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Title 3—

The President

Proclamation 6772 of February 27, 1995

American Red Cross Month, 1995

By The President of the United States of America

A Proclamation

Every day, thousands of people in need look to the American Red Cross as a banner of hope. For disaster victims here and abroad, for service men and women seeking assistance, and for everyone depending on a safe and ready supply of blood—the Red Cross stands prepared to respond. But the scope of its service extends well beyond the provision of emergency care. Its broader mission is clear: to promote compassion, to foster a spirit of generosity, and to improve the human condition everywhere.

Since Clara Barton—"The Angel of the Battlefield"—founded the American Association of the Red Cross in 1881, its members have been called upon to serve in war and in peace. Today, with more than 1 million dedicated and experienced volunteers, the American Red Cross plays a vital role in bringing physical and emotional comfort to those who need it most. Whether they are responding to an emergency or addressing the daily necessities of the homeless and elderly, Red Cross workers have always been models of community spirit.

Dangers to the health and safety of our people have changed radically during the past hundred years, and the Red Cross has adapted to meet these needs. Its commitment to caring for others enables us to restore hope in the lives of injured citizens, and its example challenges us to revitalize the covenant of American citizenship. The long-term strength of our Nation depends upon our willingness to live out the ideals long embodied by the American Red Cross. To celebrate our past and to safeguard our future, I am proud to commend the countless individuals whose courage and selflessness have sustained this organization for more than a century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1995 as "American Red Cross Month." I urge all Americans to show support for the more than 2,000 Red Cross chapters nationwide, and I challenge each of you to become active participants in advancing the noble mission of the Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–12–AD; Amendment 39–9165; AD 95–04–13]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R44 helicopters, that currently requires revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994. These revisions limit operations in high winds and turbulence; provide information about main rotor (M/R) stalls and mast bumping; and provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This amendment requires the same revisions required by the existing Priority Letter AD, but revises certain words and phrases to further clarify the revised Limitations and Normal Procedures sections, deletes the paragraph that referenced recording compliance with the AD, and adds another paragraph that states that no special flight permits will be issued prior to compliance with this AD. This amendment is prompted by two Model R44 accidents since April 1994 involving M/R blades contacting the helicopters' fuselage; and, 26 accidents involving M/R blades contacting the fuselage on the Model R22 helicopter since 1981. The Model R22 helicopter M/R system design is similar to the Model R44 helicopter M/R system design. The actions specified by this AD are intended to prevent M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

DATES: Effective March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On January 12, 1995, the FAA issued Priority Letter AD 95–02–04, to require revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994. These revisions limit operations in high winds, turbulence, and wind shear conditions; provide information about M/R stalls and mast bumping; and, provide recommendations for avoiding these situations. That action was prompted by two Model R44 accidents since April 1994 involving M/R blades contacting the helicopters' fuselage. M/R stall and mast bumping may have caused these M/R blade contacts with the fuselage. Both of these accidents resulted in fatalities. Limited pilot experience in rotorcraft has been identified as common to these accidents. High winds and turbulence were also noted in both of the accidents. Airspeed and low rotor RPM could also be influencing factors in these M/R blades contacting the fuselage. Flight in strong or gusty winds, areas of wind shear, or areas of moderate, severe, or extreme turbulence can degrade the helicopter handling qualities, thereby creating an unsafe condition. These conditions, if not compensated for, could result in M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the words "areas of forecasted or reported" should be deleted from the revision to the Limitations section of the Model R44 Rotorcraft Flight Manual, revised September 6, 1994. Some operators receive area forecasts and reports that cover wide geographic regions. These forecasts and reports can refer to turbulence in areas unrelated to the actual area of operation. Forecasted or reported wind shear or turbulence outside of the operational area was not intended to be a flight limitation. The word "spreads" was added to the term "wind gusts" to define this limitation as the spread or variance of wind velocities. The phrase "but no lower than 60 knots" was added to the Limitations section because of the possibility that at higher altitudes, 0.7 V_{ne} could be lower than 60 knots. Additionally, the phrase "but no lower than 60 knots" was added to recommendation (1) of the Normal Procedures section because of the possibility that at higher altitudes, 0.9 V_{ne} could be lower than 60 knots. Below 60 knots, the energy required to recover from a low-rotor RPM condition by flaring the helicopter and converting forward airspeed to rotor speed is unavailable. The reference to the requirement to report compliance that was contained in paragraph (b) of the existing Priority Letter AD has been deleted since part 91.147(a)(2)(v) already contains that requirement. Finally, another paragraph has been inserted to state that special flight permits will not be issued to operators for the purpose of obtaining and inserting the three pages into the rotorcraft flight manual. Due to the immediate compliance time and the criticality of preventing M/R blade contacts with the fuselage, this rule is being issued immediately to revise the operating limitation of the helicopter to a safer level.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R44 helicopters of the same type design, this AD supersedes Priority Letter AD 95–02–04 to require the same revisions to the Limitations

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section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994, that were required by the Priority Letter AD, but deletes the words "areas of forecasted or reported" from the wind turbulence limitation; adds the word "spreads" when referencing wind gusts; adds the phrase "but no lower than 60 knots" to the same section; deletes the reference to the requirement to record compliance that was contained in paragraph (b) of the existing Priority Letter AD; and, adds another paragraph to state that special flight permits will not be issued to accomplish the requirements of this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–12–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9165, to read as follows:

95–04–13 Robinson Helicopter Company: Amendment 39–9165. Docket No. 95–SW–12–AD. Supersedes Priority Letter AD 95–02–04, issued January 12, 1995.

Applicability: Model R44 helicopters, certificated in any category.

Compliance: Required before further flight, unless accomplished previously.

To prevent main rotor (M/R) stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into the Model R44 Rotorcraft Flight Manual, revised September 6, 1994. Compliance with the Limitations section is mandatory. The Normal Procedures and Emergency Procedures sections are informational.

Limitations Section

(1) Flight when surface winds exceed 25 knots, including gusts, is prohibited.

(2) Flight when surface wind gust spreads exceed 15 knots is prohibited.

(3) Flight in wind shear is prohibited.

(4) Flight in moderate, severe, or extreme turbulence is prohibited.

(5) Adjust forward airspeed to between 60 knots and 0.7 V_{ne} but no lower than 60 knots upon inadvertently encountering moderate, severe, or extreme turbulence.

Note: Moderate turbulence is turbulence that causes: (1) Changes in altitude or attitude; (2) variations in indicated airspeed; and (3) aircraft occupants to feel definite strains against seat belts.

Normal Procedures Section

Note

Until the FAA completes its research into the conditions and aircraft characteristics that lead to main rotor blade/fuselage contact accidents, and corrective type design changes and operating limitations are identified, R44 pilots are strongly urged to become familiar with the following information and comply with these recommended procedures.

Main Rotor Stall: Many factors may contribute to main rotor stall and pilots should be familiar with them. Any flight condition that creates excessive angle of attack on the main rotor blades can produce a stall. Low main rotor RPM, aggressive maneuvering, high collective angle (often the result of high-density altitude, over-pitching [exceeding power available] during climb, or high forward airspeed) and slow response to the low main rotor RPM warning horn and light may result in main rotor stall. The effect of these conditions can be amplified in turbulence. Main rotor stall can ultimately result in contact between the main rotor and airframe. Additional information on main rotor stall is provided in the Robinson Helicopter Company Safety Notices SN–10, SN–15, SN–20, SN–24, SN–27, and SN–29.

Mast Bumping: Mast bumping may occur with a teetering rotor system when excessive main rotor flapping results from low "G" (load factor below 1.0) or abrupt control input. A low "G" flight condition can result from an abrupt cyclic pushover in forward flight. High forward airspeed, turbulence, and excessive sideslip can accentuate the adverse effects of these control movements. The excessive flapping results in the main rotor hub assembly striking the main rotor mast with subsequent main rotor system separation from the helicopter.

To avoid these conditions, pilots are strongly urged to follow these recommendations:

(1) Maintain cruise airspeeds greater than 60 knots indicated airspeed and less than 0.9 V_{ne}, but no lower than 60 knots.

(2) The possibility of rotor stall is increased at high density altitudes; therefore, avoid flight at high density altitudes.

(3) Use maximum "power-on" RPM at all times during powered flight.

(4) Avoid sideslip during flight. Maintain in-trim flight at all times.

(5) Avoid large, rapid forward cyclic inputs in forward flight, and abrupt control inputs in turbulence.

Emergency Procedures Section

(1) RIGHT ROLL IN LOW "G" CONDITION

Gradually apply aft cyclic to restore positive "G" forces and main rotor thrust. Do not apply lateral cyclic until positive "G" forces have been established.

(2) UNCOMMANDED PITCH, ROLL, OR YAW RESULTING FROM FLIGHT IN TURBULENCE.

Gradually apply controls to maintain rotor RPM, positive "G" forces, and to eliminate sideslip. Minimize cyclic control inputs in turbulence; do not over control.

(3) INADVERTENT ENCOUNTER WITH MODERATE, SEVERE, OR EXTREME TURBULENCE.

If the area of turbulence is isolated, depart the area; otherwise, land the helicopter as soon as practical.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Operations Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits, pursuant to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), will not be issued.

(d) This amendment becomes effective on March 17, 1995.

Issued in Fort Worth, Texas, on February 23, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–5096 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–SW–11–AD; Amendment 39–9166; AD 95–04–14]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R22 helicopters, that currently requires revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993. These revisions limit operations in high winds and turbulence; provide information about main rotor (M/R) stalls and mast bumping; and, provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This amendment requires the same revisions required by the existing Priority Letter AD, but revises certain words and phrases to further clarify the revised Limitations and Normal Procedures sections, deletes the paragraph that referenced recording compliance with the AD, and adds another paragraph that states that no special flight permits will be issued prior to compliance with this AD. This amendment is prompted by 26 accidents since 1981 that resulted in fatalities and involved the M/R blades contacting the helicopters' fuselage. The actions specified by this AD are intended to prevent M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

DATES: Effective March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On January 12, 1995, the FAA issued Priority Letter AD 95–02–03, to require revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993. These revisions limit operations in high winds, turbulence, and wind shear conditions; provide information about M/R stalls and mast bumping; and, provide recommendations for avoiding these situations. That action was prompted by 26 Model R22 accidents since 1981 involving M/R blades contacting the helicopters' fuselage. M/R stall and mast bumping may have caused these M/R blade contacts with the fuselage. All of these accidents resulted in fatalities. Limited pilot experience in rotorcraft has been identified as common to these accidents. High winds and turbulence were also noted in some of the accidents. Airspeed and low rotor RPM could also be influencing factors in these M/R blades contacting the fuselage. Flight in strong or gusty winds, areas of wind shear, or areas of moderate, severe, or extreme turbulence can degrade the helicopter handling qualities, thereby creating an unsafe condition. These conditions, if not compensated for, could result in M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the words "areas of forecasted or reported" should be deleted from the revision to the Limitations section of the Model R22 Rotorcraft Flight Manual, revised February 4, 1993. Some operators receive area forecasts and reports that cover wide geographic regions. These forecasts and reports can refer to turbulence in areas unrelated to the actual area of operation. Forecasted or reported wind shear or turbulence outside of the operational area was not intended to be a flight limitation. The word "spreads" was added to the term "wind gusts" to define this limitation as the spread or variance of wind velocities. The phrase "but no lower than 60 knots" was added to the Limitations section because of the possibility that at higher altitudes, 0.7 V_{ne} could be lower than 60 knots. Additionally, the phrase "but no lower than 60 knots" was added to recommendation (1) of the Normal Procedures section because of the possibility that at higher altitudes, 0.9 V_{ne} could be lower than 60 knots. Below 60 knots, the energy required to recover from a low-rotor RPM condition by flaring the helicopter and converting forward airspeed to rotor speed is unavailable. The reference to the requirement to record compliance that was contained in paragraph (b) of the existing Priority Letter AD has been deleted since part 91.417(a)(2)(v)

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already contains that requirement. Finally, another paragraph has been inserted to state that special flight permits will not be issued to operators for the purpose of obtaining and inserting the three pages into the rotorcraft flight manual. Due to the immediate compliance time and the criticality of preventing M/R blade contacts with the fuselage, this rule is being issued immediately to revise the operating limitation of the helicopter to a safer level.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R22 helicopters of the same type design, this AD supersedes Priority Letter AD 95–02–03 to require the same revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993, that were required by the existing Priority Letter AD, but deletes the words "areas of forecasted or reported" from the wind turbulence limitation; adds the word "spreads" when referencing wind gusts; adds the phrase "but no lower than 60 knots" to the same section; deletes the reference to the requirement to record compliance that was contained in paragraph (b) of the existing Priority Letter AD; and, adds another paragraph to state that special flight permits will not be issued to accomplish the requirements of this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–11–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9166, to read as follows:

95–04–14 **Robinson Helicopter Company:** Amendment 39–9166. Docket No. 95–SW–11–AD. Supersedes Priority Letter AD 95–02–03, issued January 12, 1995.

Applicability: Model R22 helicopters, certificated in any category.

Compliance: Required before further flight, unless accomplished previously.

To prevent main rotor (M/R) stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into the Model R22 Rotorcraft Flight Manual, revised February 4, 1993. Compliance with the Limitations section is mandatory. The Normal Procedures and Emergency Procedures sections are informational.

Limitations Section

(1) Flight when surface winds exceed 25 knots, including gusts, is prohibited.

(2) Flight when surface wind gust spreads exceed 15 knots is prohibited.

(3) Flight in wind shear is prohibited.

(4) Flight in moderate, severe, or extreme turbulence is prohibited.

(5) Adjust forward airspeed to between 60 knots and 0.7 V_{ne} but no lower than 60 knots upon inadvertently encountering moderate, severe, or extreme turbulence.

Note: Moderate turbulence is turbulence that causes: (1) changes in altitude or attitude; (2) variations in indicated airspeed; and (3) aircraft occupants to feel definite strains against seat belts.

Normal Procedures Section

Note

Until the FAA completes its research into the conditions and aircraft characteristics that lead to main rotor blade/fuselage contact accidents, and corrective type design changes and operating limitations are identified, R22 pilots are strongly urged to become familiar with the following information and comply with these recommended procedures.

Main Rotor Stall: Many factors may contribute to main rotor stall and pilots should be familiar with them. Any flight condition that creates excessive angle of attack on the main rotor blades can produce a stall. Low main rotor RPM, aggressive maneuvering, high collective angle (often the result of high-density altitude, over-pitching [exceeding power available] during climb, or high forward airspeed) and slow response to the low main rotor RPM warning horn and light may result in main rotor stall. The effect of these conditions can be amplified in turbulence. Main rotor stall can ultimately result in contact between the main rotor and airframe. Additional information on main rotor stall is provided in the Robinson Helicopter Company Safety Notices SN–10, SN–15, SN–20, SN–24, SN–27, and SN–29.

Mast Bumping: Mast bumping may occur with a teetering rotor system when excessive main rotor flapping results from low "G" (load factor below 1.0) or abrupt control input. A low "G" flight condition can result from an abrupt cyclic pushover in forward flight. High forward airspeed, turbulence, and excessive sideslip can accentuate the adverse effects of these control movements. The excessive flapping results in the main rotor hub assembly striking the main rotor mast with subsequent main rotor system separation from the helicopter.

To avoid these conditions, pilots are strongly urged to follow these recommendations:

(1) Maintain cruise airspeeds greater than 60 knots indicated airspeed and less than 0.9 V_{ne}, but no lower than 60 knots.

(2) The possibility of rotor stall is increased at high density altitudes; therefore, avoid flight at high density altitudes.

(3) Use maximum "power-on" RPM at all times during powered flight.

(4) Avoid sideslip during flight. Maintain in-trim flight at all times.

(5) Avoid large, rapid forward cyclic inputs in forward flight, and abrupt control inputs in turbulence.

Emergency Procedures Section

(1) RIGHT ROLL IN LOW "G" CONDITION

Gradually apply aft cyclic to restore positive "G" forces and main rotor thrust. Do not apply lateral cyclic until positive "G" forces have been established.

(2) UNCOMMANDED PITCH, ROLL, OR YAW RESULTING FROM FLIGHT IN TURBULENCE.

Gradually apply controls to maintain rotor RPM, positive "G" forces, and to eliminate sideslip. Minimize cyclic control inputs in turbulence; do not over control.

(3) INADVERTENT ENCOUNTER WITH MODERATE, SEVERE, OR EXTREME TURBULENCE.

If the area of turbulence is isolated, depart the area; otherwise, land the helicopter as soon as practical.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Operations Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits, pursuant to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), will not be issued.

(d) This amendment becomes effective on March 17, 1995.

Issued in Fort Worth, Texas, on February 23, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–5097 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–ANE–06; Amendment 39–9140; AD 95–03–03]

Airworthiness Directives; Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 Propellers Installed on Beech A100 and A100A Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 propellers installed on Beech A100 and A100A aircraft. This action requires an initial and repetitive inspections, and specified rework or retirement, as necessary, of the propeller hub assemblies and propeller blades. This amendment is prompted by a determination that the current hub design and blade repair limits do not adequately protect against initiation of fatigue cracks in the propeller hub arm bore and do not prevent the resonant speed of the propeller from shifting into the permitted ground idle operating range. The actions specified in this AD are intended to prevent initiation of fatigue cracks in the propeller hub arm bore and subsequent progression to failure, with departure of the hub arm and blade, that may result in loss of aircraft control.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–06, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, IL 60018; telephone (708) 294–7031, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: On December 22, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 95–01–02, applicable to Hartzell Model HC–B4TN–5(D,G,J)L/LT10282(B,K)–5.3R and HC–B4TN–5(D,G,J)L/LT10282N(B,K)–5.3R propellers installed on Mitsubishi MU–2 series aircraft. That AD requires new propeller blade repair limits and requires replacement of propeller hubs with new improved fatigue strength steel hubs which require inspection, and specified rework as necessary, at a repetitive interval of 3,000 hours time in service (TIS). That AD was prompted by a determination that the previous hub design and blade repair limits did not adequately protect against initiation of fatigue cracks in the propeller hub arm bore and did not prevent the resonant speed of the propeller from shifting into the permitted ground idle operating range when installed in Mitsubishi MU–2 Series aircraft. That condition, if not corrected, can result in fatigue cracks in the propeller hub arm bore and subsequent progression to failure, with departure of the hub arm and blade, that may result in loss of aircraft control.

The FAA has determined, based on operating stresses and similarity of propeller type design, that similar fatigue cracks could occur in Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 propellers installed on Beech A100 and A100A aircraft.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A196A, dated December 27, 1994, that describes procedures for initial and repetitive inspections, and specified rework or retirement, as necessary, of the propeller hub assemblies and propeller blades.

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Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 propellers of the same type design, this AD is being issued to require initial and repetitive inspections, and specified rework or retirement, as necessary, of the propeller hub assemblies and propeller blades. The actions are required to be accomplished in accordance with the ASB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95 ANE–06." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–03–03 Hartzell Propeller Inc.: Amendment 39–9140. Docket 95–ANE–06.

Applicability: Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N) (B,K)–12.5 and HC–B4TN–3A/T10173F(N) (B,K)–12.5 propellers installed on Beech A100 and A100A aircraft.

Note: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller blade model designation. This airworthiness directive (AD) still applies regardless of whether these letters are present or absent on the propeller blade model designation.

Compliance: Required as indicated, unless accomplished previously.

To prevent initiation of fatigue cracks in the propeller hub arm bore and subsequent progression to failure, with departure of the hub arm and blade, that may result in loss of aircraft control, accomplish the following:

(a) For affected propellers with Time-Since-New (TSN) greater than or equal to 3,000 hours or TSN unknown on the effective date of this AD, within the next 150 hours Time-In-Service (TIS) or the next 12 calendar months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD:

(1) Remove affected propeller hub and blade assemblies from the aircraft for inspection, and accomplish specified rework or retirement, if necessary, in accordance with Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A196A, dated December 27, 1994.

(2) Replace propeller blade assemblies that have been rejected or retired per paragraph (a)(1) of this AD with propeller blade assemblies inspected and reworked, if necessary, per paragraph (a)(1) of this AD or new blade assemblies. Thereafter, at intervals of 3,000 hours TIS or 60 calendar months, whichever occurs first, inspect, and rework or retire, if necessary, the blade assemblies in accordance with Hartzell Propeller Inc. ASB No. A196A, dated December 27, 1994.

(3) Replace propeller hub assemblies that have been rejected or retired per paragraph (a)(1) of this AD with propeller hub assemblies that have had the hub arm bores inspected (and reworked as necessary), pilot tubes replaced, and have a metal impression stamp at the end of the hub serial number with suffix letter "M", followed by a number (1, 2, 3, etc.) to indicate the number of repetitive inspections performed in accordance with Hartzell ASB No. A196A, dated December 27, 1994. Thereafter, at intervals of 600 hours TIS or 60 calendar months, whichever occurs first, inspect, and rework or retire, as necessary, the hub assemblies in accordance with Hartzell Propeller Inc. ASB No. A196A, dated December 27, 1994.

(4) Replace propeller hub unit Part Number (P/N) 840–139 or P/N 840–89, unless already accomplished, with a hub that has compressive rolled internal bearing bores, which is identified with the addition of a third letter "A" in the hub serial number prefix (e.g. "CDA1234"). Thereafter, at intervals of 3,000 hours TIS or 60 calendar months, whichever occurs first, inspect, and rework or retire, as necessary, the hub assemblies in accordance with Hartzell Propeller Inc. ASB No. A196A, dated December 27, 1994.

(b) For affected propellers with less than 3,000 hours TSN on the effective date of this AD, within the next 300 hours TIS, or prior to the accumulation of 3,150 hours TSN, or within the next 12 calendar months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD

(c) Any blade repairs made after the effective date of this AD shall be accomplished in accordance with the procedures specified in Hartzell ASB No. A196A, dated December 27, 1994.

(d) For propellers that experience a blade strike, as defined in paragraph (f) of this AD, after the effective date of this AD, prior to further flight, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD.

(e) For propellers that have experienced a blade strike, as defined in paragraph (f) of this AD, prior to the effective date of this AD, within the next 100 hours TIS after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD.

(f) A blade strike is defined as a propeller having any blade(s) bent beyond the repair limits specified in Hartzell Propeller Inc. Standard Practices Manual 61–01–02, Revision 1, Pages 1104–1105, dated June 1994.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(h) Except when propellers have experienced a blade strike, special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The inspections and rework shall be accomplished in accordance with the following service documents:

Document No.	Pages	Date
Hartzell Propeller Inc., ASB No. A196A ..... Total pages: 5.	1–5	Dec. 27, 1994.
Hartzell Propeller Inc., Standard Practices Manual, 61–01–02, Revision 1 ..... Total pages: 2.	1104–1105	June 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 17, 1995.

Issued in Burlington, Massachusetts, on February 7, 1995.

Donald F. Perrault,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4248 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–253–AD; Amendment 39–9159; AD 95–04–07]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, and –30 Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This action requires inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. This action also provides for termination of the inspections for some airplanes by installing retainers on the bolts. This amendment is prompted by reports of stretched or broken lockwires on the forward engine mount bolts. The actions specified in this AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen A. Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On October 10, 1985, the FAA issued AD 85–22–01, amendment 39–5157, (50 FR 42153, October 18, 1985) applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 airplanes, and KC–10A (military) airplanes. That AD requires repetitive inspections of the engine-to-pylon forward and aft mount and the engine mount bolts; and replacement of the bolts and nuts, torque check of the bolts, and installation of a torque stripe on the bolts, if necessary. That AD provided for termination of the inspections by replacing the engine mount bolts with bolts having a lockwire hole in the bolt head, installing tabs with a lockwire hole, and installing lockwires.

Since the issuance of that AD, the FAA has received reports of broken or stretched lockwires on the forward engine mount bolts on several Model DC–10–30 airplanes on which the terminating actions described in AD 85–22–01 had been accomplished. Investigation has revealed that these lockwires may have stretched and eventually broken because the foward engine mount bolts had loosened. McDonnell Douglas has developed a bolt retainer that will prevent these bolts from loosening from the engines of Model DC–10–30 airplanes and KC–10A (military) airplanes.

Additionally, the FAA has received reports of loose bolts on the engine

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mounts of Model DC–10–10 airplane engines. However, McDonnell Douglas has not yet developed a bolt retainer for Model DC–10–10 or –15 airplanes, or KC–10A airplanes.

Broken lockwires, if not corrected, could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane.

The lockwires on the forward engine mount bolts of Model DC–10–30 airplanes are similar to those installed on Model DC–10–10 and –15 airplanes, and KC–10A airplanes. Therefore, the FAA finds that Model DC–10–10 and –15 airplanes, and KC–10A airplanes are also subject to the same unsafe condition.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995, which describes procedures for repetitive visual inspections to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3. If any broken lockwire is found, the service bulletin describes procedures to check the torque of the bolt, to install a new lockwire, and to install a torque stripe on the bolt. This service bulletin also describes procedures for subsequent visual inspections to detect misalignment of the torque stripe.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent broken lockwires, which could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane. This AD requires visual inspections to determine the condition of the lockwires on the forward engine mount bolts on engines 1, 2, and 3, and correction of discrepancies found. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

The required compliance time of 120 days is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, that compliance time was selected because of the degree of urgency associated with addressing the subject unsafe condition and the practical aspects of performing the inspection within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Further, the FAA took into account the 6-month compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 120 days after the effective date of this rule will fall approximately at the same time as that recommended by the manufacturer.

This AD also requires that operators report the results of the visual inspections to the FAA. The intent of these reports is to enable the FAA to determine how widespread the problem of broken lockwires may be in the affected fleet. Based on the results of these reports, further corrective action may be warranted.

Since retainers have been developed only for Model DC–10–30 airplanes and KC–10A airplanes, this AD also provides for the termination of the visual inspections by installing retainers on the engine mount bolts on Model DC–10–30 airplanes and KC–10A airplanes in accordance with Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–253–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–07 McDonnell Douglas: Amendment 39–9159. Docket 94–NM–253–AD.

Applicability: Model DC–10–30 airplanes on which bolt retainers have not been installed on the engine mount in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992; Model DC–10–10 and –15 airplanes; and KC–10A (military) airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken lockwires, which could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane, accomplish the following:

(a) Within 120 days after the effective date of this AD, unless accomplished previously within the last 750 flight hours prior to the effective date of this AD, perform a visual inspection to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995.

(1) If no lockwire is found broken, repeat the inspection thereafter at intervals not to exceed 750 flight hours.

(2) If any lockwire is found broken, prior to further flight, check the torque of the bolt, install a new lockwire, and install a torque stripe on the bolt, in accordance with the alert service bulletin. Thereafter at intervals not to exceed 750 flight hours, perform a visual inspection to detect misalignment of the torque stripes, and repeat the inspection to detect broken lockwires, in accordance with the alert service bulletin.

(b) Submit a report of findings of broken lockwires and/or misaligned torque stripes found during the inspections required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax to (310) 627–5210, at the times specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. The report must include the manufacturer's fuselage number of the airplane, number of cycles on the airplane, torque value of the bolt, and condition of the lockwire (i.e, broken or intact). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspections are accomplished after the effective date of this AD: Submit reports within 30 days after finding any discrepancy.

(2) For airplanes on which the inspections have been accomplished prior to the effective date of this AD: Submit the initial report within 30 days after the effective date of this AD, and subsequent reports within 30 days after finding any discrepancy.

(c) For Model DC–10–30 airplanes and KC–10A (military) airplanes only: Installation of retainers on the engine mount bolts in accordance with Figure 6 of Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995. The installation shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on February 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4379 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–14–AD; Amendment 39–9164; AD 95–04–12]

Airworthiness Directives; Airbus Model A310, A300–600, and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A310, A300–600, and A320 series airplanes. This action requires inspections to verify proper installation of the grille over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of any discrepancies. This amendment is prompted by reports of obstructions in the air extraction system of the lavatories. The actions specified in this AD are intended to prevent obstructions in the air extraction system of the lavatory, which may result in the failure of the smoke detection system to detect smoke in the lavatories.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–14–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310, A300–600, and A320 series airplanes. The French DGAC advises that there have been reports of blockage of the air duct of the air extraction system for the lavatories on some airplanes. Investigation into the cause of this blockage has revealed that either the air extraction duct may be misaligned with the hole in the air extraction cover (i.e., the duct may be inverted and positioned 180 degrees out of alignment), or the ceiling louver (grille) that houses the ceiling light may be installed improperly (i.e., the light may be positioned directly over the point of extraction, which would prevent air from being extracted).

Each lavatory is equipped with an extraction system to remove lavatory air through a duct located above the lavatory ceiling. This duct is equipped with a smoke detector to monitor the extracted air for the presence of smoke. If this duct is obstructed, the air extraction system of the lavatories may be impaired, which could result in the smoke detection system failing to detect smoke in the lavatories.

Airbus has issued All Operators Telex (AOT) 26–12, Revision 1, dated July 4, 1994, which describes procedures for inspections to verify proper installation of the grille (ceiling louver) over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory. This AOT also provides instructions for correcting improperly installed grilles and blockages in the duct. The French DGAC classified this AOT as mandatory and issued French airworthiness directives 94–169–161(B)R1, dated September 28, 1994 (for Model A310 and A300–600 series airplanes), and 94–168–058(B), dated July 20, 1994 (for Model A320 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the lavatory smoke detection system to detect smoke in the lavatories. This AD requires inspections to verify proper installation of the grille over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of improperly installed grilles and blockages in the duct. The actions are required to be accomplished in accordance with the AOT described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–14–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–12 Airbus Industrie: Amendment 39–9164. Docket 95–NM–14–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 10156 has not been accomplished, and Model A320 series airplanes on which Airbus Modification 22561 or Airbus Service Bulletin A320–26–1017 has not been accomplished; certificated in any category. This AD is not applicable to airplanes on which the air extraction system is not configured to detect smoke in the extracted air. (That is, airplanes that do not have standard air extraction systems are not subject to the requirements of this AD.)

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lavatory smoke detection system to detect smoke in the lavatory, accomplish the following:

(a) Within 450 flight hours after the effective date of this AD, perform an inspection of each lavatory to verify proper installation of the grille over the air extraction duct of the lavatories, and to detect blockage in the air extraction duct of the lavatories, in accordance with Airbus All Operators Telex (AOT) 26–12, Revision 1, dated July 4, 1994.

(1) If the grille is found to be properly installed and if no blockage is found, repeat the inspection thereafter whenever the cover over the air extraction duct of the lavatories or any ceiling louver (grille) of the ceiling light in the lavatory is removed or replaced for any reason.

(2) If the grille is found to be improperly installed and/or if blockage is found, prior to further flight, correct any discrepancies found, in accordance with Airbus AOT 26–12, Revision 1, dated July 4, 1994. Repeat the inspection thereafter whenever the cover over the air extraction duct of the lavatories or any ceiling louver (grille) of the ceiling light in the lavatory is removed or replaced for any reason.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and correction of discrepancies shall be done in accordance with Airbus AOT 26–12, Revision 1, dated July 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on February 17, 1995.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4544 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–ANE–34; Amendment 39–9163; AD 95–04–11]

Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Textron Lycoming ALF502R series turbofan engines, that currently requires the establishment of a reduced stress rupture retirement life limit for certain third stage turbine disks. This amendment establishes a new increased stress rupture retirement life limit for certain third stage turbine disks used in conjunction with third stage turbine nozzles that have improved cooling effectiveness, expands the applicability by adding the ALF502L series engines, and establishes other new reduced stress rupture retirement life limits. This amendment is prompted by the introduction of an improved design third stage turbine nozzle, and a new reduced stress rupture retirement life limit for certain third stage turbine disks on the ALF502L series engines. The actions specified by this AD are intended to prevent a total loss of engine power, inflight engine shutdown, and possible damage to the aircraft.

DATES: Effective April 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497; (203) 385–1470. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–25–02, Amendment 39–6811 (55 FR 48592, November 21, 1990), which is applicable to Textron Lycoming ALF502R series turbofan engines, was published in the **Federal Register** on March 15, 1993 (58 FR 13711). That action proposed to expand the applicability by adding the ALF502L series. That action would also provide for increased stress rupture retirement life limits for certain third stage turbine disks when used in conjunction with third stage turbine nozzles that have improved cooling effectiveness.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, but as of this date the anticipated name change on the type certificate for the

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ALF502L series engines has not occurred.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter concurs with the rule as proposed.

Since publication of the NPRM, Textron Lycoming has issued Revision 22 to Service Bulletin ALF502 72–0002, dated December 23, 1992, that introduces new part numbered rotor parts and adds pro-rating formulas to include the new parts. The technical content in regard to affected components is unchanged. This final rule has been revised to reference this later revision.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 900 Textron Lycoming ALF502R and ALF502L series turbofan series engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry will be affected by this AD, and that 100 are ALF502L series engines that are subject to the reduction in service life requirement. It is also estimated that to implement the reduction in service life requirement it will take approximately 14 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. The reduction in service life requirement will cost approximately $30,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,077,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6811 (55 FR 48592, November 21, 1990) and by adding a new airworthiness directive, Amendment 39–9163, to read as follows:

95–04–11 Textron Lycoming: Amendment 39–9163. Docket 92–ANE–34. Supersedes AD 90–25–02, Amendment 39–6811.

Applicability: Textron Lycoming ALF502R and ALF502L series turbofan engines installed on but not limited to British Aerospace BAe–146 and Canadair Challenger CL600 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a total loss of engine power, inflight shutdown, and possible damage to the aircraft, accomplish the following:

(a) Remove from service and replace with a serviceable part third stage turbine disks, Part Numbers (P/N) 2–143–030–05, 2–143–030–08, and 2–143–030–14, as follows:

(1) For disks that have been installed only with third stage turbine nozzles P/Ns 2–141–130–52 or 2–141–120–53, remove from service as follows:

(i) For disks that have accumulated 13,220 or more hours time in service (TIS) since new on the effective date of this AD, within the next 80 hours TIS after the effective date of this AD for the ALF502L engines, or within the next 80 hours TIS after December 11, 1990, (the effective date of AD 90–25–02), for the ALF502R engines, but not to exceed the existing cyclic life limit.

(ii) For disks that have accumulated less than 13,220 hours TIS since new on the effective date of this AD, prior to accumulating more than 13,300 hours TIS since new, but not to exceed the existing cyclic life limit.

(iii) Thereafter, remove disks prior to accumulating more than 13,300 hours TIS since new, but not to exceed the existing cyclic life limit.

(2) For disks that have been installed only with third stage turbine nozzles, P/Ns 2–141–120–57 or 2–141–120–R56, remove from service as follows:

(i) For disks that have accumulated 27,420 or more hours TIS since new on the effective date of this AD, within the next 80 hours TIS after the effective date of this AD, but not to exceed the existing cyclic life limit.

(ii) For disks that have accumulated less than 27,420 hours TIS since new on the effective date of this AD, prior to accumulating more than 27,500 hours TIS since new, but not to exceed the existing cyclic life limit.

(iii) Thereafter, remove disks prior to accumulating more than 27,500 hours TIS since new, but not to exceed the existing cyclic life limit.

(3) For disks that have been installed with both third stage turbine nozzles, P/Ns 2–141–120–52 or 2–141–120–53, and third stage turbine nozzles, P/Ns 2–141–120–57 or 2–141–120–R56, remove from service as follows:

(i) Determine the prorated hourly life limit in accordance with the procedure defined in the Accomplishment Instructions, Section 2.B.(2) of Textron Lycoming Service Bulletin (SB) ALF502 72–0002 (for ALF502R series engines) Revision 22, dated December 23, 1992, or Textron Lycoming SB ALF502 72–0004 (for ALF502L series engines) Revision 11, dated June 17, 1987. From this prorated hourly life limit, subtract 80 hours TIS to determine the compliance threshold for each engine model.

(ii) For disks that have equalled or exceeded the compliance threshold on the effective date of this AD, within the next 80 hours TIS, but not to exceed the existing cyclic life limit.

(iii) For disks that have accumulated less than the compliance threshold on the effective date of this AD, prior to accumulating more than the calculated prorated hourly life limit.

(iv) Thereafter, remove disks at or prior to accumulating the prorated hourly life limit, but not to exceed the existing cyclic life limit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office

(c) The actions required by this AD shall be done in accordance with the following Textron Lycoming SB's:

Document No.	Pages	Revision	Date
ALF502 72–0002	1–2	22	Dec. 23, 1992.
	3	18	Dec. 21, 1989.
	4–7	22	Dec. 23, 1992.
	8	21	Sept. 25, 1992.
	9–10	22	Dec. 23, 1992.
	11	21	Sept. 25, 1992.
	12–26	22	Dec. 23, 1992.
	27	21	Sept. 25, 1992.
Total pages: 27.			
ALF502 72–0004	1–16	11	June 17, 1987.
Total pages: 16.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497; (203) 385–1470. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on April 3, 1995.

Issued in Burlington, Massachusetts, on February 16, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4853 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–21–AD; Amendment 39–9167; AD 95–04–15]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles of certain wing pylons, and repair of any cracked upper spar angles. This amendment requires repetitive inspections to detect cracking of the upper spar angles, and revision of the applicability to exclude an airplane and to include certain other airplanes. This amendment is prompted by an additional report of cracking of the upper inboard spar cap. The actions specified in this AD are intended to prevent reduced structural integrity of the airplane due to cracking in the subject areas.

DATES: Effective March 17, 1995.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of March 17, 1995.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54–49, dated December 2, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 12, 1995 (59 FR 66669, December 28, 1994).

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–21–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On December 20, 1994, the FAA issued AD 94–26–11, amendment 39–9106 (59 FR 66669, December 28, 1994), applicable to certain McDonnell Douglas Model MD–11 series airplanes. That AD requires a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons, and repair of any cracked upper spar angles. That AD also requires that operators report the results of the visual inspection to the FAA. That action was prompted by a report of cracking in the upper spar cap of the wing pylon. The actions required by that AD are intended to prevent reduced structural integrity of the airplane due to cracking of the upper spar cap.

Since the issuance of that AD, another operator of McDonnell Douglas Model MD–11 series airplanes has reported that, while accomplishing the inspection required by AD 94–26–11, a crack was found on the upper inboard spar cap of the number 3 wing pylon. Investigation revealed that the solution heat treatment was omitted during the manufacturing process of the spar caps. Therefore, these spar caps are believed to be particularly susceptible to stress corrosion cracking.

As a result of this latest report, McDonnell Douglas conducted a crack analysis of the upper spar caps. The FAA has reviewed the data gathered from this analysis and has determined that, to maintain the safety of the Model MD–11 fleet, repetitive inspections must be performed to detect cracking in the critical areas of the spar cap.

Further, investigation revealed that one airplane, manufacturer's fuselage number 574, is not subject to this unsafe condition since it was inspected prior to delivery, and subsequently, discrepant spar caps were replaced with non-suspect parts. Additionally, the manufacturer has identified three additional airplanes, manufacturer's fuselage numbers 576, 577, and 578, that are subject to unsafe condition

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since the discrepant spar caps were installed on these airplanes.

Cracking of the spar angles, if not detected and corrected in a timely manner, could result in damage to the immediately adjacent structure, which would reduce structural integrity of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995. Revision 1 differs from the original issue of the service bulletin, which was referenced in the existing AD as the appropriate source of service information. Revision 1 describes procedures for initial and repetitive visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons, including the critical areas of the spar angle. Revision 1 also revises the effectivity to exclude one airplane and to add three additional airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 94–26–11 to require initial and repetitive visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons, in accordance with the alert service bulletin described previously. Cracked upper spar angles are required to be repaired in accordance with a method approved by the FAA.

This AD also requires that operators report the results of the initial and repetitive visual inspections to the FAA. In concert with the manufacturer's ongoing investigation, the FAA intends to use these reports to develop, review, and approve corrective action that would terminate the need for the repetitive inspections required by this AD. Therefore, depending upon the results of these reports, further corrective action may be warranted.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9106 (59 FR 66669, December 28, 1994), and by adding a new airworthiness directive (AD), amendment 39–9167, to read as follows:

95–04–15 McDonnell Douglas: Amendment 39–9167. Docket 95–NM–21–AD. Supersedes AD 94–26–11, Amendment 39–9106.

Applicability: Model MD–11 series airplanes having manufacturer's fuselage number 447 through 573 inclusive, and 575 through 578 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 30 days after January 12, 1995 (the effective date of AD 94–26–11, amendment 39–9106), unless accomplished previously within the last 30 days prior to January 12, 1995, perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, part numbers AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994.

(2) At the applicable time specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, submit a report of the results (both positive and negative findings) of the inspection required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax the report to (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(i) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after January 12, 1995: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(ii) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished prior to January 12, 1995: Submit the report within 10 days after January 12, 1995.

(b) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 30 days after the effective date of this AD, or within 60 days after accomplishing the visual inspection required by paragraph (a) of this AD, whichever occurs later, perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, part numbers AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995. Repeat this inspection thereafter, prior to further flight, following each incident of excessive maneuver, turbulence overload (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–01), or hard landing (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–03).

(2) At the applicable time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, submit a report of the results (both positive and negative findings) of the inspections required by paragraph (b) of this AD to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax the report to (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(i) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing any of the inspections required by paragraph (b) of this AD.

(ii) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(c) If no cracking is detected during the inspections required by paragraphs (a) and (b) of this AD, repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 60 days or 300 landings, whichever occurs first, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995.

(d) If any cracking is detected during the inspection required by either paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, and McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994. The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 12, 1995 (59 FR 66669, December 28, 1994). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on February 23, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 95–4983 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ASO–24]

Amendment to Class D and Class E Airspace; Fort Campbell, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on December 21, 1994, Airspace Docket No. 94–ASO–24. The December 21, 1994, final rule corrected the geographic positions of the Sabre Army Heliport and the designations of the Fort Campbell, KY, Class D and Class E airspace areas.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

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SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–31309, Airspace Docket No. 94–ASO–24, published on December 21, 1994 (59 FR 65705), corrected the geographic position coordinates of the Sabre Army Heliport and the designations of the Class D and Class E airspace areas at Fort Campbell, KY. An error was discovered in the geographic position coordinates of the Sabre Army Heliport. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic position coordinates for the Class D and Class E airspace areas at Fort Campbell, KY, as published in the **Federal Register** on December 21, 1994 (59 FR 65705), (**Federal Register** Document 94–31309; page 65706, column 3), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO KY D Fort Gampbell, KY [Corrected]

By removing "(Lat. 36°34'24" N, long. 87°28'50" W)" and substituting "(Lat. 36°34'14" N, long. 87°28'50" W)".

* * * * *

ASO KY E5 Fort Campbell, KY [Corrected]

By removing "(Lat. 36°34'24" N, long. 87°28'50" W)" and substituting "(Lat. 36°34'14" N, long. 87°28'50" W)".

* * * * *

Issued in College Park, Georgia, on February 10, 1995.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–4775 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 813, 905, 908, and 913

[Docket No. R–95–1747; FR–3730–F–03]

RIN 2577–AB47

Electronic Transmission of Required Family Data for Public Housing, Indian Housing, and the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule requires all housing agencies (HAs) to submit certain data electronically to HUD in a HUD prescribed format. For HAs that are not already automated or who determine that automation is not cost-effective, transmission of the data through the use of a service bureau is permitted. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to HAs and HUD.

This rule applies to projects administered under the public housing, Indian housing, and Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs. A similar rule was issued with respect to multifamily subsidized projects administered under programs subject to the oversight of the Assistant Secretary for Housing-Federal Housing Commissioner (58 FR 61017), which was codified at 24 CFR part 208.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: For Technical Information—Katherine M. Dillon, Director, Information Services Division, Office of Public and Indian Housing, Room 4248, telephone (202) 708–5285. For Public Housing program information—Edward C. Whipple, Director, Occupancy Division, Office of Public and Indian Housing, Room 4206, telephone (202) 708–0744. For Native American program information—Ed Fagan, Office of Native American Programs, Room B–133, telephone (202) 755–0088. These people may be reached at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule have been reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned approval number 2577–0083, which expires on August 31, 1997.

II. Background

On Thursday, October 6, 1994, the Department published a proposed rule that would require all housing agencies (HAs) to submit certain data electronically to HUD in a HUD prescribed format.

Housing agencies have been submitting data forms to HUD for each family assisted under the public housing, Indian housing, and Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation Programs. Approximately 85 percent of reporting agencies (3,655 HAs) have been submitting paper forms. This extensive processing of paper forms has become a burden to the HAs as well as to HUD.

To reduce the cost to the Department of processing this information and to improve its accuracy, HUD issued the proposed rule to require that this information be submitted electronically. The change is expected to contribute significant savings to the Department, in a time when budget constraints demand such savings. The time spent by HAs in initiating electronic collection and transmission and making corrections to the electronic data submissions will be offset by future savings in the reexamination and reporting process, as well as increased accuracy and speed associated with the admission, reexamination and reporting processes, and the reduced number of HUD adjustments and paperwork required by these adjustments.

The proposed rule requires HAs to submit data electronically via telephone modem, rather than through tape, diskette, or paper. However, the rule also provides that the Department may approve transmission of the data by tape or diskette where the Department determines that the cost of telephonic transmission would be excessive. For HAs that are not already automated or who determine that automation is not cost effective, the rule would permit transmission of the data through the use of a service bureau.

In recognition of the difficulty some HAs may have in conversion to electronic submission of data, the proposed rule permits HUD Field Offices to grant extensions of time beyond the stated implementation date for commencement of electronic submission under certain circumstances.

This final rule adopts the proposed rule, as published, in its entirety, with the addition of a reference to Indian housing programs in § 908.108(a).

III. Response to Public Comments

The Department received 16 comments on the proposed rule. The commentors consisted of HAs and two professional housing associations. Most respondents expressed general support for HUD's implementation of the rule. The following are major concerns expressed by the commentors:

The most frequent category of concern was raised by small HAs (100 units or less in management), requesting that they be excluded from the requirement

to submit family data electronically. They stated that their size and limited staff and financial resources made compliance burdensome, and they suggested two solutions. The first was to discontinue the submission of data completely; the second was to continue submission of paper reports as is currently the practice.

While the Department is aware of the unique constraints faced by small HAs in reporting family data, they should be aware that they constitute a sizeable portion of the HA universe and have valuable resident family information that should be shared. HUD's position in this matter is that small HAs unable to automate their reporting systems should seek out, and contract with, organizations that provide data processing services (Service Bureaus). Service costs should be manageable, since small HAs are only required to report on a quarterly basis. A service bureau need not be physically located in the city where the housing agency is located, since paper records may be mailed to a service bureau, which may then transmit the records electronically to HUD.

Several HAs suggested that if HUD provides the software for automating family data reporting, the requirement would be reasonable. Along these lines, other HAs and a housing organization indicated a willingness to send data electronically only if HUD provides equipment and software or pays for contracting with service bureaus.

The Department is aware that there are vendors available that can assist HAs in automating the collection and reporting of family data. These vendors also can help HAs to achieve this automation in the context of HA automation of other functions. The Department strongly encourages HAs to investigate these options. HUD also is considering development of a software package that is directed primarily for the smaller HAs. This package would automate only the collection and reporting of family data, not the other HA functions. This software package would be provided free of charge. The Department will notify HAs by letter if this software package becomes available.

The cost of automation hardware is an eligible operating expense and can be included in the operating budget. Automating this management function also is an allowable expense under the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program.

Another organization suggested that the Section 8 Program Administrative Fee be increased to cover the cost of automation. In the Section 8 Program, automation may be paid from ongoing Administrative Fees or the Operating Reserve. The Department, however, has no plans to increase Administrative Fees for the sole purpose of automation.

Several HAs recommended that HUD provide training and technical assistance in the formatting and transmission of family data to the Department's central processing facility. Plans are underway to develop a video tape and expanded training materials specifically for this purpose.

One organization recommended that this automation effort be more closely coordinated with the HUD automated database program TRACS—the data collection system used for programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner. Unfortunately, the electronic data formats for the Forms HUD–50058 and HUD–50058–FSS, which are used for the programs that are covered by this rule, and for the Form HUD–50059, which are the subject of TRACS, are unique and will not accommodate a one-for-one correspondence. While similar automation hardware may be used to process a variety of management information reports, software specifically designed for the above forms is required.

A number of HAs recommended that the time periods required for the implementation of the rule be extended in the following manner:

Automated agencies (converting to telephonic electronic transmission) from 120 days after publication of the final rule to 12 months.

Non-automated agencies (planning to automate) from 365 days after publication of the final rule to 24 months.

While HUD understands the obstacles and concerns facing agencies in this automation effort, the intent of the rule is to decrease the reporting burden for HAs while at the same time, reduce costs to the Department in a time when budget constraints demand such savings. HUD is of the opinion that the time frames originally set in the rule are realistic. Special situations may be directed to the HUD Field Office for consideration.

One HA located in a remote area of Alaska requested approval of transmission via tape or diskette, since telephonic service was undependable. In these instances HAs may utilize a Service Bureau or, upon prior approval from HUD, transmit via tape or diskette.

IV. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is directed to housing agencies that operate HUD-assisted housing, whose functions and authority remain unchanged. It merely changes the format of data submitted to HUD to make its transmission more accurate and efficient. It will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule changes the way in which the data is transmitted to HUD, and all costs associated with implementation of the electronic transmission will be considered allowable project operating costs, the rule is not expected to have a significant economic impact.

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E. Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

F. Catalog

The Catalog of Federal Domestic Assistance numbers for the programs covered by this rule are 14.850, 14.855, 14.856, and 14.857.

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Homeownership, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 908

Computer technology—automatic data processing, data processing, electronic data processing, Subsidies—grant programs, Rent subsidies.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24, chapters VIII and IX, of the Code of Federal Regulations are amended by amending parts 813, 905, and 913, and by adding a new part 908, consisting of §§ 908.101 through 908.112, as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for part 813 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

2. In § 813.109, a new paragraph (c) is added, to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(c) See 24 CFR part 908 for requirements for transmission of data to HUD.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

3. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b), 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

4. In § 905.315, paragraphs (a) (2) and (3) are redesignated as paragraphs (b) and (c), and a new paragraph (d) is added, to read as follows:

§ 905.315 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(d) See 24 CFR part 908 for requirements for transmission of data to HUD.

5. A new part 908, consisting of §§ 908.101 through 908.112, is added to read as follows:

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

Sec.

908.101 Purpose.
908.104 Requirements.
908.108 Cost.
908.112 Extension of time.

Authority: 42 U.S.C. 1437f, 3535(d), 3543, 3544, and 3608a.

§ 908.101 Purpose.

The purpose of this part is to require Housing Agencies (HAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. This electronically submitted data is required for HUD Forms HUD–50058, Family Report, and HUD–50058–FSS, Family Self-Sufficiency Addendum.

§ 908.104 Requirements.

(a) *Automated HAs.* Housing agencies that currently use automated software packages to transmit Forms HUD–50058 and HUD–50058–FSS information by tape or diskette to the Department's data processing contractor must convert to telephonic electronic transmission of that data in a HUD specified format by June 30, 1995.

(b) *Nonautomated HAs.* Housing agencies that currently prepare and transmit the HUD–50058 and HUD–50058–FSS information to HUD paper must:

(1) Complete a vendor search and obtain either:

(i) The necessary hardware and software required to develop and maintain an in-house automated data processing system (ADP) used to generate electronic submission of the data for these forms via telephonic network; or

(ii) A service contract for the operation of an automated system to generate electronic submission of the data for these forms via telephonic network;

(2) Complete their data loading; and

(3) Begin electronic transmission by March 2, 1996.

(c) *Electronic transmission of data.* Electronic transmission of data consists of submission of all required data fields (correctly formatted) from the forms HUD–050058 and HUD–50058–FSS telephonically, in accordance with HUD instructions. Regardless of whether an HA obtains the ADP system itself or contracts with a service bureau to provide the system, the software must be periodically updated to incorporate changes or revisions in legislation, regulations, handbooks, notices, or HUD electronic transmission data format requirements.

(d) *Service contract.* HAs that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management associations and management agents with centralized facilities. HAs that contract out the electronic transmission function must retain the ability to monitor the day-to-day operations of the project at the HA site and be able to demonstrate the ability to the relevant HUD Field Office.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Department may approve transmission of the data by tape or diskette if it determines that the cost of telephonic transmission would be excessive.

[Approved by the Office of Management and Budget under control number 2577–0083]

§ 908.108 Cost.

(a) *General.* The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of centralizing the electronic transmission function, shall be considered Section 8 Administrative expenses, or eligible public and Indian housing operating expenses that can be included in the public and Indian housing operating budget. At the HA's option, the cost of the computer software may include service contracts to provide maintenance or training, or both.

(b) *Sources of funding.* For public and Indian housing, costs may be covered from operating subsidy for which the HA is already eligible, or the initial cost may be covered by funds received by the HA under HUD's Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP). For Section 8 programs, the costs may be covered from ongoing administrative fees or the Section 8 operating reserve.

§ 908.112 Extension of time.

The HUD Field Office may grant an HA an extension of time, of a reasonable period, for implementation of the requirements of § 908.104, if it determines that such electronic submission is infeasible because of one of the following:

(a) Lack of staff resources;

(b) Insufficient financial resources to purchase the required hardware, software or contractual services; or

(c) Lack of adequate infrastructure, including, but not limited to, the inability to obtain telephone service to transmit the required data.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

6. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n, and 3535(d).

7. In § 913.109, a new paragraph (c) is added, to read as follows:

§ 913.109 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(c) See 24 CFR part 908 for requirements for transmission of data to HUD.

* * * * *

Dated: February 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–5047 Filed 3–1–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–94–010]

RIN 2115–AE46

Special Local Regulations; Citizen Cup Defender Semi-Final and Final Series, Louis Vuitton Cup Challenger Semi-Final and Final Series, and America's Cup Match Races; San Diego Bay and Mission Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for that portion of the International America's Cup Class (IACC) Citizen Cup Defender Semi-Final and Final Series, Louis Vuitton Cup Challenger Semi-Final and Final series, and America's Cup Match Races that are being conducted in the waters of the Pacific Ocean adjacent to San Diego Bay and Mission Bay on the following dates: March 18, 1995 through April 2, 1995; April 9, 1995 through April 23, 1995; and May 6, 1995 through May 27, 1995, inclusive. These regulations are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during the scheduled events.

EFFECTIVE DATE: This rule becomes effective at 10 a.m. PST on March 18, 1995 and terminates at 7 p.m. PDT on May 27, 1995 unless cancelled earlier by the District Commander.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cam Lewis, America's Cup Patrol; telephone number (619) 557–2920.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Cam Lewis, Project Officer for the Patrol Commander, and Lieutenant Commander Craig Jucknies, Project Attorney, Eleventh Coast Guard District Legal Office.

Regulatory History

On December 16, 1994, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (59 FR 64996). The comment period ended on January 30, 1995. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

The event prompting a need for these Special Local Regulations is the IACC Citizen Cup and Louis Vuitton Cup Semi-Finals and Finals, and the America's Cup Match Races which will be conducted in the San Diego area on several series of dates during the period mid-March through May 1995. In addition, races in the Citizen Cup Defender Selection Series and Louis Vuitton Cup Challenger Selection Series are being held on several series of dates during the period January through mid-March 1995; Special Local Regulations establishing measures promoting the safety of these races are the subject of separate rulemaking (59 FR 64850, December 16, 1994).

These regulations are intended to promote safe navigation on the waters of San Diego Bay, Mission Bay, and the IACC race venue during the IACC Citizen Cup, Louis Vuitton Cup, and America's Cup Match Races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and participant vessels associated with these races poses a safety concern, which is addressed in these special local regulations.

Within the geographic area of applicability of these proposed special local regulations, speed limits and operating requirements have been established for orderly passage to and from the IACC shore facilities and race venue.

Speed limits and operating requirements are also established for other vessel traffic operating within the regulated areas during times when most IACC and spectator vessels are expected to transit the harbors. During these same times, vessels shall not operate exclusively under sail within the regulated areas.

On each specified race date, these regulations will be in effect in San Diego Bay and Mission Bay during two periods: between the hours of 10 a.m. and 12 noon, and again in the afternoon for a two-hour period which will fall between 2:30 p.m. and 7 p.m. Selection of the afternoon regulatory period will depend on the time of termination of race activities for that date. Notice of commencement and termination of the afternoon regulatory period will be made by Broadcast Notice to Mariners; a 15-minute advance notice of commencement of the afternoon regulatory period will also be broadcast.

The nature of the winner selection process and other circumstances may dictate that races will not actually be conducted on dates specified as race

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dates. In the event of cancelation or postponement of races scheduled for a particular date, the Patrol Commander's election not to implement these regulations on that date will be announced via Broadcast Notice to Mariners.

The regulations also provide for a one-way traffic pattern and a five-knot speed limit. These requirements will be activated by the Patrol Commander when necessary to ensure the safety of navigation. Activation of these additional regulations will be announced by patrol vessels on scene and by Broadcast Notice to Mariners.

Additionally, several non-anchorage areas are established for the period of these regulations to promote smooth traffic flow and ensure access to docks and piers.

These Special Local Regulations will be enforced for that portion of the race venue which is located within the navigable waters of the United States, to minimize navigational dangers and ensure the safety of vessels participating in and viewing the races. Nonobligatory guidelines are included for that portion of the race venue which falls outside the navigable waters of the United States.

All vessels which fail to comply with these regulations while operating within the regulated areas during the regulatory periods are subject to citation for failure to comply with these regulations, and subject to the penalties presented in 33 U.S.C. 1236 and 33 CFR 100.50.

Regulatory Evaluation

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the Department of Transportation regulatory policies and procedures is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632). Because the Coast Guard expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The environmental impact of this rulemaking has been analyzed in the Environmental Assessment (EA) prepared by America's Cup 1995, the organizing committee of the races, in connection with its application for a Coast Guard regatta permit. A copy of the EA has been made a part of the public docket and is available for review at the Eleventh Coast Guard District Office at the address listed under **ADDRESSES.**

The Coast Guard has reviewed the EA submitted by the sponsors of the event, considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Finding of No Significant Impact (FONSI) has been prepared in connection with the regatta permit, has been made part of the public docket, and is available for review at the address listed under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T11–004 is added to read as follows:

§ 100.35T11–004 Special Local Regulations; San Diego Bay, Mission Bay and IACC Race Venue, CA.

(a) *Regulated areas.* This regulation pertains to specified portions of San Diego Bay, Mission Bay and the waters of the Pacific Ocean immediately offshore of San Diego. Within these waters, there are several areas with specific regulations. The regulated areas are defined by the following:

(1) *West San Diego Bay.* (i) The following area is subject to the regulations delineated below—The water area seaward of a line connecting the following points, beginning at:

32°43'27.0" N 117°12'48.0" W (Harbor Island Light, LLNR 1700); thence to

32°42'51.0" N 117°12'32.5" W (North Island light "N", LLNR 1705); thence along the shoreline to

32°40'00.0" N 117°13'24.0" W (Zuniga Jetty Light "Z", LLNR 1520); thence to

32°39'12.0" N 117°13'18.0" W; thence to

32°37'18.0" N 117°14'42.0" W (San Diego Approach "SD", LLNR 1485); thence to

32°40'00.0" N 117°15'40.0" W; thence to

32°40'00.0" N 117°14'48.0" W; thence to

32°39'54.0" N 117°13'24.0" W (point Loma Light, LLNR 5); thence returning along the shoreline to the point of beginning.

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(ii) The following area (the West Basin) is excluded from this regulated area—The waters shoreward of a line connecting the following points, beginning at:

32°43'30.0" N 117°12'48.0" W; thence to

32°43'20.0" N 117°13'00.0" W.

Datum: NAD 83

(2) *Non-anchorage areas.* The following areas are non-anchorage areas:

(i) NA–1: The waters bounded by a line connecting the following points, beginning at:

32°41'17.8" N 117°13'56.7" W; thence to

32°41'17.4" N 117°14'01.0" W; thence to

32°41'32.0" N 117°14'03.8" W; thence to

32°41'34.5" N 117°13'58.5" W; thence returning to the point of beginning.

Datum: NAD 83

(ii) NA–2: The waters bounded by a line connecting the following points, beginning at:

32°41'51.3" N 117°13'57.5" W; thence to

32°41'56.4" N 117°14'12.9" W; thence to

32°42'10.5" N 117°14'04.0" W; thence to

32°42'18.0" N 117°14'00.0" W (Entrance Range Front Light, LLNR 1500); thence to

32°42'12.9" N 117°13'50.0" W; thence returning to the point of beginning.

Datum: NAD 83

(iii) NA–3: The waters bounded by a line connecting the following points, beginning at:

32°42'41.0" N 117°13'22.0" W; thence to

32°42'52.8" N 117°13'24.6" W; thence to

32°42'55.0" N 117°13'23.0" W; (Shelter Island Light "S", LLNR 1640); thence to

32°42'49.0" N 117°13'13.0" W; thence returning to the point of beginning.

Datum: NAD 83

(iv) NA–4: The waters bounded by a line connecting the following points, beginning at:

32°42'55.2" N 117°13'04.0" W; thence to

32°43'05.7" N 117°13'04.0" W; thence to

32°43'19.7" N 117°13'00.0" W; thence to

32°43'24.5" N 117°12'51.8" W; thence to

32°43'08.1" N 117°12'58.0" W; thence to

32°42'58.1" N 117°12'54.1" W; thence returning to the point of beginning.

Datum: NAD 83

(v) NA–5: The waters bounded by a line connecting the following points, beginning at:

32°43'00.8" N 117°11'23.0" W; thence to

32°43'01.0" N 117°10'36.0" W (south west corner of "B Street" Pier); thence to

32°42'46.0" N 117°10'33.0" W (the shoreline to the north west corner of "G Street" Pier); thence to

32°42'46.2" N 117°10'58.19" W; thence returning to the point of beginning.

Datum: NAD 83

(3) *Mission Bay.* The following area is subject to the regulations delineated below—The water area between the COLREGS Demarcation Line described in section 80.1106 of this chapter and seaward of the West Mission Bay Bridge, described more particularly as the water area bounded by the COLREGS Demarcation Line, thence along the shoreline to:

32°46'07.3" N 117°14'36.7" W; thence to

32°40'00.0" N 117°14'27.8" W; thence along the shoreline to the COLREGS Demarcation Line.

Datum: NAD 83

(4) *IACC Offshore Race Venue.* The following area is subject to the regulations delineated below—The waters of the Pacific Ocean bounded by a line connecting the following points, beginning at:

32°37'18.0" N 117°14'42.0" W (San Diego approach "SD"); thence to

32°34'06.0" N 117°17'00.0" W; thence to

32°35'12.0" N 117°22'48.0" W; thence to

32°41'00.0" N 117°26'00.0" W; thence to

32°43'18.0" N 117°20'00.0" W; thence to

32°43'18.0" N 117°17'00.0" W; thence returning to the point of beginning.

Datum: NAD 83

(b) *Definitions*—(1) *Unaffiliated vessels.* All vessels that are not registered with the America's Cup '95 governing body (AC'95) or the Challenger of Record Committee (CORC) as a participant, and not designated as an AC'95 Race Vessel, A CORC Race Vessel, or an Official Vessel by the Coast Guard Patrol Commander are unaffiliated vessels.

(2) *Participant.* Any IACC race boat, IACC chase boat or IACC tender that is registered with AC'95 or CORC while in performance of its official function relative to a given race.

(3) *AC'95 or CORC Race Vessels.* Any vessel designated by AC'95 or CORC and approved by the U.S. Coast Guard Patrol Commander that has been given official duties in support of the Citizen Cup, Louis Vuitton Cup, or America's Cup Match Races. These vessels include, but are not limited to, mark boats, stake boats, and umpire boats.

(4) *Official Vessels.* Official Vessels are all U.S. Coast Guard, U.S. Coast Guard Auxiliary, state and local law enforcement vessels, and civilian vessels designated by the Coast Guard Patrol Commander and flying the official patrol vessel flag. The official patrol vessel flag is a white rectangular flag emblazoned with the words "America's Cup '95" and depicting two sailing vessels racing beneath the America's Cup trophy. The civilian vessels may include, but are not limited to, AC'95 and CORC Crowd Control Vessels and media vessels. AC'95 and CORC Crowd Control Vessels are 20-foot and 23-foot Bayliner power boats, identified by the word "PATROL" followed by a number, printed in large letters on both sides of the vessel. AC'95 and CORC Crowd Control Vessels will fly the America's Cup patrol flag and, if required in performance of their duties, operate a yellow and red flashing light.

(5) *Patrol Commander.* A Patrol Commander has been designated by the Commander, Eleventh Coast Guard District. The Patrol Commander has the authority to control the movement of all vessels operating in the regulated areas and may suspend the regatta at any time it is deemed necessary for the protection of life and property.

Note: The Patrol Commander may be contacted during the regulatory periods on VHF/FM Channel 16 (156.8 MHZ) or Channel 22 (157.1 MHZ) by calling "Coast Guard Patrol Commander" or "Coast Guard San Diego."

(6) *Race dates.* The following dates are race dates: March 18, 1995 through April 2, 1995; April 9, 1995 through April 23, 1995; and May 6, 1995 through May 27, 1995, inclusive.

(c) *Special Local Regulations*—(1) *West San Diego Bay.* The following regulations are in effect between the hours of 10 a.m. and 12 noon each race date. Additionally, the following regulations are in effect for a period of approximately two hours the afternoon of each race date, and will be implemented for a designated period between 2:30 p.m. and 7 p.m. The time of commencement of this afternoon regulatory period will be determined on each rate date, and notice of implementation will be provided by Broadcast Notice to Mariners. A 15-minute advance notice of commencement of the afternoon regulatory period will also be made by Broadcast Notice to Mariners. Notice of the termination of the afternoon regulatory period each race date will be made by Broadcast Notice to Mariners, as well. The Patrol Commander may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Participant vessels shall be operated under auxiliary power or tow when transiting San Diego Bay. Participants shall not operate their vessels exclusively under sail within San Diego Bay without the express permission of the Patrol Commander to do so. IACC boats may operate with mainsail set while being towed.

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(ii) Participant and unaffiliated vessels shall not exceed a speed of ten knots.

(iii) Unaffiliated sail vessels shall operate under auxiliary power or tow. Motor-sailing with mainsail only will be allowed.

(iv) When transiting through the regulated areas is necessary, unaffiliated vessels shall make expeditious transit and shall not impede or obstruct the orderly flow of vessel traffic.

(v) All vessels shall follow the instructions of Coast Guard and Coast Guard Auxiliary vessels.

(vi) No vessel shall anchor in a non-anchorage area specified in paragraph (a)(2) of this section, except in the case of an emergency. If equipped with a VHF/FM radio, the vessel shall immediately notify the Coast Guard on Channel 16 (156.8 MHZ) of the existence of any emergency.

(2) *Mission Bay.* The following regulations are in effect between the hours of 10 a.m. and 12 noon each race date. Additionally, the following regulations are in effect for a period of approximately two hours the afternoon of each race date, and will be implemented for a designated period between 2:30 p.m. and 7 p.m. The time of commencement of this afternoon regulatory period will be determined on each race date, and notice of implementation will be provided by Broadcast Notice to Mariners. A 15-minute advance notice of commencement of the afternoon regulatory period will also be made by Broadcast Notice to Mariners. Notice of the termination of the afternoon regulatory period each race date will be made by Broadcast Notice to Mariners, as well. The Patrol Commander may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Participant and unaffiliated vessels shall not exceed five knots.

(ii) Participant and unaffiliated sail vessels shall operate under auxiliary power or tow. Motor-sailing with mainsail only will be allowed.

(iii) When transiting through the regulated area is necessary, unaffiliated vessels shall make expeditious transit and shall not impede or obstruct the orderly flow of vessel traffic.

(iv) All vessels shall follow the instructions of Coast Guard and Coast Guard Auxiliary vessels.

(3) *IACC Offshore Race Venue.* The following regulations are in effect between the hours of 10 a.m. and 5:30 p.m. each race date on those waters within the IACC Offshore Race Venue which fall within the navigable waters of the United States, *i.e.*, those waters within three nautical miles (3nm) of the baseline from which the territorial sea is measured. The Patrol Commander may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Unaffiliated vessels shall remain outside the course perimeter, as marked by the AC'95 or CORC Race Vessels and Official Vessels.

(ii) All vessels shall follow the instructions of Coast Guard and Coast Guard Auxiliary vessels.

Note: The regulations specified in this paragraph apply only within the navigable waters of the United States. In all waters within the IACC Race Venue which fall outside the navigable waters of the United States, during the specified dates and times, the following nonobligatory guidelines apply:

(A) All unaffiliated vessels should remain clear of the race venue and avoid interfering with any participant, AC'95 or CORC Race Vessel, or Official Vessel. Interference with race activities may constitute a safety hazard warranting cancelation or termination of all or part of the race activities by the Patrol Commander.

(B) Any unauthorized entry within the race course perimeter, as marked by the AC'95 or CORC Race Vessels and Official Vessels, by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(4) *One-way traffic and five-knot speed limit.* The Patrol Commander may implement one-way traffic patterns and a five-knot speed limit in the regulated areas or portions thereof if the Patrol Commander deems it necessary to ensure safe navigation. Notion of one-way traffic and a five-knot speed limit shall be made by Broadcast Notice to Mariners. If one-way traffic patterns are implemented, participant and unaffiliated vessels are required to transit the applicable regulated area(s) in either an inbound direction (proceeding into port) or an outbound direction (proceeding to sea). No traffic in any direction other than inbound or outbound) (*i.e.*, cross traffic) will be permitted in the area of implementation. If a five-knot speed limit is implemented, all traffic entering or exiting the harbors will be required to make a speed of no more than five knots through the water. If one-way traffic or a five-knot speed limit is implemented, all participant and unaffiliated vessels shall also abide by all other nonconflicting provisions contained within these special local regulations associated with the regulated area.

(d) *Effective dates.* These regulations become effective 10 a.m. PST on March 18, 1995 and terminate at 7 p.m. PDT on May 27, 1995 unless cancelled earlier by the District Commander

Dated: February 16, 1995.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 95–5170 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 485 and 486

[BPD–798–CN]

Medicare Program; Providers and Suppliers of Specialized Services—Technical Amendments; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: **Federal Register** document No. 95–485, beginning on page 2325 of the issue of Monday, January 9, 1995, redesignated several subparts of 42 CFR part 405 of the HCFA regulations under part 485 and a new part 486. The redesignation required correction of several references to the previous designation of certain sections. This notice corrects an error in one of those reference corrections, and an error in a paragraph heading.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690–6383.

Corrections

1. On page 2328, column 2, in § 485.717, the heading for paragraph (b), "Standard: Arrangements for social or rehabilitation services." is corrected to read "Standard: Arrangements for social or vocational adjustment services.".

§ 484.38 [Corrected]

2. On page 2329, column 3, the amendatory language for § 484.38 under item b. is corrected to read as follows:

b. In § 484.38, "§§ 405.1717 through 405.1719, 405.1721, 405.1723, and 405.1725 of this chapter" is revised to read "§§ 485.711, 485.713, 485.715, 485.719, 485.723, and 485.727 of this chapter".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 16, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information, Resources Management.

[FR Doc. 95–4712 Filed 3–1–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7119

[AZ–930–1430–01; AZA–12956]

Revocation of Two Secretarial Orders Dated April 23, 1943; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial Orders dated April 23, 1943, in their entirety. One withdrew 3,666.08 acres of National Forest System lands and the other withdrew 35.34 acres of public land, totaling 3,701.42 acres, withdrawn for the Bureau of Reclamation's proposed Snowflake Project. The withdrawals are no longer needed and the revocation is needed to permit disposal of the land through land exchange. This action will open 2,791.99 acres to mining and to such forms of disposition as may by law be made of National Forest System land unless closed by overlapping withdrawals or temporary segregations of record. The remaining 874.09 acres of National Forest System lands are within an overlapping withdrawal and consequently will remain closed to mining and to such forms of disposition as may by law be made of National Forest System land. The 35.34 acres of public land will be opened to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated April 23, 1943, which withdrew the following described National Forest System lands, is hereby revoked in its entirety:

Gila and Salt River Meridian

Sitgreaves National Forests

T. 9 N., R. 22 E.,
Sec. 2, lot 5 (formerly lot 1), lot 6 (formerly lot 2), lots 11 and 12 (formerly S½NE¼), and SE¼;
Sec. 3, lot 3, lot 6 (formerly lot 2), lot 7 (formerly SW¼NE¼), SE¼NW¼, E½ lot 11 (formerly E½SW¼SE¼), and lot 12 (formerly SE¼SE¼);
Sec. 10, E½NE¼, NW¼NE¼, E½NE¼NW¼, E½E½W½SW¼, SW¼SE¼, and E½SE¼;
Sec. 11, NE¼NE¼, E½SE¼NE¼, W½W½, and E½SE¼SW¼;
Sec. 14, W½NW¼, S½SE¼NW¼, and NE¼SW¼;
Sec. 15, NE¼, E½NW¼, and E½E½NW¼NW¼;
Sec. 16, lots 3, 4, 7, and 11, lots 16 to 18, inclusive, lots 20, 21, and 24.

T. 11 N., R. 21 E.,
Sec. 1, lots 2 to 5, inclusive, lots 7, 8, 9 (formerly lot 1), lot 10, SW¼NE¼, SW¼, and W½SE¼;
Sec. 12, lots 1 to 4, inclusive, W½E½, and W½.

T. 12 N., R. 21 E.,
Sec. 26.

The areas described aggregate 3,666.08 acres in Navajo County.

2. The Secretarial Order dated April 23, 1943, which withdrew the following described public land, is hereby revoked in its entirety:

Gila and Salt River Meridian

T. 11 N., R. 22 E.,
Sec. 6, lot 7.

The area described contains 35.34 acres in Navajo County.

3. The following described lands are within an overlapping Forest Service withdrawal, Public Land Order No. 1626 as amended, and consequently will remain closed to mining and to such forms of disposition as may by law be made of National Forest System lands:

Gila and Salt River Meridian

Sitgreaves National Forests

T. 9 N., R. 22 E.,
Sec. 10, E½NE¼, NW¼NE¼, E½NE¼NW¼, E½E½W½SW¼, SW¼SE¼, and E½SE¼;
Sec. 15, NE¼, E½NW¼, and E½E½NW¼NW¼;
Sec. 16, lots 3, 4, 7, 11, lots 16 to 18, inclusive, lot 20 (formerly lot 2), lot 21 (formerly lots 8 and 9), and lot 24 (formerly lot 10).

The areas described aggregate 874.09 acres in Navajo County.

4. At 10 a.m. on April 3, 1995, the lands described in paragraphs 1 and 2, except those lands described in paragraph 3, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 10 a.m. on April 3, 1995, the lands described in paragraph 1 except, those lands described in paragraph 3, will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

6. At 10 a.m. on April 3, 1995, the land described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 3, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 16, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5087 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7120

[AK–932–1430–01; F–031038]

Revocation of Public Land Order No. 743; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a public land order, as it affects approximately 1.9 acres of public land withdrawn for use by the Department of Agriculture, Soil Conservation Service, for building purposes in Fairbanks. The

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land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Public Land Order No. 743, which withdrew public land for building purposes in Fairbanks, is hereby revoked as it affects the following described land:

Fairbanks Meridian

A parcel of land located within lot 2, sec. 5, T. 1 S., R. 1 W., more particularly described as:

Beginning at the southeast corner of said lot 2;

Thence, west along the southerly line of said lot 2, 530 feet, more or less, to the southerly line of College Road;

Thence, northeasterly along the southerly line of said College Road 610 feet, more or less, to the east line of said lot 2;

Thence, south along the east line of said lot 2, 310 feet, more or less, to the point of beginning.

The area described contains approximately 1.90 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), for the land described above, becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: February 16, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5143 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–JA–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1837

Revision to NASA FAR Supplement Coverage on Pension Portability; Correction

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Tuesday, November 29, 1994 (59 FR 60916). The regulation related to pension portability.

EFFECTIVE DATE: December 29, 1994.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction superseded, as of the effective date, NASA FAR Supplement coverage on pension portability in 48 CFR 1837.101, 1837.110, 1837.170, and 1852.237–71.

Need for Correction

As published, the final regulations contained an error in the amendatory language for 48 CFR subpart 1837.1. The amendatory language revised subpart 1837.1 in its entirety. In subpart 1837.1, the revision should have been limited to the three sections on pension portability. As a result of the error, three sections unrelated to pension portability were unintentionally removed. This correction is needed in order to retain sections 1837.104, 1837.105, and 1837.110–70.

Correction of Publication

Accordingly, the publication on November 29, 1994, of the final regulations, which were the subject of FR Doc. 94–29273, is corrected as follows:

Paragraph 2. On page 60917, in the first column, the amendatory language is corrected to read "In subpart 1837.1, sections 1837.101, 1837.110, and 1837.170 are revised to read as follows:"

David K. Beck,

Federal Register Liaison Officer, Office of Procurement.

[FR Doc. 95–5133 Filed 3–1–95; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 60, No. 41
Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–12–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1 and Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1 and series 200 airplanes. The proposed action would require incorporating operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 KIAS, and that prohibit extending the flaps beyond the take-off position if ice is visible on the airplane. An incident where an airplane of similar type design to that of the affected airplanes experienced sudden pitch down because of the accretion of over one-inch of ice prompted the proposed action. The actions specified in this proposed AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–12–AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: An incident involving a JAL Model 3101 airplane prompted the FAA to issue the following AD's on the Model 3101 airplanes:

- AD 91–08–01: required revising the maximum speed for flaps at 50 degrees from 153/149 KIAS to 130 KIAS; and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane until it was superseded by AD 95–02–06; and
- AD 95–02–06: requires incorporating the 35-degree flap system modification as terminating action for the flap speed and flap extension limitations required by AD 91–08–01.

The JAL HP137 Mk1 and Jetstream series 200 airplanes are of a similar type design to the Jetstream Model 3101 airplanes. The FAA has determined that action similar to the flap speed and flap extension limitations required on the Model 3101 airplanes by AD 91–08–01 should be taken on the JAL HP137 Mk1 and Jetstream series 200 airplanes.

JAL has issued Jetstream Service Bulletin (SB) 27–A–JA 911044, dated January 31, 1992, which specifies changes in operational procedures for landing in icing conditions for JAL HP137 Mk1 and Jetstream series 200 airplanes.

In order to assure the continued airworthiness of these airplanes in the United Kingdom, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified Jetstream SB 27–A–JA 911044, dated January 31, 1992, as mandatory. The CAA classifying a service document as mandatory is the same for airplanes registered in the United Kingdom as the FAA issuing an AD for airplanes registered in the United States.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has

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kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1 and Jetstream series 200 airplanes of the same type design, the proposed AD would require incorporating operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 KIAS, and that prohibit extending the flaps beyond the take-off position if ice is visible on the airplane. The proposed actions would be accomplished in accordance with Jetstream SB 27–A–JA 911044, dated January 31, 1992.

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts (placards fabricated from local resources) cost approximately $30 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $900. This figure is based on the assumption that no affected airplane owner/operator has incorporated the proposed limitations.

All 10 of the affected airplanes are HP137 Mk1's; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–12–AD.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Modify the operating limitations placards located on the flight deck in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) No. 27–A–JA 911044, dated January 31, 1992. This modification limits the maximum flap operating speed for DOWN flaps to 120 indicated airspeed (KIAS). Insert a copy of this AD into the Limitations section of the applicable airplane flight manual (AFM).

(b) Fabricate a placard with the words "Do not extend the flaps beyond the take-off position if ice is visible on the aircraft. Ensure the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view. Insert a copy of paragraph B. Instructions for Aircraft Operations of the Accomplishment Instructions section of Jetstream SB 27–A–JA 911044, dated January 31, 1992, into the Limitations section of the AFM.

Note 2: Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 24, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5121 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–09–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 83–05–01, which currently requires the following on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes: Repetitively inspecting the wing lower skin panels at the main gear bay cutout for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require reinforcing the wing lower skin at both the landing gear cutout at Wing Station (WS) 115 and the undercarriage bay cutout at WS 60 and WS 90, as terminating action for the repetitive inspections that are currently required by AD 83–05–01. The actions specified in the proposed AD are intended to prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in damage to the point of structural failure.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–09–AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000, Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–09–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–09–AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) The safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage occurring to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could eliminate, or, in certain instances, reduce the number of critical repetitive inspections.

From this review, the FAA has identified AD 83–05–01, Amendment 39–4573, as one that should be superseded with a new AD that would require a modification that, when incorporated, would eliminate the need for short-interval and critical repetitive inspections. AD 83–05–01 currently requires repetitively inspecting the wing lower skin panels at the main gear bay cutout for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel. The inspections are accomplished in accordance with Jetstream Service Bulletin (SB) No. 7/3, dated October 1980.

JAL has introduced two wing lower skin reinforcements that, when incorporated, (1) Reinforce the wing lower skin at the landing gear bay cutout at WS 115 (Modification No. 5122), and (2) reinforce the wing lower skin at undercarriage bay cutout between WS 60 and WS 90 (Modification No. 5146). Jetstream SB 57–JM5221 specifies procedures for incorporating Modification 5221, and Modification No. 5146 Part 2 (Ref 7/5146), specifies procedures for incorporating Modification 5146.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 83–05–01, Amendment 39–4573, and to prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in damage to the point of structural failure.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the

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applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1 and Jetstream series 200 airplanes of the same type design, the proposed AD would supersede AD 83–05–01 with a new AD that would (1) retain the requirements of repetitively inspecting the wing lower skin panels at the main gear bay cutout for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel; and (2) require incorporating Modification Nos. 5122 and 5146 as terminating action for the repetitive inspections. The proposed inspection would be accomplished in accordance with Jetstream SB No. 7/3, dated October 1980. Modification 5122 would be accomplished in accordance with Jetstream SB 57–JM5221, dated September 28, 1984, and Jetstream Modification 5146 would be accomplished in accordance with Modification No. 5146 Part 2 (Ref 7/5146), which incorporates the following pages:

Pages	Issue level	Date
1, 2, 4, 7, and 8	1	March 1981.
3, 5, and 6	2	August 1982.

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 332 workhours per airplane to accomplish the proposed modifications (172 workhours for Modification 5221 and 160 workhours for Modification 5146), and that the average labor rate is approximately $60 an hour. Parts cost approximately $12,000 per airplane ($2,400 for Modification 5221 and $9,600 for Modification 5146). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $319,200 ($31,920 per airplane).

All 10 of the affected airplanes are HP137 Mk1's; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. JAL no longer stocks Modification No. 5122, but can develop modification kits within three months after order. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 83–05–01, Amendment 39–4573, and adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–09–AD. Supersedes AD 83–05–01, Amendment 39–4573.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in damage to the point of structural failure, accomplish the following:

(a) Upon the accumulation of 6,500 hours time-in-service (TIS) or within the next 100 hours time-in-service after the effective date of this AD, whichever occurs later, unless already accomplished (see NOTE 1), and thereafter at intervals not to exceed 100 hours TIS until the modifications required by paragraphs (b)(1) and (b)(2) of this AD are incorporated, accomplish the following:

(1) Inspect the wing lower skin between Wing Station (WS) 60 and WS 115 for loose or damaged rivets or cracks in accordance with section 3. *ACTION*, paragraphs (a) through (e), of Jetstream Service Bulletin (SB) No. 7/3, dated October 1980.

(2) Replace any loose or damaged rivets and repair any cracked wing lower skin panel in accordance with section 3. *ACTION*, paragraphs (f) through (k), of Jetstream SB No. 7/3, dated October 1980.

Note 2: The repetitive inspections required by paragraph (a) of this AD are the same as required by superseded AD 83–05–01. The intent of this AD is to maintain this repetitive inspection program for the affected airplane operators until the requirements of paragraph (b) of this AD are accomplished.

(b) Upon the accumulation of 10,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Reinforce the wing lower skin at the landing gear bay cutout at WS 115 in accordance with Jetstream SB 57–JM5221, dated September 18, 1984. This is referred to as Modification 5221.

(2) Reinforce the wing lower skin at undercarriage bay cutout between WS 60 and WS 90 in accordance with Modification No. 5146 Part 2 (Ref 7/5146), which incorporates the following pages:

Pages	Issue level	Date
1, 2, 4, 7, and 8	1	March 1981.
3, 5, and 6	2	August 1982.

(c) The reinforcements required by paragraphs (b)(1) and (b)(2) of this AD may be accomplished prior to 10,000 hours TIS as terminating action for the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 83–05–01, Amendment 39–4573.

Issued in Kansas City, Missouri, on February 24, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5122 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

[RIN 3220–AB12]

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to explain when the Board will provide custom tailored information to a member of the public and to set forth the charges for such special services. The Board also proposes to amend its regulations to explain when the Board may provide custom tailored information without charging for that service.

DATES: Comment shall be submitted on or before May 1, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: OMB Circular A–25 establishes Federal policy regarding fees to be assessed for special benefits. In the case of the Railroad Retirement Board those benefits would be the provision of custom tailored or non-routine information services. The Board proposes to require payment of the Board's actual costs, as defined in the proposed rule, for the provision of such services. Consistent with OMB Circular A–25, the proposed rule provides that if it is determined that the identity of the specific beneficiary is obscure and that provision of the information can be considered primarily as benefiting broadly the general public, then the Board may determine in a particular case not to charge for the service. However, consistent with the authority contained in section 12(d) of the Railroad Unemployment Insurance Act (which is incorporated into the Railroad Retirement Act by section 7(b)(3) of the Act), the proposed regulation provides that charges may be assessed in any specific case. This regulation does not cover information which is required to be disclosed by statute or regulation such as information required to be disclosed under the Freedom of Information Act.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by adding paragraphs (o) and (p) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(o) *Custom Tailored Information Services; Fees Charged.*

This paragraph and paragraph (p) of this section set forth the policy of the Railroad Retirement Board with respect to the assessment of a fee for providing custom tailored information where requested. Except as provided in paragraphs (o)(4) (vii) and (p) of this section, a fee shall be charged for providing custom tailored information.

(1) *Definition: Custom tailored information.* Custom tailored information is information not otherwise required to be disclosed under this part but which can be created or extracted and manipulated, reformatted, or otherwise prepared to the specifications of the requester from existing records. For example, the Board needs to program computers to provide data in a particular format or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc., and this data is not already compiled and available, the end product would be the result of custom tailored information services.

(2) *Providing custom tailored information.* The Board is not required to provide custom tailored information. It will do so only when the appropriate fees have been paid as provided in paragraph (o)(4) of this section and when the request for such information will not divert staff and equipment from the Board's primary responsibilities.

(3) *Requesting custom tailored information.* Information may be requested in person, by telephone, or by mail. Any reuqest should reasonably describe the information wanted and may be sent to the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

(4) *Fee schedule.* Request for custom tailored information are chargeable according to the following schedule:

(i) *Manual searching for records.* Full cost of the time of the employees who perform the service, even if records cannot be found, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(ii) *Photocopying or reproducing records on magnetic tapes or computer diskettes.* The charge for making photocopies of any size document shall

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be $.10 per copy per page. The charge for reproducing records on magnetic tapes or computer diskettes is the full cost of the operator's time plus the full cost of the machine time and the materials used.

(iii) *Use of electronic data processing equipment to obtain records.* Full cost for the service, including computer search time and computer runs and printouts, and the time of computer programmers and operators and of other employees.

(iv) *Certification or authentication.* Full cost of certification and authentication.

(v) *Providing other special services.* Full cost of the time of the employee who performs the service, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(vi) *Special forwarding arrangements.* Full cost of special arrangements for forwarding material requested.

(vii) *Statutory supersession.* Where a Federal statute prohibits the assessment of a charge for a service or addresses an aspect of that charge, the statute shall take precedence over this regulation.

(p) *Assessment of a Fee with Respect to the Provision of Custom Tailored Information Where the Identification of the Beneficiary Is Obscure and Where Provision of the Information Can be Seen as Benefiting the Public Generally.* When the identification of a specific beneficiary with respect to the provision of custom tailored information is obscure, the service can be considered primarily as benefiting broadly the general public, and the estimated cost of providing the information is less than $1,000.00, the Director of Administration shall determine whether or not a fee is to be charged. In any such case where the cost is $1,000.00 or more, the request shall be referred by the Director of Administration to the three-member Board for a determination whether or not a fee is to be assessed.

* * * * *

Dated: February 23, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–5132 Filed 3–1 –95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Missouri regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, SMCRA). The proposed amendment consists of changes to provisions of the Missouri regulations pertaining to definitions, topsoil redistribution, impoundment design, disposal of coal processing and noncoal waste, backfilling and grading, coal exploration, fish and wildlife plan, permit approval findings, notice of violations, and eligibility for small operators assistance. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t. April 3, 1995. If requested, a public hearing on the proposed amendment will be held on March 27, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on March 17, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Michael C. Wolfrom, Acting, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374–6405

Land Reclamation Program, Missouri Department of Natural Resources, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated February 10, 1995 (administrative record No. MO–612), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 925.16 (b)(4), (p)(9), and (q)(1) through (q)(5), and at its own initiative to improve its program. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions.

Specifically, Missouri proposes to revise (1) 10 Code of State Regulations (CSR) 40–3.030(4) to require that contamination of topsoil be prevented during redistribution; (2) 10 CSR 40–3.040(10)(B)5 to reference the January 1991, U.S. Natural Resources Conservation Service (formerly the Soil Conservation Service) technical document, Practice Standards 378, concerning impoundment design; (3) 10 CSR 40–3.110(3)(A)1 to clarify that the requirements of this section apply to coal seams, combustible materials, and acid- and toxic-forming materials, to require that coal processing waste and noncoal waste be covered in accordance with the regulations for disposal of coal processing waste at 10 CSR 40–3.080, and to delete the existing requirement

that exposed coal seams and combustible materials, including coal processing waste, be covered with a minimum of 4 feet of nontoxic- and nonacid-producing materials unless otherwise demonstrated; (4) 10 CSR 40–3.110(6)(B) to provide that the regulations for repair of rills and gullies at 10 CSR 40–3.110(6)(A) apply, on areas that have been previously mined, only after final grading of the area when topsoil or a topsoil substitute is not available; (5) 10 CSR 40–6.010(2)(H) to add a definition of "Secretary;" (6) 10 CSR 40–6.020 (2)(A) and (3)(A) to clarify that these regulations concern exploration activities outside of a permit area; (7) 10 CSR 40–6.120 (7)(C) and (D) and (12)(C) and (D) to specify the information that must be included in a fish and wildlife plan and that, when the plan does not include enhancement measures, it must include an explanation of why enhancement is not practicable; (8) 10 CSR 40–6.070(8)(M) to require that the Director of the Missouri program must find, prior to permit approval for a proposed remaining operation where the applicant intends to reclaim in accordance with the requirements of 10 CSR 40–4.080, that the site of the operation is a previously mined area; (9) at 10 CSR 40–8.010(1)(A)72 the definition of "previously mined area;" (10) at 10 CSR 40–8.010(1)(A)84 the definition of "road;" (11) 10 CSR 40–8.030(7)(A) to delete the requirement that modification, termination, or vacating of notice of violations must be in accordance with the regulation at 10 CSR 40–8.040; (12) 10 CSR 40–8.040(9) to delete the definition of "habitual violator;" and (13) 10 CSR 40–8.050(2)(B) to change the eligibility requirement of coal production of 100,000 tons per year to 300,000 tons per year for a small operator assistance applicant.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. [March 17, 1995]. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Compliance With Executive Order No. 12866

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

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Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 23, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–5151 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 209

University Research Initiative Support Program (URISP)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to comply with section 802 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), which requires the Department of Defense to establish URISP, and prescribe a regulation for carrying out the program. URISP is required to be a competitive university research program for research and development that is relevant to the requirements of the Department of Defense, that is set aside for Colleges and Universities that have received less than $2 million dollars from the Department of Defense over the two previous fiscal years. URISP is oriented toward assisting institutions build university research infrastructure in the fields of science, engineering, and mathematics, so they may become more competitive.

DATES: Written comments on this proposed rule must be received by May 1, 1995.

ADDRESSES: Forward comments to the Office of Director of Defense Research and Engineering, Pentagon—3E1045, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Mr. Art McGregor (703) 614–0205.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 209 is not a significant regulation action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule does not place any economic burdens on small entities. The primary effect on grantees administering this rule will be a reduction in administrative cost and other burdens resulting from the simplification and clarification of certain policies and the elimination of policy differences among the Federal Agencies promulgating this proposed rule.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that 32 CFR part 209 does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 209

Education, Grants, Institutions, and Universities.

Accordingly, title 32, chapter I, subchapter M is proposed to be amended to add part 209 to read as follows:

PART 209—UNIVERSITY RESEARCH INITIATIVE SUPPORT PROGRAM (URISP)

Sec.

209.1 Purpose.
209.2 Applicability.
209.3 Definitions.
209.4 Policy.
209.5 Responsibilities.

Authority: Sec. 802 of Pub. L. 103–160 (see 10 U.S.C. 2358 note)

§ 209.1 Purpose.

This part establishes policy and assigns responsibilities under section 802 of Public Law 103–160 (see 10 U.S.C. 2358 note).

§ 209.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, and Defense Agencies responsible for the majority of the university basic research grants in the Department of Defense.

§ 209.3 Definitions.

(a) *American Association of State Colleges and Universities (AASCU).* Institutions that are members of AASCU during the period that peers are selected.

(b) *Eligible Institutions.* Institutions that may compete for URISP funding are those that have received a total of less than $2 million in obligations from the Department of Defense, over the two previous fiscal years (FYs). A list of ineligible institutions will be attached as an appendix to the URISP announcement, and institutions not on the list are eligible to participate.

(c) *Institutions.* Institutions of Higher Education that have accredited, degree-granting programs in science, engineering or mathematics.

(d) *Merit-based selection process.* A university-based review using peers who are members of the faculty or staff of an institution of higher education that is a member of NASULGC or AASCU (section 802 of Pub. L. 103–160).

(e) *National Association of State Universities and Land Grant Colleges (NASULGC).* Institutions that are members of NASULGC during the period that peers are selected.

(f) *Research Offices.* The research office under the Military Services and Defense Agencies that are responsible for the majority of the university basic research grants in the Department of Defense. These are:

(1) Advanced Research Projects Agency.

(2) Air Force Office of Scientific Research.

(3) Army Research Office.

(4) Ballistic Missile Defense Organization.

(5) Office of Naval Research.

§ 209.4 Policy.

It is DoD policy that:

(a) The purpose of URISP is to help build the infrastructure in the fields of science, engineering, and mathematics that are important to the Department of Defense, through the use of competitive, multi-year grants to support the conduct of research and development relevant to requirements of the Department of Defense, at institutions that have received less than $2.0 million from the Department of Defense over the 2 previous FYs (section 802 of Pub. L. 103–160).

(b) All URISP funds shall be obligated using a merit-based selection process. The university peer reviewers shall be from the faculty and staff of institutions that are members of NASULGC and ASSCU (section 802 of Pub. L. 103–160).

(c) Institutions eligible to participate in URISP will be determined using DoD obligation data for the two previous FYs.

§ 209.5 Responsibilities.

(a) The Director of Defense Research and Engineering, under the Under Secretary of Defense for Acquisition and Technology, shall ensure that only eligible institutions are allowed to participate in URISP. The Director of Defense Research and Engineering shall oversee the approval of any selected scientific topical areas to be included in the URISP announcement, and the allocation of funds among the research offices. The URISP shall be reviewed annually and modified as appropriate to ensure that defense requirements are being met.

(b) The Secretaries of the Military Departments, and the Directors of the Defense Agencies responsible for the majority of the university basic research grants, under OSD Principal Staff Assistants, shall ensure that:

(1) All proposals chosen for URISP funding shall have been selected through a merit-based selection process using university peer reviewers selected only from the faculty and staff of institutions that are members of the NASULGC and AASCU (section 802 of Pub. L. 103–160).

(2) Each project funded under URISP is reviewed annually to determine if defense requirements are being met.

Dated: February 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5079 Filed 3–1–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of meetings.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Corporation and the Authority currently are in disagreement over the level and nature of future tolls. The Corporation is considering recommendations to be made to the Authority that joint rulemaking be undertaken to lower the level of tolls or otherwise change the Tariff. In order to determine whether such a rulemaking is warranted, what the substance should be, and what is the scope of the issues involved, the Corporation is holding five public meetings to discuss the problems encountered under the existing toll structure and possible solutions. This notice announces the dates, times, and places of the meetings.

DATES: The meetings will be held on March 7, 1995, in Duluth, Minnesota, on March 14, 1995, in Milwaukee, Wisconsin, on April 5, 1995, in Portage, Indiana, on April 11, 1995, in Toled· Ohio, and on April 26, 1995, in Ogdensburg, New York, each beginning at 9:30 a.m. and concluding at 12 noon, except the Duluth meeting which will begin at 2 p.m. and conclude at 4:30 p.m., and the Milwaukee meeting which will begin at 1 p.m. and conclude at 3:30 p.m.

ADDRESSES: The meetings will be held in: the conference room of the Seaway Port Authority of Duluth, 1200 Port Terminal Drive, Duluth, Minnesota; the conference room of the Port of Milwaukee, 2323 South Lincoln Memorial Drive, Milwaukee, Wisconsin; in the conference room of Burns International Harbor, 6600 U.S. Highway 12, Portage, Indiana; the conference room of the Port Authority Office, 1 Maritime Plaza, Toledo, Ohio; and the board room of the Ogdensburg Bridge and Port Authority, Bridge Plaza, Ogdensburg, New York.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090, (202) 366–6823.

SUPPLEMENTARY INFORMATION:

Discussions between the Corporation and the Authority about the Seaway Tariff of Tolls have resulted in disagreement over future Tariff amendments. It is necessary to take into account prevailing market conditions and not unduly restrict maritime commerce or create additional barriers to trade in the development of the Tariff. Both parties wish to pursue fairness among their primary goals and strive for equal treatment for vessels and cargoes using the Seaway, but disagree on the current, fundamental economic basis for new toll levels. In addition, they believe that it is necessary to seek simplicity in developing the Tariff as complexity and ambiguity tend to provide a disincentive to using the Seaway. Lastly, both parties wish to strive for stability so that those engaged in commerce on the Seaway can make long-term planning decisions with some confidence of future conditions.

Based upon these mutual conclusions, the Corporation is considering recommending to the Authority that joint rulemaking be undertaken to lower the level of tolls or otherwise change the Tariff. In order to determine whether such a rulemaking is warranted, what the substance should be, and what is the scope of the issues involved, the Corporation is holding five public meetings to discuss the problems encountered under the existing toll structure and possible solutions. These meetings will be open for discussion, however, any person wishing to make a formal presentation is requested to notify the Corporation at least five working days before the meetings and provide the approximate time desired for the presentation to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090 (202–366–6823). In addition, the Corporation requests an original written text of any formal presentation along with five copies before, at, or within ten working days after the time of the meeting. Finally, if any person wishes to present written comments, but not participate in the meetings, they may submit those comments to that same address at any time before, at, or within ten working days after the time of the meetings.

The meetings are open to the public, each beginning at 9:30 a.m. and

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concluding at 12 noon, except the Duluth meeting which will begin at 2 p.m. and conclude at 4:30 p.m., and the Milwaukee meeting which will begin at 1 p.m. and conclude at 3:30 p.m., and will be at the following dates and places: March 7, 1995, in the conference room of the Seaway Port Authority of Duluth, 1200 Port Terminal Drive, Duluth, Minnesota; March 14, 1995, in the conference room of the Port of Milwaukee, 2323 South Lincoln Memorial Drive, Milwaukee, Wisconsin; April 5, 1995, in the conference room of Burns International Harbor, 6600 U.S. Highway 12, Portage, Indiana; April 11, 1995, in the conference room of the Port Authority Office, 1 Maritime Plaza, Toledo, Ohio; and April 26, 1995, in the board room of the Ogdensburg Bridge and Port Authority, Bridge Plaza, Ogdensburg, New York.

Issued at Washington, D.C. on February 24, 1995.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 95–5144 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–61–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 95–18; FCC 95–39]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this Notice of Proposed Rule Making, the Commission proposes to allocate 70 megahertz of spectrum at 1990–2025 MHz and 2165–2200 MHz to the Mobile-Satellite Service (MSS). This proposal responds to petitions filed by Celsat, Inc., TRW, and the Personal Communications Satellite Corporation for spectrum in the 2 GHz range to operate satellites providing personal communications services. This Notice of Proposed Rule Making solicits comment on the proposed allocation, including the necessity and means of moving incumbent Broadcast Auxiliary Service and microwave licensees to another band; on technical requirements for MSS in the proposed bands; and on awarding MSS licenses in the proposed bands by competitive bidding.

COMMENT DATES: Comments are due March 9, 1995. Reply comments are due March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 776–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted January 30, 1995, and released January 31, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In this Notice of Proposed Rule Making, the Commission proposes to allocate 70 megahertz of spectrum at 1990–2025 MHz and 2165–2200 MHz to the Mobile-Satellite Service (MSS). The 1992 World Administrative Radio Conference (WARC–92) allocated the 1970–1980 MHz (Earth-to-space) and 2160–2170 MHz (space-to-Earth) bands in Region 2 and the 1980–2010 MHz (Earth-to-space) and 2170–2200 MHz (space-to-Earth) bands worldwide to MSS. In the June 1994 Memorandum Opinion and Order in GEN Docket No. 90–314, 59 FR 32830, June 24, 1994, we allocated the 1850–1990 MHz band to terrestrial broadband personal communications services (PCS). Because of this, it does not appear to be practicable to make a domestic allocation of 2 GHz spectrum for MSS that is consistent with the international allocation without jeopardizing the availability of spectrum for PCS.

2. We believe that a need exists for allocating a substantial amount of spectrum for MSS. There is significant consumer demand for convenient mobile services such as telephone, high-rate data and fax, and video. MSS can provide such communications in remote or rural areas not covered by terrestrially based mobile services, and can provide nationwide public safety coverage. We also believe that use of 2 GHz frequencies can help minimize transmission costs and ensure a relatively low cost service that will be within the economic reach of a large segment of the population. Thus, the proposed allocation of 70 MHz of spectrum to MSS should give the public, especially rural Americans, access to new and competitive services and technologies.

3. Any 2 GHz MSS allocation should be as consistent as possible with the WARC–92 worldwide MSS allocation, to help ensure a truly universal service. We therefore believe that incorporating use of the 1990–2010 MHz and 2170–2200 MHz bands allocated for MSS by WARC–92 is desirable. At the same time, we believe that 70 megahertz is needed to accommodate all MSS demand, and so propose to allocate 1990–2025 MHz and 2165–2200 MHz to MSS.

4. This allocation would require that the candidate bands be cleared of Broadcast Auxiliary Service (BAS) incumbents in the 1990–2025 MHz band. In order to accommodate these incumbents, we propose to add 35 megahertz at the upper end of the BAS spectrum to offset the 35 megahertz we are allocating to MSS, making the BAS allocation 2025–2145 MHz. MSS providers would have to bear the costs of moving BAS licensees to their new band. The proposed MSS allocation would also require relocation of microwave incumbents. We addressed this issue in the First Report and Order and Third Notice of Proposed Rule Making in ET Docket No. 92–9, 58 FR 46457, September 2, 1993, and propose to follow the same procedures, requiring that MSS licensees bear the entire cost of relocating BAS and microwave incumbents in the 1990–2025 MHz and 2165–2200 MHz bands.

5. The Commission solicits public comment on the proposed allocation, the proposal to relocate BAS and microwave incumbents, any other sharing or technical matters pertinent to the proposed allocation, and our proposal to allocate licenses in the proposed MSS spectrum by competitive bidding.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5128 Filed 3–1–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 63

[IB Docket No. 95–22, FCC 95–53]

Foreign-Affiliated Entities: In the Matter of Market Entry and Regulation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is proposing to modify its approach to determining the public interest in cases where a foreign carrier or its affiliate applies for authority under Section 214 of the Communications Act to enter the U.S. market to provide international facilities-based services. In reviewing such applications, the Commission proposes to examine whether effective market access is available, or will soon be available, to U.S. carriers in the primary markets of the foreign carrier seeking entry. This would be an important element of the Commission's public interest determination. In addition, the Commission requests comment on whether it should modify certain aspects of its regulation of U.S. international carriers. It also clarifies and requests comment on its definition of an international facilities-based carrier. Finally, the Commission asks whether it should incorporate the proposed effective market access test as an important element of the Section 310(b)(4) public interest analysis it applies to foreign entities seeking to acquire an indirect ownership interest in U.S. radio licenses. The proposals contained in the Notice are intended to establish standard rules to regulate foreign carrier entry into the U.S. marketplace in order to promote effective global competition, prevent anti-competitive conduct and encourage foreign governments to open their communications markets.

DATES: Comments must be submitted on or before March 28, 1995. Reply comments must be submitted on or before April 28, 1995.

ADDRESSES: All comments and reply comments concerning these proposals should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner or Susan Lee O'Connell, Attorney-Advisors, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on February 7, 1995 and released February 17, 1995. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text of this Notice also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Regulatory Flexibility Act

A. Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding proposed changes to the Commission's entry standard for foreign carriers desiring to enter the U.S. international telecommunications market, as well as changes to the Commission's public interest standard for foreign entities that seek to acquire an indirect interest in a U.S. common carrier, aeronautical, or broadcast radio license. Comment is also requested on proposed modifications to the Commission's dominant carrier safeguards as well as to other non-discrimination safeguards. Comment is also sought on the Commission's definition of an international facilities-based carrier.

B. Objectives

The Commission seeks to establish standard rules and procedures to regulate foreign entry into the U.S. marketplace in order to promote effective competition and prevent anti-competitive conduct in the market for international communications services, as well as to encourage foreign governments to open their communications markets.

C. Legal Basis

The proposed action is authorized under Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r).

D. Reporting, Recordkeeping and Other Compliance Requirements

The actions contained in this Notice of Proposed Rulemaking may affect large and small carriers. We propose to require that dominant, foreign-affiliated carriers maintain or provide certain records regarding their foreign carrier affiliates. These U.S. carriers may be required to comply with proposed requirements to file certain reports, but this is not estimated to be a significant economic burden for these entities.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

To the extent that the proposals discussed in this Notice of Proposed Rulemaking propose to make equity investment by foreign carriers in U.S. carriers more difficult, carriers seeking foreign investment greater than the proposed threshold will be adversely affected. These proposals are intended to ensure that U.S. carriers can compete effectively in international markets and to open closed foreign markets. Copies of this Notice will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice solicits comment on a variety of alternatives to achieve Commission objectives.

Summary of Notice of Proposed Rulemaking

This Notice of Proposed Rulemaking proposes new policies governing the participation of foreign carriers in the U.S. international telecommunications market. The Commission proposes three goals of its regulation of the U.S. international telecommunications market: (1) To promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets. The Commission considers how to achieve these goals through implementation of Sections 214 and 310 of the Communications Act. The Commission finds that allowing foreign carrier entry into the U.S. international services market will further the public interest by providing additional competition that will benefit consumers. The Commission tentatively concludes, however, that unrestricted foreign carrier facilities-based entry is not in the public interest when U.S. carriers do not have effective opportunities to compete in the provision of services and facilities in the foreign carrier's primary markets.

The Commission proposes to modify its public interest standard for considering foreign carrier applications under Section 214 of the Act to enter the U.S. market to provide international facilities-based services. The Commission seeks comment on requiring as an important element of its public interest standard a demonstration that effective market access is, or will soon be, available to U.S. carriers seeking to provide basic, international telecommuncations facilities-based services in the primary markets served by the carrier desiring entry. The Commission also would continue to consider other factors as part of its public interest analysis, such as national security, the openness of other telecommunications segments of the

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foreign carrier's primary markets, and the ability and incentives of the foreign carrier to discriminate against unaffiliated U.S. carriers.

In addition, the Notice proposes a specified level of foreign carrier ownership in a U.S. carrier at which the proposed entry standard would apply. The Commission asks whether it is desirable to consider an applicant to be "affiliated" with a foreign carrier for purposes of the new rules when the foreign carrier acquires an ownership interest of a certain minimum level or a controlling interest at any level. The Notice requests comment on whether the minimum level of ownership should be set at greater than ten percent, twenty-five percent, or some other level of the capital stock of the applicant.

The Commission also seeks comment on whether the affiliation standard it adopts should replace the current affiliation standard it uses for purposes of classifying an affiliated U.S. carrier as dominant or nondominant on a particular U.S. international route, based on the market power of its foreign carrier affiliate on the foreign end of the route. In addition, the Commission requests comment on whether certain safeguards applied to dominant carriers should be modified to improve their effectiveness. It additionally asks for comment on other proposed nondiscrimination safeguards, including safeguards that would apply to all U.S. international carriers. The Commission also clarifies the definition of a facilities-based carrier and requests comment on its proposal to codify that definition in this proceeding.

Finally, the Notice asks whether the goals of the proceeding would be served by incorporating the proposed effective market access test as an element of the Section 310(b)(4) public interest analysis applicable to foreign entities seeking to acquire an indirect ownership interest of more than 25 percent in U.S. radio licensees. Thus, the Notice asks whether the Commission's evaluation of the public interest should consider whether the primary markets of the foreign entity offer effective market access to U.S. licensees to provide the same type of radio-based services as requested in the United States. The Notice also seeks comment on other public interest factors the Commission should consider.

The Notice seeks public comment on whether these proposals are administratively feasible and whether these approaches or other alternatives will best serve the Commission's goals.

List of Subjects in 47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5127 Filed 3–1–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 933 and 970

Regulation Identifier Number 1991–AB20 Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today issues a Notice of Proposed Rulemaking to amend the Department of Energy Acquisition Regulation (DEAR) to modify requirements for management and operating contractor purchasing systems. DEAR subpart 970.71 will be revised to identify certain purchasing system objectives and standards; eliminate the application of the "Federal norm"; and place greater reliance on commercial practices.

DATES: Written comments on the proposed rulemaking must be received on or before May 1, 1995.

ADDRESSES: Comments on the proposed rulemaking should be addressed to the U.S. Department of Energy, Director, Procurement and Property Review and Evaluation Division (HR–525.1), Attention: James J. Cavanagh, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James J. Cavanagh, Director, Procurement and Property Review and Evaluation Division (HR–525.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202–586–8257.

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I. Background

The Government-wide approach to evaluating contractor purchasing systems, as set forth in Federal Acquisition Regulation (FAR) Subpart 44.301, is to "evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with the Government policy when subcontracting." Most Federal contracts require purchases to be made in accordance with the applicable laws and the terms and conditions of the contract, with minimal references back to acquisition regulations. The policy for the extent of reviews of these purchasing systems is set forth at FAR 44.303.

Unlike other contractors, however, a DOE management and operating contractor historically has been expected to conform its purchasing practices to the "Federal norm." As provided at the DEAR 970.7103, the Federal norm is an "evolving concept", which attempts to balance commercial purchasing practices with Federal procurement principles embodied in law and regulation. The DEAR identifies a number of tenets of Federal policy and practices to which DOE's management and operating contractors must adhere. As a result of the Federal norm, and iterations of related reviews, audits, and protest decisions, management and operating contractor purchasing has, over the years, become increasingly Federal-like, replacing efficient and effective commercial business practices.

In accordance with the objectives of the National Performance Review and the Secretary of Energy's Contract Reform Team Report, the Department intends to revise its expectations for management and operating contractor purchasing systems by eliminating the concept of the "Federal norm." In lieu of the detailed tenets contained in DEAR subpart 970.71, which have resulted in the inefficient layering of non-commercial systems and practices, the Department has identified certain purchasing system objectives and standards which it believes are common to superior purchasing activities, whether they be commercial or public.

In addition, as the Department eliminates the concept of the "Federal norm," the Department intends that any disagreements with management and operating contractor purchasing decision(s) be a matter to be settled between the contractor and potential subcontractor(s). Such disagreements are typically handled in this manner in the commercial sector. The Department expects that its management and operating contractors shall handle any

such disagreements in an open, fair, and reasonable manner, and endorses the use of ombudsmen and alternative disputes resolution procedures for that purpose. Accordingly, by this action, the Department proposes to delete DEAR 970.7107 which provides guidelines for the consideration of subcontractor level protests. This is consistent with the General Accounting Office proposed rule published at 60 FR 5871, January 31, 1995. It is the intention of the Department to incorporate the changes made by this proposed rule into existing management and operating contracts as soon as practicable after the effective date of a final rule.

II. Section-by-Section Analysis

1. Section 933.170, Subcontract level protests, is removed.

2. The revision to paragraph (a) of the clause, Contractor Purchasing System, at 970.5204–22 provides guidance for a management and operating contract acquisition system consistent with proposed revisions to section 970.7103.

3. Section 970.7101, General, is revised by removing paragraphs (c) and (d).

4. The revision to section 970.7102(a) removes the parenthetical which contains references which will no longer exist when sections 970.7104 and 970.7108 are removed in their entirety. Section 970.7102(b)(3) is revised to provide that review of individual purchasing actions shall be pursuant to FAR Subpart 44.2. Section 970.7102(b)(4) is revised to provide that periodic appraisals shall be in accordance with established policies in section 970.7103.

5. The revisions to section 970.7103 eliminate the concept of the "Federal norm," and establish contractor purchasing systems objectives, expectations, and standards.

6. Section 970.7104, Conditions of purchasing by management and operating contractors, is removed. The DOE believes it is not necessary to retain this section since many of the requirements comply with provisions of statutes and are already reflected in contract clauses. These requirements will, therefore, continue to be applicable as contractual requirements. Some of the requirements, however, are not specifically prescribed in other parts of the DEAR. The Department will review such requirements prior to finalization of this proposed rule and may redesignate appropriate paragraphs, in the final rule, to other parts of the DEAR, if necessary. If such requirements are identified, the Department will publish a **Federal Register** notice, prior to issuing a final rule, listing the paragraphs being considered for redesignation.

7. Section 970.7106, Procedures for handling mistakes relating to management and operating contractor purchases, is removed.

8. Section 970.7107, Protest of management and operating contractor procurements, is removed.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the "ADDRESSES" section of this rule. All comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the "DATES" section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993).

Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department of Energy has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable

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effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, D.C. on February 24, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 933—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for part 933 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c)

933.170 [Removed]

2. Section 933.170 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

4. At 970.5204–22, revise paragraph (a) of the clause to read as follows:

970.5204–22 Contractor purchasing system.

(a) The contractor shall develop, implement, and maintain formal policies, practices and procedures to be used in the award of subcontracts consistent with DEAR 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with DEAR 970.7102. The contractor's purchasing performance will be evaluated against agreed-upon criteria in accordance with the performance criteria and measures clause(s) set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

* * * * *

970.7101 [Amended]

5. Section 970.7101 is amended by removing paragraphs (c) and (d).

970.7102 [Amended]

6. Section 970.7102 is amended at: paragraph (a) to remove the parenthetical at the end of the paragraph; paragraph (b)(3) by removing the words "to assure that management and operating contractors implement DOE policies and requirements as defined in this subpart, in accordance with the contractor's accepted system and methods" and adding in its place the words "pursuant to FAR 44.2"; and paragraph (b)(4) by removing "Subpart 944.3 and 970.7108" and adding in its place "970.7103."

970.7103 [Revised]

7. Section 970.7103 is revised to read as follows: 970.7103 Contractor purchasing system.

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be well-defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulation. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall provide for appropriate measures to ensure:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either:

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition lead-time and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures.

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards; and

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid.

970.7104 through 970.7104–47, 970.7106, 970.7107 [Removed]

8. Sections 970.7104 through 970.7104–47 970.7106, and 970.7107 are removed.

[FR Doc. 95–5173 Filed 3–1–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC–6; Notice No. 1]

RIN 2130–AA92

Selection and Installation of Grade Crossing Warning Systems; Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA proposes to prohibit railroads from unilaterally selecting and installing highway-rail grade crossing warning systems at public highway-rail crossings. FRA further proposes to require that railroads furnish state highway authorities with information necessary for state grade crossing project planning and prioritization purposes.

DATES: (1) Written comments must be received no later than May 16, 1995. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) A public hearing will be held at 9:30 a.m. on May 9, 1995. Any person who wishes to speak at the hearing should notify the FRA Docket Clerk at least five working days before to the hearing, by telephone or by mail.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, DC Persons desiring to speak at the hearing should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: This NPRM clarifies the respective responsibilities of railroads and state and local governments regarding the selection and installation of highway-rail grade crossing warning systems. This proposal is issued to eliminate confusion and uncertainty as to the role of railroads in the selection and installation process. FRA expects the proposed rules to "substantially subsume" the subject matter of railroads' selection and installation of highway rail grade crossing warning systems and as such will preempt state laws covering the same subject matter.

Background

Highway-rail grade crossings present inherent risks to users, including motorists, pedestrians, railroad passengers and railroad employees. Of the more than 168,000 public highway-rail grade crossings in the nation, only 28,100 are fully equipped with automatic lights, gates and bells; fewer than 1,000 of the 108,000 private crossings are so equipped. The vast majority of public crossings (and private crossings) are equipped with only passive warning devices such as crossbucks, Engineering improvements at individual crossings, education of the public, and enforcement of highway traffic laws have reduced accidents and casualties at highway-rail crossings. Since 1978, accidents and fatalities have decreased dramatically despite increased highway usage, stable rail traffic levels, and increased train speeds. However, the present loss of life, injuries and property damage are still unacceptable. Highway-rail collisions are the number one cause of death in the entire railroad industry, far surpassing employee or passenger fatalities. Additionally, the proportion of severe accidents (i.e., those likely to result in fatalities) is rising. Nearly 4,900 collisions occurred between highway users and on-track railroad equipment in 1993. More than 600 people were killed and over 1,800 were seriously injured in these collisions.

In 1973 Congress first established the Rail-Highway Crossing Program (section 130 program) to improve highway-rail crossing safety. Continuous federal funding since then has made more than $3 billion available in improvement funds, representing more than 90% of project costs under this program. Because highway-rail grade crossing safety is primarily achieved through highway traffic control, DOT'S Federal Highway Administration (FHWA) has oversight responsibility for the program. See 49 CFR 1.48.

State Safety Prioritization Process

FHWA regulations provide uniform federal standards for all highway traffic control systems, including those at highway-rail crossings. The federal government, rather than dictating the specific type of warning system to be installed at each of the nation's 168,000 public grade crossings, has established the outline of the required planning and selection process. FHWA has adopted regulations governing the process by which states are to establish priorities for implementing highway safety improvement projects, including projects for elimination of hazards of highway-rail grade crossings.

FHWA's regulations detail the uniform planning process involved in selecting the crossings to be improved (23 CFR Part 924.) The planning component of a state's highway safety improvement program is required to incorporate a process for collecting and maintaining a record of accident, traffic, and highway data including characteristics of both highway and rail traffic. The planning component must also contain a process for analyzing data to identify hazardous highway locations based on accident experience or accident potential as well as containing a process for conducting engineering studies of hazardous locations. Of vital importance in ensuring that limited funds are spent in a manner that will achieve the greatest safety return, a state's safety improvement program is required to have a process for establishing priorities for implementing highway safety improvement projects. That process must consider the potential reduction in the number and/or severity of accidents; the cost of the projects and resources available; the relative hazard of public highway-rail crossings based on a hazard index formula; on-site inspections of crossings; potential danger to large numbers of people at crossings used on a regular basis by passenger trains, buses, pedestrians, bicyclists or by trains and motor vehicles carrying hazardous materials; and other criteria as appropriate in each state. 23 CFR 924.9.

As a review of the planning and prioritization components shows, the process outlined above could only be carried out by an entity capable of gathering and analyzing all the needed data. A railroad has only data available

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to it which is railroad specific: rail traffic volume, authorized speed, number of tracks, type of train control system, and projected changes in these areas. Even accident data available to a railroad are of uncertain benefit since they are limited to the experiences of that one railroad rather than compared and collated with similar data from other railroads in the state or even other railroads whose tracks are crossed by the same highway.

The federal government has recognized that individual entities such as railroads do not have the requisite analytical tools and information gathering ability to make the appropriate decisions regarding the most appropriate focusing of limited safety improvement funds. State agencies have the necessary analytical tools and information. It is therefore appropriate that they have the responsibility for the actual selection of specific crossings and the determination of the type of warning devices to be installed.

The Secretary, through FHWA, has also issued standards governing the form and placement of all grade crossing warning systems irrespective of whether federal funds are used in their installation. 23 CFR 646.214. FHWA's Manual on Uniform Traffic Control Devices (MUTCD), incorporated by reference into the Code of Federal Regulations (23 CFR 655.601), establishes "traffic control device standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction." MUTCD 1A–2. The MUTCD establishes uniform standards relating to design and placement of traffic control signs, pavement markings and automatic warning devices. These standards apply nationwide—even when the improvements have not been paid for with federal funds.

DOT Safety Initiatives

This proposed rule is but one component of a continuing DOT campaign to improve grade crossing safety. DOT's Grade Crossing Action Plan includes several initiatives that will aid in improving safety at grade crossings. This plan details six major Departmental initiatives encompassing 55 separate actions addressing highway-rail grade crossing safety and trespass prevention. These initiatives include: enhanced enforcement of traffic laws at crossings; enhanced rail corridor crossing reviews and improvements; expanded public education and Operation Lifesaver activities; increased safety at private crossings; improved data and research efforts; and prevention of rail trespassing.

A cornerstone of this grade crossing safety campaign is the closure and consolidation of little used and redundant crossings. It is generally acknowledged that there are too many highway-rail grade crossings in this country—there are not sufficient resources from any source or sources to provide full warning systems or grade separations at all of the nation's crossings. Too many crossings are equipped only with crossbuck warning signs. Elimination of poorly designed, less travelled, and redundant crossings will clearly enhance the safety of the travelling public. FRA has thus been advocating consolidation and closure for a number of years. FRA's role of advocate reflects the fact that state and local governments have the authority to close and consolidate crossings just as they have the authority to create crossings in connection with public road construction.

This rulemaking is one in a series of rules addressing the responsibilities of the various parties in this critical rail safety area. On September 27, 1994, FRA issued maintenance, inspection, and testing rules (59 FR 50086, September 30, 1994). Those rules for the first time impose specific responsibilities on railroads to maintain, inspect and test active highway-rail grade crossing warning systems. Additionally, FRA imposed on railroads the responsibility to take specified actions when grade crossing warning systems malfunction. The rules impose costs on railroads in addition to the more than $130 million they spend on crossing maintenance every year. The allocation of responsibility to railroads regarding grade crossing maintenance, inspection, and testing and response to malfunctions reflects reality—railroads are the appropriate party to perform these activities. They have the technical expertise and forces to perform the work. Safety is enhanced by such allocation of responsibility.

Similarly, responsibilities have been allocated between railroads and state and local agencies by the Congress in the Swift Rail Development Act of 1994 (Pub. L. 103–440). Section 302 of that act directs the Secretary of Transportation to issue regulations requiring that a locomotive horn be sounded while each train is approaching and entering each public grade crossing unless certain supplementary safety measures are provided by the "appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing." Congress has implicitly recognized that railroads have responsibility in areas over which they have control, such as sounding of horns, while state and local traffic control authorities have responsibility pertaining to those areas within their expertise and under their control, namely, highway traffic control.

The NPRM

This NPRM would also define responsibilities in the grade crossing area. It defines the responsibility of railroads to provide information and assistance in those areas in which their expertise is paramount—railroad operations. Railroads would be required to provide appropriate state agencies information related to their operations and to participate with state or local diagnostic teams to help the state or local governmental body determine which crossings' warning systems should be upgraded and to what extent.

This allocation of responsibility to railroads is based on the recognition that state and local governmental bodies are the entities with the expertise and information to look at the entire picture (of which railroad traffic and plans are but one component): whether crossings should be consolidated or closed; funding availability; funding constraints; local desires; area residential, commercial and industrial development plans; and highway traffic engineering demands and constraints. Consistent with that expertise and information base, state and local governmental bodies are the appropriate bodies to determine which, how, and when highway rail grade crossing warning systems should be upgraded. Because of the very high cost to install an automatic traffic control warning system at a grade crossing—more than $100,000 at a double track crossing—it is imperative that the limited safety funds, from whatever sources, available for crossing improvements be spent in a rational, uniform, and coordinated manner. The present system whereby states, pursuant to FHWA regulations, investigate, plan, and prioritize crossing improvements provides the needed uniformity and coordination to ensure that the crossings most in need of safety improvements are those that receive them. Grade crossing safety is best enhanced by such a program that provides for a systematic upgrading of traffic control devices at crossings that are truly needed pursuant to a prioritized schedule established by state authorities under uniform federal criteria. Such a program allows state highway officials the ability to respond to the concerns of the public in making grade crossing improvement decisions,

and allows available resources to be allocated to the grade crossing improvement projects yielding the highest safety returns. Simply stated, this will save more lives than if an equal amount of money were spent on upgrading crossings that statistically are not as dangerous.

In other, less frequent situations, a state agency, local governmental body, or state or local legislative body may, outside of the Federal-aid program, fund the upgrading of a warning system at a specific crossing or order a railroad to install or upgrade a warning system at its own expense. These proposed rules are not meant to prevent those governmental authorities from being involved in such activities. Although the selection decision in these situations may not be based on the selection and installation criteria established by FHWA and adopted by the state department of transportation or highway department, presumably the governmental body's selection decision is based on sound public policy and overall safety considerations derived from information available to the state.

Some state laws, generally predating the advent of the Federal Rail-Highway Crossing Program, impose a tort law duty upon railroads to maintain safe crossings. In some cases this duty has been interpreted to include a duty to select and install warning systems at hazardous crossings. While this system may have been appropriate in the past, when there was no systematic and uniform improvement program in existence, today the result is one of misallocation of scarce resources. This ad hoc system of grade crossing improvements, driven by tort law and individual jury awards, runs counter to the goal of a uniform national program based on planning and prioritization. Those ofttimes arbitrary local requirements can result in the installation of grade crossing warning systems, not where research and data indicates they will do the most good, but where a judge or jury determined, after the fact, that such a system should have been installed.

Jury verdicts based on common law standards are necessarily ad hoc, case-by-case judgements that are retrospective in nature. The duties now imposed upon railroads ad hoc in this manner are inconsistent with the command of Congress that "[l]aws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable." (49 U.S.C. 20106) These verdicts do not provide an appropriate mechanism for determining whether the crossing is needed in the first place, and if needed, what warning devices are appropriate. Neither do these verdicts provide an appropriate method for determining the order in which crossings would be equipped or upgraded to yield the greatest safety benefits. Moreover, these judgments divert resources from saving lives through investments in grade crossing warning devices to compensating those killed or injured in accidents or their survivors. This is sound public policy only when the railroad has breached a duty to them that it is appropriate for the railroad to have.

In this proposed rule, FRA is defining in a nationally uniform manner the safety duties railroads have in connection with the selection and installation of warning devices at grade crossings. Tort judgments in general certainly exert a salutary deterrent influence on behaviors that rational actors can avoid, but here that deterrent is distorted and diminished by the combination of (i) the lack of adequate funds, public or private, to improve all grade crossings to the desired level of safety, (ii) the focus of tort cases on whether a railroad has satisfied its common law duties at the grade crossing in question without regard to its behavior concerning grade crossings in general, and (iii) large judgments for accidents at grade crossings of low relative hazard. As things now stand, a railroad that is responsibly investing its available funds for the improvement of grade crossings in the order and in the manner specified by the transportation authorities in the states it serves may be subjected to large tort judgments resulting from the relatively random occurrence of accidents at grade crossings of low hazard relative to those improved. The proposed regulations are meant to ensure that the present system is not compromised by state requirements that railroads select and install grade crossing improvements outside of the coordinated and prioritized federal/state system already established.

The Supreme Court, in a recent decision, *CSX Transportation, Inc.* v. *Easterwood*, (113 S. Ct. 1732, (1993)) held that legal duties imposed on railroads by a State's common law of negligence fall within the scope of the preemption provision of 49 U.S.C. 20106, (formerly § 205 of the Federal Railroad Safety Act (45 U.S.C. § 434)). However, the Court held that preemption of such state laws will lie only if the federal regulations substantially subsume the subject matter of the relevant state law.

FRA expects the proposed rules will "substantially subsume" the subject matter of railroads' selection and installation of highway rail grade crossing warning systems and as such will preempt state laws covering the same subject matter, regardless of whether Federal funding of improvements is involved at a particular crossing.

In *Easterwood*, the Court held that "for projects in which federal funds participate in the installation of warning devices, the Secretary has determined the devices to be installed and the means by which railroads are to participate in their selection. The Secretary's regulations therefore cover the subject matter of state law which, like the tort law on which respondent relies, seeks to impose an independent duty on a railroad to identify and/or repair dangerous crossings." 123 L. Ed. 2d at 401.

The Department believes that the distinction in safety duties drawn in *Easterwood* depending upon whether or not improvements to a particular grade crossing were federally funded results in poor public policy that is likely to misallocate scarce funds for grade crossing improvements because railroads are given a powerful financial incentive either (i) to invest funds in improving crossings on some basis other than the relative hazard rankings established by state highway authorities or (ii), especially in the case of small railroads, to diminish investment in grade crossing improvements because they cannot tell where an adverse verdict may strike next and their net financial results may be better served by using the funds to pay judgments they are unable to avoid. Railroad and highway safety alike are best served by focusing the economic and legal incentives of everyone involved in the process to invest grade crossing improvement funds where the most lives will be saved and the most injuries prevented. The proposed rule is intended to achieve that result.

If, as the Department has recommended in its Highway-Rail Grade Crossing Action Plan, state transportation authorities also begin evaluating the hazards of grade crossings on entire rail corridors, the proposed rule would accommodate improvements focused in that manner. That is simply another way for state transportation authorities to systematically evaluate the relative safety of highway rail grade crossings and to decide which improvements will yield the best safety results.

Moreover, highway rail grade crossing warning systems are devices to control motor vehicle traffic on highways. Government bodies responsible for

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highways and motor vehicle safety are the appropriate decision makers to decide which devices should be installed on public highways and the order in which intersections should be improved.

Railroads should be responsible for providing information to help state highway authorities make those decisions and for helping to implement those decisions after they are made. In fulfilling the requirements of FHWA's Highway Safety Improvement Program (49 CFR Part 924), state agencies have a need for railroad information that might have an impact on the type of improvement appropriate to a particular crossing or that might affect the relative priority to be given in upgrading one crossing versus another. Such data include present and projected rail traffic (both hazardous and non-hazardous materials), track configuration, signalling, and authorized train speed as well as other conditions affecting the crossing. Railroads have historically provided assistance to state agencies planning for grade crossing improvements. The proposal would codify railroads' present practice of providing information and assistance needed by those state agencies.

The proposal will not affect railroads' present obligations to maintain grade crossing warning systems. Indeed, as noted above, FRA's recently issued amendments to Grade Crossing Signal System Safety regulations codify specific maintenance, inspection, and testing requirements for grade crossing warning systems.

While this proposed rule prevents a railroad from unilaterally selecting and installing warning systems, it does not prevent a state agency from ordering a railroad to pay for all or part of grade crossing warning system on a non-Federal aid project. While FRA is philosophically opposed to the concept of a railroad being forced to pay for an upgrade to what is essentially a highway traffic control device for which it receives no net benefit (see 23 CFR 210(b)), FRA is not prepared at this time to issue regulations preempting the many state laws in this area.

Section-by-Section Analysis

§ 234.301 Railroad cooperation.

Paragraph (a) of this section requires that railroads cooperate with the appropriate state agency in furnishing information to enable the state to develop plans and project priorities for the elimination of hazards of highway-rail grade crossings. Railroad plans to increase traffic on a line or to upgrade track or signalling to enable increases in train speed, are important factors which states must take into consideration in determining their prioritization and plans. Similarly, state planners need information regarding railroad plans or projections regarding decreasing traffic volume. Railroads have generally provided such information on a voluntary and routine basis. This provision codifies the responsibility of a railroad to provide current and projected information which is uniquely available to the railroad. Without railroad information a state is unable to make the appropriate decisions to determine which crossings should be upgraded and with which type of warning systems. Many railroads already provide information such as current train counts, speeds, type and number of tracks and type of installed warning system to FRA or the state for inclusion in the DOT/Association of American Railroads National Highway-Rail Grade Crossing Inventory (Inventory) on file with FRA. Duplicate submissions to a state are not necessary under this rule inasmuch as Inventory data is routinely available to States.

Presently, information submissions by States and railroads to the Inventory are made on a voluntary basis. Comments are specifically invited regarding the advisability of making Inventory information submission mandatory.

This section also provides that a railroad need not submit proprietary data of a confidential nature to a state unless that information will be protected from disclosure. Such provision will ensure that railroads will not be penalized commercially by such regulatory compliance.

Paragraph (b) of this section requires that railroads provide appropriate engineering and other technical assistance to the state agency in designing and installing the warning system determined by the state to be appropriate to the particular crossing. In many instances a railroad is the only party with the requisite technical expertise to assist the state in developing the engineering design for the crossing. This section recognizes that fact and therefore establishes a duty to assist in this area.

§ 234.303 Selection and installation of warning systems at public crossings.

Paragraph (a) of this section prohibits a railroad from unilaterally selecting or determining the type of grade crossing warning system to be installed at a public highway-rail grade crossing. Such a decision is more appropriately made by the state or local government. In some situations today, a railroad voluntarily contributes to the cost of installing a crossing warning system. In some cases, a railroad has voluntarily contributed all or part of a locality's required local share in order to enable a particular crossing to be improved with federal funds. The proposed rule is not meant to alter this practice of voluntary railroad involvement. Similarly, this rule is not meant to affect those situations in which a railroad improves a crossing at its own expense in order to secure the closure of another crossing. These railroad practices, unlike funding of projects outside of the state planning process, are supportive and consistent with the prioritization and planning process. Therefore, nothing in the proposal prevents a railroad from voluntarily contributing to the installation costs of warning devices installed pursuant to the state planning process.

Paragraph (b) addresses installation of the warning system after the specific grade crossing and type of warning system has been selected. This paragraph provides that a railroad shall only install or upgrade a grade crossing warning system at a public highway-rail grade crossing pursuant to an order by, or agreement with, a state agency or other public body having authority to issue such order or enter into such agreements. The proposal provides that whenever such state agency or other public body determines that a particular grade crossing warning system should be installed at a particular highway-rail grade crossing, the railroad shall comply with any legally sufficient order, or in the case of federally funded grade crossing projects, enter into and perform an agreement for the installation or upgrade of that grade crossing warning system with the state agency or other public body having jurisdiction. The rule does not require a railroad to provide the non-federal share of costs involved in federally-funded grade crossing improvement projects.

This section recognizes that since the warning system is, in many instances, tied into the railroad's track circuits and the railroad will maintain the system, the railroad is generally the most appropriate party to physically install the system. Under the present Federal-aid system, railroads are reimbursed for procurement and installation costs of the warning system. This paragraph recognizes the benefits of this process and only prohibits railroads from unilaterally installing grade crossing warning systems without state or local approval.

This section is not meant to prohibit a railroad's voluntarily contribution to the costs of installation of a highway-rail grade crossing warning system.

Railroads have voluntarily contributed all or a portion of the non-Federal matching share required under Federal law for construction of grade crossing warning systems. FRA does not intend to prevent or discourage such contributions.

While FRA believes that railroads have many powerful incentives to continue their longstanding policy of voluntarily providing matching funds for federally funded grade crossing projects, comment is sought concerning whether this proposal will affect the level of railroad participation in such projects.

Paragraph (c) addresses railroad projects in which warning system improvements are only incidental to the railroad project. Some railroad projects, such as new track, upgraded track, or the installation of signal systems, may involve upgrading warning system circuits or the replacement of obsolete equipment with newer, more technologically advanced equipment. This rule is not intended to prohibit railroad's present practice of incidental upgrades.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and is considered to be significant under DOT policies and procedures (44 FR 11034, February 26, 1979). This regulatory document was subject to review under E.O. 12866. FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. A copy of the regulatory evaluation may be inspected and copied in Room 8201, 400 Seventh Street, S.W., Washington, D.C., 20590.

In its regulatory analysis FRA posited that the costs and benefits of this proposed rule are not measurable at present, but that the benefits will equal or exceed the costs, because the function of the rule is to virtually eliminate grade crossing selections and installations which do not require an analysis which considers costs and benefits.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the proposed rule, FRA has concluded that it will have a minimal economic impact on small entities. There is no direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The proposed section that contains information collection requirements is § 234.301. Persons desiring to comment on this topic should submit their views in writing to FRA (Ms. Gloria Swanson, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590) and to the Office of Management and Budget (Desk Officer, Regulatory Policy Branch (OMB No. 2130–AA92), Office and Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20530. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule has sufficient federalism implications to warrant the preparation of a Federalism Assessment. A copy of the Federalism Assessment has been placed in the public docket and is available for inspection.

List of Subjects in 49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Part 234, Title 49, Code of Federal Regulations as follows:

PART 234—[AMENDED]

1. The authority citation for Part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106, 20107, 20111, 20112, 20134, 21301, 21304, and 21311 (formerly Secs. 202, 208, and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 437, and 438, as amended)); 49 U.S.C. 20901 and 20102 (formerly the Accident Reports Act (45 U.S.C. 38 and 42); and 49 CFR 1.49 (f), (g), and (m).

2. Add a new "Subpart E—Selection and Installation of Grade Crossing Warning Systems," to read as follows:

Subpart E—Selection and Installation of Grade Crossing Warning Systems

Sec.
234.301 Railroad cooperation.
234.303 Selection and installation of grade crossing warning systems.

§ 234.301 Railroad Cooperation.

(a) Railroads shall cooperate with the appropriate state agency in furnishing information to enable the state agency to develop plans and project priorities for the elimination of hazards of highway-rail grade crossings including, but not limited to grade crossing elimination, reconstruction of existing grade separations, and grade crossing improvements. At the request of the appropriate state agency, a railroad shall provide information not already provided to the FRA or the state for inclusion in the DOT/Association of American Railroads National Highway-Rail Grade Crossing Inventory regarding railroad operations involving specific highway-rail grade crossings, including, but not limited to: present and projected rail freight traffic (including transportation of hazardous materials); present and projected passenger traffic; present and projected track configuration and signalling; present and projected maximum authorized train speed; and other conditions which may affect the planning for, and prioritization of, crossing improvements. Nothing herein requires that a railroad provide to a state proprietary data of a confidential nature unless such information shall be protected from disclosure.

(b) Railroads shall provide appropriate engineering and other technical assistance to the state agency in designing and installing the warning system determined by the state to be appropriate to the particular crossing.

§ 234.303 Selection and installation of grade crossing warning systems.

(a) A railroad shall not unilaterally select or determine the type of grade crossing warning system to be installed at a public highway-rail grade crossing.

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(b) Subject to paragraph (c), a railroad shall only install or upgrade a grade crossing warning system at a public highway-rail grade crossing pursuant to an order by, or agreement with, a state agency or other public body having authority to issue such order or enter into such agreements. Whenever such state agency or other public body determines that a particular grade crossing warning system should be installed at a particular highway-rail grade crossing, the railroad shall comply with any legally sufficient order, or in the case of federally funded grade crossing projects, enter into and perform an agreement for the installation or upgrade of that grade crossing warning system with the state agency or other public body having jurisdiction. Nothing herein shall require a railroad to provide the non-federal share of costs involved in federally-funded grade crossing improvement projects.

(c) A railroad is permitted to upgrade, at its own expense, components of a public highway-rail grade crossing warning system when such upgrade is incidental to a railroad improvement project relating to track, structures or train control systems.

3. Amend Appendix A by inserting in numerical order new entries to read as follows:

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation
. . . . .		
234.301 Railroad co-operation	$5,000	$7,500

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
§234.303 Selection and installation of grade crossing warning systems	5,000	7,500
. . . . .		

Issued in Washington, D.C. on February 24, 1995.

Jolene M. Molitoris,

Administrator.

[FR Doc. 95–5100 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 60, No. 41

Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

[4310–84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interim Strategy for Managing Anadromous Fish-Producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, and Portions of California

AGENCY: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Notice of decision and availability of environmental assessment and finding of no significant impact.

SUMMARY: On February 24, 1995, the Chief of the Forest Service and the Acting Director of the Bureau of Land Management signed a decision adopting an interim strategy for managing anadromous fish-producing watersheds on lands administered by the Forest Service and Bureau of Land Management in Eastern Oregon and Washington, Idaho, and portions of California. The decision amends Regional Guides and Forest land and resource management plans that guide the management of National Forest System lands and where compatible, provides management direction consistent with Bureau of Land Management land use plans and, thereby, establishes interim goals, objectives, and standards and guidelines for these anadromous fish-producing watersheds. The intended effect of this decision is to provide additional protective management to the watersheds in the affected areas so as to avoid limiting the choice of reasonable alternatives that may be developed in the geographically specific environmental analyses of long-term management strategies are being conducted.

EFFECTIVE DATE: For the Forest Service, this decision is effective on March 9, 1995. For the Bureau of Land Management, this decision is effective on April 3, 1995.

ADDRESSES: The decision documents, Finding of No Significant Impact, and Environmental Assessment may be reviewed at the Office of the Wildlife, Fish, and Rare Plants Staff, Forest Service, USDA, Auditors Building, 14th and Independence Avenue, SW, Washington, DC. Single copies of these documents are available by request from this office as well as from Forest Service regional offices and national forests or Bureau of Land Management state offices in the affected areas.

FOR FURTHER INFORMATION CONTACT: Harv Forsgren (Forest Service) at (202) 205–1791, or Richard Hardt (BLM) at (202) 452–5074. To request a copy of the decision document, Finding of No Significant Impact, and Environmental Assessment by phone, call (202) 205–1791.

SUPPLEMENTARY INFORMATION: The Forest Service and Bureau of Land Management have developed an ecosystem-based interim management strategy for Pacific anadromous fish (i.e., salmon, steelhead, and sea-run cutthroat trout) in response to large declines in anadromous fish populations and widespread degradation of habitat conditions. For the Forest Service the decision amends the Regional Guides for the Forest Service's Northern, Intermountain, Pacific Southwest, and Pacific Northwest Regions and 15 National Forest land and resource management plans (forest plans) to incorporate explicit goals and riparian objectives, and identify those areas where the new interim standards and guidelines will apply. For the Bureau of Land Management, the decision incorporates management direction consistent with seven Bureau of Land Management land use plans to arrest the degradation and begin restoration of anadromous fish-producing watersheds.

Alternative 4 was selected as the interim management direction from five alternatives analyzed in the March 1994 environmental assessment. Notice of the availability of the environmental assessment was published in the **Federal Register** on March 25, 1994 [58 FR 14356]. Comments received from the general public as well as other Federal agencies and state and local government were considered in arriving at a final decision to adopt Alternative 4, which applies additional protective measures to all new activities and ongoing activities that are likely to adversely affect listed salmon or contribute to the need to list additional anadromous fish species under provisions of the Endangered Species Act. The direction is to be in place for an 18–month period while geographically-specific environmental analyses of long term management strategies are being conducted.

Forest Service and Bureau of Land Management biologists have prepared a biological evaluation and assessment, analyzing the potential effects of the alternatives on species listed under the Endangered Species Act and those species identified as sensitive by the agencies. The biologists determined the selected alternative "may effect" listed species and designated critical habitat within the anadromous fish-producing watersheds covered by the decision. Pursuant to that finding, the Forest Service and the Bureau of Land Management have consulted with the Department of Interior, Fish and Wildlife Service, and the U.S. Department of Commerce, National Marine Fisheries Service. The Fish and Wildlife Service, through a letter of concurrence, has indicated that the proposed decision would have a neutral or beneficial effect on listed species under their jurisdiction. The National Marine Fisheries Service, through a biological opinion, has determined that the proposed decision is not likely to jeopardize the continued existence of listed species under their jurisdiction or result in destruction or adverse modification of critical habitat.

Pursuant to section 102(2)(2) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Guidelines (40 CFR 1508.27), the Forest Service and Bureau of Land Management hereby give notice that the actions allowed under Alternative 4 (as adopted) are not a major Federal action and will not significantly affect, either individually or cumulatively, the quality of the human environment. Therefore, an environmental impact statement is not being prepared.

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For the Forest Service, this decision may be appealed in accordance with the provisions of 36 CFR 217.7(a) by filing a written notice of appeal with the Secretary of Agriculture, in duplicate, within 45 days of the date of publication of this notice of availability. Review by the Secretary is discretionary. For the Bureau of Land Management, this decision may be appealed to the Department of the Interior, Board of Land Appeals, in accordance with the provisions of 43 CFR 4.20 to 4.31 and 43 CFR 4.400 to 4.415, by filing a written notice of appeal. The notice must be filed with the Director of the Bureau of Land Management within 30 days of the date of publication of this legal notice of availability.

Dated: February 24, 1995.
For the Forest Service:
Jack Ward Thomas,
Chief, USDA Forest Service.

Dated: February 24, 1995.
For the Bureau of Land Management:
Mike Dombeck,
Acting Director, USDI Bureau of Land Management.
[FR Doc. 95–5149 Filed 3–1–95; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; AA Production, Inc.; Twin-Creeks-Unit; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison County, CO

AGENCY: Forest Service, USDA.
ACTION: Cancellation of a notice of intent.

SUMMARY: On June 2, 1994 a Notice of Intent to prepare an environmental impact statement was published in the **Federal Register** on pages 28510–28512 entitled Forest Service; Rocky Mountain; AA Production, Inc.; Twin-Creeks-Unit; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison County Colorado. The environmental impact statement was to examine a proposal by AA Production, Inc. to drill 4 coal bed methane wells and construct a transportation system to these wells near Paonia, Colorado. Upon publication of this notice in the **Federal Register**, the environmental analysis and the June 2, 1994 Notice of Intent is cancelled.

The responsible Bureau of Land Management official is Sally Wisley, Area Manager, San Juan Resource Area, Federal Building, 701 Camino Del Rio, Durango, Colorado 81301.

The responsible Forest Service official is Ray L. Kingston, Paonia District Ranger, Grand Mesa, Uncompahgre and Gunnison National Forests, PO Box 1030, North Rio Grande Avenue, Paonia, Colorado 81428.

Dated: January 9, 1995.
Ray L. Kingston,
District Ranger.
[FR Doc. 95–5095 Filed 3–1–95; 8:45 am]
BILLING CODE 3410–11–M

California Spotted Owl EIS

AGENCY: Forest Service, USDA.
ACTION: Notice of meetings.

SUMMARY: This notice announces several open houses to which the public is invited to participate in information exchange regarding alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement, as they affect the Plumas National Forest area.

MEETING DATES, TIMES, & ADDRESSES

April 3 from 1:30 p.m. to 4:00 p.m.
Butte County Library Conference Room, 1820 Mitchell Avenue, Oroville, CA

April 4 from 1:30 a.m. to 4:00 p.m.
Plumas County Library Conference Room, 445 Jackson Street, Quincy, CA

April 4 from 7:00 p.m. to 9:30 p.m.
Portola City Council Chambers, 35 Third Avenue, Portola, CA.

CONTACT PERSON FOR FURTHER INFORMATION: Lee Anne Schramel Taylor, Plumas National Forest Supervisors Office, 159 Lawrence Street, Quincy, CA 95971 (916) 283–2050

SUPPLEMENTARY INFORMATION: The Forest Service will release a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to exchange information with the public regarding the Draft Environmental Impact Statement and the preferred alternative. The meeting will be informally structured. Members of the team that prepared the DEIS will be available to answer questions and discuss the DEIS. Visual media depicting the alternatives and selected environmental consequences will be displayed.

Mark J. Madrid,
Forest Supervisor.
[FR Doc. 95–5158 Filed 3–1–95; 8:45 am]
BILLING CODE 3410–11–M

AGRICULTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.
ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its next meeting to take place in Arlington, VA on Tuesday and Wednesday, March 14–15, 1995. The purpose of the meeting is to review the mission and programs of the Board following the request of the Vice President under the National Performance Review, Phase II. These meetings are closed to the public.

DATES: The meeting will be held on March 14–15, 1995.

ADDRESSES: The meeting will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

Lawrence W. Roffee,
Executive Director.
[FR Doc. 95–5172 Filed 3–1–95; 8:45 am]
BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–805]

Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
EFFECTIVE DATE: March 2, 1995.
FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230;

telephone: (202) 482–1756 or (202) 482–3853, respectively.

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of stainless steel bar from Spain to reflect the correction of ministerial errors made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

Case History and Amendment of the Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on December 28, 1994, the Department of Commerce (the Department) published its final determination that stainless steel bar from Spain was being sold at less than fair value (59 FR 66931). Subsequent to the final determination, we received ministerial error allegations by both petitioners and respondents in this investigation.

On January 12, 1995, petitioners made a timely allegation that the Department made ministerial errors in its final determination. First, they alleged that the Department made two incorrect adjustments to the reported difference-in-merchandise (difmer) data for respondent Roldan, S.A. (Roldan). Petitioners alleged that, in order to correct a discrepancy in Roldan's reported variable manufacturing costs for certain U.S. and home market sales, the Department increased the variable cost of manufacture (COM) for difmer purposes by adding to the home market difmer costs reported by Roldan when, in fact, the home market difmer adjustment should have been subtracted.

Furthermore, petitioners argued that the Department should not have made a similar difmer adjustment to Roldan's reported variable COM for U.S. sales because the discrepancy was confined to Roldan's home market variable COM data.

Respondent agreed with petitioner that the Department should have subtracted, rather than added, from its difmer data in order for it to correspond to its COP data. However, respondent argued that the petitioners were incorrect in their assertion that the discrepancy was confined only to Roldan's home market sales data. Consequently, respondent argued that the adjustment should have been made to the difmer data of both U.S. and home market sales.

We agree that this error constitutes a ministerial error as defined by Section 751(f) of the Tariff Act of 1930, as amended (the Act), which states that a "ministerial error" is "an error in addition, subtraction or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." We agree that the Department made a mathematical error when adjusting the respondent's difmer information. Furthermore, we agree with the respondent that this adjustment should have been made to its U.S. difmer information as well as its home market difmer information. We made the proper adjustments in our margin calculations and the resulting margin did not change from the margin calculated for the final determination.

Second, petitioners noted that the Department did not calculate margins for several of Roldan's U.S. sales that did not have product matches or constructed value data. Petitioners argued that the Department should have used the highest non-aberrational margin calculated for individual sales to calculate margins for these sales.

Respondent stated that the Department correctly deleted the sales for which there were no product matches from the margin calculation.

We have analyzed the information submitted by Roldan and have concluded that the Department made a "ministerial error" under Section 751(f) of the Act. We inadvertently omitted these sales in our concordance before they could be matched to the appropriate home market products. We have corrected this problem and calculated a margin for the sales in question.

On January 13, 1995, Acenor, S.A. (Acenor), a mandatory respondent that withdrew from the investigation, and Roldan, made timely allegations that the Department made ministerial errors in its final determination. Acenor alleged that its deposit rate was based on data presented in a sales below cost of production (COP) allegation which was determined to be invalid by the Department.

Petitioners argued that because Acenor was no longer an interested party in the investigation, the firm of George V. Egge Jr., P.C. could no longer represent itself as counsel for Acenor and submit a ministerial error allegation on its behalf. Petitioners further suggested that if the Department were to modify the best information available (BIA) rate applied to Acenor, it should have used the highest individual margin calculated in the preliminary determination using Acenor's own data.

We disagree with petitioners that Acenor is no longer an interested party. The fact that Acenor decided to withdraw from further participation does not change the fact that they are a named respondent who participated substantially throughout most of the investigation. We also disagree with respondent that the Department made a ministerial error in calculationg its BIA rate. We determine that this issue is methodological and was improperly raised as a ministerial error under Section 751(f) of the Act.

Roldan claimed that over half of its U.S. sales were improperly matched to home market sales made at a different level of trade. Petitioners argued that Roldan's argument is not a ministerial error allegation and should be rejected. We agree with petitioners that this allegation is not ministerial in nature, but rather a methodological question.

On January 19, 1995, petitioners commented on respondent's allegation and on January 20, 1995, respondent commented on petitioners' allegation.

Scope of Order

The product covered by this order is stainless steel bar (SSB). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the

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United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, on December 19, 1994, the Department made its final determination that SSB from Spain was being sold at less than fair value (59 FR 66931, December 28, 1994). On February 10, 1995, the International Trade Commission notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise.

Therefore, all unliquidated entries of SSB from Spain entered, or withdrawn from warehouse, for consumption on or after August 4, 1994, which is the date on which the Department published its notice of preliminary determination in the **Federal Register**, are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of SSB from Spain. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject merchandise not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Acenor, S.A. (and all successor companies, including Digeco, S.A. and Clorimax, SRL)	52.85
Roldan, S.A.	7.72
All Others	25.77

This notice constitutes the antidumping duty order with respect to SSB from Spain pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 24, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–5181 Filed 3–1–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission will meet in open session on March 13, 1995 at the Institute for Defense Analyses, 2001 N. Beauregard Street, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Robert Nemetz at (703) 756–2096.

Dated: February 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5080 Filed 3–1–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Combat Identification

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Combat Identification will meet in closed session on March 20–21, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the DoD long term strategy and plan for development and fielding of a comprehensive situational awareness (SA) and combat identification (CID) architecture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5081 Filed 3–1–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Williams Air Force Base (AFB), AZ

On February 17, 1995, the Air Force signed the Record of Decision (ROD) for the Disposal and Reuse of Williams AFB. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Williams AFB, filed with the Environmental Protection Agency on June 3, 1994.

Williams AFB closed on September 30, 1993, pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), (Pub. L. 101–510), and recommendations of the Defense Base Closure and Realignment Commission. This ROD documents the decisions made by the Air Force on the division of parcels, the method by which parcels are to be conveyed or transferred, and the mitigation measures to be adopted.

The decision in this ROD is to dispose of the aviation-related portion of Williams AFB in a manner that will enable the development of a regional airport with the capacity for expanding commercial and industrial development. This allows for the central theme of the proposed future land use plans discussed in the FEIS to be fully implemented. The Department of Defense (DoD) is retaining 10.74 acres for the U.S. Army Reserves, and 8 acres of the U.S. Air Force for continued military use. Four (4) parcels comprising 249 acres were declared excess to the needs of DoD and are reserved for transfer to other Federal Agencies: 1 acre for the National Weather Service, and 248 acres in perpetual easements for the Federal Aviation Administration (FAA). In total, approximately 4,023 fee acres are surplus to the needs of the Federal Government. The base has been divided into twenty-eight (28) parcels of land including roadways and utilities. The airport parcel, including two (2) nonaviation revenue producing parcels, will be conveyed at no-cost via public benefit conveyance for airport purposes. The FAA has jurisdiction by law regarding reuse of the runways and associated facilities as a civilian airport. A decision, if any, by the FAA to approve an airport layout plan will be announced by a separate ROD issued by the FAA based on the analysis in the FEIS and any additional FAA analysis that may be required. Three (3) parcels will be assigned to the Department of Health and Human Services (HHS) for disposal as a public benefit conveyance for homeless assistance purposes and three (3) parcels will be assigned to the Department of Education for disposal as a public benefit conveyance for educational purposes. Seven (7) parcels are to be offered for negotiated sale, one (1) of which consists of a building only. The road network is an integral part of all the parcels. Primary roads may be conveyed by negotiated sale to an eligible public body. Secondary roadways that are completely within a parcel will be included as part of the parcel. The utility systems, such as gas and electric, are totally integrated systems, prohibiting their separation among the various parcels. Therefore, disposal of utility systems will include conditions under which the recipient must provide service to all parcels. The gas and electric systems, with appropriate easements for maintenance and repair, will be conveyed through negotiated sale to utility purveyors, or eligible public bodies. Water and wastewater systems are required to support redevelopment efforts and is contingent on the recipient continuing to provide the necessary service to all parcels. Therefore, water wastewater systems will be assigned to HHS contingent upon a formal request for conveyance for the protection of public health.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. John E.B. Smith or Ms. De Carlo Ciccel at (703) 696–5540. Correspondence should be sent to: AFBCA/SP, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5086 Filed 3–1–95; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The New World Vistas Panel Chairs of the USAF Scientific Advisory Board will meet on 28 February 1995 at Kirtland AFB, NM from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to conduct a mission briefing on New World Vistas related issues.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5148 Filed 3–1–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10 April 1995.

Time of Meeting: 0800–1700.

Place: USAMICOM—Huntsville, Alabama

Agenda: The Army Science Board's Ad Hoc Study on "ASB Space and Missile Defense Organization" will have its 5th meeting at the USAMICOM on 10 April 1995. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specially subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–5131 Filed 3–1–95; 8:45 am]

BILLING CODE 3710–08–M

Board of Visitors, United States Military Academy; Meeting

AGENCY: United States Military Academy, DOD.

ACTION: Notice of open meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 21 March 1995.

Place of Meeting: Room S–120 (Hugh Scott Room), the Capitol, Washington, D.C.

Start Time of Meeting: Approximately 8:00 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1995.

All proceedings are open. For further information contact Lieutenant Colonel John J. Luther, United States Military Academy, West Point, NY 10996–5000, Telephone (914) 938–5870.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–5150 Filed 3–1–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Simplified Acquisition Procedures/FACNET

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Simplified Acquisition Procedures/FACNET.

DATES: Comments may be submitted on or before May 1, 1995.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

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SUPPLEMENTARY INFORMATION:

A. Purpose

Title IX of the Federal Acquisition Streamlining Act of 1994 (the Act) amended the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*) by adding new sections regarding the establishment of a program for the development and implementation of a Federal Acquisition Computer Network (hereinafter referred to as FACNET). FACNET is to be Governmentwide and will allow the electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies. Specific functions of FACNET are set forth under Section 30 of the Act.

Regulatory coverage on FACNET is included under FAR Subpart 4.5 in the draft proposed rule (FAR case 94–770). FAR section 4.503 will require contractors to register on a one-time basis with the Federal Contractor Registration System operated by the Defense Information Megacenter, Columbus, Ohio, in order to conduct business through electronic commerce (EC) with the Federal Government. Contractor registration information will be collected electronically as a prerequisite for conducting EC with the Federal Government. The process for collection of contractor information will use the Federal Implementation Conventions ANSI X12.838, Trading Partner Profile in accordance with the Federal Information Processing Standards 161(FIPS). These standards are published by the National Institute for Standards and Technology (NIST). The information required to be submitted as part of contractor registration is the same as that currently provided by the SF 129, Solicitation Mailing List Application; the SF 3881, ACH vendor/Miscellaneous Payment Enrollment Form for paper transactions. In addition, information pertaining to a contractor assignment of commercial and Government entity (CAGE) code (where applicable); electronic data interchange (EDI) capabilities, including ANSI X12 transaction set and version number status for production, testing, sending and receiving; and the registrant's value added network (VAN) or value added service (VAS) electronic communications number will also need to be provided as part of the registration process. Requiring information consistent with the existing forms that Government contractors are familiar with simplifies the process of gathering current, factual data to input into the Registration System. The additional information is information contractors should have readily available when they have established EC/EDI capability.

The information submitted by contractors will permit the Megacenter to establish a central repository for all vendors doing business with the Federal Government, information that will be accessible by all Government contracting activities. This will eliminate the need for contractors to submit the information to each individual contracting activity they are doing business with, which is the current practice.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *100,000*; responses per respondent; *1*; total annual responses, *100,000*; preparation hours per response, *25*; and total response burden hours, *25,000*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100,000*; hours per recordkeeper, *.25*; and total recordkeeping burden hours, *25,000*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Simplified Acquisition Procedures/FACNET, FAR case 94–770, in all correspondence.

Dated: February 21, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–4699 Filed 3–1–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–367–000]

Century Power Corp.; Notice of Filing

February 24, 1995.

Take notice that on February 23, 1995, Century Power Corporation tendered for filing a revised Notice of Cancellation. Century states that effective March 17, 1995 the following Rate Schedules will be canceled.

FERC Rate Schedule No. 10
FERC Rate Schedule No. 12
FERC Rate Schedule No. 14
FERC Rate Schedule No. 15

Century Power Corporation is also canceling, effective March 17, 1995, Service Agreements Nos. 1 through 23 contained in Century Power Corporation's FERC Tariff No. 1.

The following rate schedules and service agreements will remain in effect: FERC Rate Schedules 1, 17 and 18 and Service Agreements 24 and 25 under Tariff No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5152 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC95–9–000 et al.]

Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

February 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Detroit Edison Co.

[Docket No. EC95–9–000]

Take notice that on February 10, 1995, the Detroit Edison Company (Detroit Edison) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824(b), and Part 33 of the Commission's Regulations under the Federal Power Act, 18 CFR Part 33, an Application for Authority to Establish a Parent Holding Company.

Detroit Edison states that a copy of its application has been served upon the Michigan Public Service Commission.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation and Green Mountain Power Corporation

[Docket No. ER95–571–000]

Take notice that on February 8, 1995, Central Vermont Public Service Corporation ("Central Vermont") and Green Mountain Power Corporation (together the "Parties") tendered for filing a Transformer Joint Ownership Agreement.

The Parties request the Commission to waive its notice of filing requirement to permit the Agreement to become effective on the in-service date of the transformer. In support of its requests, the Parties state that allowing the Agreement to become effective as provided will enable the Parties and their customers to achieve mutual benefits. Additionally, Central Vermont requests that the Commission acknowledge that Central Vermont is not precluded from providing its customers with up to 50% of the transformer's MVA related capacity as a result of its 50% ownership in the transformer.

Comment date: March 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Kamine/Besicorp Allegany L.P.

[Docket Nos. QF88–292–003 and EL95–29–000]

Take notice that on February 17, 1995, Kamine/Besicorp Allegany L.P., (Kamine/Besicorp) tendered for filing a Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Kamine/Besicorp requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogenerating facilities as set forth in Section 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its cogeneration facility located in Hume, New York. Specifically, Kamine/Besicorp requests waiver of the operating and efficiency standards for the period of October 14, 1994, through December 31, 1994.

Comment date: Thirty days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5153 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–998–001 et al.]

Ocean State Power & Ocean State Power II, et al.; Electric Rate and Corporate Regulation Filings

February 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Ocean State Power Ocean State Power II.

[Docket Nos. ER94–998–001 and ER94–999–001]

Take notice that on February 9, 1995, Ocean State Power and Ocean State Power II tendered for filing its compliance filing in the above-referenced dockets.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Gas & Electric Co.

[Docket No. ER95–64–001]

Take notice that on February 6, 1995, South Carolina Gas & Electric Company (SCG&E) tendered a compliance filing in the referenced docket in accordance with the Commission's January 6, 1995 Order in such docket. SCG&E states that the compliance filing has been served on all parties to the proceeding.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf Power Co.

[Docket No. ER95–351–000]

Take notice that on February 6, 1995, Gulf Power Company tendered for filing a modification to its amendment to the Transmission Service Agreement between Gulf Power Company and Bay Resource Management, Inc. The purpose of this modification is to allow for the in kind payment of allowance costs prior to the EPA reporting date rather than at the time of the transaction.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Rig Gas Inc.

[Docket No. ER95–480–000]

Take notice that on February 8, 1995, Rig Gas Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Co.

[Docket No. ER95–511–000]

Take notice that on January 27, 1995, Southern California Edison Company tendered for filing a letter informing the Commission that effective February 28, 1995, the Supplemental Agreements to the 1990 Integrated Operations Agreements with the Cities of Azusa, Banning, and Colton, California will be terminated.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation on behalf of Monongahela Power Co. The Potomac Edison Company and West Penn Power Company ("the APS Companies")

[Docket No. ER95–570–000]

Take notice that on February 6, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 1 to add two (2) customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these customers on an hourly, daily, weekly, monthly or yearly basis.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and all parties of record.

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Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Co.

[Docket No. ER95–572–000]

Take notice that on February 8, 1995, Central Maine Power Company (CMP), tendered for filing an Amendment to Central Maine Power Company Rate Schedule FERC No. 91 between CMP and Maine Public Service Company (MPS), entered into as of December 16, 1995 (Amendment). The Amendment amends the Agreement to increase the rate for transmission service and to update certain terms and conditions applicable to such service.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER95–574–000]

Take notice that on February 9, 1995, Niagara Mohawk Power Corporation (Niagara), tendered for filing with the Commission an Interconnection and Transmission Services Agreement (Agreement) between Niagara and the City of Salamanca Board of Public Utilities required to increase the capability of the delivery point between Niagara and Salamanca. Niagara Mohawk requests that the Agreement become effective sixty days from the date of filing.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Co.

[Docket No. ES95–7–002]

Take notice that on February 21, 1995, Kentucky Utilities Company (Kentucky) filed an amendment to its application in Docket Nos. ES95–7–000 and ES95–7–001 under § 204 of the Federal Power Act. By letter order November 23, 1994, Kentucky was authorized to issue not more than $100 million of unsecured promissory notes and commercial paper from December 1, 1994 through November 30, 1996, with a final maturity date no later than December 31, 1996. Kentucky requests that the authorization issued in Docket Nos. ES95–7–000 and ES95–7–001 be amended to increase the authorization amount from $100 million to $150 million.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5154 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP95–61–000 and CP95–62–000]

Columbia Gas Transmission Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Majorsville/Crawford Storage Project and Request for Comments on Environmental Issues

February 24, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the Majorsville/Crawford Storage Project.[1] This EA will be used by the Commission in its decision-making process to determine if an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

In Docket No. CP95–61–000, Columbia Gas Transmission Corporation (Columbia) requests Commission authorization to temporarily deactivate the storage operations at its Majorsville-Heard Storage Complex to allow coal mining operations by the Consol Pennsylvania Coal Company and/or its affiliates. Columbia needs to deactivate its storage facilities when the coal mining operation is nearby since "long wall mining" typically causes surface subsidence which could result in adverse impact on the wells and pipelines. Once mining has ended, Columbia would determine if the facility can be reactivated or should be permanently abandoned.

At the Majorsville/Heard Storage Complex in Greene and Washington Counties, Pennsylvania and Marshall County, West Virginia, Columbia proposes to temporarily deactivate portions of the storage field for at least the next 13 years. This would include:

- Abandoning up to 238 wells; and
- Abandoning up to 60 miles of existing pipeline.

In Docket No. CP95–62–000, Columbia requests Commission authorization to increase its natural gas storage capability and to construct and operate additional facilities at its Crawford Storage Field and Crawford Compressor Station to offset the temporary deactivation of the Majorsville-Heard Storage Complex. Columbia proposes to increase:

- The storage capability of the Crawford Storage Field by 5 billion cubic feet (Bcf) to 52 Bcf;
- The annual withdrawals by 8.15 Bcf to 17.65 Bcf; and
- The design day deliverability by 67.2 million cubic feet per day (MMcfd) to 232.2 MMcfd.

At the Crawford Storage Field in Hocking County, Ohio, Columbia proposes to:

- Drill four new wells;
- Construct about 5.01 miles of pipeline, including:
  - —2.30 miles of 20-inch-diameter pipeline replacing 1.40 mile of 16-inch-diameter pipeline and 0.90 mile of 10- and 8-inch-diameter pipeline;
  - —0.80 mile of 10-inch-diameter pipeline replacing 0.80 mile of 4-inch-diameter pipeline;
  - —0.76 mile of 10-inch-diameter new pipeline;
  - —0.36 mile of 8-inch-diameter pipeline replacing 0.40 mile of 4-inch-diameter pipeline;
  - —0.45 mile of 8-inch-diameter new pipeline;
  - —0.32 mile of 6-inch-diameter pipeline replacing 0.30 mile of 4-inch-diameter pipeline; and
  - —0.02 mile of 6-inch-diameter new pipeline.
- Install other appurtenant facilities, including:
  - —Wellhead measurement stations at four new and two existing wells;
  - —Electric measurement cables within the right-of-way to the four new wells;
  - —Up to 10 pig launching/receiving facilities; and
  - —Valve replacement sets at six existing and one new well.

[1] Columbia Gas Transmission Corporation's applications in Docket Nos. CP95–61–000 and CP95–62–000 were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

At the Crawford Compressor Station in Fairfield County, Ohio, Columbia proposes to:

- Add a third dehydration contactor and related reboiler and piping;
- Add a gas cooler to each of the three existing compressor units;
- Replace a compressor cylinder on one of the existing compressor units; and
- Add a gas cleaner and make other changes.

The general location of the project facilities is shown in appendix 1. Specific locations of the proposed Crawford Storage Field facilities are shown in appendix 2.[2]

Land Requirements for Construction

Majorsville/Heard Storage Complex

The temporary deactivation of the Majorsville/Heard Storage Complex facilities would require some construction activity. Abandonment of the pipelines (either in place or by removal) would occur within the existing right-of-way. Abandonment and plugging of the wells would require some disturbance in the immediate area of the well.

Crawford Storage Field

Construction and operation of the four proposed new well sites would disturb a total of about 2.8 acres of land.

columbia intends to use its existing 50-foot-wide right-of-way for removal of the existing pipelines and construction of the small diameter (less than 18-inch-diameter) replacement pipelines. All new pipelines would be constructed within a 50-foot-wide right-of-way. For the 20-inch-diameter replacement pipeline, Columbia proposes to use a 75-foot-wide construction right-of-way, of which 50 feet would be existing right-of-way and 25 feet would be new temporary right-of-way. All of the replacement pipelines would be built in about the same location as the existing pipelines. All other appurtenant facilities would be constructed within the right-of-way for the new and replacement pipelines. Construction of the pipelines would affect about 43.1 acres of land.

Extra temporary work space would be also required for staging areas for topsoil segregation; for road, wetland and stream crossings; equipment mobilization; and contractor and pipe storage yards. Columbia estimates that these extra work spaces would temporarily disturb about 7.1 acres of land.

Following construction, the new and replacement pipelines would be within a 50-foot-wide permanent right-of-way centered on the pipeline. All temporary construction right-of-way and extra workspaces would be restored and allowed to revert to their former use. About 7.5 acres of land would be required for the new permanent right-of-way.

Crawford Compressor Station

Construction of the additional facilities at the Crawford Compressor Station would take place entirely within the existing station fenceline.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

Crawford Storage Field

- The pipelines would cross three perennial waterbodies and eight non-forested wetlands.
- The pipelines may cross or be near historic structures and archeological sites.
- Two pipeline segments would cross a state scenic highway (State Route 374).
- Construction of one pipeline segment would take place within 50 feet of three residences.
- Some of the pipeline segments would possibly cross potential habitat for the Indiana bat, a federally listed endangered species.
- Increasing the capacity of the storage field may increase the potential for leakage.

Crawford Compressor Station

- Some of the additional facilities would be within a 100-year floodplain.
- The reboiler for the dehydration contactor would slightly increase the NO_x emission levels of the station.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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• Reference Docket Nos. CP95–61–000 and CP95–62–000.

• Send a copy of your letter to: Ms. Laura Turner, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street., N.E., Room 7312, Washington, D.C. 20426.

• Mail your comments so that they will be received in Washington, D.C. on or before April 3, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Turner at the above address.

Becoming and Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Laura Turner, EA Project Manager, at (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5111 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11325–001 Utah]

Cherry Creek Hydro Associates; Surrender of Preliminary Permit

February 24, 1995.

Take notice that Cherry Creek Hydro Associates, Permittee for the Cherry Creek Project No. 11325, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11325 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on Cherry Creek, in Cache County, Utah.

The Permittee filed the request on February 15, 1995, and the preliminary permit for Project No. 11325 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5112 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–273–001]

Columbia Gas Transmission Corp.; Request for Waiver of Tariff Provision

February 24, 1995.

Take notice that on February 16, 1995, Columbia Gas Transmission Corporation (Columbia), pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, filed with the Commission a request to extend a previously granted waiver of the nine-month closeout period contained in Section 39 of the General Terms and Conditions of its FERC Gas Tariff from March 31, 1995, to and including resolution of an imbalance issue presently existing between Columbia and Tennessee Gas Pipeline Company (Tennessee). Columbia states that the requested extension is for nine months, or to December 31, 1995.

Columbia states that after several months of intensive efforts to reconcile imbalances, Columbia was unable to confirm those imbalances with several interconnecting pipelines and transportation customers, and, therefore, originally sought permission to extend the closeout period in Section 39 through March 31, 1995. On October 5, 1994, the Commission granted the requested extension.

Columbia states that since the Commission's October order, Columbia has worked to resolve its remaining historical imbalance dispute with third parties, but has been unable to resolve its imbalance with Tennessee. Columbia states that it is working diligently with Tennessee to resolve these issues, but cannot have them resolved by March 31, 1995.

Columbia states that in order to permit an orderly resolution of issues involving the termination of its Account No. 191, and collection of the remaining balance, Columbia requests that the Commission extend the nine-month closeout period from March 31, 1995, to December 31, 1995.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5101 Filed 3–1–95; 8:45 am]

BILLING CODE 6715–01–M

[Docket No. RP95–169–000]

KN Interstate Gas Transmission Co.; Notice of Filing

February 24, 1995.

On February 21, 1995, KN Interstate Gas Transmission Co. (KNI), filed pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, § 154.63 of the Federal Energy Regulatory Commission's ("Commission") Regulations, 18 CFR 154.63, and the Commission's Order on Remand issued on December 22, 1994 in Docket Nos. CP93–41–004 and CP93–42–004 for authorization to terminate its non-jurisdictional gathering and processing services which it provided prior to January 1, 1994—the date on which KNI transferred its non-jurisdictional gathering and processing facilities (except for the Bowdoin System) to KN Gas Gathering, Inc. ("KNGG"). KNI requests retroactive approval to January 1, 1994.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5102 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–7–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

February 24, 1995.

Take notice that on February 2, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet with a proposed effective date of March 5, 1995:

Third Revised Volume No. 1

Northwest states that the purpose of this filing is to comply with the directives of the Commission in 18 CFR § 250.16(b)(1), which requires an interstate natural gas pipeline to identify any marketing affiliates with which the pipeline has business relationships and to report changes, if any, which occur to the list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates.

Northwest states that a copy of the filing has been served upon Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5103 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–6–012]

Paiute Pipeline Co.; Compliance Filing

February 24, 1995.

Take notice that on February 21, 1995, Paiute Pipeline Company (Paiute) tendered for filing the following tariff sheets to be part of its FERC Gas Tariff:

First Revised Volume No. 1–A

4th Sub Third Revised Sheet No. 10
Substitute Fourth Revised Sheet No. 10
Second Substitute Original Sheet No. 131

Second Revised Volume No. 1–A

Fourth Substitute Original Sheet No. 10
1st Rev 4th Sub Original Sheet No. 10
Substitute First Revised Sheet No. 10
First Revised Sheet No. 25
Original Sheet No. 25A
Original Sheet No. 25B
Fourth Substitute Original Sheet No. 161
Substitute First Revised Sheet No. 161
Second Revised Sheet No. 161

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued January 18, 1995 in Docket No. RP93–6–011, by which the Commission approved an offer of settlement filed by Paiute. Paiute requests that the proposed tariff sheets be permitted to become effective consistent with the effective dates prescribed in the settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5104 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–22–000]

Panhandle Eastern Pipe Line Co.; Refund Report

February 24, 1995.

Take notice that on February 21, 1995 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report made pursuant to the Commission's order dated December 1, 1993 (December 1, 1993 Order) in the above dockets.

Panhandle states that on December 7, 1994 and February 14, 1995 Panhandle refunded to its jurisdictional customers their allocated share of the refunds of Kansas Ad Valorem taxes received from Panhandle's producer suppliers.

Panhandle further states that pursuant to Ordering Paragraph (F) of the December 1, 1993 Order Panhandle is submitting the following information:

(1) Appendix A—Summary of the Kansas Ad Valorem tax refund amounts due from the producer suppliers, amounts received and amounts which remain unpaid by producer suppliers.
(2) Appendix B—Workpapers supporting the refund made on December 7, 1994.
(3) Appendix C—Workpapers supporting the refund made on February 14, 1995.

Panhandle states that a copy of this information is being sent to each of Panhandle's affected customers and respective State Regulatory Commissions.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5105 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–216–000]

Panhandle Eastern Pipe Line Company, Trunkline Gas Co.; Application

February 24, 1995.

Take notice that on February 21, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 (jointly referred to as Applicants), filed in Docket No. CP95–216–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval

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to abandon a natural gas transportation service between Applicants and ANR Pipeline Company (ANR) for ultimate use as storage gas for United Cities Gas Company (Cities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they propose to abandon a transportation service initiated to implement a storage agreement for annual storage of up to 100,000 Mcf of natural gas by ANR for Cities. Applicants also state that the agreement is dated July 13, 1979, as amended, April 17, 1980. Applicants indicate that Panhandle provides its service under its Rate Schedule T–39, and Trunkline provides its service under its Rate Schedule T–61. Applicants further state that the service was authorized in Docket No. CP79–438. It is indicated that the agreement provides for delivery of gas at a rate of up to 500 Mcf per day to ANR during the 1980 and ensuing summer periods. Applicants aver that during the summer period Trunkline effects delivery to Panhandle by reducing existing deliveries of up to 500 Mcf per day of natural gas to Cities at an existing point of interconnection in Massac County, Illinois and the thermally equivalent volumes, not taken by Cities, are then delivered by Panhandle to ANR at an existing point of interconnection between Panhandle and ANR in Defiance County, Ohio, for storage. Applicants further indicate that during the winter period, Panhandle would receive daily volumes from ANR and Trunkline would make daily redeliveries of thermally equivalent volumes to Cities in Massac County, Illinois.

Applicants indicate that the agreement provides for a primary term of fifteen years with extensions provided for on a year-to-year basis until terminated by either party upon at least twelve months written notice. Applicants state that they and Cities have agreed to terminate the transportation service, effective April 1, 1995. Applicants further state that the interconnection with Cities will continue to be available for open access transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5106 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–218–000]

Texas Eastern Transmission Corp.; Petition for Declaratory Order

February 24, 1995.

Take notice that on February 22, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77252–1642, filed in Docket No. CP95–218–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) requesting that the Commission confirm that Order No. 636 does not create a *per se* rule prohibiting interstate pipelines which have implemented Order No. 636 from entering into contracts for transportation or storage capacity on other interstate pipelines.

Texas Eastern submits that the Commission's preliminary determination in Texas Eastern Transmission Corporation, 69 FERC ¶61,132 (1994),[1] incorrectly created a *per se* rule that precludes a pipeline from holding pipeline capacity on other pipelines for economic (as distinguished from operational) reasons. Texas Eastern contends that such a *per se* rule against economically desirable transactions is contrary to the policy behind Order No. 636 and is in conflict with prior Commission decisions. It is asserted that, if not corrected, the position that interstate pipelines cannot contract for capacity on other interstate pipelines will undermine the Commission's efforts in Order No. 636 to create a flexible, competitively responsive natural gas industry. Texas Eastern states that the ultimate loser will be not just interstate pipelines, but consumers who need new facilities and services as well.

Texas Eastern asserts that, unless corrected, the preliminary order will foreclose the development of new services in most circumstances in which more than one pipeline is needed to perform a new service. It is stated that in the new, post-Order No. 636 environment, it is critically important that pipelines be allowed to hold capacity on upstream or downstream pipelines. To create new services for new markets, Texas Eastern contends that a pipeline must be able to acquire firm transportation capacity rights on other pipelines in areas where the pipeline does not have transportation facilities.

Texas Eastern contends that the Commission will still have its jurisdiction to review contracts between pipelines and may withhold approval where it finds them to be anti-competitive or otherwise contrary to the public interest. It is stated that the Commission should not, however, create a *per se* rule against pipelines holding capacity on upstream or downstream pipelines. Texas Eastern argues that where the contractual arrangement is not opposed by any party and is being used to provide new services demanded by the market, such arrangements should be permitted. Texas Eastern submits that the Commission should promptly issue a Declaratory Order finding that interstate pipelines that have implemented Order No. 636 may contract for transportation or storage capacity on other interstate pipelines.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 17, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a

[1] Texas Eastern states that the Request for Hearing of this decision has been rendered moot by a settlement filed by the parties in this proceeding on February 21, 1995.

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5109 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–208–000]

Tennessee Gas Pipeline Co.; Notice of Request Under Blanket Authorization

February 24, 1995.

Take notice that on February 21, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–208–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate four existing delivery taps which were installed under the authorization of Section 311 of the Natural Gas Policy Act of 1978, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the commission and open to public inspection.

Tennessee requests authorization to operate the delivery points for jurisdictional service as well as for the non-jurisdictional service for which they were installed. It is stated that the delivery points are located in Tuscarawas County, Ohio; Plaquemines Parish, Louisiana; Powell County, Kentucky; and Columbia County, New York. It is asserted that Tennessee would use the delivery points for the delivery of gas transported under its Part 284 blanket certificate. Tennessee states that operation of the delivery points is not prohibited by its existing tariff. It is explained that the proposed deliveries would have no impact on Tennessee's peak day or annual deliveries and that Tennessee has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5108 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–23–000]

Questar Pipeline Co.; Tariff Filing

February 24, 1995.

Take notice that on February 21, 1995, Questar Pipeline Company, tendered for filing and acceptance to be effective March 1, 1995, Second Revised Sheet No. 8 and First Revised Sheet No. 8A of First Revised Volume No. 1 of its FERC Gas Tariff.

Questar states that this filing updates its Index of Shippers by reflecting information regarding firm and no-notice transportation service agreements that were executed subsequent to Questar's August 1, 1994, filing in Docket No. RP94–331–000.

Questar states further that a copy of this filing has been served upon its jurisdictional customers as well as the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with this Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5107 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–28–000]

Williams Natural Gas Co.; Technical Conference

February 24, 1995.

In the Commission's order issued on November 30, 1994 in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for March 21, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5110 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Provo River Project Notice of Rate Order No. WAPA–65

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Provo River Project.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–65 placing into effect a formula for determining annual, power-related payments for the Provo River Project (PRP) of the Western Area Power Administration (Western) on an interim basis. The formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and makes it effective on a final basis or until it is replaced by another method.

Statement of Revenue and Related Expenses

The power-related revenue requirements for the Provo River Project (PRP) will be based upon projections contained in the annual power repayment study (PRS). Differences between estimated and actual costs will be adjusted when final financial data becomes available. The following table is based on the fiscal year (FY) 1994 preliminary PRS and provides a

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summary of estimated revenue and cost data through the proposed 5-year approval period.

PROVO RIVER PROJECT—TOTAL 5-YEAR PROJECTIONS, REVENUES AND COSTS

[$1,000]

	Total FY 1995–99 projections
Total Revenues	1,341
Costs:	
O&M	959
Transmission	155
Interest	136
Investment Repayment	91
Total Costs	1,341

DATES: The formula will be effective on an interim basis beginning April 1, 1995, and remain in effect until FERC confirms, approves, and places it into effect on a final basis for a 5-year period, or until it is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth G. Maxey, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493 or

Mr. Edmond Chang, Assistant Area Manager, for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493 or

Ms. Deborah M. Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1618 or

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 58716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

This action is established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) were transferred to and vested in the Secretary of Energy (Secretary) under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved.

Rate Order No. WAPA–65, confirming, approving, and placing the proposed formula for determining annual, power-related payments for the Provo River Project into effect on an interim basis, is issued and will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, February 16, 1995.

Bill White,

Deputy Secretary.

Deputy Secretary

Order Confirming, Approving, and Placing into Effect on an Interim Basis, a Formula for Determining Annual, Power-Related Payments for the Provo River Project

February 16, 1995.

In the matter of: Western Area Power Administration Provo River Project Power Rate, Rate Order No. WAPA–65.

The formula is established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) were transferred to and vested in the Secretary of Energy (Secretary) under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms an definitions apply:

Contractors: ICPA and UMPA.
CRSP: Colorado River Storage Project.
DCP: Deer Creek Powerplant.
DOE: Department of Energy.
DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting.
FERC: Federal Energy Regulatory Commission.
FRN: **Federal Register** notice.
FY: Fiscal year, beginning October 1.
ICPA: Intermountain Consumer Power Association.
Interior: U.S. Department of the Interior.
kW: Kilowatt.
kW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.
kWh: Kilowatthour.
M&I: Municipal and industrial.
mills/kWh: Mills per kilowatthour.
MWh: Megawatthour.
NEPA: National Environmental Policy Act of 1969.
OM&R: Operation, maintenance, and replacement.
PMA: Power marketing administration.
PRP: Provo River Project.
PRP–MP: Provo River Project—Marketing Plan.
PRS: Power repayment study.
PRWUA: Provo River Water Users Association.
Reclamation: Bureau of Reclamation, U.S. Department of the Interior.
SLCA: Salt Lake City Area.
SLCAO: Salt Lake City Area Office.
Treasury: U.S. Department of the Treasury.
UMPA: Utah Municipal Power Agency.
UP&L: Utah Power & Light Company.
Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

The revenue recovery formula will become effective on an interim basis beginning April 1, 1995, and remain in effect pending FERC's approval on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in developing the method of determining annual power-related payments.

The following summarizes the steps Western took to ensure involvement of interested parties in determining annual power-related payments:

1. A **Federal Register** notice was published on July 12, 1994 (59 FR 35513), officially announcing the proposed formula, initiating the public consultation and comment period, and presenting procedures for public participation.

2. On July 15, 1994, a letter was mailed from Western's SLCAO to customers and other interested parties announcing the publication of the **Federal Register** notice of July 12, 1994.

3. The consultation and comment period ended August 11, 1994.

Project History

The PRP is located on the Provo River in central Utah. Deer Creek Reservoir is backed-up behind Deer Creek Dam. Construction of the PRP began in May 1938, with the powerplant completed in 1958. It has a present generating capacity of 5 megawatts. The PRP initially was designed to supply M&I and irrigation water to users in the Salt Lake and Utah valleys. It does this by capturing the flow of the Provo River and also by storing water diverted from the Duschesne and Weber Rivers. UP&L has a powerplant on the Weber which has its production reduced with the diversion of water to the Deer Creek Reservoir. As compensation, the PRP furnishes UP&L energy to replace that which it is estimated it would have generated absent the construction of the PRP. This arrangement was formalized in contract No. IIr–1082, dated December 20, 1938.

The irrigation water consumers for the PRP are organized into the PRWUA, a corporation of stockholders owning prorated Provo River water entitlements. They executed contract No. IIr–874 in 1936 with the Federal Government to construct and repay irrigation-related project facilities.

Only Deer Creek energy in excess of that obligated to UP&L has been available for Federal marketing. Since 1963, CRSP has purchased the available PRP energy at rates designed to recover the PRP's power-related OM&R and investment costs. Since 1986, the PRP rate has also included a commitment to supply $1.623 million toward the PRWUA's repayment obligation for costs allocated to irrigation. The PRP's original power-related investment was repaid in FY 1986.

Power Repayment Studies

PRSs are typically prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to be repaid by the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12b, requires that:

> In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (3) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs.

The PRP PRSs have been used to determine the annual PRP rate, which includes OM&R, wheeling and interest expenses. The contractors' annual irrigation assistance payments to the PRWUA will not be included in the PRS but will instead be paid under a separate agreement among Reclamation, Western, PRWUA, and the contractors.

Certification of Rate

Western's Administrator has certified that the PRP formula for determining annual, power-related payments placed into effect on an interim basis herein will result in the lowest possible cost to consumers, consistent with sound business principles. The formula has been developed in accordance with administrative policies and applicable laws.

Discussion

Each year, the contractors will pay the PRP's total estimated annual power-related costs in return for the total marketable energy produced at the PRP. The energy produced at the PRP has been allocated to the contractors proportional to their PRP entitlement. Western will prepare an annual PRS which will identify the anticipated power-related costs for the next FY. Budgeted minor replacements and additions will be included in the annual expenses. If replacements or additions exceeding $5,000.00, but no greater than $25,000.00 are needed, the contractors will be given the option of financing their share of the cost, proportional to their PRP entitlement, in advance, or of having the cost capitalized at DOE's current interest rate (the year in which funds are first expended) and amortized over the estimated, average life of the replacement, or 50 years, whichever is less. Additions will be amortized over 50 years. Each contractor will pay its share of the annual costs identified in the PRS in 12 equal monthly installments.

This method of determining annual power-related revenue requirements will satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The revenue requirements for the PRP are based upon PRS estimates of future annual costs. Each FY's annual estimated costs will be adjusted when historical financial data becomes available. The following table provides a summary of estimated revenue and cost data through the proposed 5-year approval period.

PROVO RIVER PROJECT TOTAL—5-YEAR PROJECTIONS REVENUES AND COSTS

[$1,000]

	Total FY 1995–99 projections
Total Revenues	1,341
Costs:	
O&M	559
Transmission	155
Interest	136
Investment Repayment	91
Total Costs	1,341

Basis for Rate Methodology—Provo River Project

The contractors will be billed each FY, payable in 12 equal monthly payments. The monthly payments will be due and payable regardless of the amount of power the contractors receive from the PRP. During the first year this procedure is in effect, the annual sum due for FY 1995 will be divided by the months remaining in FY 1995. The contractors will be billed in equal monthly installments for the remaining months in FY 1995. Beginning in FY 1996, the proposed 12 equal monthly installments will take effect. Each FY, Western will project PRP expenses by

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preparing a PRS which will include budgeted OM&R and repayment costs for the PRP. The revenue requirement shown in this PRS will not be dependent upon the power and energy made available for sale, or the rate of generation each year. The amount of each monthly payment for the following FY shall be established in advance by Western and submitted to each contractor on or before August 31 of the year preceding the appropriate FY.

The preparation of each FYs PRS shall include adjustment to the figures used in the previous year's PRS to incorporate final financial and operational data for the prior FY. Any adjustments required, whether resulting in an increase or decrease of the annual sum due, will be added to the FY then being calculated, and divided over 12 equal monthly installments.

Minor replacements and additions will be included in annual OM&R expenses. If replacements and/or additions exceeding $5,000.00, but no greater than $25,000.00, in cost are needed, the contractors will be given the option of financing the cost through their own non-Federal sources or having the cost financed by the Federal Government and amortized and paid over the lesser of the average life of the replacement or 50 years, whichever is less. Additions will be amortized over 50 years. If financed with Federal funds, the cost will be capitalized at the then-current interest rate prescribed by DOE, pursuant to RA 6120.2 11B, "Basic Policy for Rate Adjustments; Interest Rate Formula," in the FY in which funds are first expended for the replacement or addition.

If replacements over $25,000.00 are needed, the contractors will consult with Reclamation, the PRWUA, and Western about financing the replacement.

The proposed formula constitutes a minor rate adjustment as defined by the procedures for public participation in general rate adjustments covered in 10 CFR 903.2(f). The PRP's annual sales are less than 100 million kWh and installed capacity is less than 20,000 kW.

Comments

During the 30-day comment period, Western received no written comments either requesting information or commenting on the formula. Comments were received in response to the revised, PRP–MP **Federal Register** notice dated July 11, 1994 (59 FR 35334). Comments were accepted on Western's revised PRP–MP proposal until August 10, 1994. These comments were addressed in the PRP–MP **Federal Register** notice dated November 21, 1994 (59 FR 60007).

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate order, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the revenue-recovery methodology, is available for public review at the following offices:

Western Area Power Administration, Salt Lake City Area Office, Office of the Assistant Area Manager for Power Marketing, 257 East 200 South, Suite 475, Salt Lake City, UT 84111

Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, CO 80401

Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

Submission to Federal Energy Regulatory Commission

The formula for determining annual, power-related payments herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 1995, the method of cost recovery for the Provo River Project. The procedure shall remain in effect on an interim basis, pending Federal Energy Regulatory Commission confirmation and approval of it or a substitute process on a final basis, through March 31, 2000.

Issued in Washington, DC, February 16, 1995.

Bill White,

Deputy Secretary.

[FR Doc. 95–4880 Filed 3–1–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1039–DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1039–DR), dated September 13, 1994, and related determinations.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 16, 1995, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from severe storms and flooding on August 8, 1994 through September 15, 1994, is of sufficient severity and magnitude that special cost-sharing conditions are warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Pubic Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance to be provided at 85 percent of the eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Alaska and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–5156 Filed 3–1–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1044–DR]

Amendment to Notice of a Major Disaster Declarations; CA

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated January 10, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 1995:

The counties of El Dorado, Madera, and Solano for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–5155 Filed 3–1–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

MSL Express Inc., 160–19 Rockaway Boulevard C, Jamaica, NY 11434, Officers: Chester Tong, President, Lily Tong, Vice President

New K.S.A.I. Inc., 9009 La Cienega Boulevard, Inglewood, CA 90301, Officers: Kunihiro Iwahashi, President, Satoshi Hattori, Treasurer

Dated: February 27, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–5124 Filed 3–1–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Eastside Holding Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 27, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eastside Holding Corporation, Snellville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Eastside Bank & Trust Company, Snellville, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Guaranty Development Company, Livingston, Montana; to acquire 100 percent of the voting shares of American Bank (Whitefish), Whitefish, Montana.

Board of Governors of the Federal Reserve System, February 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5118 Filed 3–1–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94E–0360]

Determination of Regulatory Review Period for Purposes of Patent Extension; Albunex®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Albunex® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The

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approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Albunex®. Albunex® is indicated as an aid for ultrasound contrast enhancement of ventricular chambers and improvement of endocardial border definition in patients with suboptimal echoes undergoing ventricular function and regional wall motion studies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Albunex® (U.S. Patent No. 4,844,882) from Molecular Biosystems, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 19, 1994, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Albunex® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Albunex® is 2,397 days. Of this time, 975 days occurred during the testing phase of the regulatory review period, while 1,422 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* January 14, 1988. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) for human tests to begin became effective on August 18, 1987. However, FDA records indicate that IDE was conditionally approved on January 14, 1988, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* September 14, 1990. The applicant claims September 11, 1990, as the date the premarket approval application (PMA) for Albunex® (PMA P900059) was initially submitted. However, FDA records indicate that PMA P900059 was submitted on September 14, 1990.

3. *The date the application was approved:* August 5, 1994. FDA has verified the applicant's claim that PMA P900059 was approved on August 5, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 763 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 1, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 29, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.).Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 24, 1995.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 95–5183 Filed 3–1–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: March 2, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 309, Telephone Conference.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.
Date: March 20, 1995.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 303, Telephone Conference.
Contact Person: Dr. Teresa Levitin, Scientific Review Administrator, 5333 Westbard Ave., Room 303, Bethesda, MD 20892, (301) 594–7141.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 20, 1995.
Time: 12:00 noon.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Admin., 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167.

Name of SEP: Biological and Physiological Sciences.
Date: March 23, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 233A, Telephone Conference.
Contact Person: Dr. Robert Su, Scientific Review Administrator, 5333 Westbard Ave., Room 233A, Bethesda, MD 20892, (301) 594–7320.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 31, 1995.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Admin., 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5230 Filed 3–1–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3736; FR–3624–N–03]

Announcement of Funding Awards for the Traditional Indian Housing Development Program Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Indian Housing Authorities applicants under the Traditional Indian Housing Development Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing Development Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755–0068. The TDD number for hearing impaired is (202) 708–0850. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Traditional Indian Housing Development program is authorized by sections 5 and 6 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d); as amended; U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1994, Section 23, U.S. Housing Act of 1937, as added by sec. 554, Cranston Gonzalez National Affordable Housing Act; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

The purpose of the competition was to make funding available for the development of new Indian housing units and to replace units approved for demolition/disposition. These Indian Housing Development grants will enable Indian Housing authorities to assist in the development and operation of low-income housing projects in Indian areas. Recipients were chosen in a competition under selection criteria announced a Notice of Funding Availability (NOFA) published in the **Federal Register** on April 20, 1994 (59 FR 18846).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names and addresses of the recipients which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: February 27, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Funding recipient (Name and address)	Amount approved
Program name: New Indian Housing Development Statute: U.S. Housing Act of 1937; as added by the Indian Housing Act of 1988	
Metlakatla HA, P.O. Box 59, Metlakatla, AK 99926	$2,258,704
Metlakatla HA, P.O. Box 59, Metlakatla, AK 99926	3,060,695
Tlingit-Haida Reg HA, Route 1 Box 376, Ketchikan, AK 99901	2,663,667
ASRC HA, Box 677, Barrow, AK 99723	3,482,243
ASRC HA, Box 677, Barrow, AK 99723	3,262,943
Northwest Inupiat HA, P.O. Box 29, Kiana, AK 99749	3,753,000
Interior Reg HA, General Delivery, Ft Yukon, AK 99740	1,867,642
Interior Reg HA, General Delivery, Ft Yukon, AK 99740	1,307,355
Interior Reg HA, General Delivery, Ft Yukon, AK 99740	933,826
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
AVCP Reg HA, General Delivery, Kipnuk, AK 99557	3,756,264
Bristol Bay HA, P.O. Box 750, Dillingham, AK 99576	697,133
Bristol Bay HA, P.O. Box 750, Dillingham, AK 99576	1,568,549
Bristol Bay HA, P.O. Box 750, Dillingham, AK 99576	697,133
North Pacific Rim HA, P.O. Box 171, Tatitlek, AK 99677	2,136,645
North Pacific Rim HA, P.O. Box 171, Tatitlek, AK 99677	879,795
Aleutian HA, General Delivery, St. Paul, AK 99660	572,019
Baranof Island HA, P.O. Box 517, Sitka, AK 99835	2,849,637
MOWA Band of Choctaw Indians, Route 1, Box 1080, Mt. Vernon, AL 36560	720,848
MOWA Band of Choctaw Indians, Route 1, Box 1080, Mt. Vernon, AL 36560	1,123,060
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	1,132,143
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	2,875,417
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	10,286,309
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	5,221,645
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	8,193,320
Cocopah Housing Authority, P.O. Box AF, Somerton, AZ 85350	3,557,408
Kaibab Paiute Housing Authority, HC 65, Box 122, Fredonia, AZ 86022	1,664,576
Quechan Tribal Housing Authority, 1860 W. Sapphire Lane, Winterhaven, CA 92283	2,924,710
Modoc-Lassen Indian Housing Authority, P.O. Box 2028, Susanville, CA 96130	1,540,331
Modoc-Lassen Indian Housing Authority, P.O. Box 2028, Susanville, CA 96130	1,499,135

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APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (Name and address)	Amount approved
Central Cal Indian Housing Authority, 5108 E. Clinton Way, Suite 108, Fresno, CA 93727	3,005,574
Central Cal Indian Housing Authority, 5108 E. Clinton Way, Suite 108, Fresno, CA 93727	1,194,855
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, CA 95482	3,016,410
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, CA 95482	2,206,445
Mesa Grande Housing Authority, 4040 30th St., Suite 204, San Diego, CA 92104	2,143,580
Campo Housing Authority, Post Office Box 66, Campo, CA 91906	1,229,224
Campo Housing Authority, Post Office Box 66, Campo, CA 91906	2,546,449
Southern Ute, P.O. Box 561, Ignacio, CO 81137	1,939,703
Coushatta Tribe, P.O. Box 818, Elton, LA 70532	1,782,260
Wampanoag Tribe of Gay Head (Aquinnah), 20 Black Brook Road, Gay Head, MA 02535–9701	1,109,198
Wampanoag Tribe of Gay Head (Aquinnah), 20 Black Brook Road, Gay Head, MA 02535–9701	1,370,780
Pleasant Point Passamaquoddy Reservation, Housing Authority, P.O. Box 339, Perry, ME 04667	1,356,592
Houlton Band of Maliseet Indians, RR 3 Box 450, Houlton, ME 04730–9514	1,319,293
Bay Mills Housing Authority, Route 1, Box 3345, Brimley, MI 49715–	1,379,180
Sault Ste. Marie Tribal Housing Authority, 2218 Shunk Road, Sault Ste. Marie, MI 49783	1,095,000
Grand Traverse Band of Ottawa and Chippewa Indians, Governmental Operations Center, Suttons Bay, MI 49682	1,280,860
Grand Traverse Band of Ottawa and Chippewa Indians, Governmental Operations Center, Suttons Bay, MI 49682	1,377,880
Leech Lake Reservation Housing Authority, Route 3, Box 100, Cass Lake, MN 56633	1,527,300
Leech Lake Reservation Housing Authority, Route 3, Box 100, Cass Lake, MN 56633	1,685,724
Fond du Lac Lake Superior Band of Chippewa, Tribal Office, Cloquet, MN 55720	952,710
Red Lake Reservation Housing Authority, P.O. Box 219 Highway 1 East, Red Lake, MN 56671	1,664,938
Bois Forte Housing Authority, P.O. Box 12, Nett Lake, MN 55772	847,000
Mississippi Band of Choctaw Indians, P.O. Box 6010 Choctaw Branch, Philadelphia, MS 39350	1,217,950
Qualla Housing Authority, Acquoni Road P.O. Box 1749, Cherokee, NC 28719–1749	1,039,020
Qualla Housing Authority, Acquoni Road P.O. Box 1749, Cherokee, NC 28719–1749	1,069,568
Turtle Mountain, P.O. Box 620, Belcourt, ND 58316	462,285
Northern Ponca, 3341 Pioneer Blvd, Lincoln, NE 68516	1,868,047
Northern Ponca, 3341 Pioneer Blvd, Lincoln, NE 68516	2,024,072
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,657,747
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,832,326
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	1,399,495
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	5,782,487
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	690,007
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,216,278
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	1,674,828
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	108,409
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,233,145
Te-Moak Western Shoshone Housing Authority, 504 Sunset St., Elko, NV 89801	3,654,080
Seneca Nation Housing Authority, 50 Iroquois Drive, Irving, NY 14081	1,672,325
Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY 13655	1,391,280
Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY 13655	1,064,840
Cherokee Nation, P.O. Box 1007, Tahlequah, OK 74464	15,762,880
Choctaw Nation, P.O. Box G, Hugo, OK 74743	1,727,490
Creek Nation, P.O. Box 297, Okmulgee, OK 74447	1,727,491
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	2,971,777
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	4,161,542
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	2,971,777
Apache Tribe HA, P.O. Box 1172, Anadarko, OK 73005	1,485,794
Delaware Tribe IHA, P.O. Box 334, Chelsea, OK 74016	1,504,688
Delaware Tribe IHA, P.O. Box 334, Chelsea, OK 74016	1,607,696
Wichita Tribes IHA, P.O. Box 729, Anadarko, OK 73005	1,485,500
Coquille Indian Housing Authority, P.O. Box 1435, Coos Bay, OR 97420	4,178,758
Coquille Indian Housing Authority, P.O. Box 1435, Coos Bay, OR 97420	3,640,549
Catawba Indian Nation, P.O. Box 11106, Rock Hill, SC 29730	2,077,305
Catawba Indian Nation, P.O. Box 11106, Rock Hill, SC 29730	2,133,626
Oglala Sioux, P.O. Box 111, Wounded Knee, SD 57794	2,935,242
Oglala Sioux, P.O. Box 111, Wounded Knee, SD 57794	2,279,940
Rosebud, P.O. Box 69, Rosebud, SD 57570	2,953,230
Crow Creek, P.O. Box 2, Harrold, SD 57536	1,061,610
Crow Creek, P.O. Box 2, Harrold, SD 57536	1,061,610
Standing Rock, P.O. Box 196, McLaughlin, SD 57642	4,442,427
Standing Rock, P.O. Box 196, McLaughlin, SD 57642	4,229,301
Standing Rock, P.O. Box 196, McLaughlin, SD 57642	2,535,960
Yankton Sioux, General Delivery, Marty, SD 57361	1,987,820
Yankton Sioux, General Delivery, Marty, SD 57361	93,145
Sisseton-Wahpeton, RR, Peever, SD 57257	3,157,458
Spokane Indian, P.O. Box 195, Wellpinit, WA 99040	2,118,704
Spokane Indian, P.O. Box 195, Wellpinit, WA 99040	1,541,392
Spokane Indian, P.O. Box 195, Wellpinit, WA 99040	2,235,720
Muckleshoot, 38037–158th Ave SE, Auburn, WA 98002	4,403,160
Muckleshoot, 38037–158th Ave SE, Auburn, WA 98002	2,632,800

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (Name and address)	Amount approved
Colville Tribe, P.O. Box 150, Nespelem, WA 99155	1,605,552
Lac du Flambeau Chippewa Housing Authority, P.O. Box 187, Lac du Flambeau, WI 54538–0187	1,342,838
Lac du Flambeau Chippewa Housing Authority, P.O. Box 187, Lac du Flambeau, WI 54538–0187	1,177,735
Oneida Housing Authority, P.O. Box 68, Oneida, WI 54155	1,674,340
Red Cliff Band of Lake Superior Chippewa, Tribal Office, Bayfield, WI 54814	1,330,760
Mohican Housing Authority, N8618 Oak Street, Bowler, WI 54416	1,359,588
Mohican Housing Authority, N8618 Oak Street, Bowler, WI 54416	808,640
Sokaogon Chippewa Housing Authority, P.O. Box 186, Crandon, WI 54520	1,632,072
Lac Courte Oreilles Housing Authority, Route 2, Hayward, WI 54843	1,391,240

[FR Doc. 95–5168 Filed 3–1–95; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Opportunity for Review and Comment on Draft Recovery Plan for the Spectacled Eider is Extended

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the extension of a public review and comment period on a draft recovery plan for spectacled eiders (*Somateria fischeri*). The species occurs in arctic and sub-arctic regions of western and northern Alaska and along the arctic coast of Russia. The Service is proposing emphasis on recovery actions in these geographic areas. The original Notice of Availability for review and comment was published on October 25, 1994. The 120-day comment period was scheduled to close on February 23, 1995. Via this notice, the comment period is extended until March 17, 1995. All comments received during the entire period, October 25, 1994, through March 17, 1995, will be considered prior to finalization of the recovery plan.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Teresa Woods at U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska, 99503–6199 and 907/786–3505. Written comments and materials regarding the plan should be addressed to Teresa Woods at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Teresa Woods at the above address and telephone number.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 23, 1995.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 95–5157 Filed 3–1–95; 8:45 am]
BILLING CODE 4310–55–P

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Ruffe Control Committee will meet to review comments received on the Ruffe Control Program and to make final revisions before transmitting the Program to the Aquatic Nuisance Species Task Force for final approval. The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration.

DATES: The Ruffe Control Committee will meet from 8:30 a.m. to 5:00 p.m. on Tuesday, April 11, 1995, and 8:00 a.m. to 12:00 p.m. on Wednesday, April 12, 1995.

ADDRESSES: The Ruffe Control Committee will meet at the Marquette Biological Station, 1924 Industrial Parkway, Marquette, Michigan 49855.

CONTACT PERSON FOR MORE INFORMATION: Tom Busiahn, Ruffe Control Committee Chair, at (715) 682–6185.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established by section 1201 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701). Minutes of meeting will be maintained by Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203, and the Chair, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 27, 1995.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 95–5180 Filed 3–1–95; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[CO–920–95–1320–01; COC 57803]

Application, Colowyo Coal Company L.P., Colorado Invitation for Coal Exploration License

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Colowyo Coal Company L.P. in a program for the exploration of unleased coal deposits owned by the Untied States of America in the following described lands located in Moffat and Rio Blanco, Counties, Colorado:

T. 3 N., R. 93 W., 6th P.M.
Sec. 2 lots 3, and 4;
Sec. 3, lots 1 to 4, inclusive;
Sec. 4, lot 4, SW¼NW¼, and NW¼SW¼;
Sec. 6, lot 7;
Tract 41, lots 6 to 9, inclusive;
Sec. 7, lots 1 to 5, inclusive, lot 10 NW¼NE¼, and E½NW¼;
Tract 41, lots 5, and 6;
Sec. 18, lots 1, 2, and E½NW¼.
T. 3 N., R. 94 W., 6th P.M.
Sec. 1, lots 5 to 8, inclusive, S½N½, S½;
Sec. 2, lots 5 to 8, inclusive, S½N½, S½;
Sec. 3, lots 5 to 8, inclusive, S½N½, S½;

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Sec. 4, lots 5 to 8, inclusive, S½N½, S½;
Sec. 5, lots 5, 6, S½NE¼, E½SW¼, and SE¼;
Sec. 8, S½, NE¼, and E½NW¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11 all;
Tract 41, lots 2, and 4;
Sec. 12, lots 1, 3, N½, SW¼, and WH½SE;
Tract 41, lots 1, and 4;
Sec. 13, lots 2, 3, W½NE¼, NW¼, and NW¼SW¼;
Sec. 14, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 15, all
Sec. 17, all
Sec. 20, N½;
Sec. 21, N½, and N½S½;
Sec. 22, NW¼, and NE¼NE¼;
Sec. 23, N½NW¼.
T. 4 N, R. 93 W., 6th P.M.
Sec. 27, SW¼
Sec. 28, Lots 6, 8, E½SE¼, and SW¼SE¼;
Sec. 33, lots 2, 3, E½, SE¼NW¼, E½SW¼, and SW¼SW¼.
Sec. 34, all;
Sec. 35, lots 17, 19, NW¼, and W½SW¼.
T. 4 N., R. 94 W., 6th P.M.
Sec. 22, lot 26, and S½SE¼;
Sec. 23, S½S½;
Tract 44, lots 2, and 4;
Sec. 26, lots 1, 3, N½, SW¼, and W½SE¼;
Sec. 27, E½, SW¼, S½NW¼, and NE¼NW¼;
Sec. 33, lot 1, E½, SW¼, E½NW¼, SW¼NW¼;
Sec. 34, all.

The area described contains approximately 14,967.54 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 57803 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**:

Karen Purvis, Solid Minerals Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215

and

Ed Moyer, Colowyo Coal Company L.P., 5731 State Highway 13, Meeker, Colorado 81641.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: February 24, 1995.

Karen Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 95–5123 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–JB–M

[UTU–65356]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–65356 for lands in Uintah County, Utah, was timely filed and required rentals accruing from October 1, 1994, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16–⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–65356, effective October 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 95–5088 Filed 3–01–95; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–930–5410–00–B057; CACA 31188]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 319.84 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 979–2858. Serial No. CACA 31188.

T. 14 S., R. 5 E., Mount Diablo Meridian

Sec. 25, Lot 5;
Sec. 26, Lots 3, 4, and 8;
Sec. 27, Lots 1, 2, and 4, NE¼NW¼.
County—San Benito.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Dated; February 22, 1995.

David McIlnay

Chief, Branch of Lands

[FR Doc. 95–5145 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–050–1220–00]

Recreation Management; Camping Fees and Supplementary Rules; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of campground fees and establishment of supplementary rules.

SUMMARY: The Canon City District hereby gives notice that campground fees will be charged at the new Sand Gulch and The Bank Campgrounds within the Shelf Road Climbing Area, in accordance with 36 CFR 71. The campgrounds are located about 12 miles north of Canon City, Colorado, along Fremont County Road 9. This action is necessary to implement USDI and BLM policies for the collection of user fees for recreational services. Daily recreation use fees at both campgrounds are established at the rate of $4.00 per campsite. Each campground also has one group campsite with a daily fee of $8.00.

Further, in addition to the regulations in 43 CFR 8365, the following supplementary rules are established for Sand Gulch and The Bank Campgrounds:

1. Camping. Camping is permitted only in designated sites. No reservations can be made, all sites are available on a first come-first serve basis.

2. Number of vehicles and persons per site. Individual campsites are limited to no more than 2 vehicles and 8 people.

The group sites are limited to 4 vehicles and 20 people.

3. Campfires. Campfires are permitted only in fire rings provided for such purpose by BLM.

4. Trash. No trash facilities are available in these campgrounds, all trash must be taken out.

5. Firearms. No person shall shoot or discharge any weapon within ¼ mile of these developed campgrounds.

6. Motorized Vehicles. Traveling or parking off existing roads and parking areas is prohibited.

7. Noise. Quite hours, in which the use of generators, loud radios, or boisterous behavior is prohibited, are in effect between 10:00 p.m. and 6:00 a.m.

8. Firewood. The gathering of live vegetation, standing dead vegetation, or dead and down wood within the campgrounds is prohibited. Firewood gathering is allowed outside the campgrounds but is restricted to only dead and down wood.

9. Camping Length of Stay. Persons may camp or occupy a site or sites in either campground for a period of not more than 14 days within any period of 28 consecutive days. The 28 day period begins when a person or equipment initially occupies a specific campsite. The 14 day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28 day period. After the 14th day of occupation, persons may not relocate within a 25 mile radius of the previously used location(s) for a minimum of 14 days.

10. Pets. No person shall, unless authorized by BLM, bring any animal into the campgrounds unless such animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

11. Unattended Personal Property. No person shall leave personal property unattended in these campgrounds for a period of more than 24 hours.

12. Fireworks. The discharge or ignition of firecrackers, rockets or other fireworks is prohibited.

13. Natural and Cultural Features. Defacing, disturbing or removing any natural or cultural (historic and prehistoric) features is prohibited.

14. Developed Facilities. Defacing, disturbing or removing any developed facilities is prohibited.

15. Interference. Threatening, resisting, intimidating, or interfering with any BLM official, employee, or volunteer engaged in, or on account of, the performance of their duties is prohibited. Threatening, intimidating or interfering with lawful users of these campgrounds is prohibited.

16. Trapping. Trapping is prohibited except for health and public safety or administrative purposes as determined by BLM.

17. Underage drinking. Consumption and/or possession of alcoholic beverages, as defined by state law, by persons under 21 years of age is prohibited.

18. Overflow camping areas. Areas are identified for overflow camping and may only be used when the campgrounds are full.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Williams, Outdoor Recreation Planner, Royal Gorge Resource Area, 3170 E. Main Street, Canon City, CO 81212; telephone (719) 275–0631.

SUPPLEMENTARY INFORMATION: The campground fee notice and the supplementary rules are applicable to the following locations: Sand Gulch Campground: SW¼NW¼NE¼, NW¼SW¼NE¼, S½NE¼SW¼NE¼, N½SE¼SW¼NE¼, SE¼NE¼NW¼, NE¼SE¼NW¼ Section 33, T. 16 S., R. 70 W., 6th Principal Meridian.

The Bank Campground: SE¼SE¼SW¼ Section 21 and W½NW¼NE¼, NE¼SW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, NE¼NE¼NW¼ Section 28, T. 16 S., R. 70 W., 6th Principal Meridian.

The purpose of the supplementary rules is to provide for the protection of persons, property, and public lands and resources. The authority for establishing supplementary rules is contained in 43 CFR 8365. These rules will be available in the Royal Gorge Resource Area office and will be posted in both campgrounds. Violation of these rules is punishable by a fine or imprisonment as defined in 18 USC 3571.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 95–5089 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–1430–01; GP5–074; OR–48531]

Termination of Proposed Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has canceled its application to withdraw 222.77 acres of public land for protection of the Mariposa Botanical Area located in Jackson County, Oregon. This action will terminate the proposed withdrawal and will relieve the land of the temporary segregative effect. The minerals are not in Federal ownership.

DATES: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 58 FR 26153, April 30, 1993, as corrected by 58 FR 29254, May 19, 1993, which segregated the land described therein from settlement, sale, location, or entry under the general land laws, including the United States mining laws, subject to valid existing rights. The purpose of the proposed withdrawal was to protect the Mariposa Botanical Area. The applicant agency has determined that the proposed withdrawal is no longer needed and has canceled the application in its entirety as to the following described land:

Willamette Meridian

T. 41 S., R. 2 E.,
Sec. 8, those portions of the W½NE¼, NW¼, and N½SW¼ lying westerly of Interstate 5 and excepting lands now owned by the State of Oregon as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains approximately 222.77 acres in Jackson County.

At 8:30 a.m. on April 3, 1995 the proposed withdrawal will be terminated and the land will be relieved of the segregative effect of the above-referenced application.

Dated: February 16, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–5147 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–33–P

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Naltonal Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for the remainder of calendar year 1995 (with the exception of July and December) to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following at San Francisco and at Point Reyes Station, California:

Wednesday, March 15—San Francisco, CA
Wednesday, April 19—San Francisco, CA
Saturday, May 6—Point Reyes Station, CA
Wednesday, June 14—San Francisco, CA
Wednesday, August 16—San Francisco, CA
Saturday, September 16—Point Reyes Station, CA
Wednesday, October 18—San Francisco, CA
Wednesday, November 15—San Francisco, CA

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco or at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California, unless otherwise noticed. The time for the meetings at Point Reyes Station will be noticed to the public at least 15 days prior to these meetings. Information confirming the time and location of all Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 556–4484.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaños
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Anticipated Agenda items at meetings this year will include:

- Update reports on the Presidio planning process.
- Presentation of the GGNRA mushroom collection staff report.
- Reports on work of the Golden Gate National Park Association.
- Reports on programs and projects of GGNRA "park partners".
- Status reports on the proposed Tomales Bay Protection Bill.
- Reports on GGNRA education programs.
- Report from the National Biological Service.
- Presentation on plans for the northern waterfront at Crissy Field.
- Planning for the Sutro Historical District.
- Updates on issues concerning management and planning at Point Reyes NS.

These meetings will also contain Superintendent's and Presidio General Manager's Reports.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: February 17, 1995.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 95–5125 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0087), Washington, DC 20503, telephone 202–395–7340.

Title: Abandoned Mine Land Problem Area Description Form
OMB approval number: 1029–0087
Abstract: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.
Bureau Form Number: OSM–76
Frequency: On occasion
Description of respondents: State Governments and Indian Tribes
Estimated completion time: 3 hours
Annual responses: 1,800
Annual burden hours: 4,800
Bureau clearance officer: John A. Trelease, 202–343–1475.

Dated: December 6, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–5082 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0089), Washington, D.C. 20253, telephone (202) 395–7340.

Title: Exemption for Coal Extraction Incidental to Extraction of Other Minerals—30 CFR 702
OMB Number: 1029–0089
Abstract: This part implements the exemption in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Public Law 95–87. It requires the regulatory authority to make a determination of exemption from the requirements of the Act for operators extracting less than 16⅔ tons of coal incidental to the extraction of other minerals. This information will be used by the regulatory authority to make that determination.
Bureau Form Number: None.
Frequency: As Required
Description of Respondents: Producers of Coal and other Minerals
Estimated Completion Time: 13 hours
Annual Responses: 51
Annual Burden Hours: 633
Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: December 27, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–5083 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0080), Washington, D.C. 20503, telephone 202–395–7340.

Title: Training, Examination, and Certification of Blasters
OMB Number: 1029–0080
Abstract: Sections 515(b)(15)(D) and 719 of Pub. L. 95–87 require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority. The regulations provide for the training, examination, and certification of persons engaging in blasting or the use of explosives in surface coal mining operations. The information collected is used to determine the adequacy of State blasting programs
Bureau Form Number: Not applicable.
Frequency: One-time requirement
Descriptions of Respondents: State Regulatory Authorities
Estimated Completion Time: 1 hour
Annual Responses: 1 hour
Annual Reporting Burden: 1 hour
Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: January 27, 1995.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–5084 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the office of Sedgwick Noble Lowndes, Seven Penn Center, 10th Floor, 1635 Market Street, Philadelphia, Pennsylvania, on April 3, 1995, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: February 16, 1995.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 95–5174 Filed 3–1–95; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Cape Fear Community College et al.*, Civil Action No. 7:95–CF–19–F3, was lodged on February 21, 1995, with the United States District Court for the Eastern District of North Carolina. This agreement resolves a judicial enforcement action brought by the United States against the defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. § 9607, for the recovery of response costs incurred by the United States in connection with the New Hanover County Airport Burn Pit Superfund Site, ("the Site") located in Wilmington, New Hanover County, North Carolina.

The consent decree requires the settling defendants to pay 100 percent of the past response costs which the United States has incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cape Fear Community College, et al.*, DOJ Ref. #90–11–2–885.

The proposed consent decree may be examined at the Office of the United States Attorney, Federal Building, Suite 800, 310 New Bern Avenue, Raleigh, North Carolina, 27522–1461, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street N.E., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street N.W., 4th Floor Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street N.W., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5,00 (25 cents per page

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reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–5142 Filed 3–1–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Changes in Status of an Extended Benefit (EB) Period for the State of Alaska

This notice announces a change in benefit period eligibility under the EB Program for the State of Alaska.

Summary

The following changes have occurred since the publication of the last notice regarding States' EB status:

- January 29, 1995—Alaska's 13-week insured unemployment rate for the week ending January 14, 1995 exceeded 6.0 percent, causing the State to trigger "on" EB effective January 29, 1995.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on February 23, 1995.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 95–5120 Filed 3–1–95; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Rothermel Coal Company

[Docket No. M–95–07–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Rothermel Coal Company

[Docket No. M–95–08–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Rothermel Coal Company

[Docket No. M–95–09–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Rothermel Coal Company

[Docket No. M–95–10–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Rothermel Coal Company

[Docket No. M–95–11–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Stephen Shingara Jr. Coal Company

[Docket No. M–95–12–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Stephen Shingara Jr. Coal Company

[Docket No. M–95–13–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Stephen Shingara Jr. Coal Company

[Docket No. M–95–14–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Stephen Shingara Jr. Coal Company

[Docket No. M–95–15–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tur el connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Stephen Shingara Jr. Coal Company

[Docket No. M–95–16–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Frank Branch Mining, Inc.

[Docket No. M–95–17–C]

Frank Branch Mining, Inc., Route 1, Box 200, Dunlow, West Virginia 25511 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Frank Branch No. 1 Mine (I.D. No. 46–07838) located in Wayne County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states "do not disengage plugs under load;" and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Frank Branch Mining, Inc.

[Docket No. M–95–18–C]

Frank Branch Mining, Inc., Route 1, Box 200, Dunlow, West Virginia 25511 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Frank Branch No. 2 Mine (I.D. No. 46–08412) located in Wayne County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states "do not disengage plugs under load;" and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Copperas Coal Corporation

[Docket No. M–95–19–C]

Copperas Coal Corporation, P.O. Box 4544, Chapmanville, West Virginia 25508 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Red Oak Mine (I.D. No. 46–08135) located in Boone County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states "do not disengage plugs under load"; and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of

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protection as would the mandatory standard.

14. Eighty-Four Mining Company

[Docket No. M–95–20–C]

Eighty-Four Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to use high-voltage (4,160 volts) cables inby the last open crosscut to supply power to longwall face equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Minnesota Ore Operations, USX Corporation

[Docket No. M–95–03–M]

Minnesota Ore Operations, USX Corporation, 600 Grant Street, room 1580, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 56.15014 (eye protection when operating grinding wheels) to its Minntac Mine (I.D. No. 21–00282); its Minntac Plant (I.D. No. 21–00820); and its Maintenance Department (I.D. No. 21–00819) all located in St. Louis County, Minnesota. The petitioner proposes to continue using pedestal grinders with safety shields; to continue providing safety glasses, including prescription glasses to all employees for them to wear while working, except in office areas; and to discontinue using face shields when employees are wearing safety glasses while operating pedestal grinders equipped with safety shields. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 3, 1995. Copies of these petitions are available for inspection at that address.

Dated: February 24, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–5141 Filed 3–1–95; 8:45 am]

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NATIONAL CAPITAL PLANNING COMMISSION

Master Plan Submission Requirement

AGENCY: National Capital Planning Commission.

ACTION: Final master plan submission requirements.

SUMMARY: On November 3, 1994, the Commission adopted several amendments to its Master Plan Submission Requirements, originally approved on September 6, 1984 and subsequently amended on November 7, 1985. The Commission's Master Plan Submission Requirements are the basic set of guidelines used by staff to direct Federal and District of Columbia agencies in preparing their master plan submissions to the Commission. The changes to the requirements are primarily designed to incorporate Administration policy directives and current and emerging planning and design concerns which the Commission is now emphasizing in working with agencies preparing master plan submissions. Briefly, Sec. 3.A.1.f. has been changed to emphasize the need for Federal agencies, as they prepare their master plans, to take into greater consideration the Comprehensive Plan for the National Capital's employee parking policies which are designed to encourage reduced reliance on single-occupant vehicles. Consequently, the new requirements include a provision calling for the preparation of a Transportation Management Program for sites of 100 or more employees.

Sections 3.B.2.c and 3.B.3.a are new sections which are intended to promote a more consistent treatment and recognition of design issues in Federal Master Plans throughout the National Capital Region. Amendments to Sec. 4.A provide for the use of metric standards in master plan maps and drawings in accordance with Executive Order 12770, Metric Usage in Federal Government Programs. A new section, sec. 4.E, is meant to encourage Federal agencies to consider providing their master plan submissions using some of the current computer-based planning and design technologies widely available in the market today, such as Geographic Information Systems (GIS) and Computer Aided Design (CAD) packages. Other technical and clarifying changes to the requirements are included as well.

FOR FURTHER INFORMATION CONTACT: Ronald E. Wilson, Director for Planning, Review & Implementation Division, National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576 or (202)724–0191.

SUPPLEMENTARY INFORMATION:

Section 1—Introduction

Section 5(a) of the National Capital Planning Act of 1952, as amended, (hereinafter "Planning Act"), provides that each Federal and District of Columbia agency prior to the preparation of construction plans originated by such agency for proposed developments and projects or to commitments for the acquisition of land, to be paid for in whole or in part from Federal or District funds, shall advise and consult with the National Capital Planning Commission (hereinafter "Commission") in the preparation by the agency of plans and programs in preliminary and successive stages which affect the Comprehensive Plan for the National Capital.

A master plan is an integrated series of documents which present in graphic, narrative, and tabular form the present composition of an installation and the plan for its orderly and comprehensive long-range development, generally over a period of 20 years. The Commission has determined that an approved master plan is a required preliminary stage of planning prior to agency preparation and submission to the Commission of site and building plans for individual projects. Master plans are necessary for installations on which more than one principal building, structure, or activity is located or is proposed to be located.

Ordinarily, the Commission will not approve, or recommend favorably on, project plans for an installation for which there is no approved master plan unless the agency provides an explanation satisfactory to the Commission as to the agency's reasons for not submitting a current master plan, or modification thereto, for the installation.

In accordance with Section 5(b) of the Planning Act, these requirements shall not apply to the Capitol Grounds or to the planning for structures within existing military, naval, or Air Force reservations erected by the Department of Defense during wartime or national emergency, except that the appropriate defense agency shall consult with the Commission as to any developments which materially affect traffic or require coordinated planning of the surrounding areas.

These requirements are intended to be used in connection with proposed developments of the Federal and District of Columbia Governments, including civilian and military installations within the National Capital Region[1] (hereinafter "Region"), except as provided above. The Commission, as a policy, limits its review of District of Columbia plans to matters of Federal interests.

The Executive Director of the Commission may extend, modify, or waive any requirement pertaining to the scope and content of a master plan on sites where such requirements cannot be met because of the unique or special character or quality of the installation affect. Where such extension, modification, or waiver involves contents of the master plan that may reasonably be expected to address or involve potential significant off-site impacts, the Executive Director shall provide notice to potentially affected public agencies and, if appropriate, provide opportunity for consultation.

Section 2—Use of Master Plan by the Commission and Other Agencies

A master plan is used by the Commission as a basic guide in its review of and action on:

A. Proposed land acquisitions, changes in land use, and/or preliminary and final site and building plans for individual construction and development projects on an installation within the region, pursuant to Section 5 of the Planning Act;

B. Preliminary and final site and building plans for Federal public buildings on an installation within the District of Columbia and District of Columbia Government buildings on an installation within the central area [2] of the District of Columbia (as concurrently defined by the Commission and the Council of the District of Columbia), pursuant to D.C. Code, 1981 edition, sec. 5432;

C. Proposed dispositions of land pursuant to the Federal Property and Administrative Services Act of 1949;

D. Annual capital budget proposals of Federal agencies, pursuant to Office of Management and Budget Circular A–11; and

E. Advance programs of capital improvements of Federal agencies, pursuant to Section 7(a) of the Planning Act, and multi-year capital improvements plans for the District of Columbia, pursuant to Section 7(b) of the Planning Act.

A master plan also serves as the basic planning document for intergovernmental coordination of developments and projects within an installation.

Section 3—Contents of Master Plan Submission

An installation master plan includes narrative materials and data, maps and drawings, and presentation materials which describe and illustrate existing conditions and proposed developments and changes in conditions on the installation.

A. *Narrative Materials and Data.* (See *Section 4—Form of Submission of Master Plan* for information on alternative methods of submitting required narrative materials and data.)

1. *Master Plan Report.* The master plan report shall include the following:

a. A description and analysis of existing conditions, including employee, visitor, and resident facilities and needs, with reference to the existing conditions map;

b. A description of the relationship of the proposed uses on the installation to the overall missions or responsibilities, functions, and facilities of the agency or agencies that are proposed to occupy the site;

c. A list of master planning objectives;

d. A description of the master plan proposals with reference to the master plan drawings;

e. A summary sheet for easy reference providing the following information for both existing conditions and long-range projections:

(1) Total acreage, including a breakdown in acreage of land area by use (for example: office/administrative, training, service);

(2) Total population, including a breakdown by employees and visitors (by shifts), residents, and students, noting peak arrival and departure times;

(3) Building floor area;

(4) Total number of parking spaces; and

(5) Any other useful statistics and facts;

f. A description of the relationship of the proposed master plan to the Comprehensive Plan, in particular the Federal Facilities element's employee parking policies, and to the sponsoring agency's own agency-wide, long range plan and program for its installations within the Region, including the rationale for any aspect of the master plan not in conformance with the Comprehensive Plan;

g. A description of community participation efforts, including a description of the efforts of the sponsoring agency to coordinate with affected citizen groups in the vicinity of the installation, and a report of citizen views and comments on the submission;

h. A report on individuals, families, and business required to be relocated by the proposals, if any;

i. An analysis, pursuant to the implementation proposals of the Federal Employment element of the Comprehensive Plan, of the availability of affordable housing within reasonable commuting distances from the affected installation for employees and their families in cases in which the master plan proposes to change the location of, or add, 100 or more Federal employees;

j. The status of the sponsoring agency's coordination of its master planning with the local and state planning agencies and the Council of Governments, including reference to any existing agreements with such agencies;

k. A report on the consistency of the proposed master plan or revised master plan with applicable local, subregional, regional, and state development plans and policies, including a description of the rationale of the sponsoring agency in making its determination of consistency;

l. A historic preservation report which includes: an analysis of the effects, if any, that the master plan will have on recognized historic resources both on the installation or in the vicinity; and the status of compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, if applicable (Compliance must be completed prior to Commission action.);

m. A description of the predominate design idea, or set of ideas, which (1) relate the urban design framework and land use proposals within the master plan and (2) will guide the general design, character, materials and other aspects of buildings, site improvements and landscaping on the installation in the future;

n. A Transportation Management Program (TMP) for installations with 100 or more employees (including existing and proposed employees). The TMP should incorporate the following:

(1) A description of existing and projected peak hour traffic by mode, with indicated points of entrance and exit, the number of existing and proposed bicycle spaces, as well as transit routes and stops and pedestrian

[1] "Region" or "National Capital Region" means the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries.

[2] The "Central Area" of the District of Columbia as currently defined is that area contained within the boundaries of the Downtown and Shaw School Urban Renewal Areas.

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facilities serving the installation, both on-site and in the nearby area; and a summary of existing and proposed parking by type of assignment (official cars, vanpools, carpools, single-occupant vehicles, handicapped persons, visitors, etc.);

(2) A description of the Federal agency's existing strategies for assisting employee's commute to work;

(3) Stated goals and objectives for the TMP, such as trip reduction, mode split changes, or vehicle occupancy rate increases;

(4) An evaluation of projected transportation impacts resulting from master plan development and description of potential TMP mitigation measures;

(5) A description of the process for monitoring and evaluating the achievement of goals and objectives and adjusting TMP strategies, as needed; and

(6) A summary of the relationship of the TMP provisions to transportation management and air quality requirements of local, state and regional agencies, including provisions for working cooperatively with affected agencies to address those requirements.

For installations where future site tenants are undetermined, TMP information should be developed to the extent feasible at the time of the initial preparation of the Master Plan, with supplementary information to be developed when tenants are established.

o. A description of proposed energy conservation strategies and policies related to the siting and design of new buildings, the retrofitting of existing structures, the use of transportation facilities, and the consumption of renewable energy resources for the purpose of complying with Federal energy efficiency objectives;

p. Water quality management strategies and policies for controlling the impacts of any on-site discharges to natural drainage ways or to adjacent streams or wetlands and, in conjunction with the stormwater management plan required pursuant to Section 3.B.3.e. for controlling erosion and sedimentation and other non-point sources of pollution; and

q. A staging program reflecting the graphic staging plan required pursuant to Section 3.B.3.F., that indicates in narrative and/or tabular form the proposed sequence of development over the period covered by the master plan.

In cases in which information in the Master Plan Report is fully provided in the required environmental documentation, it need not be repeated in the Master Plan Report.

2. *Environmental Document.* The environmental document prepared by the sponsoring agency pursuant to the National Environmental Policy Act of 1969, as amended, and Council on Environmental Quality Regulations shall be a part of the master plan submission. The document shall be an environmental impact statement, if required pursuant to Section 102(2)(C) of NEPA. If an EIS is not required, an environmental assessment shall be submitted. The environmental document should be prepared in consultation with the Commission, pursuant to Section S.C. of these requirements and the Commission's Environmental Policies and Procedures.

B. *Maps and Drawings.* (See *Section 4—Form of Submission of Master Plan* for information on alternative methods of submitting required maps and drawings.)

1. *Vicinity Map.* The vicinity map shall show the location of the installation in relation to well-known features of the surrounding community within at least one mile from the installation, such as major transportation facilities, natural features, and public facilities. Existing land uses and zoning shall be shown on the map for the area surrounding the installation. Where adopted local and/or state plans propose changes in surrounding transportation facilities, land use, or zoning, the proposed changes shall be shown on the vicinity map. If the proposed changes cannot be clearly depicted on a vicinity map in combination with existing conditions, a separate vicinity map showing the installation in relation to planned surrounding conditions shall be provided.

2. *Inventory Maps.* The following inventory maps shall be prepared from a common base map which depicts existing physical conditions on the installation, with the coverage of the map extending beyond the boundaries of the installation in all directions for at least one city block in urban areas and ¼ mile in suburban and rural areas:

a. *Existing land use map.* The existing land use map shall indicate by appropriate categories the allocation of land uses on the installation. This allocation should also be provided in tabular form on the existing land use map. (An itemized list of suggested land use categories is available from the Commission staff.)

b. *Existing conditions map.* The existing conditions map shall include the following:

(1) Internal road system, entrance and exist locations, with existing peak hour traffic counts, the number of existing parking spaces for each site, building, and facility, and public transit routes and stops. (This information may be shown on a separate map entitled "Existing Circulation Map", if desired.);

(2) All existing buildings, structures, and other manmade improvements, indicating the use and height of principal buildings and structures;

(3) Properties and districts listed in the National Register of Historic Places or on local historical registers;

(4) Existing wooded areas, watercourses, ultimate 100 year flood plains, wetlands, and other significant natural areas and features;

(5) Existing typography of the installation at a contour interval that clearly indicates the configuration of the land (generally at not less than five-foot intervals);

(6) Major utilities; and

(7) If the installation is located within the State of Maryland, areas of critical concern to the State of Maryland as identified by the Maryland Department of State Planning, as well as officially designated coastal zone areas and "primary management areas" and "woodland buffers" along the Patuxent River within the region, as defined in the Patuxent River Policy Plan, Maryland Department of State Planning.

c. *Existing Urban Design Framework Diagram.* The existing urban design framework diagram shall include the following:

(1) Significant natural and man-made features, such as distinctive building groupings or alignments, important formal or informal landscape compositions, special views and vistas, special streets, scenic routes, gateways or edges, etc., noting the role such elements serve in either unifying the installation, manifesting its overall form or precincts therein, or contributing to or reinforcing a larger urban design context such as the National Capital's urban design framework or other Federal interest; and

(2) Intrusions, barriers, gaps or other disparate conditions affecting the integrity of the urban design qualities identified above.

3. *Master Plan Proposals.* The following maps illustrating the master plan proposals shall be prepared from a common base map which depicts future physical conditions to be achieved on the installation through the master plan, with the coverage of the map extending beyond the boundaries of the installation as required on the inventory base map:

a. *Urban Design Framework Diagram.* The urban design framework diagram should precede and be more diagrammatic than the maps listed below. The framework diagram shall graphically indicate the retention,

enhancement or modification of the inventoried urban design features and the broad urban design principles and development controls which, together, serve to support and strengthen the intended form and character of the installation.

b. *Land Use Plan.* The land use plan shall indicate by appropriate categories the proposed general land use of all land within the installation.

c. *Circulation Plan.* The circulation plan shall indicate at least the following:

(1) The proposed internal road system of the installation incorporating existing-to-remain and proposed roads and showing the functional classification of all roads;

(2) Existing-to-remain and proposed ingress and egress points serving the installation and their relationship to the existing, programmed, and planned roads immediately adjacent to the facility;

(3) Existing-to-remain and proposed off-street parking facilities showing the number of existing or estimated parking spaces for each separate facility;

(4) The proposed pedestrian circulation system, incorporating existing features to remain;

(5) The proposed public transportation system showing the routes and stops serving the installation; and

(6) Proposed bicycle paths, if any, incorporating existing features to remain.

d. *Site Development Plan.* This site development plan shall indicate the general location and use of all existing to-remain and proposed buildings and structures, the general order magnitude of building scale and orientation, and other site improvements such as landscaping. This site development plan shall be accompanied by two site development cross sections. These sections shall be cut through the center of the site at approximately 90 percent to each other to show the topography of the site, buildings, structures and landscape elements. On large installations with low intensity development, the cross sections may be limited to areas of major building concentrations.

e. *Landscape Plan.* Ideally, the landscape plan should be presented as a separate plan. It may be incorporated in the site development plan if the combined plan satisfies all content requirements and is clearly readable. The landscape plan is not intended to present precise landscaping proposals but rather to indicate the general landscaping concepts to be achieved in future projects. The landscape plan, shall indicate at least the following:

(1) Wooded areas, including those to be retained and cleared, and, in urbanized sites, the general location of all existing trees one foot or more in diameter to be retained or removed;

(2) The general location and extent of all proposed landscaping within the installation; and

(3) Existing-to-remain and proposed topography of the installation at a contour interval that clearly shows the relationship of the proposed changes to the existing topography.

f. *Stormwater Management Plan.* The stormwater management plan shall indicate the location and size of natural drainage ways, storm sewer line and outfalls, infiltration devices, retention and detention ponds, storm drainage outfalls, and any other mitigation measures to control storm water runoff on the installation, including measures required by state or local law, with back-up computations.

g. *Staging Plan.* The staging plan shall graphically illustrate the proposed sequence of development over the projected period covered by the master plan in five-year development stages. Projects to be developed in the initial five-year stage shall accord with the sponsoring agency's proposed capital improvements program submitted annually to the Commission under Section 7(a) of the Planning Act and described in the Commission's Federal Capital Improvements Program for the National Capital Region.

C. Presentation Materials.

1. *Models.* Models should be submitted with master plans for sites on which significant concentrations of new buildings programs are proposed to show the topography of the site and illustrate the site development, circulation, and landscape proposals. A joint determination will be made between the sponsoring agency and Commission staff regarding the need for a model. Where a model is needed, buildings may be shown in massing forms without depiction of architectural style or details. Models will be returned to the sponsoring agencies following action by the Commission.

2. *Photographs.* Sponsoring agencies shall submit photographs to aid in the review and evaluation of proposed mater plans. Where possible, photographs shall include both direct overhead and oblique aerial views, eye level panoramic views, and views of special features of the installation.

Section 4—Form of Submission of Master Plan

A. *Map Scales.* Maps should preferably be at a scale of 1:1000, or alternatively 1:2000 in the case of large installations that cannot be depicted on a single sheet at the larger scale. In the case of an unusually large Federal installation, sectionalized maps at either scale would be preferred together with an overall composite map of the entire installation at a scale appropriate to its size. Sponsoring agencies, in accordance with Executive Order 12770, "Metric Usage in Federal Government Programs", at the earliest feasible time, should submit their maps and drawings in metric units.

B. *Presentation and record map sheet sizes.* Presentation and record maps should be at a standardized sheet size, whenever possible. Individual sheets should be a maximum of 34 by 44 inches, in order to be compatible with the Commission's microfilm program.

C. *Reduced size maps.* The master plan maps shall also be reduced to page size for incorporation in the master plan submission. The reduced size maps may be incorporated in the Master Plan Report required in Section 3.A.l. If incorporated in the Master Plan Report, the reduced size maps may be of a size compatible with the format of the report selected by the sponsoring agency. If submitted separately from the Master Plan Report, the reduced size maps shall be of a page size no larger than 8½"×14".

D. *Numbers of copies of maps and other documents.* The numbers of copies of maps and other documents to be submitted vary according to jurisdiction and the related referral requirements that must be met by the Commission. (See Sections 5.F. and 8.). Copies of full size maps and other required master plan documents shall be submitted according to the following schedule:

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Jurisdiction	Number of sets
For installations within the District of Columbia requiring regional review	13 complete sets of maps and supporting documents.
For installations in Maryland requiring regional review	16 complete sets of maps and supporting documents.
For installations in Virginia requiring regional review	16 complete sets of maps and supporting documents.
For installations in the District of Columbia, Maryland or Virginia not requiring regional review.	3 complete sets of maps and supporting documents.

E. *Electronic Data Submissions.* Sponsoring agencies may provide their master plan submissions (maps and narrative) electronically. Agencies are encouraged to contact the staff to coordinate the procedures for electronic submissions.

Section 5—Master Plan Coordination and Review Process

The following steps are involved in the coordination and review of a master plan prior to and during its preparation by a sponsoring agency and following its submission to the Commission.

A. *Informal consultation with the Commission staff.* An informal consultation session with the Commission staff should be held by a sponsoring agency prior to initiating the preparation of a proposed master plan or a significant modification to an existing master plan.

At such a session, a joint determination will be made as to whether there are any unique or special characteristics of the affected installation which necessitate modification of any requirements respecting the master plan submission. A joint determination will also be made as to whether, because of special characteristics of an installation or proposed developments to be accommodated by a master plan, there is a need for a presentation of any type to the Commission prior to the preparation and submission of the master plan. The session will also be used to plan for early consultation with other organizations as part of the intergovernmental review process.

B. *Early consultation and discussion of proposed master plan with other affected government agencies.* After it has been contacted by a sponsoring Federal agency concerning the initiation of planning for an installation in the region, the Commission, as appropriate, will contact the planning agency, intergovernmental review official, chief administrative officer, and responsible elected official of the affected local government(s) and the affected area and state clearinghouse(s) about the work involved and the anticipated schedule for submission of the proposed master plan or revised master plan to the Commission. Where appropriate, the Commission will arrange a meeting of concerned agencies and officials with the agency sponsoring the master planning work to discuss that work, prior to any submission to the Commission.

The purpose of this step is to give local, regional, and state agencies an opportunity to learn about proposed Federal plans being developed in the region and permit early identification of possible questions, issues and concerns. This step in the process has been established in accordance with the Commission's "Procedures for Intergovernmental Cooperation in Federal Planning in the National Capital Region." Although this step applies as a requirement only to sponsoring Federal agencies, the Commission will, upon request of an affected District of Columbia agency preparing a master plan for an installation outside the District of Columbia within the region, arrange similar early consultation with the affected local, regional, and state agencies and officials.

C. *Determination of appropriate environmental document for the proposed master plan.* Master plan submissions must include appropriate environmental documentation, pursuant to Section 3.A.2. of these requirements and the Commission's Environmental Policies and Procedures.

The sponsoring agency should consult with the Commission at the earliest possible time in its master planning to determine whether projects covered by the master plan will require Commission approval thereby requiring Commission participation with the sponsoring agency in determining the appropriate environmental document for the master plan.

The environmental determination of the sponsoring agency must be made, and the environmental document submitted, in accordance with the Commission's Environmental Policies and Procedures. The required consultation regarding environmental documentation may occur in the initial informal consultation by the sponsoring agency with the Commission staff.

D. *Submission of the proposed master plan to the Commission for review and action.* The sponsoring agency shall submit the master plan in accordance with established monthly deadlines, which are available from the Commission.

E. *Commission initiation of procedures for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, if applicable.* Master plan submissions must include a historic preservation report, pursuant to Section 3.A.1.1. of these requirements. If Section 106 of the Act is applicable, the sponsoring agency shall complete compliance therewith prior to Commission action.

Upon receipt of a master plan submission from the District of Columbia Government for one of its installations within the central area of the District of Columbia, the Executive Director of the Commission will determine whether the master plan is subject to the provisions of Section 106. If he so determines, the Executive Director will initiate procedures for compliance. Compliance will be completed prior to Commission action on the proposed master plan.

F. *Referral where appropriate, of the proposed master plan to the responsible local, regional and state agencies.* Upon receipt of a master plan, the Commission will refer the plan to the affected local planning agency and regional and state clearinghouse for review and comment. The master plan will in turn also be referred by the regional clearinghouse (the Metropolitan Washington Council of Governments) to the designated intergovernmental review official of the affected jurisdiction for review and comment.

G. *Resolution of planning issues, if any, between local and Federal agencies.* Upon the identification of planning issues raised by a proposed master plan, the Commission staff in conjunction with the staff of the Council of Governments, will work with the affected local, regional or state agencies and the Federal agency to resolve such issues in accordance with "Procedures for Resolving Planning Issues That May Arise Between Local and Federal Agencies in the National Capital Region" adopted by the Commission on November 18, 1982, and the Commission's Procedures for Intergovernmental Cooperation in Federal Planning in the National Capital Region.

H. *Referral, where appropriate, of the proposed master plan to the Commission's Coordinating Committee.* Upon receipt of a master plan for a Federal or District of Columbia installation in the District of Columbia, the Commission will refer the master plan to its Coordinating Committee, pursuant to Section 2(d) of the Planning Act, for review and coordination. The committee is composed of representatives of Federal and District of Columbia agencies involved in planning and development activities. The master plan will also be referred to the Council of Governments and the designated intergovernmental review official of the District of Columbia.

I. *Review and preparation of recommendations by the Commission staff.* Following the receipt of comments from other organizations and the Coordinating Committee, where appropriate, the staff will prepare recommendations for action by the Commission on the master plan. The staff recommendations will be provided to the Commission and made available to the sponsoring agency and the general public approximately one week in advance of the schedule Commission review and action on the plan.

J. *Notification to the public and public participation in Commission review.* In accordance with the Commission's "Revised Procedures for Public Participation", organizations in the vicinity of an installation will receive a notice titled "Tentative Agenda Items" indicating the tentative schedule for the Commission's review of a master plan submission. Organizations or individuals may submit written comments for consideration by the Executive Director of the Commission in the preparation of staff recommendations. In addition, organizations or individuals may appear before the Commission to comment on a master plan submission and/or to comment on the Commission staff's recommendations on the submission.

K. *Review and action by the Commission.* The Commission will review the master plan submission at a scheduled meeting. The sponsoring agency will be notified by the staff of the schedule for Commission review, and the staff will coordinate with the agency concerning a presentation of the submission to the Commission.

L. *Official notification of Commission action on the master plan.* Notification of the Commission action on the master plan will be provided by letter to the sponsoring agency immediately following such action.

Section 6—Time Period for Review

Master plans for installations for which a referral to local, regional, and state agencies is required will be subject to a review period of approximately 90 days, whenever possible, 60 days of which will be devoted to review by the agencies receiving the referral. A sponsoring agency may request a reduction of 30 days of this review period from the Executive Director of the Commission is special and unusual circumstances warrant, but every effort should be made to comply with the 90-day review.

Section 7—Presubmission Requirements

As noted in Section 5.A. at the time of initial informal consultation on the proposed preparation of a master plan, the sponsoring agency and Commission staff will determine whether, because of special characteristics of an installation or the developments being considered for that installation, there is a need for any type of presentation to the Commission prior to the preparation and submission of the master plan. In some cases a presentation for information purposes may be appropriate to provide an opportunity for the Commission to become familiar at an early stage with an evolving development proposal.

In other cases, the submission of site boundaries, a development program, and development concepts may be required to obtain Commission views and action on an acquisition proposal pursuant to Section 5(a) of the Planning Act prior to the expenditure of funds for the preparation of a master plan. Where land is already under the jurisdiction of the sponsoring agency, the submission of development concepts to obtain Commission views on a particular proposal in advance of the preparation of a master plan may also be appropriate under certain circumstances. In cases where a presubmission of some form or a presentation is determined to be required or warranted, the contents will be determined through consultation by the sponsoring agency with the Commission staff.

Section 8—Amendments or Modifications to Master Plans

The process outlined above also applies to proposed modifications or revisions to master plans that have been previously approved by the Commission. Once a master plan has been approved, regional review of subsequent proposed modifications or revisions will be required only where the Executive Director of the Commission, in consultation with the sponsoring agency and affected local jurisdiction(s), determines that: (1) A major change in the character or intensity of an existing use is proposed, or (2) the proposed modifications or revisions would significantly change the off-site impact of the Federal activities and uses carried out within the site.

Section 9—Review and Updating of Master Plans

Agencies are encouraged to review master plans on a periodic basis to insure that both inventory material and development proposals are current. Such reviews should be conducted at least every five years. Sponsoring agencies should advise the Commission of the results of such reviews and provide to the Commission proposed schedules for the updating of master plans of a five-year cycle when updating is determined to be needed.

Robert E. Gresham,

Deputy Executive Director.

[FR Doc. 95–5160 Filed 3–1–95; 8:45 am]

BILLING CODE 7502–02–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for March 16, 1995 at 10 am in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, February 22, 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–5085 Filed 3–1–95; 8:45 am]

BILLING CODE 6330–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

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Name: Alan T. Waterman Award Committee (#1172).

Date and Time: Monday, March 20, 1995; 8:30 a.m.–3:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5164 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development (HRD); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel In Human Resource Development.

Date and Time: March 20–21, 1995; 8:30 a.m.–4:30 p.m.

Place: Room 340; National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Rodolfo Tamez; Program Director, RIMI; Human Resource Development (HRD); Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Improvement In Minority Institutions (RIMI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5165 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: March 23–24, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 390, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Karen Bennett, Program Director or Dr. Judith Plesset, Program Director, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1417.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: March 24, 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. Closed Session: March 23, 9:00 a.m. to 5:00 p.m.; March 24, 9:00 a.m. to 10:00 a.m. and 11:00 a.m. to 5:00 p.m. to review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers (RPG/CAA) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5166 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name & Committee Code: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: March 27, 1995; 8 AM–5 PM.

Type of Meeting: Closed.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. John H. Porter, Program Director, Database Activities in the Biological Sciences, Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1470.

Agenda: To review and evaluate Database Activities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5167 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: March 20–21, 1995; 8:30 A.M. til 5:00 P.M.

Place: National Science Foundation, 4201 Wilson Boulevard, Rm 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals for the Classical Analysis Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5162 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: March 19, 1995; 4:00 p.m. to 9:00 p.m., March 20, 1995; 8:00 a.m. to 8:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Applications of Advanced Technologies Program.

Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5161 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: March 20, 1995; 8:30 a.m. to 5:00 p.m.; March 21, 1995, 8:30 a.m. to 5:00 p.m.; March 22, 1995, 8:30 a.m. to 4:00 p.m.

Place: Rooms 880 and 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5163 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit 2 (NMP–2), located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application to amend the NMP–2 operating license dated July 22, 1993, as supplemented January 9, 1995. The proposed amendment would increase the licensed core thermal power from 3323 MWt to 3467 MWt, which represents an approximate increase of 4.3% over the current licensed power level. This request is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company (GE) and approved by the U.S. Nuclear Regulatory Commission (NRC) staff in a letter from W. Russell, NRC, to P. Marriotte, GE, dated September 30, 1991. Implementation of the proposed power uprate at NMP–2 will result in an increase of steam flow to approximately 105% of the current operating limit, but will require no changes to the basic fuel design. Core reload design and fuel parameters will be modified as power uprate is implemented to support the current 18-month reload cycle. The higher power level will be achieved by expanding the power/flow map and by increasing, slightly, reactor vessel dome pressure. The maximum recirculation flow limit will not be increased over the preuprate value. Implementation of this proposed power uprate will require minor modifications, such as, resetting of the low set safety relief setpoints, as well as the calibration of plant instrumentation to reflect the uprated power. Plant operating, emergency, and other procedure changes will be made where necessary to support uprated operation.

The proposed action involves NRC issuance of a license amendment to uprate the authorized power level by changing the operating license, including Appendix A of the license (Technical Specifications). No change is needed to Appendix B of the license (Environmental Protection Plan—Nonradiological).

The Need for the Proposed Action

The proposed action would authorize the licensee to increase the potential electrical output of NMP2 by approximately 45 megawatts and thus would provide additional electrical power to service domestic and commercial areas of the licensee's grid.

Environmental Impacts of the Proposed Action

The "Final Environmental Statement (FES) related to operation of Nine Mile Point Nuclear Station, Unit No. 2" was issued May 1985 (NUREG–1085). By letter of July 22, 1993, the licensee submitted the proposed amendment to implement power uprate for NMP2, which is the subject of this environmental assessment. Section 11.3 of the NMP2 power uprate licensing topical report (GE report NEDC–31994P, Revision 1) which was submitted as Enclosure 3 to NMPC's July 22, 1993, submittal, provided an environmental assessment of the proposed power uprate. Some environmental effects will remain the same, while power uprate may nominally increase others. Actual effects are at worst proportional to the approximately 5% increase in turbine steam flow. Increased core flow has no discernable effect on the environmental assessment.

The licensee provided information regarding the nonradiological and radiological environmental effects of the proposed action in the July 22, 1993, application and in its supplemental information dated January 9, 1995. The NRC staff has reviewed the potential nonradiological and radiological effects of the proposed action on the environment as described below.

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Nonradiological Environmental Assessment

Power uprate will not change the method of generating electricity nor the method of handling any influents from minor effluents to the environment. Therefore, no new or different types of environmental impacts are expected.

The NRC staff reviewed the nonradiological impact of operation at uprated power levels on influents from and effluents to Lake Ontario. NMP–2 utilizes a closed-loop circulating water system and a natural draft cooling tower for dissipating heat from the main turbine condenser. Other equipment is cooled by the service water system. The cooling tower and service water system are operated in accordance with the requirements of the State Pollutant Discharge Elimination System (SPDES) Permit No. NY–000–1015, which was issued by the New York State Department of Environmental Conservation (NYSDEC) on October 26, 1994, and became effective on December 1, 1994. It expires on December 1, 1999. This new discharge permit was issued by New York State since the previous permit had expired.

The withdrawal of cooling water from Lake Ontario is expected to increase slightly due to the increased heat loads. Emergency system flows are expected to remain generally unchanged. Increased heat loads are expected for nonsafety related loads such as the main generator stator coolers, hydrogen coolers, and exciter coolers. These systems, as well as other systems (*e.g.*, RHR heat exchangers, emergency diesel generator coolers, and spent fuel pool heat exchangers) noted in Section 6 of the July 22, 1993, submittal are expected to require additional cooling and an increase in flowrate. The increase in water intake to the cooling tower is due to increased evaporation in the cooling tower. The increase in flowrate is expected to be small and within a nominal 5 percent increase. Conservatively assuming a 5 percent increase in the withdrawal rate, the intake approach flowrate velocity is expected to increase from 0.5 fps to 0.53 fps. Observations by the licensee have shown fish impingement to be very low and in most cases nonexistent. The NYSDEC has evaluated the potential effects of the current intake flowrate and has concluded that no special aquatic studies are required to assess the biological impact. No aquatic studies were included in the licensee's new SPDES discharge permit which was effective December 1, 1994. The licensee has stated that because the current intake flowrates are low and the aquatic impacts of withdrawal are minimal, an increase of 5 percent is not expected to result in a significant impact, if any impact at all. The NRC staff agrees with the licensee's assessment and does not expect any significant impact due to the 5 percent increase in withdrawal flowrate.

The licensee does not expect an increase in the cooling tower blowdown. The cooling tower blowdown rate is controlled by total copper concentration in the circulating water system and the economic use of water treatment chemicals. The current blowdown rate is approximately 40 percent of the designed rate and is restricted to ensure compliance with the total copper concentration limitation imposed by the SPDES permit and by economic use of water treatment chemicals. The licensee has stated that if the blowdown rate was increased by 5–10 percent in order to evaluate cooling tower efficiency and to reduce the cycles of concentration of natural salts in the circulating water system, the copper limitation could still be met and the flowrate impact would be less than design. In addition, the NYSDEC has evaluated the service water and cooling tower blowdown based on the original design flowrates, as well as the state of the art technology of the discharge diffuser. The NYSDEC has concluded that no thermal measurements or thermal plume studies are necessary because of the low flowrates and the design of the discharge structure. Therefore, the licensee concluded that because the withdrawal rate is currently low and the cooling tower blowdown rate is currently below original design, the 5 percent increase in water withdrawal or an increase in blowdown is not expected to result in any additional environmental impact since any increase in flowrate is expected to be no more than the original system design. The NRC staff has reviewed the licensee's assessment and concludes the increased flowrates will not result in a significant increase in environmental impact.

The licensee has conservatively estimated that the power uprate will result in an annual increase in dissolved solids from water passing through the soil in the area of the Energy Center of approximately 0.012 ppm. Since even the most sensitive species are not affected by soil salinization of less than 1,280 ppm, it is highly unlikely that even salt-sensitive species would be measurably affected by this additional deposition rate during operation of the NMP–2 cooling tower at power uprate conditions. Therefore, the NRC staff has concluded that the increase in cooling tower drift due to the proposed power uprate will have no significant increase in environment impact and would still be well below the levels of concern to local soil and vegetation.

Nonradiological effluent discharges from other systems were also considered. Nonradiological effluent limits for such systems as floor and equipment drains are established in the SPDES permit. Discharges from these systems are not expected to change significantly, if at all, because operation at uprated power levels are governed by the limits in the SPDES permit. Thus, the impact on the environment from these systems as a result of operation at uprated power levels is not significant.

With the exception of the cooling tower, all other significant noise producing equipment associated with the service water and circulating water systems are located inside buildings and/or well below grade where the noise level would have little, if any, environmental impact. There is no expected increase in cooling tower noise levels associated with the proposed power uprate since there are no plans to increase its flow rate as part of the proposed power uprate. The main turbine and generator will operate at the same speed and thus will not contribute to increased offsite noise. Although the main station transformers will operate at a slightly (approximately 4.3 percent) increased kilovolt-ampere level, the slight increase will cause an insignificant increase in the overall noise level. Therefore, the NRC staff has concluded that the outside noise level increase will be insignificant.

The licensee has stated that the proposed power uprate will not require any changes to the SPDES discharge permit nor to the NMP–2 Environmental Protection Plan. The NRC staff agrees with this assessment and, therefore, we have concluded that the proposed power uprate will have an insignificant impact on the nonradiological elements of concern.

Radiological Environmental Assessment

The licensee evaluated the impact of the proposed power uprate amendment to show that the applicable regulatory acceptance criteria relative to radiological environmental impacts will continue to be satisfied for the uprated power conditions. In conducting this evaluation, the licensee considered the effect of the higher power level on liquid radioactive wastes, gaseous radioactive wastes, and radiation levels both in the plant and offsite during both normal operation and post-accident.

The floor drain collector subsystem waste collector subsystem both receive inputs from a variety of sources (*e.g.*, leakage from component cooling water system, reactor coolant system, condensate and feedwater system, turbine plant cooling water system, and auxiliary steam system). However, leakages from these systems are not expected to increase significantly since the operating pressures of these systems are either being maintained constant or are being increased only slightly due to the proposed power uprate.

The largest single source of liquid radioactive waste is from the ultrasonic cleaning of the condensate demineralizers. These demineralizers remove activated corrosion products which are expected to increase proportionally to the proposed power uprate. However, the total volume of processed waste is not expected to increase significantly, since the only appreciable increase in processed waste will be due to the slightly more frequent cleaning of these demineralizers. Based on a review of plant effluent reports and the slight increase expected due to the proposed power uprate, the NRC staff has concluded that the slight increase in the processing of liquid radioactive wastes will not have a significant increase in environment impact and that requirements of 10 CFR part 20 and 10 CFR part 50, appendix I, will continue to be met.

Gaseous radioactive effluents are produced during both normal operation and abnormal operation occurrences. These effluents are collected, controlled, processed, stored, and disposed of by the gaseous radioactive waste management systems which include the various building ventilation systems, the offgas system, and the standby gas treatment system (SGTS). The concentration of radioactive gaseous effluents released through the building ventilation systems during normal operation is not expected to increase significantly due to the proposed power uprate since the amount of fission products released into the reactor coolant (and subsequently into the building atmosphere) depends on the number and nature of fuel rod defects and is not dependent on reactor power level. The concentration of activation products contained in the reactor coolant is expected to remain unchanged, since the linear increase in the production of these activation products will be offset by the linear increase in steaming rate. Therefore, based on its review of the various building ventilation systems, the NRC staff has concluded that there will not be a significant adverse effect on airborne radioactive effluents as a result of the proposed power uprate.

Radiolysis of the reactor coolant causes the formation of hydrogen and oxygen, the quantities of which increase linearly with core power. These additional quantities of hydrogen and oxygen would increase the flow to the recombiners by 4.3 percent during uprated power conditions. The offgas system was originally designed for 105 percent of warranted steam flow which would not be exceeded during operation at the proposed uprated power level. Therefore, no changes will be required in the offgas system and since the offgas system will be operated within the originally evaluated design conditions, there will be no environmental impact that was not previously evaluated.

The SGTS is designed to minimize offsite radiation dose rates during venting and purging of both the primary and secondary containment atmosphere under accident or abnormal conditions. This is accomplished by maintaining the secondary containment at a slightly negative pressure (more negative than or equal to −0.25 inch water gauge) with respect to the outside atmosphere and discharging the secondary containment atmosphere through high-efficiency particulate air (HEPA) filters and charcoal absorbers. As noted in the Updated Safety Analysis Report (USAR), the SGTS charcoal absorbers are designed for a charcoal loading capacity of 10 mgI/gC and get the design requirements for 30-day and 100-day loss-of-coolant accident (LOCA) scenarios. The proposed power uprate would increase the post-LOCA iodine loading by 4.3 percent but the charcoal loading would still remain within the 10 mgI/gC loading and therefore, there would be no significant increase in environmental impact.

The licensee has evaluated the effects of the power uprate on in-plant radiation levels in the NMP–2 facility during both normal operation and post-accident. The licensee has concluded that radiation levels during both normal operation and post-accident may increase slightly (at most, proportional to the increase in power level). The slight increases in in-plant radiation levels expected due to the proposed power uprate are not expected to affect radiation zoning or shielding requirements. Individual worker occupational exposures will be maintained with acceptable limits by the existing as low as is reasonably achievable (ALARA) program which the licensee uses to control access to radiation areas. Therefore, the NRC staff has concluded that the slightly increased in-plant radiation levels will not have a significant environmental impact.

The offsite doses associated with normal operation are not significantly affected by operation at the proposed uprated power level and are expected to remain well within the limits of 10 CFR part 20 and 10 CFR part 50, appendix I. These limits are imposed by Technical Specifications 3/4.11.1, 3/4.11.2, 3/4.11.3, and 3/4.11.4, which will not be changed by the proposed power uprate. Therefore, the NRC staff has concluded that the offsite doses due to normal operation at the proposed power uprate conditions will not result in a significant environmental impact.

The dose evaluations for design basis accidents were performed for issuance of the current operating license based on 105 percent of the current rated power level. The proposed power uprate would be within the assumptions used during original licensing of the plant and, therefore, there will be no increase in environmental impacts over those evaluated in the NRC staff's Final Environmental Statement related to the operation of Nine Mile Point Nuclear Station, Unit No. 2 (NUREG–1085), May 1985.

The NRC staff has concluded that the NRC's FES (NUREG–1085) is valid for operation at the proposed uprated power conditions. The NRC staff also concluded that the plant operating parameters impacted by the proposed uprate would remain within the bounding conditions on which the conclusions of the FES are based.

The NRC staff has reviewed the licensee's reevaluation of the potential radiological and nonradiological environmental impacts for the proposed action. On the basis of this review, the NRC staff finds that the radiological and nonradiological environmental impacts associated with the proposed small increase in power are essentially immeasurable and do not change the conclusion in the FES that the operation of NMP–2 would cause no significant adverse impact upon the quality of the human environment.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological or nonradiological environmental impact.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater impact need not be evaluated. The principal alternative would be to deny the requested amendment. Denial would not significantly reduce the environmental impact of plant operations, but would restrict operation

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of NMP–2 to the currently licensed power level. Denial of the amendment would prevent the facility from generating the approximately additional 45 MWe that is obtainable from the existing plant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Nine Mile Point Nuclear Station, Unit No. 2," dated May 1985.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and consulted with the New York State official regarding the environmental impact of the proposed action. The State official had no comment regarding the NRC's proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated July 22, 1993, as supplemented January 9, 1995. These documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 24th day of February 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5137 Filed 3–01–95; 8:45 am]

BILLING CODE 7590–01–M

FOIA User Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public conference.

SUMMARY: The NRC will hold a Freedom of Information Act (FOIA) Users Conference as a part of its renewed commitment to improving openness and responsiveness to the public. The purpose of the conference will be to open communications between NRC and its FOIA user community, to explain alternatives for access to NRC information, and to obtain FOIA users' views for improving the process.

DATES: The meeting will be held on Thursday, March 23, 1995, from 9:30 a.m. to 12:00 p.m.

ADDRESSES: Conference Room T–6 A1 of the U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ms. Gigi Rammling, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20055–0001. Telephone (301) 415–7090.

SUPPLEMENTARY INFORMATION: The general public is invited to participate, particularly those who contemplate the need to obtain information from the NRC in the future. Invitations have been sent directly to some frequent and more recent NRC FOIA requesters. However, because of limited seating, advance reservations will be required.

Reservations may be made by contacting Ms. Gigi Rammling at 301/415–7090. Those requiring special accommodations should contact Ms. Rammling no later than Monday, March 13, 1995.

Agenda

The agenda for the meeting will include the following:

(1) Overview of FOIA requirements;

(2) NRC's openness policy and current practices;

(3) Overview of NRC processing procedures;

(4) Question/Answer Session.

Dated at Rockville, Maryland this 27th day of February 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services Office of Administration.

[FR Doc. 95–5136 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 issued to Carolina Power & Light Company (the licensee) for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The proposed amendment would increase the degraded grid voltage relay (DGVR) setpoint to comply with revised voltage criteria established by Carolina Power & Light Company's alternating current auxiliary electrical distribution system voltage/load flow/fault current study. The DGVR setpoint will be changed from 415 plus or minus 4 volts to 430 plus or minus 4 volts. The revised criteria would provide a voltage setting such that continuous duty, safety-related motors will not be allowed to operate at terminal voltages below the voltage required for proper operation for periods of time greater than the time delay setting of the DGVR.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase in the DGVR setpoint will prevent motor operation at terminal voltages below which motor overheating and possible life reduction could occur, due to sustained offsite power degradation under the design basis plant operating scenario. The new setting ensures that the emergency buses are transferred to their respective diesel generators at offsite power voltage levels higher than allowed by the existing setting. Analysis has determined that the new DGVR setting will not result in unnecessary offsite power separations, due to motor starting transients, during normal power operation or postulated accident conditions.

The function of the DGVR remains unchanged. The design configuration of the DGVR circuit remains unchanged. The proposed amendment will increase the minimum voltage available at the safety buses and maintain safety related loads within their voltage requirements under degraded conditions.

The change to the DGVR trip setpoint also considered the minimum bus recovery voltage following a transient that would reset the relay to prevent unnecessary transfers to the emergency diesel generators. With the offsite system at the minimum predicted voltage, the DGVRs will reset following a motor starting transient. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The higher DGVR setpoint improves the operation of continuous duty, safety-related motors, in that it ensures motor terminal voltages of sufficient value for proper operation. The higher setting has been evaluated against plant system transient voltage conditions under minimum predicted switchyard voltages and determined to result in no risk of spurious relay actuations. The proposed change is in the of DGVR only. The function of the DGVR circuit remains unchanged. Failure of the relays at their new setpoint would not change the failure analysis. The proposed amendment to the DGVR setpoint ensures appropriate automatic action will be taken in the event voltage sufficient to operate required vital electrical loads within acceptable voltage limits is not available. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment will increase the minimum voltage limit at the emergency buses. This increase in DGVR setpoint ensures that the minimum voltage requirements for vital loads will be available including under degraded offsite voltage conditions or automatic action will occur to restore voltage. Calculations have determined that the proposed setpoint meets current design requirements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 3rd, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings"in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

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requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 23, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5138 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–3070–ML; ASLBP No. 91–641–02–ML (Special Nuclear Material License)]

Louisiana Energy Services, L.P. (Claiborne Enrichment Center); Memorandum and Order (Notice of Prehearing Conference and Evidentiary Hearing)

February 24, 1995.

This proceeding concerns the licensing of a proposed uranium enrichment facility in Claiborne Parish, Louisiana. Notice is hereby given that an evidentiary hearing in this proceeding will commence on Monday, March 13, 1995, at the First Floor Magistrate's Courtroom, United States Federal Courthouse, 300 Fannin Street, Shreveport, Louisiana 71101. The evidentiary hearing will begin immediately after a prehearing conference that will commence at 2:00 p.m. The evidentiary hearing will continue, to the extent necessary, on March 14–17 and March 20–24 at that same location, beginning at 9:00 a.m. each day.

Rockville, Maryland, February 24, 1995.

For the Atomic Safety and Licensing Board.

Thomas S. Moore,

Chairman, Administrative Judge.

[FR Doc. 95–5139 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–508–OL; ASLBP Docket No. 83–486–01–OL]

Washington Public Power Supply System; WPPSS Nuclear Project No. 3; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for Washington Public Power Supply System (WPPSS Nuclear Project No. 3), with the above-identified Docket No., is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer as Chairman of the Licensing Board in place of Administrative Law Judge Morton B. Margulies who has retired.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
Richard F. Foster
Frederick J. Shon

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Chairman is: Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 24th day of February 1995.

James P. Gleason,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 95–5140 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A95–4; Order No. 1045]

Numa, Iowa 52575 (Charles H. Figge, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued February 24, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W. H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A95–4
Name of Affected Post Office: Numa, Iowa 52575
Name(s) of Petitioner(s): Charles H. Figge
Type of Determination: Closing
Date of Filing of Appeal Papers: February 22, 1995

Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 9, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 22, 1995
Filing of Appeal letter
February 24, 1995
Commission Notice and Order of Filing of Appeal
March 20, 1995
Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
March 29, 1995
Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
April 18, 1995
Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
May 3, 1995
Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
May 10, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
June 22, 1995
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–5116 Filed 3–1–95; 8:45 am]

BILLING CODE 7710–FW–P

Notice of Commission Visit

February 23, 1995.

Notice is hereby given that on February 14, 1995, members of the Commission, certain advisory staff personnel and the OCA visited the offices and processing facilities of the Baltimore Sun in Baltimore, Maryland. A report of the visit is on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission, at 202–789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–5117 Filed 3–1–95; 8:45 am]

BILLING CODE 7710–FW–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public Law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collections Under Review by the Office of Management and Budget (OMB)..

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, TN 37402–2801; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Customer Input Card for TVA Recreation Areas.

Type of Affected Public: Individual or households.

Type of Affected Public: Individuals of households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 50.

Estimated Average Burden Hours Per Response: .05.

Need For and Use of Information: This information collection asks visitors to selected TVA public use areas to provide feedback on the condition of the facilities they used and the services they received. The information collected will be used to evaluate current maintenance, facility, and service practice and policies and to identify new opportunities for improvements.

William S. Moore,

Senior Manager, Administrative and Transportation Services.

[FR Doc. 95–5091 Filed 3–1–95; 8:45 am]

BILLING CODE 8120–08–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting locations.

SUMMARY: This is to announce the meeting location for Region 2 and a change of meeting location for Region 1 of the Series 20 Regional Advisory Board meetings scheduled from March 2 through April 7 as published in the **Federal Register**, February 22, 1995, page 9885.

DATES: The meetings are scheduled as follows:

1. March 22, 9 a.m. to 12:30 p.m., Charlotte, North Carolina, Region 2 Advisory Board.

2. March 24, 9 a.m. to 12:30 p.m., Boston, Massachusetts, Region 1 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Charlotte, North Carolina—Charlotte Mecklenburg Government Center, 600 East 4th Street.

2. Boston, Massachusetts—Sheraton Boston, 39 Dalton Street.

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FOR FURTHER INFORMATION CONTACT:
Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

Dated: February 27, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–5159 Filed 3–1–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Hemisphere International Airlines, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 95–2–49); Dockets 49791 and 49792.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Hemisphere International Airlines, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than March 13, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49791 and 49792 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–9721.

Dated: February 24, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–5099 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–019]

National Offshore Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

DATES: The meeting will be held on Friday, March 31, 1995, from 1:00 p.m. to 4:00 p.m. Written material should be submitted not later than March 17, 1995.

ADDRESSES: The meeting will be held in Room 4436/4440, of the NASSIF Building, 400 7th Street, S.W., Washington, D.C. Written material should be submitted to CDR Adan Guerrero, Executive Director, Commandant (G–MVI–4), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: CDR Adan Guerrero, Executive Director, National Offshore Safety Advisory Committee (NOSAC), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001, telephone (202) 267–2307.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 *et seq.* The agenda will include discussion of the following topics:

(1) Proposed Changes to Committee Working Processes;

(2) Clean Air Act of 1990;

(3) ISM Code Implementation for the Offshore Industry;

(4) Legislative Proposal for Large OSVs;

(5) Revision of Subchapter "L" on OSVs and Liftboats;

(6) Revision to 33 CFR Subchapter "N", OCS Regulations;

(7) IMO Items Affecting the Offshore Industry; and

(8) Draft Changes to Marine Investigation Regulations—Personnel Actions (46 CFR, Part 5).

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director not later than March 17, 1995.

Dated: February 17, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–5169 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Winnebago, Outagamie and Waupaca Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement project in Winnebago, Outagamie and Waupaca Counties, in Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; Telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WISDOT), is currently preparing an environmental impact statement for the construction of a four-lane facility for Highway 10. The project begins at Highway "U" west of the Village of Fremont and extends easterly for 38.6 km (24.7 mi) to Highway 45 (USH 10).

The improvement of USH 10, which is a two-lane rural highway, is considered necessary to reduce heavy congestion and the accident potential along the existing route.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) No Build—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) Upgrade the Existing Facility—This alternative would improve the safety and traffic handling capability of the existing route; and (3) Construction on New Alignment—This alternative would involve constructing four lanes on new location. The proposed project would consist of adding two lanes to the existing facility, four lanes on new location or a combination of add lanes and new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 21, 1995.

Richard C. Madrzak,

Statewide Projects Engineer, Madison, Wisconsin.

[FR Doc. 95–5092 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

United States Customs Service

Notice of Issuance of Final Determination Concerning Auto/Marine Adapters

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain auto/marine adapters which are being offered to the U.S. Federal Bureau of Investigation ("FBI") in a procurement designated under FBI Solicitation No. 6178. The final determination found that based upon the facts presented, the country of origin of auto/marine adapters is the U.S. (Scenario I) and the Netherlands (Scenario II).

DATES: The final determination was issued on February 23, 1995. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of March 2, 1995.

ADDRESSES: Copies of the nonconfidential portions of this final determination may be obtained by writing or calling the Legal Reference Staff, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229; (202) 482–6906.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Attorney-Advisor, Office of Regulations and Rulings, (202) 482–7073.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 23, 1995, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain auto/marine adapters which are being offered to the FBI in a procurement designated under FBI Solicitation No. 6178. The U.S. Customs ruling number is HQ 735346. This final determination was issued at the request of one of the offerors under procedures set forth at 19 CFR 177 subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that based upon the facts presented: (1) Taiwanese DC to DC converters are substantially transformed in the U.S. (Scenario I) and the Netherlands (Scenario II) as a result of being further processed and assembled with other components into auto/marine adapters; (2) Taiwanese DC to DC converters and the other components which are of U.S. origin also are substantially transformed in the Netherlands as a result of being further processed and assembled into auto/marine adapters. Accordingly, the country of origin of the auto/marine adapters is the U.S. (Scenario I) and the Netherlands (Scenario II).

This document gives notice pursuant to section 177.29, Customs Regulations, (19 CFR 177.29), of that final determination. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the **Federal Register**).

Dated: February 23, 1995.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 95–5182 Filed 3–1–95; 8:45 am]

BILLING CODE 4820–02–P

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 41
Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 4, 1995.
PLACE: 2033 K St., NW., Washington, DC., Lower Level Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED:
Amendments to Part 4, Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–5316 Filed 2–28–95; 3:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, March 28, 1995.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–5317 Filed 2–28–95; 3:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 28, 1995.
PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–5318 Filed 2–28–95; 3:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 21, 1995.
PLACE: 2033 K Street NW., Washington, DC 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–5319 Filed 2–28–95; 3:32 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 14, 1995.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–5320 Filed 2–28–95; 3:32 pm]
BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 7, 1995 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This Meeting Will Be Closed to the Public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.
DATE AND TIME: Wednesday, March 8, 1995 at 10:00 a.m.
PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)
STATUS: This Oral Hearing Will Be Open to the Public.
MATTER TO BE DISCUSSED: Public Hearing on Communications Disclaimer Requirements.
DATE AND TIME: Thursday, March 9, 1995 at 10:00 a.m.
PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)
STATUS: This Meeting Will Be Open to the Public.
ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes
MCFL Rulemaking: Summary of Comments and Draft Final Rules
Administrative Matters
PERSON TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.
Delores Hardy,
Administrative Assistant.
[FR Doc. 95–5294 Filed 2–28–95; 2:48 pm]
BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 60, No. 41
Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility

Correction

In notice document 95–4268 beginning on page 9870 in the issue of Wednesday, February 22, 1995, make the following corrections:

1. On page 9870, in the third column, in the second paragraph, in the third line from the bottom, the word "plant" should read "plan".

2. On page 9871, in the second column, in the first paragraph, in the quoted paragraph, in the first line, "With the respect" should read "With respect".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35334; File No. SR-NASD-94-64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Numbering and Terminology of Rules and Correction of Cross References

Correction

In notice document 95–3496 appearing on page 8262 in the issue of Monday, February 13, 1995 make the following corrections:

On page 8262, in the first column, in the heading, the File No. is corrected to read as set forth above; and in the second column, the signature line was inadvertently omitted and should appear as follows:

Margaret H. McFarland,
Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35370; File No. SR-NASD-95-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

Correction

In notice document 95–4086 beginning on page 9708, in the issue of Tuesday, February 21, 1995, in the third column, the agency release number should read as printed above.

BILLING CODE 1505–01–D

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Part II

Environmental Protection Agency

40 CFR Parts 148 et al.
Land Disposal Restrictions—Phase III: Decharacterized Wastewaters, Carbamate and Organobromine Wastes, and Spent Potliners; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 266, 268 and 271

[EPA #530–Z–95–002, 6 FRL 5160–7]

RIN 2050–AD38

Land Disposal Restrictions—Phase III: Decharacterized Wastewaters, Carbamate and Organobromine Wastes, and Spent Potliners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, the Agency is proposing treatment standards for certain hazardous wastes—namely, wastes from the production of carbamate pesticides, organobromine flame-retardants, and aluminum—under its Land Disposal Restrictions (LDR) program. The purpose of the LDR program, authorized by the Resource Conservation and Recovery Act (RCRA), is to minimize short and long-term threats to human health and the environment from exposure to hazardous chemical constituents. The treatment standards for these wastes will minimize threats from exposure to hazardous constituents which may potentially leach from landfills to groundwater.

The Agency is also proposing to revise the treatment standards for other wastes which are hazardous because they display the characteristic of ignitability, corrosivity, reactivity, or toxicity. These wastes, known as "characteristic" hazardous wastes, are sometimes treated in lagoons which are regulated under the Clean Water Act, and sometimes injected into deepwells which are regulated under the Safe Drinking Water Act. Currently, these wastes are no longer regulated under RCRA once the characteristic property is removed. Today's revised treatment standards require treatment, not only to remove the characteristic, but also to treat any underlying hazardous constituents which may be present in the wastes, even though they are not what causes the characteristic property (i.e., a corrosive waste could have underlying hazardous constituents that, although not corrosive, are nevertheless toxic to human health). Therefore, these revised treatment standards will minimize threats from exposure to hazardous constituents which may potentially migrate from these lagoons or wells.

Finally, EPA is proposing today to forbid the use of hazardous wastes to fill in holes in the ground. EPA proposes that this practice is illegal disposal of hazardous wastes. EPA is also proposing to add to the regulations an existing policy which states that hazardous wastes which are predominantly metal should not be burned.

DATES: Comments on this proposed rule must be submitted by May 1, 1995.

ADDRESSES: The public must send an original and two copies (and a voluntary copy on computer diskette) of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F–95–PH3P–FFFFF on your comments. The official record for the proposed rulemaking is located in the EPA RCRA Docket, U.S. Environmental Protection Agency, Room 2616, 401 M Street, SW., Washington, DC 20460. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The mailing address is EPA RCRA Docket (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For additional information on submitting computer diskettes please see the heading "Paperless Office Effort" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information on the LDR program, contact the RCRA Hotline at 800–424–9346 (toll-free) or 703–412–9810 locally. For information on today's proposed rule, contact Peggy Vyas in the Office of Solid Waste, phone 703–308–8594. For specific information on the treatment standards for carbamates and/or organobromine wastes, contact Shaun McGarvey at 703–308–8603; for specific information on the Universal Treatment Standards, contact Lisa Jones at 703–308–8451. For information on the capacity analyses, contact Les Otte at 703–308–8440. For information on the regulatory impact analyses, contact Linda Martin at 202–260–2791.

SUPPLEMENTARY INFORMATION:

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure as an attempt to expedite our internal review and response to comments. This expedited procedure is in conjunction with the Agency "Paperless Office Effort" campaign. For further information on the submission of diskettes, contact the Waste Treatment Branch at 703–308–8434.

Glossary of Acronyms

BAT—Best Available Technology
BDAT—Best Demonstrated Available Technology
BIFs—Boilers and Industrial Furnaces
CAA—Clean Air Act
CWA—Clean Water Act
EP—Extraction Procedure
HON—Hazardous Organic NESHAPs
HSWA—Hazardous and Solid Waste Amendments
HWIR—Hazardous Waste Identification Rule
ICR—Ignitable, Corrosive, and Reactive wastes, or, Information Collection Request (in section XI.D.)
ICRT—Ignitable, Corrosive, Reactive, and TC Wastes
LDR—Land Disposal Restrictions
NESHAPs—National Emission Standards for Hazardous Air Pollutants
NPDES—National Pollutant Discharge Elimination System
POTW—Publically-Owned Treatment Works
PSES—Pretreatment Standards for Existing Sources
PSNS—Pretreatment Standards for New Sources
RCRA—Resource Conservation and Recovery Act
RIA—Regulatory Impact Analysis
SDWA—Safe Drinking Water Act
TC—Toxicity Characteristic
TCLP—Toxicity Characteristic Leaching Procedure
TRI—Toxic Release Inventory
UIC—Underground Injection Control
UTS—Universal Treatment Standards

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I. Background

A. Summary of the Statutory Requirements of the 1984 Hazardous and Solid Waste Amendments, and Requirements of the 1993 Proposed Consent Decree With the Environmental Defense Fund

The Hazardous and Solid-Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: Meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA sections 3004 (d), (e), (g)(5).

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments (RCRA sections 3004(d), (e), and (g)), a task EPA completed within the statutory timeframes. EPA was also required to promulgate prohibitions and treatment standards for wastes identified or listed as hazardous after the date of the 1984 amendments within six months after the listing or identification takes effect (RCRA section 3004(g)(4)).

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The Agency did not meet this latter statutory deadline for all of the wastes identified or listed after the 1984 amendments. As a result, a suit was filed by the Environmental Defense Fund (EDF). EPA and EDF signed a consent decree that establishes a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. (*EDF* v. *Reilly*, Cir. No. 89–0598, D.D.C.) This proposed consent decree was modified as a result of the court decision on the Third Third final rule (*Chemical Waste Management* v. *EPA*, 976 F. 2d 2 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993); hereafter referred to as *CWM* v. *EPA*, or the *Third Third opinion*). Today's proposed rule fulfills several provisions of the proposed consent decree. The rule proposes land disposal restrictions for characteristic hazardous wastes managed in CWA and CWA-equivalent treatment systems, and injected into underground injection control (UIC) Class I nonhazardous injection wells regulated under the SDWA. Today's rule also proposes treatment standards for carbamate and organobromine wastes. The rule also proposes treatment standards for newly listed spent aluminum potliners (K088), which according to the proposed consent decree need not be proposed until June 30, 1995.

B. Summary of the D.C. Circuit's Opinion on the Third Third Standards for Ignitable, Corrosive, Reactive, and Toxic Characteristic Wastes and EPA's Implementation of the Opinion to Date

Characteristic hazardous wastes that are treated or diluted such that they no longer exhibit the hazardous characteristic are no longer subject to RCRA Subtitle C management standards, and thus may be discharged into units that are not subject to the stringent RCRA Subtitle C standards, such as UIC wells. In *CWM* v. *EPA*, 976 F 2d 2 (D.C. Cir. 1992), the U.S. Court of Appeals for the D.C. Circuit interpreted RCRA section 3004(m) as requiring treatment of underlying hazardous constituents in decharacterized hazardous wastes so as to minimize threats to human health and the environment. As yet, the Agency has not set minimize threat levels under RCRA and therefore must require treatment.

However, the Agency has a process to set levels under the Hazardous Waste Identification Rule (HWIR). If risk-based minimize threat levels are established under HWIR, these levels would implement section 3004(m) and consequently supersede the technology-based treatment standards presently utilized. See HWTC III, 886 F. 2d at 362–63. Wastes treated to these levels also would not be classified as hazardous wastes and consequently could be disposed in units not subject to subtitle C standards (e.g., landfills not receiving federal permits.) EPA has lodged a proposed consent decree with the U.S. District Court to propose the HWIR levels not later than August 15, 1995, and finalize by December 15, 1996. As was previously mentioned, the Agency entered into a consent decree setting out a schedule for fulfilling the court's mandate for the wastes addressed in today's rule. This consent decree requires the Agency to set treatment standards for these wastes before the HWIR rulemaking.

That being said, the risks addressed by this rule, particularly UIC wells, are very small relative to the risks presented by other environmental conditions or situations. In a time of limited resources, common sense dictates that we deal with higher risk activities first, a principle on which EPA, members of the regulated community, and the public can all agree.

Nevertheless, the Agency is required to set treatment standards for these relatively low risk wastes and disposal practices during the next two years, although there are other actions and projects with which the Agency could provide greater protection of human health and the environment. At the same time, however, EPA has sought to exercise the full extent of its authority under current law to develop innovative options designed to significantly lower the potential cost of these controls while ensuring protectiveness, such as giving credit for up-stream reductions in hazardous constituents, and crafting limited exemptions for wastewaters containing *de minimis* amounts of hazardous constituents. Through the public comment process and further consultation with stakeholders, EPA expects to obtain guidance for any future action we may take.

A detailed discussion of the Agency's interpretation of the opinion in *CWM* v. *EPA* is provided in the next section. For background information on the relevant portions of the Third Third final rule (i.e., the treatment standards promulgated for hazardous wastes exhibiting the characteristics of ignitability, corrosivity, reactivity, or Extraction Procedure (EP) toxicity), see 55 FR 22653–22659 (June 1, 1990).

The Agency's immediate response following issuance of the opinion can be found in the January 19, 1993 Supplemental Information Report to the Notice of Data Availability (58 FR 4972). This report sets out the Agency's options for complying with the court's decision. The options discussed in this report applied to reactive, as well as ignitable and corrosive wastes, since EPA knows of no inherent differences among these wastes with respect to propensity to contain hazardous constituents.

1. Summary of the Third Third Standards

On May 8, 1990, EPA promulgated regulations addressing the last of five congressionally-mandated prohibitions on land disposal of hazardous wastes, which was the third one-third of the schedule of restricted hazardous wastes, referred to as the Third Third. Among other things, the Third Third final rule promulgated treatment standards and prohibition effective dates for hazardous wastes that exhibited one or more of the following characteristics: ignitability, corrosivity, reactivity, or EP toxicity (40 CFR 261.21–261.24). The Third Third rule established treatment standards for the characteristic wastes in one of four forms: (1) a concentration level equal to or greater than, the characteristic level, (2) a concentration level less than the characteristic level; (3) a specified treatment technology (e.g., for ignitable wastes containing high levels of total organic carbon); and (4) a treatment standard of "deactivation" which allowed the use of any technology, including dilution, to remove the characteristic.

The Agency also evaluated the applicability of certain provisions of the land disposal restrictions' framework with respect to characteristic wastes, including wastes regulated under the National Pollutant Discharge Elimination System (NPDES) or pretreatment programs under sections 402 and 307(b) of the CWA and the SDWA UIC programs to try to ensure successful integration of these programs with the regulations being promulgated under RCRA. See generally 55 FR 22653–59 (June 1, 1990). Specifically, the Agency considered the appropriateness of the dilution prohibition for each of the characteristic waste streams, and the applicability of treatment standards expressed as specified methods.

The Agency found, generally, that mixing waste streams to eliminate certain characteristics was appropriate and permissible for corrosive wastewaters, or in some cases, reactive or ignitable wastewaters. Furthermore, EPA stated that the dilution prohibition did not normally apply to characteristic wastewaters that are managed in treatment trains including surface impoundments whose ultimate discharge is regulated under the pretreatment and NPDES programs under sections 307(b) and 402 of the CWA, or in Class I underground injection well systems regulated under the SDWA. The Agency stated that the treatment requirements and associated dilution rules under the CWA are generally consistent with the dilution rules under RCRA, and that the Agency should rely on the existing CWA provisions. The Agency also singled out certain particularly toxic wastewaters to which the dilution prohibition still applies notwithstanding management in CWA systems. 40 CFR 268.3(b). Similarly, EPA stated that a regulatory program had been established under the SDWA to prevent underground injection which endangers drinking water sources. Class I deep wells inject below the lowermost geologic formation containing an underground drinking water source and are subject to federal location, construction, and operation requirements. The Agency stated that application of the dilution rules to these wastes would not provide further protection to human health and the environment, and that disposal of these wastes by underground injection at the characteristic levels was as sound a practice as treating them.

2. The Court's Decision

On September 25, 1992, the United States Court of Appeals for the District of Columbia Circuit ruled on the various petitions for review. The principal holdings of the case with respect to characteristic wastes are that: (1) EPA may require treatment under RCRA section 3004(m) to more stringent levels than those at which wastes are identified as hazardous, 976 F. 2d at 12–14; (2) section 3004(m) requires that treatment standards address both short-term and long-term potential harms posed by hazardous wastes, and consequently must result in destruction and removal of hazardous constituents as well as removal of the characteristic property, *id.* at 16, 17, 23. As a consequence, dilution is permissible as an exclusive method of treatment only for those characteristic wastes that do not contain hazardous constituents "in sufficient concentrations to pose a threat to human health or the environment" (i.e., the minimize threat level in section 3004(m)), *id.* at 16; and (3) situations where characteristic hazardous wastes are diluted, lose their characteristic(s) and are then managed in centralized wastewater management land disposal units (i.e., subtitle D surface impoundments or Class I nonhazardous injection wells) are legal only if it can be demonstrated that hazardous constituents are reduced or destroyed to the same extent they would be pursuant to otherwise applicable RCRA treatment standards, *id.* at 7.

As a consequence of these holdings, the court held that the deactivation standard for ignitable and corrosive wastes did not fully comply with RCRA section 3004(m). This was because that standard could be achieved by dilution, and dilution fails to destroy or remove the hazardous constituents that can be present in the wastes. *Id.* (A more detailed analysis of the D.C. Circuit's *Third Third opinion* is found in section II of this notice.)

3. Options Prepared for the Notice of Data Availability

On January 19, 1993, EPA published a Notice of Data Availability to solicit as many comments as possible on all issues in the court opinion (58 FR 4972). The Agency prepared a Supplemental Information Report that was distributed to the public that set out the Agency's options for complying with the court's decision. The options discussed in this report applied to reactive, as well as ignitable and corrosive wastes, since EPA knows of no inherent differences among these wastes with respect to propensity to contain hazardous constituents.

The report included options for establishing treatment standards for the underlying hazardous constituents in ignitable, corrosive and reactive (ICR) wastes that would have to be met prior to land disposal (including disposal in UIC wells). (It should be noted that the Agency also believes that underlying hazardous constituents can be present in wastes displaying the toxicity characteristic.) Two approaches were set out, along with the Agency's views on possible advantages and disadvantages of each.

Under approach one, the Agency discussed the possibility of adopting concentration limits for underlying hazardous constituents. Under approach two, the Agency discussed specifying required treatment technologies. The Agency discussed how these possible approaches might apply to ICR wastes that are not managed in CWA centralized wastewater treatment systems. Furthermore, the applicability of LDR treatment standards to CWA facilities, and possible implementation scenarios under the CWA, were also discussed.

The Agency also discussed options for how to determine the equivalency of CWA treatment systems with treatment under RCRA. The "equivalency" discussion included possible options for addressing air emissions, leaks, and sludges from CWA treatment surface impoundments. Also mentioned were other Agency efforts such as the Hazardous Organic NESHAPs (HON) (59 FR 19402, April 22, 1994) developed by the Office of Air. These options will be developed in a later LDR rulemaking, but are discussed here and elsewhere in this preamble in order to inform and gather comments from all potentially affected persons.

Approximately 60 public comments were received in response to the Notice of Data Availability. Those that pertain to establishing treatment standards for characteristic waste managed in CWA, CWA-equivalent, and Class I nonhazardous UIC wells have been considered as this proposed rule was developed.

4. Contents of the Interim Final Rule

EPA issued an interim final rule on May 24, 1993 (58 FR 29860) to address those treatment standards that were vacated (as opposed to remanded) by the court. Today's rule proposes treatment standards for some of the portions of the rule that were remanded. The distinction between vacated and remanded rules is that vacated rules are no longer in effect after the court's mandate issues, whereas remanded rules remain in force until the Agency acts to replace them.

The Agency's opinion at that time was that the rules dealing with centralized wastewater management involving land disposal (§§ 268.1(c)(3) and 268.3(h)) were remanded, not vacated. (See 976 F 2d at 7, 19–26 where these rules are discussed and not expressly vacated.) This means that the only wastes to which the interim final rule applied were those ignitable and corrosive wastes for which the treatment standard was deactivation (since the deactivation standard for these wastes was vacated) and which were not managed in the types of centralized wastewater management systems covered by the remanded rules cited above.

The Agency thus promulgated revised treatment standards for certain ignitable and corrosive wastes that are managed in systems other than those managed: (1) In centralized wastewater treatment systems subject to the CWA or in Class I underground injection wells subject to the SDWA UIC program; or, (2) by a zero discharger with a wastewater treatment system equivalent to that utilized by CWA dischargers prior to land disposal. The treatment standards retained the requirement of deactivation to remove the hazardous characteristic (see DEACT in Table 1, 40 CFR 268.42); however, the rule also set numerical treatment standards for the underlying hazardous

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constituents that could reasonably be expected to be present in the wastes. EPA also promulgated alternative treatment standards of incineration, fuel substitution, and recovery of organics for ignitable wastes. In addition, EPA established new precautionary measures to prevent emissions of volatile organic constituents or violent reactions during the process of diluting ignitable and reactive wastes.

5. Regulation of Toxicity Characteristic (TC) Wastes in the LDR Phase II Rule

On March 29, 1990, EPA promulgated a rule that identified organic constituents (in addition to existing EP metals and pesticide constituents) and levels at which a waste is considered hazardous based on the characteristic of toxicity (55 FR 11798). Because these wastes were identified as hazardous after the enactment date of HSWA in 1984, they were "newly identified wastes" for purposes of the LDR program. Included are wastes identified with the codes D012 through D043 based on the Toxicity Characteristic Leaching Procedure (TCLP), i.e., TC wastes. In the LDR Phase II final rule (59 FR 47982, September 19, 1994), EPA established treatment standards for each of these constituents if they are managed in systems other than those regulated under the CWA, those engaging in CWA-equivalent treatment prior to land disposal, and those injected into Class I deep injection wells regulated under the SDWA. In addition, because wastes exhibiting the TC can contain treatable levels of other hazardous constituents, EPA established treatment standards for the underlying hazardous constituents reasonably expected to be present in the waste. These rules are consistent with the Third Third opinion and adopt the same approach as the May 24, 1993 interim final rule.

Furthermore, as part of a regulatory response to implement the court's ruling, EPA required in the LDR Phase II final rule that hazardous constituents in two types of characteristic wastes—high total organic carbon (TOC) ignitable liquids (D001) and halogenated pesticide wastes that exhibit the toxicity characteristic (D012–D017)—be fully treated before those wastes are disposed into any Class I nonhazardous injection well that does not have a no-migration variance. See 59 FR at 48013. Therefore, these wastes can no longer be legally * diluted to remove the characteristic and then be injected into Class I nonhazardous injection wells.

6. Requirements of 1993 Settlement Agreement With CWM, et al.

This proposed rule continues to fulfill the requirements of the settlement agreement with the petitioners in CWM v. EPA. Today's rule proposes concentration-based treatment standards for the underlying hazardous constituents reasonably expected to be present in ignitable, corrosive, reactive and TC wastes managed in CWA and CWA-equivalent treatment systems, and injected into UIC Class I nonhazardous injection wells regulated under the SDWA. The settlement agreement calls for developing standards for ignitable and corrosive wastes only; however, the Agency believes that underlying hazardous constituents may also be present in reactive and toxic wastes, and is therefore proposing regulations for these wastestreams as well.

Today's rule also complies with the settlement agreement by describing and discussing the following option for implementing the opinion: the identification of underlying hazardous constituents that are not amenable to treatment in certain CWA centralized treatment systems, and the subsequent prohibition on the introduction of such nonamenable wastes into such systems.

II. EPA's Interpretation of the Third Third Opinion

EPA's action in this rulemaking is taken to implement key portions of the court's mandate in *CWM v. EPA*, the opinion vacating and remanding (among other things) EPA's rules allowing treatment standards for hazardous constituents in characteristic hazardous wastes to be achieved solely by diluting these constituents. EPA's initial view of the opinion is that it interprets the statute to require that hazardous constituents present in hazardous wastes at concentrations exceeding a minimize threat level to be treated so that they are destroyed, removed, or immobilized before the waste is land disposed. Some commenters to the May 24, 1993 interim final rule and the LDR Phase II proposed rule, however, have argued that dilution nevertheless can be utilized as the sole means of treating characteristic hazardous wastes, if dilution reduces hazardous constituent concentration levels to levels reflecting either performance of Best Demonstrated Available Technology (BDAT) or minimize threat levels. This argument is based largely on language in the court's opinion that treatment of hazardous constituents is required if, after dilution, hazardous constituents are present in concentrations sufficient to pose a threat to human health and the environment. See, e.g., 976 F. 2d at 7, 17, 18, 19-20, 23. Some commenters have added the further argument that section 3004(m) requires that treatment "substantially reduce the toxicity of the waste", which is accomplished when dilution lowers hazardous constituents to BDAT levels.

If these arguments were accepted, it would mean that characteristic wastes could be disposed after dilution, without further treatment of hazardous constituents, provided sufficient dilution had occurred. Although this argument has been made chiefly by representatives of facilities engaged in underground injection, the argument is not limited to the injection context, or even to the context of characteristic wastes. Thus, if EPA accepted this argument, it would mean that any hazardous waste could be land disposed into any type of land disposal unit provided the waste was sufficiently diluted before land disposal, notwithstanding that the same volume of hazardous constituents as in the initial waste would be land disposed.

EPA does not accept this interpretation of the court's opinion or of the statute. In the Agency's view, the statute and opinion are best interpreted by requiring hazardous constituents in hazardous wastes to be treated so that hazardous constituents are destroyed, removed, or immobilized before land disposal. The Agency's basis for this conclusion is set out below.

A. Statutory Language

Section 3004(m)(1) requires EPA to establish, as a precondition to land disposal of hazardous waste, treatment standards "which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." Although the first prong of the test—"substantially diminish the toxicity of the waste"—conceivably is satisfied by dilution,[1] the treatment must not only diminish the waste's toxicity but also do so in a manner that minimizes short-term and long-term harms to human health and the environment.[2]

[1] If, for example, a wastewater starts out with cadmium concentrations exceeding 100 mg/l and is diluted so that cadmium is present at concentrations below the MCL of 0.1 mg/l, the toxicity of the waste has been diminished.

[2] "Treatment is required not only for purposes of protecting against the short-term or acute risks associated with the land disposal of hazardous wastes, but more importantly focuses on the long-term hazards associated with migration of the wastes and subsequent contamination of ground or surface water." 130 Cong. Rec. S9178 (July 25, 1984) (Statement of Sen. Chaffee introducing the amendment that became section 3004(m))

[2] See also section 1002(b)(7) which states that "certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated * * *"

Furthermore, although EPA has maintained that "minimization" of threats does not necessarily require elimination of all possible hazards (see, e.g., 55 FR 6641 and n.1 (February 26, 1990)), the phrase certainly requires something more substantial than merely diluting hazardous constituents.

Allowing the waste's toxicity to be diminished solely by dilution also is at odds with RCRA's enumerated goals and policies. Congress prohibited land disposal of hazardous waste because of "long-term uncertainties associated with land disposal",[3] and persistence, toxicity, mobility, and propensity to bioaccumulate" of hazardous constituents in the waste. Sections 3004 (d)(1), (e)(1), (g)(5); *Hazardous Waste Treatment Council v. EPA*, 886 F. 2d 1355, 1362–63 (D.C. Cir. 1989), cert. denied 111 S. Ct. 139 (1990) (upholding technology-based treatment standards due to the uncertainties inherent in determining when land disposal is protective). Land disposal of untreated hazardous waste is only allowed in "protective" land disposal units, defined as meaning units from which no hazardous constituents will migrate for as long as the waste remains hazardous—to be demonstrated "to a reasonable degree of certainty". Sections 3004 (d)(1), (e)(1), (g)(5). Allowing dilution of hazardous constituents fails to take account of these long-term uncertainties, propensity to bioaccumulate, and the like. As a result, it arguably fails to minimize long-term threats posed by the wastes.

Another provision indicating that Congress did not intend for dilution to be a means of treating toxic hazardous wastes is section 3004(h). Congress, in sections 3004(h) (2) and (3), authorized EPA to postpone LDR prohibition effective dates for up to two years (renewable for up to two additional years for individual facilities) if there is inadequate available treatment capacity for a particular waste. This provision would not have been necessary if dilution could be used as a means of treatment, since it would never take two years (or longer) for a facility to develop the means (i.e. adding dirt or water) of diluting wastes to meet a treatment standard.

B. Legislative History

The legislative history states that dilution is not to be allowed as a means of treating hazardous constituents. See S. Rep. No. 284, 98th Cong. 2d sess. 17, which states that "(t)he dilution of wastes by the addition of other hazardous wastes or any other materials during waste handling, transportation, treatment, or storage is not an acceptable method of treatment to reduce the concentration of hazardous constituents. Only dilution which occurs as a normal part of the process that results in the waste can be taken into account in establishing concentration levels."[4] The House Report is similarly explicit.[5] The Conference Report similarly states that "the Conferees intend that through the vigorous implementation of the objectives of this Act, land disposal will be eliminated for many wastes and minimized for all others, and that advanced treatment, recycling, incineration and other hazardous waste control technologies should replace land disposal." H. Rep. No. 1133, 98th Cong. 2d sess. 80.

Other legislative history indicates that Congress intended for EPA to adopt technology-based treatment standards: "The requisite levels o(r) methods of treatment established by the Agency should be the best that has (sic) been demonstrated to be achievable. This does not require a BAT-type process * * *. The intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment." 130 Cong. Rec. S 9178 (daily ed. July 25, 1984) (statement of Sen. Chaffee introducing the amendment that became section 3004(m)); see also 130 Cong. Rec. 20803 (1984 (statement of Sen. Moynihan on section 3004(m)): "The requisite levels o(r) methods of treatment established by the Agency should be the best that has been demonstrated to be achievable." The legislative history also indicates that Congress intended treatment to result in destruction of total cyanide and organic hazardous constituents. 130 Cong. Rec. S 9178 (statement of Sen. Chaffee). Dilution of hazardous constituents, of course, is not BDAT, and does not destroy or remove hazardous constituents.

The legislative history consequently strongly supports reading section 3004(m) as not allowing dilution of hazardous constituents.

C. Judicial Opinions

The D.C. Circuit's position in the Third Third opinion is potentially contradictory on this point. At points in the opinion, as noted above, this court states that dilution could satisfy section 3004(m) requirements, perhaps even for hazardous constituents. Elsewhere, however, the court unequivocally stated that dilution does not satisfy section 3004(m) because hazardous constituents are not destroyed, removed, or immobilized:

> We wish to make explicit the impact of our holding * * *. First, where dilution to remove the characteristic meets the definition of treatment under section 3004(m)(1), nothing more is required. Second, where dilution removes the characteristic but does not "treat" the waste by reducing the toxicity of hazardous constituents, then the decharacterized waste may be placed in a surface impoundment if and only if the resulting CWA treatment fully complies with RCRA section 3004(m)(l).
>
> In other words, the material that comes out of CWA treatment facilities that employ surface impoundments must remove the hazardous constituents to the same extent that any other treatment facility that complies with RCRA does. 976 F. 2d at 23. Dilution thus cannot be used as the sole means of treating hazardous constituents because it does not remove hazardous constituents from the waste. The court made this explicit in a footnote quantifying the above-quoted passage:
>
> To illustrate RCRA's focus on treatment of the hazardous constituents in a waste, consider a waste stream hazardous by characteristic for cadmium. Both the

[3] The final sentence undoubtedly refers to situations where dilution occurs as part of the manufacturing process that generates the waste (see House Report quoted in the next footnote), not to dilution that occurs once the waste is generated.

This legislative history was to a bill containing the predecessor provision to section 3004(m). The critical provision would have mandated treatment only of hazardous wastes containing significant concentrations of hazardous constituents, and required treatment to levels that would be "protective", defined as satisfying the no-migration test. EPA does not view these differences as being critically different from the enacted section 3004(m), and so views the Senate legislative history as being relevant to ascertaining Congressional intent regarding dilution of hazardous constituents as a means of achieving treatment standards.

[5] "The Committee intends that dilution to a concentration less than the specified thresholds by the addition of other hazardous waste or any other material during waste handling, transportation, treatment, or storage, other than dilution which occurs as a normal part of a manufacturing process, will not be allowed. Such hazardous waste would still be prohibited from land disposal." H. Rep. No. 198, 98th Cong. 1st sess. 34; see also *id.* at 38 ("(t)he Administrator may also impose limitations on the use of waste-dilution to avoid disposal restrictions. The late (sic) is particularly important where regulations are based on concentrations of hazardous constituents.")

The House Bill did not expressly require pretreatment before disposal, the scheme of the enacted law, but nevertheless illuminates Congressional intent not to allow dilution as a means of treating hazardous constituents.

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characteristic and treatment levels for the hazardous waste are 1.0 mg/l. Assume that a stream of 3.0 mg/l daily deposits 1000 liters into a treatment facility. A RCRA treatment facility would remove at least 2000 mg of cadmium from the waste stream. A CWA must do the same—although to do so it will have to process at least three times as much water (because dilution of 1000 liters of 3.0 mg/l to just below the characteristic level will yield just over 3000 liters). Allowing dilution alone would decharacterize the waste, but it would not reduce the total amount of cadmium entering the environment. 976 F 2d at 23 n. 8.

Applying this same standard to injection of decharacterized wastewaters into Class I nonhazardous injection wells, the court stated:

(W)e hold that dilution followed by injection into a deep well is permissible only where dilution itself fully meets section 3004(m)(l) standards or where the waste will subsequently meet section 3004(m)(l) standards. Because deep well injection is permanent land disposal, our holding in effect permits diluted decharacterized wastes to be deep well injected only when dilution meets the section 3004(m)(l) standard or where the deep well secures a no-migration variance. 976 F. 2d at 25. This means that "any hazardous waste (must) be treated in such a way that hazardous constituents are removed from the waste before it enters the environment." 976 F. 2d at 24 (emphasis added). Since injection wells are disposal units and do not engage in treatment, they are incapable of satisfying this standard. Id. at 25.

EPA believes that the thrust of the opinion is to require treatment of hazardous constituents before land disposal. The court's explicit and quantified insistence that treatment standards are to reduce mass loadings of hazardous constituents makes this clear. If the court intended to allow dilution as the sole means of treating hazardous constituents, it would at least have discussed how this squared with statutory language, goals and objectives, and legislative history. Thus, the Agency does not accept the commenters' reading of the opinion. Today's rule consequently proposes that prohibited, decharacterized wastes be treated so that underlying hazardous constituents are removed, destroyed, or immobilized before final disposal into the environment.

III. Integration of BDAT With Other Agency Actions

As EPA makes decisions in this LDR Phase III rule on so-called end-of-pipe equivalence for direct and indirect dischargers treating prohibited, decharacterized wastes in surface impoundments, there are related Agency rulemaking activities warranting mention: The LDR Phase IV rule, which will consider leaks, sludges, and air emissions from surface impoundments; the Hazardous Waste Identification Rule (HWIR), which provides a risk based assessment of when wastes are hazardous, and may result in capping the extent of treatment of some hazardous constituents; the Pulp and Paper and Pharmaceutical Industries effluent limitations guidelines which affect industries using impoundment-based treatment systems to manage decharacterized wastes; and rules for control of hazardous air pollutants issued under the Clean Air Act (CAA), which regulate similar air emissions. These interrelationships are explored below, so that the public can be made aware of how future regulations may impact decisions to be made in response to this rule. Comments and data are requested on the LDR Phase IV options discussed in this part.

A. Phase IV LDRs—Cross-Media Transfer and Equivalency Issues

1. Cross-Media Implications

The LDR Phase IV rule will consider equivalent treatment for centralized wastewater treatment systems with impoundments managing wastewaters that are decharacterized. The principle potentially at issue is the transfer of pollutants from one media to another without being destroyed, removed, or immobilized. Treatment of the wastewaters transfers the pollutants , to groundwater from leaks, or to the air. The transfer of pollutants from one media to another is an Agency-wide concern. The environment is not well served by piecemeal regulation which simply transfers pollutants, nor is industry well-served by piecemeal regulation. The Agency's preference is to look at these situations holistically so that pollutants are not simply transferred, and so that the Agency provides industry with a coordinated understanding of the "environmental requirements" for all media. How the Agency pursues this preference has not been decided, but the following discussion outlines some of the issues being examined.

2. Background of Equivalency Issues EPA is Considering for LDR Phase IV

EPA is considering, in addition to evaluating equivalence at the point of ultimate discharge to surface waters or to a Publicly-Owned Treatment Works (POTWs) ("end-of-pipe equivalence"), conditions for determining equivalence of treatment for decharacterized wastes managed in nonhazardous waste (subtitle D) surface impoundments which would involve consideration of whether treatment is not equivalent due to cross-media transfers of untreated hazardous constituents. In evaluating the above approaches, EPA is looking both at RCRA and other Agency authorities and programs that would ensure protection and provide control equivalent to RCRA.

The Agency has not made any determination as to the best manner to implement the standard enunciated in the opinion. It is certain that the opinion requires at least a demonstration of end-of-pipe equivalence, which will be accomplished when the treatment standards in today's proposed rule are finalized. Whether it requires more is unclear. The opinion appears to focus on treatment of wastewaters. For example, the court stated "treatment of solid wastes in a CWA surface impoundment must meet RCRA requirements prior to ultimate discharge into waters of the United States or publicly owned treatment works * * *." 976 F. 2d at 20, emphasis added). See also id. at 7, 20 (focus on treatment of waste "streams", i.e. the liquids in the impoundment); 23 n. 8 (reduction of mass loadings of hazardous constituents of waste stream entering and exiting an impoundment); 24 (court indicates that decharacterized wastes are not held permanently in impoundments, a statement that is uniformly correct for wastewaters but not wastewater treatment sludges); 24 (court focuses on treatment of "liquids" in impoundments). At one point, the court also noted, in distinguishing between subtitle C and subtitle D surface impoundments, that sludges in subtitle C impoundments require further management in accord with subtitle C, id. at 24, n. 10, perhaps suggesting by negative implication that sludges in subtitle D impoundments do not.

Equally important, the court held that "RCRA requires some accommodation with (the) CWA", id. at 20, see also id. at 23, indicating that to some degree RCRA need not mandate a wholesale disruption of existing wastewater treatment impoundments, provided the CWA treatment system really achieves treatment equivalent to RCRA section 3004(m) treatment: "In other words, what leaves a CWA treatment facility can be no more toxic than if the waste streams were individually treated pursuant to the RCRA treatment standards." Id.

On the other hand, the opinion can be read more broadly to encompass requirements respecting surface impoundment integrity. The court's fundamental concern with dilution, echoing the requirements of section

3004(m), is that dilution does not reduce or destroy hazardous constituents, and thus does not prevent those constituents from entering the environment. Id. at 22, 24, 29–30; see also id. at 23 n. 8 stressing the court's holding that total mass loadings of pollutants "entering the environment" must be reduced in order to comply with section 3004(m).

Moreover, the court distinguished a number of times between temporary placement of diluted wastes in impoundments for treatment and permanent disposal in land disposal units, stating that only the temporary placement represents a satisfactory accommodation between RCRA and the CWA. Id. at 24, 25. To the extent hazardous constituents leak or volatilize from impoundments, it can be argued that permanent disposal of untreated hazardous constituents is occurring.

The schedule for issuing the LDR Phase III and IV rules are both subject to settlement agreement, and, according to the schedule established by these settlement agreements, will be proposed only six months apart. Therefore, industry will be able to evaluate the LDR Phase III proposed end-of-pipe equivalency requirements while keeping in mind the upcoming LDR Phase IV rule which must consider sludges, leaks, and air emissions from treatment surface impoundments. The Agency has not yet decided how to pursue the potential equivalency issues related to sludges, leaks, or air emissions; however, the Agency is taking this opportunity to discuss the issues and potential options in these three areas. Furthermore, the Agency solicits data characterizing sludges, leaks, and air emissions from surface impoundments.

a. Sludges. Characteristic wastewaters managed in CWA and CWA-equivalent impoundment-based systems invariably are treated to generate a sludge. Under EPA's existing interpretations of the rules, such sludges are usually considered to be prohibited wastes only if they are themselves hazardous. 55 FR at 22661. This is because generation of a new treatability group is considered to be a new point of generation for purposes of determining where LDR prohibitions attach. The Agency has not determined whether the court decision could or should be read to invalidate this interpretation (although the Agency adopted a "waste code carry through" approach for the characteristic wastes addressed in the emergency interim final rule). This will be an issue that must be resolved in the LDR Phase IV rule.

In addressing this issue, it should be noted that the LDR treatment standards for nonwastewaters and wastewaters are by now well established. There are 521 hazardous waste codes subject to LDR technology-based treatment standards. In instances where analytical methods are available, these hazardous wastes are subject to UTS that were promulgated in the LDR Phase II final rule (UTS are, however, based on treatment standards that have been in effect, in some cases, since 1986 and thus are well established). While no decision has been made on whether to regulate these sludges, if the Agency decides to control sludges from CWA and CWA-equivalent surface impoundments, the treatment standards (UTS levels) are already in place.

EPA believes that the likely impact of such an approach would be mixed—that is, some facilities will continue to use surface impoundments and remove and treat the sludge, if necessary, while others will move away from the use of surface impoundments. For example, aggressive biological treatment, such as that typically used by the petroleum refining industry, may achieve UTS levels as generated. Sludges from primary treatment in surface impoundments are more likely to exceed UTS levels. If the Agency decides to control sludges, such an approach may impose significant costs on the facility. Subjecting sludges to UTS may encourage pollution prevention and recycling alternatives to be used prior to placement of wastes in the impoundment, so that sludge treatment standards are not triggered. Comments are solicited on these issues.

b. Leaking Surface Impoundments. While hazardous wastes entering surface impoundments constitute temporary land disposal (because they are being placed there for treatment), leaks from such impoundments constitute permanent land disposal. Such permanent land disposal was clearly a concern of the court. 976 F. 2d at 25–6.

The Agency is considering the following additional controls if the decision is made to address leaking surface impoundments:

EPA already has UTS limits that could be applied to the influent into the surface impoundment when it is determined that it leaks underlying hazardous constituents at levels above UTS. Applying UTS to the influent would assure that only wastes that have been treated in a manner equivalent to RCRA treatment are land disposed.

EPA is also considering applying some of the subtitle D municipal solid waste landfill criteria to address leaking surface impoundments (Municipal Landfill Rule (56 FR 50978, October 9, 1991). The impacts of such an approach on aggressive biological surface impoundments may not be significant. On the other hand, facilities with leaking impoundments engaged in primary treatment could have to perform some type of action such as retrofitting, remediating groundwater, or switching to tank treatment.

A third option being considered is using triggering controls based on the potential risk of any leak. The Agency could require as a performance standard that owners demonstrate that the expected leaks would pose a low level of risk to nearby receptors. Facilities would have the flexibility to change the influent, install engineering controls, or limit potential exposure in order to comply with this performance standard.

c. Air Emissions. Achieving wastewater or nonwastewater standards by merely transferring hazardous constituents to the air may be inconsistent with the court opinion in that excessive, uncontrolled volatilization could be viewed as unequivalent treatment, or unsafe treatment conditions. For example, treatment of volatile organic compounds in surface impoundments may achieve compliance with a wastewater treatment standard by simply transferring pollutants to the air.

If EPA should determine that the court's opinion should be read to require control of excessive volatilization from impoundments to demonstrate equivalent treatment, one option is deferral to CAA NESHAP standards, such as the Benzene Waste Operations NESHAPs and the HON. The Benzene NESHAPs were promulgated on January 17, 1993, and the HON was promulgated on April 22, 1994 (59 FR 19402). The Agency will explore further whether the CAA standards for hazardous air pollutants provide equivalent protection or control of the hazardous constituents of concern.

Another option is extend the applicability of existing air emission controls in RCRA—the recently promulgated RCRA Air Emission Standards (59 FR 62585 (Dec. 6, 1994)). The RCRA Air Emission Standards are self-implementing and are applicable to 90-day units at hazardous waste generator sites. These standards do not apply to surface impoundments which receive waste that was hazardous at the point of generation but was "decharacterized" (i.e., rendered nonhazardous) before being placed in the surface impoundment.

The approach EPA is considering in the second option is a "target mass removal", which would ensure that hazardous constituents are effectively

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removed or destroyed and that standards are not achieved through dilution or air emissions. A key to this approach is that all waste streams commingled with the hazardous waste streams are accounted for, and calculations are made to ensure that dilution is not credited toward achieving the standard. The target mass removal approach is to identify a hazardous waste at its point of generation and determine the mass of hazardous constituents that must be removed to meet UTS. The mass of constituents removed can be calculated by comparing a post-treatment waste determination to the point of generation waste determination. An alternative is to calculate the percent reduction of hazardous constituents that is required to meet the standard, and ensure that associated treatment devices operate at that level of efficiency. Application of this approach could also address the issue of nonamenable waste discussed in Section VI of this preamble. Comments are solicited on the application of this approach.

The likely impacts of establishing air emission requirements are that facilities will pursue pollution prevention, recycling, steam stripping or other treatment to remove volatile organics prior to treatment in surface impoundments. Under this approach, hazardous constituents would either need to be removed prior to entering the surface impoundment, or the impoundment would have to be retrofitted in a way that prevents escape of air emissions.

Comments and data are solicited on options for addressing these three areas of potential cross media transfer from wastewater treatment surface impoundments. Comments and data are also solicited on potential costs and human health benefits.

B. The Hazardous Waste Identification Rule (HWIR)

A recurring concern expressed by many commenters is the relationship between technology-based and risk-based RCRA limits. EPA has established technology-based limits for all LDR rules and will continue to do so in the LDR Phase III rule. The Agency is considering the establishment of risk-based levels, however, under the HWIR that is scheduled to be proposed in the fall of 1995.

The integration of the two approaches could impact how facilities comply with all LDR treatment standards. For example, if the HWIR risk-based limits are determined to minimize threats to human health and the environment, when they are higher than the LDR standards (less stringent), they will satisfy RCRA section 3004(m) and the waste would not have to be treated to meet the LDR technology-based limits. HWTC III, 886 F. 2d at 362. Integration of the LDR and HWIR will be further addressed in the HWIR rulemaking process.

C. Water Rules—the Pulp and Paper and Pharmaceutical Industries Rules

The LDR Phase III end-of-pipe RCRA wastewater treatment standards (i.e., the standards which will satisfy the end-of-pipe equivalence standard enunciated by the court) being proposed today will be applied at the same location that CWA effluent limitation guidelines and pretreatment standards are currently applied. EPA is currently amending effluent limitation guidelines and standards for two industries that use surface impoundments extensively: the pulp and paper and the pharmaceutical industries. Both of these rules are considering in-process limitations of the highly-volatile constituents.

The combined CWA and CAA Pulp and Paper rule was proposed on December 17, 1993 (58 FR 66077). The Pharmaceutical Industry effluent guidelines are scheduled to be proposed by February 1995. One key issue, with respect to both of these industry categories, is the timing of these amended effluent guidelines and standards in relation to promulgation of LDR Phase III standards. EPA believes that these amended guidelines and standards should establish end-of-pipe equivalence. However, these amended rules may not be promulgated or effective until after this LDR Phase III rule takes effect. For reasons discussed later in today's preamble, however, EPA is proposing to wait until the amended rules for these industrial categories take effect before establishing end-of-pipe equivalence standards for these industries.

IV. End-of-Pipe Treatment Standards

A. EPA's General Approach to Setting Treatment Standards and Its Relation to the End-of-Pipe Standards Proposed Today

In the recently-promulgated LDR Phase II rule, EPA significantly simplified the existing treatment standards by adopting Universal Treatment Standards (UTS). 59 FR 47982 (September 19, 1994). These standards apply the same concentration limit for the same constituent in all prohibited wastes. The Agency believes these standards are typically achievable for all prohibited wastes, and greatly improve the implementation of the LDR program by reducing the numbers of different treatment standards from thousands to essentially one per constituent.

That being said, however, the Agency is nevertheless proposing today that UTS not apply to hazardous constituents in decharacterized wastewaters discharged by CWA facilities subject to the rule so long as the facility is subject to an appropriate CWA technology-based or water quality-based standard or limitation for that hazardous constituent. As explained more fully in section B below, the Agency believes that such CWA limitations and standards satisfy RCRA section 3004(m) requirements and therefore that the best means of integrating RCRA and CWA requirements is to have the CWA limitation or standard be the RCRA treatment standard as well. This choice by the Agency, should it be finalized, should not be viewed as any retreat from general applicability of UTS. Indeed, as proposed elsewhere in this preamble, EPA is proposing to apply UTS to various newly identified and listed wastes, as well as to prohibited decharacterized wastes injected into Class I nonhazardous injection wells.

B. End-of-Pipe Treatment Standards for Clean Water Act and Equivalent Wastewater Treatment Systems

As discussed before, EPA must impose treatment standards on wastes that heretofore have not been subject to RCRA regulation. Both RCRA and CWA programs require treatment notification, monitoring, and enforcement; however, they do so using different procedures. This rule proposes an approach, discussed in the following subsections, that integrates requirements under both statutes to the maximum extent possible.

The nonhazardous waste surface impoundments in CWA and CWA-equivalent systems currently have no RCRA permit. For CWA systems, the discharge into navigable waters are subject to a NPDES permit, while discharges to POTWs are subject to pretreatment standards. EPA is today proposing to require that the treatment standard be met at the same point that the NPDES and pretreatment limits are required to be met: Generally, at end-of-pipe. CWA-equivalent systems may be subject to state or local permits, and would be subject to the treatment standards before final discharge to the land.

1. CWA Standards and Limitations as RCRA Section 3004(m) Treatment Standards

RCRA section 1006(b) requires EPA (among other things) to integrate provisions of RCRA and the CWA when implemeriting RCRA and to avoid duplication to the maximum extent possible with CWA requirements. In keeping with this requirement, EPA is proposing to implement the end-of-pipe equivalency standard in the court's opinion so that a technology-based or water quality-based CWA standard for an underlying hazardous constituent in a CWA facility's discharge will also be considered to be the RCRA BDAT treatment standard for that constituent. (If a CWA standard for an underlying hazardous constituent is not included in the CWA permit, the facility must meet UTS at end-of-pipe. See further discussion in the next subsection.) Consequently, satisfying the CWA standard or limitation for that constituent will also satisfy RCRA. Thus, for example, if a facility managing decharacterized wastes containing benzene has an NPDES permit with a limitation for benzene which reflects Best Available Technology (BAT), that limitation would also satisfy RCRA LDR requirements. In addition, the facility would not be subject to a separately enforceable RCRA standard for benzene. In order to limit the amount of potential administrative duplication, EPA is proposing that the standard remain enforceable only under the Clean Water Act.

EPA is proposing that a technology-based CWA limitation or standard for a hazardous constituent satisfies RCRA because such a limitation or standard best reflects the capability of best treatment technologies to treat a specific industry's wastewater (or, when the limitation is determined by a permit writer using Best Professional Judgment, a specific plant's wastewater). The RCRA UTS for wastewaters were developed by transferring performance data from various industries, and thus EPA need not make that same transfer when industry-specific (or plant-specific) wastewater treatment data is available. (EPA notes, however, that the UTS reflect treatment of wastewater matrices that are particularly difficult to treat, and hence that the Agency's conclusion that these standards are typically achievable is sound.)

It is also reasonable for water quality-based limitations to satisfy RCRA requirements. These limitations must be at least as stringent as the limitations required to implement an existing technology-based standard. (See CWA section 301(b)(1)(c).) Even where there is no existing BAT limitation for a toxic or nonconventional pollutant, a permit writer must determine whether BAT would be more stringent than the applicable water quality-based limitation, and again, must apply the more stringent of the two potential limitations. (40 CFR 125.3(c)(2).) Consequently, a water quality-based limitation not only reasonably satisfies RCRA section 3004(m) requirements, but can be viewed as a type of site-specific minimize threat level.

If a facility has received a Fundamentally Different Factors (FDF) variance, EPA is proposing that the limitations established by that variance also satisfy RCRA requirements. Limitations established by the FDF variance process are technology-based standards reflecting facility-specific circumstances, and hence can appropriately be viewed as BDAT as well, just as with RCRA treatability variance standards. See 51 FR at 40605 (Nov. 7, 1986).

EPA also believes that there are adequate constraints in the CWA implementing rules to prevent these end-of-pipe standards from being achieved by means of dilution. First, many of the effluent limitation guidelines and standards regulate the mass of pollutants discharged, and thus directly regulate not only the concentration of pollutant discharged but the degree of wastewater flow as well. Where rules are concentration-based, NPDES permit writers can set requirements which preclude excessive water use, and EPA has so instructed permit writers. (See 58 FR 66151, December 17, 1983, encouraging permit writers to estimate reasonable rate of flow per facility and factor that flow limit into the permit.) These permit conditions can take the form of best management practices, explicit mass limitations, and conditions on internal waste streams. 40 CFR 122.44(k); 122.45(f), (g) and (h). Indirect dischargers are also subject to specific CWA dilution rules in both the general pretreatment rules and the Combined Wastestream Formula (as well as through many of the categorical standards). 40 CFR 403.6(d) and (e). Many of the guidelines and standards also preclude addition of stormwater runoff to process wastewater to preclude achieving treatment requirements by means of dilution. The Agency is accordingly of the view that end-of-pipe equivalence would be achieved by treatment that removes or destroys hazardous constituents, as required by section 3004(m). (This discussion, of course, still leaves open the questions, left for the LDR Phase IV rule, of how existence of leaks, air emissions, or depositions of constituents in sludges affects determinations of equivalent treatment and similar issues.)

With respect to indirect dischargers, EPA is further proposing that national categorical standards or, potentially, plant-specific standards contained in control mechanisms (i.e. contracts between industrial users and the POTW or other governmental entity) satisfy RCRA where these standards reflect pass through findings. If it is found that a particular pollutant/hazardous constituent will not pass through to navigable waters because of efficacious treatment by the POTW, there will be full-scale treatment of the pollutant/hazardous constituent before its final release into the environment. EPA is proposing that such full-scale treatment satisfies the court's equivalency test. EPA is also proposing to add such pass-through situations as a valid ground for indirect dischargers to obtain a RCRA treatability variance, for the same reasons.

However, the Agency is not proposing that standards based on interference with POTW operations be deemed to also satisfy RCRA requirements. Interference findings reflect the effect the pollutant may have on overall POTW treatment, not necessarily treatment of the particular constituent. Because the relationship of an interference-based standard with treatment of a particular pollutant is tenuous, the Agency does not believe such a standard can be said to be equivalent to RCRA treatment. The Agency solicits comment on the prevalence of interference-based standards.

2. Implementation When CWA Standards and Limitations Will Be the Exclusive Standard

a. Direct Dischargers

EPA is proposing that if a direct discharger subject to this rule (i.e. generating ICRT wastes containing hazardous constituents at concentrations exceeding UTS at the point the wastes are generated and treating those wastes in surface impoundments) has an NPDES permit containing a limitation for that pollutant based on BAT, New Source Performance Standards, or a more stringent water quality standard, or is regulated through controls on an indicator pollutant, then there are no RCRA requirements other than documentary recordkeeping. An indicator pollutant is a pollutant for which control of that pollutant is considered to indicate control of a

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specific constituent. For example, total phenols is an indicator for a specific phenol. The Agency solicits comments on specific circumstances where a pollutant is an indicator of a specific underlying hazardous constituent.

If the existing NPDES permit either does not contain a limitation for the pollutant or does not regulate the pollutant through an indicator, a facility would have several choices. It could do nothing, in which case the hazardous constituent would be subject to the UTS, and compliance would be monitored at end-of-pipe (unless the facility chooses to segregate the wastestreams for treatment, in which case compliance would be measured in the segregated stream after treatment). These standards would be implemented by rule, and thus would not be embodied in a permit. Enforcement would be solely under RCRA.

In the alternative, a facility could seek amendment of its NPDES permit pursuant to §122.62(a)(2), requesting that the applicable permitting authority modify the permit to add limits for the underlying hazardous constituents reflecting BAT for that pollutant at the facility. Assuming proper design and operation of the wastewater treatment technology, a permit writer in such a case could modify the permit to add a limitation for the pollutant based on Best Professional Judgement reflecting actual treatment (40 CFR 125.3(c)). Modification requests would be processed pursuant to the procedures found at § 124.5. The modified permit limitation would be a CWA requirement and enforceable solely under that statute.

A final alternative is for the facility to seek a RCRA treatability variance. EPA is proposing to amend the grounds for granting such a variance to include situations where a facility is treating decharacterized wastes by treatment identified as BAT, the technology is designed and operated properly, but is not achieving the UTS (see proposed amendments to § 268.44(a)). The amendment would also apply to indirect dischargers properly operating technology identified as the basis for their PSES (Pretreatment Standard for Existing Sources) or their PSNS (Pretreatment Standard for New Sources) standard.

b. Indirect Dischargers

The same alternatives exist for indirect dischargers. First, if an underlying hazardous constituent is not regulated nationally by a PSES, PSNS, or by a local limit, and so therefore becomes subject to the UTS for that constituent, that UTS would be enforced as a RCRA standard. In addition, if there is no pretreatment standard (i.e., PSES/PSNS) for an underlying hazardous constituent, because the Agency determined that there was no pass through, then the RCRA standard for that underlying hazardous constituents does not apply. However, in cases where an underlying hazardous constituent is not already subject to categorical PSES, categorical PSNS, or to a local limit in a control mechanism reflecting PSES or PSNS-level treatment, water quality, or pass through, the control mechanism between the indirect discharger and the applicable control authority would have to be modified in order to avoid application of the UTS by rule. Although procedures for modifying control mechanisms are less institutionalized than those codified for modifying direct dischargers' permits, the Agency initially does not believe this will pose a significant logistical problem because the number of indirect dischargers significantly affected by this rule (i.e. those treating decharacterized wastewaters in surface impoundments before discharge to a POTW where categorical PSES or local limitation does not address a particular hazardous constituent, and discharging greater than *de minimis* levels of hazardous constituents) appears to be small. The Agency continues to solicit information on the number of indirect dischargers so affected, however.

EPA also solicits comment on the best means of applying the equivalency requirement to industries where the Agency is also undertaking significant revisions to applicable CWA requirements on a somewhat slower schedule than this rule. The Agency has in mind particularly the forthcoming amended standards for the pharmaceutical and pulp and paper industrial categories.[6] Amended BAT/PSES standards for these industries are likely to encompass most or all of the underlying hazardous constituents typically found in these industries' wastewaters, and will reflect EPA's best judgement of the appropriate optimized technology-based controls for those pollutants, as well as the time needed to implement those controls. The Agency's initial preference, in keeping with the requirements of RCRA section 1006, is to wait until those controls are in place before evaluating end-of-pipe equivalency for those industries. The Agency solicits comment on this matter.

[6] The Pharmaceutical Rule is scheduled to be proposed on February 28, 1995; the Pulp and Paper Rule was proposed on December 17, 1993 (58 FR 66077).

Finally, if the facility treats to UTS and does not modify its CWA permit or control mechanism to include a CWA standard/limitation for an underlying hazardous constituent, EPA is proposing minimal record-keeping requirements, under RCRA authority. EPA is proposing that generators can use generator knowledge to identify the underlying hazardous constituents present at the point of generation of the ICRT wastes which are not covered by a CWA limitation and hence must be treated to meet UTS (assuming no permit modification, etc.). Monitoring at potentially hundreds of points of generation would be unnecessarily burdensome and so is not being proposed as a requirement. EPA is proposing that this information be kept on-site in files at the facility. EPA proposes that the facility will then monitor compliance with the UTS standard for each of these constituents at the point of ultimate discharge on a quarterly basis, and that the results of this monitoring also be kept in the facility's on-site files. Monitoring compliance with UTS at the point of discharge provides appropriate assurance of effective treatment. Failure to comply with the RCRA UTS standard must be reported by the facility to the EPA Regional or authorized state RCRA personnel.

Finally, the Agency is proposing to grant a two-year national capacity variance to allow facilities time to repipe and build on-site treatment, or to modify their CWA permit.

EPA is proposing these same requirements for documenting compliance for zero dischargers without NPDES permits who are affected by this rule. The absence of a permit necessitates some alternative means of documenting compliance, and the scheme outlined above seems to be the least burdensome scheme which would still provide a reasonable means of enforcing this rule.

C. Treatment Standards for Class I Nonhazardous Injection Wells

1. Introduction

Generally, facilities injecting decharacterized ICRT wastes into Class I nonhazardous injection wells do not treat their waste beyond removing the characteristic by mixing and diluting, plus some filtering of solids. There are as many as 149 such facilities. The average flow of a typical Class I nonhazardous well is estimated at 107,000 gallons/day. Typically, the volume of the hazardous wastestreams is relatively small (less than 25%) compared to the volumes of nonhazardous wastestreams being co-injected.

EPA is proposing that these characteristic wastestreams be considered prohibited at the point they are generated. The Agency is further proposing that underlying hazardous constituents in these prohibited wastes be treated to meet UTS levels before the waste is injected. The treatment must destroy, remove, or immobilize the underlying hazardous constituents in the waste that are present in concentrations exceeding UTS at the point the wastes are generated. It may be that in some situations, one type of treatment may pose more risk than another type, notwithstanding that it removes or destroys hazardous constituents to a greater degree. In such cases, facilities may seek a treatability variance to allow the use of the less aggressive treatment technology (assuming such treatment technology satisfies the 3004(m) standard). In such a situation, the technology posing greater risk could be considered to be "not appropriate to the waste," (see 40 CFR 268.44(a)) and a variance could be granted to allow the use of alternative treatment. EPA believes this result satisfies the court's mandate in the Third Third opinion.

EPA believes that the decision in the Third Third opinion necessitates revising the applicability of the 40 CFR Part 148 requirements, Hazardous Waste Injection Restrictions, as they now apply to Class I nonhazardous injection wells. The Agency is clarifying in proposed revisions to 40 CFR 148.1, that owners and operators of Class I nonhazardous wells must determine, under certain circumstances, whether the LDRs now apply to their facilities. Class I wells which inject nonhazardous wastes at the point of injection must now determine if any of these wastes exhibited a characteristic of hazardous waste at the point they were generated. Accordingly, EPA is proposing to amend § 148.1 and redefine the purpose, scope, and applicability of the Part 148 regulations.

To conform with the Court's ruling the Agency is also proposing to include Class I nonhazardous wells within the scope of the dilution prohibition at 40 CFR 148.3. Class I wells thus may not impermissibly dilute their hazardous waste streams in order to substitute for or avoid treatment levels or methods established in the LDRs.

2. Compliance Options for Class I Nonhazardous UIC Wells

In order to comply with today's requirements, facilities could segregate their characteristic streams for separate treatment. Treatment could occur either on-site or off-site. After the characteristic wastes have been treated to meet UTS, they can be land disposed (either by injection or by some other means). A facility could also treat the aggregated mass of wastewaters (i.e. the commingled characteristic and non-characteristic wastewaters) to meet UTS before injection.

Another option is for the facility to seek a no-migration variance under § 148.20. Thus, EPA is proposing today to amend the provisions under § 148.20 to allow facilities to seek a no-migration variance for their injection well(s). This amendment, however, would simply formalize EPA's existing interpretation that no-migration variances are already available for such wells. See 59 FR at 48013 (September 19, 1994). If these facilities submit a no-migration petition to EPA and effectively demonstrate to EPA that their formerly characteristic wastes (including any hazardous constituents contained in those wastes) will not migrate from the injection zone for 10,000 years or no longer pose any threat to human health and the environment because the wastes are attenuated, transformed, or immobilized by natural means in the injection zone, then they may continue injection without further treatment.

Each no-migration petition has, to date, taken on average 3 years to process. This time may increase if the Agency receives a large number of petitions. EPA continues to emphasize, however, that interested petitioners need not wait for this rule to be promulgated before pursuing the petition process. Petitions for a no-migration variance for Class I nonhazardous wells receiving decharacterized wastes can be received and evaluated now. Id.

EPA is also proposing to extend the availability of case-by-case extensions of the effective date to Class I nonhazardous injection facilities for any applicable Part 148 prohibition. Proposed revisions to § 148.1(c)(1) and § 148.4 will allow Class I well owners and operators on a case-specific basis to follow procedures of § 268.5 to receive a one-year extension, renewable for an additional year, from the effective date of the prohibitions, in order to acquire or construct alternative treatment capacity.

EPA today is proposing two other means for facilities with Class I UIC wells to comply with the LDR requirements. The first involves removing the same mass of hazardous constituents from streams to be injected through pollution prevention rather than pre-injection wastewater treatment. The second involves creating an exception for situations when the characteristic wastestreams make only a de minimis contribution to the waste mixture being injected. These two proposed options are described below in more detail.

3. Pollution Prevention Compliance Option

The D.C. Circuit stressed that the equivalency test, if enunciated, is required to ensure that mass loadings of hazardous constituents to permanent disposal units are reduced to the same extent they would be if a prohibited waste was treated exclusively under a RCRA regime. 976 F. 2d at 23 n. 8. EPA is proposing that these reductions in mass loadings can be achieved by removing hazardous constituents from any of the wastestreams that are going to be injected, and that these reductions in mass loadings can be accomplished by means of pollution prevention.[7] Thus, if a facility can, for example, make process changes that reduce the mass of cadmium by the same amount that would be removed if the prohibited wastestream was treated to satisfy UTS, the facility would have satisfied LDR requirements. The facility would thus no longer have to demonstrate that it is meeting UTS concentration levels.

Under this option, a hazardous constituent could be removed from either the hazardous or nonhazardous portion of the injectate, and could be removed before a waste is generated. The result would be that the mass loading into the injection unit would be reduced by the same amount as it would be reduced by treatment of the prohibited, characteristic portion of the injectate.

[7] In a 1992 memorandum from F. Henry Habicht, then EPA Deputy Administrator, and reiterated in a June 15, 1993 memorandum from Carol Browner, EPA Administrator, the Agency has defined pollution prevention as "source reduction" (as defined in the 1990 Pollution Prevention Act (PPA)), and other practices that reduce or eliminate the creation of pollutants through (1) increased efficiency in the use of raw materials, energy, water or other resources; or (2) protection of natural resources by conservation. The PPA defines "source reduction" to mean any practice which (1) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; (2) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

"Source reduction" includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. Recycling, energy recovery, treatment, and disposal are not included in the definition of pollution prevention in the PPA.

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The mass/day reduction of a particular underlying hazardous constituent can be calculated by comparing the *injected baseline with the allowance.* The injected baseline is determined by multiplying the volume/day of hazardous waste generated (and subsequently injected) times the concentration of hazardous constituents prior to the pollution prevention measure. The allowance is determined by multiplying the volume/day of a hazardous constituent generated/injected times the UTS for that constituent. The difference between the injected baseline and the allowance is the mass/day reduction.

After successful employment of a pollution prevention measure, the facility must demonstrate that the injected mass achieves the required mass/day reduction. The post-pollution prevention measures would be corrected for production variations by multiplying the mass/day reduction times the ratio of the pre-pollution prevention production baseline divided by the production on the day of sampling after the pollution prevention is successfully implemented. A correction for production variations is needed because the amount of an underlying hazardous constituent in the injectate is dependent upon the level of production. If the initial reading is taken on a day of low production, and the post-pollution prevention reading is taken on a day of high production, then without the correction factor the mass/day reduction calculation would be an underestimate.

The following is an example to illustrate this discussion:

Facility X is daily injecting 1 lb. of benzene (an underlying hazardous constituent in a characteristically hazardous wastestream). The mass allowed for benzene (based on the volume of the hazardous wastestream they inject and the UTS for benzene) is 0.3 lbs. Therefore, the mass of benzene that needs to be removed in order for Facility X to be in compliance with the LDR is 0.7 lb.

Facility X decides to use pollution prevention to remove the 0.7 lb. of benzene from their system. Before employing pollution prevention, Facility X monitors and determines that on a day when they produce 10 tons of product, 3 lbs. of benzene is being injected. After employment of pollution prevention, Facility X monitors and determines that 1 lb. of benzene is being injected. On this day of monitoring they are producing 5 tons of product. Therefore: 3 lbs. -1^{*} (10/5)=1 lb. of benzene removed, which means they are in compliance with LDR, since 0.7 lb. was all that was necessary to be removed.

EPA is proposing that the results of the monitoring of the underlying hazardous constituent concentration and the volume of the hazardous waste stream being injected, both on the day before employment of pollution prevention, and the day after successful employment of pollution prevention, be reported to the EPA Region or authorized State as a one-time notification. The facility will also include in this report a description of the pollution prevention method used. In addition, the facility will monitor and keep on-site records of the results on a quarterly basis. Quarterly monitoring is already required under SDWA regulations (40 CFR 146.13(b)). The reporting requirements for this option will be a one-time notification; however, if the facility changes its pollution prevention method, they must repeat the initial monitoring and notify the EPA Region or authorized State. The Agency is proposing to consider only those pollution prevention measures taken after the date of publication of this proposed rule.

EPA is proposing that, at this time, the pollution prevention alternative as described in this section of the preamble, be available only for facilities using Class I nonhazardous injection wells. EPA is not proposing the same alternative for facilities using surface impoundments because until the LDR Phase IV rules are completed, there will not be a test as to what comprises equivalent treatment at such facilities. That is, before EPA determines how such issues as potential releases to air and groundwater are to be resolved, there is no final equivalency standard for these facilities. It thus appears to EPA to be premature to determine how a pollution prevention alternative would fit into such a scheme. EPA also notes that because surface impoundments can pose particularly adverse environmental risks, see RCRA section 1002(b)(7) and *CWM* v. *EPA*, 919 F. 2d 158 (D.C. Cir. 1992), the Agency in any case may wish to develop alternative approaches for decharacterized wastes being managed in such units.

EPA also solicits comment on a number of issues relating to this option. The first is comment on using other production parameters besides or in lieu of volume (e.g., mass, square footage, etc.). The second is comment on use of site-specific non-linear production relationships and multiple production factors to deal with potential differences in underlying hazardous constituents produced in the hazardous and nonhazardous waste streams. Third, EPA solicits comment on whether more than one day is needed for monitoring pre and post-employment of the pollution prevention option (i.e., some pollution prevention methods may require more than one day to show results).

EPA also solicits comment on the best means of ensuring that the mass reductions achieved through this pollution prevention alternative are objectively verifiable and enforceable. In particular, EPA solicits comments on the best means of documenting baseline levels, and whether flow reductions (as opposed to hazardous constituent removal) should be allowed as an exclusive means of obtaining the requisite reductions in mass loadings of hazardous constituents.

Finally, EPA requests comment as to whether it may eventually be possible to implement this type of alternative by means of a pollutant trading type of approach, whereby the hazardous constituent being removed by means of pollution prevention need not be identical to the hazardous constituent in the characteristic stream. For example, carcinogenic metals could all be grouped rather than evaluated individually. This type of approach may add desirable flexibility if appropriately constructed.

4. De Minimis Volume Exclusion

There is a question of whether EPA should require treatment of relatively small decharacterized hazardous waste streams injected into Class I nonhazardous wells when the result will be essentially the same level of contaminants being injected (and thus risks are not measurably reduced). Therefore the Agency is proposing to establish a de minimis volume exclusion for small volumes of formerly hazardous wastes being injected into these wells along with a greater volume of nonhazardous waste.

There are two existing LDR de minimis provisions (§ 268.1(e) (4) and (5)). Both are for ignitable and/or corrosive wastes (D001 and D002); the first is for de minimis losses of D001 or D002 to wastewater treatment systems of commercial chemical products, while the second is for de minimis losses of D001 or D002 laboratory wastes. Under the approach being proposed today, when underlying hazardous constituents are present in ICRT wastes at concentrations less than 10 times UTS at the point of generation, and the combination of all of the characteristically hazardous streams together are less than 1% of the total flow at point of injection and after commingling with the nonhazardous streams, and that the total volume of hazardous streams are no more than 10,000 gallons/day, no segregation and/or treatment would be required. The 1% total flow criteria is consistent with the existing de minimis exemption for laboratory wastes (§ 268.1(e)(5)); however, the Agency solicits comment on the 1% criteria, the 10 times UTS criteria as well as the 10,000 gallons/day maximum—should these numbers be higher, lower, or dropped?

The Agency intends to continue analyzing collected data that may provide additional justification for, or alternatively, cause the Agency to modify any or all of the criteria on which it has based the de minimis exemption for injected waste. This analysis will be conducted in conjunction with revising the Regulatory Impact Analysis for underground injected wastes, and may include additional computer modeling used in assessing the health risks posed by Class I injection wells. The Agency may conduct this analysis, for example, by varying specific parameters in the modeling, such as well pump rates, total volume of waste injected, and waste concentrations, and by altering postulated exposure scenarios describing health risks posed by injection of Phase III wastes. Upon conclusion, the analysis may support the proposed de minimis criteria or may cause the Agency to revise them in the final rule. The Agency solicits any comment on this planned approach and any alternative suggestions.

The Agency is proposing that if a generator determines that he meets the requirements of the de minimis exemption, that he place a one-time notice in his files stating the % flow and concentration of the underlying hazardous constituents, and volumetric flow of prohibited wastestreams (i.e. streams exhibiting a characteristic at the point of generation). The concentration of underlying hazardous constituents would have to be determined through monitoring, and the % flow can be determined through several methods. One method for estimating annual average wastewater stream flow is to use the maximum annual production capacity of the process equipment, along with knowledge of the process and mass balance. A second method would involve using measurements that are representative of average process wastewater generation rates. A third method is to select the highest flow rate of process wastewater from the historical records. Other knowledge-based methods, which would be less expensive alternatives to actual measurement, could also be used. EPA solicits comment on these alternatives.

D. Point of Generation Discussion

1. Introduction

It has long been the rule that land disposal prohibitions apply at the point hazardous wastes are generated. See e.g. 55 FR at 22652 (June 1, 1990); 261.3(a)(2)(iii). Some members of the regulated community, including the Chemical Manufacturer's Association (CMA), have asked EPA to reconsider this issue in light of the Third Third rule and the D.C. Circuit opinion interpreting that rule. See *CWM* v. *EPA* (976 F. 2d 2 D.C. Cir. 1992). Among other things, the court held that hazardous constituents present above concentrations "sufficient to pose a threat to human health and the environment" in prohibited wastes, including characteristic wastes, must meet LDR treatment standards. See 976 F. 2d at 16.

The regulated community has argued that continued application of the point of generation rule could lead to situations where prohibitions would attach to particular characteristic wastestreams and trigger a host of potentially disproportionate consequences, without necessarily furthering any of the protective objectives of the LDR program. Many industrial processes consist of hundreds or thousands of streams, some of which exhibit characteristics only for a short time or (for batch processes) intermittently. The streams often exist within the physical confines of an industrial process, and may be collected within a common sump or other aggregation point. If one of the streams should exhibit a characteristic of hazardous waste, the entire system of wastewater treatment or other management could be affected if the system contains an impoundment or injection well.

These commenters have also requested that EPA revisit the current interpretation that prohibitions attach at the instant of generation and that this requires in certain cases knowledge or monitoring of many internal streams. They argue that some of these streams may not be readily amenable to monitoring because everything within the process is hard-piped to a common collection point. It should be noted that EPA previously considered the practical difficulties associated with sampling or monitoring wastes within closed-process units. See 55 FR 25760, 25765 (July 8, 1987).

The commenters have expressed concern that there are likely to be circumstances where mass loadings of hazardous constituents to the environment are not significantly affected by allowing initial aggregation of residual streams from a process. They also have expressed concern with the practical impacts and achievability of determining the precise content of potentially thousands of internal wastestreams within an industrial facility.

In response to these concerns raised by industry groups following the Third Third opinion, the Agency is soliciting comment on a number of approaches to modify the current point of generation approach for making LDR determinations for certain types of wastes. These approaches also could be applied more generally for purposes of subtitle C to determine at what point a waste is generated.

2. Background

EPA has required LDR determinations to be made at the point which hazardous wastes are generated since the Solvents and Dioxins final rule (51 FR 40620, November 7, 1986). EPA asserted the authority to make LDR determinations at either point of generation or point of disposal in the Third Third final rule (55 FR 22652–53). The court invalidated such selectivity (976 F. 2d at 23), but did hold that at least the dilution prohibition did not have to apply to invalidate use of CWA treatment impoundments performing RCRA-equivalent treatment. 2d. at 23–4.

In the course of finalizing the California list rule, EPA solicited comment on a "point of aggregation" approach to assessing when prohibitions attached. (See 52 FR at 22356 (June 11, 1987) where point of aggregation is defined as a point of common aggregation preceding centralized wastewater treatment.) Most commenters at that time criticized such an approach on the grounds that the "point of aggregation" was by no means readily determinable and could result in wastes being treated less or, in some cases, being diluted impermissibly. EPA rejected the approach for these reasons. 52 FR at 25766 (July 8, 1987).

The following options, which are being presented for comment, would narrowly redefine the point at which the land disposal prohibitions attach.

3. Similar Streams Generated by Similar Processes

One possible revision would address situations in which like streams are generated from like processes and combined as a matter of routine practice. An example would be collection of rinses from sequential

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rinses in a manufacturing process, or multiple rinses from parallel manufacturing lines all making the same product. In these circumstances, all the rinse water could contain the same hazardous constituents in roughly the same concentrations. Variations in hazardous constituent concentrations would reflect normal process variability, so that mass loadings of hazardous constituents to the environment over time would not alter if the rinses are aggregated and disposed. EPA seeks comment on whether or not such collection of like streams from like units should be considered impermissible dilution, since some in the regulated community might view it as counter-intuitive in many cases to even consider these similar process outputs to be separate.

4. Streams From a Single Process

Industrial facilities frequently collect residual streams from a process in a common unit such as a sump. In many cases, these streams are similar in composition because they all come from a common unit process. Consequently, although some of the residual streams could exhibit a characteristic before common collection, long-term average mass loadings of hazardous constituents per unit of production may not vary significantly, even though the waste concentrations may vary within a normal range over time.

Moreover, where residues are generated within a unit process, it might be possible to view these streams as still within the "normal part of the process that results in the waste", S. Rep. No. 284, 98th Cong. 2d sess. at 17, and consequently that any routine combination of these streams from the common process would not be impermissible dilution. Id. Of course, there is the possibility of abuse in any approach that allows combination of residues. Characteristic wastestreams not normally generated as part of the unit process could be re-piped in order to dilute the characteristic and avoid treatment of underlying hazardous constituents. This would remain impermissible dilution under any of the approaches EPA is considering.

This approach differs from the "point of aggregation" approach EPA rejected as part of the California List rule in that it limits the mixing of waste streams to wastes generated within a single unit process. In the initial "point of accumulation" approach, wastes from various sources could be mixed in a sump, as long as the sump was the first point of accumulation. This option limits the mixing to single manufacturing steps (unit operations).

5. "Battery Limits"

The CMA has suggested an expanded version of the option discussed above. Instead of limiting aggregation to that normally occurring within a single unit process, they would view an entire battery of processes (associated with making a single product or related group of products) as a single manufacturing step. CMA would use the logic of the approach described in the previous section to allow all residues generated from that sequence of processes to be combined before a determination is made as to whether wastes are prohibited. Under CMA's approach, determinations as to whether characteristic wastes are prohibited could be made at this point where all of the aqueous waste streams from a unique industrial process are aggregated (referred to by CMA as "battery limits"), or at a point that a stream exits the manufacturing process unit where it is generated ("point of rejection").

Such aggregation could, in CMA's view, be considered to be "part of the normal process that results in the waste" (S. Rep. No. 284, 98th Cong. 1st sess. 17) so that the aggregation within the industrial process battery limits need not be considered to be impermissible dilution. CMA believes that this approach could ease monitoring burdens, simplify point of generation determinations, facilitate legitimate wastewater treatment and avoid accounting for characteristic properties and underlying hazardous constituents in intermittent streams such as streams from batch processes, or from characteristic streams resulting from one-time spills or other process emergencies. [8]

6. Solicitation of Comment

The Agency solicits comment on the composition of internal residual streams within discrete processes when one or more of the streams exhibits a characteristic in order to determine how frequently such streams are similar with respect to identity and concentration of hazardous constituents. EPA also solicits comments on how difficult it is to identify the physical boundaries of a unit process, and what safeguards could be developed to assure that characteristic streams not normally part of a unit process are not diluted by re-piping and combination with unrelated streams.

The Agency seeks comment on potential difficulties with all three options, but mostly the third option. Namely, the various limits do not seem to be graphically self-defining, and, hence, could be difficult to implement. The Agency is also concerned about the possibility of impermissible dilution of non-*de minimis* characteristic [9] wastewater streams whenever large numbers and volumes of wastewaters are brought together and characteristics are eliminated without hazardous constituents being removed or destroyed.

7. Situations Where Existing Point of Generation Determinations May Remain Appropriate

a. Listed Wastes. In considering the above approaches, as well as others, it could be argued that any modification to the point of LDR determination should apply only to characteristic wastes and F001–F005 (spent solvents) listed wastes. In evaluating wastes from other sources for listing (including other "F" series wastes), EPA has carefully evaluated the various waste streams and has defined the point of generation as part of the listing description. Therefore, it may be inappropriate to modify that description with a more generic point of prohibition rule. EPA solicit comment on this issue.

b. Prohibited Wastes Whose Treatment Standard is a Method of Treatment. Section 261.3(b) states that characteristic wastes whose treatment standard is a specified method of treatment may not be diluted to remove the characteristic in lieu of performing the specified method of treatment. Principal examples of such wastes are high TOC ignitable wastes, characteristic pesticide wastes, and certain characteristic mercury wastes. 55 FR at 22657. EPA indicated that these wastes are not typically amenable to adequate treatment by means other than the designated treatment methods," so that aggregation to remove the characteristic is impermissible dilution unless treatment by the required method follows. *Id.*

EPA's initial view is that these wastestreams should remain prohibited at the current point of generation. The Agency has made a considered decision that these wastes require a particular type of treatment, and the wastestreams themselves are clearly delineated. 55 FR at 22657. In addition, the treatment

[8] However, spills of commercial chemical products exhibiting a characteristic, an example mentioned by CMA, are already not considered to be prohibited provided amounts spilled are de minimis, as defined at 268.1(e)(4) (59 FR 47982, September 19, 1994). See generally, CMA's submission to EPA of October 5, 1994, part of the record for this proposed rule.

[9] *De minimis* losses of the discarded commercial chemical product form of these wastes are not considered to be prohibited. 40 CFR 268.1(e)(4).

methods for a number of these wastes (including high TOC ignitable wastes and characteristic mercury wastes) include or require resource recovery, another reason to ensure that this type of treatment continues to occur. *Steel Manufacturers Association* v. *EPA*, 27 F. 3d 642, 647 (D.C. Cir. 1994). EPA solicits comment as to whether any alteration of the point at which LDRs attach to these wastes should be reconsidered.

8. Implications Beyond LDR Rules

The Agency believes that narrowly redefining the point at which wastes are subject to RCRA regulation should be considered because of industry's concerns with the impact this approach is having on the program currently and what potential impact it may have in the future. Strict interpretation of the current point of generation has already raised questions with respect to the status of a variety of similar wastes that sometimes exhibit the hazardous waste characteristic and are routinely mixed (e.g., spent antifreeze from automobiles, boiler cleanout wastes, emission control residues). This issue may become even more important in the future as EPA adopts exit levels which may be established by the Hazardous Waste Identification Rule.

While absolute clarity of the applicability of RCRA may result from the current point of generation requirement, industry commenters feel that it could be magnified in the future by this and other rulemakings. In considering these concerns, EPA does not wish to undermine the effort to segregate the most concentrated wastes for source reduction or treatment. EPA solicits comment on whether any of the approaches described achieves the proper balance among these goals.

V. Discussion of the Potential Prohibition of Nonamenable Wastes From Land-Based Biological Treatment Systems

This section solicits comment on two regulatory frameworks received from industry and from treaters of hazardous wastes concerning refractory underlying hazardous constituents in land-based biological treatment systems. First, the Environmental Technology Council (ETC) submitted comments to the Agency on EPA's March, 1993 Supplemental Information Report on potential responses to *CWM* v. *EPA*. The ETC raised concern as to whether the constituents from these decharacterized wastes when placed into biological impoundments are merely being diluted and discharged; volatilized from the surface of the impoundment; or simply end up concentrating in the sludge at the bottom of the impoundment. The ETC labeled these constituents whose primary fate is air or sludge (or discharge without treatment) via one of these paths as "nonamenable to biotreatment." The comment suggested several criteria for determining whether process streams with "nonamenable" constituents should be kept out of surface impoundments.

Secondly, CMA provided EPA with similar recommendations in August 1993. This section also considers CMA's suggestions for managing refractory chemicals in land-based biological treatment units.

A. Technical Overview

Many "decharacterized" wastes (i.e., wastes that were formerly hazardous wastes due to their ignitable, corrosive or reactive properties as generated but which no longer exhibit a characteristic by the time they are land disposed) are placed in Subtitle D surface impoundments for the purpose of biological treatment. In theory, microorganisms in the impoundment can degrade organic constituents in these wastes (under aerobic and/or anaerobic conditions) to carbon dioxide and water.

The ETC comment suggested that EPA identify and prohibit wastes containing these "nonamenable" constituents from biological treatment impoundments. The issue facing EPA is whether there are wastes for which biological treatment is not BDAT either because biological treatment cannot adequately reduce hazardous constituents or because biological treatment simply transfers hazardous constituents to other media, and, if so, whether an alternative regulatory scheme is appropriate. While the LDR Phase IV rule will specifically address the concerns with respect to sludges, leaks and air emissions, EPA has committed to raising certain technical issues concerning "nonamenability" in the LDR Phase III proposed rule and has also committed to discuss the suggested regulatory resolutions submitted by both the ETC and the CMA, who also submitted comments pertaining to this issue.

What follows is EPA's interpretation of the fundamental concerns which fostered this option, a discussion of the technical issues inherent to this approach and an identification of alternative approaches to address these underlying concerns. The issue of whether RCRA can require segregation of refractory hazardous wastes streams entering land-based surface impoundments is closely connected to the Agency's approach to sludges, leaks and air emissions in the LDR Phase IV rule. The Agency is therefore delaying any final action on the components of the ETC comments, or on the CMA suggestions, until LDR Phase IV when more comprehensive decisions can be made on each issue.

B. Summary of the ETC's Position

The full text of the ETC's comments can be found in the administrative record for today's rule. This section summarizes that document.

The ETC asserts that "Hazardous constituents in ICR wastes that are not amenable to the biological or sedimentation systems used in CWA lagoons are not receiving RCRA-equivalent treatment." They then propose a definition of "nonamenable waste streams" and suggest a regulatory scheme for keeping these streams out of surface impoundments.

In particular, the ETC recommends that EPA should establish treatment standards for ICR wastes that require destruction and removal of hazardous constituents in the waste as generated, and allow only those ICR wastes that contain hazardous constituents for which biological treatment is the best method to be managed in nonhazardous waste surface impoundments. They provide lists of individual constituents and constituent categories that should be segregated and restricted from biological units. These include the following individual chemicals: mercury, vanadium, chromium, cadmium, lead, and/or nickel, or the following groups of chemicals: aromatic compounds; acrylates, phenolics, and highly oxidized constituents such as phthalates, aldehydes, and ketones; nitrosamines, amines, nitrophenolics, and aniline compounds and most chlorinated and brominated organic constituents. ETC also recommends segregating the following categories of waste: Highly volatile and non-water-soluble constituents, because of the likelihood of air emissions during biological treatment; and the acutely toxic P-listed wastes, because they are poisonous to the biological treatment system. The ETC explicitly recommends the following criterion for designating a waste stream "amenable to biological treatment": the waste must contain less than 1% solids, must be free of oil and grease, and must contain less than 10 ppm total heavy metals.

ETC then defines "ICR waste streams not amenable to biological treatment" as: ICR wastes with constituents (from the groups listed above) at individual concentrations greater than 100 x F039 wastewater treatment standards; and ICR wastes with "water insoluble and

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highly volatile" F039 constituents "that are more likely to be released to air and not treated. (ETC did not indicate at what point these concentrations should be measured, although they did suggest that wastes should be segregated at "battery limits".)

The ETC believes that such "nonamenable" wastes should either be required to undergo pretreatment prior to aggregation with other wastewaters (e.g., steam stripping of volatile compounds), or be required to go to other appropriate treatment (e.g., precipitation of metals). The ETC argues that such segregation of nonamenable wastes will promote pollution prevention because companies will have an incentive to modify raw materials or production processes to keep such hazardous constituents out of the waste stream.

C. Summary of the CMA's Position

The full text of CMA's comments can be found in the administrative record for today's rule. This section summarizes that document. CMA describes "three situations in which characteristically corrosive or ignitable hazardous wastes could be sent to biological treatment in surface impoundments without jeopardizing the treatment units effectiveness by introducing non-amenable compounds" CMA implicitly requests that the LDR Phase III rule allow CWA-permitted biological treatment in the following three situations:

(a) When the stream to the impoundment only contains hazardous constituents amenable to biological treatment (listed below);

(b) When the stream contains hazardous constituents amenable to biological treatment plus other (nonamenable) constituents present at concentrations equal to some multiple (e.g., 1000) of the F039/UTS treatment standards in the influent to the surface impoundment; or,

(c) The facility can demonstrate on a case-by-case basis that a nonamenable hazardous constituent is amenable to treatment occurring in the treatment system.

CMA identifies most of the organic UTS constituents as "amenable to biological treatment". This includes all the constituents for which biological treatment is the basis of the F039 wastewater treatment standards plus a number of organic constituents generally recognized in the literature as biodegradable.

The BDAT List constituents not designated by CMA as "amenable to biological treatment are: all UTS metals, fluoride, sulfide and the volatile and semivolatile organics in the table that follows.

Nonamenable Volatile Organics

Bromodichloromethane
Carbon tetrachloride
Chloroethane
2-Chloroethyl vinyl ether
Chloroform
Chloromethane
1,2-Dibromoethane
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene
trans-1,2-Dichloroethene
1,4-Dioxane
Ethylene oxide
Iodomethane
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tribromomethane (Bromoform)
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene
Trichloromonofluoromethane
Vinyl Chloride

Nonamenable Semivolatile Organics

Benzal chloride
2-sec-Butyl-4,6-dinitrophenol
p-Chloroaniline
Chlorobenzilate
p-Dimethylaminoazobenzene
1,4-Dinitrobenzene
4,6-Dinitro-o-cresol
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Di-n-propylnitrosamine
Isosafrole
Methapyriline
3-Methylcholanthrene
4,4'-Methylenebis (2-chloroaniline)
5-Nitro-o-toluidine
Phenacetin
Pronamide
Safrole
Methoxychlor

D. Summary of EPA's Preliminary Response to CMA's and ETC's Technical Concerns

EPA presents its preliminary evaluation of three major issues that are raised by both CMA's and ETC's suggestions: the question of feed limits for land-based biological treatment units; behavior of nonamenable constituents in land-based biological treatment units and constituent-specific solubility and toxicity questions.

1. Feed Limits

The CMA and ETC approaches both suggest constituent-specific limitations of decharacterized ICR waste streams entering surface impoundments to ensure that certain toxic constituents-do not bypass treatment by volatilizing into the atmosphere, by adsorbing permanently onto sludge sediments at the bottom of the impoundment or by inhibiting biodegradation processes in the impoundment. The Agency agrees that all three of these mechanisms can hinder treatment.

While many aspects of both the ETC and CMA positions have technical and regulatory merit, there appear to be fundamental technical disagreements that need to be resolved. First and primary is the fact that ETC and CMA differ on which constituents (and chemical families of constituents) are "amenable" or "nonamenable" to treatment. Second, proposing regulations requiring segregation of streams entering impoundments would raise the following issues:

(a) Surface impoundments have traditionally provided an engineering advantage—in addition to low energy, maintenance and construction costs—in that, they offer a means of "equilibrating" and "equalizing" the relatively frequent variations in chemical compositions of process wastes (i.e., aggregated waste streams). As such, they receive variable wastes in their capacity as large-volume holding units for process upset streams, stormwaters, spill washdown and other unscheduled wastewater releases. Segregation of these various streams would require construction of holding tanks that may not be able to provide the same equalization capability of an impoundment;

(b) Mandatory analyses and separation may impose considerable added expense; and,

(c) EPA, in some cases, assumed that impoundments would be used for these purposes by not including the costs of impoundment replacement when developing effluent guidelines for affected industries.

2. Technical Concern

In theory, EPA agrees that certain RCRA waste streams should be kept out of certain types of Subtitle D impoundments. (Listed wastes already must go to Subtitle C impoundments, and High TOC D001 ignitables, as well as high mercury wastes, are also restricted from Subtitle D impoundments.) In addition, in 55 FR at 22666 (June 1, 1990), EPA presented general criteria that could affect amenable/nonamenable determinations. All parties seem to agree that certain metal-bearing wastes could also be restricted from impoundments. However, there are additional factors that need to be considered, such as impoundment size, depth, temperature, and retention time. (An individual organic compound is more treatable in some systems than in others and without information about the extent to which the lagoon supports aerobic and anaerobic processes we cannot assess how treatable these constituents are.)

In addition, the overall composition of each waste—i.e. the entire matrix—must be considered in order to characterize its relative amenability to biological treatment. In particular, waste composition can enhance or inhibit a particular organic compound's amenability to biological destruction. Enhancement occurs, for example, if microorganisms can use one compound as a co-metabolite or co-substrate in metabolizing another. A feature story on biological treatment in the February 1993 issue of Environmental Science and Technology reports "* * * highly chlorinated compounds such as trichloroethylene, 1,1,1-trichloroethane and chloroform will transform under aerobic conditions if methane, phenol or toluene is provided as a primary source of carbon and energy for biological growth. However, these reactions are co-metabolic * * *. Therefore it is important to define exact conditions when discussing biodegradation results." Inhibition occurs when one compound poisons the metabolic pathway by which another compound is otherwise degraded. The degree to which the microbial population in the impoundment has been acclimated to a particular constituent is a significant factor in determining that constituent's amenability. Acclimation determines the balance between inhibition and enhancement and is a factor to be defined in discussing biodegradation results.

The fact that "consortia" of microorganisms, rather than members of a single bacterial strain, accomplish the degradation of complex molecules further complicates the extent to which a compound can accurately be labeled "amenable" (Rittman and Saez in Levin and Gealt Biological Treatment of Industrial and Hazardous Wastes, 1993, McGraw-Hill, New York). The presence of different microorganisms in a consortium increases the number of compounds that can be degraded in that impoundment by virtue of the wider array of metabolic degradation pathways present. However, the various microbial species may require a narrower range of pH, dissolved oxygen and other parameters in order to function and may therefore be more liable to collapse and fail than a simpler more robust microbial strain.

Some of the technical issues that are likely to arise include:

(a) Biotreatment systems vary Constituents that are amenable to treatment in one system may be nonamenable in another, thus an accurate determination of what is a nonamenable waste might have to consider site-by-site factors, which would present considerable problems in the implementation of the program. If EPA set up a more generic approach, other problems are likely to occur, as described below.

(b) The ETC uses the term "battery limits" to describe where nonamenable ICR wastes should be segregated. This term, however, is undefined and could represent the point where the wastestream leaves the production equipment, or a variety of aggregation points.

(c) What levels of constituents justify requiring segregation and recovery?

(d) If EPA required segregation of nonamenable wastes from biological treatment impoundments, there is a very good possibility that facilities would merely replace the surface impoundments with RCRA exempt tanks. Biological treatment in tanks could have the same air emissions unless they are properly controlled.

With respect to specific hazardous organic constituents, EPA is currently investigating whether the BDAT list of compounds could be ordinally ranked into a series of compounds more or less amenable to biological treatment, based on published treatability data. "Amenability" is a continuous variable. Treatability data shows that some compounds are more amenable to biological degradation than are other compounds: there are no organic chemicals, other than polymers, which are absolutely resistant to biological degradation.

Due to the technical problems associated with determining which wastestreams should be kept out of certain impoundment lagoons, and the policy concerns raised by these approaches, we are setting out these issues for comment in this proposed rule.

3. Constituent Properties of Concern

The following three items are criteria ETC suggests in addition to individual constituent concentrations. EPA invites comments on means of managing these waste properties.

a. Water solubility. EPA does not share ETC's concern that less soluble compounds are significantly less amenable to biological treatment than relatively hydrophilic compounds. For example, PCB's are virtually insoluble; nevertheless the literature documents cases where PCB's have been successfully degraded to hydrochloric acid, carbon dioxide and water.

b. TC Metals. EPA believes the LDR Phase IV limitations on land disposal of wastes that meet the definition of toxicity based on their metals concentration will address ETC's and CMA's concerns about the inadequacy of surface impoundments for metal treatment.

c. Toxicity. EPA solicits comments on the suggestion that P-waste constituents be managed as particularly toxic and thus likely to poison metabolic pathways in the degradation process. EPA further solicits comment on additional constituents or categories of constituents that are likely to be acutely toxic to biological treatment processes, rather than merely resistant to biological treatment.

The target mass removal approach described earlier in this preamble can be applied to biological treatment units to determine whether constituents managed in the units are being effectively degraded. The application of this approach could address the question of wastes nonamenable to biotreatment. The target mass removal approach requires a waste determination prior to the waste entering the treatment unit, and either (1) a waste determination after treatment in the unit, or (2) a determination of the operating efficiency of the treatment unit. This approach has been applied to biotreatment units for at least two promulgated standards that regulate hazardous organic chemicals: the HON and the Subpart CC air rules. Comments are solicited on the approach to address the nonamenable waste concerns.

F Additional Issues

In addition to the issues raised in the section "Summary of EPA's Preliminary Response" above, there are other technical issues arising in developing a list of UTS constituents that are not amenable to biological treatment. Another issue concerns those UTS constituents for which biological treatment is BDAT: could a wastestream containing such constituents have such a high concentration of other compounds known to be refractory to biological treatment that biotreatment no longer effectively treats the constituents? A third issue considered here is the extent to which "nonamenable" constituents evade treatment by volatilizing into the air or by adsorbing onto sludge, in addition to flowing out untreated in effluent.

1 List of Hazardous Constituents

In order to ensure that all the constituents in a decharacterized waste

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are adequately addressed, the starting point should not be the BDAT list but rather the entire list of U and P, appendix VIII, and other toxic chemicals present in the hazardous waste universe. The next LDR rulemaking ("Phase IV") will discuss the universe of hazardous constituents regulated by RCRA (i.e., a composite of the above lists) and may propose which constituents from the composite list are considered "nonamenable" or "amenable". Today's preamble, however, raises general issues associated with "amenability" in order to solicit comments on specific questions. These questions will be addressed in LDR Phase IV. For example, the Phase IV proposed rule may include a discussion of quantification problems and the use of surrogate parameters such as BOD/COD/TOC ratios to assist in measuring performance where analytical methods do not exist.

2. Biotreatment as BDAT

EPA has already promulgated biodegradation (BIODG) as a specified method of treatment for quite a few U and P waste codes that fall under the category that ETC has asked to be classified as "nonamenable". (For example, nitrosamines easily break down in water to nitroamines. Nitrogen-containing organics can typically be biodegraded. Most microorganisms flourish in the presence of nitrogen containing chemicals.) EPA has also established numerical standards for many chemicals based on biotreatment data. EPA is including all of the chemicals in both of these cases in this proposed rule and is asking for comment on them and seeking data that would refute or support that biotreatment is BDAT for these chemicals.

3. Toxics Along for the Ride

EPA intends that the Phase IV proposed rule will expand the discussion on the concept of "toxics along for the ride" in biotreatment (i.e., concern about how best to regulate those toxic compounds that are not degraded to less toxic compounds and consequently pass untreated through the unit and on to land disposal). While the concept is environmentally attractive, in order to create a regulatory construct prohibiting such constituents from biotreatment, the Agency must consider the following constituent-specific factors:

(a) Is the elemental composition of the chemical such that it is truly not "amenable to biotreatment" such as for metals?

(b) Does a low rate of hydrolysis indicate low biodegradability?

(c) Does high volatility necessarily indicate low biodegradability?

(d) What retention time is required for biodegradation?

(e) Is the biological system responsible for degradation of the compound sensitive to upsets in either the chemistry of the impoundment or its biocomposition?

(f) Is the bioactivity considered "aggressive"?

(g) Is the constituent actually chemically treated in the impoundment?

(h) Will the constituent encounter treatment after the impoundment?

(i) Is the waste containing the constituent difficult to segregate from other wastes?

(j) Does the chemical occur naturally in the surrounding soil or water?

(k) Is the chemical already present in the sludge and could then be released by the sludge even though the influent is reduced?

(l) Is the chemical present in other nonhazardous waste that are commingled with the decharacterized wastes?

(m) Is the chemical generated at concentrations below that which is considered neither a chronic nor an acute health risk?

(n) Is there an ecological risk from the inorganic composition of the waste such as the high salinity (dissolved solids) of most D002 wastes?

(o) Is the chemical a surprise presence from the use of some product that contains trace levels that couldn't be measured when the product was used (below product specifications)?

(p) Is the chemical appearing due to corrosion of pipes and equipment?

G. Treatment Standard for Wastes With a High Concentration of Organics

In the Phase II final rule (59 FR 47982, September 19, 1994), EPA finalized regulations prohibiting the disposal in Class I nonhazardous waste injection wells ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, unless either the well is subject to a no-migration determination, or the wastes are treated by the designated the LDR treatment method. The treatment method promulgated was either combustion (i.e. incineration or fuel substitution) or recovery of organics. Today the Agency is raising the option of proposing the same treatment standard for characteristic wastes with high concentrations of organics managed in surface impoundments. This would result in a prohibition of these wastes going into biological impoundments.

The Agency requests comment on this option, including the question of how to define "high" levels of organics that would justify prohibition from surface impoundments. The Agency believes this option provides many of the benefits of segregation of refractory "nonamenable" streams with significantly lower analytical requirements.

VI. Treatment Standards for Newly Listed Wastes

A. Carbamates

Hazardous Wastes from Specific Sources (K Waste Codes)

K156—Organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.
K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.
K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes.
K159—Organics from the treatment of thiocarbamate wastes.
K160—Solids,(including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbonate wastes.
K161—Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

Acute Hazardous Wastes (P Waste Codes)

P203 Aldicarb sulfone
P127 Carbofuran
P189 Carbosulfan
P202 m-Cumenyl methylcarbamate
P191 Dimetilan
P198 Formetanate hydrochloride
P197 Formparanate
P192 Isolan
P196 Manganese dimethyldithiocarbamate
P199 Methiocarb
P190 Metolcarb
P128 Mexacarbate
P194 Oxamyl
P204 Physostigmine
P188 Physostigmine salicylate
P201 Promecarb
P185 Tirpate
P205 Ziram

Toxic Hazardous Wastes

U394 A2213
U280 Barban
U278 Bendiocarb
U364 Bendiocarb phenol
U271 Benomyl
U400 Bis(pentamethylene)thiuram tetrasulfide
U392 Butylate
U279 Carbaryl
U372 Carbendazim
U367 Carbofuran phenol
U393 Copper dimethyldithiocarbamate
U386 Cycloate
U366 Dazomet
U395 Diethylene glycol, dicarbamate
U403 Disulfiram
U390 EPTC
U407 Ethyl Ziram
U396 Ferbam
U375 3-Iodo-2-propynyl n-butylcarbamate
U384 Metam Sodium
U365 Molinate
U391 Pebulate
U383 Potassium dimethyl dithiocarbamate
U378 Potassium n-hydroxymethyl-n-methyldithiocarbamate
U377 Potassium n-methyldithiocarbamate
U373 Propham
U411 Propoxur
U387 Prosulfocarb
U376 Selenium, tetrakis (dimethyldithiocarbamate)
U379 Sodium dibutyldithiocarbamate
U381 Sodium diethyldithiocarbamate
U382 Sodium dimethyldithiocarbamate
U277 Sulfallate
U402 Tetrabutylthiuram disulfide
U401 Tetramethylthiuram monosulfide
U410 Thiodicarb
U409 Thiophanate-methyl
U389 Triallate
U404 Triethylamine
U385 Vernolate

For background information on waste characterization data, data gathering efforts, and applicable technologies, see the Best Demonstrated Available Technology (BDAT) Background Document for Newly Listed or Identified Wastes from the Production of Carbamates and Organobromines.

1. Proposed Treatment Standards

The Agency has promulgated the listing of the wastes from the carbamate industry specified above. The final listing was signed by the administrator on January 31, 1995, and published in the **Federal Register** on February 9, 1995. EPA is today proposing concentration-based treatment standards for these wastes. The concentration limits for the regulated constituents are based on both existing and newly proposed UTS (59 FR 47982, September 19, 1994). UTS standards have already been promulgated for 21 of the constituents of concern for these waste codes (16 organic constituents and 5 metals). These standards were promulgated in the LDR Phase II final rule and are based on the following technologies: (1) Incineration was the primary basis for organic constituents in nonwastewaters; (2) biological treatment or carbon absorption was the basis for organics in wastewaters; (3) high temperature metal recovery and stabilization were the basis for metals in nonwastewaters; and (4) chemical precipitation was the basis for metals in wastewaters. These treatment standards were developed by examining essentially all the BDAT treatment data the Agency had at the time.

The Agency is proposing new UTS for 42 constituents associated with carbamate wastes. 40 of these constituents are chemicals produced by this industry which may be grouped into the following categories: carbamates and carbamate intermediates, carbamoyl oximes, thiocarbamates, and dithiocarbamates. Please refer to the Background Document for definitions of these chemical groups and the categorization of these 40 chemicals. The other 2 constituents for which new UTS are being proposed (triethylamine, and o-phenylene diamine) are not carbamate products, but are hazardous constituents present at levels of regulatory concern in carbamate wastes. Note that although specific dithiocarbamate chemicals have been added to Appendix VII and VIII, the basis for listing K161, and the waste descriptions of P196, P205, U277, U366, U376–379, U381–384, U393, U396, U400–U403, and U407, the regulated constituent for these chemicals and codes is specified as "Dithiocarbamates (total)", because the analytical method for dithiocarbamates does not distinguish among specific dithiocarbamate constituents.

The Agency is proposing to base the UTS for the carbamate, carbamate intermediate, carbamoyl oxime, dithiocarbamate, and thiocarbamate constituents in wastewaters on data developed by the Office of Water for the development of effluent guidelines, and data from treatability studies performed by RREL. Wastewater standards for carbamate and carbamoyl oxime constituents are based on data from alkaline hydrolysis, with the exception of thiodicarb which is based on biological treatment. Wastewater standards for thiocarbamates are based on GAC adsorption, while wastewater standards for dithiocarbamates are based on ozone/UV light oxidation. In cases where data were not available for a specific constituent, the standard has been transferred from the constituent with the most similar chemical structure and properties.

The Agency is proposing to base the UTS for the carbamate, carbamate intermediate, carbamoyl oxime, thiocarbamate, and dithiocarbamate constituents in nonwastewaters on analytical detection limits compiled from sampling and analysis reports prepared to support the proposed listing for these wastes. Although data from the treatment of these constituents in nonwastewater matrices is not currently available, the thermal destruction technologies currently employed to treat these nonwastewaters can routinely achieve destruction to levels below the detection limit.

In addition, the Agency is proposing UTS standards for triethylamine based on data transferred from the treatment of methapyrilene. The treatment standards for methapyrilene are 0.081 mg/l for wastewaters and 1.5 mg/kg for nonwastewaters. Methapyrilene was selected as the basis for this data transfer because it is the only tertiary amine for which UTS standards have been promulgated.

Finally, the Agency is proposing UTS standards for o-phenylenediamine based on analytical detection limits compiled from sampling and analysis reports prepared to support the proposed listing for these wastes. For the treatment standards being proposed today for waste codes K156–161, P127, P128, P185, P188–192, P194, P196–199, P201–205, U271, U277, U279, U280, U364–367, U372, U373, U375–379, U381–387, U389–396, U400–404, U407, U409–411, see § 268.40 table—Treatment Standards for Hazardous Wastes in the proposed amendments to the regulatory language

2. Request for Comments

In the LDR Phase II rule establishing UTS, the Agency was able to make modifications to the proposal, where commenters submitted data. The Agency strongly encourages parties affected by these proposed standards to submit any available treatment data for these newly regulated constituents; if such data become available, the Agency will make appropriate adjustments to these proposed standards. The Agency is soliciting comments, technical descriptions, and performance data regarding the characterization and treatability of these wastes and the achievability of these proposed standards. EPA is especially interested in any information regarding the feasibility of product recovery for these wastes, any available treatment data for the new constituents being added to the list of UTS, detection limits for these constituents in treatment residues, and suggestions for specified methods which could be alternatives to the concentration based standards proposed today.

Because standards for organics are based on treatment of organic constituents to non-detect levels, EPA solicits comment on the use of constituent specific detection levels used during the testing of these wastes for purposes of the listing

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determination. The Agency recognizes that there may be differences between detection limits prior to and after treatment. Detection levels may be lowered for these wastes after treatment due to the "cleaner" matrix. This data has been placed in the docket for today's proposed rule.

B. Organobromines

K140—Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.
U408—2,4,6-Tribromophenol

For further information on waste characterization data, data gathering efforts, and applicable technologies, see the Best Demonstrated Available Technology (BDAT) Background Document for Newly Listed or Identified Wastes from the Production of Carbamates and Organobromines.

1. Proposed Treatment Standards for Organobromine Wastes

EPA proposed to add 2,4,6-Tribromophenol to Appendix VIII of Part 261 on May 11, 1994, and is today proposing to add this constituent to the list of UTS in 40 CFR 268.48. The decision to add 2,4,6-tribromophenol to appendix VIII was based on the determination that the toxicities of this chemical and its chlorinated analogue, 2,4,6-Trichlorophenol, are essentially the same, due to the Quantitative Structure Activity Relationship (QSAR) between these two compounds.

Since treatment data is not currently available on 2,4,6-tribromophenol, the Agency is proposing to set the UTS for 2,4,6-tribromophenol based on data transferred from the treatment of 2,4,6-trichlorophenol. The structures of 2,4,6-tribromophenol and 2,4,6-trichlorophenol are sufficiently similar to be considered halogenated congeners of phenol. Both halogenated phenols contain three symmetrically placed bromine or chlorine substituents which are difficult to remove by chemical substitution. The chemical behavior and mechanisms of action for 2,4,6-tribromophenol is expected to be similar to its chlorinated analogue, 2,4,6-trichlorophenol. Thus, the Agency is proposing UTS standards of 7.4 mg/kg for nonwastewaters and 0.035 mg/l for wastewaters for 2,4,6-tribromophenol.

The Agency is soliciting comment regarding the achievability of this standard by demonstrated available technologies and regarding the analytical detection limit of 2,4,6-tribromophenol in treatment residual matrices. The Agency is also soliciting any available data on the concentrations 2,4,6-tribromophenol in treatment residuals from the recovery or destruction of wastes containing 2,4,6-tribromophenol. The analytical method for 2,4,6-Tribromophenol is SW846 method 8270 (GC/MS for semivolatiles, capillary column).

2. Applicable Technology

The lone facility which produces 2,4,6-tribromophenol wastes uses a Bromine Recovery Unit (BRU) to recover bromine values from organic liquid and vapor waste streams. In this unit, the organics are burned and the combustion products are removed by a wet scrubber. The BRU is a halogen acid furnace which meets the regulatory definition of industrial furnace in 40 CFR 260.10. The combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H, which regulates air emissions from these units and requires monitoring and analyses. The facility which produces 2,4,6-tribromophenol burns listed spent solvents and still bottoms in this BRU; therefore, it is already subject to the performance standards of part 266, subpart H. Treatment of 2,4,6-tribromophenol wastes in the BRU should be effective in destroying the phenolic component of 2,4,6-tribromophenol and providing for recovery of bromine. Based on available information, EPA proposes that treatment by BRU is BDAT for 2,4,6-tribromophenol wastes. EPA solicits comment on this assertion and on the potential applicability of other technologies which destroy 2,4,6-tribromophenol and provide recovery of bromine.

C. Aluminum Potliners (K088)

K088—Spent potliners from primary aluminum reduction.

For background information on waste characterization, see the Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners.

1. Possible Determination of Inherently Waste-Like

Certain current and potential K088 management methods have features of both recycling and conventional treatment. For example, there are a number of management methods involving some type of combustion process that produce a treatment residue from which resources may be recovered and reused. These management methods either destroy or drive off cyanides and toxic organics. Nevertheless, the technologies may useful alternative management methods for K088 if valuable resources are recovered. The Agency has a long-standing preference for recovery over simple treatment. This position is based on the preference in RCRA for environmentally protective recovery versus waste treatment. Any consideration of relative safety must include not just the recovery step, but transport and storage preceding recovery, and proper management of all residues from recovery. RCRA section 1003(a)(6) as well as S. Rep. No. 284, 98th Cong. 2d sess. at 17.

EPA is considering how best to balance the potential promise of spent potliner recovery technologies with their similarities to conventional treatment technologies, especially with respect to the fate of (and risks generated by) hazardous constituents present in the waste. The Agency would prefer to provide consistent regulatory requirements for these recovery as well as for conventional treatment technologies in order to ensure both safe recovery and treatment. However, the existing regulatory framework may make it difficult to achieve this objective. For example, many of these recovery technologies already could be subject to the existing regulations for industrial furnaces burning hazardous waste (the so-called BIF rules).[10] See 56 FR at 7142 (Feb. 21, 1991); 50 FR at 49171-174 (Nov. 29, 1985).

For K088 recovery technologies subject to BIF regulations, only those facilities in existence on the effective date of the BIF rules (August 21, 1991) could operate without first obtaining a permit. This could create a significant barrier to commercial operation of the technology in the near term. If, however, these units operate in a manner that does not subject them to the BIF regulations, then it is possible that they could operate with little or no oversight under RCRA.

The regulatory classification of residues as hazardous or nonhazardous wastes is another area where there would be dissimilar requirements under current rules. For example, one company has obtained from EPA a delisting determination that residues from their conventional treatment process are at levels low enough to no longer be classified as listed hazardous wastes. Other companies have not obtained such determinations, even though they potentially could treat spent potliners to delisting levels. As a result, these companies face the cost

[10] Because the Agency is not fully aware of all of the details of some of the projected potliner treatment/recovery technologies, we cannot state at this time whether the technologies will meet the regulatory definition of an industrial furnace. It should be noted that processes recovering both energy and material values from a waste are subject to BIF rules, and energy recovery in an industrial furnace need not involve any export of energy).

and time of seeking a delisting petition, or the cost disadvantage of disposal of all residuals as hazardous waste.

Because of the similarities in risks, EPA is soliciting comment on whether there are ways to subject all of these technologies to the same, or nearly the same, regulatory requirements, while assuring that the ultimate goals of protecting human health and the environment are not compromised. The Agency has discussed with aluminum industry representatives the possibility of achieving this objective by designating spent aluminum potliners as inherently waste-like materials pursuant to 261.2(d),[11] and using this designation as a triggering event for a determination of "substantial confusion" pursuant to 270.10(e)(2), which could establish a date for eligibility for interim status after August 21, 1991. See generally 56 FR at 7142 making this type of designation and finding of "substantial confusion" for halogen acid furnaces. The Agency solicits comment on this possibility. The benefit of this approach would be to guarantee that these technologies all would be subject to a minimum level of RCRA oversight, especially with respect to design of storage equipment, control of air emissions from the process, minimum treatment standards for residuals, and mandatory corrective action in response to releases of hazardous constituents to the environment.

In order to mitigate some of the potential delay and costs in complying with RCRA, EPA also requests comment on the feasibility of establishing uniform delisting levels for residues from processing spent potliners, much as it did for residues from processing K061 wastes in high temperature metal recovery furnaces. Under this approach, we believe, levels would need to be established for organics, metals, cyanide and fluoride.

Another possibility for assuring safe processing of the potliners would be to develop air emission standards for the processing units pursuant to section 112(d) of the Clean Air Act. This alternative would have to be implemented in such a way as to assure proper management of the potliners before processing, and satisfactory treatment and management of residues from the processing. EPA solicits comment on all of these issues.

EPA wishes to add that its Region 10 office and the Washington State Department of Ecology have already evaluated the spent potliner recovery process used by one vender (Enviroscience). Washington State determined that it is an excluded recycling process, and EPA Region 10 determined that the process is not required to meet emission standards for BIFs, provided the process is conducted pursuant to certain conditions.[12] In light of the existing industry reliance on this determination, any decision made regarding designation of spent potliners in this rulemaking would not change the specific decisions concerning the Enviroscience process that have been completed to date.

2. Overview of Today's Proposal

EPA is proposing treatment standards for K088 expressed as the maximum concentration of specific constituents that would be allowed for land disposal. The tables at the end of this section summarize the constituents proposed for regulation and the maximum allowable concentrations. These maximum concentrations are the UTS for metals, cyanides, and other organics that were developed in the LDR Phase II final rule. These standards are based on a variety of technologies as follows: (1) Alkaline chlorination was the basis for the cyanide wastewater standards; (2) alkaline chlorination of the wastewater to destroy the cyanide prior to the generation of the nonwastewater residual was the basis for the cyanide nonwastewater standard; (3) incineration was the primary basis for other organic constituents in nonwastewaters; (4) biological treatment or carbon absorption was the basis for organics in wastewaters; (5) high temperature metal recovery and stabilization were the basis for metals in nonwastewaters; (6) chemical precipitation was the basis for fluorides and metals in wastewaters; and (7) immobilization through either vitrification or the addition of calcium as a stabilization reagent was the basis for fluorides in nonwastewaters.

These treatment standards were developed by examining essentially all the BDAT treatment data the Agency had at the time. The Agency is also proposing new nonwastewater treatment standards based on leachate tests for fluoride. The leach tests must be conducted using the TCLP (SW-846 Method 1311 as described in 40 CFR Part 261, Appendix II). These leach standards were developed by the Agency when granting a delisting for certain K088 wastes. The treatment standard for fluoride wastewaters is taken from the UTS promulgated in the LDR Phase II final rule. More information on the development of these treatment standards can be found in the docket to today's rule.

Treatment and recycling technologies such as mineral wool cupolas, metallurgical processes, iron and steel industrial furnaces, and other recovery and recycling technologies should be able to meet the proposed standards. K088 treatment data from Reynolds Metals, Comalco Aluminum Ltd., Ormet Corporation and the EPA Combustion Research Facility (CRF) show that K088 can be treated to meet the UTS. Because EPA is proposing numerical treatment standards, any recycling or treatment technologies can be used as long as the treatment standards are met by actual treatment, rather than impermissible dilution. More discussion on these various technologies is presented later in this preamble.

a. Proposed Regulated Constituents. EPA is proposing to regulate the following constituents: acenapthene, anthracene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(g,h,i)perylene, chrysene, dibenz(a,h)-anthracene, fluoranthene, indeno(1,2,3-cd)pyrene, phenanthrene, pyrene, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, cyanide and fluoride. Based on the available waste characterization data (see Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners found in the docket to this rule for details), these constituents were found to be present in either the untreated K088 wastes or in the K088 treatment residuals at levels exceeding the UTS. See the proposed delisting of K088 for Reynolds Metals at 56 FR 33004 and 33005, July 19, 1991, and the corresponding docket for that

[11] The basis for such a designation would be that spent potliners contain cyanides and polyaromatic hydrocarbons which are destroyed rather than recycled, even by recovery technologies. These hazardous constituents are present in concentrations not ordinarily found in raw materials or products for which the spent potliners would be substituting, and the spent potliners could pose a substantial hazard to human health and the environment when recycled. The combustion process itself, for example, would seem to pose all of the risks the BIF rule is intended to address. Past storage practices for spent potliners also have led to significant environmental damage (although much of this storage utilized open piles).

A designation of inherently waste-like, incidentally, would only apply to the potliners and not to legitimate products obtained by processing the potliner (so long as those products were not burned as fuels or used directly on the land). 56 FR at 7141. Another option, therefore, would be to designate the use of K088 in certain types of recycling (e.g., all processes involving thermal destruction of cyanide, processes that incorporate cyanide/PAHs into product unchanged) as inherently waste-like.

[12] These evaluations were conducted at the express, voluntary request of Enviroscience.

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rulemaking. See also the docket for today's proposal for more data on constituent concentrations in untreated and treated K088. EPA is specifically requesting comment on regulating the phthalates: bis (2-ethylhexyl) phthalate, di-n-butyl phthalate and di-n-octyl phthalate. These constituents can show up in the untreated potliner and the treated residue; however, there is some question that their presence may simply be due to lab contamination.

Treatment technologies for K088 are also designed to recover or stabilize the fluoride. Therefore, EPA is proposing to regulate fluoride in K088 in order to ensure that the fluoride is actually recovered or that it is properly treated. Fluoride is also being regulated because of its toxicity and the high concentrations found in untreated K088 (see Tables 2 and 3 in 56 FR 33004 (July 19, 1991)—the proposed delisting of K088 generated by Reynolds Aluminum Company). If a treatment standard is promulgated for fluoride, the Agency will add fluoride to the UTS for K088. EPA has some data on the toxicity of fluoride (see the docket for today's proposed rule), and is in the process of gathering more information. For more information on regulated constituents see the Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners found in the docket to this rule.

Section 3004(d)(1), (e)(1), and (g)(5) require that land disposal of hazardous wastes is prohibited unless a prohibition is no longer warranted to protect human health and the environment. EPA reads this language to require that land disposal may still be prohibited after treatment of hazardous constituents if the waste might still pose substantial hazards due to presence of other constituents or properties. 56 FR at 41168 (August 19, 1991); *NRDC* v. *EPA*, 907 F. 2d 1146, 1171–72 (D.C. Cir. 1990) (dissenting opinion). These hazards could be posed due to lack of treatment of other constituents in the waste, in this case, fluoride. It should be noted that this action is consistent with previous Agency actions, since EPA regulated fluoride in the delisting granted to treatment residues from the Reynolds Metals treatment process, and also regulates discharge of fluorides in the CWA effluent limitation guidelines for the primary aluminum subcategory. Consequently, the Agency is proposing a treatment standard for fluoride to assure that ultimate disposal of treated K088 is protective.

EPA is proposing treatment standards for fluoride, as well as the hazardous constituents contained in the waste. Flouride is present in these wastes in very high concentrations: upwards of 10%. Untreated concentrations of this magnitude can cause significant adverse effects to human health and the environment if improperly land disposed. The Agency requests comment on whether fluoride should be added to Appendix VIII, as well.

b. Specific Companies Investigating K088 Recovery/Treatment Technologies. It has been mentioned earlier that there are numerous technologies either available or being developed that recycle or recover the value (carbon, fluoride, etc.) in K088. Some of these technologies are described below. This is by no means a comprehensive discussion on those technologies, but rather is intended to give the public some idea of treatment options that are, or may be, available. These technologies or companies are only those of which the Agency has been made aware. EPA has placed in the RCRA Docket of this proposed rule all the recycling/treatment studies, as well as literature and videos submitted to the Agency on the various technologies. The EPA requests comment and data on these technologies and any other recycling or recovery technologies applicable to K088.

• Enviroscience, Inc. (ESI) has completed a pilot plant demonstration sponsored by Kaiser Aluminum, Vanalco and Columbia Falls Aluminum Company. Their process uses K088, K061 (electric arc furnace dust) and F006 (electroplating sludges) to produce zinc oxide, mineral wool fiber and pig iron. The K088 is first formed into briquettes and then heated to approximately 3000 F in a furnace, with lime and silica being added to attain an optimal acid:base ratio for proper fiber formation. The carbon and the cyanide from the potliner are used to reduce the metals in the K061 and F006. The non-reducible metal oxides are spun into a mineral wool from the molten slag.

• Alcan International Limited has developed a Low Caustic Leach and Liming hydrometallurgical process to treat K088. This process converts the fluorides to acid grade fluorspar and recovers the sodium and aluminum as sodium aluminate and caustic feed to be used in aluminum smelter operations. Alcan claims that the remaining brick and carbon fraction constitutes a high ash solid fuel whose reduced sodium content enhances its value as a chemical reducing agent.

• Ormet Corporation has used a pilot-scale melting system vitrification process to treat K088 wastes. The process involves the rapid suspension heating of the waste and other additives in a preheater prior to physical and chemical melting which occur within a cyclone reactor. Ormet has submitted a petition to the EPA requesting a delisting of their residues from this process. They intend to scale-up this plant upon receiving a delisting of their waste. They claim the process produces a nonhazardous reusable product with the qualities of industrial glass that can be used as glass insulation material, roofing shingle granules or in the manufacture of tiles.

• Comalco Aluminum Ltd. (CAL), an Australian company, has developed the Comtor process, which is a full-scale calcination process which thermally destroys the cyanide in K088. This process also recovers the fluoride and carbon values in K088 by using hydrometallurgical techniques with lime dewatering. The precipitate can be used as a fluxing agent or in cement making. The caustic liquor may be recycled to the alumina plant or can be used as a scrubbing agent. Comalco has plans to upgrade their plant to 10,000 ton/yr and build a second plant in New Zealand. They have a licensing agreement with Aisco Systems of Canada to commercialize the technology.

• Elkem Technology is a Norwegian company which has done bench-scale testing consisting of smelting K088 along with iron ore to produce pig iron and a slag which they hope to get delisted. The process uses the carbon in K088 to act as a reducing agent and destroy the cyanides and other toxic organics, while rendering all other constituents immobile in a glassified, inert slag. For each ton of K088, they produce 0.85 ton of iron. Elkem plans a demonstration plant in the U.S. next year. They also plan to pilot a process to recover fluoride from the molten slag.

• Ausmelt Limited is an Australian company which has performed pilot scale tests using their submerged lance technology, which is a pyrometallurgical process, to destroy the toxic constituents in K088 and produce a stable slag. Fluorides are recovered for re-use in the aluminum smelting process. Ausmelt has plans to build a facility which could process approximately 15,000 tons per year of K088.

For more specific information on these technologies, see the Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners.

For the treatment standards being proposed today for K088, see § 268.40 table— Treatment Standards for Hazardous Wastes in the proposed amendments to the regulatory language. For performance data supporting these standards, see the aforementioned K088 Background Document.

VII. Improvements to the Existing Land Disposal Restrictions Program

A major part of today's rule is designed to improve the quality and efficiency in the LDR program. Areas that are addressed in this proposed rule include: Completion/adjustments to UTS and expansion/consolidation of certain required methods of treatment.

A. Completion of Universal Treatment Standards

Today's rule proposes further streamlining and simplification of the LDR treatment standards based on the UTS promulgated in the LDR Phase II final rule (59 FR 47982, September 19, 1994). The proposed modifications apply to: (1) all UTS and therefore to all hazardous wastes regulated with numerical treatment standards included in the UTS as summarized in the Consolidated Standards Table at § 268.40, and (2) the numerical treatment standards proposed for carbamate, organobromine and spent aluminum potliner wastes. These proposed changes to UTS therefore extend to all F-, K-, U- and P- waste codes with individually regulated constituents plus ignitable, corrosive, reactive and characteristically toxic wastes with underlying hazardous constituents.

1. Expansion to Cover All Components of Newly Listed Wastes (Carbamates and Organobromines)

A number of constituents regulated with numerical treatment standards in certain waste codes are not represented in UTS. EPA lacked adequate data to cover all the BDAT List with UTS in the LDR Phase II final rule and today the Agency is proposing numerical treatment standards for additional constituents in carbamate and organobromine wastes which are not yet on the current BDAT List. These 43 constituents are:

A2213
Aldicarb sulfone
Barban
Bendiocarb
Bendiocarb phenol
Benomyl
Butylate
Carbaryl
Carbenzadim
Carbofuran
Carbofuran phenol
Carbosulfan
Cycloate
Dimetilan
Dithiocarbamates (total)
EPTC
Formetanate hydrochloride
Formparanate
m-Cumenyl methylcarbamate
Isolan
Methiocarb
Methomyl
Metolcarb
Mexacarbate
Molinate
Oxamyl
Pebulate
o-Phenylenediamine
Physostigmine
Physostigmine salicylate
Promecarb
Propham
Propoxur
Prosulfocarb
Diethylene glycol, dicarbamate
Thiodicarb
Thiophanate-methyl
Tirpate
Triallate
2,4,6-Tribromophenol
Triethylamine
3-Iodo-2-propynyl n-butylcarbamate
Vernolate

The proposed UTS for these constituents can be found in § 268.48 of today's proposed rule.

2. UTS for Constituents in Wastewater and Nonwastewater Forms

For a number of constituents, there exist UTS in wastewater forms of wastes but none in nonwastewaters. EPA believes that these constituents should be controlled in both sets of waste streams associated with a given waste code. This enhances consistent and complete treatment. The organic constituents for which EPA has promulgated wastewater UTS but no nonwastewater UTS include acrolein, 4-aminobiphenyl, aramite, chlorobenzilate, 2-chlorovinylethyl ether, 1,2-diphenylhydrazine, ethylene oxide, methyl methanesulfonate, p-dimethylaminoazobenzene, and 2-naphthylamine.

Today's rule requests comment on potential UTS values for these constituents in nonwastewaters. Although EPA does not have definitive treatability data on hand at the time of proposal, EPA believes that nonwastewater UTS for these constituents would close gaps in the current LDR framework and ensure adequate treatment of all waste streams.

a. Nonwastewaters.

(i) The Environmental Technology Council Data. EPA is soliciting comment on the treatment standards originally proposed, but not promulgated, in the Third Third F039 standards for acrolein, 4-aminobiphenyl, chlorobenzilate, p-dimethylaminoazobenzene, aramite, and 2-naphthylamine. EPA had withdrawn these as constituents of nonwastewater forms of F039 following comments from the ETC that these were analytically problematic. Specifically, in a study reporting detection limits and spike recoveries in incinerator ash from the combustion of hazardous wastes (as analyzed by six different laboratories), ETC reported anomalous levels of detection limits or spike recoveries for these compounds. Detection limits and spike recoveries are of concern because the numerical treatment standard for any constituent in incinerator ash is equal to the product of the detection limit times the accuracy correction factor, the inverse of the percent recovery times a variability factor representing the extent of the data.

ETC reported detection limits and percent recovery values for acrolein, p-dimethylaminoazobenzene (p-DAB), 4-aminobiphenyl (4AB), aramite, chlorobenzilate (CB), methylmethanesulfonate (MMS) and 2-naphthylamine (2NA), and also for dibenzo(a,e)pyrene (DBP). The detection limit results are labeled LIMITS A–F to represent the six different laboratories and the percent recovery results are similarly labeled % REC A–F to represent the six different laboratories. These data, together with the complete ETC investigations for the Third Third proposed rule and the subsequent pesticide study are available for inspection in the RCRA Docket for the LDR Phase II final rule.

TABLE 1.—DETECTION LIMITS

Limit	Constituent							
	Acrolein	p-DAB	4-AB	Aramite	CB	DBP	MMS	2-NA
A	0.029	1.82	6.94	17.18	4.87	9999	2.438	12.561
B	9999	3.2	9999	614.43	8.29	9999	1.85	26.82
C	0.161	9.43	26.89	243.05	7.98	18.72	2.3	6.96
D	9999	1.38	14.06	4.52	2.61	9999	0.75	2.214

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TABLE 1.—DETECTION LIMITS—Continued

Limit	Constituent							
	Acrolein	p-DAB	4-AB	Aramite	CB	DBP	MMS	2-NA
E	9999	46.26	0.065	2.37	11.34	9999	9999	.2.43
F	9999	1.78	14.18	9999	10.53	9999	1.37	9999

TABLE 2.—PERCENT RECOVERY

% Rec	Constituent							
	Acrolein	p-DAB	4-AB	Aramite	CB	DBP	MMS	2-NA
A	1.6	36	13.661	5.47	138.04	0	50.7	8.77
B	0	118.87	473.41	79.23	175.85	0	63.54	125.48
C	1.954	40.77	34.95	120.34	105.99	27.34	100.38	18.73
D	0	126.74	1.69	0.11	160.43	0	74.11	3.98
E	0	134.65	31.54	80	247.725	0	0	8.89
F	0	558.13	17.55	330.24	436.82	0	33.31	3.08

Although ETC reports relatively few detection limits for acrolein, the consistently problematic low recoveries, all below 2% were the basis of EPA's concern in the Third Third rule. Similarly, dibenzo(a,e)pyrene exhibits extremely and consistently low recoveries while several detection limits are missing from the report. Aramite exhibited several extremely high detection limits plus an erratic set of percent recoveries ranging from very high to very low. The other four constituents, p-dimethylaminoazobenzene, 4-aminobiphenyl, chlorobenzilate and 2-naphthylamine show a pattern of generally high detection limits and high recoveries, with much variation in recoveries and with several significantly high values in each set. The methylmethanesulfonate data were supplied by ETC despite the fact that EPA did not propose a nonwastewater standard for this constituent in the Third Third rule; this data is presented here for completeness and to stimulate comment on the development of today's proposed methylmethanesulfonate nonwastewater standard discussed below.

(ii) EPA's Treatability Data Detection Limits and Recoveries. High or erratic detection limits and recoveries are of concern to EPA. For both parameters, high values indicate a barrier to quantification and erratic values indicate unreliable quantification.

Analysis of the fourteen EPA incinerator burns used to generate nonwastewater treatability data shows both a narrower range of detection limits and lower values of detection limits than the ETC study achieved. The following table presents the ranges of detection limits achieved.

In generating treatability data for listed hazardous wastes EPA undertook a series of fourteen incinerator burns. Analysis of ash from these burns provided the numerical basis for nonwastewater standards. Detection limit data were obtained from the ash itself for all constituents. However, recovery levels were determined for only a handful of constituents. After these recoveries were determined by spiking ash with the selected constituents and measuring the percentage of the spike which was recovered, these recovery values were transferred to chemically similar constituents and incorporated into the nonwastewater treatment standard calculations. EPA generally rejected recoveries ranging outside the 20% to 200% range following the guidance of the BDAT program's Quality Assurance Project Plan.

ORIGINAL EPA NONWASTEWATER INCINERATOR BURN DETECTION LIMITS

EPA test burn	Detection limits for volatile organics	Detection limits for semivolatile organics
Test #1	0.1–10.0	0.11–10.0
Test #2	0.2–50.0	0.08–5.0
Test #3	0.05–10.0	0.01–10.1
Test #4	2.0–10.0	2.0–50.0
Test #5	[a]2.0–50.0	0.5–10.0
Test #6	[b]0.2–50.0	0.4–7.0
Test #7	[c]2.0–20	0.2–5
Test #8	0.025–2.0	1.0–10.0
Test #9	0.005–0.4	0.42–4.0
Test #10	[c]1.5–30	1.00–5.0
Test #11	0.005–0.4	0.531–4.0
Test #13	0.01–2.0	0.36–1.8
Test #14	[a]0.010–2	0.36–1.8

[a] Excluding one outlier out of 40 analytes.
[b] Excluding five outliers out of 40 analytes.
[c] Excluding two outliers out of 40 analytes.

(iii) Solicitation of Treatability Data. EPA solicits additional treatability and analytical data concerning nonwastewater forms of these constituents. By taking comment on whether to promulgate nonwastewater standards for these constituents, EPA is reopening the discussion of the issues of detection limits and recoveries raised by ETC in the comments following the Third Third proposal. EPA opens the question of whether advances in detectability, notably the use of HLPC (high pressure liquid phase chromatography) may allow reliable measurement. EPA also solicits comment whether more reliable recovery values have been achieved for these constituents, and at what detection level are reliable results achieved.

(iv) Additional Potential Nonwastewater UTS Based on Treatability Groups. EPA is also soliciting comment on potential treatment standards for 2-chlorovinyl ether, 1,2-diphenylhydrazine, ethylene oxide and methyl methanesulfonate based on the Treatability Group categories outlined in the LDR Phase II Final Background Document for Universal Standards, Volume A, Universal Standards for Nonwastewater Forms of Listed Hazardous Wastes. Specifically, for each of the constituents listed above, EPA is considering as potential UTS the lowest nonwastewater treatment standard for the treatability group to which that constituent belongs.

Treatability groups collect the UTS constituents into sets of chemically similar compounds with similar behavior in treatment processes and analytical instruments. UTS for nonwastewater UTS are based on the detection limits of that compound in incinerator ash. Since these detection limits reflect the constituent's "fate and transport" in the analytical unit according to its chemical structure and composition, transferring treatability data among members of treatability groups accounts for similarities in analytical quantification as well as in treatment.

NONWASTEWATER UTS

Compound	NW UTS (mg/l)
Acrolein	2.8
4-Aminobiphenyl	13
Aramite	2.5
Chlorobenzilate	6.6
2-Chlorovinyl ether	5.6
Dibenz(a,e)pyrene	22
1,2-Diphenylhydrazine	1.5
Ethylene oxide	0.75
Methyl methanesulfonate	4.6
p-Dimethylaminoazobenzene	29
2-Naphthylamine	15

(v) UTS for Sulfide in Nonwastewater Form.

EPA is soliciting treatability data for nonwastewater forms of sulfide. In the absence of treatability data for this inorganic ion in nonwastewater matrices, EPA is not proposing treatment standards but is requesting treatability and analytical data on which to develop a standard.

(vi) UTS for Fluoride in Nonwastewater Form.

EPA is today proposing a 48 mg/l as the UTS for the fluoride ion identical to that proposed today for fluoride in K088 nonwastewaters. The basis of the K088 standard is discussed in the section of today's preamble proposing treatment standards for K088 wastes. Today's proposed fluoride nonwastewater UTS, like the K088 fluoride standard, is based on the use of SW-846 leachate method 1311. Fluoride, like zinc, is not an underlying hazardous constituent in characteristic wastes, according to the definition at § 268.2(i).

b. Wastewaters. Additionally, today's rule proposes a wastewater treatment standard for 1,4-dioxane. 1,4-Dioxane is the only UTS constituent for which EPA had promulgated a nonwastewater standard but not a wastewater standard. Commenters reported analytical difficulties in quantifying 1,4-dioxane at the wastewater standard proposed in the LDR Phase II UTS (0.12 mg/l); this standard was based on a transfer from ethyl ether. EPA consequently withdrew that standard in the LDR Phase II final rule. The docket for today's rule includes treatability data submitted by one such commenter.

Today's rule proposes a wastewater UTS of 0.22 mg/l for 1,4-dioxane. This standard is being proposed as the maximum daily limit for 1,4-dioxane in the proposed effluent guidelines for the pharmaceuticals industry, based on the performance of steam stripping followed by biological treatment.

EPA also solicits comment on a wastewater standard for 1,4-dioxane of 8.67 mg/l, followed by biological treatment. The basis of this alternative standard is treatability data for distillation, which was developed for the proposed pharmaceutical effluent guidelines. The data supporting this standard represents a transfer of distillation performance data with methanol to 1,4-dioxane.[13]

WASTEWATER UTS

Compound	WW UTS
1,4-Dioxane	0.22 mg/l

3. Application to Listed Waste

a. Wastewater-nonwastewater pairs. There are several cases where a constituent is regulated in wastewater forms of particular listed wastes with UTS but not in nonwastewater and a nonwastewater UTS exists for these constituents, having been promulgated in LDR Phase II. For these constituents, EPA proposes to extend the UTS to nonwastewaters, and vice versa. In other words, in cases where the 40 CFR 268.40—Table of Treatment Standards for Hazardous Wastes lists a numerical treatment standard for a constituent in one form of a listed waste but not in the other, today's rule proposes the UTS as the standard for the other form. This section of today's rule does not propose new UTS, rather it extends existing UTS to gaps in the media-specific standards for individual constituents in listed wastes. An example is K019 where p-dichlorobenzene, fluorene and 1,2,4,5-tetrachlorobenzene are regulated with UTS in wastewater forms of K019 but are not regulated—indicated in the Consolidated Table as "NA"—in nonwastewater forms of K019. Today's rule proposes filling in these "NA's" for p-dichlorobenzene, fluorene and 1,2,4,5-tetrachlorobenzene in nonwastewater for K019 with the UTS and similarly applying UTS in other cases where UTS now apply to a constituent in either wastewaters and nonwastewaters but do not apply to both. The gaps between wastewater and nonwastewater coverage for individual constituents in listed wastes occurred because the Agency decided on a waste code-by-waste code basis whether to include constituents in wastewater, nonwastewater or both forms of a waste. EPA now believes that applying UTS to wastewaters and nonwastewaters consistently ensures treatment of regulated constituents regardless of the physical form of the waste or the waste treatment residual regulated under the "derived-from" rule.

The following tables show those regulated constituents, by waste code, where either a wastewater or a nonwastewater UTS is added by today's proposal.

Waste code	Constituent	Wastewater standard (mg/l)
F006	Silver	0.43
F007	Cadmium	0.69
	Silver	0.43
F008	Cadmium	0.69
	Silver	0.43
F009	Cadmium	0.69
	Silver	0.43
F011	Cadmium	0.69
	Silver	0.43
F012	Cadmium	0.69
	Silver	0.43
F038	Nickel	3.98

[13] At the time of signature of this rule, further data on these effluent guidelines were forthcoming. This additional data, if not available at the time of publication of this rule, will be made available shortly thereafter.

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Waste code	Constituent	Wastewater standard (mg/l)
K018	Pentachloroethane	0.055
K030	Hexachlorpropylene	0.035
	Pentachlorobenzene	0.055
	Pentachloroethane	0.055
K035	Acenaphthene	0.059
	Anthracene	0.059
	Dibenz(a,h)anthracene	0.055
	Fluorene	0.068
	Indeno(1,2,3-cd)pyrene	0.0055
K048	Nickel	3.98
K049	Nickel	3.98
K050	Nickel	3.98
K051	Nickel	3.98
K052	Nickel	3.98
K061	Antimony	1.9
	Arsenic	1.4
	Barium	1.2
	Beryllium	0.82
	Mercury	0.15
	Selenium	0.82
	Silver	0.43
	Thallium	1.4
	Zinc	2.61
P013	Barium	1.2

Waste code	Constituent	Nonwastewater standard (mg/kg unless otherwise noted)
F001–5	Carbon disulfide	4.8 (mg/l TCLP)
	Cyclohexanone	0.75 (mg/l TCLP)
	Methanol	0.75 (mg/l TCLP)
F037	Acenaphthene	3.4
	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
F038	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
F039	Acetonitrile	38
	Acrolein	2.8
	4-Aminobiphenyl	13
	Aramite	2.5
	Carbon disulfide	4.8 (mg/l TCLP)
	Chlorobenzilate	6.6
	2-Chloro-1,3-butadiene	0.28
	Cyclohexanone	0.75 (mg/l TCLP)
	Dibenz(a,e)pyrene	22
	Diphenylamine/diphenylnitrosamine	13
	1,2-Diphenylhydrazine	1.5
	Ethylene oxide	0.75
	Methanol	0.75 (mg/l TCLP)
	Methyl methanesulfonate	4.6
	2-Naphthylamine	15
	N-Nitrosodimethylamine	2.3
	Phthalic anhydride	28
	tris-(2,3-Dibromopropyl)phosphate	0.10
	Beryllium	0.014 (mg/l TCLP)
	Fluoride	48
	Thallium	0.078 (mg/l TCLP)
	Vanadium	0.23 (mg/l TCLP)
K006	Lead	0.37 (mg/l TCLP)
K018	Chloromethane	30
K019	p-Dichlorobenzene	6.0
	Fluorene	3.4
	1,2,4,5-Tetrachlorobenzene	14
K028	Cadmium	0.19 (mg/l TCLP)
K030	o-Dichlorobenzene	6.0
	p-Dichlorobenzene	6.0
K048	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
K049	Carbon disulfide	4.8 (mg/l TCLP)
	2,4-Dimethylphenol	14

Waste code	Constituent	Nonwastewater standard (mg/kg unless otherwise noted)
	Lead	0.37 (mg/l TCLP)
K050	Lead	0.37 (mg/l TCLP)
K051	Acenaphthene	3.4
	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
K052	2,4-Dimethylphenol	14
	Lead	0.37 (mg/l TCLP)
K083	Cyclohexanone	0.75 (mg/l TCLP)
K086	Cyclohexanone	0.75 (mg/l TCLP)
	Methanol	0.75 (mg/l TCLP)
K101	Cadmium	0.19 (mg/l TCLP)
	Lead	0.37 (mg/l TCLP)
	Mercury	0.025 (mg/l TCLP)
K102	Cadmium	0.19 (mg/l TCLP)
	Lead	0.37 (mg/l TCLP)
	Mercury	0.025 (mg/l TCLP)
P003	Acrolein	2.8
P056	Fluoride	48
U038	Chlorobenzilate	6.6
U042	2-Chloroethyl vinyl ether	5.6
U093	p-Dimethylaminoazobenzene	28
U134	Fluoride	48
U168	2-Naphthylamine	15

b. Elimination of Redundant Methods of Treatment. Several constituents had been regulated with UTS in one medium (wastewaters or nonwastewaters) but were regulated with a method of treatment in the other as alternatives, namely P022 carbon disulfide (nonwastewaters), U003 acetonitrile (nonwastewaters), U057 cyclohexanone (nonwastewaters), U108 1,4-dioxane (wastewaters and nonwastewaters), U110 1,2-diphenylhydrazine (wastewaters), U115 ethylene oxide (wastewaters), U154 methanol (wastewaters and nonwastewaters). The LDR Phase II proposal did not suggest that the specified methods be replaced with the UTS. However, in comments received on the proposal, commenters requested that EPA apply the UTS to these wastes. Because EPA had not specifically proposed such a change, the LDR Phase II final rule allowed both the specified method or the UTS.

EPA believes that the UTS are appropriate so that the alternative specified method is now unnecessary. Numerical treatment standards, such as UTS, ensure treatment more reliably than do standards expressed as methods of treatment because the target concentrations allow for verification that the waste has been treated. Consequently, EPA intends to replace required methods of treatment with numerical standards whenever possible. EPA believes UTS for these constituents provides such an opportunity. Therefore today's rule proposes to eliminate the alternative methods of treatment and establishes UTS for both wastewater and nonwastewater constituents.

4. Revision to the Acetonitrile Standard

a. The acetonitrile nonwastewater standard. EPA reviewed the constituent-specific standard for acetonitrile nonwastewaters, and believes that this standard should be raised from 1.8 mg/kg to 38 mg/kg. The 1.8 mg/kg standard, which was based on incineration, is not consistent with treatment data and standards for other structurally related organo-nitrogen UTS compounds. For example, the nonwastewater treatment standard for both acrylonitrile and methacrylonitrile is 84 mg/kg. The nonwastewater standards for ethyl methacrylate and methyl methacrylate are 160 mg/kg.

Acetonitrile is one of the compounds singled out by the ETC as being problematic to analyze for in combustion residues (i.e., nonwastewaters). In response to the Third Third Rulemaking, the ETC had submitted data from which they calculated a method detection limit of 6.678 mg/kg for other combustion residues.

The Agency is soliciting data and comment specifically on the analytical achievability of the 1.8 mg/kg acetonitrile nonwastewater standard in combustion residues and the ability of non-combustion technologies to achieve the 1.8 mg/kg and the proposed standard of 38 mg/kg for acetonitrile in nonwastewaters.

b. Revoking the special wastewater/nonwastewater definition for acrylonitrile wastes. The Agency also recognizes that K011/13/14 nonwastewaters could consist of over 90% water, and that wastewater treatment is an appropriate means of treating these wastes. For the above reasons, the Agency is proposing to revise the treatment standard for acetonitrile in nonwastewaters to 38 mg/kg based on the existing treatment data, which comes from treating K011/13/14 wastes containing greater than 1% TOC by steam stripping. (See the background documents for K011/13/14 nonwastewaters in the Second Third Final Rule Docket and the background documents for K011/13/14 "wastewaters" in the Third Third Final Rule Docket).

5. Aggressive Biological Treatment as BDAT for Petroleum Refinery Wastes

EPA solicits comment whether to specify aggressive biological treatment as the treatment standard for decharacterized petroleum refining wastewaters. Aggressive biological treatment is defined in § 261.31(b)(2) as one of the following four processes: activated sludge, trickling filters, rotating biological contactors or high-rate mechanical aeration. The American Petroleum Institute (API) has submitted data to the Agency on ten of its facilities using aggressive biological treatment. Along with the data API requested that EPA specify aggressive biological treatment as the treatment standard for their wastes. Such a standard, which would operate in lieu of UTS, may reduce the monitoring burden. EPA

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solicits comment on proposing aggressive biological treatment as BDAT for these wastes. However, because monitoring is required under CWA permits, EPA is also soliciting comment on whether a reduction in the number of constituents monitored is significant. The data which API submitted demonstrate that aggressive biological treatment in the industry may consistently meet UTS. There was one observation, however, for which a constituent exceeded UTS, and other observations which involved detection limits which exceeded UTS. This data is available in the docket for today's rule.

B. Dilution Prohibition

Under the existing LDR dilution prohibition (40 CFR 268.3), burning inorganic metal-bearing hazardous wastes can be a form of impermissible dilution. On May 27, 1994, the Assistant Administrator for the Office of Solid Waste and Emergency Response issued a Statement of Policy which clarified this point (59 FR 27546–7). Today the Agency is proposing to codify and quantify these principles.

1. Dilution Prohibited as a Method of Treatment

Under RCRA, the LDR prohibition on dilution states generally that no person "shall in any way dilute a restricted waste * * * as a substitute for adequate treatment to achieve compliance with (a treatment standard for that waste)". 40 CFR 268.3(a). This prohibition implements the requirement of section 3004(m) of RCRA, which requires that hazardous constituents in hazardous wastes be destroyed, removed or immobilized before these wastes can be land disposed. Hazardous constituents are not destroyed, removed or immobilized if they are diluted. *CWM* v. *EPA*, 976 F.2d at 16, 17, 19–20; see also S. Rep. No. 298, 98th Cong. 1st Sess. 17 (1983) ("the dilution of wastes by the addition of other hazardous waste or any other materials during waste handling, transportation, treatment or storage is not an acceptable method of treatment to reduce the concentration of hazardous constituents").

Consistent with these authorities, the Agency has stated that the dilution prohibition serves one chief purpose—"to ensure that prohibited wastes [14] are treated by methods that are appropriate for that type of waste." (55 FR 22532, June 1, 1990). Impermissible dilution can occur under a number of circumstances. The most obvious is when solid wastes are added to a prohibited waste to reduce concentrations but not volumes of hazardous constituents, or to mask their presence. Impermissible dilution also may occur when wastes not amenable to treatment by a certain method (i.e., treated very ineffectively by that treatment method) are nevertheless 'treated' by that method (55 FR 22666, June 1, 1990) (biological treatment does not effectively remove toxic metals from wastes; therefore, prohibited wastes with treatment standards for metals ordinarily would be impermissibly diluted if managed in biological treatment systems providing no separate treatment for the metals). See also 52 FR at 25778–79 (July 8, 1987) (impoundments which primarily evaporate hazardous constituents do not qualify as section 3005(j)(11) impoundments which may receive otherwise-prohibited hazardous wastes that have not met the treatment standard).

This proposed rule gives a general distinction between "adequate treatment" and potential violations of the dilution prohibition. The Agency has evaluated the listed wastes and has determined that 43 of the RCRA listed wastes (as set forth in 40 CFR 261) typically appear to be such inorganic hazardous wastes; i.e., they typically do not contain organics, or contain only insignificant amounts of organics, and are not regulated for organics [15]. BDAT for these inorganic, metal-bearing listed wastes is metal recovery or stabilization. Thus, impermissible dilution may result when these wastes are combusted.

This proposed rule reflects the Agency's concerns about the hazard presented by toxic metals in the environment. When an inorganic metal-bearing hazardous waste with insignificant organics is placed in a combustion unit, legitimate treatment for purposes of LDR ordinarily is not occurring. No treatment of the inorganic component occurs during combustion, and therefore, metals are not destroyed, removed, or immobilized. Since there are no significant concentrations of organic compounds in inorganic metal-bearing hazardous wastes, it cannot be maintained that the waste is being properly or effectively treated via combustion (i.e., thermally treated or destroyed, removed, or immobilized).

In terms of the dilution prohibition, if combustion is allowed as a method to achieve a treatment standard for these wastes, metals in these wastes will be dispersed to the ambient air and will be diluted by being mixed in with combustion ash from other waste streams. Adequate treatment (stabilization or metal recovery to meet LDR treatment standards) has not been performed and dilution has occurred. It is also inappropriate to regard eventual stabilizing of such combustion ash as providing adequate treatment for purposes of the LDRs. Simply meeting the numerical BDAT standards for the ash fails to account for metals in the original waste stream that were emitted to the air and for reductions achieved by dilution with other materials in the ash. (In most cases, of course, the metal-bearing wastes will have been mixed with other wastes before combustion, which mixing itself could be viewed as impermissible dilution).

These inorganic, metal-bearing hazardous wastes should be and are usually treated by metal recovery or stabilization technologies. These technologies remove hazardous constituents through recovery in products, or immobilize them, and are therefore permissible BDAT treatment methods.

There are eight characteristic metal wastes; however, only wastes that exhibit the TC as measured by both the TCLP and the EP for D004–D011 are presently prohibited (see 55 FR 22660–02, June 1, 1990). Characteristic wastes, of course, cannot be generically characterized as easily as listed wastes because they can be generated from many different types of processes. For example, although some characteristic metal wastes do not contain organics or cyanide or contain only insignificant amounts, others may have organics or cyanide present which justify combustion, such as a used oil exhibiting the TC characteristic for a metal. Thus, it is difficult to say which D004–D011 wastes would be impermissibly diluted when combusted, beyond stating that as a general matter, impermissible dilution would occur if the D004–D011 waste does not have significant organic or cyanide content but is nevertheless combusted.

2. Permissible Dilution

EPA ordinarily would not consider the following hazardous wastes to contain "significant organic or cyanide content", for which combustion would otherwise be impermissible dilution (the Agency is adding criteria beyond that included in the May 27, 1994 policy memorandum to clarify situations raised in comments received) Combustion of the following inorganic metal-bearing wastes is therefore not

[14] A "prohibited" hazardous waste is one which is actually subject to a prohibition on land disposal without first being treated, or disposed in a no-migration unit. See 54 FR 36968 (Sept. 6, 1989).

[15] To the extent that these wastes or residues of these wastes (i.e., biological treatment sludges) contain significant organic content, combustion may be an appropriate treatment technology. See later discussion regarding this point.

prohibited under the LDR dilution prohibition: (1) Wastes that, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, contain hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard for UTS; (2) organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste; (3) wastes that, at point of generation, have reasonable heating value such as greater than or equal to 5000 Btu/lb (see 48 FR 11157, March 16, 1983); (4) wastes co-generated with wastes that specify combustion as a required method of treatment; (5) wastes, including soil, subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); and (6) wastes with greater than 1% Total Organic Carbon (TOC). An "inorganic metal-bearing waste" is one for which EPA has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content. (See 40 CFR Appendix XI proposed in today's rule for a list of waste codes which EPA tentatively believes satisfies this definition.) The foregoing six categories of waste typically would contain sufficient organic content to indicate that combustion can be a reasonable means of treating the wastes prior to land disposal. EPA solicits comments on whether there are other inorganic wastes that would technically justify combustion as a means of complying with BDAT. For example, are there metal bearing organic wastes or complexing agents not covered by the above criteria that prevent effective stabilization of metals due to the presence of unregulated organics? However, as noted above, mixing practices such as fuel blending to add organics to inorganic metal-bearing hazardous wastes ordinarily would be considered to be impermissible dilution. This is because, under current rules, the dilution prohibition applies at the point a hazardous waste is generated. *CWM* v. *EPA* 976 F.2d at 22–3; see also 48 FR 11158, 11159 and nn. 2 and 4 (March 16, 1983); 53 FR at 522 (Jan. 8, 1988) determinations of legitimacy of recycling are made on a waste-by-waste basis before any blending occurs.

The Agency is aware of a practice within the foundry industry that recycles foundry sand by thermally oxidizing impurities. It is EPA's view that this process would violate the policy against combustion of inorganics, unless the foundry sand being oxidized contains toxic organic constituents or has a significant organic component (as described above).

3. Cyanide-Bearing Wastes and Combustion

A commenter questioned why EPA allows the presence of cyanide to justify combustion when there are adequate alternative treatment methods. This approach was adopted because cyanide is destroyed by combustion. Existing LDR rules, in many cases, identify combustion as an appropriate BDAT for destruction of cyanide-bearing wastes. The May 27, 1994 policy statement did not change BDAT determinations and thus reflected that combustion could be appropriate for destroying certain cyanide-bearing wastes. EPA, however, solicits comments on whether the cyanide criterion should be dropped.

While cyanide is effectively treated in combustion devices, EPA has received comments that non-combustion technologies such as alkaline chlorination are available to effectively treat metal bearing wastes that contain cyanide and that BDAT for these wastes should not include combustion. EPA solicits comments on the relative effectiveness and risks of combustion versus alkaline chlorination in treating cyanides in inorganic metal bearing wastes.

4. Table of Inorganic Metal Bearing Wastes

The table being proposed in 40 CFR part 268, Appendix XI today indicates the list of waste codes for which EPA regulates only metals and/or cyanides that would be affected by this proposed rule. Except for P122, this list is identical to the list originally published in the aforementioned Policy Statement on this subject. The Agency is removing P122 (Zinc Phosphide greater than 10%) from the list of restricted inorganic metal-bearing wastes, because the Agency has previously promulgated a treatment standard of INCIN for the nonwastewater forms of this waste. See 40 CFR 268.40. The policy memo was in error on this point. The Agency solicits comment on this issue, particularly with respect to costs associated with the segregation of these wastes.

5. The Addition of Iron Dust To Stabilize Characteristic Hazardous Wastes: Potential Classification as Impermissible Dilution

The Agency has become aware that certain industries may be adding iron dust or iron filings to some characteristic hazardous wastes as a form of treatment. For example, foundries are known to mix iron dust or filing with the D008 waste sand generated from their spent casting molds, viewing this practice as a form of stabilization. The Agency believes, however, that such stabilization is inadequate to minimize the threats posed by land disposal of metal-containing hazardous wastes, and is today proposing to clarify that this waste management practice is "impermissible dilution" under 40 CFR 268.3, for reasons discussed below.

In particular, when iron dust or filings are added to a characteristic waste foundry sand, it is considered "treatment" under the definition in 40 CFR 260.10. Nevertheless, the Agency does not believe it to be adequate treatment; rather, it is merely the addition of material as a substitute for adequate treatment, and thus constitutes impermissible dilution. See § 268.3(b), 54 FR at 48494 (Nov. 1989), and 55 FR at 22532 (June 1, 1990). The Agency believes it is unlikely that any chemical reactions are taking place when iron dust or iron filings are added, because the waste foundry sand would likely contain only lead, silica, microscopic pieces of castings, and binders (clays, phenols, and tars) from the molds. The Agency does not believe that simply adding iron would provide treatment for either the lead or the organics (i.e., phenol and tar).

While it is arguable that iron could form temporary, weak, ionic complexes with silica and/or phenate, so that when analyzed by the TCLP test the lead appears to have been stabilized, the Agency believes that this "stabilization" is temporary, based upon the nature of the complexing. In fact, a report prepared by EPA on Iron Chemistry in Lead Contaminated Materials (Feb. 22, 1994), which specifically addressed this issue, found that iron lead bonds are weak, adsorptive surface bonds, and therefore not likely to be permanent. Furthermore, as this iron-rich mixture is exposed to moisture and oxidative conditions over time, interstitial water would likely acidify, which could potentially reverse any temporary stabilization, as well as increase the leachability of the lead from the foundry sand. Therefore, the addition of iron dust or filings to characteristic waste foundry sand does not appear to provide long-term treatment.

Another related concern is that the addition of iron has been demonstrated to result in false negatives for lead when wastes are analyzed by means of the

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TCLP.[16] This significant interference with the analytical method for detecting lead, in conjunction with the concerns about the temporary nature of any stabilization that would occur, fully supports identifying this practice as impermissible dilution or otherwise failing to satisfy the requirements of RCRA section 3004(m) to minimize short- and long-term threats to human health and the environment. Comments and data are solicited on whether this type of stabilization is effective in achieving long-term treatment. Comments and data are also solicited on whether a test method other than the TCLP is more appropriate for measuring compliance for this waste.

D. Expansion of Methods Requiring Incineration

EPA is proposing to modify the treatment standard expressed as INCIN, which specifies hazardous waste incineration, to, CMBST, which allows combustion in incinerators and boilers and industrial furnaces. The INCIN requirement was set before EPA had issued air emission requirements for boilers and industrial furnaces (BIFs). Now that BIF regulations are in place, the need to constrain treatment to one type of combustion device is no longer appropriate. With the development of innovative technologies, EPA also solicits comment on whether the Catalytic Extraction Process, for which Molten Metal Technology received a determination of equivalent treatment under § 268.42(b)[17], should also be allowed for all wastes which have a treatment standard of CMBST, and whether there are other technologies which are equivalent to CMBST.

E. Clean Up of 40 CFR Part 268

EPA is proposing further changes to the LDR program to achieve the goal of simplified regulations. The Agency is committed to improving the LDR program by implementing participant suggestions from the LDR Roundtable held on January 12–14, 1993.

The LDR requirements are found, primarily, in 40 CFR Part 268. EPA intends to remove language that is out-of-date, and to clarify language which may be confusing, in an effort to make the LDR program easier to understand, implement, and enforce. This effort will continue in the LDR Phase IV rule, scheduled for proposal in June 1995.

1. Section 268.8

Section 268.8 stated that First and Second Third wastes for which EPA did not promulgate treatment standards by their respective effective dates could continue to be disposed of in landfill and surface impoundment units until May 8, 1990 (see 55 FR 22526). Because treatment standards for all scheduled wastes were promulgated in the Third Third rule in 1990, these "soft hammer" requirements are no longer necessary. Therefore, § 268.8 is proposed to be removed from part 268.

2. Sections 268.10–268.12

The purpose of Subpart B of § 268 was to set out a schedule for hazardous wastes by the date when treatment standards were to be established. Sections 268.10, 268.11, and 268.12 of Subpart B included the First Third, Second Third, and Third Third scheduled wastes respectively. Deadlines in all three of these sections were met on time, and the wastes are subject to treatment standards. Therefore, these three sections are no longer necessary, and are proposed to be removed.

3. Section 268.2(f)

The existing wastewater definition found in § 268.2(f) includes wastes that have less than 1% TOC and less than 1% TSS. There are three exceptions given to this definition: (1) F001–F005 wastewaters have no criteria for TSS, and must contain less than 1% solvent constituents, (2) K011, K013, K014 wastewaters must contain less than 5% TOC and less than 1% TSS, and (3) K103 and K104 wastewaters must contain less than 4% TOC and less than 1% TSS. With the promulgation of UTS in the LDR Phase II final rule (59 FR 47982, September 19, 1994), such distinctions are inconsistent and an unnecessary complication of the regulations. While such initial classifications may have had some meaning, after effective BDAT treatment the residuals are appropriately regulated by the wastewater or nonwastewater limit as specified by the 1% TOC and TSS criteria. The Agency is therefore proposing to remove paragraphs (1)–(3) from § 268.2(f).

VIII. Proposed Prohibition of Hazardous Waste as Fill Material

EPA is also proposing today to amend the LDR rules so as to prohibit the placement of hazardous waste as a fill material unless the prohibited waste is treated so that short- and long-term threats have been minimized. By "fill material", the Agency means uses[18] of waste as a substitute for low grade material (such as sand or dirt) to raise the level of land, occupy space, or otherwise fill in depressions. Hazardous waste includes, of course, any waste that is identified or listed as hazardous under § 261.3, and so includes wastes (such as residues from treating listed wastes) that are hazardous by virtue of the mixture and derived-from rules. The result of this rule, if finalized, would thus be to confirm that such uses are prohibited and therefore illegal unless the fill area is a regulated unit (i.e., a subtitle C landfill).

EPA in fact already interprets current rules as ordinarily providing a similar result. In the preamble to the May 19, 1980 rules establishing the subtitle C hazardous waste management program, EPA stated that an exemption from regulation for legitimate recycling activities does not apply to "sham uses and recovery or reclamation—e.g. 'landfilling' or 'land reclamation'". 45 FR at 33093. In the April 4, 1983 Federal Register Notice proposing a separate regulatory regime for hazardous wastes legitimately recycled in a manner constituting disposal (ultimately promulgated as 40 CFR 260.20–.23), the Agency stated that this provision would not apply to hazardous wastes used as fill material, the specific example provided being "waste stabilization processes where the stabilized material is then used as fill." 48 FR at 14985. The Agency further stated that it was "convinced that these waste treatment operations are not production processes and can therefore be regulated as waste management." *Id.*

The reasons for the Agency's interpretation are evident. The wastes are being put into the environment without any safeguards to prevent exposure. Hazardous constituents can migrate into the environment and reach human and environmental receptors by any number of direct pathways, including inhalation, dermal contact, surface runoff, and leaching to groundwater. Indirect exposure pathways exist as well.

The amended rule, if adopted, would prohibit the use of hazardous waste as fill material, and add a conforming amendment to § 266.20(b) stating that disposal of hazardous waste as fill material is not a type of use constituting disposal subject to the special standards of Part 266 subpart C, but rather disposal plain and simple, and hence illegal unless occurring in a regulated unit; or, as explained below, if the prohibited waste can be shown to be treated to satisfy section 3004(m). Section 3004(m) of the statute states that EPA is to establish "levels or methods of treatment, *if any*, which substantially reduce the likelihood of migration of hazardous constituents from the wastes *so that short-term and long-term threats to human health and the environment are minimized.*" (Emphasis added). In this case, the Agency is unable to determine any level of treatment of hazardous wastes which can guarantee the requisite minimization of short-term and long-term threats when prohibited hazardous wastes are used as fill material.

Because there are no specifications or constraints on placement of fill material, reliable assessments pose particular uncertainties and difficulties. These uncertainties relate to release, transport, and ultimate exposure, and include uncertainties regarding release mechanisms, types and amounts of hazardous constituents released due to potential waste variability, location of human and environmental receptors, and transport mechanisms. cf. *HWTC III*, 886 F. 2d at 1362–63. The existing LDR treatment standards do not fully address these potential problems for at least two reasons. First, the LDR standards are technology-based, not risk-based standards. Second, for metal hazardous constituents, the LDR standards do not regulate the total metal content of hazardous wastes. Total metal content is relevant to many possible exposure pathways when hazardous waste is used as fill material, including inhalation and direct ingestion pathways. See also 59 FR at 43499 (August 24, 1994), where EPA made similar findings with respect to use of hazardous waste K061 as anti-skid or deicing material (uses which are better defined, and hence more assessable, than use as fill material). Similarly, this type of disposal does not appear to satisfy the ultimate protectiveness standard in sections 3004 (d), (e), and (g) (which requires that disposal of hazardous waste that meets a treatment standard must nevertheless still be protective, taking into account enumerated uncertainties—including long-term uncertainties associated with the persistence, toxicity, mobility, and propensity to bioaccumulate—of land disposed hazardous waste and hazardous constituents). See 56 FR at 41168 (August 19, 1991), adopting this standard, which was first articulated in *NRDC* v. *EPA*, 907 F. 2d 1146, 1171–2 (D.C. Cir. 1990) (dissenting opinion).

EPA is not, in this notice, proposing to prohibit other uses of hazardous waste that involve placement on the land. Thus, hazardous waste presently placed on the land as fill material can be diverted to a less risky, more acceptable activity. See 59 FR 8583 (Feb. 23, 1994) noting availability of safer alternatives as justification for the then-proposed prohibition on non-encapsulated uses of hazardous waste K061. Nor would the agency preclude the possibility that particular types of prohibited waste could be used as fill material, provided that it can be established that threats to human health and the environment have been minimized, taking into account all of the statutorily-enumerated uncertainties cited above.

In a recent proposed rule on the product use of High Temperature Metal Recovery slags derived from K061, F006, and K062 hazardous waste, the Agency initially evaluated the risks that result from a variety of uses of these slags, including use as road subbase, an ingredient in cement and asphalt, top grade material for roads, etc. (59 FR 67256, December 29, 1994). While this evaluation considered the possible release and transport of waste constituents, the uses examined did not include the unrestricted use of the waste-derived product as fill material. Use as fill could result in placement of the waste residual in almost any location, including a residential setting. Therefore, an evaluation of the risks posed by use of waste-derived products as fill would need to consider the potential for direct exposure to receptors located on-site (e.g., direct ingestion or inhalation of the material), in addition to the potential for movement of the material off-site to other receptors. Such an evaluation would need to consider at a minimum the volume of material used as fill, the levels of toxic constituents in the material (both total and leachable), the placement site and proximity to receptors, and activity at the site that would promote release, transport, and exposure. Indirect exposure pathways also could be relevant, particularly for hazardous wastes containing bioaccumulative hazardous constituents (including dioxins and dibenzofurans).

IX. Capacity Determinations

A. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by this proposal. For background information on data sources, methodology, and a summary of each analysis, see the Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III—Decharacterized Wastewaters, Carbamate and Organobromine Wastes, and Spent Potliners, found in the docket for today's rule.

In general, EPA's capacity analysis methodologies focus on the amount of waste to be restricted from land disposal that is currently managed in land-based units and that will require alternative treatment as a result of the LDRs. The quantity of wastes that are not managed in land-based units (e.g., wastewaters managed only in RCRA exempt tanks, with direct discharge to a POTW) is not included in the quantities requiring alternative treatment as a result of the LDRs. Also, wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are not included in these quantity estimates.

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment systems as a result of the LDRs—quantities of waste that will be treated adequately either on site in existing systems or off site by facilities owned by the same company as the generator (i.e., captive facilities) are omitted from the required capacity estimates.[19]

B. Capacity Analysis Results Summary

For the decharacterized ICR and TC wastes managed in CWA, CWA-equivalent, and Class I injection well systems, EPA estimates that between 3.5 and 15 billion tons will be affected as a result of today's proposal. EPA believes that some affected facilities need time to build treatment capacity for these wastes, as wastewater volumes

[16] See memo from John V. Cignatta, Datanet to John Gauthier, EPA Region 1, dated September 8, 1992.

[17] The Catalytic Extraction Process, used by Molten Metal Technology, involves a molten metal bath, with temperatures around 3000°F, into which liquid wastes are injected, and solid wastes are fed with a carrier gas (Ar). The process treats the wastes in a high temperature reduction environment, which reduces the compounds to their elemental state. The metallic, inorganic ceramic, and gaseous phases which result are then reused, or purified and released.

[18] Incidentally, the term "use" here has no specific meaning other than the normal dictionary definition. It is not meant to connote the phrase "used or reused" found in § 261.1(c)(5), which is a term of art for determining the scope of the exclusion in § 261.2(e)(1) (i) and (ii).

[19] Traditionally, capacity analyses have focused on the demand for alternative capacity once existing on-site capacity and captive off-site capacity have been accounted for. However, for some of the wastes at issue in this rule it may not be feasible to ship wastes off site to a commercial facility. In particular, facilities with large volumes of wastewaters may not readily be able to transport their waste to treatment facilities. Alternative treatment for these wastes may need to be constructed on site.

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generally make off-site treatment impractical. EPA has determined that sufficient alternative treatment capacity is not available, and today is proposing to grant a two-year national capacity variance for decharacterized wastewaters.

EPA estimates that approximately 90,000 tons of newly listed wastes included in today's proposal will require alternative treatment. In particular, approximately 4,500 tons of carbamate wastes (K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, U407, U409–U411) will require alternative treatment. Less than 100 tons of organobromine wastes (K140, U408) are expected to require alternative treatment capacity. In addition, 85,000 tons of spent aluminum potliners (K088) will require alternative treatment capacity. Sufficient commercial capacity exists to manage all of these wastes, so EPA is not proposing to grant a national capacity variance for these wastes.

The quantities of radioactive wastes mixed with wastes included in today's proposal are generated primarily by the U.S. Department of Energy. EPA estimates that 820 tons of high-level waste and 360 tons of mixed low-level waste that may be affected by this proposal will be generated annually by DOE. In addition, there are currently 7,000 tons of high-level waste, 10 tons of mixed transuranic waste, and 2,700 tons of mixed low-level waste in storage that may be affected by this proposal. DOE currently faces treatment capacity shortfalls for high-level wastes and mixed transuranic wastes. Although DOE does have some available treatment capacity for mixed low-level wastes, most of this capacity is limited to treatment of wastewaters with less than one percent total suspended solids and is not readily adaptable for other waste forms. DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules. Therefore, EPA is proposing to grant a two-year national capacity variance to radioactive wastes mixed with the hazardous wastes affected by today's proposal.

Table 1 lists each RCRA hazardous waste code for which EPA is today proposing LDR standards. For each code, this table indicates whether EPA is proposing to grant a national capacity variance for land-disposed wastes.[20] Also, EPA is proposing to grant a three month national capacity variance for all wastes in this proposed rule to handle logistical problems associated with complying with the new standards. EPA is soliciting comment on these variance determinations.

TABLE 1.—VARIANCES FOR NEWLY LISTED AND IDENTIFIED WASTES

["Yes" Indicates EPA is Proposing to Grant a Variance]

Waste description	Surface-disposed wastes	Deep well-injected wastes
Ignitable Wastes [1] (D001)	YES	YES.
Corrosive Wastes [1] (D002)	YES	YES.
Reactive Wastes [1] (D003)	YES	YES.
Newly Identified Pesticide Wastes [2] (D012-D017)	YES	YES.
Newly Identified TC Organic Wastewaters (D018-D043)	YES	YES.
Spent Aluminum Potliners (K088)	NO	NO.
Carbamate Production Wastes (K156-K161, P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, U409-U411).	NO	NO.
Organobromine Wastes (K140, U408)	NO	NO.
Mixed Radioactive Wastes [3]	YES	YES.

[1] The variance determinations listed here apply only to decharacterized wastewaters managed in CWA, CWA-equivalent, and SDWA systems.
[2] The variance determinations listed here apply only to newly identified decharacterized D012-D017 wastewaters managed in CWA, CWA-equivalent, and SDWA systems.
[3] The variance determinations given listed apply only to radioactive wastes mixed with decharacterized D001-D003 or newly identified D012-D017 wastes managed in CWA, CWA-equivalent, and SDWA systems; to radioactive wastes mixed with newly identified TC organic wastewaters; and to radioactive wastes mixed with spent aluminum potliners, carbamate production wastes, or organobromine production wastes.

EPA is also proposing in this notice to prohibit placement of hazardous waste as fill material. To the extent this can be viewed as a new prohibition (which, given EPA's consistent interpretation that this activity should be occurring in regulated units, is unclear), EPA would not propose any type of capacity variance. Hazardous waste treatment residues satisfying LDR standards can be land disposed in subtitle C units, and there is no shortage of such disposal capacity. In addition, there may be opportunities for recycling hazardous waste treatment residues presently placed as fill (such as use in asphalt, cement, or as light weight aggregate) which would provide adequate capacity.

C. Requests for Comment

EPA is soliciting general comment and data on sources, quantities, and management practices of characteristic wastes, as well as presence and quantities of underlying hazardous constituents, from facilities managing their wastes using Subtitle D surface impoundments (CWA), or subsequent land disposal of treated wastewaters (CWA-equivalent), or Class I nonhazardous injection wells, or tanks. EPA requests specific information from facilities managing *de minimis* ICRT wastes, including information on waste sources, quantities, and management practices, as well as underlying hazardous constituents.

EPA requests specific information on volumes of carbamate and organobromine wastes that are recycled, mixed with, or co-managed with other wastes, and the volumes and types of residuals that are generated by the various management practices applicable to these wastes. EPA is also soliciting information, including quantities, management practices, and waste characteristics, for soil and debris contaminated with carbamate and/or organobromine wastes. EPA also seeks comments from the aluminum industry on volumes of K088 generated and future management of this waste.

EPA is soliciting specific data on reactive wastes which are deactivated using processes that may cause explosions, including quantities, management practices, and waste characteristics, and is requesting data for mixed TC/radioactive wastes which are deepwell injected.

[20] The term "land-disposed wastes" denotes wastes that are managed in land-based units at any time during the waste's storage, treatment, or disposal.

X. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is being proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). It is proposed to be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also modified to indicate that this rule is a self-implementing provision of HSWA.

EPA's proposal to prohibit hazardous waste as fill material is also a HSWA regulation. It implements RCRA sections 3004 (d), (e), (g)(5), and (m), which provisions require EPA to prohibit all land disposal of hazardous waste that is not capable of being done in a manner that is protective and that minimizes short-term and long-term threats to human health and the environment from hazardous waste disposal. See also 59 FR 43499 (August 24, 1994), which is a HSWA rule prohibiting K061 as anti-skid/de-icing material and implements these same LDR provisions. Consequently, this provision, if enacted, would be effective immediately in authorized states.

B. Effect on State Authorization

As noted above, EPA is today proposing a rule that, when final, will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21.

Section 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). This deadline can be extended in certain cases (see section 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being proposed today need not affect the State's UIC primacy status. A State currently authorized to administer the UIC program under the SDWA could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the LDRs would have to demonstrate that it had the requisite authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are discussed in a July 15, 1985 final rule (50 FR 28728).

XI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant" The Order defines a "significant" regulatory action as one that "is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by

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the Executive Order. The analysis considers compliance cost and economic impacts for both characteristic wastes and newly listed wastes affected by this rule. For characteristic wastes, the potential cost impacts of this rule depend on whether facilities' current wastewater treatment systems will meet the UTS levels or if additional treatment will be required. If current treatments are adequate, facilities will only incur administrative costs to have their permits revised. A rough estimate would be that there would be one-time incremental costs of $0.9 to $2.9 million for all incrementally impacted facilities. However, at the high end, if current wastewater treatment systems need to be augmented with additional treatment steps, the incremental compliance costs for today's rule could be as high as $1 million per affected facility. If 20% of the firms comply by installing additional treatment, treatment costs are estimated to be $6.5–$18.1 million/year. The Agency does not have adequate data to estimate how many, if any, facilities may require modification to their treatment facilities. The Agency requests comment and data on how often additional treatment may be required and what type of treatment may be needed.

For newly listed wastes, the costs are substantially higher and will be incurred each year. These costs range from approximately $11.9 million to $47.3 million and are attributable primarily to thermal treatment of spent aluminum potliner wastes (K088). Therefore, today's proposed rule may be considered an economically significant rule. Because today's proposed rule is significant, the Agency analyzed the costs, economic impacts, and benefits.

This section of the preamble for today's proposed rule provides a discussion of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's proposed rule, followed by a presentation of the cost, economic impact and benefit results. More detailed discussions of the methodology and results may be found in the background document, "Regulatory Impact Analysis of the Proposed Rule for the LDR Phase III Newly Listed and Identified Wastes," which has been placed in the docket for today's proposed rule.

1. Methodology Section

In today's proposed rule, the Agency is establishing treatment standards for the following wastes: end-of-pipe standards for ICR wastewaters managed in CWA and CWA-equivalent systems, and Class I nonhazardous UIC wells, TC pesticide (D012-17) and organic (D018-43) wastewaters managed in CWA and CWA-equivalent systems, and Class I nonhazardous UIC wells (all UIC managed volumes are covered under a different section of the preamble for today's rule), and newly listed wastes from three industries - organobromines, spent aluminum potliners, and carbamates.

a. Methodology for Estimating the Affected Universe. In determining the costs, economic impacts, and benefits associated with today's rule, the Agency estimated the volumes of waste affected by today's rule. The procedure for estimating the volumes of ICR waste and TC organic and pesticide waste, and newly listed wastes affected by today's rule is summarized below.

First, the Agency examined all industries which might be likely to produce wastes covered under today's standards. Through reviewing comments to the Supplemental Notice of Data Availability published by the Agency in 1993, reviewing runs from the Biennial Reporting System (BRS) of volumes generated from particular industry sectors, as well as discussions with industry, and discussions with the Office of Water at EPA HQ, the Agency narrowed it down to 16 industries which would potentially have significant volumes of wastewater affected by today's rule.

Using a host of databases and/or sources, the Agency collected data on the quantities, constituents, and concentrations of the volumes affected from each of the 16 industries. In addition, the Agency gathered any data on current management practices, plant design, etc. The following sources were used: Section 308 data from the Office of Water, Industrial Studies Database (ISDB), 1991 Biennial Reporting System (BRS), primary summary and development documents from effluent guidelines, Toxicity Characteristic Regulatory Impact Analysis documents, data gathered in the capacity analysis performed for today's rule, as well as comments from potentially affected industries.

The Agency obtained volume information for the newly listed wastes—organobromines (K140), spent aluminum potliners (K088), and carbamate wastes (K156–161)—from the listing documents prepared for these wastes during the listing procedure.

b. Cost Methodology. The cost analysis estimates the national level incremental costs which will be incurred as a result of today's rule. The cost estimates for both the baseline and post-regulatory scenarios are calculated employing: (i) The facility wastestream volume, (ii) the management practice (baseline or post-regulatory) assigned to that wastestream, and (iii) the unit cost associated with that practice. Summing the costs for all facilities produces the total costs for the given waste and scenario. Subtracting the baseline cost from the post-regulatory cost produces the national incremental cost associated with today's rule for the given waste.

The cost methodology section includes three subsections: (i) ICR and TC Pesticide and Organic Wastes Managed in CWA and CWA-Equivalent Systems, (ii) Newly Listed Wastes, (iii) Testing and Recordkeeping Costs. (The costs for wastes managed in Class I nonhazardous waste deep wells are discussed in section B.)

(i) ICR and TC Pesticide and Organic Wastes Managed in CWA and CWA-Equivalent Systems. The Agency employed the following approach to estimate the incremental costs for the ICR and TC wastes. First, using information available on the affected industries, the Agency created average-sized model facilities for each industry. Second, for a given model facility in an affected industry, the Agency used available unit cost data to develop costs for the baseline management practices (usually treatment in surface impoundments followed by discharge into receiving waters through a NPDES permit). Third, the Agency used data on the constituents and waste quantities for each industry, where applicable, to determine the necessary treatment required to reduce to UTS levels the constituents present. Fourth, the Agency used unit costs to develop costs for the post-regulatory management practices for the treatment requirements determined in the third step. Fifth, subtracting the baseline from the post-regulatory costs for an average facility in an industry sector and using the data available on the number of facilities affected within each industry, the Agency was able calculate the incremental cost for a given industry. Sixth, summing costs across affected industries, the Agency determined the incremental cost for the rule for the end-of-pipe treatment standards.

(ii) Newly Listed Wastes. The costs for treatment of organobromines (K140), spent aluminum potliners (K088), and carbamate wastes (K156–161) will be determined using data from the listings on baseline management practices, judgment on the technology(s) required to meet the UTS standards for these wastes, and available unit cost data.

(iii) Testing and Recordkeeping Costs. Testing and recordkeeping costs, including costs that facilities will incur for ensuring that hazardous constituents in characteristic waste are meeting new treatment standards and costs associated with permit modifications will be based upon an average, one-time testing cost and an Information Collection Request, respectively.

c. Economic Impact Methodology. The economic effects of today's proposed rule are defined as the difference between the industrial activity under post-regulatory conditions and the industrial activity in the absence of regulation (i.e., baseline conditions).

The Agency used (1) historic average capital expenditures for each industry, (2) historic average operating expenditures for each industry, (3) historic revenues, and (4) historic average pollution abatement and control expenditures (PACE) to determine the economic impacts. However, the Agency was unable to examine the impacts on a facility-specific basis due to lack of data. Therefore, the impacts are assessed on an industry-specific basis.

d. Benefits Methodology. The approach for estimating benefits associated with today's rule involves three components: (i) estimation of pollutant loadings reductions, (ii) estimation of reductions in exceedances of health-based levels, and, (iii) qualitative description of the potential benefits. The benefits assessment is based upon the waste quantity and concentration data collected for the cost analysis. This incremental assessment focuses upon reductions in toxic concentrations at the point of discharge and does not consider any potential benefits resulting from reductions in air emissions or impacts on impoundment leaks and sludges which may occur as part of treating wastes to comply with the LDRs.

EPA has not conducted an assessment of the benefits related to the effects of the proposed rule on newly listed wastes. These benefits depend on the incremental risk reductions that may result from treatment of the wastes prior to disposal at a subtitle C facility. EPA data indicate that between 100,000 and 118,000 tons of spent aluminum potliners are generated annually. Improper management of these wastes has caused many serious past damage incidents. (See listing Background Document for K088). However, data are limited with regard to current management practices and risk levels for these wastes. Therefore, EPA is not yet able to evaluate the benefits resulting under the proposed rule for these wastes. Because the quantity of waste is very small, benefits for newly listed organobromine and carbamate wastes are expected to be minimal.

(i) Estimation of Pollutant Loadings Reductions. An incremental approach was used to estimate reductions in pollutant loadings. For the baseline scenario, contaminant concentrations were based upon data or estimates of current effluent discharge concentration levels. For the post-regulatory scenario, concentration levels were assumed to equal UTS levels.

(ii) Estimation of Reductions in Exceedances of Health-Based Levels. The methods used for evaluating the benefits associated with cancer and noncancer risk reductions resulting from the proposed rule entail comparing constituent concentration levels to health-based standards to evaluate whether implementation of the proposed rule reduces concentration levels below levels that pose risk to human health.

To estimate benefits from cancer risk reductions resulting from the proposed rule, a simple screening analysis was performed. This analysis compared contaminant concentrations for the baseline and post-regulatory scenario to health-based levels for carcinogens. Further analysis may be undertaken to quantify benefits associated with facility/ wastestream combinations identified in the contaminant concentration comparisons.

Benefits associated with reductions in non-cancer exceedances are estimated based upon comparisons of contaminant concentration levels in effluent discharges of the affected wastestreams to the reference health levels. These benefits are expressed in terms of the number of exceedances of health-based levels under the baseline scenario compared to the number of exceedances under the proposed rule.

(iii) Qualitative Description of the Potential Benefits. A qualitative assessment of potential benefits likely to result from the proposed rule is used where data are limited. The Agency acknowledges limited data availability in developing waste volumes affected, constituents, concentrations, cost estimates, economic impacts, and benefits estimates for the proposed LDR Phase III rulemaking. The Agency respectfully requests comment from industry regarding constituents, concentrations, waste volumes, and current management practices.

2. Results

a. *Volume Results.* The Agency has estimated the volumes of formerly characteristic wastes potentially affected by today's rule to total in the range of 33.5 to 500 million tons. The Agency requests comment on waste volumes affected by the proposed LDR Phase III rule. For newly listed wastes, the analyses supporting the listing determination showed about 4,500 tons of carbamate wastes, less than 100 tons of organobromine wastes, and 100,000 to 118,000 tons of spent aluminum potliners are potentially affected by this rule.

b. *Cost Results.* For characteristic wastes, the potential cost impacts of this rule depend on whether facilities' current wastewater treatment systems will meet the UTS levels or if additional treatment will be required. If current treatments are adequate, facilities will only incur administrative costs to have their permits revised. A rough estimate would be that there would be one-time incremental costs of $0.9 to $2.9 million for all incrementally impacted facilities. However, at the high end, if current wastewater treatment systems need to be augmented with additional treatment steps, the incremental compliance costs could be as high as $1 million per affected facility. The Agency does not have adequate data to estimate how many, if any, facilities may require modification to their treatment facilities. The Agency requests comment and data on how often additional treatment may be required.

For newly listed wastes, the costs are substantially higher and will be incurred each year. These costs range from approximately $11.9 million to $47.3 million and are attributable primarily to thermal treatment of spent aluminum potliner wastes (K088). The Agency requests comment on these estimates.

c. *Economic Impact Results.* The Agency has estimated the economic impacts of today's rule to represent less than one percent of historic pollution control and operating costs for the organic chemical and petroleum refining industries. However, for those facilities that may need to treat to UTS to comply with today's rule, costs could be more significant. The estimated compliance costs for treating newly listed spent aluminum potliners represents 40 percent of pollution control operating costs for aluminum reducers; however, treatment costs represent only one percent of total historic operating costs. The Agency requests comment on anticipated economic impacts resulting from the proposed LDR Phase III rule.

d. *Benefit Estimate Results.* The Agency has estimated the benefits associated with today's rule to be small. Assuming facilities comply with the proposed rule by treating their affected wastestreams, loadings reductions

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estimates range between 36 and 407 tons per year for direct dischargers, and between 1,490 and 24,391 tons per year for indirect dischargers. For direct dischargers, loadings reductions represent between .03 to .30 percent of total Toxic Release Inventory (TRI) chemical loadings to surface waters. For indirect dischargers, loadings reductions represent between .8 and 12.8 percent of all TRI loadings transferred to POTWs. Based upon the results of this screening, and more detailed risk assessments, the estimated baseline risks associated with only four wastestreams exceed commonly assumed threshold cancer and noncancer risk levels. EPA estimated that three wastestreams containing aniline pose baseline cancer risks ranging from 1×10^{-5} to 1×10^{-4} which potentially would be reduced to between 8×10^{-8} and 3×10^{-6} under the Phase III rule. A fourth wastestream containing acrylamide poses baseline cancer risk at a level of 2×10^{-3}. The proposed rule is estimated to reduce this risk to between 2×10^{-4} and 4×10^{-3}. All four of these wastestreams are currently discharged to POTWs; if POTW treatment removes these constituents from the wastewater prior to discharge to surface water and/or if no drinking water intake is located downstream from the POTW's outfall, baseline risks will be lower than those estimated above. The Agency requests comment and any available information related to these wastestreams.

B. Regulatory Impact Analysis for Underground Injected Wastes

The Agency has completed a separate regulatory impact analysis for underground injected wastes affected by the LDR Phase III proposed rule. This analysis describes and evaluates the regulatory impacts only to the Class I injection well universe. The new proposed Phase III LDRs cover decharacterized ICR and TC organic wastes, and other newly-identified hazardous wastes that are distinctly industrial wastes injected by owners and operators of only Class I hazardous and non-hazardous injection wells.

According to the available data outlined in the RIA, indications are that of the 223 Class I injection facilities in the nation, up to 154 could be affected by the new Phase III LDRs. Of these facilities, 101 inject nonhazardous waste and 53 inject hazardous waste. Combined, these facilities may inject up to 14 billion gallons of waste annually into Class I wells. These Class I injection facilities will now be required to either treat wastes, or file no migration petitions as outlined in 40 CFR 148 (See 53 FR 28118 (July 26, 1988)) preamble for a more thorough discussion of the no migration petition review process). Additional options for compliance with the proposed Phase III LDRs, including a *de minimis* exemption and a pollution prevention option are discussed in more detail in the RIA.

Of these newly affected Class I facilities, 38 already have no migration exemptions approved by EPA, but may face additional requirements requiring some modifications of their petitions due to the proposed LDR Phase III rule. For the facilities which do not have approved no migration exemptions, today's proposed rule will add compliance costs to those currently incurred as a result of previous rulemakings. The Agency analyzed costs and benefits for today's rule by using the same approach and methodology developed in the *Regulatory Impact Analysis of the Underground Injection Control Program: Proposed Hazardous Waste Disposal Injection Restrictions* used for the final rule (53 FR 28118) and subsequent rulemaking. An analysis was performed to assess the economic effect of associated compliance costs for the additional volumes of injected wastes attributable to this proposed rule.

In general, Class I injection facilities affected by the LDR Phase III rule will have several options. As previously mentioned, some facilities will modify existing no migration petitions already approved by the Agency, other facilities may submit entirely new petitions, and still others may accept the prohibitions and either continue to inject wastes after treatment or cease injection operations altogether. EPA assessed compliance costs for Class I facilities submitting no-migration petitions, employing alternative treatment, and/or implementing pollution prevention measures. Although facilities using pollution prevention/waste minimization to comply with the Phase III LDRs will likely lower overall regulatory compliance costs, these situations are site-specific and, therefore, EPA cannot estimate these cost savings.

For Class I facilities opting to use alternative treatment, the Agency derived costs for both treating wastes on-site, and/or shipping wastes and treating them off-site at a commercial facility. However, the Agency believes that transportation of large volumes of liquid wastes off-site is not practical. This makes the off-site treatment scenario, at best, a highly conservative analysis. EPA expects most facilities that treat their wastes will do so on-site. Preliminary EPA estimates show that the total annual compliance cost for petitions and alternative on-site treatment to industry affected by the new LDR Phase III prohibitions will range between $9.2 million to $13.2 million. The noncommercial facilities choosing to segregate their wastes may incur additional costs totaling $2.98 million. The average annual compliance costs per affected facility employing on-site alternative treatment ranges from $59,740 to $85,714. The overall annual regulatory compliance cost to industry for petitions and alternatively treating wastes off-site will range between $486.5 million to $805.3 million. The range of costs for alternative treatment is the result of applying a sensitivity analysis. Only the incremental treatment costs for the new waste listings are calculated in this RIA. All of these costs will be incurred by Class I injection well owners and operators. The estimated economic impacts of the proposed rule were based on the random assignment of injection facilities to petition and treatment outcomes using a decision tree analysis method described in the RIA. The Agency requests comment as to how frequently facilities with Class I nonhazardous injection wells will be able to receive a no-migration variance. The Agency also requests comment on how frequently owners will choose to treat their waste and whether that treatment will occur on-site.

The benefits to human health and the environment in the RIA are generally defined as reduced human health risk resulting from fewer instances of ground water contamination. In general, potential health risks from Class I injection wells are extremely low. EPA conducted a preliminary quantitative assessment of the potential human health risks associated with two worst-case scenarios involving well malfunction. EPA applied the approach taken in an earlier study to measure health risks of two LDR Phase III contaminants: benzene and carbon tetrachloride. The results of this preliminary analysis show that all of the cancer and noncancer risks calculated are below regulatory concern, with the exception of the cancer risk and hazard index calculated for carbon tetrachloride, assuming an abandoned borehole is near the injection well, drinking water pumping is occurring, and the local geology is typical of the East Gulf Coast Region. The assumptions used in deriving these results were based on conservative, upper-bound estimates. The Agency intends to expand this analysis in the final rule to include other constituents and facilities. The Agency is interested in comments on this methodology and any data on actual injection volumes and constituents.

The economic analysis of LDR Phase III compliance costs suggests that publicly traded companies affected by the rule will probably not be significantly economically impacted. The limited data available for the privately held companies suggests, however, that they may face significant impacts due to the proportionally larger expenses they may face as a result of the proposed rule.

C. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: small businesses, small organizations, and small governmental jurisdictions). Under the Agency's Revised Guidelines for Implementing The Regulatory Flexibility Act (May 4, 1992), the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. See RCRA sections 3004(d), (e), and (g)(5), which apply uniformly to all hazardous wastes. Previous guidance required regulatory alternatives to be examined only when significant economic effects were estimated on a substantial number of small entities.

In assessing the regulatory approach for dealing with small entities in today's proposed rule, for both surface disposal of wastes and underground injection control, the Agency considered two factors. First, data on potentially affected small entities are unavailable. Second, due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generator provisions and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11-12, and 261.5, respectively. These exemptions basically prescribe 100 kg per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given these two factors, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated. See also § 268.1(c)(1), which states that LDR rules do not apply to small quantity generators.

D. Paperwork Reduction Act

The new information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Four Information Collection Request (ICR) documents has been prepared by EPA, covering the three programs impacted (i.e., the LDR program, the UIC program, and the CWA NPDES program: LDR ICR# 1442.08; UIC ICR# 1738.01; NPDES Application ICR# 0226.11; and NPDES Discharge Monitoring Report ICR# 0229.10). The overall reporting and recordkeeping burden is estimated to be approximately 632,500 hours (sum from the four ICRs). The average burden per respondent is slightly more than 4,000 hours (sum from the four ICRs.). Only incremental burdens are discussed in the ICRs. These incremental burdens will eventually be merged with: the UIC program ICR, the LDR program ICR, the NPDES permit program ICR, and the Discharge Monitoring Report program ICR.

The public reporting burden for these collections is estimated to average: for the LDR program, 75 hours per respondent; for the UIC program, 3800 hours per respondent; for the NPDES application program, 37.5 hours per respondent; and for the NPDES discharge monitoring report, 211.5 hours per respondent. This includes time for reviewing instructions, gathering and compiling data, maintaining the data, and preparing and submitting all data.

A copy of the ICRs for this rule may be obtained from the Sandy Farmer, Environmental Protection Agency, Information Policy Branch, 401 M Street, S.W. (Mail Code 2136), Washington D.C. 20460 or by calling (202) 260-2740. The public should send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden to EPA, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20460, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 266

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: February 16, 1995.

Carol M. Browner,

Administrator

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

2. Section 148.1 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 148.1 Purpose, scope and applicability.

* * * * *

(a) This part identifies wastes that are restricted from disposal into Class I wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste; and, owners or operators of Class I injection wells used to inject wastes which once exhibited a prohibited characteristic of hazardous waste identified in subpart C of part 261 of this chapter, at the point of generation, and no longer exhibit the characteristic at the point of injection.

* * * * *

(d) Wastes that are only characteristically hazardous and otherwise prohibited are not prohibited if the wastes are disposed into a nonhazardous injection well defined under 40 CFR 144.6(a) and do not

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exhibit any prohibited characteristic of hazardous waste identified in subpart C of part 261 of this chapter, and do not contain any hazardous constituents identified in 40 CFR 268.48 diluted below the Universal Treatment Standard levels prior to injection.

3. Section 148.3 is revised to read as follows:

§ 148.3 Dilution prohibited as a substitute for treatment.

(a) The provisions of § 268.3 of this chapter shall apply to owners or operators of Class I wells used to inject a waste which is hazardous at the point of generation whether or not the waste is hazardous at the point of injection.

(b) Owners or operators of Class I nonhazardous waste injection wells which inject waste formerly exhibiting a hazardous characteristic which has been removed by dilution, may address underlying hazardous constituents by treating the hazardous waste, obtaining an exemption pursuant to a petition filed under § 148.20, or complying with the provisions set forth in § 268.9 of this chapter.

4. Section 148.4 is revised to read as follows:

§ 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a Class I hazardous or nonhazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under subpart B of this part according to the procedures of § 268.5 of this chapter.

5. Section 148.18 is added to subpart B to read as follows:

§ 148.18 Waste specific prohibitions—Newly identified Wastes.

(a) On [*Insert date 90 days from date of publication of final rule*], the wastes specified in 40 CFR part 261.32 as EPA Hazardous waste numbers K088, K140, K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–387, U389–U396, U400–U404, and U407–U411 are prohibited from underground injection.

(b) On [*Insert date 2 years from effective date of the final rule*], the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers D018–043, and Mixed TC/Radioactive wastes, are prohibited from underground injection.

(c) On [*Insert date 2 years from effective date of the final rule*], the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers D001–D003 are prohibited from underground injection.

6. Section 148.20 is amended by revising paragraph (a) introductory text to read as follows:

§ 148.20 Petitions to allow injection of a waste prohibited under Subpart B.

(a) Any person seeking an exemption from a prohibition under subpart B of this part for the injection of a restricted hazardous waste, including a hazardous waste exhibiting a characteristic and containing underlying hazardous constituents at the point of generation, but no longer exhibiting a characteristic when injected into a Class I injection well or wells, shall submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration requires a showing that:

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

7. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

8. In Subpart C, § 266.20, paragraph (b) is amended by adding one sentence to the end of the paragraph to read as follows:

§ 266.20 Applicability.

* * * * *

(b) * * * This provision does not apply to hazardous waste used as a fill material (i.e., a substitute for sand, dirt or comparable material) to fill in holes, occupy space, raise land levels, or be used for other similar purposes.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

10. Section 268.1 is amended by revising paragraph (e)(4) and by removing paragraph (e)(5) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(e) * * *

(4) *De minimis* losses of characteristic wastes to wastewaters are defined as:

(i) Losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the flow of wastewater into the facility's headworks on an annual basis; or

(ii) Characteristic wastes which are injected into Class I nonhazardous wells whose combined volume is less than one per cent of the total flow at the wellhead on an annualized basis, and which any underlying hazardous constituents in the characteristic wastes are present at the point of generation at levels less than ten times the treatment standards found at § 268.48.

11. Section 268.2 is amended by revising the introductory text to paragraph (f), by removing paragraphs (f)(1), (f)(2), and (f)(3), and by adding paragraph (j) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(f) *Wastewaters* are wastes that contain less than 1% by weight total organic carbon (TOC) and less than 1% by weight total suspended solids (TSS).

* * * * *

(j) *Inorganic metal-bearing waste* is one for which EPA has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content as described in § 268.3(b)(1), and is specifically listed in appendix XI of this part.

12. Section 268.3 is revised to read as follows:

§ 268.3 Dilution prohibited as a substitute for treatment.

(a) No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with subpart D of this part, to circumvent the effective date of a prohibition in subpart C of this part, to otherwise avoid a prohibition in subpart C of this part, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

(b) Combustion of hazardous waste is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in § 268.48;

(2) The waste consists of organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co-generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

13. Section 268.7 is amended by adding paragraph (b)(5)(v) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

* * * * *

(b) * * *

(5) * * *

(v) For characteristic wastes D001, D002, D003 and D012–D043 that contain underlying hazardous constituents as defined in § 268.2(i) that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in § 268.48 Universal Treatment Standards, the certification must state the following:

> I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contained underlying hazardous constituents that have been treated on-site to meet § 268.48 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

§ 268.8 [Removed and Reserved]

14. Section 268.8 is removed and reserved.

15. Section 268.9 is amended by revising paragraphs (a), (b), (d)(1)(i), (d)(1)(ii), (d)(2) introductory text; and by adding paragraphs (d)(3), (e) and (f) to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR part 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR part 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 40 CFR part 261, subpart D operates in lieu of the standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays a hazardous characteristic (and the waste is not a D004—D011 waste, a High TOC D001, or is not treated by CMBST, or RORGS of § 268.42, Table 1), the generator must determine what underlying hazardous constituents (as defined in § 268.2 of this Part), are reasonably expected to be present above the universal treatment standards found in § 268.48 of this part.

(b) Where a prohibited waste is both listed under 40 CFR part 261, subpart D and exhibits a characteristic under 40 CFR part 261, subpart C, the treatment standard for the waste code listed in 40 CFR part 261, subpart D will operate in lieu of the standard for the waste code under 40 CFR part 261, subpart C, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic and for any underlying hazardous constituents reasonably expected to be present in the waste. Otherwise, the waste must meet the treatment standards for all applicable listed and characteristic waste codes.

* * * * *

(d) * * *

(1) * * *

(i) For characteristic wastes other than those managed on-site in a wastewater treatment system subject to the Clean Water Act (CWA), zero-dischargers engaged in CWA-equivalent treatment, or Class I nonhazardous injection wells, the name and address of the Subtitle D facility receiving the waste shipment;

(ii) For all characteristic wastes, a description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s), treatability group(s), and underlying hazardous constituents;

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

* * * * *

(3) For characteristic wastes whose ultimate disposal will be into a Class I nonhazardous injection well, and compliance with the treatment standards found in § 268.48 for underlying hazardous constituents is achieved through pollution prevention, the following information must also be included:

(i) A description of the pollution prevention mechanism;

(ii) The mass of each underlying hazardous constituent before pollution prevention;

(iii) The mass of each underlying hazardous constituent that must be removed, normalized for production; and,

(iv) The mass reduction of each underlying hazardous constituent that is achieved.

(e) For decharacterized wastes managed on-site in a wastewater treatment system subject to the Clean Water Act (CWA), zero-dischargers engaged in CWA-equivalent treatment, or Class I nonhazardous injection wells, compliance with the treatment standards found at § 268.48 must be monitored quarterly. Monitoring results must be kept in on-site files for 5 years.

(f) For characteristic wastes whose ultimate disposal will be into a Class I nonhazardous injection well which qualifies for the de minimis exclusion described in § 268.1, information supporting that qualification must be kept in on-site files.

§ 268.10—§ 268.12 [Removed and Reserved]

16. Sections 268.10 through 268.12 are removed and reserved.

17. In subpart C, § 268.39 is added to read as follows:

* * * * *

§ 268.39 Waste specific prohibitions—spent aluminum potliners, carbamates and organobromine wastes.

(a) On [*Insert date 90 days from date of publication of the final rule*], the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K088, K140, K156–K161; and in 40 CFR 261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, and U407–U411 are prohibited from land disposal. In addition, soil and debris contaminated

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with these wastes are prohibited from land disposal.

(b) On [*Insert date two years from date of publication of the final rule*], characteristic wastes that are managed in systems whose discharge is regulated under the Clean Water Act (CWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. Radioactive wastes mixed with K088, K140, K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, and U407–U411 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(c) Between [*Insert date 90 days from date of publication of the final rule*] and [*Insert date two years from date of publication of the final rule*], the wastes included in paragraph (b) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

18. The table in § 268.40 is amended as follows:

a. By revising the entries for D001 through F012, F037 through F039, K006, K018, K019, K028, K030, K035, K048 through K052, K061, K083, K086, K101, K102, P003, P013, P056, U038, U042, U093, U134, and U168.

b. By adding in alpha-numerical order entries for K088, K140, K156 through K161, P127, P128, P185, P188 through P192, P194, P196 through P199, P201 through P205, U271, U277 through U280, U364 through U367, U372, U373, U375 through U379, U381 through U387, U389 through U396, U400 through U404, and U407 through U411.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	Regulated hazardous constituent: CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
D001	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory.	NA	NA	DEACT and meet §268.48 standards; or RORGS; or CMBST.	DEACT and meet §268.48 standards; or RORGS; or CMBST.
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1)—Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.).	NA	NA	NA	RORGS; or CMBST.
D002	Corrosive Characteristic Wastes	NA	NA	DEACT and meet §268.48 standards.	DEACT and meet §268.48 standards.
D002, D004, D005, D006, D007, D008, D009, D010, D011.	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.).	Corrosivity (pH)	NA	NA	HLVIT.
		Arsenic	7440–38–2	NA	HLVIT.
		Barium	7440–39–3	NA	HLVIT.
		Cadmium	7440–43–9	NA	HLVIT.
		Chromium (Total)	7440–47–3	NA	HLVIT.
		Lead	7439–92–1	NA	HLVIT.
		Mercury	7439–97–6	NA	HLVIT.
		Selenium	7782–49–2	NA	HLVIT.
		Silver	7440–22–4	NA	HLVIT.
D003	Reactive Sulfides Subcategory based on §261.23(a)(5).	NA	NA	DEACT and meet §268.48 standards.	DEACT and meet §268.48 standards.
	Explosives Subcategory based on §261.23(a)(6), (7), and (8).	NA	NA	DEACT and meet §268.48 standards.	DEACT and meet §268.48 standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	Regulated hazardous constituent: CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
	Other Reactives Subcategory based on §261.23(a)(1).	NA	NA	DEACT and meet §268.48 standards.	DEACT and meet §268.48 standards.
	Water Reactive Subcategory based on §261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.).	NA	NA	NA	DEACT and meet §268.48 standards.
	Reactive Cyanides Subcategory based on §261.23(a)(5).	Cyanides (Total) [7]	57–12–5	Reserved	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) in SW846 Method 1310.	Arsenic	7440–38–2	5.0	5.0 mg/l EP.
		Arsenic; altermate [6] standard for nonwastewaters only.	7440–38–2	NA	5.0 mg/l TCLP.
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) in SW846 Method 1310.	Barium	7440–39–3	100	100 mg/l TCLP.
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440–43–9	NA	1.0 mg/l TCLP.
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.).	Cadmium	7440–43–9	NA	RTHRM.
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440–47–3	5.0	5.0 mg/l TCLP.
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439–92–1	5.0	5.0 mg/l EP.
		Lead; altermate [6] standard for nonwastewaters only.	7439–92–1	NA	5.0 mg/l TCLP.
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80). This subcategory consists of nonwastewaters only.).	Lead	7439–92–1	NA	RLEAD.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only.).	Lead	7439–92–1	NA	MACRO.
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory).	Mercury	7439–97–6	NA	IMERC; or RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory).	Mercury	7439–97–6	NA	RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characterisitc of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory).	Mercury	7439–97–6	NA	0.20 mg/l TCLP.
	All D009 wastewaters.	Mercury	7439–97–6	0.20	NA.
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.).	Mercury	7439–97–6	NA	AMLGM.
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.).	Mercury	7439–97–6	NA	IMERC.
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782–49–2	1.0	5.7 mg/l TCLP.
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440–22–4	5.0	5.0 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
D012	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72–20–8	BIODG; or INCIN	0.13 and meet §268.48 standards.
		Endrin aldehyde	7421–93–4	BIODG; or INCIN	0.13 and meet §268.48 standards.
D013	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319–84–6	CARBN; or INCIN	0.066 and meet §268.48 standards.
		beta-BHC	319–85–7	CARBN; or INCIN	0.066 and meet §268.48 standards.
		delta-BHC	319–86–8	CARBN; or INCIN	0.066 and meet §268.48 standards.
		gamma-BHC (Lindane)	58–89–9	CARBN; or INCIN	0.066 and meet §268.48 standards.
D014	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72–43–5	WETOX or INCIN	0.18 and meet §268.48 standards.
D015	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001–35–2	BIODG or INCIN	2.6 and meet §268.48 standards.
D016	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid).	94–75–7	CHOXD, BIODG, or INCIN.	10 and meet §268.48 standards.
D017	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93–72–1	CHOXD or INCIN	7.9 and meet §268.48 standards.
D018	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311.	Benzene	71–43–2	0.14 and meet §268.48 standards.	10 and meet §268.48 standards.
D019	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56–23–5	0.057 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D020	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers).	57–74–9	0.0033 and meet §268.48 standards.	0.26 and meet §268.48 standards.
D021	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311.	Chlorobenzene	108–90–7	0.057 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D022	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67–66–3	0.046 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D023	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311.	o-Cresol	95–48–7	0.11 and meet §268.48 standards.	5.6 and meet §268.48 standards.
D024	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77 and meet §268.48 standards.	5.6 and meet §268.48 standards.
D025	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77 and meet §268.48 standards.	5.6 and meet §268.48 standards.
D026	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations).	1319–77–3	0.88 and meet §268.48 standards.	11.2 and meet §268.48 standards.
D027	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene).	106–46–7	0.090 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D028	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107–06–2	0.21 and meet §268.48 standards.	6.0 and meet §268.48 standards.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
D029	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75–35–4	0.025 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D030	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121–14–2	0.32 and meet §268.48 standards.	140 and meet §268.48 standards.
D031	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76–44–8	0.0012 and meet §268.48 standards.	0.066 and meet §268.48 standards.
		Heptachlor epoxide	1024–57–3	0.016 and meet §268.48 standards.	0.066 and meet §268.48 standards.
D032	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118–74–1	0.055 and meet §268.48 standards.	10 and meet §268.48 standards.
D033	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87–68–3	0.055 and meet §268.48 standards.	5.6 and meet §268.48 standards.
D034	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67–72–1	0.055 and meet §268.48 standards.	30 and meet §268.48 standards.
D035	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78–93–3	0.28 and meet §268.48 standards.	36 and meet §268.48 standards.
D036	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98–95–3	0.068 and meet §268.48 standards.	14 and meet §268.48 standards.
D037	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87–86–5	0.089 and meet §268.48 standards.	7.4 and meet §268.48 standards.
D038	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110–86–1	0.014 and meet §268.48 standards.	16 and meet §268.48 standards.
D039	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127–18–4	0.056 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D040	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79–01–6	0.054 and meet §268.48 standards.	6.0 and meet §268.48 standards.
D041	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95–95–4	0.18 and meet §268.48 standards.	7.4 and meet §268.48 standards.
D042	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88–06–2	0.035 and meet §268.48 standards.	7.4 and meet §268.48 standards.
D043	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75–01–4	0.27 and meet §268.48 standards.	6.0 and meet §268.48 standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
F001, F002, F003, F004 & F005.	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluorethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in §261.31.	Acetone	67–64–1	0.28	160.
		Benzene	71–43–2	0.14	10.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Carbon tetrachloride	56–23–5	0.057	6.0.
		Chlorobenzene	108–90–7	0.057	6.0.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6.
			106–44–5	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	1319–77–3	0.88	11.2.
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)			
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		Ethyl acetate	141–78–6	0.34	33.
		Ethyl benzene	100–41–4	0.057	10.
		Ethyl ether	60–29–7	0.12	160.
		Isobutyl alcohol	78–83–1	5.6	170.
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
		Methylene chloride	75–9–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Nitrobenzene	98–95–3	0.068	14.
		Pyridine	110–86–1	0.014	16.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		Toluene	108–88–3	0.080	10.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		1,1,2-Trichloro-1,2,2-trifluoroethane.	76–13–1	0.057	30.
		Trichloroethylene	79–01–6	0.054	6.0.
		Trichloromonofluoromethane	75–69–4	0.020	30.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001–5 solvents: carbon disulfide, cyclohexanone, and/or methanol. (formerly §268.41(c)).		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
F005 solvent waste containing 2-Nitropropane as the only listed F001–5 solvent.		2-Nitropropane	79–46–9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
	F005 solvent waste containing 2-Ethoxyethanol as the only listed F001–5 solvent.	2-Ethoxyethanol	110–80–5	BIODG: or INCIN	INCIN.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing or aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
F037	Petroleum refinery primary oil/water/solids separation sludge–Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non–contact once–through cooling waters segregated from treatment form other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benzene	71–43–2	0.14	10.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	218–01–9	0.059	3.4.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, p-xylene concentrations).	1330–20–7 7440–47–3 57–12–5	0.32	30.
		Chromium (Total)	7439–92–1	2.77.	0.86 mg/l TCLP.
		Cyanides (Total)[7]	7440–02–0	1.2	590.
		Lead		0.69	0.37 mg/l TCLP.
		Nickel		3.98	5.0 mg/l TCLP.
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oil cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	218–01–9	0.059	3.4.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7 7440–47–3 57–12–5	0.32	30.
		Chromium (Total)	7439–92–1	2.77	0.86 mg/l TCLP.
		Cyanides (Total)7	7440–02–0	1.2	590.
		Lead		0.069	0.37 mg/l TCLP.
		Nickel		3.98	5.0 mg/l TCLP.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208–96–8	0.059	3.4.
		Acenaphthene	83–32–9	0.059	3.4.
		Acetone	67–64–1	0.28	160.
		Acetonitrile	75–05–8	5.6	38.
		Acetophenone	96–55–2	0.010	9.7.
		2-Acetylaminofluorene	53–96–3	0.059	140
		Acrolein	107–02–8	0.29	2.9.
		Acrylonitrile	107–13–1	0.24	84.
		Aldrin	309–00–2	0.021	0.066.
		4-Aminobiphenyl	92–67–1	0.13	13.
		Aniline	62–53–3	0.81	14.
		Anthracene	120–12–7	0.059	3.4.
		Aramite	140–57–8	0.36	2.5.
		alpha-BHC	319–84–6	0.00014	0.066.
		beta-BHC	319–85–7	0.00014	0.066.
		delta-BHC	319–86–8	0.023	0.066.
		gamma-BHC	58–89–9	0.0017	0.066.
		Benzene	71–43–2	0.14	10.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo (b) fluoranthene (difficult to distinguiah from benzo (k) fluoranthene).	207–08–9	0.11	6.8.
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		Bromodichloromethane	75–27–4	0.35	15.
		Methyl bromide (Bromomethane).	74–83–9	0.11	15.
		4-Bromophenyl phenyl ether	101–55–3	0.055	15.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Butyl benzyl phthalate	85–68–7	0.017	28.
		2-sec-Butyl-4, 6-dinitrophenol (Dinoseb).	88–85–7	0.066	2.5.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Carbon tetrachloride	56–23–5	0.057	6.0.
		Chlordane (alpha and gamma isomers).	57–74–9	0.0033	0.26.
		p-Chloroaniline	106–47–8	0.46	16.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chlorobenzilate	510–15–6	0.10	6.6.
		2-Chloro-1, 3-butadiene	126–99–8	0.057	0.28.
		Chlorodibromomethane	124–48–1	0.057	15.
		Chloroethane	75–00–3	0.27	6.0.
		bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2.
		bis(2-Chloroethyl)ether	111–44–4	0.033	6.0.
		Chloroform	67–66–3	0.046	6.0.
		bis(2-Chloroisopropyl)ether	39638–32–9	0.055	7.2.
		p-Chloro-m-cresol	59–50–7	0.018	14.
		Chloromethane (Methyl chloride).	74–87–3	0.19	30.
		2-Chloronaphthalene	91–58–7	0.055	5.6.
		2-Chlorophenol	95–57–8	0.044	5.7.
		3-Chloroprophylene	107–05–1	0.036	30.
		Chrysene	218–01–9	0.059	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol.	106–44–5	0.77	5.6
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		1,2-Dibromo-3-chloropropane.	96–12–8	0.11	15.
		Ethylene dibromide (1,2-Dibromoethane).	106–93–4	0.028	15.
		Dibromomethane	74–95–3	0.11	15.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		2,4-D (2,4-Dichlorophenoxyacetic acid).	94–75–7	0.72	10.
		o,p#-DDD	53–19–0	0.023	0.087.
		p,p#-DDD	72–54–8	0.023	0.087.
		o,p#-DDE	3424–82–6	0.031	0.087.
		p,p#-DDE	72–55–9	0.031	0.087.
		o,p#-DDT	789–02–6	0.0039	0.087.
		p,p#-DDT	50–29–3	0.0039	0.087.
		Dibenz(a,h) anthracene	53–70–3	0.055	8.2.
		Dibenz(a,e)pyrene	192–65–4	0.061	22.
		m-Dichlorobenzene	541–73–1	0.036	6.0.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		p-Dichlorobenzene	106–46–7	0.090	6.0.
		Dichlorodifluoromethane	75–71–8	0.23	7.2.
		1,1-Dichloroethane	75–34–3	0.059	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.
		1,1-Dichloroethylene	75–35–4	0.025	6.0.
		trans-1,2-Dichloroethylene	156–60–5	0.054	30.
		2,4-Dichlorophenol	120–83–2	0.044	14.
		2,6-Dichlorophenol	87–65–0	0.044	14.
		1,2-Dichloropropane	78–87–5	0.85	18.
		cis-1,3-Dichloropropylene	10061–01–5	0.036	18.
		trans-1,3-Dichloropropylene	10061–02–6	0.036	18.
		Dieldrin	60–57–1	0.017	0.13.
		Diethyl phthalate	84–66–2	0.20	28.
		2,4-Dimethyl phenol	105–67–9	0.036	14.
		Dimethyl phthalate	131–11–3	0.047	28.
		Di-n-butyl phthalate	64–74–2	0.057	28.
		1,4-Dinitrobenzene	100–25–4	0.32	2.3.
		4,6-Dinitro-o-cresol	534–52–1	0.28	160.
		2,4-Dinitrophenol	51–28–5	0.12	160.
		2,4-Dinitrotoluene	121–14–2	0.32	140.
		2,6-Dinitrotoluene	606–20–2	0.55	28.
		Di-n-octyl phthalate	117–84–0	0.017	28.
		Di-n-propylnitrosamine	621–64–7	0.40	14.
		1,4-Dioxane	123–91–1	8.67	170.
		Diphenylamine (difficult to distinguish from diphenylnitrosamine).	122–39–4	0.92	13.
		Diphenylnitrosamine (diffult to distinguish from diphenylamine).	86–30–6	0.92	13.
		1,2-Diphenylhydrazine	122–66–7	0.087	1.5.
		Disulfoton	298–04–4	0.017	6.2.
		Endosulfan I	939–98–8	0.023	0.066
		Endosulfan II	33213–6–5	0.029	0.13.
		Endosulfan sulfate	1–31–07–8	0.029	0.13.
		Endrin	72–20–8	0.0028	0.13.
		Endrin aldehyde	7421–93–4	0.025	0.13
		Ethyl acetate	141–78–6	0.34	33.
		Ethyl cyanide (Propanenitrile).	107–12–0	0.24	360.
		Ethyl benzene	100–41–4	0.057	10.
		Ethyl ether	60–29–7	0.12	160.
		bis(2-Ethylhexyl)phthalate	117–81–7	0.28	28.
		Ethyl methacrylate	97–63–2	0.14	160.
		Ethylene oxide	75–21–8	0.12	0.75.
		Famphur	52–85–7	0.017	15.
		Fluoranthene	206–44–0	0.068	3.4.
		Fluorene	86–73–7	0.059	3.4.
		Heptachlor	76–44–8	0.0012	0.066.
		Heptachlor epoxide	1024–57–3	0.016	0.066.
		Hexachlorobenzene	118–74–1	0.055	10.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachlorocyclopentadiene	77–47–4	0.057	2.4.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

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		HxCDDs (All Hexachlorodibenzo-p-dioxins).	NA	0.000063	0.001.
		HxCDFs (All Hexachlorodibenzofurans).	NA	0.000063	0.001.
		Hexachloroethane	67–72–1	0.055	30.
		Hexachloropropylene	1888–71–7	0.035	30.
		Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4.
		Iodomethane	74–88–4	0.19	65.
		Isobutyl alcohol	78–83–1	5.6	170.
		Isodrin	465–73–6	0.021	0.066.
		Isosafrole	120–58–1	0.081	2.6.
		Kepone	143–50–8	0.0011	0.13.
		Methacrylonitrile	126–98–7	0.24	84.
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
		Methapyrilene	91–80–5	0.081	1.5.
		Methoxychlor	72–43–5	0.25	0.18.
		3-Methylcholanthrene	56–49–5	0.0055	15.
		4,4-Methylene bis(2-chloroaniline).	101–14–4	0.50	30.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Methyl methacrylate	80–62–6	0.14	160.
		Methyl methansulfonate	66–27–3	0.018	4.6.
		Methyl parathion	298–00–0	0.014	4.6.
		Naphthalene	91–20–3	0.059	5.6.
		2-Naphthylamine	91–59–8	0.52	15.
		p-Nitroaniline	100–01–6	0.028	28.
		Nitrobenzene	98–95–3	0.068	14.
		5-Nitro-o-toluidine	99–55–8	0.32	28.
		p-Nitrophenol	100–02–7	0.12	29.
		N-Nitrosodiethylamine	55–18–5	0.40	28.
		N-Nitrosodimethylamine	62–75–9	0.40	2.3.
		N-Nitroso-di-n-butylamine	924–16–3	0.40	17.
		N-Nitrosomethylethylamine	10595–95–6	0.40	2.3.
		N-Nitrosomorpholine	59–89–2	0.40	2.3.
		N-Nitrosopiperidine	100–75–4	0.013	35.
		N-Nitrosopyrrolidine	930–55–2	0.013	35.
		Parathion	56–38–2	0.014	4.6.
		Total PCBs (sum of all PCB isomers, or all Aroclors).	1336–36–3	0.10	10.
		Pentachlorobenzene	608–93–5	0.055	10.
		PeCDDs (All Pentachlorodibenzo-p-dioxins).	NA	0.000063	0.001.
		PeCDFs (All Pentachlorodibenzofurans).	NA	0.000035	0.001.
		Pentachloronitrobenzene	82–68–8	0.055	4.8.
		Pentachlorophenol	87–86–5	0.089	7.4.
		Phenacetin	62–44–2	0.081	16.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Phorate	298–02–2	0.021	4.6.
		Phthalic anhydride	85–44–9	0.055	28.
		Pronamide	23950–58–5	0.093	1.5.
		Pyrene	129–00–0	0.067	8.2.
		Pyridine	110–86–1	0.014	16.
		Safrole	94–59–7	0.081	22.
		Silvex (2,4,5-TP)	93–72–1	0.72	7.9.
		2,4,5-T	93–76–5	0.72	7.9.
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14.
		TCDDs (All Tetrachlorodibenzo-p-dioxins).	NA	0.000063	0.001.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

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		TCDFs (All Tetrachlorodibenzofurans).	NA	0.000063	0.001.
		1,1,2,2-Tetrachloroethane	630–20–6	0.057	6.0.
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4.
		Toluene	108–88–3	0.080	10.
		Toxaphene	8001–35–2	0.0095	2.6.
		Bromoform (Tribromomethane).	75–25–2	0.63	15.
		1,2,4-Trichlorobenzene	120–82–1	0.055	19.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		Trichloroethylene	79–01–6	0.054	6.0.
		Trichloromonofluoromethane	75–69–4	0.020	30.
		2,4,5-Trichlorophenol	95–95–4	0.18	7.4.
		2,4,6-Trichlorophenol	88–06–2	0.035	7.4.
		1,2,3-Trichloropropane	96–18–4	0.85	30.
		1,1,2-Trichloro-1,2,2-trifluoroethane.	76–13–1	0.057	30.
		tris(2,3-Dibromopropyl) phosphate.	126–72–7	0.11	0.10.
		Vinyl chloride	75–01–4	0.27	6.0.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Antimony	7440–36–0	1.9	2.1 mg/l TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Barium	7440–39–3	1.2	7.6 mg/l TCLP.
		Beryllium	7440–41–7	0.82	0.014 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
		Fluoride	16964–48–8	35	48.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
		Sulfide	8496–25–8	14	NA.
		Thallium	7440–28–0	1.4	0.078 mg/l TCLP.
		Vanadium	7440–62–2	4.3	.023.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37mg/l TCLP.
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37mg/l TCLP.
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloroethane	75–00–3	0.27	6.0.
		Chloromethane	74–87–3	0.19	30.
		1,1-Dichloroethane	75–34–3	0.059	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.
		Hexachlorobenzene	118–74–1	0.055	10.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachloroethane	67–72–1	0.055	30.
		Pentachloroethane	76–01–7	0.055	6.0.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	bis(2-Chloroethyl)ether	111–44–4	0.033	6.0.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		p-Dichlorobenzene	106–46–7	0.090	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.

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		Fluorene	86–73–7	0.059	3.4
		Hexachloroethane	67–72–1	0.055	30.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14.
		Tetrachlorothylene	127–18–4	0.056	6.0.
		1,2,4-Tetrachlorobenzene	120–82–1	0.055	19.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0
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K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75–34–3	0.059	6.0.
		trans-1,2-Dichloroethylene	156–60–5	0.054	30.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachloroethane	67–72–1	0.055	30.
		Pentachloroethane	76–01–7	0.055	6.0.
		1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0.
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
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K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	o-Dichlorobenzene	95–50–1	0.088	6.0.
		p-Dichlorobenzene	106–46–7	0.090	6.0.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachloroethane	67–72–1	0.055	30.
		Hexachloropropylene	1888–71–7	0.035	30.
		Pentachlorobenzene	608–93–5	0.055	10.
		Pentachloroethane	76–01–7	0.055	6.0.
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		1,2,4-Trichlorobenzene	120–82–1	0.055	19.
.	.	.	.	.	.
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benz (a) anthracene	56–55–3	0.059	3.4.
		Benzo (a) pyrene	50–32–8	0.061	3.4.
		Chrysene	218–01–9	0.059	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77	5.6.
		Dibenz(a,h)- anthracene	53–70–3	0.055	8.2.
		Fluoranthene	206–44–0	0.068	3.4.
		Fluorene	86–73–7	0.068	3.4.
		Indeno(1,2,3-cd)pyrene	193–39–5	0.0055	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
.	.	.	.	.	.
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	218–01–9	0.059	3.4.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–33	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120–12–7	0.059	3.4.
		Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Chrysene	2218–01–9	0.059	3.4.
		2,4-Dimethylphenol	105–67–9	0.036	14.
		Ethylbenzene	100–41–4	0.057	10.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.96	5.0 mg/l TCLP.
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50–32–8	0.061	3.4
		Phenol	108–95–2	0.039	6.2.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	2218–01–9	0.059	3.4.
		Di-n-butyl phthalate	105–67–9	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.08	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77	5.6.
		2,4-Dimethylphenol	105–67–9	0.036	14.
		Ethylbenzene	100–41–4	0.057	10.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Toluene	108–88–3	0.08	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440–36–0	1.9	2.1 mg/l TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Barium	7440–39–3	1.2	7.6 mg/l TCLP.
		Beryllium	7440–41–7	0.82	0.014 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
		Thallium	7440–28–0	1.4	0.078 mg/l TCLP.
		Zinc	7440–66–6	2.61	5.3 mg/l TCLP.
K083	Distillation bottoms from aniline production.	Aniline	62–53–3	0.81	14.
		Benzene	71–43–2	0.14	10.
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		Diphenylamine (difficult to distinguish from diphenylnitrosamine).	122–39–4	0.92	13.
		Diphenylnitrosamine (difficult to distinguish from diphenylamine).	86–30–6	0.92	13.
		Nitrobenzene	98–95–3	0.068	14.
		Phenol	108–95–2	0.039	6.2.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67–64–1	0.28	160.
		Acetophenone	96–86–2	0.010	9.7.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Butylbenzyl phthalate	85–68–7	0.017	28.
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		o-Dichlorobenzene	95–50–1	0.088	6.0
		Diethyl phthalate	84–66–2	0.20	28.
		Dimethyl phthalate	131–11–3	0.047	28.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Di-n-octyl phthalate	117–84–0	0.017	28.
		Ethyl acetate	141–78–6	0.34	33.
		Ethylbenzene	100–41–4	0.057	10.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Methylene chloride	75–09–2	0.089	30.
		Naphthalene	91–20–3	0.059	5.6.
		Nitrobenzene	98–95–3	0.068	14.
		Toluene	108–88–3	0.080	10.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		Trichloroethylene	79–01–6	0.054	6.0.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
K088	Spent potliners from primary aluminum reduction.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		Benzo(b)fluoranthene	205–99–2	0.11	6.8.
		Benzo(k)fluoranthene	207–08–9	0.11	6.8.
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8.
		Chrysene	218–01–9	0.059	3.4.
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2.
		Fluoranthene	206–44–0	0.068	3.4.
		Indeno(1,2,3,-c,d)pyrene	193–39–5	0.0055	3.4.
		Phenanthrene	85–01–8	0.059	5.6.
		Pyrene	129–00–0	0.067	8.2.
		Antimony	7440–36–0	1.9	2.1.
		Arsenic	7440–38–2	1.4	5.0.
		Barium	7440–39–3	1.2	7.6.
		Beryllium	7440–41–7	0.82	0.014.
		Cadmium	7440–43–9	0.69	0.19.
		Chromium (Total)	7440–47–3	2.77	0.86.
		Lead	7439–92–1	0.69	0.37.
		Mercury	7439–97–6	0.15	0.025.
		Nickel	7440–02–0	3.98	5.0.
		Selenium	7782–49–2	0.82	0.16.
		Silver	7440–22–4	0.43	0.30.
		Cyanide (Total)	57–12–5	1.2	590.
		Cyanide (Amenable)	57–12–5	0.86	30.
		Fluoride	16964–48–8	35	48.
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88–74–4	0.27	14.
		Arsenic	7440–38—2	1.4	5.0 mg/l TCLP.,
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88–75–5	0.028	13.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
K-140	Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.	2,4,6-Tribromophenol	118–79–6	0.035	7.4
		Tolurene	108–88–3	0.080	10.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	Acetonitrile	75–05–8	5.6	1.8.
		Acetophenone	96–86–2	0.010	9.7.
		Aniline	62–53–3	0.81	14.
		Benomyl	17804–35–2	0.056	1.4.
		Benzene	71–43–2	0.14	10.
		Carbaryl	63–25–2	0.006	0.14.
		Carbenzadim	10605–21–7	0.056	1.4.
		Carbofuran	1563–66–2	0.006	0.14.
		Carbosulfan	55285–14–8	0.028	1.4.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		Methomyl	16752–77–5	0.028	0.14.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Naphthalene	91–20–3	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyridine	110–86–1	0.014	16.
		Toluene	108–88–3	0.080	10.
		Triethylamine	121–44–8	0.081	1.5.
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoly oximes.	Carbon tetrachloride	56–23–5	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		Chloromethane	74–87–3	0.19	30.
		Methomyl	16752–77–5	0.028	0.14.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		o-Phenylenediamine	95–54–5	0.056	5.6.
		Pyridine	110–86–1	0.014	16.
		Triethylamine	121–44–8	0.081	1.5.
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoly oximes.	Benomyl	17804–35–2	0.056	1.4.
		Benzene	71–43–2	0.14	10.
		Carbenzadim	10605–21–7	0.056	1.4.
		Carbofuran	1563–66–2	0.006	0.14.
		Carbosulfan	55285–14–8	0.028	1.4.
		Chloroform	67–66–3	0.046	6.0.
		Methylene chloride	75–09–2	0.089	30.
		Phenol	108–95–2	0.039	6.2.
K159	Organics from the treatment of thiocarbamate wastes.	Benzene	71–43–2	0.14	10.
		Butylate	2008–41–5	0.003	1.5.
		EPTC (Eptam)	759–94–4	0.003	1.4.
		Molinate	2212–67–1	0.003	1.4.
		Pebulate	1114–71–2	0.003	1.4.
		Vernolate	1929–77–7	0.003	1.4.
K160	Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarabamates and solids from the treatment of thiocarbamate wastes.	Butylate	2008–41–5	0.003	1.5.
		EPTC (Eptam)	759–94–4	0.003	1.4.
		Molinate	2212–67–1	0.003	1.4.
		Pebulate	t1114–71–2	0.003	1.4.
		Toluene	108–88–3	0.080	10.
		Vernolate	1929–77–7	0.003	1.4.
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.	Antimony	7440–36–0	1.9	2.1 mg/l TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Dithiocarbamates (total).	137–30–4	0.028	28.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
P003	Acrolein	Acrolein	107–02–8	0.29	2.8.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent: Common name	CAS[2] No.	Wastewaters: Concentration in mg/l[3]; or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
P013	Barium cyanide	Barium	7440–39–3	1.2	7.6 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Cyanides (Amenable)[7]	57–12–5	0.86	30.
P056	Fluorine	Fluoride (measured in wastewaters only).	16964–48–8	35	48.
P127	Carbofuran	Carbofuran	1563–66–2	0.006	0.14.
P128	Mexacarbate	Mexacarbate	315–18–4	0.056	1.4.
P185	Tirpate	Tirpate	26419–73–8	0.056	0.28.
P188	Physostigmine salicylate	Physostigmine salicylate	57–64–7	0.056	1.4.
P189	Carbosulfan	Carbosulfan	55285–14–8	0.028	1.4.
P190	Metolcarb	Metolcarb	1129–41–5	0.056	1.4.
P191	Dimetilan	Dimetilan	644–64–4	0.056	1.4.
P192	Isolan	Isolan	119–38–0	0.056	1.4.
P194	Oxamyl	Oxamyl	23135–22–0	0.056	0.28.
P196	Manganese dimethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
P197	Formparanate	Formparanate	17702–57–7	0.056	1.4.
P198	Formetanate hydrochloride	Formetanate hydrochloride	23422–53–9	0.056	1.4.
P199	Methiocarb	Methiocarb	2032–65–7	0.056	1.4.
P201	Promecarb	Promecarb	2631–37–0	0.056	1.4.
P202	m-Cumenyl methylcarbamate	m-Cumenyl methylcarbamate.	64–00–6	0.056	1.4.
P203	Aldicarb sulfone	Aldicarb sulfone	1646–88–4	0.056	0.28.
P204	Physostigmine	Physostigmine	57–47–6	0.056	1.4.
P205	Ziram	Dithiocarbamates (total)	137–30–4	0.028	28.
U038	Chlorobenzilate	Chlorobenzilate	510–15–6	0.10	6.6.
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110–75–8	0.062	5.6.
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene.	60–11–7	0.13	29.
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only).	16964–48–8	35	48.
U168	2-Naphthylamine	2-Naphthylamine	91–59–8	0.52	15.
U271	Benomyl	Benomyl	17804–35–2	0.056	1.4.
U277	Sulfallate	Dithiocarbamates (total)	137–30–4	0.028	28.
U278	Bendiocarb	Bendiocarb	22781–23–3	0.056	1.4.
U279	Carbaryl	Carbaryl	63–25–2	0.006	0.14.
U280	Barban	Barban	101–27–9	0.056	1.4.
U364	Bendiocarb phenol	Bendiocarb phenol	22961–82–6	0.056	1.4.
U365	Molinate	Molinate	2212–67–1	0.003	1.4.
U366	Dazomet	Dithiocarbamates (total)	137–30–4	0.028	28.
U367	Carbofuran phenol	Carbofuran phenol	1563–38–8	0.056	1.4.
U372	Carbendazim	Carbendazim	10605–21–7	0.056	1.4.
U373	Propham	Propham	122–42–9	0.056	1.4.
U375	3-Iodo-2-propynyl n-butylcarbamate	3-Iodo-2-propynyl n-butylcarbamate.	55406–53–6	0.056	1.4.
U376	Selenium, tetrakis (dimethyldithiocarbamate).	Dithiocarbamates (total)	137–30–4	0.028	28.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
U377	Potassium n-methyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U378	Potassium n-hydroxymethyl-n-methyldithiocarbamate.	Dithiocarbamates (total)	137–30–4	0.028	28.
U379	Sodium dibutyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.

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TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	Regulated hazardous constituent: CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
U381	Sodium diethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U382	Sodium dimethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U383	Potassium dimethyl dithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U384	Metam Sodium	Dithiocarbamates (total)	137–30–4	0.028	28.
U385	Vernolate	Vernolate	1929–77–7	0.003	1.4.
U386	Cycloate	Cycloate	1134–23–2	0.003	1.4.
U387	Prosulfocarb	Prosulfocarb	52888–80–9	0.003	1.4.
U389	Triallate	Triallate	2303–17–5	0.003	1.4.
U390	EPTC	EPTC	759–94–4	0.003	1.4.
U391	Pebulate	Pebulate	1114–71–2	0.003	1.4.
U392	Butylate	Butylate	2008–41–5	0.003	1.4.
U393	Copper dimethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U394	A2213	A2213	30558–43–1	0.003	1.4.
U395	Diethylene glycol, dicarbamate	Diethylene glycol, dicarbamate.	5952–26–1	0.056	1.4.
U396	Ferbam	Dithiocarbamates (total)	137–30–4	0.028	28.
U400	Bis(pentamethylene)thiuram tetrasulfide.	Dithiocarbamates (total)	137–30–4	0.028	28.
U401	Tetramethyl thiuram monosulfide	Dithiocarbamates (total)	137–30–4	0.028	28.
U402	Tetrabutylthiuram disulfide	Dithiocarbamates (total)	137–30–4	0.028	28.
U403	Disulfiram	Dithiocarbamates (total)	137–30–4	0.028	28.
U404	Triethylamine	Triethylamine	101–44–8	0.081	1.5.
U407	Ethyl Ziram	Dithiocarbamates (total)	137–30–4	0.028	28.
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	118–79–6	0.035	7.4.
U409	Thiophanate-methyl	Thiophanate-methyl	23564–05–8	0.056	1.4.
U410	Thiodicarb	Thiodicarb	59669–26–0	0.019	1.4.
U411	Propoxur	Propoxur	114–26–1	0.056	1.4.

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of treatment/regulatory subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42, Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of 1 hour and 15 minutes.

Note: NA means not applicable.

19. Section 268.44 is amended by revising paragraph (a) to read as follows:

§ 268.44 Variance from a treatment standard.

(a) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods. The petitioner may also demonstrate that it is treating underlying hazardous constituents in characteristically hazardous wastewaters by sending the waste to a properly designed and operated BAT/PSES system, which may not be achieving the treatment standards found in § 268.48.

* * * * *

20. In subpart D, § 268.48, the table in paragraph (a) is revised to read as follows:

(a) * * *

§ 268.48 Universal Treatment Standards.

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS

Regulated constituent/common name	CAS [1] No.	Wastewater standard: Concentration in mg/l [2]	Nonwastewater standard: Concentration in mg/kg [3] unless noted as "mg/l TCLP"
A2213	30558–43–1	0.003	1.4
Acenaphthylene	208–96–8	0.059	3.4
Acenaphthene	83–32–9	0.059	3.4
Acetone	67–64–1	0.28	160
Acetonitrile	75–05–8	5.6	1.8
Acetophenone	96–86–2	0.010	9.7
2-Acetylaminofluorene	53–96–3	0.059	140
Acrolein	107–02–8	0.29	NA
Acrylamide	79–06–1	19	23
Acrylonitrile	107–13–1	0.24	84
Aldicarb sulfone	1646–88–4	0.056	0.28
Aldrin	309–00–2	0.021	0.066
4-Aminobiphenyl	92–67–1	0.13	NA
Aniline	62–53–3	0.81	14
Anthracene	120–12–7	0.059	3.4
Aramite	140–57–8	0.36	NA
alpha-BHC	319–84–6	0.00014	0.066
beta-BHC	319–85–7	0.00014	0.066
delta-BHC	319–86–8	0.023	0.066
gamma-BHC	58–89–9	0.0017	0.066
Barban	101–27–9	0.056	1.4
Bendiocarb	22781–23–3	0.056	1.4
Bendiocarb phenol	22961–82–6	0.056	1.4
Benomyl	17804–35–2	0.056	1.4
Benzene	71–43–2	0.14	10
Benz(a)thracene	56–55–3	0.059	3.4
Benzal choride	98–87–3	0.055	6.0
Benzo(b)florathene (difficult to distingush from benzo(k)fluoranthene)	205–99–2	0.11	6.8
Benzo(k)fluorathene (difficult to distinguish from benzo(b)fluoranthene	207–08–9	0.11	6.8
Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
Benzo(a)pyrene	50–32–8	0.061	3.4
Bromodichloromethane	75–27–4	0.35	15
Bromomethane/Methyl bromide	74–83–9	0.11	15
4–Bromophenyl phenyl ether	101–55–3	0.055	15
n-Butyl alcohol	71–36–3	5.6	2.6
Butylate	2008–41–5	0.003	1.4
Butyle benzyl phthalate	85–68–7	0.017	28
2-sec-Butyl-4,6-dinitrophenol/Dinoseb	88–85–7	0.066	2.5
Carbaryl	63–25–2	0.006	0.14
Carbenzadim	10605–21–7	0.056	1.4
Carbofuran	1563–66–2	0.006	0.14
Carbofuran phenol	1563–38–8	0.056	1.4
Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56–23–5	0.057	6.0
Carbosulfan	55285–14–8	0.028	1.4
Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
p-Chloroaniline	106–47–8	0.46	16
Chlorobenzene	108–90–7	0.057	6.0
Chlorobenzilate	510–15–6	0.10	NA
2-Chloro-1,3-butadiene	126–99–8	0.057	0.28
Chlorodibromomethane	124–48–1	0.057	15
Choroethane	75–00–3	0.27	6.0
bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2
bis(2-Chloroethyl)ether	111–44–4	0.033	6.0
Chloroform	67–66–3	0.046	6.0
bis(2-Chloroisopropyl)ether	39638–32–9	0.055	7.2
p-Chloro-m-cresol	59–50–7	0.018	14
2-Chloroethyl vinyl ether	110–75–8	0.062	NA
Chloromethane/Methyl chlonde	74–87–3	0.19	30
2-Chloronaphthalene	91–58–7	0.055	5.6
2-Chlorophenol	95–57–8	0.044	5.7
3-Chloropropylene	107–05–1	0.036	30
Chrysene	218–01–9	0.059	3.4
o-Cresol	95–48–7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77	5.6
m-Cumenyl methylcarbamate	64–00–6	0.056	1.4

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§268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent/common name	CAS[1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l[2]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Cycloate	1134–23–2	0.003	1.4
Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP
o,p'-DDD	53–19–0	0.023	0.087
p,p'-DDD	72–54–8	0.023	0.087
o,p'-DDE	3424–82–6	0.031	0.087
p,p'-DDE	72–55–9	0.031	0.087
o,p'-DDT	789–02–6	0.0039	0.087
p,p'-DDT	50–29–3	0.0039	0.087
Dibenz(a,h)anthracene	53–70–3	0.055	8.2
Dibenz(a,e)pyrene	192–65–4	0.061	NA
1,2-Dibromo-3-chloropropane	96–12–8	0.11	15
1,2-Dibromoethane/Ethylene dibromide	106–93–4	0.028	15
Dibromomethane	74–95–3	0.11	15
m-Dichlorobenzene	541–73–1	0.036	6.0
o-Dichlorobenzene	95–50–1	0.088	6.0
p-Dichlorobenzene	106–46–7	0.090	6.0
Dichlorodifluoromethane	75–71–8	0.23	7.2
1,1-Dichloroethane	75–34–3	0.059	6.0
1,2-Dichloroethane	107–06–2	0.21	6.0
1,1-Dichloroethylene	75–35–4	0.025	6.0
trans-1,2-Dichloroethylene	156–60–5	0.054	30
2,4-Dichlorophenol	120–83–2	0.044	14
2,6-Dichlorophenol	87–65–0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D	94–75–7	0.72	10
1,2-Dichloropropane	78–87–5	0.85	18
cis-1,3-Dichloropropylene	10061–01–5	0.036	18
trans-1,3-Dichloropropylene	10061–02–6	0.036	18
Dieldrin	60–57–1	0.017	0.13
Diethylene glycol, dicarbamate	5952–26–1	0.056	1.4
Diethyl phthalate	84–66–2	0.20	28
p-Dimethylaminoazobenzene	60–11–7	0.13	NA
2-4-Dimethyl phenol	105–67–9	0.036	14
Dimethyl phthalate	131–11–3	0.047	28
Dimetilan	644–64–4	0.056	1.4
Di-n-butyl phthalate	84–74–2	0.057	28
1,4-Dinitrobenzene	100–25–4	0.32	2.3
4,6-Dinitro-o-cresol	534–52–1	0.28	160
2,4-Dinitrophenol	51–28–5	0.12	160
2,4-Dinitrotoluene	121–14–2	0.32	140
2,6-Dinitrotoluene	606–20–2	0.55	28
Di-n-octyl phthalate	117–84–0	0.017	28
Di-n-propylnitrosamine	621–64–7	0.40	14
1,4-Dioxane	123–91–1	0.22	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
1,2-Dephenylhydrazine	122–66–7	0.087	NA
Disulfoton	298–04–4	0.017	6.2
Dithiocarbamates (total)	137–30–4	0.028	28
Endosulfan I	939–98–8	0.023	0.066
Endosulfan II	33213–6–5	0.029	0.13
Endosulfan sulfate	1–31–07–8	0.029	0.13
Endrin	72–20–8	0.0028	0.13
Endrin aldehyde	7421–93–4	0.025	0.13
EPTC	759–94–4	0.003	1.4
Ethyl acetate	141–78–6	0.34	33
Ethyl benzene	100–41–4	0.057	10
Ethyl cyanide/Propanenitrile	107–12–0	0.24	360
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28
Ethyl methacrylate	97–63–2	0.14	160
Ethylene oxide	75–21–8	0.12	NA
Famphur	52–85–7	0.017	15
Fluoranthene	206–44–0	0.068	3.4
Fluorene	86–73–7	0.059	3.4
Formetanate hydrochloride	23422–53–9	0.056	1.4
Formparanate	17702–57–7	0.056	1.4
Heptachlor	76–44–8	0.0012	0.066

§268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent/common name	CAS[1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l[2]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Heptachlor epoxide	1024–57–3	0.016	0.066
Hexachlorobenzene	118–74–1	0.055	10
Hexachlorobutadiene	87–68–3	0.055	5.6
Hexachlorocyclopentadiene	77–47–4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.00063	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.00063	0.001
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
Iodomethane	74–88–4	0.19	65
3-Iodo-2-propynyl n-butylcarbamate	55406–53–6	0.056	1.4
Isobutyl alcohol	78–83–1	5.6	170
Isodrin	456–73–6	0.021	0.066
Isolan	119–38–0	0.056	1.4
Isosafrole	120–58–1	0.081	2.6
Kepone	143–50–8	0.0011	0.13
Methacrylonitrile	126–98–7	0.24	84
Methanol	67–56–1	5.6	0.75 mg/l TCLP
Methapyrilene	91–80–5	0.081	1.5
Methiocarb	2032–65–7	0.056	1.4
Methomyl	16752–77–5	0.028	0.14
Methoxychlor	72–43–5	0.25	0.18
3-Methylcholanthrene	56–49–5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50	30
Methylene chloride	75–09–2	0.089	30
Methyl ethyl ketone	78–93–3	0.28	36
Methyl isobutyl ketone	108–10–1	0.14	33
Methyl methacrylate	80–62–6	0.14	160
Methyl methansulfonate	66–27–3	0.018	NA
Methyl parathion	298–00–0	0.014	4.6
Metolcarb	1129–41–5	0.056	1.4
Mexacarbate	315–18–4	0.056	1.4
Molinate	2212–67–1	0.003	1.4
Naphthalene	91–20–3	0.059	5.6
2-Naphthylamine	91–59–8	0.52	NA
o-Nitroaniline	88–74–4	0.27	14
p-Nitroaniline	100–01–6	0.028	28
Nitrobenzene	98–95–3	0.068	14
5-Nitro-o-toluidine	99–55–8	0.32	28
o-Nitrophenol	88–75–5	0.028	13
p-Nitrophenol	100–02–7	0.12	29
N-Nitrosodiethylamine	55–18–5	0.40	28
N-Nitrosodimethylamine	62–75–9	0.40	2.3
N-Nitroso-di-n-butylamine	924–16–3	0.40	17
N-Nitrosomethylethylamine	10595–95–6	0.40	2.3
N-Nitrosomorpholine	59–89–2	0.40	2.3
N-Nitrosopiperidine	100–75–4	0.013	35
N-Nitrosophyrrolidine	930–55–2	0.013	35
Oxamyl	23135–22–0	0.056	0.28
Parathion	56–38–2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336–36–3	0.10	10
Pebulate	1114–71–2	0.003	1.4
Pentachlorobenzene	608–93–5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenyofurans)	NA	0.000035	0.001
Pentachloroethane	76–01–7	0.055	6.0
Pentachloronitrobenzene	82–68–8	0.055	4.8
Pentachlorophenol	87–86–5	0.089	7.4
Phenacetin	62–44–2	0.081	16
Phenanthrene	85–01–8	0.059	5.6
Phenol	108–95–2	0.039	6.2
o-Phenylenediamine	95–54–5	0.056	5.6
Phorate	298–02–2	0.021	4.6
Phthalic acid	100–21–0	0.055	28
Phthalic anhydribe	85–44–9	0.055	28
Physostigmine	57–47–6	0.056	1.4
Physostigmine salicylate	57–64–7	0.056	1.4

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§268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent/common name	CAS[1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l[2]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Promecarb	2631-37-0	0.056	1.4
Pronamide	23950-58-5	0.093	1.5
Propham	122-42-9	0.056	1.4
Propoxur	114-26-1	0.056	1.4
Prosulfocarb	52888-80-9	0.003	1.4
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex/2,4,5-TP	93-72-1	0.72	7.9
1,2,4,-5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All Tetrachlorobidenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Thiodicarb	59669-26-0	0.019	1.4
Thiophanate-methyl	23564-05-8	0.056	1.4
Tirpate	26419-73-8	0.056	0.28
Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
Trialiate	2303-17-5	0.003	1.4
Tribromomethane/Bromoform	75-25-2	0.63	15
2,4,6-Tribromophenol	118-79-6	0.035	7.4
1,2,4-Trichlorobenzene	120-82-1	0.055	19
1,1,1-Trichloroethane	71-55-6	0.054	6.0
1,1,2-Trichloroethane	79-00-5	0.054	6.0
Trichloroethylene	79-01-6	0.054	6.0
Trichloromonofluoromethane	75-69-4	0.020	30
2,4,5-Trichlorophenol	95-95-4	0.18	7.4
2,4,6-Tricholorphenol	88-06-2	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93-76-5	0.72	7.9
1,2,3-Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
Triethylamine	101-44-8	0.081	1.5
tris-(2,3-Dibromopropyl) phosphate	126-72-7	0.11	0.10
Vernolate	1929-77-7	0.003	1.4
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
Antimony	7440-36-0	1.9	2.1 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	7.6 mg/l TCLP
Beryllium	7440-41-7	0.82	0.014 mg/l TCLP
Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
Cyanides (Total)[4]	57-12-5	1.2	590
Cyanides (Amenable)[4]	57-12-5	0.86	30
Fluoride[5]	16964-48-8	35	NA
Lead	7439-92-1	0.69	0.37 mg/l TCLP
Mercury-Nonwastewater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury-All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	5.0 mg/l TCLP
Selenium	7782-49-2	0.82	0.16 mg/l TCLP
Silver	7440-22-4	0.43	0.30 mg/l TCLP
Sulfide	8496-25-8	14	NA
Thallium	7440-28-0	1.4	0.078 mg/l TCLP
Vanadium[5]	7440-62-2	4.3	0.23 mg/l TCLP
Zinc[5]	7440-66-6	2.61	5.3 mg/l TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[5] These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at §268.2(i).

NOTE: NA means not applicable.

21. Appendix XI is added to part 268 to read as follows:

APPENDIX XI TO PART 268.—METAL BEARING WASTES PROHIBITED FROM DILUTION IN A COMBUSTION UNIT ACCORDING TO 40 CFR 268.3(b)[1]

Waste code	Waste description
D004	Toxicity Characteristic for Arsenic.
D005	Toxicity Characteristic for Barium.
D006	Toxicity Characteristic for Cadmium.
D007	Toxicity Characteristic for Chromium.
D008	Toxicity Characteristic for Lead.
D009	Toxicity Characteristic for Mercury.
D010	Toxicity Characteristic for Selenium
D011	Toxicity Characteristic for Silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H_3AsO_4.
P011	Arsenic oxide As_2O_5.
P012	Arsenic trioxide.
P013	Barium cyanide.
P015	Beryllium.
P029	Copper cyanide Cu(CN).
P074	Nickel cyanide $Ni(CN)_2$.
P087	Osmium tetroxide.
P099	Potassium silver cyanide.
P104	Silver cyanide.
P113	Thallic oxide.
P114	Thallium (I) selenite.
P115	Thallium (I) sulfate.
P119	Ammonium vanadate.
P120	Vanadium oxide V_2O_5.
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.

[1] A combustion unit is defined as any thermal technology subject to 40 CFR part 264, subpart O; part 265, subpart O; and/or part 266, subpart

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PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

22. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

23. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	FEDERAL REGISTER reference	Effective date
[*Insert date of publication of final rule in the Federal Register (FR)*].	Land Disposal Restrictions Phase III—Decharacterized Waste- waters, Carbamate and Organobromine Wastes, and Spent Aluminum Potliners in § 268.39.	[*Insert FR page numbers of final rule*].	[*Insert date of 90 days from date of publication of final rule*].

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
[Insert date 90 days from date of publication of final rule].	Prohibition on land disposal of newly listed and identified wastes..	3004(g)(4) (C) and 3004(m).	[Insert date of publication of final rule] FR [Insert FR page numbers].
[Insert date 2 years from date of publication of final rule].	Prohibition on land disposal of radioactive waste mixed with the newly listed or identified wastes, including soil and debris.	Ditto.	Ditto.
		3004(g)(4) (C) and 3004 (m).	Ditto.

* * * * *

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Federal Register

Thursday
March 2, 1995

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD10

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate 28 areas along the coast of California, Oregon, and Washington as critical habitat for the Pacific coast vertebrate population segment of the western snowy plover (*Charadrius alexandrinus nivosus*). This small shorebird is listed as a threatened species under the Endangered Species Act of 1973, as amended (Act). Critical habitat designation would provide additional protection under section 7 of the Act with regard to activities that require Federal agency action. As required by section 4 of the Act, the Service will consider economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

DATES: Comments from all interested parties must be received by May 31, 1995. Public hearing requests must be received by April 17, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen J. Miller, Sacramento Field Office (see **ADDRESSES** section) telephone 916/979–2725, facsimile 916/979–2723.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On March 24, 1988, the Service received a petition from Dr. J.P. Myers of the National Audubon Society to list the Pacific coast population of the western snowy plover as a threatened species under the Act. On November 14, 1988, the Service published a 90-day petition finding (53 FR 45788) that substantial information had been presented indicating the requested action may be warranted. At that time, the Service acknowledged that questions pertaining to the demarcation of the subspecies and significance of interchange between coastal and interior stocks of the subspecies remained to be answered. Public comments were requested on the status of the coastal population of the western snowy plover. A status review of the entire subspecies had been in progress since the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). In that notice, as in subsequent notices of review (September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554)), the western snowy plover was included as a category 2 candidate. Category 2 encompasses species for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The public comment period on the petition was closed on July 11, 1989 (54 FR 26811, June 26, 1989).

In September 1989, the Service completed a status report on the western snowy plover. Based on the best scientific and commercial data available, including comments submitted during the status review, the Service made a 12-month petition finding on June 25, 1990, that the petitioned action was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

On January 14, 1992 (57 FR 1443), the Service published a proposal to list the coastal population of the western snowy plover as a threatened species. After a review of the best scientific and commercial available and all comments received in response to the proposed rule, the Service published a final rule to list the coastal population of the western snowy plover as a threatened species on March 5, 1993 (58 FR 12864), and thereby activated the protections applicable to listed species. The Service did not propose to designate critical habitat for the snowy plover within the proposed or final listing rulemaking because the Service found that critical habitat was not then determinable. The Service now has the information needed for a critical habitat proposal.

Ecological Considerations

The western snowy plover, which is one of twelve subspecies of the snowy plover (Rittinghaus 1961 in Jacobs 1986), is a small, pale colored shorebird with dark patches on either side of the upper breast. The species was first described in 1758 by Linnaeus (American Ornithologists' Union 1957). For a complete discussion of the ecology and life history of this subspecies, see the Service's March 5, 1993, final rule listing the coastal population of the western snowy plover as a threatened species (58 FR 12864).

The Pacific coast population of the western snowy plover breeds in loose colonies primarily on coastal beaches from southern Washington to southern Baja California, Mexico. On the Pacific coast, larger concentrations of breeding birds occur in the south than in the north, suggesting that the center of the plovers' coastal distribution lies closer to the southern boundary of California (Page and Stenzel 1981). In Baja California, Mexico, snowy plovers are distributed across 28 sites, with concentrations at six coastal lakes (Dra. Graciela De La Graza Garcia, Director General of Conservation Ecology and Natural Resources, United States of Mexico, *in litt.*, 1992). Other less common nesting habitat includes salt pans, coastal dredged spoil disposal sites, dry salt ponds, and salt pond levees and islands (Widrig 1980, Wilson 1980, Page and Stenzel 1981). Sand spits, dune-backed beaches, unvegetated beach strands, open areas around estuaries, and beaches at river mouths are the preferred coastal habitats for nesting (Stenzel *et al.* 1981, Wilson 1980).

Based on the most recent surveys, a total of 28 snowy plover breeding sites or areas currently occur on the Pacific Coast of the United States. Two sites occur in southern Washington—one at Leadbetter Point, in Willapa Bay (Widrig 1980), and the other at Damon Point, in Grays Harbor (Anthony 1985). In Oregon, nesting birds were recorded in 6 locations in 1990 with 3 sites (Bayocean Spit, North Spit Coos Bay and spoils, and Bandon State Park-Floras Lake) supporting 81 percent of the total coastal nesting population (Oregon Department of Fish and Wildlife, unpubl. data, 1991). A total of 20 plover breeding areas currently occur in coastal California (Page *et al.* 1991). Eight areas support 78 percent of the California coastal breeding population: San Francisco Bay, Monterey Bay, Morro Bay, the Callendar-Mussel Rock Dunes area, the Point Sal to Point Conception area, the Oxnard lowland, Santa Rosa Island, and San Nicolas Island (Page et al. 1991).

The coastal population of the western snowy plover consists of both resident and migratory birds. Some birds winter in the same areas used for breeding (Warriner *et al.* 1986, Wilson-Jacobs, pers. comm. in Page *et al.* 1986). Other birds migrate either north or south to wintering areas (Warriner *et al.* 1986). Plovers occasionally winter in southern coastal Washington (Brittell *et al.* 1976). The recent discovery of snowy plovers wintering near Cape Shoalwater in Pacific County, Washington, represents the northernmost record of wintering snowy plovers on the Pacific coast (Scott Richardson, Washington Department of Wildlife, pers. comm., 1994). From 43 to 81 plovers wintered on the Oregon coast between 1982–1990, primarily on 3 beach segments (Oregon Department of Fish and Wildlife 1994). The majority of birds, however, winter south of Bodega Bay, California (Page *et al.* 1986). Wintering plovers occur in widely scattered locations on both coasts of Baja California and significant numbers have been observed on the mainland coast of Mexico at least as far south as San Blas, Nayarit (Page *et al.* 1986). Many interior birds west of the Rocky Mountains winter on the Pacific coast (Page *et al.* 1986, Stern *et al.* 1988). Birds winter in habitats similar to those used during the nesting season.

Widely varying nest success (percentage of nests hatching at least one egg) and reproductive success (number of young fledged per female, pair, or nest) are reported in the literature. Nest success ranges from 0 to 80 percent for coastal snowy plovers (Widrig 1980, Wilson 1980, Saul 1982, Wilson-Jacobs and Dorsey 1985, Wickham unpubl. data in Jacobs 1986, Warriner *et al.* 1986). Instances of low nest success have been attributed to a variety of factors, including predation, human disturbance, and inclement weather conditions. Reproductive success ranges from 0.05 to 2.40 young fledged per female, pair or nest (Page *et al.* 1977, Widrig 1980, Wilson 1980, Saul 1982, Warriner *et al.* 1986, Page 1988). Page *et al.* (1977) estimated that snowy plovers must fledge 0.8 young per female to maintain a stable population. Reproductive success falls far short of this threshold at many nesting sites (Widrig 1980, Wilson 1980, Warriner *et al.* 1986, Page 1988, Page 1990).

Management Considerations

Historic records indicate that nesting western snowy plovers were once more widely distributed in coastal California, Oregon, and Washington than they are currently. In coastal California, snowy plovers bred at 53 locations prior to 1970 (Page and Stenzel 1981). Since that time, no evidence of breeding birds has been found at 33 of these 53 sites, representing a 62 percent decline in breeding sites (Page and Stenzel 1981). The greatest losses of breeding habitat were in southern California, within the central portion of the snowy plover's coastal breeding range. In Oregon, snowy plovers historically nested at 29 locations on the coast (Charles Bruce, Oregon Department of Fish and Wildlife, pers. comm., 1991). In 1990 only 6 nesting colonies remained, representing a 79 percent decline in active breeding sites. In Washington, snowy plovers formerly nested in at least 5 sites on the coast (Eric Cummins, pers. comm., 1991). Today only 2 colony sites remain active, representing, at minimum, a 60 percent decline in breeding sites.

In addition to loss of nesting sites, the plover breeding population in California, Oregon, and Washington has declined 17 percent between 1977 and 1989 (Page *et al.* 1991). Declines in the breeding population have been specifically documented in Oregon and California. Breeding season surveys along the Oregon coast from 1978 to 1993 show that the number of adult snowy plovers has declined significantly at an average annual rate of about 7 percent (Oregon Department of Fish and Wildlife 1994). The number of adults has declined from a high of 142 adults in 1981 to a low of 30 adults in 1992 (Oregon Department of Fish and Wildlife 1994; Randy Fisher, Oregon Department of Fish and Wildlife, *in litt.*, 1992). If the current trend continues, breeding snowy plovers could disappear from coastal Oregon by 1999. In 1981, the coastal California breeding population of snowy plovers was estimated to be 1,565 adults (Page and Stenzel 1981). In 1989, surveys revealed 1,386 plovers (Page *et al.* 1991), an 11 percent decline in the breeding population. The population decline in California may be greater than indicated; the 1989 survey results are considered more reliable than the earlier estimates, which may have underestimated the overall population size (Gary Page, pers. comm., 1991).

Although there are no historic data for Washington, it is doubtful that the snowy plover breeding population in Washington was ever very large (Brittell *et al.* 1976). However, loss of nesting sites in this state probably has resulted in a reduction in their overall population size. In recent years, fewer than 30 birds have nested on the southern coast of Washington (James Atkinson, pers. comm, 1990; Eric Cummins, pers. comm., 1991). In 1991, only one successful brood was detected in the State (Tom Juelson, Washington Department of Wildlife, *in litt.*, 1992).

Survey data also indicate a decline in wintering snowy plovers, particularly in southern California. The number of snowy plovers observed during Christmas Bird Counts from 1962 to 1984 significantly decreased in southern California despite an increase in observer participation in the counts (Page *et al.* 1986). This observed decline was not accompanied by a significant loss of wintering habitat over the same time period (Page *et al.* 1986).

The most important form of habitat loss to coastal breeding snowy plovers has been encroachment of European beachgrass (*Ammophila arenaria*). This non-native plant was introduced to the west coast around 1898 to stabilize dunes (Wiedemann 1987). Since then it has spread up and down the coast and now is found from British Columbia to southern California (Ventura County). European beachgrass is currently a major dune plant at about 50 percent of California breeding sites and all of those in Oregon and Washington (J.P. Myers, National Audubon Society, *in litt.*, 1988). Stabilizing sand dunes with European beachgrass has reduced the amount of unvegetated area above the tideline, decreased the width of the beach, and increased its slope. These changes have reduced the amount of potential snowy plover nesting habitat on many beaches and may hamper brood movements. The beachgrass community also provides habitat for snowy plover predators that historically would have been largely precluded by the lack of cover in the dune community. Cost effective methods to control or eradicate European beachgrass have not yet been found.

In the habitat remaining for snowy plover nesting, human activity (e.g., walking, jogging, running pets, horseback riding, off-road vehicle use, and beach raking) is a key factor in the ongoing decline in snowy plover coastal breeding sites and breeding populations in California, Oregon, and Washington. The nesting season of the western snowy plover (mid-March to mid-September) coincides with the season of greatest human use on beaches of the west coast (Memorial Day through Labor Day). Human activities detrimental to nesting snowy plovers include unintentional disturbance and trampling of eggs and chicks by people and unleashed pets (Stenzel *et al.* 1981, Warriner *et al.* 1986, P. Persons, *in litt.*, 1992), off-road vehicle use (Widrig 1980, Stenzel *et al.* 1981, Anthony 1985, Warriner *et al.* 1986, Page 1988, Philip Persons, *in litt.*, 1992); horseback riding (Woolington 1985, Page 1988, Philip Persons, *in litt.*, 1992); and beach raking (Stenzel *et al.* 1981). Page *et al.* (1977)

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found that snowy plovers were disturbed more than twice as often by such human activities than all other natural causes combined.

In the few instances where human intrusion into snowy plover nesting areas has been precluded either through area closures or by natural events, nesting success has improved. The average number of young fledged per nesting pair increased from 0.75 to 2.00 after the nesting site at Leadbetter Point, Washington was closed to human activities (Saul 1982). Similarly, vehicle closure on a portion of Pismo Beach, California, led to an eight-fold increase in the nesting plover population (W. David Shuford, Point Reyes Bird Observatory, *in litt.*, 1989). After beach access was virtually eliminated by the 1989 earthquake, fledging success increased 16 percent at Moss Landing Beach, California (Page 1990).

Predation by mammalian and avian predators is a major concern at a number of nesting sites. Western snowy plover eggs, chicks, and adults are taken by a variety of avian and mammalian predators. These losses, particularly to avian predators, are exacerbated by human disturbances. Of the many predators, American crows (*Corvus brachyrhynchos*), ravens (*C. corax*), and red fox (*Vulpes*) have had a significantly adverse effect on reproductive success at several colony sites (Wilson-Jacobs and Meslow 1984, Page 1988, John and Jane Warriner, Point Reyes Bird Observatory, *in litt.*, 1989, Page 1990, Stern *et al.* 1991). Accumulation of trash at beaches attracts these as well as other predators (Stern *et al.* 1990, Hogan 1991).

At most active breeding sites few measures have been implemented specifically to protect snowy plovers. Artificial measures have been used at several nesting sites to improve snowy plover nesting success. In 1991, the California Department of Parks and Recreation and the Service conducted plover nest enclosure studies on National Wildlife Refuge and State property in the Monterey area. Hatching success of plover nests in enclosures was 81 percent as compared to 28 percent for unprotected nests (Richard G. Rayburn, California Department of Parks and Recreation, *in litt.*, 1992, Elaine Harding-Smith, U.S. Fish and Wildlife Service, pers. comm., 1992). Use of nest enclosures at Coos Bay North Spit resulted in up to 88 percent nesting success, compared to as low as 9 percent success for unprotected nests (Stern *et al.* 1991, Randy Fisher, *in litt.*, 1992). Nest enclosures continue to be used at the above sites. The Service recently finalized a predator management plan for Salinas River National Wildlife Refuge, which proposes management measures to reduce red fox populations on the Refuge (Parker and Takekawa 1993).

In a few areas in California, including the Marine Corps Base at Camp Pendleton, plovers have benefitted somewhat from protective measures taken for the endangered California least tern (*Sterna antillarum browni*). At Vandenberg Air Force Base in southern California, beaches are closed to all foot and vehicular traffic during the least tern nesting season (Donna Brewer, U.S. Fish and Wildlife Service, pers. comm., 1991). Dogs and cattle have been restricted from some beaches at Point Reyes National Seashore (Gary Page, pers. comm., 1991), and some beaches on Federal land in Oregon have been closed to vehicles to protect plovers and other wildlife (Charles Bruce, pers. comm., 1991). Leadbetter Point in Washington (Fish and Wildlife Service), a 5-acre spoil disposal site in Coos Bay (Bureau of Land Management), and a 25-acre spoil disposal site in Coos Bay (Corps of Engineers) are the only nesting sites where human access has been restricted in the past specifically for plover nesting. In 1993, at Oregon Dunes National Recreation Area, the Forest Service used temporary fencing and signing to direct beach visitors away from snowy plover nesting areas. At Coos Bay, Oregon, the Corps of Engineers is proposing two projects to create or improve plover nesting habitat using dredged spoils.

Relationship to Recovery

Section 2(c)(1) of the Act declares that "all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act." Section 3(3) of the Act defines conservation as the use of all methods and procedures needed to recover an endangered or threatened species to the point at which it no longer needs to be listed under the Act. The Act mandates the conservation of listed species through different mechanisms, such as section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits, and other permits based on conservation plans); section 6 (cooperative agreements and Federal grants); section 5 (land acquisition); and research.

A recovery plan under section 4(f) of the Act is the "umbrella" that eventually guides all of these activities and promotes species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management, so that the species' status may improve to where it may be removed from the list of endangered and threatened wildlife and plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Service considers the conservation of a species in a designation of critical habitat. The designation of critical habitat will not, in itself, result in the recovery of the species, but is one of several measures available to contribute to conservation of the species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that require special management. The protection given critical habitat under section 7 also immediately increases the protection given to these primary constituent elements and essential areas and preserves options for the long-term conservation of the species. The protection of these areas may also shorten the time needed to achieve recovery. Designation of critical habitat also heightens the awareness of the public and agencies of species conservation needs.

Designating critical habitat does not create a management plan, establish numerical population goals, or prescribe specific management actions, and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and section 7 consultations. Areas outside of critical habitat also may have an important role in conservation of a listed species. A designation of critical habitat may be reevaluated and revised at any time that new information indicates changes are warranted. In considering whether to designate critical habitat, the Service will evaluate whether land management plans, recovery plans, or other conservation strategies have been developed and fully implemented that may reduce the need for the additional protection provided by a critical habitat designation.

Critical Habitat

Definition

Critical habitat, as defined by section 3 of the Act (16 U.S.C. 1532) means (i) the specific areas within the geographical area occupied by a species at the time it is listed on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. The term "conservation" as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." 16 U.S.C. 1532(3). Critical habitat, then, is to include biologically suitable areas necessary to recovery of the species. Critical habitat may be proposed for species that are already listed as threatened or endangered. Section 3 further states that in most cases the entire range of a species should not be encompassed within critical habitat.

Primary Constituent Elements

The Act requires critical habitat designations to be based on the best scientific data available 16 U.S.C. 1533(a)(2). In determining what areas are critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following (1) Space for individual and population growth, and normal behavior; (2) food, water, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally (5) habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species (50 CFR 424.12).

In considering the designation of critical habitat, the Service focuses on the primary physical or biological constituent elements of the area that are essential to the conservation of the species (50 CFR 424.12). Primary constituent elements may include, but are not limited to, roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types (50 CFR 424.12).

The proposed designation of critical habitat for the coastal population of the western snowy plover is based on the following physical and biological features and primary constituent elements:

* Space for individual and population growth.
* Food, water, air, light, minerals, and other nutritional or physiological requirements.
* Roost sites.
* Sites for breeding, reproduction, and rearing of offspring.
* Habitats (nesting grounds and feeding sites) that are protected from disturbance and are representative of the historic geographical and ecological distribution of the species.

For all areas of critical habitat proposed for the plover, these physical and biological features and primary constituent elements are provided or will be provided by intertidal beaches (between mean low water and mean high tide), associated dune systems, and river estuaries. Important components of the beach/dune/estuarine ecosystem include surf-cast kelp, sparsely vegetated foredunes, interdunal flats, spits, washover areas, blowouts, intertidal flats, salt flats, and flat rocky outcrops. Several of these components (sparse vegetation, salt flats) are mimicked in artificial habitat types used less commonly by snowy plovers (i.e., dredge spoil sites and salt ponds and adjoining levees). Functional suitability of areas containing the features listed above is also contingent upon isolation from human disturbance and predation. These attributes are considered essential to the conservation of the coastal population of the western snowy plover.

The primary constituent elements of snowy plover nesting, foraging, and roosting habitat could occur on virtually every beach along the Pacific coast. Therefore, biologically based criteria were developed as a basis for further identifying critical habitat areas and related recovery objectives. The key components of site importance as it relates to recovery of the species were existing nesting capacity, wintering capacity, and geographic location. Those sites in Washington, Oregon, and California that currently support the majority of breeding and wintering western snowy plovers were initially selected for critical habitat designation. Several additional sites in California were selected for designation to avoid a large gap in the geographic distribution of breeding or wintering birds. Important nesting and wintering sites were identified from Page and Stenzel (1981), Page *et al.* (1986), Page *et al.* (1991), Washington Department of Wildlife (1993), and Oregon Department of Fish and Wildlife (1994); and through personal communications with professionals in the field.

Proposed Critical Habitat Designation

The Service has identified 28 critical habitat areas totalling approximately 20,000 acres and about 210 miles of coastline, or about 10 percent of the coastline of California, Oregon, and Washington. Of the 28 areas, 19 critical habitat areas are proposed in California, 7 in Oregon, and 2 in Washington. Within the last decade, these sites provided habitat for about 65 percent of nesting and 60 percent of wintering western snowy plovers in California; 95 percent of nesting and 95 percent of wintering plovers in Oregon; and 100 percent of nesting and about 90 percent of wintering plovers in Washington. Protection and special management of these sites are essential to recovery of the coastal population of the western snowy plover and will form the cornerstone of a recovery plan.

In California, approximately 25 percent of proposed critical habitat occurs on Federal lands. About 50 percent of critical habitat proposed on non-Federal lands is State-owned, with the California Department of Parks and Recreation being the primary land manager. In Oregon about 45 percent of proposed critical habitat areas occurs on Federal land with the remainder controlled primarily by State agencies. Of the two sites proposed in the State of Washington, one is State property, and the second includes State lands adjacent to Willapa National Wildlife Refuge.

The Service excluded from proposed critical habitat designation, lands that already provide adequate protection for the western snowy plover. These sites include lands that provide plover nesting and wintering habitat within three National Wildlife Refuge complexes—Willapa National Wildlife Refuge in Washington, and Salinas National Wildlife Refuge and the Southern California Coastal Complex in California. Programs currently exist on these refuges to protect snowy plovers. Also excluded are lands owned and/or managed by the National Park Service. Important plover nesting areas on National Park Service lands (such as Santa Rosa Island) are relatively inaccessible by the public. Any recreational use impacts or other identifiable impacts on breeding and wintering birds or their habitat would

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be covered through the section 7 consultation process. Also excluded are key nesting areas on Camp Pendleton in San Diego County, California. A programmatic consultation currently underway between the Service and the Department of the Navy will address any adverse effects to nesting plovers and their habitat. For the above sites, therefore, designation of critical habitat would provide no additional benefit to the species. Prior to making a final decision on this proposal the Service will continue to consider whether existing management provides adequate protection for nesting and wintering western snowy plovers. For example, we are working with the Resources Agency of California to identify California State Park lands in this proposal that are currently providing adequate protection for these birds. The Service may exclude adequately protected sites from designation.

The Service also excluded from proposed critical habitat sites that would significantly conflict with the survival and recovery objectives of other listed species. Significant conflicts were identified between the habitat needs of snowy plovers and biological objectives for the California clapper rail (*Rallus longirostris obsoletus*), light-footed clapper rail (*Rallus longirostris levipes*), and salt marsh harvest mouse (*Reithrodontomys raviventris*). The two rails and mouse are federally listed endangered species.

The California clapper rail and salt marsh harvest mouse inhabit estuarine marshes of San Francisco Bay. Over 90 percent of historic tidal marsh habitat in the Bay has been lost, primarily through the development of commercial salt ponds (Josselyn 1983). Western snowy plovers have taken advantage of this artificial salt pond habitat, primarily in south San Francisco Bay, and nest on levees or islands within active salt ponds or in abandoned dry salt ponds. This artificial habitat supports the largest subpopulation of snowy plovers within its range (Page *et al.* 1991). This same habitat, with the exception of two salt pond sites used by nesting snowy plovers, however, is identified in the recovery plan for the California clapper rail and salt marsh harvest mouse for restoration to historic tidal marsh (U.S. Fish and Wildlife Service 1984; Peter Sorensen, Fish and Wildlife Service, pers. comm., 1994).

The light-footed clapper rail inhabits coastal tidal marshes from Santa Barbara County south to Baja California, Mexico. Over two-thirds of historic tidal marsh habitat has been lost (Speth 1971) primarily to urban development, flood control, and oil development. Several sites in Ventura, Orange, and San Diego Counties provide nesting and/or wintering habitat for snowy plovers, but also provide high quality clapper rail habitat or represent high priority tidal marsh restoration sites in the light-footed clapper rail recovery plan (U.S. Fish and Wildlife Service 1985). These sites are Bolsa Chica, Agua Hedionda Lagoon, Batiquitos Lagoon, San Elijo Lagoon, San Dieguito Lagoon, Los Penasquitos Lagoon, the San Diego River mouth, and the marshes of south San Diego Bay. Because the light-footed clapper rail is endangered and the habitat needs of this species differ significantly from those of the western snowy plover, the Service is excluding these sites from critical habitat designation.

Overall, this proposal focuses the primary recovery objectives for the western snowy plover on coastal beach and dune habitats, which represent a significant proportion of natural nesting and wintering habitat of the coastal population of the western snowy plover. These natural habitats, therefore, are considered essential to conservation of this threatened species. Protection of these sites as well as plover habitat on Fish and Wildlife Service, National Park Service, and Navy lands at Camp Pendleton will provide added protection for about 76 percent of nesting and 65 percent of wintering plovers rangewide. Sites excluded from critical habitat designation for the various reasons given above should not be considered as unnecessary to conservation of the species. The recovery plan for the coastal population of the western snowy plover will address the value of these areas to species' recovery. At the present time, these excluded sites support about 20 percent of the coastal population of the western snowy plover and during the recovery process may provide birds to supplement populations in essential breeding and wintering areas. If focusing recovery on the 28 proposed critical habitat areas proves unattainable, additional sites may be proposed as critical habitat in the future to aid in recovery of the species.

At this time, conservation of the Pacific coast population of the western snowy plover requires sufficient management efforts at all sites proposed as critical habitat. However, new information that may be grounds for review of this determination includes, but is not limited to, data showing that the species is more or less vulnerable than currently thought, a change in the species' status due to catastrophic events such as disease or weather, or evidence that continuing efforts to conserve the species are insufficient.

Many of the proposed critical habitat areas include large expanses of beach. For proposed sites that support nesting snowy plovers, nesting colonies may occupy only a small portion of the proposed critical habitat area. The larger critical habitat area is needed, however, because foraging occurs throughout the intertidal and foredune portions of the beach. Designation of larger critical habitat areas also will allow for natural shifting of plover nesting colonies as a result of vegetational changes and weather related events that reconfigure suitable nesting habitat.

Regulations governing designation of critical habitat (50 CFR 424 12(h)) state that critical habitat shall not be designated within foreign countries. Although the Pacific coast population of the western snowy plover's breeding and wintering range extends into Mexico, no critical habitat is proposed outside United States jurisdiction.

Effects of Critical Habitat Designation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical, that is, its primary constituent elements.

An activity will not adversely modify an area within designated critical habitat that does not contain any constituent elements. For example, existing areas such as parking lots, paved roads, and various kinds of structures within the proposed critical habitat boundaries clearly would not furnish habitat or biological features for western snowy plovers. Furthermore, some activities would not be restricted by critical habitat designation because they would have no significant adverse effect on the primary constituent elements.

Activities that may adversely modify critical habitat are subject to regulation under section 7(a) of the Act if they are carried out, authorized, or funded by a Federal agency. The purpose of consultations between the Service and other Federal agencies is to ensure that activities are carried out in a manner that is not likely to jeopardize the continued existence of listed species or adversely modify or destroy its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations, require Federal agencies to confer informally with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat.

Activities areas that could adversely affect proposed critical habitat of the coastal population of the western snowy plover fall into seven general categories:

(1) projects or management activities that cause, induce, or increase human-associated disturbance on beaches, including operation of off-road vehicles on the beach and beach cleaning. These activities may reduce the functional suitability of nesting, foraging, and roosting areas. Activities that may adversely modify critical habitat areas that support wintering birds (September 15–February 29) include beach cleaning that removes surfcast kelp and driftwood, dogs off leash, off-road vehicle driven at night, and falcon flying. Activities within posted fenced or otherwise protected nesting areas (March 1–September 14) that may adversely modify critical habitat areas include camping, off-road vehicle use (day or night), walking, jogging, clam digging, pets on or off leash, livestock grazing, sunbathing, picnicking, horseback riding, hang gliding, kite flying, model airplane flying, beach cleaning, and falcon flying in or over active nesting areas. With very few exceptions, the nesting area is a small fraction of the entire beach. Thus, no more that 5 to 15 percent of the vast majority of the units would be removed from these kinds of public uses during the breeding season. The Service would work with landowners to develop signs or fencing or other means to protect these small nesting areas. Furthermore, western snowy plovers occupy the soft sandy portions of the upper beach or foredunes, and people tend to prefer lower beach or sand that is regularly washed by the tides. On a case by case basis, the few restrictions could be removed after the plovers had finished breeding or left wintering grounds.

(2) actions that would promote unnatural rates or sources of predation. For example, producing human-generated litter that attracts predators, or designing exclosures that promote perching by avian predators may adversely modify critical habitat by reducing its functional suitability to support nesting snowy plovers.

(3) actions that would promote the invasion of non-native vegetation.

(4) activities associated with maintenance and operation of salt ponds. Activities that may adversely modify or destroy critical habitat when conducted during the snowy plover nesting season include flooding inactive salt ponds; raising the water level in active salt ponds; grading, resurfacing, riprapping, or placing dredged spoils on levees; and driving maintenance vehicles on levees. However, levee maintenance activities also may benefit snowy plovers by providing vegetation-free habitat for nesting. The Service would work with landowners to avoid harmful activities during the breeding season.

(5) dredge spoil disposal activities that may adversely modify critical habitat when conducted during the nesting season include deposition of spoil material, laying of pipes to transport the material, and use of machinery to spread the material. However, dredge spoil disposal sites also may benefit snowy plovers by providing nesting habitat free of European beachgrass. The Service would work with landowners to avoid harmful activities during the breeding season.

(6) shoreline erosion control projects and activities that may alter the topography of the beach. Activities that may adversely modify or destroy nesting, foraging, and roosting habitat include beach nourishment (sand deposition, spreading of sand with machinery); construction of breakwaters and jetties (interruption of sand deposition); dune stabilization using native and non-native vegetation or fencing (decreased beach width, increased beach slope, reduction in blowouts and other preferred nesting habitat); beach leveling (increased tidal reach, removal of sparse vegetation used by chicks for shelter, destruction of rackline feeding habitat). Beach nourishment projects, however, also may have the potential to benefit nesting or wintering plover habitat on some sites experiencing serious erosion. The Service would work with landowners to avoid harmful activities when the birds are present.

(7) contamination events. Contamination through oil spills or chemical releases may adversely modify critical habitat by contaminating snowy plovers and/or their food sources.

Federal agencies that may be required to consult with the Service on one or more of these activities include the Forest Service, Bureau of Land Management, Federal Aviation Administration, and the Departments of the Army (including the Corps of Engineers), Navy, and Air Force.

In addition several other species that are listed under the Act occur in the same general areas as western snowy plovers. These species share the coastal beach/dune/estuarine ecosystem with snowy plovers. All of these species occurred historically in association with western snowy plovers in this Pacific coast ecosystem, and thus, the habitat requirements of these species do not significantly conflict with those of the snowy plover. Therefore, any plans prepared for sites designated as critical habitat for the snowy plover should be considered ecosystem management plans that accommodate needs of other listed or proposed species that also occur on the site. In doing so, these proposed snowy plover critical habitat areas more aptly represent critical habitat for a multitude of species inhabiting the coastal beach/dune/estuarine ecosystem. Federal agencies proposing management actions for other listed species may affect critical habitat for the western snowy plover and be required to initiate formal consultation under section 7 of the Act. Conversely, proposed management actions for the benefit of the plover or its habitat may affect other listed species. The Service will work with other Federal agencies to develop ecosystem plans that provide for the needs of all listed species.

When the Service issues an opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, the Service also provides reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Consideration of Economic and Other Factors

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating any particular area as critical habitat. For example, beneficial impacts of critical habitat designation may include (1) a clear notification to Federal agencies and the public of the existence and importance of critical habitat, (2) voluntary increased protection of snowy plovers on some private lands, (3) stimulation of additional attention to the requirements of section 9 of the Act by private, municipal, county, and state landowners, (4) additional protection for other listed and non-listed species that occur in areas designated as critical habitat for the snowy plover, and (5) preservation of the beach-dune-estuarine ecosystem. Section 4(b)(2) authorizes the Service to exclude any area from critical habitat designation if the Service determines the benefits of excluding the area outweigh the benefits of including it, except that the Service

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may not exclude an area if the Service determines that doing so would result in extinction of the species. Pursuant to 50 CFR 424.19, the Service will consider the economic and other relevant impacts of designating of critical habitat for the coastal population of the western snowy plover.

Economic Analysis

The economic analysis is designed to provide information to assist in making determinations about areas which may be excluded from critical habitat. It is conducted by examining how a designation of critical habitat for the snowy plover would be expected to affect the use of Federal lands as well as non-Federal activities authorized or funded by Federal agencies. Activities on private or state-owned lands that do not involve Federal permits, funding or other Federal actions would not be restricted by a designation of critical habitat.

The economic analysis distinguishes between economic effects caused by the listing of the snowy plover as threatened and those that would be caused by the proposed designation of critical habitat. Furthermore, if a proposed action would otherwise have been limited or prohibited by another statute or regulation, such as the Clean Water Act, those economic effects would not be attributable to either listing or critical habitat designation under the Endangered Species Act.

Economic effects are the costs or benefits to society of precluding or limiting specific land uses in areas being considered for designation as critical habitat. Economic effects are categorized as either efficiency or distributional. Economic efficiency effects are those consequences of critical habitat designation that cause changes in national income. Economic distribution effects pertain to regional changes that may have offsetting effects elsewhere in the national economy. Efficiency effects are used primarily to determine whether an action is economically sound and whether expected benefits exceed costs. Distributional effects are used to evaluate regional and local economic impacts.

Consultation Under Section 7 of the Endangered Species Act

Section 7 of the Act (16 USC 1536), requires Federal agencies to insure that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. Jeopardy is defined at 50 CFR 402.02 as any action reasonably expected to reduce appreciably the likelihood of both the survival and recovery of the species in the wild by reducing its reproduction, numbers, or distribution. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as any direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the species.

Under section 7, a Federal agency must consult with the Service if it determines that an action may affect a listed species or its critical habitat. During consultation, the Service reviews the agency's proposed action and prepares a biological opinion as to whether that action is likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat.

In cases where species are listed without critical habitat, the Service determines only whether the proposed action is likely to jeopardize the continued existence of the species. In cases where critical habitat has been designated, the Service also determines whether the proposed action is likely to destroy or adversely modify critical habitat. The additional requirement for Federal agencies to avoid destruction and adverse modification of critical habitat may result in incremental restrictions on agency actions beyond those required to avoid jeopardy or for other statutory or regulatory purposes.

The incremental restrictions arising from section 7 consultations on destruction or adverse modification are the only way that designating critical habitat produces an economic impact. To isolate that incremental impact, total economic effects of limitations on a proposed action within critical habitat must be apportioned between a species listing (jeopardy, take prohibitions, etc.) and critical habitat designation (destruction or adverse modifications).

If the action is found to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, the Service is required to provide, to the extent possible, reasonable and prudent alternatives to the proposed action. By definition, reasonable and prudent alternatives allow the proposed action to go forward while removing the conditions that jeopardize the species or destroy or adversely modify its critical habitat. For the snowy plover, the Service believes that reasonable and prudent alternatives developed as part of consultation will allow most activities to continue, subject to some limitations. Such alternatives might include fencing or seasonal closure of certain areas to human uses, as well as changes in beach erosion control or dredging plans.

Determination of whether an action will result in jeopardy and/or adverse modification is dependent upon a number of factors, such as the type of project, its size, location, and duration. In many cases, sufficient management actions will permit agencies to avoid adverse modification with little or no effect on their activities. The Service believes that, in the case of the snowy plover, the large majority of economic impacts as a result of section 7 consultation will occur as a result of listing, through the application of the jeopardy standard and incidental take prohibitions.

Framework of Analysis

The economic analysis examines the costs and benefits of precluding or limiting specific land uses within areas designated as critical habitat. It is cast in a "with" critical habitat versus a "without" critical habitat framework and seeks to measure the net change in the various categories of benefits and costs when the critical habitat designation is imposed on the existing baseline.

National and Regional Effects

The economic effects of critical habitat designation consist of those affecting national income and those that are important on a local or regional level.

National economic (efficiency) costs represent changes in national income (the total value of goods and services). They are measured as changes in consumer surplus and producer surplus (economic rent). Economic efficiency analysis seeks to maximize national income from a given resource base. Gains and losses in recreation values, increased costs imposed on management agencies or development projects, loss of earnings by displaced labor or capital assets, and changes in revenue from user fees (beach user fees, etc.) are typical national economic costs of critical habitat designation. The economic cost of designating critical habitat includes any additional costs that would be imposed, regardless of whether they are incurred by a Federal agency, a state agency or the private sector so long as they stem from a section 7 consultation regarding destruction or adverse modification of the habitat proposed to be designated.

Regional economic (distributional) impacts represent transfers between people, groups, or geographic regions, with no net effect on the national total. Distributional impacts relate to equity and fairness considerations and deal primarily with how income and wealth are divided among regions and groups. Changes in employment, household income and local or state tax revenues are frequently used to portray regional effects.

A Net-Cost With and With-out Approach

Designation of critical habitat will often result in both economic gains and losses. Careful application of a with and without analytical framework will help to distinguish between the two. For example, with critical habitat recreation such as bird watching may be preserved that otherwise would have been lost because of a development project or continued habitat loss. The national economic value of the preserved recreation and the regional jobs and household income it produces are gains, or benefits, of designation. Without critical habitat, an area may have been used for developed recreational purposes, but critical habitat designation would prohibit those uses. The values and jobs associated with that now precluded use become a loss (benefit foregone) due to critical habitat designation. It is the net effect of these changes in both the national and regional accounts that is important. Describing what probably would have happened to an area of potential critical habitat in both the with and without scenarios, both currently and in the future, is an important part of the analysis. The availability of data limits quantification of the net effects in many instances.

Baseline for Analysis

As noted earlier, the economic effects of critical habitat designation are incremental to those already created by the Clean Water Act and other statutes, and by listing the snowy plover as threatened. Actions taken for those other purposes establish the baseline for this analysis. It is the marginal increase in species protection provided by designation of critical habitat and the marginal change in costs, regional impacts, and benefits that the designation produces that are relevant to this analysis.

Data Requirements

The Service has notified Federal agencies having jurisdiction over the areas being proposed as critical and asked them to estimate the effect of designation on their activities. Each agency was sent detailed maps and legal descriptions of the proposed areas and asked to identify areas for which they were responsible. They were then asked to provide detailed descriptions of activities on those areas that may be affected by critical habitat designation, in three situations:

Without Listing: Activities that would have been taking place in the proposed area if there had been no listing of the snowy plover as threatened.

With Listing: Activities that would be taking place once any existing or anticipated restrictions to avoid jeopardy decisions in section 7 consultations were put in place. This level of activity becomes the baseline for evaluation of the incremental effect of critical habitat designation.

With Critical Habitat: Activities expected to take place once any anticipated restrictions to avoid adverse modification decisions in section 7 consultations were put in place. The difference between this level and the With-Listing level is the impact attributable to designating critical habitat.

Land management agencies were asked to quantify their responses as much as possible in terms of days of beach use, cattle grazing, etc., and to estimate any change in their operational costs as a result of listing and of designating critical habitat. Other Federal agencies that may be affected by critical habitat through their regulatory or funding roles were also sent maps and legal descriptions of the proposed critical habitat and were asked if any of the areas were involved in pending or anticipated permit or funding actions. Responses to those requests will form the empirical basis of the economic analysis. The Service is also seeking information about such possible actions during the public comment period.

The Exclusion Process

This section summarizes the procedure that will be followed prior to a final rule in determining whether or not to exclude an area (or areas) from designation as critical habitat for the western snowy plover. The criteria used to help reach a determination and the steps followed are described below.

Section 3(5)(A) of the Endangered Species Act of 1973 (Act), as amended, generally defines critical habitat as:

> (i) The specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.

Section 3 further states that in most cases critical habitat will not encompass the entire range of the species. The Act also directs the Secretary to consider economic and other relevant impacts in the designation of critical habitat. Section 4(b)(2) states:

> The Secretary shall designate critical habitat, and make revisions thereto * * * on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Exclusion of an area as critical habitat would only eliminate the protection provided by the destruction or adverse modification standard of section 7; it would not alleviate the need to comply with other requirements of the Act in that area, such as section 7 consultation on jeopardy and section 9 prohibitions on take. These requirements would apply regardless of whether or not critical habitat is designated for a particular area.

The authority to make determinations under section 4(b)(2) of the Act has been delegated to the Director of the Fish and Wildlife Service. Implementation of section 4(b)(2) requires three determinations: (1) The conservation benefits to the species of including an area as critical habitat, (2) the economic and other costs of including an area, and (3) the cumulative effects of exclusions on the probability of species extinction. If the exclusion of an area or areas from critical habitat would result in species extinction, then exclusion of the critical habitat area(s) would not be authorized under the Act.

The process used to evaluate critical habitat areas to determine whether the benefits of exclusion outweigh the benefits of inclusion as critical habitat can be summarized in several sequential steps:

Step 1 Identify areas that meet the definition of critical habitat in section 3(5) of the Act.

Step 2 Conduct an economic analysis to determine the anticipated economic consequences of designating areas as critical habitat.

Step 3 Identify the applicable economic, biological, and other information that need to be considered to determine whether to retain, exclude, or modify areas as critical habitat.

For the western snowy plover, the Service is proposing specific critical habitat areas that the Service believes are essential to the plovers' conservation. The biological value and

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roles of each area in providing conservation benefits to the snowy plover have been identified in preparing the proposal. An economic analysis will be completed which estimates the potential economic effects of proposing critical habitat. The steps followed by the Service in designating critical habitat and in assessing the potential economic effects associated with a designation of the proposed areas will be fully described in the final rule and in the economic analysis report.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible in the conservation of endangered or threatened species and the protection of critical habitat. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Current or planned activities and their possible impacts on proposed critical habitat areas;

(3) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat;

(4) Economic values associated with benefits of designating critical habitat for the coastal population of the western snowy plover; and

(5) Information the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service during the 60-day comment period following publication of this proposed rule. The final decision on designation of critical habitat also will include any exclusion determinations.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal in the **Federal Register**. Such requests must be made in writing and should be sent to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, there are no significant economic impacts resulting from the critical habitat designation. There are a limited number of actions on private land that have Federal involvement through funds or permits that may be affected by critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990. This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

References Cited

American Ornithologists' Union. 1957. The A.O.U. checklist of North American birds. Fifth edition. 168 pp.

Anthony, J.L. 1985. A report on the distribution, numbers and human disturbance of snowy plovers at Damon Point, Washington. Report to the Washington Department of Game. Evergreen State College, Washington. 24 pp.

Brittell, J.D., J.M. Brown, and R.L. Eaton. 1976. Marine shoreline fauna of Washington, Vol. II. Washington Department of Game and Ecology, Olympia, Washington. 341 pp.

Hogan, C. 1991. Snowy plover and human activities at Damon Point, Washington. May 1 to June 10, 1991. Unpubl. report to Washington Department Wildlife, Olympia, Washington. 10 pp.

Jacobs, R.A. 1986. Snowy plover (*Charadrius alexandrinus*). Section 4.4.1, U.S. Army Corps of Engineers Wildlife Resources Management Manual, Technical Report EL–86–54, Portland, Oregon. 25 pp.

Josselyn, M. 1983. The ecology of San Francisco Bay tidal marshes: a community profile. Prepared for the National Coastal Ecosystem Team, U.S. Fish and Wildlife Service, Slidell, Louisiana. 102 pp.

Oregon Department of Fish and Wildlife. 1994. Final Draft. Oregon conservation program for the western snowy plover (*Charadrius alexandrinus nivosus*). Portland, Oregon. 56 pp.

Page, G.W. 1988. Nesting success of snowy plovers in central coastal California in 1988. Report of the Point Reyes Bird Observatory, Stinson Beach, California. 7 pp.

——— 1990. Nesting success of snowy plovers in central coastal California in 1989 and 1990. Report of the Point Reyes Bird Observatory, Stinson Beach, California. 13 pp.

Page, G.W., F.C. Bidstrup, R.J. Ramer, and L.E. Stenzel. 1986. Distribution of wintering snowy plovers in California and adjacent states. Western Birds 17(4):145–170.

Page, G.W. and L.E. Stenzel (eds.). 1981. The breeding status of the snowy plover in California. Western Birds 12(1):1–40.

Page, G.W., L.E. Stenzel, W.D. Shuford, and C.R. Bruce. 1991. Distribution and abundance of the snowy plover on its western North American breeding grounds. J. Field Ornithol. 62(2):245–255.

Page, G.W., J.S. Warriner, J.C. Warriner and R.M. Halbeisen. 1977. Status of the snowy plover on the northern California coast. Part I: Reproductive timing and success. California Department of Fish and Game Nongame Wildlife Investigations, Sacramento, California. 10 pp.

Parker, M.W. and J.E. Takekawa. 1993. Salinas River National Wildlife Refuge predator management plan and final environmental assessment. U.S. Fish and Wildlife Service, San Francisco Bay National Wildlife Refuge, Newark, California. 56 pp.

Saul, S.M. 1982. Clam diggers and snowy plovers. Washington Wildl. 32(1):28–30.

Speth, J.W. 1971. The status of coastal wetlands in southern California. Paper presented at annual meeting Western Section of the Wildlife Society.

Stenzel, L.E., S.C. Peaslee, and G.W. Page. 1981. II. Mainland Coast. Pages 6–16 in Page, G.W. and L.E. Stenzel, (eds.). The breeding status of the snowy plover in California. Western Birds 12(1):1–40.

Stern, M.A., K.A. Kristensen, and J.F. Morawski. 1988. Investigations of snowy plovers at Abert Lake, Lake Co., Oregon. Final Rept. for Oregon Department Fish and Wildlife Nongame Prog. 12 pp.

Stern, M.A., J.S. McIver, and G.A. Rosenberg. 1990. Investigations of the western snowy plover at the Coos Bay North Spit and adjacent sites in Coos and Curry Counties, Oregon, 1990. Report to Oregon Department Fish and Wildlife Nongame Program 33 pp.

Stern, M.A., J.S. McIver, and G.A. Rosenberg. 1991. Nesting and reproductive success of snowy plovers along the south Oregon coast 1991. Report to Oregon Department Fish and Wildlife Nongame Prog. 19 pp.

U. S. Fish and Wildlife Service. 1984. Salt marsh harvest mouse and California clapper rail recovery plan. Portland, Oregon. 141 pp.

U. S. Fish and Wildlife Service. 1985. Light-footed clapper rail recovery plan. Portland, Oregon. 121 pp.

Warriner, J.S., J.C. Warriner, G.W. Page, and L.E. Stenzel. 1986. Mating system and reproductive success of a small population of polygamous snowy plovers. Wilson Bull. 98(1):15–37.

Washington Department of Wildlife. 1993. Washington State recovery plan for the snowy plover (Charadrius alexandrinus). Draft. 76 pp.

Widrig, R.S. 1980. Snowy plovers at Leadbetter Point. An opportunity for wildlife management? Prepared for the U.S. Fish and Wildlife Service, Willapa National Wildlife Refuge, Ilwaco, Washington. 14 pp.

Wiedemann, A.M. 1987. The ecology of European beachgrass (*Ammophila arenaria* (L.) Link). A review of the literature. Oregon Department of Fish and Wildlife Nongame Wildlife Program Technical Report #87–1–01. 18 pp.

Wilson, R.A. 1980. Snowy plover nesting ecology on the Oregon coast. M.S. Thesis, Oregon State Univ., Corvallis, Oregon. 41 pp.

Wilson-Jacobs, R. and G.L. Dorsey. 1985. Snowy plover use of Coos Bay north spit, Oregon. Murrelet 66(3):75–81.

Wilson-Jacobs, R. and E.C. Meslow. 1984. Distribution, abundance, and nesting characteristics of snowy plovers on the Oregon coast. Northwest Science 58(1):40–48.

Woolington, M.C. 1985. A preliminary investigation of the effect of recreational use on nesting snowy plovers at Sutton and Siltcoos beach areas, Oregon. Oregon Department of Fish and Wildlife Nongame Program. 37 pp.

Author: The primary author of this proposed rule is Karen J. Miller, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846 (916/979–2725).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 USC 1361–1407; 16 USC 1531–1544; 16 USC 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Plover, western snowy", under BIRDS, to read 17.95(b).

3. It is proposed to amend § 17.95(b) by adding, in the same alphabetical order as the species occurs in § 17.11(h), critical habitat of the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*) to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

* * * * *

Western Snowy Plover (*Charadrius alexandrinus nivosus*)

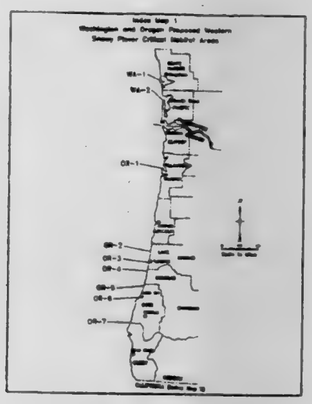

Washington. Areas of land and water as follows:

WA–1. Damon Point, Grays Harbor County (Index Map 1)

Beginning at 46°55′55″ N, 124°09′07″ W, thence northwesterly following the property line of the Oyhut Wildlife Recreation Area to 46°55′58″ N, 124°09′14″ W, thence northwesterly to 46°56′12″ N, 124°09′16″ W, thence northeasterly to 46°56′27″ N, 124°09′11″ W, thence northeasterly to 46°56′52″ N, 124°08′02″ W, thence east to MLW, thence southeasterly, southerly, and southwesterly following MLW around Damon Point to a point directly east of the point of beginning, thence west to the point of beginning. (Point Brown and Westport USGS 7.5″ Quads 1983)

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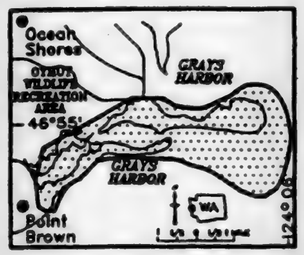

WA–1 DAMON POINT

WA–2. Leadbetter Point, Pacific County (Index Map 1)

Beginning at 46°36′22″ N, 124°03′51″ W, thence northeasterly to 46°37′38″ N, 124°03′55″ W, thence northeasterly to 46°38′30″ N, 124°03′01″ W, thence southeasterly to 46°37′58″ N, 124°02′05″ W, thence southwesterly to 46°37′48″ N, 124°02′20″ W, thence south to MLW, thence northeasterly around the north end of Leadbetter Point, thence southerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. Excludes all U.S. Fish and Wildlife Service property. (North Cove and Oysterville USGS 7.5″ Quads 1984)

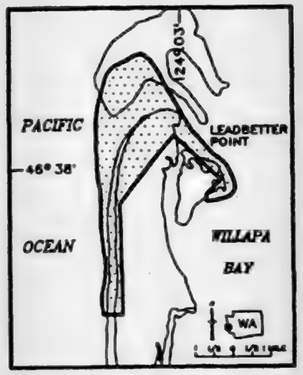

WA–2 LEADBETTER POINT

Oregon. Areas of land and water as follows:

OR–1. Bayocean Spit, Tillamook County (Index Map 1)

Beginning at 45°33′57″N, 123°56′50″W, thence north to MLW, thence southeasterly following MLW to 45°33′42″N, 123°56′21″W, thence southerly to 45°33′28″N, 123°56′18″W, thence southwesterly to 45°33′12″N, 123°56′45″W, thence southerly following the easterly edge of the sand depicted on the topographic map as a dashed line to 45°32′28″N, 123°56′54″W, thence southerly to 45°32′23″N, 123°56′56″W, thence southerly following the easterly edge of the sand depicted on the topographic map as a dashed line to 45°30′21″N, 123°57′21″W, thence west to MLW, thence northerly following MLW to the toe of the South Jetty, thence directly west to the point of beginning. (Garibaldi USGS 7.5″ Quad 1985)

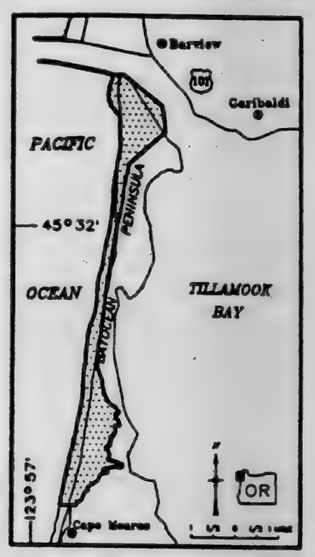

OR–1 BAYOCEAN SPIT

OR–2. Heceta Head to Siuslaw River, Lane County (Index Map 1)

Beginning at 44°06′15″N, 124°07′20″W, thence southerly to 44°05′51″N, 124°07′18″W, thence southerly to 44°05′15″N, 124°07′26″W, thence southerly to 44°04′10″N, 124°07′35″W, thence southeasterly to 44°04′03″N, 124°07′23″W, thence southerly following the east edge of the sand depicted on the topographic map as a dashed line to 44°02′50″N, 124°07′53″W, thence westerly to 44°02′50″N, 124°07′57″W, thence southerly to 44°01′08″N, 124°08′19″W, thence westerly following the northerly toe of the North Jetty to MLW, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Mercer Lake USGS 7.5″ Quad 1984)

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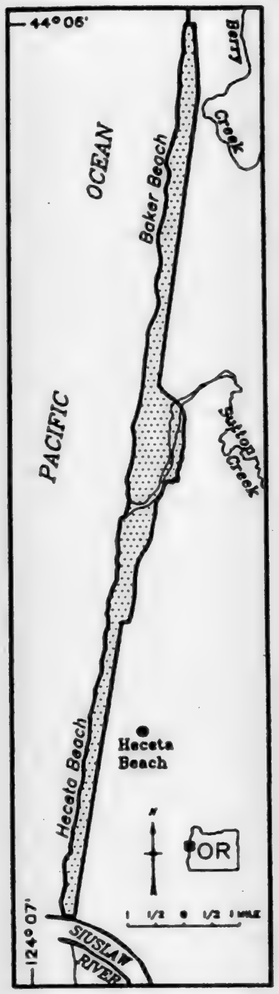

OR–2 HECETA HEAD TO SIUSLAW RIVER

OR–3. Siuslaw River to Siltcoos River, Lane County (Index Map 1)

Beginning at 44°00'59"N, 124°08'15"W, thence easterly following the toe of the South Jetty to 44°00'54"N, 124°08'01"W, thence southwesterly to 44°00'49"N, 124°08'06"W thence southerly to 44°00'00"N, 124°08'06"W, thence southerly following 25 ft. east of road to 43°57'23"N, 124°08'27"W thence southerly to 43°52'55"N, 124°09'10"W, thence southeasterly to 43°52'46"N, 124°08'58"W, thence southerly to 43°52'38"N, 124°08'58"W, thence west to MLW, thence southerly and westerly following MLW around the southern end of the spit, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Mercer Lake, Goose Pasture, and Tahkenitch Creek USGS 7.5" Quads 1984)

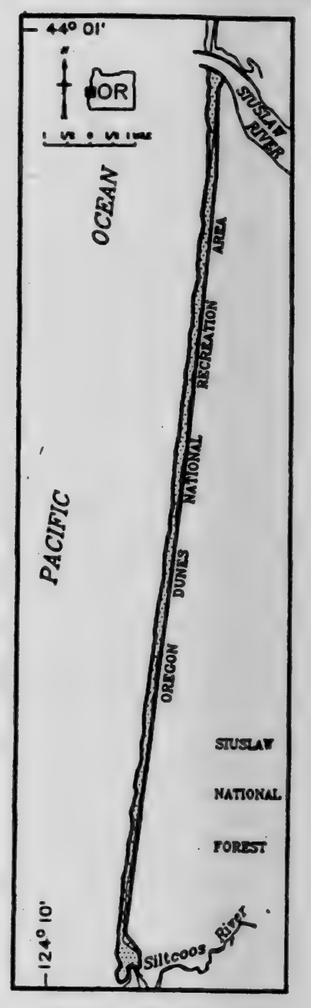

OR–3 SIUSLAW RIVER TO SILTCOOS RIVER

OR–4. Siltcoos River to Threemile Creek, Lane and Douglas County (Index Map 1)

Beginning at 43°52'29"N, 124°08'55"W, thence southwesterly to 43°52'13"N, 124°09'11"W, thence westerly to 43°52'12"N, 124°09'18"W, thence southerly to 43°49'02"N, 124°09'52"W, thence east to 43°49'02"N, 124°09'43"W, thence southerly to 43°47'08"N, 124°10'04"W, thence southwesterly to 43°47'00"N, 124°10'16N'W, thence southerly to 43°45'00"N, 124°10'42"W, thence west to MLW, thence northerly following MLW to a point directly north of the point of beginning, thence south to the point of beginning. (Goose Pasture and Tahkenitch Creek USCS 7.5" Quad 1984)

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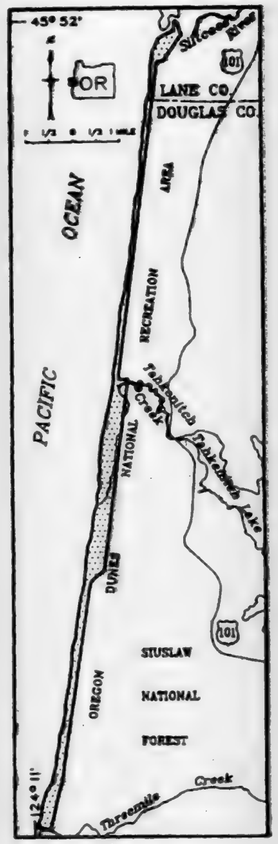

OR–4 SILTCOOS RIVER TO THREEMILE CREEK

OR–3. Umpqua River to Horsfall Beach, Douglas and Coos County (Index Map 1)

Beginning at 43°3951 N, 124°1225 W, thence southerly to 43°3936 N, 124°1225 W, thence southerly to 43°3840 N, 124°1229 W, thence southerly following 25 ft. east of road to 43°3730 N, 124°1246 W, thence southwesterly to 43°3439 N, 124°1334 W, thence southwesterly to 43°3400 N, 124°1346 W, thence easterly to 43°3358 N, 124°1326 W, thence southwesterly to 43°3329 N, 124°1337 W, thence westerly to 43° 3326 N, 124°1353 W, thence southwesterly following 20 ft. contour to 43°3000 N, 124°1516 W, thence southwesterly to 43°2708 N, 124°1636 W, thence west to MLW, thence northeasterly following MLW to the southern toe of South Jetty, thence northeast to the point of beginning. (Winchester Bay and Lakeside USGS 7.5 Quads 1985, and Empire USGS 7.5" Quad 1970)

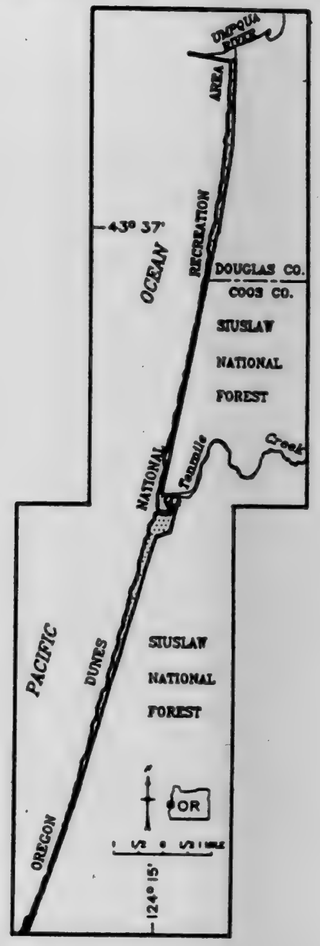

OR–5 UMPQUA RIVER TO HORSFALL BEACH

OR–6. Horsfall Beach to Coos Bay, Coos County (Index Map 1)

Unit 1

Beginning at 43°2708 N, 124°1636 W, thence southwesterly following 20 ft. contour to 43°2534 N, 124°1727 W, thence southwesterly following 20 ft. contour to 43°2223 N, 124°1925 W, thence east to MLW, thence southerly and westerly following MLW around the southern tip of the north spit, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Empire and Charleston USGS 7.5" Quads 1970)

Unit 2

Beginning at 43°2502 N, 124°1612 W, thence southeasterly to 43°2451 N, 124°1618 W, thence east to MLW, thence southerly following MLW to a point directly east of 43°2444 N, 124°1618 W, thence west to said point, thence westerly to 43°2444 N, 124°1701 W, thence northeasterly to 43°24 57 N, 124°1700 W, thence northwesterly to 43°2454 N, 124°1704 W, thence northeasterly to the point of beginning. (Empire USGS 7 5" Quad 1970)

Unit 3

Beginning at 43°2105 N, 124°2026 W, thence southwesterly to 43°2039 N, 124°2054 W, thence southwesterly to 43°2121 N, 124°2121 W, thence north to MLW, thence northeasterly following MLW to the southern toe of the South Jetty, thence easterly following the toe of the South Jetty to the point of beginning. (Charleston USGS 7 5" Quad 1970)

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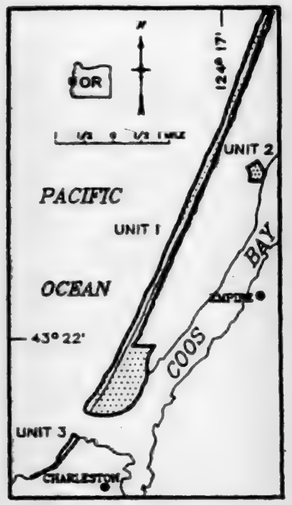

OR–6 HORSFALL BEACH TO COOS BAY UNITS 1–3

OR–7. Bandon Park to Floras Lake, Coos and Curry Counties (Index Map 1)

Beginning at 43°04'14"N, 124°26'01"W, thence southerly to 43°03'22"N, 124°26'10"W, thence southerly to 43°02'42"N, 124°26'16"W, thence southerly to 43°01'42"N, 124°26'26"W, thence southwesterly to 43°00'56"N, 124°26'58"W, thence southwesterly to 43°00'00"N, 124°27'17"W, thence southerly to 42°59'27"N, 124°27'25"W, thence southwesterly to 42°57'16"N, 124°28'24"W, thence southwesterly to 42°55'52"N, 124°29'09"W, thence southwesterly to 42°54'48"N, 124°30'00"W, thence southwesterly to 42°54'10"N, 124°30'22"W thence southwesterly to 42°53'42"N, 124°30'49"W, thence west to MLW, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Floras Lake and Langlois USGS 7.5" Quads 1986, and Bandon USGS 7.5" Quad 1970)

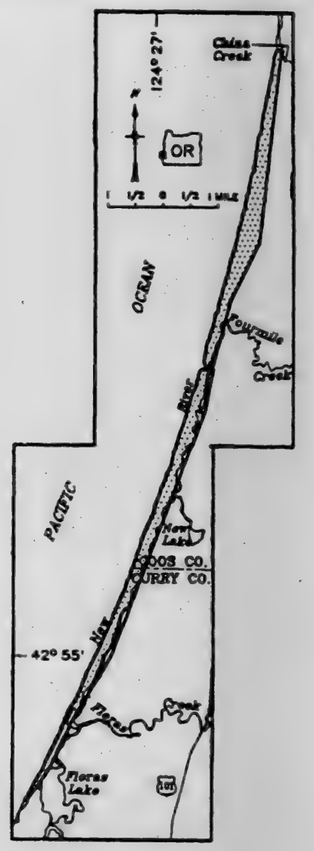

OR–7 BANDON TO FLORAS LAKE

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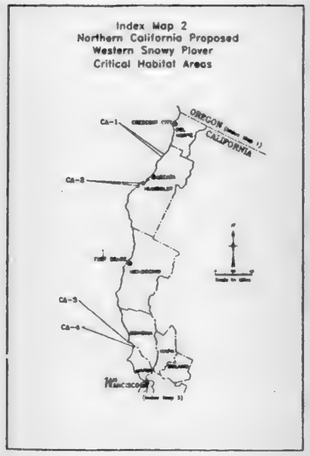

California. Areas of land and water as follows:

CA–1. Humboldt Coast Lagoon Beaches, Humboldt County (Index Map 2)

Unit 1—Stone Lagoon

Beginning at 41°15′33″N, 124°05′54″W, thence south and east following the west side of the access road to Dry Lagoon State Park to 41°15′29″N, 124°05′49″W, thence southwesterly following the high water line of Stone Lagoon to 41°14′42″N, 124°06′08″W, thence southwesterly to 41°14′40″N, 124°06′10″W, thence southwesterly following the 40-foot contour line to 41°14′14″N, 124°06′21″W, thence west to MLW, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Orick and Rodgers Peak USGS 7.5″ Quads 1966)

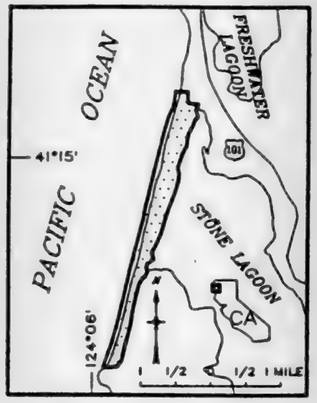

CA–1 HUMBOLDT COAST
LAGOON BEACHES
UNIT 1– STONE LAGOON

Unit 2—Big Lagoon

Beginning at 41°13′00″N, 124°06′39″W, thence southerly following the 40-foot contour line to 41°12′47″N, 124°06′40″W, thence southerly following the Big Lagoon State Park property line to 41°12′39″N, 124°06′40″W, thence northwesterly and southwesterly following the high water line of Big Lagoon to 41°09′54″N, 124°07′49″W, thence southwesterly following the Big Lagoon State Park property line to 41°09′49″N, 124°08′00″W, thence west to MLW, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Rodgers Peak USGS 7.5″ Quad 1966 and Trinidad USGS 7.5″ Quad 1978)

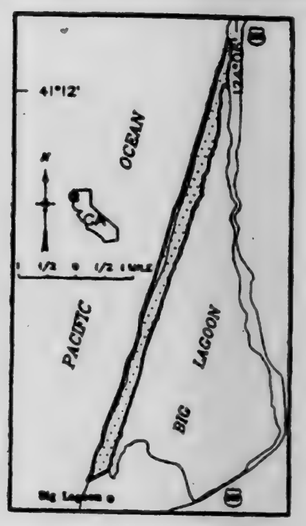

CA–1 HUMBOLDT COAST
LAGOON BEACHES
UNIT 2– BIG LAGOON

CA–2. Eel River Beaches, Humboldt County (Index Map 2)

Unit 1—Eel River North

Beginning at 40°41′51″N, 124°16′27″W, thence southwesterly to 40°40′11″N, 124°17′30″W, thence south to MLW, thence southerly following MLW around the south end of the split, thence north following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Cannibal Island USGS 7.5″ Quad 1972)

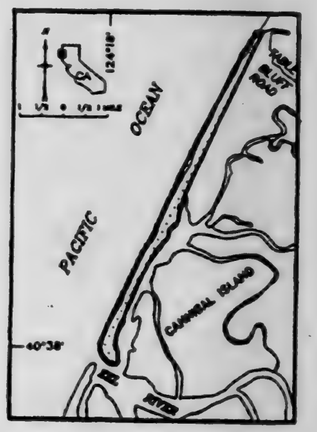

CA–2 EEL RIVER BEACHES
UNIT 1– EEL RIVER NORTH

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Unit 2—Eel River South

Beginning at 40°34′29″N, 124°21′01″W, thence west to MLW, thence northeasterly following MLW to a point directly west of 40°38′28″N, 124°18′42″W, thence east to said point, thence east to MHW of the left bank of the Eel and Salt Rivers, thence southwesterly following MHW of the left bank of the Salt River to 40°37′54″N, 124°18′52″W, thence southerly to 40°37′38″N, 124°18′53″W, thence southwesterly to 40°37′14″N, 124°19′25″W thence southwesterly to 40°36′44″N, 124°19′36″W, thence southwesterly to 40°34′29″N, 124°20′56″W, thence westerly to the point of beginning. (Cannibal Island and Ferndale USGS 7.5″ Quads 1972)

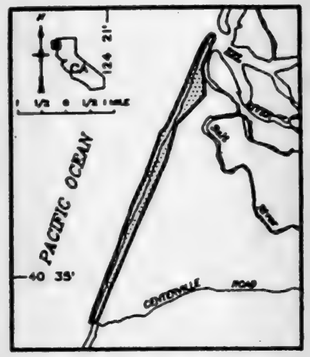

CA–2 EEL RIVER BEACHES
UNIT 2– EEL RIVER SOUTH

CA–3. Bodega Bay, Sonoma County (Index Map 2)

Unit 1—Bodega Harbor

Beginning at 38°18′51″N, 123°03′02″W, at MHW on Doran Spit, thence north to 38°19′30″N, 123°03′02″W, thence east to 38°19′30″N, 123°02′38″W, thence southeasterly to 38°19′22″N, 123°02′26″W thence southerly to 38°19′13″N, 123°02′20″W, on the MHW line of Bodega Harbor, thence southerly and westerly following MHW to the point of beginning. (Bodega Head USGS 7.5″ Quad 1972)

Unit 2—Doran Beach

Beginning at 38°18′22″ N, 123°03′09″W, at the west end of the North Jetty, thence east to MLW, thence northerly and easterly following MLW to a point directly south of 38°18′44″N, 123°01′36″W, thence north to said point, thence northwesterly to 38°18′52″N, 123°02′07″W, thence westerly to 38°18′51″N, 123°02′34″W, thence southwesterly to 38°18′42″N, 123°03′01″W thence southwesterly to 38°18′34″N, 123°03′08″W, thence southerly to the point of beginning. (Bodega Head USGS 7.5″ Quad 1972)

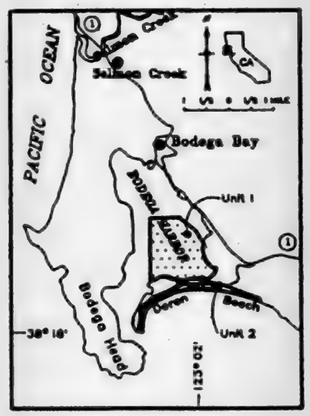

CA–3 BODEGA BAY
UNITS 1– 2

CA–4. Dillon Beach, Marin County (Index Map 2)

Beginning at 38°14′57″N, 122°57′58″W, thence southerly to 38°14′31″N, 122°58′01″W, thence southwesterly to 38°13′57″N, 122°58′15″W, thence southeasterly to 38°13′21″N, 122°58′12″W, thence south to MLW, thence northwesterly and northerly to a point directly west of the point of beginning, thence east to the point of beginning. (Tomales USGS 7.5″ Quad 1971)

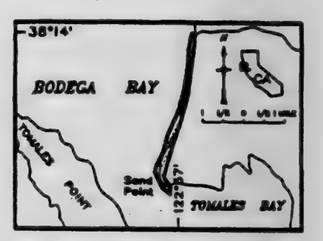

CA–4 DILLON BEACH

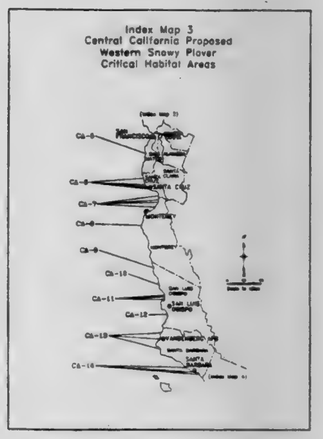

CA–5. Half Moon Bay Beaches, San Mateo County (Index Map 3)

Beginning at 37°28′57″N, 122°27′06″W, thence southeasterly to 37°28′26″N, 122°26′45″W, thence southwesterly to 37°28′24″N, 122°26′47″W, thence southerly following the 20-foot contour line to 37°27′49″N, 122°26′40″W, thence west to MLW, thence northwesterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Half Moon Bay USGS 7.5″ Quad 1973)

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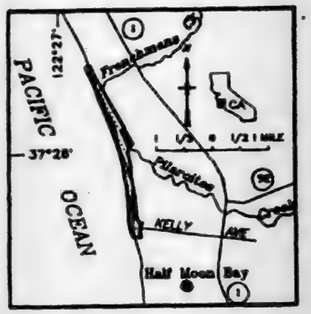

CA–5 HALF MOON BAY BEACHES

CA–6. Santa Cruz Coast Beaches, Santa Cruz County (Index Map 3)

Unit 1—Waddell Creek Beach

Beginning at 37°05'35"N, 122°16'32"W, thence west to MLW, thence northwesterly following MLW to a point west of 37°05'52"N, 122°16'32"W, thence east to said point, thence southeasterly to MHW line of Waddell Creek 37°05'41"N, 122°16'34"W, thence south to point of beginning. (Ano Nuevo USGS 7.5" Quad 1968)

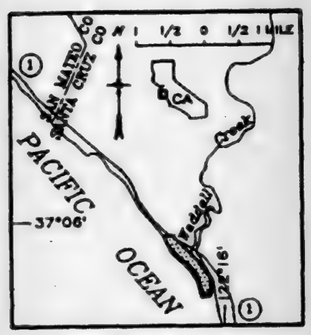

CA–6 SANTA CRUZ COAST BEACHES
UNIT 1– WADDELL CREEK BEACH

Unit 2—Scott Creek Beach

Beginning at 37°02'33"N, 122°13'53"W, located at northwest end of beach, thence southeasterly to 37°02'22"N, 122°13'36"W, located west of Highway 1 and excluding the existing Highway 1 ROW, thence south to 37°01'58"N, 122°13'34"W, located at south end of beach on 60 foot contour line, thence west to MLW, thence northwesterly following MLW to a point directly west of point of beginning, thence east to point of beginning. (Davenport USGS 7.5" Quad 1968)

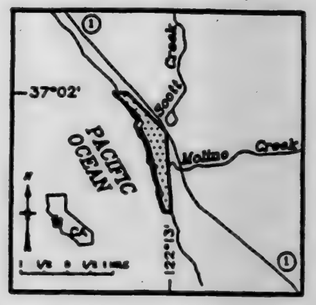

CA–6 SANTA CRUZ COAST BEACHES
UNIT 2– SCOTT CREEK BEACH

Unit 3—Laguna Creek Beach

Beginning at 36°59'04"N, 122°09'26"W, located at northwest end of beach on 20 foot contour line, thence east following 20 foot contour line to 36°59'03"N, 122°09'14"W, located at Laguna Creek at a point 800 feet south of Highway 1, thence south to MLW, thence northwesterly following MLW to a point directly south of point of beginning, thence north to point of beginning. (Santa Cruz USGS 7.5" Quad 1981)

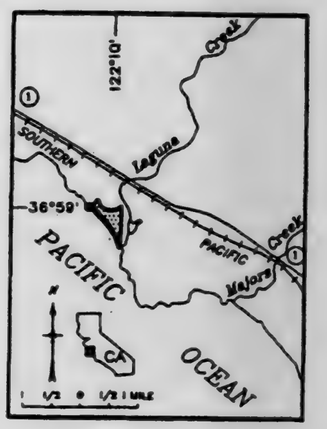

CA–6 SANTA CRUZ COAST BEACHES
UNIT 3– LAGUNA CREEK BEACH

Unit 4—Wilder Creek Beach

Beginning at 36°57'17"N, 122°04'43"W, located at northwest end of upper beach on 40 foot contour line, thence southwesterly to 36°57'16"N, 122°04'29"W, located at northeast end of upper beach east of 40 foot contour line, thence south to MLW, thence northwesterly following MLW to 40 foot contour line at west end of beach, thence north following 40 foot contour line to point of beginning. (Santa Cruz USGS 7.5" Quad 1981)

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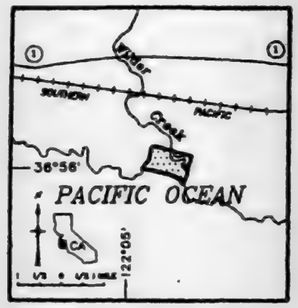

CA–6 SANTA CRUZ COAST BEACHES
UNIT 4– WILDER CREEK BEACH

CA–7 Monterey Bay Beaches, Santa Cruz and Monterey Counties (Index Map 3)

Unit 1—Sunset Beach

Beginning at 36°54'38" N, 121°50'50" W, located west of Zils Road, thence southeasterly to 36°51'25" N, 121°48'13" W, thence east along north bank of Pajaro River to 36°51'27" N, 121°48'30" W, located south of mouth of Watson Slough, thence south to MLW, thence southerly following MLW around south end of beach, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Watsonville West and Moss Landing USGS 7.5" Quad 1980)

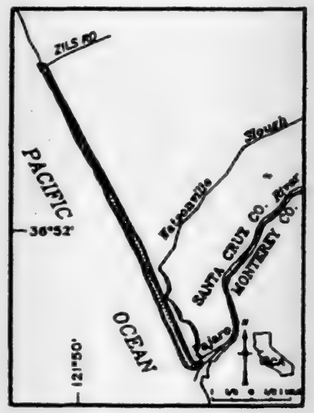

CA–7 MONTEREY BAY BEACHES
UNIT 1– SUNSET BEACH

Unit 2—Mudowski Beach

Beginning at 36°49"25" N, 121°48'21" W, thence southerly to 36°50'58" N, 121°48'15" W, located north of the 10 foot contour line and west of Jensen Road, thence southwesterly to 36°51'11" N, 121°48'20" W, thence southeasterly to 36°50'43" N, 121°47'15" W, located east of seawall, thence south to MLW, thence southwesterly following MLW around south end of beach, thence northwesterly following MLW to north end of beach, thence northeasterly following MLW around north end of beach to a point north of point of beginning, thence south to point of beginning. (Moss Landing USGS 7.5" Quad 1980)

Unit 3—Elkhorn Slough Mud Flat/Salt Pond

Beginning at north bank of Elkhorn Slough 36°48'49" N, 121°46'12" W, thence west following south perimeter of mud flat and salt pond to 36°48'50" N, 121°47'02" W, which excludes the existing Highway 1 ROW, thence north following west perimeter of the salt pond, thence east following northern perimeter of salt pond to west perimeter of mud flat, thence north following west perimeter of mud flat to 36°49'14" N, 121°46'55" W, located on south shore of Bennett Slough, thence northeasterly following south bank of Bennett Slough to 36°49'24" N, 121°46'22" W, located at the northern most point of mud flat, thence southeasterly following the east perimeter of the mud flat to 36°49'12" N, 121°46'12" W, thence easterly following the perimeter of the mud flat to 36°49'59" N, 121°45'59" W, thence south following east perimeter of mud flat to 36°49'04" N, 121°45'58" W, thence southwesterly along northern shore of Elkhorn Slough to point of beginning. (Moss Landing USGS 7.5" Quad 1980)

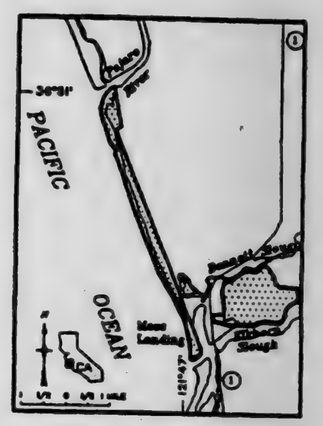

CA–7 MONTEREY BAY BEACHES
UNIT 2– MUDOWSKI BEACH
UNIT 3– ELKHORN SLOUGH
MUDFLAT/SALTPOND

Unit 4—Salinas River Beach

Beginning at 36°48'01" N, 121°47'18" W, located south of boat launch, thence southerly to 36°46'31" N, 121°47'40" W, thence southerly to 36°45'00" N, 121°48'04" W, located on north bank of Salinas River, thence southeasterly following north bank of Salinas River to 36°44'16" N, 121°47'20" W, thence southwesterly across Salinas River to 36°44'10" N, 121°47'28" W, located on south bank, thence northwesterly following south bank of Salinas River to 36°44'41" N, 121°48'02" W, thence westerly to 36°44'49" N, 121°48'12" W, thence south to 36°44'54" N, 121°48'12" W, located at northern most point of a large pond, thence southeasterly following north shore of pond to 36°44'44" N, 121°47'53" W, thence southwesterly to 36°44'34" N, 121°48'13" W, thence southerly to 36°42'59" N, 121°48'17" W, thence southerly to 36°41'45" N, 121°48'49" W, thence southerly to 36°39'45" N, 121°49'17" W, thence west to MLW, thence northerly following MLW to a point west of point of beginning, thence east to point of beginning. Excludes all U.S. Fish and Wildlife Service property. (Moss Landing USGS 7.5" Quad 1980 and Marina USGS 7.5" Quad 1983)

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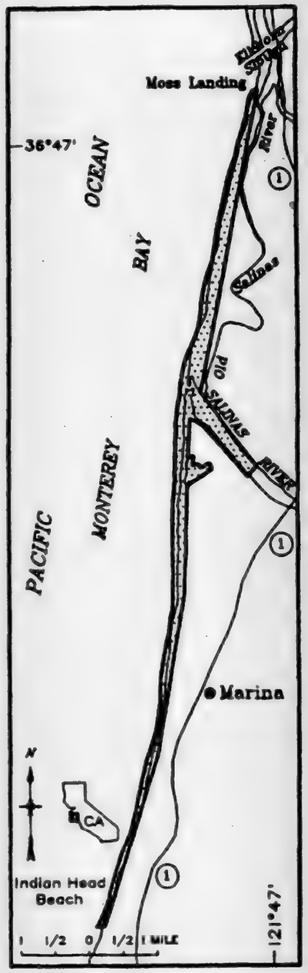

CA–7 MONTEREY BAY BEACHES
UNIT 4– SALINAS RIVER BEACH

Unit 5—Fort Ord/Seaside Beaches

Beginning at 36°39'44"N, 121°49'17"W, located west of beach parking lot, thence southerly following upper beach where it meets toe of bluffs to 36°38'33"N, 121°49'54"W, thence southerly following upper beach where it meets toe of bluffs to 36°36'58"N, 121°51'00"W, thence continue southwesterly following upper portion of beach where it meets toe of bluffs and sand dunes to 36°36'06"N, 121°52'15"W, thence west to 36°36'06"N, 121°52'30"W, thence north to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (Marina USGS 7.5" Quad 1983 and Seaside USGS 7.5" Quad 1968)

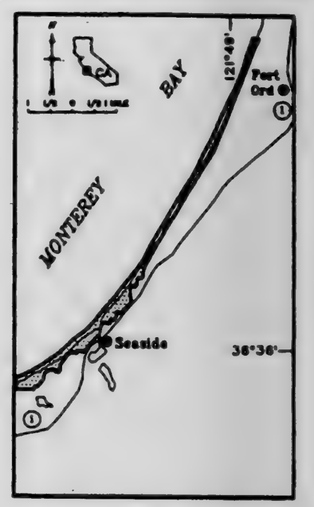

CA–7 MONTEREY BAY BEACHES
UNIT 5– FORT ORD/SEASIDE BEACHES

CA–8. Point Sur Beach, Monterey County (Index Map 3)

Beginning at 36°19'11"N, 121°53'39"W, located at north end of beach, thence south to 36°18'31"N, 121°53'32"W, located north of Lighthouse Road, thence southwesterly following a line north of Lighthouse Road to 36°18'37"N, 121°53'46"W, thence west to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (Point Sur USGS 7.5" Quad 1983)

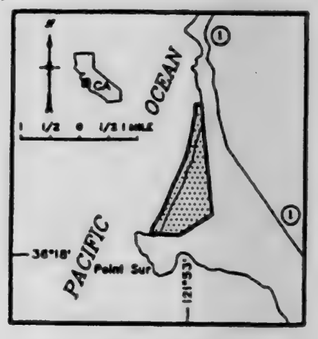

CA–8 POINT SUR BEACH

CA–9. Arroyo Hondo Creek Beach, San Luis Obispo County (Index Map 3)

Beginning at 35°45'23"N, 121°19'02"W, thence southerly following the 20-foot contour line to 35°45'00"N, 121°18'52"W, thence southeasterly to 35°44'54"N, 121°18'55"W, thence west to MLW, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Burro Mountain USGS 7.5" Quad 1972 and Piedras Blancas USGS 7.5" Quad 1959)

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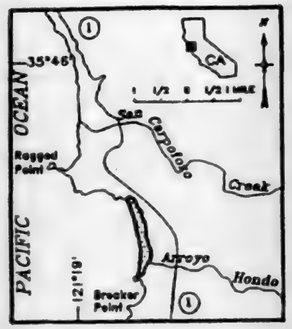

CA–9 ARROYO HONDO CREEK BEACH

CA–10. Arroyo Laguna Creek Beach, San Luis Obispo County (Index Map 3)

Beginning at 35°39'08"N, 121°13'15"W, located south of Highway 1 and excluding the existing Highway 1 ROW, thence southeasterly to 35°39'05"N, 121°13'17"W, thence south to MLW, thence westerly following MLW to a point south of point of beginning, thence north to point of beginning. (San Simeon USGS 7.5" Quad 1958)

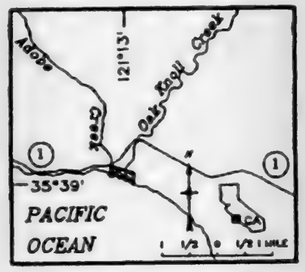

CA–10 ARROYO LAGUNA CREEK BEACH

CA–11. Morro Bay Beaches, San Luis Obispo County (Index Map 3)

Unit 1—Toro Creek

Beginning at 35°24'57" N, 120°52'27" W, located west of Highway 1 and excluding the existing Highway 1 ROW, thence southerly along a line west of Highway 1, excluding the existing Highway 1 ROW, to 35°24'30"N, 120°52'14"W, thence west to MLW, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Morro Bay North USGS 7.5" Quad 1965)

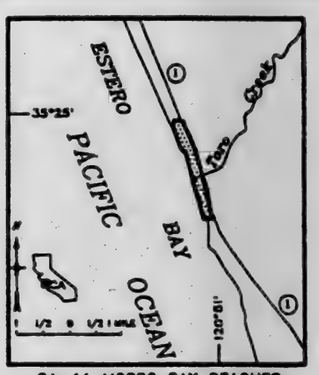

CA–11 MORRO BAY BEACHES
UNIT 1– TORO CREEK BEACH

Unit 2—Atascadero Beach

Beginning at 35°24'13"N, 120°52'02"W, located west of Beachcomber Drive, thence southeasterly along upper beach to 35°23'38"N, 120°51'48"W, located west of Sandalwood Avenue, thence south to 35°23'24"N, 120°51'39"W, thence south to 35°22'22"N, 120°51'31"W, located at the southwest end of powerplant, thence west to MLW, thence northerly following MLW to a point west of point of beginning, thence east to point of beginning. (Morro Bay North and Morro Bay South USGS 7.5" Quads 1965)

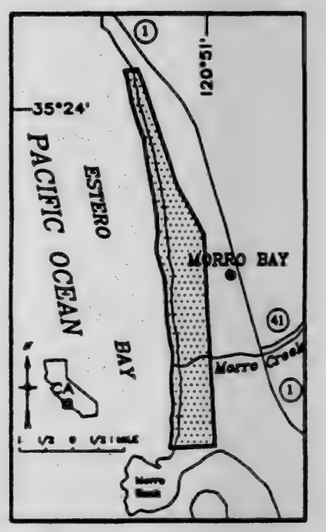

CA–11 MORRO BAY BEACHES
UNIT 2– ATASCADERO BEACH

Unit 3—Morro Bay Beach

Beginning at 35°17'28"N, 120°52'46"W, located at south end of beach, thence west to MLW, thence northeasterly following MLW to breakwater, thence from breakwater following MLW clockwise around northern end of peninsula to a point east of 35°21'28"N, 120°51'28"W, thence west to said point, thence southwesterly to 35°19'54"N, 120°51'38"W, thence southwesterly to 35°18'38"N, 120°52'06"W, thence southwesterly to point of beginning. (Morro Bay South USGS 7.5" Quad 1978)

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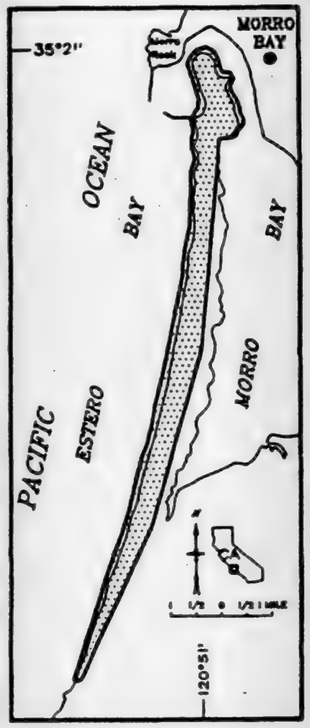

CA–11 MORRO BAY BEACHES
UNIT 3– MORRO BAY BEACH

CA–12. Pismo Beach/Nipomo Dunes, San Luis Obispo and Santa Barbara Counties (Index Map 3)

Beginning at 34°53′02″N, 120°39′40″W, located northeast of Mussel Point, thence west to MLW, thence northerly following MLW to a point west of 35°06′06″N, 120°37′45″W, thence east to said point, thence southeasterly to 35°06′01″N, 120°37′40″W, located on north bank of Arroyo Grande Creek, thence easterly following north bank of Arroyo Grande Creek to 35°05′58″N, 120°37′19″W, thence southerly across Arroyo Grande Creek to 35°05′56″N, 120°37′18″W, thence westerly to 35°05′58″N, 120°37′38″W, thence southeasterly to 35°05′27″N, 120°37′32″W, thence southerly to 35°04′27″N, 120°37′30″W, thence southwesterly to 35°02′32″N, 120°37′35″W, thence south to 35°01′42″N, 120°37′35″W, thence southwesterly to 34°58′53″N, 120°39′02″W, thence southeasterly across Guadalupe oil field to 34°58′10″N, 120°38′27″W, located at east end of a pond north of Santa Maria River, thence southwesterly to a point on 40 foot contour line 34°57′45″N, 120°38′59″W located south of the Santa Maria River, thence southwesterly along the 40-foot contour line to point of beginning. (Oceano USGS 7.5″ Quad 1979 and Point Sal USGS 7.5″ Quad 1974)

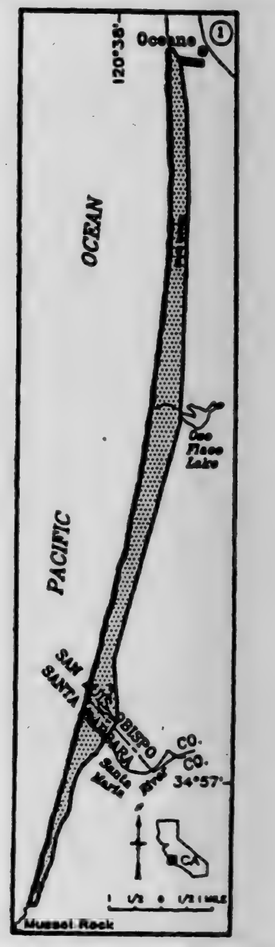

CA–12 PISMO BEACH/NIPOMO DUNES

CA–13. Point Sal to Point Conception Beaches, Santa Barbara County (Index Map 3)

Unit 1—Vandenberg Beach

Beginning at 35°51′41″N, 120°36′36″W, located on 40-foot contour line, thence southerly along 40-foot contour line to 34°45′22″N, 120°37′50″W, located southeast of Purisma Point, thence south to MLW, thence northwesterly following MLW around Purisma Point, thence north following MLW to a point west of point of beginning, thence east to point of beginning. (Casmalia USGS 7.5″ Quad 1982)

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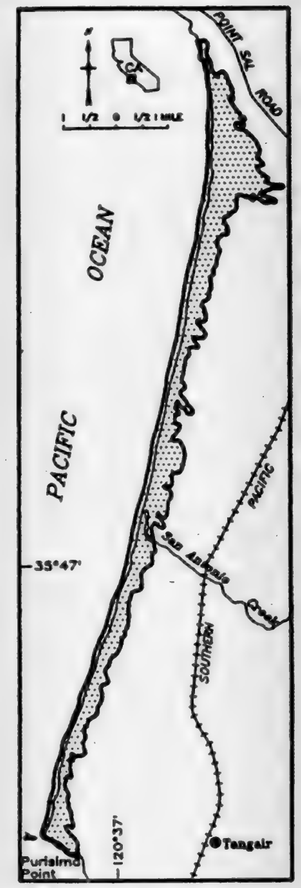

CA–13 POINT SAL TO POINT CONFERENCE
UNIT 1– VANDENBERG BEACH

Unit 2—Santa Ynez River Mouth/Ocean Beach

Beginning at 34°42′16″N, 120°35′54″W, located west of beach access road, thence southeasterly to 34°41′56″N, 120°35′45″W, located west of railroad tracks, thence southwesterly to 34°41′35″N, 120°35′55″W, located on north bank of Santa Ynez River, thence northeasterly to 34°41′41″N, 120°35′43″W, thence southeasterly along north bank of Santa Ynez River to 34°41′24″N, 120°35′05″W, located at end of Gravel Pit Road, thence southwesterly to 34°41′18″N, 120°35′13″W, located on south bank of Santa Ynez River, thence west across railroad tracks to 34°41′27″N, 120°35′58″W located on 40-foot contour line, thence southwesterly along 40-foot contour line to 34°37′28″N, 120°37′16″W, located 400 feet west of railroad tracks, thence west to MLW thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (Surf USGS 7.5″ Quad 1974)

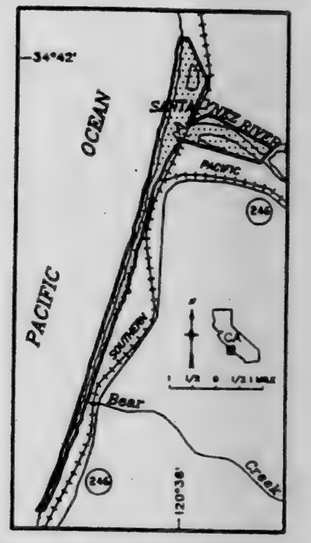

CA–13 POINT SAL TO POINT CONCEPTION
UNIT 2– SANTA YNEZ RIVER MOUTH/
OCEAN BEACH

Unit 3—Jalama Beach

Beginning at 34° 30′ 48″ N, 120° 30′ 12″ W, thence southeasterly to 34° 30′ 44″ N, 120° 30′ 04″ W, located at northern end of Jalama Beach Lagoon, thence southeasterly to 34° 30′ 23″ N, 120° 29′ 55″ W, thence southeasterly to 34° 29′ 53″ N, 120° 29′ 44″ W, thence southeasterly to 34° 29′ 43″ N, 120° 29′ 42″ W, thence west to MLW, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Tranquillon Mountain USGS 7.5″ Quad 1959, Lompoc Hills USGS 7.5″ Quad 1971, and Point Conception USGS 7.5″ Quad 1974)

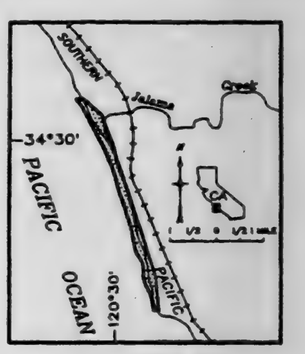

CA–13 POINT SAL
TO POINT CONCEPTION
UNIT 3– JALAMA BEACH

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CA–14. Santa Barbara Coast Beaches. Santa Barbara County (Index Map 3)

Unit 1—Devereaux Beach

Beginning at 34° 25′ 13″ N, 119° 53′ 31″ W, located on 20 foot contour line, thence southeasterly following 20-foot contour line, thence northeasterly around Coal Oil Point to 34° 24′ 33″ N, 119° 51′ 57″ W, located on 20 foot contour line, thence south to MLW thence westerly following MLW, southwesterly around Coal Oil Point, thence northwesterly to a point south of point of beginning, thence north to point of beginning. (Dos Pueblos Canyon and Goleta USGS 7.5″ 3 Quad 1988)

CA–14 SANTA BARBARA COAST BEACHES
UNIT 1– DEVEREAUX BEACH

Unit 2—Point Castillo/ Santa Barbara Harbor Beach

Point Castillo

Beginning (breakwater and sandspit) at 34°24′17″ N, 119°41′13″ W, located at Beacon, thence south to MLW, thence southwesterly following MLW on outside of breakwater to Point Castillo, thence northeasterly following MLW inside of breakwater to southwest end of sandspit thence circle sandspit clockwise following MLW to a point south of point of beginning, thence north to point of beginning. (Santa Barbara USGS 7.5″ Quad 1967)

Santa Barbara Harbor Beach

Beginning at 34°24′16″ N, 119°41′37″ W located at southwest end of beach, thence northeasterly following a line south of Cabrillo Blvd. to 34°22′09″ N, 119°38′22″ W located on west side of Stearns Wharf, thence northeasterly to 34°24′54″ N, 119°40′52″ W thence easterly following a line just south of Cabrillo Blvd. to 34°25′03″ N, 119°39′50″ W thence southeasterly to 34°25′00″ N, 119°38′01″ W, thence south to MLW, thence southwesterly following MLW to a point east of point of beginning, thence west to point of beginning. (Santa Barbara USGS 7.5″ Quad 1967)

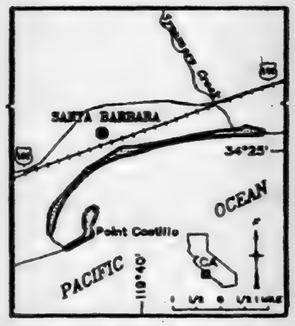

CA–14 SANTA BARBARA COAST BEACH
UNIT 2– POINT CASTILLO/
SANTA BARBARA HARBOR BEACH

Unit 3—Carpinteria Beach

Beginning at 34°23′38″ N, 119°31′26″ W located at end of Linden St. on northwest end of beach, thence southeasterly to 34°23′22″ N 119°31′02″ W located at southeast end of the beach, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (Carpinteria USGS 7 5′ Quad 1988)

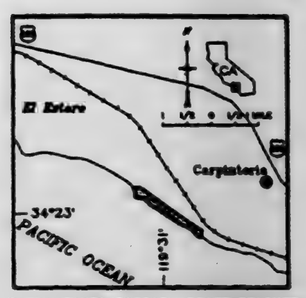

CA–14 SANTA BARBARA COAST BEACHES
UNIT 3– CARPINTERIA BEACH

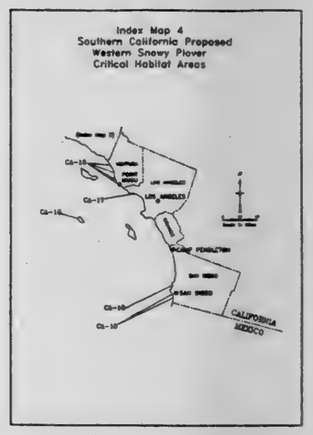

CA–15. Oxnard Lowlands, Ventura County (Index Map 4)

Unit 1—San Buena/Ventura Beach

Beginning 34°16′33″ N, 119°17′38″ W, which is located at northwest end of beach, thence east to 34°16′51″ N, 119°17′24″ W, thence southeasterly to 34°16′40″ N, 119°17′03″ W, thence southeasterly to 34°16′15″ N, 119°16′33″ W, thence southeasterly to 34°15′40″ N, 119°16′16″ W, thence southeasterly to 34°15′02″ N, 119°15′52″ W, thence west to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (Ventura USGS 7.5″ Quad 1967)

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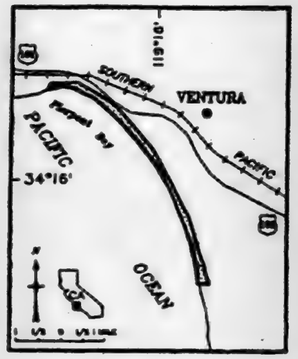

CA–15 OXNARD LOWLANDS
UNIT 1– SAN BUENA/VENTURA BEACH

Unit 2—Mandalay Beach/Santa Clara River Mouth

Beginning at 34°14′28″ N, 119°16′12″ W, located at the north end of beach, thence southeasterly to 34°14′10″ N, 119°15′30″ W, located on north bank of Santa Clara River, thence east to 34°14′09″ N, 119°15′57″ W, thence south to 34°14′09″ N, 119°13′57″ W, thence west following south bank of Santa Clara River to 34°14′01″ N, 119°15′30″ W, thence southwesterly to 34°13′53″ N, 119°15′40″ W, located on 15-foot contour line, thence southeasterly to 34°12′58″ N, 119°15′15″ W, located on north end of McGrath Lake, thence southeasterly following 15-foot contour line to 34°09′30″ N, 119°13′28″ W, located on north side of boat ramp, thence west to MLW, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Oxnard USGS 7.5″ Quad 1967)

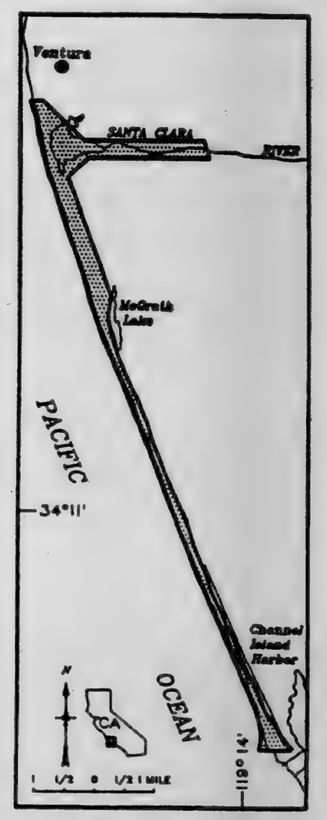

CA–15 OXNARD LOWLANDS
UNIT 2– MANDALAY BEACH/
SANTA CLARA RIVER MOUTH

Unit 3—Ormond Beach

Beginning at 34°08′40″ N, 119°11′58″ W, located east of road to jetty, thence southeasterly to 34°08′49″ N, 119°11′58″ W, thence southeasterly to 34°07′48″ N, 119°10′15″ W, located at northwest end of wetlands, thence southeasterly to 34°07′22″ N, 119°09′19″ W, located on west side of Arnold Road, thence southwest along Arnold Road to 34°07′10″ N, 119°09′32″ W, located at end of Arnold Road, thence west to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (Oxnard and Point Mugu USGS 7.5″ Quads 1967)

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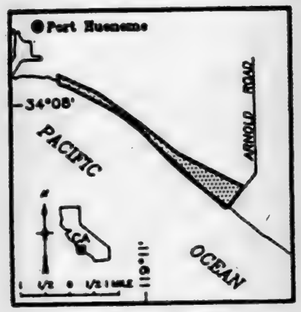

CA–15 OXNARD LOWLANDS
UNIT 3– ORMOND BEACH

Unit 4—Mugu Lagoon Beach

Beginning at 34°07'15" N, 119°09'28" W, thence southeasterly to 34°06'45" N, 119°08'44" W, thence southwesterly to 34°06'42" N, 119°08'47" W, thence southeasterly to 34°06'31" N, 119°08'32" W, thence southeasterly to 34°06'20" N, 119°08'10" W, thence southeasterly following 10-foot contour line to 34°06'03" N, 119°05'44" W, thence east following the HWL of Mugu Lagoon and crossing the mouth of said lagoon to 34°05'34" N, 119°04'13" W, thence southeasterly to 34°05'28" N, 119°04'08" W, located on 10 foot contour line, thence southeasterly following 10 foot contour line to 34°05'10" N, 119°03'38" W, located on west side of Point Mugu, thence west to MLW, thence northwesterly following MLW, but excluding the mouth of Mugu Lagoon, to a point south of point of beginning, thence north to point of beginning. (Point Mugu USGS 7.5" Quad 1967)

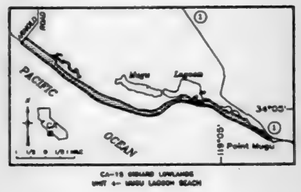

CA–16. San Nicolas Island Beaches, Ventura County (Index Map 4)

Unit SN–1

Beginning at 33°14'02" N, 119°26'12" W, thence east to MLW, thence southeasterly and southwesterly following MLW around east end of Island to a point east of 33°13'27" N, 119°26'11" W, thence west to said point, thence north following 25-foot contour line to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–2

Beginning at 33°12'59" N, 119°28'33" W, located south of Island Road, thence easterly to 33°12'57" N, 119°27'59" W, thence easterly to 33°13'02" N, 119°27'17" W, thence easterly to 33°13'10" N, 119°26'55" W, thence south to MLW, thence west following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–3

Beginning at 33°13'12" N, 119°29'36" W, located south of Island Road, thence easterly to 33°13' 11" N, 119°29'09" W, thence easterly to 33°13'02" N, 119°28'39" W, thence south to MLW, thence west following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–4

Beginning at 33°13'18" N, 119° 30' 05" W, thence southeasterly to 33°13' 10" N, 119°29'48" W, thence west to MLW, thence northwesterly to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–5

Beginning at 33°13'24" N, 119°30'25" W, thence southeasterly to 33°13'17" N, 119°30'09" W, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–6

Beginning at 33°13'47" N, 119°31'12" W, thence southeasterly to 33°13' 36" N, 119°0'55" W, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–7

Beginning at 33°14'10" N, 119°32'49" W, thence southeasterly to 33°14'07" N, 119°32'41" W, thence southeasterly to 33°14'00" N, 119°32'38" W, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–8

Beach within circle with a radius of 250 feet with center at 33°14'40" N, 119°33'29" W. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–9

Beginning at 33°16'22" N, 119°33'11" W, thence southwesterly to 33°16'17" N, 119°33'22" W, thence southwesterly to 33°16'13" N, 119°33'43" W, thence north to MLW, thence northeasterly following MLW to a point north of point of beginning, thence south to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–10

Beginning at 33°17'01" N, 119°31'58" W, thence southwesterly to 33°16'51" N, 119°32'08" W, thence southwesterly to 33°16'47" N, 119°32'21" W, thence north to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–11

Beginning at 33°15'31" N, 119°27'52" W, thence westerly to 33°15'32" N, 119°28'11" W, thence westerly to 33°15'46" N, 119°28'55" W, thence northwesterly to 33°15'59" N, 119°29'10" W, thence southwesterly to 33°15'54" N, 119°29'34" W, thence northwesterly to 33°15'58" N, 119°29'52" W, thence north to MLW, thence easterly following MLW to a point north of point of beginning, thence south to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

Unit SN–12

Beginning at 33°14'25" N, 119°26'35" W, thence northwesterly to 33°14'40" N, 119°26'49" W, thence east to MLW, thence southeasterly following MLW to a point east of point of beginning, thence west to point of beginning. (San Nicolas Island USGS 7.5" Quad 1956)

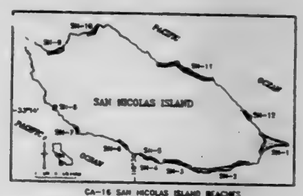

CA–16 SAN NICOLAS ISLAND BEACHES
UNITS 1–12

CA–17. Malibu Lagoon, Los Angeles County (Index Map 4)

Beginning at 34°01'58" N, 118°40'53" W, thence northwesterly crossing Highway 1, and excluding Highway 1 and the existing ROW north and south of Highway 1, to 34°02'04" N, 118°40'56" W, thence northwesterly to 34°02'13" N, 118°40'59" W, thence northeasterly to 34°02'14" N, 118°40'56" W, thence southeasterly to 34°02'03" N, 118°40'47" W, thence east to 34°02'03" N, 118°40'44" W, thence northeasterly to 34°02'12" N, 118°40'37" W, thence south to MLW, thence southerly and westerly following MLW to a point directly south of the point of beginning, thence north to the point of beginning. (Malibu Beach USGS 7.5" Quad 1981)

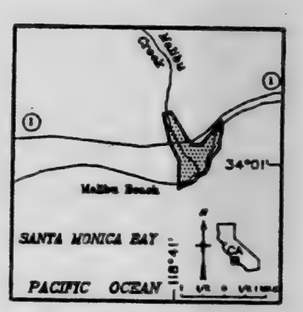

CA–17 MALIBU LAGOON

CA–18. Mission Beach and Bay, San Diego County (Index Map 4)

Unit 1—Fiesta Island

Beginning at 32°46'07" N, 117°14'34" W, thence south to MLW, thence southerly and northerly following MLW to a point directly south of 32°45'34" N, 117°14'50" W, thence north to said point, thence northwesterly to 32°45'52" N, 117°14'58" W, thence northeasterly to 32°46'16" N, 117°14'55" W, thence southeasterly to the point of beginning. (La Jolla USGS 7.5" Quad 1975)

Unit 2—Mariner's Basin

Beginning at 32°46'31" N, 117°13'25" W, thence southeasterly to 32°46'30" N, 117°13'23" W, thence southwesterly to 32°46'15" N, 117°13'34" W, thence southeasterly to 32°46'10" N, 117°13'23" W, thence south to MLW, thence westerly and northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (La Jolla USGS 7.5" Quad 1975)

Unit 3—Mission Beach

Beginning at 32°46'26" N, 117°15'08" W, thence southerly to 32°46'02" N, 117°15'06" W, thence southerly to 32°45'43" N, 117°15'05" W, thence southeasterly to 32°45'34" N, 117°14'57" W, which is on the north jetty to Mission Bay, thence westerly following the north side of the jetty to MLW, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (La Jolla USGS 7.5" Quad 1975)

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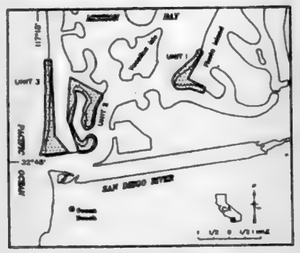

CA–18 MISSION BEACH AND BAY UNITS 1–3

CA–19. South San Diego Coast Beaches, San Diego County (Index Map 4)

Unit 1—Silver Strand/Delta Beach

Beginning at 32°40'08" N, 117°09'54" W, thence northeasterly to 32°40'40" N, 117°09'13" W, thence east to MLW, thence southwesterly following MLW to a point directly north of 32°39'27" N, 117°09'10" W, thence south to said point, thence northeasterly to 32°39'30" N, 117°08'57" W, thence southeasterly to 32°39'16" N, 117°08'48" W, thence southwesterly to 32°39'11" N, 117°09'00" W, thence southeasterly following the east side of the San Diego and Arizona Eastern Railroad tracks to 32°38'34" N, 117°08'40" W, thence northeasterly to 32°38'39" N, 117°08'36" W, thence east to MLW, thence southerly following MLW to a point directly east of 32°38'12" N, 117°08'26" W, thence west to said point, thence southwesterly to 32°38'11" N, 117°08'31" W, thence southeasterly to 32°37'20" N, 117°08'10" W, thence southeasterly following the west side of Silver Strand Boulevard to 32°36'43" N, 117°08'02" W, thence southeasterly to 32°36'32" N, 117°07'55" W, thence southerly to 32°35'09" N, 117°07'51" W, thence west to MLW, thence north following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Point Loma and Imperial Beach, Calif.—Baja Calif. Norte USGS 7.5" Quads 1975)

CA–19 SOUTH SAN DIEGO COAST BEACHES UNIT 1– SILVER STRAND/DELTA BEACH

Unit 2—Tijuana River Beach

Beginning at 32°3401 N, 117°0753 W, thence southerly following the unimproved road to 32°3344 N, 117°0749 W, thence east to the HWL of Oneonta Slough, thence south following the HWL of said slough to 32°3326 N, 117°0740 W, which is at the mouth of Tijuana River, thence southeasterly crossing said river to 32°3236 N, 117°0724 W, thence south to 32°3204 N, 117°0724 W, thence west to MLW, thence northerly following MLW, but excluding the mouth of Tijuana River, to a point directly west of the point of beginning, thence east to the point of the beginning. Excludes all U.S. Fish and Wildlife Service property. (Imperial Beach, Calif.—Baja Calif. Norte USGS 7.5 Quad 1975)

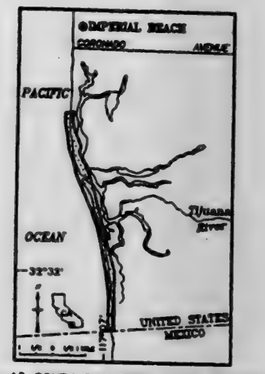

CA–19 SOUTH SAN DIEGO COAST BEACHES UNIT 2– TIJUANA RIVER BEACH

Primary Constituent Elements: Beaches, dunes, and estuaries that provide habitat, or with rehabilitation, could provide habitat for nesting, roosting, foraging, and migration.

Dated: February 1, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–4422 Filed 2–24–95; 8:45 am]

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March 2, 1995

Part IV

Department of Energy

48 CFR Parts 927, 952 and 970
Acquisition Regulation; Updating of Patent Regulations; Final Rule

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DEPARTMENT OF ENERGY

48 CFR Parts 927, 952 and 970

RIN 1991–AA23

Acquisition Regulation; Updating of Patent Regulations

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department today amends the Department of Energy Acquisition Regulation (DEAR) to base the DOE patent regulations on the Federal Acquisition Regulation (FAR) patent regulations at Subpart 27.2 and the associated FAR patent clauses at 52.227 to the extent that the FAR coverage is consistent with the DOE statutory patent requirements.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT:

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Sue Palk, Office of the Assistant General Counsel for Intellectual Property (GC–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–2802

SUPPLEMENTARY INFORMATION:

I. Background
- A. Discussion
- B. Disposition of comments

II. Procedural Requirements
- A. Regulatory Review
- B. Review Under the Regulatory Flexibility Act
- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act
- E. Review Under Executive Order 12612
- F. Review Under Executive Order 12778

I. Background

A. Discussion

The proposed rule was published on March 29, 1994, at 59 FR 14593 (1994). It was intended to amend the Department of Energy Acquisition Regulation to reflect the changes to DOE's statutory patent policy, arising out of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Federal Non-Nuclear Energy Research and Development Act, 42 U.S.C. 5901 *et seq.*, necessitated by the Bayh-Dole Act of 1980 and the Trademark Clarification Act of 1984. The rule is based on patent provisions at FAR 27.3 and FAR 52.227, varying to the extent necessary to fulfill DOE statutory and programmatic duties.

Six sets of comments were received. Of those one was from a private citizen, one was from a private organization, and four were from current DOE management and operating contractor organizations.

B. Disposition of Comments

Two commenters question the relationship of this rulemaking to DOE's contract reform initiative. This rulemaking, as stated in the preamble to the proposed rule is intended to update the DOE coverage of patent rights and to bring DOE's regulations on the subject more in line with the provisions of the Federal Acquisition Regulation (FAR). DOE believes this rulemaking is overdue and must be carried to completion. Any final developments of the Contract Reform Initiative that will affect patent rights will be reflected in a subsequent rulemaking.

One commenter questions the Department's ability to "issue independent technical data clauses which are deviations from those clauses published in the FAR." This rulemaking is directed to DOE's patent regulations, not its technical data regulations. The special status for DOE's patent coverage is statutory and was discussed in detail in the preamble to the proposed rule for this rulemaking. No change has been made.

The same commenter has questioned the inclusion of "demonstration" with research and development in establishing the scope of this regulation, while another has requested that the term be defined to distinguish the term from "research and development" to clarify the different rights that may accrue. As explained in the proposed rule, "research, development, and demonstration" is the statutory scope for the Department's patent policy and has been incorporated into this rulemaking. The second commenter requested a definition of "demonstration" predicated upon an assumption that different rights may accrue. This is not the case. We believe that the term "demonstration," particularly in light of its statutory basis, to be sufficiently clear. Therefore, neither change has been made.

One commenter suggests that the regulations at 927.300 and 927.302 refer to financial assistance transactions. The DEAR controls the award and administration in DOE of procurement contracts, the purposes of which are described in Public Law 95–224. It does not control the award or administration of either grants or cooperative agreements, assistance transactions, as the purposes of those terms are described in the same public law. For the Department of Energy, the regulations governing assistance transactions are contained at 10 CFR part 600. For this reason, we have made not made the suggested change. The regulations governing patents for assistance instruments will be the subject of a separate rulemaking.

A commenter noted that at the new 927.300 the reference to the regulations that control DOE's granting of waivers of its ownership of inventions should be corrected to reflect that the location and content of those is not being affected by this rulemaking and will continue to exist at 41 CFR 9–9.1 of the old Department of Energy Procurement Regulations (DOE PR) until they are made the subject of their own rulemaking. A change has been made to the first sentence of 927.300(b). That same commenter suggests that the restatement of DOE policy concerning the granting of waivers at 927.300(b) and (c) be deleted. We believe those provisions are descriptive of the policy and yet make it clear that the controlling regulations are located elsewhere. Therefore, we have retained those provisions, modified as described above. We deleted the second sentence of 927.300(a) as unnecessary.

One commenter suggests that "Government" be substituted for "DOE" in the first sentence of 927.302(a). We have chosen to make a change using the phrase "the United States, as represented by DOE,".

The same commenter states that the statement of the authorities of the Assistant General Counsel for Technology Transfer and Intellectual Property that were contained at 9–9.109–3(d) of the DOE PR should be retained. We agree and have added them at 927.302(d).

Another commenter requests the addition of the phrase "or is unable to meet these market demands within a reasonable time" be added to the description of circumstances at 927.302(b) in which DOE would exercise its rights to require licensing of background patents to third parties on reasonable terms and conditions. The statement at 927.302(b) is merely descriptive, and, in fact, describes the substantial considerations in the Government's application for licensing of third parties. The terms of paragraph (k) of the clause at 952.227–13 control, and provide the contractor the opportunity to demonstrate to the Department's satisfaction that either the current market situation is satisfactory or can be made so in a reasonable time. We have not made a change, believing that the current sentence is descriptive. Any additional discussion would require additional clarification, adding to the complexity of a provision that is merely descriptive, not regulatory.

A commenter has suggested revision of the third sentence of 927.302(c) to correct ambiguities in the listing of types of contracts for which the Government's rights in background patents may not be appropriate. We have made changes to the sentence that accomplish the intended purpose.

One commenter has noted that the clause at FAR 52.227–12, appropriately modified may suffice as a patent rights clause in a contract for which DOE has granted an advance waiver of its title. That may be the case. We have modified section 927.303(b) to reflect that possibility while maintaining the prohibition against the use of the clause generally.

One commenter objects to the inclusion at 952.227–9 of the Refund of Royalties clause in place of a clause of the same name in the FAR. The commenter suggests the use of a supplemental provision and, along with a second commenter, questions the authority of DOE to publish this clause where there is already a FAR provision. As explained in the preamble to the proposed rule, this clause is the FAR clause at 52.227–9 with the addition of sentences to assure the recognition of royalties deriving from technical data and copyrighted material and a disclaimer. The purpose of this clause and the FAR clause upon which it is based is to prevent the Government's paying royalties relating to a form of intellectual property to which it already has a license, perhaps royalty free. We have acted to expand the FAR provision to include all forms of intellectual property and to assure a continuing right to challenge the validity of intellectual property giving rise to the royalty. We believe these concerns to be of significant importance to DOE with its expansive technological mission. No entity is hurt by the minor changes to the FAR clause, except a firm that may today be in a position to acquire royalties from a Government contractor for use of technical data or copyrighted material to which the Government already has a license. We have retained the clause as it is in the proposed rule.

The second commenter says that the clause "is unclear on whether costs paid for technical assistance and transfer of know how are subject to repayment when the information transferred is not protected by a valid patent, copyright, or otherwise qualifies for intellectual property protections." We disagree. This clause in either of its forms is premised upon the payment of what is commonly recognized as a royalty or license fee. In order for a royalty to be paid the payee must recognize a proprietary right in the property. If no such basis exists, a royalty would not be paid. The types of costs would be subject to the clause only to the extent that they are part of a royalty agreement and could be classified as a royalty. We have made no change.

We have deleted the phrase "in the performance of work" from the definition of "subject invention" as it appears in the clause at 952.227–13 to conform more closely to the statutory language. We have altered the definition of "patent counsel" in that clause to mean the patent counsel responsible for patent administration under the specific contract, rather than Headquarters Patent Counsel.

One commenter objects to the use of the word "consultation" in paragraph (b)(2) of the clause at 952.227–13 expressing the obligations of an employee prior to that employee's asserting an interest in a subject invention. The previous DOE clause allowed an employee-inventor to request greater rights after acquiring the authorization of the contractor-employer. Since the promulgation of the previous DOE clause, Bayh-Dole was enacted, offering this right to employee-inventors upon consultation with their small business or nonprofit employers. The FAR in the clause at 52.227–13 for use with large, profit-making companies has reflected this change.

The proposed rule language was premised upon the FAR language. Bayh-Dole and the FAR reflect an interest in maximizing the commercialization of inventions under Government contracts in these circumstances in which the contractor-employer has chosen not to pursue a request for greater rights in a subject invention. We can identify no DOE interest that demands that the employee-inventor acquire the permission of his employer. The contractor-employer can control this situation by fashioning an employment agreement to protect its interest. Such an agreement, not this clause, will control what form the employee-inventor's "consultation" takes. We have made no change.

One commenter has suggested that paragraph (e)(2) of the clause at 952.227–13 include a recognition of a statutory premise "that a reported invention will be deemed to have been made in the manner specified in Section (a) (1) and (2) of 42 U.S.C. 5908 unless the contractor contends in writing when the invention is reported that it was not so made." We agree and have made the change.

A commenter opposes the Government's acquisition of rights in background patents in paragraph (k) of the clause at 952.227–13(k) and as described at 927.302(b), stating that "it could be argued that the DOE is vesting itself with the power to take the property of others without paying valid compensation." The commenter suggests that "[i]f the DOE requires such rights, it can negotiate to purchase them like any contracting party, or (sic) in the alternative, it may utilize its rights under FAR 52.227–1 "Authorization and Consent." We disagree. First, the inclusion of paragraph (k) represents the acquisition of an inchoate right which goes to the heart of the involvement of public funds in the particular project at a time in which the parties are at an equal bargaining position. These rights provide DOE only a nonexclusive and royalty free license "for the purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only." Furthermore, DOE can demand that the contractor license third parties to its background patents only under a limited set of circumstances "on terms that are reasonable under the circumstances." Should, in fact, the contractor be put in a monopolistic position in the market place as a result of the research, development, or demonstration of the contract with DOE and should that contractor choose not to meet market demand, DOE would be in a compromised bargaining position. Without the rights provided for in paragraph (k), DOE or any third party would have to pay dearly to acquire these background rights even though Federal taxpayer funds would have played a meaningful part in the contractor's market position. We have made no change.

Additionally, we have reviewed the proposed clause at 952.227–13 after having reflected the comments received and have made technical changes necessary to accurately reflect DOE's statutory patent policy and to enhance the smooth operation of the clause. We believe that the only changes of any significance, both occurring in the definition of "subject invention," are required by DOE's statute, *i.e.*, adding the phrase "in the course of or" before "under this contract" and deleting the "provided" clause that runs to the end of that definition. The first of these causes that definition to accurately reflect the statutory scope, and the second is necessary to reflect the breadth of that statutory scope.

We have added a definition of Patent Counsel and substituted that office for the Secretary of Energy where receipt of

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communication occurs in the text of the clause. We have also added a definition of DOE patent waiver regulations and used that term where appropriate in the text of the clause. We deleted the definition of the Head of contracting agency and used Secretary of Energy where appropriate throughout the clause.

In several places in the clause the proposed clause used the word "retain" in the context of the greater rights determination. We have used more specific terms depending upon the context to reflect the contractor's right to "request" greater rights or the Department's having "granted" the contractor greater rights.

In the third sentence of paragraph (b)(2)(i), we have substituted a definite condition for the application of the minimum rights flowing to the Government under paragraph (c) upon its granting a request for waiver in place of "normally."

At paragraph (b)(2)(ii) we have substituted a time certain, two months after filing the patent application, rather than "upon request" for the contractor's providing identifying information relating to the application. We have also edited that subparagraph to grammatically reflect the separate duties with regard to a patent application and issuance of the patent. In order to assure that a contractor's patent application not expire for failure to prosecute we have added new subparagraph (b)(2)(iii) requiring notice by the contractor should it decide not to prosecute. The subparagraph (iii) of the proposed rule has been redesignated as subparagraph (iv).

We have substituted the term "subparagraphs(c)(1)" for "subdivisions" in subparagraph (c)(1)(iii). The former reference added unnecessarily to the opportunity for misinterpretation.

At paragraph (d)(4)(vi) we have corrected a reference for the duration of the time period for DOE's not publishing invention disclosures relating to an application for foreign patent rights by providing for that time period to be determined by the DOE patent counsel. At subparagraph (d)(4)(vii), we have corrected a mistaken reference in the first sentence with the phrase "in a timely manner." We have added as the penultimate sentence of paragraph (e)(2) a description of the report called for. At paragraph (e)(5) we have corrected a reference that is in error in the FAR clause, *i.e*, "FAR 27.302(j)" in place of "FAR 27.302(i)."

Finally, with regard to the clause, at paragraph (g)(3), we have substituted the obligation of acquiring an affirmative patent clearance before final payment in lieu of "past due confirmatory instruments."

A commenter questions the provision at 970.2702(b) that describes the right of management and operating contractors, not small businesses or nonprofit entities, to request advance waivers and waivers in identified inventions. He suggests that this premise makes this a "significant regulatory action." We disagree. These rights have existed throughout the history of DOE's statutory patent policy. We have made an attendant change in the last sentence of this subsection substituting "42 U.S.C. 5908" for "927.300."

The same commenter has suggested the insertion of the word "nonprofit" in the first sentence of 970.2702(e) describing Bayh-Dole rights of DOE management and operating contractors. We have made the change.

Two commenters question the provisions of 970.2703 and the provisions of paragraph (m) of the clause at 970.5204–XX, relating to the transfer of title and reservation of income from licensing of subject inventions for the benefit of the laboratory, rather than the contractor. Both note that Bayh-Dole vests title in the nonprofit or educational entities and suggest that the provisions do not comply with the law where DOE employs such an entity to manage and operate one of its facilities. This provision merely reflects the reality of provisions of DOE's management and operating contracts in the interplay between patent provisions and technology transfer. That reality takes into account the special position of DOE's management and operating contractors as was recognized in Bayh-Dole. We have made no change at either place.

One commenter questions 970.2795(c), saying that it should be revised "to indicate that the limitations on the use of contractor employees only apply to those contractor employees assigned to, and working at the DOE facility." This provision verbatim existed before this rulemaking at 970.2701(d). An underlying premise of DOE's management and operating contracts is that the organization is independent of its corporate body. The workforce is dedicated to the work and is located at the DOE facility. This provision is written to that reality, and must remain that way to prevent any unintended restriction on its application. No change has been made.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this final rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under NEPA

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), or the DOE guidelines (10 CFR Part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect, will not have any effect on existing Federal laws, and will only clarify the existing regulations on this subject. The revised clauses will apply only to contracts which would be awarded after the effective date of the final rule, and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 927, 952, 970

Government procurement, Patents.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on February 16, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for part 927 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, sec. 9 (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, sec. 152 (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, sec. 3131(a) (42 U.S.C. 7261a.)

2. Subpart 927.2 is added to read as follows:

Subpart 927.2—Patents

Sec.
927.200 Scope of subpart.
927.201 Authorization and consent.
927.201–1 General.
927.206 Refund of royalties.
927.206–1 General.
927.206–2 Clause for refund of royalties.
927.207 Classified contracts.
927.207–1 General.

Subpart 927.2—Patents

927.200 Scope of subpart.

When consulting 48 CFR part 27, subpart 27.2 of the FAR, consider "research, development, and demonstration" to replace the phrase "research and development" or "R&D," for the purposes of DOE actions.

927.201 Authorization and consent.

927.201–1 General.

In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project which patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Authorization and Consent and Patent Indemnity provisions or what other action might be deemed appropriate.

927.206 Refund of royalties.

927.206–1 General.

The clause at 952.227–9, Refund of Royalties, obligates the contractor to inform DOE of the payment of royalties pertaining to the use of intellectual property, either patent or data related, in the performance of the contract. This information may result in identification of instances in which the Government already has a license for itself or others acting in its behalf or the right to sublicense others. Also, there may be pending antitrust actions or challenges to the validity of a patent or the proprietary nature of the data, or the contractor may be able to gain unrestricted access to the same data through other sources. In such situations the contractor may avoid the payment of a royalty in its entirety or may be charged a reduced royalty.

927.206–2 Clause for refund of royalties.

The contracting officer shall insert the clause at 952.227–9, Refund of Royalties, in solicitations and contracts for experimental, research, developmental, or demonstration work or other solicitations and contracts in which the contracting officer believes royalties will have to be paid by the contractor or a subcontractor of any tier.

927.207 Classified contracts.

927.207–1 General.

Unauthorized disclosure of classified subject matter, whether in a patent application or resulting from the issuance of a patent, may be a violation of the Atomic Energy Act of 1954, as amended, other laws relating to espionage and national security, and provisions of the proposed contract pertaining to disclosure of information.

3. Section 927.300 is revised to read as follows:

927.300 General.

(a) One of the primary missions of the Department of Energy is the use of its procurement process to ensure the conduct of research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. To accomplish its mission, DOE must work in cooperation with industry in the development of new energy sources and in achieving the ultimate goal of widespread commercial use of those energy sources. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(b) Pursuant to 42 U.S.C. 2182 and 42 U.S.C. 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and others not beneficiaries of Pub. L. 96–517. Regulations dealing with Department's authority to waive its title to subject inventions, including the relevant statutory objectives, exist at 41 CFR 9–9.109. Pursuant to that section, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In

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addition to considering the waiver of patent rights at the time of contracting, DOE will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by such entities or by the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for identified inventions will be granted where it is determined that the patent waiver will be a meaningful incentive to achieving the development and ultimate commercial utilization of inventions. Where DOE grants a waiver of the Government's patent rights, either at the time of contracting or after an invention is made, certain minimum rights and obligations will be required by DOE to protect the public interest.

(c) Another major DOE mission is to manage the nation's nuclear weapons and other classified programs, where research and development procurements are directed toward processes and equipment not available to the public. To accomplish DOE programs for bringing private industry into these and other special programs to the maximum extent permitted by national security and policy considerations, it is desirable that the technology developed in these programs be made available on a selected basis for use in the particular fields of interest and under controlled conditions by properly cleared industrial and scientific research institutions. To ensure such availability and control, the grant of waivers in these programs may necessarily be more limited, either by the imposition of field of use restrictions or national security measures, than in other DOE programs.

4. Section 927.302 is added to read as follows:

927.302 Policy.

(a) Except for contracts with organizations that are beneficiaries of Public Law 96–517, the United States, as represented by DOE, shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive, revocable, paid-up license in the invention and the right to request permission to file an application for a patent and retain title to any ensuing patent in any foreign country in which DOE does not elect to secure patent rights. DOE may approve the request if it determines that such approval would be in the national interest. The contractor's nonexclusive license may be revoked or modified by DOE only to the extent necessary to achieve expeditious practical application of the invention pursuant to any application for and the grant of an exclusive license in the invention to another party.

(b) In contracts having as a purpose the conduct of research, development, or demonstration work and in certain other contracts, DOE may need to require those contractors that are not the beneficiaries of Public Law 96–517 to license background patents to ensure reasonable public availability and accessibility necessary to practice the subject of the contract in the fields of technology specifically contemplated in the contract effort. That need may arise where the contractor is not attempting to take the technology resulting from the contract to the commercial marketplace, or is not meeting market demands. The need for background patent rights and the particular rights that should be obtained for either the Government or the public will depend upon the type, purpose, and scope of the contract effort, impact on the DOE program, and the cost to the Government of obtaining such rights.

(c) Provisions to deal specifically with DOE background patent rights are contained in paragraph (k) of the clause at 952.227–13. That paragraph may be modified with the concurrence of Patent Counsel in order to reflect the equities of the parties in particular contracting situations. Paragraph (k) should normally be deleted for contracts with an estimated cost and fee or price of $250,000 or less and may not be appropriate for certain types of study contracts; for planning contracts; for contracts with educational institutions; for contracts for specialized equipment for in-house Government use, not involving use by the public; and for contracts the work products of which will not be the subject of future procurements by the Government or its contractors.

(d) The Assistant General Counsel for Technology Transfer and Intellectual Property shall:

(1) Make the determination that whether reported inventions are subject inventions under the patent rights clause of the contract;

(2) Determine whether and where patent protection will be obtained on inventions;

(3) Represent DOE before domestic and foreign patent offices;

(4) Accept assignments and instruments confirmatory of the Government's rights to inventions; and

(5) Represent DOE in patent, technical data, and copyright matters not specifically reserved to the Head of the Agency or designee.

5. Section 927.303 is added to read as follows:

927.303 Contract clauses.

(a) In solicitations and contracts for experimental, research, developmental, or demonstration work (but see (FAR) 48 CFR 27.304–3 regarding contracts for construction work or architect-engineer services), the contracting officer shall include the clause:

(1) At 952.227–13, Patent Rights Acquisition by the Government, in all such contracts other than those described in paragraphs (a)(2) and (a)(3) of this section;

(2) At 952.227–11, Patent Rights by the Contractor (Short Form), in contracts in which the contractor is a domestic small business or nonprofit organization as defined at (FAR) 48 CFR 27.301, except where the work of the contract is subject to an Exceptional Circumstances Determination by DOE; and

(3) At 970.5204–71 or 970.5204–72, as discussed in 970.27, Patent, Data, and Copyrights, in contracts for the management and operation of DOE laboratories and production facilities.

(b) DOE shall not use the clause at (FAR) 48 CFR 52.227–12 except in situations where patent counsel grants a request for advance waiver and supplies the contracting officer with that clause with appropriate modifications. Otherwise, in instances in which DOE grants an advance waiver or waives its rights in an identified invention, contracting officers shall consult with patent counsel for the appropriate clause.

6. Section 927.304 is added to read as follows:

927.304 Procedures.

Where the contract contains the clause at 952.227–11 and the contractor does not elect to retain title to a subject invention, DOE may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor subject to the provisions of 35 U.S.C. 200 *et seq.* This statement is in lieu of (FAR) 48 CFR 27.304–1(c).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

8. Subsection 952.227–9 is added to read as follows:

952.227–9 Refund of Royalties.

As prescribed in 927.206–2, insert the following clause:

Refund of Royalties (MAR 1995)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

9. Subsection 952.227–11 is added to read as follows:

952.227–11 Patent rights—retention by the contractor (short form).

As prescribed in 927.303(a), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) *Made* when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) *Agency licensing regulations* and *agency regulations concerning the licensing of Government-owned inventions* mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Contractor.* (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

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(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227–13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) *Communications.*

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) A report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(End of clause)

10. Subsection 952.227–13 is added to read as follows:

952.227–13 Patent Rights—Acquisition by the Government.

As prescribed at 927.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (MAR 1995)

(a) Definitions.

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award of this contract.

Agency licensing regulations and *applicable agency licensing regulations*, as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) Allocations of principal rights.

(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.*

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement

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(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer DOE approval, if given, will be based on a determination that this would best serve the national interest

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d) (1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that is was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e) (1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment* (This paragraph does not apply to subcontracts). (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.*

(1) The contractor shall include the clause at 48 CFR 952.227–11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable

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patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) *Preference United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *Atomic energy.*

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) *Background Patents.* (1) *Background Patent* means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) *Publication.* It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) *Forfeiture of rights in unreported subject inventions.* (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

952.227–71 [Removed and Reserved]

11. Section 952.227–71 is removed and reserved.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

12. The authority citation for Part 970 continues to read as follows:

Authority. Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

13. Revise Section 970.2701 to read as follows:

970.2701 General.

This subpart applies to negotiation of patent rights and rights in technical data provisions for the Department of Energy contracts for the management and operation of its research and development and production facilities.

14. Revise 970.2702 to read as follows:

970.2702 Patent rights.

(a) Whenever a contract has as a purpose, the design, construction, or operation of a Government-owned research, development, demonstration or production facility, it is necessary that the Government be accorded certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract, including the right to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or first actually reduced to practice under or in the course of such a contract. Thus, both versions of the patent rights clause for management and operating contracts contain a facilities license.

(b) In the case of contractors operating and managing DOE research and development or production facilities, that are not the beneficiaries of Public Law 96–517, the Department is statutorily obligated to take title to inventions conceived or first actually reduced to practice in the performance of the contracts. Here, as in all other circumstances in which the Department takes title to inventions by statute, the contractors may request a waiver at the time of contracting for a class of inventions or during contract performance for identified inventions. DOE includes the considerations at 42 U.S.C. 5908 in its determination as to whether to approve the request.

(c) While no contractor that manages and operates a DOE research and development or production facility is a small business, several have historically been nonprofit organizations. As such, they are the beneficiaries of the Bayh-Dole Act (35 U.S.C. 200 *et seq.*, as amended) and, therefore, receive the right to retain title to inventions conceived or first actually reduced to practice in the performance of their contracts with the Department, except in areas of technology covered by Exceptional Circumstances Determinations made by DOE or of nuclear weapons and naval nuclear propulsion. In these latter two areas, the contractor may request that the Department waive its title and, therefore, subject to the exceptions identified below, may be granted title to inventions conceived or first actually reduced to practice in the performance of its contract with the Department.

(d) DOE has exercised statutory authority granted under 35 U.S.C. 202(a)(ii) and 202(a)(iv). In accordance with 35 U.S.C. 202(a)(ii), DOE has issued several Exceptional Circumstances Determinations pursuant to which DOE nonprofit management and operating contractors have no right to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts within covered areas of technology. However, those contractors may be given some lesser property right in an invention within limits set by DOE in a particular Exceptional Circumstances Determination so that the contractor can effectively assist with a mission of DOE, such as technology transfer. As new technologies evolve, DOE may issue additional Exceptional Circumstances Determinations, as appropriate.

(e) In accordance with 35 U.S.C. 202(a)(iv), the Department of Energy has exempted its weapons related and naval nuclear propulsion programs from the broad Bayh-Dole right of its nonprofit management and operating contractors to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts. The effect of this exemption is that, if the contractors want to acquire title, they must request title to covered inventions. DOE may then grant the request subject to a case-by-case determination that the contractor has met all procedural requirements unilaterally set by DOE to insure that all national security concerns of DOE relating to the contractor's use of an invention in either of these two areas for commercialization have been met.

15. Section 970.2703 is added to read as follows:

970.2703 Technology transfer.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) (Pub. L. 101–189) established technology transfer as a mission for Government-owned, contractor-operated laboratories, including weapons production facilities, and authorizes those laboratories to negotiate and award cooperative research and development agreements with public and private entities for purposes of conducting research and development and transferring technology to the private sector. In implementing the NCTTA, DOE has negotiated technology transfer clauses with the contractors managing and operating its laboratories. Those technology transfer clauses must be read in concert with the patent rights clause required by this subpart. Thus, each management and operating contractor holds title to subject inventions for the benefit of the laboratory or facility being managed and operated by that contractor.

16. Section 970.2704 is added to read as follows:

970.2704 Patent clauses.

(a) Contracting officers shall insert the clause at 970.5204–71 in all management and operating contracts with nonprofit organizations.

(b) Contracting officers shall insert the clause at 970.5204–72 in all management and operating contracts with profit-making entities.

17. Add section 970.2705, and section 970.2706, as follows:

970.2705 Rights in technical data—general.

(a) A management and operating contractor's obligations for protection of information and data received from DOE and other contractors or subcontractors, and for the contractor's private use of contract data first produced in the performance of the contract, are set forth in paragraph (b)(2) of each Rights in Technical Data clause in 952.227. That subparagraph provides that the contractor may, subject to patent, security, or other provisions of the contract, use for its private purposes, contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress or status reports specified to be delivered) as of the date of private use of such data. It is not necessary that a "Final Report" be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) of each Rights in Technical Data clause in 952.227 further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(b) Contractors should be aware that technical information which is reported to DOE by DOE contractors may be disseminated by DOE to others, subject to the restrictions included in the "Rights to Technical Data" clause.

(c) Employees of contractors operating DOE facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the DOE contract unless such employee has been separated, with DOE approval, from performance of work under the DOE contract for such period as the Head of the Contracting Activity or designee shall direct consistent with the purpose of this section.

(d) Contractors operating DOE facilities and performing services as a part of their contract work for other Government agencies or private organizations should not be permitted to utilize information which is furnished by such customers for their own private activities unless it is generally available to others, or unless the customer authorizes such use.

970.2706 Rights in technical data—procedures.

(a) *General.* It is essential that DOE maintain continuity in its programs which are implemented by contracts for the operation of Government-owned facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to DOE and its future contractors for the continued use of the facility or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always

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apply. Accordingly, the Rights in Technical Data-Facility clause set forth in 952.227–78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of Patent Counsel to meet particular contract situations.

(b) Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227–78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227–73.

(c) *Subcontracting.* Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402–1, 927.402–2, and 927.402–3 and shall employ the provisions of the Additional Technical Data Requirements clause of 952.227–73 and the Rights in Technical Data (Long Form) clause of 952.227–75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility clause of 952.227–78.

(d) *Optional clause—Limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227–79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) of 952.227–79 may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude contractors or evaluators from paragraph (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon (:).

(e) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, see 927.402–1(h).

18. Subsection 970.5204–71 is added to read as follows:

970.5204–71 Patent Rights—Nonprofit Management and Operating Contractors.

As prescribed at 970.2703, insert the clause at 952.227–11, Patent Rights-Retention by the Contractor (Short Form) with the following changes:

PATENT RIGHTS-NONPROFIT MANAGEMENT AND OPERATING CONTRACTORS (MAR 1995)

1. Replace subparagraph (e)(1) with the following: (e)(1) The contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

2. Add the following paragraphs (m) and (n): (m) Transfer to successor contractor (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(n) Facilities license. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed

(End of clause)

19. Subsection 970.5204–72 is added to read as follows:

970.5204–72 Patent Rights—Profit-Making Management and Operating Contractors

As prescribed at 970.2703, insert the clause at 952.227–13, Patent Rights-Retention by the Government, with the following changes:

PATENT RIGHTS—PROFIT-MAKING MANAGEMENT AND OPERATING CONTRACTORS (MAR 1995)

1. Add the following paragraphs (j) and (k):

(j) Transfer to successor contractor (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(k) Facilities License. In addition to the rights of the parties with respect to

inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(End of clause)

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Part V

Department of Housing and Urban Development

24 CFR Parts 243, 760 and 889
Low Income Housing: Elderly Persons Supportive Housing; Management and Operation Requirements; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 243, 760 and 889

[Docket No. R–95–1767; FR–3336–I–01]

RIN 2502–AF86

Supportive Housing for the Elderly; Management

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the requirements related to management and operation of the Supportive Housing for the Elderly Program. The purpose of the Supportive Housing for the Elderly Program is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing. An interim rule similar to this interim rule is also being published in today's **Federal Register** for the Supportive Housing for Persons with Disabilities Program. This interim rule also adds both Supportive Housing programs to the list of projects covered by the pet ownership requirements. This interim rule also applies the wage and claim consent form requirements to both programs.

DATES: Effective Date: April 3, 1995.

Sunset Provisions: Sections 243.3(c)(1), 760.3(b)(10) and (11), and 889.600 through 889.655, shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410, telephone (202) 708–4542; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0470.

II. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. These management rules vary only slightly from previous management requirements for the section 202 (of the Housing Act of 1959) direct loan program. This interim rule furthers the legislative mandate of section 202 of the Housing Act of 1959, as amended, and it involves only minor interpretations of that statute. The section 202 capital advance program currently is operating under a series of interim rules. The Department intends to publish a final rule that will incorporate public comments for all aspects of the section 202 capital advance program.

The Department also finds that prior public procedure would be impracticable. The Department has awarded capital advances since 1991, and many of these projects are approaching the management phase or have become operational. Management requirements are needed immediately to assure transition from the development phase to the management phase.

III. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire 18 months after the effective date of this interim rule, unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the 18-month anniversary date of the effective date of this interim rule.

IV. Background

The Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA Act) and the Housing and Community Development Act of 1992 (1992 Act). Under the program, which is implemented in 24 CFR part 889, assistance is provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance is provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the construction or rehabilitation of a structure, or the acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

On June 12, 1991, the Department published an interim rule (56 FR 27104) implementing the amendments made by section 801 of the NAHA to establish the Supportive Housing for the Elderly Program. That interim rule, which enabled the program to be funded for FY–1991, described application procedures and program requirements, selection of applications and duration of fund reservation requirements. A second interim rule was published on August 12, 1992 (57 FR 36338) to provide the development-related requirements (closing of capital advances and requirements related to project rental assistance contracts) of the program. The program was the subject of further amendments of the 1992 Act, which were implemented by a third interim rule published on May 5, 1993 (58 FR 26836). All three interim rules are codified at 24 CFR part 889.

Selection preference rules (§§ 889.611–889.615) for this program were published on July 18, 1994 at 59 FR 36616. Today's interim rule (subpart F, part 889) completes the establishment of the program by providing the requirements for management and operation of projects funded under the program. After the period of public comment is completed on this interim rule, the Department will develop a final rule based on all previous rules.

V. Summary of Interim Rule (Subpart F)

Subpart F provides the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits and vacancy payments.

The subpart F requirements are similar to existing requirements for the section 202 Projects for Nonelderly Handicapped Families and Individuals receiving assistance under section 202(h) of the Housing Act of 1959. See 24 CFR 885.940–885.985.

Owner Responsibilities

The responsibilities of an Owner under part 889 include marketing, management and maintenance, contracting for services, submission of financial and operating statements, project fund accounting and reporting. Marketing must be conducted in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements. The Owner must also establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

The Owner is required to adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are (1) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and (2) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with all nondiscrimination authorities. The Secretary is to provide to an appropriate agency in each area (which may be the applicable State or Area Agency on Aging) information regarding the availability of housing assisted under this part. The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission.

The Owner is also responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly person (as defined in § 889.105); must meet any project occupancy requirements approved by HUD under § 889.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 889.105. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 889.515. If the Owner determines that the family is eligible and is otherwise acceptable and units are available, the Owner will assign the family a unit. The Owner will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Owner will place the family on a waiting list for the project and notify the family when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements.

Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. The Owner must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 889.105, and must determine whether the family's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment and must carry out any unit transfer in accordance with HUD standards.

Family Responsibilities

Families under the program are required to do the following: (1) Pay amounts due under the lease directly to the Owner; (2) supply such certification, release, information, or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; (3) allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice; (4) notify the Owner before vacating the dwelling unit; and (5) use the dwelling unit solely for residence by the family, and as the family's principal place of residence. The family may not assign the lease or transfer the unit, nor may it occupy, or receive assistance for the occupancy of a unit governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

Lease

The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Owner may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month. The Owner shall use the lease form prescribed by HUD. The Owner may not use any of the prohibited provisions specified by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered. The provisions of part 247 apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

Security Deposit

At the time of the initial execution of the lease, the Owner will require each family occupying a unit to pay a

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security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis. The Owner must place the security deposits in a segregated interest-bearing account.

Utility Allowances

The Owner must also submit an analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, if utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

Vacancy Payments

Vacancy payments under the Project Rental Assistance Contract (PRAC) will not be made unless certain conditions for receipt of these project rental assistance payments are fulfilled. For each unit that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost for the first 60 days of vacancy, if the Owner: (1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600; (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to HUD. If an eligible family vacates a unit, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost for the first 60 days of vacancy if the Owner: (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law; (2) notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy; (3) has fulfilled and continues to fulfill the requirements specified in § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and (4) for any vacancy resulting from the Owner's eviction of an eligible family, certifies that it has complied with § 889.635. If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

HUD Reviews

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of part 889.

VI. Amendments to 24 CFR Parts 243 and 760

This interim rule also amends 24 CFR part 243 by including the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities projects in the list of projects covered by the pet ownership requirements. The interim rule also amends part 760 and applies the wage and claim consent form requirements to the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities Programs.

VII. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule would provide capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Although small entities will participate in the program, the interim rule would not have a significant impact on them.

Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this interim rule will not have a significant impact on family formation, maintenance or well being.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the interim rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

Regulatory Agenda

This interim rule was listed as sequence number 1807 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The program number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects

24 CFR Part 243

Aged, Grant programs—housing and community development, Individuals with disabilities, Loans programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Reporting and recordkeeping requirements.

24 CFR Part 760

Grant programs—housing and community development, Income verification procedures, Indians, Intergovernmental relations, Loan programs—housing and community development, Penalties, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Wages.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and communtiy development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the Code of Federal Regulations is amended to read as follows:

PART 243—PET OWNERSHIP IN HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for part 243 continues to read as follows:

Authority: 12 U.S.C. 1701r–1; 42 U.S.C. 3535(d).

2. In § 243.3, paragraph (c) introductory text and paragraph (c)(1) are revised to read as follows:

§ 243.3 Definitions.

* * * * *

(c) *Project for the elderly or persons with disabilities* means a specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(1) That is assisted under section 202 of the Housing Act of 1959, and as amended (Housing for the Elderly or Disabled or Supportive Housing for the Elderly) or is assisted under section 811 of the National Affordable Housing Act (Supportive Housing for Persons with Disabilities);

* * * * *

3. Section 243.4 is revised to read as follows:

§ 243.4 Effective date.

This part shall be effective on March 2, 1987. However, project owners shall have until May 1, 1987 to implement the provisions of this part. Section 243.3(c)(1) shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

PART 760—PROCEDURES FOR OBTAINING WAGE AND CLAIM INFORMATION ABOUT APPLICANTS AND PARTICIPANTS IN HUD'S SECTION 8 AND PUBLIC HOUSING PROGRAMS FROM STATE WAGE INFORMATION COLLECTION AGENCIES (SWICAs)

4. The authority citation for part 760 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437a, 1437d, 1437ee, 1437f, 3535(d), and 3544.

5. In § 760.3, paragraph (b) is amended by redesignating paragraphs (b)(10) through (b)(13) as paragraphs (b)(12) through (b)(15), and by adding new paragraphs (b)(10) and (b)(11), to read as follows:

§ 760.3 Applicability.

* * * * *

(b) * * *

(10) Part 889, Supportive Housing for the Elderly.

(11) Part 890, Supportive Housing for Persons with Disabilities.

* * * * *

6. Section 760.40 is amended by adding paragraph (c) to read as follows

§ 760.40 Effective date of rule.

* * * * *

(c) *Expiration date.* Sections 760.3(b)(10) and (11) shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

7. The authority citation for part 889 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C 3535(d).

8. Section 889.100 is amended by adding paragraph (d) to read as follows

§ 889.100 Purpose and policy.

* * * * *

(d) *Expiration date.* Sections 889.600 through 889.655 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

9. Subpart F is amended by adding §§ 889.600, 889.605, 889.610, 889.620, 889.625, 889.630, 889.635, 889.640, 889.645, and 889.650, to read as follows:

Subpart F—Project Management

Sec.

889.600 Responsibilities of owner
889.605 Replacement reserve.
889.610 Selection and admission of tenants
889.611 Selection preferences
* * * * *
889.620 Obligations of the family
889.625 Overcrowded and underoccupied units.
889.630 Lease requirements.
889.635 Termination of tenancy and modification of lease.
889.640 Security deposits.
889.645 Adjustment of utility allowances
889.650 Conditions for receipt of vacancy payments for assisted units
889.655 HUD review

Subpart F—Project Management

§ 889.600 Responsibilities of owner.

(a) *Marketing.* (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.

(3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Owner may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 889.105 (definition of Owner). (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its non-profit affiliate.)

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Owner will promote awareness and participation of minority and women-owned business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations.

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(e) *Use of project funds.* The Owner shall maintain a separate project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income, and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under § 889.605, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See § 889.610(a). (Approved by the Office of Management and Budget under control number 2502–0470).

§ 889.605 Replacement reserve.

(a) *Establishment of reserve.* The Owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

(b) *Deposits to reserve.* The Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD, or in a Federally-insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 889.610 Selection and admission of tenants.

(a) *Written tenant selection procedures.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with the following nondiscrimination authorities: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR Part 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR Part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended), 3 CFR, 1964–1965 Comp., p. 339 and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing), 3 CFR, 1959–1963 Comp., p. 652, at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. While local residency requirements are prohibited, local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Owner's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

(b) *Information on availability of assisted housing.* The Secretary shall provide to an appropriate agency in each area (which may be the applicable State or Area Agency on Aging) information regarding the availability of housing assisted under this part.

(c) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD and is obligated to confirm all information provided by the applicant families on the application. Applicant families must be requested to complete a release of information consent for verification of information. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant family must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(d) *Determination of eligibility and selection of tenants.* The Owner is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly person (as defined in § 889.105); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 889.105. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 889.515.

(e) *Unit assignment.* If the Owner determines that the family is eligible and is otherwise acceptable and units are available, the Owner will assign the family a unit. The Owner will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Owner will place the family on a waiting list for the project and notify the family when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

(f) *Ineligibility determination.* If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State, or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(g) *Records.* Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See § 889.610(a).

(h) *Reexamination of family income and composition.* (1) *Regular reexaminations.* The Owner must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 889.105, and must determine whether the family's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (h)(1) of this section, the Owner must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760.

(2) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the family and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760. Any change in the family's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.

(3) *Continuation of project rental assistance payment.* (i) A family shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the family meets the income eligibility requirements of part 813 of this chapter (as modified in § 889.105) and project rental assistance is available for the unit under the terms of the PRAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (d) of this section.

(ii) A family's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750) or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760).

* * * * *

§ 889.620 Obligations of the family.

(a) Requirements. The family shall:

(1) Pay amounts due under the lease directly to the Owner;

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760;

(3) Allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice;

(4) Notify the Owner before vacating the dwelling unit; and

(5) Use the dwelling unit solely for residence by the family and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit; or

(2) Occupy, or receive assistance for the occupancy of, a unit governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 889.625 Overcrowded and underoccupied units.

If the Owner determines that because of change in family size, a unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, project rental assistance payment with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Owner will, as promptly as possible, offer the family an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of § 889.650.

§ 889.630 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Owner may execute a new lease for a term not less than one year or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The Owner shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

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§ 889.635 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

§ 889.640 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Owner will require each family occupying a unit to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units. (1) Administration of security deposit.* The Owner must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must provide the Owner with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner, subject to State and local law and the requirements of paragraph (b)(3) of this section, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Owner must:

(i) Refund to a family which does not owe any amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing amounts under the lease a list itemizing each amount, along with a statement of the family's rights under State and local law. If the amount which the Owner claims is owed by the family is less than the amount of the family's security deposit balance, the Owner must refund the excess balance to the family. If the Owner fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Owner in an informal meeting. The Owner must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of paragraph (b)(4) of this section do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Owner for any amount which the family owes under the lease for a unit and the Owner has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Owner; or

(2) One month's per unit operating cost, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment due under the lease. No reimbursement may be claimed for unpaid tenant payment for the period after termination of the tenancy. The Owner may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 889.650.

§ 889.645 Adjustment of utility allowances.

The Owner must submit an analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 889.650 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates a unit, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and

(4) For any vacancy resulting from the Owner's eviction of an eligible family, certifies that it has complied with § 889.635.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 889.655 HUD review.

HUD shall conduct periodic on-site management inspections and reviews of the Owner's compliance with the requirements of this part.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–4890 Filed 3–1–95; 8:45 am]

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Federal Register

Thursday
March 2, 1995

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

Supportive Housing for Persons With Disabilities; Management; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R–95–1766; FR–3337–I–01]

RIN 2502–AF87

Supportive Housing for Persons With Disabilities; Management

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the requirements related to management and operation of the Supportive Housing for Persons with Disabilities Program. The purpose of the Supportive Housing for Persons with Disabilities Program is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. Included in a companion interim rule in today's **Federal Register** for the management and operation of projects funded by the Supportive Housing for the Elderly Program are amendments which add both Supportive Housing programs to the list of projects covered by the pet ownership requirements, and which apply the wage and claim consent form requirements to both programs.

DATES: Effective Date: April 13, 1995.

Sunset Provisions: Sections 890.600 through 890.650 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410, telephone (202) 708–4542; (TDD) (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0470.

II. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. These management rules vary only slightly from previous management requirements for the section 202/162 direct loan program for persons with disabilities. This interim rule furthers the legislative mandate of section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended, and it involves only minor interpretations of that statute. The section 811 capital advance program currently is operating under a series of interim rules. The Department intends to publish a final rule that will incorporate public comments for all aspects of the section 811 capital advance program.

Furthermore, the Department finds that prior public procedure would be impracticable. The Department has awarded capital advances since 1991, and many of these projects are approaching the management phase or have become operational. Management requirements are needed immediately to assure transition from the development phase to the management phase.

III. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire 18 months after the effective date of this interim rule, unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the 18-month anniversary date of the effective date of this interim rule.

IV. Background

The Supportive Housing for Persons with Disabilities Program is authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA Act), as amended by the Housing and Community Development Act of 1992 (1992 Act). Under the program, which is implemented in 24 CFR part 890, assistance is provided to nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Such assistance is provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the acquisition with rehabilitation, acquisition without rehabilitation (group homes only), construction or rehabilitation of a structure, and acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities) to be used as supportive housing for persons with disabilities. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

On June 12, 1991, the Department published an interim rule (56 FR 27070) implementing section 811 of the NAHA to establish the Supportive Housing for Persons with Disabilities Program. That interim rule, which enabled the program to be funded for FY–1991, described application procedures and program requirements, selection of applications and duration of fund reservation requirements. A second interim rule was published on August 12, 1992 (57 FR 36330) to provide the development-related requirements (closing of capital advances and requirements related to project rental assistance contracts) of the program. The program was the subject of further amendments by the 1992 Act, which were implemented by a third interim rule published on May 5, 1993 (58 FR 26816). All three interim rules are codified at 24 CFR part 890.

Today's interim rule (subpart F, part 890) completes the establishment of the program by providing the requirements for management and operation of projects funded under the program. After the period of public comment is completed on this interim rule, the Department will develop a final rule based on all previous rules.

V. Summary of Interim Rule (Subpart F)

Subpart F provides the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits and vacancy payments.

The subpart F requirements are similar to existing requirements for the Section 202 Projects for Nonelderly Handicapped Families and Individuals receiving assistance under section 202(h) of the Housing Act of 1959. See 24 CFR 885.940–885.985.

Owner Responsibilities

The responsibilities of an Owner under part 890 include marketing, management and maintenance, contracting for services, submission of financial and operating statements, project fund accounting and reporting. Marketing must be conducted in accordance with a HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for households occupying assisted units or residential spaces, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements. The section 811 Owner must also establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

The Owner is required to adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are (1) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (2) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with all nondiscrimination authorities. The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant households applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission.

The Owner is also responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be a disabled person (as defined in § 890.105); must meet any project occupancy requirements approved by HUD under § 890.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 890.105. Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. However, an Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 890.515. If the Owner determines that the household is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Owner will assign the household a unit or residential space in a group home. If the household will occupy an assisted unit, the Owner will assign the household a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit (or residential space in a group home) is available, the Owner will place the household on a waiting list for the project and notify the household when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements.

Records on applicants and approved eligible households, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 890.105, and must determine whether the household's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment and must carry out any unit transfer in accordance with HUD standards.

Household Responsibilities

Households under the program are required to do the following: (1) Pay amounts due under the lease directly to the Owner; (2) supply such certification, release, information, or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; (3) allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice; (4) notify the Owner before vacating the dwelling unit or residential space; and (5) use the dwelling unit or residential space solely for residence by the household, and as the household's principal place of residence. The household may not assign the lease or transfer the unit or residential space, nor may it occupy, or receive assistance for the occupancy of a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

Lease

The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and Owner may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be

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renewed for successive terms of one month. The Owner shall use the lease form prescribed by HUD. The Owner may not use any of the prohibited provisions specified by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered. The provisions of 24 CFR part 247 apply to all decisions by an Owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

Security Deposit

At the time of the initial execution of the lease, the Owner will require each household occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's tenant payment or $50, whichever is greater. The household is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis. The Owner must place the security deposits in a segregated interest-bearing account.

Utility Allowances

The Owner must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, if utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected households and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

Vacancy Payments

Vacancy payments under the Project Rental Assistance Contract (PRAC) will not be made unless the conditions for receipt of these project rental assistance payments are fulfilled. For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner: (1) Conducted marketing in accordance with § 890.600(a) and otherwise complied with § 890.600; (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to HUD. If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner: (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law; (2) notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy; (3) has fulfilled and continues to fulfill the requirements specified in § 890.600(a) (2) and (3) and § 890.645(b) (2) and (3); and (4) for any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with § 890.630. If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under § 890.635(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

HUD Reviews

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of part 890.

HUD Issuances

The Department intends to amend the Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, with these new part 890 requirements.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Although small entities will participate in the program, the interim rule would not have a significant impact on them.

Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive order 12606, the Family, has determined that the provisions of this interim rule will not have a significant impact on family formation, maintenance or well being. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that this interim rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

Regulatory Agenda

This interim rule was listed as sequence 1809 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57658) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The program number is 14.181, Supportive Housing for Persons with Disabilities.

List of Subjects in 24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 890 of title 24 of the Code of Federal Regulations is amended as follows:

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

1. The authority citation for part 890 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

2. Section 890.100 is amended by adding paragraph (d) to read as follows:

§ 890.100 Purpose and policy.

* * * * *

(d) *Effective date of regulation.* Sections 890.600 through 890.650 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

3. Part 890 is amended by adding subpart F to read as follows:

Subpart F—Project Management

Sec.

890.600 Responsibilities of Owner.
890.605 Replacement reserve.
890.610 Selection and admission of tenants.
890.615 Obligations of the household.
890.620 Overcrowded and underoccupied units.
890.625 Lease requirements.
890.630 Termination of tenancy and modification of lease.
890.635 Security deposits.
890.640 Adjustment of utility allowances.
890.645 Conditions for receipt of vacancy payments for assisted units.
890.650 HUD review.

Subpart F—Project Management

§ 890.600 Responsibilities of Owner.

(a) *Marketing.* (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with a HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible households of similar income levels in the same housing market area have a like range of housing choices available to them regardless of discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.

(3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for households occupying assisted units or residential spaces, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Owner may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 890.105 (definition of Owner) (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its non-profit affiliate).

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Owner will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations.

(e) *Use of project funds.* The Owner shall maintain a separate interest bearing project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under § 890.605, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See § 890.610(a). (Approved by the Office of Management and Budget under control number 2502–0470).

§ 890.605 Replacement reserve.

(a) *Establishment of reserve.* The Owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

(b) *Deposits to reserve.* The Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account(s) whose balances(s) are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

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§ 890.610 Selection and admission of tenants.

(a) *Written tenant selection procedures.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with the following nondiscrimination authorities: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended), 3 CFR, 1964–1965 COMP., p. 339, and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing), 3 CFR, 1959–1963 COMP., p. 652, at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. While local residency requirements are prohibited, local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Owner's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender and ethnicity and date of each person applying for the program.

(b) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant households applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant households must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant household must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(c) *Determination of eligibility and selection of tenants.* The Owner is responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be a disabled person (as defined in § 890.105); must meet any project occupancy requirements approved by HUD under §§ 890.265(c)(14) and 890.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 890.105. An Owner, may with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. However, an Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 890.515.

(d) *Unit assignment.* If the Owner determines that the household is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Owner will assign the household a unit or residential space in a group home. If the household will occupy an assisted unit, the Owner will assign the household a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit (or residential space in a group home) is available, the Owner will place the household on a waiting list for the project and notify the household when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

(e) *Ineligibility determination.* If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (*e.g.*, rights granted under Federal, State or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(f) *Records.* Records on applicants and approved eligible households, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See § 890.610(a).

(g) *Reexamination of household family income and composition.*—(1) *Regular reexaminations.* The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter, as modified by § 890.105, and must determine whether the household's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (g)(1) of this section, the Owner must require the household to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760.

(2) *Interim reexaminations.* The household must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the household's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the household and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new household members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760. Any change in the household's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.

(3) *Continuation of project rental assistance payment.* (i) A household shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the household's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the household meets the income eligibility requirements of 24 CFR part 813 (as modified in § 890.105) and project rental assistance is available for the unit or residential space under the terms of the PRAC. The household will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A household's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750 or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760).

§ 890.615 Obligations of the household.

(a) *Requirements.* The household shall:

(1) Pay amounts due under the lease directly to the Owner;

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760;

(3) Allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice;

(4) Notify the Owner before vacating the dwelling unit or residential space; and

(5) Use the dwelling unit or residential space solely for residence by the household and as the household's principal place of residence.

(b) *Prohibitions.* The household shall not:

(1) Assign the lease or transfer the unit or residential space; or

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

§ 890.620 Overcrowded and underoccupied units.

If the Owner determines that because of change in household size, an assisted unit is smaller than appropriate for the eligible household to which it is leased, or that the assisted unit is larger than appropriate, project rental assistance payment with respect to the unit will not be reduced or terminated until the eligible household has been relocated to an appropriate alternate unit. If possible, the Owner will, as promptly as possible, offer the household an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of § 890.645.

§ 890.625 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and Owner may execute a new lease for a term not less than one year or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the household.* All leases may contain a provision that permits the household to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The Owner shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 890.630 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by an Owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

§ 890.635 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Owner will require each household occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's tenant payment or $50, whichever is greater. The household is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units.*—(1) *Administration of security deposit.* The Owner must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner must at all times equal the total amount collected from the households then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Household notification requirement.* In order to be considered for the refund of the security deposit, a household must provide the Owner with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner, subject to State and local law and the requirements of paragraphs (b)(1) and (b)(3) of this section, may use the household's security deposit balance as reimbursement for any unpaid amounts which the household owes under the lease. Within 30 days (or shorter time if required by State or local

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law) after receiving notification under paragraph (b)(2) of this section the Owner must:

(i) Refund to a household which does not owe any amount under the lease the full amount of the household's security deposit balance;

(ii) Provide to a household owing amounts under the lease a list itemizing each amount, along with a statement of the household's rights under State and local law. If the amount which the Owner claims is owed by the household is less than the amount of the household's security deposit balance, the Owner must refund the excess balance to the household. If the Owner fails to provide the list, the household will be entitled to the refund of the full amount of the household's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the household will have the right to present objections to the Owner in an informal meeting. The Owner must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of paragraph (b)(4) of this section do not preclude the household from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a household, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the household's security deposit balance is insufficient to reimburse the Owner for any amount which the household owes under the lease for an assisted unit or residential space and the Owner has provided the household with the list required by paragraph (b)(3)(ii) of this section, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Owner, or

(2) One month's per unit operating cost, minus the amount of the household's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment due under the lease. No reimbursement may be claimed for any unpaid tenant payment for the period after termination of the tenancy. The Owner may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 890.645.

(Approved by the Office of Management and Budget under control number 2502–0470.)

§ 890.640 Adjustment of utility allowances.

The Owner must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected households and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

§ 890.645 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with § 890.600(a) and otherwise complied with § 890.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 890.600(a) (2) and (3) and § 890.645(b) (2) and (3); and

(4) For any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with § 890.630.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under § 890.635(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 890.650 HUD review.

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of this part.

Dated: December 27, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–4889 Filed 3–1–95; 8:45 am]

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Part VII

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 290 and 886

Disposition of Multifamily Projects and HUD-Held Multifamily Mortgages; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 290 and 886

[Docket No. R–95–1753; FR–3715–I–01]

RIN 2502–AG30

Disposition of Multifamily Projects and HUD-Held Multifamily Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's multifamily property disposition regulations to incorporate statutory amendments affecting the management and disposition of HUD-owned properties and properties with delinquent HUD-held mortgages, and the sale of HUD-held multifamily mortgages.

DATES: Effective date: March 2, 1995.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, Room 6164, 451 7th Street SW, Washington, DC 20410. Telephone (202) 708–3555; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this interim rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2502–0204 (expiration date: 9/30/96).

I. Introduction

On August 17, 1993 (58 FR 43708), the Department published a final rule amending its requirements for the management and disposition of HUD-owned multifamily housing projects. The regulation, at 24 CFR part 290, implemented HUD's statutory authority, contained in section 207(k) and (l) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was amended by section 181 of the Housing and Community Development Act of 1987 (1987 Act), section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (1988 Act), and section 579 of the National Affordable Housing Act of 1990 (NAHA). The final rule published on August 17, 1993 implemented the NAHA amendments.

Generally, the statutory amendments specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and very low-income housing, and included certain projects with HUD-held mortgages within the scope of section 203. The Department has been carrying out its multifamily property disposition program and its servicing of delinquent HUD-held multifamily mortgages on a project-by-project basis in conformity with the requirements of section 203, as amended.

In the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102–233, approved April 11, 1994), section 203 was completely revised. This interim rule, in turn, completely revises 24 CFR part 290 to reflect the new statutory amendments.

Before turning to a discussion of specific details of the implementation of the revised section 203 in this interim rule, a general comment on the overall format of this interim rule is in order. HUD is attempting to implement this complex legislation in a manner that is more accessible and "user friendly" than the typical government regulation, with the goal of providing clear guidance within a legally binding context. The structure of the statute has been reorganized in the regulation to correspond more with the flow of the disposition process as it actually happens, from general, guiding principles, through notification requirements, plan development, and the various actions the Department will take to facilitate the disposition process. The section headings in this interim rule are posed in the form of questions, to invite a broader spectrum of users for the interim rule and to permit all of its users to scan it and identify more quickly their areas of concern. Certain portions of the interim rule, which present an extended series of requirements or alternatives, have been summarized with the use of tables that appear within the permanent text of the interim rule itself. These tables, covering the subjects of rents, notification requirements, methods of disposition, and actions to facilitate disposition, provide a shorthand overview of major portions of the interim rule that will permit users to comprehend the interim rule and the disposition process more easily. The tables are cross referenced to the sections of interim rule text that provide a fuller explication of the requirements. HUD specifically invites comments on whether the public finds such innovations to be helpful, and welcomes suggestions for additional innovations.

A discussion of the revisions to the multifamily property disposition program, organized section-by-section according to the amended section 203, follows.

II. Implementation of Amended Section 203

Section 203(a)—Goals

The goals of the interim rule, which provide the general guidelines within which HUD makes its determinations for the management or disposition of multifamily housing projects, are listed in section 203(a). They closely resemble the goals previously listed at 24 CFR 290.5, but include three new factors. Protecting the financial interests of the Federal Government, adhering to fair housing requirements, and disposing of projects in a manner consistent with local housing market conditions are now explicitly listed among the goals which are set forth in § 290.3 of this regulation.

Section 203(b)—Definitions

Several of the nine definitions included in this section are combined and otherwise modified in the interim rule at § 290.5. The Department believes that its modifications provide additional precision and simplify the structure of the interim rule. For example, the interim rule defines the term multifamily housing project as a subset, with references to specific statutory authorities, of *multifamily project*, which is defined in very broad terms to cover most non-single family projects insured or subject to a loan under one of HUD's statutory authorities, including such properties as hospitals, intermediate care facilities, and nursing homes. The actions the Department may take to facilitate disposition (i.e., the assistance to be provided or the restrictions to be imposed) depend upon the type of multifamily housing project involved, and the statute provides definitions of *subsidized project*, *formerly subsidized project*, and *unsubsidized project*, for this purpose. The interim rule cuts back on the number of cross references necessary to determine what actions may be taken by combining the definitions for *subsidized* and *formerly subsidized* into a single definition of *subsidized project*. *Subsidized project* includes projects both before foreclosure and after HUD assumes ownership of the project, when the mortgage which governs the project has been extinguished. *Subsidized projects* and *unsubsidized projects* are the subsets within the category of *multifamily housing projects*.

Although section 203(b)(8) lists *market area* among the definitions, its meaning is left to the determination of the Department. The Department has determined that this is a term best defined on a case-by-case basis at the local level, particularly when the new goal of disposing of projects in a manner consistent with local housing market conditions is taken into consideration. The interim rule provides for the market area for a project to be defined by the local HUD Office, which would have the best grasp of local conditions, in terms of the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants.

The statute also permits HUD to define the term *useful life*, used to determine how long certain requirements will apply to a project. The Department has determined to define *useful life* as 20 years, the period adopted in the August 17, 1993 final rule for maintaining a project as rental or cooperative housing, but it may be more or less, as determined by the Department.

Section 203(c)—Disposition of Property

Section 203(c)(1) lists "negotiated, competitive bid, or other basis" as methods of disposition. The interim rule at § 290.30 lists the basic methods of disposition as: (1) Foreclosure sales, (2) sale of HUD-owned projects, and (3) transfer for use under other HUD programs.

Method (3) is taken from section 203(f), entitled "Discretionary Assistance," where "transfer for use under other HUD programs" is listed as an action the Department may take to facilitate disposition. However, in the Department's analysis, a transfer is actually a method of disposition, rather than a form of assistance or restriction such as the other actions given in section 203(f).

The transfer option permits the Department, "notwithstanding the provisions of subsection (e)" (which lists the basic actions and the alternatives to the basic actions to facilitate disposition), to transfer a multifamily housing project for use as public housing or supportive housing, subject to any terms, conditions, and limitations determined to be appropriate by the Department. The disposition is complete upon the transfer.

Section 203(c) also lists the qualities of an eligible purchaser (incorporated in the interim rule at § 290.32); and requirements for an initial disposition plan and initial sales price (§ 290.34 of the interim rule). Section 203(c)(2)(D) requires the Department to obtain timely and appropriate input into disposition plans from the community and tenants. This requirement is stated in § 290.34, and is also laid out in more detail at § 290.26 in subpart C of the interim rule where the notification requirements are gathered. HUD views the requirement for community and tenant input into the disposition plan as a process similar to providing public notice and an opportunity for comment in rulemaking. Just as a proposed rule is published for comment, followed by consideration of the comments before a final rule is issued, HUD will make an initial disposition plan available to the community and tenants, consider the comments it receives, and then issue its final disposition plan.

A requirement for a pre-foreclosure notification is included in section 203(c)(3), which appears in subpart C of the interim rule as § 290.22.

Section 203(d)—Management and Maintenance of Properties

This subsection of the statute is the only one that explicitly addresses management and maintenance of HUD-owned projects, or projects where HUD is the mortgagee in possession (MIP). These provisions, which provide management standards and permit HUD to contract or require an owner to contract for management services, are basically identical to those in § 290.51 of the August 17, 1993 final rule, and are incorporated in this interim rule at §§ 290.10 (standards) and 290.12 (contracting), under subpart B, titled, "Management Provisions." Also included in subpart B are provisions for determining occupancy (§ 290.14) and rental rates (§ 290.16) while a project is managed by HUD. These provisions are based largely on the August 17, 1993 final rule and, in general, provide that the requirements of the project's mortgage insurance program before HUD assumed management will continue to apply.

Actions to Facilitate Disposition

Section 203(e)—Required Assistance; Section 203(f)—Discretionary Assistance; Section 203(g)—Protection for Very Low-Income Tenants; Section 203(j)—Displacement of Tenants and Relocation Assistance

Sections 203 (e), (f), (g), and (j) are discussed together because of their close interrelationship. The actions the Department may take to facilitate disposition are the common subject matter of these sections. The regulation organizes the statutorily permitted actions into four categories: "required," "basic," "alternatives to basic," and "additional." The table which immediately precedes subpart E provides an overview of these assistance and restrictions provisions.

Section 203(e) is divided into three sections, each delineating actions that the statute requires HUD to take separately, or in combination with each other or with actions under section 203(f). These actions are the assistance that may be provided or the restrictions (mainly to preserve affordability) that may be imposed. The basic actions are established by section 203(e)(1), which identifies the units in subsidized projects and unsubsidized projects that are to receive project-based Section 8 assistance or that are to be subject to use or rent restrictions. The alternatives to these basic actions appear in: (1) Section 203(e)(1)(C), which permits project-based Section 8 assistance and/or use and rent restrictions in unsubsidized projects to be substituted for the "basic" project-based Section 8 assistance in subsidized projects; (2) section 203(e)(2), which permits tenant-based Section 8 assistance to be provided to tenants instead of the project-based Section 8 assistance required under (e)(1); and (3) section 203(e)(3), which provides that the additional actions listed in section 203(f) may be used as long as, first, affordability use and rent restrictions are imposed on units that otherwise would have received the basic project-based Section 8 assistance under (e)(1), and second, very low-income tenants in units that otherwise would have received project-based Section 8 assistance under (e)(1) receive tenant-based Section 8 assistance.

Section 203(f) then lists the additional actions that may be used in subsidized and unsubsidized projects. Included by this interim rule in the category of additional actions are provisions taken from the August 17, 1993 final rule.

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These provisions, entitled "determination not to preserve," are included to provide criteria under which the Department will take the action of a determination not to preserve a project, or a part of a project, as affordable rental or cooperative housing, resulting primarily in demolition.

In addition to these basic, alternative, and additional categories of actions is the category of required actions. Section 203(g) provides for required assistance for very-low income tenants, and 203(j) provides for required displacement assistance. The displacement assistance requirements in this interim rule are based upon the requirements of the August 17, 1993 final rule. An action from the August 17, 1993 final rule is also included as required, the nondiscrimination against Section 8 certificate holders and voucher holders provisions of section 183(c) of the Housing and Community Development Act of 1987.

The interim rule organizes this complex system of actions to facilitate a disposition according to the type of project involved in a disposition—separate subparts address which actions are applicable to all multifamily housing projects, or to subsidized projects, or to unsubsidized projects, as follows. Subpart E contains the required actions applicable to all multifamily housing projects under sections 203 (g) and (j), as well as the nondiscrimination requirements of section 183(c) of the Housing and Community Development Act of 1987. Subpart F contains the basic and alternative actions applicable to subsidized projects under section 203(e), with a reference to the additional section 203(f) actions listed in subpart H. Subpart G contains the same information for unsubsidized projects as subpart F does for subsidized projects. Subpart H lists the additional actions under 203(f) that are applicable to all multifamily housing projects. All of the actions to facilitate disposition are set out in abbreviated form in a table that precedes subpart E, to permit users of this interim rule to follow more easily the options for assistance and restrictions that would apply to a particular project.

Section 203(h)—Contract Requirements

This section states the contract requirements applicable to project-based Section 8 assistance provided in accordance with a disposition. These requirements are implemented by revising the appropriate Section 8 regulations at 24 CFR 886.310 and 886.311.

Section 203(i)—Right of First Refusal for Local and State Government Agencies

This right of first refusal provision is included among the notification requirements in subpart C as § 290.24.

III. Sale of HUD-Held Multifamily Mortgages

On September 22, 1994 (59 FR 48726), the Department published a final rule that amended 24 CFR part 290 to set forth the basic policies and procedures that govern the disposition of HUD-held multifamily project mortgages. This final rule implemented a proposed rule published on April 13, 1994 (59 FR 17500) and also incorporated amendments made by the MHPDRA. The provisions of the mortgage sale final rule are included in this interim rule as subpart I, with only slight modifications to conform to the new format of this interim rule.

IV. Other Amendments in This Interim Rule

Section 101(d) of the MHPDRA amended the definition of *owner* under the United States Housing Act of 1937 to include "an Agency of the Federal Government." The purpose and effect of this amendment is to permit HUD to collect Section 8 rental payments when it owns or manages a project. The conforming change to the definition of *owner* is made in 24 CFR 886.302.

The definition of *eligible project or project* in 24 CFR 886.302 is also amended to include a multifamily housing project under 24 CFR part 290.

Section 886.319 is amended to conform to § 886.120 and state explicitly that HUD may contract for the administration of its Section 8 contract functions.

V. Other Matters

Any assistance made available to a purchaser under this interim rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, *e.g.*, a **Federal Register** Notice published April 9, 1991 (56 FR 14436) entitled "Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance").

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866

This interim rule has been reviewed and approved by the Office of Management and Budget in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These revisions to the policies governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, Federalism, that this interim rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the interim rule would impose terms and conditions on States that acquire projects under this interim rule, that is clearly the intent of the authorizing legislation, and therefore no further review is necessary or appropriate.

Executive Order 12606, the Family

HUD has determined that this interim rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

Justification for Interim Rulemaking

This publication of this interim rule for effect upon issuance is required by MHPDRA section 101(f).

Regulatory Agenda

This interim rule was listed as item number 1802 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 290

Low and moderate-income housing, Mortgage insurance.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 290 of chapter II and part 886 of chapter VIII of title 24 of the Code of Federal Regulations, are amended as follows:

1. Part 290 is revised to read as follows:

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

Subpart A—General Provisions

Sec.
290.1 What subjects does this regulation cover?
290.3 What are the goals of this regulation?
290.5 What definitions apply in this regulation?
290.7 May any of the provisions of this regulation be waived?

Subpart B—Management and Maintenance Provisions

290.10 What maintenance and management standards apply to multifamily housing projects?
290.12 How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?
290.14 What occupancy requirements apply under this regulation?
290.16 How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Subpart C—Notification Requirements

290.20 How will HUD provide the notifications that are required under this regulation?
290.22 What notification must be given before foreclosure?
290.24 Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?
290.26 What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

Subpart D—Disposition Procedures

290.30 What are the different methods that may be used for the disposition of a multifamily housing project?
290.32 What qualities does HUD look for in a purchaser?
290.34 What kind of disposition plan will HUD prepare before selling a project?

Subpart E—All Multifamily Housing Projects—Required Actions

290.40 Are there any required actions that must be taken in the disposition of all multifamily housing projects?
290.42 What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?
290.44 What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?
290.46 What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

Subpart F—Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

290.54 What are the basic actions that may be taken in the disposition of a subsidized project?
290.56 What alternatives to the basic actions are available in the disposition of subsidized projects?

Subpart G—Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

290.64 What are the basic actions that may be taken in the disposition of an unsubsidized project?
290.66 What alternatives to the basic actions are available in the disposition of an unsubsidized projects?

Subpart H—All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

290.70 What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?
290.72 May HUD reduce the sales price for a project?
290.74 May HUD require additional use and rent restrictions?
290.76 May HUD provide short-term loans to facilitate the sale of a project?
290.78 Under what conditions may HUD provide up-front grants?
290.80 What additional tenant-based assistance may HUD offer?
290.82 How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?
290.84 What disposition assistance may be available to rebuild a multifamily housing project?
290.86 What emergency assistance funds may be provided to tenants?
290.88 Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

Subpart I—Sale of HUD-Held Multifamily Mortgages

290.100 What is the purpose of this subpart?
290.102 What affect does this subpart have on the applicability of Civil Rights requirements?
290.104 What tenant protections will apply in the sale of HUD-held subsidized mortgages?
290.106 How will HUD sell current subsidized mortgages?
290.108 How will HUD sell delinquent subsidized mortgages?
290.110 What is HUD's policy for selling HUD-held unsubsidized mortgages?

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 290.1 What subjects does this regulation cover?

(a) Except as provided in paragraph (b) of this section, this part applies to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or had a mortgage insured under the National Housing Act, or which were subject to a loan or a capital advance under Section 202 of the Housing Act of 1959. Subpart I of this part applies to the sale of HUD-held multifamily mortgages.

(b) This part does not apply to multifamily projects being foreclosed by HUD for which the decision to foreclose has been made before the effective date of this part, nor to HUD-owned projects where the initial disposition program has been approved before the effective date of this part. For such projects, the procedures in the regulations at 24 CFR part 290 in effect immediately prior to the effective date of this regulation apply, unless HUD determines, on a case-by-case basis, to apply the new regulations.

(c) This part applies to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or insured under the National Housing Act, or which were subject to a loan under section 202 of the Housing Act of 1959. It also applies to the sale of certain loans and mortgages, and to the management of certain multifamily properties.

§ 290.3 What are the goals of this regulation?

(a) The goals of this part are to provide for the management and

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disposition of HUD-owned multifamily projects, and multifamily projects subject to HUD-held mortgages, in a manner that:

(1) Is consistent with the National Housing Act, section 203 of the Housing and Community Development Amendments of 1978, and other relevant statutes;

(2) Will protect the financial interests of the Federal Government; and

(3) Will, in the least costly fashion among reasonable available alternatives, address the goals of:

(i) Preserving certain housing so that it can remain available to and affordable by low-income persons;

(ii) Preserving and revitalizing residential neighborhoods;

(iii) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(iv) Minimizing the involuntary displacement of tenants;

(v) Maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

(vi) Minimizing the need to demolish multifamily housing projects;

(vii) Adhering to fair housing requirements; and

(viii) Disposing of such projects in a manner consistent with local housing market conditions.

(b) The goals of this part, with respect to HUD-held mortgages, are to sell such mortgages in a manner that:

(1) Reduces losses to the FHA fund;

(2) Decreases HUD's inventory of project mortgages;

(3) Improves the servicing of these mortgages; and

(4) Improves the rental services provided by properties securing HUD-insured and HUD-held mortgages.

(c) *Competing goals.* In determining the manner in which a project is to be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the purposes of this part.

§ 290.5 What definitions apply in this regulation?

The following definitions apply to this part:

Affordable means, with respect to a unit of a multifamily housing project:

(1) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent of 50 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(2) For a unit occupied by a low-income family other than a very low-income family, the unit rent does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(3) The unit, or the family residing in the unit, is receiving assistance under Section 8 of the United States Housing Act of 1937.

Cooperative means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It may include mutual housing associations.

Department means the United States Department of Housing and Urban Development, or HUD.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low-income family means a low-income family as defined at 24 CFR part 813.

Market area means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

Multifamily housing project means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3) 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act (12 U.S.C. 1701 *et seq.*); or is or was subject to a loan under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715k); or mobile home parks under section 207(m) of that Act (12 U.S.C. 1713); or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act, which are classified as single family homes.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

Preexisting tenant means a family that resides in a unit in a multifamily housing project immediately before the project is acquired under this part by a purchaser other than the Department.

Project-based assistance means assistance that is attached to a structure.

Subsidized mortgage means a mortgage, including a purchase money mortgage, on a subsidized project.

Subsidized project means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to this regulation, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l) (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note) (excluding payments of tenant-based Section 8 assistance) (hereinafter project-based Section 8 assistance).

Sufficient habitable, affordable, rental housing is available means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low- and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

Tenant-based assistance means rental assistance that is not attached to a structure.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State.

Unsubsidized mortgage means any HUD-held multifamily mortgage that is not a subsidized mortgage.

Unsubsidized project means a multifamily housing project that is not a subsidized project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

Useful life means, generally, twenty years, but it may be more or less, as determined by the Department.

Very low-income family means a very low-income family as defined at 24 CFR part 813.

§ 290.7 May any of the provisions of this regulation be waived?

The Assistant Secretary for Housing may waive any provision of this part, subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with the HUD Reform Act of 1989 and HUD policies regarding publication of waivers.

Subpart B—Management and Maintenance Provisions

§ 290.10 What maintenance and management standards apply to multifamily housing projects?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

(1) That is HUD-owned;

(2) For which HUD is mortgagee-in-possession; or

(3) That is subject to a mortgage held by HUD.

(b) *Maintenance and management standards.* With respect to projects within the scope of this section, HUD or the owner, as appropriate, shall:

(1) To the greatest extent possible, maintain all occupied projects in a decent, safe, and sanitary condition, and in compliance with any standards established by the Department and under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing;

(2) Maintain full occupancy;

(3) Maintain projects for purposes of providing rental or cooperative housing; and

(4) Manage projects in accordance with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR parts 100 et al, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 that prohibit discrimination against disabled individuals in Federally-assisted activities, and 24 CFR part 9, which prohibit discrimination against disabled individuals in Federally-conducted activities; Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, which prohibit discrimination based on race, color, or national origin in programs receiving Federal financial assistance; the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146, which prohibit discrimination based on age in programs receiving Federal financial assistance; and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

§ 290.12 How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

(1) That is HUD-owned;

(2) For which HUD is mortgagee-in-possession; or

(3) That is subject to a mortgage held by HUD.

(b) *Contracting for management services.* (1) With respect to projects within the scope of this section, HUD may, or may require the owner to, contract for management services for the project with for-profit and nonprofit entities and public agencies, including public housing agencies, on a negotiated, competitive bid, or other basis, at a price determined by HUD to be reasonable, with a manager determined by HUD to be capable of:

(i) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in a decent, safe, and sanitary condition, and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing, and any such standards established by HUD;

(ii) Responding to the needs of tenants and working cooperatively with tenant organizations;

(iii) Providing adequate organizational, staff, and financial resources to the project; and

(iv) Meeting such other requirements as HUD may determine to be necessary or appropriate.

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(2) HUD will conduct outreach efforts to minority-owned and female-owned businesses to become managers of the HUD-owned projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises), Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138 (National Women's Business Enterprise Policy).

§ 290.14 What occupancy requirements apply under this regulation?

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at § 290.42.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.42 to tenants required to vacate the premises.

PROJECT RENTS WHILE HUD IS MIP OR OWNER

Unit rents	*Unit rents* set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program while HUD is mortgagee-in-possession (MIP), or in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project (§ 290.16(a)).
Rents payable by tenants	1. *Tenant rent.* Rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project (§ 290.16(b)(1)). 2. *Rent when tenant does not certify income.* If a tenant does not certify income, the tenant must pay the unit rent (§ 290.16(b)(1)). 3. *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income, HUD will use a utility allowance to reduce the rent (§ 290.16(b)(2)). 4. *Project viability.* HUD may adjust the rent to promote project viability (§ 290.16(b)(3)). 5. *Tenants with rental vouchers or certificates.* Tenant pays rent in accordance with policies and procedures governing such assistance (§ 290.16(b)(4)).

§ 290.16 How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants—(1) Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.*

(1) *Income certification by tenants—(i) In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with part 813 of this title.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title. (Approved by Office of Management and Budget under control number 2502–0204.)

PRE-DISPOSITION NOTIFICATION REQUIREMENTS

Pre-foreclosure (§ 290.22)	1. *Timing.* Not later than 60 days before foreclosure on any mortgage. 2. *Recipients.* (i) Tenants of the project, and (ii) The unit of general local government in which the project is located. 3. *Contents.* (i) General terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose; and; (ii) Whether temporary or permanent relocation is anticipated, and, if so, available displacement and relocation as sistance.
Right of first refusal (§ 290.24).	1. *Timing.* Not later than 30 days after HUD acquires title to a multifamily housing project. 2. *Recipients.* (i) The appropriate unit of general local government; (ii) Public housing agencies in the project's market area; (iii) The State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located. 3. *Contents.* (i) Description of the project; (ii) Invitation to recipients to make bona fide offers to purchase the project; (iii) Offer of right of first refusal for period of up to 90 days; (iv) Method by which the recipient may respond to HUD.
Notice to tenants and the community (§ 290.26).	1. *Timing.* Not later than 60 days after HUD acquires title to a multifamily housing project. 2. *Recipients.* (i) To the tenants of the project; (ii) To the unit of general local government in which the project is located; and (iii) To the community in which the project is located. 3. *Contents.* (i) Description of the project; (ii) Proposed general terms and conditions concerning the sale, future use, and operation of the project; (iii) Invitation for tenants and their organizations, units of general local government, and other public or nonprofit entities to submit comments on the disposition plan, and/or proposals for disposition which will be considered by HUD in making its property disposition determination.

Subpart C—Notification Requirements

§ 290.20 How will HUD provide the notifications that are required under this regulation?

(a) *In general.* HUD may combine two or more of the notifications required by this subpart, as appropriate, to simplify the disposition process.

(b) *Methods of notification—(1) To tenants.* The notices required to be made to tenants under this subpart will be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(2) *To the unit of general local government.* The notice required to be made to a unit of general local government under this section will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under this subpart, the unit of general local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any notification required by this subpart. Any notice required to be made to any party other than a tenant

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or a unit of general local government will be sent by first class mail.

§ 290.22 What notification must be given before foreclosure?

(a) *Timing and recipients of notice.* Not later than 60 days before foreclosing on any mortgage held by the Department on any multifamily housing project, HUD will provide notice of the proposed foreclosure sale to the tenants of the project and to the unit of general local government in which the project is located.

(b) *Contents of notice.* The notice will describe the general terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose on a purchaser other than HUD through the foreclosure. The notice will also state whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of displacement and relocation assistance available under § 290.42.

§ 290.24 Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?

(a) *Timing and recipients of notice.* Not later than 30 days after HUD acquires title to a multifamily housing project, HUD will provide notice of the right of first refusal to the appropriate unit of general local government, as well as public housing agencies in the project's market area, and the State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and contain an invitation to recipients to make bona fide offers to purchase the project. The notice will state:

(1) That for a period specified in the notice, not to exceed 90 days from the time the notification is made, HUD will not sell or offer to sell the project other than to a recipient of the notice, unless the recipients notify HUD sooner that they will not make an offer to purchase the project;

(2) That if a recipient expresses interest within the specified period in acquiring the project, HUD will consult with the interested parties in the preparation of the disposition plan and the terms and conditions of the sale of the project. HUD will accept a bona fide offer to purchase the project if the offer complies with the terms and conditions of the disposition plan for the project, or is otherwise acceptable to HUD;

(3) The method by which the recipient may respond to HUD with an expression of interest or a bona fide offer, or by which the recipient may notify HUD that an offer will not be made.

§ 290.26 What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

(a) *Timing and recipients of notice.* Not later than 30 days after HUD acquires title to a multifamily housing project, HUD will provide notice of HUD's acquisition and proposed disposition of the project to the tenants of the project, to the unit of general local government, and to the community in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD. The notice will, as appropriate, state:

(1) HUD has acquired the project.

(2) During HUD's ownership, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition.

(3) HUD is developing a final disposition plan for the project.

(4) HUD normally seeks to sell HUD-owned projects as rapidly as possible.

(5) HUD's interest in learning of tenant, community, and local government plans and capacity for the acquisition of the project for use as rental or cooperative housing.

(6) HUD's final determination of the terms and conditions to be imposed on the disposition of the project will not be made until after HUD considers the comments received from tenants, the community, and the unit of general local government within the specified comment period.

(7) A brief description of a proposed manner of disposition of the project.

(8) A description of the pending notice of the right of first refusal to purchase the project made under § 290.24.

(9) That alternative uses of units in the project may be part of the project's disposition, and that:

(i) Some of the units in the project may be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project;

(ii) Some of the units in the project may be used in any manner, if the Department and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals;

(iii) Such alternative uses of units may only take place if:

(A) Tenant-based Section 8 rental assistance is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(B) The Department determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

(10) That any very low-income family who is a preexisting tenant of the project who upon disposition of the project would be required to pay rent in an amount in excess of 30 percent of the adjusted income of the family:

(i) For a period of 2 years beginning upon the date of the acquisition of the project under the disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition; and

(ii) The family shall be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

(11) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of relocation assistance available under § 290.42.

(12) That tenants and their organizations, units of general local government, and other public or nonprofit entities are invited to submit comments on the disposition plan, and/or proposals (*e.g.*, expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), which will be considered by HUD in making its property disposition determination.

(13) That comments must be submitted to HUD within 30 days of receipt of the notice.

(14) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office.

METHODS OF DISPOSITION

Foreclosure sales. (§ 290.30(a)).	HUD may dispose of a project at a foreclosure sale: 1. In accordance with the Multifamily Mortgage Foreclosure Act, or 2. In accordance with other Federal or State foreclosure law.
Sale of HUD-owned projects. (§ 290.30(b)).	HUD may sell a HUD-owned project using any of the following procedures: 1. Competitive bid; 2. Auction; 3. Request for proposals; 4. Negotiated sale, as permitted under § 290.30(b)(1) and (2); or 5. Any other method, on such terms as HUD considers appropriate.
Transfer for use under other HUD programs. (§ 290.30(c)).	HUD, under an agreement, may transfer a multifamily housing project: 1. To a public housing agency (PHA) for use of the project as public housing; or 2. To an entity eligible to own or operate 202 or 811 supportive housing.

Subpart D—Disposition Procedures

§ 290.30 What are the different methods that may be used for the disposition of a multifamily housing project?

HUD may use any of the following methods, as appropriate, for the disposition of a multifamily housing project:

(a) *Foreclosure sales.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure law, on such terms as HUD considers appropriate to further the purpose stated in § 290.3.

(b) *Sale of HUD-owned projects.* HUD may dispose of a HUD-owned multifamily project by competitive bid, auction, request for proposals, or other method, on such terms as HUD considers appropriate to further the purpose stated in § 290.3. When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(1) HUD may negotiate the sale of any project to an agency of the Federal, State, or local government.

(2) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (*e.g.*, nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low- to moderate-income rental housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- and moderate-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(c) *Transfer for use under other HUD programs.*—(1) *In general.* Subject only to the requirements of an agreement under paragraph (c)(2) of this section, HUD may transfer a multifamily housing project:

(i) To a public housing agency (PHA) for use of the project as public housing; or

(ii) To an entity eligible to own or operate housing assisted under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act for use as supportive housing under either of those sections.

(2) *Transfer agreement.* An agreement providing for the transfer of a project as described in paragraph (c)(1) of this section must:

(i) Contain such terms, conditions, and limitations as HUD determines to be appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 202 of the Housing Act of 1959, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act, as applicable; and

(ii) Ensure that no tenant of the project will be displaced as a result of the transfer.

§ 290.32 What qualities does HUD look for in a purchaser?

(a) *Foreclosure sales.* HUD will dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Department determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department.

(b) *HUD-owned multifamily housing projects.* Sales of HUD-owned multifamily housing projects may be made only to a purchaser determined by the Department to be capable of:

(1) Satisfying the conditions of the disposition plan developed under § 290.34 for the project;

(2) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department;

(3) Responding to the needs of the tenants and working cooperatively with tenant organizations;

(4) Providing adequate organizational, staff, and financial resources to the project; and

(5) Meeting such other requirements as HUD may determine to be appropriate for the particular project.

§ 290.34 What kind of disposition plan will HUD prepare before selling a project?

(a) *In general.* Before disposing of a HUD-owned multifamily housing

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project. HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Market-wide plans.* In developing the disposition plan under this section for a HUD-owned multifamily housing project located in a market area in which at least 1 other HUD-owned multifamily housing project is located, HUD may coordinate the disposition of HUD-owned multifamily housing projects located within the same market area to the extent and in such a manner as the Department determines appropriate to carry out the goals under § 290.3.

(c) *Sales price.* The sales price in the disposition plan will be reasonably related to the intended use of the project after the sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under Section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that HUD considers appropriate.

(d) *Community and tenant input.* In developing the initial and final disposition plans, HUD will consider any timely input from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project, including the comments received in response to the notice required by § 290.26. To obtain this input, HUD may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or this part, for the provision of such technical assistance. Recipients of technical assistance funding under the provisions referred to in this subparagraph may provide technical assistance to the extent of such funding, notwithstanding the source of the funding.

(e) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

TABLE OF ACTIONS TO FACILITATE DISPOSITION

All Multifamily Housing Projects [Subpart E].	*Required Actions* 1. Displacement requirements (§ 290.42). 2. Very-low income preexisting tenant—2 year rent freeze if rent after disposition more than 30 percent of adjusted income (§ 290.44). 3. Nondiscrimination against Section 8 certificate holders and voucher holders (§ 290.46).
Subsidized Projects [Subpart F].	*Basic Actions* 1. Provide project-based Section 8 assistance to at least all units that, before acquisition or foreclosure, received: Rent Supp, RAP, Sec. 23, project-based Section 8 (§ 290.54(a)). 2. Vacancy in any assisted unit must be filled by a family that is eligible for the assistance (§ 290.54(b)). 3. Rent and use restrictions on BMIR, 236, or 202 subsidized project units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 (§ 290.54(c)). *Alternatives to Basic Actions* 1. Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects (§ 290.56(a)). 2. Substitution of tenant-based Section 8 assistance to low-income families instead of Project-based assistance to units (§ 290.56(b)). 3. Use of the additional assistance and restrictions permitted in subpart H (§ 290.56(c)).
Unsubsidized Projects [Subpart G]	*Basic Actions* 1. Provide project-based Section 8 assistance for all units that, before acquisition or foreclosure, received assistance under: (i) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983); (ii) The property disposition program under section 8(b) of such Act; (iii) The project-based certificate program under section 8 of such Act; (iv) The moderate rehabilitation program under section 8(e)(2) of such Act; (v) Section 23 of such Act (as in effect before January 1, 1975); (vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or (vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965 (§ 290.64(a)). 2. Provide tenant-based Section 8 assistance to preexisting tenants of LMSA-assisted units (§ 290.64(b)). *Alternatives to Basic Actions* 1. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (§ 290.66(a)). 2. Use of the additional assistance and restrictions permitted in subpart H (§ 290.66(b)).
All Multifamily Housing Projects [Subpart H].	*Additional Actions* 1. Discounted sales price (§ 290.72). 2. Additional use and rent restrictions (§ 290.74). 3. Short-term loans (§ 290.76). 4. Up-front grants (§ 290.78). 5. Additional tenant-based assistance (§ 290.80). 6. Alternative uses (§ 290.82) 6. Rebuilding (§ 290.84). 7. Emergency assistance funds (§ 290.86). 8. Determination not to preserve (§ 290.88).

Subpart E—All Multifamily Housing Projects—Required Actions

§ 290.40 Are there any required actions that must be taken in the disposition of all multifamily housing projects?

Yes, the requirements regarding tenants who are displaced (explained in § 290.42), unassisted very low-income tenants (explained in § 290.44), and nondiscrimination against Section 8 certificate holders and voucher holders (explained in § 290.46), apply in the disposition of all multifamily housing projects.

§ 290.42 What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, the owner of the project shall comply with this section, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily project, but is not subject to paragraph (d) of this section (e.g., occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily project or as a direct result of the foreclosure of a HUD-held mortgage on a multifamily housing project or sale of a HUD-owned project without federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable (and where appropriate, accessible), decent, safe, and sanitary dwelling unit in a HUD-owned multifamily project, in a public housing project, or in another HUD subsidized multifamily housing project; or

(ii) Assistance under the Section 8 Certificate program (see § 882.209(a)(4)(ii)(B) of this title) or the Housing Voucher program (see § 887.155(c) of this title), if the assistance is available; and

(5) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels*—(1) *General.* Whenever assistance under 24 CFR part 886, subpart C (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party, any resulting displacement is subject to paragraph (d) of this section. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of "initiation of negotiations".* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term "displaced person" means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes, but is not limited to:

(A) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date of the transfer of title to the purchaser.

(B) Any person that HUD determines was displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project.

(C) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the transfer of title to the purchaser, if the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, sanitary, and where appropriate, accessible dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or that is affordable, as defined in this part.

(D) A tenant-occupant of a dwelling unit who is required to relocate temporarily for the project, but does not return to the building/complex, if either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex for the project, if either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (d)(3)(i) of this section, a person does not qualify as a "displaced person" if:

(A) The person is excluded under 49 CFR 24.2(g)(2).

(B) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(C) The person moves into the property after transfer of title to the purchaser.

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who

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must relocate temporarily (*e.g.*, to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.44 What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?

HUD will require that for a period of 2 years, beginning upon the date of disposition of a multifamily housing project, the rent for any unit occupied by a very low-income family, that is a preexisting tenant and that would be required to pay a rent that is more than 30 percent of the adjusted income (as defined in part 813) of the family, may not be increased above the rent charged immediately before the acquisition. Such a family will also be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

§ 290.46 What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

Subpart F—Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

§ 290.54 What are the basic actions that may be taken in the disposition of a subsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of a subsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in § 290.56, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance to assist at least all of a subsidized project's units that were covered, before acquisition or foreclosure, by the rent subsidies (Rent Supp, RAP, Sec. 23, project-based Section 8) included in the definition of a subsidized project.

(b) *Assisted units—tenant eligibility restrictions.* The contract for project-based Section 8 assistance in accordance with paragraph (a) of this section, will provide that when a vacancy occurs in any unit that requires such assistance, but which was occupied by a family ineligible for such assistance, the owner will lease the available unit to a family that is eligible for the assistance.

(c) *Unassisted units—use and rent restrictions.* HUD will require use or rent restrictions on BMIR, 236, or 202 subsidized projects to ensure that units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 rent subsidies remain available and affordable for the remaining useful life of the project.

§ 290.56 What alternatives to the basic actions are available in the disposition of subsidized projects?

In the disposition of a subsidized project, HUD may take the following alternative actions instead of the basic actions listed in § 290.54:

(a) *Unit substitution: Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects.* Instead of providing project-based Section 8 assistance as required by § 290.54(a), HUD may, in unsubsidized projects located in the same market area, provide project-based Section 8 assistance to units to be occupied by very low-income persons, or impose use and rent restrictions to assure that units remain available to and affordable by very low-income families for the remaining useful life of the project. When this unit substitution procedure is used, the total number of unsubsidized project units provided with assistance and/or placed under use and rent restrictions must be at least equal to the number of subsidized projects units that would have received project-based Section 8 in the absence of unit substitution. In addition, HUD will make tenant-based Section 8 assistance available to low-income families residing in the subsidized project's units that would have received project-based Section 8 assistance if this unit substitution alternative had not been used.

(b) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as required under § 290.54(a), HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units that would have been eligible for the project-based Section 8 assistance under § 290.54. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance in not more than 10 percent of the aggregate number of subsidized project units disposed of by HUD in any fiscal year, and only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance. The number of units eligible for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(c) *Additional actions under subpart H.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of a subsidized project as required under § 290.54(a), HUD may make use of the additional actions to facilitate the disposition of multifamily housing projects permitted in subpart H of this part.

Subpart G—Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

§ 290.64 What are the basic actions that may be taken in the disposition of an unsubsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of an unsubsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in § 290.66, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance for all of an unsubsidized project's units that were covered, before acquisition or foreclosure, by an assistance contract under:

(1) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (the 1937 Act) (as in effect before October 1, 1983);

(2) The property disposition program under section 8(b) of the 1937 Act;

(3) The project-based certificate program under section 8 of the 1937 Act;

(4) The moderate rehabilitation program under section 8(e)(2) of the 1937 Act;

(5) Section 23 of the 1937 Act (as in effect before January 1, 1975);

(6) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(7) Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965.

(b) *LMSA-assisted units—provision of tenant-based section 8 assistance.* HUD will provide tenant-based Section 8 assistance for families that are preexisting tenants of unsubsidized projects in units that, immediately before foreclosure or acquisition of the project by HUD, were covered by an assistance contract under the loan management set-aside program under section 8(b) of the United States Housing Act of 1937

§ 290.66 What alternatives to the basic actions are available in the disposition of unsubsidized projects?

In disposing of an unsubsidized project, HUD may take the following alternative actions instead of the basic actions listed in § 290.64:

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as required under § 290.64, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units eligible for the project-based Section 8 assistance under § 290.64. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

(b) *Additional actions under subpart H.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of an unsubsidized project as required under § 290.64, HUD may make use of the additional assistance and restrictions for the disposition of multifamily housing projects permitted in subpart H of this part.

Subpart H—All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

§ 290.70 What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?

The additional actions to facilitate disposition available under this subpart are intended to replace, supplement or make more cost effective the Section 8 assistance that would otherwise be required, and are to be provided in a manner consistent with the goals of § 290.3 and unless otherwise noted:

(a) On terms that will ensure that at least the units in the project otherwise required to receive project-based Section 8 assistance in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project) are available to and affordable by low-income persons for the remaining useful life of the project, with use or rent restrictions as HUD may prescribe; and

(b) With tenant-based Section 8 assistance to any very low-income families who would have received project-based assistance under Section 8 in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project), but because of action taken under subpart H of this part, did not receive such assistance, and are left residing in units of the project with rents that exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937 for very low-income families.

§ 290.72 May HUD reduce the sales price for a project?

HUD may reduce the selling price of a project. The sales price for a project will be reasonably related to the intended use of the property as affordable housing for very low-income tenants after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of project-based Section 8 assistance being made available by HUD in the disposition of the project, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Department considers appropriate.

§ 290.74 May HUD require additional use and rent restrictions?

Consistent with the guidelines in § 290.70, HUD may require units in a project to be subject to use or rent restrictions to provide that the units will be available to and affordable by low- and very low-income persons for the remaining useful life of the project.

§ 290.76 May HUD provide short-term loans to facilitate the sale of a project?

HUD may provide short-term loans to facilitate the sale of a HUD-owned multifamily housing project if:

(a) Authority for such loans is provided in advance in an appropriation Act;

(b) The loan has a term of not more than 5 years;

(c) HUD determines, based upon documentation provided by the purchaser, that the purchaser has obtained a commitment of permanent financing to replace the short-term loan from a lender who meets standards established by the Department; and

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(d) The terms of the loan are consistent with prevailing practices in the marketplace or the provision of the loan results in no cost to the Government, as defined in section 502 of the Congressional Budget Act of 1974.

§ 290.78 Under what conditions may HUD provide up-front grants?

For a HUD-owned multifamily housing project, HUD may utilize the budget authority provided for contracts issued under this part for project-based Section 8 assistance to (in addition to providing project-based Section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other HUD-approved related development costs to reduce the level of Section 8 contract rents if HUD determines that action under this section is more cost-effective than providing project-based Section 8 assistance in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project).

§ 290.80 What additional tenant-based assistance may HUD offer?

To facilitate the sale of a multifamily housing project, HUD may make tenant-based Section 8 assistance available to families eligible to receive such assistance residing in a multifamily housing project that do not otherwise qualify for project-based assistance.

§ 290.82 How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

(a) *In general.* Notwithstanding any other provision of law, after providing notice to and an opportunity for comment by preexisting tenants, HUD may allow up to:

(1) 10 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be made available for uses other than rental or cooperative uses, such as, low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

(2) 5 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be used in any manner, if HUD and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

(b) *Computation of number of eligible units.* The number of units eligible for alternate uses in any fiscal year will be determined at the beginning of the fiscal year as the applicable percentages in paragraph (a) (1) or (2) of this section (*i.e.*, either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

(c) *Displacement protection.* HUD may take actions under paragraph (a) of this section only if:

(1) Tenant-based Section 8 assistance is made available to each family eligible for such assistance residing in the project that is displaced as a result of such actions; and

(2) HUD determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

§ 290.84 What disposition assistance may be available to rebuild a multifamily housing project?

(a) Notwithstanding any provision of section 8 of the United States Housing Act of 1937, HUD may provide project-based assistance up to the levels required in § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project) to support the rebuilding of a HUD-owned multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with a disposition under this part, if HUD determines all of the following:

(1) The project is not being maintained in a decent, safe, and sanitary condition;

(2) The costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation;

(3) The unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project determined by HUD to be satisfactory;

(4) The rebuilding is a part of a local neighborhood revitalization plan approved by the unit of general local government.

(b) The provisions of § 290.42 apply to any tenants of the project who are displaced through an action taken under paragraph (a) of this section.

§ 290.86 What emergency assistance funds may be provided to tenants?

HUD may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act for the provision of assistance under that Act on behalf of eligible families who would reside in any multifamily housing projects.

§ 290.88 Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more those listed in paragraphs (a) through (g) of this section. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in § 290.42.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

Subpart I—Sale of HUD-Held Multifamily Mortgages

§ 290.100 What is the purpose of this subpart?

The purpose of this subpart is to set out HUD's policy regarding the sale of subsidized and unsubsidized HUD-held mortgages. Except as otherwise provided in § 290.106(a)(2), the Department will sell these mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this part will govern the sale.

§ 290.102 What effect does this subpart have on the applicability of Civil Rights requirements?

Nothing in this subpart relieves HUD or housing that receives federal financial assistance from federal civil rights requirements, including section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, the Age Discrimination Act of 1975, Executive Order 11063, and related regulations and requirements. This includes housing in which less than 50% of the units are receiving housing assistance payments under either Section 23 or Section 8 of the United States Housing Act of 1937 and housing in which the rent of any unit is paid by a Section 8 certificate or voucher.

§ 290.104 What tenant protections will apply in the sale of HUD-held subsidized mortgages?

HUD will only sell subsidized mortgages if the sale is part of a transaction that will ensure that the project subject to the mortgage will continue to operate, at least until the maturity date of the mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the mortgage was insured prior to its assignment.

§ 290.106 How will HUD sell current subsidized mortgages?

HUD will sell current mortgages, as follows:

(a) *Current mortgages with FHA mortgage insurance* will be sold either:

(1) On a competitive basis to FHA-approved mortgagees; or

(2) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government, if:

(i) The terms of the sale include an agreement by the State or local government, or an agency of the State or local government, to:

(A) Act as mortgagee or owner of a beneficial interest in the mortgage; and

(B) Ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and

(ii) The sales price is the best price that HUD can obtain from an agency of a State or local government while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(b) *Current mortgages without FHA mortgage insurance* will be sold if HUD can offer protections equivalent to those listed for an insured sale in paragraph (a) of this section.

§ 290.108 How will HUD sell delinquent subsidized mortgages?

Delinquent mortgages will be sold only if, as part of the sales transaction:

(a) The mortgages are restructured; and

(b) Either FHA mortgage insurance or equivalent protections are provided.

§ 290.110 What is HUD's policy for selling HUD-held unsubsidized mortgages?

HUD's policy for selling HUD-held unsubsidized mortgages is as follows:

(a) *Current mortgages* may be sold with or without FHA mortgage insurance.

(b) *Delinquent mortgages* may be sold without FHA mortgage insurance. However, delinquent mortgages will not be sold if:

(1) HUD believes that foreclosure is unavoidable; and

(2) The project securing the mortgage is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

2. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

3. Section 886.302 is amended by revising the definitions of the terms "*Eligible project or project*", and "*Owner*", to read as follows:

§ 886.302 Definitions.

* * * * *

Eligible project or project. A multifamily housing project (see 24 CFR part 290):

(1) For which the disposition in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families; and

(2) The units of which are decent, safe, and sanitary.

* * * * *

Owner. The purchaser, including a cooperative entity or an agency of the Federal Government, under this subpart, of a HUD-owned project; or the purchaser, including a cooperative entity or an agency of the Federal Government, through a foreclosure sale of a project that was subject to a HUD-held mortgage.

* * * * *

4. Section 886.310 is revised to read as follows:

§ 886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A).

5. Section 886.311 is revised to read as follows:

§ 886.311 Term of contract.

The contract term for any unit shall not exceed 15 years, except that the term may be less than 15 years as

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provided under either paragraph (a) or (b) of this section.

(a) The contract term may be less than 15 years if HUD finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be maintained under a contract having a term less than 15 years. Where a contract of less than 15 years is provided under this paragraph, the amount of rent payable by tenants of the project for units assisted under such a contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

(b) The contract term may be less than 15 years if the assistance is provided under a contract authorized under section 6 of the HUD Demonstration Act of 1993, and pursuant to a disposition plan under this part for a project that is determined by the HUD to be otherwise in compliance with this part.

6. Section 886.319 is revised to read as follows:

§ 886.319 Responsibility for contract administration.

HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

Dated: October 13, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 95–5093 Filed 3–1–95; 8:45 am]

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federal register

Thursday
March 2, 1995

Part VIII

Department of Education

Bilingual Education: Systemwide Improvement Grants; Notice

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DEPARTMENT OF EDUCATION

Bilingual Education: Systemwide Improvement Grants

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year (FY) 1996 and following years.

SUMMARY: The Secretary proposes a priority for FY 1996 and following years under the Bilingual Education: Systemwide Improvement Grants program authorized under title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of this Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) to implement districtwide bilingual education programs or special alternative instructional programs that will serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Harry Logel, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harry Logel. Telephone: (202) 205–5530.

SUPPLEMENTARY INFORMATION: The Systemwide Improvement Grants program is a new program. Under section 7115(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire LEA, that serve a significant number of LEP children and youth in one or more LEAs with significant concentrations of these children and youth.

To assist those LEAs that have a significant concentration of LEP children and youth, the Secretary proposes to require that to be eligible for funding the project must serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment. By using a 1,000 or 25 percent threshold, the Secretary is targeting those LEAs in which LEP students constitute a major portion of the LEAs' programs and operations. The Secretary chose to allow either a number or a percentage threshold to include small and large school districts with significant concentrations of LEP students. If the Secretary had used only a percentage threshold, some of the larger districts would have been excluded from participating in the program even though they had significant numbers of LEP students enrolled in their districts. Using the 1,000 or 25 percent threshold, approximately 450 LEAs would be eligible to participate under this program. The number of eligible LEAs is based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

The Secretary will announce the final priority for FY 1996 and following years in a notice in the **Federal Register** at a later date. The final priority for FY 1996 and following years will be determined by response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition for FY 1996 will be published in the **Federal Register** following publication of the notice of final priority. A notice of final priority for FY 1995 for this program is published elsewhere in this issue of the **Federal Register**

Priority

Under section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5611, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 7425.

(Catalog of Federal Domestic Assistance Number 84.291 Bilingual Education: Systemwide Improvement Grants)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5036 Filed 3–1–95; 8:45 am]

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Part IX

Department of Education

Bilingual Education: Systemwide Improvement Grants; Notice

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DEPARTMENT OF EDUCATION

Bilingual Education: Systemwide Improvement Grants

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority for FY 1995 under the Bilingual Education: Systemwide Improvement Grants program authorized under title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of this Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) to implement districtwide bilingual education programs or special alternative instructional programs that will serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

EFFECTIVE DATE: This priority takes effect April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Harry Logel, U.S. Department of Education, 600 Independence Avenue SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Systemwide Improvement Grants program is a new program. Under section 7115(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire LEA, that serve a significant number of LEP children and youth in one or more LEAs with significant concentrations of these children and youth.

To assist those LEAs that have a significant concentration of LEP children and youth, the Secretary requires that to be eligible for funding the project must serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment. By using a 1,000 or 25 percent threshold, the Secretary is targeting those LEAs in which LEP students constitute a major portion of the LEAs' programs and operations. The Secretary chose to allow either a number or a percentage threshold to include small and large school districts with significant concentrations of LEP students. If the Secretary had used only a percentage threshold, some of the larger districts would have been excluded from participating in the program even though they had significant numbers of LEP students enrolled in their districts. Using the 1,000 or 25 percent threshold, approximately 450 LEAs would be eligible to participate under this program. The number of eligible LEAs is based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition for FY 1995 will be published in the **Federal Register** at a later date.

Priority

Under section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995 the Director, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final priority, which will apply only to the FY 1995 grant competition.

Elsewhere in this issue of the **Federal Register**, the Director is publishing a notice of proposed priority for this program and offering interested parties the opportunity to comment. The proposed priority, which is identical to this final priority, would apply to grant competitions under the program beginning in FY 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7425

(Catalog of Federal Domestic Assistance Number 84.291 Bilingual Education: Systemwide Improvement Grants)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs

[FR Doc. 95–5035 Filed 3–1–95; 8:45 am]

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Part X

Department of Education

Bilingual Education: Comprehensive School Grants; Notice

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DEPARTMENT OF EDUCATION

Bilingual Education: Comprehensive School Grants

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year (FY) 1996 and following years.

SUMMARY: The Secretary proposes a priority for FY 1996 and following years under the Bilingual Education: Comprehensive School Grants program authorized in title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of the Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to those local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) proposing projects that will serve schools with significant concentrations of limited English proficient (LEP) students.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Harry Logel, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harry Logel. Telephone: (202) 205–5530.

SUPPLEMENTARY INFORMATION: The Comprehensive School Grants program is a new program. Under section 7114(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement schoolwide bilingual education programs or special alternative instructional programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve virtually all LEP children and youth in schools with significant concentrations of these children and youth.

To assist those schools with significant concentrations of LEP children and youth, the Secretary proposes to require that to be eligible for funding the project must serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment. By using a 25 percent threshold the Secretary is targeting those schools in which LEP students constitute a major portion of the school population. The Secretary chose a percentage threshold rather than a number threshold to include schools with small student enrollments. Using the 25 percent threshold, approximately 4,400 schools would be eligible to participate under this program. These numbers are based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

The Secretary will announce the final priority for FY 1996 and following years in a notice in the **Federal Register** at a later date. The final priority for FY 1996 and following years will be determined by response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition for FY 1996 will be published in the **Federal Register** following publication of the notice of final priority. A notice of final priority for FY 1995 for this program is published elsewhere in this issue of the **Federal Register**.

Priority

Under section 7114(a) of the Act, the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Intergovernmentary Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5611, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 7424.

(Catalog of Federal Domestic Assistance Number 84.290 Bilingual Education: Comprehensive School Grants.)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5037 Filed 3–1–95; 8:45 am]

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Part XI

Department of Education

Bilingual Education: Comprehensive School Grants; Notice

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DEPARTMENT OF EDUCATION

Bilingual Education: Comprehensive School Grants

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority for FY 1995 under the Bilingual Education: Comprehensive School Grants program authorized in title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of the Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to those local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) proposing projects that will serve schools with significant concentrations of limited English proficient (LEP) students.

EFFECTIVE DATE: This priority takes effect April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Harry Logel, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Comprehensive School Grants program is a new program. Under section 7114(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement schoolwide bilingual education programs or special alternative instructional programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve virtually all LEP children and youth in schools with significant concentrations of these children and youth.

To assist those schools with significant concentrations of LEP children and youth, the Secretary requires that to be eligible for funding the project must serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment. By using a 25 percent threshold the Secretary is targeting those schools in which LEP students constitute a major portion of the school population. The Secretary chose a percentage threshold rather than a number threshold to include schools with small student enrollments. Using the 25 percent threshold, approximately 4,400 schools would be eligible to participate under this program. These numbers are based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition for FY 1995 will be published in the **Federal Register** at a later date.

Priority

Under section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Director, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final priority, which will apply only to the FY 1995 grant competition.

Elsewhere in this issue of the **Federal Register**, the Director is publishing a notice of proposed priority for this program and offering interested parties the opportunity to comment. The proposed priority, which is identical to the final priority, would apply to grant competitions under the program beginning in FY 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7424.

(Catalog of Federal Domestic Assistance Number 84.290 Bilingual Education: Comprehensive School Grants.)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5038 Filed 3–1–95; 8:45 am]

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Part XII

Department of Housing and Urban Development

24 CFR Part 888

Low Income Housing; Housing Assistance Payments (Section 8); Fair Market Rent Calculation Methods; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. R–95–1764; FR–3694–P–01]

RIN 2501–AB76

Fair Market Rents for Section 8 Housing Assistance Payments Program; Amendments to Method of Calculating

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to the Department's regulations at 24 CFR part 888 governing the method of calculating Fair Market Rents (FMRs) for the Section 8 Rental Certificate program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation program (including Single Room Occupancy); housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify the use of such FMRs.

DATES: Comments due date: April 3, 1995.

ADDRESSES: Interested persons are invited to submit comments on this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications must refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing, (202) 708–0477 (TDD: (202) 708–0850), for questions relating to the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs;

Barbara Hunter, Program Planning Division, Office of Multifamily Housing Management, (202) 708–3944 (TDD: (202) 708–4594), for questions relating to all other Section 8 programs.

David Pollack, Office of Community Planning and Development, (202) (708–1234) (TDD: (202) 708–2565), for questions relating to Moderate Rehabilitation, Single Room Occupancy (SRO).

Michael Allard, Office of Policy Development and Research, (202) (708–0577) (TDD: 708–1455), for questions relating to measurement of rent levels.

Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Introduction and Applicability

Section 8 of the U. S. Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid low-income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) established by HUD for the Rental Certificate program, or by payment standards established by local housing authorities for the Rental Voucher program based on the FMRs. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately-owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. (The amount of rent payable by a resident of assisted housing is based on income, not the FMR.)

Under section 8(c) of the Act, the Secretary of HUD is directed to establish FMRs periodically, but not less frequently than annually. HUD publishes proposed FMRs each year, and after a period of public comment, publishes the final FMRs for the next fiscal year.

The method used to calculate FMRs is described in 24 CFR part 888, subpart A. With this publication HUD is updating that regulation to specify the most current information being used. This rule would amend the regulations:

(1) To change the FMR rent standard from the 45th to 40th percentile rent of the rent distribution of rental housing units;

(2) To identify Random Digit Dialing (RDD) telephone surveys as a data source used to establish FMRs for selected individual areas and to develop rent-change factors for updating FMRs;

(3) To provide that FMRs for manufactured home spaces are set at 30 percent of the FMR for a two-bedroom housing unit;

(4) To authorize the Secretary to establish FMR areas that differ from the OMB definitions of metropolitan areas where the OMB definitions are determined by HUD to be larger than housing market areas; and

(5) To state the requirement that, in order to be considered as a basis for revising the FMRs, public comments on proposed FMRs must contain statistically valid rental housing survey data justifying the requested changes.

The amendments to the method of calculating FMRs proposed in this rule would apply to the following Section 8 Housing Assistance Payments programs: The Rental Certificate program, including space rentals by owners of manufactured homes; the Moderate Rehabilitation program and Moderate Rehabilitation SRO Program; the loan management program for projects with HUD-insured or HUD-held mortgages, as well as the Property Disposition program; and any other HUD programs whose regulations provide for the use of these FMRs (e.g., programs to assist the homeless). In addition, the rule would amend the regulations to reflect use of FMRs to establish payment standards for the Rental Voucher program.

II. Discussion of Amendments

Change in Percentile (§ 888.113(a))

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 45th percentile rent, the dollar amount below which 45 percent of the standard quality rental housing units rent.

This rule would change the definition to the 40th percentile rent of the rent distribution of standard quality rental housing units. The impact of this proposal is that FMRs on average will be 3.3 percent less than if they were set at the 45th percentile level. The current FMR standard is believed to be higher than necessary for successful operation of the affected programs. HUD believes that the change in the FMR standard will not significantly alter the amount, or quality, of rental housing available to program participants. The sample data used to calculate FMRs will continue to exclude substandard units and public housing units, and the FMR standard will continue to be based on only units occupied by recent movers.

Added Data Source (§ 888.113(c))

In developing the base-year FMR estimates, HUD uses the most accurate and current data available. The regulations currently provide for two sources of survey data: (1) The decennial Census and (2) post-Census American Housing Surveys (AHSs). The regulations also currently provide for base-year FMRs to be updated each year using Consumer Price Index (CPI) data for rents and for utilities. This rule would amend the regulations to include Random Digit Dialing (RDD) telephone surveys as a third data source for base-year estimates and for rent-change factors for updating rents in FMR areas without a local CPI survey. The RDD telephone survey technique is based on a sampling procedure that uses computers to select random samples of telephone numbers. Each sampled number is phoned to establish eligibility for the survey and, if eligible, the respondent is asked about the unit's rent and utility usage.

Three types of RDD surveys are used, the first two on behalf of HUD, and the third by individual PHAs. Under contract with HUD, a professional survey firm does large-scale RDD surveys to establish base-year FMRs for areas where HUD suspects FMRs might not correspond well with current market conditions. About 60 areas are chosen to be surveyed each year. In addition, the same firm also does 20 RDD surveys to establish rent-change factors in the metropolitan and nonmetropolitan parts of each of the ten HUD geographic regions.

Finally, individual PHAs are encouraged to sponsor or conduct various levels of RDD surveys if they wish to comment on proposed FMRs. The larger PHAs are encouraged to contract with professional survey firms to do large-scale RDD surveys. Smaller PHAs are allowed to use a simplified version of the RDD survey that makes it possible for them to do their own RDD surveys. (PHAs and other commenters are not required to use RDD surveys as long as they provide statistically-reliable, unbiased estimates of the 40th percentile gross rent.)

All of the RDD survey techniques involve drawing random samples of renter units. All exclude public housing units and other subsidized housing where the respondent does not know the full market rent. The surveys also exclude newly-built units and units for which no cash rent is paid. They do not exclude substandard units because there is no practical way to determine housing quality from telephone interviews. However, a HUD analysis conducted specifically to address this issue has shown that the slight downward bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Tests in areas where Census, AHS, and CPI data on rents are available have shown that professionally-conducted RDD surveys have a high degree of statistical accuracy. In those tests, HUD concluded that there was a 95 percent likelihood that the rent estimates developed using this approach were within 3 to 4 percent of the actual rent value and that virtually all were within 5 percent. The PHA-conducted surveys using the modified RDD technique are less precise but are still within acceptable ranges of accuracy.

FMRs for Manufactured Home Spaces (§ 888.113(e))

This rule also proposes to calculate FMRs for manufactured home spaces as a percentage of the FMR for two-bedroom units. The base estimates used to calculate the FMRs for manufactured home spaces were not revised in FY 1994 because no data were available in the 1990 Census on manufactured home space rentals, and no other source of reliable data was found that could be used for this purpose.

Originally the FMRs for rental of manufactured home spaces were established using AHS data (no longer available) for the nonmetropolitan parts of states and HUD Field Office surveys of the metropolitan areas. Over the years the FMRs for additional individual areas were established on the basis of local surveys submitted as public comments.

Because the FMRs for manufactured home spaces are based on old survey data, and there is no current data source to update these estimates, HUD does not consider them to be sufficiently accurate for continued use. Further, the very limited use of this part of the Certificate program does not justify the cost of obtaining the necessary survey data to re-benchmark the FMRs. HUD is proposing, therefore, to amend this rule to establish FMRs for manufactured home spaces at 30 percent of the applicable Section 8 two-bedroom FMR for the Rental Certificate program. HUD arrived at the 30 percent standard after analyzing the existing manufactured home space FMRs and concluding that the substantial majority of the FMRs were within a 20 to 30 percent range of the two-bedroom FMRs.

HUD will continue to accept public comments requesting modification of the proposed manufactured home space FMRs for those areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-valid survey data that show the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. This program uses the same FMR area definitions as the Rental Certificate program. In addition HUD is proposing to retain the manufactured home space FMR revisions approved since 1990. The reason for continuing to use the revised FMRs is that they are based on recent survey data that HUD determined to be valid. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

FMR Areas (§ 888.113(b)

Section 888.113(b) would be amended to authorize the Secretary to make exceptions to the use of the Office of Management and Budget definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) as FMR areas where HUD determines that use of an MSA or PMSA would encompass an area that is larger than a housing market area.

Public Comments On Proposed FMRs (§ 888.115)

The proposed rule states the requirement that, in order to be considered for approval, public comments on proposed FMRs must contain statistically-valid rental housing survey data justifying the requested revision. Each year, the Department receives, in response to its request for public comments on proposed FMRs, comments that merely object to the proposed FMRs for the area, but do not contain any documentation to support the assertion that the FMRs are inaccurate. The Notice announcing proposed FMRs has always stipulated that such documentation be included in the comment. This rule would make the regulations for the program clear that adequate supporting rental housing survey data are necessary to justify a requested change.

III. Justification for Reduced Comment Period

HUD's general policy is to provide a 60-day public comment period. For this proposed rule, however, HUD is providing only a 30-day comment period. The reduced comment period is justified because the public has had ample notice that HUD was contemplating the 40th percentile Fair Market Rent (FMR) standard.

On June 23, 1994 (59 FR 32492), HUD published a notice in the **Federal Register** containing two separate sets of proposed FMRs—one based on the 45th

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percentile rental distribution of standard quality rental housing units, and the other based on the 40th percentile rent of the same rental housing distributions. The published notice explained that HUD was considering a 40th percentile FMR standard. A reduction in the FMR standard was also announced as a proposed cost savings measure in HUD's FY 1995 budget presentation.

The June 23, 1994 Notice requested public comment on the proposed FMRs at both the 45th and 40th percentiles. Since the public has already had the opportunity to consider the proposed change in the FMR standard and to comment on the actual proposed FMRs at the 40th percentile level, an abbreviated comment period on the same idea will not have an adverse impact on the ability of the public to participate in this rulemaking.

The Department believes this abbreviated comment period is justified in order to speed the publication of a final rule which will allow more low income families to receive housing assistance.

IV. Other Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule was reviewed and approved by the Office of Management and Budget as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the proposed rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

Environmental Assessment

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the establishment and review of fair market rents is categorically excluded from the Department's regulations implementing the National Environment Policy Act at 24 CFR 50.20(*l*).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have a significant impact on family formation, maintenance, or well-being. The proposed rule would amend the method for calculating Fair Market Rent for various Section 8 assisted housing programs, and would not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that this proposal would not involve the preemption of State law by Federal statute or regulation and would not have Federalism implications. The establishment of Fair Market Rents does not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Semi-Annual Regulatory Agenda

This rule was listed as sequence number 1727 in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

Accordingly, title 24 of the Code of Federal Regulations would be amended as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

1. The authority citation for part 888 would continue to read as follows:

Authority: 42 U.S.C. 1437c, 1437f, and 3535(d).

2. Sections 888.101 and 888.105 would be removed, and § 888.111 would be revised to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

The Fair Market Rents (FMRs) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program, including space rentals by owners of manufactured homes under the Section 8 Certificate Program, the Section 8 Moderate Rehabilitation Program, Section 8 existing housing project-based assistance, and Section 8 existing housing assisted under part 886. FMRs are also used to determine payment standard schedules in the Rental Voucher program.

3. Section 888.113, would be revised to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. They are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent—the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude Public Housing units and newly built units.

(b) *FMR Areas.* FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs or PMSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

(c) *Data sources.* (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent decennial Census, which provides statistically reliable rent data.

(ii) The American Housing Survey (AHS) data, conducted by the Bureau of the Census for HUD. AHS's have comparable accuracy to the decennial Census, and are used to develop between-census revisions for the largest metropolitan areas on a four-year revolving schedule.

(iii) Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iv) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities or using rent-change factors obtained from the RDD regional surveys. The RDD rent-change factors are developed annually for the metropolitan and nonmetropolitan parts of the HUD-specified geographic regions not covered by CPI surveys, and are used to update the base-year FMR estimates within these regions.

(d) *Bedroom size adjustments.* (1) For most areas the ratios developed from the most recent decennial Census are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(e) *Manufactured home space.* The FMR for a manufactured home space is 30 percent of the FMR for a two-bedroom unit, or, where approved by HUD on the basis of survey data submitted in public comments, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home space FMRs for areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-valid survey data that show the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

4. Section 888.115 would be revised to read as follows:

§ 888.115 Fair market rents for existing housing: Manner of publication.

FMRs will be published at least annually in the **Federal Register** The Department will propose FMRs and provide a comment period of at least 30 days for the purpose of identifying areas where the FMRs are believed to be too high or too low. To be considered for FMR revisions, public comments must include statistically-valid rental housing survey data that justify the requested changes. After the comments have been considered, the Department will publish a final notice announcing FMRs to be effective on October 1 each year.

Dated: January 30, 1995.

Henry G. Cisneros,

Secretary.

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Part XIII

Securities and Exchange Commission

17 CFR Part 239, 240 et al.
Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master Feeder Funds; Voting on Distribution Plans; Final Rules and Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7143, IC–20915, File No. S7–32–93]

RIN 3235–AF00

Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans

AGENCY: Securities and Exchange Commission

ACTION: Final Rules

SUMMARY: The Securities and Exchange Commission is adopting a rule under the Investment Company Act of 1940 ("Investment Company Act") to permit open-end management investment companies ("mutual funds") to issue multiple classes of voting stock representing interests in the same portfolio. The new rule will eliminate the need for funds seeking to issue multiple classes of their shares to apply for exemptions. The Commission also is adopting amendments to certain registration statement forms under the Investment Company Act and the Securities Act of 1933 ("Securities Act") and publishing a staff guide to one registration form. These amendments require that multiple class and master-feeder funds provide investors with certain disclosure. The disclosure will allow investors to obtain information about these funds and their structures.

DATES: *Effective Date:* April 3, 1995.

Compliance Date: Registration statements and post-effective amendments filed with the Commission after the effective date must be in compliance with the amendments to Forms N–1A and N–14.

FOR FURTHER INFORMATION CONTACT: Karrie McMillan, Senior Counsel (202) 942–0695, or Robert G. Bagnall, Assistant Chief (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Stop 10–6, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel (202) 942–0659, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today adopting rule 18f–3 [17 CFR 270.18f–3] and a related amendment to rule 12b–1 [17 CFR 270.12b–1], both under the Investment Company Act. The Commission is also adopting amendments to Forms N–1A [17 CFR 239.15A, 274.11A] and N–14 [17 CFR 239.23].

Most multiple class funds have also obtained exemptive relief to impose contingent deferred sales loads ("CDSLs"). In separate releases, the Commission also is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act, to allow mutual funds to impose CDSLs, and proposing to amend the rule to permit other forms of deferred loads, such as installment loads, and to remove many of the requirements of the rule as adopted.[1]

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Executive Summary

Since 1985, the Commission has issued approximately 200 exemptive orders allowing funds to issue multiple classes of shares representing interests in the same portfolio, typically with different distribution arrangements. The orders frequently impose as many as 20 conditions designed to address various investor protection concerns.

The Commission is adopting rule 18f–3 under the Investment Company Act, which will permit funds to issue multiple classes of shares without the need to seek exemptions from the Commission. The rule will decrease the amount of time and expense involved in creating these structures. It also will reduce the Commission's burden of reviewing the applications. The rule requires certain differences in the expenses, rights, and obligations of different classes, permits certain other differences among classes, specifies the matters on which class voting is required, and prescribes how income and expenses must be allocated. The rule also emphasizes the responsibilities of the board of directors to establish and monitor allocation and other procedures in the best interests of each class and of the fund as a whole. Finally, the rule permits, but does not require, different classes to have different exchange privileges and conversion rights. A related amendment to rule 12b–1 clarifies that a rule 12b–1 plan must have separate provisions for each class; any action on the plan, such as director or shareholder approval, must take place separately for each class.

Over the past few years, many fund sponsors have adopted another distribution arrangement designed to achieve many of the same business goals as the multiple class structure without the need to obtain exemptions under section 18. This "master-feeder" arrangement comprises a two-tier structure in which one or more funds (the upper tier) invest solely in the securities of another fund (the lower tier).[2] Although master-feeder structures are functionally similar to multiple class funds, they are viewed as not needing exemptions and have been subject to different disclosure requirements.

The disclosure requirements adopted today apply equally to multiple class and master-feeder funds, and are similar to those currently in effect for master-feeder funds. A prospectus for a class or feeder fund will be required to include disclosure about other publicly offered classes or feeder funds not offered through the prospectus and a telephone number an investor may call to receive additional information about other classes or feeder funds sold by the same bank, broker, or other financial intermediary. In view of commenters' concerns, the Commission is not adopting the more extensive disclosure requirements originally proposed. The provisions as adopted are consistent

[1] Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995); Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] Master-feeder funds are often referred to as "core and feeder" or "hub and spoke" funds. Signature Financial Group is the originator and patent licensor of the Hub and Spoke™ form of the master-feeder structure.

with the Commission's encouragement of simplified prospectuses.

I. Background

Both the multiple class and master-feeder structures may benefit shareholders and fund sponsors. These structures may increase investor choice, result in efficiencies in the distribution of fund shares, and allow fund sponsors to tailor products more closely to different investor markets. Fund sponsors assert that multiple classes may enable funds to attract larger asset bases, permitting them to spread fixed costs over more shares, qualify for discounts in advisory fees ("breakpoints"), and otherwise experience economies of scale, resulting in lower fees and expenses. They also state that multiple classes avoid the need to create "clone" funds, which require duplicative portfolio and fund management expenses. Furthermore, fund sponsors state that a larger asset base permits greater portfolio liquidity and diversification.

Master-feeder funds may achieve similar benefits of economies of scale, thus potentially lowering expenses, and also allow several different small funds access to the same management and compliance personnel. The master-feeder structure allows a fund sponsor to offer feeder funds that invest in specialized portfolios, even though the sponsor's expected asset base may not justify organizing a stand-alone fund for that market or market segment. Sponsors also use this structure to offer off-shore and other unregistered feeder funds.[3]

Investor understanding of sales and service charges in both arrangements, however, has been a subject of concern to the Commission.[4] Some commentators have asserted that the complexity generated by these arrangements may confuse many investors, who often may not understand them or the effect that fees have upon performance.[5]

On December 15, 1993, the Commission proposed for public comment rule 18f–3 and related amendments to rule 12b–1 under the Investment Company Act and advertising and prospectus disclosure requirements.[6] Among other things, rule 18f–3 would have allowed funds to issue multiple classes of shares without the need to apply for and receive an exemption from the Commission and largely would have codified the exemptive orders. The proposal also would have made consistent the disclosure requirements of Form N–1A for multiple class and master-feeder funds by imposing disclosure requirements based on those in the multiple class exemptive orders. These requirements would have included a prominent legend following the fee table disclosing the availability of other classes or feeder funds not offered in that prospectus, and an undertaking to provide investors with additional information about other classes or feeder funds. They also would have required full cross-disclosure in the prospectus about any other classes or feeder funds that were offered or made available through the same broker, dealer, bank, or other financial intermediary, and permitted investors to choose among alternative arrangements for sales and related charges. The proposal also would have required a line graph comparing the hypothetical value of holdings of the classes or feeder funds described in the prospectus upon redemption at the end of each year during a ten-year period. The proposal would have made conforming changes to advertising and sales literature rules and Form N–14. A related amendment to rule 12b–1 would have clarified that a rule 12b–1 plan must treat each class separately and required separate director and shareholder approval.

II. Discussion

The Commission received 24 comments on the proposal.[7] Most of the commenters were fund groups, law firms, and trade associations. Although all commenters favored a rule allowing multiple class structures without the need for exemptive orders, most strongly opposed the proposed disclosure requirements. The Commission is adopting rule 18f–3 and related prospectus disclosure requirements with modifications that address the comments received. Rule 18f–3 allows funds flexibility in tailoring many aspects of their multiple class structures, overseen by the board of directors, while preserving investor protection conditions based on the exemptive orders and derived from the concerns underlying section 18. The Commission has reconsidered the disclosure aspects of the proposal in light of the strong opposition of the commenters, and is adopting much less extensive requirements than proposed. The rule and form amendments will give investors the means to obtain information about certain other classes or other feeder funds investing in the same master fund, but do not require extensive cross-disclosure in prospectuses and advertisements.

A. Rule 18f–3

The Commission is adopting rule 18f–3 to create a limited exemption from sections 18(f)(1) and 18(i)[8] for funds that issue multiple classes of shares with varying arrangements for the distribution of securities and provision of services to shareholders. Multiple class funds relying on existing exemptive orders would be allowed to use the rule but would not be required to do so.[9] The Commission has made several modifications to the rule in view of the comments received.

The rule largely codifies the exemptive order approach of addressing

[1] P.W. Coolidge, *Business Applications of the Hub and Spoke™ Structure*, 1993 Mutual Funds & Investment Management Conference X–3 (Mar. 11, 1993); R.M. Phillips and C.E. Plaza, *Hub & Spoke™ Mutual Funds*, 26 Securities & Commodities Regulation 137 (Aug. 1993). *See also "Hub-and-Spoke" Funds: A Report Prepared by the Division of Investment Management*, submitted with letter from Richard C. Breeden, Chairman, SEC, to John D. Dingell, Chairman, House Comm. on Energy and Commerce (Apr. 15, 1992).

[4] *See, e.g.*, Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955 (Dec. 15, 1993), 58 FR 68074 (Dec. 23, 1993) [hereinafter Proposing Release].

[5] *See* Proposing Release, 58 FR at 68082 n.59; *see also* Jeff Kelly, *A Fine Mess*, Morningstar Mutual Funds, Nov. 25, 1994, at S1; Carole Gould, *Brokers New Pitch, Level Load on Funds*, N.Y. Times, May 7, 1994, at 37 ("If investors are confused about which pricing method is best for them, it's no wonder"); Vanessa O'Connell, *Mastering the ABCs of Fund Shares*, Money, Sept. 1993 ("Counting A, B and C shares, analysts now predict that the number of fund options could double to a mind-numbing 8,000 within the next 18 months").

[6] Proposing Release, *supra* note 4.

[7] The comment letters, as well as a comment summary dated Dec. 21, 1994 prepared by the Commission's staff, are available for public inspection and copying at the Commission's public reference room in File No. S7–32–93.

[8] 15 U.S.C. § 80a–18(f)(1) and –(i). Section 18(f)(1) generally makes it "unlawful for any registered open-end company to issue any class of senior security." Section 18(g) defines senior security to include any stock of a class having a priority over any other class as to distribution of assets or payment of dividends. Section 18(i) requires that every share of stock issued by a registered investment company be voting stock, with the same voting rights as every other outstanding voting stock.

[9] Funds currently relying on exemptive orders that choose to operate instead under the new rule must first prepare plans under paragraph (d) of the rule and file copies of the plans with the Commission as exhibits to their registration statements under new Item 24(b)(18) of Form N–1A. Provided that no changes are made to arrangements and expense allocations under an existing order, paragraph (d) does not require board approval of the plan. A fund choosing to rely on an existing exemptive order, including one providing an exemption for "future classes," may continue to do so, provided it complies with *all* of the conditions in the order (including the disclosure conditions); in addition, such a fund would also be subject to the disclosure requirements adopted today. *See* discussion at II.A.3. regarding the adoption of a multiple class plan under the rule

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the potential for conflicts among classes by limiting the permissible differences among classes in expenses and voting rights. It specifies permissible methods of allocating expenses, and allows the waiver of expenses by service providers. Rule 18f–3 also specifies the conditions under which shares of one class may be converted into or exchanged with shares of another class.

The rule requires the board of directors of a fund to approve a plan detailing each class's arrangement for the distribution of securities and the services provided to each class, and the payment of other expenses. The board must determine that the plan is in the best interests of each class individually and the fund as a whole.

1. Differences in Distribution and Shareholder Services

Under paragraph (a)(1)(i), classes must differ either in the manner in which they distribute their securities, or in the services they provide to their shareholders, or both. As under the proposal, distribution systems may differ in the amount or form of payment, or the nature or extent of services provided. A class that pays a front-end load, for example, differs from a class paying a rule 12b–1 fee [10] in a spread load or level load arrangement in the amount, the form (by shareholders individually versus the class as a whole), and timing (at purchase versus over time) of distribution charges.

Funds may also meet paragraph (a)(1)(i) by providing different services to the shareholders of each class. One commenter expressed concern that the requirement in proposed paragraph (a)(5) that all classes have the same rights and obligations would not permit differences among classes in services such as checkwriting.[11] Presumably, the commenter viewed the term "shareholder service" as encompassing only certain services provided to shareholders by banks, brokers, and other third parties detailed in the many multiple class exemptive applications, and not shareholder transaction services, such as checkwriting. The term "shareholder services" in the rule, however, encompasses both types of services.

2. Allocation of Expenses

a. Class Expenses. Under rule 18f–3, certain expenses must be allocated to individual classes, while others may be so allocated at the discretion of the fund's board of directors. Paragraph (a)(1)(i) provides that expenses relating to the distribution of a class's shares, or to services provided to the shareholders of that class, must be allocated to that class. Although this requirement was implicit in proposed paragraph (a)(1)(i), the text of the rule as adopted has been clarified to make it explicit.

Paragraph (a)(1)(ii) provides that other expenses (other than advisory [12] or custodial fees or other expenses relating to the management of the fund's assets, which must be allocated to all classes in accordance with paragraph (c)) may be allocated to different classes in different amounts to the extent that they are incurred by one class in a different amount, or reflect differences in the amount or kind of services that different classes receive.[13] This paragraph encompasses both differences in actual out-of-pocket expenses among classes (for instance, blue sky fees that are incurred for some classes but not others), and differences in charges when classes receive services that are different in kind or amount. For example, some classes may use transfer agency services differently than others. Thus, the rule contemplates that allocations may be based upon the level or kind of services used.[14]

The proposal requested comment on whether the rule should provide more specific limits on differential allocations of expenses. Commenters strongly supported the flexible approach taken in the proposal.[15] In particular, one commenter stated that "[a] more rigid approach to expense allocation could undermine the utility of the exemptive rule."[16] Another endorsed the "proposal to leave these determinations to the Directors."[17] A commenter stated that mandating certain expenses as class expenses could run afoul of Internal Revenue Service private letter rulings, which only permit *de minimis* differences among the expenses of different classes.[18]

At several commenters' suggestion, the Commission has revised paragraph (a)(1)(ii) to delete the word "materially." Although the materiality qualifier in proposed paragraph (a)(1)(ii)(B) would have allowed boards of directors to avoid making allocation determinations for trivial differences in expenses, several commenters interpreted the requirement to mean that boards could not allocate expenses with immaterial differences at all.[19] Because paragraph (a)(1)(ii) is permissive, allocations of differential expenses, regardless of materiality, are at the board's discretion.

b. Allocation of Fund Income and Expenses. Paragraph (c) sets forth the allocation methods for income, realized and unrealized capital gains and losses, and expenses that are not assigned to a particular class. The proposal would have required that these items be allocated to each class based on the relative net assets. One commenter, however, argued that requiring allocations based on net asset value could result in the dilution of shareholders in daily dividend funds such as money market funds that permit investors to subscribe for shares, but not

[10] A rule 12b–1 fee is a charge to fund assets that may be used to pay certain distribution expenses in accordance with rule 12b–1 (17 CFR 270.12b–1) under the Investment Company Act.

[11] Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 22 (Feb. 22, 1994).

[12] Under rule 18f–3, the investment advisory fee charged to each class generally must be the same percentage amount. In the case of a multiple class fund with an advisory contract that provides for compensation to the adviser on the basis of performance, paragraph (a)(1)(iii) clarifies that the percentage amount may vary for each class to the extent that any difference is the result of the application of the same performance fee provisions to the different investment performance of each class.

In addition, the Commission believes that it would also be consistent with section 205(b)(2) and rule 205–1 if a multiple class fund were to use the investment performance of a single class for the purpose of calculating the performance fee. In approving the use of a class, the board of directors of the fund should consider all of the relevant factors, including the proposed performance fee schedule, the effect that using one class instead of another would have on the fees to be paid, the anticipated relative size of each class, the expense ratio of each class, the effect of any waiver or reimbursement of expenses on the performance of that class, the nature of the index to which the fund's performance will be compared and, if the index is comprised of comparable funds, the average expense ratio of those funds. For instance, it would appear difficult for a board to justify basing the calculation of a performance fee on the performance of a class with the lowest expenses if the result would be that shareholders of another class would pay a higher advisory fee than would be warranted given that class's performance.

[13] The board should monitor whether the fund's allocations have complied with the requirements of paragraph (a)(1)(ii) when the board reviews the fund's plan. *See* section II.A.5., *infra*.

[14] Paragraph (a)(1)(ii) as adopted has been reworded to delete subparagraph (A) of the proposed rule text. Under proposed paragraph (a)(1)(A), expenses could have been treated as belonging to a class if they were directly related to the arrangement of that class for shareholder services or distribution. The proposal did not provide any guidance for determining whether an expense was "directly related," nor did it explain how these expenses were to be distinguished from expenses of an arrangement under paragraph (a)(1)(i), or other expenses under paragraph (a)(1)(ii)(B). Therefore, the Commission has deleted this provision as unnecessary.

[15] *E.g.*, Letter from Ropes & Gray to Jonathan G. Katz, Secretary, SEC 7 (Feb. 21, 1994); Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC 2 (Feb. 15, 1994).

[16] ICI Comment Letter, *supra* note , at 21.

[17] Letter from the American Bar Association to Jonathan G. Katz, Secretary, SEC 12 (Mar. 15, 1994).

[18] Letter from Fidelity Management and Research Company to Jonathan G. Katz, Secretary, SEC A–1 (May 13, 1994).

[19] *E.g.*, ICI Comment Letter, *supra* note 11, at 21.

pay for them with federal funds.[20] According to the commenter, because an investor's money is not available for investment by a fund until federal funds have been received, the payment of dividends to the investor before receipt of federal funds would dilute the holdings of other shareholders.[21]

Therefore, the rule as adopted allows different methods of allocation for daily distribution funds than for non-daily distribution funds. Non-daily distribution funds must allocate these items based on the relative net assets. Money market funds (including those calculating net assets on an amortized cost basis) and other funds making daily distributions of their net investment income may allocate these items to each share regardless of class,[22] or based on the relative net assets (settled shares).[23] The parenthetical reference in the rule to calculation of net assets using amortized cost recognizes that money market funds may allocate fund expenses based on the relative amortized cost net assets.[24] The allocation method selected by the fund must be applied consistently.

A commenter requested that the Commission provide guidance about the allocation of costs of implementing a multiple class structure.[25] If a fund is organized initially with a multiple class structure, these costs are part of the fund's organization expenses and usually are capitalized. Funds may allocate the amortization of these expenses among the classes like other expenses under paragraph (c) of the rule. If the class structure is added after the fund has been organized, or if new classes are added, these expenditures would not be capitalized. Instead, they would be expenses of the class or classes in existence before the addition of the class structure or the new classes,[26] and therefore would be recognized by, and allocated to, those existing classes as an expense under paragraph (c) and not charged to the new class or classes.[27]

c. Accountant's Report on System of Internal Control. The Commission is not adopting the proposed amendment to Form N–SAR, relating to an accountant's report on a fund's system of internal controls. As proposed, Item 77B would have required accountants preparing the report on a multiple class fund's system of accounting controls to refer expressly to the procedures for calculating the classes' net asset values. This provision was intended to replace the requirement in the exemptive orders that an expert file a separate report on the adequacy of accounting procedures of multiple class funds. One commenter supported the proposal's omission of a requirement for the expert's report as no longer necessary. It believed that the orders granted to date, and the additional guidance in rule 18f–3, adequately define the methodology that a fund should follow in allocating income, realized and unrealized capital gains and losses, and expenses of the company to a class of shares.[28] The commenter, however, disagreed with the proposal's requirement of a specific reference in the internal controls report to the procedures for calculating multiple class net assets, arguing that because the internal control structure, required to be reviewed by Statement on Auditing Standards No. 55,[29] includes the procedures for calculating multiple class net assets, the report required by Item 77B need not be modified to emphasize only one of the aspects of the internal control structure. The Commission believes that since under current accounting standards, a review of the fund's internal control structure must include a review of procedures for calculating multiple class net assets, it is unnecessary to require the independent accountant's report to include such a reference.

d. Waivers and Reimbursements of Expenses. As adopted, rule 18f–3(b) expressly allows a fund's underwriter, adviser, or other provider of services to waive or reimburse the expenses of a specific class or classes. The proposal would have permitted only waivers or reimbursements by the fund's adviser or underwriter of class expenses, and would not have permitted waivers or reimbursements for specific classes of fund expenses, such as advisory fees. Despite the prohibition on differential waivers of fund expenses, fund sponsors could have achieved the same result indirectly by waiving or reimbursing class expenses. Therefore, the Commission is deleting the restrictions on waivers in the final rule. This modification is not intended to allow reimbursements or waivers to become *de facto* modifications of the fees provided for in advisory or other contracts so as to provide a means for cross-subsidization between classes.[30] Consistent with its oversight of the class system and its independent fiduciary obligations to each class, the board must monitor the use of waivers or reimbursements to guard against cross-subsidization between classes.[31]

3. Voting and Other Rights and Obligations

The Commission is adopting the provisions relating to shareholder voting substantially as proposed.[32] These provisions elicited little comment. Paragraph (a)(2), which provides that each class must have exclusive voting rights on any matter submitted to

[20] Memorandum to file from Karrie McMillan regarding telephone conversation with Richard Peteka, Oppenheimer Management Corporation (May 11, 1994) (Peteka Comment Memorandum). The term "net assets" includes the value of any receivables, including subscriptions to purchase shares for which the fund has not yet received payment. *See* AICPA Audit Guide, *supra* note 26, at ¶ 2.22. Because daily distribution fund portfolio transactions settle daily against federal funds (in contrast to other securities that have "regular way" (*e.g.*, currently T+5) settlement), many of these funds only record income and expenses on their books for shareholders whose subscriptions have cleared in federal funds. *See* T. Rowe Price Associates, Inc. (pub. avail. Dec. 22, 1986). Thus, allocating on the basis of relative net assets would be in conflict with typical daily distribution fund allocations.

[21] According to the commenter, this problem is exacerbated when a large disparity exists between the size of the classes or feeder funds, as each subscription to the smaller class or feeder fund will be large relative to the size of the other classes or feeder funds, and will dilute the classes or feeder funds having greater assets. Peteka Comment Memorandum, *supra* note 20.

[22] Like some exemptive orders, paragraph (c)(2)(i) requires funds allocating these items equally to all shares regardless of class to obtain the agreement of their service providers that, to the extent necessary to assure that all classes maintain the same net asset value, the providers will waive or reimburse class expenses.

[23] The rule defines "relative net assets (settled shares)" to mean net assets valued in accordance with generally accepted accounting principles, but excluding the value of subscriptions receivable, in relation to the net assets of the fund.

[24] *See* Fidelity Comment Letter, *supra* note 18, at A–2.

[25] *Id.* at 3.

[26] *See* Financial Accounting Standards Board, Financial Accounting Standards No. 7, §§ 8 and 9, Accounting and Reporting by Development Stage Enterprises, and AICPA, Audits of Investment Companies: Audit and Accounting Guide ¶ 8.10 (May 1993).

[27] Organization expenses should be distinguished from other expenses, such as printing of prospectuses. These other non-organizational expenses may appropriately be capitalized and amortized in accordance with the provisions of generally accepted accounting principles. The amortization of these expenses would be allocated to all classes which benefit from the expense.

[28] Letter from the American Institute of Certified Public Accountants to Jonathan G. Katz, Secretary, SEC 2 (Mar. 18, 1994).

[29] Codification of Statements on Auditing Standards, American Institute of Certified Public Accountants, AU § 319 (1994).

[30] Rule 18f–3 is only a limited exemption from the literal application of the prohibitions of section 18 and may not be used to undermine that section's role in effecting the statutory purpose of preventing the issuance of "securities containing inequitable or discriminatory provisions." 15 U.S.C. § 80a–1(b)(3).

[31] *See infra* section II.A.5.

[32] Paragraphs (a)(2) and (a)(3) of the final rule were paragraphs (a)(3) and (a)(4), respectively, in the rule as proposed. They have been renumbered as a result of the transfer of certain provisions of proposed paragraph (a)(2) into paragraph (b) of the final rule.

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shareholders that relates solely to the arrangement of that class, governs which class of shareholders may vote on a matter, but does not affect whether the matter is one that requires a shareholder vote. Paragraph (a)(3) requires that each class have the right to vote separately on matters in which its interests are different from those of other classes.

The Commission is adopting as proposed paragraph (a)(4), which states that except as provided in the previous paragraphs, each class of a fund relying on the rule must have the same rights and obligations as each other class.[33] Among other things, this paragraph effectively requires multiple class funds to allocate voting rights that affect all fund shareholders equally to all shareholders. The Commission had requested comment on whether to require that voting be allocated based on relative net asset value per share, rather than one vote per share.[34] All of the commenters addressing the issue opposed such a requirement. These commenters suggested that the proposal's more flexible approach of allowing a fund to select the method most suitable for it would provide the best result for each fund.[35] Several commenters noted that many funds would be required to hold shareholder meetings in order to amend their charters to comply with such a requirement, thus incurring additional expense.[36] Therefore, the Commission is not requiring voting based on relative net asset value per share, but believes that such voting is permissible under section 18(i) of the Investment Company Act.[37]

4. Exchange Privileges and Conversions

The Commission is adopting provisions relating to conversions and exchanges of shares substantially as proposed.[38] The rule as adopted also includes a provision allowing conversions when a shareholder is no longer eligible to invest in a particular class.[39]

Paragraph (e)(1) allows funds to offer different exchange privileges to different classes.[40] Paragraph (e)(2) permits funds to offer one or more classes with conversion features that allow for automatic conversions into another class after a specified period, if the conversions are made at net asset value without the imposition of any sales load, fee or other charge upon the conversion. As suggested by a commenter, paragraph (e)(2) as adopted provides that total expenses (not just those associated with a rule 12b–1 plan) may not be higher for the new class than for the old class.[41]

The Commission has added paragraph (e)(3), which allows, under limited circumstances, conversions that occur whenever a shareholder ceases to be eligible to invest in a class. Unlike paragraph (e)(2), this provision does not require that the new class have the same or lower expenses. A commenter objected that the expense limitation in paragraph (e)(2) would not accommodate situations in which a shareholder may no longer be eligible to participate in the class in which he or she originally invested, and therefore need or wish to be placed into a class that may have higher expenses.[42] For example, an investor in a class offered only to trust customers may cease to be a trust customer, and thus no longer be eligible to invest in that class.[43] In this event, the commenter suggested that the rule permit the new class to assess higher rule 12b–1 fees. Paragraph (e)(3) allows these conversions to occur, if the conversion is effected at net asset value without the imposition of any sales load, fee, or other charge upon the conversion and the investor is given advance notice of the conversion.

5. Board Review of Plans

The Commission is adopting paragraph (d), governing the adoption and approval of multiple class plans by boards of directors, with modifications in view of comments received. Rule 18f–3 gives the board of directors, particularly the independent directors, significant responsibility to approve a fund's plan and oversee its operation. Paragraph (d) requires that a fund adopt a written plan specifying all of the differences among classes, including the various services offered to shareholders, different distribution arrangements for each class, methods for allocating expenses relating to those differences, and any conversion features or exchange privileges.[44] The plan should provide a detailed statement of the differences among the classes.

The rule requires that the board, including a majority of the independent directors, find that the plan is in the best interests of each class individually and the fund as a whole.[45] This approval requirement replaces the several board reviews under the exemptive orders. The orders required boards of directors to approve the issuance of multiple classes of shares, review and approve specific allocations of class expenses, monitor for conflicts of interest among classes and take any action necessary to eliminate conflicts.

Paragraph (d) as adopted requires the board to approve a plan initially and before any material change. The Commission is not requiring annual approval of the board, which was proposed. Many commenters objected to the annual review requirement and argued that it runs counter to the Commission's recent elimination of certain annual review requirements.[46]

Paragraph (d) as adopted does not require the board to approve the initial adoption of a plan if the plan merely reproduces without change a fund's existing multiple class structure that the board has approved under an existing exemptive order. One commenter requested that the Commission amend the rule to clarify that board approval is not required for existing classes that intend to rely on the rule if the board has already approved a multiple class structure under an order.[47] Although the rule as adopted does not require a vote of the board of directors under these circumstances, a fund with an existing order that seeks to rely on rule 18f–3 must create a plan setting forth the fund's current separate arrangements, expense allocation procedures and exchange and conversion privileges[48] and file a copy of the plan with the Commission as an exhibit to the fund's registration statement under new Item 24(b)(18). These plans create a cohesive structure for monitoring the operation of the class system, rather than having procedures scattered among exemptive orders and their amendments, prospectuses and internal guidelines, and the formulation of a plan from these source materials should not impose a significant burden.

Finally, the rule text as adopted omits the proposed requirement that boards find that plans are "fair." This change recognizes that the term was not a condition of the exemptive applications, and that the requirement that a board find a plan to be in the best interests of each class individually and of the fund as a whole provides the same protection as a separate fairness requirement.

B. Rule 12b–1

The Commission is adopting new paragraph (g) of rule 12b–1 substantially as proposed. It provides that if a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and any action taken on the plan must be taken separately for each class. The board would be required to make the finding, separately for each class, that a distribution plan presents a "reasonable likelihood of benefit" to the company and its shareholders. Similarly, the amendment requires shareholder approval by the outstanding voting securities of each separate class when rule 12b–1 requires that a plan for the distribution of securities be approved by a majority of the fund's outstanding voting securities. Paragraph (g) also contains a cross-reference to rule 18f–3 to address the limited exception that under paragraph (e)(2) of that rule, any shareholder vote on the rule 12b–1 plan of a target class would also require a separate vote of any purchase class.[49]

C. Disclosure

The Commission is adopting disclosure requirements for registration statements of master-feeder and multiple class funds with substantial modifications from the proposal, and is not adopting any disclosure requirements for advertisements and sales literature.[50] New Item 6(h) provides that multiple class and master-feeder funds should describe the salient features of the multiple class or master-feeder structure. Feeder funds should also disclose the circumstances under which the feeder fund could no longer invest in the master fund, and the consequences to shareholders of such an event. Item 6(h) also requires prospectuses used in connection with a public offering to disclose that there are other classes or other feeder funds that invest in the same master fund, and to include a telephone number investors can call to obtain additional information about other classes or feeder funds available through their sales representative.[51] These provisions should give funds flexibility in drafting disclosure while making available to investors the means to obtain additional information about other classes or feeder funds investing in the same master fund. These disclosure requirements are consistent with the Commission's goals of promoting prospectus simplification and the use of plain language.[52]

Funds must provide more extensive prospectus disclosure about other classes or feeder funds only in two cases. First, under new staff Guide 3 to Form N–1A, if a prospectus offers more than one class or feeder fund, it must discuss briefly the differences between the classes or feeder funds, and arrange the fee table to facilitate a comparison by shareholders of the different fee structures.[53] Second, under new General Instruction I to Form N–1A, if a fund is offering a class that will or may convert or be exchanged into other classes of the same fund, the prospectus must provide disclosure about the other classes.

The Commission is not adopting most of the proposed disclosure requirements; nearly all commenters expressed strong opposition to the extent and the details of these requirements.[54] As discussed in more detail below, commenters argued, among other things, that the proposed requirements would have imposed liability burdens and logistical difficulties on some funds.

The Commission recognizes that the complexity of distribution charge

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[33] This provision was paragraph (a)(5) in the rule as proposed.

[34] See footnote 42 of the Proposing Release.

[35] *E.g.*, ICI Comment Letter, *supra* note 11, at 22; Fidelity Comment Letter, *supra* note 18, at A–2 (Fidelity stated that dollar-based voting may not be consistent with state law).

[36] *E.g.*, Letter from the Chicago Bar Association, Subcommittee of the Securities Law Committee to Jonathan G. Katz, Secretary, SEC 3 (Feb. 21, 1994); Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC 3 (Feb. 15, 1994).

[37] See Sentinel Group Funds, Inc. (pub. avail. Oct. 27, 1992) (under section 18(i), voting rights of different series in a fund may be tied to the relative net asset value of each series to avoid vesting unfair voting power in series with per share net asset values that are significantly lower than those of other series). In discussing the meaning of "equal voting rights" under section 18(i), the Commission has noted that:

> Problems of interpretation may very well arise from defining with exactitude what constitutes "equal voting rights" within the meaning of Section 18(i). It is apparent that in certain cases an inflexible adherence to any rigid interpretation could produce grave distortions of the apparent intent of Congress to require a reasonably equitable distribution of voting power consistent with the applicable provisions pertaining to the different classes of stock.

The Solvay American Corp., 27 SEC 971, 974 n.9 (1948).

The Commission also believes that voting based on relative net asset value is consistent with the definition of "the vote of a majority of the outstanding voting securities" in section 2(a)(42) of the Investment Company Act [15 U.S.C. § 80a–2(a)(42)]. That provision does not specify whether the prescribed percentages are to be determined on the basis of the number of securities, or the value of the securities.

[38] Exchanges are subject to section 11 of the Investment Company Act and the rules thereunder *See* 15 U.S.C. § 80a–11(a); 17 CFR 270.11a–1, –2 and –3 (requiring offers of exchange to be made on the basis of net asset value, with certain exceptions).

[39] The Commission also is amending Form N–1A to require prospectus disclosure for multiple class funds allowing or requiring conversions or exchanges between classes. *See infra* section II.C.3. for a discussion of the amendment.

[40] For example, when shares of one class of a fund may be exchanged for shares of the same class in another fund, but not for shares of other classes.

[41] ICI Comment Letter, *supra* note 11, at 23–24.

[42] Letter from Hale and Dorr to Jonathan G. Katz, Secretary, SEC 7 (Feb. 22, 1994). *See* Ark Funds, Investment Company Act Release Nos. 19812 (Oct 22, 1993), 58 FR 58025 (Oct. 28, 1993) (Notice of Application), and 19882 (Nov 17, 1993), 55 SEC Docket 1541 (Order) (allowing automatic conversions when a shareholder in one class becomes ineligible to purchase shares of the class originally held); Federated Securities Corp. (pub. avail. Jan. 14, 1992) (permitting shareholders to switch from one class to another class where, because of a change in circumstances, such shareholders would no longer be eligible to invest in a particular class of shares).

[43] Although some fees may be lower for classes whose shareholders have certain other relationships with a financial institution that provides services to fund shareholders, these investors may also be paying other fees directly to the institution in addition to paying expenses at the fund level.

[44] Forms N–1A and N–14 have been amended to require that a copy of the plan be filed as an exhibit to the forms.

[45] In making its findings, the board should focus, among other things, on the relationship among the classes and examine potential conflicts of interest among classes regarding the allocation of fees, services, waivers and reimbursements of expenses, and voting rights. Most significantly, the board should evaluate the level of services provided to each class and the cost of those services to ensure that the services are appropriate and that the allocation of expenses is reasonable.

[46] *E.g.*, ABA Comment Letter, *supra* note 17, at 4; Federated Investors Comment Letter, *supra* note 15, at 2; Hale and Dorr Comment Letter, *supra* note 42, at 4–5; ICI Comment Letter, *supra* note 11, at 23; Letter from Dechert Price & Rhoades to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See* Proposing Release at 21 n.48, 58 FR at 68080 n.48, for a discussion of recent Commission actions to reduce the burdens on boards of directors.

[47] ICI Comment Letter, *supra* note 11, at 23.

[48] Board approval of the plan is required, though, if it contains any material deviations from current practice.

[49] In light of the adoption of new paragraph (e)(3) of rule 18f–3, the Commission has modified rule 12b–1(g) from the proposal to limit the cross-reference to paragraph (e)(2). Whereas conversions under paragraph (e)(2) will occur if shareholders remain in a class for a specified period of time, conversions under paragraph (e)(3) will not occur except upon the happening of a specified contingency that is dependent upon the shareholder. Therefore, a vote of the class of shares that may convert is not required.

[50] In view of commenters' objections and recent industry initiatives, the Commission also is not imposing standardized class designations upon multiple class funds. *See* Memorandum of the ICI, Board of Governors Adopts Voluntary Nomenclature Standards of Multiple Class Funds (May 16, 1994); Jeff Kelly, *A Fine Mess*, Morningstar Mutual Funds, Nov. 25, 1994, at S1; ICI Comment Letter, *supra* note 11, at 19.

[51] This disclosure requirement was proposed as part of Instruction 1 to Item 2(a) of Form N–1A. Multiple class funds must comply with the disclosure requirements adopted today regardless of whether they rely on rule 18f–3 or continue to operate under and comply with all of the terms (including disclosure-related conditions) of an existing exemptive order. The disclosure requirements adopted today also do not alter feeder funds' existing disclosure obligations. Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants (Feb. 22, 1993), Comment II.H (hereinafter "1993 Generic Disclosure Comment Letter"). New Instruction 4A to Item 2(a) of Form N–1A codifies the requirement that the expenses of both the master fund and the feeder fund be reflected in a single fee table.

[52] *See, e.g.*, Arthur Levitt, Chairman, SEC, Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign, remarks before the National Press Club (Oct. 13, 1994).

[53] Funds may either use one fee table with separate and clearly labeled columns for each class or feeder fund, or may prepare separate fee tables for each class or feeder offered.

[54] A few commenters, however, supported requiring disclosure about other classes or feeder funds. *See, e.g.*, Hale and Dorr Comment Letter, *supra* note 42, at 8; Dechert Price Comment Letter *supra* note 46, at 3.

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options can be confusing to some investors. Instead of relying on prospectus disclosure, however, the Commission is addressing these concerns through consumer education and the promotion of good sales practices. In the proposal, the Commission requested comment on whether, instead of requiring extensive prospectus disclosure, it should work with the National Association of Securities Dealers, Inc. ("NASD") to develop standards for basic information that representatives should communicate to their clients. Several commenters endorsed this approach as an alternative to cross-disclosure.[55] The Commission staff has been working, and will continue to work, with the NASD on providing guidance about the duties of sales representatives when recommending the purchase of multiple class and master-feeder funds.[56] Finally, the Commission expects to promote consumer education in this area through the development and publication of a brochure explaining the structures and expenses of multiple class and master-feeder funds.[57]

1. Prospectus Disclosure Concerning Other Classes or Feeder Funds

The Commission is adding new Item 6(h) to Form N–1A [58] to require prospectuses for multiple class and master-feeder funds to describe the salient features of the multiple class or master-feeder structure. In addition, Item 6(h) requires prospectuses of multiple class or master-feeder funds to include disclosure about other publicly offered [59] classes or feeder funds, unless all classes or all feeder funds are offered through the same prospectus.[60] A fund must disclose that it issues other classes or that other feeder funds invest in the master fund, and that the other classes or feeder funds may have different sales charges and expenses, which would affect performance. The disclosure must also provide a telephone number investors may call to obtain information concerning other classes or feeder funds available through their sales representative, and note that investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative, or any person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the securities offered in the prospectus. This disclosure should provide investors with access to information allowing them to compare the expenses and services of a given class or feeder fund to others that are available to them.

Although commenters strongly opposed the more extensive disclosure requirements in the proposal, they generally agreed that it is "appropriate to require some disclosure as to the fact that there are other classes or feeder funds investing in the underlying portfolio."[61] Many agreed that alerting investors to the relationship between expenses and performance is appropriate.[62]

The Commission is not specifying how fund sponsors must respond to investors' calls. Unlike the requirements adopted today, the proposal would have required the statement to include the names of the other classes or feeder funds, and an undertaking to provide information over a toll-free number, and provide a prospectus for the other classes or feeder funds upon request. Commenters, however, vehemently objected to the proposed undertaking to provide additional information and prospectuses for other classes or feeder funds.[63] One commenter stated that independent mutual fund groups and their sponsors may be disproportionately affected by the undertaking. "Whereas the toll-free number provided by broker-sponsored mutual funds will likely have to answer questions only about (and provide prospectuses for) that particular broker's family of funds, the Release imposes upon an independent mutual fund sponsor with a master-feeder structure the much broader obligation to provide information * * * about any other entity's proprietary feeder funds feeding into the same master fund."[64] Several commenters objected to the toll-free number requirement.[65] The Commission is continuing to require the inclusion of a telephone number, but is not requiring that the number be toll-free; the requirement of a telephone number is consistent with the disclosure guidelines of the Commission staff and state regulators, to which master-feeder funds are already subject. By not requiring any specific procedures with callers, the Commission is leaving fund sponsors the flexibility to determine how best to respond to inquiries.

A commenter noted that compliance with the proposed requirement to name other classes or feeder funds would be difficult for unaffiliated feeder funds; they would be required to keep abreast of the creation of or changes to other feeder funds and sticker their prospectuses to reflect such changes.[66] A commenter also speculated that mentioning feeder funds in states where they are not registered could create problems under state securities laws because such a statement could be considered to be an offer.[67]

The disclosure requirement that the Commission is adopting is similar to the recommendations of some commenters. For example, one commenter suggested that the Commission require a narrative following the fee table stating that (i) the fund issues other classes or feeder funds that invest in the master fund; (ii) because sales charges and expenses vary, performance may also vary; and (iii) the customer may call a toll-free number to obtain further information

[55] *E.g.*, Signature Group Comment Letter, *supra* note 59, at 14–15; ABA Comment Letter, *supra* note 17, at 10; Letter from the Investment Company Institute (attaching memorandum from Kirkpatrick and Lockhart) to Matthew A. Chambers, Associate Director, Division of Investment Management, SEC (Oct. 6, 1994).

[56] Since the proposal, the NASD has reminded members of "their obligations to ensure that the investments are suitable for their customers and to disclose and discuss certain matters in the sale of mutual funds." These matters include the disclosure of "all material facts to the customer" and, in particular, sales charges. Notice to Members 94–16 (Mar. 1994).

[57] The Commission has previously published two brochures providing general information about investing.

[58] 17 CFR 239.15A, 274.11A.

[59] Item 6(h) refers to any publicly offered class or feeder fund; thus, no disclosure is required, for example, about offshore or private funds. *See, e.g.*, Letter from Kirkpatrick & Lockhart on behalf of Signature Financial Group and certain other companies to Jonathan G. Katz, Secretary, SEC 11–12 (Mar. 18, 1994) (expressing concern about disclosure regarding offshore funds); ICI Comment Letter, supra note 11, at 11 (expressing concern that disclosure would be required about private feeder funds).

[60] This requirement is more like the disclosure currently provided by master-feeder funds than that required under the exemptive orders for multi-class funds. The requirements adopted today treat multiple class and master-feeder disclosure in a consistent manner.

[61] ABA Comment Letter, *supra* note 17, at 8; *see also* Chicago Bar Comment Letter, *supra* note 36, at 2.

[62] *See, e.g.*, Hale and Dorr Comment Letter, *supra* note 42, at 9; Signature Group Comment Letter, *supra* note 59, at 5.

[63] *E.g.*, ABA Comment Letter, *supra* note 17, at 8–9; Signature Group Comment Letter, *supra* note 59, at 10; ICI Comment Letter, *supra* note 11, at 13 ("[s]uch a proposal ignores market realities, and would greatly limit the very benefits of multiple class and master-feeder structures that the Commission has itself commented on.").

[64] Eaton Vance Comment Letter, *supra* note 66, at 8.

[65] *See* Chicago Bar Comment Letter, *supra* note 36, at 2 (a toll-free number should not be required); Fidelity Comment Letter, *supra* note 10, at 2 (the proposal's toll-free number requirement would cause an issuer to deal directly with investors, when it intended to sell through intermediaries, "effectively chill[ing] the use of multi-class and feeder funds").

[66] Signature Group Comment Letter, *supra* note 59, at 10. *See also* Letter from Eaton Vance Management to Jonathan G. Katz, Secretary, SEC 4 (Feb. 24, 1994).

[67] Eaton Vance Comment Letter, *supra* note 66, at 4 n.4.

about the other funds not offered through the prospectus but available through the same financial intermediary. The commenter also recommended that the prospectus should contain prominent disclosure recommending that the investor contact his or her broker or financial adviser for further information about suitable classes or feeder funds offered by the intermediary.[68]

Commenters suggested the above approach as an alternative to the proposed cross-disclosure requirements, which commenters strongly criticized and which the Commission is not adopting. The proposal would have required a prospectus for one class or feeder fund to provide full cross-disclosure [69] about all other classes or all other feeder funds investing in the same master fund that were not offered in the prospectus and that met two conditions. First, the classes or feeder funds had to be offered through the same financial intermediary.[70] Second, they had to permit investors to choose among alternative arrangements for sales and related charges.[71]

Many commenters argued that cross-disclosure would not achieve the Commission's goal of promoting investor understanding of multiple class and master-feeder funds because of the volume of disclosure that the proposal might require, arguing that "the disclosure requirements of the Proposal run counter to the staff's professed desire for prospectus simplification and the desire to avoid 'prospectus creep.'"[72] Several commenters cautioned that if the Commission adopted the proposed disclosure requirements, sponsors would not use the master-feeder form and would create "less efficient and more expensive clone funds."[73] One commenter representing a fund family that offers both no-load and broker-sold products objected to requiring brokers to disclose that the same fund is available without a sales charge, arguing that if a client receives advice from a broker, the broker deserves to be paid for those services.[74]

Some commenters strongly criticized the proposal for requiring an issuer to provide prospectus disclosure about securities it does not intend to offer through that prospectus. Several expressed concern that feeder funds would have to assume liability for disclosure about unrelated feeder funds even though they are distinct entities and may have different advisers, underwriters, and boards of directors.[75]

Commenters also criticized the financial intermediary test—one of the proposal's two triggers for cross-disclosure.[76] One commenter stated, for example, that "[t]he Proposal erroneously assumes that all financial intermediaries are homogeneous organizations, serving only a single market or customer base."[77] Much of the commenters' concern centered on the effect of the proposed requirement on independent sponsors of feeder funds and on financial intermediaries with more than one distribution network. One commenter noted that "feeder funds, unlike different classes of shares, often are organized to serve customers of unaffiliated third party banks, insurance companies or brokerage firms who are competitors of each other and, in many cases, of the master fund."[78]

One independent sponsor of mutual funds argued that the proposal would create unique problems for independent mutual fund groups, and would discourage brokers from offering funds if prospectuses must describe funds offered by unaffiliated brokers.[79] This commenter asserted that fund sponsors would have to create a different prospectus for each possible combination of the different classes or feeder funds that in theory a broker might offer; therefore, the preparation of numerous prospectuses would create increased costs for these funds and an "administrative nightmare" for their sponsors, while in-house master-feeder or multiple class funds and their sponsors would not face comparable burdens.

The disclosure requirement as adopted addresses the commenters' concerns. The disclosure that investors may ask their sales representatives about other classes or feeder funds should alleviate the concern that the disclosure would encourage investors to deal directly with issuers, rather than their intermediaries. This dialogue should further investor understanding of the different fee arrangements or distribution possibilities associated with the fund without imposing a burden on issuers. Retaining a telephone number requirement, but not requiring the other disclosure or obligations should provide investors with a source for obtaining more information about other classes or feeder funds available through their sales representative without raising the practical concerns voiced by many commenters. Not requiring cross-disclosure about other classes or feeder funds not offered through the prospectus removes the logistical and competitive concerns voiced by many commenters. This approach is also consistent with the Commission's goals of promoting prospectus simplification.

2. Discussion of Classes or Feeder Funds Offered in Prospectus

New staff Guide 34 to Form N–1A requires a discussion of the differences between classes or feeder funds whenever two or more classes or feeder funds are offered through the same prospectus. In addition, new Guide 34 advises that if a single prospectus is used to offer more than one class or feeder fund, and the classes or feeder funds have different expense and/or sales load arrangements, the prospectus should clearly explain the differences in the features, and should provide a separate response to Item 2(a)(i) for each class or feeder. These requirements are

[68] *Id.* at 9.

[69] Disclosure responding to Items 2 through 9 of Form N–1A.

[70] The Proposing Release listed as examples of "financial intermediaries" brokers, dealers, banks and any other entities that act as agents or principals in the sale of a fund's shares, or that, like some banks, provide shareholder services under an agreement with a fund. *See* 58 FR 68083, n.69.

[71] Although the Commission is not adopting the proposed cross-disclosure requirement, it believes that disclosure about more than one class or feeder fund in the same prospectus can be consistent with clear, simple, and effective disclosure and prospectus simplification. Similarly, Guide 34 expressly contemplates that more than one class or feeder fund may be offered in the same prospectus. *See* discussion of Guide 34, *infra* at section II.C.2.

[72] Chicago Bar Comment Letter, *supra* note 36, at 2; *see also* ICI Comment Letter, *supra* note 11, at 5–7; Signature Group Comment Letter, *supra* note 59, at 6–8 (disputing the proposal's assumption that investor confusion about these instruments "is a serious and widespread problem").

[73] *E.g.*, Signature Group Comment Letter, *supra* note 59 at 5; *see also* letter from Fidelity Investments to Barry Barbash, Director, Division of Investment Management, SEC 1–2 (July 22, 1994).

[74] *See* Letter and memorandum from Robert Pozen, General Counsel and Managing Director, FMR Corp. to Arthur Levitt, Chairman, SEC 2 (Nov 18, 1994) ("This would be the equivalent of requiring Filenes to tell all of its customers that the same goods may be purchased at a discount in the basement or from a competitor.").

[75] *E.g.*, ICI Comment Letter, *supra* note 11, at 7 *See also* ABA Comment Letter, *supra* note 17, at 8–9; Signature Group Comment Letter, *supra* note 59, at 5 and 9 ("[s]uch a requirement of disclosure about products offered by competitors and the assumption of liability for such disclosures would be entirely unprecedented in the securities industry") (emphasis deleted).

[76] The proposal would have required cross-disclosure only about classes or feeder funds both offered through the same financial intermediary and with alternative arrangements for sales and related charges, and made clear that not all cases would involve alternative arrangements. *See* text accompanying notes 70–72 of the Proposing Release, 58 FR at 68083. Most commenters, however, appeared to assume that there would be alternative sales charges in all cases.

[77] Signature Group Comment Letter, *supra* note 59, at 5.

[78] *Id.* at 8.

[79] Eaton Vance Comment Letter, *supra* note 66.

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intended to inform investors about the differences between the investment options offered together to them.

The proposal would have required that whenever a prospectus offered two or more classes or feeder funds, or provided cross-disclosure about one or more classes or feeder funds, it must also contain a discussion of the differences between the classes or feeder funds. This aspect of the proposal elicited little comment. The proposal also would have required a line graph comparing the feeder funds' or classes' performance over a hypothetical ten-year period, assuming an initial investment of $10,000 and a 5% rate of return.[80] The Commission intended that the graph demonstrate the circumstances under which holding shares of each class or feeder fund for various lengths of time would produce the highest return. The Commission is not adopting this aspect of the proposal. The narrative discussion called for by Guide 34 should provide investors with similar information. Moreover, the line graph proposal was predicated upon the cross-disclosure requirement, which the Commission is not adopting.

The proposed line graph met with significant opposition from a number of commenters, many of which conjectured that it could mislead investors into believing that the "market always goes up."[81] One commenter expressed concern that the graph creates a "significant potential for litigation."[82] Another commenter observed that, except for variable life illustrations, "the Commission has not previously used these investment assumptions to project hypothetical future performance."[83] Many commenters raised numerous concerns regarding the accuracy of the graphs given the myriad redemption possibilities, expenses, sales charges, and exchange privileges.[84] A commenter also argued that much of the information would duplicate disclosure in the fee table, and thus would be contrary to the goal of prospectus simplification.[85]

3. Discussion of Classes Into Which Shares May Convert or Be Exchanged

The Commission is adopting new General Instruction I to Form N–1A. This Instruction states that multiple class funds that provide for conversions or exchanges of shares from one class to another should provide disclosure in the prospectus about all other classes into which the shares may be converted or exchanged. Although Instruction I does not specify a particular format, it states that the disclosure should be designed to aid investor comprehension, and when appropriate, should use tables, side-by-side comparisons, or other parallel presentations to assist an investor's understanding of the other class or classes.

4. Advertising and Sales Literature

The Commission is not adopting requirements for advertisements or sales literature about multiple class or master-feeder funds. The Commission had proposed amending rules 134 and 482 under the Securities Act and rule 34b–1 under the Investment Company Act to require multiple class and master-feeder fund advertisements to contain a prominent legend substantially similar to that proposed for prospectus disclosure. In addition, the Commission had proposed amending rules 482 and 34b–1 to require multiple class and master-feeder fund advertisements that contain performance figures to include, with equal prominence, the performance of all classes and feeder funds that would have been subject to the proposed prospectus cross-disclosure requirement. The proposal would also have required that when an advertisement contains performance figures for a class or feeder fund for which average annual total return information is not available for one, five, and ten year periods, and this information is available for another class, feeder or master fund, then the advertisement must include quotations of average annual total return for the securities of the other class, feeder or master fund together with any necessary explanation.

Commenters opposed the requirement of disclosure about other classes or feeder funds in advertisements.[86] One stated that "[i]n many respects, these requirements are so onerous that they are unworkable" and that "[t]he volume of disclosure required by the Proposal and the equal prominence requirement would make advertising prohibitively expensive as well as highly impractical for funds in the master-feeder fund structure."[87] Some commenters objected to the requirement because of the amount of space the disclosure would occupy in an average advertisement.[88]

In view of those objections, the Commission has determined not to adopt the proposed advertising disclosure requirements.[89] Instead, the Commission will address disclosure of performance under the general anti-fraud provisions of the federal securities laws[90] and expects that the staff will continue to address issues relating to performance disclosure on an interpretive or no-action basis.[91]

D. Effective Dates

Rule 18f–3 and the amendment to rule 12b–1 will become effective April 3, 1995. Registration statements and post-effective amendments filed with the Commission after April 3, 1995 must be in compliance with the amendments to Forms N–1A and N–14.

III. Cost/Benefit of the Proposals

Rule 18f–3 and the rule and form amendments adopted today should impose less of a reporting or recordkeeping burden and less regulatory compliance cost on multiple class funds than those imposed by the multiple class exemptive orders. Under rule 18f–3 and the form amendments, multiple class funds would be subject to fewer disclosure requirements and lower costs than under the exemptive orders. Any additional time required to comply with the rule's written plan requirement should be minimal because multiple class funds already would have to commit material class differences to writing in order to enter into distribution or service agreements, or to disclose their terms. The prospectus disclosure should impose little burden, and in fact requires less disclosure than currently required for multiple class funds. The disclosure is similar to that presently required for master-feeder funds, and thus should impose little or no additional burden on those funds.

The amendment to rule 12b–1 should not impose any additional costs because it essentially would incorporate in the rule existing requirements in the exemptive orders for multiple class funds.

IV. Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Karrie McMillan, Esq., Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W. 20549.

V. Statutory Authority

The Commission is adopting rule 18f–3 under the authority in sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. §§ 6(c), 18(i), and 37(a)], and the amendment to rule 12b–1 under section 12(b) of the Investment Company Act [15 U.S.C. § 12(b)]. The Commission is adopting the amendments to Form N–1A under sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77g(a), 77j, and 77s(a)], and sections 8(b), 24(a), and 38(a) of the Investment Company Act [15 U.S.C. §§ 80a–8(b), 24(a), and 37(a)], and the amendments to Form N–14 under sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77h, 77j and 77s(a)] and sections 14(a), 14(c) and 23(a) of the Exchange Act of 1934 [15 U.S.C. 78n(a), 78n(c) and 78w].

VI. Text of Adopted Rule and Rule and Form Amendments

List of Subjects in 17 CFR Parts 239, 270, and 274

Investment Companies, Reporting and record keeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.12b–1 is amended by adding paragraph (g) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each class, *provided, however,* that under § 270.18f–3(e)(2), any shareholder vote on a plan of a target class must also require a vote of any purchase class.

3. By adding § 270.18f–3 to read as follows:

§ 270.18f–3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a–18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] ("company") may issue more than one class of voting stock, *provided* that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, underwriter, or any other provider of services to the company.

(c) Income, realized and unrealized capital gains and losses, and expenses of the company not allocated to a particular class pursuant to paragraph (a) of this section:

(1) Except as permitted in paragraph (c)(2) of this section, shall be allocated to each class on the basis of the net asset value of that class in relation to the net asset value of the company; or

(2) For companies operating under § 270.2a–7 (including the provision allowing the calculation of net assets on an amortized cost basis), and for other companies declaring distributions of net investment income daily that maintain the same net asset value per share in each class, may be allocated:

(i) To each share without regard to class, *provided* that the company has received undertakings from its adviser, underwriter or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; or

(ii) On the basis of relative net assets (settled shares). For purposes of this section, "relative net assets (settled shares)" are net assets valued in accordance with generally accepted accounting principles but excluding the value of subscriptions receivable, in relation to the net assets of the company.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in

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[80] Both of these requirements would have been contained in a new Item 6(h) of Form N–1A.

[81] Chicago Bar Comment Letter, *supra* note 36, at 3; *See also* Signature Group Comment Letter, *supra* note 59, at 16; Fidelity Comment Letter, *supra* note 18, at 2.

[82] Federated Investors Comment Letter, *supra* note 15, at 3.

[83] Chicago Bar Comment Letter, *supra* note 36, at 2–3.

[84] *E.g.*, Signature Group Comment Letter, *supra* note 59, at 15–16; ICI Comment Letter, *supra* note 11, at 15–16 (the ICI also suggested that the line graph requirement could pose problems for EDGAR filers, since the EDGAR system cannot recognize more than a limited set of characters, *id.* at 16 n.20).

[85] Letter from IDS Financial Corporation to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See also* ICI Comment Letter, *supra* note 11, at 14.

[86] *See, e.g.*, Fidelity Comment Letter, *supra* note 18, at 3 ("cross-disclosure is particularly burdensome in advertisements"); ICI Comment Letter, *supra* note 11, at 17–18.

[87] Signature Group Comment Letter, *supra* note 59, at 16–17

[88] *Id.*; ICI Comment Letter, *supra* note 11, at 17–18 (the expense of cross-disclosure, together with the equal prominence requirement, would place multiple class and master-feeder funds at a competitive disadvantage).

[89] Footnote 88 in the proposing release erroneously stated that "rule 134 advertisements, however, may include rankings based on performance data." 58 FR at 68085, n.88. Rule 134 advertisements may not contain performance rankings.

[90] Therefore, funds relying on rule 18f–3 will not be required to quote the performance of all classes when they quote performance in advertisements under rule 482, as was required generally under the exemptive orders. The Commission cautions multiple class funds to use care not to mislead investors in advertising the performance of one class when multiple classes are being offered to the same persons. For example, it may be misleading to quote only performance of a class for institutional or inside investors (with low expenses) in a publication with a retail readership.

[91] *See, e.g.*, IDS Financial Corp. (pub. avail. Dec. 19, 1994) (allowing a multiple class fund to calculate standardized total return of a new class following a merger based upon the performance of the acquiring (and surviving) fund, adjusted to reflect differences in the sales load, but not differences in rule 12b–1 fees).

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the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an existing order of exemption. Before any vote on the plan, the directors shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

(e) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege providing that securities of the class may be exchanged for certain securities of another company; or

(2) A conversion feature providing that shares of one class of the company (the "purchase class") will be exchanged automatically for shares of another class of the company (the "target class") after a specified period of time, *provided that*:

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

(ii) The expenses, including payments authorized under a plan adopted pursuant to § 270.12b–1 ("rule 12b–1 plan"), for the target class are not higher than the expenses, including payments authorized under a rule 12b–1 plan, for the purchase class; and

(iii) If the amount of expenses, including payments authorized under a rule 12b–1 plan, for the target class is increased materially without approval of the shareholders of the purchase class, the fund will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

(3) A conversion feature providing that shares of a class in which an investor is no longer eligible to participate may be converted to shares of a class in which that investor is eligible to participate, *provided that*:

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FCRMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation of Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: Form N–1A does not, and the amendments to Form N–1A will not, appear in the Code of Federal Regulations.

6. By adding new General Instruction I to Form N–1A [referenced in §§ 239.15A and 274.11A] to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

I. Multiple Class and Master-Feeder Funds

Registrants issuing multiple classes of shares that provide for conversions of exchanges of shares from one class to another class of the same fund should disclose the information required by Form N–1A about all other classes into which the shares may be converted or exchanged. This information should be presented in a format designed to facilitate comprehension by investors, and when appropriate, should use tables, side-by-side comparisons, or other presentations to assist an investor's understanding of the other class or classes. A "multiple class fund" is an open-end management investment company that issues more than one class of shares, each of which represents interests in the same portfolio of securities, and either meets the requirements of rule 18f–3 under the Act [17 CFR 270.18f–3] or operates pursuant to an exemptive order. A "feeder fund" is an open-end management investment company, except a company that issues periodic payment plan certificates, that holds shares of a single open-end management investment company (the "master fund") as its only investment securities.

7. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding Instruction 4A to Item 2(a)(i), to read as follows:

Form N–1A

* * * * *

Item 2. Synopsis

(a)(i) * * *

Instructions:

* * * * *

4A. If the prospectus offers shares of a feeder fund, reflect the expenses of both the feeder fund and the master fund in which the feeder fund invests in a single fee table using the captions provided. In the brief narrative following the fee table, state that the fee table reflects the expenses of both Registrants.

* * * * *

8. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding Item 6(h) to read as follows:

Form N–1A

* * * * *

Item 6. Capital Stock and Other Securities

* * * * *

(h) Registrants that offer multiple classes of shares or that are feeder funds should briefly describe the salient features of the multiple class or master-feeder structure. In the case of a feeder fund, explain the circumstances under which the feeder fund could no longer invest in the master fund (e.g., if the master fund changed its investment objectives to be inconsistent with those of the feeder fund), and the consequences to shareholders of such an event. If the Registrant has publicly offered any class of shares of the same series not offered through the prospectus, or if any publicly offered feeder fund not offered through the prospectus invests in the same master fund as the Registrant, include the following disclosure: (i) that the Registrant issues other classes or that other funds invest in the same master fund (using the same terminology for classes or master and feeder funds as elsewhere in the prospectus), (ii) that those other classes or feeder funds may have different sales charges and other expenses, which may affect performance, (iii) a telephone number investors may call to obtain more information concerning the other classes or feeder funds available to them through their sales representative, and (iv) that investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative, or any person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the securities offered in the prospectus.

9. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding paragraph (b)(18) to Item 24 before the Instructions to read as follows:

Form N–1A

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(18) copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act, any agreement with any person relating to the implementation of a plan, any amendment to a plan or agreement, and a copy of the portion of the minutes of a meeting of the Registrant's directors describing any action taken to revoke a plan.

* * * * *

10. By adding Guide 34 to the Guidelines for Form N–1A [referenced in §§ 239.15A and 274.11A] to read as follows:

Guidelines for Form N–1A

* * * * *

Guide 34. Multiple Class and Master-Feeder Structures

In response to Item 6, if a single prospectus is used to offer more than one class of a multiple class fund or more than one feeder fund that invests in the same master fund, the prospectus should provide a separate response to Item 2(a)(i) (the fee table requirement) for each class or feeder fund and should clearly explain the differences between the expense and/or sales load arrangements of the classes or feeder funds. The fee table information should be arranged to facilitate a comparison by shareholders of the different fee structures.

11. By amending Form N–14 [referenced in § 239.23] by revising Item 16(10) to read as follows:

Note: Form N–14 does not, and the amendment to Form N–14 will not, appear in the Code of Federal Regulations.

Form N–14

* * * * *

Item 16. Exhibits

* * * * *

(10) copies of any plan entered into by registrant pursuant to rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] and any agreements with any person relating to implementation of the plan, and copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act [17 CFR 270.18f–3], any agreement with any person relating to implementation of the plan, any amendment to the plan, and a copy of the portion of a meeting of the minutes of the Registrant's directors describing any action taken to revoke the plan;

* * * * *

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4997 Filed 3–1–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–20916; File No. S7–24–88]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies To Impose Contingent Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule under the Investment Company Act of 1940 to permit certain registered open-end management investment companies ("mutual funds") to impose contingent deferred sales loads ("CDSLs"). A CDSL is a sales charge that is paid at redemption; its amount declines over several years until it reaches zero. The adoption of the rule is intended to allow mutual funds to offer investors the choice of an additional form of sales load without applying to the Commission for exemptive relief.

EFFECTIVE DATE: The new rule will become effective April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act of 1940 [15 U.S.C. § 80a] (the "Investment Company Act" or the "Act"). The Commission is not adopting the amendments that were proposed to Form N–1A [17 CFR 239.15A, 274.11A]. In a companion release, the Commission is proposing amendments to rule 6c–10 that would permit mutual funds to impose deferred sales loads generally, including loads payable in installments ("installment loads"); the amendments also would modify most of the substantive requirements of rule 6c–10 as adopted here.[1]

A condition in many CDSL exemptive orders granted to date requires applicants to comply with rule 6c–10 as originally proposed or as it may be reproposed, adopted, or amended. Rule 6c–10 as adopted here constitutes the rule as adopted within the meaning of that condition; the amendments that the Commission is proposing in the companion release do not constitute the rule as reproposed or amended within the meaning of that condition and may not be relied upon by those applicants.

I. Introduction and Background

The Commission proposed rule 6c–10 in 1988 to allow mutual funds to impose deferred sales loads generally, including CDSLs, as well as other loads paid at redemption and sales loads payable in installments.[2] The Commission received 33 comment letters.[3] Although the commenters generally supported the proposal to allow CDSLs, some commenters questioned the need for certain substantive requirements in the rule. Commenters had mixed reactions to the proposed provisions for installment loads.

Since the proposal of rule 6c–10, the Commission (or the Division of Investment Management exercising delegated authority) has issued almost 200 exemptive orders permitting funds to impose CDSLs and continues to receive such applications. Also since the original proposal, the National Association of Securities Dealers, Inc. ("NASD") has amended the provisions of its Rules of Fair Practice that govern mutual fund sales charges ("NASD Sales Charge Rule"). The amendments address certain deferred sales charges, including CDSLs, and distribution charges paid by funds in accordance with rule 12b–1 under the Investment Company Act.[4]

The Commission has considered the comments on the proposal and the implications of the amendments to the NASD Sales Charge Rule and has concluded that it may be appropriate to modify the rule to eliminate most of the substantive requirements in the original proposal and rely upon the roles of disclosure and the overall limits in the NASD Sales Charge Rule. Instead of adopting rule 6c–10 with these changes, the Commission is proposing modifications to rule 6c–10 to obtain the benefit of public comment on this approach and on issues raised by deferred loads other than CDSLs.

In light of the Commission's extensive experience under the CDSL exemptive

[1] Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 [hereinafter Proposing Release].

[3] The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the "ABA Subcommittee"); the American Council of Life Insurance; Deutsche Bank AG New York Branch ("Deutsche Bank") (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. ("IDS Financial"); IDS Mutual Fund Group; the Investment Company Institute (the "ICI") (commenting both within and outside the comment period); the Keystone Group, Inc.; the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE Securities, Inc.; Simpson, Thacher & Bartlett ("Simpson Thacher") (commenting outside the comment period); Templeton Funds Management, Inc.; and 19 individual investors. The comment letters are available for public inspection and copying at the Commission's public reference room in File No. S7–24–88.

[4] 17 CFR 270.12b–1.

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orders, the Commission does not believe that it is necessary to require funds seeking to impose CDSLs to continue to file exemptive applications with the Commission pending consideration of these proposed modifications. Therefore, the Commission is adopting rule 6c–10 to permit the imposition of CDSLs, but not other forms of deferred sales load.[5]

II. Discussion

The Commission is adopting rule 6c–10 substantially as originally proposed to permit mutual funds[6] to impose CDSLs. The rule as adopted and as originally proposed requires CDSLs to be calculated based on the lesser of the net asset value at the time of purchase or at the time of redemption; specifies a particular order of load calculation in a partial redemption; prohibits CDSLs on reinvested dividends and capital gains distributions; and allows scheduled CDSL variations. The rule as adopted does depart from the proposal in certain respects in light of comments on the 1988 proposal and of the adoption of amendments to the NASD Sales Charge Rule.

A. The NASD Rule on Maximum Sales Charges

Paragraph (a)(2) in the proposed rule provided that the maximum amount of a back-end load, or any combination of a back-end load and a front-end load, may not exceed the maximum allowed under the NASD Sales Charge Rule. At the time rule 6c–10 was proposed, the NASD Sales Charge Rule did not expressly apply to back-end loads. Since then, the NASD has amended its Sales Charge Rule to include expressly back-end loads, as well as asset-based distribution fees.[7] Because a Commission rule no longer is necessary to bring CDSLs within the limits of the NASD Sales Charge Rule, the proposed paragraph has been deleted from rule 6c–10 as adopted to permit CDSLs.

B. "No-Load" Labeling

As initially proposed, rule 6c–10 would have prohibited any exempted person and its first and second tier affiliates (all as set forth in the proposed rule), from holding a mutual fund out to the public as being "no-load" or as having "no sales charge" if the fund imposed a deferred sales load. The amendments to the NASD Sales Charge Rule also expressly prohibited NASD members and their associated persons from describing a mutual fund as "no load" or as having "no sales charge" if the fund imposes a front-end load, a back-end load, or a 12b–1 and/or service fee that exceeds .25% of average net assets per year.[8] Therefore, the rule as adopted to permit CDSLs omits the prohibition in proposed paragraph (b) as duplicative of the provision in the NASD Sales Charge Rule. The Commission also believes that it would be misleading and a violation of the federal securities laws for a fund that imposes a deferred sales load to be held out as a no-load fund.[9]

C. Interest, Carrying, and Finance Charges

As proposed in 1988, rule 6c–10 would have prohibited a fund from imposing a deferred load if any amount were charged on the shareholders or the fund that was intended to be a payment of interest related to the load or a similar charge. Several commenters pointed out that a prohibition on interest charges would leave a fund's underwriter uncompensated for the cost of advancing the sales and promotional expenses later reimbursed through deferred loads.[10] Commenters noted that the NASD Sales Charge Rule allows the inclusion of an interest component in the computation of the aggregate sales load limits.[11]

The proposed provision was not intended to prohibit any interest charges that might be reflected in the specified load amount. Rather, the provision was designed to prohibit any interest or similar charge that was separate from and in addition to the load amount. Because paragraph (a)(1) of the rule already requires all components of a deferred load to be included in one specified amount, rule 6c–10 as adopted does not include the interest charge prohibition.[12]

D. Scheduled Variations

Paragraph (a)(4) of the rule as adopted permits a fund to offer a scheduled variation in, or eliminate, a CDSL for a particular class of shareholders or transactions, provided that the scheduled variation meets the conditions in rule 22d–1 under the Act.[13] Paragraph (a)(4) also permits a fund to offer an existing shareholder any new scheduled variation that would

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[5] *See supra* note 1.

[6] Like the rule as proposed, rule 6c–10 as adopted applies only to open-end management investment companies other than registered separate accounts. In the Proposing Release, the Commission also requested comment on whether to propose amendments to rules 6c–8 [17 CFR 270.6c–8] and 6e–3(T) [17 CFR 270.6e–3(T)] under the Act, and whether to issue revised proposed amendments to rule 6e–2 [17 CFR 270.6e–2] under the Act, governing the use of deferred sales loads by registered insurance company separate accounts. The Commission received eight comment letters in response to that request, suggesting that the Commission not propose any amendments. The Commission is not taking any action with regard to these rules.

[7] The NASD Sales Charge Rule prohibits NASD members from offering or selling shares of an open-end management investment company registered under the Act if the sales charges described in the company's prospectus are excessive. Aggregate sales charges are deemed excessive under the Rule if they do not conform to the specific provisions set forth in the Rule. NASD, Rules of Fair Practice, Art. III, Secs. 26(d)(1) and (2). *See also* Letter from the NASD to Jonathan G. Katz, Secretary, SEC (March 14, 1989), File No. S7–24–88; Proposed Rule Change by NASD Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 29070 (Apr. 12, 1991), 56 FR 16137; Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985.

Since back-end loads are used by mutual funds to finance the payment of brokerage commissions, and brokers selling mutual fund shares must be members of the NASD, virtually all funds that impose these loads would be distributed by NASD members and therefore would be subject to the Sales Charge Rule.

[8] NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(3).

[9] *See* Proposing Release, *supra* note 2, at 45283 (referring, in turn, to an earlier Commission statement of its view).

[10] Letter from the ABA to Jonathan G. Katz, Secretary, SEC at 7–8 (Jan. 31, 1989); Letter from Deutsche Bank, submitted on its behalf by Simpson Thacher, to the Division of Investment Management, SEC 8–9 (Nov. 5, 1993); Letter from the ICI to Barry Barbash, Director, Division of Investment Management, SEC 3–4 (June 14, 1994); Letter from the ICI to Jonathan G. Katz, Secretary, SEC 7–8 (Jan. 9, 1989); Letter from IDS Financial to Jonathan G. Katz, Secretary, SEC 1–2 (Jan. 3, 1989).

[11] ICI June 14 comment letter, *supra* note 10, at 3–4; Deutsche Bank November 5, 1993 comment letter, *supra* note 10, at 9.

[12] The initial proposal stated that in the view of the Commission's Division of Market Regulation, deferred sales loads likely would not involve an extension of credit from a fund's underwriter to the shareholders that would be prohibited under section 11(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"). One commenter nevertheless raised a concern that section 11(d)(1) of the Exchange Act would prohibit deferred sales charges. Deutsche Bank November 5, 1993 comment letter, *supra* note 10, at 9–10. The Commission believes that absent an explicit interest charge, a deferred sales load would not involve an extension of credit prohibited by section 11(d)(1) of the Exchange Act. The Commission notes that the NASD Sales Charge Rule limits the amount that NASD members can charge their customers for the purchase of mutual fund shares.

[13] 17 CFR 270.22d–1. Under rule 22d–1, any scheduled variation must be applied uniformly to all offerees in the specified class; adequate information about the scheduled variation must be furnished to the existing and prospective shareholders; the fund's prospectus and statement of additional information must be revised to describe the new scheduled variation prior to making the variation available to investors; and existing shareholders must be advised of the new scheduled variation within one year of the date the variation is first made available to investors.

waive or reduce the amount of a CDSL not yet paid.

E. Other Changes

The text of the rule as adopted also departs from the originally proposed text in two other respects. First, because the adoption of the rule is limited to CDSLs, the adopted rule text omits provisions relating to installment loads or other forms of back-end loads.[14] Second, paragraph (a) of the rule as adopted omits an exemption from section 22(c) of the Investment Company Act [15 U.S.C. § 80a–22(c)], because section 22(c) is solely a grant of rulemaking authority to the Commission and no exemption from that section is required.

F. Form N–1A

The Commission is not adopting the amendments to Form N–1A that were proposed in 1988. Because the Commission is not adopting the provisions of rule 6c–10 for installment loads, no adjustments to the fee table are necessary now.

III. Cost/Benefit Analysis

Rule 6c–10 as adopted does not impose any significant burdens on mutual funds. Rather, the rule should benefit the funds by making it possible to impose CDSLs without having to file exemptive applications with the Commission. The adoption of the rule would give investors an additional option for a means of paying sales charges.

IV. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 16619. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604. The Analysis explains that the new rule allows mutual funds to impose CDSLs without having to file exemptive applications with the Commission. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Nadya B. Roytblat, Esq., Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

[14] *E.g.*, paragraph (a)(1)(ii) and pertinent provisions of other paragraphs such as paragraph (c)(3) in the original proposal.

V. Statutory Authority

The Commission is adopting rule 6c–10 under sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), and –37(a)].

List of Subjects in 17 CFR Part 270

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of Adopted Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37 80a–39 unless otherwise noted;

* * * * *

Section 270.6c–10 is also issued under sec 6(c) [15 U.S.C. 80a–6(c)];

* * * * *

2. Section 270.6c–10 is added to read as follows:

§ 270.6c–10 Exemption for certain open-end management investment companies to impose contingent deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of Sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1 to the extent necessary to permit a contingent deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) The amount of a contingent deferred sales load is calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption;

(2) No contingent deferred sales load is imposed on shares, or amounts representing shares, that are purchased through the reinvestment of dividends or capital gains distributions;

(3) The contingent deferred sales load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased, *Provided*, however, that another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales load; and

(4) The same contingent deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a contingent deferred sales load may be offered to particular classes of shareholders or in connection with particular classes of transactions, *Provided*, that the conditions in § 270.22d–1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a contingent deferred sales load that has not yet been paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of such company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by such company; and

(3) *Contingent deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company

Dated: February 23, 1995

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4996 Filed 3–1–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7144; IC–20917; File No. S7–8–95]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies To Impose Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendments, and request for comment.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits certain registered open-end management investment companies ("mutual funds") to impose contingent deferred sales loads. The proposed amendments would allow funds to offer investors a wider variety of deferred sales loads, including installment loads, and would eliminate certain requirements in the rule. The Commission also is proposing amendments to the registration form for mutual funds, and publishing for comment a staff guide to the registration form. These amendments modify the requirements for disclosing deferred sales loads in mutual fund prospectuses to reflect the changes made in the proposed rule amendments.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–8–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 10–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 6c–10 (17 CFR 270.6c–10) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or the "Act"), and on proposed amendments to Form N–1A (17 CFR 239.15A, 274.11A) under the Securities Act of 1933 (15 U.S.C. 77a–77aa) (the "Securities Act") and the Investment Company Act.[1]

Executive Summary

The Commission is proposing amendments to rule 6c–10 (17 CFR 270.6c–10) under the Investment Company Act to allow mutual funds to impose deferred sales loads other than contingent deferred sales loads ("CDSLs"), and to remove certain requirements in the rule. Rule 6c–10, which allows mutual funds to impose CDSLs, was adopted today in a companion release.[2] The proposed amendments would allow mutual funds to assess sales charges such as those paid at redemption ("back-end loads") that differ from CDSLs, as well as loads paid after purchase during the term of a shareholder's investment in a fund, for example, in installments ("installment loads"). These new forms of deferred sales load would be an alternative to the existing sales load structures. Although mutual funds to date have not used installment loads or back-end loads other than CDSLs, the Commission has permitted back-end loads under the rules for certain variable insurance products, and has issued installment load exemptive orders to separate accounts and unit investment trusts.

Rule 6c–10 provisions for back-end loads other than CDSLs and installment loads were part of proposed rule 6c–10 as originally proposed in 1988.[3] That proposal would have codified for deferred sales loads generally the exemptions and the requirements in the CDSL exemptive orders granted to date. Rule 6c–10 was adopted today to allow CDSLs essentially as proposed. Some commenters on the original proposal suggested that, because mutual fund sales charges are regulated by the National Association of Securities Dealers, Inc. (the "NASD"), it is unnecessary for the Commission to impose specific requirements on deferred loads, other than requirements governing prospectus disclosure. The Commission is proposing amendments to rule 6c–10 to follow such an approach for CDSLs and other deferred loads by removing most of the requirements in rule 6c–10. Under the new approach, the terms of any deferred sales load would be subject to specific disclosure requirements and would be covered by the overall limits in the NASD rule governing the amount of mutual fund sales charges ("NASD Sales Charge Rule"). The Commission also is proposing revised prospectus disclosure requirements that reflect the proposed changes to rule 6c–10.

I. Background

The Commission first proposed rule 6c–10 allowing mutual funds to impose deferred sales loads on November 2, 1988.[4] Under the 1988 proposal, mutual funds would have been able to assess deferred loads under the terms and conditions contained in CDSL exemptive orders granted to individual funds as of the date of the proposal. The proposed rule would have permitted mutual funds to charge not only CDSLs,[5] but also loads paid at redemption whose amount remains the same or changes in a manner different than a CDSL, as well as loads paid in one or more installments during the term of a shareholder's investment in a fund. In accordance with the CDSL exemptive orders, the rule as proposed in 1988 would have specified load calculation requirements; prohibited deferred loads on reinvested distributions; and allowed scheduled load variations. Rule 6c–10 as adopted today to allow CDSLs contains these requirements.

The Commission received 33 comment letters on the 1988 proposal.[6]

[1] Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995) [hereinafter Rule 6c–10 Adopting Release].

[2] *Supra* note 1.

[3] Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 [hereinafter 1988 Proposing Release].

[4] 1988 Proposing Release, *supra* note 3.

[5] A CDSL is paid at redemption, but declines to zero if the shares are held for a certain period of time. Mutual funds typically impose a CDSL in combination with an asset-based distribution fee charged in accordance with rule 12b–1 under the Act [17 CFR 270.12b–1] ("rule 12b–1 fee"), in an arrangement commonly called a "spread load." Under this arrangement, a fund's principal underwriter initially pays the fund's sales and promotional expenses, including commissions to persons who sell the fund's shares. The underwriter then recovers these expenses through a distribution fee paid to it by the fund out of the fund's assets. Should a shareholder redeem his or her shares before the underwriter has been fully reimbursed, the CDSL paid by the shareholder upon redemption compensates the underwriter for the balance.

[6] The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the "ABA Subcommittee"); the American Council of Life Insurance; Deutsche Bank AG New York Branch ("Deutsche Bank") (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. ("IDS Financial"); IDS Mutual Fund Group; the Investment Company Institute (the "ICI") (commenting both within and outside the comment period); the Keystone Group, Inc. ("Keystone"); the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE Securities, Inc. ("NYLIFE"); Simpson, Thacher & Bartlett ("Simpson Thacher") (commenting outside the comment period); Templeton Funds Management, Inc. ("Templeton"); and 19 individual investors. The comment letters are available for public inspection and copying at the Commission's public reference room in File No. S7–24–88.

The commenters generally supported the proposal.[7] The commenters welcomed a rule allowing CDSLs as eliminating the need to file exemptive applications, and many maintained that installment loads could offer desirable flexibility to funds as well as consumers.[8] Individual investors in particular supported installment loads as an option in paying a sales charge.[9] Some of these investors compared installment loads to front-end loads and preferred the former as allowing them to defer the payment of a sales charge; others compared installment loads to rule 12b–1 fees, and believed that installment loads as proposed in 1988 would be a more clear charge, as well as one that would be payable within a more definite term. Other commenters have suggested that installment loads would make it easier for smaller mutual fund sponsors, as well as sponsors of mutual funds not affiliated with brokerage firms, to obtain financing to pay broker commissions through securitization of installment load cash flows; and they argued that installment loads would thereby encourage competition in the fund industry that ultimately would benefit investors.[10]

II. Discussion of Proposed Amendments to Rule 6c–10

Like the 1988 proposal, the proposed amendments to rule 6c–10 would allow mutual funds to impose back-end sales loads other than CDSLs as well as installment loads, and would permit scheduled load variations. In a change from the 1988 proposal and the rule as adopted, the proposed amendments no longer would specify load calculation requirements, nor prohibit deferred sales loads on reinvested dividends and other distributions. Instead, the terms of any deferred sales load would be required to be covered by the overall limits in the NASD Sales Charge Rule,[11] and would be subject to specific prospectus disclosure requirements under the proposed amendments to the Commission's mutual fund registration form.

A. Scope of the Rule as Amended

Under the proposed amendments, paragraph (b)(3) of the rule would define a deferred sales load as any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.[12] The definition would include CDSLs, as well as other loads paid at redemption whose amount may remain the same or change in a manner different than a CDSL. The definition also would include loads paid after purchase during the term of a shareholder's investment in a fund, such as in one or more installments that could be accelerated upon an early redemption.

Rule 6c–10 as adopted and as originally proposed does not apply to registered insurance company separate accounts. The exemption to impose deferred sales loads under the proposed amendments also would not extend to unit investment trusts. The Commission has issued installment load exemptive orders to unit investment trusts ("UITs"),[13] and requests comment on the appropriateness of a rule allowing UITs to assess deferred loads.[14]

Unlike the 1988 proposal, which would have required installment loads to be deducted directly from a shareholder's account, the amendments would not require any particular method of collecting installment loads. The loads, for example, could be paid out of distributions, by automatic redemptions, or through separate billing of an investor's account. Two commenters indicated that funds most likely would deduct installment load payments from dividend distributions.[15] The Commission invites further comment on the methods that could be used to pay installment loads. Whichever method is used, however, it would have to be disclosed in the fund's prospectus, as required by the proposed

[7] The comments addressed CDSLs and installment loads, but did not focus specifically on back-end loads other than CDSLs. While some earlier industry commenters perceived practical difficulties with using installment loads, more recent industry comments suggest that any such difficulties either no longer exist or could be resolved. Compare Letter from the ABA Subcommittee to Jonathan G. Katz, Secretary, SEC (Jan. 11, 1989); Letter from IDS Financial to Jonathan G. Katz, Secretary, SEC (Jan. 3, 1989); Letter from the ICI to Jonathan G. Katz, Secretary, SEC (Jan. 9, 1989); Letter from Keystone to Jonathan G. Katz, Secretary, SEC (Jan. 6, 1989) (together, suggesting recordkeeping, transfer agent, accounting and tax-related complexities associated with installment loads) *to* Letter from Deutsche Bank, submitted on its behalf by Simpson Thacher, to the Division of Investment Management, SEC 2 (Dec. 13, 1993) (stating that Deutsche Bank "encountered a great deal of interest" in installment loads in the course of its "discussions with more than 15 well-recognized (both small and large) mutual fund management companies").

Two earlier commenters also interpreted a statement in the 1988 Proposing Release that the proposal of rule 6c–10 should be read together with the Commission's proposed amendments to rule 12b–1, as intending to mandate installment loads as a replacement for spread loads. ABA Subcommittee comment letter, *supra* note 7, at 3; ICI comment letter, *supra* note 7, at 2, 13–16. *See also* Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies, Investment Company Act Release No. 16431 (June 13, 1988), 53 FR 23258. The 1988 proposal was not intended to express such a view, nor is the Commission today expressing such a view.

[8] Letter from IDS Mutual to Jonathan G. Katz, Secretary, SEC (Nov. 15, 1988); Letter from NYLIFE to Jonathan G. Katz, Secretary, SEC (Dec. 30, 1988); Letter from Templeton to Jonathan G. Katz, Secretary, SEC (Jan. 9, 1989); Deutsche Bank December 13, 1993 comment letter, *supra* note 7; Letter from the NASL to the Division of Investment Management, SEC (Feb. 16, 1994).

[9] All but one of the 16 letters the Commission received from individual investors on this subject favored the installment load proposal.

[10] Deutsche Bank December 13, 1993 comment letter, *supra* note 7; NASL comment letter, *supra* note 8. Both commenters compared the financing possibilities with installment loads to the financing of receivables from rule 12b–1 fees. The commenters noted that the risk of a fund board's terminating a rule 12b–1 plan, as well as the risk of net asset value fluctuations inherent in an asset-based charge, currently restrict the availability of credit to larger mutual fund sponsors only; and that installment loads, which would not carry the same risks, could broaden the financing possibilities. *See also* Letter from the ICI to Barry Barbash, Director, Division of Investment Management, SEC 5 (June 14, 1994) (noting that facilitation of the financing of distribution costs is one of the principal objectives cited by the proponents of installment loads).

One commenter's remarks suggested that, from the point of view of those concerned with systemic risk, the assurance of a steady stream of payments in an installment load structure would mean that a fund sponsor would be taking on less risk when it borrows to finance commission payments. Deutsche Bank December 13, 1993 comment letter, *supra* note 7, at 4–5.

[11] The NASD Sales Charge Rule prohibits NASD members from offering or selling shares of an open-end management investment company registered under the Investment Company Act if the sales charges described in the company's prospectus are excessive. Aggregate sales charges are deemed excessive under the Rule if they do not conform to the specific provisions set forth in the Rule. NASD Rules of Fair Practice, Art. III, Secs. 26(d) (1) and (2).

[12] Rule 6c–10 as amended would not be applicable to certain charges that may be imposed by a mutual fund to discourage short-term trading in its shares and that are paid directly to the fund. *See, e.g.*, 17 CFR 270.11a–3(a)(7) (defining a "redemption fee"). The Commission's staff has taken the position that such charges may be imposed without the need for exemptive relief under the Act. *See, e.g.*, John P. Reilly & Associates (pub. avail. July 12, 1979).

[13] *See* Merrill Lynch, Pierce, Fenner & Smith, Inc., Investment Company Act Release Nos. 13801 (Feb. 29, 1984), 49 FR 8512 (Notice of Application to allow UITs to impose a deferred sales load payable in installments) and 13848 (Mar. 27, 1984), 30 SEC Docket 192 (Order), and 15120 (May 29, 1986), 51 FR 20389 (Notice of Application) and 15167 (June 24, 1986), 35 SEC Docket 1735 (Order). *See also* PaineWebber, Inc., Investment Company Act Release Nos. 20755 (Dec. 6, 1994), 59 FR 64003 (Notice of Application to allow a UIT to impose a deferred sales load payable in installments) and 20819 (Jan. 4, 1995) (Order).

[14] *See* Rule 6c–10 Adopting Release, *supra* note 1, at n.7 regarding deferred sales loads in the context of separate accounts.

[15] ICI comment letter, *supra* note 7 at 8; Letter from Simpson Thacher to the Division of Investment Management, SEC 2 (Dec. 13, 1993).

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amendments to Form N–1A.[16] Because different methods of collecting load payments could carry different potential tax consequences for investors,[17] funds also would be required to disclose those consequences briefly in the prospectus.[18]

B. Deferred Load Calculation

Rule 6c–10 sets two requirements for calculating a deferred sales load. Under the first requirement, a CDSL must be based on the lesser of the net asset value (the "NAV") at the time of purchase or the NAV at the time of redemption.[19] The 1988 proposal would have required the "lesser of" standard for all deferred loads paid at redemption, but would have allowed deferred loads paid other than at redemption (such as installment payments) to be based at a fund's option either on the NAV at the time of purchase or on the lesser of the NAV at the time of purchase or the NAV at the time the load was paid. The mandatory "lesser of" standard for loads paid at redemption was designed to eliminate any impediment to redemption in a falling market that might be created by the load. The second requirement prescribes the method for load calculation in a partial redemption.[20]

This requirement was intended to allow shareholders the maximum benefit from shares in their deferred load accounts that carried no load.

Commenters on the 1988 proposal generally argued that neither requirement is necessary as long as deferred loads are subject to the limits of the NASD Sales Charge Rule and properly disclosed.[21] None of the commenters addressed the concern about an impediment to redemption associated with the "lesser of" requirement, nor any benefits or drawbacks of the order of load calculation. Some commenters suggested, however, that allowing, but not requiring, the "lesser of" method would make it easier for fund sponsors to obtain financing to pay commissions to brokers by eliminating the risk of NAV fluctuation.[22] One commenter also argued that eliminating the "lesser of" requirement would eliminate the need to build a cushion into the load structure to account for the risk of a lower NAV.[23] This commenter suggested that the "lesser of" standard may cause fund sponsors to set the load at a higher percentage amount than they otherwise would in order to allow a margin for a possible decline in the NAV.

The Commission is proposing to eliminate the two load calculation requirements from rule 6c-10. Under the proposed amendments, paragraph (a)(1) would allow a deferred load to be a specified percentage of the NAV at the time of purchase, redemption, or the payment of an installment, but would not otherwise limit load calculation.[24] Paragraph (a)(2) would require the terms of a deferred load to be subject to the NASD Sales Charge Rule.

The Commission requests comment on whether paragraph (a)(1) should provide for a deferred load to be based on the offering price either instead of, or in addition to, the NAV at the time of purchase. The fee table appearing in mutual fund prospectuses calls for deferred loads to be expressed, where applicable, as a percentage of the original purchase price. This disclosure provides easier comparability with front-end sales loads, which are expressed as a percentage of the offering price.

The requirement in paragraph (a)(1) that the load be a "specified percentage stated in the prospectus would allow investors to know at the time of purchase the maximum percentage amount of the load.[25] Under the revised prospectus disclosure requirements, funds also would have to disclose in the fee table, and explain elsewhere in the prospectus, the manner in which the load is calculated.[26] In addition, funds would have to disclose the method by which they would calculate a deferred load in a partial redemption. The requirement in paragraph (a)(2) that the terms of a deferred load be covered by the NASD Sales Charge Rule would subject all deferred sales loads to the NASD's limits on maximum sales charges.[27] Such an approach is consistent with that currently taken with front-end sales charges assessed on mutual fund shares. The Commission requests comment on the proposed elimination of the load calculation restrictions and the reliance on revised prospectus disclosure requirements and the NASD Sales Charge Rule for deferred sales charges.

[16] *See infra* section III.B.

[17] One commenter on the 1988 proposal, for example, pointed out that paying installments out of dividend distributions would mean that a shareholder would incur dividend income, yet not actually receive the portion of that income that was used to pay the installment. ICI comment letter, *supra* note 7, at 2, 9. Payment through automatic redemptions, on the other hand, would mean that a shareholder might incur a capital gain or loss on each such redemption; if additional shares then were purchased by the shareholder within 30 days of the automatic redemption, any capital loss might be disallowed under the "wash sale" rule contained in the Internal Revenue Code. *Id.* at 9; IDS Financial comment letter, *supra* note 7, at 1; NYLIFE comment letter, *supra* note 8, at 3.

According to another commenter, installment loads could present potential difficulties for tax-privileged investors, such as retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Simpson Thacher comment letter, *supra* note 15, at 1–8. Automatic redemptions to pay installment loads, for example, might result in the mutual fund's being deemed a fiduciary of the investor for purposes of ERISA, the redemption's being deemed a prohibited transaction under ERISA, and the investor's losing its tax-exempt status. *Id.* This commenter noted, however, that a fund could seek to obtain a favorable ruling from the Internal Revenue Service on these issues. Simpson Thacher comment letter, *supra* note 15, at 5–6. A fund also could choose not to offer installment loads to its tax-privileged investors.

[18] *See infra* section III.B (discussing staff Guide 30 to Form N–1A).

[19] 17 CFR 270.6c–10(a)(1).

[20] 17 CFR 270.6c–10(a)(3). A fund must treat as if redeemed first shares or amounts representing shares not subject to a load, and treat other shares or amounts representing shares as if redeemed in the order they were purchased. In a partial redemption, this method would allow a shareholder, in effect, to delay the payment of the deferred sales charge. In a full redemption, no particular order of load calculation would have affected the amount of a deferred sales charge due.

[21] ABA Subcommittee comment letter, *supra* note 7, at 6; ICI comment letter, *supra* note 7, at 2; IDS comment letter, *supra* note 7, at 2.

[22] Deutsche Bank December 13, 1993 comment letter, *supra* note 7, at 5; ICI June 14, 1994 comment letter, *supra* note 10, at 5.

[23] Deutsche Bank December 13, 1993 comment letter, *supra* note 7, at 5.

[24] This provision also would allow funds to base a deferred sales load on a combination of these standards, such as on the lesser of, or the higher of, the NAV at the time of purchase or redemption, provided the standard is disclosed and is consistent with any applicable provisions in the NASD Sales Charge Rule. A "higher of" standard, for instance, currently is not allowed under the NASD Sales Charge Rule for mutual funds without an asset-based sales charge, because the Rule limits the sales loads for these funds to a set percentage of the offering price. NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(1)(A).

[25] The requirement that the load be a "specified percentage" does not mean that the amount must be fixed and may not decrease or increase over time. Rather, it requires only that the percentage amount of the load to be charged at a given time be disclosed in the prospectus. Therefore, the phrase "the same or a lower percentage" in paragraph (a)(1) as adopted for CDSLs has been deleted from the proposed text. Funds would be able to show in the prospectus fee table the range of any deferred load that changes over time, as well as a schedule of any installment load payments. *See infra* section III.A.

[26] *See infra* sections III.A and B.

[27] The NASD Sales Charge Rule in its current form governs only deferred loads paid at redemption. The Rule applies to, among other things, "deferred sales charges," which it defines, in relevant part, as "a sales charge that is deducted from the proceeds of the redemption of shares by an investor." NASD, Rules of Fair Practice, Art. III, Sec. 26(b)(8)(B). To the extent deferred loads would be allowed to be paid other than upon redemption (*e.g.*, installment loads), they would fall outside the current definition and would not be covered by the Rule. The proposed amendments to rule 6c-10 contemplate the NASD's amending its Sales Charge Rule to address deferred loads paid other than upon redemption. The Commission's staff has requested the NASD to review its Sales Charge Rule in light of the proposed amendments.

C. Deferred Loads on Reinvested Distributions

Rule 6c-10 prohibits mutual funds from imposing CDSLs on shares purchased through the reinvestment of dividends or other distributions.[28] Some commenters on the 1988 proposal argued that this prohibition is unnecessary so long as a mutual fund appropriately discloses the manner in which loads are assessed and so long as loads charged by mutual funds generally are subject to the limits in the NASD Sales Charge Rule.[29] The Commission is proposing to delete this prohibition from rule 6c-10. Under the revised prospectus disclosure requirements, funds that impose deferred sales charges on reinvested dividends and other distributions would have to disclose this fact in their prospectuses.[30] This approach would be consistent with the Commission's approach to front-end loads on reinvested dividends. The Commission requests comment on the appropriateness of the proposed approach for deferred loads.

The NASD Sales Charge Rule currently covers front-end loads, but not deferred loads, on reinvested dividends. The NASD Sales Charge Rule also does not cover loads on reinvested capital gains distributions or returns of capital.[31] The proposed amendments to rule 6c–10 contemplate the NASD's amending its Sales Charge Rule to address these issues.

D. "No-Load" Labeling

As proposed in 1988, rule 6c–10 would have prohibited any exempted person and its first and second tier affiliates (all as set forth in the proposed rule) from holding a mutual fund out to the public as being "no-load" or as having "no sales charge" if the fund imposed a deferred load. After rule 6c–10 was proposed, the NASD amended its Sales Charge Rule expressly to prohibit NASD members and their associated persons from describing a mutual fund as "no load" or as having "no sales charge" if the fund imposes a front-end load, a back-end load, or a 12b–1 and/or service fee that exceeds .25% of average net assets per year.[32] In light of this amendment to the NASD Sales Charge Rule, the Commission concluded that it was unnecessary to retain a separate no-load labeling prohibition for CDSLs in rule 6c–10 as adopted. The prohibition similarly is unnecessary for back-end loads other than CDSLs. Although the NASD Sales Charge Rule currently does not address installment loads, the Commission anticipates that the NASD would amend its Sales Charge Rule if the proposed rule 6c–10 amendments are adopted, and believes that it is unnecessary to amend rule 6c–10 to prohibit no-load labeling in the case of installment loads. The Commission also believes that it would be misleading and a violation of the federal securities laws for a fund that imposes a deferred sales load to be held out to the public as a no-load fund.[33]

E. Exchanges Involving Deferred Loads

The Commission is not proposing any amendments to rule 11a–3 under the Investment Company Act governing exchanges of shares, that relate to deferred sales loads.[34] Back-end and installment loads would fall under the current definition of "deferred sales load" in rule 11a–3,[35] and therefore would be covered by the requirements in that rule on the imposition of deferred sales charges in connection with an exchange. The Commission invites comment on whether it should amend the definition of deferred sales load in rule 11a–3 to correspond expressly with the deferred load definition in the proposed amendments to rule 6c–10. The Commission also invites comment on whether rule 11a–3 needs to include any additional provisions for deferred loads.

III. Discussion of Revised Disclosure Requirements

The Commission is proposing new disclosure requirements for deferred sales loads in light of the proposed changes to rule 6c–10 discussed above. These requirements would reflect the rule's scope under the proposed amendments, which would permit loads paid at redemption or in installments. They also respond to the proposed elimination of the limitations in the 1988 proposal that would have required a back-end load to be based on the lower of the NAV at the time of purchase or redemption, and permitted installment loads to be based on the NAV at the time of purchase or on the lower of the NAV at the time of purchase price and the NAV at the time an installment was paid.

A. Fee Table Disclosure

The fee table requirements in Item 2 of Form N–1A currently require disclosure of deferred sales loads, but do not contemplate installment loads the amount of which is based on a price other than the purchase price or redemption proceeds. The Commission is proposing amendments to the fee table requirements to require disclosure concerning all forms of deferred sales loads, including installment loads.

The parenthetical explanation following the caption "Deferred Sales Load" in the fee table currently provides for deferred loads to be expressed only as a percentage of the original purchase price or the redemption proceeds. The proposed amendment would replace most of the current wording inside the parentheses with a blank, indicating that a registrant should provide appropriate disclosure describing the basis on which the load is computed. This change reflects the greater variety of load formulations that rule 6c-10 would permit under the proposed amendments: in contrast to the limitations in the rule as adopted and as initially proposed, the proposed amendments would permit deferred loads to be a percentage of the NAV at the time of purchase, redemption, or the payment of an installment, or the higher or lower of those amounts.

The proposed revisions to Instruction 5 to the fee table are intended to clarify how the fee table should address all deferred loads and to respond to the greater range of practices that would be permitted under the proposed amendments. The addition of the word "total" would make clear that the response to the "Deferred Sales Load" caption for an installment load should be the sum of the installments (e.g., 6%,

[28] 17 CFR 270.6c-10(a)(2). The 1988 proposal also would have prohibited funds from charging deferred loads on capital appreciation. Because under the proposed amendments paragraph (a)(1) would allow deferred loads to be based on the NAV at the time of redemption and at the time an installment is paid, a load could be charged on any capital appreciation to the extent the load is based on the higher of the NAV at purchase or at the time of redemption or load payment.

[29] ABA Subcommittee comment letter, supra note 7 at 8–9; ICI comment letter, *supra* note 7, at 5.

[30] *See infra* section III.B.

[31] A return of capital generally occurs when a fund's distribution exceeds the fund's aggregate amount of undistributed net taxable income and net realized capital gains. *See Determination, Disclosure, and Financial Statement Presentation of Income, Capital Gain, and Return of Capital Distributions by Investment Companies*, American Institute of Certified Public Accountants, Statement of Position 93–2, 8 (Feb. 1, 1993).

[32] NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(3).

[33] *See* 1988 Proposing Release, *supra* note 3, at 45283 (referring, in turn, to an earlier Commission statement of its view).

[34] 17 CFR 270.11a–3. The 1988 proposal did not address rule 11a–3.

[35] Rule 11a–3 defines a "deferred sales load" as "any amount properly chargeable to sales or promotional activities that is or may be deducted upon redemption of all or a portion of a securityholder's interest in an open-end investment company." 17 CFR 270.11a–3(a)(3). Deferred loads paid other than upon redemption would fall within this definition because they could be accelerated upon redemption.

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rather than 1% a year for six years). Like the 1988 proposal, the proposed amendments would permit a fund to include within the larger fee table a tabular presentation of the schedule of installment payments.[36]

B. General Prospectus Disclosure

The Commission is proposing to require more detailed prospectus disclosure concerning the way in which a specific fund's deferred sales load is imposed and computed. Proposed new Item 7(g) would cover many operational details that have been mandatory for all funds under rule 6c–10 as adopted and as originally proposed but would be subject to greater flexibility under the proposed amendments. These details include the price on which the load is based, whether deferred sales loads may be imposed on shares acquired through reinvestments of distributions, and the way in which the load is calculated.[37] If a fund charges deferred loads on shares from reinvestment of dividends or other distributions, Item 7(g) would require a statement to that effect, but it would not require this disclosure if the fund did not charge such a load. In addition, as a general matter, to the extent that a fund's sales charges do not differ from those of other funds, the disclosure in response to proposed new Item 7(g) should be relatively brief, but to the extent that the fund's charges differ, more detail may be required.[38]

The proposed provision also would require an explanation of the ways in which a shareholder may be required to pay an installment load, such as through the withholding of dividend payments, involuntary redemptions, or separate billing of an investor's account. The Commission also is publishing for comment a revision to staff Guide 30 of the Guidelines for Form N–1A to require funds to describe briefly in the prospectus any tax consequences for investors related to an installment load.[39]

C. Performance Data

The Commission is proposing to amend Instruction 1 to Item 22(b)(i) of Form N–1A to require deferred sales loads to be included in calculations of advertised total return data. The amendment would require the calculation to be based on the deduction of the maximum amount of a deferred sales load at the times, in the amounts, and under the terms disclosed in the prospectus.

The Commission is not proposing to amend Item 22(b)(ii) of Form N–1A to require installment loads to be included in advertised yield calculations. Paragraph (a)(6) of rule 482 under the Securities Act[40] requires advertisements containing yield data to disclose the maximum amount of any sales load; if the sales load is not reflected in performance figures, the advertisement also must disclose that the figures do not reflect the load and that, if reflected, the load would reduce the quoted performance. Because installment loads would not be reflected in yield figures, rule 482(a)(6) would apply to advertisements containing yield figures of funds with installment loads.[41]

The treatment of installment loads in advertised yield calculations would be different from the current treatment of rule 12b-1 fees, which are included in the numerator in the yield formula in Item 22(b)(ii) of Form N–1A as expenses, and thereby reflected in the yield data. Therefore, for example, a fund with a rule 12b-1 fee of 1% would show a lower yield than a fund with comparable performance and an installment load of 1% per year for six years. The Commission requests comment on whether it should require a thirty-day percentage amount of an installment load similarly to be included as an expense in the numerator in the yield formula in Item 22(b)(ii), or, alternatively, require that the installment load be added to the net asset value to reach an assumed "offering price" in the denominator in the yield formula. The first alternative would allow greater comparability to rule 12b-1 fees, but would understate the yield for those shareholders that have completed paying the installment load. The second alternative would treat installment loads as if they were front-end loads.

D. Dealer Compensation

The amount of commissions paid to persons selling funds' shares currently is not required to be disclosed in prospectuses, except in the case of front-end sales loads. Item 7(b)(iv) of Form N–1A requires funds to show in a tabular format in the prospectus the sales load reallowed to dealers as a percentage of the public offering price. This requirement currently is deemed to apply only to front-end sales loads. The Commission requests comment on whether it should amend Item 7(b)(iv) to require mutual funds that impose deferred sales loads to provide disclosure about the commissions received by dealers selling the funds' shares comparable to that now provided by funds with front-end loads. Alternately, the Commission requests comment on whether proposed new Item 7(g) should be modified to require such disclosure.

IV. Cost/Benefit Analysis

The proposed amendments to rule 6c-10 and Form N–1A would not impose any significant burdens on mutual funds. Rather, the amendments should benefit funds by providing them with alternatives in financing their sales and promotional expenses. The amendments also would enable investors to defer the payment of a sales charge on the purchase of mutual fund shares until redemption or over one or more installment payments during the term of their investment.

V. Summary Of the Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis. The Analysis explains that the proposed amendments to rule 6c-10 would allow mutual funds to impose deferred sales loads other than CDSLs and would remove certain restrictions in the rule. The Analysis further explains that the proposed amendments to Form N–1A would set prospectus disclosure requirements for deferred loads that reflect the proposed changes to rule 6c-10, but that are similar to the disclosure currently provided by funds and that would not impose any additional burdens. A copy of the Analysis may be obtained by contacting Nadya B. Roytblat, Esq., Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

[36] As currently required by Instruction 1 to the fee table, a fund also would have to provide a reference following the fee table to the discussion of any scheduled variations and other information about installment loads elsewhere in the prospectus.

[37] As noted above, paragraphs (a)(1), (a)(5) and (a)(6) of rule 6c-10 as originally proposed required a load paid at redemption to be based on the lower of the NAV at the time of purchase or redemption; specified the order in which shares should be treated as being redeemed for purposes of load calculation; and prohibited the imposition of deferred loads on reinvested dividends and capital gains distributions.

[38] The General Instructions to Form N–1A emphasize the importance of brevity in describing practices "that do not differ materially from those of other investment companies." General Instruction G (Preparation of the Registration Statement or Amendment), Part A, Instruction 1.

[39] *See, e.g., supra* note 17 (describing potential tax complications suggested by commenters on the original proposal).

[40] 17 CFR 230.482.

[41] A fund's yield advertisement would disclose the amount of an installment load, and the period of time during which a shareholder is subject to the installment load.

VI. Statutory Authority

The Commission is proposing amendments to rule 6c-10 under sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c), and -37(a)]. The authority citations for the proposed amendments to Form N–1A precede the text of the amendments.

List of Subjects in 17 CFR Parts 239, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a-37 80a-39 unless otherwise noted:

* * * * *

Section 270.6c–10 is also issued under sec. 6(c) [15 U.S.C. 80a–6(c)];

* * * * *

2. Section 270.6c-10 is revised to read as follows:

§ 270.6c-10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of Sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a-2(a)(32), 80a-2(a)(35), and 80a-22(d), respectively] and § 270.22c-1 to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) Any deferred sales load is a specified percentage of the net asset value at the time of purchase, redemption, or the payment of an installment;

(2) The terms of the deferred sales load are covered by the provisions of Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.; and

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions, *Provided*, that the conditions in § 270.22d-1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company;

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

5. Item 2 of Part A of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by revising the parenthetical after "Deferred Sales Load" in paragraph (a)(i), and Instruction 5, to read as follows:

Note: Form N–1A does not, and the amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 2. Synopsis

(a)(i) * * *

* * * * *

Shareholder Transaction Expenses

* * * * *

Deferred Sales Load (as a percentage of _____); %

* * * * *

Instructions.

* * * * *

Shareholder Transaction Expenses

5. "Deferred Sales Load" includes the maximum total deferred sales load payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 7(g), and may include a tabular presentation, within the larger table, of the range over time of any deferred sales load (such as a contingent deferred sales load) that may change over time, or a schedule of any installment load payments.

* * * * *

6. Item 7 of Part A of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by removing the word "and" at the end of paragraph (e), removing the period at the end of paragraph (f) and adding "; and" in its place, and adding paragraph (g) to read as follows:

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 7. Purchase of Securities Being Offered

* * * * *

(g) a concise explanation of the way in which any deferred sales load is imposed and computed, including: (i) an explanation of the basis on which the specified percentage is calculated (e.g., the original purchase price, the price at redemption, or the net asset value at the time an installment is paid); (ii) if the method of determining the amount of load results in a load being applied to shares or amounts representing shares acquired through the reinvestment of dividends or other distributions, a statement to that effect; (iii) a description of the way in which the load is calculated (e.g., in the case of a partial redemption, whether or not the load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased); and (iv) if applicable, an explanation of the way(s) in which a shareholder may be required to pay an installment load (e.g., through the withholding of dividend payments, involuntary redemptions, separate billing of an investor's account).

7. Item 22 of Part B of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by adding at the end of Instruction 1 to paragraph (b)(i) a sentence that reads as follows:

Form N–1A

* * * * *

Part B. Information Required in a Statement of Additional Information

* * * * *

Item 22. Calculation of Performance Data

* * * * *

(b) Other Registrants

(i) Total Return * * *

Instructions:

1. * * * If shareholders are charged a deferred sales load, assume the maximum deferred sales load is deducted at the times,

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in the amounts, and under the terms disclosed in the prospectus.

* * * * *

8. Guide 30 to Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by adding a paragraph before the last paragraph to read as follows:

Guidelines for Form N–1A

* * * * *

Guide 30. Tax Consequences

* * * * *

If the registrant imposes a sales load payable in installments on the securities being offered, the registrant must describe briefly in response to Item 6 any related tax consequences for investors.

* * * * *

Dated: February 23, 1995

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4998 Filed 3–1–95; 8:45 am]

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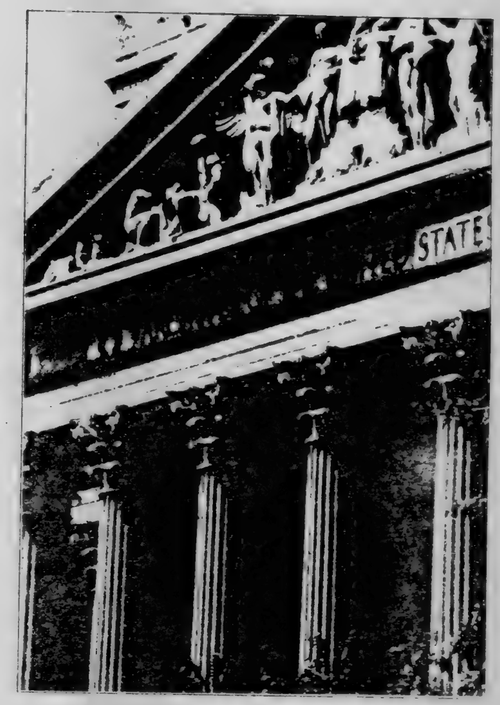

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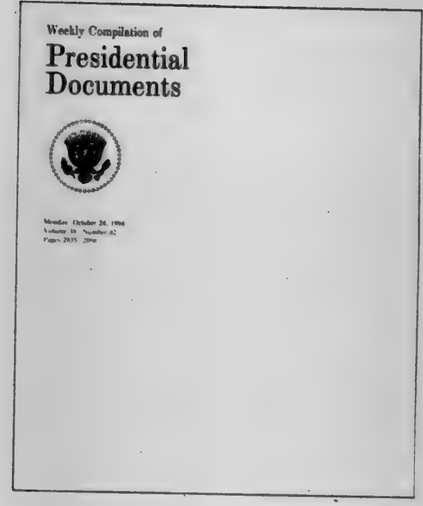

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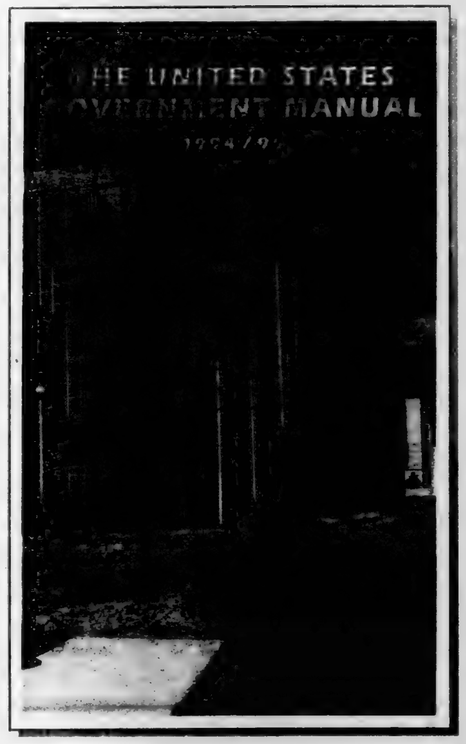

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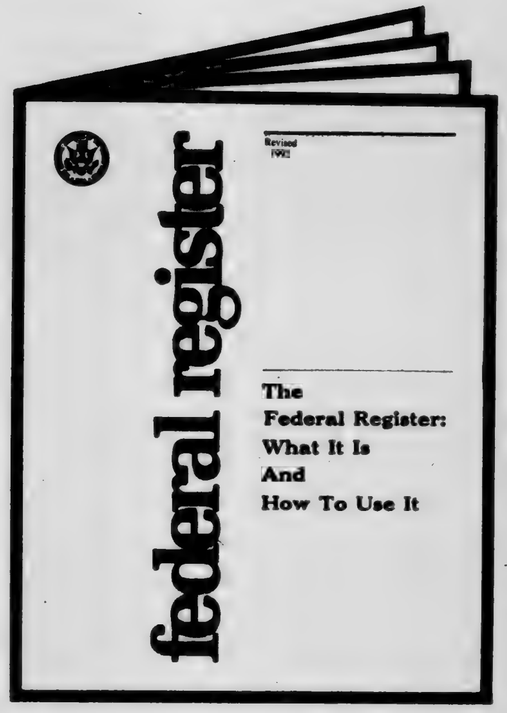

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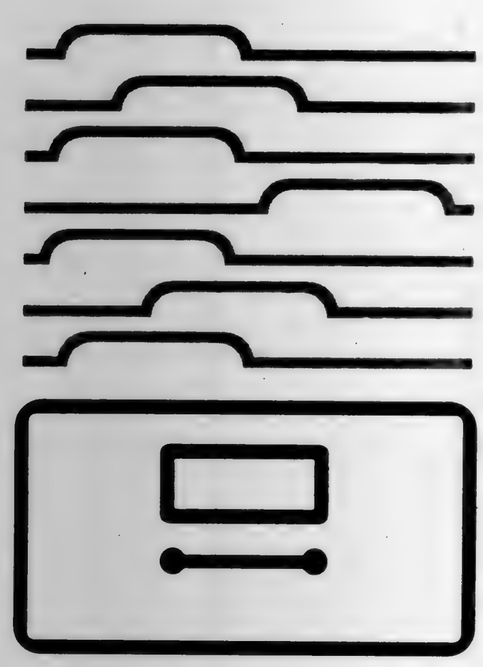

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 94–138–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees for Plant Protection and Quarantine by removing and adding commuted traveltime allowances for travel between various locations in Delaware, Maryland, and Pennsylvania. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: March 3, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator for PPQ, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Resource Management Support, 4700 River Road Unit 130, Riverdale, MD 20737–1236; (301) 734–7764

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for travel between various locations in Delaware, Maryland, and Pennsylvania. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

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PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing and adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
[Remove]			
. . . . .			
Delaware:			
Claymont	Dover		4
Claymont	Wilmington		2
Delaware City	Wilmington		2
Delaware City	Dover		3
Dover		2	
Slaughter Beach.	Dover		2
Wilmington (including marine terminal and airport).		2	
Wilmington (including marine terminal and airport).	Carlisle, PA		6
Wilmington (including marine terminal and airport).	Chestertown, MD.		4
Wilmington (including marine terminal and airport).	Dallas, PA		6
Wilmington (including marine terminal and airport).	Dover		4
Wilmington (including marine terminal and airport).	Gap, PA		4
. . . . .			
[Add]			

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
. . . . .			
Delaware:			
. . . . .			
Dover		1	
Dover	Wilmington		3½
. . . . .			
Wilmington (including NCCA, Delaware City, and Claymont).		2	
Wilmington (including NCCA, Delaware City, and Claymont).	Dover		3
. . . . .			

Done in Washington, DC, this 27th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5284 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 77

[Docket No. 94–053–3]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by reducing the designation of Virginia from an accredited-free (suspended) State to a modified accredited State. We have determined that Virginia no longer meets the criteria for designation as an accredited-free (suspended) State but meets the criteria for designation as a modified accredited State. This change was necessary to prevent the spread of tuberculosis in cattle and bison.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Cattle Diseases and Surveillance, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8715.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on November 29, 1994 (59 FR 60885–60886, Docket No. 94–053–2), we amended the tuberculosis regulations in 9 CFR part 77 by removing Virginia from the list of accredited-free (suspended) States in § 77.1 and adding it to the list of modified accredited States in that section.

Comments on the interim rule were required to be received on or before January 30, 1995. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

The action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 59 FR 60885–60886 on November 29, 1994.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 27th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5287 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 93F–0483]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of chlorine dioxide to control the microbial population in poultry process water. This action is in response to a petition filed by Rio Linda Chemical Co., Inc.

DATES: The regulation is effective March 3, 1995; written objections and requests for a hearing by April 3, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in new § 173.69, effective March 3, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of February 2, 1994 (59 FR 4924), FDA announced that a food additive petition (FAP 4A4408) had been filed by Rio Linda Chemical Co., Inc., 410 North 10th St., Sacramento, CA 95814, proposing that the food additive regulations be amended to provide for the safe use of chlorine dioxide to disinfect waters contacting fresh meat, fresh poultry, processed meat, and processed poultry. Since filing the petition, the agency has concluded that it is more appropriate to replace the term "disinfect" with "control the microbial population" because "disinfect" implies total eradication of microbial contamination.

FDA has completed its review of the use of up to 3 parts per million (ppm) residual chlorine dioxide in process water contacting whole fresh poultry carcasses. The agency is issuing this regulation to permit this use while its review of the other proposed uses of chlorine dioxide continues.

II. Chlorine Dioxide

Chlorine dioxide (CAS Reg. No. 10049–04–4) is a yellow to reddish-yellow gas with a pungent odor similar to that of chlorine. Because chlorine dioxide is explosive when concentrated, it is usually generated at the site where it is used. Chlorine dioxide can be prepared by reaction of chlorine with sodium chlorite, reduction of sodium chlorate, or acidification of sodium chlorite. High yield production of chlorine dioxide (greater than 90 percent) is accomplished by reaction of sodium chlorite with chlorine or by reaction of an acid, sodium hypochlorite, and sodium chlorite (Ref. 1).

Chlorine dioxide is a strong oxidant which is expected to react with microbial contaminants and other organic material present in poultry process water. Oxidation of chlorine dioxide results in the formation of chlorite ion, which is an oxidant that is capable of reacting with organic material in poultry process water. Residual chlorate present as an impurity in chlorine dioxide solutions can also act as an oxidant.

Chlorine dioxide is currently listed in 21 CFR 178.1010(b)(34) as a component of a sanitizer solution. Chlorine dioxide is also listed in 21 CFR 137.105 for use as a bleaching agent for flour and is also approved by the Environmental Protection Agency (EPA) for use in potable water treatment plants (40 CFR part 141, subpart H). The Health Protection Branch of Health and Welfare Canada has stated in a letter to the petitioner that chlorine dioxide is permitted for use in poultry chiller water in Canada (Ref. 2).

Chlorine dioxide is a potential substitute for chlorine, which is currently commonly used in poultry processing. Published studies that were included in the petition show that chlorine dioxide is four to seven times more effective than an equal concentration of chlorine as a bactericide in poultry chiller water (Refs. 3, 4, and 5). Thus, chlorine dioxide can be used at considerably lower levels than chlorine without compromising bactericidal effects. Most of the studies conducted by the petitioner were with residual chlorine dioxide levels in the process water of 3 ppm.

III. Safety

Data from the gas chromatographic-mass spectroscopic analysis of poultry process water containing 3 ppm of chlorine dioxide were provided in the petition. These data show that organic reaction byproducts, such as the potentially toxic trihalomethanes (e.g., chloroform), are not present in poultry process water at the 0.2 parts per billion (ppb) limit of detection when the method for detecting chloroform is used. (EPA proposed a drinking water standard (59 FR 38668 at 38670, July 29, 1994) that permits a maximum contaminant level of up to 80 ppb (400 times the amount detectable by the analytical method) of "total trihalomethanes" (chloroform, bromoform, dibromochloromethane and bromodichloromethane) in drinking water.) Moreover, FDA's review of the results of an Ames test on poultry process water that was treated with 20 ppm chlorine dioxide revealed no mutagenic activity. The Ames test results support the conclusion that significant levels of harmful organic reactions byproducts will not be formed when chlorine dioxide, at a residual level of 3 ppm, is used as the bacteriocidal agent in poultry process water.

In addition to evaluating the probable formation of organic reaction byproducts from the use of chlorine dioxide in poultry process water, FDA has also evaluated the possible presence of residual chlorine dioxide, chlorite, and chlorate on treated poultry carcasses; the potential for the oxidation of poultry tissue, including sensitive fatty acids; and data from mutagenicity tests.

Based on its evaluation of the information in the petition, the agency has concluded that no detectable residues of chlorine dioxide would remain on poultry carcasses, and that exposure to chlorite and chlorate as a result of this use of chlorine dioxide would be virtually nil. (No chlorite or chlorate could be detected on poultry (raw or cooked) at the limit of detection (50 ppb) for the method used.) The agency also concluded that the very low levels of chlorite and chlorate that may be retained on poultry carcasses as a result of exposure to chlorine dioxide-containing process water would be converted to correspondingly low levels of chloride (a relatively innocuous substance, e.g., chloride in table salt) during cooking (Ref. 6).

FDA also considered potential oxidative effects of chlorine dioxide, chlorite, and chlorate on poultry. The agency reviewed information in the

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petition on thiobarbituric acid (TBA) values of raw and cooked poultry exposed to chlorine dioxide-containing process water. A TBA test is commonly used as an indicator of oxidative decomposition (and of rancidity) of meat and fat. The more oxidative decomposition, the higher the TBA values. The agency determined that the TBA values for both raw and cooked poultry exposed to chlorine dioxide-containing process water did not significantly differ from that for poultry exposed to tap water. Thus, the agency concludes that no significant oxidation of poultry exposed to chlorine dioxide-containing process water occurs under the prescribed conditions of use.

FDA also evaluated information in the petition on the levels of oxidation-sensitive fatty acids (e.g., oleic, linoleic, linolenic, and arachidonic acid) in raw untreated poultry and in poultry exposed to chlorine dioxide-containing process water. Fatty acid profiles were comparable for treated and untreated poultry when analyzed by gas chromatography. FDA concludes that exposure to chlorine dioxide at levels 7 to 10 times higher than that prescribed in the proposed regulation does not result in appreciable loss of these fatty acids from poultry.

Based on the above findings, the agency concludes that 3 ppm of residual chlorine dioxide in poultry process water will not result in a measurable increase in oxidation of poultry as compared with poultry exposed to tap water.

The agency also considered the possibility of formation of mutagenic compounds in poultry and poultry process water treated with chlorine dioxide. Ames test information presented in the petition showed no evidence of mutagenic activity in poultry process water treated with chlorine dioxide. Thus, the agency concludes that the use of chlorine dioxide in poultry process water under the conditions prescribed in the regulation should not pose a significant health concern from the formation of mutagenic substances.

IV. Conclusions

FDA has evaluated the data in the petition and other relevant material and has consulted with scientists in the Food Safety and Inspection Service in the U. S. Department of Agriculture concerning the technological and practical aspects of the proposed use of chlorine dioxide. Based upon this evaluation, the agency concludes that the proposed use of the additive is safe and will have the intended technical effect. The agency also concludes that a specification for minimum purity of chlorine dioxide should be included in the regulation to reflect the purity of the chlorine dioxide that it evaluated. Therefore, 21 CFR part 173 is amended as set forth below.

V. Inspection of Documents

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Imapct

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 3, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Kirk-Othmer Encyclopedia of Chemical Technology, Vol. 5, pp. 612–632.

2. Letter dated July 30, 1991, to Dr. Richard Higby from J. W. Salminen, Health Protection Branch, Health and Welfare Canada.

3. Lillard, H. S., "Levels of Chlorine and Chlorine Dioxide of Equivalent Bactericidal Effect in Poultry Processing Water," *Journal of Food Science*, 44:1594–1597, 1979.

4. Lillard, H. S., "Effect on Broiler Carcasses and Water of Treating Chiller Water with Chlorine or Chlorine Dioxide," *Poultry Science*, 59:1761–1766, 1980.

5. Thiesson, G. P., W. R. Usborne, and H. L. Orr, "The Efficacy of Chlorine Dioxide in Controlling Salmonella Contamination and Its Effect on Product Quality of Chicken Broiler Carcasses," *Poultry Science* 63:647–653, 1984.

6. Gordon, G., R. G. Kieffer, and D. H. Rosenblatt, "The Chemistry of Chlorine Dioxide" in *Progress in Inorganic Chemistry*, Vol. 15, pp. 201–286, S. J. Lippard, ed., Wiley-Interscience, New York, 1972.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. New section 173.69 is added to read as follows:

§ 173.69 Chlorine dioxide.

Chlorine dioxide (CAS Reg. No. 10049–04–4) may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is generated by treating an aqueous solution of sodium chlorite with either chlorine gas or a mixture of sodium hypochlorite and hydrochloric acid. The generator effluent contains at least 90 percent (by weight) of chlorine dioxide with respect to all chlorine species as determined by Method 4500–ClO_2 E in the "Standard Methods for the Examination of Water and Wastewater," 18th ed., 1992, or an equivalent method. Method 4500–ClO_2 E is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food And Drug Administration, 200 C St., SW., Washington, DC 20204–0001 and The American Public Health Association, 1015 Fifteenth St., NW., Washington, DC 20005, or may be examined at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.

(b) The additive may be used as an antimicrobial agent in water used in poultry processing in an amount not to exceed 3 parts per million (ppm) residual chlorine dioxide as determined by Method 4500–ClO_2 E referenced above or an equivalent method.

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–5275 Filed 3–2–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 15

[Docket R–95–1682; FR–3282–F–01]

RIN 2501–AB47

Freedom of Information Act Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR part 15, which implements the Freedom of Information Act and sets forth the procedures to be followed by the Department in responding to requests from the public for documents. The rule fashions certain in-house administrative and procedural changes in the processing of requests for documents and appeals from denials of requests for documents, and is necessary to reflect current organizational responsibilities of the various offices within the Department. The rule also implements the Department's FOIA Handbook procedures for notifying business submitters and affording them an opportunity to object to disclosure of their business information.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Yvette Magruder, Assistant Director, Freedom of Information Unit, Room 10139, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410; telephone (202) 708–3054, or 1–800–877–8339 (TDD). (Only the "800" TDD number is toll-free.)

SUPPLEMENTARY INFORMATION:

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 does provide for an exception for rules governing the Department's organization or its own internal practices or procedures. Because the provisions contained in this rule relate to the manner in which the Department will administer its responsibilities under the Freedom of Information Act and related technical amendments, notice-and-comment rulemaking would not benefit the public and is not required.

Background

The Department's regulations implementing the Freedom of Information Act (5 U.S.C. 552) (FOIA) were published at 40 FR 48123 (October 14, 1975), and were amended at 52 FR 12160 (April 15, 1987) and 53 FR 37549 (September 27, 1988). This rule is being issued to reflect organizational changes relating to the manner in which the Department administers the disclosure of public documents.

Under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) Federal agencies have a responsibility to protect sensitive business information from disclosure. Under Executive Order 12600 (3 CFR, 1987 Comp., p. 235), in meeting this responsibility agencies must notify business submitters that their information has been requested under the FOIA and must afford them an opportunity to object to disclosure of the requested information. By this rule, a new § 15.54, updating the Department's current business submitter notification procedures in HUD Handbook 1327.1 REV–1, Freedom of Information Act, is being added to title 24 of the Code of Federal Regulations (CFR).

In addition, the rule updates language in § 15.21 on the protections available for law enforcement records. The new language duplicates statutory language in the Freedom of Information Reform Act of 1986 (Pub. L. 99–570, subtitle N, approved October 27, 1986; 100 Stat. 3207–48), which modified the terms of the exemption as provided in the FOIA.

Section-by-Section Analysis

Section 15.1(f) currently defines "information center" as any place, reading room, desk, or other area or facility, established and maintained by the Department where the public may request and obtain information and records concerning the Department's operations and business. This rule clarifies the means by which the public may obtain access to those resources that are maintained in a combination of locations within the Department. The rule corrects any perception that all records are maintained in a single location within the Department.

Section 15.13(b) currently provides that the Department will request records that have been stored in the National Archives or other record centers of the General Services Administration. This rule deletes reference to the General Services Administration, because the Federal Record Centers are now administered by the National Archives and Records Administration. The rule establishes that records that have been accessioned by the National Archives and Records Administration may be requested directly from the National Archives and Records Administration.

Section 15.14 addresses the payment of fees for search time and the copying of documents. Those fees currently established in § 15.14(a) are inadequate to defray the Government's own reasonable direct costs in processing requests and copying documents. Accordingly, this rule increases those fees. In addition, § 15.14(c) currently does not include a separate schedule of fees for computer search time. This rule provides for charges to be assessed on the basis of the direct cost of running the computer, plus the programming cost attributable to the search. Section 15.14(e) places restrictions on the assessment of fees against noncommercial requesters. The rule simplifies those restrictions by eliminating confusing language. Section 15.14(f) currently provides that fees may be paid in cash, by check, or by money order. This rule removes approval of cash payments, except when a cash payment is made in person, and identifies to whom the fees should be directed.

The changes to § 15.14 will help defray the direct reasonable cost to the Government of compliance with the FOIA and will simplify fee projections for certain computer searches.

Section 15.21 currently reflects the statutory exemptions to the Freedom of Information Act, with the exception of

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Exemption 7, which was substantially amended in 1986, but was not previously incorporated into the Department's regulations. This rule incorporates statutory language with regard to Exemption 7, setting forth the circumstances under which the exemption may provide authority for withholding documents from the public.

Section 15.31 currently establishes that the Department maintains a Central Information Center at its Headquarters location. This rule deletes the designation "Central"; cross-references § 15.1(f), which, as amended, describes "Information Center" as a combination of places, rather than one place within the Headquarters location; and updates the addresses of referenced offices.

Section 15.32 currently authorizes the Director of the Office of Public Affairs to designate the FOIA information officer in Headquarters, and requires the Director's concurrence in the selection by the Regional Administrator and by Directors of Field Offices of information officers in the Regional or Field Offices. This rule substitutes the Director, Office of the Executive Secretariat, for Director, Office of Public Affairs, and eliminates the requirement for the Director's concurrence in the Secretary's Representatives' designees, or designees of the State or Area Coordinators.

Section 15.33 currently provides, in paragraph (a)(6), that the Central Information Center shall contain or have ready access to an index of all Departmental regulations, opinions and adjudicated orders, staff and program manuals, and precedential interpretations. This rule deletes the reference to a "Central" information center, to provide consistency with §§ 15.1(f) and 15.31, as amended; provides that the enumerated records are available in a compilation of indices rather than in a single index; and eliminates other obsolete or unnecessary references. Thus, the rule corrects any public perception that the Department maintains a single index containing all records required by the FOIA to be made available to the public, and simplifies the regulatory language.

Section 15.41 clarifies the parameters for the Department's exercise of its discretion to require payment in advance.

Section 15.42 currently sets forth time limits applicable to requests for documents and appeals from adverse determinations, and provides for the General Counsel to make appeal determinations and approve time extensions, when appropriate. This rule adds authorization for Field Assistant General Counsel to make appeal determinations with respect to denials issued by Field Offices within their geographical jurisdictions and to grant extensions of time, under certain circumstances, for the Department's response.

Section 15.51 currently authorizes the head of each organizational unit within the Department to release records within his or her area of responsibility. This rule provides that only the Office of the Executive Secretariat (in Headquarters) and designated FOIA liaisons (in Field Offices) are authorized to release records to the public. The amendment consolidates the FOIA process under the supervision of a designated officer, which assures more consistent and prompt responses to FOIA requests.

Section 15.52 concerns the authority to deny requests for records. To be consistent with the statutory language, this rule substitutes the word "appeal" for the word "review" wherever it appears in this section. The rule permits program counsel in Headquarters to concur in the denial of a request for a record and authorizes Field Assistant General Counsel to make appeal determinations with respect to denials issued by Field Offices within their geographical jurisdictions. The rule also requires the Department to list the documents withheld when they number fewer than 21. In addition, the rule eliminates language that terminated the authority of an officer or the officer's designee to release records after the officer or designee has denied the release of those records; therefore, reconsideration by the issuing official of a denial is permitted.

Section 15.54 provides procedures for notifying a submitter when a FOIA request has been made for business information provided by the submitter. The rule provides for designation of business information by the submitter at the time of submission or at a reasonable time thereafter (see § 15.54(h) (4) and (5)). The rule allows business submitters an opportunity to object to disclosure of their information and provides for notice to business submitters about the Department's decision to disclose the information under the FOIA.

Section 15.61 currently provides for administrative review by the General Counsel of a denial of a request for a record, when requested in writing and addressed to the Assistant General Counsel for Training and Administrative Law at HUD Headquarters. To be consistent with the statutory language and § 15.52, as amended, this rule substitutes the word "appeal" for the word "review" wherever it appears in this section. The rule also reiterates the authority, provided elsewhere in the rule, of the Field Assistant General Counsel to make appeal determinations with respect to Field Office denials of requests for records, and changes the official to whom appeals from decisions by Headquarters and by offices containing a Field Assistant General Counsel should be addressed.

Other Matters

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866. Any changes made in the rule as a result of this review are identified in the docket file of the rule maintained by the Department and available for review at the above address.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule merely implements certain in-house procedural changes in the processing of FOIA requests, and conforms regulatory language relating to FOIA Exemption 7 to current statutory language.

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. This final rule implements certain housekeeping provisions relating to the Department's regulations on the release of requested documents.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns. The final rule updates administrative regulations relating to the processing of requests for documents maintained by the Department.

Regulatory Agenda

This rule was listed as Item No. 1731 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57642), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 15 of Title 24 of the Code of Federal Regulations is amended as follows.

PART 15—TESTIMONY, PRODUCTION AND DISCLOSURE OF MATERIAL OR INFORMATION BY HUD EMPLOYEES

1. The authority citation for part 15 is revised to read as follows:

Authority: 5 U.S.C. 552; Freedom of Information Reform Act of 1986 (Pub. L. 99-570); 42 U.S.C. 3535(d).

2. In § 15.1, the paragraph designations (a) through (i) are removed, and the definition for "Information center" is revised to read as follows:

§ 15.1 Definitions.

* * * * *

Information center means library, reading room, desk, or other facility, or any combination of places established and maintained by the Department, where the public may request and obtain information and records concerning the Department's operations and business.

* * * * *

3. In § 15.13, paragraph (b) is revised to read as follows:

§ 15.13 Records produced upon request when reasonably described.

* * * * *

(b) When a request is made that reasonably describes a record of the Department that has been stored in a record center of the National Archives and Record Administration, this record will be requested from the Records Center by the Department and made available to the requester if the record would otherwise be available under this part. Records accessioned by the National Archives will not be made available by the Department, but may be requested directly from the National Archives.

* * * * *

4. In § 15.14, paragraphs (a), (b), (c), (e), and (f) are revised to read as follows:

§ 15.14 Fees.

(a) *Copies of records.* HUD will charge $0.15 per page for photocopies of documents. For copies prepared by computer, HUD will charge the actual cost of the tape or disk plus $25.00 per minute for central processing unit (CPU) time, so as to recoup reasonable direct costs of duplicating. For other methods of reproduction or duplication of documents, HUD will charge the actual direct costs of producing the documents.

(b) *Manual searches for records.* HUD will charge $16.35 per hour per person for searches/reviews performed by clerical staff, and $37.00 per hour per person for searches/reviews performed by professional staff. Charges for search/review time will be billed in 1/2 hour segments.

(c) *Computer searches for records.* HUD will charge $35.00 per hour for computer programming relating to a search, plus $25.00 per minute for central processing unit (CPU) time.

* * * * *

(e) *Restrictions on assessing fees.* HUD will provide the first 100 pages of duplication and the first two hours of search time, manual or computer, free of charge to noncommercial use requesters. There is no charge to noncommercial use requesters for time needed for review, as defined in paragraph (g)(4) of this section. Review time is chargeable only to commercial use requesters. HUD will only assess fees for amounts in excess of $25.00.

(f) *Payment of fees.* Payment of fees under this section and under § 15.16(a) shall be made by check or money order, payable to the Treasurer of the United States. Cash payments may be made in person at Headquarters or the Field Offices. The fees shall be sent to the Office of Executive Secretariat at Headquarters or to the appropriate Field Office.

* * * * *

5. In § 15.21, paragraph (a)(7) is revised to read as follows:

§ 15.21 Exemptions authorized by 5 U.S.C. 552.

* * * * *

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

6. In section 15.31, paragraphs (a) and (b)(1) are revised and paragraph (b)(2) is removed and reserved, to read as follows:

§ 15.31 Information centers.

(a) The Department maintains an information center as described in § 15.1(f) at Headquarters, 451 Seventh Street SW., Washington, DC 20410.

(b) * * *

(1) In each of its Secretary Representatives' Offices, as follows:

New England, Boston Office—Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092.

New York/New Jersey, New York Office—26 Federal Plaza, New York, New York 10278–0068.

Mid-Atlantic, Philadelphia Office—Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392.

Southeast/Caribbean, Atlanta Office—Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388.

Midwest, Chicago Office—Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.

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Southwest, Fort Worth Office—1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905.
Great Plains, Kansas City Office—Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406.
Rocky Mountain, Denver Office—633 17th Street, Denver, Colorado 80202–3607.
Pacific/Hawaii, San Francisco Office—Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448.
Northwest/Alaska, Seattle Office—Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000.

(2) [Reserved]

* * * * *

7. Section 15.32 is revised to read as follows:

§ 15.32 Information officer and FOIA liaisons.

There shall be an information officer in Headquarters and a FOIA liaison in each of the information centers described in § 15.31(b), who shall be responsible for making information and records available to the public in accordance with this part. The information officer in Headquarters shall be designated by the Director, Office of the Executive Secretariat. The FOIA liaisons in each Field Office shall be designated by the Secretary's Representative, State Coordinator, or Area Coordinator.

8. In § 15.33, paragraphs (a) introductory text, (a)(6), (b), and (c) are revised to read as follows:

§ 15.33 Material in department information centers.

(a) The information center at Headquarters shall contain or have access to the following:

* * * * *

(6) Current indices of the foregoing materials.

(b) The information center in each Regional Office shall contain or have access to such of the above records that pertain to the activities of that office.

(c) Facilities shall be available in each information center for the copying of available records.

9. In § 15.41, paragraph (c) is revised to read as follows:

§ 15.41 Requests for records.

* * * * *

(c) The request shall be accompanied by an agreement to pay a fee to be determined in accordance with § 15.14. Under the circumstances enumerated in § 15.18, the Department may refuse to furnish records before receipt of the appropriate fee. A requester may specify a limit for fees, above which the requester is not willing to pay without advance consultation with the Department.

* * * * *

10. Section 15.42 is revised to read as follows:

§ 15.42 Time limitations.

(a) Upon receipt of a request for records, the appropriate office will determine within ten working days whether to comply with such requests. The office will either agree to provide the requested documents, or will notify the requester, in writing, of an adverse determination, the reasons therefor, and the right to appeal the denial to the:

(1) General Counsel, with respect to a denial issued by the Office of the Executive Secretariat or by the offices in which there is a Field Assistant General Counsel; or

(2) Field Assistant General Counsel, with respect to a denial issued by the Field Offices.

(b) When a request for records is misdirected by the requester, the office receiving the request shall:

(1) Promptly refer it to the appropriate office; and

(2) Advise the requester that the time of receipt by the appropriate office will be the time of receipt for processing purposes.

(c) A determination by the General Counsel or the Field Assistant General Counsel with respect to an appeal under § 15.61 shall be made within 20 working days after receipt of the appeal, and shall be communicated to the appellant, in writing.

(d) In unusual circumstances, the General Counsel, or the appropriate Field Assistant General Counsel, may extend the time limits prescribed in paragraphs (a) and (c) of this section, by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. An extension shall not exceed ten working days. As used in this paragraph, unusual circumstances means that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) To search for, collect, and examine appropriately a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more organizational units of the Department having a substantial interest in the subject matter of the request.

11. Section 15.51 is revised to read as follows:

§ 15.51 Authority to release records or copies.

The Office of the Executive Secretariat in Headquarters and the FOIA liaisons in each Field Office are authorized to release copies of any Department records upon written request unless disclosure is clearly not appropriate under this part.

12. Section 15.52 is revised to read as follows:

§ 15.52 Authority to deny requests for records.

The officers described in § 15.51, or other official designated by the Secretary's Representative, may deny a request for a record only with the concurrence of the appropriate program counsel in Headquarters or counsel in the Field Offices. Any denial shall:

(a) Be made in writing, describing the documents denied and, if fewer than 21, listing them specifically;

(b) Contain a simple reason for the denial, stating the appropriate exemption used; and

(c) Advise of the right to appeal the adverse determination, in accordance with § 15.61, to the:

(1) General Counsel, with respect to a denial issued by the Office of Executive Secretariat or by offices in which there is a Field Assistant General Counsel; and

(2) Field Assistant General Counsel, with respect to a denial issued by Field Offices.

13. A new section 15.54 is added to read as follows:

§ 15.54 Business information.

(a) *In general.* Business information provided to the Department by a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.* As used in this section:

Business information means commercial or financial information provided to the Department by a submitter that arguably is protected from disclosure under Exemption 4 (42 U.S.C. 552(b)(4)) of the Act.

Submitter means any person or entity who provides business information, directly or indirectly, to the Department. The term includes, but is not limited to, corporations, State governments, and foreign governments.

(c) *Designation of business information.* A submitter's claim that certain information is confidential or proprietary should be supported by a statement or certification by an officer or authorized representative of the submitter that the information is, in fact, confidential or proprietary and has not been disclosed to the public. All information considered confidential or proprietary by a submitter should be clearly designated with a prominent stamp, typed legend, or other suitable form of notice, stating "Confidential Treatment Requested by [insert name of submitter]", which should appear on each page or segregable portion of the page. If such marking is impractical, a cover sheet prominently marked "Confidential Treatment Requested by [insert name of submitter]" should be securely attached to the information for which confidential treatment is requested. These designations shall be deemed to have expired 10 years after the date of the submission, unless the submitter requests, and provides reasonable justification for, a longer period of designation.

(d) *Notice to submitter.* To the extent permitted by law, the Department shall provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its business information, unless notice is excused under paragraph (h) of this section. Such notice shall afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. The notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The Department will provide this notice whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected under Exemption 4; or

(2) The Department has reason to believe that the information may be protected from disclosure under Exemption 4.

(e) *Notice to requester.* At the same time the Department notifies the submitter, the Department shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (d) of this section, the Department shall afford a submitter or its designee 10 Federal working days to provide the Department a detailed written statement of the submitter's objection to disclosure of any portion of the information it submitted to the Department. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information is a trade secret or commercial or financial information that is privileged or confidential. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment. Information provided by a submitter or its designee pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Department shall consider carefully a submitter's objections and specific grounds for nondisclosure, before determining whether to disclose business information. If the Department decides to disclose business information over the objection of a submitter, the Department shall forward to both the submitter and the requester a written notice of intent to disclose. The written notice shall be forwarded 10 Federal working days before the specified disclosure date and shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

(h) *Exceptions to the notice requirement.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The Department determines that the information should not be disclosed;

(2) The information has been published lawfully or has been made available officially to the public;

(3) Disclosure of the information is required by law (other than the Act);

(4) Disclosure of the information is required by a departmental regulation that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the Department that are to be released under the FOIA; and

(iii) Provides for notice in exceptional circumstances when the submitter provides, at the time the information is submitted or a reasonable time thereafter, written justification that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information requested was not designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section at the time of the submission of the information or a reasonable time thereafter, unless the Department has substantial reason to believe that the disclosure of the information would cause competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous. In such circumstances, the Department shall forward to the submitter, 10 Federal working days before a specified disclosure date, written notice of any final administrative decision to disclose business information.

(i) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the Department shall promptly notify the submitter.

(j) *Determination of confidentiality.* HUD will make no determination as to the validity of any request for confidentiality until a request for disclosure of the information is received.

(k) *Current mailing address for the submitter.* Each submitter shall provide to the Department:

(1) A mailing address for receipt of any notices under this section; and

(2) Notice of any change of address.

(l) *Treatment of confidential information by HUD employees.* (1) HUD officers and employees shall not, directly or indirectly, use or allow the use of business information obtained through or in connection with Government employment that has not been made available to the general public.

(2) Except as otherwise provided in this section, HUD officers and employees may not disclose business information, except to other HUD officers or employees who are properly entitled to such information for the performance of their official duties.

14. Section 15.61 is revised to read as follows:

§ 15.61 Administrative appeal.

(a) Appeal shall be available only from a written denial of a request issued under § 15.52, and only when the appeal is filed within 30 days of issuance of the denial. An appeal from a denial issued by the Office of Executive Secretariat or by offices in which there is a Field Assistant General Counsel must be mailed to the Assistant General Counsel for Training and Administrative Law, Room 10246, 451 Seventh Street, SW, Washington, DC, 20410. An appeal from a denial issued by a Field Office must be mailed to the appropriate Field Assistant General Counsel. An appeal must include a copy of the original request for records; a copy of the written denial of access to those records, and a statement of the reasons, circumstances, or arguments advanced in support of, or in opposition to, disclosure of the records. The

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envelope containing the appeal should be clearly marked as a Freedom of Information Act appeal, so that the Department can comply with the time limitations set forth in § 15.42.

(b) When an appeal is misdirected by the requester, the Office receiving the appeal shall:

(1) Promptly refer it to the:

(i) Assistant General Counsel for Training and Administrative Law, if the denial was issued by the Office of Executive Secretariat or by an office in which there is a Field Assistant General Counsel, or

(ii) Appropriate Field Assistant General Counsel, if the denial was issued by a Field Office; and

(2) Advise the appellant that the time of receipt for processing purposes will be the time the appeal is received by the appropriate office.

(c) The appeal determination shall be in writing; constitute final administrative action by the Department; and, if the denial is upheld in full or in part, include notification of the right to judicial review.

Dated: December 27, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–5274 Filed 3–2–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8585]

RIN 1545–AS00

Allocations Reflecting Built-in Gain or Loss on Property Contributed to a Partnership; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8585], which were published in the **Federal Register** for Wednesday, December 28, 1994 (59 FR 66724). The final regulations relate to the remedial allocation method with respect to property contributed by a partner to a partnership and to allocations with respect to securities and similar investments owned by a partnership.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Deborah Harrington at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 704 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 94–31435, is corrected as follows:

§ 1.704–3 [Corrected]

1. On page 66729, column 1, § 1.704–3, paragraph (d)(7), paragraph (iii) of *Example 1.*, line 1, in the paragraph heading, the word "*Years*" is corrected to read "*years*".

2. On page 66729, column 2, § 1:704–3, paragraph (d)(7), paragraph (iii)(A) of *Example 1.*, line 1, the word "commended" is corrected to read "commented".

3. On page 66729, § 1.704–3, paragraph (d)(7), paragraph (iii)(C) of *Example 1.*, line 3 of the table is corrected as follows:

	L		M	
	Book	Tax	Book	Tax
. . . . .				
Remedial allocations	.....	1,500	.....	<1,500>
. . . . .				

4. On page 66730, columns 1 and 2, § 1.704–3, paragraph (d)(7), paragraph (iii)(A) of *Example 3.* is removed.

5. On page 66732, § 1.704–3, paragraph (e)(3)(ix), paragraph (i) of *Example 1.*, line 5 from the top of column 2, the language "+$5,000 (net gain at end of Day 2)+" is corrected to read "+$5,000 (net gain at end of Day 2)+".

6. On page 66732, column 2, § 1.704–3, paragraph (e)(3)(ix), paragraph (iii) of *Example 1.*, 13th line, the language "tax gain from the sale of Stock 2 and the loss" is corrected to read "tax gain from the sale of Stock 2 and the tax loss".

7. On page 66733, § 1.704–3, paragraph (e)(3)(ix), paragraph (iii) of *Example 1.*, the second table on the page, line 1 is corrected as follows:

	Z		
	Book	Tax	Reevaluation account
Opening Balance	$152,500	$152,500	0
. . . . .			

8. On page 66733, § 1.704–3, paragraph (e)(3)(ix), the second table in paragraph (iii) of *Example 2*, the column heading and line 1 are corrected as follows:

	X and Y		
	Book	Tax	Reevaluation account
Opening Balance ...	$150,000	$150,000	0
. . . . .			

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5286 Filed 3–2–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1951–95]

Federal Bureau of Investigation; General Functions

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Justice organization regulations by adding a new function for the Federal Bureau of Investigation (FBI), that of carrying out the responsibilities conferred upon the Attorney General in Title I of the Communications Assistance for Law Enforcement Act. This rule will accurately update the existing list of the FBI's delegated functions.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Telecommunications Industry Liaison Unit (TILU), Engineering Section, Information Resources Division, FBI; telephone number 1–800–551–0336; David F. Worthley, telephone: 703–630–6242.

SUPPLEMENTARY INFORMATION: On October 25, 1994, the President signed into law the Communications Assistance for Law Enforcement Act (the Act), Title I of Pub. L. 103–414, also referred to as the digital telephony legislation. Under the Act, a number of responsibilities are conferred upon the Attorney General. The Attorney General is delegating her responsibilities under the Act because the FBI possesses the technical resources and in-depth expertise necessary to effectively implement these duties. Also, the FBI has already expended substantial resources in planning for the implementation of this Act.

This delegation will authorize the Director, FBI, or his designee(s), to: (1) Publish notices of actual and maximum capacity requirements; (2) establish regulations for paying telecommunications carriers for reasonable costs in achieving compliance with the capability and capacity requirements; (3) determine compliance priorities; (4) participate in the setting of publicly available technical requirements and standards; (5) prepare annual reports to the Congress; and (6) take necessary steps to implement this Act. The delegation of authority would not include the enforcement authority provided in Title II of the legislation, which properly is executed by the Attorney General and the Department of Justice.

This order is a matter of internal Departmental management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.85 is amended by adding paragraph (o) to read as follows:

§ 0.85 General functions.

* * * * *

(o) Carry out the responsibilities conferred upon the Attorney General under the Communications Assistance for Law Enforcement Act, Title I of Pub. L. 103–414 (108 Stat. 4279), subject to the general supervision and direction of the Attorney General.

Dated: February 16, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–4377 Filed 3–2–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 3

Official Seal

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary revises the regulations governing the Official Seal and Insignias of the Department of Education to remove provisions relating to the official insignia for AMERICA 2000. The Secretary takes this action to remove unnecessary and obsolete provisions from the regulations.

EFFECTIVE DATE: These regulations take effect March 3, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, 600 Independence Ave., S.W., Room 5112, FB–10B, Washington, D.C. 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations eliminate obsolete provisions in 34 CFR part 3, subpart B—Official Insignia—AMERICA 2000, published on December 16, 1991 (56 FR 65388). The title of part 3 is also revised to reflect this change.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes are not substantive and merely remove obsolete provisions relating to Department policy with respect to the AMERICA 2000 insignia, the Secretary has determined pursuant to 5 U.S.C. 553(b)(A) that public comment on the regulations is not required.

List of Subjects in 34 CFR Part 3

Education Department, Seals and insignia.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: February 27, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 3 of title 34 of the Code of Federal Regulations as follows:

1. The title of part 3 is revised to read as follows:

PART 3—OFFICIAL SEAL

2. The authority citation for part 3 continues to read as follows:

Authority: 20 U.S.C. 3472 and 3485, unless otherwise noted.

3. The heading "Subpart A—Official Seal" is removed from part 3.

Subpart B, §§ 3.5–3.10—[Removed]

4. Subpart B of part 3, §§ 3.5 through 3.10, is removed.

[FR Doc. 95–5255 Filed 3–2–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[WI51–01–6828; FRL–5158–3]

Modification of the Ozone Monitoring Season; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: This final rule contains revisions to part 58 of chapter 1 of title 40 of the Code of Federal Regulations (CFR), appendix D, the Ozone Monitoring Season By State table in section 2.5. The revisions change Wisconsin's ozone monitoring season to April 15 through October 15.

EFFECTIVE DATE: March 3, 1995.

ADDRESSES: Copies of documents relevant to this action are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Regulation Development Section, U.S. Environmental Protection Agency, Region 5, Air Toxics and Radiation

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Branch, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1980 (45 FR 2319), the USEPA approved, into the Wisconsin SIP, revisions to Wisconsin rule NR 154.01–Definitions, which set forth the ozone season for Wisconsin as the period each year from May 1 through September 30. This action was codified in 40 CFR part 52, § 52.2570(c)(13).

On April 4, 1980, the USEPA approved a waiver for ozone monitoring at State and Local Ambient Monitoring Stations (SLAMS) from October 16 to April 14 with the exception of National Ambient Monitoring Stations (NAMS) sites required in the southeast Wisconsin air quality control region, which would continue to monitor for the entire year as recommended in the USEPA's Guideline for the Implementation of Ambient Air Monitoring (EPA 450/4–79–038). This approval was in the form of a letter from the Regional Administrator to the Director of Wisconsin's Department of Natural Resources (WDNR) Bureau of Air Management. See the USEPA guidance entitled Guideline on Modification to Monitoring Seasons for Ozone, March 1990, prepared by the Technical Support Division of Office of Air Quality Planning and Standards.

On March 19, 1986 (51 FR 9582), the USEPA promulgated revisions to 40 CFR part 58, appendix D, which were needed to meet changing air monitoring program requirements. These revisions included the addition of the Ozone Monitoring Season By State table in section 2.5, of appendix D. This table listed the Wisconsin ozone monitoring season as beginning on April 1 and ending on October 31. This is the ozone season currently reflected in the Aerometric Information Retrieval System (AIRS) for Wisconsin.

II. Review

Since AIRS extracts the ozone monitoring season from appendix D, April 1 through October 31 is reflected in AIRS for Wisconsin. Consequently, this ozone season is used in the calculation of the number of expected exceedances. Since Wisconsin SLAMS only monitor from April 15 through October 15, there are 29 non-monitored days. AIRS views this non-monitored situation as missing data. This has the effect of increasing the exceedance estimate, if any exceedances are observed. AIRS assigns the same ozone season to all SLAMS, NAMS and Special Purpose Monitoring Stations (SPMS) monitors in a State or county. AIRS does not have the capability to define a separate ozone season for individual monitors. Further, 40 CFR part 58, appendix D does not distinguish ozone seasons by monitor type, but defines an ozone season for all monitor types.

Since the shorter ozone season was already approved by the Regional Administrator in 1980 for SLAMS, an analysis for these monitors is not required. The 1980 waiver, however, did not apply to NAMS monitors. Therefore, as recommended by the Guideline on Modification to Monitoring Seasons for Ozone, Technical Support Division Office of Air Quality Planning and Standards, March 1990, the USEPA reviewed the ozone monitoring data for the entire State to determine whether the 1980 waiver may be extended to NAMS.

The guidance states that the potential for ozone exceedances, and, consequently, ozone season reductions can be determined using historical ozone monitoring data. A review of historical ozone data for this purpose must be based on 5 years of the most recent data, in order to ensure that both favorable and unfavorable conditions are represented. The guidance allows reduction in monitoring for months without 1-hour ozone concentrations exceeding 0.10 ppm during the most recent 5 years.

The most recent 5 years, 1988–1993, of ambient ozone data (AIRS AMP215 and AMP355 Standard Reports), demonstrates that there have been no exceedances of the ozone National Ambient Air Quality Standard in the time periods April 1 through April 14 and October 16 through October 31 for any of the NAMS monitors in the State. The highest ozone value recorded at a NAMS between April 1 and April 14 was 0.08 parts per million (ppm) in Ozaukee county (55–089–0005) in 1991. The highest ozone value recorded at a NAMS between October 16 and October 31 was 0.076 ppm which occurred in 1989 in Columbia county (55–021–0015) and Ozaukee county (55–089–0005), both of which fall below the 0.10 ppm recommended limit. See Guideline on Modification to Monitoring Seasons for Ozone, Technical Support Division Office of Air Quality Planning and Standards, March 1990, p. 5.

The relevant data demonstrates that no concentrations above 0.10 ppm were recorded during April 1–April 14 or October 16–October 31. Consequently, the test of 5 years of data without any concentrations above the recommended limit of 0.10 ppm has been satisfied.

In addition, it should be noted that the ozone season as it applies to Wisconsin's rules and regulations will not change with this revision. The ozone season approved as part of the Wisconsin SIP, in Rule 154.01 Definitions, is the period from May 1 through September 30 and will continue to be so.

The modified ozone monitoring season will apply to future monitoring efforts at SLAMS and NAMS unless otherwise revised.

III. Action

After reviewing 5 years worth of Wisconsin ozone monitoring data, we find that the change in ozone monitoring season in Wisconsin complies with all applicable requirements of the Clean Air Act (Act) and USEPA policy and regulations concerning such revisions. Pursuant to 40 CFR 58.13(a)(3), the Regional Administrator has the authority to exempt periods or seasons from consecutive hourly averages for continuous SLAMS analyzers.

The USEPA is revising Wisconsin's ozone monitoring season in 40 CFR part 58, appendix D, section 2.5 to April 15 through October 15 of each year for all monitor types.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on March 3, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action does not create any new requirements. Therefore, I certify that it does not have a significant impact on small entities.

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations.

Dated: February 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 58, appendix D is amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, and 7619.

Appendix D—[Amended]

2. In section 2.5 of appendix D, the table is amended by revising the entry for Wisconsin to read as follows:

Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

2.5 * * *

Ozone Monitoring Season By State

State	Begin month	End month
Wisconsin	April 15	October 15.

* * * * *

[FR Doc. 95–5028 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–132; RM–8529]

Radio Broadcasting Services; Reed City,

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247A to Reed City, Michigan, as that community's first local FM broadcast service in response to a petition filed by Steven V. Beilfuss. *See* 59 FR 60111, November 22, 1994. Canadian concurrence has been received for this allotment at coordinates 43–51–31 and 85–30–50. There is a site restriction 1.9 kilometers (1.2 miles) southwest of the community. With this action this proceeding is terminated.

DATES: Effective April 10, 1995. The window period for filing applications for Channel 247A at Reed City will open on April 10, 1995, and close on May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94–132, adopted February 15, 1995, and released February 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Reed City, Channel 247A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5250 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–2; RM–8415, 8465]

Radio Broadcasting Services; Hazlehurst and Bude, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Douglas B. DeLawder (RM–8465), allots Channel 282C3 to Bude, Mississippi. Channel 282C3 can be allotted to Bude in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.3 miles) northeast to avoid a short-spacing with the licensed site of Station WHER(FM), Channel 279C, Hattiesburg, Mississippi. The coordinates for the allotment of Channel 282C3 at Bude are 31–32–33 and 90–45–36. The proposal filed by PDB Broadcasting (RM–8415), *see* 59 FR 07238, February 15, 1994, requesting the allotment of Channel 282A to Hazlehurst, Mississippi, is denied. With this action, this proceeding is terminated.

DATES: Effective April 10, 1995. The window period for filing applications will open on April 10, 1995, and close on May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–2, adopted February 15, 1995, and released February 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Bude, Channel 282C3.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5251 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–121; RM–8530]

Radio Broadcasting Services; Nashville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Eternal Lamp, Inc., allots Channel 259A to Nashville, NC, as the community's first local aural broadcast service. *See* 59 FR 53775, October 26, 1994. Channel 259A can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 35–58–12 North Latitude and 77–58–00 West Longitude. With this action, this proceeding is terminated.

DATES: Effective April 10, 1995. The window period for filing applications will open on April 10, 1995, and close on May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–121, adopted February 15, 1995, and released February 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Nashville, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5249 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–118; RM–8521]

Radio Broadcasting Services; Norris, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Norris Broadcasting Company, allots Channel 294A to Norris, Tennessee. *See* 59 FR 51398, October 11, 1994. Channel 294A can be allotted to Norris, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.1 kilometers (2.5 miles) northeast in order to avoid a short-spacing conflict with Station WSKZ(FM), Channel 293C, Chattanooga, Tennessee. The coordinates for Channel 294A at Norris are 36–13–47 and 84–02–59. With this action, this proceeding is terminated.

DATES: Effective April 10, 1995. The window period for filing applications will open on April 10, 1995, and close on May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–118, adopted February 15, 1995, and released February 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Norris, Channel 294A.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5252 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–250; RM–8331, RM–8397, RM–8398]

Radio Broadcasting Services; Fairview and Cambridge Springs, Pennsylvania, North Kingsville, Ohio

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KDC, Inc., allots Channel 230A to Fairview, Pennsylvania, as the community's first local aural transmission service. *See* 58 FR 52735, October 12, 1993. At the request of Thomas J. Sauber, the Commission allots Channel 283A to Cambridge Springs, Pennsylvania, as the community's first local aural transmission service. At the request of North Kingsville Broadcasting, the Commission allots Channel 298A to North Kingsville, Ohio, as the community's first local aural transmission service. Canadian concurrence in the allotments has been received since all of the communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border. Channel 230A can be allotted to Fairview without the imposition of a site restriction, at 42–01–48; 80–15–12. Channel 298A can be allotted to North Kingsville without the imposition of a site restriction at coordinates 41–54–18; 80–41–36. Channel 283A can be allotted to Cambridge Springs with a site restriction of 0.4 kilometers (0.3 miles) east, at coordinates 41–48–13; 80–03–24. With this action, this proceeding is terminated.

DATES: Effective April 10, 1995. The window period for filing applications will open on April 10, 1995, and close on May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–250, adopted February 14, 1995, and released February 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding North Kingsville, Channel 298A.

3. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Cambridge Springs, Channel 283A, and Fairview, Channel 230A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5253 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–112; RM–8516]

Radio Broadcasting Services; Farmville, Virginia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Farmville Herald, Inc, allots Channel 225A to Farmville, Virginia. *See* 59 FR 50719, October 5, 1994. Channel 225A can be allotted to Farmville, Virginia, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 225A at Farmville are 37–18–00 and 78–23–48. With this action, this proceeding is terminated.

DATES: Effective April 14, 1995. The window period for filing applications will open on April 14, 1995, and close on May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–112, adopted February 21, 1995, and released February 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel 225A at Farmville.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5254 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–114; RM–8515]

Radio Broadcasting Services; Ettrick, Virginia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hoffman Communications, Inc., allots Channel 226A to Ettrick, Virginia. *See* 59 FR 50887, October 6, 1994. Channel 226A can be allotted to Ettrick, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) northwest in order to avoid a short-spacing conflict with Station WFOG(FM), Channel 225B, Suffolk, Virginia. The coordinates for Channel 226A at Ettrick are 37–1753 and 77–32–53. With this action, this proceeding is terminated.

DATES: Effective April 14, 1995. The window period for filing applications will open on April 14, 1995, and close on May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–114, adopted February 15, 1995, and released February 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Ettrick, Channel 226A.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5186 Filed 3–2–95; 8:45 am]

BILLING CODE 6712–01–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 703, 715, 724, 731, 752, and Appendix G to Chapter 7

[AIDAR Notice 95–1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: United States Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development Acquisition Regulation (AIDAR) is being amended to make various administrative changes, to add coverage releasing proprietary and/or source selection information outside the Government for evaluation purposes, and to revise salary approval requirements.

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EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: M/OP/P, Ms. Frances Maki or Ms. Kathleen O'Hara concerning the release of proposals outside the Government, Room 1600I, U.S. Agency for International Development, Washington, D.C. 20523–1435. Telephone: (703) 875–1534.

SUPPLEMENTARY INFORMATION: The AIDAR is being amended to change the salary approval requirement from the maximum for an FS–1 to the maximum for a Senior Executive, Level 6. The approval authority for salaries above the ES–6 is the Procurement Executive rather than AA or Mission Director. Coverage is added on the use of non-Government evaluators and evaluation assistance contractors including certification requirements from such non-Government evaluators or evaluation assistance contractors before they can release information outside the government.

The changes being made by this document are editorial and administrative and are not considered significant rules under FAR Section 1.301 or Subpart 1.5, nor economically significant rules as defined in Executive Order 12866. This document will not have an impact on a substantial number of small entities, nor does it establish any collection of information as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature of this document, use of the proposed rule/public comments approach was not considered necessary. USAID has decided to issue this document as a final rule; however, we welcome public comment on the material covered by this document or any part of the AIDAR at any time. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

List of Subjects in 48 CFR Parts 701, 703, 715, 724, 731, 752 and Appendix G

Government procurement.

Accordingly for the reasons set out in the Preamble, 48 CFR Chapter 7 is amended as follows:

1. The authority citations in Parts 701, 703, 715, 724, 731 and 752 and continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

701.601 [Amended]

2. Section 701.601(b)(4) is amended by removing "Director, Office of International Training" and replacing it with "Director, Office of Field Support and Technical Assistance (G/HCD/FSTA)."

PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. A new subpart 703.1 is added to read as follows:

Subpart 703.1—Safeguards

703.104–5 Disclosure, protection, and marking of proprietary and source selection information.

A Contracting Officer may authorize release of proprietary and/or source selection information outside the Government for evaluation purposes pursuant to (FAR) 48 CFR 15.413–2, Alternative II, as implemented by (AIDAR) 48 CFR 715.413–2, Alternate II.

Subpart 703.4—Contingent Fees

703.403 [Amended]

4. Section 703.403 is amended by removing "FAR 3.404(B)(4)" and replacing it with "(FAR) 48 CFR 3.404(b)(4)."

PART 715—CONTRACTING BY NEGOTIATION

5. A new subpart 715.4 is added to read as follows:

Subpart 715.4—Solicitation and Receipt of Proposals and Quotations

715.413–2 Alternate II.

(a) A contracting officer may, subject to the requirements of this section and (FAR) 48 CFR 15.413–2, authorize release of proposals outside the Government for evaluation:

(1) When an evaluation assistance contractor (EAC) is required to provide technical advisory or other services relating to the evaluation of proposals; or

(2) When an individual other than a Government employee, known as a non-Government evaluator (NGE), is selected to serve as a member of an AID technical evaluation committee.

(b) Prior to releasing proposals outside the Government for evaluation, the contracting officer shall obtain a signed and dated copy of a certification and agreement from each NGE and EAC. See paragraph (c).

(c) A certification and agreement substantially as follows:

Certification and Agreement for the Use and Disclosure of Proposals

With respect to proposals submitted in response to AID solicitation no. _____, the undersigned hereby agrees, and/or certifies, to the following:

1. I will use the proposals, and all information therein other than information otherwise available without restriction, for evaluation purposes only. I will safeguard the proposals, and will not remove them from the site at which the evaluation is conducted unless authorized by the Contracting Officer. In addition, I will not disclose them, or any information contained in them (other than information otherwise available without restriction), except as directed or approved by the Contracting Officer.

2. I will ensure that any authorized restrictive legends placed on the proposals by prospective contractors or subcontractors, or AID, will be applied to any reproduction, or abstract of information, made by me.

3. Upon completing the evaluation, I will return all copies of the proposals, and any abstracts thereof, to the AID office which initially furnished them to me.

4. Unless authorized by the contracting officer in advance in writing, I will not,—whether before, during, or after the evaluation—contact any prospective contractor or subcontractor, or their employees, representatives or agents, concerning any aspect of the proposal.

5. I have carefully reviewed my employment (past, present and under consideration) and financial interests, as well as those of my household family members. Based on this review, I certify, to the best of my knowledge and belief as of the date indicated below, that I either (1) have no actual or potential conflict of interest, personal or organizational, that could diminish my capacity to perform an impartial and objective evaluation of the proposals, or that might otherwise result in an unfair competitive advantage to one or more prospective contractors or subcontractors, or (2) have fully disclosed all such conflicts to the contracting officer, and will comply fully, subject to termination of my evaluation services, with any instructions by the contracting officer to mitigate, avoid, or neutralize conflicts(s). I understand that I will also be under a continuing obligation to disclose, and act as instructed concerning, such conflicts discovered at any time prior to the completion of the evaluation.

Signature: _____

Name Typed or Printed: _____

Date: _____

(2) An Optional form 333, Procurement Integrity Certification for Procurement Officials, as required by FAR 15.413–2(f)(6). The words "leave the Government" in the fourth sentence of that form mean "cease to function as a procurement official."

PART 724—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

724.170 [Amended]

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

731.205 [Amended]

6 and 7. Subsection 731.205–6(d) is amended by removing "Foreign Service Officer Class FS–1" and "FS–1" and replacing it with "Executive Service level ES–6" and "ES–6" respectively.

8. Section 731.371(b) is amended by removing "Foreign Service Officer Class FS–1" and "FS–1" and replacing it with "Executive Service level ES–6" and "ES–6" respectively.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

752.7004 [Amended]

9. Section 752.7004, paragraph (b)(5) is amended by removing the second "which" and replacing it with "such".

752.7035 [Amended]

10. Section 752.7035 is amended by removing "Office of External Affairs" wherever it appears and replacing it with "Legislative and Public Affairs (LPA)."

11. Appendix G to Chapter 7 is revised to read as follows:

Appendix G—Approval Procedures for Contractor Salaries

1. Purpose

This Appendix provides guidelines for use when considering contractor salaries, and procedures for approval of contractor salaries exceeding the maximum salary level for Senior Executive Service level ES–6.

2. Procedures

(a) *General.* Personnel compensation negotiated and payable under USAID contracts should be at the minimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the market place where the types of services are obtained. Using such criteria, very few salaries should approach or exceed the ES–6 level. Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts (see (AIDAR) Appendix A to this Chapter).

(b) In accordance with 731.205–6, 731–371(b) and 731.772, approval of contractors salaries exceeding the maximum for Executive Service Level 6 are to be based upon a Memorandum from the technical office through the cognizant Assistant Administrator or Mission Director and the Contracting Officer to the Procurement Executive for approval. The reasonableness of proposed salaries exceeding the ES–6 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. The Contracting Officer shall clear the Memorandum if he/she concurs with the action. If he/she does not concur, a memorandum explaining the reasons shall be attached to the approval request and forwarded with it to the Procurement Executive. Increases in the ES–6 salary levels are not, and shall not be by themselves, the basis for upward salary increases of institutional contractor employees. Proposals for revisions should be considered normally when contracts are renewed or amended, and must be fully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. It is the Contracting Officer's responsibility to scrutinize increases as a matter of good business practice whenever USAID negotiations deal with any salaries payable under contracts. Salaries below the ES–6 maximum level should also be fully justified, even though formal approval procedures may not be involved. The justification should be a part of the negotiation memorandum and placed in the contract file.

Dated: December 12, 1994.

Michael D. Sherwin,

Procurement Executive.

[FR Doc. 95–4111 Filed 3–2–95; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 575

[Docket No. 93–81, Notice 03]

RIN 2127–AE70

Federal Motor Vehicle Safety Standards, New Pneumatic Tires; Consumer Information Regulations Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This document corrects test inflation pressures associated with the 350 kilopascal (kPa) (51 pounds per square inch (psi)) maximum inflation pressure for certain passenger car tires specified in the Uniform Tire Quality Grading Standards and the safety standard on new pneumatic tires. NHTSA makes this correction in response to a submission from the Rubber Manufacturers Association.

DATES: *Effective date:* The amendments in this correction document are effective March 3, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Droneburg, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5307, Washington, DC 20590. Ms. Droneburg's number is: (202) 366–4803.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* specifies requirements for passenger car tires for strength, endurance, high speed performance, and bead unseating resistance. In addition, the standard defines tire load ratings and specifies dimensions, maximum inflation pressures, and labeling requirements.

Paragraph S4.2.1(b) of the standard specifies separate maximum permissible inflation pressures for CT tires (pneumatic tires with an inverted flange tire and rim system in which the rim is designed with rim flanges pointed radially inward and the tire is designed to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire), and for tires other than CT tires (non-CT tires). In effect, S4.2.1(b) proscribes maximum permissible inflation pressures other than the ones listed.

A manufacturer's selection of a maximum permissible inflation pressure for a given tire has the effect under the Standard of determining the pressure at which that tire will be tested for compliance. For each maximum permissible inflation pressure, Table II of Appendix A of Standard No. 109 specifies pressures at which compliance tests will be conducted. Table II specifies one pressure for tests of physical dimensions, bead unseating, tire strength, and tire endurances, and specifies another pressure for the high speed performance test.

A manufacturer's selection of a maximum permissible inflation pressure for a given tire also has the effect under the Standard of determining the pressure at which that tire will be tested under the Uniform Tire Quality Grading Standards (UTQGS) (49 CFR 575.104): The UTQGS specify that passenger car tires be labeled with information about the relative performance of the tires in the areas of treadwear, traction, and temperature resistance. Table 1 of the UTQGS specifies, for each maximum permissible inflation pressure, pressures at which compliance tests for treadwear and temperature resistance will be conducted.

On August 1, 1994, NHTSA published a final rule (59 FR 38938) amending Standard No. 109 and the UTQGS by making changes permitting the manufacture and sale of CT and non-CT

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passenger car tires that have a maximum tire inflation pressure of 350 kiloPascals (kPa) (51 pounds per square inch (psi)). The final rule took effect on August 31,1994. Previously, only CT tires were permitted a maximum tire inflation pressure of 350 kPa.

In a submission that it characterized as a "petition for reconsideration," the Rubber Manufacturers Association (RMA) noted typographical errors in the August 1994 final rule. The RMA noted both Table II *Test Inflation Pressures* of Appendix A of Standard No. 109, and Table 1 *Test Inflation Pressures* in paragraph (g) of the UTQGS, specified incorrect pressures at which compliance tests would be conducted for 350 kPa tires other than CT tires. The RMA stated that for testing of 350 kPa non-CT tires, in Table II of Appendix A of Standard No. 109, the test pressure for the tests of physical dimensions, bead unseating, tire strength, and tire endurance should be 180 kPa, and the test pressure for the high speed performance test should be 220 kPa. The RMA also stated that for 350 kPa non-CT tires, in Table 1 in paragraph (g) of the UTQGS, the test pressure for the treadwear test should be 180 kPa and the test pressure for the temperature resistant test should be 220 kPa.

NHTSA agrees that RMA's recommended changes are correct. The final rule erroneously specified identical test pressures for testing of both 350 kPa CT tires and 350 kPA non-CT tires. The test pressures specified in the final rule for 350 kPa CT tires were correct; but the test pressures for 350 kPA non-CT tires were not. Accordingly, in this document, NHTSA corrects Table II of Standard No. 109 and Table I of the UTQGS to specify the correct test pressures for 350 kPa non-CT tires.

The changes in this document impose no duties or responsibilities on any party, nor do they make any substantive changes to Standard No. 109 or the UTQGS. The changes simply ensure that Standard No. 109 and the UTQGS read as the agency intended.

Since the changes are technical in nature and have no substantive impact, it is found that notice and public comment are unnecessary. Further, because the amendments are technical in nature, it is found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are effective upon publication in the **Federal Register**.

TABLE II.—TEST INFLATION PRESSURES

[Maximum permissible inflation pressure to be used for the following test]

Test type	Tires other than CT tires									CT tires			
	psi				kPa					kPa			
	32	36	40	60	240	280	300	340	350	290	300	350	390
Physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220	180	230	270	230	270
High speed performance	30	34	38	58	220	260	220	260	220	270	310	270	310

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR parts 571 and 575 are corrected by making the following correcting amendments:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.109 is amended by revising Table II of Appendix A to read as follows:

§ 571.109 Standard 109, New Pneumatic Tires.

* * * * *

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30123, delegation of authority at 49 CFR 1.50

§ 575.104 [Amended]

2. Section 575.104(g) is amended by revising Table 1 as follows:

(g) * * *

TABLE I.—TEST INFLATION PRESSURES

[Maximum permissible inflation pressure for the following test]

Test type	Tires other than CT tires									CT tires			
	psi				kPa					kPa			
	32	36	40	60	240	280	300	340	350	290	330	350	390
Treadwear test	24	28	32	52	180	220	180	220	180	230	270	230	270
Temperature resistant test	30	34	38	58	220	260	220	260	220	270	310	270	310

* * * * *

Issued on: February 24, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–5238 Filed 3–2–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 022795A]

Groundfish of the Gulf of Alaska; Pollock in the Eastern Gulf

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Eastern Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 27, 1995, until 12 noon A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The initial specification for pollock TAC in the Eastern Regulatory Area in the GOA was established by final initial specifications (60 FR 8740, February 14, 1995) as 3,360 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 final interim specification of pollock in the Eastern Regulatory Area in the GOA soon will be reached. The Regional Director established a directed fishing allowance of 3,000 mt, and has set aside the remaining 360 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the Eastern Regulatory Area in the GOA.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5219 Filed 2–27–95; 4:41 pm]

BILLING CODE 3510–22–F

50 CFR Parts 672 and 675

[Docket No. 900833–1095; I.D. 021595C]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Bycatch Rate Standards for the First Half of 1995

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; response to comments.

SUMMARY: NMFS responds to a comment submitted on Pacific halibut and red king crab bycatch rate standards for the first half of 1995. NMFS previously published these bycatch rate standards in the **Federal Register** for comment as required under regulations implementing the vessel incentive program (VIP). No change in the Pacific halibut or red king crab bycatch rate standards is specified as a result of this action.

EFFECTIVE DATE: The effective date of the January 12, 1995, final rule is 12:01 a.m., Alaska local time (A.l.t.), January 20, 1995, through 12 midnight, A.l.t., June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Regulations at §§ 672.26 and 675.26 implement a VIP to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**.

NMFS published Pacific halibut and red king crab bycatch rate standards for the first half of 1995 in the **Federal Register** on January 12, 1995 (60 FR 2905), and solicited comments from the public until January 23, 1995. One letter of comment was received within the comment period that is summarized in the Response to Comments section, below. After review of the comment received, NMFS determined that no change to the bycatch rate standards for the first half of 1995 is warranted. Additional information on the derivation of the 1995 bycatch rate standards is contained in the January 12, 1995, publication of these standards in the **Federal Register**.

Response to Comments

One letter of comment was received within the comment period that ended January 23, 1995. A summary of the comment and NMFS' response follows.

Comment. Given an agreement among many vessel operators to use large mesh trawl gear in the Bering Sea rock sole fishery to reduce groundfish discard amounts, NMFS should make allowances for vessels that have higher halibut and red king bycatch rates if the higher rates are a result of decreased discard amounts of groundfish as a result of large mesh trawl gear, rather than increased amounts of halibut or crab.

Response. The North Pacific Fishery Management Council (Council) reviewed current and historical halibut and red king crab bycatch rates when recommending that NMFS implement the VIP bycatch rate standards for the first half of 1995 that were published in the **Federal Register** on January 12, 1995. When recommending these rates, the Council was aware of the fact that some vessels may use large mesh trawl gear and that the resulting bycatch rates of halibut and red king crab could increase. However, no information was available on whether the use of large mesh trawl gear would result in vessel bycatch rates that exceed the recommended VIP standard established for the "other trawl" fishery category, which includes the rock sole fishery. The Council, therefore, recommended to maintain the current VIP bycatch rate standards until information is available on which to base a change in these standards, and regulatory changes are implemented to allow a separate bycatch rate standard for the rock sole fishery.

Voluntary industry efforts to reduce groundfish discard amounts are laudable. Nonetheless, NMFS does not

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intend to absolve a vessel owner/operator from accountability under the VIP simply because groundfish are harvested using large mesh trawl gear.

Dated: February 27, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5298 Filed 3–2–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 676

[Docket No. 950206039–5039–01; I.D. 081794A]

RIN 0648–AG98

Limited Access Management of Federal Fisheries In and Off of Alaska; Community Development Quota Compensation Formula

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule providing the method used for determining Community Development Quota (CDQ) compensation for the Pacific halibut and sablefish Individual Fishing Quota (IFQ) Program. This action is necessary to codify the formula used in calculating CDQ compensation and is intended to inform interested parties of the method used for determining the compensation provided to affected persons.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Pacific halibut and sablefish CDQ Program was intended by the North Pacific Fishery Management Council (Council) to assist in revitalizing rural communities in Western Alaska by providing those communities with access to fishery resources within their geographical proximity. The CDQ Compensation Formula was designed to compensate persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas resulting from allocations of those fishery resources to the CDQ Program. Compensated persons would be those who are initially issued quota share (QS) in CDQ areas. This one-time compensation adjustment would be in the form of QS in each of the non-CDQ areas.

The CDQ Compensation Formula would affect all persons who are initially issued QS, including those persons who did not participate historically in the Pacific halibut or sablefish fisheries in CDQ areas. The Council intended that all persons initially issued QS share the burden of compensating persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas. This would be accomplished by distributing the compensation burden among all persons initially issued QS by reducing their harvest privilege by a fixed percentage. Even persons who receive compensation would share the burden.

Persons eligible for compensation would receive a portion of their total amount of compensation in each non-CDQ area. Their compensation in each non-CDQ area, in the form of QS, would be proportional to the size of the QS pool of that area. For example, a person eligible for compensation QS for halibut would receive the greatest amount of compensation QS in area 3A, which has the largest QS pool, and the least amount in area 4A, which has the smallest QS pool. The CDQ Compensation Formula will be codified at § 676.24(i)(3). Further information on the methodology of the CDQ Compensation Formula and an example of how CDQ compensation would be calculated is available in the preamble to the proposed rule for the CDQ Compensation Formula published in the **Federal Register** on September 29, 1994 (59 FR 49637).

Changes Incorporated in the Final Rule

NMFS received no comments on the proposed rule for the CDQ Compensation Formula. The text at § 676.24(i)(3), however, was changed from that proposed to clarify NMFS' intent to issue CDQ Compensation QS to all persons initially issued QS for IFQ regulatory areas in which a portion of the total allowable catch (TAC) is allocated to the CDQ Program, no matter when those persons may be initially issued QS.

Classification

The regulatory impact review (RIR) prepared for this rule incorporates by reference the final regulatory flexibility analysis (FRFA) prepared for the IFQ Program, the program for which the CDQ Compensation Formula was designed. The FRFA supports the determination that the IFQ Program may have a significant impact on a substantial number of small entities. Further information on the FRFA can be obtained by referring to the final rule for the IFQ Program, published in the **Federal Register** on November 9, 1993 (58 FR 59375).

A collection of information for the IFQ Program was approved by the Office of Management and Budget, OMB control number 0648–0272. This action will not affect the collection-of-information requirements already approved for the IFQ Program.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: February 27, 1995

Nancy Foster,

Deputy Assistant Administrator for Fisheries National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.24 is amended by revising paragraph (i)(3) to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(i) * * *

(3) Compensation of halibut and sablefish QS foregone due to the CDQ program will be provided to those persons initially issued QS for IFQ regulatory areas in which a portion of the TAC is allocated to the CDQ Program and will be calculated for each non-CDQ area using the following formula:

$$Q_N = \{Q_C \times QSP_N \times RATE)/(SUM_{CDQ} - [RATE \times SUM_{TAC}])([1 - RATE] \times TAC_{AVE})(QSP_C \times [CDQ_{PCT} - RATE])$$

Where:

Q_N = quota share in non-CDQ area

Q_C = quota share in CDQ area

QSP_N = quota share pool in non-CDQ area (as existing on January 31, 1995)

RATE = SUM_{CDQ}/average of the TAC (1988–1994) for all CDQ and non-CDQ areas.

TAC_{AVE} = average of the TAC (1988–1994) for CDQ area

QSP_C = quota share pool in CDQ area (as existing on January 31, 1995)

CDQ_{PCT} = CDQ percentage for CDQ area

SUM_{CDQ} = sum $[TAC_{AVE} \times CDQ_{PCT}]$

SUM_{TAC} = sum $[TAC_{AVE}]$

* * * * *

[FR Doc. 95–5297 Filed 3–2–95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 42
Friday, March 3, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–95–302]

Peaches; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would revise the United States Standards for Grades of Peaches. The recommended revision would bring the standards into conformity with current cultural, harvesting and marketing practices by revising the method in which peaches are sized. This would be accomplished by changing the definition of "diameter" from the shortest distance to the greatest distance. The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

DATES: Comments must be postmarked or courier dated on or before May 2, 1995.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456. FAX number (202) 720–8871. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this proposed rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Peaches will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Peaches were last revised in June 1952. The National Peach Council (NPC), with the support of the Georgia Peach Council, New Jersey Peach Promotion Council, Inc., and the South Carolina Peach Council and Promotion Board, Inc., requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The NPC contends that due to new improved varieties, that changes to the current standards are necessary.

Specifically, the NPC requested that the standards be revised in regard to the method of sizing peaches. Peaches are currently sized based on the shortest diameter, which requires the use of a caliper or slotted sizing ring. This method was adopted several years ago when most peaches were oblong and heavily sutured. Industry research has demonstrated that today's varieties are generally much more round and more uniform in shape than older varieties. The shape of peaches is similar to the shape of nectarines. Nectarines are sized by using the greatest diameter of the nectarine, which allows fruit to be sized using a sizing ring. Therefore, peaches should be sized on the same basis as nectarines (greatest dimension measured at right angles to a line from stem to blossom end of the fruit, using a sizing ring) in order to create uniformity in the marketplace.

The proposed revision would affect peaches that are sized to a minimum diameter, which are mostly grown on the east coast and some in the Midwest. This should not affect peaches grown on the west coast as they are sized based on the marketing order 917, consisting of a weight-count system.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Part 51, Subpart—United States Standards for Peaches is revised to read as follows:

Subpart—United States Standards for Grades of Peaches

* * * * *

3. In § 51.1216, paragraph (c) is revised to read as follows:

§ 51.1216 Size requirements.

* * * * *

(c) *Diameter* means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

* * * * *

Dated: February 24, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–5296 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 58

[DA–91–010B]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Monterey (Monterey Jack) Cheese

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the United States Standards for Grades of Monterey (Monterey Jack) Cheese. The proposed changes would revise the standards to recognize differences in cheese characteristics resulting from technological changes in manufacturing practices and to more accurately describe consumer-acceptable product. The proposal would expand the permissible range of open body characteristics to include monterey (monterey jack) cheese manufactured using automated equipment. The proposal was initiated at the request of the National Cheese Institute (NCI) and was developed in cooperation with NCI and other dairy trade associations.

DATES: Comments should be filed by May 2, 1995.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be available for public inspection at the Dairy Division in Room 2750–S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9383.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To recognize differences in cheese characteristics resulting from technological changes in the manufacture of monterey (monterey jack) cheese and to permit the assignment of U.S. grade to cheese manufactured utilizing this technology, USDA is proposing the following changes in the U.S. Standards for Grades of Monterey (Monterey Jack) Cheese.

1. Expand Body and Texture Criteria To Permit U.S. Grade Assignment to Monterey (Monterey Jack) Cheese That Contains Less Than Numerous Mechanical Openings

The current U.S. Standards for Grades of Monterey (Monterey Jack) Cheese became effective in 1973. When these standards were established, production procedures encouraged the formation of numerous small mechanical openings evenly distributed throughout the cheese. Since then, automated manufacturing processes have been developed which have altered traditional body characteristics. Monterey (Monterey jack) cheese that is produced using automated production technology has resulted in cheese that no longer exhibits numerous mechanical openings. Cheese produced in this manner is readily available and is capturing an increasing share of the monterey cheese market. Changes in body characteristics have not altered the flavor or reduced the useability of the cheese.

Changes in the standards would provide for the assignment of U.S. grades to monterey (monterey jack) cheese that contains less than numerous mechanical openings or that may be completely devoid of mechanical openings. These changes do not disallow mechanical openings in cheese produced using traditional production methods.

2. Modify the Body Characteristics by Allowing "Very Slight Weak" in U.S. Grade AA Monterey (Monterey Jack) Cheese

Compositional standards permit monterey (monterey jack) cheese to contain up to 44 percent moisture. Cheese that contains this moisture content is classified as a semisoft cheese. A very slight weak body is an acceptable characteristic in this class of cheese. The proposal would add "very slight weak" to the list of permissible body characteristics for U.S. Grade AA Monterey (Monterey Jack) Cheese.

3. Increase the Minimum Aging Period Before Monterey (Monterey Jack) Cheese Can Be Graded From 5 to 10 Days

In order to accurately evaluate cheese quality, the cheese must have completed an aging period during which quality characteristics develop. With the exception of the U.S. grade standards for monterey (monterey jack) cheese, which stipulate a minimum 5-day aging period, all other U.S. grade standards for various varieties of cheese require this aging period to be at least 10 days. Changes proposed herein would increase the accuracy in determining U.S. grade by allowing cheese quality characteristics to develop to a greater extent. Also, this change would provide consistency with the age requirements prescribed for other types of cheese.

4. Permit the Use of Safe and Suitable Antimycotics on the Surface of Monterey (Monterey Jack) Cheese, as Sanctioned by the Food and Drug Administration

The Food and Drug Administration (FDA) has amended the Standards of Identity for Monterey (Monterey Jack) Cheese (21 CFR Part 133, Cheese and Related Cheese Products," as issued by the Food and Drug Administration) to permit the use of antimycotics on the surface of the cheese. The National Cheese Institute, a trade association representing U.S. cheese manufacturers, had petitioned FDA to permit the broader use of safe and suitable antimycotics. Previously, use was permitted only on cuts and slices in consumer-size packages for a number of standardized cheeses.

Provision for the use of antimycotics would be beneficial in preventing or inhibiting mold development on the surface of monterey (monterey jack) cheese.

5. Redefine Packaging Requirements

Proposed changes in packaging requirements would provide greater clarity and expand the types of

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packaging methods permitted. The general-type packaging requirements outlined in this proposed revision would recognize the packaging methods (such as rinded and paraffin-dipped, rindless and wrapped, and rindless and paraffin-dipped) that are used in the cheese industry today, and would provide latitude for future developments in packaging technology.

6. Update the Terminology and Format of the Standards

The current U.S. Standards for Grades of Monterey (Monterey Jack) Cheese were established in 1973. Since that time, changes in terminology and formatting of standards have taken place. The proposal would update the standards to provide consistency among the various U.S. grade standards for cheeses.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When monterey (monterey jack) cheese is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would more accurately identify the useful quality characteristics of monterey (monterey jack) cheese.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In Part 58, Subpart I—United States Standards for Grades of Monterey (Monterey Jack) Cheese is revised to read as follows:

Subpart I—United States Standards for Grades of Monterey (Monterey Jack) Cheese

Definitions

Sec.
58.2465 Monterey (Monterey Jack) cheese.
58.2466 Types of surface protection.

U.S. Grades

58.2467 Nomenclature of U.S. grades.
58.2468 Basis for determination of U.S. grade.
58.2469 Specifications for U.S. grades.
58.2470 U.S. grade not assignable.

Explanation of Terms

58.2471 Explanation of terms.

Subpart I—United States Standards for Grades of Monterey (Monterey Jack) Cheese[1]

Definitions

§ 58.2465 Monterey (Monterey Jack) cheese.

Monterey (Monterey Jack) cheese is cheese made by the monterey process or by any other procedure which produces a finished cheese having the same organoleptic, physical, and chemical properties as the cheese produced by the monterey process. The cheese is made from pasteurized cow's milk. It may contain added common salt and contains not more than 44 percent moisture, its total solids content is not less than 50 percent milkfat, and it conforms to the applicable provisions of 21 CFR Part 133, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

§ 58.2466 Types of surface protection.

The following are the types of surface protection for monterey (monterey jack) cheese:

(a) *Rinded and paraffin-dipped.* The cheese that has formed a rind is dipped in a refined paraffin, amorphous wax, microcrystalline wax, or other suitable substance. Such coating is a continuous, unbroken, and uniform film adhering tightly to the entire surface of the cheese rind.

(b) *Rindless.*

(1) *Wrapped.* The cheese is completely enveloped in a tight-fitting wrapper or other protective covering, which is sealed with sufficient overlap or satisfactory closure. The wrapper or covering shall not impart color or objectionable taste or odor to the cheese. The wrapper or covering shall be of sufficiently low permeability to air so as to prevent the formation of a rind.

(2) *Paraffin-dipped.* The cheese is dipped in a refined paraffin, amorphous wax, microcrystalline wax, or other suitable substance. The paraffin shall be applied so that it is continuous, unbroken, and uniformly adheres tightly to the entire surface. If a wrapper or coating is applied to the cheese prior to paraffin dipping, it shall completely envelop the cheese and not impart color or objectionable taste or odor to the cheese.

(c) If antimycotics are used, they shall be used in accordance with the provisions of Food and Drug Administration regulations (21 CFR part 133).

U.S. Grades

§ 58.2467 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Grade AA.
(b) U.S. Grade A.
(c) U.S. Grade B.

§ 58.2468 Basis for determination of U.S. grade.

(a) The cheese shall be graded no sooner than 10 days of age.

(b) The rating of each quality factor shall be established on the basis of characteristics present in any vat of cheese.

(c) The U.S. grades of monterey (monterey jack) cheese are determined on the basis of rating the following quality factors:

(1) Flavor.
(2) Body and Texture.
(3) Color.
(4) Finish and Appearance.

(d) The final U.S. grade shall be determined on the basis of the lowest rating of any one of the quality factors.

§ 58.2469 Specifications for U.S. grades.

The general requirements for the U.S. Grades of Monterey (Monterey Jack) Cheese are as follows:

(a) *U.S. Grade AA.* U.S. Grade AA Monterey (Monterey Jack) Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese shall possess a fine and highly pleasing monterey (monterey jack) cheese flavor which is free from undesirable tastes and odors or may be lacking in flavor development. The cheese may possess a very slight acid or feed flavor. See Table I of this section.

(2) *Body and Texture.* A plug drawn from the cheese shall be reasonably firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit evenly distributed small mechanical openings or a close body

[1] Compliance with the standards in this Subpart does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

The cheese shall be free from sweet holes, yeast holes, or other gas holes. The body may be very slightly weak, and the texture may be definitely curdy. See Table II of this section.

(3) *Color.* The color shall be natural, uniform, and bright. See Table III of this section.

(4) *Finish and appearance.*

(i) *Rinded and paraffin-dipped.* The bandage shall be evenly placed over the entire surface of the cheese and be free from unnecessary overlapping and wrinkles, and not burst or torn. The rind shall be sound, firm, smooth, and provide good protection to the cheese. The surface shall be smooth, bright, and have a good coating of wax or coating of paraffin that adheres firmly to all surfaces. The cheese shall be free from mold under the paraffin. The cheese shall be free from high edges, huffing, or lopsidedness, but may possess soiled surface to a very slight degree. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be practically smooth and properly sealed with adequate overlapping at the seams or sealed by any other satisfactory type of closure. The wrapper or covering shall be neat and shall adequately and securely envelop the cheese, but may be slightly wrinkled. Allowance should be made for slight wrinkles caused by crimping or sealing when vacuum packaging is used. The cheese shall be free from mold under the wrapper or covering and shall not be huffed or lopsided. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The cheese surface shall be smooth, bright, and have a good coating of paraffin that adheres firmly. If a wrapper or coating is applied prior to paraffin dipping, it shall completely envelop the cheese. The cheese shall be free from high edges, huffing, lopsidedness, or mold. The cheese may possess soiled surface to a very slight degree. The wrapper may be wrinkled to a slight degree. See Table IV of this section.

(b) *U.S. Grade A.* U.S. Grade A Monterey (Monterey Jack) Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese shall possess a pleasing monterey (monterey jack) cheese flavor which is free from undesirable tastes and odors; or may be lacking in flavor development. The cheese may possess bitter or flat flavor to a very slight degree; and acid or feed flavor to a slight degree. See Table I of this section.

(2) *Body and texture.* A plug drawn from the cheese shall be reasonably firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit evenly distributed mechanical openings or a close body. The plug shall be free from sweet holes, yeast holes, or other gas holes. The body and texture may be very slightly weak or loosely knit, and definitely curdy. See Table II of this section.

(3) *Color.* The color shall be natural, fairly uniform, and bright. The cheese may possess waviness to a very slight degree. See Table III of this section.

(4) *Finish and appearance.*

(i) *Rinded and paraffin-dipped.* The bandage shall be evenly placed over the entire surface of the cheese and not be burst or torn. The rind shall be sound, firm, smooth, and provide good protection to the cheese. The surface shall be practically smooth, bright, and have a good coating of paraffin that adheres firmly to all surfaces. The cheese shall be free from mold under the paraffin. The cheese may possess the following characteristics to a very slight degree: Soiled surface or surface mold; and to a slight degree: High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be practically smooth, properly sealed with adequate overlapping at the seams or sealed by any other satisfactory type of closure. The wrapper or covering shall be neat and adequately and securely envelop the cheese but may be slightly wrinkled. Allowance should be made for slight wrinkles caused by crimping or sealing when vacuum packaging is used. The cheese shall be free from mold under the wrapper or covering and shall not be huffed but may possess to a slight degree: High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The cheese surface shall be bright and have a good coating of paraffin that adheres firmly. If a wrapper or coating is applied prior to paraffin dipping, it shall completely envelop the cheese and have a good coating of paraffin that adheres firmly. The cheese may possess soiled surface to a very slight degree but shall be free from mold, and it may possess to a slight degree: High edges, irregular press cloth, lopsided, rough surface, or wrinkled wrapper or covering. See Table IV of this section.

(c) *U.S. Grade B.* U.S. Grade B Monterey (Monterey Jack) Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese may possess a fairly pleasing monterey (monterey jack) cheese flavor; or it may be lacking in flavor development. The cheese may possess onion or sour flavor to a very slight degree; barny, bitter, flat, fruity, malty, old milk, rancid, utensil, weedy, whey-taint, or yeasty flavor to a slight degree; and acid or feed flavor to a definite degree. See Table I of this section.

(2) *Body and texture.* A plug drawn from the cheese shall be moderately firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit mechanical openings or a close body. The cheese may possess the following characteristics to a slight degree: Coarse, corky, crumbly, gassy, loosely knit, mealy, pasty, short, slitty, sweet holes, or weak; and the following to a definite degree: Curdy. See Table II of this section.

(3) *Color.* The cheese may possess the following characteristics to a slight degree: Acid-cut, dull, faded, mottled, salt spots, unnatural, or wavy. In addition, rindless monterey cheese may have a bleached surface to a slight degree. See Table III of this section.

(4) *Finish and appearance.*

(i) *Rinded and paraffin-dipped.* The bandage shall be placed over the entire surface of the cheese and may be uneven and wrinkled, but not burst or torn. The rind shall be reasonably sound and free from soft spots, rind rot, cracks, or openings of any kind. The surface may be rough and unattractive but shall possess a fairly good coating of paraffin. The paraffin may be scaly or blistered, with very slight mold under the bandage or paraffin, but there shall be no indication that mold has entered the cheese. The cheese may possess the following characteristics to a slight degree: Checked rind, defective coating, soiled surface, sour rind, surface mold, or weak rind; and to a definite degree: High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be unbroken and shall adequately and securely envelop the cheese. The following may be present to a very slight degree: Mold under the wrapper but not entering the cheese; to a slight degree: Soiled surface or surface mold; and to a definite degree: High edges, irregular press cloth, lopsided, rough surface, or wrinkled wrapper or cover. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The wrapper or coating applied prior to paraffin dipping shall adequately and securely envelop the cheese and have a coating of paraffin that adheres firmly to the cheese wrapper and shall be unbroken but may be definitely wrinkled. The paraffin may be scaly or

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blistered, with very slight mold under the paraffin, but there shall be no indication that mold has entered the cheese. The cheese may possess the following characteristics to a slight degree: Defective coating, soiled surface, or surface mold; and the following to a definite degree: High edges, irregular press cloth, lopsided, rough surface, or wrinkled wrapper or covering. See Table IV of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics	AA	A	B
Acid	VS	S	D
Barny	—	—	S
Bitter	—	VS	S
Feed	VS	S	D
Flat	—	VS	S
Fruity	—	—	S
Malty	—	—	S
Old milk	—	—	S
Onion	—	—	VS
Rancid	—	—	S
Sour	—	—	VS
Utensil	—	—	S
Weedy	—	—	S
Whey—taint	—	—	S
Yeasty	—	—	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

TABLE II.—CLASSIFICATION OF BODY AND TEXTURE WITH CORRESPONDING U.S. GRADE

Body and texture characteristics	AA	A	B
Coarse	—	—	S
Corky	—	—	S
Crumbly	—	—	S
Curdy	D	D	D
Gassy	—	—	S
Loosely knit	—	VS	S
Mealy	—	—	S
Pasty	—	—	S
Short	—	—	S
Slitty	—	—	S
Sweet holes	—	—	S
Weak	VS	VS	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

TABLE III.—CLASSIFICATION OF COLOR WITH CORRESPONDING U.S. GRADE

Color characteristics	AA	A	B
Acid-cut	—	—	S
Bleached surface (rindless)	—	—	S
Dull or faded	—	—	S
Mottled	—	—	S
Salt spots	—	—	S
Unnatural	—	—	S
Wavy	—	VS	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

TABLE IV.—CLASSIFICATION OF FINISH AND APPEARANCE WITH CORRESPONDING U.S. GRADE

Finish and appearance characteristics	AA	A	B
Rindless:			
Defective coating (paraffin-dipped: scaly, blistered, and checked)	—	—	S
High edges	—	S	D
Irregular press cloth (uneven, wrinkled, and improper overlapping)	—	S	D
Lopsided	—	S	D
Mold under wrapper or covering	—	—	VS
Rough surface	—	S	D
Soiled surface	—	—	S
Soiled surface (paraffin-dipped)	VS	VS	S
Surface mold	—	—	S
Wrinkled wrapper or covering	S	S	D

TABLE IV.—CLASSIFICATION OF FINISH AND APPEARANCE WITH CORRESPONDING U.S. GRADE—Continued

Finish and appearance characteristics	AA	A	B
Rinded:			
Checked rind	—	—	S
Defective coating (scaly, blistered, and checked)	—	—	S
High edges	—	S	D
Irregular press cloth (uneven, wrinkled, and improper overlapping)	—	S	D
Lopsided	—	S	D
Mold under paraffin	—	—	VS
Rough surface	—	S	D
Soiled surface	VS	VS	S
Sour rind	—	—	S
Surface mold	—	VS	S
Weak rind	—	—	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

§ 58.2470 U.S. grade not assignable.

Monterey (Monterey Jack) cheese shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The cheese fails to meet or exceed the requirements for U.S. Grade B.

(b) The cheese is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

Explanation of Terms

§ 58.2471 Explanation of terms.

(a) *With respect to types of surface protection:*

(1) *Paraffin.* Refined paraffin, amorphous wax, microcrystalline wax, or any combination of such or any other suitable substance.

(2) *Paraffin dipped.* Cheese that has been coated with paraffin.

(3) *Rind.* A hard coating caused by the dehydration of the surface of the cheese.

(4) *Rinded.* A protection developed by the formation of a rind.

(5) *Rindless.* Cheese which has not formed a rind due to the impervious type of wrapper, covering, or container, enclosing the cheese.

(6) *Wrapped.* Cheese that has been covered with a transparent or opaque material (plastic film type or foil) next to the surface of the cheese.

(7) *Wrapper or covering.* A plastic film or foil material next to the surface of the cheese, used as an enclosure or covering of the cheese.

(b) *With respect to flavor:*

(1) *Very slight.* Detected only upon very critical examination.

(2) *Slight.* Detected only upon critical examination.

(3) *Definite.* Not intense but detectable.

(4) *Undesirable.* Those listed in excess of the intensity permitted or those characterizing flavors not listed.

(5) *Acid.* Sharp and puckery to the taste, characteristic of lactic acid.

(6) *Barny.* A flavor characteristic of the odor of a poorly ventilated cow barn.

(7) *Bitter.* Distasteful, similar to the taste of quinine.

(8) *Feed.* Feed flavors (such as alfalfa, sweetclover, silage, or similar feed) in milk which have carried through into the cheese.

(9) *Flat.* Insipid, practically devoid of any characteristic monterey (monterey jack) cheese flavor.

(10) *Fruity.* A fermented, sweet, fruit-like flavor resembling apples.

(11) *Lacking in flavor development.* No undesirable and very little, if any, monterey (monterey jack) cheese flavor development.

(12) *Malty.* A distinctive, harsh flavor suggestive of malt.

(13) *Old milk.* Lacks freshness.

(14) *Onion.* A flavor recognized by the peculiar taste and aroma suggestive of its name. Present in milk or cheese when the cows have eaten onions, garlic, or leeks.

(15) *Rancid.* A flavor suggestive of rancidity or butyric acid; sometimes associated with bitterness.

(16) *Sour.* An acid, pungent flavor resembling vinegar.

(17) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sterilization of milking machines, utensils, or factory equipment.

(18) *Weedy.* A flavor present in cheese when cows have eaten weedy hay or grazed on weed-infested pasture.

(19) *Whey-taint.* A slightly acid flavor characteristic of fermented whey.

(20) *Yeasty.* A flavor indicating yeast fermentation.

(c) *With respect to body and texture:*

(1) *Very slight.* Detected only upon very critical examination and present only to a minute degree.

(2) *Slight.* Barely identifiable and present only to a small degree.

(3) *Definite.* Readily identifiable and present to a substantial degree.

(4) *Coarse.* Feels rough, dry, and sandy.

(5) *Corky.* Hard, tough, over-firm cheese which does not readily break down when rubbed between the thumb and fingers.

(6) *Crumbly.* Tends to fall apart when rubbed between the thumb and fingers.

(7) *Curdy.* Smooth but firm; when worked between the fingers is rubbery and not waxy or broken down.

(8) *Firm.* Feels solid, not soft or weak.

(9) *Gassy.* Gas holes of various sizes and may be scattered.

(10) *Loosely knit.* Curd particles which are not well-matted and fused together.

(11) *Mealy.* Short body, does not mold well and looks and feels like corn meal when rubbed between the thumb and fingers.

(12) *Mechanical openings.* Irregular shaped openings that are caused by variations in make procedure and not caused by gas fermentation.

(13) *Pasty.* Is usually a weak body and when the cheese is rubbed between the thumb and fingers becomes sticky and smeary.

(14) *Pinny.* Numerous very small gas holes.

(15) *Reasonably firm.* Somewhat less firm but not to the extent of being weak.

(16) *Short.* No elasticity in the cheese plug and when rubbed between the thumb and fingers, the cheese tends toward mealiness.

(17) *Slitty.* Narrow, elongated slits generally associated with a cheese that is gassy or yeasty. These slits may sometimes be referred to as "fish-eyes."

(18) *Sweet holes.* Spherical gas holes which are glossy in appearance and usually about the size of BB shots. These gas holes are sometimes referred to as "shot holes."

(19) *Weak.* The cheese plug is soft but is not necessarily sticky like a pasty cheese and requires little pressure to crush.

(d) *With respect to color:*

(1) *Very slight.* Detected only upon very critical examination and present only to a minute degree.

(2) *Slight.* Barely identifiable and present only to a small degree.

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(3) *Acid-cut.* A bleached or faded color which sometimes varies throughout the cheese and appears most often around mechanical openings.

(4) *Bleached surface.* A faded color beginning at the surface and progressing inward.

(5) *Dull or faded.* A color condition lacking in luster or translucency.

(6) *Mottled.* Irregular shaped spots or blotches in which portions are not uniform in color. Also an unevenness of color due to combining the curd from two different vats, sometimes referred to as "mixed curd."

(7) *Natural.* White to light cream in color.

(8) *Salt spots.* Large light-colored spots or areas.

(9) *Unnatural.* Any color which is not white to light cream.

(10) *Wavy.* An unevenness of color which appears as layers or waves.

(e) *With respect to finish and appearance:*

(1) *Very slight.* Detected only upon very critical examination and present to a minute degree.

(2) *Slight.* Barely identifiable and present to a small degree.

(3) *Definite.* Readily identifiable and present to a substantial degree.

(4) *Adequately and securely enveloped.* The wrapper or covering is properly sealed and entirely encloses the cheese with sufficient adherence to the surface of the cheese to protect it from contamination or dehydration.

(5) *Bandage.* Cheese cloth used to wrap cheese prior to dipping in paraffin.

(6) *Bandage evenly placed.* Placement of the bandage so that it completely envelops the cheese and overlaps evenly about one inch.

(7) *Bright surface.* Clean, glossy surface.

(8) *Burst or torn bandage.* A severance of the bandage usually occurring at the side seam; or when the bandage is otherwise snagged or broken.

(9) *Checked rind.* Numerous small cracks or breaks in the rind which sometimes follows the outline of curd particles.

(10) *Defective coating.* A brittle coating of paraffin that breaks and peels off in the form of scales or flakes; flat or raised blisters or bubbles under the surface of the paraffin; checked paraffin, including cracks, breaks or hairline checks in the paraffin or coating of the cheese.

(11) *Firm sound rind.* A rind possessing a firmness and thickness (not easily dented or damaged) consistent with the size of the cheese and which is dry, smooth, and closely knit, sufficient to protect the interior quality from external defects; free from checks, cracks, breaks, or soft spots.

(12) *High edge.* A rim or ridge on the side of the cheese.

(13) *Huffed.* A block of cheese which is swollen because of gas fermentation. The cheese becomes rounded or oval in shape instead of having flat surfaces.

(14) *Irregular press cloth.* Press cloth improperly placed in the hoop resulting in too much press cloth on one end and insufficient on the other causing overlapping; wrinkled and loose fitting.

(15) *Lopsided.* One side of the cheese is higher than the other side.

(16) *Mold under bandage and paraffin.* Mold spots or areas under the paraffin.

(17) *Mold under wrapper or covering.* Mold spots or areas under the wrapper or covering.

(18) *Rind rot.* Soft spots on the rind that have become discolored and are decayed or decomposed.

(19) *Rough Surface.* Lacks smoothness.

(20) *Smooth surface.* Not rough or uneven.

(21) *Soft spots.* Areas soft to the touch and which are usually faded and moist.

(22) *Soiled surface.* Milkstone, rust spots, or other discoloration on the surface of the cheese.

(23) *Sour rind.* A fermented rind condition, usually confined to the faces of the cheese.

(24) *Surface mold.* Mold on the exterior of the paraffin or wrapper.

(25) *Wax or paraffin that adheres firmly to the surface of the cheese.* A coating with no cracks, breaks, or loose areas.

(26) *Weak rind.* A thin rind which possesses little or no resistance to pressure.

Dated: February 24, 1995.

Kenneth C. Clayton,

Acting Administrator.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 31

[Docket No. 95–04]

RIN 1557–AB38

Interpretive Rulings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise the interpretive rulings that appear in part 7 of title 12. This proposal, another component of the OCC's Regulation Review Program, updates and streamlines OCC regulations and seeks to eliminate regulatory requirements that impose ineffective, inefficient and costly regulatory burdens on national banks. This proposal clarifies, revises, and reorganizes existing interpretive rulings, eliminates rulings that are obsolete, adds interpretive rulings to address new issues, and transfers some interpretive rulings to other parts of title 12.

DATES: Comments must be received by May 2, 1995.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–04. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Senior Attorney, Jacqueline L. Lussier, Senior Attorney, or Laurie P. Sears, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to revise and reorganize 12 CFR part 7 in connection with its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and regulations to eliminate regulatory requirements that impose ineffective, inefficient and costly regulatory burdens on national banks, which do not contribute significantly to maintaining safety and soundness, and to revise rules that do not effectively advance the OCC's other goals and statutory responsibilities. The proposal is also intended to clarify and supplement the interpretive rulings where necessary.

Part 7

Part 7 is a collection of interpretive rulings, some of which date back several decades. Prior to 1971 these interpretive rulings were not codified in the Code of Federal Regulations. When part 7 was originally introduced in the **Federal Register**, the OCC characterized the new part 7 simply as a collection of interpretive rulings that merited publication in order to be available to the general population.[1]

[1] The preamble to the original publication, 36 FR 17000, Aug. 26, 1971, introduced part 7 as follows: These rulings, which interpret and apply the laws and regulations relating to national banks and general principles of prudent banking, have become of increasing importance not only to national banks but to persons dealing with national banks and to the public generally. The Comptroller has accordingly concluded that the public interest requires the publication of these rulings in the Code of Federal Regulations.

At the time of their initial publication, many of the rulings formed the basis of regulatory authority for new bank activities. Many of those activities are recognized as usual and customary today. However, most of these interpretive rulings are unchanged since their initial publication, while the banking statutes and interpretive positions of the OCC have continued to evolve. As a result, many of the interpretive rulings in part 7 need revision, and some are so outdated that they no longer serve any useful purpose. In addition, new rulings are needed to address changing industry practices, developing issues, and recent statutory amendments. In conjunction with these revisions, the OCC also is proposing to transfer some interpretive rulings presently located in part 7 of title 12 to part 31 of title 12, since they relate to the subject matter of that part.

Proposal

This proposal also substantially reorganizes part 7. To aid users of the part, the subparts are renumbered and divided among four topic sections: Subpart A—Bank Powers, Subpart B—Corporate Practices, Subpart C—Bank Operations, and Subpart D—Preemption. The proposal removes a number of rulings that are obsolete or superfluous because they merely restate statutory authority, and proposes changes to the remaining rulings to clarify or update longstanding interpretive positions. In addition, new interpretive rulings are proposed to address developing issues and changing industry practices as well as recent statutory developments.

Wherever possible, this proposal consolidates related interpretive rulings into one section in order to address related issues together. For instance, proposed § 7.2011 on bank compensation plans combines current §§ 7.5000, 7.5010, and 7.5015, regarding bonus and profit sharing plans, pension plans, and employee stock option and stock purchase plans. The OCC condensed related sections, to present relevant information in one comprehensive section for greater clarity.

The proposal's revisions, additions, and consolidation of current sections are described in the section-by-section summary that follows. After the section-by-section summary, the preamble explains the OCC's reasons for proposing to remove a number of interpretive rulings contained in current part 7. The preamble concludes by listing those sections for which no change, except for necessary renumbering, is proposed, and briefly explains the reasons for preserving the sections as they are. A distribution table and derivation table comparing current part 7 sections to the proposed sections follows the "proposal" segment of this preamble.

Section-by-Section Descriptions of Proposed Changes

Bank Ownership of Property (§ 7.1000)

Proposed § 7.1000 simplifies and consolidates current §§ 7.3005, 7.3010, 7.3100, 7.3300, and 7.5230 regarding permissible ownership of real property by national banks, primarily bank premises. Proposed § 7.1000 provides an updated, non-exclusive list of real estate the OCC considers as bank premises for purposes of 12 U.S.C. 29, and removes provisions that merely repeat statutory language. For greater simplicity and clarity, proposed § 7.1000 uses the phrase "necessary for the transaction of its business" rather than "necessary for its accommodation in the transaction of its business" used in 12 U.S.C. 29.

Proposed § 7.1000(b) clarifies that a national bank, as well as a bank premises corporation, may own necessary fixed assets as part of bank premises, and adds that a national bank may own real property "fixtures." In recognition of modern corporate law developments, proposed § 7.1000(c) provides that a bank premises subsidiary may be organized as a partnership or similar entity (e.g., a limited liability company) as well as a corporation. A statement in current § 7.3100(b)(2) that a bank premises corporation is not a bank service corporation has been removed as unnecessary, but the OCC intends no substantive change.

Proposed § 7.1000(d) shortens the discussion of investment limitations on bank ownership of property or corporations owning bank premises by referring to 12 U.S.C. 371d, where they are fully set forth, and refers to part 5 of this chapter for the relevant approval requirements. See § 5.37 of this chapter, 59 FR 61034, Nov. 29, 1994. Proposed § 7.1000 removes references to prior approval, because revisions to part 5, recently proposed by the OCC, would not always require prior approval for these investments. See 59 FR 61034, Nov. 29, 1994.

Proposed § 7.1000(e) covers two other types of real estate ownership that the OCC has found to be permissible in narrowly defined circumstances, although not as bank premises. In a line of precedent originating in the early sixties, the OCC has permitted the lease financing of public facilities under certain conditions, on the basis that such transactions are essentially secured real estate loans. This rationale is analogous to the basis for leasing personal property pursuant to 12 U.S.C. 24(Seventh), and could have broader applicability.

The OCC invites comment on the extent to which real estate lease financing should be similarly permitted for other types of borrowers and other types of properties.

Proposed § 7.1000(e) also incorporates the present § 7.5230, concerning bank purchases of the homes of relocating employees who would otherwise suffer a loss on the sale of their homes. Such purchases are justified because they facilitate the efficient utilization of bank personnel, but the bank must divest itself of the house as soon as reasonably possible.

National Bank Acting as Finder (§ 7.1002)

Proposed § 7.1002 revises current § 7.7200 to reflect more recent OCC interpretations. The proposal clarifies that a national bank may act as a finder of certain goods and services other than insurance. In addition, proposed § 7.1002(b) contains a non-exclusive list of the types of activities that a national bank may engage in while acting as finder.

Proposed § 7.1002(c) also adds the phrase—"Unless otherwise prohibited"—to recognize that some state laws prohibit insurance brokers from splitting commissions with nonbrokers and certain national bank finder activities could violate the Real Estate Settlement Procedures Act (RESPA) and its implementing regulations. See 12 U.S.C. 2601 through 2617, and 24 CFR 3500.14(b). Proposed § 7.1002 also revises current § 7.7200 to reflect that since 1986 the OCC has not objected to a national bank advertising its finder services.

Loans made at banking offices or at other than banking offices (§ 7.1003); Loans originating at other than banking offices (§ 7.1004); Credit decisions at other than banking offices (§ 7.1005)

The proposal retains and redesignates current § 7.7380 as § 7.1004 without substantive change, (the section is slightly reworded to be more readable) and adds new sections that address when a loan is made, loan approval and loan disbursal. The new sections, §§ 7.1003 and 7.1005, are intended to

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codify recent OCC interpretations relating to loan production offices (LPOs) and the use of back offices. These sections, taken together, provide guidance on what types of facilities constitute a branch in the lending context, and the circumstances under which a bank may conduct lending-related activities at nonbranch locations.

Proposed § 7.1003 incorporates case law relating to where a loan is "made" for purposes of branching. Under § 7.1003, a loan is made where the customer, in person, receives loan funds from the bank. Thus, if funds are received by a customer from a bank employee or at bank premises, branching limitations apply and OCC approval is required. If, however, funds are received by the customer from an independent third party, including a messenger service described in current § 7.7490 (proposed § 7.1012), at the customer's home, office, or at another nonbank facility, branching limitations do not apply and OCC approval is not needed. Proposed § 7.1003 also codifies OCC interpretations that branching requirements do not encompass industry practices with respect to loan disbursal such as when an attorney or escrow agent disburses funds at a real estate closing.

Proposed § 7.1004 clarifies the language in current § 7.7380. It addresses what does and does not constitute a branch in the lending context but makes no substantive change to current § 7.7380.

Proposed § 7.1005 codifies OCC interpretations that offices at which loan approvals occur are not branches if the public has no in-person access to such offices. This clarifies that loans may be approved at locations other than the bank's main office or branches, and that loans originated at LPOs may be approved at such back offices.

Messenger Service (§ 7.1012)

Proposed § 7.1012 modifies current § 7.7490. Proposed § 7.1012 clarifies factors regarding: (1) the responsibility of the messenger for items during transit; (2) the relationship between the messenger and the bank customer; and (3) the permissibility of transporting items by the messenger between a bank customer and a back office facility that processes deposits and withdrawals. Proposed § 7.1012 retains the safe harbor in current § 7.7490 and also allows OCC to evaluate, on a case-by-case basis, whether messenger services that do not precisely fit the terms of the safe harbor need to be considered as bank branches.

Debt Cancellation Contracts (§ 7.1013)

Proposed § 7.1013 revises current § 7.7495 to provide that a national bank may enter into a contract to provide for the cancellation of a loan upon disability or unemployment as well as upon death of the borrower.

Sale of Money Orders at Nonbanking Outlets (§ 7.1014)

Proposed § 7.1014 modifies current § 7.7500 by removing unnecessary descriptive language. However, these changes do not represent any change in OCC policy.

Independent Undertakings To Pay Against Documents (§ 7.1016)

Proposed § 7.1016 revises current § 7.1016 to make its provisions current and relevant to modern market standards and industry usage. Last revised in 1977, current § 7.7016 has served as the basis for, an expansion of services beyond typical letters of credit. The term "letters of credit" is no longer adequate to describe the type of services that banks are offering pursuant to the conditions in the regulation. Therefore, proposed § 7.1016 uses the term "independent undertakings" to describe all such unilateral commitments under which the bank's obligation to honor its commitment is dependent solely on the proper presentation of specified documents.

The term "independent undertakings" is used by the United Nations Commission on International Trade Law (UNCITRAL) to cover a broad array of transactions including commercial letters of credit, standby letters of credit, and other undertakings that are functionally identical or equivalent to letters of credit. The common characteristic of these transactions is that a bank's obligation to pay is conditioned solely on the proper presentation of specified documents regardless of extrinsic factors (except fraud, forgery, or an overriding public policy issue).

Proposed § 7.1016(a) states that a national bank may issue and commit to issue a letter of credit or other independent undertaking within the scope of the laws or rules of practice recognized by law under which the bank's obligation to honor depends upon the presentation of specified documents. Proposed § 7.1016(a) provides a nonexclusive list of sample laws and rules of practice and explains that non-documentary conditions on the bank's undertaking are not relevant to the bank's obligation to honor its commitment. Because the obligation of the issuer of an independent undertaking is restricted to determining matters of documentary character, the issuer can act without regard to other circumstantial matters of dispute, such as breach of an implied warranty or the terms of delivery. Such matters are settled between the parties to the underlying transactions.

Independent undertakings encompass not only letters of credit and standby letters of credit but similar types of commitments that are used widely in international trade. These include (but are not limited to): independent guarantees, authorized confirmations, commitments to purchase documents, irrevocable reimbursement undertakings, and preliminary advices. All of these independent undertakings are in common use domestically and worldwide, and national banks currently are engaged in providing these services. In fact, the variation has developed, at least in part, in reliance upon the terms and conditions required for letters of credit by current Proposed § 7.7016.

Proposed § 7.1016 recognizes that the scope of current § 7.7016 is too limited and does not reflect the scope of independent undertakings permissible for national banks. Proposed § 7.1016 also extends the same safety and soundness principles in current § 7.7016 to this broader class of activities. Although more specific and more dependent on industry terminology, the revised interpretive ruling is a clearer statement of regulatory standards directed to the segment of the banking industry that engages in these activities.

National Bank as Guarantor or Surety on Indemnity Bond (§ 7.1017)

Proposed § 7.1017 modifies § 7.7010 by removing § 7.7010(b). Paragraph (b) states the "[u]nder appropriate circumstances, foreign branches may exercise additional powers pursuant to 12 U.S.C. 604a." The OCC expects to incorporate that provision into part 28 through a later **Federal Register** document revision of part 28.

Use of Data Processing Equipment and Furnishing of Data Processing Services (§ 7.1019)

Proposed § 7.1019 revises current § 7.3500. Under proposed § 7.1019 a national bank that uses data processing equipment or technology to perform authorized services may market and sell any legitimate excess capacity in that equipment or technology. Current § 7.3500 states the Comptroller's opinion on the data processing services that a national bank may perform for itself and others. It sets forth a general analytical framework for deciding

questions regarding the permissibility of particular data processing services. Current § 7.3500 does not specify in detail the data processing services permissible for national banks.

In light of the rapid advances in data processing equipment and technology in the ten years since the interpretive ruling was last amended, the OCC invites comment on whether the interpretive ruling should be more specific in describing the authorized services a national bank may provide using data processing equipment or technology, and, if so, what services should be included and how should they be described.

Commenters also are asked to address whether the additional language recognizing the authority of national banks to sell legitimate excess capacity in data processing equipment or technology is needed.

Commenters are also requested to indicate whether the OCC should be more specific in describing permissible sales of excess capacity and, if so, how such sales should be described.

Corporate Governance Procedures (§ 7.2000)

Proposed § 7.2000 is a new section that provides additional guidance regarding national banks' corporate governance procedures. Under proposed § 7.2000, a bank undertaking a corporate governance procedure must comply with applicable statutes and regulations, and safe and sound banking practices. However, where the statutes and regulations are silent on a matter, proposed § 7.2000 establishes a safe harbor for a national bank that undertakes a corporate governance procedure that complies with designated sections of the Model Business Corporation Act (MBCA), sections 6.24, 6.28, 7.01, 7.02, 7.25, 7.26, 8.05, 8.07, 8.20–23, 8.25, 10.03, and 10.09 (1984) (amended 1993). For example, telephonic board meetings for directors of a national bank are not covered by Federal banking statutes or regulations. Under proposed § 7.2000, such meetings would be permissible as provided for under the relevant provision of the MBCA, § 8.20(b) (1984) (amended 1993).

A list of approved MBCA sections are contained in Appendix A to Part 7. The OCC anticipates adding additional provisions over time following a careful review of the procedures' impact on the safe and sound operation of banks.

The OCC invites comment on whether additional sections of the MBCA should be included in the safe harbor.

Proposed § 7.2000(c) also provides that in accordance with the no-objection procedures contained in Banking Circular 205, the OCC will consider requests for staff guidance on the permissibility of engaging in certain corporate governance practices that are not addressed by applicable Federal banking statutes and regulations or by the designated sections of the MBCA.

The OCC also invites comment on whether the MBCA is the appropriate form of guidance to provide national banks with additional flexibility in structuring their corporate practices to meet new technologies and other corporate changes, or whether the Delaware General Corporation Law or other sources are preferable.

Notice of Shareholders' Meetings (§ 7.2001)

Proposed § 7.2001 clarifies the language of current § 7.4000 and removes the sentence referring to specific statutory provisions concerning conversions, consolidations and mergers of national banks. Proposed § 7.2001 clarifies that the national bank must mail the notice of shareholders' meetings ten days before the proposed meeting.

Director or Attorney as Proxy (§ 7.2002)

Proposed § 7.2002 modifies current § 7.4020 to clarify that a person who is both an officer, and either a director or attorney may not act as proxy. Proposed 7.2002 like current § 7.4020 repeats 12 U.S.C. 61 and states that directors and attorneys may act as proxy.

The OCC invites comment on whether to remove this section as unnecessary.

Annual Meeting for Election of Directors (§ 7.2003)

Proposed § 7.2003 revises current § 7.4105 by removing unnecessary language that merely explains the rationale for the statutory requirement that a director stay in office until a successor has been elected.

Ownership of Stock Necessary To Qualify as Director (§ 7.2005)

Proposed § 7.2005 consolidates and streamlines current § 7.4210 by removing repetitive information and making the provision more readable. Consistent with OCC precedent, proposed § 7.2005 provides that a director's ownership of preferred stock in a national bank may satisfy the requirements of 12 U.S.C. 72. Proposed § 7.2005 also clarifies that the funds used to purchase the required minimum equity interest may be borrowed from the bank or its affiliates. (When funds are borrowed from the bank itself, however, the bank must make appropriate accounting adjustments to the value of the stock.)

Cumulative Voting in Election of Directors (§ 7.2006)

Proposed § 7.2006 streamlines and simplifies current § 7.4300. Proposed § 7.2006 directly states how shares may be allocated to elect directors if all directors are not elected on the first ballot. The proposal removes an example of this procedure contained in current § 7.4300.

Filling Vacancy in or Increasing Board of Directors (§ 7.2007)

Proposed § 7.2007 modifies current § 7.4305 to clarify that it is "the majority of shareholders or a majority of directors" that may increase the number of directors. Current § 7.4305 uses the more ambiguous term "national bank," creating uncertainty about what body has the ability to act on this issue. Proposed § 7.2007 also eliminates language that repeats the statute, and clarifies the procedures for filling vacancies.

Quorum of the Board of Directors; Proxies Not Permissible (§ 7.2009)

Proposed § 7.2009 clarifies current § 7.4420 to indicate that the OCC requires a national bank's articles of association or bylaws to provide that a quorum of directors is at least a majority of the entire board then in office.

Delegation of Directors' Duties (§ 7.2010)

Proposed § 7.2010 revises current § 7.4425. Proposed § 7.2010 states that while directors may delegate the day-to-day operations of the bank to management, the directors maintain the responsibility for supervising management to ensure that the bank is operated in accordance with policies and procedures established by the board as well as with applicable law, regulations, and safe and sound banking practices.

Compensation Plans (§ 7.2011)

Proposed § 7.2011 combines and condenses current §§ 7.5000, 7.5010, and 7.5015, regarding bonus and profit sharing plans, pension plans, and employee stock option and stock purchase plans, respectively, into one section on compensation plans. The OCC believes these subjects are closely related and thus belong in one section.

President as Director; Chief Executive Officer (§ 7.2012)

Proposed § 7.2012 modifies current § 7.5200 to provide that a person other than the president or a director may

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serve as chief executive officer of the bank.

Indemnification of Directors, Officers, and Employees (§ 7.2014)

Proposed § 7.2014 clarifies current § 7.5217 to state that a national bank may indemnify certain individuals and advance legal fees and expenses, subject to certain limitations. Under proposed § 7.2014, a national bank may not indemnify an individual where an administrative proceeding results in a final order assessing a civil money penalty or requiring restitution, or a final removal or prohibition order under 12 U.S.C. 1818 (e) or (g). Proposed § 7.2014 adds legal fees to the list of expenses for which a national bank may not indemnify an individual under such circumstances.

The OCC invites comments on whether the general provision permitting indemnification is broad enough to permit appropriate indemnification in contexts outside of administrative enforcement action.

The OCC also invites comment on whether the term "institution-affiliated party" should be added to the list of individuals who a bank may not indemnify under § 7.2014(b).

Proposed § 7.2014(c) also adds a new paragraph that imposes certain procedural requirements for national banks that wish to advance expenses and legal fees in connection with administrative enforcement actions. Under proposed § 7.2014, a national bank may advance expenses and legal fees if the disinterested members of the board of directors determine, in good faith, that there is a reasonable basis for the individual to prevail on the merits; that the individual has the financial capacity to reimburse the bank if he or she does not prevail; and that the payment of the expenses by the bank is not unsafe or unsound. The indemnified individual must repay advances to the bank, however, if the action or proceeding results in a final order assessing a civil money penalty or requiring restitution, or a final removal or prohibition order under 12 U.S.C. 1818 (e) or (g).

The OCC invites comment on whether these standards (particularly the determination of a reasonable basis for prevailing on the merits) are workable or too restrictive, and whether other standards are more appropriate.

Proposed § 7.2014(c)(2) also requires an individual to execute a formal and binding agreement to reimburse the bank for expenses and fees in the event he or she does not prevail. Proposed § 7.2014(d) also clarifies that based upon a review of an indemnification or advance, or proposed indemnification or advance, the OCC may direct a national bank to modify a specific indemnification or payment through any appropriate means.

Proposed § 7.2014(e) clarifies that a bank may pay reasonable premiums for insurance covering the expenses, legal fees and liability of directors, officers, or employees, except that the insurance may not cover final orders assessing civil money penalties.

The OCC invites comment on whether the exclusion from insurance coverage should be limited further to require exclusions only for willful or criminal misconduct.

Cashier (§ 7.2015)

Proposed § 7.2015 revises current § 7.5245 to clarify that the cashier's duties may be delegated to the president, chief executive officer, or other officer.

Restricting Transfer of Stock and Record Dates (§ 7.2016)

Proposed § 7.2016 modifies current § 7.6005 to clarify, among other things, that it is the board of directors, rather than the bank, that sets the record date.

Facsimile Signatures on Bank Stock Certificates (§ 7.2017)

Proposed § 7.2017 revises current § 7.6010 to clarify that facsimile signatures include electronic means of signature.

Loan Secured by a Bank's Own Shares (§ 7.2019)

Proposed § 7.2019 modifies current § 7.6030 by removing the first paragraph which merely restates the statute. Proposed § 7.2019 does not alter the substance of current § 7.6030.

Acquisition and Holding of Shares as Treasury Stock (§ 7.2020)

Proposed § 7.2020 is a new section that addresses a national bank's acquisition and holding of shares as treasury stock. Proposed § 7.2020 explains that pursuant to the authority and procedures of 12 U.S.C. 59, a national bank may acquire its outstanding shares and hold them as treasury stock, as long as the acquisition and retention of the shares is for a legitimate corporate purpose. A national bank has authority under section 12 U.S.C. 24(Seventh) to fulfill a legitimate corporate need, so long as it complies with section 59 in its repurchase of outstanding shares with the consequent reduction in capital. Because section 59 limits such capital reductions to situations where the bank receives the approval of the OCC and of two-thirds of its shareholders, there is little risk of improper use of treasury stock. It would not be permissible, however, for a national bank to acquire and hold treasury stock for speculation or as a means of bypassing some requirement or obligation under the Federal banking laws.

Voting Trusts (§ 7.2022)

Proposed § 7.2022 revises current § 7.6060 by affirmatively stating that a national bank shareholder may establish a voting trust. Proposed § 7.2022 also removes the requirement that the law of the state in which the bank is located should be observed in the preparation of the trust agreement. The OCC recognizes that with the advent of interstate banking, it is increasingly likely that a bank's shareholders will be located in many different states. Accordingly, the voting trust may be established under the law of any state selected by the participants and designated in the trust agreement. Proposed § 7.2022 continues to require that the trust be consistent with safe and sound banking practices.

Bank Hours and Closings (§ 7.3000)

Proposed § 7.3000 revises current § 7.7434 to provide more comprehensive guidance to banks regarding hours and closings.

Proposed § 7.3000(a) maintains the general information that a national bank's board of directors is responsible for establishing a schedule of business hours independently of other banks.

Proposed § 7.3000(b) informs national banks that the Comptroller, a state or a legally authorized state official may declare a day to be a legal holiday for emergency reasons. Proposed § 7.3000(b) sets forth examples to provide guidance regarding the circumstances under which a national bank may remain closed and be assured that the bank will not incur liability for closing.

Proposed § 7.3000(c) also provides that a state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons, and that a national bank may choose to remain open or to close on such holidays.

Finally, proposed § 7.3000(d) reminds national banks to look to applicable law to determine if they may incur liability for closing.

Although not specified in proposed § 7.3000, the proposed ruling would apply to foreign branches and agencies pursuant to the International Banking Act, 12 U.S.C. 3102(b).

Sharing Space and Employees (§ 7.3001)

Proposed § 7.3001 revises current § 7.7516 to reflect current OCC positions

on sharing space and employees. Current § 7.7516 only addresses sharing bank premises with other financial institutions. Through interpretive letters, however, the OCC has allowed national banks to lease excess space in bank-owned buildings.

Proposed § 7.3001(a) codifies existing interpretive letters that have addressed the scope of a national bank's ability to share space with other businesses.

Proposed § 7.3001(b) also addresses the issue of a national bank sharing employees with businesses with which it shares space. In addition to permitting a national bank to lease lobby space to various tenants, the OCC has permitted bank employees to perform services as agent for the bank's tenants under certain circumstances.

Finally, proposed § 7.3001(c) summarizes the supervisory concerns that may be presented by these arrangements, and proposed § 7.3001(d) identifies legal issues a bank should consider when entering into these arrangements.

Commenters are specifically requested to address whether the listed items are appropriate and if other considerations should be identified in lieu of, or in addition to, those described in the proposal.

Books and Records of National Banks (§ 7.4000)

Proposed § 7.4000 revises current § 7.6025 which addresses the exclusive examination authority of the OCC. Proposed § 7.4000 clarifies that state authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with applicable state unclaimed property and escheat laws. Proposed § 7.4000 also removes the current § 7.6025(c) provisions relating to the disclosure of examination reports, which will be incorporated into 12 CFR Part 4 through a later **Federal Register** document to revise part 4.

Charging Interest at Rates Permitted Competing Institutions; Charging Interest to Corporate Borrowers (§ 7.4001).

Proposed § 7.4001 updates current § 7.7310 to reflect current law and OCC interpretive letters. Under 12 U.S.C. 85, a national bank may charge interest at the highest rate allowed by the state in which the bank is located. Section 85 permits a national bank to "export" the rate of "interest" allowed by the state in which the bank is located to customers in other states. For example, a national bank located in State A can charge interest in accordance with the law of State A to a borrower in State B even though the laws of State B prohibit or restrict the rate or type of interest charged.

Although the exportation principle of section 85 is well established in case law, the application of section 85 is still the subject of court challenges, usually over whether a particular fee or charge imposed by a bank located in a given state is properly characterized as "interest," and thus is "exportable" to a different state. For example, courts have held that charges such as late fees and overlimit fees are a component of "interest." See *Tikkanen* v. *Citibank (South Dakota) N.A.*, 801 F. Supp. 270 (D. Minn. 1992); *Cades* v. *H & R Block, Inc.*, No. 4:92–1454–21, 1993 U.S. Dist. LEXIS 19043 (D.S.C. 1993), *aff'd*, No. 93–2555, 1994 WL 719070 (4th Cir. Dec. 30, 1994); *Ament* v. *PNC National Bank*, 849 F. Supp. 1015 (W.D. Pa. 1994) (on appeal). *But see Mazaika* v. *Bank One, Columbus, N.A.*, No. 00231 Phila. 1993, 1994 WL 698016 (Pa.Super.Ct. Dec. 14, 1994) (*en banc*).

The OCC has addressed, through interpretive letters, the issue of what fees or charges may be considered "interest." Most recently, the OCC summarized its previous opinions and concluded that in addition to periodic percentage rates, charges consisting of late charges, annual fees and overlimit charges are included within the meaning of "interest" as used in section 85. Thus, if they are permissible for lenders to impose under the laws of the state where a bank is located, they may be charged and "exported" by the national bank without reference to whether such fees and charges are denominated "interest" by the laws of the state where the bank is located or by the laws of the state where the customer resides. See Letter from Julie L. Williams, Chief Counsel, to John L. Douglas, dated February 17, 1995.

Proposed § 7.4001(a) proposes to codify these interpretive positions. Under proposed § 7.4001(a) "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for any extension of credit, the making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports. Thus, the description includes items that the OCC considers components of interest, such as late fees and annual fees, as well as items that the OCC generally does not consider interest, such as appraisal fees and premiums. Proposed § 7.4001(a) also is not intended to be a comprehensive treatment of the issue, and other charges may also be found to be components of interest.

National Bank Charges (§ 7.4002)

Proposed § 7.4002 revises current § 7.8000 to clarify that section and to address concerns raised by Congress. The conference report to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 urged the OCC to review current § 7.8000 to determine if it should be withdrawn or revised. H.R. Conf. Rep. No. 651, 103rd Cong., 2d sess. 54 (1994). The conferees expressed the view that in certain circumstances the OCC had applied the principles of preemption in an overly broad manner. In particular, the conferees expressed concern regarding the scope of the broad assertion of current § 7.8000 that Federal law preempts state laws that prohibit, limit, or restrict deposit account service charges imposed by a national bank. Specifically, current § 7.8000 cites the "comprehensive [F]ederal statutory scheme governing the deposit-taking function of national banks" as authority for preemption of these state laws.

Proposed § 7.4002 revises the approach in current § 7.8000.

Proposed § 7.4002(a) addresses the ability of a national bank to charge customers reasonable deposit account service charges and loan-related fees. Proposed § 7.4002(a) incorporates current §§ 7.7315 and 7.7515 which deal with credit report fees and service charges on dormant accounts. The authority of a national bank to charge these fees is well established. Proposed § 7.4002(a) requires such fees to be reasonable and determined through consideration of all factors relevant to a sound business decision.

Proposed § 7.4002(b) sets out the relevant considerations in establishing such charges.

In place of the broad assertion of Federal preemption in current § 7.8000, proposed § 7.4002(c) states that the OCC will consider on a case-by-case basis whether a national bank may establish a particular service charge that is in conflict with a state law. Proposed § 7.4002(c) affirms that in issuing an opinion on whether such state laws are

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preempted, the OCC will employ the preemption principles derived from the Supremacy Clause of the U.S. Constitution and judicial precedent. Generally, state laws apply to national banks unless the state law expressly or impliedly conflicts with Federal law, Federal law is so comprehensive as to evidence a congressional intent to occupy a given field, or the state law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law.

Licensing; Request for Comments

The OCC has not proposed a specific interpretive ruling addressing the applicability of state licensing requirements to national banks, but is considering whether it would be advisable to do so in order to clarify its position on various issues that have recently arisen in this area. For example, the OCC has consistently taken the position that a state may not require a national bank to obtain a state license to exercise the powers authorized for national banks under Federal law. This position is consistent with judicial precedent that establishes the parameters of preemption of state law by Federal banking law.[2] The OCC's position also is supported by *Bank of America* v. *Lima*, 103 F. Supp. 916 (D. Mass. 1952), which stated that as Federal government instrumentalities, national banks are not required to obtain state approval for the exercise of the powers granted to them by Congress.

Some state laws apply to national banks. However, as a general principle, a national bank need not conform to state laws that conflict with Federal law. In *Davis* v. *Elmira Savings Bank*, 161 U.S. 275 (1896), for example, the Supreme Court drew upon constitutional principles to define the ability of the states to regulate national banks:

> National banks are instrumentalities of the Federal government, created for a public purpose and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

161 U.S. 275, 283. The *Davis* decision captures the essential elements of Federal banking preemption analysis and is frequently cited by the OCC and reviewing courts. However, it is not always simple to apply these preemption principles because of the valid role of state law in certain aspects of national bank operations. Moreover, the manner in which the national bank's activities may be conducted may be subject to certain types of state laws, and the OCC often encourages national banks to comply with certain types of state law requirements as a matter of sound business practices.

Commenters are specifically asked to address whether these principles should be included in a new interpretive ruling and if any additional or alternative provisions would also be appropriate.

Sections Removed From Part 7

The OCC is proposing to remove current §§ 7.3000, 7.4005, 7.4015, 7.4100, 7.4200, 7.4205, 7.4400, 7.4410, 7.7400, 7.7410, 7505, 7.7519, 7.7590, 7.7000, and 7.7015 as generally unnecessary, outdated or repetitive. The OCC proposes to remove the following additional sections for the reasons stated below.

Section 7.4010—Quorum for shareholders' meeting. The issues are covered sufficiently by proposed cross-references to the MBCA, § 7.25 (1984) (amended 1993).

Section 7.5210—Same person holding offices of president and cashier. There is no legal impediment to one person serving as both president and cashier. Further, proposed § 7.2015, discusses the assignment of the cashier's duties and clarifies that the duties of cashier may be delegated to the president, chief executive officer, or other officer.

Section 7.5220—Contracts of employment. Any employment contract that is excessive or unreasonable is unsafe and unsound. Therefore, the current "reasonable" standard is necessarily in effect, so it is unnecessary to reiterate the standard in this interpretive ruling. Moreover, section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and regulations to be issued by the OCC and other agencies under section 132 will deal with excessive or unreasonable contracts. See 12 U.S.C. 1831p–1 (c), and (d).

Section 7.7012—Foreign operations. This section has been removed and will be incorporated into 12 CFR part 28 as part of the overall revision of that part.

Section 7.7112—Insuring lives of bank officers. Banking Circular 249 covers the relevant issues in more detail, and § 7.7112 is therefore unnecessary.

Sections 7.7355—Debts of affiliates, 7.7360—Loans secured by stock or obligation of an affiliate, 7.7365—Federal funds transactions between affiliates, and 7.7370—Deposits between affiliated banks. These sections have been transferred to § 31.100 of this chapter.

Sections 7.7378—Issuance of credit cards, and 7.7379—Servicing of mortgage and other loans as agent. These sections have been incorporated into proposed revisions of part 5 of this chapter. See proposed § 5.34(e)(2)(ii)(F) of this chapter, 59 FR 61034, Nov. 29, 1994.

Section 7.7540—Reports of condition: Waiver of affiliate reports. Section 308 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994), eliminated the requirement that national banks and their affiliates periodically publish the reports of condition in a newspaper. See 12 U.S.C. 161.

The OCC's proposed removal or transfer of these sections does not imply any alteration of the underlying authority for national bank activity. The interpretive rulings the OCC proposes to remove or transfer are grounded in statutory authority that remains unchanged. Unless otherwise noted, these proposed changes to part 7 are not intended to effect any change in the substance or influence of the interpretive rulings beyond that described in this preamble.

The OCC requests comments on whether it should retain any of the sections proposed to be removed, and if so, why.

Sections That Remain Substantively Unchanged

The OCC proposes stylistic changes and redesignates the following sections. The OCC does not intend to affect the substance of these sections.

Current § 7.7380 to proposed § 7.1004—Loans originating at other than banking offices;

Current § 7.4110 to proposed § 7.2004—Honorary directors or advisory board;

Current § 7.4415 to proposed § 7.2008—Oath of directors;

Current § 7.4420 to proposed § 7.2009—Quorum of board of directors; proxies not permissible;

Current § 7.5215 to proposed § 7.2013—Fidelity bonds covering officers and employees;

Current § 7.6015 to proposed § 7.2018—Lost stock certificates;

Current § 7.6050 to proposed § 7.2021—Preemptive rights;

Current § 7.7100 to proposed § 7.1001—National banks acting as general insurance agents;

Current § 7.7430 to proposed § 7.1008—Preparing income tax returns for customers or public;

Current § 7.7312 to proposed § 7.1006—Loan agreement providing for share in profits, income or earnings;

Current § 7.7420 to § 7.1007—Acceptances;

Current § 7.7455 to proposed 7.1009—National bank holding collateral as nominee.

Current § 7.7482 to proposed § 7.1010—Postal service by national bank;

Current § 7.7485 to proposed § 7.1011—National bank acting as payroll issuer;

Current § 7.7535 to proposed § 7.1015—Receipt of stock from SBIC; and

Current § 7.7560 to proposed § 7.1018—Automatic payment plan account.

The OCC includes these sections in the proposal for the convenience of readers to present part 7 as proposed in its entirety.

Distribution Table

The distribution table indicates where, if applicable, each section of the current part 7 will appear in the proposed part 7 or elsewhere.

Original provision	Revised provision	Comment
§ 7.1100		Moved (part 32).
§ 7.1105		Moved (part 32).
§ 7.3000		Moved (part 32).
§ 7.3005	§ 7.1000	Significant change.
§ 7.3010	§ 7.1000	Significant change.
§ 7.3100	§ 7.1000	Significant change.
§ 7.3300	§ 7.1000	Significant change.
§ 7.3500	§ 7.1019	Significant change.
§ 7.4000	§ 7.2001	Significant change.
§ 7.4005		Removed.
§ 7.4010		Removed.
§ 7.4015		Removed.
§ 7.4020	§ 7.2002	Modified.
§ 7.4100		Removed.
§ 7.4105	§ 7.2003	Significant change.
§ 7.4110	§ 7.2004	Unchanged.
§ 7.4200		Removed.
§ 7.4205		Removed.
§ 7.4210	§ 7.2005	Significant change.
§ 7.4300	§ 7.2006	Significant change.
§ 7.4305	§ 7.2007	Modified.
§ 7.4400		Removed.
§ 7.4410		Removed.
§ 7.4415	§ 7.2008	Unchanged.
§ 7.4420	§ 7.2009	Unchanged.
§ 7.4425	§ 7.2010	Modified.
§ 7.5000	§ 7.2011	Significant change.
§ 7.5010	§ 7.2011	Significant change.
§ 7.5015	§ 7.2011	Significant change.
§ 7.5200	§ 7.2012	Modified.
§ 7.5210		Removed.
§ 7.5215	§ 7.2013	Unchanged.
§ 7.5217	§ 7.2014	Significant change.
§ 7.5220		Removed.
§ 7.5230	§ 7.1000	Significant change.
§ 7.5245	§ 7.2015	Significant change.
§ 7.6005	§ 7.2016	Modified.
§ 7.6010	§ 7.2017	Significant change.
§ 7.6015	§ 7.2018	Unchanged.
§ 7.6025	§ 7.4000	Significant change.
§ 7.6030	§ 7.2019	Modified.
§ 7.6040		Moved (part 5).
§ 7.6050	§ 7.2021	Unchanged.
§ 7.6060	§ 7.2022	Significant change.
§ 7.6120		Moved (part 5).
§ 7.7000		Removed.
§ 7.7010	§ 7.1017	Modified.
§ 7.7012		Removed.
§ 7.7015		Removed.
§ 7.7016	§ 7.1016	Significant change.
§ 7.7100	§ 7.1001	Unchanged.
§ 7.7115		Removed.
§ 7.7200	§ 7.1002	Significant change.
§ 7.7310	§ 7.4001	Significant change.
§ 7.7312	§ 7.1006	Unchanged.
§ 7.7315	§ 7.4002	Significant change.
§ 7.7355		Moved (part 31).
§ 7.7360		Moved (part 31).

[2] *See McClellan* v. *Chipman*, 164 U.S. 347, 356–57 (1896) (National banks are instrumentalities of the Federal government and are necessarily subject to the paramount authority of the United States); see also *Flood* v. *City Nat'l Bank of Clinton*, 220 Iowa 935, 263 N.W. 321 (1935), *cert. denied*, 298 U.S. 666 (1936) (National banks derive their powers and authority under Federal law, and thus are not subject to conflicting state law).

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Original provision	Revised provision	Comment
§7.7365		Moved (part 31).
§7.7370		Moved (part 31).
§7.7378		Removed.
§7.7379		Removed.
§7.7380	§7.1004	Unchanged.
§7.7400		Removed.
§7.7405		Removed.
§7.7410		Removed.
§7.7415		Removed.
§7.7420	§7.1007	Unchanged.
§7.7430	§7.1008	Unchanged.
§7.7434	§7.3000	Significant change.
§7.7455	§7.1009	Unohanged.
§7.7482	§7.1010	Unchanged.
§7.7485	§7.1011	Unchanged.
§7.7490	§7.1012	Modified.
§7.7495	§7.1013	Significant change.
§7.7500	§7.1014	Modified.
§7.7505		Removed.
§7.7515	§7.4002	Significant change.
§7.7516	§7.3001	Significant change.
§7.7519		Removed.
§7.7530		Removed.
§7.7535	§7.1015	Unchanged.
§7.7540		Removed.
§7.7560	§7.1018	Modified.
§7.7570		Moved (part 1).
§7.7590		Removed.
§7.8000	§7.4002	Significant change.

Derivation Table

This derivation table illustrates which current sections of part 7 the proposed sections are based upon.

Revised provision	Original provision	Comment
	§7.1100	Moved (part 32).
	§7.1105	Moved (part 32).
	§7.3000	Removed.
§7.1000	§§7.3005, 7.3010, 7.3100, 7.3300, 7.5230	Significant change.
§7.1001	§7.7100	Unchanged.
§7.1002	§7.7200	Significant change.
§7.1003		Added.
§7.1004	§7.7380	Unchanged.
§7.1005		Added.
§7.1006	§7.7312	Unchanged.
§7.1007	§7.7420	Unchanged.
§7.1008	§7.7430	Unchanged.
§7.1009	§7.7455	Unchanged.
§7.1010	§7.7482	Unchanged.
§7.1011	§7.7485	Unchanged.
§7.1012	§7.7490	Modified.
§7.1013	§7.7495	Significant change.
§7.1014	§7.7500	Modified.
§7.1015	§7.7535	Unchanged.
§7.1016	§7.7016	Significant change.
§7.1017	§7.7010	Modified.
§7.1018	§7.7560	Unchanged.
§7.1019	§7.3500	Significant change.
§7.2000		Added.
§7.2001	§7.4000	Significant change.
	§7.4005	Removed.
	§7.4010	Removed.
	§7.4015	Removed.
§7.2002	§7.4020	Modified.
	§7.4100	Removed.
§7.2003	§7.4105	Significant change.
§7.2004	§7.4110	Unchanged.
	§7.4200	Removed.
	§7.4205	Removed.
§7.2005	§7.4210	Significant change.
§7.2006	§7.4300	Significant change.
§7.2007	§7.4305	Modified.

Revised provision	Original provision	Comment
	§7.4400	Removed.
	§7.4410	Removed.
§7.2008	§7.4415	Unchanged.
§7.2009	§7.4420	Unchanged.
§7.2010	§7.4425	Modified.
§7.2011	§§7.5000, 7.5010, 7.5015	Significant change.
§7.2012	§7.5200	Modified.
	§7.5210	Removed.
§7.2013	§7.5215	Unchanged
§7.2014	§7.5217	Significant change.
	§7.5220	Removed.
§7.2015	§7.5245	Significant change.
§7.2016	§7.6005	Modified.
§7.2017	§7.6010	Significant change.
§7.2018	§7.6015	Unchanged.
§7.2019	§7.6030	Modified.
	§7.6040	Moved (part 5).
§7.2020		Added.
§7.2021	§7.6050	Unchanged.
§7.2022	§7.6060	Significant change.
	§7.6120	Moved (part 5).
	§7.7000	Removed.
	§7.7012	Removed.
	§7.7015	Removed.
	§7.7355	Moved (part 31).
	§7.7360	Moved (part 31).
	§7.7365	Moved (part 31).
	§7.7370	Moved (part 31).
	§7.7400	Removed.
§7.3000	§7.7434	Significant change.
	§7.7505	Removed.
§7.3001	§7.7516	Significant change.
	§7.7519	Removed.
	§7.7540	Removed.
	§7.7570	Moved (part 1).
	§7.7590	Removed.
§7.4000	§7.6025	Significant change.
§7.4001	§7.7310	Significant change.
§7.4002	§§7.7315, 7.7515, 7.8000	Significant change.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 31

Credit, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

1. Part 7 is revised to read as follows:

PART 7—INTERPRETIVE RULINGS

Subpart A—Bank Powers

Sec.

7.1000 Bank ownership of property.
7.1001 National bank acting as general insurance agent.
7.1002 National bank acting as finder.
7.1003 Loans made at banking offices, or at other than banking offices.
7.1004 Loans originating at other than banking offices.
7.1005 Credit decisions at other than banking offices.
7.1006 Loan agreement providing for share in profits, income or earnings.
7.1007 Acceptances.
7.1008 Preparing income tax returns for customers or public.
7.1009 National bank holding collateral stock as nominee.
7.1010 Postal service by national bank.
7.1011 National bank acting as payroll issuer.
7.1012 Messenger service.
7.1013 Debt cancellation contracts.
7.1014 Sale of money orders at nonbanking outlets.
7.1015 Receipt of stock from small business investment company.
7.1016 Independent undertakings to pay against documents.
7.1017 National bank as guarantor or surety on indemnity bond.
7.1018 Automatic payment plan account.
7.1019 Use of data processing equipment and furnishing of data processing services.

Subpart B—Corporate Practices

Sec.

7.2000 Corporate governance procedures.
7.2001 Notice of shareholders' meetings.
7.2002 Director or attorney as proxy.
7.2003 Annual meeting for election of directors.
7.2004 Honorary directors or advisory board.
7.2005 Ownership of stock necessary to qualify as director.
7.2006 Cumulative voting in election of directors.
7.2007 Filling vacancy in or increasing board of directors.
7.2008 Oath of directors.

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7.2009 Quorum of board of directors; proxies not permissible.
7.2010 Delegation of directors' duties.
7.2011 Compensation plans.
7.2012 President as director; chief executive officer.
7.2013 Fidelity bonds covering officers and employees.
7.2014 Indemnification of directors, officers, and employees.
7.2015 Cashier.
7.2016 Restricting transfer of stock and record dates.
7.2017 Facsimile signatures on bank stock certificates.
7.2018 Lost stock certificates.
7.2019 Loan secured by own shares.
7.2020 Acquisition and holding of shares as treasury stock.
7.2021 Preemptive rights.
7.2022 Voting trusts.

Subpart C—Bank Operations

7.3000 Bank hours and closings.
7.3001 Sharing space and employees.

Subpart D—Preemption

7.4000 Books and records of national banks.
7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.
7.4002 National bank charges.
Appendix A to Part 7—Corporate Governance Procedures; OCC Approved Model Business Corporation Act Provisions

Authority: 12 U.S.C. 1 *et seq.*, 93a.

Subpart A—Bank Powers

§ 7.1000 Bank ownership of property.

(a) *Bank premises*—(1) *General.* Under 12 U.S.C. 29, a national bank may invest in real estate that is necessary for the transaction of its business.

(2) *Type of real estate.* This real estate includes, but is not limited to:

(i) Bank buildings and parking facilities, including the underlying real estate;

(ii) Real estate held for future bank expansion, where the bank in good faith expects to utilize the property as bank premises (property acquired for this purpose should normally be used within five years. *See* § 34.83(c) of this chapter);

(iii) Residential property for the use of bank officers or employees who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(iv) Property for the use of bank officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

(b) *Fixed assets.* In addition to real estate, a national bank may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) *Permissible means of holding.* A national bank may acquire and hold bank premises real estate by any reasonable and prudent means, including ownership in fee, a leasehold estate, or an interest in a cooperative. Property described in this paragraph may be held directly by the bank, or by one or more subsidiaries. A bank premises subsidiary may be organized as a corporation, a partnership, or similar entity.

(d) *Investment in bank premises*—(1) *Investment limitation; approval.* A national bank's aggregate investment in bank premises generally is limited by 12 U.S.C. 371d to the amount of the bank's capital stock, except where the bank receives approval from the OCC in accordance with § 5.37 of this chapter.

(2) *Options to purchase.* An unexercised option to purchase bank premises or stock in a corporation holding bank premises is not an investment in bank premises. A national bank must receive OCC approval in accordance with § 5.37 of this chapter to exercise the option if the price of the option and the bank's other investments in bank premises/real property, exceed the amount of the bank's capital stock.

(e) *Other real property*—(1) *Lease financing of public facilities.* A national bank may purchase or construct a municipal building, school building, or other similar public facility and, as holder of legal title, lease the facility to a municipality or other public authority having resources sufficient to make all rental payments as they become due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

(2) *Purchase of employee's residence.* To facilitate the efficient use of bank personnel, a national bank may purchase the residence of an employee who has been transferred to another area, in order to spare the employee a loss in the prevailing real estate market. The bank must arrange for early divestment of title to such property.

§ 7.1001 National bank acting as general insurance agent.

Pursuant to 12 U.S.C. 92 a national bank may act as an agent for any fire, life, or other insurance company in any place the population of which does not exceed 5,000 inhabitants. This provision is applicable to any office of a national bank when the office is located in a community having a population of less than 5,000, even though the principal office of such bank is located in a community whose population exceeds 5,000.

§ 7.1002 National bank acting as finder.

(a) *General.* A national bank may act as a finder in bringing together a buyer and seller.

(b) *Qualification.* Acting as a finder includes, without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. Acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law.

(c) *Advertisement and fee.* Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

§ 7.1003 Loans made at banking offices, or at other than banking offices.

(a) *General.* For purposes of 12 U.S.C. 36, a loan generally is deemed to be made at the location where the borrower receives funds. If funds are disbursed to a borrower in person by the lending bank or a subsidiary corporation, or if funds are disbursed to a borrower in person at a facility that is owned or rented by the bank or subsidiary corporation, branching limitations apply and OCC approval is required.

(b) *Disbursed funds.* Funds may be disbursed to a borrower at a location that is not licensed as a branch without violating 12 U.S.C. 36 and 81, provided that a third party is used to deliver the loan proceeds and the location is not owned or rented by the lending bank or subsidiary corporation. A third party includes a person who satisfies the requirements of § 7.1012(c)(2), or one who customarily delivers loan proceeds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

§ 7.1004 Loans originating at other than banking offices.

(a) *General.* A national bank may use the services of and compensate persons not employed by the bank for originating loans.

(b) *Approval.* An employee or agent of a national bank or of a subsidiary corporation may originate a loan at locations other than the main office or a branch office of the bank. This action does not violate 12 U.S.C. 36 and 81 if the loan is approved and made at the main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank.

§ 7.1005 Credit decisions at other than banking offices.

A national bank or subsidiary corporation also may make credit decisions regarding loan applications at locations other than the main office or a branch office of the bank without violating 12 U.S.C. 36 and 81, provided that loans are not made at those other locations within the meaning of § 7.1003.

§ 7.1006 Loan agreement providing for share in profits, income or earnings.

A national bank may take as consideration for a loan a share in the profit, income or earnings from a business enterprise of a borrower. Such share may be in addition to, or in lieu of, interest. The borrower's obligation to repay principal, however, shall not be conditioned upon the profit, income, or earnings of the business enterprise.

§ 7.1007 Acceptances.

A national bank is not limited in the character of acceptances it may make in financing credit transactions. Bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.

§ 7.1008 Preparing income tax returns for customers or public.

A national bank may not serve as an expert tax consultant. However, a national bank may assist its customers in preparing their tax returns, either gratuitously or for a reasonable fee.

§ 7.1009 National bank holding collateral stock as nominee.

A national bank that accepts stock of another bank or other corporation as collateral for a loan, may have such stock transferred to the bank's name, as nominee.

§ 7.1010 Postal service by national bank.

(a) *General.* A national bank may maintain and operate a postal substation on banking premises and receive income from it. The services performed by the substation may include meter stamping of letters and packages, and the sale of related insurance. The bank may advertise, develop, and extend the services of the substation for the purpose of attracting customers to the bank.

(b) *Postal regulations.* A national bank operating a postal substation shall do so in accordance with the rules and regulations of the U.S. Postal Service. The national bank shall keep the books and records of the substation separate from those of other banking operations. Under 39 U.S.C. 705 and regulations issued pursuant thereto, the Postal Service may inspect the books and records of the substation.

§ 7.1011 National bank acting as payroll issuer.

A national bank may disburse to employees of its customers payroll funds deposited with the bank by its customers. A national bank may disburse funds by direct payment to any employee, or by crediting an account standing in the employee's name at the disbursing bank.

§ 7.1012 Messenger service.

(a) *Definition.* For purposes of this section, a "messenger service" refers to any service, such as a courier service or armored car service, that is used by a national bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) *Pick-up and delivery of items relating to nonbranching activities.* Pursuant to 12 U.S.C. 24(Seventh), a national bank may establish and operate a messenger service, or use, with its customers, a third party messenger service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the limitations set forth in 12 U.S.C. 36, so long as the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

(c) *Pickup and delivery of items pertaining to branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24(Seventh), a national bank and its customers may use a messenger service to pick up from, and deliver to, customers items that relate to branching functions within the meaning of 12 U.S.C. 36(j) without regard to the limitations set forth in 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this ruling, as it deems appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. However, a messenger service clearly is established by a third party if:

(i) A party other than the national bank owns the service and its facilities (or rents them from a party other than the bank) and employs the person engaged in the provision of the service; and

(ii) The messenger service:

(A) Makes its services available to the public, including other depository institutions;

(B) Retains ultimate discretion to determine which customers and geographical areas it will serve;

(C) Maintains ultimate responsibility for scheduling, movement, and routing;

(D) Does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(E) Assumes responsibility for the items during transit and for maintaining adequate insurance covering holdups, employee fidelity, and other in-transit losses; and

(F) Acts as the agent for the customer when the items are in transit. The bank does not deem items intended for deposit to be deposited until credited to the customer's account at an established bank office or other permissible nonbranch facility. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

(d) *Pickup and delivery of items pertaining to branching activities where the messenger service is established by the national bank.* A national bank may establish and operate a messenger service to transport items relevant to the bank's transactions with its customers if such transactions involve one or more branching functions within the meaning of 12 U.S.C. 36(j), provided the bank receives approval to establish a branch pursuant to § 5.30 of this chapter.

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§ 7.1013 Debt cancellation contracts.

A national bank may enter into a contract to provide for losses arising from cancellation of outstanding loans upon the death, disability, or unemployment of borrowers. The imposition of an additional charge and the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of a national bank.

§ 7.1014 Sale of money orders at nonbanking outlets.

A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and their agents should be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. The bank's agents need not report on sales and transmit funds from the nonbanking outlets more frequently than at the end of the third business day following receipt of the funds.

§ 7.1015 Receipt of stock from small business investment company.

A national bank may purchase the stock of a small business investment company (SBIC), (see 15 U.S.C. 682(b)) and may receive the benefits of such stock ownership (*e.g.*, stock dividends). The receipt and retention of a dividend by a national bank from an SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

§ 7.1016 Independent undertakings to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the laws or rules of practice recognized by law (such as the Uniform Commercial Code (1962) (amended 1990)), the Uniform Customs and Practice for Documentary Credits (Int'l Chamber of Com., 1983) (ICC Publication No. 400), the United Nations Commission on International Trade Law (UNCITRAL) Convention on Independent Guarantees and Standby Letters of Credit, and Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (Int'l Chamber of Com., 1995) (ICC Publication No. 525), under which the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions outside the bank's operational purview. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations.* (1) Terms. As a matter of safe and sound banking practice, banks that issue independent undertakings must not be exposed to undue risk. At a minimum, banks must consider the following:

(i) The independent character of the undertaking must be apparent from its terms and include a reference to the laws or rules providing for its independent character;

(ii) The undertaking must be limited in duration and in amount; and

(iii) The bank must have a post-honor right of reimbursement from its customer or from another bank, or if the bank's undertaking is to purchase drafts accompanied by documents of title, securities, or other intrinsically valuable documents, the bank must obtain a first priority right to realize on the documents if the bank is not otherwise reimbursed.

(2) *Additional considerations in special circumstances.* Certain undertakings require particular protections against credit, operational and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the bank must ensure that market fluctuations that affect the value of the item will not cause the bank to assume undue market risk;

(ii) In the event that an undertaking provides for renewal, the terms for renewal must be consistent with the bank's ability to make any necessary credit assessments prior to renewal; and

(iii) In the event that a bank issues an undertaking for its own account, the underlying obligation for which it is issued must be within the bank's authority and comply with any safety and soundness requirements applicable to that obligation.

(3) *Operational expertise.* The bank must possess operational expertise that is commensurate with the sophistication of its independent undertaking activities.

(4) *Documentation.* The bank must accurately reflect the bank's undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

§ 7.1017 National bank as guarantor or surety on indemnity bond.

General. A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability. For example, a bank, as a fiduciary, has a sufficient interest in the faithful performance by a cofiduciary of its duties to act as surety on the bond of such cofiduciary.

§ 7.1018 Automatic payment plan account.

A national bank may, for the benefit and convenience of its savings depositors, adopt an automatic payment plan under which a savings account will earn dividends at the current rate paid on regular savings accounts. The depositor, upon reaching a previously designated age, receives his or her accumulated savings and earned interest in installments of equal amounts over a specified period.

§ 7.1019 Use of data processing equipment and furnishing of data processing services.

In general, data processing is a technology rather than a service distinct or different from the underlying services or functions to which the technology is applied. A national bank may use data processing equipment and technology to perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks. Further, when a national bank uses data processing equipment or technology to perform authorized services, the bank may market and sell any legitimate excess capacity in that equipment or technology.

Subpart B—Corporate Practices

§ 7.2000 Corporate governance procedures.

(a) *General.* A national bank proposing to engage in a corporate governance procedure must comply with applicable Federal banking statutes and regulations, and safe and sound banking practices.

(b) *Model Business Corporation Act.* In the event that there is no applicable Federal banking statute or regulation, a national bank may obtain guidance on proper corporate governance procedures from a variety of sources. In addition to other appropriate sources of guidance, a national bank may engage in a corporate governance procedure in the manner prescribed in those sections of the Model Business Corporation Act (MBCA) (1984) (amended 1993), designated by the OCC, which are set forth in Appendix A of this part.

(c) *No-objection procedures.* The OCC also considers requests for the staff's position on the ability of a national bank to engage in a particular corporate governance procedure in accordance with the no-objection procedures set forth in Banking Circular 205. Requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations, and is consistent with safe and sound banking practices.

§ 7.2001 Notice of shareholders' meetings.

A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least ten days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. The articles of association, bylaws or law applicable to national banks may require a longer period of notice and/or specific means of delivery.

§ 7.2002 Director or attorney as proxy.

Any person or group of persons except the bank's officers, clerks, tellers, or bookkeepers may be designated to act as proxy. The bank's directors or attorneys may act as proxy. An individual who is both an officer and either a director or attorney may not act as proxy.

§ 7.2003 Annual meeting for election of directors.

When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the state in which the bank is located, the shareholders' meeting shall be held, and the directors elected, on the next following banking day.

§ 7.2004 Honorary directors or advisory board.

A national bank may appoint honorary or advisory members of the board of directors to act in advisory capacities without voting power or power of final decision in matters concerning the business of the bank. Any listing of such honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.

§ 7.2005 Ownership of stock necessary to qualify as director.

(a) *General.* A national bank director must own a qualifying equity interest in a national bank or a company that has control of a national bank. The director must own the qualifying equity interest in his or her own right and meet a certain minimum threshold ownership.

(b) *Qualifying equity interest*—(1) *Minimum required equity interest.* For purposes of this section, a qualifying equity interest includes common or preferred stock that has an aggregate par value of not less than $1,000 in the case of a director whose sole equity interest is held in the stock of a national bank. In the case of a director whose sole equity interest is held in the stock of a company that controls a national bank, the common or preferred stock must have an aggregate par value of not less than either $1,000, an aggregate shareholders' equity of $1,000, or an aggregate fair market value of $1,000.

(i) The value of the common or preferred stock held by a national bank director is valued as of the date purchased or the date on which the individual became a director, whichever value is greater.

(ii) In the case of a company that owns more than one national bank, a director may use his or her equity interest in the controlling company to satisfy, in whole or part, the equity interest requirement for any or all of the controlled national banks.

(iii) Upon request, the OCC may consider whether other interests in a company controlling a national bank constitute an interest equivalent to $1,000 par value of national bank stock.

(2) *Joint ownership and tenancy in common.* Shares held jointly or as a tenant in common are qualifying shares held by a director in his or her own right only to the extent of the aggregate value of the shares which the director would be entitled to receive on dissolution of the joint tenancy or tenancy in common.

(3) *Shares in a living trust.* Shares deposited by a person in a living trust (inter vivos trust) as to which the person is a trustee and retains an absolute power of revocation are shares owned by the person in his or her own right.

(c) *Non-qualifying ownership.* The following are not shares held by a director in his or her own right:

(1) Shares pledged by the holder to secure a loan. However, all or part of the funds used to purchase the required qualifying equity interest may be borrowed from any party, including the bank or its affiliates;

(2) Shares that are purchased subject to an absolute option vested in the seller to repurchase the shares within a specified period; and

(3) Shares deposited in a voting trust where the depositor surrenders:

(i) Legal ownership (depositor ceases to be registered owner of the stock);

(ii) Power to vote the stock or to direct how it shall be voted; or

(iii) Power to transfer legal title to the stock.

§ 7.2006 Cumulative voting in election of directors.

When electing directors, a shareholder shall have as many votes as the number of directors to be elected multiplied by the number of the shareholder's shares. The shareholder may cast all these votes for one candidate, or distribute the votes among as many candidates as the shareholder chooses. If, after the first ballot, subsequent ballots are necessary to elect directors, a stockholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate.

§ 7.2007 Filling vacancy in or increasing board of directors.

A majority of the board of directors or a majority of the shareholders may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. The board of directors may appoint persons to fill the resulting vacancies between meetings of shareholders, if authorized by the bank's articles of association. A majority of the board of directors or a majority of the shareholders may increase the number of directors by up to two directors, when the number of directors last elected by shareholders was 15 or less, and by four directors, when the number of directors last elected by shareholders was 16 or more.

§ 7.2008 Oath of directors.

(a) *Administration of the oath.* A notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors. An officer, other than an officer of the bank, having an official seal and authorized by the state to administer oaths, may also administer the oath.

(b) *Execution of the oath.* All directors attending the organization meeting must execute either the joint or individual oath. Directors not attending the organization meeting (the first meeting after the election of the directors) must execute the individual oath. A director must take another oath upon re-election, notwithstanding uninterrupted service. Appropriate sampie oaths are located in the "Comptroller's Manual for Corporate Activities."

§ 7.2009 Quorum of board of directors; proxies not permissible.

The articles of association or bylaws of a national bank shall provide that, for the transaction of business, a quorum of the board of directors is at least a majority of the entire board then in office. A national bank director may not vote by proxy.

§ 7.2010 Delegation of directors' duties.

The board of directors of a national bank has the responsibility for supervising the management of the bank

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to ensure that the bank is operated in compliance with the policies and procedures established by the board, all applicable laws, rules and regulations, and safe and sound banking practices. The board may delegate the day-to-day operation of the bank to the management of the bank, but the board remains responsible for overseeing the affairs of the bank and the conduct of the management of the bank.

§ 7.2011 Compensation plans.

Consistent with safe and sound banking practices, a national bank may adopt the following compensation plans:

(a) *Bonus and profit-sharing plans.* A national bank may adopt a bonus or profit-sharing plan designed to ensure adequate remuneration of bank officers and employees.

(b) *Pension plans.* A national bank may provide employee pension plans and make reasonable contributions to the cost of the pension plan.

(c) *Employee stock option and stock purchase plans.* A national bank may provide employee stock option and stock purchase plans.

§ 7.2012 President as director; chief executive officer.

Pursuant to 12 U.S.C. 76, the president of a national bank must be a member of the board of directors, but a director other than the president may be elected chairman of the board. A person other than the president may serve as chief executive officer, and this person is not required to be a director of the bank.

§ 7.2013 Fidelity bonds covering officers and employees.

(a) *Adequate coverage.* All officers and employees of a national bank must have adequate fidelity coverage. The failure of directors to require bonds with adequate sureties and in sufficient amount may make the directors liable for any losses which the bank sustains because of the absence of such bonds. Directors should not serve as sureties on such bonds.

(b) *Factors.* The board of directors should determine the amount of such coverage, premised upon a consideration of factors, including:

(1) Internal auditing safeguards employed;

(2) Number of employees;

(3) Amount of deposit liabilities; and

(4) Amount of cash and securities normally held by the bank.

§ 7.2014 Indemnification of directors, officers, and employees.

(a) *General.* Except as provided in paragraph (b) of this section, a national bank may provide in its articles of association that the bank will indemnify directors, officers, and employees for damages and expenses reasonably incurred. These damages include the advancement of expenses and legal fees, in actions to which the directors, officers, or employees are parties or potential parties by reason of the performance of their official duties. Indemnification articles which substantially reflect general standards of law as evidenced by the law of the state in which the main office of the bank is located, the law of the state in which the bank's holding company is incorporated, or the relevant provisions of the MBCA are presumed by the OCC to be within the corporate powers of a national bank.

(b) *Prohibitions.* When an administrative proceeding or action instituted by a bank regulatory agency results in a final order assessing a civil money penalty or requiring restitution, or a final removal or prohibition order against such individuals pursuant to 12 U.S.C. 1818(e) or (g), a national bank must require the repayment of all legal fees and expenses advanced pursuant to paragraph (c) of this section, and may not indemnify directors, officers, or employees for expenses. Expenses that may not be indemnified include legal fees, penalties, or other payments incurred.

(c) *Procedural requirements for certain actions and proceedings*—(1) *Advancing expenses.* A national bank may advance expenses and legal fees to directors, officers, or employees of the bank in connection with an action or proceeding under 12 U.S.C. 164 or 1818 only if the:

(i) Disinterested members of the board of directors of the bank determine in good faith that the director, officer, or employee has a reasonable basis for prevailing on the merits;

(ii) Indemnified individual will have the financial capacity to reimburse the bank in the event he or she does not prevail; and

(iii) Payment of expenses and fees by the bank will not adversely affect the safety and soundness of the bank.

(2) *Restrictions.* The bank must require the individual to execute a formal and binding agreement to reimburse the bank for all expenses and fees advanced by the bank in the event an order is issued against the individual assessing a civil money penalty or requiring restitution, or a removal or prohibition order against the individual is issued pursuant to 12 U.S.C. 1818(e) or (g). The bank must cease advancing expenses and fees at any time the board believes, or reasonably should believe, that any of the conditions in paragraph (c)(1) of this section are no longer met.

(d) *OCC review.* In accordance with its supervisory responsibilities, the OCC may, in its discretion, review any indemnification or advancement of fees and expenses, or proposed indemnification or advancement of fees and expenses, of directors, officers, or employees by a national bank to evaluate whether the indemnification or advance is consistent with safe and sound banking practices and with the standards adopted by that bank in its articles of association. Based upon this review, the OCC may direct a national bank to modify a specific indemnification or payment.

(e) *Insurance premiums.* A national bank may provide in its articles of association for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of its directors, officers, or employees except that such provision shall explicitly exclude insurance coverage for a final order assessing civil money penalties against such persons by an agency.

§ 7.2015 Cashier.

A national bank's bylaws or board of directors may assign some or all of the duties previously performed by the bank's cashier to its president, chief executive officer, or any other officer.

§ 7.2016 Restricting transfer of stock and record dates.

(a) *Conditions for stock transfer.* Under 12 U.S.C. 52, a national bank may impose conditions upon the transfer of its stock reasonably calculated to simplify the work of the bank with respect to stock transfers, voting at shareholders' meetings, and related matters and to protect it against fraudulent transfers.

(b) *Record dates.* Stock records of a national bank may be closed for a reasonable period to ascertain shareholders for voting purposes. The board of directors may fix a record date for determining the shareholders entitled to notice of, and to vote at, any meeting of shareholders. Such record date should be in reasonable proximity to the date that notice is given to the shareholders of such meeting.

§ 7.2017 Facsimile signatures on bank stock certificates.

The president and cashier, or other officers authorized by the bank's bylaws, must sign every national bank stock certificate. The signatures may be manual or facsimile, including electronic means of signature. Each certificate must be sealed with the seal of the association.

§ 7.2018 Lost stock certificates.

If a national bank does not provide for replacing lost, stolen, or destroyed stock certificates in its articles of association or bylaws, the bank may adopt procedures that meet the requirements of the law of the state in which the bank is located.

§ 7.2019 Loan secured by own shares.

(a) *Permitted agreements, relating to bank shares.* A national bank may require a borrower holding shares of the bank to execute agreements:

(1) Not to pledge, give away, transfer, or otherwise assign such shares;

(2) To pledge such shares at the request of the bank when necessary to prevent loss; and

(3) To leave such shares in the bank's custody.

(b) *Use of capital notes and debentures.* A national bank may not make loans secured by a pledge of the bank's own capital notes and debentures. Such notes and debentures must be subordinated to the claims of depositors and other creditors of the issuing bank, and are, therefore, capital instruments within the purview of 12 U.S.C. 83.

§ 7.2020 Acquisition and holding of shares as treasury stock.

Pursuant to the authority and procedures of 12 U.S.C. 59, a national bank may acquire its outstanding shares and hold them for a reasonable period as treasury stock, provided that the acquisition and retention of the shares is for a legitimate corporate purpose.

§ 7.2021 Preemptive rights.

A national bank's articles of association must allow or disallow, by a vote of the holders of two-thirds of the bank's outstanding voting shares, preemptive rights in the bank's shareholders.

§ 7.2022 Voting trusts.

The shareholders of a national bank may establish a voting trust under the applicable law of a state selected by the participants and designated in the trust agreement, provided the implementation of the trust is consistent with safe and sound banking practices.

Subpart C—Bank Operations

§ 7.3000 Bank hours and closings.

(a) *Bank hours.* A national bank's board of directors should review its banking hours, and, independently of any other bank, take appropriate action to establish a schedule of banking hours.

(b) *Emergency closings.* Pursuant to 12 U.S.C. 95 (b) (1), the Comptroller of the Currency, a state, or a legally authorized state official may declare a day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks or their offices in the affected geographic area (*i.e.*, throughout the country, in a state, or in a part of a state). Emergency conditions include natural disasters, civil and municipal emergencies (*e.g.*, severe flooding, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller issues a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a state, or a legally authorized state official declares a day to be a legal holiday due to emergency conditions, a national bank may choose to remain open or to close any of its banking offices in the affected geographic area.

(c) *Ceremonial closings.* A state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons. When a state or a legally authorized state official declares a day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close.

(d) *Liability.* A national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied.

§ 7.3001 Sharing space and employees.

(a) *Sharing space.* Subject to paragraphs (c) and (d) of this section, a national bank may:

(1) Lease excess space in bank premises to one or more other businesses (including other banks and financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned or leased by other businesses.

(b) *Sharing employees.* Subject to paragraphs (c) and (d) of this section, when sharing space with other businesses as described in paragraph (a) of this section, a national bank may provide, under one or more written agreements among the bank, the other businesses, and their employees, that:

(1) Bank employees may act as agents for the other businesses; or

(2) Employees of the other businesses may act as agents for the bank.

(c) *Supervisory conditions.* When a national bank engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the bank must ensure that:

(1) The other businesses are conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the bank and of the other businesses so that customers will know the identity of the bank or business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the bank and the other businesses are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the bank;

(5) Security issues arising from the activities of the other businesses on the premises are addressed;

(6) The activities of the other businesses do not adversely affect the safety and soundness of the bank;

(7) The activities of shared employees are consistent with applicable laws and regulations that pertain to agents or employees of such other businesses; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements the bank must ensure that each arrangement complies with 12 U.S.C. 29 and 36, and with any other applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the bank:

(1) The bank must ensure compliance with all applicable statutory and regulatory provisions governing bank transactions with these persons or entities; and

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

Subpart D—Preemption

§ 7.4000 Books and records of national banks.

(a) *Inspection.* The only provision of Federal banking law authorizing persons other than the Comptroller of the Currency or his authorized representatives to inspect books or records of a national bank is contained in 12 U.S.C. 62, relating to the right of shareholders, creditors, and certain tax officials to inspect the list of shareholders of a bank. Production of records may, however, be required under normal judicial procedures.

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(b) *Visitorial powers.* Except as otherwise expressly provided by Federal law, the exercise of visitorial powers over national banks is vested solely in the OCC, 12 U.S.C. 484. State officials have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable state unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with those laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes, 26 U.S.C. 3305(c), for enforcing the Fair Labor Standards Act, 29 U.S.C. 211, and for ascertaining the correctness of Federal tax returns, 26 U.S.C. 7602.

(c) *Report of examination.* The report of examination made by an examiner selected by the OCC is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in part 4 of this chapter.

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) *Definition.* The word "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for any extension of credit, the making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A national bank located in a state may charge interest at the maximum rate permitted by law of that state to any state-chartered or licensed lending institution. If state law permits a higher interest rate on a specified class of loans, a national bank making loans at the higher rate is subject only to the provisions of state law relating to the class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company or Morris Plan bank, without being so licensed.

(c) *Usury.* A national bank located in a state the law of which denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by a corporate borrower.

§ 7.4002 National bank charges.

(a) *Customer charges and fees.* A national bank may charge its customers deposit account service charges and loan-related fees. For example, a national bank may impose service charges, that its board of directors determines to be reasonable, on dormant accounts. A national bank may also charge a borrower reasonable fees for credit reports or investigations with respect to a borrower's credit. All charges to customers should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding or discussion with other banks or their officers.

(b) *Considerations.* The establishment of reasonable deposit account service charges and loan-related fees, and the amounts thereof, is a business decision to be made by each bank according to sound banking judgment and safe and sound banking principles. In establishing deposit account service charges and loan-related fees, the bank may consider, but is not limited to considering:

(1) The cost incurred by the bank, plus a profit margin, in providing the service;

(2) The enhancement of the competitive position of the bank in accord with the bank's marketing strategy; and

(3) Maintenance of the safety and soundness of the institution.

(c) *State law.* The OCC evaluates on a case-by-case basis whether a national bank may establish deposit account service charges or loan-related fees pursuant to paragraphs (a) and (b) of this section notwithstanding a contrary state law that purports to limit or prohibit such charges or fees. In issuing an opinion on whether such state laws are preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States Constitution and applicable judicial precedent.

(d) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by part 9 of this chapter.

Appendix A to Part 7—Corporate Governance Procedures; OCC Approved Model Business Corporation Act Provisions

The following sections of the Model Business Corporation Act (1984), as amended through 1993, are permissible corporate governance procedures for a national bank under § 7.2000(b) of this part:

6.24 Share Options
6.28 Expense of Issue
7.01 Annual Meeting
7.02 Special Meeting
7.04 Action Without Meeting
7.25 Quorum and Voting Requirements for Voting Groups
7.26 Action by Single and Multiple Voting Groups
8.05(a), (c)–(e) Terms of Directors Generally
8.07 Resignation of Directors
8.20 Meetings
8.21 Action Without Meeting
8.22 Notice of Meeting
8.23 Waiver of Notice
8.25 Committees
10.03 Amendment By Board of Directors and Shareholders
10.09 Effect of Amendment

PART 31—EXTENSIONS OF CREDIT TO NATIONAL BANK INSIDERS

2. The authority citation for part 31 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b(3), 1817(k), and 1972(2)(G)(ii).

3. Part 31 is amended by adding new subpart C consisting of § 31.100 to read as follows:

Subpart C—Interpretive Rulings

§ 31.100 Transactions with affiliates.

(a) *Debts of affiliates.* A national bank's bad debts do not include bad debts due to an affiliate for purposes of 12 U.S.C. 56 except to the extent of each debt of, or other claim against, the affiliate with respect to which the bank is personally liable either as obligor or guarantor. This section does not apply, however, to debts of operating subsidiaries.

(b) *Loans secured by stock or obligations of an affiliate.* Where a loan is otherwise adequately secured, additional security in the form of the capital stock, bonds, debentures, or other such obligations of an affiliate need not be considered in determining the limitation contained in 12 U.S.C. 371c with respect to the aggregate amount of loans secured by stock or obligations of an affiliate.

(c) *Federal funds transactions between affiliates.* The limitations contained in 12 U.S.C. 371c apply to the sale of Federal funds by a national bank to an affiliate of such bank.

(d) *Deposits between affiliated banks.* A deposit made by a national bank in an affiliate is considered to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c, except for a deposit made in an affiliated domestic or foreign bank in the ordinary course of correspondent business or as otherwise provided in 12 U.S.C. 371c(d)(1). Loans or extensions of credit to an affiliate are required to be secured under 12 U.S.C. 371c. However, 12 U.S.C. 90 and applicable case law restrict the authority of national banks to pledge their assets to secure private deposits. Similar restrictions on securing deposits also apply to many state-chartered banks. Consequently, a national bank may not make a deposit in an affiliated national bank unless made in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1). A national bank may not make a deposit in an affiliated state bank unless made in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1) or unless the affiliated state bank can legally offer collateral for such deposit in conformance with the requirements of 12 U.S.C. 371c. A national bank may not receive a deposit from an affiliated bank, except in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1), because of its legal inability to provide the required collateral.

Dated: February 17, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–4703 Filed 3–2–95; 8:45 am]

BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 122

Business Loan Policy and Business Loans; Facsimiles of SBA Forms

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize SBA participating lenders to use computer generated facsimile exact copies of SBA application and closing forms in making SBA guaranteed loans. SBA lenders, under the proposed rule, would agree to accept liability for a substantial SBA loss attributable to deficiencies in such forms. Under the proposed rule, SBA would deny liability to a lender which fails to use SBA provided forms or computerized facsimile exact copies of the SBA forms if this failure would contribute to a substantial loss by the SBA on the guaranteed loan.

DATES: Comments must be submitted on or before April 3, 1995.

ADDRESSES: Comments may be mailed to John R. Cox, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, 202/205–6490.

SUPPLEMENTARY INFORMATION: For many years, the SBA has required that its participating lenders use SBA provided forms in the SBA guaranteed business loan program. With advances in technology, SBA recognizes that such forms may be reproduced as mirror image facsimiles by computers and that such reproductions may be in the best interest of expedition of the SBA guaranteed loan program.

Under this proposed rule, lenders participating in the SBA guaranteed business loan program would be authorized to use SBA application and closing forms which are computer generated by the lenders or from software prepared by third parties with whom they have contracted. Because SBA in the past has withheld permission to computerize some identified SBA forms, the proposed new § 122.5–6 would specifically include these forms in the general authority to utilize computer generated facsimile copies: SBA Forms 147 (Note), 148 (Guaranty), 155 (Standby Agreement), 601 (Applicant's Agreement of Compliance), 928 (Mortgage), 1050 (Settlement Sheet), 1059 (Security Agreement).

SBA's guaranty to a participating lender with respect to an SBA guaranteed business loan is conditional on the lender's actions in properly and prudently making, closing, servicing, and liquidating a loan. Accordingly, SBA's rules release the agency from its obligation to the lender to purchase the guaranteed portion of a business loan under certain prescribed conditions. SBA is proposing to amend § 120.202–5 of its regulations so that it would be released from an obligation to a participating lender to purchase the guaranteed portion of a loan if the lender fails to utilize SBA provided forms or computer exact facsimile copies thereof, and this failure contributes to a substantial loss on the loan by the SBA. This means that if the computer generated SBA forms used by a lender are not exact facsimile copies, and such lack of conformity contributes or may contribute to a substantial loss by SBA on the loan, SBA could refuse to honor its guaranty with respect to the lender. In no event could SBA refuse to purchase the guaranteed portion from a registered holder (*i.e.*, investor) in the secondary market. SBA's obligation to a registered holder always unconditional, and this proposed rule would have no effect on such obligation.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic impact on a substantial numbers of small entities.

SBA certifies that this proposed rule, if promulgated in the final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which could be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this proposed rule could not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order. (Catalog of Federal Domestic Assistance Programs, No. 59.012)

List of Subjects

13 CFR Part 120

Loan programs-business, Small Businesses.

13 CFR Part 122

Loan programs-business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend parts

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120 and 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.202–5 would be amended by revising the introductory text to read as follows:

§ 120.202–5 When SBA does not purchase.

SBA shall be released from its obligation to purchase its share of the guaranteed loan if the Lender has not substantially complied with all of the provisions of these regulations, the Guaranty Agreement and the Loan Authorization; has failed to disclose material facts; has made material misrepresentations to SBA with respect to the loan; or has failed to utilize SBA provided forms or exact computerized facsimile copies thereof; provided that any of these failures contributes or may contribute to a substantial loss on the loan by SBA; or upon the happening of any one or more the following events:

* * * * *

PART 122—BUSINESS LOANS

1. The authority citation for part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a), 636(m).

2. Section 122.5–6 would be added to read as follows:

§ 122.5–6 Facsimile Copies of SBA Application Forms.

For guaranteed loans, a Participating Lender may use computer generated SBA application or closing forms which are exact facsimile reproductions of SBA's forms. Lenders which use computer generated application or closing forms agree to accept liability for a substantial SBA loss due to deficiencies in the use of these forms. (See § 120.202–5). All SBA Business loan forms, including the following, may be computer generated: 147 (Note), 148 (Guaranty), 155 (Standby Agreement), 601 (Applicant's Agreement of compliance), 928 (Mortgage), 1050 (Settlement Sheet), 1059 (Security Agreement).

Dated: December 23, 1994.

Philip Lader,

Administrator.

[FR Doc. 95–5126 Filed 3–2–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–226–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP). This proposal is prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. The actions specified by the proposed AD are intended to prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane.

DATES: Comments must be received by April 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and Parker Hannifin Corporation, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathi N. Ishimaru, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–226–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received one report of an uncommanded right elevator deflection after takeoff and two reports of elevator/control column bumps during landing gear retraction on Boeing Model 747–400 series airplanes equipped with certain inboard elevator Parker power control packages (PCP). Investigation revealed that hydraulic system number 4 is connected to the sensitive side of the servo valve, which may lead to an uncommanded elevator motion when the return pressure for the hydraulic system number 4 fluctuates. This condition, if not corrected, could result in structural damage and reduced controllability of the airplane.

The FAA has reviewed and approved Parker Service Bulletin 327400–27–171, dated December 2, 1994, which describes procedures for modification of the left and right servo assemblies of the PCP of the inboard elevator for Model 747–100, –200, –300, and –400 series airplanes, equipped with certain Parker PCP's. The modification involves rework of the dual tandem servo assembly. This modification will prevent blockage of the hydraulic balance passageway by the spring guide, which can contribute to the uncommanded motion of the PCP.

However, for certain Model 747–400 series airplanes, Boeing has issued Alert Service Bulletin 747–27A2348, Revision 1, January 26, 1995, which describes additional procedures for modification of the hydraulic tubing of the right inboard elevator PCP. This modification connects the hydraulic system number 3 to the sensitive side of the servo valve. This modification will prevent an uncommanded right elevator deflection caused by hyraulic system number 4 pressure flucuations. The FAA has reviewed and approved this alert service bulletin.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the left and right servo assemblies and re-routing the hydraulic tubing of the inboard elevator PCP. The actions would be required to be accomplished in accordance with the service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 672 Model 747–100, –200, and –300 series airplanes, and 357 Model 747–400 series airplanes of the affected design in the worldwide fleet, a total of 1,000 airplanes.

The FAA estimates that 114 Model 747–100, –200, and –300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 73 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,720 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $923,400, or $8,100 per airplane.

The FAA estimates that 65 Model 747–400 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 111 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8,549 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $988,585, or $15,209 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–226–AD.

Applicability: Model 747–100, –200, –300, and –400 series airplanes, equipped with Parker inboard elevator power control packages (PCP) having part numbers (P/N) 327400–1001, –1003, –1005, and –1007; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane, accomplish the following:

(a) For Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2348, dated November 17, 1994: Within 1 year after the effective date of this AD, modify the hydraulic tubing of the right inboard elevator PCP, in accordance with Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995.

(b) For all airplanes: Within 3 years after the effective date of this AD, modify the left and right servo assemblies of the inboard elevator PCP, in accordance with Parker Service Bulletin 327400–27–171, dated December 2, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), ANM–100S, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5244 Filed 3–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–241–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require installation of reinforcement plates at certain fuselage stations. This proposal is prompted by a report indicating that cracks were found in the frame strips at certain fuselage stations on a Model F28 Mark 0100 series airplane test article due to fatigue-related stress. The actions specified by the proposed AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Comments must be received by April 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–241–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, during full-scale fatigue testing on a Model F28 Mark 0100 series airplane test article, cracks were found in the frame strips at fuselage stations 14911 and 17011. The cause of such cracking has been attributed to fatigue-related stress. Such fatigue-related cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage pressure vessel.

Fokker has issued Service Bulletin SBF100–53–072, dated March 12, 1993, which describes procedures for installation of reinforcement plates at left and right fuselage stations 14911 and 17011. Installation of the reinforcement plates will reduce stress in this area and increase the fatigue life of the affected parts. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive BLA 93–037(A), dated March 17, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of reinforcement plates at left and right fuselage stations 14911 and 17011. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 160 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,800 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $603,000, or $13,400 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 94–NM–241–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11371 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the frame strips at fuselage stations 14911 and 17011, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, install reinforcement plates at left and right fuselage stations 14911 and 17011, in accordance with Fokker Service Bulletin SBF100–53–072, dated March 12, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5243 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–13–U

14 CFR Part 39

[Docket No. 95–NM–05–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require an inspection to determine the adequacy of clearance between the normal maximum (second) detent for the reverse thrust control and the surrounding moving parts and to detect chafing or damage of the detent. This proposal would also require eventual replacement of the normal maximum detent with an improved detent. This proposal is prompted by a report indicating that an inadequate level of clearance between the normal maximum detent and the surrounding parts may exist on earlier production Model F28 Mark 0100 series airplanes. The actions specified by the proposed AD are intended to ensure proper operation of the normal maximum detent for reverse thrust control.

DATES: Comments must be received by April 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

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proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–05–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 29, 1992, the FAA issued AD 92–15–08, amendment 39–8302 (57 FR 34216, August 8, 1992), applicable to certain Fokker Model F28 Mark 0100 series airplanes, to require removing the normal maximum (second) detent of the reverse thrust control and installing an improved unit. That action was prompted by reports indicating that the override force for the normal maximum detent of the reverse thrust control is too low. The actions required by that AD are intended to prevent fatigue damage and subsequent reduced structural capability of the horizontal stabilizer attachment.

The normal maximum detents that were installed in accordance with AD 92–15–08 (reference Fokker Service Bulletin SBF100–76–008, dated May 8, 1991) were intended to be functional only with certain pulleys. Since the issuance of that AD, however, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has notified the FAA that certain earlier production airplanes affected by AD 92–15–08 are not fitted with those specific pulleys. As a result, compliance with AD 92–15–08 may have produced an inadequate level of clearance between the normal maximum detent and the surrounding moving parts on these airplanes. This condition, if not corrected, could result in the inability to select reverse thrust levels above the normal maximum detent.

Fokker has issued Service Bulletin SBF100–76–010, dated October 31, 1993, which describes procedures for:

1. Performing a one-time inspection of certain airplanes to determine the adequacy of clearance between the normal maximum detent for the reverse thrust control and the surrounding moving parts and to detect chafing or damage of the detent and/or surrounding moving parts; and

2. Replacing the normal maximum detent for reverse thrust control with an improved detent.

The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–151(A), dated November 1, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

The FAA is considering further rulemaking action to revise AD 92–15–08 to change the applicability of that AD to remove certain earlier production Model F28 Mark 0100 series airplanes that could have a potential thrust reverser detent interference problem.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to determine the adequacy of clearance between the normal maximum detent for the reverse thrust control and the surrounding moving parts, and to detect chafing or damage of the normal maximum detent; and replacement of the normal maximum detent with a new normal maximum detent. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $400 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,000, or $1,000 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–05–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11261 inclusive, 11263, and 11268 through 11283 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the normal maximum detent for reverse thrust control, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin SBF100–76–008, dated May 8, 1991, has been accomplished: Within 1,500 flight cycles after the effective date of this AD, perform an inspection to determine the adequacy of clearance between the normal maximum (second) detent for the reverse thrust control and the surrounding moving parts and to detect chafing or damage of the normal maximum detent, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–010, dated October 31, 1993.

(1) If any chafing or damage is found (regardless of clearance), prior to further flight, replace the normal maximum detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin

(2) If the clearance is found to be inadequate, but no chafing or damage is found, within 250 flight cycles following the inspection required by paragraph (a) of this AD, replace the normal maximum detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(3) If the clearance is found to be adequate and no damage or chafing is found, within 3,000 flight cycles following the inspection required by pararaph (a) of this AD, replace the detent with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(b) For airplanes on which Fokker Service Bulletin SBF100–76–008, dated May 8, 1991, has not been accomplished: Within the next 500 flight cycles after the effective date of this AD, replace the normal maximum detent for reverse thrust control with an improved normal maximum detent, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–010, October 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5242 Filed 3–2–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 905

[Docket No. 950104002–5002–01; I.D. 061394C]

RIN 0648–AE40

Use in Enforcement Proceedings of Information Collected by Voluntary Fishery Data Collectors

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary), through NOAA, is publishing proposed regulations that would restrict the use of information collected by voluntary fishery data collectors (VFDC). These regulations would limit the extent to which such information could be used in civil and criminal enforcement proceedings conducted pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). In promulgating these regulations, NOAA seeks to encourage the use of VFDCs by the fishing industry, while protecting the necessary use of observer information by law enforcement personnel.

DATES: Comments must be submitted by May 2, 1995.

ADDRESSES: Comments may be mailed to the National Oceanic and Atmospheric Administration, Office of General Counsel, Enforcement and Litigation Section, 8484 Georgia Avenue, 4th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Joel La Bissonniere, (301) 427–2202.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson Act, 16 U.S.C. 1801, *et seq.* and the MMPA, 16 U.S.C. 1361 *et seq.* specifically authorize the stationing of observers aboard fishing vessels.

Observers serve two separate and essential purposes. First, observers collect scientific information essential to the effective management and protection by the National Marine Fisheries Service (NMFS) of ocean fisheries and protected species. Second, observers monitor compliance with existing Federal laws. Information collected by an observer that establishes a violation of the Magnuson Act, the MMPA or the ESA, 16 U.S.C. 1531 *et*

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seq. may be used to prosecute the owner or operator of that vessel in a subsequent civil or criminal enforcement proceeding.

Most observer programs are mandatory in nature. For example, under the Magnuson Act, domestic vessels participating in the groundfish fishery of the Gulf of Alaska are required to carry an observer if ordered to do so. (See 50 CFR 672.27). Under the MMPA, U.S. commercial vessels in the eastern tropical Pacific yellowfin tuna purse seine fishery must carry an observer, (See 16 U.S.C. 1374(h)(2)(B)(viii)), as must any vessel selected by NMFS while operating pursuant to a special exemption permit in a Category I fishery. (See 16 U.S.C. 1383a(b)(3)(B)). Under the ESA, NMFS occasionally requires observers as a condition of a section 7 incidental take statement. (See 16 U.S.C. 1536(b)).

Pursuant to all three acts, however, voluntary observer programs also have been utilized. For example, under the MMPA's interim exemption program for commercial fisheries, NMFS may, with the consent of a vessel owner, station an observer aboard a vessel that is not fishing in a Category I fishery. (See 16 U.S.C. 1383a(e)(3)). Under this and other programs, fishermen who are under no legal obligation to do so, may voluntarily agree to carry observers selected by NMFS. Although most observer programs implemented by NMFS are mandatory in nature, voluntary programs are widely used to gather scientific information along the northeastern and southeastern coasts of the United States.

Concerns have arisen within the fishing industry and NMFS as to whether information collected by voluntary observers should be used in subsequent enforcement proceedings. Many fear that fishermen will be reluctant to carry voluntary observers if the information collected by the observer can be used to prosecute them. Without the cooperation of the fishing industry, the voluntary observer program might deteriorate, depriving NMFS of information that is essential to living marine resource management and protection. Conversely, others worry that unduly restricting the use of such information will undermine the ability to effectively prosecute violations of each statute.

In response to these concerns, Congress enacted 16 U.S.C. 1853(f) of the Magnuson Act. This amendment, codified at section 303(f) of the Magnuson Act, requires the issuance of regulations that restrict, in civil and criminal enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA, the use of information collected by VFDCs while aboard a vessel for conservation and management purposes.

These proposed regulations have been prepared to satisfy this statutory directive. They do so in a manner that balances the competing concerns associated with the use of information collected by voluntary observers. Specifically, the regulations would encourage industry participation in voluntary observer programs by limiting the risk of civil or criminal prosecution under the Magnuson Act, MMPA, and ESA, based upon information collected by a VFDC. At the same time, the regulations would protect essential enforcement activities by permitting the use of such information in limited circumstances.

Scope

These proposed regulations would add a new part to title 15 of the Code of Federal Regulations, and would apply to the use of information collected by VFDCs. Section 905.5 would define a VFDC as an observer or sea sampler whose presence aboard a vessel is not required pursuant to any provision of the Magnuson Act, MMPA, ESA or supporting regulations. By definition, these proposed regulations would only apply when an observer is aboard a vessel at the sole discretion of the owner or operator.

These regulations would not categorically prohibit the use of information collected by VFDCs in enforcement proceedings. Rather, the regulations would restrict the use of such information. Restricting the use of information collected by a VFDC is consistent with the plain language of the statute, and strikes a balance between separate and sometimes conflicting goals of the Magnuson Act, MMPA, and ESA: the management and protection of species through the acquisition of scientific information and through the effective prosecution of prohibited conduct.

These regulations would apply to any enforcement proceeding initiated pursuant to the Magnuson Act, MMPA, or ESA. The term "enforcement proceeding" is broadly defined to encompass any judicial or administrative action that is initiated for the purpose of imposing any civil or criminal penalty that is authorized by the Magnuson Act, MMPA, or ESA.

These regulations would apply even if the information collected relates to the violation of a statute subject to this proposed rule that is different from the one giving rise to the VFDC's presence onboard a vessel. For example, assume that a VFDC is stationed aboard a fishing vessel pursuant to a voluntary program authorized by the Magnuson Act. These regulations would restrict the use of information collected by the VFDC in an enforcement proceeding arising from a violation of the Magnuson Act. The regulations, however, also would restrict the use of information collected by this same VFDC in an enforcement proceeding arising from a violation of the MMPA or ESA.

Information

Part 905 would restrict the use of information collected by a VFDC in enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA. The term "information" would be defined in § 905.2 to include all observations, data, statistics, photographs, film, or recordings collected by a VFDC. Under this broad definition, information may take the form of recorded data or activities seen or heard by the observer. This definition is intended to encompass any type of information, regardless of form.

The restrictions, however, would not apply to independent evidence that is derived from information collected by a VFDC. In practice, evidence initially collected by enforcement personnel frequently leads to the discovery of additional evidence. These regulations would not restrict the use of additional evidence acquired in this manner. Absent this exception, prosecutors might be denied use of relevant evidence, wholly unrelated to the purposes of part 905, simply because it was acquired through information collected by a VFDC.

For example, assume a VFDC observed a fishing vessel land fish in excess of the vessel's authorized limit. Under these proposed regulations, the government could not rely upon the VFDC's observations in any subsequent prosecution. Aware of these observations, however, enforcement personnel could obtain additional evidence, such as landing slips, that independently establish the violation. These proposed regulations would not restrict the use of the landing slips in any subsequent prosecution.

Access to Information

Part 905 would restrict the use of information collected by a VFDC in an enforcement proceeding conducted pursuant to the Magnuson Act, MMPA or ESA. It would not restrict access to this same information by any party to an enforcement proceeding. Instead, access to such information remains subject to existing Federal statutes and rules. For example, access to information collected by Federal agencies is subject to the Freedom of Information Act and the Privacy Act. Information collected by NMFS pursuant to the Magnuson Act and the MMPA may only be disclosed consistent with the confidentiality provisions of both statutes. Within enforcement proceedings, access to information is governed by discovery provisions set forth in the Federal rules of civil and criminal procedure, and agency regulations that control discovery. (See 15 CFR 904.240).

Use of Information

Under proposed § 905.4(a), information collected by a VFDC may not initially be introduced by the government as evidence against any consenting owner that is a party to an enforcement proceeding. A "consenting owner" is defined as the owner, operator or crewmember of a vessel carrying a VFDC.

This restriction, however, would not apply to other parties. Under proposed § 905.4(b)(1), any other party to an enforcement proceeding may introduce such information. This exception recognizes the fact that, in certain cases, information collected by a VFDC may establish a party's innocence. Denying a party the right to use such information in a criminal proceeding might run counter to a party's right to compulsory process under the Sixth Amendment of the U.S. Constitution. While VFDC-collected information will ordinarily be introduced to establish innocence, such information may be introduced for any reason by any party other than the government, regardless of their status as a plaintiff or defendant.

Once information collected by a VFDC has been introduced, any party, including the government, may introduce any information collected by a VFDC. (See § 905.4(b)(2)). In most instances, parties will offer additional information when necessary to clarify, explain, or contradict information previously introduced. Pursuant to proposed § 905.4(b)(2), however, any other information may be introduced against any party for any purpose, within the sound discretion of the court or tribunal.

Exceptions

While the restrictions proposed in part 905 are intended to apply to the vast majority of enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA, exception is made for a few limited categories of actions. Pursuant to proposed § 905.5, the provisions of part 905 would not apply to enforcement proceedings based upon: (1) The assault, intimidation, or harassment of any person; or (2) the impairment or interference with the duties of a VFDC. These regulations are intended to promote voluntary observer programs by reducing the risk of prosecution for fishing-related violations, not improper conduct directed against a VFDC. Extending the restrictions of part 905 to conduct of this nature would jeopardize the safety of VFDCs and undermine the quality of any data collected.

Classification

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small businesses. This proposed rule is procedural in nature, limiting the use of specific information in enforcement proceedings. As a result, a regulatory flexibility analysis has not been prepared.

This action has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 15 CFR Part 905

Fisheries, Statistics

Dated: February 21, 1995.

Terry D. Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR part 905 is proposed to be added to read as follows:

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec.
905.1 Scope.
905.2 Definitions.
905.3 Access to information.
905.4 Use of information.
905.5 Exceptions.

Authority: 16 U.S.C. 1853(f).

§ 905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§ 905.2 Definitions.

When used in this part:

Consenting owner means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector.

Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not limited to, any proceeding initiated to: impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA, while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§ 905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.

§ 905.4 Use of information.

(a) Except as provided for in paragraph (b) of this section, information collected by a voluntary fishery data collector may not be introduced by the Secretary as evidence

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against any consenting owner that is a party to an enforcement proceeding.

(b) Provided that all applicable evidentiary requirements are satisfied:

(1) Information collected by a voluntary fishery data collector may be introduced in an enforcement proceeding by any party except the Secretary;

(2) If information is introduced pursuant to paragraph (b)(1) of this section, all information collected by a voluntary fishery data collector may be introduced by any other party, including the Secretary.

(c) Independent evidence derived from information collected by a voluntary fishery data collector may be introduced by any party, including the Secretary, in an enforcement proceeding.

§ 905.5 Exceptions.

The provisions of this part shall not apply in any enforcement proceeding against a consenting owner that alleges the actual or attempted:

(a) Assault, intimidation, or harassment (including sexual harassment) of any person; or

(b) Impairment or interference with the duties of a voluntary fishery data collector.

[FR Doc. 95–5221 Filed 3–2–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–57–94]

RIN 1545–AT06

Cash Reporting by Court Clerks; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the information reporting requirements of court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense.

DATES: The public hearing originally scheduled for Monday, March 13, 1995, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6050I of the Internal Revenue Code of 1986. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Thursday, December 15, 1994 (59 FR 64635), announced that the public hearing on the proposed regulations would be held on Monday, March 13, 1995, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, N.W., Washington, D.C.

The public hearing scheduled for Monday, March 13, 1995, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5198 Filed 3–2–95; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[INTL–933–86]

RIN 1545–AL98

Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking [INTL–933–86] which was published in the **Federal Register** for Friday, January 6, 1995 (60 FR 2049). The proposed regulations relate to the computation of foreign taxes deemed paid by a domestic corporate shareholder owning at least 10 percent of the voting stock of the foreign corporation.

FOR FURTHER INFORMATION CONTACT: Caren S. Shein (202) 622–3850, or Kristine K. Schlaman (202) 622–3840 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 902 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking [INTL–933–86] contains typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 95–173, is corrected as follows:

On pages 2056 and 2058, § 1.902–1 is corrected by removing the formulas in paragraphs (b)(2)(i), (b)(2)(ii) and (d)(2)(i) and adding correctly revised formulas at the end of paragraphs (b)(1), (b)(2)(i), (b)(2)(ii) and (d)(2)(i) to read as follows:

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

* * * * *

(b) * * * (1) * * *

$$\text{Foreign income taxes deemed paid by domestic shareholder (or upper-tier corporation)} = \text{Post 1986 foreign income taxes of first-tier corporation (or lower-tier corporation)} \times \frac{\text{Dividend paid to domestic shareholder (or upper-tier corporation) by first-tier corporation (or lower-tier corporation)}}{\text{Post-1986 undistributed earnings of first-tier corporation (or lower-tier corporation)}}$$

(2) * * * (i) * * *

$$\text{Portion of dividend to a shareholder attributable to post-1986 undistributed earnings} = \text{Post-1986 undistributed earnings} \times \frac{\text{Dividend to shareholder}}{\text{Total dividends paid to all shareholders}}$$

(ii) * * *

$$\text{Portion of dividend to a shareholder attributable to accumulated profits of a particular pre-1987 taxable year} = \text{Dividend paid out of pre-1987 accumulated profits with respect to the particular pre-1987 taxable year} \times \frac{\text{Dividend to shareholder}}{\text{Total dividends paid to all shareholders}}$$

* * * * *

(d) * * *

(2) * * * (i) * * *

$$\text{Foreign taxes deemed paid by domestic shareholder or upper-tier corporation with respect to a separate category under section 904(d)} = \text{Post-1986 foreign income taxes of first-tier or lower-tier corporation allocated and apportioned to a separate category under § 1.904–6} \times \frac{\text{Dividend amount attributable to a separate category}}{\text{Post-1986 undistributed earnings of first-tier or lower-tier corporation attributable to the separate category}}$$

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5285 Filed 3–2–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 941128–4326; I.D. 112294A]

North Atlantic Right Whale Protection; Reopening of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); reopening of comment period.

SUMMARY: On December 27, 1994, NMFS published an ANPR in response to a petition requesting the issuance of regulations that will establish specific protection zones around every northern right whale. NMFS solicited public comment and information until February 27, 1995, to assist in determining the need for and types of conservation measures that would be effective in minimizing human-induced disturbance of and harmful interaction with northern right whales. In response to several requests for an extension of the ANPR comment period, NMFS is reopening the comment period for 30 days to provide additional opportunity to submit suggestions and commentary on potentially effective measures to reduce harmful interaction with northern right whales.

DATES: New information and comments must be submitted on or before April 3, 1995.

ADDRESSES: Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, NMFS, Office of Protected Resources at (301) 713–2322, or Doug Beach, NMFS, Northeast Regional Office at (508) 281–9254.

Dated: February 24, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–5220 Filed 3–2–95; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 60, No. 42
Friday, March 3, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meeting of Advisory Committee on Emerging Democracies

AGENCY: Foreign Agricultural Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the third meeting of the Advisory Committee on Emerging Democracies will be held March 23–24, 1995. The purpose of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the program on sharing agricultural expertise with emerging democracies. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging democracies in food and rural business systems.

DATES: The meeting will be held Thursday, March 23, 1995 from 9:00 a.m. to 5:30 p.m., and Friday, March 24 from 10:30 a.m. to 1:00 p.m. Both meetings will be held at the U.S. Department of Agriculture in Washington, DC.

SUPPLEMENTARY INFORMATION: The minutes of the meeting announced in this Notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Douglas Freeman, Foreign Agricultural Service, room 6506 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW., Washington, DC 20250, but should not make any oral comments at the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, February 24, 1995.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 95–5283 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Mono Tunnel Geothermal Lease Area

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: The Forest Service has withdrawn its proposal to complete an Environmental Impact Statement on a proposal to lease geothermal resources on the Mono Lake Ranger District, Inyo National Forest, Mono County, California. The preparation of an environmental impact statement for this proposal is cancelled.

The Notice of Intent, published in the **Federal Register** on October 14, 1993, is hereby rescinded (58 FR 53185).

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to John Schuyler, Forest Planner, Inyo National Forest, Bishop, California, 93514, phone 619–873–2544.

Dated: February 22, 1995.

Leigh S. Beck,

Acting Regional Forester.

[FR Doc. 95–5199 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Request for Comments on the Need for Official Services in the South Texas Region, and Request for Applications for Designation to Provide Official Services in the South Texas (TX) Region Under a Pilot Program

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA has received several inquiries regarding designation of an organization to provide official services in South Texas. GIPSA is requesting comments on the need for official inspection services in South Texas. GIPSA is proposing to designate more than one official agency under a pilot program to provide official services in the South Texas region. GIPSA also is requesting persons interested in providing official services in South Texas under a pilot program to submit an application for designation.

DATES: Applications and comments must be postmarked on or sent by telecopier (FAX) by March 21, 1995.

ADDRESSES: Applications and comments must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications and comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA'S Administrator, after determining that there is sufficient need for official services, to designate a qualified applicant to provide official services in a specified area after determining that the applicant is qualified and is better able than any other applicant to provide such official services.

Sections 7(f) and 7A of the Act were amended by the U.S. Grain Standards Act Amendments of 1993 (Public Law 103–156) on November 24, 1993, to authorize FGIS' Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of the pilot programs is to evaluate the feasibility and impact of allowing more than one official agency to provide official services within a single geographic area.

GIPSA announced five possible pilot programs and requested comments on them in the March 14, 1994, **Federal Register** (59 FR 11759). Comments were due by April 22, 1994. GIPSA has analyzed the comments received based on this notice and plans to announce potential nationwide pilot programs based on the results of these comments.

The opening of a pilot program in the South Texas area is one of a limited geographic area. The nationwide pilot programs discussed above will be announced at a later date.

GIPSA has received several inquiries regarding designation of an organization to provide official services in South Texas. GIPSA is requesting comments on the need for official inspection services in South Texas (including estimates of the number of official inspections by carrier, type of service, and kind of grain). The South Texas region, being considered for assignment to the applicant or applicants selected for designation, pursuant to Section (7)(2) of the Act, is as follows:

The Texas Counties of: Atascosa, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina, Nueces, San Patricio, Starr, Uvalde, Val Verda, Webb, Willacy, Zapata, and Zavala, excluding those export port locations served by GIPSA.

GIPSA also is requesting persons interested in providing official services in these South Texas Counties under a pilot program allowing more than one official agency to provide service in a single geographic area to submit an application for designation. GIPSA plans to allow all designated official agencies to provide official services to any grain firm located within the geographic area specified above.

GIPSA will not designate any applicants unless it determines that there is sufficient need for official services in the South Texas region.

Interested persons are hereby given an opportunity to submit comments on the need for official inspection services in the region specified above, and to apply for designation under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Designation in the South Texas area is for a 1 year period beginning about June 1, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant or applicants will be designated after GIPSA determines that there is a need for official services in the South Texas region.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 15, 1995

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 95–5281 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–EN–F

Rural Utilities Service

Announcement of Applications Received Under the Distance Learning and Medical Link Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications received.

SUMMARY: The Administrator of the Rural Utilities Service (RUS) is hereby announcing the applications received prior to the January 14, 1995 application filing deadline for the Distance Learning and Medical Link Grant Program.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Bryant, Jr., Chief, Distance Learning and Telemedicine Branch, Advanced Telecommunications Services Division, Rural Utilities Service, telephone number (202) 690–3594.

SUPPLEMENTARY INFORMATION: RUS is hereby publishing the names of the organizations which applied for grants under 7 CFR Section 1703 Subpart D, Distance Learning and Medical Link Grant Program (DLMLGP). These applications contained herein, submitted and postmarked prior to the January 14, 1995 filing deadline, will be considered for funding during fiscal year (FY) 1995. This list includes applications that were submitted under the April 14, 1994, July 14, 1994, and the October 14, 1994 filing periods.

The following information is being published in accordance with 7 CFR 1703, subpart D Section 1703.115, Public notice of applications received. The applicants are as follows:

State	Applicant	Funds requested
AR	St. Edward Mercy Medical Center	$132,838
AR	University of Arkansas Cooperative Extension Service	350,000
AZ	Coconino County School District	500,000
AZ	Career Development, Inc	125,000
AZ	University of Arizona-Sierra Vista	500,000
AZ	University of Arizona	284,302
CA	Riverside County Department of Mental Health	158,360
CA	Redwoods Community College District	349,900
CA	Valley Health System	121,800
CA	Reef-Sunset Unified School District	500,000
CO	Northwest Colorado Board of Coop. Ed. Services	500,000
CO	High Plains Rural Health Network	260,500
CO	National Technological University (NTU)	399,073
CO	Grand River Hospital District	40,781
CO	Alpine Medical Network	339,516
CO	Community Health Centers, Inc	563,780
CO	Rocky Mountain Adventist Healthcare/Porter	370,903
GA	Lowndes County Board of Health	495,942
HI	Kohala High & Elementary School	350,000
IA	MERCY FOUNDATION	276,246
IA	University of Dubuque	122,336
IA	Iowa Lakes Community College	500,000
IA	Northwestern College	474,107
ID	NORTH IDAHO RURAL HEALTH CONSORTIUM	449,145
ID	Eastern Idaho Technical College	350,000
ID	Luke's Net	500,000
IL	West Central Illinois Educational Telec. Corp	119,000

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State	Applicant	Funds requested
IL	Illinois Distance Learning Foundation	350,000
IN	Indiana University	143,707
IN	Purdue University	499,853
KS	Area Resource Center of Central Kansas	239,304
KS	Pittsfield State University	416,108
KS	Western Kansas Community Services Consortium (WK)	332,631
KS	Hays Medical Center	90,896
KS	St. Francis Regional Medical Center	499,771
KS	Kansas St. University	349,048
KY	GRAYSON COUNTY HOSPITAL FOUNDATION, INC	122,320
KY	University of Louisville Research Foundation	500,000
KY	Leslie County School System	494,250
MD	Garrett Community College	182,527
ME	Rural Health Partners	48,031
MI	Cheboygan-Otsego-Presque Isle Intermediate	445,230
MI	McBain Rural Agricultural School District	275,800
MI	Delta-Schoolcraft Intermediate School District	355,689
MI	Newaygo County Intermediate School District	325,000
MI	Kelsy Memorial Hospital, Inc	298,180
MI	Carson City Hospital	217,900
MI	Alpena-Montmorency-Alcona Educational Serv, Dist	444,000
MI	Kalamazoo Valley Intermediate School	466,200
MN	Mesabi Regional Medical Center	116,270
MO	Rock Port R–II School	165,000
MO	West Missouri School Improvement Consortium	500,000
MO	Central Board for Distance Learning, Inc	420,816
MO	Junior College Dist. of Newton-McDonald County	347,133
MO	Cameron Community Hospital	454,876
MO	Cedar County Memorial Hospital	500,000
MS	University of Mississippi	459,400
MS	North Mississippi Health Services, Inc	983,787
MT	MILES COMMUNITY COLLEGE	379,796
MT	Montana State University	212,037
MT	Montana State University-Northern	299,000
MT	St. Peter's Community Hospital	439,513
MT	Outlook Public Schools	168,000
NC	Alleghany County Board of Education	465,000
ND	North Dakota University System	314,283
ND	Medcenter One Health Systems, Incorporated	500,000
NE	Our Lady of Lourdes Hospital	266,000
NE	Board of Regents of the University of Nebraska	316,711
NE	Bloomfield Community Schools	500,000
NE	Gordon Memorial Hospital District	99,389
NH	University of New Hampshire	479,191
NM	SMHA Healthcare Alliance	488,810
NM	Guadalupe County Hospital	336,450
NM	University of New Mexico	134,448
NY	Schuyler Hospital, Inc	350,238
NY	Cattaraugus/Alleghany/Erie/Wyoming BOCES	434,140
NY	Red Hook Central School District	500,000
OH	Ohio University	500,000
OH	Adams County Hospital	485,200
OH	The Ohio State University Research	598,568
OH	Lima Technical College	350,000
OH	Celina City School	135,4620
OK	Stillwater Medical Center Trust Authority	77,400
OK	Wheatland Resource Conservation & Dev. Assoc	276,144
OK	St. John Medical Center	500,000
OK	Rural Health Projects, Inc. (NwAHEC)	236,346
OK	Northeastern State University	258,000
OK	Oklahoma Health System	468,593
OR	Grande Ronde Hospital	172,430
OR	Central Linn School District	252,448
OR	North Clackamas School District #12	251,549
PA	Keystone Central School District	483,100
PA	Jameson Health System, Inc	119,645
SD	HEALTH EDUCATION DEVELOPMENT SYSTEMS, INC	478,059
TN	Trinity Elementary School	50,000
TN	University of Tennessee Medical Center/Knoxville	91,722
TN	Columbia St. Community College	350,000
TX	Sam Houston State University	350,000
TX	Hubbard Independent School District	378,000
TX	Texas Department of Health	595,129

State	Applicant	Funds requested
VA	Southwest Virginia Education & Training Network	174,143
VA	University of Virginia	500,000
VA	Southside Virginia Community College	500,000
WA	Wenatchee Valley College	496,893
WA	Skagit Valley College	295,354
WI	Nicolet Distance Education Network	350,000
WV	WV University Research Corporation on behalf of	322,059
WV	Charleston Area Medical Center, Inc	125,317
WY	Northern Wyoming Community College District	264,000

Also to be considered for FY 1995 funding are applications submitted prior to the January 31, 1994 application deadline which were previously considered for FY 1994 funding, but not selected. The notices which contain the lists of FY 1994 applicants were published on December 21, 1993 at 58 FR 67931 and April 18, 1994 at 59 FR 18355. The total number of applications to be considered for funding during FY 1995 is 247.

Due to limited FY 1995 DLMLGP funding the amount awarded to any application selected for FY 1995 will not exceed $350,000. Legislative authority for the DLMLGP expires September 30, 1995. Therefore interested persons should not submit applications for FY 1996 until futher announcements regarding the DLMLGP are published.

Dated: February 24, 1995.

Adam Golodner,

Acting Administrator, Rural Utilities Services.

[FR Doc. 95–5282 Filed 3–2–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On October 21, 1994, in the case of *Zenith Electronics Corporation* v. *United States*, Slip-Op 94–170 (*Zenith*), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) third results of redetermination on remand and prior remand determinations of the final results of the first administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. In accordance with the Court's determination, we are hereby amending the final results of administrative review with respect to one company, Capetronic (BSR) Ltd. (Capetronic), for the period October 19, 1983, through March 31, 1985.

EFFECTIVE DATE: March 3, 1995.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1986, the Department published in the **Federal Register** (51 FR 46895) the final results of the first administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan, covering the period October 19, 1983, through March 31, 1985.

Subsequent to the Department's final results, Zenith Electronics Corporation (Zenith), a domestic producer, alleged before the Court that the Department erred in calculating Capetronic's constructed value. The Court agreed and remanded the issue to the Department to recalculate Capetronic's margin using certain production data on the record. As a result of the recalculation, Capetronic's margin increased from the *de minimis* margin of 0.46 percent to 1.36 percent. The decision became final on October 21, 1994, when the Court issued its final decision on this administrative review in *Zenith*.

Amended Final Results of Review

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit (Federal Circuit) held that the Department must publish notice of a decision of the Court or Federal Circuit which is not "in harmony" with the Department's determination. The Department published that notice with respect to the Court's October 21, 1994, decision in the **Federal Register** on January 17, 1995 (60 FR 3391). In *Timken*, the Federal Circuit also held that the Department must suspend liquidation until there is a "conclusive" decision in the action. An appeal was filed in this case. However, because no party has appealed an issue which would affect Capetronic, the Department is now publishing Capetronic's new margin in accordance with the Court's final and conclusive decision.

Based on our revised calculations, we have amended our final results of review for Capetronic for the period October 19, 1983, through March 31, 1985. The amended weighted-average margin is 1.36 percent. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

This notice is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: February 24, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–5300 Filed 3–2–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications; Cincinnati

AGENCY: Minority Business Development Agency.

ACTION: Notice.

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SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Cincinnati, Ohio Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Cincinnati Metropolitan Area. The award number of the MBDC will be 05–10–95008–01.

DATES: The closing date for applications is March 31, 1995. Applications must be received in MBDA's Executive Secretariat on or before March 31, 1995. A pre-application conference will be held on March 14, 1995, at the Federal Building, 550 Main Street, room 8411, Cincinnati, Ohio.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW., room 5073, Washington, DC 20230, (202) 482–3763.

FOR FURTHER INFORMATION CONTACT: David Vega at (312) 353–0182.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, Section 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, Section 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award documents.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: February 24, 1995.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5098 Filed 3–2–95; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 3, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 6, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 2083) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Laundry Service
Naval Undersea Warfare Center
Keyport, Washington
Mailing Service
Headquarters, Air Force Military Personnel Center
Randolph Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–5288 Filed 3–2–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List disposable coveralls to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 3, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 28, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 60781) of proposed addition to the Procurement List.

Comments were received from counsel for the current contractor, indicating that while the contractor would oppose the addition of a larger portion of the Government requirement to the Procurement List than the Committee proposing, it has no objection to the addition as proposed because it would not have a serious impact on the contractor's business. Accordingly, the Committee has concluded that this addition would not have a severe adverse impact on the current contractor.

After consideration of the material presented to it concerning capability of

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qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Coveralls, Disposable
8415–01–092–7529
8415–01–092–7530
8415–01–092–7531
8415–01–092–7532
8415–01–092–7533
(Additional 25% of the Government requirement)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–5289 Filed 3–2–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 3, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Lancet, Finger Bleeding
6515–01–225–4757
6515–01–225–8497
NPA: Lincoln Training Center and Rehabilitation Workshop South El Monte, California

Holder, Label, Brass
9905–02–000–8089
9905–02–000–8008
9905–02–000–8698
NPA: Constructive Workshops, Inc. New Britain, Connecticut

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–5290 Filed 3–2–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List chemical protective drawers and undershirts to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 3, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 14, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 F.R. 56467) of proposed addition to the Procurement List.

Comments were received from two contractors. Both of the commenters helped develop similar underwear for another Federal customer, and both have received contracts to supply that underwear to Federal agencies other than the Marine Corps. One has a sizeable contract with another Department of Defense agency at this time.

The contractor that does not currently have a contract argued that the Committee should not add 100% of the Marine Corps requirement to its Procurement List. The contractor contended that adding 100% would preclude it from having the opportunity to secure future contracts for the underwear, thereby preventing it from securing production work to cover its R&D expenditures. This contractor also questioned the capability of the nonprofit agency proposed to develop and supply the Marine Corps underwear, citing the difficulty of manufacturing such items and the failures of all except two contractors involved in developing the existing underwear.

Because no contractor is guaranteed to receive a contract under the competitive bidding system, the Committee does not normally consider loss of the opportunity to bid on subsequent contracts to constitute severe adverse impact. In this case, the commenting contractor is not the current contractor for either the underwear proposed for addition to the Procurement List or similar underwear being purchased by another Government agency. Consequently, the Committee does not believe that loss of opportunity to bid on the Marine Corps underwear constitutes severe adverse impact on the contractor. With respect to the nonprofit agency's ability to produce the underwear, the Committee has concluded that it is capable based on the results of inspections by the contracting activity, the cognizant military research and development center, and the central nonprofit agency charged by the Committee with evaluating local organizations' capabilities to furnish the Government with specific products and services.

The other commenting contractor, which is supplying similar underwear to another military customer, raised a number of concerns about the proposed addition. Initially, many of the concerns stemmed from the lack of information in the Committee's files, which led the contractor to the correct conclusion that the Committee at that time was not in a position to make a decision on whether it was appropriate to add the items to the Procurement List. Subsequently, the Committee received the necessary information, which was provided to the contractor and reflected in the firm's second set of comments. These included a concern about the capability of the nonprofit agency to supply an acceptable product, an issue addressed above.

The primary objections of this other contractor relate to the possibility that the Marine Corps underwear proposed for the Procurement List might in the future be purchased by the contractor's current customers instead of the underwear it is supplying. The contractor argued that losing the opportunity to compete to supply the underwear that replaced the garments it was supplying would have a severe adverse impact on its operations, including its employees. In addition, the contractor interpreted a Committee regulation regarding new purchases of similar items to mean that if the underwear for the Marine Corps were added to the Procurement List, other Government agencies purchasing similar items in the future would have to purchase them from the nonprofit agency designated by the Committee. Another Committee regulation regarding the applicability of the Committee's actions to all Government agencies was interpreted by the contractor as having the potential to produce the same result.

The contractor also expressed concerns that the Government would be harmed by having to pay more than a competitively bid price for the garments. Another objection raised by the contractor involved the impact on its operations of a previous Committee decision to add a different item to the Procurement List.

The Committee recognizes that if the contractor's current Government customer decides in the future to purchase the items being developed by the Marine Corps instead of the underwear it is now procuring and the commenting firm is still the current contractor, the circumstances should be considered by the Committee. Specifically, the Committee would assess the impact of its action on the commenting firm.

Accordingly, the Committee has formally advised the contractor that if the Marine Corps underwear replaces the existing garments in the future, such an assessment will take place. At that time, the Committee would consider all aspects of such impact, including effects on employees, plant and equipment investments, other business relationships, and previous impact. In the case of the last factor, the Committee observed that the commenting firm had not been the current contractor for any items previously added to the Procurement List and, thus, under Committee procedures, would not be considered to have been impacted by prior Committee action.

Notwithstanding its commitment to monitor future impacts, the Committee noted that representatives of both the Marine Corps and the current military customer have indicated that there are no plans for the Marine Corps underwear to replace the garments currently being supplied by the commenting contractor.

With respect to the commenter's interpretation of the Committee regulation regarding purchasing similar items, the Committee does not interpret the regulation in the way suggested by the commenter. The regulation in question only applies to similar items not purchased by the Government in recent years. Therefore, the regulation would not cause the contractor to lose purchases by its present customer. The other regulation commented upon by the contractor would mean, as the commenter suggested, that in the event the contractor's current customer decided to switch to the Marine Corps garments, the customer would be expected to purchase the garments from the nonprofit agency designated by the Committee. However, as noted above, because such an action could impact upon the commenting firm, the Committee will—if such a switch is made—consider the appropriateness of retaining the total Marine Corps requirement on the Procurement List.

In response to the comments about the price the Government will pay if the underwear is added to the Procurement List, the Committee noted that it is required to establish a fair market price for such items and to revise that price over time. Such a price has been established in this case and the nonprofit agency has agreed to supply the Marine Corps at that price.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Drawers and Undershirt, Chemical Protective
8415–00–NSH–0091 Size—32
8415–00–NSH–0092 Size—34
8415–00–NSH–0093 Size—36
8415–00–NSH–0094 Size—38
8415–00–NSH–0095 Size—40
8415–00–NSH–0096 Size—42
8415–00–NSH–0097 Size—44
8415–00–NSH–0098 Size—46
8415–00–NSH–0099 Size—48
8415–00–NSH–0100 Size—26
8415–00–NSH–0101 Size—28
8415–00–NSH–0102 Size—30
8415–00–NSH–0103 Size—32
8415–00–NSH–0104 Size—34

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8415–00–NSH–0105 Size—36
8415–00–NSH–0106 Size—38
8415–00–NSH–0107 Size—40
8415–00–NSH–0108 Size—42

(Requirements for the U.S. Marine Corps, Washington, DC)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–5299 Filed 3–2–95; 8:45 am]

BILLING CODE 8820–33–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 1, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Group, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (30 Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: February 28, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Emergency.
Title: Challenge Grants for Technology in Education.
Abstract: The Challenge Grants for Technology in Education Program supports consortia to improve and expand new applications of technology for school reform, student achievement, and professional development of school staff.
Additional Information: An emergency review is requested for OMB approval by March 1, 1995, in order to assure that states will have sufficient notice of the application requirements and selection criteria. We expect to make awards during the spring of 1995.
Frequency: Annually.
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions; State, Local or Tribal governments.
Reporting Burden:
Responses: 500.
Burden Hours: 12,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

[FR Doc. 95–5257 Filed 3–2–95; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 3, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 28, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.
Title: Survey of Effects of Changes in Pell Grant Eligibility Rules and Survey of Why Pell Grants Are Not Used.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1,520.
Burden Hours: 469.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will examine the effects of passage of 1992 Higher Education Amendments on (1) the educational behavior of postsecondary students, particularly those who experienced decreased Pell Grant eligibility as a result of the rule change and (2) the reasons why Pell applicants with an eligible PGI never use their awards.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Annual Report on Post-Employment Services and Annual Reviews.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 81.
Burden Hours: 89.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Vocational Rehabilitation (VR) Form RSA–62 is used to monitor three post closure activities: (a) the provision of post employment services to help rehabilitated persons to maintain or regain employment; (b) review of ineligibility determinations to see if an applicant can benefit from VR; and (c) review of non-competitive placements to see if the client can now work in the competitive labor market. The Department will use the information to report to Congress.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application and Continuation Application, Reports, and Recordkeeping for the National Science Scholars Program.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Governments.
Reporting Burden:
Responses: 19,467.
Burden Hours: 266,945.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Individuals apply for Federal scholarships under the National Science Scholars Program in which the Department uses the information to make grant awards. State nominating committees use the information to evaluate the applications and nominate scholars. Institutions use the forms to apply for continuation awards for continuing scholars and to report on the status of the program.

[FR Doc. 95–5258 Filed 3–2–95; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 28, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Bilingual and Minority Languages Affairs

Type of Review: Expedited.
Title: Verification of Title VII Funded Grant Applications.
Frequency: One time.
Affected Public: Not-for-profit institutions; State, Local or Tribal Government.
Reporting Burden:
Responses: 1,239.
Burden Hours: 228.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This verification task will collect information on FY 1994 Title VII funded projects. The collection will provide data on actual, as opposed to proposed, services provided. Project directors for all FY 1994 Part A and Part C Title VII funded projects will be contacted by telephone.
Additional Information: Clearance for this information collection is requested for April 1, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–5259 Filed 3–2–95; 8:45 am]

BILLING CODE 4000–01–M

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Wholesale Power and Transmission Rates, Pacific Northwest Coordinating Agreement Rates, and Transmission Terms and Conditions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Additional Prehearing/Settlement Conference.

SUMMARY: *BPA File No:* WP–95, TR–95, TC–95. On December 28, 1994, Bonneville Power Administration (BPA) published a Notice of Intent to Revise Transmission Rates, 59 F.R. 66946 and Notice of Intent to Revise Wholesale Power Rates, 59 F.R. 66947. Subsequently, BPA also published **Federal Register** Notices of Proposed Wholesale Power Rate Adjustment, 60 F.R. 8496 (February 14, 1995) , Proposed Transmission Rate Adjustment, 60 F.R. 8505 (February 14, 1995), and Hearing and Opportunity for Public Comment Regarding Proposed Comparable Transmission Terms and Conditions, 60 F.R. 8511 (February 14, 1995). The Notices included a date for a Prehearing Conference of February 13, 1995, but were not published before the Prehearing Conference. At the Prehearing Conference held on February 13, 1995, the Hearing Officers set another Prehearing/Settlement Conference and established a schedule for interventions to these proceedings, which follows. At the March 15 Prehearing/Settlement Conference, the Hearing Officers will act on petitions to intervene.

DATES: The Prehearing/Settlement Conference will be held before the Hearing Officers at 9 a.m. on March 15, 1995 in the BPA Rates Hearing Room, 3rd Level, 2032 Lloyd Center, Portland, Oregon. Registration for the Prehearing/Settlement Conference will begin at 8:30 a.m. The Hearing Officers will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs, and for expediting any necessary cross examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the Prehearing Conference must be made in person or through a representative at the Prehearing Conference.

The Prehearing/Settlement Conference for wholesale power and transmission rates will be held at the same time and place as the Prehearing/Settlement Conference for the Transmission Terms and Conditions. BPA's present intent is for the Hearing Officer for the Transmission Terms and Conditions Proceeding to be other than the Hearings Officer presiding over BPA's 1995 Power and Transmission Rate Proceeding. However, it also is BPA's intent to merge as much as possible the schedules and records for these two proceedings in order to address common transmission issues efficiently. At the Prehearing/Settlement conference, BPA may move to consolidate common transmission issues.

Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with the requirements stated in this Notice. Petitions to intervene must be received by March 6, 1995. Persons intervening in the wholesale power and transmission rate proceeding who also desire to intervene in the transmission terms and conditions proceeding may file a single petition which specifically identifies both proceedings. Petitions to intervene should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

In addition, a copy of the petition must be served concurrently on BPA's Office of Legal Services: Janet L. Prewitt, Bonneville Power Administration, Office of Legal Services—LQ, 905 NE. 11th Ave., P.O. Box 3621, Portland, Oregon 97208.

Interventions in the Terms and Conditions Proceeding must be served concurrently on: Stephen Larson, Office of Legal Services—LP, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 3621, Portland, Oregon 97208.

Persons who have been denied party status in any past BPA rate proceeding shall be denied party status unless they establish a significant change of circumstances.

BPA has determined that its initial proposal should include a stable, 5-year rate for most, if not all, of its requirements service. BPA anticipates that the work necessary to assemble such a proposal will take until early April of 1995. Since such a rate would be available to purchasers for the bulk of BPA's firm sales, its impact on BPA's overall proposal is fundamental. At the same time, in order to have sufficient time to conduct a full rate proceeding for the 5-year proposal, BPA must extend its current rates for a three month period. This extension will require a separate proceeding.

The following schedule information is provided for informational purposes. The schedule included here is BPA's proposed schedule. The parties have indicated a desire to attempt to settle some issues, which may cause this proposed schedule to change. A final schedule will be established by the Hearing Officer at the Prehearing Conference.

SCHEDULE FOR NEW RATES AND TERMS AND CONDITIONS PROCEEDING

March 6, 1995	Deadline to Petition to Intervene.
March 9, 1995	Deadline to file Oppositions to Petitions to Intervene.
March 15, 1995.	Prehearing/Settlement Conference to set schedule and act on Petitions to Intervene; 9:00 a.m.; BPA Rates Hearing Room; 3rd Level; 2032 Lloyd Center; Portland, Oregon.
April 12, 1995	Prehearing Conference/BPA Initial Proposal available.
May 30, 1995	Parties file Direct Cases.
July 10, 1995 .	Litigants file Rebuttal Testimony.
July 24–August 11, 1995.	Cross Examination.
August 28, 1995.	Initial Briefs filed.
September 7–8, 1995.	Oral Argument.
September 29, 1995.	BPA Draft Rates Record of Decision; Hearing Officer Terms and Conditions Recommended Decision.
October 10, 1995.	Briefs on Exceptions.
October 30, 1995.	BPA Final Record of Decision.

SCHEDULE FOR EXTENSION OF CURRENT RATES PROCEEDING

March 6, 1995	Deadline to Petition to Intervene.
March 9, 1995	Deadline to file Oppositions to Petitions to Intervene.
March 15, 1995.	Prehearing/Settlement Conference to set schedule and act on Petitions to Intervene; 9:00 a.m.; BPA Rates Hearing Room; 3rd Level; 2032 Lloyd Center; Portland, Oregon.
April 12, 1995	Prehearing Conference/ BPA initial Proposal available.
May 15, 1995	Parties file Direct Case.
June 8, 1995 .	Litigants file Rebuttal testimony.
June 23, 1995	Cross Examination.
July 7, 1995 ...	Initial Briefs Filed.
July 31, 1995 .	BPA Final Record of Decision.

The schedule for extension of current rates assumes that the Administrator will waive any procedural rules relating to filing a Draft Record of Decision.

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the Prehearing Conference. A notice of the dates, times, and locations of the field hearings will be made later through a **Federal Register** Notice, mailings, and public advertising.

ADDRESSES: Written comments by participants must be received by June 16, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager, Corporate Communications—CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed immediately above, (503) 230–4328 or call toll-free 1–800–622–4519. Information also may be obtained from:

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box 3621; Portland, OR 97232 (503–230–5356).

Mr. George Eskridge; Manager, SE Sales and Customer Service District; 1101 W. River, Suite 250; Boise, ID 83702 (208–334–9137).

Mr. Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201 (509–353–2518).

Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660 (360–418–8600).

Ms. Marg Nelson; Manager, NW Sales and Customer Service District; 201 Queen Anne Ave. N., Suite 400; Seattle, WA 98109–1030 (206–216–4272).

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates. Mr. Dennis Metcalf, BPA Transmission Team Lead, is the official responsible for the development of BPA's transmission terms and conditions.

SUPPLEMENTARY INFORMATION:

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I. Background.
II. Procedures Governing Rate Adjustments and Public Participation.

I. Background

On February 13, 1995, BPA held a Prehearing Conference in its 1995 Wholesale Power Rates, Transmission Rates and Transmission Terms and Conditions Proceedings, presided over by Hearing Officers Keith Callow and Helen Edwards. At the time the Prehearing Conference was held, the **Federal Register** Notice announcing the Prehearing Conference had not yet been published in the **Federal Register**. Thus, some potential parties had not had adequate notice and opportunity to intervene, nor had parties had opportunity to file oppositions to interventions.

In addition, the noticed Prehearing Conference was intended for the Hearing Officers to set the schedule for the proceedings. At the Prehearing Conference, BPA tendered its proposed schedule, which is reprinted in this **Federal Register** Notice. The parties, however, believed that the schedule was inadequate. As a compromise, it was suggested that additional meetings, including an additional on-the-record Prehearing/Settlement Conference be scheduled to address both scheduling and intervention issues. The Hearing Officers endorsed this compromise, and the schedule for interventions and the March 15, 1995, Prehearing/Settlement Conference noted above is the result.

Prior to the February 13, 1995, Prehearing Conference, BPA prepared a Draft Service List for adoption by the Hearing Officers, based on interventions received by February 13. The Hearing Officers conditionally allowed interventions received by February 13, subject to objections by parties filed by March 9, 1995, as noted in the schedule above. Additional persons wishing to intervene may do so by filing a petition by March 6, 1995, with service to all parties on the Draft Service List, which may be obtained by contacting: Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999, Portland, Oregon 97212, (503) 230–4201.

In addition, the Hearing Officers adopted two procedural orders which also may be obtained from Mr. Troy, the first adopting Special Rules of Practice for the Proceedings and the second addressing Rules for Document Numbering.

To aid BPA in providing the notice required under the *ex parte* rules, the Hearing Officers have ruled that each party must provide BPA with either an internal E-mail address or a Fax number for service of notices. Additional parties planning to intervene should also provide either an internet E-mail address or Fax number for service of documents.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record. This proceeding will be governed by BPA's rules for general rate proceedings, § 1010.9 of BPA's Procedures, due to the importance and complexity of the issues involved. These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

BPA's Procedures distinguish between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the Procedures as any person who may express views, but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the Prehearing Conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by June 16, 1995. This date is anticipated to follow the submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications, at the address listed in the Summary section of this Notice, above. In addition, BPA will hold several field hearings in the Pacific Northwest Region. Participants may appear at the field hearings and present oral testimony. The transcripts of these hearings will be a part of the record upon which the Administrator makes the rate decision.

The second category of interest is that of a "party" as defined in § 1010.2 and 1010.4 of BPA's Procedures. Parties may

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participate in any aspect of the hearing process.

Persons wishing to become a formal "party" to BPA's rate proceeding must notify the Hearing Officer and BPA in writing of their request. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Intervention Petitions will be available for inspection in BPA's Public Information Center; 1st Floor; 905 NE. 11th; Portland, Oregon. Any opposition to a Petition to Intervene must be filed with the Hearing Officer and served on all parties by March 9, 1995. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored and may not be accepted. Opposition to an untimely Petition to Intervene shall be filed and served within two days after service of the petition. Interventions are subject to § 1010.4 of BPA's Procedures.

Because of the complexity of the issues in this rate case, in part occasioned by continuing contract negotiations between BPA and its customers, as well as BPA's "reinvention" and Competitiveness Project, BPA anticipates that it will need to meet with customers and other interested third parties during the rate case on a very frequent, and possibly extended, basis. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving rate case issues for participation by all rate case parties. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding. Consequently, parties should be prepared to attend meetings every day during the course of the rate case.

Issued in Portland, Oregon on February 24, 1995.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 95–5176 Filed 3–2–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–109–000]

CNG Transmission Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed TL–470, Extension 5 Project and Request for Comments on Environmental Issues

February 27, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed by CNG Transmission Corporation (CNG) for its TL–470, Extension 5 Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

CNG requests Commission authorization to construct and operate about 4.73 miles of 30-inch-diameter natural gas pipeline loop in Rotterdam Township, Schenectady County, New York.

The proposed loop would be constructed parallel and adjacent to CNG's existing facilities and would begin at a new gate station on CNG's system near Gregg Road and end at a new gate station near Burdeck Street.

CNG indicates that the proposed facility would enable it to deliver additional natural gas to Niagara Mohawk Power Corporation's distribution system serving the Albany, New York area.

The location of the project facility is shown in appendix 1.[2]

Land Requirements for Construction

CNG proposes to use a 75-foot-wide right-of-way for construction. Since CNG proposes to construct its pipeline near the edge of its existing, maintained right-of-way, only about 50 feet of additional right-of-way width would be cleared for construction. Following construction, 25 feet of the additional width would be restored and allowed to revert back to its former use. Therefore, only about 25 feet of additional permanent right-of-way width would be required.

Additional working space would be required adjacent to the planned construction right-of-way at bored road crossings, the Delaware and Hudson Railroad crossing, stream and wetland crossings, and in agricultural areas where topsoil would be segregated.

An approximate 600-foot by 600-foot (8.3 acres) pipeyard would be used for the construction trailer and storage of pipe.

Four existing roads or farm lanes would be used as access roads.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries and wetlands
- Vegetation and wildlife
- Land use
- Cultural resources
- Hazardous waste
- Endangerd and threatened species
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facility and the environmental information provided by CNG. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed loop would cross Poentic Kill, Plotter Kill and six other small, unnamed streams or drains. Poentic Kill is a state-protected stream.
- About 2.2 acres of wetlands would be affected by the project.
- About 15 acres of upland forest would be disturbed.
- The Plotter Kill Nature Preserve would be crossed.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP95–109–000;
- Send a copy of your letter to: Mr. Howard J. Wheeler, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before April 5, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Wheeler at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 358.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Howard Wheeler, EA Project Manager, at (202) 208–2299.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5224 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–38–000]

Ouachita River Gas Storage Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Ouachita River Gas Storage Project

February 27, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Ouachita River Gas Storage Company, L.L.C. (Ouachita) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed underground gas storage facility and related hub facilities including:

- About 5 miles of 6-, 8-, and 12-inch-diameter field gathering lines (designated as Lines FG–1, FG–2, and FG–3) in Lincoln and Union Parishes, Louisiana;
- About 2.6 miles of dual 24-inch-diameter header pipeline (designated as Lines B and C) and four meter stations in Ouachita Parish, Louisiana;
- About 23.9 miles of 24-inch-diameter bi-directional flow transmission pipeline (Line A) in Lincoln, Union, and Ouachita Parishes, Louisiana;
- About 4.5 miles of 16-inch-diameter bi-directional flow transmission pipeline (line D) and one meter station in Ouachita Parish, Louisiana;
- A 6,260-horsepower (hp) Remote Compressor Station in Ouachita Parish, Louisiana;
- A 12,520-hp Central Compressor Station in Section 30–T19N–R1W, Union Parish, Louisiana; and
- Drill 11 injection/withdrawal wells and 2 observation wells in Lincoln and Union Parishes, Louisiana.

The purpose of the proposed facilities would be to provide about 27 billion cubic feet of working gas capacity with an estimated peak withdrawal capacity of 550 MMcf of gas a day and an estimated peak injection capacity of 250 MMcf of gas a day via the hub facilities. The hub facilities near Monroe, Louisiana would be interconnected with certain interstate and intrastate pipelines.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, NE., room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Herman Der, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0896.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–38–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426.

Comments should be filed as soon as possible, but must be received no later than April 3, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Herman Der, Environmental Project Manager, room 7312, at the above address.

[1] CNG's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need interventor status to have your comments considered.

Additional information about this project is available from Mr. Herman Der, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5223 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–219–000]

ANR Pipeline Co.; Notice of Request Under Blanket Authorization

February 27, 1995.

Take notice that no February 22, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–219–000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) to operate facilities, which were constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978, under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR seeks authorization to operate an interconnection (Edon Interconnection) under provisions of Section 7(c) of the Natural Gas Act. The Edon Interconnection allows an existing customer Ohio Gas Company, to deliver natural gas to the town of Edon, Ohio providing service to residential customers. The Edon Interconnection is located in Williams County, Ohio. The facilities consist of two 4-inch hot taps and metering facilities. The two 4-inch hot taps are located on ANR's existing 24-inch and 22-inch pipelines that connect to the metering facilities. The metering facilities consist of one 2-inch positive displacement meter, one 2-inch turbine meter and one electronic measurement computer all contained within a metering building. ANR states that the total cost of the facilities is approximately $171,000. ANR states that the capacity of the facilities is approximately 5,500 Mcf per day at 600 psig.

ANR states that authorization for the addition and operation of the Edon Interconnection will not impact ANR's gas supply situation and that deliveries of natural gas at this point can be made without detriment or disadvantage to any existing customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5225 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR94–16–000]

Southern California Gas Co.; Informal Settlement Conference

February 27, 1995.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Friday, March 10, 1995 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and participants, as defined by 18 CFR 385.102 (b) and (c). Persons wishing to become a party must move to intervene and receive intervenor status pursuant to § 385.214 of the Commission's regulations.

For additional information, please contact Mark E. Hegerle at (202) 208–0287.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5226 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–000, et al. (Phase III)]

Tennessee Gas Pipeline Co.; Informal Settlement Conference

February 27, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, March 14, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Dennis H. Melvin (202) 208–0042 Donald Williams (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5227 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–352–002]

Western Gas Interstate Co.; Compliance Filing

February 27, 1995.

Take notice that on February 17, 1995, Western Gas Interstate Company (Western) in compliance with the Federal Energy Regulatory Commission s (Commission) order of December 19, 1994, Western is filing a report showing the final balances of Account No. 191 and detailing any amounts collected or disbursed to date of the report including all schedules pertinent to annual PGA filings, *i.e.,* Schedules A, B, C1, C2 and D. This filing also includes tariff sheets specifying the effective date of the billings, the customers billed and the amounts. Western has not included any information concerning the nine month payment option because there were not any provisions for a nine month payment option considered as part of Western's settlement agreement.

Western states that, its filing proposes changes to its tariff sheets by issuing two tariff sheets First Revised Sheet No. 12 and Original Sheet No. 13. Western further states that the Tariff sheet are proposed to become effective April 1, 1994.

Western requested a waiver of the Commission regulation to direct bill Southern Union Gas Company for $30,559. This amount is attributable to their share of the amounts paid to El Paso Natural Gas Company as a result of the Commission decision in their rate case.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5228 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–170–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1995.

Take notice that on February 22, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, revising the provisions of Rate Schedule LMS (Load Management Service), effective December 1, 1994:

Third Revised Sheet No. 24
First Revised Sheet No. 141
First Revised Sheet No. 142
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 437

According to Granite State its tariff for restructured operations, approved in Docket No. RS93–1–000 and effective November 1, 1993, included Rate Schedule LMS (Load Management Service) which provided a monthly balancing service and a Daily Demand Service to cover swings in excess of the daily variance tolerances for transportation services at delivery points to its former sales customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State further states that both services were tied to underlying services provided by Tennessee Gas Pipeline Company (Tennessee), which had been Granite State's principal upstream supplier of natural gas supplies prior to restructuring. The monthly balancing service was tied to an Operational Balancing Agreement between Tennessee and Granite State, and Granite State contracted for the Daily Demand Service under Tennessee's Rate Schedule LMS–MA.

Granite State further states that, during the latter half of 1994, Tennessee offered its customers an option to convert Daily Demand Service to a storage service under its Rate Schedule FS–MA. According to Granite State, it and its customers accepted the option; Granite State assigned its conversion rights to Bay State and Northern Utilities and both customers contracted separately with Tennessee for storage services under Tennessee's Rate Schedule FS–MA, effective December 1, 1994.

According to Granite State, the revised tariff sheets submitted herewith eliminate the Daily Demand Service and references to the service from its Rate Schedule LMS but continue the availability of the monthly balancing service through the Operational Balancing Agreement with Tennessee.

According to Granite State, copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts, and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5229 Filed 3–2–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Kool-Fire From the Department of Energy Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure (Case No. CAC–007)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Kool-Fire from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's lines of HC and LTH burner-assisted heat pumps.

Today's notice also publishes a "Petition for Waiver" from Kool-Fire. Kool-Fire's Petition for Waiver requests DOE to grant relief from the DOE heat pump test procedure for the Kool-Fire lines of HC and LTH burner-assisted heat pumps, which operate in both the cooling and heating modes. Kool-Fire requests that the heating mode tests be waived for its burner-assisted heat pumps because the DOE procedure has no provision for testing burner-assisted heat pumps. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than April 3, 1995.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CAC–007, Mail Stop EE–43, Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than

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automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. The test procedures appear at 10 CFR Part 430, Subpart B, Appendix M.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days, or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 18, 1994, Kool-Fire filed a Petition for Waiver and an Application for Interim Waiver regarding the heat pump tests. Additional information supporting the application was provided to DOE in a letter dated January 6, 1995. Kool-Fire's application seeks a Waiver from the DOE test of heating mode operation for its burner-assisted heat pumps because the current DOE test procedure does not address burner-assisted heat pumps. Kool-Fire also applied for an Interim Waiver, based on economic hardship which would be experienced if the Application for Interim Waiver is denied.

In Kool-Fire's Application for an Interim Waiver, the company addresses the economic hardship likely to result absent a favorable determination on its application. The company states that, lacking the Interim Waiver, Kool-Fire's rejection by certain State Energy Commissions has brought the manufacturing, marketing, and distribution of its products to a virtual stand-still. In its January 6, 1995 letter, Kool-Fire included a letter from its Oregon distributor claiming that lack of a DOE waiver for the company's product was directly responsible for the loss of a 180-plus unit order. Kool-Fire further stated that the inability to meet the DOE testing requirements is impacting 100 percent of the Kool-Fire product line.

The Department knows of no other company which manufactures a heat pump similar to the Kool-Fire burner-assisted system. However, the Department has granted a waiver to Enviro Master International from the need to determine a Heating Seasonal Performance Factor (HSPF) because its heat pumps could not be tested in the heating mode using the DOE test procedure. Based on the economic hardship which will be suffered by Kool-Fire if the Application for Interim Waiver is denied and the precedent established in granting a waiver from the requirement to test a heat pump in the heating mode when the product cannot be tested using the DOE test procedure, the Department is granting Kool-Fire an Interim Waiver from the requirement to test its lines of HC and LTH heat pumps in the heating mode. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations Part 430, the following letter granting an Interim Waiver to Kool-Fire was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, February 22, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Department of Energy

Washington, DC 20585

February 22, 1995.

Mr. J.N. Friedrich, President, Kool-Fire Division of Friedrich Corporation, 1930 Lincoln Way East, P.O. Box 643, Massillon, OH 44648–0643.

Dear Mr. Friedrich: This is in response to your letters of July 18, 1994 and January 6, 1995, submitting an Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) central air conditioners and central air conditioning heat pumps test procedure for Kool-Fire's model HC and LTH burner-assisted heat pumps.

The Department agrees that the Kool-Fire lines of HC and LTH burner-assisted heat pumps contain design characteristics which prevent testing them in the heating mode according to the prescribed test procedures. Thus, it appears likely that the Petition for Waiver will be granted.

Kool-Fire's Application for Interim Waiver provides sufficient information to determine that Kool-Fire has and will continue to experience a severe negative economic impact absent a favorable determination on its Application. Therefore, Kool-Fire's Application for an Interim Waiver from the DOE test procedure for its model HC and LTH burner-assisted heat pumps is granted.

Kool-Fire shall be required to test its HC and LTH series heat pumps on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix M, for the cooling mode of operation, Section 2.1. The heating mode test, Section 2.2, is waived.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days, or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Kool-Fire

1930 Lincoln Way East Δ P.O. Box 643 Δ Massillon, Ohio 44648–0643, 216–833–2117 Δ Fax 216–833–2494

July 18, 1994.

Ms. Christine Ervin,

Assistant Secretary for Energy Efficiency, and Renewable Energy, U.S. Department of Energy, Mail Station EE–1, Forrestal Building, 1000 Independence Avenue., S.W., Washington, D.C. 20585.

RE: Petition for waiver and application for interim waiver for Kool-Fire products.

Dear Ms. Ervin: For the past few months I have been working through Mr. Ed Pollock from the DOE and with Mr. Brian Dougherty with NIST to reestablish communications to resolve a "certification procedure" and/or "request for waiver" which we began in 1990. *As of this date, Mr. Ed Pollock and I have agreed upon a course of action.* The agreed upon approach consists of and includes the following four points:

1. The "cooling mode" performance of the Kool-Fire burner-assisted heat pumps will be evaluated as per the DOE heat pump and air conditioning test procedure. Kool-Fire systems will be tested at 82 degree F and 95 degree F and have an SEER rating.

2. Kool-Fire requests a waiver from having to use the DOE test procedure to evaluate the "heating" mode performance of Kool-Fire burner-assisted heat pumps. This waiver is requested because the existing test procedure does not state how to test burner-assisted heat pumps. An HSPF rating only reflects the seasonal space heating efficiency of all-electric heat pumps, not dual fuel heat pumps like the Kool-Fire HC and LTH models.

3. While Kool-Fire's request for a waiver from the "heating" mode portion of the DOE test procedure is being pursued through the public review process, Kool-Fire requests that an "interim waiver" be IMMEDIATELY granted.

4. Kool-Fire will continue to work on the development of a NEW test procedure for testing and rating the "heating" mode performance of dual-fuel, burner assisted heat pumps. In developing this new approach, Kool-Fire expects to use portions of the existing DOE test procedures for heat pumps.

Mr. Brian Dougherty and I have exchanged a great deal of information regarding the Kool-Fire product which we manufacture and distribute throughout the United States. I would request that Mr. Dougherty, due to his extensive involvement to date, continue to be assigned to this project.

As a result of the efforts of Mr. Pollock and Mr. Dougherty, we have reached the point where there is an understanding, as stated above, on the procedure to follow to resolve the "certification" requirement. *CRITICAL mid-term and short-term components to this process are the granting of a "waiver" and "interim waiver", respectively.* Therefore, this letter will serve to initiate our formal request for a "waiver" and "interim waiver" of the HEATING operation mode of the Kool-Fire two thru four ton "split system" products for the reasons enumerated herein.

Following are excerpts of my most recent reply to Mr. Dougherty of June 28, 1994 in response to his letter of June 10, 1994 wherein I explain situations which exist that would justify your granting Kool-Fire this "interim waiver":

"A situation exists relating to our receipt of an "interim waiver". Lacking this "interim waiver", Kool-Fire's acceptance by certain State Energy Commissions has brought the distribution of our products to a virtual stand-still in those areas. This situation can and will cause both our manufacturing operation and distribution network to experience severe "economic hardship". We have been informed that with this "interim waiver", Kool-Fire distribution would be approved and we could actively compete in the market place with other heating/cooling manufactures. The sooner we have this "interim waiver" in hand, the faster we can work to develop a proper "heating" mode test procedure."

I have sent Mr. Dougherty all the information I could find related to laboratory testing, various certifications received, and numerous data compiled from field tests and subsequent reports presented since Kool-Fire's inception in 1979. Most of this testing was done in Canada by Ontario Hydro and the Canadian Gas Association (CGA), except for the AGA testing information from the early 80's on earlier versions of Kool-Fire models and current ETL certification procedures. I indexed this material to facilitate Mr. Dougherty's use and perusal. Unlike other *"unique/dual-fuel"* systems, Kool-Fire has been tested, perfected, and proven over the past 15 years, primarily in the Canadian marketplace. I believe this, in itself, lends creditability to it's concept and our requests for *BOTH the "waiver" and the IMMEDIATELY NEEDED "interim waiver".*

In this same letter to Mr. Dougherty, I commented on his suggestions regarding "possible testing methods" as follows:

I. Regarding an SEER test for Kool-Fire:

a. I see no problem conducting this test, in the COOLING mode, like a single speed heat pump or air conditioner. My only thoughts as related to the SEER test is that. * * *

IN REALITY,

Kool-Fire is a COMBINATION air conditioner, reverse cycle "heat pump" TYPE unit which utilizes an auxiliary heat absorption system that is used in conjunction with a "matched" indoor forced air heat exchanger.

Any SEER test for "cooling" must be augmented with an appropriate test for the "heating" mode, else Kool-Fire could be misconstrued to be a "cooling" only type system. This would cast untrue representation of the product and put us at a competitive disadvantage.

IN REALITY,

"COOLING" IS SECONDARY to Kool-Fire's primary design intent of "most efficient" utilization of BOTH energy sources used in the "HEATING" mode.

II. Regarding heating mode tests as Mr. Dougherty suggested:

a. There appears to be a problem differentiating a test procedure between the HC and the LTH model systems. To conduct a test at 17 Degrees F. in the "air to air" reverse cycle mode would not be indicative of a "true" indication of how any Kool-Fire system operates and would tend to misrepresent it's design purpose and intent. This also would cast an untrue representation of the product and put us at a competitive disadvantage. In fact, current electrical rates have increased to a point that now over 99% of the systems installed are the HC models. This is due to the fact that the "economic" balance point of natural gas and propane compared to electrical energy costs dictates changing to the "flame mode" at outdoor ambient temperatures of 42 degrees F. and higher.

Kool-Fire's true comparative annual "heating" test must consider the actual utilization of both energy sources used in the "heating" mode; based on the "economic" balance point of the fuels used, compared to the "thermal" balance point of a structure. These facts then could be factored with the "bin" temperature profiles similar to other DOE tests applied for competitive "year-round" system. If these type facts are determined, and if this information were published in conjuction with the results of DOE tests performed at the higher temperatures of 47 Degree dry bulb and 43 Degree wet bulb, both steady state and cyclic; this information would be an accurate representation of Kool-Fire's efficiency.

b. Due to circumstances outlined above, I question whether a need exists to be concerned with developing a procedure to perform a DOE Frost accumulation test. As I understand this test, part of the equation considers the "negative" COP during the defrost cycle when the reversing valve causes an ordinary heat pump system to switch to the "cooling" mode.

Kool-Fire LTH model has NO "negative" COP. During defrost of the Kool-Fire outdoor coil the outdoor blower turns OFF and the fossil fuel burner turns ON to defrost the coil; Kool-Fire's compressor NEVER turns "off". Kool-Fire's reversing valve DOES NOT shift and cause the inside of the structure to be cooled. Unlike "ordinary" heat pumps, the "outdoor coil" of Kool-Fire is ENCLOSED and not subject to "wind effect". 100% of the energy used for defrost is used to heat the structure. While the ice is changing to water it transfers the "latent" heat to the circulating refrigerant that is heating the structure. This situation that occurs during the defrost cycle of a Kool-Fire should be included in the annual efficiency calculations for Kool-Fire and should be reflected as a CREDIT for Kool-Fire systems.

c. Since Mr. Dougherty had talked to Mr. Dave Young, from Ontario Hydro's Research and Development Department, and Mr. Dougherty referred to the Cd (Coefficient of degradation) factor, Dave probably has made him aware how the actual field tested cyclic performance profile of Kool-Fire differs from ordinary heating systems. The difference of Kool-Fire's actual operating profile should be reflected in the Cd factor applied in any evaluation equation. Then Kool-Fire can be accurately compared to others.

III. Could Kool-Fire be tested as a "Hybrid" heat pump?

After presenting Mr. Dougherty an explanation of Kool-Fire and the differences between Kool-Fire and heating systems evaluated in the "hybrid" heating system test procedures, Mr. Dougherty and I mutually agree that:

THIS HYBRID TEST IS IN NO WAY INDICATIVE OF A "true" indication of how any Kool-Fire system functions and could

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tend to mis-represent our purpose and intent. This also would cast an untrue representation of the product and put us at a competitive disadvantage.

Kool-Fire IS NOT A HYBRID HEAT PUMP. Hybrid system tests are based on the assumption that at some outdoor temperature, the heat pump electrical energy usage for "heating" will stop and some other "single" source fuel will turn "on" for "heating". With Kool-Fire systems, the outdoor fan turns "off" when the fossil fuel burner turns "on", THE COMPRESSOR NEVER TURNS "OFF". Therefore, electricity PLUS another energy source are used simultaneously.

IV. UNIQUE Kool-Fire features vs. "ordinary" furnaces:

Some of Kool-Fire's differences compared to "ordinary" fossil fuel furnaces are as follows:

a. There is no steel plate heat exchanger, Kool-Fire is an absorption heating system causing heat to the absorbed into refrigerant which has a boiling point of −40 Degree F. (Similar to a "boiler" system)

b. Kool-Fire's absorption system surface is constantly "wet", surface temperatures never exceed 55 Degree F.

c. Combustion air, both primary and secondary, on a Kool-Fire constantly changes from +50 to −40 Degree F. due to the fact that all combustion occurs OUTDOORS.

d. Some of the test data I supplied Mr. Dougherty on Kool-Fire was done by Ontario Hydro and others throughout the 80's. I NOTED that the Canadian Gas Association (CGA) test report of November 20, 1980, on an "early" version of Kool-Fire, indicates a "tested" heating output of 12.33 KW with a "combined" measured input of 10.26 KW. THIS TEST INDICATES KOOL-FIRE HAD A COMBINED EFFICIENCY OF 120%, which NO OTHER fossil fuel appliance in the world has achieved. This data does not reflect the over 20% efficiency improvement due to design changes since that time.

e. When Kool-Fire cycles "off", unlike vented furnaces, there is little heat build-up in the exchanger because the absorption coil is exposed to outdoor ambient. Kool-Fire's outdoor exchanger cools from 55 Degrees to ambient rapidly. This fact eliminates any possibility of acid formation on the outdoor exchanger.

f. Kool-Fire's design assures that a "matched" exchange rate exists between the amount of liquid refrigerant boiling and the amount of fossil fuel burning under the outdoor exchanger. This fact of it's design insures that the surface temperature of the exchanger does not exceed 55 Degree F.

Note: A limit control set at 65 Degree F., which is located "upstream" on the compressor suction line, senses return gas temperature. Two (2) 90 Degree F. limit controls are also located on the top of the outdoor exchanger coil. Any of these controls will shut the fossil fuel burner "off", then turn the outdoor fan "on", in the event of "low" refrigerant charge in the system.

To summarize:

Kool-fire burns it's fossil fuel, OUTDOORS, and is subject to extreme fluctuation of temperatures that will have to be duplicated in order to obtain accurate test results.

Kool-Fire systems function more like a "boiler" than like a furnace. The heat transfers medium used is refrigerant instead of water. *I know of none other like it in the world.*

V. Concerning an HSPF rating for Kool-Fire systems:

At this point, Mr. Ed Pollock, Mr. Brian Dougherty, and I all agree that Kool-Fire units cannot be tested and assigned an HSPF rating because of their unique, duel-fuel, burner-assisted design. *Kool-fire DOES NOT USE any supplemental electrical resistance heat.*

VI. Thoughts about Heating Season Operating Costs (HSOC):

a. Existing DOE test procedures have been developed to provide an ACCURATE evaluation and comparison of products.

b. Instead of modifying existing procedures, is the DOE at a point that NEW test procedures are required that will reflect the Comparative Annual Integrated Fuel Efficiency (CAIFE) of Kool-Fire and other "unitue/dual-fuel" systems, that could emerge in the future?

c. DOE might consider developing a test procedure that measures the actual fuel utilization of those energy sources used in the "heating" mode based on their "economic" balance point. Then factor this information in conjunction with the "thermal" balance point of the structure.

d. Tests should consider including the TOTAL BTU OUTPUT, related costs to purchase the INPUT FUEL being consumed, and efficiencies of same. These facts could be cross-plotted on some type graph format to find the "economic" balance point of the fuels being consumed. This information could then be factored with the "bin" temperature profiles for a given geographical location. These "bin" temperatures could be the same as used by DOE in tests used for "ordinary" heating systems.

IN CONCLUSION:

The intent of all the DOE testing is to provide an accurate, fair evaluation so that United States consumers will be provided factual information to enable them to make an informed purchasing decision. Unfortunately, times are changing and technology has advanced. I realize this stretches the imagination of those in the DOE and NIST who are responsible to be sure that this intent is fulfilled.

As previously described, Mr. Ed Pollock and I have agreed upon a course of action to resolve this matter.

We will be glad to work and supply input for this test procedure in co-operation with Mr. Pollock from DOE and Mr. Dougherty from NIST. I am sure Mr. Dave Young from Ontario Hydro will be able to provide valuable input to this process. I have contacted Mr. Hank Rutkowski, a well-known Mechanical Engineer from the HVAC industry, who is knowledgeable of existing test procedures and is willing to lend his expertise. Mr. Gerry Vandaarvart, the inventor of Kool-fire from Canada, can offer valuable assistance to arrive at an accurate "certification" and proper "heating" mode test procedure.

I sincerely hope I have supplied enough facts to warrant a PROMPT, FAVORABLE RESPONSE to our "waiver" request and to motivate DOE to IMMEDIATELY grant an "interim waiver".

Respectfully,

J.N. (Jim) Friedrich, CMS,

President.

cc: Mr. Gerry Vandaarvart (Kool-Fire Research & Development)
Mr. Dave Young (Ontario Hydro)
Mr. Hank Rutkowski, Mechanical Engineer
Mr. Brian Dougherty (NIST)
Mr. Edward Pollock (DOE)

[FR Doc. 95–5291 Filed 3–2–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4720–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 30, 1995 through February 03, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–J31024–UT Rating EO2, Blanchett Park Dam and Irrigation Reservoir, Construction and Operation, Uintah Water Conservancy District (UWCD), Special-Use-Permit and COE Section 404 Permit, Ashley National Forest, Vernal Ranger District, Uintah County, UT.

Summary

EPA supported the USFS selection of No Action as the agency preferred alternative. EPA expressed environmental objections with the build alternative due to the unmitigable impacts to over 50 acres of montane peat fen and loss of a portion of a genetically pure native salmonid population.

ERP No. D–AFS–L65235–ID Rating EO2, Boise River Wildfire Recovery Project, Implementation, North Fork Boise River and Mores Creek Drainages, Boise National Forest, Idaho City and Mountain Home Ranger Districts, Boise and Elmore Counties, ID.

Summary

EPA expressed objections to the sale's potential effect on water quality. Additional information is needed on cumulative effects, water quality/fish habitat effectiveness monitoring and documentation for environmental effort predictions.

ERP No. D–AFS–L81011–AK Rating LO, Helicopter Glacier Landing Tours, Implementation, Issuance of Special-Use-Permits, Tongass National Forest, Chatham Area, Juneau Ranger District, Alaska.

Summary

EPA had no objection to the proposed action.

Final EISs

ERP No. F–BLM–L67027–ID Stone Cabin Open Pit Gold and Silver Mine Development and Operation, Plan of Operations Approval and NPDES Permit Issuance, Florida Mountain, Boise District, Owyhee County, ID.

Summary

EPA continued to have environmental concerns with the preferred alternative. EPA's concerns are based on the proposed mitigation plan for the COE Section 404 permit application for wetland fill and on the effectiveness of the proposed treatment technology at the Delamar mine site.

Dated: February 28, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–5304 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4720–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed February 20, 1995 Through February 24, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950057, DRAFT EIS, DOE, WA, Washington Windplant No. 1, Construction and Operation, 115 Megawatt (MW) Windpower Project, Conditional-Use-Permit, NPDES and COE Section 404 Permits, Klickitat County, WA, Due: April 17, 1995, Contact: Kathy Fisher (503) 230–4275.

EIS No. 950058, DRAFT EIS, FRC, WI, Wisconsin River Basin Hydroelectric Project, Application for Licensing for ten FERC Hydroelectric Projects: Nos. 2119, 2239, 2476, 1999, 2212, 2590, 2256, 2255, 2291 and 2292, Vilas, Forest, Oneida, Lincoln, Marathon, Portage and Wood Counties, WI and Gogebic County, MI, Due: April 17, 1995, Contact: Sabina Joe (202) 219–1648.

EIS No. 950059, FINAL EIS, AFS, OR, Washington Analysis Area/Baker City Municipal Watershed Project, Implementation, Wallowa-Whitman National Forest, Baker Ranger District, Baker County, OR, Due: April 03, 1995, Contact: Chuck Ernst (503) 523–1901.

EIS No. 950060, FINAL EIS, NPS, NV, AZ, Lake Mead National Recreation Area, Management of Burros, Implementation, Clark Co., NV and Mohave Co., AZ, Due: April 03, 1995, Contact: Kent Turner (702) 293–8946.

EIS No. 950061, DRAFT EIS, AFS, CA, San Bernardino National Forest, Realignment and Reconstruction, Falls Road, Implementation, San Bernardino County, CA, Due: April 17, 1995, Contact: Hal Seyden (909) 884–6634.

EIS No. 950062, DRAFT EIS, AFS, CO, Loveland Ski Area Master Development Plan, Implementation, Arapaho National Forest, Clear Creek Ranger District, Clear Creek County, CO, Due: April 17, 1995, Contact: Sue Greenley (303) 567–2901.

EIS No. 950063, FINAL EIS, USN, RI, Davisville Naval Construction Battalion Center, Base Reuse and Development Plan, Implementation, Town of North Kingstown, Washington County, RI, Due: April 03, 1995, Contact: Robert Ostermueller (215) 595–0759.

EIS No. 950064, DRAFT EIS, USN, PA, Philadelphia (Former) Naval Base Hospital Disposal and Reuse, Implementation, City of Philadelphia, PA, Due: April 17, 1995, Contact: Tina Deininger (610) 595–0759.

EIS No. 950065, FINAL EIS, USN, CA, US Navy Lease of Fleet and Industrial Supply Center, (Naval Supply Center) Property of the Port of Oakland for Develcpment of Intermodal Rail Facilities and Maritime Cargo-Related Tenant Uses, Alameda County, CA, Due: April 03, 1995, Contact: Raymond Chiang (415) 244–3022.

Dated: February 28, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–5305 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5162–8]

Committee Meetings of the Grand Canyon Visibility Transport Commission

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) is announcing a meeting of the Public Advisory Committee (PAC) of the Grand Canyon Visibility Transport Commission (Commission).

The PAC will meet from 10:00 a.m., MST on Thursday, March 9, to 12:00 Noon on Saturday, March 11, at the Woodlands Plaza Hotel, 1175 West Route 66, Flagstaff, Arizona. Activities on Thursday, March 9, will include a briefing on technical documents produced by the Commission's various committees, and a field trip to a visibility monitoring station at the Grand Canyon. Friday, March 10 and Saturday, March 11, will be devoted to a workshop during which the PAC will review the Commission's emissions inventory, emissions management scenarios, economic and demographic projections, and methodologies for assessing social, environmental, equity, and administrative impacts of emissions management scenarios.

The Commission was established by the EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). All meetings are open to the public. These meetings are not subject to provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governor's Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

Dated: February 23, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–5016 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5164–3]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory

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Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office, unless otherwise specified. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis.

1. Executive Committee (EC)

The Science Advisory Board's Executive Committee will conduct a public teleconference meeting on Monday, March 20, 1995, between the hours of 1 p.m. and 3 p.m. The meeting will be coordinated through a conference call connection at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Additional instructions about how to participate in the conference call (in person or via telephone) can be obtained by calling Ms. Constance Valentine at (202) 260–6552 or FAX (202) 260–7118 no later than March 13.

This is the first conference call meeting conducted by the Executive Committee. It stems from a recommendation of the Board's self-study committee that the SAB explore methods for speeding final action on reports from the Board's various committees. By conducting the final review of reports via conference call that take place between the quarterly face-to-face meetings of the Executive Committee, the production for final SAB reports can be shortened by as much as several weeks.

In this meeting the Executive Committee plans to review three reports from two of its Committees: (1) Environmental Health Committee—(a) Review of the Agency's Reproductive Toxicity Risk Assessment Guidelines and (b) Commentary on the Benchmark Dose; and (2) Drinking Water Committee—Review of the Agency's Arsenic in Drinking Water Document. Copies of these documents are available from Ms. Valentine at the above phone numbers.

Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Mr. A. Robert Flaak, Acting Designated Federal Official for the Executive Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–6552; FAX (202) 260–7118; or via the INTERNET at FLAAK.ROBERT@EPAMAIL.EPA.GOV.

2. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the SAB will meet on March 17, 1995, at the Holiday Inn, 550 C Street SW., Washington, DC. The meeting will begin at 8:30 a.m. and end no later than 5 p.m.

The Research Strategies Advisory Committee routinely reviews broad issues related to the planning and management of research activities within the Agency. At this meeting, RSAC will receive briefings on the FY 1996 President's Budget Request for the Office of Research and Development (ORD), the status of several management and reorganization initiatives within ORD, and the Agency's Research Strategic Planning activities. Based on these presentations, RSAC will offer recommendations to the Agency and develop its agenda for formal reviews later in this fiscal year.

Members of the public desiring additional information about the meeting, including a draft agenda, should contact Mrs. Constance Valentine, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street SW., Washington DC 20460, by telephone at (202) 260–6552 or fax at (202) 260–7118. Anyone wishing to submit written comments must forward at least 35 copies of their comments to Dr. Edward S. Bender, Designated Federal Official, at the above address, no later than March 13 for distribution to the Committee and the interested public. Dr. Bender may also be contacted via the INTERNET at: BENDER.EDWARD@EPAMAIL.EPA.GOV.

3. Radionuclide Cleanup Standards Subcommittee (RCSS) of the Radiation Advisory Committee (RAC)

The Radionuclide Cleanup Standards Subcommittee (RCSS) of the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will continue its review of the technical basis of the Agency's Cleanup Standards for Radionuclides with a public teleconference meeting on Monday, March 27, 1995 from 11 am to 1 p.m. The RCSS formally began this review at its first public meeting on the topic on October 27 and 28, 1994 (See **Federal Register** Vol. 59, No. 191, Tuesday, October 4, 1994, pages 50600–50601), and had a follow-up review meeting on January 26 and 27, 1995 (See **Federal Register** Vol. 60, No. 5, January 9, 1995, pp. 2386–2387). This teleconference meeting is open to the public, but the number of lines available is limited and available on a first-come basis. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun at (202) 260–6552 or FAX (202) 260–7118 no later than March 21, 1995.

The draft documents that are the subject of this review are available from the originating EPA office (see below) and are not available from the SAB Office. These draft documents are: (1) Radiation Site Cleanup Regulations: Technical Support Document for the Development of Radionuclide Cleanup Levels for Soil, Review Draft, September, 1994. and (2) Radiation Site Cleanup Regulations: Technical Support Document for the Development of Radionuclide Cleanup Levels for Soil, Appendices, September 1994.

To discuss technical aspects of the draft documents, please contact Dr. Anthony B. Wolbarst, Chief, Remedial Guidance Section, Office of Radiation and Indoor Air (ORIA) (6603J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, tel. (202) 233–9392. To simply obtain copies of the draft documents, please contact Ms. Virginia Stradford, Secretary, at (202) 233–9350, FAX (202) 233–9650. The background documents that support this review, as well as the draft documents listed above are available in the Agency's Air and Radiation Docket. Please address written inquiries as follows: USEPA, Attn: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–93–27, Room M1500, First Floor, Waterside Mall, 401 M Street SW, Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays, in Room M1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Lynn Johnson, ORIA Staff at (202) 233–9383.

The charge to the SAB is as follows:

(a) Is the methodology used by the Office of Radiation and Indoor Air (ORIA) for evaluating source terms for radioactively contaminated sites, for modeling transport to people, and for estimating risk to individuals and populations acceptable for providing a technical basis for writing a cleanup standard?

(b)(1) Are the assumptions for the combined residential/agricultural land use scenario, and the pathways model, reasonable and suitable for assessing risk at radioactively contaminated sites?

(2) Are the assumptions for the combined industrial/commercial land use scenario, and the pathways model, reasonable and suitable for assessing risk at radioactively contaminated sites?

(c) Is RESRAD version 5.01 suitable for modeling radiation risk to individuals at radioactively contaminated sites?

Members of the public who wish to make a brief oral presentation at this teleconference should contact Mrs. Diana L. Pozun, Staff Secretary, RCSS, (tel. 202–260–6552; FAX 202–260–7118) no later than March 21, 1995, in order to advise the Agency of your desire to participate in the teleconference and to have time reserved on the agenda for public comments. For a copy of the teleconference draft agenda, please contact Ms. Pozun at the numbers given above. For questions regarding technical issues to be discussed, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Science Advisory Board (1400F), US EPA, 401 M Street SW., Washington DC 20460, by telephone at (202) 260–2560, FAX at (202) 260–7118, or via the INTERNET at: KOOYOOMJIAN.JACK @EPAMAIL.EPA.GOV.

4. Clean Air Scientific Advisory Committee (CASAC)

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on March 21 and 22, 1995 at the Omni Europa Hotel, 1 Europa Drive, Chapel Hill, North Carolina 27514. Phone: (919) 968–4900. The meeting will begin at 9 am and end no later than 5 pm on both days. The Committee will meet to review and provide advice on the scientific and technical adequacy of two EPA draft documents under preparation for use by the Agency in decision-making on possible retention or revision of the current National Ambient Air Quality Standards (NAAQS) for Ozone. The documents to be reviewed are (a) the revised Air Quality Criteria for Ozone and Related Photochemical Oxidants (Ozone Criteria Document, CASAC Review Draft, February, 1995; prepared by the Environmental Criteria and Assessment Office of the U.S. EPA Office of Research and Development—ECAO) and (b) the Review of National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—Draft Staff Paper (the Staff Paper; prepared by the U.S. EPA Office of Air Quality Planning and Standards—OAQPS).

Ozone Criteria Document

The Revised version of the draft Ozone Criteria Document (CASAC Review Draft, February 1995) incorporates revisions made in response both to public comments on a December 1993 External Review Draft (EPA/600/AP–93/004a, b, c) of the document and to CASAC comments on that earlier draft from a July 1994 review meeting. In its review of the Ozone Criteria Document, the CASAC will focus on several key subjects, including the following:

(a) *Acute Ozone Exposure Effects on Human Health:* Has the new data on acute ozone exposure effects (1 to 2 hour and 6 to 8 hour exposures) been adequately characterized in the revised Criteria Document? What is the public health significance of these findings from humans exposed to ozone concentrations lower than or equal to the current standard while undergoing intermittent, moderate exercise? To what extent does the data from acute exposure studies support the potential for possible chronic irreversible effects?

(b) *Chronic Effects of Ozone in Laboratory Animals:* Recently, information has been developed from chronic exposures (in diurnal or seasonal exposure patterns) of laboratory animals to near-ambient levels of ozone. How can the chronic effects data from laboratory animal studies be credibly interpreted with regard to whether long-term exposure to ozone leads to development or exacerbation of chronic lung disease? Do the recent dosimetry model results discussed in the Criteria Document allow for application of this information to risk assessment for human population groups?

(c) *Characterization of Ozone Vegetation Effects:* Characterization of ozone exposure parameters associated with effects on plants remains controversial. Has the Ozone Criteria Document adequately assessed and interpreted the available scientific literature on this subject (especially relative to agricultural crops, tree growth and reproduction, and subsequent impacts on natural ecosystems)? Of crucial interest is the relative importance of peak versus mid-level ozone concentrations in eliciting responses in plants.

Ozone Staff Paper

The February 1995 Draft Ozone Staff Paper draws upon scientific evaluations contained in the above-mentioned Ozone Criteria Document and other information (e.g., estimated human exposures and risks) to assess health effects due to ozone. The draft Staff Paper includes preliminary staff conclusions and recommendations for further consideration of alternative primary NAAQS for ozone. A subsequent draft of the Ozone Staff Paper will include information and assessments of ecological effects. The key issues listed above, of interest in review of the Draft Ozone Criteria Document, are also important in the review of the Draft Ozone Staff Paper. In addition, CASAC will review the results of the Agency's (OAQPS) human exposure and health risk analyses.

Availability of Documents

Copies of the revised Draft Ozone Criteria Document will be mailed to parties who submitted comments to EPA on the earlier December 1993 External Review Draft. A limited number of copies of the Criteria Document will also be available to interested parties at the March 21–22, 1995 CASAC meeting. Copies will also be available for public inspection in the EPA Air Docket (401 M St., S.W., Washington, DC). Following the March 21–22, 1995 meeting, further revisions to reflect that review and final editorial changes will be made to produce a final version of the document in time for EPA publication in 1995. For more information regarding the draft Criteria Document, contact Diane Ray (Phone: 919–541–3637; FAX: 919–541–1818).

Single copies of the Ozone Staff Paper may be obtained from Dr. David J. McKee, Air Quality Standards and Strategies Division, Office of Air Quality Planning and Standards (MD–15), U.S. EPA, Research Triangle Park, NC 27711. Dr. McKee can also be reached by phone at (919) 541–5288 or by FAX at (919) 541–0237. The Office of Air Quality Planning and Standards (OAQPS) will accept written comments from the public on all aspects of their draft of the Ozone Staff Paper. Written comments will be accepted by Dr. McKee through April 15, 1995. Comments should be sent to Dr. McKee at the previously stated address.

Single copies of the draft exposure analyses, and a draft health risk assessment report are available by contacting Mr. Harvey Richmond, U.S. EPA, MD–15, Research Triangle Park, NC 27711. Mr. Richmond can also be reached by phone at (919) 541–5271 or by FAX at (919) 541–0824. OAQPS will accept written comments from the public on all aspects of their draft exposure and risk analyses reports. Please forward comments to Mr. Richmond through April 15, 1995 at the previously stated OAQPS address.

Members of the public desiring additional information about the meeting should contact Mr. Randall Bond, Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–8414 or by FAX at (202) 260–1889, or via the INTERNET at

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BOND.RANDALL@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda and the charge to the committee should contact Ms. Lori Anne Gross at (202) 260–8414 or by FAX at (202) 260–1889 or via the INTERNET at GROSS.LORI@EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available by contacting Ms. Gross at the previously stated address.

Members of the public who wish to make a brief oral presentation to the Committee concerning the scientific issues contained in the draft document(s) must contact Mr. Bond in writing (by letter or by FAX—see previously stated information) no later than 12 noon Eastern Time, Friday, March 10, 1995 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g. overhead projector, 35mm projector, chalkboard, etc.), and provide at least 35 copies of an outline of the issues to be addressed or the presentation itself.

5. Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: February 22, 1995.

Samuel Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–5279 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5164–2]

Meeting of the Small Town Environmental Planning Task Force

On March 28 and 29, 1995, the Small Town Environmental Planning Task Force (STTF) will conduct its fourth meeting. The purpose of the meeting is to review and discuss the Agency's responses to their recommendations paper presented at the October 1994 meeting, discuss the progress of the various work groups, discusss current proposals which focus on regulatory reform and consultation, and activities necessary to comply with the provisions of the Small Town Environmental Planning Act (42 U.S.C. 6908).

The Task Force is charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying the means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and identifying the means to promoting regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic conditions of such systems and infrastructure.

The meeting will be held at the Days Inn, located at 1201 K Street NW., Washington, DC 20005. The meeting will begin at 8 a.m. on March 28th and conclude at 3:30 p.m. on March 29th.

The Designated Federal Officer (DFO) for this Committee is Christine Zawlocki. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0244 or by writing to: U.S. EPA, 401 M Street SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Christine Zawlocki,

Designated Federal Official, Office of Regional Operations and State/Local Relations.

[FR Doc. 95–5277 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–S164–4]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation & Liability Act of 1980 (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of five parties for certain response costs incurred by EPA at the Rockaway Borough Well Field Superfund Site.

DATES: Comments must be provided by not later than April 3, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th floor, 290 Broadway, New York, New York 10007–1866 and should refer to: In the Matter of the Rockaway Borough Well Field Superfund Site, U.S. EPA Index No. II CERCLA–94–0123.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th floor, 290 Broadway, New York, New York 10007–1866, (212) 264–3415, Attention: Bruce Aber, Esq.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Rockaway Borough Well Field Superfund Site which is located in Rockaway, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

Klockner & Klockner, a general partnership, Multi-form Metals, Inc., Ferraz Corporation, Roned Realty Company, a limited partnership, and Lusardi's Cleaners, Inc. will pay a total of $859,365 under this agreement to reimburse EPA for certain response costs incurred at the Rockaway Borough Well Field Superfund Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, 17th floor, 290 Broadway, New York, New York 10007–1866.

Proposed Settlement under Section 122(h) of CERCLA—Rockaway Borough Well Field Superfund Site.

Dated: February 7, 1995.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 95–5278 Filed 3–2–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC); Family and Intimate Violence Prevention Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 1 p.m.–5 p.m., March 20, 1995.

Place: Holiday Inn at Lenox/Buckhead, 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The subcommittee provides advice and makes recommendations to the ACIPC regarding feasible goals for prevention and control of family and intimate violence. The subcommittee makes recommendations regarding policies, strategies, objectives and priorities; and advises on the development of a national plan for family and intimate violence and the development of new technologies and their subsequent application.

Matters To Be Discussed: The subcommittee will discuss communications and definitional issues for the Family and Intimate Violence Prevention Program.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Denise Johnson, Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, Mailstop K–60, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–4410.

Dated: February 27, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–5239 Filed 3–2–95; 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1 p.m.–3:30 p.m., March 20, 1995; 8:30 a.m.–3:30 p.m., March 21, 1995.

Place: Holiday Inn at Lenox/Buckhead, 3377 Peachtree Road, NE, Atlanta, George 30326.

Status: Closed 1 p.m.–2 p.m., March 20, and 8:30 a.m.–9 a.m., March 21; Open 2 p.m.–3:30 p.m., March 20, and 9 a.m.–3:30 p.m., March 21.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters To Be Discussed: The meeting will convene in closed session from 1 p.m. to 2 p.m. on March 20, 1995. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. On March 21, 1995, from 8:30 a.m. to 9 a.m., the meeting will convene in closed session in order for the full committee to vote on a funding recommendation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Pub. L. 92–463. Following the closed sessions, the committee will discuss (1) programmatic oversight, (2) proposed program review, (3) issues concerning NCIPC's extramural research grants program, (4) an update from the Director, NCIPC, (5) updates on injury issues from other Federal agencies, (6) a report on the current and future issues in motor vehicle injury control, and (7) a report from the ACIPC Family and Intimate Violence Prevention Subcommittee, and issues/activities relating to family and intimate violence.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Tom Bartenfield, Acting Executive Secretary, ACIPC, NCIPC, Mailstop K–60, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–4690.

Dated: February 27, 1995.

William H. Gimson,

Acting Association Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–5240 Filed 3–2–95; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

National Center for Human Genome Research; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Genome Research Review Committee.

Date: March 14, 1995.

Time: 10 a.m. to adjournment.

Place: Embassy Suites Hotel, Chevy Chase Pavilion, Washington, D.C.

Contact Person: Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Date: February 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5231 Filed 3–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Program Project: Coronary Atherosclerosis in Female Monkeys.

Date: March 16–17, 1995.

Time: 7:30 p.m.

Place: The Hawthorne Inn & Conference Center, Winston-Salem, North Carolina.

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Contact Person: Anthony M. Coelho, Jr., Ph.D., 5333 Westbard Avenue, Room 548, Bethesda, Maryland 20892, (301) 594–7485.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5233 Filed 3–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on March 30, 1995, from 4:00 p.m. to 6:00 p.m., at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, Washington, D.C. 20004 (202) 393–2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, 31 Center Drive MSC 2480 Bethesda, Maryland 20892, (301) 496–0554.

Dated: February 20, 1995.

Claude Lenfant,

Director, NHLBI.

[FR Doc. 95–5236 Filed 3–2–95; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Mental Health; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Extramural Science Advisory Board of the National Institute of Mental Health (NIMH) for April 1995.

The entire meeting will be open to the public for discussion of the NIMH grant portfolio. Attendance by the public will be limited to space available. If individuals who plan to attend need special assistance, such as sign language interpretation or other reasonable accommodations, or need other information pertaining to the meeting, notify the contact person named below in advance of the meeting.

Committee Name: Extramural Science Advisory Board, NIMH.

Contact: Andrea Baruchin, Ph.D., Executive Secretary, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4335.

Meeting Dates and Time: April 24, 1995; 8:30 a.m.—Recess; April 25, 1995; 8:30 a.m.—adjournment.

Place: Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Purpose/Agenda: To discuss the Intitute's portfolio.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: February 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5235 Filed 3–2–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: March 15, 1995.

Time: 2:30 p.m.

Place: NIH, Westwood Building, Room 209, Telephone Conference.

Contact Person: Dr. Nicholas Mazarell, Scientific Review Admin., 5333 Westbard Ave., Room 209, Bethesda, MD 20892, (301) 594–7098.

Name of SEP: Clinical Sciences.

Date: March 15, 1995.

Time: 10:45 a.m.

Place: NIH, Westwood Building, Room 219, Telephone Conference.

Contact Person: Dr. Lawrence Pinkus, Scientific Review Admin., 5333 Westbard Ave., Room 219, Bethesda, MD 20892, (301) 594–7315.

Name of SEP: Biological and Physiological Sciences.

Date: March 16, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 209, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 5333 Westbard Ave., Room 209, Bethesda, MD 20892, (301) 594–7332.

Name of SEP: Clinical Sciences.

Date: March 22, 1995.

Time: 10:00 a.m.

Place: Holiday Inn, Alexandria, VA.

Contact Person: Dr. Priscilla Chen, Scientific Review Admin., 5333 Westbard Ave., Room 219, Bethesda, MD 20892, (301) 594–7287.

Name of SEP: Clinical Sciences.

Date: March 29, 1995.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 219, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Admin., 5333 Westbard Ave., Room 219, Bethesda, MD 20892, (301) 594–7287.

Name of SEP: Multidisciplinary Sciences.

Date: March 29, 1995.

Time: 11:00 a.m.

Place: NIH, Westwood Building, Room 2A10, Telephone Conference.

Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 5333 Westbard Ave., Room 2A10, Bethesda, MD 20892, (301) 594–7188.

Name of SEP: Behavioral and Neurosciences.

Date: April 4, 1995.

Time: 12:00 noon.

Place: NIH, Westwood Building, Room 319C, Telephone Conference.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard Ave., Room 319C, Bethesda, MD 20892, (301) 594–7358.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5232 Filed 3–2–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: March 20, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 2A07B, Telephone Conference.

Contact Person: Dr. Nada Vydelingum, Scientific Review Administrator, 5333 Westbard Ave., Room 2A07B, Bethesda, MD 20892, (301) 594–7350.

Name of SEP: Behavioral and Neurosciences.

Date: March 24, 1995.

Time: 9:00 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 5333 Westbard Ave., Room 325B, Bethesda, MD 20892, (301) 594–7132.

Name of SEP: Biological and Physiological Sciences.

Date: March 28–29, 1995.

Time: 9:00 a.m.

Place: Georgetown Holiday Inn, Washington, DC.

Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 5333 Westbard Ave., Room 425A, Bethesda, MD 20892, (301) 594–7336.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc..95–5234 Filed 3–2–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Rescission of Social Security Acquiescence Ruling 87-1(6)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 87-1(6)—*Webb* v. *Richardson*, 472 F.2d 529 (6th Cir. 1972).

SUMMARY: In accordance with 20 CFR 404.985(e) and 422.406(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87-1(6).

EFFECTIVE DATE: March 3, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(2), a Social Security Acquiescence Ruling may be rescinded as obsolete if a circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling.

On January 6, 1987, we issued Acquiescence Ruling 87-1(6) to reflect the holding in *Webb* v. *Richardson*, 472 F.2d 529 (6th Cir. 1972), that the tribunal that ultimately allows an individual's retirement, survivor's or disability insurance (title II) claim may approve an attorney's fee covering services provided during the entire appeal process (at both the administrative level of review and before the Federal courts) and that such approved fee is limited to 25 percent of the past-due benefits.

On September 14, 1994, the United States Court of Appeals for the Sixth Circuit issued a judgment in *Horenstein* v. *Secretary of Health and Human Services*, 35 F.3d 261 (6th Cir. 1994) (en banc), in which it overruled *Webb* and joined seven other circuit courts by holding that a tribunal may award attorneys' fees only for the services performed before the tribunal. The Sixth Circuit also held that only fee awards for services performed in Federal courts, not awards for services performed before the Secretary, are limited to 25 percent of past-due benefits. The Sixth Circuit recognized that section 206(b)(1) of the Social Security Act (the Act) establishes a separate standard for awarding attorneys' fees for services performed in cases before the Federal courts and that those fees may not exceed 25 percent of the total past-due benefits. The Sixth Circuit also recognized that Congress made specific provision under section 206(a)(1) of the Act for awarding reasonable attorneys' fees for services performed before the Secretary at the administrative level, and that these fees are not limited by past-due benefits. Furthermore, the circuit court found that in cases involving court remands the court will set attorneys' fees, limited to 25 percent of past-due benefits, for services performed before it and that the Secretary will separately set reasonable attorneys' fees for the services performed at the administrative level.

Because the Sixth Circuit's judgment in *Horenstein* overruled the holding in *Webb* that resulted in our issuance of Acquiescence Ruling 87-1(6), we are rescinding that Acquiescence Ruling.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security - Retirement Insurance; 93.805 Social Security - Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners.)

Dated: December 28, 1994.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–5241 Filed 3–2–95; 8:45 am]

BILLING CODE 4190–29–F

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or

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revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU-LAB, Inc., 405 Alderson St., Schofield, WI 54476,800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103,800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING MetPath Clinical Laboratories, 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc.)

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

Drug Proof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath Laboratories, 4900 Perry Hwy., Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286

Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986

Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory)

Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: CompuChem Laboratories, Inc.—Special Division)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the Program on February 1, 1995: Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504–465–0751.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–5247 Filed 3–2–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3894]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

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proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 22, 1995.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Quality Standards Mail Survey.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This resident mail survey will test the use of such a survey as an additional assessment instrument to determine whether local Public Housing Authorities (PHAs) are complying with Section 8 Housing Quality Standards, established by Congress to ensure the lease of decent, safe, and sanitary units to holders of Section 8 Existing Housing Vouchers and Certificates.

Form Number: None.

Respondents: Individuals or Households and State, Local, or Tribal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	2,000		1		.25		500

Total Estimated Burden Hours: 500.

Status: New.

Contact: Jacqueline A. Kruszek, HUD, (202) 708–4370; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 22, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Deed-in-Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More Than One Property).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Mortgagees must obtain written consent from local HUD Field Offices to accept a deed-in-lieu of foreclosure when the mortgagor is a corporate mortgagor or a mortgagor owning more than one property. Mortgagees must provide HUD with specific information.

Form Number: None.

Respondents: Individuals or Households.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	600		1		.5		300

Total Estimated Burden Hours: 300.

Status: Extension, no changes.

Contact: Joseph E. Baum, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 22, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Assessing Service Quality: Housing/FHA Consolidated Single Family Processing Center.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This survey seeks to measure and test methods that can provide HUD with valid and reliable information from mortgagees (mortgage lending institutions) on issues related to service quality and customer satisfaction.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	300		1		.23		70

Total Estimated Burden Hours: 70.

Status: New.

Contact: Kenneth P. Voytek, HUD, (202) 708–4504; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 17, 1995.

[FR Doc. 95–5260 Filed 3–2–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–26]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW.,

Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized an underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: February 24, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/03/95

Suitable/Available Properties

Buildings (by State)

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Bldg. T33 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick, Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized Comment: 7,270 sq. ft., 1 story bldg, most recent use—storage, structural deficiencies.

Bldg. 373, Topsham Annex
Naval Air Station
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320024
Status: Excess Comment: 1300 sq. ft., 1 story, most recent use—public works maintenance shop, on 2.55 acres

Land (by State)

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess Comment: 43.48 acres; 60% of land under lease until 8/93. GSA Number: 7–N–TX–402–V.

Suitable/Unavailable Properties

Buildings (by State)

Maine

Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME

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Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab.

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince George MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized Comment: 3067 sq. ft. 2 story, possible asbestos.

Texas

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2482
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010182
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 ft.; 1 story residence.

Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment: 1758 ft.; 1 story residence.

Bldg. 2458
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010204
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2502
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2475
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2501
Laguna Housing Area

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NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Naval Medical Clinic
6500 Hamptons Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Underutilized
Comment: 3665 sq. ft.; 1 story, possible asbestos, most recent use-laundry.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use-offices; 15% of total space occupied; needs rehab; land leased from city-expires September 1990.

Land (by State)

Alaska

Nome Site
Lot 10, Block 67
E. Fifth Avenue
Nome Co: Nome AK 99762–
Landholding Agency: GSA
Property Number: 549510007
Status: Excess
Comment: 17000 sq. ft., trailer site, no known utility hook up
GSA Number: 9-A-AK-619E

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station-next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Underutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Underutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access, use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access, most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access, most recent use—dinning hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–

Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access, most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access, most recent use—storage.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secured facilities with alternate access, most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access, most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access, most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access, most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs on it.

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area.

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area.

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area.

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area.

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area.

Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area.

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area.

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area.

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area.

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area.

Generator Bldg.
Naval Security Group Activity
Adak Island AK
Landholding Agency: Navy
Property Number: 779430017
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

California

Bldg. 105
Naval FPS, CVB Detachment
Monetery Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monetery Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility.

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779340003
Status: Unutilized
Reason: Secured Area.

Bldg. 31107
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 77942001
Status: Unutilized
Reason: Secured Area.

Bldg. 15951
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 77943006
Status: Unutilized
Reason: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material.

Bldg. 31539
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779430016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Connecticut

Bldgs. 25 and 26

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Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 419440003
Status: Excess
Reason: Secured Area.

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone.

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area.

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Other
Comment: Extensive Deterioration.

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Unutilized
Reason: Secured Area.
Comment: Extensive Deterioration.

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu Hi 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Unutilized
Reason: Secured Area, Other.
Comment: Extensive Deterioration.

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Unutilized
Reason: Extensive deterioration, Secured Area

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor, HI 96516–
Landholding Agency: Navy
Property Number: 779310048
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration.

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 463—Storage Warehouse
Barbers Point
Honolulu Co: Honolulu HI 96862–5050
Landholding Agency: Navy
Property Number: 779430019
Status: Excess
Reason: Extensive deterioration.

Bldg. 93, Naval Station
Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779440027
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 605
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419440001
Status: Excess
Reason: Extensive deterioration.

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Underutilized
Reason: Secured Area.

Bldg. 28
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Unutilized
Reason: Secured Area.

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Unutilized
Reason: Secured Area.

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area.

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Unutilized
Reason: Secured Area.

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Unutilized
Reason: Secured Area.

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Unutilized
Reason: Secured Area.

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Unutilized
Reason: Secured Area.

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Unutilized
Reason: Secured Area.

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Unutilized
Reason: Secured Area.

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–

Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area.

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Extensive deterioration.

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419430002
Status: Unutilized
Reason: Extensive deterioration.

New York

Bldg. 93
Brookhaven National laboratory
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 419510006
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. SH–7
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410017
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SH–11
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410018
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SH–13
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410019
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SH–16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410020
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SH–17
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410021
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SH–21
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410022
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SH–31
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 7794410023
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SSH–10
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410024
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS–209
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410025
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS–589
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410026
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS–590
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410027
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS–4138
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410028
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS–4139
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410029
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 867
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410030
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 939
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410031
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 940
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410032
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. H–38
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410033
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SM–173
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410034
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 1744
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410035
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. PT–42
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420002
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. S–93
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420003
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. TC–910
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–942
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–1213
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 79
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420008

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Status: Excess
Reason: Secured Area.

Bldg. 281
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420009
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 282
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420010
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 88
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420011
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 98
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420012
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 99
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420013
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1234
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420014
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1235
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420015
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1246
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420016
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1390
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420017
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1710
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420018
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1742
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420019
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1743
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420020
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1744
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420021
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 1745
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420022
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 3450
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420023
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 8067
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420024
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 3546
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420025
Status: Excess
Reason: Secured Area, Extensive deterioration.

Bldg. 9017
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430001
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 9019
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430002
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 9021
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430003
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 9023
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430004
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 9035
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430005
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Structure #AS582
New River Air Station
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430015
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS–299, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430020
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 854, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430021
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 883, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430022
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. TC–174, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430023
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. TC–179, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy

Property Number: 779430024
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 935, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430025
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Facility 1972, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430026
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 3248
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779440009
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS 552, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440010
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS 587, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440011
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. TT38, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440012
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 49, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440013
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS 147, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440014
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. BB 166, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440015
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. SM 183, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440016
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. BB 222, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440017
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 451, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440018
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 630, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440019
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. S 745, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440020
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 805, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440021
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. AS 866, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440022
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 954, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440023
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 1808, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440024
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 1810, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440025
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Structure #SVL 142
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510021
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Structure #FC 363
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510022
Status: Unutilized
Reason: Secured Area.

Structure #AS 583
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510023
Status: Unutilized
Reason: Secured Area.

Structure #1966
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510024
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Structure #2322
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510025
Status: Unutilized
Reason: Secured Area.

Ohio

Bldg. 16
RMI Environmental Services
Ashtabula Co: Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 419440002
Status: Excess
Reason: Other
Comment: Contamination: radioactive materials.

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area.

Texas

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway.

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway.

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway

Bldg. 2498
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–

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Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway.

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway.

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway.

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway.

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway.

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway.

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway.

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway.

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway.

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway.

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway.

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway.

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway.

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area.

Bldg. 14
Naval Undersea Warfare Center Div., Keyport
Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 779440001
Status: Unutilized
Reason: Secured Area

Bldg. 39
Naval Undersea Warfare Center
Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 779510020
Status: Unutilized
Reason: Secured Area. Extensive deterioration.

Land (by State)

California

Naval Air Station, Miramar
San Diego Co: San Diego CA 92145–5005
Landholding Agency: Navy
Property Number: 779440026
Status: Underutilized
Reason: Within airport runway clear zone. Other.
Comment: Inaccessible.

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway.

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Maryland

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible.

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

[FR Doc. 95–5113 Filed 3–2–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–50437]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.
ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The State of Nevada proposes to use the land for a Mens Correctional Facility.

Mount Diablo Meridian, Nevada

T. 16 S., R. 57 E.,
Sec. 31: Lots 5–16 and the NE¼, E½NW¼;
Sec. 32: Lots 1–12 and the N½.
Containing 1,280 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. NEV–043546 the under the Act of October 21, 1976 (43USC1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a prison facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a prison facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 13, 1995.

Micheal F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–5194 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–59106]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.
ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Henderson, Clark Country, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) The City of Henderson proposes to use the land for a public park.

Mount Diablo Meridian, Nevada

T. 22 S., R. 63 E.,
Sec. 9: E½W½NW¼NW¼.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 40.00 feet in width along all boundarys in favor of the City of Henderson for roads, public utilities and flood control purposes.

2. Those rights for waterline purposes which have been granted to B.M.I. by Permit No. N–1521 the under the Act of December 5, 1924 (43STAT0672).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a public park facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use

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is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 13, 1995.

Micheal F. Dwyer,

District Manager, Las Vegas, NV

[FR Doc. 95–5192 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–1430–01; N–59150]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 6: E½SE¼SE¼SW¼SE¼.
Containing 1.25 acres, more or less.

This parcel of land, situated in Las Vegas is being offered as a direct sale to the Las Vegas Valley Water District.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to an easement 30.00 feet in width along the east boundary for roads to include a 25 foot spandrel as the southeast corner, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

1. Those rights for public road purposes which have been granted to Clark County by Permit No. N–43902 under the Act of October 21, 1976 (43 U.S.C. 1761).

2. Those rights for public road purposes which have been granted to Clark County by Permit No. N–46505 under the Act of October 21, 1976 (43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**

Dated: February 21, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV

[FR Doc. 95–5193 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–HC–M

[OR–050–1600–00:G5–073]

Central Oregon Urban Interface Plan Amendment for the Brothers-LaPine Resource Management Plan, Crook, Deschutes, and Klamath Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental Notice of Intent to prepare an amendment to the Brothers-LaPine Resource Management Plan.

1. Description of the proposed planning action: To amend the Brothers-LaPine Resource Management Plan (RMP) completed in July 1989. A Notice of Intent proposing an amendment to the Brothers-LaPine Resource Management Plan was published in the **Federal Register** in March, 1992. The proposed planning action is a reinitiation of the 1992 proposal and is now scheduled to move at a more rapid pace. The planning amendment will be based upon exiting statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The amendment will provide the basis for modifying the Land Tenure section of the Resource Management Plan to provide specific direction for land exchanges and classifications involving the Recreation and Public Purposes Act. In addition, issues will include identification of limited, seasonal, and closed areas to vehicle use; non-motorized trail designations; establishment of shooting buffer zones; policy regarding forest and woodland management; collection of special forest and range products; mineral material sites; public safety; and management for healthy and diverse ecosystems. The amendment will consider special management designations of unique ecological areas including old growth juniper woodlands and will evaluate the direction of grazing management in specific allotments.

2. Identification of the geographic area involved: The planning area involved within the Brothers-LaPine RMP amendment includes approximately 184,000 acres of public lands in the "Urban Interface" adjacent to the communities of Bend, Redmond, Sisters, and LaPine. The planning area is located in portions of Crook, Deschutes, and Klamath Counties.

3. General types of issues anticipated. The proposed amendment would address possible changes in the following sections of the RMP: Area of Critical Environmental Concern (ACEC) designations, forestry, land tenure, mineral materials, range, recreation, special status species, and wildlife.

4. Disciplines to be represented and used to prepare the RMP amendment will be the following: botany, cultural resources, fire management, fisheries, forestry, geology, hydrology, realty and rights-of-way, law enforcement and natural resource protection, range, recreation, soils, volunteer coordination, and wildlife.

5. The kind and extent of public opportunities provided: Three public scoping meetings will be held in the spring of 1995 and will be announced in local newspapers, news media, and a mailed scoping document. Public participation will be carried out through participation in several document review and comment periods to be announced in the **Federal Register** and local newspapers. Oregon State and local government notification and Tribal consultation and coordination will be continued. Interested parties will receive a mailer; the approximate mailing date is March 7, 1995. Additional copies will be available at: Prineville District Office, 185 E. Fourth Street, Prineville, Oregon 97754, phone 503–447–4115.

6. Times, dates, and locations scheduled or anticipated for public meetings, hearings, conferences, or gatherings will be published in the local newspapers such as The Bulletin, The Central Oregonian, The Oregonian, The Redmond Spokesman, The Pioneer, The Nugget, and others. Public input through written comments will be emphasized.

7. Name, title, address, and telephone number of the Bureau of Land Management official who may be contacted for further information: Jim Kenna, Area Manager, 185 E. Fourth Street, Prineville, Oregon 97754, phone 503–447–8757.

8. Location and availability of documents relevant to the planning process: Documents will be available for public review at the Prineville District Office, 185 E. Fourth Street, Prineville, Oregon 97754 and in the public room at the Oregon State Office, 1515 Bldg. SW Fifth Ave. Rm. 1050, Portland, Oregon 97201, phone 503–952–6000.

Dated: February 21, 1995.

Donald L. Smith,

Acting District Manager, Prineville District Office.

[FR Doc. 95–5090 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)

PRT–798958

Applicant: Peter Houde, Department of Biology, New Mexico State University, Las Cruces, New Mexico.

The applicant requests a permit to include take activities for the salvage of various endangered and threatened species for the purpose of specific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom on Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–5189 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

PRT–799158

Applicant: Victoria J. Byrn, Oklahoma Museum of Natural History, Norman, Oklahoma.

The applicant requests a permit to include take activities for the black-capped vireo (*Vireo atricapillus*) and the Interior Least Tern (*Sterna antillarum athalassos*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–799160

Applicant: Dr. J. Scott Altenbach, University of New Mexico, Albuquerque, New Mexico.

The applicant requests a permit to include take activities for the lesser long-nosed bat (*Leptonycteris curasoae*) and Mexican long-nosed bat (*Leptonycteris nivalis*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–799157

Applicant: Dr. Albert E. Bivings, Headquarters, U.S. Army Forces Command, AFPI–ENE, Fort McPherson Georgia.

The applicant requests a permit to include take activities for the Northern aplomado falcon (*Falco femoralis septentrionalis*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 and must be received by the Assistant Regional Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–5190 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*)

PRT–799102

Applicant: Susan P. Rust, Stewardship Services, San Antonio, Texas.

The applicant requests a permit to include take activities for the golden-checked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) for the purpose of

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scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–5191 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Lake Mead National Recreation Area, Arizona and Nevada; Notice of Availability of Final Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, Department of Interior, has prepared a final environmental impact statement (FEIS) that describes and analyzes a proposed action and four alternatives for burro management within Lake Mead National Recreation Area (NRA), Mohave County, Arizona, and Clark County, Nevada

The draft Environmental Impact Statement for Burro Management was released for public review on June 28, 1994 (59 FR 123), and the public comment period closed August 31, 1994. During this period written comments were received. The FEIS contains responses to the comments received and modifications to the text as needed in response to the comments

The goal of the proposed action, designated in the FEIS as "Alternative B: Resource Based Management", is the cessation of environmental change caused by burros, and the protection of the natural, cultural, and recreational resources of Lake Mead NRA. It intends to allow the restoration of damaged park lands and the protection and preservation of native ecosystems not yet altered by burros. Burros would be removed, using live-removal techniques, fencing, sterilization and/or birth control, from portions of the park that have been so severely overutilized by burros in the past that habitat recovery is not possible with any level of burro use. Burros would also be removed within areas that have threatened, endangered, sensitive, or unique resources, or where burros cause a threat to public safety. Burros would not be allowed to expand into areas that are currently burro free. Burro presence would be tolerated in certain areas of the park where reducing the burro populations to zero is not prudent or feasible at this time, due to presence of burro populations on adjacent Bureau of Land Management administered lands, few or non-existent barriers, and the lack of practical and cost effective control methods for these areas of the park. Lands within the park near the Muddy Mountains and Gold Butte, Nevada and Arizona; portions of the Grand Wash not designated as critical tortoise habitat; and lands within the park south of the Eldorado Jeep Trail, Arizona, would be areas where burros may remain, managed to NPS standards and prescriptions, in cooperation with the Bureau of Land Management.

The alternatives under consideration, in addition to the proposed action, include "No-Action or Status Quo" (which is the continuance of the level of management that currently exists within the NRA), "No Management of Burros", "Managing a Population of Burros for Perpetuity", and "Total Removal of All Burros" Major impact topics assessed for the proposed action and alternatives include natural resources, socioeconomic resources, cultural resources, and burros.

SUPPLEMENTARY INFORMATION: The no-action period on this final environmental impact statement for burro management will extend for 30 days after a notice of its availability is published by the Environmental Protection Agency in the **Federal Register**

Inquiries about the document should be addressed to: Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada, 89005; or by calling the park at (702) 293–8949.

For copies of the FEIS, or for further information, please contact the Superintendent at the above address or telephone number. Copies of the document are available at park headquarters and at area libraries.

Dated: February 22, 1995.

Stanley T. Albright,

Regional Director, Western Region

[FR Doc. 95–5195 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Wednesday, April 5, 1995; 6:30 p.m. to 9:30 p.m.

ADDRESSES: Metropolitan Council Chambers, 230 East Fifth Street, Saint Paul, Minnesota.

An agenda for the meeting will be available by March 15, 1995, from the Superintendent of the Mississippi National River and Recreation Area at the address below. Public statements about matters related to the Mississippi National River and Recreation Area will be taken at the meeting.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by P.L. 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, MN 55101 (612–290–4160).

Dated: February 23, 1995

William W. Schenk,

Regional Director

[FR Doc. 95–5196 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–70–P

Bid Sale of Property

AGENCY: National Park Service, Interior

ACTION: Notice.

SUMMARY: This notice announces the request for sealed bids for the sale of Cuyahoga Valley NRA Tract 109–38, aka 1509 Boston Mills Road, Peninsula, Ohio. Freehold interest in the property is to be conveyed, including restrictive covenants attached to the deed. The minimum acceptable bid is $70,000 plus a $100.00 non-refundable processing fee. The fair market appraisal may be inspected at Park Headquarters, 15610 Vaughn Road, Brecksville, Ohio. Monies must be submitted separately for the bid and non-refundable fee by certified check, post office money order, bank draft or cashier's check made payable to the United State of America for the full amount of the bid and non-refundable fee and sent to Superintendent, Cuyahoga Valley NRA, 15610 Vaughn Road, Brecksville, Ohio 44141. The property will be available for inspection from 2:00 to 4:00 p.m. on April 29, 1995. Bids will be received until 2:00 p.m. on May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Superintendent John P. Debo, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, OH 44141 (216–526–5256).

SUPPLEMENTARY INFORMATION: This notice is being published in accordance with 36 CFR 17.4, July 1, 1992.

Dated: February 27, 1995

Roy F. Beasley, Jr.,

Acting Superintendent, Cuyahoga Valley NRA.

[FR Doc. 95–5197 Filed 3–2–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Publication of the Cost Recovery Percentage for 1995.

SUMMARY: The provisions of 49 U.S.C. 10709(d)(5)(A) require the Commission to calculate an annual cost recovery percentage (CRP), a revenue-to-variable cost (r/vc) ratio reflecting a hypothetical rate ceiling that would permit railroads, in the aggregate, to recover their costs of doing business. If the CRP falls between 170% and 180%, it becomes the jurisdictional threshold for determining whether railroad traffic is market dominant and hence subject to maximum rate regulation. If it exceeds 180%, then the market dominance threshold is set at 180%. Because the calculated CRP for 1995 exceeds 180%, the jurisdictional threshold applicable to calendar year 1995 is 180%.

EFFECTIVE DATE: This decision is effective April 2, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239; or H Jeff Warren, (202) 927–6243. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of our regulation is to calculate the threshold revenue-variable cost ratio for market dominance determinations as required by law. No new reporting requirements will be placed on the railroad industry. The economic impact on small entities, if any, will not likely be significant within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10709; 5 U.S.C. 553.

Decided: February 10, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5261 Filed 3–2–95; 8:45 am]

BILLING CODE 7035–01–P

Docket No. AB–3 (Sub-No. 121X)]

Missouri Pacific Railroad Company—Abandonment Exemption—in Morris and Dickinson Counties, KS

Missouri Pacific Railroad Company (MP) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 26.57-mile rail line between milepost 425.0, near Council Grove, and milepost 451.57, near Herington, in Morris and Dickinson Counties, KS.

MP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective April 2, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 13, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 23, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Joseph D. Anthofer, 1416 Dodge Street, Rm. 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 8, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

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Decided: February 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5301 Filed 3–2–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 19, 1995, Abbott Laboratories, IMP, Attn: Plant Manager, U.S. Highway 301 N., Rocky Mount, North Carolina 27801, made a written request to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230) a basic class of controlled substance in Schedule II.

The firm will import the Meperidine to produce vials for a patient controlled analgesia pump.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objection to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 24, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–5266 Filed 3–2–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ950002 (FEB. 10, 1995)
NJ950003 (FEB. 10, 1995)
New York
NY950010 (FEB. 10, 1995)
NY950015 (FEB. 10, 1995)
NY950016 (FEB. 10, 1995)
NY950017 (FEB. 10, 1995)
NY950025 (FEB. 10, 1995)
NY950033 (FEB. 10, 1995)
NY950039 (FEB. 10, 1995)
NY950041 (FEB. 10, 1995)
NY950043 (FEB. 10, 1995)
NY950045 (FEB. 10, 1995)
NY950060 (FEB. 10, 1995)
NY950072 (FEB. 10, 1995)

Volume II

Pennsylvania
PA950004 (FEB. 10, 1995)
PA950035 (FEB. 10, 1995)
PA950051 (FEB. 10, 1995)
PA950054 (FEB. 10, 1995)
Virginia
VA950015 (FEB. 10, 1995)
VA950017 (FEB. 10, 1995)
VA950080 (FEB. 10, 1995)
VA950085 (FEB. 10, 1995)
West Virginia
WV950002 (FEB. 10, 1995)

Volume III

None

Volume IV

Indiana
IN950004 (FEB. 10, 1995)

Volume V

Iowa
IA950004 (FEB. 10, 1995)
IA950016 (FEB. 10, 1995)
IA950031 (FEB. 10, 1995)
Kansas
KS950009 (FEB. 10, 1995)

Volume VI

Arizona
AZ950001 (FEB. 10, 1995)
AZ950002 (FEB. 10, 1995)
AZ950011 (FEB. 10, 1995)
AZ950012 (FEB. 10, 1995)
AZ950013 (FEB. 10, 1995)
AZ950014 (FEB. 10, 1995)
AZ950015 (FEB. 10, 1995)
AZ950016 (FEB. 10, 1995)
AZ950017 (FEB. 10, 1995)
California
CA950001 (FEB. 10, 1995)
CA950002 (FEB. 10, 1995)
CA950004 (FEB. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 24th Day of February 1995.

Alan L. Moss,

Director, Division of Wage Determinations

[FR Doc. 95–5057 Filed 3–2–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Dates and Times: March 30 and 31, 1995 from 8:30 a.m. to 5:00 p.m.

Place: Holiday Inn, 4610 N. Fairfax Drive, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Hyman Field, Section Head, Division of Elementary, Secondary and Informal Education, room 885, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1620.

Purpose of Meeting: To propose advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 28, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5303 Filed 3–2–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Dates and Times: March 13 and 14, 1995 from 8:30 a.m. to 5:00 p.m.

Place: 8th Floor, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. Donald E. Jones, Program Officer, Division of Elementary, Secondary and Informal Education, Room 885, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel: (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovative Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 28, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5302 Filed 3–2–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–281]

Virginia Electric and Power Company; Surry Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Unit No. 2 (SPS2) located in Surry County, Virginia.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environment issues related to the

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licensee's application of February 14, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 15 months from the February 1995 refueling outage to the May 1996 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the February 1995 refueling outage to the May 1996 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The NRC staff also notes that the containment is maintained at a subatmospheric pressure which provides a means for continuously monitoring potential containment leakage paths during power operation. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Surry Power Station, Unit No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Virginia State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 14, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Acting Director Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5358 Filed 3–2–95; 8:45 am]

BILLING CODE 7590–01–M

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support System Advisory Review Panel (LSSARP) will hold its next meeting on March 22 and 23, 1995, at the Department of Energy's Yucca Mountain Site Characterization Project Office, room 450, Bank of America Building, 101 Convention Center Drive, Las Vegas, Nevada. The entire meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

AGENDA: The meeting will be held from 1:00 p.m. to 5:00 p.m. on Wednesday, March 22 and from 9:00 a.m. to 4:30 p.m. on Thursday, March 23, 1995. The agenda will consist of briefings and discussions on the following topics:

1. Header Working Group Update.
2. Technical Working Group Report on Review of LSS Requirements Document.
3. Current LSS Activity at DOE.
4. Inclusion/Exclusion Criteria for DOE's Records Management System.
5. Location of the LSS Facility.
6. Topic Selection for Use of LSS on Pilot Project Basis.
7. Progress Toward Development of an NRC/DOE Memorandum of Agreement.
8. Comments Received on Draft Participant Compliance Document.
9. Future Meeting Schedule.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) on topics, issues, and activities related to the design, development and operation of an electronic information management system known as the Licensing Support System (LSS). This system will contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the Panel consists of representatives of the State of Nevada, Nye County, Nevada, a coalition of effected units of local Government in Nevada, the National Congress of American Indians, a coalition of organizations representing the nuclear industry, DOE, NRC and other agencies of the Federal government which have experience with large electronic information management systems.

FOR FURTHER INFORMATION CONTACT: John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1969.

PUBLIC PARTICIPATION: Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed below as far in advance as practicable so that appropriate arrangements can be made.

Dated: February 27, 1995.

Andrew L. Bates,

Advisory Committee Management Officer

[FR Doc. 95–5248 Filed 3–2–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35420; International Series Release No. 787; File No. SR-Phlx–95–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to British Pound Strike Price Intervals

February 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its strike price policy respecting foreign currency options on the British pound by changing from a $.025 interval to a $.01 interval in the nearest three expiration months and $.02 in the next three nearest expiration months. In addition to reducing the strike price interval from 2½ cents to 1 and 2 cents, the Exchange also proposes to reduce the strike price interval for long-term British pound options, which have 12 to 36 months until expiration,[3] from $.05 to $.04. The strike price interval applicable to long-term foreign currency options is determined by doubling the strike price interval of regular options (12 months or less until expiration). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's strike price interval policies are administered pursuant to Rule 1012, Series of Options Open for Trading. Currently, British pound options are listed at 2½ cent intervals; long-term options are listed at 5 cent intervals. Pursuant to Phlx Rule 1012, six expiration months are currently listed in regular foreign currency options, with one, two, three, six, nine, and twelve months until expiration. Additionally, two long-term options are currently listed (in June and December) with 18 and 24 months until expiration. Fluctuations in the spot price of the British pound result in additional listings at 2½ cent intervals.

The Exchange proposes to revise its strike price policy respecting foreign currency options on the British pound by changing from a $.025 interval to a $.01 interval in the nearest three expiration months and $.02 in the next three nearest expiration months. In addition to reducing the strike price interval from 2½ cents to 1 and 2 cents, the Exchange also proposed to reduce the strike price interval for long-term British pound options, which have 12 to 36 months until expiration, from $.05 to $.04. The purpose of the proposed rule change is to respond to changes in the world-wide market marketplace for the British pound. The Exchange notes that lower volatility respecting the British pound had created a customer need for narrower strike price intervals. Lower volatility signifies less movement in the currency such that it currently trades in a more narrow range, perhaps without moving to the next (2½ cent) strike price interval. The Exchange notes that the strike price interval for a non-volatile foreign currency option, including the British Pound, has previously been decreased.[4]

In addition, the Exchange seeks to remain competitive and consistent with the contract terms applicable to foreign currency futures and options on such futures traded on the Chicago Mercantile Exchange ("CME"). Recently, the CME determined to list certain options on British pound futures (the three near months) at $.01 intervals.

The Exchange believes that the proposed reduction in the strike price interval should provide investors and traders of British pound options with the ability to more closely tailor investment and hedging strategies to British pound trading levels and movement. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade by enabling more effective management of foreign currency risk respecting the British pound.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or (B) Institute proceedings to

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *See* Phlx Rule 1012(a)(ii). *See also* Securities Exchange Act Release No. 30672 (May 6, 1992), 57 FR 20546 (May 13, 1992) (File No. SR-Phlx–91–30).

[4] *See e.g.*, Securities Exchange Act Release Nos. 25685 (May 10, 1988), 53 FR 17534 (May 17, 1988) (French franc from $.05 to $.025 strike price intervals) (File No. SR-Phlx–86–14), and 24103 (February 13, 1987), 52 FR 5605 (February 25, 1987) (British Pound from $.05 to $.025 strike price intervals) (File No. SR-Phlx–86–14).

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determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–Phlx–95–06 and should be submitted by March 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5276 Filed 3–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26237]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 24, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 20, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al., (70–8105)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana, a registered holding company, and its wholly owned nonutility subsidiary company, Entergy Enterprises, Inc. ("Enterprises"), Three Financial Centre, Little Rock, Arkansas, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 45, 53, 87, 90 and 91 thereunder.

Entergy proposes through December 31, 1997 to invest up to $350 million in Enterprises for its use in providing preliminary development activities, consulting services, management and administrative support services, operations and maintenance services and engaging in certain related transactions.

Pursuant to Commission orders, dated January 11, 1983 (HCAR 22818), January 13, 1984 (HCAR No. 23200), January 15, 1985 (HCAR 23569), July 25, 1991 (HCAR No. 25353), July 13, 1992 (HCAR No. 25580), and September 3, 1992 (HCAR No. 25617), Enterprises was organized and has been engaged in the analysis and development of various investment opportunities for the Entergy system, as well as the marketing of management, operating, technical and training expertise developed by Entergy system companies to nonaffiliates.[1] The Commission also authorized Enterprises to form an energy management service company, Entergy Systems and Service, Inc. (HCAR No. 25718, December 28, 1992) and to provide certain consulting services to affiliated utilities in Argentina (HCAR Nos. 25705 and 25706, December 14, 1992).

As part of a restructuring plan, Entergy entered into a series of agreements ("Settlement Agreements") with four of its five retail rate regulators, the Arkansas Public Service Commission, the Council of the City of New Orleans, the Louisiana Public Service Commission and the Mississippi Public Service Commission concerning,[2] in part, transfer pricing for the provision of services and other affiliate transactions between Entergy's regulated utilities[3] and Entergy's nonutility businesses. Entergy has filed an Application-Declaration seeking the Commission's approval under the Act to implement provisions of the Settlement Agreements (S.E.C. File No. 70–8529).

Pursuant to the initial order of the Commission issued in this File (HCAR No. 25848 (dated July 8, 1993) (the "Order")), Enterprises is currently authorized, and proposes to continue, to conduct preliminary development activities ("Preliminary Development Activities") related to possible investments by Entergy. Enterprises' Preliminary Development Activities may include: (1) Project due diligence and design review; (2) marketing studies; (3) investigating sites; (4) research, preliminary engineering and licensing activities; (5) applying for required permits and regulatory approval; (6) acquiring options and rights; (7) drafting, negotiation and execution of contractual commitments with owners of existing facilities; governmental authorities, equipment vendors, construction firms, power purchasers, thermal energy users and other project participants; (8) negotiation of financing commitments with lenders and equity co-investors (including the provision of guarantees and other credit enhancements); (9) legal, accounting and financial analysis; (10) preparing and submitting bids and proposals; and (11) any other activities necessary to identify and analyze investment opportunities.

Enterprises would continue its Preliminary Development Activities with respect to potential investments by Entergy in the following types of businesses and activities (hereinafter, "Permitted Investments"): (1) exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs") under the Act; (2) qualifying facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"); (3) non-exempt domestic and foreign generation, transmission and distribution facilities, including but not limited to "inside the fence" generating projects and other power production facilities, provided, however, that any nonexempt domestic facility would be part of the integrated utility system; (4) technologies relating to energy efficiency; (5) the development of alternative energy sources; and (6) other exempt or nonutility business investments permissible under the Act. Except with respect to investments in EWGs, FUCOs and any other Permitted Investment for which Commission approval is not required under the Act or rules thereunder, neither Entergy nor Enterprises would make any Permitted Investment without obtaining further Commission approval. In addition, the financing of any such Permitted Investment would, to the extent jurisdictional, be subject to further Commission authorization.

The Order also authorizes Enterprises to provide various consulting services ("Consulting Services") to nonassociate companies in the areas of electric power generation, transmission and distribution and operations ancillary thereto. Enterprises proposes to continue to provide such Consulting Services to nonassociate companies. The Consulting Services may include: (1) Management expertise, such as strategic planning, organization, policy matters and management services; (2) technical expertise, such as design engineering, availability engineering, construction management planning and procedures, and financial, system and operational planning; (3) operating expertise, particularly with respect to generating, transmission and distribution facilities; (4) environmental expertise, such as environmental licensing and compliance, negotiation of permits and environmental planning; (5) training expertise, particularly in the areas of operations and management; (6) technical and procedural resources, such as are embedded in computer systems, programs and manuals; (7) fuel procurement, delivery and storage expertise; (8) expertise related to marketing and brokering of power resources; and (9) expertise relating to demand side management or other energy management services. Enterprises also would continue to market expertise in the bulk power business of its associate company, Entergy Power Inc., including: (1) Management services related to generating projects, transmission facilities and thermal energy facilities, particularly in the areas of strategic planning, feasibility studies, and policy and organizational matters; (2) technical services related to such projects and facilities, particularly in the areas of design, engineering, procurement and construction; and (3) training services related to such projects and facilities, particularly in areas of operations and maintenance. Enterprises also proposes to provide Consulting Services to associate companies, including associate EWGs, FUCOs and QFs. Enterprises will not, without further authorization from the Commission, provide Consulting Services to Retail Electric Companies.

The Order also authorizes Enterprises to provide, and Enterprises proposes to continue to provide, certain management and administrative support services to associate companies which are not Retail Electric Companies. Administrative services consist of corporate and project development and planning, portfolio management, and administrative services, including legal, financial, accounting and internal auditing ("Administrative Services"). Enterprises would continue to charge its associate companies for the fully allocated direct and indirect cost of services provided, determined in accordance with Rules 90 and 91 under the Act. Enterprises also would continue to utilize a project-based accounting system to account properly for and allocate the cost of providing such services to its associate companies.

The Commission reserved jurisdiction in its Order over Enterprises' provision of Administrative Services to associate companies that are EWGs or FUCOs under Sections 32 and 33, respectively, of the Act. The Commission adopted final rules in September 1993 concerning investments in EWGs (HCAR No. 25886) (September 3, 1993), and Entergy and Enterprises state that they are in compliance with such rules. In addition, Entergy and Enterprises agree to comply with the terms and conditions of all applicable rules under the Act relating to the provision of services to EWGs and FUCOs, including without limitation Rule 87 as it may be amended. Accordingly, Entergy and Enterprises request the Commission to release jurisdiction over the provision of Administrative Services by Enterprises to associate companies that are EWGs and FUCOs.

Enterprises also proposes to offer directly or indirectly through one or more special purpose subsidiary companies of Entergy or Enterprises ("O&M Sub"), various operations and maintenance services ("O&M Services") to developers, owners and operators of domestic and foreign power projects, including power projects that Enterprises may develop on its own or in collaboration with third parties. O&M Services would include development, engineering, design, construction and construction management, pre-operational start-up, testing and commissioning, long-term operations and maintenance, fuel procurement, management and supervision, technical and training, administrative support, and any other managerial or technical services required to operate and maintain electric power facilities.

Enterprises would provide the O&M Services using its own workforce and the personnel and resources of the Retail Electric Companies obtained pursuant to the Service Agreements with such companies, as they may be amended by order of the Commission. Under the terms of the Settlement Agreements, the Retail Electric Companies would be reimbursed for the fully allocated cost of any services provided to Enterprises or any O&M Sub, plus 5%. O&M Subs would be domestic or foreign corporations, partnerships or other entities (depending upon the legal and regulatory requirements of a particular project). Enterprises will provide information to the Commission concerning the formation of an O&M Sub that is not an EWG or FUCO, and will represent that no Retail Electric Company has subsidized the operations of Enterprises or any O&M Sub and that any transfer of personnel from any Retail Electric Company to, and the rendering of O&M Services by, Enterprises or the O&M Sub are in compliance with applicable rules, regulations and orders of the Commission. Enterprises proposes to provide Consulting Services and O&M Services to its nonassociate and associate companies (excluding the Retail Electric Companies) at fair market prices. In this respect, Enterprises requests an exemption pursuant to Section 13(b) of the Act from the requirements of Rules 90 and 91 thereunder, provided one or more of the

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] The Entergy system consists of Entergy and (1) five retail electric public-utility subsidiary companies, Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc. (collectively, "System Operating Companies"), (2) a wholesale generating company that sells power to the System Operating Companies, System Energy Resources, Inc. ("System Entergy"), (3) a wholesale generating company that sells power to nonaffiliates, Entergy Power, Inc., (4) a service company subsidiary, Entergy Services, Inc. ("ESI"), (5) a nuclear management service company, Entergy Operations, Inc. ("EOI"), (6) Enterprises, (7) a fuel supply company, System Fuels, Inc. ("SFI"), (8) an energy management services company, Entergy Systems and Service, Inc., (9) two companies formed to own Entergy's interests in certain Argentine utility companies, Entergy S.A. and Entergy Argentina S.A., and (10) various direct and indirect subsidiary companies of Entergy formed to own Entergy's interests in "eligible facilities" within the meaning of Section 33 of the Act.

[2] The System Operating Companies' retail rate regulator in Texas is precluded from agreeing to the terms of the Settlement Agreements because Texas has regulations governing affiliate transactions.

[3] "Regulated utility" includes the system's five utility companies, System Energy, EOI, ESI, SFI, and any similar subsidiary Entergy may create in the future.

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following conditions are satisfied with respect to associate companies:

(1) An associated power project is an EWG or a FUCO which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An associated power project is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, provided that the purchaser is not a Retail Electric Company;

(3) An associated power project is a QF which sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their use and not for resale, and/or to an electric utility company, other than a Retail Electric Company, at the purchaser's "avoided cost" determined in accordance with the regulations under PURPA; or

(4) An associated power project is an EWG or a QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not a Retail Electric Company.

Enterprises also proposes to continue to market and license to nonaffiliated third parties intellectual properties developed by Entergy system companies. The Settlement Agreements provide that if a nonutility business markets a product that was developed by a Retail Electric Company and is actually used by a Retail Electric Company, all profits on the sale of the product shall be divided evenly between the Retail Electric Company responsible for developing the product and the nonutility business responsible for marketing the product after deducting all incremental costs associated with making the product available for sale, including all costs of marketing the product. However, in the event that a product developed by a Retail Electric Company to be used in its utility business is not actually so used, and subsequently is marketed by a nonutility business to third parties, such Retail Electric Company shall be entitled to recover all of its costs to develop the product before any profits from marketing shall be divided.

Entergy proposes, through December 31, 1997, to invest up to $350 million in Enterprises (and continuing beyond December 31, 1997 in accordance with the terms of any debt incurred or guarantee issued prior to such date) in connection with Enterprises' authorized business activities. Entergy's investments in Enterprises may take the form of: (1) Additional purchases of Enterprises' common stock, no par value, for a purchase price of $1,000 per share; (2) capital contributions; (3) loans (and the conversion of any such loans to capital contributions); and (4) guarantees of indebtedness or other obligations incurred by Enterprises or its associate companies. Any loans to Enterprises by Entergy would mature no later than December 31, 2004, and would bear interest at a rate not to exceed the prime rate in effect on the date of the loan at a bank designated by Entergy.

Entergy and Enterprises also request authority through December 31, 1997, to issue guarantees in an aggregate amount that, when added to investments in Enterprises and any O&M Sub, will not exceed $350 million. Guarantees may be required for Enterprises' Preliminary Development Activities, which might include undertaking reimbursement obligations or acting as surety on bonds, letters of credit, evidences of indebtedness, equity commitments, performance and other obligations. Guarantees may also be required for Enterprises other business activities or to satisfy the requirements of lenders and other project participants under financing documents and other agreements to which Enterprises, an O&M Sub or another associate company of Entergy (other than a Retail Electric Company) becomes a party. The terms and conditions of guarantees would be established at arm's length based upon market conditions.

Entergy and Enterprises also request authorization through December 31, 1997 to organize and provide funding to O&M Subs, through any one or combination of: (1) Purchases of capital stock; (2) capital contributions; (3) loans; or (4) guarantees of the securities or other obligations of an O&M Sub. Any investments in an O&M Sub would be included in the $350 million investment authority requested by Entergy.

Enterprises would use the proceeds from Entergy's investments to: (1) Provide working capital in connection with Enterprises' Preliminary Development Activities, Consulting Services, Administrative Services, O&M Services, and other authorized business activities; (2) to pay its associate companies for services rendered to Enterprises; and (3) for other general corporate purposes. Entergy and Enterprises currently estimate that approximately $100 million of the $350 million of investment authority would be applied to meeting Enterprises' foregoing capital needs. Enterprises currently estimates that, of the proposed additional investments by Entergy, up to $79 million (but in any case not more than $86 million) would be used for Preliminary Development Activities, and up to $26 million (but in any case not more than $30 million) would be used for Administrative Services. None of the funds will be used to acquire securities or an interest in the business of an EWG, FUCO, or QF.

Columbus Southern Power Company, (70–8573)

Columbus Southern Power Company ("CSPCo"), 215 North Front Street, Columbus, Ohio 43215, Kentucky Power Company ("KPCo"), 1701 Central Avenue, P.O. Box 1428, Ashland, Kentucky 41101 and Ohio Power Company ("OPCo"), 301 Cleveland Avenue, S.W., Canton, Ohio 44702 (collectively, the ("Companies"), electric utility subsidiary companies of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration under Sections 6(a), 7, 9, 10 and 12(b) of the Act and Rules 45 and 54 thereunder.

The Companies propose to issue and sell Junior Subordinated Debentures ("Debentures") through December 31, 1997. Each series of Debenture will mature in not more than 50 years in aggregate principal amounts of up to the following: (1) $80 million for CSPCo; (2) $65 million for KPCo; and (3) $90 million for OPCo. The Debentures may be sold by competitive bidding or through negotiation with underwriters or agents. The Debentures will be offered for sale at an initial public offering price resulting in a yield to maturity which shall not exceed by more than 3.0% the yield to maturity on United States Treasury bonds of comparable maturity at the time of pricing of the Debentures. The commission payable to agents or underwriters will not exceed 3.5% of the principal amount of the Debentures sold.

The Companies may have the right to defer payment of interest on the Debentures for up to five years. However, the Companies may not declare and pay dividends on its outstanding stock if payments under the Debentures are deferred. The payment of principal, premium and interest on the Debentures will be subordinated in right of payment to the prior payment in full of its senior indebtedness. The Companies will agree to specific redemption provisions, if any, at the time of the pricing of the Debentures.

If the Companies determine that it is not advisable to sell the Debentures directly to the public, each may organize a separate special purpose subsidiary as either: (1) a limited liability company under the Limited Liability Company Act ("LLC Act") of the State of Ohio in the case of CSPCo and OPCo, and of the State of Kentucky in the case of KPCo or of the State of Delaware or other jurisdiction considered advantageous in the case of any of the Companies; or (2) a limited partnership under the Revised Uniform Limited Partnership Act of the State of Ohio in the case of CSPCo and OPCo, and of the State of Kentucky in the case of KPCo or of the State of Delaware or other jurisdiction considered advantageous in the case of any of the Companies ("Special Purpose Subsidiary"). In the event that any Company organizes its Special Purpose Subsidiary as a limited liability company, it may also organize a second special purpose wholly owned subsidiary under the General Corporation Law of the State of Ohio, the State of Kentucky, or the State of Delaware or other jurisdiction ("Investment Sub"), for the purpose of acquiring and holding Special Purpose Subsidiary common stock to comply with the requirement under the applicable LLC Act that a limited liability company have at least two members. If any Company organizes its Special Purpose Subsidiary as a limited partnership, it may also organize an Investment Sub for the purpose of acting, or may itself act, as the general partner of the Special Purpose Subsidiary and may acquire, either directly or indirectly through such Investment Sub, a limited partnership interest in such Special Purpose Subsidiary to ensure that such Special Purpose Subsidiary will have a limited partner to the extent required by applicable law.

The Special Purpose Subsidiaries propose to issue and sell at any time or from time-to-time, in one or more series through December 31, 1997, preferred securities ("Preferred Securities"), up to: (1) $75 million aggregate par or stated value or liquidation preference of Preferred Securities, with a par or stated value or liquidation preference of up to $100 per security in the case of CSPCo; (2) $60 million aggregate par or stated value or liquidation preference of Preferred Securities, with a par or stated value or liquidation preference of up to $100 per security in the case of KPCo; (3) $85 million aggregate par or stated value or liquidation preference of Preferred Securities, with a par or stated value or liquidation preference of up to $100 per security in the case of OPCo.

Each Company and/or its respective Investment Sub will acquire all of the common stock or all of the general partnership interests of its Special Purpose Subsidiary for an amount up to 5% of the total equity capitalization from time-to-time of such Special Purpose Subsidiary ("Equity Contribution"). Each Company may issue and sell to its Special Purpose Subsidiary the Debentures, at any time or from time-to-time in one or more series and such Special Purpose Subsidiary will apply both the Equity Contribution made to it and the proceeds and from the sale of Preferred Securities by it from time-to-time to purchase the Company's Debentures. The payment rate, terms, redemption and other similar provisions of the Preferred Securities will correspond to those of the Debentures purchased from the Company.

Each Company may also guarantee ("Guarantee"): (1) Payment of dividends or distributions on the Preferred Securities of its Special Purpose Subsidiary if and to the extent such Special Purpose Subsidiary has declared dividends or distributions out of funds legally available therefor; (2) payments to the Preferred Securities holders of amounts due upon liquidation of such Special Purpose Subsidiary or redemption of the Preferred Securities of such Special Purpose Subsidiary; and (3) certain additional amounts that may be payable in respect of such Preferred Securities.

It is expected that each Company's interest payments on the Debentures issued by it will be deductible for federal income tax purposes and that its Special Purpose Subsidiary will be treated as a partnership for federal income tax purposes. If Preferred Securities are issued, any series may be redeemable at the option of the Special Purpose Subsidiary issuing such series, with the consent or at the direction of the Company, at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, upon the occurrence of certain events. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Each Company may also have the right in certain cases to exchange the Preferred Securities of its Special Purpose Subsidiary for the Debentures of the Company.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, it may also have the obligation to "gross up" such payments so that the holders of the Preferred Securities issued by such Special purpose Subsidiary will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. If any Special Purpose Subsidiary is required to pay taxes with respect to income derived from interest payments on the Debentures issued to it, the Company may be required to pay such additional interest on the Debentures as shall be necessary in order that net amounts received and retained by the Special Purpose Subsidiary, after the payment of such taxes, shall result in its having such funds as it would have had in the absence of such payment of taxes.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of the Preferred Securities will be entitled to receive, out of the assets available for distribution to its shareholders or partners, before any distribution of assets to the common shareholders or general partner of the Special Purpose Subsidiary, an amount equal to the par or stated value or liquidation preference of such Preferred Securities plus any accrued and unpaid dividends or distributions.

Each Company expects to apply the net proceeds of the Debentures to the repayment of outstanding short-term debt, for construction purposes, and for other general corporate purposes, including the redemption or other retirement of outstanding preferred stock and senior securities.

The Columbia Gas System, Inc., (70–8575)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered gas utility holding company, has filed a declaration under section 12(b) of the act and rule 45 thereunder.

Columbia and Columbia Gas Transmission Corporation ("TCO") presently are debtors-in-possession under Chapter 11 of the U.S. Bankruptcy Code in U.S. Bankruptcy Court for the District of Delaware.

Columbia proposes to make a loan of no more than $4.3 million to the Employees' Thrift Plan of Columbia Gas System ("Thrift Plan"). Columbia is the plan sponsor of the Thrift Plan, a defined contribution plan which is qualified under sections 401 (a) and (k) of the Internal Revenue Code. Columbia's subsidiary companies ("Subsidiaries") are Thrift Plan participating employers,[4] whose

[4] The participating employers are the following Subsidiaries: Columbia Gas of Pennsylvania, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Kentucky, Inc., Commonwealth Gas Services, Inc., Columbia Gulf Transmission Company, Columbia Gas

Continued

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employees, former employees and beneficiaries constitute the participants. The Thrift Plan is administered by the Thrift Plan Committee, which is appointed by Columbia's board of directors and which is currently comprised of members of senior management of major Columbia companies, including the distribution companies and the transmission companies.

One of the investment options under the Thrift Plan is the Money Market/Investment Contract Fund ("Fund") offered by Fidelity Investments of Boston, Massachusetts ("Fidelity"). The Fund includes a guaranteed investment contract ("GIC") issued by Confederation Life Insurance Company of Canada ("Confederation Life"). The Confederation Life GIC was acquired by the Thrift Plan of January 2, 1990 in the amount of $6.5 million.

On August 12, 1994, Canadian governmental authorities seized Confederation Life. In order to protect Confederation Life's U.S. assets, the Insurance Commissioner for the State of Michigan moved to seize all such assets. At the time Confederation Life was seized, a segregated subaccount was established by the Thrift Plan Committee and the Thrift Plan's trustee and was frozen within the Fund.

The Thrift Plan Committee, which is the named fiduciary as well as Plan Administrator of the Thrift Plan, has considered various options and has recommended to the boards of directors for Columbia and TCO that loans be made to the Thrift Plan in order to allow Thrift Plan participants access to their frozen funds as soon as practicable. Subject to the receipt of necessary regulatory and Bankruptcy Court approvals, the boards of directors of Columbia and TCO have considered the Thrift Plan Committee's recommendation and approved loans to the Thrift Plan.

Columbia proposes to make two loans to the Thrift Plan, one to be made by Columbia, subject to the approval of the Bankruptcy Court and the Commission, and one to be made by TCO, subject to the approval of the Bankruptcy Court.[5] The total amount of the loans would be $6.8 million, which represents the accumulated value of the frozen investment in the Confederation Life GIC, including accrued interest, as of the close of business on August 11, 1994 (the date preceding the seizure of Confederation Life's assets). TCO's loan would be approximately $2.5 million, and Columbia's loan would be no more than $4.3 million. The loans would be made unsecured and without interest, would be evidenced by notes and would be non-recourse to participants or assets held in the Thrift Plan. Repayment of the loans would be made only from the proceeds received from Confederation Life (from liquidation and rehabilitation proceedings or otherwise), state guaranty funds, and other sources, including litigation, in connection with the Confederation Life GIC. Should the ultimate recovery of these funds from Confederation Life and other sources be less than 100 percent, full repayment would be waived, and this cost would be borne by Columbia and TCO.

Upon issuance of the loans, the participants' segregated subaccounts would be immediately closed, and their previously frozen funds would be transferred to Fidelity's Money Market Fund. Periodically as amounts are received from Confederation Life, state guaranty funds and other sources with regard to the Confederation Life account, the proceeds would be paid to Columbia or TCO, as the case may be, and the amounts of the loans would be reduced accordingly.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5200 Filed 3–2–95; 8:45 am]

BILLING CODE 8010–01–M

[5] Columbia and TCO assert the TCO's loan is exempted from Commission approval pursuant to rule 49(c).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2174]

Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive order 12295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports, with the exception of passports of immediate family members of hostages in Lebanon, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was taken because the situation in Lebanon was so chaotic that American citizens there could not be considered safe from terrorist acts.

Although there continues to be improvement in the security situation, review of the situation there has led me to conclude that Lebanon continues to be an area "* * * where there is imminent danger to the public health or the physical safety of United States travelers" within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of six months unless extended or sooner revoked by Public Notice.

Dated: February 28, 1995.

Warren Christopher,

Secretary of State.

[FR Doc. 95–5306 Filed 3–2–95; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Balter Worldwide Corp. d/b/a Sunshine Airlines d/b/a Sunshine Air

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 95–2–56, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Balter Worldwide Corp. d/b/a Sunshine Airlines d/b/a Sunshine Air is fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with Janet A. Davis, Air Carrier Fitness Division, X–56, Room 6401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–9721.

Dated: February 27, 1995

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–5237 Filed 3–2–95; 8:45 am]

BILLING CODE 4910–62–P

Research of Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in June 1994 thruough December 1994. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582–P	DOT–E 2582	BOC Gases, Murray Hill, NJ.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, 4.)
3004–P	DOT–E 3004	BOC Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To become a party to exemption 3004. (Modes 1, 2.)
3302–P	DOT–E 3302	BOC Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To become a party to exemption 3302. (Modes 1, 2, 3, 4.)
3415–X	DOT–E 3115	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.79, 173.92	Authorizes the transport of rocket motors, containing certain Class A or Class B explosives, without overpacking. (Mode 1.)
4039–P	DOT–E 4039	BOC Gases, Murray Hill, NJ.	49 CFR 173.316(a)	To become a party to exemption 4039. (Mode 1.)
4354–X	DOT–E 4354	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e), 173.3(a).	Authorizes the shipment of choloroformates in a DOT specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4453–X	DOT–E 4453	Mining Services, International (MSI), Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	Authorizes the use of a non-DOT specification bulk, hopper-type tank for transportation of blasting agent, n.o.s. or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4453–P	DOT–E 4453	H.H. Burt Explosives, Inc., Moab, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4453–P	DOT–E 4453	Florex Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4850–P	DOT–E 4850	High Energy International, Fort Worth, TX.	49 CFR 173.100(cc), 175.3.	To become a party to exemption 4850. (Modes 1, 2, 3, 4.)
4850–P	DOT–E 4850	Directional Wireline Services, Inc., Lake Charles, LA.	49 CFR 173.100(cc), 175.3.	To become a party to exemption 4850. (Modes 1, 2, 3, 4.)
4884–X	DOT–E 4884	Praxall, Inc., Danbury, CT	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	Authorizes the shipment of liquefied and nonliquefied compressed gases and a flammable liquid in stainless steel cylinders complying with DOT Specification 4BS with certain exceptions. (Modes 1, 2, 3, 4.)
4884–P	DOT–E 4884	Balchem Corporation, Slate Hill, NY.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	To become a party to exemption 4884. (Modes 1, 2, 3, 4.)
4884–P	DOT–E 4884	MG Industries, Morrisville, PA.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	To become a party to exemption 4884. (Modes 1, 2, 3 4.)
5038–P	DOT–E 5038	BOC Gases, Murray Hill, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247(a)(1), 173.346, 173.620, 173.630, 175.3.	To become a party to exemption 5038. (Modes 1, 2, 3, 4.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5403–P	DOT–E 5403	HydroChem Industrial Services, Inc., Houston, TX.	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343–2(b), 178.343–5(b)(1)(i), 178.343–5(b)(2)(i).	To become a party to exemption 5403. (Modes 1, 3.)
5600–P	DOT–E 5600	BOC Gases, Murray Hill, NJ.	49 CFR 175.3, Part 173. Subparts D, F, G	To become a party to exemption 5600. (Modes 1, 2 3.)
5604–P	DOT–E 5604	BOC Gases, Murray Hill, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To become a party to exemption 5604. (Modes 1, 3.)
5967–P	DOT–E 5967	Olin Aerospace Company, Redmond, WA.	49 CFR 173.304(a)(2). 175.3, 178.44.	To become a party to exemption 5967. (Modes 1, 2, 4, 5.)
6309–P	DOT–E 6309	Carpenter Co., Richmond, VA.	49 CFR 173.315(a)(1). 174.63(b).	To become a party to exemption 6309. (Modes 1, 2.)
6349–P	DOT–E 6349	BOC Gases, Murray Hill, NJ.	49 CFR 172.203(a). 173.32, 173.318, 176.30(a), 176.76(h). 177.840, 178.338.	To become a party to exemption 6349. (Modes 1, 2, 3.)
6530–P	DOT–E 6530	BOC Gases, Murray Hill, NJ.	49 CFR 173.302(c)	To become a party to exemption 6530. (Modes 1, 2.)
6543–P	DOT–E 6543	BOC Gases, Murray Hill, NJ	49 CFR 173.119. 173.135(a)(6), 173.136(a)(5), 173.245. 173.247, 173.271, 175.3.	To become a party to exemption 6543. (Modes 1, 2 3.)
6626–P	DOT–E 6626	BOC Gases, Murray Hill, NJ.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(iv), 175.3.	To become a party to exemption 6626. (Modes 1, 2, 3, 4, 5.)
6670–P	DOT–E 6670	BOC Gases, Murray Hill, NJ.	49 CFR 173.301(d), 173.302.	To become a party to exemption 6670. (Mode 1.)
6691–P	DOT–E 6691	Plattner Welding Supplies, Inc., Coffeyville, KS.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4.)
6691–P	DOT–E 6691	Walter Smith Welding Supplies, Inc., Kingston, NY.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4.)
6691–P	DOT–E 6691	Plattner Welding Supplies, Inc., Coffeyville, KS.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4.)
6765–P	DOT–E 6765	BOC Cases, Murray Hill, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 6765. (Modes 1, 3.)
6805–P	DOT–E 6805	BOC Gases, Murray Hill, NJ.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 6805. (Mode 1.)
7023–P	DOT–E 7023	Ashland Chemical, Inc., Columbus, OH.	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24), 173.3(a).	To become a party to exemption 7023. (Mode 1.)
7607–X	DOT–E 7607	The Foxboro Company, East Bridgewater, MA.	49 CFR 172.101, 175.3	Authorizes the shipment of hydrogen in certain non-DOT specification, seamless stainless steel cylinders. (Mode 5.)
7616–P	DOT–E 7616	Eastern Idaho Railroad, Twin Falls, ID.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616–P	DOT–E 7616	Alaska Railroad Corporation, Anchorage, AK.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7835–P	DOT–E 7835	REMAC USA, Inc., Silver Spring, MD.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Eastern Chemical Waste Systems-Caribe, Inc., Silver Spring, MD.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7835–P	DOT–E 7835	Gerin Welding Sales, Inc., Santa Clara, CA.	19 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	American Welding Supply, San Jose, CA.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	BOC Gases, Murray Hill, NJ.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7887–X	DOT–E 7887	North Coast Rocketry, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	Authorizes the shipment of packages of toy propellant devices as an OPM–D material and excepted from labeling requirements. (Modes 1, 2, 3, 4.)
7954–X	DOT–E 7954	Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 172.101, 172.504, 172.504, 173.301(d)(2), 173.302(a)(3).	Authorizes the shipment of nonflammable gases in manifolded DOT Specification 3A2400, 3AA2400 or 3AAX2400 cylinders. (Modes 1, 3.)
8006–P	DOT–E 8006	JA–RU, Inc., Jacksonville, FL.	49 CFR 172.400(a), 172.504 Table 2.	To become a party to exemption 8006. (Modes 1, 2, 3, 4.)
8074–P	DOT–E 8074	AGL Welding Supply Co., Inc., Clifton, NJ.	49 CFR 173.34(d), 175.3	To become a party to exemption 8074. (Modes 1, 2, 3, 4.)
8091–P	DOT–E 8091	CP Clare Corporation, Wakefield, MA.	49 CFR Parts 100, 177	To be a party to exemption 8091. (Modes 4, 5.)
8215–X	DOT–E 8215	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173.101, 173.107, 173.154, 173.184, 173.60, 173.74, 173.78, 173.93.	Authorizes the shipment of certain identified Class A, B and C explosives in non-DOT specification containers. (Modes 1, 2.)
8236–P	DOT–E 8236	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236. (Modes 1, 2, 3, 4.)
8273–P	DOT–E 8273	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8273. (Modes 1, 2, 3, 4.)
8445–P	DOT–E 8445	Superior Hazardous Waste Group, Inc., Port Washington, WI.	49 CFR Part 173, Subpart D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–P	DOT–E 8445	MKC Enterprises, Inc., Atlanta, GA.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8451–P	DOT–E 8451	Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3.)
8451–P	DOT–E 8451	Gould Laboratories, Pitman, NJ.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3.)
8451–P	DOT–E 8451	Raymond Engineering, Inc., Middletown, CT.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3.)
8451–P	DOT–E 8451	Reactives Management Corporation, Chesapeake, VA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3.)
8453–P	DOT–E 8453	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.114a	Authorizes the use of non-DOT specification cargo tanks and DOT Specification MC–306, MC–307, or Mc–312 stainless steel cargo tanks to transport blasting agent. (Modes 1, 3.)
8526–P	DOT–E 8526	Landair Transport, Romulus, MI.	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8582–P	DOT–E 8582	Gateway Western Railway, Fairview Heights, IL.	49 CFR Parts 100–177	To become a party to exemption 8582. (Mode 1.)
8723–P	DOT–E 8723	Florex Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114(a)(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 2.)
8723–P	DOT–E 8723	Intermountain Ireco, Inc., Gillette, WY.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723. (Modes 1, 2.)
8725–X	DOT–E 8725	CNG Cylinder Company, Long Beach, CA.	49 CFR 173.302(a)	Authorizes the manufacture, marking, and sale of non-DOT Specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Mode 1.)
8915–P	DOT–E 8915	BOC Gases, Murray Hill, NJ.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 8915. (Modes 1, 3.)
8915–P	DOT–E 8915	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 8915. (Modes 1,3.)
8958–P	DOT–E 8958	BIMEX Corp, Mamaroneck, NY.	49 CFR 172.101, 173.60	To become a party to exemption 8958. (Modes 1, 2.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8965–X	DOT–E 8965	Pressed Steel Tank Company, Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	Authorizes the manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders for shipment of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
8966–P	DOT–E 8966	Aqua Tri-Irvine, CA	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To become a party to exemption 8966. (Mode 1.)
9034–P	DOT–E 9034	BOC Gases, Murray Hill, NJ.	49 CFR 173.302, 173.304, 173.328, 173.334, 175.3.	To become a party to exemption 9034. (Modes 1, 2, 3, 4, 5.)
9110–P	DOT E–9110	AKZO Nobel, Columbus, MS.	49 CFR 173.163	To become a party to exemption 9110. (Modes 1, 2, 3.)
9248–P	DOT–E 9248	AB&C Group, Inc., Panson, WV.	49 CFR 173.1200, 173.154a.	To become a party to exemption 9248. (Modes 1, 2.)
9275–P	DOT–E 9275	Givenchy, Edison, NJ	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Compar, Inc., Hawthorne, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Halston Borghese, Inc., Jamesburg, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Revlon Consumer Products Corporation, Oxford, NC.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Estee Lauder, Melville, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Stern Fragrances, Inc., Orange, CT.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Puig Perfumes, Inc., Hawthorne, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	H.L. Fragrances, Inc., Hawthorne, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Bulgari Parfums USA, Inc., Piscataway, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Bath & Body Works, Columbus, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Cacique, Reynoldsburg, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Limited Too, Columbus, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Brylane, Indianapolis, IN	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Victoria Secret Catalog, Columbus, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Structure, Columbus, OH	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4; 5.)
9275–P	DOT–E 9275	Abercrombie & Fitch, Reynoldsburg, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Victoria Secret Stores, Reynoldsburg, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Express, Columbus, OH	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Henri Bendel, New York, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9275–P	DOT–E 9275	Lane Bryant, Reynoldsburg, OH.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9357–P	DOT–E 9357	Transamerica Leasing, Inc., Purchase, NY.	49 CFR 173.315, 178.245	To become a party to exemption 9357. (Modes 1, 2, 3.)
9416–P	DOT–E 9416	Valent U.S.A. Corporation, Walnut Creek, CA.	49 CFR 173.359	To become a party to exemption 9416. (Modes 1, 2, 3.)
9480–P	DOT–E 9480	BOC Gases, Murray Hill, NJ.	49 CFR 173.302(a)(5)	To become a party to exemption 9480. (Modes 1, 2, 3, 4.)
9498–X	DOT–E 9498	Cominco Fertilizers/A Division of Cominco Ltd., Calgary, Alberta, CN.	49 CFR 173.365, 173.367, 173.370.	To authorize the use of non-DOT specification aluminum cylinders for the transportation of certain liquefied and nonliquefied compressed gases, and certain other hazardous materials. (Modes 1, 2, 3.)
9628–P	DOT–E 9628	Cometals, Inc., New York, NY.	49 CFR 173.154, 173.245(b).	To become a party to exemption 9628. (Mode 1.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9645–X	DOT–E 9645	Bonar Plastics Ltd., Lindsay, Ontario, CN.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	Authorizes the manufacture, marking and sale of non-DOT rotationally molded, cross-linked polyethylene or linear low density polyethylene portable tanks enclosed within either a protective steel frame or a foam-filled steel reinforced outer cage. (Modes 1, 2.)
9645–Y	DOT–E 9645	Bonar, Inc., Lindsay, Ontario, CN.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	Authorizes the manufacture, making and sale of non-DOT rotationally molded, cross-linked polyethylene or linear low density polyethylene portable tanks enclosed within either a protective steel frame or a foam-filled steel reinforced outer cage. (Modes 1, 2.)
9716–X	DOT–E 9716	Comdyne I, Inc., West Liberty, OH.	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3.	Authorize the manufacture, marking and sale of non-DOT specification, fiber reinforced plastic, full composite cylinder for shipment of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4.)
9723–P	DOT–E 9723	Superior Hazardous Waste Group, Inc., Port Washington, WI.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Romic Environmental Technologies Corp., East Palo Alto, CA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Eastern Chemical Waste Systems-Caribe, Inc., Silver Spring, MD.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	REMAC USA, Inc., Silver Spring, MD.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Tonawanda Tank Transport Service Inc., Buffalo, NY.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	General Chemical Corporation, Framingham, MA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Brewer Environmental Industries, Inc., Honolulu, HI.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Dart Trucking Company, Inc., Canfield, OH.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	MKC Enterprises, Inc., Atlanta, GA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Environmental Products & Services, Inc., Syracuse, NY.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9735–P	DOT–E 9735	"K" Line America, Inc., Seattle, WA.	49 CFR 176.30(a), 46 CFR 146.29–14(a).	To become a party to exemption 9735. (Mode 3.)
9741–P	DOT–E 9741	Sunbelt Services, Seminole, FL.	49 CFR 173.260(a)(3)	To become a party to exemption 9741. (Modes 1, 2, 3.)
9746–P	DOT–E 9746	BOC Gases, Murray Hill, NJ.	49 CFR 173.264	To become a party to exemption 9746. (Modes 1, 3.)
9769–P	DOT–E 9769	Burlington Environmental, Inc., Seattle, WA.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, 3.)
9781–X	DOT–E 9781	Chlorine Institute, Inc., Washington, DC.	49 CFR 173.304(a)(2), 173.34(d), (e).	Authorizes the use of a non-DOT specification full opening head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
9781–X	DOT–E 9781	Chlorine Institute, Inc., Washington, DC.	49 CFR 173.304(a)(2), 173.34(d), (e)	Authorizes the use of a non-DOT specification full opening head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
9781–X	DOT–E 9781	Chlorine Institute, Inc., Washington, DC.	49 CFR 173.304(a)(2), 173.34(d), (e).	Authorizes the use of a non-DOT specification full opening head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
9884–X	DOT–E 9884	Puritan-Bennett Corporation, Indianapolis, IN.	49 CFR 173.316, 178.57–(8)(c), 178.57–2.	Authorizes the manufacture, marking, and sale of a non-DOT specification insulated cylinder conforming with 49 CFR 178.57 except 178.57–2 and 178.57–8(c) and DOT 4L Specification with exceptions. (Mode 1.)
9977–X	DOT–E 9977	Hercules Incorporated, Magna, UT.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	Authorizes the transport of rocket motors in a propulsive state, with igniters installed. (Mode 1.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9990–P	DOT–E 9990	Olin Ordnance, Downey, CA.	49 CFR 173.113	To become a party to exemption 9990. (Mode 1.)
9990–P	DOT–E 9990	GenCorp Aerojet Ordnance, Chino Hills, CA.	49 CFR 173.113	To become a party to exemption 9990 (Mode 1.)
10001–P	DOT–E 10001	Grand Rapids Welding Supply Co., Grand Rapids, MI.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10001–P	DOT–E 10001	BOC Gases, Murray Hill, NJ.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10094–P	DOT–E 10094	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 173.154(a)(17)	To become a party to exemption 10094. (Mode 2.)
10101–P	DOT–E 10101	BOC Gases, Murray Hill, NJ.	49 CFR 173.301(c), 173.34(e)(15).	To become a party to exemption 10101. (Mode 1.)
10127–X	DOT–E 10127	Thiokol Corporation, Huntsville, AL.	49 CFR 173.92	Authorizes the transport of a rocket motor with igniter installed and in a packaging not authorized by 49 CFR (Mode 2.)
10141–P	DOT–E 10141	Engelhard Corporation, Carteret, NJ.	49 CFR 173.421(d), 173.421–1(a), Part 107, Subpart B, Appendix B.	To become a party to exemption 10141. (Modes 1, 2, 3, 4.)
10195–X	DOT–E 10195	Catalyst Resources, Inc., Pasadena, TX.	49 CFR 173.119, 173.245, 173.34(e).	Authorizes a 15 year service life for cylinders that are subjected to 5 year internal and external visual inspections when used in dedicated compatible catalyst formulation service. (Modes 1, 2, 3.)
10251–P	DOT–E 10251	Aztec Peroxides, Inc., Elyria, OH.	49 CFR 173.314(c), 179.106–3(c).	To become a party to exemption 10251. (Mode 2.)
10285–X	DOT–E 10285	Western Growers Association, Newport Beach, CA.	49 CFR 173.29, 173.315	To authorize shipment of residual amounts of ammonia in DOT specification packagings. (Mode 1.)
10291–X	DOT–E 10291	Tankbouw Rootselaar B.V., Holland.	49 CFR 173.315, 178.245	Authorizes the manufacture, marking, and sale of non-DOT specification IMO Type 5 portable tanks for shipment of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3.)
10307–P	DOT–E 10307	Alcoa Specialty Chemicals, Inc., Westlake, LA.	49 CFR 179.200–18, 179.201–1.	To become a party to exemption 10307. (Mode 2.)
10336–X	DOT–E 10336	Morton International, Inc., Ogden, UT.	49 CFR 173.93(a)(9)	Authorizes the transportation of propellant explosives, solid in packagings larger than those authorized in 49 CFR 173.93. (Mode 1.)
10380–X	DOT–E 10380	Reeled Tubing, Inc., Harvey, LA.	49 CFR 173.320	Authorizes the manufacture, marking, and sale of non-DOT specification cryogenic portable tanks, for transportation of nonflammable gases. (Mode 3.)
10429–P	DOT–E 10429	Nalco Chemical Company/Exxon Energy Chemicals, L.P., Sugar Land, TX.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173, Subpart D and F.	To become a party to exemption 10429. (Mode 1.)
10441–P	DOT–E 10441	Consolidated Waste Industries, Inc., Montclair, CA.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Division Transport/ ENPAK, El Dorado, AR.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Eastern Chemical Waste Systems-Caribe, Inc., Silver Spring, MD.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	General Chemical Corporation, Framingham, MA.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Frank's Vacuum Truck Service, Inc., Niagara Falls, NY.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Franklin Environmental Services, Inc., Wrentham, MA.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	MKC Enterprises, Inc., Atlanta, GA.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Clean Harbors Environmental Services, Inc., Quincy, MA.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Dart Trucking Company, Inc., Canfield, OH.	49 CFR 177.848	To become a party to exemption 10441 (Mode 1.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10476–X	DOT–E 10476	Syn-Tex B.A.G., Winnipeg, Manitoba, Canada.	49 CFR 172.331, 173.114a, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245b, 173.365, 173.366, 173.367.	Authorizes the manufacture, marking and sale of large, non-reusable collapsible polypropylene-lined woven polypropylene bulk bags, having a capacity of up to 2204 pounds each and top and bottom outlets, for shipment of flammable, corrosive, oxidizer, blasting agent and poison B solids. (Modes 1, 2, 3.)
10497–P	DOT–E 10497	Martin Marietta, Princeton, NJ.	49 CFR 173.336, 177.834(m), 179.300.	To become a party to exemption 10497. (Modes 1, 3.)
10517–P	DOT–E 10517	Nalco Chemical Company/Exxon Energy Chemicals, L.P., Sugar Land, TX.	49 CFR 173.32(e)(1)(ii)	To become a party to exemption 10517. (Modes 1, 2, 3.)
10575–P	DOT–E 10575	BOC Gases, Murray Hill, NJ.	49 CFR 174.67(i), (j), Part 107, Appendix B, Subpart B.	To become a party to exemption 10575. (Mode 2.)
10589–P	DOT–E 10589	Testing Associates, LA Honda, CA.	49 CFR 173.31(c)(3)	To become a party to exemption 10589. (Mode 2.)
10589–P	DOT–E 10589	Union Tan Car Company, East Chicago, IN.	49 CFR 173.31(c)(3)	To become a party to exemption 10589. (Mode 2.)
10589–P	DOT–E 10589	Physical Acoustics Corporation, Lawrenceville, NJ.	49 CFR 173.31(c)(3)	To become a party to exemption 10589. (Mode 2.)
10623–P	DOT–E 10623	Island Gases Limited, Jupiter, FL.	49 CFR 172.203, 173.318, 173.32, 176.76(h), 178.338.	To become a party to exemption 10623. (Modes 1, 3.)
10645–X	DOT–E 10645	Essex Cryogenics of Missouri, Inc., St. Louis, MO.	49 CFR 173.316; 178.57–8(c).	To authorize the manufacture, marking and sale of one liter non-DQT specification cylinders conforming to specification 4L for use as part of a portable mobile system for the physically impaired. (Mode 1.)
10660–P	DOT–E 10660	Sigma Chemical Company, St. Louis, MO.	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv).	To become a party to exemption 10660. (Modes 1, 4.)
10660–P	DOT–E 10660	DuPont Radiopharmaceuticals, North Billerica, MA.	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv).	To become a party to exemption 10660. (Modes 1, 4.)
10688–P	DOT–E 10688	Northern Alps, Inc., d/b/a Willow Air Service, Willow, AK.	49 CFR 175.310	To become a party to exemption 10688. (Mode 5).
10688–P	DOT–E 10688	M&M Aviation, Inc. d/b/a Airlift Alaska, Anchorage, AK.	49 CFR 175.310	To become a party to exemption 10688. (Mode 5).
10692–X	DOT–E 10692	Technical Manufactured Products Jasper, GA.	49 CFR 178.61–11, 178.61–15, 178.61–20, 178.61–5, 178.61–8(c)(2).	To authorize the manufacture, mark and sale of non-DOT specification cylinders constructed of ASTM A240 type 304L stainless steel built to 4BW specification to store and transport liquified petroleum gas. (Mode 1).
10692–X	DOT–E 10692	Technical Manufactured Products, Jasper, GA.	49 CFR 178.61–11, 178.61–15, 178.61–20, 178.61–5, 178.61–8(c)(2).	To authorize the manufacture, mark and sale of non-DOT specification cylinders constructed of ASTM A240 type 304L stainless steel built to 4BW specification to store and transport liquified petroleum gas. (Mode 1.)a party to exemption 1.
10692–P	DOT–E 10692	Miller-Leaman, Inc., Port Orange, FL.	49 CFR 178.61–11, 178.61–15, 178.61–20, 178.61–5, 178.61–8(c)(2).	To become a party to exemption 10692. (Mode 1.)
10695–X	DOT–E 10695	3M Company, St. Paul, MN.	49 CFR 172.101, 172.400(b), 172.504(e).	Authorizes the transportation by rail and highway of ethylene oxide packaged in aluminum cartridges within a fiberboard box with a flammable gas (Division 2.1) label instead of both poison gas (Division 2.3) and flammable gas labels. (Modes 1, 2.)
10706–X	DOT–E 10706	Energy & Environmental Technology Company (EETCO), Southfield, MI.	49 CFR 173.119	Authorizes the shipment of a flammable liquid in a non-DOT specification cylindrical steel packaging with a removable end which is bolted on for closure. (Mode 1.)
10709–P	DOT–E 10709	Nalco Chemical Company, Naperville, IL.	49 CFR 173.119(m)	To become a party to exemption 10709. (Modes 1, 2, 3.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10738–P	DOT–E 10738	Rotonics Molding Industries, Gardena, CA.	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 178.19, 178.253.	To manufacture, mark and sell a 300 gallon non-DOT specification, rotationally molded, polyethylene tank equipped with bottom outlet designed to be stackable for use in transporting various classes of material. (Modes 1, 2.)
10741–X	DOT–E 10741	Northern Natural Gas Company, Houston, TX.	49 CFR 178.36–2 thru 178.36–18.	To authorize the use of a non-DOT specification cylinder comparable to a 3AX cylinder for use transporting compressed natural gas. (Mode 1.)
10751–P	DOT–E 10751	Conex, Inc., Derby, IN	49 CFR 177.848	To become a party to exemption 10751. (Mode 1.)
10751–P	DOT–E 10751	Piedmont Explosives, Inc., Statesville, NC.	49 CFR 177.848	To become a party to exemption 10751. (Mode 1.)
10751–P	DOT–E 10751	IRECO of Florida, Inc., Miramar, FL.	49 CFR 177.848	To become a party to exemption 10751. (Mode 1.)
10751–P	DOT–E 10751	Dyna-Blast, Inc., Nortonville, KY.	49 CFR 177.848	To become a party to exemption 10751. (Mode 1.)
10751–P	DOT–E 10751	Alaska-Pacific Powder Company, Anchorage, AK.	49 CFR 177.848	To become a party to exemption 10751. (Mode 1.)
10785–X	DOT–E 10785	Kay-Ray/Sensall, Inc., Mt. Prospect, IL.	49 CFR 173.302, 175.3	Authorizes the manufacture, marking and sale of non-DOT specification containers (radiation detection chamber) in certain non-contacting measurement systems. (Modes 1, 2, 3, 4, 5.)
10789–P	DOT–E 10789	DX Distributors, Inc., Houston, TX.	49 CFR 173.304(a)(2), 173.34(d) and (e).	To become a party to exemption 10789. (Mode 1.)
10798–X	DOT–E 10798	Olin Corporation, Stamford, CT	49 CFR 174.67(i) and (j), Part 107, Appendix B.	Authorizes tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10798–X	DOT–E 10798	Olin Corporation, Stamford, CT	49 CFR 174.67(i) and (j), Part 107, Appendix B.	Authorizes tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10827–X	DOT–E 10827	Shannon Packaging Company, Covina, CA.	49 CFR 173.12(b)(1), 49 CFR Part 107	To authorize the manufacture, mark and sell of non-DOT specification quad-wall fiberboard boxes equipped with polyethylene film and aluminum foil liner specifically designed for use in transporting lab packs. (Mode 1.)
10916–P	DOT–E 10916	Nalco Chemical Company/Exxon Energy Chemicals, L.P., Sugar Land, TX.	49 CFR Part 173, Subpart F and 178.251–2(a).	To become a party to exemption 10916. (Modes 1 2, 3.)
10933–P	DOT–E 10933	Division Transport/ ENPAK, El Dorado, AR.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933. (Modes 1, 2, 3.)
10933–P	DOT–E 10933	Eastern Chemical Waste Systems-Caribe, Inc., Silver Spring, MD.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933. (Modes 1, 2, 3.)
10933–P	DOT–E 10933	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933. (Modes 1, 2, 3.)
10933–P	DOT–E 10933	All Chemical Disposal, Inc., San Jose, CA.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933. (Modes 1, 2, 3.)
10933–P	DOT–E 10933	REMAC USA, Inc., Silver Spring, MD.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933. (Modes 1, 2, 3.)
10949–P	DOT–E 10949	Environmental Transportation Services, Inc., Oklahoma City, OK.	49 CFR 177.848(c)	To become a party to exemption 10949 (Mode 2.)
10962–X	DOT–E 10962	International Compliance Center (USA), Ltd., Niagara Falls, NY.	49 CFR Part 172, Subparts E & F, Part 177, Subpart C.	To authorize the manufacture, mark and sale of specially designed combination packaging for shipment of limited quantities of various classes of hazardous materials. (Mode 1.)
10965–P	DOT–E 10965	HASA of Arizona, Inc., Eloy, AZ.	49 CFR 173.152(b)(1), 173.217(c).	To become a party to exemption 10965. (Mode 1.)
10984–P	DOT–E 10984	BOC Gases, Murray Hill, NJ.	49 CFR 173.304	To become a party to exemption 10984 (Modes 1, 3.)
11025–X	DOT–E 11025	Mass Systems, Inc., Baldwin Park, CA.	49 CFR 173.302(a)(2), 175.3, 178.44.	To authorize the manufacture, mark and sell of a non-DOT specification welded stainless steel cylinder having 200 cubic inches maximum water capacity and 3800 psi maximum service pressure for transporting various Division 2.2 commodities. (Modes 1, 2, 4, 5.)
11037–P	DOT–E 11037	W A. Cleary Chemical Corporation, Somerset, NJ.	49 CFR 172.101	To become a party to exemption 11037 (Modes 1, 2, 3, 4, 5.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11037–P	DOT–E 11037	Wilbur-Ellis Company, Fresno, CA.	49 CFR 172.101	To become a party to exemption 11037. (Modes 1 2, 3, 4, 5.)
11043–P	DOT–E 11043	Hazmat Environmental Group, Inc., Buffalo, NY.	49 CFR 177.848	To become a party to exemption 11043. (Mode 1.)
11043–P	DOT–E 11043	Frank's Vacuum Truck Service, Inc., Niagara Falls, NY.	49 CFR 177.848	To become a party to exemption 11043. (Mode 1.)
11043–P	DOT–E 11043	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR 177.848	To become a party to exemption 11043. (Modes 1.)
11043–P	DOT–E 11043	Division Transport, El Dorado, AR.	49 CFR 177.848	To become a party to exemption 11043. (Mode 1.)
11043–P	DOT–E 11043	Dart Trucking Company, Inc., Canfield, OH.	49 CFR 177.848	To become a party to exemption 11043. (Mode 1.)
11043–P	DOT–E 11043	Advanced Environmental Technology Corporation, Flanders, NJ.	49 CFR 177.848	To become a party to exemption 11043. (Mode 1.)
11043–P	DOT–E 11043	California Advanced Environmental Technology Corp., Hayward, CA.	49 CFR 177.848	To become a party to exemption 11043. (Mode 1.)
11050–P	DOT–E 11050	Arrow Terminal Company, Industry, PA.	49 CFR 174.67(i)+(j)	To become a party to exemption 11050. (Mode 2.)
11055–P	DOT–E 11055	Hazmat Environmental Group, Inc., Buffalo, NY.	49 CFR 173.226, 174.81, 176.83, 177.848.	To become a party to exemption 11055. (Modes 1. 2, 3.)
11055–P	DOT–E 11055	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR 173.226, 174.81. 176.83, 177.848.	To become a party to exemption 11055. (Modes 1. 2, 3.)
11090–X	DOT–E 11090	Mobile Ripening Systems, Inc., Jessup, MD.	49 CFR 177.809 and 177.817, Part 107, Subpart B, Appendix B, Part 172, Subpart C, D and E; 173.24(b)(1).	To authorize the controlled release of ethylene, contained in DOT specification cylinders, into a transport vehicle for the purpose of ripening fruits and vegetables. (Mode 1.)
11119–P	DOT–E 11119	G.H. Brown Automotive, Inc., Perkasie, PA.	49 CFR 173.152	To become a party to exemption 11119. (Modes 1 2.)
11119–P	DOT–E 11119	Auto Refinish Distributors, Inc., Tulsa, OK.	49 CFR 173.152	To become a party to exemption 11119. (Modes 1 2.)
11135–P	DOT–E 11135	GE Silicones, Waterford, NY	49 CFR 173.29(b)(ii)	To become a party to exemption 11135. (Mode 2.)
11136–P	DOT–E 11136	International Fireworks Co., Inc., Newton, NJ.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136. (Mode 4.)
11136–P	DOT–E 11136	Rodney Clark, Anchorage, AK.	49 CFR 172 101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136. (Mode 4.)
11136–P	DOT–E 11136	Lynn C. Johnson, Anchorage, AK.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136. (Mode 4.)
11136–P	DOT–E 11136	Alfred R. Lupton, Anchorage, AK.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136. (Mode 4.)
11136–P	DOT–E 11136	Mark O. Holt, Kodiak, AK	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a part to exemption 11136. (Mode 4.)
11136–P	DOT–E 11136	FireArt by Griz, Anchorage, AK.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136. (Mode 4.)
11136–P	DOT–E 11136	J & J Pyrotechnics, Manufacturing, Inc., Moscow, PA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136. (Mode 4.)
11139–X	DOT–E 11139	Alaska Pacific Powder Company, Olympia, WA.	49 CFR 173.62, Part 107 Appendix B(1), 172.301(c), 175.320(a).	The authorizes the transportation in commerce, aboard cargo aircraft, in Alaska, Explosives, blasting, type E, Division 1.5D which are described in 49 CFR Section 175.320 as Blasting agent, n.o.s. (Mode 4.)
11139–P	DOT–E 11139	DYNO—Alaska, Olympia, WA.	49 CFR 173.62, Part 107 Appendix B(1), 172.301(c), 175.320(a).	To become a party to exemption 11139. (Mode 4.)
11139–P	DOT–E 11139	DYNO—Northwest, Olympia, WA.	49 CFR 173.62, Part 107 Appendix B(1), 172.301(c), 175.320(a).	To become a party to exemption 11139. (Mode 4.)

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11139–P	DOT–E 11139	Pacific Powder Company, Olympia, WA	49 CFR 173.62, Part 107 Appendix B(1), 172.301(c), 175.320(a).	To become a party to exemption 11139. (Mode 4.)
11156–P	DOT–E 11156	ICI Explosives USA, Inc., Dallas, TX.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	St. Lawrence Explosives Corp., Adams Center, NY	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Evenson Explosives, Inc., Morris, IL.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Explosives Technologies International, Wilmington, DE	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Dyna-Blast, Inc., Nortonville, KY	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Slurry Explosive Corporation, Columbus, KS.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Slurry Explosive Corporation, Columbus, KS.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Quick Supply Co., Des Moines, IA.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Piedmont Explosives, Inc., Statesville, NC.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Cherokee Products, Inc., Jefferson City, TN.	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	El Dorado Chemical Company, St. Louis, MO	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Maurer & Scott Sales, Inc., Lehigh Valley, PA	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	Buckley Powder Co., Englewood, CO	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11156–P	DOT–E 11156	MEMSCO, Dawson Springs, KY	49 CFR 173.62	To become a party to exemption 11156. (Mode 1.)
11184–P	DOT–E 11184	BP Chemicals, Inc. Cleveland, OH.	49 CFR 179.101–1	To become a party to exemption 11184. (Mode 2.)
11189–P	DOT–E 11189	TRW Vehicle Safety Systems, Inc. Washington, MI	49 CFR 172.101 173.56 173.116	To authorize automotive passive restraint inflators and/or modules, which are capable of passing certain UN test criteria, to be shipped as class 9 (Modes 1, 2, 3, 4, 5.)
11189–P	DOT–E 11189	TEMIC, Aschau, Germany	49 CFR 172 101 173.56, 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Takata Moses Lake, Inc ("TML"), Moses Lake, WA.	49 CFR 172 101 173.56 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Automotive Systems Laboratory, Inc. ("ASL"), Farmington Hills, MI	49 CFR 172 101 173.56 173.116.	To become a party to exemption 11189 (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Inflation Systems, Inc. ("ISI"), LaGrange, GA.	49 CFR 172.101 173.56, 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Takata, Inc. Auburn Hills, MI.	49 CFR 172.101 173.56, 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Toyota Motor Sales, U.S.A., Inc. Torrance CA.	49 CFR 172.101 173.56 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–X	DOT–E 11189	Morton International, Inc. Ogden, UT	49 CFR 172.101 173.56 173.116	To authorize automotive passive restraint inflators and/or modules, which are capable of passing certain UN test criteria, to be shipped as class 9 (Modes 1, 2, 3, 4, 5.)
11189–P	DOT–E 11189	Honda of America Mfg. Inc., Marysville, OH.	49 CFR 172.101 173.56, 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Diamond-Star Motors, Normal, IL.	49 CFR 172.101 173.56, 173.116.	To become a party to exemption 11189. (Modes 1 2, 3, 4, 5.)
11189–P	DOT–E 11189	Breed Technologies, Inc., Lakeland, FL	49 CFR 172.101 173.56, 173.116.	To authorize automotive passive restraint inflators and/or modules, which are capable of passing certain UN test criteria, to be shipped as class 9 (Modes 1 2, 3, 4, 5.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11215–X	DOT–E 11215	Orbital Sciences Corporation (OSC), Dulles, VA.	49 CFR and 173.62, Part 107, Subpart B, Appendix B; 172.102 note 109; Part 172 Subpart C, D, E, F; Part 173 Subpart E, G.	To authorize the transportation in commerce of certain hazardous materials, contained in a pegasus XL three stage winged solid fuel rocket in captive carry launch (CCL) configuration secured beneath a McDonnell Douglas L–1011 (L–1011) aircraft. The flight of the L–1011 must be in accordance with the range safety procedure of Vandenberg AFB, CA. (Mode 4.)
11251–P	DOT–E 11251	Aztec Peroxides, Inc., Elyria, OH.	49 CFR 173.225	To become a party to exemption 11251. (Mode 2.)
11253–P	DOT–E 11253	Rhone-Poulenc, Shelton, CT.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	McKenzie Tank Lines, Inc., Tallahassee, FL.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	Cominco Fertilizers Ltd., Calgary, Alberta, CN.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	Coulton Chemical Corp., Sylvania, OH.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	Hoechst Celanese Corp., Charlotte, NC.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	MARSULEX, Inc., North York, Ontario, CN.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	Peridot Chemicals (New Jersey), Inc., Newark, NJ.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11253–P	DOT–E 11253	Ruan Transport Corporation, Des Moines, IA.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
11254–P	DOT–E 11254	Schlumberger Well Services, Houston, TX.	49 CFR 173.62(c), 49 CFR, Packing Method US006, Paragraph C and F.2.	To become a party to exemption 11254. (Mode 3.)
11347–X	DOT–E 11347	Nuclear Containers, Inc., Elizabethton, TN.	49 CFR 178.358	To authorize the manufacture, mark, and sell of DOT Specification 21PF–1B overpacks manufactured in variance with the Specification in 49 CFR 178.358 for the transportation of uranium hexafluoride, fissile (containing 1—5% U–235) in Type A cylinders. (Modes 1, 2, 3.)

NEW EXEMPTIONS

10328–N	DOT–E 10328	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.119, 179.101–1(a), 179.102–11.	To authorize alternate safety relief valve settings for DOT specification tank cars used for shipment of certain flammable liquids. (Mode 2.)
10395–N	DOT–E 10395	Ceyogenic Services Incorporated, Canton, GA.	49 CFR 173.316(c)	To authorize the manufacture, marking and sale of a DOT Specification 4L cylinder to be used for the transportation of methane, refrigerated liquid, (Division 2.1). (Mode 1.)
11300–N	DOT–E 10441	North State Environmental, South San Francisco, CA.	49 CFR 177.848	To authorize transportation in commerce of cyanides, Division 6.1, in lab packs with Class 8 materials, not to exceed 55 gallons per container, to be transported on the same vehicle. (Mode 1.)
10511–N	DOT–E 10511	Schlumberger Well Services, Houston, TX.	49 CFR 173.304	To authorize shipment of sulfur hexafluoride, classed as a nonflammable gas, in a non-DOT specification device contained in a specially designed shipping vessel. (Modes 1, 2, 3, 4, 5.)

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10589–N	DOT–E 10589	Monsanto, St. Louis, MO	49 CFR 173.31(c)(3)	To authorize an alternative method for (acoustic emission test) for retesting and to discontinue internal shell inspection of tank cars. (Mode 2.)
10751–N	DOT–E 10751	Ireco, Incorporated, Salt Lake City, UT	49 CFR 177.848	To authorize the transportation of oxidizers and high explosives contained in a separate compartment in the same vehicle. (Mode 1.)
10791–N	DOT–E 10791	Con-Quest Products, Inc., Elk Grove Village, IL	49 CFR 173.12(b)(1)	To authorize the manufacture, mark and sell of a non-DOT specification tri-wall corrugated container with a polyethylene inner base for use as a lab pack outer package for transporting various classes of material. (Mode 1.)
10858–N	DOT–E 10858	Ashland Chemical, Inc., Columbus, OH	49 CFR 174.67(i)	To authorize tank cars containing various classes of hazardous materials to be exempt from physical presence of unloader during unloading. (Mode 2.)
10903–N	DOT–E 10903	National Medical Waste, Inc., Nashville, TN.	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in various size polyethylene carts not to exceed 269 gallon capacity. (Mode 1.)
10920–N	DOT–E 10920	Dodson International Air, Roswell, GA.	49 CFR 172.101, 172.204(c)(3), 173.27(b) (2), (3) and 173.27(f) Table 2, 175.30(e)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only (Mode 4.)
10950–N	DOT–E 10950	The Fertilizer Institute on behalf of Members Co., Spokane, WA.	49 CFR 173.315(a) Note 17· 2, 6 & 7; 173.315(m).	To authorize the shipment of anhydrous ammonia for agricultural purposes in MC 330, 331 and non-DOT specification cargo tanks (nurse tanks) mounted on specially designed trucks. (Mode 1.)
10954–N	DOT–E 10954	Atlas Bag Company, Inc., Lincolnwood, IL	49 CFR 173.211, 173.212, 173.213, 173.62.	To authorize the manufacture, mark and sale of non-DOT specification flexible intermediate bulk bags to be used in transporting various classes of hazardous materials. (Mode 2.)
10965–N	DOT–E 10965	HASA, Inc., Santa Clarita, CA.	49 CFR 173.152(b)(1). 173.217(c).	To authorize the transportation of various Division 5.1 products in ten pound or less plastic bottles overpacked with strong outside containers. (Mode 1.)
10986–N	DOT–E 10986	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)(2) (3) + (4), 173.34(e)(1)(3) (4) + (6).	To authorize ultrasonic retesting of DOT-Specification 3A cylinders used for shipment of liquefied and non-liquefied compressed gases, and mixtures of two or more gases classed as Division 2.1, 2.2 and 2.3 material. (Mode 1.)
10987–N	DOT–E 10987	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.163, 173.192(a), 173.302(a)(1), 173.304(a)(2), 173.34 (d) + (e).	To authorize the use of non-DOT specification salvage cylinders for shipment of certain hazardous materials which are authorized to be shipped in DOT-Specification cylinders. (Mode 1.)
10990–N	DOT–E 10990	Air Transport Association of America, Washington, DC.	49 CFR 173.34(e)	To authorize an alternative maintenance program for DOT-Specification 4DA and 4DS hermetically sealed cylinders charged with bromotrifluoromethane, compressed, Division 2.2 used as components on aircraft fire suppression systems. (Modes 1, 4, 5.)
11029–N	DOT–E 11029	Olin Ordnance, St. Marks, FL	49 CFR 173.62(a) (b) + (c).	To authorize shipment of propellant explosives in water, classed as Division 1.3, in DOT MC–307, DOT–407, MC312 or DOT 412 cargo tanks having a minimum design pressure of 25 psig. (Mode 1.)
11043–N	DOT–E 11043	Laidlaw Environmental Services, Inc., Columbia, SC	49 CFR 177.848	To load, transport and store Division 2.3 (Gas) or 6.1 (liquid), Packing Group 1, Zone A material packed in "lab-pack" drums on the same transport vehicle carrying packagings containing various classes of hazardous materials. (Mode 1.)
11055–N	DOT–E 11055	Rollins CHEMPAK, Inc., Wilmington, DE	49 CFR 173.226, 174.81, 176.83, 177.848.	To authorize the transportation of combination packages of Division 6.1, Packing Group I, Hazard Zone A material to be shipped with other hazardous materials. (Modes 1, 2, 3.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11075–N	DOT–E 11075	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	49 CFR 172.202(e), 172.203(d)(2)(4), 172.310(a)(1); 172.331(b), 173.403(c), 173.425(c)(5), 173.443(a), 174.59, 174.700(e), 174.715(a).	To authorize relief from certain shipping paper, marking, placarding, and other requirements involving full trains of closed gondola cars containing soils and debris having low concentrations of naturally occurring radioactive material. (Mode 2.)
11078–N	DOT–E 11078	Ryder Aviall, Inc., Mt. Juliet, TN.	49 CFR 173.159 (d)(1) & (2).	To authorize the transport of batteries, wet, filled with alkali, electric storage, classed as Class 8, in specially designed packaging meeting UN 1H2 Packing Group III requirements to be shipped as essentially non-regulated. (Modes 1, 2, 4, 5.)
11082–N	DOT–E 11082	Advanced Tissue Sciences, Inc., La Jolla, CA.	49 CFR 173.136(a)(1), 173.137	To authorize an alternative mechanical type test method to determine corrosivity and specific packaging group. (Modes 1, 2, 3, 4, 5.)
11088–N	DOT–E 11088	Federal Laboratories, Saltsburg, PA.	49 CFR 172.102	To exempt from labelling requirements small packages of various hazardous materials (i.e. tear gas type products) formerly requiring irritant label now reclassed to require a poison or explosive label. (Modes 1, 3, 4, 5.)
11099–N	DOT–E 11099	AMKO Service Company Gnadenhutten, OH.	49 CFR 173.302(c), 173.34(e).	To authorize acoustic emission retesting of DOT-Specification 3A and 3AA compressed gas cylinders (trailer tubes). (Modes 1, 2, 3.)
11132–N	DOT–E 11132	Uniroyal Chemical Company, Inc., Middlebury, CT	49 CFR 173.224, 49 CFR	To authorize the transport of Division 4.1, flammable solid, in a specially designed composite type packaging in quantities not to exceed 55 pounds. (Mode 1.)
11141–N	DOT–E 11141	McClure Industries, Inc., Portland, OR.	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type containers secured to specially designed trucks. (mode 1.)
11156–N	DOT–E 11156	Austin Powder Company, Cleveland, OH.	49 CFR 173.62	To authorize the transport of ammonium nitrate-fuel oil mixture, classed as Division 1.5 in specially designed multi-wall plastic lined bags meeting UN packaging criteria except not sift-proof. (Mode 1.)
11159–N	DOT–E 11159	Fort Container Systems Inc. Brampton, Ontario, Canada.	49 CFR 178.253, CFR Part 173, Subpart F, 178.19.	To authorize the manufacture, mark and sell of rotationally moulded polyethylene intermediate bulk containers equipped with stackable steel frame, with a capacity of 300 gallons, for shipment of Class 8 material. (Modes 1, 2.)
11163–N	DOT–E 11163	Control Instruments Corporation, Fairfield, NJ.	49 CFR 172.101	To authorize the transport of hydrogen, compressed, Division 2.1 otherwise forbidden on passenger aircraft, as part of a protable monitoring system. (Mode 5.).
11167–N	DOT–E 11167	Eco-Pak, Inc., Elizabeth, TN.	49 CFR 173.240–244	To manufacture, marking and sell a non-DOT specification 250 gallon capacity packaging system, consisting of a inner and outer cylindrical metal container meeting group I packaging criteria, for shipment of all packaging group I materials, solids and liquids. (Modes 1, 2, 3, 4.)
11172–N	DOT–E 11172	Lockheed Engineering & Sciences Company, San Diego, CA.	49 CFR 173.301(h), 173.302 (a)(1)(2) & (3), 175.3.	To authorize the transportation of non-Dot specification (spherically shaped) cylinders, comparable to DOT specification 3A, to transport air, nitrogen, and oxygen in non-liquefied form as part of a submergence rescue system. (Modes 1, 4, 5.)
11178–N	DOT–E 11178	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.226	To authorize the transportation of bromine, Class 8, in specially designed non-bulk reusable containers constructed of steel equipped with removable head with design pressure of 75 psig. (Mode 1.)
11184–N	DOT–E 11184	Rohm and Haas Company, Philadelphia, PA.	49 CFR 179.101–1	To authorize the transportation of flammable liquids, Class 3 in DOT–105J300 tank cars equipped with either 75 psi or 150 psi safety relief valves. (Mode 2.)
11186–N	DOT–E 11186	Cryenco, Inc., Denver, CO.	49 CFR 173.318	To authorize the manufacture, mark and sell of a cryogenic portable tank of SA–240 316L construction, comparable to MC–338, equipped with safety relief valve with 250 psig for use in transporting hazardous materials classed in Division 2.1 and 2.2. (Modes 1, 2, 3.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11190–N	DOT–E 11190	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173.62(c)	To authorize the transportation of 1G fiber drums as outer packaging for use in transporting various classes of explosives. (Modes 1, 3, 4.)
11191–N	DOT–E 11191	Alaska Helicopters, Inc., Anchorage, AK.	49 CFR 172.101, 173.241, 173.242, 173.243.	To authorize the bulk transportation of class 3 hazardous materials in quantities greater than those presently authorized by cargo air. (Mode 4.)
11192–N	DOT–E 11192	Bulk Sak. Inc., Malvern, AR.	49 CFR 172.101, 172.331, 173.124, 173.152, 173.154, 173.164, 173.204, 173.213, 173.217, 173.227, 173.240, 173.241, 173.242, 173.244.	To authorize the manufacture, mark and sell of non-DOT specification collapsable, nonreusable, flexible bulk bags for use in transporting various classes of solid hazardous material. (Modes 1, 2, 3.)
11196–N	DOT–E 11196	DHE (Fabrication and Machining), Vereeniging, Republic of So. Africa.	49 CFR 178.245–1(b)	To authorize the transportation of various classes of hazardous material in non-DOT specification steel portable tanks similar to Specification 51 equipped with fittings at the end or on top in one location. (Modes 1, 2, 3.)
11202–N	DOT–E 11202	Newport News Shipbuilding and Dry Dock Company, Newport News, VA.	49 CFR 173, 49 CFR 172	To authorize the intra plant transportation across a public street, of various classes of hazardous materials in quantities not to exceed 55 gallons to be transported as non-regulated. (Mode 1.)
11204–N	DOT–E 11204	Vulcan Chemicals, Birmingham, AL.	49 CFR 174.67(j)	To authorize tank cars equipped with 2" valve hose under 30 psig pressure to remain connected during unloading of hydrochloric acid, Class *. (Mode 2.)
11206–N	DOT–E 11206	Western Atlas International, Houston, TX.	49 CFR 173.62, Packing Method E–124, PPR–33.	To authorize the transportation of detonating cord, Class 1, in plastic bags as alternative inner packaging overpacked as specified in CFR. (Modes 1, 3, 4, 5.)
11210–N	DOT–E 11210	Owl Scientific, Inc., Woburn, MA.	49 CFR 49 CFR 173.4(a)(2)(ii).	To authorize the manufacture, mark and sell of a specially designed packaging incorporating an inner receptacle, which is thinner than required, for shipment of approximately 16.11 grams of a 5.1 material as non regulated. (Modes 1, 2, 4.)
11220–N	DOT–E 11220	Nalco Chemical Company, Naperville, IL.	49 CFR 173.28(b)(2)	To authorize the reuse of certain stainless steel packagings without leakproofness air test for use in transporting various classes of hazardous materials, Class 1, 8, 9 and Division 5.1, 6.1 (Modes 1, 2, 3.)
11221–N	DOT–E 11221	Matrix Construction, Inc., Anchorage, AK.	49 CFR 172.101, 173.315	To authorize the bulk transportation of Propane, Division 2.1, in DOT–51 specification portable fuel tanks in quantities greater than those presently authorized by cargo air. (Mode 4.)
11226–N	DOT–E 11226	Carpenter Co., Pasadena, TX.	49 CFR 174.67(a) and (j)	To authorize rail cars containing ethylene oxide, Division 2.3, PIH, zone C, to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
11228–N	DOT–E 11228	High Voltage Environmental Applications, Inc., Miami, FL.	49 CFR 173.315	To authorize transportation of a specially designed packaging configuration containing sulfur hexafluoride, Division 2.2. (Mode 1.)
11240–N	DOT–E 11240	Mead Fine Paper, Chillicothe, OH.	49 CFR 173.31(A1)(c)	To authorize a one-time shipment of a DOT-Specification 111A100W1 rail car, which was filled after it was out-of-test, containing corrosive liquid, n.o.s., Class 8. (Mode 2.)
11242–N	DOT–E 11242	Northrop Corporation, Hawthorne, CA.	49 CFR 172.200, 172.300, 172.400, 173.60, 173.62.	To authorize the interfacility transportation of Class 1 explosives packaged in strong wooden boxes and shipped as non-regulated in private owned enclosed vehicles. (Mode 1.)
11248–N	DOT–E 11248	HAZMATPAC, Inc., Houston, TX	49 CFR 173.3(a), 175.3, 177.848(b), 49 CFR 172 Subpart E & Subpart F, and Subpart H, Part 173, Subpart D, Subpart E, Subpart F	To authorize the manufacture, mark and sale of specially designed combination type packaging for transporting certain hazardous materials in limited quantities without required labelling and placarding. (Modes 1, 2, 3, 4, 5.)
11251–N	DOT–E 11251	Akzo Chemicals, Inc., Chicago, IL.	49 CFR 173.225	To authorize the transportation of Division 5.2 organic peroxide solid or liquid material in 4H2 combination packaging. (Mode 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11253–N	DOT–E 11253	Boliden Intertrade, Inc. et al., Atlanta, GA.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To authorize continued use of certain DOT specification MC 331 cargo tanks which are not insulated as required for shipment of Sulfur Doxide liquefied, Division 2.3. (Mode 1.)
11255–N	DOT–E 11255	Arvin Industries, Inc., Columbus, IN.	49 CFR 172, 299–200, 172.203–204, 173.300, 173.306(f)(1), 173.306(f)(2)(iii) and 173.306(f)(3).	To manufacture, mark and sell various gas pressurized shock absorbers, struts and cartridges with relief from certain required test parameters and shipped as consumer commodities, ORM–D, in specially designed packaging. (Modes 1, 2, 3, 4, 5.)
11260–N	DOT–E 11260	VIZ Manufacturing Company, Philadelphia, PA.	49 CFR 173.3069a)(1)	To authorize the transportation of argon, compressed gas, Division 2.2, in low pressure airbag, pressure switches, containing .021 cubic inch of argon at a pressure between 2500 and 3000 psi in specially designed packaging. (Mode 1.)
11263–N	DOT–E 11263	American Coke & Coal Chemicals Institute, Washington, DC.	49 CFR 172.101 (SP8, B45).	To authorize the transportation of solid coal tar pitch compounds, Class 9, in open-top and closed-top sift-proof metal cans in amounts that exceeds reportable quantities. (Mode 1.)
11265–N	DOT–E 11265	American Sterilizer Company, Erie, PA.	49 CFR 172.101, 172.504, 173.323, 174.81 and 77.848.	To authorize the shipment of ethylene oxide contained in aluminum cannisters overpacked in fiberboard boxes to carry a Division 2.1 label instead of a Division 2.3 label. (Modes 1, 2.)
11266–N	DOT–E 11266	Amersham Corporation, Burlington, MA.	49 CFR 173.416(e)	To authorize transportation of certain radioactive materials in a 20–WC overpack that has an alternative inner packaging. (Modes 1, 2, 4.)
11267–N	DOT–E 11267	The University of New Mexico, Albuquerque, NM.	49 CFR Part 173	To authorize the transportation of Space Nuclear Power systems (Topaz II), containing various hazardous material, to be shipped in a specially designed transport container. (Mode 1.)
11270–N	DOT–E 11270	B.F Goodrich Company, Henry, IL.	49 CFR 174.67(i)(j)	To authorize chlorine filled tank cars to remain connected without the physical presence of an unloader. (Mode 2.)
11274–N	DOT–E 11274	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.306(c)	To authorize the transportation of personally owned fire extinguisher bottles in private owned vehicles shipped under military or civilian permanent change of station orders aboard cargo vessel (Mode 3.)
11277–N	DOT–E 11277	Bulk Sak, Incorporated, Malvern, AK.	49 CFR Parts 173, Subpart E & F	To authorize the manufacture, marking and sell of large, non-reusable, collapsible, woven polypropylene bulk bags (coated w/polyethylene film), incorporating four top lifting straps of woven polyester or polypropylene webbing with a minimum breaking strength of 6000 lbs, and having top and bottom outlets, for shipment of certain hazardous materials. (Modes 1, 2, 3.)
11281–N	DOT–E 11281	E.I. du Pont De Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.101/SP B–14,, B–32 and T–38.	To authorize the transportation of certain Class 8 materials and Division 6.1, PIH material in uninsulated MC 312, 330, 331 and DOT 412 cargo tanks and DOT 51 portable tanks of stainless steel construction. (Mode 1.)
11283–N	DOT–E 11283	Zesto Therm, Inc., Cincinnati,OH.	49 CFR 171.2, 172.101, 173.1(b), 173.124(c), 173.144.	To authorize the transportation of flameless heating devices containing small quantities of material classed as Division 4.3 to be transported as consumer commodity. ORM–D. (Modes 1, 2.)
11287–N	DOT–E 11287	DADCO, Detroit, MI	49 CFR 173.306(f)	To provide for alternative testing criteria for gas spring devices containing small quantities of compressed, nonflammable nitrogen gas pressurized from 250 psi to 2175 psi at 70 degree F. (Modes 1, 2, 3, 4, 5.)
11297–N	DOT–E 11297	Reebok International Ltd., Stoughton, MA.	49 CFR (Parts 171–177) of Subtitle B, 175.10, Subchapter C.	This exemption authorizes the transportation of Reebok "instapump" inflators equipped with CO2 cartridges, classed in Division 2.2, which are presently forbidden either in the passenger cabin of the aircraft, or the cargo compartment. (Mode 5.)
1321–N	DOT–E 11321	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.101 column 7, Special Provision B14 and T38.	To authorize the transportation of uninsulated DOT specification cargo tanks and portable tanks containing titanium tetrachloride which is poisonous by inhalation. (Mode 1.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EMERGENCY EXEMPTIONS				
EE6530–X	DOT–E 6530 ..	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.302(c)	Authorizes the shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
EE6691–X	DOT–E 6691 ..	Valley Welding Supply Company, Wheeling, WV	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	Authorizes the use of DOT Specification 3A or 3AA cylinders over 35 years old, which can be retested every 10 years, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4.)
EE 6769–X	DOT–E 6769 ..	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314, 173.315	Authorizes the transport of trifluoromethane in DOT specification tank cars cargo tanks. (Modes 1, 2.)
EE 7835–X	DOT–E 7835 ..	Solkatronic Chemicals, Inc., Morrisville, PA.	49 CFR 177.848, Part 107, Appendix (B)(1).	Authorizes the transport of compressed gas cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
EE 7909–P ..	DOT–E 7909 ..	ALH Systems, Inc., Elk Grove Village, IL.	49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 173.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, 175.33.	To become a party to exemption 7909. (Modes 1, 2.)
EE 8156–X	DOT–E 8156 ..	Valley Welding Supply Company, Wheeling, WV	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	Authorizes the shipment of flammable gases in DOT Specification 39 cylinders up to 225 cubic inches in volume. (Modes 1, 2.)
EE 8458–X	DOT–E 8458 ..	Welland Chemical Inc., Newell, PA.	49 CFR 173.31(c) Table 1, 179.202–12(b).	Authorizes the conversion of DOT Specification 105A500W or 112A400W tank cars to a DOT Specification 111A100W2 tank car (Mode 2.)
EE 8582–X	DOT–E 8582 ..	Metro-North Commuter Railroad Company, New York, NY	49 CFR Parts 100–177	Authorizes the transport of railway track torpedoes and fuses packed in metal kits in motor vehicles by railroad maintenance crews as nonregulated rail carrier equipment. (Mode 1.)
EE 8723–X	DOT–E 8723 ..	Mt. State Bit Service, Inc., Morgantown, WV	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	Authorizes the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 2.)
EE 8723–X	DOT–E 8723 ..	Savage Industries, Inc., Salt Lake City, UT	49 CFR 172.101, 173.114a(h)(3), 173.154, 175.415, 176.83.	Authorizes the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 2.)
EE 9047–X	DOT–E 9047 ..	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	Authorizes the use of copper-bearing (brass) valves in DOT specification cylinders and DOT Specification 5P drums containing ethylene oxide. (Modes 1, 2, 3, 4.)
EE 9145–X	DOT–E 9145 ..	Exxon Pipeline Company, Houston, TX.	49 CFR 173.119, 173.304, 173.315.	Authorizes the use of a non-DOT specification container, for shipment of flammable gases. (Mode 1.)
EE 10143–X ..	DOT–E 10143	Eurocom Imports, Inc., Irving, TX.	49 CFR 173.306(a), 178.33a.	Authorizes the transport of certain hazardous materials in a container conforming with DOT Specification 2Q exception for size and marking. (Modes 1, 2.)
EE 10184–X ..	DOT–E 10184	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.34(e)(10), 173.34(e)(9).	Authorizes the shipment of a specific gas mixture in DOT Specification 4B, 4BA or 4BW cylinders retested in accordance with the provisions of 49 CFR 173.34 (e)(9) and (e)(10). (Modes 1, 2, 3.)
EE 10334–X ..	DOT–E 10334	Chevron Pipe Line Company, Houston, TX.	49 CFR 173.119, 173.304, 173.315.	Authorizes the use of a non-DOT specification container for shipment of flammable liquids and flammable gases. (Mode 1.)
EE 10529–X ..	DOT–E 10529	LND, Inc., Oceanside, NY	49 CFR 173.302, 175.3 ...	Authorizes the use of non-DOT specification containers described as hermetically sealed electron tube devices. (Modes 1, 2, 3, 4, 5.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10645–X ..	DOT–E 10645	Essex Cryogenics of Missouri, Inc., St. Louis, MO.	49 CFR 173.316; 178.57–8(c).	Authorizes the manufacturer, marking and sale of insulated non-DOT specification cylinder conforming with 49 CFR 178.57 with exception for shipment of certain nonflammable gases. (Mode 1.)
EE 10650–X ..	DOT–E 10650	United Agri Products/ Transbas, Incorporated, Greeley, CO.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	Authorizes tank cars, containing flammable gases, flammable liquids, combustible liquids and other regulated materials (OPM–E), to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
EE 10693–X ..	DOT–E 10693	Vertex Chemical Corporation, St. Louis, MO.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	Authorizes the use of tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
EE 10784–X ..	DOT–E 10784	U. S. Department of the Treasury, Washington, DC.	49 CFR 173.25, 175.85, Part 107, Appendix B to Subpart B, Part 172, Subpart C.	Authorizes the shipment of oxygen in DOT specification 3AA2015 cylinders in the passenger compartment of commercial aircraft. (Mode 5.)
EE 11136–P ..	DOT–E 11136	Alaska Pyrotechnics, Inc., Anchorage, AK.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To become a party to exemption 11136 (Mode 4.)
EE 11136–X ..	DOT–E 11136	Alaska Pyrotechnics, Inc., Anchorage, AK.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To authorize the air transport of fireworks, 1.3G with the approval, marking, labeling and packaging requirements of Title 49 CFR. (Mode 4.)
EE 11200–P ..	DOT–E 11200	Olin Corporation, Stamford, CT.	49 CFR 173.31(a)(4) and 179–300–15.	To become a party to exemption 11200 (Modes 1 3.)
EE 11200–P ..	DOT–E 11200	Astrotech Space Operations, L.P., Titusville, FL.	49 CFR 173.31(a)(4) and 179–300–15.	To become a party to exemption 11200 (Modes 1 3.)
EE 11251–P ..	DOT–E 11251	Aztec Peroxides, Inc., Elyria, OH.	49 CFR 173.225	To become a party to exemption 11251. (Mode 2.)
EE 11253–P ..	DOT–E 11253	International Chemical Express, Inc., Surry, B.C. Canada.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
EE 11253–P ..	DOT–E 11253	Trimac Transportation System, Calgary, Alberta, Canada.	49 CFR 172.101, Special Provision B14, 173.315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
EE 11253–P ..	DOT–E 11253	Arrow Transportation Company, Portland, OR.	49 CFR 172.101, Special Provision B14, 173, 315 Notes 4 and 24, 49 CFR Section.	To become a party to exemption 11253. (Mode 1.)
EE 11269–N .	DOT–E 11269	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 176.67(k), 174.9(b).	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2.)
EE 9064–N ...	DOT–E 11271	Union Miniere, Antwerpen, Belgium.	.....	To authorize the transportation of germanium tetrachloride in packagings consisting of an inner glass bottle with a maximum capacity of 10 liters, cushioned within a steel drum, which is further cushioned and overpacked in a second steel drum. (Modes 1, 2, 3.)
EE 11272–N	DOT–E 11272	Union Tank Car Company, Chicago, IL.	49 CFR 173.29(a), 173.31(a).	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a residue of a Class 3 material, which does not fully comply with all DOT requirements. (Mode 2.)
EE 11279–N	DOT–E 11279	Van Waters & Rogers, Incorporated, Anchorage, AK.	49 CFR 172.101 Column (9B); Part 107, Appendix B, Subpart B(1).	To authorize the one time transportation in commerce of six (6) DOT Specification 4AA480 cylinders containing 150 pounds of anhydrous ammonia, liquefied, Division 2.2, which exceeds the quantity limitations authorized for shipment by cargo aircraft only. (Mode 4.)
EE 11280–N	DOT–E 11280	Amoco Oil Company, Chicago, IL.	49 CFR 173.29(a), 173.31(a) and (b)(3), and 179.200–6.	To authorize the transportation of class DOT 111A tank cars with a shell thickness below the regulatory minimum. (Mode 2.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11290–N	DOT–E 11290	Olin Corporation, Stamford, CT	49 CFR 173.31(b)(3), 179.100–12(c), 179.100–13 and, 179.102–2.	To authorize the transportation of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve which has been equipped with a chlorine "C" kit attached. (Mode 2.)
EE 11291–N	DOT–E 11291	Transammonia, Incorporated, Tampa, FL	49 CFR 179.201–1	To authorize the transportation of DOT Specification 111A100W1 tank cars, containing sulfur, a class 9 material, which does not fully comply with all DOT requirements. (Mode 2.)
EE 11292–N	DOT–E 11292	FMC Corporation, Philadelphia, PA.	49 CFR 172.101 Table, Column (7), Special Provisions T38, T43, T46.	To authorize the one time transportation in commerce of three (3) DOT Specification IM 101 portable tanks, each containing a residual amount of chloropivaloyl chloride, which do not comply with special packaging provisions required for the shipment of a Division 6.1, Poison inhalatiotion hazard (PIH) material. (Mode 1.)
EE 11293–N	DOT–E 11293	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.31(b); 173.31(b)(3), 179.300(b);, 179.300–13(a) and 179.300–14	To authorize the shipment of a DOT Specification 106A500X multi-unit tank car tank (ton tank), containing a division 2.3 material, meeting all DOT requirements except that the ton tank has a defective unloading valve and a Chlorine Institute "B" kit attached. (Mode 1.)
EE 11295–N	DOT–E 11295	Monsanto Company, St. Louis, MO	49 CFR 172.302(c), 173.29(c)(2); 173.31(a), Part 107, Appendix B to Subpart B.	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a residue of a Class 8 material, which does not fully comply with all DOT requirements. (Mode 2.)
EE 11295–N	DOT–E 11295	Lucier Chemicals Industries, Jacksonville Beach, FL.	49 CFR 172.302(c), 173.29(c)(2); 173.31(a), Part 107, Appendix B to Subpart B.	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank cr, containing a residue of a Class 8 material, which does not fully comply with all DOT requirements. (Mode 2.)
EE 11296–N	DOT–E 11296	Ashland Chemical Company, Dublin, OH	49 CFR 173.306	To authorize the transportation in commerce of certain waste aerosol cans containing flammable gas propellants, including isobutane and propane, overpacked in a removable head DOT Specification 17H or UN1A2 steel drum, or disposal. (Models 1, 2.)
EE 11303–N	DOT–E 11303	Union Pacific Railroad Company, Omaha, NE	49 CFR 173.29(a), 173.31(a); 173.314(c) and 179.105–4	To authorizes the transportation in commerce of a DOT Specification 112T340 tank car, containing a Division 2.1 material, meeting all DOT requirements except that the tank car is not equipped with a complete thermal insulation system due to accident. (Mode 2.)
EE 11303–X ..	DOT–E 11303	Union Pacific Railroad Company, Omaha, NE	49 CFR 173.29(a), 173.31(a); 173.314(c) and 179.105–4	To authorizes the transportation in commerce of a DOT Specification 112T340 tank car, containing a Division 2.1 material, meeting all DOT requirements except that the tank car is not equipped with a complete thermal insulation system due to accident. (Mode 2.)
EE 11305–N	DOT–E 11305	Nichimen America, Inc New York, NY	49 CFR 172.301(a)(1) and (c), Part 107, Appendix B to Subpart B, paragraph (1)	To authorizes the one time transportation in commerce of a freight container loaded with 67 DOT Specification 1A1 steel drums which are improperly marked ORM–A, NA2783 instead of the required marking of organophosphorus pesticides, liquid, toxic, n.o.s., UN3018. (Mode 1.)
EE 11308–N	DOT–E 11308	Sun Refining and Marketing Company, Philadelphia, PA	49 CFR 174.9(b), 174.67(k)	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2.)
EE 11309–N	DOT–E 11309	Association of American Railroads, Washington, DC	49 CFR 173.31(a)(15) and 173.242	To authorize the shipment of an AAR Specification 211A100W1 tank car, containing a Class 3 material, having a non-reclosing safety relief device (Mode 2.)
EE 11310–N	DOT–E 11310	Sun Refining and Marketing Company Philadelphia, PA	49 CFR 173.29(a) and 174.67(k).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 3 material, meeting all DOT requirements except that the tank car has a plugged hole in the tank car tank. (Mode 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11317–N	DOT–E 11317	Hoechst Celanese Corporation, Charlotte, NC.	49 CFR 173.202, 173.203	To authorize the one-time transportation in commerce of certain non-DOT specification metal drums containing corrosive liquids. (Mode 1.)
EE 11318–N	DOT–E 11318	Akzo Nobel Chemicals Inc., Chicago, IL.	49 CFR 172.101 Special Provision B14.	To authorize the continued transportation of certain uninsulated DOT Specification 51 portable tanks that are currently authorized for titanium tetrachloride. (Modes 1, 3.)
EE 11319–N	DOT–E 11319	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 173.242	To authorize the transportation of dimethylaminoethyl acrylate in certain DOT Specification IM 101 portable tanks. (Modes 1, 3.)
EE 11333–N	DOT–E 11333	U.S. Department of Defense, Washington, DC.	49 CFR 173.226(b)(3)(iii), 173.226(b)(4)(ii)(A).	To authorize the one-time transportation of three (3) DOT Specification 5C drums containing a Division 6.1 material. (Mode 1.)
EE 11334–N	DOT–E 11334	Dyno Nobel, Incorporated, Salt Lake City, UT	49 CFR 172.101 table, Column (9B).	To authorize the one-time transportation of a Division 1.1D explosive by cargo aircraft only, which is forbidden by the Hazardous Materials Regulations. (Mode 4.)
EE 11335–N	DOT–E 11335	Trinity Industries, Incorporated, Dallas, TX.	49 CFR 172.302(c), 172.203(a) and 173.31(c)(9), Paras 1 & 2 of Appendix b to Subpart B of Part 107	To authorize the use of nondestructive testing techniques, in lieu of a hydrostatic test, to qualify repairs of DOT Specification tank car tanks. (Mode 2.)
EE 11336–N	DOT–E 11336	Noranda Minerals, Incorporated, Rouyn-Noranda, Quebec, Canada.	49 CFR 173.29(a) and 173.31(a).	To authorize the transportation of a DOT Specification 111A100W3 tank car, containing a residual amount of a Class 8 material, meeting all DOT requirements except that the tank car has defective bottom outlet valve. (Mode 2.)
EE 11337–N	DOT–E 11337	U.S. Vanadium, Corporation, Hot Springs, AR.	49 CFR 173.242	To authorize the transportation of vanadium pentoxide in non-DOT specification cylindrically shaped non-specification portable tank. (Mode 1.)
EE 11343–N	DOT–E 11343	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 174.9(b). 174.67(k).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2.)
EE 11347–N	DOT–E 11347	Nuclear Containers, Inc., Elizabethton, TN.	49 CFR 178.358	To authorize the manufacture, mark and sell of DOT Specification 21F–1b overpacks manufactured in variance with the Specification in 49 CFR 178.358 for the transportation of uranium hexafluoride, fissile (containing 1–5% U-235) in Type A cylinders. (Modes 1, 2, 3.)
EE 11349–N	DOT–E 11349	Merichem Company, Houston, TX.	49 CFR 174.9(b). 174.67(k).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 8 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2.)
EE 11350–N	DOT–E 11350	Sun Company, Incorporated, Philadelphia, PA.	49 CFR 174.9(b). 174.67(k).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing residual amount of a Class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2.)
EE 11354–N	DOT–E 11354	Merichem Company, Houston, TX.	49 CFR 174.9(b) and 174.67(k).	To authorize the transportation of a residual amount of a combustible liquid, n.o.s., in a DOT Specification 111A100W1 tank car, with defective interior heater coils, which will remain capped to prevent leakage while in transportation. (Mode 2.)
EE 11355–N	DOT–E 11355	Button Transportation, Inc., Dixon, CA.	49 CFR 173.315(a), Note 15.	To authorize the transportation of the liquefied petroleum gas (LPG), in DOT Specification MC–331 cargo tank motor vehicles manufactured from quenced and tempered steel which are coated on the inside with a cross linked epoxy-phenolic compound. (Mode 1.)
EE 11368–N	DOT–E 11368	Kalama Chemicals, Inc., Kalama, WA.	49 CFR 173.116(e) and 179.13.	To authorize the shipment of a DOT Specification 111A100W1 tank car, containing a Class 3 material, meeting all DOT requirements except that the tank cars are suspected to have been overloaded. (Mode 2.)
EE 11369–N	DOT–E 11369	Sun Company, Incorporated, Philadelphia, PA.	49 CFR 173.31(c)(9)	To authorize the use of petroleum oil for the hydrostatic test of certain DOT Specification 111A100W1 tank cars. (Mode 2.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11370–N	DOT–E 11370	Hoechst Celanese Chemical Corporation, Dallas, TX.	49 CFR 173.29(c) and 173.31(a).	To authorize the shipment of a DOT Specification 111A100W1 tank car, containing a residue of a Class 3 material, which does not fully comply with all DOT requirements. (Mode 2.)
		WITHDRAWAL EXEMPTIONS		
3004–P		BOC Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To become a party to exemption 3004 (Modes 1, 2.)
3302–P		BOC Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To become a party to exemption 3302 (Modes 1, 2, 3, 4.)
4108–X		Mid-South Oxygen Company, Memphis, TN.	49 CFR 173.315(a)	Authorizes shipment of liquefied argon, nitrogen and oxygen in non-DOT specification insulated cargo tanks. (Mode 1.)
5022–X		United Technologies Chemical Corp., San Jose, CA.	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	Authorizes the shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1, 2.)
6126–X		Aceto Corporation, Lake Success, NY	49 CFR 173.253(a)	Authorizes the shipment of chloroacetylchloride in a DOT Specification 6D/2S or 2SL composite packaging. (Modes 1, 3.)
6349–P		BOC Gases, Murray Hill, NJ.	49 CFR 172.203(a), 173.32, 173.318, 176.30(a), 176.76(h), 177.840, 178.338.	To become a party to exemption 6349 (Modes 1, 2, 3.)
6530–P		BOC Gases, Murray Hill, NJ.	49 CFR 173.302(c)	To become a party to exemption 6530 (Modes 1, 2.)
6762–X		Aqua Laboratories, Inc., Amesbury, MA.	49 CFR 173.286(b)(2), 175.3.	Authorizes the transport of chemical kits in plastic inside bottles, packed in plastic boxes overpacked in fiberboard boxes. (Modes 1, 2, 3, 4.)
6765–P		BOC Gases, Murray Hill, NJ.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 6765 (Modes 1, 3.)
7070–X		American Chemical & Refining Company, Inc., Waterbury, CT	49 CFR 173.365, 175.3, 175.630.	Authorizes the shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated fiberboard DOT Specification 12B box. (Modes 4, 5.)
7076–X		Aqua Laboratories, Inc., Amesbury, MA.	49 CFR 173.286(b)	Authorizes the use of a packaging not authorized for transportation of a certain corrosive liquid and flammable liquid. (Modes 1, 2, 3.)
7247–X		U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29–11(c)(19), 146.29–75(b)(2).	Authorizes a bulkhead in the lower hold of a vessel separating military explosives from general cargo to be secured on 4 inch by 6 inch uprights, in lieu of the required 6 by 6 inch uprights. (Mode 3.)
8141–X		Boeing Defense & Space Group, Seattle, WA.	49 CFR 172.101, 173.206, 173.247	Authorizes the transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride. (Modes 1, 3.)
8518–X		Laidlaw Environmental Services, Inc. Columbia, SC.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semisolids. (Mode 1.)
8518–X		Cummings Vacuum Service, Inc., Bakersfield, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semisolids. (Mode 1.)
8645–X		Mining Services International Corporation, (MSI) Salt Lake City, UT	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8936–X		Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357(b)(2)	Authorizes the shipment of a mixture containing 57 percent chloropicrin and 43 percent 1,3-dichloropropene, 1,2-dichloropropane and related hydrocarbons, respectively, by weight, in nonauthorized DOT Specification 5B metal drums. (Modes 1, 2, 3.)
8988–X		Schlumberger Well Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	Authorizes the transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds. (Modes 1, 3, 4.)
9064–P		Union Miniere, Antwerpen, Belgium.	49 CFR 172.271, 173.245, 173.247, 173.3(a).	To become a party to exemption 9064 (Modes 1, 3.)
9222–P		Wills Trucking, Inc., Richfield, OH.	49 CFR 173.154	To become a party to exemption 9222 (Mode 1.)
9222–P		Wills Trucking, Inc., Richfield, OH.	49 CFR 173.154	Authorizes the use of non-DOT specification metal tanks for transportation of a flammable liquid or flammable solid. (Mode 1.)
9637–X		Connelly Containers, Inc., Bala Cynwyd, PA	49 CFR 173.245b, 173.365.	To authorize manufacture, marking and sale of non-reusable, fiberboard bulk boxes made of triple-well corrugated fiberboard having a inside lining of 0.006-inch minimum thickness polyethylene film, for transportation of various corrosive solids and poison B solids. (Modes 1, 2.)
9637–X		Connelly Containers, Inc., Bala-Cynwyd, PA	49 CFR 173.245b, 173.365.	Authorizes the manufacture, marking, and sale of nonreusable, fiberboard bulk boxes made of triple-wall corrugated fiberboard having a inside lining of 0.006-inch minimum thickness polyethylene film for transportation of various corrosive solids and poison B solids. (Modes 1, 2.)
9775–X		Enviropack Company, Arlington, VA	49 CFR 173.3(c)	Authorize the manufacture, marking and sale of a polyethylene, removable head salvage drum of 85-gallon for overpacking of damaged or leaking packages of hazardous materials of no greater than 55-gallon or for packing hazardous materials that have spilled or leaked, for repackaging or disposal. (Modes 1, 2.)
10184–P		Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.34(e)(10), 173.34(e)(9).	To become a party to exemption 10184 (Modes 1, 2, 3.)
10229–X		United States Can Company, Oak Brook, IL.	49 CFR 173.1200(a)(8), 173.302, 173.304, 173.306 (a), (b), (c), 178.33–2(b).	To authorize manufacture, marking and sale of nonrefillable non-DOT specification inside metal containers, for shipment of nonflammable and flammable gases. (Modes 1, 2, 3, 4.)
10273–X		Georgia-Pacific Corporation, Schenectady, NY	49 CFR 173.154, 173.217, 173.245b, 173.365.	To authorize manufacture, marking and sale of non-reusable, fiberboard bulk boxes having an inside lining of 0.0065-inchminimum thickness polyethylene film. (Mode 1.)
10357–N		Global Future Technologies, Inc., Tonawanda, NY	49 CFR 172.504(a)	To authorize shipment of limited quantities of Fireworks, special, classed as explosives B, without placarding transport vehicles or freight containers. (Mode 1.)
10452–N		Container Products, Inc., Southfield, MI.	49 CFR 178.11–12, 178.116–12, 178.15–12, 178.81–13, 178.82–13, 178.98–11, 178.99–11.	To authorize hydrostatic and drop tests to be performed on single DOT Specification series stainless steel drums representative of each capacity to be tested and retained indefinitely. (Modes 1, 2, 3, 4.)
10547–X		Tri-Wall Butler, IN	49 CFR 173.154, 173.245(b), 173.365	Authorizes the manufacturing, marking and sale of non-reusable, fiberboard bulk boxes made of triple-wall corrugated fiberboard having an inside lining of 0.006-inch minimum thickness polyethylene bulk bag for transportation of various corrosive solids and poison B solids. (Mode 1.)
10650–X		United Agri Products/ Transbas, Incorporated, Greeley, CO.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars containing various classes of material to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10650–X		United Agri Products/ Transbas, Incorporated, Greeley, CO.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars containing various classes of material to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10783–X		Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.29(c)(1) and 174.67(k).	Authorizes the transportation of a DOT Specification 111A100W1 tank car which has defective interior heating coils for shipment of petroleum naphtha. (Mode 2.)
10787–P		Evergreen International Airlines, Inc., McMinnville, OR.	49 CFR 172.101, 172.204(c)(3), 173.27, 173.54(j), 175.30(a)(1), 175.320(b), 175.75, Part 107, Appendix B.	To become a party to exemption 10787 (Mode 4.)
10812–N		Witco Corporation, Marshall, TX.	49 CFR 173.225	To authorize an alternative cargo tank design for shipment of certain organic peroxides classed as flammable liquid. (Mode 1.)
10876–N		Dorton Packaging Ltd., North Yorkshire, EN.	49 CFR 173.213	To manufacture, mark, and sell collapsible, nonreusable polyethylene lined woven bulk bags capacity for use in transporting ammonium nitrate, classed as oxidizer. (Mode 1.)
10931–N		Western Atlas International/Atlas Wireline Service, Houston, TX.	49 CFR 173.24, 173.304(a), 173.34(d), 175.30, 178.37–5.	To authorize the manufacture, mark and sell of DOT specification 3AA cylinder, constructed of titanium alloy with a design pressure of 20,000 psi for use in transporting flammable gas, n.o.s., Division 2.1. (Modes 1, 2, 3, 4.)
11004–N		Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.240	To authorize the shipment of paraformaldehyde, classed as Division 4.1 in flexible intermediate bulk bags (Specification 13H3). (Modes 1, 2.)
11013–N		Hercules Incorporated, Wilmington, DE.	49 CFR 173.225(c)	To authorize the transportation of Organic Peroxide, Type D, liquid, classed as Division 5.2, in 55 gallon 1H1 plastic drums (Mode 1.)
11014–N		Hercules Incorporated, Wilmington, DE.	49 CFR 173.225(c)	To authorize the transportation of Organic Peroxide, Type D, solid, classed as Division 5.2, in DOT–57 portable tanks. (Mode 1.)
11034–N		Arsynco, Inc., Carlstadt, NJ.	49 CFR 173.34(e)(10)	To authorize the transport of propylene imine, inhibited, classed as Division 6.1, in DOT Specification 4B240 and 4BW240 cylinders. (Modes 1, 2, 3.)
11048–N		R.T. Vanderbilt Company, Inc., Norwalk, CT.	49 CFR 172.102, 173.132(a)(1)(iii).	To authorize the transport of poisonous solids, n.o.s. and dithiocarbamate pesticides, n.o.s., classed as Division 6.1, PIH, Zone C hazard, in UN specification bags and open head steel drums without required markings. (Mode 1.)
11144–N		Sam Nally Shop, Inc., Bardstown, KY.	49 CFR 173.63	To manufacture, mark and sell non-DOT specification containers similar to an IME container for use in transporting detonators, classed as Division 1 1 and 1.4 explosives, in open body pickup trucks. (Mode 1.)
11187		Amalgamet Canada, Toronto, Ontario, CN.	49 CFR 172.101 SPN41	To authorize the transportation of titanium tetrachloride, classed as Division 6.2, Hazard Zone B. PIH, in 316L stainless steel containers, comparable to a 1A1 drums. (Modes 1, 2, 3.)
11187–P		Corning Incorporated, Corning, NY.	49 CFR 172.101 SPN41	To become a party to exemption 11187. (Modes 1, 2, 3.)
11238–N		Thiokol Corporation, Brigham City, UT.	49 CFR 172.101, 172.102, Code 109, 173.60(a), 173.61, 173.62.	To authorize the transportation of rocket motors, in propulsive stage containing one or more hazardous materials, classed as Division 1.3, in specially designed packaging. (Mode 1.)
11276–N		CP Clare Corporation, Wakefield, MA.	49 CFR 171.2, 172.200, 172.202, 172.204, 172.25, 172.300, 172.400, 173.164.	To authorize the transportation of miniature switching devices consisting of two subassemblies joined together in sealed glass tubes with limited quantities of mercury, Class 8, to be shipped without required markings and labelling. (Mode 5.)
11325–N		Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR 177.848	To authorize the loading, transport, and storage of laboratory amounts of Division 6.1, Packing Group 1, Zone A liquids in the same transport vehicle with Class 3, 4, 5 or 8 materials. (Mode 1.)
11357–N		Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR 173.173, 173.202, 173.203.	To authorize transportation in commerce of paint and paint related material, Class 3, in glass and metal packaging not to exceed 5 gallons equipped with plastic liner and overpacked in strong outer packaging. (Mode 1.)

Application No.	Denials
9061–X	(3) Request by The S.S.I. Group, Ltd. Fairdale, KY to authorize the shipment of a small quantity of a flammable solid labeled Flammable Solid and Dangerous When Wet but without a Flammable Solid W placard on the vehicle denied December 9, 1994.
10277–P	(3) Request by Worthington Cylinder Corporation Columbus, OH to authorize the manufacture, marking, and sale of non-DOT specification cylinder conforming in part with DOT Specification 4BA denied June 29, 1994.
10705–X	(3) Request by Baker Performance Chemicals, Inc. Houston, TX to authorize the transportation of acrolein in non-DOT specification IMCO Type 5 portable tanks with flammable or corrosive material denied September 22, 1994.
10980–N	(3) Request by Daws Manufacturing Company, Inc. Pensacola, FL to authorize the manufacture, mark and sell of jerricans constructed of additional aluminum with a capacity not to exceed 103 gallons for shipment of various Class 3 commodities denied August 1, 1994.
11056–N	(3) Request by Matheson Gas Products Secaucus, NJ to authorize an alternate testing method for DOT-Specification 3A and 3AA cylinders containing more than 150 lbs. of phosgene, classed as Division 6.1 denied October 31, 1994.
11127–N	(3) Request by U.S. Department of Defense Falls Church, VA to authorize the shipment of ammunition packaged prior to October 1, 1992, which is marked, labeled and described on shipping papers in accordance with the regulations in effect on September 30, 1991 denied June 18, 1994.
11138–N	(3) Request by Nippon Riku-Un Sangyo Co., Ltd. Tokyo, Japan to authorize the transport of refrigerant gases, n.o.s., classed as Division 2.2 in non-DOT specification portable tank comparable DOT–51 specification denied August 19, 1994.
11158–N	(3) Request by CEM International Pty Ltd. Coolarro Victoria, Australia to authorize the manufacture, mark and sell of non-DOT specification portable tanks built comparable to a DOT-Specification 51 for use in transporting liquefied petroleum gas, Division 2.1 denied October 27, 1994.
11161–N	(3) Request by Air Products and Chemicals, Inc. Allentown, PA to authorize ultrasonic retesting of DOT-Specification 3AA and 3AAX cylinders used for shipment of material classed as Division 2.1 and 2.2 denied August 12, 1994.
11183–N	(3) Request by Sioux City Foundry Co. Sioux City, IA to authorize an exemption from the U stamp requirements for cargo tank construction denied July 29, 1994.
11208–N	(3) Request by U.S. Department of Defense Falls Church, VA to authorize the transportation of a hazardous material, Class 9, in a 5,300 gallon bulktainer loaded at less than the required 80 percent filling density denied September 19, 1994.
11243–N	(3) Request by Thiokol Corporation Brigham City, UT to authorize UN1A2/Y 300/S drums of 220 liter capacity embossed with a minimum wall thickness of less than 0.96 mm equipped with polyethylene liner to be reused, without reconditioning for the shipment of ammonium perchlorate, Division 5.1 denied August 18, 1994.
11250–N	(3) Request by Mobil Chemical Company Princeton, NJ to authorize the transportation of non-DOT specification cylinders comparable to 4B for use in transporting Class 4 material denied September 14, 1994.

Issued in Washington DC on February 22 1995

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals

[FR Doc. 95–5119 Filed 3–2–95 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 24, 1995

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511 Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW , Washington, DC 20220

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number 1512–0509

Form Number: ATF F 5300.27

Type of Review: Revision

Title: Federal Firearms and Ammunition Excise Tax Deposit

Description: Businesses and individuals who manufacture or import firearms, shells and cartridges may be required to deposit Federal excise tax. ATF uses this information to identify the taxpayer and the deposit

Respondents: Individuals or households, Business or other for profit

Estimated Number of Respondents 440

Estimated Burden Hours Per Respondent: 9 minutes

Frequency of Response: On occasion Monthly, Other

Estimated Total Reporting Burden 1,214 hours

Clearance Officer Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–5271 Filed 3–2–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

February 27 1995

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Note: All public comments must be received by the Comptroller of the Currency by March 23, 1995

Comptroller of the Currency (OCC)

OMB Number: 1557–0100

Form Number: FFIEC 009 and FFIEC 009a

Type of Review: Extension

Title: (MA)-Country Exposure Report and Disclosure (12 CFR 20)

Description: The Country Exposure Report and Country Exposure Disclosure require national banks to report quarterly their exposure in foreign countries. This information is

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critical in determining and monitoring the soundness of banks.

Respondents: Businesses or other for-profit

Estimated Number of Recordkeepers: 150

Estimated Burden Hours Per Recordkeeper: 27 hours, 30 minutes

Frequency of Response: Quarterly

Estimated Total Recordkeeping Burden: 33,000 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–5273 Filed 3–2–95; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

February 24, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0746

Regulation ID Number: LR–100–78 Final

Type of Review: Extension

Title: Creditability of Foreign Taxes

Description: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of § 1.901–2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.

Respondents: Individuals or households, Business or other for-profit, Farms

Estimated Number of Respondents: 110

Estimated Burden Hours Per Respondent: 20 minutes

Frequency of Response: Other (nonrecurring)

Estimated Total Reporting Burden: 37 hours

OMB Number: 1545–0755

Regulation ID Number: LR–58–83 Final

Type of Review: Extension

Title: Related Group Election with Respect to Qualified Investments in Foreign Base Company Shipping Operations

Description: This election converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

Respondents: Business or other for-profit

Estimated Number of Respondents: 100

Estimated Burden Hours Per Respondent: 2 hours

Frequency of Response: Other (nonrecurring)

Estimated Total Reporting Burden: 205 hours.

OMB Number: 1545–1222

Form Number: IRS Forms 8628, 8635, and 9161

Type of Review: Extension

Title: Request for Federal Income Tax Forms for "Plan Only" Accounts (8628); Order Blank for Federal Income Tax Forms for Libraries (8635); and Order Blank for Federal Income Tax Forms for Miscellaneous Accounts (9161)

Description: These forms allow banks, post offices and libraries to distribute tax forms and publications to taxpayers at convenient locations as a service for the Internal Revenue Service.

Respondents: Business or other for-profit, Not-for-Profit institutions, Farms, Federal Government, State, Local or Tribal Governments

Estimated Number of Respondents: 62,911

Estimated Burden Hours Per Respondent:

Form	Burden Hours
8628 ..	5 minutes.
8635 ..	10 minutes.
9161 ..	10 minutes.

Frequency of Response: Annually

Estimated Total Reporting Burden: 6,507 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–5272 Filed 3–2–95; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on Friday, March 10, 1995, at the Metro Dade Government Center in Miami, Florida. The intended agenda is listed below.

Presidential Advisory Board Meeting, March 10, 1995

Agenda

Part One—Closed to the Public: Interagency Working Group Meeting Update

Part Two—Open to the Public

I. Approval of Minutes of January Meeting

II. Update on Radio and T V Radio Martí

III. Focus Groups Report

IV Congressional Liaison: Report 104th Congress

V. Old Business

(a) Guantanamo Survey

(b) Pending Investigations

VI. Feasibility Study on Radio and T V Martí Relocation to Miami/Homestead/Key West: Final Report

VII. New Business.

Part one, which will be discussed from 9:00 a.m. to 10:00 a.m. will be closed to the public. Discussion of item one will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed Agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Determination To Close A Portion Of The Advisory Board Meeting Of March 10, 1995

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 9:00 a.m. to 10:00 a.m. portion of this meeting should be closed to the public.

The Advisory Board has requested that part one of the March 10, 1995, meeting be closed to the public. Part one will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions, frequencies, alternate channels and new technologies for Radio Martí.

Dated: February 27, 1995.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 95–5188 Filed 3–2–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Benefits, VA Form 21–530

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicab;e; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 3, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Reinstatement

1. Application for Benefits, VA Form 21–530.

2. The form is used to file a claim for burial benefits including transportation expenses. The information is used to determine basic eligibility and whether the person who paid the veteran's burial expenses should be paid, or if expenses are unpaid, whether the creditor is to be paid.

3. Individuals or households—Business or other for-profit.

4. 100,000 hours.

5. 20 minutes.

6. On occasion.

7. 300,000 respondents.

[FR Doc. 95–5265 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Compliance Inspection Report, VA Form 26–1839

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

DATED: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Compliance Inspection Report, VA Form 26–1839.

2. The form is used by fee compliance inspectors to report the acceptability of residential construction and its conformity with standards prescribed by law for new housing proposed as security for guaranteed loans. Because compliance inspections are a common practice in the housing industry, only one burden hour is shown for reporting purposes.

3. Individuals or households.

4. The estimated burden hour per year is 56,250. However, because compliance inspections are a common practice in the housing industry, only 1 hour is being reported for this information collection.

5. 15 minutes.

6. On occasion.

7. 225,000 respondents.

[FR Doc. 95–5268 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Fee Personnel Designation, VA Form 26–6681

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey,

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NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by April 3, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Revision

1. Application for Fee Personnel Designation, VA Form 26–6681.
2. The form is used to obtain information on the applicant's professional experience for evaluation by panels for possible VA fee appraiser, compliance inspector, or Lender Appraisal Processing Program designation. The information is used to evaluate the professional expertise of fee applicants.
3. Individuals or households.
4. 2,067 hours.
5. 20 minutes.
6. On occasion.
7. 6,200 respondents.

[FR Doc. 95–5263 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Declaration of Status of Dependents, VA Form 21–686c

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6886.

FOR FURTHER INFORMATION CONTACT: Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 3, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Declaration of Status of Dependents, VA Form 21–686c.
2. The form is used to confirm marital status and dependency of children.
3. Individuals or households.
4. 56,500 hours.
5. 15 minutes.
6. On occasion.
7. 226,000 respondents.

[FR Doc. 95–5267 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 3, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.
2. The information is used to determine suitability of a training program or evaluate the reasons regarding a veteran's unsatisfactory progress or conduct.
3. Individuals or households.
4. 11,000 hours.
5. 30 minutes.
6. On occasion.
7. 22,000 respondents.

[FR Doc. 95–5264 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Wood Destroying Insect Information—Existing Construction, VA Form 26–8850

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Reinstatement

1. Wood Destroying Insect Information—Existing Construction, VA Form 26–8850.
2. The form is completed by pest control operators to report the presence, if any, of wood destroying insects and any resulting damage to properties proposed for guaranteed financing. The information is used to determine whether the property is acceptable and the effect, if any, the damage may have on the reasonable value of the property.
3. Individuals or households—Business or other for-profit.
4. The estimated burden hour per year is 87,651. However, because the requirement for wood destroying insect inspections is common practice in the housing industry, only 1 hour is being reported for this information collection.
5. 20 minutes.
6. On occasion.
7. 262,953 respondents.

[FR Doc. 95–5269 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Environmental Hazards, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Tuesday and Wednesday, April 25–26, 1995, in room 724 on both days, at 801 I Street, N.W., Washington, D.C. 20001. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Ms. Vanessa Fulcher, Department of Veterans Affairs Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420, phone (202) 523–3911, prior to April 17, 1994.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, (026B), Department of Veterans Affairs Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: February 24, 1995.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–5270 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, from April 26, 1995, through April 28, 1995. The meeting will convene at 9:00 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limiting to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: February 24, 1995.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–5262 Filed 3–2–95; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 42
Friday, March 3, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2:00 pm, Wednesday, March 29, 1995.

PLACE: SC–5, United States Capitol Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
2. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of 1995 Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (703) 756–6012.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 95–5436 Filed 3–1–95; 3:17 pm]

BILLING CODE 4738–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: March 14, 1995, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. EEOC Enforcement Responsibilities Regarding National Origin Discrimination, Including Presentations by Invited Representatives from Affected Communities.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued March 1, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–5415 Filed 3–1–95; 2:58 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Tuesday, March 7, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, March 7, 1995, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: Rochester Telephone Corporation, Petition for Waivers to Implement its Open Market Plan. Summary: The Commission will consider action concerning Rochester Telephone's Petition for Waivers to Implement its Open Market Plan.

2—Mass Media—Title: Review of the Commission's Regulations Governing Television Broadcasting (MM Docket No. 91–221). Summary: The Commission will consider action concerning the network station ownership rule and the secondary affiliation rule.

3—Wireless Telecommunications—Title: Eligibility Requirements for the Specialized Mobile Radio Service and Radio Services in the 220–222 MHz Land Mobile Band and Use of Radio Dispatch Communications (GN Docket No. 94–90). Summary: The Commission will consider action concerning eligibility restrictions for holding specialized mobile radio and commercial 220 MHz licenses and the prohibition on the provision of dispatch service by mobile service common carriers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: February 28, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5367 Filed 3–1–95; 11:12 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:02 p.m. on Tuesday, February 28, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations regarding administrative enforcement proceedings.

Matters relating to the probable failure of a certain insured depository institution.

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than sevens days' notice to the public; that no public notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: February 28, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–5366 Filed 3–01–95; 11:11 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 8, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5357 Filed 3–1–95; 11:10 am]

BILLING CODE 6210–01–P

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming quarterly meeting of the Board of Directors.

DATE: A regular, open meeting will be held Wednesday, March 22, 1995, at 10:00 a.m.; followed by a closed Executive Session.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public, with the exception of the Executive Session.

Dated: February 28, 1995.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 95–5437 Filed 3–1–95; 3:18 pm]

BILLING CODE 7630–01–M

VOL 60 ISS 42 MR 3 1995 UMI

Corrections

Federal Register
Vol. 60, No. 42
Friday, March 3, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignments

Correction

In notice document 95–5175 beginning on page 11414 in the issue of Wednesday, March 1, 1995, make the following correction:

On page 11607, at the bottom of the page, the FR Doc. line was omitted and should read as set forth below:

[FR Doc. 95-5175 Filed 2–28–95; 12:01 pm]

BILLING CODE 5000–04–C

BILLING CODE 1505–01–D

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-101 (Sub-No. 12X)]

Duluth, Missabe and Iron Range Railway Company—Abandonment Exemption—St. Louis County, MN

Correction

In notice document 95–4032 beginning on page 9397 in the issue of Friday, February 17, 1995, the Docket Number should appear as set forth above.

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Units 1 and 2; Exemption

Correction

In notice document 95–4170 beginning on page 9700 in the issue of Tuesday, February 21, 1995, make the following correction:

On page 9701, in the third column, in the last paragraph, in the fifth line, insert "not" after "will".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 121

[Docket No. 28060; Amdt. No. 1-39, 11-38; SFAR 38-2]

RIN 2120-AF59

Public Aircraft Definition and Exemption Authority

Correction

In rule document 95–1744 beginning on page 5074 in the issue of Wednesday, January 25, 1995, make the following corrections:

§ 11.25 [Corrected]

1. On page 5075, in the third column, in § 11.25(b)(6)(i)(B), in the third line, "safety" should read "safe".

2. On the same page, in the same column, in amendatory instruction 6., in the first line "SAFAR" should read "SFAR".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-933-86]

RIN 1545-AL98

Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes

Correction

In proposed rule document 95–173 beginning on page 2049 in the issue of Friday, January 6, 1995, make the following correction:

§ 1.902-2 [Corrected]

On page 2063, in the first column, the heading for § 1.902-2 should read as set forth below:

§ 1.902-2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid under § 1.902-1.

BILLING CODE 1505–01–D

federal register

Friday
March 3, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for the Rental Voucher Program and Rental Certificate Program; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3874; FR–3849–N–01]

NOFA for the Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability (NOFA) for FY 95 and procedures for allocating funds and approving housing agency (HA) applications.

SUMMARY: The purpose of the rental voucher and the rental certificate programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. This notice states the FY 95 fund allocations available for award for all subprograms of the rental voucher and rental certificate programs. The Department has decided in the interest of convenience and timeliness to publish all information on each subprogram of the Section 8 rental voucher and certificate programs in one NOFA for FY 95. Please review the table of contents in this NOFA and then refer to the separate sections of this NOFA for specific information on each subprogram. For ease of reference, the term "HUD Office" will be used throughout this NOFA to mean the HUD State Office, HUD Area Office and the HUD Native American Programs Office. If a particular type of HUD Office needs to be identified, e.g., the HUD Native American Programs Office, the appropriate office name will be used.

This notice also:

(1) Invites Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds;

(2) Provides instructions to HAs governing the submission of applications; and

(3) Describes procedures for rating, ranking, and approving HA applications.

DATES: Refer to Section I.(B) of this NOFA for a summary of the deadline dates for applications for all subprogram applications.

ADDRESSES: See section I.(B) of this NOFA.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.) Copies of this NOFA will be made available on tape or large print for those with impaired vision that request them. Inquiries requesting clarification of items in this NOFA or requesting application materials should be directed to the Public Housing Director in the HUD Office serving the HA's jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0169.

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I. NOFA General

(A) Authority

The regulations governing the rental certificate and the rental voucher programs are published at 24 CFR parts 882 and 887, respectively, and 24 CFR Part 982. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

(B) Subprogram Funding and Summary of Application Deadline Dates

The application deadline for each subprogram under this NOFA is 3:00 p.m., local time. The local HUD Office is the official place of receipt for all applications on the date shown below except for applications for Section 8 Counseling (see Section V. of this NOFA). The local HUD Native American Programs Office is the place of official receipt for IHA applications except for applications for Section 8 Counseling (see Section V. of this NOFA). An IHA also must submit, at the same time, a copy of its application to the local HUD State or Area Office that has jurisdiction over the portion of the State in which the IHA is located. Local HUD Offices are responsible for notifying their HAs of the exact address and room number where applications are to be submitted.

Subprogram area	Number of units (approximate)	Deadline dates
Fair Share Allocations.	35,000	May 2, 1995.
Mainstream Housing.	2,500	June 1, 1995.
Homeless Families (Non-competitive Process).	12,000	Do.
Persons with AIDS (Non-competitive Process).	3,000	Do.
Section 8 Counseling.	N/A	May 2, 1995.
FSS Service Coordinators.	N/A	May 17, 1995.
Family Unification.	2,000	Do.

The above-stated application deadlines are firm as to date and hour. In the interest of fairness to all competing HAs, HUD will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Other allocations of Section 8 funds, including the FY 94 funding and those allocations without specific application deadlines, are listed in Section IX. of the NOFA.

(C) Family Self-Sufficiency (FSS) Program Requirement

Unless specifically exempted by HUD, all rental voucher or rental certificate funding reserved in FY 95 (except funding for renewals or amendments) will be used to establish the minimum size of an HA's FSS program.

(D) Application Submission Requirements—General

(1) General

The provisions of this section I apply to all subprograms covered by this NOFA. Applications must meet the requirements of this section I as well as the requirements for each subprogram as shown in the pertinent section of this NOFA for the subprogram. Refer to the subprogram section for the specific application submission requirements.

Except as provided for Indian Housing Authorities or unless otherwise specified for a subprogram, only an original application and one copy should be submitted. It is not necessary to submit additional copies of the application.

(2) Application Procedures for HUD-Designated Housing Agencies with Major Program Findings

HUD will establish a pass or fail threshold for all HAs and those HAs that fail the threshold will not be eligible to apply without a contract administrator. Some housing agencies currently administering the Section 8 rental voucher and certificate programs have, at the time of publication of this NOFA, major program management findings that are open and unresolved or other significant program compliance problems (e.g., HA has not implemented mandatory FSS program). HUD will not accept applications for additional funding from these HAs as contract administrators if, on the application deadline date, the findings are not closed to HUD's satisfaction. If these HAs want to apply for any of the subprograms listed in this NOFA, the HA must submit an application that designates another housing agency, non-profit agency, or contractor, that is acceptable to HUD and includes an agreement with the other housing agency or contractor to administer the new funding increment on behalf of the HA. The Office of Public Housing in the local HUD Office will notify, immediately after the publication of this NOFA, those HAs that are not eligible to apply. Applications submitted by these HAs without an agreement from another housing agency or contractor, approved by HUD, to serve as contract administrator will be rejected. Other agencies may be notified by HUD at other times as HUD deems appropriate.

(3) Forms

Application forms may be obtained from the local HUD Office. Applications for all of the subprograms must include, unless otherwise specifically excepted:

(a) Form HUD–52515.

An Application for Existing Housing, Form HUD–52515, must be completed in accordance with the rental voucher and certificate program regulations. An application for rental vouchers or certificates must include the information in Section H, Average Monthly Tenant Payment, of Form HUD–52515 in order for HUD to calculate the amount of Section 8 budget authority necessary to fund the requested number of units. HAs may obtain a copy of Form HUD–52515 from the local HUD Office. (Not applicable to subprograms for Family Self-Sufficiency Coordinators or Section 8 Counseling.)

(b) Certification Regarding Drug-Free Workplace.

The Drug-Free Workplace Act of 1988 requires grantees of Federal Agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with CFR part 24, subpart F. HAs may obtain a copy of this form from the local HUD Office.

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(c) Certification Regarding Lobbying.

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Governments in connection with a specific contract, grant or loan.

The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL). IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage. HAs may obtain a copy of the certification and the Form SF–LLL from the local HUD Office.

(d) Application Requirements for Subprograms.

HAs must also comply with the additional application requirements for each subprogram identified in the section of the NOFA for the specific subprogram.

(e) HA Eligibility.

All HAs that meet the eligibility requirements for the various subprograms, other than those HAs notified under the provisions of paragraph I.(D)(2) of this NOFA and those with certain civil rights or program violations or deficiencies as specified in section I.(G)(2), are eligible to apply for funding.

(E) Selection Criteria—General

Each subprogram section of this NOFA has specific selection criteria to evaluate the applications submitted. Refer to the specific subprogram section in this NOFA for the selection criteria.

(F) Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The HUD Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved. The Section 213 requirements do not apply to applications for the FSS Service Coordinators and Section 8 Counseling subprograms.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

(G) Corrections to Deficient Applications—General

(1) Acceptable Applications—General

To be eligible for processing, an application must be received by the appropriate HUD Office no later than the date and time specified in Section I.(B) of this NOFA. The HUD Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of the HUD notification letter to submit the missing or corrected information to the HUD Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors. The 14 calendar day technical correction period does not apply to NOFAs for Section 8 Counseling, Mainstream Housing Opportunities, Persons with HIV/AIDS and Homeless Families.

All HAs must submit corrections within 14 calendar days from the date of the HUD letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete.

(2) Unacceptable Applications—General

(a) After the 14-calendar day technical deficiency correction period, the HUD Office will disapprove HA applications that it determines are not acceptable for processing. The HUD Office notification of rejection letter must state the basis for the decision.

(b) Applications that fall into any of the following categories will not be processed:

(i) There is a pending civil rights suit against the HA instituted by the Department of Justice or there is a pending administrative action for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act).

(ii) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with a court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(iv) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(v) The HA has serious unaddressed, outstanding Inspector General audit findings, Fair Housing and Equal Opportunity monitoring review findings, or HUD Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program. The only exception to this category is if the HA has been identified under the policy established in section I.(D)(2) of this NOFA and the HA makes application with a designated contract administrator.

(vi) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(vii) An HA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(viii) An HA application submitted after the deadline date for the subprogram of rental vouchers or certificates will be rejected from processing.

(ix) An HA must have achieved 90 percent lease-up of units in its HUD-approved budget for the HA fiscal year prior to application for funding in each of its rental voucher and certificate programs. Applications from HAs that have failed to achieve the 90 percent lease-up will be rejected from processing.

(H) HUD Corrections to Rating and Ranking FY 94 Applications

HUD is aware that a few HA applications submitted under the FY 94 NOFAs were not funded due to HUD field staff incorrectly rating and ranking some HAs' applications. Although the number of errors were limited, HUD believes that the errors must be corrected; therefore, HUD Offices that failed to fund certain HA applications for FY 1994 funding due to these errors by the HUD Office may correct those errors as follows:

(1) The HUD Office will reconstruct the FY 94 ranking process to include the application(s) missing from the original ranking process due to the error; and

(2) The HUD Office will determine the number of units and Section 8 budget authority that would have been awarded to the application(s) subject to the FY 94 funds available at the time and the funding selection process utilized in the FY 94 competition.

The HUD Office will correct the error by funding the FY 94 applications from the FY 95 fair share allocation for the same allocation area prior to the FY 95 competition. The funds for the allocation area remaining after correcting the FY 94 ranking error will be available for the FY 95 competition. The correction of the FY 94 error for an HA will not affect the HA's ability to compete for the remaining FY 95 funds and the FY 95 application will be considered as though no error had been made.

(I) Notification of Funds Awarded

(1) After the HUD Offices have reviewed, rated, and ranked applications, and the HUD Offices have approved the applications, each HUD Office must submit to Headquarters a list of all approved applications for each subprogram in this NOFA. The application approval list is due in Headquarters (ATTENTION: Rental Assistance Division, Office of Public and Indian Housing) on the tenth working day following the date set by Headquarters for completion of application ranking and selections.

(2) The HUD Offices must provide the following information for each application approved:

(a) The name and address of the HA;

(b) The project number, and the number of rental vouchers and the number of rental certificates, as applicable, approved for the HA; and

(c) The amount of contract authority and budget authority, stated separately for rental vouchers and rental certificates.

The Field Offices of Native American Programs (FONAPs) also must send to Headquarters Office of Native American Programs a list of all approved IHA applications for each subprogram in this NOFA.

II. Fair Share Allocations

(A) Fair Share Application Deadline Date

The deadline date for applications for the Fair Share allocation is listed in Section I.(B) of the NOFA.

(B) Fair Share Allocation Amounts

(1) Housing Needs Formula

In FY 95, approximately $1.2 billion of budget authority for the rental voucher and certificate programs is available for fair share formula allocation. Of this amount, approximately $600 million is for rental vouchers and approximately $600 million is for rental certificates. This budget authority is being allocated to each HUD Office under this NOFA, using the housing needs factors established in accordance with 24 CFR 791.402. In addition, approximately $151 million is retained in a Headquarters Reserve that will not be allocated by formula.

(2) Metropolitan/Non-Metropolitan Mix

Separate housing needs factors were developed for the metropolitan and non-metropolitan allocation areas within each HUD Office jurisdiction. On a nationwide basis, approximately 90 percent of the FY 1995 "fair share" budget authority for the Rental Voucher Program and Rental Certificate Program is designated for allocation to metropolitan areas. The metropolitan housing needs factors were applied to the housing assistance budget authority available for metropolitan areas and the non-metropolitan housing needs factors were applied to the housing assistance budget authority available for non-metropolitan areas.

The allocation areas were established by the HUD State and Area Offices to ensure sufficient competition among HAs (including State and regional or multi-county HAs) operating housing programs within the HUD-established allocation areas.

(3) Program Type

This notice announces the fair share allocation of housing assistance budget authority (See Attachment 1) for the Rental Voucher Program and for the Rental Certificate Program to each allocation area, based on the housing needs factors. The allocation of housing assistance budget authority to each allocation area, however, is the total for both programs. The allocations have been structured to give HUD Offices flexibility in approving HA applications for funding of rental vouchers or rental certificates. This Notice also provides an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the allocation area based on the national average cost of rental assistance for a two-bedroom unit. The actual number of units assisted within each HUD Office will vary from the estimates prepared by Headquarters for each HUD Office since the actual costs of rental assistance for each HA vary from the average.

(4) Reimbursement for Portability Units

The Department has decided that it is appropriate to use up to 50 percent of the fair share allocation for each allocation area as reimbursement to HAs for the costs associated with families that have moved under the portability procedures of the programs. Each HA must designate, in an attachment to Form HUD–52515, the number of units that it is requesting as reimbursement for portability billings or absorptions. A receiving HA that currently bills an initial HA for the cost of rental assistance for a family and receives funding under this NOFA for reimbursement of the rental assistance must discontinue billing the initial HA upon execution of the amendment to the annual contributions contract (ACC). The initial HA will then be able to reissue the rental assistance to another family on the initial HA's waiting list.

Attachment 2 to this NOFA provides a suggested format for the receiving HA to list the number of units and to certify to the number of families assisted under the portability provisions. In order to be eligible for reimbursement for portability, the HA must have billed, during the most recent month prior to

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the HA application to HUD for reimbursement, another HA for the cost of the families' rental assistance, including administrative fees, or have absorbed the families into its own program at any time during the last HA fiscal year. A receiving HA may apply for the number of rental vouchers or certificates for which the HA billed another HA during the most recent month prior to application or the number of rental vouchers or certificates for families absorbed at any time during the HA fiscal year.

HUD will, for each allocation area, fund HAs with the highest ratio of rental vouchers or certificates billed and families absorbed in the HA's total rental voucher and certificate program. HUD will divide the total number of rental vouchers and certificates billed and families absorbed by the total number of rental vouchers and certificates on the most recent HUD-approved budget in an HA's program. The resulting percentage (rounded to four decimal places) will be used to rank HAs for funding. Receiving HAs will be ranked in descending order based on the percentage of portable rental vouchers and certificates. When funds are not available to fund the last ranked HAs with the same percentage, the HUD Office will distribute the balance of the funds evenly to the HAs with the same percentage.

(5) Potential Additional Funding

If additional rental voucher or rental certificate funding becomes available for fair share use during FY 95, the Department plans to distribute any additional funding to HUD Offices using the same percentage distribution as reflected in Attachment 1 to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund HA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount.

(C) Fair Share Application Submission Requirements

(1) All the items in Section I.(D), Application Submission Requirements—General, of this NOFA must be included in the application submitted to the HUD Office.

(2) The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the HUD Office can only rate and rank the application based on information the HUD Office has on-hand.

(3) Attachment 1 to this notice lists the HUD Offices and an estimate of the number of rental vouchers and certificates and budget authority available for each allocation area within the HUD State or Area Office jurisdiction. HAs should limit their applications for the "fair share" program to a reasonable number of rental vouchers and rental certificates, based on the capacity of the HA to lease-up within 12 months of ACC execution. The number of rental vouchers or certificates on the HA application, excluding those designated as portability reimbursements, may not exceed the lesser of: (a) ten percent (10%) of the total rental vouchers and rental certificates on the most recent HUD-approved budget for the HA; or (b) 50 percent of the number of units available for the allocation area.

(4) Each HA that intends to apply for rental vouchers or certificates as reimbursement for families that exercised their rights to portability must attach the portability certification (See Attachment 2 to this NOFA) to its fair share application (Form HUD–52515). Otherwise, the HA application will be considered only for fair share funding. HAs must provide the following portability information to be considered for this special funding:

(i) List the number of units by bedroom size for all rental vouchers and certificates for which the receiving HA billed another HA and for all families that an HA absorbed into its program.

(ii) List the number of rental vouchers and certificates by bedroom size that the HA is requesting under the fair share funding.

(iii) Provide the certification as to the number of rental vouchers or certificates for which the receiving HA is billing under portability or the number of families it has absorbed.

(5) HAs may submit only one application (Form HUD–52515) for an allocation area and must submit a separate application for each allocation area. The total number of rental vouchers or certificates for which an HA applies may not exceed the lesser of ten percent of its program size or 50 percent of the rental vouchers and certificates available for the allocation area.

(6) The HUD Office will reduce the number of rental vouchers and certificates requested in any application that exceeds the established application limit to the lesser of ten percent of the total rental vouchers and rental certificates on the latest HUD-approved budget or 50 percent of the units available for the allocation area.

(D) Fair Share Application Rating Process

The HUD Office must use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 120.

(1) Selection Criterion 1: Unmet Housing Needs (50 points)

(a) Description: This criterion assesses the unmet housing need in the primary area specified in the HA's application compared to the unmet housing need for the allocation area. Unmet housing need is defined as the number of very low-income renter households with housing problems based on 1990 Census, minus the number of Federally-assisted housing units provided since the 1990 Census.

In awarding points under this criterion, HUD will, to the extent practicable, consider all units provided since the 1990 Census under the Section 8 Rental Voucher and Certificate programs, any other Section 8 programs, the Public and Indian Housing programs, the Section 202 program, and the Farmers Home Administrations's Section 515 Rural Rental Housing program.

(b) Rating and Assessment: The number of points assigned is based on the percentage of the allocation area's unmet housing need that is within the HA's primary area. State or Regional Housing Agencies will receive points based on the areas they intend to serve with this allocation, e.g., the entire allocation area or the localities within the allocation area specified in the application. The HUD Office will assign one of the following point totals:

- 50 points. If the HA's percentage of unmet housing need is greater than 50 percent of the allocation area's unmet need.
- 45 points. If the HA's percentage of unmet housing need is equal to or less than 50 percent but greater than 40 percent of the allocation area's unmet need.
- 40 points. If the HA's percentage of unmet housing need is equal to or less than 40 percent but greater than 30 percent of the allocation area's unmet need.
- 35 points. If the HA's percentage of unmet housing need is equal to or less than 30 percent but greater than 20 percent of the allocation area's unmet need.
- 30 points. If the HA's percentage of unmet housing need is equal to or less than 20 percent but greater than 10 percent of the allocation area's unmet need.

- 25 points. If the HA's percentage of unmet housing need is equal to or less than 10 percent but greater than 5 of the allocation area's unmet need.
- 20 points. If the HA's percentage of unmet housing is equal to or less than 5 percent (but greater than zero) of the allocation area's unmet need.
- 0 points. If the HA has no unmet housing need (zero percent). The HUD Office will not consider for funding any HA application receiving zero (0) points.

In accordance with Notice PIH 91–45, the HUD Office will notify the Farmers Home Administration (FmHA) of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing FmHA projects, with which HUD agrees, will receive zero points for this criterion.

(2) Selection Criterion 2: Efforts of HA to Provide Area-Wide Housing Opportunities for Families (60 points)

(a) Description: Many HAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 rental voucher and certificate programs. HAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. The HUD Office will assign points to HAs that have established cooperative agreements with other HAs or created a consortium of HAs in order to facilitate the transfer of families and their rental assistance between HA jurisdictions. In addition, the HUD Office will assign points to HAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) Rating and Assessment: The HUD Office will assign point values for any of the following assessments for which the HA qualifies and add the points for all the assessments (maximum of 60 points) to determine the total points for this Selection Criterion:

- 10 points—Assign 10 points if the HA documents that it participates in an area-wide rental voucher and certificate exchange program where all HAs absorb portable Section 8 families.
- 10 Points—Assign 10 points if the HA certifies that its administrative plan does not include a "residency preference" for selection of families to participate in its rental voucher and certificate programs or the HA certifies that it will eliminate immediately any "residency preference" currently in its administrative plan.
- 10 Points—Assign 10 points if the HA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five HAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration and any other HAs that receive counseling funds from HUD in settlement of litigation involving desegregation may qualify for points under this assessment, but these HAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration or the court-ordered plans, to expand housing opportunities.
- 10 Points—Assign 10 points if the HA documents that it requested from HUD, and HUD approved, the authority to utilize exceptions to the fair market rent limitations as allowed under 24 CFR 882.106(a)(4) to allow families to select units in low-poverty or non-minority areas.
- 10 Points—Assign 10 points if the HA documents that it participates with other HAs in using a metropolitan wide or combined waiting list for selecting participants in the program.
- 10 Points—Assign 10 points if the HA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

(3) Selection Criterion 3: Local Initiatives (10 points)

(a) Description: The application must describe the extent to which the HA demonstrates locally initiated efforts in support of its Rental Voucher and Rental Certificate Program or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(b) Rating and Assessment: The HUD Office will assign one of two point-values, as follows:

- 10 points: The State or locality provides significant local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.
- 0 points: The State or locality does not provide support to the HA's Rental Voucher or Rental Certificate Program.

(E) Corrections to Deficient Fair Share Applications

(1) Acceptable Applications

See Section I.(G)(1) of this NOFA.

(2) Unacceptable Applications

See Section I.(G)(2) of this NOFA.

(F) Fair Share Application Selection Process

(1) Maximum Funding Allowed

Excluding rental vouchers or certificates for portability reimbursements, the HUD Office may approve maximum funding for an HA under this NOFA that does not exceed the lesser of 10 percent of the HA rental vouchers and rental certificates on the latest HUD-approved budget or 50 percent of the number of rental vouchers and certificates available in the allocation area, whichever is less.

(2) Funding Procedure

The HUD Office must develop a procedure for approving applications (including applications rated by the Native American Programs Office) in rank order until all the housing assistance budget authority is used. The HUD Office may elect to approve applications for 100 percent of the rental vouchers or certificates requested, or the maximum number allowed for each HA under this NOFA (not to exceed the lesser of ten percent of the HA's program size or 50 percent of rental vouchers and certificates available for the allocation area), in all applications that score above a HUD Office-determined funding cut-off. The HUD Office may elect to approve all applications using a lower percentage, but may not approve applications at less than 80 percent of the rental vouchers and certificates requested in all applications that score above the HUD Office-determined funding cut-off.

The HUD Office may elect to divide applications into two categories and to approve a different percentage of requested rental vouchers and certificates for applications in each of the two ranking categories, but not less than 80 percent of the rental vouchers and certificates requested in all applications. The higher percentage of rental vouchers and certificates requested would be approved for all

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applications in the higher category and a lower percentage of rental vouchers and certificates requested would be approved for all applications in the lower category. The HUD Office must approve the same percentage (at least 80 percent) of each application within each of the two ranking categories.

Where a HUD Office funds applications at 100 percent or 80 percent of the rental vouchers and certificates requested according to rank order, only to find it has some number of rental vouchers or certificates left but not enough to fund the next fundable application, the next rated application, or applications receiving the same score, can be funded to the extent of the number of rental vouchers or certificates available provided that each application receives the same percentage even though it is less than 80 percent.

If an HA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the metropolitan allocation area or non-metropolitan allocation area, the HUD Office will award the available form of assistance, even though not specifically requested by the applicant.

The HUD State or Area Office must promptly notify the applicable Native American Programs Office for each allocation area as to the status of any applications from IHAs and, if applicable, the amount of budget authority to be made available for IHA applications that were rated high enough to receive funding. The HUD State or Area Office must promptly notify Headquarters (Attention: Budget Division, Office of Public and Indian Housing) of any IHA to be awarded funding so that the funds may be re-assigned to the appropriate Native American Programs Office.

(3) Reallocations of Funds

Each HUD Office must make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one HUD Office to another when the funds are not likely to be used in the HUD Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(a) *Reallocations within the Same State.* If the allocation of funds to a HUD Office cannot be awarded within the office jurisdiction during Fiscal Year 1995, funds will be reallocated to another HUD Office within the same State where they can be used during Fiscal Year 1995.

(b) *Reallocations Between States.* If a HUD Office cannot use funds within the same State, those funds will be re-allocated to another HUD Office for use in a State where they can be used during Fiscal Year 1995.

(c) *Reallocations Between Metropolitan and Non-metropolitan Areas.* The HUD Office must follow the original fund assignments for metropolitan and non-metropolitan areas. If there are not enough approvable applications for the designated metropolitan or non-metropolitan budget authority, the HUD Office may switch the budget authority between a metropolitan and non-metropolitan area within the same State, provided that an offsetting switch can be made in another State within the HUD Office. If an offsetting switch cannot be made and the metropolitan or non-metropolitan amounts require changes to the fund assignments, the approval of the Budget Division, Office of Management and Policy, Office of Public and Indian Housing, must be obtained before switching budget authority between a metropolitan and a non-metropolitan area.

(d) *Requests for Reallocations.* A request for approval of a reallocation between States or between metropolitan and non-metropolitan areas must explain the reasons that funds cannot be used in the original State, or metropolitan and non-metropolitan area, the amount being withdrawn, the program type, and the metropolitan/non-metropolitan mix, and the amount to be reallocated. These requests must be submitted to Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) for approval.

III. Family Unification/Foster Care Program

(A) Family Unification Application Deadline Date

The Deadline date for the Family Unification Program application is listed in Section I.(B) of the NOFA.

(B) Purpose and Substantive Description of Family Unification Program

(1) Authority

Section 8(x) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(x). The regulations governing the section 8 rental certificate program are codified at 24 CFR parts 882 and 982. This NOFA announces the availability of Family Unification funding under the VA, HUD-Independent Agencies Appropriations Act of 1995 (Pub.L. 103–327, approved September 28, 1994).

(2) Background

The Family Unification Program is a program under which Section 8 rental assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in:

(a) The imminent placement of the family's child, or children, in out-of-home care, or

(b) The delay in the discharge of the child, or children, to the family from out-of-home care.

The purpose of the Family Unification Program is to promote family unification by providing rental assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families.

Rental certificates awarded under the Family Unification Program are to be administered by HAs under HUD's regulations for the Section 8 rental certificate program (24 CFR parts 882 and subpart E of part 982). The HA may issue a rental voucher (24 CFR part 887 and subpart E of part 982) to a family selected for participation in the Family Unification Program if the family requests a rental voucher and the HA has one available.

(3) Eligibility of HAs

HAs currently administering a rental voucher or certificate program in the following sixteen states are eligible to apply except those HAs determined unacceptable under section I.(D)(2) of this NOFA: California, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia. Applications were limited to HAs in eleven States by Congress under the VA, HUD-Independent Agencies Appropriations Act of 1992, and the Senate Committee Report for the VA, HUD-Independent Agencies Act of 1993 allowed HUD to expand the program to five additional States. The selection of the five additional States was based on the caseload of families with children in foster care within the States. The information concerning families with children in foster care was provided to HUD by the Administration for Children and Families at the U.S. Department of Health and Human Services (HHS).

(4) Program Guidelines

(a) Definitions: For purposes of the Family Unification Demonstration Program:

(i) Family Unification eligible family means a family that:

(*A*) The public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care; and

(*B*) The HA has determined is eligible for Section 8 rental assistance.

(ii) The lack of adequate housing means a situation in which a family:

(*A*) Is living in substandard housing or homeless, as defined in 24 CFR 982.212 and 982.213, or

(*B*) Is, or will be, involuntarily displaced from a housing unit because of actual or threatened violence against a family member under the circumstances described in 24 CFR 982.211.

(iii) Public child welfare agency (PCWA) means the public agency that is responsible under applicable State or Tribal law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(b) HA Responsibilities.

HAs must:

(i) Accept families certified by the PCWA as eligible for the Family Unification Program. If the HA has a closed waiting list, it must reopen the waiting list to accept Family Unification applicant families. The HA is not required to review its waiting list for eligible families. The HA upon receipt of the PCWA list of families currently in the PCWA caseload must compare the names with those of families already on the HA's Section 8 waiting list. Any family on the HA's Section 8 waiting list that matches with the PCWA's list must be assisted in order of their position on the waiting list in accordance with HA admission policies;

(ii) Determine if any applicants on its waiting list are living in temporary shelters or on the street, and refer such applicants to the PCWA;

(iii) Determine if families referred by the PCWA are eligible for Section 8 assistance and place eligible families on the Section 8 waiting list;

(iv) Amend the administrative plan in accordance with applicable program regulations and requirements;

(v) Administer the rental assistance in accordance with applicable program regulations and requirements; and

(vi) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Program, and cooperate with and provide requested data to the HUD office or HUD-approved contractor responsible for program evaluation.

(c) Public Child Welfare Agency (PCWA) Responsibilities. Public child welfare agencies must:

(i) Establish and implement a system to identify Family Unification eligible families within the agency's caseload and to review referrals from the HA;

(ii) Provide written certification to the HA that a family qualifies as a Family Unification eligible family;

(iii) Commit sufficient staff resources to ensure that Family Unification eligible families are identified and certified in a timely manner; and

(iv) Cooperate with the evaluation that HUD intends to conduct on the Family Unification Program, and submit a certification with the HA's application for Family Unification funding that the PCWA will agree to cooperate with and provide requested data to the HUD office or HUD-approved contractor having responsibility for program evaluation.

(d) Section 8 Rental Certificate Assistance.

The Family Unification Program provides assistance under the Section 8 rental assistance programs. Although HUD is providing a special allocation of rental certificates, the HA may use both rental vouchers and certificates to assist families under this program.

HAs must administer this program in accordance with HUD's regulations governing the Section 8 rental certificate and rental voucher programs. The HA may issue a rental voucher to a family selected to participate in the Family Unification Program if the family requests a rental voucher and the HA has one available. If Section 8 assistance for a family under this program is terminated, the rental assistance must be reissued to another Family Unification eligible family during the five-year term of the ACC for the Section 8 rental certificates provided under this program.

(C) Family Unification Allocation Amounts

This NOFA announces the availability of up to $76 million for the Family Unification Program which will support assistance for about 2,000 families. Each HA may apply for funding for a maximum of 50 units.

The amounts allocated under this NOFA will be awarded under a national competition based on demonstrated need for such assistance and a lottery for selection from all approvable applications. The Family Unification Program is exempt from the fair share allocation requirements of section 213(d) of the Housing and Community Development Act of 1974, and from 24 CFR part 791, subpart D, the HUD regulation implementing section 213(d).

(D) Family Unification Application Submission Requirements

(1) Letter of Intent and Narrative

All the items in this Section and Section I.(D), Application Submission Requirements—General, must be included in the application submitted to the HUD Office. The application must include an explanation of how the application meets, or will meet, Threshold Criteria 1 through 4 in Section III.(E)(2) below.

The application must also include a letter of intent from the PCWA stating its commitment to provide resources and support for the Family Unification Program. The PCWA letter of intent must explain:

(i) The method used to identify eligible families,

(ii) The process to certify eligible families,

(iii) The PCWA assistance to families to locate suitable housing,

(iv) The staff resources committed to the program, and

(v) PCWA experience with the administration of similar programs including cooperation with an HA.

The PCWA serving the jurisdiction of the HA is responsible for providing the information for Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to the HA for submission with the HA application. The application must include a statement by the PCWA describing the need for a Family Unification Program. This should include a discussion of the case-load of the PCWA and information about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care as a result of inadequate housing, and the PCWA's experience in obtaining housing through HUD assisted housing programs and other sources for families lacking adequate housing. A State-wide Public Child Welfare Agency must provide information on Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to all HAs that request data; otherwise, HUD will not consider applications from any HAs with the State-wide PCWA as a participant in its program. The HA must state in its cover letter to the application whether it will accept a reduction in the number of rental certificates and the minimum number of rental certificates it will accept since the funding is limited and HUD may only have enough funds to approve a smaller amount than

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the number of rental certificates requested.

(2) Evaluation Certifications

The HA and the PCWA in separate certifications must state that the HA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office or HUD-approved contractor delegated the responsibility for the program evaluation. No specific language for this certification is prescribed by HUD.

(E) Family Unification Application Rating Process

(1) General

The HUD Office is responsible for rating the applications, and HUD Headquarters is responsible for selection of applications (including applications rated by the Native American Programs Office) that will receive assistance under the Family Unification Program. The HUD Office will initially screen all applications and determine any technical deficiencies based on the application submission requirements.

Each application submitted in response to the NOFA must receive, in order to be eligible for funding, at least 30 points for Threshold Criterion 1: Unmet Housing Needs; at least 10 points for Threshold Criterion 2: Efforts of HA to Provide Area-Wide Housing Opportunities for Families; and must meet the requirements for Threshold Criterion 3: Coordination between HA and Public Child Welfare Agency, and Threshold Criterion 4: Public Child Welfare Agency Statement of Need for Family Unification Program.

(2) Threshold Criteria

(a) Selection Criterion 1· Unmet Housing Needs (50 points).

(i) Description: This criterion assesses the unmet housing need in the primary area specified in the HA's application compared to the unmet housing need for the allocation area. Unmet housing need is defined as the number of very low-income renter households with housing problems based on 1990 Census, minus the number of Federally-assisted housing units provided since the 1990 Census.

In awarding points under this criterion, HUD will, to the extent practicable, consider all units provided since the 1990 Census under the Section 8 Rental Voucher and Certificate programs, any other Section 8 programs, the Public and Indian Housing programs, the Section 202 program, and the Farmers Home Administration's Section 515 Rural Rental Housing program.

(ii) Rating and Assessment: The number of points assigned is based on the percentage of the allocation area's unmet housing need that is within the HA's primary area. State or Regional Housing Agencies will receive points based on the areas they intend to serve with this allocation, e.g., the entire allocation area or the localities within the allocation area specified in the application. The HUD Office will assign one of the following point totals:

- 50 points. If the HA's percentage of unmet housing need is greater than 50 percent of the allocation area's unmet need.
- 45 points. If the HA's percentage of unmet housing need is equal to or less than 50 percent but greater than 40 percent of the allocation area's unmet need.
- 40 points. If the HA's percentage of unmet housing need is equal to or less than 40 percent but greater than 30 percent of the allocation area's unmet need.
- 35 points. If the HA's percentage of unmet housing need is equal to or less than 30 percent but greater than 20 percent of the allocation area's unmet need.
- 30 points. If the HA's percentage of unmet housing need is equal to or less than 20 percent but greater than 10 percent of the allocation area's unmet need.
- 25 points. If the HA's percentage of unmet housing need is equal to or less than 10 percent but greater than 5 of the allocation area's unmet need.
- 20 points. If the HA's percentage of unmet housing is equal to or less than 5 percent (but greater than zero) of the allocation area's unmet need.
- 0 points. If the HA has no unmet housing need (zero percent). The HUD Office will not consider for funding any HA application receiving zero (0) points.

In accordance with Notice PIH 91–45, the HUD Office will notify the Farmers Home Administration (FmHA) of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing FmHA projects, with which HUD agrees, will receive zero points for this criterion.

(b) Selection Criterion 2: Efforts of HA to Provide Area-Wide Housing Opportunities for Families (60 points).

(i) Description: Many HAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 rental voucher and certificate programs. HAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. The HUD Office will assign points to HAs that have established cooperative agreements with other HAs or created a consortium of HAs in order to facilitate the transfer of families and their rental assistance between HA jurisdictions. In addition, the HUD Office will assign points to HAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(ii) Rating and Assessment: The HUD Office will assign point values for any of the following assessments for which the HA qualifies and add the points for all the assessments (maximum of 60 points) to determine the total points for this Selection Criterion:

- 10 points—Assign 10 points if the HA documents that it participates in an area-wide rental voucher and certificate exchange program where all HAs absorb portable Section 8 families.
- 10 points—Assign 10 points if the HA certifies that its administrative plan does not include a "residency preference" for selection of families to participate in its rental voucher and certificate programs or the HA certifies that it will eliminate immediately any "residency preference" currently in its administrative plan.
- 10 points—Assign 10 points if the HA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five HAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration and any other HAs that receive counseling funds from HUD in settlement of litigation involving desegregation may qualify for points under this assessment, but these HAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration or the court-ordered plans, to expand housing opportunities.
- 10 points—Assign 10 points if the HA documents that it requested from HUD, and HUD approved, the authority to utilize exceptions to the fair market rent limitations as allowed under 24 CFR 882.106(a)(4) to allow families to select units in low-poverty or non-minority areas.
- 10 points—Assign 10 points if the HA documents that it participates with other HAs in using a metropolitan wide or combined waiting list for selecting participants in the program.
- 10 points—Assign 10 points if the HA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

(c) Threshold Criterion 3: Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families.

The application must describe the method that the HA and the public child welfare agency will use to identify and assist Family Unification eligible families. The application must include a letter of intent from the PCWA stating its commitment to provide resources and support for the program. The PCWA letter of intent and other information must be comprehensive and must include an explanation of the method used to identify eligible families, of the PCWA's certification process for determining Family Unification eligible families, of the responsibilities of each agency, of the PCWA assistance provided to families in locating housing units, of the PCWA staff resources committed to the program, of the past PCWA experience administering a similar program, and of the PCWA/HA cooperation in administering a similar program.

(d) Threshold Criterion 4: Public Child Welfare Agency Statement of Need for Family Unification Program.

The application must include a statement by the PCWA describing the need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care, or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency. The PCWA must adequately demonstrate that there is a need in the HA's jurisdiction for the Family Unification program which is not being met through existing programs. The narrative must include specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families lacking adequate housing.

(F) Corrections to Deficient Family Unification Applications

(1) Acceptable Applications

See Section I.(G)(1) of this NOFA.

(2) Unacceptable Applications

See Section I.(G)(2) of this NOFA.

(G) Family Unification Application Selection Process

After the HUD Office has screened HA applications and disapproved any applications unacceptable for further processing (See Section I.(G)(2) of this NOFA), the HUD Office will review and rate all approvable applications, utilizing the Threshold Criteria and the point assignments listed in this NOFA. Each HUD Office will send to HUD Headquarters the following information on each application that passes the Threshold Criteria:

(1) Name and address of the HA;

(2) Name and address of the Public Child Welfare Agency;

(3) State Office, Area Office, or Native American Programs Office contact person and telephone number.

(4) The number of rental certificates in the HA application and minimum number of rental certificates specified in the HA application and the corresponding budget authority acceptable to the HA; and

(5) A completed fund reservation worksheet for the number of rental certificates requested in the application.

All Field Offices of Native American Programs also must send to Headquarters Office of Native American Programs the information listed in Section III.(G) (1)–(5) for each IHA application that passes the threshold criteria.

Headquarters will select eligible HAs to be funded based on a lottery. All HAs identified by the HUD Offices as meeting the Threshold Criteria identified in the NOFA will be eligible for the lottery selection process. As HAs are selected, the costs of funding the applications will be counted against the total funds available for the Family Unification program. In order to achieve geographic diversity, HUD Headquarters will limit the number of applications selected for funding under the lottery for any State to ten percent of the budget authority made available under this NOFA.

Applications will be funded in full for the number of rental certificates requested by the HA in accordance with the NOFA. However, when remaining rental certificate funds are insufficient to fund the last HA application in full, HUD Headquarters may fund that application to the extent of the funding available and the applicant's willingness to accept a reduced number of rental certificates. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

IV. Family Self-Sufficiency (FSS) Service Coordinators

(A) FSS Service Coordinators Applications Deadline Date

The deadline date for the Family Self-Sufficiency (FSS) Service Coordinators subprogram is listed in Section I.(B) of the NOFA.

(B) Purpose and Substantive Description of Funding for FSS Service Coordinators

The FY 1995 HUD Appropriations Act (Pub. L. 103–327 approved September 28, 1994) makes available administrative fees under section 23(h) of the U.S. Housing Act of 1937 for the Section 8 FSS program. Section 23(h) establishes a fee for the costs incurred in administering the Section 8 FSS program and requires the Secretary to revise the fee upon submission by the General Accounting Office (GAO) of a report determining the additional costs to HAs under FSS programs. In April 1992, the GAO issued its report; however, the report indicated that it was premature to make a recommendation for changes in the fee. As a result, the Department determined to make a sufficient fee available under this NOFA, to enable the smaller HAs (i.e., those with programs of less than 1,500 total rental vouchers and certificates) with required FSS programs of at least 25 slots, to hire up to one FSS program coordinator for one year at a reasonable cost, as determined by the HA and HUD, based on salaries for similar positions in the locality.

(1) Eligible Activity

Funds are available under this NOFA to employ or otherwise retain the services of up to one FSS program coordinator for one year. A part-time FSS program coordinator may be retained where appropriate. Under the FSS program, HAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable

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participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful program.

(a) Program Coordinator Role.

HAs administering the FSS program use program coordinating committees (PCCs) to assist them to secure resources for and implement the FSS program. The program coordinating committee is made up of representatives of local government, job training and employment agencies, local welfare agencies, educational institutions, child care providers, nonprofit service providers, and businesses.

An FSS program coordinator works with the PCC, and with local service providers to assure that program participants are linked to the supportive services they need to achieve self-sufficiency. The FSS program coordinator may ensure, through case management, that the services included in participants' contracts of participation are provided on a regular, ongoing and satisfactory basis, and that participants are fulfilling their responsibilities under the contracts.

(b) Staffing Guidelines.

Under normal circumstances, a full-time FSS program coordinator should be able to serve approximately 50 FSS participants, depending on the coordinator's case management functions.

(c) Eligibility of HAs.

All HAs funded under the FY 94 NOFA that wish to obtain funding for another year do not need to re-apply. HUD will automatically fund the FY 94 recipients at 103 percent of the FY 94 amount unless the HA submits a new application or notifies HUD not to fund the HA for an FSS Service Coordinator. All HAs which did not receive FSS coordinator funding in FY 94 and that currently administer a rental voucher and certificate program of less than 1,500 total rental vouchers and certificates and that received FY 1992 FSS incentive award funding, or FY 1993 and later rental voucher or certificate funding (other than renewal funding), and as a result are required to administer an FSS program of at least 25 FSS slots are eligible to apply. HAs with less than 1,500 total rental vouchers and certificates and with FSS programs of fewer than 25 slots may also apply, if they apply jointly with one or more other eligible HAs so that between or among the HAs they administer at least 25 FSS slots. If eligible applicants apply jointly, their combined total program size may exceed 1,500 total rental vouchers and certificates, but the $40,000 maximum amount that may be requested still applies. Joint applicants must specify a lead coapplicant which will receive and administer the FSS program coordinator funding. A state or regional (i.e., multi-county jurisdiction) HA that administers a program of more than 1,500 rental vouchers and certificates may apply if it is required to administer an FSS program of fewer than 1,500 FSS slots.

HUD has limited eligibility under this NOFA to HAs with less than 1,500 total Section 8 rental vouchers and certificates and to state and multi-county regional HAs that are required to administer FSS programs of at least 25 but fewer than 1,500 FSS slots, because the $17.3 million appropriated for FSS program coordinators is insufficient to fund all HAs administering FSS programs. HUD determined that HAs administering large Section 8 programs are more likely than smaller HAs to have access to other resources for FSS program administration. State HAs indicated an interest in FY 94 in submitting applications for funding under the FSS Service Coordinators NOFA regardless of the 600 total program size limitation in FY 94. In response, HUD has decided to allow a state or multi-county regional HA that administers an FSS program in more than one location to submit an application if the state or multi-county regional HA is required to administer an FSS program of at least 25 but fewer than 1,500 FSS slots.

HUD is requiring that applicants under this NOFA administer FSS programs of at least 25 FSS slots (based on FY 1992 FSS incentive award funding or FY 1993 and later rental voucher and certificate funding (other than renewal funding)) to ensure that the limited program coordinator funds are used in a cost-effective manner. The Department expects that FSS programs of less than 25 FSS slots can be managed within HA resources.

(2) Eligible Applicants With HUD Approved Exceptions to Mandatory Minimum Size

If HUD has approved either a full or partial exception to implementing an FSS program of the mandatory minimum size for an eligible applicant with less than 1,500 rental vouchers and certificates, solely because of a lack of funds for reasonable administrative costs, the approval of the exception is hereby automatically rescinded, since funding for an FSS program coordinator is now available under this NOFA.

(C) FSS Service Coordinators Allocation Amounts

For FY 1995, the HUD Appropriations Act made $17.3 million available for HA administrative fees for Section 8 FSS Service Coordinators. Of this amount, up to $8.7 million will be provided to those HAs that received FY 94 funds in response to the NOFA published on August 29, 1994. This is the second fiscal year of funding for FSS Service Coordinators. All HAs that received funding for FSS Service Coordinators funding under the FY 94 NOFA will receive 103 percent of the amount awarded under the FY 94 NOFA without submitting a new application in response to this NOFA, unless the HA notifies the HUD Office that it does not want additional funding. Any previously funded HA has the flexibility to submit a new application in response to this NOFA in order to change the funded amount up to the maximums established in this NOFA. Any other HA with less than 1,500 total rental vouchers and certificates may submit an application for initial funding under this subprogram.

An eligible HA may apply for a maximum of $40,000 to support up to one FSS program coordinator for one year. An eligible state HA or multi-county regional HA may apply for a maximum of $40,000. HUD may fund applications at less than the requested amount, based on the HUD Office application review.

(D) FSS Service Coordinators Application Submission Requirements

Each application for funding under this NOFA must contain the following items:

(1) Request for FSS Service Coordinator Funds

All applications must contain the following information stated in a letter from the Executive Director of the HA to the Director of the Office of Public Housing in the local HUD Office or to the Administrator of the Native American Programs Office (see sample letter format, Attachment 6A):

(a) The total number of currently enrolled FSS families.

(b) The total number of required FSS slots (based on FY 1992 incentive award funding and FY 1993 and later rental voucher and certificate funding).

(c) The annual salary proposed for the FSS program coordinator, plus any fringe benefits. Do not include costs of training, transportation, clerical support, equipment, supplies, or other administrative costs or overhead. The service coordinator salary should be set as follows:

(i) Determine the salary level, taking into consideration salaries for comparable jobs, modified by the hours worked.

(ii) Set the annual salary, including any fringe benefits that pertain to the job.

(d) Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

(e) Joint applicants must indicate which HA will be the lead applicant and will receive and administer the FSS program coordinator funding.

(2) Required Certification Form

The HA must submit the Certification Regarding Fair Housing and Equal Opportunity included as Attachment 6B to this NOFA.

(E) Corrections to Deficient FSS Service Coordinators Applications

(1) Acceptable Applications

See Section I.(G)(1) of this NOFA.

(2) Unacceptable Applications

See Section I.(G)(2) of this NOFA.

(F) Application Selection Process for FSS Service Coordinators

The funds available under this subprogram are not being awarded on a competitive basis. The Department anticipates that there may be sufficient funds available under the NOFA to fund all applications that meet the NOFA requirements. Applications will be reviewed by the HUD Office to determine whether or not they are technically adequate based on the NOFA requirements.

Upon completion of the HUD Office review, a list of all technically adequate applications, each applicant's total program size and FSS program size, and the amount approved for each applicant will be forwarded by the HUD Office to the Rental Assistance Division in HUD Headquarters which will then allocate the available funding among approvable applications. All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will fund applications from the smallest HAs first (i.e., those HAs with the smallest combined rental voucher and certificate programs, or, in the case of state and multi-county regional HAs, smallest FSS program size) and will not fund applications from the larger HA applicants. The size of a State or multi-county regional HA's program will be determined based on the number of FSS slots it plans to administer with the funds for the FSS Coordinator.

V. Section 8 Counseling

(A) Application Due Date for Section 8 Counseling

Applications for Section 8 Counseling are to be submitted directly to HUD Headquarters at the following address: Mr. Laurence Pearl, Office of Program Standards and Evaluation, Fair Housing and Equal Opportunity, Room 5226, 451 Seventh Street, SW, Washington, DC 20410. The deadline date for applications for the subprogram for Section 8 Counseling is listed in Section I.(B) of the NOFA.

(B) Purpose and Substantive Description of Section 8 Counseling

(1) General

This NOFA announces the availability of approximately $150 million for HA administrative fees for Section 8 Counseling to facilitate a wide range of housing options for rental voucher and certificate holders and program participants. HUD has determined that families assisted under the Section 8 program frequently have a lack of knowledge of the rental market and this has limited the housing options of these families. HUD has decided to set-aside a portion of the FY 95 Section 8 funding (See Attachment 5) for administrative fees for housing agencies (HAs) to establish counseling services programs to assist families in expanding housing opportunities for families. The set-aside is designed to provide eligible families with information about a wide range of housing options in neighborhoods throughout a metropolitan area so that the families may make informed decisions about the selection of housing units. This goal will be accomplished by a combination of intensive counseling and outreach to landlords. Each HA funded under this NOFA for Section 8 Counseling must use the counseling funds only for those families eligible under this NOFA and may not counsel families for which the HA is funded from other sources, e.g., funds provided by HUD to assist and to counsel families benefiting from the settlement of litigation or involving desegregation.

(2) Housing Agency/Non-Profit Organization Partnership

The HA identified on Attachment 5 is designated as the lead HA for the metropolitan area for which funds are allocated. The lead HA must form a partnership with other HAs within the metropolitan area that have a high proportion of families living in poverty concentrated census tracts and with a non-profit organization (NPO) in order to undertake the housing counseling services on a metropolitan-wide basis unless the HAs believe they can perform the housing counseling. The lead HA will submit an application to HUD on behalf of all the HAs participating in the Section 8 Counseling provided by the NPO or in some cases the HAs and, the lead HA will be responsible for budgeting and financial management activities. HUD will allow HAs to undertake the housing counseling services without an NPO only if the HA can demonstrate in its application that the HA has the capability and the experience to perform the required services on a metropolitan-wide basis. HUD will not consider requests for "pre-approval" of HA capability and experience to perform these services under this set-aside. An HA without sufficient capability and experience that submits an application without an NPO must modify its application (i.e., add an NPO) during the 30 calendar day correction period or the HA will not be funded under this set-aside.

(3) Housing Counseling Services

The housing counseling services to be provided must be consistent with current program rules and, at a minimum, must include the services identified below; however, it is not necessary that each of these services be provided to every family:

(i) Outreach to private landlords in low-poverty neighborhoods (i.e., neighborhoods where the concentration of families at or below the poverty is less than 10 percent) throughout the metropolitan area, and counseling and referral services for eligible families consistent with a policy of avoiding unduly concentrating assisted families in a particular neighborhood;

(ii) Review eligible families for credit, housekeeping and criminal backgrounds to ensure suitability for counseling services;

(iii) Conduct home visits and escort families to potential units selected by the families;

(iv) Assist families in negotiating rent incentives and inducements from landlords during housing search;

(v) Coordinate support services and provide counseling on opportunities for educational, child care, medical care and employment after families move to new units;

(vi) Monitor activities for compliance with fair housing laws; and,

(vii) Monitor rents in low poverty neighborhoods and compare with the Section 8 fair market rents (FMRs) every six months to determine the impact of the FMRs on the range of housing opportunities on families.

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HUD encourages HAs to undertake additional housing counseling activities that have the potential of expanding housing opportunities for eligible families. HUD will provide funds, in excess of the amount listed in Attachment 5, from the $10 million set-aside retained for this purpose to lead HAs contingent upon documentation of satisfactory performance based on application and administrative guidance, and review and approval by HUD, that propose innovative housing counseling services. HUD will determine the amount of additional funds based on the proposed services to be provided.

(4) Eligible Families

A family is eligible to receive housing counseling services under this set-aside if the family is a current participant in the rental voucher or certificate programs or if the family has received a rental voucher or certificate from the HA to search for a unit. A family is also eligible if it receives rental assistance under the subprograms of this NOFA for Persons with HIV/AIDS, Mainstream Housing, and Homeless Families.

An HA must provide housing counseling services to eligible families, that are current participants or if the family has received a rental voucher or rental certificate from the HA to search for a unit, in the order set forth below:

(a) Families that currently receive income from work;

(b) Families that currently are work-ready, i.e., enrolled in an education or job training program; and then,

(c) All other eligible families. The other eligible families may be ranked at the HA's discretion to meet the HA's goals for policies established by the HA in its administrative plan.

(5) Program Record Keeping Requirements

In addition to the normal documentation required for the Section 8 program, each HA must maintain separate records for this set-aside as follows:

(a) the amount of time that staff devote to Section 8 counseling activities;

(b) a general description of the amount of landlord outreach effort for the set-aside to include the names and addresses of landlords contacted; the types of units under their control or management; whether the landlord has accepted Section 8 previously, and the outcome of the outreach effort;

(c) the average costs of the housing counseling services per counseled family;

(d) periodic surveys to measure the satisfaction of counseled families (customer satisfaction form to be provided by HUD);

(e) a summary of the racial, ethnic and income composition of families counseled under the set-aside and correlated with the number and location of units shown to each family and the neighborhood in which the family successfully leases a unit;

(f) information on the employment or educational training status of families at the time of counseling and any problems encountered;

(g) a record of all housing referrals to landlords and the results of these referrals; and

(h) periodic surveys to measure the satisfaction of landlords participating in this program for families that received housing counseling services (landlord satisfaction forms to be provided by HUD).

Each HA must maintain its records to show that NPO, or in some cases the HA, counselled only those families eligible for these services.

(C) Allocation Amounts for Section 8 Counseling

The availability of HA administrative fees is based on a formula allocation and is not a competition for funding. Each lead HA must submit an approvable application that identifies all the HAs participating in the Section 8 Counseling program to receive the administrative fee funding identified in Attachment 5. The award of Section 8 Counseling funds is contingent upon documentation of satisfactory performance based on application and administrative guidance, and review and approval by HUD.

Section 8 Counseling funds of $115 million have been allocated to the metropolitan areas with the highest concentrations of persons living in poverty-concentrated census tracts, i.e., census tracts where 30 percent or more of the persons live below the poverty level according to the 1990 census.

HUD allocated the $115 million Section 8 Counseling funds to the metropolitan areas using the Fair Share factors. The remaining $10 million will be awarded to eligible HAs, i.e., only those HAs listed on Attachment 5, as bonus funding to supplement the funding for those HAs and NPOs that have demonstrated successes in operating counseling programs of this type and that intend to undertake counseling with unique features such as innovative methods of counseling, metropolitan-wide housing search assistance, and other varied combinations of services. HUD encourages HAs to propose unique methods for increasing the housing opportunities for Section 8 rental voucher and certificate holders and participant families.

(D) Application Submission Requirements for Section 8 Counseling

Each lead HA must submit the items identified in Section I.(D) of the NOFA, Application Submission Requirements - General, and this section of the NOFA for Section 8 Counseling.

(1) HA Application

Each HA listed in Attachment 5 to this NOFA may submit an application for Section 8 Counseling as the lead HA for the metropolitan area. All other HAs intending to participate in the Section 8 Counseling program must be identified and must submit a letter of support for the lead HA's application.

(2) Counseling Services

The application must describe the HA's proposed counseling program over the five-year ACC term and must include a complete, specific statement outlining the proposed methods of housing counseling, landlord recruitment and data collection. HAs must describe the methods proposed to provide housing counseling services that increase housing opportunities for rental voucher and certificate holders and participant families beyond those normally provided under the Section 8 program. HAs should also identify goals for the housing counseling services, including those performed by an NPO subcontractor, against which their success may be measured.

The application must include information concerning the site at which the housing counseling will be conducted. An HA may provide the housing counseling services through a subcontract with an NPO to perform these functions on its behalf or, under certain circumstances, provide the services itself. Counseling services provided either by the HA or by a non-profit organization (NPO) must contain, at a minimum, the services described in Section V.(B)(3) of this NOFA.

Any HA that proposes to undertake housing counseling services in excess of those required under this set-aside must separately identify the additional activities and additional funds requested for the innovative services as well as the proposed cost of the additional services during the five-year ACC term. HUD has not established a maximum amount per HA to be provided from the $10 million of the funding for this set-aside that has been retained for innovative services.

(3) Counseling Subcontractor

The HA must submit a letter from the NPO with which it intends to subcontract with its application that describes the services, unless the HA decides to undertake the counseling services itself. The letter from the NPO must explain in detail the services to be performed on behalf of the HA and the experience or qualifications of the subcontractor to perform the services. The NPO letter will explain the timing and method of payment from the HA. In order for HUD to evaluate the cost of the proposed services, the HA and the NPO subcontractor must include information on the indirect cost arrangement to be established between the HA and the NPO. The NPO must submit documentation as a part of the application that verifies the 501(c)(3) (IRS Code) status of the NPO and its legal authority to operate throughout the metropolitan area. If the HA intends to perform the counseling services itself, the HA must provide the details of its capability to undertake the proposed counseling as required by section V.(D)(2) of this NOFA.

(4) Eligible Families

The application must describe the order of priorities for families to receive counseling services. Section V.(B)(4) of this NOFA establishes the first order of priorities of families to receive counseling. HAs have the discretion to establish preferences within the order of priorities and add priorities to the end of the list identified by HUD. The application must also include the number of Section 8 rental voucher and certificate holders as well as current Section 8 participants that are anticipated to be eligible for housing counseling under this set-aside and the subprograms of this NOFA for Persons with HIV/AIDS, Mainstream Housing, and Homeless Families.

(5) Management and Staffing Plans and Budget

The HA must submit a management plan, staffing plan and complete a five-year budget for the housing counseling program that, at a minimum meets the requirements of Section V.(B)(3) of this NOFA. The staffing plan should include a brief resume of each principal of the NPO and a list of its Board of Directors or other governing body.

If the HA proposes services beyond those required in Section V.(B)(3) of this NOFA, the application must include a separate and comprehensive, five-year budget that reflects all minimum and extra services to be provided. This budget is not in lieu of, but is in addition to, the budget for the minimum services.

(6) Application Revisions After Submission to HUD

HUD will provide the applicant an opportunity to revise its application after submission to HUD in response to specific written comments from HUD. The HA will have a thirty calendar day period from the date of HUD's letter to satisfy all issues with HUD. Applicants will be allowed to respond to HUD comments more than once during the thirty day correction period so long as the negotiations are completed by the thirty calendar day deadline.

(E) Corrections to Deficient Applications for Section 8 Counseling

(1) Acceptable Applications

See Section V.(D)(6) of this NOFA for the applicable provisions.

(2) Unacceptable Applications

The 14 calendar day technical correction period does not apply to this NOFA. See Section VIII.(D)(6) of this NOFA for the applicable provisions.

(F) Application Selection Process for Section 8 Counseling

(1) General

The funds available under this NOFA are being awarded on a formula basis as listed in Attachment 5 of the NOFA. An HA must submit an application to receive the Section 8 counseling funds. Applications will be reviewed by HUD Headquarters to determine whether or not they are technically adequate and responsive to the application submission criteria based on the NOFA requirements. An application must receive a minimum score of 40 points under the threshold criteria shown below in order to be approvable for funding. To expedite the review of applications and the award of funds under this subprogram, HUD Headquarters may initiate its review of any application received prior to the deadline established for submission.

HUD will allocate the available funding to the HAs identified in technically adequate and responsive applications. If HUD receives applications for funding less than the amount made available for an area under this NOFA, due to failure of an applicant to apply or due to technically inadequate applications, HUD will make these funds available to other applicants.

(2) Application Threshold Criteria

(a) Threshold Criterion 1: Proposed Methodology for Housing Counseling Services (40 points).

HUD Headquarters will assign up to 40 points for the proposed methodologies for conducting the housing counseling program, landlord outreach and program evaluation. The highest assessment of points is limited to those applications where the applicant provides an excellent understanding of the services to be performed and proposed innovative techniques to achieve the goals of the set-aside.

(b) Threshold Criterion 2: Experience and Capability of NPO/HA (35 points).

HUD Headquarters will assign up to 35 points for an application where the NPO/HA providing the housing counseling services has the capability and experience to successfully undertake the housing counseling services. No points will be awarded for an application that shows the service provider has minimal experience or experience only in the normal Section 8 Equal Opportunity Housing Plan activities.

VI. NOFA for Mainstream Housing Opportunities for Persons With Disabilities (Mainstream Program)

(A) Mainstream Program Application Deadline Date

The deadline date for Mainstream Program applications is listed in Section I.(B) of the NOFA.

(B) Purpose and Substantive Description of Mainstream Program

(1) Purpose

The Secretary has established a Mainstream Housing Opportunities for Persons with Disabilities Program (Mainstream Program) to provide rental vouchers and certificates to enable persons with disabilities to rent affordable private housing of their choice, in a nonsegregated environment.

Federal housing assistance for persons with disabilities has generally been provided under project-based programs targeted for groups with special needs (i.e., housing exclusively for persons with disabilities or housing exclusively for the elderly and disabled populations). This approach partly reflects the disparity between the needs of persons with disabilities and the availability of decent, affordable and accessible housing in an integrated setting. In addition, persons with disabilities often face difficulties in locating suitable and accessible housing on the private market and linking their

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housing environment with any supportive services that they may want or need.

The Mainstream Program will reach communities that have concentrations of persons with disabilities in need of housing assistance, including those living in housing of an institutional nature. The Department expects the program to be of particular interest to HAs with public housing reserved for occupancy by elderly families and disabled families that wish to provide nonpublic housing options to some of their disabled residents.

(a) Application Options. HUD will award funding for rental vouchers and/or certificates under the Mainstream Program through two application options: (1) An application option open only to HAs that submit an allocation plan to designate public housing for occupancy by elderly families, and that also administer a Section 8 rental certificate, rental voucher or moderate rehabilitation program; and (2) an application option for general use rental assistance for persons with disabilities, open to all HAs which currently administer a Section 8 rental certificate, rental voucher or moderate rehabilitation program. Eligible HAs may apply for assistance under either or both application options.

Under the first application option, HUD will make available approximately 1,250 rental vouchers and certificates to support approvable HA allocation plans to designate housing for elderly families. The rental vouchers and certificates will enable HAs to meet the designated housing regulatory requirement to make available sufficient housing resources to provide assistance to at least the number of nonelderly disabled families that would have been housed by the HA if occupancy in the designated public housing project were not restricted to elderly households. Applicants who choose to apply under this option should be familiar with the Public Housing Designated Housing rule, published in the **Federal Register** April 13, 1994 (24 CFR part 945). HUD intends to fund all approvable applications under the designated housing allocation plan application option, unless HUD receives applications for more funding than available for this option. In that case, HUD will select applications for funding by lottery.

Under the second application option, for general use rental assistance for persons with disabilities, HUD will make available approximately 1,250 Section 8 rental vouchers and certificates for HAs to increase the supply of mainstream housing opportunities available to persons with disabilities. HUD will select HA applications for funding under the general use application option by lottery.

(b) Limit on Rental Assistance Requested. An eligible HA applying under the general use application option may apply for up to 150 rental vouchers and/or certificates. An HA applying in conjunction with submission of a designated housing allocation plan may apply for only the number of units needed to meet the requirements of the allocation plan to provide housing resources for persons who otherwise would have received public housing, up to a maximum of 150 rental vouchers and certificates.

(2) Guidelines

(a) Definitions.

Allocation plan. A HUD-approved allocation plan required of HAs seeking to designate a project for occupancy by elderly families. See 24 CFR 945.203.

Disabled Family. A family whose head, spouse or sole member is a person with disabilities. The term "disabled family" may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

Person with disabilities. A person who—

(a) Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

(b) Is determined to have a physical, mental or emotional impairment that:

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions, or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

Section 8 Counseling. Services to increase access by program participants to housing units in a variety of neighborhoods and to assist participants in locating and obtaining a unit suited to their needs. See Section V of this NOFA.

Supportive services. Assistance that addresses the needs of eligible persons, provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training and placement, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care does not qualify as a supportive service.

Supportive service provider (or service provider). A person or organization (including peer support and consumer-run organizations) licensed or otherwise qualified to provide supportive services either for profit or not for profit that has been in existence for at least one year and delivers some or all of the above services to a client population.

(b) Eligible HAs.

(i) Rental assistance in conjunction with designated housing allocation plans. HAs that submit an allocation plan to designate public housing for occupancy by elderly families, and that also administer a Section 8 rental certificate, rental voucher or moderate rehabilitation program.

(ii) General use rental assistance for persons with disabilities. HAs which currently administer a Section 8 rental certificate, rental voucher or moderate rehabilitation program.

(iii) Additional Eligibility Requirements. See sections I(D)(2) and I(G)(2) of this NOFA.

(c) Eligible Participants.

(i) Rental assistance in conjunction with designated housing allocation plans. Only persons with disabilities and disabled families who live in public housing that has been designated for occupancy by the elderly, or disabled families who are on the HA's public housing waiting list, may receive a rental voucher or certificate awarded under the application option in conjunction with designated housing allocation plans. Nonelderly persons with disabilities and disabled families who live in public housing designated for the elderly in accordance with an allocation plan submitted in response to this NOFA, need not be listed on the Section 8 waiting list in order to be offered and receive Section 8 rental assistance as an incentive for a voluntary transfer from the designated project. These families may be admitted to the Section 8 program as a special admission (24 CFR 982.203).

(ii) General use rental assistance for persons with disabilities. Only persons with disabilities and disabled families may receive a rental voucher or certificate awarded under the general use application option. However, in selecting disabled applicants from the Section 8 waiting list, HAs must provide assistance on a priority basis to nonelderly disabled persons who reside in public housing reserved for occupancy by elderly families and disabled families, or who are on the public housing waiting list and will not be housed because a public housing project has been designated for elderly families.

(d) Rental Voucher and Certificate Assistance.

(i) Section 8 regulations. HAs must administer the Mainstream Program in accordance with HUD regulations governing the Section 8 rental voucher and certificate programs.

(ii) Section 8 admissions requirements. Section 8 assistance must be provided to eligible applicants in conformity with applicable rules governing the Section 8 program including the federal preference rules, and in accordance with the terms of the HA's designated housing allocation plan where applicable, and with HUD-approved administrative and equal opportunity housing plans.

If there is an insufficient pool of persons with disabilities and disabled families on the HA Section 8 waiting list, an HA may conduct outreach to encourage eligible persons to apply for the general use Mainstream Program. Outreach may include contacting independent living centers, disabled advocacy organizations, and medical, mental health, and social service providers for referrals of persons receiving such services who would benefit from the general use Mainstream Program.

If the HA's Section 8 waiting list is closed, and if the HA has insufficient applicants on its Section 8 waiting list to use all awarded Mainstream Program rental vouchers and certificates, the HA may open the waiting list to only those who qualify for the Mainstream Program.

(iii) Turnover. When a rental voucher or rental certificate under this program becomes available for reissue (e.g., the individual or family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the rental assistance may be used only for another individual or family eligible for assistance under this program during the five-year term of the ACC for the Mainstream Program.

(e) HA Responsibilities. In addition to normal HA responsibilities under the Section 8 programs and under HUD regulations for nondiscrimination based on handicap (24 CFR 8.28), HAs that receive rental voucher or certificate funding under the Mainstream Program must:

(i) assist program participants to gain access to supportive services available within the community, and to identify public or private funding sources for accessibility features, when participants request such assistance;

(ii) not deny persons who qualify for rental assistance under the Mainstream Program other housing opportunities for which they are eligible;

(iii) not deny other housing opportunities, or otherwise restrict access to HA programs, to eligible applicants who choose not to participate in the Mainstream Program; and

(iv) not require eligible applicants to accept supportive services in order to participate in the Mainstream Program.

(C) Mainstream Program Allocation Amounts

This NOFA announces the availability of up to $85.7 million of budget authority that will support approximately 2,500 rental vouchers or certificates for the Mainstream Program. The Mainstream Program includes an option for HAs to apply for rental vouchers and certificates in conjunction with submission of an allocation plan to designate public housing for elderly families. HUD will make available approximately $42.9 million of the $85.7 million total, to support approximately 1,250 rental vouchers and certificates, for the application option to support designated housing allocation plans. Remaining funding of approximately $42.9 million will support approximately 1,250 rental vouchers and certificates for general use rental assistance for persons with disabilities and disabled families. In the event HUD receives insufficient approvable applications for the designated housing allocation plan option, the surplus funding will be made available to the general use Mainstream Program applicants.

(D) Application Submission Requirements for Mainstream Program in Conjunction With Submission of Designated Housing Allocation Plans

Note that a separate application is required for each application option under the Mainstream Program. An HA may request only the number of rental vouchers and certificates supported by the designated housing allocation plan, not to exceed 150. Each application must include the items identified in Section I.(D) of the NOFA, Application Submission Requirements—General, and items in this section of the NOFA for the Mainstream Program in support of designated housing allocation plans

(1) Approvable Designated Housing Allocation Plan

The application must include an approvable allocation plan to designate housing for the elderly in accordance with 24 CFR 945.203.

(2) Description of Need for Mainstream Program Rental Vouchers and Certificates

The application must include a description of how the rental assistance is necessary to meet the requirement of 24 CFR 945.203(6)(iv) to provide assistance to at least the number of nonelderly disabled families that would have been housed by the HA if occupancy in units in the designated project were not restricted to elderly families. HAs may not request more than the number of rental voucher and certificates necessary to meet the above obligation, up to a maximum of 150.

(3) Description of Program Implementation

The application must include a narrative description of how the HA will operate its Mainstream Program. The description must include:

(a) Eligibility. A description of which portions of the eligible population the HA will serve (i.e., nonelderly disabled families on the public housing waiting list, nonelderly disabled families currently residing in housing designated for the elderly, or both).

(b) HA Assistance in Obtaining Accessibility Features. A description of how the HA will carry out its responsibilities under 24 CFR 8.28 to assist recipients in locating units with needed accessibility features. A description of the assistance the HA will provide to identify public or private funding sources (including any HA resources) for accessibility features such as ramps, grab bars, visual smoke alarms and fire detectors, accessible electrical controls, thermostats, and door hardware, and structural changes to dwelling units or common areas.

(c) Section 8 Counseling. A description of the assistance the HA will provide to eligible applicants to locate suitable housing in the private market. See Section V of this NOFA.

(E) Application Submission Requirements for General Mainstream Program for Persons With Disabilities

Note that a separate application is required for each application option under the Mainstream Program. An HA may request up to a maximum of 150

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rental vouchers and certificates under the general use Mainstream Program. Each application must include the items identified in Section I.(D) of the NOFA, Application Submission Requirements—General, and items in this section of the NOFA for the general use Mainstream Program.

(1) Description of Need for Mainstream Program Rental Assistance

The application must demonstrate a significant need for Mainstream Program rental vouchers and certificates, and demonstrate that the demand for such housing would equal or exceed the requested number of units.

(2) Mainstream Program Operating Plan

The application must include a description of an adequate plan for operating a program to serve eligible persons with disabilities, including a description of how the HA will carry out its responsibilities under 24 CFR 8.28 to assist recipients in locating units with needed accessibility features.

(3) Supportive Services Plan

The application must describe an adequate plan to assist recipients of Mainstream Program rental assistance, should they request such assistance, to gain access to supportive services available within the community. The application must demonstrate that the HA has identified service providers who will assist recipients to overcome impediments to success in the Mainstream Program. Such provider may include nonprofit organizations able to fund accessibility renovation and supportive services providers able to assist recipients to meet such lease obligations as adequate housekeeping and timely rental payments.

(F) Corrections to Deficient Applications.

(1) Acceptable Applications

See Section I.(G)(1) of this NOFA.

(2) Unacceptable Applications

See Section I.(G)(2) of this NOFA.

(G) Mainstream Program Application Selection Process

(1) Application Option in Support of Designated Housing Allocation Plans

(a) HUD Office Review. Upon receipt, the Office of Public Housing in the HUD Office will screen HA applications and stop processing any applications found unacceptable for further processing. Immediately after screening an acceptable application, the Offices of Public Housing and Fair Housing and Equal Opportunity in the HUD Office will review the applicant's designated housing allocation plan in accordance with 24 CFR 945.203.

If, within the 45-day or 90-day review period provided under 24 CFR 945.203(e)(2), the HUD Office finds an allocation plan approvable, subject to receipt of the requested rental assistance, the Offices of Public Housing and Fair Housing and Equal Opportunity will review the rest of the Mainstream Program application to determine if the application is technically adequate and responsive to the requirements of the NOFA. If the HUD Office determines that an allocation plan is approvable, and that the remainder of the Mainstream Program application is technically adequate and responsive, it will recommend to HUD Headquarters that the application be funded.

If the HUD Office disapproves an allocation plan submitted in response to this NOFA, the HA's application under the Mainstream Program will be rejected and the HA will not be eligible for the rental vouchers and certificates available under this Mainstream Program NOFA. However, the HA may continue to pursue its plans to designate housing for elderly families if it can identify other additional housing resources that it will need to meet the designated housing allocation plan requirements under 24 CFR 945.203.

(b) Funding. Headquarters will fund all applications that are recommended for funding by the HUD Offices, unless HUD receives approvable applications for more funds than allocated for the designated housing allocation plan application option. If HUD receives approvable applications for more funding than is available for the allocation plan option, HUD will select applicants to be funded by lottery. All HAs identified by the HUD Offices as having submitted technically adequate and responsive applications will be included in the lottery. As HAs are selected, the cost of funding the applications will be subtracted from the funds available. In order to achieve geographic diversity, HUD Headquarters will limit the number of applications selected for funding from any state to 10 percent of the budget authority available for the designated housing allocation plan application option.

(2) Application Option for General Use Mainstream Program

After the HUD Office has screened HA applications and disapproved any applications found unacceptable for further processing (see Section I.(G)(2) of this NOFA), the HUD Office will review all acceptable applications to ensure that they are technically adequate and responsive to the requirements of the NOFA. Each HUD Office will send to HUD Headquarters the following information on each application that is found technically adequate and responsive:

(a) Name and address of the HA;

(b) HUD Office contact person and telephone number;

(c) The completed fund reservation worksheet, indicating the number of units requested in the HA application and approved by the HUD Office during the course of its review, and the corresponding budget authority.

Headquarters will select eligible HAs to be funded by lottery. All HAs identified by the HUD Offices as having submitted technically adequate and responsive applications will be included in the lottery. As HAs are selected, the cost of funding the applications will be subtracted from the funds available. In order to achieve geographic diversity, HUD Headquarters will limit the number of applications selected for funding from any state to 10 percent of the budget authority available for the general use Mainstream Program.

Applications will be funded for the total number of units requested by the HA and approved by the HUD Office in accordance with the NOFA. However, when remaining budget authority is insufficient to fund the last selected HA application in full, HUD Headquarters will fund that application to the extent of the funding available.

(3) Program Type

If an HA application specifically requests funding for either rental vouchers or rental certificates, and funding for the specified program is not available, HUD will award the available form of assistance, notwithstanding the program type specified in the HA application.

VII. NOFA for Persons With HIV/AIDS

(A) Application Deadline Date for Persons With HIV/AIDS Subprogram

The Deadline Date for applications for the subprogram for Persons with HIV/AIDS is listed in Section I.(B) of the NOFA.

(B) Purpose and Substantive Description of Subprogram for Persons With HIV/AIDS

(1) General

The two subprograms for Persons with HIV/AIDS and for Homeless Families together provide approximately $514 million in budget authority for an estimated 15,000 rental vouchers and certificates for homeless families. Approximately $103 million, or 3,000 rental vouchers, will be set-aside for persons with HIV/AIDS and their families who are homeless or who are at risk of homelessness. Approximately $411 million, or approximately 12,000 rental vouchers and certificates, will be made available to provide rental assistance to homeless families living in transitional housing or emergency shelters. Section 8 budget authority for each of these subprograms is allocated by formula as described in this section and in section VIII of this NOFA.

The Department recognizes that the HIV/AIDS epidemic has had a widespread and perverse impact on the ability of communities to provide the appropriate housing and care for their residents who are living with HIV/AIDS. The findings of the National Commission on AIDS in *Housing and the HIV/AIDS Epidemic* (issued in June 1992) state that there is "frequently desperate need for safe shelter that provides not only protection and comfort, but also a base in which and from which to receive services, care and support." Since 1992, the Department has provided assistance to communities to address these needs under the Housing Opportunities for Persons with AIDS (HOPWA) program. The HOPWA program supports community planning and coordination of public and private efforts and supports programs that provide housing and supportive services for low-income persons living with HIV/AIDS and their families. This set-aside of rental vouchers is intended to complement the community efforts already underway by providing permanent housing resources and ensuring coordination of housing and health-care programs with HAs, governmental agencies and community-based organizations.

The set-aside of rental vouchers for persons with HIV/AIDS and their families is an initiative of the Department that will help communities establish a continuum of care for this population by creating additional permanent housing options. This initiative combines rental voucher assistance to selected HAs in conjunction with State and local governments that have been implementing planning efforts and programs that provide housing and services for persons with HIV/AIDS under the Housing Opportunities for Persons with AIDS (HOPWA) program.

This notice stipulates the roles of the HA, the HOPWA grantee and community-based organizations which provide assistance to persons with HIV/AIDS and their families. These community planning and program efforts generally involve experienced non-profit housing and service providers engaged in connecting housing assistance for persons with HIV/AIDS to appropriate case management, comprehensive health services and other supportive services for clients. Community-based organizations will undertake outreach efforts to identify eligible people with HIV/AIDS in need of permanent housing. The assistance will be given on a priority basis to persons with HIV/AIDS who are homeless and on a lower priority basis to persons with HIV/AIDS who are at risk of homelessness. Community-based organizations will also assist these clients in finding and securing permanent housing and provide or assist clients in accessing appropriate supportive services.

The Department expects that HOPWA grantees and HAs will be able to initiate their programs within 120 days after approval of their application. To expedite the administration of this program, the area's HOPWA formula grantee should consider how HOPWA funds might be used in support of this set-aside of rental vouchers, including technical assistance and resource identification activities to assist in the delivery of this housing resource.

(2) Guidelines

Under this initiative HAs will provide Section 8 rental vouchers to persons with HIV/AIDS in conjunction with program planning and comprehensive supportive services from other sources which are coordinated by the HOPWA grantee. The initiative will be implemented at the local level through partnerships of grantees of the HOPWA program, HAs and community-based organizations. The roles and responsibilities of each participating entity are detailed in this notice. The application must be submitted jointly by an area's HOPWA grantee and one or more eligible HAs that the HOPWA grantee designates and that agree to administer the rental vouchers for use in conjunction with services provided by community-based organizations. The application must designate the number of rental vouchers for the area or subarea to be administered by each HA. HAs identified by HUD with certain civil rights or major program violations are ineligible to apply.

Rental vouchers under this subprogram will be administered in conjunction with existing community planning processes for housing assistance and supportive services for persons with HIV/AIDS. This connection will provide greater program efficiencies, reduce the need for additional planning mechanisms, ensure coordination of the program with other current related efforts and help ensure an appropriate response to the person's or family's individual housing and related service needs. The HOPWA grantee must ensure that the supportive service component will be made available for the term of the Section 8 funding.

(a) Definitions.

The definition of family for the purposes of this set-aside is a definition similar to that established for the Housing Opportunities for Persons with AIDS (HOPWA) program at 24 CFR 574.3.

"Family" means a household composed of two or more related persons. The term family also includes one or more eligible persons living with another person or persons who are determined to be important to their care or well being, and the surviving member or members of any family described in this definition who were living in a unit assisted under this program with the person with AIDS at the time of his or her death.

While the Department expects that most families who apply for this set-aside will be single persons, the families of eligible persons may also be assisted. This NOFA uses the term "person" frequently, although the eligible population for this set-aside, as with the regular rental assistance programs, includes the family of any person selected to participate in the set-aside.

(b) HOPWA Grantee Responsibilities. The grantee for the 1995 HOPWA formula allocation, or its designated representative, will have responsibilities that include:

(i) planning for the use of this set-aside in coordination with HAs and existing HIV/AIDS housing and services programs and providers in the entitlement area, including participation by persons living with HIV/AIDS and their families;

(ii) establishing participation agreements with HAs to implement this initiative; if more than one HA in an area will be participating, deciding how to suballocate available funding for the service area between or among the participating HAs;

(iii) establishing participation agreements with community-based organizations as service providers to implement this initiative; these agreements can be used to implement a plan for the provision of supportive services, including outreach to identify eligible persons and assistance in locating and securing suitable housing, ongoing case management, health-care

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and other services; these services will be funded from sources other than this program; and

(iv) coordinating the submission of an application to HUD for its service area that designates the participating HA(s) and community-based organizations and is responsive to the criteria established in the Application Submission Requirements of this notice.

(c) HA Responsibilities. HAs are responsible for administering the rental voucher program in accordance with HUD regulations and requirements, including:

(i) conducting initial and periodic Housing Quality Standards inspections and contracting with landlords;

(ii) reviewing the Section 8 waiting list to determine if there are any individuals already on the waiting list who may be eligible for the Section 8 set-aside for persons with HIV/AIDS who are homeless or at risk or homelessness and referring them to service providers;

(iii) after proper verification of Section 8 eligibility of individuals referred by the service providers, adding individuals to the Section 8 waiting list and issuing rental vouchers;

(iv) amending its administrative plan and equal opportunity housing plan to provide for a preference for persons with HIV/AIDS to participate in the Section 8 set-aside for persons with HIV/AIDS in a number equal to the number of rental vouchers provided under this subprogram for the area;

(v) provide technical assistance to service providers and others in understanding and utilizing this Section 8 set-aside; and

(vi) maintaining records and providing information for evaluation purposes, as required by HUD.

(d) Service Provider Responsibilities. Community-based organizations that provide housing and/or services may agree to undertake responsibilities which include:

(i) providing outreach to identify participants who are eligible for the Section 8 set-aside for persons with HIV/AIDS who are homeless or at risk of homelessness;

(ii) assisting HAs in verifying income and other eligibility criteria;

(iii) referring eligible individuals to the HAs for determination of Section 8 eligibility and placement on the Section 8 waiting list;

(iv) providing or assisting clients in arranging for supportive services and health care as needed, such as case management, counseling, day care, outpatient health services, in-home nursing care, hospitalization and hospice care;

(v) providing housing search assistance, assistance in securing housing, move-in assistance and housing counseling as appropriate; and

(vi) maintaining records and providing information for evaluation purposes, as required by HUD.

(e) Participant Eligibility. Eligible person means a person with acquired immunodeficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) and his or her family who qualify as very low-income. Assistance will be provided on a priority basis to eligible persons who are homeless and on a lower priority basis to eligible persons who are at risk of homelessness. Programs may target assistance to eligible persons based on additional criteria of need, such as need for higher levels of care or disabling conditions, but not persons institutionalized or hospitalized.

(f) Rental Voucher Assistance. HAs must administer this program in accordance with HUD's regulations governing the Section 8 rental voucher and certificate programs. The HA may issue a rental certificate instead of a rental voucher to an individual selected to participate in the initiative if the individual requests a rental certificate and the HA has one available. If Section 8 assistance for a participant under this demonstration ends during the five-year term of the ACC for the Section 8 rental vouchers provided under this demonstration, the rental assistance must be reissued to another eligible person with HIV/AIDS. In order to receive rental assistance provided under this Section 8 set-aside, a person or family must:

(i) have been identified by a participating service provider as meeting the program criteria and referred to a participating HA and placed on its Section 8 waiting list; or

(ii) have been identified by the HA from the Section 8 waiting list as an eligible person and referred to a participating service provider.

(C) Allocation Amounts for Persons With HIV/AIDS

This NOFA provides approximately $103 million for approximately 3,000 rental vouchers set aside for persons with HIV/AIDS and their families who are homeless or at risk of homelessness. The rental vouchers are allocated to 66 areas that have had the greatest number of reported cases of AIDS and in which community planning, housing assistance and supportive services are being provided by the governmental agency that is administering the Housing Opportunities for Persons with AIDS (HOPWA) program in the area. This notice allocates rental voucher budget authority based on the HOPWA formula allocation established by the AIDS Housing Opportunities Act (42 U.S.C. 12901). That formula provides a mechanism to provide assistance to areas that have the highest numbers of reported cases of AIDS and to metropolitan areas that have a higher-than-average incidence of AIDS within their population. The Act also recognizes the need for the coordinated response to AIDS within the metropolitan area or within a State. In FY 95, HOPWA formula allocations were made to 66 grantees, including 43 qualifying cities in Eligible Metropolitan Statistical Areas (EMSA) and 23 States for areas outside of these EMSAs. Rental vouchers under this subprogram are allocated based on this formula for the areas listed in Attachment 3, arranged by HUD Offices.

(D) Application Submission Requirements for Persons With HIV/AIDS Subprogram

Each HA must submit the items identified in Section I.(D) of the NOFA, Application Submission Requirements—General, and this section of the NOFA for Persons with HIV/AIDS. If more than one HA is designated by the HOPWA grantee to administer the rental vouchers, each HA must submit the required information under Section VII.(D)(1).

(1) Need for Subprogram for Persons with AIDS

The application must describe the need for a rental assistance program targeted to persons with HIV/AIDS and their families who are homeless or at risk of homelessness as evidenced by data which show the unmet need in the area to be served.

(2) Program Implementation

The application must describe the timely implementation of a plan that will result in eligible participants finding permanent housing. The plan must have all of the following elements and must link all the elements in a consistent framework:

(a) the participating HA(s) and participating community-based organizations providing services are identified;

(b) the proposed outreach and selection efforts ensure that the targeted population in the area to be served is served;

(c) the plan provides housing search assistance that will help eligible persons obtain appropriate housing; and

(d) the plan describes an evaluation component that will result in an evaluation of program effectiveness by the HOPWA grantee, the participating HA, and the participating community-based organizations undertaking housing-related activities.

(3) Linkage to Supportive Services

The application must demonstrate that supportive services will be made available to meet the needs of the targeted population. This is evidenced by:

(a) the identification of participating community-based organization(s);

(b) the identification of supportive services that are appropriate to the needs of the population proposed to be served;

(c) a description of procedures to ensure that participants have access to these services; and

(d) a plan for monitoring and evaluating the supportive services provided to eligible persons to ensure that services are appropriate to their changing needs on an individual basis.

(4) Application Revisions After Submission to HUD

HUD will provide the applicant an opportunity to revise its application after submission to HUD in response to specific written comments from HUD. The joint applicants will have a thirty calendar day period from the date of HUD's letter to satisfy all issues with HUD. Applicants will be allowed to respond to HUD comments more than once during the thirty calendar day correction period so long as the negotiations are completed by the thirty calendar day deadline.

(E) Corrections to Deficient Applications for Persons With HIV/AIDS Subprogram

(1) Acceptable Applications

See Section VII.(D)(4) of this NOFA for the applicable provisions.

(2) Unacceptable Applications

The 14 calendar day technical correction period does not apply to this NOFA. See Section VII.(D)(4) of this NOFA for the applicable provisions.

(F) Application Selection Process for Persons With HIV/AIDS Subprogram

The funds available under this NOFA are being awarded on a formula basis as listed in Attachment 3 of the NOFA. Applications will be reviewed by the HUD Office to determine whether or not they are technically adequate and responsive to the application submission criteria based on the NOFA requirements. To expedite the review of applications and the award of funds under this subprogram, the HUD Office may initiate its review of any application received prior to the deadline established for submission.

The Office of Public Housing in the HUD Office will initially screen all applications to determine if an application is complete, technically adequate and responsive to the general application selection requirements. The Community Planning and Development (CPD) Office for the area will review the application to determine if an application is responsive to the criteria for need, program implementation, and quality of supportive services. If an application is found to be unresponsive to a criterion, the HUD Office will notify the applicant of its finding and permit the applicant to revise the application as provided in Section VII.(D)(4).

The HUD Office of Public Housing will approve applications that are technically adequate and responsive applications. If a local HA and HOPWA grantee do not submit a joint application by the deadline date specified in the NOFA, or if its application is disapproved, the allocation for that HOPWA jurisdiction will be reallocated to another HOPWA jurisdiction within the same State. If no other HOPWA grantee within the same State applied, the allocation will be reallocated to HOPWA grantees in other States.

VIII. Subprogram for Homeless Families

(A) Application Deadline Date for Homeless Families Subprogram

The deadline date for applications for the set-aside of rental vouchers and certificates for Homeless Families is listed in Section I.(B) of the NOFA.

(B) Purpose and Substantive Description of the Homeless Families Subprogram

(1) General

The two subprograms for Homeless Families and for Persons with HIV/AIDS together provide approximately $514 million in budget authority for an estimated 15,000 rental vouchers and certificates for homeless Americans. Approximately $411 million, or 12,000 rental vouchers and certificates, will be made available to provide rental assistance to homeless families living in transitional housing or emergency shelters. Approximately $103 million, or 3,000 rental vouchers and certificates will be set-aside for persons with HIV/AIDS and their families who are homeless or who are at risk of homelessness. These allocations of Section 8 budget authority will each be allocated by formula as described in the NOFA.

Communities across the country are developing or refining comprehensive homeless assistance strategies following the continuum of care approach. The fundamental components of a continuum of care system include: an emergency shelter/needs assessment to identify an individual's or family's needs; transitional housing and appropriate supportive services to help those individuals and families who are not prepared to make the transition to permanent housing and independent living; and permanent housing or permanent supportive housing. Permanent housing resources are essential to the success of efforts to alleviate homelessness. Homeless individuals and families who lack these resources become trapped in emergency shelters and transitional housing, occupying space and using limited resources that could benefit other homeless persons.

This program is designed to support local homeless assistance strategies by providing Section 8 rental vouchers and certificates to assist homeless families who are currently living in transitional housing or emergency shelters and are immediately ready for permanent housing. The program is also designed to ensure that the homeless families moving to permanent housing will receive appropriate assistance in finding housing, moving into the permanent housing, adjusting to their new surroundings, and obtaining needed services, such as day care. These services will help the formerly homeless families remain in permanent housing and avoid future homelessness.

The program depends on a partnership between the HA the ESG jurisdiction, and homeless provider organizations. Homeless provider organizations identified to participate in the set-aside program must be chosen through a community-wide process. The ESG jurisdiction and the homeless provider organizations will be responsible for providing housing counseling, follow-up and other supportive services to participating families as needed for stabilization in permanent housing. The homeless provider organizations will identify the homeless families currently living in transitional housing or emergency shelters that are immediately ready for permanent housing. The homeless provider organizations will certify to the HA that the families meet the "immediately ready for permanent housing" definition. The HA will provide rental assistance based on the criteria established in this NOFA.

(2) Definitions

(a) Emergency Shelter Grant Jurisdictions

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An ESG jurisdiction is a State, metropolitan city or urban county that is eligible to receive a FY 95 grant under the Emergency Shelter Grants Program, as described in 24 CFR 576.43.

(b) Homeless Provider Organizations.

An organization, including non-profits and others, that delivers housing search assistance and other services to homeless persons and families.

(c) Immediately Ready for Permanent Housing.

A family, that prior to receipt of rental assistance under this NOFA, has received an intensive needs assessment to determine if the family is immediately ready for permanent housing. Specifically, a family that is immediately ready for permanent housing has:

(i) needs that were appropriately addressed through a transitional housing program; or

(ii) needs that can be addressed by receiving appropriate services and/or treatment in permanent housing; and

(iii) the life skills needed to succeed in the rental assistance program.

(3) ESG Grantee Responsibilities

The ESG grantee is responsible for initiating the community-wide process and forming the partnership with the HA as well as identifying and involving homeless provider organizations. The ESG grantee is responsible for coordinating the joint application with the HA. The ESG grantee as part of the ongoing partnership is responsible for ensuring that eligible homeless participants are being served in the program. The ESG grantee is also responsible for ensuring that housing search assistance and stabilization services are being provided by the homeless provider organizations.

(4) Housing Agency Responsibilities

HAs are responsible for administering the rental voucher program in accordance with HUD regulations and requirements, including:

(a) conducting initial and periodic Housing Quality Standards inspections and contracting with landlords;

(b) reviewing the Section 8 waiting list to determine if there are any individuals already on the Section 8 waiting list who may be eligible for the Section 8 set-aside for Homeless Families and referring them to homeless provider organizations;

(c) after proper verification of Section 8 eligibility of individuals referred by the homeless provider organization, adding individuals to the Section 8 waiting list and issuing rental vouchers or certificates;

(d) amending its administrative plan and equal opportunity housing plan to provide for a preference for Homeless Families referred by homeless provider organizations that meet the "immediately ready for permanent housing" requirement to participate in the Section 8 set-aside for Homeless Families in a number equal to the number of rental vouchers and certificates provided under this subprogram for the area;

(e) providing technical assistance to homeless provider organizations and others in understanding and utilizing this Section 8 set-aside; and

(f) maintaining records and providing information for evaluation purposes, as required by HUD.

(5) Homeless Provider Organization Responsibilities

The homeless provider is responsible for identifying and referring eligible families that are immediately ready for permanent housing and for providing housing counseling and the family stabilization services. HUD does not define those services in this NOFA although the services should be adequate to meet the needs of the families during their search for permanent housing and the ensuing adjustment period after moving into permanent housing. These services may include move-in assistance, housing counseling, services to help the family adjust to new surroundings and connecting to community-based services and/or treatment, and any other services needed to allow the family to remain in permanent housing.

(C) Allocation Amounts for Homeless Families Subprogram

The Department will make available approximately $411 million in budget authority to support an estimated 12,000 rental vouchers and certificates. The Department has decided to allocate the rental assistance budget authority for the Homeless Families subprogram to each jurisdiction that is eligible to receive an Emergency Shelter Grant (ESG) program allocation for FY 95. Attachment 4 to this NOFA lists the ESG jurisdictions and the allocation of budget authority for use in each jurisdiction based on the FY 95 ESG formula. The ESG formula was modified to ensure that 75 percent of the budget authority is allocated for use in ESG metropolitan cities and urban counties and 25 percent of the budget authority is allocated for use by states in other jurisdictions not receiving a direct formula allocation under this NOFA.

(D) Application Submission Requirements for Homeless Families Subprogram

The HA, in conjunction with the ESG jurisdiction, must submit the items identified in Section I(D) of the NOFA, Application Submission Requirements—General, and must include the descriptions required by this section and explained in further detail in the Application Selection section.

(1) Joint Application

HUD will make a set-aside of rental assistance budget authority for Homeless Families only if there is a joint application by the housing agency (HA) and the ESG jurisdiction that describes the partnership among the HA, the ESG jurisdiction and homeless provider organizations and describes the community-wide process for involving homeless provider organizations in the program. The application must demonstrate evidence of an agreement between the ESG jurisdiction and the HA(s) spelling out the responsibilities of the respective parties to achieve the objective of this NOFA. Homeless provider organizations help the ESG jurisdiction identify and refer homeless families to the HA and provide needed housing counseling and supportive services. At the time of application, participating homeless provider organizations may be identified, but this is not required. Any HA that has the legal authority to operate a rental assistance program within the ESG jurisdiction may submit, in conjunction with the ESG jurisdiction, an application in order to receive the available rental vouchers or certificates.

(2) Application Content

Each ESG jurisdiction must initiate, as a part of the application preparation, a community-wide process to involve homeless provider organizations in the development and implementation of the set-aside program. Each applicant must:

(a) Describe the Community-wide Process.

Describe the community-wide process used to involve homeless provider organizations in the planning and implementation of the rental assistance program. The application must also describe how participating homeless provider organizations, that will enter into agreements to provide services, have been or will be identified through a request for proposals process or other form of selection.

(b) Identify Eligible Homeless Families.

The method that will be used to identify and refer to the HA homeless families currently living in emergency shelters or transitional housing within the ESG jurisdiction, who are "immediately ready for permanent housing" as defined in this NOFA.

(c) Section 8 Waiting List.

The method that the homeless provider organizations and the HA will use to verify and ensure that each identified family meets the "immediately ready" criteria and is either on the Section 8 waiting list or will be added to the waiting list.

(d) Involvement of Homeless Provider Organizations.

Describe the agreements with homeless provider organizations that will ensure each family receiving Section 8 rental assistance under this NOFA will receive the following:

(i) Housing search assistance, assistance in securing housing, move-in assistance and housing counseling, as appropriate;

(ii) Stabilization services for a minimum of six months to assist the family in adjusting to their new surroundings and connecting to community-based services and/or treatment, as appropriate; and

(iii) Other community-based services and/or treatment as needed to allow the family to remain in permanent housing.

(e) Project-Based Assistance. The method that will be used to determine what amount, if any, of the rental certificate funding is proposed to be used for project-based rental assistance for Single Room Occupancy (SRO) in accordance with 24 CFR part 882, subpart G, Project-Based Certificate Assistance rules.

(3) Application Revisions After Submission to HUD

HUD will provide the applicant an opportunity to revise its application after submission to HUD in response to specific written comments from HUD. The joint applicants will have a thirty calendar day period from the date of HUD's letter to satisfy all issues with HUD. Applicants will be allowed to respond to HUD comments more than once during the thirty day correction period so long as the negotiations are completed by the thirty calendar day deadline.

(E) Corrections to Deficient Applications for Homeless Families Subprogram

(1) Acceptable Applications

See Section VIII.(D)(3) of this NOFA for the applicable provisions.

(2) Unacceptable Applications

The 14 day technical correction period does not apply to this NOFA. See Section VIII.(D)(3) of this NOFA for the applicable provisions.

(F) Application Selection Process for Homeless Families Subprogram

The funds available under this NOFA are being allocated on a formula basis as listed in Attachment 4 of the NOFA. Applications will be reviewed by the HUD Office to determine whether or not they are technically adequate and responsive to the application submission criteria based on the NOFA requirements. To expedite the review of applications and the award of funds under this subprogram, the HUD Office may initiate its review of any application received prior to the deadline established for submission.

The Office of Public Housing in the HUD Office will initially screen all applications to determine if an application is complete, technically adequate and responsive to the general application selection requirements. The Community Planning and Development (CPD) Office will review the application to determine if an application is responsive to the application submission requirements including consistency with the locality's homeless assistance strategy, adequacy of community-wide process, and the procedures for assisting homeless families. If an application is found to be unresponsive, the HUD Office will notify the applicant of its finding and permit the applicant to revise the application as provided in Section VIII.(D)(3).

The HUD Office of Public Housing will approve HA applications that are technically adequate and responsive. If any local HA and ESG jurisdiction does not submit a joint application by the due date specified in the NOFA, or if its application is disapproved, the allocation for that ESG jurisdiction will be reallocated to the State in which the jurisdiction is located. If a State does not apply by the due date, or if its application is disapproved, the allocation for that State will be reallocated to other States receiving allocations.

IX. Other Allocations

In addition to the budget authority for "fair share" rental vouchers and rental certificates, additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1995 for rental vouchers and rental certificates for the following purposes:

(A) Relocation, Demolition and Disposition and Replacement Housing (HOPE I, II, Section 5(h), Section 18, and HOPE VI and "OPT-OUTS"

Headquarters will assign funds directly to the HUD Offices to assist families living in public housing projects that are being demolished or disposed of with HUD approval; to provide replacement housing in connection with Section 18, HOPE VI, or Section 5(h) activities; or relocation assistance to families affected by HOPE I, HOPE II, and Section 5(h) activities; or assistance to non-purchasing families affected by HOPE II activities. Headquarters will also assign funds directly to HUD Offices to assist families living in a Section 8 New Construction or Substantial Rehabilitation, or Loan Management Set-Aside Projects, where the Section 8 Housing Assistance Payments Contract ends. HUD Office requests for funding under this category will be approved on a first-come, first-served basis. HUD Office requests should include all data pertinent to determining the eligibility of the request for funding under the appropriate program and the amount of funds required. Replacement housing assistance will be provided in the form of 5-year rental voucher or rental certificate funding. (Approximately 9,425 units and $323 million in budget authority.)

(B) Rental Voucher and Rental Certificate Renewals

Headquarters will allocate funds directly to the HUD Offices for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1995. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments). (Approximately 126,000 units and $2.9 billion in budget authority.)

(C) Section 23 Conversions

Headquarters will allocate rental certificate funds directly to the HUD Offices for tenant-based rental assistance to residents of Section 23 leased housing for which leases are expiring. HUD Office requests for funding under this category will be approved on a first-come, first-served basis. HUD Offices must include all data necessary to determine the amount of funds required. (Approximately 320 units and $6.5 million in budget authority.)

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(D) Section 8 Amendments

Headquarters will allocate Rental Certificate Program cost amendments to provide budget authority increases to HA rental certificate programs. Headquarters will allocate the funds on an as needed basis. (Approximately $185 million in budget authority.)

(E) Housing Agency Portability Fees

Headquarters will allocate these funds to pay special preliminary fees to HAs under Rental Voucher and Rental Certificate Program portability provisions. The Department issued a HUD Notice PIH 92–14 (PHA), dated April 22, 1992, that describes administrative procedures for requesting the special preliminary fees. These funds will be allocated to the HAs on a first-come, first-served basis. (Approximately $9.5 million in budget authority.)

(F) Headquarters Reserve

Headquarters will retain in the Headquarters Reserve sufficient funding to meet the requirements for the following purposes: (1) Natural disasters, (2) other housing emergencies, (3) litigation, and (4) desegregation of public housing. (Approximately 4,300 units and $151 million in budget authority.)

(G) Property Disposition

Headquarters will assign funds directly to the HUD Offices to assist families living in a HUD-owned property when it is sold. HUD Office requests for funding under this category will be approved on a first-come, first-served basis. (Approximately 900 units and $30 million in budget authority.)

(H) FY 94 NOFA for Homeless Persons With Disabilities

HUD published a NOFA for a FY 94 Section 8 Rental Voucher Set-Aside for Homeless Persons with Disabilities on February 1, 1994. The February 1, 1994 NOFA is independent of any subprogram funding published in this NOFA. HUD expects to issue the funds shortly to the HUD State and Area Offices for reservation of those funds for the HAs selected under the February 1, 1994 NOFA.

(I) FY 94 NOFA for Homeless Veterans With Severe Psychiatric or Substance Abuse Disorders

HUD published a NOFA for the FY 94 Section 8 Rental Voucher Set-Aside for Homeless Veterans with Severe Psychiatric or Substance Abuse Disorders on July 14, 1994. The July 14, 1994 NOFA is independent of any subprogram funding published in this NOFA. HUD expects to issue the funds shortly to the HUD State and Area Offices for reservation of those funds for the HAs selected under the July 14, 1994 NOFA.

(J) FY 94 NOFA for Family Unification

HUD published a NOFA for the FY 94 Family Unification Program on August 29, 1994. The August 29, 1994 NOFA is independent of any subprogram funding published in this NOFA. HUD expects to issue the funds shortly to the HUD State and Area Offices for reservation of those funds for the HAs selected under the August 29, 1994 NOFA.

(K) FY 94 NOFA for FSS Service Coordinators

HUD published a NOFA for the Family Self-Sufficiency (FSS) Service Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs on August 29, 1994. The August 29, 1994 NOFA is independent of any subprogram funding published in this NOFA. HUD expects to issue the funds shortly to the HUD State and Area Offices for reservation of those funds for the HAs selected under the August 29, 1994 NOFA.

X. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment for all funding available under this NOFA has been made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

(D) Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(E) Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) is codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her HUD Office Counsel, or Headquarters counsel for the program to which the question pertains.

(F) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(G) Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Any questions about the rule should be forwarded to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (this is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Dated: February 6, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

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ATTACHMENT 1

FISCAL YEAR 1995 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 01

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
New England			
Massachusetts State Offime			
METROPOLITAN ALLOCATION AREA			
Western Massachusetts	5,554,473	128	BERKSHIRE county towns of: Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town, Stockbridge town FRANKLIN county towns of: Sunderland town, HAMPDEN county towns of: Agawam town, Chicopee city, East Longmeadow to Hampden town, Holyoke city, Longmeadow town, Ludlow town Monson town, Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town, HAMPSHIRE county towns of: Amherst town, Belchertown town, Easthampton town Granby town, Hadley town, Hatfield town, Huntington town Northampton city, Southampton town, South Hadley town Ware town, Williamsburg town
CENTRAL	3,989,396	80	MIDDLESEX county towns of: Ashby town, WORCESTER county towns of: Ashburnham town, Fitchburg city, Gardner city Leominster city, Lunenburg town, Templeton town Westminster town, Winchendon town, HAMPDEN county towns of: Holland town, WORCESTER county towns of: Auburn town Barre town, Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town, East Brookfield to Grafton town, Holden town, Leicester town, Millbury town Northborough town, Northbridge town, North Brookfield t Oakham town, Oxford town, Paxton town, Princeton town Rutland town, Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town, Uxbridge town Webster town, Westborough town, West Boylston town West Brookfield to, Worcester city
Boston	24,389,590	549	BRISTOL county towns of: Berkley town, Dighton town Mansfield town, Norton town, Taunton city, ESSEX county towns of: Amesbury town, Beverly city, Danvers town, Essex town Gloucester city, Hamilton town, Ipswich town, Lynn city Lynnfield town, Manchester town, Marblehead town Middleton town, Nahant town, Newbury town, Newburyport city Peabody city, Rockport town, Rowley town, Salem city Salisbury town, Saugus town, Swampscott town, Topsfield town Wenham town, MIDDLESEX county towns of: Acton town Arlington town, Ashland town, Ayer town, Bedford town Belmont town, Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city, Framingham town Holliston town, Hopkinton town, Hudson town, Lexington town Lincoln town, Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town, Sherborn town Shirley town, Somerville city, Stoneham town, Stow town Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town Winchester town, Woburn city, NORFOLK county towns of: Bellingham town, Braintree town, Brookline town, Canton town Cohasset town, Dedham town, Dover town, Foxborough town

FISCAL YEAR 1995 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 02

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Franklin town, Holbrook town, Medfield town, Medway town Millis town, Milton town, Needham town, Norfolk town Norwood town, Plainville town, Quincy city, Randolph town Sharon town, Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town, PLYMOUTH county towns of: Carver town, Duxbury town, Hanover town Hingham town, Hull town, Kingston town, Marshfield town Norwell town, Pembroke town, Plymouth town, Rockland town Scituate town, Wareham town, SUFFOLK county towns of: Boston city, Chelsea city, Revere city, Winthrop town WORCESTER county towns of: Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town, Southborough town Upton town
Northeast	3,484,993	78	ESSEX county towns of: Andover town, Boxford town Georgetown town, Groveland town, Haverhill city, Lawrence city Merrimac town, Methuen town, North Andover town West Newbury town, MIDDLESEX county towns of: Billerica town Chelmsford town, Dracut town, Dunstable town, Groton town Lowell city, Pepperell town, Tewksbury town, Tyngsborough town Westford town
Southeast	5,102,683	113	BARNSTABLE county towns of: Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town BRISTOL county towns of: Easton town, Raynham town, NORFOLK county towns of: Avon town, PLYMOUTH county towns of: Abington town, Bridgewater town, Brockton city East Bridgewater t, Halifax town, Hanson town, Lakeville town Middleborough town, Plympton town, West Bridgewater t Whitman town, BRISTOL county towns of: Acushnet town Dartmouth town, Fairhaven town, Freetown town New Bedford city, PLYMOUTH county towns of: Marion town Mattapoisett town, Rochester town, BRISTOL county towns of: Attleboro city, Fall River city, North Attleborough Rehoboth town, Seekonk town, Somerset town, Swansea town Westport town
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Statewide	1,038,305	25	BARNSTABLE county towns of: Bourne town, Falmouth town Provincetown town, Truro town, Wellfleet town, BERKSHIRE county towns of: Alford town, Becket town, Clarksburg town Egremont town, Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town, Peru town Sandisfield town, Savoy town, Sheffield town, Tyringham town Washington town, West Stockbridge t, Williamstown town Windsor town, DUKES, FRANKLIN county towns of: Ashfield town Bernardston town, Buckland town, Charlemont town, Colrain town Conway town, Deerfield town, Erving town, Gill town Greenfield town, Hawley town, Heath town, Leverett town Leyden town, Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town, Whately town HAMPDEN county towns of: Blandford town, Brimfield town

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FISCAL YEAR 1995 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

PAGE 03

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Chester town, Granville town, Tolland town, Wales town HAMPSHIRE county towns of: Chesterfield town, Cummington town Goshen town, Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town, NANTUCKET, WORCESTER county towns of: Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town
Connecticut State Office			
METROPOLITAN ALLOCATION AREAS			
SOUTHWEST METRO CT	6,399,627	134	FAIRFIELD county towns of: Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town, Stratford town Trumbull town, NEW HAVEN county towns of: Ansonia town Beacon Falls town, Derby town, Milford town, Oxford town Seymour town, FAIRFIELD county towns of: Bethel town Brookfield town, Danbury town, New Fairfield town Newtown town, Redding town, Ridgefield town, Sherman town LITCHFIELD county towns of: Bridgewater town, New Milford town Roxbury town, Washington town, FAIRFIELD county towns of: Darien town, Greenwich town, New Canaan town, Norwalk town Stamford town, Weston town, Westport town, Wilton town LITCHFIELD county towns of: Bethlehem town, Thomaston town Watertown town, Woodbury town, NEW HAVEN county towns of: Middlebury town, Naugatuck town, Prospect town, Southbury town Waterbury town, Wolcott town
SOUTH-SOUTHEAST METRO CT	4,987,791	104	MIDDLESEX county towns of: Clinton town, Killingworth town NEW HAVEN county towns of: Bethany town, Branford town Cheshire town, East Haven town, Guilford town, Hamden town Madison town, Meriden town, New Haven town, North Branford tow North Haven town, Orange town, Wallingford town West Haven town, Woodbridge town, MIDDLESEX county towns of: Old Saybrook town, NEW LONDON county towns of: Bozrah town East Lyme town, Franklin town, Griswold town, Groton town Ledyard town, Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town, Preston town Salem town, Sprague town, Stonington town, Waterford town WINDHAM county towns of: Canterbury town, Plainfield town WINDHAM county towns of: Thompson town
HARTFORD MSA	6,868,283	143	HARTFORD county towns of: Avon town, Berlin town Bloomfield town, Bristol town, Burlington town, Canton town East Granby town, East Hartford town, East Windsor town Enfield town, Farmington town, Glastonbury town, Granby town Hartford town, Manchester town, Marlborough town New Britain town, Newington town, Plainville town Rocky Hill town, Simsbury town, Southington town South Windsor town, Suffield town, West Hartford town Wethersfield town, Windsor town, Windsor Locks town LITCHFIELD county towns of: Barkhamsted town, Harwinton town New Hartford town, Plymouth town, Winchester town, MIDDLESEX county towns of: Cromwell town, Durham town, East Haddam town East Hampton town, Haddam town, Middlefield town Middletown town, Portland town, NEW LONDON county towns of: Colchester town, Lebanon town, TOLLAND county towns of:

FISCAL YEAR 1995 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Andover town, Bolton town, Columbia town, Coventry town Ellington town, Hebron town, Mansfield town, Somers town Stafford town, Tolland town, Vernon town, Willington town WINDHAM county towns of: Ashford town, Chaplin town Windham town
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN CT	597,442	14	HARTFORD county towns of: Hartland town, LITCHFIELD county towns of: Canaan town, Colebrook town, Cornwall town Goshen town, Kent town, Litchfield town, Morris town Norfolk town, North Canaan town, Salisbury town, Sharon town Torrington town, Warren town, MIDDLESEX county towns of: Chester town, Deep River town, Essex town, Westbrook town NEW LONDON county towns of: Lyme town, Voluntown town, TOLLAND county towns of: Union town, WINDHAM county towns of: Brooklyn town, Eastford town, Hampton town, Killingly town Pomfret town, Putnam town, Scotland town, Sterling town Woodstock town
New Hampshire State Office			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN Maine/New Hampshire/Vermont	5,796,540	140	PENOBSCOT county towns of: Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town, Old Town city Orono town, Orrington town, Penobscot Indian I, Veazie town WALDO county towns of: Winterport town, ANDROSCOGGIN county towns of: Auburn city, Greene town, Lewiston city, Lisbon town Mechanic Falls tow, Poland town, Sabattus town, Turner town Wales town, CUMBERLAND county towns of: Cape Elizabeth tow Casco town, Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow, Portland city Raymond town, Scarborough town, South Portland cit Standish town, Westbrook city, Windham town, Yarmouth town YORK county towns of: Buxton town, Hollis town, Limington town Old Orchard Beach, YORK county towns of: Berwick town Eliot town, Kittery town, South Berwick town, York town ROCKINGHAM county towns of: Brentwood town, East Kingston town Epping town, Exeter town, Greenland town, Hampton town Hampton Falls town, Kensington town, New Castle town Newfields town, Newington town, Newmarket town North Hampton town, Portsmouth city, Rye town, Stratham town STRAFFORD county towns of: Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city, ROCKINGHAM county towns of: Seabrook,town South Hampton town, ROCKINGHAM county towns of: Atkinson town Chester town, Danville town, Derry town, Fremont town Hampstead town, Kingston town, Newton town, Plaistow town Raymond town, Salem town, Sandown town, Windham town HILLSBOROUGH county towns of: Pelham town, HILLSBOROUGH county towns of: Bedford town, Goffstown town, Manchester city Weare town, MERRIMACK county towns of: Allenstown town Hooksett town, ROCKINGHAM county towns of: Auburn town Candia town, Londonderry town, HILLSBOROUGH county towns of:

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Amherst town, Brookline town, Greenville town, Hollis town Hudson town, Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city, New Ipswich town Wilton town, CHITTENDEN county towns of: Burlington city Charlotte town, Colchester town, Essex town, Hinesburg town Jericho town, Milton town, Richmond town, St. George town Shelburne town, South Burlington c, Williston town Winooski city, FRANKLIN county towns of: Fairfax town Georgia town, St. Albans city, St. Albans town, Swanton town GRAND ISLE county towns of: Grand Isle town, South Hero town
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO Maine/New Hampshire/Vermont	4,873,101	145	ANDROSCOGGIN county towns of: Durham town, Leeds town Livermore town, Livermore Falls to, Minot town, AROOSTOOK CUMBERLAND county towns of: Baldwin town, Bridgton town Brunswick town, Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town, FRANKLIN HANCOCK, KENNEBEC, KNOX, LINCOLN, OXFORD, PENOBSCOT county towns of: Alton town, Argyle unorg., Bradford town Bradley town, Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town, Corinna town Corinth town, Dexter town, Dixmont town, Drew plantation East Central Penob, East Millinocket t, Edinburg town Enfield town, Etna town, Exeter town, Garland town Greenbush town, Greenfield town, Howland town, Hudson town Kingman unorg., Lagrange town, Lakeville town, Lee town Levant town, Lincoln town, Lowell town, Mattawamkeag town Maxfield town, Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town, Woodville town PISCATAQUIS, SAGADAHOC, SOMERSET, WALDO county towns of: Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town, Jackson town Knox town, Liberty town, Lincolnville town, Monroe town Montville town, Morrill town, Northport town, Palermo town Prospect town, Searsmont town, Searsport town Stockton Springs t, Swanville town, Thorndike town, Troy town Unity town, Waldo town, WASHINGTON, YORK county towns of: Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town, Kennebunkport town Lebanon town, Limerick town, Lyman town, Newfield town North Berwick town, Ogunquit town, Parsonsfield town Saco city, Sanford town, Shapleigh town, Waterboro town Wells town, BELKNAP, CARROLL, CHESHIRE, COOS, GRAFTON HILLSBOROUGH county towns of: Antrim town, Bennington town Deering town, Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town, Windsor town MERRIMACK county towns of: Andover town, Boscawen town Bow town, Bradford town, Canterbury town, Chichester town Concord city, Danbury town, Dunbarton town, Epsom town

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Franklin city, Henniker town, Hill town, Hopkinton town Loudon town, Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town, Sutton town Warner town, Webster town, Wilmot town, ROCKINGHAM county towns of: Deerfield town, Northwood town, Nottingham town STRAFFORD county towns of: Middleton town, New Durham town Strafford town, SULLIVAN, ADDISON, BENNINGTON, CALEDONIA CHITTENDEN county towns of: Bolton town, Buels gore Huntington town, Underhill town, Westford town, ESSEX FRANKLIN county towns of: Bakersfield town, Berkshire town Enosburg town, Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town, Sheldon town GRAND ISLE county towns of: Alburg town, Isle La Motte town North Hero town, LAMOILLE, ORANGE, ORLEANS, RUTLAND WASHINGTON, WINDHAM, WINDSOR
Rhode Island State Office			
METROPOLITAN ALLOCATION AREAS			
PROVIDENCE, RHODE ISLAND	5,926,951	150	WASHINGTON county towns of: Hopkinton town, Westerly town BRISTOL county towns of: Barrington town, Bristol town Warren town, KENT county towns of: Coventry town East Greenwich tow, Warwick city, West Greenwich tow West Warwick town, NEWPORT county towns of: Jamestown town Little Compton tow, Tiverton town, PROVIDENCE county towns of: Burrillville town, Central Falls city, Cranston city Cumberland town, East Providence ci, Foster town Glocester town, Johnston town, Lincoln town North Providence t, North Smithfield t, Pawtucket city Providence city, Scituate town, Smithfield town Woonsocket city, WASHINGTON county towns of: Charlestown town Exeter town, Narragansett town, North Kingstown to Richmond town, South Kingstown to
NONMETROPOLITAN ALLOCATION AREAS			
PROVIDENCE, RHODE ISLAND, NONMETROPOLITAN	307,355	8	NEWPORT county towns of: Middletown town, Newport city Portsmouth town, WASHINGTON county towns of: New Shoreham town
New York/New Jersey			
Buffalo Area Office			
METROPOLITAN ALLOCATION AREAS			
ALBANY-SCHENECTADY-TROY/GLENS FALLS, NY MSA'S	4,755,320	140	ALBANY, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY SCHOHARIE, WARREN, WASHINGTON
BUFFALO-NIAGARA FALLS/JAMESTOWN, NY MSA'S	8,249,275	250	ERIE, NIAGARA, CHAUTAUQUA
SYRACUSE/UTICA-ROME/BINGHAMTON/ELMIRA, NY MSA	6,848,600	214	BROOME, CAYUGA, CHEMUNG, HERKIMER, MADISON, ONEIDA, ONONDAGA OSWEGO, TIOGA
ROCHESTER, NEW YORK MSA	5,237,366	165	GENESEE, LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST, NEW YORK	1,716,382	59	CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, JEFFERSON, LEWIS ST. LAWRENCE
SOUTHEAST, NEW YORK	1,554,613	93	CHENANGO, COLUMBIA, CORTLAND, DELAWARE, GREENE, OTSEGO TOMPKINS
SOUTHWEST, NEW YORK	1,057,272	37	ALLEGANY, CATTARAUGUS, SCHUYLER, SENECA, STEUBEN, WYOMING YATES

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
New York State Office			
METROPOLITAN ALLOCATION AREAS			
New York PMSA	158,942,685	3089	BRONX, KINGS, NEW YORK, PUTNAM, QUEENS, RICHMOND, ROCKLAND WESTCHESTER
DUTCHESS AND ORANGE COUNTIES, NEW YORK	3,532,062	69	DUTCHESS, ORANGE
NASSAU COUNTY, NEW YORK	4,332,329	84	NASSAU
SUFFOLK COUNTY, NEW YORK	4,259,791	83	SUFFOLK
NONMETROPOLITAN ALLOCATION AREAS			
SULLIVAN AND ULSTER COUNTIES, NEW YORK	1,066,370	36	SULLIVAN, ULSTER
New Jersey State Office			
METROPOLITAN ALLOCATION AREAS			
Bergen-Passaic NJ	8,042,920	158	BERGEN, PASSAIC
Jersey City NJ	8,434,934	166	HUDSON
Newark NJ	14,512,011	285	ESSEX, MORRIS, SUSSEX, UNION, WARREN
Southern New Jersey	8,152,090	160	ATLANTIC, CAPE MAY, BURLINGTON, CAMDEN, GLOUCESTER, SALEM CUMBERLAND
Central New Jersey	9,544,991	187	HUNTERDON, MIDDLESEX, SOMERSET, MONMOUTH, OCEAN, MERCER
Mid-Atlantic			
Maryland State Office			
METROPOLITAN ALLOCATION AREAS			
MARYLAND METROPOLITAN	13,475,786	362	ALLEGANY, ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD QUEEN ANNE'S, BALTIMORE CITY, WASHINGTON, CALVERT, CHARLES FREDERICK, CECIL
NONMETROPOLITAN ALLOCATION AREAS			
MARYLAND NONMETROPOLITAN	1,072,185	33	CAROLINE, DORCHESTER, GARRETT, KENT, ST. MARY'S, SOMERSET TALBOT, WICOMICO, WORCESTER
West Virginia State Office			
METROPOLITAN ALLOCATION AREAS			
METRO WEST VIRGINIA	2,139,454	69	KANAWHA, PUTNAM, CABELL, WAYNE, WOOD, BROOKE, HANCOCK MARSHALL, OHIO, MINERAL, BERKELEY, JEFFERSON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO NORTH	1,098,821	53	BARBOUR, CALHOUN, DODDRIDGE, GILMER, GRANT, HAMPSHIRE, HARDY HARRISON, JACKSON, LEWIS, MARION, MONONGALIA, MORGAN PENDLETON, PLEASANTS, PRESTON, RANDOLPH, RITCHIE, ROANE TAYLOR, TUCKER, TYLER, UPSHUR, WETZEL, WIRT
NONMETRO SOUTH	1,027,245	51	BOONE, BRAXTON, CLAY, FAYETTE, GREENBRIER, LINCOLN, LOGAN MCDOWELL, MASON, MERCER, MINGO, MONROE, NICHOLAS, POCAHONTAS RALEIGH, SUMMERS, WEBSTER, WYOMING
Pennsylvania State Office			
METROPOLITAN ALLOCATION AREAS			
Philadelphia, PA PMSA	18,699,776	507	BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA
ALLENTOWN-BETHLEHEM-EASTON MSA	2,526,731	68	CARBON, LEHIGH, NORTHAMPTON
HARRISBURG-LEBANON-CARLISLE MSA	2,526,468	68	CUMBERLAND, DAUPHIN, LEBANON, PERRY
LANCASTER MSA/YORK MSA	3,108,490	84	LANCASTER, YORK
SCRANTON/WILKES-BARRE/HAZLETON MSA	3,364,117	91	COLUMBIA, LACKAWANNA, LUZERNE, WYOMING
WILLIAMSPORT/STATE COLLEGE/READING/NEWBURGH	3,053,444	82	LYCOMING, CENTRE, BERKS, PIKE
WILMINGTON-NEWARK MSA/DOVER MSA	2,132,861	58	NEW CASTLE, KENT

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
NON-METRO PENNSYLVANIA & DELAWARE	2,491,912	94	SUSSEX, ADAMS, BRADFORD, CLINTON, FRANKLIN, JUNIATA, MIFFLIN MONROE, MONTOUR, NORTHUMBERLAND, SCHUYLKILL, SNYDER, SULLIVAN SUSQUEHANNA, TIOGA, UNION, WAYNE
Pittsburgh Area Office			
METROPOLITAN ALLOCATION AREAS			
METRO 1	5,554,940	206	ALLEGHENY
METRO 2	6,558,079	243	BEAVER, BUTLER, FAYETTE, WASHINGTON, WESTMORELAND, BLAIR, ERIE CAMBRIA, SOMERSET, MERCER
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO WESTERN PENNSYLVANIA	2,025,500	93	ARMSTRONG, BEDFORD, CAMERON, CLARION, CLEARFIELD, CRAWFORD ELK, FOREST, FULTON, GREENE, HUNTINGDON, INDIANA, JEFFERSON LAWRENCE, MC KEAN, POTTER, VENANGO, WARREN
Virginia State Office			
METROPOLITAN ALLOCATION AREAS			
All Metro Areas	11,600,051	357	ALBEMARLE, FLUVANNA, GREENE, CHARLOTTESVILLE CITY, CLARKE CULPEPER, PITTSYLVANIA, DANVILLE CITY, SCOTT, WASHINGTON BRISTOL CITY, KING GEORGE, AMHERST, BEDFORD, CAMPBELL BEDFORD CITY, LYNCHBURG CITY, GLOUCESTER, ISLE OF WIGHT JAMES CITY, MATHEWS, YORK, CHESAPEAKE CITY, HAMPTON CITY NEWPORT NEWS CITY, NORFOLK CITY, POQUOSON CITY PORTSMOUTH CITY, SUFFOLK CITY, VIRGINIA BEACH CITY WILLIAMSBURG CITY, CHARLES CITY, CHESTERFIELD, DINWIDDIE GOOCHLAND, HANOVER, HENRICO, NEW KENT, POWHATAN, PRINCE GEORGE COLONIAL HEIGHTS CITY, HOPEWELL CITY, PETERSBURG CITY RICHMOND CITY, BOTETOURT, ROANOKE, ROANOKE CITY, SALEM CITY WARREN, FAUQUIER, SPOTSYLVANIA, STAFFORD, FREDERICKSBURG CITY
NONMETROPOLITAN ALLOCATION AREAS			
All Nonmetro Areas	3,162,131	130	ACCOMACK, ALLEGHANY, AMELIA, APPOMATTOX, AUGUSTA, BATH, BLAND BRUNSWICK, BUCHANAN, BUCKINGHAM, CAROLINE, CARROLL, CHARLOTTE CRAIG, CUMBERLAND, DICKENSON, ESSEX, FLOYD, FRANKLIN FREDERICK, GILES, GRAYSON, GREENSVILLE, HALIFAX, HENRY HIGHLAND, KING AND QUEEN, KING WILLIAM, LANCASTER, LEE, LOUISA LUNENBURG, MADISON, MECKLENBURG, MIDDLESEX, MONTGOMERY, NELSON NORTHAMPTON, NORTHUMBERLAND, NOTTOWAY, ORANGE, PAGE, PATRICK PRINCE EDWARD, PULASKI, RAPPAHANNOCK, RICHMOND, ROCKBRIDGE ROCKINGHAM, RUSSELL, SHENANDOAH, SMYTH, SOUTHAMPTON, SURRY SUSSEX, TAZEWELL, WESTMORELAND, WISE, WYTHE, ROCKBRIDGE ALLEGHANY, ALLEGHANY, GREENSVILLE, SOUTHAMPTON, CARROLL ROCKINGHAM, ROCKBRIDGE, HENRY, WISE, MONTGOMERY, HALIFAX AUGUSTA, AUGUSTA, FREDERICK
District of Columbia Office			
METROPOLITAN ALLOCATION AREAS			
Washington, DC	19,565,931	384	DISTRICT OF COLUMBIA, MONTGOMERY, PRINCE GEORGE'S, ARLINGTON FAIRFAX, LOUDOUN, PRINCE WILLIAM, ALEXANDRIA CITY FAIRFAX CITY, FALLS CHURCH CITY, MANASSAS CITY MANASSAS PARK CITY
Southeast			
Georgia State Office			

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	5,962,232	182	BARTOW, CARROLL, CATOOSA, CHEROKEE, COBB, COWETA, DADE DOUGLAS, FAYETTE, FULTON, HARRIS, HENRY, PAULDING, PICKENS SPALDING, WALKER
METROPOLITAN ALLOCATION AREA 2	3,916,494	119	BARROW, CLARKE, CLAYTON, DEKALB, FORSYTH, GWINNETT, MADISON NEWTON, OCONEE, ROCKDALE, WALTON
METROPOLITAN ALLOCATION AREA 3	5,754,755	174	BIBB, BRYAN, CHATHAM, CHATTAHOOCHEE, COLUMBIA, DOUGHERTY EFFINGHAM, HOUSTON, JONES, LEE, MCDUFFIE, MUSCOGEE, PEACH RICHMOND, TWIGGS
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	4,626,950	207	APPLING, ATKINSON, BACON, BAKER, BALDWIN, BANKS, BEN HILL BERRIEN, BLECKLEY, BRANTLEY, BROOKS, BULLOCH, BURKE, BUTTS CALHOUN, CAMDEN, CANDLER, CHARLTON, CHATTOOGA, CLAY, CLINCH COFFEE, COLQUITT, COOK, CRAWFORD, CRISP, DAWSON, DECATUR DODGE, DOOLY, EARLY, ECHOLS, ELBERT, EMANUEL, EVANS, FANNIN FLOYD, FRANKLIN, GILMER, GLASCOCK, GLYNN, GORDON, GRADY GREENE, HABERSHAM, HALL, HANCOCK, HARALSON, HART, HEARD, IRWIN JACKSON, JASPER, JEFF DAVIS, JEFFERSON, JENKINS, JOHNSON LAMAR, LANIER, LAURENS, LIBERTY, LINCOLN, LONG, LOWNDES LUMPKIN, MCINTOSH, MACON, MARION, MERIWETHER, MILLER, MITCHELL MONROE, MONTGOMERY, MORGAN, MURRAY, OGLETHORPE, PIERCE, PIKE POLK, PULASKI, PUTNAM, QUITMAN, RABUN, RANDOLPH, SCHLEY SCREVEN, SEMINOLE, STEPHENS, STEWART, SUMTER, TALBOT TALIAFERRO, TATTNALL, TAYLOR, TELFAIR, TERRELL, THOMAS, TIFT TOOMBS, TOWNS, TREUTLEN, TROUP, TURNER, UNION, UPSON, WARE WARREN, WASHINGTON, WAYNE, WEBSTER, WHEELER, WHITE, WHITFIELD WILCOX, WILKES, WILKINSON, WORTH
Alabama State Office			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	1,326,175	51	DALE, HOUSTON, AUTAUGA, ELMORE, MONTGOMERY, RUSSELL
METROPOLITAN ALLOCATION AREA 2	1,222,367	48	BALDWIN, MOBILE
METROPOLITAN ALLOCATION AREA 3	3,199,895	123	CALHOUN, BLOUNT, JEFFERSON, ST. CLAIR, SHELBY, TUSCALOOSA
METROPOLITAN ALLOCATION AREA 4	1,493,636	58	LAWRENCE, MORGAN, COLBERT, LAUDERDALE, ETOWAH, LIMESTONE MADISON
NONMETROPOLITAN ALLOCATION AREAS			
ALABAMA STATE NONMETRO	2,364,388	120	BARBOUR, BIBB, BULLOCK, BUTLER, CHAMBERS, CHEROKEE, CHILTON CHOCTAW, CLARKE, CLAY, CLEBURNE, COFFEE, CONECUH, COOSA COVINGTON, CRENSHAW, CULLMAN, DALLAS, DEKALB, ESCAMBIA FAYETTE, FRANKLIN, GENEVA, GREENE, HALE, HENRY, JACKSON, LAMAR LEE, LOWNDES, MACON, MARENGO, MARION, MARSHALL, MONROE, PERRY PICKENS, PIKE, RANDOLPH, SUMTER, TALLADEGA, TALLAPOOSA, WALKER WASHINGTON, WILCOX, WINSTON
Caribbean Office			
METROPOLITAN ALLOCATION AREAS			
METRO ALLOCATION AREA #1	1,296,414	50	FLORIDA MUNICIPIO, HORMIGUEROS MUNICIPIO, CEIBA MUNICIPIO LUQUILLO MUNICIPIO, COMERIO MUNICIPIO, BARCELONETA MUNICIPIO GUAYANILLA MUNICIPIO, PENUELAS MUNICIPIO, NAGUABO MUNICIPIO SABANA GRANDE MUNICIPIO, VILLALBA MUNICIPIO, ANASCO MUNICIPIO MOROVIS MUNICIPIO, AGUAS BUENAS MUNICIPIO LAS PIEDRAS MUNICIPIO, NARANJITO MUNICIPIO, GURABO MUNICIPIO CAMUY MUNICIPIO, LOIZA MUNICIPIO, JUNCOS MUNICIPIO

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			DORADO MUNICIPIO, HATILLO MUNICIPIO, MOCA MUNICIPIO COROZAL MUNICIPIO
METRO ALLOCATION AREA #2	1,713,813	66	VEGA ALTA MUNICIPIO, CATANO MUNICIPIO, SAN GERMAN MUNICIPIO SAN LORENZO MUNICIPIO, CIDRA MUNICIPIO, AGUADA MUNICIPIO YABUCOA MUNICIPIO, CANOVANAS MUNICIPIO, FAJARDO MUNICIPIO CABO ROJO MUNICIPIO, MANATI MUNICIPIO, YAUCO MUNICIPIO TOA ALTA MUNICIPIO, JUANA DIAZ MUNICIPIO, RIO GRANDE MUNICIPIO CAYEY MUNICIPIO, HUMACAO MUNICIPIO, VEGA BAJA MUNICIPIO
METRO ALLOCATION AREA #3	1,917,666	73	AGUADILLA MUNICIPIO, TRUJILLO ALTO MUNICIPIO TOA BAJA MUNICIPIO, GUAYNABO MUNICIPIO, ARECIBO MUNICIPIO
METRO ALLOCATION AREA #4	4,290,873	164	MAYAGUEZ MUNICIPIO, CAGUAS MUNICIPIO CAROLINA MUNICIPIO, PONCE MUNICIPIO, BAYAMON MUNICIPIO SAN JUAN MUNICIPIO
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA	1,854,016	70	ADJUNTAS MUNICIPIO, AIBONITO MUNICIPIO, ARROYO MUNICIPIO BARRANQUITAS MUNICIPIO, CIALES MUNICIPIO, COAMO MUNICIPIO CULEBRA MUNICIPIO, GUANICA MUNICIPIO, GUAYAMA MUNICIPIO ISABELA MUNICIPIO, JAYUYA MUNICIPIO, LAJAS MUNICIPIO LARES MUNICIPIO, LAS MARIAS MUNICIPIO, MARICAO MUNICIPIO MAUNABO MUNICIPIO, OROCOVIS MUNICIPIO, PATILLAS MUNICIPIO QUEBRADILLAS MUNICIPIO, RINCON MUNICIPIO, SALINAS MUNICIPIO SAN SEBASTIAN MUNICIPIO, SANTA ISABEL MUNICIPIO UTUADO MUNICIPIO, VIEQUES MUNICIPIO, VIRGIN ISLANDS
South Carolina State Office			
METROPOLITAN ALLOCATION AREAS			
UPPER STATE METRO	2,459,008	88	ANDERSON, CHEROKEE, GREENVILLE, PICKENS, SPARTANBURG, YORK
MID-STATE METRO	2,188,474	77	FLORENCE, LEXINGTON, RICHLAND, AIKEN, EDGEFIELD, SUMTER
LOWER STATE METRO	2,030,188	72	HORRY, BERKELEY, CHARLESTON, DORCHESTER
NONMETROPOLITAN ALLOCATION AREAS			
STATEWIDE NON-METRO	2,105,827	93	ABBEVILLE, ALLENDALE, BAMBERG, BARNWELL, BEAUFORT, CALHOUN CHESTER, CHESTERFIELD, CLARENDON, COLLETON, DARLINGTON, DILLON FAIRFIELD, GEORGETOWN, GREENWOOD, HAMPTON, JASPER, KERSHAW LANCASTER, LAURENS, LEE, MCCORMICK, MARION, MARLBORO, NEWBERRY OCONEE, ORANGEBURG, SALUDA, UNION, WILLIAMSBURG
North Carolina State Office			
METROPOLITAN ALLOCATION AREAS			
Charlotte-Gastonia	2,764,745	94	CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION
Greensboro--Winston-Salem--High Point	2,920,623	101	ALAMANCE, DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES YADKIN
Raleigh-Durham-Chapel Hill	2,827,641	97	CHATHAM, DURHAM, FRANKLIN, JOHNSTON, ORANGE, WAKE
Metro West	2,063,163	71	BUNCOMBE, MADISON, CUMBERLAND, ALEXANDER, BURKE, CALDWELL CATAWBA
Metro East	2,519,155	85	WAYNE, PITT, ONSLOW, CURRITUCK, EDGECOMBE, NASH, BRUNSWICK NEW HANOVER
NONMETROPOLITAN ALLOCATION AREAS			
Non-metro West	2,256,186	99	ALLEGHANY, ANSON, ASHE, AVERY, CASWELL, CHEROKEE, CLAY CLEVELAND, GRAHAM, GRANVILLE, HAYWOOD, HENDERSON, IREDELL JACKSON, LEE, MCDOWELL, MACON, MITCHELL, MONTGOMERY, MOORE PERSON, POLK, RICHMOND, ROCKINGHAM, RUTHERFORD, STANLY, SURRY SWAIN, TRANSYLVANIA, VANCE, WARREN, WATAUGA, WILKES, YANCEY
Non-metro East	2,494,511	106	BEAUFORT, BERTIE, BLADEN, CAMDEN, CARTERET, CHOWAN, COLUMBUS

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			CRAVEN, DARE, DUPLIN, GATES, GREENE, HALIFAX, HARNETT HERTFORD, HOKE, HYDE, JONES, LENOIR, MARTIN, NORTHAMPTON PAMLICO, PASQUOTANK, PENDER, PERQUIMANS, ROBESON, SAMPSON SCOTLAND, TYRRELL, WASHINGTON, WILSON
Mississippi State Office			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area 1	2,455,168	89	HANCOCK, HARRISON, JACKSON, FORREST, LAMAR, HINDS, MADISON RANKIN, DESOTO
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area 1	3,584,392	174	ADAMS, ALCORN, AMITE, ATTALA, BENTON, BOLIVAR, CALHOUN CARROLL, CHICKASAW, CHOCTAW, CLAIBORNE, CLARKE, CLAY, COAHOMA COPIAH, COVINGTON, FRANKLIN, GEORGE, GREENE, GRENADA, HOLMES HUMPHREYS, ISSAQUENA, ITAWAMBA, JASPER, JEFFERSON JEFFERSON DAVIS, JONES, KEMPER, LAFAYETTE, LAUDERDALE LAWRENCE, LEAKE, LEE, LEFLORE, LINCOLN, LOWNDES, MARION MARSHALL, MONROE, MONTGOMERY, NESHOBA, NEWTON, NOXUBEE OKTIBBEHA, PANOLA, PEARL RIVER, PERRY, PIKE, PONTOTOC PRENTISS, QUITMAN, SCOTT, SHARKEY, SIMPSON, SMITH, STONE SUNFLOWER, TALLAHATCHIE, TATE, TIPPAH, TISHOMINGO, TUNICA UNION, WALTHALL, WARREN, WASHINGTON, WAYNE, WEBSTER, WILKINSON WINSTON, YALOBUSHA, YAZOO
Jacksonville Area Office			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Area No 1	11,568,095	311	DADE
Metropolitan Area No 2	2,988,359	80	PALM BEACH, MARTIN, ST. LUCIE
Metropolitan Area No 3	6,688,032	180	HERNANDO, HILLSBOROUGH, PASCO, PINELLAS
Metropolitan Area No 4	9,496,268	257	CLAY, DUVAL, NASSAU, ST. JOHNS, MARION, FLAGLER, VOLUSIA ALACHUA
Metropolitan Area No 5	4,458,259	119	LAKE, ORANGE, OSCEOLA, SEMINOLE, BREVARD
Metropolitan Area No 6	4,128,714	112	ESCAMBIA, SANTA ROSA, OKALOOSA, BAY, GADSDEN, LEON
Metropolitan Area No 7	3,811,169	102	POLK, MANATEE, SARASOTA, COLLIER, LEE, CHARLOTTE
Metropolitan Area No 8	3,506,246	94	BROWARD
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetro Area No 1	1,772,971	67	BAKER, BRADFORD, CALHOUN, CITRUS, COLUMBIA, DESOTO, DIXIE FRANKLIN, GILCHRIST, GLADES, GULF, HAMILTON, HARDEE, HENDRY HIGHLANDS, HOLMES, INDIAN RIVER, JACKSON, JEFFERSON, LAFAYETTE LEVY, LIBERTY, MADISON, MONROE, OKEECHOBEE, PUTNAM, SUMTER SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON, WASHINGTON
Kentucky State Office			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	4,027,908	152	BOURBON, CLARK, FAYETTE, JESSAMINE, MADISON, SCOTT, WOODFORD BULLITT, JEFFERSON, OLDHAM
METROPOLITAN ALLOCATION AREA 2	2,029,009	77	BOONE, CAMPBELL, KENTON, CHRISTIAN, HENDERSON, GALLATIN, GRANT BOYD, CARTER, GREENUP, DAVIESS, PENDLETON
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST NONMETROPOLITAN ALLOCATION AREA	388,677	19	BATH, BRACKEN, ELLIOTT, FLEMING, JOHNSON, LAWRENCE, LEWIS MARTIN, MASON, MENIFEE, MONTGOMERY, MORGAN, POWELL, ROBERTSON ROWAN
SOUTH CENTRAL NONMETROPOLITAN ALLOCATION AREA	533,713	27	ADAIR, ANDERSON, CASEY, CLINTON, CUMBERLAND, FRANKLIN, GARRARD GREEN, HARRISON, LINCOLN, MCCREARY, NICHOLAS, PULASKI, RUSSELL

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			TAYLOR, WAYNE
SOUTHEAST NONMETROPOLITAN ALLOCATION AREA	957,183	45	BELL, BREATHITT, CLAY, ESTILL, FLOYD, HARLAN, JACKSON, KNOTT KNOX, LAUREL, LEE, LESLIE, LETCHER, MAGOFFIN, OWSLEY, PERRY PIKE, ROCKCASTLE, WHITLEY, WOLFE
MIDWEST NONMETROPOLITAN ALLOCATION AREA	539,508	28	ALLEN, BARREN, BUTLER, EDMONSON, HANCOCK, HART, LOGAN, MCLEAN METCALFE, MONROE, OHIO, SIMPSON, UNION, WARREN, WEBSTER
FAR WEST NONMETROPOLITAN ALLOCATION AREA	514,061	23	BALLARD, CALDWELL, CALLOWAY, CARLISLE, CRITTENDEN, FULTON GRAVES, HICKMAN, HOPKINS, LIVINGSTON, LYON, MCCRACKEN MARSHALL, MUHLENBERG, TODD, TRIGG
NORTH CENTRAL NONMETROPOLITAN ALLOCATION AREA	594,360	30	BOYLE, BRECKINRIDGE, CARROLL, GRAYSON, HARDIN, HENRY, LARUE MARION, MEADE, MERCER, NELSON, OWEN, SHELBY, SPENCER, TRIMBLE WASHINGTON
Knoxville Area Office			
METROPOLITAN ALLOCATION AREAS			
METRO ALLOCATION AREA 1	3,400,874	133	HAMILTON, MARION, CARTER, HAWKINS, SULLIVAN, UNICOI WASHINGTON, ANDERSON, BLOUNT, KNOX, LOUDON, SEVIER, UNION
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO ALLOCATION AREA 1	923,928	44	BLEDSOE, BRADLEY, CAMPBELL, CLAIBORNE, COCKE, CUMBERLAND FENTRESS, GRAINGER, GREENE, GRUNDY, HAMBLEN, HANCOCK JEFFERSON, JOHNSON, MCMINN, MEIGS, MONROE, MORGAN, PICKETT POLK, RHEA, ROANE, SCOTT, SEQUATCHIE
Tennessee State Office			
METROPOLITAN ALLOCATION AREAS			
JACKSON-MEMPHIS ALLOCATION AREA	3,764,984	133	MADISON, FAYETTE, SHELBY, TIPTON
CLARKSVILLE-NASHVILLE ALLOCATION AREA	3,032,093	105	MONTGOMERY, CHEATHAM, DAVIDSON, DICKSON, ROBERTSON, RUTHERFORD SUMNER, WILLIAMSON, WILSON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN TENNESSEE ALLOCATION AREA	1,613,572	78	BEDFORD, BENTON, CANNON, CARROLL, CHESTER, CLAY, COFFEE CROCKETT, DECATUR, DEKALB, DYER, FRANKLIN, GIBSON, GILES HARDEMAN, HARDIN, HAYWOOD, HENDERSON, HENRY, HICKMAN, HOUSTON HUMPHREYS, JACKSON, LAKE, LAUDERDALE, LAWRENCE, LEWIS, LINCOLN MCNAIRY, MACON, MARSHALL, MAURY, MOORE, OBION, OVERTON, PERRY PUTNAM, SMITH, STEWART, TROUSDALE, VAN BUREN, WARREN, WAYNE WEAKLEY, WHITE
Midwest			
Illinois State Office			
METROPOLITAN ALLOCATION AREAS			
METRO I CHICAGO	34,560,102	870	COOK
METRO II CHICAGO COLLAR COUNTIES	7,285,341	184	LAKE, KANE, KENDALL, GRUNDY, WILL, MCHENRY, DUPAGE, DEKALB
METRO III ROCKFORD-ROCK ISLAND	2,835,295	72	BOONE, OGLE, WINNEBAGO, HENRY, ROCK ISLAND
METRO IV BLOOMINGTON-CHAMPAIGN-DECATUR-KANKAK	3,314,920	83	MCLEAN, CHAMPAIGN, MACON, KANKAKEE
METRO V PEORIA-SPRINGFIELD	2,773,221	69	PEORIA, TAZEWELL, WOODFORD, MENARD, SANGAMON
METRO VI ST.LOUIS-IL PORTION	2,634,471	67	CLINTON, JERSEY, MADISON, MONROE, ST. CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
NON-METRO NORTH	1,931,798	88	ADAMS, BROWN, BUREAU, CARROLL, CASS, DE WITT, FORD, FULTON HANCOCK, HENDERSON, IROQUOIS, JO DAVIESS, KNOX, LA SALLE, LEE LIVINGSTON, LOGAN, MARSHALL, MASON, MCDONOUGH, MERCER, PIATT PUTNAM, SCHUYLER, STARK, STEPHENSON, VERMILION, WARREN WHITESIDE

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NON-METRO SOUTH	2,079,529	97	ALEXANDER, BOND, CALHOUN, CHRISTIAN, CLARK, CLAY, COLES CRAWFORD, CUMBERLAND, DOUGLAS, EDGAR, EDWARDS, EFFINGHAM FAYETTE, FRANKLIN, GALLATIN, GREENE, HAMILTON, HARDIN, JACKSON JASPER, JEFFERSON, JOHNSON, LAWRENCE, MACOUPIN, MARION, MASSAC MONTGOMERY, MORGAN, MOULTRIE, PERRY, PIKE, POPE, PULASKI RANDOLPH, RICHLAND, SALINE, SCOTT, SHELBY, UNION, WABASH WASHINGTON, WAYNE, WHITE, WILLIAMSON
Cincinnati Area Office			
METROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - METROPOLITAN	9,776,154	327	BUTLER, GREENE, MIAMI, MONTGOMERY, CLERMONT, HAMILTON, WARREN BROWN
NONMETROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - NONMETROPOLITAN	434,703	18	ADAMS, CLINTON, DARKE, HIGHLAND, PREBLE
Cleveland Area Office			
METROPOLITAN ALLOCATION AREAS			
AKRON-CANTON MSA AREA	3,995,845	136	PORTAGE, SUMMIT, CARROLL, STARK
CLEVELAND-LORAIN-ELYRIA MSA AREA	9,340,187	317	ASHTABULA, CUYAHOGA, GEAUGA, LAKE, LORAIN, MEDINA
OTHER CLEVELAND OFFICE MSA AREA	5,779,081	195	CRAWFORD, RICHLAND, JEFFERSON, FULTON, LUCAS, WOOD, COLUMBIANA MAHONING, TRUMBULL
NONMETROPOLITAN ALLOCATION AREAS			
CLEVELAND OFFICE - NONMETROPOLITAN	1,671,319	67	ASHLAND, DEFIANCE, ERIE, HANCOCK, HARRISON, HENRY, HOLMES HURON, OTTAWA, PAULDING, SANDUSKY, SENECA, TUSCARAWAS, WAYNE WILLIAMS, WYANDOT
Ohio State Office			
METROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - METROPOLITAN	6,856,298	240	ALLEN, AUGLAIZE, BELMONT, CLARK, DELAWARE, FAIRFIELD, FRANKLIN LAWRENCE, LICKING, MADISON, PICKAWAY, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - NONMETROPOLITAN NORTH	1,237,512	54	CHAMPAIGN, COSHOCTON, GUERNSEY, HARDIN, KNOX, LOGAN, MARION MERCER, MONROE, MORROW, MUSKINGUM, NOBLE, PUTNAM, SHELBY UNION, VAN WERT
COLUMBUS OFFICE - NONMETROPOLITAN SOUTH	1,296,995	55	ATHENS, FAYETTE, GALLIA, HOCKING, JACKSON, MEIGS, MORGAN PERRY, PIKE, ROSS, SCIOTO, VINTON
Michigan State Office			
METROPOLITAN ALLOCATION AREAS			
ANN ARBOR,FLINT,SAGINAW-BAY-MIDLAND MSAs	6,040,086	177	WASHTENAW, LENAWEE, LIVINGSTON, GENESEE, SAGINAW, BAY, MIDLAND
WAYNE COUNTY	13,844,897	408	WAYNE
DETROIT PMSA LESS WAYNE COUNTY	5,292,388	155	LAPEER, MACOMB, MONROE, OAKLAND, ST. CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
DETROIT OFFICE NON-METRO	676,418	30	ALCONA, ALPENA, ARENAC, GLADWIN, HURON, IOSCO, MONTMORENCY OGEMAW, OSCODA, PRESQUE ISLE, SANILAC, SHIAWASSEE, TUSCOLA
Grand Rapids Area Office			
METROPOLITAN ALLOCATION AREAS			
GRAND RAPIDS-MUSKEGON-HOLLAND, LANSING MSAs	4,402,103	144	KENT, MUSKEGON, OTTAWA, ALLEGAN, INGHAM, CLINTON, EATON
BERRIAN,CALHOUN,KALAMAZOO,JACKSON CO	2,981,145	97	BERRIEN, CALHOUN, KALAMAZOO, JACKSON, VAN BUREN
NONMETROPOLITAN ALLOCATION AREAS			
GRAND RAPIDS OFFICE NON-METRO	2,711,452	114	ALGER, ANTRIM, BARAGA, BARRY, BENZIE, BRANCH, CASS, CHARLEVOIX CHEBOYGAN, CHIPPEWA, CLARE, CRAWFORD, DELTA, DICKINSON, EMMET

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			GOGEBIC, GRAND TRAVERSE, GRATIOT, HILLSDALE, HOUGHTON, IONIA IRON, ISABELLA, KALKASKA, KEWEENAW, LAKE, LEELANAU, LUCE MACKINAC, MANISTEE, MARQUETTE, MASON, MECOSTA, MENOMINEE MISSAUKEE, MONTCALM, NEWAYGO, OCEANA, ONTONAGON, OSCEOLA OTSEGO, ROSCOMMON, ST. JOSEPH, SCHOOLCRAFT, WEXFORD
Indiana State Office			
METROPOLITAN ALLOCATION AREAS			
INDIANAPOLIS OFFICE - METROPOLITAN NORTH	5,227,887	174	ELKHART, ADAMS, ALLEN, DE KALB, HUNTINGTON, WELLS, WHITLEY
INDIANAPOLIS OFFICE - METROPOLITAN SOUTH	2,191,046	74	LAKE, PORTER, HOWARD, TIPTON, CLINTON, TIPPECANOE, ST JOSEPH MONROE, DEARBORN, POSEY, VANDERBURGH, WARRICK, CLARK, FLOYD
INDIANAPOLIS OFFICE - METROPOLITAN CENTRAL	5,660,962	191	HARRISON, SCOTT, OHIO BOONE, HAMILTON, HANCOCK, HENDRICKS, JOHNSON, MADISON, MARION MORGAN, SHELBY, DELAWARE, CLAY, VERMILLION, VIGO
NONMETROPOLITAN ALLOCATION AREAS			
INDIANAPOLIS OFFICE - NONMETROPOLITAN NORTH	1,637,941	68	BENTON, BLACKFORD, CARROLL, CASS, FOUNTAIN, FULTON, GRANT HENRY, JASPER, JAY, KOSCIUSKO, LAGRANGE, LA PORTE, MARSHALL MIAMI, MONTGOMERY, NEWTON, NOBLE, PULASKI, RANDOLPH, STARKE STEUBEN, WABASH, WARREN, WAYNE, WHITE
INDIANAPOLIS OFFICE - NONMETROPOLITAN SOUTH	1,197,079	52	BARTHOLOMEW, BROWN, CRAWFORD, DAVIESS, DECATUR, DUBOIS FAYETTE, FRANKLIN, GIBSON, GREENE, JACKSON, JEFFERSON JENNINGS, KNOX, LAWRENCE, MARTIN, ORANGE, OWEN, PARKE, PERRY PIKE, PUTNAM, RIPLEY, RUSH, SPENCER, SULLIVAN, SWITZERLAND UNION, WASHINGTON
Wisconsin State Office			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area #1	4,414,804	139	CALUMET, OUTAGAMIE, WINNEBAGO, DOUGLAS, CHIPPEWA, EAU CLAIRE BROWN, LA CROSSE, ST. CROIX, SHEBOYGAN, MARATHON, PIERCE
Metropolitan Allocation Area #2	4,454,855	140	ROCK, KENOSHA, DANE, RACINE
Metropolitan Allocation Area #3	8,603,659	269	MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area #1	1,624,162	70	COLUMBIA, CRAWFORD, DODGE, GRANT, GREEN, IOWA, JEFFERSON LAFAYETTE, RICHLAND, SAUK, VERNON, WALWORTH, ADAMS, DOOR FOND DU LAC, GREEN LAKE, KEWAUNEE, MANITOWOC, MARQUETTE WAUSHARA
Nonmetropolitan Allocation Area #2	1,673,331	72	ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CLARK, DUNN, IRON JACKSON, JUNEAU, MONROE, PEPIN, POLK, PRICE, RUSK, SAWYER TAYLOR, TREMPEALEAU, WASHBURN, WOOD, FLORENCE, FOREST LANGLADE, LINCOLN, MARINETTE, OCONTO, ONEIDA, PORTAGE, SHAWANO VILAS, WAUPACA, MENOMINEE
Minnesota State Office			
METROPOLITAN ALLOCATION AREAS			
GREATER MINNESOTA METRO	2,907,293	82	OLMSTED, ST. LOUIS, BENTON, STEARNS, SHERBURNE, WRIGHT, CLAY HOUSTON, POLK
MINNEAPOLIS/ST. PAUL METRO	8,192,286	231	ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY SCOTT, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
SOUTHERN NON-METRO	1,227,622	52	BLUE EARTH, BROWN, COTTONWOOD, DODGE, FARIBAULT, FILLMORE FREEBORN, GOODHUE, JACKSON, LE SUEUR, LINCOLN, LYON, MARTIN MOWER, MURRAY, NICOLLET, NOBLES, PIPESTONE, REDWOOD, RICE ROCK, SIBLEY, STEELE, WABASHA, WASECA, WATONWAN, WINONA

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NORTHERN NON-METRO	1,323,287	56	AITKIN, BECKER, BELTRAMI, BIG STONE, CARLTON, CASS, CHIPPEWA CLEARWATER, COOK, CROW WING, DOUGLAS, GRANT, HUBBARD, ITASCA KANABEC, KANDIYOHI, KITTSON, KOOCHICHING, LAC QUI PARLE, LAKE LAKE OF THE WOODS, MCLEOD, MAHNOMEN, MARSHALL, MEEKER MILLE LACS, MORRISON, NORMAN, OTTER TAIL, PENNINGTON, PINE POPE, RED LAKE, RENVILLE, ROSEAU, STEVENS, SWIFT, TODD TRAVERSE, WADENA, WILKIN, YELLOW MEDICINE
Southwest			
Texas State Office			
METROPOLITAN ALLOCATION AREAS			
DALLAS PMSA	8,439,601	269	COLLIN, DALLAS, DENTON, ELLIS, HUNT, KAUFMAN, ROCKWALL HENDERSON
EAST TEXAS METRO	7,795,476	249	ARCHER, WICHITA, HOOD, JOHNSON, PARKER, TARRANT, BELL, CORYELL GREGG, HARRISON, UPSHUR, GRAYSON, BOWIE, SMITH, MCLENNAN
WEST TEXAS METRO	7,679,693	243	TAYLOR, POTTER, RANDALL, EL PASO, LUBBOCK, ECTOR, MIDLAND TOM GREEN
NEW MEXICO METRO	2,649,553	83	BERNALILLO, SANDOVAL, VALENCIA, DONA ANA, LOS ALAMOS, SANTA FE
NONMETROPOLITAN ALLOCATION AREAS			
NORTH TEXAS NONMETRO	2,921,381	130	ANDERSON, ANDREWS, ARMSTRONG, BAILEY, BAYLOR, BORDEN, BOSQUE BREWSTER, BRISCOE, BROWN, CALLAHAN, CAMP, CARSON, CASS, CASTRO CHEROKEE, CHILDRESS, CLAY, COCHRAN, COKE, COLEMAN COLLINGSWORTH, COMANCHE, CONCHO, COOKE, COTTLE, CRANE CROCKETT, CROSBY, CULBERSON, DALLAM, DAWSON, DEAF SMITH, DELTA DICKENS, DONLEY, EASTLAND, ERATH, FALLS, FANNIN, FISHER, FLOYD FOARD, FRANKLIN, FREESTONE, GAINES, GARZA, GLASSCOCK, GRAY HALE, HALL, HAMILTON, HANSFORD, HARDEMAN, HARTLEY, HASKELL HEMPHILL, HILL, HOCKLEY, HOPKINS, HOWARD, HUDSPETH, HUTCHINSON IRION, JACK, JEFF DAVIS, JONES, KENT, KIMBLE, KING, KNOX LAMAR, LAMB, LAMPASAS, LIMESTONE, LIPSCOMB, LOVING, LYNN MCCULLOCH, MARION, MARTIN, MASON, MENARD, MILAM, MILLS MITCHELL, MONTAGUE, MOORE, MORRIS, MOTLEY, NAVARRO, NOLAN OCHILTREE, OLDHAM, PALO PINTO, PANOLA, PARMER, PECOS, PRESIDIO RAINS, REAGAN, RED RIVER, REEVES, ROBERTS, RUNNELS, RUSK SAN SABA, SCHLEICHER, SCURRY, SHACKELFORD, SHERMAN, SOMERVELL STEPHENS, STERLING, STONEWALL, SUTTON, SWISHER, TERRELL, TERRY THROCKMORTON, TITUS, UPTON, VAN ZANDT, WARD, WHEELER WILBARGER, WINKLER, WISE, WOOD, YOAKUM, YOUNG
NEW MEXICO NONMETRO	1,359,742	64	CATRON, CHAVES, CIBOLA, COLFAX, CURRY, DEBACA, EDDY, GRANT GUADALUPE, HARDING, HIDALGO, LEA, LINCOLN, LUNA, MCKINLEY MORA, OTERO, QUAY, RIO ARRIBA, ROOSEVELT, SAN JUAN, SAN MIGUEL SIERRA, SOCORRO, TAOS, TORRANCE, UNION
Houston Area Office			
METROPOLITAN ALLOCATION AREAS			
SOUTHEAST TEXAS	4,055,806	121	HARDIN, JEFFERSON, ORANGE, BRAZORIA, BRAZOS, GALVESTON
HOUSTON PMSA	12,997,692	390	CHAMBERS, FORT BEND, HARRIS, LIBERTY, MONTGOMERY, WALLER
NONMETROPOLITAN ALLOCATION AREAS			
HOUSTON AREA NONMETRO	1,238,368	54	ANGELINA, AUSTIN, BURLESON, COLORADO, GRIMES, HOUSTON, JASPER LEON, MADISON, MATAGORDA, NACOGDOCHES, NEWTON, POLK, ROBERTSON SABINE, SAN AUGUSTINE, SAN JACINTO, SHELBY, TRINITY, TYLER WALKER, WASHINGTON, WHARTON

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Arkansas State Office			
METROPOLITAN ALLOCATION AREAS			
ARKANSAS METRO AREAS	2,895,595	109	BENTON, WASHINGTON, CRAWFORD, SEBASTIAN, FAULKNER, LONOKE PULASKI, SALINE, CRITTENDEN, JEFFERSON, MILLER
NONMETROPOLITAN ALLOCATION AREAS			
NONMET Nonmetro Arkansas	2,567,709	126	ARKANSAS, ASHLEY, BAXTER, BOONE, BRADLEY, CALHOUN, CARROLL CHICOT, CLARK, CLAY, CLEBURNE, CLEVELAND, COLUMBIA, CONWAY CRAIGHEAD, CROSS, DALLAS, DESHA, DREW, FRANKLIN, FULTON GARLAND, GRANT, GREENE, HEMPSTEAD, HOT SPRING, HOWARD INDEPENDENCE, IZARD, JACKSON, JOHNSON, LAFAYETTE, LAWRENCE LEE, LINCOLN, LITTLE RIVER, LOGAN, MADISON, MARION MISSISSIPPI, MONROE, MONTGOMERY, NEVADA, NEWTON, OUACHITA PERRY, PHILLIPS, PIKE, POINSETT, POLK, POPE, PRAIRIE, RANDOLPH ST. FRANCIS, SCOTT, SEARCY, SEVIER, SHARP, STONE, UNION VAN BUREN, WHITE, WOODRUFF, YELL
Louisiana State Office			
METROPOLITAN ALLOCATION AREAS			
South-Western Louisiana Metro Areas	2,195,446	80	LAFOURCHE, TERREBONNE, LAFAYETTE, ST. MARTIN, CALCASIEU ACADIA, ST. LANDRY
Baton Rouge Metro Area	1,488,820	56	ASCENSION, EAST BATON ROUGE, LIVINGSTON, WEST BATON ROUGE
New Orleans Metro Area	6,256,538	232	JEFFERSON, ORLEANS, PLAQUEMINES, ST. BERNARD, ST CHARLES ST. JOHN THE BAPTIST, ST. TAMMANY, ST. JAMES
North-Central Louisiana Met	2,008,446	74	BOSSIER, CADDO, WEBSTER, OUACHITA, RAPIDES
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Louisiana All	2,064,307	107	ALLEN, ASSUMPTION, AVOYELLES, BEAUREGARD, BIENVILLE, CALDWELL CAMERON, CATAHOULA, CLAIBORNE, CONCORDIA, DE SOTO EAST CARROLL, EAST FELICIANA, EVANGELINE, FRANKLIN, GRANT IBERIA, IBERVILLE, JACKSON, JEFFERSON DAVIS, LA SALLE, LINCOLN MADISON, MOREHOUSE, NATCHITOCHES, POINTE COUPEE, RED RIVER RICHLAND, SABINE, ST. HELENA, ST. MARY, TANGIPAHOA, TENSAS UNION, VERMILION, VERNON, WASHINGTON, WEST CARROLL WEST FELICIANA, WINN
Oklahoma State Office			
METROPOLITAN ALLOCATION AREAS			
WESTERN METRO	3,287,654	124	GARFIELD, COMANCHE, CANADIAN, CLEVELAND, LOGAN, MCCLAIN OKLAHOMA, POTTAWATOMIE
EASTERN METRO	2,041,773	76	CREEK, OSAGE, ROGERS, TULSA, WAGONER, SEQUOYAH
NONMETROPOLITAN ALLOCATION AREAS			
WESTERN NON-METRO	1,238,685	61	ALFALFA, BEAVER, BECKHAM, BLAINE, CADDO, CARTER, CIMARRON COTTON, CUSTER, DEWEY, ELLIS, GARVIN, GRADY, GRANT, GREER HARMON, HARPER, JACKSON, JEFFERSON, JOHNSTON, KAY, KINGFISHER KIOWA, LINCOLN, LOVE, MAJOR, MARSHALL, MURRAY, NOBLE, PAYNE PONTOTOC, ROGER MILLS, SEMINOLE, STEPHENS, TEXAS, TILLMAN WASHITA, WOODS, WOODWARD
EASTERN NON-METRO	1,141,539	58	ADAIR, ATOKA, BRYAN, CHEROKEE, CHOCTAW, COAL, CRAIG, DELAWARE HASKELL, HUGHES, LATIMER, LE FLORE, MCCURTAIN, MCINTOSH, MAYES MUSKOGEE, NOWATA, OKFUSKEE, OKMULGEE, OTTAWA, PAWNEE PITTSBURG, PUSHMATAHA, WASHINGTON
San Antonio Area Office			

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREAS			
Metro Area A	8,829,980	270	BASTROP, CALDWELL, HAYS, TRAVIS, WILLIAMSON, BEXAR, COMAL GUADALUPE, WILSON
Metro Area B	5,436,299	168	CAMERON, NUECES, SAN PATRICIO, WEBB, HIDALGO, VICTORIA
NONMETROPOLITAN ALLOCATION AREAS			
SAN ANTONIO AREA NONMETRO	1,488,104	69	ARANSAS, ATASCOSA, BANDERA, BEE, BLANCO, BROOKS, BURNET CALHOUN, DEWITT, DIMMIT, DUVAL, EDWARDS, FAYETTE, FRIO GILLESPIE, GOLIAD, GONZALES, JACKSON, JIM HOGG, JIM WELLS KARNES, KENDALL, KENEDY, KERR, KINNEY, KLEBERG, LA SALLE LAVACA, LEE, LIVE OAK, LLANO, MCMULLEN, MAVERICK, MEDINA, REAL REFUGIO, STARR, UVALDE, VAL VERDE, WILLACY, ZAPATA, ZAVALA
Great Plains			
Iowa State Office			
METROPOLITAN ALLOCATION AREAS			
EASTERN IOWA METROPOLITAN ALLOCATION AREA	2,706,460	93	BLACK HAWK, DUBUQUE, JOHNSON, LINN, SCOTT
WESTERN IOWA METROPOLITAN ALLOCATION AREA	2,057,662	71	DALLAS, POLK, WARREN, POTTAWATTAMIE, WOODBURY
NONMETROPOLITAN ALLOCATION AREAS			
EASTERN IOWA NON METROPOLITAN ALLOCATION AREA	1,899,646	88	ALLAMAKEE, APPANOOSE, BENTON, BREMER, BUCHANAN, BUTLER, CEDAR CERRO GORDO, CHICKASAW, CLAYTON, CLINTON, DAVIS, DELAWARE DES MOINES, FAYETTE, FLOYD, FRANKLIN, GRUNDY, HANCOCK, HARDIN HENRY, HOWARD, IOWA, JACKSON, JEFFERSON, JONES, KEOKUK KOSSUTH, LEE, LOUISA, LUCAS, MAHASKA, MARSHALL, MITCHELL MONROE, MUSCATINE, POWESHIEK, TAMA, VAN BUREN, WAPELLO WASHINGTON, WAYNE, WINNEBAGO, WINNESHIEK, WORTH
WESTERN IOWA NON METROPOLITAN ALLOCATION AREA	1,611,914	71	ADAIR, ADAMS, AUDUBON, BOONE, BUENA VISTA, CALHOUN, CARROLL CASS, CHEROKEE, CLARKE, CLAY, CRAWFORD, DECATUR, DICKINSON EMMET, FREMONT, GREENE, GUTHRIE, HAMILTON, HARRISON, HUMBOLDT IDA, JASPER, LYON, MADISON, MARION, MILLS, MONONA, MONTGOMERY O'BRIEN, OSCEOLA, PAGE, PALO ALTO, PLYMOUTH, POCAHONTAS RINGGOLD, SAC, SHELBY, SIOUX, STORY, TAYLOR, UNION, WEBSTER WRIGHT
Kansas/Missouri State Office			
METROPOLITAN ALLOCATION AREAS			
WESTERN MISSOURI METROPOLITAN ALLOCATION AREA	4,698,917	166	CASS, CLAY, CLINTON, JACKSON, LAFAYETTE, PLATTE, RAY, JASPER NEWTON, ANDREW, BUCHANAN, CHRISTIAN, GREENE, WEBSTER
KANSAS METROPOLITAN ALLOCATION AREA	4,081,071	144	JOHNSON, LEAVENWORTH, MIAMI, WYANDOTTE, DOUGLAS, SHAWNEE BUTLER, HARVEY, SEDGWICK
NONMETROPOLITAN ALLOCATION AREAS			
KANSAS NON METROPOLITAN ALLOCATION AREA	2,363,632	101	ALLEN, ANDERSON, ATCHISON, BARBER, BARTON, BOURBON, BROWN CHASE, CHAUTAUQUA, CHEROKEE, CHEYENNE, CLARK, CLAY, CLOUD COFFEY, COMANCHE, COWLEY, CRAWFORD, DECATUR, DICKINSON DONIPHAN, EDWARDS, ELK, ELLIS, ELLSWORTH, FINNEY, FORD FRANKLIN, GEARY, GOVE, GRAHAM, GRANT, GRAY, GREELEY, GREENWOOD HAMILTON, HARPER, HASKELL, HODGEMAN, JACKSON, JEFFERSON JEWELL, KEARNY, KINGMAN, KIOWA, LABETTE, LANE, LINCOLN, LINN LOGAN, LYON, MCPHERSON, MARION, MARSHALL, MEADE, MITCHELL MONTGOMERY, MORRIS, MORTON, NEMAHA, NEOSHO, NESS, NORTON OSAGE, OSBORNE, OTTAWA, PAWNEE, PHILLIPS, POTTAWATOMIE, PRATT RAWLINS, RENO, REPUBLIC, RICE, RILEY, ROOKS, RUSH, RUSSELL SALINE, SCOTT, SEWARD, SHERIDAN, SHERMAN, SMITH, STAFFORD

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			STANTON, STEVENS, SUMNER, THOMAS, TREGO, WABAUNSEE, WALLACE WASHINGTON, WICHITA, WILSON, WOODSON
WESTERN MISSOURI NON METROPOLITAN ALLOCATION	1,203,109	57	ATCHISON, BARRY, BARTON, BATES, BENTON, CALDWELL, CAMDEN CARROLL, CEDAR, CHARITON, DADE, DALLAS, DAVIESS, DEKALB GENTRY, GRUNDY, HARRISON, HENRY, HICKORY, HOLT, JOHNSON LACLEDE, LAWRENCE, LINN, LIVINGSTON, MCDONALD, MERCER, MILLER MORGAN, NODAWAY, PETTIS, POLK, PULASKI, PUTNAM, ST. CLAIR SALINE, STONE, SULLIVAN, TANEY, VERNON, WORTH
Nebraska State Office			
METROPOLITAN ALLOCATION AREAS			
NEBRASKA METROPOLITAN ALLOCATION AREA	2,944,389	99	DAKOTA, CASS, DOUGLAS, SARPY, WASHINGTON, LANCASTER
NONMETROPOLITAN ALLOCATION AREAS			
NEBRASKA NON METROPOLITAN ALLOCATION AREA	1,644,603	68	ADAMS, ANTELOPE, ARTHUR, BANNER, BLAINE, BOONE, BOX BUTTE BOYD, BROWN, BUFFALO, BURT, BUTLER, CEDAR, CHASE, CHERRY CHEYENNE, CLAY, COLFAX, CUMING, CUSTER, DAWES, DAWSON, DEUEL DIXON, DODGE, DUNDY, FILLMORE, FRANKLIN, FRONTIER, FURNAS GAGE, GARDEN, GARFIELD, GOSPER, GRANT, GREELEY, HALL, HAMILTON HARLAN, HAYES, HITCHCOCK, HOLT, HOOKER, HOWARD, JEFFERSON JOHNSON, KEARNEY, KEITH, KEYA PAHA, KIMBALL, KNOX, LINCOLN LOGAN, LOUP, MCPHERSON, MADISON, MERRICK, MORRILL, NANCE NEMAHA, NUCKOLLS, OTOE, PAWNEE, PERKINS, PHELPS, PIERCE PLATTE, POLK, RED WILLOW, RICHARDSON, ROCK, SALINE, SAUNDERS SCOTTS BLUFF, SEWARD, SHERIDAN, SHERMAN, SIOUX, STANTON THAYER, THOMAS, THURSTON, VALLEY, WAYNE, WEBSTER, WHEELER YORK
St. Louis Area Office			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area	6,414,750	227	BOONE, FRANKLIN, JEFFERSON, LINCOLN, ST. CHARLES, ST. LOUIS WARREN, ST. LOUIS CITY
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area	1,857,316	99	ADAIR, AUDRAIN, BOLLINGER, BUTLER, CALLAWAY, CAPE GIRARDEAU CARTER, CLARK, COLE, COOPER, CRAWFORD-SULLIVAN (PART), DENT DOUGLAS, DUNKLIN, GASCONADE, HOWARD, HOWELL, IRON, KNOX, LEWIS MACON, MADISON, MARIES, MARION, MISSISSIPPI, MONITEAU, MONROE MONTGOMERY, NEW MADRID, OREGON, OSAGE, OZARK, PEMISCOT, PERRY PHELPS, PIKE, RALLS, RANDOLPH, REYNOLDS, RIPLEY STE. GENEVIEVE, ST. FRANCOIS, SCHUYLER, SCOTLAND, SCOTT SHANNON, SHELBY, STODDARD, TEXAS, WASHINGTON, WAYNE, WRIGHT
Rocky Mountain			
Colorado State Office			
METROPOLITAN ALLOCATION AREAS			
Northern Colorado Front Range Metro	2,471,626	78	BOULDER, LARIMER, WELD
Southern Colorado Front Range Metro	1,975,398	63	PUEBLO, EL PASO
Montana/Wyoming Metro	1,134,457	37	YELLOWSTONE, CASCADE, NATRONA, LARAMIE
North/South Dakota Metro	2,148,209	68	BURLEIGH, MORTON, CASS, GRAND FORKS, PENNINGTON, LINCOLN MINNEHAHA
Utah Metro			
Denver, Colorado PMSA	4,152,680	132	UTAH, DAVIS, SALT LAKE, WEBER
NONMETROPOLITAN ALLOCATION AREAS	5,497,689	175	ADAMS, ARAPAHOE, DENVER, DOUGLAS, JEFFERSON

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Colorado/Utah Nonmetro	2,272,947	91	ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CHEYENNE, CLEAR CREEK CONEJOS, COSTILLA, CROWLEY, CUSTER, DELTA, DOLORES, EAGLE ELBERT, FREMONT, GARFIELD, GILPIN, GRAND, GUNNISON, HINSDALE HUERFANO, JACKSON, KIOWA, KIT CARSON, LAKE, LA PLATA LAS ANIMAS, LINCOLN, LOGAN, MESA, MINERAL, MOFFAT, MONTEZUMA MONTROSE, MORGAN, OTERO, OURAY, PARK, PHILLIPS, PITKIN PROWERS, RIO BLANCO, RIO GRANDE, ROUTT, SAGUACHE, SAN JUAN SAN MIGUEL, SEDGWICK, SUMMIT, TELLER, WASHINGTON, YUMA, BEAVER BOX ELDER, CACHE, CARBON, DAGGETT, DUCHESNE, EMERY, GARFIELD GRAND, IRON, JUAB, KANE, MILLARD, MORGAN, PIUTE, RICH SAN JUAN, SANPETE, SEVIER, SUMMIT, TOOELE, UINTAH, WASATCH WASHINGTON, WAYNE
Montana/Wyoming Nonmetro	2,320,111	92	BEAVERHEAD, BIG HORN, BLAINE, BROADWATER, CARBON, CARTER CHOUTEAU, CUSTER, DANIELS, DAWSON, DEER LODGE, FALLON, FERGUS FLATHEAD, GALLATIN, GARFIELD, GLACIER, GOLDEN VALLEY, GRANITE HILL, JEFFERSON, JUDITH BASIN, LAKE, LEWIS AND CLARK, LIBERTY LINCOLN, MCCONE, MADISON, MEAGHER, MINERAL, MISSOULA MUSSELSHELL, PARK, PETROLEUM, PHILLIPS, PONDERA, POWDER RIVER POWELL, PRAIRIE, RAVALLI, RICHLAND, ROOSEVELT, ROSEBUD SANDERS, SHERIDAN, SILVER BOW, STILLWATER, SWEET GRASS, TETON TOOLE, TREASURE, VALLEY, WHEATLAND, WIBAUX, ALBANY, BIG HORN CAMPBELL, CARBON, CONVERSE, CROOK, FREMONT, GOSHEN HOT SPRINGS, JOHNSON, LINCOLN, NIOBRARA, PARK, PLATTE SHERIDAN, SUBLETTE, SWEETWATER, TETON, UINTA, WASHAKIE, WESTON
North/South Dakota Nonmetro	2,158,084	78	ADAMS, BARNES, BENSON, BILLINGS, BOTTINEAU, BOWMAN, BURKE CAVALIER, DICKEY, DIVIDE, DUNN, EDDY, EMMONS, FOSTER GOLDEN VALLEY, GRANT, GRIGGS, HETTINGER, KIDDER, LAMOURE LOGAN, MCHENRY, MCINTOSH, MCKENZIE, MCLEAN, MERCER, MOUNTRAIL NELSON, OLIVER, PEMBINA, PIERCE, RAMSEY, RANSOM, RENVILLE RICHLAND, ROLETTE, SARGENT, SHERIDAN, SIOUX, SLOPE, STARK STEELE, STUTSMAN, TOWNER, TRAILL, WALSH, WARD, WELLS, WILLIAMS AURORA, BEADLE, BENNETT, BON HOMME, BROOKINGS, BROWN, BRULE BUFFALO, BUTTE, CAMPBELL, CHARLES MIX, CLARK, CLAY, CODINGTON CORSON, CUSTER, DAVISON, DAY, DEUEL, DEWEY, DOUGLAS, EDMUNDS FALL RIVER, FAULK, GRANT, GREGORY, HAAKON, HAMLIN, HAND HANSON, HARDING, HUGHES, HUTCHINSON, HYDE, JACKSON, JERAULD JONES, KINGSBURY, LAKE, LAWRENCE, LYMAN, MCCOOK, MCPHERSON MARSHALL, MEADE, MELLETTE, MINER, MOODY, PERKINS, POTTER ROBERTS, SANBORN, SHANNON, SPINK, STANLEY, SULLY, TODD, TRIPP TURNER, UNION, WALWORTH, YANKTON, ZIEBACH
Pacific/Hawaii			
Hawaii State Office			
METROPOLITAN ALLOCATION AREAS			
HONOLULU, HI MSA	7,374,050	111	HONOLULU
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO AREA	3,254,052	58	HAWAII, KAUAI, MAUI, PACIFIC ISLANDS
Los Angeles Area Office			
METROPOLITAN ALLOCATION AREAS			
KERN - SAN LUIS OBISPO COUNTIES	5,222,935	107	KERN, SAN LUIS OBISPO
LOS ANGELES COUNTY	87,151,828	1788	LOS ANGELES

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
ORANGE COUNTY	11,087,557	227	ORANGE
RIVERSIDE - SAN BERNARDINO COUNTIES	12,775,164	262	RIVERSIDE, SAN BERNARDINO
SAN DIEGO COUNTY	16,286,759	334	SAN DIEGO
SANTA BARBARA - VENTURA COUNTIES	6,085,594	124	SANTA BARBARA, VENTURA
NONMETROPOLITAN ALLOCATION AREAS			
SOUTHERN CALIFORNIA NON-METRO COUNTIES	703,466	22	IMPERIAL, INYO, MONO
Arizona State Office			
METROPOLITAN ALLOCATION AREAS			
METRO AREA	10,653,620	338	MOHAVE, MARICOPA, PINAL, PIMA, YUMA
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO AREA	1,437,638	51	APACHE, COCHISE, COCONINO, GILA, GRAHAM, GREENLEE, LA PAZ NAVAJO, SANTA CRUZ, YAVAPAI
Sacramento Area Office			
METROPOLITAN ALLOCATION AREAS			
METRO AREA 1	7,810,014	217	SACRAMENTO, SAN JOAQUIN
METRO AREA 2	1,713,520	48	YOLO, SUTTER, YUBA
METRO AREA 3	2,242,334	62	BUTTE, SHASTA
METRO AREA 4	894,722	25	EL DORADO, PLACER
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO AREA	1,299,352	42	ALPINE, AMADOR, CALAVERAS, COLUSA, GLENN, LASSEN, MODOC NEVADA, PLUMAS, SIERRA, SISKIYOU, TEHAMA, TRINITY, TUOLUMNE
California State Office			
METROPOLITAN ALLOCATION AREAS			
METRO AREA 1	13,029,952	265	FRESNO, MADERA, MERCED, STANISLAUS, TULARE
METRO AREA 2	15,670,439	320	ALAMEDA, CONTRA COSTA
METRO AREA 3	17,261,385	352	MARIN, SAN FRANCISCO, SAN MATEO
METRO AREA 4	12,686,117	259	MONTEREY, SANTA CLARA, SANTA CRUZ
METRO AREA 5	4,751,061	96	SONOMA, NAPA, SOLANO
METRO AREA 6	6,201,289	127	CLARK, NYE, WASHOE
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO AREA	2,594,053	78	DEL NORTE, HUMBOLDT, KINGS, LAKE, MARIPOSA, MENDOCINO SAN BENITO, CHURCHILL, DOUGLAS, ELKO, ESMERALDA, EUREKA HUMBOLDT, LANDER, LINCOLN, LYON, MINERAL, PERSHING, STOREY WHITE PINE, CARSON CITY
Northwest/Alaska			
Alaska State Office			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	954,880	22	ANCHORAGE
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	1,228,199	31	ALEUTIAN EAST, ALEUTIAN WEST, BETHEL, BRISTOL BAY, DILLINGHAM FAIRBANKS NORTH STAR, HAINES, JUNEAU, KENAI PENINSULA KETCHIKAN GATEWAY, KODIAK ISLAND, LAKE & PENINSULA MATANUSKA-SUSITNA, NOME, NORTH SLOPE, NORTHWEST ARCTIC PR.WALES-OUTER KETCHIKAN, SITKA, SKAGWAY-YAKUTAT-ANGOON SOUTHEAST FAIRBANKS, VALDEZ-CORDOVA, WADE HAMPTON WRANGELL-PETERSBURG, YUKON-KOYUKUK
Oregon State Office			

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FISCAL YEAR 1995 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREAS			
Id-Or-Wa Metro	11,135,929	3945	ADA, CANYON, LANE, JACKSON, CLACKAMAS, COLUMBIA, MULTNOMAH WASHINGTON, YAMHILL, CLARK, MARION, POLK
NONMETROPOLITAN ALLOCATION AREAS			
Id-Or-Wa Nonmetro.	4,386,716	1573	ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CARIBOU, CASSIA CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT, GEM GOODING, IDAHO, JEFFERSON, JEROME, KOOTENAI, LATAH, LEMHI LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE PAYETTE, POWER, SHOSHONE, TETON, TWIN FALLS, VALLEY WASHINGTON, BAKER, BENTON, CLATSOP, COOS, CROOK, CURRY DESCHUTES, DOUGLAS, GILLIAM, GRANT, HARNEY, HOOD RIVER JEFFERSON, JOSEPHINE, KLAMATH, LAKE, LINCOLN, LINN, MALHEUR MORROW, SHERMAN, TILLAMOOK, UMATILLA, UNION, WALLOWA, WASCO WHEELER, KLICKITAT, SKAMANIA
Washington State Office			
METROPOLITAN ALLOCATION AREAS			
SEATTLE METROPOLITAN ALLOCATION AREA 1	18,431,637	4637	WHATCOM, KITSAP, THURSTON, BENTON, FRANKLIN, ISLAND, KING SNOHOMISH, SPOKANE, PIERCE, YAKIMA
NONMETROPOLITAN ALLOCATION AREAS.			
NONMETROPOLITAN ALLOCATION AREA 1	2,718,117	1117	ADAMS, ASOTIN, CHELAN, CLALLAM, COLUMBIA, COWLITZ, DOUGLAS, FERRY, GARFIELD, GRANT, GRAYS HARBOR, JEFFERSON, KITTITAS LEWIS, LINCOLN, MASON, OKANOGAN, PACIFIC, PEND OREILLE SAN JUAN, SKAGIT, STEVENS, WAHKIAKUM, WALLA WALLA, WHITMAN

Attachment 2

NOFA for Fair Share
SUGGESTED FORMAT FOR PORTABILITY CERTIFICATION

Dear Director, Office of Public Housing or Native American Programs Office:

This letter is to request rental vouchers and certificates as reimbursement for Portability units from the Fair Share funding for FY 95.

The Housing Agency has submitted a Form HUD-52515, Application for Existing Housing, in response to a NOFA published on [insert date of publication], 1995, and included in its application is a request for reimbursement of rental vouchers and certificates for families that have moved into the Housing Agency's jurisdiction under portability procedures. The Housing Agency hereby requests reimbursement out of the FY 95 Fair Share allocation for (insert the County or MSA Allocation Area) for the number of rental vouchers and certificates by bedroom size shown below:

REIMBURSEMENT REQUEST	Zero BR	One BR	Two BR	Three BR	Four BR	TOTALS
Rental Vouchers						
Rental Certificates						
TOTALS						

The Housing Agency certifies that the following information, on the number of rental vouchers and certificates for which the Housing Agency billed another housing agency during the most recent month prior to application and has absorbed into its program during the Housing Agency's most recently ended fiscal year, is true and accurate:

HA PROGRAM STATUS	Zero BR	One BR	Two BR	Three BR	Four BR	TOTALS
Absorbed Rental Vouchers						
Billed Rental Vouchers						
Absorbed Rental Certificates						
Billed Rental Certificates						
TOTALS						

The Housing Agency acknowledges that HUD has a right to inspect its records to verify the accuracy of the information provided in this letter.

Name of HA _____

Signature of HA Representative _____

Attachment 3

NOFA for Persons with HIV/AIDS

SERVICE AREA (State or Locality):	BUDGET AUTHORITY	UNITS
New England Region CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, and VERMONT		
STATE OF CONNECTICUT (outside of the Hartford EMSA)	$ 714,000	21
HARTFORD CT MSA	395,000	12
COMMONWEALTH OF MASSACHUSETTS (outside of the Boston EMSA)	599,000	19
BOSTON, MA-NH PMSA	1,142,000	30
New York, New Jersey Region NEW JERSEY and NEW YORK		
STATE OF NEW JERSEY (outside of 5 EMSAs)	722,000	19
Paterson for the BERGEN-PASSAIC, NJ PMSA	779,000	16
JERSEY CITY, NJ PMSA	1,259,000	30
Woodbridge for the MIDDLESEX-SOMERSET-HUNTERDON NJ PMSA	368,000	8
NEWARK, NJ PMSA	3,205,000	76
STATE OF NEW YORK (outside of 2 EMSAs)	1,392,000	56
Islip for the NASSAU-SUFFOLK, NY PMSA	750,000	15
NEW YORK, NY PMSA	25,607,000	584
Mid-Atlantic Region DELAWARE, DISTRICT OF COLUMBIA, MARYLAND, PENNSYLVANIA, VIRGINIA, and WEST VIRGINIA		
WASHINGTON, DC-MD-VA-WV PMSA	2,861,000	67
BALTIMORE, MD PMSA	1,639,000	55
COMMONWEALTH OF PENNSYLVANIA (outside of the Philadelphia EMSA)	785,000	34
PHILADELPHIA, PA-NJ PMSA	1,981,000	59
COMMONWEALTH OF VIRGINIA (outside of the Washington DC EMSA)	706,000	25
Southeast Region ALABAMA, FLORIDA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, PUERTO RICO, SOUTH CAROLINA, and TENNESSEE		
STATE OF ALABAMA	551,000	24
STATE OF FLORIDA (outside of 6 EMSAs)	1,582,000	63
FORT LAUDERDALE, FL PMSA	1,945,000	57
JACKSONVILLE, FL MSA	489,000	19
MIAMI, FL PMSA	4,855,000	135
ORLANDO, FL MSA	542,000	17
TAMPA-ST. PETERSBURG-CLEARWATER, FL MSA	1,028,000	38
WEST PALM BEACH-BOCA RATON, FL MSA	953,000	27
STATE OF GEORGIA (outside of the Atlanta EMSA)	601,000	27

ATLANTA, GA MSA	1,615,000	53
STATE OF MISSISSIPPI	362,000	15
STATE OF NORTH CAROLINA	978,000	36
COMMONWEALTH OF PUERTO RICO (outside of the San Juan EMSA)	962,000	40
SAN JUAN-BAYAMON, PR PMSA	2,472,000	108
STATE OF SOUTH CAROLINA	766,000	29
STATE OF TENNESSEE	684,000	27
Midwest Region ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, OHIO, and WISCONSIN		
CHICAGO, IL PMSA	2,196,000	62
STATE OF MICHIGAN (outside of the Detroit EMSA)	349,000	11
DETROIT, MI PMSA	806,000	28
STATE OF INDIANA	633,000	24
MINNEAPOLIS-ST PAUL MN-WI MSA	380,000	13
STATE OF OHIO (outside of the Cleveland-Lorain-Elvyria EMSA)	860,000	36
CLEVELAND-LORAIN-ELVYRIA OH PMSA	333,000	13
STATE OF WISCONSIN (outside of the Minneapolis-St Paul MSA)	399,000	15
Southwest Region ARKANSAS, LOUISIANA, NEW MEXICO, OKLAHOMA, and TEXAS		
STATE OF LOUISIANA (outside of the New Orleans EMSA)	494,000	23
NEW ORLEANS, LA MSA	787,000	34
STATE OF OKLAHOMA	416,000	21
STATE OF TEXAS (outside of 5 EMSAs)	973,000	40
DALLAS, TX PMSA	1,376,000	52
FT WORTH-ARLINGTON, TX PMSA	320,000	13
HOUSTON, TX PMSA	2,873,000	111
AUSTIN-SAN MARCOS, TX MSA	645,000	23
SAN ANTONIO, TX MSA	426,000	18
Great Plains Region IOWA, KANSAS, MISSOURI, and NEBRASKA		
KANSAS CITY, MO-KS MSA	505,000	21
ST. LOUIS, MO-IL MSA	529,000	24
Rocky Mountain Region COLORADO, MONTANA, NORTH DAKOTA, SOUTH DAKOTA, UTAH, and WYOMING		
DENVER, CO PMSA	705,000	27

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Pacific/Hawaii Region ARIZONA, CALIFORNIA, HAWAII, and NEVADA		
PHOENIX-MESA, AZ MSA	508,000	20
STATE OF NEVADA	395,000	13
STATE OF CALIFORNIA (outside of 8 EMSAs)	1,323,000	44
OAKLAND, CA PMSA	960,000	24
SACRAMENTO, CA PMSA	359,000	12
SAN FRANCISCO, CA PMSA	7,588,000	161
SAN JOSE, CA PMSA	369,000	8
Santa Ana for ORANGE COUNTY, CA PMSA	671,000	16
LOS ANGELES, CA PMSA	5,973,000	146
RIVERSIDE-SAN BERNARDINO, CA PMSA	681,000	22
SAN DIEGO, CA MSA	1,277,000	38
Northwest/Alaska Region ALASKA, IDAHO, OREGON, and WASHINGTON		
PORTLAND-VANCOUVER, OR-WA PMSA	444,000	17
SEATTLE-BELLEVUE-EVERETT, WA PMSA	958,000	30
PERSONS WITH AIDS SUBPROGRAM TOTAL	**$ 102,800,000**	**3,000**

ATTACHMENT 4A

FY 95 SECTION 8 SUBPROGRAM FOR HOMELESS FAMILES
BUDGET AUTHORITY AND ESTIMATED NUMBER OF UNITS
STATE ALLOCATIONS

Name of State	Budget Authority	Approximate Number of Units
Alabama	$2,424,000	95
Alaska	139,000	2
Arizona	900,000	28
Arkansas	1,725,000	76
California	7,894,000	199
Colorado	1,394,000	23
Connecticut	1,467,000	29
Delaware	118,000	4
Florida	3,052,000	69
Georgia	2,775,000	96
Hawaii	202,000	3
Idaho	599,000	18
Illinois	3,787,000	157
Indiana	2,757,000	98
Iowa	2,239,000	83
Kansas	1,348,000	51
Kentucky	2,176,000	86
Louisiana	2,521,000	99
Maine	942,000	27
Maryland	760,000	20
Massachusetts	3,193,000	45
Michigan	4,113,000	137
Minnesota	1,788,000	64
Mississippi	2,306,000	87
Missouri	2,046,000	88
Montana	567,000	21
Nebraska	936,000	39
Nevada	330,000	8
New Hampshire	705,000	17
New Jersey	2,048,000	44
New Mexico	879,000	32
New York	4,306,000	107
North Carolina	3,645,000	119
North Dakota	470,000	21
Ohio	4,598,000	167
Oklahoma	1,431,000	61
Oregon	1,115,000	35
Pennsylvania	4,077,000	113
Puerto Rico	3,713,000	139
Rhode Island	436,000	10
South Carolina	2,372,000	73
South Dakota	546,000	22
Tennessee	2,131,000	82
Texas	6,824,000	256
Utah	642,000	20
Vermont	437,000	13
Virginia	2,148,000	68
Washington	1,404,000	37
West Virginia	1,451,000	61
Wisconsin	2,712,000	94
Wyoming	267,000	8
TOTAL	$102,855,000	3,343

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ATTACHMENT 4B

SECTION 8 SUBPROGRAM FOR HOMELESS FAMILIES
BUDGET AUTHORITY AND ESTIMATED NUMBER OF UNITS
CITY/URBAN COUNTY ALLOCATIONS

Name of Jurisdiction	Budget Authority	Approximate Number of Units
Alabama		
BIRMINGHAM	$1,235,000	48
MOBILE	505,000	22
MONTGOMERY	431,000	16
JEFFERSON COUNTY	463,000	18
STATE TOTAL	$2,634,000	105
Alaska		
ANCHORAGE	297,000	7
STATE TOTAL	$297,000	7
Arizona		
MESA	401,000	13
PHOENIX	1,930,000	65
TUCSON	986,000	33
MARICOPA COUNTY	509,000	17
PIMA COUNTY	394,000	13
STATE TOTAL	$4,220,000	141
Arkansas		
LITTLE ROCK	340,000	13
STATE TOTAL	$340,000	13
California		
ANAHEIM	488,000	10
BAKERSFIELD	327,000	11
BERKELEY	474,000	10
FRESNO	947,000	32
LONG BEACH	1,040,000	21
LOS ANGELES	10,760,000	215
OAKLAND	1,287,000	27
OXNARD	370,000	7
PASADENA	316,000	10
POMONA	338,000	7
RIVERSIDE	390,000	11
SACRAMENTO	771,000	21
SAN BERNARDINO	427,000	12
SAN DIEGO	2,113,000	54
SAN FRANCISCO	3,129,000	54
SAN JOSE	1,313,000	24
SANTA ANA	865,000	17
STOCKTON	535,000	15
COMPTON	388,000	8
EL MONTE	388,000	8
GLENDALE	390,000	8
INGLEWOOD	305,000	6
CONTRA COSTA COUNTY	459,000	10
FRESNO COUNTY	743,000	25
KERN COUNTY	897,000	29
LOS ANGELES COUNTY	4,830,000	95
ORANGE COUNTY	617,000	12
RIVERSIDE COUNTY	1,173,000	32
SACRAMENTO COUNTY	925,000	26
SAN BERNARDINO COUNTY	1,079,000	30
SAN DIEGO COUNTY	765,000	19
SAN JOAQUIN COUNTY	455,000	13
SAN LUIS OBISPO COUNTY	330,000	8
SAN MATEO COUNTY	449,000	8
SANTA CLARA COUNTY	394,000	7
SONOMA COUNTY	319,000	7
VENTURA COUNTY	362,000	7
STATE TOTAL	$41,158,000	917
Colorado		
COLORADO SPRINGS	401,000	14
DENVER	1,621,000	49
STATE TOTAL	$2,022,000	63
Connecticut		
BRIDGEPORT	589,000	12
HARTFORD	674,000	16
NEW BRITAIN	286,000	7
NEW HAVEN	624,000	14
WATERBURY	340,000	9
STATE TOTAL	$2,513,000	58
Delaware		
WILMINGTON	423,000	12
NEW CASTLE COUNTY	366,000	10
STATE TOTAL	$789,000	22
District of Columbia	2,899,000	60
Florida		
FORT LAUDERDALE	373,000	9
HIALEAH	635,000	15
JACKSONVILLE	1,187,000	40
MIAMI	1,772,000	41
MIAMI BEACH	359,000	8
ORLANDO	327,000	9
ST. PETERSBURG	438,000	14
TALLAHASSEE	290,000	9
TAMPA	678,000	21
BREVARD COUNTY	323,000	10
BROWARD COUNTY	912,000	22
DADE COUNTY	2,633,000	60
ESCAMBIA COUNTY	390,000	16
HILLSBOROUGH COUNTY	811,000	25
ORANGE COUNTY	582,000	19
PALM BEACH COUNTY	962,000	24
PASCO COUNTY	423,000	13
PINELLAS COUNTY	498,000	16
POLK COUNTY	559,000	21
SEMINOLE COUNTY	330,000	9
VOLUSIA COUNTY	420,000	13
STATE TOTAL	$15,002,000	415
Georgia		
ATLANTA	1,714,000	50
AUGUSTA	308,000	12
COLUMBUS	399,000	16
MACON	308,000	12
SAVANNAH	434,000	15
COBB COUNTY	370,000	11
DE KALB COUNTY	639,000	18
FULTON COUNTY	359,000	10
GWINNETT COUNTY	297,000	9
STATE TOTAL	$4,828,000	153

SECTION 8 SUBPROGRAM FOR HOMELESS FAMILIES
BUDGET AUTHORITY AND ESTIMATED NUMBER OF UNITS
CITY/URBAN COUNTY ALLOCATIONS

Hawaii		
HONOLULU	1,902,000	30
STATE TOTAL	$1,902,000	30
Illinois		
CHICAGO	15,406,000	377
EAST ST. LOUIS	377,000	14
EVANSTON	290,000	7
PEORIA	344,000	13
ROCKFORD	330,000	12
CICERO	295,000	7
COOK COUNTY	1,840,000	45
DU PAGE COUNTY	542,000	13
LAKE COUNTY	377,000	9
MADISON COUNTY	524,000	19
ST. CLAIR COUNTY	330,000	12
STATE TOTAL	$20,655,000	530
Indiana		
EVANSVILLE	509,000	21
FORT WAYNE	474,000	17
GARY	693,000	23
HAMMOND	401,000	13
INDIANAPOLIS	1,510,000	51
SOUTH BEND	485,000	16
TERRE HAUTE	334,000	14
STATE TOTAL	$4,406,000	156
Iowa		
DES MOINES	674,000	22
SIOUX CITY	334,000	13
STATE TOTAL	$1,008,000	35
Kansas		
KANSAS CITY	431,000	15
TOPEKA	338,000	13
WICHITA	516,000	18
STATE TOTAL	$1,285,000	46
Kentucky		
LEXINGTON–FAYETTE	390,000	15
LOUISVILLE	1,654,000	68
COVINGTON	301,000	11
JEFFERSON COUNTY	474,000	19
STATE TOTAL	$2,819,000	113
Louisiana		
BATON ROUGE	854,000	34
HOUMA	295,000	13
NEW ORLEANS	2,659,000	95
SHREVEPORT	581,000	23
JEFFERSON PARISH	754,000	27
STATE TOTAL	$5,143,000	193
Maine		
PORTLAND	323,000	8
STATE TOTAL	$323,000	8
Maryland		
BALTIMORE	3,978,000	113
ANNE ARUNDEL COUNTY	351,000	10
BALTIMORE COUNTY	696,000	20
MONTGOMERY COUNTY	696,000	14
PRINCE GEORGES COUNTY	886,000	18
STATE TOTAL	$6,607,000	175
Massachusetts		
BOSTON	3,215,000	70
CAMBRIDGE	488,000	11
FALL RIVER	449,000	12
LAWRENCE	330,000	9
LOWELL	344,000	9
LYNN	438,000	10
NEW BEDFORD	455,000	14
SPRINGFIELD	667,000	19
WORCESTER	750,000	19
NEWTON	327,000	7
QUINCY	323,000	7
SOMERVILLE	459,000	10
STATE TOTAL	$8,245,000	196
Michigan		
DEARBORN	351,000	11
DETROIT	7,760,000	237
FLINT	811,000	50
GRAND RAPIDS	617,000	21
KALAMAZOO	301,000	11
LANSING	305,000	10
PONTIAC	286,000	9
SIGINAW	444,000	16
GENESSEE COUNTY	416,000	15
OAKLAND COUNTY	574,000	18
WAYNE COUNTY	516,000	16
STATE TOTAL	$12,381,000	393
Minnesota		
MINNEAPOLIS	2,217,000	69
ST. PAUL	1,235,000	35
HENNEPIN COUNTY	477,000	14
ST. LOUIS COUNTY	879,000	36
STATE TOTAL	$4,808,000	148
Mississippi		
JACKSON	557,000	20
STATE TOTAL	$557,000	20
Missouri		
KANSAS CITY	1,636,000	55
ST. JOSEPH	334,000	16
ST. LOUIS	3,792,000	140
ST. LOUIS COUNTY	990,000	36
STATE TOTAL	$6,752,000	250
Nebraska		
OMAHA	912,000	32
STATE TOTAL	$912,000	32
Nevada		
LAS VEGAS	434,000	12
CLARK COUNTY	503,000	13
STATE TOTAL	$937,000	25

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SECTION 8 SUBPROGRAM FOR HOMELESS FAMILIES
BUDGET AUTHORITY AND ESTIMATED NUMBER OF UNITS
CITY/URBAN COUNTY ALLOCATIONS

New Jersey		
ATLANTIC CITY	305,000	7
CAMDEN	531,000	13
ELIZABETH	384,000	8
JERSEY CITY	1,205,000	26
NEWARK	1,805,000	37
PATERSON	542,000	10
TRENTON	524,000	12
BAYONNE	316,000	7
BERGEN COUNTY	1,751,000	33
BURLINGTON COUNTY	297,000	7
CAMDEN COUNTY	377,000	9
ESSEX COUNTY	973,000	20
HUDSON COUNTY	836,000	18
MONMOUTH COUNTY	470,000	9
MORRIS COUNTY	316,000	6
OCEAN COUNTY	330,000	7
UNION COUNTY	854,000	17
STATE TOTAL	$11,816,000	246
New Mexico		
ALBUQUERQUE	721,000	24
STATE TOTAL	$721,000	24
New York		
ALBANY	617,000	18
BINGHAMTON	388,000	14
BUFFALO	2,877,000	100
NEW YORK CITY	30,768,000	643
NIAGARA FALLS	463,000	16
ROCHESTER	1,558,000	47
SCHENECTADY	409,000	12
SYRACUSE	1,016,000	34
TROY	323,000	10
UTICA	503,000	19
ISLIP TOWN	334,000	6
MOUNT VERNON	308,000	5
TONAWANDA TOWN	286,000	10
YONKERS	609,000	11
ROCKLAND COUNTY	305,000	6
ERIE COUNTY	416,000	14
MONROE COUNTY	290,000	9
NASSAU COUNTY	2,217,000	38
SUFFOLK COUNTY	617,000	10
WESTCHESTER COUNTY	821,000	14
STATE TOTAL	$45,125,000	1,037
North Carolina		
CHARLOTTE	628,000	21
GREENSBORO	295,000	11
RALEIGH	312,000	10
STATE TOTAL	$1,235,000	42
Ohio		
AKRON	1,173,000	38
CANTON	509,000	20
CINCINNATI	2,236,000	79
CLEVELAND	4,349,000	148
COLUMBUS	1,227,000	44
DAYTON	1,127,000	39
SPRINGFIELD	344,000	12
TOLEDO	1,266,000	45
YOUNGSTOWN	804,000	34
LAKEWOOD	305,000	10
CUYAHOGA COUNTY	481,000	16
FRANKLIN COUNTY	316,000	11
HAMILTON COUNTY	524,000	19
MONTGOMERY COUNTY	370,000	13
STATE TOTAL	$15,031,000	528
Oklahoma		
OKLAHOMA CITY	875,000	35
TULSA	667,000	24
STATE TOTAL	$1,542,000	60
Oregon		
PORTLAND	1,506,000	48
CLACKAMAS COUNTY	319,000	10
WASHINGTON COUNTY	284,000	9
STATE TOTAL	$2,109,000	68
Pennsylvania		
ALLENTOWN	431,000	13
ALTOONA	349,000	16
ERIE	600,000	25
HARRISBURG	401,000	13
JOHNSTOWN	301,000	15
LANCASTER	290,000	9
PHILADELPHIA	9,166,000	231
PITTSBURGH	3,021,000	113
READING	516,000	17
SCRANTON	563,000	22
WILKES-BARRE	319,000	13
YORK	284,000	10
CHESTER	286,000	7
UPPER DARBY TOWNSHIP	323,000	8
ALLEGHENY COUNTY	2,544,000	95
BEAVER COUNTY	657,000	25
BERKS COUNTY	412,000	14
BUCKS COUNTY	355,000	9
CHESTER COUNTY	416,000	10
DELAWARE COUNTY	589,000	15
LANCASTER COUNTY	505,000	16
LUZERNE COUNTY	757,000	30
MONTGOMERY COUNTY	531,000	13
WASHINGTON COUNTY	761,000	28
WESTMORELAND COUNTY	682,000	25
YORK COUNTY	394,000	14
STATE TOTAL	$25,453,000	807
Puerto Rico		
AGUADILLA MUNICIPIO	381,000	21
ARECIBO MUNICIPIO	589,000	22
CAGUAS MUNICIPIO	711,000	32
CAYEY MUNICIPIO	297,000	13
MAYAGUEZ MUNICIPIO	589,000	32
PONCE MUNICIPIO	1,202,000	46
SAN JUAN MUNICIPIO	2,152,000	82
BAYAMON MUNICIPIO	973,000	37
CAROLINA MUNICIPIO	778,000	30
GUAYNABO MUNICIPIO	401,000	15
HUMACAO MUNICIPIO	327,000	12
TOA BAJA MUNICIPIO	463,000	18
TRUJILLO ALTO MUNICIPIO	290,000	11
VEGA BAJA MUNICIPIO	351,000	13
STATE TOTAL	$9,504,000	384
Rhode Island		
PAWTUCKET	319,000	8
PROVIDENCE	1,005,000	27
WOONSOCKET	197,000	5
STATE TOTAL	$1,521,000	40

SECTION 8 SUBPROGRAM FOR HOMELESS FAMILIES
BUDGET AUTHORITY AND ESTIMATED NUMBER OF UNITS
CITY/URBAN COUNTY ALLOCATIONS

South Carolina		
GREENVILLE COUNTY	362,000	15
STATE TOTAL	$362,000	15
Tennessee		
CHATTANOOGA	351,000	14
KNOXVILLE	370,000	15
MEMPHIS	1,725,000	66
NASHVILLE-DAVIDSON	879,000	30
STATE TOTAL	$3,325,000	124
Texas		
AMARILLO	334,000	14
ARLINGTON	316,000	10
AUSTIN	1,023,000	28
BEAUMONT	319,000	13
BROWNSVILLE	538,000	19
CORPUS CHRISTI	717,000	26
DALLAS	2,457,000	74
EL PASO	1,658,000	59
FORT WORTH	1,019,000	33
HOUSTON	4,570,000	141
LAREDO	589,000	22
LUBBOCK	459,000	17
MC ALLEN	344,000	14
SAN ANTONIO	2,759,000	93
WACO	305,000	11
BEXAR COUNTY	334,000	11
FORT BEND COUNTY	286,000	9
HARRIS COUNTY	1,285,000	40
HIDALGO COUNTY	1,131,000	47
TARRANT COUNTY	488,000	16
STATE TOTAL	$20,931,000	698
Utah		
PROVO	286,000	12
SALT LAKE CITY	707,000	27
SALT LAKE COUNTY	553,000	21
STATE TOTAL	$1,546,000	59
Virginia		
NEWPORT NEWS	297,000	9
NORFOLK	850,000	27
PORTSMOUTH	301,000	10
RICHMOND	775,000	25
ROANOKE	295,000	12
VIRGINIA BEACH	390,000	12
ARLINGTON COUNTY	301,000	5
FAIRFAX COUNTY	700,000	14
STATE TOTAL	$3,909,000	116
Washington		
SEATTLE	1,944,000	51
SPOKANE	624,000	21
TACOMA	416,000	13
KING COUNTY	819,000	22
PIERCE COUNTY	548,000	17
SNOHOMISH COUNTY	401,000	11
STATE TOTAL	$4,752,000	134
West Virginia		
CHARLESTON	351,000	15
HUNTINGTON	388,000	18
STATE TOTAL	$739,000	33
Wisconsin		
MADISON	334,000	10
MILWAUKEE	2,852,000	81
RACINE	316,000	11
STATE TOTAL	$3,502,000	109
NATIONAL TOTAL	$308,565,000	8,828

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ATTACHMENT 5

FY 95 SECTION 8 COUNSELING FUNDS

	METROPOLITAN STATISTICAL AREA	LEAD HOUSING AGENCY	SECTION 8 BUDGET AUTHORITY
1	NEW YORK, NY	NEW YORK CITY HOUSING AUTHORITY	$10,000,000
2	LOS ANGELES–LONG BEACH, CA	HOUSING AUTHORITY OF CITY OF LOS ANGELES	$10,000,000
3	CHICAGO, IL	COOK COUNTY HOUSING AUTHORITY	$8,350,000
4	BOSTON, MA	BOSTON HOUSING AUTHORITY	$4,959,000
5	PHILADELPHIA, PA	PHILADELPHIA HOUSING AUTHORITY	$4,684,000
6	WASHINGTON, DC	PRINCE GEORGE'S COUNTY HOUSING AUTHORITY	$3,969,000
7	DETROIT, MI	MICHIGAN STATE HOUSING DEVELOPMENT AGENCY	$3,623,000
8	OAKLAND, CA	OAKLAND HOUSING AUTHORITY	$2,855,000
9	MIAMI, FL	DADE COUNTY SPECIAL HOUSING PROGRAMS	$2,844,000
10	NEWARK, NJ	NEWARK HOUSING AUTHORITY	$2,752,000
11	SAN DIEGO, CA	SAN DIEGO CITY HOUSING COMMISSION	$2,679,000
12	HOUSTON, TX	HOUSTON HOUSING AUTHORITY	$2,549,000
13	BALTIMORE, MD	BALTIMORE CITY HOUSING AUTHORITY	$2,121,000
14	DALLAS, TX	DALLAS HOUSING AUTHORITY	$1,945,000
15	CLEVELAND–LORAIN–ELY, OH	CUYAHOGA METROPOLITAN HOUSING AUTHORITY	$1,835,000
16	RIVERSIDE–SAN BERNARDINO, CA	RIVERSIDE HOUSING AUTHORITY	$1,810,000
17	ATLANTA, GA	DEKALB COUNTY HOUSING AUTHORITY	$1,803,000
18	PITTSBURGH, PA	PITTSBURGH HOUSING AUTHORITY	$1,793,000
19	MINNEAPOLIS–ST. PAUL, MN	METROPOLITAN COUNCIL	$1,745,000
20	MILWAUKEE–WAUKESHA, WI	MILWAUKEE HOUSING AUTHORITY	$1,697,000
21	ST. LOUIS, MO–IL	ST. LOUIS COUNTY HOUSING AUTHORITY	$1,443,000
22	PROVIDENCE, RI	PROVIDENCE HOUSING AUTHORITY	$1,380,000
23	BUFFALO–NIAGARA FALLS, NY	BUFFALO RENTAL ASSISTANCE COUNCIL	$1,377,000
24	PHOENIX–MESA, AZ	PHOENIX HOUSING DEPARTMENT	$1,322,000
25	CINCINNATI, OH–KY–IN	CINCINNATI METROPOLITAN HOUSING AUTHORITY	$1,244,000
26	NEW ORLEANS, LA	HOUSING AUTHORITY OF NEW ORLEANS	$1,207,000
27	TAMPA–ST. PETERSBURG, FL	TAMPA HOUSING AUTHORITY	$1,187,000
28	DENVER, CO	DENVER HOUSING AUTHORITY	$1,185,000
29	SACRAMENTO, CA	SACRAMENTO HOUSING & REDEVELOPMENT	$1,169,000
30	HARTFORD, CT	HARTFORD HOUSING AUTHORITY	$1,148,000
31	SAN JUAN–BAYAMON, PR	SAN JUAN HOUSING AUTHORITY	$1,109,000
32	ROCHESTER, NY	ROCHESTER HOUSING AUTHORITY	$1,040,000
33	NORFOLK–VIRGINIA BEACH, VA	NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY	$965,000
34	COLUMBUS, OH	COLUMBUS METROPOLITAN HOUSING AUTHORITY	$954,000
35	SAN ANTONIO, TX	SAN ANTONIO HOUSING AUTHORITY	$944,000
36	FORT LAUDERDALE, FL	FT. LAUDERDALE HOUSING AUTHORITY	$934,000
37	INDIANAPOLIS, IN	INDIANAPOLIS PUBLIC HOUSING DIVISION	$895,000
38	KANSAS CITY, KS–MO	KANSAS CITY, KANSAS, HOUSING AUTHORITY	$871,000
39	AUSTIN–SAN MARCOS, TX	AUSTIN HOUSING AUTHORITY	$863,000
40	FORT WORTH–ARLINGTON, TX	FORT WORTH HOUSING AUTHORITY	$792,000
41	SPRINGFIELD, MA	SPRINGFIELD HOUSING AUTHORITY	$774,000
42	ORLANDO, FL	ORLANDO HOUSING AUTHORITY	$751,000
43	FRESNO, CA	FRESNO CITY HOUSING AUTHORITY	$747,000
44	DAYTON–SPRINGFIELD, OH	DAYTON METROPOLITAN HOUSING AUTHORITY	$712,000
45	MEMPHIS, TN–AR–MS	MEMPHIS HOUSING AUTHORITY	$628,000
46	SYRACUSE, NY	SYRACUSE HOUSING AUTHORITY	$616,000
47	CHARLOTTE–GASTONIA, NC	CHARLOTTE HOUSING AUTHORITY	$607,000
48	NASHVILLE, TN	NASHVILLE HOUSING AUTHORITY	$585,000
49	RICHMOND–PETERSBURG, VA	RICHMOND REDEVELOPMENT & HOUSING AUTHORITY	$573,000
50	STOCKTON–LODI, CA	COUNTY OF SAN JOAQUIN HOUSING AUTHORITY	$539,000
51	LOUISVILLE, KY–IN	LOUISVILLE HOUSING AUTHORITY	$534,000
52	TUCSON, AZ	CITY OF TUCSON COMMUNITY SERVICES DEPARTMENT	$523,000
53	EL PASO, TX	EL PASO HOUSING AUTHORITY	$520,000
54	JACKSONVILLE, FL	JACKSONVILLE DHUD	$516,000
55	GRAND RAPIDS–MUSKEGON–HOLLAND, MI	GRAND RAPIDS HOUSING COMMISSION	$504,000
56	OKLAHOMA CITY, OK	OKLAHOMA CITY HOUSING AUTHORITY	$494,000
57	AKRON, OH	AKRON METROPOLITAN HOUSING AUTHORITY	$485,000
58	TOLEDO, OH	TOLEDO METROPOLITAN HOUSING AUTHORITY	$475,000
59	BAKERSFIELD, CA	KERN COUNTY HOUSING AUTHORITY	$426,000
60	BIRMINGHAM, AL	BIRMINGHAM HOUSING AUTHORITY	$420,000
61	GARY, IN	GARY HOUSING AUTHORITY	$404,000
62	TULSA, OK	TULSA HOUSING AUTHORITY	$391,000
63	YOUNGSTOWN–WARREN, OH	YOUNGSTOWN HOUSING AUTHORITY	$359,000
64	ALBUQUERQUE, NM	ALBUQUERQUE HOUSING AUTHORITY	$357,000
65	LANSING–EAST LANSING, MI	LANSING HOUSING AUTHORITY	$340,000
66	CHARLESTON–N. CHARLESTON, SC	HOUSING AUTHORITY OF THE CITY OF CHARLESTON	$330,000
67	KALAMAZOO–BATTLE CREEK, MI	BATTLE CREEK HOUSING AUTHORITY	$324,000

68	LEXINGTON, KY	LEXINGTON HOUSING AUTHORITY	$313,000
69	FLINT, MI	FLINT HOUSING AUTHORITY	$313,000
70	KNOXVILLE, TN	KNOXVILLE HOUSING AUTHORITY	$303,000
71	SAGINAW–BAY CITY–MIDLAND, MI	SAGINAW HOUSING AUTHORITY	$294,000
72	BATON ROUGE, LA	BATON ROUGE CITY HOUSING AUTHORITY	$288,000
73	VISALIA–TULARE–PORTERVILLE, CA	TULARE COUNTY HOUSING AUTHORITY	$277,000
74	LITTLE ROCK–N. LITTLE ROCK, AR	LITTLE ROCK HOUSING AUTHORITY	$273,000
75	JACKSON, MS	JACKSON HOUSING AUTHORITY	$242,000
76	CORPUS CHRISTI, TX	CORPUS CHRISTI HOUSING AUTHORITY	$230,000
77	MOBILE, AL	MOBILE HOUSING AUTHORITY	$228,000
78	PONCE, PR	PONCE HOUSING AUTHORITY	$219,000
79	SHREVEPORT–BOSSIER CITY, LA	SHREVEPORT HOUSING AUTHORITY	$219,000
80	SAVANNAH, GA	SAVANNAH HOUSING AUTHORITY	$201,000
81	TALLAHASSEE, FL	TALLAHASSEE HOUSING AUTHORITY	$192,000
82	BROWNSVILLE–HARLINGEN–SAN BENITO, TX	BROWNSVILLE HOUSING AUTHORITY	$192,000
83	BEAUMONT–PORT ARTHUR, TX	BEAUMONT HOUSING AUTHORITY	$187,000
84	MC ALLEN–EDINBURG–MISSION, TX	EDINBURG HOUSING AUTHORITY	$187,000
85	HUNTINGTON–ASHLAND, WV–KY–OH	HUNTINGTON HOUSING AUTHORITY	$182,000
86	MACON, GA	MACON HOUSING AUTHORITY	$180,000
87	COLUMBUS, GA–AL	COLUMBUS HOUSING AUTHORITY	$173,000
88	GAINESVILLE, FL	GAINESVILLE HOUSING AUTHORITY	$171,000
89	MONTGOMERY, AL	MONTGOMERY HOUSING AUTHORITY	$160,000
		NATIONAL TOTAL	$115,000,000

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Attachment 6A

FSS Service Coordinators Sample Letter Format
REQUEST FOR FSS PROGRAM COORDINATOR FUNDS
SAMPLE LETTER FORMAT

Dear Director, Office of Public Housing: (or Administrator, Native American Programs Office:)

This is to request approval to hire a Family Self-Sufficiency (FSS) program coordinator for one year, for the X housing agency (HA) FSS program.

1. Total Number of Currently Enrolled FSS Families: _____.

2. Total Number of Required FSS Program Slots (based on rental vouchers and certificates approved under FY 1992 incentive award funding and under FY 1993 and later rental voucher and certificate program funding): _____.

3. Service Coordinator Salary:

a. Salary level, based on salaries for comparable jobs (modified by number of hours worked) _____.

b. Annual Salary plus Fringe Benefits:

_____ Hours/Week; _____ $/Hour; _____ Fringe Rate (%);

Annual Salary _____.

4. Attachment: Evidence demonstrating salary comparability to similar positions in the local jurisdiction.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director

Attachments

ATTACHMENT 6B

FAIR HOUSING AND EQUAL OPPORTUNITY CERTIFICATIONS

The housing agency (HA) certifies that, in administering the activities of Family Self-Sufficiency program coordinators:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 and related HUD regulations (24 CFR Part 1), which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act and related HUD regulations (24 CFR Part 100), which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Section 504 of the Rehabilitation Act of 1973 and related HUD regulations (24 CFR Part 8), which state that no otherwise qualified individual with handicaps in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(4) The HA will comply with the provisions of the Age Discrimination Act of 1975 and related HUD regulations (24 CFR Part 146), which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of Title II of the Americans with Disabilities Act and related Department of Justice regulations (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

Name of HA

_____

Signature and Title of HA Representative Date

_____ _____

[FR Doc. 95–5184 Filed 2–28–95; 8:45 am]
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Part III

Department of Education

34 CFR Part 75
Direct Grant Programs; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA61

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) to permit the Department to consider for funding, under appropriate discretionary grant programs administered by the Department, unsolicited grant applications. The Secretary takes this action as part of the Department's overall effort at re-invention. The authority to consider unsolicited applications allows the Department to respond to truly exceptional applications of national significance that might not conform to the Department's announced annual competitions.

EFFECTIVE DATE: These regulations take effect April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Vick, Grants Division, GCS, U.S. Department of Education, (Room 3636, ROB–3), 600 Independence Avenue, S.W., Washington, D.C., 20202–4700. Telephone: (202) 708–8199. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary amends EDGAR to make a change in the procedures for selecting applications for new grants. The Secretary continues to believe that the vast majority of discretionary grant funds should be awarded on the basis of competition, and that for some of these competitions the Department should establish funding priorities in order to focus limited resources on critical issues and problems. However, the Secretary is also concerned that the constraints of the Department's grant schedules and funding priorities may preclude the Department's consideration of truly exceptional applications representing novel approaches to issues facing the nation or other groundbreaking ideas or methods appropriate to Department of Education programs.

Under these amendments to EDGAR, the Department will continue to use existing procedures for announcing grant competitions and selecting applications for new grants. On what the Secretary expects to be rare occasions, the Secretary will also consider unsolicited applications that were not submitted in response to an application notice published in the **Federal Register**. However, the Secretary does not consider unsolicited applications under a program if the program office has published a notice in the **Federal Register** indicating that unsolicited applications will not be considered for that year.

Any unsolicited applications that meet the requirements for existing or upcoming competitions of the Department will be considered under those competitions. Applications that could have been considered under competitions for which deadlines have passed will not be considered for funding as unsolicited applications unless the Secretary determines on an individual basis that, because of an exceptional circumstance, consideration of an application is warranted. Inability to meet a deadline for submitting an application under a grant competition, by itself, is not such a circumstance.

Analysis of Comments and Changes

The Secretary published a notice of proposed rulemaking (NPRM) on December 9, 1994 (59 FR 63878). Two comments were received on the NPRM. Except for minor editorial and technical revisions, the Secretary has made no changes in these regulations since publication of the NPRM. A note has been added following § 75.222 informing applicants of the address to which unsolicited applications should be sent to assure prompt consideration. An analysis of the comments follows.

Comment: One commenter expressed support for the amendments permitting the Secretary to consider unsolicited applications.

Discussion: None.

Changes: None.

Comment: One commenter questioned the source of the money to fund unsolicited applications and recommended an annual competition without priorities, format requirements, or regulations, to fund unsolicited applications.

Discussion: Funding for unsolicited applications will come from available, but unobligated, funds for the program under which the application is considered for selection. An unsolicited application would be considered only if it would not have an adverse impact on the funds available for other awards planned for the program. Since the unsolicited applications would not be competing against each other, but would be considered on an individual basis to determine if they are of exceptional quality, the Secretary believes limiting the consideration of unsolicited applications to an annual competition would be unnecessarily restrictive.

Changes: None.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 27, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.219 is amended by removing the word "or" at the end of paragraph (a), removing the period at the end of paragraph (b)(3) and adding, in its place, "; or" and adding a new paragraph (c) to read as follows:

§ 75.219 Exceptions to the procedures under § 75.217.

* * * * *

(c) The Secretary receives an unsolicited application that meets the requirements of § 75.222.

3. Section 75.222 is redesignated as § 75.221.

4. A new § 75.222 is added to read as follows:

§ 75.222 Procedures the Department uses under § 75.219(c).

If the Secretary receives an unsolicited application, the Secretary may consider the application under the following procedures unless the Secretary has published a notice in the **Federal Register** stating that the program that would fund the application would not consider unsolicited applications:

(a)(1) The Secretary determines whether the application could be funded under a competition planned or conducted for the fiscal year under which funds would be used to fund the application.

(2)(i) If the application could be funded under a competition described in paragraph (a)(1) of this section and the deadline for submission of applications has not passed, the Secretary refers the application to the appropriate competition for consideration under the procedures in § 75.217.

(ii)(A) If the application could have been funded under a competition described in paragraph (a)(1) of this section and the deadline for submission of applications has passed, the Secretary may consider the application only in exceptional circumstances, as determined by the Secretary.

(B) If the Secretary considers an application under paragraph (a)(2)(ii) of this section, the Secretary considers the application under paragraphs (b) through (e) of this section.

(iii) If the application could not be funded under a competition described in paragraph (a)(1) of this section, the Secretary considers the application under paragraphs (b) through (e) of this section.

(b) If an application may be considered under paragraphs (a)(2)(ii) or (iii) of this section, the Secretary determines if—

(1) There is a substantial likelihood that the application is of exceptional quality and national significance for a program administered by ED;

(2) The application meets the requirements of all applicable statutes and codified regulations that apply to the program; and

(3) Selection of the project will not have an adverse impact on the funds available for other awards planned for the program.

(c) If the Secretary determines that the criteria in paragraph (b) of this section have been met, the Secretary assembles a panel of experts that does not include any employees of the Department to review the application.

(d) The experts—

(1) Evaluate the application based on the selection criteria; and

(2) Determine whether the application is of such exceptional quality and national significance that it should be funded as an unsolicited application.

(e) If the experts highly rate the application and determine that the application is of such exceptional quality and national significance that it should be funded as an unsolicited application, the Secretary may fund the application.

Note to § 75.222: To assure prompt consideration, applicants submitting unsolicited applications should send the application, marked "Unsolicited Application" on the outside, to the Chief, Application Control Center, U.S. Department of Education, Washington, DC 20202–4725.

(Authority: 20 U.S.C. 1221e–3 and 3474)

[FR Doc. 95–5222 Filed 3–2–95; 8:45 am]

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Part IV

The President

Proclamation 6773—Women's History
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Presidential Documents

Title 3—

The President

Proclamation 6773 of March 1, 1995

Women's History Month, 1995

By the President of the United States of America

A Proclamation

Women have made inestimable contributions to our country throughout our Nation's history. Some have names we recognize. Clara Barton. Harriet Tubman. Susan B. Anthony. Eleanor Roosevelt. And Rosa Parks. But women's history is also about the countless women whose names we do not know—the millions of women of courage and commitment who have served this society as doctors and scientists, teachers and factory workers, marathoners and mothers. At home and in schools, in offices and congregations, in our Armed Forces and our communities, women have helped to build this Nation and keep it strong. It is in their honor that we pause to celebrate Women's History Month each year.

The story of women's accomplishments in America is long and proud. Patriots such as Dolly Madison and Harriet Beecher Stowe put their concern for country ahead of their own well-being in order to advance the principles of justice and freedom upon which this Nation was founded. Writers and artists such as Emily Dickinson, Georgia O'Keeffe, and Martha Graham enlivened our culture, extended our horizons, and expanded our appreciation of the world around us. And in recent decades, women have made enormous strides. The pioneers such as Jane Addams, founder of Chicago's Hull House and our first woman Nobel Prize winner, and Frances Perkins, our first woman Cabinet Officer, have paved the way for ever growing numbers of women running businesses and universities, serving as governors and diplomats, conducting orchestras and exploring space, helping to lead our land toward a new century.

Yet barriers remain. Women now work for pay in greater numbers, in more occupations, and for more years of their lives than ever before, but too many must still settle for compensation far below what it should be, and too many still find their potential curbed by glass ceilings. And women still struggle every day, in tests of resourcefulness and devotion, to balance the demands of work and family. If freedom and opportunity are truly to be the law of the land, we must sustain and renew our commitment to the principle of equality that is our American heritage and work to remove the obstacles that stand in the way.

Women's History Month offers us an opportunity to celebrate the contributions of all of the women who have enriched our Nation. I encourage Americans to learn about women's history—this month and throughout the year. Only by studying the history of America's women—their triumphs and their struggles—can we understand the history of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1995 as "Women's History Month." I ask all Americans to observe this month with appropriate programs, ceremonies, and activities, and to remember year-round the many and varied contributions that women make each day.

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IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-5476
Filed 3-2-95; 9:18 am]
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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 543, 552, and 571

[No. 94–158]

RIN 1550–AA76

"De Novo" Applications for a Federal Savings Association Charter

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today proposing a regulation incorporating, with certain changes, its current statement of policy on "*de novo*" applications for a federal savings association charter (Policy Statement). The proposed changes are intended not only to make the Policy Statement into a regulation, but also to conform it with current law and to facilitate the application process by simplifying the regulatory scheme, thereby reducing the cost of compliance.

The Federal Home Loan Bank Board (FHLBB), the OTS's predecessor agency, originally promulgated the Policy Statement to provide specific guidance on the content of *de novo* applications. Many provisions in the current Policy Statement have, however, become obsolete or redundant, or are otherwise unnecessary, as a result of changes in federal laws and regulations addressing capital adequacy, business plans, officer and director qualifications, insider conflicts of interest and transactions with affiliates. These revised statutes and regulations now adequately address many of the issues previously covered by the Policy Statement. Because the remaining revised OTS *de novo* provisions contain requirements, not merely guidance, the OTS believes that they should be recodified as a regulation.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Send comments to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 94–158. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5:00 P.M. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Gary Masters, Financial Analyst, Corporate Activities Division (202) 906–6729; Therese L. Monahan, Project Manager, Thrift Policy (202) 906–5740; or Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS today proposes a new regulation to revise and update its treatment of *de novo* applications for federal savings association charters.

The FHLBB originally promulgated the Policy Statement, which appears at section 571.6 of the OTS's rules,[1] to explain its policies relating to the approval of insurance applications for newly created, so-called *de novo*, institutions. At that time, the FHLBB was the operating head of the Federal Savings and Loan Insurance Corporation, the insurance fund for thrifts, and *de novo* applications included not only applications for permission to organize and requests for a federal charter, but also applications for insurance of accounts.[2] Sweeping statutory reforms in the past few years, particularly the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[3] (FIRREA), and the Federal Deposit Insurance Corporation Improvement Act of 1991[4] (FDICIA), have effected significant changes in the structure of the agency and the scope of its mission. For example, under FIRREA, the OTS succeeded to the chartering and supervisory functions of the FHLBB, but the insurance function was transferred to the Federal Deposit Insurance Corporation (FDIC).

FIRREA and FDICIA have also rewritten much of the substantive law relevant to the OTS's *de novo* approval process. For instance, section 32 of the Federal Deposit Insurance Act (FDIA), which was added by section 914 of FIRREA, requires officers and directors for a *de novo* to be approved by the OTS.[5] In addition, the OTS's regulations regarding transactions with affiliates and conflicts of interest have been substantially revised due to the incorporation, through section 11 of the Home Owners' Loan Act (HOLA),[6] of the substance of sections 23A, 23B, 22(g) and 22(h) of the Federal Reserve Act (FRA). Finally, the OTS's policy concerning net worth maintenance agreements also has changed; such agreements are no longer required in the context of *de novo* applications.

Although the Policy Statement has been amended over the years to integrate some of these changes in the law,[7] a thorough revision is now warranted to conform the OTS's de novo chartering policies with the totality of significant statutory and regulatory changes that have recently occurred.

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[1] Unless otherwise indicated, all references to specific parts and sections in text will be to title 12 of the Code of Federal Regulations.

[2] A bank or other depository institution that converts to a thrift charter is not a *de novo* association, as that term is defined under the current OTS Policy Statement. The definition excludes "any entity the business of which has been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association." *See* 12 CFR 571.6(g). Thus, the provisions of the Policy Statement do not apply to such conversions. The requirements of the qualified thrift lender test do, however, apply. For purposes of the qualified thrift lender test, the term "*de novo* association" includes any newly chartered thrift (including a bank that converts to a thrift charter). This result is consistent with the intent and purpose of the qualified thrift lender test. *See* OTS Chief Counsel's Op., March 11, 1992.

[3] Pub. L. No. 101–73, 103 Stat. 183 (1989).

[4] Pub. L. No. 102–242, 105 Stat. 2236 (1991).

[5] *See* OTS Thrift Bulletin No. 45 (April 25, 1990).

[6] 12 U.S.C.A. 1468 (West Supp. 1994).

[7] *See* 48 FR 51270 (November 7, 1983); 48 FR 54320 (December 2, 1983); 54 FR 49411 (November 30, 1989).

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The OTS, therefore, proposes to remove obsolete statutory references, eliminate redundancy, enhance where possible consistency with the policies of other federal banking agencies, clarify the OTS's most recent policy considerations, and generally provide for more flexible standards for processing applications for the establishment of *de novo* federal savings associations. The OTS also intends to recodify these provisions as part of its regulations on the incorporation of federal savings associations.

II. Statutory and Regulatory Requirements

A. Statutory Requirements

The statutory chartering and insurance framework initially established by FIRREA provided that the FDIC could insure the accounts of a *de novo* federal savings association upon application by the savings association and upon receipt by the FDIC of a certificate issued by the Director of the OTS.[8] The OTS, as chartering authority for federal savings associations, was required to certify to the FDIC that it had considered certain factors, set forth at section 6 of the Federal Deposit Insurance Act (FDIA), in granting a federal thrift charter. These factors included: (1) the financial history and condition of the association; (2) the adequacy of its capital structure; (3) its future earnings prospects; (4) the character and fitness of its proposed management; (5) the risk presented to the insurance fund; (6) the convenience and needs of the community to be served; and (7) whether the association's proposed corporate powers would be consistent with the purposes of the FDIA.[9]

FDICIA removed this certification requirement. Instead, a *de novo* federal savings association may obtain insurance of its accounts "upon application and examination by the [FDIC] and approval by the [FDIC] Board of Directors * * *."[10] In acting on the application for insurance, the FDIC Board is required to consider the statutory factors enumerated at section 6 of the FDIA and set forth above. FDICIA made no changes to the section 6 factors. The FDIC has issued a Statement of Policy Regarding Applications for Deposit Insurance (FDIC Policy Statement) which establishes the standards used by the FDIC in granting deposit insurance and provides guidelines for making applications for insured status.[11]

Although the OTS is no longer required to certify to the FDIC that it has considered the factors in section 6 of the FDIA, section 5(e) of the HOLA[12] requires the OTS to make findings that resemble the section 6 factors before granting a federal charter. Section 5(e) of the HOLA requires the OTS to determine: (1) the character of the organizers; (2) the need for the association in the community to be served; (3) the reasonable probability of the association's usefulness and success; and (4) whether the association can be established without undue injury to existing local thrift and home financing institutions. In addition, pursuant to the Community Reinvestment Act of 1977[13] (CRA), the OTS must assess the new institution's proposed CRA statement and plans for meeting the credit needs of its community (including low- and moderate-income neighborhoods) and must take that assessment into account in determining whether to grant a charter.

B. Current OTS Policy Statement

Minimum Capitalization Requirement and Business and Investment Plans. The current OTS Policy Statement sets the minimum level of capitalization for *de novo* institutions at $3 million, with a provision that the Office will consider approving a *de novo* applicant having at least $2 million if certain criteria are met. Among those criteria are that the applicant would be located in, and intended to serve, an area with a population not exceeding 50,000, and that the applicant will be community-oriented.

The current OTS Policy Statement provides that the Office must consider certain factors in order for an applicant to obtain insurance of accounts by the FDIC. Among the factors to be considered are the association's future earnings prospects, the general character and fitness of the association's management, and the convenience and needs of the community to be served. The Office may grant a new charter only if, among other things, in the judgment of the Director a necessity exists for such association in the community to be served.

Policies Pertaining to Management Officials. The current OTS Policy Statement requires controlling shareholders to personally agree to maintain the association's required regulatory capital for a minimum of five years. It also contains provisions requiring the filing of a plan to identify areas where conflicts of interest and abuse of corporate opportunity may occur.

Standard Approval Conditions. Currently, standard conditions on application approvals are not listed in the policy statement. Standard conditions, however, are imposed for all approvals of *de novo* applications and are contained in the OTS's Applications Processing Handbook.

III. Description of Proposed Revisions

A. Deletion of Obsolete Statutory References and Deletion of Certain Duplicative Factors

The proposal would delete obsolete statutory references. Current § 571.6(b) contains language requiring that the OTS certify to the FDIC that it has considered the factors listed under section 5(a)(2) of the FDIA.[14] Since FDICIA eliminated this certification requirement from the statute, we propose a parallel deletion from the rule. These pre-FDICIA certification requirements are also contained in §§ 543.2(g)(2) and 552.2–1(b)(2), which address the organization of federal mutual and federal stock institutions, respectively. We similarly propose to delete these sections in their entirety.

The proposal would also delete current section 571.6(b)(2), which contains language regarding certain factors considered in evaluating applications to organize a federal savings association. Among others, these factors require the agency to consider whether there is a reasonable probability of the association's usefulness and success, and whether, in the judgment of the Director of the OTS, a necessity exists for the association in the community to be served. These factors are duplicative of the factors that already appear in sections 543.2(g)(1) and 552.2–1(b)(1).

B. Other Proposed Revisions

Minimum Capitalization and Business Plan Requirements. The proposal revises the minimum capitalization and business plan requirements for *de novo* applicants. When the Policy Statement was first adopted, since *de novo* applicants did not have a proven "track record" or a supervisory history, the FHLBB believed it was appropriate to set a minimum level of capitalization for *de novo* associations. In addition, the FHLBB believed that *de novo* associations, as new companies, presented risks not associated with other institutions. These minimum capitalization requirements were intended to ensure that a *de novo* institution commenced operations in a safe and sound manner and to protect the insurance fund. To the same end, the FHLBB also required submission of detailed information on the institution's business plan for its first few years of operation, including descriptions of proposed management, management policies, investment policies and operations.

Minimum capitalization and business plan requirements remain appropriate safeguards because of the absence, in the case of a *de novo*, of any operating or supervisory history. However, those requirements would be revised by today's proposal.

Under the proposal, the standard minimum capitalization requirement would be decreased from $3 million to $2 million. The OTS could impose a higher or lower capital requirement on a case-by-case basis. The proposal would conform the minimum capitalization requirement to that of the insuring agency, the FDIC,[15] while providing flexibility and information vital to the OTS in making its statutorily required determinations. It also would streamline the *de novo* application process and reduce the financial burden on applicants wishing to organize federal *de novo* institutions.

In securities offerings for a *de novo* institution, the OTS proposes that all securities of a particular class in the initial offering be sold at the same price. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of the securities offering.

The business plan provisions have been revised to consolidate certain provisions, to bring the requirements up-to-date, and to delete obsolete statutory references. The proposal clarifies the required elements of the business plan, including descriptions of lending, leasing and investment activity, plans for meeting the qualified thrift lender requirements, deposit, savings and borrowing activity, compliance with the CRA, continuation or succession of competent management, and information on the proposed institution's ability to maintain required minimum regulatory capital levels.

C. Policies Pertaining to Management Officials

Capital Maintenance Requirements. The proposal would delete the current capital maintenance requirements in order to conform to the current OTS policy. Current § 571.6(d)(4) requires controlling shareholders to agree to maintain a *de novo* association's required regulatory capital level for a minimum of five years. Controlling shareholders are also prohibited from pledging more than 50% of their stock to secure borrowed funds to finance their stock purchase for a period of three years.[16] Under the proposal, the provisions requiring controlling shareholders to execute capital maintenance agreements have been deleted and replaced by a new provision that requires a certification by legal counsel that the establishment of the *de novo* institution has been consummated in accordance with the provisions of all applicable laws and regulations, the application, and the Office's order. These changes will streamline the application process, conform the process to current OTS rules and policy and will reduce the burden on organizers of a federal *de novo* institution.

Since 1991, it has been the OTS's policy generally not to require prospectively the execution of capital maintenance agreements by controlling shareholders of a *de novo* institution. Under the Prompt Corrective Action provisions of section 38 of FDICIA,[17] which were enacted in 1991, and as implemented by OTS regulations,[18] the OTS may not approve a capital restoration plan for any "undercapitalized" institution unless each company that controls the institution guarantees the institution's compliance with the plan until it has been adequately capitalized for four consecutive quarters and unless each such company provides adequate assurances of performance of the plan. Thus, sufficient statutory and regulatory protections currently exist to assure that savings associations maintain adequate capital and to deal with capital deficiencies promptly and thoroughly.

Conflicts of Interest and Usurpation of Corporate Opportunity. The proposal would delete provisions requiring the organizers of a *de novo* to file a plan identifying areas where conflicts of interest and abuse of corporate opportunity may occur and describing specific policies and actions that the association will institute to avoid that abuse. Existing statutory and regulatory requirements obviate the need for this information in the application process. For instance, section 571.9, the OTS's "Corporate Opportunity Statement of Policy," makes clear that directors, officers and other persons having the power to direct the management of a savings association stand in a fiduciary relationship to the association and its accountholders or shareholders that requires them to avoid conflicts of interest and self-dealing.

The Corporate Opportunity Statement of Policy prohibits usurpation of corporate opportunities by insiders, if taking advantage of a business opportunity would breach their fiduciary obligations. The purpose of the Corporate Opportunity Statement of Policy, which was intended "to codify existing common law fiduciary principles,"[19] is to protect savings associations from managers and controlling parties who might divert beneficial business opportunities from their savings associations to themselves or their affiliates in violation of applicable fiduciary rules.[20]

Concerns relating to the avoidance of conflicts of interest and usurpation of corporate opportunity are addressed not only through the Corporate Opportunity Statement of Policy, but also by the statutory requirements governing transactions between savings associations and their affiliates and insiders. Transactions with affiliates and insider transactions at savings associations have become subject to the comprehensive statutory and regulatory framework that applies to banks under sections 23A, 23B, 22(g) and 22(h) of the Federal Reserve Act[21] (FRA). These sections of the FRA were made applicable to savings associations by provisions of FIRREA and by FDICIA. The OTS has substantially revised its regulations[22] to implement the statutory restrictions of sections 23A, 23B, 22(g) and 22(h) of the FRA.

The current statutory and regulatory structure thus eliminates the need for a separate statement of these restrictions in rules governing the organization of *de novo* institutions. Therefore, the proposed regulation deletes the requirements for the filing of plans for

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[8] 12 U.S.C.A. 1815(a)(2) (West 1989).
[9] 12 U.S.C.A. 1816 (West 1989).
[10] 12 U.S.C.A. 1815 (a)(1) (West Supp. 1994).
[11] 57 FR 12825 (April 13, 1992).
[12] 12 U.S.C.A. 1464(e) (West Supp. 1994).
[13] Community Reinvestment Act of 1977, Pub. L. No. 95–128, tit. 8, sec. 802, 91 Stat. 1147 (*codified at* 12 U.S.C. 2901, *et seq.* (1980)).
[14] 12 U.S.C.A. 1815(a)(2) (West 1989).
[15] *See* FDIC Policy Statement, 57 FR 12822 (April 13, 1992).
[16] *See* 12 CFR 571.6(d)(3)(iii).
[17] 12 U.S.C.A. 1831o(e)(2)(C) (West Supp. 1994).
[18] 12 CFR 565.5.
[19] 39 FR 6696 (February 22, 1974).
[20] *See also OTS's Statement Concerning the Responsibilities of Directors and Officers of Insured Depository Institutions* (November 16, 1992).
[21] 12 U.S.C.A. 371c, 371c-1, 375 and 375b (West 1989 and Supp. 1994). *See also* 12 U.S.C.A. 1468 (West Supp. 1994).
[22] *See* 12 CFR 563.41, 563.42 and 563 43.

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avoidance of conflicts of interest and usurpations of corporate opportunity.

Standard Approval Conditions. The proposed rule revises and codifies the standard approval conditions for *de novo* institutions. The OTS has generally imposed approval conditions in order to ensure compliance with its substantive regulations, to address unique supervisory concerns, and to impose subsequent oversight by the OTS regional offices. However, a number of these standard conditions, such as those imposing specific controls on insider and affiliate transactions, have become redundant or obsolete. For example, a previously imposed standard condition required the submission of extensive background material by controlling shareholders, directors and officers both prior to and after consummation of the transaction. Current statutory and policy requirements already adequately address this issue and a standard condition is not necessary.[23] However, the proposal retains a requirement that provides for the collection of information on the performance of management, which gives the OTS an additional supervisory tool for institutions without proven track records.

Recodification of Requirements. Under the proposed amendment, the requirements for creation of a *de novo* institution will be moved from part 571, Statement of Policy, to part 543, Incorporation, Organization, and Conversion of Federal Mutual Associations, and incorporated into part 552, Incorporation, Organization, and Conversion of Federal Stock Associations, by cross-reference to part 543. This recodification will make these provisions easier to locate, as they will be grouped with other federal savings association regulations rather than with policies affecting all savings associations. Recodifying these provisions as regulations should also minimize any confusion about their status as requirements, rather than only guidance.

IV. Request for Comment

The OTS requests comments from interested parties on all aspects of this proposal. In addition, the OTS is specifically soliciting comment on whether or not there should be a deletion or revision of the current section 571.6(c), which contains requirements regarding the composition of the board of directors. This section was added in 1984.[24] It specifically provides, among other things, that a majority of the board of directors must be representative of the state in which the association is located, and that it must be diversified and composed of individuals with varied business and professional experience. The FDIC Policy Statement [25] and that of the Office of the Comptroller of the Currency (OCC) have similar requirements. The OCC Policy Statement states that local directors encourage "community support." [26] The OTS is requesting comment on whether the explicit requirements for a board of directors with diverse backgrounds and ties to the *de novo's* home state continue to serve a useful purpose. The OTS also is requesting comment on the factors currently in its Policy Statement that are to be considered in judging whether the board of directors meets these requirements.

V. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VI. Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The reporting requirements in this proposed rule are found in 12 CFR 543.3. The information is needed by the OTS to reduce the risk of loss to newly-chartered institutions and the Savings Association Insurance Fund.

Estimated number of respondents: 10
Estimated average burden per respondent: 110 hours
Estimated annual frequency of responses: 1
Estimated total annual reporting burden: 1100 hours

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal does not impose additional burdens or requirements upon a small entity that files an application to become a *de novo* institution.

List of Subjects

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby proposes to amend parts 543, 552, and 571, chapter V, title 12 of the Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 543.2 [Amended]

2. Section 543.2 is amended by removing and reserving paragraph (g)(2).

3. A new § 543.3 is added to read as follows:

§ 543.3 "De Novo" applications for a Federal savings association charter.

(a) *Definitions.* For purposes of this section, the terms "*de novo* association" and "*de novo* applicant" mean any savings and loan association, savings association, or savings bank that has submitted to the Office an application for permission to organize a Federal savings association, the business of which has not been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association for a period of three years.

(b) *Minimum initial capitalization.* (1) A *de novo* association must have not less than two million dollars in initial capital stock (stock institutions) or initial pledged savings or cash (mutual institutions), except as provided in paragraph (b)(2) of this section. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of a securities offering. In securities offerings for a *de novo* institution, all securities of a particular class in the initial offering shall be sold at the same price.

(2) On a case by case basis, the Director may, for good cause, approve a *de novo* applicant that has less than two million dollars in initial capital or may require an applicant to have more than two million dollars in initial capital.

(c) *Business and investment plans of newly-chartered associations.* (1) In order for the Office to make the determinations required under section 5(e) of the Home Owners' Loan Act, a *de novo* applicant for a Federal charter shall submit a business plan describing, for the first three years of operation, the major areas of operation, including, but not limited to:

(i) Lending, leasing and investment activity, including plans for meeting Qualified Thrift Lender requirements within the timeframes established in 12 CFR 563.50(d);

(ii) Deposit, savings and borrowing activity;

(iii) Interest-rate risk management;

(iv) Internal controls and procedures;

(v) A Community Reinvestment Act statement, pursuant to 12 CFR part 563e, and plans for meeting the credit needs of the proposed *de novo's* community (including low- and moderate- income neighborhoods);

(vi) Projected statement of condition; and

(vii) Projected statement of operations.

(2) The business plan shall provide for the continuation or succession of competent management subject to the approval of the Regional Director, and shall further provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director. The business plan shall demonstrate the proposed institution's ability to maintain required minimum regulatory capital under 12 CFR parts 565 and 567 for the duration of the plan.

(d) *Composition of the board of directors.* (1) A majority of a *de novo* association's board of directors must be representative of the state in which the savings association is located. The Office generally will consider a director to be representative of the state if such director resides, works or maintains a place of business in the state in which the savings association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) that incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company that does not have substantial independent economic substance, the foregoing standards will be applied to the holding company.

(e) *Management Officials.* (1) Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an application for permission to organize and subsequent to issuance of a Federal savings association charter to the association by the Office, any individual or group of individuals acting in concert, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this section, shall submit a Biographical and Financial Report to the Regional Director.

(2) Each new director of a *de novo* institution shall sign an "Oath of Director for Savings Associations." The original of the document, executed, shall be submitted to the Regional Director.

(f) *Standard conditions.* The following are standard conditions that are imposed in any Office approval order relating to a *de novo* application:

(1) The *de novo* institution must receive all required regulatory approvals prior to the establishment of the *de novo* institution, with copies of all such approvals supplied to the appropriate Regional Office.

(2) The *de novo* institution must represent that there have been no substantial changes with respect to the *de novo* institution as disclosed in the information currently before the Office, including but not limited to changes in directors, shareholders, or in the business plan. The *de novo* institution must also represent that no additional information that would have a materially adverse bearing on any feature of the application has been brought to the attention of the applicant.

(3) The *de novo* institution shall provide for employment of senior executive officers who shall be charged with the full administrative and managerial responsibilities of the *de novo* institution under policies established by its board of directors. The performance of such individuals will be periodically reviewed and their continued employment will be subject to approval by the appropriate Regional Director, or his designee, for a period of three years.

(4) If applicable, the *de novo* institution shall submit to the appropriate Regional Office a list of stockholders of the *de novo* institution, and holders of any stock options and/or warrants, including each individual stockholder's name, address, amount of stock purchased, and principals of companies owning stock in the *de novo* institution, total purchase price, and any affiliation between stockholders.

(5) No later than 10 calendar days from the date of the consummation of the establishment or acquisition of the *de-novo* institution, the *de novo* institution shall file, with the appropriate Regional Office, a certification by legal counsel stating the effective date(s) of its insurance and its opening, the exact number of shares of stock, if applicable, of the *de novo* institution, and that the establishment (or acquisition, if appropriate) of the *de novo* institution has been consummated in accordance with the provisions of all applicable laws and regulations, the application, and the Office's order.

(g) *Supervisory transactions.* This section does not apply to any application for a Federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes, or in connection with

[23] Section 32 of the FDIA, which was added by FIRREA, requires certain savings associations and thrift holding companies to notify the OTS and provide it with relevant information prior to adding or replacing directors or hiring senior executive officers if, among other things, the association has been chartered for less than two years. See 12 U.S.C.A. 1831i (West 1989); 58 FR 45421 (August 30, 1993) (OTS final rule implementing section 32); OTS Thrift Bulletin No. 45 (April 25, 1990).

[24] 49 FR 41243 (October 22, 1984).

[25] 57 FR 12825 (April 13, 1992).

[26] 12 CFR 5.20(d)(3)(iv)(B).

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applications for Federal charters for interim *de novo* associations chartered for the purpose of facilitating mergers or holding company reorganizations.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

4. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.2–1 [Amended]

5. Section 552.2–1 is amended by adding the phrase "and § 543.3" after the phrase "of 543.2" in paragraph (a), and by removing and reserving paragraph (b)(2).

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 571—STATEMENTS OF POLICY

6. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.6 [Removed]

7. Section 571.6 is removed.

Dated: August 25, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–5315 Filed 3–3–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

Delegation of Authority

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The Administrator of the Federal Aviation Administration (FAA) is delegating the authority to deny a petition for rulemaking to the Office or Service that has jurisdiction over the specific parts of Federal Aviation Regulations (Title 14 of the Code of Federal Regulations) for which a petition is submitted. The Administrator will continue to be the decision point for petitions for reconsideration. This delegation will enable the FAA to respond more effectively to the large number of petitions for rulemaking submitted by the aviation community and the general public.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hawkins, Office of Rulemaking (ARM–2), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9680.

SUPPLEMENTARY INFORMATION: The FAA has over 130 petitions for rulemaking on which it has been unable to take action primarily due to higher priorities and insufficient resources. Currently these petitions must be reviewed personally by the Administrator before action on them is complete. This involves significant participation of individuals at all levels of the agency.

In the case of a grant of a petition, personal involvement by the Administrator is appropriate, since the action of granting a petition results in the initiation of rulemaking proposing to amend a regulation. The authority to issue regulations has not been delegated below the level of the Administrator except for routine rulemaking, such as airworthiness directives and airspace actions. However, in a case where the responsible agency program office determines that a petition should be denied, it is unnecessary to require the personal involvement of the Administrator. For this reason, authority to issue the denial of a petition for rulemaking is being delegated to the head of the FAA office or service involved. This authority will be exercised with the concurrence of the Office of the Chief Counsel as to form and legality. In a case where a petitioner is not persuaded by the agency's rationale for denying the petition, the petitioner may request reconsideration of the denial by the Administrator.

Consistent with Vice President Gore's reinventing government initiatives and the National Performance Review, the Administrator is making this delegation to streamline the process for addressing petitions for rulemaking. It should achieve the following results: (1) Faster response to certain petitioners on the merits of their petitions; (2) a reduction in resources required for processing petitions by eliminating certain levels of review, unless such review becomes necessary due to special circumstances; (3) a reduction of the current backlog.

Rulemaking

The FAA also will initiate rulemaking to amend 14 CFR part 11 (General Rule-Making Procedures) to reflect this delegation of authority. This delegation, however, is being made immediately in order to begin improving the process as quickly as possible.

Delegation

Accordingly, the authority to deny a petition for rulemaking is hereby delegated to the head of the FAA office or service involved.

Issued in Washington, DC on February 14, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–5427 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AAL–10]

Amendment to Class E Airspace; Cordova, AK

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Cordova, AK, to accommodate Visual Flight Rules (VFR) traffic in the Cordova area, landing and departing from the Cordova Muni (CKU) airport located about 10 miles west of Merle K. "Mudhole" Smith (CDV) airport. Due to terrain limitations, VFR traffic must pass through the northern portion of the Cordova Class E surface area. When the Class E surface area is below basic VFR and Special Visual Flight Rule (SVFR) operations are being conducted, numerous delays are experienced. The area will be depicted on aeronautical charts to provide a reference for pilots operating under VFR.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, AAL–531, 222 West 7th Avenue #14, Anchorage, AK, 99513–7587; telephone: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E surface area at Cordova, AK (60 FR 2044). The proposed action would provide required controlled airspace for Instrument Flight Rules (IFR) procedures at the Merle K. "Mudhole" Smith Airport and allow Visual Flight Rules (VFR) aircraft to proceed through the northern portion of the existing Cordova Class E surface area. The reduction in Class E surface area will segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for surface areas of an airport are published in paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Cordova, AK, by providing required controlled airspace for IFR procedures at the Merle K. "Mudhole" Smith Airport and allowing VFR aircraft to proceed through the northern portion of the current Cordova Class E surface area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 0854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace areas designated as a surface area for an airport.

* * * * *

AAL AK E2 Cordova, AK [Revised]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK

(Lat. 60°29'31" N, Long. 145°28'39" W)

Glacier River NDB

(Lat. 60°29'56" N, long. 145°28'28" W)

Within a 4.1-mile radius of the Merle K. (MUDHOLE) Smith Airport and within 2.1 miles each side of the 222° bearing from the Glacier River NDB extending from the 4.1-mile radius to 10 miles southwest of the airport within 2.2 miles each side of the 142° bearing from the NDB extending from the 4.1-mile radius to 10.4 miles southeast of the airport; excluding that airspace north of a line from lat. 60°32'48" N, long. 145°34'06" W; to lat. 60°31'00" N, long. 145°20'00" W.

* * * * *

Issued in Anchorage, AK, on February 21, 1995.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 95–5423 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28104; Amdt. No. 1652]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

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publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 25, 1995*

Ashland, KY, Ashland-Boyd County, VOR or GPS RWY 10, Amdt 10
Ashland, KY, Ashland-Boyd County, SDF RWY 10, Amdt 6
Gruver, TX, Gruver Muni, VOR/DME or GPS–A, Amdt 1, CANCELLED
Gruver, TX, Gruver Muni, VOR/DME or GPS–B, Orig

** * * Effective April 27, 1995*

Iowa City, IA, Iowa City Muni, GPS RWY 30, Orig
Marysville, KS, Marysville Muni, NDB or GPS RWY 33, Amdt 4
Oakley, KS, Oakley Muni, NDB or GPS RWY 34, Amdt 2
Baltimore, MD, Baltimore-Washington Intl, VOR or GPS RWY 10, Amdt 15
Hagerstown, MD, Washington County Regional, ILS RWY 27, Amdt 6
Chickasha, OK, Chickasha Muni, VOR/DME RNAV or GPS RWY 35, Amdt 1
Conway, SC, Conway-Horry County, VOR/DME–B, Amdt 4
Baytown, TX, RWJ Airpark, VOR/DME or GPS RWY 32, Amdt 4
Baytown, TX, RWJ Airpark, VOR/DME RNAV or GPS RWY 26, Amdt 1
Spokane, WA, Felts Field, NDB–A, Amdt 1, CANCELLED

** * * Effective March 30, 1995*

Colorado City, AZ, Colorado City Muni, NDB–A, Orig
Oroville, CA, Oroville Muni, VOR–A, Amdt 5
Oroville, CA, Oroville Muni, NDB or GPS RWY 1, Amdt 2
San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Amdt 4, CANCELLED
San Francisco, CA, San Francisco Intl, BAY ILS/DME RWY 28L, Amdt 1
Lamar, CO, Lamar Muni, VOR/DME RWY 36, Orig
Mount Sterling, KY, Mt Sterling-Montgomery County, NDB RWY 03, Amdt 1
Mount Sterling, KY, Mt Sterling-Montgomery County, NDB RWY 21, Amdt 1
Oakdale, LA, Allen Parish, NDB RWY 35, Orig
Baltimore, MD, Baltimore, Washington Intl, ILS RWY 28, Amdt 8
Newark, NJ, Newark Intl, ILS RWY 11, Orig
Fargo, ND, Hector International, RADAR–1, Amdt 9
Jackson, OH, James A. Rhodes, VOR/DME or GPS–A, Orig
Jackson, OH, James A. Rhodes, VOR/DME or GPS–A, Amdt 2, CANCELLED
Versailles, OH, Darke County, NDB RWY 27, Orig
Versailles, OH, Darke County, NDB or GPS RWY 9, Amdt 7, CANCELLED
North Bend, OR, North Bend Muni, MLS RWY 22, Orig
Lebanon, TN, Lebanon Muni, NDB RWY 18, Amdt 3, CANCELLED
Saratoga, WY, Shively Field, NDB–A, Orig

** * * Effective Upon Publication*

Jacksonville, FL, Jacksonville Intl, LOC RWY 25, Amdt 8
Warrensburg, MO, Skyhaven, VOR/DME or GPS–A, Amdt 1.

Note: The FAA published an Amendment in Docket No. 28055, Amdt. No. 1644 to Part 97 of the Federal Aviation Regulations (Vol. 60 FR No. 19 Page 5573; dated Monday, Jan. 30, 1995) under Section 97.23 effective 30 MAR 95, which is hereby amended as follows:

Prestonburg, KY, Big Sandy Regional, VOR/DME–A, Amdt 1 should read: VOR/DME or GPS–A, Amdt 1.

[FR Doc. 95–5424 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28105; Amdt. No. 1653]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements.

These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorpration by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on February 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

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FDC Date	State	City	Airport	FDC No.	SIAP
01/24/95	WI	Madison	Dane County Regional-Truax Filed	5/0301	VOR OR TACAN OR GPS RWY 31 AMDT 24...
01/30/95	FL	Melbourne	Melbourne Intl	5/0402	LOC BC RWY 27L AMDT 8...
02/09/95	CA	Los Angeles	Los Angeles Intl	5/0633	ILS RWY 24L AMDT 21...
02/09/95	CA	Los Angeles	Los Angeles Intl	5/0634	ILS RWY 7L AMDT 3...
02/09/95	GA	Waycross	Waycross-Ware County	5/0631	VOR–A AMDT 7...
02/09/95	GA	Waycross	Waycross-Ware County	5/0632	RNAV RWY 18 AMDT 4...
02/10/95	CA	Firebaugh	Firebaugh	5/0662	VOR/DME OR GPS–A, AMDT 2...
02/10/95	CA	Los Banos	Los Banos Muni	5/0658	VOR/DME OR GPS RWY 14, AMDT 3...
02/10/95	CA	Los Banos	Los Banos Muni	5/0659	VOR/DME OR GPS RWY 32, AMDT 4...
02/10/95	CA	Modesto	Modesto City-County-Harry Sham Field.	5/0663	NDB RWY 28R, AMDT 7A...
02/10/95	CA	Oakdale	Oakdale	5/0661	VOR OR GPS RWY 10, AMDT 5A...
02/10/95	FL	Jacksonville	Craig Muni	5/0670	ILS RWY 32 AMDT 2C...
02/10/95	TN	Tullahoma	Tullahoma Regional Airport/WM Northern Field.	5/0655	VOR OR GPS–A AMDT 3...
02/14/95	AK	Juneau	Juneau Intl	5/0731	LDA–1, RWY 8, AMDT 10...
02/14/95	GA	Moultrie	Moultrie Muni	5/0722	VOR OR GPS RWY 22, AMDT 11A...
02/16/95	FL	Melbourne	Melbourne Intl	5/0782	VOR OR GPS RWY 27L, AMDT 11...
02/21/95	FL	Fort Myers	Page Field	5/0821	VOR OR GPS RWY 13, ORIG...
02/21/95	FL	Orlando	Orlando Intl	5/0822	ILS RWY 35, AMDT 2...

[FR Doc. 95–5426 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 165

[CGD13–95–002]

Safety Zone Regulation; Bremerton, Washington, to Queets, Washington

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone 300 yards around the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while they are in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of latitude 47°32′N, Queets, Washington. The zone is needed to protect the tugs STACEY FOSS and RICHARD FOSS, and the barge NESTUCCA, and other persons, facilities, and vessels from safety hazards associated with onlookers and others who may wish to view the barge at close range. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on March 22, 1995 at 5 a.m. (PDT). It terminates when the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA are south of Latitude 47°32′N, Queets, Washington, at 1 p.m. (PDT) on March 23, 1995, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG K. Paquette, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA and other vessels that may transit the area. Details were not available 30 days prior to the event, thus, there were not sufficient time to publish proposed rules in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures would be impracticable.

Drafting Information

The drafters of this regulation are LTJG K. Paquette, project officer for the Captain of the Port, and LCDR J. Odell, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on March 22, 1995 at 5 a.m. (PDT). In response to a request from the U.S. Navy, the Coast Guard is establishing a 300 yard moving safety zone around the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while these vessels are in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of Latitude 47°32′N, Queets, Washington at 1 p.m. (PDT) on March 23, 1995. This transit may result in a large number of vessels congregating near or in the path of the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA. This safety zone is needed due to the limited maneuverability of the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA and the need to ensure the safety of the mariners who may attempt to approach the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA during their transit, as well as other vessels in the immediate vicinity. This moving safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of he Port may be assisted by other federal agencies.

This regulation is issued pursuant to 33 USC 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T13–002 is added to read as follows:

§ 165.T13–002 Safety Zone: Puget Sound, Washington.

(a) *Location.* The following area is a safety zone: All waters within 300 yards of the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of Latitude 47°32′ N., Queets, Washington, at 1 p.m. (PDT) on March 23, 1995.

(b) *Definitions.* A designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Puget Sound, to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(d) *Effective dates.* This regulation becomes effective on March 22, 1995 at 5 a.m. (PDT). It terminates when the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA are south of Latitude 47°32′ N., Queets, Washington, at 1 p.m. (PDT) on March 23, 1995, unless sooner terminated by the Captain of the Port.

Dated: February 10, 1995.

R.K. Softye,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 95–5385 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM91–1; Order No. 1043]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is publishing final rules amending its rules of practice adopted in Order No. 1043, issued February 17, 1995. The rules are based on revisions submitted as a proposed settlement of issues in Docket RM91–1, a rulemaking addressing general improvements in the Commission's rules of practice. The proposed revisions were published in the **Federal Register** (59 FR 8576) and comments have been received and considered. The differences between the rules as proposed and as adopted reflect conforming changes, editorial improvements, or clarification of intent.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor (202) 789–6820.

SUPPLEMENTARY INFORMATION: Two settlement agreements involving proposed improvements to the Commission's rules of practice were presented to the Commission in this docket. In response to the settlement coordinator's motion transmitting these agreements, the Commission incorporated the text of both agreements in a notice of proposed rulemaking, and requested comments. See 59 FR 8576, February 23, 1994. One involved a number of traditional, or standard, aspects of these rules, such as service and production specifications. This final rule adopts, with minor adjustments, revisions to the rules of practice contained in that proposal. The other proposed that participants be required to file certain documents in electronic form. Opposition to this settlement existed, and a new docket will shortly be established to further explore potential solutions to problems in this area.

The Commission received five comments. Four commenters expressed general support for the proposed revisions, but singled out one or more specific changes for additional discussion. One commenter expressed no opinion on the rules as whole, but sought clarification of one proposed change.

The Commission's evaluation of the settlement agreements and participants' comments leads to the publication of final rules that differ in several respects from the proposed rules. The main differences entail: the deletion of a proposed requirement related to filing documents in electronic form; the express exclusion of answers to interrogatories (and compelled answers) from the "special request" service practice otherwise applicable to discovery-related documents; removal of language restricting transcript corrections of Commission hearings to oral material; and clarification of minimum typeface size. Other differences reflect conforming changes and editorial improvements. A review of the rules and related comments follows.

Production Requirements (Rule 10(a)): Terminology and Formatting Instructions

Existing rule 10(a) sets forth specifications for production and preparation of documents filed with the Commission. The revision updates these requirements to reflect modern office technology and practice. For example, the final rule replaces the term "typewritten," which currently appears as the title of the subsection and in the first sentence, with the term "production" or "produced," as appropriate. In addition, the final rule increases the amount of space available for text by easing longstanding margin and line-spacing restrictions. It also replaces the existing requirement that text be double spaced with language allowing spacing of not less than one

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and one-half lines. The former reference to "type no smaller than elite" is supplemented with a restriction against typeface sizes smaller than 12 points.

The latter change responds to one commenter's request for clarification of the proposed change regarding minimum allowable typeface size. This commenter, David Popkin, notes that point size, which the proposed rule adopts as the new standard, is inappropriate because points represent letter height, not characters per inch. Mr. Popkin raises the possibility that in adopting new terminology, the proposed rule inadvertently imposes stiffer restrictions on typeface size than currently exist. If so, the imposition of these restrictions would be contrary to the thrust of other proposals, which generally provide participants with more, rather than less, flexibility. The Commission's resolution of this issue is influenced by two considerations. One is the absence of any affirmative indication that the settlement signatories intended to impose more stringent restrictions on type size than currently exist. The other is the assumption that the signatories wanted to reflect the emergence of word processing equipment, which often includes software containing proportional typefaces expressed in characters per inch. The Commission views these as complementary, rather than competing, interests that can be reconciled with a minor revision. Accordingly, the rule as adopted retains the existing reference to elite type, but adds language recognizing the growing use of typefaces expressed in characters per inch or points.

Action on Proposed Rule Requiring Documents To Be Filed in Electronic Form (Rule 10(d)) Deferred

The proposal concerning electronic filing was agreed to by some, but not all, of the participants in the underlying rulemaking proceeding. The Postal Service, which did not support the proposal, reiterated its opposition to this change during the comment period. It asserted that it had encountered difficulty in generating diskette versions of its Docket No. R94–1 testimony and raised concerns about the potential for administrative problems. The Service further stated its conviction that this rule would not enhance efficiency or ease the burden on participants in the absence of uniform standards and an acceptable method of authentication. The Newspaper Association of America conditioned its support of the electronic filing provision on the Service's willingness to comply with it. The Office of the Consumer Advocate (OCA), which was a signatory to the non-unanimous settlement on electronic filing, reiterated its support for adoption of the rule as proposed but also formally requested that publication of the electronic filing rule be followed by notice of the Commission's interest in requiring that extensive database information be provided on CD–ROM media.

The Commission believes that the benefits of filing documents in electronic form are substantial. However, the Commission's review of the proposed rule and the record that has been developed in the underlying docket indicate that important questions about the scope, intent and adequacy of the rule as proposed remain unanswered. Moreover, the success of this type of change depends heavily on the cooperation of the Postal Service and other active participants. The Service's opposition leads the Commission to defer action on the proposed rule pending an opportunity for a more focused discussion. This discussion could include consideration of a requirement addressing the filing of extensive database information on CD–ROM, as suggested by the OCA. Accordingly, the Commission plans to publish an advance notice of proposed rulemaking to further explore this topic.

Service Requirements Related to Discovery Requests (Rule 12(b) and Rules 25 Through 27)

Existing rule 12(b), which addresses service by parties, generally requires that all documents be served upon all participants. This requirement has the potential to impose a burden on participants. In the interest of easing the service burden, the proposed settlement provision carved out an exception to rule 12(b)'s blanket service rule for discovery requests pursuant to rules 25 (interrogatories), 26 (requests for production of documents) and 27 (requests for admissions). It also added the direction that "Special requests for service by other participants shall be honored" and a sentence providing that special requests may be served upon participants conducting discovery and was to identify the witness(es) involved.

The preamble in the notice of proposed rulemaking acknowledged that a settlement conference participant had questioned whether the proposed revision accurately reflected the position of the conferees, as the terms applicable to service of answers appear to differ from those applicable to service of discovery requests and objections thereto. This participant's understanding was that the conferees intended for the "special request" provision to apply across-the-board. In recognition of this comment, the Commission indicated that in the absence of opposition, it would make appropriate changes reflecting a uniform service requirement.

However, another conferee has submitted a comment objecting to applying the new "special request" requirement to the service of discovery answers. This commenter apparently supports retention of rule 12(b)'s requirement of "automatic" service upon all participants for these filings. The commenter expresses no opposition to the "special request" practice for being served with discovery requests or objections.

This system of limited service of discovery requests and objections was followed in the most recent omnibus rate case, Docket R94–1. While some parties chose to serve documents even when no special request had been received, this new system allowed interested intervenors to reduce the cost of participation if they wished to do so. The Commission believes that formalizing the practice of limited service of discovery requests and objections can considerably reduce the burden of participation in Commission proceedings. Given that participants' interest in answers to interrogatories may differ from their interest in the initial questions or objections thereto, and the Commission's indication that it would honor objections to across-the-board application of the service requirement, the rule as adopted does not apply to the service of answers to interrogatories (or compelled answers). Instead, answers to interrogatories will be subject to the general service requirement. By extension, service of compelled answers and supplemental answers should also follow the general rule.

Grace Period for Filing Signature Pages (Rule 25(b))

Existing rule 25(b) requires that answers to interrogatories be signed by the person responding to them. The proposed rule allows a 10-day grace period for filing signature pages if the witness involved is not available to sign the answers when filed. The terms of the rule recognize an exception to the general service requirements by providing that signature pages filed under this circumstance need be served only on the Commission, and not on participants. This provision was part of the unopposed settlement, and it generated no opposition during the recent comment period. The Commission agrees that this change would be beneficial, and adopts the change as proposed.

Responsibilities of Limited Participants (Rule 20a(c))

Existing rule 20a(c) provides that limited participators are not required to respond to discovery requests. The final rule qualifies this exception by requiring limited participators to respond to discovery requests when those requests are directed specifically to testimony limited participators have submitted. This provision was part of the unopposed settlement, submitted by the OCA, and generated no opposition during the most recent comment period. Accordingly, the rule is adopted as proposed.

Transcript Corrections (Rule 30(i))

Existing rules do not explicitly address the scope of transcript corrections. The change proposed in the settlement agreement, as a new subsection (i) in rule 30, specifies that transcript corrections should be limited to corrections of material substantive error in the transcription of oral statements made at the hearing. The Commission agrees that clarification of the informal practice that has developed is useful, and welcomes this change. However, as official reporters sometimes transcribe written material presented at hearings as well as oral statements, the Commission believes it would be preferable to eliminate the restriction to "oral statements." With this modification, the rule is adopted as proposed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Commission certifies that this rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

2. Section 3001.10 is amended by revising paragraph (a) to read as follows:

§ 3001.10 Form and number of copies of documents.

(a) *Production.* If not printed, documents filed with the Commission shall be produced on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than ten pages. The text shall be not less than one and one-half spaced except that footnotes and quotations may be single spaced. Any typeface not smaller than elite or a comparable size expressed in points or characters per inch may be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

* * * * *

3. Section 3001.12 is amended by revising paragraph (b) to read as follows:

§ 3001.12 Service of documents.

* * * * *

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.25 (a) and (c), 3001.26 (a) and (c), and 3001.27 (a) and (c). Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

4. Section 3001.20a is amended by revising paragraph (c) to read as follows:

§ 3001.20a Limited participation by persons not parties.

* * * * *

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under § 3001.25 through § 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

5. Section 3001.25 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve a copy upon the Postal Service. Special requests for service by other participants shall be honored.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. The answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to

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sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory and the Postal Service. Special requests for service by other participants shall be honored.

(d) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

* * * * *

6. Section 3001.26 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to a request shall serve the objection on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request for production. Special requests for service by other participants shall be honored.

* * * * *

7. Section 3001.27 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request. Special requests for service by other participants shall be honored.

* * * * *

8. Section 3001.30 is amended by adding paragraph (i) to read as follows:

§ 3001.30 Hearings.

* * * * *

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing.

Issued by the Commission on February 17, 1995.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–5114 Filed 3–3–95; 8:45 am]

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39 CFR Part 3001

[Docket No. RM95–1; Order No. 1042]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by the United States Postal Service, the Postal Rate Commission initiated this rulemaking to consider re-enactment of special rules of practice and procedure applicable to Postal Service requests to change Express Mail rates in response to market conditions. Interested persons were invited to comment. 59 FR 65985–65987 (December 22, 1994). After reviewing the comments submitted, the Commission has determined that the published rules should be re-enacted, subject to a five-year sunset provision.

EFFECTIVE DATE: These rules will become effective March 6, 1995 and ending March 6, 2000 if not re-enacted by the Commission after the provision of an opportunity for public comment.

ADDRESSES: Correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor (telephone: (202) 789–6820).

SUPPLEMENTARY INFORMATION: On August 15, 1994, the United States Postal Service filed a petition for institution of a rulemaking to re-enact Commission rules that establish special procedures for considering Postal Service requests to change Express Mail rates in response to market conditions. These rules, codified at 39 CFR 3001.57 through 3001.57c, were adopted as the culmination of the Commission's Docket No. RM88–2 in August, 1989; at that time, the Commission included a five-year sunset provision in 39 CFR 3001.57(b). Order No. 836, 54 FR 33681 (August 16, 1989). Consequently, by their own terms the rules ceased to be effective in mid-August of 1994.

The Commission granted the Postal Service's petition and began this rulemaking on December 14, 1994. Order No. 1038; Notice of Proposed Rulemaking, 59 FR 65985–87 (December 22, 1994). In its Notice of Proposed Rulemaking, the Commission published the pre-existing rules, stated its preliminary agreement with the Postal Service's position that the Express Mail market response rules should be retained, and established January 23, 1995, as the due date for comments by interested parties. Id. at 65985.

Two sets of comments were submitted in response to the Notice of Proposed Rulemaking in this docket.[1] United Parcel Service (UPS), a competitor of the Postal Service in the expedited delivery market, opposes re-enactment of the rules because: (1) Circumstances have changed since their initial adoption in a manner that allegedly negates any possible justification for their continued existence; (2) the rules are unnecessary because other available Commission rules provide adequate avenues for expedited consideration of specific Postal Service rate requests; and (3) the rules allegedly are contrary to the letter and spirit of the Postal Reorganization Act, the Administrative Procedure Act, and fundamental considerations of due process. The Commission's Office of the Consumer Advocate (OCA) opposes re-enactment on similar grounds: that there is less demonstrable need for, and opportunity to use, the rules than was anticipated when they were adopted in Docket No. RM88–2; and that it would be more efficient to devise comprehensive rules of procedure applicable to any class of mail, in the context of the Commission's Procedural Streamlining Inquiry, Docket No. RM95–2. Because these comments raise a variety of issues, the latter will be grouped by category for consideration.

[1] Additionally, while no provision had been made for reply comments, Advertising Mail Marketing Association (AMMA) submitted reply comments on February 3, 1995, together with a motion for leave to file such comments. In order to avoid prejudice to other parties that may have been inclined to file replies, the Commission shall grant AMMA's motion only in part, and will consider its comments strictly as an expression of support for re-enactment of the pre-existing rules.

I. Alleged Legal Defects

Commenter United Parcel Service argues that certain features of rules 57 through 57c violate pertinent portions of the Postal Reorganization Act, the Administrative Procedure Act, and applicable due process requirements. For the most part, these comments replicate earlier arguments considered and rejected during the course of the RM88–2 proceeding, and the Commission finds them equally unpersuasive now.

UPS suggests that by contemplating the recommendation of Express Mail rates near the level of estimated attributable costs, the market response rules could yield rates which fail to recover the portion of institutional costs "reasonably assignable" to Express Mail, in contravention of 39 U.S.C. 3622(b)(3). UPS Comments at 7–8. UPS also argues that the recommendation of such rates would produce an overall rate schedule that fails to satisfy the "fair and equitable" standard of § 3622(b)(1). Id. at 8–9. However, these criticisms overlook the special rationale on which the market response rules are premised, and the particular restrictions on the rates which the Postal Service can propose under the rules. The appropriate level of "reasonably assignable" costs is determined by reference to the non-cost factors in § 3622(b);[2] the Postal Service could invoke rules 57 through 57c only where one or more of the policies of the Act arguably applies with such force as to justify a minimal contribution to institutional costs.[3] Additionally, the rules establish two different protective rate floors which the Postal Service must observe in its requests. Under section 57b(b), the Service is forbidden to propose rates less than the *greater* of average per piece attributable costs: (1) As determined in the most recent omnibus rate case, or (2) as estimated for the most recent fiscal year for which information is available. Section 57b(b)(2) also prohibits proposal of a rate "for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service." The Commission retained these restrictions in the final rules adopted in Docket No. RM88–2, over the objections of the Postal Service, in order "to eliminate the risk that new Express Mail rates would be a burden on other classes of mail[,]" and to ensure "that the relationships among the classes of mail—in terms of contribution to institutional costs—are disturbed as little as possible." Order No. 836 at 15, 13. Thus, the Commission has already considered and accommodated the concerns raised by UPS, and there is no reasonable basis for concern that re-enactment of the rules would degrade the Commission's sound application of the § 3622(b) (1) and (3) factors.

The Commission also rejects the claims of UPS that the market response rules constitute "a clear license to engage in unfair competition with private sector enterprises, in violation of Section 3622(b)(4) [,]" and that they "violate the discrimination prohibition in Section 403(c) of the Act" by establishing a preference for Express Mail users. UPS Comments at 9. During the course of the RM88–2 proceeding the Commission received comments from several parties—including the Bureau of Competition of the Federal Trade Commission—regarding the Postal Service's participation in the expedited parcel delivery market. On the basis of that record, the Commission concluded that there was no justification for:

* * * any finding that the Postal Service is so restricting the ability of other firms to compete in the expedited delivery market through use of the Private Express Statutes that it should not be given even the potential

[2] *See* National Association of Greeting Card Publishers v. U.S. Postal Service, 462 U.S. 810, 834 (1983): "The Rate Commission is to assign remaining costs on the basis of the other eight factors set forth by § 3622(b)."

[3] Section 57a(c) requires that every formal request under §§ 57 through 57c "contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond."

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to change its rate more quickly in response to developments in the market.

Notice of Proposed Rule, 54 FR 11404–11405 (March 20, 1989). The Commission also stated its resolve to "take into account the effect on the market" when recommending rates under the expedited rules. Id. No commenter in this docket claims that the Postal Service has engaged in anti-competitive conduct in the expedited delivery market in the interim.

As to the claim of preference in violation of § 403(c), the Commission concluded in RM88–2 that adoption of expedited procedural rules would not constitute "undue or unreasonable" discrimination because "Express Mail is the only class for which evidence supporting such rules has been given." Id. at 11399. Lacking evidence of a need to change rates for other classes expeditiously in response to competition, and of the likely impact such rate changes would have on postal finances, the Commission found it unreasonable to reject the proposed rules for Express Mail. The Commission also alluded to the possibility of extending the applicability of those rules, "[i]f it later appears that similar procedures might be suitable for another class. * * *" Id. The Commission is in much the same posture in this docket, but with the significant difference that Docket No. RM95–2 has been initiated to consider "potential mechanisms for expediting its proceedings conducted under 39 U.S.C. 3624(a)," which includes rate change proceedings. *See* 59 FR 65987 (December 22, 1994). Consequently, the Commission's prior conclusion that the rules for Express Mail pose no undue preference problem is now reinforced by its contemporaneous docket to consider similar mechanisms for other types of requests.

The Commission also finds no merit in the arguments that the rules would operate in violation of the hearing requirements of the Administrative Procedure Act, or would trench upon the due process rights of intervenors. Contrary to those claims, the Postal Service would be required to sustain its burden as proponent under rules 57 through 57c, beginning with the data filing requirements laid down in § 3001.57a. If the Commission concludes that the Service's presentation poses one or more genuine issues of material fact, either at the suggestion of an intervenor or on its own motion, a formal hearing would be held. *See* § 57b(e)(5). Only in the event that *no* such issue was identified—an extremely rare occurrence in the Commission's institutional experience—would a hearing not be held. In the absence of any genuine issue of material fact, the Commission would be under no obligation to conduct a hearing.[4]

The discovery and hearing procedures established in rule 57b admittedly require prompt action by all parties involved, in furtherance of the declared purpose "to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested parties." § 3001.57c. However, in fashioning these procedures in Docket No. RM88–2, the Commission devoted considerable effort to striking a workable balance between expedition and the due process rights of interested parties. In response to comments, the Commission rejected some of the expedited procedures proposed by the Postal Service and supplemented others. Notice of Proposed Rulemaking (Second Notice), 54 FR 11401–11403 (March 20, 1989); Notice of Proposed Rulemaking (Third Notice), 54 FR 25137–25139 (June 13, 1989). Nor did the Commission overlook the need for flexibility in administering the expedited procedural schedule. It stated: "If any particular date causes difficulty, the Presiding Officer can grant an extension of time * * *. When the Commission reviews its experience with these rules, we will be prepared to judge whether any of the scheduled dates should be changed in the rules." Third Notice of Proposed Rulemaking, 54 FR 25139. Consequently, at this time the Commission finds no basis for concern that re-enactment of these carefully considered rules would jeopardize the due process rights of participants in proceedings under rules 57 through 57c.

II. Institutional Issues

United Parcel Service also comments that re-enactment of the rules would be inappropriate because they allegedly pose a "risk of seriously undermining Congress' carefully crafted division of authority between the Commission and the Postal Service." UPS Comments at 15. UPS suggests that the rules would improperly delegate the Commission's responsibility for determining attributable costs to the Postal Service; could be invoked to nullify the Commission's rate recommendations for Express Mail in omnibus rate decisions and introduce reduced rates that could be in effect for years; and would serve as "a device for selectively deregulating postal ratemaking in the case of only one favored class of mail." Id. at 15–16. In the Commission's view, these comments mischaracterize the purpose and intended operation of the Express Mail market response rules.

As the source and repository of the raw data from which cost estimates are derived, the Postal Service necessarily provides the principal input to the process of determining attributable cost levels. The Commission's functions thereafter are to provide a forum in which interested parties can probe and challenge the Service's estimates; and to decide whether the Service's proposals are supported by substantial evidence and consistent with the Postal Reorganization Act's policies and factors. Rules 57 through 57c provide expedited procedures, but also preserve these essential functions. They do not allow the Commission to recommend Express Mail rates that are unsupported by credible cost evidence or otherwise inconsistent with statutory factors. *See* the rule for decision in § 3001.57c. They will not be allowed to become a substitute for scrutiny in omnibus rate cases, as the Commission clearly stated in Docket No. RM88–2. *See* Second Notice of Proposed Rulemaking, 54 FR 11403 (March 20, 1989). Therefore, in no meaningful sense can they be characterized as a vehicle for deregulating Express Mail rates.

III. The Question of Need

Both United Parcel Service and the Office of the Consumer Advocate take the position that, because of the Postal Service's failure to invoke rules 57 through 57c during their initial five-year period of effectiveness, and changed circumstances in the expedited delivery market in that time, there is no demonstrable need for re-enacting the rules. On the basis of available information, the Commission believes that this conclusion may be incorrect, and at the very least is premature. While the expedited delivery market doubtless has changed in five years, the Postal Service appears to be correct in its characterization that, "[t]he most important feature that distinguishes competitors is price." Postal Service Petition at 4; *see* PRC Op. R94–1, November 30, 1994, para. 5402. In this fiercely competitive market, it is possible that expeditious adjustments in Express Mail rates may be useful to sustain the viability of that service to meet future competitive exigencies.[5]

[4] *See* Costle v. Pacific Legal Foundation, 445 U.S. 198, 213–16 (1980).

[5] The Commission cannot agree with the contentions of UPS and OCA that the current modest contribution of Express Mail to the institutional costs of the Postal Service represents an "irreducible minimum" (OCA Comments at 4), leaving no room for operation of the market response rules. In recommending a 119 percent coverage for Express Mail in the recent omnibus rate case—a target "slightly lower than that proposed by the Postal Service"—the Commission neither stated nor suggested that this figure was an "irreducible minimum." *See* PRC Op. R94–1, para. 4052. On the contrary, the finding that 119 percent is an acceptable coverage factor for Express Mail at this time suggests (all other things being equal) that market response rates nearer average estimated attributable costs would be *more* acceptable than if a higher coverage factor had been recommended in the last omnibus rate case.

Consequently, the Commission will re-enact rules 57 through 57c for an additional five-year period.[6]

IV. Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that these rules will apply exclusively to the United States Postal Service in proceedings conducted by the Postal Rate Commission, and to parties who choose to participate in those proceedings. Therefore, it is certified that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* Because these rules will only apply to the Postal Service and other participants in Commission proceedings, it has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. Inasmuch as the rules impose information-gathering and reporting requirements exclusively upon the United States Postal Service for the purpose of conducting postal rate proceedings, they do not contain any information collection requirements as defined in the Paperwork Reduction Act [44 U.S.C. 3502(4)], and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662, 84 Stat. 759–62, 764, 90 Stat. 1303; [5 U.S.C. 553], 80 Stat. 383.

2. Sections 3001.57 through 3001.57c are added to subpart B to read as follows:

[6] For the sake of clarity, section 57(b) of the re-enacted rules has been amended by deletion of the word "initially" from its first sentence.

§ 3001.57 Market Response Rate Requests for Express Mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–11413 (March 20, 1989), 54 FR 25132–42 (June 13, 1989) and PRC Order No. 836.

(b) This section and §§ 3001.57a through 57c are to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the **Federal Register** which provides an appropriate opportunity for public comments.

§ 3001.57a Market Response Rate Requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) of this section shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extend practicable, the factors identified in rule 54(j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. The Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail

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revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) rates remain at their existing levels, and

(2) rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1)(i)–(iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) that the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) that the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

§ 3001.57b Market Response Rate Requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) the average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) the average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e) (1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.57c Express Mail Market Response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

Issued by the Commission on February 17, 1995.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–5115 Filed 3–3–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–3–6638a; FRL–5159–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern a rule from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The revised rule controls emissions of volatile organic compounds (VOCs) from in-situ combustion well vents. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate VOC emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of nonsubmittal for this rule has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on May 5, 1995 unless adverse or critical comments are received by April 5, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, suite 200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is SJVUAPCD Rule 4407, In-Situ Combustion Well Vents. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County

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APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because some of these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2)(C) of the CAA, Congress statutorily required nonattainment areas to submit reasonably available control technology (RACT) rules for all major sources of VOCs by November 15, 1992 (the RACT catch-up requirement).

On March 20, 1991, the SJVUAPCD was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. It requires such areas to adopt RACT rules pursuant to section 172(b) as interpreted in pre-amendment guidance.[3] The San Joaquin Valley Area is classified as serious[4]; therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.[5]

The State of California submitted many RACT rules for incorporation into its SIP on July 13, 1994, including the rule being acted on in this document. This document addresses EPA's direct-final action for SJVUAPCD Rule 4407, In-situ Combustion Well Vents. The SJVUAPCD adopted Rule 4407 on May 19, 1994. This submitted rule was found to be complete on July 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[6] and is being finalized for approval into the SIP.

Rule 4407 controls emissions of VOCs from crude oil production wells where production has been enhanced by the heat of combustion resulting from air injected into the oil reservoir. VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of the SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to the section 182(b)(2)(C) CAA requirement. The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "catch-up" their RACT rules. See section 182(b)(2). For some source categories, such as in-situ combustion well vents, EPA has not published a CTG. In such cases, the air pollution control agency may determine what controls are required to satisfy the RACT requirement by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls are considered. Additionally, for both CTG and non-CTG rules, the air pollution control agency may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD's submitted Rule 4407, In-Situ Combustion Well Vents, is a new rule which controls VOC emissions from well vents by requiring either the use of an emissions control device which reduces well vent emissions by 85%, or routing emissions to fuel burning equipment or a smokeless flare. Rule 4407 also requires leak inspection and repair, annual compliance testing of control systems, and recordkeeping for operations, inspections and maintenance.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. If this direct final action is not withdrawn, on May 5, 1995, any FIP clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate

[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for the following counties: Kern, King, Madera, Merced, and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[5] California did not make the required SIP submittals by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The rule being acted on in this Notice of Direct Final Rulemaking was submitted in response to the EPA finding of failure to submit.

[6] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 5, 1995, unless, by April 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 5, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 8, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(198)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(C) San Joaquin Valley Unified Air Pollution Control District

(*1*) Rule 4407, adopted on May 19, 1994.

* * * * *

[FR Doc. 95–5342 Filed 3–3–95; 8:45 am]

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40 CFR Part 52

[MA–30–1–6846a; A–1–FRL–5158–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC RACT for Brittany Dyeing and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision consists of a reasonably available control technology (RACT) Plan Approval for controlling volatile organic compound (VOC) emissions from Brittany Dyeing and Printing Corporation of New Bedford, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken in accordance with the Clean Air Act.

DATES: This final rule is effective May 5, 1995, unless notice is received by April 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On March 31, 1994, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a reasonably available control technology (RACT) Plan Approval for controlling volatile organic compound (VOC) emissions from Brittany Dyeing and Printing Corporation of New Bedford, Massachusetts.

Background Information

On November 9, 1983 (48 FR 51480), EPA approved Massachusetts Regulation 310 CMR 7.18(17) "Reasonably Available Control Technology," as part of the Commonwealth of Massachusetts 1982 ozone attainment plan. This regulation requires the Massachusetts Department of Environmental Protection to determine and impose RACT on all facilities with the potential to emit one hundred tons per year or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.[1]

Summary of SIP Revision

On March 31, 1994, Massachusetts submitted a RACT Plan Approval for Brittany Dyeing and Printing. EPA has reviewed this Plan Approval against the

[1] On February 12, 1993, Massachusetts revised 310 CMR 7.18(17) to apply to 50 ton per year facilities pursuant to Section 182 of the Clean Air Act Amendments of 1990. This revised rule has not yet been approved into the Massachusetts SIP.

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applicable statutory requirements and for consistency with EPA guidance. Massachusetts' Plan Approval and EPA's evaluation are detailed in a memorandum dated December 21, 1994, entitled "Technical Support Document—Massachusetts—Brittany Dyeing and Printing Corporation." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. A summary of EPA's analysis is provided below.

Brittany has four 310 CMR 7.18(17) RACT applicable VOC emitting processes at its textile processing facility: Fabric printing, fabric finishing, fabric dyeing, and process cleaning. Brittany's total 1990 VOC emissions were 172.1 tons.

Brittany has significantly reduced its VOC emissions by reformulating its printing pastes and finish formulations. Fabric printing and fabric finishing are the main source of VOC emissions at Brittany. Together these processes account for 93.6 percent of the facility's total 1990 VOC emissions. Although there is no CTG document for the fabric printing and finishing operations at Brittany, a CTG does exist for graphic arts printing (Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography; EPA–450/2–78–033) which covers a printing process that is similar to the fabric printing and finishing operations at Brittany. This CTG recommends a 65 percent overall reduction in VOC emissions from packaging rotogravure and a 75 percent overall reduction for publication rotogravure when using add-on controls. Furthermore, EPA has determined that a 0.5 pounds of VOC per pound of solids emission limit constitutes RACT for flexographic and packaging rotogravure printing.

The DEP has determined that an emission limit of 0.5 pounds of VOC per pound of solids represents RACT for both the fabric printing and the fabric finishing processes at Brittany. These emissions limits, which are consistent with those imposed on facilities covered by the Graphic Arts printing CTG, are reasonable limits. The 0.5 pounds of VOC per pound of solids limits are also consistent with a previously approved RACT Plan for Duro Textile Printers of Fall River, Massachusetts (54 FR 46896).

DEP has also determined that an emissions limit of 0.5 pounds of VOC per pound of solids represents RACT for the fabric dyeing process at Brittany. One exception to this limit is allowed for Polyester Carrier. Once again, the 0.5 pounds of VOC per pound of solids limit appears reasonable. The exception for Polyester Carrier is also considered acceptable in light of the following: (1) Fabric dyeing is responsible for only 0.7 percent of the facility's total 1990 emissions; and (2) DEP is also imposing a 0.4 tons of VOC per year cap on emissions from this product.

Finally, cleaning activities account for 5 percent of Brittany's total 1990 VOC emissions. EPA has recently published guidance on emissions from process cleaning (Alternate Control Techniques Document—Industrial Cleaning Solvents; EPA–453/R–94–015). This document indicates that the establishment of a solvents accounting or tracking system whereby actual solvent usage is tracked (rather than tracking only the total quantity purchased) leads to a reduction in emissions from cleaning activities. DEP is requiring that Brittany keep a separate daily VOC emissions log for cleaning activities and is also imposing annual caps on VOC emissions from specific cleaning products.

Brittany's compliance with the RACT requirements outlined above will be determined by the VOC content of its print pastes, finish formulations and dyes, and by the amount of solvent used per day. Brittany is required to keep daily records documenting the use of all VOC containing material.

EPA's review of Massachusetts' SIP revision indicates that the requirements contained in Massachusetts Plan Approval No. 4P92012 represent RACT for Brittany. EPA is, therefore, approving the March 31, 1994 Massachusetts SIP revision.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 5, 1995 unless, by April 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 5, 1995.

Final Action

EPA is approving Massachusetts' Plan Approval for Brittany Dyeing Printing Corporation which was submitted as a SIP revision on March 31, 1994. This Plan Approval imposes RACT on Brittany in order to reduce VOC emissions from this facility.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 9, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(104) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(104) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on March 31, 1994.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated March 31, 1994 submitting a revision to the Massachusetts State Implementation Plan.

(B) Final Plan Approval No. 4P92012, dated and effective March 16, 1994 imposing reasonably available control technology on Brittany Dyeing and Finishing of New Bedford, Massachusetts.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citation 310 CMR 7.18(17) to read as follows:

§ 52.1167 EPA-approved Massachusetts state regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.18(17)	Reasonably Available Control Technology.	3/31/94	March 6, 1995	[Insert *FR* citation from published date].	104	RACT for Brittany Dyeing and Finishing of New Bedford, MA.

[FR Doc. 95–5350 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–47–1–6705a; FRL–5161–5]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing Sulfur Dioxide in Harris County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the Texas State Implementation Plan (SIP) to include Agreed Orders limiting sulfur dioxide (SO_2) allowable emissions at certain nonpermitted facilities in Harris County, Texas. By approving these Agreed Orders into the Texas SIP, along with approving a modeling demonstration showing attainment for the SO_2 National Ambient Air Quality Standards (NAAQS) in Harris County, and acknowledging that Harris County has more than two years of quality assured SO_2 monitoring data showing no violations of the SO_2 NAAQS, the EPA will not, at this time, designate Harris County, Texas nonattainment for the SO_2 NAAQS.

DATES: This final rule is effective on May 5, 1995 unless adverse or critical comments are received by April 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch (6T–A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

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SUPPLEMENTARY INFORMATION:

Background

Four violations of the primary 24-hour SO_2 NAAQS of 365 ug/m³ (0.14 parts per million) were recorded at a single monitoring site (Houston Regional Monitoring Network (HRM) monitoring site #3) located near the Houston Ship Channel in Harris County, Texas, during 1986, 1988, and 1990. The 24-hour SO_2 NAAQS only allows one exceedance of the 365 ug/m³ standard per calendar year. Each additional exceedance is considered a violation of the NAAQS. Due to the monitoring violations and a modeling study conducted in 1987 by Science Applications International Corporation, under contract with the EPA Region 6, which predicted SO_2 NAAQS exceedances in a portion of Harris County, the EPA declared, in an FR document dated April 22, 1991 (56 FR 16274), that Harris County was under consideration as a potential new SO_2 nonattainment area.

In response to the recommended redesignation, Radian Corporation, which represented the HRM, worked with the Texas Natural Resource Conservation Commission (TNRCC) to obtain reductions in SO_2 allowable emissions from certain Houston industries. Radian then modeled the revised allowable SO_2 emission inventory to determine if the area would attain the SO_2 NAAQS. By achieving these emission reductions, making them federally enforceable, and executing an in-depth modeling study, HRM sought to demonstrate that Harris County was in attainment for SO_2, and could thus avoid being redesignated to nonattainment. The EPA agreed to defer its final decision regarding nonattainment for Harris County, and granted the TNRCC, HRM, and the involved Harris County industries time to complete the modeling analysis, and also allowed the TNRCC to put in place enforceable restrictions on the new SO_2 emission rates (i.e. through Agreed Orders).

Analysis of State Submission

A. Procedural Background

The Clean Air Act (the Act) requires states to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Texas held a public hearing on March 31, 1994, to entertain public comment on a proposed Texas SIP revision containing the following elements: (1) An example Agreed Order limiting SO_2 allowable emissions; (2) a modeling demonstration showing SO_2 NAAQS attainment for Harris County; and (3) supporting narrative information. Subsequent to the public hearing and consideration of hearing comments, the SIP revision, containing 13 Agreed Orders, was adopted by the State on June 29, 1994. The SIP revision was submitted by the Governor to the EPA by cover letter dated August 3, 1994.

The SIP revision package was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated September 20, 1994, was forwarded to the Governor finding the submittal complete and indicating the next steps to be taken in the review process.

B. Review of State SIP Revision

The Texas SIP Revision for Harris County contained, as outlined above, modeling analyses demonstrating SO_2 NAAQS attainment for Harris County (3-hour, 24-hour, and annual), Agreed Orders limiting SO_2 allowable emissions at 13 nonpermitted companies in Harris County, and supporting narrative information. The modeling analyses used a revised allowable emission inventory obtained through an SO_2 emissions reduction plan involving many Houston industries. As a result of the reduction plan, about 94,000 tons per year of federally-enforceable SO_2 allowable emissions reductions were obtained in Harris County, thereby decreasing the original areawide SO_2 allowable emissions inventory from about 287,000 tons per year to about 193,000 tons per year.

A review of the worst case scenario modeling presented in the SIP showed no exceedances of the SO_2 NAAQS (i.e. no exceedances at any of the receptors in the modeling grid). The modeling protocol and procedures, approved by the EPA and consistent with the EPA's "Guideline on Air Quality Models (Revised)" (July, 1986), used the EPA's Industrial Source Complex Short Term 2 model (most current version at the time of modeling) and five years of meteorological data (1981–1985) from the Houston International Airport with Lake Charles, Louisiana upper air data. A value of 3.5 ug/m³ was used as the 24-hour background value, based on an evaluation of background monitored values and the area source contribution to the total emission inventory. Further, no violations of the SO_2 NAAQS have occurred at any Harris County area monitoring site since calendar year 1990. It is important to note that an SO_2 violation is defined as more than one exceedance of the 3-hour or 24-hour SO_2 NAAQS, or an exceedance of the annual SO_2 NAAQS. Only one exceedance of the 24-hour SO_2 NAAQS, in 1991, has been recorded in Harris County since calendar year 1990. For SO_2 NAAQS attainment, at least 8 calendar quarters (2 years) of data with no violations of the NAAQS is required. For further details on the modeling analyses and monitoring data, please reference the Technical Support Document (TSD) and the State submittal located at the EPA Region 6 office listed above.

The Agreed Orders were reviewed for consistency with the EPA enforceability guidance (i.e., the September 23, 1987, memorandum from J. Craig Potter regarding SIP enforceability), and with40 CFR part 60. The provisions of the Agreed Orders clearly identify each subject company, which all contain unpermitted SO_2 sources. Each Order, effective June 29, 1994, also sets SO_2 maximum allowable emissions limits, and recordkeeping, reporting and compliance monitoring requirements, including continuous emission monitoring requirements. Six facilities requested approval of an equivalent method of monitoring SO_2 emissions: Crown Central Petroleum Corporation, Exxon Company USA, Lyondell Citgo Refining Company, LTD., Mobil Mining and Minerals Company (Mobil), Phibro Energy USA, Inc., and Shell Chemical/Oil. On June 28, 1994, the Executive Director of the TNRCC approved the alternate method requests. The EPA is also granting in this FR document approval for each of the alternative monitoring proposals. The equivalent monitoring method proposed by all of the companies, except Mobil, was to use a continuous emission monitor (CEM) to measure the concentration of hydrogen sulfide in the fuel gas that is fed to the combustion units listed in Attachment A of the respective Orders. In addition, it was also proposed by all companies, except Mobil, to use the maximum fuel capacity of the combustion units listed in Attachment A of the respective Orders as part of the calculations to demonstrate compliance with the maximum allowable emission rates in the event there is no fuel feed meter on a combustion unit or in the event the fuel feed meter is out of operation or malfunctioning. Mobil requested approval of an alternative CEM quality assurance program, and an alternative monitoring method for a small emission point. For further details on the Agreed Orders, please reference the TSD and the State submittal located at the EPA Region 6 office listed above.

Final Action

The EPA is approving a revision to the Texas SIP submitted by the Governor of Texas by cover letter dated August 3, 1994, in order to make federally enforceable Agreed Orders to limit SO_2 allowable emissions at 13 nonpermitted facilities in Harris County. By approving these Agreed Orders into the Texas SIP, along with approving the modeling demonstration showing attainment for the SO_2 NAAQS in Harris County, and acknowledging that Harris County has more than 2 years of quality assured SO_2 data showing no violations, EPA will not undertake the process to designate Harris County, Texas as nonattainment for the SO_2 NAAQS at this time.

The EPA has reviewed this revision to the Texas SIP and is approving the revision as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this action will be effective May 5, 1995 unless, by April 5, 1995, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 5, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* vs. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 14, 1995.

William B. Hathaway,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(93) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(93) A revision to the Texas State Implementation Plan (SIP) to include agreed orders limiting sulfur dioxide (SO_2) allowable emissions at certain nonpermitted facilities in Harris County, and to include a modeling demonstration showing attainment of the SO_2 National Ambient Air Quality Standards, was submitted by the Governor by cover letter dated August 3, 1994.

(i) Incorporation by reference.

(A) Texas Natural Resource Conservation Commission (TNRCC) Order No. 94–09, as adopted by the TNRCC on June 29, 1994.

(B) TNRCC Order No. 94–10 for Anchor Glass Container, as adopted by the TNRCC on June 29, 1994.

(C) TNRCC Order No. 94–11 for Crown Central Petroleum Corporation, as adopted by the TNRCC on June 29, 1994.

(D) TNRCC Order No. 94–12 for Elf Atochem North America, Inc., as adopted by the TNRCC on June 29, 1994.

(E) TNRCC Order No. 94–13 for Exxon Company USA, as adopted by the TNRCC on June 29, 1994.

(F) TNRCC Order No. 94–14 for ISK Biosciences Corporation, as adopted by the TNRCC on June 29, 1994.

(G) TNRCC Order No. 94–15 for Lyondell Citgo Refining Company, LTD., as adopted by the TNRCC on June 29, 1994.

(H) TNRCC Order No. 94–16 for Lyondell Petrochemical Company, as adopted by the TNRCC on June 29, 1994.

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(I) TNRCC Order No. 94–17 for Merichem Company, as adopted by the TNRCC on June 29, 1994.

(J) TNRCC Order No. 94–18 for Mobil Mining and Minerals Company, as adopted by the TNRCC on June 29, 1994.

(K) TNRCC Order No. 94–19 for Phibro Energy USA, Inc., as adopted by the TNRCC on June 29, 1994.

(L) TNRCC Order No. 94–20 for Shell Chemical and Shell Oil, as adopted by the TNRCC on June 29, 1994.

(M) TNRCC Order No. 94–21 for Shell Oil Company, as adopted by the TNRCC on June 29, 1994.

(N) TNRCC Order No. 94–22 for Simpson Pasadena Paper Company, as adopted by the TNRCC on June 29, 1994.

(ii) Additional material.

(A) May 27, 1994, letter from Mr. Norman D. Radford, Jr. to the TNRCC and the EPA Region 6 requesting approval of an equivalent method of monitoring sulfur in fuel and an equivalent method of determining compliance.

(B) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Crown Central Petroleum Corporation, approving an alternate monitoring and compliance demonstration method.

(C) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Exxon Company USA, approving an alternate monitoring and compliance demonstration method.

(D) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Lyondell Citgo Refining Co., LTD., approving an alternate monitoring and compliance demonstration method.

(E) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Phibro Energy, USA, Inc., approving an alternate monitoring and compliance demonstration method.

(F) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Shell Oil Company, approving an alternate monitoring and compliance demonstration method.

(G) June 8, 1994, letter from Mr. S. E. Pierce, Mobil Mining and Minerals Company, to the TNRCC requesting approval of an alternative quality assurance program.

(H) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Mobil Mining and Minerals Company, approving an alternative quality assurance program.

(I) August 3, 1994, narrative plan addressing the Harris County Agreed Orders for SO_2, including emission inventories and modeling analyses (i.e. the April 16, 1993, report entitled "Evaluation of Potential 24-hour SO_2 Nonattainment Area in Harris County, Texas–Phase II" and the June, 1994, addendum).

(J) TNRCC certification letter dated June 29, 1994, and signed by Gloria Vasquez, Chief Clerk, TNRCC.

[FR Doc. 95–5352 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 70

[WI001; FRL–5164–9]

Clean Air Act Final Interim Approval of the Operating Permits Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Wisconsin for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: April 5, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, Permits and Grants Section (AT–18J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2703.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the Clean Air Act (Act), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On October 19, 1994, EPA proposed interim approval of the operating permits program for the State of Wisconsin. See 59 FR 52743. The EPA received public comment from 7 organizations on the proposal and compiled a Technical Support Document (TSD) responding to the comments and briefly describing and clarifying aspects of the operating permits program. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the State of Wisconsin.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The EPA received comments on a total of 14 topics from 7 organizations. The EPA's response to these comments is summarized in this section. Comments supporting EPA's proposal are not addressed in this notice; however, EPA's complete response to comments TSD is available in the official file at the Region 5 address noted in the **ADDRESSES** section above.

1. Indian Lands

The EPA proposed that interim approval of Wisconsin's operating permits program not extend to lands within the exterior boundaries of reservations of federally recognized Indian Tribes in the State of Wisconsin. The proposal indicated that the Wisconsin Department of Natural Resources (WDNR) had not demonstrated the legal authority to regulate sources on tribal lands. WDNR submitted several comments on this issue, which are summarized and addressed below.

Comment: "[W]ho will be responsible for issuance of permits to sources on Indian reservations prior to promulgation of either a tribal operation permits program or the federal operation permits program under 40 CFR Part 71? We are not aware of any tribal programs being developed or implemented in Wisconsin, and the federal part 71 rules have not yet been formally proposed. We are concerned about the apparent lack of any regulatory authority over sources on Indian reservations until a federal or tribal program is promulgated."

Response: At this time, EPA is not aware of any facility within the exterior boundaries of a reservation in the State of Wisconsin that requires a title V operating permit. Further, the Act explicitly contemplates that Indian Tribes may develop and administer their own Clean Air Act programs in the same manner as States. Section 164(c) delegates to Indian governing bodies the authority to redesignate lands within the exterior boundaries of reservations of federally recognized Indian tribes for purposes of the Act's Prevention of Significant Deterioration of Air Quality (PSD) program. Section 301(d) of the Act delegates to EPA the authority to specify the provisions of the Act for which it is appropriate to treat Indian Tribes in the same manner as States. The EPA has issued proposed rules that would authorize Tribes to administer approved Act programs in the same manner as States for virtually all provisions of the Act, including title V operating permit programs. *See* 59 FR 43956 (Aug. 25, 1994).

The EPA has spelled out some of the steps it currently takes and plans to take to protect tribal air quality prior to issuance of final rules authorizing tribal Act programs and ensuing tribal program approvals. *See, e.g.*, 59 FR at 43960–43961. The EPA is also developing rules to be issued within the next few months that would provide for EPA implementation of title V permit programs on tribal lands in the interim period before tribal programs are approved.

Comment: "[T]he State of Wisconsin believes that it has authority to permit sources within Indian reservations if the source may have a substantial off-reservation impact * * *. The State has jurisdiction to enforce its air permitting laws on the basis of common law principles laid down by the United States Supreme Court. Recent decisions of that Court have departed from the concept of inherent Indian sovereignty as a bar to State jurisdiction over Indians and leaned towards reliance on the principle of federal preemption. *Rice* v. *Rehner*, 463 U.S. 713 (1983); see also *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164 (1973) * * *. Although the concept of tribal sovereignty is given less emphasis today, it continues to be relevant to a form of preemption analysis applicable to Indian law, which can be summarized as follows: State jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority. *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324, [ ] 334 (1983). Thus, the inquiry must be whether federal or Indian interests are interfered with by enforcement of the state's air permitting laws, and, if so, whether the State interests at stake are sufficient to justify the assertion of State authority. In *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Court discusses the issue of whether State laws apply to on-reservation conduct of Indians. The Court describes the appropriate analysis, that being the balancing of state, federal, and tribal interests and the related notion of tribal sovereignty * * *. Where a State's interest in applying its law outweighs any competing federal or Indian interests at stake, and where the State's exercise of its jurisdiction is not incompatible with congressional goals of promoting Indian self-government, self-sufficiency and economic development, states may apply their laws unless such application is preempted by the law. *Cabazon*, 480 U.S. at 214–216. In the case of the title V permitting program, no express federal law preempts State jurisdiction on Indian reservations. While this could occur with delegation of state status to the tribes, it has not happened yet. Furthermore, no Tribe in Wisconsin has a comprehensive air management program similar to that of the State. Given this backdrop, the State's interests in protecting the health and welfare of its citizens must prevail."

"* * * [T]he State of Wisconsin believes that EPA's assertion that the State has no permitting jurisdiction over non-Indians on Indian reservations is overly broad, especially where the lands are owned by non-Indians. It is the State of Wisconsin's position that activities by non-Indians on Indian reservations are subject to a case-by-case review to determine whether the tribe (the federal government) or the state has regulatory jurisdiction. In order to regulate non-Indians, the tribe must demonstrate its inherent authority on a case-by-case basis. *Montana* v. *US*, 450 US 544 [ ] (1981), *Brendale* v. *Confederated Tribes of Yakima Indian Nation*, 492 US 408 [ ] (1989) * * *. In addition, as noted above, there is no inherent bar to state jurisdiction over the on-reservation activities of non-Indians."

Response: To obtain title V program approval a State must demonstrate that it has adequate authority to issue permits and assure compliance by all sources required to have permits under title V with each applicable requirement under the Act. See Act § 502(b)(5); 40 CFR 70.4(b)(3)(i). The authority must include:

> A legal opinion from the Attorney General from the State or the attorney for those State, local, or interstate air pollution control agencies that have independent counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific stat[ut]es, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority.

40 CFR 70.4(b)(3). Thus, the Act requires affected States to support their title V program submittals with a specific showing of adequate legal authority over all regulated sources, including sources located on lands within Indian reservations. For the reasons outlined below, EPA concludes that the information presented by WDNR has not adequately demonstrated authority to regulate title V sources located within the exterior boundaries of reservations of Federally recognized Tribes, including any non-Indian owned fee lands within reservation boundaries.

In *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465, 1469 (9th Cir. 1985), the court upheld EPA's decision declining to approve the application of a state program submitted under the Resource Conservation and Recovery Act (RCRA) to Indian activities within Indian country, notwithstanding that "RCRA does not directly address the problem of how to implement a hazardous waste management program on Indian reservations." The court reasoned that EPA's decision was within its reasonable discretion and was buttressed by "well-settled principles of federal Indian law":

> States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it. [citations omitted]. This rule derives in part from respect for the plenary authority of Congress in the area of Indian affairs. [citations omitted]. Accompanying the broad congressional power is the concomitant federal trust responsibility toward Indian tribes. [citations omitted]. That responsibility arose largely from the federal role as a guarantor of Indian rights against state encroachment. [citation omitted]. We must presume that Congress intended to exercise its power in a manner consistent with the federal trust obligation. [citation omitted].

Washington Department of Ecology, 752 F.2d at 1469–1470; *see also United States* v. *Mazurie*, 419 U.S. 544, 556 (1975) (the inherent sovereign authority of Indian Tribes extends "over both their members and their territory"); *Montana* v. *United States*, 450 U.S. 544, 556–557 (1981) (Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe).

The cases cited by WDNR do not demonstrate that Wisconsin has authority to administer its title V operating permits program within the

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exterior boundaries of Indian reservations. In *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324, 337–38, 340–41, 343–44 (1983), the Supreme Court held that the State of New Mexico's attempt to regulate the hunting activities of non-tribal members on a Tribe's reservation was preempted because federal law recognized the authority of the Tribe to regulate hunting and fishing and the State regulation of non-members would entangle and interfere with the federal promotion of tribal authority. In *California* v. *Cabazon Band of Mission Indians*, 107 S.Ct. 1083 (1987), the Court held that California and Riverside County could not assert jurisdiction over bingo and gambling activities conducted by Indians on Indian land, even though the primary customers for the activities were non-Indians. The Court found that neither Pub. L. No. 83–280 nor the Organized Crime Control Act of 1970 authorized the State or County to impose gambling laws or ordinances on the reservation. In *McClanahan* v. *Arizona State Tax Comm.*, 411 U.S. 164 (1973), the Supreme Court held that it was unlawful for the State of Arizona to impose an income tax on a reservation Indian whose income was derived from reservation sources. In three of the four Supreme Court cases cited by WDNR to support its regulation of Indian country based on preemption analysis, the Court held that state regulation was preempted.

In *Rice* v. *Rehner*, 463 U.S. 713 (1983) the Supreme Court reversed a lower court's decision that State regulation of liquor on a reservation was preempted by Federal law. The Court's decision was based on its conclusion that "[i]n the area of liquor regulation, we find no 'congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development'" (citation omitted) and that Congress authorized State regulation over Indian liquor transactions. *Rice*, 463 U.S. at 724, 726, 734–35. In notable contrast with liquor regulation and as elaborated below, the Act (and other environmental statutes) plainly provides for tribal and Federal programs to protect air quality within reservations. Further, as explained below, there is well-established Federal policy promoting collaborative tribal and Federal environmental management of reservations and treating Tribes, not States, as responsible for protection of the reservation environment.

WDNR cites two additional Supreme Court cases to support its comment that EPA has been overbroad in proposing to conclude that the State lacks authority over non-Indian owned lands within the exterior boundaries of an Indian reservation. WDNR comments that the determination of regulatory jurisdiction over such lands should be based on a specific case-by-case review.

The case law addressing a Tribe's authority over non-members on non-Indian owned fee lands within the exterior boundaries of a reservation must be viewed in light of the provisions of the Act providing for tribal and Federal protection of air quality within reservation boundaries and the reservationwide concerns presented by air pollution activities, discussed further below.

As noted, EPA's regulations implementing the title V program require specific evidence of legal authority. WDNR does not present Federal law, particularized facts, and a formal legal opinion that specifically and adequately support its broad claim of title V program jurisdiction over all reservations in Wisconsin. Adequate State authority is especially necessary in these circumstances where, as set out below, the Act and relevant Federal policies provide for Tribes and EPA to protect reservation air quality, Supreme Court case law recognizes inherent sovereign tribal authority to regulate activities on fee lands where the conduct may have a serious and substantial impact on tribal health or welfare, and EPA has proposed to interpret the Act tribal authority provisions as granting Tribes' authority over air pollution activities on fee lands within reservations.

For many years Congress has delegated to Indian governing bodies the authority to redesignate "[l]ands within the exterior boundaries of reservations of federally recognized Indian tribes" for the PSD program under the Act. *See* section 164(c) of the Act. In 1990, Congress broadly addressed tribal authority under the Act, adding sections 110(o) and 301(d) to the Act. Section 301(d)(2) of the Act authorizes EPA to issue regulations specifying those provisions of the Act for which it is appropriate "to treat Indian Tribes as States." Further, it addresses the potential jurisdictional scope of tribal Act programs, authorizing EPA to treat Tribes in the same manner as States for "the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." Act § 301(d)(2)(B). In addition, section 110(o) provides that tribal implementation plans under the Act "shall become applicable to all areas * * * located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation." Section 302(r) of the Act defines "Indian tribe" to mean "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Section 302(b) of the Act includes "[a]n agency of an Indian tribe" in the definition of "air pollution control agency." *See also* sections 103 and 105 of the Act (authorizing Federal financial assistance to air pollution control agencies).

The EPA has proposed to interpret these and other provisions of the Act as granting Tribes—approved by EPA to administer Act programs in the same manner as States—authority over all air resources within the exterior boundaries of a reservation for such programs. The EPA has explained that "[t]his grant of authority by Congress would enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation." 59 FR 43956, 43958–43960 (Aug. 25, 1994) (legal rationale).[1]

The Supreme Court has indicated that a Tribe "may * * * retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the * * * health or welfare of the tribe." *Montana*, 450 U.S. at 566. A Tribe's inherent authority must be determined on a case-by-case basis, considering whether the conduct being regulated has a direct effect on the health or welfare of the Tribe substantial enough to support the Tribe's jurisdiction over non-Indians. *See Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).

Thus, EPA observed that even without the proposed grant of authority, Indian Tribes would very likely have inherent authority over all activities within reservation boundaries, including non-Indian owned activities on fee lands, that are subject to Act regulation. The high mobility of air pollutants, resulting area-wide effects and the seriousness of such impacts would all tend to support

[1] EPA's proposed interpretation was informed in part by the significant regulatory entanglements and inefficiencies that could result if tribes have reservationwide jurisdiction over Act Tribal implementation plans (TIPs), as plainly provided in section 110(o) of the Act, but States are conferred jurisdiction within reservation boundaries over non-TIP programs, such as title V. *See* 59 FR 43959; *see also New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. at 340–41.

such inherent tribal authority. *See* 59 FR 43958, n. 5; *see also* 56 FR 64876 at 64877–64879 (Dec. 12, 1991).

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with tribal governments on a "government-to-government" basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign tribal governments must be fully respected. 59 FR 22,951 (May 4, 1994).

The EPA's tribal policies commit to certain principles, including the following:

> EPA recognizes tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.
>
> * * * * *
>
> In keeping with the principal of Indian self-government, the Agency will view tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to tribal Governments to play this lead role for matters affecting reservation environments.

November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations"; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994; *see also Washington Department of Ecology*, 752 F.2d at 1471–72 & n. 5.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider tribal interests in its actions. *Nance* v. *EPA*, 645 F.2d 701, 710 (9th Cir.), *cert. denied*, *Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981).

The EPA provides federal financial assistance and technical assistance to Tribes to support assessment and protection of reservation environments including air quality. Section 301(d)(4) of the Act expressly provides for EPA administration of Act programs where it is inappropriate or infeasible for Tribes. EPA has described its efforts and plans to protect reservation air quality. The EPA will fill gaps in air quality protection in the interim period before tribal Act programs are approved, as necessary to ensure that reservation air quality is adequately protected. *See* 59 FR 43960–61. The EPA will issue proposed rules within the next few months that will provide for EPA implementation of title V permit programs where Tribes lack approved programs.

Even where an environmental statute did not directly address management on reservations and Tribes themselves had not assumed authority for program management, the reviewing court upheld EPA's decision declining to approve a State program's application to Indian country and concluded:

> [T]he tribal interest in managing the reservation environment and the federal policy of encouraging tribes to assume or at least share in management responsibility are controlling.
>
> * * * * *
>
> It is enough that EPA remains free to carry out its policy of encouraging tribal self-government by consulting with the tribes over matters of hazardous waste management policy, such as the siting of waste disposal. * * * The 'backdrop' of tribal sovereignty, in light of federal policies encouraging Indian self-government, consequently supports EPA's interpretation of RCRA.

Washington Dept. of Ecology, 752 F.2d at 1427 (citation omitted).

Further, the State has failed to identify any compelling State interest that would justify broad assertion of State authority throughout Indian country. At this time, EPA is not aware of any facility within the exterior boundaries of an American Indian reservation in the State of Wisconsin that requires a title V operating permit. It is possible but entirely speculative that some future title V reservation sources may be located near State boundaries. As indicated, EPA has issued proposed rules that would authorize Tribes to administer EPA-approved title V programs and, in the interim, EPA is developing regulations that would authorize EPA to issue title V permits for affected sources where Tribes lack approved programs. In addition, the Act provides several mechanisms to address the potential transport of pollution off-reservation. *See, e.g.*, 59 FR 43964; sections 110(a)(2)(D) and 126 of the Act; section 164(e) of the Act; section 505 of the Act.

Based on the Clean Air Act and Federal Indian law and policies, EPA concludes that WDNR has not adequately supported the application of its title V program to reservations generally or to fee lands within reservation boundaries. *See also* 53 FR 43080 (Oct. 25, 1988) (EPA's decision declining to approve Washington's request to administer the Safe Drinking Water Act's Underground Injection Control Program to Indian lands).

Finally, EPA's decision to decline to approve application of the State's program to lands within the exterior boundaries of reservations of federally recognized Indian Tribes based on the limited information submitted by the State and the special issues and considerations associated with tribal lands is within the Agency's discretion. *See* Act section 502(d)(1) (EPA "may" approve a [state title V] program) & Act section 502(g) (EPA "may" by rule grant the [state title V] program interim approval); *compare Alabama Power Co.* v. *EPA*, No. 94–1170, slip op. at 11 (D.C. Cir. Nov. 29, 1994) ("the AEL provision's mandatory language * * * '[t]he permitting authority *shall* * * * authorize an emission limitation less stringent than the applicable limitation * * *.' (emphasis added) * * *"); *see also* 59 FR 43982 ("[a] State Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian Tribe") (proposed 40 CFR 49.10).

Comment: "[T]he proposed interim approval discusses both Indian reservations and tribal lands, with no clear distinction between the two. On page 4 of its proposed interim approval, EPA states: '* * * the proposed interim approval of Wisconsin's operating permits program will not extend to lands within the exterior boundaries of any Indian reservation in the State of Wisconsin.' However, it is our understanding that Indians may own lands outside of a reservation which may still be considered 'tribal lands'. Certain lands may be simply owned by tribal members, while other lands may be considered 'trust lands' (i.e. after approval by the U.S. Department of the Interior). We are uncertain what EPA's position is as to whether State jurisdiction extends to various lands owned by Indians, but located outside of reservation boundaries. Again, this determination should likely be made on a case-by-case basis, as the State of Wisconsin may have regulatory jurisdiction on these lands. We are concerned that if the state does not have jurisdiction over these lands, a 'checkerboard' pattern of regulation will develop, with no clear delineation of who has jurisdiction over air pollution sources. This can result in a non-uniform, confusing and ineffective air pollution regulatory system. We believe that this issue should be clarified in EPA's final interim approval. Our position is that the State of Wisconsin should be allowed to exercise its jurisdiction on these lands, which are

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located outside of reservation boundaries."

Response: As indicated, EPA is currently not aware of any title V source located on lands over which an Indian tribe has jurisdiction. Further, the State's comment does not identify any specific affected off-reservation sources. Without more information about specific circumstances, EPA cannot address the State's specific concern. In general, based on the information currently submitted to EPA by the State and largely for the reasons outlined in the preceding response, EPA's approval of Wisconsin's program would not extend to any sources located within Indian country, as defined at 18 U.S.C. 1151. The EPA will work with both the State and an affected tribal governments to evaluate any specific questions that are in fact presented.

2. Fee Adequacy

WDNR commented that the State's title V fees were developed to provide for adequate implementation of the minimum program requirements as they existed when the fees were developed. However, WDNR is concerned that these fees may not be sufficient to cover any extra requirements that may be added to the program, especially the section 114 enhanced compliance monitoring requirements and the section 112(r) emergency release requirements. WDNR stated that EPA must take into account the limited resources that States will have under the presumptive minimum fees established for the title V program in promulgating these regulations.

Although title V establishes a presumptive minimum cost model, it also requires that a State's fee schedule result in the collection and retention of revenues sufficient to cover permit program costs. See 40 CFR 70.9 as well as the guidance memorandum issued on August 4, 1993 entitled, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V," signed by John Seitz, Director of the Office of Air Quality Planning and Standards. This adequacy requirement ensures that title V programs are not and will not be underfunded, and obligates the States to update and adjust their fee schedules if they are not sufficient to fund the program costs. It may therefore be appropriate to adjust fees for program expenditure increases, such as the implementation of new applicable requirements for enhanced monitoring and emergency releases.

3. Acid Rain Fees

The EPA proposed that the approval of Wisconsin's fee schedule does not extend to Wisconsin's fee provisions for the collection of emissions fees from utilities with affected units under section 404 of the Act (s.144.399(2)(am), Wis. Stats., and s.NR 410.04(4), Wis. Adm. Code). 40 CFR 70.9(b)(4) provides that, for 1995 through 1999, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act. One commenter argued that the State fees are not directly charged on emissions from Phase I affected units, and therefore EPA should not be concerned about these fees, which would place Wisconsin's fee revenue collection slightly above the presumptive minimum cost established in part 70. Although the fees in question are not directly charged on emissions from Phase I affected units, they are charged to other units operated by a utility that owns or operates a Phase I affected source. In addition, the fee amount is equivalent to what would have been charged to the Phase I affected unit. In other words, the State program charges emissions fees to utilities with Phase I units in an amount equivalent to what would have been charged directly to the Phase I units. Because of this equivalency, EPA has determined that these fees cannot be considered title V fees.

4. Section 112(g) Implementation

The EPA received several comments regarding the proposed approval of Wisconsin's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Two commenters argued that Wisconsin should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commenters also argued that Wisconsin's preconstruction review program cannot serve as a means to implement section 112(g) because it was not designed for that purpose. One commenter also asserted that such a regulatory program is unconstitutional because the section 112(g) requirements are vague. In addition to the above comments, WDNR also commented that EPA should delay the implementation of section 112(g) until the Federal regulations are promulgated. WDNR anticipates that the implementation of section 112(g) without Federal regulations will be difficult and time consuming. However, WDNR also commented that it will implement the requirements of section 112(g) if a such a delay is not possible.

In its proposed interim approval of Wisconsin's part 70 program, EPA proposed to approve Wisconsin's preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Wisconsin must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Wisconsin's preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Wisconsin of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Further, EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Wisconsin currently lacks a program designed specifically to implement section 112(g), Wisconsin's preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Wisconsin to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

Another consequence of the fact that Wisconsin lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Wisconsin to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

WDNR also commented that it will implement section 112(g) using its preconstruction review program, as EPA proposed on October 19, 1994. In addition, WDNR agreed that allowing Wisconsin 18 months from promulgation of Federal section 112(g) regulations to adopt its own regulations is sufficient.

One commenter incorporated by reference its comments on the proposed section 112(g) rule, and stated that the proposed rule has technical, legal, and constitutional defects that disqualify it as a valid or workable approach to section 112(g) implementation. The EPA believes the appropriate forum for pursuing objections to the legal validity of Federal regulations is by: (1) Submitting comments on a proposed rulemaking during the public comment period for that particular rulemaking, or (2) petitioning for review of the promulgated rule in the D.C. Circuit Court of Appeals. If the commenter has concerns with the final section 112(g) rule, the commenter will have the opportunity to pursue such action once the section 112(g) rule is promulgated.

Two commenters assumed that EPA would delegate the section 112(g) requirements to the State. The EPA wishes to clarify that the implementation of section 112(g) by the State, including case-by-case MACT determinations, is a requirement for approval of a State title V program. In other words, approval of the title V operating permits program confers on the State responsibility to implement section 112(g). Since the requirement to implement section 112(g) lies with the State in the first instance, there is no need for a delegation action apart from the title V program approval mechanism, except where the State seeks approval of a "no less stringent" program under 40 CFR part 63 subpart E. The EPA's approval of Wisconsin's program for delegation of section 112 standards as promulgated does not affect this responsibility to implement section 112(g).

5. Acid Rain Commitment

WDNR commented that there has been a delay in finalizing the State's acid rain regulations, and stated that Wisconsin will be requesting a short extension of its January 1, 1995 commitment date for submitting the acid rain program requirements. On December 19, 1994, EPA received WDNR's request to extend the acid rain submittal requirement to May 1, 1995. Because EPA does not expect this extension to affect WDNR's ability to timely implement the Phase II acid rain requirements, EPA approves WDNR's request.

6. Operational Flexibility Provisions

One commenter questioned EPA's authority to grant interim approval to a State that did not include operational flexibility provisions for "new" and "modified" sources (as defined by Wisconsin's program). The Act provides that EPA may grant interim approval to a program that substantially meets the requirements of title V, but is not fully approvable. The key term, "substantially meets", was not expressly defined in the statute. The part 70 regulations further address this issue, but in fairly broad terms, specifying eleven core program elements, including operational flexibility. Further guidance was issued in a memorandum on August 2, 1993 entitled, "Interim Title V Program Approvals," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

40 CFR 70.4(d)(3)(viii) provides that the State program must allow certain changes to be made without requiring a permit revision if the changes are not title I modifications and do not exceed the emissions allowable under the permit, as provided in 40 CFR 70.4(b)(12). The preamble to the part 70 rulemaking further indicates that interim programs need to include only the ability to generally implement this section. See 57 FR 32271.

Each of the three approaches to operational flexibility set forth in 40 CFR 70.4(b)(12) describes an approach to implementing the language of the statutory mandate for operational flexibility. As explained in the August 2, 1993 memorandum, EPA interprets the regulation and preamble to mean that a State program would be eligible for interim approval if it provides for the implementation of any one of these three approaches for providing operational flexibility.

40 CFR 70.4(b)(12)(i) provides for section 502(b)(10) changes. Wisconsin's program includes this provision for "existing" sources, but not for "new" or "modified" sources. 40 CFR 70.4(b)(12)(ii) provides for an optional SIP trading program. Wisconsin's program does not currently include this provision, as no SIP trading program exists. 40 CFR 70.4(b)(12)(iii) provides for trading in the permitted facility for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Wisconsin's program includes this provision in s.NR 407.025(2)(a), Wis Adm. Code.

Wisconsin's program partially includes the first operational flexibility provision, and fully includes the third provision. Therefore, Wisconsin's operational flexibility provisions substantially meet the requirements of part 70, and the program is eligible for interim approval. However, EPA is clarifying in the final interim approval of Wisconsin's program that the operational flexibility deficiency is specific to the requirements of 40 CFR 70.4(b)(12)(i).

7. Denial of Permit Renewal Applications

Two commenters disagreed with EPA's proposal that, as a condition for full approval, Wisconsin's program must provide the authority to deny a renewal application for a source that is not in compliance. The commenters stated that part 70 does not mandate denial in such a circumstance, and Wisconsin should be able to retain its discretion to either approve or deny a permit renewal application for a source that is not in compliance.

The EPA agrees with the commenters that the denial of a permit renewal application for a source that is not in compliance is a discretionary action. As explained in the proposal, however, Wisconsin's program is lacking the underlying authority to deny a renewal application for a source that is not in compliance. As a condition for full approval, Wisconsin's program must include the provision that any permit noncompliance is grounds for denial of a permit renewal application. This

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should not be interpreted to mean that Wisconsin has no discretion in determining its action on individual permit renewal applications for noncomplying sources.

8. Reopenings for Cause

Three commenters disagreed with EPA's proposal that, as a condition for full approval, Wisconsin's program must be revised to require permits to be reopened for cause under certain circumstances. Some commenters noted that the State reopening provisions are structured differently than the part 70 reopening provisions. The EPA proposed that reopening permits for cause must be mandatory for the following State provisions: ss.NR 407.14(1) (b), (c), (d), and (h), Wis. Adm. Code.

One commenter specifically opposed the mandatory reopening requirement for s.NR 407.14(1)(b), which provides for reopening to assure compliance with applicable requirements. This provision is equivalent to 40 CFR 70.7(f)(1)(iv), which requires reopening if the permitting authority determines that the permit must be revised to assure compliance with applicable requirements. Therefore, s.NR 407.14(1)(b) must be revised to require reopenings to assure compliance with applicable requirements. In addition, the same commenter referenced 40 CFR 70.7(f)(1)(i) requirements in the discussion of the State's s.NR 407.14(1)(b) requirements. The Federal provisions in (i) do not preclude the requirements in (iv).

The second provision, s.NR 407.14(1)(c), provides for reopening when there is a change in any applicable requirement, a new applicable requirement, or an additional applicable requirement. This State provision includes the provisions of 40 CFR 70.7(f)(1)(i), which requires reopening of a permit with a remaining term of 3 or more years when additional applicable requirements become applicable. This State provision also includes the provisions of 40 CFR 70.7(f)(1)(ii), which requires reopening when additional requirements become applicable to an affected source under the acid rain program. Therefore, s.NR 407.14(1)(c) must be revised to require reopenings, in accordance with the 3 year requirement under 40 CFR 70.7(f)(1)(i), or the acid rain requirements under 40 CFR 70.7(f)(1)(ii), as applicable. The EPA is clarifying in the final interim approval of Wisconsin's program that s.NR 407.14(1)(c) must be mandatory only to the extent required by 40 CFR 70.7(f)(1).

The third provision, s.NR 407.14(1)(d), provides for reopening when there is a change in any applicable emission limitation, ambient air quality standard, or ambient air quality increment that requires either a temporary or permanent reduction or elimination of the permitted emission. One commenter specifically opposed the mandatory reopening requirement for this State provision, stating that 40 CFR 70.7(f)(1) does not establish any requirement that a permit be reopened in response to a change in an applicable emission limitation or an air quality increment. The EPA disagrees with this comment, as the provisions outlined in s.NR 407.14(1)(d) include additional applicable requirements that a source may be subject to. Therefore, s.NR 407.14(1)(d) must be revised to require reopenings, in accordance with the 3 year requirement under 40 CFR 70.7(f)(1)(i), or the acid rain requirements under 40 CFR 70.7(f)(1)(ii), as applicable. However, EPA is clarifying in the final interim approval of Wisconsin's program that s.NR 407.14(1)(d) must be mandatory only to the extent required by 40 CFR 70.7(f)(1).

The fourth provision, s.NR 407.14(1)(h), provides for reopening when a permit contains a material mistake or inaccurate or unclear statements. Two commenters specifically opposed the mandatory reopening requirement for this State provision, stating that the Wisconsin provision is broader than the requirements of 40 CFR 70.7(f)(1)(iii). The EPA partially agrees with the commenters. 40 CFR 70.7(f)(1)(iii) requires permit reopening when the permitting authority determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit. The Wisconsin provision is broader because it includes "unclear statements" in a permit, in addition to material mistakes and inaccurate statements. The Wisconsin provision also does not limit the "inaccurate statements" provision to emissions standards or other terms or conditions of the permit. Therefore, EPA is clarifying in the final interim approval of Wisconsin's program that s.NR 407.14(1)(h) must be mandatory only to the extent required by 40 CFR 70.7(f)(1).

One commenter also objected to any revision that would require WDNR to mandatorily reopen any operating permit issued to a non-part 70 source. The EPA's interim approval of Wisconsin's title V operating permits program only applies to the State's title V program, and does not require the State to revise its operating permits program for non-part 70 sources.

9. Wisconsin Permitting Exemptions

Four commenters expressed concerns with EPA's proposal that, as a condition for full approval, some of Wisconsin's permitting exemptions must be revised to ensure that no part 70 sources are exempted from the requirement to obtain an operating permit.

All four commenters stated that the exemptions and associated recordkeeping and reporting requirements adequately limit potential to emit for the exempted sources. The EPA disagrees that the exemptions in question adequately limit potential to emit. As explained in the proposal, these Wisconsin permitting exemptions determine applicability based in part or totally on these sources' actual emissions or throughput, and the State's recordkeeping requirements do not provide a federally enforceable mechanism for limiting these sources' potential emissions to the actual emissions levels or throughput established in the exemptions. The recordkeeping provisions do not include specific emissions accounting requirements, and therefore do not ensure that the recordkeeping will be adequate to determine sources' actual emissions. In addition, the exemptions do not provide for any reporting requirements. Finally, mechanisms to limit potential to emit must be based on production or operation limits; emission rates do not adequately limit a source's potential to emit.

WDNR commented that, while it disagrees with EPA's concerns, WDNR commits to working with EPA to develop acceptable and practical mechanisms to deal with these source categories. The EPA agrees to work with WDNR to resolve this interim approval issue, and believes that it is important to develop mechanisms to avoid flooding the title V program with thousands of small sources that will never emit at part 70 applicability levels.

One commenter specifically objected to EPA's concern with ss.NR 407.03(1)(g) and (h). The commenter appears to be of the opinion that these exemptions are based on potential to emit because both exemptions include sources that "*will emit* not more than 1,666 pounds of organic compounds per month". The EPA disagrees with this interpretation. The Wisconsin provision provides an exemption for "* * * operations which *emit or will emit* not more than 1,666 pounds of organic chemicals per month". While this provision exempts

sources that "will emit" at this level, it also exempts sources that "emit" at this level. A source that has actual emissions of 1,666 pounds of organic chemicals per month may have the potential to emit at greater amounts, and therefore may be a part 70 source. In addition, the commenter noted that these Wisconsin exemptions are based on emissions measured prior to entering any emission control devices, while the determination of a source's potential to emit may be calculated by including air pollution control devices (if enforceable by the Administrator). Regardless of this distinction, EPA does not believe that the exemptions are based on potential to emit.

One commenter requested that the exemption in ss.NR 407.03(1)(t) be maintained to the extent possible. This provision provides an exemption for a combination of specified activities. The exemption is structured differently than the other exemptions for which EPA is granting interim approval, as it does not attempt to limit sources' potential to emit. Instead, this exemption allows combinations of activities to be grouped together, and certain combinations could result in emissions that would exempt part 70 sources from the permit program. Therefore, Wisconsin must revise this exemption to ensure that no part 70 sources are exempted. The State will need to determine to what extent this exemption can be retained and still ensure that no part 70 sources are eligible for the exemption.

10. Source Category Limited Interim Approval

Two commenters were supportive of EPA's proposed source category limited (SCL) interim approval; however, they were concerned that the State's current determination that it will not need additional time to issue initial permits would require those source categories to submit permit applications before the State has fully developed the program' requirements for these sources. The EPA proposed SCL interim approval for Wisconsin for two separate circumstances: for new and modified sources that are not in compliance, and for sources belonging to the source categories covered by the permitting exemptions in ss.NR 407.03(1) (d), (g), (h), (o), (s), (sm), and (t).

The deficiency in Wisconsin's program with respect to new and modified sources that are not in compliance relates to the lack of State authority to issue permits to such sources. However, the State program does require these sources to submit permit applications in accordance with the State application schedule. Therefore, these sources are already covered by the State program, and are currently required to submit applications.

The deficiency in Wisconsin's program with respect to the permitting exemptions relates to the lack of State authority to require permits for certain part 70 sources. Therefore, the State may currently exempt some part 70 sources. Interim approval requires the State to correct this deficiency and submit a corrected program to EPA within 18 months after the effective date of the interim approval. Once the State corrects the deficiency, any part 70 sources which had been exempt will be required to obtain an operating permit in accordance with the requirements of the State program.

As stated in the proposal, Wisconsin has not requested additional time for issuing initial operating permits because the State intends to fix the SCL interim approval deficiencies in time to permit all sources within the 3 year phase-in period. In addition, previously exempted part 70 sources (if any exist) will be required to submit applications within one year of the interim approval effective date. If Wisconsin determines that it cannot meet these implementation requirements, SCL interim approval does provide that the completion of the initial permitting of the SCL sources could occur as late as 5 years after the granting of SCL interim approval (the 3 year phase in period plus the 2 year interim approval). To obtain this extension, Wisconsin would have to submit a request to EPA that includes compelling reasons why the additional time is needed. For additional discussion of this issue, including the specific requirements for a state's extension request, refer to the August 2, 1993 memorandum entitled, "Interim Title V Program Approvals," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

11. Proposed Part 70 Rules

One commenter submitted comments it had previously filed on the proposed part 70 rule, and stated that it objected to interim approval of Wisconsin's operating permits program for the same reasons it had objected to the part 70 rule itself. The EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule brought in the D.C. Circuit Court of Appeals. The EPA notes that this commenter has filed such a petition. However, unless and until the part 70 rule is revised, EPA must evaluate programs according to the rule that is in effect.

12. Particulate Matter (PM) Issues

One commenter raised several issues regarding PM that were not relevant to EPA's proposed interim approval of Wisconsin's operating permits program. Therefore, EPA is not addressing these comments in the final action on Wisconsin's program.

B. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Wisconsin on January 27, 1994. The scope of Wisconsin's part 70 program approved in this notice applies to all part 70 sources within Wisconsin, except for tribal lands in the manner described previously in this notice. The State must make the following changes to receive full approval:

1. Revise Wisconsin's operating permit program regulations to provide for criminal fines against any person who knowingly makes any false material statement, representation, or certification in a permit application. This provision is required by 40 CFR 70.11(a)(3)(iii).

2. Revise the following legislation and regulations to provide an application shield for "new" and "modified sources" (as defined by ss.144.30(20s) and (20e), Wis. Stats.): s.144.391(1)(b), Wis. Stats.; s.144.3925(7), Wis. Stats.; s.NR 407.06(2), Wis. Adm. Code; and s.NR 407.08, Wis. Adm. Code. Wisconsin's program does provide an application shield for "existing sources" (as defined by s.144.30(13). 40 CFR 70.7(b) requires that the application shield must apply to all part 70 sources which meet the application shield requirements.

3. Revise the following legislation and regulation to provide for operational flexibility, as required by 40 CFR 70.4(b)(12)(i), for "new" and "modified sources" (as defined by ss.144.30(20s) and (20e), Wis. Stats.): s.144.391(4m), Wis. Stats.; and s.NR 407.025, Wis. Adm. Code. Wisconsin's program does include this requirement for "existing sources" (as defined by s.144.30(13)). 40 CFR 70.4(b)(12)(i) is required to apply to all part 70 sources.

4. Revise the appropriate legislation and regulations to provide the authority to deny a renewal application for a source that is not in compliance. 40 CFR 70.6(a)(6)(i) requires that any permit noncompliance is grounds for denial of a permit renewal application. Section NR 407.09(1)(f)1., Wis. Adm. Code, states that the authority to deny a permit renewal application for noncompliance

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is contingent upon the requirements in s.144.3925(6), Wis. Stats., which do not currently provide for a denial in such a circumstance. Appendix P of Wisconsin's operating permits program submittal includes draft statutory revisions that are intended to fix this deficiency. The draft revisions propose to add this authority to s.144.396(3)(c), Wis. Stats. Regardless of the statutory placement of this authority, s.NR 407.09(1)(f)1., Wis. Adm. Code, must be revised if necessary to reference the correct statutory authority.

5. Revise ss.NR 407.14(1)(b), (c), (d), and (h), Wis. Adm. Code, to provide that if the conditions specified in these provisions are met, and the conditions meet the requirements of 40 CFR 70.7(f)(1), WDNR is required to reopen a permit for cause. Under the State's current provisions, reopening a permit under these circumstances is discretionary. 40 CFR 70.7(f)(1) establishes the conditions under which reopening a permit for cause is mandatory.

6. Revise s.NR 407.05, Wis. Adm. Code, to include the duty to supplement or correct application provisions, as required under 40 CFR 70.5(b).

7. Revise s.144.3935(1)(a), Wis. Stats., to provide WDNR the authority to issue operating permits to "new" and "modified" part 70 sources (as defined by ss.144.30(20s) and (20e), Wis. Stats.) that are not in compliance. 40 CFR 70.3(a) requires that the permitting agency must have authority to issue permits to all part 70 sources.

Revise s.NR 407.05(4)(h)2.c., Wis. Adm. Code, to provide that compliance plan application requirements for noncomplying new and modified sources include a narrative description of how the sources will achieve compliance. 40 CFR 70.5(c)(8)(ii)(C) requires this compliance plan application requirement for all part 70 sources that are not in compliance.

Revise s.NR 407.05(4)(h)3.c., Wis. Adm. Code, to provide for schedule of compliance application requirements for noncomplying new and modified sources. 40 CFR 70.5(c)(8)(iii)(C) requires schedules of compliance in all noncomplying part 70 source applications.

Revise s.NR 407.05(4)(h)4., Wis. Adm. Code, to provide for progress report application requirements for noncomplying new and modified sources. 40 CFR 70.5(c)(8)(iv) requires progress report schedules in all noncomplying part 70 source applications.

Revise s.NR 407.09(4)(b), Wis. Adm. Code, to provide for schedule of compliance and progress report requirements in permits issued to noncomplying new and modified sources. 40 CFR 70.6(c) (3) and (4) require schedule of compliance and progress report requirements in all part 70 permits that are issued to noncomplying sources.

8. Revise ss.NR 407.03(1) (d), (g), (h), (o), (s), (sm), and (t), Wis. Adm. Code, to ensure that no part 70 sources are exempted from the requirement to obtain an operating permit, as provided under 40 CFR 70.2. Section NR 407.03(1)(t) potentially exempts certain part 70 sources, and ss.NR 407.03(1) (d), (g), (h), (o), (s), and (sm) do not provide for adequate procedures to limit these sources' potential to emit. The 40 CFR 70.2 definition of "major source" considers the potential to emit of a source in determining major source status. The Wisconsin permitting exemptions listed above determine applicability based in part or totally on these sources' actual emissions or throughput, and the provisions in s.NR 407.03(4) do not provide a federally enforceable mechanism for limiting these sources' potential emissions to the actual emissions levels or throughput established in the exemptions.

To be eligible for interim approval, 40 CFR 70.4(d)(3)(ii) requires that a program provide for adequate authority to issue permits containing all applicable requirements to all title V sources. Due to the deficiencies outlined in 7. and 8. above, EPA is granting source category limited interim approval to Wisconsin's operating permit program. See 57 FR 32270 (July 21, 1992). Therefore, EPA is not including "new" and "modified" part 70 sources that are not in compliance (as defined by Wisconsin's operating permits program), and part 70 sources covered by Chapter NR 407.03(1) (d), (g), (h), (o), (s), (sm), and (t) as part of the interim approval of Wisconsin's program. The exclusion of these source categories from approval, however, does not affect Wisconsin's obligation to fix these deficiencies in order to be eligible for full approval.

This interim approval, which may not be renewed, extends until April 7, 1997. During this interim approval period, Wisconsin is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Wisconsin fails to submit a complete corrective program for full approval by October 7, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Wisconsin then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Wisconsin has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Wisconsin, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Wisconsin has come into compliance. In any case, if, 6 months after application of the first sanction, Wisconsin still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Wisconsin's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Wisconsin has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Wisconsin, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, 6 months after EPA applies the first sanction, Wisconsin has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Wisconsin's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Wisconsin upon expiration of interim approval.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA is also promulgating approval of Wisconsin's preconstruction permitting program found in Chapters 406 and 408, Wis. Adm. Code, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the Federal section 112(g) rule and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Wisconsin adequate time for the State to adopt regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Official File

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments on the proposal received and reviewed by EPA, are maintained in the official file at the EPA Regional Office. The file is an organized and complete record of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The official file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Wisconsin in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Wisconsin

(a) Department of Natural Resources: submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires April 7, 1997.

(b) Reserved

* * * * *

[FR Doc. 95–5403 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36 and 65

[CC Docket No. 93–50; FCC 95–56]

Accounting and Rate Treatment of Allowance for Funds Used During Construction ("AFUDC") and Telephone Plant Under Construction ("TPUC")

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a report and order to amend its rules regarding the accounting and ratemaking treatment for TPUC and interest costs incurred to finance construction projects. This action is to make FCC rules consistent with generally accepted accounting principles and as fair and reasonable as possible for ratemaking purposes.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Kim Yee, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Docket No. 93–50, adopted February 13, 1995 and released February 28, 1995. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at 2100 M Street, NW., Suite 140, Washington, DC 20037, or call (202) 857–3800.

Synopsis of Report and Order

1. This Report and Order amends Part 32, Uniform Systems of Accounts, and 65, Interstate Rate of Return Prescription Procedures and Methodologies, with respect to the proper accounting and ratemaking treatment for telephone plant under construction and allowance for funds used during construction.

2. Specifically, this Report and Order amended Part 32 to require carriers to capitalize AFUDC for both short-term and long-term TPUC using a capitalization rate based on the carrier's average cost of debt. It amended Part 65 to include the interstate portion of the TPUC balances in the interstate rate base and to require carriers to reduce their interstate revenue requirement by the amount of AFUDC capitalized in the current year.

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3. This Report and Order eliminates Account 2004, Telecommunication Plant Under Construction-long term. All plant under construction will be record in Account 2003. The distinction between long-term and short-term construction is eliminated.

4. The Report and Order will be effective six months after it is published in the **Federal Register**.

Rule Changes

5. Accordingly, it is ordered that, pursuant to Section 1, 4(i), 201–205, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 219, and 220, parts 32, 36, and 65 of our Rules, 47 CFR parts 32, 36, and 65 are amended, as set forth below.

6. It is further ordered that, pursuant to Section 220(g) of the Communication Act of 1934, as amended, 47 U.S.C. 220(g) and Section 1.427(c) of the Commission's Rules, 47 CFR 1.427(c), the amendments to parts 32, 36, and 65 of the Commission's Rules, 47 C.F.R. parts 32, 36, and 65 as set forth below, shall be effective September 6, 1995.

List of Subjects

47 CFR Part 32

Uniform system of accounts.

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communication Commission.

William F. Caton,

Acting Secretary.

Parts 32, 36 and 65 of Title 47 of the CFR are amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: Secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. secs. 154(i), 154(j) and 220 unless otherwise noted.

2. Paragraph 32.2000(c)(2)(x) is revised to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

* * * * *

(c) * * *

(2) * * *

(x) Allowance for funds used during construction ("AFUDC") provides for the cost of financing the construction of telecommunications plant. AFUDC shall be charged to Account 2003, Telecommunications Plant Under Construction, and credited to Account 7340. The rate for calculating AFUDC shall be determined as follows: If financing plans associate a specific new borrowing with an asset, the rate on that borrowing may be used for the asset; if no specific new borrowing is associated with an asset or if the average accumulated expenditures for the asset exceed the amounts of specific new borrowing associated with it, the capitalization rate to be applied to such excess shall be weighted average of the rates applicable to other borrowing of the enterprise. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the company in that period.

* * * * *

3. Section 32.2003 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 32.2003 Telecommunications plant under construction.

(a) This account shall include the original cost of construction projects. (Note also § 32.2000(c).)

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account shall be transferred to Account 2006, Nonoperating Plant, without further direction or approval of this Commission. If a project is abandoned, the cost included in this account shall be charged to Account 7370, Special Charges.

* * * * *

§ 32.2004 [Removed]

4. Section 32.2004 is removed.

5. Section 32.7340 is revised in its entirety to read as follows:

§ 32.7340 Allowance for funds used during construction.

This account shall be credited with amounts charged to the telecommunications plant under construction account. (See § 32.2000(c)(2)(x).)

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

2. Section 36.101 is revised to read as follows:

§ 36.101 Section arrangement.

(a) This subpart is arranged in sections as follows:

General

Telecommunications Plant in Service—Account 2001—36.101 and 36.102.
General Support Facilities—Account 2110—36.111 and 36.112.
Central Office Equipment—Accounts 2210, 2220, 2230—36.121 thru 36.126.
Information Origination/Termination Equipment—Account 2310—36.141 and 36.142.
Cable and Wire Facilities—Account 2410—36.151 thru 36.157.
Amortization Assets—Accounts 2680 and 2690—36.161 and 36.162.
Telecommunications Plant—Other Accounts 2002 thru 2005—36.171.
Rural Telephone Bank Stock—36.172.
Material and Supplies—Accounts 1220, and Cash Working Capital—36.181 and 36.182.
Equal Access Equipment—36.191.

3. Section 36.171 is revised to read as follows:

§ 36.171 Property held for future telecommunications use—Account 2002; Telecommunications plant under construction—Account 2003; and Telecommunications plant adjustment—Account 2005.

The amounts carried in Accounts 2002, 2003, and 2005 are apportioned among the operations on the basis of the apportionment of Account 2001, Telecommunications Plant in Service.

4. Section 36.222(c) is revised to read as follows:

§ 36.222 Nonoperating income and expenses—Account 7300.

* * * * *

(c) The portion reflecting allowance for funds used during construction is apportioned on the basis of the cost of Telecommunications Plant Under Construction—Account 2003. The portion reflecting costs for social and community welfare contributions and fees is apportioned on the basis of the apportionment of corporate operations expenses.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.450(d) is revised to read as follows:

§ 65.450 Net income.

* * * * *

(d) Except for the allowance for funds used during construction, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300–7450) and interest and related items (Accounts 7500–7540) and extraordinary items (Accounts 7600–7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

3. Section 65.820(a) is revised to read as follows:

§ 65.820 Included items.

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization. Any interest cost for funds used during construction capitalized on assets recorded in these accounts shall be computed in accordance with the procedures in § 32.2000(c)(2)(x) of this chapter.

[FR Doc. 95–5187 Filed 3–3–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM–207D; Amdt. No. 107–33]

RIN 2137–AC60

Hazardous Materials Regulations; Penalty Guidelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is publishing its hazardous material transportation enforcement civil penalty guidelines. This action provides the regulated community and the general public with guidance as to the factors RSPA considers in its hazmat penalty assessment process.

EFFECTIVE DATE: This rule is effective April 7, 1995.

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SUPPLEMENTARY INFORMATION:

I. Background

In response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act, 1994, RSPA is publishing its hazardous material transportation (hazmat) enforcement civil penalty guidelines as an appendix to its regulations. This action will provide the regulated community and the general public with information concerning how RSPA generally begins its hazmat penalty assessment process and types of information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

RSPA enforcement personnel and attorneys use these guidelines as a partial means of determining a baseline civil penalty for selected violations of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), or the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.* (formerly the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*).

Because these guidelines are non-binding and are periodically updated, they are being published as an informational appendix to the enforcement regulations, Subpart D of Part 107 in Title 49 of the Code of Federal Regulations (CFR). They are being published without public notice or comment because they are merely informational, are not finally determinative of any issues or rights, and do not have the force of law. Because these guidelines are merely a general statement of agency policy and practice and because they impose no requirements, no notice of proposed rulemaking is necessary.

This rule publishes the guidelines as they existed on January 18, 1995. In any particular case, the Office of Hazardous Materials Enforcement will use the version of the guidelines in effect at the time of its referral of a matter to the Office of the Chief Counsel for possible issuance of a notice of probable violation (NOPV). However, since the guidelines are not legally binding, later changes in the guidelines may be considered in a particular case before a final order is issued.

On November 16, 1990, Congress amended the HMTA by passing the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Public Law 101–615); in HMTUSA, Congress increased the maximum penalties for HMTA and HMR violations from $10,000 to $25,000 per violation per day. The guidelines reflect the culmination of a five-year program under which RSPA increased the baseline penalty for most violations by 20 percent per year (on November 16 of each year between 1990 and 1994) to effect Congress' 1990 increase of the maximum penalty for hazmat violations.

These guidelines are a preliminary assessment tool used by RSPA personnel, and they create no rights in any party. They contain baseline amounts or ranges for violations that frequently have been cited in RSPA hazmat NOPVs. When a violation not described in the guidelines is encountered, it sometimes is possible to determine a baseline penalty by analogy to a similar violation in the guidelines.

Even when the guidelines are applicable to a violation, the use of the guidelines is only a starting point. They promote consistency and generally are used to provide some standard for imposing similar penalties in similar cases. However, no two cases are identical, and ritualistic use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria. Therefore, regardless of whether the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. These criteria are in 49 U.S.C. 5123 and 49 CFR 107.331.

The criteria that RSPA applies are the nature, extent, circumstances, and gravity of each violation; the degree of the violator's culpability; the violator's history of prior violations (if any); the violator's ability to pay; any effect of the penalty on the violator's ability to continue to do business, and other matters that justice requires. The baseline amount or range is an initial reflection of the nature, extent, circumstances, and gravity of the violation as compared with other types of violations. This amount then may be modified on the basis of case-specific information on nature, extent, circumstances, and gravity, as well as information with respect to the other enumerated factors.

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Corrective action taken by a violator to prevent a recurrence of similar violations is a major consideration under "other matters that justice requires." Application of the statutory assessment criteria may increase or decrease the baseline penalty amount or range. The two economic criteria, however, are only used to decrease penalties and are not used to increase penalties. Conversely, a violator's history of prior violations is used only to increase a penalty.

As discussed more fully below, the guidelines are not binding on RSPA or Department of Transportation personnel. Enforcement personnel and staff attorneys generally use the guidelines as a starting point for penalty assessment. However, they, the Chief Counsel, administrative law judges (ALJs), and the RSPA Administrator may deviate from the guidelines where appropriate, and are legally bound only by the statutory assessment criteria.

RSPA is aware of a recent decision by the United States Court of Appeals for the District of Columbia Circuit ruling that a Federal Communications Commission (FCC) civil penalty schedule used in its forfeiture proceedings may not be published as a policy statement, but must be issued as a rule in accordance with the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553 (b), (c). *United States Telephone Ass'n* v. *FCC*, 28 F.3d 1232 (D.C. Cir. 1994). RSPA has reviewed the Court's decision, as well as the FCC schedule and procedures that were the subject of the ruling, and believes that the ruling is not applicable to the RSPA guidelines.

A respondent has no right to be heard in an FCC forfeiture proceeding other than by the FCC Bureau that initiates the forfeiture action. The Bureau begins a proceeding by issuing a forfeiture order. 47 CFR 1.80(f). The respondent is permitted a written reply, and the Bureau issues a final administrative determination. *Id.* A hearing before an ALJ may be held, but solely at the Bureau's discretion, 47 CFR 1.80(g); the regulations themselves state that normally the matter will be heard by an ALJ only when it arises in conjunction with other proceedings for which a formal hearing is required, *id.* When a hearing *is* held, the decision of the ALJ is subject to Bureau review and approval. 47 CFR 1.273, 1.282. The FCC schedule governs the Bureau's penalty determination, whether following a respondent's written reply or in reviewing an ALJ decision. Thus, a respondent, even where it fully exercised its procedural rights, would be assessed a penalty determined according to a methodology that it had no opportunity to contest. It is firmly established that a standard must be issued as a rule if it is "finally determinative" of a respondent's obligations. *E.g., Brock* v. *Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 537 (D.C. Cir. 1986).

In contrast, the RSPA guidelines are used by the RSPA Office of the Associate Administrator for Hazardous Materials Safety (OHMS), at a staff, level to assist in developing recommended proposed penalties in enforcement cases. On receiving an NOPV setting forth the penalty, a respondent may demand a formal hearing before an ALJ. 49 CFR 107.319. The OHMS and RSPA's Office of Chief Counsel will employ the guidelines to determine the penalty for which it will argue before the ALJ; nonetheless, the ALJ is not bound by the guidelines, and retains his or her essential discretion.

An ALJ decision that is not appealed is a final administrative action. 49 CFR 107.323. A decision that is appealed is reviewed by the RSPA Administrator. 49 CFR 107.325. On review of an ALJ decision, the Administrator, as well, is not bound by the OHMS guidelines. Accordingly, the guidelines do not "finally determin[e]" a respondent's penalty obligation; a respondent that objects to the proposed penalty has the right to contest the penalty fully before the administrative decisionmaker. The administrative decisionmaker remains "free to exercise his [or her] informed discretion." *Guardian Fed. Savings & Loan Ass'n* v. *Federal Savings & Loan Ins. Corp.*, 589 F.2d 658, 666, 668 (D.C. Cir. 1978).

In addition, the FCC schedule and the RSPA guidelines differ significantly in the degree to which they permit deviation in their use. The *USTA* court, citing the proposition that the policy/rule distinction turns on "an agency's intention to bind itself to a particular legal policy position," 28 F.3d 1234, found that in over 300 cases, the FCC followed its fine schedule essentially without exception, *id.* at 1234–35.

The OHMS guidelines, as opposed to a penalty schedule, consist of a listing of violations and the baseline penalty, or range of penalties, proposed for each as of November 16, 1994, as well as an explanation of the methodology OHMS generally uses to modify the baseline proposed penalty on the basis of case-specific factors required to be considered under 49 U.S.C. 5123(c) and 49 CFR 107.331. The guidelines presuppose flexibility in their application; beyond that, the OHMS or, where respondent has waived formal hearing, the order of the Chief Counsel imposing a penalty, often has gone beyond the boundaries of the guidelines as warranted by particular evidence from or arguments of a respondent. RSPA expects to publish revised guidelines annually.

II. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law contains an express preemption provision (49 U.S.C. 5125(b)(1)) that preempts State, local, and Indian tribe requirements on certain covered subjects unless they are "substantively the same" as the HMR. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. The Federal hazardous materials transportation law (49 U.S.C. 5125(b)(2)), as amended, provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This final rule is an informational appendix and imposes no requirements. Thus, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact.

Paperwork Reduction Act

There are no new information requirements in this final rule.

List of Subjects in 49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53.

2. Appendix A is added to subpart D of part 107 to read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

I. This appendix sets forth the guidelines used by the Office of Hazardous Materials Safety (as of January 18, 1995) in making initial baseline determinations for recommending civil penalties. The first part of these guidelines is a list of baseline amounts or ranges for probable violations frequently cited in enforcement reports referred for action. Following the list of violations are general guidelines used by OHMS in making initial penalty determinations in enforcement cases.

II. List of Frequently Cited Violations

Violation description	Section or cite	Baseline assessment
Part 107—Requirements		
Failure to register as a carrier or shipper of hazardous material	107.608	$1,500
Part 171—Requirements		
Failure to inform foreign shipper and U.S. forwarding agent of 49 CFR requirements applying to a shipment within the U.S.	171.12(a)	7,200
Failure to file a DOT 5800.1 Hazardous Materials Incident Report within 30 days following an unintentional release of hazardous materials in transportation.	171.16	3,100
Part 172—Requirements		
Shipping Papers (§§ 172.200–172.205):		
Failure to execute a shipping paper for a shipment of hazardous materials	172.201	5,200
Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1)	1,200
Failure to include a proper shipping name in the proper shipping description	172.202	1,850
Failure to included a hazard class/division number in the proper shipping description	172.202	1,850
Failure to include the identification number in the proper shipping description	172.202	1,200
Using an incorrect identification number in the proper shipping description	172.202	1,850
Using an incorrect identification number in the proper shipping description, that changes the required response information.	172.202	2,500
Using a shipping description that is mostly correct, but includes extra or incorrect words	172.202	1,000
Using a shipping description that includes additional unauthorized information	172.202	850
Using a proper shipping description not in required sequence	172.202	500
Using a shipping description that is missing two required elements	172.202	3,100
Using a shipping description where more than two required elements are missing	172.202	4,300
Using a shipping name and hazard class that is incorrect, such that the material is misdescribed.	172.202	3,700
Using a shipping name and hazard class that is incorrect, such that a material is misclassified.	172.202	6,200
Failure to include the total quantity of hazardous material covered by a shipping description.	172.202(c)	430
The letters "RQ" are not used in the shipping description to identify materials that are hazardous substances.	172.203(c)(2)	500
Failure to include a required technical name in parentheses for a listed generic or "n.o.s." material.	172.203(k)	1,200
Failure to list an exemption number as part of the required shipping description	172.203(a)	1,200
Failure to include the required shipper's certification on a shipping paper	172.204(a)	1,800
Failure to execute the required shipper's certification on a shipping paper	172.204	1,000
Emergency Response Information Requirements (§§ 172.600–172.604):		
Providing or listing incorrect emergency response information with or on a shipping paper (if significant difference in response).	172.602	2,600
Providing or listing incorrect emergency response information with or on a shipping paper (if no significant difference in response).	172.602	1,300
Failure to include an emergency response telephone number on a shipping paper	172.604	2,600
Failure to have the emergency response telephone number monitored while a hazardous material is in transportation.	172.604	1,300
Listing a fraudulent emergency response telephone number on a shipping paper	172.604	3,700

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Violation description	Section or cite	Baseline assessment
Listing an emergency response telephone number on a shipping paper that is not working or is incorrect.	172.604	1,300
Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604	2,600
Package Marking Requirements (§§ 172.300–172.338):		
Failure to mark the required identification number on a package	172.301(a)	1,200
Marking an incorrect identification number on a package	172.301(a)	1,850
Marking an incorrect identification number on a package that changes the appropriate emergency response information.	172.301(a)	2,500
Failure to mark the required shipping name on a package	172.301(a)	2,500
Failure to mark the required shipping name and identification number on a package	172.301(a)	4,200
Marking a package with an incorrect shipping name and identification number	172.301(a)	5,000
Marking a package with an incorrect shipping name and identification number that does not affect emergency response information/actions.	172.301(a)	2,500
Failure to include the required technical name(s) in parentheses for a listed generic or "n.o.s." entry.	172.301(c)	1,200
Failure to mark a package containing liquid hazardous materials with required orientation marks.	172.312	3,700
Failure to mark a package containing liquid hazardous materials with required orientation marks, when inside packagings have vented closures.	172.312	4,200
Package Labeling Requirements (§§ 172.400–172.450):		
Failure to label a package, when required	N/A	4,300
Placing a label in a package when the label represents a hazard other than the actual hazard presented by the hazardous material in the package.	N/A	5,000
Placing a label not conforming to size requirements on a package	N/A	1,000
Placing a label on a package that does not contain a hazardous material	172.401(a)	1,300
Placing a label that does not meet color specification requirements on a package	N/A	600 to 2,500
Failure to place a required subsidiary label on a package, when required	N/A	2,500
Failure to provide an appropriate division number on an explosive label	N/A	5,200
Placarding Requirements (§§ 172.500–172.560):		
Failure to placard a freight container containing hazardous materials	N/A	500 to 7,500
Failure to properly placard a freight container containing Division 1.1, 1.2, or 1.3 (Class A or B) explosives.	172.504	5,650
Training Requirements (§§ 172.700–172.704):		
Failure to train hazmat employees in the three required areas	172.702	1,500 to 25,000
Failure to train hazmat employees in one of the three required areas	172.702	500 and up
Failure to train hazmat employees in two of the three required areas	172.702	1,000 and up
Failure to maintain training records	172.702	500 and up
Part 173—Requirements		
Overpack Requirements (§ 173.25):		
Failure to mark an overpack with a statement indicating that the inside packages comply with prescribed specifications when specification packaging is required.	173.25(a)(4)	3,100
Reconditioner Requirements (§ 173.28):		
Representing, marking, or certifying a drum as a reconditioned DOT packaging, when the drum did not meet a DOT specification.	173.28(m)(3)(ii) [1]	5,200 to 7,200
Marking an incorrect registration number on a reconditioned packaging	173.28(m)(3)(ii) [1]	1,550
Failure to properly conduct alternate leakage test	173.28(m)(2) [1]	5,000
Representing, marking, or certifying a drum as altered from one specification to another, when the drum had not actually been altered.	173.28(o)(1) [1]	1,000
IM Portable Tank Requirements (§ 173.32c):		
Offering a hazardous material for transportation in an IM portable tank equipped with bottom outlets, when the material contained is prohibited from being offered in this type of packaging.	173.32c(a)	5,200 to 7,200
Offering an IM portable tank for transportation that has not been visually inspected within last 2½ years per 173.32b(b).	173.32c(c)	5,000
Offering an IM portable tank for transportation that has not been hydrostatically retested in last five years per 173.32b(a).	173.32c(c)	6,200
Offering an IM portable tank for transportation that has not been visually or hydrostatically tested as required, or failing to remove the safety relief valves during testing.	173.32c(c)	12,500
Failure to provide the required outage for a shipment of hazardous materials, that results in the release of hazardous materials.	173.32c(k)	15,500
Cylinder Retesters (§§ 173.23, 173.34, and 173.302):		
Failure to remark an aluminum exemption cylinder as a DOT 3 AL	173.23(c)	2,100
Certifying or marking as retested a nonspecification cylinder	173.34	5,200 to 7,200
Marking a cylinder in or on the sidewall area when not permitted by the applicable specification.	173.34(c)(1)	8,650
Failure to maintain legible markings on a cylinder	173.34(e)	1,200
Failure to perform hydrostatic retesting at the minimum of 5/3 times the service pressure, or at the minimum specified test pressure.	173.34(e)	2,100 to 5,200
Failure to perform visual external examination	173.34(e)(1)	3,100

Violation description	Section or cite	Baseline assessment
Failure to perform visual internal examination	173.34(e)(1)	3,600
Failure to perform both visual external and visual internal examinations	173.34(e)(1)	4,200
Inability to conduct a complete visual examination due to: excess paint build-up on a cylinder; failure to remove banding; failure to remove a permanent attachment; or failure to remove a plastic attachment that has torn or cracked.	173.34(e)(1)	3,100
Failure to have a retester's identification number (RIN)	173.34(e)(1)(i)	3,600
Failure to have current authority due to failure to renew a retester's identification number.	173.34)e)(1)(i)	2,500
Failure to have a retester's identification number and marking another RIN on a cylinder.	173.34(e)(1)(i)	7,200
Marking a RIN before successfully completing a hydrostatic retest.	173.34(e)(1)(ii)	3,100
Marking a cylinder as having been retested without performing retest	173.34(e)(1)(ii)	8,650
Performing hydrostatic retesting without demonstrating the accuracy of the testing equipment.	173.34(e)(3)	2,100 to 5,200
Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	173.34(e)(3)	3,100
Failure to perform a second retest, after equipment failure, at a pressure of 10% more or 100 psi more, whichever is less.	173.34(e)(3)	3,100
Exceeding 90% of test pressure prior to conducting test	173.34(e)(3)	850
Failure to condemn a cylinder with permanent expansion of 10% or greater (5% for certain exemption cylinders); failure to condemn cylinders with evidence of internal or external corrosion, denting, bulging, or rough usage.	173.34(e)(4)	6,000
Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption	8,650
Failure to keep records of cylinder reinspection and retest	173.34(e)(5)	4,200
Failure to keep accurate records of cylinder reinspection and retest	173.34(e)(5)	1,000 to 3,100
Improper marking of the RIN or retest date on a cylinder	173.34(e)5)	1,550
Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp	173.34(e)(13)(iv)	5,200 and up
Marking a "+" sign on a cylinder without determining the average or maximum wall stress.	173.302(c)(3)	3,000 to 4,300
Representing, marking, or certifying a cylinder as meeting the requirements of an exemption, when the cylinder was not maintained or retested in accordance with the exemption.	N/A	4,300 to 6,000
Rebuilder Requirements (§ 173.34):		
Representing a DOT–4 series cylinder as meeting the requirements of the Hazardous Materials Regulations without being authorized to do so by the Associate Administrator for Hazardous Materials Safety.	173.34(l)	7,200
Part 178—Requirements		
Third-Party Packaging Certifiers (General):		
With testing completed, TPPC's certification directs manufacturer to improperly mark a packaging (e.g., steel drum to be marked UN 4G).	N/A	2,100
Manufacturers (General):		
Failure to conduct drop testing from required distance	N/A	4,200
Manufacturing, marking, certifying, or selling a package marked to a specification, UN standard, or an exemption when applicable requirements are not met.	N/A	5,200 to 8,650
Certifying a packaging as meeting a UN standard when design qualification testing was not performed.	N/A	6,000 to 10,800
Failure to conduct periodic testing on UN standard packaging	N/A	5,000 to 8,650
Failure to properly conduct design qualification or periodic retesting for UN standard packaging.	N/A	4,200
Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	N/A	7,200
Failure to keep and maintain records of design qualification testing	178.601(k)(1)	4,200
Failure to keep and maintain records of periodic retest	178.601(k)(2)	4,200
Manufacturing DOT specification packaging after October 1, 1994	N/A	3,000 and up
Manufacturer Requirements—Fiberboard Boxes:		
Manufacturing, marking, certifying, or selling a package marked to a specification, UN standard, or an exemption when applicable requirements are not met.	N/A	4,300 to 7,200
Certifying packaging as meeting UN 4G standard when it was not properly conditioned before design qualification testing.	N/A	4,300
Failure to properly mark a fiberboard box	N/A	1,200
Manufacturing Requirements—UN 1H1 Drums:		
Failure to properly conduct alternate leakproofness test	N/A	4,200
Manufacturing Requirements—DOT High-Pressure Cylinders:		
Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	N/A	6,000 to 10,800
Manufacturing Requirements—Spec. DOT 39 Cylinders:		
Failure to have a registration number/failure to mark it on the cylinder	N/A	3,700
Marking another company's number on a cylinder	N/A	5,000

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Violation description	Section or cite	Baseline assessment
Failure to mark the date of manufacture or lot number on a cylinder	N/A	3,100
Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S./failure to obtain a chemical analysis from the foreign manufacturer.	N/A	5,000
Failure to conduct a complete visual internal examination	N/A	3,500 to 5,200
Failure to conduct a flattening test	N/A	5,200
Failure to conduct a burst test	N/A	5,200
Failure to properly conduct required test.	N/A	4,200
Failure to maintain a required inspector's report	N/A	5,200
Failure to maintain an accurate inspector's report	N/A	1,200 to 3,700
Manufacturing Requirements—DOT 4B Cylinders:		
Failure to conduct a hydrostatic test by water jacket method on one cylinder out of each lot of 200 or less.	178.50–14	5,200
Failure to conduct a flattening test	178.50–15	5,200
Failure to conduct physical testing	178.50–16	5,200
Failure to properly conduct required test	N/A	4,200
Failure to maintain the required Inspector's report	N/A	5,200
Failure to maintain an accurate Inspector's report	N/A	1,200 to 3,700
Manufacturing Requirements—Steel Drums:		
Failure to pass testing conducted in plant	N/A	5,200 and up
Failure to properly conduct "solution over partial seams" test	N/A	3,500 to 5,000
Failure to retain chime cuts when conducting "solution over partial seams" testing	N/A	3,100
Other Requirements		
Offeror Requirements (General):		
Offering a hazardous material for transportation in an unauthorized, nonspecification, or nonstandard packaging.	N/A	5,200 to 8,650
Offering a hazardous material for transportation in an unauthorized, nonstandard, or nonspecification inner package.	N/A	4,300
Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation.	N/A	10,400
Offering a hazardous material for transportation that is covered by an exemption, without complying with its terms.	N/A	5,200 to 8,650
Offering a hazardous material for transportation in a packaging marked as manufactured to a DOT specification where that packaging was manufactured after October 1, 1994.	171.14	3,000 and up
Offeror requirements (Class 1 (Explosives)):		
Failing to mark the "EX" approval number on a package containing an explosive	172.320	1,200
Offering an unapproved explosive for transportation	173.54(a) and 173.56(b)	10,000 to 25,000
Offering a leaking or damaged package of explosives for transportation	173.54(c)	10,000 to 25,000
Offering a Division 1.3 (Class B) explosive for transportation that is misclassified as Division 1.4 (Class C) explosive.	N/A	8,400 and up
Offeror Requirements (Class 3 (Flammable Liquid)):		
Using an incorrect marking for the flashpoint in order to be excepted from specification packaging, for a flammable liquid with a flash point of 73° Fahrenheit or higher.	173.118(b) [1]	1,000
Offering a flammable liquid with a flash point below 20° Fahrenheit for transportation in an unauthorized DOT 17E drum (20/18-gauge v. 18-gauge).	173.119(a)(3) [1]	6,200
Offering a flammable liquid with a flash point of 73° Fahrenheit or above in nonspecification packaging, without marking the flash point or an indication that it was at or above 73° Fahrenheit on the packaging.	N/A	3,600 to 5,200
Offeror Requirements (Division 6.1 (Poisonous Liquids)):		
Offering a poisonous liquid for transportation in a DOT 12A fiberboard box that was tested as required by § 178.210–10.	173.346(a)(26) [1]	5,200
Offeror Requirements (Class 7 (Radioactive Materials)):		
Failure to have a valid U.S. NRC approval certificate authorizing the use of a packaging as Type B (never having obtained one).	173.415(c)	4,300
Failure to have a valid U.S. NRC approval certificate authorizing the use of a packaging as Type B (previously had one, but now expired).	173.415(c)	3,500 and up
Offeror Requirements (Portable or IM Tanks):		
Offering a hazardous material for transportation in a DOT 57 or exemption portable tank that is out of test.	173.32(e)(1)(ii)	6,200
Offering a compressed gas for transportation in a DOT 51 portable tank that is out of test (may be higher if offeror is also owner and portable tank has not been tested at all, or not for a long time).	173.32(e)(l)(i) 173.315(a)	5,200 to 8,650
Offeror Requirements (Cylinders):		
Offering a compressed gas for transportation in a cylinder that is out of test (may be higher if offeror is also owner and cylinder has not been retested at all, or not for a long time.	173.301(c)	5,200 to 8,650
Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for at least 30 days.	173.303(d)	4,200

Violation description	Section or cite	Baseline assessment
Offering a mixture of a non-hazardous material and a compressed gas as an ORM–D without properly determining the internal pressure at equilibrium in a water bath heated to 130° Fahrenheit.	173.1200(a)(ii)(E)	6,200
Carrier Requirements:		
Transporting railway track torpedoes outside of flagging kits, in violation of E–7991	N/A	6,000
Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage such explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent such damage.	177.835(i)	5,200
Exemptions:		
Requested renewal of an exemption prior to expiration, but shipped after expiration	N/A	2,500
Offered or transported a packaging or otherwise performed a function covered by an exemption after an exemption had expired (less than one year).	N/A	2,900
Offered or transported a packaging or otherwise performed a function covered by an exemption after an exemption had expired (more than one year).	N/A	3,600 to 7,200

[1] Cite refers to provisions in effect September 30, 1991 (see 49 CFR Part 173, revised as of October 1, 1990).

III. Consideration of Statutory Criteria

A. These guidelines are used by the Office of Hazardous Materials Safety (OHMS) in setting initial proposed penalties for hazmat violations. They indicate baseline amounts or ranges for probable violations frequently cited in enforcement reports and set forth general OHMS policy for considering statutory criteria.

B. The initial baseline determination partially considers the nature, extent, circumstances, and gravity of the alleged violation. That determination then is adjusted to consider all other evidence concerning the nature, extent, circumstances, and gravity of the alleged violation; degree of culpability; history of prior violations; ability to pay; effect of the penalty on ability to continue to do business; and such other matters as justice may require (a major component of which is corrective action taken by a respondent to prevent a recurrence of similar violations). In making a penalty recommendation, the baseline or range may be increased or decreased on the basis of evidence pertaining to these factors.

C. The following miscellaneous factors are used to implement one or more of the statutory assessment criteria.

IV. Miscellaneous Factors Affecting Penalty Amounts

A. Corrective Action

1. A proposed penalty is mitigated for documented corrective action of alleged violations taken by a respondent. Corrective action may occur: (1) After an inspection and before a Notice of Probable Violation (NOPV) is issued; (2) on receipt of an NOPV; or (3) after receipt of an NOPV (possibly after it is solicited by an RSPA attorney). In general, corrective action may reduce a penalty up to 25%. Mitigation may be taken into account in the referral memo or may be recommended prior to issuance of an Order by RSPA's Chief Counsel.

2. The two primary factors in determining the penalty reduction are extent and timing of the corrective action. In other words, mitigation will be determined on the basis of how much corrective action was taken and when it was taken. Systemic action to prevent future violations is given greater consideration than action simply to remedy violations identified during the inspection.

3. Mitigation is applied to individual violations. Thus, in a case with two violations, if corrective action for the first violation is more extensive than for the second, the penalty for the first will be mitigated more than that for the second.

B. Respondents That Re-Ship

A shipper that reships materials received from another company, in the same packaging and without opening or altering the package, independently is responsible for ensuring that the shipment complies with Federal hazmat law, and independently may be subject to enforcement action if the package does not comply. Nevertheless, the reshipper is considered to have a lesser level of responsibility for compliance in those respects in which it reasonably relies on the compliance of the package as received. In most cases of this type, OHMS will discount the applicable baseline standard by about 25%. The specific knowledge and expertise of all parties must be considered in discounting for reliance on a prior shipper. This discount is applied before any consideration of mitigation based on corrective action.

C. Penalty Increases for Multiple Counts

Under the Federal hazmat law, 49 U.S.C. 5213(a), each violation of the HMR and each day of a continuing violation (except for violations pertaining to packaging manufacture or qualification) is subject to a civil penalty of up to $25,000. Absent aggravating factors, OHMS, in its exercise of discretion, ordinarily will apply a single penalty for multiple counts or days of violation. In a number of cases, particularly those involving shippers, an inspector may cite two or more similar packaging violations for different hazardous materials. For example, the inspector may cite the same marking violation for two or more packages. OHMS usually will consider those additional violations as counts of the same violation and will not recommend multiples of the same baseline penalty. Rather, OHMS usually will recommend the baseline penalty for a single violation, increased by 25% for each additional violation.

D. Financial Considerations

1. Mitigation is appropriate when the baseline penalty would (1) exceed an amount that the respondent is able to pay, or (2) have an adverse effect on the respondent's ability to continue in business. These criteria relate to a respondent's entire business, and not just the product line or part of its operations involved in the violation(s). Beyond the overall financial size of the respondent's business, the relevant items of information on a respondent's balance sheet include the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. These figures are considered on a case-by-case basis. In general, however, a current ratio close to or below 1.0 means that the company may have difficulty in paying a large penalty, and may justify reduction of the penalty or an installment payment plan. A small amount of cash on hand representing limited liquidity, even with substantial other current assets (such as accounts receivable or inventory), may warrant a short-term payment plan. Respondent's income statement also will be reviewed to determine whether a payment plan is appropriate.

3. Many companies are able to continue in business for extended periods of time with a small or negative net worth, and many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

4. In general, an installment payment plan may be justified where reduction of a proposed penalty is not, but the appropriateness of either (or both) will depend on the circumstances of the case. The length of a payment plan should be as short as possible, but the plan may consider seasonal fluctuations in a company's income if the company's business is seasonal (e.g., swimming pool chemical sales, fireworks sales) or if the company has documented specific reasons for current non-liquidity.

5. Evidence of financial condition is used only to decrease a penalty, and not to increase it.

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E. Penalty Increases for Prior Violations

1. The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standard for increasing a baseline proposed penalty on the basis of prior violations is as follows:

a. One prior case—25% increase over the pre-mitigation recommended penalty
b. Two prior cases—50% increase over the pre-mitigation recommended penalty
c. Three prior cases—75% increase over the pre-mitigation recommended penalty
d. Four or more prior cases—100% increase over the pre-mitigation recommended penalty

2. A case of prior violations closed more than five years previously normally will not be considered in determining a proposed penalty.

F. Penalty Increases for Use of Expired Exemptions

Adjustments to the base line figures for use of expired exemptions can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired exemption, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

Issued in Washington, DC on February 27, 1995 under authority delegated in 49 CFR part 1.

Ana Sol Gutierrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–5179 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–60–P

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–28]

Parts and Accessories Necessary for Safe Operation; Glazing and Window Construction; Petition for Waiver To Permit Use of Automatic Vehicle Identification Transponder

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Grant of petition for waiver.

SUMMARY: The FHWA is granting a petition from the Commonwealth of Kentucky, lead State for the ADVANTAGE I–75 Program, and Heavy Vehicle Electronic License Plate, Inc., (HELP) requesting a waiver from the requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to allow mounting of an automatic vehicle identification (AVI) transponder near the upper border at the approximate center of the windshields of commercial motor vehicles.

The FHWA is granting the waiver to permit the use of the transponders in commercial motor vehicles participating in the ADVANTAGE I–75 operational ("beta") test and the HELP corridor programs, subject to the conditions imposed in this notice.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1994, the FHWA published a notice in the **Federal Register** (59 FR 51540) requesting comments on petitions received from the Commonwealth of Kentucky (Kentucky) and HELP. The petitioners are the lead organizations in multi-State partnerships of public and private sector interests conducting a series of operational tests that fall within the Commercial Vehicle Operations (CVO) element of the Intelligent Transportation System (ITS) Program (formerly known as the Intelligent Vehicle-Highway Systems (IVHS) program). The ADVANTAGE I–75 and HELP programs were created to allow commercial motor vehicles (CMVs) that are equipped with transponders and that comply with safety and administrative requirements to travel any segment of their respective instrumented highways at mainline speeds with minimal stopping at weight/inspection checkpoints.

The AVI device proposed for use in both programs is an electronic transponder designed to send and receive signals from a CMV to ports of entry (POEs) and safety inspection sites. The devices would be used to transmit a variety of information, such as the identity of the motor carrier, the gross weight of the vehicle, and the status of the vehicle's registration and fuel tax payments. The transponder measures 84 mm (3.3 inches) high by 112 mm (4.4 inches) wide by 38 mm (1.5 inches) deep.

In order to function effectively, the transponder must be able to properly transmit and receive signals from roadside receivers installed at States' ports of entry. The physical location of the transponder is a critical factor in its operation because of the potential for internal and external electronic interference. In addition, the device must be placed in a suitable location to allow drivers to read the instruction displayed on the transponder, i.e., to enter or to bypass the POE. An engineering evaluation performed by one of the ADVANTAGE I–75 electronic equipment contractors determined that a location near the center of the upper border of the windshield best allowed the device to meet both of these requirements.

However, 49 CFR 393.60(c) requires that no motor vehicle be operated with any label, sticker, decalcomania, or other vision-reducing matter covering any portion of its windshield or windows at either side of the driver's compartment, except that stickers required by law may be affixed to the bottom of the windshield, provided that no portion of any label, sticker, decalcomania, or other vision-reducing matter may extend upward more than 114 mm (4.5 inches) from the bottom of the windshield. The requirements of § 393.60, particularly the 114 mm (4.5 inch) limit specified in § 393.60(c), are independent of the physical dimensions of windshields.

Section 206(f) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e), formerly 49 U.S.C. app. 2505(f)) authorizes waivers of any regulation issued under the authority of that Act upon a determination that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

The FHWA proposed to grant the waiver on October 12, 1994. The notice described the agency's review of automotive engineering recommended practices, the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards, and recent research concerning drivers' field of view. It also examined current CMV cab designs related to placement of interior mirrors and sunvisors which occupy approximately the same space proposed for the AVI transponder. Based on the information obtained from this review, the FHWA concluded that a transponder mounted at the approximate center of the top of the windshield would be extremely unlikely to create a situation inconsistent with the safe operation of a CMV. This location is well outside the area recommended for windshield wiper sweep under the Society of Automotive Engineers (SAE) Recommended Practice J198 (Windshield Wiper Systems—Trucks, Buses, and Multipurpose Vehicles) and the area recommended for windshield defrosting under Recommended Practice J342 (Windshield Defrosting Systems Performance Guidelines—Trucks,

Buses, and Multi-Purpose Vehicles). The findings of four recent research reports on the subject also suggested that the location of an object, such as a transponder device, near the upper margin of a CMV's windshield is unlikely to have any effect on a driver's ability to observe nearby objects, such as pedestrians.

In addition, the FHWA believes that the public interest would be furthered by granting this waiver. Drivers whose CMVs are in compliance with registration, safety inspection, and operating requirements and permits may receive a signal from inspection officials to bypass ports of entry or inspection sites. This would have the effect of greatly improving inspection efficiency and effectiveness by enabling officials to focus their resources on vehicles with safety and size and weight infractions.

Discussion of Comments to the Docket

The FHWA received five comments to the notice of petition. Advocates for Highway and Auto Safety (AHAS) opposed the windshield mounting location for the transponder and criticized the prior field activity under the ADVANTAGE I–75 "alpha" test. The Department of California Highway Patrol (CHP) supported the general concept of the waiver, but expressed concern with the windshield mounting location due to a potential conflict with its State regulations. The Illinois Department of Transportation, Heavy Vehicle Electronic License Plate (HELP), Inc., and the Commonwealth of Kentucky Transportation Cabinet commented in favor of the waiver.

The AHAS stated its opposition to "any action or item of equipment that might obstruct [the] view of CMV drivers," and added that "[a]ny waiver that might pose an impediment to driver vision must be carefully scrutinized to assure that it is consistent with safety." "It is axiomatic," it noted, "that vision plays a central role in the driving task * * *." The AHAS believes the design of the transponder is inappropriate, and that the transponder hardware should be separated from the visual indicator provided for the driver.

The AHAS stated that it "might support the FHWA's proposal because of the small size of the transponder, and the fact that it will be placed at the top of the windshield and outside the general field of view of the driver." However, "Advocates cannot support the transponder proposal at this time since there are unresolved issues regarding the necessity of placing the device on the windshield." The AHAS also asserted that the FHWA provided insufficient technical justification for the windshield mounting location. It dismissed the agency's reasoning as merely rationalizing the "convenience" of that location.

The FHWA disagrees with the AHAS' assertions. The FHWA is required to evaluate the safety, not to regulate the design, of equipment for which a waiver is requested. The design is a product of the petitioners' engineering judgment. ADVANTAGE I–75 and HELP requested a waiver for tests of a device whose design had already been selected. The only issue was whether the placement of the AVI device would reduce motor carrier safety. The FHWA has fully considered that question.

The FHWA requested, and has received, a copy of engineering notes from Delco Electronics documenting its assessment of alternate transponder mounting locations. A copy of the test report has been placed in the docket.

Delco Electronics performed two tests of antenna pattern characterization to compare the strength of the signal received at the roadside reader. The first compared mounting locations at the lower-right, upper-right, upper-left, and lower-left corners of the driver's side of the windshield. The second compared two alternate locations with the transponder attached to the windshield (upper-right and lower-left corners of driver's side) with a third location utilizing a mounting bracket (upper-right corner of driver's side) that held the transponder just off the windshield. In both tests, the location at the upper-right corner of the driver's side of the windshield delivered a superior signal, as measured by relative attenuation in dBm [decibel-milliwatts, a measurement of signal power on a logarithmic scale]. The signal from the upper-right driver's side windshield mounting location was as much as 10 dBm stronger compared to other locations and to the bracket-mounted alternative.

For radio frequency (RF) devices to successfully perform their functions, their transmitted signals must be strong enough to reach their targets. The upper-right driver's side windshield mounting location appears to be the best among the several alternatives that Delco Electronics evaluated. The 10 dBm difference in the signal strength can be a key factor in facilitating the transponder's successful field implementation.

As ITS matures, it is likely that technical advancements and competition among manufacturers will improve the packaging and reduce the size of transponders and other ITS devices. It is conceivable that future clearance transponders could be mounted in locations other than a CMV's windshield, and indicator lamps added to dashboard instrumentation, as the AHAS recommends in its comments.

The FHWA believes that the AHAS' comments reflect a misinterpretation of the visibility issue. For example, the AHAS argued that the visible indicator was not necessary because the transponder would be hidden by a sunvisor. There is nothing in the notice that warrants that conclusion. Sunvisors are not always extended. The FHWA made the comparison between the vertical dimension of the transponder and that of sunvisors and sunshades in reference to a driver's useful field of view. The AHAS also questioned other technical issues regarding the transponder's placement without presenting research results comparable to those cited by the FHWA in support of the proposed waiver.

In addition, the AHAS contended that the FHWA should have followed formal waiver procedures for the ADVANTAGE I–75 Alpha Test, rather than issuing an enforcement moratorium that had the same effect. The FHWA disagrees. The Alpha Test was merely a technical shakedown of AVI transponders on a small number of vehicles (up to 200) to ensure that the equipment would work properly during the operational Beta Test. This kind of fine-tuning could not be done with stationary vehicles. The Alpha Test was closely controlled and monitored by the FHWA's State partners, since the participating States and motor carriers needed to be aware of problems before starting the Beta Test. The FHWA simply allowed ADVANTAGE I–75 to complete this preparatory evaluation. As the agency and the ADVANTAGE I–75 States expected, no visibility problems caused by the transponders were reported.

The Department of California Highway Patrol (CHP) did not object to the use of the transponder. It did, however, express a concern about the proposed mounting location: "California law prohibits any object from being installed or affixed on any portion of the windshield except for * * * a 7-inch square in the lower corner of the windshield opposite the driver or in a 5-inch square in the lower corner of the windshield near the driver." The CHP provided a copy of the relevant regulation, California Vehicle Code Section 26708.

California's regulation differs from § 393.60(c). In the fall of 1994, the FHWA notified the CHP, as the State's Motor Carrier Safety Assistance Program (MCSAP) grant recipient, that the regulation must be brought into conformance with the FMCSRs. The

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FHWA is working with California to address this issue, and recommends that the CHP accept the terms of this waiver while efforts are ongoing by the State to seek a legislative change.

The Illinois Department of Transportation (IDOT) strongly supports the waiver. The IDOT noted that windshield-mounted transponders are also being actively considered for automated toll collection and commercial vehicle [electronic] pre-clearance systems planned by Illinois and other States. The IDOT believes the waiver would not sacrifice truck safety, but would allow the transponders used in the programs to be positioned in vehicles so as to work more effectively.

HELP, Inc. stated that it is working with Intelligent Transportation Systems technology to provide benefits to both motor carriers and weigh station controllers. HELP emphasizes the importance of the location of the AVI transponder to insure that transmitted signals are received properly. It noted that the proposed "right center quadrant" windshield location is similar to the standard location of an inside rear-view mirror, reducing the impact of reduced or obstructed driver views. HELP is also working with the CHP to implement a weigh station bypass service called PRE-PASS™ which requires placement of the AVI transponder in that optimal location. Citing the CHP's comment to this docket, HELP notes that it is working with the CHP to draft legislation which will modify current California law to allow the AVI transponder to be mounted in this location. HELP strongly supports the proposed waiver and requests the FHWA's approval so that State governments and the motor carrier industry can proceed with implementing PRE-PASS™ and gain improvements in transportation productivity and efficiency.

The Commonwealth of Kentucky Transportation Cabinet (Kentucky), as lead State in the ADVANTAGE I–75 partnership, strongly supports the proposed waiver. Kentucky stated that over 200 trucks operated with the transponders for over a year. Staff from the Transportation Cabinet and the Kentucky Transportation Center rode in the trucks during testing, and also talked with drivers, dispatchers, maintenance personnel, and fleet managers. Kentucky became "convinced that, when properly mounted, the transponder does not in any way obstruct the driver's view of the roadway. We have not had a single report of an incident or a concern relating to a transponder obstructing a driver's view." Kentucky goes on to state that

> Safety is a vital element of the ADVANTAGE I–75 project. The project is supported by Motor Carrier Enforcement Personnel in each of the participating states and province. We would not support any practice that we believed would compromise the safety of travelers on our nation's highways. Our support of the proposed waiver is based upon our conviction that the transponder does not obstruct the driver's vision or in any other way create a safety hazard. We invite those with strong concerns to visit one of our ADVANTAGE I–75 sites and to climb into the cab of a transponder-equipped truck.

Conditions of the Waiver

The conditions of the waiver proposed in the October 12, 1994, notice have been modified somewhat for the reasons set forth below.

As an alternative to complying with the wiring requirements of 49 CFR 393.27 and 393.33, the petitioners may, if they choose, comply with SAE Recommended Practice (RP) J1292, Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring. The guidelines contained in RP J1292 provide more comprehensive guidance and are equivalent to, and slightly more stringent than, §§ 393.27 and 393.33 of the FMCSRs. The RP covers 3 areas. It cross-references the same RPs incorporated by reference in § 393.27 (Wiring Specifications) for battery cable (SAE RP J1127) and for low-tension primary cable (SAE RP J1128). It cross-references SAE RP J163, Low-tension wiring and cable terminals and splice clips, which is indirectly referenced in § 393.33, Wiring [and] installation. The RP also requires wiring overload protective devices, fuses, or circuit breakers in this type of low-current application. While this last item is a slight change, the agency notes that the transponder's installation manual requires the power wire to be connected to the fused side of battery power, and states that a one-amp in-line fuse may be added for additional protection.

The duration and termination of the waiver discussed in Conditions III and VI have been changed so that the waiver shall remain in effect unless revoked by the FHWA. The grantees will be required to report the number of participating motor carriers and the number of transponder-equipped CMVs. Removing the time limit on the waiver will enable the grantees to continue operating their programs, provided the reports submitted indicate that the transponders are not affecting the safe operation of CMVs.

Condition VII now requires that the project reports be submitted within two years of the effective date of the waiver. A review after two years will enable the petitioners and the FHWA to assess a significant amount of data.

Condition IV has been modified to recognize the potential for the existence of nonconforming State or local laws or regulations that may not have been brought to the FHWA's attention.

Condition V of the October proposal would have limited the number of CMVs eligible for the waiver to 30,000. This restriction has been eliminated. Although that figure was a reasonable estimate of the number of participating vehicles, it would have required the petitioners to request adjustments to the ceiling, possibly more than once, if additional motor carriers wished to join the test program. Because the agency's review of the engineering standards and research on field of view discussed above indicated that use of the transponder would be very unlikely to create an unsafe operating situation, the FHWA has decided not to impose a numerical limit on the number of vehicles included in the program. However, both ADVANTAGE I–75 and HELP will be required to submit information on accidents involving the vehicles equipped with transponders, in accordance with Condition III.

I. Location of the Transponder

The transponder shall be mounted at or near the top center of the windshield, outside the area swept by the CMV's windshield wipers, or, at a minimum, outside the driver's sight lines to the road and highway signs or signals.

II. Compliance With Wiring Requirements of the FMCSRs

The installation of the transponder shall be required to comply with either (a) 49 CFR 393.27, Wiring specification, and 49 CFR 393.33, Wiring [and] installation, or (b) with SAE Recommended Practice J1292, Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring.

III. Duration of Waiver; Accident and Incident Monitoring

The waiver for HELP and ADVANTAGE I–75 is effective beginning April 5, 1995. The waiver shall remain in effect indefinitely, unless revoked by the FHWA.

Motor carriers participating in ADVANTAGE I–75 and HELP shall provide the FHWA with information on accidents (as defined in 49 CFR 390.5) involving the vehicles equipped with the transponders. Accident reports shall be submitted every 6 months, and shall contain the information listed below:

1. A copy of all accident reports prepared and required by State or other governmental entities or insurers.

2. Interview information with the driver and occupants of the CMV involved. The information shall specifically indicate whether the driver of the transponder-equipped vehicle believed that the presence of the transponder was a factor in the accident. The interview shall be conducted by a motor carrier employee responsible for supervising the driver of the transponder-equipped vehicle.

IV. State and Local Laws

This waiver applies to all participating vehicles operating in interstate commerce. Although incompatible State laws or regulations perhaps cannot be changed to coincide with the start of the waiver period, the FHWA strongly encourages State and local authorities with safety regulations that would prohibit the use of the proposed transponders to accept the terms and conditions of this waiver.

V. Vehicles To Be Equipped With Transponders

The names and USDOT numbers of the motor carriers participating in the ADVANTAGE I–75 and HELP programs, as well as the number of transponder-equipped CMVs operated by each carrier, shall be provided to the FHWA. Motor carriers not participating in these programs may not equip straight trucks, tractors, or motor coaches with the transponders discussed in this waiver.

VI. Termination of Waiver

The FHWA may terminate this waiver at any time without prior warning if it determines that continued use of the transponders decreases the operational safety of the vehicles on which they are installed. Upon receipt of a notice of termination, motor carriers participating in the ADVANTAGE I–75 and HELP projects must immediately remove the transponders from their vehicles.

VII. Report

ADVANTAGE I–75 and HELP shall provide separate reports describing the transponder's installation and use within two years after the effective date of the waiver. The reports shall include information obtained from the drivers on the device's effect on visibility through the windshield.

The FHWA has fully considered the information presented in the request for waiver, engineering and other technical material reviewed concerning requirements for visibility from vehicles, and the comments received. The FHWA hereby concludes that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Accordingly, the FHWA hereby grants the Commonwealth of Kentucky and Heavy Vehicle Electronic License Plate, Inc., their petition for a waiver from the requirements of 49 CFR 393.60(c).

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: February 21, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–5323 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950223057–5057–01; I.D. 120594A]

RIN 0648–AG95

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Pacific Halibut Bycatch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final 1995 specification of Pacific halibut bycatch allowances.

SUMMARY: NMFS issues a final rule to revise the management of seasonal Pacific halibut bycatch allowances annually specified for nontrawl fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This final rule also provides NMFS the authority to determine annually whether to apportion a halibut bycatch allowance to the BSAI jig gear fishery or the BSAI or Gulf of Alaska (GOA) hook-and-line gear fisheries for sablefish or to exempt these fisheries from halibut bycatch restrictions. Final 1995 halibut bycatch allowances for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, seasonal apportionments thereof, and the manner in which these seasonal apportionments will be managed under the final rule are specified. This action is necessary to manage halibut bycatch allowances consistent with seasonal apportionments of groundfish total allowable catch (TAC) amounts, prevent preemption of the BSAI jig gear fisheries by the attainment of halibut bycatch allowances apportioned to other nontrawl fisheries, and support the implementation of the sablefish/halibut individual fishing quota (IFQ) program. This action is intended to promote management and conservation of groundfish and other fish resources and to further the objectives contained in the fishery management plans for Alaska groundfish fisheries.

EFFECTIVE DATE: April 3, 1995.

ADDRESSES: Copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by vessels in the exclusive economic zone of the GOA and BSAI is managed by NMFS according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 620, 672, 675, and 676.

Regulations for the management of halibut bycatch limits established for the GOA groundfish fisheries are set out at § 672.20(f). Regulations for the management of prohibited species bycatch limits established for the BSAI groundfish fisheries are set out at § 675.21. A proposed rule was published in the **Federal Register** on December 29, 1994 (59 FR 67268), that would revise the management of the halibut bycatch limits established for the GOA hook-and-line gear groundfish fisheries and the BSAI nontrawl groundfish fisheries. The proposed action would (1) address concerns about the potential closure of the BSAI jig gear fishery due to halibut bycatch in other nontrawl fisheries, (2) allow for the management of the seasonal apportionment of the halibut bycatch allowances annually specified for the BSAI Pacific cod hook-and-line gear fishery consistent with the management of the amount of Pacific cod TAC allocated to this fishery, and (3) authorize the exemption of the GOA and BSAI hook-and-line gear sablefish fishery from halibut bycatch restrictions to support the new sablefish/halibut IFQ program. Comments on the proposed

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rule were invited through January 30, 1995. No written comments were received within the comment period.

Upon reviewing the reasons for revisions to regulations addressing the management of the halibut bycatch limits established for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, NMFS has determined that this final rule implementing the following measures is necessary for fishery conservation and management:

1. Separately define the GOA sablefish hook-and-line gear fishery under § 672.20(f)(1)(ii) and the BSAI groundfish jig gear fishery and the BSAI sablefish hook-and-line gear fishery under § 675.21(b)(2)(ii) so that these fisheries annually either receive a separate halibut bycatch allowance or are exempted from halibut bycatch restrictions. These determinations will be implemented by NMFS, after consultation with the Council, as part of the annual specification process set out at §§ 672.20(c) and 675.20(a)(7); and

2. Authorize NMFS, after consultation with the Council, to specify annually how seasonal bycatch allowances established for the BSAI nontrawl fisheries will be reapportioned among remaining seasons during the same fishing year.

Further explanation of, and reasons for, these measures are contained in the preamble to the proposed rule (59 FR 67268, December 29, 1994).

Final 1995 Specifications of the Pacific Halibut Bycatch Mortality Limit Established for the BSAI Nontrawl Fisheries

NMFS published with the proposed rule the proposed 1995 halibut bycatch allowances for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, seasonal apportionments thereof, and the manner in which these seasonal apportionments would be managed. The proposed specifications were recommended by the Council during its September 1994 meeting.

At its December 1994 meeting, the Council recommended final halibut bycatch specifications under the assumption that this final rule would be implemented early in 1995. These final recommendations would exempt the 1995 GOA and BSAI sablefish hook-and-line gear fisheries from halibut bycatch restrictions and establish a 300 metric ton (mt) halibut bycatch mortality limit for the 1995 GOA hook-and-line gear fisheries.

NMFS concurs with the Council's GOA halibut bycatch specifications for the hook-and-line gear fisheries as set out in Table 1. The justification for the 300 mt bycatch limit is discussed in the preamble to the proposed rule (59 FR 67268, December 29, 1994). This bycatch limit is apportioned between the demersal shelf rockfish fishery (10 mt) and the "other hook-and-line gear" fisheries (290 mt). Over 80 percent of the halibut bycatch mortality allowance apportioned to the "other hook-and-line gear" fisheries is seasonally apportioned to the first 5 months of the year to support the hook-and-line gear fishery for Pacific cod. The remaining amount of this halibut bycatch mortality allowance is divided between the last two seasons of the year to support the hook-and-line gear fishery for rockfish.

TABLE 1.—FINAL 1995 PACIFIC HALIBUT BYCATCH LIMIT, BYCATCH ALLOWANCES, AND SEASONAL APPORTIONMENTS THEREOF, FOR THE GOA HOOK-AND-LINE (H&L) GEAR FISHERIES

Fishery	Halibut bycatch mortality allowance in mt
Demersal shelf rockfish	10 mt.
Sablefish	Exempt.
Other H&L gear fisheries	
Jan. 1–May 14	242 mt.
May 15–Aug. 31	29 mt.
Sep. 1–Dec. 31	19 mt.
Total 1995 bycatch allowance specified for other H&L fisheries.	290 mt.
Total	300 mt

NMFS also concurs with the Council's final recommendation for 1995 BSAI nontrawl fishery halibut bycatch allowances as set out in Table 2. The halibut bycatch allowances are unchanged from those implemented under the final 1995 groundfish specifications published in the **Federal Register** February 14, 1995 (60 FR 8479). Under the authority of this final rule, however, Table 2 specifies that the BSAI sablefish hook-and-line gear fishery is exempt from 1995 halibut-bycatch restrictions. Table 2 also specifies the accounting for any underharvest or overharvest of a seasonal apportionment of the Pacific cod halibut bycatch allowance.

TABLE 2.—FINAL 1995 PACIFIC HALIBUT BYCATCH ALLOWANCES, AND SEASONAL APPORTIONMENTS THEREOF, FOR THE BSAI NONTRAWL FISHERIES

Fishery	Halibut bycatch mortality allowance in mt
Pacific cod hook-and-line [1]	
Jan. 1–Apr. 30	475 mt.
May 1–Aug. 31	40 mt.
Sep. 1–Dec. 31	210 mt.
Total	725 mt.
Sablefish hook-and-line	Exempt.
Jig gear	Exempt.
Other nontrawl	175 mt.
Groundfish pot gear	Exempt.
Total	900 mt.

[1] Any unused portion of the first season's halibut bycatch allowance specified for the Pacific cod hook-and-line gear fishery would be reapportioned to the third seasonal allowance. Any overage of a seasonal bycatch allowance specified for this fishery would be deducted from the remaining seasonal bycatch allowances specified for 1995 in amounts proportional to these remaining seasonal bycatch allowances.

The specifications set out in Tables 1 and 2 supersede the halibut bycatch specifications for the GOA hook-and-line gear fisheries published in the **Federal Register** February 14, 1995 (60 FR 8470) and for the BSAI nontrawl fisheries published in the **Federal Register** February 14, 1995 (60 FR 8479), respectively.

NMFS notes that separate halibut bycatch allowances may be established for the GOA and BSAI sablefish hook-and-line gear fisheries in future years under the annual specification process if halibut discard mortality in these fisheries is not reduced in the manner anticipated under the IFQ program.

Classification

This final rule is exempt from review under E.O. 12866.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this would not have a significant economic impact on a substantial number of small entities. The reasons were published in the **Federal Register** on December 29, 1994 (59 FR 67268). As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraphs (f)(1)(ii) and (f)(3)(ii) are revised to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(1) * * *

(ii) *Hook-and-line and pot gear fisheries.* (A) After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed and final halibut PSC limits for vessels using hook-and-line gear. The notification also may specify a halibut PSC limit for the pot gear fisheries. The halibut PSC limit specified for vessels using hook-and-line gear may be further apportioned, as bycatch allowances, to the fishery categories listed in paragraph (f)(1)(ii)(B) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (f)(1)(ii).

(B) For purposes of apportioning the hook-and-line halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species for which a TAC has been specified under paragraphs (a) and (c) of this section:

(*1*) *Demersal shelf rockfish in the Southeast Outside District.* Fishing with hook-and-line gear in the Southeast Outside District of the Eastern Regulatory Area of the Gulf of Alaska during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (f)(1)(ii)(B).

(*2*) *Sablefish fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (f)(1)(ii)(B).

(*3*) *Other hook-and-line gear fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery or a sablefish fishery as defined under paragraphs (f)(1)(ii)(B) (*1*) and (*2*) of this section.

* * * * *

(3) * * *

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the three hook-and-line gear fishery categories listed in paragraph (f)(1)(ii)(B) of this section will catch the Pacific halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire Gulf of Alaska or the applicable regulatory area or district to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.21, paragraph (b)(2)(ii) (B) and (C) are redesignated as paragraphs (b)(2)(ii) (D) and (E) respectively; paragraphs (b)(3)(ii) and (b)(3)(iii) are redesignated as paragraphs (b)(3)(ii)(A) and (b)(3)(ii)(B), respectively; newly redesignated paragraph (b)(2)(ii)(E) and paragraphs (b)(4) and (d) are revised; and new paragraphs (b)(2)(ii)(B), (b)(2)(ii)(C), (b)(3)(ii) heading, and paragraph (b)(3)(iii) are added to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) *Sablefish hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other groundfish species.

(C) *Groundfish jig gear fishery.* Fishing with jig gear during any weekly reporting period that results in a retained catch of groundfish.

* * * * *

(E) *Other nontrawl fisheries.* Fishing for groundfish with nontrawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line fishery, a sablefish hook-and-line fishery, a groundfish jig gear fishery, or a groundfish pot gear fishery as defined under this paragraph (b)(2)(ii).

(3) * * *

(ii) *Management of seasonal trawl fishery bycatch allowances.*

* * * * *

(iii) *Management of seasonal nontrawl fishery bycatch allowances.* (A) Any unused portion of a seasonal fishery bycatch allowance made under paragraph (b)(3)(i) of this section will be reapportioned to the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (b)(3)(i) of this section.

(B) If a seasonal apportionment of a fishery bycatch allowance made under paragraph (b)(3)(i) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (b)(3)(i) of this section.

(4) NMFS will publish annually in the **Federal Register** the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under § 675.20(a)(7). Public comment will be accepted by NMFS on the proposed bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days after publication in the **Federal Register**.

* * * * *

(d) *Attainment of a Pacific halibut nontrawl fishery bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the nontrawl fishery categories listed in paragraphs (b)(2)(ii) (A) through (E) of this section will catch the Pacific halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing

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with the relevant gear type for each species and/or species group in that fishery category.

[FR Doc. 95–5392 Filed 3–3–95; 8:45 am]

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50 CFR Parts 672 and 676

[Docket No. 950223056–5056–01; I.D. 022195C]

RIN 0648–AG45

Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries in and Off of Alaska; Authority To Establish the Sablefish Season

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; season opening date.

SUMMARY: NMFS issues a final rule amending the regulations establishing the Individual Fishing Quota (IFQ) sablefish fishing season. This action is necessary to provide the Director, Alaska Region, NMFS (Regional Director), with the authority to establish the IFQ sablefish season and announce it by publication in the **Federal Register**. It is intended to provide flexibility in starting the IFQ sablefish season to allow coordination with the IFQ halibut season established by the International Pacific Halibut Commission (IPHC).

EFFECTIVE DATE: March 1, 1995.

ADDRESSES: Copies of this action, and the Regulatory Impact Review (RIR), including the Final Regulatory Flexibility Analysis (FRFA), for this action, can be obtained from Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21688, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 676.23(b) is revised to authorize the Regional Director to establish the start of the IFQ sablefish fishing season by publication in the **Federal Register**. This framework provision allows the Regional Director to take into account the opening date of the IFQ halibut season when determining the opening date for the IFQ sablefish season. Allowing flexibility in starting the IFQ sablefish season facilitates its coordination with the start of the IFQ halibut season, which is determined by the IPHC annually each January. Starting the IFQ sablefish and IFQ halibut seasons concurrently benefits persons harvesting IFQ species and the Nation's fishery resource. Persons harvesting IFQ species would benefit economically because they would be able to retain both species, rather than having to discard one species because its season was closed. Also, the fisheries under the IFQ Program would benefit because regulatory discards, and the resulting mortality caused by those discards, would be reduced.

The IPHC, during its annual January meeting, decided that the Pacific halibut fixed gear season will start March 15, 1995, and end November 15, 1995. Consequently, the Regional Director announces under this final rule that the sablefish fixed gear directed fishing season will start 12 noon, Alaska local time (A.l.t.), March 15, 1995, and end 12 noon, A.l.t., November 15, 1995.

NMFS will publicize the March 15 opening date for both IFQ fisheries, which will give the public sufficient time to prepare for the IFQ season opening date.

No public comments were received on the proposed rule, published at 60 FR 2935 (January 12, 1995).

Changes in the Final Rule from the Proposed Rule

In § 676.23(b), the text of the third sentence of the proposed rule is changed slightly in the final rule to clarify the regulatory text because it was grammatically awkward. The change is not substantive. Also, § 672.23(c) of this chapter currently includes an opening date for the fishing season for sablefish with hook and line gear. This paragraph conflicts with the intent to framework the opening date of the sablefish fishing season under the IFQ Program and is therefore removed.

Classification

The RIR prepared for this action describes changes that are made to the IFQ Program. These changes are minor and do not substantially alter the current management process.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for the IFQ Program. The FRFA described and estimated the total number of small entities affected, and analyzed the economic impact on those small entities. Based on the FRFA, it was determined that the IFQ Program would have a significant economic impact on a substantial number of small entities. A copy of the FRFA can be obtained by contacting the Alaska Region, NMFS (see **ADDRESSES**).

The benefits referenced above will not be realized unless this final rule is effective March 1, 1995, the IFQ sablefish season start date originally specified in the IFQ regulations. Pursuant to 5 U.S.C. 553(d)(3), a rule may be made effective prior to 30 days after publication for good cause found and published with the rule. Opening the IFQ sablefish season on March 15, rather than March 1, avoids discards of halibut bycatch in the IFQ sablefish fishery from March 1 through March 15. Avoiding unnecessary discards is economically and biologically beneficial to the Nation's fishery resources and constitutes good cause for waiving requirement for a 30-day delay in effective date.

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 676

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 676 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 672.23 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as (c), (d), and (e), respectively.

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

3. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

4. Section 676.23 is amended by revising paragraph (b) to read as follows:

§ 676.23 IFQ fishing season.

* * * * *

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Director and announced by publication in the **Federal Register**. The Regional Director will take into account the opening date of the Pacific halibut season when determining the opening date for sablefish for the purposes of reducing bycatch and regulatory

discards between the two fisheries. Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at §§ 672.20(g) and 675.20(h) of this chapter when made by an individual onboard who has a valid IFQ card and unused IFQ in the account on which the card was issued. Catches of sablefish in excess of the directed fishing standards and catches made without IFQ must be treated in the same manner as prohibited species.

[FR Doc. 95–5383 Filed 3–1–95; 3:56 pm]

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Proposed Rules

Federal Register
Vol. 60, No. 43
Monday, March 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-93-04]

Grading and Inspection, General Specification for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Instant Nonfat Dry Milk

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the United States Standards for Instant Nonfat Dry Milk. The proposed changes would reduce the direct microscopic clump count, limit the use of lactose as a processing aid in the instantizing process, provide fortification levels for instant nonfat dry milk with added vitamins A and D, and delete the optional phosphatase test. This proposal was developed in cooperation with the American Dairy Products Institute and other dairy trade associations.

DATES: Comments should be filed by May 5, 1995.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be available for public inspection at the Dairy Division in Room 2750–S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality instant nonfat dry milk, USDA is proposing the following changes in the U.S. Standards for Instant Nonfat Dry Milk.

1. Reduce the Direct Microscopic Clump (DMC) Count Requirements

For many years, the enumeration of bacteria in instant nonfat dry milk by the direct microscopic clump (DMC) count method has been used as a means of determining the quality of the product. Improvements in the quality of raw milk and the sanitary production of instant nonfat dry milk have resulted in a reduction in the DMC count. Proposed changes to reduce the allowable DMC count from 75 million per gram to 40 million per gram would more accurately reflect the ability of the U.S. dairy industry to produce high quality instant nonfat dry milk.

2. Restrict the Amount of Lactose Used as a Processing Aid

The use of lactose as a processing aid in the production of instant nonfat dry milk is an acceptable practice provided the amount used does not exceed the amount necessary to produce the desired effect. If more lactose than necessary is added, the additional lactose serves no purpose other than to displace nonfat dry milk. Proposed changes would permit the use of lactose as a processing aid and restrict the amount added to a maximum of 2.0 percent of the weight of the nonfat dry milk.

3. Provide Fortification Levels for Instant Nonfat Dry Milk With Added Vitamins A and D

The current U.S. Standards for Instant Nonfat Dry Milk do not provide fortification levels for product with added vitamins A and D. Proposed changes would incorporate fortification levels that are consistent with the Food and Drug Administration's standards of identity for nonfat dry milk fortified with vitamins A and D (21 CFR 131.127).

4. Delete the Reference to the Optional Phosphatase Test

Pasteurization destroys pathogenic organisms and occurs when milk is heated to pasteurization temperature and held at that temperature for a specified period of time. To be considered pasteurized, the heating and holding of milk must take place in properly designed and installed equipment which has been inspected and sealed by the State Regulatory Agency. Phosphatase testing confirms only that a given sample of instant nonfat dry milk has been pasteurized but does not ensure that pasteurization has occurred for product manufactured before and after the sample tested.

Before U.S. grade can be assigned to instant nonfat dry milk, it must be produced in a dairy plant which has been inspected by USDA. When a USDA dairy plant inspection is conducted, the inspector evaluates the pasteurization system for compliance with program requirements.

The Department believes that the inspection and sealing of pasteurization equipment by the State Regulatory Agency and a review of the system by the USDA inspector provide adequate assurance that the instant nonfat dry milk has been properly pasteurized. For this reason, the Department is proposing to delete the reference to the optional phosphatase test that appears in 7 CFR part 58.2756. This action does not prohibit using the phosphatase test upon request.

5. Update the Terminology and Format of the Standards

The current U.S. Standards for Instant Nonfat Dry Milk were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The proposal would update the standards to provide

consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When instant nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in instant nonfat dry milk.

Corollary changes are also proposed for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of instant nonfat dry milk set forth therein with the proposed revision of the United States Standards for Instant Nonfat Dry Milk.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.205 (b) is revised to read as follows:

§ 58.205 Meaning of words.

* * * * *

(b) *Instant nonfat dry milk.* Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional process. Instant nonfat dry milk shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof. If instant nonfat dry milk is fortified with vitamin A, and vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

* * * * *

3. In Part 58, Subpart U is revised to read as follows:

Subpart U—United States Standards for Instant Nonfat Dry Milk[1]

Definitions

Sec.
58.2750 Instant nonfat dry milk.

U.S. Grade

58.2751 Nomenclature of the U.S. grade.
58.2752 Basis for determination of the U.S. grade.
58.2753 Specifications for the U.S. grade.
58.2754 U.S. grade not assignable.
58.2756 Test methods.

Explanation of Terms

58.2759 Explanation of terms.

Subpart U—United States Standards for Instant Nonfat Dry Milk[1]

Definitions

§ 58.2750 Instant nonfat dry milk.

(a) Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional processes. Instant nonfat dry milk covered by these standards shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

(b) "Nonfat dry milk" is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions or 21 CFR part 131, "Milk and Cream" as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grade

§ 58.2751 Nomenclature of the U.S. grade.

The nomenclature of the U.S. grade is U.S. Extra.

§ 58.2752 Basis for determination of the U.S. grade.

The U.S. grade of instant nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count and coliform count, milkfat content, moisture content, scorched particle content, solubility index, titratable acidity, and dispersibility.

§ 58.2753 Specifications for the U.S. grade.

(a) *U.S. Extra Grade.* U.S. Extra Grade instant nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted instant nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Instant nonfat dry milk shall possess a uniform white to light cream natural color. It shall be reasonably free-flowing and free from lumps except those that readily break up with very slight pressure. See Table II of this section.

(3) *Bacterial estimate.* Not more than 30,000 per gram standard plate count. See Table III of this section.

(4) *Coliform count.* Not more than 10 per gram. See Table III of this section.

(5) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

[1] Compliance with the standards in this subpart does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

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(6) *Moisture content.* Not more than 4.5 percent. See Table III of this section.

(7) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(8) *Solubility index.* Not more than 1.0 ml. See Table III of this section.

(9) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(10) *Dispersibility.* Not less than 85.0 percent. See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR

Flavor characteristics	U.S. extra grade
Chalky	Slight.
Cooked	Slight.
Feed	Slight.
Flat	Slight.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE

Physical appearance characteristics	U.S. extra grade
Color	White to light cream.
Free flowing	Reasonably.
Lumpy	Very slight pressure.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS

Laboratory tests	U.S. extra grade
Bacterial estimate; Standard plate count; per gram (max)	30,000
Coliform count; per gram (max)	10
Milkfat content; percent (max)	1.25
Moisture content; percent (max)	4.5
Scorched particle content; mg (max)	15.0
Solubility index; ml (max)	1.0
Titratable acidity (lactic acid); percent (max)	0.15
Dispersibility; percent (min)	85.0

§ 58.2754 U.S. grade not assignable.

Instant nonfat dry milk shall not be assigned the U.S. grade for one or more of the following reasons:

(a) The instant nonfat dry milk fails to meet the requirements for U.S. Extra Grade.

(b) The instant nonfat dry milk has a direct microscopic clump (DMC) count exceeding 40 million per gram.

(c) The instant nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2756 Test methods.

All required tests shall be performed in accordance with DA Instruction No. 918–RL, "Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis," Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; the latest revision of "Official Methods of Analysis of the Association of Official Analytical Chemists"; or the latest edition of "Standard Methods for the Examination of Dairy Products" available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

Explanation of Terms

§ 58.2759 Explanation of terms.

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(3) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(4) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the instant nonfat dry milk.

(5) *Flat.* Insipid, practically devoid of any characteristic reconstituted instant nonfat dry milk flavor.

(b) *With respect to physical appearance:*

(1) *Reasonably free-flowing.* Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.

(2) *Very slight pressure.* Lumps fall apart with only light touch.

(3) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(4) *Natural color.* A color that is white to light cream.

Dated: February 24, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–5295 Filed 3–3–95; 8:45 am]

BILLING CODE 3410-2-P

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7 CFR Part 58

[DA–93–03]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Nonfat Dry Milk (Spray Process)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The proposed changes would reduce existing bacterial standard plate count maximums and incorporate a coliform requirement to reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk. The reduction in the maximum standard plate count is made possible through improved raw milk quality and enhanced processing and sanitation techniques. The inclusion of a maximum coliform count adds to the assurance that post-pasteurization contamination has not occurred. This proposal was developed in cooperation with the American Dairy Products Institute and other trade associations.

DATES: Comments should be filed by May 5, 1995.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be available for public inspection at the Dairy Division in Room 2750–S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk, USDA is proposing the following changes in the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process).

1. Expand the U.S. Grade Standards To Include a Maximum Coliform Count in USDA-Graded Product

Coliform bacteria, abundantly present in the environment, are destroyed by pasteurization. Post-pasteurization contamination has occurred when coliform bacteria are present in nonfat dry milk. The addition of a coliform requirement into the U.S. grade standard increases the assurance that USDA graded nonfat dry milk is produced and packaged in a sanitary manner.

2. Reduce the Standard Plate Count Requirements

Enumeration of bacteria by the standard plate count method has been a criterium used in the determination of U.S. grade for many years. Improvements in the sanitary production of nonfat dry milk have resulted in a gradual reduction in the number of bacteria present in the product. The proposal would reduce the allowable bacteria from 50,000 to 40,000 per gram for U.S. Extra Grade and from 100,000 to 75,000 per gram for U.S. Standard Grade. These proposed changes accurately reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk and enhance the image of U.S. products on the world market.

3. Update the Terminology and Format of the Standards

The current U.S. Standards for Grades of Nonfat Dry Milk (Spray Process) were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The proposal would update the standards to provide consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in nonfat dry milk.

Corollary changes are also proposed for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of nonfat dry milk set forth therein with the proposed revision of the United States Standards for Grades of Nonfat Dry Milk (Spray Process).

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In § 58.205, paragraph (a) is revised to read as follows:

§ 58.205 Meaning of words.

* * * * *

(a) *Nonfat dry milk.* The product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR 131 "Milk and Cream" as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

* * * * *

3. In Part 58, Subpart L is revised to read as follows:

Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process)[1]

Definitions

Sec.
58.2525 Nonfat dry milk.

U.S. Grades

58.2526 Nomenclature of U.S. grades.
58.2527 Basis for determination of U.S. grade.
58.2528 Specifications for U.S. grades.
58.2529 U.S. grade not assignable.
58.2532 Test methods.

Explanation of Terms

58.2537 Explanation of Terms.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

58.2538 Basis for obtaining heat treatment classification.
58.2539 Nomenclature of U.S. Heat Treatment Classification.
58.2540 Basis for determination of U.S. Heat Treatment Classification.
58.2541 Test method; whey protein nitrogen.

Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process)[1]

Definitions

§ 58.2525 Nonfat dry milk.

(a) "Nonfat dry milk" is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR part 131, "Milk and Cream" as issued by the Food and Drug Administration. Nonfat dry milk covered by these standards shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grades

§ 58.2526 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra.

(b) U.S. Standard.

§ 58.2527 Basis for determination of U.S. grade.

(a) The U.S. grade of nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count, milkfat content, moisture content, scorched particle content, solubility index, and titratable acidity.

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

§ 58.2528 Specifications for U.S. grades.

(a) *U.S. Extra Grade.* U.S. Extra Grade nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

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(2) *Physical appearance.* Nonfat dry milk shall possess a uniform white to light cream natural color. It shall be free from lumps, except those that readily break up with slight pressure, and be practically free from visible dark particles. The reconstituted product shall be free from graininess. See Table II of this section.

(3) *Bacterial estimate.* Not more than 40,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

(5) *Moisture content.* Not more than 4.0 percent. See Table III of this section.

(6) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(7) *Solubility index.* Not more than 1.2 ml., except that product classified as U.S. High-heat may have not more than 2.0 ml. See Table III of this section.

(8) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(b) *U.S. Standard Grade.* U.S. Standard Grade nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted nonfat dry milk shall possess a fairly pleasing flavor, but may possess the following flavors to a slight degree: Bitter, oxidized, scorched, storage, or utensil; the following to a definite degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Nonfat dry milk may possess a slight unnatural color. It shall be free from lumps, except those that break readily under moderate pressure, and be reasonably free from visible dark particles. The reconstituted product shall be reasonably free from graininess. See Table II of this section.

(3) *Bacterial estimate.* Not more than 75,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content.* Not more than 1.50 percent. See Table III of this section.

(5) *Moisture content.* Not more than 5.0 percent. See Table III of this section.

(6) *Scorched particle content.* Not more than 22.5 mg. See Table III of this section.

(7) *Solubility index.* Not more than 2.0 ml., except that product classified as U.S. High-heat may have not more than 2.5 ml. See Table III of this section.

(8) *Titratable acidity.* Not more than 0.17 percent (lactic acid). See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics	U.S. extra grade	U.S. standard grade
Bitter	—	S
Chalky	S	D
Cooked	S	D
Feed	S	D
Flat	S	D
Oxidized	—	S
Scorched	—	S
Storage	—	S
Utensil	—	S

(—) = Not permitted S = Slight D = Definite.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE WITH CORRESPONDING U.S. GRADE

Physical appearance characteristics	U.S. extra grade	U.S. standard grade
Dry Product:		
Lumpy	Slight	Moderate.
Unnatural color	—	Slight.
Visible dark particles	Practically free	Reasonably free.
Reconstituted Product:		
Grainy	—	Reasonably free.

(—) = Not permitted.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS WITH CORRESPONDING U.S. GRADE

Laboratory tests	U.S. extra grade	U.S. standard grade
Bacterial estimate; Standard plate count; per gram (max)	40,000	75,000
Milkfat content; percent (max)	1.25	1.50
Moisture content; percent (max)	4.0	5.0
Scorched particle content; mg (max)	15.0	22.5
Solubility index; ml (max)	1.2	2.0
U.S. High-heat (max)	2.0	2.5
Titratable acidity (lactic acid); percent (max)	0.15	0.17

§ 58.2529 U.S. grade not assignable.

Nonfat dry milk shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The nonfat dry milk fails to meet or exceed the requirements for U.S. Standard Grade.

(b) The nonfat dry milk has a direct microscopic clump (DMC) count exceeding 100 million per gram.

(c) The nonfat dry milk has a coliform count exceeding 10 per gram.

(d) The nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2532 Test methods.

All required tests shall be performed in accordance with DA Instruction No. 918–RL, "Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis," Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; the latest revision of "Official Methods of Analysis of the Association of Official Analytical Chemists"; or the latest edition of "Standard Methods for the Examination of Dairy Products", available from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

Explanation of Terms

§ 58.2537 Explanation of terms.

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Bitter.* Distasteful, similar to the taste of quinine.

(4) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(5) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(6) *Feed.* Feed flavors (such as alfalfa, sweetclover, silage, or similar feed) in milk carried through into the nonfat dry milk.

(7) *Flat.* Insipid, practically devoid of any characteristic reconstituted nonfat dry milk flavor.

(8) *Oxidized.* A flavor resembling cardboard and sometimes referred to as "cappy" or "tallowy".

(9) *Scorched.* A more intensified flavor than "cooked" and imparts a burnt aftertaste.

(10) *Storage.* Lacking in freshness and imparting a "stale" aftertaste.

(11) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sanitation of milking machines, utensils, or manufacturing equipment.

(b) *With respect to physical appearance:*

(1) *Practically free.* Present only upon very critical examination.

(2) *Reasonably free.* Present only upon critical examination.

(3) *Slight pressure.* Only sufficient pressure to disintegrate the lumps readily.

(4) *Moderate pressure.* Only sufficient pressure to disintegrate the lumps easily.

(5) *Grainy.* Minute particles of undissolved powder appearing in a thin film on the surface of a glass or tumbler.

(6) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(7) *Natural color.* A color that is white to light cream.

(8) *Unnatural color.* A color that is more intense than light cream and is brownish, dull, or grey-like.

(9) *Visible dark particles.* The presence of scorched or discolored specks.

Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

§ 58.2538 Basis for obtaining heat treatment classification.

Heat treatment classification is not a U.S. grade requirement except in cases when the higher solubility index specified for U.S. High-heat product is permitted. In all other instances, product submitted for USDA grading may be analyzed for heat treatment classification upon request and the results shown on the grading certificate. Heat treatment classification will be made available only upon a product graded by USDA.

§ 58.2539 Nomenclature of U.S. Heat Treatment Classification.

The nomenclature of U.S. Heat Treatment Classification is as follows:

(a) U.S. High-heat.

(b) U.S. Medium-heat.

(c) U.S. Low-heat.

§ 58.2540 Basis for determination of U.S. Heat Treatment Classification.

The whey protein nitrogen test shall be used in determining the heat treatment classification as follows:

(a) *U.S. High-heat.* The finished product shall not exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(b) *U.S. Medium-heat.* The finished product shall exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk and shall be less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(c) *U.S. Low-heat.* The finished product shall be not less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

§ 58.2541 Test method; whey protein nitrogen.

The whey protein nitrogen test shall be performed in accordance with DA Instruction 918–RL, "Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis," Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20090–6456, or the latest edition of "Standard Methods for the Examination of Dairy Products", available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

Dated: February 24, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–5293 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 102, 104, 105, and 116

[Docket No. 93–072–1]

Viruses, Serums, Toxins, and Analogous Products; Licenses, Inspections, Records, and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations under the Virus-Serum-Toxin Act to clarify certain provisions concerning licenses, inspections, records, and reports. The effect of the rule is to ensure that licensees are aware of the fact that licenses are issued on the condition that the licensee permit inspection of establishments, products, and records, and that a licensee must have at least one product license in order to maintain a valid establishment license. Failure to permit inspection would make the license subject to suspension or revocation. We are also proposing amendments concerning the content of records and reports and their availability for inspection. The proposed rule is necessary to clarify and simplify certain provisions of the regulations.

DATES: Consideration will be given only to comments received on or before May 5, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–072–1, Animal and Plant Health Inspection Service, Regulatory Analysis and Development, Program and Policy Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–072–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to

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inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Chief Staff Microbiologist, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1237. 301–734–8245.

SUPPLEMENTARY INFORMATION: The Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151–159), as amended, is intended to ensure that veterinary biological products shipped in or from the United States are not worthless, contaminated, dangerous, or harmful. To achieve that purpose, the Act requires that such products be prepared in compliance with USDA regulations at an establishment holding an unsuspended and unrevoked USDA establishment license. No such products may be imported into the United States without a permit issued by the Administrator. Provisions regarding veterinary biological product licenses, license suspensions, and inspections appear in the regulations. See for example, 9 CFR Parts 102, 105, and 116.

The regulations currently provide in § 102.4(f) that when a licensee holding an establishment license no longer holds an unexpired, unsuspended, or unrevoked product license authorizing preparation of a product in the licensed establishment, the establishment license shall be submitted to the Administrator for termination.

Pursuant to § 102.2 of the regulations, licensees producing biological products in the United States are required to hold at least one unexpired, unsuspended, and unrevoked product license in addition to an establishment license. Therefore, and establishment license without a product license would not be valid. Section 102.2 would be amended to make this clear.

Section 102.4 would also be amended by revising paragraph (f) and by adding new paragraph (g). Paragraph (f) would be revised to provide that an establishment license is not valid unless the licensee also holds a product license, or is in the process of obtaining one. This would include activities such as requesting or filing a product license application or being involved in the development of a product. Paragraph (g) would provide that licenses for establishments where biological products are prepared shall be issued on condition that the licensee shall permit the inspection by USDA inspectors of such establishments and of products prepared in these establishments. Failure to permit such inspection could result in license suspension or revocation. This proposed change simply reflects the language in § 157 of the Virus-Serum-Toxin Act.

In § 104.6(b), editorial changes would be made to reflect organizational changes within the Animal and Plant Health Inspection Service. The words "Veterinary Services" would be removed and the words "Animal and Plant Health Inspection Service" would be added in their place.

Amendments would also be made to two sections of part 105 of the regulations which deal with suspension, revocation, or termination of biological product licenses or permits. In § 105.1, current paragraphs (a)(4) and (5) would be redesignated paragraphs (a)(5) and (6). New § 105.1(a)(4) would be added to assure that licensees, permittees, or foreign manufacturers of products that are imported under permit, maintain and make available for inspection all records relevant to the development and preparation of a product. Records and reports would be required to be complete and accurate.

Otherwise a license or permit could be subject to suspension or revocation under § 105.1. This proposed amendment to clarify the regulations is necessary because of recent incidence of noncompliance and refusal by licensees or permittees to produce requested records and reports. Since recordkeeping is already required under current § 116.8, no new paperwork burden would be imposed.

The second amendment which would be made in Part 105 is to § 105.4 concerning termination of licenses for inactivity. Proposed § 105.4(a) would specify that a product license or a permit would be terminated for inactivity unless intent to resume activity is demonstrated. Proposed § 105.4(b) would also specify that certain records be completed and retained in accordance with provisions in § 116.8. The proposed amendment would help to make the section clearer and easier to administer.

The proposed rule would also amend several sections of Part 116 which deal with records and reports. First § 116.1 would be amended to provide that detailed records and reports concerning biological products must be maintained at the establishment in which the products are produced, unless otherwise authorized (See proposed § 116.1(c)). This proposed change is necessary because of problems which have arisen during inspections involving records which were not available at the producing establishment. Since such records and reports are already required under current §§ 116.5 and 116.8, no new reporting or recordkeeping burden would be imposed.

Proposed § 116.1(b) would also be added to provide for appropriate records at the permittee's place of business. Proposed § 116.1(c) would be added to provide for maintenance of records at an alternate location. Such an alternate location would have to be confirmed by filing an addendum to the plot plan legend. The proposed amendment would provide for archiving of records, maintenance of distribution records, and compilation of consumer reports in off-premise facilities and other locations. Such archiving of records and reports should not result in paperwork burden that is greater than that already required under current §§ 116.5 and 116.8.

Section 116.5 would be amended to clarify that producers and importers of biological products may be required to submit reports containing information related to production activities or the purity, safety, potency, and efficacy of a product. The proposed amendment would clarify that APHIS be notified when a consumer report raises a question regarding purity, safety, potency, and efficacy of a product or a product is found to be unsatisfactory, or prepared, tested, or distributed in violation of the act or regulations. Again, the amendment is necessary to clarify for licensees, permittees, and foreign manufacturers the type of information that must be provided to APHIS. Since product purity, safety, potency, and efficacy remain the responsibility of licensees and permittees, no new paperwork burden would be imposed by these amendments over what is required in current part 116.

Section 116.7 would be amended to state that test summaries prepared from reports must be submitted to APHIS on Form 2008 or its equivalent prior to serial or subserial release.

Finally § 116.8, which deals with records and their retention, would be amended by including permittees in the requirement that records concerning biological products (other than disposition records) be completed prior to product marketing or export. In addition, permittees would be required to retain all records at a designated establishment or place of business for a specified period of time after the expiration date of the product. Since the permittee is normally a licensee or a representative of a foreign manufacturer, who already has recordkeeping requirements under current § 116.8, no new recordkeeping requirements would be imposed by this amendment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

The proposed rule would amend the regulations in 9 CFR parts 102, 104, 105, and 116 to clarify existing provisions concerning licenses, inspections, records, and reports. Licenses are issued on condition that the licensee permit inspection of establishments, products, and records. The proposed rule would provide that the failure to permit such inspection would make the license subject to suspension or revocation. In order to hold a valid establishment license, licenses are required to have at least one unexpired, unsuspended, and unrevoked product license. Otherwise, the establishment license would be invalid. We are also proposing amendments concerning the content of records and reports and the availability of their inspection.

The proposed rule would make clear and unambiguous certain regulatory provisions. No new requirements are added in the proposed rule. Therefore, no adverse economic impact would result from the rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0013.

List of Subjects

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 104

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 105

Animal biologics.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102, 104, 105, and 116 would be revised as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 102.2, the introductory paragraph would be designated as paragraph (a) and a new paragraph (b) would be added to read as follows:

§ 102.2 Licenses required.

* * * * *

(b) An applicant who applies for an establishment license must also apply for at least one product license. An establishment license will not be issued without a license authorizing the production of a biological product in the establishment.

3. In § 102.4, paragraph (f) would be revised, paragraphs (g) and (h) would be redesignated as paragraphs (h) and (i), respectively, and new paragraph (g) would be added to read as follows:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(f) When a licensee no longer holds at least one unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product, or is in the process of obtaining a product license, the establishment license shall no longer be valid and shall be returned to the Administrator. In the case where an establishment license expires or is suspended or revoked, any product license authorizing preparation of a product at such establishment shall be invalid indefinitely or for as long as the suspension is in effect.

(g) Any license issued under this Part to establishments in which biological products are prepared shall be issued on condition that the licensee permit the inspection of such establishments, products, product preparation, and all relevant records as provided in Part 115. Failure to permit inspection may result in the license being suspended or revoked.

* * * * *

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

4. The authority citation for part 104 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 104.6 [Amended]

5. In § 104.6, paragraph (b), the words "Veterinary Services" would be removed and the words "Animal and Plant Health Inspection Service" would be added in their place.

6. In 9 CFR part 105, the heading for the part would be revised to read as follows:

PART 105—SUSPENSION, REVOCATION, OR TERMINATION OF BIOLOGICAL LICENSES OR PERMITS

7. The authority citation for part 105 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

8. In § 105.1, paragraphs (a)(4) and (a)(5) would be redesignated paragraphs (a)(5) and (a)(6), new paragraph (a)(4) would be added, and redesignated paragraph (a)(5) would be revised to read as follows:

§ 105.1 Suspension or revocation.

* * * * *

(a) * * *

(4) The licensee, permittee, or the foreign manufacturer has failed to maintain and make available for inspection records in connection with the development and preparation of product, has failed to provide complete and accurate information when requested, or has failed to provide complete and accurate information in the Outline of Production or in reports and records;

(5) The licensee or permittee has violated or failed to comply with any provision of the Virus-Serum-Toxin Act or the regulations in this subchapter;

* * * * *

9. Section 105.4 would be revised to read as follows:

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§ 105.4 Termination of licenses and permits for inactivity.

(a) If a biological product has not been prepared by a licensee, or imported by a permittee for a period of five years or more, the Administrator may require the licensee to show intent to resume production, or the permittee to show intent to resume importation, within six months of notification. If the licensee does not resume preparation, or the permittee does not resume importation, within six months of notification, or within a mutually agreeable period, the product license, or permit, may be terminated by the Administrator.

(b) When a license or permit is terminated, the licensee or permittee shall continue to be subject to applicable records provisions of § 116.8.

10. In 9 CFR part 116, the heading for the part would be revised to read as follows:

PART 116—RECORDS AND REPORTS

11. The authority citation for part 116 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

12. In § 116.1, paragraphs (a), (b) and (c) would be redesignated as paragraphs (a)(1), (a)(2), and (a)(3), respectively; redesignated paragraph (a)(1) would be revised; the introductory paragraph would be designated as paragraph (a) and would be revised; and new paragraphs (b) and (c) would be added to read as follows:

§ 116.1 Applicability and general considerations.

(a) Each licensee, permittee, and foreign manufacturer of biological products imported into the United States shall maintain, at the licensed or foreign establishment in which the products are prepared, detailed records of information necessary to give a complete accounting of all the activities within such establishment. Such records shall include, but shall not be limited to, the items enumerated in this part.

(1) Records shall be made concurrently with the performance of successive steps in the development and preparation of biological products, including new products under development. Such records shall include the date and where critical, the time that each essential step was taken, the identity and quantity of ingredients added or removed at each step, and any gain or loss of product from the beginning to the end of product preparation.

* * * * *

(b) In the case of imported products, each permittee shall maintain at the permittee's place of business detailed and accurate records that are relevant to each imported product and that include, but are not limited to, importation documents, sampling records, tests summaries, shipping records, and inventory and disposition records as required in § 116.2.

(c) When authorized by the Administrator, the licensee, permittee, or foreign manufacturer may maintain and retain records required under part 116 at an alternative location. Such authorization shall be confirmed by the filing of an addendum to the plot plan legend. The addendum shall list the location of the records and the condition of their storage and shall permit the inspection of the records by APHIS inspectors, or foreign inspectors acting on behalf of APHIS.

(Approved by the Office of Management and Budget under control number 0579–0013)

§§ 116.2, 116.3, 116.4, and 116.6 [Amended]

13. At the end of §§ 116.2, 116.3, 116.4, and 116.6, the reference to OMB control number "0579–0059" would be removed and the number "0579–0013" would be added in its place.

14. Section 116.5 would be revised to read as follows:

§ 116.5 Reports.

(a) When required by the Administrator, reports containing accurate and complete information concerning biological products, including but not limited to, product development and preparation, consumer reports, and market suspensions and recalls, shall be prepared and submitted to the Animal and Plant Health Inspection Service by the licensee, permittee, or foreign manufacturer whose products are being imported or offered for importation. Unless otherwise authorized by the Administrator, records necessary to make such reports shall be maintained in each establishment.

(b) If, at any time, consumer reports concerning the use of products raise questions regarding purity, safety, potency, or efficacy of the products; or a biological product appears to be unsatisfactory or is found to have been prepared, tested, or distributed in violation of the Virus-Serum-Toxin Act or the regulations; the licensee, permittee, or foreign manufacturer shall immediately report the circumstances and the action taken, if any, to the Animal and Plant Health Inspection Service.

(Approved by the Office of Management and Budget under control number 0579–0013)

15. In § 116.7, the second sentence would be revised to read as follows:

§ 116.7 Test records.

* * * Summaries of such tests shall be prepared from such records and submitted to the Animal and Plant Health Inspection Service using APHIS Form 2008 or an acceptable equivalent form prior to release of the serial or subserial. * * *

* * * * *

16. Section 116.8 would be revised to read as follows:

§ 116.8 Completion and retention of records.

All records (other than disposition records) required by this part shall be completed by the licensee, permittee, or foreign manufacturer before any portion of a serial of any product may be marketed in the United States or exported. All records shall be retained at the licensed or foreign establishment or permittee's place of business for a period of two years after the expiration date of a product, or for such longer period as may be required by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0013)

Done in Washington, DC, this 28th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5406 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Parts 102 and 114

[Docket No. 93–136–1]

Viruses, Serums, Toxins, and Analogous Products; State-Federal Licensure of Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning State-Federal licensing of veterinary biological products. The effect of the amendment would be that a Federally licensed establishment would not be allowed to produce the same veterinary biological product under both a State and Federal product license. Autogenous biologics would not be subject to the same requirement, in that a Federally licensed establishment could hold both State and Federal product licenses for autogenous biologics, but must choose to produce each specific serial of such biologic under either a State or Federal product license. No autogenous biologic could be produced at the same time under both a Federal and State license. The amendment is necessary in order to ensure the integrity of the Federal licensing system and the safety of biological products produced in Federally licensed establishments.

We are also removing outdated sections from the regulations referring to interim establishment licenses and exemption procedures that were permitted during the 5-year transition period to attain Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act.

DATES: Consideration will be given only to comments received on or before May 5, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–136–1, Animal and Plant Health Inspection service, Regulatory Analysis and Development, Program and Policy Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–136–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requests to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20723–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, licenses veterinary biological products under the Virus-Serum-Toxin Act (21 U.S.C. 151–159, hereinafter, the Act), as amended by the Food Security Act of 1985. Veterinary biologics licensed by APHIS include products such as vaccines, antitoxins, viruses, diagnostics, and autogenous biologics (vaccines, bacterins, and toxoids) which are normally used in the herd of origin (the herd from which the disease causing microorganism is derived) to immunize animals against infectious disease.

Under the Act, veterinary biological products are licensed on the basis of their purity, safety, potency, and efficacy. The 1985 amendments to the Act exempt certain products from the requirement that they be produced pursuant to an unsuspended and unrevoked Federal license. Such products include those which are prepared solely for distribution within the State of production pursuant to a license granted by such State under a program approved by the Administrator of APHIS.

The regulations in 9 CFR part 102 contain Federal licensing provisions for biological products. This proposed rule would amend the regulations in part 102 by removing the outdated reference to Federal interim licenses in § 102.1 and by removing § 102.4(h), which refers to outdated provisions. We would also be making minor editorial changes to § 102.4(b)(3) and § 102.6 (introductory paragraph and paragraph (a)) to reflect organizational changes within APHIS.

The regulations in 9 CFR part 114 prescribe conditions under which an unlicensed product may be prepared in a USDA-licensed establishment. Section 114.2(c) prohibits the production of unlicensed veterinary biological products in licensed establishments, except when an establishment is licensed by USDA for an interim period as provided in § 114.2(b), when production of an experimental biological product is authorized in accordance with 9 CFR part 103, or when biological products are subject to the provisions of § 107.2 (products produced under State license).

The proposed rule would amend part 114 by removing from § 114.2 paragraphs (b) and (d) which refer to outdated provisions for interim licenses and to certain exemption procedures that were used in implementing the 5-year transition to Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act.

The proposed rule would also establish the conditions that must be maintained when a State-licensed veterinary biological product is produced in an establishment holding a U.S. Veterinary Biologics Establishment License. The proposed rule would require that an establishment holding a U.S. Veterinary Biologics Establishment License that is also producing products licensed by a State may produce a product either under a U.S. Veterinary Biological Product License or a State product license, but the establishment cannot produce the same product under both USDA and State product licenses. It should be noted that in order to be Federally licensed, an establishment must hold at least one Federal product license. Autogenous biologics would not be subject to the proposed requirement in that an establishment may hold both a State and Federal product license for autogenous biologics but each serial of an autogenous biologic must either be produced pursuant to the State license or the Federal license. The wide variety of different autogenous biologics that are made and the different conditions for their use dictate the need for choosing to produce some of these products under a State product license and others under a USDA product license. This choice would permit such establishments to produce autogenous biologics for intrastate use only, under a State product license, or for both intrastate or interstate use, under a U.S. Veterinary Biological Product License, provided that certain conditions of production are maintained. This proposed rule would define such conditions and ensure that the primary regulatory responsibility for each serial of product is clearly identified prior to production.

Under the proposed amendments, a biological product produced in a USDA-licensed establishment could be produced under either a State or U.S. Veterinary Biological Product License, but not both. Prior to the issuance of a U.S. Veterinary Biological Product License (including a conditional license), any State product license for the same product would have to be surrendered to the State licensing authority. As explained previously, autogenous biologics would not be subject to these requirements.

Under the proposed amendments, State-licensed products (including autogenous biologics) would only be allowed to be distributed or shipped intrastate, would not be allowed to bear a U.S. Veterinary Biological Product License Number, or otherwise be represented as having met the requirements for USDA product licensure. Labeling of State- and USDA-licensed products produced in the same establishment would be required to be distinctly different in color and design.

All biological products in USDA-licensed establishments, whether State- or USDA-licensed, would only be prepared in locations indicated in legends filed in accordance with 9 CFR part 108. A description of each State-licensed product would have to be filed with APHIS as part of the blueprint legends that is sufficient for APHIS to determine any risk to other products in the establishment and to ensure that contamination does not occur during production.

The proposed amendments would also specify that certain reporting and recordkeeping requirements have to be met for both State- and USDA-licensed products.

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The proposed amendments under § 114.2(c) would require that autogenous biological products produced in a USDA-licensed establishment be identified as produced under the provisions of the State license or the Federal license at the time that a culture of microorganisms (the isolate) is received at the establishment. If, after producing the product pursuant to one license, the licensee elects to produce an autogenous biologic from the same isolate under the other license, approval of the other licensing authority would have to be obtained.

In addition, the proposed amendment would require that a State-licensed autogenous biologic prepared in a Federally licensed establishment bear a "true name" indicating the State of licensure, such as "(name of State) Autogenous Bacterin" or "(name of State) Autogenous Vaccine."

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

The effect of the proposed rule would be to remove outdated sections from the regulations in §§ 102.1 and 102.4(h) and § 114.2 (b) and (d). These sections refer to outdated provisions related to the implementation of the 1985 amendments to the Virus-Serum-Toxin Act. These provisions expired on June 30, 1991.

The proposed rule would also establish conditions applicable to some 100 producers to prepare a biological product under either a State or USDA product license in a USDA licensed establishment. An exception would be provided for autogenous biologics. The proposed amendment would not have an adverse economic impact on these producers of biologics since it would still allow the production of both State and Federally licensed products in Federally licensed establishments. Therefore, it is not anticipated that the amendment would impose economic burdens on producers or small businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 114

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102 and 114 would be amended as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 102.1 [Revised]

2. Section 102.1 would be revised to read as follows:

Each establishment qualified to prepare biological products under the Virus-Serum-Toxin Act shall hold an unexpired and unrevoked U.S. Veterinary Biologics Establishment License issued by the Administrator and a U.S. Veterinary Biological Product License for each product prepared in such establishment unless the product is subject to the provisions of 9 CFR parts 103 or 106 of this subchapter.

§ 102.4 [Amended]

3. In § 102.4, paragraph (b)(3), the words "Veterinary Services" are removed and the words "Animal and Plant Health Inspection Service" are added in their place.

4. In § 102.4, paragraph (h) would be removed.

§ 102.6 [Amended]

5. In § 102.6, in the introductory paragraph and paragraph (a), the term "Deputy" is removed.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

6. The authority citation for part 114 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

7. Section 114.2, paragraphs (b) and (d) would be removed; paragraph (c) would be redesignated paragraph (b) and revised; and a new paragraph (c) would be added to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(b) Except as provided in 9 CFR part 103, a biological product shall not be prepared in a licensed establishment unless the person to whom the establishment license is issued holds an unexpired, unsuspended, and unrevoked product license issued by the Administrator to prepare such biological product, or unless the products prepared are subject to the provisions of § 107.2 of this subchapter.

(c) A biological product produced in a USDA-licensed establishment shall be produced under a U.S. Veterinary Biological Product License or a License granted by a State under § 107.2 (referred to as a State biological product license and the products prepared pursuant thereto as State-licensed biological products, including autogenous biologics), but not under both a U.S. Veterinary Biological Product License and a State biological product license. Before a U.S. Veterinary Biological Product License (including a conditional license) is issued, the licensee shall relinquish its State license for that product: *Provided*, That autogenous biologics shall not be subject to this provision when they are prepared in accordance with the provisions of paragraph (c)(5) of this section.

(1) State-licensed biological products (including autogenous biologics) shall only be distributed or shipped intrastate, must not bear a U.S. Veterinary Biologics Establishment License Number, and must not otherwise be represented in any manner as having met the requirements for a U.S. Veterinary Biological Product license. Labeling of State- and USDA-licensed biological products produced in the same establishment must be distinctly different in color and design.

(2) All biological products in USDA-licensed establishments, whether licensed by USDA or by the State, shall be prepared only in locations indicated in legends filed in accordance with 9 CFR part 108. A description of each State-licensed product must be filed with the Animal and Plant Health Inspection Service as part of the blueprint legends and must be sufficient for Animal and Plant Health Inspection Service to determine any risk to the production of other products in the licensed establishment and to determine that adequate procedures are followed to prevent contamination during production.

(3) Records in such establishments must be maintained in accordance with §§ 116.1 and 116.2 of this subchapter and shall include all products licensed by the State or USDA.

(4) Reports prescribed in § 116.5 of this subchapter for USDA-licensed establishments shall be submitted for all veterinary biological products in the establishment.

(5) Under the following conditions, an autogenous biologic may be produced in a USDA-licensed establishment under either a State or U.S. Veterinary Biological Product License:

(i) When a culture of microorganisms, isolated from a herd in a State, is received at a USDA-licensed establishment that is in the same State but that holds both a State and a U.S. Veterinary Biological Products License for autogenous biologics, the isolate shall be designated by the licensee for use in the production of an autogenous biological product under either the State product license, or the U.S. Veterinary Biological Product License: *Provided*, That the isolate meets the requirements of the respective regulatory authority for an autogenous biologic. If, after producing the product pursuant to one license, the licensee elects to produce an autogenous biologic from the same isolate under provisions of the other license, the licensee may do so only with the approval of the other licensing authority.

(ii) The true name of a State-licensed autogenous biologic shall specify the State of licensure: e.g. "(State) Autogenous Bacterin" or "(State) Autogenous Vaccine".

Done in Washington, DC, this 28th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5407 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–34–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Opportunity for Oral Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Opportunity for presentation of oral public comments.

SUMMARY: The Commission announces an opportunity for the presentation of oral comments on two issues that were recently raised concerning amendments the Commission is considering to its regulations under the Poison Prevention Packaging Act of 1970 (PPPA) for child-resistant packaging to change the child and adult tests under which child-resistant packaging is evaluated.

Immediately after issuing a rule amending the PPPA test protocol, the Commission was provided with comments on the final rule that had not previously been submitted to the agency during the course of the rulemaking. As a result, the Commission, on February 9, 1995, voted to withhold publication of the final rule in order to consider these new arguments.

The new arguments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for "normal adults" to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation.

The Commission has provided that written comments, limited to these two issues, may be submitted until March 7, 1995. In addition, the Commission is providing the opportunity for interested parties to present oral comments, on these two issues alone, limited to a maximum of 10 minutes per commenter.

DATES: Oral comments limited to the new issues described below may be presented to the Commission at a Commission hearing beginning at 10:00 a.m., March 16, 1995. A request to present oral comments and an outline or text of the comments must be received by the Commission on or before March 10, 1995.

ADDRESSES: The hearing will be held in the Commission's Hearing Room, 4330 East-West Highway, 4th Floor, Bethesda, MD 20814. Requests to present comments and outlines or text of the comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 501, 4340 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Ph.D., Project Manager, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION: The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant ("CR") packaging. Under the PPPA, the Commission has defined and established standards for such "special" packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15, and 1700.20. The Commission has also determined which household substances are required to have the special packaging. 16 CFR 1700.14.

Congress provided that to comply with the special packaging requirements, a package must resist entry by most young children and must be "not difficult" for "normal adults" to open and properly resecure, within specified time periods. 15 U.S.C. 1471(4). The Commission's existing regulations were developed before the widespread use of CR packaging ("CRP") and, therefore, without the benefit of the actual use experience and test data that since have become available.

The current adult test protocol, 16 CFR 1700.20(a) (4) and (5), specifies a test panel of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females and 30 percent must be males. The test period is 5 minutes. The adults are given the test package and asked to open and then properly close the package. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and, if appropriate, properly close the package within the 5-minute test period. 16 CFR 1700.15(b)(2).

Although the PPPA has significantly reduced the number of poisonings of young children, deaths and injuries resulting from these accidental ingestions continue to be a substantial problem. For example, in 1993 alone, approximately 140,000 children under 5 years old were treated in hospital emergency rooms for suspected or actual poisonings. Also in 1993, poison control centers received reports of more

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than 6,000 poisonings of young children with "moderate" or "major" (life-threatening) effects. In addition, 42 children died in these accidents in 1992, the last year for which the Commission has complete data.

During the more than 20 years since the PPPA was adopted, the Commission has found that, contrary to requirements of the PPPA, "normal" adults of all ages have difficulty using typical CRP. Moreover, the Commission's data indicate that the difficulty in using CRP results in a substantial number of accidental ingestions by young children because adults purchase hazardous substances in non-CRP or disable CRP by leaving the caps off or loose or transferring the package contents to another container.

Accordingly, the Commission sought to address the safety hazard created by difficult to open CRP. On January 19, 1983, the Commission published an advance notice of proposed rulemaking ("ANPR") outlining its concerns in this area and explaining and seeking comment on possible actions to increase the proper use of CRP, to simplify the test procedures, and to make the test procedures less affected by possible variables. 48 FR 2389.

Older adults typically have the most difficulty with CRP. Therefore, in order to eliminate the currently-marketed CR package designs that are most difficult for "normal adults" of all ages to open, the Commission indicated that older adults, ages from 60–75 years, could be substituted for the current panel of 100 18–45-year-olds.

After considering comments on the ANPR and other available information, the Commission proposed amendments to the protocol to address this problem. The proposed amendments would also change the protocol to make the test results more consistent and make the child test easier to perform. The Commission published its initial proposal in the **Federal Register** of October 5, 1990, for public comment. 55 FR 40856.

In addition to the requests for comments in January 1983 and October 1990 noted above, the Commission announced additional comment periods on March 5, 1991, (56 FR 9181) and March 21, 1994 (59 FR 13264). The Commission's staff evaluated the comments received in response to each of these requests.

On December 20, 1994, the Commission was briefed by its staff on the comments on the proposed rule and the changes recommended by the staff. On January 6, 1995, the Commission met and decided to approve the rule recommended by the staff, but to exclude from the scope of the rule those products that must be packaged in metal cans or aerosol form. The staff made appropriate changes to the draft **Federal Register** notice that would issue the final rule, and that notice was approved by the Commission on February 6, 1995.

Immediately thereafter, the Coalition for Responsible Packaging, an industry group, raised concerns about the Commission's action. Most of these concerns already had been addressed in the rulemaking proceeding. Two concerns, however, had not been the subject of specific comments by interested parties in this rulemaking.

Specifically, the new comments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for "normal adults" to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation. In addition, the second comment contends that to the extent that child-resistant packages exist that will pass the "senior friendly" test approved by the Commission, market forces will be an adequate and more appropriate mechanism to ensure that the more convenient packaging will be adopted.

The Commission wanted to assure that it had an opportunity to consider these new arguments that had not previously been raised in the rulemaking. Accordingly, on February 8, 1995, the Commission voted unanimously to withhold publication of the **Federal Register** notice that would have issued the final rule, to consider the new arguments.

On February 21, 1995, the Commission published a **Federal Register** notice announcing that written comments, limited to these two issues only, could be submitted until March 7, 1995. 60 FR 9654. The Commission has now decided to also receive oral comments on these two new issues. Oral comments on these new issues alone may be presented to the Commission at a Commission hearing beginning at 10:00 a.m., March 16, 1995.

A request to present oral comments and an outline or text of the comments must be received by the Commission on or before March 10, 1995. The oral comments shall be limited to 10 minutes per commenter. The Commission reserves the right to further limit repetitious comments. Comments addressing other issues will not be considered.

The hearing will be held in the Commission's Hearing Room, 4330 East-West Highway, 4th Floor, Bethesda, MD 20814. Requests to present oral comments and outlines or text of the comments shall be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 501, 4340 East-West Highway, Bethesda, MD 20814.

Dated: March 1, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–5502 Filed 3–2–95; 11:42 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. No. 4 and 16]

RIN 0960–AB73

Determining Disability and Blindness; Substantial Gainful Activity Guides

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed rules reflect amendments to the Social Security Act (the Act) concerning the trial work period and the disability insurance reentitlement period. The proposed rules also clarify certain standards we use to determine whether work is substantial gainful activity and whether an individual is entitled to a trial work period, thereby further explaining how we determine disability under titles II and XVI of the Act.

DATES: To be sure that your comments are considered, we must receive them no later than May 5, 1995.

ADDRESSES: Comments should be telefaxed to (410) 966–0869 or submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Sandy Bond, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794.

SUPPLEMENTARY INFORMATION: We propose to revise §§ 404.1573(c) and 416.973(c) to explain in greater detail what we mean by work under special conditions that take into account an individual's impairments. We have added information found in Social Security Ruling 84–25 to clarify these regulatory provisions.

We propose to amend §§ 404.1574(a) and 416.974(a) to add an expanded description of how we determine whether work performed by an employee is substantial gainful activity, what we mean by subsidized work, and how we determine the value of a subsidy. We explain in more detail: (1) How earnings may show that an employee has done substantial gainful activity; (2) what we consider in determining the amount an employee earns; (3) how we use information from an employer as to whether wages have been subsidized; (4) how we determine the value of subsidized earnings when the value has not been explained adequately by the employer; (5) how we determine the amount of any subsidy that may be provided by organizations that employ individuals with handicaps; and (6) how we evaluate earnings received by persons working in a sheltered or special environment. The changes we are proposing to these regulations reflect Social Security Ruling 83–33.

These proposed rules also clarify how we evaluate earnings from work in sheltered workshops. Under §§ 404.1574(b)(4) and 416.974(b)(4) of our current and proposed regulations, a person working in a sheltered workshop ordinarily will be found not to be doing substantial gainful activity when his or her average monthly earnings are not greater than the specified amounts that ordinarily show that a worker who is not in a sheltered workshop situation is engaging in substantial gainful activity. The average monthly earnings amount currently specified is $500 per month for years after 1989. These sections of the current regulations do not provide rules for evaluating sheltered workshop earnings above the specified average monthly earnings amount because it is our policy that sheltered workshop earnings that exceed the specified average monthly earnings amount must be evaluated under §§ 404.1574(b)(2) and 416.974(b)(2) in the same way as non-sheltered workshop earnings. We propose to amend §§ 404.1574(b)(4) and 416.974(b)(4) to state this policy explicitly.

Our current regulations also specify a lower amount (currently $300 per month for earnings in calendar years after 1989) below which earnings outside a sheltered workshop will ordinarily show that an individual has not engaged in substantial gainful activity. Non-sheltered workshop earnings that are above these amounts but below the upper substantial gainful activity threshold amounts, that is, between $300 and $500 per month for calendar years after 1989, are ordinarily evaluated on a more case-by-case basis. However, there is no such middle ground for evaluating earnings from sheltered workshop employment on a more case-by-case basis because we do not impose separate, lower amounts on sheltered workshop employees as we have done for employees outside of sheltered workshops. If sheltered workshop earnings exceed the upper substantial gainful activity threshold amounts, we ordinarily consider the individual to have engaged in substantial gainful activity. A Federal circuit court decision, *Iamarino* v. *Bowen*, 795 F.2d 59 (8th Cir. 1986), has interpreted our regulations differently. In *Iamarino*, the court held that because our regulations provide a middle ground for evaluating non-sheltered workshop earnings between specified upper and lower limits, we also must provide a middle ground for evaluating sheltered workshop earnings and not presume substantial gainful activity when sheltered workshop earnings exceed the upper substantial gainful activity threshold amounts. Because this was not the intent of our regulations, we propose to revise §§ 404.1574(b)(4) and 416.974(b)(4) to clarify our policy on this point. At the same time we are proposing a minor editorial correction to the heading of paragraph 404.1574(b)(6) to change the word "of" to the word "or."

We also propose to add new paragraphs 404.1574(d) and 416.974(d) and to revise paragraph 404.1592(b) to provide that volunteer work done under programs mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act shall not be considered in determining whether an individual has performed substantial gainful activity or services in the trial work period. This exclusion is currently stated in Social Security Ruling 84–24 and is required by 42 U.S.C. 5044 and 15 U.S.C. 637.

We also propose to add new §§ 404.1574a and 416.974a to explain how we average earnings or self-employment income to determine if a person has been performing substantial gainful activity and the periods used for averaging. These amendments are based upon Social Security Ruling 83–35 and do not represent a change in policy.

We propose revisions to §§ 404.1575(a) and 416.975(a) to explain the order in which we will apply the three tests used to determine whether self-employed persons have engaged in substantial gainful activity. We also propose to expand the discussion in §§ 404.1575(c) and 416.975(c) of what we mean by substantial income for purposes of determining whether a self-employed person has engaged in substantial gainful activity. These revisions are based upon Social Security Ruling 83–34 and do not represent a change in policy.

We are also proposing to add to §§ 404.1574, 404.1575, 416.974, and 416.975 an explanation, now found in Social Security Ruling 84–25, of how we evaluate periods of brief work activity to determine if they should be considered unsuccessful work attempts. The proposed rules on an unsuccessful work attempt provide, consistent with Social Security Ruling 84–25, that we will not consider work performed at the substantial gainful activity level for more than six months to be an unsuccessful work attempt regardless of why it ended or why earnings were reduced to below the substantial gainful activity earnings level. We propose to amend §§ 404.1574, 404.1575, 416.974, and 416.975 to explain when we will find that substantial work activity that is discontinued or reduced below a specified level is an unsuccessful work attempt. If there is an unsuccessful work attempt, we disregard, for substantial gainful activity determination purposes, brief work attempts that do not demonstrate sustained substantial gainful activity. The criteria for an unsuccessful work attempt differ depending on whether the work effort is for a duration of three months or less or for a duration of between three and six months. These proposed amendments to the regulations on unsuccessful work attempts reflect Social Security Ruling 84–25.

In addition, we propose to add to § 404.1584(d) the substantial gainful activity earnings guidelines for evaluating the work activity of blind persons under title II for the years 1983 through 1994.

We propose to revise the last sentence of current § 404.1592(b) to clarify that we generally do not consider work which is done without remuneration to be "services" for purposes of determining when the trial work period has ended if it is done merely as therapy

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or training or if it is work usually done in a daily routine around the house or in self-care.

We propose revisions to § 404.1592(d) to explain, consistent with Social Security Ruling 82–52, that a trial work period may not be awarded when a claimant performs work demonstrating the ability to engage in substantial gainful activity within 12 months after the alleged onset of disability and prior to an award of benefits. These revisions, which do not represent a change in policy, are based upon our interpretation of the duration requirement of section 223(d)(1)(A) of the Act and will clarify the issues raised by the courts in *McDonald* v. *Bowen*, 800 F.2d 153 (7th Cir. 1986), amended on rehearing, 818 F.2d 559 (7th Cir. 1987) and *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991).

The trial work period is a period during which a person who becomes entitled to title II benefits may test his or her ability to work and still be considered disabled. Under section 222(c)(3) of the Act, the trial work period begins with the month an individual "becomes entitled" to title II disability benefits and it generally ends after 9 months of work whether or not the 9 months are consecutive. Section 222(c) provides that work performed during the trial work period may not be considered in determining whether "disability has ceased" during that period.

In order to be found disabled under section 223(d)(1)(A), an individual must be unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or "*which has lasted or can be expected to last for a continuous period of not less than 12 months.*" (Emphasis added.) Under our longstanding interpretation of this provision as reflected in Social Security Ruling 82–52, the duration requirement to establish disability will be found not to have been met and a disability claim denied based on evidence that, within 12 months of the onset of an impairment which prevented substantial gainful activity and prior to an award of benefits, the impairment no longer prevents substantial gainful activity. Under these circumstances, it is not necessary to determine whether earlier in the 12-month period the impairment was expected to prevent the performance of substantial gainful activity for 12 months. We determine whether an impairment is expected to prevent substantial gainful activity for 12 months only when the claim is being adjudicated within 12 months of onset and the evidence shows that the impairment currently prevents substantial gainful activity. We believe that Congress provided that disability can be found based on an impairment which "can be expected to last" 12 months simply to provide a means for the Social Security Administration to adjudicate disability claims without having to wait 12 months from the alleged onset of disability, rather than to permit claims to be allowed in the face of evidence that the claimant's impairment did not prevent substantial gainful activity for 12 continuous months.

Because section 222(c) provides that a trial work period shall begin with the month in which a person becomes entitled to title II disability benefits, a claimant who does not become entitled to disability benefits cannot receive a trial work period. Under our interpretation of the duration requirement, a person cannot be found to be under a disability if he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months of onset and prior to an award of benefits. Because the person cannot become entitled to disability benefits in this situation, there can be no trial work period. On the other hand, if a claimant returns to work prior to an award of benefits, but more than 12 months from onset, the duration requirement may be satisfied, the claimant may become entitled to benefits, and the work may be protected by the trial work period even though the work began prior to an award of benefits.

We propose to revise § 404.1592(d)(2) by deleting the rule stating that an individual is not entitled to a trial work period if he or she is receiving disability insurance benefits in a second period of disability for which a waiting period was not required. We are also proposing to revise § 404.1592(e) to show that the trial work period ends when 9 service months are completed within a consecutive 60-month rolling period. Prior to a statutory change, the trial work period would end after 9 service months no matter when they were completed. These two proposed changes reflect section 5112 of Public Law (Pub. L.) 101–508 which took effect on January 1, 1992.

We are proposing to make minor wording changes to § 404.1592(d)(1) to establish consistency with the wording in § 404.1592(d)(2)(i). This rewording does not represent a change in our policy concerning who is entitled to a trial work period.

We are also proposing to add a new § 404.1592(d)(2)(iv) to clarify our policy, consistent with current § 404.1592(e), that an individual is not entitled to a trial work period if he or she demonstrates an ability to engage in substantial gainful activity level work at any time after the onset of the impairment(s) which prevented the individual from engaging in substantial gainful activity but before the month he or she files an application for disability benefits.

We are also proposing to amend § 404.1592a to clarify that the earnings averaging and unsuccessful work attempt concepts do not apply in determining whether to pay benefits for any month during or after the reentitlement period after disability has been determined to have ceased because of the performance of substantial gainful activity. Those concepts do apply during and after the reentitlement period in determining whether disability has ceased due to the performance of substantial gainful activity. This amendment reflects and clarifies Social Security Ruling 83–35 and Social Security Ruling 84–25. This amendment also will clarify the averaging methodology issue raised by the court in *Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988). These proposed rules also provide cross-references to § 404.1592a in the explanations of the averaging and unsuccessful work attempts concepts contained in §§ 404.1574(c), 404.1574a, and 404.1575(d).

These proposed regulations also reflect section 9010 of Pub. L. 100–203 which extended, as of January 1, 1988, the reentitlement period from 15 months to 36 months. During this extended reentitlement period, the title II benefits of a disabled individual whose benefits are stopped because of substantial gainful activity can be reinstated without the need to file a new application if his or her work falls below the substantial gainful activity level. These statutory changes are reflected in proposed amendments to §§ 404.321, 404.325 and 404.1592a.

Public Law 99–643 made a number of changes in the way we handle supplemental security income cases under title XVI of the Act when a disabled person, eligible for supplemental security income benefits, works. Certain supplemental security income recipients who work despite otherwise disabling impairments and begin to earn amounts that would ordinarily represent substantial gainful activity will not have their earnings considered when determining whether they continue to be disabled. Pursuant to section 4 of Pub. L. 99–643, the trial work period and the reentitlement period no longer apply in title XVI disability cases, and we are accordingly proposing to delete §§ 416.973(f), 416.976(f)(2), 416.992, 416.992a, and 416.994(b)(3)(v), (b)(5)(i), the first paragraph of (b)(6)(i), (b)(6)(i)(D), and (b)(6)(ii) from the regulations and to amend §§ 416.901(m), 416.991, and 416.1331(a) by removing references to the trial work period and reentitlement period. A substantial gainful activity test is still necessary to establish an individual's initial eligibility for SSI benefits based on disability under title XVI.

Regulatory Procedures

Paperwork Reduction Act

These regulations contain reporting requirements in §§ 404.1574(a)(3) and 416.974(a)(3). We would normally seek approval of these requirements (under the Paperwork Reduction Act) from the Office of Management and Budget (OMB). We are not doing so in this situation because we already have clearance from the OMB to collect this information using form SSA–3033 (OMB No. 0960–0483).

The public reporting burden for this collection of information is estimated to average 15 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information. We expect approximately 12,500 employers to complete form SSA–3033 annually, and estimate the total burden to be 3,125 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0483), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or title XVI benefits because of disability or blindness.

Executive Order 12866

OMB has reviewed these rules and determined they do not meet the criteria for a significant regulatory action under E.O. 12866.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Supplemental security income.

Dated: September 6, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Approved: November 22, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D of Part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.321 is amended by revising paragraph (c)(3) to read as follows:

§ 404.321 When a period of disability begins and ends.

* * * * *

(c) * * *

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

3. Section 404.325 is revised to read as follows:

§ 404.325 The termination month.

If you do not have a disabling impairment, your termination month is the third month following the month in which your impairment is not disabling even if it occurs during the trial work period or the reentitlement period. If you continue to have a disabling impairment and complete 9 months of trial work, your termination month will be the third month following the earliest month you perform substantial gainful activity or are determined able to perform substantial gainful activity; however, in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a.

Example: You complete your trial work period in December 1988. You are then working at the substantial gainful activity level and continue to do so throughout the 36 months following completion of your trial work period and thereafter. Your termination month will be January 1992, which is the 37th month—that is, the first month in which you performed substantial gainful activity after the 36th month following your trial work period.

Example: You complete your trial work period in December 1988 but you are not able to work at the substantial gainful activity level until March 1992, 3 months after the last month of your reentitlement period. Your termination month will be June 1992—that is, the third month after the earliest month you performed substantial gainful activity.

4. The authority citation for subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808; sec. 10103 of Pub. L. 101–239, 103 Stat. 2472.

5. Section 404.1573 is amended by revising paragraph (c) to read as follows:

§ 404.1573 General information about work activity.

* * * * *

(c) *If your work is done under special conditions.* Even though the work you are doing is done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. Examples of the special conditions that may relate to your impairment include situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

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(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

6. Section 404.1574 is amended by redesignating current paragraph (a)(3) as (a)(6); revising paragraphs (a)(1), (a)(2), newly designated (a)(6), (b)(1), and (b)(4) and the heading of paragraph (b)(6); and adding new paragraphs (a)(3) through (a)(5), (c), and (d) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

(a) * * *

(1) *Your earnings may show you have done substantial gainful activity.* In evaluating an employee's work activity for substantial gainful activity purposes, our primary consideration is the earnings that are derived from the work activity. The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a handicapped person does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity. Paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section explain how we determine the amounts of subsidies.

(3) *Evidence of subsidy from your employer.* We will first ask your employer to tell us if your wages have been subsidized and, if so, the amount of the subsidy. Your employer may set a specific amount as the reasonable value of your services. If the wages you receive exceed the reasonable value of the actual services you performed, we will regard the excess as a subsidy rather than earnings. Any of the following circumstances may indicate the existence of a subsidy:

(i) You work in sheltered employment.

(ii) Childhood disability is involved.

(iii) You have a mental impairment.

(iv) There is a marked discrepancy between the amount of your pay and the value of your services.

(v) You receive an unusual degree of help from others to do your work.

(vi) Your impairment indicates you would need an unusual degree of help from others.

(vii) You are involved in a government-sponsored job training and employment program.

(4) *When your employer does not tell us the value of your subsidy.* If your earnings are subsidized and your employer does not set the amount of the subsidy, or does not adequately explain how the subsidy was determined, we will use the following criteria to determine the amount of your subsidy:

(i) In most instances, we will determine the amount of your subsidy by comparing the time, energy, skills, and responsibility involved in your services with the time, energy, skills, and responsibility involved in the performance of the same or similar work by unimpaired individuals in your community. We will estimate the proportionate value of your services according to the prevailing pay scale for your work.

(ii) In other instances, it may be possible for us to determine the approximate extent of your subsidy based upon other indications of your productivity, such as your need for an unusual degree of supervision or assistance in the performance of simple tasks, the length of time you need to do simple tasks, or how efficiently you are able to do simple tasks.

(5) *Subsidies in organizations that hire the handicapped.* If you work for an organization that hires the handicapped and the organization either operates at a loss or receives charitable contributions or government aid, this does not necessarily establish that your work is subsidized. Our determination of whether or not you receive a subsidy, and the amount of any subsidy you may receive, will depend upon your productivity rather than the financial condition of your employer's business.

(6) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Because persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate their work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines.*—(1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 404.1574a for our rules on averaging earnings.

(2) * * *

(3) * * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we ordinarily will consider that your earnings from this work show that you have engaged in substantial gainful activity if the guides in paragraph (b)(2) of this section are met. Earnings less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information discussed in paragraph (b)(6) of this section even if those earnings are more than those indicated in paragraph (b)(3) of this section.

(5) * * *

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* * * *

(c) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(3) of this section and you meet the conditions described in paragraphs (c)(2), (3), (4), and (5), of this section. The unsuccessful work attempt criteria do not apply in determining whether payment should be made for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. The reentitlement period is explained in § 404.1592a.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 404.1573(c). We will consider your prior work to be "discontinued" if you were out of work at least 30 consecutive days. We will also consider your prior work to be "discontinued" if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less which ended, or was reduced below the substantial gainful activity earnings level, because of your impairment or due to the removal of special conditions which took into account your impairment and permitted you to work to be an unsuccessful work attempt.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below the substantial gainful activity earnings level, within 6 months because of your impairment and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, any payments you receive from these programs will not be counted as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. Volunteer work you perform in other programs or any nonvolunteer work you may perform is not excluded under this paragraph. Also, your work will not be excluded if you work for one of the specified programs but are not a volunteer. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. The value of any subsidy must be subtracted and the remainder used to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(6) of this section.

7. A new § 404.1574a is added to read as follows:

§ 404.1574a When and how we will average your earnings.

(a) If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity. See § 404.1592a for information on the reentitlement period.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

(d) Earnings will not be averaged in determining whether payment should be made for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. See § 404.1592a for information on the reentitlement period. The following example illustrates what we mean by a significant change in the work pattern of an employee.

Example: Mary Holmes began receiving disability insurance benefits in March 1986. In January 1988 she began selling magazines by telephone solicitation, with minimum time being expended, for which she received $125 monthly. In this manner, Mrs. Holmes used up her trial work period during the months of January 1988 through September 1988. It was determined, however, that she had not engaged in substantial gainful activity during her trial work period. Her reentitlement period began October 1988. In December 1988, Mrs. Holmes discontinued her telephone solicitation work to take a course in secretarial skills. In January 1990, she began work as a part-time temporary secretary in a banking firm. Mrs. Holmes worked 20 hours a week, without any subsidy or impairment-related work expenses, at beginner rates. She earned $285 per month in January 1990 and February 1990. In March 1990 she had increased her secretarial skills to journeyman level and was assigned as a part-time private secretary to

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one of the vice-presidents of the banking firm. Mrs. Holmes' earnings increased to $525 per month effective March 1990. It was determined that she was engaging in substantial gainful activity in March 1990. A finding of disability cessation was made effective March 1990. Earnings for the period January 1990 and February 1990 were not averaged with the period beginning March 1990, because a significant change in earnings and work activity had taken place and made the two periods unrepresentative of each other. Thus, the earnings of January 1990 and February 1990 could not be averaged with those of March 1990 to reduce March 1990 earnings below the substantial gainful activity level. After disability has been determined to have ceased because of the performance of substantial gainful activity, her earnings cannot be averaged in determining whether payment should be made for any month during or after the reentitlement period. From March 1990 (the month of cessation) on, all of Mrs. Holmes' work activity would then be evaluated on a month-by-month basis.

8. Section 404.1575 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend upon a number of different factors, such as capital investment and profit sharing agreements. We will generally consider work that you were forced to stop or reduce below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, tests two and three must be considered. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

(b) * * *

(c) *What we mean by substantial income.* Your normal business expenses are deducted from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties which ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 404.1574(b)(2) and 404.1574(b)(3). See § 404.1574a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 404.1574(b)(2); or

(2) It averages less than the amounts described in § 404.1574(b)(2) but it is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), (4), and (5) of this section. The unsuccessful work attempt criteria do not apply in determining whether payment should be made for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. The reentitlement period is explained in § 404.1592a.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below substantial gainful activity because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be discontinued if you were out of work at least 30 consecutive days, or if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, within 6 months because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months an unsuccessful work attempt regardless of why it ended or was reduced below substantial gainful activity.

9. Section 404.1584 is amended by revising paragraph (d) to read as follows:

§ 404.1584 Evaluation of work activity of blind people.

* * * * *

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your monthly earnings average more than $334 in 1978; $375 in 1979; $417 in 1980; $459 in 1981; $500 in 1982; $550 in 1983; $580 in 1984; $610 in 1985; $650 in 1986; $680 in 1987; $700 in 1988; $740 in 1989; $780 in 1990; $810 in 1991; $850 in 1992; $880 in 1993; and $930 in 1994. (Sections 404.1574(a)(2), 404.1575(c), and 404.1576 are applicable in determining the amount of your earnings.) Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed in taxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

10. Section 404.1592 is amended by revising the last sentence of paragraph (b), adding a sentence to paragraph (b), and revising paragraphs (d) and (e) to read as follows:

§ 404.1592 The trial work period.

(a) * * *

(b) * * * We generally do not consider work done without remuneration to be "services" if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. Work as a volunteer in the Federal programs described in § 404.1574(d) is not considered in determining whether you have performed services in the trial work period.

* * * * *

(d) *Who is and is not entitled to a trial work period.* (1) You are generally entitled to a trial work period if you are receiving disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability.

(2) You are not entitled to a trial work period if—

(i) You are entitled to a period of disability but not to disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability; or

(ii) You perform work demonstrating the ability to engage in substantial gainful activity during any required waiting period for benefits; or

(iii) You perform work demonstrating the ability to engage in substantial gainful activity within 12 months of the onset of the impairment(s) which prevented you from performing substantial gainful activity and before the date of the decision awarding you disability benefits; or

(iv) You perform work demonstrating the ability to engage in substantial gainful activity at any time after the onset of the impairment(s) which prevented you from engaging in substantial gainful activity but before the month you file your application for disability benefits.

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance benefits, to child's benefits based on disability or to widow's, widower's, or surviving divorced spouse's benefits based on disability. It cannot begin before the month in which you file your application for benefits and for widows, widowers, and surviving divorced spouses, it cannot begin before December 1, 1980. It ends with the close of whichever of the following calendar months is the earlier:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services if that 9th month is prior to January 1992; or

(2) The 9th month (whether or not the months have been consecutive and whether or not the previous eight months of services were prior to January 1992) in which you have performed services within a rolling 60-month period if that 9th month is after December 1991; or

(3) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled. See § 404.1594 for information on how we decide whether your disability continues or ends.

11. Section 404.1592a is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 404.1592a The reentitlement period.

(a) *General.* The reentitlement period is an additional period after 9 months of trial work during which you may continue to test your ability to work if you have a disabling impairment. You will not be paid benefits for any month after the second month following the month disability ceased due to substantial gainful activity in this period in which you do substantial gainful activity and you will be paid benefits for months in which you do not do substantial gainful activity. (See §§ 404.316, 404.337, 404.352 and 404.401a.) If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period. If your benefits are stopped because you do substantial gainful activity they may be started again without a new application and a new determination of disability if you discontinue doing substantial gainful activity during this period. In determining, for reentitlement benefit purposes, whether you do substantial gainful activity in a month, we consider only your work in or earnings for that month; we do not consider the average amount of your work or earnings over a period of months. When disability has been ceased because of the performance of substantial gainful activity, the unsuccessful work attempt criteria and averaging concepts do not apply in determining whether payments should be made for any particular month during or after the reentitlement period that occurs after the month disability ceased. The unsuccessful work attempt criteria and averaging concepts do apply during and after the reentitlement period in determining whether disability has ceased because of the performance of substantial gainful activity.

(b) * * *

(1) * * *

(2)(i) The last day of the 15th month following the end of your trial work period if you were not entitled to benefits after December 1987; or

(ii) The last day of the 36th month following the end of your trial work

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period if you were entitled to benefits after December 1987 or if the 15-month period described in paragraph (b)(2)(i) of this section had not elapsed as of January 1988. (See §§ 404.316, 404.337, and 404.352 for when your benefits end.)

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a), (c) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.901 is amended by revising paragraph (m) to read as follows.

§ 416.901 Scope of subpart.

* * * * *

(m) Our rules on when disability or blindness continues and stops are contained in §§ 416.986 and 416.988 through 416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in determining whether you are still disabled.

3. Section 416.973 is amended by revising paragraph (c) and removing paragraph (f) to read as follows:

§ 416.973 General information about work activity.

(a) * * *

(b) * * *

(c) *If your work is done under special conditions.* Even though the work you are doing is done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. Examples of the special conditions that may relate to your impairment include situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, such as where other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

4. Section 416.974 is amended by redesignating current paragraph (a)(3) as (a)(6); revising paragraphs (a)(1), (a)(2), newly designated (a)(6), (b)(1), and (b)(4); and adding new paragraphs (a)(3) through (a)(5), (c), and (d) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

(a) * * *

(1) *Your earnings may show you have done substantial gainful activity.* In evaluating an employee's work activity for substantial gainful activity purposes, our primary consideration is the earnings that are derived from the work activity. The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a handicapped person does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity. Paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section explain how we determine the amounts of subsidies.

(3) *Evidence of subsidy from your employer.* We will first ask your employer to tell us if your wages have been subsidized and, if so, the amount of the subsidy. Your employer may set a specific amount as the reasonable value of your services. If the wages you receive exceed the reasonable value of the actual services you performed, we will regard the excess as a subsidy rather than earnings. Any of the following circumstances may indicate the existence of a subsidy:

(i) You work in sheltered employment.

(ii) Childhood disability is involved.

(iii) You have a mental impairment.

(iv) There is a marked discrepancy between the amount of your pay and the value of your services.

(v) You receive an unusual degree of help from others to do your work.

(vi) Your impairment indicates you would need an unusual degree of help from others.

(vii) You are involved in a government-sponsored job training and employment program.

(4) *When your employer does not tell us the value of your subsidy.* If your earnings are subsidized and your employer does not set the amount of the subsidy, or does not adequately explain how the subsidy was determined, we will use the following criteria to determine the amount of your subsidy:

(i) In most instances, we will determine the amount of your subsidy by comparing the time, energy, skills, and responsibility involved in your services with the time, energy, skills, and responsibility involved in the performance of the same or similar work by unimpaired individuals in your community. We will estimate the proportionate value of your services according to the prevailing pay scale for your work.

(ii) In other instances, it may be possible for us to determine the approximate extent of your subsidy based upon other indications of your productivity, such as your need for an unusual degree of supervision or assistance in the performance of simple tasks, the length of time you need to do simple tasks, or how efficiently you are able to do simple tasks.

(5) *Subsidies in organizations that hire the handicapped.* If you work for an organization that hires the handicapped and the organization either operates at a loss or receives charitable contributions or government aid, this does not necessarily establish that your work is subsidized. Our determination of whether or not you receive a subsidy, and the amount of any subsidy you may receive, will depend upon your productivity rather than the financial condition of your employer's business.

(6) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Because persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate their work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines.*—(1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 416.976, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b) (2), (3), (4), and (6) of this section. See § 416.974a for our rules on averaging earnings.

(2) * * *

(3) * * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we ordinarily will consider that your earnings from this work show that you have engaged in substantial gainful activity if the guides in paragraph (b)(2) of this section are met. Earnings less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information discussed in paragraph (b)(6) of this section even if those earnings are more than those indicated in paragraph (b)(3) of this section.

(5) * * *

(6) * * *

(c) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(3) of this section and you meet the conditions described in paragraphs (c) (2), (3), (4), and (5), of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 416.973(c). We will consider your prior work to be "discontinued" if you were out of work at least 30 consecutive days. We will also consider your prior work to be "discontinued" if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less which ended, or was reduced below the substantial gainful activity earnings level, because of your impairment or due to the removal of special conditions which took into account your impairment and permitted you to work, to be an unsuccessful work attempt.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below the substantial gainful activity earnings level, within 6 months because of your impairment and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, any payments you receive from these programs will not be counted as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or Small Business Act. Programs explicitly mentioned in these Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. Volunteer work you perform in other programs or any nonvolunteer work you may perform is not excluded under this paragraph. Also, your work will not be excluded if you work for one of the specified programs but are not a volunteer. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis

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under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. The value of any subsidy must be subtracted and the remainder used to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(6) of this section.

5. A new section 416.974a is added to read as follows:

§ 416.974a When and how we will average your earnings.

(a) To determine your initial eligibility for benefits, we will average any earnings you make during the month you file for benefits and any succeeding months to determine if you are doing substantial gainful activity. If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

6. Section 416.975 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend upon a number of different factors, such as capital investment and profit sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, tests two and three must be considered. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

(b) * * *

(c) *What we mean by substantial income.* Your normal business expenses are deducted from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties which ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 416.976. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 416.974(b)(2) and 416.974(b)(3). See § 416.974a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 416.974(b)(2); or

(2) It averages less than the amounts described in § 416.974(b)(2) but it is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.* (1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d) (2), (3), (4), and (5) of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below substantial gainful activity because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be discontinued if you were out of work at least 30 consecutive days, or if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work.

(4) *If you work between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial

gainful activity, within 6 months because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months an unsuccessful work attempt regardless of why it ended or was reduced below substantial gainful activity.

§ 416.976 [Amended]

7. Section 416.976 is amended by removing paragraph (f)(2) and by redesignating paragraphs (f)(3) through (f)(6) as paragraphs (f)(2) through (f)(5), respectively.

§ 416.991 [Amended]

8. Section 416.991 is amended and by removing the parenthetical sentence immediately preceding the example.

§ 416.992 [Removed and Reserved]

9. Section 416.992 is removed and reserved.

§ 416.992a [Removed and Reserved]

10. Section 416.992a is removed and reserved.

11. Section 416.994 is amended by removing paragraph (b)(3)(v) and revising paragraphs (b)(5) and (b)(6) to read as follows:

§ 416.994 How we will decide whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement is related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvements applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments (in combination) are severe (see § 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with § 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

(6) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the following month—

(i) The month the evidence shows that you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(ii) The month the evidence shows that you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(iii) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, and we expected your impairment(s) to improve (see § 416.991);

(iv) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4)(iv) of this section applies;

(v) The first month in which you were told by your physician that you could return to work provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence; or

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(vi) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (b)(4)(ii) of this section applies.

* * * * *

12. The authority citation for Subpart M of Part 416 continues to read as follows:

Authority: Secs. 1102, 1611–1615, 1619 and 1631 of the Social Security Act; 42 USC 1302, 1382–1382d, 1382h, 1383.

13. Section 416.1331 is amended by revising paragraph (a) to read as follows:

§ 416.1331 Termination of your disability or blindness payments.

(a) *General.* The last month for which we can pay you benefits based on disability is the second month after the first month in which you are determined to no longer have a disabling impairment (described in § 416.911). (See § 416.1338 for an exception to this rule if you are participating in an appropriate vocational rehabilitation program, and § 416.261 for an explanation of special benefits to which you may be entitled.) The last month for which we can pay you benefits based on blindness is the second month after the month in which your blindness ends (see § 416.986 for when blindness ends). You must meet the income, resources, and other eligibility requirements to receive any of the benefits described in this paragraph. We will also stop payment of your benefits if you have not cooperated with us in getting information about your disability or blindness.

* * * * *

[FR Doc. 95–5171 Filed 3–3–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–092]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Beach Thorofare, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the National Railroad Passenger Corporation (AMTRAK), the Coast Guard is considering a change to the regulations governing operation of the AMTRAK/New Jersey Transit Rail Operation (NJTRO) drawbridge across the Beach Thorofare, at New Jersey Intracoastal Waterway, mile 68.9, at Atlantic City, New Jersey, by permitting the bridge to be operated remotely from AMTRAK's Philadelphia office. This proposal is being made in an effort to combine bridge tender and dispatcher positions, enhance rail safety and operation, and reduce operating costs. This action should relieve AMTRAK of the burden of having to man the bridge constantly to open the draw, and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before June 5, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004–5073.

Any comments received will become part of this docket and will be available for inspection and copying by appointment at Bldg. 135A, Governors Island, New York 10004–5073. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Fridays, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Gary Kassaf, Bridge Administrator—NY, Fifth Coast Guard District, (212) 668–7069, 668–7021, or 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–092), and the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. J. Arca, Fifth Coast Guard District, Bridge Branch—NY, Project Officer, and LCDR C.A. Abel, Fifth Coast Guard District Legal Office, Project Attorney.

Background and Purpose

A permit was issued by the Coast Guard on December 20, 1988, to replace and slightly raise the superstructure of the Beach Thorofare bridge. The new drawbridge provides a vertical clearance of 4 feet at mean high water and 9 feet at mean low water when in the closed position. Prior to its rehabilitation in 1988, the old bridge was left in the open position and unused for 5 to 10 years. However, the regulations governing operation of this bridge require that the bridge open on signal from 11 p.m. to 6 a.m. From 6 a.m. to 11 p.m., the draw is required to open on signal from 20 minutes to 30 minutes after each hour and remain open for all waiting vessels. As a result of the rehabilitation and replacement work, the bridge now operates according to the published regulations, and AMTRAK seeks to operate the bridge remotely from its Philadelphia office.

The Beach Thorofare section of the New Jersey Intracoastal Waterway is used primarily by recreational power boats ranging in length from eighteen (18) to thirty-eight (38) feet. The bridge is required to open for vessel traffic infrequently during the winter months. The number of openings increases during the normal season boating season. However, the number of openings is not excessive. During the period from February 1994 through June 1994, drawlogs for the Beach Thorofare Bridge show the bridge averaged 1 opening per day in February; 1 or 2 openings per day in March; 2 openings per day in April; 6 openings per day in May; and 7 openings per day in June. During the same 5 month period, data provided by AMTRAK shows the number of trains per month crossing the bridge in both directions remained fairly constant, averaging between 900 and 1000 trains per month. The vast majority of these trains are passenger/shuttle type trains transporting persons wishing to visit Atlantic City, New Jersey. Train traffic across the bridge is proportionately much heavier than waterway traffic requiring openings of the bridge. Because of the relatively few requests for bridge openings, AMTRAK would like to combine the bridge tender and train dispatcher positions in its Philadelphia office. By controlling openings of the bridge and movement of trains across the bridge from one location, AMTRAK can reduce operating costs and still closely monitor operations at the bridge.

The Coast Guard has no record of any vessel allisions with this bridge. The vessels that do use this waterway are relatively small, and it is unlikely that they could create major damage to the bridge even if a vessel/bridge allision did occur. Therefore, safety does not appear to be a concern in the evaluation of this request.

The proposed change establishes procedures and criteria for remote operation of the drawbridge, while providing mariners warning of this operation and a 24 hour-a-day point of contact for normal or emergency operation.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the Beach Thorofare Bridge, nor will it change the present opening schedule. Rather, it will permit the bridge owner to operate the bridge remotely.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concern" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impacts of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.733(e) is revised to read as follows:

§ 117.733 New Jersey Intracoastal Waterway

* * * * *

(e) The draw of the AMTRAK New Jersey Transit Rail Operation (NJTRO) automated railroad swing bridge, mile 68.9, across Beach Thorofare at Atlantic City shall operate as follows:

(1) Open on signal from 11 p.m. to 6 a.m. From 6 a.m. to 11 p.m., the draw shall open on signal from 20 minutes to 30 minutes after each hour and remain open for all waiting vessels.

(2) Opening of the draw span may be delayed for ten minutes except as provided in § 117.31(b). However, if a train is moving toward the bridge and has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) When the bridge is not tended locally and/or is operated from a remote location, sufficient, closed-circuit TV cameras shall be operated and maintained at the bridge site to enable the remotely located bridge/train controller to have full view of both river traffic and the bridge.

(4) Radiotelephone Channel 13 (156.65 Mhz) and 16 (156.8 Mhz) VHF–FM, shall be maintained and utilized to facilitate communication in both remote and local control locations. The bridge also shall be equipped with directional microphones and horns to receive and deliver signals to vessels within a mile that are not equipped with radiotelephones.

(5) Whenever the remote control system equipment is partially disabled or fails for any reason, the bridge shall be physically tended and operated from local control. Personnel shall be dispatched to arrive at the bridge as soon as possible but not more than one hour after malfunction or inoperation of the remote system. Mechanical by-pass and override capability for remote operation shall be provided and maintained.

(6) When the draw is opening, being closed, or is closed, yellow flashing lights located on the ends of the center piers shall be displayed continuously until the bridge is in the fully open position.

* * * * *

3. Appendix A to part 117 is amended by adding a new entry under the State of New Jersey in alphabetical order to read as follows: New Jersey Intracoastal Waterway.

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APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
• •	•	•	•	•		•
NEW JERSEY						
• •	•	•	•	•		•
New Jersey Intracoastal Waterway. (Beach Thorofare)	68.9	Atlantic City	AMTRAK	WXZ 528.	13	13
• •	•	•	•	•		•

Dated: February 3, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 95–5386 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–3–6638b; FRL–5160–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that concern the control of volatile organic compound (VOC) emissions from in-situ combustion well vents. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 5, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns San Joaquin Valley Unified Air Pollution Control District Rule 4407, In-Situ Combustion Well Vents, submitted to EPA on July 13, 1994 by the California Air Resources Board. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–5343 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[IL99–01–6821, IN46–01–6622, MI33–01–6626, WI47–01–6627; FRL–5165–1]

Approval of a Section 182(f) Exemption; Illinois, Indiana, Michigan, and Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the EPA a petition (the petition) for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), are petitioning for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of oxides of nitrogen (NO_x). In the Lake Michigan Ozone Study (LMOS) modeling domain, the RACT requirements apply to major stationary sources of NO_x located in areas currently classified as moderate and above nonattainment for ozone. The NSR requirements apply to major stationary sources of NO_x located in areas currently classified as marginal and above nonattainment for ozone. The petition also seeks an exemption from the transportation and general conformity requirements for NO_x in all ozone nonattainment areas in the modeling domain. Although the petition does not specifically request an exemption from the Inspection/Maintenance (I/M) program requirements, the approval of the petition will impact the I/M NO_x requirements for ozone nonattainment areas in the modeling domain. In this rulemaking, EPA is proposing to approve the petition based upon its demonstration that additional NO_x reductions would not contribute to attainment of the National ambient air quality standard (NAAQS) for ozone in any nonattainment area within the LMOS modeling domain. The EPA is reserving the right, however, to reverse this approval if subsequent modeling, such as may be available through the final attainment demonstration, or any other subsequent modeling data demonstrate an ozone attainment benefit from NO_x emission controls.

DATES: Comments on the petition and on the proposed EPA action must be received by April 5, 1995.

ADDRESSES: Written comments shall be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the petition are available for inspection at the following address: (It is recommended that you telephone Daniel Meyer at (312) 886–9401, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Background

Part D of the Act establishes the State Implementation Plan (SIP) requirements for nonattainment areas. Subpart 2, part D of the Act establishes additional provisions for ozone nonattainment areas. At section 182(b)(2) of this subpart, the Act requires the application of RACT regulations for major stationary volatile organic compound (VOC) sources located in moderate and above ozone nonattainment areas as well as in ozone transport regions. States are required to submit RACT regulations by November 15, 1992 and sources are required to achieve compliance with these RACT regulations by May 31, 1995. At section 182(a)(2)(C), the Act requires the application of NSR regulations for major new or modified VOC sources located in marginal and above ozone nonattainment areas as well as in ozone transport regions. States are required to adopt revised NSR regulations by November 15, 1992. At section 182(f), the Act requires States to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of VOC. Therefore, the RACT and NSR requirements also apply to major stationary sources of NO_x.

The EPA "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 55628), November 25, 1992 (NO_x Supplement), discusses in detail the section 182(f) requirements. For sources outside of an ozone transport region, these requirements do not apply to NO_x sources if: (1) The EPA determines that net air quality benefits are greater in the absence of NO_x emissions reductions; or (2) the EPA determines that additional reductions of NO_x emissions would not contribute to attainment of the NAAQS for ozone in the area. Where any one of the tests is met (even if the other test is failed), the NO_x RACT and NSR requirements of section 182(f) would not apply.

In addition to determining the applicability of NO_x reductions under RACT and NSR, the section 182(f) exemption process may also determine the applicability of NO_x reductions under the Act's conformity requirements, which assure conformity with approved SIPs. The general and transportation conformity requirements are found at section 176(c) of the Act. The conformity requirements apply on an areawide basis in all nonattainment areas, including the nonclassifiable ozone nonattainment areas. The EPA's transportation conformity final rule [1] and general conformity final rule [2] reference the section 182(f) exemption process as a means for exempting an affected area from NO_x conformity requirements. The approval of an areawide section 182(f) petition will exempt marginal and above ozone nonattainment areas from the NO_x conformity requirements of the Act. See the May 27, 1994, memorandum entitled, "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria," from John Seitz, Director of the Office of Air Quality Planning and Standards.

Under the I/M program final rule (57 FR 52950), November 5, 1992, the section 182(f) petition is also referenced to determine applicability of NO_x reductions. The I/M program requirement for moderate ozone nonattainment areas is found at section 182(b)(4), and the I/M program requirement for serious and above ozone nonattainment areas is found at section 182(c)(3). Basic I/M testing programs must be designed such that no increase in NO_x occurs as a result of the program. If a petition is granted to an area required to implement a basic I/M program, the basic I/M NO_x requirement may be omitted. Enhanced I/M testing programs must be designed to reduce NO_x emissions consistent with the enhanced I/M performance standard. If a petition is granted to an area required to implement an enhanced I/M program, the NO_x emission reductions are not required, but the program must be designed to offset NO_x emission increases resulting from the repair of vehicles due to hydrocarbon and carbon monoxide failures.

The EPA believes that all approvable petitions should be approved only on a contingent basis. As described in the NO_x Supplement, the EPA would rescind a NO_x petition in cases where NO_x reductions were later found to be beneficial in the area's attainment demonstration. Therefore, a modeling-based exemption would last only as long as the area's modeling continued to demonstrate attainment without the additional NO_x reductions required by section 182(f). The EPA would also rescind the exemption if other data, including new photochemical grid modeling, demonstrates an ozone attainment benefit from NO_x emission controls. If EPA later determines that NO_x reductions are beneficial in an area initially exempted, the area would be removed from exempt status and would be required to adopt the NO_x RACT and NSR rules, except to the extent that the new modeling shows NO_x reductions to be "excess reductions." In addition, the area would no longer be exempt from the NO_x reduction requirements under the Act's I/M and conformity programs. In the rulemaking action rescinding the exempt status, the EPA would specify a schedule for a State to adopt the NO_x RACT and NSR rules and for sources to comply with the NO_x RACT emission limits. In addition, the rulemaking action would also describe how a State must comply with the I/M and conformity program requirements. For conformity, the effect of a recision is that subsequent Federal actions will

[1] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. or the Federal Transit Act" November 24, 1993 (58 FR 62188).

[2] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule" November 30, 1993 (58 FR 63214).

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have to demonstrate that they conform, although projects that had begun because of the exemption would be allowed to go forward. See "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions," 59 FR 31238 (June 17, 1994).

If EPA grants a petition for an exemption from the section 182(f) NO_x requirements, a State may impose NO_x restrictions for other reasons. If, however, the EPA grants the petition based upon a finding that NO_x reductions are counterproductive, the State must justify how the SIP continues to be adequate for achieving ozone attainment given its NO_x reductions. Although a section 182(f) petition may determine the applicability of SIP requirements pertaining to NO_x emission reductions and controls, the petition is not a SIP, nor is it a revision to a SIP. Therefore, a petition is not required to undergo a public hearing, nor must a petition be submitted by a Governor of a State or his designee. See "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions," 59 FR 31238 (June 17, 1994).

II. Summary of Submittal

The LMOS is a regional modeling project that was initiated by the States of Illinois, Indiana, Michigan, and Wisconsin, with assistance from the EPA, to deal with the ozone problem in the Lake Michigan air basin as a whole. A major goal of the study is to develop a comprehensive modeling system that the four States would use to support a regional control strategy that would be implemented through revisions to their ozone attainment SIPs. The Lake Michigan air basin, which constitutes the LMOS modeling domain, contains a number of generally contiguous nonattainment areas including several major urban nonattainment areas, including Chicago, Milwaukee, and Grand Rapids, and many smaller, less-dense nonattainment areas generally downwind of the large urban centers. The entire domain is affected by ozone concentrations that are transported into the area. These ozone concentrations are estimated to be as high as 80–100 parts per billion (ppb). Additionally, within the domain itself, ozone precursor emissions generated in the urban centers upwind travel downwind, resulting in significant downwind ozone levels. It is because of these meteorological characteristics that the ozone problem in the Lake Michigan area is considered to be a very broad regional phenomenon requiring a regional solution. Consequently, the preliminary control strategy simulations pursued in the ozone study consisted of an approach that assumed across-the-board reductions in VOC and NO_x emissions throughout the region as a whole in order to provide information on the most effective control path to pursue toward attainment.

The petition, which is part of a July 13, 1994 submittal from LADCo to the EPA, seeks to exempt major stationary sources of NO_x within ozone nonattainment areas classified as marginal and above in the LMOS modeling domain from the RACT requirements of section 182(b)(2) and the NSR requirements under section 182(a)(2)(C). The petition for an exemption from NO_x RACT and NSR applies to the following counties: (1) Within Illinois, the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will; (2) within Indiana, the Counties of Elkhart, Lake, Porter, and St. Joseph; (3) within Michigan, the Counties of Kent, Muskegon, and Ottawa; and (4) within Wisconsin, the Counties of Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington, and Waukesha.

Pursuant to 40 CFR part 93, subpart A; 40 CFR part 51, subpart T; 40 CFR part 93, subpart B; and 40 CFR part 51, subpart W, the petition seeks an exemption from the transportation and general conformity requirements for NO_x in all ozone nonattainment areas within the LMOS modeling domain. The areas include the above Counties as well as the following Michigan Counties: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillside, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawasse, and Van Buren.

Pursuant to 40 CFR part 51, subpart S, an approved petition allows for an exemption from the NO_x requirements of the basic I/M requirements for moderate ozone nonattainment areas. These Counties include: (1) Within Indiana, the Counties of Elkhart, and St. Joseph; (2) within Michigan, the Counties of Kent, Muskegon, and Ottawa; and (3) within Wisconsin, the Counties of Door, Kewaunee, Manitowoc, Sheboygan, Walworth, Washington, and Waukesha. Also pursuant to subpart S, an approved petition allows for an exemption from the NO_x requirements of the enhanced I/M requirements for serious and above ozone nonattainment areas. These Counties include: (1) Within Illinois, the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will; (2) within Indiana, the Counties of Lake and Porter; and (3) within Wisconsin, the Counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

The December 1993 Office of Air Quality Planning and Standards guidance document, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)," (Guideline), recommends the use of photochemical grid modeling for testing the contribution of NO_x emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions; (2) substantial NO_x reductions; and (3) both VOC and NO_x reductions. If the areawide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the section 182(f) NO_x emissions reduction requirements may not apply.

As noted above, section 182(f)(1) of the Act provides that the new NO_x requirements of subpart 2 of part D of the Act shall not apply for the ozone nonattainment areas within the LMOS modeling domain if, among other tests, EPA determines that additional NO_x emission reductions would not contribute to attainment of the ozone standard in the ozone nonattainment areas covered by the petition. The States' have utilized the Urban Airshed Model (UAM-V), a photochemical grid model approved by EPA for LADCo's section 182(f) and attainment demonstrations, to demonstrate that NO_x emission reductions would not contribute to attainment. To conduct the modeling analysis, LADCo followed these steps: (a) Emissions were projected to the year 1996 (the attainment deadline for the moderate nonattainment areas) and to the year 2007 (the attainment deadline for the severe nonattainment areas) from the 1990 base year; (b) a 40 percent VOC emission reduction beyond that achieved as a result of emission controls mandated by the Act was assumed to be necessary to attain the ozone standard in the LMOS modeling domain; (c) a 40 percent NO_x emission reduction beyond the projected emission levels was assumed for all anthropogenic NO_x emissions; (d) a 40 percent VOC emission reduction and a 40 percent NO_x reduction beyond projected emission levels were assumed for all anthropogenic VOC and NO_x emissions; and (e) the ozone modeling results for (b), (c), and (d) were compared considering the domain-wide peak ozone concentrations and temporal and spatial extent of ozone concentrations above 120 ppb. In addition, ozone impacts resulting from increasing new source growth NO_x emissions were analyzed.

For all modeled days using 1996 and 2007 conditions, domain-wide peak ozone concentrations for "VOC-only" controls were found to be lower than or equal to those for "NO_x-only" controls or those for "VOC plus NO_x" controls. The "VOC-only" control scenario leads to the smallest areas with predicted peak ozone concentrations exceeding 120 ppb. In addition, the NOT^{2x} point source growth is not expected to exacerbate the nonattainement problem.

III. Analysis of Submittal

As stated earlier in this document, for purposes of their NO_x exemption submission, the LMOS States elected to rely on the statutory test provided in section 182(f)(1)(A), which requires a demonstration that NO_x reductions would not contribute to attainment of the ozone NAAQS "in the area". Under the EPA Guideline, this would ordinarily mean that the demonstration should show that in a single nonattainment area NO_x emissions reductions from sources in the same nonattainment area would not contribute to attainment. However, the EPA Guideline goes on to encourage petitioners relying on modeling under the contribute to attainment test to include consideration of the entire modeling domain for two key reasons. First, because the test focuses on the effects of NO_x reductions on attainment, to fully realize those effects, the attainment control strategy often needs to extend beyond the geographic bounds of the designated nonattainment area. This is especially warranted for the nonattainment areas in the Lake Michigan air basin given the meteorological indications noted previously. Second, when photochemical grid modeling is utilized for this demonstration, it is generally advisable, as a technical matter, to use a modeling domain larger than the designated nonattainment area in order to consider multi-day episodes, to establish realistic boundary conditions, and to accommodate the geometry of the model grid cells. Again, as noted previously, the location of the nonattainment areas and the meteorology characteristic of the Lake Michigan area made it reasonable for the LMOS study to analyze domain-wide precursor effects rather than attempting to identify such effects in each individual nonattainment area. Because of this, the modeling protocol lacks the type of precision that would make it capable, for example, of analyzing particularized, individual local area effects. However, a region-wide modeling assessment may—and, in the case of the LMOS modeling, clearly did—include consideration of general, directional effects in specific areas.

Review of the modeling results by EPA show a very definite directional signal that general, across-the-board NO_x emission reduction controls in the ozone nonattainment areas throughout the LMOS modeling domain would not contribute to attainment, but, in fact, would exacerbate peak ozone concentrations. Specifically, the LMOS modeling runs demonstrate that reductions in NO_x emissions result in increases in the domain-wide peak ozone concentrations, in the areal coverage of hours greater than 120 ppb (the current ozone standard), and in the number of hours greater than 120 ppb. Nitrogen oxide reductions also increased hourly ozone concentrations within and immediately downwind of the major urban areas of Chicago, Milwaukee, Gary, and Grand Rapids. Additional model sensitivity tests involving alternative VOC:NO_x emissions ratios and alternative photolysis rates produced similar results. In addition, independent analyses of the LMOS field data also conclude that NO_x controls would increase ozone concentrations in and downwind of Chicago. In light of all this evidence in support of the conclusion that application of NO_x controls in the nonattainment areas throughout the LMOS domain would be counterproductive, EPA believes the LADCo States have made an acceptable case for approval of their NO_x exemption petition.

However, data provided to the EPA to date by LADCo indicate that some adjustments in the modeling results may be expected when certain aspects of the modeling are subject to more detailed inputs. Specifically, the LMOS analysis projected emissions for conditions expected in the attainment years of 1996 (for Moderate areas) and 2007 (for Severe areas with a design value between 0.190 and 0.280 ppm). However, the analysis did not rely on source category-specific emission projection factors, but instead used simple, region-wide adjustment factors for point, area, and mobile (motor vehicular) sources to account for both known controls (i.e., 15 percent reasonable further progress and other mandatory Clean Air Act Amendment controls) and for growth. Therefore, some changes in the modeling results are to be expected if area-specific and source category-specific emission projection factors are used. And, in fact, these more detailed projection factors will be used in the final demonstration of attainment for the LMOS domain. It should be noted, however, that nothing in the data presented, and in the analysis of that data, leads EPA to believe either that these adjusted modeling results will reverse the directional signal provided by the modeling done to date, or alter the preliminary conclusion that NO_x reductions in the nonattainment areas throughout the domain would not contribute to attainment of the ozone NAAQS.

Finally, although this document earlier points out that the version of the photochemical grid model utilized in the LMOS study (UAM-V) was approved by EPA for LADCo's section 182(f) and attainment demonstrations, it is noted here by EPA that the Lake Michigan States and LADCo had not completed the appropriate validation process for the UAM-V modeling system utilized in the LMOS study at the time the NO_x exemption petition was submitted. In this regard, the EPA Guideline states that an assessment of the model's performance and a copy of the modeling protocol should be included in States' NO_x exemption analysis "for informational purposes." On the basis of that guidance, the use of the UAM-V model by LADCo to support the section 182(f) "contribute to attainment" test is acceptable. In any event, however, the validation process has now been completed, and a model validation report has been submitted to EPA by LADCo. With respect to the emission projection factors, it is also likely that some adjustments in the modeling results may be expected based on the completed validation process. However, as in the previous case, nothing in the existing modeling data, or in the analyses, leads EPA to believe that any subsequent adjustments would be sufficient to reverse the directional indication that NO_x reductions in the nonattainment areas throughout the LMOS modeling domain would not contribute to attainment of the ozone NAAQS.

In summary, then, the EPA believes that the modeling data contained in the LADCo NO_x exemption petition demonstrates that, for the nonattainment areas throughout the LMOS domain in general, additional reductions of NO_x would not contribute to attainment of the ozone standard. However, other data submitted to EPA

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offer the possibility that subsequent adjustments to the modeling results due to the completed model validation process, as well as the inclusion of area-specific and source category-specific emissions projection factors, may result in changes that could alter the conclusions presently reached with respect to the effects of NO_x reductions on nonattainment areas within the domain. Although this result seems highly unlikely, it does remain a possibility. In light of the above, EPA has concluded that the LADCo exemption demonstration is adequate to support the granting of a NO_x waiver. Therefore, pursuant to section 182(f)(3) of the Act, and based on the results provided by the modeling data that is available at this time, and on the modeling analyses' conformance to the criteria contained in relevant EPA guidance, including the Guideline, the EPA proposes to approve the LADCo NO_x exemption petition. The EPA reserves the right to reverse this approval to the extent necessary if subsequent modeling results, such as may be available through the final attainment demonstration submittal, or through any other subsequent modeling data, demonstrate that additional NO_x emission reductions will contribute to attainment of the ozone NAAQS in all or part of any nonattainment areas within the LMOS modeling domain. For a more detailed analysis of the petition, please see the August 22, 1994 technical support document entitled "Technical Review of a Four State Request for a Section 182(f) Exemption from Oxides of Nitrogen (NO_x) Reasonably Available Control Technology (RACT) and New Source Review (NSR) Requirements."

IV. Implication of Action

The EPA is proposing to approve the LADCo petition. If granted, the approval will exempt ozone nonattainment areas in the LMOS modeling domain from any applicable NO_x requirements set forth in the Act, such as those for NO_x RACT, NSR, I/M, and conformity. Therefore, the sanctions clocks currently underway for the applicable ozone nonattainment areas in the States of Illinois, Indiana, Michigan, and Wisconsin for failing to submit a complete NO_x RACT SIP will be stopped upon final approval of the exemption. The EPA reserves the right, however, to reverse the proposed approval if subsequent modeling, such as may be available through the final attainment demonstration, or any other subsequent modeling data, demonstrate an ozone attainment benefit from NO_x emission controls within all or part of the ozone nonattainment areas within the LMOS modeling domain. In that case, the EPA would notify the States that the exemption no longer applies for the relevant nonattainment areas, and would also provide notice to the public in the **Federal Register**.

There are also consequences if the EPA disapproves the petition. The requirement to submit NO_x RACT rules and implement the NSR, conformity, and I/M NO_x requirements for the LMOS modeling domain area remain in place. Therefore, the sanctions clocks currently underway for the applicable ozone nonattainment areas in the States of Illinois, Indiana, Michigan, and Wisconsin for failing to submit a complete NO_x RACT SIP will not be stopped. As provided under section 179(a) of the Act, if the State did not make a complete submittal within 18 months after the finding of failure to submit, the EPA would be required to impose the requirements to provide two-to-one NSR offsets. If the State had not corrected its deficiency within 6 months after imposing the offset sanction, the EPA would impose a second sanction related to Federal highway funding restrictions. Any sanction the EPA imposes must remain in place until the EPA determines that the State has corrected the deficiency. In addition, the finding of failure to submit would trigger the 24-month clock for the EPA to impose a Federal Implementation Plan as provided under section 110(c)(1) of the Act.

V. Request for Public Comments

Interested parties are invited to submit comments on this petition and on EPA's proposed rulemaking action. Public comments received by the date indicated above will be considered in the development of the final rule.

VI. Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866. Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Because any type of approval of a section 182(f) petition does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 27, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–5402 Filed 3–3–95; 8:45 am]

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40 CFR Part 52

[MA–30–1–6846b; A–1–FRL–5158–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC RACT for Brittany Dyeing and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision consists of a reasonably available control technology (RACT) Plan Approval for controlling volatile organic compound (VOC) emissions from Brittany Dyeing and Printing Corporation of New Bedford, Massachusetts. In the final rules section of this **Federal Register**, EPA is approving the Massachusetts' SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before April 5, 1995.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 9, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–5351 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–47–1–6705b; FRL–5161–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing Sulfur Dioxide in Harris County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA in this action proposes to approve a revision to the Texas State Implementation Plan (SIP) to include Agreed Orders limiting sulfur dioxide (SO_2) allowable emissions at certain nonpermitted facilities in Harris County, Texas. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather,Planning Section (6T-AP), Air Programs Branch (6T-A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733,telephone (214) 665–7258.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the final rules section of this **Federal Register**.

Dated: February 8, 1995.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 95–5353 Filed 3–3–95; 8:45 am]

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40 CFR Part 85

[FRL–5164–7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

DATES: Comments must be submitted on or before April 20, 1995.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category V), Room M–1500, 401 M Street SW., Washington, DC 20460.
2. Anthony Erb, Technical Support Branch, Manufacturers Operations Division (6405J), 401 M Street SW., Washington, DC 20460.

This Engelhard notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild requirements are intended to reduce the ambient levels of particulate matter (PM) in urban areas and are limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that sets out a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of this regulation is the certification of retrofit/rebuild

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equipment. To comply with either of the two compliance programs, operators of the affected buses must use equipment which has been certified by the Agency.

Emissions requirements under either of the two programs depend on the availability of retrofit/rebuild equipment certified for each engine model. Engelhard has requested that this application be considered under Program 2 only. Therefore, certification of this equipment will not trigger any requirements under Program 1. Equipment certified for Program 2 must provide some level of PM reduction that can in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

II. Notification of Intent To Certify

By a notification of intent to certify dated October 24, 1994, Engelhard Corporation has applied for certification of equipment applicable to certain petroleum-fueled diesel engines, DDC 6V92TA MUI engines, used in urban buses of 1989 and earlier model years. The notification of intent to certify states that the candidate equipment will be certified at a maximum particulate matter (PM) emission level of 0.25 g/bhp-hr. Since this application is being submitted only under Program 2, and life cycle cost data is not required, certification will permit the use of this retrofit/rebuild equipment but will not specifically require its usage; nor will certification lead to more stringent emission standards for operators of fleets using the engines affected. The use of the equipment by transit operators to meet Program 2 requirements is discussed further below.

Major components of the candidate equipment are: (1) A muffler containing an oxidation catalyst, which takes the place of the original exhaust system muffler; (2) and a rebuild kit which incorporates a ceramic in-cylinder coating. The notification of intent to certify states that the candidate equipment is applicable to the following engines:

Manufacturer	Engine model	Model years
DDC	6V92TA MUI	1979–1989

Engelhard presents exhaust emission data from testing the equipment on a recently rebuilt 1985 model year DDC 6V92TA MUI engine documenting PM emissions using the heavy-duty engine Federal Test Procedure. The PM emissions from this test equalled 0.22 g/bhp-hr. Exhaust testing with the equipment installed also showed that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NOx), emissions were less than the federal emission standards for 1987. Smoke emission measurements for the engine with the candidate equipment installed indicate compliance with applicable standards.

Engelhard has requested certification only under Program 2. Engelhard is applying for certification to a post rebuild PM level of 0.25 g/bhp-hr with the equipment installed on the DDC 6V92TA MUI engine. If the Agency approves Engelhard's request to certify this candidate equipment, urban bus operators who choose to comply with Program 2 of the urban bus regulation may use this equipment, but it would not be specifically required. If this equipment is certified, operators under Program 2 using this equipment will use the PM emission level(s) established during the certification review process, in the calculations for fleet level attained (FLA).

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the Engelhard notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild program. Interested parties are encouraged to review the notification of intent to certify and provide comments during the 45 day period. Please send separate copies of your comments to each of the above addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–5405 Filed 3–3–95; 8:45 am]

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NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum Services

45 CFR Part 1180

Competitive Grants Technical Amendments

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Institute of Museum Services issues proposed amendments to regulations relating to its General Operating Support and Conservation Project Support grant programs. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions, use of funds, audit requirements, amount of awards, and remove unneeded provisions.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments should be addressed to Mamie Bittner, Public Information Officer, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, Telephone: (202) 606–8539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act" which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985, and 1990). The purpose of the Act is stated in section 202 as follows:

It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups: to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museums Services Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 101–512 Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations.

The Need for the Amendment

The proposed amendment to the regulations are intended to simplify application requirements and make the programs more accessible to the applicants by making audit requirements apply evenly to all applicants, to make awards more responsive to the needs of applicants by increasing the maximum amount of conservation awards by distributing general operating awards more broadly across high quality museums and by assisting in program evaluation.

Amendment by Amendment Analysis

1. Eligibility for applying for General Operating Support (GOS) grants.

Amendment 1 amends § 1180.5 which states the eligibility requirements that a museum must meet in order to be considered for a grant from the Institute. The Institute proposes an additional criteria for applicants to the General Operating Support program which would prohibit a museum from applying if it had two consecutive awards in the immediately preceding 2-year cycles, effective 1996. For example, if a museum applied for and received a two-year GOS award in 1996 and applied for and received a two-year GOS award in 1998, it would not be eligible to apply for a third award in 2000, but would be eligible to apply in 2001. However, if a museum applied for and received a two-year GOS award in 1996, and either did not apply in 1998 or applied for but did not receive an award in 1998, it would be eligible to apply for an award in 1999. The result of this change will allow a higher number of museums operating at high levels to benefit from the GOS program awards, and therefore provide greater benefit. The criteria would apply to applicants to the General Operating Support program only. The year 2000 would be the first deadline affected by this proposed rule.

2. Maximum awards for Conservation Project Support grants.

Amendment 2 revises § 1180.20(f)(1) which states that IMS normally makes a conservation award of no more than $25,000. The Institute proposes to raise the amount to $50,000. This increase will provide for the needs of museums to pursue more expensive projects to implement the recommendations of general conservation surveys and of institutional long range conservation plans.

3. Deleting "Special Project" from regulatory language.

Amendments 4 through 9 amend several regulations to remove references to a category of assistance no longer available. The Institute proposes to remove the term "Special Project" from the sections of the regulations provided below. The "Special Project" grant program has not been offered by the Institute since 1984. These changes have no impact on any other program and are made solely for clarification. The following sections will have references to "Special Project" removed: §§ 1180.17, 1180.35, 1180.40 (reserved), 1180.41, 1180.45, 1180.48 through 1180.50, 1180.58 and 1180.59.

4. Requiring final reports from recipients of assessment grants.

Amendment 10 revises § 1180.75(d) which states that a museum receiving a grant for an assessment need not submit a financial report or a performance report. The Institute intends to require reports from grantees for assessments so that the Institute will be better able to evaluate the effectiveness of assessment programs. The final reporting period would be extended beyond the normal deadline of 90 days after the close of the grant period to allow the museum to report on actions taken as a result of the assessment.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before May 5, 1995, will be considered before the Director issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at the Institute of Museum Services, room 510, 1100 Pennsylvania Ave., NW, Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Executive Order 12291

These proposed amendments have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National Boards.

Dated: February 28, 1995.

Diane B. Frankel,

Director, Institute of Museum Services.

The Institute of Museum Services proposes to amend part 1180, subchapter E of chapter XI of title 45 of the Code of Federal Regulations as set forth below:

SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

PART 1180—GRANTS REGULATIONS

1. The authority citation for part 1180 is revised to read as follows:

Authority: 20 U.S.C. 961–969; Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994; 29 U.S.C. 794.

1a. Section 1180.5 is amended by adding paragraph (f) to read as follows:

§ 1180.5 Eligibility and burden of proof—Who may apply.

* * * * *

(f) In a given year, a museum that has not received two consecutive General Operating Support awards in the immediately preceding two-year cycles is eligible to apply to General Operating Support.

2. Section 1180.20 is amended by revising paragraph (f)(1) to read as follows:

§ 1180.20 Guidelines and standards for conservation projects.

* * * * *

(f) *Limits for Federal funding.* (1) The normal maximum amount of a Conservation Project Support grant will

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be established through a notice published in the **Federal Register**. Beginning in FY 1996, the normal maximum amount is $50,000. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in Federal funds in excess of the normal maximum award. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

3. Section 1180.17 is revised to read as follows:

§ 1180.17 Reports.

In its final reports a grantee shall briefly detail how the expenditure of the grant funds has satisfied the proposed use of the funds as stated in its General Operating Support application or has accomplished the proposal as set forth in its application and has served the purpose of the Act as reflected in the applicable evaluation criteria in § 1180.14.

Section 1180.35 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1180.35 Group applications.

(a) Eligible museums may apply as a group for a project grant.

(b) If a group of museums applies for a grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity, consisting solely of the museum group, to apply for the grant.

* * * * *

§ 1180.40 [Reserved]

5. Section 1180.40 is removed and reserved.

6. Section 1180.41 is amended by revising paragraph (a) to read as follows:

§ 1180.41 The cost analysis; basis for grant amount.

(a) Before the Director sets the amount of a grant, a cost analysis of the project is made which involves an examination of:

(1) The cost data in the detailed budget for the project;

(2) Specific elements of cost; and

(3) The necessity, reasonableness, and allowability under applicable statutes and regulations.

* * * * *

7. Section 1180.45 is amended by revising the heading and paragraph (a) to read as follows:

§ 1180.45 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the staff.

* * * * *

8. Sections 1180.48 through 1180.50 and 1180.58 are revised to read as follows:

§ 1180.48 General conditions on publications.

(a) *Content* of materials. Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of materials that it publishes or arranges to have published.

(b) *Required Statement.* The grantee shall ensure that any publication that contains materials also contains the following statement:

The contents of this (insert type of publication, e.g., book, report, film) were developed in whole or in part under a grant from the Institute of Museum Services. However, the contents do not necessarily represent the policy of the Institute, and endorsement by the Federal Government should not be assumed.

§ 1180.49 Copyright policy for grantees.

A grantee may copyright materials in accordance with government-wide policy applicable to copyright of publications developed under Federal grants.

§ 1180.50 Definition of "materials."

As used in §§ 1180.48 through 1180.49, *materials* means a copyrightable work developed in whole or in part with funds from a grant from the Institute.

§ 1180.58 Records related to performance.

(a) A grantee shall keep records revealing progress and results under the grant.

(b) The grantee shall use the records under paragraph (a) of this section to:

(1) Determine progress in accomplishing objectives; and

(2) Revise those objectives, if necessary, and authorized under the grant.

9. Section 1180.59 is amended by revising paragraph (a) to read as follows:

§ 1180.59 Applicability.

(a) Subparts B and C (§§ 1180.30 through 1180.58) apply to General Operating Support assistance, except as otherwise provided in these regulations.

* * * * *

10. Section 1180.75 is amended by revising paragraph (d) to read as follows:

§ 1180.75 Funding and award procedures.

* * * * *

(d) A museum receiving assistance under this subpart must submit a final financial and narrative report that evaluates the success of the assessment and actions taken by the museum as a result of the assessment. IMS may request the report be submitted up to 12 months after the close of the grant period.

(20 U.S.C. 96–969)

* * * * *

[FR Doc. 95–5341 Filed 3–3–95; 8:45 am]

BILLING CODE 7036–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–070]

RIN 2115–AE68

Facsimile Filing of Instruments

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its vessel documentation regulations to provide for optional filing of commercial instruments by facsimile, and to establish a filing and recording handling fee for filing instruments by facsimile. The option of filing commercial instruments by facsimile complements the centralization of Coast Guard vessel documentation services. Facsimile filing of commercial instruments is one way in which a centralized vessel documentation center can deliver timely services to distant vessel documentation customers and be responsive to time sensitive matters. Filing commercial instruments by facsimile should further streamline the vessel documentation process.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–070), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Vessel Documentation and Tonnage Survey Branch; (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–070) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, and C. G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

Significant changes to the vessel documentation program were made in 1988 by Public Law 100–710 (the "statute"). Among other things, the statute added chapter 313 to title 46, U.S. Code, to revise, consolidate, and codify into positive law the ship mortgage laws administered by the Department of Transportation. The statute made certain substantive changes to then-existing law to modernize ship mortgages and the filing and recording process.

The legislative history for the statute is contained in House Report No. 100–918. That report noted that one of the primary purposes of chapter 313 of title 46, U.S. Code, is to provide third parties with notice of the existence of mortgages and liens. The report further advocates the use of a central computer system to facilitate access to data. The report noted that the "Secretary should also consider allowing private vessel documentation services to submit applications electronically, with appropriate paper document backup for legal purposes * * *" This proposal would implement some of the suggestions the report made concerning office automation and should realize some of the benefits expected to flow from modernization.

On November 15, 1993, the Coast Guard published a final rule revising 46 CFR part 67 implementing the substantive changes made by the statute. The final rule became effective on January 1, 1994.

Under subpart O of the current regulations, instruments to be filed and recorded with the Coast Guard are first submitted to the appropriate port of record. An instrument submitted for filing and recording must be a completed, executed instrument at the time it is submitted. If the instrument submitted meets the minimal requirements for filing, it is filed and stamped with a date and time. If all of the necessary elements for recording the instrument are present when it is filed, it can be promptly recorded. If an instrument is filed but cannot be recorded because of an error or omission, the instrument is deemed "filed subject to termination" and a 90-day window is provided for correction. If corrected within the 90-day period, the instrument may then be recorded with the recording date and time "relating back" to the date and time filed. If the instrument is not corrected within the 90-day period, the filing is terminated and the instrument is returned. In order to preserve the notice purpose of the statute, any instrument filed with the Coast Guard, even if the filing is terminated and the instrument not recorded, is indexed on the vessel's General Index or Abstract of Title (form CG–1332). Allowing for the submission of an instrument by facsimile for filing would not change any of the procedural steps provided in the current regulations. However, the submission of an instrument by facsimile for filing will start the process earlier, resulting in an earlier date and time for filing and recording purposes.

The Coast Guard is proceeding with the consolidation of its 14 regional vessel documentation offices into one central location. This centralization will conclude the effort begun in 1983 when a number of field offices were consolidated into regional offices. Although most vessel documentation transactions are currently completed by ordinary mail, a number of persons have expressed concern with regard to centralization for those cases where "over-the-counter" service is desired. As an example, some lending institutions will not advance funds under a ship mortgage until assured that the mortgage has been filed and recorded so as to acquire preferred status. In such cases, the Coast Guard documentation officer will verify over the telephone that the mortgage has been filed and recorded and the lending institution will advance funds immediately. The Coast Guard anticipates that the desire for such service will continue. Therefore, the Coast Guard is contemplating further use of office automation technology as part of the centralization effort. One such use of office automation technology is the filing of certain forms and instruments by facsimile. This document proposes amendments to the Coast Guard's regulations to permit optional submission by facsimile of certain forms and instruments for filing.

Discussion of Proposed Rules

The Coast Guard proposes to add to 46 CFR part 67 a new § 67.219 to provide for filing commercial instruments by facsimile submission. Paragraph (a) of proposed § 67.219 would limit the instruments that could be filed by facsimile submission to those identified as eligible for filing and recording in § 67.200. Those instruments are: bills of sale and similar instruments; deeds of gift; mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof; preferred mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof; interlender agreements affecting mortgages, preferred mortgages, and related instruments; and notices of claim of lien and assignments, amendments, and satisfactions and releases thereof. Paragraph (a) of proposed § 67.219 would also list the facsimile telephone number for the National Vessel Documentation Command to which facsimile submissions may be made. Finally, paragraph (a) of proposed § 67.219 would require that the vessel to which the instrument relates either be currently documented or be the subject of an application for documentation.

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In accordance with § 67.203, no instrument will be accepted for filing unless it pertains to a documented vessel or a vessel for which a properly completed application for documentation, redocumentation, or deletion from documentation is filed. The Coast Guard deems an instrument filed contemporaneously with a properly completed application for documentation, redocumentation, or deletion from documentation of the related vessel to meet the requirements of the regulation. Therefore, if the vessel related to the instrument being submitted by facsimile for filing is not a currently documented vessel, a completed application would also have to be submitted by facsimile with the instrument.

Paragraph (b) of proposed § 67.219 would require that the person submitting an instrument by facsimile for filing within 10 days submit the original instrument in duplicate to the National Vessel Documentation Command. One of the duplicate instruments submitted would have to bear original signatures. The 10-day period would begin to run at the time the instrument is received by facsimile at the National Vessel Documentation Command. Since the instrument being submitted by facsimile must be a completed and executed document, the submitter should be able to take it from the facsimile machine, place it in an envelope with the original of any required application and the appropriate fee, and mail the original and a copy to the National Vessel Documentation Command without delay. Thus, the 10-day period is considered a sufficient mailing window. The duplicate submission requirement proposed in paragraph (b) would meet the submission requirement for the filing of all instruments in § 67.209, while obtaining the earlier filing date for those instruments submitted by facsimile. In addition, paragraph (b) of proposed § 67.219 would require that the original of any application required to be submitted by paragraph (a) of this section, which is not already on file, also be submitted to the National Vessel Documentation Command.

Paragraph (c) of proposed § 67.219 would provide that upon receipt of the duplicate instruments and the original of any required application, the date and time of recording of the instrument "relates back" to the date and time that the instrument submitted by facsimile was filed. Provided that the instrument submitted by facsimile for filing meets the minimal requirements for filing, it would be filed at the date and time received by facsimile. The objective of submitting an instrument by facsimile for filing is to obtain an earlier filing date than could otherwise be acquired. Because the instrument submitted by facsimile is itself filed, the process should work well to meet that objective, even during weekends. For example, if an instrument were submitted by facsimile for filing late Friday evening, it would not be reviewed to ensure that it met the filing requirements until the next regular workday. On a regular weekend that would be the following Monday. On most holiday weekends, that would be the following Tuesday. Therefore, it is possible that an instrument submitted by facsimile for filing would not be reviewed to determine whether it met the minimal filing requirements until as many as four days after it was submitted. However, if the instrument submitted by facsimile does meet the filing requirements, then it would be stamped filed and the date and time of filing would be the date and time received by facsimile. The filing of the instrument would then be indexed on the vessel's General Index or Abstract of Title (form CG–1332). Of course, the 10-day period for submitting the duplicate instruments would also start running on the date the instrument is submitted by facsimile. Therefore, persons submitting an instrument by facsimile for filing must exercise due diligence to ensure that the duplicate instruments required by paragraph (b) arrive within the 10-day period. When the duplicate instruments arrive, they would be compared with the instrument filed by facsimile and, if not subject to termination under paragraph (f) of this section, the instrument would be recorded.

Paragraph (d) of proposed § 67.219 would require that all instruments filed by facsimile be clearly legible as received, that they be originally submitted from 8½-inch by 11-inch paper in not less than 10-point type size, and that they be accompanied by a cover sheet. This requirement would provide for minimum quality control of the instruments submitted by facsimile for filing. In addition, clear legibility of the instrument as received will assist Coast Guard personnel to ensure that the instrument meets minimum requirements for filing and recording pending receipt of the duplicate instruments in accordance with paragraph (b).

Paragraph (e) of proposed § 67.219 would indicate that the facsimile cover sheet required by paragraph (d) should contain the name, address, telephone number and facsimile telephone number of the person submitting the instrument by facsimile, and the number of pages submitted. This information will assist Coast Guard personnel to verify receipt of the complete instrument and will provide a point of contact should a difficulty arise in facsimile transmission.

Paragraph (f) of proposed § 67.219 would state the conditions upon which the filing of an instrument submitted by facsimile would be terminated. First, if the duplicate instruments required by paragraph (b) are not received within the 10-day period following submission of the instrument by facsimile, the filing is terminated and the instrument submitted by facsimile is returned to the submitter. Second, if there is any variance between the instrument submitted by facsimile and the duplicate instruments required by paragraph (b), the filing is terminated and the instrument submitted by facsimile is returned to the submitter. The provision for termination because of a variance would ensure that the instrument being submitted by facsimile for filing is not being submitted for the purpose of reserving an earlier filing date for a different or amended instrument submitted as the duplicate instruments required by paragraph (b). The instrument being submitted by facsimile for filing must be a complete and executed instrument at the time it is submitted, as is the case for any instrument submitted for filing under Subpart O of the current regulations.

Paragraph (g) of proposed § 67.219 would provide that where the filing of an instrument submitted by facsimile is terminated pursuant to paragraph (f)(3) because of a variance with the duplicate instruments submitted in accordance with paragraph (b), the duplicate instruments would be treated as an original submission for filing. Provided this instrument meets the minimal requirements for filing, it would be filed but would be subject to termination under § 67.217(a)(1). This instrument would be subject to termination because of the variance with the earlier instrument submitted by facsimile. The termination of filing and distribution of instruments procedures described in § 67.217 (b) and (c) would apply. The reason for treating this instrument as subject to termination is that the same transaction has been addressed by two different instruments with a variance between them. Therefore, the veracity of the facts of the transaction as reflected in the two instruments is in question. The instrument submitted as the duplicate instruments would be subject to the 90-day termination period in which the variance may be explained, thereby curing the defect and allowing for recording of the instrument. In this instance, the recording date and time would relate back to the date and time that the "duplicate instruments" were filed subject to termination. A letter from the person who submitted the instrument by facsimile for filing explaining that the instrument submitted by facsimile has been superseded by the duplicate instruments would be sufficient.

Paragraph (a) of § 67.500 would be revised to clarify the Coast Guard's current practice to not perform any vessel documentation service which is subject to a fee until the required fee is paid. As is current practice, the person requesting the documentation service would submit the fee at the time the service is requested. As applied to the submission by facsimile of instruments for filing, the payment of the fee would accompany the submission of the duplicate instruments submitted in accordance with paragraph (b) of this section.

A new § 67.540 would be added to clearly state that a handling fee would be charged for processing an instrument submitted by facsimile for filing. This fee would not alter the current per page fee charged for filing and recording services, but would be an additional per page fee.

An appropriate entry in Table 67.550—FEES in § 67.550 would be added to reflect the amount of the fee added to address the handling fee. This additional fee is justified because of the additional time Coast Guard personnel would have to expend in processing the facsimile submission, and to cover the added expense of facsimile machines. For example, Coast Guard personnel would have to receive and sort the facsimile submission, review it to ensure that it met minimal filing requirements, assign a filing date and time, store the facsimile submission, retrieve it when the duplicate instruments were received, and compare the facsimile with the duplicate instruments. Based on the additional personnel handling required for an instrument submitted by facsimile for filing, and additional equipment costs, a fee of $2.00 per page is proposed.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard anticipates that optional filing by facsimile will be used only in a limited number of cases. For example, when additional financing is being negotiated; when an assignment or assumption of an existing mortgage is pending; when financing at favorable rates is time critical; or when a vessel owner desires to meet a specific sailing date and filing an instrument is critical to that date, are situations when filing by facsimile could be advantageous. Nevertheless, submission by facsimile is proposed as an optional method of presenting documents for filing. A party may always use regular mail or personal delivery if desired. Therefore, any additional costs to the public associated with this proposal would be due to an election to use the optional method.

In order to more fully anticipate the costs and benefits associated with this proposal, the Coast Guard specifically solicits information from the public concerning potential use of the option of filing by facsimile.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

As explained earlier in this preamble, this proposal, if adopted, would merely add an optional method of submitting certain forms and instruments to the Coast Guard for filing. Since filing by facsimile would be optional, any additional costs borne by any users would be at their election. Current methods of submitting instruments for filing, at no increase in costs, would remain available. In addition, it is anticipated that the option of filing by facsimile would be used only in limited situations where time is of the essence. Therefore, the Coast Guard expects the impact of this proposal to be minimal.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposal merely describes an optional method of submitting instruments for filing and recording.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal has been determined to be categorically excluded because the changes proposed are administrative and procedural in nature, relate solely to the documentation of vessels, and clearly have no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701, 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. Section 67.219 is added to read as follows:

§ 67.219 Optional filing of instruments by facsimile.

(a) Any instrument identified as eligible for filing and recording under § 67.200 may be submitted by facsimile for filing to the National Vessel Documentation Command at [telephone number to be inserted in final rule]. If the instrument submitted by facsimile for filing pertains to a vessel that is not a currently documented vessel, a properly completed Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) or an

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application for deletion from documentation must already be on file with the National Vessel Documentation Command or must be submitted by facsimile with the instrument being submitted by facsimile for filing.

(b) Within 10 days of submitting an instrument by facsimile for filing, the person submitting the instrument by facsimile must submit the instrument in duplicate to the National Vessel Documentation Command, [address to be inserted in final rule]; at least one copy must bear original signatures. If not already on file, the original of any application required by paragraph (a) of this section must also be submitted with the original instrument to the National Vessel Documentation Command.

(c) Upon receipt of the instrument in duplicate in accordance with paragraph (b) of this section, the date and time of recording of the instrument is the date and time the instrument submitted by facsimile was filed.

(d) All instruments submitted by facsimile for filing must be clearly legible, submitted from 8½-inch by 11-inch paper in not less than 10-point type size, and accompanied by a cover sheet.

(e) The facsimile cover sheet required by paragraph (d) of this section should indicate the name, address, telephone number and facsimile telephone number of the person submitting the instrument by facsimile, and the number of pages submitted by facsimile.

(f) The filing of any instrument submitted by facsimile is terminated and the instrument will be returned to the submitter if:

(1) The instrument is subject to termination for any cause under § 67.217(a);

(2) The instrument required to be submitted in duplicate in accordance with paragraph (b) of this section is not received within the 10-day period; or

(3) There is any variance between the instrument submitted by facsimile for filing and the instrument submitted in duplicate in accordance with paragraph (b) of this section.

(g) When the filing of an instrument submitted by facsimile is terminated for a variance in accordance with paragraph (f)(3) of this section, the instrument submitted in duplicate in accordance with paragraph (b) of this section will be deemed to be an original filing under this subpart subject to termination under § 67.217(a)(1). The instrument submitted in duplicate will be deemed not in substantial compliance with the applicable regulations in this part because of the variance between it and the instrument submitted by facsimile. The procedures for termination of filing and disposition of instruments described in paragraphs (b) and (c) of § 67.217 will apply.

3. In § 67.500, paragraph (a) is revised to read as follows:

§ 67.500 Applicability.

(a) This subpart specifies documentation services provided for vessels for which fees are applicable. No documentation service for which a fee is applicable will be performed until the appropriate fee has been paid. Fees are contained in Table 67.550.

* * * * *

4. Section 67.540 is added to read as follows:

§ 67.540 Facsimile handling fee.

A handling fee is charged for processing an instrument submitted by facsimile for filing in accordance with subpart O of this part.

5. In § 67.550, Table 67.550 is amended by adding "Facsimile submission handling" as an entry following the entry "Notice of claim of lien and related instruments" under the category "Filing and recording:" to read as follows:

§ 67.550 Fee table.

* * * * *

TABLE 67.550.—FEES

Activity	Reference	Fee
. . . . .	.	.
Facsimile submission handling	Subpart O	[1]2.00
. . . . .	.	.

[1] Per page.

* * * * *

Dated: February 28, 1995.

N.W. Lemley,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–5387 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–009, Notice 01]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces that NHTSA will be holding a public meeting regarding the misuse of child restraint systems (safety seats). NHTSA seeks comments on actions that the agency, industry and public can do to improve the proper installation and use of child safety seats.

DATES: *Public meeting:* A public meeting to hear views and comments will be held in Indianapolis, Indiana on April 2, 1995, from 1 p.m. to 4 p.m.

Those wishing to make oral presentations at the meeting should contact Dr. George Mouchahoir, at the address or telephone number listed below by March 24, 1995.

Written comments: Written comments may be submitted to the agency and must be received by April 2, 1995.

ADDRESSES: *Public meeting:* The public meeting will be held at the following location: The Hyatt Regency Indianapolis, One South Capitol Avenue, Indianapolis, Indiana 46204, Telephone: (317) 632–1234/(800) 233–1234 Toll Free Reservations.

Written comments: All written comments must refer to the docket and notice number of this notice and be submitted (preferable 10 copies) to the Docket Section, National Highway Traffic Safety Administration (NHTSA), Room 5109, 400 Seventh St., S.W., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION: A child safety seat that is installed properly and used correctly provides very effective crash protection for a child. However, the safety benefits of a child seat can be reduced or negated by misuse of the seat. The agency believes in most cases, the misuse is unknown to the person installing or using the restraint.

In September 1994, three-year-old Dana Hutchinson was killed in a misused child seat. The DANA Foundation, established by the child's family after the crash to encourage correct safety seat use, describes the crash:

> Dana's father had installed her child safety seat in their car for a short trip to Grandma's house. As always, he checked it to make sure it was tightly held. When her mother picked her up from school, Dana was securely fastened in the seat, and the installation was double-checked. As always, she and her two brothers were safely buckled in before the trip began.
>
> It was raining very hard, and the roads were slippery. Their car was in a serious collision with a pick-up truck, and Dana, her mother, and her two brothers were injured. A few days later, Dana died from severe head and neck injuries. The police report from the accident stated an opinion that her child safety restraint was improperly secured.

The vehicle in which Dana Hutchinson was restrained required a supplemental buckle that was specially designed for use with child seats. The need for this buckle was discussed in the vehicle owner's manual. While Dana's parents did not read the manual, they thought they had done everything they were supposed to do to secure their child in the car seat.

Improving the proper installation and use of child seats is a NHTSA priority. In recent months, NHTSA Administrator Ricardo Martinez appeared on national television to make the public more aware of misuse problems. The agency has also worked with newspapers, magazines and other journals across the country to alert the public that misuse is "foiling child safety seat's effectiveness" (quoting headline in December 12, 1994 article of the Washington Post). Further, last month Administrator Martinez announced the formation of a "blue ribbon panel" of experts to recommend ways that safety seats can be made easier to install and use. Panel members include senior representatives of the motor vehicle, child safety seat and seat belt industries, a pediatric physician and several child safety seat practitioners. Mr. Joseph Colella, the executive director of the DANA Foundation, is also a member. The panel moderator is Philip Haseltine, president of the American Coalition for Traffic Safety. By June 1, the panel will make recommendations to the industries affected and the general public.

NHTSA is having the public meeting to afford interested persons the opportunity to comment on child seat misuse problems. The transcript of the meeting will be made available to the blue ribbon panel for its consideration. While blue ribbon panel members may be attending the public meeting as observers, they will not be participating formally in the proceeding.

The agency would like information about misuse problems from parents or other caretakers who personally had difficulty using a safety seat with a child. What feature of the child seat promoted the misuse problem? NHTSA is also interested in the observations of educators or safety specialists who have encountered misuse problems when training members of the public to use child seats correctly. How are safety seats being misused? What has been or could be done to reduce that misuse? How can parents and other caretakers be encouraged to read owner's manuals to learn how to use a child safety seat correctly? The agency seeks information from child seat and vehicle manufacturers on what aspects of Federal Motor Vehicle Safety Standard 213, "Child Restraint Systems," encourage or discourage proper child seat use. For example, child seat labeling requirements have often been criticized as overwhelming the consumer with long and complex warnings and instructions. How can these labeling requirements be improved? Which aspects of the labeling requirements should be retained, and which should be abolished, and why? How do manufacturers assess whether a child seat will be misused (i.e., the potential for misuse)? What actions have been taken by vehicle and child seat manufacturers to reduce consumers' misuse of child seats?

NHTSA requests comments from all interested persons on the compatibility between vehicle seat and belt assemblies and child safety seats that promote system misuse. NHTSA is concerned that child safety seats and the vehicles they are used in are not always readily compatible, making it difficult for parents to install and use the safety seat to ensure that their child receives the best level of protection. The incompatibility arises from differences in vehicle seat cushion width, depth and angles; forward-mounted anchorage points, and vehicle belt systems with emergency locking retractors, at times create an improper fit or difficult installation of the safety seat. As noted above, the blue ribbon panel will recommend ways to make child safety seats and vehicles more compatible to promote convenient and correct usage.

The agency has chosen the date and place of the public meeting to coincide with NHTSA's Lifesavers 1995 National Conference on Highway Safety Priorities, which will be held on April 2–5, 1995 in Indianapolis, Indiana. It hopes that scheduling the public meeting for April 2 will encourage persons participating in the Lifesavers conference to attend the public meeting to share their views. Typically, Lifesavers participants work in state highway safety agencies, community traffic safety programs, state or local EMS or injury prevention offices, and state or local law enforcement agencies. (For information about the Lifesavers conference, contact Ms. Shirley Barton, NHTSA Office of Traffic Safety Programs, at (202) 366–2687.)

Procedural Matters

As noted at the beginning of this notice, persons wishing to speak at the public meeting should contact Dr. Mouchahoir by the indicated date. If the number of requests for oral presentations exceeds the available time, NHTSA will ask prospective speakers with similar views to combine presentations. To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the meeting. Thus, any person desiring assistance of auxiliary aids should contact Ms. Barbara Carnes, NHTSA Office of Rulemaking, telephone (202) 366–1810, no later than 10 days before the meeting.

Those speaking at the public meeting should limit their presentation to 10 minutes. If the presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting so that NHTSA can readily include the material in the public record.

The presiding officials at the meeting may ask questions of any speaker, and any participant may submit written questions for the official, at its discretion, to address to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits,

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persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentations will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: March 1, 1995.

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 95–5416 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–69–P

Notices

Federal Register
Vol. 60, No. 43
Monday, March 6, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Feed Grain Donations; Spokane Indian Reservation of Washington

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Acting Executive Vice President, Commodity Credit Corporation (CCC) announces that the Spokane Indian Reservation of Washington is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

FOR FURTHER INFORMATION CONTACT: John Newcomer, Consolidated Farm Service Agency, P.O. Box 2415, Washington, DC, 20013–2415, 202–720–6157.

SUPPLEMENTARY INFORMATION: Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, notice is being given that it is determined that:

1. The chronic economic distress of the needy members of the Spokane Tribe using the Spokane Indian Reservation of Washington has been materially increased and become acute because of severe drought and high temperatures during the 1994 growing season, thereby severely affecting livestock feed production and causing increased economic distress. This reservation is utilized by members of the Spokane Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by CCC for livestock feed for such needy members of the Spokane Tribe using the Spokane Indian Reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, the Spokane Indian Reservation of Washington is declared an acute distress area and the donation of feed grain owned by the CCC is authorized to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Spokane Tribe utilizing such lands. These donations by the CCC may commence upon February 2, 1995, and shall be made available through April 30, 1995, or such other date as may be stated in a notice issued by the Acting Executive Vice President, CCC.

Signed at Washington, DC, on March 1, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–5408 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–05–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Special Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Open meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold an executive session and a public meeting on March 20, 1995. The executive session is closed to the public.

DATES: March 20, 1995.

ADDRESSES: Radisson Penn Harris Hotel & Convention Center 1150 Camp Hill Bypass in Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Marc S. Tenan, Executive Director 207 State Street, Harrisburg, PA 17101, 717–234–6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Pub. L. 100–319, May 19, 1988). The Commission represents the states of Delaware, Maryland, West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Pub. L. 99–240, January 15, 1986).

The primary purpose of the public meeting is to consider a $1.5 million grant request from the Pennsylvania Department of Environmental Resources. A summary of the executive session will also be presented.

The notice of this special meeting may not be printed with 14 days notice as required by Public Law 100–319 and the Administrative Procedure Act because of the urgency of the agenda.

Marc S. Tenan,

Executive Director

[FR Doc. 95–5482 Filed 3–3–95; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1994

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1994, for each state and the District of Columbia are as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: February 28, 1995

Ronald H. Brown,

Secretary of Commerce

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1 1994

[In thousands]

Area	Population 18 and over
United States	192,323
Alabama	3,139
Alaska	415
Arizona	2,936
Arkansas	1,812
California	22,753
Colorado	2,686
Connecticut	2,487
Delaware	532
District of Columbia	452
Florida	10,690
Georgia	5,163
Hawaii	874
Idaho	794
Illinois	8,668
Indiana	4,279
Iowa	2,100
Kansas	1,863
Kentucky	2,857
Louisiana	3,080
Maine	935
Maryland	3,7

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ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 1994—Continued

[In thousands]

Area	Population 18 and over
Massachusetts	4,617
Michigan	6,971
Minnesota	3,327
Mississippi	1,913
Missouri	3,899
Montana	619
Nebraska	1,181
Nevada	1,081
New Hampshire	845
New Jersey	5,973
New Mexico	1,156
New York	13,658
North Carolina	5,314
North Dakota	466
Ohio	8,248
Oklahoma	2,378
Oregon	2,304
Pennsylvania	9,155
Rhode Island	757
South Carolina	2,712
South Dakota	513
Tennessee	3,879
Texas	13,077
Utah	1,236
Vermont	435
Virginia	4,949
Washington	3,935
West Virginia	1,393
Wisconsin	3,735
Wyoming	339

Note: These estimates are consistent with the population as enumerated in the 1990 census, and have not been adjusted for census coverage errors.

Source: Population Distribution Branch, Bureau of the Census, Washington, D.C.

For a description of methodology see Current Population Reports, P25–1010 and P25–1106.

[FR Doc. 95–5311 Filed 3–3–95; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Notice of Scope Rulings

February 24, 1995.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between October 1, 1994, and December 31, 1994. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3931.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between October 1, 1994, and December 31, 1994, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in April 1995 a notice of scope rulings and anticircumvention inquiries completed between January 1, 1995, and March 31, 1995, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between October 1, 1994, and December 31, 1994:

Country: People's Republic of China.

A–570–504 *Petroleum Wax Candles*
Lew-Mark Baking Co.—The pansy candle tin is within the scope of the order. 12/16/94.

Country: Japan.

A–588–405 *Cellular Mobile Telephone and Subassemblies*
Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics America, Inc.—Model 2000 portable cellular telephone is not within the scope of the order. 11/09/94.
JRC International—Portable cellular telephone model PTR–830 is not within the scope of the order. 11/09/94.

A–588–823 *Professional Electric Cutting Tools*
Makita Inc., Makita U.S.A.—Wood Surfacer model LP1812C is not within the scope of the order. 12/16/94.
Makita Inc., Makita U.S.A.—Electronic Jig Saw model 4304 is not within the scope of the order. 12/16/94.

A–588–814 *Polyethylene Terephthalate (PET) Film*
Kimoto U.S.A. Inc.—Anti-Static Clear Film is not within the scope of the order. 11/10/94.
Tektronix Inc., Tektronix Asia—Overhead projection film model 4681 is within the scope of the order and model 4684 is not within the scope of the order. 12/19/94.

Country: Germany.

A–428–801 *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*
Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order. 12/05/94

II. Anticircumvention Rulings Completed Between October 1, 1994, and December 31, 1994

None.

III. Scope Inquiries Terminated Between October 1, 1994, and December 31, 1994

Country: Sri Lanka.

C–542–401 *Mill Products and Apparel*
Liz Claiborne, Inc.—Clarification to determine whether certain women's cotton denim jeans are within the scope of the countervailing duty (CVD) order. The CVD order was revoked as of May 18, 1992, rendering this scope request moot. 12/02/94.

IV. Anticircumvention Inquiries Terminated Between October 1, 1994, and December 31, 1994

None.

V. Pending Scope Clarification Requests as of December 31, 1994

Country: Canada.

A–122–006 *Steel Jacks from Canada*
Seeburn, a division of Ventra Group, Inc.—Clarification to determine whether automotive tire jacks are within the scope of the order.

Country: Mexico.

A–201–805 *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.
Tubacero International Corporation - Clarification to determine whether circular welded carbon steel piping, 16 inches in outside diameter with 3/8 inch wall thickness, for use in extremely heavy load bearing applications is within the scope of the order.

Country: Brazil.

A–351–809 *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–351–503 *Iron Construction Castings*
Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.

C–351–504 *Iron Construction Castings*
Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.

Country: France.

A–427–078 *Sugar*
Boiron-Borneman, Inc.—Clarification to determine whether manufactured homeopathic sugar pellets are within the scope of the order.

Country: Turkey.

A–489–501 *Welded Carbon Steel Standard Pipe and Tube Products*
Allied Tube and Conduit Corporation, Wheatland Tube Company, Laclede Steel Company, Sharon Tube Company, and Sawhill Tubular Division of Armco, Inc. - Clarification to determine whether pipe and tube which meets the order's physical specifications, when intended for or actually used as standard pipe and tube, is included within the scope of the order.

Country: People's Republic of China.

A–570–001 *Potassium Permanganate*
Aerostat Inc.—Clarification to determine whether certain plastic ignitor spheres are within the scope of the order.

A–570–504 *Petroleum Wax Candles*
Two's Company—Clarification to determine whether certain decorated pillar candles and red and gold angel taper candles are within the scope of the order.
Springwater Cookie and Confections—Clarification to determine whether certain feather twist candles are within the scope of the order.

A–570–502 *Iron Construction Castings*
Jack's International—Clarification to determine whether certain cast iron area drains are within the scope of the order.

A–570–804 *Sparklers*
Fritz Companies Inc.—Clarification to determine whether 14 inch Morning Glorys are within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*
Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

Country: Korea.

A–580–809 *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–580–811 *Steel Wire Rope*
TSK Korea and Hi-Lex Corp. - Clarification to determine whether certain motion control cables are within the scope of the order.

Country: Japan.

A–588–802 *3½" Microdisks*
TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*
Dana Corporation—Clarification to determine whether an automotive component known variously as a center bracket assembly, center bearing assembly, support bracket, or shaft support bearing, is within the scope of the order.
Nakanishi Manufacturing Corp.—Clarification to determine whether a stamped steel washer with a zinc phosphate and adhesive coating which is used in the manufacture of a ball bearing seal is within the scope of the order.

A–588–014 *Tuners*
Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components, are within the scope of the finding.
Fujitsu Ten Corporation of America - Clarification to determine whether certain "front end" components of car tuners are within the scope of the finding.

A–588–405 *Cellular Mobile Telephones and Subassemblies*
Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether certain portable telephones, subassemblies, and components thereof are within the scope of the order (five products).
TDK Corporation of America—Clarification to determine whether Duplexers, Voltage Control Oscillators, and Isolators are within the scope of the order.
JRC International—Clarification to determine whether portable cellular telephone model PTR–829 is within the scope of the order.
JRC International Clarification to determine whether portable cellular telephone model PTR–870 is within the scope of the order.
NEC Corporation and NEC America, Inc.—Clarification to determine whether portable cellular telephone models MP5A1D1 and MP5A1D2 are within the scope of the order.
Matsushita Communication Industrial Corporation of America—Clarification to determine whether Panasonic portable cellular telephone, models EB–3560 and EB–3561, are within the scope of the order.

A–588–823 *Professional Electric Cutting Tools*
Makita Inc., Makita U.S.A.—Clarification to determine whether Planer-Jointer model 2030SC is

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within the scope of the order.
Makita Inc., Makita U.S.A.—Clarification to determine whether Chain Morticer model 7104L is within the scope of the order

A–588–055 *Acrylic Sheet*
Sumitomo Chemical America, Inc.—Clarification to determine whether acrylic sheet with light scattering properties is within the scope of the order.

A–588–604 *Tapered Roller Bearings and Parts Thereof*
Koyo Seiko—Clarification to determine whether certain forgings are within the scope of the order. Affirmative preliminary ruling issued on February 28, 1994.

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*
Iwatsu America, Inc. and Iwatsu Electric Co.—Clarification to determine whether certain circuit cards are within the scope of the order.

Country: Venezuela.

A–307–805 *Circular Welded Non-Alloy Steel Pipe*
Self-initiation. Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Country: Argentina.

C–357–803 *Leather*
Petitioners—Clarification to determine whether upper bovine leather without hair on, not whole, prepared after tanning is within the scope of the countervailing duty order

Country: Sweden.

A–401–040 *Stainless Steel Plate*
Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the finding. Affirmative preliminary scope ruling issued on November 16, 1994.

Country: Germany.

A–428–801 *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*
Consolidated Saw Mill International (CSMI) Inc.—Clarification to determine whether certain Cambio bearings contained in its sawmill debarker are within the scope of the order. Affirmative preliminary ruling issued on December 16, 1994.
Marquart Switches—Clarification to determine whether certain steel balls are within the scope of the order.

Country: Taiwan.

A–583–810 *Chrome-Plated Lug Nuts*
Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–583–603 *Stainless Steel Cookware*
Max Burton Enterprises, Inc.—Clarification to determine whether the Max Burton StoveTop Smoker is within the scope of the order.

A–583–508 *Porcelain-on-Steel Cookware*
Blair Corp.—Clarification to determine whether product number 271911, eight-quart stock pot and product number 271921, twelve-quart stock pot are within the scope of the order.
Blair Corp.—Clarification to determine whether product number 1001, seven piece cookware set is within the scope of the order.

A–583–816 *Certain Stainless Steel Butt-Weld Pipe Fittings*
Top Line Process Equipment Corporation—Clarification to determine whether various stainless steel tube fittings with non-welded end-connections, and other products, are within the scope of the order.

VI. Pending Anticircumvention Inquiry Requests as of December 31, 1994

Country: Mexico.

A–201–806 *Steel Wire Rope*
Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope. Affirmative preliminary determination of circumvention published June 3, 1994.

Country: Japan.

A–588–602 *Carbon Steel Butt-Weld Pipe Fittings*
U.S. Fittings Group—Anticircumvention inquiry to determine whether a producer of Carbon Steel Butt-Weld Pipe Fittings in Japan is circumventing the antidumping duty order by shipping parts to Thailand for processing and importing the finished product into the United States.

Country: Germany.

A–428–811 *Hot-Rolled Lead and Bismuth Carbon Steel Products*
Inland Steel Bar Company and USS Kolbe Steel Company—Anticircumvention inquiry to determine whether a producer of steel in Germany is circumventing the antidumping duty order by shipping leaded steel billets to its wholly-owned subsidiary in the Netherlands, hot-rolling the billets into bars and rods and then exporting them to the United States.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: February 24, 1995.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance

[FR Doc. 95–5430 Filed 3–3–95; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 931090–4048]

RIN 0525–AA06

Allocation of Duty-Exemptions for Calendar Year 1995 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates 1995 duty-exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–1660.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands In accordance with § 303.3(a) of the regulations (15 CFR part 303), this action establishes the total quantity of duty-free insular watches and watch movements for 1995 at 5,100,000 units and divides this amount among the three insular possessions of the United States and the Northern Mariana Islands. Of this amount, 3,600,000 units may be allocated to Virgin Islands producers, 500,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (59 FR 8847).

The criteria for the calculation of the 1995 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by producers in the Virgin Islands and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1994 the Virgin Islands watch assembly firms shipped 2,269,461 watches and watch movements into the customs territory of the United States under Pub. L. 97–446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1994 plus the creditable wages paid by the industry during calendar year 1994 to residents of the territory totalled $5,694,887.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 1995 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA–334P) as a result of the Departments' verification; and reallocation of the duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1995 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	250,000
Progress Watch Co., Inc	650,000
Unitime Industries, Inc	500,000
Tropex, Inc	400,000
Timex V.I., Inc	742,000

Susan G. Esserman,
Acting Assistant Secretary for Import Administration.

Leslie M. Turner,
Assistant Secretary for Territorial and International Affairs.

[FR Doc. 95–5431 Filed 3–3–95; 8:45 am]
BILLING CODE 3510–DS–P and 4310–93–P

National Oceanic and Atmospheric Administration

[Docket No. 950227061–5061–01; I.D. 020695C]

RIN 0648–XX11

Northeast Fishing Industry Grants (FIG) Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: NMFS issues this notice describing the conditions under which applications will be accepted under the FIG Program and how NMFS will determine which applications it will fund. This notice implements the second round of the FIG Program, for which $4.5 million is available to fund innovative proposals to assist the Northeast fishing industry to promote the development of commercial fishing and markets for underexploited species; develop methods for eliminating or reducing bycatch; and create new business and alternative employment opportunities for those who have been affected by the decline of the traditional fisheries.

DATES: Applications must be received by May 5, 1995. Applicants must submit one signed original and two copies of the complete application. No facsimile applications will be accepted. Generally, the time required to process applications is 120 days from the closing date of the solicitation.

ADDRESSES: Applications should be sent to the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298, telephone: (508) 281–9256 or (508) 281–9267. Application kits, with instructions for completion, may be obtained from that office.

FOR FURTHER INFORMATION CONTACT: Kenneth Beal or Joyce Lacerda, NMFS, at (508) 281–9267.

SUPPLEMENTARY INFORMATION:

I. Background

Under the provisions of Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994, $30 million has been provided to the U.S. Department of Commerce (Department) for the Northeast Fisheries Assistance Program (NFAP) to address the needs of those directly affected by the decline of the traditional fisheries in the Northeast. Of the total package, $18 million has been designated to the Economic Development Administration to provide economic adjustment assistance to communities; $12 million has been designated to NMFS for direct industry assistance in the form of (1) loan guarantees under the Fisheries Obligation Guarantee Program to help restructure existing debt, (2) grants to assist the fishing industry which has been affected by the decline of the traditional groundfish and scallop fisheries and, (3) Fishing Family Assistance Centers in the Northeast to serve as clearinghouses for all possible assistance available from Federal and state sources.

Of the $12.0 million in NFAP funds administered by NMFS $9.0 million is being provided directly to the private sector through grants under the FIG Program, which is authorized under 15 U.S.C. 713c–3(d). These grants are being provided in two rounds. The availability of $4.5 million for the first round was announced in the **Federal Register** on July 8, 1994 (59 FR 35107). In response to that notice, 201 proposals were received. Of those 201 proposals, 28 were recommended for funding. Eleven of the 28 projects will address development of commercial fisheries and markets for underexploited finfish and shellfish species; nine will focus on aquaculture as a method for enhancing natural production of groundfish and shellfish stocks, and also as a commercial enterprise; and eight will explore various aspects of new business opportunities for displaced fishermen. Federal support for these projects ranges from $20,000 to $654,900, with an average Federal funding level of $160,714.

Since July 1994, when the first round of the FIG Program was implemented, the situation with respect to the New England groundfish stocks has worsened. As recent stock assessments indicated that groundfish populations were on the verge of collapse, NMFS approved the New England Fishery Management Council's request for implementation of emergency regulations while a more comprehensive plan is developed to restore the stocks. In recognition of the adverse impact of further reductions in fisheries access on the fishing industry, the second round of the FIG Program, through which $4.5 million will be provided, will

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emphasize short-term assistance for those directly dependent upon groundfish and other traditional Northeast Fishery resources.

Additional consideration will be given to those applications under this solicitation that include participation by individuals who own or operate fishing vessels permitted under the Magnuson Fishery Conservation and Management Act (Magnuson Act)(i.e., participants in the New England Groundfish fishery), and who agree to tender their privilege to harvest regulated multi-species finfish for the duration of the assistance period.

Through this notice, NMFS is soliciting applications for Federal assistance, and describing the conditions under which applications will be accepted for the second part of the FIG Program and how NMFS will select the applications it will fund.

II. Funding Priorities

The following have been identified as priorities for part two of the FIG Program:

A. Develop projects/conduct activities to provide alternate employment or new business opportunities (e.g., through aquaculture or improved processing and expanded use of fish waste) for those who have been affected by the decline of the traditional fisheries.

B. Promote development of commercial fisheries and markets for underexploited species of the northwest Atlantic Ocean. For the purposes of this solicitation, underexploited species include, but are not limited to, red hake (Gulf of Maine to Mid-Atlantic); Atlantic herring (coastal stock complex); Atlantic mackerel (Labrador to North Carolina); butterfish (Gulf of Maine to the Mid-Atlantic); skates (Gulf of Maine to the Mid-Atlantic); and short-finned squid (*Illex*) (Gulf of Maine to the Mid-Atlantic). Note: If applicable, recipients must have the appropriate Federal fishing permits in their possession. Also, if applicable, obtaining an experimental fishing permit may be required prior to approval of project activities.

C. Develop methods for eliminating or reducing the inadvertent take, capture or destruction of nontargeted, protected, or prohibited species (e.g., juvenile or sublegal-sized fish and shellfish) in fishing operations through the technical development, demonstration, or evaluation of fishing gear or harvesting strategies.

Applications may be for demonstration or pilot projects, technology development and/or transfer, experimental fishing, or other activities to develop immediate and long-term employment or new business opportunities for the various segments of the fishing industry. Funding will not be provided for projects primarily involving construction or operational costs for individual businesses. Those seeking financial assistance for proprietary business activities, e.g., business loans, may contact the Family Assistance Centers listed in section III.A. of this document for information regarding other types of financial assistance.

The priorities contained in this solicitation provide potential applicants with a general sense of program focus and are not intended to limit or further constrain development of innovative proposals. Additional consideration (see section IV.A.2.f.) will be given to applications under this solicitation that include participation by individuals who own or operate fishing vessels permitted under the Magnuson Act (i.e., participants in the New England groundfish fishery) who agree to tender their privilege to harvest multispecies finfish for the duration of the project.

III. How To Apply

A. Eligible Applicants

Applications for assistance may be made, in accordance with the procedures set forth in this notice, by any individual who is a citizen or national of the United States, or any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802).

Federal Government agencies or employees, including full-time, part-time, and intermittent personnel (or their spouses or blood relatives who are members of their immediate households), are not eligible to submit an application under this solicitation.

Assistance from NMFS employees is available to eligible applicants, by telephone or through pre-proposal meetings, and will be limited to such issues as the program goals, funding priorities, application procedures, and responding to questions regarding completion of application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring competitive proposals. Pre-proposal meetings will be held at Fishing Family Assistance Centers located in Portland and Rockland, ME; Gloucester, New Bedford, and Chatham, MA; and Narragansett, RI. Details on specific times and location of pre-proposal meetings may be obtained by calling the NMFS Northeast Regional Office in Gloucester (508–281–9256 or 508–281–9267), or the nearest Fishing Family Assistance Center. The addresses and telephone numbers of all Fishing Family Assistance Centers are as follows:

Fishing Family Assistance Center, National Marine Fisheries Service, Federal Building, Room 200, 21 Limerock Street, Rockland, ME 04841; Tel: 207–594–2267.

Fishing Family Assistance Center, National Marine Fisheries Service, Marine Trades Center, Suite 311, 2 Portland Fish Pier, Portland, ME 04101; Tel: 207–780–3423.

Fishing Family Assistance Center, National Marine Fisheries Service, Department of Employment and Training, 11–15 Parker Street, Gloucester, MA 01930; Tel: 508–283–2863.

Fishing Family Assistance Center, National Marine Fisheries Service, 15–A Market Place, Chatham, MA 02633; Tel: 508–945–5492.

Fishing Family Assistance Center, National Marine Fisheries Service, Greater New Bedford Reemployment Career Services, 693 Purchase Street, New Bedford, MA 02740; Tel: 508–979–1750.

Fishing Family Assistance Center, National Marine Fisheries Service, 118 Point Judith Road, Narragansett, RI 02882; Tel: 401–782–8640.

B. Duration and Terms of Funding

Generally, grants are awarded for a period of 1 year, but no more than 18 months at a time. Renewal of an award to increase funding, or to extend the period of performance, is at the total discretion of the Department.

If an application is selected for funding, the Department has no obligation to provide any additional future funding in connection with that award.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

C. Costsharing

Sharing of project costs by applicants is not required and will not be considered in the technical evaluation of proposals. However, NMFS does encourage costsharing and will take into account the degree to which costsharing is provided in the final selection of projects to be funded. If costsharing is proposed, the applicant will be obligated to account for both the Federal and non-Federal amounts contained in the award document.

D. Format

This format for Phase II has been streamlined from that in Phase I. Proposals must identify the principal participants and include copies of any agreements between the participants and the applicant, describing the specific tasks to be performed. Project applications must be clearly and completely submitted in the format that follows. The forms described are available, with instructions for completion, from the Northeast Regional Office, NMFS (see **ADDRESSES**).

1. *Cover sheet*: An applicant must use Office of Management and Budget (OMB) Standard Form 424 (revised 4–92) as the cover sheet for each project. (Do not complete item 16 of Standard Form 424 (REV 4–92). NMFS will obtain for the applicant any necessary clearances by the State Single Point of Contact established as a result of E.O. 12372, Intergovernmental Review of Federal Programs, to which this program is subject.)

2. *Project summary*: An applicant must complete NOAA Form 88–204 (10–92), Project Summary, for each project. This form is required in addition to the Project Narrative described below. Those applications which are to receive additional consideration in the review process must include the following sentence in the upper left-hand corner of this form: "If selected for funding, I agree to tender my privilege to fish for and retain regulated multispecies finfish for the duration of this project. My vessel name and permit number are _____."

If an application involves more than one vessel, a similar statement for each vessel may be attached to the Project Summary sheet, with the signature of the appropriate vessel owner(s).

3. *Project budget*: A budget must be submitted for each project, using NOAA Form 88–205 (10–92), Project Budget. The applicants must submit cost estimates showing total project costs. Costsharing is discretionary, but if applicants choose to cost share, both the Federal and non-Federal shares must be shown, divided into cash and in-kind contributions. To support the budget, the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Estimates of the direct costs must be specified in the categories listed on the Project Budget form. The budget may also include an amount for indirect costs, if the applicant has an established indirect cost rate with the Federal Government. A copy of the current, approved, negotiated indirect Cost Agreement with the Federal Government must be included with the application, if applicable. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. This restriction also applies to any subrecipient of this program.

NMFS will not consider fees or profits as allowable costs for applicants.

The total costs of a project consist of all costs incurred in accomplishing project objectives during the life of the project. A project begins on the effective date of an award between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Generally, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are not reimbursable.

4. *Project narrative description*: The project must be completely and accurately described, as follows:

a. *Project goals and objectives*: State what the proposed project is expected to accomplish.

b. *Project statement of work*: The statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated goals and objectives.

(1) Describe in detail the project design. What work, activities, or procedures will be undertaken to produce anticipated results?

(2) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting).

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

c. *Project management*: Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. Provide a statement of experience and qualifications for the Principal Investigator(s). If any portion of the project will be conducted through consultants and/or subcontractors, applicants must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. Commercial organizations and individuals which apply should use OMB Circular A–110. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection. If a consultant and/or subcontractor has been selected as a "sole source," a justification must be provided giving the unique qualifications for the selection.

d. *Project impacts*: Describe the anticipated impacts of the project in terms of increased employment, increased landings, processing; and sales of underutilized species, or other measurable factors. Describe how the results of the project will be made available to the public.

e. *Federal, state, and local government activities*: List any existing Federal, state, or local government programs or activities that this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

5. *Supporting documentation*: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed.

IV. Evaluation Criteria and Selection Procedures

A. Evaluation of Proposed FIG Projects

1. *Consultation with interested parties*: NMFS will evaluate applications in consultation with NMFS Offices, the NOAA Grants Management Division, and, as appropriate, Department and other Federal agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and others outside NMFS who have knowledge in the subject matter of a project or who would be affected by a project. The Regional Fishery

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Management Councils may be asked to review applications that could affect a managed fishery, the bycatch of a managed fishery, or a fishery management issue.

2. *Technical evaluation*: NMFS will solicit technical evaluations of each project application from appropriate private and public sector experts. Point scores will be given to project applications, based on the following evaluation criteria:

a. *Problem description and concept for problem resolution.* The applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (20 points)

b. *Soundness of project design/ technical approach.* Applications will be evaluated as to the soundness of the project design and the adequacy of the technical approach as it relates to achieving the stated goals and objectives. What are the proposal's strengths and weaknesses? (25 points)

c. *Project management and experience and qualifications of personnel.* The organization and management of the project and the project's Principal Investigator and other key personnel in terms of related experience and qualifications will be evaluated. Those projects that do not identify the Principal Investigator with his or her qualifications will receive a lower point score. (20 points)

d. *Project costs.* The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high project costs will be taken into account. (15 points)

e. *Project impacts.* The degree to which alternative employment or business opportunities are created for those dependent upon traditional Northeast fisheries resources will be evaluated. For example, will displaced fishermen be employed during the project period and beyond? (20 points)

f. *Tendering of multispecies harvesting privileges.* Applicants who are willing to tender these privileges for the assistance period will be given an additional 10 points.

g. In addition to the above criteria, in reviewing applications that include consultants and contracts, NMFS will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

3. *Constituent panel review*: After the technical evaluation, comments will be solicited individually from members of a panel of at least three representatives, selected by the Assistant Administrator for Fisheries, NOAA (AA), from the fishing industry, state government, and others, as appropriate, to rank the projects. Considered in the rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. Each panelist will individually rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Selection Procedures and Project Funding

After projects have been evaluated and ranked, the Director, Northeast Region, NMFS, will develop recommendations for project funding. These recommendations will be submitted to the AA, who will determine the number of projects to be funded, ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The funding instrument will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligation of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. *Primary applicant certification.* Applicants whose applications are recommended for funding will be required to submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-free workplace.* Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-lobbying.* Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. *Anti-lobbying disclosure.* Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. *Lower tier certifications.* Successful applicants shall require applicants/ bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF-LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

B. Other Requirements

1. *Federal policies and procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and Department policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review.* All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

3. *Financial management certification/preaward accounting survey.* Successful applicants at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a pre-award accounting survey by the Department prior to execution of the award.

4. *Past performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. *Delinquent Federal debts.* No award of Federal funds shall be made to an applicant or to its subrecipients who have an outstanding delinquent Federal debt or fine until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department are made.

6. *Buy American-made equipment or products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, sections 607(a) and (b).

7. *Pre-award activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, OMB Control Number 0648–0135. Public reporting burden for preparation of the grant application is estimated to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., Rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, Attention: NOAA Desk Officer.

Authority: 15 U.S.C. 713c–3(d).

Dated: March 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–5399 Filed 3–1–95; 3:56 pm]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Special Demonstration Project, Availability of Funds

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to $100,000 for service/development projects to meet significant human needs in the Yukon-Kuskokwim Delta of Alaska. Any Indian tribe, public or private non-profit organization, or institution of higher education that has formed a partnership with the Yukon-Kuskokwim Health Corporation and/or the Alaska Village Council Presidents is eligible to apply. The Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents are also eligible to apply.

DATES: Applications must be received by 3:30 p.m. Daylight Savings Time, April 20, 1995, to be eligible.

ADDRESSES: Applications must be mailed to the attention of Peg Rosenberry, PO Box YK, Corporation for National Service, 1201 New York Ave., NW, Washington, DC 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: If you have questions about the application process or you would like to receive an application packet, you may call or write Lisa Bloch at the Corporation for National Service, 1201 New York Ave. N.W., Washington, DC 20525. Phone: (202) 606–5000 ext. 140.

SUPPLEMENTARY INFORMATION: The Corporation announces the availability of up to $100,000 for service/ development projects to meet significant human needs in the Yukon-Kuskokwim Delta of Alaska. These programs should meet the needs of the region in health, education, environmental revitalization and/or public safety. Specific strategies must be developed in cooperation with the Yupi'k speaking population residing in the Delta for comprehensive and intensive community development. Organizations wishing to incorporate AmeriCorps*VISTA or AmeriCorps*USA Members into their plans should request the requirements for these programs from the Corporation through the phone number listed above. Organizations can apply for funds to plan and/or operate programs. Grants may cover a period of six months to one year, depending on the nature (planning or operating) and scope of the projects. Additional funds for longer-term operation may be available in early Fall and will be announced in the **Federal Register**.

The Corporation will accept applications from any Indian tribe, public or private non-profit organization, or institution of higher education that has formed a partnership with the Yukon-Kuskokwim Health Corporation and/or the Alaska Village Council Presidents. The applications should describe a plan to implement comprehensive and intensive community development/ community service programs by using AmeriCorps*VISTA Members, individuals who have served in the Peace Corps, and other qualified individuals. The applications should take into consideration (1) the primarily non-cash economy of the region; and (2) the needs and desires of residents of the local communities in the region.

Authority: 42 U.S.C. 12501 *et seq.*

Dated: March 1, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95–5396 Filed 3–3–95; 8:45 am]

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Availability of Public Comments for Viewing and Extension of Hours of Hearing and the Deadline for Submitting Testimony

March 2, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of availability of public comments, extension of hours of the public hearing and extension of the deadline for submitting testimony for the public hearing on integration.

FOR FURTHER INFORMATION CONTACT: Julie Carducci, Office of Textiles and Apparel, U.S. Department of Commerce, (202)482–3588.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Uruguay Round Agreement on Textiles and Clothing (ATC), approved by Congress as part of the Uruguay Round Agreements Act, provides for the integration of the textiles and clothing sectors into the World Trade Organization.

On January 30, 1995, the Committee for the Implementation of Textile Agreements (CITA) published a Federal Register notice (60 FR 5625) announcing the proposed list of products for integration in the second and third phases of the integration. CITA requested interested parties to submit comments on the proposed list and announced a hearing to address any significant issues related to the second and third phases of the integration. Comments submitted in response to 60 FR 5625 will be available for public viewing as of the date of publication of this notice. Parties wishing to view the comments should contact Julie Carducci to make an appointment.

The deadline for submitting testimony to be presented at the public hearing on integration on March 20, 1995, will be extended (from the original deadline of on or before March 2) to March 15, 1995. Therefore, all written testimony and other comments to be presented at the hearing must be received in triplicate by the Chairman of CITA on or before March 15, 1995. Submissions in triplicate should be addressed to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

The length of the hearing on integration has been extended three hours, and will now be held from 10 a.m. to 4 p.m. on March 20, 1995, in the Main Commission Hearing Room at the International Trade Commission, 500 E Street, SW., Washington, DC.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–5497 Filed 3–2–95; 10:54 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Rules and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces.

The Commission is charged with providing an independent review of the roles and missions of the armed services to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. The purpose of this meeting is to discuss some of the specific roles and missions issues that are being developed for consideration by the Commission. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

DATES: March 11, 1995.

SUPPLEMENTARY INFORMATION: Extraordinary circumstances compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: February 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5310 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–4–M

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, March 9, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Cheri Spencer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5312 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 23 March 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Department propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 11§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5313 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 21–22 March 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5314 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Notice of Intent to Prepare an Environmental Assessment for the Disposal and Reuse of Newark AFB, OH

The United States Air Force is issuing this notice to advise the public that the Air Force intends to prepare an environmental assessment (EA) to assess the potential environmental impacts of the disposal and reuse of Newark AFB identified for closure under the Base Closure and Realignment Act of 1990 as amended. This notice amends the **Federal Register** Notice of October 28, 1993 which stated that an Environmental Impact Statement (EIS) would be prepared for the disposal and reuse of Newark AFB.

The Air Force conducted a public scoping meeting on May 10, 1994 at the Heath City Hall, Heath, OH. This meeting had been previously publicized in a **Federal Register** Notice dated May 5, 1994. The proposed action is now well-defined and consists of a continuation of the existing activities at Newark AFB under the privatization-in-place initiative which means that the current workload performed by the Air Force will be performed by the private sector. Based on this information, lack of environmental issues raised at the scoping meeting, and environmental baseline data collected to date, preparation of an environmental assessment is reasonable.

The environmental assessment might lead to issuance of a Finding of No Significant Impact(FONSI) if supported by the environmental impact analysis. If significant environmental impacts are identified during the environmental analysis process, an EIS will be prepared. The Air Force will publish another notice in the **Federal Register** notifying the public of the FONSI or of the intent to prepare an EIS.

Please direct requests for further information concerning the Newark AFB disposal and reuse environmental assessment to: Lt Col Terry D. Armstrong, HQ AFCEE/EC, 8106 Chennault Road, Brooks AFB, TX 78235–5318, (210) 536–3907

List of Subjects

Environmental Protection, Environmental Impact Statement, Environmental Assessment, US Air Force, Newark AFB, Defense Base Closure and Realignment.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5308 Filed 3–3–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board; Meeting

The Information Technology and Applications Panels of the USAF Scientific Advisory Board will meet on 21–21 March 1995 at The ANSER Corporation, Arlington, VA from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to provide science and technology assessments on issues relating to

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information technology and applications.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5393 Filed 3–3–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Electronics Panel of the USAF Scientific Advisory Board will meet on 3–7 April 1995 at Wright Patterson, AFB, OH from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to provide science and technology assessments on issues relating to electronics.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5394 Filed 3–6–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment)

Community Redevelopment Authority and Available Surplus Buildings and Property at Military Installations Designated for Closure: Naval Air Station, Agana, Guam

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Agana, Guam, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; telephone: (703) 325–0474; or J. M. Kilian, Director, Real Estate Division, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300; telephone: (808) 471–3217. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floorplan, sanitary facilities, exact street address, etc.), contact Commander Modesto Martinez, Caretaker Site Officer, Naval Air Station, PSC 456, FPO AP 96539; telephone: (671) 344–4125 and facsimile: (671) 344–4138.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Air Station, Agana, Guam was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on October 14, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 20, 1994, the Governor of Guam submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Station, Agana, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Air Station, Agana, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Government of Guam whose chief executive officer is the Governor of Guam. The Governor has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing air station. This committee is known as the "Komitea Para Tiyan" and is chaired by the Lieutenant Governor. A cross section of community interests is represented on the commission. Day to day operations of the committee are handled by a Project Manager. The address of the committee is Komitea Para Tiyan, P.O. Box 2950, Agana, Guam 96910; telephone: (671) 472–4201/3 and facsimile: (671) 477–1812.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Air Station, Agana that were declared surplus to the federal government on October 14, 1994 (Note: As the redevelopment authority submitted a timely request to proceed under the new procedures, the surplus determination date is now treated as December 20, 1994, pursuant to Section 2(e)(2) of the new statute):

Land

Approximately 1,654 acres of improved and unimproved fee simple land at the U.S. Naval Air Station, Agana, in the central portion of the Territory of Guam.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on April 1, 1995, unless otherwise indicated. Property numbers are available on request.

—Aircraft support facilities (11 structures). Comments: Approx. 174,842 square feet. Line shacks, four hangars, and two emergency generator sheds.
—Ammunition storage (9 structures). Comments: Approx. 12,726 square feet.
—Bachelor quarters housing (16 structures). Comments: Approx. 207,056 square feet. Most structures have individual rooms.
—Blast/sludge facilities (2 structures). Comments: Approx. 84,000 square feet.
—Child care facility (1 structure). Comments: Approx. 4,440 square feet.
—Communication and electronic facility (1 structure). Comments: Approx. 907 square feet.
—Family housing units (176 duplex structures with 352 individual housing units). Comments: Approx. 292,160 square feet. Anticipate all units will be vacated by end of July 1995.
—Fire protection facilities (2 structures). Comments: Approx. 15,636 square feet.
—Fuel storage facilities (4 structures). Comments: Approx. 1,260,000 gallon storage capacity.
—Hazardous storage facilities (9 structures). Comments: Approx. 4,378 square feet.
—Industrial buildings (8 structures). Comments: Approx. 6,559 square feet.
—Library (1 structure). Comments: Approx. 13,032 square feet.
—Maintenance facilities (6 structures). Comments: Approx. 39,057 square feet. Shop buildings.
—Mess and dining facilities (3 structures). Comments: Approx. 59,708 square feet. Club facility, cafeteria, and enlisted mess hall.
—Miscellaneous facilities (18 structures). Comments: Approximately 6,508 square feet. Small buildings and bus waiting sheds.
—Office/administration buildings (4 structures). Comments: Approx. 57,852 square feet.
—Paved areas (5 structures). Comments: Approx. 1,832,035 square feet. Roads, parking areas, sidewalks, etc.
—Photography laboratory (1 structure). Comments: Approximately 18,700 square feet.
—Recreational facilities (11 structures). Comments: Approx. 41,446 square feet. Gymnasium, theater, hobby shop, picnic sheds, and softball fields.
—Stores and services facilities (6 structures). Comments: Approx. 43,401 square feet. Small retail facilities.
—Utility facilities (60 structures). Comments: Measuring systems vary. Telephone, electric, steam, and water utility systems.
—Warehouse/storage facilities (5 structures). Comments: Approx. 3,737 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Agana, shall submit to said redevelopment authority (Government of Guam) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Guam the date by which expressions of interest must be submitted. Under Section 2(e)(6) of said Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one month nor more than 6 months from the date the Governor of Guam elected to proceed under the new statute, i.e., December 20, 1994.

Dated: February 16, 1995.

M. D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–5307 Filed 3–3–95; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Public Hearing for the Draft Environmental Impact Statement for Disposal and Reuse of the Former Naval Hospital; Philadelphia, PA

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508), implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for disposal and reuse of the former Naval Hospital at Philadelphia, Pennsylvania.

In accordance with legislative requirements in the 1990 Base Closure and Realignment Act (Public Law 101–510) and the results of the 1988 Base Closure and Realignment Process, Naval Hospital Philadelphia was directed to be closed and made available for reuse. The former Naval Hospital Philadelphia is located in the southern portion of the city of Philadelphia. The Base encompasses approximately 49 acres of land and includes a total of 59 buildings and structures.

The proposed action addressed in the DEIS is the disposal and subsequent redevelopment of lands/facilities determined surplus to the needs of the Federal Government. A Community Reuse Plan was prepared by the Mayor of Philadelphia's Commission on Defense Conversion, which included representation of local groups and organizations from throughout the region. The Preferred Redevelopment Plan proposes demolition of existing structures on the former Naval Hospital property and identifies areas to be redeveloped for a nursing home, development of market-rate townhomes, and expansion of the adjacent FDR Park including new parking area.

In the preparation of the Reuse Plan, consideration was given to the possible reuse of the Property Base by other Federal, State, and local agencies, homeless support organizations, business interests and recreational users. Various reuse scenarios were developed by the Commission, and a preferred Reuse Plan was identified and approved by the Commission following public review and evaluation. The DEIS has been prepared to address environmental consequences of implementing the comprehensive Reuse Plan. Potential impacts addressed include, but are not limited to, community services, traffic, air quality, water quality, vegetation and wildlife, cultural resources, noise and land use.

The DEIS has been distributed to various Federal, State, and local agencies, elected officials, special interest groups, libraries and the media. A limited number of single copies are available at the address listed at the end of this notice.

The Department of the Navy will hold a public hearing to inform the public of the DEIS findings and to solicit comments. The hearing will be held at 7:30 p.m. on Wednesday, March 22, 1995, at the Holy Spirit Church Hall, 1835 Hartranft Street, Philadelphia, Pennsylvania. Should inclement weather preclude holding the public scoping meeting on this date, the alternate date for the meeting will be Thursday, March 23, 1995 (meeting to be held at the same location). If there is any question of meeting date in the event of inclement weather, contact the person listed at the end of this notice for confirmation. The public hearing will continue until 10:30 p.m. or until the conclusion of public comments. The public hearing will be conducted by the Navy. Federal, State, and local agencies and interested parties are invited and urged to attend or be represented at the

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hearings. Oral statements will be heard and transcribed by a stenographer; however, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record and equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their remarks to five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by Tuesday, April 18, 1995, to become part of the official record.

Additional information concerning this notice may be obtained by contacting the Commanding Officer, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, PA 19113 (Attn: Mrs. Tina Deininger, Code 202), telephone 610–595–0759.

Dated: March 1, 1995

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–5370 Filed 3–3–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF95–5071–000 et al.]

Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

February 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF95–5071–000]

Take notice that on February 17, 1995, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–65, did confirm and approve on an interim basis, the Western Area Power Administration's (Western), formula for determining annual revenue requirements for electric power sold from the Provo River Project (PRP), effective April 1, 1995.

The formula for revenue recovery will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of a substitute procedure on a final basis, through March 31, 2000.

Comment date: March 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–175–000]

Take notice that on February 14, 1995, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing an amendment to its agreement with Long Island Lighting Company ("LILCO"), to provide for the purchase and sale of energy and capacity subject to cost based ceiling rates.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Eastern Power Distribution, Inc.

[Docket No. ER94–964–004]

Take notice that on February 9, 1995, Eastern Power Distribution, Inc. (EPDI), filed certain information as required by the Commission's April 5, 1994, letter order in Docket No. ER94–964–000. Copies of EPDI's informational filing are on file with the Commission and are available for public inspection.

4. Electric Clearinghouse, Inc.

[Docket No. ER94–968–004]

Take notice that on January 30, 1995, Electric Clearinghouse, Inc. (ECI), filed certain information as required by the Commission's April 7, 1994, letter order in Docket No. ER94–968–000. Copies of ECI's informational filing are on file with the Commission and are available for public inspection.

5. Eclipse Energy, Inc.

[Docket No. ER94–1099–003]

Take notice that on January 26, 1995, Eclipse Energy, Inc. (Eclipse), filed certain information as required by the Commission's June 15, 1994, letter order in Docket No. ER94–1099–000. Copies of Eclipse's informational filing are on file with the Commission and are available for public inspection.

6. Vesta Energy Alternatives Company

[Docket No. ER94–1168–003]

Take notice that on February 3, 1995, Vesta Energy Alternatives Company (Vesta), filed certain information as required by the Commission's July 8, July 20, November 28 and December 7, 1994, letter orders in Docket No. ER94–1168–000. Copies of Vesta's informational filing are on file with the Commission and are available for public inspection.

7. CMEX Energy, Inc.

[Docket No. ER94–1328–002]

Take notice that on January 23, 1995, CMEX Energy, Inc. (CMEX), filed certain information as required by the Commission's July 12, 1994, letter order in Docket No. ER94–1328–000. Copies of CMEX's informational filing are on file with the Commission and are available for public inspection.

8. Texas-Ohio Power Marketing, Inc.

[Docket No. ER94–1676–001]

Take notice that on January 24, 1995, Texas-Ohio Power Marketing, Inc. (Texas-Ohio), filed certain information as required by the Commission's October 31, 1994, letter order in Docket No. ER94–1676–000. Copies of Texas-Ohio's informational filing are on file with the Commission and are available for public inspection.

9. Equitable Power Services Company

[Docket No. ER94–1539–002]

Take notice that on January 27, 1995, Equitable Power Services Company (EPSC), filed certain information as required by the Commission's September 8, 1994, letter order in Docket No. ER94–1539–000. Copies of EPSC's informational filing are on file with the Commission and are available for public inspection.

10. Hadson Electric, Inc.

[Docket No. ER94–1613–001]

Take notice that on January 27, 1995, Hadson Electric, Inc. (Hadson), filed certain information as required by the Commission's November 17, 1994, letter order in Docket No. ER94–1613–000. Copies of Hadson's informational filing are on file with the Commission and are available for public inspection.

11. St. Joseph Light & Power Company

[Docket No. ER95–294–000]

Take notice that on February 16, 1995, St. Joseph Light & Power Company (SJLP), submitted for filing an Amendment to the Non-Firm Transmission Service Agreement between SJLP and Rainbow Energy Marketing Corporation filed previously with the Commission on December 19, 1994, in the above-referenced docket.

Comment date: March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Indiana Gas and Electric Company

[Docket No. ER95–600–000]

Take notice that on February 14, 1995, Southern Indiana Gas and Electric Company (Southern Indiana), tendered for filing Amendments to Coordination

Rates in its Interconnection Agreement with Alcoa Generating Corporation to Reflect the Costs of Emissions Allowances for FERC Rate Schedule No. 0029. A copy of the filing has been sent to Alcoa Generating Corporation.

The proposed Amendment to the Rate Schedule is being made by an abbreviated filing under FPA Section 205 and pursuant to the Commission's Interim Rate issued in Docket No. PL95–1–000, Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates and provides for cost recovery of SO_2 emissions allowances in energy sales. These amendments are limited to coordination sales tariffs contained in the Agreement.

Waiver of the Commission's Notice Requirement is requested to allow for an effective date of January 1, 1995, and Southern Indiana agrees to the refund condition for allowance related charges assessed between January 1, 1995, and the date the Commission issues an order accepting the filing.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company

Metropolitan Edison Company

Pennsylvania Electric Company

[Docket No. ER95–601–000]

Take notice that on February 14, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the "GPU Operating Companies"), filed an executed Service Agreement between GPU and Electric Clearinghouse, Inc. (Electric Clearinghouse), dated January 21, 1995. This Service Agreement specifies that Electric Clearinghouse has agreed to the rates, terms and conditions of the GPU Operating Companies" Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company*, Docket No. ER95–276–000 and allows GPU and Electric Clearinghouse to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of January 21, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ER95–602–000]

Take notice that on February 15, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a Coordination Sales Tariff. Under the Coordination Sales Tariff, CILCO will make Limited Term Power, Short-Term Power, General Purpose Energy and Emergency Energy available to customers upon mutual agreement. CILCO requests an effective date of April 3, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served on the Illinois Commerce Commission and are available for public inspection at CILCO's offices in Peoria, Illinois.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER95–620–000]

Take notice that Northeast Utilities Service Company (NUSCO) on February 17, 1995, tendered for filing, a Service Agreement with Pennsylvania Power & Light Company (PP&L) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to PP&L.

NUSCO requests that the Service Agreement become effective on March 1, 1995.

Comment date: March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER95–621–000]

Take notice that on February 17, 1995, Arizona Public Service Company (APS), tendered for filing the proposed Power Sale Agreement (Agreement) between APS and Nevada Power Company (NPC) having a proposed effective date of June 1, 1995.

The Agreement proposes that APS will make available to NPC, when pre-scheduled by NPC, 50 MW of firm power and energy for the period June 1, through September 30 for each of the calendar years 1995, 1996 and 1997. The rate for sales under the Agreement contains a Capacity Charge component and an Energy Charge component.

A copy of this filing has been served on NPC, the Arizona Corporation Commission and the Nevada Public Service Commission.

Comment date: March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. ER95–622–000]

Take notice that on February 17, 1995, Orange and Rockland Utilities, Inc. (Orange and Rockland), One Blue Hill Plaza, Pearl River, New York 10965, submitted for filing proposed rates and other changes applicable to future service contracts executed under Orange and Rockland's FERC Electric Tariff Original Volume (Buyback Tariff). The Buyback Tariff provides for Orange and Rockland to purchase capacity and associated energy from certain Orange and Rockland customers. In addition to the new rates, the filing would reduce the maximum amount of loans available to participating customers and would modify the number and duration of opportunities for qualifying customers to sell to Orange and Rockland. Orange and Rockland has requested that the proposed changes become effective as of the date of the filing.

Comment date: March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Midwest Power Systems Inc.

[Docket No. ES95–22–000]

Take notice that on February 23, 1995, Midwest Power Systems Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue up to $250 million of promissory notes during the period commencing April 16, 1995 and ending April 15, 1997, with a final maturity date not later than April 15, 1998.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. White Oak Energy Company L.L.C. (Lockport Project)

[Docket No. QF95–122–000]

On February 22, 1995, White Oak Energy Company L.L.C. (White Oak) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure and technical aspects of White Oak's small power production facility. No determination has been made that the submittal constitutes a complete filing.

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Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. White Oak Energy Company L.L.C. (Joliet Project)

[Docket No. QF95–123–000]

On February 22, 1995, White Oak Energy Company L.L.C. (White Oak) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure and technical aspects of White Oak's small power production facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Osceola Power Limited Partnership

[Docket Nos. QF95–30–000 and QF95–30–001]

On February 24, 1995, Osceola Power Limited Partnership tendered for filing an amendment to its December 2, 1994, filing in this docket.

The amendment pertains to technical requirements and the ownership structure of the cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: March 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Western Systems Power Pool

[Docket No. ER91–195–019]

Take notice that on February 16, 1995, Western Systems Power Pool (WSPP), tendered for filing revised copies of its quarterly report for the fourth quarter of 1994 in the above-referenced docket.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 95–5384 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC94–23–000 et al.]

Washington Water Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 24, 1995.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power Company

[Docket No. EC94–23–000]

Take notice that February 14, 1995, Washington Water Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket Nos. ER82–427–013 and ER83–301–003]

Take notice that on February 15, 1995, Southern California Edison Company tendered for filing its refund report in the above referenced dockets.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER89–672–008]

Take notice that on January 18, 1995, PSI Energy, Inc. (PSI) filed certain information as required by the Commission's order issued on June 28, 1990 [51 FERC ¶61,367 (1990)], and pursuant to Section T of their Transmission Service Tariff. Copies of PSI's informational filing are on file with the Commission and are available for public inspection.

4. Morgan Stanley Capital Group, Inc.

[Docket No. ER94–1384–003]

Take notice that on January 31, 1995, Morgan Stanley Capital Group, Inc. (Morgan Stanley) filed information as required by the Commission's November 8, 1994 order in Docket No. ER94–1384–000. Copies of Morgan Stanley's filing are on file with the Commission and are available for public inspection.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. AIG Trading Corporation

[Docket No. ER94–1691–003]

Take notice that on February 17, 1995, AIG Trading Corporation (AIGTC) tendered for filing Revised AIG Trading Corporation FERC Rate Schedule No. 1, and requested waiver of the 60-day prior notice requirement. The purpose of the filing is to clarify that no sales will be made under the rate schedule to any affiliate of AIGTC.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Regional Transmission Association

[Docket No. ER95–19–000]

Take notice that February 17, 1995, Northeast Regional Transmission Association tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Century Power Corporation

[Docket No. ER95–367–000]

Take notice that on February 23, 1995, Century Power Corporation tendered for filing a revised Notice of Cancellation. Century states that effective March 17, 1995 the following Rate Schedules will be cancelled:

FERC Rate Schedule No. 10
FERC Rate Schedule No. 12
FERC Rate Schedule No. 14
FERC Rate Schedule No. 15

Century Power Corporation is also cancelling, effective March 17, 1995, Service Agreements Nos. 1 through 23 contained in Century Power Corporation's FERC Tariff No. 1.

The following rate schedules and service agreements will remain in effect: FERC Rate Schedules 1, 17 and 18 and Service Agreements 24 and 25 under Tariff No. 1.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Tenneco Energy Marketing Company

[Docket No. ER95–428–000]

Take notice that on February 16, 1995, Tenneco Energy Marketing Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER95–451–000]

Take notice that on February 10, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Midcon Power Services Corp. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of December 14, 1994.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Baltimore Gas and Electric

[Docket No. ER95–466–000]

Take notice that Baltimore Gas and Electric Company (BGE), on February 22, 1995, tendered for filing a revision to its January 23, 1995 filing of the Short-Term Energy Transactions Agreement between Public Service Electric and Gas Company and BGE in the above-captioned docket. The revision modifies Exhibit III of the filing to clarify the application of daily and weekly Maximum Reservation Charges.

BGE has requested waiver of the Commission's notice requirements to allow for an effective date of January 25, 1995 as originally requested.

Comment date: March 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Conowingo Power Company

[Docket No. ER95–555–000]

Take notice that on February 6, 1995, Delmarva Power & Light Company (Delmarva) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 70 between Delmarva and Conowingo Power Company.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Tennessee Power Company

[Docket No. ER95–581–000]

Take notice that on February 10, 1995, Tennessee Power Company (TPCO) petitioned the Commission for acceptance of TPCO Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations. TPCO is not affiliated with any entity which owns, operates, or controls electric power generating or transmission facilities, or that has a franchised electric power service area.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER95–582–000]

Take notice that on February 10, 1995, the Northern Indiana Public Service Company (Northern) tendered for filing Addenda to each of Northern's seven coordination agreements on file with the Commission.

The Addenda detail Northern's method for recovery of emission allowance costs in coordination power sales. Northern requests an effective date of January 1, 1995, and has requested a waiver of the filing date and leave to file instanter, along with a waiver of the Commission's notice requirements.

A copy of the filing was served by Northern upon the affected companies listed in Exhibit 1 to Northern's filing and the Indiana Utility Regulatory Commission.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER95–583–000]

Take notice that on February 10, 1995, Wisconsin Public Service Corporation tendered for filing an executed service agreements with AES Power Inc. and Intercoast Power Marketing Company, under its CS–1 Coordination Sales Tariff.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER95–584–000]

Take notice that on February 10, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company and Public Service Company of New Hampshire, a System Power Sales Agreement (Agreement) to provide system capacity and associated energy to Sterling Municipal Light Department and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Long-Term Firm Transmission Service No. 1 for this Sales Agreement.

NUSCO requests that the rate schedule become effective on May 1, 1995. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreements and the affected state utility commission.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Colorado

[Docket No. ER95–585–000]

Take notice that on February 10, 1995, Public Service Company of Colorado (Public Service) tendered for filing a revised exhibit to its Contract No. 87–LAO–285 which is its contract for the ownership, use, operation, maintenance, and replacement of the Ault Substation and other related facilities with the Western Area Power Administration (Western), Tri-State Generation and Transmission Association, Inc. (Tri-State), Platte River Power Authority (PRPA) and Basin Electric Power Cooperative (Basin), as contained in Public Service's Rate Schedule FERC No. 67. The proposed revision was made to provide for Tri-State to have backup supervisory control of the Ault Substation. The proposed revision will have no impact on the rates or revenues collected for service under this rate schedule.

Public Service requests an effective date of January 13, 1995, for the revised exhibit.

Copies of the filing were served upon Western, Tri-State, PRPA, Basin and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Power System Inc.

[Docket No. ER95–586–000]

Take notice that on February 10, 1995, Midwest Power System Inc. tendered for filing a Notice of Cancellation of FERC Rate Schedule 49.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Midwest Power System Inc.

[Docket No. ER95–587–000]

Take notice that on February 10, 1995, Midwest Power System Inc. tendered for filing a Notice of Cancellation of FERC Rate Schedule 54.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–588–000]

Take notice that on February 10, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Electric Clearinghouse, Inc. (ECI) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per kWhr when the SIC in the hour reflects a purchased power

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resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. For energy and capacity sold by ECI the rates will be market based.

Con Edison states that a copy of this filing has been served by overnight delivery upon ECI.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Rochester Gas and Electric Corporation

[Docket No. ER95–589–000]

Take notice that on February 10, 1995, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and Rainbow Energy Marketing Corporation. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 C.F.R. § 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. West Penn Power Company

[Docket No. ER95–591–000]

Take notice that on February 7, 1995, Allegheny Power Service Corporation, on behalf of West Penn Power Company, submitted Supplement No. 2 to its 1994 Wholesale Customer Rate Change to add to the public record documents intended to clarify the terms of the Settlement Agreement and to establish operating procedures for providing service under the rate schedule entered into between West Penn Power Company and Allegheny Electric Cooperative, Inc.

Copies of the filing were served upon the Allegheny Electric Cooperative, Inc. and the Pennsylvania Public Utility Commission.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Western Resources, Inc.

[Docket No. ER95–592–000]

Take notice that on February 13, 1995, Western Resources, Inc. (WRI), tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 252. WRI states the purpose of the change is to provide generation deferral service to the City of St. John. The change is proposed to become effective June 1, 1995.

Copies of the filing were served upon the City of St. John and the Kansas Corporation Commission.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. South Carolina Electric & Gas Company

[Docket No. ER95–593–000]

Take notice that on February 13, 1995, South Carolina Electric & Gas Company, tendered for filing proposed cancellation of Rate Schedule 28 (FPC) between South Carolina Electric & Gas Company and Duke Power Company.

Under the proposed cancellation the agreement which expired effective January 31, 1995 will be canceled.

Copies of this filing were served upon Duke Power Company.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. The Washington Water Power Company

[Docket No. ER95–594–000]

Take notice that on February 13, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.13, a new signed Service Agreement under Electric Tariff No. 4.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Kentucky Utilities Company

[Docket No. ER95–595–000]

Take notice that on February 13, 1995, Kentucky Utilities Company filed a Letter of Agreement providing for power sales between itself and Wabash Valley Power Association, Inc.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. San Diego Gas & Electric Company

[Docket No. ER95–596–000]

Take notice that on February 13, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing an acceptance, pursuant to 18 C.F.R. § 35.12, an Interchange Agreement (Agreement) between SDG&E and Engelhard Power Marketing, Inc. (ENGL).

SDG&E requests that the Commission allow the Agreement to become effective on the 17th of April, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and ENGL.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Pennsylvania Electric Company

[Docket No. ER95–597–000]

Take notice that on February 13, 1995, GPU Service Corporation (GPUSC), on behalf of Pennsylvania Electric Company (Penelec), filed an Hourly Energy Transmission Service Agreement between GPUSC and New York State Electric & Gas Company (Agreement).

Under the Agreement, Penelec will provide Hourly Energy Transmission Service consisting of non-firm transmission service for an amount of electric energy not to exceed 200 megawatt hours per hour over its transmission facilities between the Homer City Generating Station located in Center Township, Indiana County, Pennsylvania and Baltimore Gas and Electric Company's use entitlement in the Keystone substation. GPUSC, a service company subsidiary of General Public Utilities Corporation and an affiliate of Penelec, will serve as agent for the Penelec with respect to the administration of the Agreement.

GPUSC requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 14, 1995.

GPUSC has served copies of the filing on the Pennsylvania Public Utility Commission and New York State Electric & Gas Company.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Power Service Corporation on Behalf of West Penn Power Company

[Docket No. ER95–598–000]

Take notice that on February 14, 1995, Allegheny Power Service Corporation on behalf of West Penn Power Company submitted Supplement No. 3 to the above-referenced docket to add a new delivery point for borderline service with Pennsylvania Power & Light Company.

A copy of the filing has been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Southern Indiana Gas and Electric Company

[Docket No. ER95–599–000]

Take notice that on February 14, 1995, Southern Indiana Gas and Electric Company (Southern Indiana), tendered for filing Amendments to Coordination Rates in Interconnection Agreements to Reflect the Costs of Emissions Allowances for the following FERC Rate Schedules: No. 21, Agreement with Public Service Indiana, Inc. (CINERGY); No. 24, Agreement with Louisville Gas and Electric Company (LG&E); No. 25, Agreement with Indianapolis Power and Light Co., Inc.; No. 27, Agreement with Public Service Company of Indiana, Inc. (CINERGY) and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); No. 33, Agreement with Big Rivers Electric Corporation (Big Rivers); No. 44, Agreement with Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); No. 1, Agreement with Ohio Valley Electric Corporation (OVEC), and pending FERC Cause No. ER95–283–000, with Wabash Valley Power Association (WVPA). A copy of the filing has been sent to each of the above companies.

The proposed Amendment in each Rate Schedule is being made by an abbreviated filing under FPA § 205 and pursuant to the Commission's Interim Rate issued in Docket No. PL95–1–000, Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates and provides for cost recovery of SO_2 emissions allowances in energy sales. These amendments are limited to coordination sales tariffs contained in the Agreements.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of January 1, 1995, and Southern Indiana agrees to the refund conditions for allowance related charges assessed between January 1, 1995, and the date the Commission issues an order accepting the filing.

Comment date: March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. Selkirk Cogen Partners, L.P.

[Docket No. QF89–274–012]

On February 17, 1995, Selkirk Cogen Partners, L.P. (Applicant), of Creble Road, County Route 55, Selkirk, New York 12158, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility is located in Selkirk, New York. The Commission previously certified the facility as a qualifying cogeneration facility in *JMC Selkirk, Inc.*, 48 FERC ¶ 62,228 (1989) and recertified the facility in *Selkirk Cogen Partners, L.P.*, 51 FERC ¶ 61,264 (1990) and 59 FERC ¶ 62,254 (1992). Notices of self-recertification were filed on June 18, 1990, October 16, 1992, March 10, 1993, June 16, 1993, May 2, 1994, and August 25, 1994. The Commission most recently recertified the facility in *Selkirk Cogen Partners, L.P.*, 70 FERC ¶ 62,084 (1995). The instant request for recertification is due to a change in ownership of the facility.

Comment date: April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5395 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. PR95–5–000]

Cranberry Pipeline Corporation; Notice of Petition for Rate Approval

February 28, 1995.

Take notice that on February 24, 1995, Cranberry Pipeline Corporation (Cranberry), filed pursuant to § 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable maximum rate of $0.8839 per MMBtu for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) on its West Virginia system. Cranberry also requests Commission approval of a maximum Hub Rate of $0.0645 per MMBtu for transportation on its West Virginia system between certain interstate pipelines.

Cranberry states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates intrastate pipeline systems in the States of West Virginia and Pennsylvania. Cranberry proposes an effective date of February 24, 1995.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 15, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5327 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–182–009]

Florida Gas Transmission Company; Notice of Compliance Filing

February 28, 1995.

Take notice that on February 15, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 8A.01
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet No. 102B
Substitute First Revised Sheet No. 113
Substitute Second Revised Sheet No. 168
Substitute First Revised Sheet No. 171
Substitute Second Revised Sheet No. 172
Substitute Second Revised Sheet No. 173
Substitute Second Revised Sheet No. 176

By orders issued January 15, 1993, April 21, 1993, September 15, 1993 and February 2, 1994, the Commission approved the Stipulation and Agreement filed August 25, 1992 (Settlement) in Docket Nos. CP92–183, *et al.* and authorized FGT to construct and operate a major expansion of its system (Phase III Expansion). These

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orders also authorized FGT to provide firm transportation rate schedule, FTS–2. The initial orders in the Phase III proceedings were issued prior to final resolution of the issues in FGT's restructuring proceeding in Docket No. RS92–16–000. Ordering Paragraph H of the January 15 order provided that "(p)roposed Rate Schedule FTS–2 must comply with any general modifications made by the commission" in FGT's restructuring proceeding. Ordering Paragraph C of the September 15 order required that "Florida Gas shall submit for filing, not less than thirty days and not more than 60 days prior to the proposed effective date or commencement of operations authorized herein, revised tariff sheets in accordance with the Commission's January 15 and April 21 orders and this order." On October 28, 1994, FGT filed revised tariff sheets to implement the new FTS–2 transportation service in compliance with the settlement and the above-referenced orders (October 28 Filing).

On January 31, 1994, the Commission issued its Order Accepting Tariff Sheets, Subject to Conditions, Accepting and Suspending Other Tariff Sheets, Subject to Conditions, and Rejecting Tariff Sheets (January 31 order). The January 31 order addressed FGT's October 28 filing, as well as FGT's general Section 4 rates case filed on December 30, 1994 (Section 4 filing). The January 31 order accepted, subject to conditions, those portions of the October 28 filing which the Commission determined to be directly related to the implementation of FGT's Phase III service to be effective March 1, 1995, or upon the in-service date of the Phase III Expansion, whichever was later. The remaining portions of the October 28 filing were rejected without prejudice to their inclusion in the Section 4 filing and a merits determination in the review of that filing. FGT states that the instant filing is submitted to comply with the January 31 order as it relates to the October 28 filing. FGT states that compliance with that portion of the January 31 order addressing the Section 4 filing will be filed under separate cover letter.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5328 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–173–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1995.

Take notice that on February 23, 1995, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1995:

Second Revised Sheet No. 1
First Revised Sheet No. 2
Fifth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fourth Revised Sheet No. 23
Fifth Revised Sheet No. 24
First Revised Sheet No. 28
Second Revised Sheet No. 402
Second Revised Sheet No. 403
Third Revised Sheet No. 502
First Revised Sheet No. 600
First Revised Sheet No. 801
First Revised Sheet No. 803
First Revised Sheet No. 806
Third Revised Sheet No. 1104
First Revised Sheet No. 1300
Second Revised Sheet No. 1305
First Revised Sheet No. 1400
First Revised Sheet No. 1403
First Revised Sheet No. 1404
Original Sheet No. 1404A
Second Revised Sheet No. 1409
First Revised Sheet No. 1411
First Revised Sheet No. 1412
Second Revised Sheet No. 1501
Second Revised Sheet No. 1702
Second Revised Sheet No. 1703
Second Revised Sheet No. 1708
First Revised Sheet No. 1710
Second Revised Sheet No. 1801
Second Revised Sheet No. 1802
Second Revised Sheet No. 1803
Second Revised Sheet No. 1804
First Revised Sheet No. 1900
First Revised Sheet No. 1901
First Revised Sheet No. 1905
Third Revised Sheet No. 2700
Third Revised Sheet No. 2701
Third Revised Sheet No. 2702
Third Revised Sheet No. 2703
Third Revised Sheet No. 2704
Third Revised Sheet No. 2705
Third Revised Sheet No. 2706
Second Revised Sheet No. 2800
First Revised Sheet No. 2801
Original Sheet No. 2802
First Revised Sheet No. 3606
First Revised Sheet No. 3703
First Revised Sheet No. 4102
First Revised Sheet No. 4202
First Revised Sheet No. 4302
Second Revised Sheet No. 4401
First Revised Sheet No. 4402
First Revised Sheet No. 4600
First Revised Sheet No. 4702
Second Revised Sheet No. 4900
Second Revised Sheet No. 5000
Second Revised Sheet No. 5200

KGPC states that as a result of one year of experience under Order No. 636 and subsequent Commission orders modifying certain requirements and responsibilities of interstate natural gas pipelines, KGPC is revising its Tariff to clarify current practices, and to institute modifications to improve the administration of its system in the new operational environment. Specifically, KGPC submits the above referenced tariff sheets to provide for fuel discounts, to amend the Firm Storage Service (FSS) and Interruptible Storage Service (ISS) rate schedules to modify the treatment of gas remaining in storage at the expiration of the contract and to clarify excess withdrawal capability, to update certain provisions to conform to current practices regarding sales service, nominations, imbalance resolution, supplemental points, recording of telephone conversations, and Predetermined Allocation Agreements. Additionally, KGPC submits other sheets to update its tariff pursuant to Commission Order No. 563 *et seq.* and Order No. 636 *et seq.*, and to correct miscellaneous errors and cross references, as explained in the application which is on file with the Commission.

KGPC also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before March 7, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5324 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–172–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1995.

Take notice that on February 23, 1995, Natural Gas Pipeline Company of America (Natural), tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 246, with a proposed effective date of March 25, 1995.

Natural states that the purpose of the filing is to modify the first-of-the-month deadline of its Tariff to permit nominations up until 11:59 p.m. of the fourth business day preceding the first day of the month.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheet to become effective March 25, 1995.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 385.211 or 315.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5326 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–171–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1995.

Take notice that on February 23, 1995, Stingray Pipeline Company (Stringray), tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 119, with a proposed effective date of March 25, 1995.

Stingray states that the purpose of the filing is to modify the first-of-the-month deadline of its Tariff to permit nominations up until 11:59 p.m. of the second business day preceding the first day of the month.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheet to become effective March 25, 1995.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5325 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5164–8]

Economic Incentive and Regulatory Innovation Subcommittee of the Clean Air Act Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Protection Agency is convening a series of open meetings of the Economic Incentive and Regulatory Innovation Subcommittee of the Clean Air Act Advisory Committee. These meetings will concern the development of generic language for a rule on open market emissions trading. The meetings are open to the public. Seating is available on a first-come, first-served basis.

DATES: The Subcommittee will meet on the following dates and times at the following locations:

March 16, 1995, 9 a.m. to 5 p.m. EST, Location A
March 30, 1995, 9 a.m. to 1 p.m. EST, Location B
April 13, 1995, 9 a.m. to 5 p.m. EST, Location A
April 25, 1995, 9 a.m. to 1 p.m. EST, Location B

ADDRESSES: Location A is the Channel Inn (the State Room), 650 Water Street, S.W., Washington, D.C. 20024 (202–554–2400). Location B is Conference Room #3 North, Washington Information Center, EPA Headquarters, 401 M Street, S.W., Washington, D.C. 20460 (202–260–2046).

FOR FURTHER INFORMATION: Carey Fitzmaurice, U.S. EPA–OAR, (202) 260–7433, or Scott Mathias, US EPA–OAQPS, (919) 541–5310.

SUPPLEMENTARY INFORMATION: Agenda and other materials for these meeting will be mailed to Committee members prior to the meetings, and are available to others upon request.

Dated: February 28, 1995.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–5404 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following report(s):

1. *Report title:* Annual Report of Bank Holding Companies.
Agency form number: FR Y-6.
OMB Docket number: 7100-0124.
Frequency: Annual.
Reporters: Bank Holding Companies.
Annual reporting hours: 21,972.
Estimated average hours per response: Range from 1.3 to 101 hours per response.

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Number of respondents: 5,493.
Small businesses are affected.

General description of report: This information collection is mandatory to obtain or retain a benefit [12 U.S.C. 1844(b) and (c)] and 12 CFR 225.5 of Regulation Y. Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

Abstract: The FR Y-6 is an annual report filed by the top-tier bank holding companies. Foreign banking organizations as defined by section 211.23(b) of Regulation K are not required to file this form. The FR Y-6 consists of consolidated and parent company financial statements in the company's own format.

The FR Y-6 report is the Federal Reserve's principal source of internally generated and independently audited financial data on individual bank holding companies and their banking and nonbanking subsidiaries. The report enables the Federal Reserve to monitor bank holding company operations and to ensure that the operations are conducted in a safe and sound manner and in compliance with the provisions of the Bank Holding Company Act and Regulation Y.

The Federal Reserve approved the following revisions to the FR Y-6:

(1) Eliminate the requirement to submit consolidated and parent company financial statements.

(2) Revise the requirement for audited financial statements to include only holding companies with assets of $500 million or more.

(3) Eliminate the requirement to submit nonbank subsidiary financial statements. This information is currently proposed to be incorporated into an expanded standardized FR Y-11 report (Financial Statement of Nonbank Subsidiaries of Bank Holding Companies).

(4) Eliminate the requirement to submit certified copies of amendments to organizational documents.

(5) Eliminate the collection of information on insider loans.

(6) Eliminate the confirmation of changes in investments and activities.

Board of Governors of the Federal Reserve System, February 28, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-5368 Filed 3-3-95; 8:45AM]
Billing Code 6210-01-F

Agency Forms Under Review

Background:

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments are welcome and should be submitted on or before March 20, 1995.

FOR FURTHER INFORMATION CONTACT:
Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829); for the hearing impaired only, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.
OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Request for OMB approval to revise the following report:

1. Report title: Consolidated Reports of Condition and Income (Call Report).
Agency form number: FFIEC 031-034.
OMB Docket number: 7100-0036.
Frequency: Quarterly.
Reporters: State member banks.
Annual reporting hours: 169,592.
Estimated average hours per response: 43.0.
Number of respondents: 986.
Small businesses are affected.

General description of report: This information collection is mandatory to obtain or retain a benefit (12 U.S.C. 324) and is given partial confidential treatment.

SUMMARY: The proposed revisions to the Call Report that have been submitted to the Office of Management and Budget for approval are mandated by the Federal Financial Institutions Examination Council (FFIEC).

On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the proposed changes would apply to all four sets of reporting forms (FFIEC 031, FFIEC 032, FFIEC 033, and FFIEC 034; the proposed changes are as follows:

DELETIONS AND REDUCTIONS IN DETAIL

The level of detail with which restructured loans and leases that are in compliance with modified terms are reported in the memoranda section of Schedule RC-C, "Loans and Lease Financing Receivables," would be reduced. For all banks, the current separate items for the various non-real-estate loan categories will be combined into a single item for "All other loans and all lease financing receivables." In addition, banks with foreign offices or with $300 million or more in total assets that file the FFIEC 031 and 032 report forms also will report a single total for their restructured commercial loans to and their restructured leases of non-U.S. addressees.

CALL REPORT ITEMS IN THE SEVEN FOLLOWING AREAS WOULD BE DELETED:

(1) Schedule RC-R, item 3, "Total qualifying capital allowable under the risk-based capital guidelines."

(2) The quarterly average of "Obligations (other than securities and leases) of states and political subdivisions in the U.S." in Schedule RC-K, item 6.a(6) on the FFIEC 031, item 6.f on the FFIEC 032, and Memorandum item 1 on the FFIEC 033. This average has not been collected from banks with less than $100 million in assets that file the FFIEC 034 report form.

(3) The four components of mandatory convertible debt, net of dedicated stock, in Schedule RC-M, items 7.a through 7.d on the FFIEC 031 and 032, items 6.a through 6.d on the FFIEC 033, and items 8.a through 8.d on the FFIEC 034. The item for the total amount of mandatory convertible debt, net of dedicated stock, would be retained.

(4) The year-to-date reconcilement of the allocated transfer risk reserve in Schedule RI-B, Part II. This reconcilement has been collected only from banks with foreign offices or with total assets of $300 million or more that file the FFIEC 031 or 032 report forms.

(5) The quarterly reconcilement of the agricultural loan loss deferral account in Schedule RC-M, items 10.a through 10.e. This reconcilement has been collected only from banks with total assets of less than $100 million that file the FFIEC 034 report.

(6) Recoveries of "Special-Category Loans" in Schedule RI-B, Part 1, Memorandum item 1 on the FFIEC 031 and 032, Memorandum item 3 on the FFIEC 033, and Memorandum item 2 on the FFIEC 034. This item has been collected from national banks only.

(7) The yes-no question on "Personnel changes among the three senior officers of the bank during the quarter" in Schedule RC-M, item 6 on the FFIEC 034. This item has been completed only by banks with total assets of less than $100 million that file the FFIEC 034 report form.

NEW ITEMS

Call Report items in the eight following areas would be added:

(1) Notional Amounts/Par Values

At present, all banks report notional amount/par value data for interest rate, foreign exchange rate, and other commodity and equity contracts in items 11 through 13 of Schedule RC-L, "Off-Balance Sheet Items." The existing items will be expanded to separate exchange-traded contracts from over-the-counter contracts and to separate equity derivative contracts from commodity and other contracts. (Spot foreign exchange contracts would also be reported separately.) In addition, for each of the four types of underlying risk exposures (i.e., interest rate, foreign exchange, equity, and commodity, and other), the total notional amount/par value of contracts held for trading and held for purposes other than trading will be reported separately, with the latter further divided between contracts that are marked to market for Call Report purposes and those that are not.

(2) Gross Fair Values

For banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 reporting forms, Schedule RC-L will also be expanded to include gross fair value data for derivatives. (This information will not be collected from small banks that file the FFIEC 034 report forms.) For each of the four types of underlying risk exposures, the gross positive and gross negative fair values will be reported separately for

(i) Contracts held for trading purposes,

(ii) Contracts held for purposes other than trading that are marked to market, and

(iii) Contracts held for purposes other than trading that are not marked to market. When reporting gross fair values, no netting of contracts would be permitted.

(3) Income-Related Information

Additional memorandum items to Schedule RI, "Income Statement" will be reported by banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 reporting forms. First, banks will provide a breakdown of trading revenue that has been included in the body of the Schedule RI income statement. For each of the four types of underlying risk exposures, banks will report the combined revenue from trading cash and derivative instruments. Second, for derivatives held for purposes other than trading, banks will report the effect that these contracts had on the bank's income as reported in Schedule RI. There will be separate disclosure of

(i) The net increase (decrease) to interest income,

(ii) The net increase (decrease) to interest expense, and

(iii) The effect on noninterest income and expense of these off-balance-sheet derivative contracts.

(4) Risk-Based Capital Reporting Changes

For those banks that complete Schedule RC-R in its entirety, the schedule's memorandum section will be revised to provide for the collection of remaining maturity data for long-dated contracts and for four additional types of derivative contracts: gold contracts, other precious metals contracts, other commodity contracts, and equity contracts. The two replacement cost items currently collected for interest rate and foreign exchange rate contracts will be deleted and replaced with a single new item for a bank's current credit exposure across all derivative contracts and counterparties, taking into account legally enforceable, bilateral netting agreements that are recognized for risk-based capital.

(5) Investments in "High-Risk Mortgage Securities" and Structured Notes"

Four memorandum items would be added to Schedule RC-B, "Securities," in which banks will separately report the amortized cost and fair value of any "high-risk mortgage securities" and of any "structured notes" that are held in either the held-to-maturity or available-for-sale portfolios.

(6) Sales of Proprietary Mutual Funds and Annuities

Currently banks are required to report separately the dollar amount of sales during the quarter for money market funds, equity securities funds, debt securities funds, other mutual funds, and annuities in Schedule RC-M, "Memoranda." The five existing mutual fund and annuity items combine sales of proprietary, private label, and third party products. The banking agencies would add one item to Schedule RC-M in which banks will report separately the total sales during the quarter of proprietary mutual funds and annuities.

(7) Reporting of Reciprocal Demand Balances for Insurance Assessment Purposes

The banking agencies would add three items to Schedule RC-O, "Other Data for Deposit Insurance Assessments," in order to identify the amount of the these adjustments to a bank's reported demand deposits that are needed for deposit insurance assessment purposes:

(i) Amount by which demand deposits would be reduced if reciprocal demand balances between the reporting bank and savings associations were reported on a net basis rather than a gross basis in Schedule RC-E,

(ii) Amount by which demand deposits would be increased if reciprocal demand balances between the reporting bank and U.S. branches and agencies of foreign banks were reported on a gross basis rather than a net basis in Schedule RC-E, and

(iii) Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of net reciprocal demand balances between the reporting bank and U.S. banks and savings associations in Schedule RC-E.

(8) Disclosure of the Acquisition Date When Push Down Accounting Has Been Applied

Push down accounting is the establishment of a new accounting basis for a bank in its separate financial statements (including its Call Report) as a result of a substantive change in control. The banking agencies would add an item to the Memoranda section of Schedule RI, "Income Statement," to reveal the date when any such transactions have taken place.

INSTRUCTIONAL CHANGES

The Call Report instructions will be updated in certain places to incorporate references to FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan." Statement No. 114 defines impairment and sets forth measurement methods for estimating the portion of the total allowance for loan and lease losses attributable to impaired loans. The banking agencies also propose instructional changes relating to the reporting of mortgage-backed securities in the body of Schedule RC-B, "Securities," so that item 4 of Schedule RC-B will include all mortgage-backed securities. In addition, the Call Report instructions will be clarified in response to questions about the reporting of lines of credit extended to bank insiders, participations in pools

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of residential mortgages, refundable loan commitment fees, and stock subscription payments.

The effective date for these proposed changes, if approved, would be the March 31, 1995, report date.

Board of Governors of the Federal Reserve System, February 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-5359 Filed 3-3-95; 8:45AM]

Billing Code 6210-01-F

Agency Forms Under Review

Background:

Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments are welcome and should be submitted on or before March 20, 1995.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829); for the hearing impaired *only*, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Request for OMB approval to revise the following report:

1. Report title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Agency form number: FFIEC 002.

OMB Docket number: 7100-0032.

Frequency: Quarterly.

Reporters: U.S. branches and agencies of foreign banks.

Annual reporting hours: 49,350.

Estimated average hours per response: 22.15.

Number of respondents: 557.

Small businesses are affected.

General description of report: This information collection is mandatory to obtain or retain a benefit (12 U.S.C. 3105(b)(2)), 1817(a)(1) and (3), and 3102(b) and is given confidential treatment (5 U.S.C. 552(b)(8).

SUMMARY: The proposed revisions to the FFIEC 002 that have been submitted to the Office of Management and Budget for approval are mandated by the Federal Financial Institutions Examination Council (FFIEC).

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies. The proposed changes affect several existing schedules.

The following revisions are proposed for implementation as of March 31, 1995.

(1) On Schedule RAL, "Assets and Liabilities," item 1.c for "Other bonds, notes, debentures, and corporate stock (including U.S. state and local securities) would be divided into "Securities of freign governmental units" and "All other."

(2) On Schedule RAL, "Assets and Liabilities", a new item would be added for "Trading Liabilities" to disclose further information on trading activities (open short positions and revaluation losses on derivatives).

(3) On Schedule RAL, "Memoranda," five items would be added in which branches and agencies would separately report the amortized cost and fair value of any "high-risk mortgage securities" and of any "structured notes" that are held in either the held-to-maturity or available-for-sale portfolios, and total sales of mutual funds and annuities.

(4) On Schedule M, "Due from/Due to Related Institutions in the U.S. and in Foreign Countries," a memorandum item would be added for revaluation gains and revaluation losses from the marking-to-market of off-balance-sheet derivatives contracts with related parties that are held for trading purposes.

(5) The banking agencies would add three items to Schedule O, "Other Data for Deposit Insurance Assessments," in order to identify the amount of the these adjustments to reported demand deposits of a branch or agency for deposit insurance assessment purposes:

(i) Amount by which demand deposits would be reduced if reciprocal demand balances between the reporting branch or agency and savings associations were reported on a net basis rather than a gross basis in Schedule E,

(ii) Amount by which demand deposits would be increased if reciprocal demand balances between the reporting branch or agency and U.S. banks were reported on a gross basis rather than a net basis in Schedule E, and

(iii) Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of net reciprocal demand balances between the reporting branch or agency and U.S. banks savings associations in Schedule E.

The following revisions are proposed for implementation as of June 30, 1995.

(1) Notional Amounts/Par Values

At present, all branches and agencies report notional amount/par value data for interest rate, foreign exchange rate, and other commodity and equity contracts in items 2,3,4, and 9 of Schedule L, "Commitments and Contingencies," for transactions with non-related depository institutions, and in items 2,3,4, and 9 of Schedule M, Part V, "Commitments and Contingencies," for transactions with related depository institutions. The existing items would be expanded to separate exchange-traded contracts from over-the-counter contracts and to separate equity derivative contracts from commodity and other contracts. (Spot foreign exchange contracts would also be reported separately.) In addition, for each of the four types of underlying risk exposures (i.e., interest rate, foreign exchange, equity, and commodity and other), the total notional amount/par value of contracts held for trading and held for purposes other than trading will be reported separately, with the latter further divided between contracts that are marked to market for FFIEC 002 reporting purposes and those that are not.

(2) Gross Fair Values of Derivative Contracts

For branches and agencies with $100 million or more in total assets that file the FFIEC 002 reporting forms, Schedule L and Schedule M, Part V, would also be expanded to include gross fair value data for derivatives. For each of the four types of underlying risk exposures, the gross positive and gross negative fair values will be reported separately for

(i) Contracts held for trading purposes,

(ii) Contracts held for purposes other than trading that are marked to market, and

(iii) Contracts held for purposes other than trading that are not marked to market. When reporting gross fair values, no netting of contracts would be permitted.

Board of Governors of the Federal Reserve System, February 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-5369 Filed 3-3-95; 8:45AM]

Billing Code 6210-01-F

Bank of Colorado Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 30, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bank of Colorado Holding Company, Vail, Colorado; to merge with Snow Bankcorp, Inc., Dillon, Colorado, and thereby indirectly acquire Snow Bank, N.A., Dillon, Colorado.

B. Federal Reserve Bank of Dallas (Genie D. Short, V'ce President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FirstBank Group, Inc., Los Fresnos, Texas; to merge with Raymondville State Bancshares, Inc., Raymondville, Texas, and thereby indirectly acquire First Valley Bank, Raymondville, Texas.

In connection with this application FirstBank Group, Inc., Los Fresnos, Texas; also has applied to acquire 100 percent of the voting shares of First Valley Delaware Financial Corporation, Dover, Delaware, and First Valley Bank, Raymondville, Texas.

Board of Governors of the Federal Reserve System, February 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-5363 Filed 3-3-95; 8:45 am]

BILLING CODE 6210-01-F

Executive Auto Lease, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Executive Auto Lease, Inc., Andover, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Fidelity Bank and Trust Company, Salem, New Hampshire, a *de novo* bank, whose name will be changed to Southern New Hampshire Bank & Trust Company, Salem, New Hampshire.

In connection with this application, Applicant also has applied to engage directly in leasing real or personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-5361 Filed 3-3-95; 8:45 am]

BILLING CODE 6210-01-F

Sidell Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to

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produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Sidell Bancorp, Inc., Sidell, Illinois; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families and the Public Health Service

[Program Announcement No. OCS 95–12]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services, Administration for Children and Families; Centers for Disease Control and Prevention, Public Health Service; and the Substance Abuse and Mental Health Services Administration, Public Health Service; in the Department of Health and Human Services (HHS).

ACTION: Notice of the availability of financial assistance and request for applications to establish a National Domestic Violence Hotline.

SUMMARY: The Office of Community Services, Administration for Children and Families, in cooperation with the Centers for Disease Control and Prevention and Substance Abuse and Mental Health Services Administration, announces the availability of funds in fiscal year 1995 for the award of one cooperative agreement on a competitive basis to operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. This announcement contains all of the application materials needed to apply for this cooperative agreement.

The purpose of the national domestic violence hotline is to provide information and referral services, counseling, and assistance to victims of domestic violence, their children and other family members, and others affected by such violence and to enable them to find safety and protection in crisis situations. The successful applicant will be required to provide telephonic assistance on a 24 hour-per-day, seven day-a-week basis throughout the continental United States, and in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

DATES: The closing date for submission of applications is June 5, 1995.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families/Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, (OCS 95–12) Washington, DC. 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at:

Administration for Children and Families, Division of Discretionary Grants, 901 D Street, SW., 6th Floor (OCS 95–12), OFM/DDG, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley, Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, S.W., Washington, DC. 20447. Telephone (202) 401–5529.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts. Part I provides information on the legislative authority applicable to this announcement and background information on the proposed national domestic violence hotline. Part II describes the minimum requirements for the design of the hotline that the applicant must address in its application. Part III describes the evaluation criteria. Part IV provides information and instructions for the development and submission of an application.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that the cooperative agreement to be awarded under this program announcement is subject to the availability of funds.

Part I: General Information

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, et seq.) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was reauthorized and amended for fiscal years 1996 through 2000 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill), signed into law on September 13, 1994.

One part of the Crime Bill, the Violence Against Women Act, added section 316 to the Family Violence Prevention and Services Act to authorize a grant award for up to five years to provide for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

B. Conceptual Framework and Scope of Services

The prevalence of family violence is widespread and its effective prevention and treatment requires coordination and collaboration among a broad range of legal, justice system, health, and social service providers, and advocates at the Federal, State and local levels.

To serve the wide range of expected calls effectively, the hotline must have expertise about domestic violence and services to victims of domestic violence. The staff also must understand the importance of using appropriate linkages with State and local resources to serve callers to the hotline. The benefits of a highly visible national hotline to victims and others will be directly related to the productive working relationships and coordinated provision of services between and among the hotline and State and local hotlines and other services and resources.

Calls to the hotline may range from the urgent and life-threatening to calls for general reference information. The target population to be served by the hotline is specified in the statute as "victims of domestic violence." The hotline should be prepared to respond to the broad range of violence that occurs in the context of family and intimate relationships, domestic violence, spouse abuse, partner abuse, battering of women, sexual assault, date rape, and acquaintance rape. The hotline also will serve those less directly affected by such abuse, e.g., relatives, children of victims and other family members, friends, neighbors, perpetrators and batterers, other concerned individuals, and the general public.

In terms of the scope of the services provided by the hotline, the statute requires the provision of "information and assistance" and "counseling and referral services." Therefore, the applicants' proposed design and plan for operating the hotline and responding to callers is important. However, the hotline is not expected to provide extended or long-term counseling or therapy services. The fuller discussion of a problem and consideration of options is done most appropriately at the local level, given the variation in laws and services available among the States and localities.

Finally, because domestic violence often contributes to isolation, helplessness, loss of self-esteem, and dependence, a self-help and empowerment model of services is needed. Such a model:

- Protects and assures safety for all victims and other family members;
- Builds on the strengths and resources of individuals and families;
- Offers options and support for independent decision-making based on specific individual and family needs and circumstances; and
- Assists individuals and families to obtain protection and needed services that are respectful of cultural and community characteristics.

Finally, we recognize that there is an inter-relationship between alcohol, drug abuse, and mental health (ADM) problems and domestic violence. Alcohol abuse has been demonstrated to contribute to violent behavior. Moreover, the abuse of alcohol coupled with other drugs is even more likely to be associated with severe battering incidents than is alcohol by itself. Victims of and or witnesses to domestic violence also may experience psychological consequences or turn to substance to ameliorate their pain. In addition to physical trauma resulting from acts of physical abuse, battered women suffer from a number of mental health consequences, including higher levels of depression, drug and alcohol abuse, suicide attempts, and low self-esteem. Many of the mental health consequences of spousal violence result from chronic intimidation and fear, which are often as significant as the actual, acts of physical aggression. Witnessing spousal violence contributes to the cycle of violence outside the home. There is an increased likelihood of child abuse in homes where there has already been spouse abuse.

C. Eligible Applicants

Any private nonprofit agency, organization, institution, Tribal organization, or combination thereof, is eligible to apply for these funds. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

D. Availability of Funds

As authorized by section 316 of the Act, the Office of Community Services will award one cooperative agreement in FY 1995 of a maximum of $1 million for the implementation of the toll-free rational domestic violence hotline. The source of these funds will be the Crime Bill Trust Fund.

Non-competitive continuation grant awards for each of years two through five (FYs 1996–1999) will be a maximum of $850,000, subject to the availability of funds. This total represents $400,000 from the Crime Bill Trust Fund for the operation of the hotline and $450,000 to be used to carry out additional statutory and programmatic activities on behalf of the Centers for Disease Control and Prevention (CDC), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the Office of Community Services (OCS).

Because the national hotline is viewed as a viable mechanism to achieve a number of specific aims, in each of years two through five CDC plans to provide $250,000 under section 393 of the Public Health Services Act to provide additional support for State and local domestic violence hotlines in response to the demand generated by the national public awareness campaign; SAMHSA plans to provide $100,000 under appropriate FY 1996 statutory authorities to enhance the hotline database to include ADM resources, support the training of hotline staff to assure that they are knowledgeable about ADM involvement in incidents of domestic violence and can make appropriate referrals to ADM services, and, to the extent possible, collect such information from callers; and OCS plans to provide $100,000 under section 305 of the Family Violence Prevention and Services Act to support additional compilation and reporting of information based on calls to the hotline. These supplemental activities are described in greater detail as grantee requirements in Part II of this announcement.

Section 316 of the Act also states that funds appropriated and awarded from the Crime Trust Fund will remain available until expended, i.e., the $1 million in FY 1995 and $400,000 in FYs 1996–1999. This provides additional flexibility to the grantee in the timing and use of these funds. The funds for additional purposes in FYs 1996–1999 ($450,000 in each of years two through five) must be expended by the end of the fiscal year following receipt of the funds.

E. Duration of Project

The Office of Community Services, in cooperation with CDC and SAMHSA, will award one grant, as a cooperative agreement, for up to five years (60-month project period). The initial grant award, to be made on a competitive basis, will cover a 12-month budget period. Application for continuation funding beyond the initial 12-month budget period, but within the 60-month project period, will be considered in subsequent years on a non-competitive basis, subject to the approval of the Secretary, the availability of funds, the satisfactory performance of the grantee, and the determination that the continued funding and support of the project would be in the best interest of the government.

F. Cooperative Agreement

The Office of Community Services intends to support the national toll-free hotline through a cooperative agreement. A cooperative agreement is Federal financial aid in which substantial Federal involvement is anticipated. The responsibilities of the Administration for Children and Families and of the successful applicant will be identified and incorporated into the cooperative agreement during pre-award negotiations. It is anticipated that ACF responsibilities will not change the project requirements found in Part II of this announcement.

The grantee will outline a plan of interaction with OCS for implementation under a cooperative

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agreement including, as appropriate, activities involving Federal staff. The plan under the cooperative agreement will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the hotline.

G. Grantee Share of the Project

The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $1,000,000 in Federal funds for the first year budget period must include a match of at least $333,333 (25 percent of total project cost). If approved for funding, the grantee will be held accountable for commitments of non-Federal resources, and failure to provide the required amounts will result in a disallowance of unmatched Federal funds.

Part II: Project Requirements

Requirements for Project Implementation

The following requirements must be met by the grantee and addressed in the application:

1. All funds received by the grantee pursuant to Section 316 of the Act must be used to establish and operate a national toll-free, telephone hotline to provide information and assistance to victims of domestic violence.

2. In establishing the hotline, the private, nonprofit entity shall—

- Contract with a carrier for the use of a toll-free telephone line;
- Employ, train, and supervise personnel to answer incoming calls and provide counseling and referral services on a 24-hour-a-day basis;
- Assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women and their children; and
- Publicize the hotline to potential users throughout the united States.

3. To be approved by the Secretary, the application must include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including description of—

- The training program for hotline personnel;
- The hiring criteria for hotline personnel;
- The methods for the creation, maintenance, and updating of a resource database;
- A plan for publicizing the availability of the hotline;
- A plan for providing service to non-English speaking callers, including hotline personnel who speak Spanish; and
- A plan for facilitating access to the hotline by persons with hearing impairments.

4. The applicant must demonstrate that it has:

- Nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as domestic violence State coalitions or recognized national domestic violence groups; and
- A commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities.

5. The applicant must demonstrate knowledge of the field, including the range of services and the resources available for domestic violence victims, their children and family members, perpetrators and batterers, and other concerned individuals, including services and resources relating to substance and mental health problems; State and Indian tribal domestic violence laws, including the availability of legal protection; and the barriers affecting access to such services, resources and protection.

6. The applicant must demonstrate experience in providing high-quality crisis intervention, information and referral, and counseling services and support to battered women, their children, other domestic violence victims, their family and friends, batterers, and the general public.

7. The applicant must demonstrate an understanding of the relationship of alcohol, drug abuse, and mental health (ADM) problems to incidents of domestic violence and the ability to make appropriate referrals to callers.

8. The applicant must demonstrate an understanding of the need for a national hotline for domestic violence victims, including a description of the function and limitation of the current network of national and State crisis hotlines, information lines, and State victims referral services.

9. The applicant must provide a plan and demonstrated ability to build, maintain, and keep current a comprehensive database of resource information, including the full range of services available in local communities, the types of legal protection and services available in different States and localities, and the capability to access information.

10. The applicant must provide a detailed description of:

- The telecommunications and computer technology that will be employed to establish and support the hotline, including all management functions, referral functions, resource database management functions, monitoring functions, and overall project administration and quality control, including periodic reporting to HHS;
- The design and operation of the telephone system that will be used to provide the service; its capacity and its limitations, including information such as the capacity to facilitate the number of incoming calls, call conferencing, automatic call referral to local providers, and service integration with computers.
- The methods that will be used to ensure that the national hotline is a confidential crisis intervention and the specific provisions that will be in place to safeguard the confidentiality of callers and ensure the proper handling of confidential or sensitive information;
- The personnel recruitment, hiring, and training program (i.e., a description of an initial and ongoing training plan for staff and volunteers should be included in this section) that will ensure the delivery of quality crisis intervention, information and referral, assistance, and counseling services to diverse populations;
- The specific emergency response and crisis protocol to be used, the ability to conference call (or "patch") a caller to a local domestic violence, legal services, or mental health or substance abuse program when appropriate, and the plans for minimizing such problems as crank/obscene calls and busy signals; and
- The methods the applicant will use to provide for the development, maintenance, and updating of a comprehensive resource database (distributed to the maximum extent appropriate); the technical capacity to link with other State and local databases in order to maintain an extensive and current resource locator or listing; the ability to facilitate communication among service providers to assist the

provision of services; and how the information on best practices gathered through the inventory being conducted by CDC will be used to assist victims.

11. The applicant must demonstrate an understanding of the technological requirements of such a project and include a detailed timeline to provide the following services nationally:

- 24-hour/365 days per year access;
- Direct access to English and Spanish-speaking personnel at all times and provision for services to other non-English speaking callers and the hearing impaired;
- Personnel (paid staff and volunteers) trained in crisis intervention, information and referral, and counseling skills;
- Comprehensive database of current information;
- The ability to connect callers directly to local programs or services when appropriate;
- Emergency response protocol for callers in immediate danger; and
- Appropriate confidentiality safeguards; and data collection and data management capability sufficient to support program administration, reporting, monitoring, and an ongoing quality assessment of the hotline service.

12. The applicant must provide a plan to coordinate, work with, and provide hotline services and data resource and referrals that make maximum use of existing domestic violence programs and resources, including, but not limited to, local and State-wide domestic violence hotlines, State Domestic Violence Coalitions, shelter programs, emergency services, legal services programs, national domestic violence resource centers, other existing national hotlines, and other national organizations; resources related to child abuse and youth endangerment, ADM problems, and perpetrators and batterers programs, the national domestic violence media campaign coordinated by the Family Violence Prevention Fund, and the various activities of the Centers for Disease Control under its campaign to prevent violence against women. The applicant must provide support to State and local domestic violence hotlines in response to the demand generated by the national public awareness campaign.

13. The applicant must provide a description of the quality assurance system it will use to assess regularly the quality of the services being provided by the hotline and the extent to which the goals and objectives of the service are being met. The quality assurance system also must include actions to address identified problems.

14. The applicant must provide a comprehensive plan to publicize the hotline to a wide national audience, including efforts to ensure promotion through the national media and through targeted outreach to racially and ethnically diverse communities, older individuals, and individuals with disabilities.

15. The applicant must demonstrate the ability to staff, financially support, and programmatically administer a national project of this scope.

16. The author(s) of the application must be clearly identified together with a description of his or her current relationship to the applicant organization and any future project role he or she may have if the project is funded.

17. The applicant must provide an assurance that any information collected as a part of this grant will become the property of the Federal Government.

18. The applicant must provide an assurance that it will work with the Federal Project Officer to identify the information that will be compiled based on incoming calls including compilation of information on both maternal and child victims of domestic violence and individual and situational factors characterizing violent and abusive behavior.

19. The applicant must provide an assurance that it will comply with the grant administration requirements in 45 CFR part 74.

Part III: Evaluation Criteria

The five criteria that follow will be used to review and evaluate how each application has addressed the requirements stated in Part II and should be used in developing the program narrative. The point values following each criterion heading indicate the maximum numerical weight that each section will be given in the review process.

1. Need for the Project (10 Points)

Provide a detailed discussion of the need for a national domestic violence hotline of the scope being proposed. Provide a detailed analysis of the available data related to the problem being addressed (both domestic violence in general and the specific lack of a national domestic violence hotline); the strengths and limitations of other national and local crisis intervention and victim services hotline/referral services available, and the "state-of-the-art" relative to the problem being addressed by the proposal.

2. Goals and Objectives (10 Points)

Clearly state the project goals and objectives. Objectives should be stated in concrete, measurable terms which clearly identify the population(s) to be served, the type, quality, and level of service to be provided, the timeline for the establishment and delivery of services, and other project benchmarks. The anticipated demand for hotline services during the initial start-up period and a projection of the demand on an ongoing basis should be discussed, with supporting documentation. Describe the precise location of the project.

3. Approach (30 Points)

Provide a sound workable plan of action (approach) which details: how the proposed work will be accomplished; how each task relates to the project's goals and activities; identifies the key staff member responsible for the specific tasks; provides a chart indicating the timetable for completing each task, the phasing in of the tasks over time, the lead staff person, and the time committed to the task; cites factors which might accelerate or decelerate the work; justifies the approach selected over other approaches; makes maximum use of existing facilities and resources and off-the-shelf technology; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social or community involvement; and provides projections of the accomplishments to be achieved and identifies the activities for which Federal technical assistance, advice, or guidance as the project is implemented is anticipated and would be acceptable.

4. Results and Benefits Expected (20 Points)

Identify, in specific terms, the results and benefits to be derived from the project and relate each result and benefit to a specific objective. Indicate the aggregate number of calls expected to be received and individuals to be assisted on an annual basis, e.g., the expected volume of calls in such service areas as crisis counseling, immediate referrals to shelters, or the number of referrals made in response to non-English speaking callers. Indicate the anticipated impact on and the subsequent benefit of the national hotline to victims of domestic violence and on the existing network of State and local shelters and services. Identify the kinds of data to be collected, maintained, and updated, and discuss

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the criteria to be used to assure the quality of the services provided.

5. Level of Effort (30 Points)

Expertise, Commitment, and Support. The extent to which the applicant has nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as State Domestic Violence Coalitions or recognized national domestic violence groups; the extent of the applicant's commitment to diversity, and to the provision of service to ethnic, racial, and non-English speaking minorities, older individuals, and individuals with disabilities.

Staff Background and Organizational Experience. The adequacy of the staffing pattern for the proposed project, how the individual responsibilities are linked to project tasks, and the contributions to be made by key staff. Each collaborating or cooperative organization, individual consultant, or other key individuals who will work on the project should be listed along with a description of the nature of their effort or contribution.

Competence of Staff. The background and experience of the project director and key project staff and the history and accomplishments of the organization; the qualifications of the project team including any experience with similar projects; the variety of skills, relevant educational background, and the ability to effectively manage the project and to coordinate activities with other agencies. One or two pertinent paragraphs on each key member are preferred to vitae/resumes. However, vitae/resumes may be included.

Adequacy of Resources. The adequacy of the available resources and organizational experience with regard to the tasks of the proposed project. List the financial, physical, and other resources already committed by other public and private agencies and institutions, if any. Explain how these organizations will participate in the day to day operations of the project. Letters from these agencies and organizations identifying and discussing the specifics of their commitment and participation must be included in the application.

Budget. Relate the proposed budget to the level of effort required to obtain the project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Collaborative Efforts. The additional anticipated private sector resources that may be available to support or enhance the overall program. Discuss in detail and provide documentation for any proposed collaborative or coordinated efforts with other public and private agencies or organizations. Identify these agencies or organizations and explain how their participation will enhance the project. Letters from these agencies and organizations must be included discussing their interest and/or commitment in supporting this project, the stage of the planning and decision-making, and the expected level of resource commitment.

Part IV: Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this publication along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information describing the proposed project under which the application is to be submitted. The project design requirements are found in Part II.

A. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, (E.O.) "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa, and Palau, have elected to participate in the E.O. process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–95–12) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included at the end of this announcement.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is found at the beginning of this program announcement under **DATES**. Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–95–12) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, or

2. Sent on or before the deadline date and received by OCS in time to be considered during the competitive review process.

Applications must be postmarked no later than the date to be found at the beginning of the Program Announcement under **DATES**. When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Late applications. Applications which do not meet the criteria under *"Deadlines"* are considered late applications. The ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The ACF reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; or if ACF determines a deadline extension to be in the best interest of the Government. However, ACF will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, Page 2, and the required certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, instructions for these forms are included below.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

Please Prepare Your Application in Accordance With The Following Instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page! Enter designation "BTL."

Item 1! "Type of Submission"—Preprinted on the form.

Item 2! "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3! "Date Received By State"—State use only (if applicable).

Item 4 "Date Received by Federal Agency"—Leave blank.

Item 5 "Applicant Information" "Legal Name"—Enter the legal name of applicant organization.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number, including the area code, of the person to be contacted on matters involving this application "—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6: "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7: "Type of Applicant"—Self-explanatory.

Item 8: "Type of Application"—Preprinted on the form.

Item 9: "Name of Federal Agency"—Preprinted on the form.

Item 10: "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. The CFDA number for this program is 93.671.

Item 11: "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project.

Item 12: "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13: "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14: "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

Items 15: "Estimated Funding Levels"—

In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 month budget period of the proposed five year project period.

Item 15a: Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the project description.

Items 15b-e: Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding and "matching" requirements, see Part I, Grantee Share of the Project.

Item 15f: Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement. If not applicable, enter N/A.

Item 15g: Enter the sum of items 15a-15e.

Item 16a: "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 30, 1995.

Item 16b: "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17: "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18: "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this

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application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a-c: "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d: "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e: "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) The total project period of 17 months or less; or (2) the first 12 month budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) The total project period of 17 months or less or (2) the first 12 month budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—Line 6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $5,000 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f: Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g: Not applicable. New construction is not allowable.

Other—Line 6h: Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i: Enter the total of Lines 6a through 6h.

Indirect Charges—6j: Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k: Enter the total amounts of lines 6i and 6j.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." "In-kind contributions" are defined in title 45 of the Code of Federal Regulations, Part 74.2, as "the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real, property, equipment, supplies and other expandable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20: For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21: Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the project description in Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Need for the Project*
(b) *Goals and Objectives*
(c) *Approach*
(d) *Results and Benefits Expected*
(e) *Level of Effort*

The specific information to be included under each of these headings is described in Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement. There is no page limit on the length of the narrative.

The length of the remainder of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½" x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances— Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, the Debarment and Other Responsibilities, and the Environmental Tobacco Smoke certifications.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

_____One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

_____Application is from an organization which is eligible under the eligibility require.nents defined

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in the priority area description (screening requirement);
_____Application length, excluding the narrative, does not exceed 60 pages, unless otherwise specified in the project description.
_____A complete application consists of the following items in this order:
_____Application for Federal Assistance (SF 424, REV 4–88);
_____A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
_____Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
_____Budget justification for Section B—Budget Categories;
_____Table of Contents;
_____Letter from the Internal Revenue Service to prove non-profit status, if necessary;
_____Copy of the applicant's approved indirect cost rate agreement, if appropriate;
_____Project summary description and listing of key words;
_____Program Narrative Statement (See Part III);
_____Organizational capability statement, including an organization chart;
_____Any appendices/attachments;
_____Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88); and
_____Certification Regarding Lobbying.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACF by telephone at (202) 401–5529.

(Catalog of Federal Domestic Assistance Number 93.671, Family Violence Prevention and Services.)

Dated: March 1, 1995.

Donald Sykes,

Director, Office of Community Services

BILLING CODE 4184–01–P

Attachment A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1 TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name | Organizational Unit

Address (*give city, county, state, and zip code*) | Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7 TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A State H Independent School Dist
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (*specify*): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*)

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a Applicant , b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7 Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name a Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to he State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1		$	$	$	$	$
2						
3						
4						
5 TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4). Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5 Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15.—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in column (a) Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the

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right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17 Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

_____

Title

_____

Applicant organization

_____

Date submitted

BILLING CODE 4184–01–M

Attachment B

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment D—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Signature

_____
Title

_____
Organization

_____
Date

BILLING CODE 4184-01-M

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

Attachment E

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814. Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (303) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC. 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, Fax (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

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Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to:

Linda Clarke, Telephone (809) 774–0750

Attachment F

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–5409 Filed 3–3–95; 8:45 am]

BILLING CODE 4184–01–P

Commission on Child and Family Welfare; Hearing

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of public hearings.

SUMMARY: The Commission on Child and Family Welfare will hold Public Hearings at the following locations:

On March 28–29, 1995—Alexandria, Virginia, Embassy Suites Hotel, 1900 Diagonal Road

On April 19–20, 1995—Cleveland, Ohio, Forum Conference Center, 1 Cleveland Center, 1375 E. 9th Street

On May 9–10, 1995—San Francisco, California, Holiday Inn Golden Gateway, 1500 Van Ness Avenue

Mission

Creating environments in which decisions can best be made about the well-being of children that ensure that children get emotional and financial support from both parents.

Subject of Hearings: Custody and Visitation

A. Laws, Policies and Procedures
- determination of how custody and visitation decisions are made and enforced;
- examination of alternative dispute resolution models, standards and guidelines;
- examination of (interstate) mobility factors of parents and children;
- examination of the effectiveness of putative fathers' registries in custody and visitation.

B. Community-Based Alternatives and Support Systems
- examination of community support systems and resources available to parents and families with custody and visitation issues.

C. Child Well-Being Issues: Strengthening the Family
- examination of special populations including: remarried, adoption, domestic violence, immigration, racial and ethnic factors that affect custody and visitation;
- examination of research concerning child adjustment associated with various custody and visitation approaches;
- examination of the dynamics of the absent father syndrome; and
- examination of public policies and procedures working against the viability and support of two-parent families.

Guidelines for Public Participation

Persons wishing to provide oral testimony on the subject areas specified above should make a request in writing prior to the hearings by the following dates:

For Alexandria, Virginia—March 17
For Cleveland, Ohio—April 5
For San Francisco, California—April 25

Send your request to: U.S. Commission on Child and Family Welfare, 370 L'Enfant Promenade, SW., Aerospace Building, Room 616, Washington, DC 20447, Phone: (202) 401–5565. Witnesses will be notified of the time of their appearance. Oral testimony may be limited due to time constraints. To ensure thorough consideration of all viewpoints, witnesses and other interested individuals should submit written testimony for inclusion in the printed record of the hearing. Written testimony will be accepted before, but not later than 7 days following, each public hearing. If a sign language interpreter is needed, contact Kevin Costigan at (202) 401–5565 no later than 14 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Kevin Costigan, Commission on Child and Family Welfare, 370 L'Enfant Promenade SW., Aerospace Bldg., 6th Floor West, Room 616, Washington, DC 20447, (202) 401–5565.

SUPPLEMENTARY INFORMATION: None.

Dated: February 27, 1995.

Ann Rosewater,

Deputy Assistant Secretary for Policy and External Affairs.

[FR Doc. 95–5333 Filed 3–3–95; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Memorandum of Understanding Between the Food and Drug Administration and the Environmental Protection Agency

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Environmental Protection Agency (EPA). This action is necessary to establish the working arrangements and responsibilities of the two agencies. The purpose of the MOU is to establish an FDA liaison to the EPA Gulf of Mexico Program Office.

DATES: The agreement became effective September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Juanita Pointer, Center for Food Safety and Applied Nutrition (HFS–669), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4098.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: February 3, 1995.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration and Environmental Protection Agency, Gulf of Mexico Program

Purpose:

This Memorandum of Understanding (MOU) is to establish the working arrangements and responsibilities of the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) for the purpose of FDA providing a liaison to the EPA Gulf of Mexico Program Office.

Background:

The Gulf of Mexico Program (GMP) was established under the leadership of EPA to develop a comprehensive, intergovernmental strategy to protect and enhance the environmental quality of the Gulf of Mexico. The GMP identified priority issues of environmental degradation and concern, established a Gulf-wide committee framework and infrastructure to ensure communication and information exchange and began implementing a 5-year strategy The strategy includes:

1. Preparation of environmental characterization reports,

2. Preparation of environmental assessments,

3. Development of an interactive data management system,

4. Preparation of predictive assessments,

5. Development of environmental measurement plans and

6. Development of an environmental monitoring system.

FDA's Office of Seafood was established to strengthen the agency's domestic and imported seafood programs. The Office of Seafood coordinates all of FDA's seafood activities, including those which assure that seafood does not contain harmful amounts of natural or man-made substances, such as toxins, pathogenic microorganisms, industrial chemicals or toxic metals. FDA uses several strategies to accomplish its public health mission. One strategy is to assist EPA in its Gulf of Mexico Program.

A The Food and Drug Administration agrees to

1. Assign one individual to serve as the principal liaison between FDA and the Gulf of Mexico Program (GMP) with responsibility for managing, coordinating, implementing and evaluating FDA activities in support of the GMP. The FDA liaison:

a. Provides program and technical assistance and coordination of FDA activities with the GMP Technical Steering Committee, Policy Review Committee, technical steering subcommittees and the State, local and Federal agencies participating in the GMP

b. Serves as Federal Co-Chair of the Public Health Subcommittee with primary responsibility for developing a Public Health Action Plan for the Gulf of Mexico Program and incorporating the recommendations of the National Academy of Sciences Report on Seafood Safety. The plan should address four major elements, three of which are problems for which FDA has the lead:

(1) Illnesses associated with consumption of raw shellfish as a result of naturally occurring pathogens and/or pathogens of fecal origin.

(2) Risks associated with consumption of Gulf of Mexico seafood contaminated with toxic substances or pesticides.

(3) Effects of naturally occurring marine biotoxins on the public health through direct exposure via aerosols and/or exposure via contaminated Gulf seafood.

(4) Illness associated with recreational or occupational use of ambient waters contaminated with sewage.

c. Coordinates, with other GMP participants, the five major aspects of the GMP study: Resource characterization and assessment; problem identification and study design; communication and education; integration with ongoing programs of the Gulf; and development of management, implementation and monitoring strategies.

d. Evaluates technical documents developed by the Technical Steering Subcommittees and other agencies as they relate to public health and GMP issues and for consistency with FDA policies, programs and regulations.

e. Works closely with States to promote cooperation and harmonization of their public health programs as they relate to Gulf of Mexico issues.

f. Serves as the FDA point of contact with the National Shellfish Pollution Indicator Study. Is responsible for keeping the GMP informed of developments and providing program needs to the Indicator Study directors.

g. Develops appropriate projects to evaluate programs and methods of reducing public health risks associated with the use of the waters and resources of the Gulf of Mexico.

h. Serves as project officer on extramural projects to conduct scientific studies of interest to FDA which relate to the Gulf of Mexico Program.

2. Provide the following administrative support to the assigned individual:

a. *Salary*—The FDA employee will remain on the FDA payroll for the entire period of the assignment.

b. *Relocation Expenses*—The cost of relocating the FDA employee to the John C. Stennis Space Center, Mississippi, as provided by policies and procedures relating to reporting to a duty station.

c. *Travel Expenses*—The FDA employee will be provided transportation and per diem expenses while in temporary duty status for the entire period of the assignment.

d. *Equipment*—FDA will provide a personal computer for use by the employee during the entire period of the agreement.

3. Provide annual review of the individual's performance for the entire period of the assignment.

4. *Administrative Support*—Annually provide partial financial support to EPA/GMP to defray part of the overall costs to them for providing services as stated under this IAG. Amount to be worked out between the two agencies.

B. The Environmental Protection Agency-Gulf of Mexico Program agrees to:

1. Provide technical supervision and assign day-to-day tasks to the FDA representative to the GMP. The technical and day-to-day assignments will be provided by the Director of the Gulf of Mexico Program; and he shall serve as the EPA's point of contact and the liaison officer for this interagency agreement.

2. Provide the following administrative support to the assigned individual:

a. *Space*—Space will be provided at the GMP Headquarters at the John C. Stennis Space Center; and the space will contain appropriate furniture and conveniences.

b. *Telecommunication*—Telephone service including FTS, Long Distance, and Fax will be provided.

c. *Secretarial Support*—Secretarial support will be provided to include: Typing, xeroxing, dictating, filing, printing, duplicating, and office supplies.

3. The Director, GMP, will provide FDA with written comments on the individual's performance for the specified rating period. The information will be used on the General Workforce Performance Appraisal of the FDA liaison.

Period of Agreement:

It is anticipated that this MOU will be for approximately 5 years from the date of signature. Modification of the MOU shall be by mutual consent of the parties. However, if either party desires to terminate this MOU, a written notice to the other party shall be forwarded and received 30 days in advance of the desired termination date.

Approved and Accepted for the Environmental Protection Agency Gulf of Mexico Program

By: Douglas A. Lipka
Title: Acting Director
Date: September 29, 1994

Approved and Accepted for the Food and Drug Administration

By: Fred R. Shank
Title: Director, Center for Food Safety and Applied Nutrition

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Dated: September 22, 1994.

[FR Doc. 95–5309 Filed 3–3–95; 8:45 am]
BILLING CODE 4160–01–F

Health Resources and Services Administration

Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $42.4 million will be available in fiscal year (FY) 1995 for: (1) Awards for educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (LRP) (Section 338B of the Public Health Service (PHS) Act) and (2) grants to States to operate loan repayment programs (Section 338I of the PHS Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC LRP and invites States to apply for grants to operate State Loan Repayment Programs (LRPs). The HRSA estimates that approximately 550 NHSC Loan Repayment awards totaling $35.4 million will be made to health professionals providing primary health services. Approximately $7 million in discretionary grants will be available to States to operate LRPs. Approximately $3 million will be available to support 10 competing continuation grants and 3 to 5 new starts. The range for these grants is approximately $20,000 to $1 million. Approximately $4 million is available for 19 noncompeting continuation grants. Awards will be made for a 1-year budget period and for up to a 5-year project period.

The PHS is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting health priority areas. These programs will contribute to the *Healthy People 2000* objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report, Stock No. 017–001–00474–01) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Part A of this notice contains specific information concerning the NHSC LRP, and Part B contains specific information concerning grants for State LRPs.

Part A—NHSC Loan Repayment Program

ADDRESSES: Application materials may be obtained by calling or writing to: National Health Service Corps Loan Repayment Program, 8201 Greensboro Drive, Suite 600, McLean, Virginia 22102, 1–800–221–9393 or (703) 734–6855. Completed applications must be returned to: Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, (301) 594–4400. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is 301–594–4981. Applicants for the NHSC LRP will use HRSA Form 873 approved under Office of Management and Budget (OMB) Number 0915–0127.

DATES: To receive consideration for funding, health professionals must submit their applications by August 1, 1995. To assure early processing of the application and approval for site matching, individuals are encouraged to submit applications well ahead of the August 1 deadline.

Applications will be considered to be on time if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance, please contact the Loan Repayment Programs Branch at the above address, phone or FAX number.

SUPPLEMENTARY INFORMATION: Section 338B of the PHS Act (42 U.S.C. 254l–1) authorizes the Secretary to establish the NHSC LRP to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in federally designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, general internal medicine, general pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC LRP, the Secretary will repay graduate and undergraduate educational loans incurred by primary care health professionals. For the first 2 years of full-time service at an approved site in a designated HPSA, the Secretary will repay up to $25,000 per year of the educational loans of such individual. (There is a minimum 2-year service obligation.) For subsequent years of full-time service, if the NHSC LRP contract is extended, the Secretary will repay up to $35,000 per year. Payments may be made to participants on an advanced quarterly basis (one quarter in advance of service for the entire service obligation), on an advanced annual basis (one year in advance of service for each year of service) or on an advanced biennial basis (2 years in advance of service but only for the first 2 years of a contract). The Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved. In addition to these amounts, NHSC LRP participants will receive a salary from a private nonprofit or public entity or, in some cases, the Federal Government during the term of their service.

The Secretary will identify and make available annually a list of those HPSA sites which will be available for service repayment under the NHSC LRP. The Secretary will select applicants for consideration for participation in the NHSC LRP according to the following criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined in this notice at the end of Part A.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board, and in the case of other health professions, are certified in their specialty), and have a current and unrestricted license to practice their profession in a State, will receive highest consideration.

(5) The academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

In providing contracts under the NHSC LRP, priority will be given to an applicant:

- Whose health profession or specialty is most needed by the NHSC;
- Who has and whose spouse, if any, has characteristics that increase the probability of continuing to serve in a HPSA upon completion of his or her service obligation;
- Who is from a disadvantaged background, subject to the preceding paragraph.

Eligible Participants: To be eligible to participate in the NHSC LRP, an individual must:

(1) (a) Have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant. Other health professions include clinical psychology, clinical social work, and dental hygiene.

(b) Be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or

(c) Be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession;

(2) Be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the PHS or be eligible for selection for civilian service in the NHSC; and

(3) Submit an application for a contract to participate in the NHSC LRP which contract describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the NHSC LRP. Any individual who has a judgment lien against his or her property for a debt to the United States is ineligible to participate in the NHSC LRP until the judgment is paid in full or otherwise satisfied.

No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC LRP contract. All individuals must have a current and unrestricted license to practice their profession in a State prior to beginning service under this Program.

Professions and Specialities Needed by the NHSC

At this time, the Secretary has determined, based on community demand, that priority will be given to the following health professionals: physicians (M.D.s and D.O.s) who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, obstetrics/gynecology, internal medicine, and pediatrics.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals. In addition, this program is not subject to the Public Health System Reporting Requirements, since the requirements do not cover payment to individuals.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.162.

Part B—Grants for State Loan Repayment Programs

ADDRESSES: Application materials for State Loan Repayment Programs may be obtained from: Alice H. Thomas, Grants Management Officer, HRSA/BPHC/GMB, 4350 East-West Highway, Room 11–1C3, Bethesda, Maryland 20814, (301) 594–4260, FAX (301) 594–4073. Completed new and competing applications must be returned to: Bureau of Primary Health Care, Grants Management Officer, c/o Houston Associates, Inc., 1010 Wayne Avenue, Suite 240, Silver Spring, Maryland 20910. Completed applications for budget period renewals (i.e., non-competing continuations) must be returned to: Alice H. Thomas, Grants Management Officer, HRSA/BPHC/GMB, 4350 East-West Highway, Room 11–1C3, Bethesda, Maryland 20814, (301) 594–4260 and FAX (301) 594–4073. The Grants Management staff is available to provide assistance on business management issues.

Application for these grants will be made on PHS Form 5161–1 (revised in July 1992) with revised face sheet DHHS Form 424, as approved by the OMB under control number 0937–0189. Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

DATES: Applications are due April 1, 1995. Applications will be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant, except to the extent the BPHC Office of Grants Management may authorize acceptance of a late application. Please contact Beth Rosenfeld at (301) 594–4235 if you have a question regarding receipt of applications.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact Clarke E. Gordon, Chief, Loan Repayment Programs Branch, HRSA/BPHC/DSLR, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, (301) 594–4400. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is (301) 594–4981

SUPPLEMENTARY INFORMATION: Section 338I of the PHS Act (42 U.S.C. 254q–1) authorizes the Secretary, acting through the Administrator, HRSA, to make grants to States for the purpose of assisting the States in operating programs as described in this notice for the repayment of educational loans of health professionals in return for their practice in federally designated health professional shortage areas (HPSAs) to increase the availability of primary health services in federally designated HPSAs.

Eligibility Requirements

State Loan Repayment Programs (LRPs) eligible for funding under this announcement must meet the following requirements:

(1) direct administration by a State agency;

(2) payment of all or part of the qualifying educational loans (including principal, interest, and related educational loan expenses) of health professionals agreeing to provide primary health services in federally designated HPSAs. "Qualifying educational

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loans" are Government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the graduate or undergraduate education of a health professional;

(3) assignment of participating health professionals only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs; and

(4) participant contracts which provide remedies for any breach of contract by participating health professionals.

Contract Requirements

Contracts provided by a State are not to be on terms that are more favorable to health professionals than the most favorable terms the Secretary is authorized to provide for contracts under the Federal NHSC Loan Repayment Programs under Section 338B of the PHS Act, including terms regarding:

(1) The annual amount of payments provided on behalf of the professionals regarding educational loans; and

(2) The availability of remedies for any breach of the contracts by the health professionals involved.

States are required to develop contracts that reflect a minimum of 2 years of obligated full-time clinical service. The annual amount of payments under a contract may not exceed $35,000, unless (1) this excess amount is paid solely from non-Federal contributions, and (2) the contract provides that the health professional involved will satisfy the requirement of full-time clinical service under the contract solely through the provision of primary health services in a federally designated HPSA that is receiving priority for the purposes of section 333A(a)(1), and is authorized to receive assignments of individuals who are participating in the NHSC Scholarship Program.

No loan repayments will be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract, and no credit will be given for any practice done while the provider is in a professional school or graduate training program. Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the State LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the State LRP. Any individual who has a judgment lien against his or her property for a debt to the United States is ineligible to participate in the State LRP until the judgment is paid in full or otherwise satisfied.

Program Requirements

States seeking support under this notice for the cost of State LRPs must provide adequate assurances that:

(1) With respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant. The Federal grant funds and the State matching funds will be used only for loan repayments to health professionals who have entered into contracts with States. In determining the amount of non-Federal contributions in cash that a State has to provide, no other Federal funds may be used.

(2) The State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs, and identify each site available for placement.

(3) Applications must identify the State entity and key personnel who will administer the grant.

(4) With respect to contracts between the State and the health professional, all contract breaches, by either party, will be reported regularly

Future Support

The Secretary must determine that the State has complied with each of the agreements of the grant in order for funding to continue. Before making a grant for a subsequent year of State LRP support, the Secretary will, in the case of a State with one or more initial breaches by health professionals of the repayment contracts, reduce the amount of a grant to the State for the fiscal year involved. The grant will be reduced by an amount equal to the sum of the expenditures of Federal funds made regarding the State LRP contracts involved, including interest on the amount of such expenditures, determined on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States. The Secretary may waive the reduction in the subsequent grant award if the Secretary determines that a health professional's breach was attributable solely to the professional having a serious illness or has died.

Evaluation Criteria

For new and competing continuation grants the following criteria will be used to evaluate State applications to determine which States are to be supported under this notice: (a) the extent of State's need for health professionals consistent with the health professions and specialties identified later in this notice; (b) the extent to which special consideration will be extended to federally designated HPSAs with large minority populations; (c) the number and type of providers the State proposes to support through this program; (d) the appropriateness of the proposed placements of State LRP recipients (e.g., consistency and coordination with State-based plans to improve access to primary health services for the underserved communities and individuals); (e) the appropriateness of the qualifications, the administrative and managerial ability of the staff to implement the proposed project; (f) the suitability of the State's approach and the degree to which the plan of a State is coordinated with Federal, State, and other programs for meeting the State's health professional needs and resources, including mechanisms for ongoing evaluation of the program's activities; (g) the source and plans for the use of the State match (the degree to which the State match exceeds the minimum requirements or has increased over time the amount of the match relative to the needs and resources of the State, and the adequacy and appropriateness of the proposed budget).

For competing continuation applicants only, the following criteria will be used: (a) the grantee's progress in achieving stated goals and objectives for the previous year's grant including the impact the State LRP placements have had on the State's short-term and long-term health professional needs; (b) an assessment of the number of and the reasons for initial breaches by health professionals of repayment contracts; and (c) the grantee's history of compliance with reporting requirements including goals, objectives, evaluation plans, organizational structure, financial management, and personnel changes.

Professions and Specialties Needed

To be supported under this program, the State Program must establish State priorities for the selection of health professionals consistent with the NHSC LRP. At this time the Secretary has determined that priority will be given to the following health professionals: physicians (M.D.s and D.O.s) who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, obstetrics/gynecology, internal medicine, and pediatrics.

Other Award Information

This program is not subject to the Public Health System Reporting Requirements.

This program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system to review applications from within their States under certain Federal programs. The application kit, to be made available under this notice, will contain a listing of States which have chosen to set up a review system and will provide a single point of contact (SPOC) in the States for that review. Applicants (other than federally recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.165.

Dated: February 28, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–5354 Filed 3–3–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Notice is hereby given of the meeting of an Ad Hoc Subcommittee of the Extramural Science Advisory Board, National Institute on Drug Abuse on March 13–14, 1995, from 9 a.m. to 5 p.m. at the Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857.

The Ad Hoc Subcommittee will discuss NIDA's program areas and extramural programs. This meeting will be open to the public, however, attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, or to request substantive program information contact Ms. Jacqueline P. Downing, Room 10A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–1056).

A summary of the meeting and a roster of members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Dated: February 27, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5338 Filed 3–3–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications
Name of SEP: Behavioral and Neurosciences
Date: March 21, 1995
Time: 8:00 a.m.
Place: Embassy Suites, Chevy Chase, MD
Contact Person: Dr. David Simpson, Scientific Review Administrator, 5333 Westbard Ave., Room 328, Bethesda, MD 20892, (301) 594–7171

Name of SEP: Microbiological and Immunological Sciences
Date: March 23, 1995
Time: 2:30 p.m.
Place: NIH, Westwood Building, Room 404A
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 5333 Westbard Ave., Room 404A, Bethesda, MD 20892, (301) 594–7112

Name of SEP: Microbiological and Immunological Sciences
Date: March 24, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 404A Telephone Conference
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 5333 Westbard Ave., Room 404A, Bethesda, MD 20892, (301) 594–7112

Name of SEP: Microbiological and Immunological Sciences
Date: March 28, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 404A Telephone Conference
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 5333 Westbard Ave., Room 404A, Bethesda, MD 20892, (301) 594–7112

Name of SEP: Microbiological and Immunological Sciences
Date: March 28, 1995
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 28, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 29, 1995
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 29, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 30, 1995
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Multidisciplinary Sciences
Date: March 31, 1995
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 2A18A Telephone Conference
Contact Person: Dr. Harish Chopra, Scientific Review Admin., 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594–7342

Name of SEP: Clinical Sciences
Date: April 3, 1994
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 349 Telephone Conference
Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254

Name of SEP: Behavioral and Neurosciences
Date: April 4, 1995
Time: 3:30 p.m.
Place: NIH, Westwood Building, Room 319C Telephone Conference
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard

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Ave., Room 319C, Bethesda, MD 20892, (301) 594–7358

Name of SEP: Biological and Physiological Sciences

Date: April 10, 1995

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 234 Telephone Conference

Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 5333 Westbard Ave., Room 234, Bethesda, MD 20892, (301) 594–7051.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 27, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5339 Filed 3–3–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: March 15, 1995.

Time: 9:00 a.m.

Place: Guest Quarters Hotel, Washington, DC.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7257

Name of SEP: Clinical Sciences.

Date: April 3, 1995.

Time: 8:00 a.m.

Place: Crowne Plaza, Rockville, MD.

Contact Person: Dr. Jeanne Ketley, Chief, Clinical Sciences, 5333 Westhard Ave., Room 203, Bethesda, MD 20892, (301) 594–7375.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 6–7, 1995.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Gerald Liddel, Scientific Review Admin., 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: March 24, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 219C Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., Room 219C, Bethesda, MD 20892, (301) 594–7130..

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 27, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5340 Filed 3–3–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 1995.

The meeting agenda will include discussion of announcements and reports of administrative, legislative, and program developments. It will also include reviews of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of this meeting and roster of committee members may be obtained from: Ms. Vera Hunter, Acting Committee Management Officer, CSAP, Rockwall II Building, Suite 7A–140, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–9540.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Drug Testing Advisory Board

Meeting Date(s): March 30, 1995

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20857

Open: March 30, 1995 8:30 a.m.–11:00 a.m.

Closed: March 30, 1995 11:00 a.m.–Adjournment

Contact: Donna M. Bush, Ph.D., Parklawn Building, Room 13A–54, Telephone: (301) 443–6014.

Dated: February 28, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–5355 Filed 3–3–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of intent and meeting.

Preparation of an Environmental Impact Statement in Anticipation of Receiving a Permit Application to Incidentally Take Threatened and Endangered Species in Association with a Multiple Species Conservation Plan for Southwestern San Diego County, California.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration for approval the draft Multiple Species Conservation Program (MSCP) plan submitted by the City of San Diego, California. This long-term plan, prepared by the City of San Diego and 11 other participating jurisdictions, will accompany a future application to the Service for a permit under section 10(a) of the Endangered Species Act that would authorize incidental take of listed species. Additionally, the applicants will request pre-listing agreements for species which may be listed in the future. In response to the plan, the Service intends to prepare a joint programmatic and project-level Environmental Impact Statement/Environmental Impact Report (EIS/EIR) pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act. The MSCP plan covers an approximately 900-square-mile area of rapid growth in southwestern San Diego County. The plan addresses numerous sensitive plant and animal species and their habitats. The MSCP creates a process for the issuance of permits and other authorizations under the Federal ESA, California ESA, and the California Natural Community Conservation Planning Act. This notice describes the proposed action and possible alternatives, notifies the public of a scoping meeting, invites public participation in the scoping process for preparing the joint EIS/EIR, solicits written comments, and identifies the Service official to whom questions and comments concerning the proposed action and the joint EIS/EIR may be directed.

DATES: A public scoping meeting will be held from 7 p.m. to 10 p.m. on March 15, 1995, at the Scottish Rite Center, 1895 Camino del Rio South, San Diego, California 92108. Oral comments will be received during the scoping meeting. Written comments are encouraged and should be received on or before April 5, 1995, at the address below.

ADDRESSES: Information, comments, or questions related to preparation of the joint EIS/EIR and the NEPA process should be submitted to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to telephone (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Gilbert, Supervisory Fish and Wildlife Biologist, at the above Carlsbad address, telephone (619) 431–9440. Persons wishing to obtain background material should contact the City of San Diego, Development Services Division, Environmental Analysis Section, 1222 First Avenue, 5th Floor, San Diego, California 92101, telephone (619) 236–6268. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the above San Diego office.

SUPPLEMENTARY INFORMATION:

Background

The MSCP study area occupies portions of the unincorporated County of San Diego and 10 additional city jurisdictions. The southern boundary of the MSCP study area is the international border with Mexico. National forest lands form much of the eastern boundary, the Pacific Ocean lies to the west, and the northern boundary is the San Dieguito River Valley. Conservation planning to the north of the MSCP study area is being conducted by the San Diego Association of Governments, and a coalition of 8 north county cities and San Diego County. San Diego County is responsible for conservation planning in the eastern portion of the county.

The diversity of topography, soils, and climate in the study area combine to influence vegetative associations, which in turn support a high diversity of plant and animal species. Topographic features in the study area include broad flat valleys, deep canyons, perennially flowing rivers and intermittent creeks, moderately sloped terrain and steep hillsides, rolling foothills and nearly level mesas, coastal bluffs, and a series of coastal bays, inlets, and lagoons. Elevations range from mean sea level (msl) along the coast to approximately 3,738 feet above msl.

The objectives of the MSCP are to:

1. Develop a program for the maintenance of biological diversity and the conservation/protection of self-sustaining viable populations of federally-listed endangered, threatened, and key candidate species and their habitats.

2. Define a Multi-Habitat Planning Area (MHPA) within which preserve planning is focused or within which a preserve is defined, and implement a preserve system which conserves viable habitat and provides for wildlife use and movement.

3. Reduce the human-related causes of species' extirpation within the MSCP study area.

4. Establish a partnership among State, Federal, and local agencies of government to facilitate mitigation and approval of public and private sector land development and construction projects by expediting acquisition of Federal and State permits. This action would provide a long-term economic benefit.

The biological goal for the preserve design is preservation of as much of the core biological resource areas and linkages as possible. The economic goal is for the ultimate preserve to be affordable and for the costs to be shared equitably among the participants.

The plan proposes a new process for wildlife and habitat conservation, and for implementation of the Federal and State of California ESAs, which relies on existing local agency land use review and approval authority. The new process places conservation responsibilities on local jurisdictions, based on their ability to implement a segment of the MSCP for their jurisdiction. In exchange for these coordinated conservation plans, local jurisdictions will receive from the Service permits for the taking of federally-listed species and will enter into pre-listing agreements for protection of other species of concern. A list of covered animal and plant species is incorporated in the MSCP Plan, including species that are federally or state-listed, proposed for listing, and candidates for listing.

The lands identified for open space and habitat preservation are located within the MHPA. The MHPA was cooperatively designed by the 12 participating jurisdictions in the MSCP study area, in consultation with the Service and California Department of Fish and Game, major property owners and environmental groups, based on biological, ownership, and land use criteria. Planning staff of the 5 jurisdictions that have the largest amounts of remaining habitat in the MSCP study area (County of San Diego and cities of San Diego, Chula Vista, Poway, and Santee) spent several months developing "soft lines" delineating areas within which specified percentages of land would be preserved and "hard lines" delineating 100% preservation areas. The other local jurisdictions within the MSCP study area were asked to comment on a preserve design based solely on public ownership and general plan open-space designations. The resulting MHPA covers 164,326 acres of habitat.

The habitat conservation described by the MHPA is approximate. The MHPA may be modified during the course of subsequent land use and project planning, as long as the changes are consistent with MSCP objectives. Preserve boundaries, approved through either the MSCP plan or subsequent land use plans, may be adjusted without the need to amend the MSCP plan, or applicable land use plans, when the new preserve boundary results in a preserve area that is equivalent in biological value to the original configuration or is of greater biological value.

Although the City of San Diego will prepare the draft EIS, the Service will be responsible for its content and scope. In addition, the City of San Diego will act as the lead agency for the preparation of the EIR.

Project level environmental documentation will be included in the joint EIS/EIR for amendments to a variety of planning documents for the cities of San Diego, Chula Vista, and Santee. The proposed amendments would incorporate the preserve boundaries of the MSCP plan into adopted land use plans. Actions

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proposed by these 3 cities that will be addressed in the joint EIS/EIR include, but are not limited to, amendments to progress guides and general plans, local coastal programs, community plans, precise plans, and zoning ordinances.

The joint EIS/EIR will consider the proposed action (issuance of a section 10(a) ESA permit for the MSCP plan), and a reasonable range of alternatives derived from scenarios considered during development of the MSCP plan:

Alternative 1: Coastal Sage Scrub Scenario. This alternative would focus on preservation of the highest quality coastal sage scrub in the planning area with less emphasis on preserving other habitat types.

Alternative 2: Biologically Preferred/Core and Linkage Area Scenario. This alternative would attempt to preserve those lands with the highest conservation value in the planning area, including multiple habitats and habitat linkages. This alternative is based heavily on biological criteria rather than other land use issues that determine the feasibility of preservation.

Alternative 3: Public Lands Scenario. This alternative relies more heavily than the proposed plan on public lands and open space associated with existing or proposed development.

Alternative 4: No Project (No Preserve) Scenario. This alternative assumes that conservation practices throughout the study area would occur on a project-by-project basis as occurs under existing conditions. Under the no project alternative, a regional preserve would not be established at this time within the MSCP study area.

Environmental review of the MSCP will be conducted in accordance with the requirements of the 1969 NEPA, as amended (42 U.S.C. 4321 et seq.), NEPA regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the NEPA to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the joint EIS/EIR.

Comments and participation in the scoping process are solicited. The primary purpose of the scoping process is to identify rather than to debate the significant issues related to the proposed action. Interested persons are encouraged to attend the public scoping meeting to identify and discuss issues and alternatives that should be addressed in the joint EIS/EIR. The proposed agenda for this facilitated meeting includes a summary of the proposed action; status of and threats to subject species; and tentative issues, concerns, opportunities, and alternatives. Additional public meetings will be conducted on later dates to provide more opportunities to comment on the draft EIS/EIR.

Dated: February 28, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–5380 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–55–P

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Notice of Additional Public Involvement Opportunities for the Preparation of an Environmental Impact Statement to Allow Incidental Take of Four Threatened Species on Lands Administered by Plum Creek Timber Company in the State of Washington.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has added another scoping workshop to assist in gathering information necessary for the preparation of an Environmental Impact Statement (EIS). The EIS will consider a permit application by Plum Creek Timber Company, L.P., to take federally listed species, under the provisions of section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. It will also consider the development of an unlisted species agreement. This notice supplements the notice of intent published in the February 8 **Federal Register** (60 FR 7577).

DATES: Written comments regarding the scope of the EIS should be received on or before March 10, 1995. A scoping workshop will be held on March 8, 1995.

ADDRESSES: Written comments should be addressed to Mr. Curt Smitch; U.S. Fish and Wildlife Service; 3773 Martin Way East; Building C, Suite 101; Olympia, Washington 98501. Comments received will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday). A scoping workshop will be held from 6:30–9:00 p.m. in the Cafeteria Area of the Walter Strom Middle School; 2694 State Route 903 (between Cle Elum and Roslyn); Cle Elum, Washington 98922.

FOR FURTHER INFORMATION CONTACT: William Vogel, Wildlife Biologist; U.S. Fish and Wildlife Service; 3773 Martin Way East; Building C, Suite 101; Olympia, Washington 98501, (360) 534–9330.

SUPPLEMENTARY INFORMATION: A scoping workshop was held on February 22, 1995, in Bellevue, Washington. As a further opportunity for interested persons to comment on this planning effort, an additional scoping workshop is scheduled for 6:30–9:00 p.m. on March 8, 1995. The workshop location will be the Cafeteria Area of the Walter Strom Middle School; 2694 State Route 903 (between Cle Elum and Roslyn); Cle Elum, Washington 98922.

Interested parties may contact the Service at the address listed above to receive additional information, including a map for the workshop location.

Dated: February 28, 1995.

Frances J Dyer,

Deputy Regional Director.

[FR Doc. 95–5381 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–55–P

Wild Bird Conservation Act of 1992; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a public meeting to discuss opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations, under the Wild Bird Conservation Act (WBCA) of 1992.

DATES: The public meeting will be held on April 6, 1995, from 9:30 a.m. to 1:00 p.m.

ADDRESSES: The public meeting will be held in Room 200 of the U.S. Fish and Wildlife Service building, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman or Dr. Rosemarie S. Gnam, Office of Management Authority, at (703) 358–2095.

SUPPLEMENTARY INFORMATION:

Background

The Wild Bird Conservation Act of 1992, hereinafter referred to as WBCA, was enacted October 23, 1992, the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin.

Section 114 of the WBCA requires that "the Secretary, in consultation with appropriate representatives of industry, the conservation community, the Secretariat of the Convention, and other national and international bodies shall:

(1) Review opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations; and

(2) Report to the Congress the results of this review within 2 years after the date of enactment of this Act".

In accordance with the WBCA, and in an attempt to comply with the intent of Congress that the aforementioned opportunities be reviewed and considered, the Service wishes to initiate a discussion of this topic and invite review and input from the public. By this notice, the Service announces a public meeting to discuss the opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and technical assistance. This meeting will serve as a working session and the Service will facilitate the discussion of these topics and report to Congress the results of such discussions. Interested members of the public may also submit written comments to the Service on this issue, which should be addressed to the Office of Management Authority [see **ADDRESSES**, above].

Author: This notice was prepared by Rosemarie S. Gnam, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095; FAX 703/358–2280).

Dated: February 24, 1995.

Bruce Blanchard,

Director.

[FR Doc. 95–5360 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WY–920–05–1320–01]

Notice of Competitive Coal Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale (Eagle Butte Tract, WYW124783).

SUMMARY: Notice is hereby given that certain coal resources in the Eagle Butte Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 2 p.m., Wednesday, April 5, 1995. Sealed bids must be submitted on or before 4 p.m., Tuesday, April 4, 1995.

ADDRESSES: The lease sale will be held in the Third Floor Conference Room, Wyoming State Office (WSO), 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, WSO, at the address given above.

FOR FURTHER INFORMATION CONTACT: Laura Steele, Land Law Examiner, or Eugene Jonart, Coal Coordinator, at 307–775–6250.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to an application for a lease by application competitive coal lease sale filed by AMAX Land Company (formerly, Meadowlark Farms, Inc.) of Gillette, WY. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 3 miles north of Gillette, WY:

T. 51 N., R. 72 W., 6th P.M., Wyoming
Sec. 28: Lot 13 (W2);
Sec. 33: Lots 1 thru 4, 5 (E2), 6 thru 11, 12 (E2), and 14 thru 16;
Sec. 34: Lots 3 thru 6, and 9 thru 16.
Containing 1,059.175 acres.

The Eagle Butte Tract, located adjacent to the existing Eagle Butte mine, contains the Roland and Smith coal seams both of which are in the Fort Union Formation. The Roland seam averages about 40 ft. thick and the Smith seam averages about 61 ft. thick on the LBA area. The Roland seam is thicker in the LBA area than some adjacent portions of existing leases. This is due to an upper zone of the seam becoming dominantly coal on the LBA, whereas the same zone is an interbedded claystone and coal on the existing leases. Total burden on the LBA averages 217 ft. thick. There is a shaly coal split separating the Smith and Roland seems averaging about 4 ft. thick on the LBA tract. The average in-place stripping ratio (BCY/ton) for the LBA tract is estimated to be 1.99:1.

The tract contains an estimated 188,500,000 tons of in-place coal reserves. However, about 115 acres of the tract are unavailable for mining because of a required buffer for U.S. Highway 14/16. The BLM estimates that this buffer reduces minable reserves to approximately 166,400,000 tons.

The coal rank is subbituminous C. Average as received quality for the Roland seam on the LBA is 8434 BTU/LB., 4.95% ash, and 0.54% sulfur. Average as received quality for the Smith seam on the LBA tract is 8341 BTU/LB., 4.23% ash, and 0.22% sulfur. This places the coal reserves in the LBA tract just slightly below average in heat content for coal being mined in this portion of the Power River Basin. Other quality parameters compare favorably with coal presently being mined in this area.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value for the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bid should be sent by *"CERTIFIED MAIL—RETURN RECEIPT REQUESTED"*, or be hand-delivered. The Cashier will issue a receipt for each hand-delivered bid. *Bids received after 4 p.m., Tuesday, April 4, 1995, will not be considered.* The minimum bid is not intended to represent fair market value (FMV). The FMV of the tract will be determined by the authorized officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre, or fraction thereof, *and* of a royalty payment to the U.S. of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250(f).

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the WSO at the addresses above. Case file documents are available for inspection at the WSO.

Robert A. Bennett,

DSD, Mineral Resources.

[FR Doc. 95–5379 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–22–M

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[AZ-024-1330-00]

Intent To Amend the Phoenix Resource Management Plan and the Safford District Resource Management Plan, Arizona

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management, Phoenix District, in response to a land exchange proposal, is preparing an Environmental Assessment to amend the Phoenix Resource Management Plan and the Safford District Resource Management Plan (RMPs) in compliance with the Federal Land Policy and Management Act of 1976, as amended, and Section 102(2)(c) of the National Environment Policy Act of 1969. The exchange, as proposed, involves trading selected public lands for private lands with high resource values. The public lands selected include 160 non-wilderness acres of the remaining segments of the White Canyon Area of Critical Environmental Concern (ACEC)—most of the ACEC is now managed as the White Canyon Wilderness—and 4,561 acres which were designated as retention lands within the RMPs. Three hundred fifty-five (355) of these selected public lands were transferred from the Safford District to the Phoenix Resource Area (Phoenix District) under a 1991 boundary adjustment. The proposed land exchange will be analyzed under a separate environmental impact statement (**Federal Register** Notice of Intent, December 19, 1994: 65383). Management actions proposed in the Environmental Assessment include altering the ACEC designation and changing the classification of selected public lands from retention to disposal parcels available under an exchange. The Environmental Assessment to amend the two Resource Management Plans will identify a proposed action and no action alternative as well as appropriate alternatives derived through the analysis of planning issues and criteria. Once the Environmental Assessment draft has been completed, a Notice of Availability will be published in the **Federal Register** followed by a 60-day comment period.

Public comment is needed now to identify issues and criteria for consideration during the amendment process. Public open houses/scoping meetings will be held at the following locations and times:

Florence Open House, March 28, 1995, 4–8 p.m. at the Florence Unified School District Office, Administration Building, 350 S. Main St., Florence, AZ 85232, (602) 868–2300. Mesa Open House, March 30, 1995, 4–8 p.m. at the Rendezvous Center, 263 North Center Street, Mesa, Arizona (602) 644–2178.

DATES: Written public comments may be submitted during the open houses or to the address given below. Public comments will be accepted until April 10, 1995.

ADDRESSES: Written comments should be mailed to, and copies of the scoping documentation are available from: Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, ATTENTION McFARLIN AMENDMENT.

FOR FURTHER INFORMATION, CONTACT: Shela McFarlin, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027 or telephone (602) 780–8090.

Dated February 28, 1995.

David J. Miller,

Associate District Manager

[FR Doc. 95–5432 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–32–P

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from Covington & Burling and Union Pacific Corporation (UP) for permission to use certain data from the 1993 I.C.C. Waybill Sample. A copy of the request (WB468–2/23/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's, Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5389 Filed 3–3–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–43 (Sub-No. 166X)]

Illinois Central Railroad Company—Abandonment Exemption—in Smith County, MS

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 3-mile line of railroad (known as the Taylorsville, MS line) between milepost MB–128.50 and MB–131.50 in Taylorsville, Smith County, MS.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective April 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 16, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, 20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 10, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 24, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5391 Filed 3–3–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket Nos. 32476, 32623 and 32624]

Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV; Northern Nevada Railroad Corporation—Modified Rail Certificate—Between McGill Junction and Keystone, NV, and Northern Nevada Railroad Corporation—Modified Rail Certificate—Between Cobre and McGill Junction, NV

The Northern Nevada Railroad Corporation (Northern Nevada) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 3.13 mile rail line in White Pine County, NV. The Commission's Section of Environmental Analysis (SEA) has prepared its Environmental Assessment (EA) which analyzes the environmental impacts associated with this construction project and related operations over rail lines between McGill Junction and Keystone, Nevada and Cobre and McGill Junction, Nevada. Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions that would implement the mitigation measures contained in the EA.

The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this EA should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Mr. Harold McNulty (202) 927–6217. Requests for copies of the EA should also be directed to Mr. McNulty.

Date made available to the public: March 3, 1995.

Comment due date: April 3, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5390 Filed 3–3–95; 8:45 am]

BILLING CODE 7035–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95–1 CARP DD 92–94]

Ascertainment of Controversy for 1994 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office directs all claimants to royalty fees collected for Digital Audio Recording Devices and Media (DART) for the 1992 and 1993 Musical Works Fund, and the 1994 Musical Works and Sound Recordings Funds, to submit comments as to whether a controversy exists as to the distribution of these funds. The Office also announces the deadline for filing Notices of Intent to Participate in royalty distribution.

DATES: Written comments due by April 15, 1995. Notices of Intent to Participate are due May 5, 1995.

ADDRESSES: If sent by mail, an original and five copies of written comments and Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–407, James Madison Memorial Building, 101 Independence Avenue SE., Washington, DC 20540. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments and Notices of Intent to Participate be delivered by private messenger service.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Acting General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202)707–8380.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, Congress enacted the Audio Home Recording Act. This Act requires manufacturers and importers to pay royalties on digital audio recording devices and media (DART) that are distributed in the United States. The royalties are deposited with the Copyright Office and distributed by Copyright Arbitration Royalty Panels (CARPs)[1], convened by the Librarian of Congress, to interested copyright parties who file claims with the Copyright Office each year during January and February.

The Act provides that the royalties are to be divided into two funds—the Sound Recordings Fund, which accounts for 66⅔% of the royalties, and the Musical Works Fund, which accounts for 33⅓% of the royalties.

Within each fund, the Act establishes subfunds. The Sound Recordings Fund consists of four subfunds: the first of these—the Nonfeatured Musicians Subfund—is allocated 2⅝% of the Sound Recordings Fund, and the second subfund—the Nonfeatured Vocalists Subfund—gets a 1⅜% share. After the shares of these two subfunds are

[1] At the time of passage of the Audio Home Recording Act, the Copyright Royalty Tribunal conducted DART distribution proceedings. The Tribunal, however, was eliminated by the Copyright Royalty Tribunal Reform Act of 1993, Pub.L. No. 103–198, and the authority to distribute DART funds was given to the CARPs, as administered by the Librarian of Congress.

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subtracted, two other subfunds—the Featured Recording Artist Subfund and the Sound Recording Owners Subfund—receive 40% and 60%, respectively, of the remainder. In the Musical Works Fund, there are two subfunds—the Publishers Subfund and the Writers Subfund—which each receive 50% of that Fund. Thus, the Act establishes the percentages for each fund and subfund, but directs the CARPs, through the process of a distribution proceeding, to determine what amount each claimant within a subfund is entitled to receive.

Accordingly, the Act requires the Librarian of Congress to ascertain within 30 days after the last day for filing claims—March 30—whether there are any controversies among the claimants as to the proper distribution of the royalties in their fund and/or subfund. If there are controversies, then the Librarian is directed immediately to convene a CARP or CARPs to decide the proper distribution.

II. Consolidation of Proceedings

The first proceeding to be initiated under the new CARP system was the distribution of the 1992 and 1993 DART royalties. The 1992 DART distribution proceeding was begun by the Copyright Royalty Tribunal, but was suspended when the Tribunal was abolished and needed to be started anew. The 1993 DART distribution was begun by the Copyright Office under the new authority conferred by the Copyright Royalty Tribunal Reform Act of 1993. On March 1, 1994, the Office published a notice in the **Federal Register** seeking comment as to the existence of controversies in both the 1992 and the 1993 DART funds. 59 FR 9773 (March 1, 1994). The interested copyright parties reported that there were controversies in the Sound Recordings Fund and the Musical Works Fund for both 1992 and 1993. In addition, several of the larger claimants to both funds requested that the Office consolidate the 1992 and the 1993 DART distribution proceedings with the 1994 DART distribution proceeding and defer all consideration of DART distributions until 1995. After seeking comment on the request, the Office granted the motion to consolidate. 59 FR 35762 (July 13, 1994).

Subsequent to the consolidation of proceedings, the Copyright Office received notification from the claimants to the 1992 and 1993 Sound Recordings Fund that they had reached a settlement. On December 15, 1994, the Office issued a distribution order distributing all of the royalties in the 1992 and 1993 Sound Recordings Fund to the parties designated in the settlement agreement. *Distribution Order*, Docket No. 94–2 CARP-DD (December 15, 1994). No settlement has been reached yet for either the 1992 or the 1993 Musical Works Fund.

III. Request for Comments and Notices of Intent To Participate

In accordance with the Copyright Office's consolidation order, 59 FR 35762, and 17 U.S.C. 1007, the Librarian of Congress and the Copyright Office are beginning distribution proceedings for the 1992 (Musical Works Fund only), 1993 (Musical Works Fund only), and 1994 (both funds) DART royalties (collectively the 1992–94 DART proceeding) by requesting that interested copyright parties comment as to the existence of controversies. Written comments are due by April 5, 1995.

To begin the distribution process for DART royalties, the pertinent regulation of the Copyright Office rules, 37 CFR 251.45(a), requires that:

> [T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a Notice of Intention to Participate.

See 59 FR 63041 (December 7, 1994).

A. *Negotiating settlement.* Section 251.45(a) places an affirmative duty on all claimants to DART royalties to contact each other and attempt to negotiate a settlement of their differences. The claimants to the 1992 and 1993 Sound Recordings Fund have already negotiated a settlement and have received a distribution of royalties. The 1992 and 1993 Sound Recordings Funds, therefore, are no longer a part of this DART distribution proceeding. The Musical Works Funds for 1992 and 1993, and the Sound Recordings Fund and Musical Works Fund for 1994, however, are part of this proceeding, and claimants to these funds are subject to the negotiation requirement of § 251.45(a).

The purpose of the negotiation requirement is to make all of the claimants within each fund aware of each other and to encourage active participation and open discussion between them, thereby increasing the possibility of settlements. The Copyright Office has compiled a claimant list of all interested copyright parties who timely filed a claim or claims for the 1992 and 1993 Musical Works Fund, and 1994 Musical Works and Sound Recordings Funds. The claimant lists are available from the Copyright Office at the addresses provided in this Notice, and claimants must use these lists in negotiating settlements with each other and in reporting on the existence of controversies to the royalty funds.

B. *Comments as to controversies.* In order to determine whether controversies exist for the 1992–94 DART proceeding, and consequently whether it will be necessary to convene a CARP or CARPs to distribute these royalties, we are asking the claimants to provide the Office with the following information: (a) Whether any controversies exist concerning distribution of the 1992 and 1993 Musical Works Fund, and the 1994 Musical Works and Sound Recordings Funds; (b) if controversies do exist, the particular subfunds for which they exist; and (c) if settlements have been made, the identity of all of the claimants who are covered by the settlement.

After the existence of any controversies are determined, the Audio Home Recording Act gives the Copyright Office 30 days to distribute those royalties not in controversy. In addition to the information solicited above, in order to determine the amount of royalties not in controversy, we are asking any claimants who report a controversy to state how much is in controversy in each subfund. The information provided should include each claimant's asserted percentage or dollar claim to the subfund, and a brief narrative justifying that asserted claim.

C. *Notices of Intent to Participate.* As prescribed by § 251.45(a), the Office is requesting all claimants who expect to participate in the 1992–94 DART proceeding to file a Notice of Intent to Participate with the Copyright Office. *See* 59 FR 63041. The Notice of Intent to Participate must be filed with the Office by May 5, 1995. Failure of a claimant to file a timely Notice of Intent to Participate, or to be represented by another claimant filing a timely notice, may subject the claim to dismissal. The filing of a Notice of Intent to Participate is thus critical to a claimant being able to present an effective claim.

IV. DART Deadline

A. *DART deadline.* The Audio Home Recording Act establishes several statutory deadlines to assure the speedy distribution of DART royalties. Claims are to be filed by the last day of February, each year. The existence of controversies is to be ascertained by March 30. Distribution of royalties not

in controversy are to be authorized for distribution within 30 days of the finding that they were not in controversy—that is, no later than April 29. Prior to the passage of the Copyright Royalty Tribunal Reform Act, the Tribunal was given one year to resolve any controversies in royalty distribution after their declaration. As a result of this one year period, the Tribunal had a greater amount of time to address controversies and address issues such as discovery and collection and presentation of evidence, and this time period was reflected in the construction and operation of the Tribunal's procedural and administrative rules. However, with the passage of the CRT Reform Act, the time period for resolving controversies has been cut in half. This time reduction, along with the novel demands and requirements of the CARPs, has required the Copyright Office to adopt completely new rules and procedures for distribution of royalties and has, consequently, made the meeting of certain statutory deadlines exceedingly difficult. Nowhere is this more evident than the March 30 deadline for declaring DART distribution controversies.

The Administrative Conference of the United States has considered the issue of how agencies should respond to circumstances that affect their ability to adhere to schedule, and has issued a series of recommendations concerning statutory time limits. 43 FR 27509 (June 26, 1978), 1 CFR 305.78–3. The Administrative Conference said:

> [I]t should be recognized that special circumstances, such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations, may justify an agency's failure to act within a predetermined time. An agency's departure from the legislative timetable should be explained in current status reports to affected persons or in a report to Congress.

Id. at para. 4.

The Copyright Office has already faced the difficulties of meeting the March 30 deadline for declaring DART controversies and initiating arbitration. The Office postponed the deadline for the 1992 and 1993 DART royalties, prior to the consolidation of these royalties with the 1994 royalties, because it was soon after the passage of the CRT Reform Act and we had not yet implemented procedural rules for the CARPs. *See* 59 FR 9773. Although we have now adopted final procedural rules, 59 FR 63025, good cause nonetheless remains for postponing the statutory deadline of March 30, 1995, for declaring controversies and initiating arbitration for the 1992–94 DART proceeding.

An important facet of the new CARP procedural rules adopted by the Office are regulations creating a 45-day precontroversy discovery period, prior to initiating arbitration, in which claimants are directed to exchange their direct cases, make discovery requests, file their objections regarding selection of the arbitrators, and otherwise engage in precontroversy motions practice. 37 CFR 251.45. Adoption of a precontroversy discovery period was strongly urged by all of the commentators to the Office's rulemaking proceeding, *see* 59 FR 63030, and was endorsed by Representative William Hughes, Chairman of the House Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, in his statement accompanying the House version of the Copyright Royalty Tribunal Reform Act. *See* 139 Cong. Rec. H10973 (daily ed. Nov. 22, 1993)("In order to reduce the amount of actual litigation time, and thereby reduce expenses, I encourage the Librarian to promulgate regulations permitting exchange of information before the tolling of the 180-day decision period, and, to the extent practicable, generally to permit precontroversy discovery.").

There can be no meaningful precontroversy discovery period under the current requirement of beginning DART arbitration within 30 days of filing the claims. The 45-day precontroversy discovery period prescribed in § 251.45(a) could not take place prior to March 30, since it would overlap the period for filing claims. Shortening the period to 30 days beginning the first day after the filing of claims would reduce the benefits of precontroversy discovery enjoyed by claimants in other proceedings and deny DART claimants a period in which to negotiate settlements. Exchange of direct cases on the first day after the close of the filing period for claims is also impossible since the Office will not have had sufficient time to prepare the claimant service list, and it is highly unlikely that most claimants will be prepared to exchange their direct cases immediately after the filing period. There is, therefore, justifiable cause for postponing the March 30, 1995, date for determining controversies for the 1992–94 DART funds to permit proper and efficient operation of the Office's procedural rules.[2]

In order to assure that there is not a lengthy delay in distribution of 1992–94 DART royalties, the Office will publish the precontroversy discovery schedule in the **Federal Register** shortly after receipt of the comments on the existence of controversies. In addition to the prehearing schedule, the Office will also announce the date on which controversies will be declared, if any, and arbitration will commence.

Dated: February 23, 1995.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–5329 Filed 3–3–95; 8:45 am]

BILLING CODE 1410–33–P

[2] The statutory requirement of declaring DART controversies 30 days after the close of the claims filing period is obviously a problem that will be faced annually by the Copyright Office. To correct for the inequities that this requirement poses, the Office will be seeking legislative amendment of 17 U.S.C. 1007(b) in the 104th Congress by changing the phrase "Within 30 days after the period established for the filing of claims * * *" to "After the period established for the filing of claims * * *"

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–2 and NPF–8 issued to Southern Nuclear Operating Company (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendment would allow modifications to relocate the lower level steam generator water level taps to be made during the upcoming refueling outages for both units. These modifications affect the Technical Specifications associated with the reactor trip system and the engineered safety feature actuation system setpoints.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the

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amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.9(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes to the steam generator low-low water level reactor trip and ESF actuation setpoint and to the steam generator high-high water level turbine trip and feedwater isolation setpoint do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. Several analyses previously performed in the FSAR required re-analysis. All acceptance criteria for the re-analyzed accidents continue to be met. Therefore, there is no increase in the consequences of any previously evaluated accident. The change to the steam generator low-low water level setpoint affords additional margin to spurious trips. No fission product barriers are affected. The relocation of the steam generator lower level tap does not result in increased failure probability of the SG level tap, sensing line, or instrument. Therefore, the proposed changes to the Technical Specifications do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR.

2. The proposed changes to the Technical Specifications do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failures or accident scenarios have been created or identified due to the proposed changes. All safety-related systems will continue to perform as designed. No new challenges to any installed safety systems have been created by the proposed setpoint modifications. Therefore, the possibility of a new or different accident is not created.

3. The proposed steam generator water level setpoint changes do not involve a significant reduction in the margin of safety. Some re-analysis was necessary because of the proposed setpoint changes; however, all margin associated with the current acceptance criteria continues to be unaffected. The proposed design and installation of the new level taps using the criteria of the ASME Code with inherent safety factors assure that the margin of safety in the structural integrity of the steam generator shell is not reduced. Setpoint uncertainty calculations have confirmed adequate margin exists between the assumed analysis setpoints and the revised setpoints. Therefore, there is no significant reduction in the margin of safety due to the setpoint changes or the physical modification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdenshaw Street, Post Office Box 1369, Dothan, Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide reference to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceedings, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 10, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation

[FR Doc. 95–5364 Filed 3–3–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company (TU Electric, the licensee) for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas.

The proposed amendment would modify the Comanche Peak Steam Electric Station (CPSES) Technical Specification (TS) 3/4.6.2, "Depressurization and Cooling Systems—Containment Spray System" Surveillance Requirement (SR) 4.6.2.1b. is replaced with NUREG–1431 SR 3.6.6A.4. This change replaces the specific pump flow and head values now contained in the SR with the general requirement that the pump develop the required head at the flow test point. Also Bases 3/4.6.2.1 "Containment Spray System" will be revised to expand the detail consistent with the NUREG–1431 Bases SR 3.6.6A.4. The Bases from NUREG–1431 has minor modifications to reflect (1) that the CPSES containment spray pumps are tested via a special test line which allows testing at flows higher than that allowed by the miniflow recirculation line; (2) the "pump design curve" is termed the "analytical pump curve"; and (3) the reference to the technical requirements manual where the pump head requirements are defined is provided for the user's information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The relocation of the specific values for flow and developed head at the flow test point to the Technical Requirements Manual (TRM) is essentially an administrative change. The change does not change the plant hardware or operating procedures. As such, the change has no impact on the probability of an accident.

The consequences of an accident previously evaluated, as it relates to the performance characteristics of the containment spray pumps, depends on the pumps meeting the performance characteristics in the analytical pump curve used by the containment analyses. Since the limitations established in the TRM will continue to ensure that this analytical pump curve is met, there is no impact on the

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accident analyses. The initial TRM will duplicate the existing surveillance values. In the future, the TRM values may be slightly more or slightly less restrictive based on changes to the containment analyses or their design inputs. The result of this variation could be a minor variation in the consequences of an actual event were one to occur; however, the consequences would be bounded by the existing safety analyses and therefore, the change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not add new hardware to the units or change plant operations. Relocation of the surveillance acceptance criteria to the TRM cannot initiate an event nor cause an analyzed event to progress differently. Thus, the possibility of a new or different kind of accident is not created.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The margin of safety is not affected since the surveillance will continue to be required by Techincal Specifications at the same frequency and that surveillance will continue to ensure the containment spray pump performance is bounded by the analytical pump curve used in the containment analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Aministration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioners shall file a supplement to the petition to intervene which must incude a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 28, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 1st day of March 1995.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5365 Filed 3–3–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35425; File No. SR–MSTC–95–01]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Technical Corrections to Articles III & IV of the Midwest Securities Trust Company Rules

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] ("Act"), notice is hereby given that on January 18, 1995, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MSTC. On January 30, 1995, MSTC amended the proposal to include an additional cross-reference correction.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes the following rule change in order to make technical corrections to Section 3(ii) of Rule 1 of Article IV and to Section 2(ii) of Rule 1(B) of Article III of MSTC's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to make a technical revision to Section 3(ii) of Rule 1 of Article IV of MSTC's rules. On May 12, 1993, the Commission approved MSTC's pilot Same-Day Fund Settlement ("SDFS") service.[3] The SDFS rules amended and renumbered Section 3 of Rule 1 of Article III to Sections 2 and 3 of Rule 1(B) of Article III. However, Section 3(ii) of Rule 1 of Article IV was not amended to reflect the proper cross-reference to Sections 2 and 3 of Rule 1(B) of Article III instead of Section 3(ii) of Rule 1 of Article III; this proposal makes this correction. MSTC also proposes to make a technical revision to Section 2(ii) of Rule 1(B) of Article III of MSTC's rules to reflect the proper cross-reference to Section 1 of Rule 1(B) of Article III instead of Section 1 of Rule 1 of Article III.

MSTC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because clarifying MSTC's rules will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MSTC will notify the Commission of any written comments received by MSTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [4] of the Act and pursuant to Rule 19b–4(e)(4) [5] promulgated thereunder in that the proposal effects a change in an existing service that does

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (January 30, 1995).

[3] For a complete description of MSTC's pilot SDFS service, refer to Securities Exchange Act Release No. 32300 (May 12, 1993), 58 FR 28438 [File No. SR–MSTC–90–6] (order approving a pilot SDFS service).

[4] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[5] 17 CFR 240.19b–4(e)(4) (1994).

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not adversely affect the safeguarding of securities or funds in MSTC's custody or control and does not significantly affect the respective rights or obligations of MSTC or persons using MSTC's services. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–01 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5373 Filed 3–3–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35424; File No. SR–MSTC–94–21]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change Seeking To Establish an Automated Program for the Transfer of Certain Securities Between the Midwest Securities Trust Company and Transfer Agents

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 28, 1994, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to establish an automated program, to be known as ATS, for the transfer of certain securities between MSTC and transfer agents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks to establish an automated program for the transfer of securities between MSTC and transfer agents. Under MSTC's proposed program, MSTC and the transfer agents participating in the program will use a master balance certificate[2] to evidence the number of securities of a particular issue registered in MSTC's nominee name and transferred into or out of MSTC through the transfer agents. The transfer agents will have custody of the securities in the form of balance certificates registered in MSTC's nominee name. The balance certificates will be adjusted daily to reflect MSTC's withdrawal and deposit activity.

Currently, if a participant requests the withdrawal of one hundred shares of a security from MSTC, MSTC will send a written instruction to the transfer agent followed by a physical surrender of the shares to the transfer agent. The transfer agent will reissue the shares in the requested name and will send the shares back to MSTC. Using the ATS program, an electronic instruction will immediately effectuate the withdrawal transfer thus eliminating the extra step of physically surrendering the security from MSTC to the transfer agent.

For issues eligible for ATS, MSTC will deliver to participating transfer agents nominee and/or non-nominee certificates[3] for each issue. The transfer agent will cancel the certificates delivered and issue one or more balance certificates per issue. The transfer agent will retain possession of the balance certificates and hold them in a secured area at all times.

In its normal course of business, MSTC will continue to deliver to participating transfer agents nominee certificates and/or non-nominee certificates with the instructions to register the transfer of the non-nominee certificates into the account of Kray & Co. MSTC also will instruct the transfer agent to include the securities evidenced by the nominee and/or non-nominee certificates in the balance certificate for the issue represented by such balance certificate. MSTC also may issue instructions to the transfer agent to register the transfer of all or some of the securities evidenced by a balance certificate to a name other than Kray & Co. or to issue a certificate to a name other than Kray & Co. The transfer agent will increase or decrease the number of securities evidenced by the balance certificate so that at the end of each day the balance certificate will evidence the number of securities equal to the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For the purpose of the ATS program, "balance certificates" shall mean a certificate registered in the name Kray & Co., which is MSTC's nominee name, which evidences (1) record ownership by Kray & Co. of the number of shares or units of the issue shown from time to time on the records of the issuer thereof or (2) the duties of the issuer thereof to perform the obligations shown from time to time on the records of the issuer thereof, which records are maintained by a transfer agent, as being evidenced by such certificate, which certificate shall be retained by a transfer agent.

[3] For the purpose of the ATS program, the term "nominee certificates" shall mean a certificate of an issue registered in the name of Kray & Co. The term "non-nominee certificate" shall mean a certificate of an issue registered in a name other than Kray & Co.

previous balance plus any securities received from MSTC to be registered in the name Kray & Co. minus any transfers and issuance of certificates in a name other than Kray & Co. The transfer agent will confirm in writing, on a daily or other periodic basis as MSTC may reasonably request, the number of securities evidenced by each balance certificate.

The obligations of the ATS transfer agents and MSTC will be set forth in a Balance Certificate Agreement ("Agreement") executed by each ATS transfer agent and MSTC.[4] The Agreement provides that all shares or units or the amount of any obligations evidenced by the balance certificate which come into possession of the transfer agent pursuant to ATS will be the sole property of MSTC. The transfer agent will not obtain any legal or equitable right, title, or interest in or to such securities evidenced by the balance certificates.

The Agreement also provides that upon request from MSTC, the transfer agent will be obligated to deliver, within twenty-four hours, all securities evidenced by a balanced certificate. If the transfer agent determines that any security held by it is lost, destroyed, stolen, or otherwise unaccounted for, the transfer agent must notify MSTC immediately and issue a replacement certificate.

The Agreement provides that the transfer agent must maintain an insurance policy in the form of a customary banker's blanket bond to cover any securities received from MSTC or held by the transfer agent pursuant to ATS. The bond must be in the maximum amount of one hundred million dollars. The Agreement further states that the transfer agent must provide annually to MSTC's satisfaction evidence that such blanket bond or comparable plan of insurance is in full effect.[5] When the transfer agent is responsible for the shipment of securities, the Agreement requires that the transfer agent provides adequate insurance coverage or require coverage from the carrier to cover losses that occur while in transit to and until received by MSTC. The amount of coverage must be equal to or exceed 110% of the fair market value of the securities shipped. The transfer agent is not obligated to delivery shares evidenced by balance certificates within twenty four hours of such a request from MSTC if the aggregate value of the shares to be delivered exceeds the amount of the bankers blanket bond. The transfer agent will instead deliver or make available the certificates as promptly as possible.[6]

Instructions from MSTC to register the transfer of securities evidenced by a balance certificate in a name other than Kray & Co. will constitute a presentation of the balance certificate to the transfer agent under applicable law. The same warranties that would apply if MSTC physically presented the balance certificate to the transfer agent will be applicable in this instance.

MSTC believes the proposed rule change is consistent with section 17A(b)(3)(A) of the Act[7] in that it enhances MSTC's ability to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.

MSTC also believes the rule change will further MSTC's goal of minimizing the exposure of securities to loss in transit between MSTC and transfer agents. The program will eliminate needless movement of securities. Under ATS, securities will be maintained in a form that will no longer permit the ready negotiation of the securities in the event of theft.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose an inappropriate burden on competition.

[4] If a transfer agent employs a processor to perform the transfer agent's duties in ATS, the transfer agent and processor must enter into a separate agreement obligating the processor to perform the duties described in the Agreement. The transfer agent must notify MSTC if there is any material changed to the terms of the agreement between the transfer agent and processor, if there is a termination or anticipated termination of the agreement, or if there is a breach of the agreement or an event that will affect or might reasonably be expected to affect the processor's ability to perform any of its obligations under the agreement. MSTC only will permit a transfer agent to employ a processor as its agent if the transfer agent represents and warrants that it will bear any and all liability and responsibility for all securities held by, all actions taken by, and all obligations assigned to the processor with the same force and effect as if the securities were held by, the actions were taken by, or the obligations were those of the transfer agent.

[5] The transfer agent may limit, decrease, or cancel the blanket bond protection upon thirty days prior notice of such action to MSTC.

[6] Before delivering the MSTC certificates with an aggregate current market value in excess of the maximum amount of the blanket bond, the transfer agent may not create or maintain certificates, other than any balance certificate, having a value in excess of the blanket bond.

[7] 15 U.S.C. 78q–1(b)(3)(A) (1988).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it find such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MSTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change would be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–94–21 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5374 Filed 3–3–95; 8:45 am]

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[8] 17 CFR 200.20–3(a)(12) (1994).

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[Release No. 34-35423; File No. SR-NSCC-95-01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Expanding the Types of Payments Processed Through the Mutual Fund Networking Service

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] ("Act"), notice is hereby given that on January 10, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC proposes to modify its Mutual Fund Networking Service rules to permit settlement of additional payments pertaining to mutual fund activity.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Mutual Fund Networking Service currently enables Networking participants to transmit mutual fund customer account data among NSCC's broker-dealer and mutual fund processing members [2] and to settle mutual fund dividend payments.[3] The proposed rule change will modify the Mutual Fund Networking Service to permit settlement of other payments pertaining to mutual fund activity in addition to dividend payments.[4] NSCC currently proposes to allow Networking participants to settle payments which result from standing instructions (*e.g.*, monthly) given by a customer to a mutual fund to liquidate a certain amount or value of shares or specific instructions given by a customer directly to a mutual fund to liquidate shares.[5] The proposed rule modifies the existing Mutual Fund Networking Service to better meet the needs of NSCC's Networking participants by expanding the standardization of money payments on an automated basis.

NSCC believes the proposed rule change is consistent with the requirements of the Act, and specifically Section 17A of the Act, and the rules and regulations thereunder, because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and pursuant to Rule 19b-4(e)(4)[7] promulgated thereunder, in that the proposal effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in NSCC's custody or control and does not significantly affect the respective rights or obligations of NSCC or persons using NSCC's services. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-95-01 and should be submitted by March 27, 1995

For the Commission by the Division of Market Regulation, pursuant to delegated authority [8]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95-5372 Filed 3-1-95, 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a detailed description of NSCC's Networking Service, refer to Securities Exchange Act Release No. 26376 (December 28, 1988), 53 FR 52544 [File No. SR-NSCC-88-08] (order granting approval to NSCC's Networking Service).

[3] Securities Exchange Act Release No. 28608 (November 19, 1990), 55 FR 48193 [File No. NSCC-89-13] (order granting permanent approval to NSCC's automated settlement of mutual fund dividends).

[4] Payments made through the Networking Service are not guaranteed by NSCC; therefore, NSCC reserves the right to reverse any credit in the event NSCC does not receive a corresponding payment from a Fund member

[5] NSCC will be required to file a proposed rule change pursuant to Section 19(b) of the Act before allowing other types of payments to be processed through the Networking service.

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b-4(e)(4) (1994).

[8] 17 CFR 200.30-3(a)(12) (1994)

[Investment Company Act Rel. No. 20925/ International Rel. No. 788 812-8970]

Enersis S.A.; Notice of Application

February 27 1995

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Enersis S.A.

RELEVANT ACT SECTION: Section 2(a)(9).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it controls Empresa Nacional de Electricidad S.A. ("Endesa"), notwithstanding that it owns less than 25% of its voting securities.

FILING DATE: The application was filed on April 28, 1994 and amended on July 8, 1994 and October 6, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Santo Domingo 789, Santiago, Chile.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942-0570, or Barry Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Chilean holding company primarily engaged through its majority-owned subsidiaries and related companies in the utility business. Applicant is not registered under the Investment Company Act by virtue of its reliance on rule 3a-1.[1]

2. Endesa is a Chilean electric generation company. Applicant owns directly and indirectly approximately 17% of Endesa and is Endesa's largest shareholder. Four of the five remaining largest shareholders of Endesa are entities comparable to United States pension funds. Under Chilean law, the amount one of these entities can invest in a company similar to Endesa is the lesser of 7% of its assets or 7% of Endesa's equity. The fifth large shareholder of Endesa is a company owning approximately 3.4% of Endesa's shareholder equity. Applicant, therefore, owns more than twice as many shares as the next largest shareholder.

3. Three of Endesa's nine member board are Enersis officers or directors. Enersis's equity ownership gives it the power to elect two of Endesa's directors; a third Enersis official on Endesa's board publicly campaigned for the position. These persons also hold the positions of Enersis's Chairman of the Board, its Chief Executive Officer, and its Director of Planning and Development. Applicant's Chief Executive Officer is the Chairman of the board of Endesa. The Chairman is entitled to cast a second vote in the event of a tie of Endesa's board of directors, thereby giving Enersis an additional vote.

4. Enersis, previously a government-owned utility, was privatized in 1987 and restructured to become a holding company. Since its privatization, all of Enersis's stock acquisitions have been of utility businesses. Enersis's strategy has been to concentrate its activities on its core utility business and to take stock positions in other entities only under circumstances where it is the dominant shareholder or where it and Endesa together are the dominant shareholders of the entity whose stock is being acquired.

5. Jose Yuraszeck, Enersis's Chief Executive Officer, became Endesa's Chairman in April 1992. He is commonly referred to as the "Electricity Czar" in Chile and is identified by the public as personifying Endesa.[2] Mr. Yuraszeck is also Chairman of Endesa's subsidiary formed to build, own, and mange Endesa's major power plant development.

6. Endesa's Director of Planning and Development was assigned to Endesa at Enersis's direction and the planning and development staffs of Enersis and Endesa have collaborated on various projects.

Applicant's Legal Analysis

1. Section 2(a)(9) defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company." Section 2(a)(9) also creates a presumption that owners of more than 25% of a company's voting securities control such company, and the owners of 25% or less of a company's voting securities do not control such company. A securityholder may obtain an SEC order rebutting either presumption by producing evidence to the contrary.

2. Applicant seeks an order of the SEC declaring that it controls Endesa, notwithstanding the presumption under the Act that ownership of less than 25% of a company's voting securities is insufficient to establish control.[3]

3. Applicant argues that the facts set forth in the application are sufficient to support a finding that applicant controls Endesa. Applicant holds the largest share of Endesa's voting securities and has significant representation on Endesa's board of directors.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5334 Filed 3-3-95, 8:45 am]

BILLING CODE 8010-01-M

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[1] Rule 3a-1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) no more than 45% of the value of its total assets (exclusive of government securities and cash items) consists of securities other than government securities, securities issued by employee securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer that are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is received from such securities.

[2] "Electricity Czar," Que Pasa, May 1992

[Release No. IC-20926; File No. 812-9230]

The Equitable Life Assurance Society of the United States, et al.

February 27, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account No. 45 of Equitable (the "Account"), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by equitable ("Other Account"), and Equitable Capital Securities Corporation ("ECCS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of: (i) a mortality and expense risk charge from the assets of the Account in

[1] Any order concerning the application will be limited to determining whether Enersis controls Endesa under section 2(a)(9). Enersis is not seeking any determination as to whether it "primarily" controls Endesa for purposes of rule 3a-1 or whether applicant falls within the definition of investment company under the Act.

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connection with the offering of certain deferred variable annuity contracts and certificates (collectively, the "Account Contracts") issued by Equitable through the Account; (ii) a guaranteed minimum death benefit charge from a contract owner's account value; and (iii) a contribution-based distribution fee from a contract owner's account value. Applicants also seek an order to permit the deduction of a mortality and expense risk charge, guaranteed minimum death benefit charge and contribution-based distribution fee from the assets of, and account values held in, the Account and of any Other Account in connection with the offering in the future of deferred variable annuity contracts (the "Other Contracts") which are substantially similar in all material respect to the Account Contracts and are issued by Equitable through the Account or any Other Account.

FILING DATE: The Application was filed on September 16, 1994, and amended and restated on January 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 24, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 787 Seventh Avenue, Area 36–K, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Equitable is a stock life insurance company organized under the laws of the State of New York. Equitable serves as depositor of the Account. Equitable may establish one or more Other Accounts in the future, for which it will serve as depositor.

2. The Account was established on August 15, 1994, as a segregated asset account of Equitable. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are credited to or charged against the Account without regard to other income, gains or losses of Equitable. The Account is registered with the Commission as a unit investment trust series investment company under the 1940 Act. The Account will fund the variable benefits available under the Account Contracts. Units of interest in the Account under the Account Contracts will be registered under the Securities Act of 1933. In the future, Equitable may issue Other Contracts through the Account or Other Accounts.

3. The Account Contracts consist of a basic form of group annuity contract (the "Group Contract"), a basic form of certificate ("Certificate") issued under the Group Contract, and forms of Certificate endorsements ("Endorsements") to be used for specific benefits under the Certificates. Certificates may be issued as individual contracts in certain states.

4. The Account Contracts will be offered in the tax-qualified retirement plan ("Plan") market and in non-qualified ("NQ") markets. The Account Contracts initially will be offered in the rollover individual retirement annuity ("IRA") Plan market and in NQ markets. In both the IRA Plan and NQ markets, the initial contribution must be at least $10,000; under IRA Certificates, that initial payment may come in the form of a minimum rollover contribution or direct transfer from another individual retirement arrangement. In both IRA Plan and NQ markets, additional contributions must be at least $1,000.

5. Different minimum contribution amounts may be established for other Plan markets. Lower minimum amounts may be established for automatic investment programs. Maximum limitations on contributions also may be imposed. Contributions under the Certificates may be accumulated before annuitization, and annuity payments may be received after annuitization, on a variable basis. Annuity payments also may be received on a fixed basis.

6. Under an Endorsement, the Certificates permit contributions to be allocated to guarantee periods expiring on specified dates. The guarantee periods will be funded through a "non-unitized" separate account established by Equitable; assets in such "non-unitized" separate account will be subject to the claims of Equitable's general creditors. Each guarantee period will provide a guarantee of the contribution allocated thereto and interest, which guarantee is supported by Equitable's general accounts assets, including those allocated to the "non-unitized" separate account. An upward or downward adjustment—a "market value adjustment ("MVA")"—will be made to the Annuity Account Value [1] in a guarantee period upon a withdrawal surrender or transfer from a guarantee period before its expiration Death benefit amounts based on Annuity Account Value in a guarantee period only will reflect any upward MVA

7 Under an Endorsement, the Certificates may include a life contingent annuity option funded through Equitable's general account The life contingent annuity provides guaranteed periodic fixed annuity benefits, generally commencing at later ages, for the life of the annuitant or a survivor annuitant This form of benefit will be offered for use in conjunction with certain reallocations and withdrawal arrangements to be made available by Equitable.

8 The Account currently is subdivided into nine subaccounts ("Investment Funds"), each of which will be available under the Certificates Each Investment Fund will invest in the shares of a corresponding portfolio ("Portfolio") of The Hudson River Trust (the "Trust"). The Trust is an open-end diversified "series" management investment company, registered under the 1940 Act.

9 In the future, Equitable may create additional Investment Funds of the Account to invest in any additional Portfolios, or other such underlying portfolios or other investments as may now or in the future be available Investment Funds also may be combined or eliminated from time to time.

10. ECSC is an indirect wholly-owned subsidiary of Equitable, and will be the principal underwriter of the Account and the distributor of the Account Contracts. ECSC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"), and is a member of the National Association of Securities Dealers, Inc. (the "NASD") The Certificates will be offered through representatives of ECSC and its affiliates, as well as through unaffiliated broker-dealers who have entered into agreements with ECSC. All of such

[1] A contract owner's "Annuity Account Value" is the sum of the amounts held for the owner in the "Investment Options" under the Account Contracts The "Investment Options" include the variable investment options and each guarantee period account available through the Account Contracts

affiliates and unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members.

11. ECSC or any successor entity may act as principal underwriter for any Other Account and as distributor for any Other Contracts. A successor entity also may act as principal underwriter for the Account.

12. The charges and fees described below are the maximum that may be imposed under the Certificates. The amount of the applicable charges and fees, as set forth in the Certificates and relevant offering prospectuses, may not be increased during the life of the Certificate without the owner's consent. Equitable may reserve the right to impose transfer charges not otherwise applicable when the Certificate is issued, subject to the maximum amounts described below.

13. Equitable proposes to deduct a daily asset charge from the Account for assuming mortality and expense risks. Equitable assumes a mortality risk by its contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity options involving life contingencies, regardless of the annuitant's own longevity or an improvement in life expectancy generally. Equitable assumes the risk that annuitants as a group will live longer than Equitable's annuity tables predict, which would require Equitable to pay out more in annuity income than it planned.

14. Equitable will assume an expense risk under the Certificates to the extent that the administrative charges applicable under the Certificates—including the annual contract fee, the asset-based administrative charge, the withdrawal processing charge, and the transfer charges—may be insufficient to cover actual administrative expenses.

15. As compensation for assuming mortality and expense risks, Equitable will assess a daily charge, equal on an annual basis to 0.90% of the assets of each Investment Fund of the Account. Approximately 0.60% of the charge is for assumption of mortality risks, and approximately 0.30% is for assumption of expense risks. (Equitable reserves the right to revise the percentages so allocated.)

16. The Certificates provide for a death benefit which is the sum of (a) the Annuity Account Value or, if greater, the "guaranteed minimum death benefit, " and (b) the death benefit provided in an Endorsement (including a "Market Value Adjustment Terms Endorsement" proposed to offered by Equitable).

17. On the Contract Date,[2] the guaranteed minimum death benefit applicable to Certificates issued in all states except New York will equal the portion of the initial contribution allocated to the Account. Thereafter (except as adjusted at the end of the seventh Contract year), the guaranteed minimum death benefit will equal (i) the prior guaranteed minimum death benefit, (ii) plus any subsequent contributions to and transfers into the Account, (iii) less any transfers out of, and any withdrawals from, the Account, (iv) plus interest credited on each Processing Date.[3] At the end of the seventh Contract year, the guaranteed minimum death benefit will be set at the then current guaranteed minimum death benefit or, if greater, the current Annuity Account Value in the Account.

18. Interest for the guaranteed minimum death benefit calculation under NQ Certificates will be credited at rates determined by the annuitant's "issue age" (the annuitant's age at issue of the Certificate)—6% for issue ages 0 through 69, 3% for issue ages 70 through 74, and 0% for issue ages 75 and older. For amounts in the money market Investment Fund, the rate will be based on the lesser of those guaranteed minimum death benefit interest rates and the actual rate of return.

19. Under IRA Certificates, interest will be credited at the applicable effective annual guaranteed minimum death benefit interest rate for an "attained age" (the owner's age at issue of the Certificate plus the number of Contract years that have elapsed since the Contract Date)—6% for attained ages 0 through 70, and 0% for attained ages 71 through 85. For amounts in the money market Investment Fund, the rate will be based on the lesser of those guaranteed minimum death benefit interest rates and the actual rate of return.

20. For Certificates sold in New York, the guaranteed minimum death benefit is calculated on a basis different from that for Certificates sold in all other states, but will not be less than (i) the initial and any subsequent contributions and transfers into the Account, (ii) less any transfers out of, and any withdrawals from, the Account, (iii) plus interest credited on each Processing Date in the same manner as under Certificates sold in all other states.

21. Equitable will impose a charge for providing the guaranteed minimum death benefit and assuming related mortality risks. The charge will not be asset-based, but will be based on the amount of the guaranteed minimum death benefit, and will compensate Equitable for the risk that the annuitant may die at a time when the cash value of the Account is less than the amount of the guaranteed minimum death benefit. Because the Certificates do not impose any withdrawal charge on the payment of a death benefit, Equitable assumes the risk that the owner will die at a time when the withdrawal charge would otherwise have been applicable. Equitable also will assume the risk that, at the time of death, the Annuity Account Value will not have increased by at least the amount of interest credited to contributions in determining the amount of the guaranteed minimum death benefit.

22. The maximum guaranteed minimum death benefit charge is 0.35% of the amount of the guaranteed minimum death benefit as of each Processing Date. The applicable charge will be deducted from the Annuity Account Value held in the Investment Funds on each Processing Date, and will be the same for all Certificates.

23. No sales charges will be deducted at the time contributions are applied under a Certificate. A distribution fee, or sales load, equal to a maximum of 1.00% of the amount of each contribution made, and not withdrawn, may be deducted from the Annuity Account Value held in the Investment Funds annually on each of the seven Processing Dates following the receipt by Equitable of each contribution. The distribution fee, if any, will be deducted from the Investment Funds on a pro-rata basis, unless the Certificate owner specifies otherwise. If, at any time before the seventh Processing Date, the Certificate owner surrenders the Certificate for its cash value (i.e., the Annuity Account Value less any applicable charges) or annuitizes, the Certificate is terminated, or a death benefit is payable, no further distribution fee deductions will be made. If a partial withdrawal is taken before the seventh Processing Date, the distribution fee will be applied only to the remaining amount of the contribution. The distribution fee and the withdrawal charge (described below) combined will never exceed the amount of the maximum withdrawal charge. Any amounts realized from the distribution fee will be used to defray a portion of the sales expenses.

[2] The "Contract Date" is the date on which an annuitant is enrolled under a Group Contract, or the effective date of an individual contract form of Account Contract in states requiring individual contracts.

[3] The "Processing Date" is each anniversary of the Contract Date, but may occur quarterly.

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24. Depending upon the distribution channels used and other factors affecting marketing costs, Equitable may offer Certificates at distribution fee levels below 1.00%, or without a distribution fee. In addition, Equitable may increase the number of Processing Dates over which the distribution fee may be imposed.

25. A withdrawal charge will be imposed upon a surrender of a Certificate, upon annuitization, or upon any partial withdrawal. The charge will apply to amounts in excess of a "free corridor amount" and will be deducted from the Annuity Account Value held in the Investment Funds from which the withdrawal is made. The withdrawal charge is a percentage of each contribution received by Equitable, and depends on the Contract year in which the Certificate is surrendered, or a partial withdrawal is taken. The maximum withdrawal charge during the first Contract year—*i.e.*, when Equitable receives the contribution—is 7% and declines by 1% each Contract year thereafter to zero in the eighth and subsequent Contract years.

26. A "free corridor amount" equal to 15% of the Annuity Account Value under a Certificate at the beginning of the Contract year, less prior withdrawals made in that Contract year, may be withdrawn during that Contract year without being subject to the withdrawal charge. The "free corridor amount" is not applicable upon the surrender of a Certificate.

27. When computing the withdrawal charge, amounts shall be considered withdrawn on a "first-in, first-out" basis. The withdrawal charge is not applicable upon the payment of any death benefit. The amounts obtained from the withdrawal charge, together with the distribution fee, will be used to help defray expenses incurred in the sale of Certificates. The withdrawal charges will not exceed the percentages discussed above. Based on marketing considerations, Equitable may reduce the percentages charged or increase the number of Contract years over which the charges are imposed. During the life of the Certificate, the schedule of withdrawal charges shown in a Certificate will not be increased, nor will the charge period be abbreviated.

28. The administrative charges which may be assessed under the Certificates include: a maximum annual contract fee, equal to the greater of 0.15% of the amount of each contribution made and $30 per Contract Year, which is incurred by the Certificate owner at the beginning of each Contract Year and deducted annually on each Processing Date; and a daily asset-based administrative charge, at a maximum annual rate of 0.25%, assessed against the Investment Funds. Unless the Certificate owner directs otherwise, the annual contract fee will be deducted pro-rata from amounts held in the Investment Funds. The annual contract fee may be inapplicable if the total contributions received under a Certificate exceed specified amounts.

29. The administrative charges also include a charge, equal to the lesser of $25 or 2% of the amount withdrawn, for processing each partial withdrawal (other than withdrawals under certain flexible payment distribution options) after the first in a Contract year. This charge will be deducted pro-rata from the Investment Funds from which each withdrawal is made. This charge does not apply upon the surrender of a Certificate.

30. The Certificates provide for five free transfers during a Contract year. For each additional transfer in excess of the free transfers, Equitable may charge $25 at the time the transfer is processed. The charge will be deducted pro-rata from the Investment Funds from which the transfer is made. Equitable also may deduct a $25 transfer charge for a direct transfer to a third party of amounts under the Certificate, or for an exchange for the contract of another insurance carrier.

31. Equitable expects that, over the period that the Certificates are in force, the revenues from the administrative charges—including the annual contract fee, the daily asset-based administrative charge, the withdrawal processing charge, and the transfer charges—will not exceed its total expected costs of administering the Certificates, on average, excluding costs that are properly categorized as distribution expenses. Applicants represent that these administrative charges will be deducted in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

32. Unless the Certificate owner specifies otherwise, charges for premium taxes generally are deducted from the Annuity Account Value in the Investment Funds upon annuitization. Under Certificates sold in certain states, however, a deduction for premium taxes is made from the Annuity Account Value in the Investment Funds at the time the contribution is received. Whether premium taxes are applicable depends on the owner's current place of residence; such taxes generally range from 0% to 5% of contributions or the amount annuitized, as appropriate. Equitable represents that the amount that it will recover for premium taxes will not exceed the amount of premium taxes required to be paid.[4]

33. Applicants represent that if the mortality and expense risk charge and the guaranteed minimum death benefit charge are insufficient to cover the expenses and costs assumed, the loss will be borne by Equitable; if the amounts deducted prove more than sufficient, the excess will be profit to Equitable. Equitable expects to earn a profit over the expected life of the Certificates from the mortality and expense risk and the guaranteed minimum death benefit charges. If the distribution fee and withdrawal charge are insufficient to cover the actual costs of distribution, the expenses will be paid from Equitable's general account assets, which will include any profit derived from the mortality and expense risk and the guaranteed minimum death benefit charges.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the assessment of a mortality and expense risk charge, a guaranteed minimum death benefit charge, and a distribution fee under the Account Contracts and Other Contracts.

2. Section 6(c) of the 1940 Act provides, in relevant part, that the Commission may issue an order exempting any person, security or transaction, or any class or classes thereof, from any provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants believe that the terms of the relief requested with respect to any Other Contracts funded by the Account or any Other Account are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants undertake that the Other Contracts funded by the Account or any Other Account will be substantially similar in all material respects to the Account Contracts. Applicants state that without the requested relief Applicants would have to request and obtain exemptive relief in connection with Other Contracts and/or Other Accounts. Any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this Application.

[4] Equitable represents that, to the extent necessary, it will assess charges for premium taxes in reliance upon Rule 26a–2(d) under the 1940 Act.

4. Applicants submit that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Equitable to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Equitable's ability to effectively take advantage of business opportunities as they arise.

5. Applicants submit that the reasons cited above also explain why the requested relief is consistent with the purposes of the 1940 Act and the protection of investors. In this regard, Applicants submit that investors would not receive any benefit or additional protection if Equitable were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application. Indeed, investors might be disadvantaged as a result of Equitable's increased overhead expenses.

6. Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

7. The literal wording of Section 2(a)(35) contemplates a front-end sales charge. Although Rule 6c–8 permits the deduction of a contingent deferred sales load, such as the withdrawal charge provided for in the Certificates, that rule is not available for the periodic deduction of a contribution-based deferred distribution fee. Applicants, therefore, request an exemption from Section 2(a)(35) to the extent necessary to permit the assessment of a contribution-based deferred distribution fee under the Accounts.

8. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require, among other things, that all payments received under a periodic payment plan certificate sold by a registered unit investment trust, any depositor thereof or underwriter therefor, be held by a qualified bank as trustee or custodian, under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

9. Applicants submit that because the distribution fee is designed to compensate for sales related expenses, not bookkeeping or other administrative services, it could be argued that Section 26(a)(2)(C) precludes the deduction of the distribution fee from the Annuity Account Value in the Account. Applicants also submit that Section 27(c)(2) may be construed to prohibit a registered investment company or a depositor or underwriter for such a company from selling any periodic payment plan certificate (such as the Certificates) unless the proceeds of all the payments under such a certificate are held by a trustee or custodian under an agreement containing the substance of the provisions of Section 26(a)(2). For this reason, Applicants state that it could be argued that the Account, by virtue of the deduction of the distribution fee, does not meet the requirements of Section 26(a)(2)(C) and, therefore, the sale of the Certificates violates Section 27(c)(2). Accordingly, Applicants request exemption from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of the distribution fee in the manner described in this Application.

10. Applicants submit that the imposition of a sales load in the form of a contribution-based charge that is deducted over an extended period is more favorable to Certificate owners than the deduction of the equivalent charge as a front-end sales load (as contemplated by Section 2(a)(35)). In this regard, Applicants note that the full amount of a contribution is available for investment in the Account, thereby providing each Certificate owner with more investment dollars than if an equivalent front-end sales charge were deducted from the contribution.

11. Applicants also state that deferring a sales charge can benefit Certificate owners by permitting them to receive any positive investment experience on the portion of the charge that is deferred. Applicants further state that, because the distribution fee is not deducted from death benefit proceeds, deducting the distribution fee over time, rather than at issue of the Certificate, can favorably affect the amount of the death benefit payable if death occurs during the first seven Contract years. Applicants also state that the total amount charged to a Certificate owner when the distribution fee is deducted over time is no greater than the amount that would be charged if the distribution fee were deducted from the contribution as a front-end sales load.

12. Applicants state that the Commission previously has promulgated regulations permitting the deduction of sales charges from cash value, but only in connection with variable life insurance policies pursuant to Rule 6e–3(T) under the 1940 Act. Applicants submit that the reasoning that justifies the exemptions provided by that rule in connection with variable life insurance policies also justifies exemptive relief in this instance.

13. Applicants represent that the distribution fee may not exceed 7% of the contribution made, and the total sales load will never be more than the maximum withdrawal charge of 7%. In this regard, Applicants assert that if a Certificate owner does not withdraw a contribution in the seven-year period after the contribution is made, no withdrawal charge will be applicable, but the 1% maximum distribution fee will be imposed on each Processing Date, for a maximum total of 7% of the contribution made. Applicants further assert that if a partial withdrawal of a contribution is made during that seven-year period, the amount withdrawn will be subject to a withdrawal charge, but will no longer be part of the contribution base upon which the distribution fee is assessed on a Processing Date. That is, the amount withdrawn would not be subject to any further distribution fee, and the balance of the contribution would not be subject to a withdrawal charge, but would be charged a distribution fee on the Processing Date. Accordingly, Applicants represent that, as the withdrawal charge is reduced 1% in each of the years following the year in which the contribution is made, and the distribution fee only applies to the remaining amount of a contribution after a withdrawal, the sum of the distribution fee and the withdrawal charge (as applicable) will never exceed 7% of the contribution made. Applicants also represent that the sum of the distribution fee and the withdrawal charge (as applicable) always will be lower than the 9% maximum permitted by Rule 6c–8 and the provisions of Section 27(a)(1) of the 1940 Act regarding maximum sales loads for variable insurance products or periodic payments plan certificates.

14. Applicants assert that the maximum guaranteed minimum death benefit charge is reasonable in relation to the risk assumed by Equitable under the Certificates. In arriving at this determination, Equitable states that it conducted a large number of trials at different issue ages to determine the expected cost of the guaranteed minimum death benefit. By analyzing

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the results of a statistically valid number of such simulations, Equitable was able to determine actuarially the level cost of providing the benefit. Based on this analysis, Equitable determined that the 0.35% charge was a reasonable charge for providing the guaranteed minimum death benefit under the Certificates. Equitable undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making that determination.

15. Applicants represent that the aggregate mortality and expense risk and guaranteed minimum death benefit charges under the Certificates are reasonable in relation to the risks by Equitable under the Certificates, and reasonable in amount as determined by industry practice for comparable contracts. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk and guaranteed minimum death benefit charges under comparable variable annuity contracts currently being offered in the insurance industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees, and the markets in which the Certificate will be offered. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying the foregoing representations.

16. Equitable will assess a mortality and expense risk charge not to exceed an annual rate of 0.90%, and a maximum annual charge of 0.35% of the guaranteed minimum death benefit. Assuming a hypothetical gross investment return in the Account of 5.0%, the 0.35% maximum guaranteed minimum death benefit charge would, if expressed as a daily charge against Account assets, add approximately 0.35% to the 0.90% mortality and expense risk charge, for a total charge, on an annual basis, of approximately 1.25% of the assets in the Investment Funds.

17. For higher hypothetical gross returns, the guaranteed minimum death benefit charge, when expressed as an asset-based charge, would be less; for lower hypothetical gross returns, it would be more. Applicants assert that this is because the charge base—which is essentially contributions plus interest—is a relative constant in dollar amount compared to the fluctuating values of an Investment Fund. Thus, as a percentage of the assets of an Investment Fund, which (assets) change with investment performance, positive performance results in a reduction of the guaranteed minimum death benefit charge when expressed as an asset-based charge; negative performance will result in an increase in the guaranteed minimum death charge when expressed as an asset-based charge.

18. Applicants acknowledge that the withdrawal charge and distribution fee, as applicable, may be insufficient to cover all costs relating to the distribution of the Certificates. Applicants further acknowledge that if a profit is realized from the mortality and expense risk and guaranteed minimum death benefit charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge and distribution fee. In such circumstances, a portion of such charges might be viewed as providing for costs relating to distribution of the Certificates.

19. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Certificates will benefit the Account and Certificate owners and annuitants. Equitable represents that it will maintain at its principal office, and make available on request to the Commission, a memorandum setting forth the basis for such conclusion.

20. Equitable represents that the Account will invest only in an underlying mutual fund which has undertaken to have a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the Act, formulate and approve any plan to finance distribution expenses in accordance with Rule 12b–1 under the 1940 Act.

Conclusion

Applicants submit that for the reasons and based upon the facts set forth above, the requested exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of a mortality and expense risk charge, a guaranteed minimum death benefit charge, and a distribution fee under the Account Contracts and Other Contracts meet the statutory standards of Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5335 Filed 3–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20922; 812–8846]

Prudential Securities Incorporated, et al.; Notice of Application

February 27, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Prudential Securities Incorporated (the "Sponsor"); and National Municipal Trust, Prudential Unit Trusts, National Equity Trust, and Government Securities Equity Trust (the "Trusts").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) to amend a prior order (the "Prior Order") granting relief from section 11(c).[1]

SUMMARY OF APPLICATION: Applicants seek to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

FILING DATES: The application was filed on February 22, 1994 and amended on July 21, 1994, January 19, 1995, and February 21, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

[1] Prudential-Bache Securities, Inc., Investment Company Act Release Nos. 14943 (Feb. 18, 1986) (notice) and 14989 (March 13, 1986) (order).

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 32 Old Slip, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202 942–0570 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each of the Trusts is a unit investment trust sponsored by the Sponsor. The Trusts are made up of one or more separate series ("Series"). Over four hundred Series of the Trusts are currently outstanding.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities and deposits them with a trustee in exchange for certificates representing fractional undivided interests in the portfolio of securities ("Units"). Units currently are offered to the public through the Sponsor and other underwriters and dealers at a price based upon the aggregate offering side evaluation of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 2.00% to 5.50% of the public offering price. The Sponsor may offer a discounted sales charge to unitholders within a Series based on the quantity of Units purchased. The sales charge may also vary among Series depending on the terms of the underlying securities.

3. Applicants seek an order under section 6(c) exempting them from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) and rule 22c–1 thereunder to let them impose sales charges on Units on a deferred basis and waive the deferred sales charge in certain cases. Under applicants' proposal, the Sponsor will continue to determine the amount of sales charge per Unit at the time portfolio securities are deposited in a Series. The Sponsor will have the discretion to defer collection of all or part of this sales charge over a period ("Collection Period") following the settlement date for the purchase of Units. The Sponsor will in no event add to the deferred amount initially determined any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

4. The deferred sales charge ("DSC") may be (a) deducted from the proceeds of a sale, exchange, or redemption of units or termination of the Series; or (b) deducted from (i) amounts received on the sale of portfolio securities, (ii) amounts received on the maturity of portfolio securities, (iii) income distributions on the Units, or (iv) a combination thereof ("Distribution Deductions"). Alternatively, the trustee may advance the DSC on behalf of the Series on a periodic basis, in which case the trustee will be reimbursed from the income or principal account of the Series upon the receipt of proceeds from the maturity or sale of portfolio securities, until the total amount per unit is collected. The total of all these amounts will not exceed the aggregate DSC per unit.

5. For purposes of calculating the amount of the deferred sales charge due upon redemption or sale of Units, it will be assumed that Units on which the balance of the sales charge has been collected from installment payments are liquidated first. Any Units disposed of over such amounts will be redeemed in the order of their purchase, so that Units held for the longest time are redeemed first.

6. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales, exchange, or redemption proceeds, if necessary, so as not to jeopardize the tax-exempt nature of various investors such as Individual Retirement Accounts and employee benefits plans, if otherwise required for tax purposes, or for such other reasons as disclosed in the prospectus.

7. The date and amount of each DSC accrual or payment will be disclosed in the prospectus. The prospectus for a Series will disclose that portfolio securities may be sold to pay the DSC if amounts in the income account are insufficient to pay the DSC or proceeds from portfolio securities are intended to pay the DSC. The confirmation received by a holder on the purchase, sale, exchange, or redemption of a Unit will indicate the DSC to the extent required by National Association of Securities Dealers, Inc. rules. The account statement of a holder will reflect a value for a Unit. The account statement, however, will not reflect the amount a holder paid for the up-front sales charge. At the end of every year, the Series' annual report will reflect the aggregate amount of any Distribution Deductions taken, both on a Series and per Unit basis.

8. Units received in an exchange are subject to a fixed dollar sales charge of $15, $20, or $25 per $1000 of Units for (a) Units trading in the secondary market, (b) Units trading in the secondary market received upon the exchange of units of a trust not solely sponsored by the Sponsor, and (c) Units received during such Series' initial offering period, respectively. When Units held for less than five months are exchanged for Units with a higher regular sales charge, the sales charge will be the greater of (a) the reduced sales charge or (b) the difference between the sales charge paid in acquiring the Units being exchanged and the regular sales charge for the quantity of Units being acquired, determined as of the date of the exchange.

9. Applicants seek to amend the Prior Order to permit offers of exchange of Units subject to a DSC. If a Unit subject to a DSC is being exchanged, the proceeds due to the exchanging investor will be net of the DSC due upon the sale of a Unit at such time. Units acquired in the exchange will be subject to the greater of a sales load of a fixed dollar amount (currently ranging from $15 to $25 depending on whether the Series being acquired is in the initial offering period or the secondary market) or the amount of the DSC remaining on the Units being acquired.

10. The Sponsor may offer certain Series that have intermediate or short-term stated maturities. Upon termination of such Series, the Sponsor may create a new Series with the same investment objective, the same type of portfolio securities as the terminating Series, and in certain instances some of the same portfolio securities. Applicants wish to make Units of the new Series available to the unitholders of the terminating Series at the net asset value of the new Units plus a reduced sales charge on an up-front and/or deferred basis (the "Rollover Option"). Although applicants believe that the Prior Order already permits the Rollover Option, they request that the Prior Order be amended to cover the Rollover Option explicitly.

Applicants' Legal Analysis

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive

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approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets.[2]

3. Section 2(a)(35) defines the term "sales load" to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a DSC is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a DSC may cause a redeeming unit holder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this section and rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d–1 was adopted to permit the sale of redeemable securities "at prices that reflect scheduled variations in, or elimination of, the sales load." Because rule 22d–1 may not be interpreted as extending to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit each Series to waive or reduce the DSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from distribution deductions or Trust assets.

7. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the unitholders of the Trusts. Thus, granting the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 11(c) prohibits any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses incurred in connection with the exchange.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The amount of the sales charge per Unit collected from a holder at the time of any exchange or conversion of a Unit will be lower than the sales charge collected on the initial purchase of the same Unit at such time.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5336 Filed 3–3–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Without an exemption, a trust selling unit subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only "redeemable securities."

SMALL BUSINESS ADMINISTRATION

Preferred Lenders Program; FA$TRAK Pilot Program

AGENCY: Small Business Administration.

ACTION: Notice of pilot program "FA$TRAK".

SUMMARY: the Small Business Administration (SBA) is establishing a pilot program in which certain lenders will be permitted to use their own documentation and procedures to approve loans to small businesses using the Section 7(a) loan program in return for a reduced percentage of guaranty and other modifications to SBA's normal lending practices. This program will be called FA$TRAK and will be considered a part of the Preferred Lenders Program.

DATES: This pilot will be effective on February 27, 1995 and will remain in effect for 2 years.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Deputy Director, Office of Financing, U.S. Small Business Administration, 8th floor, 409 3rd St., SW., Washington, DC 20416; 202–205–6493.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is establishing the FA$TRAK pilot program as part of the existing Preferred Lenders Program. This program is designed to streamline the process by which a lender receives a guaranty from SBA on a loan made to a qualifying small business. It is SBA's goal to utilize, to the maximum extent possible, existing documentation of participating lenders. Therefore, for FA$TRAK loans lenders will be permitted to use their own application form(s), internal credit memoranda, notes, collateral documents, servicing documentation and liquidation documentation. The SBA will limit the use of government-mandated forms to those forms necessary to authorize the lender to disburse the loan with a government guaranty, record the guaranteed balance and loan status, and ensure that the borrower has agreed to those items required by law and regulation.

Lenders participating in this pilot program will be given the ability to attach an SBA guaranty to an approved loan without having to submit the loan application to an SBA field office for a credit analysis or review. These loans will be sent to a single location for assignment of an SBA loan number and a determination of borrower eligibility.

In return for this flexibility and the ability to attach an SBA guaranty to a loan without prior review by SBA, lenders will agree to: limit the maximum loan amount to $100,000; accept a maximum guaranty of 50 percent; and, waive payment on defaulted loans until after the lender has completed liquidation and SBA has reviewed the underlying documentation supporting the loan. The payment of interest on defaulted loans will be limited to 120 days. Lenders will be responsible for loan servicing and liquidation and will be required to indemnify SBA against any loss due to documentation drafting errors or negligent servicing and liquidation.

Many aspects of the existing SBA guaranteed loan program will continue to be utilized in FA$TRAK. Borrowers who are not eligible for assistance under the existing program will not be eligible under FA$TRAK. Lenders will be provided with general guidance on eligibility; however, the SBA loan processing office will make an eligibility determination. Lenders must negotiate interest rates that are within the SBA maximum interest rate ceiling. The current SBA policy on fees charged by the lender will remain in effect. SBA reserves the right to review any fees charged by a lender that the applicant considers to be unreasonable. If SBA determines that such fees are unreasonable, the lender agrees to return the excess to the applicant.

During the pilot program, lenders will not be permitted to sell the guaranteed portion of these loans into the secondary market because SBA will not have reviewed the loan documentation for these loans prior to such sale.

Lenders will be permitted to reduce their exposure to an existing borrower of the bank by making a FA$TRAK loan only if the existing loan has always been current (no payment more than 29 days late).

The pilot program is scheduled to last 2 years, beginning on February 27, 1995. Prior to the termination date, SBA will review the experience with the program and determine if final rules and regulations will be developed.

The Rules and Regulations for the Preferred Lenders Program may be found at 13 CFR 120.400. During this pilot, various sections of SBA rules will be suspended only for FA$TRAK loans made by lenders participating in the FA$TRAK program. The suspended sections include, but are not limited to, Section 120.102–2, 120.402–2, 120.403–2 and 120.403–4. A copy of the FA$TRAK supplemental guaranty agreement and the program guide are attached to this notice. These documents provide more detailed information on the operation of the pilot program.

Philip Lader,

Administrator.

Small Business Administration

Supplemental Guaranty Agreement FA$TRAK

This agreement is made this _____ day of _____, 19____ ("the effective date") by and between the _____ ("Lender") and the U.S. Small Business Administration ("SBA"), an agency of the United States Government.

Whereas, this is a Supplemental Guaranty Agreement ("Supplemental Agreement") to the Loan Guaranty Agreement (SBA Form 750, dated 10–83) between the parties hereto, dated _____, ("the Guarantee Agreement") all the provisions of that SBA Form 750 are applicable to loans made by lender to small business concerns under the FA$TRAK program, which is a process for approving, servicing and liquidating loans made under the Preferred Lenders Program (PLP), except as otherwise provided herein.

Whereas, the parties intend under this Supplemental Agreement for the Lender to perform the processing and most of the servicing and liquidating tasks associated with loans of $100,000 or less in principal amount under the FA$TRAK portion of the Preferred Lenders Program;

The parties agree as follows:

1. Under this Supplemental Agreement, Lender will be permitted to issue an SBA guaranty for any loan of $100,000 or less in principal amount approved under FA$TRAK procedures which meets the requirements and standards for FA$TRAK loans. Except as specifically provided herein or in the Program Guide for FA$TRAK, such loans are subject to all PLP Rules and Regulations as promulgated from time to time. Lender shall have the authority to issue a loan guaranty agreement and such other loan approval forms as may be necessary in order to permit a small business to receive a FA$TRAK loan from the Lender.

2. In conjunction with each FA$TRAK loan, the Lender shall be permitted to use its own application forms and other credit documents normally required by it for approving loans, and its own note and other forms of loan documentation specifically including a settlement sheet and all other instruments which it uses to make, service and liquidate similar loans in a manner consistent with prudent lending practices and loan documentation. After Lender performs a thorough credit analysis relative to an application for a FA$TRAK loan, it will forward such summary information as SBA requires in the Program Guide for FA$TRAK to the SBA's FA$TRAK Processing Center. SBA will endeavor to provide Lender with an SBA loan number within one working day of receipt of the summary information.

3. Lender assumes the responsibility for the completeness of each FA$TRAK application package and all documentation it has relieved upon to make a credit judgment for a FA$TRAK loan. Lender agrees to require approved borrowers to execute SBA Form 1920 prior to first disbursement (this form contains requirements that are mandated by Congress as a condition for receiving federal financial assistance).

4. The percentage of SBA's guaranty of a loan guaranteed under this Supplemental Agreement shall not exceed fifty percent (50%) of the outstanding principal amount of the loan at the time of disbursement.

5. Approval of a loan under procedures established by this Supplemental Agreement shall constitute certification by the Lender, to the best of its professional knowledge and judgment at the time of loan approval, and in accordance with standard and prudent lending practices, that:

a. The partners, principal owners, officers, and management of the applicant are of good charter;

b. There is a reasonable assurance of repayment by the borrower according to the terms determined by the lender;

c. Without the guaranty of the SBA, the loan funds would not otherwise be available on reasonable terms to the applicant, or from the personal resources of the principal owner of the applicant; and

d. The Lender is not and will not be in a superior lien position on any collateral securing the FA$TRAK loan, unless the application file contains an explanation leading to the necessity of the subordinated lien position and a complete description of the lien positions as a result of the subordination.

6. Lender agrees that it will not approve any FA$TRAK loan application on which the Applicant has noted any outstanding SBA business, disaster or development company loans

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(guaranteed or otherwise), unless the outstanding SBA loans are current at the time of approval of the FA$TRAK loan and the Lender does not possess any information that could indicate impending default on any such loan.

7. Lender shall service loans made under this Supplemental Agreement in accordance with the provisions of 13 C.F.R. § 120.404 (copy attached) of the PLP regulations and the Guarantee Agreement. Lender is permitted to perform any servicing action on any FA$TRAK loan in its portfolio that does not confer a preference on the lender except that the Lender may not unilaterally compromise or sell the borrower's obligation for less than the amount owned on that obligation. Lender may use its own documents to record servicing changes as necessary.

8. Lender agrees to liquidate all SBA loans made under this Supplemental Agreement unless written instructions to the contrary are received from SBA. Liquidation will be conducted in a commercially reasonable manner and will be consistent with SBA's regulations and the Guarantee Agreement.

9. Lender agrees that interest on any FA$TRAK loan made under this agreement will cease to accrue after 120 days from the date of the earliest uncured default. Further, Lender agrees to withhold a request for SBA to honor its guaranty on any loan made hereunder until final liquidation of the loan is completed by lender, including liquidation of all worthwhile collateral and recovery from any collectible obligor(s). Payment will be made after SBA has reviewed and approved all documentation supporting the making, closing, servicing and liquidating of the loan.

10. Lender agrees to provide SBA with a notification of loan status on an as requested basis (requests will initially be quarterly but may be changed to monthly after an electronic reporting mechanism is developed).

11. (a) Lender authorizes SBA to make periodic reviews and audits of all loans made under this Supplemental Agreement, including making copies and extracts from, all files, records, papers, or other relevant information. Lender authorizes all Federal, State and municipal authorities to furnish reports of examination, records and other information relating to the condition and affairs of the Lender and any desired information from reports, returns, files, and records of such authorities upon request by SBA.

(b) Lender agrees to photocopy a representative sample, as defined by SBA, of its FA$TRAK loan files on an occasional basis, as determined by SBA and to send these copies to SBA.

12. The SBA guaranty on any loan made under this Supplemental Agreement shall commence immediately upon first disbursement by the Lender. After that time, denial of liability on the guaranty shall take place only upon the determination by SBA that the Lender is guilty of fraud, negligence, misrepresentation or other misconduct, or violation of any provision of this Supplemental Agreement, the Guaranty Agreement (SBA Form 750), SBA's Rules and Regulations, or the Program Guide for FA$TRAK.

13. This agreement shall be effective for two years from the Effective Date, unless both parties agree in writing to a renewal prior to the expiration of the two-year period. Either party may terminate this agreement without cause upon not less than ten (10) business days written notice by certified mail to the other party. Termination shall not affect the guaranty of any loan approved by the lender pursuant to this Supplemental Agreement.

14. The provisions of the Program Guide for FA$TRAK are an integral part of this Supplemental Agreement and are incorporated herein by reference. Lender represents to SBA that it fully understands the Program Guide.

15. The guaranteed portion of loans approved pursuant to this Supplemental Agreement may not be sold in the Secondary Market.

16. All of the terms and conditions of the Guaranty Agreement (SBA Form 750) not expressly modified by this Supplemental Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Lender and SBA have caused this agreement to be duly executed as of the date written above.

Institution

Signature

Typed Name

Street Address

City, State, Zip Code

U.S. Small Business Administration

Signature

Typed Name

Title

BILLING CODE 8025-01-M

FA$TRAK

February 27, 1995

U.S.Small Business Administration

BILLING CODE 8025-01-C

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I. Introduction

This program guide contains the policies, procedures and guidelines for implementation of FA$TRACK. This guide is an integral part of the "Supplemental Guaranty Agreement for FA$TRACK" and has been incorporated therein by reference. Participation in FA$TRACK is limited to those lenders which have been approved by SBA for FA$TRACK program participation and have executed the supplemental guaranty agreement.

FA$TRACK is intended to increase the capital available to those businesses seeking loans of $100,000 or less by permitting lenders to use their existing documentation and procedures and receive an SBA guaranty on the loan. Eliminating the requirement that SBA forms be used and application procedures be followed will allow lenders to reduce the cost of processing an SBA guaranteed loan. SBA hopes that reducing the cost of providing credit will encourage lenders to make smaller loans. To further reduce the lender's cost of doing business with SBA, lenders participating in FA$TRACK will be permitted to use their own internal documentation for servicing actions and will be permitted to use their existing procedures for loan liquidation.

In exchange for the authorities described above and in recognition of the increased risk assumed by SBA, lenders participating in FA$TRACK agree to accept a maximum guaranty of 50% on each loan. The guaranty of 50% is designed to give participating lenders the credit enhancement needed to approve certain applications while recognizing that SBA has not reviewed the credit or the documentation of the participating lender. Lenders desiring a guaranty higher than 50% for a specific case are permitted to use regular SBA procedures and forms to submit a loan to SBA for a guaranty up to 90%.

II. Eligibility Requirements for FA$TRACK

The Small Business Act provides certain requirements and restrictions on businesses which are entitled to government financial assistance. These considerations are described below.

A. Size Standards

While the $100,000 maximum loan amount will tend to limit the size of business interested in this type of loan, SBA's existing size standards which are described in Part 121 of Title 13 of the Code of Federal Regulations apply to all loans approved under FA$TRACK. These size standards refer to the applicant and any affiliates.

B. Eligible Loan Recipients

Lenders may not obtain a guaranty for loans to certain types of businesses. SBA rules on applicant eligibility are located in Section 120.101 and 120.102 of Title 13 of the Code of Federal Regulations. A copy is included as Appendix 1 to this guide. These rules are subject to change. Any questions regarding eligibility may be directed to the Sacramento FA$TRAK Processing Center. The names and telephone numbers for the Processing Center staff are located in Appendix 2.

C. Conflict of Interest

Lender may not use FA$TRAK procedures to approve a loan to a firm in which any of the owners or managers are also an employee of the lender or SBA or own 10% or more of the stock of the lender. Furthermore, FA$TRAK may not be used to make a loan to an associate or close relative (See 13 CFR 120.2–2, Appendix 3.) of either of the above described individuals.

D. Ineligible Uses of Loan Proceeds

In general, loan proceeds may be used for the same purposes as loans approved without an SBA guaranty. Loan proceeds may not be used for the following purposes:

a. To pay off inadequately secured creditors.

b. To provide funds for distribution to the owners of a business unless these funds fully change the ownership of a business. Loans for a change of ownership are eligible provided there is a 100% change of ownership and the transfer is not between family members.

c. To refund any debt owed to a Small Business Investment Company.

d. To fund a gambling operation, except that businesses that receive less than one-third of their revenue from the commissions on the sale of state lottery tickets or businesses involved in state supervised gambling operations are eligible.

e. To finance real estate held for investment, purchases of stock for investment, or to make loans to non-profit entities.

f. To fund a loan that would reduce lender's own or an affiliate's exposure to a business, unless the existing debt has always been current (no payments more than 29 days past due during the life of the credit). Refinancing of the debt owed to another lender is allowed, however, the FA$TRAK participant must insure that the refinancing is beneficial for the borrower due to more reasonable terms or the transfer of a borrower's account relationship from other sources to the FA$TRAK participant. Care should be taken to avoid the appearance that the lender is using FA$TRAK to bail itself out of an inadequately secured or poorly performing credit.

g. To fund a loan when funds are available from other sources on reasonable terms including disposal of unneeded business assets and use of personal resources provided there is no undue hardship involved in the use of personal funds. A self certification by the lender that funds would not otherwise be available on reasonable terms, as determined by the lender, is part of SBA Form 1920, FA$TRAK Authorization and Request for Loan Number.

h. To fund a loan for the purchase or construction of real estate, the purchase or repair of equipment, or the refinancing of a loan used for those purposes, when the applicant business is not a 100% owner operator of the real estate or personal property being financed. In cases where the applicant is not a 100% owner operator, the loan may be submitted to SBA using regular 7(a) procedures. Loan proceeds may be used to finance real property with residential or rental space provided that in purchasing an existing building, residential and/or rental space must be less than 50% of total space, location must be conducive to the success of the business and other facilities must not be reasonably available and in constructing a building, the business must need a resident owner or manager and residential space must not exceed 33⅓% of the total or business growth is reasonably projected to indicate need for space in the reasonably near future, later additions are not feasible, and residential space does not exceed 33⅓% of total space.

i. To make a loan to a recreational or amusement enterprise that is not open to the public and properly licensed.

j. To replenish working capital funds used for any of the above purposes.

III. Eligible Loan Types

FA$TRAK procedures may be used for term loans or revolving credits made by the lender. Revolving credits must have a termination date that cannot exceed five years from the date of first disbursement. If the borrower remains creditworthy, a new revolving FA$TRAK loan can be approved.

IV. Terms and Conditions

A. Loan Amount

The maximum loan amount that may be approved using the FA$TRAK procedure is $100,000.

B. Percentage of SBA's Guaranty

The guaranty on loans approved under FA$TRAK will be limited to a maximum of 50%.

C. Interest Rates

(1) Loans approved using the FA$TRAK procedure are subject to the same maximum interest rate as all SBA loans. For loans in excess of $50,000 the maximum interest rate is 2.25 percentage points above the prime rate as published in the *Wall Street Journal* (WSJ) for loans with a maturity of less than seven years and 2.75 percentage points above the WSJ prime rate for loans with a maturity of seven years or longer. FA$TRAK participants may use the additional interest rate spread authorized by 13 CFR 122.8–4(g) for loans approved using the FA$TRAK procedure. Thus for loans of $25,000 or less, the maximum rate is the WSJ prime plus 4.25 and 4.75 depending on the maturity and for loans over $25,000 but not exceeding $50,000 the maximum rate is the WSJ prime rate plus 3.25 and 3.75 depending on the maturity.

(2) Loans may have a fixed or variable rate of interest. If a variable interest rate is used, the lender may use the same base rate of interest used on similar loans made without an SBA guaranty.

V. Fees

A. Guaranty Fee

The guaranty fee will be 2% of the amount guaranteed for any loan with a maturity greater than one year. If the maturity is less than one year, the guaranty fee will be ¼ of one percent. The fee splitting arrangement accorded lenders using regular procedures for loans under $200,000 will not apply to FA$TRAK. The guaranty fee must be paid within 90 days of the loan approval date or immediately after first disbursement, whichever is earlier for loans with a maturity of one year or greater. If the maturity is less than one year, the guaranty fee must be submitted with the application for an SBA loan number. Lender may charge Borrower for the guaranty fee only after Lender has paid the fee and an initial disbursement was made on the loan. This fee may be collected at the time of loan closing if there is a disbursement at closing.

B. Late Payment Fee

Lenders are permitted to charge borrowers a late payment fee of up to 5% of the payment amount for payments not received within 10 days of the due date.

C. Extraordinary Servicing Fee

An extraordinary servicing fee of up to 2% of the outstanding balance may be collected in cases involving construction, or using accounts receivable or inventory for collateral.

D. Other Fees

Application fees, commitment fees or prepayment fees are not permitted on term credits.

E. Revolving Credit Fees

Lenders will be permitted to use the same fee schedule for revolving credits approved by the lender without an SBA guaranty. These fees must be reasonable and are subject to review by SBA. Fees determined by SBA to be unreasonable must be returned by the lender to the borrower.

VI. Loan Making, Servicing and Liquidation

A. Application Forms

(1) Lenders are permitted to use their own application forms, internal credit memoranda and any other documentation necessary to make a credit determination. Lenders must insure that their application form includes language in which the applicant certifies that the information supplied is true and complete. This language must appear on the application form or on the financial statement from the applicant if a specific application form is not used. The form including this certification must be signed by the borrower.

(2) Lender will be required to obtain a signed copy of SBA Form 1919, FA$TRAK Borrower Information Form from a sole proprietor, all partners, or each officer, director, or each holder of 20% or more of the voting stock of a corporate applicant, and any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business. The form must be part of the loan file, but does not have to be sent to the Processing Center. If the applicant answers "yes" to either of questions 1, 2, or 3, the loan may not be submitted under FA$TRAK. It may be submitted to the local SBA office using regular processing procedures.

B. Credit Decision

(1) Lenders approved to use the FA$TRAK procedure are responsible for a thorough and complete credit analysis. This analysis should be in the loan file and is subject to SBA review. An analysis for a loan that is approved should demonstrate that the loan can be repaid from the cash flow of the business and that the applicant is of good character.

(2) Applications that are declined by the lender should be handled in the same manner the lender handles declined applications for conventional loans. These applications will not be considered applications for an SBA guaranteed loan.

C. Notification to SBA

(1) FA$TRAK lenders may request a loan number from SBA by submitting an executed SBA Form 1920, FA$TRAK Authorization and Request for Loan Number. This document serves both as an Authorization by the FA$TRAK lender for the loan and a request to SBA to issue the loan number. This form will contain the information necessary for SBA to issue loan number and a certification that the funds are not available elsewhere on reasonable terms. This form may be faxed or sent to the Processing Center in Sacramento, California. The Processing Center is set up to provide a loan number to the FA$TRAK lender by fax.

(2) SBA's budget is determined by Congress on an annual basis. SBA does not have authority to guaranty loans if it has run out of authority. While loan approval authority has been delegated to the FA$TRAK lender, the loan does not have an SBA guaranty until the SBA Processing Center has issued a loan number. The processing center will not issue a loan number if funds are not available.

D. Closing and Disbursement

(1) FA$TRAK participating lenders will use the same closing and disbursement procedures for FA$TRAK loans as are used for their conventional loans. Loans may be closed by the lender's attorney and lenders are permitted to use their own closing documentation. This documentation includes, but is not limited to the lender's note, personal guaranty statements, mortgage, deed of trust or other security agreements, resolutions of the Borrower's Board of Directors, and a review of insurance requirements.

(2) FA$TRAK participants must use the FA$TRAK Authorization and Loan Agreement (SBA Form 1920) for all loans approved using the FA$TRAK procedure. The signature block of the Form must contain the following language: "As a participant in the FA$TRAK portion of the Preferred Lenders Program and agent of and on behalf of SBA."

(3) Lender must do the following prior to disbursement for each loan for which it issues an SBA guaranty:

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A. Receive satisfactory evidence that there has been no unremedied adverse change since the date of the Application, or since any of the preceding disbursements, in the financial or any other condition of Borrower which would warrant withholding or not making any such disbursement or any further disbursement.

B. Receive evidence of the kind described below from an independent authoritative source which is sufficient to indicate to Lender that any collateral property is not in a special flood hazard area. If such evidence is not provided to Lender, Lender must obtain from Borrower agreement to obtain, and maintain, a Standard Flood Insurance Policy or other appropriate special flood hazard insurance in an amount and coverage equal to the lesser of (1) the insurable value of the property or (2) the maximum limit of coverage available. The Borrower can show that special flood hazard insurance has been acquired by submitting a copy of the policy or providing evidence of premium payment for the appropriate coverage to a licensed insurance agent. Borrower will not be eligible for either any future disaster assistance or SBA business loan assistance if the special flood hazard insurance is not maintained as stipulated herein throughout the entire term of its loan.

As evidence that the property is not located within a special hazard area subject to flooding, mudslides, or erosion, Lender may rely on a determination of special flood hazard area status by the applicant's property & casualty insurance company, real estate appraiser, title insurance company, a local government agency or other authoritative source acceptable to SBA which would ordinarily have knowledge of the special flood hazard area status for the property.

C. In the construction of a new building or an addition to a building, obtain agreement from the Borrower that the construction will conform with the ' National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings." Compliance with these requirements shall be evidenced by a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that the issuance of an occupancy permit is required and is subject to conformance with building codes and that the local building codes include the Seismic standards.

The following codes have been identified as being substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions: 1991 Uniform Building Code of the International Congress of Building Officials (ICBO); 1992 Supplement to the Building Officials and Code Administrators (BOCA) National Building Code; 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code.

D. Obtain agreement from the Borrower that it will, to the extent feasible purchase only American-made equipment and products with the proceeds of this loan.

E. For any loan involving construction of more than $10,000, require borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance. Appendix 4 is a copy of Form 601. This form must be retained in the loan file, but does not have to be submitted to the FA$TRAK Processing Center.

(4) The Small Business Act requires that all borrowers supply information regarding payments to loan packagers, accountants, appraisers, lawyers, or any other individual or entity that assisted the borrower in obtaining the loan. SBA Form 159 may be used for this purpose or the lender may use its own form as long as the information required by SBA Form 159 is supplied by the borrower and the service provider. Appendix 5 is a copy of Form 159. This form must be retained in the loan file, but does not have to be submitted to the FA$TRAK Processing Center. If the applicant did not pay anyone to assist in the preparation of the loan, a written certification to that effect is sufficient to meet this requirement.

VII. Loan Servicing

A. Lenders will be permitted to service loans approved under FA$TRAK using the same policies and procedures used for the lender's conventional loan portfolio. These policies and procedures must be based on prudent lending practices and the FA$TRAK lender should be prepared to demonstrate to SBA that a servicing action taken on a FA$TRAK loan is consistent with actions taken on loans in the lender's unguaranteed portfolio.

B. There are two actions that cannot be delegated to the FA$TRAK participating lender. They are:

(1) Selling or accepting a compromise settlement of any indebtedness guaranteed by SBA for a sum less than the total amount due on the loan, and

(2) Enforcing compliance by the borrower with non-discrimination regulations (13 CFR Part 113). This enforcement shall be subject to action by SBA.

C. SBA must be notified of any servicing action that alters any of the repayment terms of the loan. This includes, but is not limited to, changes in the interest rate on fixed rate loans or the interest rate spread on variable rate loans, maturity, or payment schedule. Notification should be sent to the servicing office responsible for the loan. The servicing office address will be provided to the FA$TRAK lender along with the loan number.

D. Lender may release collateral as necessary. Due to the perception of a preference for the FA$TRAK lender, care should be taken to fully document and justify any release of collateral for an SBA guaranteed loan that will subsequently be pledged for a conventional loan from the lender.

VIII. Loan Liquidation

A. A participating lender will be expected to fully liquidate any loan approved using FA$TRAK. The lender must follow the same policies and procedures it uses for its non-guaranteed portfolio and should be prepared to demonstrate that it has done so. All liquidations of FA$TRAK loans must be commercially reasonable.

B. Proceeds from the sale of collateral shall be applied first to the expenses associated with the liquidation, secondly, to the 120 days of interest permitted on the balance as of the earliest uncured default and finally to the principal balance. SBA will not pay to the lender an amount in excess of 50% of the loan balance at the time of default plus 120 days of interest at the rate in effect on the date of default. The Lender must absorb any expenses that exceed this amount.

C. Any action taken during the liquidation of a loan must be fully documented. SBA will review liquidation actions as part of the general review of a lender's use of the FA$TRAK program. It is not necessary to provide a liquidation plan to SBA.

D. SBA reserves the right to purchase its guaranty prior to liquidation and to liquidate the loan using SBA personnel, however, it is expected that this right will be used only in very unusual circumstances.

E. Lender is permitted to take back a Note Receivable on the sale of collateral on any terms negotiated between the lender and the buyer. The Note Receivable will not have an SBA guaranty.

F. Lender is to insure that ordinary protective measures are taken. Expenses associated with the protection of collateral may be recovered from the proceeds of the sale of collateral.

G. Collateral sales to the Lender's officers, directors, employees or stockholders (10% or greater) or a close relative of either are not permitted.

H. The selection of firms owned by officers, directors, employees or stockholders (10% or greater) to provide care and preservation services, legal assistance, or other services associated with the liquidation should be avoided. If it cannot be avoided, the lender must be prepared to justify the benefit to SBA of using the particular firm.

IX. Payment of the SBA Guaranty

A. Payment of the SBA guaranty will be made after the lender has fully liquidated all collateral and pursued all obligors and after SBA has reviewed the documentation that supports the loan. Payment will consist of the SBA guaranteed percentage of the balance remaining after liquidation plus up to 120 days of interest based on the balance outstanding at the time of the earliest uncured default if liquidation proceeds were insufficient to cover a full 120 days of interest.

B. To receive payment, lender must submit a transcript of account, a summary of liquidation activities, a detail of liquidation expenses, and a copy of the Note and relevant loan documents to the SBA office servicing the loan. The servicing office will review the account and prepare the paperwork required to wire SBA's portion of the loss to the lender.

X. Lender Selection and Review

A. Lenders will be selected for participation in FA$TRAK based on their desire to increase lending under $100,000 to small businesses, especially minority and women owned businesses. An SBA district office shall make a nomination to the Central Office, which will make a decision. A lender will receive the FA$TRAK designation for its entire system. This may involve executing multiple copies of the supplemental guaranty agreement depending on the legal structure of the lender.

B. The loan approval authority in the supplemental guaranty agreement for FA$TRAK will last for two years. At the end of two years, the activity will be reviewed and may be renewed for either one or two years. The servicing and liquidation provisions will last for the life of any loan approved using FA$TRAK.

C. SBA will monitor the progress of the FA$TRAK loans approved by each other. We will use the performance of loans approved under FA$TRAK to determine if a lender may continue to participate in FA$TRAK. Lenders that violate the terms of the supplemental guaranty agreement, this guidebook, or SBA regulations as determined by SBA shall be removed from the program.

D. SBA reserves the right to make a periodic on-site review of the loan files for FA$TRAK loans. SBA may, from time to time, ask FA$TRAK lenders to photocopy documents in a file selected by SBA and send the copy to SBA for review. This procedure is intended to limit the intrusion on the lender by SBA reviewers and to reduce the cost to SBA of program monitoring. Lender acknowledges that the SBA review does not give rise to any estoppel claim, right or defense if SBA should determine that it will not honor its guaranty on a loan approved using FA$TRAK.

E. If a problem develops with part of a lender's operation in one location, the lender will be notified and given a reasonable time to correct the problem. If the problem is not corrected, the lender's entire organization will be removed from FA$TRAK.

XI. Lender Reporting

Lenders will be required to report the status and outstanding balance of each loan approved under FA$TRAK on SBA form 1175. This form is submitted on a quarterly basis to the SBA field office. SBA is in the process of developing an electronic data interchange (EDI) system for lender reporting. FA$TRAK lenders will be expected to use EDI after it has been implemented for SBA reporting.

XII. Secondary Market

Loans approved using the FA$TRAK procedure may not be sold in the secondary market.

XIII. Lender Mergers

A lender's status as a participant in the FA$TRAK will be reviewed at the time of a merger and a decision will be made regarding whether the new entity will be a participant in FA$TRAK.

XIV. IRS Tax Verification

Lenders must verify tax returns of the business prior to disbursement of a FA$TRAK loan. Tax verification procedures are included in Appendix 6. SBA has a cooperative agreement with the IRS to provide information within ten days. The key to a quick reply from the IRS is to ask for a transcript of the tax return, not a copy of the return and to write the words "SBA Loan Application" at the top of the form. Please report any problems with the tax verification system to the FA$TRAK Processing Center or your local SBA district office. Lenders are reminded that the letters "SBA" must be placed at the top of each request to insure expedited processing and that sole proprietorship information is obtained from a different SBA location than partnership or corporate tax information.

[FR Doc. 95-5337 Filed 3-3-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 24, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50148.
Date filed: February 21, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 729.
Proposed Effective Date: April 1, 1995.

Docket Number: 50149.
Date filed: February 21, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0686 dated January 27, 1995, Europe-Southeast Asia Resos r-1 to r-23.
Proposed Effective Date: April 1, 1995.

Docket Number: 50150.
Date filed: February 21, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC12 Telex Mail Vote 730, Germany-Canada Fares, r-1—076jj r-2—080rr.
Proposed Effective Date: April 1, 1995.

Myrna F. Adams,
Acting Chief, Documentary Services Division.

[FR Doc. 95-5429 Filed 3-3-95; 8:45 am]

BILLING CODE 4910-62-P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 24, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth

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below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50153.
Date filed: February 24, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1995.
Description: Application of Horizon Air Industries, Inc. d/b/a Horizon Air, pursuant to 49 U.S.C. 41108 and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing service between Seattle, Washington, and Calgary, Alberta, Canada.

Docket Number: 50156.
Date filed: February 24, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1995.
Description: Application of Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc. and Wings West Airlines, Inc. (d/b/a American Eagle), pursuant to 49 U.S.C. 41108 and Subpart Q of the Regulations, requests amendment of their certificate of public and convenience for Route 537, to authorize foreign air transportation of persons, property, and mail between the United States and additional points in the Caribbean.

Docket Number: 50157.
Date filed: February 24, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1995.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between any point in the United States and any point in Canada, subject to a condition that service to Vancouver and Montreal must be separately authorized for a period of two years, and service to Toronto must be separately authorized for a period of three years, consistent with the phase-in provisions for those three cities in the United States-Canada Air Transport Agreement signed on February 24, 1995.

Myrna F. Adams,
Acting Chief, Documentary Services Division.
[FR Doc. 95-5428 Filed 3-3-95; 8:45 am]
BILLING CODE 4910-62-P

Coast Guard

[CGD 95-005]

Area To Be Avoided Off the Washington Coast

AGENCY: Coast Guard, DOT.
ACTION: Extension of comment period.

SUMMARY: In response to several requests, the Coast Guard is extending the comment period for written comments on whether the applicability of the area to be avoided (ATBA) off the Washington Coast should be expanded to include vessels and barges other than those carrying cargoes of oil or hazardous materials.

DATES: Written comments must be received not later than April 17, 1995. Copies of a written transcript from the February 23, 1995, public meeting will be available for inspection and copying after March 15, 1995 at the addresses indicated in the **ADDRESSES** section which follows.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA), U.S. Coast Guard, 2100 Second Street SW. Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

In addition, the written transcript of the February 23, 1995, public meeting will be available for inspection and copying at the Thirteenth Coast Guard District, 915 Second Avenue, Room 3410, Seattle, WA 98174 and at the Olympic Coast National Marine Sanctuary, 138 W. First Street, Port Angeles, WA 98362-2600, from 7:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Project Manager, Vessel Traffic Services Division, phone (202) 267-0415. This telephone is equipped to take messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: The ATBA was adopted by the Maritime Safety Committee of the International Maritime Organization on December 7, 1994, and goes into effect on June 7, 1995. It is recommended that all vessels, including barges, carrying oil or cargoes classified by the United States as hazardous materials (e.g., chemicals) avoid the ATBA.

A meeting to obtain public comment on whether the ATBA off the Washington Coast should be applicable to other categories of vessels was announced in the **Federal Register** on January 27, 1995 (60 FR 5454). The purpose of the meeting, as stated in the meeting notice, was to obtain information to assist the Coast Guard in determining whether there is a need to expand the applicability of the ATBA.

Commenters were asked to respond to ten specific questions, and present any other information. However, the Coast Guard did not propose any specific changes in the area or the applicability. The meeting was held on February 23, 1995, and 17 individuals made oral presentations.

The Coast Guard has received several requests to extend the comment period for submitting written comments beyond the current March 3, 1995 deadline. The additional time will result in a more comprehensive review of the issue and more detailed information for Coast Guard consideration. As the Coast Guard is interested in substantiated comments and giving all concerned parties the opportunity to present information, the comment period is extended until April 17, 1995.

Dated: February 28, 1995.
G.A. Penington,
Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.
[FR Doc. 95-5388 Filed 3-3-95; 8:45 am]
BILLING CODE 4910-14-M

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; Fort Worth Alliance Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration.
ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 11, 1994, the FAA determined that the noise exposure maps submitted by the city of Fort Worth under Part 150 were in compliance with applicable requirements. On February 7, 1995, the Administrator approved the Fort Worth Alliance Airport noise compatibility program. All of the recommendations of the program elements relating to new or revised flight procedures for noise

abatement were proposed by the city of Fort Worth.

EFFECTIVE DATE: The effective date of the FAA's approval of the Fort Worth Alliance Airport noise compatibility program is February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0653, (817) 222-5606. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Alliance Airport, effective February 7, 1995.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0650.

The city of Fort Worth submitted to the FAA on August 4, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1991 through July 1994. The Fort Worth Alliance Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on August 11, 1994. Notice of this determination was published in the **Federal Register** on August 18, 1994.

The Fort Worth Alliance Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1994, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eleven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective February 7, 1995.

Outright approval was granted for all of the specific program elements. The following is a listing of the approved actions on and off the airport:

a. Maintain the existing flight track configuration and utilization;

b. Request pilots of airline aircraft to adhere to FAA noise abatement departure procedures;

c. Establish noise overlay zoning district for the airport vicinity as an amendment to the existing airport development zone ordinance;

d. Revise land use plan for noise compatibility;

e. Purchase noise sensitive sites—fee simple;

f. Where fee simple acquisition cannot be achieved, obtain avigation easement and where feasible, soundproofing existing eligible structures within the 65DNL;

g. Enact noise disclosure regulations to inform prospective buyers of potential noise exposure;

h. Assign a noise abatement officer for noise program management for all three city of Fort Worth airports;

i. Continue public involvement program;

j. Implement a periodic noise monitoring program; and

k. Conduct noise review and update as required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on February 7, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Fort Worth Department of Aviation Offices.

Issued in Fort Worth, Texas on February 20, 1995.
Otis T. Welch,
Manager, Texas Airport Development Office
[FR Doc. 95-5422 Filed 3-3-95; 8:45 am]
BILLING CODE 4910-13-M

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Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Fort Worth Spinks Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Fort Worth, Texas for Fort Worth Spinks Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Fort Worth Spinks Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 12, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 13, 1995. The public comment period ends April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, TX 76193–0653. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fort Worth Spinks Airport are in compliance with applicable requirements of Part 150, effective February 13, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 12, 1995. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Fort Worth submitted to the FAA on February 3, 1995 noise exposure maps, descriptions and other documentation which were produced from November 1991 to January 1995 during the development of the Fort Worth Spinks Airport FAR Part 150 Airport Noise Compatibility Plan. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Fort Worth. The specific maps under consideration are Exhibits 10.1 and 10.2 in the submission. The FAA has determined that these maps for Fort Worth Spinks Airport are in compliance with applicable requirements. This determination is effective on February 13, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Fort Worth Spinks Airport, also effective on February 13, 1994. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 12, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Suite 697, Fort Worth, TX 76193–0653

Mr. A.M. Rivera, Director of Airport Systems, City of Fort Worth, 4201 North Main Street, Fort Worth, TX 76106–2736.

Question may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas on February 13, 1995.

Otis T. Welch,

Manager, Texas Airport Development Office.

[FR Doc. 95–5421 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

FAA Approval of Noise Compatibility Program; Fort Worth Meacham Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 11, 1994, the FAA determined that the noise exposure maps submitted by the city of Fort Worth under Part 150 were in compliance with applicable requirements. On February 7, 1995, the Administrator approved the Fort Worth Meacham Airport noise compatibility program. Most of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the city of Fort Worth.

EFFECTIVE DATE: The effective date of the FAA's approval of the Fort Worth Meacham Airport noise compatibility program is February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0653, (817) 222–5606. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Meacham Airport, effective February 7, 1995.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The city of Fort Worth submitted to the FAA on August 4, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1991 through July 1994. The Fort Worth Meacham Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on August 11, 1994. Notice of this determination was published in the **Federal Register** on August 18, 1994.

The Fort Worth Meacham Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1994, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twelve proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective February 7, 1995.

Outright approval was granted for nearly all of the specific program elements.

The following program element was partially approved:

a. Aircraft maintenance runup procedures.

Development of a run-up pad and encouraging its use are *approved.* Designation of engine run-up locations is within the discretion of the airport operator and may be added to the airport rules and regulations and instituted at any time provided that they do not limit Stage 2 or Stage 3 operations so as to qualify as an airport noise and access restriction or create an

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undue burden on interstate commerce. Promotion of the continued use of the City Ordinance restricting run-ups between 12 midnight and 6:00 a.m. is *disapproved* pending receipt of additional information regarding the City Ordinance, the airport rules and regulations, and the potential effects on air transportation. Engine run-up restrictions that limit the total number or hours of Stage 2 or Stage 3 operations would require compliance with 14 CFR 161.

The following program elements on and off the airport were fully approved:

a. Voluntary use of noise abatement departure and arrival procedures for aircraft weighting over 12,500 pounds;

b. Noise barriers and acoustical shielding;

c. Rezone properties immediately adjacent to airport property;

d. Revise land use plan for noise compatibility and community revitalization;

e. Purchase noise sensitive sites—fee simple.

f. Where fee simple acquisition cannot be achieved, obtain avigation easement and where feasible, soundproofing existing eligible structures within the 65 DNL;

g. Enact noise disclosure regulations to inform prospective buyers of potential noise exposure;

h. Assign a noise abatement officer for noise program management for all three city of Fort Worth airports;

i. Continue public involvement program;

j. Implement a periodic noise monitoring program; and

k. Conduct noise review and update as required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on February 7, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Fort Worth Department of Aviation Offices.

Issued in Fort Worth, Texas on February 20, 1995.

Otis T. Welch,

Manager, Texas Airport Development Office.

[FR Doc. 95–5420 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 10 through April 13, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held April 10–12 in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, and on April 13 at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from April 10 through April 12, 1995, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, and on April 13 at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 7, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from July 10–13, 1995, in Denver, CO.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC on February 27 1995.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 95–5425 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on March 24, 1995, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr Reginald C. Matthews, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held at 1 p.m. on Friday, March 24, 1995, in Rooms 5A at the Federal Aviation Administration, 800 Independence Ave., Washington, DC. The agenda for this meeting will include briefings on:

- Assignment of new task on special visual flight rules operations;
- Mode S Study; and
- Status of the Unmanned Air Vehicle Working Group.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on February 23, 1995.

Reginald C. Matthews,

Assistant Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc 95–5417 Filed 3–3–95, 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Aspen-Pitkin County Airport/Sardy Field, Submitted by Pitkin County, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Aspen-Pitkin County Airport/Sardy Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 5, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Smith, Director of Aviation, at the following address: Aspen-Pitkin County Airport/Sardy Field, 0233 East Airport Road, Aspen, CO 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Aspen-Pitkin County Airport/Sardy Field, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Fels, (303) 286–5596; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Aspen-Pitkin County Airport/Sardy Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158)

On June 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pitkin County was not substantially complete within the requirements of part 158. Pitkin County was notified by letter dated June 16, 1993, of this determination, with a request for information which would have allowed the application to meet the requirements of part 158. By letter dated June 30, 1993, Pitkin County declined to provide the supplemental information requested. A decision was made by the FAA to defer action on the application pending resolution of Airport Noise and Capacity Act (ANCA) issues. With the passage of Section 517 of Public Law 103–305 and the opening of the airport to night access by general aviation aircraft, under the conditions specified in this legislation, the ANCA issues have been resolved. This allows the FAA to make, at this time, a determination of substantially complete on this application. There has been no change to the original application.

On February 27, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Aspin-Pitkin County Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 4, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: July 1, 1995

Proposed charge expiration date: January 31, 1998

Total estimated PFC revenues: $1,533,541.00

Brief description of proposed project: Relocate State Highway 82; Overlay runway 15/33.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators operating pursuant to § 135.1(a)(3) of the Federal Aviation Regulations (14 CFR).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aspen-Pitkin County Airport.

Issued in Renton, Washington on February 27, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–5418 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–100; Notice 2]

Excalibur Automobile Corporation; Grant of Application for Temporary Exemption From Motor Vehicle Safety Standard No. 208

Excalibur Automobile Corporation of West Allis, Wisconsin, applied for a temporary exemption of its JAC 427 Cobra passenger car for three years from compliance with paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on December 28, 1994, and an opportunity afforded for comment (59 FR 66999). This notice grants the application.

The applicant sought an exemption for its JAC 427 Cobra passenger car, of which it produced 59 between January 1993 and September 1994. Thirty-six of these "are presently in the control of Excalibur's dealers", and the applicant asked that the exemption cover these vehicles so that they may be offered for sale and sold in compliance with the law. It plans increased production in 1995, of which 60 to 108 would be sold in the United States.

Excalibur is a small company with 37 employees and net assets of $3,000,000 The company has had cumulative net losses of $4,493,000 from January 1, 1992 to September 30, 1994. If it were required to comply immediately with the automatic restraint requirements of Standard No. 208, it would have to raise the retail price by more than 300 per cent which "is likely to deemed (sic) to be prohibitive by potential purchasers (and dealers), thereby significantly reducing the line's desirability, if not ending the demand entirely * * *." Denial of the petition would result in a reduction of the work force to 8 employees.

Excalibur has been owned since 1991 by German residents, who changed the company's management in August 1994 The new management has not been able

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to trace the company's efforts to comply beyond December 1993 when the then Vice President of Production informed the then President that he had "just located a potential source for a retrofit driver's as well as passenger air bag system." Compliance was anticipated "within weeks." NHTSA was likewise informed of this possibility in December 1993. On May 31, 1994, in an incomplete petition for exemption from Standard No. 208, Excalibur informed the agency that its efforts to work with companies in Arizona and Florida had ended in frustration and failure and that it was currently unable to find a source for an adequate, workable airbag system.

According to its application, Excalibur will use the exemption period "to accommodate a fully-complying airbag system." It is investigating the possibility of installing Ford Mustang steering columns and airbag systems, as well as whether its existing column could accept an airbag produced by Breed Technologies. Exempted vehicles would be provided with a three-point restraint system as well as with a "clearly visible warning label reminding the vehicle's occupants of the importance of wearing their safety belts.

The company argued that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it presently has 17 dealers in 12 states, and "a thriving manufacturing business and dealer network not only provides employment, but will generate federal and state tax revenues." The small number of vehicles that the exemption will cover and the limited mileage they will be driven ensure that an exemption "will not materially affect overall motor vehicle safety in the U.S."

No comments were received on the application. That the applicant is experiencing "substantial economic hardship" within the meaning of the phrase, as interpreted by NHTSA, over the years, is demonstrated by its continuing and cumulative losses of approximately $4.5 million over the 2 3/4 year period previous to filing its application. The applicant has recently informed NHTSA that at least two of its dealers are seeking to terminate their dealership agreements and to require Excalibur to repurchase vehicles in stock because of their failure to meet the automatic restraint requirements of Standard No. 208.

The efforts of the applicant to make a good faith effort to comply with Standard No. 208 appear to have originated with the company's new ownership in 1991. NHTSA is aware that small manufacturers of open cars, such as Excalibur, have found it difficult to engineer an airbag system into their existing steering columns, let alone to find a supplier interested in providing only a low volume of airbags.

The public interest is served, of course, as the applicant argues, by providing continuing employment to those who manufacture, sell, and repair Excalibur vehicles, as well as the benefits derived from the generation of Federal and state tax revenues. It is also in the public interest to avoid litigation where possible and an exemption may forestall actions against the applicant by its dealers, which would contribute further to its hardship. The overall effect upon motor vehicle safety will be negligible due to the small number of cars that will be manufactured and sold under it, which will be equipped with a three-point restraint system and a label reminding the two passengers of the need to use their safety belts.

The company has also asked that the exemption cover the vehicles currently in the hands of its dealers. This is an unusual request. Only once before has the agency been petitioned to grant an exemption to motor vehicles already in existence. In 1989, Chrysler Corporation manufactured several electric vans for research purposes which, three years later, in 1992, it wished to sell or lease to a public utility in California. As the purpose of a temporary exemption is to allow a company for a limited time to engage in activities that would otherwise be in violation of the statute, the agency granted Chrysler's petition. NHTSA noted that an exemption would permit Chrysler to offer for sale, sell, introduce and deliver for introduction into interstate commerce noncomplying motor vehicles, acts otherwise prohibited (See 57 FR 27506). The fact situation is somewhat different here in that noncomplying vehicles have already been manufactured for sale and delivered for introduction into interstate commerce, in violation of 49 U.S.C. 30112(a). The agency has no authority to excuse retroactively statutory violations, and these are acts for which NHTSA has the right to seek recovery of civil penalties. However, an exemption will allow the company to generate income and its dealers to offer for sale, sell, and introduce into interstate commerce the vehicles that are currently in their possession.

The applicant requested an exemption for the maximum permissible under statute, three years. Given the fact that the company began its compliance efforts in 1993 if not earlier, the agency believes that full compliance with Standard No. 208 should be the company's regulatory priority, and is providing an exemption of two years. This, of course, does not affect the right of the applicant to petition for a renewal if compliance remains elusive.

In consideration of the foregoing, it is hereby found that compliance with the automatic restraint requirements of Standard No. 208 would cause substantial economic hardship to a company that has tried to comply with the standard in good faith, and that an exemption would be consistent with the public interest and motor vehicle safety. Accordingly, Excalibur Automobile Corporation is hereby granted NHTSA Temporary Exemption No. 95–1 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Crash Protection, expiring March 1, 1997

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50

Issued on February 28, 1995

Ricardo Martinez,

Administrator

[FR Doc. 95–5322 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 43
Monday, March 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the FCS Building Association.

DATE AND TIME: The special meeting of the Board concerning the FCS Building Association will be held March 7, 1995 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's special meeting at 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

A Approval of Minutes

B Reports

1 FCSBA Quarterly Report

Dated: March 1, 1995.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board

[FR Doc 95–5546 Filed 3–2–95; 2:17 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 7, 1995, from 11:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A Approval of Minutes

Closed Session*

A. Reports

1 OSMO Quarterly Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: March 1, 1995.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 95–5547 Filed 3–2–95; 2:17 pm]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 1:00 p.m., Friday, March 10, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1 Final Interpretive Ruling and Policy Statement (IRPS) 95–1, Supervisory Review Committee.

2. Establishment of the Position of Ombudsman.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board. Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–5514 Filed 3–2–95; 12:47 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 6, 1995.

A closed meeting will be held on Thursday, March 9, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 9, 1995, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 2, 1995

Jonathan G. Katz,

Secretary

[FR Doc. 95–5576 Filed 3–2–95; 3:56 pm]

BILLING CODE 8010–01–M

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federal register

Monday
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Part II

Department of Defense
Department of Army
Corps of Engineers

Environmental Protection Agency

Department of Agriculture
Natural Resources Conservation Service

Department of the Interior
Fish and Wildlife Service

Department of Commerce
National Oceanic and Atmospheric Administration

Federal Guidance for the Establishment, Use and Operation of Mitigation Banks; Notice

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

AGENCIES: Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Natural Resources Conservation Service, Agriculture; Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers (Corps), Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are proposing guidance regarding the establishment, use and operation of mitigation banks for the purpose of providing compensatory mitigation for adverse impacts to wetlands and other aquatic resources. The purpose of this guidance is to clarify the manner in which mitigation banks may be used to satisfy mitigation requirements associated with the Clean Water Act (CWA) Section 404 permit program and the wetland conservation provisions of the Food Security Act (FSA) (i.e., "Swampbuster" provisions). Recognizing the potential benefits mitigation banking offers for streamlining the permit evaluation process and providing more effective mitigation for authorized impacts to wetlands, the agencies encourage the establishment and appropriate use of mitigation banks in the Section 404 and "Swampbuster" programs.

DATES: Written comments must be submitted on or before April 20, 1995.

ADDRESSES: All comments concerning this proposed document should be submitted in writing to: Mitigation Banking Docket, Wetlands Division, Mail Code (4502F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning (Corps) at (202) 272–1725; Ms. Julie Metz (Corps) at (703) 355–3065; Mr. Thomas Kelsch (EPA) at (202) 260–8795; Ms. Sandra Byrd (NRCS) at (202) 690–3501; Mr. Michael Long (FWS) at (703) 358–2183; Ms. Susan-Marie Stedman (NMFS) at (301) 713–2325.

SUPPLEMENTARY INFORMATION: Mitigating the harmful effects of necessary development actions on the Nation's wetlands and other aquatic resources is a central premise of Federal wetlands programs. The CWA Section 404 permit program relies on a sequential approach to mitigating these harmful effects by first avoiding unnecessary impacts, then minimizing environmental harm, and, finally, compensating for remaining unavoidable damage to wetlands and other aquatic resources through, for example, the restoration or creation of wetlands. Under the "Swampbuster" provisions of the FSA, farmers are required to provide mitigation to offset certain conversions of wetlands for agricultural purposes in order to maintain their program eligibility.

Mitigation banking has been defined as wetland restoration, creation, enhancement, and in exceptional circumstances, preservation undertaken expressly for the purpose of mitigating unavoidable adverse wetland losses in advance of development actions, when compensatory mitigation cannot be achieved at the development site or is not as environmentally beneficial. It typically involves the consolidation of fragmented wetland mitigation projects into one large contiguous site. Units of restored, created, enhanced or preserved wetlands are expressed as "credits" which may subsequently be withdrawn to offset "debits" incurred at a project development site.

Ideally, mitigation banks are constructed and functioning in advance of development impacts, and are seen as a way of reducing uncertainty in the CWA Section 404 permit program or the FSA "Swampbuster" program by having established compensatory mitigation credit available to an applicant. By consolidating compensation requirements, banks can more effectively replace lost wetland functions within a watershed, as well as provide economies of scale relating to the planning, implementation, monitoring and management of mitigation projects.

On August 23, 1993, the Clinton Administration released a comprehensive package of improvements to Federal wetlands programs which included support for the use of mitigation banks within environmentally sound limits as a means for compensating for authorized wetland impacts. At that same time, EPA and the Department of the Army issued interim guidance clarifying the role of mitigation banks in the Section 404 permit program and providing general guidelines for their establishment and use. In that document it was acknowledged that additional guidance would be developed, as necessary, following completion of the first phase of the Corps Institute for Water Resources national study on mitigation banking.

This notice responds to a need identified in the Corps national study for more detailed guidance on the policy of the Federal government regarding the establishment, use and operation of mitigation banks. The proposed guidance is based, in part, on the experiences to date with mitigation banking, as well as other environmental, economic and institutional issues identified through the Corps national study. The agencies are specifically soliciting public comment on the proposed guidance and will consider all comments submitted by the public in developing final guidance. A copy of the proposed guidance is published with this notice.

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Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

I. Introduction

A. Purpose and Scope of Guidance

This document provides policy guidance for the establishment, use and operation of mitigation banks for the purpose of providing compensatory mitigation for authorized adverse impacts to wetlands and other aquatic resources. This guidance is provided

expressly to assist Federal personnel, bank sponsors, and others in meeting the purpose and goals of Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act, the wetland conservation provisions of the Food Security Act (FSA) (i.e., "Swampbuster"), and other applicable Federal statutes and regulations. The policies and procedures discussed herein are consistent with current requirements of the Section 10/404 regulatory program and "Swampbuster" provisions and are intended only to clarify the applicability of existing requirements to mitigation banking.

The policies and procedures are applicable to the establishment, use and operation of public mitigation banks, as well as privately-sponsored mitigation banks, including third party banks (e.g., entrepreneurial banks).

B. Background

For purposes of this guidance, mitigation banking means the restoration, creation, enhancement and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

The objective of a mitigation bank is to provide for the replacement of the chemical, physical and biological functions of wetlands and other aquatic resources which are lost as a result of authorized impacts. Using appropriate methods, the newly established functions are quantified as mitigation "credits" which are available for use by the bank sponsor or by other parties to compensate for adverse impacts (i.e., "debits"). Consistent with mitigation policies established under the Council on Environmental Quality Implementing Regulations (CEQ regulations) (40 CFR part 1508.20), and the Section 404(b)(1) Guidelines (Guidelines) (40 CFR part 230), the use of credits may only be authorized for purposes of complying with Section 10/404 when adverse impacts are unavoidable In addition, for both the Section 10/404 and "Swampbuster" programs, credits may only be authorized when on-site compensation is either not practicable or use of a mitigation bank is environmentally preferable to on-site compensation. Prospective bank sponsors should not construe or anticipate participation in the establishment of a mitigation bank as ultimate authorization for specific projects or as excepting such projects from any applicable requirements.

Mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

1. It may be more advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation into a single large parcel or contiguous parcels when ecologically appropriate;

2. Establishment of a mitigation bank can bring together financial resources, planning and scientific expertise not practicable to many project-specific compensatory mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation that maximizes opportunities for contributing to biodiversity and/or watershed function;

3. Use of mitigation banks may reduce permit processing times for projects that qualify and provide more cost-effective compensatory mitigation opportunities;

4. Compensatory mitigation is typically implemented and functioning in advance of project impacts, thereby reducing temporal losses of aquatic functions and uncertainty over whether the mitigation will be successful in offsetting project impacts;

5. The existence of mitigation banks can contribute towards attainment of the goal for no overall net loss of the Nation's wetlands by providing applicants with opportunities to compensate for authorized impacts when mitigation might not otherwise be required.

II. Policy Considerations

The following policy considerations provide general guidance for the establishment, use and operation of mitigation banks. This policy applies to all mitigation bank proposals submitted for approval on or after the effective date of this guidance and to those in early stages of planning or development. It is not intended that this policy be retroactive for mitigation banks that have already received agency approval. While it is recognized that individual mitigation banking proposals may vary, the fundamental precepts of this guidance should apply to all future mitigation banks.

For the purposes of Section 10/404, and consistent with the CEQ regulations, the Guidelines, and the Memorandum of Agreement Between the Environmental Protection Agency (EPA) and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, mitigation means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. Compensatory mitigation, under Section 10/404, is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of compensating for unavoidable adverse impacts. A site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources is a mitigation bank.

A. Authorities

This guidance is established in accordance with the following statutes, regulations, and policies. It is intended to clarify provisions within these existing authorities and does not establish any new requirements.

1. Clean Water Act Section 404 (33 USC 1344).

2. Rivers and Harbors Act of 1899 Section 10 (33 USC 403 *et seq.*).

3. Environmental Protection Agency, Section 404(b)(1) Guidelines (40 CFR part 230). Guidelines for Specification of Disposal Sites for Dredged or Fill Material.

4. Department of the Army, Section 404 Permit Regulations (33 CFR parts 320–330). Policies for evaluating permit applications to discharge dredged or fill material.

5. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404 (b)(1) Guidelines (February 6, 1990).

6. Title XII Food Security Act of 1985 as amended by the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC 3801 *et seq.*).

7. National Environmental Policy Act (42 USC 4321 *et seq.*), including the Council on Environmental Quality's implementing regulations (40 CFR parts 1500–1508).

8. Fish and Wildlife Coordination Act (16 USC 661 *et seq.*).

9. Fish and Wildlife Service Mitigation Policy (46 FR 7644–7663, 1981).

10. Magnuson Fishery Conservation and Management Act (16 USC 1801 *et seq.*).

11. National Marine Fisheries Service Habitat Conservation Policy (48 FR 53142–53147, 1983).

B. Planning Considerations

1. Prospectus

Prospective bank sponsors are encouraged to submit a prospectus to

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the Army Corps of Engineers (Corps) or Natural Resources Conservation Service (NRCS)[1] to initiate the planning and review process by the appropriate agencies (e.g., pre-application coordination). The purpose of the prospectus is to provide information to the agencies regarding the general need for and technical feasibility of a bank, as well as its potential for providing compensatory mitigation within a particular watershed or other designated geographic area (i.e., bank service area). Formal agency involvement and review is initiated with submittal of a prospectus. The submittal of a prospectus and establishment of an approved mitigation bank in no way guarantees use of a bank to satisfy compensatory mitigation requirements of any authorized activity.

2. Goal Setting

The overall goal of a mitigation bank should be the establishment or reestablishment of a self-sustaining, functioning aquatic system, which replaces the functions and acreage of wetlands and other aquatic resources anticipated to be adversely affected within a watershed or other designated geographic area. It is desirable to set the particular objectives (i.e., determining the type and character of compensatory mitigation to be developed) for a mitigation bank in advance of site selection. The goal and objectives should be driven by the anticipated mitigation need; the site selection should support achieving the goal and objectives.

3. Site Selection

Consideration should be given to the ecological suitability of a site for achieving the goal and objectives of a bank, i.e., that it possess the physical, chemical and biological characteristics to support establishment of the desired aquatic resources and functions. Size and location of the site relative to other ecological features, hydrologic sources (including the availability of water rights), and compatibility with adjacent land uses and watershed management plans are important factors for consideration. It also is important that ecologically significant upland resources (e.g., mature forests) or cultural sites, or threatened and endangered species habitat are not compromised in the process of establishing a bank. Other factors for consideration include development trends (i.e., land use changes), habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., reestablishment of habitat corridors), water quality and floodplain management goals, and establishment of habitat for species of concern.

Banks may be sited on public or private lands. Cooperative arrangements between public and private entities to use public lands for mitigation banks may be acceptable. In some circumstances, it may be appropriate to site banks on Federal, state, tribal or locally owned resource management areas (e.g., wildlife management areas, national or state forests, public parks, recreation areas). The siting of banks on such lands may be acceptable if the internal policies of the public agency allow use of its land for such purposes, and the public agency grants approval. Mitigation credits generated by banks of this nature must be based solely on those values in the bank that are supplemental to the public program(s) already planned or in place, that is, baseline values represented by existing or already planned public programs, including preservation value, may not be counted toward bank credits.

Federally funded wetland conservation projects undertaken via separate authority and for other purposes, such as the Wetlands Reserve Program, Farmers Home Administration fee title transfers or conservation easements, and Partners for Wildlife Program, cannot be used for the purpose of generating credits within a mitigation bank.

4. Technical Feasibility

Mitigation banks should be planned and designed to be self-sustaining over time to the extent possible and pose little risk of failure. The techniques for restoring and creating wetlands and/or other aquatic resources must be carefully selected, since restoration/creation science is constantly evolving. The restoration of historic or substantially degraded wetlands and/or other aquatic resources utilizing proven techniques increases the likelihood of mitigation success and lessens the loss of valuable uplands due to wetland creation. Thus, restoration should be the first option considered when siting a bank.

In general, banks which involve complex hydraulic engineering features and/or questionable water sources (e.g., pumped) are more costly to develop, operate and maintain, and have a higher risk of failure than banks designed to function with little or no human intervention. The former situations should be avoided to the extent possible. This guidance recognizes that in some circumstances wetlands must be actively managed to ensure their viability and sustainability. Furthermore, long-term maintenance requirements may be necessary and appropriate in some cases (e.g., to maintain fire-dependent plant communities in the absence of natural fire; to control invasive exotic plant species).

Mitigation techniques should be sufficiently well understood and reliable to allow the development of detailed construction plans and specifications for review and approval. When uncertainties surrounding the technical feasibility of a proposed mitigation technique exist, appropriate arrangements (e.g., financial assurances, contingency plans, additional monitoring requirements) should be in place to increase the likelihood of success. Such arrangements may be phased out or reduced once the attainment of prescribed performance standards is demonstrated.

5. Role of Preservation

Credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource. Such augmentation may be reflected in the total number of credits available from the bank.

Consistent with existing regulations, policies and guidance, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in mitigation banks only under exceptional circumstances. Under such circumstances, preservation may be accomplished through the implementation of appropriate legal mechanisms (e.g., transfer of deed, deed restrictions, conservation easement) to protect wetlands and/or other aquatic resources, accompanied by implementation of appropriate changes in land use or other physical changes as necessary (e.g., installation of restrictive fencing).

Determining whether preservation is appropriate as the sole basis for generating credits at a mitigation bank requires careful judgment regarding a number of factors. Consideration must be given to whether wetlands and/or other aquatic resources proposed for preservation (1) perform physical or biological functions, the preservation of which is important to the region in which the aquatic resources are located, and (2) are under demonstrable threat of loss or substantial degradation due to human activities that might not otherwise be expected to be restricted (e.g., by Section 10/404 or the FSA "Swampbuster" provisions). The existence of a demonstrable threat must be based on clear evidence of destructive land use changes which are consistent with local and regional land use trends and are not the consequence of actions under the control of the bank sponsor. The number of mitigation credits available from a bank that is based solely on preservation should be based on the functions that would otherwise be lost or degraded if the aquatic resources were not preserved, and the timing of such loss or degradation. As such, compensation for aquatic resource impacts will generally require a greater number of acres from a preservation bank than from a bank which is based on restoration, creation or enhancement.

6. Inclusion of Upland Areas

Credit may be given for the inclusion of upland areas occurring within a bank only to the degree that such features increase the overall ecological functioning of the bank. If such features are included as part of a bank, it is important that they receive the same protected status as the rest of the bank and be subject to the same operational procedures and requirements. An appropriate functional assessment methodology should be used to determine the manner and extent to which such features augment the functions of restored, created or enhanced wetlands and/or other aquatic resources. The presence of upland areas may increase the per-unit value of the aquatic habitat in the bank, but upland areas are not directly counted as mitigation credits.

7. Mitigation Banking and Watershed Planning

Mitigation banks should be planned and developed to address resource needs within a particular watershed. Moreover, decisions regarding the location and uses of a mitigation bank, as well as the type of wetlands and/or other aquatic resources to be restored, created, enhanced or preserved may often be made within the context of ecological objectives set for the watershed. Watershed planning efforts often identify categories of activities having minimal adverse effects on the aquatic ecosystem which could be authorized under a general permit. In order to reduce potential cumulative effects of such activities, it may be appropriate to offset these types of impacts through the use of a mitigation bank established in conjunction with a watershed plan.

C. Establishment of Mitigation Banks

1. Mitigation Banking Instruments

All mitigation banks need to have a banking instrument as documentation of agency concurrence on the objectives and administration of the bank. The banking instrument should describe in detail the physical and legal characteristics of the bank, and how the bank will be established and operated. The banking instrument will be signed by the bank sponsor and the concurring regulatory and resource agencies represented on the Mitigation Bank Review Team (section II.C.2.). The following information should be addressed, as appropriate:

a. Bank goals and objectives;
b. Ownership of bank lands;
c. Bank size and classes of wetlands and/or other aquatic resources proposed for inclusion in the bank;
d. Description of baseline conditions;
e. Geographic service area;
f. Wetland classes or other aquatic resource impacts suitable for compensation;
g. Methods for determining credits and debits;
h. Accounting procedures;
i. Performance standards for determining credit availability and bank success;
j. Reporting protocols and monitoring plan;
k. Contingency and remedial actions and responsibilities;
l. Financial assurances;
m. Compensation ratios;
n. Provisions for long-term management and maintenance.

In cases where initial establishment of the mitigation bank involves a discharge into waters of the United States requiring Section 10/404 authorization, the banking instrument will be made part of the Department of the Army (DA) permit. The permit application to establish a bank will be evaluated by the Corps on its own merits pursuant to Section 10/404 policies and procedures. As such, preparation of a banking instrument should not alter the normal permit evaluation process timeframes. A bank sponsor may proceed with activities for the construction of a bank subsequent to receiving the DA authorization. It should be noted, however, that a bank sponsor who proceeds in the absence of a banking instrument does so as his/her own risk.

In cases where the mitigation bank is established pursuant to the FSA, the banking instrument will be included in the plan developed or approved by NRCS and the Fish and Wildlife Service (FWS).

2. Agency Roles and Coordination

Collectively, the signatory agencies to the banking instrument will comprise the Mitigation Bank Review Team (MBRT). Representatives from the Corps, EPA, FWS, National Marine Fisheries Service (NMFS), and NRCS, as appropriate given the projected use for the bank, should typically comprise the MBRT. In addition, it is appropriate for representatives from state, tribal and local regulatory and resource agencies to participate where an agency has authorities and/or mandates directly affecting or affected by the establishment, use or operation of a bank. No agency is required to sign a banking instrument; however, in signing a banking instrument, an agency agrees to comply with the terms of that instrument.

The Chair of the MBRT will be the Corps, except in cases where the bank is proposed solely for the purpose of complying with the FSA, in which case NRCS will be the MBRT Chair. Either agency may delegate that responsibility to another Federal, state, tribal or local agency, as appropriate.

The primary role of the MBRT is to facilitate the establishment of mitigation banks through the development of mitigation banking instruments. Because of the different authorities and responsibilities of each agency represented on the MBRT, there is a benefit in achieving agreement up front. For this reason, the MBRT will strive to obtain consensus[2] on its actions. The MBRT will review and reach consensus on the banking instrument and final plans for the restoration, creation, enhancement, and/or preservation of wetlands and other aquatic resources. Once the banking instrument has been signed, the MBRT will not typically be involved in the operation of a bank on a project-specific basis. Periodically, the MBRT will review monitoring and accounting reports. In the event a bank

[1] The Corps will typically serve as the lead agency for the establishment of mitigation banks. Bank sponsors proposing establishment of mitigation banks solely for the purpose of complying with the "Swampbuster" provisions of FSA should submit their prospectus to the NRCS.

[2] The term consensus as defined herein, is a process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. Under consensus, agreements or decisions are made without voting. An agreement is reached through a process of gathering information and viewpoints, discussion, analysis, persuasion, a combination or synthesis of the proposals and/or development of totally new solutions that are acceptable to the group. The goal of consensus is to reach an agreement or decision with which everyone can agree, but not necessarily unanimity. A consensus agreement is a recognition by a group that it has reached the best achievable solution for the parties involved.

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sponsor proposes remedial actions, or an agency on the MBRT considers remedial actions to be necessary, the MBRT will review and reach consensus on the specific remedial measures to be implemented at a bank.

Consistent with its authorities under Section 10/404, the Corps is responsible for authorizing use of a particular mitigation bank on a project-specific basis and determining the number and availability of credits required to compensate for proposed impacts in accordance with the terms of the banking instrument. Decisions rendered by the Corps must fully consider review agency comments submitted as part of the permit evaluation process. Similarly, the NRCS, in consultation with the FWS, will make the final decision pertaining to the withdrawal of credits from banks as appropriate mitigation pursuant to FSA.

3. Role of the Bank Sponsor

The bank sponsor is responsible for the preparation of the banking instrument in consultation with the MBRT. The bank sponsor is also responsible for the overall operation and management of the bank in accordance with the terms of the banking instrument, including the preparation and distribution of monitoring reports and accounting statements/ledger.

4. Dispute Resolution Procedure

The MBRT will work to reach consensus on its actions in accordance with this guidance. It is anticipated that all issues will be resolved by the MBRT in this manner.

a. *Development of the banking instrument.* During the development of the banking instrument, if the agency representatives on the MBRT cannot reach consensus on the content of the banking instrument within a reasonable timeframe, or if an agency representative considers that a particular decision raises concern regarding the application of existing policy or procedures, an agency may request the issue be reviewed by a higher level within each agency. If resolution is still not achieved, any agency(ies) may initiate interagency review through written notification to, as appropriate, the Corps District Engineer, EPA Regional Wetlands Division Director, FWS Field Supervisor, NMFS Habitat Coordinator, NRCS State Conservationist and corresponding management levels within other agencies represented on the MBRT. Said notification will describe the issue in sufficient detail and provide recommendations for resolution. Within 20 days, the District Engineer or State Conservationist (as appropriate), or an appropriate designee, will lead necessary discussions to achieve interagency concurrence on the issue of concern, and forward documentation of the resolution to the MBRT Chair for distribution to the other MBRT member agencies. The bank sponsor may also request the District Engineer or State Conservationist review actions taken to develop the banking instrument if the sponsor believes that inadequate progress has been made on the instrument by the MBRT.

b. *Application of the banking instrument.* As previously stated, the Corps and NRCS are responsible for making final decisions on a project-specific basis regarding the use of a mitigation bank for purposes of Section 10/404 and FSA, respectively. In the event an agency on the MBRT is concerned that a proposed use may not comply with the terms of the banking instrument, that agency may raise the issue to the attention of the Corps or NRCS through the permit evaluation process. In order to facilitate timely and effective consideration of agency comments, the Corps or NRCS, as appropriate, will advise the MBRT agencies of a proposed use of a bank and initiate discussion as necessary. The Corps will fully consider comments provided by the review agencies regarding mitigation as part of the permit evaluation process. The NRCS will consult with FWS in making its decisions pertaining to mitigation.

If, in the view of an agency on the MBRT, an issued permit or series of permits reflects a pattern of concern regarding the application of the terms of the banking instrument, that agency may initiate review of the concern by the full MBRT through written notification to the MBRT Chair. The MBRT Chair will convene a meeting of the MBRT, or initiate another appropriate forum for communication, typically within 10 days upon receipt of notification, to resolve concerns. If resolution is not reached, an agency may request that the issue be reviewed by higher levels within each agency consistent with the procedures described in the preceding paragraph. Invoking this dispute resolution procedure to address concerns regarding the application of a banking instrument will not delay any permit decision pending before the authorizing agency (i.e., Corps or NRCS).

This guidance does not affect in any way the Corps statutory authorities and responsibilities under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. The ability of an agency to elevate a particular permit or policy issue in accordance with the Section 404(q) Memoranda of Agreement between the Department of the Army and the Federal advisory agencies will not be limited in any way by this guidance. Similarly, EPA's authority to deny or restrict authorization of a CWA permit in accordance with Section 404(c) will not be limited in any way by this guidance.

D. Criteria for Use of a Mitigation Bank

1. Project Applicability

All activities regulated under Section 10/404 may be eligible to use a mitigation bank as compensation for unavoidable impacts to wetlands and/or other aquatic resources in so far as the use complies with the terms of the banking instrument. Mitigation banks established for FSA purposes may be debited only in accordance with the mitigation and replacement provisions of 7 CFR part 12.

Mitigation banks may also be used to compensate for adverse impacts to wetlands and/or other aquatic resources authorized under other resource protection programs such as state regulatory programs. In no case may the same credits be used to compensate for more than one activity; however, the same credits may be used to compensate for an activity which requires authorization under more than one program.

2. Relationship to Mitigation Requirements

For purposes of Section 10/404, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to aquatic resources, prior to authorization to use a particular mitigation bank. Remaining unavoidable impacts must be compensated to the extent appropriate and practicable. For both the Section 10/404 and "Swampbuster" programs, requirements for compensatory mitigation may be satisfied through the use of mitigation banks when either on-site compensation is not practicable or use of the mitigation bank is environmentally preferable to on-site compensation.

It is important to emphasize that applicants should not expect that establishment of, or participation in, a mitigation bank will ultimately lead to a determination of compliance with applicable mitigation requirements (i.e., Section 404(b)(1) Guidelines or FSA Manual), or as excepting projects from any applicable requirements.

3. Geographic Limits of Applicability

The service area of a mitigation bank is the designated area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources. Designation of the service area should be based on consideration of hydrologic, edaphic and biotic criteria, and be stipulated in the banking instrument.

The geographic extent of a service area should be guided by the cataloging unit of the "Hydrologic Unit Map of the United States" (USGS, 1980) and ecoregion of the "Ecoregions of the United States" (James M. Omernik, EPA, 1986) or section of the "Descriptions of the Ecoregions of the United States" (Robert G. Bailey, USDA, 1980). It may be appropriate to use other hydrologic and biotic classification and mapping systems developed at the state or regional level for the purpose of specifying bank service areas, when such systems compare favorably in their objectives and level of detail. In the interest of integrating banks with other resource management objectives, bank service areas may encompass larger watershed areas if the designation of such areas is supported by local or regional management plans (e.g. Special Area Management Plans, Advance Identification), State Wetland Conservation Plans or other Federally sponsored or recognized watershed management plans.

4. Use of a Mitigation Bank vs. On-Site Mitigation

As indicated in 1990 Memorandum of Agreement on mitigation between the EPA and DA, compensatory mitigation should be undertaken in areas adjacent or contiguous to the site of the aquatic resource impacts when practicable and environmentally preferable. This preference for on-site mitigation is established because on-site mitigation often has greater potential for compensating for particular aquatic functions. For example, on-site mitigation may be the most appropriate option for compensating for local flood control functions, habitat for a species or population with a very limited geographic range or narrow environmental requirements, or where local water quality concerns dominate.

The preference for on-site mitigation, however, should not preclude the use of a mitigation bank when there is no practicable opportunity for on-site compensation, or when use of a bank is environmentally preferable to on-site compensation. In making the latter determination, careful consideration must be given to wetland functions, landscape position, affected species populations at the impact and mitigation bank sites, and potential on-site compensation areas. In general, it may be desirable to provide compensation for minor aquatic resource impacts through consolidation in a well-managed bank. There may also be circumstances warranting a combination of on-site and off-site (i.e., bank) mitigation to compensate for losses.

With respect to larger aquatic resource impacts, use of a bank may be appropriate if it is capable of replacing essential physical and/or biological functions of the aquatic resources which are expected to be lost or degraded and is environmentally preferable to on-site compensatory mitigation. Moreover, for projects that might otherwise cause or contribute to significant degradation (40 CFR part 230.10(c)), a bank may only be used when it is demonstrated that use of the bank will prevent or replace the lost functions that give rise to the significant degradation finding, and where a reasonable assurance of success is provided.

5. In-Kind vs. Out-Of-Kind Mitigation Determinations

In the interest of achieving functional replacement, in-kind compensation of aquatic resource impacts should generally be required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g., of greater ecological value to a particular region). However, non-tidal wetlands should typically not be used to compensate for the loss or degradation of tidal wetlands, nor vice-versa. Decisions regarding out-of-kind mitigation are typically made on a case-by-case basis during the permit evaluation process. The banking instrument may identify circumstances in which it is environmentally desirable to allow out-of-kind compensation within the context of a particular mitigation bank. Mitigation banks developed as part of an area-wide management plan to address a specific resource objective (e.g. restoration of a particularly vulnerable or valuable wetland habitat type) may be such an example.

6. Timing of Credit Withdrawal

The number of credits available for withdrawal (i.e., debiting) should generally be commensurate with the level of aquatic functions attained at a bank at the time of debiting. The level of function may be determined through the application of performance standards tailored to the specific restoration, creation or enhancement activity at the bank site or through the use of an appropriate functional assessment methodology.

The success of a mitigation bank with regard to its capacity to establish a healthy and fully functional aquatic system relates directly to both the ecological and financial stability of the bank. Since financial considerations are particularly critical in early stages of bank development, it may be appropriate to allow limited debiting based upon a projected level of aquatic functions at a bank (e.g. 15% of the total credits projected for the bank at maturity). However, it is the intent of this policy to ensure that those actions necessary for the long-term viability of a mitigation bank be accomplished prior to any debiting of the bank. In this regard, the following requirements should be satisfied prior to debiting: (1) Banking instrument and final mitigation plans have been approved; (2) bank site has been secured; and (3) appropriate financial assurances have been established. In addition, initial physical and biological improvements should be completed within the first full growing season following initial debiting of a bank. The temporal loss of functions associated with the debiting of projected credits may require higher compensation ratios. Further debiting of the bank should not occur until the allocated projected credits have accrued and additional credits have accrued to match proposed debiting.

Credits based solely on the preservation of existing aquatic resources may become available for debiting immediately upon implementation of appropriate legal protection accompanied by appropriate changes in land use or other physical changes, as necessary.

7. Crediting/Debiting/Accounting Procedures

Credits and debits are the terms used to designate the units of trade (i.e., currency) in mitigation banking. Credits represent the accrual or attainment of aquatic functions at a bank; debits represent the loss of aquatic functions at an impact or project site. Credits are debited from a bank when they are used to offset aquatic resource impacts (e.g. for the purpose of satisfying Section 10/404 permit or FSA requirements).

An appropriate functional assessment methodology (e.g. Habitat Evaluation Procedures, hydrogeomorphic approach to wetlands functional assessment) acceptable to all signatories should be used to assess wetland and/or other aquatic resource restoration, creation

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and enhancement efforts within a mitigation bank, and to quantify the amount of available credits. The range of functions to be assessed will depend upon the assessment methodology identified in the banking instrument. The same methodology should be used to assess both credits and debits. If an appropriate functional assessment methodology is impractical to employ; credits and debits can be based on simple indices (e.g. acres) of various classes of wetlands and/or other aquatic resources (e.g., Cowardin et al, 1979, as modified for National Wetland Inventory mapping conventions). Regardless of the method employed, credits should be based on the difference between site conditions under the with- and without-bank scenarios.

The bank sponsor should be responsible for assessing the development of the bank and submitting appropriate documentation of such assessments to the authorizing agency(ies) and members of the MBRT for review. Alternatively, functional assessments may be conducted by a team representing involved resource and regulatory agencies and other appropriate parties.

Bank sponsors will establish and maintain an accounting system (i.e., ledger) which documents the activity of all mitigation bank accounts. Each time an approved debit/credit transaction occurs at a given bank, the bank sponsor will submit a statement to each member agency of the MBRT. The bank sponsor will also generate an annual ledger report for all mitigation bank accounts for similar distribution.

Credits may be sold to third parties. The cost of mitigation credits to a third party is determined by the bank sponsor.

8. Party Responsible for Bank Success

The bank sponsor is responsible for assuring the success of the restoration, creation, enhancement and preservation activities at the mitigation bank. This responsibility must be clearly documented in the banking instrument and in any authorization approving the use of the bank as compensatory mitigation. Where authorization under Section 10/404 and/or FSA is necessary to establish the bank, the DA permit or NRCS plan should be conditioned accordingly to ensure that provisions of the banking instrument are enforceable. In circumstances where establishment of a bank does not require such authorization, adequate mechanisms (i.e., legal and financial assurances) need to be in place to ensure that provisions of the banking instrument are enforceable.

E. Long-Term Management, Monitoring and Remediation

1. Bank Operational Life

The operational life of a bank refers to the period during which the terms and conditions of the banking instrument are applicable, and signatories of the instrument are responsible for carrying out its provisions. With the exception of arrangements for the long-term management and protection in perpetuity of the bank, the operational life of a mitigation bank terminates at the point when (1) compensatory mitigation credits have been exhausted or banking activity is voluntarily terminated with written notice by the bank sponsor provided to the Corps or NRCS and other members of the MBRT, and (2) it has been determined that the debited bank is functionally mature and/or self-sustaining to the degree specified in the banking instrument.

2. Long-Term Management and Protection

Mitigation banks should be protected in perpetuity with appropriate real estate arrangements. In exceptional circumstances, real estate arrangements may be approved which dictate finite protection for a bank. However, in no case should finite protection extend for a lesser time than the duration of project impacts for which the bank is being used to provide compensation.

All banks must be protected by legal instruments which effectively prevent harmful activities (i.e., incompatible uses [3]) that would jeopardize their continued conservation purpose. Acceptable instruments are deed restrictions, conservation easements or other enforceable legal mechanisms.

Banking instruments should identify the entity responsible for the management of the bank beyond its operational life as a means to assure the conservation purpose of the bank. The bank sponsor is responsible for securing adequate funds for the operation and maintenance of the bank during its operational life, as well as for management of the bank beyond its operational life, as necessary. Where needed, the acquisition and protection of water rights should be secured by the bank sponsor and documented in the banking instrument.

3. Monitoring Requirements

The bank sponsor is responsible for monitoring the mitigation bank in accordance with monitoring provisions identified in the banking instrument to determine the level of success and identify problems requiring remedial action. Monitoring provisions need to be set forth in the banking instrument and based on scientifically sound performance standards prescribed for the bank. Monitoring should be conducted at time intervals appropriate for the particular project type and until such time that the authorizing agency(ies), in consultation with the MBRT, are confident that success is being achieved (i.e., performance standards are attained). Annual monitoring reports should be submitted to the authorizing agency(ies) and members of the MBRT.

4. Remedial Action

The banking instrument should stipulate the procedures for identifying and implementing remedial measures at a bank, or any portion thereof. Remedial measures should be based on information contained in the monitoring reports (i.e., the attainment of prescribed performance standards), as well as site inspections. The need for remediation will be determined by the authorizing agency(ies) in consultation with the MBRT and bank sponsor.

5. Financial Assurances

The bank sponsor is responsible for securing sufficient funds to cover contingency actions in the event of bank default or failure. Accordingly, banks posing a greater risk of failure and where credits have been debited, should have comparatively higher financial sureties in place, than those where the likelihood of success is more certain. In addition, the bank sponsor is responsible for securing adequate funding to monitor and maintain the bank throughout its operational life, as well as beyond the operational life if not self-sustaining. Total funding requirements should reflect realistic cost estimates for monitoring, long-term maintenance, contingency and remedial actions.

Financial assurances may be in the form of performance bonds, irrevocable trusts, escrow accounts, casualty insurance, or other approved instruments. Such assurances may be phased-out or reduced, once it has been demonstrated that the bank is functionally mature and/or self-sustaining (in accordance with performance standards).

[3] For example, certain silvicultural practices (e.g. clear cutting and/or harvests on short-term rotations) may be incompatible with the objectives of a mitigation bank. In contrast, silvicultural practices such as long-term rotations, selective cutting, maintenance of vegetation diversity, and undisturbed buffers are more likely to be considered a compatible use.

F. Other Considerations

1. In-Lieu-Fee Mitigation Arrangements

For purposes of this guidance, in-lieu-fee, fee mitigation, or other similar arrangements, wherein funds are paid to a natural resource management entity for implementation of either specific or general wetland or other aquatic resource development projects, are not considered to meet the definition of mitigation banking because they do not typically provide compensatory mitigation in advance of project impacts. Moreover, such arrangements do not typically provide a clear timetable for the initiation of mitigation efforts leaving the potential for project impacts to go unmitigated for a significant time period. The Corps, in consultation with the other agencies, may find there are some exceptional circumstances where such arrangements are appropriate. In such cases, a formal agreement between the sponsor and the agencies, similar to a banking instrument, is necessary to define the limited circumstances and conditions under which its use is considered appropriate.

2. Special Considerations for "Swampbuster"

Note to readers: Current FSA legislation limits the extent to which mitigation banking can be used for FSA purposes. FSA requires that mitigation be conducted on prior-converted cropland as opposed to farmed wetlands or other degraded wetland systems. If this legislation is not modified to be consistent with the mitigation provisions commonly used by other wetland regulatory programs, including the Section 10/404 program, then the final mitigation banking guidance will be appropriately annotated to identify the FSA constraints.

III. Definitions

For the purposes of this guidance document the following terms are defined:

A. Bank sponsor. Any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

B. Compensatory mitigation. For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidable and minimization has been achieved.

C. Creation. The establishment of a wetland or other aquatic resource where one did not formerly exist

D. Credit. A unit of measure representing the accrual or attainment of aquatic functions at a mitigation bank.

E. Debit. A unit of measure representing the loss of aquatic functions at an impact or project site.

F. Enhancement. Activities conducted in existing wetlands or other aquatic resources to achieve specific management objectives or provide conditions which previously did not exist, and which increase one or more aquatic functions. Enhancement may involve trade-offs between aquatic resource structure, functions, and values; a positive change in one function may result in negative effects to other functions.

G. Mitigation. For purposes of Section 10/404 and consistent with the Council on Environmental Quality regulations, the Section 404(b)(1) Guidelines and the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, mitigation means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

H. Mitigation bank. A mitigation bank is a site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. For purposes of Section 10/404, use of a mitigation bank may only be authorized when impacts are unavoidable.

I. Mitigation Bank Review Team (MBRT). An interagency group of Federal, state, tribal, and/or local regulatory and resource agency representatives which are signatory to a banking instrument and oversee the establishment, use and operation of a mitigation bank.

J. Practicable. Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

K. Preservation. The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the aquatic ecosystem.

L. Restoration. Re-establishment of previously existing wetland or other aquatic resource character and function(s) at a site where they have ceased to exist, or exist only in a substantially degraded state.

M. Service area. The service area of a mitigation bank is the designated area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources.

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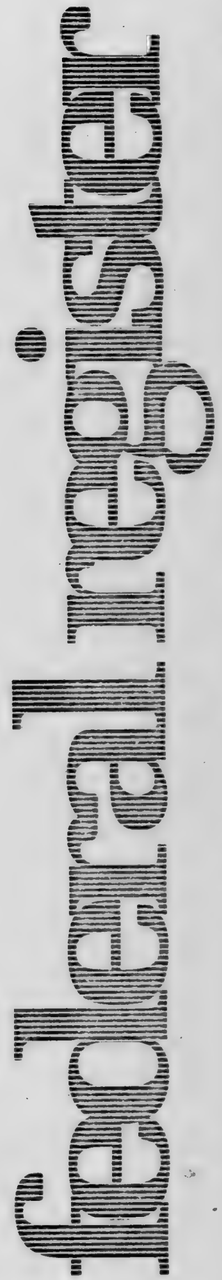

Monday
March 6, 1995

Part III

Department of Transportation

Federal Transit Administration

49 CFR Parts 653 and 654
Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations; Final Rules

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 653

[Docket No 92–H]

RIN 2132–AA37

Prevention of Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Transit Administration (FTA) is making technical amendments to its anti-drug rule to correct a citation, add words that inadvertently had been omitted, redesignate a provision, and clarify portions of the preamble discussion of the rule. This rule is intended to clarify the existing rule.

DATES: This rule is effective March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek, Attorney-Advisor for Legislation and Rulemakings, Office of the Chief Counsel, FTA, 400 7th Street SW, Washington DC 20590, (202) 366–4011. Information may also be obtained from Judy Meade or Rhonda Crawley of the Office of Safety and Security, Federal Transit Administration, same address, (202) 366–2896.

SUPPLEMENTARY INFORMATION: FTA recipients and other interested parties may access this rule through the FTA's Transit Safety and Security Bulletin Board using a microcomputer and a modem. The telephone number for the Bulletin Board is 1–800–231–2061. The Bulletin Board is a user-friendly, menu-driven system with information accessible seven days a week, twenty-four hours a day. Once registration is completed, interested parties may access this and other regulations.

To obtain additional information regarding access to the Bulletin Board, please contact the Operator, at (617) 494–2108, or leave a message on the Message Board of the Bulletin Board.

The FTA is making the following technical amendments to its anti-drug rule.

Applicability—Commuter Railroads and CDL Holders

The applicability provision, section 653.5, clarifies which Department of Transportation (DOT) drug and alcohol testing program covers Commercial Drivers License (CDL) holders who work for commuter railroads. Three DOT agencies are involved in this issue: FTA, which funds commuter railroads; the Federal Railroad Administration (FRA), which regulates railroads, including commuter railroads; and the Federal Highway Administration (FHWA), which requires CDL holders to be tested for prohibited drugs and the misuse of alcohol. Under the FTA's final rule, to avoid jurisdictional problems, commuter railroads that receive FTA funds are to comply with FRA's drug and alcohol regulation. Because the FRA regulation only covers hours-of-service employees, however, there remains a question as to which agency's drug and alcohol program covers CDL holders who work for a commuter railroad. This rule clarifies that it is FHWA's regulation that covers such CDL holders.

We also note that the FRA hours-of-service classification system does not include the same kinds of workers covered under FTA's rules; for example, armed security personnel are covered by FTA's rules but not FRA's. Because FTA in its rule has delegated its authority to require commuter railroads to implement a drug and alcohol testing program to FRA, commuter railroad workers who are not safety-sensitive under FRA's rule are not subject to testing, even though they would be if they were subject to FRA's rules.

Section 653.5 is changed to correct a citation error in a reference to the regulations of the United States Coast Guard. The citation now reads 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

Definitions

The definition of the term "disabling damage" is changed to be consistent with the definition used by the Federal Highway Administration, and is now defined independently of the term "accident."

The definition of "large operator" is changed to add the word "urbanized," which inadvertently was omitted. Thus, a large operator operates primarily in an urbanized area of 200,000 or more in population.

A parallel change is made to the definition of "small operator," which operates primarily in a nonurbanized area or in an urbanized area of less than 200,000 in population. These changes are consistent with the way the Federal Transit Administration administers its grant programs.

The definition of "safety-sensitive function" is changed, at subsection (4), to clarify that the rule excludes from coverage maintenance contractors working for recipients or small operators primarily serving an area of less than 50,000 in population, regardless of whether they receive section 18 or section 3 funding.

The definition of "vehicle" is changed to add, in the category of "mass transit vehicle," certain vehicles used for services ancillary to mass transportation. The definition of a mass transit vehicle thus now includes not only buses and vans, but also nonrevenue service commercial motor vehicles and vehicles used by armed security personnel.

Starting Date for Drug Testing Programs

Section 653.13 makes a conforming change in the implementation section of the rule to reflect the addition of the word "urbanized" to the definition of large operator.

Referral, Evaluation, and Treatment

Section 653.37(a) is changed to add the word "or," which clarifies that an employee who either refuses to submit to a drug test or has a verified positive drug test result must be advised of the resources available to him or her in evaluating and resolving problems associated with prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

Supervisors Acting as a Collection Person

The reasonable suspicion testing provision, section 653.43, specifically prohibited a supervisor from acting as a collection site person for covered employees under his or her direct supervision. This provision, however, was misplaced; it was our intention to prohibit a direct supervisor from acting as a collection site person for any of the tests required under the rule. Accordingly, we have redesignated section 653.43(c) as section 653.65.

Post-Accident Testing

Sections 653.45(a)(1), (a)(2)(i), and (a)(2)(ii) are amended to change the phrase "on duty in," to "operating." The provision as drafted required the testing of any safety-sensitive employee on duty in a revenue service vehicle when an accident occurred. The rule, however, was not meant to use the same standard for both vehicle operators and other covered employees who happen to be in the vehicle at the time of the accident. Thus, the mass transit vehicle operator must be tested if an accident has occurred and he or she has received a citation from a State or local law enforcement official. (In a Notice of Proposed Rulemaking published in the **Federal Register** on February 6, 1995, at 60 FR 7169, the FTA seeks comment on whether this citation requirement should be deleted.) We note that to test other covered employees, the employer must determine whether that employee contributed to the accident, using the best information available at the time of the decision.

Random Testing Rate

On December 2, 1994, FTA changed section 653.47 by, among other things, adopting a performance-based random drug testing rate. For more information on these changes, see 59 FR 62217–62231.

Certification of Compliance

On October 12, 1994, the FTA published a **Federal Register** Notice, at 59 FR 51793, entitled "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements." In the Notice, FTA compiled a complete listing and the full text of the certifications and assurances necessary to receive financial assistance from the Federal Transit Administration. Instead of submitting a variety of certifications and assurances with each grant application, the grant applicant and its attorney certify compliance with all of the certifications and assurances relevant to any and all grants for which the grant applicant wishes to apply in fiscal year 1995 by signing the single Signature Page, attached to the Notice at 59 FR 51813. The Notice, which will be updated and republished annually for use in future fiscal years, includes a certification of compliance with the FTA drug and alcohol testing program. Accordingly, we are deleting as unnecessary the sample certification in the rule.

Retention of Records

The preamble discussion of this topic contained an error; specifically, it stated in Subpart E, paragraph A, at 59 FR 7587, that "[t]he rule provides three separate record retention periods for different types of records—five years, three years, and one year." Actually, records must be retained for either five years, *two* years, or one year. The regulatory text, however, is accurate, and remains unchanged.

Executive Order 12612

We inadvertently stated in this paragraph, at 59 FR 7589, that FTA was not preempting Indian tribal law. Elsewhere in the preamble, however, we discussed this issue at length and concluded that FTA is preempting Indian tribal law under the standard developed by the Ninth Circuit in *Donovan* v. *Coeur d'Alene Tribal Farm*, 751 F. 2d 1113, 1116 (9th Cir. 1985). There is a comprehensive discussion of this issue in the **Federal Register**, published on February 15, 1994, at 59 FR 7541, 7549, and 7581.

List of Subjects in Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety and Transportation.

For the reasons set forth in the preamble, the FTA amends Title 49, Code of Federal Regulations, part 653 as follows:

1. The authority for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

§ 653.5 [Amended]

a. Paragraph (b) of § 653.5 is amended by removing "part 219" and adding "parts 219 and 382, as appropriate".

2. The note to § 653.5 is amended by changing the phrase "and 6" to the phrase "and 16".

§ 653.7 [Amended]

3. In § 653.7, the definition of *accident* is amended in paragraph (3) by removing the period at the end of the first sentence and adding a semicolon; and by removing the second and third sentences.

4. The definition of *large operator* is amended by adding the word "urbanized" after the word "an" and before the word "area".

5. The definition of *safety-sensitive function* is amended in paragraph (4) by adding the words "section 3 funding and is in an area of less than 50,000 in population or" after the word "receives" and before the word "section".

6. The definition of *small operator* is amended by removing the words "in an area" and adding in their place the words "in a nonurbanized area or in an urbanized area."

7. The definition of *vehicle* is amended by adding the words "or for ancillary services" after the word "transportation" and before the period.

8. In § 653.7 a new definition following the definition of "covered employee" is added as follows:

§ 653.7 [Definitions]

* * * * *

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

* * * * *

§ 653.13 [Amended]

9. Section 653.13(a) is amended by adding the word "primarily" after the word "operating" and before the word "in" and by adding the word "urbanized" after the word "an" and before the word "area".

10. Section 653.13(b) is amended by removing the words "operating in an area" and adding in their place the words "operating primarily in a nonurbanized area or in an urbanized area"

§ 653.37 [Amended]

11. Section 653.37(a) is amended by adding the word "or" after the word "result" and before the word "refuses".

§ 653.43 [Amended]

12. Section 653.43(c) is redesignated as *§ 653.65, Supervisor acting as collection site person*, in subpart D.

§ 653.45 [Amended]

13. Section 653.45(a)(1) is amended by removing the phrase "on duty in" and adding in its place the word "operating".

14. Section 653.45(a)(2)(i) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

15. Section 653.45(a)(2)(ii) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

Appendix A to Part 653 [Removed and Reserved]

16. Appendix A to Part 653, Sample Certification of Compliance, is removed and reserved.

Date Issued: February 27, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–5177 Filed 3–3–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 654

[Docket No. 92–I]

RIN 2132–AA38

Prevention of Alcohol Misuse In Transit Operations

AGENCY: Federal Transit Administration, DOT

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Transit Administration (FTA) is making some minor and technical amendments to its alcohol rule to correct a citation, add words that inadvertently had been omitted, and clarify portions of the preamble discussion of the rule. This rule is intended to clarify the existing rule.

DATES: This rule is effective March 6, 1995

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek, Attorney for Legislation/Rulemakings, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street SW., Washington, DC 20590; 202–366–4011 Information may also be obtained from Judy Meade or Rhonda Crawley of the Office of Safety and Security, Federal Transit Administration, same address; 202–366–2896.

SUPPLEMENTARY INFORMATION: FTA recipients and other interested parties may access this rule through the FTA's Transit Safety and Security Bulletin Board using a microcomputer and a modem. The telephone number for the Bulletin Board is 1–800–231–2061. The Bulletin Board is a user-friendly, menu-driven system with information accessible seven days a week, twenty-four hours a day. Once registration is completed, interested parties may access this and other regulations.

To obtain additional information regarding access to the Bulletin Board, please contact the Operator, at (617) 494–2108, or leave a message on the Message Board of the Bulletin Board.

The FTA is making the following technical amendments to its alcohol rule.

Applicability—Commuter Railroads and CDL Holders

The applicability provision, section 654.3, clarifies which Department of Transportation (DOT) drug and alcohol testing program covers Commercial Drivers License (CDL) holders who work for commuter railroads. Three DOT agencies are involved in this issue: FTA, which funds commuter railroads; the Federal Railroad Administration (FRA), which regulates railroads, including commuter railroads; and the Federal Highway Administration (FHWA), which requires CDL holders to be tested for prohibited drugs and the misuse of alcohol. Under the FTA's final rule, to avoid jurisdictional problems, commuter railroads that receive FTA funds are to comply with FRA's drug and alcohol regulation. Because the FRA regulation only covers hours-of-service employees, however, there remains a question as to which agency's drug and alcohol program covers CDL holders who work for a commuter railroad. This rule clarifies that FHWA's regulation covers such CDL holders.

We also note that the FRA hours-of-service classification system does not include the same kinds of workers covered under FTA's rules; for example, armed security personnel are covered by FTA's rules but not FRA's. Because FTA in its existing rule has delegated its authority to require commuter railroads to implement a drug and alcohol testing program to FRA, commuter railroad workers who are not safety-sensitive under FRA's rule are not subject to testing, even though they would be if they were subject to FTA's rules.

Also, section 654.3 is changed to correct a citation error in a reference to the regulations of the United States Coast Guard. The citation should read 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

Definitions

The definition of the term "disabling damage" is changed to be consistent with the definition used by the Federal Highway Administration, and is now defined independently of the term "accident."

The definition of "large operator" is changed to add the word "urbanized," which inadvertently was omitted. Thus, a large operator operates primarily in an urbanized area of 200,000 or more in population.

A parallel change is made to the definition of "small operator," which operates primarily in a nonurbanized area or in an urbanized area of less than 200,000 in population. These changes are consistent with the way the Federal Transit Administration administers its grant programs.

The definition of "safety-sensitive function" is changed, at subsection (4), to clarify that the rule excludes from coverage maintenance contractors working for recipients or small operators primarily serving an area of less than 50,000 in population, regardless of whether they receive section 18 or section 3 funding.

The definition of "vehicle" is changed to add, in the category of "mass transit vehicle," certain vehicles used not only for mass transportation, but also for services ancillary to mass transportation. The definition of a mass transit vehicle thus now includes not only buses and vans, but also non-revenue service commercial motor vehicles and vehicles used by armed security personnel.

Starting Date for Alcohol Testing Programs

Section 654.15 makes a conforming change in the implementation section of the rule to reflect the addition of the word "urbanized" to the definition of large operator.

Post-Accident Testing

Sections 654.33(a)(1), (a)(2)(i), and (a)(2)(ii) are amended to change the phrase "on duty in," to "operating." The provision, as drafted, required the testing of any safety-sensitive employee on duty in a revenue vehicle when an accident occurred. The rule, however, was not meant to use the same standard for both vehicle operators and other covered employees who happen to be in the vehicle at the time of the accident. Thus, the mass transit vehicle operator must be tested if an accident has occurred and he or she has received a citation from a State or local law enforcement official. (In a Notice of Proposed Rulemaking published in the **Federal Register** on February 6, 1995, at 60 FR 7169, the FTA seeks comment on whether this citation requirement should be deleted.) We note that to test other covered employees the employer must determine whether that employee contributed to the accident, using the best information available at the time of the decision.

Supervisor Acting as a Breath Alcohol Technician

Section 654.45 is added to include a prohibition against the supervisor acting as the Breath Alcohol Technician for covered employees under his or her direct supervision. In the final drug rule, published on the same day as the final alcohol rule, we prohibited a supervisor from acting as the collection site person. It was always our intent for the two rules, which cover the same employers and employees, to be as similar as possible, and this omission was unintentional. We now correct that omission.

Random Testing

The preamble discussion of random testing at 59 FR 7546 contained an error; we stated that "an employer must include a refusal to submit to a test as a result of 0.02 or greater." The phrase "0.02 or greater," however, should read "0.04 or greater." The regulatory text, however, is accurate, and is not changed by this technical amendment.

Random Testing Rate

Section 654.35(c)(1) is changed to conform the alcohol rule to the amendment to the drug rule published in the **Federal Register** on December 2, 1994, at 59 FR 62218, 62231. Specifically, the Administrator may decrease the random testing rate from 25 percent to 10 percent if the two initial years of data indicate that the violation rate for the entire transit industry is less than 0.5 percent. This means that the Administrator will use two years of data from large operators, which start testing a year before small operators, and one year of data for small operators to determine the initial violation rate for the entire transit industry. This change affects only the initial two years of the alcohol testing program.

Also, FTA is adding three new paragraphs inadvertently omitted from its rule, but included in the rules published by the Federal Aviation Administration, the Federal Railroad Administration, and the Federal Highway Administration on February 15, 1994, at 59 FR 7391–92, 7464, and 7509. (To be codified at Appendix J to part 121 (III)(C)(10), (III)(C)(11)(a), (III)(C)(11)(b); 49 CFR 219.608 (e), (f)(1), and (f)(2); and 49 CFR 382.305 (j), (k)(1), and (k)(2).) Moreover, FTA made the same change to its drug rule on December 2, 1994, in a rule published in the **Federal Register** at 59 FR 62217, 62231.

These new paragraphs, (j), (k)(1), and (k)(2) address situations in which a covered employee is subject to the alcohol testing regulations of more than one Department of Transportation (DOT) agency. Paragraph (j) directs the employer to apply the random testing rate of the DOT agency that regulates more than 50 percent of a covered employee's function.

When an employer has employees regulated by different DOT agencies, paragraphs (k)(1) and (k)(2) allow an employer to establish separate pools for employees based on the rate set by the DOT agency regulating them, or to establish one pool for all its employees, but randomly test them at the highest minimum rate set by another DOT agency.

Certification of Compliance

On October 12, 1994, the FTA published a **Federal Register** Notice, at 59 FR 51793, entitled "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements." In the Notice, FTA compiled a complete listing and the full text of the certifications and assurances necessary to receive financial assistance from the Federal Transit Administration. Instead of submitting a variety of certifications and assurances with each grant application, the grant applicant and its attorney certify compliance with all of the certifications and assurances relevant to any and all grants for which the grant applicant wishes to apply in fiscal year 1995 by signing the single Signature Page, attached to the Notice, at 59 FR 51813. The Notice, which will be updated and republished annually for use in future fiscal years, includes a certification of compliance with the FTA drug and alcohol testing program. Accordingly, we are deleting as unnecessary the sample certifications in the rule.

Retention of Records

The preamble discussion of this topic contained an error; specifically, it stated in the Section-by-Section Analysis, Subpart D, paragraph A, at 59 FR 7546 that "[t]he rule provides three separate record retention periods for different types of records—five years, three years, and one year." Actually, records must be retained for either five years, *two* years, or one year. The regulatory text, however, is accurate, and remains unchanged.

List of Subjects in Part 654

Alcohol testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Federal Transit Administration amends Title 49, Code of Federal Regulations, part 654 as follows:

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 654.3 [Amended]

1a. Paragraph (b) of § 654.3 is amended by removing "part 219" and adding in its place "parts 219 and 382, as appropriate".

2. The note to § 654.3 is amended by removing the phrase "and 6" and adding in its place the phrase "and 16".

§ 654.7 [Amended]

3. In § 654.7, the definition of *accident* is amended in paragraph (3) by removing the period at the end of the first sentence and adding a semicolon; and by removing the remaining text in paragraph (3).

4. The definition of *large operator* is amended by adding the word "urbanized" after the word "an" and before the word "area".

5. The definition of *safety-sensitive function* is amended in paragraph (4) by adding the words "section 3 funding and is in an area of less than 50,000 in population or" after the word "receives" and before the word "section".

6. The definition of *small operator* is amended by removing the words "in an area" and adding in their place the words "in a nonurbanized area or in an urbanized area."

7. The definition of *vehicle* is amended by adding the words "or for ancillary services" after the word "transportation" and before the period.

8. In § 654.7 a new definition following the definition of "covered employee" is added as follows:

§ 654.7 Definitions.

* * * * *

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

§ 654.15 [Amended]

9. Section 654.15(a) is amended by adding the word "primarily" after the word "operating" and before the word "in" and by adding the word "urbanized" after the word "an" and before the word "area".

10. Section 654.15(b) is amended by removing the words "operating in an area" and adding in their place the words "operating primarily in a nonurbanized area or in an urbanized area".

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§ 654.33 [Amended]

11. Section 654.33(a)(1) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

12. Section 654.33(a)(2)(i) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

13. Section 654.33(a)(2)(ii) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

14. In § 654.35, paragraph (c)(1) is revised and paragraphs (j) and (k) are added to read as follows:

§ 654.35 Random testing.

* * * * *

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 654.53 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent. However, after the initial two years of testing by large transit operators and the initial first year of testing by small transit operators, the Administrator may lower the rate the following calendar year, if the combined violation rate is less than 0.5 percent and is in the interests of safety.

* * * * *

(j) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency for the same employer, the covered employee shall be subject to random alcohol testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the covered employee's function.

(k) If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

15. Section 654.45 is added to subpart C to read as follows:

§ 654.45 Supervisor acting as Breath Alcohol Technician.

An employer shall not permit a direct supervisor of an employee to serve as the breath alcohol technician for an alcohol test of the employee.

Appendix A to Part 654—[Removed and Reserved]

16. Appendix A to Part 654—Sample Certifications of Compliance is removed and reserved.

Issued: February 27, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–5178 Filed 3–3–95; 8:45 am]

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March 6, 1995

Part IV

Department of Health and Human Services

Office of Community Services

Request for Applications Under the Office of Community Services' FY 1995 Family Support Center and Gateway Demonstration Programs; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–95–07]

Request for Applications Under the Office of Community Services' FY 1995 Family Support Center and Gateway Demonstration Programs

AGENCY: Administration for Children and Families (ACF) DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' FY 1995 Family Support Center and Gateway Demonstration Programs.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for Family Support Center and Gateway Demonstration projects authorized by the Stewart B. McKinney Homeless Assistance Act, as amended (P.L. 103–382). (See 42 U.S.C. 11481–11489.)

CLOSING DATE: The closing date for submission of applications is April 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sheldon Shalit, Program Officer, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 401–4807.

This Announcement is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, *A Guide to Accessing and Downloading* is available from Ms. Minnie Landry at (202) 401–5309.

SUPPLEMENTARY INFORMATION: Under the Family Support Center Program, the Office of Community Services will make grants to eligible entities to pay for the cost of demonstration programs designed to prevent family homelessness through the provision of intensive and comprehensive supportive services to previously homeless individuals and families residing in subsidized public housing or those at risk of homelessness. Services to infants, children and youths shall be designed to enhance their physical, social and educational development and include an array of appropriate services that address the causes and deleterious effects of homelessness. Services to parents and other family members shall be designed to contribute to their child(ren)'s healthy development and to the acquisition of skills and resources that can prevent homelessness and move the family toward self-sufficiency. All services provided shall be coordinated through the auspices of an organized case management program and include necessary and appropriate services that address the economic and housing needs of the "low-income and very low-income" client families.

Under the Gateway Demonstration Program, grants will be provided to local education agencies to provide on-site education, training and necessary support services to economically disadvantaged residents of public housing. Applicants, in consultation with the local public housing authorities and private industry councils, will design such demonstration programs to increase literacy levels and basic employment skills among residents of public housing developments.

Eligible applicant entities for the Family Support Center Demonstration Program are limited to State and local government agencies, Head Start agencies and any community-based organization of demonstrated effectiveness such as a Community Action Agency designated under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790), public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6)), State Housing Finance Agencies, local education agencies, an institution of higher education, a public hospital, a community development corporation, a private industry council as defined under section 102(a) of the Job Training Partnership Act (JTPA)(29 U.S.C. 1512(a)), a community health center, and any other public or private nonprofit organizations specializing in the provision of social services.

Eligible applicant entities for the Gateway Demonstration Program are limited to local education agencies in consultation with public housing authorities and private industry councils. Such programs will provide required services as outlined in Part III, Section B.

Availability of Funds and Grant Amounts

1. OCS is statutorily limited to funding no more than 25 Family Support Center Demonstration grants for a period not to exceed three years. Approximately $7 million is available to support grant awards under this program announcement.

Under the Family Support Center Demonstration Program legislation, grants must be for a minimum amount of $200,000 per year for a total of at least $600,000 for the maximum project period of three years, and the maximum grant support allowable for a three-year project period is $2,000,000.

Pursuant to this Announcement, OCS plans to make up to approximately $4.3 available to fund up to 14 new grants with three year project periods and budget periods of 17-months for not less than $283,000 each and averaging approximately $310,000 per grantee. Applications for continuation grants funded under these awards beyond the 17-month budget period but within the three year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that this would be in the best interest of the government.

OCS expects to make $2,000,000 available to fund 10 competitive 12-month renewal grants. Current grantees completing their second year of Family Support Center Demonstration Programs are eligible to compete for renewal grants for a maximum of twelve additional months of support. This will allow these projects to complete a full three year program as a demonstration project.

2. OCS plans to fund 5 three-year Gateway Demonstration projects for a first-year budget period of up to $125,000 each.

Part I: General Information—Family Support Center Demonstrations

A. Program Purpose

The Family Support Center Demonstration Program is an integral part of an HHS/HUD, White House and Interagency Council for the Homeless initiative to encourage and test integrated services delivery approaches to reducing homelessness among families with children. The purpose of this demonstration is to develop and operate Family Support Centers which can intervene to prevent family homelessness. The program supports the Family Support Center's efforts to coordinate and integrate its activities with State and local public and private agencies in providing improved assistance to this at-risk population. Using a coordinated case management approach, Family Support Centers should provide a comprehensive array of family oriented services to prevent initial occurrences of homelessness and to combat the effects of previous homelessness and to prevent its recurrence.

Family Support Centers, through the provision of a comprehensive array of supportive social services using

coordinated case management, should strive to enhance the physical, social, and educational development of low- and very low-income families, thereby increasing their chances of becoming self-sufficient. The intended beneficiaries of these services are families who are living in government-subsidized housing who were homeless or who are at risk of becoming homeless. (Families at risk of homelessness include those living in precarious housing situations, e.g., doubled up with another family; in unstable or inadequate housing; or those facing eviction or loss of housing.)

B. Program Services

The project awards will primarily allow for the development and establishment of a family support center that can arrange for and/or provide an array of comprehensive and intensive case-managed social services to those individuals and families who are living in government subsidized housing who were previously homeless or who are at risk of homelessness. Services to infants, children and youths shall be designed to enhance their physical, social and educational development and include an array of appropriate services that address the causes and deleterious effects of homelessness. Services to parents and other family members shall be designed to contribute to their child(ren)'s healthy development and to the achievement of skills and objectives that move the family toward self-sufficiency. All services provided shall be coordinated through the auspices of a family case management program and include necessary and appropriate services that address the economic and housing needs of the "low-income and very low-income" client families.

In the case of services provided to infants, children and youth, such services shall include, where appropriate, the following:

— Nutritional services
— Screening and referral services
— Child care services
— Early childhood development programs
— Early intervention services for children with, or at risk of developmental delays
— Dropout prevention services
— After school activities
— Job readiness and job training services
— Education (including basic skills and literacy services)
— Emergency services including special outreach services targeted to homeless and runaway youth
— Crisis intervention and counseling services
— Other services as necessary and appropriate

In the case of services provided to parents and other family members, services shall be designed to better enable parents and other family members to contribute to their child's healthy development and to the acquisition of skills and resources that can prevent homelessness and move the family toward self-sufficiency and shall include, where appropriate, the following:

—Substance abuse education
—Counseling
—Referral for treatment
—Crisis intervention
—Employment counseling and training
—Life-skills training, including personal financial counseling
—Education, including basic skills and literacy services
—Parenting classes
—Consumer homemaking
—Other services as necessary and appropriate

Family case management shall include the following:

—Needs assessment
—Support in accessing and maintaining appropriate public assistance and social services
—Referral and followup for substance abuse counseling and treatment
—Counseling and crisis intervention
—Family advocacy services
—Housing assistance activities
—Housing counseling
—Eviction or foreclosure prevention assistance
—Referral to sources of emergency rental or mortgage assistance payment
—Support in accessing home energy assistance
—Other services as appropriate

Centers may be part of an existing family oriented program for low and very low income, at risk families or a center organized specifically to provide services targeted at serving the previously homeless and/or at risk families in an identified community. Approaches are sought that emphasize a coordinated effort by a range of community-oriented entities that consolidate resources to the targeted population and which seek to replace a goal of maintenance with a goal of progression and transformation.

C. Program Beneficiaries

Projects proposed for funding under this announcement must directly benefit low-income and very low-income families with children residing in governmentally subsidized housing who were previously homeless or who are at-risk of becoming homeless. The term "low-income" when applied to families means one whose income does not exceed 80% of the median income for a family in the area, as determined by the Secretary of Housing and Urban Development, subject to his discretion to establish different ceilings based on area variations. The term "very low-income" when applied to families means one whose income does not exceed 50% of the median income for a family in the area, as determined by the Secretary of Housing and Urban Development, subject to his discretion to establish different ceilings based on area variations. (See Attachment A.)

D. Eligible Applicants

Eligible entities are State and local government agencies, Head Start agencies and any community-based organization of demonstrated effectiveness such as a Community Action Agency designated under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790), public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6)), State Housing Finance Agencies, local education agencies, an institution of higher education, a public hospital, a community development corporation, a private industry council as defined under section 102(a) of the Job Training Partnership Act (JTPA)(29 U.S.C. 1512(a)), a community health center, and any other public or private nonprofit organizations specializing in the provision of social services.

More than one eligible entity in a State may apply, but separate applications must be submitted.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the currently valid IRS tax exemption certificate *or* by providing a copy of the applicant's Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled.

E. Project Period

This announcement is soliciting applications for project periods of up to three years. Awards, on a competitive basis, will be for an initial seventeen (17) month budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the initial 17-month budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory

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progress of the grantee and determination that continued funding would be in the best interest of the government.

Part II: Guidelines for Family Support Center Demonstration Project Plans and Applications

A. Grant Objectives

The objectives of the grants funded under the Family Support Center Demonstration Program are: the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the reduction in the rate of repeated incidences of homelessness among center clientele; and a decrease in the incidence of first time homelessness among community participants.

B. Project Design

The Family Support Center Demonstration Program is intended to prevent the occurrence or recurrence of family homelessness by providing an intensive and comprehensive array of supportive and other services. This announcement prescribes no single model, however, for designing, staffing, or delivering the services of such a program. Its purpose is to stimulate eligible entities to demonstrate the effectiveness of innovative models or approaches which will offer value to both the client population selected and the social services providers in the community. It invites applicants to propose structures and mechanisms for delivering services that are unique to the community and the clientele that they serve, and to propose a program and an approach that replace the goal of client maintenance with one of transformation of families to a position of self-sufficiency.

The center should create a centralized point for the provision of these services and facilitate access to various service providers in the community. The center should provide active family case management and assist clients in maintaining a stable household and assist them in achieving self-sufficiency. Further, the center should assist in joining the case management functions offered by other service providers to render coordinated family case management. The center should tie together service providers in the community and organize a means to reduce duplication of effort in response to their potentially or previously homeless clientele; and, to reduce the administrative and programmatic burdens that often are placed upon the client population.

To accomplish these goals, applicants are expected to have, in addition to the ability to provide a core of essential services, the capacity to coordinate, link and otherwise organize a cadre of existing providers and to propose a program and an approach that replace the goal of client maintenance with one of transformation to self-sufficiency. A Family Support Center Demonstration program should also include coordination and linkage with existing Federal, State and locally sponsored social services and housing programs such as the Community Services Block Grant (CSBG), AFDC/JOBS program and the varied programs of the Departments of Housing and Urban Development, Labor, and Education.

Each Family Support Center Demonstration Program applicant is required to exhibit the following:

—the capacity to administer a comprehensive support services program directed toward an identified target population;
—the geographic proximity of the facility to the families to be served or the ability to provide mobile or offsite services;
—the ability to coordinate and integrate its activities with State and local public agencies (such as agencies responsible for education, employment and training, health and mental health services, substance abuse services, social services, child care, nutrition, income assistance, housing and energy assistance, and other relevant services), with public or private non-profit agencies and organizations that have a demonstrated record of effectiveness in providing assistance to homeless and at risk families, and with appropriate non-profit private organizations involved in the delivery of eligible support services;
—the fiscal and administrative capacities to conduct a complex, comprehensive and intensive service delivery program;
—the involvement of project participants and community representatives in the planning and operation of the program;
—the utilization and proximity of available comparable Community Action Agency services, unless the applicant is the CAA and intends to expand its existing services;
—the provision of coordinated family case management services which direct all respective case management activities through a team approach;
—use of not more than 7 percent of their grant award to improve the retention and effectiveness of staff and volunteers;
—the participation in an ongoing evaluation mechanism to address process and outcome issues as they relate to the efficacy and efficiency of the demonstration program; and
—the establishment and provision of necessary staff to support an advisory body representing the community, providers and target population. The advisory council must include a participant of the program as an active member.

The operating and organizational structure of the program should include a range of agreements with community services providers that responds to the assessed needs of the client populations. These agreements are essential to the success of the project. The program seeks to attract prospective grantees with written agreements either in place at the time of application or able to be in place within 60 days of the grant award. This is to assure an accelerated provision of services to the clients. In those cases where additional services are to be added to existing service patterns, the grantee will provide timetables for the inclusion of these added services. Prospective grantees will have a combination of existing and potential agreements and affiliations for services. It is recommended that the program include affiliations with entities that support and enlarge its service providing role. This may include affiliations with the academic community, such as schools of social work, that may provide a source of staff resources, student/intern placements and a site for scholastic investigation, evaluation and research.

Most importantly, applicants must be closely identified with and located within circumscribed geographical boundaries that coincide with the location and residences of the target population. This catchment area concept should be reflected in the physical location of the project which should be readily accessible to the target population. This in no way limits the possible configurations for project locus. Instead, it permits a range of possibilities that is consistent with the residential pattern of the target population. While the project is most likely to be physically located in or near the place(s) where its target population lives, it is conceivable that its administrative functions may be off-site or co-located with parent agencies.

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced.

A percentage of non-Federal share, either in cash and/or in-kind contributions, secured from non-Federal sources is not required. The lack of a requirement is not intended in any way to discourage the use of applicant or third party financial and resource support. Although there is not a specific non-Federal percentage requirement for grants awarded under this announcement, the amount pledged will be given additional weight during the evaluation process. Therefore, the applicant should ensure any amount proposed as match prior to inclusion in its budget. If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal Funds. Further, it should be noted that as the project matures over the project life, there is an implicit encouragement of the assumption of costs of the project by the applicant and the constituent community participants.

C. Grantee Assurances

The applicant is required by statute to provide within its application the following:

1. Assurances that grant funds will be used to create new services only to the extent that no other funds can be obtained to fulfill the purpose, as required by 42 U.S.C. 11482(e)(2)(F);
2. A description of the program's relationship to various State and local agencies, as required by 42 U.S.C. 11482(e)(2)(G);
3. An explanation of the methods which the grantee will employ to ensure that no more than 7% of the grant funds awarded will be used to improve the retention and effectiveness of staff and volunteers, as required by 42 U.S.C. 11482(e)(2)(I);
4. Assurances that the grantee will establish an advisory council group of not more than 15 members to provide policy and programming guidance which will meet the representational requirements of 42 U.S.C. 11482(e)(2)(J). Representation includes the following:

—participants in the programs, including parents;
—representatives of local private industry;
—individuals with expertise in the services the program intends to offer;
—representatives of the community in which the program will be located;
—representatives of local government social service providers;
—representatives of local law enforcement agencies;
—representatives of the local public housing agency, where appropriate; and
—representatives of local education providers.

5. Assurances that any fees assessed by the grantee for program services will be nominal in relation to the financial situation of the recipient of such services, as required by 42 U.S.C. 11482(e)(2)(M); and
6. Assurance that grant funds will not be used to supplant Federal, State and local funds currently expended to provide program services, as required by 42 U.S.C. 11482(e)(2)(N).

D. Project Evaluation

The Department expects to contract for an independent evaluation of the programs and entities that receive assistance under this announcement. The anticipated evaluation shall examine, at a minimum, the fulfillment of program objectives. Additionally, for children and families served, the project evaluation will also include the following:

1. The enhancement of the living conditions of low and very low income families in housing and in neighborhoods;
2. The improvement of physical, social and educational development;
3. The achievement of progress towards increased potential for independence and self-sufficiency; and,
4. The degree to which the provision of services is affected by caseload size.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve initially, reaching agreement with the contractors on the collection and retention of data which will be needed for the evaluation, and thereafter periodically furnishing needed process and outcome oriented data as required and allowing them access to information that has not otherwise been provided by the grantee.

Grantees are expected to maintain sufficient resources to fulfill required data obligations and to respond to demands for information that is to be compiled for national evaluation and reporting purposes.

E. Grant Applications

Applicants should develop their applications so as to address the following factors and elements:

Responsiveness to Community Need

Applicants should identify the population to be served by the project and should describe how previously homeless and at-risk families within this community will be chosen for enrollment. They should provide demographic data to show that there are sufficient numbers of eligible low- and very low-income families residing in the designated area. The application should include a credible plan for enrolling a sufficient number of these families in the project to warrant project investment. Applicants should also demonstrate that the services they intend to provide are responsive both to the assessed needs of the population to be served and the purposes of this announcement.

Project Strategy

Applicants should persuasively explain their project strategy—how it will achieve the homelessness prevention goals of this program with the community to be served. The distinctive features of the service approach to be demonstrated should be emphasized, rather than an exhaustive description of all the individual service activities to be undertaken. As an integral part of this discussion, they should define the meaning of success for their project and describe the conditions that they expect to see exist at the conclusion of the project period. Applicants should also identify and briefly describe the kinds of results they will be seeking and the key measures of performance and accomplishment that management will be using to monitor and manage the initiative to a successful conclusion, using time-based graphics if appropriate.

Project Services and Delivery Arrangements

Applicants should identify the different services they will offer to achieve project goals and should describe where and how they will be provided. They should also describe the role and contribution of project partners, such as referral sources and agencies with which services will be coordinated. Both on-budget and no-cost partners should be identified and explained; the applicant should differentiate between those services to be provided with Federal funds and those [to be] committed to the project from other funding sources. Partnering applicants should furnish relevant

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agreements, letters of commitment, and information about prior experience with these partners with their applications, indicating which services will be affected and the levels of service (availability and cost) that will be provided to project participants from these provider organizations.

Applicant Capabilities and Management Qualifications

Applicants should present, through relevant information about their personnel and their experience, their qualifications for undertaking a demonstration program of the type proposed. They should identify proposed project leadership, submit the resumes of relevant education and experience, and describe the previous success of the team or of its key members with strengthening families and their housing arrangements through the delivery and coordination of quality family support services. They should also address the experience of project leadership—especially the individual accountable for effective service delivery to the selected clientele—in coordinating other agencies and project participants over whom he/she has influence but not control. The roles and commitments of the key people in the project should be defined.

Project Plans (Budgets) and Schedules

Applicants should detail the implementation plan and schedule for the project, using time-based displays as appropriate. The early months of the schedule should detail service-building and/or service redirecting activities, with major project milestones such as training capacities established, cooperative services open for use, and apprenticeship relationships created. Later entries should indicate when various kinds of project outcomes will begin to be realized in the lives of the community being served. The budget for the project should be correlated with this timeline, showing approximately when budget resources (including non-Federal) will be available and how they will be used to conduct project activity.

Project Reporting

Provide in descriptive terms, the manner in which required reports are to be assembled along with the identification of data sources. The application should identify and describe the mechanisms that will be instituted and the commitment of specific resources that will address the requisite evaluation activities, including commitment to meet information requirements. This would necessarily include the reliance on a useful information management system that is capable of producing program outcome data and responding to needs of a national evaluation study.

Renewal applications should, with regard to future program operations, include the basic information required above. In addition, renewal applications should also include a description of the program's previous 12 months of operation in sufficient detail that it can be reviewed against the project evaluation criteria found in Part IV of this document.

Part III: Description of the Gateway Demonstration Program

A. Program Purpose

This demonstration program will provide grant funds to local education agencies, in consultation with the local public housing authority and private industry council, to provide on-site education, training and necessary support services to economically disadvantaged residents of public housing who have encountered barriers to employment because of basic skills deficiencies.

B. Program Services and Requirements

The project awards will primarily allow for the development, establishment and operation of an education, training and support services program, at a minimum, consisting of the following mandatory services:

—Outreach and information services designed to make eligible individuals aware of available services;
—Literacy and bilingual education services, where appropriate and necessary;
—Remedial education and basic skills training;
—Employment training and personal management skill development or referrals for such services; and
—Child care or dependent care for dependents of eligible individuals during those times, including afternoons and evenings, when training services are being provided. (To the extent practicable, child care services shall be designed to employ public housing residents after appropriate training.)

Program may provide the following optional services:

—Pre-employment skills training;
—Employment counseling and application assistance;
—Job development services;
—Federal employment-related activity services;
—Completion of high school or GED program services;
—Transitional assistance, including child care for up to 6 months to enable such individual to successfully secure unsubsidized employment;
—Substance abuse prevention and education; and,
—Other appropriate support services.

C. Program Beneficiaries

Projects proposed for funding under this portion of the announcement must directly target training and services to individuals who reside in public housing; are economically disadvantaged; and have encountered barriers to employment because of basic skills deficiency including not having a high school diploma, GED, or the equivalent. The grantee shall give priority to single heads of households with young dependent children.

D. Evaluation

The Department expects to contract for an independent evaluation of the programs and entities that receive assistance under this program. The anticipated evaluation shall examine, at a minimum, with respect to the fulfillment of program objectives for families with children residing in public housing, the ability of the Gateway Program to promote increases in literacy levels and basic employment skills and the securing of jobs.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve periodically furnishing needed process and outcome oriented data as required by the contractors and allowing them access to information that has not otherwise been provided by the grantee.

Grantees are expected to maintain sufficient resources to fulfill required data obligations and to respond to requests for information that is to be compiled for national evaluation and reporting.

E. Eligible Applicants

Eligible entities are local education agencies.

F. Project Period

This announcement is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a seventeen (17) month budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the 17-month budget period, but within the three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government.

G. Requirements

The applicant shall demonstrate that training and ancillary support services will be accessed through existing program providers to the extent that they are located in the immediate vicinity of the public housing development, or they will contract with such providers for on-site service delivery. The applicant shall warrant that funds provided under this program will be utilized to purchase such services only to the extent that no other funds can be obtained to fulfill the purpose of this demonstration.

The local public housing agency shall agree to make available suitable facilities in the public housing development for the provision of education, training and support services.

The applicant shall detail the process by which the recipients of services will be recruited with the assistance of the public housing authority and how they will be determined to be eligible individuals.

The applicant shall demonstrate the ability to coordinate the services provided with other services provided, with the public housing development and private industry council as well as with other public and private agencies and organizations of demonstrated effectiveness providing similar and ancillary services to the target population.

The applicant, to the fullest extent practicable, shall set forth the manner in which it will attempt to employ residents of the public housing development whenever qualified residents are available.

Part IV: Criteria for Review and Evaluation of Applications for New Family Support Center and Gateway Demonstration Programs

Applications for both programs will be reviewed and evaluated to assess the applicant's ability to carry out the projects described under Part II and III of this announcement, using the following criteria and weights:

A. Understanding of Program Purposes and Community Needs (10 points)

1. Understanding of Program Purposes (0–5 points)

The extent to which the application reflects a good understanding of the purpose(s) of the program, including the problems, barriers and impediments that prevent the efficient and effective delivery of an array of intensive and comprehensive services. For the Family Support Center Program, the purpose is to stabilize previously homeless and at-risk families and prevent them experiencing initial or recurring episodes of homelessness. For the Gateway Program, the purpose is to provide education, training and necessary support services to economically disadvantaged residents of public housing who have encountered barriers to employment because of basic skills deficiencies.

2. Understanding of Client, Community, and Service System Needs (0–5 points)

The degree to which the application presents the appropriate and pertinent demographic, social and personal data describing the needs of the client populations to be served. Specifically, the Family Support Center application should identify the extent of family homelessness and the numbers of families in the project's community who are at risk of becoming homeless. For both programs, community data should reflect the resources and the lack of services or programs to address the target population needs. Service system needs should reveal the extent to which there is potential for short to intermediate range solutions to organizational and systemic problems that affect the target populations.

B. Quality of Project Plan (40 points)

1. Degree of Innovativeness (0–10 points)

Application should articulate creative and otherwise original approaches and ways to achieve project objectives; application describes unique features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary client and community involvements. The application uses original and enterprising means to identify, target, reach and serve children and families using creative and innovative configurations of mainstream and other programs in the community.

2. Soundness and Clarity of Project Approach/Strategy (0–15 points)

The soundness and feasibility of the project approach to achieve specified goals and objectives and response to client, community and system needs. The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished and gives acceptable reasons for taking one approach as opposed to others. The inclusion of plans and actions to accomplish service coordination and delivery.

3. Appropriateness and Specificity of Project Goals (0–5 points)

The enumeration of clearly articulated goals and corresponding objectives addressing the problems. These should be listed in a sequential and integrated fashion tied to program purposes and client needs. For the Family Support Center, this must include the reduction of family homelessness through prevention measures. For Gateway, this must include education and training to prepare participants for employment.

4. Appropriateness of Performance and Impact Measures Selected (0–5 points)

Application lists the activities along with anticipated steps to be carried out in a programmatic and chronological order. Application includes a feasible schedule of target dates and accomplishments, in sufficient detail, for the first seventeen months and more generally for the remaining project period up to 36 months.

Application identifies measurable expected results for participating children and families.

5. Cost Effectiveness (0–5 points)

The extent to which the project's financial costs are reasonable in view of the activities to be carried out and their forecasted outcomes. Applications should address cost expenditures *vis a vis* anticipated project related benefits.

C. Capacity (20 points)

1. Staff Background and Experience (0–10 points)

The extent to which the résumés of the program director and key project staff (including names, addresses, training, background and other qualifying experience) demonstrate the ability to effectively and efficiently administer and/or operate within a project of this size, complexity and scope. Staff background and experience should also exhibit clearly the ability of proposed staff to use and coordinate activities with other agencies for the delivery of intensive and comprehensive support services. In the event that new hires or positions are involved, application should include position descriptions and demonstrate the ability to bring available human resources quickly on line with the project.

2. Organization (0–10 points)

Organizational resources that can be utilized within this project, including applicant facilities and physical resources such as existing office and

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client services space. The resources capacity of the organization may also include the attributes of the applicant entity to attract cooperating community and other agency resources such as outside means, properties and assets to participate in the program. Application also includes information confirming the organization's administrative and management capabilities and its appropriate location within the organizational structure to support the successful operation of this project.

D. Coordination (15 points)

1. Consortia or Project Partnerships (0–5 points)

Application demonstrates breadth and depth in the strength of the consortia involved in the project. Application describes project coordination and linkages with organizations, agencies, and key groups as well as the activities and nature of their effort or contribution. Partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

2. Committed Resources (0–5 points)

Application identifies current and/or anticipated commitments indicating kinds of service along with specific level of efforts from cooperating service-providing organizations or agencies.

3. Linkages (0–5 points)

Confirmation of linkages established with other local systems-oriented or integration initiatives.

E. Monitoring and Evaluation (15 points)

1. Reports and Monitoring (0–5 points)

Application should include information reflecting the entity's ability to conform to required schedule of program and administrative reports and to maintain controls through an organized monitoring effort.

2. Evaluation Activities (0–10 points)

Application should contain information outlining the entity's ability and willingness to participate in ongoing evaluation mechanisms and the capacity to provide required process and outcome oriented data. For the Family Support Center program, these data requirements will support identification and evaluation of grantee objectives, namely, the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the reduction in the rate of repeated incidences of homelessness among center clientele and a decrease in the incidence of first time homelessness among community participants.

For Gateway programs, these data requirements will support identification and evaluation of grantee objectives, namely, the removal of barriers to employment because of basic skills deficiencies and the preparation for employment and securing of jobs.

Part V: Criteria for Review and Evaluation of Applications for Family Support Center Demonstration Renewal Projects—Only

Applications for renewals will be reviewed and evaluated to assess the applicant's ability to carry out the projects described under Part II of this announcement, using the following criteria and weights:

A. Understanding of Program Purposes and Community Needs (0–25 points)

The application has briefly restated the key elements of the initial grant's approved work plan, including the problems, barriers and impediments that have prevented the effective delivery of intensive and comprehensive services to homeless and at risk families. In describing the initial plan the applicant has included pertinent demographic, social and personal data describing the needs of the client population to be served, and the ability of the community to respond to such needs.

B. Quality of Project Plan (0–40 points)

The application provides sufficient evidence of positive outcomes demonstrating that initial project design, approach and implementation strategies are effective in responding to client and community homeless prevention needs. The information is sufficient to identify and evaluate grantee accomplishments, namely, the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the degree to which the provision of services is affected by caseload size; the reduction in the rate of repeated incidences of homelessness among center clientele; and a decrease in the incidences of first time homelessness among community participants.

C. Institutional and Community Coordination (0–15 points)

The applicant shows that there has been a continuing involvement among the community service partners and an increased coordination in service delivery programs as a result of its initial grant. Partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

The application reflects how the initial period of the grant has had a positive impact toward strengthening the community socio-economic infrastructure, and toward achieving greater access to community resources and/or greater integration of available social service delivery systems while preventing family homelessness.

D. Cost Effectiveness (0–10 points)

The extent to which the project's financial costs are reasonable in view of accomplishments and forecasted outcomes. Application should address cost expenditures *vis a vis* project benefits to date and anticipate project related benefits.

E. Evaluation Significance (0–10 points)

—The applicant has demonstrated that a longer project operational period is needed to assure program results that will have greater significance.
—The applicant has documented that the renewal of its project will result in more substantial progress toward self-sufficiency of the targeted client population.
—The applicant has demonstrated that a renewal of the grant will result in a more valid and useful project including what the anticipated contributions to policy, practice, and program evaluation will be.

Part VI: Application Procedures

A. Availability of Forms

This announcement with attachments contains standard forms necessary to apply for awards under this program. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed in the section entitled "For Further Information" at the beginning of this Announcement or through the OCS Electronic Bulletin Board.

Agencies and organizations interested in applying for demonstration grant funds should submit an application on the Standard Form 424, 424A and 424B included in this announcement.

Each Form 424 must be signed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached applications package.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

B. Application Submission

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447, or

b. Sent on or before the deadline date and received by ACF in time for the independent review. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not accepted as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: The Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, S.W., Washington, D.C. 20447.

3. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. *Extension of Deadline.* The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant. Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies are required.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated post mark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

C. Application Consideration

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Applications meeting the above screening requirements will be reviewed competitively and scored against the criteria outlined in Part IV or Part V of this announcement. The review will be conducted in Washington, D.C. Such applications will be referred to reviewers knowledgeable about programs dealing with housing, homelessness, education, community action and supportive services. Reviewers will provide a numerical score and explanatory comments based solely on responsiveness to the specific criteria published in this announcement. Reviewers' scores will weigh heavily in funding decisions but may not be the only factor considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding as other factors are considered, including: comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

The results of the competitive review will assist the Director of the Office of Community Services, in considering competing applications. Consideration will be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

D. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and

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Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

Part VII: Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement. It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable". If your submission on an item needs further explanation or is not directly responsive to the item requested, please explain or provide commentary in Item Number 23. This item may be extended by use of an additional sheet of paper, appropriately identified.

Prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

A. SF–424—"Application for Federal Assistance" (see Attachment B)

Item 1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications" and no Construction projects. Accordingly, check the "Non-Construction" box.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date received by State"—N/A.

Item 4. "Date received by Federal Agency"—Leave blank.

Item 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

Item 7. Mark the appropriate box. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "other". Proof of non-profit status, such as IRS determination or Articles of Incorporation, must be included as an appendix to the project narrative.

Item 8. "Type of Application"—Please indicate the type of application (New or New-Renewal).

Item 9. "Name of Federal Agency"—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance Number for OCS programs covered under this announcement is 93.578. The title is "Family Support Center and Gateway Demonstration Program".

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title (a brief descriptive title) and the following letter designations must be used:

ZC—Family Support Center
ZR—Family Support Center Renewals
ZG—Gateway Demonstration

Item 12. "Areas Affected by Project"—List only the largest unit or units affected, such as State, county or city.

Item 13. "Proposed Project"—Enter the desirable starting date for the project and the proposed completion date. Projects may not exceed the maximum duration specified.

Item 14. "Congressional District of Applicant/Project" —Enter the number of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional district(s) where the project will be located.

Item 15a. This amount should be no greater than the amount specified under the Section on *Availability of Funds and Grant Amounts.*

B. SF–424A—"Budget Information-Non-Construction Programs"

(See Attachment C)

See Instructions accompanying this form as well as the instructions set forth below:

Sections A, B, C, and D should reflect budget estimates for the first year of the project. Section E should present the estimates for Federal assistance for the second year of the project. Grant awardees will be required to submit a "continuation application" for the second year of the project.

In completing these sections, the "Federal Funds" budget entries should separately identify all Federal funds involved in the project, "Non-Federal" will include mobilized funds from all other sources—applicant, State, and other.

Section A—Budget Summary

Line 1: Column (a): Enter "Family Support Center/Gateway Demonstration Program"; Column (b): Enter 93.578 Columns (c) and (d): Not Applicable for new applications. Columns (e), (f) and (g): enter the appropriate amounts needed to support the project for the first budget period.

Lines 2–4: Enter same information as above for any other Federal funds proposed to be used in the project. (Please explain status of funds; e g., approved or requested, etc.)

Section B—Budget Categories

Allocability of costs are governed by applicable cost principles set forth in OMB Circular A–122 and 45 CFR Part 74 (non-governmental) and OMB Circular A–7 and 45 CFR Part 92 (governmental). Budget estimates for all costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculations to be duplicated. For any additional object class categories included under the object class "other" identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travels; new positions; major equipment purchases and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included, as indicated below.

Personnel-Line 6a. Enter the estimated total costs of salaries and wages.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits-Line 6b: Enter the estimated total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel-Line 6c: Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Except for Family Support Center renewal applications, travel costs to attend one national workshop in Washington, D.C. by the project director should be included.

Equipment-Line 6d: Enter the estimated total costs of all tangible, non-expendable personal property to be acquired by the project. Tangible, non-expendable personal property is that which has a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined above. (See Line 21 for additional requirements).

Supplies-Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual-Line 6f: Enter the total costs of all contracts: (1) procurement contracts (except those which belong on other lemires such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: If available at the time of application, attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, thus entering into an interagency agreement, the applicant/grantee must submit Sections A and B of this Form SF–24A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Free and open competition is encouraged for any procurement activities planned using ACF grant funds. Prior approval is required when applicants anticipate procurements that will exceed $25,000 are requesting an award without competition.

The applicant's procurement procedures should outline the type of advertisement appropriate to the nature and anticipated value of the contract to be awarded. Advertisements are typically made in city, regional and local newspapers; trade journals; and/or through announcements by professional associations.

Construction-Line 6g: New construction costs are not permitted under this program. This line may be used for renovation costs.

Other-Line 6h: Enter the estimated total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), space and equipment rentals, printing and publication, computer use, training costs including tuition, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges-Line 6j: Enter the total amount of indirect costs. This line generally should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agency. With the exception of local governments, applicants should enclose a copy of a current rate agreement negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant organization is renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total-Line 6k: Enter total amounts of lines 6i and 6j.

Program Income-Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, and whether it is cash or third-party in-kind. The firm commitment of these funds should be documented and submitted with the application in order to be given full credit in the review criteria.

Justification: Describe all non-Federal resources including third-party, cash and/or in-kind contributions. Except in unusual situations, this documentation should be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Grant Program-Line 8. Grant Program.

Column (a): Enter the project title.

Column (b): Enter the amount of cash or donations to be made by the applicant.

Column (c): Enter the other contribution.

Column (d): Enter the amount of cash and third-party, in kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program-Lines 9, 10, and 11 should be left blank.

Grant Program-Line 12. Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal-Line 13. Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 17-month budget period for Family Support Center Demonstration applications. For Gateway Demonstration grants, enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12-month budget period.

Non-Federal-Line 14. Enter the amount of cash from all other sources needed by quarter during the first year

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Total-Line 15. Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Applicants for two year projects will complete line 16, (a), (b) and (c).

Column (a) refers respectively to the second year of the project.

Section F— Other Budget Information

Direct Charges-Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges-Line 22. Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks-Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–24B—"Assurances-Non-Construction"

All applicants must fill out, sign, date and return the "Assurances" (see Attachment D) with the application.

Part VIII: Contents of Application and Receipt Process

A. Contents of Application

Each application submission should include a signed original and two additional copies of the application. Each application should include the following in the order presented:

1. Table of Contents;

2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

[Note: The original SF–24 must bear the original signature of the authorizing representative of the applicant organization]

3. "Budget Information-Non-Construction Programs" (SF-424A);

4. A narrative budget justification for each object class category required under Section B, SF–424A;

5. Filled out, signed, and dated "Assurances-Non-Construction Programs" (SF–424B);

6. The applicant should sign Attachment E. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.

8. A project abstract (a paragraph which succinctly describes the project in 200 characters or less).

9. An Executive Summary—not to exceed one page;

10. Appendices, including (where applicable) proof of non-profit status; proof that the organization is a community development corporation, commitments from service providing organizations, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.

11. A self-addressed mailing label which can be affixed to a notice to acknowledge receipt of application.

The total number of pages for the entire application package, excluding Appendices, should not exceed 50 pages. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF–424 as Page #1.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½×11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the application. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

B. Acknowledgement of Receipt

All applicants who meet the initial screening criteria outlines in Part V, Section C will receive an acknowledgement notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9365.

Part IX: Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for any dissemination effort conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92 and OMB Circular A–133 and OMB Circular A–128, Audits of States and Local Governments.

Attachment I indicates the regulations which apply to all applicants/grantees under the Family Support Center and Gateway Demonstration Programs.

Dated: February 23, 1995.

Donald Sykes,

Director, Office of Community Services.

Attachment A

FY 1995 Median Family Income as Determined by the Secretary of Housing and Urban Development

HUD Field Offices with assisted housing program functions are responsible for maintaining records of income limits established for areas within their jurisdiction. Field Offices are prepared to make income limits available to the public upon request.

Requests from the public for individual area limits, sets of national or regional income limits may be secured by calling 1–800–245–2691 (301–251–5154 in the Washington, DC area).

The Office of Community Services, Division of Community Demonstration Programs maintains a current set of income information. You may contact Mr. Sheldon Shalit at 202–401–4807 if you are not able to access the appropriate information from the toll free number listed above.

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Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State H Independent School Dist
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify)

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF: a Applicant b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D

[OMB Approval No. 0348–0040]

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10.000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544), as amended (7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–P

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Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

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Attachment F

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." Without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Straton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin. N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

Attachment H

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, if known: Congressional District, if known:	Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):	13. Type of Payment (check all that apply):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184-01-C

Attachment I—DHHS Regulations Applying to All Applicants/Grantees Under the Family Support Center and Gateway Demonstration Programs

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections

74.62(a) Non-Federal Audits

74.173 Hospitals

74.174(b) Other Nonprofit Organizations

74.304 Final Decisions in Disputes

74.710 Real Property, Equipment and Supplies

74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J

Certification Regarding Maintenance of Effort

The undersigned certifies that:

(1) activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

_____

Organization

_____

Authorized Signature

_____

Title

_____

Date

Attachment K

Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95-5330 Filed 3-3-95; 8:45 am]

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March 6, 1995

Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2509

Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974; Final Rule

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2509

[Interpretive Bulletin No. 95–1]

Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

AGENCY: PWBA, Department of Labor.

ACTION: Interpretive Bulletin.

SUMMARY: This document announces the Department of Labor's (the Department's) view of the legal standard imposed by section 404(a)(1) (A) and (B) of part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA) on a plan fiduciary's selection of an annuity provider when purchasing annuities for the purpose of distributing benefits under an employee pension benefit plan. Under this standard, plan fiduciaries choosing to purchase annuities have a duty to select the safest available annuity provider, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise. The document also provides guidance to plan fiduciaries regarding circumstances when it may be in the interest of the participants and beneficiaries to purchase other than the safest available annuity.

EFFECTIVE DATE: The standard announced in this bulletin is effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: William W. Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Rm N–4611, 200 Constitution Ave., NW., Washington, DC 20210, (telephone (202) 219–9141) or Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N–5669, 200 Constitution Avenue NW., Washington, DC 20210, (telephone (202) 219–8671). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In order to provide a concise and ready reference to its interpretations of ERISA, the Department of Labor publishes its Interpretive Bulletins in the Rules and Regulations section of the **Federal Register**.

Published in this issue of the **Federal Register** is ERISA Interpretive Bulletin **95–1**, which describes the application of the fiduciary standards set forth in section **404(a)(1)** (A) and (B) of ERISA, 29 U.S.C. **1104(a)(1)** (A) and (B), in selecting an insurer to provide pension benefit distribution annuities to plan participants and beneficiaries. The Department is publishing this Interpretive Bulletin because it believes there is a need for further guidance regarding the selection of such annuity providers by plan fiduciaries.

(Sec. 505, Pub. L. 93–406, 88 Stat. 894 (29 U.S.C. 1135))

Background

Annuities are issued by insurers in a variety of forms designed to suit different purposes. This interpretive bulletin addresses only annuities that are purchased by pension plans with the intention to transfer liability for benefits promised under the plan to the annuity provider (i.e., the insurance company).[1] Annuities designed to serve this purpose are sometimes referred to herein as benefit distribution annuities. Regulations issued by the Department explicitly recognize a transfer of liability from the plan when such an annuity is purchased from an insurance company licensed to do business in a State. 29 CFR 2510.3–3(d)(2)(ii).[2] Pension plans purchase benefit distribution annuity contracts in a variety of circumstances. Such annuities may be purchased for participants and beneficiaries in connection with the termination of a plan, or in the case of an ongoing plan, annuities might be purchased for participants who are retiring or separating from service with accrued vested benefits.

The selection of an annuity provider under these circumstances is a fiduciary decision governed by part 4 of title I of ERISA. Specifically, pursuant to ERISA section 404(a)(1), 29 U.S.C. 1104(a)(1), fiduciaries must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries. Section 404(a)(1)(A), 29 U.S.C. 1104(a)(1)(A), states that the fiduciary must act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable plan administration expenses. In addition, section 404(a)(1)(B) requires a fiduciary to act with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity would use.[3]

Several developments over the past few years have resulted in questions being raised about the security of the pension benefits promised to participants and beneficiaries under benefit distribution annuity contracts purchased on their behalf. In particular, concerns have been expressed about the ability of certain insurance carriers to satisfy their annuity liabilities because their investment portfolios contain or contained substantial amounts of high-risk, high-yield debt securities (also known as "junk bonds") or troubled real-estate loans, or a combination of both. The basis for such concerns is best exemplified by the well-publicized developments involving the Executive Life Insurance Companies of California and New York. State regulators in both California and New York were forced to take control of the operations of the Executive Life Companies, whose poor financial condition is principally attributable to substantial investments in high risk bonds. In response to such developments, the Department has acted in the following areas to enforce ERISA's fiduciary standards and determine whether additional regulatory action is warranted.

Litigation

Subsequent to the failure of Executive Life, the Department's enforcement activities have centered on, among other things, the process by which plan fiduciaries selected annuity providers.

The Department has filed lawsuits against numerous companies whose plans purchased annuities because the plan fiduciaries who, acting in their fiduciary capacities, failed to follow adequate procedures designed to select the safety available insurance carrier when choosing an annuity provider. Cases have been brought against several companies which purchased annuities from Executive Life including Pacific Lumber Co., Magnetek, Inc., Smith International, Inc., Geosource, Inc., American National Can Company, AFG Industries, Inc., and Raymark Industries, Inc. as well as against the Strouse Adler Company which purchased annuities from Presidential Life Insurance Company. It is the Department's position that these fiduciaries breached their fiduciary responsibilities under ERISA in connection with their selection of annuity providers.[4] Consent orders settling the Secretary's claims have been entered in certain of these cases.

Regulatory Action

In addition to its enforcement activities, the Department and the Pension Benefit Guaranty Corporation (PBGC) sought to determine if, in addition to and independent of ERISA's fiduciary standards, minimum standards for annuity providers would be appropriate and necessary in order to ensure a reasonable likelihood that participants or beneficiaries on whose behalf annuities are purchased will receive their promised pension benefits. It was anticipated that such modification might be effected by amending the minimum standards which already exist under the regulation at 29 CFR 2510.3–3(d)(2)(ii). On June 21, 1991, both the Department and the PBGC published advanced notices of proposed rulemaking (ANPRMs) in the **Federal Register** (56 FR 28638 and 56 FR 28642 respectively) soliciting information and comments from the public as to whether regulatory action relating to the purchase of annuity contracts was necessary and if so, what form such action should take.

After receiving over thirty letters in response, the Department reviewed the comments and, after extensive deliberation, the Department has determined that no regulatory action should be taken at this time to amend the minimum standards under the regulation at 29 CFR 2510.3–3(d)(2)(ii). More generally, the Department has decided not to promulgate any regulation limiting the circumstances under which the purchase of an annuity will be considered a full distribution of benefits for a participant or beneficiary such that the plan's and the employer's obligations to pay benefits have been served.

The following interpretive bulletin concerns solely the fiduciary standard and is published in addition to and independent of the regulatory minimum standard at 29 CFR 2510.3–3(d)(2)(ii).

The Interpretive Bulletin

The interpretive bulletin explains that, when choosing an annuity provider for purposes of a benefit distribution, whether for purposes of separation or retirement of a participant or upon termination of a plan, compliance with ERISA's fiduciary rules requires, at a minimum, that plan fiduciaries conduct an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities. In conducting such a search, a fiduciary must evaluate a potential annuity provider's claims-paying ability and creditworthiness because the participants and beneficiaries whose entitlement to benefits will be transferred to the annuity provider have a paramount interest in the ability of the provider to make those payments. As a result, the interpretive bulletin states that a plan fiduciary choosing an annuity provider for the purpose of making a benefit distribution must take steps calculated to obtain the safest annuity available, unless under the circumstances, it would be in the interests of the plan participants and beneficiaries to do otherwise.[5] The Department recognizes that, in many circumstances likely to arise under existing law, the interest of the plan participants and beneficiaries may require the selecting fiduciary to consider the cost of the annuity (to the extent that the cost is borne by the participants and beneficiaries) in addition to the annuity provider's claims-paying ability.[6] Cost consideration may not, however, justify purchase of an unsafe annuity.

The Interpretive bulletin also explains that an annuity provider's claims-paying ability and creditworthiness should be evaluated on the basis of a number of factors. Although ratings provided by insurance rating services may be a useful factor in evaluating a potential annuity provider, reliance solely on such ratings would not be sufficient to meet the requirement of a thorough and analytical search for an appropriate annuity provider.

List of Subjects in 29 CFR Part 2509

Employee benefit plans, Pensions.

For the reasons set forth in the preamble, Part 2509 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for Part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Section 2509.75–1 is also issued under 29 U.S.C. 1114. Sections 2509.75–10 and 2509.75–2 are also issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. Part 2509 is amended by adding a new § 2509.95–1 to read as follows:

§ 2509.95–1 Interpretive Bulletin relating to the fiduciary standard under ERISA when selecting an annuity provider.

(a) Scope. This Interpretive Bulletin provides guidance concerning certain fiduciary standards under part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104–1114, applicable to the selection of annuity providers for the purpose of pension plan benefit distributions where the plan intends to transfer liability for benefits to the annuity provider.

(b) In General. Generally, when a pension plan purchases an annuity from an insurer as a distribution of benefits, it is intended that the plan's liability for such benefits is transferred to the annuity provider. The Department's regulation defining the term "participant covered under the plan" for certain purposes under title I of ERISA recognizes that such a transfer occurs

[1] In particular, the interpretive bulletin does not address fiduciary responsibilities in connection with the purchase of annuities for investment purposes. *See infra* note 5.

[2] This regulation defines the term "participant covered under the plan" for certain purposes under title I of ERISA. The Department notes that the regulation was issued primarily to define the class of participants entitled to receive copies of certain plan documents without charge and without request under ERISA sections 101(a) and 104(b)(1), 29 U.S.C. 1021(a) and 1024(b)(1). 40 FR 24649 (June 9, 1975), 40 FR 34528 (Aug. 15, 1975). A premise of the regulation was that, by using the term "participant covered under the plan," Congress had provided a ground for distinguishing between the class of all participants within the meaning of ERISA § 3(7) and participants entitled to receive copies of plan documents without charge and without request. 40 FR 24649 (June 9, 1975). Thus, the regulation is not intended to define the term "participant" or "beneficiary" for all purposes under ERISA, and, in particular, is not intended to define these terms for purposes of standing to bring a civil action under ERISA section 502(a), 29 U.S.C. 1132(a).

[3] On March 13, 1986, the Department released an information letter addressed to John N. Erlenborn, who was then the Chairman of the Advisory Council on Employee Welfare and Plans. In the letter, the Department stated in pertinent part:

Consistent with the functional analysis of fiduciary activity, the choice of an insurer would appear to involve the type of discretionary authority over the disposition of plan assets covered in section 3(21)(A) [of ERISA]. . . . Therefore, it appears that the fiduciary provisions of ERISA, including the prudence requirement of section 404(a)(1)(B), will apply to the choice of an insurer to issue annuities upon plan termination.

[4] The Pension Annuitant's Protection Act of 1994, Pub. L. No. 103–401, 108 Stat. 4172 (1994) amended section 502(a) of ERISA to clarify the standing of pension annuitants to bring actions for fiduciary breaches that occurred. In addition, the Act specifies that a court may order appropriate relief to assure the annuitant's receipt of the amounts provided or to be provided by the annuity, plus reasonable prejudgment interest. The amendments made by the Act apply to any legal proceeding pending, or brought, on or after May 31, 1993.

[5] This standard does not apply to the purchase of annuities for plan investment purposes. As with any other ordinary investment decision, ERISA's fiduciary duty of prudence requires that the risk attendant to such products, in the context of the plan's investment portfolio, and its funding, liquidity and diversification needs, must be weighed against the promised return. Thus, fiduciaries may select such investments that involve greater risks, but that also provide an expected investment return that is commensurate with that greater risk. In this regard, the Department notes that in an investment contract with an annuity option, the standard described herein, while not applicable to the decision to invest in the investment product, nonetheless applies to the fiduciary's decision to exercise the annuity option.

[6] Under IRC § 4980, an excise tax of up to 50 percent may be imposed on the amount of any employer reversion from a qualified plan unless the employer establishes and maintains a qualified replacement plan to which assets are transferred, or provides certain benefit increases for participants

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when the annuity is issued by an insurance company licensed to do business in a State. 29 CFR 2510.3–3(d)(2)(ii). Although the regulation does not define the term "participant" or "beneficiary" for purposes of standing to bring an action under ERISA § 502(a), 29 U.S.C. 1132(a), it makes clear that the purpose of a benefit distribution annuity is to transfer the plan's liability with respect to the individual's benefits to the annuity provider.

Pursuant to ERISA section 404(a)(1), 29 U.S.C. 1104(a)(1), fiduciaries must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries. Section 404(a)(1)(A), 29 U.S.C. 1104(a)(1)(A), states that the fiduciary must act for the exclusive purpose of providing benefits to the participants and beneficiaries and defraying reasonable plan administration expenses. In addition, section 404(a)(1)(B), 29 U.S.C. 1104(a)(1)(B), requires a fiduciary to act with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use.

(c) Selection of Annuity Providers. The selection of an annuity provider for purposes of a pension benefit distribution, whether upon separation or retirement of a participant or upon the termination of a plan, is a fiduciary decision governed by the provisions of part 4 of title I of ERISA. In discharging their obligations under section 404(a)(1), 29 U.S.C. 1104(a)(1), to act solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits to the participants and beneficiaries as well as defraying reasonable expenses of administering the plan, fiduciaries choosing an annuity provider for the purpose of making a benefit distribution must take steps calculated to obtain the safest annuity available, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise. In addition, the fiduciary obligation of prudence, described at section 404(a)(1)(B), 29 U.S.C. 1104(a)(1)(B), requires, at a minimum, that plan fiduciaries conduct an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities. In conducting such a search, a fiduciary must evaluate a number of factors relating to a potential annuity provider's claims paying ability and creditworthiness. Reliance solely on ratings provided by insurance rating services would not be sufficient to meet this requirement. In this regard, the types of factors a fiduciary should consider would include, among other things:

(1) the quality and diversification of the annuity provider's investment portfolio;

(2) the size of the insurer relative to the proposed contract;

(3) the level of the insurer's capital and surplus;

(4) the lines of business of the annuity provider and other indications of an insurer's exposure to liability;

(5) the structure of the annuity contract and guarantees supporting the annuities, such as the use of separate accounts;

(6) the availability of additional protection through state guaranty associations and the extent of their guarantees. Unless they possess the necessary expertise to evaluate such factors, fiduciaries would need to obtain the advice of a qualified, independent expert. A fiduciary may conclude, after conducting an appropriate search, that more than one annuity provider is able to offer the safest annuity available.

(d) Costs and Other Considerations. The Department recognizes that there are situations where it may be in the interest of the participants and beneficiaries to purchase other than the safest available annuity. Such situations may occur where the safest available annuity is only marginally safer, but disproportionately more expensive than competing annuities, and the participants and beneficiaries are likely to bear a significant portion of that increased cost. For example, where the participants in a terminating pension plan are likely to receive, in the form of increased benefits, a substantial share of the cost savings that would result from choosing a competing annuity, it may be in the interest of the participants to choose the competing annuity. It may also be in the interest of the participants and beneficiaries to choose a competing annuity of the annuity provider offering the safest available annuity is unable to demonstrate the ability to administer the payment of benefits to the participants and beneficiaries. The Department notes, however, that increased cost or other considerations could never justify putting the benefits of annuitized participants and beneficiaries at risk by purchasing an unsafe annuity.

In contrast to the above, a fiduciary's decision to purchase more risky, lower-priced annuities in order to ensure or maximize a reversion of excess assets that will be paid solely to the employer-sponsor in connection with the termination of an over-funded pension plan would violate the fiduciary's duties under ERISA to act solely in the interest of the plan participants and beneficiaries. In such circumstances, the interests of those participants and beneficiaries who will receive annuities lies in receiving the safest annuity available and other participants and beneficiaries have no countervailing interests. The fiduciary in such circumstances must make diligent efforts to assure that the safest available annuity is purchased.

Similarly, a fiduciary may not purchase a riskier annuity solely because there are insufficient assets in a defined benefit plan to purchase a safer annuity. The fiduciary may have to condition the purchase of annuities on additional employer contributions sufficient to purchase the safest available annuity.

(e) Conflicts of Interest. Special care should be taken in reversion situations where fiduciaries selecting the annuity provider have an interest in the sponsoring employer which might affect their judgment and therefore create the potential for a violation of ERISA § 406(b)(1). As a practical matter, many fiduciaries have this conflict of interest and therefore will need to obtain and follow independent expert advice calculated to identify those insurers with the highest claims-paying ability willing to write the business.

Signed at Washington, DC, this 28th day of February 1995.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 95–5321 Filed 3–3–95; 8:45 am]

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Monday
March 6, 1995

Part VI

Department of Health and Human Services

Administration for Children and Families

Department of Education

Office of Elementary and Secondary Education

Safe and Drug Free Schools Program; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

[Program Announcement No. ACF–93588.951]

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Safe and Drug Free Schools Program; The Community Schools Youth Services and Supervision Grant Program, and The Family and Community Endeavor Schools Grant Program; Availability of Fiscal Year (FY) 1995 Funds and Request for Applications

AGENCIES: Administration for Children and Families (ACF), Department of Health and Human Services (HHS), and the Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Announcement of the availability of funds and request for applications under the Family and Community Endeavor School Grant Program.

SUMMARY: The Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF) and the Safe and Drug Free Schools Program of the Office of Elementary and Secondary Education announce the availability of funds for competing discretionary grants under two programs established by the Family and Community Endeavor Schools Grant Program, Title III, Subtitle D of Pub. L. 103–322. The purpose of these programs is to prevent crime and violent behavior by providing academic, social and developmental services to children and youth during and after school hours, evenings, on weekends, and during holidays and the summer months

This legislation mandates the implementation of two similar programs under Subtitle D: The Community Schools Youth Services and Supervision Grant Program (hereafter referred to as "Community Schools") and the Family and Community Endeavor Schools Grant Program (hereafter referred to as "FACES"). As the needs of children, youth and communities can best be served by integrating the two programs, the Departments of Health and Human Services and Education have jointly developed this grant announcement.

The two Departments intend to demonstrate that prevention strategies that bring together community-based organizations and schools in communities with high poverty rates, violent crime and significant juvenile delinquency have the greatest potential for preventing the involvement of children and youth in violent crime and other negative behaviors and for supporting their positive and healthy development.

Further, the Departments intend to demonstrate that, by concentrating the resources of schools and community-based organizations in well-defined rural, suburban and urban communities that face great social and economic problems, the positive effect of the programs for a core number of children, youth and families will be intensified. The HHS and ED also expect to collaborate with the National Institutes of Health to offer grantees the opportunity and the resources to participate in a rigorous assessment of the implementation and impact of a small number of projects.

This announcement describes the grant application requirements and processes for both programs and allows applicants to apply for either program separately or both programs jointly through submission of one application. This single application has been developed to further link the two programs, encourage local consortia to apply for both programs, and to help reduce the application burden.

DATES: The closing date for RECEIPT of applications under this announcement is May 5, 1995. Please note that this is a departure from the traditional approach of using postmarks instead of receipt date to determine eligibility of applications for review.

ADDRESSES: Application receipt: Department of Health and Human Services, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF–93588.951.

FOR FURTHER INFORMATION ON THE COMMUNITY SCHOOLS PROGRAM CONTACT: Department of Health and Human Services, AC/ACYF, Family and Youth Services Bureau, P.O. Box 1182, Washington, D.C. 20013. Telephone (202) 205–8076. Information is also available on the ACF Electronic Bulletin Board. To access, set modem to No Parity, 8 Data Bits, 1 Stop Bit and dial 1–800–627–8886. Under "Program Office Subsystems, Family and Youth Services Bureau," relevant files are found under COMMSCH.

FOR FURTHER INFORMATION ON THE FACES PROGRAM CONTACT: Department of Education, OESE, Safe and Drug Free Schools Program, 600 Independence Avenue, SW., Washington, DC. 20202. Telephone (202) 260–3954.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I discusses the importance of addressing the developmental needs of children and youth, and provides background information on the legislative history and purposes of these programs. Part II describes the three programmatic priority areas for which applications are being solicited: The Community Schools Program; the FACES Program, and the Joint Community Schools/FACES Program. Part III describes the application evaluation criteria that will be used to review grant applications. Part IV describes the application process and how funding decisions will be made. Part V provides instructions for the development, assembly and submission of applications. Part VI provides information on the State Single Points of Contact, the Table of Community Schools Funding Allocations by State and all the necessary forms and instructions for applying for a grant under this announcement. *No additional materials are needed to submit an application.*

Applicants should note that grants to be awarded under this program announcement are subject to availability of funds.

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Part I. General Information

A. Legislative Authority, Purposes and Goals, and Funding

Congress enacted the Family and Community Endeavor Schools Grant Program as Subtitle D of Title III of the Violent Crime Control And Law Enforcement Act of 1994 (Public Law 103–322). This subtitle includes two programs: Community Schools, administered by the Department of Health and Human Services; and FACES, administered by the Department of Education. Congress intended that the legislation for these programs offer, through public-private partnerships between government and community-based organizations, an opportunity to empower distressed and disconnected communities to prevent crime and violent behavior by:

Developing their resources and abilities in order to meet the needs of children.

Forging innovative solutions to the challenges confronting the development of the children in such communities, and

Creating environments where children grow up learning a healthy respect for themselves, for neighbors and for their communities.

The legislation mandates that public-private partnerships, including community-based organizations and schools, should provide a broad spectrum of supervised recreational, extracurricular, and academic programs. Recreational activities can include family-focused outings, a safe place to go games, organized team or individual sports, supervised play and community service. Extracurricular and academic activities can include curriculum-based supervised educational activities, work force preparation, entrepreneurship experiences, cultural programs, health education, social activities, and tutorial and mentoring programs. The legislation also mandates that programs train teachers, administrators, social workers, guidance counselors, parents and school volunteers to provide concurrent social services for at-risk students.

Subtitle D of the Family and Community Endeavor Schools Grant Program is also designed to stimulate collaborative efforts that will assist urban, suburban and rural communities and neighborhoods in identifying the specific needs of their children, youth and families, and in using their resources and abilities to develop and implement programs that build on community strengths, respond to identified needs and reduce crime and violence.

Under the Community Schools program, HHS will make grants to private, community-based, nonprofit organizations in communities with significant poverty and juvenile delinquency for the provision of after-school, evening, weekend, holiday, and summer education and recreation programs. The total authorization for HHS for FY 1995 is $25.9 million. The amount of funds available to community-based organizations in each State is listed in the Table of Community Schools Funding Allocations by State (Part VI, Appendix B). In accordance with the Act, this distribution is based on the proportionate number of children in each State who live in families with incomes below the Federal poverty line. These funds do not, however, go to the States or pass through the States. Rather, funds will be awarded directly to successful community-based applicants in each State. Funds have also been set aside for grants to Federally recognized Indian tribes; for administrative purposes as allowed by the law; for training and technical assistance; and for evaluation.

Under the FACES program, ED will award grants to local educational agencies or community-based organizations to improve the overall academic and social development of at-risk students in public schools in communities with significant poverty, violent crime, and juvenile delinquency. The total authorization for FACES for FY 1995 is $11.1 million.

Note: A Notice of Final Definition, Maximum Grant Award and Selection Criteria for the FY 1995 FACES Program is published by the Department of Education elsewhere in this issue of the **Federal Register**.

B. Development of the Program Announcement

In accordance with Congressional intent to develop programs that respond to the needs of individual children, youth and communities, HHS and ED have conducted 37 focus groups, involving more than 500 participants in Washington, DC, and each of the 10 Federal regions. A day for public comment was also held in Washington, DC.

Focus group participants have included more than 100 youth; parents and other residents of communities with significant juvenile delinquency and high rates of poverty; academicians and researchers; service providers, including representatives from youth serving organizations; local and State officials; and foundation representatives. Focus groups were used to (1) provide information on the Community Schools and FACES programs and on the Federal youth development agenda; and (2) obtain information on important principles related to serving children and youth; on designing and implementing youth programs and making collaborations work; on the training and technical assistance needs of youth programs; and program evaluation.

Letters, papers and program descriptions were also solicited from a variety of sources across the country. Additionally, an Interdepartmental Work Group on Violence was convened in 1994 to obtain information about the best ways to serve youth, prevent violence and coordinate responses across Departments. These sessions and materials have led to the development of principles which guide this program announcement. The principles are explained below

C. Development of Children and Youth Within the Context of Their Social Environment

Children and youth pass through a series of developmental phases which advance them from total dependence upon their parents and families to competent and independent adulthood. They struggle with adults for independence, affiliate with peers take risks, and seek their place within the world. They need the help and support of family and community while they make the transition from adolescence to adulthood.

Most children in the United States are successful at making the transition from childhood to adolescence to adulthood. But for many, the crime and violence of their environment can effectively rob them of their childhood and deprive them of opportunities to carry out the developmental tasks associated with childhood and adolescence. With few outlets for recreational and creative activities and few positive role models, children and youth in many poor communities become involved in the violent activities of gangs, drugs and alcohol. The involvement of children at increasingly younger ages in these dangerous activities and the overall increase in youth violence is alarming:

Between 1988 and 1992, arrests of juveniles increased by 47 percent, more than twice the increase for adults.

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Juvenile arrests for murder increased by 51 percent, compared with a nine percent increase for adults.

Between 1990 and 1992, the number of juveniles under age 15 arrested for violent crimes increased 33 percent.

Between 1988 and 1992, the number of females under age 18 arrested for violent crimes increased by 63 percent.

Violence and crime also invade schools. Nationally, nearly 3 million thefts and incidents of violent crime occur on or near school grounds annually. Nearly one in five high school students have reported carrying a weapon at least once in a 30 day period, and nearly 8 percent of 9–12 year olds have reported being involved in a fight requiring treatment by a doctor or nurse. Schools in many poor communities find it increasingly difficult to educate children and youth because of the problems that many bring to school.

The Department of Education has found that, despite the increasing violence among children and youth, there are safe schools even in communities where the worst crime and drug problems exist. An element common to many safe schools is the adoption of comprehensive strategies for schools and communities aimed at the prevention of crime and violence through a wide array of educational and professional activities and early intervention services. Comprehensive strategies include the development of education and training programs for students, staff, and community members; conflict resolution; peer meditation; the teaching of law and legal concepts; a school ethic that sets high standards for students and values their contribution; efforts to involve families in the community in developing programs; and implementation of innovative activities such as community service projects designed to rebuild safe and healthy neighborhoods and increase students' sense of individual responsibility.

D Lessons From Consultation

Service providers and other experts have identified a number of shortcomings in past approaches to the funding of services to children and youth:

1. Public and private community-based service systems are increasingly unable to compensate as families become more isolated from traditional sources of support. Many parents are stressed and squeezed for time, whether because both parents are working, a single parent is struggling to combine work and parenting, or simply because they lack traditional neighborhood and extended family support. As a result, parents are turning to under-funded and over-burdened community agencies, including schools, day care centers, youth serving organizations and recreation centers to fulfill their children's social and developmental needs and to provide the requisite supervision needed to ensure their safety.

2. Many publicly funded programs have not engaged a broad range of community services nor responded to the reality of youth's experiences, goals, strengths and needs.

3. Historically, youth programs have focused on intervening once youth have participated in delinquent or negative behaviors, rather than on preventing these behaviors and supporting youth during the critical transition from childhood through adolescence.

To address these shortcomings, youth, practitioners and other experts identified the following principles as characteristic of effective programs. Applicants are strongly encouraged to draw on these principles in designing their application:

1. Promote the positive development of children and youth. Program strategies and activities must be grounded within a developmental framework, begin early in a child's life, be sustained over a long period of time, and be geared to children's individual needs.

2. Involve children and youth in positive peer group interactions and constructive, developmentally appropriate activities. Programs should ensure the availability of age appropriate, constructive activities that are safe, accessible, fun and culturally relevant. Involving children and youth in the design and implementation of the activities will ensure that they are interesting and well attended.

3. Promote learning and academic achievement. Education can promote responsible citizenship by supporting the development of, and adherence to, high standards for academic and social performance among children and youth. The involvement of parents and families in the educational attainment of their children can, through interaction, strengthen family and community bonds. In addition, programs can broaden and/or enhance the academic and social experiences of parents by providing adult basic education courses, parenting classes and positive parent-teacher interactions.

4. Foster sustained relationships between children, youth and caring adults. Children and youth need individualized attention and interaction with a caring and supportive adult over an extended period of time. These needs are best met by parents, but volunteers, program staff, social workers and/or teachers can perform a valuable role by acting as mentors, role models and friends to children and youth.

5. Promote the long-term development of neighborhood and communities. Strong communities yield positive development for children and youth. In developing programs, local communities should place priority on developing local leadership, on involving children, youth and their families as resources in the community building process, and on providing needed services to families as well as children and youth.

6. Emphasize flexibility and functional collaboration in program design. Residents and service providers within the community must be involved in the design and implementation of the program to ensure that it becomes an integral part of the community. Collaborations should be functional: letters of agreement are not enough. Each collaborating agency should be actively involved and should provide an essential component of service to the program.

Part II. Priority Areas

Part II contains three options. Eligible organizations can choose to apply for a Community Schools Youth Services and Supervision Grant Program (Priority Area A), for a Family and Community Endeavor Schools Grant Program (Priority Area B), *OR* for a Joint Community Schools/FACES Program (Priority Area C). Each priority area description includes information on eligible applicants, program purpose and general legislative requirements. Part II also includes information relevant to all priority areas on Program Evaluation; Duration of the Project; Federal Share of the Project; and Grantee Share of the Project.

Priority Area A: Community Schools Program

Eligible Applicants: Private, non-profit, locally initiated community-based organizations (CBOs) with a 501(c)(3) status that are operated by, or are members of, a consortium of service providers consisting of representatives from five or more of the following categories: (1) Residents in the community; (2) business and civic leaders actively involved in providing employment and business development opportunities in the community; (3) educators; (4) religious organizations, which shall not provide sectarian instruction or worship in connection with an activity funded under these grants; (5) law enforcement agencies; (6) public housing agencies; (7) other public agencies; and (8) interested parties. It is also strongly recommended that youth and local youth-serving agencies be represented.

A single community-based organization or consortium must be the grantee and must assume responsibility for administrative and fiscal management and reporting. A community-based, private, non-profit organization that applies for funds, but is not a consortium, must involve other community organizations as equal partners in the development and implementation of the project. Consortium members are expected to make a significant contribution to the project.

Federally recognized Indian Tribes are also eligible for funding under this priority area.

Program Purpose: The Administration on Children, Youth and Families (ACYF) will award between 50 and 75 grants to community-based organizations for $250,000 to $500,000 per year for implementation of the Community Schools Program, although in some cases, applications for less than $250,000 will be considered for funding. (See Part II, Section F.) Approximately three grants will be awarded to Federally-recognized Indian tribes.

Successful grantees will receive a grant to operate the program for five years, subject to the availability of funds, satisfactory progress, and determination that continued funding would be in the best interest of the government. The grantee's share of project costs (non-Federal share) is 25 percent of total project costs for FYs 1995 and 1996. For FY 1997 this share increases to 30 percent. For FY 1998 and beyond the non-Federal share of project costs is 40 percent.

The Community Schools legislation requires that communities organize into consortia. The consortia are responsible for community coordination and collaboration to enhance the ability of the community to meet the developmental needs of children and youth. Developmentally appropriate activities can take place after school, during the evenings, on weekends and holidays during the school year and as daily full- or part-day programs during the summer months.

Applications developed in response to this priority area should articulate a vision for children, youth and their families and include community-wide strategies and interventions designed to prevent crime, enhance academic achievement and change environmental factors, circumstances and attitudes which put children and youth at risk of unhealthy and destructive behaviors.

Eligible Community: Applicants must show the existence of significant poverty, significant crime and juvenile delinquency in the community to be served. Applicants must also demonstrate that they are proposing to serve an identifiable community or neighborhood with boundaries that are generally recognized by the residents in the community and that is small enough to allow a concentration of resources and the potential for measurable effects.

Local public schools are established institutions in every community, and Congress has identified them as logical program sites. In some communities, however, public schools may not be the ideal site. The legislation, therefore, identifies colleges or universities, local or State parks or recreation centers, churches, or military bases as possible options, if they are easily accessible to children in the community and comply with all local ordinances. Other options include space in community-based organizations, including youth serving agencies.

Population to be Served: The Community Schools legislation identifies children and youth, ages 5 through 18 who reside in the community, as eligible for participation in the program. While applicants may elect to serve children and youth in the entire 5 through 18 age range, they are encouraged to identify a particular developmentally-defined age group within that range to receive services to maximize the impact of the program.

Other Requirements: Based on past demonstration efforts, ACYF has learned that short-term interventions do not result in significant effects on children and youth. Therefore, programs should be designed so that children and youth who are initially chosen to participate can continue to participate for a sustained period of time as they grow older and as the program develops over the five year period. Attention must be given to maintaining the active participation of children and youth if they are to receive long-term benefits. The applicant must assure, as required by the legislation, that the program will maintain an average attendance rate of enrolled participants of not less than 75 percent. The program should identify a system for encouraging and maintaining participant attendance and a policy for the recruitment of new children and youth as needed.

Fiscal Control and Requirements: No more than five percent of Federal funds may be used to pay for the administrative cost of the program. This maximum may not be exceeded even if an agency's negotiated indirect cost rate is greater than five percent. Indirect costs above the allowable five percent may be used as part of an applicant's non-Federal share contribution.

No Federal funds may be used to provide sectarian worship or sectarian instruction.

Applicants must address all of the Application Evaluation Criteria found in Part III below

Priority Area B: FACES Program

Eligible Applicants: Local educational agencies (LEAs) and community-based organizations are eligible to receive grants under this program. A community-based organization means a private, non-profit organization which is representative of a community, or significant segments of a community, and which provides educational or related services to individuals in the community.

Program Purpose: The Department of Education will award approximately 30 grants to local educational agencies or community-based organizations to improve the overall academic and social development of at-risk students. The minimum grant award is $250,000 and the maximum is $500,000 for each 12-month period.

Successful grantees will receive a grant to operate the program for five years, subject to the availability of funds, satisfactory progress, and determination that continued funding would be in the best interest of the government. The applicant's share of project costs (non-Federal share) is 30 percent of total project cost.

In order to receive an award, eligible applicants must:

(1) Identify an eligible community to be assisted.

(2) Develop a community planning process that includes parents and family members, local school officials, teachers employed at schools within the eligible community, public housing resident organization members, when applicable, and public and private non-profit organizations that provide education, child protective services, or other human services to low-income, at-risk children and their families.

(3) Develop a concentrated strategy for implementation of a community planning process that targets clusters of at-risk children and youth in the eligible community.

It is strongly recommended that youth and local youth-serving agencies be included in the planning process.

Note: A Notice of Final Definition, Maximum Grant Award and Selection Criteria for the FY 1995 FACES Program is

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published in the ED section of this issue of the **Federal Register**.

Program Requirements: Applicants must propose to develop or expand programs designed to improve the academic and social development of at-risk students at selected public schools in eligible communities. To accomplish this goal, each grantee must institute a collaborative structure that trains and coordinates the efforts of teachers, administrators, social workers, guidance counselors, parents and school volunteers to provide concurrent social services.

Applicants may also propose a variety of optional activities to serve the comprehensive needs of at-risk students in the community. These activities may include, but are not limited to, homework assistance and after-school programs, including educational, social, and athletic activities; nutrition services; mentoring programs; family counseling; and parent training programs.

Eligible Community: Applicants must demonstrate that they are proposing to serve an identifiable community or neighborhood with boundaries that are generally recognized by the residents in the community and that is small enough to allow a concentration of resources and the potential for a measurable impact. The community must have a significant level of poverty, violent crime and juvenile delinquency.

Services for at-risk students must be offered at selected public schools in the eligible community.

Other Requirements: Applications developed in response to this priority area must contain a comprehensive plan describing the program that is designed to improve the academic and social development of at-risk children in schools in the community. The plan should articulate a vision for children, youth and their families and include community-wide strategies and interventions designed to prevent crime and change the environmental factors, circumstances and attitudes which put children and youth at risk of unhealthy and destructive behaviors.

Applicants must provide evidence of support for accomplishing the objectives of the comprehensive plan from community leaders; a school district; local officials; and other organizations that the applicant determines to be appropriate.

Applicants must also provide an estimate of the number of children in the eligible community expected to be served under the program.

Assurances: Applicants must provide the following program specific assurances: (1) That the applicant will use grant funds to implement the program requirements; (2) that the applicant will comply with any evaluation requested as part of the FACES program, any research effort authorized under Federal law, and any investigation by the Secretary; (3) that the applicant shall prepare and submit to the Secretary an annual report regarding any program conducted with these funds; (4) that funds made available under the FACES program shall be used to supplement, not supplant other federal funds that would otherwise be available for activities funded under this program; and (5) that the applicant will maintain separate accounting records for the program.

In addition, the standard assurances described in Part V, Section A–4 must be included. Forms for these assurances are included in this application package.

Applicants must address all of the relevant Application Evaluation Criteria found in Part III, below.

Priority Area C: Joint Community Schools/FACES Program

In order to receive an award under this priority, applicants must meet all requirements of both the FACES and the Community Schools Programs (Priorities A and B).

Eligible Applicants: Private, non-profit, locally initiated community-based organizations (CBOs) with a 501(c)(3) status that are operated by, or are members of, a consortium of service providers consisting of representatives from five or more of the following categories: (1) Residents in the community; (2) business and civic leaders actively involved in providing employment and business development opportunities in the community; (3) educators; (4) religious organizations, which shall not provide sectarian instruction or worship in connection with an activity funded under these grants; (5) law enforcement agencies; (6) public housing agencies; (7) other public agencies; and (8) interested parties. It is also strongly recommended that youth and local youth serving agencies be represented.

Applicants requesting funding under this priority area must work in partnership with a local educational agency and must develop an in-school component as part of the proposed program.

A single community-based organization or consortium must be the grantee and must assume responsibility for administrative and fiscal management and reporting. A community-based, private, non-profit organization that applies for funds, but is not a consortium, must involve other community organizations as equal partners in the development and implementation of the project.

Federally-recognized Indian Tribes are also eligible for funding under this priority area.

Program purpose: The ACYF and the OESE will award approximately 20 grants to community-based organizations for $500,000 to $1,000,000 per year for implementation of Joint Community Schools/FACES Programs. Because of limited dollars, most programs will be funded at the lower end of this range. Successful grantees will receive funding to operate the program for five years, subject to the availability of funds, satisfactory progress, and determination that continued funding would be in the best interest of the government.

The intent to fund a significant number of joint projects reflects the Departments' commitment to collaboration. It is intended to provide greater flexibility and facilitate comprehensive community-wide interventions that will meet the developmental needs of children and youth in a holistic manner and prevent crime and violence. All stakeholders, including teachers, parents, social service providers, private sector and community leaders should be involved in the project as equal partners, which should result in community ownership of the program. The consolidation and joint operation of the program should result in a comprehensive and coherent continuum of care for children and youth on a daily and long-term basis, including academic, social and recreational services throughout the entire school day, into the evening hours, on weekends and holidays and during the summer months.

Projects funded under the Joint Community Schools/FACES program should provide a continuum of care that will significantly increase opportunities for children and youth to develop into physically and emotionally healthy, contributing members of society. In taking a developmental approach, these joint programs are expected to include plans to identify and meet the social and academic needs of children and youth that will be served jointly by the community and the school in a safe and violence-free environment.

Eligible Community: Applicants must demonstrate that they are proposing to serve an identifiable community or neighborhood with boundaries that are generally recognized by the residents in the community and that is small enough to allow a concentration of resources

and the potential for a measurable impact. The community must have a significant level of poverty, violent crime and juvenile delinquency.

Population to be Served: Children and youth, ages 5 through 18 who reside in the community, are eligible for participation in the program. While applicants may serve children and youth in the entire 5 through 18 age range, they are encouraged to identify a particular developmentally-defined age group to receive services to maximize the impact of the program.

Budget and Reporting: A single budget may be submitted, however, the budget must separate projected costs and non-Federal share for Community Schools and FACES programs as the required non-Federal share varies based on the funding source. Instructions in Part V below describe how this should be done. Applicants willing to comply with the highest non-Federal share requirements for a given year for both programs do not have to separate out Community Schools and FACES budgets.

The two Departments are currently developing financial and programmatic reporting requirements that will eliminate duplication and ease the reporting burden. Successful grantees will receive instructions on these requirements.

Applicants must address all of the Application Evaluation Criteria found in Part III, below.

Priority Area D: Program Evaluation

The following section describes the evaluation requirements that should be addressed by applicants, and the opportunities that may be available for organizations that successfully compete for grants under this program announcement. Applicants should also note that a national evaluation involving a sample of projects and cross-site data collection and analysis may be conducted by the Federal government

All Applicants

- All applicants must agree to cooperate with any national data collection, research and evaluation activities that are funded and/or coordinated by the Administration for Children and Families or the Office of Elementary and Secondary Education In addition, all applicants must demonstrate that key staff have the knowledge and experience needed to participate in these efforts.
- All applicants are required to submit a specific plan for the evaluation of their individual projects. The plan should provide for the collection and documentation of baseline, progress and outcome data on all phases of their projects, including planning and implementation; collaboration and coordination; on program participants, their family and neighborhood environments; on the nature, availability and access to services and resources; intensity and duration of services to be provided and on the possible effects of the programs on children, youth and community.

Grantees are required to periodically collect and maintain data that can be used to report annually to Congress on the number of children participating in the program; the academic achievement of such children; the school attendance and graduation rates of such children; and the number of such children being processed by the juvenile justice system. Technical assistance regarding the implementation of these evaluation activities will be provided to programs that receive grants under this program announcement.

Applicants for Joint Community Schools/FACES Programs

- Applicants for the Joint Community Schools/FACES Program are required to submit detailed plans for independent, third-party evaluations. The plans should include both implementation and impact components and use scientifically valid and rigorous evaluation designs. Applicants for the joint program must set aside a portion of their proposed budgets, but no more than 15% of the total budget, to carry out the evaluation plan.

Additional funding for such an evaluation may be available from private foundations and/or the Federal government. This possibility of receiving these additional funds will be explored with successful applicants.

- Applicants for the Joint Community Schools/FACES Program may be eligible to apply to the National Institutes of Health (NIH) for a Research Demonstration Grant to Enhance Services and Assessment. These grants would support program development and assessment. NIH has an interest in intervention research aimed at the prevention of aggressive behavior and violence and has set aside $1.8 million in FY 1995 for grants in this area. The funds will be awarded to researchers who establish partnerships with prospective applicants to the Joint Community Schools/FACES Program to enhance local interventions for at-risk youth and conduct a rigorous study of the implementation and impact of the interventions. This partnership would allow successful grantees to use all funds awarded under this announcement for program purposes and use the NIH funds for the evaluation. It is expected that fewer than five (5) of these research demonstration grants will be funded.

Major criteria for the award of the NIH funds will be research, training and achievements of the Principal Investigator and other research staff; demonstration of a collaborative relationship between the research organization and the Joint Community Schools/FACES Program applicant(s); and the extent to which representatives from the community are involved in all phases of the research from design through analysis and reporting. Technical assistance is available from NIH to Joint Community Schools/FACES Program applicants in forming these partnerships with interested and qualified researchers as well as in developing their project concept, plans and research methodology.

Since research plans must be integrated into the program initiative from the outset, it is important that interested applicants immediately contact James Breiling, Ph.D., Violence and Traumatic Stress Research Branch, National Institute of Mental Health, 5600 Fishers Lane, Parklawn Building 10c-24, Rockville, MD 20857. Dr. Breiling can be reached by telephone at (301) 443-3728 or by FAX at (301) 443-4045.

Priority Area E: Duration of the Project

This announcement solicits applications for five-year projects (60 months). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 60-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

Priority Area F Federal Share of the Project

The range of the Federal share of project costs is as follows:

Priority Area A, the Community Schools Program: The preferred range of Federal share for projects is between $250,000 and $500,000 for each 12-month period, but smaller grants will be entertained on an exception basis. All applications will be reviewed under the criteria found in Part III below and must show collaboration with and linkages to other community organizations. Applicants should refer to Part VI, Appendix B: Table of Community

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Schools Funding Allocations by State, to identify the amount of funds available for community-based organizations in their State.

Priority Area B, FACES Program: The range of Federal Share for projects is between $250,000 and $500,000 for each 12-month period.

Priority Area C, Joint Community Schools/FACES Program: The range of Federal Share for projects is between $500,000 and $1,000,000 for each 12-month period. Most of the grants will be funded at the lower end of the range.

Priority Area G Grantee Share of the Project

The applicant share of project is as follows:

Priority Area A, the Community Schools Program: The required non-Federal share is 25 percent of total project costs (i.e., Federal and non-Federal) for FYs 1995 and 1996, 30 percent for FY 1997, and 40 percent for FYs 1998 and 1999. For example, a project requesting $250,000 in Federal funds must include a match of at least $83,333 (25 percent of a total project cost of $333,333) for FYs 1995 and 1996. For FY 1997, the non-Federal match would be at least $107,142 for a total budget of $357,142. For FYs 1998 and 1999, the match is $166,666 per year for a total budget of $416,666 per year.

Priority Area B, The FACES Program: The applicant share of project costs for the FACES Program is 30 percent of total project costs.

Priority Area C, Joint Community Schools/FACES Program: Applicants must fulfill the non-Federal requirements for each individual program. See instructions in Part V, Section A.2. regarding construction of the budget.

For all applications submitted under this program announcement, at least 15 percent of the non-Federal match must be provided from private or nonprofit sources. The non-Federal share may be met by cash or in-kind contributions, fairly evaluated, including personnel, plant, equipment, and services. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. For the Community Schools Programs, however, funds appropriated by Congress for the activity of any agency of an Indian Tribal government or the Bureau of Indian Affairs of any Indian lands may be used to provide the non-Federal share for the cost of these programs.

Any applicant that does not provide the required percentage of non-Federal share will not be funded.

Part III. Application Evaluation Criteria

Applications submitted in response to this program announcement will be read and evaluated based on the application evaluation criteria. The point values following each criterion indicate the numerical weight each will be accorded in the evaluation. The information that follows each criterion includes those areas that applicants must address in their proposals.

Applicants should organize and present the Program Narrative section of the application in the order of the five Application Evaluation Criteria. It has been our experience that applications that are not organized according to the criteria and do not address all the criteria generally rate very poorly.

Criterion 1: Objectives and Need for Assistance (15 Points)

- Demonstrate the need for the assistance and identify existing gaps in services, infrastructure and opportunities that, if filled, will support the academic and social development of children and youth in the community and reduce crime and violence.
- Clearly state the measurable goals and objectives of the proposed project.
- Identify the geographic area to be served. Describe what makes the area an identifiable community or neighborhood and demonstrate that the community is small enough to allow a concentration of resources that will result in an appreciable difference for children, youth and the community itself.
- Provide data on the number, gender and ethnic/cultural background of the children and youth in the area. (This applies only to the use of funds for Community Schools and Joint Community Schools/FACES Programs.)

Criterion 2: Approach (30 Points)

- Describe the underlying child and youth development principles that will be employed as a framework for the program and discuss why this framework was chosen and how it will lead to the reduction of crime and violence. Identify the age group(s) of the children and youth to be served and explain the reasons for that choice. Indicate the period of time over which children and youth will receive services.
- Describe in detail how the applicant will achieve each of the goals and objectives listed above in Objectives and Need for Assistance and identify any unusual features of the program.
- Describe the continuum of services and activities that will be provided and indicate how those services will meet the academic, social and developmental needs of the participants and reduce crime and violence.
- Indicate how services and activities will take into account and be sensitive to cultural differences of children and youth being served, including racial and ethnic background, gender, religious beliefs, physical capacity and sexual orientation. Assure that funds will be used to provide academic programs, supervised sports programs and extra-curricula activities. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Describe if and how applicant will arrange for the provision of needed preventive health services and treatment, including initial physical examinations, first aid training, nutritional guidance, and substance abuse treatment where appropriate. Indicate how applicant will identify other funding sources for these services, using funds under this grant program for these purposes only as the dollar of last resort. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Identify the physical location(s) of the program and assure that public schools or other local facilities will be used. FACES applicants must propose to use public school facilities. Demonstrate that the location and the services are safe and secure and accessible to children, youth and families, in terms of days and hours of operation and sensitivity to the population served.
- Describe the consortium. Provide an agreement signed by each consortium member that identifies the organizational structure of the consortium including the overall leadership, membership requirements and responsibilities, decision-making procedures and fiscal and programmatic commitments, including generation of local support and contributions to non-Federal share. Identify a strategy to coordinate and deliver services between schools and community-based organizations, including youth-serving organizations; address fiscal, programmatic and other barriers to coordination; and indicate how these barriers will be addressed. Provide assurance that community leaders, businesses, local education agencies, local officials, State officials, Indian Tribal government offices and other appropriate organizations support the consortium. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

- Provide information that demonstrates the effort to generate local support for the program from community leaders, a school district, local officials and other organizations that the applicant determines to be appropriate.
- List State, Federal and foundation programs with which the applicant has coordinated, including Family Preservation and Family Support State planning efforts, Corporation for National and Community Service Projects, formally designated Empowerment Zones and Enterprise Communities, and/or the Pulling America's Communities Together (PACT) planning process. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Indicate to what extent a community planning process has occurred and the extent of the planning effort that still remains to be accomplished. Include information on the process and timing for the phase-in of services and other program components. Provide information on the manner in which any of the following groups have been or will be included in the planning and implementation of this effort: children, youth and family members; local school officials and teachers; business and civic leaders; religious organizations; museums, cultural and arts organizations; parks and recreation organizations; juvenile justice, law enforcement and community policing representatives; community residents, neighborhood associations and public housing groups; public and private non-profit organizations that provide education, child protective services, or other human services; and other appropriate entities such as social service, health and mental health agencies. Identify barriers to participation and indicate how those barriers will be overcome.
- Describe the strategy for recruiting children and youth into the program, including a strategy for recruiting those children and youth not connected to the school system. If appropriate, indicate how applicant will deliver services to the youth and/or family through outreach activities and home visits. Describe the terms and conditions for participation of children and youth, including mechanisms for obtaining written permission from parents or guardians and securing an application for participation. Describe the mechanism for assuring that an average attendance rate of not less than 75 percent is maintained for enrolled participants. In addition, describe the policy for identifying children or youth who are deemed a danger to themselves or others and for referring them to other more appropriate services. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Identify a collaborative structure that trains and coordinates efforts of administrators, social workers, guidance counselors, parents, teachers and school volunteers.
- Identify how youth, community volunteers and staff of community-based organizations will be trained. Provide assurance that applicant will cooperate and participate in training and technical assistance activities provided or sponsored by HHS. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Describe procedures for maintaining confidentiality of records on individual children, youth and families served. Identify how pertinent information about individuals can be appropriately shared with service providers and describe how data collection on program participation and will be conducted in a manner consistent with Federal regulations governing pupil privacy. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

Criterion 3: Results or Benefits Expected (15 Points)

- Describe the long and short term outcomes of the program. Indicate, in measurable terms, appropriate indicators for assessment of program implementation and impact.
- Estimate the number and characteristics (gender, ethnicity and/or racial group, ages, academic standing, etc.) of the children and youth that will benefit from this project. (FACES applicants need only supply the number of children and youth to be served.)

Criterion 4: Program Evaluation (15 Points)

- Provide assurance that the applicant will cooperate with any data collection, research or evaluation efforts independently funded or sponsored by HHS and/or ED.
- Provide an evaluation plan for the proposed project that is thorough, feasible and appropriate. This evaluation must include collection of baseline data and identification and tracking of indicators that will show progress in program implementation and attainment of outcomes. These data should be collected in the areas of program planning; collaboration and coordination; and program implementation, including intensity, duration and location of services provided. Applicants for the Community Schools and Joint Community Schools/FACES programs should also collect baseline data on individual children and youth, their families and neighborhood environments. Applicants for FACES programs must include a plan for the assessment of social and academic achievement of children and youth served.
- Provide information on how the program will periodically collect and maintain data that can be used to report annually to Congress on the number of children participating in the program; the academic and social achievement of such children; the school attendance and graduation rates of such children; and the number of such children being processed by the juvenile justice system.
- Applicants applying for a Joint Community Schools/FACES Program must provide a plan for a third-party evaluation that is comprehensive; includes a rigorous scientifically valid evaluation design; and is capable of contributing to the state of knowledge in this field. Provide information on experience of the third-party evaluator.

Criterion 5: Staff Background and Organizational Experience (20 Points)

- Identify the skills, experience and educational requirements of key staff and indicate how they are relevant to the objectives of the project. Include résumés of individuals already chosen for positions. Identify recruitment strategies that will be used to identify potential staff and volunteers, especially those that will be used to hire staff that reflect or come from the community.
- Demonstrate the ability to effectively manage the project including the ability to lead community prevention efforts, coordinate activities with schools and other agencies and participate in or develop evaluation activities.
- Provide assurances that staff-to-participant ratio (including volunteers) is appropriate to the activities and service provided. Demonstrate that this ratio reflects the opportunity for children and youth to develop positive, consistent and nurturing relationships with adults. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

Criterion 6: Budget Appropriateness (10 Points)

- Discuss the costs of the proposed project in terms of children, youth and neighborhoods served. Include funds in the budget, as appropriate, for training

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and technical assistance, evaluation and the cost of up to 3 annual trips to Washington, D.C. for two people to participate in meetings and conferences.

• Explain and justify, in terms of amount and benefits to be derived, any use of Federal funds for minor renovation of existing facilities or for health or substance abuse treatment. Demonstrate that no more than five percent of Federal funds will be used to pay for the administrative costs of the program, especially if the applicant's approved indirect cost rate is higher than five percent. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Describe the fiscal control and accounting procedures that will ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement. Assure that competitive procedures will be used when purchasing contracting or otherwise providing goods, activities and services.

• Provide assurances that no funds from this project will be used to provide sectarian worship or sectarian instruction. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Provide evidence that the applicant can and intends to generate the local financial and in-kind support, service and commitments that will be required for non-Federal match over the life of the project. Provide a description of charitable, private and non-profit resources that will be obtained to support the program.

Part IV. Application Process

A. Application Requirements

To be considered for a grant under this program announcement, applications must be submitted on forms found in Part VI, Appendix C, and in accordance with guidance provided below. The application must be signed by an individual authorized to act for the applicant agency and assume responsibility for obligations imposed by the terms and conditions of grant award.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization with legal responsibility for the grant.

Any non-profit organization submitting an application must submit proof of its non-profit status with its application. Proof can include a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* a copy of the currently valid IRS tax-exemption certificate, *or* a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

B. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for grant applications under OMB Control Number 0348–0043.

C. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 19 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCS are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they must be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix A below.

D. Availability of Forms and Other Materials

To be considered, each application must be submitted on the forms provided in Part VI, Appendix C. The forms may be reproduced, as needed.

E. Application Consideration

All applications will be screened to determine eligibility of the applicant. Applications submitted by ineligible applicants will not be reviewed or considered for funding. Applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review against the specific Application Evaluation Criteria contained in Part III of this announcement. This review will be conducted in Washington, D.C. by teams of experts knowledgeable in the areas of child and youth development, education, drug and violence prevention, juvenile justice, social services, community development and related areas. The results of the competitive review will be analyzed by Federal staff who will recommend applications for funding as either joint or single program grants to the Assistant Secretary for Elementary and Secondary Education and/or the Commissioner for the Administration on Children, Youth and Families.

The Assistant Secretary and/or Commissioner will make the final selection of the applicants to be funded. Priority for funding will be given to applicants who propose to carry out projects and activities in communities that have significant poverty,juvenile delinquency and violent crime and who can demonstrate the greatest effort in generating local support for the program. In addition, the Assistant Secretary and/or Commissioner may show preference for applications proposing projects in diverse geographic areas that would not otherwise be served. Special consideration will be given to qualified applicants that meet the primary grant requirements and serve areas that are preparing or implementing comprehensive community-based strategic plans for achieving both human and economic development in an integrated manner, especially those applicants that operate within formally designated Empowerment Zones or Enterprise Communities or that have participated in the Pulling America's Communities Together (PACT) planning process.

In awarding Community Schools Program grants, the Commissioner may elect to consider an applicant's past performance in providing services to children and youth and may elect not to fund any applicant having known management, fiscal or other problems which make it unlikely that they would be able to perform effectively. Regional Offices will be consulted regarding these applications.

Grant awards of FY 1995 funds will be made by September 30, 1995. Subject to the availability of resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the Federal government may elect to select recipients for FY 1996 new grant awards out of the pool of applications submitted under this program announcement.

Successful grantees will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing as soon as possible after final funding decisions are made.

Part V: Application Content, Instructions, Assembly and Submission

A. Content, Instructions and Assembly of Application.

Each application must contain the following items in the order listed. Applicants should number all pages to make review and evaluation easier.

1. *Application for Federal Assistance.* (Standard Form 424, REV 4–88). To fill out this Form, follow the instructions in Part VI, Appendix C. In Item 8 of Form 424, check "New." In Item 10 of the 424, clearly identify the Catalog of Federal Domestic Assistance Program Number and Title of the program for which funds are being requested (Priority Area A: Community Schools Program (93.588); Priority Area B: FACES Program (84.285A); or Priority Area C: Joint Community Schools/ FACES Program (93.588 and 84.285A)).

2. *Budget Information.* (Standard Form 424A, REV 4-88). Provide amounts for major budget categories.

For a budget submitted in response to Priority Area C: Joint Community Schools/FACES Program, Columns 1–4 of Section B of the Standard Form 424 should include the following information: Column 1: FACES Federal Costs; Column 2: FACES Non-Federal Share; Column 3: Community Schools Federal Costs; and Column 4: Community Schools Non-Federal Share.

3. *Budget Justification.* List on standard size plain white paper the amounts and sources of all funds, both Federal and non-Federal, that will be used for this project. Explain how these funds will be used.

4. *Assurances.* (Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, Certification Regarding Lobbying and Certification Regarding Environmental Tobacco Smoke). Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. Note: For FACES and Joint Community Schools/ FACES Programs the Program Specific Assurances Form must also be signed and returned with the application. By signing the Standard Form 424, the applicant agrees to abide by requirements regarding drug-free workplace, debarment and environmental tobacco smoke.

5. *Project Summary Description.* Clearly mark this page with the applicant's name as shown in item 5 of the Standard Form 424 and the title of the project as shown in item 11 of the same Form. The summary, not to exceed one page, should accurately and concisely reflect the proposal and include a description of the objectives of the project, approaches to be used and outcomes expected.

6. *Program Narrative Statement.* Applicants should use the Evaluation Criteria in Part III as a way to organize the Program Narrative and should address all the specifics contained in the criteria. The pages of the narrative section must be numbered and are limited to 45 typed pages, double spaced, printed only on one side, with at least 1/2 inch margins. Applications which contain a Program Narrative Statement longer than 45 double-spaced pages will not be reviewed or considered for funding. In addition, please note that previous attempts by applicants to exceed page limits or to circumvent space limitations by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application. It is in the best interest of applicants to ensure that the narrative statement is easy to read, logically developed in accordance with evaluation criteria and adheres to page limitations.

7. *Organizational Capability Statement.* Applicants must provide information (no more than three pages, double-spaced) on the applicant agency's experience and ability to bring together a broad consortium of organizations; and on planning and management capabilities. Applicants should provide and explain an organizational chart and show the relationship of this project to the current organization.

Applicants must provide assurances that a separate accounting system will be established to manage funds awarded under this program and that competitive procedures will be used for all project-related contracts and purchases.

8. *Supporting Documentation.* These documents might include resumes, newsclippings, and evidence of efforts to coordinate services at the local level. The maximum for supporting documentation is 15 pages, exclusive of letters of agreement. Documentation over the 15 page limit will not be reviewed. The applicant may, however, include as many letters of agreement as are appropriate to support the commitment of consortium members.

B. Application Submission

To be considered for a grant, each applicant must submit a signed original and two additional copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have an original signature, signed in black ink. Each copy must be stapled (back and front) in the upper left corner. All copies of the application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or other items that cannot be processed easily on a photocopy machine with an automatic feed.

Closing Date for the Receipt of Applications: The closing date for receipt of applications for the grant programs in this announcement is May 5, 1995.

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Applications may be submitted to the following address: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447. Hand delivered applications will be accepted during normal working hours of 8 a m. to 4:30 p.m., Monday through Friday at the Administration for Children and Families, Division of Discretionary Grants, 6th floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20447.

Envelopes containing applications must clearly indicate the Program Announcement Number ACF-93588.951 and the priority area that the application is addressing: Priority Area A: Community Schools Program; Priority Are B: FACES Program; or Priority Area C: Joint Community Schools/FACES Program.

Deadline: Applications will be considered as meeting the deadline if they are received on or before the receipt date at the above address. *Please note that this is a departure from the traditional approach of using post marks instead of receipt date to determine eligibility of application for review.*

Late Applications: Applications which do not meet the criteria stated above and are not received by the receipt date are considered late applications. These applications will not be reviewed or considered for funding.

Extension of Deadline. The granting agency may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Number 84.285A for the FACES Program and Number 93.588 for the Community School Program.)

Dated: February 27, 1995.

Thomas Payzant,

Assistant Secretary, Office of Elementary and Secondary Education.

Dated February 27, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Appendix A

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW, Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jefferey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640. Fax (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Board Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr Daniel W Varin, Association Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to:

Linda Clarke, Telephone (809) 774–0750

Appendix B

PART VI: APPENDIX B.—TABLE OF COMMUNITY SCHOOL FUNDING ALLOCATIONS BY STATE

Regions and states	State allocations
Region I	
Connecticut	$250,000
Maine	250,000
Massachusetts	301,486
New Hampshire	250,000
Rhode Island	250,000
Vermont	250,000
Region II	
New Jersey	314,575
New York	1,329,456
Puerto Rico	1,044,840
Virgin Islands	250,000
Region III	
Delaware	250,000
District of Columbia	250,000
Maryland	250,000
Pennsylvania	580,467
Virginia	297,723
West Virginia	250,000

PART VI: APPENDIX B.—TABLE OF COMMUNITY SCHOOL FUNDING ALLOCATIONS BY STATE—Continued

Regions and states	State allocations
Region IV	
Alabama	352,025
Florida	887,552
Georgia	586,084
Kentucky	295,851
Mississippi	370,850
North Carolina	526,165
South Carolina	385,729
Tennessee	286,488
Region V	
Illinois	898,787
Indiana	265,891
Michigan	584,211
Minnesota	250,000
Ohio	762,096
Wisconsin	277,126
Region VI	
Arkansas	250,000
Louisiana	563,614
New Mexico	250,000
Oklahoma	250,000
Texas	1,492,361
Region VII	
Iowa	250,000
Kansas	250,000
Missouri	338,918
Nebraska	250,000
Region VIII	
Colorado	250,000
Montana	250,000
North Dakota	250,000
South Dakota	250,000
Utah	250,000
Wyoming	250,000
Region IX	
American Samoa	250,000
Arizona	273,381
California	2,357,443
Guam	250,000
Hawaii	250,000
Northern Marianas	250,000
Nevada	250,000
Region X	
Alaska	250,000
Idaho	250,000
Oregon	250,000
Washington	250,000
Native American Pgms	750,000

Appendix C—Forms and Instructions

BILLING CODE 4184–01–P

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1 TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2 DATE SUBMITTED	Applicant Identifier
	3 DATE RECEIVED BY STATE	State Application Identifier
	4 DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5 APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6 EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8 TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify) _____

7 TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State H Independent School Dist
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

9 NAME OF FEDERAL AGENCY:

10 CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐
TITLE

11 DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12 AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13 PROPOSED PROJECT		14 CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a Applicant	b Project

15 ESTIMATED FUNDING		
a Federal	$	00
b Applicant	$	00
c State	$	00
d Local	$	00
e Other	$	00
f Program Income	$	00
g TOTAL	$	00

16 IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17 IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18 TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9				
10.				
11				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16	$	$	$	$
17				
18.				
19				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21 Direct Charges:	22. Indirect Charges:
23 Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6 a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Nonconstruction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

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U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BUILDING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. **Report Type:** ☐ a. initial filing ☐ b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable* _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

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[For the Family and Community Endeavor Schools Grant Program (FACES) under the Violent Crime Control and Law Enforcement Act]

Assurances

The applicant hereby makes the following program-specific assurances covering the Family and Community Endeavor Schools (FACES) Grant Program:

- The applicant will use grant funds received under this program to implement the program requirements;
- The applicant will comply with any evaluation requested as part of the FACES program, any research effort authorized under Federal law, and any investigation by the Secretary;
- The applicant shall prepare and submit to the Secretary an annual report regarding any program conducted with these funds;
- Funds made available under the FACES program shall be used to supplement, not supplant, other federal funds that would otherwise be available for activities funded under this program;
- The applicant will maintain separate accounting records for the program.

The applicant further agrees to:

- Cooperate with any data collection, research or evaluation efforts independently funded be sponsored by HHS and/or ED.

Name of Applicant

Program

Signature

Date

[FR Doc. 95–5331 Filed 3–3–95; 8:45 am]

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federal register

Monday
March 6, 1995

Part VII

Department of Education

Family and Community Endeavor Schools Grant Program; Notice

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DEPARTMENT OF EDUCATION

RIN 1810–ZA01

Family and Community Endeavor Schools Grant Program

AGENCY: Department of Education.

ACTION: Notice of final definition, maximum award amount, and application evaluation criteria for fiscal year 1995.

SUMMARY: The Secretary announces the final definition, maximum award amount, and application evaluation criteria for the Family and Community Endeavor Schools Grant Program for fiscal year 1995. The Secretary takes this action to comply with the statute, the Violent Crime Control and Law Enforcement Act of 1994, and to ensure appropriate criteria by which to evaluate applications under this Act.

EFFECTIVE DATE: The definition, maximum grant award, and application evaluation criteria take effect on April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Charlotte Dalton Gillespie, U.S. Department of Education, 600 Independence Avenue SW., Portals Building, Room 603, Washington, DC 20202–6123. Telephone (202) 260–3954. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: The purpose of the Family and Community Endeavor Schools Grant Program is to prevent crime and violent behavior by providing programs designed to improve the academic and social development of at-risk children and youth in eligible communities during and after school hours, evenings, on weekends, and during holidays and the summer months. This notice contains the definition of an eligible community, the maximum grant award, and final evaluation criteria by which applications for funds will be evaluated in fiscal year 1995.

Congress authorized the Family and Community Endeavor Schools Grant Program under Title III, Subtitle D of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994. This legislation mandates the implementation of two similar programs under Subtitle D: The Community Schools Youth Services and Supervision Grant Program (Community Schools) through the Department of Health and Human Services and the Family and Community Endeavor Schools Grant Program (FACES) through the Department of Education. As the needs of children, youth, and communities can best be served by integrating the two programs, the Departments of Health and Human Services and Education have jointly developed an announcement of the availability of funds under these two programs.

Note: The definition, maximum grant award, and evaluation criteria outlined in this notice apply only to the FACES program operated through the Department of Education. A notice inviting applications for Community Schools, FACES, or a joint Community Schools/FACES program—all three programs—is published in the Department of Health and Human Services section of this issue of the **Federal Register**

Authority for the FACES program is contained in 42 U.S.C. 13792 and 13793.

Definition

Eligible Community means—

(1) An identifiable community or neighborhood with boundaries generally recognized by the residents in the community;

(2) A community that is small enough to allow a concentration of resources and the potential for a measurable impact; and

(3) A community that can demonstrate that it has a significant level of poverty, violent crime, and juvenile delinquency.

(Authority: 42 U.S.C. 13792, 13793)

Maximum Grant Award

The maximum award for a FACES grant is $500,000. (The Violent Crime Control and Law Enforcement Act of 1994 sets a minimum FACES grant award of $250,000.)

Application Evaluation Criteria

The Secretary uses the following criteria to evaluate applications under this program:

(a) *Objectives and need for assistance* (15 points). The Secretary reviews each application to determine the extent to which the project clearly specifies goals and service objectives; identifies a geographic area to be served; and demonstrates that the area has a significant level of poverty, violent crime, and juvenile delinquency Applicants must—

(1) Demonstrate a need for assistance and identify existing gaps in services, infrastructure, and opportunities that, if filled, will support the academic and social development of children and youth in the community and reduce crime and violence;

(2) Identify measurable goals and objectives of the proposed project; and

(3) Identify the geographic area to be served, describe the factors that make the area an identifiable community or neighborhood, and demonstrate that the community is small enough to allow a concentration of resources that will result in an appreciable difference for children, youth, and the community.

(b) *Approach (30 points).* The Secretary reviews each application to determine the overall quality and appropriateness of its comprehensive plan to improve the academic and social development of at-risk children. The applicant must—

(1) Describe the underlying child and youth development principles that will be employed as a framework for the program and discuss why this framework was chosen and how it will lead to the reduction of crime and violence;

(2) Identify the age groups to be served, explain the reasons for that choice, and indicate the period of time over which children and youth will receive services;

(3) Describe in detail how the applicant will achieve each of the goals and objectives identified in the application and identify any unusual features of the program;

(4) Describe the continuum of services and activities that will be provided and indicate how these services will meet the academic, social, and developmental needs of the participants and reduce crime and violence;

(5) Identify the physical location of the program and demonstrate that the location and services are safe, secure, and accessible to children, youth, and families in terms of days and hours of operation and sensitivity to the population served;

(6) Provide information that demonstrates the extent to which the applicant has attempted to generate local support for the program from community leaders, a school district, local officials, and other organizations that the applicant determines to be appropriate;

(7) Indicate the extent to which a community planning process has occurred and the extent of the planning effort that remains to be accomplished; include information on the process and timing for the phase-in of services and other program components; and information on how the following groups have been or will be included in the planning and implementation of the program—

(i) Children, youth, and family members;

(ii) Local school officials and teachers

(iii) Business and civic leaders;

(iv) Religious organizations;

(v) Museums, cultural and arts organizations;

(vi) Juvenile justice, law enforcement and community policing representatives;

(vii) Community residents, neighborhood associations and public housing groups;

(viii) Public and private non-profit organizations that provide education, child protective services, or other human services;

(ix) Other appropriate entities such as social service, health and mental health agencies; and a description of barriers to participation and how these barriers will be overcome; and

(8) Identify the applicant's plan for a collaborative structure that trains and coordinates the efforts of administrators, social workers, guidance counselors, parents, teachers, and school volunteers.

(c) *Results or benefits expected* (15 points). The Secretary reviews each application to determine the results and benefits to be derived from the project. The applicant must—

(1) Describe the long- and short-term outcomes of the program and indicate, in measurable terms, appropriate indicators for assessment of program implementation and impact; and

(2) Estimate the number of children and youth that will be served.

(d) *Program evaluation* (15 points). The Secretary considers the quality and thoroughness of the applicant's plan to evaluate the program, including an assessment of the academic and social achievement of children assisted by the program. The applicant must—

(1) Provide assurances that it will cooperate with any data collection, research or evaluation efforts independently funded or sponsored by HHS and/or ED;

(2) Provide an evaluation plan for the project that is thorough, feasible, and appropriate; that includes collection of baseline data and identifies and tracks indicators that will show progress in program implementation and attainment of outcomes, including program planning, collaboration and coordination, and intensity, duration and location of services provided; and that assesses the social and academic achievement of children and youth served; and

(3) Provide information on how the program plans to periodically collect and maintain data that can be used to report annually to Congress on the number of children participating in the program; the academic and social achievement of such children; the school attendance and graduation rates of such children; and the number of such children being processed by the juvenile justice system.

(e) *Staff background and organizational experience* (20 points). The Secretary reviews each application to determine the skills, experience, and educational background of key personnel the applicant plans to use on the project. The applicant must—

(1) Identify the skills, experience, and educational requirements of key staff and indicate how they are relevant to the objectives of the project; provide résumés of individuals already chosen for positions and identify recruitment strategies that will be used to identify potential staff and volunteers, especially those that will be used to hire staff that reflect or come from the community; and

(2) Demonstrate the staff's ability to effectively manage the project, including the ability to lead community prevention efforts, coordinate activities with schools and other agencies and participate in or develop evaluation activities.

(f) *Budget appropriateness* (10 points). The Secretary reviews each application to determine that the project's costs are reasonable in view of the anticipated results and benefits. The applicant must—

(1) Identify the costs of the proposed project in terms of children, youth, and neighborhoods to be served; include funds in the budget, as appropriate, for training and technical assistance, evaluation, and the cost of up to 3 annual trips to Washington, DC for two people to participate in meetings and conferences;

(2) Describe the fiscal controls and accounting procedures that will ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under this program, including assurance that competitive procedures will be used when purchasing contracting or otherwise providing goods, activities, and services; and

(3) Provide evidence that the applicant can and intends to generate the local financial and in-kind support, service, and commitments required for non-Federal match over the life of the project, including a description of charitable, private and non-profit resources that will be obtained to support the program. (Approved under Office of Management and Budget control number 1810–A158.)

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in fiscal year (FY) 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final notice of eligible community definition, maximum grant award, and selection criteria, which will apply only to the FY 1995 grant competition.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Authority: 42 U.S.C. 13792, 13793)

(Catalog of Federal Domestic Assistance Program Number 84.285, Family and Community Endeavor Schools Grant Program)

Dated: February 27, 1995

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–5332 Filed 3–3–95; 8:45 am]

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Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 33

Airworthiness Standards: Windmilling and Rotor Locking Tests, and Vibration and Vibration Tests; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 28107; Notice No. 95–3]

RIN 2120–AF57

Airworthiness Standards; Windmilling and Rotor Locking Tests, and Vibration and Vibration Tests

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to change the windmilling and vibration airworthiness standards for the issuance of original and amended type certificates for aircraft engines. This proposal resulted from an effort to harmonize the Federal Aviation Regulations with European requirements being drafted by the Joint Aviation Authorities (JAA). The proposed changes, if adopted, would create one set of common requirements, that would reduce the regulatory burden on the aviation industry worldwide by eliminating the need for applicants for type certificates to comply with different sets of standards when seeking certifications from the FAA and JAA.

DATES: Comments must be submitted on or before June 5, 1995.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28107, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28107. Comments may be inspected in Room 915G weekdays between 9:00 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Golinski or Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 238–7119; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit written data, views, or arguments on this proposed rule. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. all comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28107." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Part 33 of title 14 of the Code of Federal Regulations (14 CFR part 33, hereafter "part 33") prescribes airworthiness standards for the issuance of original and amended type certificates for aircraft engines. Part E of the Joint Aviation Requirements (JAR–E) prescribes corresponding airworthiness standards of the European Joint Aviation Authorities (JAA). While part 33 and JAR–E are similar, they differ in several respects. Non-uniform standards impose a regulatory burden on applicants seeking certification under both sets of standards in the form of additional costs and delays in the time required for certification.

As part of its commitment to promote harmonization of part 33 and JAR–E, the FAA, with the cooperation of the JAA, established the part 33/JAR–E Authorities Engine Group to compare part 33 and JAR–E. This group included regulatory representatives from France, Canada, Germany, the United Kingdom, and the United States. The basis for the comparison was part 33, as amended through Amendment 11, and JAR–E, as amended through Change 7. As its initial effort, the study group focused on gas turbine engines and concentrated on JAR–E items that appeared to be more stringent than part 33. The identified differences were categorized into lists 1 and 2. List 1 included twenty items where the differences appear to be sufficiently significant to cause the JAA to apply additional conditions to U.S. manufacturers seeking JAA certification List 2 included requirements considered to be equivalent to the corresponding Federal Aviation Regulation (FAR) in part 33 based on FAA policy and practice.

In August 1989, at the request of the Aerospace Industries Association (AIA) and the Association Europeene Des Constructeurs De Materiel Aerospatial (AECMA), the FAA and JAA met in Paris, France, with aerospace industry representatives to initiate a process for resolving List 1 comparison issues. At an FAA/JAA management meeting in June 1992, in Toronto, Canada, seven part 33 engine "Harmonization's Terms of Reference" were introduced. Two of these initiatives, windmilling and rotor locking test requirements, and vibration and vibration test requirements, were contained in the FAA/JAA List 1 of twenty items. They were the first engine harmonization initiatives for which consensus was reached by study groups from domestic and international industry and airworthiness authorities. In December 1992, the FAA requested the Aviation Rulemaking Advisory Committee (ARAC) to further evaluate the proposals (57 FR 58840). This task, in turn, was assigned to the Propulsion Harmonization Working Group of ARAC. On June 18, 1993, the working group reported to the ARAC, which recommended to the FAA that the FAA proceed with rulemaking. This NPRM and a corresponding notice of proposed amendment (NPA) to JAR–E reflect the ARAC recommendations.

General Discussion of the Proposals

The proposals in the NPRM would harmonize U.S. regulations with existing and proposed requirements of the European Joint Aviation Authorities, codify current industry practices, and clarify existing requirements. Specifically, whey would (1) Clarify the existing requirement that excessive vibratory stresses may not be induced

throughout the declared flight envelope of the engine; (2) require that continued windmilling following engine shutdown must not create a hazard for the airplane; (3) expand the scope of vibration tests; (4) expand the applicability of rotor locking tests; and (5) clarify rotor locking and vibration test requirements.

Windmilling and Rotor Locking Test Requirements

Section 33.74 Windmilling

Parts 23 and 25 of title 14 of the CFR prescribe the airworthiness standards for airplanes. Sections 23.903(e)(2) and 25 903(c) in part, state that for turbine engine installations, the means for stopping the rotation of any engine need be provided only where continued rotation could jeopardize the safety of the airplane. JAR–E presently provides a safety objective for windmilling without oil.

This proposal would add a new section to state specific windmilling requirements that are consistent with the safety objectives of the airplane requirements in §§ 23.903(e)(2) and 25 903(c), which address control of engine rotation. The proposed new requirements would ensure that windmilling following engine shutdown in flight would not create a hazard for the airplane

This proposal was developed and agreed to by the ARAC Propulsion Harmonization working group. The proposed change contains language that would be common to the language proposed for JAR–E, thereby establishing equivalency and creating consistency between the two regulations. In addition, because an engine manufacturer must show compliance to the proposed § 33.74 which has safety objectives consistent with the corresponding airplane requirements for windmilling engines identified in §§ 23.903(e)(2) and 25 903(c), the engine manufacturer can provide this information directly to the airplane manufacturers to reduce the amount of analysis performed by the airplane manufacturers under §§ 23.903(e)(2) and 25.903(c), which could result in potential cost savings for the airplane manufacturers.

Section 33.92 Rotor Locking Tests

Section 33.92 currently specifies engine test requirements for engines installed on supersonic aircraft and also specifies an endurance test for turbine engine rotor stopping and locking devices. This proposal would delete the test requirements in § 33.92(a) and clarify the endurance test for rotor stopping and locking devices, that is applicable to all turbine engines that incorporate such a device. This proposed requirement will also be proposed in JAR–E, thereby harmonizing with part 33 and facilitating the harmonization of part 25 with JAR 25, by allowing deletion of JAR 25.903(c)(1), which addresses continued windmilling after loss of engine oil.

The proposed deletion of current § 33.92(a) is based on the service experience of the world's only supersonic commercial transport. The British/French Concorde has experienced a number of inflight engine shutdowns at supersonic speeds since 1974. In each of these incidents, because of the aerodynamic effect of drag and loss of thrust, speed was rapidly reduced to subsonic levels. Therefore, requirements for conducting prolonged engine windmilling tests at supersonic speeds are unnecessary.

The proposal would move the requirement that each engine incorporating a rotor locking device be shut down while operating at rated maximum continuous thrust from § 33.92(b)(1) to proposed § 33.92. Proposed revision § 33.92 would also require that the means for stopping and locking the rotor(s) must be operated as specified in the engine operating instructions.

The proposed revision to § 33.92 would clarify the endurance test requirements currently identified in § 33.92(b) by establishing that following rotor locking, the rotor(s) must be held stationary for five minutes while being subjected to the maximum torque that could result from continued flight in this condition. The harmonization review has established that the current requirement does not provide adequate information on how to run the test. Clarification is provided by the addition of a five minute test to confirm the durability of the system.

Vibration and Vibration Test Requirements

Section 33.63 Vibration

Section 33.63 currently contains vibration design and construction standards for aircraft engines. This proposal would clarify the existing text by adding the term "declared flight envelope" to ensure that excessive vibration stresses are not induced at all intended airborne and non-airborne conditions of operation. This proposal would harmonize the vibration requirements.

Section 33.83 Vibration Test

Section 33.83 prescribes the testing requirements that turbine engines must undergo to establish the aerodynamically induced system vibration (flutter) as well as the mechanically induced vibration characteristics of components that could induce failure. This proposal would delete the existing text and replace it with harmonized requirements. The harmonized requirements address some conditions that are currently being addressed by analysis in § 33.75.

Section 33.83(a). This proposal would replace the current text with new harmonized text to clarify the existing requirement that all components in each engine that may be subject to mechanically or aerodynamically induced vibratory excitations must undergo vibration surveys. These engine surveys shall be based upon an appropriate combination of experience, analysis, and component test and should address, as a minimum, blades, vanes, rotor discs, spacers, and rotor shafts. Substantive pre-certification activity (tests and analyses) is necessary for determining which engine components require verification by the engine certification process. The proposal retains the current practice of the FAA and JAA of limiting formal certification test requirements to only the final engine or major assembly rig vibration test.

The proposal would replace the phrase "at the maximum inlet distortion limit" with "throughout the declared flight envelope" to clarify that the engine must be tested to cover all intended airborne and non-airborne conditions of operation. Using the term "declared flight envelope" better describes the airworthiness objective of this section. This change results in no foreseen additional burden on applicants because industry practice has been to conduct vibration surveys throughout the declared flight envelope. This proposal would also move the requirement specifying the range of rotor speeds and power or thrust of the vibration surveys from current § 33.83(a) to proposed revised § 33.83(b).

Section 33.83(b). This proposal would revise this paragraph to reorganize and elaborate on existing requirements, introduce terminology relevant to flutter vibration, and achieve harmonization where differences currently exist between Part 33 and JAR–E. The proposed paragraph (b) would require the vibration tests to cover the ranges of physical rotor speeds, corrected rotor speeds, and engine power or thrust corresponding to operations throughout

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the declared flight envelope from idling speed up to 103 percent of the maximum rotor speed permitted for rating periods of 2 minutes or longer, and up to 100 percent of all other rotor speeds. The proposal would also add to the revised paragraph (b) a requirement that if there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended. If it becomes physically impossible to achieve these extended rotor speeds, it would have to be shown by analysis or other means that no harmful vibration exists. Engine manufacturing and build tolerances can result in peak stresses occurring at slightly different rotor speeds between engines and engine parts (i.e., blades) of the same type design. The speed extension, therefore, is intended to cover inherent engine-to-engine and blade-to-blade variations in vibratory response.

Section 33.83(c). The proposal would revise the current paragraph (c) and reword the existing text to harmonize and clarify the existing requirement. Current paragraph (c) requires that during the vibration test, each accessory drive and mounting attachment must be loaded with the load imposed by each accessory used only for aircraft service up to the limit load specified by the applicant for the engine drive or attachment point. The proposal would require that evaluations be made of the effects on vibration characteristics of operating with scheduled changes (including tolerances) to variable vane angles, compressor bleeds, accessory loading, the most adverse inlet air flow distortion pattern declared by the manufacturer, and the most adverse conditions in the exhaust duct(s).

Section 33.83(d) This proposal would add a new paragraph (d) that would require that the effects on vibration characteristics of likely fault conditions shall be evaluated by test, or analysis, or by reference to previous experience and be shown not to create a hazardous condition. Since U.S. engine manufacturers presently address and evaluate the effects of vibration characteristics through analysis in accordance with the requirements of § 33.75, this proposal would harmonize part 33 with JAR–E.

Section 33.83(e). This proposal would add a new paragraph (e). The current § 33.83(b) requires that vibration stresses of rotor and stator components be less, by a margin acceptable to the Administrator, than the endurance limit of the material from which these parts are made, adjusted for the most severe operating conditions. This proposal would slightly modify the text of the requirement by incorporating the standard industry practice of making due allowance for variations in material properties. Current industry practice is based on the FAA interpretation of the current requirement. The vibration stresses associated with the vibration characteristics determined under § 33.83 must be less than the endurance limits of the materials concerned, after making certain allowances. The suitability of these stress margins would have to be justified for each part and if it is determined that certain operating conditions, or ranges, need to be limited, operating and installation limitations would be established. The proposed new paragraph (e) would harmonize with existing JAR–E–650 provisions and conform with current component vibration testing practices.

Section 33.83(f). Proposed new paragraph (f) would require that compliance with § 33.83 be substantiated for each specific installation configuration that can affect the vibration characteristics of the engine. The proposed language would provide that if these vibrations cannot be fully investigated during engine certification, then the methods by which they can be evaluated and compliance shown shall be substantiated and defined in the installation documents required by § 33.5. The proposed amendment would codify current industry practice.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), an evaluation of the paperwork burden of this proposal is not required since there are no recordkeeping or reporting requirements associated with this proposed rule.

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analysis. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule (1) Would generate benefits outweighing its costs; (2) is not a "significant regulatory action" as defined in the Executive Order; (3) is not "significant" as defined in DOT's policies and procedures; (4) would not have a significant impact on a substantial number of small entities; and (5) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

Of the several proposals, only one might result in additional cost. The FAA has identified the requirements in proposed § 33.83(b) as the only one that could require minor additional engine testing and engineering analysis, resulting in negligible compliance costs. The reference to experience, analysis, and component tests in proposed § 33.83(a) should not impose additional costs since it incorporates current industry practice. The revised engine windmilling requirements of proposed new § 33.74 and the proposed amendments to § 33.92(a) could potentially result in cost savings to engine and transport airplane manufacturers. The FAA solicits comments from interested persons on the costs of the proposed rule.

The primary benefits of the proposed rule would be harmonization of airworthiness standards with the European Joint Aviation Requirements and clarification of existing standards. The resulting increased uniformity of standards would simplify airworthiness approval for import and export purposes and would avoid some of the costs that can result when manufacturers seek type certification under both sets of standards. While not readily quantifiable, the cost economies of harmonization would far exceed the minor incremental costs of the proposed rule.

Regulatory Flexibility Determinations

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on thresholds in implementing FAA Order 2100. 14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. aircraft engines to foreign countries and the import of foreign aircraft engines into the United States. Instead, the proposed standards would harmonize with existing and proposed standards of foreign authorities, thereby lessening restraints on trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, including the findings in the Regulatory Evaluation and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 33

Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 33 as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g).

2. Section 33.63 is revised to read as follows:

§ 33.63 Vibration.

Each engine must be designed and constructed to function throughout its declared flight envelope and operating range of rotational speeds and power/thrust, without inducing excessive stress in any engine part because of vibration and without imparting excessive vibration forces to the aircraft structure.

3. A new section 33.74 is added to read as follows:

§ 33.74 Windmilling.

If the engine continues to windmill after it is shut down for any reason while in flight, continued windmilling of that engine must not result in damage that could create a hazard to aircraft representing a typical installation during the maximum period of flight likely to occur with that engine inoperative.

4. Section 33.83 is revised to read as follows:

§ 33.83 Vibration test.

(a) Each engine must undergo vibration surveys to establish that the vibration characteristics of those components that may be subject to mechanically or aerodynamically induced vibratory excitations are acceptable throughout the declared flight envelope. The engine surveys shall be based upon an appropriate combination of experience, analysis, and component test and shall address, as a minimum, blades, vanes, rotor discs, spacers, and rotor shafts.

(b) The surveys shall cover the ranges of power or thrust, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minimum rotor speed up to 103 percent of the maximum rotor speed permitted for rating periods of two minutes or longer, and up to 100 percent of all other permitted rotor speeds, including those that are overspeeds. If there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended in order to quantify the phenomenon and to ensure compliance with the requirements of § 33.63.

(c) Evaluations shall be made of the effects on vibration characteristics of operating with scheduled changes (including tolerances) to variable vane angles, compressor bleeds, accessory loading, the most adverse inlet air flow distortion pattern declared by the manufacturer, and the most adverse conditions in the exhaust duct(s).

(d) The effects of likely fault conditions (such as, but not limited to, out-of balance, local blockage or enlargement of stator vane passages, fuel nozzle blockage, incorrectly scheduled compressor variables, etc.) on vibration characteristics, shall be evaluated by test or analysis, or by reference to previous experience and shall be shown not to create a hazardous condition.

(e) The vibration stresses associated with the vibration characteristics determined under this section must be less than the endurance limits of the materials concerned, after making due allowance for operating conditions and permitted variations in properties of the materials. The suitability of these stress margins must be justified for each part evaluated. If it is determined that certain operating conditions, or ranges, need to be limited, operating and installation limitations shall be established.

(f) Compliance with this section shall be substantiated for each specific installation configuration that can affect the vibration characteristics of the engine. If these vibration effects cannot be fully investigated during engine certification, the methods by which they can be evaluated and methods by which compliance can be shown shall be substantiated and defined in the installation documents required by § 33.5.

5. Section 33.92 is revised to read as follows:

§ 33.92 Rotor locking tests.

If windmilling is prevented by a means to lock the rotor(s), the engine must be subjected to a test that includes 25 operations of this means under the following conditions:

(a) The engine must be shut down from rated maximum continuous thrust or power, and

(b) The means for stopping and locking the rotor(s) must be operated as specified in the engine operating instructions while being subjected to the maximum torque that could result from continued flight in this condition; and

(c) Following rotor locking, the rotor(s) must be held stationary under these conditions for five minutes for each of the 25 operations.

Issued in Washington, DC, on February 22, 1995.

Daniel P. Salvano,

Acting Director of Aircraft Certification Service.

[FR Doc. 95–5419 Filed 3–3–95; 8:45 am]

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Part IX

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 2, et al.
Federal Acquisition Regulation; Simplified Acquisition Procedures, Federal Acquisition Computer Network Requirements (FACNET) and Electronic Contracting; Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

[FAR Case 94–770]

RIN 9000–AG18

Federal Acquisition Regulation; Simplified Acquisition Procedures/ FACNET

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the new simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

DATES: *Comments:* Comments should be submitted on or before May 5, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on April 3, 1995, at 9:30 a.m. in the GSA Auditorium on the first floor of the GSA Building.

Oral and Written Statements: Persons wishing to make oral or written statements at the public meeting should submit to the FAR Secretariat a copy of the presentation by March 29, 1995.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–770 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Diana Maykowskyj, Team Leader, Simplified Acquisition Procedures/ FACNET Team, on (703) 274–6307 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–755. Please cite FAR Case 94–770, Simplified Acquisition Procedures.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include the areas of commercial item acquisition, simplified acquisition procedures, the Truth in Negotiation Act and FACNET.

The terms "simplified acquisition" and "Federal Acquisition Computer Network (FACNET)" are defined by the Federal Acquisition Streamlining Act of 1994 (the Act). The Act defines the simplified acquisition threshold as $100,000. It limits use of simplified acquisition procedures by procurement activities not having certified Interim FACNET to procurements not exceeding $50,000. Use of simplified acquisition procedures is also limited to procurements not exceeding $50,000 if an agency does not have certified Full FACNET by January 1, 2000.

Review of the law and the proposed implementing rule requires that the difference between the simplified acquisition threshold and the use of simplified acquisition procedures be recognized. The simplified acquisition threshold is $100,000. The authority to use simplified acquisition procedures depends on implementation and proper certification of FACNET.

This rule proposes to incorporate FAR Subpart 4.5 for FACNET information and guidance. FAR Subpart 4.5 provides definitions, certification information, and exemptions in accordance with the Act. FAR case 91–104 ("Electronic Commerce") and this implementation of the Act are interdependent and are meant to be considered jointly. Reviewers are advised that FACNET is not a single electronic system that will be used by all executive agencies. It is, however, a universal electronic capability that will permit potential contractors to, as a minimum, obtain information on proposed procurements, submit questions, and receive awards on a government-wide basis. Each agency will determine the system(s) that will be used by its procuring activities so that they can certify Interim FACNET for those activities and Full FACNET for the agency. The Act and the proposed rule also provide for exempting individual procurements and procuring activities from the use of FACNET. This becomes significant when agencies certify Full FACNET which is based, in part, on the percentage of non-exempt transactions which were made through FACNET during the previous fiscal year.

Implementation of FACNET (Electronic Commerce) will include a vendor registration requirement for any business entity wishing to do business with the Government electronically. Contractor's information will be submitted to the Centralized Contractor Registration System in accordance with the Federal implementation conventions.

There are technical requirements and other procedures with respect to FACNET that are not appropriate for coverage in the FAR but are needed by executive agencies to fully implement FACNET. This information will be disseminated via other appropriate means.

Public Meeting. A public meeting will be held on April 3, 1995 at 9:30 a.m. in the GSA Auditorium to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR. Persons or organizations wishing to make presentations will be allowed 10 minutes each to present their views, provided they notify the FAR Secretariat, at (202) 501–4755. Written statements for presentation should be submitted to the FAR Secretariat by March 29, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

This rule overlaps in some areas with the "Electronic Commerce" rule (FAR case 91–104) appearing elsewhere in this issue of the **Federal Register**. Presenters are welcome to submit prepared statements concerning the "electronic commerce" rule to the extent that the statement has some interrelation with this simplified acquisition/FACNET rule.

Interested members of the public may obtain a copy of the desired rule from the FAR Secretariat, see **ADDRESSES** caption.

B. Regulatory Flexibility Act

The proposed rule may have a significant positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because it is designed to reduce the burden on entities desiring to do business with the Government and will apply to all large and small business entities, and all educational and non-profit organizations who are interested in participating in Government acquisitions. The proposed rule establishes the simplified acquisition threshold and sets forth policies and guidance for the implementation of FACNET pursuant to the Act. The implementation of FACNET will provide for electronic exchange of acquisition information between the private sector and the Federal Government that will increase the opportunities for vendors currently doing business with the Government, particularly small businesses. As a result of the Act, procurements between $2,500 and $100,000 are exclusively reserved for small business. It is recognized that an initial start-up cost will be incurred for purchase of personal computer, modem, software, and telephone lines estimated to be $1,500. Additionally, it is anticipated that most small businesses will subscribe to third party value added network (VAN) service to facilitate their communications with the Government's computers. The cost of advance subscription ranges from approximately $30 to $100 per month, depending on the type of services obtained. The benefit of increased business opportunities should far outweigh these initial start-up costs.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Council for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 94–770), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the proposed rule contains information collection requirements that need the approval of the Office of Management and Budget (OMB) under 44. U.S.C. 3501 *et seq.* Contractors will be required to electronically register with the Federal Contractor Registration System operated by the Defense Information Megacenter. The information to be provided electronically is information currently reported under several existing forms, including SF–129, Solicitation Mailing List Application, the SF–3881, ACH vendor/Miscellaneous Payment Enrollment Form, and the DD–2051, request for Assignment of a Commercial and Government Entity information pertaining to their EDI capabilities. Establishment of a central registration system should eliminate the need to submit multiple registrations with each contracting office the contractor is doing business with.

A request for approval of a new information collection requirement concerning simplified acquisition procedures is being submitted to the OMB. Public comments concerning this request are invited through a **Federal Register** notice published elsewhere in this issue.

List of Subjects in 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

Government procurement.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Chapter 1 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.201 is revised to read as follows:

2.201 Contract clause.

The contracting officer shall insert the clause at 52.202–1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold in Part 13. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.103–1 is amended by revising paragraph (a) to read as follows:

3.103–1 Solicitation provision.

* * * * *

(a) The acquisition is to be made under the simplified acquisition procedures in Part 13;

* * * * *

4. Section 3.104–10 is amended by revising paragraph (c) to read as follows:

3.104–10 Solicitation provision and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the simplified acquisition threshold (see 13.000) and all contracts and modifications to contracts exceeding that threshold which do not already contain the clause when the modification is expected to exceed that threshold.

* * * * *

5. Section 3.404 is amended by revising paragraphs (b)(1) and (c) to read as follows:

3.404 Solicitation provision and contract clause.

* * * * *

(b) * * *

(1) The contract amount is expected to be at or below the simplified acquisition threshold in Part 13;

* * * * *

(c) The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold.

6. Section 3.502–3 is revised to read as follows:

3.502–3 Contract clause.

The contracting officer shall insert the clause at 52.203–7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13.

7. Section 3.503–2 is revised to read as follows:

3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13.

PART 4—ADMINISTRATIVE MATTERS

8. Part 4 is amended by adding Subpart 4.5, consisting of sections 4.500 through 4.507, to read as follows:

Subpart 4.5—Electronic Commerce in Contracting

Sec.

4.500 Scope of subpart.
4.501 Definitions.
4.502 Policy.
4.503 Contractor registration.
4.504 FACNET functions.
4.505 FACNET certification.

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4.505–1 Interim certification.
4.505–2 Full certification.
4.505–3 Governmentwide certification.
4.505–4 Contract actions excluded.
4.506 Exemptions.
4.507 Contract actions using simplified acquisition procedures.

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of FACNET as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

4.501 Definitions.

"ANSI X12" means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). The American National Standards Institute is the coordinator and clearinghouse for national standards in the United States.

"Federal Acquisition Computer Network (FACNET)" means the governmentwide Electronic Commerce/Electronic Data Interchange systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

"Full FACNET" means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504 and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

"Governmentwide FACNET" means that the Federal government has certified its FACNET capability and more than 75 percent of eligible contracts in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

"Interim FACNET" means a contracting activity has been certified as having implemented a capability to provide widespread public notice of, and issue, solicitations and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

"Transaction Set" means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

"Value-Added Network (VAN)" means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

"Value-Added Service (VAS)" means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business systems support for customers.

4.502 Policy.

(a) The Federal government shall acquire supplies and services via FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of acquiring supplies and services exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103(b)).

(c) Contracting officers are authorized to use FACNET for any contract action governed by the FAR, unless specifically exempted by agencies.

(d) Before using electronic data interchange, agencies shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal government, the contractor must provide registration information to the Centralized Contractor Registration System.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

4.504 FACNET functions.

(a) FACNET shall allow agencies to do the following electronically—

(1) Provide widespread public notice of contracting opportunities, and issue solicitations;

(2) Receive responses to solicitations and associated requests for information;

(3) Provide public notice of awards of contracts and orders (including price);

(4) Receive questions regarding solicitations, if practicable;

(5) Issue contracts and orders, if practicable;

(6) Initiate payments to contractors, if practicable; and,

(7) Archive data relating to each procurement action.

(b) FACNET shall allow the private sector to do the following electronically:

(1) Access notices of solicitations;

(2) Access and review solicitations;

(3) Respond to solicitations;

(4) Receive contracts and orders, if practicable;

(5) Access information on awards of contracts and orders; and,

(6) Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable.

4.505 FACNET certification.

4.505–1 Interim certification.

A contracting activity is considered to have implemented interim FACNET if:

(a) The contracting activity has implemented the FACNET functions described in 4.504(a) (1) and (2), and (b) (1), (2), and (3); and issues notices of solicitations and receives responses to solicitations in a system having those functions.

(b) The contracting activity is using FACNET for contracts (not otherwise exempted, see 4.506), that exceed the micro-purchase threshold and do not exceed the simplified acquisition threshold;

(c) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense, has certified to the Administrator of OFPP that the contracting activity has implemented interim FACNET.

(d) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense, shall notify the private sector via the Commerce Business Daily that a contracting activity of the agency has certified interim FACNET. The notice shall establish a date after which it will be required that all responses to solicitations issued by the contracting activity through FACNET, must be submitted through FACNET, unless otherwise authorized.

4.505–2 Full certification.

An agency is considered to have implemented full FACNET if:

(a) The agency has implemented all of the FACNET functions described in 4.504; and

(b) During the preceding fiscal year, more than 75 percent of the agency's eligible contract actions, not otherwise exempted (see 4.506), that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold were made via FACNET; and

(c) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET.

(d) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET

4.505–3 Governmentwide certification.

The Federal Government is considered to have implemented Governmentwide FACNET if:

(a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies that exceeded the micro-purchase threshold and did not exceed the simplified acquisition threshold were made via full FACNET; and

(b) The Administrator of OFPP has certified implementation of governmentwide FACNET to the Congress.

4.505–4 Contract actions excluded.

For purposes of calculating the percentage of FACNET use referred to in 4.505–2 and 4.505–3, actions issued against established contracts, such as delivery orders, task orders, and in scope modifications shall not be included.

4.506 Exemptions.

The following contracts are exempted from the use of FACNET, as specified below, and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) Interim FACNET.

(1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost effective to process via FACNET. Such determinations shall be centrally maintained at the contracting activity.

(2) Contracts that do not require notice under subpart 5.202.

(b) Full FACNET—Contracts made by a contracting activity (or a portion of a contracting activity), if the activity is exempted from use of FACNET by the head of the agency or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense. Any such exemption shall be based on a written determination that FACNET processing is not cost effective or practicable for the contracting activity, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive or the Under Secretary of Defense for Acquisitions and Technology for the Department of Defense.

4.507 Contract actions using simplified acquisition procedures.

Contracting officers shall refer to section 13.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

9. Section 4.800 is revised to read as follows:

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to contracts made using the simplified acquisition procedures covered by Part 13 is optional. (See also documentation requirements in 13.106–2).

10. Section 4.804–1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

4.804–1 Closeout by the office administering the contract.

(a) * * *

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts other than those using simplified acquisition procedures should be closed within 6 months after the date in which the contracting officer receives evidence of physical completion.

* * * * *

11. Section 4.804–2 is amended by revising paragraph (a) to read as follows:

4.804–2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by regulation.

* * * * *

12. Section 4.805 is amended in the table in paragraph (b) by revising the entries in the "Document" column of paragraphs (b)(5), (10), (11), and (13) to read as follows:

4.805 Storage, handling and disposal of contract files.

* * * * *

(b) * * *

Document	Retention period
. . . . .	.
(5) Unsuccessful offers or quotations that pertain to contracts using simplified acquisition procedures	.....
. . . . .	.
(10) Records or documents other than those in paragraphs 4.805(b)(1)–(9) of this section pertaining to contracts using simplified acquisition procedures	.....
. . . . .	.
(11) Records or documents other than those in paragraphs 4.805(b)(1)–(10) of this section pertaining to contracts using simplified acquisition procedures	.....
. . . . .	.
(13) Solicited and unsolicited unsuccessful offers and quotations above the appropriate simplified acquisition threshold in Part 13	.....
. . . . .	.

PART 5—PUBLICIZING CONTRACT ACTIONS

13. Section 5.002 is amended by revising paragraph (c) to read as follows:

5.002 Policy.

* * * * *

(c) Assist small business concerns, small disadvantaged business concerns, and women owned small businesses in obtaining contracts and subcontracts.

14. Section 5.101 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(2) introductory text and (a)(2)(ii) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) As required by the Small Business Act (U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), and unless the contract action is being made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET, contracting officers shall disseminate information on proposed contract actions as follows:

(1) For contract actions expected to exceed $25,000, by synopsizing in the

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Commerce Business Daily (CBD) (see section 5.201); and

(2) For proposed contract actions expected to exceed $10,000 ($5,000 for Defense activities), but not expected to exceed $25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency. Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days or until after quotations have been opened, whichever is later.

* * * * *

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a)(1), (5) through (9) or (11) apply, or when oral solicitations are used. The exemption from display requirements does not relieve the contracting officer from the responsibility to consider all quotations timely received from responsible sources.

* * * * *

15. Section 5.202 is amended by adding paragraph (a)(13) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

13. The contract action is for an amount at or below $250,000 and is made through certified FACNET after Governmentwide FACNET has been certified. This exception does not apply when the contract action is not made through certified FACNET. (see Subpart 4.5)

* * * * *

16. Section 5.203 is amended by redesignating paragraphs (b) through (f) as (c) through (g), adding a new paragraph (b) and and revising newly designated (c), (d), and (e) to read as follows:

5.203 Publicizing and response time.

* * * * *

(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for each contract action, including actions via FACNET, in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold. The contracting officer should consider the circumstances of the individual procurement such as the complexity, commerciality (see Part 12), availability, and urgency when establishing the solicitation response time.

(c) Agencies shall allow at least a 30 day response time for receipt of bids or proposals from the date of issuance of a solicitation if the contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies shall allow at least a 45 day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development if the contract action is expected to exceed the simplified acquisition threshold.

* * * * *

17. Section 5.205 is amended by revising paragraph (d)(1) to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(1) Except when exempted by 5.202, synopsize each proposed contract action for which the total fee (including phases and options) is expected to exceed $25,000. Reference shall be made to the appropriate CBD Numbered Note.

* * * * *

18. Section 5.207 is amended by redesignating paragraphs (c)(2)(xi) through (c)(2)(xv) as (c)(2)(xii) through (c)(2)(xvi), adding new paragraph (c)(2)(xi), and revising newly redesignated (c)(2)(xiv) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xi) For a contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, enter (A) a description of the procedures to be used in awarding the contract (e.g., request for quotation or solicitation) and (B) the anticipated award date.

* * * * *

(xiv) In the case of noncompetitive contract actions insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

* * * * *

19. Section 5.301 is amended by adding a new (b)(7) to read as follows:

5.301 General.

* * * * *

(b) * * *

(7) The contract action is for an amount greater than $25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been made through FACNET.

* * * * *

20. Section 5.303 is amended by revising the introductory text of paragraph (b) to read as follows:

5.303 Announcement of contract awards.

* * * * *

(b) *Local announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold in 13.000, they shall include—

* * * * *

21. Section 5.503 is amended by revising paragraph (c)(1), to read as follows:

5.503 Procedures.

* * * * *

(c) *Forms.* (1) When contracting directly with the media for advertising, contracting officers:

(i) Shall use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the simplified acquisition threshold; or

(ii) May use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the threshold for use of simplified acquisition procedures (see Part 13).

* * * * *

PART 6—COMPETITION REQUIREMENTS

22. Section 6.001 is amended by revising paragraph (a) to read as follows:

6.001 Applicability.

* * * * *

(a) Contracts awarded using the simplified acquisition procedures of Part 13;

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

23. Section 8.203–1 is amended by revising paragraph (a)(1) to read as follows:

8.203–1 Contract clause and solicitation provision.

(a) * * *

(1) Contract actions not exceeding the simplified acquisition threshold under Part 13;

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

* * * * *

24. Section 9.405–2 is amended by revising the second sentence of paragraph (b) introductory text to read as follows:

9.405–2 Restrictions on subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of the simplified acquisition threshold with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

25. Section 9.409 is revised to read as follows:

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibilities Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.209–6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds the simplified acquisition threshold.

26. Section 9.507–1 is amended by revising paragraph (c) to read as follows:

9.507–1 Solicitation provisions.

* * * * *

(c) The contracting officer shall insert the provision at 52.209–8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed the simplified acquisition threshold.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

27. 13.000 is revised to read as follows.

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction and research and development, the aggregate amount of which does not exceed the simplified acquisition threshold (see 13.103(b)). See 36.602–5 for simplified procedures to be used when acquiring architect-engineering services.

28. 13.101 is amended by revising the definitions of "bulk funding," "delivery order," and "purchase order,"; removing the definitions of "small purchase," and "small purchase procedures," and adding, in alphabetical order, definitions for "imprest fund," "simplified acquisition procedures," and "simplified acquisition threshold".

13.101 Definitions.

"Bulk funding," means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligation authority on each purchase document.

"Delivery Order," means an order for supplies or services placed against an established contract or with Government sources of supply.

* * * * *

"Imprest Fund," means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

* * * * *

"Purchase order," as used in this part, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

"Simplified acquisition procedures," means the methods prescribed in this part for making purchases of supplies or services using imprest funds, purchase orders, blanket purchase agreements, governmentwide commercial purchase cards, FACNET or any other appropriate authorized method. Contracting Officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of Part 13. For example, the procedures of other FAR Parts may, as appropriate, be adapted for use in awarding contracts under this part. Other FAR Parts that may be adapted include, but are not limited to, (1) Part 14, Sealed Bidding; (2) Part 15, Contracting by Negotiation; (3) Part 12, Acquisition of Commercial Items; or (4) Part 36, Construction and Architect-Engineer Contracts, including the use of Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

"Simplified acquisition threshold," means $100,000 (but see 13.103(b)). In the case of any DoD acquisition to be awarded and performed, or purchase to be made, outside the United States in support of a military contingency operation (10 U.S.C. 101(a)(13)), the term means $200,000.

29. 13.102 is revised to read as follows:

13.102 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to (a) reduce administrative costs; (b) improve opportunities for small business, small disadvantaged business, and women owned small business concerns to obtain a fair proportion of Government contracts; (c) promote efficiency and economy in contracting; and, (d) avoid unnecessary burdens for agencies and contractors.

30. 13.103 is revised to read as follows:

13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold unless requirements can be met by using required sources of supply (see Part 8).

(b) Simplified acquisition procedures may not be used for contract actions exceeding $50,000, and not exceeding the simplified acquisition threshold, unless the contracting activity making the purchase has been certified as having interim FACNET. The contracting activity shall not use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, unless the activity's cognizant agency has certified full FACNET capability pursuant to section 4.505–2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated

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to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold shall not be broken down into several purchases that are less than the threshold merely to permit negotiation under simplified acquisition procedures.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) FACNET is the preferred means for effecting the acquisition of supplies and services, including construction and research and development, in amounts exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.

(f) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond.

31. 13.104 is revised to read as follows:

13.104 Procedures.

(a) Contracting officers shall make awards under this part in the simplified manner that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under simplified acquisition procedures as prescribed in section 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments when using simplified acquisition procedures (see Subpart 25.3).

(f) For proposed purchases covered by this part, see 5.101 for public display requirements.

32. 13.105 is revised to read as follows:

13.105 Small Business Set-asides.

(a) Except as provided in paragraphs (b), (c), and (d), of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold (see Subpart 13.6) and not exceeding $100,000, is reserved exclusively for small business concerns and shall be set-aside (see 19.503–3).

(b) The requirements of this section apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000). Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

(c) The requirements of this section do not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts.

(d)(1) Each written solicitation under a small business set-aside shall contain the provision at 52.219–6, Notice of Total Small Business Set-Aside. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.402.

(3) If the contracting officer proceeds with the set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106–2(a)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis.

(4) When proceeding under 13.105(d)(1) or (2), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106–1(a)(7)).

(5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.

(6) Nothing in this section 13.105 shall preclude award, using simplified acquisition procedures, of an acquisition exceeding the micro-purchase threshold and not exceeding $50,000 ($100,000 when FACNET has been implemented) under:

(i) 19.8, Contracting with the Small Business Administration;

(ii) 19.1006(c), emerging small business set-asides; or

(iii) 19.503–2, as a small disadvantaged business set-aside.

(7)(i) Acquisitions exceeding the micro-purchase threshold in Subpart 13.6 and not in excess of $25,000 for supplies and services in the four designated industry groups pursuant to the Small Business Competitiveness Demonstration Program (see 19.10) are set-aside for emerging small businesses.

(ii) For acquisitions exceeding $25,000 in the four designated industry groups pursuant to the Small Business Competitiveness Demonstration Program, see 19.10.

33. 13.106 text is removed and the heading is revised to read as follows:

13.106 Purchases exceeding the micro-purchase threshold.

34. 13.106–1 is added to read as follows:

13.106–1 Soliciting competition, evaluation of quotes, and award.

(a) *Soliciting competition.* (1) Contracting officers shall solicit a reasonable number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, based, as appropriate on either price alone, or price and other factors (e.g., past performance and quality considered, including the administrative cost of the purchase). Requests for quotations or solicitations shall notify suppliers that award is to be made based on price alone, or price and other factors.

(2) FACNET is the preferred method of soliciting and awarding simplified acquisitions. However, if FACNET is not available, or the contracting officer has made a determination that it is not practicable or cost effective to process a specific purchase via FACNET, or the head of the contracting activity has made a determination that it is not practicable or cost effective to process a class of purchases via FACNET (see Subpart 4.506), quotations may be solicited through other appropriate means. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not to exceed $25,000 when FACNET is not available or a determination has been made that it is practicable or cost effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed $25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Solicitations for construction contracts over $2,000 shall only be issued electronically or by paper solicitation.

(3) When not soliciting quotations electronically, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the trade area in which the contracting office is located for actions that do not exceed $25,000. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not exceed $25,000. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(4) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source being reasonably available (e.g., only one available source, urgency).

(5) Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, nor shall quotations be solicited on a personal preference basis. If required to maintain a list of sources, new supply sources disclosed through trade journals or other media, shall be continuously reviewed and, if appropriate, added to the list.

(6) Consistent with the applicable principles in 14.407–3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(7)(i) Unless exempted from this requirement by the head of the contracting activity or purchases are made through FACNET, each contracting office should maintain a source list (or lists, if more convenient) and should record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Women-owned small business.

(ii) The status information should be used to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(b) *Evaluation of quotes.* (1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (e.g., past performance, or quality). When evaluating quotations or offers on price and other factors, contractor's quotations or offers shall be evaluated solely on the basis of criteria established in the solicitation. Methods to accomplish this may include, but are not limited to simplified solicitations, streamlined evaluation methods, and award with simplified award documentation. Formal evaluation plans, conduct of discussions and scoring of quotes or offers are not required. Evaluation of other factors does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge, previous experience, or customer surveys.

(2) If suppliers furnish standing price quotations on supplies or services required on an intermittent and recurring basis, the information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. The buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum discounts.

(3) Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(4) Contracting officers shall comply with the policy in section 7.202 relating to economic purchase quantities, when practicable.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and request it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award which was based on other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.

35. 13.106–2 is added to read as follows:

13.106–2 Data to support purchases.

(a) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased or any other reasonable basis.

(b) When other than price related factors are considered in selecting the supplier (see 13.106–1(b)(1)), the contracting officer shall document the file to support the final contract award decision.

(c) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(d) Simplified documentation practices should be used. The following illustrate the extent to which quotation information should be recorded.

(1) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) Written (see 2.101) solicitations. Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or

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suppliers contacted, and other pertinent data.

(e) Purchasing offices shall retain data supporting purchases using simplified acquisition procedures to the minimum extent and duration necessary for management review purposes. (See Subpart 4.8)

36. 13.107 is revised to read as follows:

13.107 Solicitation forms.

(a) Except when quotations are solicited via FACNET or orally, Standard Form 18, Request for Quotations (illustrated in 53.301–18), is available, but not required, for use by all agencies.

(b) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.

(c) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or electronically.

(d) Each agency-designed request for quotations form shall conform with Standard Form 18, insofar as practical.

(e) When using an unsigned electronic purchase orders (see 13.506) for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

37. 13.108 is revised to read as follows:

13.108 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a suppliers quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(b) When appropriate, the contracting officer may request the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

38. 13.109 is revised to read as follows:

13.109 Agency use of indefinite delivery contracts.

Costs and processing time for acquisitions at or below the simplified acquisition threshold may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

39. 13.110 is added to read as follows:

13.110 Federal Acquisition Streamlining Act of 1994 (FASTA) list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontractors) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) & (b) (Anti-Kickback Act of 1986)(Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 27 (Miller Act) (but see Part 28)

(3) 40 U.S.C. 329 (Contract Work Hours and Safety Standards Act—Overtime Compensation)

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988)

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act) (Only the requirement for providing the estimate of material utilized for the performance of the contract which is recovered materials is inapplicable.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees.)

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors.)

(8) 10 U.S.C. 2384(b) (Requirement to Identify Suppliers and Sources of Supply.)

(9) 10 U.S.C. 2393(d) (Prohibition Against Doing Business with Certain Offerors or Contractors.)

(10) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States.)

(11) 10 U.S.C. 2408(a) (Prohibition on Persons Convicted of Defense Related Felonies.)

(12) 10 U.S.C. 2410b (Contractor Inventory Accounting System Standards.)

(13) 10 U.S.C. 2534 (Miscellaneous Procurement Limitations.)

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994 that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services on the list set forth in 13.110(a), unless the FAR Council makes a written determination that it is in the best interests of the government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of 13.110(b) do not apply to laws that:

(1) provide for criminal or civil penalties; or

(2) specifically state that notwithstanding the language of Section 4101, Pub. L. 103–355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator for Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable.

(e) The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

40. Subpart 13.2 is revised to read as follows:

Subpart 13.2—Blanket Purchase Agreements

Sec.

13.201 General.
13.202 [Reserved]
13.203 Establishment of Blanket Purchase Agreements.
13.203–1 General.
13.203–2 Clauses.
13.204 Purchases under Blanket Purchase Agreements.
13.205 Review procedures.
13.206 Completion of Blanket Purchase Agreements.

13.201 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established at the appropriate level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.

13.202 [Reserved]

13.203 Establishment of Blanket Purchase Agreements.

13.203–1 General.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (but see 13.204(e)(4)).

(d) BPAs should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous purchases at or below the simplified acquisition threshold are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.

(e) To the extent practical, BPAs for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under PPAs.

(f) BPAs may also be established with Federal Supply Schedule contractors and GSA Nonmandatory ADP Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) BPAs shall be prepared and issued on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(4) *Notice of individuals authorized to purchase under the BPA and dollar limitations by title of position or name.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(5) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements (except that the statement in paragraph (j)(6)(iii) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPAs in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

13.203–2 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the FAR that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.204 Purchases under Blanket Purchase Agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the blanket purchase agreement, being a method of

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simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those BPAs established in accordance with 13 203–1(f), shall not exceed (i) $50,000, or (ii) $100,000 when the procuring activity has certified interim FACNET (see 13.103(b)).

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.105 and 13.106 also apply to each order under a BPA.

(d) If there is an insufficient number of BPAs to ensure maximum practicable competition for a particular purchase, the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if (i) recurring requirements for the same or similar items or services seem likely, (ii) qualified sources are willing to accept BPAs, and (iii) it is otherwise practical to do so.

(e) Documentation of purchases under BPAs shall be limited to essential information and forms, as follows:

(1) Purchases under BPAs generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a paper document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Documentation of individual purchases under BPAs shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this section are being followed.

13.206 Completion of Blanket Purchase Agreements.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

41. Subpart 13.3 is revised to read as follows:

Subpart 13.3—Fast Payment Procedure

Sec.

13.301 General.
13.302 Conditions for use.
13.303 Preparation and execution of orders.
13.304 Responsibility for collection of debts.
13.305 Contract clause.

13.301 General.

The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that—

(a) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(b) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

13.302 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual orders do not exceed $25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the purchasing office at that activity.

(c) Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure (1) documenting evidence of contractor performance under fast payment acquisitions, (2) timely feedback to the contracting officer in case of contractor deficiencies, and (3) identification of suppliers who have a current history of abusing the fast payment procedure. (Also see Subpart 9.1.)

13.303 Preparation and execution of orders.

(a) Except when orders are placed via FACNET, orders incorporating the fast payment procedure should be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form (but see 13.204(e) for purchases under BPAs). Orders may be either priced or unpriced.

(b) Contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(1) A requirement that the supplies be shipped transportation or postage prepaid.

(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers "FAST PAY."

13.304 Responsibility for collection of debts.

The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.305 Contract clause.

The contracting officer shall insert the clause at 52.213–1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

42. Subpart 13.4 is revised to read as follows:

Subpart 13.4—Imprest Fund

Sec.

13.401 General.
13.402 Agency responsibilities.
13.403 Conditions for use.
13.404 Procedures.

13.401 General.

This subpart prescribes policies and procedures for using imprest funds to purchase supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.402 Agency responsibilities.

Each agency using imprest funds shall—

(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;

(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds; and

(2) Documentation of purchases using imprest funds, including documentation of (i) receipt and acceptance of supplies and services by the Government, (ii) receipt of cash payments by the suppliers, and (iii) cash advances and reimbursements.

13.403 Conditions for use.

Imprest funds may be used for purchases when—

(a) the transaction does not exceed $500 or such other limits as have been approved by the agency head;

(b) the use of imprest funds is considered to be advantageous to the Government; and

(c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.402.

13.404 Procedures.

(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition.

(b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers (see 13.105).

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary; e.g., if required by the supplier for discount, tax exemption, or other reasons. If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest Fund."

(f) The individual authorized to make purchases using imprest funds shall—

(1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect (i) that an imprest fund purchase has been made, (ii) the unit prices and extensions, (iii) the supplier's name and address, and (iv) the date of anticipated delivery; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving (i) the supplier's name and address, (ii) list and quantity of items, (iii) unit prices and extensions, and (iv) cash discount, if any.

43. Subpart 13.5 is revised to read as follows:

Subpart 13.5—Purchase Orders

Sec.

13.501 General.
13.502 Unpriced purchase orders.
13.503 Obtaining contractor acceptance and modifying purchase orders.
13.504 Termination or cancellation of purchase orders.
13.505 Purchase order and related forms.
13.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.
13.505–2 [Reserved]
13.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
13.506 Unsigned electronic purchase orders.
13.507 Provisions and clauses.
13.508 Use of options in acquisitions using simplified acquisition procedures.

13.501 General.

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders shall be issued on a fixed-price basis unless otherwise authorized by agency procedures.

(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.407–3.

(c) Purchase orders shall specify the quantity of supplies or services ordered.

(d) Inspections under simplified acquisition procedures shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at destination and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(f) Each purchase order shall contain a determinable date by which delivery

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of supplies or performance of services is required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.502 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is anticipated that the transaction will not exceed

(i) $50,000, or (ii) $100,000 when the contracting activity of an agency has certified interim or full FACNET (see 13.103(b)).

(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(3) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or electronically (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106–2(a)), process the invoice for payment.

13.503 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

(b) A purchase order may be modified by use of

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an agency-approved automated format; or

(3) A purchase order form, if not prohibited by agency regulations.

(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.504 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination action as prescribed by Part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required; i.e., the purchase order shall be considered canceled.

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by Part 49.

13.505 Purchase order and related forms.

13.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(a) Optional Form 347 (illustrated in 53.302–347) and Optional Form 348 (illustrated in 53.302–348) are multipurpose forms designed for the following:

(1) Negotiated purchases of supplies or services.

(2) Delivery orders.

(3) Inspection and receiving reports.

(4) Invoices.

(b) Agencies may use order forms other than Optional Form 347 and 348 and may print on those forms the clauses they consider to be generally suitable for their purchases using simplified acquisition procedures. The clauses may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.

13.505–2 [Reserved]

13.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301–44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(b) Standard Form 44 may be used if all of the following conditions are satisfied:

(1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of a military contingency operation. Agencies may establish higher dollar limitations for specific activities or items.

(2) The supplies or services are immediately available.

(3) One delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of other simplified acquisition methods.

(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

(d) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(e) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.506 Unsigned electronic purchase orders.

(a) An unsigned electronic purchase order (EPO) may be issued when the following conditions are present—

(1) Its use is more advantageous to the Government than any other simplified acquisition method;

(2) It is acceptable to the supplier;

(3) It is approved by the contracting officer;

(4) It does not require written acceptance by the supplier; and

(5) The purchasing office retains all contract administration functions.

(b) When an unsigned EPO is used—

(1) Appropriate clauses shall be incorporated by reference;

(2) Administrative information that is not needed by the supplier shall be placed only on copies intended for internal distribution;

(3) The same distribution shall be made of the unsigned EPO as is made of signed purchase orders; and

(4) No purchase order form is required.

(c) An unsigned EPO may be unpriced if it meets the conditions in 13.502.

13.507 Provisions and clauses.

(a) Each purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213–2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213–3, Notice to Supplier, in unpriced purchase orders.

(d) Pursuant to Pub.L. 103–355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(1) 28.102–4, Miller Act solicitation requirements. However, Part 28 sets forth alternatives to payment bonds as payment protections for suppliers of labor and materials for contracts exceeding $25,000, but not exceeding $100,000.

(2) 52.203–1, Officials Not to Benefit

(3) 52.203–4, Contingent Fee Representation and Agreement

(4) 52.203–5, Covenant Against Contingent Fees

(5) 52.203–6, Restrictions on Subcontractor Sales to the Government

(6) 52.203–7, Anti-Kickback Procedures

(7) 52.215–1, Examination of Records by Comptroller General

(8) 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation

(9) 52.223–5, Certification Regarding a Drug-Free Workplace

(10) 52.223–6, Drug-Free Workplace

13.508 Use of options in acquisitions using simplified acquisition procedures.

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of subpart 17.2 are met and that the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

PART 15—CONTRACTING BY NEGOTIATION

44. Section 15.106–1 is amended by revising paragraph (b)(1) to read as follows:

15.106–1 Examination of Records clause.

* * * * *

(b) * * *

(1) The contract amount is at or below the simplified acquisition threshold;

* * * * *

45. Section 15.106–2 is amended by revising the first sentence in paragraph (b) to read as follows:

15.106–2 Audit-Negotiation clause.

* * * * *

(b) The contracting officer shall insert the clause at 52.215–2, Audit-Negotiation, in solicitations and contracts when contracting by negotiation, unless the acquisition is made under simplified acquisition procedures. * * *

46. Section 15.401 is amended by revising paragraph (a) to read as follows:

15.401 Applicability.

* * * * *

(a) Acquisitions made under simplified acquisition procedures (see Part 13.); and

* * * * *

47. Section 15.602 is amended by revising paragraph (b) to read as follows:

15.602 Applicability.

* * * * *

(b) This subpart does not apply to acquisitions made under simplified acquisition procedures (see Part 13.).

48. Section 15.804–2 is amended by revising paragraphs (a)(4) and (5) to read as follows:

15.804–2 Requiring certified cost or pricing data.

(a) * * *

* * * * *

(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the simplified acquisition threshold in Part 13.

(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price.

* * * * *

49. Section 15.812–2 is amended by revising paragraph (a)(1) to read as follows:

15.812–2 Contract clause.

(a) * * *

(1) Acquisitions at or below the simplified acquisition threshold;

* * * * *

50. Section 15.1001 is amended by revising the first sentence of paragraph (b)(1) and paragraphs (c)(1) introductory text and (3) amended to read as follows:

15.1002 Notification to unsuccessful offerors.

* * * * *

(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation not using simplified acquisition procedures in Part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. * * *

* * * * *

(c) *Postaward notices.* (1) After award of contracts resulting from solicitations not using simplified acquisition procedures, the contracting officer shall notify unsuccessful offerors in writing or electronically, unless preaward notice was given under paragraph (b) of this section. The notice shall include—

* * * * *

(3) Upon request, the contracting officer shall furnish the information described in 15.1002(c)(1) (i) through (v) to unsuccessful offerors in solicitations using simplified acquisition procedures in Part 13.

PART 16—TYPES OF CONTRACTS

51. Section 16.000 is amended by revising the first sentence to read as follows:

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions other than those made under simplified acquisition procedures in Part 13, unless otherwise authorized by agency procedures. * * *

52. Section 16.103 is amended by revising paragraph (d)(1) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(1) acquisitions made under simplified acquisition procedures in Part 13, unless otherwise required under agency procedures,

* * * * *

53. Section 16.105 is revised to read as follows:

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at 52.216–1.

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Type of Contract, in a solicitation unless it is for:

(a) A fixed-price acquisition made under simplified acquisition procedures (see Part 13) or

(b) Information or planning purposes.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

54. Section 22.202 is amended in the introductory text by adding the phrase "except for purchases made at or below the micro-purchase threshold," after "contracts".

22.202 Contract clause.

55. Section 22.305 is amended by revising the first sentence of the introductory text and paragraph (a), removing paragraph (b) and redesignating paragraphs (c) through (h) as (b) through (g) to read as follows:

22.305 Contract clause.

The contracting officer shall insert the clause at 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. * * *

(a) Contracts at or below the simplified acquisition threshold.

* * * * *

22.1006 Contract clauses.

56. Section 22.1006 is amended by revising the heading to read as set forth above and by removing from the first two sentences of paragraphs (c)(1) and (c)(2) the phrase "small purchase limitation(s)" and inserting "simplified acquisition threshold(s)" in their places.

PART 23—ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

57. Section 23.101 is amended by revising the first sentence to read as follows:

23.101 Applicability.

This subpart does not apply to contracts below the simplified acquisition threshold or to the use of facilities outside the United States. * * *

58. Section 23.501 is amended by revising paragraph (a) to read as follows:

23.501 Applicability.

* * * * *

(a) Contracts at or below the simplified acquisition threshold; nowever, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;

* * * * *

59. Section 23.504 is amended by revising the introductory text of paragraph (a) to read as follows:

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104–1) for a contract that exceeds the simplified acquisition threshold, unless it has certified, pursuant to 52.223–5, Certification Regarding a Drug-Free Workplace by—

* * * * *

60. Section 23.505 is amended by revising paragraph (a)(2) an adding paragraph (c)(4) to read as follows:

23.505 Solicitation provision and contract clause.

* * * * *

(a) * * *

(2) Expected to exceed the simplified acquisition threshold if the contract is expected to be awarded to other than an individual; or

* * * * *

(c) * * *

(4) The resultant contract is expected to be at or below the simplified acquisition threshold.

PART 25—FOREIGN ACQUISITION

61. Section 25.302 is amended by revising paragraph (b)(1) to read as follows:

25.302 Policy.

* * * * *

(b) * * *

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold in Part 13.

* * * * *

62. Section 25.703 is amended by revising the third sentence to read as follows:

25.703 Exceptions.

* * * The approval level for this exception is the contracting officer for acquisitions at or below the simplified acquisition threshold unless otherwise provided by agency procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head. * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

63. Section 27.201–2 is amended by revising paragraph (a) to read as follows:

27.201–2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52–227- 1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.

* * * * *

64. Section 27.202–2 is revised to read as follows:

27.202–2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architech-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

65. Section 27.203–1 is amended by revising paragraph (b)(4) to read as follows:

27.203–1 General.

* * * * *

(b) * * *

(4) When the contract is awarded using simplified acquisition procedures.

* * * * *

PART 28—BONDS AND INSURANCE

66. Section 28.103–2 is amended by revising the first sentence of paragraph (a) to read as follows:

28.103–2 Performance bonds.

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. * * *

28.103–3 Payment bonds.

67. Section 28.103–3(a) is amended by removing the word "A" at the beginning of the paragraph and inserting the phrase "For acquisitions in excess of the simplified acquisition threshold a" in its place.

68. Section 28.310 is amended by revising paragraph (a) introductory text to read as follows:

28.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold in Part 13, and the contract will require work on a Government installation, unless—

* * * * *

PART 29—TAXES

69. Section 29.401-3 is revised to read as follows:

29.401–3 Competitive contracts.

The contracting officer shall insert the clause at 52–229–3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico when a fixed-price contract is contemplated, and the contract is expected to exceed the simplified acquisition threshold in 13.000, unless the clause at 52.229–4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

29.401–4 [Amended]

70. Section 29.401–4 is amended by removing the words "small purchase limitation" after the words "exceeds the" and inserting the words "simplified acquisition threshold."

* * * * *

PART 32—CONTRACT FINANCING

71. Section 32.617 is amended by revising paragraph (a)(1) to read as follows:

32.617 Contract clause.

(a) * * *

(1) Contracts at or below the simplified acquisition threshold.

* * * * *

72. Section 32.901 is revised to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including contracts at or below the simplified acquisition threshold as defined in Subpart 13.1), except contracts with payment penalties established by other governmental authority (e.g., tariffs).

73. Section 32.908 is amended by revising paragraph (c) to read as follows:

32.908 Contract clause.

* * * * *

(c) The contracting officer shall insert the clause at 52.232–25, Prompt Payment, in all other solicitations and contracts (including contracts at or below the simplified acquisition threshold in Part 13), except as indicated in 32.901.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.515, 36.521, 36.602–5, and 36.702 [Amended]

74a. Part 36 amended by removing the phrase "exceed the small purchase limitation" and inserting "exceed the simplified acquisition threshold" in its place in the following locations:

36.502	36.509	36.515
36.503	36.510	36.521
36.506	36.512	36.602–5
36.508	36.513(a)	36.702(b)(2)

36.511, 36.701, 36.702 [Amended]

74b. Part 36 amended by removing the phrase "exceed the small purchase limitations" and inserting "exceed the simplified acquisition threshold" in the following locations: 36.511, 36.701(b), and 36.702(b)(2).

36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.521, 36.701, and 36.702 [Amended]

74c. Part 36 is amended by removing the phrase "within the small purchase limitation" and inserting "at or below the simplified acquisition threshold" in its place at the following locations: 36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513(a), 36.515, 36.521, 36.602–5, 36.701(c).

36.511, 36.701, and 36.702 [Amended]

74d. Part 36 is amended by removing the phrase "within the small purchase limitations" and inserting "at or below the simplified acquisition threshold" in its place at the following locations: 36.511, 36.701(b), 36.702–(b)(2).

PART 41—ACQUISITION OF UTILITY SERVICES

75. In 41.201(b) the first sentence is revised to read as follows:

41.201 Policy.

* * * * *

(b) Except for acquisitions at or below the simplified acquisition threshold in Part 13, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41:501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

42.903 [Amended]

76. In 42.903 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place.

42.1104 [Amended]

77. In 42.1104(b), the phrase "Contracts of value less than the small purchase" is removed and "Contracts at or below the simplified acquisition threshold" is inserted in its place.

PART 43—CONTRACT MODIFICATIONS

43.205 [Amended]

78. In section 43.205(d)(2) and (e), the phrase "applicable small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201–2 and 44.204 [Amended]

79. In sections 44.201–2(b) and 44.204(e), the phrase "small purchase limitation is removed and "simplified acquisition threshold" is inserted in its place.

PART 45—GOVERNMENT PROPERTY

80. Section 45.106 is amended by revising paragraph (e) to read as follows:

45.106 Government property clauses.

* * * * *

(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold (but see 13.103(b)), purchase orders for property repair need not include a Government property clause.

* * * * *

PART 46—QUALITY ASSURANCE

46.202–1 [Amended]

81. In section 46.202–1(a), the phrase "under small purchases" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.301 [Amended]

82. In section 46.301 in the introductory text the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in i place.

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46.302 [Amended]

83. In the first sentence of section 46.302 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in the second sentence the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.304 [Amended]

84. In section 46.304 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place and the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.307 [Amended]

85. In Section 46.307(a)(3), the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in paragraph (b) the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.312 [Amended]

86. In the first sentence of section 46.312 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in the second sentence the phrase "within small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.316 [Amended]

87. In Section 46.316, the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in the second sentence the phrase "within small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

88. Section 46.404 is amended by revising the heading; removing the words "small purchases" in paragraphs (a) and (b)(1) and inserting "contracts at or below the simplified acquisition threshold" in their place.

89. Section 46.805 is amended by revising the heading of the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold in 13.000.* * * *

* * * * *

(b) *Acquisitions at or below the simplified acquisition threshold in 13.000.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold in 13.000. However in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold in 13.000 and obtain any price reduction that is appropriate.

PART 47—TRANSPORTATION

90. Section 47.104–4(a)(2), is amended by removing the phrase "small purchases under" and inserting "contracts at or below the simplified acquisition threshold in" in its place; and revising paragraph (b) to read as follows:

47.104–4 Contract clause.

* * * * *

(b) The contracting officer may insert the clause at 52.247–1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold in Part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

47.200 [Amended]

91. In 47.200(b)(4), remove the phrase "Small purchases under" and insert "Contracts at or below the simplified acquisition threshold in" in its place.

47.205 [Amended]

92. In section 47.205, paragraph (b), remove the phrase "small purchase limitation" and insert "the threshold for use of simplified acquisition procedures in Part 13 " in its place; and remove the phrase "the small purchase procedures" and insert "simplified acquisition procedures" in its place.

47.305–16 [Amended]

93. In the first sentence of 47.305–16(b)(1) remove the phrase "awarded under small purchase procedures of" and insert "at or below the simplified acquisition threshold" in its place.

94. Section 47.405 is revised to read as follows:

47.405 Contract clause.

The contracting officer shall insert the clause at 52.247–63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13.

95. Section 47.504 is amended by revising paragraph (d) to read as follows:

47.504 Exceptions.

* * * * *

(d) Contracts awarded using the simplified acquisition procedures in Part 13.

PART 49—TERMINATION OF CONTRACTS

49.504 [Amended]

96. In section 49.504 at paragraphs (a)(1), (b) and (c)(1) in the first sentence remove the phrase "small purchase limitation" and insert "simplified acquisition threshold" in its place; and in the second sentence remove the phrase "not expected to exceed the small purchase limitation" and insert "at or below the simplified acquisition threshold;"

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–6 [Amended]

97. In the clause at 52.203–6 the date of the clause is revised to read (XXX 1995) and at the end of paragraph (c) add the phrase ", which exceed $100,000."

52.203–7 [Amended]

98. In the clause at 52.203–7 the date of the clause is revised to read (XXX 1995) and at the end of paragraph (c)(5) add the phrase ", which exceed $100,000."

52.209–6 [Amended]

99. In the clause at 52.209–6 the date of the clause is revised to read (XXX 1995) and in the second sentence of paragraph (a) and in paragraph (b) remove the phrase "small purchase limitation" and insert "simplified acquisition threshold."

100. Sections 52.213–2 and 52.213–3 are amended by revising the introductory paragraphs to read as follows:

52.213–2 Invoices.

As prescribed in 13.507(b), insert the following clause:

* * * * *

52.213–3 Notice to Supplier.

As prescribed in 13.507(c), insert the following clause in unpriced purchase orders:

* * * * *

52.215–1 [Amended]

101. In the clause at 52.215–1 the date of the clause is revised to read (XXX 1995) and in the first sentence of paragraph (c) after the first appearance of "subcontracts" add the phrase ", exceeding $100,000,".

52.215–2 [Amended]

102. In the clause in section 52.215–2, the date is revised to read (XXX 1995) and in paragraph (f) remove the phrase "are over the small purchase limitation" and insert "exceed the simplified acquisition threshold" in its place.

103. Section 52.216–1 is amended by revising the introductory paragraph to read as follows:

52.216–1 Type of contract.

As prescribed in 16.105, complete and insert the following provision:

* * * * *

52.222–4 [Amended]

104. In the clause at 52.222–4 the date is revised to read (XXX 1995) and in the first sentence of paragraph (e) following "subcontracts" the first time it appears add the phrase ", exceeding $100,000,"

105. Section 52.223–5 is amended in the clause by revising the date and revising paragraph (b) introductory text to read as follows:

52.223–5 Certification regarding a drug-free workplace.

* * * * *

Certification Regarding a Drug-Free Workplace (XXX 1995)

* * * * *

(b) By submission of its offer, the offeror (other than an individual responding to a solicitation that is expected to exceed the simplified acquisition threshold), certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

* * * * *

52.227–1 [Amended]

106. In the clause at section 52.227–1, revise the clause date to read "(XXX 1995)" and paragraph (b) remove "$25,000" after the word exceed" and insert "the simplified acquisition threshold" in its place; and remove the phrase "under or over $25,000" and insert "including those at or below the simplified acquisition threshold" in its place.

52.227–3 [Amended]

107. In section 52.227–3, Alternate III, revise the clause date to read "(XXX 1995)" and remove "$25,000" and insert "the simplified acquisition threshold" in its place

108. The introductory paragraphs in sections 52.236–2, 52.236–3, 52.236–6, 52.236–8, 52.236–9, 52.236–10, 52.236–11, 52.236–12, 52.236–15, 52.236–21, and 52.243–5 are revised to read as follows:

52.236–2 Differing site conditions.

As prescribed in 36.502, insert the following clause:

* * * * *

52.236–3 Site investigation and conditions Affecting the Work.

As prescribed in 36.503, insert the following clause:

* * * * *

52.236–6 Superintendence by the contractor.

As prescribed in 36.506, insert the following clause:

* * * * *

52.236–8 Other contracts.

As prescribed in 36.508, insert the following clause:

* * * * *

52.236–9 Protection of existing vegetation, structures, equipment, utilities, and improvements.

As prescribed in 36.509, insert the following clause:

* * * * *

52.236–10 Operations and storage areas.

As prescribed in 36.510, insert the following clause:

* * * * *

52.236–11 Use and possession prior to completion.

As prescribed in 36.511, insert the following clause:

* * * * *

52.236–12 Cleaning up.

As prescribed in 36.512, insert the following clause:

* * * * *

52.236–15 Schedules for construction contracts.

As prescribed in 36.515, insert the following clause:

* * * * *

52.236–21 Specifications and drawings for construction.

As prescribed in 36.521, insert the following clause:

* * * * *

52.243–5 Changes and changed conditions.

As prescribed in 43.205(e), insert the following clause:

* * * * *

52.244–2 [Amended]

109. In section 52.244–2, Alternate I, revise the parenthetical date to read "(XXX 1995)" and in paragraph (a)(2) remove the phrase "small purchase limitation" and insert "simplified acquisition threshold" in its place.

110. Section 52.244–5 is amended by revising the introductory text and removing paragraphs (a) and (b) to read as follows:

52.244–5 Competition in subcontracting.

As prescribed in 44.204(e), insert the following clause:

* * * * *

111. The introductory paragraphs of sections 52.246–1, 52.246–7, 52.246–12, 52.246–16, 52.246–23, 52.246–24, and 52.246–25 are revised to read as follows:

52.246–1 Contractor inspection requirements.

As prescribed in 46.301, insert the following clause:

* * * * *

52.246–7 Inspection of research and development-fixed price.

As prescribed in 46.307(a), insert the following clause:

* * * * *

52.246–12 Inspection of construction.

As prescribed in 46.312, insert the following clause:

* * * * *

52.246–16 Responsibilities for suppliers.

As prescribed in 46.316, insert the following clause:

* * * * *

52.246–23 Limitation of liability.

As prescribed in 46.805, insert the following clause:

* * * * *

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52.246–24 Limitation of liability-high-value items.

As prescribed in 46.805, insert the following clause:

* * * * *

52.246–25 Limitation of liability-services.

As prescribed in 46.805, insert the following clause:

* * * * *

112. Section 52.247–1 is amended by adding the introductory paragraph and removing paragraphs (a) and (b) to read as follows:

52.247–1 Commercial bill of lading notations.

As prescribed in 47.104–4, insert the following clause:

* * * * *

52.247–64 [Amended]

113. In the clause at section 52.247–64, the date is revised to read "(XXX 1995)"; in paragraph (d) remove the words "small purchases" and insert "contracts at or below the simplified acquisition threshold" in their place; and in paragraph (e)(1), remove the words "Small purchases" and insert "Contracts at or below the simplified acquisition threshold" in their place.

114. In sections 52.249–8, 52.249–9, and 52.249–10 the introductory paragraphs are revised to read as follows:

52.249–8 Default (Fixed-price supply and service).

As prescribed in 49.504(a)(1), insert the following clause:

* * * * *

52.249–9 Default (Fixed-price research and development).

As prescribed in 49.504(b), insert the following clause:

* * * * *

52.249–10 Default (Fixed-price construction).

As prescribed in 49.504(c)(1), insert the following clause:

* * * * *

PART 53—FORMS

115. Section 53.213 is amended by revising the heading, the introductory paragraph, and paragraphs (a), (c), and (e)(1) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) SF 18 (Rev. 5/93), Request for Quotations. SF 18 prescribed in 53.215–1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505–3.

* * * * *

(e) * * *

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505–1(a)(2).

* * * * *

116. Section 53.215–1 is amended by revising the introductory paragraph to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

* * * * *

[FR Doc. 95–5451 Filed 3–3–95; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53

[FAR Case 91–104]

Federal Acquisition Regulation; Electronic Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of electronic commerce/electronic data interchange in Government contracting. This regulatory action was subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 5, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 91–104 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755 Please cite FAR Case 91–104.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** at 58 FR 69588, December 30, 1993. The rule proposed amendments to the FAR to remove any barriers to the use of electronic data interchange in Government contracting. Thirty-six comments from ten respondents were received during the public comment period. After evaluating the public comments, the Councils agreed to publish another proposed rule, because significant changes to the rule published on December 30, 1993, were deemed to be necessary. The changes include:

—Revision of the definition of "in writing" or "written" at 2.101 to include electronically transmitted and stored information.

—Revision of the definition of "signature" at 2.101 for clarity and to include electronic symbols.

—Addition of a definition of "electronic commerce" at 4.301.

—Amendment of section 5.101 to permit the use of electronic dissemination, available to the public at the contracting office, to satisfy the requirement for public display of proposed contract actions.

—Amendment of section 5.102 to permit contracting officers to furnish solicitations directly to the electronic address of a small business concern.

—Amendment of sections 12.103, 14.304–1, 52.212–1, 52.212–2, 52.214–7, 52.214–23, 52.214–32, 52.214–33, 52.215–10, and 52.215–36 to accommodate the use of electronic systems which batch-process communications overnight and, therefore, require receipt of information one day in advance to ensure timely delivery to the designated address.

—Revision of paragraph (a) of section 14.205–1 to eliminate the requirement for establishment of solicitation mailing lists when using electronic commerce methods which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity.

—Addition of new regulations at 14.406 and 15.607(d) to establish procedures for handling unreadable electronic bids and proposals.

This proposed rule and the proposed rule published under FAR Case 94–770, Simplified Acquisition Procedures/FACNET, are interdependent and are meant to be considered jointly.

B. Regulatory Flexibility Act

The proposed rule is expected to have a positive impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it encourages broader use of electronic contracting, thereby improving industry access to Federal contracting opportunities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the FAR Secretariat. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 91–104) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53:

Government procurement.

Dated: February 21, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definitions, "In writing" or "written" and "Signature" or "signed" to read as follows:

2.101 Definitions.

* * * * *

In writing or *written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

* * * * *

Signature or *signed* means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.101 is revised to read as follows:

4.101 Contracting officer's signature.

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

4.201 [Amended]

4. Section 4.201 is amended in paragraph (a) by removing the parenthetical "(see 4.101(b))."; in paragraph (b)(1) by removing the parenthetical "stamped 'DUPLICATE ORIGINAL,' see 4.101(b))"; and in paragraph (d) by revising the parenthetical to read "(see 30.601(b))".

5. Section 4.500, as proposed to be added in FAR Case 94–770 published elsewhere in this issue of the **Federal Register**, is amended by adding, in alphabetical order, definitions for "Electronic commerce" and "Electronic data interchange" to read as follows:

4.500 Definitions.

Electronic commerce means a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques for accomplishing business transactions. The use of terms commonly associated with paper transactions (e.g., "copy", "document", "page", "printed", "sealed envelope" and "stamped") shall not be interpreted to restrict the use of electronic commerce.

Electronic data interchange means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.101 is amended by adding a new last sentence to paragraph (a)(2) introductory text and by adding paragraph (a)(2)(iv) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) * * *

(2) * * * Electronic dissemination available to the public at the contracting office may be used to satisfy the public display requirement.

* * * * *

(iv) Contracting offices utilizing electronic systems for public posting shall periodically publicize the methods for accessing such information.

* * * * *

7. Section 5.102(a)(4)(i) is revised to read as follows:

5.102 Availability of solicitations.

(a) * * *

(4) * * *

(i) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

* * * * *

8. Section 5.207 is amended by adding a new paragraph (c)(2)(xvi) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xvi) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

* * * * *

PART 7—ACQUISITION PLANNING

7.304 [Amended]

9. Section 7.304(b)(3) is amended in the first sentence by adding ", or

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electronic equivalent," after the word "envelope".

10. Section 7.306(a)(1)(i) is revised to read as follows:

7.306 Evaluation.

* * * * *

(a)(1) * * *

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

11. Section 8.405–2 is amended by revising the first sentence of the introductory text to read as follows:

8.405–2 Order placement.

Ordering offices may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. * * *

* * * * *

8.705–3 [Amended]

12. Section 8.705–3(a) is amended in the first sentence by removing the word "letter" and inserting "written" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.206–3 [Amended]

13. Section 9.206–3(b) is amended in the first sentence by removing "requested copies of the solicitation" and inserting "expressed interest in the acquisition" in its place.

PART 12—CONTRACT DELIVERY OR PERFORMANCE

14. Section 12.103(e) is revised to read as follows:

12.103 Supplies or services.

* * * * *

(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding 5 calendar days (as representing the normal time for arrival through ordinary mail). If the contract or notice of award will be transmitted electronically, (1) the solicitation shall so state; and (2) the contracting officer shall evaluate delivery schedule based on the date of contract receipt or notice of award, by adding one working day. (The term "working day" excludes weekends and U.S. Federal holidays.) If the offered delivery date computed with mailing or transmittal time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

PART 14—SEALED BIDDING

15. Section 14.201–6(e)(1) is revised to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(e) * * *

(1) 52.214–9, Failure to Submit Bid, except when using electronic data interchange methods not requiring solicitation mailing lists; and

* * * * *

14.202–1 Bidding time.

16. Section 14.202–1(b)(6) is amended by removing the word "mailing" and inserting "transmittal" in its place.

17. Section 14.202–2(a)(1) is revised to read as follows:

14.202–2 Telegraphic bids.

(a) * * *

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or

* * * * *

18. Section 14.202–8 is added to read as follows:

14.202–8 Electronic bids.

In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

19. Section 14.203–1 is revised to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices shall be transmitted as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by electronic data interchange or international air mail if security classification permits.

20. Section 14.205–1(a) is revised to read as follows:

14.205–1 Establishment of lists.

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when (1) the requirements of the contracting office can be obtained through use of the simplified acquisition procedures (see Part 13), (2) the requirements are nonrecurring, or (3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity. Lists may be established as a central list for use by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

* * * * *

21. Section 14.209(b) is amended by adding a second sentence to read as follows:

14.209 Cancellation of invitations before opening.

* * * * *

(b) * * * For bids received electronically, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

* * * * *

22. Section 14.301 is amended by adding paragraph (e) to read as follows:

14.301 Responsiveness of bids.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

23. Section 14.303 is amended by revising the first sentence of paragraph (a) and adding (c) to read as follows:

14.303 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. * * *

* * * * *

(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

24. Section 14.304–1 is amended by removing the word "either" at the end of the paragraph (a) introductory text, by removing the world "or" at the end of paragraph (a)(2), by removing the period at the end of paragraph (a)(3) and inserting "; or" in its place, and by adding paragraph (a)(4) to read as follows:

14.304–1 General.

* * * * *

(a) * * *

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 PM one working day prior to the date specified for receipt of bids.

* * * * *

25. Section 14.401(a) is amended by revising the second sentence to read as follows:

14.401 Receipt and safeguarding of bids.

(a) * * * Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. * * *

* * * * *

26. Section 14.402–3(a)(1) is revised to read as follows:

14.402–3 Postponement of openings.

(a) * * *

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due); or

* * * * *

14.406 through 14.408 [Redesignated as 14.407 through 14.409; new 14.406 added.]

27. Sections 14.406, 14.406–1 through 14.406–4, 14.407, 14.407–1 through 14.407–8; and 14.408, 14.408–1 and 14.408–2 are redesignated as 14.407, 14.407–1 through 14.407–4; 14.408, 14.408–1 through 14.408–8; and 14.409, 14.409–1 and 14.409–2, respectively, and a new section 14.406 is added to read as follows:

14.406 Receipt of an unreadable electronic bid.

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

27A. Section 14.407–2 is amended by adding paragraph (c) to read as follows:

14.407–2 Apparent clerical mistakes.

* * * * *

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

PART 15—CONTRACTING BY NEGOTIATION

28. Section 15.402 is amended by adding paragraph (k) to read as follows:

15.402 General.

* * * * *

(k) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use.

29. Section 15.407(d)(3) is revised to read as follows:

15.407 Solicitation provisions.

* * * * *

(d) * * *

(3) Insert in RFP's the provision at 52.215–15, Failure to Submit Offer, except when using electronic data interchange methods not requiring solicitation mailing lists; and

* * * * *

30. Section 15.410(b) is revised to read as follows:

15.410 Amendment of solicitations before closing date.

* * * * *

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, telegram, or telephone of an extension of the closing date. Telephonic and telegraphic notices shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

* * * * *

31. Section 15.412 is amended by revising the heading and adding paragraph (h) to read as follows:

15.412 Late proposals, modifications, and withdrawals of proposals.

* * * * *

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

32. Section 15.607 is amended by adding paragraph (d) to read as follows:

15.607 Disclosure of mistakes before award.

* * * * *

(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence—

(1) Of the content of the proposal as originally submitted; and

(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling.

14.407–1, 14.407–3, 14.407–4, 14.408–6, 14.409, 15.607, 15.608 [Amended]

33. In addition to the amendments set forth above, newly-redesignated sections 14.407 through 14.409, 15.607, and 15.608 are further amended by updating the internal references as follows:

Section	Remove	Insert
14.407–1	14.406	14.407
14.407–3 intro. text	14.406–3	14.407–3
	14.406–2	14.407–2
14.407–3 (e), (h) & (i).	14.406–3	14.407–3
14.407–4(f)	14.406–4	14.407–4
14.408–6(c)	14.407–6	14.408–6
14.409–2	14.408–1	14.409–1
15.607(a)	14.406	14.407
15.608(c)	14.407–3	14.408–3

PART 16—TYPES OF CONTRACTS

34. Section 16.506(c) is revised to read as follows:

16.506 Ordering.

* * * * *

(c) Orders may be placed by electronic commerce methods when permitted under the contract.

* * * * *

PART 32—CONTRACTING FINANCING

35. Section 32.503–1(b) is revised to read as follows:

32.503–1 Contractor requests.

* * * * *

(b) Comply with the instructions appropriate to the applicable form, and the contract terms; and

* * * * *

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PART 45—GOVERNMENT PROPERTY

36. Section 45.606–5 is amended by revising in paragraphs (b) (3) and (4) to read as follows:

45.606–5 Instructions for preparing and submitting schedules of contractor inventory.

* * * * *

(b) * * *

(3) The standard inventory schedule forms may be electronically reproduced by contractors pursuant to 53.105, provided no change is made to the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

(4) The appropriate continuation sheet shall be used when more space is needed.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

37. Section 52.212–1 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing "(R 7–104.92(b) 1974 APR)", "(R 1–1.316–5)" and "(R 1–1.316–4(c))" after "(End of clause)" to read as follows:

52.212–1 Time of Delivery.

* * * * *

TIME OF DELIVERY (DATE)

* * * * *

(b) * * * However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award though the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) * * *

(End of clause)

* * * * *

38. Section 52.212–2 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing "(R 7–104.92(c) 1974 APR)", "(R 1–1.316–5(c))" and "(R 1–1.316–4(c))" following "(End of clause)" to read as follows:

52.212–2 Desired and Required Time of Delivery.

* * * * *

DESIRED AND REQUIRED TIME OF DELIVERY (DATE)

* * * * *

(b) * * * However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) * * *

(End of clause)

* * * * *

39. Section 52.214–5 is amended by revising the date in the heading of the provision and adding paragraph (d) to read as follows:

52.214–5 Submission of Bids.

* * * * *

SUBMISSION OF BIDS (DATE)

* * * * *

(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

40. Section 52.214–7 is amended by revising the date in the provision heading, at the end of paragraph (a)(2) by removing "or," at the end of paragraph (3) by removing the period and inserting "; or" in its place, and adding paragraph (4) to read as follows:

52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (DATE)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the government not later than 5:00 PM, one working day prior to the date specified for receipt of bids.

* * * * *

(End of provision)

41. Section 52.214–9 is amended by revising the introductory text, the date in the heading of the provision, the second sentence of the provision, and removing "(R SF 33A, Para 6, 1978 JAN)" after "(End of provision)" to read as follows:

52.214–9 Failure to Submit Bid.

As prescribed in 14.201–6(e)(1), insert the following provision in invitations for bids:

FAILURE TO SUBMIT BID (DATE)

* * * Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. * * *

(End of provision)

42. Section 52.214–23 is amended by revising the date in the heading of the provision, at the end of paragraph (3) by removing the period and adding "or" in its place, redesignating paragraph (4) as (5), and adding a new paragraph (4) to read as follows:

52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (DATE)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 PM one working day prior to the date specified for receipt of technical proposals; or

* * * * *

43. Section 52.214–32 is amended by revising the date in the heading of the provision and paragraph (a) to read as follows:

52.214–32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS)(DATE)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays.

* * * * *

44. Section 52.214–33 is amended by revising the date in the heading of the provision, at the end of paragraph (a)(1) by removing the word "or", redesignating paragraph (2) as (3), and adding a new paragraph (2) to read as follows:

52.214–33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (DATE)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one

working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S Federal holidays; or

* * * * *

45. Section 52.215–9 is amended by revising the date in the provision heading, redesignating paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

52.215–9 Submission of Offers.

* * * * *

SUBMISSION OF OFFERS (DATE)

* * * * *

(d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

* * * * *

46. Section 52.215–10 is amended by revising the introductory text and the date in the provision heading, at the end of (a)(3) by removing the word "or", redesignating paragraph (4) as (5), and adding a new paragraph (4) to read as follows:

52.215–10 Late Submissions, Modifications, and Withdrawals of Proposals.

As prescribed in 15.407(c)(6), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (DATE)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

* * * * *

47. Section 52.215–15 is revised to read as follows:

52.215–15 Failure to Submit Offer.

As prescribed in 15.507(d)(3), insert the following provision:

FAILURE TO SUBMIT OFFER (DATE)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

48. Section 52.215–36 is amended by revising the date in the provision heading, at the end of paragraph (a)(1) by removing the word "or", redesignating paragraph (2) as (3), and adding a new paragraph (2) to read as follows:

52.215–36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) (DATE)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

* * * * *

(End of provision)

52.223–3 [Amended]

49. Section 52.223–3, Alternate I, is amended by removing "(NOV 1991)" and inserting "(DATE)" in its place, and in the second sentence of paragraph (i)(1) by removing the word "mail" and inserting "transmit" in its place.

50. Section 52.242–12 is amended by revising the date in the clause heading and everything after the first sentence of the clause to read as follows:

52.242–12 Report of Shipment (REPSHIP).

* * * * *

REPORT OF SHIPMENT (REPSHIP) (DATE)

* * * The Government bill of lading, commercial bill of lading or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer by United States mail or authorized electronic commerce method.

(End of clause)

51. Section 52.242–13 is amended by revising the date in the clause and the first sentence of the clause to read as follows:

52.242–13 Bankruptcy.

* * * * *

BANKRUPTCY (DATE)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. * * *

52. Section 52.247–48 is amended by revising the introductory text, the date in the clause heading, redesignating the introductory text of the clause and paragraphs (a), (b), and (c) as (a), (1), (2), and (3), respectively, adding new paragraph (b), and removing "(R 7–104.76 1968 JUN)" after "(End of clause)" to read as follows:

52.247–48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305–4(c), insert the following clause:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (DATE)

* * * * *

(b) Electronic transmission of the information required by paragraph (a) of this clause is acceptable.

(End of clause)

PART 53—FORMS

53. Section 53.105 is revised to read as follows:

53.105 Computer generation.

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided:

(1) the form is in an electronic format that complies with Federal Information Processing Standards, or

(2) there is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall either comply with Federal Information Processing Standards or shall retain the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

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Part X

The President

Memorandum of March 2, 1995

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Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of March 2, 1995

Memorandum for the Secretary of Transportation [and] the United States Trade Representative

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10922(*l*) (1) and (2), I hereby extend for an additional 2 years both the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1996, unless earlier revoked or modified.

This memorandum shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 2, 1995.

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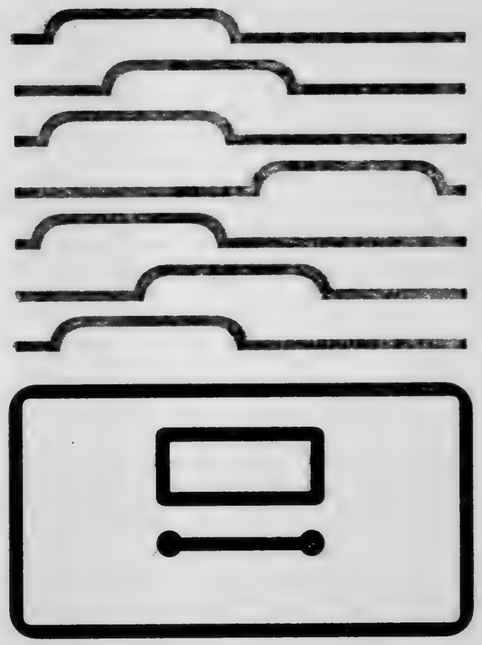

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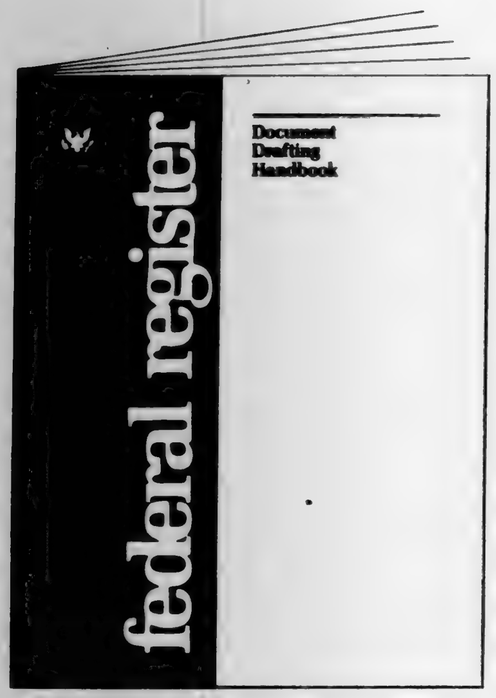

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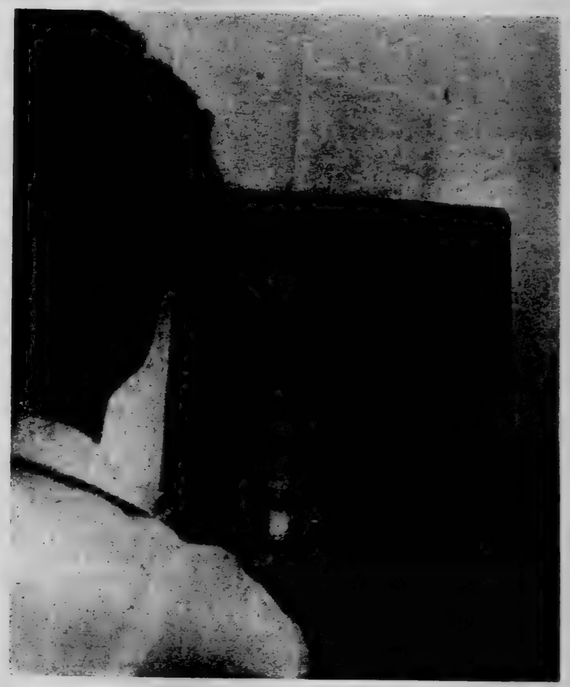

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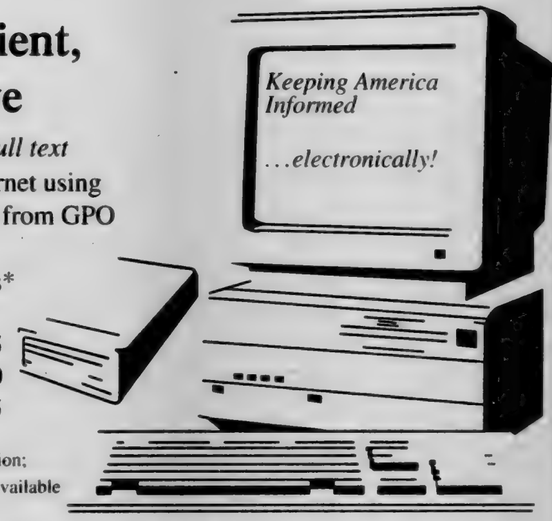

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG46

Prevailing Rate Systems; Redefinition of Scranton-Wilkes-Barre, PA; Harrisburg, PA; Washington, DC; and Waco, TX, Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to remove Schuylkill County, PA, from the Scranton-Wilkes-Barre, PA, Federal Wage System wage area and reassign the county to the Harrisburg, PA, area of application. This rule also moves Adams County and Perry County, PA, from the Harrisburg survey area to the Harrisburg area of application. Additionally, this rule adds Manassas and Manassas Park, two independent cities in Virginia, to the Washington, DC, FWS wage area definition. This rule also corrects a printing error by reinserting McLennan County, TX, in the Waco, TX, FWS wage area listing.

EFFECTIVE DATE: April 6, 1995.

FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is currently engaged in an ongoing system-wide review of the geographic definitions of Federal Wage System (FWS) appropriated fund wage areas. On December 28, 1994, OPM published a proposed rule (59 FR 66795) communicating changes and technical corrections in FWS wage area definitions. The proposed rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule without any changes.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for Washington, District of Columbia; Harrisburg, Pennsylvania; Scranton-Wilkes-Barre, Pennsylvania; and Waco, Texas; to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

District of Columbia, Washington, DC

Survey Area

District of Columbia:
  Washington, D.C.
Maryland:
  Charles
  Frederick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
  Manassas
  Manassas Park
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William

Area of Application. Survey area plus:

Maryland:
  Calvert
  St. Mary's
Virginia:
  Fauquier
  King George
  Stafford

* * * * *

Pennsylvania, Harrisburg

Survey Area

Pennsylvania:
  Cumberland
  Dauphin
  Lebanon
  York

Area of Application. Survey area plus:

Pennsylvania:
  Adams
  Berks
  Juniata
  Lancaster
  Lycoming[19]
  Mifflin
  Montour
  Northumberland
  Perry
  Schuylkill
  Snyder
  Union

* * * * *

Scranton-Wilkes-Barre

Survey Area

Pennsylvania:
  Lackawanna
  Luzerne
  Monroe

Area of Application. Survey area plus:

Pennsylvania:
  Bradford
  Carbon
  Columbia
  Lycoming[20]
  Pike
  Sullivan
  Susquehanna
  Tioga
  Wayne
  Wyoming

* * * * *

Texas

* * * * *

Waco

Survey Area

Texas:
  Bell
  Coryell
  McLennan

Area of Application. Survey area plus:

Texas:
  Anderson

[19] Allenwood Federal Prison Camp portion only.
[20] Excluding Allenwood Federal Prison Camp.

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Bosque
Brazos
Falls
Freestone
Hamilton
Hill
Leon
Limestone
Mills
Robertson

* * * * *

[FR Doc. 95–5453 Filed 3–6–95; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AG44

Prevailing Rate Systems; Abolishment of Cook, IL, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.
ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Cook, IL, nonappropriated fund (NAF) Federal Wage System wage area and add Cook County, IL, as an area of application to the Lake, IL, NAF wage area for pay-setting purposes.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 23, 1994, the Office of Personnel Management (OPM) published an interim rule to abolish the Cook, IL, nonappropriated fund (NAF) Federal Wage System wage area and add Cook County, IL, as an area of application to the Lake, IL, NAF wage area for pay-setting purposes. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on November 23, 1994 (59 FR 60293), is adopted as final without any changes.

Office of Personnel Management.
Lorraine A. Green,
Deputy Director.
[FR Doc. 95–5452 Filed 3–6–95; 8:45 am]
BILLING CODE 6325–01–M

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1300 and Chapter LXXVII

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Office of Management and Budget

AGENCY: Office of Management and Budget (OMB).
ACTION: Final rule.

SUMMARY: The Office of Management and Budget, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the OMB that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE with a requirement for prior approval of outside employment. The Office of Management and Budget also is repealing its old standards of conduct regulations and is inserting in their place a cross-reference to the new provisions and to applicable executive branch-wide standards of ethical conduct, as well as to applicable financial disclosure regulations.

EFFECTIVE DATE: These regulations are effective on March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Darrell A. Johnson, OMB Designated Agency Ethics Official (DAEO), (202) 395–5715, or McGavock D. Reed, OMB Alternate DAEO, (202) 395–3563.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, OMB has determined that the following supplemental regulations, being codified in new 5 CFR chapter LXXVII, consisting of part 8701, are necessary to the success of its ethics program. The Office of Management and Budget is simultaneously repealing its superseded Standards of Conduct at 5 CFR part 1300 and is replacing those provisions with a single section that provides cross-references to 5 CFR parts 2634 and 2635, and to OMB's new supplemental regulations.

II. Analysis of the Regulations

Section 8701.101 General

Section 8701.101 explains that the regulations contained in the final rule will apply to all OMB employees and are supplemental to the executive branch-wide standards. Employees of OMB also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

Section 8701.102 Prior Approval for Outside Employment

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment. Under 5 CFR 1300.735–15(b) which is now being revoked, OMB employees have long been required to obtain advance approval for outside employment, and OMB has determined that it is necessary to the administration of its ethics program to continue to require that employees obtain prior approval before engaging in outside employment. New paragraph 8701.102, therefore, continues the basic requirement for prior approval of outside employment. By adding a definition of "employment," however, it clarifies the circumstances under which prior approval must be obtained and, by specifying the information to be provided as part of the employee's request, it provides additional guidance for employees who are required to submit requests for approval.

Whereas 5 CFR 1300.735–15(b) had specified that approval was to be obtained from the Assistant to the Director for Administration, section 8701.102 contains a multiple approval requirement. In addition to the approval of his or her division of office head, the employee must obtain the approval of the OMB General Counsel, as well as that of the designated agency ethics official.

The standard to be used in approving or denying requests for approval of outside employment is set forth at section 8701.102(b), in part, to highlight the fact that section 8701.102 does not itself provide a basis to deny any OMB employee's request for approval. The basis for disapproval, if any, must be found in applicable statutes or the executive branch-wide Standards.

III. Repeal of the Old OMB Standards of Conduct Regulations

Because the OMB's Standards of Conduct have been largely superseded by the new executive branch financial disclosure regulations at 5 CFR parts 2634 and by the new executive branch-wide Standards at 5 CFR part 2635 as supplemented by the regulations contained in new 5 CFR part 8701, OMB is repealing all of existing 5 CFR part 1300. To ensure that employees are on notice of the ethical standards to which they are subject, the OMB is replacing its old standards at 5 CFR part 1300 with a residual provision that cross-references 5 CFR parts 2634, 2635 and 8701.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

The Office of Management and Budget has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30 day delay in effectiveness as to this final rule and repeal. This supplemental regulation is essentially a restatement of a rule previously contained in the OMB Standards of Conduct. Furthermore, this rulemaking is related to the OMB organization, procedure and practice.

Executive Order 12866

In promulgating this final rule, OMB has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation is not deemed "significant" under that Executive order.

Regulatory Flexibility Act

The Office of Management and Budget has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only OMB employees.

Paperwork Reduction Act

The Office of Management and Budget has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

5 CFR Part 1300

Conflict of interest, Government employees.

5 CFR Part 8701

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: February 7, 1995.
Robert G. Damus,
General Counsel, Office of Management and Budget.

Approved: February 13, 1995.
Stephen D. Potts,
Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Management and Budget, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

5 CFR CHAPTER III—OFFICE OF MANAGEMENT AND BUDGET

1. Part 1300 of 5 CFR chapter III is revised to read as follows:

PART 1300—STANDARDS OF CONDUCT

§ 1300.1 Cross-reference to employees ethical conduct standards and financial disclosure regulations.

Employees of the Office of Management and Budget are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, OMB's regulations at 5 CFR part 8701 which supplement the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

Authority: 5 U.S.C. 7301.

2. A new chapter LXXVII, consisting of part 8701, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LXXVII—OFFICE OF MANAGEMENT AND BUDGET

PART 8701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF MANAGEMENT AND BUDGET

Section 8701.101 General.
Section 8701.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp. p. 215, as modified by E.O. 12731, 55 FR 42547 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 8701.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to the employees of the Office of Management and Budget and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, OMB employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 8701.102 Prior approval for outside employment.

(a) Before engaging in outside employment with or without compensation, an employee of the Office of Management and Budget, other than a special Government employee, must obtain the written approval of his or her division or office head, the General Counsel, and the Designated Agency Ethics Official (DAEO). Requests for approval shall be forwarded through normal supervisory channels to the division or office head, who shall forward the request to the General Counsel, to be forwarded with their successive approvals to the DAEO. The request for approval shall include, at a minimum, the following:

(1) A statement of the name of the person, group, or other organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment; and

(2) A statement that the outside employment will not depend on information obtained as a result of the employee's official Government position and that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment.

(b) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing

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when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

[FR Doc. 95–5553 Filed 3–6–95; 8:45 am]
BILLING CODE 3110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB–94–35]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Tifton and Fitzgerald-Ocilla, Georgia, to become the consolidated market of Tifton-Fitzgerald-Ocilla. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Tifton and Fitzgerald-Ocilla, Georgia, tobacco markets shall be designated as and called Tifton-Fitzgerald-Ocilla. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, PO. Box 96456, Washington, DC. 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the **Federal Register** (60 FR 6452–53) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Tifton or Fitzgerald-Ocilla, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Tifton-Fitzgerald-Ocilla, Georgia, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Ocilla, Georgia, on November 7, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 152 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 45 responses: 41 eligible producers voted in favor of the consolidation; 1 eligible producer voted against the consolidation; and 3 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR part 29, subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (hhh) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
.	.	.	.	.
(hhh) Georgia	flue-cured	Tifton-Fitzgerald-Ocilla	April 6, 1995.	

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5538 Filed 3–6–95; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 29

[TB–94–37]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Kingstree and Hemingway, South Carolina, to become the consolidated market of Kingstree-Hemingway. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Kingstree and Hemingway, South Carolina, tobacco markets shall be designated as and called Kingstree-Hemingway. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the **Federal Register** (60 FR 6453–54) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Kingstree or Hemingway, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Kingstree-Hemingway, South Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Kingstree, South Carolina, on November 9, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 520 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 207 responses: 185 eligible producers voted in favor of the consolidation; 17 eligible producers voted against the consolidation; and 5 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (iii) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
.	.	.	.	.
(iii) South Carolina	flue-cured	Kingstree-Hemingway	April 6 1995.	

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5539 Filed 3–6–95; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 29

[TB–94–36]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Clarkton and Chadbourn, North Carolina, to become the consolidated market of Clarkton-Chadbourn. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Clarkton and Chadbourn, North Carolina, tobacco markets shall be designated as and called Clarkton-Chadbourn. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, PO. Box 96456, Washington, DC. 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the **Federal Register** (60 FR 6452) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Clarkton or Chadbourn, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Clarkton-Chadbourn, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding

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seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Fair Bluff, North Carolina, on November 10, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Tobacco Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 735 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 308 responses: 293 eligible producers voted in favor of the consolidation; 6 eligible producers voted against the consolidation; and 9 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets.

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

§ 29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (jjj) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
. .	.	.	. .	.
(jjj) North Carolina	flue-cured	Clarkton-Chadbourn		April 6, 1995.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5540 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 29

[TB–94–32]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Fairmont and Fair Bluff, North Carolina, to become the consolidated market of Fairmont-Fair Bluff. A mail referendum was conducted during the period of February 6–10, 1995, among tobacco growers who sold tobacco on these markets in 1994 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Growers approved the merger. Therefore, for the 1995 and succeeding flue-cured marketing seasons, the Fairmont and Fair Bluff, North Carolina, tobacco markets shall be designated as and called Fairmont-Fair Bluff. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: April 6, 1992.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: A notice was published in the February 2, 1995, issue of the **Federal Register** (60 FR, 6453) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Fairmont or Fair Bluff, during the 1994 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Fairmont-Fair Bluff, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1995 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Fair Bluff, North Carolina, on November 10, 1994, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the February 6–10 referendum were mailed to 1,100 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 570 responses: 467 eligible producers voted in favor of the consolidation; 84 eligible producers voted against the consolidation; and 19 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule

Additionally, in conformance with the provisions of Public Law 96–354,

the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. The Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets.

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a) (1), 95 Stat. 374 (7 U.S.C. 511d).

29.8001 [Amended]

2. In § 29.8001, the table is amended by adding a new entry (kkk) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
. .	.	.	. .	.
(kkk) North Carolina	flue-cured	Fairmont-Fair Bluff		April 6, 1995.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5537 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 56

[Docket No. PY–92–004]

RIN 0581–AA60

Voluntary Shell Egg Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is issuing amendments to the voluntary shell egg grading regulations and standards in response to new technology and current practices in the shell egg industry and to conform to statutory requirements. The amended regulations define washed ungraded eggs and clarify the definition of a quality assurance inspector; add age and disability as types of prohibited discrimination in providing grading services; clarify the type of facilities and equipment to be supplied to a grader and the method by which cartons of eggs are to be identified; update grading room requirements to include mechanized shell egg operations and to require rinse water to be at least as warm as wash water; harmonize the standards for quality of individual shell eggs for B quality in U.S. Nest-Run grades with the U.S. Standards for Quality of Individual Shell Eggs for B quality; and delete wholesale shell egg grades and weight classes.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202–720–3271.

SUPPLEMENTARY INFORMATION:

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the revisions reflect current industry production and marketing practices.

The information collection requirements that appear in § 56.17(b) and § 56.37 to be amended by the rule have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0128, under the Paperwork Reduction Act of 1980.

Background

Periodically the Poultry Division of AMS reviews its existing regulations. As a result of a review, it was determined that several revisions were necessary to make the shell egg standards and regulations for grading shell eggs more useful and efficient.

The grading of shell eggs by the AMS is a voluntary program, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and is offered on a fee-for-service basis. The grading program is designed to assist orderly marketing of shell eggs. Therefore, the standards must keep abreast of new technology and advancements in production and marketing practices.

Accordingly, AMS is amending the voluntary shell egg grading regulations to redefine "quality assurance inspector" to exclude from this designation a plant owner, manager, foreman, or supervisor and to clarify that the quality assurance inspector is authorized to examine product.

The amendments also define the term "washed ungraded eggs" to mean shell eggs which have been washed but not subject to any grading or segregation for quality.

The amendments update the regulations to comply with current statutory requirements regarding providing grading services and licensing graders without discrimination due to age or disabilities.

The facilities and equipment which the applicant furnishes the graders are expanded to include other facilities and equipment as may otherwise be required.

The amendments revise the regulations to comply with the Nutrition Labeling and Education Act of 1990.

Also revised are the existing methods of identifying cartons to require that each officially identified carton of shell eggs be lot numbered on either the carton or the consumer package.

The amendments revise the minimum facility and operating requirements for shell egg grading and packing plants by updating grading room requirements.

Shell egg cleaning operations also are revised to require that the temperature of the water used to spray rinse shell eggs be at least as warm as the water used to wash the shell eggs. Additionally, the National Supervisor is specifically authorized to approve

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methods of sanitizing shell eggs other than the normal spray rinse method.

The amendments delete U.S. Wholesale Grades and Weight Classes for Shell Eggs.

The standards for B quality in U.S. Nest-Run Grades for shell eggs are amended to allow shell eggs with pronounced ridges and thin spots to be included in the maximum percentage tolerance permitted for B quality.

Comments

AMS published proposed revisions in the **Federal Register** (59 FR 15866) on April 5, 1994, to the Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs in 7 CFR part 56. A 60-day comment period was provided.

Three comments were received, two from State government representatives and one from a shell egg processor.

Two commenters expressed overall support of the proposal. One commenter recommended including in 7 CFR 56.37 a sentence to read that consumer packaging material for eggs manufactured prior to May 8, 1994, be excluded from the nutrition labeling requirements, defining a "lot" in 7 CFR 56.37, and requiring in 7 CFR part 56.76 that eggs be spray rinsed with fresh water ten degrees higher than the temperature of the wash water. AMS did not adopt these recommendations. AMS does not have the authority to authorize the use of cartons which do not conform to the Food and Drug Administration's rules and regulations. Such approval is beyond the scope of the shell egg grading regulation's authority. A "lot" is clearly defined in the current regulations as the consecutive day of the year in which the eggs were packed or other systems as may be approved by the Administrator. Rinse water that is at least as warm as wash water will help to reduce bacterial contamination of shell eggs without causing excessive thermal breakage. Firms always have the option to utilize a rinse water that is warmer than the wash water to the extent that their own processing operations will allow. The commenter also recommended using fresh water for the spray rinse. It was not clear what was meant by "fresh" water. However, all shell egg plants which utilize the Department's voluntary shell egg grading service are required to provide to AMS certification that the water used in its grading processes is potable.

The proposed method of sealing cases of eggs provided in the proposed rule specified that approximately 2–3 inch plastic or gummed tape be used to cover all seams. No comments were received on this provision. However, AMS evaluated this requirement further during the comment period and ascertained that a specific tape measurement was not necessary so long as cases were securely closed. Accordingly, AMS is making this change without an additional opportunity for comments because the change will eliminate burden and provide the flexibility to adapt to future changes in packaging material technology.

With the exception of the above change, the regulatory text contained in the proposed rule is hereby adopted.

List of Subjects 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 56 is amended as follows:

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

1. The authority citation for Part 56 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.1 is amended by revising the term "quality assurance inspector" and adding alphabetically the new term "washed ungraded eggs" to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Quality assurance inspector means any designated company employee other than the plant owner, manager, foreman, or supervisor, authorized by the Secretary to examine product and to supervise the labeling, dating, and lotting of officially graded shell eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

* * * * *

Washed ungraded eggs means eggs which have been washed but not sized or segregated for quality.

3. Section 56.3 is amended by revising paragraph (b) to read as follows:

§ 56.3 Administration.

* * * * *

(b) The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, national origin, religion, age, sex, or disability.

* * * * *

4. Section 56.17 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 56.17 Facilities and equipment for graders.

* * * * *

(b) Furnished office space, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official stamps and supplies, and other facilities and equipment as may otherwise be required. * * *

* * * * *

5. Section 56.35 is amended by revising paragraph (c) to read as follows:

§ 56.35 Authority to use, and approval of official identification.

* * * * *

(c) *Nutritional labeling.* Nutrition information must be included with the labeling on each unit container of consumer packaged shell eggs in accordance with the provisions of Title 21, Chapter I, Part 101, Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. The nutrition information included on labels is subject to review by the Food and Drug Administration prior to approval by the Department.

6. Section 56.36 is amended by revising the last sentence of paragraph (b)(2) to read as follows:

§ 56.36 Information required on and form of grademark.

* * * * *

(b) * * *

(2) * * * The grademark shall be printed on the carton.

7. Section 56.37 is amended by revising the first sentence to read as follows:

§ 56.37 Lot marking of officially identified product.

Each carton identified with the grademarks shown in Figures 2, 3, or 4 of § 56.36 shall be legibly lot numbered on either the carton or the consumer package. * * *

* * * * *

8. Section 56.76 is amended by revising paragraphs (b) and (e)(10), to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(b) *Grading room requirements.* (1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs. There shall be no other light source or reflections of light that interfere with, or prohibit the accurate quality determination of eggs in the grading or candling area.

(2) The grading and candling equipment shall provide adequate light to facilitate quality determinations. Other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.

(3) Adequate facilities, equipment, and light sources shall be provided to determine the condition of packing material.

(4) Egg weighing equipment shall be provided. The egg weighing equipment shall be constructed to permit cleaning; operation in a clean, sanitary manner; and shall be capable of ready adjustment.

(5) Adequate ventilation shall be provided.

* * * * *

(e) * * *

(10) Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water and contain an approved sanitizer of not less than 50 p/m nor more than 200 p/m of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the National Supervisor.

* * * * *

§§ 56.226, 56.227, and 56.228 [Removed and Reserved]

9. Sections 56.226, 56.227, and 56.228 are removed and reserved.

10. Section 56.230 is revised to read as follows:

§ 56.230 Grade.

"U.S. Nest-Run ____% AA Quality" shall consist of eggs of current production of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 15 percent which may be below A quality, not more than 10 percent may be B quality for shell shape, pronounced ridges or thin spots, interior quality (including meat or blood spots), or due to rusty or blackish-appearing cage marks or blood stains, not more than 5 percent may have adhering dirt or foreign material on the shell ½ inch or larger in diameter, not more than 6 percent may be Checks, and not more than 3 percent may be Loss. Marks which are slightly gray in appearance and adhering dirt or foreign material on the shell less than ½ inch in diameter are not considered quality factors. The eggs shall be officially graded for all other quality factors. No case may contain less than 75 percent A quality and AA quality eggs in any combination.

11. Section 56.231 is amended by revising Table 1 to read as follows:

§ 56.231 Summary of grade.

* * * * *

	Nest-run grade, description [1]	U.S. nest-run ___ percent AA quality [2]
Minimum percentage of quality required (lot average) [3]	AA quality [4]	20
Maximum percentage tolerance permitted (15 percent lot average) [3]	A quality or better [5]	85
	B quality for shell shape, pronounced ridges or thin spots, interior quality (including blood & meat spots) or cage marks [6] and blood stains.	10
	Checks	6
	Loss	3
	Adhering dirt or foreign material ½ inch or larger in diameter	5

[1] Stains (other than rusty or blackish appearing cage marks or blood stains), and adhering dirt and foreign material on the shell less than ½ inch in diameter shall not be considered as quality factors in determining the grade designation.
[2] The actual total percentage must be stated in the grade name.
[3] Substitution of eggs of higher qualities for lower specified qualities is permitted.
[4] No case may contain less than 10 percent AA quality.
[5] No case may contain less than 75 percent A quality and AA quality eggs in any combination.
[6] Cage marks which are rusty or blackish in appearance shall be considered as quality factors. Marks which are slightly gray in appearance are not considered as quality factors.

12. Section 56.234 is amended by revising paragraph (c) to read as follows:

§ 56.234 Packaging material.

* * * * *

(c) Sealing: The tops of all cases must be securely closed, so they will not open during transportation, by applying paper gummed, plastic, or other suitable tape or by methods that would secure seams made by the closing of the top of the case. The tape shall extend down the sides and/or ends of the case a sufficient length to preclude the top flaps from opening while permitting the official identification of the case, as applicable.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5543 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[FV95–989–1IFR]

Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for the 1994–95 Crop Year for Zante Currant and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for 1994 crop Zante Currant and Other Seedless raisins. The percentages are 40 percent free and 60 percent reserve for each of these varietal types. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order

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DATES: This interim final rule becomes effective March 7, 1995, and applies to all Zante Currant and Other Seedless raisins acquired from the beginning of the 1994–95 crop year. Comments which are received by April 6, 1995 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Zante Currant and Other Seedless raisins for the 1994–95 crop year, beginning August 1, 1994, through July 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A minority of handlers and a majority of producers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of Zante Currant and Other Seedless raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to section 989.54 of the order, the Committee met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If

the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1994–95 trade demand of 787 tons for Other Seedless raisins.

Section 989.54 of the order also authorizes the Committee to consider factors which pertain to the marketing of raisins, including an estimated trade demand which differs from the computed trade demand. At its August 15, 1994, meeting, the Committee computed a trade demand of 500 tons for Zante Currants. The Committee, however, determined that anticipated changes in the market conditions for Zante Currants warranted an estimated trade demand substantially higher than this.

Entering this season, the California raisin industry was carrying a very large supply of 1992–93 and 1993–94 crop Zante Currants and projected a record production in 1994–95. The Committee recommended actions to help handlers sell their tonnage at prices competitive with other currant prices in domestic and export markets. Because of these actions, the Committee believed that the computed trade demand was insufficient and decided to calculate its percentages based on an estimated trade demand of 2,200 tons.

When the Committee met on October 5, 1994, the field price for Zante Currants had been established, but the field price for Other Seedless raisins had not. Section 989.54(b) of the order requires the Committee to compute percentages which release 85 percent of the trade demand for varieties for which field prices have been established and 65 percent for varieties which have not. Thus, when the Committee met on that date, it computed and announced preliminary crop estimates and preliminary free and reserve percentages for Zante Currant and Other Seedless raisins which released 85 percent and 65 percent of the trade demands, respectively. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 6,074 tons, 31 percent free and 69 percent reserve for Zante Currants; and 4,073 tons, 13 percent free and 87 percent reserve for Other Seedless Raisins. The Committee also authorized the Committee staff to increase the preliminary percentages to release 85 percent of the trade demands for varietal types without established field prices when the field prices were established. For Other Seedless raisins, the preliminary percentages were adjusted soon thereafter to 16 percent free and 84 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Sultana, Muscat, Monukka, and Golden Seedless raisins. On January 12, 1995, the Committee decided that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins. The Committee delayed announcing final percentages for Natural (sun-dried) Seedless raisins until more shipment and production information was available. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. Thus, volume control percentages would not be necessary to maintain market stability.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for both Zante Currant and Other Seedless raisins of 39.75 percent free and 60.25 percent reserve were computed and announced on January 12, 1995. That action released most, but not all, of the computed trade demand for Zante Currant and Other Seedless raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's estimates, as of January 12, 1995, of 1994–95 production of Zante Currant and Other Seedless raisins are 5,507 and 1,973 tons, respectively. For Zante Currants, dividing the estimated trade demand of 2,200 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent. For Other Seedless raisins, dividing the computed trade demand of 787 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1994–95 crop year apply to all Zante Currant and Other Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1994–95 crop raisins of the Zante Currant and Other Seedless varietal types and this action should be taken promptly to achieve the intended purpose of making the full trade demand available to handlers; (3) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day period for written comments and all comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows

Authority: 7 U.S.C. 601–674.

2. Section 989.247 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.247 Final free and reserve percentages for the 1994–95 crop year.

The final percentages for Zante Currant and Other Seedless raisins acquired by handlers during the crop year beginning on August 1, 1994, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

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Percentage	Free percentage	Reserve
Zante Currant	40	60
Other Seedless	40	60

Dated: March 1, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–5542 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–07–AD; Amendment 39–9162; AD 95–04–10]

Airworthiness Directives; Beech Aircraft Corporation Models 34C, T–34C, and T–34C–1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Models 34C, T–34C, and T–34C–1 airplanes. This action requires replacing the eight wing attachment steel bolts and hardware with Inconel bolts and hardware. A report of the right lower aft wing attachment nut assembly separating in two pieces on a Model T–34C–1 airplane prompted this action. The actions specified by this AD are intended to prevent the wing from separating from the fuselage because of failure of this assembly

DATES: Effective April 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech Models 34–C, T–34C, and T–34C–1 airplanes was published in the **Federal Register** on October 25, 1994 (59 FR 53613). The action proposed to require replacing the eight wing attachment steel bolts and hardware with Inconel bolts and hardware. Accomplishment of the proposed replacements would be in accordance with Beech Service Bulletin No. 2487, dated August 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all information related to the subject discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by stress corrosion. Stress corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

The FAA estimates that 494 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $632,320. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required replacement.

The Beech Aircraft Company has informed the FAA that 89 wing attachment assembly kits have been sold. Assuming that each of these kits is installed on an affected airplane, this would reduce the cost impact of the required AD upon U.S. operators of the affected airplanes by $113,920 from $632,320 to $518,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–04–10 Beech Aircraft Corporation: Amendment 39–9162 Docket No. 94–CE–07–AD.

Applicability: The following model and serial number airplanes, certificated in any category, that have steel wing attachment assembly bolts and hardware:

Model	Serial numbers
34C	GP–1 through GP–50.
T–34C	GL–2 through GL–353.
T–34C–1	GM–1 through GM–71 and GM–78 through GM–98.

Compliance: Within whichever of the following occurs later, unless already accomplished:

- Four years after airplane manufacture;
- Four years after installing a new wing attachment assembly; or
- Within the next 30 calendar days after the effective date of this AD.

To prevent the wing from separating from the fuselage because of failure of the wing attachment nut assembly, accomplish the following:

(a) Replace all eight steel wing attach bolts and hardware with Inconel bolts and hardware in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Beech Service Bulletin No. 2487, dated August 19 1993.

Note 1: Replacing all eight steel wing attach bolts and hardware with Inconel bolts and hardware as required by this AD eliminates the repetitive inspection requirements of AD 85–22–05, Amendment 39–5146, for the affected airplanes.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The replacements required by this AD shall be done in accordance with Beech Service Bulletin No. 2487, dated August 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9162) becomes effective on April 7, 1995.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4367 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–132–AD; Amendment 39–9156; AD 95–04–04]

Airworthiness Directives; British Aerospace Model Avro 146–RJ70A and –RJ85A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes, that requires an inspection to identify and remove certain cable terminals on the auxiliary power unit (APU) starter circuit and installation of certain new cable terminals. This amendment is prompted by a report that, during an inspection of the cable terminals on the APU starter circuit, incorrect cable terminals were found installed on these airplanes. The actions specified by this AD are intended to ensure the installation of correct starter cable terminals in the APU; incorrect cables could lead to the inability of the pilot to start the APU when needed in a situation of loss of other electrical power sources.

DATES: Effective April 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes was published in the **Federal Register** on November 7, 1994 (59 FR 55383). That action proposed to require a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 on the APU starter circuit at terminal block KA9, removal of certain cable terminals, and installation of certain new cable terminals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

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The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,020, or $340 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-04-04 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39-9156. Docket 94-NM-132-AD.

Applicability: Model Avro 146-RJ70A and -RJ85A airplanes, as listed in Avro International Aerospace Service Bulletin 49-40, Revision 1, dated March 17, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the auxiliary power unit (APU), accomplish the following:

(a) Within 5 months after the effective date of this AD, perform a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 in the APU starter circuit at terminal block KA9, in accordance with Avro International Aerospace Service Bulletin S.B. 49-40, Revision 1, dated March 17, 1994. If the cable terminals are identified as part number (P/N) S1007-042, prior to further flight, remove the cable terminals and install new cable terminals having P/N S1006-040, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, removal, and installation shall be done in accordance with Avro International Aerospace Service Bulletin S.B. 49-40, Revision 1, dated March 17, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	Mar. 17, 1994.
2-4	Original	Feb. 16, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041-6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1995.

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-4255 Filed 3-6-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-CE-10-AD; Amendment 39-9161; AD 95-04-09]

Airworthiness Directives; Pilatus Britten-Norman BN2A, BN2B, and BN2T Islander Series and BN2A Mk III Trislander Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Britten-Norman BN2A, BN2B, and BN2T Islander and BN2A Mk III Trislander series airplanes that are equipped with a nose wheel steering disconnect system with either a Modification NB/M/503 or Modification NB/M/733 nose undercarriage unit. This action requires repetitively inspecting the nose wheel steering drive ring for cracks, and replacing any cracked drive ring. A report of the rudder pedals jamming in the central position during takeoff on one of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of the nose wheel steering system because of a cracked drive ring, which, if not detected and corrected, could result in the inability to move the rudder pedals.

DATES: Effective April 14, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 14, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman Ltd, Bembridge, Isle of Wight, United Kingdom, PO35 5PR. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Delano D. Castle, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513.3830, extension 2716; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Britten-Norman BN2A, BN2B, and BN2T Islander and BN2A Mk III Trislander series airplanes that are equipped with a nose wheel steering disconnect system with either a Modification NB/M/503 or Modification NB/M/733 nose undercarriage unit was published in the **Federal Register** on October 25, 1994 (59 FR 53615). The action proposed to require repetitively inspecting the nose wheel steering drive ring for cracks, and replacing any cracked drive ring. The proposed inspection would be accomplished in accordance with Pilatus Britten-Norman Service Bulletin No. BN-2/SB.214, Issue 1, dated September 23, 1993. The drive ring replacement, if necessary, would be accomplished in accordance with the applicable maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $900. This figure does not take into account the cost of repetitive inspections or the cost of replacing any cracked drive ring. The FAA has no way of determining how many repetitive inspections each owner/operator would incur over the life of the airplane or how many drive rings may be cracked.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95-04-09 Pilatus Britten-Norman: Amendment 39-9161; Docket No. 94-CE-10-AD.

Applicability: BN2A, BN2B, and BN2T Islander and BN2A Mk III Trisiander series airplanes, certificated in any category, that are equipped with a nose wheel steering disconnect system with either a Modification NB/M/503 or Modification NB/M/733 nose undercarriage unit.

Compliance: Required within the next 100 hours time-in-service (TIS), unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent failure of the nose wheel steering system because of a cracked drive ring, which, if not detected and corrected, could result in the inability to move the rudder pedals, accomplish the following:

(a) Visually inspect the nose wheel steering drive ring for cracks in accordance with the ACTION section of Pilatus Britten-Norman Service Bulletin No. BN-2/SB.214, Issue 1, dated September 23, 1993. Prior to further flight, replace any cracked nose wheel steering drive ring in accordance with the applicable maintenance manual.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(d) The inspection required by this AD shall be done in accordance with Pilatus Britten-Norman Service Bulletin No. BN-2 SB.214, Issue 1, dated September 23, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Britten-Norman Ltd., Bembridge Isle of Wight, United Kingdom, PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City,

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Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9161) becomes effective on April 14, 1995.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4369 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–153–AD; Amendment 39–9160; AD 95–04–08]

Airworthiness Directives; Boeing Model 747–300 and –400 Series Airplanes Equipped With BFGoodrich Stretched Upper Deck Evacuation Slides, Part Number 7A1323–( )

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747–300 and –400 series airplanes equipped with certain stretched upper deck evacuation slides manufactured by BFGoodrich series airplanes. This amendment requires modification of the slide's main restraint strap, regulator assembly, and turbo fan flapper retaining roll pins. This amendment is prompted by reports of loss of air pressure and non-inflation of the inflatable tubes of the slide due to problems associated with the restraint strap, regulator assembly, and turbo fan flapper retaining roll pins. The actions specified by this AD are intended to prevent loss of air pressure or non-inflation of the inflatable tubes of the slide, which could impede the successful evacuation of passengers from the airplane during an emergency.

DATES: Effective April 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Dept. 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 747–300 and –400 series airplanes equipped with BFGoodrich stretched upper deck evacuation slides, Part Number 7A1323–( ), was published in the **Federal Register** on November 30, 1994 (59 FR 61296). That action proposed to require modification of the slide's main restraint strap, regulator assembly, and turbo fan flapper retaining roll pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposal.

One commenter requests that the description of the report that prompted the proposal be clarified. The preamble to the notice stated that the proposed action was based, in part, on a report indicating that, "during deployment of the slide, the turbo fan flapper retaining roll pin broke, allowing the flapper to fall out." The commenter wishes to clarify that the reported incident occurred during the deployment of a slide that was equipped with roll pins that are common to those used on the stretched upper deck escape slide; however, there have been no reports of roll pins breaking during deployment of stretched upper deck slides that are the subject of the proposed rule. The FAA acknowledges this clarification.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the addition of the clarifying note previously described. The FAA has determined that the addition of the clarifying note will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 900 BFGoodrich stretched upper deck evacuation slides of the affected design installed on Boeing Model 747 series airplanes worldwide. The FAA estimates that 100 of these slides are installed on airplanes of U.S. registry that are affected by this AD. It will take approximately 4.5 work hours per slide to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,402 per slide assembly. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $167,200, or $1,672 per slide.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–08 Boeing: Amendment 39–9160. Docket 94–NM–153–AD

Applicability: Model 747–300 and –400 series airplanes equipped with BFGoodrich stretched upper deck evacuation slides, part number (P/N) 7A1323–1, –2, –3, –4, –105, –106, –107, –108, –109, or –110; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of air pressure or non-inflation of the inflation tubes of an evacuation slide, which could impede the evacuation of passengers from the airplane during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the BFGoodrich stretched upper deck evacuation slide, P/N 7A1323–( ), in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1323–25–266, Revision 1, dated September 30, 1994.

Note 2: Installation of the "product improvements," specified in paragraph 2.J. of the Accomplishment Instructions of the service bulletin, is not required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 7A1323–25–266, Revision 1, dated September 30, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Dept. 7916, Phoenix , Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1995.

Issued in Renton, Washington, on February 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4378 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–40; Amendment 39–9154; AD 95–04–02]

Airworthiness Directives; Rolls-Royce, plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Rolls-Royce, plc RB211–524 series turbofan engines, that requires a one-time modification of the nozzle guide vane (NGV) assembly to incorporate vane core reinforcement inserts which would prevent release of the stage 2 NGV seal ring, rotor contact, and severance of the rotor drive arm. This amendment is prompted by a report of an uncontained stage 1 low pressure turbine failure. The actions specified by this AD are intended to prevent release of the stage 2 NGV seal ring, which could result in an uncontained engine failure.

DATES: Effective May 8, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce, plc, P.O. Box 31, Derby, England DE2 8BJ; telephone 44–332–242424, 44–332–249936. This information may be examined at the Federal Aviation Administration (FAA) New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Rolls-Royce, plc (R–R) RB211–524 series turbofan engines was published in the **Federal Register** on October 4, 1993 (58 FR 51585). That action proposed to require a one-time modification of the nozzle guide vane (NGV) assembly to incorporate vane core reinforcement inserts which would prevent release of the stage 2 NGV seal ring, rotor contact, and severance of the rotor drive arm in accordance with R–R Mandatory Service Bulletin (SB) No. RB.211–72–9672, Revision 1, dated November 6, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the rule as proposed.

One commenter states that the proposed rule should provide separate compliance times for spare engines. The commenter further states that the proposed rule notes that no U.S. registry engines would be affected. The commenter has one affected spare engine, and states that an acceptable

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level of safety would be maintained provided the spare engine is modified within 20 months of installation. The FAA concurs in part. The FAA has revised the economic analysis of this final rule to include the one domestic spare engine. However, the FAA does not concur with the proposal to require modifying spare engines within 20 months after installation on Lockheed L–1011 aircraft, or at the next shop visit. The FAA has determined that the acceptable level of safety maintained by this AD is based on total fleet compliance within a finite period after AD issuance. The commenter's proposal to modify spare engines within 20 months after installation or at the next shop visit could allow indefinite operation of unmodified engines, if an engine were removed for use as a spare engine and subsequently installed without undergoing a shop visit. Therefore, the FAA concludes that the compliance timetable originally provided in the NPRM is appropriate to maintain an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 300 R–R RB211–524 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1 spare engine of U.S. registry will be affected by this AD, that it will take approximately 37 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,420 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–02 Rolls-Royce, plc: Amendment 39–9154. Docket 93–ANE–40.

Applicability: Rolls-Royce, plc (R–R) Models RB211–524B–02, –524B–B–02, –524B3–02, –524B2–19, –524B2–B–19, –524C2–19, and –524C2–B–19 turbofan engines, installed on but not limited to Boeing 747 series and Lockheed L–1011 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent release of the stage 2 nozzle guide vane (NGV) seal ring, which could result in an uncontained engine failure, accomplish the following:

(a) For engines installed on Boeing 747 series aircraft, modify the NGV assembly in accordance with R–R Mandatory Service Bulletin (SB) No. RB.211–72–9672, Revision 1, dated November 6, 1992, at the next shop visit, but not later than 9 months after the effective date of this airworthiness directive (AD), whichever occurs first.

(b) For engines installed on Lockheed L–1011 series aircraft, modify the NGV assembly in accordance with R–R Mandatory SB No. RB.211–72–9672, Revision 1, dated November 6, 1992, at the next shop visit, but not later than 20 months after the effective date of this AD, whichever occurs first.

(c) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of mating engine flanges or the removal of a disk, hub, or spool.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The modification shall be done in accordance with the following SB:

Document No.	Pages	Revision	Date
R–R SB No. RB.211–72–9672	1–31	1	Nov. 6, 1992.
R–R SB Supplement	1–2	1	Nov. 6, 1992.
Total pages	33		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce, plc, P.O. Box 31, Derby, England DE2 8BJ; telephone 44–332–242424, fax 44–332–249936. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 8, 1995.

Issued in Burlington, Massachusetts, on February 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4545 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–157–AD; Amendment 39–9158; AD 95–04–06]

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Avro 146–RJ series airplanes, that requires inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. This amendment is prompted by reports of cracking of the upper main fitting of the NLG. The actions specified by this AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Effective on April 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146–RJ series airplanes was published in the **Federal Register** on November 7, 1994 (59 FR 55380). That action proposed to require repetitive eddy current or ultra high sensitivity penetrant inspections, and replacement or repair of cracked parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $450, or $150 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–06 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Amendment 39–9158. Docket 94–NM–157–AD.

Applicability: All Model Avro 146–RJ series airplanes, certificated in any category

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a

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request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the main fitting, which could lead to collapse of the nose land gear (NLG) during landing, accomplish the following:

(a) For airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings.

(b) For airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993, which contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1	2	July 10, 1993.
2–4	1	Nov. 12, 1992.
Appendix A–1 1–4.	Original	Dec. 6, 1991.

The replacement and repair shall be done in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 6, 1995.

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4254 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–ANE–11; Amendment 39–9151; AD 95–03–15]

Airworthiness Directives; Textron Lycoming ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Textron Lycoming ALF502R series turbofan engines, that reduces the service life for the No. 2 stage turbine disk, reduces the service lives for No. 1 and No. 3 through No. 7 stage compressor rotor disks, and requires a scheduled removal of these disks from service. This amendment is prompted by reports of cracks in disks returned from the field and in disks tested by the manufacturer. The actions specified by this AD are intended to prevent disk failure resulting in a possible uncontained engine failure.

DATES: Effective on May 8, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R series turbofan engines was published in the **Federal Register** on March 16, 1993 (58 FR 14185). That action proposed to reduce the service life for the No. 2 stage turbine disk, reduce the service lives for No. 1 and No. 3 through No. 7 stage compressor rotor disks, and require a scheduled removal of these disks from service in accordance with Textron Lycoming Service Bulletin (SB) ALF502R 72–281, dated February 7, 1992.

The compliance section of this final rule has been revised to specify the reduced service lives for each affected disk, to clarify that the reduced service lives are the new life limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, but as of this date the anticipated name change on the type certificate for the ALF502R series engines has not occurred.

There are approximately 700 Textron Lycoming ALF502R series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 200 engines installed on aircraft of U.S. registry will be affected by this AD. The required reduction in service life will cost $41,400 per engine based on the cost of a new disk prorated over the reduced service life as compared to the current service life. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,280,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–03–15 Textron Lycoming: Amendment 39–9151. Docket 92–ANE–11.

Applicability: Textron Lycoming ALF502R series turbofan engines installed on but not limited to British Aerospace BAe-146 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent No. 2 stage turbine disk, and No. 1 and No. 3 through No. 7 stage compressor rotor disk, failure resulting in possible uncontained engine failure, accomplish the following:

(a) Remove from service No. 2 stage turbine disks, P/Ns 2–121–058–18, 2–121–058–20, and 2–121–058–R24, in accordance with the schedule defined in paragraph B(1) of Table 1 of Textron Lycoming Service Bulletin (SB) ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 10,000 cycles.

(b) Remove from service No. 1 stage compressor rotor disks, P/N 2–101–331–04, in accordance with paragraph A(1) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 12,500 cycles.

(c) Remove from service No. 3 stage compressor rotor disks, P/Ns 2–101–263–02, 2–101–263–05, 2–101–263–06, 2–101–263–09, and 2–101–263–R10, in accordance with paragraph A(2) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 11,800 cycles.

(d) Remove from service No. 4 stage compressor rotor disks, P/Ns 2–100–042–03, 2–100–042–07, 2–100–042–09, and 2–100–042–R08, in accordance with paragraph A(3) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 9,000 cycles.

(e) Remove from service No. 5 stage compressor rotor disks, P/Ns 2–100–043–01, 2–100–043–07, 2–100–043–09, and 2–100–043–R08, in accordance with paragraph A(4) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 12,300 cycles.

(f) Remove from service No. 6 stage compressor rotor disks, P/Ns 2–100–044–01, 2–100–044–05, 2–100–044–07, and 2–100–044–R06, in accordance with paragraph A(5) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 12,500 cycles.

(g) Remove from service No. 7 stage compressor rotor disks, P/Ns 2–100–045–01, 2–100–045–05, 2–100–045–07, and 2–100–045–R06, in accordance with paragraph A(6) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992, and replace with a disk with cycle accumulation no greater than the reduced service life limit of 9,200 cycles.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) The actions required by this AD shall be done in accordance with the following Textron Lycoming service bulletin:

Document No.	Pages	Date
ALF502R 72–281	1–5	Feb. 7, 1992.
Total pages ..	5	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(j) This amendment becomes effective on May 8, 1995.

Issued in Burlington, Massachusetts, on February 8, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4125 Filed 3–6–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8581]

RIN 1545–AQ87

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: The final regulations (TD 8581), which are the subject of these corrections were published in the **Federal Register** for Friday, December 23, 1994 (59 FR 66165). The final regulations govern certain cash or deferred arrangements and employee and matching contributions under employee plans.

EFFECTIVE DATE: December 23, 1994.

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FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 401(a)(30), 401(k), 401(m), 402(a)(8), 402(g), 411(d)(6), 415(c), 416 and 4979 of the Internal Revenue Code.

Need for Correction

As published, TD 8581 contains typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 94–31427, is corrected as follows:

1. On page 66165, column 2, in the preamble following the paragraph heading "*1. Coordination With Regulations Under Sections 401(a)(4), 401(a)(17), 410(b), and 414(s)*", paragraph 2, line 10, the section "410(k)" is corrected to read "401(k)".

§ 1.401(k)–1 [Corrected]

2. On page 66173, column 2, § 1.401(k)–1, paragraph (f)(3)(iii)(C), line 11, the regulations section "§ 410(b)–7(c)" is corrected to read "§ 1.410(b)–7(c)".

§ 1.401(m)–1 [Corrected]

3. On page 66178, column 1, § 1.401(m)–1, paragraph (e)(6), *Example 3.*, third line from the bottom of the paragraph, the language "in compensation). Since Plan X satisfies the" is corrected to read "in compensation. Since Plan X satisfies the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5552 Filed 3–6–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

North Carolina State Plan; Suspension of Limited Concurrent Federal Enforcement

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final rule; notice of suspension of concurrent Federal enforcement.

SUMMARY: This document announces OSHA's suspension of its exercise of concurrent Federal enforcement authority in North Carolina. Federal enforcement authority will be exercised only with regard to those issues not covered by the State plan and in specific areas defined in this document under "Level of Federal Enforcement."

EFFECTIVE DATE: March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e). In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. See 29 CFR 1954.3 for guidelines and procedures.

The North Carolina Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and part 1902 of this chapter on January 26, 1973 (38 FR 3041), and certified by OSHA as having completed all of its developmental steps on October 5, 1976 (41 FR 43896). On February 20, 1975, OSHA and the State of North Carolina entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. (See 40 FR 16843).

On September 3, 1991, a tragic fire occurred at the Imperial Food Products chicken processing plant in Hamlet, North Carolina, which resulted in the deaths of 25 workers. In response to that event OSHA understood a comprehensive reevaluation of the performance of the North Carolina State Plan and a special evaluation of all other State Plans. On October 24, 1991 (56 FR 55192) OSHA reasserted concurrent Federal enforcement jurisdiction in North Carolina with respect to all currently pending and new complaints of discrimination filed either with OSHA or the State; all complaints of unsafe or unhealthful working conditions brought to OSHA's attention on or after October 24, 1991 by employees or referred by others; and referrals from the North Carolina Governor's 800 "Safety Line". This action was responsive to the State's request for assistance. Upon further request, on March 31, 1992, (57 FR 10820) OSHA extended its jurisdiction to include all as yet uninvestigated workplace complaints filed with the State as of March 20, 1992.

Congressional oversight hearings were held on the Hamlet fire and the AFL–CIO, on September 11, 1991, petitioned the Assistant Secretary to withdraw approval of the North Carolina State Plan. (See September 30, 1991, 56 FR 49444, Request for Public Comment and January 16, 1992, 57 FR 1889, extension of the comment period and announcement of the availability of a Special Evaluation report on North Carolina.) On January 7, 1992, OSHA issued a Special Evaluation report on North Carolina finding significant deficiencies and giving the State 90 days to take corrective action. On April 23, 1992, OSHA determined that the State's response to the Special Evaluation findings was insufficient and gave North Carolina 45 days to show cause why plan withdrawal action should not be initiated. Fully satisfactory assurances the necessary corrective action would be undertaken were received in June 1992.

Since that date, North Carolina has made substantive and significant modifications to its program. Major modifications were made to the State's occupational safety and health program enabling legislation; State funding and staffing were increased. The State now has the inspection resources necessary to provide effective worker protection in the State and has addressed all of the deficiencies identified as a result of OSHA's 1991 Special Evaluation Report. The State increased its allocated enforcement staff to 115 (64 safety and 51 health) and trained its new compliance officers in accord with the schedule outlined in the State's June 1992 corrective action commitments. (On-board compliance staffing totals 104—61 safety and 43 health as of February 1, 1995.) North Carolina resumed responsibility for all discrimination complaints effective July 1, 1992, as a result of enactment of legislation creating the Workplace Retaliatory Discrimination (WORD) Division, selection and training of dedicated staff, and revision of its discrimination manual to be comparable to OSHA's. The State has no appreciable backlog of workplace complaints and is conducting programmed inspection. These and others actions have also resolved all issues raised in the AFL–CIO's petition for withdrawal of approval of the North Carolina State Plan.

OSHA has issued three evaluation reports on North Carolina's performance since the Special Evaluation. All have documented continuing improvement and indicate that the program is now operating in a more than acceptable manner with an outstanding commitment to necessary enforcement as well as creative outreach and other voluntary compliance activities.

As a result of these actions, OSHA was prepared to suspend its exercise of concurrent Federal jurisdiction in North Carolina by mid-1994. However, two initiatives that the State had undertaken were brought to OSHA's attention as potential problems—the conditions attendant to the establishment of a joint Ergonomics Center with North Carolina State University; and an amendment to State law establishing a two-step contest procedure as a means of expediting review of contested cases and achieving more timely abatement of hazards. Both of these issues have now been resolved. The ergonomics program has been revised to eliminate any possibility or perception that inspection or citation exemption could result from employer participation in the Ergonomics Center program. The informal conference procedures have been revised through an internal operating procedure and a proposed regulation to specify that any informal conference resulting from the contest process must be held within 20 days.

B. Decision

Based on the foregoing, OSHA has determined that the exercise of concurrent Federal enforcement jurisdiction is no longer warranted, and it is hereby suspended. Federal enforcement authority will be exercised only with regard to those issues not covered by the State and in specific areas defined in the following modification to 29 CFR 1952.155 "Level of Federal Enforcement."

OSHA has similarly determined that no further action is necessary or appropriate with regard to the AFL–CIO petition for North Carolina plan withdrawal. This does not preclude the resubmission of a petition at any time on substantive issues of State Plan structure or performance.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Accordingly, 29 CFR 1952.155 is amended as set forth below.

Signed in Washington, DC, this 28th day of February 1995.

Joseph A. Dear,

Assistant Secretary

PART 1952—[AMENDED]

1. The authority citation for 29 CFR part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Section 1952.155 of part 1952, subpart I—North Carolina is revised to read as follows:

Subpart I—North Carolina

§ 1952.155 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii), discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR part 1910, 29 CFR part 1926, and 29 CFR part 1928. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); enforcement with respect to private sector maritime activities, including enforcement of all provisions of the Act, rules or orders and all Federal standards, current or future, applicable to private sector maritime employment including 29 CFR part 1915, shipyard employment (including boat building establishments in SIC 3732 located on the navigable waters and all establishments in SIC 3731); 29 CFR part 1917, marine terminals; 29 CFR part 1918, longshoring (including all private sector and Federal sector marine cargo handling establishments or operations in SIC 4491 located within the State of North Carolina), 29 CFR part 1919, gear certification; all marinas in SIC 4493 located on the navigable waters; enforcement of marine construction activities on the navigable waters which are not directly accessible by land; and, enforcement of general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage in the North Carolina plan; the enforcement of occupational safety and health standards on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government; enforcement on military bases; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; enforcement in situations where the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of this notice; and investigations for the purpose of the evaluation of the North Carolina plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in North Carolina.

[FR Doc. 95–5504 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Hawaii State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Approval of supplements to the Hawaii State Plan.

SUMMARY: This document gives notice of Federal approval of supplements to the Hawaii State occupational safety and health plan. These supplements are: regulations concerning the Division of Occupational Safety and Health's Access to Employee Medical Records; changes to previously approved regulations covering the Labor and Industrial Relations Appeals, Board, General Provisions and Definitions, Recording and Reporting Occupational Injuries and Illnesses, Inspections, Citations, and Proposed Penalties, and Variances; an amendment to the Hawaii Occupational Safety and Health Law enacted in 1987; the Hawaii Consultation Policies and Procedures Manual; and the Hawaii Occupational

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Safety and Health Administration Technical Manual.

EFFECTIVE DATE: March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 4, 1974 (39 FR 1010). Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Regulations

On September 16, 1982, the State submitted its regulation concerning the Division of Occupational Safety and Health's Access to Employee Medical Records. This regulation is identical to the Federal regulation set out in part 1913 of this Chapter. On March 11, 1988, the State submitted minor editorial revisions to this regulations.

On October 7, 1983, the State submitted a revised version of the Rules of Practice and Procedure of the Hawaii Labor and Industrial Relations Appeals Board. These rules have been reviewed and found to be as effective as the regulations governing the Federal Occupational Safety and Health Review Commission.

On June 27, 1983, the State submitted a revision to its regulation on Recording and Reporting Occupational Injuries and Illnesses (Chapter 52) to incorporate a change in the Federal regulation at Part 1904 of this Chapter concerning an exemption from requirements for recording occupational injuries and illnesses for certain low hazard industries. The State change is identical to the Federal revision. On March 11, 1988, the State submitted minor editorial changes to this regulation.

On June 27, 1983, the State submitted revisions to its regulations on Inspections, Citations, and Proposed Penalties (Chapter 51), to incorporate a change in the Federal regulation at Part 1903 of this Chapter concerning the use of personal sampling devices during inspections. On March 11, 1988, the State submitted further revisions to this regulation. OSHA's review of an earlier version of this regulation had expressed concern about the provisions for Petition for Modification of Abatement dates (PMAs). (See 43 FR 5820, February 10, 1978.) In response, the State revised its regulation to provide for employee contest of a PMA within ten days of posting of the petition and an opportunity for contest PMAs to be heard by the Appeals Board, with the burden of proof placed on the employer. In addition, the State has issued a Guideline which provides that the employer will be informed of the right to contest the denial of a PMA and that the Director will not grant an uncontested PMA before the ten day contest period has expired. These revisions make the Hawaii regulations at least as effective as the Federal regulations in Part 1903 of this Chapter. This submission also contained a change in the State's provision for filing complaints of discrimination for exercising rights under the Act. The change incorporates a revision to the Federal regulation at Part 1977 of this Chapter concerning time limits for filing such complaints.

On March 11, 1988, Hawaii submitted revisions to its Rules of Practice for Variances (Chapter 53). The State amended its regulations to allow for acceptance of Federally granted variances from standards which are identical to Federal standards.

The March 11, 1988 submission also included minor editorial changes to Hawaii's General Provisions and Definitions (Chapter 50). In addition, on March 13, 1992, the State submitted a revision to this regulation to include a definition of nationally recognized testing laboratories, in response to changes in the Federal definition. On July 13, 1993, the State submitted an updated Guideline on Nationally Recognized Testing Laboratories, which states that Hawaii will not establish its own testing program but will recognize Federally approved laboratories.

B. Amendment to Hawaii Occupational Safety and Health Law

In 1987, the State enacted an amendment to its Occupational Safety and Health Law. The amendment, submitted as a plan supplement on March 13, 1992, expands the type of information that is protected from disclosure in any discovery or civil action arising out of enforcement or administration of the law.

C. Consultation Manual

On June 12, 1987, the State submitted its Consultation Policies and Procedures Manual. This manual is identical to Part I of the Federal Consultation Policies and Procedures Manual.

D. Industrial Hygiene Technical Manual

On August 8, 1991, the State submitted notice of its adoption of the Federal OSHA Technical Manual, through Change 1. The State manual is identical to the Federal Technical Manual.

E. Revised Plan

On January 28, 1992, Hawaii submitted a reorganized State plan, incorporating the plan supplements approved herein as well as previously approved plan changes and other supplements still under review.

Location of Supplements for Inspection and Copying

A copy of the plan and the supplements may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 415, 71 Stevenson Street, San Francisco, California 94105; Director, Hawaii Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813; and the Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Hawaii plan supplements are consistent with Federal requirements and with commitments contained in the plan and previously made available for public comment. Good cause is therefore found for approval of these supplements, and further public participation would be unnecessary.

Decision

After careful consideration and extensive review by the Regional and National Offices, the Hawaii plan supplements described above are found to be in substantial conformance with comparable Federal provisions and are hereby approved under Part 1953 of this chapter. The decision incorporates the requirements and implementing regulations applicable to State plans generally.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 20th day of February, 1995.

Joseph A. Dear,

Assistant Secretary.

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read:

Authority: Secs. 8, 18 Pub. L. 91–596, 84 Stat. 1608 Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. New paragraphs (b) through (f) are added to § 1952.316 of Subpart Y to read as follows:

§ 1952.316 Changes to approved plans.

* * * * *

(b) Regulations.

(1) The State's regulation on the Division of Occupational Safety and Health's Access to Employee Medical Records, and amendments to State regulations covering the Labor and Industrial Relations Appeals Board; General Provisions and Definitions; Recording and Reporting Occupational Injuries and Illnesses; Inspections, Citations, and Proposed Penalties; and Variances, promulgated by the State through March 22, 1991, were approved by the Assistant Secretary on February 20, 1995.

(2) [Reserved]

(c) Legislation.

(1) An amendment to the Hawaii Occupational Safety and Health Law, enacted in 1987, which expands the type of information that is protected from disclosure in any discovery or civil action arising out of enforcement or administration of the law, was approved by the Assistant Secretary on February 20, 1995.

(2) [Reserved]

(d) Consultation Manual. The State's Consultation Policies and Procedures Manual was approved by the Assistant Secretary on February 20, 1995.

(e) Occupational Safety and Health Administration Technical Manual. The State's adoption of the Federal OSHA Technical Manual, through Change 1, was approved by the Assistant Secretary on February 20, 1995.

(f) Reorganized Plan. The reorganization of the Hawaii plan was approved by the Assistant Secretary on February 20, 1995.

[FR Doc. 95–5505 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA23

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule is to reform CHAMPUS quality of care standards and reimbursement methods for inpatient mental health services. The rule updates existing standards for residential treatment centers (RTCs) and establishes new standards for approval as CHAMPUS-authorized providers for substance use disorder rehabilitation facilities (SUDRFs) and partial hospitalization programs (PHPs); implements recommendations of the Comptroller General of the United States that DoD establish cost-based reimbursement methods for psychiatric hospitals and residential treatment facilities; adopts another Comptroller General recommendation that DoD remove the current incentive for the use of inpatient mental health care; and eliminates payments to residential treatment centers for days in which the patient is on a leave of absence.

DATES: This rule is effective April 6, 1995, except amendments to § 199.4 which are effective October 1, 1995.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development; Aurora, Colorado 80045–6900.

FOR FURTHER INFORMATION CONTACT: CAPT Deborah Kamin, NC, USN, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

Questions regarding payment of specific claims should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: Provisions of this rule apply to the CHAMPVA (Civilian Health and Medical Program of the Department of Veterans Affairs) in the same manner as they apply to CHAMPUS.

I. Introduction

Quality assurance and cost effectiveness of mental health care services under CHAMPUS continue to be major reform issues for the Defense Department and Congress. In recent years, a series of DoD initiatives, legislative and regulatory actions, and Congressional hearings have spotlighted both progress made and the need for more improvement.

Two recent Comptroller General Reports are indicative of the importance of these issues and the need for reform. The first of these, "Defense Health Care: Additional Improvements Needed in CHAMPUS's Mental Health Program," GAO/HRD–93–34, May 1993, stated that, although DoD has taken actions to improve the program "several problems persist." The Report (hereafter referred to as "GAO Report #1") elaborated:

> For example, reviews of medical records have identified numerous instances of poor medical record documentation, potentially inappropriate admissions, excessive hospital stays, and poor-quality care. Also, inspections of RTCs [Residential Treatment Centers] continue to reveal significant health and safety problems, and corrective actions often take many months.
>
> Moreover, DoD * * * pays considerably higher rates for comparable services than do other public programs.

GAO Report #1, p. 2. The Report referenced the General Accounting Office's 1991 Congressional testimony regarding CHAMPUS mental health care and inspections of residential treatment facilities conducted for DoD since then:

> Inspections conducted since our 1991 testimony have identified some of the same problems we described then: unlicensed and unqualified staff, inappropriate use of seclusion and medication, inadequate staff-to-patient ratios, and inadequate documentation of treatment.

The principal conclusions of this Report were: (1) "Standards, which include termination for noncompliance, should be specified and termination proceedings, time frames, and reinspection provisions * * * should be adopted;" and (2) because "DoD reimburses psychiatric hospitals and RTCs at higher rates than do other government payers, it should modify its payment system to more closely resemble other programs such as Medicare." GAO Report #1, p. 9.

A second recent Comptroller General Report, "Psychiatric Fraud and Abuse: Increased Scrutiny of Hospital Stays Is Needed to Lessen Federal Health Program Vulnerability," GAO/HRD–93–92, September 1993, also called for improvements in the CHAMPUS mental health program. The Report (hereafter referred to as GAO Report #2) said:

> Investigations to date have revealed that federal health programs have been subject to fraudulent and abusive psychiatric hospital

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practices, but apparently to a lesser extent than private insurers * * *

Some federal control weaknesses do exist which have resulted in unnecessary hospital admissions, excessive stays, and sometimes inadequate quality of care * * *

DOD has also identified numerous instances of quality problems and unnecessary hospital admissions.

GAO Report #2, pp. 9–10.

These two recent Comptroller General Reports, as well as a substantial body of other documentation, highlight the need for a very active quality assurance program. As discussed further below, two primary issues are presented. First, there is a need for clear, specific standards for psychiatric facilities on staff qualifications, clinical practices, and all other aspects directly impacting the quality of care. These standards are needed for residential treatment facilities, substance use disorder rehabilitation facilities, and partial hospitalization programs. These standards will help bring those facilities, a minority in the industry, that have been unwilling or unable to comply with necessary requirements, up to an appropriate standard of care.

The second key issue is reimbursement rates. As documented by the Comptroller General, CHAMPUS needs to discontinue payment rates based on historical billed charges and establish payment rates based on the actual costs of providing the services.

This final rule puts into place as part of the CHAMPUS regulation comprehensive quality of care certification standards for residential treatment facilities, substance abuse rehabilitation facilities, and partial hospitalization programs. It also modifies current payment methodologies, which will result in rates approximating the costs of providing services in psychiatric hospitals and moving toward cost levels for residential treatment facilities. In addition, the rule addresses several other issues, addressed below.

II. Provisions of Rule to Reform Certification Standards for Mental Health Care Facilities

The Comptroller General's call for stronger management by CHAMPUS to assure quality of care in the mental health programs was based partially on a review of serious abuses on the part of some providers. The GAO presented audit findings identifying program weaknesses. Texas, which is one of four states which account for more than half of CHAMPUS mental health hospital costs, surfaced in recent audits as number one in CHAMPUS mental health expenditures. Of particular concern are practices described during 1991 hearings conducted before the Texas state senate and summarized in GAO Report #2. In over 80 hours of testimony, 175 witnesses—some beneficiaries of federal programs—brought forth allegations which included exorbitant charges for care never rendered; kickbacks for patient referrals; restraint of voluntary patients against their will; discharge of patients upon exhaustion of benefits, regardless of their condition; and isolation of family from patients, including withholding of visitation and mail/telephone privileges. While privately insured patients are the most common target of unethical practices, increasing benefit limits and payment controls by private third party payers may place federal programs at increased risk for fraudulent practices. GAO auditors point out that, because CHAMPUS reimburses mental health at rates higher than other federal programs, it may be particularly vulnerable to the minority of unethical providers seeking additional revenue sources.

In recent years, the Department has worked to strengthen oversight and monitoring of mental health programs, particularly with respect to treatment of children and adolescents. Through the contract with HMS, and other efforts, CHAMPUS has paid much more attention to care in RTCs. In [insert 30 days after date of publication] of 1992, Health Management Strategies International (HMS) expressed specific concerns about several of the CHAMPUS-authorized residential treatment centers. Numerous quality of care issues surfaced during on-site facility visits to residential treatment centers where CHAMPUS beneficiaries were receiving care.

Here are several examples:

—Staff qualifications were deficient. In some cases, patient treatment was not being directed by qualified psychiatrists. At one facility, psychiatry residents were acting as facility medical directors. In some facilities, one psychiatrist may be responsible for as many as 90 children and their families, seriously limiting professional time available for individual attention. In some RTCs, group therapy was being conducted by child care workers with high school diplomas.

—Several facilities failed to individualize treatment plans. At one facility all treatment plans were the same, regardless of history, needs or problems. Similarly, some facilities were discovered to focus on one type of treatment to the exclusion of all other approaches. This was true regardless of whether or not patients responded to this type of treatment.

—In several facilities, registered nurses were not available on a full-time basis. For example, at one facility children were ordering their own medications "as needed" and medications were dispensed—without further evaluation—by untrained child care workers. In one instance a child who developed tardive dyskinesia (a motion disorder resulting from medication) was described by a child care worker as having a "nervous tic."

—There was evidence of excessive use of restraints and seclusion as methods of behavioral management. Examples including placing children as young as three or four in restraint and seclusion. In one facility, seclusion was used 146 times in one month. The practice of zipping children into so-called "body bags" was employed by several facilities. Use of a body bag, which leaves an opening only for the head, carries risk of overheating to the point of lethal hyperthermia. One facility policy governing this practice did not require physician evaluation of the patient for 72 to 96 hours after the event.

—Certain RTCs employed unnecessary strip searches and other intrusive acts. Searches involve adult authority figures for forcing children between the ages of four and 18 to remove all clothing and submit to cavity searches. Cavity searches involve finger probes to the mouth, vagina, and rectum. Some facilities were requiring such searches whenever the patient returned from a pass or having a visitor. In many cases, children subjected to such searches were victims of abuse and, for some, these methods of search re-enact the original trauma.

These HMS case findings pointed out shortcomings in practices in some RTCs that can be addressed through improved standards. Although standards for residential treatment centers exist, they have evolved over time from attempts to address individual issues with incremental change. Further, existing CHAMPUS standards for residential treatment centers were written as supplements to standards employed by the Joint Commission on Accreditation of Hospital Organizations (JCAHO). In recent years, the JCAHO has moved toward a more general set of facility standards, with less specific reference to unique requirements of medical specialties. The result has been that CHAMPUS standards—which were not intended to stand alone—do not address the full spectrum of requirements and expectations for mental health facilities and providers.

Originally drafted in the late 1970s, CHAMPUS standards for RTCs have undergone multiple revisions to ensure they reflect currently accepted clinical practice. This rule incorporates revisions necessary to update existing standards. With shorter lengths of stay in acute care facilities, mental health patients are reaching residential treatment centers at earlier—and less stable—stages of treatment. Similar to trends in other medical specialties, the growing intensity of illness among inpatients has dictated a need for higher standards of care and increasing levels of professional supervision and treatment. Current CHAMPUS standards for RTCs must be updated to reflect more clearly professional skill levels and intervention strategies employed in today's mental health environment. Based on a clear record of problems among some institutional mental health providers and the shortcomings of current standards, DoD has developed a comprehensive, unified set of standards for residential treatment centers, partial hospitalization programs and substance use disorder rehabilitation facilities. This rule updates existing standards to reflect current mental health practices, account for policy shifts in the JCAHO, and communicate clearly CHAMPUS policy with regard to quality and scope of care provided to its beneficiaries.

The standards will work to prevent recurrence of abuses such as those discussed by defining more completely and specifically quality indicators which will be used to judge care rendered in these facilities. Among areas addressed by the standards are:

Qualifications and authority of clinical director. Standards require the clinical director of any RTC to have completed appropriate training and have at least five years' experience in treating children and adolescents. In addition to oversight of all clinical care provided, standards for RTCs, substance abuse rehabilitation facilities and partial hospitalization programs outline specific requirements for clinical director participation in program development, peer review, quality monitoring and improvement and coordination with the governing body.

Adequate staffing with qualified professionals. Standards require written staffing plans. Specific information is provided concerning requirements for staffing levels and professional qualifications 24 hours per day, seven days per week (or, in the case of partial hospitalization programs, during all hours of operation). Standards require that all clinical care provided under clinical supervision is the responsibility of a licensed or certified mental health professional. Additionally, there must be evidence to show that ultimate authority for management of the medical aspects of care is vested in a physician.

Patient rights and limitations on use of seclusion and restraint. Standards require provisions for protection of all individual patient rights, including civil rights, provided for under federal law and the laws of the state where the residential treatment center is located. Specific requirements address privacy, personal freedoms, contact with families and environmental safety. Detailed guidelines for use, supervision and medical monitoring of behavior management—including use of seclusion and retraint—are also provided.

Implementation of individualized treatment plans addressing each patient's needs. Responsibility of development, supervision, implementation and assessment of written, individualized and interdisciplinary treatment plans is assigned to a qualified mental health professional. Treatment goals must be communicated to the family, must undergo regular review and must include specific, measurable and observable criteria for discharge.

Comprehensive evaluation system to guide an ongoing quality improvement program. Standards provide detailed expectations with respect to evaluation systems by which quality, efficiency, appropriateness and effectiveness of care, treatments, and services are provided. The evaluation system must involve all disciplines, services, and programs of the facility, including administrative and support activities. Responsibility for development and implementation of quality assurance and quality improvement programs rests with the clinical director and must support overall facility and philosophical assumptions and values.

The standards are designed to foster interdisciplinary communication and patient protection through involvement and oversight of the Governing Body, Chief Executive Officer, Clinical Director, and Professional Staff with respect to administrative, utilization review, and clinical activities. DoD has also strengthened standards for substance abuse treatment programs in a manner similar to residential treatment centers. For partial hospitalization, these standards occur as part of implementation of this new benefit, which became effective September 29, 1993.

This rule incorporates basic requirements governing CHAMPUS approval of facilities providing mental health services as residential treatment centers, as partial hospitalization providers, and substance use disorder rehabilitation facilities. More detailed definition of these basic standards have been issued under the authority of this regulation. It should be noted that only the requirements included in this final regulation have, by themselves, the force and effect of law. Additional detail in the more lengthy standards are extensions of the regulation. They establish the agency's interpretations of the regulation and will serve as guidelines for compliance with the regulatory requirements. The complete standards are available to the public from the Office of CHAMPUS. These more lengthy standards are finalized coincident with issuance of this final regulation.

III. Provisions of Rule to Reform Payment Methods for Mental Health Care Facilities

This rule implements payment reforms in keeping with the Comptroller General's recommendations regarding payment reform for mental health care facilities. The Comptroller General's findings regarding current CHAMPUS payment rates are especially noteworthy. According to the report: "Our work indicates that DoD pays psychiatric facilities considerably more than other government programs do for comparable services." GAO Report #1, p.6. The Comptroller General very accurately summarized the background of the current CHAMPUS payment methods for psychiatric hospitals and RTCs:

> Although the current CHAMPUS system of per diem reimbursements has helped limit program cost increases for inpatient mental health, the per diem rates were based on providers' billed charges, not their costs. The rates were based on billing data from a period when providers' charges were not subject to controls and had just increased significantly. Before 1989 when no upper limit on rates existed, hospitals, and RTCs essentially set their own CHAMPUS payment rates. Before the per diem calculations, hospitals and RTC rates increased significantly. For example, average daily charges per CHAMPUS inpatient day rose by 17 percent from fiscal years 1987 to 1988. One RTC boosted its daily charges from an average of $331 in fiscal year 1987 to $531 in June 1988—a 60% increase.

GAO Report #1, pp 6–7.

Because CHAMPUS payments are based on historical billed charges, they substantially exceed the facilities' actual

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costs and Medicare reimbursement rates. Based on an analysis of payments to a number of high CHAMPUS volume psychiatric hospitals, the Comptroller General concluded "The hospitals made large profits, on average, on CHAMPUS patients." GAO Report #1, p. 7.

A similar pattern emerges on payment rates for RTCs. Using fiscal year 1991 data, the Comptroller General compared CHAMPUS payments to state-authorized daily rates for a number of RTCs in Florida and Virginia, and found that the average daily CHAMPUS rate was 36 percent more than the average state rate. RTC cost data were available for three RTCs in Texas, the state with the highest total CHAMPUS RTC costs. These data showed "an average profit margin of 27 percent." *Id.*, p. 8. The Comptroller General also stated that the index factor used to annually update CHAMPUS RTC per diems, the consumer price index for urban medical services (CPI–U), results in excessive increases. The GAO Report says the hospital market basket index factor that CHAMPUS and Medicare use for hospital payments "would be more appropriate than the CPI–U because it reflects increases in the amounts hospitals pay for goods and services" rather than "increases in charges by health practitioners and facilities." *Id.*

The problem of excessive payments also involves substance use disorder rehabilitation facilities, which continue to be paid by CHAMPUS billed charges. According to the Comptroller General:

> These facilities set their own fees and can increase them freely—without controls over their charges. Some of the facilities are paid more on a daily basis than are psychiatric hospitals. *Id.*

Based on these findings, the Comptroller General recommended that the Secretary of Defense:

> Establish a system of reimbursing psychiatric facilities, RTCs, and specialized treatment facilities based on a cost-based system similar to Medicare, adjusted appropriately for differences in beneficiary demographics, rather than the present per diem or billed charges system.

Id., p. 10.

Under the proposed rule, CHAMPUS payments to specialty psychiatric hospitals and units and residential treatment facilities would have gradually transitioned from the present system of per diem rates based on historical billed charges to a new system of per diem rates based on detailed facility cost reports. Comments from providers and the professional community pointed out the significant administrative complexity and costs associated with payments based on cost reporting. They proposed alternatives premised on adjustments to the current system. We have been persuaded by these comments and have made adjustments to current payment structures which, although not based on detailed facility cost reports, move CHAMPUS reimbursement rates significantly closer to the costs of delivering care in mental health facilities. This rule is based on the legal authority of 10 USC 1079(j)(2) which authorizes CHAMPUS to adopt payment methods for institutional providers similar to those applicable to Medicare. Under the final rule, CHAMPUS payments to specialty psychiatric hospitals and units will remain at FY95 rates for a two-year period beginning in FY96. Additionally, effective [insert 30 days after date of publication], the cap on per diem rates for these hospitals and units will be reduced from the current 80th percentile to the 70th percentile of all CHAMPUS base year charges in high volume hospitals. In FY98, payments will again be updated using the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System.

With respect to RTCs, the rule makes similar adjustments to current payment methodologies. Per diem rates will remain at FY95 rates during fiscal years 1996 and 1997 and will be subject to a cap set at the 70th percentile of all CHAMPUS RTC per diem rates. RTCs with FY95 payment rates below the 30th percentile of all RTC CHAMPUS per diem rates will be exempt from the two year freeze in rates, instead continuing the current methodology for annual updates, up to the 30th percentile rate. Beginning in FY 1998, payment updates for all RTCs will be based on the Medicare update factor used for hospitals and units exempt from Medicare's Prospective Payment System.

We estimate that payment methodologies under this rule will lead to aggregate expenditures which approximate average costs in psychiatric hospitals and units. While cost data are not generally available for RTCs, we estimate that under this rule, aggregate expenditures for RTC care will move closer to the level of average facility costs. We expect that over the next two years, we will obtain more data on actual RTC costs that will facilitate an assessment of whether additional regulatory changes should be considered.

With respect to substance use disorder rehabilitation facilities, this rule includes services provided by these facilities under the CHAMPUS DRG-based payment system. Currently, most substance use disorder rehabilitation services reimbursed by CHAMPUS are provided by facilities covered by the CHAMPUS DRG system or mental health per diem system. Only a small portion are provided by facilities that continue to be paid on the basis of billed charges. Under Medicare, these facilities are covered by the Medicare Prospective Payment System. Based on these factors, we believe inclusion of services provided by substance use disorder rehabilitation facilities should be included with the similar services already covered by the CHAMPUS DRG-based payment system. Partial hospitalization for substance use disorder rehabilitation will be reimbursed in the same manner as psychiatric partial hospitalization programs and the rates will be frozen at the FY95 level for fiscal years 1996 and 1997.

The payment system changes appear at the proposed revisions to section 199.14.

IV. Other Provisions of Rule

A. Therapeutic Leave of Absence Days

Currently, DoD pays RTCs for days a patient is away from the facility on an approved therapeutic leave of absence. The payment amount is 100% of the normal per diem for the first three days and 75% for additional days. It is our view that current rates are not justified by any costs to the facility. In addition, we are aware of no other public payer that pays for leave days. Therefore, for care provided on or after July 1, 1995, this rule eliminates payment for days in which patients are on leave from the residential treatment center. We received a number of comments objecting to this on the grounds that therapeutic leave of absence are an important part of therapy, and should be recognized in reimbursement for services. We agree that therapeutic leaves are an important component in the patient's overall treatment plan. However, because payment rates to RTCs under this rule will probably remain above average costs, we believe they will be sufficient to cover facility costs associated with reserving space for the patient's return. This change applies only to RTCs; in psychiatric hospitals, substance use disorder rehabilitation facilities and partial hospitalization programs, leave days are not reimbursed by CHAMPUS.

B. Reversing Incentive for Inpatient Care

Another of the recommendations of the Comptroller General was to "reverse the financial incentives to use inpatient care by introducing larger copayments for CHAMPUS inpatient care." GAO

Report #1, p. 10. This recommendation was based on the Comptroller General's conclusion that there is a "bias toward patients receiving inpatient rather than outpatient care" because inpatient care is less expensive for dependents of active duty members than outpatient care. *Id.*, p. 8–9. These beneficiaries currently pay approximately $10.00 per day or $25 per admission, whichever is greater, for inpatient care. For outpatient care, dependents of active duty members pay a $150 deductible (subject to a $300 family limit) and 20 percent of the allowable payment for individual professional services. Consequently, as a general matter, there is a financial incentive for beneficiaries to seek services on an inpatient, rather than an outpatient basis. Under 10 U.S.C. section 1079(i)(2), DoD has authority to establish mental health copayment requirements different from those for other CHAMPUS services.

This rule establishes a per day copayment of $20 for dependents of active duty beneficiaries. This is based on the fact that an outpatient mental health visit is generally approximately $100, meaning that the copayment would be $20. Thus, an inpatient day would have a roughly equal beneficiary copayment as an outpatient visit (excluding the deductible). One commenter objected to this proposal. Based on DoD experience in delivery of mental health services, information collected during utilization management reviews, and reports from the GAO, our observation is that inpatient mental health services remain vulnerable to over utilization. We believe this modest increase in inpatient cost share addresses the Comptroller General's recommendation, without impairing access to care or imposing hardship on beneficiaries. (With respect to avoidance of hardship, we note that the catastrophic cap for active duty dependents is $1000 per family per year.) To ensure adequate notice of providers and beneficiaries we have established an effective date of October 1, 1995 for the copayment requirements as stated above.

C. Equalization of Alcoholism and Drug Abuse Benefit Provisions

The frequent coexistence of alcohol and other chemical dependency or abuse suggests existing differences in benefit structures for treatment of alcohol and drug abuse should be eliminated. Effective for admissions on or after October 1, 1995, this rule includes treatment for both alcohol and drug dependency/abuse under a broad benefit package designed to include treatment of all substance use disorders.

IV. Additional Discussion of Public Comments

The proposed rule was published in the **Federal Register** June 29, 1994 (59 FR Page 33465). We received 23 comment letters, all of which were from providers and provider associations. Many of the comments were quite similar in wording and content. Some were very detailed and provided helpful insight and analysis. We thank those who provided input on this important issue. Significant items raised by commenters and our analysis of the comments are summarized below.

1. *GAO Recommendations are Based Upon Outdated Information.* We received a significant number of comments regarding our reliance on GAO reports for developing components of the proposed rule. Findings and recommendations provided in GAO reports relied to some extent on information gathered prior to realization of impact from several DoD quality, cost and utilization management initiatives.

Response. Although substantial progress has been made as a result of earlier DoD efforts, ongoing utilization reviews and facility inspections continue to reveal departures from minimum CHAMPUS health and safety standards. Additionally, in many areas CHAMPUS continues to reimburse mental health services at significantly higher rates than many other third party payers. While the GAO analysis does not reflect the specific impact of recent initiatives, we believe the themes which emerged from their two reports remain current.

2. *Specificity of Standards.* Several commenters asserted that standards in the proposed rule were stated too broadly, leaving excessive room for interpretation and significant doubt as to the exact CHAMPUS requirements. Examples included the absence of stated requirements for specific staff-to-patient ratios and specific numbers for professional staffing. A similar comment was that terms like "essentially stabilized" and "reasonable and observable" treatment goals should be better defined. Commenters pointed out that specific standards which provide explicit requirements for all aspects of facility certification should be published for public review and comment prior to their application in the certification process.

Response. A more detailed set of standards which provide the agency's interpretation of standards contained in the rule are available from OCHAMPUS. These were made available for public review concurrent with publication of the proposed rule. The more detailed set of standards does not include specific requirements with respect to professional staff mix and staff-to-patient ratios because these will vary depending upon the characteristics of each facility. Consistent with regulatory standards in the rule and further described in the supplemental set available from OCHAMPUS, facilities should develop staffing patterns which reflect the characteristics and special needs of the population served, the patient census, and acuity/intensity of services required. With respect to specific definitions of terms, the unique requirements brought by each patient to the treatment setting necessarily require individual assessments, and professional judgment as to required level of care for the presenting symptoms or dysfunction and progress being made in addressing the patient's specific needs. As such, we do not think it appropriate to establish a fixed list of criteria which must be applied to all patients.

3. *Requirement for Physician Medical Directors.* Physician professional associations agreed with a requirement for physician medical directors, but associations representing non-physician mental health professionals objected to this. Several commenters recommended that current non-physician medical directors who are serving successfully should be exempt from this requirement.

Response. We have reconsidered the provisions in the proposed rule regarding physician oversight of all clinical services and agree that some of the language may have had the effect of unduly restricting the scope of practice for some providers, particularly doctoral level psychologists. We are also aware that widely recognized accrediting bodies, as well as several states, permit independent practice and hospital admitting privileges for certain non-physician providers. We have made revisions to language contained in the proposed rule to assure our standards are consistent with those of the Joint Commission on Accreditation of Hospital Organizations (JCAHO) and in keeping with changing practice patterns in the mental health community. Because treatment of mental health patients often includes pharmacologic intervention and evaluation and treatment for related or co-existing medical problems, physician management for these components of therapy is still required. We require medical management of patients to be under the supervision of a physician medical director. However, we also agree that oversight of the spectrum of clinical services provided in a program

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may be accomplished by doctoral level psychologists. We have added language which allows clinical directors to be physicians or, where permitted by law and by the facility, doctoral level psychologists who meet CHAMPUS requirements for individual professional providers.

4. *Admitting Privileges for Non-physician Providers.* A number of commenters objected to proposed language which limited admitting privileges to physicians. They argued that such limitations on certain non-physician mental health professionals, for example, master's level clinical social workers, were unnecessarily restrictive and counter to legislative and industry trends toward an expanded scope of practice for these providers.

Response. We are aware of these changes and agree that, where permitted by law and by the facility, individuals who meet the CHAMPUS definition of individual professional mental health provider should be allowed to refer patients for admission. We have included language in the final rule which reflects this position.

5. *Qualifications for CEOs.* We received a number of comments suggesting that upgraded CEO requirements should not apply to individuals who, although they do not meet these standards, are currently serving in that capacity successfully.

Response. We believe the proposed standards for CEOs are appropriate, given the level and scope of responsibility attached to this position. However, we have included language which makes CEO qualification standards effective October 1, 1997. This should provide sufficient time for CEOs currently serving to undertake appropriate education and/or training to meet increased requirements.

5. *Upgraded Standards are Costly and May Limit Treatment Options for CHAMPUS Beneficiaries.* A number of commenters suggested that standards in the proposed rule were costly to implement. They argued that the increased cost of doing business, in addition to potential reductions in reimbursement caused by the rule's payment reforms, may cause some providers to drop participation in CHAMPUS programs. Commenters viewed this as a particular problem for providers with limited CHAMPUS volume and those in rural areas. Some commenters argued that treatment methods not relying upon a medical model should be expanded, rather than changed to conform.

Response. Standards in this final rule are based upon accepted standards of practice, requirements of the Joint Commission on Accreditation of Healthcare Organizations, and input from Department consultants and the provider community. Although we have made significant progress in addressing quality issues raised by GAO's study and highlighted in various forms, rapidly evolving practice patterns and treatment settings require CHAMPUS standards which reflect the character and pace of these changes. We believe these updated standards are necessary minimums which ensure CHAMPUS beneficiaries receive high quality care by appropriately trained professionals and staff. We believe the cost of upgraded standards will be accommodated within projected reimbursement rates. Facilities unable or unwilling to comply with these standards are not in a position to provide a proper standard of care.

6. *Implementation of Seclusion and Restraint.* We received a large number of comments objecting to standards which restricted implementation of seclusion and restraint to qualified mental health professionals. Additionally, the proposed rule excluded seclusion and restraint as behavior management devices in substance use disorder rehabilitation facilities. Commenters argued that these restrictions were unworkable, that they may pose safety issues when professional staff are not immediately available, and that facility staff are trained to use these techniques for behavior management.

Response. Seclusion and restraint imply a severity of dysfunction and need for treatment beyond the scope of care settings addressed in this rule. If seclusion and/or restraint is frequently required for behavior management in RTCs, PHPs, or SUDRFs, this suggests patients who require a more intense level of care. Facilities should evaluate policies and practices to determine their effectiveness in identifying patients who have not been assigned to the appropriate level of care. All facility staff should be trained in temporary holds which provide immediate intervention for safety of the patient and others. Also, facilities should have clear emergency response procedures which define appropriate intervention in crisis situations.

With the exception of brief physical holds and time outs, use of seclusion and restraint is excluded in SUDRFs, as patients who require this level of intervention are not appropriate to this treatment setting. The use of time out or physical holds should be infrequent, since behavior routinely requiring this type of intervention suggests a need for care at a higher level of intensity. We do agree that proposed rule language may have restricted appropriate response to emergency situations. We have added clarifying language which requires a qualified mental health professional to be responsible for implementation of seclusion and restraint, but allows actual implementation by facility staff under supervision of the responsible provider.

7. *Inclusion of Spiritual and Skills Assessments.* A number of commenters questioned inclusion of new requirements for spiritual and skills assessments in the proposed standards and requested more detailed description of this requirement.

Response. Spiritual assessments are part of a comprehensive, multidisciplinary assessment which should address the full range of a patient's clinical needs, including the impact of religious, ethnic and cultural influences upon the patient or family. Spiritual assessments, which occur in the context of obtaining a social history, are not new to the CHAMPUS standards and are included specifically in standards of other widely recognized accrediting bodies. A skills assessment is an important component of patient evaluation and includes activities of daily living, perceptual-motor skills, sensory integration factors, cognitive skills, communication skills, social interaction skills, creative abilities, vocational skills, and the impact of physical limitations. Activity services related to this assessment should be part of the therapeutic plan and should be supervised by a qualified mental health professional.

8. *Requirement for Clinical Formulation.* Several commenters questioned the need for clinical formulation in addition to development of a treatment plan. Additionally, several comments pointed out the standards allowed less time for completion of a treatment plan (10 days) than for development of the clinical formulation (14 days) which forms the basis of the treatment plan.

Response. The clinical formulation summarizes significant clinical interpretations from each of the multidisciplinary assessments, forming the basis for development of a master treatment plan. Interrelating findings from all assessments, the clinical formulation should clearly describe problems to be addressed in the treatment plan and indicate appropriate focus for the treatment strategies. We view this as a necessary, and not redundant, part of the process for developing a plan of care responsive to the unique requirements of each patient. We agree the proposed time requirements were not consistent with this logic and have modified language accordingly.

Treatment plans must be completed within 10 days; clinical formulations no longer have a specific deadline, but must be completed prior to development of the interdisciplinary treatment plan.

9. *Family Therapy.* A large number of commenters raised the issue of logistical problems which present difficulty in accomplishing family therapy for CHAMPUS beneficiaries. An example frequently used was the deployment of military members which caused geographic separations. The argument was made that CHAMPUS should be more flexible regarding this requirement.

Response. Family therapy is not a new requirement for CHAMPUS beneficiaries. Geographical distance is not considered a reason to exclude the family from a treatment plan. For patients separated from their families by deployment or for other reasons, CHAMPUS allows geographically distant family therapy. If one or both parents reside a minimum of 250 miles from the RTC, the RTC has the flexibility to arrange for therapy with parents at the distant locality. If family therapy is clinically contraindicated, rationale for this conclusion must be documented in the patient's record.

10. *Annual Facility Evaluation.* We received several comments arguing that a service specific annual evaluation was overly burdensome to facilities and "unheard of" outside academic settings.

Response. The proposed rule identified this requirement in the context of facility development of a strategic plan which contains specific goals and objectives for each program component or service and patient population served. Sound business practices would suggest regular organizational assessments to identify progress toward established performance and fiscal goals and objectives. The Department, as well as other accrediting agencies, expect governing bodies, through their CEOs, to provide sufficient resources to achieve the organization's missions, goals, philosophy and objectives. Without a clear idea of resource allocation and performance across the range of services provided, it is unclear how facilities would evaluate outcomes, or the need for change. We do not agree that this is overly burdensome and find it surprising that such reviews would be limited only to academic settings.

11. *Education Hours in Partial Hospitalization Programs.* The proposed rule does not count educational hours towards total hours for "full day" partial hospitalization programs. Several commenters argued that, by not including time spent in school, those hours, combined with the required six hours for a full day partial program, result in an excessively long day for patients.

Response. Patients who meet the criteria for admission to partial hospitalization programs do not require a professionally managed milieu twenty-four hours a day, as do individuals in residential treatment programs. Therefore, we find it reasonable to expect that school hours may be accommodated separately from the hours spent in therapy and other treatment activities. Determinations as to school hours vs. time spent in treatment or other activities should be considered as part of an overall assessment of the patient's needs and addressed in an individualized treatment plan.

12. *Benefit Limitations.* One provider association objected to CHAMPUS limits on treatment of substance use disorders, stating that these limits do not consider the chronic nature of this problem.

Response. Compared to many third party payers, CHAMPUS provides one of the more generous benefits for treatment of substance use disorders. We do recognize the chronic as well as individual nature of these problems and, consistent with that, provide an allowance for waivers of benefit limits when continued treatment is justified.

13. *Burden and Expense Associated With Cost Based Reimbursement.* The overwhelming majority of comments on the proposed cost based reimbursement system argued that the cost and administrative burden associated with these changes, for both the Department and providers, far exceeded any benefit to the government. A number of commenters pointed out that the GAO reports which provided impetus for payment reform were based on outdated information which did not reflect the results of earlier initiatives. Commenters suggested that, if DoD is required to implement additional cost containment measures, these could be accomplished more efficiently through adjustments to existing payment mechanisms.

Response. After full consideration of comments from the provider community, as well as our continuing analysis of costs associated with implementation of a cost based system for mental health, we agree that implementation of the proposed system is not appropriate at this time. Although cost containment and utilization management programs have achieved program savings, we agree with GAO conclusion that additional improvements are needed. While the GAO report may not reflect the full measure of cost and quality improvements achieved by earlier efforts, continuing program reviews and findings gathered through utilization management programs suggest CHAMPUS mental health programs require additional controls.

In keeping with comments from the industry and our own analysis, additional cost containment in CHAMPUS mental health programs will be accomplished through adjustments to current reimbursement mechanisms. For specialty psychiatric hospitals and units, payment will be held at FY95 rates for two years, beginning in FY96 and extending through FY97. Additionally, April 6, 1995, payment will be capped at a rate not to exceed the 70th percentile of payment rates in all high volume CHAMPUS psychiatric hospitals. We estimate that these adjustments will result in CHAMPUS payments at the level of average aggregate costs for psychiatric hospitals and units, thereby addressing concerns expressed by the GAO.

The general lack of availability with respect to RTC cost information presented some difficulties in our attempt to analyze impact of payment reforms for this community. In measures similar to those for psychiatric hospitals, RTC payment rates for facilities at or above the 30th percentile of all CHAMPUS RTC payment rates in FY95 will be held constant, with no additional update through fiscal years FY96 and FY97. Additionally, effective April 6, 1995, payments will be capped at level not to exceed the 70th percentile of all RTC rates nationally. For those RTCs paid at levels below the 30th percentile of national CHAMPUS RTC rates, payments will be updated by the lesser of the CPI–U for medical care or the amount that brings the rate up to the 30th percentile level. The update factor for payments beginning in FY98 will be the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. In order to determine the effectiveness of RTC cost containment measures established in this final rule, the Department will continue to explore avenues for obtaining accurate cost data for RTC services.

V. Rulemaking Procedures

This rule is a significant regulatory action as determined by the Office of Management and Budget. Also, we certify that this rule will not significantly affect a large number of

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small entities within the meaning of the Regulatory Flexibility Act.

This rule does not impose new information collection requirements.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is amended by revising the heading of paragraph (e)(4), paragraph (e)(4) introductory text, (e)(4)(i), (e)(4)(ii), (e)(4)(iv), and the introductory text of paragraph (f)(2)(ii), and by adding new paragraphs (e)(4)(v), and (f)(2)(ii)(D), as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *.

* * * * *

(4) *Treatment of substance use disorders.* Emergency and inpatient hospital care for complications of alcohol and drug abuse or dependency and detoxification are covered as for any other medical condition. Specific coverage for the treatment of substance use disorders includes detoxification, rehabilitation, and outpatient care provided in authorized substance use disorder rehabilitation facilities.

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of substance abuse withdrawal (detoxification), for stabilization, and for treatment of medical complications of substance use disorders. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. Stays provided for substance use disorder rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services also are subject to the provisions regarding the limit on inpatient mental health services.

(ii) *Authorized substance use disorder treatment.* Only those services provided by CHAMPUS-authorized institutional providers are covered. Such a provider must be either an authorized hospital, or an organized substance use disorder treatment program in an authorized free-standing or hospital-based substance use disorder rehabilitation facility. Covered services consist of any or all of the services listed below. A qualified mental health provider (physicians, clinical psychologists, clinical social workers, psychiatric nurse specialists) (see paragraph (c)(3)(ix) of this section) shall prescribe the particular level of treatment. Each CHAMPUS beneficiary is entitled to three substance use disorder treatment benefit periods in his or her lifetime, unless this limit is waived pursuant to paragraph (e)(4)(v) of this section. (A benefit period begins with the first date of covered treatment and ends 365 days later, regardless of the total services actually used within the benefit period. Unused benefits cannot be carried over to subsequent benefit periods. Emergency and inpatient hospital services (as described in paragraph (e)(4)(i) of this section) do not constitute substance abuse treatment for purposes of establishing the beginning of a benefit period.)

(A) *Rehabilitative care.* Rehabilitative care in a authorized hospital or substance use disorder rehabilitative facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage during a single benefit period is limited to no more than inpatient stay (exclusive of stays classified in DRG 433) in hospitals subject to CHAMPUS DRG-based payment system or 21 days in a DRG-exempt facility for rehabilitation care, unless the limit is waived pursuant to paragraph (e)(4)(v) of this section. If the patient is medically in need of chemical detoxification, but does not require the personnel or facilities of a general hospital setting, detoxification services are covered in addition to the rehabilitative care, but in a DRG-exempt facility detoxification services are limited to 7 days unless the limit is waived pursuant to paragraph (e)(4)(v) of this section. The medical necessity for the detoxification must be documented. Any detoxification services provided by the substance use disorder rehabilitation facility must be under general medical supervision.

(B) *Outpatient care.* Outpatient treatment provided by an approved substance use disorder rehabilitation facility, whether free-standing or hospital-based, is covered for up to 60 visits in a benefit period, unless the limit is waived pursuant to paragraph (e)(4)(v) of this section.

(C) *Family therapy.* Family therapy provided by an approved substance use disorder rehabilitation facility, whether free-standing or hospital-based, is covered for up to 15 visits in a benefit period, unless the limit is waived pursuant to paragraph (e)(4)(v) of this section.

* * * * *

(iv) *Confidentialty.* Release of any patient identifying information, including that required to adjudicate a claim, must comply with the provisions of section 544 of the Public Health Service Act, as amended, (42 U.S.C. 290dd–3), which governs the release of medical and other information from the records of patients undergoing treatment of substance abuse. If the patient refuses to authorize the release of medical records which are, in the opinion of the Director, OCHAMPUS, or a designee, necessary to determine benefits on a claim for treatment of substance abuse the claim will be denied.

(v) *Waiver of benefit limits.* The specific benefit limits set forth in paragraphs (e)(4)(ii) of this section may be waived by the Director, OCHAMPUS in special cases based on a determination that all of the following criteria are met:

(A) Active treatment has taken place during the period of the benefit limit and substantial progress has been made according to the plan of treatment.

(B) Further progress has been delayed due to the complexity of the illness.

(C) Specific evidence has been presented to explain the factors that interfered with further treatment progress during the period of the benefit limit.

(D) The waiver request includes specific time frames and a specific pian of treatment which will complete the course of treatment.

* * * * *

(f) * * *

(2) * * *

(ii) *Inpatient cost-sharing.* Except in the case of mental health services (see paragraph (f)(2)(ii)(D) of this section), dependents of active duty members of the Uniformed Services or their sponsors are responsible for the payment of the first $25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

* * * * *

(D) *Inpatient cost-sharing for mental health services.* For care provided on or after October 1, 1995, the inpatient cost-sharing for mental health services is $20 per day for each day of the inpatient admission. This $20 per day cost sharing amount applies to admissions to any hospital for mental health services, any residential treatment facility, any substance abuse rehabilitation facility, and any partial hospitalization program providing mental health or substance use disorder rehabilitation services.

* * * * *

3. Section 199.6 is amended by revising paragraphs (b)(4)(vii) and (b)(4)(xii), by removing paragraph (b)(4)(x)(B)(*3*), and by adding a new paragraph (b)(4)(xiv) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) *Institutional providers.* * * *

* * * * *

(4) *Categories of institutional providers.* * * *

* * * * *

(vii) *Residential treatment centers.* This paragraph (b)(4)(vii) establishes standards and requirements for residential treatment centers (RTCs).

(A) *Organization and administration.*

(*1*) *Definition.* A Residential Treatment Center (RTC) is a facility or a distinct part of a facility that provides to beneficiaries under 21 years of age a medically supervised, interdisciplinary program of mental health treatment. An RTC is appropriate for patients whose predominant symptom presentation is essentially stabilized, although not resolved, and who have persistent dysfunction in major life areas. The extent and pervasiveness of the patient's problems require a protected and highly structured therapeutic environment. Residential treatment is differentiated from:

(*i*) Acute psychiatric care, which requires medical treatment and 24-hour availability of a full range of diagnostic and therapeutic services to establish and implement an effective plan of care which will reverse life-threatening and/or severely incapacitating symptoms;

(*ii*) Partial hospitalization, which provides a less than 24-hour-per-day, seven-day-per-week treatment program for patients who continue to exhibit psychiatric problems but can function with support in some of the major life areas;

(*iii*) A group home, which is a professionally directed living arrangement with the availability of psychiatric consultation and treatment for patients with significant family dysfunction and/or chronic but stable psychiatric disturbances;

(*iv*) Therapeutic school, which is an educational program supplemented by psychological and psychiatric services;

(*v*) Facilities that treat patients with a primary diagnosis of chemical abuse or dependence; and

(*vi*) Facilities providing care for patients with a primary diagnosis of mental retardation or developmental disability.

(*2*) Eligibility.

(*i*) Every RTC must be certified pursuant to CHAMPUS certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(vii) (A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, OCHAMPUS determines are necessary to implement the basic standards.

(*ii*) To be eligible for CHAMPUS certification, the facility is required to be licensed and fully operational for six months (with a minimum average daily census of 30 percent of total bed capacity) and operate in substantial compliance with state and federal regulations.

(*iii*) The facility is currently accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) under the current edition of the Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services which is available from JCAHO, P.O. Box 75751, Chicago, IL 60675.

(*iv*) The facility has a written participation agreement with OCHAMPUS. The RTC is not a CHAMPUS-authorized provider and CHAMPUS benefits are not paid for services provided until the date upon which a participation agreement is signed by the Director, OCHAMPUS.

(*3*) *Governing body.*

(*i*) The RTC shall have a governing body which is responsible for the policies, bylaws, and activities of the facility. If the RTC is owned by a partnership or single owner, the partners or single owner are regarded as the governing body. The facility will provide an up-to-date list of names, addresses, telephone numbers and titles of the members of the governing body.

(*ii*) The governing body ensures appropriate and adequate services for all patients and oversees continuing development and improvement of care. Where business relationships exist between the governing body and facility, appropriate conflict-of-interest policies are in place.

(*iii*) Board members are fully informed about facility services and the governing body conducts annual review of its performance in meeting purposes, responsibilities, goals and objectives.

(*4*) *Chief executive officer.* The chief executive officer, appointed by and subject to the direction of the governing body, shall assume overall administrative responsibility for the operation of the facility according to governing body policies. The chief executive officer shall have five years' administrative experience in the field of mental health. On October 1, 1997, the CEO shall possess a degree in business administration, public health, hospital administration, nursing, social work, or psychology, or meeting similar educational requirements as prescribed by the Director, OCHAMPUS.

(*5*) *Clinical Director.* The clinical director, appointed by the governing body, shall be a psychiatrist or doctoral level psychologist who meets applicable CHAMPUS requirements for individual professional providers and is licensed to practice in the state where the residential treatment center is located. The clinical director shall possess requisite education and experience, credentials applicable under state practice and licensing laws appropriate to the professional discipline, and a minimum of five years' clinical experience in the treatment of children and adolescents. The clinical director shall be responsible for planning, development, implementation, and monitoring of all clinical activities.

(*6*) *Medical director.* The medical director, appointed by the governing body, shall be licensed to practice medicine in the state where the residential treatment center is located and shall possess requisite education and experience, including graduation from an accredited school of medicine or osteopathy, an approved residency in psychiatry and a minimum of five years clinical experience in the treatment of children and adolescents. The Medical Director shall be responsible for the planning, development, implementation, and monitoring of all activities relating to medical treatment of patients. If qualified, the Medical Director may also serve as Clinical Director.

(*7*) *Medical or professional staff organization.* The governing body shall establish a medical or professional staff organization to assure effective implementation of clinical privileging, professional conduct rules, and other activities directly affecting patient care.

(*8*) *Personnel policies and records.* The RTC shall maintain written personnel policies, updated job descriptions and personnel records to assure the selection of qualified personnel and successful job performance of those personnel.

(*9*) *Staff development.* The facility shall provide appropriate training and development programs for administrative, professional support, and direct care staff.

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(*10*) *Fiscal accountability.* The RTC shall assure fiscal accountability to applicable government authorities and patients.

(*11*) *Designated teaching facilities.* Students, residents, interns or fellows providing direct clinical care are under the supervision of a qualified staff member approved by an accredited university. The teaching program is approved by the Director, OCHAMPUS.

(*12*) *Emergency reports and records.* The facility notifies OCHAMPUS of any serious occurrence involving CHAMPUS beneficiaries.

(B) *Treatment services.*

(*1*) Staff composition.

(*i*) The RTC shall follow written plans which assure that medical and clinical patient needs will be appropriately addressed 24 hours a day, seven days a week by a sufficient number of fully qualified (including license, registration or certification requirements, educational attainment, and professional experience) health care professionals and support staff in the respective disciplines. Clinicians providing individual, group, and family therapy meet CHAMPUS requirements as qualified mental health providers and operate within the scope of their licenses. The ultimate authority for planning, development, implementation, and monitoring of all clinical activities is vested in a psychiatrist or doctoral level psychologist. The management of medical care is vested in a physician.

(*ii*) The RTC shall ensure adequate coverage by fully qualified staff during all hours of operation, including physician availability, other professional staff coverage, and support staff in the respective disciplines.

(*2*) *Staff qualifications.* The RTC will have a sufficient number of qualified mental health providers, administrative, and support staff to address patients' clinical needs and to coordinate the services provided. RTCs which employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the all-inclusive per diem rate, provided the individual works under the clinical supervision of a fully qualified mental health provider employed by the RTC. All other program services shall be provided by trained, licensed staff.

(*3*) *Patient rights.*

(*i*) The RTC shall provide adequate protection for all patient rights, including rights provided by law, privacy, personnel rights, safety, confidentiality, informed consent, grievances, and personal dignity.

(*ii*) The facility has a written policy regarding patient abuse and neglect.

(*iii*) Facility marketing and advertising meets professional standards.

(*4*) *Behavioral management.* The RTC shall adhere to a comprehensive, written plan of behavioral management, developed by the clinical director and the medical or professional staff and approved by the governing body, including strictly limited procedures to assure that the restraint or seclusion are used only in extraordinary circumstances, are carefully monitored, and are fully documented. Only trained and clinically privileged RNs or qualified mental health professionals may be responsible for the implementation of seclusion and restraint procedures in an emergency situation.

(*5*) *Admission process.* The RTC shall maintain written policies and procedures to ensure that, prior to an admission, a determination is made, and approved pursuant to CHAMPUS preauthorization requirements, that the admission is medically and/or psychologically necessary and the program is appropriate to meet the patient's needs. Medical and/or psychological necessity determinations shall be rendered by qualified mental health professionals who meet CHAMPUS requirements for individual professional providers and who are permitted by law and by the facility to refer patients for admission.

(*6*) *Assessments.* The professional staff of the RTC shall complete a current multidisciplinary assessment which includes, but is not limited to physical, psychological, developmental, family, educational, social, spiritual and skills assessment of each patient admitted. Unless otherwise specified, all required clinical assessments are completed prior to development of the multidisciplinary treatment plan.

(*7*) *Clinical formulation.* A qualified mental health professional of the RTC will complete a clinical formulation on all patients. The clinical formulation will be reviewed and approved by the responsible individual professional provider and will incorporate significant findings from each of the multidisciplinary assessments. It will provide the basis for development of an interdisciplinary treatment plan.

(*8*) *Treatment planning.* A qualified mental health professional shall be responsible for the development, supervision, implementation, and assessment of a written, individualized, interdisciplinary plan of treatment, which shall be completed within 10 days of admission and shall include individual, measurable, and observable goals for incremental progress and discharge. A preliminary treatment plan is completed within 24 hours of admission and includes at least an admission note and orders written by the admitting mental health professional. The master treatment plan is reviewed and revised at least every 30 days, or when major changes occur in treatment.

(*9*) *Discharge and transition planning.* The RTC shall maintain a transition planning process to address adequately the anticipated needs of the patient prior to the time of discharge. The planning involves determining necessary modifications in the treatment plan, facilitating the termination of treatment, and identifying resources to maintain therapeutic stability following discharge.

(*10*) *Clinical documentation.* Clinical records shall be maintained on each patient to plan care and treatment and provide ongoing evaluation of the patient's progress. All care is documented and each clinical record contains at least the following: demographic data, consent forms, pertinent legal documents, all treatment plans and patient assessments, consultation and laboratory reports, physician orders, progress notes, and a discharge summary. All documentation will adhere to applicable provisions of the JCAHO and requirements set forth in § 199.7(b)(3). An appropriately qualified records administrator or technician will supervise and maintain the quality of the records. These requirements are in addition to other records requirements of this Part, and documentation requirements of the Joint Commission on Accreditation of Healthcare Organizations.

(*11*) *Progress notes.* RTC's shall document the course of treatment for patients and families using progress notes which provide information to review, analyze, and modify the treatment plans. Progress notes are legible, contemporaneous, sequential, signed and dated and adhere to applicable provisions of the Manual of Mental Health, Chemical Dependency, and Mental Retardation/Development Disabilities Services and requirements set forth in § 199.7(b)(3).

(*12*) *Therapeutic services.*

(*i*) Individual, group, and family psychotherapy are provided to all patients, consistent with each patient's treatment plan, by qualified mental health providers.

(*ii*) A range of therapeutic activities, directed and staffed by qualified personnel, are offered to help patients meet the goals of the treatment plan.

(*iii*) Therapeutic educational services are provided or arranged that are appropriate to the patients educational and therapeutic needs.

(*13*) *Ancillary services.* A full range of ancillary services is provided. Emergency services include policies and procedures for handling emergencies with qualified personnel and written agreements with each facility providing the service. Other ancillary services include physical health, pharmacy and dietary services.

(C) *Standards for physical plant and environment.*

(*1*) *Physical environment.* The buildings and grounds of the RTC shall be maintained so as to avoid health and safety hazards, be supportive of the services provided to patients, and promote patient comfort, dignity, privacy, personal hygiene, and personal safety.

(*2*) *Physical plant safety.* The RTC shall be of permanent construction and maintained in a manner that protects the lives and ensures the physical safety of patients, staff, and visitors, including conformity with all applicable building, fire, health, and safety codes.

(*3*) *Disaster planning.* The RTC shall maintain and rehearse written plan for taking care of casualities and handling other consequences arising from internal and external disasters.

(D) *Standards for evaluation system.*

(*1*) *Quality assessment and improvement.* The RTC shall develop and implement a comprehensive quality assurance and quality improvement program that monitors the quality, efficiency, appropriateness, and effectiveness of the care, treatments, and services it provides for patients and their families, primarily utilizing explicit clinical indicators to evaluate all functions of the RTC and contribute to an ongoing process of program improvement. The clinical director is responsible for developing and implementing quality assessment and improvement activities throughout the facility.

(*2*) *Utilization review.* The RTC shall implement a utilization review process, pursuant to a written plan approved by the professional staff, the administration, and the governing body, that assesses the appropriateness of admission, continued stay, and timeliness of discharge as part of an effort to provide quality patient care in a cost-effective manner. Findings of the utilization review process are used as a basis for revising the plan of operation, including a review of staff qualifications and staff composition.

(*3*) *Patient records review.* The RTC shall implement a process, including monthly reviews of a representative sample of patient records, to determine the completeness and accuracy of the patient records and the timeliness and pertinence of record entries, particularly with regard to regular recording of progress/non-progress in treatment.

(*4*) *Drug utilization review.* The RTC shall implement a comprehensive process for the monitoring and evaluating of the prophylactic, therapeutic, and empiric use of drugs to assure that medications are provided appropriately, safely, and effectively.

(*5*) *Risk management.* The RTC shall implement a comprehensive risk management program, fully coordinated with other aspects of the quality assurance and quality improvement program, to prevent and control risks to patients and staff and costs associated with clinical aspects of patient care and safety.

(*6*) *Infection control.* The RTC shall implement a comprehensive system for the surveillance, prevention, control, and reporting of infections acquired or brought into the facility.

(*7*) *Safety.* The RTC shall implement an effective program to assure a safe environment for patients, staff, and visitors, including an incident report system, a continuous safety surveillance system, and an active multidisciplinary safety committee.

(*8*) *Facility evaluation.* The RTC annually evaluates accomplishment of the goals and objectives of each clinical program and service of the RTC and reports findings and recommendations to the governing body.

(E) *Participation agreement requirements.* In addition to other requirements set forth in paragraph (b)(4)(vii), of this section in order for the services of an RTC to be authorized, the RTC shall have entered into a Participation Agreement with OCHAMPUS. The period of a participation agreement shall be specified in the agreement, and will generally be for not more than five years. Participation agreements entered into prior April 6, 1995 must be renewed not later than October 1, 1995. In addition to review of a facility's application and supporting documentation, an on-site inspection by OCHAMPUS authorized personnel may be required prior to signing a Participation Agreement. Retroactive approval is not given. In addition, the Participation Agreement shall include provisions that the RTC shall, at a minimum:

(*1*) Render residential treatment center impatient services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and CHAMPUS regulation;

(*2*) Accept payment for its services based upon the methodology provided in § 199.14(f) or such other method as determined by the Director, OCHAMPUS;

(*3*) Accept the CHAMPUS all-inclusive per diem rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in section 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*4*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts, which represents the beneficiary's liability, as defined in § 199.4;

(*5*) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*6*) Submit claims for services provided to CHAMPUS beneficiaries at least 30 days (except to the extent a delay is necessitated by efforts to first collect from other health insurance). If claims are not submitted at least every 30 days, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(*7*) Certify that:

(*i*) It is and will remain in compliance with the provisions of paragraph (b)(4)(vii) of this section establishing standards for Residential Treatment Centers;

(*ii*) It has conducted a self assessment of the facility's compliance with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents with Mental Disorders, as issued by the Director, OCHAMPUS and notified the Director, OCHAMPUS of any matter regarding which the facility is not in compliance with such standards; and

(*iii*) It will maintain compliance with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents with Mental Disorders, as issued by the Director, OCHAMPUS, except for any such standards regarding which the facility notifies the Director, OCHAMPUS that it is not in compliance.

(*8*) Designate an individual who will act as liaison for CHAMPUS inquiries. The RTC shall inform OCHAMPUS in writing of the designated individual;

(*9*) Furnish OCHAMPUS, as requested by OCHAMPUS, with cost data certified

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by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*10*) Comply with all requirements of this section applicable to institutional providers generally concerning preauthorization, concurrent care review, claims processing, beneficiary liability, double coverage, utilization and quality review and other matters;

(*11*) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records (including records relating to patients who are not CHAMPUS beneficiaries) to determine the quality and cost-effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review includes, but is not limited to:

(*i*) Examination of fiscal and all other records of the RTC which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS RTC provider;

(*ii*) Conducting such audits of RTC records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*iii*) Examining reports of evaluations and inspections conducted by federal, state and local government, and private agencies and organizations;

(*iv*) Conducting on-site inspections of the facilities of the RTC and interviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required;

(*v*) Audits conducted by the United States General Accounting Office.

(F) *Other requirements applicable to RTCs.*

(*1*) Even though an RTC may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for particular services provided is contingent upon the RTC also meeting all conditions set forth in section 199.4 especially all requirements of paragraph (b)(4) of that section.

(*2*) The RTC shall provide inpatient services to CHAMPUS beneficiaries in the same manner it provides inpatient services to all other patients. The RTC may not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provisions of special or limited treatment.

(*3*) The RTC shall assure that all certifications and information provided to the Director, OCHAMPUS incident to the process of obtaining and retaining authorized provider status is accurate and that it has no material errors or omissions. In the case of any misrepresentations, whether by inaccurate information being provided or material facts withheld, authorized status will be denied or terminated, and the RTC will be ineligible for consideration for authorized provider status for a two year period.

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(xii) *Psychiatric partial hospitalization programs.* Paragraph (b)(4)(xii) of this section establishes standards and requirements for psychiatric partial hospitalization programs.

(A) *Organization and administration.*

(*1*) *Definition.* Partial hospitalization is defined as a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated, and structured clinical services within a stable therapeutic milieu. Partial hospitalization programs serve patients who exhibit psychiatric symptoms, disturbances of conduct, and decompensating conditions affecting mental health.

(*2*) *Eligibility.*

(*i*) Every psychiatric partial hospitalization program must be certified pursuant to CHAMPUS certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(xii) (A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, OCHAMPUS determines are necessary to implement the basic standards. Each psychiatric partial hospitalization program must be either a distinct part of an otherwise authorized institutional provider or a freestanding program.

(*ii*) To be eligible for CHAMPUS certification, the facility is required to be licensed and fully operational for a period of at least six months (with a minimum patient census of at least 30 percent of bed capacity) and operate in substantial compliance with state and federal regulations.

(*iii*) The facility is currently accredited by the Joint Commission on Accreditation of Healthcare Organizations under the current edition of the Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services.

(*iv*) The facility has a written participation agreement with OCHAMPUS. On October 1, 1995, the PHP is not a CHAMPUS-authorized provider and CHAMPUS benefits are not paid for services provided until the date upon which a participation agreement is signed by the Director, OCHAMPUS. Partial hospitalization is capable of providing an interdisciplinary program of medical and therapeutic services a minimum of three hours per day, five days per week, and may include full- or half-day, evening, and weekend treatment programs.

(*3*) *Governing body.*

(*i*) The PHP shall have a governing body which is responsible for the policies, bylaws, and activities of the facilities. If the PHP is owned by a partnership or single owner, the partners or single owner are regarded as the governing body. The facility will provide an up-to-date list of names, addresses, telephone numbers, and titles of the members of the governing body.

(*ii*) The governing body ensures appropriate and adequate services for all patients and oversees continuing development and improvement of care. Where business relationships exist between the governing body and facility, appropriate conflict-of-interest policies are in place.

(*iii*) Board members are fully informed about facility services and the governing body conducts annual review of its performance in meeting purposes, responsibilities, goals and objectives.

(*4*) *Chief executive officer.* The Chief Executive Officer, appointed by and subject to the direction of the governing body, shall assume overall administrative responsibility for the operation of the facility according to governing body policies. The chief executive officer shall have five years' administrative experience in the field of mental health. On October 1, 1997, the CEO shall possess a degree in business administration, public health, hospital administration, nursing, social work, or psychology, or meet similar educational requirements as prescribed by the Director, OCHAMPUS.

(*5*) *Clinical Director.* The clinical director, appointed by the governing body, shall be a psychiatrist or doctoral level psychologist who meets applicable CHAMPUS requirements for individual professional providers and is licensed to practice in the state where the PHP is located. The clinical director shall possess requisite education and experience, credentials applicable under state practice and licensing laws appropriate to the professional discipline, and a minimum of five years' clinical experience in the treatment of mental disorders specific to the ages and disabilities of the patients served. The clinical director shall be responsible for planning, development, implementation, and monitoring of all clinical activities.

(*6*) *Medical director.* The medical director, appointed by the governing body, shall be licensed to practice medicine in the state where the residential treatment center is located and shall possess requisite education and experience, including graduation from an accredited school of medicine or osteopathy, an approved residency in psychiatry and a minimum of five years clinical experience in the treatment of mental disorders specific to the ages and disabilities of the patients served. The Medical Director shall be responsible for the planning, development, implementation, and monitoring of all activities relating to medical treatment of patients. If qualified, the Medical Director may also serve as Clinical Director.

(*7*) *Medical or professional staff organization.* The governing body shall establish a medical or professional staff organization to assure effective implementation of clinical privileging, professional conduct rules, and other activities directly affecting patient care.

(*8*) *Personnel policies and records.* The PHP shall maintain written personnel policies, updated job descriptions, personnel records to assure the selection of qualified personnel and successful job performance of those personnel.

(*9*) *Staff development.* The facility shall provide appropriate training and development programs for administrative, professional support, and direct care staff.

(*10*) *Fiscal accountability.* The PHP shall assure fiscal accountability to applicable government authorities and patients.

(*11*) *Designated teaching facilities.* Students, residents, interns, or fellows providing direct clinical care are under the supervision of a qualified staff member approved by an accredited university. The teaching program is approved by the Director, OCHAMPUS.

(*12*) *Emergency reports and records.* The facility notifies OCHAMPUS of any serious occurrence involving CHAMPUS beneficiaries.

(B) *Treatment services.*

(*1*) *Staff composition.*

(*i*) The PHP shall ensure that patient care needs will be appropriately addressed during all hours of operation by a sufficient number of fully qualified (including license, registration or certification requirements, educational attainment, and professional experience) health care professionals. Clinicians providing individual, group, and family therapy meet CHAMPUS requirements as qualified mental health providers, and operate within the scope of their licenses. The ultimate authority for managing care is vested in a psychiatrist or licensed doctor level psychologist. The management of medical care is vested in a physician.

(*ii*) The PHP shall establish and follow written plans to assure adequate staff coverage during all hours of operation, including physician availability, other professional staff coverage, and support staff in the respective disciplines.

(*2*) *Staff qualifications.* The PHP will have a sufficient number of qualified mental health providers, administrative, and support staff to address patients' clinical needs and to coordinate the services provided. PHPs which employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the all-inclusive per diem rate, provided the individual works under the clinical supervision of a fully qualified mental health provider employed by the PHP. All other program services shall be provided by trained, licensed staff.

(*3*) *Patient rights.*

(*i*) The PHP shall provide adequate protection for all patient rights, including rights provided by law, privacy, personal rights, safety, confidentiality, informed consent, grievances, and personal dignity.

(*ii*) The facility has a written policy regarding patient abuse and neglect.

(*iii*) Facility marketing and advertising meets professional standards.

(*4*) *Behavioral management.* The PHP shall adhere to a comprehensive, written plan of behavior management, developed by the clinical director and the medical or professional staff and approved by the governing body, including strictly limited procedures to assure that restraint or seclusion are used only in extraordinary circumstances, are carefully monitored, and are fully documented. Only trained and clinically privileged RNs or qualified mental health professionals may be responsible for implementation of seclusion and restraint procedures in an emergency situation.

(*5*) *Admission process.* The PHP shall maintain written policies and procedures to ensure that prior to an admission, a determination is made, and approved pursuant to CHAMPUS preauthorization requirements, that the admission is medically and/or psychologically necessary and the program is appropriate to meet the patient's needs. Medical and/or psychological necessity determinations shall be rendered by qualified mental health professionals who meet CHAMPUS requirements for individual professional providers and who are permitted by law and by the facility to refer patients for admission.

(*6*) *Assessments.* The professional staff of the PHP shall complete a multidisciplinary assessment which includes, but is not limited to physical health, psychological health, physiological, developmental, family, educational, spiritual, and skills assessment of each patient admitted. Unless otherwise specified, all required clinical assessment are completed prior to development of the interdisciplinary treatment plan.

(*7*) *Clinical formulation.* A qualified mental health provider of the PHP will complete a clinical formulation on all patients. The clinical formulation will be reviewed and approved by the responsible individual professional provider and will incorporate significant findings from each of the multidisciplinary assessments. It will provide the basis for development of an interdisciplinary treatment plan.

(*8*) *Treatment planning.* A qualified mental health professional with admitting privileges shall be responsible for the development, supervision, implementation, and assessment of a written, individualized, interdisciplinary plan of treatment, which shall be completed by the fifth day following admission to a full-day PHP, or by the seventh day following admission to a half-day PHP, and shall include measurable and observable goals for incremental progress and discharge. The treatment plan shall undergo review at least every two weeks, or when major changes occur in treatment.

(*9*) *Discharge and transition planning.* The PHP shall develop an individualized transition plan which addresses anticipated needs of the patient at discharge. The transition plan involves determining necessary modifications in the treatment plan, facilitating the termination of treatment, and identifying resources for maintaining therapeutic stability following discharge.

(*10*) *Clinical documentation.* Clinical records shall be maintained on each patient to plan care and treatment and provide ongoing evaluation of the patient's progress. All care is documented and each clinical record contains at least the following: demographic data, consent forms,

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pertinent legal documents, all treatment plans and patient assessments, consultation and laboratory reports, physician orders, progress notes, and a discharge summary. All documentation will adhere to applicable provisions of the JCAHO and requirements set forth in § 199.7(b)(3). An appropriately qualified records administrator or technician will supervise and maintain the quality of the records. These requirements are in addition to other records requirements of this Part, and documentation requirements of the Joint Commission on Accreditation of Health Care Organization.

(*11*) *Progress notes.* PHPs shall document the course of treatment for patients and families using progress notes which provide information to review, analyze, and modify the treatment plans. Progress notes are legible, contemporaneous, sequential, signed and dated and adhere to applicable provisions of the Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services and requirements set forth in section 199.7(b)(3).

(*12*) *Therapeutic services.*

(*i*) Individual, group, and family therapy are provided to all patients, consistent with each patient's treatment plan by qualified mental health providers.

(*ii*) A range of therapeutic activities, directed and staffed by qualified personnel, are offered to help patients meet the goals of the treatment plan.

(*iii*) Educational services are provided or arranged that are appropriate to the patient's needs.

(*13*) *Ancillary services.* A full range of ancillary services are provided. Emergency services include policies and procedures for handling emergencies with qualified personnel and written agreements with each facility providing these services. Other ancillary services include physical health, pharmacy and dietary services.

(C) *Standards for physical plant and environment.*

(*1*) *Physical environment.* The buildings and grounds of the PHP shall be maintained so as to avoid health and safety hazards, be supportive of the services provided to patients, and promote patient comfort, dignity, privacy, personal hygiene, and personal safety.

(*2*) *Physical plant safety.* The PHP shall be of permanent construction and maintained in a manner that protects the lives and ensures the physical safety of patients, staff, and visitors, including conformity with all applicable building, fire, health, and safety codes.

(*3*) *Disaster planning.* The PHP shall maintain and rehearse written plans for taking care of casualities and handling other consequences arising from internal and external disasters.

(D) *Standards for evaluation system.*

(*1*) *Quality assessment and improvement.* The PHP shall develop and implement a comprehensive quality assurance and quality improvement program that monitors the quality, efficiency, appropriateness, and effectiveness of care, treatments, and services the PHP provides for patients and their families. Explicit clinical indicators shall be used to be used to evaluate all functions of the PHP and contribute to an ongoing process of program improvement. The clinical director is responsible for developing and implementing quality assessment and improvement activities throughout the facility.

(*2*) *Utilization review.* The PHP shall implement a utilization review process, pursuant to a written plan approved by the professional staff, the administration and the governing body, that assesses distribution of services, clinical necessity of treatment, appropriateness of admission, continued stay, and timeliness of discharge, as part of an overall effort to provide quality patient care in a cost-effective manner. Findings of the utilization review process are used as a basis for revising the plan of operation, including a review of staff qualifications and staff composition.

(*3*) *Patient records.* The PHP shall implement a process, including regular monthly reviews of a representative sample of patient records, to determine completeness, accuracy, timeliness of entries, appropriate signatures, and pertinence of clinical entries. Conclusions, recommendations, actions taken, and the results of actions are monitored and reported.

(*4*) *Drug utilization review.* The PHP shall implement a comprehensive process for the monitoring and evaluating of the prophylactic, therapeutic, and empiric use of drugs to assure that medications are provided appropriately, safely, and effectively.

(*5*) *Risk management.* The PHP shall implement a comprehensive risk management program, fully coordinated with other aspects of the quality assurance and quality improvement program, to prevent and control risks to patients and staff, and to minimize costs associated with clinical aspects of patient care and safety.

(*6*) *Infection control.* The PHP shall implement a comprehensive system for the surveillance, prevention, control, and reporting of infections acquired or brought into the facility.

(*7*) *Safety.* The PHP shall implement an effective program to assure a safe environment for patients, staff, and visitors, including an incident reporting system, disaster training and safety education, a continuous safety surveillance system, and an active multidisciplinary safety committee.

(*8*) *Facility evaluation.* The PHP annually evaluates accomplishment of the goals and objectives of each clinical program component or facility service of the PHP and reports findings and recommendations to the governing body.

(E) *Participation agreement requirements.* In addition to other requirements set forth in paragraph (b)(4)(xii) of this section, in order for the services of a PHP to be authorized, the PHP shall have entered into a Participation Agreement with OCHAMPUS. The period of a Participation Agreement shall be specified in the agreement, and will generally be for not more than five years. On October 1, 1995, the PHP shall not be considered to be a CHAMPUS authorized provider and CHAMPUS payments shall not be made for services provided by the PHP until the date the participation agreement is signed by the Director, OCHAMPUS. In addition to review of a facility's application and supporting documentation, an on-site inspection by OCHAMPUS authorized personnel may be required prior to signing a participation agreement. The Participation Agreement shall include at least the following requirements:

(*1*) Render partial hospitalization program services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and CHAMPUS regulation.

(*2*) Accept payment for its services based upon the methodology provided in section 199.14, or such other method as determined by the Director, OCHAMPUS;

(*3*) Accept the CHAMPUS all-inclusive per diem rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(*4*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts, which represent the beneficiary's liability, as defined in § 199.4;

(*5*) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*6*) Submit claims for services provided to CHAMPUS beneficiaries at least every 30 days (except to the extent a delay is necessitated by efforts to first collect from other health insurance). If claims are not submitted at least every 30 days, the PHP agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(*7*) Certify that:

(*i*) It is and will remain in compliance with the provisions of paragraph (b)(4)(xii) of this section establishing standards for psychiatric partial hospitalization programs;

(*ii*) It has conducted a self assessment of the facility's compliance with the CHAMPUS Standards for Psychiatric Partial Hospitalization Programs, as issued by the Director, OCHAMPUS, and notified the Director, OCHAMPUS of any matter regarding which the facility is not in compliance with such standards; and

(*iii*) It will maintain compliance with the CHAMPUS Standards for Psychiatric Partial Hospitalization Programs, as issued by the Director, OCHAMPUS, except for any such standards regarding which the facility notifies the Director, OCHAMPUS that it is not in compliance.

(*8*) Designate an individual who will act as liaison for CHAMPUS inquiries. The PHP shall inform OCHAMPUS in writing of the designated individual;

(*9*) Furnish OCHAMPUS with cost data, as requested by OCHAMPUS, certified by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*10*) Comply with all requirements of this section applicable to institutional providers generally concerning preauthorization, concurrent care review, claims processing, beneficiary liability, double coverage, utilization and quality review and other matters;

(*11*) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records (including records relating to patients who are not CHAMPUS beneficiaries) to determine the quality and cost-effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review includes, but is not limited to:

(*i*) Examination of fiscal and all other records of the PHP which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS PHP provider;

(*ii*) Conducting such audits of PHP records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*iii*) Examining reports of evaluations and inspections conducted by federal, state and local government, and private agencies and organizations;

(*iv*) Conducting on-site inspections of the facilities of the PHP and interreviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required;

(*v*) Audits conducted by the United States General Account Office.

(F) *Other requirements applicable to PHPs.*

(*1*) Even though a PHP may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for particular services provided is contingent upon the PHP also meeting all conditions set forth in section 199.4 of this part.

(*2*) The PHP shall provide patient services to CHAMPUS beneficiaries in the same manner it provides inpatient services to all other patients. The PHP may not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or provisions of special or limited treatment.

(*3*) The PHP shall assure that all certifications and information provided to the Director, OCHAMPUS incident to the process of obtaining and retaining authorized provider status is accurate and that is has no material errors or omissions. In the case of any misrepresentations, whether by inaccurate information being provided or material facts withheld, authorized provider status will be denied or terminated, and the PHP will be ineligible for consideration for authorized provider status for a two year period.

* * * * *

(xiv) *Substance use disorder rehabilitation facilities.* Paragraph (b)(4)(xiv) of this section establishes standards and requirements for substance use order rehabilitation facilities (SUDRF). This includes both inpatient rehabilitation centers for the treatment of substance use disorders and partial hospitalization centers for the treatment of substance use disorders.

(A) *Organization and administration.*

(*1*) *Definition of inpatient rehabilitation center.* An inpatient rehabilitation center is a facility, or distinct part of a facility, that provides medically monitored, interdisciplinary addiction-focused treatment to beneficiaries who have psychoactive substance use disorders. Qualified health care professionals provide 24-hour, seven-day-per-week, medically monitored assessment, treatment, and evaluation. An inpatient rehabilitation center is appropriate for patients whose addiction-related symptoms, or concomitant physical and emotional/behavioral problems reflect persistent dysfunction in several major life areas. Inpatient rehabilitation is differentiated from:

(*i*) Acute psychoactive substance use treatment and from treatment of acute biomedical/emotional/behavioral problems; which problems are either life-threatening and/or severely incapacitating and often occur within the context of a discrete episode of addiction-related biomedical or psychiatric dysfunction;

(*ii*) A partial hospitalization center, which serves patients who exhibit emotional/behavioral dysfunction but who can function in the community for defined periods of time with support in one or more of the major life areas;

(*iii*) A group home, sober-living environment, halfway house, or three-quarter way house;

(*iv*) Therapeutic schools, which are educational programs supplemented by addiction-focused services;

(*v*) Facilities that treat patients with primary psychiatric diagnoses other than psychoactive substance use or dependence; and

(*vi*) Facilities that care for patients with the primary diagnosis of mental retardation or developmental disability.

(*2*) *Definition of partial hospitalization center for the treatment of substance use disorders.* A partial hospitalization center for the treatment of substance use disorders is an addiction-focused service that provides active treatment to adolescents between the ages of 13 and 18 or adults aged 18 and over. Partial hospitalization is a generic term for day, evening, or weekend programs that treat patients with psychoactive substance use disorders according to a comprehensive, individualized, integrated schedule of care. A partial hospitalization center is organized, interdisciplinary, and medically monitored. Partial hospitalization is appropriate for those whose addiction-related symptoms or concomitant physical and emotional/behavioral problems can be managed outside the hospital environment for defined periods of time with support in one or more of the major life areas.

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(*3*) *Eligibility.*

(*i*) Every inpatient rehabilitation center and partial hospitalization center for the treatment of substance use disorders must be certified pursuant to CHAMPUS certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(xiv) (A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, OCHAMPUS determines are necessary to implement the basic standards.

(*ii*) To be eligible for CHAMPUS certification, the SUDRF is required to be licensed and fully operational (with a minimum patient census of the lesser of: six patients or 30 percent of bed capacity) for a period of at least six months and operate in substantial compliance with state and federal regulations.

(*iii*) The SUDRF is currently accredited by the Joint Commission on Accreditation of Healthcare Organizations under the Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/ Developmental Disabilities Services, or by the Commission on Accreditation of Rehabilitation Facilities as an alcoholism and other drug dependency rehabilitation program under the Standards Manual for Organizations Serving People with Disabilities, or other designated standards approved by the Director, OCHAMPUS.

(*iv*) The SUDRF has a written participation agreement with OCHAMPUS. On October 1, 1995, the SUDRF is not considered a CHAMPUS-authorized provider, and CHAMPUS benefits are not paid for services provided until the date upon which a participation agreement is signed by the Director, OCHAMPUS.

(*4*) *Governing body.*

(*i*) The SUDRF shall have a governing body which is responsible for the policies, bylaws, and activities of the facility. If the SUDRF is owned by a partnership or single owner, the partners or single owner are regarded as the governing body. The facility will provide an up-to-date list of names, addresses, telephone numbers and titles of the members of the governing body.

(*ii*) The governing body ensures appropriate and adequate services for all patients and oversees continuing development and improvement of care. Where business relationships exist between the governing body and facility, appropriate conflict-of-interest policies are in place.

(*iii*) Board members are fully informed about facility services and the governing body conducts annual reviews of its performance in meeting purposes, responsibilities, goals and objectives.

(*5*) *Chief executive officer.* The chief executive officer, appointed by and subject to the direction of the governing body, shall assume overall administrative responsibility for the operation of the facility according to governing body policies. The chief executive officer shall have five years' administrative experience in the field of mental health or addictions. On October 1, 1997 the CEO shall possess a degree in business administration, public health, hospital administration, nursing, social work, or psychology, or meet similar educational requirements as prescribed by the Director, OCHAMPUS.

(*6*) *Clinical Director.* The clinical director, appointed by the governing body, shall be a qualified psychiatrist or doctoral level psychologist who meets applicable CHAMPUS requirements for individual professional providers and is licensed to practice in the state where the SUDRF is located. The clinical director shall possess requisite education and experience, including credentials applicable under state practice and licensing laws appropriate to the professional discipline. The clinical director shall satisfy at least one of the following requirements: certification by the American Society of Addiction Medicine; one year or 1,000 hours of experience in the treatment of psychoactive substance use disorders; or is a psychiatrist or doctoral level psychologist with experience in the treatment of substance use disorders. The clinical director shall be responsible for planning, development, implementation, and monitoring of all clinical activities.

(*7*) *Medical director.* The medical director, appointed by the governing body, shall be licensed to practice medicine in the state where the center is located and shall possess requisite education including graduation from an accredited school of medicine or osteopathy. The medical director shall satisfy at least one of the following requirements: certification by the American Society of Addiction Medicine; one year or 1,000 hours of experience in the treatment of psychoactive substance use disorders; or is a psychiatrist with experience in the treatment of substance use disorders. The medical director shall be responsible for the planning, development, implementation, and monitoring of all activities relating to medical treatment of patients. If qualified, the Medical Director may also serve as Clinical Director.

(*8*) *Medical or professional staff organization.* The governing body shall establish a medical or professional staff organization to assure effective implementation of clinical privileging, professional conduct rules, and other activities directly affecting patient care.

(*9*) *Personnel policies and records.* The SUDRF shall maintain written personnel policies, updated job descriptions, personnel records to assure the selection of qualified personnel and successful job performance of those personnel.

(*10*) *Staff development.* The SUDRF shall provide appropriate training and development programs for administrative, support, and direct care staff.

(*11*) *Fiscal accountability.* The SUDRF shall assure fiscal accountability to applicable government authorities and patients.

(*12*) *Designated teaching facilities.* Students, residents, interns, or fellows providing direct clinical care are under the supervision of a qualified staff member approved by an accredited university or approved training program. The teaching program is approved by the Director, OCHAMPUS.

(*13*) *Emergency reports and records.* The facility notifies OCHAMPUS of any serious occurrence involving CHAMPUS beneficiaries.

(B) *Treatment services.*

(*1*) *Staff composition.*

(*i*) The SUDRF shall follow written plans which assure that medical and clinical patient needs will be appropriately addressed during all hours of operation by a sufficient number of fully qualified (including license, registration or certification requirements, educational attainment, and professional experience) health care professionals and support staff in the respective disciplines. Clinicians providing individual, group and family therapy meet CHAMPUS requirements as qualified mental health providers and operate within the scope of their licenses. The ultimate authority for planning, development, implementation, and monitoring of all clinical activities is vested in a psychiatrist or doctoral level clinical psychologist. The management of medical care is vested in a physician.

(*ii*) The SUDRF shall establish and follow written plans to assure adequate staff coverage during all hours of operation of the center, including physician availability and other professional staff coverage 24 hours per day, seven days per week for an inpatient rehabilitation center and during all hours of operation for a partial hospitalization center.

(*2*) *Staff qualifications.* Within the scope of its programs and services, the SUDRF has a sufficient number of professional, administrative, and support staff to address the medical and clinical needs of patients and to coordinate the services provided. SUDRFs that employ individuals with master's or doctoral level degrees in a mental health discipline who do not meet the licensure, certification and experience requirements for a qualified mental health provider but are actively working toward licensure or certification, may provide services within the DRG, provided the individual works under the clinical supervision of a fully qualified mental health provider employed by the SUDRF.

(*3*) *Patient rights.*

(*i*) The SUDRF shall provide adequate protection for all patient rights, safety, confidentiality, informed consent, grievances, and personal dignity.

(*ii*) The SUDRF has a written policy regarding patient abuse and neglect.

(*iii*) SUDRF marketing and advertising meets professional standards.

(*4*) *Behavioral management.* When a SUDRF uses a behavioral management program, the center shall adhere to a comprehensive, written plan of behavioral management, developed by the clinical director and the medical or professional staff and approved by the governing body. It shall be based on positive reinforcement methods and, except for infrequent use of temporary physical holds or time outs, does not include the use of restraint or seclusion. Only trained and clinically privileged RNs or qualified mental health professionals may be responsible for the implementation of seclusion and restraint in an emergency situation.

(*5*) *Admission process.* The SUDRF shall maintain written policies and procedures to ensure that, prior to an admission, a determination is made, and approved pursuant to CHAMPUS preauthorization requirements, that the admission is medically and/or psychologically necessary and the program is appropriate to meet the patient's needs. Medical and/or psychological necessity determinations shall be rendered by qualified mental health professionals who meet CHAMPUS requirements for individual professional providers and who are permitted by law and by the facility to refer patients for admission.

(*6*) *Assessment.* The professional staff of the SUDRF shall provide a complete, multidisciplinary assessment of each patient which includes, but is not limited to, medical history, physical health, nursing needs, alcohol and drug history, emotional and behavioral factors, age-appropriate social circumstances, psychological condition, education status, and skills. Unless otherwise specified, all required clinical assessments are completed prior to development of the multidisciplinary treatment plan.

(*7*) *Clinical formulation.* A qualified mental health care professional of the SUDRF will complete a clinical formulation on all patients. The clinical formulation will be reviewed and approved by the responsible individual professional provider and will incorporate significant findings from each of the multidisciplinary assessments. It will provide the basis for development of an interdisciplinary treatment plan.

(*8*) *Treatment planning.* A qualified health care professional with admitting privileges shall be responsible for the development, supervision, implementation, and assessment of a written, individualized, and interdisciplinary plan of treatment, which shall be completed within 10 days of admission to an inpatient rehabilitation center or by the fifth day following admission to full day partial hospitalization center, and by the seventh day of treatment for half day partial hospitalization. The treatment plan shall include individual, measurable, and observable goals for incremental progress towards the treatment plan objectives and goals and discharge. A preliminary treatment plan is completed within 24 hours of admission and includes at least a physician's admission note and orders. The master treatment plan is regularly reviewed for effectiveness and revised when major changes occur in treatment.

(*9*) *Discharge and transition planning.* The SUDRF shall maintain a transition planning process to address adequately the anticipated needs of the patient prior to the time of discharge.

(*10*) *Clinical documentation.* Clinical records shall be maintained on each patient to plan care and treatment and provide ongoing evaluation of the patient's progress. All care is documented and each clinical record contains at least the following: demographic data, consent forms, pertinent legal documents, all treatment plans and patient assessments, consultation and laboratory reports, physician orders, progress notes, and a discharge summary. All documentation will adhere to applicable provisions of the JCAHO and requirements set forth in § 199.7(b)(3). An appropriately qualified records administrator or technician will supervise and maintain the quality of the records. These requirements are in addition to other records requirements of this Part, and provisions of the JCAHO Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services.

(*11*) *Progress notes.* Timely and complete progress notes shall be maintained to document the course of treatment for the patient and family.

(*12*) *Therapeutic services.*

(*i*) Individual, group, and family psychotherapy and addiction counseling services are provided to all patients, consistent with each patient's treatment plan by qualified mental health providers.

(*ii*) A range of therapeutic activities, directed and staffed by qualified personnel, are offered to help patients meet the goals of the treatment plan.

(*iii*) Therapeutic educational services are provided or arranged that are appropriate to the patient's educational and therapeutic needs.

(*13*) *Ancillary services.* A full range of ancillary services is provided. Emergency services include policies and procedures for handling emergencies with qualified personnel and written agreements with each facility providing the service. Other ancillary services include physical health, pharmacy and dietary services.

(C) *Standards for physical plant and environment.*

(*1*) *Physical environment.* The buildings and grounds of the SUDRF shall be maintained so as to avoid health and safety hazards, be supportive of the services provided to patients, and promote patient comfort, dignity, privacy, personal hygiene, and personal safety.

(*2*) *Physical plant safety.* The SUDRF shall be maintained in a manner that protects the lives and ensures the physical safety of patients, staff, and visitors, including conformity with all applicable building, fire, health, and safety codes.

(*3*) *Disaster planning.* The SUDRF shall maintain and rehearse written plans for taking care of casualties and handling other consequences arising from internal or external disasters.

(D) *Standards for evaluation system.*

(*1*) *Quality assessment and improvement.* The SUDRF develop and implement a comprehensive quality assurance and quality improvement program that monitors the quality, efficiency, appropriateness, and effectiveness of the care, treatments, and services it provides for patients and their families, utilizing clinical indicators of effectiveness to contribute to an ongoing process of program improvement. The clinical director is

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responsible for developing and implementing quality assessment and improvement activities throughout the facility.

(2) *Utilization review.* The SUDRF shall implement a utilization review process, pursuant to a written plan approved by the professional staff, the administration, and the governing body, that assesses the appropriateness of admissions, continued stay, and timeliness of discharge as part of an effort to provide quality patient care in a cost-effective manner. Findings of the utilization review process are used as a basis for revising the plan of operation, including a review of staff qualifications and staff composition.

(3) *Patient records review.* The center shall implement a process, including monthly reviews of a representative sample of patient records, to determine the completeness and accuracy of the patient records and the timeliness and pertinence of record entries, particularly with regard to regular recording of progress/non-progress in treatment plan.

(4) *Drug utilization review.* An inpatient rehabilitation center and, when applicable, a partial hospitalization center, shall implement a comprehensive process for the monitoring and evaluating of the prophylactic, therapeutic, and empiric use of drugs to assure that medications are provided appropriately, safely, and effectively.

(5) *Risk management.* The SUDRF shall implement a comprehensive risk management program, fully coordinated with other aspects of the quality assurance and quality improvement program, to prevent and control risks to patients and staff and costs associated with clinical aspects of patient care and safety.

(6) *Infection control.* The SUDRF shall implement a comprehensive system for the surveillance, prevention, control, and reporting of infections acquired or brought into the facility.

(7) *Safety.* The SUDRF shall implement an effective program to assure a safe environment for patients, staff, and visitors.

(8) *Facility evaluation.* The SUDRF annually evaluates accomplishment of the goals and objectives of each clinical program and service of the SUDRF and reports findings and recommendations to the governing body.

(E) *Participation agreement requirements.* In addition to other requirements set forth in paragraph (b)(4)(xiv) of this section, in order for the services of an inpatient rehabilitation center or partial hospitalization center for the treatment of substance abuse disorders to be authorized, the center shall have entered into a Participation Agreement with OCHAMPUS. The period of a Participation Agreement shall be specified in the agreement, and will generally be for not more than five years. On October 1, 1995, the SUDRF shall not be considered to be a CHAMPUS authorized provider and CHAMPUS payments shall not be made for services provided by the SUDRF until the date the participation agreement is signed by the Director, OCHAMPUS. In addition to review of the SUDRFS application and supporting documentation, an on-site visit by OCHAMPUS representatives may be part of the authorization process. In addition, such a Participation Agreement may not be signed until an SUDRF has been licensed and operational for at least six months. The Participation Agreement shall include at least the following requirements:

(1) Render applicable services to eligible CHAMPUS beneficiaries in need of such services, in accordance with the participation agreement and CHAMPUS regulation;

(2) Accept payment for its services based upon the methodology provided in § 199.14, or such other method as determined by the Director, OCHAMPUS;

(3) Accept the CHAMPUS-determined rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.4, and charges for services and supplies that are not a benefit of CHAMPUS;

(4) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.4;

(5) Comply with the provisions of § 199.8, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(6) Furnish OCHAMPUS with cost data, as requested by OCHAMPUS, certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(7) Certify that:

(*i*) It is and will remain in compliance with the provisions of paragraph (b)(4)(xiv) of the section establishing standards for substance use disorder rehabilitation facilities;

(*ii*) It has conducted a self assessment of the SUDRF'S compliance with the CHAMPUS Standards for Substance Use Disorder Rehabilitation Facilities, as issued by the Director, OCHAMPUS, and notified the Director, OCHAMPUS of any matter regarding which the facility is not in compliance with such standards; and

(*iii*) It will maintain compliance with the CHAMPUS Standards for Substance Use Disorder Rehabilitation Facilities, as issued by the Director, OCHAMPUS, except for any such standards regarding which the facility notifies the Director, OCHAMPUS that it is not in compliance.

(8) Grant the Director, OCHAMPUS, or designee, the right to conduct quality assurance audits or accounting audits with full access to patients and records (including records relating to patients who are not CHAMPUS beneficiaries) to determine the quality and cost effectiveness of care rendered. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. This right to audit/review included, but is not limited to:

(*i*) Examination of fiscal and all other records of the center which would confirm compliance with the participation agreement and designation as an authorized CHAMPUS provider;

(*ii*) Conducting such audits of center records including clinical, financial, and census records, as may be necessary to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided CHAMPUS beneficiaries;

(*iii*) Examining reports of evaluations and inspection conducted by federal, state and local government, and private agencies and organizations;

(*iv*) Conducting on-site inspections of the facilities of the SUDRF and interviewing employees, members of the staff, contractors, board members, volunteers, and patients, as required.

(*v*) Audits conducted by the United States General Accounting Office.

(F) *Other requirements applicable to substance use disorder rehabilitation facilities.*

(1) Even though a SUDRF may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for particular services provided is contingent upon the SUDRF also meeting all conditions set forth in § 199.4.

(2) The center shall provide inpatient services to CHAMPUS beneficiaries in the same manner it provides services to all other patients. The center may not discriminate against CHAMPUS beneficiaries in any manner, including admission practices, placement in special or separate wings or rooms, or

provisions of special or limited treatment.

(3) The substance use disorder facility shall assure that all certifications and information provided to the Director, OCHAMPUS incident to the process of obtaining and retaining authorized provider status is accurate and that it has no material errors or omissions. In the case of any misrepresentations, whether by inaccurate information being provided or material facts withheld, authorized provider status will be denied or terminated, and the facility will be ineligible for consideration for authorized provider status for a two year period.

* * * * *

4. Section 199.14 is amended by designating the current text of paragraph (a)(2)(ii)(A) as paragraph (a)(2)(ii)(A)(*1*), revising paragraphs (a)(2)(ii)(B) and (a)(2)(iv)(C), the heading of paragraph (a)(2)(ix), paragraphs (a)(2)(ix)(A), (a)(2)(ix)(C), (f)(3), and (f)(5), and by adding new paragraphs (a)(1)(ii)(F), (a)(2)(ii)(A)(*2*), and (f)(6) as follows:

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.* * * *

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.*

* * *

(ii) *Applicability of the DRG system.*

* * *

(F) *Substance Use Disorder Rehabilitation facilities.*

With admissions on or after July 1, 1995, substance use disorder rehabilitation facilities, authorized under § 199.6(b)(4)(xiv), are subject to the DRG-based payment system.

* * * * *

(2) *CHAMPUS mental health per diem payment system.*

* * * * *

(ii) *Hospital-specific per diems for higher volume hospitals and units.*

* * *

(A) *Per diem amount.* * * *

(2) In states that have implemented a payment system in connection with which hospitals in that state have been exempted from the CHAMPUS DRG-based payment system pursuant to paragraph (a)(1)(ii)(A) of this section, psychiatric hospitals and units may have per diem amounts established based on the payment system applicable to such hospitals and units in the state. The per diem amount, however, may not exceed the cap amount applicable to other higher volume hospitals.

(B) *Cap.*

(1) As it affects payment for care provided to patients prior to April 6, 1995, the base period per diem amount may not exceed the 80th percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals.

(2) Applicable to payments for care provided to patients on or after April 6, 1996, the base period per diem amount may not exceed the 70th percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals. For this purpose, base year charges shall be deemed to be charges during the period of July 1, 1991 to June 30, 1992, adjusted to correspond to base year (FY 1988) charges by the percentage change in average daily charges for all higher volume hospitals and units between the period of July 1, 1991 to June 30, 1992 and the base year.

* * * * *

(iv) *Base period and update factors.*

* * * * *

(C) *Update factors.*

(1) The hospital-specific per diems and the regional per diems calculated for the base period pursuant to paragraphs (a)(2)(ii) of this section shall remain in effect for federal fiscal year 1989; there will be no additional update for fiscal year 1989.

(2) Except as provided in paragraph (a)(2)(iv)(C)(3) of this section, for subsequent federal fiscal years, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(3) As an exception to the update required by paragraph (a)(2)(iv)(C)(2) of this section, all per diems in effect at the end of fiscal year 1995 shall remain in effect, with no additional update, throughout fiscal years 1996 and 1997. For fiscal year 1998 and thereafter, the per diems in effect at the end of fiscal year 1997 will be updated in accordance with paragraph (a)(2)(iv)(C)(2).

(4) Hospitals and units with hospital-specific rates will be notified of their respective rates prior to the beginning of each Federal fiscal year. New hospitals shall be notified at such time as the hospital rate is determined. The actual amounts of each regional per diem that will apply in any Federal fiscal year shall be published in the **Federal Register** at approximately the start of that fiscal year.

* * * * *

(ix) *Per diem payment for psychiatric and substance use disorder rehabilitation partial hospitalization services.*

(A) *In general.* Psychiatric and substance use disorder rehabilitation partial hospitalization services authorized by § 199.4 (b)(10) and (e)(4) and provided by institutional providers authorized under § 199.6 (b)(4)(xii) and (b)(4)(xiv), are reimbursed on the basis of prospectively determined, all-inclusive per diem rates. The per diem payment amount must be accepted as payment in full for all institutional services provided, including board, routine nursing services, ancillary services (includes art, music, dance, occupational and other such therapies), psychological testing and assessments, overhead and any other services for which the customary practice among similar providers is included as part of the institutional charges.

* * * * *

(C) *Per diem rate.* For any full day partial hospitalization program (minimum of 6 hours), the maximum per diem payment amount is 40 percent of the average inpatient per diem amount per case established under the CHAMPUS mental health per diem reimbursement system for both high and low volume psychiatric hospitals and units (as defined in § 199.14(a)(2)) for the fiscal year. A partial hospitalization program of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for a full-day program.

* * * * *

(f) *Reimbursement of Residential Treatment Centers.*

* * * * *

(3) For care on or after April 6, 1995, the per diem amount may not exceed a cap of the 70th percentile of all established Federal fiscal year 1994 RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the first half of Federal fiscal year 1994, and updated to FY95. For Federal fiscal years 1996 and 1997, the cap shall remain unchanged. For Federal fiscal years after fiscal year 1997, the cap shall be adjusted by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

* * * * *

(5) Subject to the applicable RTC cap, adjustments to the RTC rates may be made annually.

(i) For Federal fiscal years through 1995, the adjustment shall be based on the Consumer Price Index-Urban (CPI–U) for medical care as determined applicable by the Director, OCHAMPUS.

(ii) For purposes of rates for Federal fiscal years 1996 and 1997:

(A) for any RTC whose 1995 rate was at or above the thirtieth percentile of all established Federal fiscal year 1995 RTC rates normally, weighted by total CHAMPUS days provided at each rate during the first half of Federal fiscal

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year 1994, that rate shall remain in effect, with no additional update, throughout fiscal years 1996 and 1997; and

(B) For any RTC whose 1995 rate was below the 30th percentile level determined under paragraph (f)(5)(ii)(A) of this section, the rate shall be adjusted by the lesser of: the CPI–U for medical care, or the amount that brings the rate up to that 30th percentile level.

(iii) For subsequent Federal fiscal years after fiscal year 1997, RTC rates shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(6) For care provided on or after July 1, 1995, CHAMPUS will not pay for days in which the patient is absent on leave from the RTC. The RTC must identify these days when claiming reimbursement.

Dated: March 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5375 Filed 3–6–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–17–1–5600a; FRL–5163–3]

Approval and Promulgation of Implementation Plans; Texas State Implementation Plan Revision; Corrections for Reasonably Available Control Technology (RACT) Rules; Volatile Organic Compounds (VOC) RACT Catch-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on June 8, 1992, and additional revisions which were submitted on November 13, 1992. These SIP revisions contain regulations which require the implementation of RACT for various types of VOC sources. These revisions respond to the requirements of section 182(b)(2) of the Federal Clean Air Act, as amended in 1990 (CAA), for States to adopt RACT rules by November 15, 1992, for major VOC sources which are not covered by an existing EPA Control Techniques Guideline (CTG) and for all sources covered by an existing CTG. These revisions also include corrections to the monitoring, recordkeeping, and reporting requirements for Victoria County, in order to make the VOC rules more enforceable in that County.

DATES: This final rule is effective on May 8, 1995, unless critical or adverse comments are received by April 6, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittals and other information relevant to this action are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street S.W, Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wishing to review these documents at the U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7219.

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(2) of the CAA, as amended in 1990, requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This action does not address requirements to implement RACT at sources covered by post-enactment CTG's. Texas has identified sources in these post-enactment CTG source categories. RACT requirements will be addressed for these sources in future actions.

Section 182(b)(2) calls for nonattainment areas that previously were exempt from certain VOC RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements under the preamended Act. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. In addition, the major source threshold is lowered for certain nonattainment areas (50 tons/yr for serious areas and 25 tons/yr in severe areas). States are required to ensure that RACT is implemented based on these new major source definitions. In Texas, there are four ozone nonattainment areas: Dallas/Fort Worth (moderate), Beaumont/Port Arthur (serious), El Paso (serious) and Houston (severe). These VOC RACT revisions pending before EPA expand the applicability of control requirements to include the newly-designated perimeter counties (Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller). In addition, the applicability of control requirements has been expanded to include all previously-designated ozone nonattainment counties (Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant). The existing requirements for Gregg, Nueces, and Victoria Counties have been relocated to a separate (new) subsection in each applicable section. Non-CTG RACT rules for mirror backing coating facilities have been added. Finally, monitoring/recordkeeping requirements for VOC sources in Victoria County were revised to be made more enforceable.

Procedural Background

The Clean Air Act (the Act) requires states to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of

receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Texas held a public hearing on February 24, 1992, to entertain public comment on the June 8, 1992 SIP submittal. The State held a public hearing on July 27, 1992, to entertain public comment on the November 13, 1992 SIP revision. Subsequent to the public hearings and consideration of hearing comments, the June 8, 1992 SIP revision was adopted by the State on May 8, 1992. The November 13, 1992 SIP revision was adopted by the State on October 16, 1992.

These SIP revisions were reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated July 20, 1992, was forwarded to the Governor finding the submittal complete and indicating the next steps to be taken in the review process. The November 16, 1992 submittal was ruled complete on January 15, 1993.

EPA Evaluation

In determining the approvability of a VOC rule, the EPA must evaluate the rule for consistency with the requirements of the CAA and the EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.

To evaluate these rules, the EPA used the CTGs and "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations", dated May 25, 1988. The technical review of these rule revisions is included in the RACT "Catch-up" Technical Support Document (TSD). Please refer to this document for an explanation of the specific revisions. The following rules have been submitted. For a detailed description of the rule changes, see the TSD.

Revisions to the General Rules and Regulation V, Submitted June 8, 1992

Section 101.1 of the General Rules (Definitions), and the following sections of regulation V: 115.010 (Definitions), 115.112–115.119 (Storage of Volatile Organic Compounds), 115.121–115.129 (Vent Gas Control), 115.131–115.139 (Water Separation), 115.211–115.219 (Loading/Unloading of VOCs), 115.221–115.229 (Stage I), 115.234–115.239 (VOC Leaks from Gasoline Tank Trucks), 115.242–115.249 (Gasoline Reid Vapor Pressure), 115.311–115.319 (Process Unit Turnaround), 115.322–115.329 (Petroleum Refinery Fugitives), 115.332–115.339 (Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether (MTBE) Manufacturing Fugitives), 115.342–115.349 (Natural Gas/Gasoline Processing Fugitives), 115.412–115.249 (Degreasing Operations), 115.421–115.429 (Surface Coating Processes), 115.432–115.439 (Graphic Arts), 115.512–115.519 (Cutback Asphalt), 115.531–115.539 (Pharmaceutical Manufacturing), and 115.612–115.619 (Consumer Solvent Products).

Revisions to the General Rules and Regulation V, Submitted November 13, 1992

Section 101.1 of the General Rules (Definitions), and the following sections of regulation V: 115.010 (Definitions), 115.116–115.119 (Storage of Volatile Organic Compounds), 115.126–115.219 (Vent Gas Control), 115.136–115.139 (Water Separation), 115.211–115.219 (Loading/Unloading of VOCs), 115.249 (Reid Vapor Pressure), 115.316–115.319 (Process Unit Turnaround), 115.421–115.429 (Surface Coating Processes), 115.436–115.439 (Graphic Arts), and 115.536–115.539 (Pharmaceutical Manufacturing).

These revisions accomplish the following requirements of section 182(b)(2):

1. Expand RACT requirements to the newly designated nonattainment counties;

2. Eliminate the distinction between "rural" and "urban" nonattainment areas, and;

3. Ensure that RACT is applied to all major sources in the ozone nonattainment areas.

The EPA has determined that the RACT revisions to the Texas General Rules and Regulation V meet the applicable Federal requirements.

Final Action

The EPA has evaluated the State's submittal for consistency with the CAA, EPA regulations, and EPA policy. The EPA has determined that the rules meet the CAA's requirements and today is approving under section 110(k)(3) the above mentioned VOC rules.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this FR publication, the EPA is proposing to approve these SIP revisions should adverse or critical comments be received. Thus, this action will be effective on May 8, 1995, unless adverse or critical comments are received by April 6, 1995.

If such comments are received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another final action will be published addressing any adverse comments. If no such adverse comments are received, the public is advised that this action will be effective on May 8, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of

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judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c) (88) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(88) Revisions to the Texas State Implementation Plan, submitted to EPA on June 8 and November 13, 1992, respectively. These revisions adopt expansion of applicability for Reasonably Available Control Technology (RACT) rules for volatile organic compounds (VOCs) to ensure that all major VOC sources are covered by RACT, to revise the major source definition, and to revise certain monitoring, recordkeeping, and reporting requirements for Victoria County, Texas.

(i) Incorporation by reference.

(A) Texas Air Control Board Order No. 92–04, as adopted on May 8, 1992.

(B) Revisions to the General Rules, as adopted by the Board on May 8, 1992, section 101.1—New definitions for capture efficiency, capture system, carbon adsorber, carbon adsorption system, coating, coating line, control device, control system, pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents), pounds of volatile organic compounds (VOC) per gallon of solids, printing line; revised definitions for component, exempt solvent, leak, vapor recovery system, volatile organic compound (VOC).

(C) Revisions to Regulation V, as adopted by the Board on May 8, 1992, sections 115.010 (Definitions)—Beaumont/Port Arthur area, Dallas/Fort Worth area, El Paso area, Houston/Galveston area; revised definition for delivery vessel/tank truck tank; 115.112(a), 115.112(a)(3), 115.112(b)(1), 115.112(b)(2), 115.112(b)(2)(A) through 115.112(b)(2)(D), 115.112(b)(2)(E), 115.112(b)(2)(F), 115.112(c), 115.112(c)(3)(A), 115.112(c)(3)(B), 115.113(a) through 115.113(c), 115.114(a), 115.114(b), 115.114(b)(1), 115.114(b)(2), 115.115(a), 115.115(b), 115.115(b)(1) through 115.115(b)(8), 115.116(a), 115.116(a)(4), 115.116(b), 115.116(b)(1) through 115.116(b)(4), 115.117(a), 115.117(b), 115.117(b)(1) through 115.117(b)(6), 115.117(b)(6)(A) through 115.117(b)(6)(C), 115.117(b)(7), 115.117(b)(7)(A) through 115.117(b)(7)(C), 115.117(c), 115.117(c)(1) through 115.117(c)(4), 115.119 introductory paragraph, 115.121(a), 115.121(a)(1), 115.121(a)(1)(C), 115.121(a)(2), 115.121(a)(3), 115.121(b), 115.121(b)(1) through 115.121(b)(3), 115.121(c), 115.121(c)(1), 115.121(c)(2) through 115.121(c)(4), 115.122(a), 115.122(b), 115.122(c), 115.122(c)(1) through 115.122(c)(4), 115.123(a) through 115.123(c), 115.125(a), 115.125(a)(2), 115.125(b), 115.125(b)(1) through 115.125(b)(7), 115.126 introductory paragraph, 115.127(a), 115.127(a)(2), 115.127(a)(3), 115.127(a)(3)(B), 115.127(a)(3)(C), 115.127(a)(4), 115.127(a)(4)(C), 115.127(b), 115.127(b)(1), 115.127(b)(2), 115.127(b)(2)(A) through 115.127(b)(2)(B), 115.127(c), 115.127(c)(1), 115.127(c)(2), 115.127(c)(2)(A) through 115.127(c)(2)(C), 115.129 introductory paragraph, 115.129(1) through 115.129(3), 115.131(a), 115.131(a)(2) through 115.131(a)(4), 115.131(b) through 115.131(c), 115.132(a), 115.132(b), 115.132(b)(1) through 115.132(b)(3), 115.132(c), 115.132(c)(3), 115.133(a) through 115.133(c), 115.135(a), 115.135(b), 115.135(b)(1) through 115.135(b)(6), 115.136(a), 115.136(a)(1), 115.136(a)(2), 115.136(a)(2)(A) through 115.136(a)(2)(D), 115.136(a)(3), 115.136(a)(4), 115.136(b), 115.137(a), 115.137(a)(1) through 115.137(a)(4), 115.137(b), 115.137(b)(1) through 115.137(b)(4), 115.137(c), 115.137(c)(1) through 115.137(c)(3), 115.139 introductory paragraph, 115.139(1), 115.139(2), 115.211 introductory paragraph, 115.211(1)(A), 115.211(1)(B), 115.211(2), 115.212(a), 115.212(a)(4), 115.212(a)(5), 115.212(b), 115.212(b)(1), 115.212(b)(2), 115.212(b)(2)(A), 115.212(b)(2)(B), 115.212(b)(3), 115.212(b)(3)(A) through 115.212(b)(3)(C), 115.212(c), 115.212(c)(1), 115.213(a) through 115.213(c), 115.214(a), 115.214(a)(3), 115.214(a)(4), 115.214(b), 115.214(b)(1), 115.214(b)(2), 115.215(a), 115.215(b), 115.215(b)(1) through 115.215(b)(8), 115.216 introductory paragraph, 115.216(4), 115.217(a), 115.217(a)(2) through 115.217(a)(4), 115.217(b), 115.217(b)(1) through 115.217(b)(3), 115.217(c), 115.217(c)(3), 115.219 introductory paragraph, 115.219(1) through 115.219(6), 115.221 introductory paragraph, 115.222 introductory paragraph, 115.222(6), 115.223 introductory paragraph, 115.224 introductory paragraph, 115.224(2), 115.225 introductory paragraph, 115.226 introductory paragraph, 115.227 introductory paragraph, 115.229 introductory paragraph, 115.234 introductory paragraph, 115.235 introductory paragraph, 115.236 introductory paragraph, 115.239 introductory paragraph, 115.311(a), 115.311(a)(1), 115.311(a)(2), 115.311(b), 115.311(b)(1), 115.311(b)(2), 115.312(a), 115.312(a)(2), 115.312(b), 115.312(b)(1), 115.312(b)(1)(A), 115.312(b)(1)(B), 115.312(b)(2), 115.313(a) through 115.313(b), 115.315(a), 115.315(b), 115.315(b)(1) through 115.315(b)(7), 115.316 introductory paragraph, 115.316(1), 115.316(2), 115.316(3), 115.317 introductory paragraph, 115.319 introductory paragraph, 115.319(1), 115.319(2), 115.322(a), 115.322(b), 115.322(b)(1) through 115.322(b)(5), 115.323(a), 115.323(a)(2), 115.323(b), 115.323(b)(1), 115.323(b)(2), 115.324(a), 115.324(a)(4), 115.324(b), 115.324(b)(1), 115.324(b)(1)(A) through 115.324(b)(1)(D), 115.324(b)(2), 115.324(b)(2)(A) through 115.324(b)(2)(C), 115.324(b)(3) through 115.324(b)(8), 115.324(b)(8)(A), 115.324(b)(8)(A)(i), 115.324(b)(8)(A)(ii), 115.324(b)(8)(B), 115.325(a), 115.325(b), 115.325(b)(1) through 115.325(b)(3), 115.326(a), 115.326(a)(2), 115.326(b), 115.326(b)(1), 115.326(b)(2), 115.326(b)(2)(A) through 115.326(b)(2)(I), 115.326(b)(3), 115.326(b)(4), 115.327(a), 115.327(a)(2), 115.327(a)(4), 115.327(a)(5), 115.327(b), 115.327(b)(1), 115.327(b)(1)(A) through 115.327(b)(1)(C), 115.327(b)(2) through 115.327(b)(6), 115.329 introductory paragraph, 115.332 introductory paragraph, 115.333 introductory

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(D) Texas Air Control Board Order No. 92–16, as adopted on October 16, 1992.

(E) Revisions to the General Rules, as adopted by the Board on October 16, section 101.1: Introductory paragraph, new definition for extreme performance coating; revised definitions for gasoline bulk plant, paragraph vii of miscellaneous metal parts and products coating, mirror backing coating, volatile organic compound.

(F) Revisions to Regulation V, as adopted by the Board on October 16, 1992, sections 115.010—new definition for extreme performance coating; revised definitions for gasoline bulk plant, paragraph vii of miscellaneous metal parts and products coating, mirror backing coating, and volatile organic compound; 115.116 title (Monitoring and Recordkeeping Requirements), 115.116(a)(2), 115.116(a)(3), 115.116(a)(3)(A) through 115.116(a)(3)(C), 115.116(a)(5), 115.116(b)(2), 115.116(b)(3), 115.116(b)(3)(A) through 115.116(b)(3)(D), 115.116(b)(4), 115.116(b)(5), 115.119(a), 115.119(b), 115.126 title (Monitoring and Recordkeeping Requirements), 115.126(a), 115.126(a)(1)(A), 115.126(a)(1)(C), 115.126(a)(1)(E), 115.126(b), 115.126(b)(1), 115.126(b)(1)(A) through 115.126(b)(1)(E), 115.126(b)(2), 115.126(b)(2)(A) through 115.126(b)(2)(D), 115.126(b)(3), 115.126(b)(3)(A), 115.126(b)(3)(B), 115.127(a)(4)(A) through 115.127(a)(4)(C), 115.129(a), 115.129(a)(1), 115.129(b), 115.136 title (Monitoring and Recordkeeping Requirements), 115.136(a)(4), 115.136(b), 115.136(b)(1), 115.136(b)(2), 115.136(b)(2)(A) through 115.136(b)(2)(D), 115.136(b)(3), 115.136(b)(4), 115.139(a), 115.139(b), 115.211(a), 115.211(b), 115.215(a), 115.215(b), 115.216 title (Monitoring and Recordkeeping Requirements), 115.216(a), 115.216(a)(2)(A) through 115.216(a)(2)(C), 115.216(a)(5), 115.216(b), 115.216(b)(1), 115.216(b)(2), 115.216(b)(2)(A) through 115.216(b)(2)(D), 115.216(b)(3), 115.216(b)(3)(A), 115.216(b)(3)(B), 115.216(b)(4), 115.217(a)(6), 115.219(a)(1) through 115.219(a)(4), 115.219(b), 115.316 title (Monitoring and Recordkeeping Requirements), 115.316(a), 115.316(a)(1)(A), 115.316(a)(1)(C), 115.316(a)(4), 115.316(b), 115.316(b)(1), 115.316(b)(1)(A) through 115.316(b)(1)(D), 115.316(b)(2), 115.316(b)(2)(A) through

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115.316(b)(2)(C), 115.316(b)(3), 115.316(b)(4), 115.319(a)(1), 115.319(a)(2), 115.319(b), 115.421(a), 115.421(a)(12), 115.421(a)(12)(A), 115.421(a)(12)(A)(i), 115.421(a)(12)(A)(ii), 115.421(a)(12)(B), 115.425(a)(4)(C)(ii), 115.426 title (Monitoring and Recordkeeping Requirements), 115.426(a)(2), 115.426(a)(2)(A)(i), 115.426(b)(2), 115.426(b)(2)(i), 115.427(a)(5)(C), 115.427(a)(6), 115.427(a)(6)(A) through 115.427(a)(6)(C), 115.427(a)(7), 115.429(d), 115.436 title (Monitoring and Recordkeeping Requirements), 115.436(a)(3), 115.436(a)(3)(C), 115.436(b), 115.436(b)(3), 115.436(b)(3)(B) through 115.436(b)(3)(D), 115.439(d), 115.536 title (Monitoring and Recordkeeping Requirements), 115.536(a)(1), 115.536(a)(2), 115.536(a)(2)(A), 115.536(a)(2)(A)(ii), 115.536(a)(5), 115.536(b)(1), 115.536(b)(2), 115.536(b)(2)(A), 115.536(b)(2)(A)(ii) through 115.536(b)(2)(A)(iv), 115.539(c).

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40 CFR Part 52

[TX–21–1–6634; FRL–5134–6]

Clean Air Act Approval and Promulgation of Title I, Section 182(d)(1)(B), Employee Commute Options/Employer Trip Reduction Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an Employee Commute Options (ECO) program (also known as the Employer Trip Reduction (ETR) program). Pursuant to Section 182(d)(1)(B) of the Clean Air Act (CAA), as amended in 1990, the SIP was submitted by Texas to satisfy the statutory mandate that an ETR Program be established for employers with 100 or more employees, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of their employees who commute to work during the peak period, by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area.

EFFECTIVE DATE: This action will be effective on April 6, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733.

The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Hal D. Brown, Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require employers with 100 or more employees in the Houston-Galveston ozone nonattainment area to participate in a trip reduction program. Section 182(d)(1)(B) requires that employers submit ETR compliance plans to the State two years after the SIP is submitted to the EPA. These compliance plans must "convincingly demonstrate" that within four years after the SIP is submitted, the employer will achieve an increase in the APO of its employees who commute to work during the peak period by not less than 25 percent above the AVO of the nonattainment area. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

For an approvable ETR SIP, the State submittal must contain each of the following program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (3) an ETR program that includes a process for compliance demonstration; and, (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The EPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements [Employee Commute Options Guidance, December 1992].

On November 13, 1992, the EPA received from the Governor of Texas a SIP revision to incorporate the ETR regulation which was adopted by the State on October 16, 1992. On October 18, 1993, the EPA proposed approval of the Texas ETR SIP in the **Federal Register** (FR) because it meets the requirements of section 182(d)(1)(B) of the CAA and the criteria listed above (see 58 FR 53693). The proposed rulemaking action provides a detailed discussion of the EPA's rationale for proposing approval of the State's ETR SIP, and should be referred to. The EPA requested public comments on all aspects of the proposal. A summary of the comments received and the EPA's response to them are provided below. A more detailed response to comments is available from the EPA Region 6 office.

II. Response to Comments

The EPA received three comment letters, one from the State of Texas which supported the EPA's action, one from a local citizen which raised concerns with the Texas program, and one from a local environmental group which objected to EPA's proposed approval.

Comment 1—The Texas Natural Resource Conservation Commission (TNRCC) supported the EPA's proposed approval of the Texas ETR SIP. In addition, the State pointed out a correction to our notice. On page 53695, part D under "Enforcement Procedures," the EPA states that violators may be subject to up to $10,000 in administrative penalties and up to $25,000 in civil penalties. The State commented that this provision should instead read, "may subject the violator up to $10,000 in administrative penalties or up to $25,000 in civil penalties per violation."

EPA Response—The EPA agrees with the State's comment. Violators may be subject to either administrative or civil penalties for a given violation. The penalty provisions of the Texas program are approvable.

Comment 2—A local citizen and the environmental group commented that the emphasis of the ETR program should be on reducing work-related trips. In addition, the environmental group commented that it would be illegal to also emphasize reductions in vehicle miles travelled (VMT).

EPA Response—The EPA agrees that the intent of the section 182(d)(1)(B) of the CAA is to reduce work-related commute trips. We feel that Texas' program will accomplish this goal. The ETR regulation subjects employers to a violation for not achieving the target APO. The SIP clearly provides for sufficient penalties to deter non-compliance. In addition to this "penalty-based" approach, the State regulation also requires employers to sufficiently plan to ensure that they meet their target APO. Employers are required to register with the State, submit ETR compliance plans, implement their plan, and monitor their progress towards meeting their target APO.

The EPA disagrees that it would be illegal to also emphasize reductions in VMT. Section 182(d)(1)(B) of the CAA states that States "shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees." It is clear that the intent of this provision is to accomplish a reduction in both trips and VMT associated with commuting. Therefore, we do not believe it would be illegal to incorporate reductions in VMT as part of the ETR program, as long as other provisions of section 182(d)(1)(B) are met. While Texas currently does not include VMT considerations in its ETR program, the EPA believes that the State is not precluded from subsequently revising its ETR rule to allow for VMT considerations.

Comment 3—One local citizen and the environmental group objected to ETR trading or banking.

EPA Response—The current State ETR regulation does not allow for ETR trading although the EPA's Employee Commute Options Guidance, issued in December 1992, does allow employers in the same nonattainment area to aggregate APO credits through averaging, banking and trading (see page 16 of that guidance). We understand that the State may consider establishing a trading program, which would require a subsequent SIP revision.

The current State ETR rule does allow companies to bank ETR credits for only one year. As explained in the EPA's ECO Guidance (see page 19), the EPA believes that in terms of public health benefits, early reductions achieved through banking of APO credits offset later application of banked credits because as the fleet turns over and cleaner fuels are employed, each vehicle trip generates less emissions. The TNRCC restricts the use of banked credits to one year. The EPA believes that the use of the banked APO credits complies with the intent of the statute and will not materially affect attainment by the required date of 2007.

Comment 4—The environmental group commented that the term "regular basis" must be defined in the definition of "carpool," otherwise a loophole will be created.

EPA Response—The EPA disagrees with this comment. The term "carpool" is defined in the SIP narrative to help clarify what types of trip reduction measures may be effective in achieving compliance with the target APO. The ETR regulation, however, does not define the term "carpool." The EPA does not believe that a loophole will be created by not defining "regular basis" in the definition of "carpool" in the SIP. Compliance with the target APO is not determined by the use of carpools, but rather through specific calculations of actual occupancy based on travel commute data collected through the employee surveys.

Comment 5—The environmental group commented that it is their understanding that the definition of employer would not allow different companies located at one common location to submit one ETR plan. Instead, each company would have to submit its own ETR plan.

EPA Response—The EPA agrees with this comment, and believes that the State regulation is unambiguous in requiring different companies that occupy a common worksite to submit individual company plans.

Comment 6—The environmental group commented that they believe motorcycles should be included in the definition of "single occupancy vehicle" (SOV).

EPA Response—The EPA agrees but believes that the SIP narrative is unambiguous in including motorcycles as part of the definition for a SOV.

Comment 7—The environmental group commented that the amount of credit given for alternative trip reduction strategies (e.g., alternative fuels) must be included in the ETR SIP. Currently, the SIP states that such credit will be calculated in accordance with procedures and formulas provided by the TNRCC.

EPA Response—It is our understanding that the State will not grant credit for alternative trip reduction strategies unless and until the protocols for granting such credit are adopted into the regulation. In addition, the EPA will need to approve any credit for alternative trip reduction strategies as part of the SIP. We understand that the State plans to revise the ETR SIP through the full rulemaking process, to incorporate appropriate credit for various alternative trip reduction strategies.

Comment 8—The environmental group asked for clarification of the term "common control" as used in the definition for "worksite."

EPA Response—In the definition of "worksite," the State makes clear that the term "common control" is further defined under the definition of "employer." We believe that the definition found under "employer," is consistent with the EPA's guidance and is sufficiently clear as to what types of organizations are intended.

Comment 9—The environmental group objected to the use of two target APOs for the rural and urbanized areas. The group argued that all employers in the nonattainment area should be required to meet a 1.46 target APO, rather than giving those in outlying areas "a break."

EPA Response—Section 182(d)(1)(B) of the CAA states that, "The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes." The EPA believes that Congress intended to provide States with the flexibility to set different target APOs in a nonattainment area based on varying existing occupancy rates and the availability of alternative transportation modes.

In addition, as articulated in the EPA's ECO guidance (see page 16), the statutory phrase "commuting trips between home and the workplace" can be interpreted to refer to the trips by any employees in the area rather than only the employees of a specific employer. Although the rural areas are required to meet a target that is less than 25 percent above the AVO, the urbanized areas are required to meet a target greater than 25 percent above the AVO. Therefore, across the entire nonattainment area, the State of Texas is complying with the 25 percent increase requirement. The EPA's guidance explicitly allows for averaging and trading between employers such that an employer who did not achieve the target APO may still be in compliance if it obtains sufficient credit from another employer who exceeded the target. The TNRCC's two target area program is an institutionalized form of averaging between employers.

Comment 10—The environmental group argued that there was not adequate public participation in the development of the ETR regulation.

EPA Response—Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable

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notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. 40 CFR 51.102 defines adequate public notice and comment to include: (1) Public notification of the proposed SIP revision in a major newspaper in the affected area; (2) a comment period of at least 30 days; (3) public hearing; and (4) State analysis and response to the public comments. The TNRCC met these requirements. Public notice on the proposed ETR regulation was published in the Houston ozone nonattainment area on May 30, 1992, in the Houston Chronicle, and on May 31, 1992, in the Baytown Sun, in accordance with the State of Texas's public notice requirements. Public notice was also published in the Texas Register on June 5, 1992 (see 17 Texas Register (TexReg) 4067). The State held a public hearing on the proposed regulations on June 30, 1992, and the comment period closed on July 8, 1992. Following the public hearing, the ETR regulation was adopted by the State on October 16, 1992. The publication of the final ETR regulation in the Texas Register on November 27, 1992 (see 17 TexReg 8297), includes an extensive analysis by the State of the comments received during the public comment period and the State's recommended action. The EPA therefore disagrees with this comment.

Comment 11—This environmental group argued that the term "approvable ETR Plans" is not defined, and recommended that the phrase "plans that meet all ETR plan requirements under the CAAA," be used instead. The group also stated that the term "convincingly demonstrate" must be defined.

EPA Response—The term "approvable ETR plans" is clarified on page 28 of the SIP narrative, which states that the TNRCC "will review ETR plans based on completeness and accuracy of information requested." We do not believe that the phrase "plans that meet all ETR plan requirements under the CAAA" provides any additional clarification because the CAA only requires that plans "convincingly demonstrate" prospective compliance. As to a definition of "convincingly demonstrate," as described in more detail in our proposed approval of the Texas ETR SIP (see 58 FR 53694), the EPA provided four options for States to meet the requirement that plans "convincingly demonstrate" prospective compliance. The TNRCC met this requirement by selecting our fourth option by imposing significant penalties for not meeting the target APO.

Comment 12—The environmental group challenged the adequacy of the tracking and auditing procedures, and the current implementation of the SIP.

EPA Response—The EPA disagrees that the tracking and auditing procedures contained in the SIP are inadequate. Even though the EPA's ECO guidance did not require specific tracking and auditing procedures, the State's ETR SIP narrative and regulation address these provisions. The SIP and the regulation specify numerous recordkeeping and reporting requirements for affected employers. For example, § 114.21(g) of the regulation requires employers to maintain complete and accurate records for at least two years, and details seven types of information which must be included as part of those records. Section 114.21(h) details the specific reports that employers must submit to the TNRCC. Section 8.c. of the SIP specifies the State's ETR quality assurance procedures, which include auditing of employee surveys, announced and unannounced site visits, and auditing of the required employer records. We believe the TNRCC's procedures included in the SIP are fully adequate to ensure proper implementation of the ETR program.

As to the commenter's concerns about current implementation of the SIP, we do not believe that the TNRCC has fallen short of its responsibility to implement the SIP. During 1994, the TNRCC has increased the ETR staff, both in its headquarters office in Austin, and in its Regional office in Houston. The TNRCC has implemented the registration of affected employers, initiated training programs, and developed the necessary forms and systems to implement the ETR employer plans. The EPA believes that Texas's implementation of the ETR program to date does not indicate that the EPA should hesitate to approve the program.

Comment 13—The environmental group argued that allowing employers to demonstrate compliance with the target APO up to two years after the date of their plan submission deadline gave the employers too much time.

EPA Response—The EPA disagrees since the TNRCC regulation is fully consistent with the time frames specified in section 182(d)(1)(B) of the CAA, which requires that employer plans convincingly demonstrate compliance within two years of plan submittal.

Comment 14—The environmental group argued that records should by kept by affected employers for five years, rather than only two years.

EPA Response—This comment was also provided to the TNRCC during the State's public comment period. In response, the TNRCC stated that they believed two years of information appears to be adequate to assess compliance with the ETR requirements. The EPA agrees with the State because the primary driving force behind compliance with the target APO in Texas's program is the fact that substantial financial penalties may be imposed on an employer for not meeting the target APO.

Comment 15—The environmental group commented that the SIP narrative should state that "falsifying or failing to maintain appropriate records will be considered a violation of [TNRCC] Regulation IV," rather than "may be."

EPA Response—This comment was submitted to the State during its public comment period. The State responded that it is understood that falsifying and failing to maintain required records are considered to be violations of the regulation. The EPA agrees with the State since section 114.21(g) of the ETR regulation clearly establishes mandatory requirements for all employers to maintain complete and accurate records for at least two years. In considering whether to issue a notice of violation for falsifying or failing to maintain records, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 16—This environmental group argued that the SIP should not be approved because it does not detail the specific quality assurance procedures that will be carried out by the State. The group also commented that the SIP should state that audits will be conducted and site visits will be conducted, rather than "may be."

EPA Response—Please see our response to comments 12 and 15 above with respect to quality assurance and enforcement discretion.

Comment 17—The environmental group argued that the certification of training programs procedures and the public information program must be specified in the SIP. Also, the group asked that "comprehensive training course" be defined and that the training should include a discussion of the health, welfare effects, and costs due to air pollution.

EPA Response—While the EPA agrees that these items would be beneficial to include in the SIP, we do not believe that the integrity of the ETR program is threatened by not including these items since the TNRCC ETR SIP fully meets the requirements of the CAA.

Comment 18—The environmental group argued that the SIP narrative should read, "failure to attain the appropriate target APO will be considered violations of [TNRCC] Regulation IV," rather than "may be."

EPA Response—Similar to our response to comment 15, we believe that section 114.21(j)(4) of the State's ETR regulation clearly establishes mandatory requirements for all employers to achieve final compliance with the target APO no later than two years after the applicable ETR plan submission deadline. It is therefore understood that not complying with this requirement would be considered to be a violation of the regulation. In considering whether to issue a notice of violation for not achieving the target, however, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 19—This environmental group objected to the provision in the SIP narrative that "[i]n formulating an enforcement policy, the [TNRCC] may consider any good faith effort made by the employer to achieve compliance."

EPA Response—An enforcement policy is developed to cover the implementation and enforcement of a rule, not just the enforcement of a particular case. The policy would discuss the appropriate enforcement response that the State would take at each level of violation and might also discuss what and how much penalty, if any, to assess. Any enforcement policy of this type may always consider the good faith efforts made to comply. In addition, as discussed above, in considering whether to issue a notice of violation for not achieving the target, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. For these reasons, we believe the language contained in the SIP narrative, is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 20—This environmental group commented that the methodology to estimate the emission reductions from the ETR program should be included in the SIP.

EPA Response—The EPA disagrees that the emission reduction estimates must be included in this SIP submittal. The estimates need to be included only to the extent that the State takes credit for the reductions to meet a Reasonable Further Progress or attainment demonstration requirement. In that case, the emissions estimates would need to be included in that SIP submittal.

III. Final Action

In this action, the EPA is approving the ETR SIP revision adopted by the State of Texas on October 16, 1992, and submitted to the EPA on November 13, 1992. The State of Texas has submitted a SIP revision implementing each of the ETR program elements required by section 182(d)(1)(B) of the CAA.

On February 23, 1994, the TNRCC adopted revisions to the ETR regulation, revising the compliance deadlines for affected employers to submit the ETR plans and comply with the target APO. These revisions were submitted to the EPA on March 9, 1994.

In this FR document, the EPA is approving only the ETR SIP revision which was submitted by the State of Texas on November 13, 1992. The EPA will act upon the subsequent ETR SIP revision submitted by the State on March 9, 1994, in a separate rulemaking action in the near future.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone.

Dated: December 23, 1994.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(91) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(91) Revisions to the TNRCC Regulation IV, concerning the Employer Trip Reduction program, were submitted by the Governor on November 13, 1992.

(i) Incorporation by reference.

[1] Also Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

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(A) Revisions to the TNRCC Regulation IV (31 TAC § 114.21, Employer Trip Reduction Program), as adopted by the TACB on October 16, 1992.

(B) TACB Order 92–14 as adopted on October 16, 1992.

(C) SIP narrative entitled, "Employer Trip Reduction Program, Houston-Galveston Area," adopted by the TACB on October 16, 1992, pages 31–38, addressing: 8.c. Quality Assurance Measures; 9. Training and Information Assistance; 11. Enforcement; and 12. Notification of Employers.

(ii) Additional material.

(A) SIP narrative entitled, "Employer Trip Reduction Program, Houston-Galveston Area," adopted by the TACB on October 16, 1992.

(B) The TACB certification letter dated November 10, 1992, signed by William R. Campbell, Executive Director, TACB.

[FR Doc. 95–5439 Filed 3–6–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[MI26–04–6805; FRL–5157–1]

Approval and Promulgation of Implementation Plan; Michigan Detroit-Ann Arbor NO_X Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is granting an exemption to the Detroit-Ann Arbor ozone nonattainment area from applicable oxides of nitrogen (NO_X) requirements found in the Clean Air Act (Act). Approval of the exemption would apply for various NO_X requirements including adoption and implementation of regulations addressing general conformity, transportation conformity, inspection and maintenance, reasonably available control technology, and new source review. The State of Michigan submitted a NO_X exemption request on November 12, 1993. A subsequent letter dated May 31, 1994 clarified this earlier submittal. This request is based on the fact that ozone monitoring in the Detroit-Ann Arbor area indicates that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for an exemption from the NO_X requirements based on a demonstration that additional reductions of NO_X would not contribute to attainment of the ozone standard.

EFFECTIVE DATE: This final rule will be effective April 6, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the EPA's analysis are available for inspection at the following address: USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993 the State of Michigan submitted a petition to the EPA requesting that the Detroit-Ann Arbor ozone nonattainment area be exempted from the requirement to implement NO_X controls pursuant to section 182(f) of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in the Detroit-Ann Arbor area during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On August 10, 1994, EPA published a direct final rulemaking approving the NO_X exemption petition for the Detroit-Ann Arbor nonattainment area. During the 15 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and 2 requests for additional time to comment on this rulemaking from the State of New York and the Citizens Commission for Clean Air in the Lake Michigan Basin. The EPA published a document announcing the opening of a second comment period on October 6, 1994. The second comment period lasted until November 7, 1994. During the second comment period, the State of New York submitted adverse comments.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical support documents dated February 8, 1994 and December 1, 1994.

NRDC Comments

Following is a summary of comments received from the NRDC in a letter dated August 24, 1994 signed by Sharon Buccino. After each comment is EPA's response.

NRDC Comment 1: Certain commenters argued that NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

EPA Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which

section 302(e) of the Act defines to include States) may petition for NO_X exemptions "at any time," and requires the EPA to make its determination within 6 months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]" [1] may petition for a NO_X determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time" this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1). Thus, EPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for EPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the Act sanctions, areas seeking a NO_X exemption would have had to submit their exemption requests for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NRDC Comment 2: Some commenters stated that the modeling required by EPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., "substantial" reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

EPA Response: This comment is directed towards exemption approvals based on photochemical grid modeling. This comment does not apply in the case of Detroit-Ann Arbor because this exemption request is based on monitoring.

NRDC Comment 3: Three years of "clean" data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

EPA Response: The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the Act. The section 107 criteria are more comprehensive than the Act requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_X] would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since "additional reductions of [NO_X] would not contribute to attainment" of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NRDC Comment 4: A waiver of NO_X controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separated downwind areas.

EPA Response: As a result of the comments, EPA reevaluated its position on this issue and is revising the previously issued guidance. As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of

[1] Section 302(e) of the Act defines the term "person" to include States.

[2] The final section 185B report was issued July 30, 1993.

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demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area."[3] As described in section 4.3 of the Guidelines for Determining the Applicability of Nitrogen Oxides Requirements under section 182(f), December 16, 1993 ("guidance") document, EPA believes that the term "area" means the "nonattainment area" and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to "consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State (see section 110(a)(2)(D)(i)(I))."

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NRDC Comment 5: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response: With respect to conformity, EPA's conformity rules[4,5] provide a NO_X waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

NRDC Comment 6: The Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_X requirements shall not apply (or may by limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

State of New York Comment 1: The State of New York reaffirms its objection to this proposed rulemaking originally stated in an August 24, 1994 letter. According to the May 27, 1994 memorandum from Mr. John Seitz and the December 1993 section 182(f) NO_X exemption guidance, the exemption cannot be approved if there is evidence that NO_X exemption would interfere with the attainment of a downwind area.

Section 3.3 of the December 1993 guidance states;

> The net air quality benefit test is not specifically limited to an ozone nonattainment area or ozone transport region and may be directed at a specific set of sources. Thus, a broad geographic area should be considered. The area may, in some cases, extend beyond an ozone nonattainment area or ozone transport region * * * Sufficient area is needed to allow for completion of the various chemical transformations of NO_X and interaction with other pollutants.

The latest results of the EPA regional oxidant modeling (ROM) indicate that emissions of NO_X from stationary sources west of the Ozone Transport Region contribute to increased ozone levels in the northeast, including New York State. These results show that control of NO_X emissions throughout the eastern United States will contribute to significant reductions in peak ozone levels within the ozone transport region (OTR).

EPA Response: With respect to the comments regarding the latest ROM results and downwind impacts in general, EPA refers the commenter to its previous responses to NRDC Comments 3 and 4.

The State of New York incorrectly cites section 3.3 of EPA's December 1993 guidance. Section 3.3 applies only to those areas applying for a NO_X exemption under the "net air quality benefit" test. The Detroit-Ann Arbor petition is based on the "contribute to attainment" test. The "contribute to attainment" test requires that only the emissions from the immediate nonattainment area be considered in evaluating the petition (see December 1993 guidance document, "Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)", section 4.3). In its petition the State of Michigan has demonstrated that the average number of exceedances of the ozone standard in the area during the past 3 years (1991–1993, the most current monitored years at the time the exemption request was made) is fewer than one per year which is sufficient to receive an exemption under this test. In addition, the 1994 ozone season has passed and no violation of the ozone standard has been recorded in the area.

State of New York Comment 2: The air quality monitoring data alone does not support this exemption proposal. This is supported by a July 28, 1994 letter from the Michigan Department of Natural Resources which states that "(we) are nearly in violation of the ozone standard at several monitoring sites, primarily due to the many excursions we had in June." This proposal does not appear to consider this data. In addition, the data submitted for the period 1991 to 1993 (November 12, 1993 section 182(f) NO_X exemption request letter to EPA Region V) contain the maximum number of exceedances allowed to still be considered attainment. This does not provide a clear test that additional

[3] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO_X reductions" from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, "[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

[4] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

[5] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rules," November 30, 1993 (58 FR 63214).

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reductions would not contribute to maintenance of attainment.

EPA Response: EPA is required to base its SIP decisions on the information duly submitted by a State in fulfillment of requirements imposed by the Act. The basis for granting this exemption is the fact that the information submitted by the State of Michigan demonstrates that this area has not experienced a violation of the ozone standard for the most recent 3 years of monitored data. Consistent with the established EPA policy, the fact that the area has recorded the maximum number of exceedances without violating the standard is irrelevant to a determination regarding whether an area is showing attainment for the period in question. What is relevant is whether or not the standard was violated, and the submitted data confirms that it was not. (See 40 CFR 50.9, 40 CFR part 50, appendix H, and Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003.) In addition to the fact that the ozone standard was not violated for the years 1991–1993, the years upon which this exemption request is based, monitoring data throughout the 1994 ozone season for the Detroit-Ann Arbor area continues to show attainment of the ozone standard.

State of New York Comment 3: The State of New York strongly objects to the guidance developed to allow these exemptions to be processed. The May 27, 1994 memorandum "Section 182(f) Nitrogen Oxides (NO_X Exemptions—Revised Process and Criteria" allows a nonattainment area to consider only its own air quality monitoring data and does not require a demonstration that the area does not negatively impact the attainment status of downwind areas. The guidance memorandum also allows the nonattainment area to submit the NO_X exemption request without a redesignation or maintenance request. This does not provide the federal government with the appropriate information to make an informed judgment on the contribution of NO_X to nonattainment. Finally, this guidance did not undergo State review before issuance. While not necessarily required, it is EPA's usual practice to allow the States to have input in the development of guidance.

EPA Response: EPA's guidance regarding both the adequacy of the demonstration needed to qualify for a NO_X exemption and the extent to which downwind impacts need to be considered was developed in accordance with what EPA considers to be the best interpretation of the language in section 182(f) of the Act. For a more detailed discussion of that interpretation see EPA's responses to NRDC Comments 1 and 4 above. In addition, while it may be true that this guidance did not undergo State review before issuance, an opportunity for State participation is provided when such guidance is followed in proposed rulemaking actions. If a State objects to a proposed action and the guidance that action is based on, it is free to comment on the proposed action during the public comment period provided, as indeed, the State of New York has done here.

State of New York Comment 4: The Detroit-Ann Arbor area has been designated as moderate ozone nonattainment and as such requires a 15 percent rate-of-progress plan and a modeled attainment demonstration. It is unclear from the record whether these requirements have been fulfilled. An exemption request would need this information at a minimum to determine its validity. Please provide the status of these State implementation plan revisions.

EPA Response: As described previously in EPA's response to NRDC Comment 1, EPA action on NO_X exemption petitions submitted pursuant to section 182(f)(3) of the Act can be taken independently of action on attainment or maintenance demonstration plans or redesignation requests. Consequently, the issue of whether the State of Michigan's independent requirements under the Act to submit a 15 percent rate-of-progress plan and an attainment demonstration plan have been met do not affect EPA's ability to act on the State's exemption request. (See also EPA's response to NRDC Comment 3, describing the Agency's policy regarding the use of monitoring data to meet the "contribute to attainment" test).

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_X exemption request. Therefore, EPA is granting the Detroit-Ann Arbor section 182(f) exemption petition based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

The EPA's transportation conformity rule[6] and EPA's general conformity rule[7] also reference the section 182(f) exemption process as a means for exempting affected areas from NO_X conformity requirements, and the conformity requirements apply on an areawide basis. Since this petition for exemption is areawide, as opposed to source-specific, an approval would also exempt this area from the NO_X conformity requirements of the Act (see John Seitz May 27, 1994 "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria" memorandum). Additionally, the Inspection/Maintenance (I/M) Program Final Rule (57 FR 52950) allows for the omission of the basic I/M NO_X requirements if a 182(f) exemption is granted to an area. Michigan does not currently have—or need—an enhanced I/M program. If the State did adopt such a program (because further emissions reductions necessary to address other portions of the Act could be obtained through an enhanced program), it would have to be designed to offset NO_X increases resulting from the vehicle repairs due to hydrocarbon (HC) and carbon monoxide (CO) failures.

If, subsequent to the NO_X waiver being granted, EPA determines that the area has violated the standard, the section 182(f) exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. If an exemption is revoked, the State must comply with any applicable NO_X requirements set forth in the Act, such as those for NO_X RACT, NSR, I/M, and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

The **Federal Register** document revoking the NO_X exemption would also establish the schedule for adoption and implementation of those NO_X requirements the area was previously exempt.

[6] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act" November 24, 1993 (58 FR 62188).

[7] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans: Final Rule" November 30, 1993 (58 FR 63214).

On November 12, 1993 the State submitted a redesignation request. Section 175(A) requires submittal of a maintenance plan for areas that are redesignating to attainment. This maintenance plan must contain contingency measures which shall be implemented if a violation of the ozone standard occurs. Consequently, if the State's redesignation request is approved, the NO_X requirements found in the maintenance plan for that area would, thereafter, apply as long as the area is designated attainment for the ozone standard.

This action will become effective on April 6, 1995.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: February 8, 1995.

Norman R. Niedergang,

Acting Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (j) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(j) Approval—On November 12, 1993, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the Detroit-Ann Arbor ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity, inspection and maintenance, reasonably available control technology, and new source review. These are required by sections 176(c), 182(b)(4), and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the Detroit-Ann Arbor ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 95–5444 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 102–8–6860a; FRL–5160–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected. The rules control VOC emissions from pump and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; large commercial bakeries; and polyester resin operations. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 6, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460,

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

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Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The BAAQMD rules being approved into the California SIP include: 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8–42, Large Commercial Bakeries; and 8–50, Polyester Resin Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Bay Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco-Bay Area (Bay Area) is classified as moderate;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 28, 1994, including the rules being acted on in this document. This notice addresses EPA's direct-final action for the BAAQMD's Rules 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8–42, Large Commercial Bakeries; and 8–50, Polyester Resin Operations. The BAAQMD adopted Rules 8–25 and 8–42 on June 1, 1994 and Rule 8–50 on June 15, 1994.

These submitted rules were found to be complete on November 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP.

Rule 8–25 controls volatile organic compound (VOC) emissions from pumps and compressors; Rule 8–42 controls VOC emissions from bakery ovens; and Rule 8–50 controls VOC emissions from manufacturing or production operations using polyester resins. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8–25 is entitled, "Control of Volatile Organic Leaks from Synthetic Organic Chemical and Polymer Manufacturing" EPA–450/3–83–006), U.S. EPA, March 1984. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. For some source categories, such as large commercial bakeries (BAAQMD Rule 8–42) and polyester resin operations (BAAQMD Rule 8–50), EPA did not publish a CTG. In these cases, the district may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. EPA did publish an Alternative Control Technology Document (ACT) entitled, "Alternative Control Technology Document for Bakery Oven Emissions", EPA 453/R–92–017, December 1972 as guidance for bakery sources.

BAAQMD Rule 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals improves the current SIP rule by:

- Revising the compliance dates.
- Adding definitions to clarify the rule.
- Adding visual inspection requirements.
- Adding new test method requirements.
- Adding recordkeeping requirements.
- Adding a "burden of proof" requirement for exemptions.

BAAQMD Rule 8–42, Large Commercial Bakeries, is a new rule which was adopted to control emissions of VOCs from large commercial bread bakeries. However, Rule 8–42 has been in effect in the Bay Area since 1989. The rule requires:

- All ovens to be vented to an emission control system.
- Sources to maintain records of the emissions control system's key operating parameters on a daily basis.
- Sources claiming exemptions to provide the necessary information to substantiate the exemption.
- Sources to use district method ST–32 for determination of emissions.
- The use of an emissions factor table for calculation of emissions.

BAAQMD Rule 8–50, Polyester Resin Operations, is a new rule which limits the emission of VOCs from polyester resin operations. The rule provides the following:

- Standards which affect the application and curing of resin, gel coat application and curing, and clean-up solvents.
- Standards for resins and gel coats are not applicable to polyester resin operations that choose to install and operate emission control equipment.
- Storage requirements for surface preparation and clean-up solvents.
- Recordkeeping requirements and test methods.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the BAAQMD's Rule 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; Rule 8–42, Large Commercial Bakeries; and Rule 8–50, Polyester Resin Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The final action on these rules serves as a final determination that any deficiencies in these rules noted in prior proposed rulemakings have been corrected.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995, unless, by April 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 8, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 10, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(199)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(199) * * *

(i) * * *

(A) * * *

(*3*) Rules 8–25 and 8–42, adopted on June 1, 1994 and Rule 8–50, adopted on June 15, 1994.

* * * * *

[FR Doc. 95–5348 Filed 3–6–95; 8:45 am]

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40 CFR Parts 52 and 81

[TX–53–1–6843a; FRL–5163–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Texas; Approval of the Maintenance Plan for Victoria County and Redesignation of the Victoria County Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 27, 1994 the State of Texas submitted a maintenance plan and a request to redesignate the Victoria County, Texas ozone nonattainment area to attainment. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Texas' redesignation request because it meets the maintenance plan and redesignation

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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requirements set forth in the CAA and EPA is approving the 1992 base year emissions inventory. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for Victoria County, Texas.

DATES: This final rule is effective on May 8, 1995, unless notice is received by April 6, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, Texas 78711–3087.

Anyone wishing to review this petition at the U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The CAA, as amended in 1977 required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. Victoria County, Texas was designated under section 107 of the 1977 CAA as nonattainment with respect to the ozone NAAQS on March 3, 1978 (40 CFR 81.344). In accordance with section 110 of the 1977 CAA, the State of Texas submitted an ozone SIP as required by part D on April 13, 1979. EPA fully approved this ozone SIP on March 25, 1980 (45 FR 19244), and August 13, 1984 (49 FR 32190).

On November 15, 1990, the CAA Amendments of 1990 were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The ozone nonattainment designation for Victoria County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990 (See 56 FR 56694, November 6, 1991). Since the State had not yet collected the required three years of ambient air quality data necessary to petition for redesignation to attainment, the nonattainment area was further designated as nonclassifiable-incomplete data for ozone.

The Texas Natural Resource Conservation Commission (TNRCC) more recently has collected ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) of .12 parts per million. The State developed a maintenance plan for Victoria County, and solicited public comment during a public hearing on July 7, 1994. Accordingly, on July 27, 1994, Texas requested redesignation of the area to attainment with respect to the ozone NAAQS and submitted an ozone maintenance SIP for Victoria County. Please see the TSD for the detailed air quality monitoring data.

Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area must meet all applicable requirements under section 110 and part D of the CAA; (3) the area must have a fully approved SIP under section 110(k) of the CAA; (4) the air quality improvement must be permanent and enforceable; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the CAA. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status. Please see EPA's Technical Support Document (TSD) for a detailed discussion of these requirements.

(1) Attainment of the NAAQS for Ozone

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. When a valid daily maximum hourly average value is not available for each required monitoring day during the year, the missing days must be accounted for when estimating exceedances for the year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

The State of Texas' request is based on an analysis of quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. The data come from the State and Local Air Monitoring Station network. The request is based on ambient air ozone monitoring data collected for 36 consecutive months from May 3, 1991, through May 2, 1994, encompassing 3 valid ozone seasons (1991–1993). The data clearly show an expected exceedance rate of zero for the ozone standard.

Appendix H does not explicitly address the situation where a new site collects data for only a portion of the calendar year. However, this situation has been addressed in an EPA memorandum, "Ozone and Carbon Monoxide Design Value Calculations," William Laxton, Director, Technical Support Division, OAQPS, June 18, 1990 (Laxton memo). The missing data penalty created by the calculation is designed to encourage prompt repair or replacement of monitors, rather than to discourage air pollution control agencies from installing new monitoring sites in excess of the number required by 40 CFR part 58. For this reason, the Laxton memo essentially allows an agency which installs a monitoring site to base the estimated exceedance calculation for the initial year on the portion of the year following start-up of the monitor. Based on the underlying reasoning of the Laxton memo and the fact that there were no exceedances at the monitoring site during the peak ozone season of May through September for the 3-year monitoring period, EPA accepted the data as an adequate demonstration that the ozone standard was attained in Victoria County.

In addition to the demonstration discussed above, EPA required completion of air network monitoring requirements set forth in 40 CFR part 58. This included a quality assurance plan revision and a monitoring network review to determine the adequacy of the ozone monitoring network. The TNRCC fulfilled these requirements to complete documentation for the air quality demonstration. The TNRCC has also committed to continue monitoring in this area in accordance with 40 CFR part 58.

In sum, EPA believes that the data submitted by the TNRCC provides an adequate demonstration that Victoria County attained the ozone NAAQS. Moreover, the monitoring data continue to show attainment in 1994 and in 1995 to date.

If the monitoring data records a violation of the NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substituted for the direct final approval.

(2) Section 110 Requirements

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the CAA prior to or at the time the State submitted its redesignation request, as set forth in EPA policy. EPA interprets section 107(d)(3)(E)(v) of the CAA to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable to the area at later dates (see section 175A(c)) and, if redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements. These requirements are discussed in the following EPA documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992, "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992, and "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations, requires monitoring, compiling, and analyzing ambient air quality data, requires preconstruction review of new major stationary sources and major modifications to existing ones, provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

(3) Additional Section 110 and Part D Requirements

The TNRCC submitted a SIP revision entitled "Revisions to Texas Regulation V and the General Rules to Meet Reasonably Available Control Technology Requirements" (Texas RACT Catch-up and Victoria County Fix-up). This SIP revision contains certain recordkeeping and monitoring requirements necessary for Victoria County to have a fully-approved SIP under section 110. The EPA is approving the Texas RACT Catch-up and Victoria County Fix-up SIP revisions together in a separate action concurrent with this Victoria County redesignation request. The Texas RACT Catch-up and Victoria County Fix-up direct final approval notice is located in the final rules section of this **Federal Register**. If adverse or critical comments are received on the Texas RACT Catch-up and Victoria County Fix-up action, the notice will be converted from a direct final action to a proposal and those comments addressed in a subsequent final action. In such a case, the Victoria County redesignation direct final action will be converted to a proposal as well. As discussed earlier in this document, all of the SIP requirements must be met by the TNRCC and approved by EPA into the SIP prior to or concurrent with final action on the redesignation request.

Before Victoria County can be redesignated to attainment, it also must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1). Since Victoria County is considered nonclassifiable, the State is only required to meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176.

Section 172(c)(1) requires the implementation of all reasonably available control technology (RACT) as expeditiously as possible. The State of Texas has adopted VOC RACT rules under the following general categories: General Volatile Organic Compound Sources, Volatile Organic Compound Transfer Operations, Petroleum Refining and Petrochemical Processes, Solvent-Using Processes, Miscellaneous Industrial Sources, Consumer-Related Sources, and Administrative Provisions. Incomplete/no data areas such as Victoria County must correct any RACT deficiencies regarding the enforceability of existing rules in order to be redesignated to attainment. To this end, certain monitoring, recordkeeping, and reporting requirements are being revised to improve the enforceability of RACT in Victoria County in the concurrent action discussed above. With the approval of these revisions the requirements of section 172(c)(1) are fully met for Victoria County.

Section 172(c)(2) lists requirements for a demonstration of reasonable further progress (RFP). An RFP demonstration assumes a long nonattainment period or a large amount of reductions required to attain the standard. Because Victoria County is already in attainment, EPA considers Federal measures, such as the Federal Motor Vehicle Control Program and Reid Vapor Pressure requirement, sufficient to meet the RFP requirement. See the General Preamble for the Implementation of Title I (57 FR 13498, 13525–26, 13564).

Section 172(c)(3) requires an emissions inventory as part of an area's attainment demonstration. The emissions inventory requirement has been met by the submission and approval with this action of the 1992 inventory for Victoria County.

Section 172(c)(9) requires that contingency measures be developed should an area fail to meet the reasonable further progress requirement. As explained in the General Preamble (57 FR 13525), EPA believed it not appropriate to apply this requirement to incomplete/no data areas such as Victoria County. Moreover, since Victoria County has met the RFP requirement, and has demonstrated attainment through air monitoring data, the contingency measures requirement of section 172(c)(9) no longer applies (57 FR 13564). Thus, the State is not required to submit section 172(c)(9) contingency measures for Victoria County to be redesignated.

Section 172(c)(5) requires the development of a New Source Review (NSR) Program. Although Texas has had an NSR program, revisions required by the 1990 Act have not been approved by EPA. Texas, therefore, does not currently have a fully approved NSR program. However, in an October 14, 1994 memo from Mary D. Nichols, Assistant Administrator for Air and

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Radiation, entitled "Part D New Source Review (part D NSR) Requirements for Areas Redesignating to Attainment" (NSR memo), EPA amended one aspect of the redesignation guidance by removing the requirement that an area have an approved NSR program prior to the area requesting redesignation to attainment. The NSR memo explained that EPA now believes that a *de minimis* exception to the requirement of section 107(d)(3)(E) for an approved part D NSR program is justifiable in certain cases where the adoption and full approval of a part D NSR program as a prerequisite to redesignation would not be of significant environmental value. Once an area has been redesignated to attainment, a part D NSR program must be replaced by the Prevention of Significant Deterioration (PSD) program. Victoria County's maintenance plan demonstrates maintenance without the use of the NSR program; therefore, EPA does not require the part D NSR program to be approved prior to approval of this redesignation request. Please see the TSD for a copy of the NSR memo.

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity").

Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the implementation of title I informed the State that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)). The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A.

Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Texas was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Texas was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Texas submitted its transportation conformity rules to EPA on November 6, 1994. The State's general conformity rules were submitted to EPA on November 22, 1994. As these requirements did not come due until after the submission date of the redesignation request, these conformity rule submissions need not be approved prior to taking action on this redesignation request.

The EPA recently published additional guidance on maintenance plans and their applicability to conformity issues in a memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," (limited maintenance plan memo) from Sally L. Shaver, Director, Air Quality Strategies & Standards Division, on November 16, 1994. This limited maintenance plan memo discusses maintenance requirements for certain areas petitioning for redesignation to attainment. Nonclassifiable ozone nonattainment areas with design values less than 85% of the exceedance level of the ozone standard are no longer required to project emissions over the maintenance period.

The Federal transportation conformity rule (58 FR 62188) and the Federal general conformity rule (58 FR 63214) apply to areas operating under maintenance plans. Under either rule, one means by which a maintenance area can demonstrate conformity for Federal projects is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Based on guidance discussed in the limited maintenance plan memo, emissions inventories in areas that qualify for the limited maintenance plan approach are not required to be projected over the life of the maintenance plan. EPA feels it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the NAAQS would occur. Emissions budgets in limited maintenance plan areas would be treated as essentially not constraining emissions growth, and would not need to be capped for the maintenance period. In these cases, Federal projects subject to conformity determinations could be considered to satisfy the "budget test" of the Federal conformity rules.

(3) Fully Approved SIP

The EPA finds that, upon approval of the Texas RACT Catch-up and Victoria County Fix-up SIP revisions, the State of Texas will have a fully approved SIP for Victoria County.

(4) Permanent and Enforceable Measures

Under the CAA, EPA approved Texas' SIP control strategy for the Victoria County nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Several Federal and Statewide rules are in place which have significantly improved the ambient air quality in Victoria County. Existing Federal programs, such as the Federal Motor Vehicle Control Program and the Reid Vapor Pressure (RVP) limit of 7.8 pounds per square inch for gasoline in Victoria County, will not be lifted upon redesignation. These programs will counteract emissions growth as the county experiences economic growth over the life of the maintenance plan.

The State adopted VOC rules such as degreasing and solvent clean-up processes; surface coating rules for large appliances, furniture, coils, paper, fabric, vinyl, cans, miscellaneous metal parts and products, and factory surface coating of flat wood paneling; solvent-using rules for graphic arts, and miscellaneous industrial source rules such as for cutback asphalt. The applicable RACT rules will also remain in place in Victoria County. In addition, the State permits program, the PSD permits program, and the Federal Operating Permits program will help counteract emissions growth.

The EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

(5) Fully Approved Maintenance Plan Under Section 175A

In today's document, EPA is approving the State's maintenance plan for Victoria County because EPA finds that the TNRCC's submittal meets the requirements of section 175A. Thus, the Victoria County nonattainment area will have a fully approved maintenance plan in accordance with section 175A as of the effective date of this redesignation. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

Demonstration of Maintenance

The requirements for an area to redesignate to attainment are discussed in the memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memo). One aspect of a complete maintenance demonstration discussed in the Calcagni memo is the requirement to develop an emission inventory from one of the three years during which the area has demonstrated attainment. This inventory should include volatile organic compounds (VOC), oxides of nitrogen (NO_X), and CO emissions from the area in tons per day measurements. In addition to the Calcagni memo, more recent guidance on the redesignation of certain nonattainment areas to attainment is provided in the limited maintenance plan memo.

Attainment Inventory

The TNRCC adopted comprehensive inventories of VOC, NO_X, and CO emissions from area, stationary, and mobile sources using 1992 as the base year to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1992 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory. The State submittal contains the detailed inventory data and summaries by source category.

The TNRCC provided the stationary source estimates for each company meeting the emissions criteria by requiring the submission of complete emission inventory questionnaires which had been designed to obtain site-specific data. The TNRCC generated area source emissions for each source category based on EPA's "Procedures for the Preparation of Emissions Inventories for Precursors of Carbon Monoxide and Ozone, Volume I", and the EPA document entitled "Compilation of Air Pollutant Emission Factors". The non-road mobile source inventory was developed using methodology recommended in EPA's "Procedures for Emission Inventory Preparation. Volume IV: Mobile Sources". Additional data was provided with reference to an EPA-sponsored study entitled "Nonroad Engine Emission Inventories for CO and Ozone Nonattainment Boundaries." On-road emissions of VOC, NO_X, and CO were calculated on a county-wide basis using EPA's MOBILE5a computer model. The biogenic emissions were calculated using the EPA software package entitled PC-BEIS. This package yields results in U.S. short tons per day (daily emissions only).

In the limited maintenance plan memo, EPA set forth new guidance on maintenance plan requirements for certain ozone nonattainment areas. The limited maintenance plan memo identified criteria through which certain nonclassifiable ozone nonattainment areas could choose to submit less rigorous maintenance plans. As mentioned earlier, the method for calculating design values is presented in the June 18, 1990 memorandum, "Ozone and Carbon Monoxide Design Value Calculations," from William G. Laxton, former Director of the Office of Air Quality Planning and Standards Technical Support Division. Nonclassifiable ozone nonattainment areas whose design values are calculated at or below 0.106 parts per million (ppm) at the time of redesignation, are no longer required to project emissions over the maintenance period. The 0.106 ppm represents 85% of the ozone exceedance level of 0.125 ppm. As explained in the November 16, 1994 limited maintenance plan memo, the EPA believes if an area begins the maintenance period at or below 85% of the ozone exceedance level of the NAAQS, the existing Federal and SIP control measures, along with the PSD program, will be adequate to assure maintenance of the ozone NAAQS in the area. Victoria County has a calculated design value of 0.100 ppm. In light of that, and the lack of any recent history of violations of the ozone NAAQS, EPA believes that it is reasonable to conclude that the combination of the RACT measures in the SIP, the Federal Motor Vehicle Control Program, the RVP limit of 7.8 pounds per square inch, and the applicability of preconstruction review in accordance with the PSD requirements of part C of Title I, provides adequate assurance that the ozone NAAQS will be maintained. Thus, the EPA believes Victoria County qualifies for the limited maintenance plan approach.

The following is a table of the revised average peak ozone season weekday VOC and NO_X emissions for the biogenic and major anthropogenic source categories for the 1992 attainment year inventory.

SUMMARY OF VOC EMISSIONS

Source category	Tons per year	Tons per day
Point Sources	2180.10	5.97
Area Sources	1940.41	6.04
Non-Road Mobile Sources	962.24	3.55
On-Road Mobile Sources*		4.44
Biogenic Sources*		26.32
Total*		46.32

*Tons per year calculations were not submitted for these categories.

SUMMARY OF NO_X EMISSIONS

Source category	Tons per year	Tons per day
Point Sources	13339.91	36.55
Area Sources	206.73	0.35
Non-Road Mobile Sources	985.47	3.31
On-Road Mobile Sources*		8.01
Biogenic Sources*		
Total*		48.22

*Tons per year calculations were not submitted for these categories.

The attainment inventory submitted by TNRCC for Victoria County meets the redesignation requirements as discussed in the Calcagni memo and limited maintenance plan memo. Therefore, the EPA is today approving the emissions inventory component of the maintenance plan for Victoria County.

Continued Attainment

Continued attainment of the ozone NAAQS in Victoria County will depend, in part, on the Federal and State control measures discussed previously. However, the ambient air monitoring site will remain active at its present location during the entire length of the maintenance period. This data will be quality assured and submitted to the Aerometric Information and Retrieval System (AIRS) on a monthly basis. As

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discussed in the limited maintenance plan memo, certain monitored ozone levels will provide the basis for triggering measures contained in the contingency plan. Additionally, as discussed above, during year 8 of the maintenance period, TNRCC is required to submit a revised plan to provide for maintenance of the ozone standard in Victoria County for the next ten years.

Contingency Plan

Section 175A of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. The contingency plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The State should also identify specific triggers which will be used to determine when the measures need to be implemented.

The TNRCC has selected Stage I vapor control as its contingency measure. At any time during the maintenance period, if the Victoria County air quality monitor records a third exceedance of the ozone NAAQS within any consecutive three-year period (a level below the NAAQS), the TNRCC will promulgate a rule change to implement Stage I gasoline controls in Victoria County. This rule will be submitted to EPA within 6 months of the third exceedance. The compliance date for applicable sources in Victoria County will be 6 months after TNRCC adopts the rule change. This contingency measure and schedule satisfies the requirements of section 175A(d).

In addition, the State has adopted several voluntary measures that, although not enforceable and therefore not contingency measures that could satisfy section 175A, are expected to contribute to the maintenance of air quality. The triggers for the voluntary measures, with the exception of the emissions projection measure, are at ozone levels below the standard, to allow the State to take early action to address a possible violation of the NAAQS before it occurs. The following trigger levels would activate measures: The ozone design value equals or exceeds 85% of the exceedance level of the ozone NAAQS, or 0.106 ppm; or the monitor shows one to four exceedances of the ozone NAAQS during any consecutive three-year period.

If the design value of Victoria County exceeds .106 ppm at any time during the maintenance period, Victoria County officials will establish a voluntary ozone advisory program. The TNRCC will coordinate the dissemination of information to the county with respect to ozone advisory predictions, voluntary compliance measures on ozone advisory days, and public notification. The ozone advisory program will be functional within 6 months of notification by the TNRCC that the ozone design value for Victoria County has reached the trigger level.

If the monitor records an exceedance of the ozone NAAQS, Victoria County officials will establish a formal ozone advisory program. This formal program will be staffed sufficiently to operate the program on a daily basis during the peak ozone season (May 1–September 30). The formal program will be staffed and functional within 6 months of notification by TNRCC that the trigger level has been reached.

If the monitor records a second exceedance of the ozone NAAQS during any consecutive three-year period, the newly-formed ozone advisory board will institute a voluntary program with area industry to reschedule, revise, or curtail activities for the ozone advisory days. This program will be developed and available for use within 30 days after notification by the TNRCC that this contingency measure will be required.

If Victoria County should violate the ozone NAAQS (4 exceedances during any consecutive three-year period) during the maintenance period, the TNRCC will require an additional voluntary measure to be implemented within one year of a violation of the ozone NAAQS. A complete description of these voluntary measures and their triggers can be found in the State's submittal. Although these voluntary measures do not qualify as contingency measures under section 175A, EPA is hereby approving them under section 110 for whatever strengthening effect they may have on the SIP.

Final Action

The EPA has evaluated the State's redesignation request for Victoria County, Texas, for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that, with the concurrent approval of the Texas RACT Catch-up and Victoria County Fix-up submission, the redesignation request and monitoring data demonstrate that Victoria County, Texas, has attained the ozone standard. In addition, the EPA has determined that, with the concurrent approval of the Texas RACT Catch-up and Victoria County Fix-up submission, the redesignation request meets the requirements and policy set forth in the General Preamble and policy memorandum discussed in this notice for area redesignations, and today is approving Texas' redesignation request for Victoria County.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995, unless adverse or critical comments are received by April 6, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action or the Texas RACT Catch-up and Victoria County Fix-up action, the public is advised that this action will be effective May 8, 1995. Similarly, if adverse or critical comments are received on the Texas RACT Catch-up and Victoria County Fix-up action, the notice on that action will be converted to a proposal and those comments addressed in a subsequent final action. In such a case, the Victoria County redesignation direct final action will be converted to a proposal as well.

The EPA has reviewed this redesignation request for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements. I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National parks, Reporting and recordkeeping, Ozone, Volatile organic compounds, and Wilderness areas.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2275 is amended by adding paragraph (e) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(e) Approval—The Texas Natural Resource Conservation Commission (TNRCC) submitted an ozone redesignation request and maintenance plan on July 27, 1994, requesting that the Victoria County ozone nonattainment area be redesignated to attainment for ozone. Both the redesignation request and maintenance plan were adopted by TNRCC in Commission Order No. 94–29 on July 27, 1994. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Texas Ozone State Implementation Plan for Victoria County. The EPA approved the request for redesignation to attainment with respect to ozone for Victoria County on May 8, 1995.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In Section 81.344, the attainment status designation table for ozone is amended by revising the entry for Victoria County under "Designated Area" to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

Designated area	Designation date	Classification	
		Type	Date type
Victoria Area, Victoria County.	May 8, 1995.	Attainment.	

* * * * *

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[FR Doc. 95–5347 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[MI21–04–6753, MI18–03–6754; FRL–5160–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On July 21, 1994 the USEPA published a proposal to approve the 1990 base year emission inventory, basic vehicle inspection and maintenance (I/M) and the redesignation to attainment and associated section 175A maintenance plan for the ozone National Ambient Air Quality Standard (NAAQS) for the seven-county Detroit-Ann Arbor, Michigan area as a State Implementation Plan (SIP) revisions. The 30-day comment period concluded on August 22, 1994. A total of 72 comment letters were received in response to the July 21, 1994 proposal, 62 favorable, 9 adverse and 1 request to extend the comment period. On September 8, 1994, however, the USEPA published a correction document and 15-day extension of the comment period as a result of the inadvertent omission of a number of lines from the July 21, 1994 proposal. The reopened comment period concluded on September 23, 1994. An additional 25 comment letters were received in response to the September 8, 1994, extension of public comment period regarding the July 21, 1994 proposal approval, 2 favorable, 22 adverse and 1 informational. This final rule summarizes all comments and USEPA's responses, and finalizes the approval of the 1990 base year emission inventory, and basic I/M, and the redesignation to attainment for ozone and associated section 175A maintenance plan for the Detroit-Ann Arbor area.

EFFECTIVE DATE: This action will be effective April 6, 1995.

ADDRESSES: Copies of the SIP revisions, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 1990 base year emission inventory, basic I/M, and redesignation

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request and maintenance plan discussed in this rule were submitted on January 5, 1993 (with revisions on November 15, 1993), November 15, 1994 and November 12, 1994, respectively, by the Michigan Department of Natural Resources (MDNR) for the Detroit-Ann Arbor moderate ozone nonattainment area. The Detroit-Ann Arbor area consists of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties. On July 21, 1994, (59 FR 37190) the USEPA published a proposal to approve the 1990 base year emission inventory, basic I/M, and redesignation request and associated section 175A maintenance plan as revisions to the Michigan ozone SIP. On September 8, 1994 (59 FR 46479 and 46380), the USEPA published a correction notice and 15-day extension of the comment period as a result of the inadvertent omission of a number of lines from the July 21, 1994 proposal. Adverse comments were received regarding the proposed rule. The final rule contained in this **Federal Register** addresses the comments which were received during the public comment periods and announces USEPA's final action regarding the 1990 base year emission inventory, basic I/M, and redesignation and section 175A maintenance plan for the Detroit-Ann Arbor area. A more detailed discussion in response to each comment is contained in the USEPA's Technical Support Document (TSD), dated February 3, 1995 from Jacqueline Nwia to the Docket, entitled "Response to Comments on the July 21, 1994 Proposal to Approve the 1990 Base Year Emission Inventory, Basic I/M, and Redesignation to Attainment for Ozone and Section 175A Maintenance Plan for the Detroit-Ann Arbor Area," which is available from the Region 5 office listed above.

II. Public Comments and USEPA Responses and Final Rulemaking Actions

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II. Final Rulemaking Action

A. 1990 Base Year Emission Inventory

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding the 1990 base year emission inventory.

Comment

Two commentors note an error in the 1990 base year emission inventory portion of the proposed action. One of these commentors notes that the total tons of volatile organic compounds (VOC) per summer weekday emitted from non-road mobile sources is listed as 531.03 for this source category. The correct number submitted by MDNR is 111.67.

USEPA Response

The USEPA acknowledges this error. The VOC emissions per summer weekday from the non-road mobile source category in the July 21, 1994 proposal (p. 37192) will be changed to reflect the number submitted by MDNR, 111.67. In addition, the total tons of VOC per summer weekday in the same table will be changed to 971.92. The Daily VOC Emissions table is changed and appears as follows:

DAILY VOC EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emmissions	Biogenic emissions	Total emissions
Detroit/Ann Arbor	167.08	252.27	327.00	111.67	113.90	971.92

II. Final Rulemaking Action

The USEPA approves the ozone emission inventory SIP submitted to the USEPA for the Detroit-Ann Arbor area as meeting the section 182(a)(1) requirements of the Clean Air Act (Act) for emission inventories.

B. Inspection and Maintenance

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding Inspection and Maintenance.

Comment

One commentor suggests that the USEPA's redesignation decision should be explicitly conditioned upon the requirement for the Michigan Department of Transportation to implement enhanced I/M 240 as a contingency measure. At a bare minimum, the maintenance plan should include the BAR 90 emissions test with visual anti-tampering check for all cars newer than 1975 with no Medicaid waiver.

USEPA Response

The Act requires that nonattainment areas classified as moderate adopt and submit as a SIP revision provisions for implementation of a basic I/M program. See sections 182(a)(2)(B)(i) and (b)(4). Since the Detroit-Ann Arbor area was classified as moderate nonattainment for ozone, the Act requires an I/M program that meets the basic I/M performance standard. The Detroit-Ann Arbor area has implemented an I/M program since 1986, as required by the pre-1990 Act. The area, therefore, must provide for upgrades to the current I/M program to the level of a basic I/M program. Under recent revisions to the national I/M rule (January 5, 1995, 60 FR 1735), however, areas that have requested redesignation to attainment, and are otherwise eligible to obtain approval of the request, may defer adoption and implementation of otherwise applicable requirements established in the originally promulgated I/M rule [1]. The State was required to submit and has submitted, as a contingency measure within the section 175A maintenance plan a commitment, legislative authority and an enforceable schedule for adoption and implementation of a basic I/M program. The contingency plan is described in detail in a subsequent USEPA response within this **Federal Register**.

Comment

One commentor requests that the USEPA delay approval of the redesignation request until Michigan's Joint Committee on Administrative Rules completes its review of the I/M legislation and the USEPA confirms that the essential elements listed at 59 FR

[1] I/M rule was promulgated on November 5, 1992, 57 FR 52950.

37193–94 regarding basic I/M, upon which redesignation approval relies, are still in place.

USEPA Response

The USEPA cannot delay approval of the redesignation, since Michigan has submitted the elements required and necessary to establish basic I/M as a contingency measure in the section 175A maintenance plan as provided for by the revisions to the national I/M rule. As presented in the July 21, 1994 proposal, the State submittal contains the essential elements listed at 59 FR 37193–94. Basic I/M, if implemented as a contingency measure, may be implemented in Wayne, Oakland, and Macomb counties and expanded to Washtenaw county.

Comment

One commentor is concerned that expanding upgraded [2] basic I/M to Washtenaw, St. Clair, Livingston and Monroe counties is subject to potential legislative veto after the need for contingency measures is triggered. The commentor states that because Michigan's legislature can unilaterally rescind the provisions to extend basic I/M programs to Washtenaw, St. Clair, Livingston and Monroe counties (1993 Mich. Pub. Act 232 § 8(2)(c) & (d)), Michigan's provisions do not appear to meet even the relaxed standards proposed in the June 28, 1994 revisions to the national I/M rule, 59 FR 33237, as being fully self-implementing and enforceable under all circumstances. Therefore, Michigan's basic I/M SIP is not complete or approvable. Consequently, the Detroit-Ann Arbor area is not eligible for redesignation.

USEPA Response

Sections 8(2)(c) and (d) of Michigan's Enrolled House Bill 5016 only apply if the redesignation request is disapproved and basic I/M must be implemented in the entire 7-county Detroit-Ann Arbor area (Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe counties). The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable, as described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Clearly, the 45-day notification period is not applicable for implementation of I/M as a contingency measure. It is important to acknowledge that only notification to the legislature is required, and that no affirmative action on the part of the legislature is necessary to allow the program to be implemented. In addition, States at any time are able to amend existing rules and/or regulations for any required program as a matter of State law. This ability is not a reason for disapproval of any State submittal because such unilateral State action would not affect the Federal enforceability of the version of the State law or regulation the USEPA had approved into the SIP. The I/M legislation for the Detroit-Ann Arbor area satisfies the requirements of the revisions to the national I/M rule.

Sections 8(2)(a) and (b) of the legislation apply if the area is redesignated, and basic I/M is implemented as a contingency measure or as a condition for approval of the redesignation request. In particular, section 8(2)(a) provides that basic I/M may be implemented as a contingency measure in Wayne, Oakland and Macomb county and also expanded to Washtenaw county, if necessary. Together, the basic I/M submittal and redesignation request and the section 175A maintenance plan for the Detroit-Ann Arbor area (1) provide for the adoption of implementing regulations for a basic I/M program, meeting the national basic I/M requirements without further legislation, (2) provide for the implementation of basic I/M upgrades as a contingency measure in the maintenance plan upon redesignation, (3) contain, as a contingency measure within the maintenance plan, a commitment by the Governor to adopt regulations to implement I/M in response to a specified triggering event, and (4) contain a commitment including an enforceable schedule for adoption and implementation of a basic I/M program, as provided in the revisions to the national I/M rule. The revisions to the I/M rule do not, however, require that the basic I/M SIP be fully self-implementing. Consequently, contrary to the commentor's statement, the basic I/M SIP is complete and approvable and the Detroit-Ann Arbor area is eligible for redesignation.

Comment

One commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan's basic I/M SIP submission does not even satisfy the requirements of the USEPA's unlawful policy. In particular, the commentor argues that since the legislature could at any time amend the legislative authority, the USEPA should require the State to submit adopted regulations with a basic I/M SIP. The commentor further argues that Michigan did not submit a sufficiently specific and enforceable schedule for adoption and implementation of a basic I/M program upon a specified triggering event. The commentor also notes that if the State has not adopted the regulations necessary to implement the contingency measure, such measure will not correct any violation promptly as required by the Act and USEPA guidance.

USEPA Response

The commentor states that the 45-day notice provided in the legislation prior to implementation of a required I/M program ensures that the legislature can repeal the legislative authority before it takes effect. This commentor's interpretation of Michigan's Enrolled House Bill 5016 is incorrect. The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable under the scenario described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Thus, as discussed earlier, the 45-day notification period is not applicable for implementation of I/M as a contingency measure.

The USEPA further responds that Michigan has submitted as part of the 175A maintenance plan an enforceable schedule for adoption and implementation of basic I/M as a contingency measure. Section 6.8.3 of the State's submittal indicates that adoption and implementation schedules for contingency measures would be consistent with those specified in the Act and any corresponding regulations and submitted as part of the technical urban airshed modeling (UAM) analysis. The I/M redesignation rule provides the relevant adoption and implementation schedules. If the Governor chooses I/M to be implemented as the contingency measure, under the schedule of the I/M redesignation rule Michigan incorporated by reference, the State would need to adopt I/M within one year of the trigger date. Michigan's submittal defined the trigger date as the

[2] The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act or any area that was required by the Act, as amended in 1977, to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP, whichever was more stringent. Areas classified as moderate and worse were also subject to this requirement to improve programs to this level. The Detroit-Ann Arbor area, a moderate ozone nonattainment area, had in effect an I/M program pursuant to the 1977 Act. The area, therefore, was required to improve its existing I/M program to meet the basic I/M program requirements.

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date that the State certifies to the USEPA that the air quality data are quality assured, which will be no later than 30 days after an ambient air quality violation is monitored. Pursuant to the I/M redesignation rule, the trigger date is the date no later than when the USEPA notifies the State of a violation. As long as the trigger date as defined by Michigan occurs prior to the date the USEPA notifies the State of a violation, Michigan's timeframe for implementing I/M as a contingency measure is consistent with the I/M redesignation rule. Because it often takes several months for the USEPA to obtain the data and confirm a violation, it is unlikely that the trigger date as defined by Michigan will be later than that defined in the I/M redesignation rule. However, if the USEPA does notify the State of a violation prior to the State certifying to the USEPA that the ambient air quality data assure a violation, then the trigger date will be the date of the USEPA notification to the State, consistent with the I/M redesignation rule. The basic I/M program, if selected as a contingency measure, must be implemented within 24 months of the trigger date, or 12 months after the adoption of implementing regulations. This schedule is consistent with the I/M redesignation rule, which is the applicable regulation for purposes of establishing an adoption and implementation schedule. This schedule is specific and enforceable since it will be incorporated into the SIP as part of the section 175A maintenance plan. The section 175A(d) requirement for contingency provisions is that they must promptly correct a violation of the NAAQS. The USEPA believes that the schedule provided for implementation of a basic I/M program within the Detroit-Ann Arbor area's section 175A maintenance plan is sufficient to address this requirement in light of the logistics of adopting and implementing a basic I/M program.

The commentor also indicated that the Michigan submittal does not satisfy the USEPA's requirement of a "specified and enforceable schedule" because it does not include a timetable of steps necessary to get the required regulations adopted. As discussed above, because Michigan incorporated by reference the timetable of the I/M redesignation rule, adoption of I/M regulations is specified to occur within one year of the trigger date. The only other interim step necessary to get the required regulations adopted is the proposal of draft regulations. Although the Michigan submittal did not specify a date for the proposal, the State's commitment to a date for promulgation of the final rule implies that the draft regulations will be proposed on a date no later than that necessary to provide for notice and comment and a hearing on the draft regulations. Because Michigan's submittal specified a timetable to get the final regulations adopted, the Michigan submittal has met the requirement to provide a specified and enforceable schedule.

A commentor also suggested that a determination that actual emissions from mobile sources actually exceed those predicted in the emission inventories should also be included as a triggering event. This is neither a requirement of the Act nor of USEPA policy, although it has been suggested as a possible triggering event in guidance, and States are encouraged to use it.

Comment

One commentor challenges the adequacy of Michigan's demonstration that its I/M program did not contribute to Southeast Michigan's attainment, and urged reconsideration of the proposed elimination of the program after 1995.

USEPA Response

Michigan did not claim that the current I/M program did not contribute to the Detroit-Ann Arbor's attainment, nor did it claim credit for the emission reductions achieved as a result of the program within the attainment demonstration. Furthermore, neither the State nor the USEPA has proposed or suggested that the current I/M program be eliminated after 1995. In fact, the State must continue to implement its current I/M program as well as all other SIP control measures that were contained in the SIP prior to the submittal of a complete redesignation request. The September Shapiro[3] memorandum reviews and reinforces the USEPA's policy on SIP relaxations, particularly in the context of redesignation. The memorandum notes that the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration, based on computer modeling, is approved by the USEPA. Existing control strategies must continue to be implemented in order to maintain the standard. Although section 175A recognizes that SIP measures may be moved to the contingency plan upon redesignation, such a SIP revision may be approved only if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. A demonstration for an area redesignated to attainment for ozone would entail submittal of an attainment modeling demonstration with the USEPA's current Guideline on Air Quality Models, showing that the control measure is not needed to maintain the ozone NAAQS. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled Ozone Redesignation Policy.

Comment

One commentor states that the USEPA's policy of approving a basic I/M SIP revision that does not include adopted regulations is unlawful.

USEPA Response

The USEPA's specific response to these comments is published in the USEPA's final rulemaking on the revisions to the national I/M rule. See January 5, 1995, 60 FR 1735. In that rulemaking, the commentor also submitted similar remarks and the USEPA's responses to those comments appear in the docket for that rulemaking. It is appropriate for the USEPA to rely on the final I/M rule revisions in taking today's final action, and this rulemaking is not the appropriate forum in which to challenge the validity of the I/M rule revisions.

II. Final Rulemaking Action

The USEPA approves the basic I/M program submitted to the USEPA for the Detroit-Ann Arbor area as meeting the revised national I/M rule (January 5, 1995, 60 FR 1735) for areas redesignated from nonattainment to attainment, consequently satisfying the requirements of section 182(a)(2)(B)(i) of the Act.

C. Redesignation

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding the redesignation of the Detroit-Ann Arbor area to attainment for ozone.

Comment

One commentor notes that if an expeditious review and approval of MDNR's request had occurred prior to the 1994 ozone season, then any ozone violation thereafter would have prompted the implementation of a contingency measure from the maintenance plan to correct the air quality problem.

[3] September 17, 1993 memorandum from Michael H. Shapiro, entitled SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or after November 15, 1992.

USEPA Response

The Act authorizes the USEPA up to 18 months from submittal to act on a State's request to redesignate. See section 107(d)(3)(D). The process for redesignating areas to attainment is a complex one which is designed not only to identify areas which currently have clean air, but also to assure that clean air will be maintained in the future. There are many statutory requirements which must be satisfied before the redesignation request can be processed, including review and approval of all revisions to the SIP for programs whose deadlines came due prior to submittal of the redesignation request to the USEPA. See September Calcagni[4] memorandum and September Shapiro. Before the USEPA could finally redesignate the area to attainment, all remaining items had to be finally approved, including: (1) the State regulations for Reasonable Available Control Technology (RACT) for VOC,[5] (2) the section 182(f) oxides of nitrogen (NO_x) RACT exemption petition, and 3) revisions to the national motor vehicle I/M rule. The USEPA could not redesignate the Detroit-Ann Arbor area until these actions were finalized. Because all these actions were finalized, the Federal action on the redesignation can be completed. Furthermore, if a violation had occurred during the pendency of the USEPA's review of the ozone redesignation request, the USEPA could not approve the request since the area would not have remained in attainment. As a consequence, further control measures would have been required under the Act.

In any case, the commentor's concern is moot, since no violations of the ozone NAAQS occurred during the 1994 ozone season.

Comment

One commentor suggests that redesignation requests should be Table I decisions to ensure national consistency.

USEPA Response

An October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, revised the SIP tables initially published in the **Federal Register** on January 19, 1989 (54 FR 2214). The USEPA revised these tables in conjunction with the Office of Management and Budget (OMB). The revisions classified all redesignation, except those for total suspended particulate, as Table 2 actions. These actions require the Regional Administrator's decisions and concurrence, but provide a 40-day opportunity for Headquarters review before concurrence by the Regional Administrator. The 40-day Headquarters review is intended to function as a check for national consistency and the USEPA believes that this system provides adequate assurances of consistency.

Comment

One commentor notes that the USEPA's proposed redesignation relies on data from 1993 which was not included in Michigan's November 12, 1993 request, and was not subject to public comment. Further, there is an inconsistency between the years offered by Michigan as a basis for redesignation 1990–92 and the years selected by the USEPA as the basis for considering and actually proposing the redesignation (1991–1993). Therefore, Michigan's redesignation request was not "complete" on November 12, 1993.

USEPA Response

As stated in the proposed rulemaking, Michigan submitted ambient data for 1990–1992 in its November 12, 1993 submission, but did not submit 1993 ozone data because it was not completely quality-assured at the time the request was being developed. Under the guidance of the USEPA, the State submitted the 3 most recent consecutive years of complete air monitoring data (1990–1992), with the understanding that shortly thereafter, the 1993 ozone season data would be available in AIRS for the USEPA to review. The 1993 ozone data was considered by the USEPA and was subject to public comment as a result of the July 21, 1994 proposed rulemaking. Regardless of which years of data are used, 1990–1992 or 1991–1993, Michigan has demonstrated attainment of the ozone NAAQS in the Detroit-Ann Arbor area by providing monitoring data with no violations. Completeness of a SIP submittal is based on the criteria established in 40 CFR part 51, appendix V. Using these, the USEPA found the November 12, 1993 submittal complete in a letter to Michigan dated January 7, 1994. The use of 1993 ozone season data that was not completely quality-assured at the time of the November 12, 1993 submission does not alter the conclusion that the submission, which the USEPA found complete was based on 3 consecutive years of air monitoring data.

Comment

One commentator alleges that USEPA's notice of proposed approval of the redesignation is a product of undue haste since the action was incomplete and failed to give adequate notice of plans for verification of continued attainment. The action skips portions of paragraph (b) Demonstration of Maintenance and paragraph (C) Verification of Continued Attainment on pages 37198–37199. In addition, three paragraphs on page 37198 duplicate text on page 37197.

USEPA Response

The omission of paragraph (B) and (C) and duplicated text is acknowledged. Unfortunately, the Office of Federal Register, inadvertently excluded a number of lines from these two sections of the action. For this reason, the comment period on the July 21, 1994, redesignation was reopened on September 8, 1994, (59 FR 46479 and 46380) for 15 days in order to provide the public an opportunity to appropriately comment on it.

Comment

One commentor requested additional time for reviewing and providing comments on the proposed redesignation due to insufficient time to comment on such a complex proposal.

USEPA Response

As discussed above, the comment period was extended for the redesignation and section 175A maintenance plan in order to give the public sufficient time to review and to submit comments. The correction document and extension of public comment period action were published on September 8, 1994. The USEPA does not believe that any additional extension of time is necessary as an adequate comment period has already been provided.

Comment

One commentor requested a formal USEPA public hearing on the redesignation.

USEPA Response

Under the Act, States can submit proposed implementation plans (and revisions) to the USEPA for approval only after they have afforded interested parties "reasonable notice and public hearing * * *." See Section 110(a)(1) and (a)(2). The State held a public hearing on the proposed redesignation to attainment for ozone and revision to

[4] September 4, 1992 memorandum from John Calcagni, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment.*

[5] The VOC RACT rules were approved in a final rulemaking published on September 7, 1994 in the **Federal Register** (59 FR 46213 and 46182).

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the Michigan SIP, i.e., maintenance plan, on October 22, 1993. There are no provisions, however, requiring the USEPA to hold its own hearings. The USEPA is required to provide the opportunity for public comment. The USEPA announced opportunities on July 21, 1994 and September 8, 1994 for the public to submit comments. The USEPA believes those opportunities represent a more than ample opportunity for public input and comment on this redesignation.

Comment

One commentor states that the air quality in the area has been poor and has gotten worse in the past 10 years. Offensive odors are apparent when it is slightly overcast or during the night when a local incinerator is burning.

USEPA Response

This redesignation pertains to solely to ozone, and would not affect offensive odors from an incinerator, regardless of whether these odors are evident during slightly overcast skies or at night. Redesignating the area to attainment for ozone would neither solve nor contribute to the problem. The incinerator must continue to operate existing control equipment in compliance with its own applicable permits, rules and regulations. Ambient monitoring data from 1990 through 1994 demonstrates that the area is attaining the ozone NAAQS. This evidences that the air quality has improved at least since the period 1987–1989, the years of air quality data which were used to designate the area nonattainment for ozone.

Comment

A number of commentors urge the USEPA to reconsider the NAAQS for ground level ozone. One commentor notes that Canada's ozone standard' is 82 parts per billion (ppb) while the United States' (U.S.) is 125 ppb.[6] This disparity in limits continues to be debated in the U.S. courts with the American Lung Association and others, who contend that the U.S. must lower its limit to 82 ppb, or lower, for health based reasons. Another commentor states that the current ozone NAAQS is not protective of the public health, and should be made more stringent to comply with the Congressional mandate to protect public health with an "adequate margin of safety."

[6] This is equivalent to 0.125 parts per million (ppm). This is the reference used by the commentor, presumably, to illustrate the difference between the Canadian objective and U.S. standard.

USEPA Response

The USEPA is currently in the process of reevaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, however, the USEPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignation.

Comment

One commentor notes that MDNR has taken the position that the measured concentration must exceed 125 ppb before a legally actionable exceedance that contributes to a 3 year running average on the number of days with exceedances is triggered. As a result, MDNR has not included as excursions days with maximum numbers that actually do exceed the published standard of 0.12 ppm.

USEPA Response

Published guidance (Guideline for the Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003), which is part of the ozone standard by reference in 40 CFR part 50, appendix H, notes that the stated level of the standard is determined by defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and therefore, 0.125 ppm is the smallest three-decimal concentration value in excess of the level of the standard. Therefore, MDNR is following USEPA national guidance.

Comment

The commentor objects to the USEPA's proposed disapproval of the redesignation request if a monitored violation of the ozone NAAQS occurs prior to final USEPA action on the redesignation. The commentor notes further that since the area has reached attainment of the NAAQS and has requested redesignation, a requirement to implement contingency measures to correct the problem would be sound policy in the event of a violation during 1994.

USEPA Response

Section 107(d)(3)(E) of the Act establishes five criteria which must be satisfied in order for the USEPA to redesignate an area from nonattainment to attainment. One of these criteria is that the Administrator determine that the area has attained the NAAQS. See section 107(d)(3)(E)(i). This requirement clearly prohibits the Administrator from redesignating areas that have not attained the NAAQS. If a violation had occurred prior to the USEPA's final action, the Detroit-Ann Arbor area would no longer have been in attainment and the USEPA could not redesignate the area to attainment. Furthermore, only a final rulemaking action can change an area's designation under 40 CFR part 81. Despite the July 21, 1994 proposal, the area must continue to meet this criterion until final rulemaking is published. As a result, the USEPA must consider air quality data that is collected until the date of final rulemaking and revision of the area's nonattainment status under 40 CFR part 81.

In addition, the USEPA's September Calcagni memorandum, page 5, states that Regions should advise States of the practical planning consequences if the USEPA disapproves the redesignation request or if the request is invalidated because of violations recorded during USEPA's review. This policy has been followed in disapproving the Richmond, Virginia redesignation, which was disapproved due to violations of the ozone NAAQS occurring prior to final action on a proposed approval of the redesignation (May 3, 1994, 59 FR 22757).

With respect to a requirement to implement contingency measures in the event of a violation prior to final approval of a redesignation, the USEPA notes that the Detroit-Ann Arbor area, like any other nonattainment area, is subject to the contingency measure requirements of section 172(c)(9) until the area is redesignated to attainment.

In any case, the commentor's concern is moot, since no violations of the ozone NAAQS occurred during the 1994 ozone season.

Comment

Several commentors request that the Detroit-Ann Arbor area be denied redesignation to attainment until it is clearly shown, using 1994 data, that the area is in attainment. Other commentors noted that although the Detroit-Ann Arbor area experienced only one ozone exceedance from 1991 to 1993 or 1990 to 1992, it experienced at least three ozone exceedances in 1994 alone. Commentors provided specific monitored ozone values recorded at Detroit-Ann Arbor area monitors during the 1994 ozone season. The following ozone concentrations from Detroit-Ann Arbor area monitors were provided: 133 ppb at the Algonac monitor, 142 ppb at the New Haven monitor, 145 ppb at the Warren monitor, 178 ppb at the Port Huron monitor, and 127 ppb at the Oak Park monitor.

USEPA Response

As discussed above, the USEPA could not approve the redesignation if a violation occurred during the USEPA's review of the request. Consequently, while the July 21, 1994 action proposed to approve the redesignation, it also proposed, in the alternative, to disapprove the redesignation if violations of the ozone NAAQS occur before the USEPA took final action on the redesignation.

Title 40 CFR part 50.9 establishes the ozone NAAQS, measured according to appendix D, as 0.12 ppm (235 micrograms per cubic meter (ug/m3)). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 ug/m3) is equal to or less than 1 as determined by 40 CFR part 50 appendix H. Further discussion of these procedures and associated examples are contained in the document Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003. Simply, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1. The net result is that each monitor in an area is allowed to record 3.0 expected exceedances in a 3 year period. More than 3.0 expected exceedances in a 3-year period would constitute a violation of the ozone NAAQS. As explained in the July 21, 1994 proposed rulemaking (59 FR 37190), the Detroit-Ann Arbor area has attained the ozone NAAQS during the 1990–1992 and 1991–1993 periods. The 1994 ozone season has concluded and while there have been some recorded ozone exceedances in the Detroit-Ann Arbor area, they do not (in consideration with 1992 and 1993 data) constitute a violation of the ozone standard. Consequently, the Detroit-Ann Arbor area continues to attain the ozone standard at this time. The USEPA has considered all air quality data collected prior to final rulemaking on the redesignation request.

Comment

One commentor questions whether actual attainment and maintenance of the standard was achieved and suggests that paper demonstrations of attainment and maintenance should *not* be given more weight in decisionmaking when compared to actual adverse air quality monitoring data showing unhealthy concentrations of ozone, or data that is marginally so.

USEPA Response

The USEPA notes that it has not given "paper" (or more properly, analytical) demonstrations of attainment more weight than ambient monitoring data. As discussed above, the ambient air quality monitoring data for the Detroit-Ann Arbor area demonstrates attainment of the ozone NAAQS over the time periods of 1990–1992, 1991–1993, and 1992–1994. Furthermore, continued maintenance of the ozone NAAQS will be determined by continued ambient monitoring.

Comment

One commentor asserted that the USEPA cannot redesignate the Detroit-Ann Arbor area because the USEPA must determine the relevant applicable requirements at the time of approval of an area's redesignation request and the State must satisfy them. According to the commentor, section 175A(c) of the Act requires that all requirements of subpart D remain in force until an area is redesignated. The commentor argued that the USEPA's interpretation of section 107(d)(3)(E), pursuant to which the USEPA determines whether an area seeking redesignation has met the Act requirements applicable prior to or at the time of the submission of a redesignation request, is inconsistent with section 175A(c). Specifically, the commentor argued that the Act prohibits the redesignation of the Detroit-Ann Arbor area because the area has not submitted by November 15, 1993, an approvable SIP revision providing for 15 percent VOC reductions, nor satisfied the basic I/M and New Source Review (NSR) requirements that came due prior to the submission of the redesignation request. Moreover, the commentor claimed that the USEPA's interpretation encourages States to delay implementation of the Act since delay in implementing requirements that come due after the submission of a redesignation request would not affect the approvability of the request.

USEPA Response

The USEPA has interpreted section 107(d)(3)(E) to mean that the section 110 and part D provisions that are required to be fully approved in order for a redesignation to be approved are those which came due prior to or at the time of the submittal of a complete redesignation request. At the same time, however, the USEPA has maintained that States continue to be statutorily obligated to meet any SIP requirements that come due after the submission of the redesignation request before the USEPA takes final action to redesignate an area. As a consequence, the USEPA has also followed a policy of issuing findings of failure to submit if a State that has submitted a redesignation request fails to comply with a SIP submittal requirement that comes due after the submission of a redesignation request. See September and October Calcagni [7] memorandums, September Shapiro memorandum, and the memorandum dated January 7, 1994, from John S. Seitz to Regional Air Division Directors, entitled "Procedures for SIP Elements Due November 15, 1993." The USEPA believes that its approach is both reasonable and harmonizes the pertinent provisions of the Act in a workable manner that is consistent with the language and intent of the Act. Moreover, the USEPA believes that the interpretation advocated by the commentor would be unworkable and make it virtually impossible for areas to be redesignated to attainment.

The pertinent provisions of the Act are as follows. Section 107(d)(3)(E)(v) of the Act provides that a State must have met "all requirements applicable to the area under section 110 and part D" in order to be redesignated. Furthermore, section 107(d)(3)(E)(ii) provides that the USEPA must have fully approved the SIP for the area seeking redesignation. Finally, section 175A(c) provides that the requirements of part D remain in force and effect for an area until such time as it is redesignated.

The USEPA believes that it is both logical and reasonable to interpret section 107(d)(3)(E)(ii) and (v) so that, for purposes of the evaluation of a redesignation request, the only requirements that are "applicable" and for which the SIP must be fully approved before the USEPA may approve the redesignation request are those that came due prior to or at the time of the submission of a complete redesignation request.

The first reason that it is reasonable to determine the approvability of a redesignation request on the basis of compliance with only Act requirements applicable prior to or at the time of the submission of the request is that holding the State to a continuing obligation to comply with subsequent requirements coming due after the submission of the request for purposes of the redesignation would make it impossible in many instances for the USEPA to act on redesignation requests in accordance with the 18-month deadline mandated

[7] October 28, 1992 memorandum from John Calcagni entitled *SIP Actions Submitted in Response to Clean Air Act Deadlines*.

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by Congress for such actions in section 107(d)(3)(C). This is because each Act requirement coming due during the pendency of the USEPA's review of a redesignation request carries with it a necessary implication that the USEPA must also fully approve the SIP submission made to satisfy that requirements in order for the area to be redesignated. Otherwise, the area would fail to satisfy the redesignation requirement of section 107(d)(3)(E)(ii) to have a fully-approved SIP. As Congress limited the USEPA to an 18-month period to take final action on complete redesignation requests, Congress could not have intended that, for those requests to be approved, States make additional SIP submissions that would require the USEPA to undertake action that would necessarily delay action on the redesignation request beyond the 18-month time frame. (The delay would occur due to the time needed for the USEPA to take action regarding the determinations as to whether to find those SIP submissions complete and to approve or disapprove them. Congress accorded the USEPA up to 18 months from the submission of a SIP revision to take such action. *See* section 110(k).)

Another reason that the USEPA's interpretation is reasonable is that the fundamental premise for a request to redesignate a nonattainment area to attainment is that the area has attained the relevant NAAQS. Thus, an area for which a redesignation request has been submitted should have already attained the NAAQS as a result of the satisfaction of Act requirements that came due prior to the submission of the request, and it is reasonable to view the only requirements applicable for purposes of evaluating the redesignation request as those that had already come due since those requirements were the ones that presumably led to attainment of the NAAQS—which is the primary purpose of title I of the Act. To require that a State continue to satisfy requirements coming due during the pendency of the USEPA's review of a complete redesignation request in order to have the redesignation approved would require the State to do more than was needed to attain the NAAQS.

The USEPA's interpretation by no means eliminates the obligation of States to comply with requirements coming due after the submission of a redesignation request. Rather, it simply means that areas may be redesignated even though the State may not have complied with those requirements. As the USEPA's policy makes clear, in accordance with the requirements of section 175A(c), the statutory obligation of the States to fulfill those requirements remains in effect until the USEPA takes final action to redesignate an area to attainment. Thus, the USEPA's policy is to issue findings of failure to submit if a State fails to submit a SIP revision to fulfill such a requirement, thereby triggering a clock that will result in the imposition of mandatory sanctions, under section 179 of the Act, 18 months after the issuance of the finding unless the USEPA approves the redesignation request prior to the expiration of the sanctions clock.

Thus, if a State chooses not to submit a complete and approvable SIP revision to comply with a requirement that comes due after the submission of a redesignation request, it runs the risk it will be sanctioned in the event that the USEPA does not approve the redesignation request. For example, in the case of the Detroit-Ann Arbor area, on January 21, 1994, the USEPA started the 18-month sanctions clock for the 15 percent reduction plan required by section 182(b)(1) to be submitted by November 15, 1993 after the State had submitted its complete redesignation request for the Detroit-Ann Arbor area, by finding the area's 15 percent plan incomplete. If the USEPA were not now approving the redesignation request, the sanctions clock would continue to run and the State would continue to be subject to the risk that sanctions would be imposed. Notably, a State seeking redesignation for an area is in the same position as to the initiation of sanctions clocks for the failure to make a submittal as any other State. Thus, if Michigan had *not* submitted a redesignation request for the Detroit-Ann Arbor area and nevertheless had failed to submit a complete 15 percent plan by November 15, 1993, it would also have been subject to a finding of failure to submit and the consequent commencement of a sanctions clock.

For this reason, the USEPA disagrees with the comment's contention that the USEPA's interpretation regarding the requirements applicable for purposes of evaluating redesignation requests encourages States to delay implementation of the Act. States seeking redesignation for areas are subject to sanctions for failure to submit SIP revisions in accordance with the Act's requirements in the same way that States not seeking redesignation are. To the extent that the USEPA's interpretation results in States not adopting measures they might otherwise have had to, such a result is a consequence of the only workable interpretation of the provisions of section 107 concerning applicable requirements and that result does not justify rejecting that interpretation. This is particularly so since the only areas that benefit from this interpretation are those that have attained the ambient air quality standards and have demonstrated that they will continue to maintain them in the future.

Thus, the USEPA believes it may approve the Detroit-Ann Arbor redesignation request notwithstanding the lack of a fully approved 15 percent plan. Such action is consistent with the USEPA's national policy and is permissible under the Act. (The commentor's contentions regarding the basic I/M plans and NSR review program are dealt with as part of the responses to other comments on those programs elsewhere in this document.)

Comment

One commentor stated that the requirement of both general and transportation conformity is an important element of Michigan's attainment SIP and that the USEPA's notice has not addressed conformity in the context of the redesignation. Adverse consequences will stem from failure to continue to require conformity analyses and measures. Another commentor states that redesignation does not excuse the State from submitting a conformity SIP revision for the Detroit-Ann Arbor area or from including a motor vehicle emission budget for NO_X in the area's maintenance plan. The commentor further states that the NO_X waiver available under section 182(f), has no connection with the conformity requirements for transportation plans and programs contained in section 176(c)(2)(A) and 176(c)(1)(B).

USEPA Response

The July 21, 1994 proposal (59 FR 37190) did state that the November 24, 1993 (59 FR 62188) transportation and November 30, 1993 (59 FR 63214) general conformity rules require States to adopt transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. The proposal further explained that, although conformity is applicable in these areas, since the deadline for submittal had not come due for these rules at the time Michigan submitted a redesignation request, the approval of the redesignation is not contingent on these submittals to comply with section 107(d)(3)(E)(v). The Detroit-Ann Arbor area must comply with the section 176 conformity regulations as required by the conformity rules and the Conformity General Preamble (June 17, 1994, 59 FR 31238)[8]. According to these rules, conformity applies to nonattainment areas as well as maintenance areas. Once redesignated, the Detroit-Ann Arbor area will be a maintenance area which will be required to conduct emission analyses to determine that the VOC and NO_X emissions remain below the motor vehicle emission budget established in the maintenance plan. Transportation and general conformity apply to maintenance areas and therefore, the Detroit-Ann Arbor area must comply with these rules. The Conformity General Preamble to the conformity regulations further clarifies this issue, particularly as it pertains to areas requesting and obtaining a section 182(f) NO_X exemption. According to the conformity rules and preamble, the Detroit-Ann Arbor area's conformity test will be to remain within the VOC and NO_X budgets established in the section 175A maintenance plan. Michigan has established a motor vehicle emission budget for NO_X in the area's maintenance plan.

The commentor's suggestion that the section 182(f) exemption has no connection to the conformity requirements for transportation plans and programs contained in section 176(c)(2)(A) and 176(c)(1)(B) was made in response to the August 10, 1994 proposal to approve the section 182(f) NO_X exemption for the Detroit-Ann Arbor area. The USEPA's response is, therefore, articulated in the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this **Federal Register**.

Comment

One commentor states that areas are requesting exemptions from the NO_X control measures based on incomplete modeling studies (i.e. Lake Michigan and Southeast Michigan Ozone Studies) which do not accurately predict the relative contribution of mobile source emissions because the mobile source emissions inventory understates its contribution to ozone production. Furthermore, given the uncertainty of mobile source NO_X contributions to ozone and the inaccuracy of mobile source inventories, it is inappropriate to remove from the SIP any NO_X or VOC conformity analysis.

USEPA Response

Exemption from the section 182(f) NO_X requirements is provided for in sections 182(f)(1)(a) and 182(f)(3) of the Act. Michigan submitted such an exemption request on November 12, 1993 for the Detroit-Ann Arbor area based on 3 consecutive years of clean air quality monitoring data, not on a modeling study or analysis. In addition, approval of an exemption based on monitoring data will be contingent on the area's maintenance of the ozone NAAQS. As noted previously, a section 182(f) NO_X exemption will not exempt areas from compliance with the conformity regulations. The USEPA refers the commentor to the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this **Federal Register**.

Comment

One commentor notes that there is no reasonable or adequate basis for eliminating Michigan's existing NSR program from the current SIP. Another commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan has not met the NSR requirements under section 182(b)(5).

USEPA Response

The USEPA believes that the Detroit-Ann Arbor area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Act amendments and the absence of such an NSR program from the contingency plan. This view, while a departure from past policy, has been set forth by the USEPA as its new policy in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.

The USEPA believes that its decision not to insist on a fully-approved NSR program as a pre-requisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle*, the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 110 and part D of title I of the Act. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Michigan area seeking redesignation at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, it may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. In this context, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the Detroit-Ann Arbor area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case.

Michigan has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections made by Michigan to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) and were premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect, during the maintenance period. Under NSR, significant point source emissions growth would not occur. Michigan assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Michigan has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

[8] On November 18, 1994 and November 29, 1994, Michigan submitted SIP revisions to comply with the Transportation and General conformity rules.

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The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by sections 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area." Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a "measure" for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term "measure" is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs to include "enforceable emission limitations and other control measures, means, or techniques* * *as may be necessary or appropriate to meet the applicable requirements of the Act." In section 110(a)(2)(C), Congress required that SIPs include "a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D." (Emphasis added.) If the term measures as used in section 110(a)(2) (A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless "measures" referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished "measures" from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term "measures."

The USEPA believes that the fact that Congress used the undefined term "measure" differently in different sections of the Act is germane. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret "measure," as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[9] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and RACT programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term "measure."[10]

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Michigan has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which is that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

As the USEPA has recently changed its policy, the position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

Comment

One commentor suggests that the USEPA's rulemaking is an effort to permit Michigan to avoid including the 15 percent Rate-of-Progress (ROP) measures, required of moderate nonattainment areas in the SIP. It is essential to have elements of the 15 percent ROP plan available as contingency measure in the attainment plan. It is not clear that the current rulemaking procedure will allow that to happen.

USEPA Response

As explained above, under the USEPA's interpretation of section 107, an area need not meet all section 110 and part D requirements that become applicable after the submittal of a complete redesignation request in order to have the request approved. Therefore, the 15 percent ROP plan, which was not due to be submitted until November 15, 1993, after the submission of the redesignation request, is not required to be fully approved into the SIP before redesignating the area to attainment. Similarly the section 175A contingency plan need not include all measures that would have been included in the 15 percent plan since those measures were not required to be included in the SIP prior to redesignation. Furthermore, some elements of the incomplete 15 percent ROP plan that Michigan did submit for the Detroit-Ann Arbor area are included in the maintenance plan and are available as contingency measures in the maintenance plan. These elements include basic I/M, Stage I expansion,[11] and Stage II vapor recovery. The USEPA believes that the menu of contingency measures is adequate and that additional contingency measures are not necessary.

As for the commentor's effort to ascribe subjective motivations to the USEPA in acting on this redesignation, the USEPA believes such contentions are simply irrelevant.

Comment

One commentor states that there can be no redesignation until Michigan submits a complete and approvable 15 percent ROP plan. The commentor alleges that since Michigan's application was not complete on November 12, 1993, all moderate area provisions including the 15 percent plan must be in place to accomplish the redesignation. The commentor notes that Stage II vapor recovery and an upgraded I/M program should be in Michigan's SIP to assure continued maintenance of the NAAQS.

USEPA Response

After the USEPA's review, on January 21, 1994, the redesignation request was found complete on the basis of the completeness criteria codified in 40 CFR part 51, appendix V. As explained above, the November 12, 1993 request was based on three complete years of clean data, and the consideration of subsequent air quality data does not alter the conclusion that that request was complete. Thus, the November 12, 1993 redesignation request is complete and, in accordance with the USEPA's policy on applicable requirements (described above), the 15 percent plan need not be submitted or approved prior to approval of the redesignation.

With respect to the commentor's assertions regarding the need for Stage II vapor recovery and an upgraded I/M program to assure maintenance, the USEPA notes that the State has provided an adequate demonstration that maintenance will occur even in the absence of those programs. The State's emissions projections underlying the maintenance demonstration are discussed in the proposal at 59 FR 37197, and the commentor has provided no evidence that those projections are erroneous. Furthermore, the USEPA notes that Stage II vapor recovery and an upgraded I/M program were not implemented in the area in the period of attainment and therefore, did not contribute to attainment of the ozone NAAQS. Stage II vapor recovery and basic I/M, however, are control measures included as contingency measures within the maintenance plan. Thus, Stage II and basic I/M may be implemented in the event a violation of the ozone NAAQS occurs during the maintenance period. The basic I/M program included in the contingency plan would upgrade and expand the current I/M program being implemented in the Detroit area. As the Detroit-Ann Arbor area has demonstrated attainment and maintenance of the ozone NAAQS without implementation of Stage II and an upgraded I/M program those measures may be made part of the contingency plan without implementation until such time as a violation of the ozone NAAQS warrants their implementation. The State, however, must continue to implement all programs currently in place in the Detroit-Ann Arbor area including the existing I/M program.

Comment

Several commentors suggested that meteorological conditions observed in Michigan and Canada were not conducive to ozone formation. These meteorological conditions, coupled with a general reduction of emissions in the Detroit-Ann Arbor area resulting from an economic downturn, resulted in the attainment claimed by the Detroit-Ann Arbor area. The commentors believe that the attainment claimed by Michigan is not based on real reductions of ozone precursor gases (NO_x and VOC).

USEPA Response

Section 107(d)(3)(E)(iii) requires that, for the USEPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The September Calcagni memorandum, at page 4, clarifies this requirement by stating that "[a]ttainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." As discussed in the July 21, 1994 **Federal Register** notice, the State of Michigan has demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from the year that was used to determine the design value for designation and classification) of VOC and NO_x achieved through Federal measures such as the Federal Motor Vehicle Control Program (FMVCP) and fuel volatility rules implemented from 1988–1993, as suggested by the September Calcagni memorandum. The total reductions achieved from 1988 to 1993 were 226 tons of VOC and 45 tons of NO_x per day. These emission reductions were primarily the result of the FMVCP and RVP reductions from 11.0 pounds per square inch (psi) in 1988, to 9.5 in 1990 and finally, to 9.0 in 1993. The State only claimed credit for emission reductions achieved as a result of implementation of these federally enforceable control measures. These emission reductions claimed by Michigan are conservative since they do not account for emission reductions resulting from other control measures and programs implemented during this time period such as the current I/M program and VOC RACT. The State, therefore, adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of 226 tons VOC and 45 tons of NO_x per day as a result of implementing the federally enforceable FMVCP and RVP reductions.

With respect to the issue of unusually favorable meteorology, the commentors have not supplied and the USEPA is not aware of data demonstrating that the meteorological conditions in the Detroit-Ann Arbor area in 1990 and subsequent years were unusually favorable with respect to the impact on ozone formation. The USEPA examined the average meteorological parameters of maximum monthly temperatures, monthly precipitation, and days with temperatures greater than 90 degrees Fahrenheit for the periods of April through September, 1991 through 1993, with the 9-year (1982–1990) averages for these parameters. The 1991–1993 averages for these parameters agreed with those for the 9-year averages with only minor differences. Based on averaged parameters, it can be concluded that the 1991–1993 period was typically conducive to ozone formation. Further, the USEPA notes that the Detroit-Ann Arbor area has been in attainment for three consecutive three-year periods (1990–1992, 1991–

[9] The U.S. EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_x offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.

[10] The U.S. EPA also notes that in the case of the Michigan area, all permits to install for major offset sources and major offset modifications issued by the State in the moderate nonattainment areas since November 15, 1992 have complied with the 1.15 to 1.0 offset ratio. In addition, permits to install cannot be issued under the PSD program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS. Michigan's Rule 702, which is part of the SIP, requires the installation of Best Available Control Technology regardless of size or location of all new and modified sources in the State. In addition, Michigan's Rule 207, also approved in the SIP, requires denial of any permit to install if operation of the equipment will interfere with attainment or maintenance of the NAAQS.

[11] The expanded applicability of Stage I to county boundaries of each nonattainment area classified as moderate and above.

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1993, and 1992–1994), and that this, along with the fact that real emission reductions have occurred, indicates that attainment is not due to unusually favorable, temporary meteorological conditions.

Comment

A few commentors noted that "Ozone Action!" days were declared on selected bad meteorology days, with extensive media publicity asking the public to reduce activities having the potential to emit ozone precursors. It is entirely possible that the voluntary reduction program had an effect in the summer of 1994 to reduce potential ozone excursions. The existence of the voluntary program should be considered in evaluating the summer 1994 data. In addition, one commentor stated that this is an attempt to deny industry's responsibility to reduce emissions by shifting the burden onto private households though these "Ozone Action!" days.

USEPA Response

Attainment has been demonstrated for 1990–1992, and 1991–1993, and an attainment level of emissions identified at which time no such voluntary program was being implemented in the Detroit-Ann Arbor area. Michigan has also demonstrated through emission projections that the precursor emissions will remain below the attainment year levels thorough the year 2005 without accounting for any emission reductions that may have resulted from implementation of a voluntary program. With respect to any possible impact of a voluntary emission reduction program on 1994 emissions, the USEPA notes that the commentor has not provided and the USEPA has no basis for attempting to assess the impact of such program on emission and monitored air quality levels. Thus, the USEPA has no basis for any determination regarding the impact of the program, and does not believe that speculation regarding such impacts provides a basis for disapproving the redesignation.

Comment

One commentor states that emission control programs mandated by the Act cannot be converted to contingency measures, that the Act does not authorize conversion of required emission reduction programs to contingency measures and that section 175A(d) imposes a mandatory duty on an area that is redesignated to continue the emission control programs the area adopted prior to redesignation. The commentor further elaborates by stating that "the SIP implementation requirement is included in the section discussing contingency provisions because contingency provisions automatically become effective if an area fails to implement the applicable SIP requirements. Inclusion of the provision in section 175A(d) does not by any stretch of statutory interpretation authorize converting a control measure that must be complied with now to a contingency measure that only need be complied with at some later date, if ever." The commentor also contended that allowing the conversion of mandatory control programs to contingency measures is bad policy since the public will suffer harmful exposure during the time necessary to implement the program after the event triggering the contingency measures occurs. According to the commentor, the delay would be exacerbated due to the USEPA's failure to require adopted regulations for the programs.

USEPA Response

The Act contains many requirements that States adopt certain measures specifically for nonattainment areas. Those requirements do not by their own terms continue to apply to an area after it has been redesignated to attainment. Moreover, nothing in section 175A itself suggests that these requirements must continue to be met in redesignated areas. Section 175A(d) is specifically and clearly applicable to contingency provisions and their inclusion in a section 175A maintenance plan. Section 175A(d) establishes that SIP revisions submitted under 175A must contain contingency provisions, as may be necessary, to assure that the State will promptly correct any violation of the ozone NAAQS that occurs after redesignation to attainment. It further requires that these contingency provisions include a requirement for the State to implement all measures with respect to the control of ozone that were in the nonattainment SIP before the area was redesignated. This provision clearly demonstrates that section 175A(d) contemplates that there may be fully adopted but unimplemented control measures in the SIP prior to redesignation that will be shifted into the maintenance plan as contingency measures. Nothing in section 175A suggests that the measures that may be shifted into the contingency plan do not include programs mandated by the Act when the area was designated nonattainment. As section 175A(a) requires adoption and implementation of measures to ensure maintenance, it indicates that measures may not be converted to contingency provisions unless the State demonstrates that the standard will be maintained in the absence of the implementation of such measures.

The USEPA disagrees with the commentor's assertion that its policy regarding the conversion of emission control programs mandated by the Act to contingency measures is bad policy due to delays that could occur. Programs required to be adopted and submitted to the USEPA prior to the submission of a redesignation request will already have been adopted and may be implemented with minimal delay in the event contingency measures are triggered. Such measures satisfy the requirement of section 175A(d) that the contingency provisions "promptly correct any violation of the standard which occurs after redesignation."

With respect to the commentor's specific assertions that the USEPA should require upgrades to basic I/M and NSR programs to be fully adopted by the State and approved by the USEPA prior to redesignation, the USEPA notes first that it does not interpret the Act to require Michigan to adopt the I/M upgrades fully now if it otherwise qualifies for redesignation to attainment. Rather, as evidenced in the USEPA's final I/M rule revisions, described above and in the proposal, Michigan is required only to adopt the upgrades as a contingency measure in order to meet the requirements for basic I/M in section 182(a)(2)(B)(i) and (b)(4). Michigan has done that. Under its submittal, Michigan must implement basic I/M 18 months from the date the Governor decides to implement the program as a contingency measure and Michigan's contingency plan contains other control measures which would result in near term emission reductions that will be more effective towards correcting a violation of the NAAQS than a NSR program, such as Stage I or Stage II vapor recovery.

The commentor also suggests that since the current ozone NAAQS is not sufficiently protective of public health the USEPA should not be concerned with over control. In response, as previously discussed, the USEPA is currently reviewing the ozone NAAQS. Unless and until the NAAQS is revised, the USEPA is to make judgements on the basis of the current NAAQS, e.g., determine whether a maintenance plan assures maintenance of the current ozone NAAQS.

Comment

One commentor noted that Stage II vapor recovery was expected to account for at least 22.5 tons per day (TPD) or 17 percent of the 15 percent ROP plan, that mobile sources account for 50

percent of air toxic emissions, and that refueling automobiles is the most significant source of benzene exposure for the average person. As proposed, the redesignation would finally eliminate Stage II vapor recovery from the SIP. An improved I/M program was expected to account for reductions of 61.6 TPD or nearly half of the 15 percent ROP. The commentor adds that these 15 percent ROP measures may be contingency measures in the maintenance plan, rather than immediately required at any point in the future. Nevertheless, any such transfer of a maintenance measure in the SIP to a contingency measure, to be required only if certain triggering events occurred, must be accompanied by a demonstration that the SIP measures are no longer necessary for maintenance. Any proposed transfer and demonstration of justification of the transfer must be subject to public notice and comment, as required by the Act.

USEPA Response

Air toxic emissions or benzene exposure are not relevant to this rulemaking since it pertains to an ozone redesignation. Moreover, this redesignation in no way exempts the area from the air toxics requirements of section 112 or other provisions of the Act.

Since the area was able to demonstrate maintenance through an emissions projection analysis showing that future VOC and NO_X emissions will remain below the attainment year level of emissions (the level of emissions sufficient to attain the NAAQS), the USEPA concludes that currently required and future mandated control programs (e.g., FMVCP) are sufficient to provide for attainment and maintenance of the NAAQS. However, contingency measures in the maintenance plan are required in accordance with section 175A(d). The maintenance plan for the Detroit-Ann Arbor area contains contingency measures which would be implemented when triggered by a violation of the ozone NAAQS. USEPA guidance allows the transfer of SIP measures which came due prior to submittal of a complete redesignation request to the maintenance plan as contingency measures if the area demonstrates attainment without implementation of these measures and therefore, are unnecessary for attainment. The State has adequately demonstrated that maintenance will occur in the absence of the implementation of the measures cited by the commentor. Finally, the demonstration for the transfer was subject to public notice and comment during Michigan's public comment period and hearing, as well as the USEPA's comment period, as required by the Act.

Comment

One commentor notes that to be effective at restoring air quality when a post-redesignation violation occurs, contingency measures must include measures in the 15 percent ROP plan. In elaborating, the commentor notes that a contingency plan which lacks a program for enhanced I/M, Stage II and conformity is an empty box with no benefits. The precedent of "grandparenting" in moderate areas by allowing redesignation without requiring inclusion of the attainment plan's 15 percent plan as a contingency measure in the maintenance plan is a dangerous precedent for Region 5 to set. It has the potential to result in the gutting of the Act nationwide by a seemingly innocuous rulemaking at the Regional level.

It is unclear that the verification and tracking measures described at 59 FR 37199 (July 21, 1994) will ever actually trigger the requirement to implement the contingency plan.

USEPA Response

The contingency plan contains, as contingency measures, all of the unimplemented SIP control measures that were required prior to submittal of the complete redesignation request, including basic I/M, Stage II, Stage I expansion, and NO_X RACT. As noted in the proposal, Stage II is no longer a required measure due to the USEPA's promulgation of on-board vapor recovery requirements. In addition, the State has also included 7.8 RVP [12] and intensified degreasing for degreasing operations [13] as contingency measures. The USEPA does not believe that this contingency plan is an "empty box with no benefits" instead that the contingency measures in the plan would provide very real benefits in terms of potential emission reductions that the USEPA believes are adequate to deal with potential future violations. The area is not required to include all measures from its 15 percent plan in its contingency plan since the 15 percent plan was not an applicable requirement at the time the State submitted a complete redesignation request.

In addition, Region 5 is not setting a precedent of "grandparenting" of the 15 percent ROP requirement as contingency measures in the maintenance plan. This is consistent with national policy that has already been established and has been discussed above. See September Calcagni and September Shapiro memorandums.

Regarding transportation conformity, once redesignated, the Detroit-Ann Arbor area will be a maintenance area and, therefore, required to conduct emission analyses to determine whether the VOC and NO_X emissions remain below the motor vehicle emission budget established in the maintenance plan. The July 21, 1994 proposal (59 FR 37190) does address conformity with respect to the redesignation on p. 37196. The proposal further discusses that, although conformity is applicable in these areas, since the deadline for submittal had not come due for these rules, the approval of the redesignation is not contingent on these submittals to comply with section 107(d)(3)(E)(v). However, transportation and general conformity apply to maintenance areas and therefore, the Detroit-Ann Arbor area must comply with these rules once redesignated to attainment. The June 17, 1994 Conformity General Preamble (59 FR 31238) to the conformity regulations further clarifies this issue. According to the conformity rules and preamble, the Detroit-Ann Arbor area's conformity test will be to remain within the VOC and NO_X budgets established in the section 175A maintenance plan.

The July 21, 1994 notice does describe a tracking plan for updating the emission inventory. As discussed, the redesignation request commits Michigan to conduct periodic inventories every 3 years, provides a schedule for these submittals, and lists the types of factors used in projecting the emission inventories. The State notes that if the factors change substantially, the State would reproject emissions for the maintenance period to determine whether apparent increases in emissions are due to changes in calculation techniques or actual emissions. Although these periodic emission inventories are not a mechanism to trigger implementation of contingency measures, if the periodic inventories exceed the attainment level of emissions in the maintenance plan, the USEPA may issue a SIP call to the area under section 110(k)(5) on the basis that the State made inadequate assumptions in projecting the inventory used to demonstrate maintenance. In this event, the USEPA may require the State to correct the projection inventory and, if increases are projected, propose and

[12] Lower RVP to 7.8 psi may only be implemented as a contingency measure if the State submits and the USEPA finds, under section 211(c)(4)(C) of the Act, that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS.

[13] Intensified RACT for degreasing operations would entail requiring more stringent controls than are currently specified in Michigan Rules 611, 612, 613, and 614.

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ultimately implement maintenance measure(s) to lower the emissions to a level at or below the attainment year level. Since USEPA policy only suggests that level of emissions be included as a triggering mechanism or method of monitoring the area emissions, States are provided the flexibility not to include such a triggering mechanism.

The Detroit-Ann Arbor area's contingency plan contains one trigger, a monitored air quality violation of the ozone NAAQS, as defined in 40 CFR section 50.9. The trigger date will be the date that the State certifies to the USEPA that the air quality data are quality-assured, and no later than 30 days after an ambient air quality violation is monitored. Once the trigger is confirmed, the State will implement one or more appropriate contingency measures based on a technical analysis using a UAM analysis. The Governor will select the contingency measures within 6 months of the trigger. The control measures which may be used as contingency measures within the maintenance plan are I/M upgrades, NO_x RACT, Stage I expansion, Stage II, RVP reduction to 7.8 psi and intensified RACT for degreasing operations. As explained in the proposal, the USEPA believes that these measures are adequate to restore air quality in the event of a post-redesignation violation.

Comment

The commentor notes that the Detroit-Ann Arbor area is the fastest growing business area in Michigan, and that "if regulations are not implemented now, it will take years for companies to comply with new regulations added later." [sic] Local industry should have to implement common-sense, cost-effective, pollution-control measures to protect the people in the area.

USEPA Response

The area is currently implementing numerous emission control measures and will continue to do so even after redesignation to attainment for ozone. While the area may be growing, the State has considered the impacts of growth not just in mobile sources, but also industrial sources of ozone precursors in its maintenance plan. The State has adequately shown that permanent and enforceable controls will continue to more than offset the impact of any such growth through the maintenance period as its projections indicate that emissions will decrease during the maintenance period. In the event, the area is redesignated and happens to record a violation of the ozone NAAQS, however, the section 175A maintenance plan specifies control measures which would be implemented as contingency measures in accordance with the schedules specified in the July 21, 1994 and this final rule.

Comment

One commentor notes that the maintenance plan and contingency measures are not likely to protect maintenance of the NAAQS for ozone, because the timeline for implementing corrective measures is too protracted, providing too little protection, too late.

USEPA Response

For clarification, the contingency measures are intended to provide for maintenance by addressing a violation of the ozone NAAQS; maintenance measures serve to provide for maintenance of the NAAQS. The contingency measure implementation schedules were derived from the Act and applicable State and Federal regulations. As explained in the proposal and this final action, the schedule established for the implementation of contingency measures provides for the implementation of such measures as soon as within one year of a violation. Also, as explained in the proposal, the USEPA believes that this schedule satisfies the criterion of section 175A regarding the need for contingency measures to promptly correct violations of the standard occurring during the maintenance period.

Comment

One commentor alleges that the maintenance demonstration relies on fleet turnover with new cars required to have on-board canisters and perhaps enhanced fuel efficiency to create reductions of VOC emissions sufficient to compensate for the steady growth of VMT [14] and keep Southeast Michigan in attainment. With an average time for fleet turnover of 10 to 15 years, those measures will have little effect on maintenance of attainment in the near term.

USEPA Response

The State is not relying on on-board canisters in its emission projections through the maintenance period. The maintenance demonstration through emission projections must demonstrate that the emissions will not exceed the attainment year inventory. See General Preamble (April 16, 1992, 57 FR 13498) and September Calcagni memorandum. Michigan has demonstrated that, by considering the effects of permanent and enforceable control programs (not including the on-board vapor recovery rule), as well as, growth in the area (including VMT growth), through the year 2005 emissions will remain below the attainment year inventory. See 59 FR 37190, tables on p. 37198. Neither the Act nor USEPA guidance specifies or suggests that the State achieve other emission reductions during the maintenance period. The USEPA reviewed the projection inventory methodologies and found them to be appropriate. Furthermore, transportation conformity provides another emission management mechanism. The transportation conformity rules (November 24, 1993, 58 FR 62188) and General Preamble (June 17, 1994, 59 FR 31238) apply to nonattainment and maintenance areas. The General preamble clarifies that conformity analyses must demonstrate that VOC and NO_x emissions will remain within the motor vehicle emission budget as approved in a section 175A maintenance plan.

Comment

One commentor states that an ozone precursor, NO_x, can scavenge ozone. For this reason, NO_x controls can actually increase ozone levels in metropolitan areas while beneficially affecting downwind areas. The lack of NO_x controls in the Metropolitan Detroit area would help in attaining the 120 ppb ozone standard but this approach would have no net benefit downwind (southwestern Ontario). The commentor concludes that both NO_x and VOC must be controlled. Another commentor notes that there is too little information about the interaction between VOC and NO_x to justify granting an exemption from NO_x controls.

USEPA Response

Section 182(f)(1)(A) of the Act allows the Administrator to exempt an area outside an ozone transport region from the section 182(f) NO_x requirements, if the USEPA determines that "additional reductions of [NO_x] would not contribute to attainment" of the ozone NAAQS in the relevant area. It is clear that if an area has demonstrated attainment of the ozone NAAQS with 3 consecutive complete years of air quality monitoring data, additional NO_x reductions would not contribute to attainment, since the area has already attained. Therefore, a State may submit a petition for a section 182(f) exemption based on air quality monitoring data showing attainment of the ozone NAAQS. The USEPA's approval of such

[14] VMT is the number of miles traveled by vehicles of various types, preferably for each link of the highway system.

an exemption is granted on a contingent basis, i.e., the exemption would only be valid as long as attainment of the ozone NAAQS continues. If prior to final action to redesignate the area to attainment the USEPA determines that a violation of the NAAQS occurred, the section 182(f) exemption would no longer apply, as of the date of such a determination. See December 1993 guidance document Guideline for Determining the Applicability of NO_x Requirements under Section 182(f), and the May 27, 1994 memorandum from John Seitz, Section 182(f) NO_x Exemptions—Revised Process and Criteria. In addition, the May 27, 1994 Seitz memorandum, page 3, n. 7, states that while NO_x reductions in areas that request and are granted a section 182(f) exemption may not contribute to attainment, they may contribute to maintenance and must be addressed in the maintenance plan required for redesignation. The Detroit-Ann Arbor area submitted a section 182(f) NO_x exemption on November 12, 1994 based on 3 consecutive years of monitoring data demonstrating attainment of the ozone NAAQS. The Detroit-Ann Arbor area submitted the appropriate NO_x documentation in their redesignation maintenance plan. By doing so, the State has demonstrated a commitment to control NO_x if it is deemed necessary to maintain the ozone standard. The USEPA approved the section 182(f) NO_x exemption petition for the Detroit-Ann Arbor area in a final USEPA action published elsewhere in this **Federal Register**.

With respect to the aspects of the comments relating to the effects of NO_x controls or the lack of NO_x controls on ambient air in Canada, the USEPA refers the reader to the responses to the comments set forth below.

In addition, the redesignation request establishes VOC and NO_x emission budgets, establishing emission levels adequate to attain the ozone NAAQS. The State has also demonstrated through emission projections that the area's emissions will remain below the attainment year inventory through the year 2005. Consequently, the State has demonstrated that NO_x levels will not exceed current levels through the maintenance period.

In response to the commentors note that there is too little information about the interaction between VOC and NO_x to justify granting an exemption from NO_x controls, the USEPA refers the commentor to the NO_x/VOC Study released by the USEPA on July 31, 1993. Congress provided that USEPA decisions on personal petitions for NO_x exemptions under section 182(f)(3) be triggered by publication of this 185B report. Consequently, the USEPA believes that this provides evidence that Congress appears to have believed the results of the 185B study would supply sufficient information for the Agency to grant section 182(f) exemptions. The USEPA refers the commentor to the final rulemaking approving the section 182(f) NO_x exemption petition for the Detroit-Ann Arbor area published elsewhere in this **Federal Register**.

Nonetheless, as demonstrated by the emission projections for the 10-year maintenance plan submitted by Michigan, continuing reductions in NO_x emissions are expected (primarily from mobile sources as a result of FMVCP). Also, additional NO_x emission reductions are expected from implementation of the NO_x controls required by title IV of the Act. Designation status of an area is irrelevant in the applicability of title IV requirements; consequently, subject sources in the Detroit-Ann Arbor area will be required to comply with these requirements.

Comment

One commentor notes that the action of proposed redesignation is a product of undue haste and that the final decision on redesignation should await data from Canada's study of ozone levels at its receptors which are downwind of Southeast Michigan. A number of other commentors suggested that the USEPA respond to concerns expressed by Ontario and Canada prior to making any decision. Another commentor suggests that the USEPA obtain and assess ambient ozone levels prior to proceeding with the redesignation.

USEPA Response

The USEPA has received comments and information from a number of Canadian interests. All comments from commentors in Canada have been considered as the USEPA made a final decision on this action, and are addressed within this final rulemaking. As explained below, the USEPA does not believe that these comments warrant a deferral of final action on this redesignation.

Comment

One commentor states that between 60 percent-80 percent of toxic air pollutants in Windsor's ambient air are transported from the City of Detroit and other U.S. areas northwest of Windsor. Another commentor suggests that the technology needed to reduce ozone closely parallels the technology needed to abate toxic air pollutants in the region. By designating the area as attainment, the region will no longer be required to include ozone reduction technology in the State of Michigan's SIP under the Act. This could eliminate further technological improvements that would not only reduce ozone levels but also contribute to the abatement of toxic air pollution. Since the Governments of the United States and Canada, in their Reference to the International Joint Commission (IJC), have emphasized that the IJC address the impacts of toxic air pollution problems in the region, the IJC cannot support any move that would result in less stringent controls which have direct impact on minimization of ozone levels and reduction of toxic chemical emissions. Consequently, the commentor strongly disagrees with the proposed USEPA redesignation and recommends against it. The commentor believes that the control requirements of the Act for this area should be implemented.

USEPA Response

This redesignation is for ozone. Toxic air pollutants are not relevant to the issue of whether an area should be redesignated due to its attainment of the ozone NAAQS. Separate from this redesignation, the State is required to meet other requirements of the Act specifically to control air toxics emissions. The ozone redesignation would not exempt the area from implementing section 112 of the Act, which is intended to address the control of hazardous air pollutants. Rules promulgated pursuant to section 112 are applicable to sources regardless of an area's attainment status.

In addition, sources of ozone precursors in the Detroit-Ann Arbor area must continue to implement all control equipment and/or measures in accordance with applicable rules, regulations and permits. Consequently, the redesignation would not result in less stringent controls than are currently being implemented in the Detroit-Ann Arbor area.

Comment

One commentor notes that Canada and Ontario are assembling data from Canadian monitoring stations which are directly relevant to the decision as to whether the Detroit-Ann Arbor area is currently meeting the prescribed Act requirements with respect to ozone. The commentor states that this information and other points will be provided to the Department of State on October 17, 1994. (On October 17, 1994 a document entitled Canada/Ontario Technical Component of the Canadian Comment on the Michigan/Ann Arbor Ozone Redesignation Request was submitted.

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This document was prepared by Environment Canada and the Ontario Ministry of the Environment and Energy). The commentor expects that this information would be considered in any final decision. A copy of the September 23, 1994 letter from the IJC to Warren Christopher, Secretary of State, was attached. Another commentor claims that the Canadians in Southern Ontario are affected by some of the worst smog episodes in Canada. Many commentors state that much, if not all, of the ground level ozone in Southern and Southeastern Ontario is a result of transboundary movement of ozone and NO_x from the U.S. to Canada. Michigan is a significant source of the ozone and NO_x coming from the U.S. A number of commentors provided monitoring data from monitors located in Southwestern Ontario and the Detroit-Ann Arbor area and assert that high ozone levels recorded in the Detroit-Ann Arbor area correspond directly with high ozone levels which exceed Ontario's ozone standard. Some commentors noted that high levels of ozone in Ontario may be the cause of increased respiratory problems. Another commentor noted that a recent study in southern Ontario indicates that hospital admissions for respiratory problems has increased due to ozone and acidic air pollution. This situation is occurring at ozone levels well below the 125 ppb averaged over one hour. Another commentor suggests that being another sovereign nation and not a neighboring State, Canada is denied protection available to downwind States adversely affected by emissions from upwind neighbors within the U.S. Another commentor notes the damaging effect of ozone on agricultural crops.

USEPA Response

The USEPA has considered the October 17, 1994 submittal referred to and all other information provided by the Canadian Government and other commentors on these issues.

The following provides a synopsis of the USEPA's review of the October 17, 1994 document submitted by Environment Canada and the Ontario Ministry of the Environment and Energy. The document contains, among other elements, some ozone monitoring data. However, the ozone monitoring data was inadequate for the USEPA to assess whether a violation of the U.S. ozone NAAQS occurred in Canada. Consequently, on November 1, 3 and 24, and December 14 and 19, 1994 the USEPA obtained clarifying information from the Ontario Ministry of the Environment and Energy on the ozone monitoring data submitted.

In reviewing the Canadian ozone monitoring data, the USEPA examined each 3-year interval from 1990 through 1994 as well as associated wind patterns. Based on a review of the Canadian report and the clarifying information, the monitoring data demonstrates that there has not been a violation of the U.S. ozone NAAQS at the Windsor (University or South), Sarnia, Merlin, Mandaumin, London, Longwoods, or Parkhill monitors for the timeframe 1990–1992, 1991–1993, or 1992–1994. In fact, the only monitors that have recorded violations of the U.S. ozone NAAQS are the Grand Bend monitor and Tiverton monitor, which are located more than 90 miles and 140 miles away from the Detroit-Ann Arbor area, respectively. The Grand Bend monitor recorded violations of the U.S. ozone NAAQS during the timeframe 1990–1992 with a number of expected exceedances of 1.67 and during 1991–1993 of 2.0. However, for the 1992–1994 period, there was no violation of the U.S. ozone NAAQS with a number of expected exceedances at 0.33. The Tiverton monitor recorded violations of the U.S. ozone NAAQS during the timeframes 1990–1992 and 1991–1993 with a number of expected exceedance of 2.0. However, during the 1992–1994 period, there was no violation of the U.S. ozone NAAQS.[15]

In addition, the modeling submitted on October 17, 1994 is limited and insufficient for purposes of implicating the Detroit-Ann Arbor area as the cause of elevated ozone levels in Ontario[16].

The ground level wind trajectories presented in the October 17, 1994 submittal, indicate that winds into Tiverton and the Windsor area pass through a number of urbanized areas in both the U.S. and Canada (the Windsor urbanized area). The USEPA also notes that such concentration may be attributable to or fostered by ozone precursor emissions generated within Canadian borders, since Windsor itself is an urban area with an estimated metropolitan population greater than 225,000. Thus, the extent of any contribution from the Detroit-Ann Arbor area to monitored ozone levels in Ontario cannot be determined with any degree of certainty on the basis of the information presently available to the USEPA. The data provided in the October 17, 1994 submittal are inadequate to provide a basis for determining the extent to which emissions from Michigan, and more specifically, the Detroit-Ann Arbor area, are contributing to ambient ozone levels in Ontario. As a consequence, the USEPA does not believe that the presently available information provides any basis for affecting its decision regarding the redesignation of the Detroit-Ann Arbor area.

The USEPA would like to note that the governments of the United States and Canada are in the process of developing a joint study of the transboundary ozone phenomena under the U.S.-Canada Air Quality Agreement. It is envisioned that this regional ozone study will provide the scientific information necessary to understand what contributes to ozone levels in the region, as well as, what control measures would contribute to reductions in ozone levels. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will decide what is an appropriate course of action. The USEPA may take appropriate action notwithstanding the redesignation of the Detroit-Ann Arbor area. Therefore, the USEPA does not believe that the contentions regarding transboundary impact currently provide a basis for delaying action on this redesignation or disapproving the redesignation. This is particularly true since approval of the redesignation is not expected to result in an increase in ozone precursor emissions and is not expected to adversely affect air quality in Canada. In fact, a decrease in both VOC and NO_x emissions from the Detroit-Ann Arbor area is expected over the 10-year maintenance period. See 59 FR 37190, July 21, 1994. It should also be noted that redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. NAAQS for any pollutant. As discussed previously, the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration[17],

[15] The October 17, 1994 submittal and subsequent clarifying information revealed that the Tiverton monitor recorded one exceedance in 1994. The exceedance, a value of 136 ppb, was recorded on April 24, 1994 at 7:00 PM. However, based on clarifying information provided by the Ontario Ministry of the Environment and Energy, this ozone value was invalidated. The strip chart recorder registered interference (electrical or otherwise) on April 24, 1994 between the hours of 5:00 PM through 8:00 PM and for 10:00 PM. Consequently, the data for these hours was invalidated by the Ontario Ministry of the Environment and Energy.

[16] Among the inadequacies were that the submittal had limited documentation on the model input parameters. The ADOM-GESIMA model is not a USEPA guideline model as listed in the Guideline on Air Quality Models, (revised in February 1993). Further model documentation is necessary for a comparative evaluation against USEPA guideline models.

[17] Such a demonstration must show that removal of a control program will not interfere with maintenance of the ozone NAAQS and would entail submittal of an attainment modeling demonstration with the USEPA's current Guideline on Air Quality Models. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled Ozone Redesignation Policy.

based on computer modeling, is approved by the USEPA. In this case, no previously implemented control strategies are being relaxed as part of this redesignation.

The health effects of acidic air pollution are not relevant to this ozone redesignation. However, the USEPA is aware of the study referenced by the commentor and is considering this study in the process of reevaluating the ozone NAAQS.

Further, apart from title I requirements related to the cessation of the Detroit-Ann Arbor area's status as an ozone nonattainment area, the area is and will continue to be required to satisfy all Act requirements. Other control programs required by the Act will be implemented in the area, regardless of the ozone designation, such as title IV NO_x controls, section 112 toxic controls and on-board vapor recovery requirements.

Comment

One commentor notes that recent information indicates that significantly high ozone readings have been recorded in the Town of Kincardine this summer. Kincardine is halfway up the eastern shoreline of Lake Huron, and therefore, the air quality in Kincardine is, for the most part, a result of emissions from Michigan. The commentor requests that the USEPA reconsider the redesignation of the area because it will have drastic effects on the communities on the eastern shore.

USEPA Response

Kincardine is more than 100 miles northeast of the Detroit-Ann Arbor area, the subject of the redesignation to attainment for ozone. Consequently, attributing elevated ozone levels in Kincardine to the Detroit-Ann Arbor area would be a complex task. It cannot be conclusively stated that emissions emanating from the Detroit-Ann Arbor area are, "for the most part," responsible for elevated ozone concentrations recorded at a monitor more than 100 miles away. As demonstrated by the wind trajectories provided by Canada as part of the October 17, 1994 submittal, it can be seen that air parcels travel through several U.S. and Canadian urbanized areas. Again, it is noted that the U.S. and Canada are cooperatively developing a regional ozone study to investigate the transboundary ozone phenomena.

Comment

One commentor states that the transboundary ozone issue points to the need to manage air quality in a regional context and notes that in their meeting of July 25, 1994 in Washington, Carol Browner, Administrator of the United States Environmental Protection Agency, and Sheila Copps, Deputy Prime Minister, Minister of the Environment, Canada, agreed to cooperate in regional management of the transboundary ozone problem. The commentor suggests that the Great Lakes region provides an ideal opportunity to advance this concept.

USEPA Response

Subsequent to the Browner/Copps meeting, the U.S. and Canadian Governments have met to discuss and develop a regional pilot program to address any potential regional transboundary ozone issue. This new regional pilot effort is being developed as a priority under the U.S.-Canada Air Quality Agreement.

Comment

One commentor states that the Southeast Michigan Council of Governments has discussed the redesignation at past meetings of the Windsor Air Quality Committee, at which local committee members pointed out their concerns to no avail. All information available suggests that the request for redesignation is without scientific merit at present, and is premature at best.

USEPA Response

Ambient air monitoring data in the Detroit-Ann Arbor area demonstrates that the area is attaining the ozone NAAQS. In addition, the State has met all applicable requirements under section 107 of the Act. As previously discussed, the U.S. and Canada are cooperatively developing a regional ozone study to investigate the transboundary ozone phenomena.

Comment

One commentor notes that the March 1991 formal agreement (the March 13, 1991 U.S.-Canada Air Quality Agreement) between the U.S. and Canada called for other parties to take steps to avoid or mitigate the potential risk posed by specific actions. On this basis, it is requested that the USEPA reconsider the consequences of approving this request for southeast Michigan. Another commentor refers to the March 13, 1991 Air Quality Agreement between Canada and the U.S. with respect to the effort of the two countries to address transboundary air pollution through "cooperative and coordinated action." Alleging that ground level ozone production in the Detroit-Ann Arbor area by its movement across the U.S.-Canada border has a significant impact on ozone production and general air quality in the Windsor Southwestern Ontario region of Canada, the commentor expresses concern that the Department of State chose not to provide the Canadian Government with formal advance notice of the intention of the USEPA to act on an issue which would have a major impact on transboundary air pollution.

USEPA Response

Paragraph 1 of Article V of the March 13, 1991 U.S.-Canada Air Quality Agreement states that "Each Party shall, as appropriate and as required by its laws, regulations and policies, assess those proposed actions, activities and projects within the area under its jurisdiction that, if carried out, would be likely to cause significant transboundary air pollution, including consideration of appropriate mitigation measures." Paragraph 2, specifies that parties shall notify each other of actions under paragraph 1. Since the action to redesignate the Detroit-Ann Arbor area to attainment does not result in a relaxation of existing control requirements or an increase in ozone precursor emissions, the USEPA does not believe that formal notification was necessary nor that this action poses a potential risk. Canada is well aware of this redesignation at this time. However, in the future, the U.S. intends to notify Canada of actions similar to this action as early as possible regardless of whether notification is required under the U.S.-Canada Air Quality Agreement. In addition, the U.S. will work with Canada to address tropospheric ozone in the context of the Air Quality Agreement as previously discussed.

Comment

A number of commentors believe that the air quality in the Detroit-Ann Arbor area has not improved but deteriorated in recent years. Recent developments have been detrimental to air quality, such as the operation of a trash incinerator which emits foul smoke into the air around the clock, particularly on weekends when businesses are closed. Instead of recycling, the City of Detroit chooses to pollute southeast Michigan and Ontario's air. Multitudes of industrial plants are located on the Detroit River whose smokestacks cast gray haze over everything, even on sunny days. One commentor lists a number of local facilities which it claims causes visible emissions and

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offensive odors. Another commentor states that Wayne county ranked #1 in amount of hazardous chemicals released through air emissions (as well as #1 in "suspected" carcinogens), and was fearful for her health and future because of current air quality. Another commentor claimed breathing problems caused by outdoor air. Wayne County was accused of posing numerous pulmonary health risks for residents. Improvements in air quality are necessary for the residents' safety and health.

USEPA Response

The July 21, 1994 **Federal Register** notice proposes to redesignate the Detroit-Ann Arbor area to attainment solely for ozone. The Detroit-Ann Arbor redesignation request satisfies the section 107(d)(3)(E) requirements. Among these requirements is that the area demonstrate attainment of the ozone NAAQS. See section 107(d)(3)(E)(i). The Detroit-Ann Arbor area has demonstrated through 3 consecutive years of complete air quality data, that the area has attained the ozone NAAQS. The area is and will continue to be required to satisfy all Act requirements pertaining to the emission of hazardous air pollutants. Further, existing facilities must continue to operate existing air pollution control equipment in accordance with applicable rules, regulations and permits, and sources that are problematic in terms of posing a nuisance to area residents may be referred to the State and local environmental enforcement staff for investigation. Retaining the area's current nonattainment designation for ozone would not affect visible emissions and/or offensive odors from the existing incinerator. In addition, certain new rules and regulations will still apply to area sources even if the area is redesignated to attainment for ozone; for example, Maximum Achievable Control Technology and additional controls under section 112 (air toxics) of the Act. With respect to the commentor's contention that improvements in air quality are necessary for residents' safety and health, it should be recognized that section 109 of the Act requires that the NAAQS, which must be based on established criteria and allow an adequate margin of safety, protect the public health. Unless and until it is revised, the current ozone NAAQS provides the pertinent standard for protecting public health.

Comment

Many commentors believe that designating the area to attainment would exempt the area from stricter clean air regulations. They believe that the USEPA should require local industry to implement common-sense, cost-effective pollution control measures, more stringent automobile emission testing (current testing is not effective), and service stations to install anti-pollution devices on gasoline pumps (Stage II). The USEPA should encourage that measures be taken to ensure that no pollution problems occur in the future.

USEPA Response

Redesignating the area to attainment for ozone does not exempt the State from implementing measures necessary for attainment. Further, additional regulations such as a basic I/M program, Stage II vapor recovery, or Stage I expansion are incorporated into the area's maintenance plan as contingency measures. The contingency measures selected by the State will be implemented if a violation is experienced.

Comment

One commentor requests the USEPA to require, and to make public, an independent, third party, statistical verification of air quality and related environmental health data to support or dispute claims made by local businesses, a senator and a governor. If monitoring in the southwest section of Detroit is ongoing, then there would be no question that tougher standards are needed.

USEPA Response

The State has established air monitoring networks, sampling and analysis procedures as well as quality assurance and control procedures that satisfy USEPA guidelines. The State will continue to operate its monitoring network after redesignation. Third party statistical verification of air quality data is not required by the guidelines applicable for the purposes of this redesignation.

Comment

One commentor stated that the USEPA should not redesignate the Detroit-Ann Arbor area because it is likely that the area will soon have to be redesignated back to nonattainment. The commentor also provided various information related to increasing VOC emissions and petroleum usage.

USEPA Response

The USEPA believes that Michigan has shown that the Detroit-Ann Arbor area has attained and can continue to maintain the NAAQS for ozone. In the event that a violation of the ozone NAAQS does occur in the future, however, the maintenance plan provides for the implementation of the State's contingency measures under section 175A to promptly correct any violations of the NAAQS, as required by the Act.

With regard to the commentor's contentions concerning VOC emissions and petroleum usage, the USEPA notes that in its showing of maintenance over a 10-year period, the State has technically assessed not only the impacts of reductions due to control programs, but also increases due to growth in all potential sources of emissions. These potential sources include petroleum usage in the mobile source and industrial source sectors. The State has shown in these assessments that reductions in emissions over the maintenance period will more than offset any increases in emissions of VOC. The USEPA's decisions must be based solely on whether Michigan's submission adequately addresses the statutory requirements applicable to redesignation. The USEPA has determined that it does, and is thus approving the redesignation request. Again, in the event that violations of the ozone NAAQS occur, Michigan must promptly implement its contingency measures such that the ozone NAAQS is once again attained and maintained.

II. Final Rulemaking Action

The USEPA approves the redesignation of the Detroit-Ann Arbor, Michigan ozone area to attainment and the section 175A maintenance plan as a revision to the Michigan SIP. The State of Michigan has satisfied all of the necessary requirements of the Act. The USEPA has also approved the section 182(f) NO_X exemption for the Detroit-Ann Arbor area in an action published elsewhere in this **Federal Register** which exempts the area from the section 182(f) NO_X requirements. As a consequence of this action, the USEPA also stops the sanctions clocks that had been started as a result of the findings made on January 21, 1994, regarding the incompleteness of the 15 percent ROP plan and the section 172(c)(9) contingency plan for the Detroit-Ann Arbor area and on May 11, 1994, regarding the basic I/M plan for the area.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 100 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, National parks, Nitrogen oxides, Ozone, Volatile organic compounds, Wilderness areas.

Dated: February 8, 1995.

Norman R. Niedergang,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraphs (c) (101) and (102) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(101) On November 15, 1993, the State of Michigan submitted as a revision to the Michigan State Implementation Plan for ozone a State Implementation Plan for a motor vehicle inspection and maintenance program for the Detroit-Ann Arbor area. Michigan submitted House Bill No. 5016, signed by Governor John Engler on November 13, 1993.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 5016 signed by the Governor and effective on November 13, 1993.

(102) On November 12, 1993, the State of Michigan submitted as a revision to the Michigan State Implementation Plan for ozone a State Implementation Plan for a section 175A maintenance plan for the Detroit-Ann Arbor area as part of Michigan's request to redesignate the area from moderate nonattainment to attainment for ozone. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_X RACT, and RVP reduction to 7.8 psi. Michigan submitted legislation or rules for basic I/M in House Bill No 5016, signed by Governor John Engler on November 13, 1993; Stage I and Stage II in Senate Bill 726 signed by Governor John Engler on November 13, 1993; and RVP reduction to 7.8 psi in House Bill 4898 signed by Governor John Engler on November 13, 1993.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 5016 signed by the Governor and effective on November 13, 1993.

(B) State of Michigan Senate Bill 726 signed by the Governor and effective on November 13, 1993.

(C) State of Michigan House Bill No. 4898 signed by the Governor and effective on November 13, 1993.

2. Section 52.1174 is amended by adding paragraphs (h) and (i) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(h) Approval—On January 5, 1993, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan for the 1990 base year emission inventory. The inventory was submitted by the State of Michigan to satisfy Federal requirements under section 182(a)(1) of the Clean Air Act as amended in 1990, as a revision to the ozone State Implementation Plan for the Detroit-Ann Arbor moderate ozone nonattainment area. This area includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties.

(i) Approval—On November 12, 1993, the Michigan Department of Natural Resources submitted a request to redesignate the Detroit-Ann Arbor (consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties) ozone nonattainment area to attainment for ozone. As part of the redesignation request, the State submitted a

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maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_X RACT, and RVP reduction to 7.8 psi. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Michigan Ozone State Implementation Plan for the above mentioned counties.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323 the ozone table is amended by revising the entry for the Detroit-Ann Arbor area for ozone to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
. . . . .				
Detroit-Ann Arbor Area:				
Livingston County	April 6, 1995	Attainment		
Macomb County	April 6, 1995	Attainment		
Monroe County	April 6, 1995	Attainment		
Oakland County	April 6, 1995	Attainmnet		
St. Clair County	April 6, 1995	Attainment		
Washtenaw County	April 6, 1995	Attainment		
Wayne County	April 6, 1995	Attainment		
. . . . .				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–5445 Filed 3–6–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[IL001; FRL–5164–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by Illinois for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: March 7, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzecky, 77 West Jackson Boulevard, Permits and Grants Section AR–18J, Chicago, Illinois 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 30, 1994, EPA proposed interim approval of the operating permits program for Illinois. See 59 FR 49882. The EPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for Illinois.

II. Final Action and Implications

A. Analysis of State Submission

The EPA received comments from a total of four organizations. The EPA's response to these comments is summarized in this section. Comments supporting EPA's proposal are not addressed in this notice; however, EPA's response to all comments is available in a document contained in the docket at the address noted in the **ADDRESSES** section above.

1. Section 112(G) Implementation

The EPA received several comments regarding the proposed approval of Illinois' preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Two commentors argued that Illinois should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commentors also argued that Illinois' preconstruction review program cannot serve as a means to implement section 112(g) because it was not designed for that purpose. One commentor also asserted that such a regulatory program is unconstitutional because the section 112(g) requirements are vague.

In its proposed interim approval of Illinois' part 70 program, EPA also proposed to approve Illinois' preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Illinois must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Illinois' preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Illinois of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Furthermore, EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Illinois currently lacks a program designed specifically to implement section 112(g), Illinois' preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Illinois to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit. Illinois will be able to impose federally enforceable measures reflecting MACT for most if not all changes qualifying as a modification, construction, or reconstruction under section 112(g) because Illinois' preconstruction permitting program is not limited to criteria pollutants. 415 ILCS 5/9.1(d).

Another consequence of the fact that Illinois lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Illinois to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

In addition, one commentor incorporated by reference its comments on the proposed section 112(g) rule, and stated that the proposed rule has technical, legal, and constitutional defects that disqualify it as a valid or workable approach to section 112(g) implementation. The EPA believes the appropriate forum for pursuing objections to the legal validity of Federal regulations is by: (1) Submitting comments on a proposed rulemaking during the public comment period for that particular rulemaking, or (2) petitioning for review of the promulgated rule in the D.C. Circuit Court of Appeals. If the commentor has concerns with the final section 112(g) rule, the commentor will have the opportunity to pursue such action once the section 112(g) rule is promulgated.

Two commentors assumed that EPA would delegate the section 112(g) requirements to the State. The EPA wishes to clarify that the implementation of section 112(g) by the State, including case-by-case MACT determinations, is a requirement for approval of a State title V program. In other words, approval of the title V operating permits program confers on the State responsibility to implement section 112(g). Since the requirement to implement section 112(g) lies with the State in the first instance, there is no need for a delegation action apart from the title V program approval mechanism, except where the State seeks approval of a "no less stringent" program under 40 CFR part 63 subpart E. EPA's approval of Illinois' program for delegation of section 112 standards as promulgated does not affect this responsibility to implement section 112(g).

2. Variance

EPA received two comments regarding the variance provisions contained in Illinois' existing regulations. The commentors objected to EPA's position that State variances are not recognized by EPA unless a variance is issued in accordance with part 70 procedures. The commentors stated that dismissing all State-issued variances would conflict with part 70. The commentors also stated that while part 70's requirements for compliance schedules do not sanction non-compliance by a source, variances provided by the state are consistent with the recognition of non-complying sources and the requirement for compliance schedules in the permit application.

EPA agrees with the commentors that variances provided by the State could be consistent with the issuance of a part 70 permit. The inclusion of a compliance schedule in a part 70 permit is a part 70 requirement and, therefore, a State variance from the applicable requirements at the time of permit

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issuance that is provided to a non-complying source may not be inconsistent with part 70. EPA would not, however, recognize variances that grant relief from the duty to comply with the terms of an issued federally enforceable part 70 permit except where such relief is granted through procedures allowed by part 70. Once again, EPA is not taking any action on Illinois' variance procedures. The Agency is only clarifying that all variances provided by the State for title V sources must be granted in accordance with part 70.

3. Insignificant Activities

Four commentors responded to EPA's proposed concerns regarding Illinois' draft insignificant activities regulations. In response to these comments EPA reviewed the draft regulations a second time. On February 2, 1995, EPA formally received a final copy of these regulations for inclusion in the State's CAAPP submittal. Please see the docket for a more detailed review of the Illinois rule.

All commentors objected to EPA's interpretation that the threshold levels of 1.0 pound per hour (lb/hr) of criteria pollutants and .1 lb/hr of HAP in 35 Illinois Administrative Code (IAC) Part 201.211 are not acceptable. These cut-off rates mentioned above are contained in the State's provision, "Application for Classification as an Insignificant Activity." 35 IAC 201.211. One commentor stated that the more appropriate classification of insignificant activities lies in different sections of the State's regulations. The section referred to by the commentor distinguishes between HAP and non-HAP emissions. For HAP calculations, the rule relies on concentrations of HAPs in the form of raw material fed to an emission unit. 35 IAC 201.209(a)(1)(A)–(C). For non-HAPs, the rule refers to emission units that never exceed .1 lb/hr or .44 tpy. 35 IAC 201.210(a) (2) and (3). Although EPA cannot now determine whether or not the HAP calculations would result in emissions in amounts greater than the significance limits that will ultimately be finalized in the section 112(g) rulemaking, EPA also believes that the non-HAP provisions in 35 IAC 201.210(a) (2) and (3) do not now pose a problem for approval of the State's submittal. The Agency, therefore, is taking no action on these provisions. EPA originally objected to 35 IAC 201.210(a)(1), however, because this provision includes emissions determined to be insignificant according to the provisions in 35 IAC 201.211 (allowing sources to apply for insignificant activities that are granted by IEPA's discretion). The regulatory sections offered by the commentor, therefore, are not entirely dispositive of the issue.

Upon further reflection, EPA generally agrees with the commentors that the rate itself of 1.0 lb/hr of criteria pollutant emission cut-off contained in 35 IAC 201.211 need not be amended for full approval. Emission cut-offs approved for insignificant activities are based upon State-specific circumstances and analysis. One State's cut-offs may not be appropriate for another State's programs due to variations in local factors such as non-attainment areas, State Implementation Plans (SIP), source types, and emissions. EPA believes the State should be given substantial deference in this matter and finds the insignificance levels established by Illinois will not, in and of themselves, interfere with the State's ability to ensure that part 70 sources meet all applicable requirements of the SIP. Although a severe ozone nonattainment area exists in the State, EPA believes that it is reasonable in this case to project that the insignificant levels established in the State of Illinois' regulations will not interfere with its effort to be reclassified as attainment. Illinois believes that this level will not only reduce its administrative burden, but allow it to eventually meet its attainment demonstrations.

The Agency, however, is still concerned with the development of these regulations and continues to believe that interim approval is appropriate for these rules at this time. 35 IAC 201.208 of the State's rule does not meet the requirements of 40 CFR 70.5(c), which requires that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirements, or to evaluate the fee amount required under the schedule approved pursuant to 40 CFR 70.9. These provisions are intended to ensure that sources do not file incomplete permit applications due to inadvertent usage of a State's insignificant activity provisions. In addition, 35 IAC 201.210(b) must be amended to clarify that a source must specifically list in its permit application the activities present at its facility and not just rely on a general statement that denotes the presence of activities.

Although the emission cut-offs for criteria pollutants are not a concern at this time, revisions to the State's insignificant regulations will still be necessary for full approval of the State's program. EPA believes the State must make the following changes for full approval: (1) the language of 201.208 must worded to state that at the time of filing an application, the application must include all necessary information to determine the applicability of or to impose any applicable requirements or fees and (2) 201.210(b) must be amended so that sources specifically list the insignificant activities present at their facilities.

4. Administrative Amendments

EPA received three comments on the inclusion of the State's incorporation of emission trades based upon a SIP-approved trading program into a title V permit based upon the administrative amendment procedure. Two of the commentors requested clarification as to whether EPA intends to subject emissions trading that occurs under an emissions cap established in a part 70 permit to significant modification procedures. One commentor stated that it is not necessary for EPA to consider this provision now since Illinois has no such regulations developed concerning emissions trading.

Responding to the commentors' request for clarification, EPA does *not* interpret part 70 to require states to subject emissions trades that occur under an emissions cap established in a part 70 permit to significant modification procedures. These trades are established by a part 70 permit and, therefore, sources do not need to revise their part 70 permits when utilizing these trading provisions.

Part 70, however, does not allow the use of an administrative permit amendment to accomplish incorporation of emissions trades resulting from the application of an approved economic incentives rule, a marketable permits rule or a generic emissions trading rule into a part 70 permit. 40 CFR 70.7(d). Any substantive change to a permit term or condition must follow the permit revision procedures of part 70. Future part 70 rulemakings may change this requirement, but for the present, EPA can only review State submittals in accordance with the promulgated part 70 rulemaking of July 21, 1992.

Despite the fact that Illinois does not currently have an approved trading program, it is appropriate for EPA to now consider this State legislative provision allowing emission trades to be incorporated through the administrative amendment procedure. EPA cannot approve regulations in a State program that would conflict with provisions in the part 70 regulations.

5. Compliance Certification

Three commentors objected to EPA's proposed interim approval regarding the State's legislation concerning compliance certification by a responsible official. The Illinois statute requires that applications be certified for truth, accuracy, and completeness by a responsible official in accordance with applicable regulations. 415 ILCS 5/39.5(5)(e). Part 70 requires that certifications be based upon a "reasonable belief" or that statements be based upon "information and belief." 40 CFR 70.5(d) and 70.6(c)(1).

EPA agrees with the commentors to the extent that interim approval for this issue is not appropriate. Upon further review, Illinois' legislative authority for certification of responsible officials carries the same meaning as part 70. A responsible official of the permit applicant would presumably need to make some inquiry into the document being certified to ensure that the official's certification meets the requirements of the Illinois statute. In light of this, EPA will remove the compliance certification issue from the items needing further State action for final approval.

6. Enhanced NSR

Three commentors objected to EPA's proposal of interim approval for Illinois' inclusion of preconstruction review permits into part 70 permits via the administrative amendment procedures of part 70. To summarize, all three commentors object to requiring the development of specific regulations that would outline the substantive, procedural and compliance requirements necessary for incorporation of a preconstruction permit into a part 70 permit through the administrative amendment procedure. This incorporation of a preconstruction permit into a part 70 permit is known as "enhanced new source review (NSR)."

In EPA's proposal, EPA stated that 40 CFR 70.7(d)(1)(v) allows such incorporation only when the State's preconstruction review program meets procedural and compliance requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. To utilize 40 CFR 70.7(d)(1)(v), the state must develop regulations which outline the actual requirements necessary for preconstruction permits to qualify for inclusion in part 70 permits using the administrative amendment procedure and for EPA to approve these regulations as "substantially equivalent." Without these regulations, the public and EPA cannot track the issuance and amendments of part 70 permits to ensure that the permits contain all requirements. The public also needs assurance that a source will not be able to avoid the requirements of the part 70 process through a different permitting program such as preconstruction review.

Although 40 CFR 70.7(d)(1)(v) is not a necessary element of a part 70 program, the State of Illinois submitted a title V permit program that provides for the use of this procedure. EPA, therefore, must determine the adequacy of this aspect of the State's submittal. Because Illinois' existing legislative authority allows the use of enhanced NSR, without any further regulations defining substantially equivalent procedures to 40 CFR 70.6, 70.7 and 70.8, this provision is currently deficient. To cure this deficiency, the State must: (1) develop regulations outlining the exact substantive, procedural and compliance requirements for incorporation of preconstruction permits into part 70 permits and (2) submit these regulations to EPA for review and approval to ensure that these regulations are "substantially equivalent" to the part 70 regulations.

415 ILCS 5/39.5(13)(c)(v), therefore, will remain on the interim approval list until the State corrects this deficiency. Until regulations are developed outlining the elements of an enhanced NSR program, the State will be expected to interpret "substantially equivalent" in 415 ILCS 5/39.5(13)(c)(v) consistently with part 70.

7. Knowingly Tampering with Monitoring Devices

Two commentors objected to EPA's inclusion of Illinois' statutory provision concerning enforcement of knowingly tampering with any "monitoring device or record." 415 ILCS 5/44(j)(4)(D). Part 70 requires that criminal fines be imposed upon one who knowingly renders inaccurate any required "monitoring device or method." 40 CFR 70.11(a)(3)(iii). One commentor stated that Illinois' enforcement provision is identical in meaning and effect to the language in part 70 and is appropriate in the context of Illinois' law.

Upon further review, EPA agrees with the commentors that the Illinois legislative provisions for enforcement for knowingly tampering with monitoring devices or records is equivalent in meaning to the requirements of part 70. EPA will, therefore, remove from the list of interim approval issues the requirement that the State make a legislative change to its enforcement provisions.

8. Prompt Reporting of Deviations

EPA received two comments supporting its review of Illinois' submittal concerning the prompt reporting of deviations from permit conditions required by 40 CFR 70.6(a)(3)(iii)(B). Because Illinois did not include a definition of "prompt" in its legislation or regulations, an acceptable alternative is for the State to define "prompt" in each part 70 permit. This definition will be dependent upon the individual circumstances of each source.

The commentors, however, believe that the EPA must revise several of its earlier interim approval notices, in which the Agency conditioned final approval on including a definition of prompt in the State program, in order to provide a consistent application of the appropriate interpretation of its rules. EPA is not aware of any program approval notices that need to be corrected at this time.

B. Additional Issues

The Illinois Environmental Protection Agency (IEPA) informed the EPA, after publication of the proposed interim approval of the State's title V program, that the State cannot meet its January 1, 1995, commitment for an effective acid rain program. In light of the structure of existing state legislation, in order for an eventual full approval of the State's CAAPP, the State must incorporate by reference the Federal acid rain program into the State's existing CAAPP legislation. 415 ILCS 5/39.5(17). IEPA requested an extension of its commitment to incorporate by reference the Federal program so that the State can combine this incorporation by reference with the amendments to its CAAPP legislation required for interim approval. This presentation to the legislature would occur in the January, 1996, legislative session, rather than the January, 1995, session originally contemplated. IEPA argues that amending its CAAPP legislation once rather than twice would not interfere with the State's implementation of Phase II of the Acid Rain Program.

On January 9, 1994, EPA received a letter from Bharat Mathur, Chief, Bureau of Air, IEPA, to Stephen Rothblatt, Chief, Regulation Development Branch, EPA Region 5, detailing why the State cannot meet its January 1, 1995, commitment and reiterating its commitment to implement the Acid Rain program.

Due to the State's existing enabling legislation for titles IV and V and its commitment to implement the acid rain program in the interim period between

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this final notice and an effective incorporation by reference of the Federal acid rain program into the State's legislation, EPA believes an extension of the State's commitment to adopt acid rain legislation is appropriate. Existing State legislation allows the State to collect applications for Phase II affected source and allows the State to process these applications and evidences the State's ability to implement the Federal acid rain program in accordance with all Federal regulations. 415 ILCS 5/39.5(17). Until the State officially incorporates the Federal acid rain program by reference, EPA expects the State to use its broad legislative authority for the receipt and processing of phase II applications in accordance with all Federal regulations.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by Illinois on November 15, 1993. The State must make the following changes to receive full approval:

1. The State must correct all deficiencies in its insignificant activities regulations (refer to previous discussion of insignificant activities for actual changes);

2. The State must amend 415 ILCS 5/39.5(13)(c)(vi) to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit;

3. The State must develop regulations defining enhanced NSR for the purposes of implementing 40 CFR 70.7(d)(1)(v); and

4. Due to the State's present legislative provisions concerning the Acid Rain program, the State must incorporate by reference the federal regulations for implementation of the acid rain program.

The scope of Illinois' part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Illinois, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until March 7, 1997. During this interim approval period, the State of Illinois is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Illinois. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Illinois fails to submit a complete corrective program for full approval by September 9, 1996, EPA will start an 18-month clock for mandatory sanctions. If Illinois then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Illinois has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Illinois, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Illinois had come into compliance. In any case, if, six months after application of the first sanction, Illinois still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Illinois' complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Illinois has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Illinois, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Illinois has come into compliance. In all cases, if, six months after EPA applies the first sanction, Illinois has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Illinois has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program.

Moreover, if EPA has not granted full approval to the Illinois program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Illinois upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

The EPA is also promulgating approval of Illinois' federally enforceable state operating permit program (FESOP) for the purposes of creating federally enforceable limitations on the potential to emit of Hazardous Air Pollutants (HAP) regulated under section 112 of the CAA. The EPA is approving this program as meeting the criteria articulated in the June 28, 1989, **Federal Register** notice for State operating permit programs to establish limits federally enforceable on potential to emit and the criteria established in section 112(l).

The EPA is also promulgating approval of Illinois's preconstruction permitting program found in 35 Ill. Adm. Code 201–203, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the period between final promulgation of section 112(g) and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Illinois adequate time for the State to adopt any necessary regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including four public comments received and reviewed by EPA on the proposal, are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Effective Date

An administrative agency engaging in rulemaking must comport with the requirements of section 553 of the Administrative Procedures Act (5 U.S.C.A., chapter 5). Section 553 requires that an agency allow at least 30 days from the date of publication before the effective date of a substantive rulemaking. If, however, good cause can be shown, then the agency may impose an effective date of less than 30 days after publication. Good cause exists to initiate an effective date less than 30 days after publication when it is in the public interest and the shorter time period does not cause prejudice to those regulated by the rule. *British American Commodity Options Corp.* v. *Bagley*, 552 F.2d 482, at 488–89 (1977). For the reasons explained below, EPA believes that good cause exists for the effective date of Illinois' CAAPP to be the date of publication of this rulemaking.

An immediate effective date is in the public's interest for several reasons. The requirement for sources to submit CAAPP applications to the State is contingent in the Illinois regulations upon the effective date of the program, not the date of publication. All sources subject to title V in Illinois must submit their title V applications to the state within one year of the effective date of the State's program. Likewise, the collection of fees, hiring of permit engineers and analysis of applicants' permits cannot begin until the State's program is effective. Illinois' program, therefore, should be adopted without any further delay inasmuch as the public has been without the protection of this comprehensive regulatory program and because any further delay would not serve the public interest.

Although it is in the public's interest to commence Illinois' title V program upon the date of publication, EPA must ensure that this action will not have any prejudicial effects upon the regulated community. *Rowell* v. *Andrus*, 631 F.2d 699, at 702–703 (1980). For example, EPA must ensure that the regulated community has sufficient notice of this rulemaking and ample opportunity to comment. EPA believes that all interested parties have had sufficient notice of this rulemaking and ample time to comment. The development of the State's CAAPP occurred over the last few years. As such, it contains a combination of legislation and regulations. These regulations were all previously subjected to public comment at the State level. The State's legislation has been effective and fully enforceable as a matter of State law since September 26, 1992, and the first set of State CAAPP regulations became effective on June 10, 1993. Illinois' CAAPP program, therefore, has been fully effective and enforceable as a matter of State law for over the past year. In addition, EPA also subjected these same regulations and legislation to public comment when it published its proposed interim approval of the State's CAAPP on September 30, 1994. From the preceding facts, it is obvious that all interested parties have had ample time both to participate in the rulemaking process and to ready themselves to comply with this program.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. sections 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for Illinois in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Illinois

(a) The Illinois Environmental Protection Agency: submitted on November 15, 1993; interim approval effective on March 7, 1995, interim approval expires March 7, 1997

(b) Reserved

* * * * *

[FR Doc. 95–5516 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC28

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Gesneria pauciflora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Gesneria pauciflora* (no common name) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. This small shrub is endemic to Puerto Rico, where only three populations are known to exist in the western mountains in the municipalities of Maricao and Sabana Grande. The species is threatened by the potential for natural disasters and modification of its highly restricted habitat. This final rule extends the Act's protection and recovery provisions to *Gesneria pauciflora*.

EFFECTIVE DATE: April 6, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O Box

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491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Gesneria pauciflora is a small shrub currently known from only three populations in the western mountains of Puerto Rico. It was discovered by the German botanical collector Paul Sintenis on December 3, 1884, at "Indiera Fria" in Maricao, Puerto Rico. Numerous other botanists collected the plant from this same location throughout the years. A second population was discovered recently in the municipality of Sabana Grande, near the headwaters of the Seco River and a third from a small tributary of the Lajas River. Herbarium specimens indicate that the species has also been collected in the past from the Yaguez River and from Cerro Las Mesas (D. Kolterman and G. Breckon, pers. comm.). Population estimates are difficult due to the plant's habit of growing in dense mats; however, the largest population (Maricao River) has been estimated at approximately 1,000 individuals and the second (Seco River) at 50 (Proctor 1991; CPC 1992). Plants are known to occur in clusters of few to numerous individuals. Each population consists of clusters or colonies of individuals. D. Kolterman and G. Breckon (pers. comm.) have indicated that the population of the Maricao River consists of 12 colonies; the Seco River of 3; and the Lajas River of 2.

Gesneria pauciflora is a small gregarious shrub which may reach 30 centimeters in height and 8 millimeters in diameter. Stems may be erect or decumbent and the bark is smooth, gray-brown, and glabrous. The leaves are alternate and the terete or flattened petioles are from 2 to 7 millimeters long. Leaf blades are shaped like a narrow trowel, 2.8 to 9.2 centimeters long and .9 to 2.3 centimeters wide, membranous, dark green and glossy above, and pilose along the prominent veins. The margin is subentire toward the cuneate base and serrate to sublobate above. The inflorescences are one to few-flowered and the peduncles from 6.1 to 15.3 centimeters long and slightly curved. The pedicels are 1 to 2 centimeters long, reddish-brown, and pilose to glabrescent. The corolla is tubular, curved, 2 to 2.3 centimeters long, 4 millimeters wide at the base, narrowing to 3 millimeters but widening to 5 millimeters at the middle and again narrowing to 4 millimeters at the mouth. The 5-lobed corolla is yellow to yellow-orange and densely pilose outside but glabrous inside. The fruit is a capsule, approximately 4 millimeters long and wide, gray-brown, glabrescent, with 5 to 10 not prominent ridges (Proctor 1991).

At all known localities the species is found growing in rocky stream beds on wet serpentine rock, where water is constantly seeping. The plants may be submerged for a short time during periods of high water (D. Kolterman and G. Breckon, pers. comm.). The Maricao and Seco River localities are found within the Maricao Commonwealth Forest, managed by the Puerto Rico Department of Natural and Environmental Resources. However, the Lajas River population lies at the edge of the forested area and it is not certain whether the site falls within Commonwealth Forest property (D. Kolterman and G. Breckon, pers. comm.). The largest population is located in an area of steep unstable slopes and may be threatened by landslides and flood damage. Forest management practices such as trail construction may adversely affect the species. The Center for Plant Conservation (1992) assigned *Gesneria pauciflora* a priority 1 ranking, indicating that the plant could possibly go extinct in the wild within the next 5 years.

Previous Federal Action

Gesneria pauciflora was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened by the Service as published in the **Federal Register** notice of review dated December 15, 1980 (45 FR 82480); the November 28, 1983 update (48 FR 53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 51144) notices of review. The species was designated as a category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notices of review published on February 21, 1990, and September 30, 1993.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act, as amended in 1982. Beginning in October 1983, and in each October thereafter, the Service found that listing *Gesneria pauciflora* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *Gesneria pauciflora*, published on February 18, 1994 (59 FR 8165), constituted the final 1-year finding for the species in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the February 18, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general comment was published in the "El Dia" on March 18, 1994. Four letters of comment were received and discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural and Environmental Resources, both the Terrestrial Ecology Section and the Natural Heritage Program, supported the listing of the species as threatened.

The Puerto Rico Planning Board stated that although they did not have any proposed projects before them at this time that might affect the species, they would circulate the information within the agency in order that it could be considered upon receipt of projects.

Dr. Duane Kolterman and Dr. Gary Breckon provided additional information on a recently discovered population along a tributary of the Lajas River in or near the Maricao Commonwealth Forest as well as on historical records, biological information and threats. They state that survival of the colonies is dependent on water flow, water level, siltation and land slippage and that any major clearing or water removal upstream or water impoundment downstream may potentially harm the species. They stated that because of the absence of a management program in the Commonwealth Forest and the apparent loss of the species at two historical collection sites, the species should be designated as endangered rather than threatened. The Service, however, believes that current threats to the species are not imminent and that a classification of threatened is more appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Gesneria pauciflora* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gesneria pauciflora* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Gesneria pauciflora* is known from only three populations in western Puerto Rico. Although at least two of the populations are found within the Maricao Commonwealth Forest, a management plan for the Forest has not been prepared. Activities within the Forest may increase the potential for erosion of the steep unstable slopes where the species occurs. Management practices such as trail construction may directly affect the species. Because the plant has not been found more than 1 meter above or away from the water, any water removal upstream or water impoundment downstream may adversely affect this plant (D. Kolterman and G. Breckon, pers. comm.). Due to water shortages experienced by the whole island, the number of proposed water intakes has increased, which would result in a lower flow of water.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although an attractive plant, taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Gesneria pauciflora* is not yet on the Commonwealth list. Federal listing will provide immediate protection and, when the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur in a limited area, the magnitude of threat is extremely high. Landslides, floods and storm damage are natural occurrences that may affect the steep, unstable slopes associated with the species' habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Gesneria pauciflora* as threatened. Three populations are currently known, the largest one of which may contain as many as 1,000 individuals; however, at least two occur on land managed by the Commonwealth. Although limited in distribution, the species does not appear to be in imminent danger of becoming extinct. Therefore, threatened rather than endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for this species due to the potential for taking and vandalism. The number of individuals of *Gesneria pauciflora* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Gesneria pauciflora*, as discussed above. Federal involvement may occur through the use of federal funds (U.S. Department of Agriculture) for forest management practices.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species

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are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time of listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed or ongoing activities. Two of the three known populations of *Gesneria pauciflora* are located in the Maricao Commonwealth Forest. The third population lies on the border of the Maricao Forest and the ownership of this site is uncertain. Since there is no Federal ownership, and the species is not currently in trade, the only potential section 9 involvement would relate to removing or damaging the plant in knowing violation of Commonwealth law, or in knowing violation of Commonwealth criminal trespass law. Section 15.01(b) of the Commonwealth "Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico," states "It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico." The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Office (see **ADDRESSES** section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Regional Permit Coordinator, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/697–7110).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Center for Plant Conservation. 1992. Report on the rare plants of Puerto Rico. Center for Plant Conservation, Missouri Botanical Garden, St. Louis, Missouri.

Proctor, G. R. 1991. Status report on *Gesneria pauciflora* Urban. *In* Puerto Rican plant species of special concern: status and recommendations. Publicacion Cientifica Miscelanea No. 2, Department of Natural Resources, San Juan, Puerto Rico.

Author

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under flowering plants, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Gesneria pauciflora	None	USA (PR)	*Gesneriaceae*	T	578	NA	NA
.	.	.	.	.	.	.	.

Dated: February 15, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–5508 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 022895D]

Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock Fishery in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 1, 1995, until 12 noon, A.l.t., August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for the inshore component in the BS was established by the final groundfish specifications (60 FR 8479, February 14, 1995) as 167,344 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the first allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 162,344 mt with consideration that 5,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5434 Filed 3–1–95; 3:56 pm]

BILLING CODE 3510–22–F

VOL
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Proposed Rules

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–015A]

North Carolina State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks (i.e., the number of compliance personnel necessary to assure a "fully effective" enforcement effort) applicable to the North Carolina State plan. North Carolina's benchmarks of 83 safety inspectors and 119 industrial hygienists were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CIO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978), and revised on January 17, 1986 (51 FR 2481) to 50 safety inspectors and 27 industrial hygienists. The North Carolina State plan has reconsidered the information utilized in its initial revision of the State's 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the proposed revised benchmarks for North Carolina will provide the State with sufficient compliance personnel necessary to assure a "fully effective" enforcement effort and, consequently, should be approved.

DATES: Written comments must be received by April 11, 1995.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 *et seq.*) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the ensuing implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel (safety inspectors and industrial hygienists) necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring North Carolina to allocate 83 safety and 119 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplates subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983, OSHA and the State plan representatives initiated a comprehensive review of the 1980 benchmark and developed a formula that each State could use to revise its benchmarks when circumstances warranted such revision. (A complete discussion of both the 1980 benchmarks and the benchmark revision process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

The State of North Carolina participated in this benchmark revision process and, in September 1984, requested that the Assistant Secretary approve revised compliance staffing levels of 50 safety and 27 health compliance officers for a "fully effective" program responsive to the occupational safety and health needs and circumstances in the State. These revised benchmarks were approved by the Assistant Secretary on January 17, 1986 (51 FR 2481). In March 1989 the North Carolina House Appropriations Committee of the North Carolina General Assembly passed a resolution instructing the Commissioner of Labor to renegotiate the appropriate number of occupational safety and health compliance officers with OSHA. In June 1990 the State of North Carolina requested that the Assistant Secretary approve revisions to its 1984 compliance staffing benchmark levels which the State found to be more reflective of current occupational safety and health needs and circumstances within the State.

In September 1991, a catastrophic fire occurred at a poultry processing plant in North Carolina, resulting in the reinstitution of limited Federal concurrent jurisdiction and a special Federal evaluation of the State's occupational safety and health operations. The revision of North Carolina's benchmarks was suspended during this time. Significant legislative and budgetary changes were made in the North Carolina State program and, for Fiscal Year 1995, the State authorized compliance staffing of 64 safety and 51 health inspectors. The North Carolina Department of Labor has requested that the Assistant Secretary resume consideration of State's proposed revision of its benchmarks at this time.

The North Carolina plan, which was granted initial State plan approval on February 1, 1973 (38 FR 3041), is administered by the North Carolina Department of Labor. The exercise of concurrent Federal enforcement authority was suspended in North Carolina on February 20, 1975, with the signing of an Operational Status Agreement (April 15, 1975, 40 FR 16843). Limited Federal enforcement authority was reasserted on October 14, 1991 (56 FR 55193), but it is anticipated that this authority will be suspended in the near future. The plan was certified as having satisfactorily completed all of its developmental commitments on October 5, 1976 (41 FR 43901).

Proposed Revision of Benchmarks

In June 1990, the North Carolina Department of Labor (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for North Carolina in 1986. In accord with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, North Carolina reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised staffing benchmarks of 64 safety and 50 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary, by industry and size group, utilizing the 1989 Dun and Bradstreet listing of employers for North Carolina and Federal data on North Carolina's lost workday case rates for 1988) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). The State has historically spent an average of 12.4 hours on such inspections, and each State safety inspector is able to devote 1,440 hours annually to actual inspection activity based on State personnel practices. A total of 4,870 establishments have been added to the initial general schedule safety inspection universe of 3,216 establishments based upon the State's analysis of past injury and inspection experience to identify those additional employers or groups of employers most likely to have hazards that could be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile (e.g., construction) and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of North Carolina.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the 1984 County Business Patterns and the 1987 Dun and Bradstreet listings for North Carolina) in the 150 top high hazard Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure of health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 31.85 hours on such inspections, and each health compliance officer is able to devote 1,504 hours annually to actual inspection activity, based upon State personnel practices. A total of 2,955 establishments have been added to the initial general schedule health inspection universe of 2,028 establishments based upon the State's knowledge gained from inspection experience and other data on the extent of employee exposure to and use of toxic substances and harmful physical agents by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of North Carolina.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide for compliance staff sufficient to ensure a "fully effective enforcement program."

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to receive final approval under section 18(e) of the Act. The proposed revised benchmarks of 64 safety and 50 health compliance officers meet North Carolina's Fiscal Year 1995 allocated compliance positions of 64 safety and 51 health officers. (Of those allocated positions, 30 safety and 40 health inspectors are completely funded by the State; the remainder are funded on a 50/50 basis with State and Federal funds.) OSHA does not anticipate any significant increase in its appropriations whereby it would be able to provide 50 percent Federal funding for North Carolina to meet its proposed revised staffing benchmarks.) Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, Subpart I, which generally describes the North Carolina plan and sets forth the State's revised safety and health benchmark levels.

Documents of Record

A comprehensive document containing the proposed revision to North Carolina's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NE., Washington, D.C. 20210.

Regional Administrator—Region IV, U.S. Department of Labor, OSHA, 1371 Peachtree Street NE., Atlanta, Georgia 30367.

North Carolina Department of Labor, 319 Chapanoke Road, Raleigh, North Carolina 27603.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v.

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Marshall, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. Docket Number T–018 is available for public inspection and copying at the Docket Office of the U.S. Department of Labor, Room N–2625.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised North Carolina benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for North Carolina in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before April 11, 1995, and be submitted in quadruplicate to the Docket Office, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written submissions must be directed to the specific benchmarks proposed for North Carolina and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, Room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033))

Signed at Washington, DC, this 28th day of February 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5503 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements provisions of Public Laws 103–123 and 103–329, the Treasury, Postal Service, and General Government Appropriations Acts for 1994 and 1995, respectively. The proposed rule is necessary to clarify and implement further restrictions on the use of special bulk third-class rates.

DATES: Comments must be received on or before April 6, 1995.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying from 9 a.m. to 4 p.m., Monday through Friday, in Room 6800 at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On October 28, 1993, the President signed into law Public Law 103–123, the Treasury, Postal Service, and General Government Appropriations Act for 1994. Title VII of the Act, the Revenue Forgone Reform Act, amended 39 U.S.C. 3626 by adding provisions to subsections (j) and new subsection (m) (1993 amendments). These sections add further restrictions on the use of special bulk third-class postage rates by qualified organizations. Specifically, the law makes certain types of advertisements, promotions, and offers, as well as some products, ineligible to be mailed at the special bulk third-class rates. The final rule implementing the new statutory restrictions was published by the Postal Service on May 5, 1994, with an implementation date of September 4, 1994. It was subsequently delayed indefinitely by notice in the **Federal Register** (59 FR 39967) on August 5, 1994.

On September 30, 1994, the President signed into law Public Law 103–329, the Treasury, Postal Service, and General Government Appropriations Act for 1995 (1994 amendment), amending provisions of Public Law 103–123. The amendment creates an exception to the 1993 amendments for advertisements printed in materials that meet the content requirements for periodical publications as prescribed by the Postal Service.

The 1993 amendments established new content-based restrictions on matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service to qualify for mailing at the special bulk third-class rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The determination whether a product or service is substantially related to an organization's purpose is to be made in accordance with standards established under the Internal Revenue Code. The amendments also added restrictions on the mailing of products at the special bulk third-class rates.

The 1994 amendment provides that advertisements mailed at the special bulk third-class rates need not meet the substantially related test if the material of which the advertisement is a part meets the content requirements of a periodical publication, as specified by the Postal Service. The 1994 amendment does not affect the restrictions on the mailing of products established in the 1993 amendments.

This proposal republishes for comment the rules adopted on May 5, 1994, with certain changes. The major change is the addition of new sections E370.5.4(d)(2) and 5.8 of the Domestic Mail Manual (DMM) that implement the new exception to the restrictions in the 1993 amendments. Specifically, the new rule provides that the 1993 amendments do not apply to advertisements for products or services that appear in third-class material meeting the content requirements for periodical publications. These content requirements are listed in DMM E370.5.8.

Other changes from the rules published May 5, 1994, include the following. Several sections in the DMM have been renumbered to accommodate the addition of new DMM E370.5.8; section 5.7(c) has been deleted. This provision excluded certain material in newsletters and other publications from the new advertising restrictions. Because the publications that were intended to benefit from the provision are among those that are expected to benefit from the new 1994 exception, this section has been deleted as unnecessary and potentially confusing. Products and services advertised in materials meeting the content requirements for a periodical publication are mailable at the special bulk third-class rates regardless of whether their sale or provision is substantially related to the purposes of the qualified organization. (This proposed rule change does not affect the prohibition on mailing advertisements for affinity, credit, debit, or charge cards; insurance policies; and travel arrangements.) Also, the cost of a low-cost item has been adjusted for cost of living. Editorial changes, including the consolidation of provisions and deletion of unnecessary or redundant provisions, have been proposed in several sections for the purpose of clarity. These editorial changes are not intended to make substantive changes from the rules adopted on May 5, 1994.

As a reminder, mailers should remain aware that the restrictions in proposed DMM E370.5.4(d) do not apply unless the material to be mailed "advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of" a product or service. Other material is not prohibited under this restriction. This includes certain acknowledgments and "permissible references" described in current DMM E370.5.6 (which would be renumbered as DMM E370.5.7 under this proposal). It also includes public service announcements that are not considered to be advertising under postal standards. This policy is set forth in DMM E211.11.2; a new definition of public service announcements has recently been adopted by the Postal Service in the **Federal Register** (59 FR 10021) on February 23, 1995. The determination whether other material may come within the restrictions in DMM E370.5.4(d) must be made on a case-by-case basis. For example, the Postal Service has received inquiries concerning material containing prize offers. If the reader is not required to make a purchase in order to be eligible for a prize, the material is not considered to be an advertisement or other item subject to section DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements generally involve such arrangements. Where an individual is only eligible for a prize or premium if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, renumber sections E370.5.6; 5.7; 5.8, and 5.9 as E370.5.7; 5.9; 5.12, and 5.11, respectively.

3. In the Domestic Mail Manual, section E370 is amended by adding 5.4(d), 5.6, 5.8, and 5.10. The proposed text is as follows:

E—Eligibility

* * * * *

E370 Special (Nonprofit) Bulk Rates

* * * * *

5.0 Eligible and Ineligible Matter

* * * * *

5.4 Prohibitions

Special bulk third-class rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

* * * * *

[Add new 5.4d as follows:]

d. Any other product or service unless one of the following exceptions is met:

(1) The sale of the product or the providing of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the special bulk third-class rates. The criteria in 5.6 are used to determine whether an advertisement, promotion, or offer for a product or service is for a substantially related product or service and, therefore, mailable at the special bulk third-class rates.

(2) The product or service is advertised in third-class material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the third-class material meets the content requirements for a periodical publication.

[Change title of 5.5 as follows:]

5.5 Definitions, Insurance

* * * * *

[Add new 5.6; renumber existing 5.6 as 5.7; and renumber existing 5.7 as 5.9.]

5.6 Definitions, Substantially Related Advertising, Products

For the standards in 5.4d:

a. To be substantially related, the sale of the product or the providing of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the special bulk third-class rates is based. The sale of the product or providing of the service must have a causal relationship to the achievement of the exempt purposes (other than through the production of income) of the qualified organization. (The fact that income is produced from selling an advertised product or providing a service does not make such action a substantially related activity, even if the income will be used to accomplish the purpose or purposes of the qualified organization.)

b. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or providing of an advertised product or service, whether sold or offered by the organization or by another party, is substantially related to the qualifying purposes of an organization. (Advertisements in third-class material that meets the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the special bulk third-class rates. See 5.4(d)(2) and 5.8.)

(1) If the advertising material is for a product or service that is not substantially related, it is not mailable at the special bulk third-class rates.

(2) If an organization pays unrelated business income tax on the profits from the sale of a product or the providing of a service, that activity is by IRS definition not substantially related. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related because other criteria may exempt the organization from payment. Thus, the inclusion of an advertisement for a product or service in a mailpiece may disqualify the piece for special bulk third-class rates, even if the mailer does not pay unrelated business income tax on its sale.

(3) Third-party paid advertisements may be included in material mailed at the special bulk third-class rates if the products or services advertised are substantially related to one or more of

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the purposes for which the organization is authorized to mail at special bulk third-class rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the special rates, unless it is a publication that meets the content requirements described in 5.8 and is not disqualified from using the special bulk third-class rates under another provision.

c. Announcements of activities, e.g., bake sale, car wash, charity auction, oratorical contest, are considered substantially related if substantially all the work is conducted by the members or supporters of a qualified organization without compensation.

d. Advertisements for products and services, including products and services offered as prizes or premiums, are considered substantially related if the products and services are received by a qualified organization as gifts or contributions.

e. An advertisement, promotion, offer, or subscription order form for a periodical publication meeting the eligibility criteria in E211 and published by one of the types of nonprofit organizations listed in 2.0 is mailable at the special bulk third-class rates.

* * * * *

[Renumber existing 5.8 as 5.12, renumber existing 5.9 as 5.11, and add new section 5.8 as follows:]

5.8 Periodical Publication Content Requirements

Advertisements for products and services in materials that meet the content requirements for a periodical publication are mailable at the special bulk third-class rates. The material mailed must meet the following requirements:

a. Have a title. The title must be printed on the front cover page in a style and size of type that make it clearly distinguishable from other information on the front cover page.

b. Be formed of printed sheets. (It may not be reproduced by stencil, mimeograph, or hectograph processes. Reproduction by any other process is permitted.) Any style of type may be used.

c. Contain an identification statement on one of the first five pages of the publication that includes the following elements:

(1) Title.

(2) Issue date. The date may be omitted if it is on the front cover or cover page.

(3) Statement of frequency showing how many issues are to be published each year and at what regular intervals (daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; etc.).

(4) Name and address of the nonprofit organization, including street number, street name, and ZIP+4 or 5-digit ZIP Code. The street name and number are optional if there is no letter carrier service.

(5) Issue number. Every issue of each publication is numbered consecutively in a series that may not be broken by assigning numbers to issues omitted. The issue number may be printed on the front or cover page instead of in the identification statement.

(6) ISSN or USPS number, if applicable.

(7) Subscription price, if applicable.

d. Consist of at least 25% nonadvertising matter in each issue. Advertising is defined in E211.11.0.

* * * * *

[Renumber current 5.8 and 5.9 as 5.12 and 5.11, respectively; add new section 5.10 as follows:]

5.10 Products Mailable at Special Bulk Third-Class Rates

The following products are mailable at special bulk third-class rates:

a. Low-cost items within the meaning of 26 U.S.C. 513(h)(2), Internal Revenue Code. At the beginning of each calendar year, the value of low-cost items is adjusted for cost of living. The standard established on January 1, 1995, provided that low-cost items have a cost of not more than $6.56. The cost is the cost to the qualified nonprofit organization that mails the item or on whose behalf the item is mailed.

b. Items donated or contributed to the qualified organization. Such items do not have to meet the definition of low-cost as described in 5.10a.

c. A periodical publication (as defined in E211) of a nonprofit organization unless it is ineligible under the provisions of E370.5.0 to be mailed at the special bulk third-class rates.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–5458 Filed 3–6–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 58

[AD–FRL–5157–7]

Proposed Requirements for Implementation Plans and Ambient Air Quality Surveillance for Sulfur Oxides (Sulfur Dioxide) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action proposes implementation strategies for reducing short-term high concentration sulfur dioxide (SO_2) emissions in the ambient air. The EPA is concerned that a segment of the asthmatic population may be at increased health risk when exposed to 5-minute peak concentrations of SO_2 in the ambient air while exercising. "Exercising" in this case can include walking up stairs or hills, as well as more strenuous activities.

In a related document published on November 15, 1994 in the **Federal Register** (part 50/53 document), EPA proposed not to revise the current 24-hour and annual primary national ambient air quality standards (NAAQS) for sulfur oxides (measured as SO_2) while soliciting comment on the possible need to adopt additional regulatory measures to address short-term peak SO_2 exposures. The three alternatives under consideration include: Augmenting the implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO_2 concentrations; establishing a new regulatory program under the authority of section 303 of the Clean Air Act (Act) to supplement protection provided by the existing SO_2 NAAQS; and revising the existing SO_2 NAAQS by adding a new 5-minute NAAQS of 0.60 ppm SO_2, 1 expected exceedance. All three regulatory alternatives would be implemented through a risk-based targeted strategy designed to protect the population at risk while minimizing the burden on the States for implementation.

This document presents EPA's proposed targeted implementation strategy and the associated regulatory requirements for implementing each of the regulatory measures under consideration. Also in this document, EPA solicits comments on appropriate changes to the new source review (NSR) programs as they relate to the 5-minute NAAQS regulatory alternative, and EPA proposes to incorporate appropriate changes to the ambient air quality surveillance requirements.

DATES: Written comments on this proposal must be received by June 6, 1995. The EPA will hold a public hearing on this document in approximately 30 days and will announce the time and place in a subsequent **Federal Register** document.

ADDRESSES: Submit comments on the proposed revisions to the requirements for the preparation, adoption, and submittal of implementation plans (two copies are preferred) to: Office of Air and Radiation Docket and Information Center (Air Docket 6102), Room M 1500, U.S. Environmental Protection Agency, Attention: Docket No. A–94–55 (for part 51 comments) or A–94–56 (for part 58 comments), 401 M Street, S.W., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. The Air Docket may be called at 202–260–7548.

FOR FURTHER INFORMATION CONTACT: Laura D. McKelvey, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5497, for the part 51 SIP. For parts 51 and 52 new source review programs, contact Dan deRoeck, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5593. For part 58 ambient air quality surveillance, contact David Lutz, Emissions Monitoring and Analysis Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5476.

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SUPPLEMENTARY INFORMATION:

I. Background

As required under sections 108 and 109 of the Act, EPA has completed a thorough review of the air quality criteria and the current SO_2 NAAQS. Based on the health effects information assessed in the air quality criteria, EPA provisionally concludes that the current 24-hour and annual primary standards provide adequate protection against the effects associated with those averaging periods. As discussed in detail in the part 50/53 document (59 FR 58958), the key issue that emerged from the review is whether additional regulatory measures are needed to provide additional protection for asthmatic individuals that may be exposed to high 5-minute peak SO_2 concentrations.

As discussed in the part 50/53 document, the available air quality and exposure data indicate that the likelihood that the asthmatic population as a whole would be exposed to 5-minute peak SO_2 concentrations of concern, while outdoors and at exercise, is very low when viewed from a national perspective. The data indicate, however, that high peak SO_2 concentrations can occur around certain sources or source types with some frequency, suggesting asthmatic individuals that reside in the vicinity of such sources or source types will be at greater health risk than indicated for the asthmatic population as a whole. These assessments lead EPA to conclude that if any additional regulatory measures are adopted to provide additional protection, they should be implemented through a risk-based targeted strategy that focuses on those individual sources most likely to produce high 5-minute peak SO_2 concentrations.

Based on these consideration, EPA is soliciting comment on the part 50/53 document on three regulatory alternatives: (1) Augmenting implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO_2 concentrations; (2) establishing a new regulatory program under section 303 of the Act to supplement the protection provided by the existing NAAQS; and (3) revising the existing NAAQS by adding a new 5-minute standard of 0.60 ppm, 1 expected exceedance. Because the risk-based targeted strategy is an integral part of each of the three alternatives being proposed for comment, this notice will first present EPA's approach for targeting sources with a high potential

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for causing or contributing to high 5-minute peak SO_2 concentrations. As discussed below and in the part 58 notice, a key element of this strategy will be to relocate existing SO_2 monitors to areas in proximity of point sources of concern. The relocation of monitors is necessary because the existing SO_2 monitoring network is designed to characterize urban ambient air quality associated with 3-hour, 24-hour, and annual SO_2 concentrations. These monitors are not located to measure peak SO_2 concentrations from point sources. As a result, EPA's existing guidance on siting criteria, the spanning of SO_2 instruments, and instrument response time likely leads to underestimates of high 5-minute peak SO_2 concentrations. To address these concerns, EPA is proposing revisions to the ambient air quality surveillance requirements (40 CFR part 58) and proposed certain technical changes to the requirements for Ambient Air Monitoring Reference and Equivalent Methods (40 CFR part 53) in the part 50/53 document.

In addition to outlining the targeted implementation strategy, this notice presents EPA's proposed program for implementing the section 303 program and the 5-minute SO_2 NAAQS alternative. Regardless of the alternative selected (i.e., retain the existing standards but augment their implementation, establish a new 303 program, or add a new 5-minute NAAQS), the targeted implementation strategy would be used to identify areas that may be subject to high 5-minute SO_2 concentrations. The measures that sources must take if they cause or contribute to such high peaks and the actions that the States must take will vary depending on the proposed alternative, if any, selected.

The following discussion gives statutory background information on the regulatory approach used in addressing air pollution. Under sections 108 and 109 of the Act, EPA is responsible for issuing air quality criteria and for proposing and promulgating NAAQS. Under section 110(a)(1) and part D of title I, the States then have primary responsibility for implementing the NAAQS. In broad outline, each State must develop and submit to EPA a plan that provides for attainment of each NAAQS within certain time limits. The EPA must review the SIP submittal and approve or disapprove its provisions. If States fail to submit required SIP's or submit inadequate SIP's, and the deficiencies are not cured within specified time periods, the States become subject to certain sanctions under section 179, and EPA ultimately becomes subject to an obligation to promulgate a Federal implementation plan (FIP). For a more complete discussion of the provisions of title I of the Act, see the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 published in the **Federal Register** on April 16, 1992 (57 FR 13498).

The 1990 Amendments preserved the existing framework of the SIP process, i.e., States are still responsible for preparing and submitting SIP's, and EPA is still responsible for reviewing and approving or disapproving SIP's. In addition, the 1990 Amendments, among other things, provide EPA with the unilateral authority to designate areas as either attainment, nonattainment or unclassifiable with respect to any NAAQS (see generally, section 107(d)(1)). States with areas designated nonattainment for a NAAQS are required to submit SIP's which provide for attainment of that NAAQS. States can face sanctions and other repercussions if they fail to meet the various SIP requirements of title I.

In general, for each of the proposed regulatory alternatives, the Act may or may not require specific actions on the part of EPA or the States. If the existing NAAQS is retained, then the Act imposes no new SIP requirements on EPA and the States, although EPA will use its discretionary authority to effectuate the Act's protective purposes by requiring States to implement targeted monitoring around sources capable of producing short-term high concentrations of SO_2 to the extent that those sources contribute to ambient concentrations of SO_2. If the existing NAAQS is retained along with a trigger level for implementing an emergency program under section 303, then the State would be principally responsible for developing and implementing the necessary prevention and/or abatement strategies. If a new 5-minute NAAQS is established, States would have to develop and submit SIP's which provide for implementation, maintenance and enforcement of the new NAAQS.

Further discussion of the requirements that are to be met by the States is provided below with regard to each of the additional regulatory alternatives to be considered by EPA.

II. Targeted Implementation Strategy

This section principally proposes EPA's strategy to identify those areas where the potential exists for exceedances of the current SO_2 NAAQS as well as the potential for high 5-minute concentrations of SO_2. This strategy has two stages. The first stage is to identify potential problem areas and then to conduct ambient monitoring at those areas. The second stage is to take corrective action should monitoring conducted during the first stage reveal concentrations in excess of the appropriate SO_2 NAAQS or trigger level. To begin this strategy, EPA intends to refocus Agency monitoring resources into those areas with potential 5-minute SO_2 peaks. The development and implementation of this strategy relies on the ability of the States to identify the specific emission and operating characteristics of sources which can contribute to violations of the existing NAAQS as well as contribute to high 5-minute SO_2 concentrations. Successful implementation of this strategy will result in either the identification of additional SO_2 problem areas or the conclusion that the ambient SO_2 problem is largely solved. It also allows EPA to apply finite resources in an efficient way where public health is most likely to be jeopardized by air pollution. The EPA intends to pursue this targeted strategy regardless of the outcome of the NAAQS proposal published in the part 50/53 notice and solicits comments on the targeted implementation strategy.

A. Background

1. Modeling

For implementing the current SO_2 program, EPA has historically relied on mathematical dispersion models for predicting air pollutant concentrations for the following needs: (1) For redesignating areas to nonattainment or attainment under section 107 of the Act; (2) for setting emission limits for an attainment strategy as required per 14 section 110(a)(2)(K) and part 40 of the Code of Federal Regulations, § 51.115 (40 CFR 51.115); (3) for predicting locations of maximum concentrations for siting monitors; (4) for determining boundaries of nonattainment areas; (5) for predicting consumption of ambient air increments under prevention of significant deterioration (PSD); and (6) for determining, under nonattainment NSR, if the significance level, used for determining if a major source or modification is considered to cause or contribute to a violation of the NAAQS, is exceeded.

The "Guideline on Air Quality Models (Revised)," EPA–450/2–78–027R, hereinafter referred to as "the Modeling Guideline," has provided a common basis for conducting such modeling. The Modeling Guideline was incorporated into 40 CFR part 51 on July 20, 1993 (58 FR 38816) as appendix W. However, modeling is not currently feasible for predicting 5-minute ambient air concentrations of SO_2. This is due to present uncertainties regarding the ability of models to reliably predict SO_2 concentrations for 5-minute periods and uncertainties with the accuracy of the input data needed to run the models. A brief summary of issues follows.

Validation. Although models are available, they have not been applied in predicting 5-minute SO_2 concentrations. Model validation studies have not been conducted to determine whether existing models can estimate with sufficient accuracy to be used in a regulatory context. Model validation studies are therefore necessary to determine the precision needed for input data for achieving the desired prediction accuracy. This would help determine, for example, whether on-site 5-minute meteorological data are needed or if nearby National Weather Service data are sufficient.

Emissions Data. In addition to the unassessed uncertainties of models, the accuracy and availability of input data, such as emissions, meteorology, and the occurrence of a short-term release (e.g., a process upset or control equipment malfunction) necessary to run the models, limits the ability to accurately predict 5-minute SO_2 concentrations at this time. Obtaining accurate source emission data for 5-minute periods is of critical importance. However, it is difficult to obtain such data since such data often depend on trying to measure emissions that may occur infrequently and at unpredictable times, concentrations, and flow rates (estimates of both flow rates and pollutant concentrations are necessary to determine mass emissions unless a mass balance can be performed, which would be difficult on a 5-minute basis). Moreover, emergency bypass valves, where measurements of emissions might be most appropriate under some circumstances, are infrequently used and therefore are not appropriate sites for the installation of monitors for continuous measurement of flow rates or pollutant concentrations.

Predicting Short-term Events. Current models used for predicting ambient air concentrations rely on a known emission release, usually some steady-state emission rate, and known past meteorological data. Short-term models use hourly weather data from the National Weather Service or from on-site meteorological stations, which are preprocessed before being used in the model. Long-term models use joint frequency distribution summaries of wind speed, direction and atmospheric stability category. In order to model for emission releases due to malfunctions, a method of determining the expected frequency of these malfunctions would have to be employed (e.g., a Monte Carlo simulation which is a computer simulation using random sampling techniques to obtain approximate solutions to mathematical or physical problems especially in terms of a range of values each of which has a calculated probability of being the solution). To date, EPA has never attempted to integrate dispersion modeling with malfunction frequency data to set emission limits, or to perform any other regulatory modeling tasks. Indeed, EPA's longstanding position has been to regard malfunctions as violations of applicable control requirements, subject to enforcement, unless it can be shown that such malfunctions are truly unavoidable (Bennett, 1982). To allow deviations from this policy, EPA would need to develop a method along with policy and guidance for its use, which EPA does not intend to do at this time.

Meteorological Data. On-site meteorological data are preferable, but National Weather Service data may be acceptable if a station is nearby and deemed representative of the area modeled. The meteorological data requirements for 5-minute SO_2 modeling could be determined through model evaluation studies, as discussed earlier in this section.

For these reasons, in contrast with longer averaging periods, models cannot currently be used to predict 5-minute SO_2 excursions needed to support a 5-minute NAAQS. However, despite these limitations, current models may still be used as a tool in a qualitative sense in the decision-making process for determining boundaries of nonattainment areas and for siting of monitors in areas of maximum concentrations. Consequently, the targeted implementation strategy which is designed to find areas exposed to high, 5-minute concentrations of SO_2 will rely principally on ambient air monitoring instead of modeling.

2. Ambient Monitoring

Requirements for monitoring are established at 40 CFR Part 58—Ambient Air Quality Surveillance. This part: (1) Contains criteria and requirements for ambient air quality monitoring and requirements for reporting ambient air quality data and information; (2) contains requirements pertaining to provisions for an air quality surveillance system in the SIP; (3) acts to establish a national ambient air quality monitoring network for the purpose of providing timely air quality data upon which to base national assessments and policy decisions; and (4) includes requirements for the daily reporting of an index of ambient air quality to ensure that the population of major urban areas are informed daily of local air quality conditions.

In the early 1970's when EPA and the States first began to monitor for SO_2 in the ambient air, SO_2 emissions were greater and more widespread than today. Combustion of sulfur-bearing fuels occurred not only in industrial and utility settings but in private settings as well. Fuel oil and coal were burned in residences and building boilers for warmth. For this reason and because of the potential for exposures of the population, large metropolitan areas were generally selected for monitoring. Sulfur oxide emissions have decreased about 27 percent since 1970 (EPA, 1992b). Today most residences and buildings use electricity or natural gas for heating and nearby industrial or utility sources have installed control devices or have switched to lower sulfur fuel resulting in less sulfur emissions in the vicinity of the ambient air monitors. Because of these reductions in SO_2 emissions in populated areas, only a small number of monitors are now recording exceedances. Even these few exceedances are due not to area sources of SO_2 but instead to emissions from nearby industrial sources. Despite these changes in the profile of sources of SO_2 emissions, the SO_2 ambient air monitoring network has not been modified to reflect the ambient air quality for SO_2 near industrial sources.

As a result of past emphasis on urban scale air quality management, SO_2 monitoring networks are designed to measure population exposure over a large area and are not generally designed to measure the influence of specific point sources. To an increasing extent, therefore, SO_2 nonattainment areas have been identified by air quality dispersion models and defined by one or a few point sources with probability of causing a violation of the SO_2 NAAQS when operating at allowable emission limits at times of unfavorable meteorology. Increased concerns about high short-term concentrations of SO_2 occurring near point sources, together with the prevalence of low concentrations at existing networks and the inability of models to predict short-term concentrations, suggest a need to redirect monitor networks near these sources.

As already briefly discussed, there are about 675 SO_2 SLAMS monitors across the Nation. In this notice, EPA is proposing changes to 40 CFR part 58 to allow for fewer SLAMS monitors per metropolitan statistical area. This will enable monitors and resources to be redirected towards placing monitors

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near point sources. There is a higher initial cost associated with finding and setting up new monitoring sites than the annual operating cost of the monitor itself. Because of this and because of limited State monitoring resources, not all monitors initially freed up can be immediately placed around a targeted source, but will be phased in over a period of time.

For the reasons stated above, EPA proposes to direct States to redeploy SO_2 monitors around targeted sources of SO_2 and respan the instrumentation at selected sites to measure values above 0.5 parts per million (ppm). The monitors will be sited at microscale, middle, or neighborhood distance from the targeted sources in order to best measure high, 5-minute concentrations of SO_2. Micro, middle, neighborhood, and urban scales are all more completely defined in 40 CFR part 58, appendix D. The EPA and States will first monitor around those sources in areas with population with the greatest potential to exposure to 5-minute, peak SO_2 levels. The EPA and States will consider discontinuing the operation of existing monitors and relocate them for the purpose of monitoring around targeted sources (see part 58 discussion published elsewhere in this notice for monitoring requirements).

B. Implementing the Targeting Strategy

As discussed earlier, the available air quality and exposure information indicates that a large degree of protection against exposure to short-term peak SO_2 concentrations is provided by the current NAAQS. Full implementation of the Acid Rain Program will result in further reduction of SO_2 emissions and the likelihood of peak SO_2 concentrations. The available data indicate, however, that peak concentrations of SO_2 can still occur around certain sources or source types with some frequency, suggesting asthmatic individuals who reside in the vicinity of such sources or source types will be at greater health risk than indicated for the asthmatic population as a whole. These assessments have led EPA to conclude that any regulatory measures adopted to provide additional protection should be implemented through a risk-based targeted strategy that focuses on those individual sources more likely to produce high 5-minute peaks.

Therefore, in order to gather more information, to focus implementation efforts on those sources that EPA's existing data suggest may pose the greatest health risk, and to allocate monitoring resources as efficiently as possible, EPA has developed an approach to guide States in developing a prioritized list of sources to be targeted for monitoring. As further discussed below, potential sources have been placed in one of three groups based on the overall likelihood of the source category to emit high 5-minute SO_2 peaks. However, before redeploying monitors, States must evaluate each of these facilities individually, basing their decision on more specific information such as size, configuration, compliance history and proximity to population centers.

As just described, States need to review their current SO_2 monitoring networks to determine which monitor sites should continue operating and which should be discontinued and relocated around potential sources. The EPA will work with each State to develop a targeted SO_2 monitoring plan to implement the strategy, based on the number of targeted sources, SO_2 monitoring resources, and within a reasonable time horizon.

The EPA believes that new locations for siting monitors should be in the vicinity of sources suspected of causing short-term SO_2 peaks. Some examples of sources which emit SO_2 are petroleum refineries, sulfuric acid plants, fossil fuel-fired industrial boilers, utility boilers, pulp and paper mills, iron and steel mills, wet corn milling operations, nonferrous smelters, carbon black manufacturing, portland cement manufacturing, phosphatic fertilizer production, and natural gas production. This list is not exhaustive and could potentially include other process sources with known emissions of SO_2. These sources have the ability to emit relatively large quantities of SO_2 over short durations. Such large quantities of emissions may be due to releases from batch type operations, operational malfunctions or upsets requiring control equipment bypasses, control equipment malfunctions that can result in uncontrolled emissions to the atmosphere, startup/shutdown, short stacks subject to downwash, or fugitive emissions.

1. Ranking of Source Categories

The information most heavily relied on in developing this ranking of source categories was: (1) Available 5-minute air quality data documenting the number of high, short-term concentrations observed in the vicinity of various sources by monitoring networks (Table 3–1, EPA, 1994b); (2) estimates of exposures from various source types, which integrated a source's likelihood to emit short-term SO_2 peaks with the size and activity of the surrounding population, as summarized in Table 3–5, Table B–1, and Table B–2 (EPA, 1994b), as well as accompanying documentation (Rosenbaum et al., 1992; Stoeckenius et al., 1990; Burton et al., 1987); and (3) the Geographic Targeting Data Base for nonutility sources that is derived from combining a census of manufacturing, the EPA Facilities Index System, and the EPA Aerometric Information Retrieval System (AIRS) into a projected source impact data set. This data base, which will be available through AIRS, is a data set of nonutility sources sorted on the projected annual process emissions per source and per size category.

In order to further refine the ranking of source categories, both within and between groups, EPA solicits technical information concerning several issues which include: (1) The likelihood of source categories to produce short-term SO_2 peaks; (2) the characteristics, within a source category which cause a subset of facilities to be more likely to produce short-term SO_2 peaks; and (3) the factors which are likely to drive the variability in SO_2 emissions of individual facilities within a source category.

The ranking described here separates source categories into three groups: A, B, and C. In pursuit of this targeting strategy, EPA intends to require States to evaluate groups A, B, and C sources and produce a refined monitoring plan. States are free to substitute, e.g., group B sources for group A sources in their priority schemes, but should provide a reasoned justification for finding that the risks posed by these sources justifies such substitution. Ultimately, EPA anticipates that sources in all three groups will be assessed for their exposure potential and appropriate actions taken to address them. The EPA believes that there is a higher probability of finding individual sources that produce high, short-term ambient concentrations of SO_2 within each source category in group A than in the other groups. As such, they are judged in general to pose the highest risk of exposing population in their vicinity to high, short-term concentrations of SO_2, as well as potentially exposing some individuals to several peaks per year.

The source categories within group A were generally found to meet two of the three following characteristics. Either the source category contained SO_2 sources which: (1) Have a high emission rate, (2) are near monitors which measured 5-minute peaks, or (3) are estimated, based on exposure analysis, to expose a high number of asthmatics living in their vicinity at elevated ventilation rates to SO_2 concentrations greater than 0.6 ppm. In addition, these source categories are known to have short-term releases due to events discussed later.

Group A consists of the following source categories: Sulfite pulp and paper mills, primary copper smelters, primary lead smelters, aluminum smelters, and the top 20 percent of the petroleum refineries in terms of projected annual emissions of SO_2 as listed in the Geographic Targeting Data Base.

Source categories were selected for group B because they have high annual emissions or are subject to events leading to short-term releases of SO_2. In addition, in some instances, there were air quality or exposure data which indicate the source category to be of concern for emitting short-term SO_2 peaks.

The EPA judged group B source categories to have the potential to produce high 5-minute peaks of SO_2 but to pose less risk than group A because: (1) Air quality or exposure data indicated that the potential to emit high 5-minute peaks of SO_2 was less than for group A; (2) the grouping was based on annual emission data, but lacked 5-minute data to estimate risk; or (3) the overall risk posed by the source category was judged to be low. This was the case for industrial boilers because, while exposure analysis indicated that this group was responsible for a considerable number of exposures, the exposures were attributed to a very small subset of industrial boilers. The EPA expects that States will examine their source categories within this group very closely for inclusion in the targeted SO_2 monitoring plan.

The group B sources are as follows: Kraft sulfate pulp and paper mills, secondary copper smelters, secondary lead smelters, the remaining petroleum refineries, iron and steel mills, carbon black manufacturing, portland cement manufacturing, crude petroleum and natural gas extraction processes, phosphatic fertilizer manufacturing, industrial boilers, and sulfuric acid plants.

Industrial boilers were placed in this group because they accounted for about 30 to 50 percent of the 5-minute SO_2 exposure events given in the staff paper supplement (Table 3–5, EPA, 1994b). However, in a study by Stoeckenius et al. (Table 2–14, 1990), approximately half of the total industrial boiler exposures were attributed to a very small proportion (≤2 percent) of the total population of industrial boilers analyzed. Good engineering judgment suggests that the use of higher sulfur coal and short stack height would contribute to an increased likelihood of producing ambient SO_2 peaks.

The group C source category consists of utility boilers. Although utility boilers can emit large quantities of SO_2, many power plants are not anticipated to cause 5-minute violations despite their high emission rates due to tall stacks and steady-state operating conditions. They are placed in group C because as a source category, utility boilers may be responsible for approximately 17 to 37 percent of total estimated exposures (Table 3–5, EPA, 1994b). However, the risk of exposures is very unevenly distributed across the sources in this category. Approximately 75 percent of the utility sector's post-title IV exposures were estimated to result from less than 10 percent of the power plants (Rosenbaum, 1992, Table 3, Burton et al., 1987).

With the passage of the 1990 Amendments, Congress created under title IV an SO_2 emission trading program as an integral part of the Acid Rain Program, which is designed to reduce SO_2 emissions by 10 million tons nationwide by the year 2010. Phase I, which begins in 1995, reduces emissions from the 110 largest emitting power plants, which are identified in table A of section 404 of the Act. The Acid Rain Program introduces a flexibility for sources to choose the most cost-effective compliance strategy to achieve their emission reduction obligations and to maintain the national cap of 8.95 million tons of SO_2 emissions. Compliance flexibility may involve switching to low-sulfur coal, scrubbing, conservation, other emission control technologies, or buying SO_2 allowances.

Title IV sources participating in the Acid Rain Program are under the obligation to match their annual SO_2 emissions with their allowance holdings. They are also required to meet all other requirements of the Act and regulations that apply to them, including the NAAQS. Therefore, the compliance flexibility offered under the Acid Rain Program does not permit any source to violate regulations adopted to attain or maintain the SO_2 NAAQS. Emissions from these sources will be closely tracked, because title IV sources are also required to install continuous emissions monitoring systems (CEMS) and report to EPA on a quarterly basis their emissions of SO_2, nitrogen oxides, and carbon dioxide.

Further improvements in air quality are expected to be realized from the SO_2 emission reductions under Phase II of the Acid Rain Program to be implemented by January 1, 2000 under title IV of the Act. Because of the potential to have higher emissions and because of potential plume downwash and interaction of complex terrain, EPA is mainly concerned with those power plants that buy allowances rather than reduce emissions themselves in order to comply with title IV and those located in complex terrain, respectively. Complex terrain is defined for modeling applications as that terrain exceeding the height of the stack, but this definition is being applied here for monitoring applications as well. In a study done for EPA, that is contained in the docket for this rulemaking (Polkowsky, 1991), many of the predicted exceedances of the SO_2 standards in the vicinity of power plants should be reduced or eliminated by allocating allowances based on a reduced rate under Phase II. Any remaining exceedances not addressed by the more restrictive Phase II emission rates will require a reanalysis of the SO_2 NAAQS control strategy demonstration and consideration of more restrictive emission limits to protect the air quality standards.

Because of the SO_2 reductions that will occur under the Acid Rain Program, the accurate stack monitoring of their emissions, and the long-range atmospheric transport of these emissions due to taller stacks at most large utilities, EPA believes that higher priority in placing ambient monitors should be given to nonutility sources. However, in instances at a particular power plant where the possibility of high 5-minute emission peaks still exists, EPA believes that consideration should be given by the State to locating monitors near the facility.

2. Other Considerations

In addition to the guidelines and groupings listed above, which are based largely on available information concerning the likelihood of a source type to produce concentrated peaks of SO_2, States may have other information which may lead them to believe that a source located in a lower probability group should be made a higher priority for SO_2 monitoring. Of particular importance to consider is any available information on potential population exposure, inferred in part by the population in the vicinity of the source.

In addition, other information can be incorporated by States into an evaluation of the relative likelihood of sources under their jurisdiction to produce SO_2 exposures, thus refining their judgments on priority of monitoring decisions. Such other information can include the type of process being used (i.e., one type of process within a source category may be less efficient and known to emit more SO_2 than a newer one), a history of past

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upsets or malfunctions, the type of fuel used, the type of terrain around the source (e.g., is the source in a river valley or on flat terrain), knowledge of how well the source is controlled, and a history of citizen complaints, and should be considered by the States when deciding which sources to monitor first. Such considerations would be noted in each State's targeted SO_2 monitoring plan presented during the annual SLAMS review as described below.

As part of the targeting strategy, the States will also need to decide how much relative weight should be given any particular source. For example, a State would have to determine how heavily to weigh a group A source in a less densely populated area versus a group C source burning a high sulfur fuel in a more densely populated area. In addition, some sources are often found collocated with other sources such as sulfuric acid plants with copper smelters. Industrial boilers may be located with any number of process sources. There may be small geographic areas where there is clustering of an assorted number of SO_2 sources. In these situations there is no precise way to determine what source should be targeted first at this point. For this reason, the decision making should rest with the States who have better knowledge of the individual circumstances pertaining to the potential sources to be targeted.

3. States' Targeted SO_2 Monitoring Program

The EPA will review and take appropriate action on the States' targeted SO_2 monitoring plans during the annual SLAMS network review process to ensure that States provide an adequate rationale for any deviations from the grouped approach. The States are then expected to present to EPA in a targeted SO_2 monitoring plan at the annual SLAMS network review their listing of sources to be monitored, the schedule for conducting such monitoring, and the rationale for selecting these sources. Requirements for the targeted SO_2 monitoring plan are discussed later in this notice for part 58 but EPA expects the targeted SO_2 monitoring plan to be a dynamic process that could change depending on data gathered from early rounds of monitoring or changes at targeted sources, such as installation of control equipment.

Section 110(a)(2)(B) of the Act requires SIP's which provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile and analyze data on ambient air quality. Should EPA determine that a State's targeted SO_2 monitoring plan is inadequate, then EPA expects to issue a call for a SIP revision under section 110(k)(5) of the Act based on a finding that the SIP is substantially inadequate in meeting the requirement of section 110(a)(2)(B). The EPA solicits comments on all aspects of this approach to grouping of sources to investigate potential air quality problems.

In the State targeted SO_2 monitoring plan, EPA expects SO_2 monitoring network reviews to be completed within 1 year of the effective date of promulgation of any of the three regulatory alternatives. Implementation of network revisions is expected to take longer.

4. Addressing the Problem

Regardless of the regulatory alternative chosen by the Administrator, those areas which have monitored exceedances of the existing or revised NAAQS or of a section 303 trigger level should undergo a compliance inspection by the State of the targeted source. If the source is out of compliance, EPA expects that the responsible air pollution control agency will initiate appropriate enforcement action to bring it into compliance, e.g., by using available administrative or judicial enforcement authorities. If the source is in compliance, the State will need to pursue other appropriate solutions to the problem as discussed later in section III.

The EPA encourages States to pursue, where appropriate, the enforcement and improved compliance options before other regulatory actions. In many cases, air quality problems may be due to poor operation and maintenance or other resolvable compliance problems. In these instances, enforcement action can result in timely resolution of violations and avoid the sometimes lengthy regulation development process. However, the State should pursue existing regulatory options where the regulations are inadequate, e.g., because the source is in compliance with the existing regulations and an air quality problem still exists.

C. Relocating Monitors

The EPA's criteria for the network design of monitors are discussed in 40 CFR part 58, appendix D. Elsewhere in this notice, EPA is proposing changes to part 58 in order to implement the proposed targeting program. The EPA recognizes that it is not a trivial matter to relocate monitors and that there are concerns that agencies will need to consider in making relocation decisions.

1. Resource Concerns

The EPA believes that the resources currently devoted to monitoring ambient concentrations of SO_2 may be more effectively utilized through systematic evaluations and reconfigurations of existing monitoring networks. However, even if States and locals acquire no additional SO_2 monitors and rely solely on the current number of monitors, there will be some costs incurred when relocating monitors. Costs associated with moving a monitor include the resources taken in locating new sites and negotiating leases along with the capital costs of a new shelter and associated equipment. Because of the costs for relocating monitors, not all monitors freed up can be immediately placed around a targeted source, but will be phased in over a period of time. The operating costs saved by not operating these monitors will be used toward the costs of relocating monitors.

In more detail, the costs for moving an SO_2 monitor have been calculated in 1994 dollars to be $60,940 per site. These costs include initial capital costs, operation, and amortization. The initial costs include network design and site selection, land lease, power drop, shelter, site preparation, calibration equipment, data logger, quality assurance plan preparation, etc. The operation costs include routine site visits, repairs, maintenance, data acquisition and reporting, quality assurance calibrations, and supervision. The amortization costs for replacement capital equipment were also calculated.

The total costs for the initial 3 years are summarized as follows. The existing network of 679 NAMS, SLAMS, and industrial monitors costs about $16 million per year. The first year costs for reconfiguration and operation of NAMS, SLAMS, and industrial monitors in order to comply with changes to 40 CFR part 58, which is being proposed in this notice and is not a result of the targeted implementation strategy, is estimated to be $12.4 million per year. This will leave an available $3.6 million to be used toward the targeted implementation strategy the first year to establish and operate four monitors around 15 sources.

The second year costs for operating the NAMS, SLAMS, industrial, and targeted implementation strategy monitors is estimated to be $9.6 million dollars, making available $6.4 million for the targeted implementation strategy. This will allow for establishing sites around 26 sources in addition to the 15 sources from the first year for a total of 41 targeted sources.

The third year costs for operating monitors are estimated to be $11.4 million, leaving $4.6 million for the targeted implementation strategy. This will allow for establishing sites around 16 sources in addition to the 41 sources established in the first and second years for a total of 57 targeted sources. The EPA estimates that monitors at 7 of the 15 sources established in the first year would be moved in the third year due to no monitored violations.

2. Siting Concerns

The EPA is aware of the many considerations that arise when siting monitoring stations. Monitors are usually sited where electrical power is already available, they are reasonably secure, the immediate environment satisfies the siting criteria of part 58, and they are in proximity to the desired locations. Waiver provisions are also included in the regulations to deviate from siting criteria when appropriate. Generally, monitors are sited at or within reasonable proximity of the desired locations. For purposes of convenience, monitors are sometimes sited where other pollutants are already monitored.

When conducting the SO_2 network review, EPA-approved air quality models and saturation studies may be used to predict locations where maximum concentrations are expected within the vicinity of SO_2 sources or clusters of sources. As discussed earlier, models can be used in a qualitative sense to predict relative ambient impacts and are useful as a tool for establishing preferred monitor locations for predicting 5-minute concentrations.

3. Trends Data Concerns

A potential concern regarding the movement of monitors is the effect on EPA's ability to detect and evaluate trends in air quality. When monitors are operated in the same locations for several years, it is possible to account for the effects of meteorology, seasonal patterns in air pollutant concentrations and other variables specific to a monitor location. When monitors are moved, the confidence in detecting trends in air pollutant concentrations is compromised due to a new set of variables that may affect ambient concentrations at the new location.

The EPA needs to maintain a certain number of monitors for detecting and evaluating trends in air pollutant concentrations. However, EPA believes that a sufficient number of monitors now used for trends analyses are not critical to the objectives of trends reporting and should be considered for relocation. Elsewhere in this notice, the EPA is proposing changes to 40 CFR part 58, appendix D, in which a minimum number of SO_2 monitors in the metropolitan areas will be retained for trends purposes.

4. Barriers

Certain institutional barriers may be encountered in some attempts to relocate monitors. These stem from the separate political entities responsible for implementation of air pollution control programs at the State and local levels throughout the U.S. Where monitor sites considered for relocation are within the boundaries of one political entity, the problems are diminished, since the resources necessary to maintain existing monitoring sites may be redirected to the new sites, providing the SO_2 monitor is not sharing a site with other pollutant monitors. Sites in a network around targeted sources of SO_2 emissions which are located in different States or air pollution control districts may present some added difficulties. In such cases, resources, such as grants for support of air pollution planning and control programs as allowed under section 105 of the Act, may be redirected by EPA to aid in relocating and maintaining new monitoring stations.

5. Conclusion

In general, EPA believes that a portion of the monitors now directed to monitoring ambient air quality in population areas for trends purposes should be considered for relocation. While EPA may not normally require monitors operated by industries to be relocated and thus industry-operated monitors will not be candidates for relocation, EPA strongly encourages companies to evaluate their networks in light of today's notice. However, quality-assured data from such monitors could allow for the relocation of nearby SLAMS monitors to other locations if monitored air quality concentrations from industry-operated monitors provide assurances that the SO_2 NAAQS are maintained.

D. Compliance and Enforcement Issues

Certain compliance and enforcement issues will arise only if either the section 303 alternative or the new 5-minute NAAQS alternative is selected. The issues are how to determine compliance to ensure protection of a trigger level or NAAQS that has a 5-minute averaging period, and what actions are appropriate by the State when the cause of the violation may be process upsets, startup or shutdown, batch operations, or other nonsteady-state sources. As is currently done with the NAAQS, measurement of SO_2 ambient air concentrations with ambient air monitors under each of the three proposed regulatory alternatives will serve as indicators of compliance. Enforcement will be based on the results of compliance inspections at the source, and the compliance inspection will be based on requirements in the applicable operating permit or SIP. In most instances, EPA believes that in order to ensure protection of the 5-minute NAAQS or trigger level, compliance will need to be determined through sources meeting recordkeeping and reporting requirements or carrying out any other agreed-upon actions designed to reduce short-term emission peaks.

1. Averaging Times for Emission Limits

Under EPA's policy for emissions averaging under the current SO_2 NAAQS, sources are to be controlled through the imposition of emission limits having averaging times consistent with the averaging period of the air quality standard of concern. As an example, in order to protect the SO_2 ambient air quality standard that has been established for a 24-hour period, mass emission limits for sources should normally allow averaging of emissions over no more than a 24-hour period when determining compliance with the limits. The purpose of this is to restrict extreme variations in emissions of short duration that might otherwise be allowed to occur if emission variations are averaged over much longer periods (e.g., 30 days). Air quality concentrations in excess of the standard could be produced while sources are still complying with long-term average emission limits by reducing emissions sufficiently at other times within their emission averaging periods.

A variety of emission limit averaging times had been developed by State and local agencies for SIP's both prior and subsequent to the implementation of this policy on averaging. As a result, those SIP's with averaging times inconsistent with the policy that were adopted prior to implementation of the policy are included in an effort by EPA to correct general SIP enforcement deficiencies. The EPA has not taken final action on those rules developed subsequent to the policy.

The EPA has allowed the use of stack tests and analysis of fuel samples for sulfur content as surrogates for continuous compliance monitoring with the emission limits. In many cases, these methods will continue to be feasible for ensuring compliance with a 5-minute trigger level or NAAQS. Technically, SO_2 emissions can be measured in a stack at intervals less

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than 5 minutes using Method 6c (the instrumental analyzer procedure) in Appendix A of 40 CFR part 60 or by using a CEM. However, EPA believes that in many instances 5-minute releases of SO_2 that would cause exceedances of a 5-minute NAAQS or trigger level will occur at unpredictable times or as fugitive emissions (i.e., not through a stack), making stack tests an impractical compliance method. Nor may sampling fuel at 5-minute intervals be a practicable alternative as in the case of coal in which sulfur content may not be homogeneous. In addition, the source of the emission may not be due to combustion of fossil fuel but to chemical process emissions.

The EPA believes that in most instances, in order to attain a 5-minute NAAQS or trigger level, the State will not be able to rely on measurable emission limits but instead on actions by the source to, for example, modify equipment or process or to have improved maintenance that will address the emission releases that are causing 5-minute exceedances. Because of these potential limitations to determining compliance of emission limits designed to protect a 5-minute NAAQS or trigger level, compliance will in most instances need to consist of the State ensuring that the source has implemented the necessary remedies. Verification that actions have been effective will require that ambient air monitoring continue for a reasonable period, e.g., another 2 years following the corrective action. However, in those instances where emissions can be feasibly measured on a 5-minute basis or it is determined that fuel sampling is a feasible compliance indicator, the State may elect to set an emission limit and use emission measurement or fuel sampling as the method for determining compliance.

2. Malfunction Policy

As stated previously, EPA has on occasions used its enforcement discretion in determining how and whether to act on unavoidable violations of source emission limits during periods of startup, shutdown and malfunction (40 CFR 60.11(d)). This policy recognizes that during startup and shutdown conditions, effective pollutant control may sometimes not be technically feasible due to process temperatures and pressures that have not yet stabilized. The policy also recognizes that certain source malfunctions are not reasonably foreseeable and are unavoidable, which result in uncontrolled emissions to the atmosphere. Clearly, in many cases, forces of nature such as floods, tornadoes and lightning strikes can overwhelm a source's ability to function in a normal fashion and may produce conditions that preclude proper operation of sources or control equipment. However, some conditions may be reasonably anticipated and proper design of equipment can ameliorate their effects (e.g., grounding of equipment for lightning protection, observation of flood plains, etc). It is possible in some cases to address this through design of redundant control systems to guard against the release of uncontrolled emissions to the atmosphere should one system suffer a malfunction; however, the cost may be prohibitive and such systems are not uniformly required. Some SO_2 control systems offer this protection, such as dual acid plants operated in parallel at petroleum refineries. Should one plant experience operational problems in such cases, the other is available to provide a continued partial level of sulfur (and ultimately SO_2) removal.

3. Conclusion

As is currently done, where there have been monitored violations of the 24-hour, 3-hour, or 5-minute SO_2 NAAQS or trigger level, the State shall be required to determine the source of the SO_2 emissions and investigate the cause of the emissions at that source. Where the results of these investigations demonstrate that improper operation and maintenance practices and/or poor control equipment design are primarily responsible for release of uncontrolled emissions to the atmosphere, the State shall be expected to work with the source to take appropriate actions to reduce inadequately controlled source emissions.

For purposes of verifying the results of any corrective actions taken and compliance, the EPA intends to rely on continued ambient air monitoring. The EPA also anticipates the need to review the implementation of its malfunctions policy in light of the concerns discussed in this document with the possible result of more stringent showings required to justify the conclusion that malfunctions are truly unavoidable. Recordkeeping based on earlier baseline assessments of the problem at the source should be maintained at the source to assist in evaluations should further exceedances be monitored.

III. Requirements Associated With Retention of Existing NAAQS

The State is not required to revise its SIP to address 5-minute, high concentrations of SO_2 if the existing NAAQS is retained. However, in concert with changes in monitoring requirements for part 58 proposed in this document, as discussed above, EPA is proposing to require States to implement a targeting strategy to more aggressively monitor process sources that are likely producing high concentrations of SO_2 even if for short periods of time. As described previously, the targeted strategy will be implemented through the annual SLAMS network review during which the States will report on progress made the previous year. The EPA believes that the results of such a targeting strategy will reduce the possibility and frequency of 5-minute high-concentration SO_2 exposures as an incident to more effectively monitoring peak SO_2 concentrations and by bringing into compliance those sources violating the existing NAAQS. However, EPA acknowledges that there may be occurrences of SO_2 releases which could exceed the 5-minute NAAQS or section 303 trigger level proposed in the part 50/53 document and not exceed the current SO_2 NAAQS. In those cases, the State should, nevertheless, conduct compliance inspections in the eventuality that the source is out of compliance with current SIP requirements. Beyond these measures, EPA would not have authority to take further actions under the title I SIP program.

If violations of the current NAAQS cannot be resolved through compliance and enforcement (i.e., the source is in compliance), then the State will be expected to take steps to reduce emissions on its own initiative by revising the emission limit, by requiring process modifications, or other control measures. The State shall then prepare a SIP revision for EPA approval in order to make the emission reductions federally enforceable. In the event that a State does not take these steps, then EPA can take either of two actions: (1) If the area is currently designated attainment, using the authority under section 107(d) to redesignate the area nonattainment; and/or (2) issuing a SIP call under section 110(k)(5) of the Act to notify the Governor of the State that the SIP is inadequate to attain and maintain the SO_2 NAAQS and to call for a SIP revision as necessary to correct such inadequacies.

There are advantages and disadvantages in using either the nonattainment redesignation or SIP call approach. For instance, the nonattainment redesignation process, in addition to requiring expeditious attainment of the standard, imposes the requirements applicable under part D, title I, of the Act (e.g., reasonably available control measures (RACM), reasonable further progress (RFP) nonattainment NSR, and contingency measures), and requires sanctions and FIP's if the SIP is not developed and implemented in a timely manner.

While these part D requirements may well be useful in effectively addressing the air quality problem, plan development may proceed more quickly in response to a SIP call in some cases because the SIP call does not entail the process and time needed to undertake a redesignation of an area (including the notification of the Governor required under section 107(d)(3)). The SIP submitted in response to a SIP call under section 110 must also provide for expeditious attainment of the NAAQS. A disadvantage of relying on SIP calls for attainment areas is that, unless an area is otherwise subject to section 173 permit requirements, no mandatory sanctions are applicable in the event the State fails to respond adequately to the SIP call. The discretionary air grant funding sanction under section 179 remains available for attainment areas, however. The requirement for EPA to promulgate a Federal plan if the State fails to submit an approvable SIP is wholly applicable for either option.

In addition to the advantages and disadvantages just described, decisions about which regulatory approach to use should consider factors specific to the affected area. Among the factors EPA will consider are the following:

(1) The magnitude of the violation.
(2) The persistence of violations.
(3) The exposure potential. (For example, is it near a population center or a school?)
(4) The State's regulatory process. (For example, is it lengthy; does the legislature only meet periodically? Would the timeline of one option fit better within the State's regulatory frame work?)
(5) Other sources in the area. (For example, can culpability be clearly determined? Would one process facilitate that determination of culpability over the other? Is new source growth anticipated?)
(6) The need for a more objective level of control.
(7) The type of information available for indicating a problem exists (monitoring, modeling, others).
(8) If there is uncertainty associated with modeling and/or past history of failing to attain the standard, does the action taken provide for appropriate contingencies that can be implemented if the area fails to provide a SIP or to attain and maintain the standards?
(9) Is there a need for long-range planning for the area and does the approach taken facilitate this planning effort?

IV. Requirements Associated With Retention of Existing NAAQS and Implementation of a Section 303 Program

In attempting to address health concerns with population exposure to high concentrations of SO_2 for short periods of time, one of the alternatives that EPA considered in the part 50/53 notice is to reaffirm the existing SO_2 NAAQS and at the same time to promulgate a trigger level for implementation of a program under section 303 of the Act. The basic rationale and legal authority for that program are discussed in that document. What follows in more detail is the proposed implementation program, including the proposed regulatory text. The EPA believes that a targeted implementation strategy, as already discussed, could be used to find sources that would be subject to further emissions or operational control under a section 303 program. The EPA believes that a program to protect the public from exposure to high concentrations of SO_2 for short periods of time may be successfully implemented under section 303. The type of program EPA is proposing to implement would require States to submit contingency plans to EPA that would require certain actions on behalf of the State and source once an established ambient SO_2 concentration ("trigger level") is violated. The State would be required to take certain actions to determine the source of the emissions and to protect against future violations of the trigger level.

As described in the part 50/53 notice concerning the regulatory alternative of the section 303 program, EPA believes that sections 303, 110(a)(2)(G), and 301 provide adequate legal authority to establish this program and to promulgate regulations to implement it. As with the existing section 303 program, EPA's proposed regulations require States to adopt contingency plans under section 110(a)(2)(G) to carry out the program. The EPA is proposing to require that each State submit such plans to EPA within 18 months of the promulgation of final regulations establishing a section 303 program. The EPA believes that section 110(a)(2)(G) authorizes EPA to require these submissions and that 18 months is an adequate period of time to develop and submit the programs to EPA for approval.

Once the section 303 trigger level has been violated, EPA proposes that the following actions occur. First, within 30 days of a violation of the trigger level, the State would carry out a compliance inspection of the culpable source. The EPA recommends that the State not wait for a violation but conduct a compliance inspection after the first exceedance. If the source is out of compliance with its existing emission limits, then the State would take the necessary steps to bring the source into compliance within 30 days of the compliance inspection. If, however, the State determines that bringing the source into compliance with its existing emission limits would not be likely to prevent further exceedances of the trigger level, or the State determines the source to be in compliance with applicable emission limits, then further action would be needed. In such circumstances, the next step would be for the State and source to examine the cause of the emissions. Once that is determined, enforceable actions would need to be developed to address the cause of the pollution. These actions must eventually be made federally enforceable by adopting them as source-specific SIP revisions. The EPA proposes to require that actions be taken within 60 days of the compliance inspection and provide for implementation of any new control measures as expeditiously as practicable. The EPA expects that the control measures that may need to be implemented to prevent recurrences of 5-minute SO_2 peaks may include better maintenance of control equipment, better capture of fugitive emissions, raising the stack height, or other innovative control measures.

The EPA believes that the actions required of States and sources would provide adequate protection against the recurrence of high, 5-minute SO_2 peaks once such emissions are identified as a problem for particular sources. The EPA also believes that the time periods for taking action that it is proposing are reasonable periods, as they provide sufficient time for the required actions to take place, while assuring that any necessary corrective actions will be taken and implemented as expeditiously as practicable.

The EPA would also retain the ability to take whatever actions it believed appropriate directly under section 303. Thus, EPA could take direct action under section 303 prior to the adoption of State contingency plans if needed, or take action after their adoption if circumstances warranted such Federal action. Moreover, once the section 303 contingency plans have been adopted and incorporated into SIP's, EPA may directly enforce their provisions pursuant to section 113 of the Act.

However, it is EPA's position that the States are primarily responsible for carrying out actions under this section

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303 program. If a State does not exercise its responsibility under section 303 once a trigger level has been violated, EPA intends to consult with the State prior to taking action itself.

The EPA is proposing to add an Appendix X to 40 CFR part 51 which explains the computations necessary to determine from monitoring data whether the 5-minute trigger level has been exceeded or violated. Appendix X defines several terms, among them, "5-minute hourly maximum," "exceedance," "expected exceedance," and "violation." Appendix X explains the convention used to calculate expected exceedances, which essentially is a procedure which makes an adjustment for missing monitoring data.

In brief, the 5-minute trigger level is not violated when the number of expected exceedances per year is less than or equal to one. In general, this determination is made by recording the number of 5-minute hourly maximum exceedances at a monitoring site for each year, making the adjustment for missing data (if required), averaging the number of exceedances over a 2-year period, and comparing the number calculated to the allowable number of exceedances (one). The 2-year period reduces the likelihood of a source being penalized for a violation that may be attributed to a one-time event. Aside from changes in terminology to make the language appropriate for a section 303 program rather than a NAAQS, the proposed Appendix X is identical to the Appendix I to 40 CFR part 50 for interpreting the 5-minute NAAQS for SO_2 that was proposed in the part 50/53 document. The EPA is soliciting comments on Appendix X.

V. Requirements Associated With New 5-Minute SO_2 NAAQS

The EPA proposed in the part 50/53 document a new primary 5-minute SO_2 NAAQS which would be in addition to the 24-hour and annual primary SO_2 NAAQS. Should this new 5-minute NAAQS be promulgated, EPA intends to initiate the targeted implementation strategy previously described to determine which areas are not meeting the new 5-minute NAAQS. In addition, EPA and the States will need to initially meet statutory requirements under sections 107 and 110. In general, these requirements are that the States must submit their initial suggested designations and statewide SIP's to EPA. Later, if areas are designated or redesignated to nonattainment, then EPA and the States must meet the requirements under section 172. The requirements under sections 107, 110, and 172 of the Act are discussed in detail below. The rationale for any requirements which are discretionary, such as setting timeframes, or which need interpretation, are also discussed. Since the current annual, 24-hour, and 3-hour NAAQS are retained under this option, all existing requirements, such as SIP submittal and attainment dates, will remain in place as to the current NAAQS.

A. Targeted Implementation Strategy

Should a new 5-minute NAAQS be promulgated, EPA intends to initiate the targeted implementation strategy previously described to determine which areas are not meeting the revised 5-minute NAAQS. And as described, the States should initially attempt to address any violations through compliance inspection and, if necessary, enforcement actions.

Because of the modeling issues discussed previously (II.A.1.), the targeted implementation strategy relies principally on monitoring. The use of models is not advocated at this time for establishing section 107 designations under a 5-minute SO_2 NAAQS due to a lack of evaluation results concerning model performance, or defining the precision and bias of modeled 5-minute ambient SO_2 concentrations. However, models may still be used under a new 5-minute SO_2 NAAQS program for the following purposes:

(1) Models may be useful as a tool for developing control strategies. When evaluating emissions from complex sources, they may provide information on the relative contributions to ambient SO_2 concentrations from various sources of emissions. Receptor modeling may be a useful tool for developing control strategies for complex sources. The use of tracers or "tramp elements" in association with these models would be needed for SO_2 emission sources to determine source locations and relative contributions to ambient SO_2 concentrations.

(2) Models can be and are recommended as a useful tool for evaluating the design of monitoring networks for a 5-minute SO_2 standard. They can provide useful information in a relative sense for determining points of maximum impact providing the characteristics of the emission source are not too complex or uncertain.

B. Designations—Section 107

1 Statutory Requirements

The 1990 Amendments require EPA to promulgate designations, of areas for new or revised NAAQS. Section 107(d)(1)(A) of the Act requires States to submit designations, and section 107(d)(1)(B) requires EPA to promulgate designations of all areas (or portions thereof) with respect to new or revised NAAQS as nonattainment, attainment or unclassifiable. The specific requirements of section 107(d)(1) (A) and (B) of the Act are described below An area which is designated nonattainment is one that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS for the pollutant. An area which is designated attainment is one which meets the NAAQS for the pollutant. An area which is designated unclassifiable is one that cannot be classified on the basis of available information as meeting or not meeting the NAAQS for the pollutant. Also, while section 107(d)(1) provides for States to submit a list of areas designated, it authorizes EPA to modify the designations submitted by the States. Once an area's initial designation is promulgated, any change in the designation status is accomplished pursuant to section 107(d)(3) of the Act.

2. Timeframe for Submittal of Designations by State

As mentioned above, section 107(d)(1)(A) of the Act requires States to submit a list of all areas (or portions thereof) in the State designating them as nonattainment, attainment or unclassifiable for SO_2. States must submit such list of areas (or portions thereof) in a timeframe EPA deems reasonable but not later than 1 year after the effective promulgation date of the new or revised NAAQS. The EPA cannot require the States to submit the list of areas in less than 120 days, however.

The EPA intends to require that the initial SO_2 designations be submitted not later than 1 year from the effective date of promulgation of the revised standard in order to allow the States as much time as possible to gather the necessary data to make the designation determinations. The EPA believes that, in most instances, areas will need to be initially designated unclassifiable due to lack of adequate ambient air monitoring data and the inability to rely on models for predicting 5-minute SO_2 concentrations. By giving the maximum time allowed under the Act, States may have enough time to gather the data needed to make an adequate determination of an area's designation status. Nonetheless, EPA encourages States to submit designations sooner, wherever possible, in order to provide improved protection of public health.

3. Determining Initial Designation of an Area

The EPA expects, in most instances, to initially designate areas as unclassifiable due to the lack of complete data or no data at all reported for 5-minute averaging time increments. Most of the existing ambient monitoring data are not reported for 5-minute averaging time increments, and EPA believes that those that are reported in this manner may not meet the data completeness criteria required by the proposed SO_2 NAAQS (see discussion in revisions to CFR part 50, appendix I, published in the part 50/53 document). Revising the SO_2 NAAQS to include an additional primary standard set at 5-minute and 0.60 ppm necessitates that most ambient monitors be respanned to measure the higher concentration.

In anticipation of a revised NAAQS, EPA has requested that the States respan monitors to begin measuring for higher concentrations. In these cases, EPA and States may have data to provide as a basis for initially designating an area as nonattainment.

The EPA understands that in some instances States may want to request that certain areas be initially designated attainment for the revised SO_2 NAAQS. An area will not be initially designated as attainment based solely on ambient monitoring data since no requirements have been issued to ensure complete data. Data completeness is a significant issue when trying to determine if an area is attaining the NAAQS as opposed to determining if an area is not attaining the NAAQS. However, areas with no SO_2 sources as shown by their emission inventory would be likely candidates for an early attainment designation. Providing ambient air monitoring data does not indicate otherwise, EPA intends to designate an area as attainment if the State can show in its emissions inventory that the area does not contain any potential major source of SO_2 as defined in the Act. This does not preclude the State or EPA from initially designating an area unclassifiable, if there is reason to believe there is an SO_2 source which may be causing a violation of the revised NAAQS in the area. The EPA believes this guidance gives reasonable assurance that the area is in attainment of the revised NAAQS. This does not prevent EPA or the State from redesignating an area, initially designated unclassifiable, to nonattainment at a later time should ambient air monitoring data indicate that the area is violating the NAAQS.

4. Determining the Boundaries of Designated Areas

States should identify the boundaries of the nonattainment, attainment and unclassifiable areas when submitting designations for the revised SO_2 NAAQS. In the absence of data or more specific boundary information, it may be more appropriate to define SO_2 nonattainment boundaries by the perimeter of the county in which the ambient SO_2 monitor(s) recording the violation is located. Alternatively, it might be appropriate to define the nonattainment area using monitoring or other data to determine more specifically the geographic area that is nonattainment. In addition, if the ambient monitor measuring violations is located near a county boundary, then EPA recommends that the adjacent county also be designated as nonattainment for SO_2. In some situations, however, a boundary other than the county perimeter may be appropriate. States may choose, alternatively, to define the SO_2 nonattainment boundaries by using any one, or a combination, of the following techniques: (1) Qualitative analysis, (2) spatial interpolation of air monitoring data, (3) air quality simulation by dispersion modeling, or (4) saturation monitoring. If a State defines an SO_2 nonattainment boundary using one of the methods above, EPA requires that it submit a defensible rationale for the boundary chosen with the Governor's request to designate the area.

Boundaries for attainment areas can be drawn along current political boundaries if the State can show in its emissions inventory that the area does not contain any potential major source of SO_2 as defined in the Act, nor any of the sources listed in the previous section on determining the initial designation of an area.

All areas of the State not designated attainment or nonattainment will be designated unclassifiable. The boundaries of the unclassifiable area will be the "remainder of the State."

5. Promulgation of Designations by EPA

Section 107(d)(1)(B)(i) of the Act requires that EPA promulgate the designations submitted by States as expeditiously as practicable, but not later than 2 years from the date of promulgation of the revised SO_2 NAAQS. This period may be extended for up to 1 year where EPA has insufficient information to promulgate the designations. The EPA may make any modifications deemed necessary to the areas (or portions thereof) submitted by the State (see generally section 107(d)(1)(B) of the Act). However, no later than 120 days before promulgating a modified area, EPA must notify the affected State and provide an opportunity for the State to demonstrate why any proposed modification is inappropriate.

The EPA expects in many cases to require the full extension of 1 year before promulgating the designations of many areas as allowed under section 107(d)(1)(B) of the Act. The full extension would be needed in these cases in order to allow States and EPA to respan or relocate monitors and collect complete ambient data to better ascertain the designation status of areas with monitors. Therefore, EPA generally intends to promulgate the initial area designations within 3 years from the effective date of promulgation of the revised SO_2 NAAQS.

Designations promulgated pursuant to section 107(d)(1) of the Act are exempt from the Administrative Procedures Act requirements for notice-and-comment rulemaking (5 U.S.C. section 553–557) (see section 107(d)(2)(B) of the Act). Therefore, when EPA promulgates designations with respect to the revised SO_2 NAAQS, it may or may not promulgate the designations through notice-and-comment rulemaking.

6. Failing to Submit Designations

If the Governor of a State fails to submit the required SO_2 designations, in whole or in part, EPA is required to promulgate the designation that EPA deems appropriate for any area (or portion thereof) not designated by the State (see section 107(d)(1)(B)(ii) of the Act). The EPA will do so no later than 3 years after the date of promulgation of a new NAAQS.

C. State Implementation Plans (SIP's)

Section 110(a) establishes the general requirements for SIP's. In addition, subparts 1 and 5 of part D of title I of the Act establish additional requirements concerning SIP's for areas designated nonattainment for SO_2. These requirements concern the content of the SIP's, the applicable dates by which nonattainment areas must attain a new SO_2 NAAQS, and the schedule for the submission of the SIP's.

1. General SIP Requirements—Section 110(a)

All SIP's, regardless of whether they concern areas designated nonattainment or not, must meet the general SIP requirements of section 110(a). Section 110(a)(1) provides that each state must submit a SIP to provide for the implementation, maintenance and enforcement of a primary NAAQS in

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each air quality control region within the State (hereinafter referred to as "statewide SIP's"). Section 110(a)(2) sets forth the elements that a SIP must contain in order to be fully approved. These elements are discussed in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13556–13557).

2. General SIP Requirements—Section 110(a)(2).

(a) *Statutory and Existing Regulatory Requirements.* Regulations for the preparation, adoption, and submission of SIP's under section 110 of the Act were initially published November 25, 1971 (36 FR 22369) and codified as 40 CFR part 51. The 40 CFR part 51 has been modified from time to time since then. On November 7, 1986 (51 FR 40656), EPA restructured and consolidated the 40 CFR part 51 regulations to make them easier to follow and revise in the future.

The 1990 amended Act did not substantially change the SIP requirements in section 110(a)(2) of the Act. For the most part, EPA believes that the existing regulatory framework, i.e., 40 CFR part 51, defines the general section 110(a)(2) SIP requirements for SO_2. However, as a result of a revised SO_2 *NAAQS*, data handling practices, and specified SIP submittal timeframes in the Act, some revisions to 40 CFR part 51 are necessary. The specific revisions to 40 CFR part 51 are discussed in another section entitled "Regulatory Revisions." The EPA also notes that under section 193, anything in part 51 that is inconsistent with the 1990 Amendments is superseded even if EPA has not yet revised the regulations. A discussion of the statewide SIP requirements is provided below.

(b) *Statewide SIP's for the Revised SO_2 NAAQS.* For the most part, States have already adopted, as part of their overall SIP for current SO_2 NAAQS, rules or regulations which satisfy the majority of the general SIP requirements in section 110(a)(2) of the Act and the existing 40 CFR part 51. At this time, the EPA does not envision that States will have to develop substantial new general regulations for the statewide SIP's for the revised SO_2 NAAQS. The EPA will issue appropriate guidance in the future in the event that this assessment changes.

There are two requirements, in particular, under section 110(a)(2) that must be met by the States upon promulgation of a revised SO_2 NAAQS. Section 110(a)(2)(B) requires the establishment and operation of appropriate ambient air monitoring systems, data from which must be made available to the Administrator upon request. Coupled with this is a requirement under section 110(a)(2)(E) that States have adequate resources and authority to implement the SIP.

(c) *New Source Review Issues.* Section 110(a)(2)(C) of the Act requires States to protect the NAAQS by providing for the regulation of the construction and modification of stationary sources. In areas that are designated as attaining the NAAQS, as well as areas that are designated as unclassifiable under section 107 of the Act, each implementation plan must contain legally-enforceable requirements which enable the State to determine whether the construction or modification of stationary sources will interfere with maintenance of the NAAQS (see section 161 of the Act). For major stationary sources that locate in attainment or unclassifiable areas, the Act requires that comprehensive preconstruction review requirements under PSD of the air quality program contained in part C, title I, of the Act must be satisfied [1] (e.g., sections 160–169 of the Act).

The EPA has set forth SIP requirements at 40 CFR 51.166 containing the minimum requirements by which a State preconstruction review permit program will be considered to meet with the statutory requirements for PSD.[2] In very broad terms, these requirements provide for the imposition of best available control technology at new and modified major stationary sources for each pollutant subject to regulation under the Act, and provide for review of the potential air quality impacts of such sources and modifications (e.g., section 165(a) of the Act).

The current PSD program requirements under 40 CFR 51.166, which protect the existing primary and secondary NAAQS for SO_2, will also be protective of a new 5-minute SO_2 NAAQS in that the regulations prevent the issuance of a PSD permit to a major source that would cause or contribute to a violation of any NAAQS (§ 51.166(k)). However, while no changes to the existing requirements are needed to ensure the new or modified PSD source must evaluate their ambient impacts against a new 5-minute standard for SO_2, EPA has reviewed certain existing PSD provisions at § 51.166 (and corresponding provisions at § 52.21) to determine whether changes may be needed to ensure that a new 5-minute SO_2 standard, as proposed in the part 50/53 document, would be adequately protected.

Several of the existing PSD provisions rely on Agency-prescribed significance levels to determine whether any pollutant that would be emitted by a new or modified major stationary source must undergo comprehensive permit review. First, EPA uses significant emissions rates (expressed in tons per year) to determine whether a regulated pollutant (other than a pollutant emitted in major amounts) to be emitted by a new or modified major stationary source must undergo PSD review [3] (e.g., § 51.166(b)(23)(i)).

Second, significant ambient impact concentrations are used to determine whether a source must undergo an impact analysis to show that it will not contribute to a violation of the NAAQS or PSD increments (§ 51.165(b)). Finally significant monitoring concentrations are used to determine whether the reviewing authority may exempt a source from the ambient monitoring requirements for a particular pollutant (e.g., § 51.166(i)(8)).

As described below, the EPA examined each applicable significance level used for SO_2 in order to determine whether a 5-minute standard for SO_2 would necessitate any revisions to the existing levels. In each case, EPA has determined that sufficient information is not presently available to warrant any revision to the existing levels.

The significant emissions rate for SO_2 is currently defined as an emissions rate of 40 tpy or more under the PSD regulations. New or modified sources that would emit significant amounts of SO_2 must undergo PSD review for that pollutant. Conversely, de minimis amounts of SO_2 emissions are exempt from further review The existing significance level for SO_2 is based on the premise that an emissions rate that would result in ambient concentrations equaling at least 4 percent of the 24-hour primary standard should be considered significant (45 FR 52676, 52707–52708 (August 7, 1980)). In order to help determine whether the existing

[1] The statutory PSD requirements apply to new major stationary sources and modifications of existing major stationary sources. A "major stationary source" is: (1) Any source from a statutory list of 28 source categories that emits, or has the potential to emit, 100 tons per year (tpy) or more of a regulated pollutant; or (2) any other source that emits, or has the potential to emit, at least 250 tpy of a regulated pollutant (see section 169(1) of the Act).

[2] The EPA has also promulgated regulations for a Federal PSD program at 40 CFR 52.21. The Federal program applies to States that do not have EPA-approved PSD programs as part of their SIP

[3] The PSD review requirements apply to any regulated pollutant which a new or modified major stationary source would emit in significant amounts. Thus, a source may be "major" for only one pollutant, but PSD review would apply to other pollutants emitted in "significant" amounts.

significant emissions rate for SO_2 would be appropriate, based on the same criteria, for the proposed 5-minute standard, EPA would need to predict the 5-minute concentration that results from a source emitting 40 tpy of SO_2. The absence of an approved methodology for either directly modeling 5-minute SO_2 concentrations or converting modeled concentrations of SO_2 from a given averaging period (e.g., 3-hour, 1-hour) to a 5-minute average precludes EPA from completing its analysis of the adequacy of the existing significant emissions rate. Should EPA adopt a 5-minute NAAQS for SO_2, EPA will further study the need for revisions of the significant emissions rate.

Because of the present difficulties associated with efforts to model 5-minute ambient concentrations of SO_2, EPA has also determined that it would be inappropriate to establish a significant ambient impact level for a 5-minute SO_2 NAAQS. In the event that adequate data and the appropriate performance evaluations become available to support the use of dispersion models to estimate 5-minute SO_2 concentrations in the future, EPA will consider the establishment of a 5-minute SO_2 significant ambient impact concentration.

Under the existing regulations, the reviewing authority may exempt a proposed major stationary source from the PSD pre-application monitoring requirements (40 CFR 51.166(m)) if either the air quality impacts resulting from the source, or the existing ambient concentrations of the particular pollutant in the area of the source, are less than the prescribed significance level for that pollutant. For SO_2, the significance level is 13 $\mu g/m^3$ (24-hour average). Since models are not available for a source to project its ambient impact for 5-minute averaging periods, EPA believes that consideration of a new significance level for SO_2 based on a 5-minute averaging time is not practical at this time. Instead, EPA proposes to continue using the existing 24-hour significance level in conjunction with the pre-application monitoring requirement at 40 CFR 51.166(m). Thus, if a source finds that it must gather ambient data for SO_2, based on ambient impacts and existing air quality concentrations exceeding the SO_2 significance level, then the applicant will be required to gather 5-minute air quality data in addition to data for all other applicable averaging periods for SO_2.

As indicated in the preceding discussion, for several different PSD program elements, EPA proposes to retain existing SO_2 significance levels instead of pursuing the possibility of revising the significance levels based on a new 5-minute SO_2 NAAQS. The EPA requests the public's views about this proposed use of existing significance levels.

The PSD program also includes specific air quality limitations, known as increments, which define maximum allowable increases in pollutant concentrations. These increments prevent unlimited increases in ambient pollutant concentrations beyond a determined baseline concentration for a particular area.[4] Section 166 of the Act authorizes EPA to promulgate new increments within 2 years from the date of promulgation of new NAAQS. The existing PSD regulations include increments for SO_2 for the 3-hour, 24-hour and annual averaging periods. The EPA will determine the need for a 5-minute increment for SO_2, especially in light of the present difficulties which restrict the Agency's ability to use air quality dispersion models to determine the amount of increment that would be consumed by new and modified SO_2 sources for a 5-minute averaging period. The EPA will also investigate the feasibility of developing and implementing alternatives to numerical air quality increments (expressed in $\mu g/m^3$), as authorized under section 166(d) of the Act. In any event, EPA will not propose new increments for SO_2 until such time that a new 5-minute SO_2 NAAQS is first promulgated.

(d) *Schedule for Submittal of Section 110(a)(1) SIP's.* Section 110(a)(1) states that the SIP's required by that subsection are to be submitted to EPA "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109." Such SIP's are to provide for "implementation, maintenance and enforcement" of the new NAAQS. Section 110(a)(1), however, must be read in light of the timetable for designations of areas as nonattainment, attainment, or unclassifiable under section 107(d)(1) described above, and the explicit timetables for SIP submissions for nonattainment areas under part D of title I. Section 107(d)(1) provides that designations must occur within 3 years of the promulgation of a new NAAQS and the part D provisions (sections 172(b) and 191(a)) provide for the submission of SIP's meeting the requirements of section 172(c) within a specified time period following the designation of an area as nonattainment.

The EPA believes that these provisions can best be harmonized in the context of a new 5-minute SO_2 NAAQS by interpreting the section 110(a)(1) deadline as being satisfied by the submission of SIP elements whose content does not depend on the designation of an area. In the case of SIP's concerning a new 5-minute SO_2 NAAQS, EPA believes that such submissions would be limited to SIP revisions concerning compliance with the monitoring requirements of section 110(a)(2)(B) and the resource requirements of section 110(a)(2)(E). The EPA believes that, until a problem with maintaining a new 5-minute NAAQS is identified, it is reasonable to view the already-existing substantive SIP provisions as adequate and that it would be absurd to require areas to adopt additional control requirements or emission limitations prior to the identification of particular problem sources. The EPA notes that any areas designated nonattainment will be subject to further SIP submission deadlines requiring the submission of nonattainment area SIP's under part D of title I that satisfy the substantive requirements of section 172(c).

Moreover, with respect to the monitoring and resource SIP elements, EPA believes that any changes to existing SIP's that would be needed will not be significant in terms of scope or effort. Indeed, some States may have to make minimal or no changes to their own rules in order to implement the new monitoring requirements. For this reason, and because the changes in monitoring requirements will assist in developing information about ambient air quality that will be relevant to designations, EPA is proposing that all States submit any needed SIP revisions within 1 year of final action on today's proposal.

D. Nonattainment Area Requirements

Areas designated nonattainment must meet the SIP requirements of part D of title I as well as the requirements of section 110. The provisions of part D

[4] The PSD areas (areas designated as attainment or unclassifiable under section 107 of the Act) are further categorized as Class.I, II, or III areas (section 162 of the Act). Each of these classifications determines the "maximum allowable increases" or increment of air quality deterioration permissible (section 163 of the Act). Only a relatively small increment of air quality deterioration is permissible in Class I areas and consequently these areas are afforded the greatest amount of air quality protection. An increasingly greater amount of air quality deterioration is allowed in Class II and III areas.

Air quality deterioration is measured from the date on which the first PSD application is submitted. This date becomes the baseline date after which any change in actual emissions affects the allowable increment. In all instances, however, the NAAQS represent the overarching air quality ceiling that may not be exceeded, notwithstanding any allowable increment.

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pertinent to SO_2 areas are those contained in subparts 1 and 5. These provisions have been described previously in the General Preamble for the implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), and the following discussion will focus on the requirements of particular relevance to the implementation of a new NAAQS.

1. Attainment and SIP Submittal Dates

To determine the attainment dates and SIP submittal dates applicable to a new SO_2 NAAQS, it is necessary to analyze the relationship of the relevant provisions of both subpart 1 and subpart 5.

The starting point for the analysis is section 172(a) in subpart 1. Section 172(a)(2)(A) provides that the attainment date for attaining a primary NAAQS is the date by which attainment can be achieved as expeditiously as practicable, but not later than 5 years from the date of designation under section 107(d). It also provides that EPA may extend the attainment date to the extent appropriate, for a period of up to 10 years after designation, considering the severity of the air quality problem and the feasibility and availability of pollution control measures. Section 172(a)(2)(D), however, provides that "[t]his paragraph (paragraph (2)) shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part." This language therefore leads to the question of whether areas designated nonattainment with respect to a new SO_2 NAAQS are areas for which attainment dates are provided elsewhere in part D of title I.

As subpart 5 establishes attainment dates for certain SO_2 nonattainment areas, the issue is whether those provisions establish attainment dates for areas designated nonattainment with respect to a new SO_2 NAAQS. Of particular relevance are sections 192(a) and 191(a). Section 192(a) provides that SIP's required under section 191(a) provide for attainment "as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation." Section 191(a) requires that "[a]ny State containing an area designated or redesignated under section 107(d) as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to the date of the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part."

One possible interpretation of the Act is that the language of section 191(a) applies to areas designated nonattainment with respect to a new SO_2 NAAQS promulgated after the enactment of the 1990 Amendments. If that interpretation is followed, section 192(a), rather than section 172(a)(2), would determine the attainment date for those areas. This is due to the language in section 172(a)(2)(D) providing that section 172(a)(2) does not apply to areas for which attainment dates are specifically provided elsewhere in part D. The language of section 191(a), rather than section 172(b), would also apply to the establishment of the SIP submittal date for nonattainment SIP's required to implement the new NAAQS. The consequence of this interpretation for the attainment deadline is that the 5-year attainment deadline of section 192(a) would apply, rather than the 5-year deadline that can be extended to 10 years under certain conditions under section 172(a). As far as SIP submittal deadlines are concerned, section 191(a)'s 18-month deadline would apply rather than section 172(b)'s 3-year deadline.

An alternative interpretation is that the provisions of subpart 5 were intended to apply only to attainment dates and SIP submittal deadlines concerning a NAAQS in existence at the time of the enactment of the 1990 Clean Air Act Amendments. Under this view, the general provisions of subpart 1 (i.e., sections 172(a)(2)(A) and 172(b)) would apply to the determination of attainment dates and SIP submittal deadlines pertaining to a new SO_2 NAAQS promulgated after the 1990 Amendments. The EPA notes, however, that it believes that an 18-month SIP submittal deadline would provide adequate time for the States to develop and submit their SIP's regarding a new NAAQS. It would also provide more time to implement the control strategy adopted in the SIP, which EPA believes is preferable. If the maximum period of 3 years were allowed, there would only be 2 years between the date of the submittal of the SIP and the 5-year attainment date, and even less time between EPA's final action regarding the approvability of the SIP's and the attainment date. Consequently, even if the provisions of section 172(b) were to apply to SIP submittal deadlines for a new NAAQS, EPA would require States to submit their SIP's within an 18-month timeframe pursuant to section 172(b)'s authority to establish a shorter period than the maximum 3-year period.

The EPA requests comment on both of these interpretations and the consequences that they lead to regarding the establishment of attainment dates and SIP submittal deadlines for a new SO_2 NAAQS.

2. Classifications—Section 172(a)(1)

The classification provisions (section 172(a)(1)) give EPA the authority to classify nonattainment areas for the purposes of applying attainment dates (section 172(a)(2)(A)). In exercising this authority, EPA may consider such factors as the severity of the nonattainment problem or the availability and feasibility of the pollution control measures. Based upon the classification, EPA may set later attainment dates for areas with more severe air quality problems (section 172(a)(2)(A)).

At the present time, EPA does not intend to establish a classification scheme for areas which violate the new 5-minute SO_2 NAAQS. Currently the SO_2 program does not have a classification scheme since, typically, within the SO_2 program the severity of the SO_2 ambient air quality is not a factor in attaining the NAAQS once the needed control measures are put in place. The EPA believes that in most of the areas designated nonattainment for the new 5-minute NAAQS, the cause of the high SO_2 concentrations (usually a single source) will be obvious. While the method of controlling these emissions may not be as obvious, the control measure should result, in most cases, in a single step correction of any future violations. Consequently, EPA does not believe a classification scheme is necessary or appropriate.

3. Nonattainment Plan Provision—Section 172(c)

Section 172(c) lists the requirements to be met by a nonattainment SIP. Some of those requirements are discussed below in the context of a SIP submittal for a SO_2 NAAQS nonattainment area.

a. *Statutory and Existing Regulatory Requirements.* As previously indicated, regulations for the preparation, adoption, and submission of SIP's were initially published November 25, 1971 and codified as 40 CFR part 51. The 40 CFR part 51 has been modified from time to time since then. However, the most current guidance on how EPA intends to interpret the 1990 Amendments is found in the General Preamble (57 FR 13498, April 16, 1992)

The 1990 Amendments added section 172(c) which prescribes the nonattainment SIP requirements. To the extent that the existing SIP regulations that have been codified in 40 CFR parts 51 and 52 do not conflict with section 172(c), EPA will rely on them to carry out the requirements of section 172(c).

As necessary EPA will adopt new or modify existing regulations to carry out other provisions of section 172(c). For further information on potential changes to 40 CFR part 51 with respect to SO_2, see the separate section entitled "Regulation Revisions." Also, as noted earlier under section 193, anything in part 51 that is inconsistent with the 1990 Amendments is superseded even if EPA has not yet revised the regulations.

b. *Reasonably Available Control Measures (Including Reasonably Available Control Technology).* Section 172(c)(1) requires SIP's to "provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the national primary ambient air quality standards." Historically, EPA has defined RACT as "the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (Strelow, 1976)." In the case of a new 5-minute SO_2 NAAQS, EPA believes that RACT should be interpreted in accordance with EPA's long-standing interpretation.

The EPA notes that, as the sources of any violations of a new SO_2 NAAQS should be readily identifiable, there should not be any questions about the identity of the sources to which RACT should be applied. Thus, in the case of a new SO_2 NAAQS, compliance with EPA's general recommendation that available control technology be applied to those existing sources in the nonattainment area that are reasonable to control in light of the attainment needs of the area and the feasibility of such controls should be readily achieved (EPA 1992c, n. 20, 57 FR 13541).

While a plan must require the implementation of RACM needed to attain within the statutory timeframes, it need not require the adoption of all available control measures if it demonstrates attainment as expeditiously as practicable without the adoption of all measures. The EPA believes it would be unreasonable to require that a plan which demonstrates attainment include all technologically and economically available control measures if such measures would not expedite attainment. Thus, it is possible that some available control measures may not be "reasonably" available, and not required by RACM, because their implementation would not expedite attainment (EPA 1992c, 57 FR 13543).

In addition to available control technology that should be fully considered in identifying RACT for purposes of the current SO_2 NAAQS, RACT for purposes of a new 5-minute NAAQS would also include consideration of maintenance and process operating procedures at SO_2 sources that will achieve the new NAAQS within the statutory timeframes. The EPA believes that such available control measures should be fully assessed, in light of the general guidance above, in determining RACM (including RACT) for purposes of implementing a 5-minute SO_2 NAAQS.

c. *Emission Inventory.* Section 172(c)(3) states that the SIP shall include a comprehensive, accurate, current inventory of actual emissions from all sources of SO_2 in the nonattainment area and that EPA may require periodic revisions of the inventory as determined necessary to assure that the requirements of part D are met. Typically for most nonattainment areas, determining the nature and extent of specific control strategies needed requires an emissions inventory. Also, typically, an emission inventory should be based on measured emissions or documented emission factors. The more comprehensive and accurate the inventory, the more effective the control evaluation.

However, in terms of a new 5-minute NAAQS, measured emissions or emission factors for the probable sources of 5-minute NAAQS exceedances, process upsets, equipment malfunctions, batch processes, startup/shutdown, and fugitive emissions, are almost nonexistent. It is anticipated that most nonattainment areas for the 5-minute SO_2 NAAQS will be defined by a single source as measured by a monitor or monitors close to the source. Thus, in most cases, the part D SIP for a nonattainment area will fulfill the inventory requirements of section 172(c)(3) by identifying the source around which the monitors were located and which may have caused the monitored problem. In situations where it is technically feasible, emission estimates should be made using emission measurements or factors.

d. *Control Strategy Demonstration.* The EPA has historically required dispersion modeling for setting emission limits. However, because of the limitations of models in predicting 5-minute concentrations, other methods may have to be used. Control strategy demonstrations may have to rely on monitors as evidence of adequacy of the implemented emission reductions as being protective of the 5-minute NAAQS. In certain cases, the monitors may be used for setting the emission limits. The EPA intends to rely on section 11.2.2 of the Modeling Guideline which addresses requirements for using monitoring networks to set emission limits.

e. *Reasonable Further Progress.* As stated in the General Preamble (57 FR 13547), section 171(l) of the amended Act defines reasonable further progress as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." This definition is most appropriate for pollutants which are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventorywide. The definition is generally less pertinent to pollutants such as SO_2, particularly for the proposed new NAAQS, which usually have a limited number of sources, relationships between individual sources and air quality which are relatively well defined, and emissions control measures which result in swift and dramatic improvement in air quality. That is, for SO_2, there is usually a single "step" between pre-control nonattainment and post-control attainment.

Therefore, for a new 5-minute SO_2 NAAQS, with its discernible relationship between emissions and air quality and significant and immediate air quality improvements, RFP will continue to be construed as "adherence to an ambitious compliance schedule."[5] The compliance schedule for a new 5-minute NAAQS could consist of implementation of a maintenance program where the source of emissions is due to frequent malfunction of a control device. The SIP's which require RFP as just described for an SO_2 nonattainment area will be considered as meeting the requirements of section 172(c)(2).

f. *Permits for New and Modified Major Stationary Sources.* Section 172(c)(5) of the Act states that the SIP shall require permits for the construction and operation of new or modified major stationary sources (i.e., stationary

[5] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," (Research Triangle Park, North Carolina, January 27, 1984), page 27

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sources which emit or have the potential to emit at least 100 tpy of any nonattainment pollutant or lesser amounts in certain nonattainment areas) anywhere in a nonattainment area, in accordance with section 173 of the Act.[6] In nonattainment areas, a presumption exists that emissions increases resulting from new and modified major stationary sources will adversely affect the area; thus, in lieu of a complete air quality impact analysis (including ambient monitoring), emissions reductions (offsets) from existing sources must be obtained in order to mitigate the ambient impacts resulting from the potential emissions from the proposed new source, or net emissions increase from a proposed major modification to an existing source (e.g., section 173(c) of the Act).

Under the nonattainment NSR program (40 CFR 51.165(a)), EPA uses significant emissions rates (expressed in tons per year) for pollutant applicability purposes to determine whether a modification of an existing major stationary source will result in a significant net emissions increase (§ 51.165(a)(1)(x)). For the same reasons described in section V.C of this preamble, EPA does not now intend to propose to revise the significant emissions rate for SO_2 commensurate with the 5-minute SO_2 NAAQS proposed in the part 50/53 document. Public comment is requested as to whether the existing 40 tpy significant emissions rate needs to be revised if EPA promulgates the proposed 5-minute SO_2 standard.

Major new or modified sources locating in the nonattainment area will be required to meet the lowest achievable emission rate, obtain emissions offsets, and satisfy other applicable requirements under section 173 of the Act. With implementation of a new 5-minute NAAQS, these requirements may be addressed by existing permit programs for those areas already designated nonattainment for SO_2 and meeting the nonattainment NSR requirements under section 173 of the Act. However, for those States without the appropriate nonattainment NSR program, the State would need to develop and implement such a program for any newly designated nonattainment areas resulting from a new 5-minute NAAQS for SO_2.

[6] For purposes of the nonattainment NSR requirements under part D of title I of the Act, "major stationary source" is defined as any stationary source which emits, or has the potential to emit, 100 tpy (or lesser amounts in certain nonattainment areas) of any nonattainment pollutant (see, e.g., sections 182(c–e), 189(b)(3), and 302(j)) of the Act).

g. *Contingency Measures.* Section 172(c)(9) of the amended Act defines contingency measures as measures that become effective without further action by the State or EPA, upon determination by EPA that the area has failed to: (1) Make reasonable further progress, or (2) attain the SO_2 NAAQS by the applicable statutory deadline.

For current SO_2 programs, EPA interprets "contingency measures" to mean that the State agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive followup for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIP's. The rationale for this interpretation as presented in the General Preamble (57 FR 13547) is the following. The EPA interprets the contingency measure provisions as primarily directed at general programs which can be undertaken on an areawide basis. First, for some criteria pollutants, the analytical tools for quantifying the relationship between reductions in emissions and resulting air quality improvements remain subject to significant uncertainties, in contrast with procedures for pollutants such as SO_2 and its current NAAQS. Second, emission estimates and attainment analyses can be strongly influenced by overly optimistic assumptions about control efficiency and rates of compliance for many small sources. In contrast, controls for the current SO_2 NAAQS are well understood and are far less prone to uncertainty. Since SO_2 control measures are by definition based upon what is directly and quantifiably necessary to attain the SO_2 NAAQS, it would be unlikely for an area to implement the necessary emissions control yet fail to attain the NAAQS.

However, for the proposed 5-minute SO_2 NAAQS, EPA will need to interpret requirements for contingency measures different from those for the current NAAQS, due to the nature of sources and emissions that EPA considers likely to cause violations. As opposed to the current NAAQS, which can rely on dispersion models to predict attainment of the NAAQS, the State and Local agencies cannot reliably predict that attainment will be achieved even with proper implementation of a control program. It is possible that even with the control equipment operating properly, violations may persist. In other words, there may be overly optimistic assumptions about control efficiencies and emission rates. Therefore, contingency measures for the proposed 5-minute NAAQS will require more than aggressive follow-up for compliance and enforcement as allowed for the current SO_2 NAAQS. As an example, if the cause of the SO_2 violations is due to control equipment failure, a SIP may require a more rigorous maintenance schedule. If further violations occur due to continued failures of the control equipment, then the contingency measures may need to invoke a more frequent inspection/maintenance program of the control equipment or even installation of backup control equipment.

E. SIP Processing Requirements

1. SIP Completeness

Section 110(k)(1) required EPA to promulgate minimum criteria that any SIP submittal must meet. The EPA proposed an initial set of completeness criteria at 56 FR 23826 (May 24, 1991) and finalized them at 56 FR 42216 (August 26, 1991). Those notices describe the procedures for assessing whether a SIP submittal is complete and, therefore, adequate to trigger the Act requirement that EPA review and take action on the submittal. The completeness criteria provide a procedure and criteria that enable States to prepare adequate SIP submittals and enable EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without having to go through rulemaking. The EPA intends to use the completeness criteria as amended in 40 CFR part 51, appendix V, to determine completeness of SIP submittals as required under section 110(k)(1)(B).

2. Approval/Disapproval of Plan

The Act as amended in 1990 allows for EPA to make full and partial approvals and disapprovals under section 110(k)(3) and conditional approvals under section 110(k)(4) of SIP submittals. In meeting the requirements under section 110(k)(3) and (4), EPA intends to follow the guidance for processing SIP submittals issued in the memo from Calcagni to the Regional Air Division Directors dated July 9, 1992.

3. Sanctions and Other Consequences of SIP Deficiencies

The EPA intends to use sanctions consistent with the following stated policies and regulations as provided for by the Act in sections 110(m) and 179 for the imposition of sanctions in the event that EPA finds that a State did not make a required SIP submission (in whole or in part), finds that a State did not submit a complete submission,

disapproves in whole or in part a required submission, or finds that any part of an approved SIP is not being implemented. Section 179(a) provides for the imposition of mandatory sanctions unless the deficiency identified by EPA (e.g., the failure to submit or disapproval) is corrected within 18 months. Moreover, section 110(m) provides EPA with the discretionary authority to impose sanctions at any time after a finding, disapproval or determination under section 179(a).

With respect to mandatory sanctions, section 179(a) provides that unless the State corrects the deficiency within 18 months, one of the two sanctions referred to in section 179(b) (i.e., highway or offset sanctions) shall be selected by EPA and will apply until EPA determines that the State has come into compliance. (In the case of a finding of failure to submit a required SIP revision, the sanctions would not be lifted until EPA determines that the State has submitted a SIP revision that satisfies the completeness criteria.) If 6 months after the imposition of the first sanction the State still has not corrected the deficiency, then the second sanction shall apply as well. If EPA finds a lack of good faith on the part of the State, then both the highway and offset sanctions are applied 18 months after the finding or disapproval.

The EPA has discussed in detail issues concerning the imposition of sanctions in a number of Federal Register notices. The criteria for imposing discretionary sanctions on a statewide basis are discussed in a February 11, 1994 Federal Register notice, Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act (59 FR 1476), and are codified at 40 CFR 52.30. The preamble to this notice also sets forth EPA's policy with respect to section 110(m) sanctions. Mandatory sanctions were discussed in a October 1, 1993 proposal (58 FR 51270) and in the August 4, 1994 final rule (59 FR 39832) selecting the order of mandatory sanctions under section 179. That final rule does not apply to State failures to respond to SIP calls. The EPA intends to address sanctions for such failures in a future rulemaking.

Apart from sanctions under sections 110(m) and 179(b), other consequences may also attach to a failure to comply with the Act's SIP submission or implementation requirements. First, section 179(a) authorizes EPA to withhold all or part of section 105 grants for air pollution control planning and control programs. Second, section 110(c)(1)(B) provides that within 2 years of a finding that a State has failed to make a required submittal, a finding that a required submittal was not complete, or a disapproval of a submission (in whole or in part), EPA shall promulgate a FIP unless EPA approves a submitted SIP that corrects the deficiency. In support of this requirement, EPA intends to use its authority to withhold all or part of section 105 grants to develop and implement FIP's where a State fails to comply with the Act's SIP submission or implementation requirements.

VI. Significant Harm Levels and Episode Criteria

In a notice published in the Federal Register on April 26, 1988 (53 FR 14926), in which the EPA proposed not to revise the SO_2 NAAQS, the EPA at the same time proposed to revise the significant harm levels for SO_2. Since final action was never taken on that proposal, EPA is reproposing to revise the 24-hour significant harm levels.

Section 303 of the Act authorizes the Administrator to take certain emergency actions if pollution levels in an area constitute "an imminent and substantial endangerment to public health or welfare, or the environment." The Act and EPA's regulations governing adoption and submittal of SIP's (section 110(a)(2)(G) and 40 CFR 51.16 and subpart H of part 51) require States to adopt contingency plans to prevent ambient pollutant concentrations from reaching specified significant harm levels and to take additional abatement actions if such levels are reached. The existing significant harm levels (40 CFR 51.16a) for SO_2 were established in 1971 (36 FR 24002, November 21, 1971) at the following levels: SO_2 alone—1.00 ppm (2620 μg/m³) 24-hour average of SO_2; and $SO_2 \times tsp$—490×103 (μg/m³) 2—24-hour average product of SO_2 and tsp concentrations.

On the basis of EPA's reassessment of the data upon which these levels were based and its assessment of more recent scientific evidence on sulfur oxides and particulate matter, EPA proposes to revise the significant harm levels for SO_2.

In actions related to the revisions of the particulate matter standards, EPA has already eliminated the combined tsp/SO_2 significant harm level (52 FR 24672, July 1, 1987). In doing so, EPA left open the possibility of reinstating an SO_2/PM–10 significant harm level, if necessary for additional protection against SO_2 effects, at the conclusion of the SO_2 review. The scientific data suggest that SO_2 in combination with high levels of particulate matter have been associated with increases in daily mortality. The final 24-hour PM–10 significant harm level of 600 μg/m³ takes this potential interaction into account. Addition of a combined SO_2/PM–10 significant harm level therefore appears unnecessary.

Removal of the combined significant harm level raises the question as to whether the remaining SO_2 significant harm level is sufficient. The possibility that SO_2 alone or in combination with other pollutant or fog droplets may be in part responsible for the effects associated with 24-hour exposures suggests the need to continue a 24-hour significant harm level for SO_2 alone at a substantially lower concentration. The EPA's assessment of studies of daily mortality (EPA, 1986a, Table 1 and EPA, 1986b Table 4–2) indicates greatest certainty of some increased daily mortality associated with high particle concentrations in combination with SO_2 levels at or above 750 μg/m³ (0.29 ppm) for 24-hours. Accordingly, EPA proposes to revise the 24-hour SO_2 significant harm level from 1.0 (2,620 μg/m³) to 0.29 ppm (750 μg/m³).

Appendix L to part 51 contains example air pollution episode levels and example contingency plans for the purpose of preventing air pollution from reaching the significant harm levels prescribed in section 51.151. The examples in appendix L serve as guides to States for the development of their own contingency plans. To conform with the proposed revisions to the significant harm level for SO_2, certain changes to appendix L are required. The EPA proposes the following revisions to the example 24-hour episode levels for SO_2:

(1) That the example alert level for SO_2 be changed from 800 μg/m³ to 0.19 ppm (500 μg/m³), 24-hour average.

(2) That the example warning level for SO_2 be changed from 1600 μg/m³ to 0.23 ppm (600 μg/m³), 24-hour average.

(3) That the example emergency level for SO_2 be changed from 2100 μg/m³ to 0.26 ppm (675 μg/m³), 24-hour average.

The basis for changing the episode levels for SO_2 is the same as discussed above for the revisions to the significant harm level. With respect to example episode levels, the proposed alert level reflects the upper bound of the 24-hour range of interest for the NAAQS presented in the staff paper addendum (EPA, 1986b, Table 2). The staff paper concludes that at or above 0.19 ppm (500 μg/m³) for 24 hours, health effects are likely to occur in certain sensitive population groups (EPA, 1982a, page 72). Therefore, it would be appropriate under the episode criteria to initiate first stage control action when this ambient level of SO_2 occurs. The proposed 24-

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hour warning and emergency levels are set at increments between the proposed alert level and the proposed significant harm level. This approach would provide opportunity for the control actions associated with each episode level to take effect before the next stage is triggered and additional control actions become necessary. This proposal, if adopted, would change the 24-hour significant harm level. Therefore, States would be required to adopt the new numerical level, to evaluate the emergency episode provisions, in their current SIP's and any permits containing such provisions and to make any revisions necessary to assure their adequacy.

All public comments on the proposed significant harm level and episode criteria will be considered by the Agency as it makes a decision on the final significant harm level.

VII. Proposed Revisions to Part 58 Monitoring Regulations

The proposed revisions to 40 CFR part 58 are needed to allow States to reduce in most cases the number of NAMS SO_2 monitors in the metropolitan areas. This, in turn, will free up monitors and resources that can be used toward the SO_2 targeted implementation strategy. The following preamble details requirements which will be implemented regardless of the regulatory alternative that is ultimately selected for part 50.

A. Section 58.1 Definitions

The number of SO_2 monitors in the revised NAMS network for major metropolitan areas will be based on factors including population, historical ambient concentration measurements, and total SO_2 emissions. The SO_2 emissions data are available from the AIRS for each county and for each consolidated metropolitan statistical area/metropolitan statistical area (CMSA/MSA). Therefore, the requirements for NAMS SO_2 stations have been determined on a CMSA/MSA basis, and the requirements for SLAMS SO_2 stations have been determined on a county basis. Definitions are added for CMSA and MSA as provided by the U.S. Census Bureau.

B. Appendix C—Ambient Air Quality Monitoring Methodology

As explained in a related notice in this issue of the **Federal Register** that proposes amendments to part 53, continuous ambient air monitoring analyzers designed to obtain 1-hour average SO_2 concentration measurements may not provide accurate 5-minute average concentration measurements. That notice proposes special supplemental performance specifications applicable to continuous SO_2 analyzers that would be used for 5-minute monitoring so that the average SO_2 concentration measurements would be accurate. A companion amendment to appendix C of part 58 is needed to specifically require the use of these specially approved analyzers for 5-minute monitoring in SLAMS monitoring networks. Accordingly, a new section 2.4 is proposed to require that monitoring methods used for 5-minute average SO_2 measurements meet the special supplemental specifications proposed to be added to part 53.

C. Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS)

Appendix D is being revised to change the NAMS requirements for SO_2 monitors. The present requirements are based on measuring population exposure over a large area without being unduly influenced by point sources. Because concentrations at a significant number of these sites have decreased over time and many are measuring concentrations well below the current SO_2 NAAQS, EPA believes that they may be put to better use if relocated. The monitors which may be moved could be used to complete the minimum NAMS and SLAMS requirements or to implement the targeted monitoring strategy for point sources of SO_2 emissions described earlier in this notice (section II: Targeted Implementation Strategy). Up to three SO_2 monitors would be required for each metropolitan area for trends purposes and general urban air quality analyses. The new number of NAMS monitors required for each metropolitan area would be based on the combination of population and SO_2 emissions, as defined in the Air Facility Subsystem of AIRS and other information. The EPA solicits comments on reducing the requirements for the number of population-oriented NAMS SO_2 monitors in the metropolitan areas.

In addition to changing the criteria for the required number of NAMS monitors as noted above, new criteria are being included for a minimum number of SLAMS SO_2 monitors for those counties (or parts of counties) not a part of any CMSA/MSA but with significant SO_2 emissions. These counties with SO_2 emissions greater than 20,000 tons/year, as defined in the Air Facility Subsystem of AIRS, would be required to have one to two monitors. However, EPA is proposing a provision which would allow for a waiver of all (or part of) these monitoring requirements after a 2-year monitoring period in accordance with EPA guidelines for network review for source-oriented SO_2 monitoring in nonurban areas. Although these guidelines have not been developed at this time, EPA solicits comments on the waiver provision criteria to be established and included in the guideline as well as the minimum number of years for data collection. The EPA also solicits comments on the requirement for SO_2 SLAMS monitors in these areas.

As discussed earlier in this notice, EPA believes there are a significant number of sources of SO_2 emissions which can produce high 5-minute ambient concentrations of SO_2. These 5-minute concentrations have the potential to exceed the level for a proposed 5-minute SO_2 NAAQS or the trigger level which may be established under the authority of section 303 of the Act. The sources which are believed to provide these high concentrations would be targeted for monitoring as discussed earlier in this notice. States will be required to prepare a targeted SO_2 monitoring plan containing a listing of sources to be monitored, the schedule for monitoring, and the rationale for selecting the sources. The schedule for monitoring should be as expeditious as practicable. It is expected that the resources which are made available by the reconfiguration of the NAMS and SLAMS networks will be used to implement the targeting strategy around selected SO_2 sources. The targeted SO_2 monitoring plan will be reviewed as part of the annual network review.

The number of SO_2 monitors to be used around the targeted sources depends on several diverse factors, i.e. quantity of SO_2 emissions, meteorology, terrain, stack height and diameter of stack, temperature and velocity of stack emissions, distance from point of emissions to fence line and populated areas, batch operations, etc. To capture high peak 5-minute concentrations may require many monitors around the sources (Sonoma Technology Inc., 1994). However, it is not economically feasible to place enough monitors around the source to capture all potential exceedances of the NAAQS or trigger level. Therefore, EPA is using a more moderate approach on the number of monitors required.

The EPA is proposing a minimum requirement of four SO_2 monitors to measure 5-minute, 3-hour, 24-hour, and annual average SO_2 concentrations around the targeted sources. These monitors could be point SO_2 monitors, open path SO_2 analyzers, or a combination of both. If open path analyzers with multiple monitoring paths are used, each monitoring path could potentially be substituted for one point SO_2 monitor. Modeling, and perhaps saturation monitoring (a short term study involving the use of portable monitors deployed around the source), could be used to determine the area of expected maximum concentration based on the most predominant wind direction. One monitor would be placed at the fence line downwind of the predominant wind direction. A second monitor would be placed in the modeled maximum concentration area based on the predominant wind direction. Since wind directions around an SO_2 source may be significantly different from one season to another, this same procedure would be repeated for the second most frequent wind direction. For some cases, two or more of these locations may coincide and thereby reduce the number of monitors, or allow for a State or local agency to locate sites in alternative locations. In other cases, additional monitors would probably be needed for situations of complex terrain and/or meteorology. The EPA also encourages the use of open path SO_2 analyzers in combination with point SO_2 monitors to obtain better spatial coverage around the targeted sources. One open path SO_2 analyzer using multiple monitoring paths could potentially replace several of the point SO_2 monitors, depending on factors such as meteorology, terrain, and obstructions. Open path analyzers may be particularly useful in assessing ambient SO_2 concentrations over large populated areas, such as parks and recreation centers, where people are expected to jog/exercise. The EPA solicits comments on the location, number and type of SO_2 monitors, the various available monitoring technologies, and the need to waive minimum monitoring requirements.

The concentration gradients are expected to be sharper around these targeted sources of SO_2 emissions. As a result, the SO_2 monitors located to measure population exposures over a wide area are unlikely to adequately characterize these peaks. Therefore, appendix D is being revised to allow the use of microscale SO_2 sites for SLAMS monitors, and to encourage middle/neighborhood scale measurements as appropriate in populated areas near these targeted sources. The microscale measurements for SO_2 would represent concentrations over an area ranging from several meters to up to about 100 meters. The EPA solicits comments on the use of micro, middle, and neighborhood scale monitors, both point monitors and/or open path analyzers, around point sources of SO_2 emissions.

The EPA is also proposing that the SO_2 monitors around these targeted sources of SO_2 emissions be classified as SLAMS monitors. Section 2.3 requires that monitoring be performed for a minimum of 2 years. After that time, a decision should be made during the annual network review as to whether the monitoring should be continued around the targeted source, or the monitors redeployed around a different targeted source based on measured concentration levels, changes in plant process operations, etc. The EPA solicits comments on the SLAMS classification of the SO_2 monitors around the targeted sources and a waiver provision to relocate the monitors before the full 2 years based on a review of the data.

With this proposal, EPA is also requiring the collection of 5-minute SO_2 concentrations at the targeted sites. The EPA solicits comment on the need to require 5-minute concentrations at NAMS or other SLAMS sites, and if supplementary criteria should be considered for this additional request (e.g., require 5-minute SO_2 monitor data if 1-hour concentration exceeds some level).

D. Appendix F—Annual SLAMS Report

A proposed revision to section 2.1.1 of appendix F would reword this section to provide greater clarity and add a requirement to report the number of 5-minute hourly maximum observations. Section 2.1.2 would similarly be reworded for clarity and to require that the 24-hour averages reported in the annual report for SO_2 be based on block (midnight to midnight) averaging periods and the 3-hour averages also to be based on block averaging periods. Reporting of the number of values in specified ranges of 24-hour average concentrations would be deleted because of new revisions to 40 CFR part 58 data reporting requirements.

Reporting of 5-minute hourly maximums would also be added. The EPA solicits comments on the need for reporting additional summary data if a multiple exceedance form of the standard is adopted.

E. Appendix G—Air Quality Index Reporting and Daily Reporting

The EPA proposes to revise the SO_2 ambient concentrations contained in Tables 1 and 2 and in Figure 3 to correspond to the proposed new episode criteria and significant harm levels.

VIII. Transition Issues

Since the existing NAAQS would be retained even if a 5-minute NAAQS is promulgated, all existing requirements and attainment dates will remain in place as to the existing NAAQS.

IX. Other Clean Air Act Amendment Authorities Affecting SO_2 Sources

The EPA is also developing a voluntary program as part of the acid rain program to encourage nonutility sources to reduce their emissions of SO_2. The voluntary entry into the acid rain program, known as the opt-in program, allows nonaffected sources (nonaffected under title IV), the opportunity to receive their own allowances, undertake emission reductions and trade the extra allowances they would no longer need for compliance with the acid rain program. Again, such participating sources would be under the same obligations to meet all other air regulatory requirements.

These nonutility sources that could participate in the opt-in program are the same group of sources of concern for establishing a 5-minute SO_2 NAAQS. Assuming entry occurred prior to the imposition of the 5-minute standard, the source could accelerate its emissions reductions and offset the cost of such reductions through participation in the opt-in program. The EPA believes the development of options for a 5-minute SO_2 standard and the opt-in program protects public health and provides an opportunity for cost reduction.

X. Public Participation

A. Comments and the Public Docket

The EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal that they find objectionable. All comments, with the exception of proprietary information, should be directed to Docket No. A–94–55 with regard to part 51 and Docket No. A–94–56 with regard to part 58 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by: (1) Labeling proprietary information "Confidential Business Information," and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as

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confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone who wants to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-serve basis to follow previously scheduled testimony.

The EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least 1 week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to Docket No. A–94–55 with regard to part 51 and Docket No. A–94–56 with regard to part 58 (see **ADDRESSES**).

Joseph W. Paisie is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

XI. Administrative Requirements

A. Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities , or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of its potential to have an annual effect on the economy of $100 million or more as discussed in the related SO_2 NAAQS proposal package on November 15, 1994 (59 FR 58958). As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The EPA has prepared a draft regulatory impact analysis (RIA) based on information developed by several EPA contractors. It includes estimates of costs, benefits, and net benefits associated with alternative SO_2 NAAQS. The draft analysis, entitled Regulatory Impact Analysis of the National Ambient Air Quality Standards for SO_2–Draft, is available from the address given above. The draft RIA estimates the cost for the short-term SO_2 NAAQS regulatory alternative. The cost estimate for the short-term SO_2 NAAQS alternative represent a snapshot of the estimated total industry costs that could be incurred at some unspecified time in the future following full implementation of a short-term SO_2 NAAQS. The costs are based on the use of add-on control devices and fuel switching to lower-sulfur fuels. Given that EPA believes that many sources will be able to reduce their peaks through other, nontechnological means, this assumption may result in overstating costs. With this caveat in mind, nonutility annualized costs are estimated to be approximately $250 million for an ambient SO_2 concentration for a 0.06 ppm, 5 annual exceedance concentration levels are estimated to be approximately $160 million. It is estimated that SO_2 will be reduced by approximately 910,000 tons, and 560,000 tons for 1 and 5 exceedance cases, respectively. Incremental to the title IV requirements and attainment of the existing SO_2 NAAQS, total utility annualized costs in 2005 are estimated to be an additional $1.5 billion for the 0.06 ppm, 1 expected exceedance case, and $400 million for the 5 expected exceedance case. Estimated total utility SO_2 emissions in 2005 are not expected to change given the title IV emissions trading program.

Administrative costs are estimated to be approximately $18 million for the short-term NAAQS regulatory alternative. Monitoring costs are estimated to be minimal.

However, EPA has not completed its cost analysis of the section 303 regulatory alternative which EPA believes will be less than the SO_2 NAAQS regulatory alternative. The EPA intends to complete this analysis and make it available to the public by the end of January 1995. The EPA will announce the availability of this analysis in the **Federal Register** as soon as it is available. A final RIA will be issued at the time of promulgation of final standards. Neither the draft RIA nor the other contractor reports have been considered in issuing this proposal.

The regulations, implementation of the revised SO_2 NAAQS, the retained existing NAAQS, and the section 303 program, have been submitted to OMB for review under Executive Order 12866. Any written comments from OMB and any EPA responses to those comments are in the public docket for this rulemaking.

B. Impact on Reporting Requirements

Air quality monitoring activities that would occur as a result of the SO_2 NAAQS proposal could increase the costs and man-hour burdens to State and local agencies for conducting ambient SO_2 surveillance required by 40 CFR part 58 and currently approved under OMB Control Number 2060–0084. Temporarily-increased costs could result from the relocation of some monitors currently operated as part of the SLAMS networks and from the purchase and operation of additional monitors in a small number of agencies.

However, some or all of these costs could be offset by savings in existing monitoring networks. As a result, to the extent that additional monitoring costs will be incurred at all, EPA expects that these costs will be minimal.

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No.0940.11) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St., S.W. (Mail Code 2136), Washington, DC 20460, or by calling (202) 260–2740.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., S.W. (Mail Code 2136), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C., 600 et seq, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

A decision to revise the current NAAQS for SO_2 or set a trigger level for implementation of a section 303 program would impose no new major requirements. It is expected that following the promulgation of a revised SO_2 NAAQS, additional nonattainment areas will be designated and will thus have to submit SIP revisions imposing additional control requirements on affected sources.

Furthermore, the control measures necessary to attain and maintain the NAAQS or implement a section 303 program are developed by the respective States as part of their SIP's. In selecting such measures, the States have considerable discretion so long as the mix of controls selected is adequate to attain and maintain the NAAQS or not exceed the section 303 trigger level. Whether a particular NAAQS would have a significant effect on a substantial number of small entities, therefore, depends on how the States would choose to implement it. For these reasons, any assessment performed by EPA on the costs of additional SIP requirements at this time would necessarily be speculative. On the basis of the above considerations and findings, and as required by section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Administrator certifies that this regulation does not have a significant impact on a substantial number of small entities.

D. Reduction of Governmental Burden

Executive Order 12875 ("Enhancing the Intergovernmental Partnership") is designed to reduce the burden to State, local, and tribal governments of the cumulative effect of unfunded Federal mandates. The Order recognizes the need for these entities to be free from unnecessary Federal regulation to enhance their ability to address problems they face and provides for Federal agencies to grant waivers to these entities from discretionary Federal requirements. The Order applies to any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government. The EPA is required by statute to review periodically and, as necessary, revise the national ambient air quality standards, and to call on States to develop plans to attain and maintain these standards. However, this action also includes a request for comment on the adoption of a section 303 program, as well as a proposal to establish a targeted monitoring network, neither of these actions is explicitly mandated by statute. Therefore, in accordance with the purposes of Executive Order 12875, EPA will consult with representatives of State, local, and tribal governments to inform them of the requirements for implementing the alternative regulatory measures being proposed to address short-term peak SO_2 exposures. The EPA will summarize the concerns of the governmental entities and respond to their comments prior to taking final action.

The EPA anticipates that there will be no additional cost burden imposed on States in order to implement the monitoring requirements proposed in this notice. In general, costs incurred for relocating monitors will be offset by operating costs saved from discontinuing SLAMS and NAMS monitors. For more detail the reader is referred to the section on resource concerns for relocating monitors under the targeted implementation strategy section discussed earlier in this notice or to the supporting statement for the information collection request.

E. Environmental Justice

Executive Order 12898 requires that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The requirements of Executive Order 12898 have been addressed in the draft RIA cited above.

On average, approximately 25 percent of the total population and 14 percent of total households residing in geographic areas that are potentially impacted by short-term SO_2 peaks of 0.60 ppm or greater are nonwhite and below the poverty level, respectively. These estimates exceed the national averages of 19.7 percent and 12.7 percent, respectively. It also follows that, on average, 25 percent of the asthmatics potentially exposed to short-term SO_2 peaks of 0.60 ppm or greater are nonwhite. Upon closer examination, 44 percent of these potentially SO_2-impacted areas have a nonwhite population greater than the national average with 24 percent between 1 and 2 times greater, 10 percent between 2 and 3 times greater, 7 percent between 3 and 4 times greater, and 3 percent between 4 and 5 times greater.

Appendix A—References

Bennett, K.M. (1982), US EPA, Assistant Administrator for Air, Noise and Radiation, Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, Memorandum to Regional Administrators, Regions I-X, September 28, 1982.

Burton, C.S.; Stoeckenius, T.E.; Stocking, T.S.; Carr, E.L.; Austin, B.S.; Roberson, R.L. (1987), Assessment of exposures of exercising asthmatics to short-term SO_2 levels as a result of emissions from U.S. fossil-fueled power plant, Systems Applications, Inc., San Rafael, CA., Pub. No. 87/176, September 23, 1987.

Calcagni, J. (1992), Director of Air Quality Management Division, Processing of State Implementation Plan (SIP) Submittals, Memorandum to Air Division Directors, Regions I-X, July 9, 1992.

EPA (1982a), Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information-OAQPS Staff Paper, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–450/5–82–007.

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EPA (1986a), Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information, Environmental Criteria and Assessment Office, Research Triangle Park, NC, EPA–450/5–86–012.

EPA (1986b), Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Addendum to the 1982 OAQPS Staff Paper, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–450/05–86–013.

EPA (1986c), Guideline on Air Quality Models (Revised), Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–450/2–78–027R. (Codified in 40 CFR 51, appendix W.)

EPA (1992a), National Air Pollutant Emission Estimates, 1900–1991, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–454/R–92–013.

EPA (1992b), National Air Quality and Emissions Trends Report, 1991, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA/450–R–92–001.

EPA (1992c), General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992, 57 FR 13498.

EPA (1994b), Review of the Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA/452/R–94–013.

Polkowsky, B. (1991), U.S. EPA, Standards Development Section, Analysis of Utility Emissions Limits for Short-term SO_2 NAAQS, Memorandum to John Haines, Chief, Standards Development Section, August 2, 1991.

Rosenbaum, A.S.; Hudischewskyj, A.B.; Roberson, R.L.; Burton, C.S. (1992), Estimates of Future Exposures of Exercising Asthmatics to Short-term Elevated SO_2 Concentrations Resulting from Emissions of U.S. Fossil-fueled Power Plants: Effects of the 1990 Amendments to the Clean Air Act and a 5-minute Average Ambient SO_2 Standard, Pub. No. SYSAPP–92/016, April 23, 1992.

Sonoma Technology Inc. (January 1994), Recommendations for the Use of Open-Path and Fixed-Point Monitors for Determining Ambient SO_2 Concentrations, Final Report STI–94021–1402–FR, Prepared for U. S. Environmental Protection Agency, Research Triangle Park, NC.

Strelow, R. (1976), U.S. EPA, Assistant Administrator, Air and Waste Management, Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas, Memorandum to Regional Administrators, Regions I-X, December 9, 1976.

Stoeckenius, T.E.; Garelick, B.; Austin, B.S.; O'Connor, K.; Pehling, J.R. (1990), Estimates of Nationwide Asthmatic Exposures to Short-term Sulfur Dioxide Concentrations in the Vicinity of Nonutility Sources. Systems Application Inc., San Rafael, CA, Publication Number SYSAPP–90/129, December 6, 1990.

List of Subjects in 40 CFR Parts 51 and 58

Environmental protection, Administrative practices and procedure, Air pollution control, Intergovernmental relations, SO_2, Reporting and recordkeeping requirements, State implementation plans.

Dated: February 15, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend chapter I of title 40 of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7602.

2. In § 51.151 of subpart H, the entry for "Sulfur dioxide" is revised to read as follows:

§ 51.151 Significant harm levels.

* * * * *

Sulfur dioxide—0.29 parts per million (750 micrograms/cubic meter), 24-hour average.

* * * * *

3. In appendix L to part 51, paragraphs 1.1 (b), (c), and (d) are amended by revising the entries for "SO_2" to read as follows:

Appendix L to Part 51—Example Regulations for Prevention of Air Pollution Emergency Episodes

* * * * *

1.1 * * *

(b) * * *

SO_2—0.19 ppm (500 μg/m³), 24-hour average.

* * * * *

(c) * * *

SO_2—0.23 ppm (600 μg/m³), 24-hour average.

* * * * *

(d) * * *

SO_2—0.26 ppm (675 μg/m³), 24-hour average.

* * * * *

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

4. Section 51.465 is added to Subpart T to read as follows:

§ 51.465 Contingency plans.

(a) Each plan must include a contingency plan which must, as a minimum, provide for taking action necessary to prevent further violations of the 5-minute trigger level for sulfur dioxide (SO_2) attributable to emissions from a source once one exceedance has occurred. The 5-minute trigger level is 0.60 parts per million (ppm), not to be exceeded more than once per calendar year, as determined in accordance with appendix Y to this part.

(b) Each contingency plan must provide that:

(1) Within 30 days of determination of a violation of the trigger level, the State shall carry out a compliance inspection of any source whose emissions may have resulted in or contributed to the violation of the trigger level.

(2) If the source is out of compliance with applicable SO_2 emission limits then, within 30 days of completing the compliance inspection in paragraph (b)(1) of this section, the State shall take enforcement action to bring the source into compliance.

(3) If the source is in compliance with applicable SO_2 emission limits then, within 60 days of completing the compliance inspection in paragraph (b)(1) of this section, the State shall develop and implement an enforceable emission reduction plan with a compliance schedule to address the cause of the emissions producing the trigger level violation. The schedule shall provide for implementation of all actions necessary to prevent further violations of the trigger level as expeditiously as practicable. This emission reduction plan must be submitted to EPA as a revision to their State implementation plan within 1 year of completing the compliance inspection in paragraph (b)(1) of this section.

(4) If in carrying out the compliance inspection referred to in paragraph (b)(1) of this section, the State determines that the source is out of compliance with its applicable SO_2 emission limits but also determines that bringing the source into compliance with its applicable emission limits would not be likely to prevent further exceedances of the trigger level, then the State and source shall develop and implement an emission reduction plan as described in paragraph (b)(3) of this section.

5. Appendix Y is added to part 51 to read as follows:

Appendix Y to Part 51—Interpretation of the 5-Minute Trigger Level for Sulfur Dioxide

1.0 General

a. This appendix explains the computations necessary for analyzing sulfur dioxide data to determine whether the 5-minute trigger level specified in § 51.400(a), subpart T, has been exceeded and whether the 5-minute trigger level has been violated. Sulfur dioxide is measured in the ambient air by the reference method specified in appendix A of this part or an equivalent method designated in accordance with part 53 of this chapter.

b. Several terms used in this appendix must be defined. A "5-minute hourly maximum" for SO_2 refers to the highest of the 12 possible nonoverlapping 5-minute SO_2 averages calculated or measured during a clock hour. The term "exceedance" of the 5-minute trigger level concentration means a 5-minute hourly maximum value that is greater than the 5-minute trigger level after rounding to the nearest hundredth ppm (i.e., values ending in or greater than 0.005 ppm are rounded up; e.g., a value of 0.605 would be rounded to 0.61, which is the smallest value for an exceedance). The term "year" refers to a calendar year. The term "quarter" refers to a calendar quarter. The 5-minute SO_2 trigger level is expressed in terms of the number of expected exceedances per year by adjusting for missing data (if required) and by averaging over a 2-year period.

2.0 Trigger Level Determination

a. The 5-minute trigger level is not violated when the number of expected exceedances per year is less than or equal to one. In general, this determination is to be made by recording the number of 5-minute hourly maximum exceedances at a monitoring site for each year, using the calculations in section 3.2 to compensate for missing data (if required), averaging the number of exceedances over a 2-year period, and comparing the number of exceedances (rounded to the nearest integer) to the number of allowable exceedances.

b. Although it is necessary to meet the minimum data completeness requirements to use the computational formula described in section 3.2, this criterion does not apply when there are obvious exceedance situations which contribute to a violation. For example, when a site fails to meet the completeness criteria, violation of the 5-minute trigger level can still be established on the basis of the observed number of exceedances in a year (e.g., three observed exceedances in a single year).

3.0 Calculations for the 5-Minute Trigger Level

3.1 Calculating a 5-Minute Hourly Maximum

A 5-minute hourly maximum value for SO_2 is the highest of the 5-minute averages from the 12 possible nonoverlapping periods during a clock hour. These 5-minute values shall be rounded (to the nearest hundredth ppm (fractional values equal to or greater than 0.005 ppm are rounded up). A 5-minute maximum shall be considered valid if: (1) 5-minute averages were available for at least 9 of the 12 5-minute periods during the clock hour, or (2) the value of the 5-minute average exceeds the level of the 5-minute trigger level.

3.2 Calculating Expected Exceedances for a Year

a. Because of practical considerations, a 5-minute maximum SO_2 value may not be available for each hour of the year. To account for the possible effect of incomplete data, an adjustment must be made to the data collected at a particular monitoring location to estimate the number of exceedances in a year. The adjustment is made on a quarterly basis to ensure that the entire year is adequately represented. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the trigger level is identical to the fraction of measured values above this level.

b. For all NAMS and SLAMS sites that report 5-minute SO_2 data, the computation for incomplete data is to be made for all sites with 50 to 90 percent complete data in each quarter. If a site has more than 90 percent complete data in a quarter, no adjustment for missing data is required. If a site has less than 50 percent complete data in a quarter, no adjustment for missing data is required and the observed exceedances are used.

c. The estimate of the expected number of exceedances for the quarter is equal to the observed number of exceedances plus an increment associated with the missing data.

1. The following formula must be used for these computations:

$$e_q = v_q + [(v_q/n_q) \times (N_q - n_q)] = v_q \times N_q/n_q \quad [1]$$

Where:

e_q=the expected number of exceedances for quarter q,

v_q=the observed number of exceedances for quarter q,

N_q=the number of hours in quarter q, and

n_q=the number of hours in the quarter with valid 5-minute hourly SO_2 maximums

q=the index for each quarter, q=1, 2, 3 or 4.

2. The expected number of exceedances for the quarter must be rounded to the nearest hundredth (fractional values equal to or greater than 0.005 are rounded up).

d.1. The expected number of exceedances for the year, e, is the sum of the estimates for each quarter.

$$e = \sum_{q=1}^{4} e_q$$

2. The expected number of exceedances for a single year must be rounded to one decimal place (fractional values equal to or greater than 0.05 are rounded up).

e. The number of exceedances is then estimated by averaging the individual annual estimates over a 2-year period, rounding to the nearest integer, and comparing with the allowable exceedance rate of one per year (fractional values equal to or greater than 0.5 are rounded up; e.g., an expected number of exceedances of 1.5 would be rounded to 2, which is the lowest value for violating the trigger level.

f. *Example.*

1. During the most recent quarter, 1210 out of a possible 2208 5-minute hourly maximums were recorded, with one observed exceedance of the 5-minute trigger level. Using formula [1], the expected number of exceedances for the quarter is:

$e_q = 1 \times 2208/1210 = 1.825$ or 1.83

2. If the expected exceedances for the other 4 quarters were 0.0, then using formula [2], the expected number of exceedances for the year is:

1.83 + 0.0 + 0.0 + 0.0 = 1.83 or 1.8

3. If the expected number of exceedances for the previous year was 0.0, then the expected number of exceedances is estimated by:

(1.8 + 0.0)/2 = 0.9 or 1

4. Since 1 is not greater than the allowable number of exceedances, this monitoring site would not violate the trigger level.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation for part 58 continues to read as follows:

Authority: Secs 110, 301(a), and 319 of the Clean Air Act as amended, (42 U.S.C. 7410, 7601(a), and 7619).

2. Section 58.1 is amended by adding and reserving paragraphs (aa) through (hh) and by adding paragraphs (ii) and (jj) to read as follows:

§ 58.1 Definitions.

* * * * *

(ii) "Metropolitan Statistical Area" means the most recent area as designated by the U.S. Office of Management and Budget and population figures from the U.S. Bureau of the Census. The Department of Commerce defines a metropolitan area as "one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus."[1]

(jj) "Consolidated Metropolitan Statistical Area" means the most recent area as designated by the U.S. Office of Management and Budget and population figures from the Bureau of

[1] U.S. Bureau of the Census, "Statistical Abstract of the United States: 1993", (113th Edition), Washington, DC (1993).

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the Census. The Department of Commerce provides "that within metropolitan complexes of 1 million or more population, separate component areas are defined if specified criteria are met. Such areas are designated primary metropolitan statistical areas (PMSA's); and any area containing PMSA's is designated a consolidated metropolitan statistical area (CMSA)." [2]

* * * * *

3. In appendix C to part 58, section 2.4 is added to read as follows:

Appendix C—Ambient Air Quality Monitoring Methodology

* * * * *

2.4 A monitoring method for SO_2 used for obtaining 5-minute average concentrations in connection with targeted monitoring of an SO_2 source likely to produce short-duration, high-level concentration peaks must be a designated reference or equivalent method as defined in § 50.1 of this chapter and must meet the supplemental specifications for 5-minute monitoring given in table B–1 of part 53 of this chapter.

* * * * *

4. In appendix D to part 58, section 1, the last two sentences of the third paragraph are removed, and replaced by four new sentences to read as follows:

Appendix D—Network Design for State and Local Air

Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

1. * * *

* * * It should be noted that this appendix contains no criteria for determining the total number of stations in SLAMS networks. A minimum number of lead SLAMS is prescribed as well as a minimum required number of SO_2 SLAMS for those counties not within the boundaries of any CMSA/MSA. Also, a minimum required number of SO_2 SLAMS is listed for targeted sources of SO_2 emissions. The optimum size of a particular SLAMS network involves trade-offs among data needs and available resources which EPA believes can best be resolved during the annual network design review process.

* * * * *

§ 2.3 [Amended]

5. In appendix D, the first paragraph of section 2.3 is revised, and a new paragraph is added between the first and second paragraphs to read as follows:

* * * * *

2. * * *

2.3 * * *

The spatial scales for SO_2 SLAMS monitoring are the micro, middle, neighborhood, urban, and regional scales. The most important spatial scales to effectively characterize the emissions of SO_2 from stationary sources are the micro, middle, and neighborhood scales. Because of the nature of SO_2 emissions and the nature of distributions over metropolitan areas, the neighborhood scale is the most likely scale to be represented by a single measurement in the metropolitan area where the concentration gradients are less steep, but only if the undue effects from local sources (minor or major point sources) can be eliminated. Urban scales would represent areas where the concentrations are uniform over a larger geographical area. Regional scale measurements would be associated with rural areas and urban background measurements.

Microscale—Emissions from stationary sources may, under certain plume conditions, result in high 5-minute and 24-hour ground level concentrations at the microscale level. The microscale measurements would represent an area impacted by the plume with dimensions extending up to approximately 100 meters.

* * * * *

6. In appendix D, section 2.3, a sentence is added to the end of the paragraph titled "Middle Scale" to read as follows:

* * * * *

2.3 * * *

Middle Scale * * * Emissions from stationary sources that cover larger geographic areas may also result in high 5-minute and 24-hour SO_2 concentrations.

* * * * *

7. In appendix D, section 2.3, a sentence is added to the last paragraph to read as follows:

* * * * *

2.3 * * *

* * * The use of SO_2 saturation monitors is encouraged to determine the areas of maximum concentration from sources of SO_2 emissions as an aid to locating reference or equivalent SO_2 monitors.

* * * * *

8. In appendix D, § 2.3, seven new paragraphs are added at the end of this section to read as follows:

* * * * *

The required number of sites needed to measure SO_2 concentrations for population exposure in the metropolitan areas of the counties are discussed in section 3.2 of this appendix. However, there may be significant point source emissions in other counties which are not within the geographic boundaries of any CMSA/MSA. To determine the SO_2 concentrations and exposures for these counties, a minimum number of SLAMS SO_2 monitors will be required. Table 2 shows the minimum required number of SLAMS SO_2 monitors for those counties which are not a part of any CMSA/MSA and also have SO_2 emissions greater than 20,000 tons/year as defined in the Air Facility Subsystem of AIRS.

TABLE 2.—STATE AND LOCAL AIR MONITORING STATIONS CRITERIA

Area	SO_2 emissions (tons/year)	Minimum number of SO_2 stations
Counties (or parts of counties) not included in any CMSA/MSA	>100,000	2
	20,000–100,000	1
	<20,000	0

Monitors located to meet this requirement would generally be either middle or neighborhood scale of representativeness to measure population exposure. The monitors are not necessarily required to be located in the county where the SO_2 emissions originate, but should be located in the maximum concentration area. The maximum concentration area may be determined by modeling the SO_2 emission sources and/or in combination with SO_2 saturation monitoring studies.

[2] See footnote 1 in paragraph (ii) of this section.

The EPA will consider a request to waive all or part of these requirements for these areas. If monitoring has been conducted for a minimum of 2 years and the measured concentrations were low, then EPA will consider a request to waive all or part of the monitoring requirement in accordance with EPA guidelines.

In addition to the above requirement for SO_2 monitors, SLAMS monitors are required to be deployed around targeted sources of SO_2 emissions in order to produce 5-minute, 3-hour, 24-hour, and annual average concentration measurements. A listing of which sources are to be monitored, the schedule for monitoring, and the rationale for selecting the sources shall be prepared by the State in a targeted SO_2 monitoring plan to be reviewed as part of the annual SLAMS network review. The implementation of this plan will be as expeditious as practicable.

To adequately monitor and characterize air quality around point sources of SO_2 emissions would require multiple point monitors or open path analyzers (or a combination of both). Financial and practical constraints may prohibit the deployment of large numbers of SO_2 monitors around these targeted sources. Therefore, a modest network with a minimum requirement of four SO_2 monitors around each targeted source will be used. If open path analyzers with multiple paths are used, each monitoring path could potentially be substituted for one point SO_2 monitor. Modeling and/or saturation sampling may be used to determine the general area(s) of expected maximum SO_2 concentrations based on the most predominant wind direction. One monitor will be located at the fence line downwind of the most predominant wind direction, and a second monitor will be located in the modeled maximum concentration area based on the most predominant wind direction. Since wind directions frequently change from one season to another, the second most predominant wind direction will be used to locate the second pair of monitors. The third monitor will be located at the fence line downwind of the second most predominant wind direction, and the fourth monitor will be located in the modeled maximum concentration area based on the second most predominant wind direction. However, for situations where there is complex terrain and/or meteorology, additional monitors may be required to adequately monitor the emissions.

In some cases, it is simply not practical to place monitors at the indicated modeled locations of maximum concentrations. Some examples may include locations over open bodies of water, on rivers, swamps, cliffs, etc. The EPA Regional Offices and the State or local air pollution control agencies should determine alternative locations and alternative network designs on a case-by-case basis.

The use of SO_2 monitoring around targeted sources of SO_2 emissions is intended to capture high 5-minute peak concentrations as well as exceedances of the 3-hour, 24-hour, and annual mean standards for SO_2. However, there will be cases where this monitoring strategy will be implemented around the targeted sources of SO_2 emissions, and the resulting measured SO_2 concentrations will be low. Therefore, SO_2 monitoring around a targeted source must be conducted for a minimum of 2 years to account for factors such as year-to-year variability in meteorology, change of plant processes, etc. If monitoring has been conducted for a minimum of 2 years, and the concentrations were low, then a decision could be made in the annual SLAMS network review between the EPA Regional Office and the State or local air pollution control agency to move the SO_2 monitors to another targeted source of SO_2 emissions. In general, it is more important to monitor around another targeted source of SO_2 emissions than to retain monitors around a source with demonstrated low SO_2 concentrations.

9. In appendix D, the first two sentences of the first paragraph of section 3 are removed and the following two sentences are added to read as follows:

* * * * *

3. * * *

The NAMS must be stations selected from the SLAMS network with emphasis given to urban and multisource areas. Areas to be monitored must be selected based on the CMSA/MSA population and pollutant emission concentration levels as defined in the Air Facility Subsystem of AIRS. * * *

* * * * *

10. In appendix D, the first paragraph in section 3.2 and Table 3 are revised to read as follows:

* * * * *

3.2 Sulfur Dioxide (SO_2) Design Criteria for NAMS.

It is desirable to have several NAMS in the more polluted and densely populated urban and multisource areas to characterize the national and regional SO_2 air quality trends and geographical patterns. Table 3 shows the required number of NAMS monitors in the metropolitan areas to accomplish this purpose. These neighborhood scale monitoring stations (which would be located within the boundaries of the CMSA/MSA) would normally be classified as category (a) or (b) as discussed in section 3. The actual number and location of the NAMS must be determined by the EPA Regional Office and the State agency, subject to the approval of EPA Headquarters (OAR).

TABLE 3.—NATIONAL AIR MONITORING STATION CRITERIA

CMSA/MSA population	SO_2 emissions (tons/year)	Minimum required number SO_2 stations
>1,000,000	200,000	3
	100,000–200,000	2
200,000–1,000,000	0–100,000	1
	>200,000	1
	100,000–200,000	2
	20,000–100,000	1
50,000–200,000	>20,000	0
	>100,000	2
	20,000–100,000	1
	<20,000	0

* * * * *

11. In appendix D, section 5, Table 5 is amended by revising the entry for "Micro" to read as follows:

5. * * *

TABLE 5.—SUMMARY OF SPATIAL SCALES FOR SLAMS AND REQUIRED SCALES FOR NAMS

Spatial scale	Scale applicable for SLAMS						Scales Required for NAMS					
	SO_2	CO	O_3	NO_2	Pb	PM–10	SO_2	CO	O_3	NO_2	Pb	PM–10
Micro	✔	✔			✔	✔	✔	✔			✔	✔

* * * * *

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12. In appendix E to part 58, § 3.1, the fourth sentence is revised to read as follows:

Appendix E—Probe Siting Criteria for Ambient Air Quality Monitoring

* * * * *

3. * * *

3.1 * * * Therefore, the probe or at least 80 percent of the monitoring path must be located 2 to 15 meters above ground level for all scales of measurements. * * *

* * * * *

13. In appendix F to part 58, by revising §§ 2.1, 2.1.1, and 2.1.2 to read as follows:

Appendix F—Annual SLAMS Air Quality Information

* * * * *

2.1 Sulfur Dioxide (SO_2).

2.1.1 *Site and Monitoring Information.* City name (when applicable), county name and street address of site location. AIRS site code. AIRS monitoring method code. Number of 5-minute hourly maximum observations. Number of hourly observations.

2.1.2 *Annual Summary Statistics.* Annual arithmetic mean (ppm). Highest and second highest 24-hour averages (ppm) (block averages measured midnight to midnight) and dates of occurrence. Highest and second highest 5-minute hourly maximums (ppm) (block averages) and dates and times (hour) of occurrence when 5-minute measurements are required. Highest and second highest 3-hour averages (ppm) (block averages beginning at midnight) and dates and times (ending hour) of occurrence. Number of exceedances of the 24-hour primary NAAQS. Number of exceedances of the 5-minute primary NAAQS (if a 5-minute primary NAAQS is promulgated) when 5-minute measurements are required. Number of exceedances of the 3-hour secondary NAAQS.

* * * * *

14. Appendix G is amended by revising tables 1 and 2 and Figure 3 to read as follows:

Appendix G—Uniform Air Quality Index and Daily Reporting

* * * * *

TABLE 1.—BREAKPOINTS FOR PSI IN METRIC UNITS [1]

PSI value (Ψ)	24-hr. PM μg/m³	24-hr. SO_2 μg/m³	8-hr. CO mg/m³	1-hr. O_3 μg/m³	1-hr. NO_2 μg/m³
50	50	[3]80	5	120	[2]
100	150	[3]365	10	235	[2]
200	350	[3]500	17	400	1,130
300	420	[3]600	34	800	2,260
400	500	[3]675	46	1,000	3,000
500	600	[3]750	57.5	1,200	3,750

[1] At 25°C and 760 mm Hg.
[2] No index values reported at these concentration levels because there is no short-term NAAQS.
[3] All the concentration levels are used for illustrative purposes only. The actual levels will be determined at the time of the promulgation of the standard.

TABLE 2.—BREAKPOINTS FOR PSI

[Parts per million]

PSI value (Ψ)	24-hr. SO_2	8-hr CO	1-hr. O_3	1-hr. NO_2
50	[2]0.03	4.5	.06	(1)
100	[2]0.12	9	.12	(1)
200	[2]0.19	15	0.2	0.6
300	[2]0.23	30	0.4	1.2
400	[2]0.26	40	0.5	1.6
500	[2]0.29	50	0.6	2.0

[1] No index value reported at these concentration levels because there is no short-term NAAQS.
[2] All the concentration levels are used for illustrative purposes only. The actual levels will be determined at the time of the promulgation of the standard.

* * * * *

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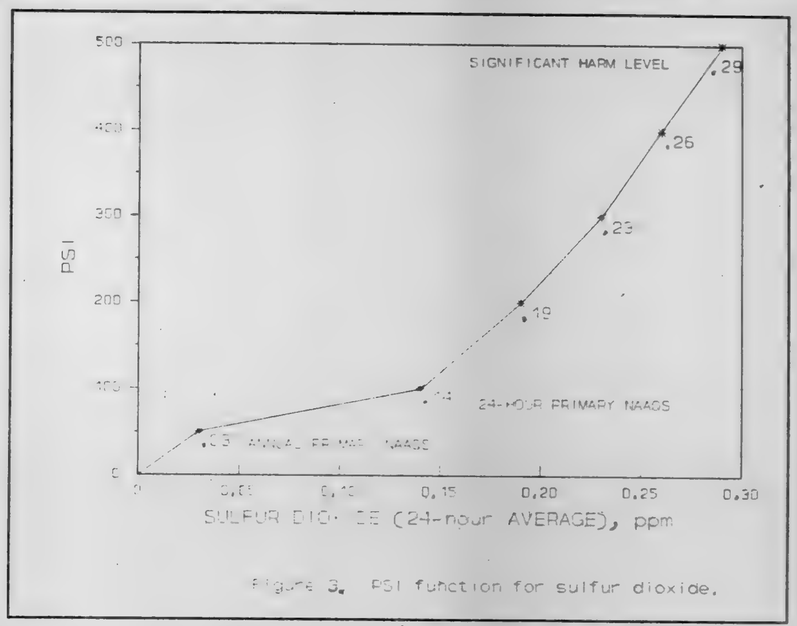

Figure 3. PSI function for sulfur dioxide.

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* * * * *

[FR Doc. 95-5021 Filed 3-6-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[TX-17-1-5600b; FRL-5163-4]

Approval and Promulgation of Implementation Plans; Texas State Implementation Plan Revision; Corrections for Reasonably Available Control Technology (RACT) Rules; Volatile Organic Compounds (VOC) RACT Catch-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on June 8, 1992, and additional revisions which were submitted on November 13, 1992. These SIP revisions contain regulations which require the implementation of RACT for various types of VOC sources. These revisions respond to the requirements of section 182(b)(2) of the Federal Clean Air Act, as amended in 1990 (CAA), for States to adopt RACT rules by November 15, 1992, for major VOC sources which are not covered by an existing EPA Control Techniques Guideline (CTG) and for all sources covered by an existing CTG. These revisions also include corrections to the monitoring, recordkeeping, and reporting requirements for Victoria County, in order to make the VOC rules more enforceable in that County.

In the final rules section of this **Federal Register**, the EPA is approving these SIP revisions as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse or critical comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 6, 1995.

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T-AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, Texas 78711-3087.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T-AP), EPA Region 6, telephone (214) 665-7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final

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rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–5346 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 95–2–6860b; FRL–5160–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from pump and compressor seals at petroleum refineries, chemical plants, bulk plants, and bulk terminals; large commercial bakeries; and polyester resin operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 6, 1995

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197

SUPPLEMENTARY INFORMATION: This document concerns the Bay Area Air Quality Management District Rules 8–25, Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals; 8–42, Large Commercial Bakeries; and 8–50, Polyester Resin Operations; submitted to EPA on September 28, 1994 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q

Dated: February 10, 1995.

Felicia Marcus,

Regional Administrator

[FR Doc. 95–5349 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Parts 52 and 81

[TX–53–1–6843b; FRL–5164–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Texas; Approval of the Maintenance Plan for Victoria County and Redesignation of the Victoria County Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 27, 1994 the State of Texas submitted a maintenance plan and a request to redesignate the Victoria County, Texas ozone nonattainment area from nonattainment to attainment. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements.

In the final rules section of this **Federal Register**, the EPA is approving this exemption request as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 6, 1995.

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr Mick Cote, Planning Section (6T–AP), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental

regulations, Lead, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–5345 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5166–4]

Clean Air Act Proposed Approval Of Operating Permits Program; State of Nebraska and the City of Omaha

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes full approval of the Operating Permit Programs submitted by the state of Nebraska and city of Omaha for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by April 6, 1995.

ADDRESSES Comments should be addressed to Christopher D. Hess at the address below. Copies of the submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours by contacting: Christopher D. Hess, Environmental Protection Agency, Air Branch; 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under Title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act which outlines criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of Submission by State and Local Authority

Introduction. What follows are brief explanations indicating how the submittals meet the requirements of Part 70. The reader may consult the Technical Support Document (TSD) for a more detailed explanation of these topics.

1. Support Materials

(1) Governor's Letter. The state of Nebraska has requested approval of its Title V program. Additionally, the state designated its two local agencies to administer independent Title V programs and have requested approval on their behalf. Thus, this action also applies to the city of Omaha's Title V program. The Lincoln-Lancaster County Health Department (LLCHD) is addressed in a separate rulemaking action. The entire geography of Nebraska will be covered by either the state or an approved local program. The EPA will retain responsibility for the Title V program on tribal lands in Nebraska. These actions fulfill the requirements of part 70.4(b).

(2) Regulations. The basic regulatory framework for the operating permit program is Title 129 Nebraska Air Quality Regulations. The state's submittal includes a demonstration of the public review and hearing process involved with the adoption of Title 129. The city of Omaha has adopted these regulations by reference and provided adequate demonstration of the required legal authority and public review process. Both programs also use the Nebraska Environmental Protection Act and Title 115 Rules of Practice and Procedure.

The initial submittal contained an inadequate definition of "applicable requirements" that limited the ability to include all requirements in the operating permit. This is because the initial definition stated that "applicable requirements" were only those adopted by the state's Environmental Quality Council. However, in response to EPA comments, the state modified the regulations in December 1994, so that Nebraska can require that all "applicable requirements" of the Clean Air Act will be addressed in the permit process.

As a result, the submittal (as modified) does not identify any regulatory provisions which would restrict operation of the program.

(3) Attorney General's Legal Opinion. The opinion contains the elements required by 40 CFR 70.4(b)(3) and demonstrates that there is adequate authority to meet all Title V requirements. The city of Omaha's legal opinion incorporates the state's by reference and also provides adequate legal authority.

2. Implementation

(1) Program Description. A comprehensive plan for implementing the Title V program was included in each submittal that meets the requirements of 40 CFR 70.4(b)(1). Each plan identifies appropriate program authority, agency organization, and staffing. A combination of approximately 244 major sources have been identified that will require a Title V permit within both programs' jurisdictions.

These programs have also identified adequate procedures for the permit application and review process, including inspection and enforcement provisions. The EPA has determined the outlined processes are sufficient to ensure effective implementation of the program. An implementation agreement was not included in either submittal, but the EPA is encouraging its development in anticipation of program approval.

With respect to the operating permit fee, the city of Omaha has selected the presumptive minimum plus consumer price index (CPI), currently $30.07. The state has selected a fee above this amount at $30.69. These fees will be discussed further under the fee demonstration section (II., 3.). Both programs will maintain a Class II program for minor, non-Title V sources.

(2) Program Implementation. Each program is establishing a permit registry to ensure issuing one-third of all permits in the first year of the program. This registry also includes a provision to review permit applications within nine months of receipt for those sources

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of hazardous air pollutants participating in the early reduction program under section 112(i)(5) of the Act.

In terms of initial permit applications, adequate procedures are outlined to satisfy Part 70 requirements. The application process includes affected state and EPA review. Each program's procedures and guidance are designed to ensure that a permit is issued within 18 months of application.

Both programs have established criteria for monitoring source compliance which include compliance inspections, citizen complaint responses, follow-up inspections, and permit application review. Each Title V source will be inspected at least once per year. Surveillance through monitoring will also be conducted to ensure compliance.

(3) Personnel. Each submittal includes a workload analysis estimating the number of personnel needed for the Title V program. Since both the state and the city of Omaha have selected a fee equal to or greater than the $25 plus CPI as outlined in Part 70, EPA is presuming that the requirements of § 70.9(b)(1) are met with respect to personnel. Either agency could be required to provide additional analysis if comments are received that propose to rebut the presumption of this Part 70 provision in accordance with § 70.9(5)(ii).

(4) Data Management. All permit application information will be entered into the state's computer data base and be submitted to the EPA. The proposed permits will be made available for EPA review. A permit decision schedule will ensure that a permit is issued within 18 months of initial application.

Each program requires the retention of permit information by the source for five years. Additionally, each agency has committed to maintain records for five years in its respective program descriptions.

(5) Applicability Provisions. These programs provide for permitting of all major sources, affected sources, sources that opt to apply for a permit, and all sources subject to sections 111 or 112 standards (new source performance standards and standards for hazardous air pollutants).

Both the state and the city of Omaha exempt sources that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act. This exemption is allowed by § 70.3(b)(1) until the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources.

Since the city of Omaha has incorporated the state's rules by reference, the above-mentioned items apply to that local Title V program as well.

(6) Permit Content. Nebraska's regulations require Title V permits to include Part 70 terms and conditions for all applicable requirements. These rules also stipulate that the duration of the permit will be specified in the permit. Both programs also provide for the inclusion of enhanced monitoring in permits.

Title 129 requires the permit to contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act as required by § 70.6(a)(4). The regulations also meet the requirements of § 70.6(a)(5), § 70.6(a)(6), § 70.6(a)(7), and § 70.6(a)(8). Part 70 also requires terms and conditions for reasonably anticipated operating scenarios to be included in the permit. Title 129 requires that the terms and conditions of each alternative scenario meet all the requirements of Part 70. Section 70.6(a)(10) requires the permit to contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases at the facility. Title 129 fulfills this requirement.

Part 70 also has requirements for the terms and conditions in a Part 70 permit at § 70.6(b), compliance requirements at § 70.6(c), and emergency provisions at § 70.6(g). Title 129 complies with these requirements.

Both programs provide for general permits. The director will identify criteria by which sources may qualify for the general permit as required by § 70.6(d)(1).

The permitting program can also have provisions for permitting temporary sources and for permit shields. Title 129 has both of these options and meets the requirements of Part 70. Title 129 also provides for operational flexibility and closely follows EPA's requirements.

The program does make provision to exempt the listing of insignificant activities in permit applications. The state has submitted a list to EPA that was adopted in December 1994. This list will be used by the city of Omaha as well.

(7) Permit Applications. Title 129 addresses permit application requirements in Chapters 5 and 7. Within these rules adequate procedures are outlined for the following: duty to apply, complete applications, confidential information, correcting a permit application, standard forms, and compliance certification. A detailed analysis of how the submittal meets these Part 70 requirements is included in the TSD.

(8) Permit Issuance. Title 129 satisfies both the complete and timely component of section 503 of the Act and 40 CFR 70.5(a). Sources are required to submit permit applications within 12 months after becoming subject to the permit program, or on or before some earlier date established under the state operating permit registry. Source permit applications must conform to the standard application forms developed by each of the respective agencies. These applications must contain information sufficient to determine all applicable requirements with respect to the applicant. Both submittals demonstrate that a source will receive a completeness determination within 30 days.

Both programs also require that final action be taken on complete applications within 18 months of submittal of a complete application, except for initial permit applications which are subject to the three-year transition plan set forth by the Clean Air Act Amendments of 1990. Title 129 requires compliance with public participation procedures, notification to affected states, compliance with all applicable requirements, and allows for a 45-day period for EPA objection.

The regulations provide for priority on applications for construction or modification under an EPA approved preconstruction review program. The operating permit regulations do not affect the requirement that any source have a preconstruction permit under an EPA-approved preconstruction review. The programs also provide that permits being renewed are subject to the same procedural requirements, including those for public participation and affected state and EPA review, that apply to initial permit issuance. Title 129 provides for administrative amendments which meet the requirements of the Federal rule.

Permit modification processing procedures are equivalent to Federal requirements as they provide for the same degree of permitting authority, EPA, and affected state review and public participation. The program satisfies all of the Federal minor permit modification procedures.

The programs provide for promptly sending to EPA any notice that either agency refuses to accept all recommendations of an affected state regarding a proposed minor permit modification. In addition, the programs provide that the permitting authority may approve, but may not issue, a final permit modification until after EPA's 45-day review period or until the EPA has notified the permitting authority that the EPA will not object to issuance, whichever is first.

Title 129 provides for minor permit modification group processing which meets the Federal criteria. Specifically, any application for group processing must meet permit application requirements similar to those outlined in section 70.7(e)(3). The state's rules also provides for notifying the EPA and affected states of the requested permit modification within five working days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level.

Significant modification procedures are defined in a manner that parallels Federal provisions. Each agency's program description provides for completion of review of the majority of significant permit modifications within nine months after receipt of a complete application.

a. Permit reopenings. A permit is to be reopened and revised when additional applicable requirements become applicable to a major source with a remaining permit term of three or more years, and such a reopening is to be completed within 18 months after promulgation of the applicable requirement. In addition, the proceedings to reopen a permit will follow the same procedures that apply to initial issuance, will affect only those parts of the permit for which cause to reopen exists, and will ensure reopenings are made as expeditiously as practicable. The rule provides that at least 30 days' advance notice must be given to the permittee for reopenings, and that notice will be given of the intent to reopen the permit.

b. Off-permit revisions. Both the state and city of Omaha have elected to not allow off-permit activities.

(9) Compliance Tracking and Enforcement. The requirement for proposed compliance tracking and enforcement reporting has been met by both programs. Omaha will provide enforcement information to the state monthly. The state will then enter information for both agencies into the Aerometric Information Retrieval System. The proposed enforcement program will consist of source inspection, surveillance, response to complaints, permit application review, and enforcement responses. Proposed enforcement responses include permit modification, permit revocation, stipulation, administrative orders, injunctive relief, civil/criminal referral, and referral to the EPA.

(10) Public Participation, EPA and Affected States Review. Both programs ensure that all permit applications are available to the public. All requirements are included to ensure that each concerned citizen will be aware of proposed and final permit actions. This includes the commitment to keep a record of proceedings that will allow citizens to object to a permit up to 60 days after the EPA review period.

Title 129 contains rules that ensure mutual review by affected states and the EPA. Neither the state nor city of Omaha will issue a permit when it is objected to in accordance with § 70.8(c).

3. Fee Demonstration

The city of Omaha has elected to collect the presumptive minimum plus CPI in accordance with Part 70 to cover direct and indirect costs of developing and administering its program. The state has selected a fee in the amount of $30.69 which is above the presumptive.

Each program is also required to demonstrate that fees collected under Title V will be used exclusively for the purpose of Title V. This is addressed by the state in Nebraska statute 81.1505.01, which states that any Title V fees collected will be deposited into a designated account with the State Treasurer. Furthermore, in 81.105.04 the State Legislature's Appropriations Committee will conduct an annual review to ensure that all funds have been accounted for appropriately. Omaha has established a separate accounting structure exclusively for Title V.

Part 70 also requires permitting authorities to submit periodic accounting reports to EPA. Upon further guidance by EPA, both agencies will be requested to submit these reports.

Each submittal included an inventory of sources and the amount of fees that it expects to collect in the first year from each source as part of their fee demonstration. The state anticipates approximately $1,765,530 and the city of Omaha anticipates $419,957. Each agency submitted year-to-year estimates of resources by major activities which adequately satisfies the four-year projection.

4. Provisions Implementing the Requirements of Other Titles of the Act

(1) Acid rain. The legal requirements for an approval under the Title V operating permits program for a Title IV program were cited in guidance distributed on May 21, 1993, entitled "Title V—Title IV Interface Guidance for States." Each program has met the five major criteria of this guidance which include legal authority, regulatory authority, forms, regulatory revisions, and a commitment to acid rain deadlines. 40 CFR part 72 is adopted by reference.

(2) Section 112. The specific Title V program approval criteria with respect to section 112 provisions are enumerated in a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated April 13, 1993. The state and city of Omaha have met these criteria as described in the following topics:

a. Section 112(d), (f), and (h).—EPA Emissions Standards. Chapter 8 of Title 129 requires each permit to specify emission limitations and standards, including those operational requirements and limitations that ensure compliance with all requirements applicable at the time of permit issuance. If any applicable requirements have been promulgated at the Federal level, but not yet adopted by the state or Council, the director has specific regulatory authority to insert these applicable requirements into a permit on a case-by-case basis. Chapter 15 requires a permit to be reopened if a source becomes subject to an additional applicable requirement and has a remaining permit term of three years or more.

b. General Provisions. The Seitz memorandum notes that the implementation of all current National Emission Standards for Hazardous Air Pollutants standards and future Maximum Achievable Control Technology (MACT) standards includes the implementation of any "general provisions" that EPA develops for these standards. Initial Title V approval must ensure that states will carry out these provisions as in effect at the time of any permit issuance or revisions. The EPA promulgated the general provisions in 40 CFR part 63, Subpart A on March 19, 1994 (59 FR 12407). The state and city of Omaha intend to adopt all applicable requirements. EPA thus considers that both programs have met this requirement.

c. Section 112 (g)—Case-by-Case MACT For Modified/Constructed and Reconstructed Major Toxic Sources. Both programs propose to require best available control technology for new and modified sources of air toxics. In the absence of any EPA guidance/regulations defining case-by-case MACT procedures and methods for determining agency equivalency of Federal requirements at the time of agency program submittal, the respective submissions are adequate for the interim. Each agency intends to adopt Federal air toxic regulations expeditiously.

d. Section 112 (i)(5)—Early Reductions. Both programs have

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adequate provisions for implementation of this program by adopting by reference 40 CFR part 63, Subpart D, early reduction compliance extension rules, promulgated in the **Federal Register** on December 29, 1992. To date, no source in either agency's area has made a commitment to participate in the early reductions program. Title 129 provides for incorporating alternative emission limits into permits.

e. Section 112(j)—Case-by-case MACT Hammer. Both agencies' intend to make case-by-case MACT determinations and to issue permits to subject sources in accordance with the 112(j) requirements. Title 129, Chapter 7 requires newly subject sources to file a permit application within 12 months of first becoming operational or otherwise subject to the title V program. This rule further requires sources subject to Chapter 28 (MACT) to submit a permit application within 12 months of becoming operational. The agencies would make their case-by-case MACT determination after receipt of the permit application and prior to permit issuance.

f. Section 112(l)—State Air Toxics Programs. The EPA intends to delegate authority for existing section 112 standards under the authority of section 112(l) concurrent with approval of the title V program. Both the state and city of Omaha have requested delegation of future 112 standards/rules in accordance with the adoption-by-reference procedures in 40 CFR Part 63, Subpart E, section 63.91. Since section 112(i) (the early reduction rule) has already been adopted by reference in Title 129, the EPA anticipates delegating this rule concurrent with title V approval.

g. Section 112(r)—Accidental Release Plans. Title 129 provides for the section 112(r) requirements in Chapter 8. The permit of a source subject to the requirements of section 112(r) will contain a requirement to register the plan, verification of plan preparation and submittal to the permitting agency, the state Emergency Response Commission, and any local emergency planning committee; and will require an annual certification in accordance with Chapter 7, that the risk management plan is being properly implemented.

The permit application requires a schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Requirements for a compliance schedule are listed in Chapter 8.

B. Options for Approval/Disapproval and Implications

The EPA is proposing full approval of the operating permits program submitted to EPA for the state of Nebraska and city of Omaha on November 15, 1993. Both of these agencies have demonstrated that their programs will be adequate to meet the minimum elements of an operating permits program as specified in 40 CFR part 70.

Prior to the EPA taking final action on these programs, the state is required to officially submit the December 2, 1994 amendments to title 129 and the city of Omaha must incorporate these amendments by reference and submit them to the EPA. As noted, the EPA has reviewed these rule amendments and considers them adequate for the title V program.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state and local program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of each program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for Part 70 sources. Both agencies have informed EPA that they intend to accept delegation of section 112 standards through the adoption by reference mechanism. This program for delegations applies to both existing and future standards for part 70 sources.

Additionally, both agencies have requested delegation of current and future section 112 standards under section 112(l)(5) and 40 CFR 63.91 for sources not subject to Part 70 requirements. Both have demonstrated broad legal authority which covers all section 112 sources, and both have demonstrated they have adequate resources to implement current section 112 standards. With respect to future section 112 requirements, both have committed to provide EPA with future demonstrations of resource adequacy as necessary when new requirements are promulgated and the resource burdens associated with those requirements become known. Both have demonstrated that they will expeditiously implement section 112 requirements for these sources pursuant to a schedule after EPA promulgation, and that they have sufficient enforcement authority to adequately enforce section 112 requirements for all sources.

Therefore, for sources not subject to part 70 requirements, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 the state and Omaha's program for receiving delegation of future section 112 standards that are unchanged from federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-Part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of either submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents for participating in the rulemaking process, and

2. To serve as the record in case of judicial review. The EPA will consider any comments received by April 6, 1995.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain the OMB clearance for collection of information from 10 or more non-Federal respondents.

D. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 13, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–5517 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 261, 271 and 302

[SWH–FRL–5167–3]

RIN 2050–AD80

Extension of Comment Period for the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Industries

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed listing determination on a number of wastes generated during the production of dyes and pigments, which appeared in the **Federal Register** on December 22, 1994 (see 59 FR 66072–114). The public comment period for this proposed rule was to end on March 22, 1995. The purpose of this notice is to extend the comment period an additional 120 days beyond that, to end on July 19, 1995. This extension of the comment period is provided to allow commenters an opportunity to comment further on the proposal.

DATES: EPA will accept public comments on this proposed listing determination until July 19, 1995. Comments postmarked listing determination until July 19, 1995. Comments postmarked after the close of the comment period will be stamped "late."

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–94–DPLP–FFFFF, Room 2616, U.S. EPA, 401 M Street SW., Washington, DC. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7458.

SUPPLEMENTARY INFORMATION: This proposed rule was issued under Section 3001(b) of RCRA. EPA proposed to list certain wastes generated during the production of dyes and pigments because these wastes may pose a substantial present or potential risk to human health or the environment when improperly managed. See 59 FR 66072–114 (December 22, 1994) for a more detailed explanation of the proposed rule.

These proposed hazardous waste listings were based in part upon data claimed as confidential by certain dye and pigment manufacturers. Although EPA intends to publish these data or information derived from these data claimed as confidential (to the extent relevant to the proposed listing), the Agency is unable to do so at the present time. EPA is pursuing avenues to allow publication of the information, and intends to supplement the public record prior to issuance of a final listing. EPA is extending the comment period to provide sufficient time for the public to comment if and when additional data are published.

Dated: February 27, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–5525 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 261, 271, and 302

[SWH–FRL–5167–2]

RIN 2050–AD80

Postponement of Public Hearing on the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Industries

AGENCY: Environmental Protection Agency.

ACTION: Notice of postponement of public hearing.

SUMMARY: On December 22, 1994 (see 59 *FR* 66072–114), the U.S. Environmental Protection Agency (EPA or Agency) proposed to list as hazardous five wastes generated during the production of dyes and pigments, proposed not to list six other wastes from these industries, and proposed to defer action on three wastes due to insufficient information. At the request of the parties originally seeking a public hearing concerning this proposal, the Agency is announcing the postponement of the public hearing, previously scheduled to be held on March 15, 1995, in Washington, DC.

DATES: The public hearing has not been rescheduled.

ADDRESSES: The RCRA regulatory docket that contains the record for this proposed listing determination on wastes from the production of dyes and pigments is located at Room 2616, U.S. EPA, 401 M Street SW., Washington, DC. the docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7458.

SUPPLEMENTARY INFORMATION: Since publication of this proposed rule, the Agency had received requests for a public hearing from the trade association representing the pigments industry, the Color Pigments Manufacturers Association (CPMA); and the trade association representing the dyes industry, the Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers (ETAD). After the announcement of the public hearing in the Wednesday, February 8, 1995 **Federal Register** (see 60 *FR* 7513–4), both associations requested that it be postponed pending resolution of several outstanding issues. In response to these requests, EPA has decided to postpone the public hearing. EPA may reschedule the public hearing in the future, and will provide further notice at that time.

Dated: March 1, 1995.

Michael H. Shapiro, Director,

Office of Solid Waste.

[FR Doc. 95–5515 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 65a

RIN 0905–AD46

National Institute of Environmental Health Sciences Hazardous Substances Basic Research and Training Grants

AGENCY: National Institutes of Health, Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to issue new regulations to govern grants for research

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and training awarded by the National Institute of Environmental Health Sciences (NIEHS) for the purpose of understanding, assessing, and attenuating the adverse effect on human health of exposure to hazardous substances. The grants are authorized by section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as added by section 209 of the Superfund Amendments and Reauthorization Act of 1986.

DATES: Comments must be received on or before May 8, 1995. The final rule would become effective on April 6, 1995.

ADDRESSES: Comments should be sent to Mr. Jerry Moore, NIH Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore at the address above, or telephone (301) 496–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 311(a) of CERCLA, enacted on October 17, 1986, authorizes the Secretary of the Department of Health and Human Services, acting through the Director of the National Institute of Environmental Health Sciences (NIEHS) and, in consultation with the Administrator of the Environmental Protection Agency, to administer a program of grants for basic research and training directed towards understanding, assessing, and attenuating the adverse effects on human health resulting from exposure to hazardous substances. Grants made under this program are for coordinated, multi-component, interdisciplinary projects linking biomedical research with related engineering, hydrologic, and ecologic research, and concomitant training. NIH published a full description of the program in the **Federal Register** on November 21, 1986 (51 FR 43089), and invited the public to attend an open meeting on the program which was held on December 19, 1986. Subsequently, NIH announced its intention to issue regulations to implement this program in the Unified Agenda of Federal Regulations published in the **Federal Register** on October 21, 1991 (56 FR 53327).

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

The purpose of this notice is to invite public comment on the proposed regulations.

The following statements are provided as information for the public.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal, governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this proposed rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this proposed rule is not inconsistent with the actions of any other agency.

This proposed rule merely codifies internal policies and procedures of the Federal government currently used by NIH to administer the NIEHS Hazardous Substances Basic Research and Training Grants Program. The grants do not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this proposed rule would only affect those qualified public and private non-profit institutions of higher education; generators of hazardous waste; persons involved in the detection, assessment, evaluation, and treatment of hazardous substances; owners and operators of facilities at which hazardous substances are located; and State and local governments interested in participating in the program. No individual or institution is obligated to participate in the grant program.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this proposed rule is: 93.143.

List of Subjects in 42 CFR Part 65a

Grant programs—health, Health, Medical research, Hazardous substances.

Dated: October 28, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: February 28, 1995.

Donna E. Shalala,

Secretary.

For reasons set forth in the preamble, we propose amending title 42 of the Code of Federal Regulations by adding a new part 65a as follows.

PART 65a—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES HAZARDOUS SUBSTANCES BASIC RESEARCH AND TRAINING GRANTS

Sec.

65a.1 To what programs do these regulations apply?
65a.2 Definitions.
65a.3 Who is eligible to apply for a grant?
65a.4 What are the program requirements?
65a.5 How to apply.
65a.6 How will applications be evaluated?
65a.7 Awards.
65a.8 How long does grant support last?
65a.9 What are the terms and conditions of awards?
65a.10 For what purposes may grant funds be spent?
65a.11 Other HHS policies and regulations that apply.

Authority: 42 U.S.C. 216; 9660(a).

§ 65a.1 To what programs do these regulations apply?

(a) The regulations of this part apply to the award of grants to support programs for basic research and training directed towards understanding, assessing, and attenuating the adverse effects on human health resulting from exposure to hazardous substances, as authorized under section 311(a) of the Act (42 U.S.C. 9660(a)). The purpose of these programs is to carry out coordinated, multicomponent, interdisciplinary research consisting of at least three or more biomedical research projects relating to hazardous substances and at least one non-biomedical research project in the fields of ecology, hydrogeology, and/or engineering, and including the training of investigators as part of the grantee's overall program.

(b) These regulations also apply to cooperative agreements awarded to support the programs specified in paragraph (a) of this section. References to "grant(s)" shall include "cooperative agreement(s)."

(c) The regulations of this part do not apply to:

(1) Research training support under the National Research Services Awards Program (see part 66 of this chapter),

(2) Research training support under the NIH Center Grant programs (see part 52a of this chapter),

(3) Research training support under traineeship programs (see parts 63 and 64a of this chapter), or

(4) Research training support under the NIH AIDS Research Loan Repayment Program authorized under section 487A of the Public Health Service Act, as amended (42 U.S.C. 288–1).

§ 65a.2 Definitions.

As used in this part:

Act means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

Award or *grant* means a grant awarded under section 311(a) of the Act (42 U.S.C. 9660(a)).

Director means the Director of the National Institute of Environmental Health Sciences, or the Director's delegate.

HHS means the Department of Health and Human Services.

Institution of higher education means an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Is legally authorized within such State to provide a program of education beyond secondary education,

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

(4) Is a public or other nonprofit institution, and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

(i) Is an institution with respect to which the Secretary of Education has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(ii) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(6) The term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of paragraphs (1), (2), (4), and (5) of this definition.

(7) The term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 1091(d) of Title 20 U.S. Code.

(8) For purposes of this definition, the Secretary of Education shall publish a list of nationally recognized accrediting agencies or associations which that official determines to be reliable authority as to the quality of training offered.

NIEHS means the National Institute of Environmental Health Sciences, an organizational component of the National Institutes of Health, as authorized under sections 401(b) and 463 of the Public Health Service Act, as amended (42 U.S.C. 281(b)(1)(L) and 285*l*).

NIH means the National Institutes of Health.

Nonprofit, as applied to any agency, organization, institution, or other entity, means a corporation or association no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

Program means the activity to carry out research and training supported by a grant under this part.

Program director means the single individual designated by the grantee in the grant application and approved by the Director, who is responsible for the scientific and technical direction of the research component and the conduct of the training component under a program.

Project period means the period of time, from one to five years, specified in the notice of grant award that NIEHS intends to support a proposed program without requiring the program awardee to recompete for funds.

§ 65a.3 Who is eligible to apply for a grant?

(a) Public and private nonprofit institutions of higher education may apply for awards under this part.

(b) Awardee institutions may carry out portions of the research or training components of an award through contracts with appropriate organizations, including:

(1) Generators of hazardous wastes;

(2) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances;

(3) Owners and operators of facilities at which hazardous substances are located; and

(4) State and local governments.

§ 65a.4 What are the program requirements?

The applicant shall include the following in its proposed program for which support is requested under this part.

(a) *Basic research component.* The program shall include three or more meritorious biomedical research projects, including epidemiologic studies relating to the study of the adverse effects of hazardous substances on human health, and at least one meritorious project involving hydrogeologic or ecologic research which shall cumulatively address:

(1) Methods and technologies to detect hazardous substances in the environment,

(2) Advanced techniques for the detection, assessment, and evaluation of the effects of these substances on human health,

(3) Methods to assess the risks to human health presented by these substances, and

(4) Basic biological, chemical, and/or physical methods to reduce the amount and toxicity of these substances.

(b) *Training component.* The program shall include training, as part of or in conjunction with the basic research component:

(1) Graduate training in environmental and occupational health and safety and in public health and engineering aspects of hazardous waste control, and/or

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(2) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields, necessary to meet professional personnel needs in the public and private sectors and to carry out the purposes of the Act, and

(3) Worker training relating to handling hazardous substances, which includes short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by these facilities.

§ 65a.5 How to apply.

Each institution desiring a grant under this part shall submit an application at such time and in such form and manner as the Secretary may prescribe.

§ 65a.6 How will applications be evaluated?

The Director shall evaluate applications through the officers and employees, and experts and consultants engaged by the Director for that purpose, including review by the National Advisory Environmental Health Sciences Council in accordance with peer review requirements set forth in part 52h of this chapter. The Director's first level of evaluation will be for technical merit and shall take into account, among other pertinent factors, the significance of the program, the qualifications and competency of the program director and proposed staff, the adequacy of the applicant's resources available for the program, and the amount of grant funds necessary for completion of its objectives. A second level of review will be conducted by the National Advisory Environmental Health Sciences Council.

§ 65a.7 Awards.

Criteria. Within the limits of available funds, the Director may award grants to carry out those programs which:

(a) Are determined by the Director to be meritorious; and

(b) In the judgment of the Director, best promote the purposes of the grant program, as authorized under section 311(a) of the Act and the regulations of this part, and best address program priorities.

§ 65a.8 How long does grant support last?

(a) The notice of grant award specifies how long NIEHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, may be for 1–5 years.

(b) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application at such time and in such form and manner as the Secretary may prescribe to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require determination by the Director that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

(d) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Director, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Director that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for that period, the Director may adjust the amounts awarded by withdrawing the excess.

§ 65a.9 What are the terms and conditions of awards?

In addition to being subject to other applicable regulations (see § 65a.11 of this part), grants awarded under this part are subject to the following terms and conditions:

(a) *Material changes.* The grantee may not materially change the quality, nature, scope, or duration of the program unless the approval of the Director is obtained prior to the change.

(b) *Additional conditions.* The Director may impose additional conditions prior to the award of any grant under this part if it is determined by the Director that the conditions are necessary to carry out the purpose of the grant or assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

§ 65a.10 For what purposes may grant funds be spent?

A grantee shall expend funds it receives under this part solely in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, and the applicable cost principles in 45 CFR 74.27.

§ 65a.11 Other HHS policies and regulations that apply.

Several other HHS policies and regulations apply to awards under this part. These include but are not necessarily limited to:

42 CFR part 50, subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science
42 CFR part 50, subpart D—Public Health Service grant appeals procedure
42 CFR part 52h—Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects
45 CFR part 16—Procedures of the Departmental Grant Appeals Board
45 CFR part 46—Protection of human subjects
45 CFR part 74—Administration of grants
45 CFR part 75—Informal grant appeals procedures
45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81—Practice and procedure for hearings under part 80 of this title
45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance
45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments
45 CFR part 93—New restrictions on lobbying 51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986) 59 FR 14508 (as republished March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research

[FR Doc. 95–5433 Filed 3–6–95; 8:45 am]
BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 95–20; FCC 95–48]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 18, 1994, the United States Court of Appeals for the Ninth Circuit remanded in part the Commission's *BOC Safeguards Order* in the *Computer III* proceedings, which had established procedures for the Bell Operating Companies (BOCs) to offer enhanced services on a structurally integrated basis. This Notice of Proposed Rulemaking responds to the court decision. The Notice reviews the nonstructural safeguards that have been implemented under the *Computer III* framework, and asks parties to comment on the specific issue remanded by the court, as well as on the broader question of whether structural separation should be reimposed for some or all BOC enhanced services.

DATES: Comments must be filed on or before April 7, 1995, and reply comments must be filed on or before April 28, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin at (202) 418–1571 or Kevin Werbach at (202) 418–1597, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 95–48, adopted February 7, 1995 and released February 21, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In the *Computer III* proceeding, beginning with the *Phase I Order* (51 FR 24350 (July 3, 1986)), the Commission concluded that the Bell Operating Companies (BOCs) should be permitted to offer enhanced services without establishing structurally separate subsidiaries. Enhanced services use the existing telephone network to deliver services—such as voice mail, E-Mail, and gateways to on-line databases—beyond a basic transmission offering. Under structural separation requirements, the BOCs had to form subsidiary companies, with separate personnel, facilities, and equipment, to offer these services. The need for safeguards on BOC provision of enhanced services arises from the fact that competing enhanced service providers generally must depend on the BOC networks to transport their services to customers. The Commission has identified two primary forms of anticompetitive conduct that may arise from BOC involvement in the enhanced services marketplace: (1) Improper cross-subsidization, in which the BOCs undercut competing enhanced service providers (ESPs) by shifting costs from their enhanced services to their regulated basic services; and (2) access discrimination, in which BOCs provide competing ESPs with inferior interconnection and access to network services that these companies need for their enhanced services.

2. In *Computer III*, the Commission determined that the benefits of lifting structural separation requirements—in terms of increased availability of enhanced services—outweighed the risks of anticompetitive conduct by the BOCs, and that a regime of nonstructural safeguards could provide adequate protection against cross-subsidization and access discrimination. The Commission established a two-step process in *Computer III* for lifting structural separation restrictions. Initially, BOCs were permitted to offer individual enhanced services on a structurally integrated basis once they had received FCC approval of service-specific Comparably Efficient Interconnection (CEI) plans. Those plans were required to detail how the BOCs would make the underlying network services used by their own enhanced service offerings available to competing ESPs on an equal access basis. In the second stage of *Computer III*, BOCs were required to develop Open Network Architecture (ONA) plans detailing how they would unbundle and make available basic network services, and describing how they would comply with other nonstructural safeguards. Upon FCC approval of the initial BOC ONA plans, the remaining structural separation requirements were to be lifted. Following a remand from the Court of Appeals for the Ninth Circuit, the Commission strengthened and reaffirmed its regime of nonstructural safeguards in the 1991 *BOC Safeguards Order* (57 FR 4373 (February 5, 1992)). Between 1992 and 1993, the Common Carrier Bureau granted full structural relief to the BOCs upon a showing that they had complied with the requirements of the *BOC Safeguards Order*, and those decisions were subsequently ratified by the Commission.

3. In October, 1994, the United States Court of Appeals for the Ninth Circuit partially remanded the *BOC Safeguards Order*. The court concluded that the Commission had scaled back its conception of ONA from the original vision in *Computer III*, and had not explained how the more limited version of ONA represented in the approved BOC ONA plans provided sufficient protection against BOC access discrimination. On this basis, the court held that the FCC's cost benefit analysis for fully lifting structural separation restrictions was flawed. On January 11, 1995, the Common Carrier Bureau clarified the requirements for BOC provision of enhanced services after the Ninth Circuit decision, and granted the BOCs interim waivers to offer new services, subject to certain restrictions and filing requirements, during the pendancy of remand proceedings.

4. In this Notice of Proposed Rulemaking, the Commission has initiated a proceeding to reexamine its *Computer III* rules in light of the most recent Ninth Circuit remand. The Commission noted that the partial vacation of the *BOC Safeguards Order* generally reinstates the *Computer III* service-by-service CEI plan regime, subject to the modification spelled out in the Common Carrier Bureau's waiver order. The Commission concluded that the Ninth Circuit had remanded the specific issue of whether the existing nonstructural safeguards including the level of network unbundling under ONA, are sufficient to justify fully lifting structural separation requirements.

5. The Notice of Proposed Rulemaking reviewed the various nonstructural

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safeguards the Commission has put into place to protect against anticompetitive practices by the BOCs. The Commission described how the ONA model had evolved, and the forms of network unbundling it encompasses today and is likely to cover in the future. The Notice of Proposed Rulemaking also outlined the other safeguards that are designed to work in concert with ONA to protect against anticompetitive practices by the BOCs. Parties were asked to comment on the specific issue identified by the court: Whether these nonstructural safeguards are sufficient for the BOCs to be granted full structural relief.

6. The Commission also asked parties to comment on broader issues regarding the relative merits of structural and nonstructural safeguards. The Commission noted that, although there is evidence to suggest that nonstructural safeguards have been effective, various parties have argued that structural separation should be reimposed on the BOCs. In order to provide it with information to make an informed decision, the Commission asked commenters to provide specific evidence as to the relative costs and benefits of structural separation and nonstructural safeguards.

7. The Notice of Proposed Rulemaking also sought comment on the protection against discrimination necessary to allow ESPs and BOCs to compete effectively without creating unnecessary burdens, whether certain types of enhanced services may require greater protection than others, and whether structural separation or additional nonstructural safeguards are needed for specific enhanced services. Parties were asked to identify any specific unbundled network services that BOCs do not currently provide which meet the criteria established in *Computer III* for service unbundling. To the extent that parties propose a reimposition of structural separation, the Commission asked that they identify the benefits that they believe will accrue for the provision of enhanced services to consumers from such action, and articulate why these benefits cannot be achieved under a regime of nonstructural safeguards.

8. Finally, the Commission recognized that a return to some form of structural separation requirements at this time would impose certain transition costs on the BOCs, and could result in service disruption and customer confusion. The Commission therefore asked parties to identify transitional expenses that would be borne by customers of BOC enhanced services, and to indicate whether a return to structural separation requirements would result in disruptions of service or confusion among customers. To the extent that parties believe structural separation is appropriate, the Commission asked them to describe particular scenarios and timetables under which BOCs would be required to move from the existing partially integrated CEI plan regime, and to identify the specific costs and benefits of those scenarios.

Ordering Clauses

1. Accordingly, *it is ordered* That, pursuant to the authority contained in sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–205, a Notice of Proposed Rulemaking is hereby adopted.

List of Subjects in 47 CFR Part 64

Communciations common carriers, Computer technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5491 Filed 3–6–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–29, RM–8596]

Radio Broadcasting Services; Iron Mountain, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Superior Media Group, Inc., proposing the allotment of Channel 294A to Iron Mountain, Michigan, as that community's third local FM service. The channel can be allotted to Iron Mountain without a site restriction at coordinates 45–49–12 and 88–04–06. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before April 24, 1995, and reply comments on or before May 9, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Matthew H. McCormick, Reddy, Begley, Martin & McCormick, 1001 22nd Street, NW, Suite 350, Washington, D. C. 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–29, adopted February 21, 1995, and released March 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5492 Filed 3–6–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 45, 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of cancellation and rescheduling of public meeting.

SUMMARY: The public meetings originally scheduled for March 9, and 10, 1995, as part of the continuing initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, have been canceled and rescheduled for April 6, 1995, and April 7, 1995.

DATES: Public Meetings: The public meetings will be conducted at the address shown below from 12:30 p.m. to 5:00 p.m., local time, on April 6, 1995; and from 9:30 a.m. to 5:00 p.m., local time, on April 7, 1995.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the address below on or before April 3, 1995.

ADDRESSES:

Draft Materials: Intersted parties may obtain drafts of the materials to be discussed at the April 6 and 7 public meetings from Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

Public Meeting: The location of the public meeting is 1211 S. Fern Street, Room C–102, Arlington, VA 22202–2808. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topics scheduled for discussion, should contact Ms. Angelena Moy, PDUSD(A&T)DP/MPI, 1211 S. Fern Street, Room C–109, Arlington, VA 22202–2808.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 604–5385. FAX (703) 604–6709.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register**.

The public meetings scheduled for March 9 and 10, 1995, have been canceled and rescheduled for April 6 and 7, 1995.

As indicated in the February 9, 1995, **Federal Register** notice (60 FR 7744), interested parties are invited to present statements on (1) draft legislation permitting negotiated sales of low value Government property to holding contractors, (2) revisions to FAR 52.245–17, Special Tooling, (3) disposal of Government property, and (4) establishing the value of Government property for the purpose of determining appropriate rental charges.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 95–5605 Filed 3–3–95; 11:32 am]

BILLING CODE 5000–04–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Endangered or Threatened Status for Four Southwestern California Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a public hearing will be held and the comment period reopened on proposed endangered status for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) and *Allium munzii* (Munz's onion), and proposed threatened status for *Brodiaea filifolia* (thread-leaved brodiaea) and *Navarretia fossalis* (spreading navarretia). The Service also proposes critical habitat for *Atriplex coronata* var. *notatior*. All parties are invited to comment on this proposal.

DATES: The public hearing will be held from 2:00 to 4:00 p.m. and from 6:00 to 8:00 p.m. on Thursday, March 23, 1995, in Riverside, California. The public comment period now closes on May 20, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The hearing will be held at the Holiday Inn, Empire Ballroom, 3400 Market Street, Riverside, California. Written comments and materials may be submitted at the hearing or may be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor (see **ADDRESSES** section) at (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

Allium munzii (Munz's onion), a member of the lily family, is a white-flowered, single-leaved, scapose perennial originating from a bulb. *A. munzii is* restricted to mesic clay soils in western Riverside County, California. It is frequently associated with southern needlegrass grassland, mixed grassland, and open coastal sage scrub, or occasionally in cismontane juniper woodlands. Twelve populations are currently known.

Atriplex coronata var. *notatior* (San Jacinto Valley crownscale or saltbush) is a low, grey-green, erect annual member of the goosefoot family. It is restricted to the Traver-Domino-Willows alkaline soils series of the San Jacinto, Perris, and Menifee Valleys of western Riverside County, California, in association with alkali sink, alkali playa, vernal pools, and alkali grassland habitats. This taxon occurs at 10 population centers. The number of individuals in any given year vary widely, depending on available rainfall, and the duration and extent of flooding.

Brodiaea filifolia (thread-leaved brodiaea), a member of the lily family, is a lavender-flowered scapose perennial herb. It typically occurs on gentle slopes, and in valleys and flood plains associated with mesic, southern needlegrass grassland and alkali grassland plant communities growing on clay, loamy sand, or alkaline silty-clay soils. The species is distributed in widely disjunct populations from the foothills of the San Gabriel Mountains in Los Angeles County, California, east to the foothills of the San Bernardino Mountains in San Bernardino County, south through western Riverside and eastern Orange Counties to central coastal San Diego County. About 18 out of 27 historical populations are known to exist throughout its range. The majority of the populations are centered on the Santa Rosa Plateau, Riverside County, California, and in the vicinity of Carlsbad, Vista, and San Marcos, San Diego County, California.

Navarretia fossalis (spreading navarretia) is a low, white-flowered annual of the phlox family that is found primarily in association with vernal pools, alkali grassland, and vernal alkali flood plains. *N. fossalis* is known from a single occurrence in Los Angeles County, California, the lowlands of western Riverside County, California, and coastal San Diego County south into northwestern Baja California, Mexico. Fewer than 30 populations of this species are known in the United States. These populations are concentrated in three locations: Otay Mesa in southern San Diego County, near Hemet and along the San Jacinto River in Riverside County.

These species are threatened by one or more of the following factors: Habitat destruction and fragmentation from agricultural and urban development, pipeline construction, alterations of wetland hydrology by draining or channelization, clay mining, off-road vehicle activity, cattle and sheep

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grazing, weed abatement, fire suppression practices, competition from alien plant species, and the inadequacy of existing regulatory mechanisms.

On December 15, 1994, the Service published a proposed rule on endangered status for *Atriplex coronata* var. *notatior* and *Allium munzii*, proposed threatened status for *Brodiaea filifolia* and *Navarretia fossalis*, and critical habitat for *Atriplex coronata* var. *notatior* (59 FR 64812). Section 4(b)(5)(E) of the Endangered Species Act requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. Public hearing requests were received from several requestors. As a result, the Service has scheduled a public hearing on Thursday, March 23, 1995, at the Holiday Inn, Empire Ballroom, 3400 Market Street, Riverside, California.

Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits on the length of written comments or materials presented at the hearing or mailed to the Service.

The comment period on the proposal was to close on February 13, 1995. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until May 20, 1995, to the Service in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: (16 U.S.C. 1531 *et seq.*)

Dated: February 28, 1995.

Thomas J. Dwyer,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 95–5484 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 44

Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Committee on Adjudication, Committee on Administration, and Committee on Governmental Processes

ACTION: Notice of Public Meetings; Notice of Cancellation of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committees on Rulemaking, Adjudication, and Administration of the Administrative Conference of the United States. In addition, notice is hereby given of cancellation of a meeting of the Committee on Governmental Processes.

AGENCY: Committee on Rulemaking.

DATES: Wednesday, March 29, 1995, at 9:30 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Adjudication.

DATES: Friday, March 17, 1995 at 9:30 a.m.; Monday, April 3, 1995 at 9:30 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Administration.

DATES: Thursday, March 23, 1995 at 10:00 a.m.; Wednesday, April 12, 1995 at 10:00 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: D. Leah Meltzer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Governmental Processes.

DATES: The meeting previously scheduled for Monday, March 13, 1995, at 12:30 p.m. has been cancelled. A new meeting will be scheduled for later in March.

FOR FURTHER INFORMATION CONTACT: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to discuss several topics relating to rulemaking. The topics will include a report on "interim final rules," prepared by Professor Michael Asimow of UCLA Law School, a report on "direct final rulemaking," by Professor Ronald Levin of Washington University School of Law, and a report on agency review of existing rules, by Professor Sidney Shapiro of the University of Kansas Law School.

The Committee on Adjudication will meet to begin discussion of a report on the use of Rule 11-type sanctions in administrative-level adjudications. The report is being prepared by Professor Carl Tobias of the University of Montana School of Law.

The Committee on Administration will meet to discuss reports on two topics. A report on the potential uses of alternative dispute resolution techniques for resolving conflicts between endangered species and development interests was prepared by Professors Steven L. Yaffee and Julia M. Wondolleck of the University of Michigan. A second report, by Professor Mark H. Grunewald of Washington and Lee University School of Law, addresses the Freedom of Information Act and Confidentiality of Records in Alternative Dispute Resolution.

The Committee on Governmental Processes will reschedule its meeting to continue discussion of when federal government lawyers and other government employees may participate in public service activities. There are possible restrictions in the Code of Professional Responsibility, in agency regulations governing outside activities, and in government-wide rules concerning use of government instrumentalities.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: March 2, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–5586 Filed 3–6–95; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–94–704]

Debt Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) hereby gives notice that, in an effort to collect delinquent assessments (debts) from persons and commercial entities under research and promotion programs and fruit and vegetable marketing orders, AMS will implement the debt collection procedures set forth in 7 CFR 3.1 through 3.36. Under these debt collection procedures, AMS will report delinquent debts to credit reporting agencies or will institute administrative offset against debtors, or both. These actions apply to both current and future delinquent debts and are necessary for effective enforcement of the various programs.

FOR FURTHER INFORMATION CONTACT: *For research and promotion programs*—Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable

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Division, AMS, USDA, Room 2535–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9915; *for marketing orders*—Barbara Schulke, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4607.

SUPPLEMENTARY INFORMATION: AMS administers certain marketing programs that require industry members, such as producers, handlers, and importers, to pay assessments to fund the programs. Persons or commercial entities under these programs are required by law to report their production, handling, or importing of the regulated commodity and to remit the applicable assessment to an industry board or committee under AMS supervision.

Whenever and wherever feasible, all agencies of the U.S. Department of Agriculture (USDA) must use, or request another Federal agency to use, administrative offset in accordance with 31 U.S.C. 37616 and 4 CFR 102.3 to collect debts due to the United States through the USDA or its instrumentalities. The debt need not be reduced to a judgment or be undisputed. The offset will be effective 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offsets, or when a stay of offset expires, unless AMS determines that immediate action is necessary under 7 CFR 3.26.

Furthermore, consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR 102.3(c), and 5 U.S.C. 522a, AMS may report to credit reporting agencies all commercial debts and all delinquent consumer debts owed to the USDA or its instrumentalities.

This debt collection procedure affects marketing agreements and orders covering fruits, vegetables, and specialty crops under the Agricultural Marketing Agreement Act of 1937, as amended; and under research and promotion programs authorized under a variety of statutes, as amended. These statutes are the Beef Promotion and Research Act of 1985; the Cotton Research and Promotion Act; the Dairy Production Stabilization Act of 1983; the Egg Research and Consumer Information Act; the Fluid Milk Promotion Act of 1990; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993; the Honey Research, Promotion, and Consumer Information Act; the Lime Research, Promotion, and Consumer Information Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Pork Promotion, Research, and Consumer Information Act of 1985; the Potato Research and Promotion Act; the Soybean Promotion, Research, and Consumer Information Act; and the Watermelon Research and Promotion Act.

Authority: 5 U.S.C. 5514; 7 U.S.C. 601–674, 2101–2118, 2611–2627, 2701–2718, 2901–2911, 4501–4513, 4601–4612, 4801–4819, 4901–4916, 6101–6112, 6201–6212, 6301–6311, 6401–6417, 6801–6814; 12 U.S.C. 1150; 31 U.S.C. 3701, 3711, 3716–3719, 3720A, 3728; 26 U.S.C. 61; 4 CFR 102, 105.2, 105.4; and 5 CFR 550, subpart K.

Dated: March 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–5541 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Ecosystem Management Workshop Planning Group

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Ecosystem Management Workshop Planning Group, composed of only federal members, will have its first meeting in Washington, DC, on March 17, 1995, from 1 p.m. to 3 p.m. The Planning Group wishes to solicit public input from interested individuals for the planning and implementation of a proposed ecosystem management workshop. The workshop is being designed to bring together technical, social, economic, and policy experts to develop the framework for the sustainable use of natural resources. The actual date of the workshop "Developing a National Framework for Ecosystem Management" has yet to be decided, but is proposed to be held between October 1 and December 15, 1995. Participation in the workshop planning process is open to the public. Persons who wish to participate can do so by attending a Planning Group meeting or by filing written statements with the Executive Secretary of the Planning Group before or after each Planning Group meeting.

DATES: The Ecosystem Management Workshop Planning Group will meet Friday, March 17, and Friday, March 24, and every other Friday after March 24, 1995, until the workshop is held.

ADDRESSES: Each meeting will be held at the office of the Forest Service's International Forestry Staff, Franklin Court Building, Suite 5500–W, 1099 14th Street NW., Washington, DC.

Send written comments to Robert C. Szaro, Executive Secretary, Ecosystem Management Workshop Planning Group, USDA Forest Service, Research Staff, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Robert C. Szaro, telephone: (202) 205–1697

Please call (202) 205–0884 prior to each Planning Group meeting for confirmation of meeting time and for additional information about the meetings.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking public input in the areas of: Scientific consensus regarding the specific components of ecosystem management; the relationship of ecosystem management to sustaining ecosystems and maintaining biological diversity; the past, present, and future relationships of people to ecosystems; and issues related to implementing ecosystem management.

Goals for the workshop include establishing a scientific foundation for ecosystem management and developing definitive recommendations for its implementation.

The second meeting of the Ecosystem Management Workshop Planning Group will be held on March 24, 1995. Successive meetings will be held on every other Friday thereafter until the workshop is held.

Dated: March 1, 1995.

Jack Ward Thomas,

Chief.

[FR Doc. 95–5498 Filed 3–6–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1994 Survey of Women–Owned Businesses.

Form Number(s): WB–1.

Agency Approval Number: 0607–0765–EXPEDITED REVIEW.

Type of Request: Revision of a currently approved collection.

Burden: 65,000 hours.

Number of Respondents: 130,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census will conduct the 1994 Survey of Women–Owned Businesses (WOB) to determine the size of the women–owned subset of sole proprietorships, corporations, and partnerships. The WOB is designed to collect data on the ownership characteristics of a sample of businesses to determine which are owned by women. Additionally, the survey will gather information on the viability and growth of these businesses. Federal, state, and local governments use WOB statistics as a framework for assessing and directing programs designed to promote the activities of women–owned businesses.

Affected Public: Business or other for–profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 1, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

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U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
1201 EAST 10TH STREET
JEFFERSONVILLE, IN 47134-0001

1994 SURVEY OF BUSINESSES

NAME

ADDRESS

Dear Survey Respondent

The Census Bureau is conducting a business survey to improve the effectiveness of Federal programs aimed at facilitating new business starts and subsequent growth opportunities. The survey is being sent to a sample of businesses with paid employees. The data collected will measure the impact of businesses on the economy in terms of jobs provided and receipts or income generated. A summary of findings from this survey will be published in 1996.

Please complete and return the survey in the enclosed envelope within 15 days. Estimates are acceptable Information collected from individual businesses is held confidential. Only Census Bureau employees will see your report and will use the data for statistical analysis only Although response is voluntary, your data are needed to make the results complete. Timely response will also reduce the cost of reminder mailings.

On the back of this form are answers to questions you might have regarding this survey If you have additional questions, please phone 1-800-354-7271 from 8 a m to 5 p.m eastern time

Thank you for your cooperation.

Sincerely.

Martha Farnsworth Riche
Director
Bureau of the Census

Name of person to contact regarding this report	Telephone Number

1 Is this business still in operation?
If not in operation at anytime in 1994, mark 'No' to Item 1, sign form on page 1, and return form in the provided envelope

- ☐ Yes
- ☐ No ➜ Please continue to answer this questionnaire if you were in business **anytime** during 1994.

2 a. Check the one box below which best reflects the gender of the majority of ownership of this business at the end of 1994. If the business ceased operations during 1994, report for ownership at the close of operations.

- *SOLE PROPRIETORSHIPS (IRS 1040C filers) not jointly owned should check the appropriate box. If owned by both husband and wife, check the box that corresponds to the primary owner if the business is not equally owned.*
- *CORPORATIONS and SUBCHAPTER S CORPORATIONS should answer based upon percent of outstanding stock. Corporations for which the gender of all stockholders is not available should base their answer on the percent of ownership for owners listed on Form 10-K.*
- *PARTNERSHIPS should answer based upon the percent of ownership of the partners.*

- ☐ Female
- ☐ Male
- ☐ Male/Female - equal percent of ownership
- ☐ Not owned by individuals (for example: a corporation whose shareholders are other corporations)

b. If you are a corporation other than a subchapter S corporation, check the answer that best describes the basis for the answer to item 2a.

- ☐ Total outstanding stock
- ☐ Percent of stock for owners reported on Form 10-K
- ☐ Other - specify ➜ _____

	1994	1993	1992
3 a. • Total Employment as of March 12 *Report for all employees as defined on Treasury Form 941.*			
• **Average Number of Full-Time Employees during** *Full-time employees are employees who work on average 35 or more hours per week.*			
• **Average Number of Part-Time Employees during** *Part-time employees are employees who work on average less than 35 hours per week.*			
b. Total Annual Payroll *Report total annual payroll as defined on Treasury Form 941.*	$	$	$
c. Total Wage/Labor/Commission Expenses NOT reflected in payroll. *Include cost of contract labor.*	$	$	$
d. Total Gross Sales and Receipts *Report sales as reported on your 1994 tax return. 1120-L, 1120-PC filers should use gross income from Schedule A. 1120-RIC filers should use total income. Finance, insurance, and real estate businesses should include interest, dividends, commissions, and rental income.*	$	$	$
e. Total Assets as of December 31 *Total assets should include both domestic and foreign assets.*	$	$	$
f. Number of Business Locations as of December 31			

4. Estimate the Percentage of Total Sales/Receipts for 1994 accounted for by each of the following:
The total of the percentages for Items 4a - 4f should equal 100.

- a. _____% Federal government *(Include purchases for exports, if known.)*
- b. _____% State and local government
- c. _____% A subcontractor or supplier to another business to fill Federal government orders or contracts
- d. _____% A subcontractor or supplier to another business to fill State/local government orders or contracts
- e. _____% Nongovernment domestic customers
- f. _____% Exports *(Include exports to foreign governments.)*

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5 b. **Was this business operated primarily from a home:**

	When Founded?	In 1994?
Yes	☐	☐
No	☐	☐
Do Not Know	☐	

6 a. **Are there plans to expand this business by:** *(Check all that apply)*

	In 1995	1996	1997	1998
Increasing number of employees	☐	☐	☐	☐
Permanently increasing number of hours worked by owner(s) and/or employees	☐	☐	☐	☐
Adding new products or services	☐	☐	☐	☐
Increasing number of locations	☐	☐	☐	☐
Expanding into international markets	☐	☐	☐	☐
Expanding sales and/or services to government or as a supplier or subcontractor to fill government orders or contracts	☐	☐	☐	☐

b. **What will be the source(s) of any additional capital needs?** (Check all that apply)

- ☐ Business loan from bank or commercial lending institution
- ☐ Corporate or business credit card
- ☐ Government guaranteed loan from bank or commercial lending institution
- ☐ Loan from Federal, State, or local government
- ☐ Loan from other profit or nonprofit source (for example foundation, venture capitalist, etc.)
- ☐ Additional investment from owners
  - *Include:* - *equity/stock offerings*
    - *addition of new partners*
    - *additional investment of funds/assets from current owners regardless of source*
- ☐ Reinvestment of profits
- ☐ Supplier credit
- ☐ Other - specify ➜ _____

7. a. **Has difficulty obtaining credit in the past five years affected this business's ability to expand or remain in operation?**

- ☐ Yes
- ☐ No ➜ *Continue to Item 8*
- ☐ Not applicable ➜

b. **If 'Yes', what is the status of funding requests made from the following:** *(Check all that apply.)*

	Pending approval	Denied loan	Received fewer funds than requested	Loan approved as requested
Bank or other commercial lending institution	☐	☐	☐	☐
Government guaranteed loan from a bank or commercial lending institution	☐	☐	☐	☐
Loan from Federal, State or local government	☐	☐	☐	☐
Loan from other profit or nonprofit source (e.g., foundation, venture capitalist, etc.)	☐	☐	☐	☐

If your business has 10 employees or more, sign form and return in the provided envelope. If your business has less than 10 employees, please continue.

8 a. **Since 1992, has your business been able to expand as planned?**

- ☐ Yes ➜
- ☐ Not applicable-- Did not plan to expand. ➜ Stop here. Sign form and return in provided envelope.
- ☐ No

b. **Which of the following prevented your business from expanding as planned?** *(Check all that apply).*

- ☐ Cost of capital
- ☐ Availability of capital
- ☐ Cost of labor
- ☐ Availability of labor
- ☐ Cost of raw materials
- ☐ Availability of raw materials

Remarks:

QUESTIONS AND ANSWERS REGARDING THE
1994 SURVEY OF BUSINESSES

- **Why is this survey being taken?**

The Census Bureau has been asked to conduct this survey for several Federal agencies. The results of this survey will be used to make better policy decisions that will improve the effectiveness of their Federal programs.

- **Who uses the survey data?**

Persons and institutions in both the public and private sectors extensively use these survey data. Private companies and trade associations use the data to analyze industry trends; educators use them in teaching and research; the media use them in news articles; and Federal, State, and local governments uses them for policy decisions.

- **Can I be paid for completing this report?**

No. The law (Title 13 of the United States Code) that directs the Census Bureau to conduct the economic census and supplemental surveys does not authorize payment for completing census reports. In addition, no funds have been appropriated for this purpose.

- **Why was I selected for this survey?**

You are part of a small sample of businesses that we randomly selected to represent your type of business and geographic area. The use of a sample substantially limits the reporting burden of small businesses and reduces the survey cost; however, it also greatly increases the importance of receiving a report form from each business selected.

- **What business are included in this survey?**

Businesses were eligible to be selected for this survey if they reported any employment or payroll on Treasury Form 941 "Employer's Quarterly Federal Tax Return" or Treasury Form 943 "Employer's Annual Tax Return for Agricultural Employees", for the year 1994.

- **Is each survey response kept confidential?**

Yes. By law, the Census Bureau cannot give individual responses to anyone (including government agencies) for any purpose. Survey responses are immune from legal action and exempt from the provisions of the Freedom of Information Act. Census Bureau tabulations summarize responses so that the confidentiality of respondents and their business activities is fully protected.

- **How can I get more information?**

Call 1-800-354-7271 Monday through Friday, 8 a.m. to 5 p.m. eastern time. Our telephone staff can answer survey questions as well as provide you with additional forms and instructions.

We estimate that it will take 30 minutes or less to complete this questionnaire. If you have any comments regarding these estimates or any other aspect of this survey, send them to the Associate Director for Administration, Paperwork Reduction Project 0607-XXXX, room 3104, FB 3, Bureau of the Census, Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0607-XXXX, Washington, DC 20503.

[FR Doc. 95–5477 Filed 3–6–95; 8:45 am]
BILLING CODE 3510–07–C

VOL 60 ISS 44 MR 7 1995 UMI

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW:

Not later than March 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping duty proceedings	Period
Australia: Canned Bartlett Pears (A–602–039)	03/01/94–02/28/95
Bangladesh: Shop Towels (A–538–802)	03/01/94–02/28/95
Brazil: Ferrosilicon (A–351–820)	08/16/93–02/28/95
Brazil: Lead and Bismuth Steel (A–351–811)	03/01/94–02/28/95
Canada: Iron Construction Castings (A–122–503)	03/01/94–02/28/95
Chile: Standard Carnations (A–337–603)	03/01/94–02/28/95
Colombia: Certain Fresh Cut Flowers (A–301–602)	03/01/94–02/28/95
Ecuador: Certain Fresh Cut Flowers (A–331–602)	03/01/94–02/28/95
France: Brass Sheet and Strip (A–427–602)	03/01/94–02/28/95
France: Lead and Bismuth Steel (A–427–804)	03/01/94–02/28/95
Germany: Brass Sheet and Strip (A–428–602)	03/01/94–02/28/95
Germny: Lead and Bismuth Steel (A–428–811)	03/01/94–02/28/95
India: Sulfanilic Acid (A–533–806)	03/01/94–02/28/95
Israel: Oil Country Tubular Goods (A–508–602)	03/01/94–02/28/95
Italy: Certain Valves and Connections of Brass, for Use in Fire Protection Systems (A–475–401)	03/01/94–02/28/95
Italy: Brass Sheet Strip (A–475–601)	03/01/94–02/28/95
Japan: Defrost Timers (A–588–829)	08/24/93–02/28/95
Japan: Stainless Steel Butt-Weld Pipe Fittings (A–588–702)	03/01/94–02/28/95
Japan: Television Receivers, Monochrome and Color (A–588–015)	03/01/94–02/28/95
Mexico: Steel Wire Rope (A–201–806)	03/01/94–02/28/95
Korea: Steel Wire Rope (A–580–811)	03/01/94–02/28/95
Sweden: Brass Sheet and Strip (A–401–601)	03/01/94–02/28/95
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing (A–583–803)	03/01/94–02/28/95
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes (A–549–502)	03/01/94–02/28/95
The People's Republic of China: Chloropicrin (A–570–002)	03/01/94–02/28/95
The People's Republic of China: Ferrosilicon (A–570–819)	03/01/94–02/28/95
United Kingdom: Lead and Bismuth Steel (A–412–810)	03/01/94–02/28/95
Suspension Agreements	
Brazil: Frozen Concentrated Orange Juice (C–351–005)	01/01/94–12/31/94
Colombia: Certain Textile Mill Products (C–301–401)	03/01/94–02/28/95
Thailand: Certain Textile Mill Products (C–301–401)	03/01/94–02/28/95
Countervailing Duty Proceedings	
Argentina: Certain Apparel (C–357–404)	01/01/94–12/31/94
Argentina: Certain Textile Mill Products (C–357–404)	01/01/94–12/31/94
Argentina: Leather Wearing Apparel (C–357–001)	01/01/94–12/31/94
Brazil: Certain Caster Oil Products (C–351–029)	01/01/94–12/31/94
Brazil: Cotton Yarn (C–351–037)	01/01/94–12/31/94
Brazil: Hot-Rolled Steel and Bismuth Carbon Steel Plate (C–351–812)	01/01/94–12/31/94
Chile: Standard Carnations (C–337–601)	01/01/94–12/31/94
France: Brass Sheet and Strip (C–427–603)	01/01/94–12/31/94
France: Hot-Rolled Lead and Bismuth Carbon Steel Plate (C–428–812)	01/01/94–12/31/94
Germany: Hot-Rolled Lead and Bismuth Carbon Steel Plate (C–428–812)	01/01/94–12/31/94
India: Sulfanilic Acid (C–533–807)	01/01/94–12/31/94
Iran: In-Shell Pistachios (C–507–501)	01/01/94–12/31/94
Israel: Oil Country Tubular Goods (C–508–601)	01/01/94–12/31/94
Mexico: Certain Textile Mill Products (C–201–405)	01/01/94–12/31/94
Netherlands: Standard Chrysanthemums (C–421–601)	01/01/94–12/31/94
New Zealand: Carbon Steel Wire Rod (C–614–504)	01/01/94–12/31/94
Pakistan: Cotton Shop Towels (C–535–001)	01/01/94–12/31/94
Peru: Certain Textile Mill Products (C–333–402)	01/01/94–12/31/94
Peru: Certain Apparel (C–333–402)	01/01/94–12/31/94
South Africa: Ferrochrome (C–792–001)	01/01/94–12/31/94
Sri Lanka: Certain Textile Mill Products (C–542–401)	01/01/94–12/31/94
Thailand: Certain Apparel (C–549–401)	01/01/94–12/31/94
Turkey: Certain Welded Carbon Steel Pipe and Tube (C–489–502)	01/01/94–12/31/94
Turkey: Welded Carbon Steel Line Pipe (C–489–502)	01/01/94–12/31/94
United Kingdom: Hot-Rolled Lead and Bismuth Carbon Steel Plate (C–412–811)	01/01/94–12/31/94

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 31, 1995. If the Department does not receive, by March 31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 1, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–5560 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 022895A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council (Councils) will hold a meeting of their joint Mackerel Stock Assessment Panel (Panel) beginning at 1:00 p.m. on March 21, 1995, and concluding on March 23, 1995. The Panel will review available data on Gulf of Mexico and Atlantic stocks of king and Spanish mackerels and cobia to determine the condition of the stocks, and to recommend to the Councils levels of acceptable biological catch for the 1995–96 fishing years.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by March 14, 1995.

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5528 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022895E]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; notice of public meetings and hearings; request for comments.

SUMMARY: The Pacific Fishery Management Council has begun its annual preseason management process for the 1995 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. Notices of meetings and hearings, and their respective agendas, will be published in the **Federal Register** prior to each meeting or hearing.

DATES: See **SUPPLEMENTARY INFORMATION** for dates and times of public meetings and hearings in March and April. Written comments on the season options must be received by March 29, 1995.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for meeting and hearing locations in California, Oregon, and Washington.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Fishery Management Coordinator, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

The following actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

March 1, 1995: Council reports which summarize the 1994 salmon season and project the expected salmon stock abundance for 1995 were made available to the public from the Council office.

March 6–10, 1995: Council and advisory entities meet at the Holiday Inn San Francisco International Airport North, South San Francisco, CA, to adopt 1995 regulatory options for public review. (See 60 FR 9325, February 17, 1995.)

March 20, 1995: Report with proposed management options and public hearing schedule is mailed and made available to the public (see **ADDRESSES**). (The report includes options, rationale, and a summary of biological and economic impacts.)

March 27–29, 1995: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council (see below).

April 3–7, 1995: The Council and its advisory entities meet at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR, to adopt final 1995 regulatory measures.

April 13, 1995: A newsletter describing adopted ocean salmon fishing management measures is mailed

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and made available to the public (see **ADDRESSES**).

April 7–21, 1995: Salmon Technical Team completes the Preseason Report III Analysis of Council Adopted Regulatory Measures for 1995 Ocean Salmon Fisheries.

May 1, 1995: Federal regulations are implemented and the preseason report is available for distribution to the public.

Public Hearings

All public hearings will begin at 7 p.m. on the dates and at the locations specified below.

March 27, 1995: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 28, 1995: Red Lion Inn, Chinook Room, 400 Industry, Astoria, OR.

March 28, 1995: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

March 29, 1995: Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR.

March 29, 1995: California Department of Fish and Game, Auditorium, 1416 Ninth Street, Sacramento, CA

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5529 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030195A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Western Pacific Fishery Management Council (Council) will hold its 59th meeting on March 21–23, 1995.

The meeting will be held from 8:00 a.m. until 5:00 p.m., each day, in Room 322–A, Kalanimoku Building, 1151 Punchbowl St., Honolulu, HI 96813.

The SSC will discuss and may make recommendations to the Council on the following topics: Status of the Pelagic Fisheries Research Program; development of a pelagic fisheries biological research plan; U.N. Conference on Straddling and Highly Migratory Fish Stocks; Hawaii bottomfish issues (including status of *onaga* and *ehu* management, and NMFS review of Northwestern Hawaiian Islands catch reporting system); coral reef management needs; defining marine recreational fishing/fishermen; other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5529 Filed 3–6–95; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps* Leaders Program (AC*L); Information Collection Request

AGENCY: Corporation for National and Community Service.

ACTION: Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review.

SUMMARY: This notice provides information about a data collection proposal by AmeriCorps* Leaders, currently under review by the Office of Management and Budget (OMB). The revised AmeriCorps Leaders Application is a document, based on the previously approved Leaders application (OMB Approval No. 3045–0005). It is to be used for the purpose of screening applicants in the recruitment process for the AmeriCorps Leaders. The revisions are as follows:

A. Page One, section III., "National and Community Service Background," was redesigned with the, "Skills and Employment History," title. This section requests Leader applicants complete the following "Skills Self-Assessment" and to attach a resume-type document which includes a listing of professional experience and service organizations with whom the applicant has worked.

B. The section IV., "Skills in National Service Priority Areas", was replaced with a "Skills Self-Assessment."

C. The applicant reference form was expanded to include a skills assessment from the reference. The skills assessment form works with the same list as the self-assessment form.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. OMB and AmeriCorps* Leaders will consider comments on the proposed collection of information and record keeping requirements received by April 6, 1995.

ADDRESSES:

Janet Peters Mauceri, Director, AmeriCorps* Leaders, 1201 New York Avenue, NW., Washington, DC 20525.

Dan Chenok, Desk Officer for Corporation for National Service, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503. Send comments to both:

*This document will be made available in alternate format upon request: TDD–(202) 565–2799.

FOR FURTHER INFORMATION CONTACT: Julie Huffaker (202) 606–5000 ext. 164.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests.

Office of Action Issuing Proposal. AmeriCorps* Leaders.

Title of Forms: AmeriCorps* Leader Application.

Needs and Use: AmeriCorps* Leaders is requesting information to meet requirements of federal law. This information is used for program management, planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondent's Obligation to Reply: Required to receive benefits.

Frequency of Collection: On occasion.

Estimated Number of Responses: 500.

Average Burden Hours Per Response. 2 hours (reporting and record keeping).

Estimated Annual Reporting or Disclosure Burden: 1,000 hours.

Regulatory Authority: 1990 National Service Act (as amended).

Dated: March 21, 1995.

Janet Peters Mauceri,

Director, AmeriCorps Leaders.

[FR Doc. 95–5544 Filed 3–6–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.031A]

Strengthening Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability so they can become self-sufficient.

This grant program should be seen as an opportunity for applicants to support those elements of the National Education Goals that are relevant to their unique missions.

Deadline for Transmittal of Applications: May 1, 1995.

Deadline for Intergovernmental Review: June 30, 1995.

Applications Available: Applications will be mailed by March 13, 1995 to the office of the president of all institutions that were mailed applications to be designated as eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: $12,000,000.

Estimated Range of Awards: $300,000 to $350,000 per year for development grants only.

Estimated Average Size of Awards: $325,000 per year for five-year development grants only.

Estimated Number of Awards: 36 development grants only.

Project Period: 60 months for development grants.

Note: The Department is not bound by any estimates in this notice.

Special Funding Considerations: In tie-breaking situations described in 34 CFR 607.23 of the Strengthening Institutions program regulations, 34 CFR 607.23, the Secretary awards additional points under § 607.22 to an application from an institution which has an endowment fund for which the current market value, per full-time equivalent (FTE) student, is less than the average, per FTE student, at similar type institutions; and has expenditures for library materials, per FTE student, which are less than the average, per FTE student, at similar type institutions.

For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national average for base year 1992–93.

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year public institutions	$1,222	$41
Two-year nonprofit, private institutions	12,600	104
Four-year public institutions	1,862	141
Four-year nonprofit	32,164	239

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 607.

SUPPLEMENTARY INFORMATION: On August 15, 1994, the Secretary published a notice of final rulemaking for this program in the **Federal Register** (59 FR 41914).

For Fiscal Years 1995 and 1996, the Department will conduct biennial grant award competitions under the Strengthening Institutions Program. Under a biennial grant award competition, an institution submits a grant application that may be considered for funding under two successive fiscal year grant award competitions. Applications are evaluated and ranked by field readers for the first competition. If the institution's application is not selected for funding under the first fiscal year's award competition, it will be considered for funding under the second fiscal year's award competition for new awards, based upon the score it received in the first competition. As part of the plan, the Secretary will not invite applications for new awards for the second fiscal year. Accordingly, if an institution wishes to apply for a new grant award under the Strengthening Institutions Program for Fiscal Year 1995 or Fiscal Year 1996, it must submit an application by the closing date of May 1, 1995. An applicant should identify the fiscal year (1995 and/or 1996) from which it seeks funding.

No planning grants will be awarded under this competition.

FOR FURTHER INFORMATION CONTACT: Louis J. Venuto, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, Suite 600, Washington, DC 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057

Dated: March 1, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–5454 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board; Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, March 27, 1995: 6:00 p.m.–7 p.m. (public comment session).

Tuesday, March 28, 1995: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The public comment session and board meeting will be held at: Hyatt Regency Savannah, Two West Bay Street, Savannah, GA.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

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Tentative Agenda

Monday, March 27, 1995

6:00 p.m.—Public Comment Session (5-minute rule)
7:00 p.m.—Adjourn

Tuesday, March 28, 1995

8:30 a.m.—Board organizational issues
9:30 a.m.—Membership Replacement Election
10:00 a.m.—Subcommittee Reports
3:30 p.m.—Public Comment Session (5-minute rule)
4:00 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, March 27, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC, on March 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5480 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATE AND TIME: March 15, 1995, 1:00 a.m.–5:00 p.m.; March 16, 1995, 8:30 a.m.–4:30 p.m.; March 17, 1995, 8:00 a.m.–4:00 p.m.

PLACE: The Madison Hotel, 15th and M Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax:(202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Wednesday, March 15, 1995

1:00 p.m.—Call to order and Opening Remarks
1:05 p.m.—Public Comment
3:15 p.m.—Discussion, Committee Strategy and Direction
5:00 p.m.—Meeting Adjourned

Thursday, March 16, 1995

8:30 a.m.—Opening Remarks
8:40 a.m.—Discussion, Committee Strategy and Direction
12:15 p.m.—Lunch
1:30 p.m.—Discussion, Committee Strategy and Direction (continued)
4:30 p.m.—Meeting Adjourned

Friday, March 17, 1995

8:00 a.m.—Opening Remarks
8:05 a.m.—Discussion, Committee Strategy and Direction
12:15 p.m.—Lunch
1:30 p.m.—Discussion, Committee Strategy and Direction (continued)
4:00 p.m.—Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5481 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the first meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety. This public meeting was previously published in the **Federal Register** (Vol. 60, No. 35), February 22, 1995.

DATES AND TIMES: Thursday, March 9, 1995, 8:30 a.m. to 5:00 p.m.; and Friday, March 10, 1995, 8:30 a.m. to 3:30 p.m.

ADDRESSES: United States Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Catherine Volk, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW., Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION:

Tentative Agenda

March 9, 1995

Proposed Agenda

8:30 a.m.—Welcome: Hazel R. O'Leary, Secretary of Energy

8:50 a.m.— Opening Remarks: Dr. John F Ahearne, co-Chair.
9:00 a.m.—Introduction of Members: Advisory Committee Members.
9:30 a.m.—Administrative Setting: Advisory Committee Staff & DOE Internal Working Group, Federal Advisory Committee Act: Thomas H. Isaccs, Executive Director.
Considerations: Jo Anne Whitman, Deputy Advisory Committee Management Officer, DOE.
Conflict of Interest Requirements: Susan Beard, Deputy Assistant General Counsel for Standards of Conduct, DOE.
10:15 a.m.—Approval of Agenda for this Meeting: Dr. Ahearne.
10:30 a.m.—Break
10:45 a.m.—Summary of Background Materials: Mr. Isaacs.
11:15 a.m.—Overview of the Department of Energy: Donald W. Pearman, Jr., Associate Deputy Secretary for Field Management, DOE.
12 noon Lunch
1:30 p.m.—Overview of Current DOE Facilities and Materials: Robert Alvarez, Deputy Assistant Secretary for National Security & Environmental Restoration Policy, DOE.
2:15 p.m.—Overview of Existing Legal Framework for DOE Regulation & Current Legislation: Mary Anne Sullivan, Deputy General Counsel for Health, Safety, & Environment, DOE.
3:00 p.m.—Break
3:15 p.m.—Overview of Current DOE Practice for Contractor Oversight: Peter N. Brush, Principal Deputy Assistant Secretary for Environment, Safety, & Health, DOE.
4:00 p.m.—Public Comment Period: Dr. Ahearne.
Open Adjourn: Dr. Ahearne.

March 10, 1995

Proposed Agenda

8:30 a.m.—Opening Remarks: Gerard F Scannell, co-Chair.
8:40 a.m.—Discussion of the Committee's Proposed Method of Operating: Committee.
9:15 a.m.—Principle Findings on Nuclear Safety at DOE Defense Program Facilities: Dr. John T. Conway, Chairman, Defense Nuclear Facility Safety Board.
10:00 a.m.—Break
10:15 a.m.—Committee Discussion of the Range of Safety Functions & Scope of Operations to be addressed by the Advisory Committee: Committee.
11:00 a.m.—Public Comment Period: Mr. Scannell.
12 noon—Lunch
1.30 p.m.—Identification of Committee Outputs & Tentative Schedule: Committee.
2:30 p.m.—Discussion of Subcommittees: Committee.
3:00 p.m.—Subcommittee & Staff Assignments, Next Meeting, Actions: Committee.
3:30 p.m.—Adjourn: co-Chairs.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript also will be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on March 2, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5557 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 94–5 of the Defense Nuclear Facilities Safety Board, Integration of Department of Energy Safety Rules, Orders, and Other Requirements

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The Defense Nuclear Facilities Safety Board published Recommendation 94–5, concerning Integration of Department of Energy Safety Rules, Orders, and other requirements, in the **Federal Register** on January 6, 1995 (59 FR 2089).

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before April 6, 1995.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Tara O'Toole, M.D., M.P.H., Assistant Secretary for Environment, Safety and Health, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 27, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway, Chairman, *Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Suite 700, Washington, DC 20004.*

Dear Mr. Chairman: This letter responds to your Recommendation 94–5, Integration of DOE Safety Rules, Orders, and Other Requirements, dated December 29, 1994. The Department accepts the Recommendation.

The Department recognizes, as your recommendation generally observes, that DOE expectations in the transition from nuclear safety Orders to rules, and the development of associated implementation plans for Orders, rules, and other necessary and sufficient safety requirements should be effectively communicated and understood. We agree that these initiatives and efforts require effective coordination, integration, and communication as the transition to revised Orders or new rules occurs.

The Department has already embarked on a course of actions that are and will be responsive to your recommendations. For example, we have widely disseminated the Department's response to your May 6, 1994 letter on DOE's Safety Management Program and we are actively monitoring activities to assure consistency with that response. Your general recommendation regarding a smooth and complete transition between Orders and rules largely will be addressed in a Policy Statement on Procedures for Developing, Implementing, and Achieving Compliance with Nuclear Safety Requirements currently in development by the Office of General Counsel, a draft of which has been furnished to you.

The Assistant Secretary, Environment, Safety and Health, in conjunction with the Office of General Counsel and Cognizant Program Offices, will develop the Department's Implementation Plan for this Recommendation in accordance with 42 USC 2286d.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–5556 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER95–603–000 et al.]

Montaup Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Co.

[Docket No. ER95–603–000]

Take notice that on February 15, 1995, Montaup Electric Company (Montaup), filed a credit of $6,145,326.98 under its Purchased Capacity Adjustment Clause(PCAC) to true up the amounts billed in 1994 under a forecast billing rate to conform with actual purchased capacity costs. The credit will appear in bills for January 1995 service rendered for all requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company and

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Newport Electric Corporation in Rhode Island, and for contract demand service to two non-affiliates: Pascoag Fire District in Rhode Island and the Town of Middleborough in Massachusetts.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas and Electric Corp.

[Docket No. ER95–604–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Enron Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas and Electric Corp.

[Docket No. ER95–605–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Louis Dreyfus Electric Power. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas and Electric Corp.

[Docket No. ER95–606–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Central Vermont Public Service Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas and Electric Corporation

[Docket No. ER95–607–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and New York State Electric & Gas Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas and Electric Corp.

[Docket No. ER95–608–000]

Take notice that on February 15, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for the Federal Energy Regulatory Commission (Commission) between CHG&E and Long Island Lighting Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corp.

[Docket No. ER95–609–000]

Take notice that on February 15, 1995, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and Enron Power Marketing, Inc. (EPMI). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales. Cost support for both schedules have been previously filed and approved by the Commission. No specifically assignable facilities have been or will be installed or modified in order to supply service under the proposed rates.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on February 16, 1995. Waiver is appropriate because this filing does not change the rate under these two Commission accepted, existing rate schedules.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Co.

[Docket No. ER95–610–000]

Take notice that on February 15, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Rainbow Energy Marketing Corporation (REMC) and Virginia Power, dated January 17, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to REMC under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Co.

[Docket No. ER95–611–000]

Take notice that on February 15, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Carolina Power & Light Company and Virginia Power, dated January 19, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 17, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Carolina Power & Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of Service Schedule B included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. East Texas Electric Cooperative, Inc.

[Docket No. ER95–613–000]

Take notice that on February 15, 1995, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing proposed changes in its Rate Schedule ETEC–1. The proposed changes amend Rate Schedule ETEC–1 by revising the calculations contained in the Pool Commitment Equalization Adjustment (PCEA) to more accurately reflect the cost of power assigned to ETEC by its three members, Sam Rayburn G&T Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., since sales by ETEC began on April 1, 1994. The change of tariff filing also proposes a two-tiered PCEA adjustment mechanism and the use of a calendar year as the applicable billing period.

ETEC seeks changes to the PCEA charges and credits to conform to current data relating to projected costs and quantities of purchases from ETEC by its three members. The proposed adjustments are intended to govern future PCEA changes as may be necessary. Finally, ETEC seeks to align its billing period to its calendar year budgeting process.

Copies of the filing were served on the public utility's customers, and the Public Utility Commission of Texas.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. CINergy Services, Inc.

[Docket No. ER95–614–000]

Take notice that on February 15, 1995, CINergy Services, Inc. (CINergy), tendered for filing service agreements under CINergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into by: Electric Clearinghouse, Inc., Intercoast Power Marketing Company, Enron Power Marketing, Inc., LG&E Power Marketing, Inc., Louisville Gas and Electric Company, and CINergy Services, Inc.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER95–615–000]

Take notice that on February 16, 1995, Western Resources, Inc. (Western Resources), tendered for filing a contract for the sale of power and energy to The Empire District Electric Company (EDE). Western Resources asks that contract be accepted by the Commission and that first deliveries be permitted on June 1, 1995.

Copies of the filing were served on EDE and the Kansas Corporation Commission.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Power, Inc.

[Docket No. ER95–616–000]

Take notice that on February 16, 1995, Entergy Power, Inc. (Entergy Power), tendered for filing a firm power sale agreement between Entergy Power and Alabama Municipal Electric Authority. Entergy Power requests waiver of the Commission's cost support requirements under Sections 35.12 or 35.13 of the Commission's Regulations, to the extent they are otherwise applicable to this filing.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Co.

[Docket No. ER95–617–000]

Take notice that on February 16, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Maine Public Service Corporation (MPS) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to MPS.

NUSCO requests that the Service Agreement become effective on February 16, 1995.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Co.

[Docket No. ER95–618–000]

Take notice that on February 16, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Catex Vitol Electric Incorporated (Catex) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Catex.

NUSCO requests that the Service Agreement become effective on February 11, 1995.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Blackstone Valley Electric Co.

[Docket No. ER95–619–000]

Take notice that on February 16, 1995, Blackstone Valley Electric Company, tendered for filing an Additional Facilities Agreement between itself and The Narragansett Electric Company. Narragansett and its affiliate New England Power Company are repowering their Manchester Street generating station located in Providence, Rhode Island. Additional protective equipment must be installed on Blackstone's transmission system at its West Farnum Substation in order to maintain the reliability and stability of Blackstone's transmission facilities when the repowered Manchester Street station re-enters service. The Agreement contains the terms and conditions under which Blackstone will install, operate and maintain that equipment. The additional facilities are expected to come on line on March 31, 1995. The agreement provides that Blackstone will bill Narragansett for a CIAC. Montaup requests waiver of the notice requirement in order to permit the agreement to become effective on February 17, 1995.

Comment date: March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5501 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–P

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[Project No. 349-030 Alabama]

Alabama Power Co.; Notice of Availability of Draft Environmental Assessment

March 1, 1995.

An environmental assessment (EA) is available for public review. The EA is an application for Non-project Use of Project Land and Water for the Martin Dam Hydroelectric Project. The EA finds that approval of the application would not constitute a major federal action significantly affecting the human environment. The Martin Dam Hydroelectric Project is located on the Tallapoosa River in Elmore County, Alabama.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Jon Cofrancesco at (202) 219-0079.

Lois D. Cashell,

Secretary

[FR Doc. 95-5499 Filed 3-6-95; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District, Nebraska Public Power District; Public Briefing

March 1, 1995.

In response to a request by the U.S. Department of the Interior (Interior), the Commission will host a public briefing on the Memorandum of Agreement for the Central Platte River Basin Endangered Species Recovery Implementation Program (MOA). The briefing is scheduled for April 6, 1995, from 10:00 a.m. until 12:00 noon in the Commission Meeting Room, located on the 9th Floor of 825 N. Capitol St., N.E., Washington, D.C.

Representatives from each of the parties to the MOA, including Interior and the States of Nebraska, Colorado, and Wyoming, will make a presentation on the Platte River Basin and activities under the MOA.

This briefing is neither a hearing nor a settlement conference. It will provide an opportunity for the Commission staff and interested persons to obtain a fuller understanding of the MOA and activities under it.

The briefing will be recorded by a stenographer, and all briefing statements (oral and written) will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the briefing may contact Ann Riley & Associates by calling (202) 293-3950, or writing to 1612 K Street, NW, Suite 300, Washington, D.C. 20006.

Anyone wishing to comment in writing on the briefing must do so no later than May 8, 1995. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Reference should be clearly made to: the Kingsley Dam (Project No. 1417) and North Platte/Keystone Diversion Dam (Project No. 1835).

For further information, please contact Frankie Green at (202) 501-7704.

Lois D. Cashell,

Secretary.

[FR Doc. 95-5470 Filed 3-6-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-209-000, et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

February 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP95-209-000]

Take notice that on February 21, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia, 25314, filed in Docket No. CP95-209-000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate certain replacement storage facilities and for permission and approval to abandon the existing segment of storage facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to construct and operate approximately 0.9 mile of 20-inch storage pipeline as a replacement for 0.9 mile of 16-inch storage pipeline, which will be abandoned. Columbia estimates the cost of the proposed construction to be $3,076,000. The segment of storage pipeline to be replaced is designated as Line X-77-F-1, and is located in Grady Storage Field, Pocahontas County, West Virginia.

Columbia does not request authorization for any new or additional service and states that the replacement line would facilitate on-line pigging in an 8.8 mile continuous section of 20-inch pipeline from Glady Compressor Station to a point where the 20-inch pipeline will meet existing 12-inch pipeline in the Glady Storage Field.

Comment date: March 21, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP95-222-000]

Take notice that on February 23, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP95-222-000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon a delivery point located in Newton County, Texas, all as more fully described in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline proposes to abandon the facilities associated with its delivery point located at the terminus of Trunkline's 3-inch, Line 43A-100, Newton County, Texas (Abstract H.T.&B., A-192). Trunkline proposes to abandon this delivery point which was formerly used to deliver gas to producers for gas-lift operations at the Sabine Tram Field. Trunkline has been notified by S.M.A. Production Company, the current customer, that the delivery point is no longer required and can therefore be abandoned. Trunkline proposes to abandon the delivery point by removing the above-ground measurement facilities from the delivery point site for future use. Trunkline states that the facilities are not used for any other transportation agreements.

Comment date: April 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP95-223-000]

Take notice that on February 23, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston Texas 77056-5310, filed a request with the Commission in Docket No. CP95-223-000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install an additional meter tube, authorized in blanket certificate issued in Docket No. CP82-535-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposes to install an additional 12-inch meter tube at its existing Meter Station No. 128 (M&R 128) located on Texas Eastern's 30-inch Line No. 20 at Mile Post 42.94 in Union County, New Jersey. Texas Eastern states that the proposed tube will increase the maximum delivery capacity of M&R 128 by up to 70,000 dekatherms per day of natural gas deliveries to Public Service Electric and Gas Company (PSE&G), an existing customer. Texas Eastern states that the costs of the proposed meter tube would be $60,000, which Texas Eastern would pay and waive the reimbursement by PSE&G.

Comment date: April 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95-5500 Filed 3-6-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP95-60-001]

Alabama-Tennessee Natural Gas Company; Refund Report

March 1, 1995.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on January 10, 1995, tendered for filing with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds disbursed on August 8, 1994, pursuant to the Commission-approved settlement in Docket No. RP92-237, *et al.* Alabama-Tennessee states that the refunds were disbursed by means of a credit to each customer's respective OBA imbalance amount existing at the time of the credit.

All parties that have already filed comments or protests regarding the subject refund need not file in response to this notice.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-5471 Filed 3-6-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT95-24-000]

Colorado Interstate Gas Company; Filing of Refund Report

March 1, 1995.

Take notice that on February 24, 1995, Colorado Interstate Gas Company (CIG), filed a refund report in Docket Nos. GP83-11, RI 83-9, et al. CIG states that the filing and refunds were made to comply with the Federal Energy Regulatory Commission's (Commission) Orders or December 1, 1993 and May 19, 1994. CIG states that these amounts were paid by CIG on December 14, 1994.

CIG states that the refund report summarizes the Kansas ad valorem tax refund amounts related to tax bills rendered for production on or after June 28, 1988 pursuant to the Commission's December 1, 1993 and May 19, 1994 Orders. Lump-sum cash refunds were made by CIG to its former jurisdictional sales customers within 30 days of receipt from the producers. As provided for in the Orders, no additional interest was required to be paid.

CIG states that copies of CIG's filing have been served on CIG's former jurisdictional sales customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95-5469 Filed 3-6-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-133-004 (Phase I)]

Gas Research Institute; Petition to Continue the Current Funding Mechanism Through 1997

March 1, 1995.

Take notice that on February 27, 1995, Gas Research Institute (GRI), filed a petition requesting expedited approval of its proposal to continue the current funding mechanism for purposes of 1996 and 1997 GRI funding.

GRI proposes that the provisions of the post-1993 funding mechanism.

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which has been applicable to GRI's 1994 and 1995 Research and Development (R&D) Programs, be continued through 1997. Under GRI's proposal, the funding surcharge caps previously approved for 1995 would be used for 1996 and 1997 funding, with demand and volumetric caps of 25.5 cents per Dth per month and 1.1 cents per Dth, respectively, allowed to track any increases the Commission may approve in GRI's 1996 and 1997 R&D budgets.

GRI also proposes to add its new pipeline member to the list of pipelines that will be acting as collection agents for GRI funding.

Any person desiring to be heard or to protest GRI's petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All protests, motions to intervene and comments should be filed on or before March 15, 1995. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5473 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–23–000]

MidAmerican Energy Company

March 1, 1995.

Take notice that on February 23, 1995, MidAmerican Energy Company (MidAmerican), filed an application under § 204 of the Federal Power Act seeking authorization to issue securities and assume obligation and liabilities in connection with the proposed merger of Iowa-Illinois Gas and Electric Company (Kowa-Illinois), Midwest Resources Inc. (Midwest Resources) and Midwest Power Systems Inc. (Midwest Power) with and into MidAmerican.

MidAmerican proposes;

- To issue up to 103,784,200 shares of its common stock for the conversion of Midwest Resources common stock and Iowa-Illinois common stock to MidAmerican common stock;
- To issue up to an additional 6,000,000 shares of its common stock for MidAmerican's dividend reinvestment plan;
- To issue up to 3,217,789 shares of its preferred stock for the conversion of Iowa-Illinois preference stock and Midwest Power preferred stock to MidAmerican preferred stock;
- To assume all obligations and liabilities with respect to the existing securities of Iowa-Illinois, Midwest Resources and Midwest Power;
- To assume the outstanding short-term debt limit of $250 million previously granted by the Commission to Midwest Power in Docket No. ES93–35–000 and the new authorization sought by Midwest Power in its application filed with the Commission on February 23, 1995, in Docket No. ES95–22–000 for authorization to issue up to $250 million of promissory notes, pending the Commission's approval; and
- To assume the outstanding short-term debt limit of $150 million sought by Iowa-Illinois in Docket No. ES95–20–000 pending the Commission's approval.

MidAmerican requests that the proposed issuance of securities and assumption of obligations and liabilities be exempted from the Commission's competitive bidding and negotiated placement requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5468 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–175–000]

Mojave Pipeline Company; Rate Filing

March 1, 1995.

Take notice that on February 27, 1995, Mojave Pipeline Company (Mojave), tendered for filing a notice of rate filing concerning Tariff, First Revised Volume No. 1. Mojave is tendering revised tariff sheets for filing and acceptance to become effective March 1, 1995.

Mojave states that based upon test period data, Mojave projects an annual revenue deficiency in excess of $6 million under its currently effective rates as a result of actual increases in its cost of service. Notwithstanding such prospective revenue deficiency, Mojave does not propose to increase the level of its currently effective rates, nor does it propose to modify the rate design underlying such rates established in Mojave's Order No. 636 restructuring proceeding. Rather, Mojave's rate filing proposes to continue the effectiveness of its current rates and rate design, and thus to recover the same level of revenues it is allowed to collect under its currently effective tariff.

Mojave is proposing to modify the currently effective crediting mechanism for revenues derived from interruptible transportation established in Mojave's Order No. 636 restructuring proceeding. Under such mechanism, ninety percent of the amounts in excess of Mojave's $0.0010 Minimum Interruptible Rate collected from Mojave's interruptible shippers under Rate Schedule IT–1 are credited to Mojave's firm shippers in proportion to their respective firm contract quantities, while the remaining ten percent (10%) of such amounts are retained by mojave.

Mojave proposes to eliminate this crediting mechanism in light of the minimal revenues from interruptible service experienced during the base period, and Mojave's inability to project interruptible revenues.

Mojave states that copies of the notice were served upon all of Mojave's firm and interruptible transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Parts 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5467 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1614–000]

Southern Company Services, Inc.; Filing

March 1, 1995.

Take notice that on February 1, 1995, Southern Company Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5466 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–174–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 1, 1995.

Take notice that on February 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1995:

Second Revised Sheet No. 139
Second Revised Sheet No. 140
Second Revised Sheet No. 141
Second Revised Sheet No. 142
Second Revised Sheet Nos. 143–155

Texas Eastern states that the filing is submitted pursuant to Section 15.2(G), Transition Cost Tracker, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, pursuant to Order No. 528, *et seq.*, and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission") promulgated thereunder.

Texas Eastern states that the purpose of the filing is (1) to recover approximately $4.5 million of Order No. 636 transition costs incurred by upstream pipelines and flowed through to Texas Eastern; (2) to recover approximately $163,000 in costs incurred by Texas Gas Transmission Corporation (Texas Gas) and flowed through to Texas Eastern pursuant to Order No. 528, *et seq.*; and (3) to flow through a refund of approximately $119,000 of Order No. 528 costs received by Texas Eastern from Texas Gas pursuant to Texas Gas' settlement in Docket Nos. RP91–100, *et al.*

Texas Eastern states that carrying charges pursuant to Section 154.305 of the Commission's Regulations are included from the date of payment of the costs to the projected date of payment by the customers and also from the date of receipt of the refund by Texas Eastern to the projected date of refund to the customers.

Texas Eastern states that copies of the filing were served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5475 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–9–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

March 1, 1995.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing on February 24, 1995 certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of the attached tariff sheets is April 1, 1995.

TGPL states that the instant filing is submitted pursuant to Section 41 of the General Terms and Conditions of TGPL's FERC Gas Tariff which provides that TGPL will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. TGPL states that attached in Appendix B to the filing are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5474 Filed 3–6–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency Standards: Evaluation Criteria for the Voluntary Program to Provide Energy Efficiency Information for Commercial Office Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Change of Date for Public Meeting and Closing Date for Submission of Comments.

SUMMARY: On February 24, 1995, the Department of Energy published a notice announcing a public meeting to discuss the Evaluation Criteria that will be used as the basis for assessing the voluntary testing and information program to promote energy efficiency in commercial office equipment (60 FR 10379). Because of a request from the Council on Office Products Energy Efficiency, the industry group responsible for the voluntary program, the Department of Energy has rescheduled the public meeting

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originally scheduled for Wednesday, March 8, 1995, to Tuesday, March 28, 1995, and extended the close of the comment period for the written comments on the Evaluation Criteria from March 31, 1995, to April 14, 1995. All persons are hereby given notice of the opportunity to submit written comments, and to attend the public meeting.

DATES: Written comments in quadruplicate on the Evaluation Criteria must be received by April 14, 1995. The public meeting will be held on Tuesday, March 28, 1995.

ADDRESSES: Written comments should be labeled "Voluntary Program to Promote Energy Efficiency in Commercial Office Equipment" and submitted to Ms. Barbara Twigg, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. Telephone: (202) 586–8714; FAX: (202) 586–4617.

The meeting will begin at 10:00 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room GH–019, 1000 Independence Avenue, SW., Washington, DC.

Copies of the draft evaluation criteria may be requested from Barbara Twigg at the above address. Copies are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8714.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

Issued in Washington, DC, March 1, 1995.

Brian Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 95–5558 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

Appliance and Equipment Energy Efficiency Standards: Public Workshop to Discuss the Engineering Analysis for Energy Conservation Standards for Fluorescent Lamp Ballasts

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department will hold a public workshop on Friday, March 3, 1995, to discuss the Engineering Analysis Section of the Draft Technical Support Document in support of the reproposal of fluorescent lamp ballast energy conservation standards. All persons are hereby given notice of the opportunity to submit written comments and to attend the public workshop.

DATES: Five copies of any written comments must be received by March 31, 1995. The public workshop will be held on Friday, March 17, 1995.

ADDRESSES: Please label your written comments as "Comments on the Fluorescent Lamp Ballast Engineering Analysis" and submit to Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. Telephone: (202) 586–7574; FAX: (202) 586–4617.

The workshop will begin at 9:30 a.m. at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC.

Copies of transcripts of the April 5–7 the June 7–8, 1994 public hearings for the Eight Products Energy Conservation Standards and the agendas of the December 2, 1994 and the January 17, 1995 public meetings are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC. (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1689.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), (Pub. L. 94–163) created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products currently subject to this Program include fluorescent lamp ballasts among others. EPCA sets minimum energy conservation standards for fluorescent lamp ballasts and requires the Department of Energy to revise and increase these standards.

2. Background

On March 4, 1994, the Department proposed standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, fluorescent lamp ballasts and television sets. (59 FR 10464). The Department received over 8,000 comments on the proposed rule, including comments from manufacturers, consumers, Members of Congress, retailers, broadcasters, national trade associations, national energy advocates, utilities and other Federal agencies. Based on the comments in the record, the Department determined that revised data from a larger sample of fluorescent lamp ballast types was needed. On December 2, 1994 and on January 17, 1995, the Department held public meetings at the Lawrence Berkeley Laboratory (LBL) in Berkeley, California. The purpose of the meeting was to review the methodology for the fluorescent lamp ballast engineering analysis and to discuss the need for current data on all types of fluorescent lamp ballasts. On January 31, 1995, the Department published notification in the **Federal Register** of the Department decision to proceed with separate rulemakings for fluorescent lamp ballasts, televisions, and electric water heaters. (60 FR 5880).

3. Discussion

The purpose of the workshop is to discuss the engineering analysis, data sources, the maximum technologically feasible design, and the life-cycle cost analysis for fluorescent lamp ballasts. This workshop will not involve discussion of energy conservation standards for ballasts.

Discussion of the engineering analysis will focus on ballast classes, energy use data (watts input), ballast efficacy factors (BEF), and cost versus ballast efficiency. Ballast classes under discussion will be the one to four lamp F40T12 and F32T8 ballasts, the two lamp F96 and F96H0 ballasts and the one to four lamp F40T12 ballasts for energy saver lamps. A discussion of the methods, data and data sources for the incremental costs associated with improved ballast efficiency, for ballast life-cycle costs and for payback will be included in this workshop. Workshop participants will discuss the criteria for the ballast with the highest BEF for the maximum technologically feasible design.

The Department has examined many sources of data and has requested and received engineering data from ballast manufacturers and ballast users. However, the Department still has limited engineering data on currently manufactured cathode cut-out magnetic ballasts (e.g., watts, lumens, BEF, total harmonic distortion (THD), Power Factor, etc). Additionally, ballast manufacturers have advised the Department that they could not determine the incremental costs for various improved features in electronic ballasts such as minimum THD, minimum electromagnetic interference maximum power factor, maximum reliability, minimum flicker, maximum lamp life, and good line voltage regulation. The Department has assumed, therefore, that there is no cost difference between levels of electronic ballasts and has used cost data derived from a survey of original equipment maunfacturers and lighting maintenance companies. Anyone having additional cost or price data, contact Mr. Issac Turiel, Lawrence Berkeley Laboratory, Building 90–4000, Berkeley, CA 94720, (510) 486–6493.

4. Public Meeting Procedure

The meeting will be informal. Copies of the engineering analysis are available in the DOE public reading room and will be available at the meeting. Additionally, copies will be mailed to persons who commented on the March 4, 1994, Notice of Proposed Rulemaking for fluorescent lamp ballasts and to anyone who requests a copy by March 10, 1995.

Issued in Washington, DC. February 28, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–5479 Filed 3–6–95, 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–13–NG]

Canwest Gas Supply U.S.A., Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CanWest Gas Supply U.S.A., Inc. blanket authorization to import and export a combined total of up to 400 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export after February 28, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–5555 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–10–NG]

Phibro Division of Salomon, Inc.; Order Granting Blanket Authorization to Import Natural Gas From and Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Phibro Division of Salomon Inc. blanket authorization to import up to 200 Bcf of natural gas from Mexico and to export up to 200 Bcf of natural gas to Mexico over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–5554 Filed 3–6–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5167–1]

Public Water System Supervision Program Revision for Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Puerto Rico is revising its approved Public Water System Supervision Primacy Program. The Commonwealth of Puerto Rico has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the lead and Copper Rule (LCR). USEPA regulations were promulgated on June 7, 1991 (56 FR 26460). The USEPA has determined that Puerto Rico Lead and Copper regulations are no less stringent than the corresponding Federal regulations and that Puerto Rico continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional

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Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Carl-Axel P. Soderberg—Director, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907.

All documents relating to this determination are available for inspection between the hours of 9:00 am and 4:30 pm, Monday through Friday, at the following offices:

Public Water Supply Supervision Program, Puerto Rico Department of Health, Edificio A. Centro Medico, Call Box 70184, San Juan, Puerto Rico 00936

U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907

U.S. Environmental Protection Agency, Region II, Public Water System Supervision Section, Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

For further information, you may contact: Victor Trinidad, Chief, Water Management Staff, Water Management Staff Caribbean Field Office, U.S. Environmental Protection Agency, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907, (809) 729–6951.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: February 24, 1995

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–5536 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5166–6]

Common Sense Initiative Council, Iron and Steel Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Iron and Steel Sector Subcommittee—Notice of Meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC)—Iron and Steel Sector Subcommittee (CSIC-ISS) on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the iron and steel industry. The charter for CSIC is authorized through October 17, 1996 under regulations established by the Federal Advisory Committee Act (FACA). The Iron and Steel Sector Subcommittee is currently in the process of identifying issues and projects that it will pursue.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency is convening an open meeting of the Iron and Steel Sector Subcommittee on Wednesday, March 22, 1995 from 12:00 noon to 3:00 p.m. at the Ambassador West Hotel, 1300 North State Parkway, Chicago, Illinois 60610, telephone number 312–787–3700. Seating will be available on a first come, first served basis.

The Iron and Steel Subcommittee has created four workgroups which are responsible for proposing to the full Subcommittee for Subcommittee review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. These workgroups will be meeting on Tuesday preceding the meeting. The purpose of the this meeting will for the four Subcommittee workgroups to report on the progress they have made, and for the Subcommittee to review and discuss the activities or projects recommended by the workgroups, to provide further guidance as necessary, and, as appropriate, to approve projects for which detailed workplans will be subsequently developed.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For more information about this meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5682 in Washington, D.C.

Dated: February 28, 1995.

Mahesh Podar,

Designated Federal Official.

[FR Doc. 95–5520 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5166–3]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Citizens Advisory Committee will hold a meeting at the Sheraton Corpus Christi Bayfront Hotel, N. Shoreline Blvd., Corpus Christi, Texas.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held March 29–31, 1995, at the Sheraton Corpus Christi Bayfront Hotel, N. Shoreline Blvd., Corpus Christi, Texas. The committee will meet from 3:00 to 6:00 p.m. on March 29, 8:00 a.m. to 7:30 p.m. on March 30, and 8:00 a.m. to 5:30 p.m. on March 31. Agenda items will include: (March 29) Describe Review and Evaluation Process for GMP Symposia; Develop Evaluation Form to Insure Consistency Among Reviewers; Receive Reports from Session Evaluations; Analyze and Critique Evaluation Form; and Assign Members to Specific Sessions for Evaluation. (March 30) Assign Members to Specific Sessions for Evaluations; Receive and Compile Reports from Session Evaluations; and Prepare Preliminary Report. (March 31) Assign Members to Specific Sessions for Evaluations; Complete Critique of Symposium; Receive Status Report on Key Committee Initiatives, Activities and Issues; Develop a Five Year Citizens Advisory Committee Plan; Receive Report on Gulf of Mexico Foundation; Develop a CAC Challenge for Next Six Months; Amend Bylaws Concerning Quorum; and Elect CAC Officers. The meeting is open to the public.

Frederick Kopfler,

Acting Director, Gulf of Mexico Program

[FR Doc. 95–5518 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5165–7]

Notice of Meetings, Open to the Public, of the Multi-Agency Radiation Site Investigation Manual Development Working Group

AGENCY: Environmental Protection Agency, lead.

ACTION: Meetings open to the public.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the Department of Defense, Department of Energy, Environmental Protection Agency, and the Nuclear Regulatory Commission are meeting to develop joint Federal guidance for standardized and consistent approaches to accomplish structural and environmental radiation surveys. Relevant information will be provided to the group by other persons present. The guidance is being developed as a draft document, entitled the "Multi-Agency Radiation Site Investigation Manual (MARSIM)", and it is anticipated that the final product will be a consensus document each agency can agree upon and eventually adopt. Meetings of the group are open to the public on a first come, space available basis with advance registration. During the next meeting, representatives of the agencies will discuss: survey planning and design; implications of minimum detectable activity; application of statistics; and the schedule of future meetings.

DATES, ADDRESSES, AND REGISTRATION: A meeting will be held on Tuesday, March 28, 1995 from 9:00 am until about 3:00 pm. The meeting will be held at the U. S. Nuclear Regulatory Commission, 2 White Flint North, Room T–10A1, 11555 Rockville Pike, Rockville, MD. Persons wishing to attend this meeting contact Roberta Gordon at (301) 415–7555 to register. A future meeting is tentatively scheduled for April 27, 1995. The schedule, location, and registration information for future meetings will be posted on the U. S. Nuclear Regulatory Commission Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, (800) 880–6091; the NRC Public Meeting Announcement System by electronic bulletin board at (800) 952–9676 or by recording at (800) 952–9674; the EPA Cleanup Regulation Electronic Bulletin Board at (800) 700–7837 outside the Washington area and (703) 790–0825 locally; and the RCRA/Superfund Hotline at (800) 424–9346 outside the Washington area, (703) 412–9810 locally, or by TDD at (800) 553–7672.

FOR FURTHER INFORMATION CONTACT: Persons needing further information concerning this group and the work of developing the Multi-Agency Radiation Site Investigation Manual should contact Colleen Petullo, U.S. Environmental Protection Agency/ORIA, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2446.

Dated: March 1, 1995.

Nicholas Lailas,

Chief, Radiation Assessment Branch, EPA Office of Radiation and Indoor Air.

[FR Doc. 95–5521 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5166–5]

Modification of General Administrative Compliance Order for Produced Water Discharges Covered by NPDES General Permits for Produced Water and Produced Sand Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Louisiana (LAG290000) and Texas (TXG290000)

AGENCY: Environmental Protection Agency, Region 6.

ACTION: Modification of General Administrative Compliance Order.

SUMMARY: Region 6 of the United States Environmental Protection Agency (EPA) today modifies the General Administrative Compliance Order that was issued January 9, 1995, at 60 FR 2393. This Order is modified to add as respondents to the Order those permittees subject to General NPDES Permit Nos. LAG290000 and TXG290000 who discharge produced water from new Coastal, Stripper or Offshore Subcategory wells to "coastal" waters of Texas or Louisiana which will be spudded after the effective date of NPDES permits LAG290000 and TXG290000 and which discharge produced water through existing facilities that are required by this Order to cease produced water discharges no later than January 1, 1997.

DATES: The General Administrative Compliance Order will become effective on March 7, 1995.

ADDRESSES: Notifications required by this Order should be sent to the Water Management Division, Enforcement Branch (6W–EA), EPA Region 6 P.O. Box 50625, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone: (214) 665–7513.

SUPPLEMENTARY INFORMATION: The General Administrative Compliance Order being modified today was originally issued January 9, 1995 and published in the **Federal Register** at 60 FR 2393 with an effective date of February 8, 1995. After the Order was issued, the Region received information that a number of new wells are planned to be drilled in the near future in existing fields in Louisiana and Texas. The discharge of produced water associated with these new wells is not currently covered by the Order. These wells are ones which will discharge their produced water through existing treatment/discharge facilities that are required by the Order to cease discharge of produced water no later than January 1, 1997. Individual wells of this type cannot normally justify a separate injection well for a single production well. If the Order was not modified, it was claimed that oil and gas drilling in coastal Louisiana and Texas would be delayed until the planned injection facilities are in place, which in some cases may be nearly 2 years. The Region has agreed to modify the Order to allow coverage of produced water discharges from those new wells.

Those permittees who have already submitted an "Administrative Order Notice" in connection with the General Administrative Compliance Order issued January 9, 1995 do not need to resubmit an Administrative Order Notice to be covered by today's modified Order.

United States Environmental Protection Agency, Region 6 in Re: NPDES Permit Nos. LAG290000 and TXG290000 General Administrative Compliance Order

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Section 309(a)(3) of the Clean Water Act (hereinafter "the Act"), 33 U.S.C. 1319(a)(3), and duly delegated to the Regional Administrator, Region 6, and duly redelegated to the undersigned Director, Water Management Division, Region 6. Failure to comply with the interim requirements established in this ORDER constitutes a violation of this ORDER and the NPDES permits.

Findings

I

The term "waters of the United States" is defined at 40 C.F.R. 122.2. The term "coastal" is defined in NPDES Permits LAG290000 and TXG290000 and includes facilities which would be considered "Onshore" but for the decision in *API* v. *EPA* 661 F.2 340 (5th Cir. 1981). The term "existing well"

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means a well spudded prior to the effective date of NPDES Permits LAG290000 and TXG290000. The term "new well" means a well spudded after the effective date of NPDES Permits LAG290000 and TXG290000 whose associated produced water will be discharged through an existing treatment/discharge facility required by this Order to cease discharge of produced water no later than January 1, 1997.

II

Pursuant to the authority of Section 402(a)(1) of the Act, 33 U.S.C. § 1342, Region 6 issued National Pollutant Discharge Elimination System (NPDES) Permits No. LAG290000 and TXG290000 with an effective date of February 8, 1995. These permits prohibit the discharge of produced water and produced sand derived from Oil and Gas Point Source Category facilities to "coastal" waters of Louisiana and Texas in accordance with effluent limitations and other conditions set forth in Parts I and II of these permits. Facilities covered by these permits include those in the Coastal Subcategory (40 CFR 435, Subpart D), the Stripper Subcategory (40 CFR 435, Subpart F) that discharge to "coastal" waters of Louisiana and Texas, and the Offshore Subcategory (40 CFR 435, Subpart A) which discharge to "coastal" waters of Louisiana and Texas.

III

Respondents herein are permittees subject to General NPDES Permit Nos. LAG290000 and/or TXG290000 and who:

A. Discharge produced water derived from an existing Coastal, Stripper or Offshore Subcategory well or wells to "coastal" waters of Texas or Louisiana, or will discharge produced water derived from a new Coastal, Stripper or Offshore Subcategory well or wells to "coastal" waters of Texas or Louisiana.

B. Discharge produced water derived from an existing Coastal Subcategory well or wells located in Louisiana or Texas to waters of the United States outside Louisiana or Texas "coastal" waters, or will discharge produced water derived from a new Coastal Subcategory well or wells located in Louisiana or Texas to waters of the United States outside Louisiana or Texas "coastal" waters.

C. Are required by Permits No. LAG290000 or TXG290000 to meet the requirement of No Discharge of produced water and are taking affirmative steps to meet that requirement.

D. Have submitted an "Administrative Order Notice". Such Notices shall be sent to: Enforcement Branch (6W–EA), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75270. Upon submission of such an Administrative Order Notice, a permittee shall be a Respondent under this General Administrative Order. The terms of each Administrative Order Notice submitted shall be considered terms of this Order and shall be enforceable against the Respondent submitting the Administrative Order Notice. Each Administrative Order Notice must include:

1. Identification of the facility by name and its location (by lease, lease block, field or prospect name), the name and address of its operator, and the name, address and telephone number of a contact person.

2. A certification signed by a person meeting the requirements of Part II, Section D.9 (Signatory Requirements) of Permits LAG290000 and TXG290000 stating that a Compliance Plan has been prepared for the facility in accordance with this Order. A copy of this plan shall not be included with the Administrative Order Notice, but shall be made available to EPA upon request.

3. A Compliance Plan shall include a description of the measures to be taken, along with a schedule, to cease discharge of produced water to waters of the United States as expeditiously as possible.

IV

To maintain oil and gas production and comply with the permits' prohibition on the discharge of produced water, a significant number of Respondents will have to reinject their produced water. A lack of access to the finite number of existing Class II disposal wells, state UIC permit writers, and drilling contractors may cause non-compliance for a significant number of Respondents. In addition, time will be required for some Respondents to reroute produced water collection lines to transport the produced water to injection wells.

V

Respondents may reasonably perform all actions necessary to cease their discharges of produced water no later than January 1, 1997.

VI

For new wells as defined by this ORDER, coverage under this ORDER shall begin immediately after the discharge of the associated produced water begins.

Order

Based on the foregoing Findings, *it is ordered* That Respondents:

A. Fully comply with all conditions of NPDES Permits No. LAG290000 and TXG290000 except for the prohibition on the discharge of produced water and except for the requirement that all discharges of produced water be reported within twenty-four hours.

B. Complete all activities necessary to attain full and continuous compliance with NPDES Permits No. LAG290000 and TXG290000 as soon as possible, but in no case later than January 1, 1997.

C. Operate and maintain all existing pollution control equipment, including existing oil/water separation equipment, in such a manner as to minimize the discharge of pollutants contained in produced water at all times until such time as respondents cease their discharges of produced water.

D. Submit notice to the Water Enforcement Branch of EPA Region 6 when produced water discharges subject to this Order have ceased.

E. Subject to NPDES Permit LAG290000 comply at all times with Part I. Section C.1.b of said permit, requiring that Respondents meet any more stringent requirements contained in Louisiana Water Quality Regulation, LAC: 33,IX,7.708.

Nothing herein shall preclude additional enforcement action.

The effective date of this ORDER shall be March 7, 1995.

Dated: February 24, 1995.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 95–5519 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 23]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

PURPOSE: The proposed Export-Import Bank Questionnaire of City/State Partners to exporters and banks is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of providing an evaluation of the effectiveness, utility, strengths and weaknesses of, and means to improve upon the relationships established between Eximbank and its 30 City/State Partners.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

SUMMARY: The following summarizes the information collection proposal submitted to OMB.

(1) Type of request: New.

(2) Number of forms submitted: One.

(3) Form Number: EIB 95–4.

(4) Title of information collection: Export-Import Bank Questionnaire of City/State Partners.

(5) Frequency of Use: Annual.

(6) Respondents: City/State export finance organizations.

(7) Estimated total number of annual responses: 30.

(8) Estimated total number of hours needed to fill out the form: 15.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed application may be obtained from Tamzen Reitan Agency Clearance Officer, (202) 565–3333. Comments and questions should be directed to Mr. Jeff Hill, Office of Management and Budget, Information and Regulatory Affairs, Room 3235, New Executive Office Building, Washington, DC 20503, (202) 395–3176. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: March 1, 1995.

Tamzen C. Reitan,

Agency Clearance Officer.

[FR Doc. 95–5449 Filed 3–6–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for OMB review of the information collection described below.

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064–0052.

Expiration Date of OMB Clearance: July 31, 1995.

Respondents: Insured State Nonmember Commercial and Savings Banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,011.

Number of Responses per Respondent: 4.

Total Annual Responses: 28,044.

Average Number of Hours per Response: 26.87.

Total Annual Burden Hours: 753,429.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0052, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before March 22, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (call Report) filed quarterly by insured state nonmember commercial and savings banks. The Federal Reserve Board (FRB) and the Office of the Comptroller of the Currency (OCC) are also submitting these changes for OMB review for the banks under their supervision.

The proposed revisions to the Call Report that are the subject of this request have been mandated by the FFIEC and are scheduled to take effect as of March 31, 1995. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the Call Report changes apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks will be advised that, for the March 31, 1995, report date, they may provide reasonable estimates for any new or revised item for which the requested information is not readily available. The changes for which OMB approval is requested are summarized as follows:

Deletions and Reductions in Detail

The level of detail with which restructured loans and leases that are in compliance with modified terms are reported in the memoranda section of Schedule RC–C, "Loans and Lease Financing Receivables," would be reduced. For all banks, the current separate items for the various non-real-estate loan categories will be combined into a single item for "all other loans and all lease financing receivables." In addition, banks with foreign offices or with $300 million or more in total assets that file the FFIEC 031 and 032 report forms also will report a single total for their restructured commercial loans to and their restructured leases of non-U.S. addressees.

Call Report items in the seven following areas would be deleted:

(1) Schedule RC–R, item 3, "Total qualifying capital allowable under the risk-based capital guidelines."

(2) The quarterly average of "Obligations (other than securities and leases) of states and political subdivisions in the U.S." in Schedule RC–K, item 6.a(6) on the FFIEC 031, item 6.f on the FFIEC 032, and Memorandum item 1 on the FFIEC 033. This average has not been collected from banks with less than $100 million in assets that file the FFIEC 034 report form.

(3) The four components of mandatory convertible debt, net of dedicated stock, in Schedule RC–M, items 7.a through 7.d on the FFIEC 031 and 032, items 6.a through 6.9 on the FFIEC 033, and items 8.a through 8.d on the FFIEC 034. The item for the total amount of mandatory convertible debt, net of dedicated stock, would be retained.

(4) The year-to-day reconcilement of the allocated transfer risk reserve in Schedule RI–B, Part II. This reconcilement has been collected only from banks with foreign offices or with total assets of $300 million or more that file the FFIEC 031 or 032 report forms.

(5) The quarterly reconcilement of the agricultural loan loss deferral account in Schedule RC–M, items 10.a through 10.e. This reconcilement has been collected only from banks with total assets of less than $100 million that file the FFIEC 034 report.

(6) Recoveries of "Special-Category Loans" in Schedule RI–B, Part I, Memorandum item 1 on the FFIEC 031

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and 032, Memorandum item 3 on the FFIEC 033, and Memorandum item 2 on the FFIEC 034. This item has been collected from national banks only.

(7) The yes-no question on "Personnel changes among the three senior officers of the bank during the quarter" in Schedule RC–M, item 6 on the FFIEC 034. This item has been completed only by banks with total assets of less than $100 million that file the FFIEC 034 report form.

New Items

Call Report items in the eight following areas would be added:

(1) Notional Amounts/Par Values of Off-Balanced Sheet Derivatives

At present, all banks report notional amount/par value data for interest rate, foreign exchange rate, and other commodity and equity contracts in items 11 through 13 of Schedule RC–L, "Off-Balance Sheet Items." The existing items will be expanded to separate exchange-traded contracts from over-the-counter contracts and to separate equity derivative contracts from commodity and other contracts. (Spot foreign exchange contracts would also be reported separately.) In addition, for each of the four types of undelying risk exposures (i.e., interest rate, foreign exchange, equity, and commodity and other), the total notional amount/par value of contracts held for trading and held for purposes other than trading will be reported separately, with the latter further divided between contracts that are marked to market for Call Report purposes and those that are not.

(2) Gross Fair Values of Off-Balance Sheet Derivatives

For banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 report forms, Schedule RC–L will also be expanded to include gross fair value data for derivatives. (This information will not be collected from small banks that file the FFIEC 034 report forms.) For each of the four types of underlying risk exposures, the gross positive and gross negative fair values will be reported separately for (i) contracts held for trading purposes, (ii) contracts held for purposes other than trading that are marked to market, and (iii) contracts held for purposes other than trading that are not marked to market. When reporting gross fair values, no netting of contracts would be permitted.

(3) Income-Related Information Encompassing Off-Balance Sheet Derivative Activities

Additional memorandum items to Schedule RI, "Income Statement," will be reported by banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 report forms. First, banks will provide a breakdown of trading revenue that has been included in the body of the Schedule RI income statement. For each of the four types of underlying risk exposures, banks will report the combined revenue from trading cash and derivative instruments. Second, for derivatives held for purposes other than trading, banks will report the effect that these contracts had on the bank's income as reported in Schedule RI. There will be separate disclosure of (i) the net increase (decrease) to interest income, (ii) the net increase (decrease) to interest expense, and (iii) the effect on noninterest income and expense of these of-balance-sheet derivative contracts.

(4) Risk-Based Capital Reporting changes

For those banks that complete Schedule RC–R in its entirety, the schedule's memorandum section will be revised to provide for the collection of remaining maturity data for long-dated contracts and for four additional types of derivative contracts: gold contracts, other precious metals contracts, other commodity contracts, and equity contracts. The two replacement cost items currently collected for interest rate and foreign exchange rate contracts will be deleted and replaced with a single new item for a bank's current credit exposure across all derivative contracts and counterparties, taking into account legally enforceable bilateral netting agreements that are recognized for risk-based capital purposes.

(5) Investments in "High-Risk Mortgage Securities" and "Structured Notes"

Four memorandum items would be added to Schedule RC–B, "Securities," in which banks will separately report the amortized cost and fair value of any "high-risk mortgage securities" and of any "structured notes" that are held in either the held-to-maturity or available-for-sale portfolios.

(6) Sales of Proprietary Mutual Funds and Annuities

Currently banks are required to report separately the dollar amount of sales during the quarter for money market funds, equity securities funds, debt securities funds, other mutual funds, and annuities in Schedule RC–M, "Memoranda." The five existing mutual fund and annuity items combine sales of proprietary, private label, and third party products. The banking agencies would add one item to Schedule RC–M in which banks will report separately the total sales during the quarter of proprietary mutual funds and annuities.

(7) Reporting of Reciprocal Demand Balances for Insurance Assessment Purposes

The banking agencies would add new items to Schedule RC–O, "Other Data for Deposit Insurance Assessments," in order to separately identify the amount of the following three types of adjustments to a bank's reported demand deposits that are related to reciprocal demand balances and are needed for deposit insurance assessment purposes: (i) Amount by which demand deposits would be reduced if reciprocal demand balances between the reporting bank and savings associations were reported on a net basis rather than a gross basis in Schedule RC–E, (ii) Amount by which demand deposits would be increased if reciprocal demand balances between the reporting bank and U.S. branches and agencies of foreign banks were reported on a gross basis rather than a net basis in Schedule RC–E, and (iii) Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of net reciprocal demand balances between the reporting bank and U.S. banks and savings associations in Schedule RC–E.

(8) Disclosure of the Acquisition Date When Push Down Accounting Has Been Applied

Push down accounting is the establishment of a new accounting basis for a bank in its separate financial statements (including its Call Report) as a result of a substantive change in control. The banking agencies would add an item to the Memoranda section of Schedule RI, "Income Statement," to reveal the date when any such transactions have taken place.

Instructional Changes

The Call Report instructions will be updated in certain places to incorporate references to FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan." Statement No. 114 defines impairment and sets forth measurement methods for estimating the portion of the total allowance for loan and lease losses attributable to impaired loans. The banking agencies also propose instructional changes relating to the reporting of mortgage-backed securities in the body of Schedule RC–B, "Securities," so that item 4 of Schedule RC–B will include all mortgage-backed securities. In addition, the Call Report instructions will be clarified in response to questions about the reporting of lines of credit extended to bank insiders, participations in pools of residential mortgages, refundable loan commitment fees, and stock subscription payments.

Dated: March 1, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–5438 Filed 3–6–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0806]

Policy Statement on Payments System Risk; Daylight Overdraft Pricing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has approved a modification of the increase in the fee charged to depository institutions for daylight overdrafts incurred in their accounts at the Reserve Banks that had been scheduled to take effect on April 13, 1995. As a result of the sizeable reductions in daylight overdrafts already achieved, as well as concerns about the possible effects of further rapid fee increases, the Board has approved an increase in the daylight overdraft fee to an effective daily rate of 15 basis points rather than 20 basis points. (The 15-basis-point fee equals an annual rate of 36 basis points, quoted on the basis of a 360-day year and a 24-hour day.) The Board will evaluate the desirability of any further increases in the daylight overdraft fee, based on the objectives of the payments system risk program, two years after the implementation of the 15-basis-point fee. Any changes in the fee resulting from that review will be announced with a reasonable lead-time for implementation.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360) or Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background on the Daylight Overdraft Fee Policy

The Board's initial policy statement aimed at controlling daylight overdrafts, which became effective in 1986 (50 FR 21120, May 22, 1985), encouraged depository institutions to establish voluntary daylight overdraft limits, or caps, across all large-value payment systems. The cap levels were subsequently reduced by the Board, effective in 1988, in an effort to reduce further the level of overdrafts (52 FR 29255, August 6, 1987).

While daylight overdrafts associated with funds transfers appeared to stabilize somewhat after the introduction of caps, daylight overdrafts associated with securities transfers, which were exempt from the original caps, continued to grow strongly. The Board became concerned, however, that further reductions in cap levels might seriously disrupt long-established market practices for settling financial transactions. Thus, in 1987, the Board commissioned two studies of the fundamental issues concerning payments system risk by a staff task force and an industry advisory group. Both groups agreed that the Federal Reserve's provision of free daylight overdraft credit was a subsidy that encouraged the overuse of such credit by private institutions. The advisory group emphasized the flexibility of daylight overdraft fees as a market-oriented means of allocating daylight credit to depository institutions that valued it most highly, while allowing them to determine the least costly means of reducing these overdrafts.

The task force identified the following set of public policy objectives for the Board's daylight overdraft program:

- Low direct credit risk to the Federal Reserve,
- Low direct credit risk to the private sector,
- Low systemic risk,
- Rapid final payments,
- Low operating expense of making payments,
- Equitable treatment of all service providers and users in the payments system,
- Effective tools for implementing monetary policy, and
- Low transaction costs in the Treasury securities market.

The task force recognized that the pursuit of these objectives might, at times, result in competing policy goals, and that policy options would need to be evaluated on the basis of whether they achieved an appropriate balance of the objectives. In particular, a policy might need to balance considerations of direct risks to the Federal Reserve, on the one hand, and systemic risks on the other.

After completion of the two studies, the Board sought public comment on the issues associated with charging fees for daylight overdrafts, along with a number of other issues relating to its payments system risk program. The Board abolished cross-system net debit caps, but retained caps on overdrafts in Federal Reserve accounts, effective in 1991 (55 FR 22087, May 31, 1990). In 1992, the Board announced its intention to charge fees for daylight overdrafts (57 FR 47084, October 14, 1992). The Board also announced that the fee would be phased in so the Board could monitor the impact of the fee and make adjustments, if necessary.

The current effective daily fee of 10 basis points was implemented on April 14, 1994. Under the policy adopted in 1992, the fee is scheduled to increase to 20 basis points on April 13, 1995, and to 25 basis points on April 11, 1996. (The annual rate charged for daylight overdrafts is quoted on the basis of a 360-day year and a 24-hour day. The annual rates are officially quoted as 24, 48, and 60 basis points. The annual rate is converted to an effective daily rate by multiplying it by the fraction of the day that the Fedwire funds transfer system operates, currently 10 hours out of 24. This document will refer to the effective daily rates, because they are commonly used in public discussions of the daylight overdraft fee.)

II. Impact of the Initial Daylight Overdraft Fee

In the aggregate, daylight overdrafts in Federal Reserve accounts have fallen by roughly 40 percent in response to the initial 10-basis-point fee. Significant reductions in overdrafts occurred immediately upon implementation of fees, and the resulting levels of overdrafts have remained fairly constant since that time. Peak overdrafts, defined as the maximum aggregate daylight overdraft at the end of each minute during an operating day, have fallen from $124 billion, on average, during the six months before implementation of fees, to $70 billion, on average, from April 14 through the last reserve maintenance period in 1994. Over the same period, aggregate per-minute average overdrafts, the base measure upon which fees are assessed, dropped from $70 billion to $43 billion. These figures represent reductions of 43 percent and 39 percent respectively, in aggregate peak and per-minute average overdrafts.

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The reduction in overdrafts has been concentrated among a few institutions. For the six institutions with the largest daylight overdrafts (per-minute average overdrafts since April 14, 1994, of at least $1 billion), average overdrafts have fallen by $25 billion overall, or 48 percent. This decline represents 97 percent of the total reduction in per-minute average overdrafts. In contrast, 44 institutions with overdrafts between $100 million and $1 billion had increased overdrafts, on average, with the implementation of fees. Thus, daylight overdraft fees appear to have resulted in a reduction in daylight overdrafts in the aggregate, as well as a reallocation of daylight overdrafts among institutions.

A large portion of the reduction in overdraft levels observed since April has been related to securities-transfer activity on Fedwire. Average securities-related daylight overdrafts in Federal Reserve accounts have decreased by 47 percent since implementation of daylight overdraft fees. By contrast, average Fedwire-funds-related and non-Fedwire-related daylight overdrafts combined have decreased by 26 percent.

III. Impact on the Financial Markets

Government Securities Market

The significant reduction in overdrafts related to securities-transfer activity is due primarily to changes in settlement patterns in the government securities market, in particular the overnight repurchase agreement (RP) market, and to the concentration of government securities clearing services among a few institutions—the securities clearing banks. Typically, securities dealers finance their inventories of government securities through overnight RPs with institutional investors, who exchange cash for securities and hold the securities overnight in accounts at custodian depository institutions. These securities are usually returned on Fedwire to the dealers' clearing banks by the custodian banks at the opening of business. Because funds are simultaneously debited from the clearing banks' accounts when the securities are transferred on Fedwire, substantial overdrafts are created in the clearing banks' accounts at the Federal Reserve. Overdrafts persist until new RPs are arranged and settled by deliveries of securities out of accounts at the securities clearing banks later in the day. Before implementation of daylight overdraft fees, these overdrafts typically reached a peak at around 11:00 a.m. ET.

The concentration of RP clearing activity at the securities clearing banks, along with the substantial associated daylight overdrafts, led these institutions to expect sizeable daylight overdraft charges. As a result, they developed automated systems to allocate daylight overdraft charges to the customers whose RP activity generated the overdrafts. Thus, strong incentives were created for securities dealers to modify RP trading and settlement practices in order to minimize charges assessed by the clearing banks.

Since the implementation of daylight overdraft fees, securities dealers have accelerated the morning practice of arranging RPs, as well as the identification and pricing of the related RP securities. This practice has significantly improved the speed with which securities are delivered to RP counterparties, thereby shifting funds back to the clearing banks earlier in the day and reducing their average overdrafts at the Reserve Banks. In the aggregate, securities-related overdrafts now reach their maximum much earlier in the morning, at roughly 9:30 a.m. ET, and the largest overdrafts persist for a shorter time.

The decrease in securities-related daylight overdrafts may also be attributable, in part, to an increase in tri-party repurchase agreement activity. In a tri-party RP, both parties hold securities through a common securities custodian, and the transfer of RP securities is executed on the books of the custodian rather than on Fedwire. Tri-party RPs may reduce daylight overdrafts if funds are also maintained at the custodian institution and not returned to investors on Fedwire during the day. Although no statistics are available on tri-party RP volume, major institutions have reported a large increase in tri-party RPs as a result of daylight overdraft fees. It should be noted, however, that steady growth in tri-party volume had been reported even before implementation of fees.

Other Markets and Transactions

Daylight overdrafts related to Fedwire funds transfers are more widely dispersed across depository institutions, are generated by settlement practices associated with a variety of market activities, and are characterized by a much different intraday pattern than those related to securities transfers. The largest aggregate funds-related overdrafts occur between the hours of 12:30 p.m. and 4:30 p.m. ET, with the intraday peak generally occurring at around 2:30 p.m. This period corresponds to the current settlement timing conventions, or "window," for federal funds contracts in which overnight borrowings are repaid in the morning and the proceeds from new contracts are received in the afternoon. In addition, it is during the mid-afternoon period that other payment systems, such as securities depositories, impose the greatest settlement funding requirements on their members, further contributing to funds-related overdrafts in accounts at Reserve Banks.

Because funds-related overdrafts and associated daylight overdraft charges are widely dispersed among institutions, the incentives to change market conventions or risk disrupting customer relationships are much smaller in the funds markets than in the securities markets.[1] As a result, the intraday patterns of settlements that use the Fedwire funds transfer service as well as funds-related overdrafts have remained largely unchanged. Further, the aggregate level of funds-related overdrafts has been reduced only moderately.

When the Board adopted the daylight overdraft fee policy in 1992, it identified a number of measures that institutions might take to reduce funds-related overdrafts. These included delays of less time-critical funds transfers, a shift of funds transfer activity from Fedwire to CHIPS, increased netting of funding contracts, the development of an intraday funds market, and the use of time-specific deliveries of funds.

So far, these potential responses appear to have been implemented only to a limited degree. First, only four to five percent of daily Fedwire funds transfer value has shifted from before noon to later in the day, with a negligible impact on transfer volume. Second, discussions with market participants indicate that few institutions have shifted payments from Fedwire to CHIPS. Third, anecdotal evidence suggests that institutions have increased somewhat their use of netting for overnight federal funds contracts, yet it is unclear whether the increase is the result of daylight overdraft fees or other developments in the funds markets. Anecdotal evidence also suggests that institutions have increased their use of term federal funds contracts, although market participants suggest this increase may be related more to interest rate developments than to daylight overdraft fees. Finally, neither an intraday market nor a significant increase in the time-specific delivery of funds has materialized since the implementation of daylight overdraft fees.

[1] One exception is a procedural change implemented in response to daylight overdraft fees by the Participants Trust Company to permit partial disbursement of principal and interest payments on securities held at the depository to its participants earlier in the day

IV. Fee Options Considered by the Board

In keeping with its policy of monitoring the impact of the fee during the phase-in period and adjusting it, if necessary, the Board considered three options for the next phase of the daylight overdraft fee: increase the fee to 20 basis points as scheduled, leave the fee at 10 basis points, or increase the fee to an intermediate level of 15 basis points for at least two years.

Increase the Fee to 20 Basis Points as Announced

By most accounts, the implementation of the initial daylight overdraft fee has been a success. The 10-basis-point fee dramatically reduced the aggregate amount of daylight credit provided by the Federal Reserve, along with the associated direct credit risk, with little disruption in the financial sector. The fact that such a large reduction in overdrafts was possible as a result of a small fee suggests that the economic inefficiencies created by the provision of free daylight credit were substantial. The Board believes that a further increase in the fee will tend to reduce or eliminate any remaining subsidies associated with Federal Reserve daylight credit and reduce inefficiencies in the use of such credit.

The Board considered that implementation of the previously announced increase in the fee to 20 basis points might prompt institutions to take additional steps to improve payment practices and reduce the use of daylight credit along with associated credit risks. The Board also believes, however, that an increase in the fee to 20 basis points at this time could increase the probability of undesirable market effects contrary to the objectives of the Board's risk-control program.

Perhaps the overriding concern is the potential for increases in systemic risk. The Board believes that systemic risk could increase if the higher fee were to induce a significant shift of payment activity from Fedwire, where transfers are immediately final and credit risk is absorbed and controlled by the central bank, to private systems, where payments are often provisional, risks are less transparent, and, in some cases, risks may not be fully controlled.

A significant shift in transfer volume from Fedwire to CHIPS, for example, would be more likely to occur with a higher fee. Such a shift could increase systemic risk somewhat even though elaborate risk controls have been installed on CHIPS. The extent to which funds transfer volume would shift from Fedwire to CHIPS, however, is uncertain. CHIPS has historically been used primarily to settle international transactions, yet CHIPS participants might begin to use CHIPS routinely for domestic as well as international funds transfers. In the longer term, CHIPS potentially could attract additional members and significantly increase the scale of its domestic funds transfer activities.

Industry participants have also suggested that the automated clearing house (ACH) system, typically associated with small-dollar transfers, could be used to make large-dollar payments traditionally made on Fedwire. Such a shift could increase systemic risk, because credit transfers made through ACH systems are provisional payments and real-time risk controls may be difficult to implement. Anecdotal evidence suggests that, so far, there has been a small increase in the use of the ACH system for large-dollar payments.

There is also an increased likelihood that a higher daylight overdraft fee could prompt a shift in securities transfer activity from Fedwire to private securities depositories and the securities clearing banks. For example, in 1994 the Participants Trust Company (PTC) announced an initiative to make certain mortgage-backed federal agency securities eligible for its system. Also in 1994, the Depository Trust Company (DTC) issued a study of the feasibility of expanding its services to include U.S. government and federal agency securities, including mortgage-backed securities, in its same-day funds settlement securities system. In addition, the securities clearing banks might seek the custodial business of large institutional investors, who tend to hold large intraday funds balances, in order to increase tri-party RP volume and reduce daylight overdraft charges. The result of these potential developments could be an increased concentration of collateral, clearing, and deposit risks at private securities depositories and the clearing banks.

The probability that funds and securities transfer activity would move off Fedwire is influenced by both cost and risk considerations. CHIPS, PTC and DTC incorporate net debit caps and collateralization requirements as part of their risk management systems. As a result, participants in these systems would have to weigh the costs of posting additional collateral to support additional payment activity against the costs of incurring daylight overdrafts in Federal Reserve accounts, as well as other factors such as settlement speed and finality. In the case of tri-party RPs, the large institutional RP counterparties are likely to be aware of the custodial risks in tri-party RPs and might demand a higher return for tri-party RPs as a result. If so, the premium for these tri-party RPs might be more costly to dealers than daylight overdraft charges.

In addition to possible increases in systemic risk, a higher daylight overdraft fee could cause further delays in Fedwire funds transfers.[2] Furthermore, if payment volume moves to later in the day, there is less time available for institutions to recover from unforeseen operational problems and meet settlement obligations by the end of the banking day. As noted earlier, however, there has been only a modest shift in payments to later in the day with the 10-basis-point fee, and it remains unclear at what level the fee might cause excessive payment delays or disruptions in the financial sector.

The Board also considered the potential for detrimental effects on the government securities market from a 20-basis-point fee. The Public Securities Association (PSA) has stated publicly that all possible low-cost behavioral changes in the government securities markets to reduce overdrafts have already been made. The PSA expects that increases in costs to securities dealers from a higher daylight overdraft fee would ultimately be passed on to the Treasury in the form of higher borrowing costs, without any further reduction in overdrafts.

It should be recognized, however, that the costs incurred so far by the securities dealers have largely been fixed costs to upgrade systems that will not be incurred again. Furthermore, the incremental impact of increased costs that might result from a higher daylight overdraft fee is quite small relative to the tick size in the auctions or secondary market for U.S. Government and federal agency securities. Also, Federal Reserve daylight overdraft charges passed through by the clearing banks to the dealers would ultimately be recouped by the Treasury through the Federal Reserve's payment to the Treasury of its net earnings.

Maintain the Fee at 10 Basis Points

The Board considered maintaining the fee at 10 basis points based on the significant reductions in daylight overdrafts that have already occurred and concerns about undesirable systemic risks that might result from a higher fee. The Board decided that if the fee were not increased, there would be

[2] In the extreme, delays could ultimately result in payment "gridlock" as each institution, in order to avoid daylight overdraft fees, awaits incoming payments before initiating its own payments.

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very limited incentives for additional reductions in daylight overdrafts and credit risk. Furthermore, the Board was concerned that the momentum in the financial markets for the serious review and improvement of payment and settlement conventions might be lost if the fee were not increased.

Increase the Fee to 15 Basis Points for at Least Two Years

The Board's decision to increase the fee to 15 rather than 20 basis points was based on three primary considerations. First, as noted above, the response by depository institutions and securities dealers to the 10-basis-point fee has improved RP settlement practices and has reduced significantly the use of Federal Reserve securities-related daylight credit, which before implementation of daylight overdraft fees constituted a large and growing portion of total daylight credit. The strong response in securities markets eases the need for sizeable increases in daylight overdraft fees over the next two years. Instead, a more limited increase to 15 basis points would provide incentives for additional improvements in securities settlements, while limiting increases in daylight overdraft charges borne by securities market participants. The improvements in settlement practices might include the use of time-specific deliveries of RP securities and the greater use of netting contracts between counterparties, where appropriate. Allowing two years before considering additional fee increases will permit sufficient time for the study of other potential changes in market conventions that could help reduce securities-related daylight overdrafts.

Second, the Board believes that an increase in the daylight overdraft fee to 15 basis points will provide additional incentives for participants in funds markets to evaluate and modify payment practices that create daylight overdrafts. As discussed earlier, the responses in funds markets that the Board anticipated when it originally adopted the fee policy have not occurred to a significant degree. The uncertainty about the strength of the market response to daylight overdraft fees at various fee levels was one of the reasons that the Board announced that fees would be phased-in beginning at 10 basis points. The lack of significant response in the funds markets suggests that there is still room for improvements in funding and settlement practices and reductions in daylight overdrafts.

Improvements in funding practices might include the greater use of "rollovers," "continuing contracts," or "term contracts" for federal funds transactions, where appropriate. Further, the Payments Risk Committee, a committee of representatives from a selection of large U.S. depository institutions, has suggested that a higher fee may prompt the market to study changes in federal funds and other settlement timing conventions that contribute to a large portion of the aggregate level of daylight overdrafts. Also, a higher fee may prompt institutions to take measures to reduce daylight overdrafts related to customer payment activity.

Third, the Board believes that concerns about systemic risk argue for a more gradual approach to raising daylight overdraft fees. It is important to note that the Board has taken a number of steps to limit systemic risks in the payments system, including adopting policies that apply to private-sector payment networks.[3] Most recently, the Board adopted a revised policy statement on risks in large-dollar multilateral netting systems (59 FR 67534, December 29, 1994). This policy statement applied the Lamfalussy minimum standards for netting arrangements to domestic as well as off-shore multilateral netting systems that clear U.S. dollar payments. At the same time, the Board announced that the staff would continue to study systemic risks in small-dollar payment systems, such as check and ACH clearing systems, as well as the need for any public policy changes in this area.

Thus, at this time, a limited increase in the daylight overdraft fee, particularly an increase to 15 basis points instead of 20 basis points, is likely to create very little incremental systemic risk in private-sector payment systems. In case greater concerns develop regarding systemic risks, the Board retains the option of reducing daylight overdraft fees and taking other appropriate measures to help limit such risks.

The Board believes that the daylight overdraft fee program has been an important part of efforts by both the Board and the private sector over a number of years to reduce risk in the payments system. The fundamental theory of charging fees has been that cost-effective behavioral changes to reduce risks would be taken by depository institutions and their customers if modest fees were charged for daylight credit. Some changes in payment practices have already taken place, and additional changes appear to be possible. Thus, the Board believes a modest increase in the daylight overdraft fee at this time will continue to encourage private-sector efforts to reduce risks and to improve efficiency in the nation's payment and settlement systems.

V. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[4] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete efficiently with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

As noted in the Board's 1992 announcement of the daylight overdraft fee policy, the Board does not believe that imposition of daylight overdraft fees adversely affects the ability of private-sector payments system participants to compete with the Reserve Banks in providing payments services. Private-sector correspondent banks have the ability to charge for intraday credit extended to their customers, either explicitly (as do the Reserve Banks) or implicitly as part of overall service fees. The Board stated in 1992 that private-sector payment systems might benefit from daylight overdraft fees, if the fee caused institutions to shift payments from the Federal Reserve to private systems in order to avoid daylight overdraft fees. Although the shift to private systems might not be as large under a 15-basis-point fee as under a 20-basis-point fee, the Board believes that the lower fee might still produce payment shifts, as discussed in the supplementary information above, as well as a reduced cost burden for private-sector payments system participants.

VI. Administrative Procedure Act

The notice and comment requirements of the Administrative Procedure Act ("APA") do not apply to matters relating to "public property, loans, grants, or contracts." (5 U.S.C. 553(a)(2)) The daylight overdraft fee relates to "loans," in that the fee is for an extension of intraday credit by Federal Reserve Banks, and "contracts," in that the fee is part of an agreement between institutions and the Federal Reserve Banks for the provision of Reserve Bank payment services. Therefore, the APA does not require the Board to seek notice and comment on the fee revision.

Additionally, the Board finds for good cause that notice and comment on the fee revision is unnecessary, in accordance with 5 U.S.C. 553(b)(B). The Board originally adopted a policy, after notice and comment, to implement an annual fee of 48 basis points (equivalent to 20 basis points for a 10-hour Fedwire day) on April 13, 1995. The Board's action today will reduce the previously announced 1995 fee to an annual rate of 36 basis points (equivalent to 15 basis points for a 10-hour Fedwire day.) Because the Board's action reduces burden on affected institutions compared to the previously announced policy, the Board believes that seeking additional comment on this action is unnecessary.

VII. Policy Statement

The Board has adopted the following change in its policy statement that will replace paragraphs two and three of part (I)(B) in its "Federal Reserve Policy Statement on Payments System Risk" under headings "I. Federal Reserve Policy" and "B. Pricing":

The overdraft fee is 36 basis points (annual rate), quoted on the basis of a 24-hour day. To obtain the daily overdraft fee (annual rate) for the standard Fedwire operating day, the quoted 36-basis-point fee is multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate. For example, under a 10-hour scheduled Fedwire operating day, the overdraft fee equals 15 basis points (36 basis points multiplied by 10/24). The 36-basis-point fee is effective April 13, 1995.

The 36-basis-point fee (times an operating hour fraction) will be in effect for at least two years. A change in the length of the scheduled Fedwire operating day would not change the effective fee because the fee is applied to average overdrafts which, in turn, would be deflated by the change in the operating day. The Board will evaluate the desirability of an increase in the daylight overdraft fee, based on the objectives of the payments system risk program, two years after the implementation of the 36-basis-point fee. Any changes in the fee resulting from that review will be announced with a reasonable lead-time for implementation.

By order of the Board of Governors of the Federal Reserve System, March 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-5530 Filed 3-6-95; 8:45 am]

BILLING CODE 6210-01-P

[3] These policies include those for private large-dollar multilateral netting systems and private delivery-against-payment securities systems (54 FR 26092, 26104, June 21, 1989). In addition, in 1991, the New York Clearing House adopted changes to the CHIPS rules designed to enhance the assurances of settlement through the use of loss sharing and collateral requirements.

[4] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990).

Brill Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 31, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Brill Bancshares, Inc., Brill, Wisconsin; to become a bank holding company by acquiring 80.11 percent of the voting shares of Brill State Bank, Brill, Wisconsin.

2. First Community Bank Group, Inc., and Todd County Agency, Inc., both of Hopkins, Minnesota; to acquire a total of 100 percent of the voting shares of Citizens State Bank of Barrett, Barrett, Minnesota.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-5488 Filed 3-6-95; 8:45 am]

BILLING CODE 6210-01-F

First Farmers Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Farmers Bancshares, Inc., Portland, Tennessee; to engage *de novo* through its subsidiary Tennessee Business and Industrial Development

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Corporation, Chattanooga, Tennessee, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y, and to make, acquire, and service loans or other extensions of credit related to community development activities, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95-5486 Filed 3-6-95; 8:45 am]

BILLING CODE 6210-01-F

First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 21, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire Coral Gables Fedcorp, Inc., Coral Gables, Florida, and thereby indirectly acquire Coral Gables Federal Savings and Loan Association, Coral Gables, Florida, and engage in acquiring and operating a federal savings bank holding company and its subsidiary savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan and NBD Illinois, Inc. Park Ridge, Illinois; to acquire Deerbank Corporation, and thereby indirectly acquire Deerfield Federal Savings and Loan Association, and Northern Illinois Financial Services Corporation, all of Deerfield, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-5485 Filed 3-6-95; 8:45 am]

BILLING CODE 6210-01-F

John M. Saphir, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. John M. Saphir, John M. Saphir Living Trust and John M. Saphir Family Partnership, Glenwood, Illinois; each to acquire collectively 17.33 percent of the voting shares of Heritage Community Bancorporation, Inc., Glenwood, Illinois (formerly known as Riverdale Bancorporation, Inc., Riverdale, Illinois), and thereby indirectly acquire Heritage Community Bank, Glenwood, Illinois.

Board of Governors of the Federal Reserve System, March 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-5487 Filed 3-6-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday afternoon, March 15 from *1:00* to 4:30 and continuing on Thursday, March 16 from 9:00 A.M. to 4:00 in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The agenda for the meeting includes discussions of issues related to the following projects: Stewardship, Revenue Recognition, Liabilities, and Managerial Cost Accounting Standards.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting. Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512-7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: March 1, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95-5465 Filed 3-6-95; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February, 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of February, 1995. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since February 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, SW., Aerospace Building, 7th Floor West, Washington DC 20447. Fax: (202) 205-3598, Phone: (202) 401-9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New and Pending Proposals for the Month of February, 1994

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of February, 1994.

WAIVER TITLE: Arizona—Employing and Moving People Off Welfare and Encouraging Responsibility Program
DESCRIPTION: Would not increase benefits for additional children conceived while receiving AFDC; limit benefits to adults to 24 months in any 60 month period; allow recipients to deposit up to $200/month (with 50% disregarded) in Individual Development Accounts; require minor mothers to live with parents; extend Transitional Child Care and Medicaid to 24 months and eliminate the 100-hour rule for AFDC-U cases. Also, in a pilot site, would provide individuals with short-term subsidized public or private OJT subsidized by grant diversion which includes cashing-out Food Stamps
DATE RECEIVED: 8/3/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Gail A. Parin, (602) 542-4702

WAIVER TITLE: California—Work Pays Demonstration Project (Amendment)
DESCRIPTION: Would amend Work Pays Demonstration Project by adding provisions to: Reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC
DATE RECEIVED: 3/14/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Glen Brooks, (916) 657-3291

WAIVER TITLE: California—AFDC and Food Stamp Compatibility Demonstration Project
DESCRIPTION: Would make AFDC and Food Stamp policy more compatible by making AFDC households categorically eligible for Food Stamps; allowing recipients to deduct 40 percent of self-employment income in reporting monthly income; disregarding $100 per quarter in non-recurring gifts and irregular/infrequent income; disregarding undergraduate student assistance and work study income if payments are based on need; reinstating food stamp benefits discontinued for failure to file a monthly report when good cause is found for the failure; and simplifying vehicle valuation methodology
DATE RECEIVED: 5/23/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Michael C. Genest, (916) 657-3546

WAIVER TITLE: California—Assistance Payments Demonstration Project (Amendment)
DESCRIPTION: Would amend the Assistance Payments Demonstration Project by: Exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala*
DATE RECEIVED: 8/26/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Michael C. Genest, (916) 657-3546

WAIVER TITLE: California—Work Pays Demonstration Project (Amendment)
DESCRIPTION: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC
DATE RECEIVED: 11/9/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Eloise Anderson, (916) 657-2598

WAIVE TITLE: California—School Attendance Demonstration Project

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DESCRIPTION: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS
DATE RECEIVED: 12/5/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Michael C. Genest (916) 657–3546

WAIVER TITLE: California—Incentive to Self-Sufficiency Demonstration
DESCRIPTION: Statewide, would require 100 hours CWEP participation per month for JOBS mandatory individuals who have received AFDC for 22 of the last 24 months and are working fewer than 15 hours per week after two years from JOBS assessment and: have failed to comply with JOBS without good cause, have completed CWEP or are in CWEP less than 100 hours per month, or have completed or had an opportunity to complete post-assessment education and training; provide Transitional Child Care and Transitional Medicaid to families who become ineligible for AFDC due to increased assets or income resulting from marriage or the reuniting of spouses; increase the duration of sanctions for certain acts of fraud
DATE RECEIVED: 12/28/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Michael C. Genest (916) 657–3546

WAIVER TITLE: Delaware: A Better Chance
DESCRIPTION: Statewide, would implement a two-part demonstration. The Welfare Reform Project (WRP), operating from 10/95–6/99, would include: A 2-year limit on cash benefits for cases with able-bodied adults; educational and employment services based on adult's age; in limited cases benefits up to two additional years provided under pay-for-performance workfare program; non-time-limited benefits for unemployable cases; self-sufficiency contract requirements; education and employment-related sanctions to be 1/3 reduction in AFDC and Food Stamp benefits for first offense, 2/3 reduction for second, and loss of Food Stamp benefits until compliance and permanent AFDC loss for third; penalty for failure to comply with other contract requirements of $50 the first month, increasing by $50 per month until compliance; full-family sanction for noncooperation with Child Support; no AFDC increase for additional children; no 100-hour and work history rules for AFDC—UP; exempting special education and business accounts up to $5,000; fill-the-gap budgeting using child support and earnings; auto resource limit of $4,500; $50 bonus to teens who graduate from high school; additional 12 months of transitional child care and Medicaid benefits; no time limit on job search; forward funding of EITC payment; requiring teen parents to live in adult supervised setting, attend school, participate in parenting and family planning education, and immunize children; and providing JOBS services to non-custodial parents. The Family Assistance Plan (FAP), beginning 7/99, would replace the AFDC program and include: Services, but no monetary grant, to children of teen parents; benefits for up to two years under pay-for-performance workfare program; welfare diversion payments and services; forward funding of EITC payment; child care assistance; access to Medicaid Managed Care System; no resource test; direct child support to family; small residual cash benefit program for unemployable cases
DATE RECEIVED: 1/30/95
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Elaine Archangelo, (302) 577–4400

WAIVER TITLE: Georgia—Work for Welfare Project
DESCRIPTION: Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students
DATE RECEIVED: 6/30/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Nancy Meszaros, (404) 657–3608

WAIVER TITLE: Kansas—Actively Creating Tomorrow for Families Demonstration
DESCRIPTION: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and ⅓ income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities
DATE RECEIVED: 7/26/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Faith Spencer, (913) 296–0775

WAIVER TITLE: Maine—Project Opportunity
DESCRIPTION: Increase participation in Work Supplementation to 18 months; use Work Supplementation for any opening; use diverted grant funds for vouchers for education, training or support services; and extend transitional Medicaid and child care to 24 months
DATE RECEIVED: 8/5/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Susan L. Dustin, (207) 287–3106

WELFARE TITLE: Maryland—Welfare Reform Project
DESCRIPTION: Statewide, eliminate increased AFDC benefit for additional children conceived while receiving AFDC and require minor parents to reside with a guardian. In pilot site, require able-bodied recipients to do community service work after 18 months of AFDC receipt; impose full-family sanction on cases where JOBS non-exempt parent fails to comply with JOBS for 9 months; eliminate 100-hour rule and work history requirements for AFDC-UP cases; increase both auto and resource limits to $5000; disregard income of dependent children; provide one-time payment in lieu of ongoing assistance; require teen parents to continue education and attend family health and parenting classes; extend JOBS services to unemployed non-custodial parents; and for work supplementation cases cash-out food stamps

DATE RECEIVED: 3/1/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Katherine L. Cook, (410) 333–0700

WAIVER TITLE: Massachusetts—Employment Support Program
DESCRIPTION: Would end cash assistance to most AFDC families, requiring recipients who could not find full-time unsubsidized employment after 60 days of AFDC receipt to do community service and job search to earn a cash "subsidy" that would make family income equal to the applicable payment standard; provide direct distribution of child support collections to, and cash-out food stamps for, those who obtain jobs; continue child care for working families as long as they are income-eligible (but requiring sliding scale co-payment); restrict JOBS education and training services to those working at least 25 hours per week; extend transitional Medicaid for a total of 24 months; and require teen parents to live with guardian or in a supportive living arrangement and attend school
DATE RECEIVED: 3/22/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Joseph Gallant, (617) 727–9173

WAIVER TITLE: Mississippi—A New Direction Demonstration Program—Amendment
DESCRIPTION: Statewide, would amend previously approved New Direction Demonstration Program by adding provision that a family's benefits would not increase as a result of additional children conceived while receiving AFDC
DATE RECEIVED: 2/17/95
TYPE: AFDC
CURRENT STATUS: New
CONTACT PERSON: Larry Temple, (601) 359–4476

WAIVER TITLE: Missouri—Families Mutual Responsibility Plan
DESCRIPTION: Statewide, Missouri would require JOBS mandatory applicants and recipients to sign a self-sufficiency agreement with a 24-month AFDC time limit to be extended an additional 24 months when necessary. The agreement would allow a resource limit of $5000, an earned income disregard of 50 percent of a family's gross earned income for 12 consecutive months, and standard earned income disregards for remaining earned income. The agreement would require job search and CWEP after the 24 or 48 month limit; and would sanction individuals who do not comply without good cause as well as individuals who re-apply for AFDC if they have completed an agreement entered after July 1, 1997, if they received AFDC benefits for at least 36 months. Further, Missouri would require all minor parent applicants and recipients to live at home or in another adult-supervised setting; disregard parental income of minor parents up to 100 percent of Federal Poverty Guidelines; disregard earnings of minor parents if they are students; provide a alternative to standard filing unit requirements for households with minor parents; eliminate work history and 100-hour rule for two-parent families under 21 yrs old; exclude the value of one automobile; and allow non-custodial parents of AFDC children credit against state child support debt for satisfactorily participating in JOBS
DATE RECEIVED: 1/30/95
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Greg Vadner, (314) 751–3124

WAIVER TITLE: Montana—Achieving Independence for Montanans
DESCRIPTION: Would establish: (1) Job Supplement Program consisting of a set of AFDC-related benefits to assist individuals at risk of becoming dependent upon welfare; (2) AFDC Pathways Program in which all applicants must enter into a Family Investment Contract and adults' benefits would be limited to a maximum of 24 months for single parents and 18 months for AFDC-UP families; and (3) Community Services Program requiring 20 hours per week for individuals who reach the AFDC time limit but have not achieved self-sufficiency. The office culture would also be altered in conjunction with a program offering a variety of components and services; and simplify/unify AFDC and Food Stamp intake/eligibility process by: (1) Eliminating AFDC deprivation requirement and monthly reporting and Food Stamp retrospective budgeting; (2) unifying program requirements; (3) simplifying current income disregard policies. Specific provisions provide for cashing out food stamps, expanding eligibility for two-parent cases, increasing earned income and child care disregards and resource limits, and extending transitional child care
DATE RECEIVED: 4/19/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Penny Robbe, (406) 444–1917

WAIVER TITLE: New Hampshire—Earned Income Disregard Demonstration Project
DESCRIPTION: AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded
DATE RECEIVED: 9/20/93
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Avis L. Crane, (603) 271–4255

WAIVER TITLE: New Mexico—Untitled Project
DESCRIPTION: Would increase vehicle asset limit to $4500; disregard earned income of students; develop an AFDC Intentional Program Violation procedure identical to Food Stamps; and allow one individual to sign declaration of citizenship for entire case
DATE RECEIVED: 7/7/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Scott Chamberlin, (505) 827–7254

WAIVER TITLE: North Dakota—Training, Education, Employment and Management Project
DESCRIPTION: Would require families to develop a social contract specifying time-limit for becoming self-sufficient; combine AFDC, Food Stamps and LIHEAP into single cash payment with simplified uniform income, expense and resource exclusions; increase income disregards and exempt stepparent's income for six months; increase resource limit to $5000 for one recipient and $8000 for families with two or more recipients; exempt value of one vehicle; eliminate 100-hour rule for AFDC-UP;impose a progressive sanction for non-cooperation in JOBS or with child support; require a minimum of 32 hours of paid employment and non-paid work; require participation in EPSDT; and eliminate child support pass-through
DATE RECEIVED: 9/9/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Kevin Iverson, (701) 224–2729

WAIVER TITLE: Ohio—A State of Opportunity Project
DESCRIPTION: Three demonstration components proposed would test provisions which: Divert AFDC and Food Stamp benefits to a wage pool to supplement wages of at least $8/hour; eliminate 100-hour rule for UP cases; provide fill-the-gap budgeting for 12 months from month of employment; increase child support pass-through to

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$75; provide a one-time bonus of $150 for paternity establishment; provide an additional 6 months of transitional child care; increase automobile asset limit to $4500 equity value; require regular school attendance by 6 to 19 year olds; continue current LEAP demo waivers (i.e., eliminate many JOBS exemptions and provide incentive payments and sanctions); and disregard JTPA earnings without time limit
DATE RECEIVED: 5/28/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Joel Rabb, (614) 466–3196

WAIVER TITLE: Oklahoma—Mutual Agreement, A Plan for Success
DESCRIPTION: Oklahoma Five pilot demonstrations would test provisions which: (1) Eliminate 100-hour rule for UP cases; (2) increase auto asset level to $5000; (3) time-limit AFDC receipt to cases with non-exempt JOBS participants to 36 cumulative months in a 60 month period followed by mandatory workfare program; (4) provide intensive case management; and (5) apply fill-the-gap budgeting
DATE RECEIVED: 2/24/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Raymond Haddock, (405) 521–3076

WAIVER TITLE: Oregon—Expansion of the Transitional Child Care Program
DESCRIPTION: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months
DATE RECEIVED: 8/8/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Jim Neely, (503) 945–5607

WAIVER TITLE: Oregon—Increased AFDC Motor Vehicle Limit
DESCRIPTION: Would increase automobile asset limit to $9000
DATE RECEIVED: 11/12/93
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Jim Neely, (503) 945–5607

WAIVER TITLE: Pennsylvania—School Attendance Improvement Program
DESCRIPTION: In 7 sites, would require school attendance as condition of eligibility
DATE RECEIVED: 9/12/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Patricia H. O'Neal, (717) 787–4081

WAIVER TITLE: Pennsylvania—Savings for Education Program
DESCRIPTION: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts
DATE RECEIVED: 12/29/94
TYPE: AFDC
CURRENT STATUS: Pending
CONTACT PERSON: Patricia H. O'Neal, (717) 787–4081

WAIVER TITLE: Virginia—Welfare to Work Program
DESCRIPTION: Statewide, would provide one-time diversion payments to qualified applicants in lieu of AFDC; change first time JOBS non-compliance sanction to a fixed period of one month or until compliance and remove the conciliation requirement; require paternity establishment as condition of eligibility; remove good cause for non-cooperation with child support and exclude from AFDC grant caretakers who cannot identify, misidentify, or fail to provide information on the father; require minor parents to live with an adult guardian; require AFDC caretakers without a high school diploma, aged 24 and under, and children, aged 13–18, to attend school; require immunization of children; allow $5000 resource exemption for savings for starting business; and increase eligibility for Transitional and At-Risk Child Care. Also: Require non-exempt participants to sign an Agreement of Personal Responsibility as a condition of eligibility and assign to a work site under CWEP for a number of hours determined by dividing AFDC grant plus the value of the family's Food Stamp benefits by the minimum wage; eliminate increased AFDC benefit for additional children born while a family received AFDC; time-limit AFDC benefits to 24 consecutive months; increase earned income disregards to allow continued eligibility up to the federal poverty level; provide 12 months transitional transportation assistance; modify current JOBS exemption criteria for participants; eliminate the job search limitation; and eliminate the deeming requirement for sponsored aliens when the sponsor receives food stamps. In 12 sites, would operate sub-component paying wages in lieu of AFDC benefits and Food Stamps for CWEP and subsidized employment, increase eligibility for transitional Medicaid; plus other provisions
DATE RECEIVED: 12/2/94
TYPE: Combined AFDC/Medicaid
CURRENT STATUS: Pending
CONTACT PERSON: Larry B. Mason, (804) 692–1900

WAIVER TITLE: Washington—Success Through Employment Program
DESCRIPTION: Statewide, would eliminate the 100-hour rule for AFDC-UP families; impose a 10 percent grant reduction for AFDC recipients who have received assistance for 48 out of 60 months, and impose an additional 10 percent grant reduction for every additional 12 months thereafter, and budget earnings against the original payment standard; and hold the food stamp benefit level constant for cases whose AFDC benefits are reduced due to length of stay on assistance
DATE RECEIVED: 2/1/95
TYPE: AFDC
CURRENT STATUS: New
CONTACT PERSON: Liz Begert Dunbar, (206) 438–8350

III. Listing of Approved Proposals Since February 1, 1995

WAIVER TITLE: Nebraska—Welfare Reform Waiver Demonstration
CONTACT PERSON: Dan Cillessen, (402) 471–9270

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: March 1, 1995.

Howard Rolston,

Director, Office of Policy and Evaluation.

[FR Doc. 95–5513 Filed 3–6–95; 8:45 am]

BILLING CODE 4184–01–P

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1995.

Name: Advanced General Dentistry Review Committee.

Date and Time: March 20–22, 1995, 8:30 a.m.

Place: Conference Room J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on March 20, 8:30 a.m.–9:30 a.m. Closed for Remainder of Meeting.

Purpose: The Advanced General Dentistry Review Committee shall review applications from public and nonprofit private schools of dentistry or accredited postgraduate dental training institutions that plan, develop and operate an approved residency program or advanced educational program in the general practice of dentistry, including the support of trainees in such programs who plan to specialize in the practice of general dentistry.

Agenda: The open portion of the meeting will cover welcome and opening remarks, legislative updates, and overview of the review process. The meeting will be closed to the public on March 20, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Rosemary E. Duffy, Executive Secretary, Advanced General Dentistry Review Committee, Room 8C–09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6837.

Agenda Items are subject to change as priorities dictate.

Dated: March 2, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–5559 Filed 3–6–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–95–3865; FR–3852–N–02]

Service Coordinator Funds for Fiscal Year 1995; Correction to Identification of NY State Director

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice; Technical correction.

SUMMARY: On February 13, 1995, HUD published a notice that announced the issuance of Housing Notice H–94–99, entitled "Processing of Requests for Section 8 Funds for Service Coordinators in Section 8 (including Section 515/8 under the Rural Housing and Community Development Service (RHCDS),[1]) and Sections 202, 202/8, 221(d)(3) and 236 Projects and Monitoring of Approved Requests—FY 1995". Housing Notice H–94–99 describes the procedures for applying for service coordinator funds in FY 1995 and the State or area office's processing of applications and awards for those funds.

The February 13, 1995 notice included a list of Multifamily Division Directors. The purpose of this notice is to correct the name of the director listed for the New York State Office.

SUPPLEMENTARY INFORMATION: On February 13, 1995 (60 FR 8380), HUD published a notice that announced the issuance of Housing Notice H–94–99, entitled "Processing of Requests for Section 8 Funds for Service Coordinators in Section 8 (including Section 515/8 under the Rural Housing and Community Development Service (RHCDS)), and Sections 202, 202/8, 221(d)(3) and 236 Projects and Monitoring of Approved Requests—FY 1995". Housing Notice H–94–99 describes the procedures for applying for service coordinator funds in FY 1995 and the State or area office's processing of applications and awards for those funds.

The February 13, 1995 notice included a list of Multifamily Division Directors. The purpose of this notice is to correct the name of the director listed for the New York State Office.

Accordingly, in FR Doc. 95–3473, published February 13, 1995 (60 FR 8280), on page 8280, in column three, the name of the Multifamily Division Director for New York/New Jersey is corrected to read as follows:

New York/New Jersey

New York

Beryl Niewood, Acting Multifamily Director, HUD-New York Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–2960.

Dated: February 28, 1995.

Camille Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–5456 Filed 3–6–95; 8:45 am]

BILLING CODE 4210–27–M

[1] Previously entitled the Farmers Home Administration (FmHA).

DEPARTMENT OF THE INTERIOR

National Park Service

Creve Coeur Lake Memorial Park Final Supplemental Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Availability of final supplemental environmental impact statement for determination of section 6(f)(3) replacement lands for Creve Coeur Lake Memorial Park (CCLMP), St. Louis County, Missouri.

SUMMARY: The National Park Service (NPS), in compliance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and 4332, as amended, and with Section 6(f)(3) of Title 1 of the Land and Water Conservation Fund Act (L&WCF), 16 U.S.C. 4601–(8)(f), as amended, announces the availability of a final supplemental environmental impact statement (FSEIS) evaluating and selecting additional replacement land for land in CCLMP converted from outdoor recreation use as a result of the Page Avenue Extension. It is determined that a total of 207 acres will be impacted by the proposed "Red Route" of significant magnitude to adversely affect present park activities and environment. CCLMP, a county park which has received Federal financial assistance from the L&WCF program, must comply with the requirements of Section 6(f)(3) of the L&WCF Act as it pertains to maintaining outdoor recreation use of all Federally assisted park and recreation areas. This FSEIS is a supplement to the final environmental impact statement (FEIS) for Page Avenue (Route D) extension, St. Louis and St. Charles Counties, Missouri, approved in a Record of Decision on January 6, 1993, by the Federal Highway Administration (FHWA).

The FHWA FEIS addressed construction of a 10-lane elevated extension of Page Avenue across the southern tip of the park site assuming all necessary coordination with other Federal agencies has been satisfactorily accomplished. The NPS on December 11, 1992, adopted the FEIS for use in the environmental evaluation requirements of Section 6(f)(3) of the L&WCF Act.

The initial proposal of 264.78 acres, revised to 258.48 acres and submitted by the State of Missouri to replace the converted 183.4 acres, revised to 207.0 acres, was determined by the NPS as not offering "reasonably equivalent usefulness" to the extent necessary to reflect appropriately the loss of this unique natural area. Secretary Babbitt announced on May 18, 1993, in letters to Senators Danforth and Bond, that he did not intend to use his authority under section 6(f)(3) to block the construction of this highway project. He further stated that "* * * it is necessary to identify a significant amount of additional lands to be included in the mitigation package."

The FSEIS identifies eight potential alternative land proposals and a "no action" alternative for consideration in meeting section 6(f)(3) requirements of the L&WCF Act. Four alternatives were evaluated in detail; three others were eliminated after initial consideration; and one proposed alternative, identified by the Howard Bend Levee District

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during the draft supplemental environmental impact statement public review period, was evaluated in the FSEIS and determined not to be a significant "new and reasonable" alternative nor was it found to meet the necessary section 6(f)(3) replacement requirements.

It is determined by the NPS and State of Missouri that Alternative B (Little Creve Coeur Lake) as the preferred alternative, most closely meets the requirements of significant "additional land" for replacement of converted land at CCLMP. This alternative, 464.8 acres declared eligible for section 6(f)(3) consideration, is located to the west and south of Creve Coeur Lake Memorial Park and consists primarily of wetlands presently in agricultural use.

With the adoption of the above preferred alternative, added to the initial replacement package submitted by the State of Missouri, the total land replacement for land converted at CCLMP could amount to 723.28 acres at an estimated value of $3,379,820. The approximate 207 acres of CCLMP land being converted has been valued at $1,755,098.

Copies of the FSEIS may be obtained from the responsible official, Mr. William Schenk, Regional Director (refer to address below). Comments on the FSEIS must be received no later than March 26, 1995 and may be responded to in the Record of Decision.

ADDRESSES: Comments on the FSEIS should be submitted to: Mr. William W. Schenk, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska 68102, 402–221–3432.

Public reading copies of the FSEIS will be available for review at: Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, (202) 343–6843.

Dated: February 10, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 95–5460 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–70–P

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the fourteenth meeting of the Gettysburg National Military Park Advisory Commission.

MEETING DATE AND TIME: April 20, 1995; 7:00 p.m.–9:00 p.m.

ADDRESSES: Holiday Inn Gettysburg—Battlefield, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

The Agenda for the meeting will focus on Sub-Committee Reports, the Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange alternative study, recent lands activities and land acquisition issues, and an operational update on park activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, PA 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325, Phone: (717) 334–1124.

Dated: February 22, 1995.

John McKenna,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 95–5461 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 25, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 22, 1995.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Baxter County

Davis House, Jct. of Wolf St. and AR 5, SE corner, Norfolk, 95000271

Crittenden County

Marion Colored High School, W of AR 77, Sunset, 95000349

Jefferson County

Saenger Theater, Jct. of W. Second Ave. and Pine St., SE corner, Pine Bluff, 95000348

Madison County

Pettigrew School, N of AR 16, pettigrew, 95000272

Washington County

Washington—Willow Historic District, Roughly, Spring, Dickson, Sutton and Lafayette Sts. from Olive Ave. to Willow Ave., also jct. of Rebecca St. and Willow, Fayetteville, 95000350

CONNECTICUT

Fairfield County

Norwalk City Hall, 41 N. Main St., South Norwalk, Norwalk, 95000282

Hartford County

Department Store Historic District, 884—956 Main St. and 36 Talcott St., Hartford, 95000284

Watkinson Juvenile Asylum and Farm School, 140, 180 and 190 Bloomfield Ave., Hartford, 95000273

New London County

Ames, Winslow, House, 132 Mohegan Ave., New London, 95000283

FLORIDA

Marion County

Ferguson, Robert H., House (Early Residences of Rural Marion County MPS), Off Co. Rd. 326, E of jct. with US 27, Emathla vicinity, 95000288

Randall, T. H., House (Early Residences of Rural Marion County MPS), 11685 NE. Co. Hwy. C–314, Silver Springs vicinity, 95000289

LOUISIANA

Caddo Parish

Kansas City Southern Railroad Bridge, Cross Bayou, Over Cross Bayou at Spring St., Shreveport, 95000347

MICHIGAN

Livingston County

Louk, George, Farm, 1885 tooley Rd., Howell Township, Howell vicinity, 95000285

NEW MEXICO

Mora County

Valmora Sanatorium Historic District, NM 97, 4 mi. E of jct. with Hwy. 161 NE of Watrous, Watrous vicinity, 95000286

NEW YORK

New York County

Zion—St. Mark's Evangelical Lutheran Church, 339–341 E. 84th St., New York, 95000335

Queens County

Flushing Armory (Army National Guard Armories in New York State MPS), 137–158 Northern Blvd., Flushing, 95000270

PUERTO RICO

Sabana Grande Municipality

Hacienda San Francisco, Callejon de la Hacienda, Sabana Grande vicinity, 95000287

SOUTH DAKOTA

Brown County

Firey, John H., House, 418 S. Arch St., Aberdeen, 95000277

Foght—Murdy House, 1403 S. Main St., Aberdeen, 95000276

Lamont, Margaret and Maurice, House, 915 S. Arch St., Aberdeen, 95000281

Clay County

St. Agnes Catholic Church, 202 Washington St., Vermillion, 95000280

Custer County

Historic Trail and Cave Entrance (Jewel Cave National Monument MPS), From old ranger station HS–1 to old cave entrance, Jewel Cave NM, Custer vicinity, 95000337

Pig Tail Bridge (Wind Cave National Park MPS), SD 87 loop over SD 87, N of Norbeck Lake, Wind Cave NP, Hot Springs vicinity, 95000344

Ranger Station (Jewel Cave National Moument MPS), Old administration area, Jewel Cave NM, Custer vicinity, 95000336

Davison County

Mitchell Historic Commercial District (Boundary Increase), Roughly bounded by Duff, Railroad and Lawler Sts., Mitchell, 95000275

Day County

Fiksdal, Lars J., House, 619 W. First St., Webster, 95000279

Hughes County

Goodner, I. W., House, 216 E. Prospect Ave., Pierre, 95000278

TEXAS

Dallas County

Alcalde Street—Crockett School Historic District (East and South Dallas MPS), 200—500 Alcalde, 421—421A N. Carroll and 4315 Victor, Dallas, 95000330

Bianchi, Didaco and Ida, House (East and South Dallas MPS), 4503 Reiger Ave., Dallas, 95000311

Bryan—Peak Commercial Historic District (East and South Dallas MPS), 4214—4311 Bryan Ave. and 1325—1408 N. Peak, Dallas, 95000327

Central Congregational Church (East and South Dallas MPS), 1530 N. Carroll, Dallas, 95000307

Claremont Apartments (East and South Dallas MPS), 4636 Ross Ave., Dallas, 95000313

Colonial Hill Historic District (East and South Dallas MPS), Bounded by Pennsylvania Ave., I–45, US 75 and Hatcher, Dallas, 95000334

Dixon—Moore House (East and South Dallas MPS), 2716 Peabody, Dallas, 95000320

Ellis, James H. and Molly, House (East and South Dallas MPS), 2426 Pine, Dallas, 95000323

Emanuel Luthern Church (East and South Dallas MPS), 4301 San Jacinto, Dallas, 95000315

Fannin, James H., Elementary School (East and South Dallas MPS), 4800 Ross Ave., Dallas, 95000314

Forest Avenue High School, Old (East and South Dallas MPS), 3000 Martin Luther King, Jr., Blvd., Dallas, 95000318

Levi—Moses House (East and South Dallas MPS), 2433 Martin Luther King, Jr., Blvd., Dallas, 95000316

Levi—Topletz House (East and South Dallas MPS), 2603 Martin Luther King, Jr., Blvd., Dallas, 95000317

Mary Apartments (East and South Dallas MPS), 4524 Live Oak, Dallas, 95000310

Mrs. Baird's Bread Company Building (East and South Dallas MPS), 1401 N. Carroll, Dallas, 95000309

Peak's Suburban Addition Historic District (East and South Dallas MPS), Roughly bounded by Sycamore, Peak, Worth and Fitzhugh, Dallas, 95000328

Proctor Hall (East and South Dallas MPS), 1206 N. Haskell, Dallas, 95000308

Queen City Heights Historic District (East and South Dallas MPS), Roughly bounded by Eugene, Cooper, Latimer, Kynard and Dildock, Dallas, 95000332

Romine Avenue Historic District (East and South Dallas MPS), 2300—2400 blocks of Romine Ave., N side, Dallas, 95000333

Rush—Crabb House (East and South Dallas MPS), 2718 Pennsylvania, Dallas, 95000321

Shiels, Thomas, House (East and South Dallas MPS), 4602 Reiger Ave., Dallas, 95000312

Silberstein, Ascher, School (East and South Dallas MPS), 2425 Pine St., Dallas, 95000325

Trinity English Lutheran Church (East and South Dallas MPS), 3100 Martin Luther King, Jr., Blvd., Dallas, 95000319

Wheatley Place Historic District (East and South Dallas MPS), Bounded by Warren, Atlanta, McDermott, Meadow, Oakland and Dathe, Dallas, 95000331

VIRGINIA

Danville Independent City

Danville National Cemetery (Civil War Era National Cemeteries MPS), 721 Lee St., Danville (Independent City), 95000274

WISCONSIN

Milwaukee County

North Grant Boulevard Historic District, 2370—2879 N., Grant Blvd., Milwaukee, 95000290

[FR Doc. 95–5459 Filed 3–6–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32569]

Burlington Northern Railroad Company—Construction Exemption—Butler and Platte Counties, Nebraska

The Burlington Northern Railroad Company (BN) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 4.34 mile rail line in Butler and Platte Counties, Nebraska. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Burlington Northern Railroad Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Michael Dalton (202) 927–6202. Requests for copies of the EA should also be directed to Mr. Dalton.

Date made available to the public: March 7, 1995.

Comment due date: April 6, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5507 Filed 3–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32667]

Georgia Department of Transportation—Acquisition Exemption—Central of Georgia Railroad Company

The Georgia Department of Transportation (GDOT), a non-carrier, has filed a verified notice under 49 CFR Part 1150, Subpart D—Exempt Transactions to acquire from Central of Georgia Railroad Company (COG) a

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21.1-mile rail line between milepost SA–36.4, at Ardmore, and milepost SA–57.5, at Sylvania, in Effingham and Screven Counties, GA. The transaction also involves COG's assignment to GDOT of its interest, as lessor, in a lease agreement under which the line will continue to be operated by Ogeechee Railway Company (Ogeechee). The Commission exempted Ogeechee's operation of the line under the lease in *Istra Corporation—Assignment of Lease and Interchange Agreement Exemption—Ogeechee Railway Company*, Finance Docket No. 31478 (ICC served June 19, 1989). The involved transaction was to have been consummated as soon as possible after the exemption's February 17, 1995, effective date.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on George P. Shingler, 40 Capitol Square, SW., Atlanta, GA 30334–1300.

Decided: February 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5510 Filed 3–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William W. Malone, M.D.; Revocation of Registration

On October 14, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William W. Malone, M.D., (Dr. Malone) of Phoenix, Arizona, proposing to revoke his DEA Certificate of Registration, AM546789, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Malone's lack of authorization to handle controlled substances in the State of Arizona; that his continued registration would be inconsistent with the public interest; and that Dr. Malone had been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a). See 21 U.S.C. 824(a)(3), (4) and (5).

The Order to Show Cause was served on Dr. Malone by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Malone and the DEA has received no response thereto. Pursuant to 21 CFR 1301.54(e) and 1301.54(d), William W. Malone, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Deputy Administrator finds that effective January 31, 1994, Dr. Malone's medical license was suspended, pursuant to a Consent Agreement, for a period of five years by the State of Arizona, Board of Medical Examiners (Arizona Board). As a result of the Arizona Board's action, Dr. Malone is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of Arizona.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. See 21 U.S.C. 823(f). The Deputy Administrator and his predecessors have consistently so held. See Howard J. Reuben, M.D., 52 FR 8375 (1987); Ramon Pla, M.D., Docket No. 86–54, 51 FR 41168 (1986); Dale D. Shahan, DD.S., Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since Dr. Malone lacks state authorization to handle controlled substances, it is not necessary for the Deputy Administrator to decide the issue of whether Dr. Malone's DEA registration should be revoked on the basis of 21 U.S.C. 824(a)(4) and (5), at this time.

No evidence of explanation or mitigating circumstances has been offered by Dr. Malone. Therefore, the Deputy Administrator concludes that Dr. Malone's DEA Certificate of Registration must be revoked.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM5467849, previously issued to William W. Malone, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective April 6, 1995.

Stephen H. Greene,

Deputy Administrator.

Dated: March 1, 1995.

[FR Doc. 95–5455 Filed 3–6–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30,731]

The Hanover Shoe Company, Franklin and Marlinton, West Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1995 in response to a worker petition which was filed on February 13, 1995 on behalf of workers at The Hanover Shoe Company, Franklin & Marlinton, West Virginia.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–730,715–6). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5535 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 634]

Illinois Masonic Hospital, Chicago, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 9, 1995 in response to a worker petition which was filed on January 9, 1995.

The investigation revealed that there was no available information regarding the employment of the single petitioner at Illinois Masonic Hospital, Chicago, Illinois or at other employers listed on the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5534 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,668]

Venus Fashions, Incorporated, Hoboken, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 28, 1994 in response to a worker petition which was filed on behalf of workers at Venus Fashions, Incorporated, Hoboken, New Jersey.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5533 Filed 3–6–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 17, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 17, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Wirekraft Industries, Inc. (Co)	Marion, OH	02/21/95	02/09/95	30,740	Electrical Wiring.
Boeing of Portland (Wkrs)	Portland, OR	02/21/95	02/02/95	30,741	Aircraft.
Advanced Imaging Technology (Co.)	Toms River, NJ	02/21/95	02/03/95	30,742	Printer Ribbon Cassettes.
Transportation Manufacturing Corp. (Wkr)	Roswell, NM	02/21/95	02/03/95	30,743	Buses.
Gioia Pasta Co (BCT)	Buffalo, NY	02/21/95	02/07/95	30,744	Macaroni and Noodles.
Thermal Laminates Corp. (Wkrs)	Stevenson, WA	02/21/95	01/22/95	30,745	Molded Composite
Editorial America, S.A. (Wkrs)	Virginia Gardens, FL	02/21/95	02/11/95	30,746	Magazines.
Kay Lynn Sportswear, Inc. (Wkrs)	Palestine, TX	02/21/95	02/02/95	30,747	Ladies' Pants.
Halbar Enterprises (Co.)	Falmouth, ME	02/21/95	02/07/95	30,748	Design Ladies' Sportswear.
Bristol Myers SquibbOCAW	North Brunswick, NJ	02/21/95	02/03/95	30,749	Drugs and Vitamins.
Berkeley Belt, Inc. (ILGWU)	New York, NY	02/21/95	02/10/95	30,750	Ladies' Belts.
Fashion Button (ILGWU)	New York, NY	02/21/95	02/10/95	30,751	Covered Buttons.
Visador Company (PMSD)	Tacoma, WA	02/21/95	02/07/95	30,752	Glass for Home Fixtures.
Techmedica, Inc. (Wkrs)	Camarilo, CA	02/21/95	02/07/95	30,753	Orthopedic Implants & Instruments.
UDT Sensors, Inc., (Wkrs)	El Paso, TX	02/21/95	01/30/95	30,754	Opt-Electric Medical Diagnostic Equip.
Philips Components/Mineral Wells (Wkrs)	Mineral Wells, TX	02/21/95	02/10/95	30,755	Electronic Components.
CMS Gilbreth Packaging System (Wkrs)	Kingston, PA	02/21/95	02/03/95	30,756	Packaging Machinery.
Xerox Corporation (ACTWU)	Oak Brook, IL	02/21/95	12/07/95	30,757	Duplicating Equipment.
W.E. Kautenberg Co (Wkrs)	Freeport, IL	02/21/95	01/25/95	30,758	Brooms and Brushes.
Touch of Elegance, Inc. (Co)	Holland, MI	02/21/95	02/16/95	30,760	Silk Floral Designs.
Kennametal, Inc. (Wkrs)	El Paso, TX	02/21/95	02/16/95	30,760	Service—Sales, Warehouse, Distribution.
Motor Coach Industries (Wkrs)	Roswell, NM	02/21/95	02/03/95	30,761	Buses.

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[FR Doc. 95–5531 Filed 3–6–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,523]

Xerox Corporation, Canadian, Latin American Manufacturing Organization, Pittsford, New York; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 26, 1995, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on January 12, 1995 and published in the **Federal Register** on February 10, 1995 (60 FR 8061).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers of Canadian Latin American Manufacturing Organization (CLAMO) of Xerox Corporation in Pittsford, New York do not produce an article within the meaning of the Trade Act. The workers instead perform engineering and support services for articles produced overseas.

Only in very limited circumstances are service workers certified for TAA, namely, the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under a certification for TAA. (Emphasis supplied). These conditions were not met for the CLAMO workers of Xerox in Pittsford, New York.

The workers at the Office of Document Products in Henrietta, New York were certified because their services were in direct support of the production done at Xerox' Webster, New York plant whose workers were certified under petition TA–W–29,744

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who produced an article and experienced a decline in sales or production and employment as a result of increased imports of like or directly competitive products.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 22nd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5532 Filed 3–6–95; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; extension of comment period.

SUMMARY: In response to comments from the mining community, the Mine Safety and Health Administration (MSHA) is expanding the membership of its proposed advisory committee to eliminate pneumoconiosis among coal miners. To allow time for the mining community to respond to this change, MSHA is extending the comment period on the establishment of the advisory committee.

DATES: Comments must be filed on or before March 17, 1995.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 31, 1995, the Secretary of Labor published a notice in the **Federal Register** (60 FR 5947) announcing the establishment of an advisory committee on the elimination of pneumoconiosis among coal miners. Comments regarding the establishment of the committee were due on March 1, 1995, as indicated in a notice extending the comment period published on February 17, 1995 (60 FR 9411).

In the January 1995 notice, MSHA announced that there would be seven committee members: one representing labor, one representing industry, and five persons who have no economic interest in the industry. In the comments received to date, several members of the mining community requested that the committee be expanded to include two labor representatives and two industry representatives. In response to these comments, MSHA has amended the proposed charter. With this notice, MSHA is announcing a nine-person advisory committee: two representing labor, two representing industry, and five persons who have no economic interest in the industry. To allow persons sufficient time to comment on this change, MSHA is extending the comment period until March 17, 1995.

Dated: March 2, 1995.

Andrea M. Hricko,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–5568 Filed 3–2–95; 3:40 pm]
BILLING CODE 4510–43–P

NATIONAL EDUCATION GOALS PANEL

National Education Goals Panel Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: March 13, 1995 from 1 p.m.–3 p.m.

ADDRESSES: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, N.W., Salon G, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Noemi Friedlander, Deputy Director, 1850 M Street, NW., Suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators, was created to monitor and report annually to the President, Governor and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes a discussion of the evolving role and impact of national academic standards and the role of the Goals Panel in promoting their use.

Dated: March 1, 1995.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 95–5548 Filed 3–6–95; 8:45 am]
BILLING CODE 4010–01–M

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Christine Lambert at (202) 632–7003, or by facsimile at (202) 632–7066 (not toll–free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulator Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register,** approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW, Suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Absentee—Shawnee Tribe of Oklahoma
Big Lagoon Rancheria
Coast Indian Community of the Resighini Rancheria
Coeur d'Alene Tribe
Colorado River Indian Tribes
Colusa Band of Wintun Indians
Confederated Tribes of the Grande Ronde
Indian Community
Confederated Tribes of the Siletz Reservation
Confederated Tribes and Bands of the Yakima Nation
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians
Devils Lake Sioux Tribe
Eastern Band of Cherokee Indians
Flandreau Santee Sioux Tribe
Fort McDermitt Paiute—Shoshone
Grand Traverse Band of Ottawa/ Chippewa Indians
Hannahville Indian Community
Kootenai Tribe of Idaho
Las Vegas Paiute Tribe
Lummi Nation
Mashantucket Pequot Tribe
Miami Tribe of Oklahoma
Modoc Tribe of Oklahoma
Mohegan Tribe of Indians of Connecticut
Oneida Tribe of Indians of Wisconsin
Pala Band of Mission Indians
Ponca Tribe of Nebraska
Prarie Band Potawatomi
Pueblo of Acoma
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Tao
Pueblo of Tesuque
Puyallup Tribe of Indians
San Manuel Band of Mission Indians
Santa Rose Band of Tachi Indians
Sault Ste. Marie Tribe of Chippewas
Seminole Tribe
Shoshone-Bannock Tribes
Squaxin Island Tribe
Sycuan Band of Mission Indians
Three Affiliated Tribes of the Fort Berthold Reservation
Tyme Maidu Tribe of the Berry Creek Rancheria
Upper Sioux Community
Wyandotte Tribe of Oklahoma
Upper Skagit Indian Tribe

Harold A. Monteau,

Chairman.

[FR Doc. 95–5478 Filed 3–6–95; 8:45 am]
BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1 (PNPP), located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the Technical Specifications (TS) to make them consistent with the current requirements of part 55 of Title 10 of the Code of Federal Regulations (10 CFR part 55), to delete training requirements that have been superseded by 10 CFR 50.120, and to allow an Operations Middle manager to hold a PNPP Senior Reactor Operator (SRO) license in lieu of the Operations Manager.

The proposed action is in accordance with the licensee's applications for amendment dated September 27, 1993, and December 16, 1994.

The Need for the Proposed Action

The proposed action, in the form of TS amendments is needed because training and qualification requirements have evolved over the past few years resulting in the obsolescence of some TS requirements. In addition, the alternative of allowing an Operations middle manager to hold a PNPP SRO license would allow the Operations Manager to return to normal duties following classroom training to continue with efforts to improve the operational performance of PNPP.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that there will be no changes to the facility, to the training requirements, or to the intent of the qualification requirements as a result of the proposed license amendment.

Accoringly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect the

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nonradiological plant effluents and has no other environmental impact. Accordingly, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no changes to current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Perry Nuclear Power Plant, Units 1 and 2, documented in NUREG–0884.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the State of Ohio regarding the environmental impact of the proposed action. The state of Ohio official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated September 27, 1993, and December 16, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, MD., this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Project—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5493 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 72nd meeting on March 15–16, 1995, in Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance, with the exception of portions that may be closed to discuss information and release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 522b(c)(6).

The agenda for this meeting shall be as follows: *Wednesday and Thursday, March 15 and 16, 1995—8:30 a.m. until 6 p.m.*

During this meeting the Committee plans to consider the following:

A. *DOE's Program Approach*—The Committee will hear presentations and hold discussions with representatives of the Department of Energy and the NRC staff on DOE's program approach for a site suitability determination at the Yucca Mountain site.

B. *DOE's Engineered Barrier System Program*—The Committee will hear presentations and hold discussions with representatives of the Department of Energy and the NRC staff of DOE's efforts to design an engineered-barrier system for the proposed high-level radioactive waste repository.

C. *Disposal of Baghouse Dirt*—The Committee will hear a presentation by the NRC staff on the issues associated with the management and disposal of the mixed waste which is created when scrap steel being recycled in an electric arc furnace becomes inadvertently contaminated by a cesium source. The Florida Steel Corporation will also address the Committee on this issue.

D. *Branch Technical Position on Low-Level Radioactive Waste Performance Assessment*—The Committee will review issues associated with the NRC staff's Branch Technical Position on Low-Level Radioactive Waste Performance Assessment as outlined in a recent Commission paper.

E. *Groundwater Travel Time*—The Committee will review the approach proposed by the NRC staff for compliance evaluation associated with the groundwater travel time requirement in 10 CFR part 60. Presentations will also be made by ACNW consultants regarding their views on this topic.

F. *Meet with the Director, NRC's Division of Waste Management, Nuclear Materials Safety & Safeguards*—The Director will provide information to the Committee on current waste management issues, which may include the status of site characterization work at the Yucca Mountain site, and preview staff development of a technical position on expert judgment.

G. *Radiological Criteria for Decommissioning (tentative)*—The Committee will hear presentations and hold discussions with the NRC staff on a proposed rule on radiological criteria for decommissioning of NRC licensed facilities. A comparison will be made of this proposed rule and EPA's proposed Standards for Land Disposal of Low-Level Radioactive Waste.

H. *Preparation of ACNW Reports*—The Committee will discuss proposed reports on issues considered during this meeting and, as time permits, safety goals applicable to nuclear waste disposal and generic issues involving the direction of radioactive waste research.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to the selection of new ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

J. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings maybe adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 28, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–5496 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific issues (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Three plenary sessions are planned, two of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held May 9–10, 1995.

ADDRESSES: The conference will be held at the Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, MD 20852. Telephone: (301) 468–1100 FAX (301) 468–0163 (Refer to Group REG).

FOR REGISTRATION INFORMATION CONTACT: ES Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585.

PARTICIPATION: This conference is open to the general public; however, advance registration is required by April 24, 1995. The following is the preliminary program for the conference:

Tuesday, May 9, 1995—(8:30 a.m.–5:15 p.m.)

1. Welcome and Introductory Remarks—William T. Russell, Director Office of Nuclear Reactor Regulation
2. Morning Plenary Session: Regulatory Trends
3. Breakout Sessions:
   1. On-Line Maintenance and Maintenance Rule
   2. Steam Generator Issues
   3. Probabilistic Risk Assessment Policy and Implementation Plan
   4. 10 CFR Part 54—License Renewal Rulemaking and 10 CFR Part 51—Environmental Protection Rulemaking for License Renewal
4. Post-Luncheon Speaker: Commissioner Kenneth C. Rogers
5. Afternoon Plenary Session: Regional Administrator Panel Issues:
   1. Inspection Planning, Oversight, and Followup
   2. Cost Reduction and Safety
   3. Feedback Report on Inspector Professionalism
   4. Systematic Assessment of Licensee Performance Process
6. Breakout Sessions:
   1. Outage Planning and Shutdown Risk
   2. 10 CFR Part 52—Advanced Reactors/Design Certification
   3. Regulatory Process Improvements (Commitment Management and Cost Beneficial Licensing Actions)
   4. Boiling Water Reactor Internals Cracking
7. Dinner Speaker: Commissioner E. Gail de Planque

Wednesday, May 10, 1995—(8:00 a.m.–4:30 p.m.)

1. Breakout Sessions:
   1. NRC/Licensee Interface and Communications, Region I
   2. NRC/Licensee Interface and Communications, Region II
   3. NRC/Licensee Interface and Communications, Region III
   4. NRC/Licensee Interface and Communications, Region IV
2. Breakout Sessions:
   1. Reactor Vessel Material Issues
   2. Spent Fuel Issues/Dry Cask Storage/Independent Spent Fuel Storage Installations/Palisades and Davis Besse Experience
   3. New Source Term (Design Certification Application and Future Applications to Operating Licenses)
   4. Security Issues
3. Post Luncheon Speaker: James M. Taylor, Executive Director for Operations
4. Breakout Sessions:
   1. New Approach to Assessing Performance Through Inspection—the Integrated Performance Assessment Process (IPAP, formerly CIPP)
   2. Self Assessment (Inspection Procedures & Lessons Learned)
   3. Standard Technical Specifications
   4. Enforcement (Notice of Enforcement Discretions) and Allegations

Closing Plenary Session: NRR Executive Team and Regional Administrators

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for April 10–11, 1996, at the Capitol Hilton Hotel, Washington, DC.

Dated in Rockville, Maryland this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Gary G. Zech,

Chief, Planning, Program, and Management Support Branch, Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5551 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Utilities Millstone Nuclear Power Station, Unit 1, License No. DPR–21; Receipt of Petitions for Director's Decision Under 10 CFR 2.206

Notice is hereby given that Anthony J. Ross (Petitioner) has filed four Petitions with the Executive Director for Operations requesting that escalated enforcement action be taken with regard to alleged violations at Millstone Nuclear Power Station, Unit 1.

By Petition dated December 30, 1994, the Petitioner requests that the Nuclear Regulatory Commission (NRC)(1) "force" Northeast Utilities (NU) to review all existing work orders for the past 10 or 12 years, with NRC oversight, to ensure that no quality assurance (QA) motor and connection work has certain deficiencies; (2) assess a Severity Level I violation against NU and its managers for apparent violations of 10 CFR 50.7 and a Severity Level III violation against a gas turbine system engineer at Millstone for his apparent violation of 10 CFR 50.7 and the company's "Code of Conduct and Ethics"; and (3) institute sanctions against the system engineer and NU and its managers for engaging in deliberate misconduct in violation of 10 CFR 50.5. As grounds for these requests, the Petitioner asserts that (1) work control and procedure compliance are inadequate at Millstone, as evidenced by the use of standard commercial-grade lugs in a gas turbine fuel forwarding pump and motor (QA subsystems of the emergency gas turbine generator) that had apparently been crimped using diagonal pliers; improper Raychem splices, cable bend radius, and connections in the connection boxes of major safety-related QA equipment; and non-QA lugs crimped improperly and installed in fire protection quality assurance emergency lights; and (2) he had been subjected to ridicule by the gas turbine system engineer for raising concerns regarding the lugs on the gas turbine fuel forwarding pump and motor.

By Petition dated January 2, 1995, the Petitioner requests that the NRC: (1) Assess a Severity Level II violation and a Severity Level III violation against his department manager and first line

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supervisor for their apparent violations of 10 CFR 50.7; (2) institute sanctions against his first line supervisor, NU, and the Millstone Unit 1 organization for engaging in deliberate misconduct in violation of 10 CFR 50.5; and (3) remove his first line supervisor from his position until a "satisfactory solution to the falsifying of nuclear documents" by this individual can be achieved. As grounds for these requests, the Petitioner asserts that (1) his first line supervisor willfully falsified nuclear documents in that he signed off on a surveillance of the gas turbine battery as having met acceptance criteria when the requirements had not been met; (2) he was "unjustly chastised" by his first line supervisor and department manager about absenteeism, and his department manager threatened him in a memorandum; and (3) the Unit 1 organization failed to enter into a four-day limiting condition for operation as required by technical specifications when the operations department was notified of the failed surveillance, in violation of 10 CFR 50.5. In addition, the Petitioner asserts that a number of violations occurred in 1992 and 1993 with regard to the emergency gas turbine battery, which have not been handled appropriately by the NRC and NU, and that the utility and NRC are engaged in an apparent "cover-up" of the problems.

By Petition dated January 5, 1995, the Petitioner requests that the NRC institute sanctions against his department manager, first line supervisor, and two coworkers for engaging in deliberate misconduct in violation of 10 CFR 50.5. The Petitioner also asserts that the NRC "desperately needs to conduct an investigation" of the procedure violations, and to audit the Unit 1 maintenance department measuring and test equipment (M&TE) folders to reveal widespread problems regarding noncompliance with this procedure. As grounds for this request, the Petitioner describes several examples of what he alleges have been violations of procedure WC–8, which requires that M&TE be signed out from and returned to a custodian.

By Petition dated January 8, 1995, the Petitioner requests that the NRC institute at least three sanctions against his department manager, and institute sanctions against his coworker and maintenance first line supervisor for engaging in deliberate misconduct in violation of 10 CFR 50.5. As grounds for this request, the Petitioner alleges that on numerous occasions since January 1994, his department manager instructed his coworkers to shut off or turn down the volume on the site paging system and site siren evacuation alarm in the Unit 1 maintenance shop, and his first line supervisor and coworker complied with this request, in violation of Technical Specification 6.8.1 and NUREG–0654.

The requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The requests have been referred to the Director of the Office of Nuclear Reactor Regulation.

Copies of the Petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, and at the local public document room for Millstone Unit 1 located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, MD, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of the Nuclear Reactor Regulation.

[FR Doc. 95–5494 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–27 and License No. SNM–42 EA 94–169]

Babcock and Wilcox Company, Lynchburg, Virginia; Order Imposing Civil Monetary Penalty

I

Babcock and Wilcox Company (Licensee) is the holder of Special Nuclear Material (SNM) License No. SNM–42 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 31, 1984. The license authorizes the Licensee to possess and use Special Nuclear Material in accordance with the conditions specified therein.

II

Inspections of the Licensee's activities were conducted on June 1–July 1, 1994, July 1–8, 1994, and July 1—August 9, 1994. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 21, 1994. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for Violations I.A and I.B.

The Licensee responded to the Notice in two letters, both dated November 20, 1994. In its responses, the Licensee protested the proposed imposition of the civil penalty, disagreed with NRC statements concluding that the violations represented a Severity Level III problem, denied Violations I.B.1, I.B.2, and II.C, and disagreed with the application of the escalation and mitigation factors.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $37,500 within 30 days of the date of this order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, GA 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of the order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements set forth in Violations I.B.1 and I.B.2, as set forth in the Notice, and

(b) Whether, on the basis of such violations and the additional violations set forth in Section I of the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 27th day of February 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On October 21, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during NRC inspections conducted on June 1–July 1, 1994, July 1–8, 1994, and July 1–August 9, 1994. Babcock and Wilcox Naval Nuclear Fuel Division (Licensee) responded to the Notice with a reply and an answer, both dated November 20, 1994. The Licensee admitted Violations I.A.1, I.A.2, II.A, and II.B, denied Violations I.B.1, I.B.2, and II.C, protested the proposed imposition of the civil penalty, disagreed with NRC statements concluding that the violations represented a Severity Level III problem, and disagreed with the application of the escalation and mitigation factors. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

I. Evaluation of Violations Assessed a Civil Penalty

Restatement of Violation I.B.1

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered.

Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

1. On June 7, 1990, the CRB reviewed and approved License Evaluation Request 89–155 based on a nuclear criticality safety analysis of acceptable material types, but failed to consider pertinent process conditions related to the operation of the drum counter system that were not excluded by experimental evidence or design considerations. This resulted in a failure to accurately measure quantities of U–235 in 2-liter bottles.

Summary of Licensee's Response to Violation I.B.1

In its reply to the Notice, the Licensee denies that a violation occurred as stated. The Licensee states that its nuclear criticality safety (NCS) evaluation did consider pertinent process conditions and known modes of failure in establishing operating safety limits for the low-level dissolution process in Uranium Recovery, and that the Nuclear Licensing Board (NLB), now CRB, did review the effect on NCS from processing materials measured by the drum counter in low-level dissolution and did ensure that appropriate safety controls were considered. The Licensee states that its Licensee Evaluation Request 89–155 was submitted, evaluated, and approved *only* because of the drum counter measurement problem which resulted in the low-level dissolution NCS limit being exceeded in 1989 and that the *purpose* of the NCS evaluation and NLB review and approval was to consider the pertinent process conditions and known modes of failure identified by the 1989 problem. The Licensee also states that the violation statement that pertinent process conditions and known modes of failure were not considered cannot be true since these were *the only* issues that were considered.

The Licensee further suggests that the evaluation was adequate in that the LER requested approval of processing only certain material types in low-level dissolution based on drum count measurements and only those types were approved for processing based upon the information in the LER. Further, the Licensee states that none of these material types were inaccurately measured by the drum counter subsequent to the approval, and the processing of these material types did not result in NCS limit violations.

The Licensee states that the scope of the LER was the *use* of drum counter measurements to comply with NCS limits for low-level dissolution and that no restraints were placed on the measurement of materials when the LER was approved; rather, restraints were placed only on the use of the measurements. The Licensee states that restraints on measuring materials by drum counting would be inappropriate. The Licensee adds that the primary purpose of the drum counter is to measure materials for material control and accountability and that the accuracy of the drum counter measurements is not a safety issue unless the measurements are used to meet safety limits. The Licensee adds that the NLB appropriately prohibited the use of the measurements of certain material types to meet safety limits for low-level dissolution, but also appropriately did not prohibit the measurement of any materials using the drum counter.

NRC Evaluation of Licensee's Response to Violation I.B.1

The NRC does not agree with the Licensee's statements that the Licensee considered pertinent process conditions and known modes of failure in establishing operating safety limits for the low-level dissolution process in Uranium Recovery and that the NLB reviewed the effect on NCS of the approval of processing materials measured by the drum counter in low-level dissolution. The Licensee was presented with a known mode of failure regarding a system that was used to demonstrate compliance with NCS limits. The known mode of failure was that the drum counter measurements could underestimate the amount of U–235 in a container.

The Licensee failed to consider pertinent process conditions such as scrap/waste generation, packaging, labeling, and storage that could affect the drum counter system's U–235 measurement accuracy and, therefore, did not ensure that pertinent and appropriate operating safety controls were considered to prevent the known failure. Thus, the review and approval of LER 89–155 was not considered adequate in establishing operating NCS controls or limits.

With respect to the Licensee's statement regarding the adequacy of its review of LER 89–155, the NRC notes that the review of the specific items in the single LER as presented may have been adequate for the very narrow and limited conditions of the LER presented; however, the license requires the Licensee to consider pertinent process conditions and known modes of failure in establishing NCS safety controls and limits and the Licensee failed to consider such conditions and known modes of failure.

The NRC agrees with the Licensee's statement that the primary purpose of using the drum counter is to measure materials for material control and accountability. However, in this case the Licensee was relying on the drum counter measurements to ensure that NCS limits were not exceeded. Given the nature of the Licensee's use of the measurements, the Licensee did fail to consider all failure modes that were not specifically excluded by experimental evidence or design considerations because, despite the Licensee's knowledge that drum counter measurements were inaccurate, such measurements were used for estimating quantities of U–235 in 2-liter bottles.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

Restatement of Violation I.B.2

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Paragraph 2.0, of the application requires that the design of equipment and establishment of operating safety limits consider the pertinent process conditions and known modes of failure. Certain conditions may be deemed incredible if specifically excluded by experimental evidence or design considerations.

Section II, Paragraph 3.1, of the application states that the Change Review Board (CRB) reviews the effect on nuclear criticality safety, radiation protection, and other

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regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered. Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

2. From March 1989 through November 1990, the CRB reviewed drum counter evaluations that revealed measurement problems associated with material type and container fill level, but failed to establish requirements for remeasurement of materials previously measured by the drum counter and stored at the facility.

Summary of Licensee's Response to Violation I.B.2

In its reply to the Notice, the Licensee does not agree that this violation relates to the stated requirements. The Licensee further states that the need for remeasurement of materials in 1990 was neither a part of equipment design or the establishment of safety limits nor a part of the consideration of safety controls for low-level dissolution. The Licensee further states that the NLB is chartered to review and approve new or modified facilities, equipment, and processes and that it is not chartered to investigate safety problems or require actions to resolve safety problems. The Licensee maintains that the review and approval of changes to the low-level dissolution process did not impact the safety of material storage and, therefore, the need for remeasurement of material was not within the charter of the NLB.

The Licensee states that no information was presented to the NLB which indicated a need for remeasurement of scrap materials in storage. The Licensee states that the materials which were in storage and had not been acceptably measured were never identified during the evaluation, review, and approval process, and, therefore, there appeared to be no need for remeasurement.

The Licensee acknowledges that there were deficiencies related to the problems discussed, including the inaccurate measurements. However, the Licensee indicates that these deficiencies did not constitute the violation as stated.

NRC Evaluation of Licensee's Response to Violation I.B.2

The Licensee appears to take the wording of the violation out of context in that the Licensee has argued that the NLB is only responsible for considering information contained in LERs. The NLB, or another body of the Licensee's organization, should have established requirements for remeasurement of materials previously measured by the drum counter and stored at the facility. The Licensee's argument further heightens the NRC's concern as to whether the Licensee has an oversight organization that is charged with this responsibility. In addition, the argument points out that such narrow views are, in part, the reason for the Licensee's continued NCS problems (i.e., exceeding NCS limits). The license requires the Licensee to review the effect on NCS of new and revised processes involving special nuclear material (SNM) and to ensure that appropriate safety controls are considered.

During a review of revised drum counting processes, the NLB was presented with evidence that demonstrated problems existed which were associated with drum counter measurement accuracy. The NLB was, therefore, required to review the effect on NCS of items or processes that were using drum counter measurement results to deomonstrate compliance with NCS limits. Such a review should have included drum counter measurement results or materials stored in 55-gallon drums used to demonstrate compliance with the NCS limit of 350 grams of U–235 per drum.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

II. Evaluation of Violation not assessed a Civil Penalty, Restatement of Violation II.C

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 10.4 of the application requires the retention of records of Change Review Board (CRB) actions for the longer of either two years or six months after termination of the operation.

Contrary to the above, as of June 29, 1994, records associated with License Evaluation Request (LER) 89–124, which provided the basis for a CRB action on LER 89–155, approving the counting of partially-filled bottles on the drum counter (an operation that was currently being performed), were not retained and the operation had not been terminated.

Summary of Licensee's Response to Violation II.C

In its reply, the Licensee denies that the violation occurred as stated. The Licensee states that the NLB (now CRB) took no action with regard to LER 89–124 because it was withdrawn and no information associated with LER 89–124 formed a basis for any NLB action on LER 89–155.

NRC Evaluation of Licensee's Response to Violation II.C

The Licensee's license requires the retention of records of NLB actions. The LER 89–155 file contains a document which reads: "Subject: Low-Level Dissolving of Partial Containers, Reference: LER 89–124." This document states that the subject LER contained a description of all types of material normally processed in the low-level dissolvers and the means used to ensure nuclear safety while processing the various types of material. The document also states: "After a thorough review of all the material presented in the LER [89–124] it was *concluded* [emphasis added] by the Nuclear Licensing Board that processing of partial containers was not the main area of concern." Therefore, the NLB did consider information from LER 89–124 in its review of LER 89–155. However, the LER 89–155 file does not contain any of the material that was thoroughly reviewed and used as the basis for the NLB to conclude that processing of partial bottles was not the main area of concern in the approval of LER 89–155.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

III. Summary of Licensee's Request for Mitigation

In its answer to the Notice, the Licensee states that a civil penalty was proposed based on Violations I.A and I.B constituting, in the aggregate, a Severity Level III problem. The Licensee argues that since Violation I.B is not a violation, only Violation I.A. remains and no aggregation can occur; therefore, there is no basis for a civil penalty. The Licensee maintains that even if Violation I.B were a violation, sufficient basis does not exist for a civil penalty and that the statements in Violation I.B, if accurate, would be causes of Violation I.A and should be written as part of Violation I.A. In addition, the Licensee believes aggregating a violation which may have occurred in 1990 with one which occurred in 1994 is inappropriate.

As to certain statements made in the Notice, the Licensee disagrees that there have been many examples of inadequate evaluations relating to known modes of failure, that it has had continued poor performance in the area of NCS, and that extensive management attention has not been directed toward identifying and correcting NCS problems. The Licensee indicates that the issues for which the civil penalty is being proposed were primarily caused by problems which predate most of its efforts and that it is applying significant attention and resources to strengthen its NCS program.

With respect to the application of escalation and mitigation factors the Licensee states that Violation I.A was not a self-disclosing event because if the operators had not compared the output values from the dissolvers to the mass limit and reported the limit violation, Violation I.A. would not have been known since there was no requirement to make such comparison. Further, the Licensee requests full mitigation because it showed enormous initiative in identifying the root causes, contrary to the NRC's Notice, which stated that the Licensee did not demonstrate initiative in identifying the root causes of the Violations I.A. and I.B, and because it developed long-term corrective actions in a timely manner. The Licensee also states that it suspended or severely restricted activities involving scrap and waste to prevent recurrence. The Licensee states that the September 23, 1994 report to the NRC addressed in detail why procedures, controls, and implementation were inadequate and did address corrective actions for the underlying problems revealed by the event. Additional information regarding other causes and corrective actions was provided to the NRC on November 16, 1994. Thus, based on all of its corrective actions, the Licensee indicates that a civil penalty is unwarranted. The Licensee also states that escalation of 100 percent for prior opportunity to identify is not warranted since it demonstrated that the February 1994 event did not provide opportunities for identification and that the March 1989 problem provided limited opportunities for this identification.

NRC Evaluation of Licensee's Request for Mitigation

With respect to the Licensee's argument that aggregating Violations I.A and I.B is inappropriate, the NRC concluded, as described above, that Violation I.B occurred as stated. The NRC determined that Violations I.A and I.B were related in that they have the same fundamental underlying cause and similar programmatic deficiencies, namely, the lack of management attention to NCS controls. Violation I.A involved exceeding a NCS limit. Violation I.B was issued for failure to consider process conditions and known modes of failure in the NCS analysis. These are two different issues in NCS controls and two different license requirements. Therefore, the NRC concludes both that aggregating Violations I.A and I.B as a Severity Level III was appropriate regardless of the time period between the two violations and that an escalated enforcement action was warranted.

With regard to the Licensee's disagreement with NRC statements, the NRC notes that there are 17 documented Licensee violations of NRC requirements involving NCS controls over the past two years. Despite these noted numerous weaknesses, the Licensee's NCS evaluations and analyses have not been adequately strengthened as evidenced by the failures described in NRC inspection reports 70–27/94–12, 94–15, and 94–16. These violations and other weaknesses clearly represent continued poor performance and inadequate management attention because the Licensee has not sufficiently improved its performance over the past two years to prevent recurring problems in the area of NCS. Furthermore, the Licensee's argument regarding the function of the NLB is narrow and does not support the Licensee's statements that extensive management attention has been placed in this area to ensure identification and correction of NCS problems. While the NRC acknowledges that some management attention has been directed toward identifying and correcting NCS problems, Licensee management must ensure that proper NCS controls and oversight are in place and are adhered to, and that NCS problems are thoroughly investigated to ensure that effective corrective actions are in place to prevent such problems from recurring or leading to other problems.

The NRC neither escalated nor mitigated for the identification factor because while the NRC recognizes that the Licensee identified Violation I.A, the Licensee should note that the NRC identified Violation I.B. In addition, Section VI of the Enforcement Policy states, in part, that a "self-disclosing' event as used in this policy statement means an event that is readily obvious by human observation * * *" The Licensee's Chemical Processing operating procedures required operators to: compare the amount of U–235 added to the low-level dissolvers with the amount removed, determine if the difference between the two exceeded 40 percent and, if so, report such excessive differences to management. Also, the Licensee's NCS limits required the amount of U–235 in each low-level dissolver zone be limited to 350 grams. Because the license requires procedures and postings to be followed and because doing so made the 350 gram limit violation readily obvious to human observation, the event was correctly categorized as self-disclosing.

Furthermore, Section VI of the Enforcement Policy also states, in part, that "The base civil penalty may also be mitigated up to 25% when the licensee identifies a violation resulting from a self-disclosing event where the licensee demonstrates initiative in identifying the root cause of the violation." While the NRC acknowledged that the Licensee identified inadequacies in procedures, controls, and implementation systems, the NRC maintains that the Licensee did not demonstrate initiative in identifying the root cause of the violations because its analysis did not ask or answer *why* these procedures, controls, and systems were inadequate and what should be done to prevent such recurrence. Specifically, NRC involvement was needed before acceptable corrective action was taken in that it was not until NRC requested and conducted a management meeting with the Licensee on August 3, 1994, that the Licensee agreed to evaluate the series of incidents that had been occurring in an attempt to uncover the underlying generic root cause(s).

With regard to the corrective action factor, the NRC acknowledged that the Licensee took some immediate corrective actions to stop operations of the low-level dissolver and formed an incident review team to review the event in detail and determine appropriate corrective actions. The NRC did give the Licensee credit for these corrective actions in that escalation for this factor was not applied. However, the NRC affirms that full mitigation for this factor is not warranted because: (1) The Licensee did not demonstrate initiative in identifying the root cause of the violations because NRC involvement was needed before adequate actions were taken; (2) the Licensee's initial long term corrective actions were not comprehensive; and (3) the Licensee's development of long term corrective actions was not timely.

As noted earlier, it was not until NRC requested and conducted a management meeting that the Licensee agreed to evaluate the series of incidents in an attempt to identify the root cause. The results of that evaluation were discussed in a management meeting on November 16, 1994, and were submitted by the Licensee on November 20, 1994, as an attachment to the Licensee's reply to the Notice. Furthermore, on July 8, 1994, as the NRC's Augmented Inspection Team discussed its findings with Licensee management, the Licensee was requested to submit a copy of its investigation team findings, including corrective actions, to the NRC. The Licensee stated that the report would be completed and made available to the NRC on or about August 5, 1994. However, the report was not completed and made available to the NRC until September 23, 1994, after the enforcement conference. During the enforcement conference, NRC asked the Licensee for a time schedule for implementing the corrective actions discussed by the Licensee at the conference. More than two months after the low-level dissolver event, the Licensee did not have long-term corrective action time schedules firmly in place.

Regarding the prior opportunity to identify factor, the NRC believes that effective corrective action, if taken, for events occurring in March 1989 and February 1994, which revealed weaknesses in the drum counter measurement system, could have prevented the June 1994 event. Specifically, if the Licensee had adequately reviewed the effect on NCS of items or processes that were using drum counter measurement results and implemented effective corrective actions, the June 1994 event could have been prevented. Following the March 1989 and February 1994 events, a formal incident review and root cause analysis were not performed and corrective actions were not taken. The NRC expects licensees to learn from their mistakes and implement adequate and effective corrective actions to prevent recurrence. In its answer to the Notice, the Licensee acknowledges that its corrective actions would have prevented the low-level dissolution violation had they been followed.

The NRC concludes that the escalation and mitigation factors were applied appropriately and in accordance with the Enforcement Policy.

NRC Conclusion

The NRC concludes that Violations I.B.1, I.B.2, and II.C occurred as stated, that Violations I.A and I.B were appropriately categorized as a Severity Level III problem, and that an adequate basis for mitigation of the proposed civil penalty was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of $37,500 should be imposed by Order.

[FR Doc. 95–5495 Filed 3–6–95; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management

Proposed Rescission of OMB Circular A–73

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Notice of Proposed Rescission of OMB Circular A–73.

SUMMARY: Publication of OMB's intention to rescind Circular A–73.

FOR FURTHER INFORMATION CONTACT: Suzanne Murrin, OMB, Office of Federal Financial Management, (202) 395–6911.

Dated: February 28, 1995.

John B. Arthur,

Associate Director for Administration.

Office of Management and Budget

Rescission of OMB Circulars

AGENCY: Office of Management and Budget.

ACTION: Notice of Proposed Rescission of OMB Circular A–73.

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SUMMARY: Notice is hereby given that OMB intends to rescind Circular No. A–73, Audit of Federal Operations and Programs. The current circular codifies what are now common audit practices throughout the Federal Government and extends the application of certain principles in the Inspector General Act of 1978 (IG Act) to those agencies not covered by the IG Act. Circular No. A–73 is unnecessary because: (1) Its audit policy direction is largely hortatory and (2) the IG Act has been expanded in 1988 amendments to cover almost all Federal entities of significant size.

DATES: Persons who wish to comment on the proposed rescission of Circular No. A–73 should submit their comments no later than April 7, 1995. The rescission will take place May 22, 1995, unless the comments raise significant concerns regarding the proposed rescission.

ADDRESSES: Comments should be addressed to: Suzanne Murrin, Office of Federal Financial Management, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 6025, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rescission of Circular No. A–73, contact Suzanne Murrin on (202) 395–6911. For further information on OMB's overall review of its circulars, contact Frank J. Seidl, III, Staff Assistant, on (202) 395–5146; or Rosalyn J. Rettman, Associate General Counsel for Budget on (202) 395–5600.

SUPPLEMENTARY INFORMATION: The Director of the Office of Management and Budget (OMB) has initiated a systematic review of all OMB circulars, as part of efforts to reduce unnecessary Government directives. As part of this initiative, each OMB circular is being reviewed to see whether it should be rescinded or whether its requirements can be simplified.

[FR Doc. 95–5489 Filed 3–6–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–92]

Termination of Section 301 Investigation and Action Regarding the People's Republic of China's Protection of Intellectual Property and Provision and Market Access to Persons Who Rely on Intellectual Property Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Termination of investigation of certain acts, policies and practices of the Peoples' Republic of China (China) initiated under section 302 of the Trade Act of 1974, as amended (Trade Act); termination of action pursuant to section 301 of the Trade Act; monitoring of trade agreement under section 306 of the Trade Act; revocation of priority foreign country identification under section 182(c)(1)(B) of the Trade Act; and requests for public comment.

SUMMARY: On February 4, 1995, the United States Trade Representative (USTR) determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of China with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined pursuant to section 304(a)(1)(B) and 301(b) that action in the form of increasing duties on certain products of China to 100 percent ad valorem was appropriate. 60 FR 7230 (February 7, 1995). Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to: (1) Terminate this section 301 investigation; (2) monitor implementation of the agreement under section 306 of the Trade Act; (3) terminate the action ordered pursuant to section 301 with respect to raising tariffs on certain products originating in China; and (4) revoke China's identification as a priority foreign country under section 182 of the Trade Act. Public comments will be accepted on the decision to terminate the action ordered pursuant to section 301.

EFFECTIVE DATE: The modification of the Harmonized Tariff Schedule of the United States (HTS) described below is effective with respect to imports entered, or withdrawn from warehouse for consumption, on or after February 26, 1995. The determinations to terminate the action taken under section 301 and revoke China's status as a priority foreign country were made by the USTR on February 26, 1995. Written comments from interested persons are due by noon on Friday, March 10, 1995.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Deborah Lehr, Director for China and Mongolian Affairs (202) 395–5050, or Thomas Robertson, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 30, 1994, China was identified as a priority foreign country under the "special 301" provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country (PFC) under section 182(c)(1)(B) of the Trade Act. 59 FR 35558 (July 12, 1994).

On December 31, 1994, the USTR extended the investigation until February 4, 1995, and sought public comment on proposed determinations under section 304(a)(1). 60 FR 1829 (January 5, 1995). On February 4, 1995, the USTR determined that the acts, policies and practices of the Chinese government at issue in the investigation are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined that the appropriate action in response was to impose duties of 100 percent ad valorem on certain Chinese-origin products that were entered, or withdrawn from warehouse for consumption, on or after February 26, 1995. 60 FR 7230 (February 7, 1995).

After extensive negotiations, the United States and China entered into an exchange of letters (including an Action Plan for the Effective Protection and Enforcement of Intellectual Property Rights) by which China will address the issues raised by the United States in the negotiations. Under the agreement, China will, among other things, establish a system at the central, provincial and local levels to provide strong, transparent and responsive enforcement of intellectual property rights; initiate a special enforcement period during which enhanced resources will be allocated to the enforcement of intellectual property rights; establish an effective border enforcement regime; ensure the transparency of its legal regime,

including the publication of all laws and regulations concerning intellectual property protection; and provide U.S. right holders with enhanced access to the Chinese market. The United States and China will consult regularly on China's implementation of the agreement.

On the basis of the measures that China has agreed to undertake in the agreement, the USTR has decided that the action taken pursuant to section 301(b) (the increase in tariffs on certain products from China) is no longer appropriate and should be terminated. The United States Custom Service has been notified of this determination. Pursuant to section 182(c)(1)(A) of the Trade Act, the USTR has also decided to revoke China's designation as a priority foreign country.

Section 307(a)(1)(C) of the Trade Act authorizes the USTR to terminate any action, subject to the specific direction, if any, of the President, if, inter alia, the USTR determines that the action being taken under section 301(b) of the Trade Act is no longer appropriate. Prior to terminating this 301 action, the USTR consulted with the domestic industries concerned regarding the modification and termination of the existing action. An opportunity for public comment prior to this action was not possible in view of the need for expeditious action. Immediate termination of the 301 action was required so that U.S. intellectual property right holders could immediately start to receive the benefits of the agreement entered into with China. However, interested members of the public are now invited to submit comments to USTR regarding this action in accordance with the directions provided below. USTR will review these comments upon receipt.

Pursuant to section 306 of the Trade Act, the USTR will monitor China's implementation of the agreement. If, on the basis of this monitoring, the USTR considers that China is not satisfactorily implementing the terms of the agreement, the USTR will decide what further action to take under section 301(a) of the Trade Act.

Public Comments

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due no later than noon, Friday, March 10, 1995. Comments must be in English and be provided in twenty copies to: Chairman, section 301 Committee, Room 223, USTR, 600 17th Street, N.W., Washington, D.C. 20506.

Comments will be placed in a file [Docket 301–92] open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page (on each of the 20 copies), and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket open to public inspection.

Modification of the Harmonized Tariff Schedule of the United States (HTS)

Accordingly, the HTS is hereby modified by deleting subheadings 9903.50.01 through 9903.50.33, inclusive, and the superior text immediately preceding such subheadings, effective February 26, 1995.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–5664 Filed 3–6–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35428; File No. SR–NASD–94–9, Amendment No. 2]

Self-Regulatory Organizations; Notice of Amendment No. 2 To Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Non-member Viewing Access to SelectNet

February 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 30, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its proposal to enhance the transparency of, and nonmember viewing access to, "broadcast" orders transmitted through The Nasdaq Stock Market, Inc.'s ("Nasdaq") SelectNet service. Specifically, the NASD proposes to disseminate a separate feed of "broadcast" orders entered into SelectNet that will be available to vendors.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1994, the NASD proposed modifications to the operation of Nasdaq's SelectNet service that would permit viewing access by non-members who are subscribers to the Nasdaq Workstation Level 2 service to view "broadcast" orders immediately as they are entered into the service.[3] In addition, because of the additional non-member constituencies that will be able to view all broadcast orders entered into SelectNet, the NASD also proposed to modify its order-entry procedure for SelectNet to ensure that broadcast orders are entered into and displayed through SelectNet anonymously. This feature was proposed for two reasons: (a) To preserve incentives for dealers to continue to make markets that add liquidity to the market; and (b) to avoid conditioning the market in one direction or another by orders identified with particular market makers or order entry firms.[4] With this filing, the NASD

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The subscriber fees imposed for receipt of this information will be set forth in a separate rule filing submitted pursuant to Section 19(b) of the Act. The NASD does not believe that Commission consideration of the instant proposal should be contingent upon approval of the fees for this service, as Nasdaq will make the service available at no charge until an appropriate fee structure for the service is approved by the Commission.

[3] Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994).

[4] The original notice of the NASD's proposal set forth in greater detail the basis for this feature. Specifically, the original notice states that:

Because of the additional non-member constituencies that will be able to view all broadcast orders, the NASD is also proposing to

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proposes to modify its proposal by providing for the dissemination of a separate feed of "broadcast" orders entered into SelectNet that will be available to vendors. In particular, the feed to vendors will contain information on all orders broadcast in SelectNet, partial executions of these orders, full executions of these orders, and, if applicable, when these orders timed-out or were canceled.

SelectNet is the service operated by The Nasdaq Stock Market that permits NASD member firms to enter buy or sell orders in Nasdaq securities into the system, direct those orders to a single market maker (directed orders) or broadcast the order to all market makers in the security. Originally implemented in its predecessor form in 1988 as the Order Confirmation Transaction service,[5] the primary function of that service was to offer an automated alternative to the telephone as a method of contacting market makers in times of market stress. To this end, order entry firms could direct an order to buy or sell a Nasdaq security to a single market maker in the issue. When the service was enhanced and renamed SelectNet in 1990,[6] the broadcast feature was added to permit a wider dissemination of orders (*i.e.*, "broadcast orders") to all market makers in an issue. In addition, the redesigned system allowed market makers in a subject security to send a broadcast order to all member firms that had designated that security in their SelectNet "watch file,"[7] whether the firm was a market maker or not. In 1992, the service was expanded to add pre-opening and after-hours sessions,[8] so that today SelectNet is available for members to negotiate and execute orders from 9:00 a.m. until 5:15 p.m. Eastern Time. The Nasdaq Stock Market operates SelectNet to provide investors and members with an automated system to facilitate communication of trading interest between members, negotiation of orders with the possibility of price improvement with automated, locked-in executions, and dissemination of last sale reports to the tape. In addition, SelectNet retains the original functionality of the service as a replacement for one-on-one communication between members, especially in times of market stress.

Since its enhancement in December 1990, the service has grown in popularity with members and traffic has increased significantly—from an average of 3,000 transactions and 6 million shares daily in the first half of 1991 to over 10,000 transactions and more than 12 million shares daily in December 1994. As the system's usage has increased, institutions and other non-members have expressed a desire to view the orders broadcast within the service. Indeed, the Commission's Division of Market Regulation ("Division") recommended that "the NASD [should] examine how to improve access to information regarding orders entered into SelectNet" in its Market 2000 Report.[9] Accordingly, as noted above, in March 1994, the NASD filed the instant rule proposal with the Commission.

With this amendment to the filing, the NASD now proposes to enhance further the market transparency benefits of the proposal by providing market participants with a more cost-effective and efficient means to receive information on orders broadcast in SelectNet. In particular, by making SelectNet information available to investors without the need for them to procure Nasdaq Workstation Level 2 Service, the NASD believes investors will have ready viewing access to an expanded spectrum of information regarding larger-size orders in Nasdaq securities at an affordable and reasonable cost. With this information, the NASD believes investors will be better able to assess the overall supply and demand for a particular Nasdaq stock, which, in turn, will permit them to effect transactions in a more cost-effective manner. Thus, the NASD believes this proposal, as amended, will promote the protection of investors and the maintenance of fair and orderly markets. The NASD also believes that the proposal directly responds to one of the Division's key recommendations designed to improve the transparency of orders broadcast through the SelectNet service.

This proposed amendment also is responsive to comments raised regarding the NASD's proposal. In particular, the Investment Company Institute ("ICI") and the New York Stock Exchange ("NYSE") commented that the SelectNet order information should be made available to all subscribers of Nasdaq Level 2 price information, not just to non-members that possess Nasdaq Level 2 Workstations.[10] Without making the SelectNet order information more broadly available at a lower cost, these commentators maintain that the improvements to market transparency and the benefits to investors resulting from the proposal will be minimal. The NASD believes these comments are fully addressed by this proposed amendment.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(a)(1)(C) of the Act and is a particularly timely and germane response to the recommendations contained in the Market 2000 study. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities and economically efficient execution of securities transactions.

The SelectNet service has served as an alternative to the telephone in times of market stress and as a system to broadcast orders to market makers for economically efficient negotiations and executions. By permitting non-members to view those broadcast orders, the NASD is removing impediments to transparency of market information and is facilitating transactions for those non-members who will now be able to see all broadcast orders in the service and timely arrange for the execution of such orders by a member. Although the orders in SelectNet do not represent quotations or last sale reports, the NASD believes that the information is valuable to investors and market participants and should be transparent and disseminated to non-members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–94–9 and should be submitted by March 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5462 Filed 3–6–95; 8:45 am]

BILLING CODE 8010–01–M

February 28, 1995.

Self-Regulatory Organization; Philadelphia Depository Trust Company; Order Approving Proposed Rule Change Concerning Disposal of Expired Securities Certificates of Warrants and Rights

[Release No. 34–35426; File No. SR–Philadep–94–05]

On October 6, 1994, the Philadelphia Depository Trust Company ("Philadep") filed a proposed rule change (File No. SR–Philadep–94–05) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on January 3, 1995, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposal authorizes Philadep to implement a program which allows it to destroy certain expired securities certificates, specifically expired warrants and rights. This destruction policy will enable Philadep to reduce the administrative and safekeeping expenses associated with keeping expired warrants and rights related certificates in its vault.

In implementing this program, Philadep will adhere to several procedures to help assure that Philadep destroys only certificates for which the warrant or rights have expired. First, Philadep will contact the transfer agent or the issuer of the securities after the securities have reached their expiration dates to verify that the respective warrants or rights have expired. Second, Philadep will obtain written confirmation from the transfer agent that the certificates representing the warrants or rights have expired. If there is no transfer agent, Philadep will obtain such written confirmation from the issuer. Philadep also will exercise such other reasonable due diligence, as it may deem necessary under the circumstances, to confirm the expired nature of the respective certificates including consulting with Philadep's legal department, its internal audit department, and its senior management. Third, Philadep: (1) Will notify its participants that the certificates have expired in the judgment of the transfer agent or of other appropriate parties where there is no transfer agent; (2) will delete such securities positions from its participants' account on or after the thirtieth day following the date of the notice to the participants; and (3) will mark the securities certificates and send them to its internal audit department for destruction. Additionally, Philadep has agreed to retain copies of all such destroyed certificates on microfilm or on other mediums for not less than one year.[3]

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modify its order-entry procedure for SelectNet to ensure that broadcast orders are entered into and displayed through SelectNet anonymously. This feature is proposed for two reasons: To preserve incentives for dealers to continue to make markets that add liquidity to the market and to avoid conditioning the market in one direction or another by orders identified with particular market makers or order entry firms. First, the NASD believes that it is very important to retain incentives for market makers to participate in the market. Market makers put quotes in the Nasdaq system as a form of advertisement that they stand ready and willing to transact business at their quoted prices and sizes. There are obligations that accrue to those market makers, however, the NASD and the SEC require market makers to be firm for their quotes and to participate in order execution systems. Enabling order entry firms to advertise buy and sell interest freely, with no concomitant market maker obligations, by attaching their names to SelectNet orders so that anyone with a Workstation would be able to contact the entity directly by telephone, would eviscerate the positive attributes of being a market maker with a quote in the Nasdaq system.

Second, allowing market makers (or order entry firms) to put their names on broadcast orders might condition or influence the market in a security by advertising the buying or selling power of the member firm. For example, if a broker/dealer that is considered a lead market maker or a major institutional block positioner in a security was interested in buying shares in the stock, it might broadcast a sell order in SelectNet, identify its name on the order, and cause the market to react to the sell interest and the power of the firm's name. Accordingly, other market makers in the stock might react to the sell interest by dropping their bids and the lead market maker would be able to buy stock at a lower price than would otherwise have been the case, simply because it was advertising its name, or conditioning the market. Indeed, similar conditioning effects might be caused by any firm, order entry firm or market maker, by entering orders that are quickly canceled without actual trading interest by the entry firm. Accordingly, the NASD proposes that member firms enter all broadcast orders anonymously.

Although orders must be entered on an anonymous basis, once two firms are in negotiation over the terms of the broadcast order, the order entry firm may of course identify itself to the contra side. Presently, SelectNet provides members the option of identifying themselves on broadcast orders through their market maker identification symbol, although this alternative is seldom used. The information on SelectNet broadcast orders will be made available to members and nonmember subscribers to the Nasdaq Workstation Level 2 service. This proposal is intended to avoid conditioning the market with orders that might be canceled at any time without actual trading interest by the order entry firm.

Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994).

[5] See Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988).

[6] See Securities Exchange Act Release No. 28636 (Nov. 21, 1990), 55 FR 49732 (Nov. 30, 1990).

[7] The SelectNet watch file is established by each member firm and may contain as many as 300 securities. The member will then receive any directed or broadcast order selected for inclusion in the watch file.

[8] See Securities Exchange Act Release No. 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992).

[9] Market 2000: An Examination of Current Equity Market Developments, Division of Market Regulation, Securities and Exchange Commission (Jan. 1994).

[10] See letters from Craig S. Tyle, Vice President & Senior Counsel, Securities and Financial Regulation, ICI, to Jonathan G. Katz, Secretary, SEC, dated May 19, 1994, at 2–3, and from James E. Buck, Senior Vice President & Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated June 2, 1994, at 4–7.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35153 (December 27, 1994), 60 FR 161.

[3] Telephone conversation between J. Keith Kessel, Compliance Officer, Philadep, and Thomas C. Etter,

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II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[4] Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to safeguard the funds and securities which are in the custody or control of a clearing agency or for which it is responsible. Additionally, Section 17A(a)(1) of the Act[6] directs the Commission to encourage the reduction of unnecessary costs by persons facilitating transactions on behalf of investors.

These new procedures provide for the implementation of a destruction policy that will permit Philadep to eliminate certain expired and worthless securities certificates rather than maintain them in its vault. As a result, Philadep expects to reduce its administrative expenses that are associated with storing such certificates. The proposal also contains numerous safeguards concerning the selection of the securities certificates to be destroyed, and the Commission believes that the safeguards in question are reasonably designed to reduce the risk that Philadep will select for destruction certificates for which the warrants or rights have not expired.[7]

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly those of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the above-mentioned proposed rule change (File No. SR–Philadep–94–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5464 Filed 3–6–95; 8:45 am]

BILLING CODE 8010–01–M

[r., Senior Counsel, Division of Market Regulation, Commission (February 27, 1995).

[4] 15 U.S.C. 78q–1 (1988)

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988)

[6] 15 U.S.C. 78q–1(a)(1) (1988)

[7] The Commission is expressing no opinion here on the means that Philadep will use for the actual physical destruction of any certificate or on the related standards that may apply. These are separate matters and are not part of this rule proposal.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20930; File No. 812–9410]

Jackson National Life Insurance Company of Michigan, et al.

February 28, 1995.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Jackson National Life Insurance Company of Michigan ("Company"), Jackson Michigan Separate Account–I ("Separate Account") and Jackson Financial Services, Inc. ("Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account and other separate accounts established by the Company in the future in connection with the issuance and sale of certain flexible premium variable annuity contracts ("Contracts") and any contracts that are similar in all material respects to the Contracts ("Other Contracts").

FILING DATE: The application was filed on December 30, 1994. An amended application was filed on February 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and servings Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Mark J. Mackey, Esq., Routier, Mackey and Johnson, P.C., 1700 K Street, NW., Suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized under the laws of the State of Michigan in September 1992. The Company is a wholly-owned subsidiary of Jackson National Life Insurance Company and an indirect wholly-owned subsidiary of Prudential Corporation plc, London, England. The Company is currently admitted to do business in Michigan.

2. The Separate Account was established by the Company as a separate account under the laws of Michigan on June 14, 1993 as a funding medium for variable annuity contracts. The Separate Account meets the definition of a "separate account" under the federal securities laws and is registered under the 1940 Act as a unit investment trust. The application states that the Company will establish for each investment option offered under the Contracts a Separate Account subaccount ("Portfolio") which will invest solely in a specific corresponding series of the JNL Series Trust or of some other designated investment company (the "Funds"). JNL Series Trust is registered as an open-end management investment company under the 1940 Act.

3. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., will serve as the distributor and principal underwriter for the Contracts.

4. The Contracts are flexible premium individual deferred variable annuity contracts offered in connection with retirement plans that may qualify for favorable federal income tax treatment ("Qualified Contracts") or on a non-tax qualified basis ("Non-Qualified Contracts"). Interests in the Contracts are registered under the Securities Act of 1933. The Contracts provide for, among other things: (a) Certain minimum initial and subsequent premium payments; (b) several annuity payment options beginning on the annuity date; and (c) the payment of a death benefit where the annuitant dies during the accumulation phase, which is equal to the greater of the contract value or premium payments (net of withdrawals and premium taxes). Where permitted by state law, the Contract will also provide an enhanced death benefit determined by (1) recomputing the standard death benefit by accumulating the total dollar amount of premiums made prior to the death of the annuitant, minus the sum of the total amount of withdrawals and premium taxes incurred, annually at 5% (4% if the annuitant was age 70 or older on the issue date) to the date of death, and (2) paying the greater of the amount so determined and the contract value at the seventh contract year, plus any premiums made since that time and before the death of the annuitant, minus the total amount of partial withdrawals and premium taxes incurred since the seventh contract year, all accumulated annually at 5% (4% if the annuitant was age 70 or older on the issue date) to the date of death. The amount determined under (2) above will equal $0 if the annuitant dies prior to the seventh contract year.

5. Various fees and charges are deducted under the Contracts. An annual Contract Maintenance Charge of $35 will be deducted prior to the annuity date, and upon a full surrender on any date other than a contract anniversary, to reimburse the Company for contract administration expenses. A daily Administration Charge, equal to an effective annual rate of 0.15% of the net assets of each Portfolio in which the contract owner has invested, will be deducted prior to the annuity date. This charge is designed to reimburse the Company for administrative expenses related to the Separate Account and the issuance and maintenance of the Contract. Currently, the Company permits fifteen free transfers among the Portfolios per contract year; however, a $25 charge will be assessed on the sixteenth and each subsequent transfer within the contract year. The Company does not expect a profit from these charges. The Company represents that it will monitor its administrative expenses and the proceeds of these charges to ensure compliance with Rule 26a–1 under the 1940 Act.

6. The Company will pay applicable premium taxes when due and reserves the right to deduct the amount of the tax either from premiums as they are received or deduct the tax at a later date as permitted or required by applicable law.

7. No sales charge is deducted from premium payments. However, certain full or partial surrenders will be subject to a maximum 7% contingent deferred sales charge ("Withdrawal Charge"), which will be imposed on a declining basis during the first seven contract years after payment of the premium being withdrawn. The Withdrawal Charge will compensate the Company for expenses relating to the distribution and sale of the Contracts. For purposes of computing the Withdrawal Charge, withdrawals will be allocated first to investment income, and then to premiums on a first-in, first-out basis so that all withdrawals are allocated to premiums to which the lowest (if any) Withdrawal Charge applies. No Withdrawal Charge may be applied to that portion of the first withdrawal in the contract year equal to 10% of premiums that remain subject to the Withdrawal Charge, less earnings in the contract owner's account. The Company may also waive the Withdrawal Charge under other circumstances permitted under the 1940 Act.

To the extent that the Withdrawal Charge is insufficient to cover all sales and distribution expenses, the Company may use any of its corporate assets, including potential profit which may arise from the mortality and expense risk charge, to make up any difference.

8. Shares of the Fund are sold to the Separate Account at net asset value. The Fund pays its investment adviser a fee for managing its investments and business affairs. The Fund is responsible for all of its other expenses.

9. A daily charge equal to an effective annual rate of 1.25% of the value of the net assets in the Separate Account will be deducted to compensate the Company for bearing certain mortality and expense risks under the Contracts. Of that amount, approximately 1.02% is for mortality risks and approximately 0.23% is for expense risks.

10. The mortality risk arises from the Company's contractual obligations: (1) To make annuity payments (determined in accordance with the annuity tables and other provisions provided in the Contracts) regardless of how long any individual annuitant or all annuitants may live, (2) to waive the Withdrawal Charge in the event of the death of the annuitant, and (3) to provide both a standard and an enhanced death benefit prior to the annuity date. The portion of the total mortality risk charge attributable to the Company's assuming the first two of those three risks and providing a standard death benefit is 0.90%; the balance of 0.12% is assessed for providing the enhanced death benefit. Applicants represent that the mortality risk charge may not be increased under the Contract.

11. The expense risk assumed by the Company is the risk that the Company's actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts and the Separate Account, the Company will bear the loss.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicant request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the 1.25% charge from the assets of the Separate Account to compensate the Company for the assumption of mortality and expense risks. Applicants further request that such exemptive relief extend to contracts that are similar in all material respects to the Contracts which may be issued in the future by the Separate Account or any other separate account established by the Company. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. The Company represents that the 1.25% mortality and expense risk charge is reasonable in relation to the risks assumed by the Company under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon the Company's analysis of publicly available information about comparable industry products, taking into consideration such factors as current charge levels and benefits provided, the existence of expense level guarantees and guaranteed annuity rates. The Company represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and

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the methodology and results of, its comparative review.

4. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and contract owners. The Company represents that the basis for conclusion is set forth in memorandum which will be maintained at its home office and will be available to the Commission upon request.

5. Applicants assert that the terms of the future relief requested wit respect to any Other Contracts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if the Company were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair the Company's ability to effectively take advantage of business opportunities as they arise.

6. The Company also represents that the Separate Account or future separate accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the Company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5463 Filed 3–6–95; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who have attained the age of 17 years, who have not attained the age of 26 years and who have not completed his active duty obligation under the Military Selective Service Act.

Frequency: One-time.

Burden: The reporting burden is twelve minutes or less per individual.

SSS–350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: February 22, 1995.

Gil Coronado,

Director.

[FR Doc. 95–5435 Filed 3–6–95; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area; Alabama

Cullman and Marshall Counties and the contiguous Counties of Blount, Dekalb, Etowah, Jackson, Lawrence, Madison, Morgan, Walker and Winston in the State of Alabama constitute a disaster area as a result of damages caused by severe storms, flooding and tornadoes which occurred on February 15, 1995. Applications for loans for physical damage may be filed until the close of business on May 1, 1995 and for economic injury until the close of business on December 1, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7 125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276512 and for economic injury the number is 847600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 1, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–5549 Filed 3–6–95; 8:45 am]

BILLING CODE 8025–01–M

Declaration of Disaster Loan Area; North Carolina and Contiguous Counties in Tennessee

Watauga County and the contiguous counties of Ashe, Avery, Caldwell, and Wilkes in the State of North Carolina, and Carter and Johnson Counties in the State of Tennessee constitute an economic injury disaster area as a result of damages caused by severe storms and flooding which occurred on January 14 and 15, 1995. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 1, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: March 1, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–5550 Filed 3–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Department Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0072.

Form Number: CF 1302 and CF 1302A.

Type of Review: Extension.

Title: Cargo Declaration and Cargo Declaration (Outward with Commercial Forms).

Description: Customs Forms 1302 and 1302A are used by the master of a Vessel to list all inward cargo onboard and for the clearance of all cargo onboard with commercial forms.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 5,600.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 11,662 hours.

Clearance Officer: Laverne Williams (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 95–5522 Filed 3–6–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

March 1, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Department Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: New.

Form Number: PD F 5376 and PD F 5377.

Type of Review: New collection.

Title: 1. Transaction Request for U.S. Treasury Securities State and Local Series (5376).

2. Early Redemption Request for U.S. Treasury Securities State and Local Government Series (5377).

Description: These forms will provide a vehicle for State and Local Government entries to use for conducting accounts maintenance changes and early redemptions of their State and Local Series (SLGS) Securities.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 3,350.

Estimated Burden Hours Per Response:

Form and Time Per Response

PD F 5376—30 minutes

PD F 5377—30 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,675 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–5523 Filed 3–6–95; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

March 1, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0582.

Form Number: IRS Form 1139.

Type of Review: Revision.

Title: Corporation Application for Tentative Refund.

Description: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is reasonable.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—25 hr., 7 min.

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3 hr., 20 min.
Preparing the form—8 hr., 32 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 114,960 hours.

OMB Number: 1545–0757.

Regulation ID Number: LR–209–76 Final.

Type of Review: Extension.

Title: Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A; Procedure and Administration.

Description: Section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 34,600

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 8,650 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 95–5524 Filed 3–6–95; 8:45 am]

BILLING CODE: 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 44

Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 13, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 3, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5700 Filed 3–3–95; 3:43 pm]

BILLING CODE 6210–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 10:00 a.m., Friday, March 17, 1995.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes:
  December 16, 1994
III. Audit Committee Report:
  February 22, 1995, Meeting
  a. Receive FY 1994 Audit Report from Outside Auditors
  b. Selection of Outside Auditors
  c. Proposed Revisions to the Corporate Investment Policy
IV Budget Committee Report:
  February 23, 1995, Meeting
  a. Proposed FY 1995 Budget Revisions
V Treasurer's Report
VI. Executive Director's Quarterly Management Report
VII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 95–5649 Filed 3–3–95; 12:38 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 6, 13, 20, and 27, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 6

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301–415–7266)
3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting)
(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Sequoyah Fuels Corporation—Intervenors' Petition for Review of the Presiding Officer's Order LBP–93–25 (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of March 13—Tentative

Tuesday, March 14

10:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Wednesday, March 15

2:00 p.m.
Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
(Contact: Jesse Funches, 301–415–7322)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 20—Tentative

Wednesday, March 22

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: John Hickey, 301–415–7192)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
Briefing on Status of Reactor Regulatory Reform Initiatives (Public Meeting)
(Contact: Gene Imbro, 301–415–2969)

Wednesday, March 29

10:00 a.m.
Briefing by National Academy of Sciences on Status of Independent Review of Medical Use Program (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)
2:00 p.m.
Briefing on Lessons Learned from Enhanced Participatory Rulemakings (Public Meeting)
(Contact/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov

Dated: March 3, 1995.

William M. Hill, Jr.,

Office of the Secretary

[FR Doc. 95–5685 Filed 3–3–95; 3:10 pm]

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Corrections

Federal Register
Vol. 60, No. 44
Tuesday, March 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5-95]

Proposed Foreign-Trade Zone—Olympia/South Puget Sound Area, WA (Port of Olympia Customs Port of Entry Area); Application and Public Hearing

Correction

In notice document 95–4633 appearing on page 10352 in the issue of Friday, February 24, 1995, make the following corrections:

On page 10352,in the second column, in the fourth full paragraph, beginning in the seventh line, "[60 days from date of publication]" should read "April 25, 1995"; and in the last line, "[75 days from date of publication])." should read "[May 10, 1995])."

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

RIN 0648-AC63

Olympic Coast National Marine Sanctuary Regulations

Correction

In rule document 95–4025 beginning on page 9294 in the issue of Friday, February 17, 1995, make the following corrections:

Appendix A to Part 925 [Corrected]

On page 9294, in Appendix A to Part 925, in the table, in the third column, the first three digits of the Longitude for Point(s) 3, 4, 5 and 6 now reading "124" should read "125".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 940953-4347; I.D. 081594A]
RIN 0648-AE52

Snapper-Grouper Fishery Off the Southern Atlantic States

Correction

In rule document 94–31421 beginning on page 66270, in the issue of Friday, December 23, 1994, make the following correction:

§646.7 [Corrected]

On page 66274, in the third column, in §646.7 (pp) (i), (ii), (iii) were designated incorrectly and the paragraphs should read "(1), (2), (3)".

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Correction

In notice document 95–4136 beginning on page 9688 in the issue of Tuesday, February 21, 1995, make the following corrections:

1. On page 9688:

a. In the first column, under *1.*, the *OMB Docket number:* should read "7100-0055".

b. In the second column, under *2.*, the *OMB Docket number:* should read "7100-0224".

c. In the third column:

(i) Under *3.*, the *Agency form number:* should read "FR MSD-4, MSD-5"; the *OMB Docket number:* should read "7100-0100, 7100-0101"; and in the *Abstract*, in the last line, insert "4" after "FR MSD-"

(ii) Under *4.*, the *Agency form number:* should read "FR TA-1", and the *OMB Docket number:* should read "7100-0099".

2. On page 9689, in the first column, under *1.*, the *OMB Docket number* should read "7100-0137".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7100

[WY-930-1430-01; WYW-83357]

Partial Revocation of Secretarial Orders of October 20, 1917, May 6, 1918, May 16, 1918, August 28, 1934, and July 12, 1939; Wyoming

Correction

In rule document 94–27690 beginning on page 55820, in the issue of Wednesday, November 9, 1994, make the following correction:

On page 55821, in the first column, in the land description, in the first line, "Sec. 31, lots 1 to 4, inclusive, E½, and E½W¼." should read "Sec. 31, lots 1 to 4, inclusive, E½, and E½W½.".

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Examination of Working Places

Correction

In notice document 95–4341 beginning on page 9987 in the issue of Wednesday, February 22, 1995, in the second column, under **DATES**, in the second line, "April 1, 1995" should read "April 10, 1995".

BILLING CODE 1505–01–D

federal register

Tuesday
March 7, 1995

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888
Section 8 Housing Assistance Payment Programs: Contract Rent Annual Adjustment Factors; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N–95–3875; FR–3807–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revised contract rent annual adjustment factors.

SUMMARY: The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This notice announces revised Annual Adjustment Factors (AAFs), which are based on a formula using data on residential rent and utilities cost changes from the Bureau of Labor Statistics Consumer Price Index (CPI) and the HUD Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477 (TDD) or (202) 708–0850 (voice)], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Barbara Hunter, Program Planning Division, Office of Multifamily Housing Management [(202) 708–3944 (TDD) or (202) 708–4594 (voice)], for questions relating to all other Section 8 programs; for technical information regarding the development of the schedules for specific areas or the method used for calculating the AAFs, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0577 (TDD) or (202) 708–0770 (voice)]. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (The above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) provides that, "For any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0". Schedule C, tables 1 and 2 contain separate AAFs for a unit occupied by the same family at the last annual adjustment (Table 2), and for a unit occupied by a new family since the last annual adjustment since (Table 1).

The revised AAFs are applicable for adjusting Contract Rents for contract anniversaries falling on or after November 8, 1994, the anniversary date for publication of a new annual adjustment factor.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this Notice are used to adjust Contract Rents for Section 8 Housing Assistance Payments Program units. However, the specific application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations or requirements.

AAFs are not used for the Section 8 Voucher program. Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR part 886, subpart A, and for projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19(e).

Under the Section 8 Moderate Rehabilitation program, the public housing agency (PHA) applies the AAF to the base rent, not the Contract Rent.

AAF Tables

The AAFs for FY 1995 are contained in Schedule C, tables 1 and 2 of this notice.

AAF Areas

With several exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because they closely correspond to housing market area definitions.

The exceptions are for six large metropolitan areas, where HUD considers the area covered by the OMB definitions to be larger than appropriate for use as a housing market area definition. HUD therefore modified the definitions for these areas by deleting some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan Area Deleted Counties

Atlanta, GA—Carroll, Pickens, and Walton Counties.
Chicago, IL—DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH-KY-IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX—Henderson County.
New Orleans, LA—St. James Parish.
Washington, DC—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk denotes that there is a difference between the OMB metropolitan area and the HUD AAF area definitions for these areas.

Based on an evaluation of information submitted by local officials, HUD has determined that Spalding County is part of the Atlanta housing market area. Program units in Spalding County, therefore, will use the Atlanta, GA AAFs.

Each AAF applies to a specified geographical area and to units of all bedroom sizes. AAFs are provided for the metropolitan parts (exclusive of CPI areas) and the nonmetropolitan parts of the ten HUD regions, which, under HUD's reorganization plan have been renamed and are referred to as follows:

Region I (Boston) is now New England
Region II (New York) is now New York/New Jersey
Region III (Philadelphia) is now the Mid-Atlantic
Region IV (Atlanta) is now the Southeast
Region V (Chicago) is now the Midwest
Region VI (Fort Worth) is now the Southwest
Region VII (Kansas City) is now the Great Plains
Region VIII (Denver) is now Rocky Mountain
Region IX (San Francisco) is now Pacific/Hawaii
Region X (Seattle) is now Northwest/Alaska

AAFs, developed from local CPI surveys, also are provided for 103 separate metropolitan AAF areas.

Program participants should refer to the area definitions section at the end of Schedule C to make certain that they are using the correct AAFs. Units located in metropolitan areas with a local CPI survey must use the corresponding AAFs listed separately for those metropolitan areas. Units that are located in areas without a local CPI survey must use the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All CPI defined areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the CPI defined areas (in those states that have such areas) are the metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the table as STATE: Hawaii, which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey. All other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs. Reflecting a decrease in the local CPI survey, the AAFs for the San Diego, CA MSA are shown as 1.00.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

The AAFs in this publication identified as "Highest Cost Utility Excluded" are to be used for updating manufactured home space contract rents. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

Retroactivity

Retroactivity is permitted to avoid any detriment to owners because of HUD's delay in the annual publication of the factors, as required by 24 CFR 888.202. Owners of Section 8 units (other than units assisted under the Section 8 Certificate, Moderate Rehabilitation, regular and SRO, Project-based Assistance Certificates, and FmHA programs) who have HAP Contracts with anniversary dates falling on November 8, 1994 through March 7, 1995 may request that the AAFs be applied retroactively to the anniversary date of their HAP Contracts.

The AAFs are not applied retroactively for units assisted under the Section 8 Certificate, Moderate Rehabilitation (both regular and SRO), Project-based Assistance Certificates, and the FmHA programs. The annual adjustments for these units are determined as of any anniversary date using the AAFs most recently published in the **Federal Register** (see 24 CFR 882.108(a)(1)(i) and 884.109(b)(2)).

RDD Factors

HUD uses the RDD regional surveys for calculating AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

AAF Formula

The formula for calculating the AAFs for each area is as follows:

For areas with CPI surveys: (1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data; (2) the shelter rent factor was calculated by eliminating the effect of heating costs that are included in the rent of some of the units included in the CPI surveys; and (3) the gross rent factors were calculated by weighing the rent and utility components with the 1990 Census corresponding components.

For areas using RDD surveys: (1) The change in gross rent was calculated using the most recent RDD survey median gross rent for the respective metropolitan or nonmetropolitan parts of the HUD region; and (2) the change in shelter rent was calculated by subtracting median value of utilities costs from the median gross rent. The median cost of utilities was determined from the units in the RDD sample reporting that all utilities were paid by the tenant.

Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(l).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following tables:

Dated: February 7, 1995.

Henry Cisneros,

Secretary

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SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS — PREPARED ON 013095

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
New England Metropolitan	1 015	1 015	New England Nonmetropolitan	1.008	1.005
New York/New Jersey Metropolitan	1 013	1 006	New York/New Jersey Nonmetropolitan	1.024	1.024
Mid-Atlantic Metropolitan	1 018	1.015	Mid-Atlantic Nonmetropolitan	1.020	1.012
Southeast Metropolitan	1.016	1 013	Southeast Nonmetropolitan	1.014	1.000
Midwest Metropolitan	1.029	1.030	Midwest Nonmetropolitan	1.014	1.003
Southwest Metropolitan	1.038	1 039	Southwest Nonmetropolitan	1.014	1.002
Great Plains Metropolitan	1.030	1.028	Great Plains Nonmetropolitan	1.022	1.022
Rocky Mountain Metropolitan	1.062	1.067	Rocky Mountain Nonmetropolitan	1.014	1.013
Pacific/Hawaii Metropolitan	1.018	1.016	Pacific/Hawaii Nonmetropolitan	1.014	1.011
Northwest/Alaska Metropolitan	1 038	1.040	Northwest/Alaska Nonmetropolitan	1.023	1.022
STATE Hawaii	1 037	1.032	PMSA Akron, OH	1.028	1.025
MSA Anchorage, AK	1.047	1.046	PMSA Ann Arbor, MI	1.022	1.025
*Atlanta, GA	1 029	1.025	PMSA Atlantic-Cape May, NJ	1.013	1.016
PMSA Baltimore, MD	1 024	1 024	PMSA Bergen-Passaic, NJ	1.027	1.025
*COUNTY Berkeley, WV	1 011	1 001	PMSA Boston, MA-NH	1.010	1.004
PMSA Boulder-Longmont, CO	1 068	1.074	PMSA Brazoria, TX	1.031	1.032
PMSA Bremerton, WA	1 024	1.020	PMSA Bridgeport, CT	1.027	1.025
PMSA Brockton, MA	1 010	1 004	*COUNTY Brown, OH	1.026	1.011
PMSA Buffalo-Niagara Falls, NY	1 037	1 028	*COUNTY Carroll, GA	1.021	1.025
*Chicago, IL	1 025	1 021	*Cincinnati, OH-KY-IN	1 021	1.013
*COUNTY Clarke, VA	1 010	1 002	PMSA Cleveland-Lorain-Elyria, OH	1.028	1.025

SCHEDULE C - TABLE 1 CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS — PREPARED ON 013095

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
*COUNTY Culpeper, VA	1 010	1 002	*Dallas, TX	1 023	1 022
PMSA Danbury, CT	1 027	1 025	*COUNTY De Kalb, IL	1 026	1 021
PMSA Denver, CO	1 066	1 074	PMSA Detroit, MI	1 021	1 026
PMSA Dutchess County, NY	1.027	1.025	PMSA Fitchburg-Leominster, MA	1 010	1.004
PMSA Flint, MI	1.021	1.026	PMSA Fort Lauderdale, FL	1.039	1.042
PMSA Fort Worth-Arlington, TX	1.023	1.022	*COUNTY Gallatin, KY	1.027	1.010
PMSA Galveston-Texas City, TX	1.031	1.032	PMSA Gary, IN	1.027	1.019
*COUNTY Grant, KY	1.026	1.011	PMSA Greeley, CO	1.067	1.074
*COUNTY Grundy, IL	1.027	1.020	PMSA Hagerstown, MD	1.010	1.002
PMSA Hamilton-Middletown, OH	1.022	1.013	*COUNTY Henderson, TX	1.024	1.022
PMSA Houston, TX	1.031	1.032	*COUNTY Jefferson, WV	1.011	1.001
PMSA Jersey City, NJ	1.027	1.025	PMSA Kankakee, IL	1.028	1.019
MSA Kansas City, MO-KS	1 024	1.019	*COUNTY Kendall, Il	1.026	1.021
PMSA Kenosha, WI	1.026	1.020	*COUNTY King George, VA	1.011	1.001
PMSA Lawrence, MA-NH	1.011	1.004	PMSA Los Angeles-Long Beach, CA	1.004	1.002
PMSA Lowell, MA-NH	1.010	1.004	PMSA Manchester, NH	1.010	1.004
PMSA Miami, FL	1.039	1.042	PMSA Middlesex-Somerset-Hunterdon, NJ	1.027	1.025
PMSA Milwaukee-Waukesha, WI	1.028	1.025	MSA Minneapolis-St. Paul, MN-WI	1.018	1.013
PMSA Monmouth-Ocean, NJ	1 027	1 025	PMSA Nashua, NH	1 010	1.004
PMSA Nassau-Suffolk, NY	1 027	1 025	PMSA New Bedford, MA	1 010	1.004
PMSA New Haven-Meriden, CT	1 027	1 025	*New Orleans, LA	1 040	1.035

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SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
PMSA New York, NY	1 026	1 026	*COUNTY Westchester, NY	1.026	1.026
PMSA Newark, NJ	1 027	1 025	PMSA Newburgh, NY-PA	1.027	1.025
PMSA Oakland, CA	1 026	1 027	*COUNTY Ohio, IN	1.025	1.011
PMSA Olympia, WA	1 024	1 020	PMSA Orange County, CA	1.003	1.002
*COUNTY Pendleton, KY	1.025	1 011	PMSA Philadelphia, PA-NJ	1.013	1.017
*COUNTY Pickens, GA	1.032	1.025	PMSA Pittsburgh, PA	1.024	1.028
PMSA Portland-Vancouver, OR-WA	1.036	1 036	PMSA Portsmouth-Rochester, NH-ME	1.010	1.004
PMSA Racine, WI	1.028	1 025	PMSA Riverside-San Bernardino, CA	1.005	1.002
*COUNTY St James Parish, LA	1.042	1.035	MSA St Louis, MO-IL	1.017	1.016
PMSA Salem, OR	1.037	1 036	MSA San Diego, CA	1.000	1.000
PMSA San Francisco, CA	1.026	1 027	PMSA San Jose, CA	1.026	1.027
PMSA Santa Cruz-Watsonville, CA	1 026	1 027	PMSA Santa Rosa, CA	1.026	1.027
PMSA Seattle-Bellevue-Everett, WA	1.029	1 021	PMSA Stamford-Norwalk, CT	1.027	1.025
PMSA Tacoma, WA	1.023	1.021	MSA Tampa-St Petersburg-Clearwater, FL	1.029	1.028
PMSA Trenton, NJ	1.027	1 025	PMSA Vallejo-Fairfield-Napa, CA	1.026	1.027
PMSA Ventura, CA	1 004	1.002	PMSA Vineland-Millville-Bridgeton, NJ	1.013	1.017
*COUNTY Walton, GA	1 031	1 025	*COUNTY Warren, VA	1.010	1.002
*Washington, DC-MD-VA	1 008	1 004	PMSA Waterbury, CT	1 027	1 025
PMSA Wilmington-Newark, DE-MD	1 014	1 016	PMSA Worcester, MA-CT	1 010	1 004

SCHEDULE C - TABLE 2 CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
New England Metropolitan	1 005	1 005	New England Nonmetropolitan	1 000	1 000
New York/New Jersey Metropolitan	1 003	1 000	New York/New Jersey Nonmetropolitan	1 014	1 014
Mid-Atlantic Metropolitan	1 008	1 005	Mid-Atlantic Nonmetropolitan	1 010	1 002
Southeast Metropolitan	1 006	1 003	Southeast Nonmetropolitan	1 004	1.000
Midwest Metropolitan	1 019	1 020	Midwest Nonmetropolitan	1 004	1.000
Southwest Metropolitan	1 028	1 029	Southwest Nonmetropolitan	1 004	1.000
Great Plains Metropolitan	1 020	1 018	Great Plains Nonmetropolitan	1 012	1.012
Rocky Mountain Metropolitan	1 052	1 057	Rocky Mountain Nonmetropolitan	1 004	1.003
Pacific/Hawaii Metropolitan	1 008	1 006	Pacific/Hawaii Nonmetropolitan	1.004	1.001
Northwest/Alaska Metropolitan	1 028	1 030	Northwest/Alaska Nonmetropolitan	1 013	1.012
STATE Hawaii	1 027	1 022	PMSA Akron, OH	1 018	1 015
MSA Anchorage, AK	1.037	1 036	PMSA Ann Arbor, MI	1 012	1.015
*Atlanta, GA	1.019	1 015	PMSA Atlantic-Cape May, NJ	1 003	1 006
PMSA Baltimore, MD	1.014	1 014	PMSA Bergen-Passaic, NJ	1 017	1 015
*COUNTY Berkeley, WV	1 001	1 000	PMSA Boston, MA-NH	1 000	1 000
PMSA Boulder-Longmont, CO	1 058	1 064	PMSA Brazoria, TX	1 021	1.022
PMSA Bremerton, WA	1 014	1 010	PMSA Bridgeport, CT	1 017	1.015
PMSA Brockton, MA	1 000	1 000	*COUNTY Brown, OH	1 016	1.001
PMSA Buffalo-Niagara Falls, NY	1 027	1 018	*COUNTY Carroll, GA	1 021	1.018
*Chicago, IL	1 015	1 011	*Cincinnati, OH-KY-IN	1 011	1 003
*COUNTY Clarke, VA	1 000	1 000	PMSA Cleveland-Lorain-Elyria, OH	1 018	1 015

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SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.000	1.000	*Dallas, TX	1.013	1.012
PMSA Danbury, CT	1.017	1.015	*COUNTY De Kalb, IL	1.016	1.011
PMSA Denver, CO	1.056	1.064	PMSA Detroit, MI	1.011	1.016
PMSA Dutchess County, NY	1.017	1.015	PMSA Fitchburg-Leominster, MA	1.000	1.000
PMSA Flint, MI	1.011	1.016	PMSA Fort Lauderdale, FL	1.029	1.032
PMSA Fort Worth-Arlington, TX	1.013	1.012	*COUNTY Gallatin, KY	1.017	1.000
PMSA Galveston-Texas City, TX	1.021	1.022	PMSA Gary, IN	1.017	1.009
*COUNTY Grant, KY	1.016	1.001	PMSA Greeley, CO	1.057	1.064
*COUNTY Grundy, IL	1.017	1.010	PMSA Hagerstown, MD	1.000	1.000
PMSA Hamilton-Middletown, OH	1.012	1.003	*COUNTY Henderson, TX	1.014	1.012
PMSA Houston, TX	1.021	1.022	*COUNTY Jefferson, WV	1.001	1.000
PMSA Jersey City, NJ	1.017	1.015	PMSA Kankakee, IL	1.018	1.009
MSA Kansas City, MO-KS	1.014	1.009	*COUNTY Kendall, IL	1.016	1.011
PMSA Kenosha, WI	1.016	1.010	*COUNTY King George, VA	1.001	1.000
PMSA Lawrence, MA-NH	1.001	1.000	PMSA Los Angeles-Long Beach, CA	1.000	1.000
PMSA Lowell, MA-NH	1.000	1.000	PMSA Manchester, NH	1.000	1.000
PMSA Miami, FL	1.029	1.032	PMSA Middlesex-Somerset-Hunterdon, NJ	1.017	1.015
PMSA Milwaukee-Waukesha, WI	1.018	1.015	MSA Minneapolis-St. Paul, MN-WI	1.008	1.003
PMSA Monmouth-Ocean, NJ	1.017	1.015	PMSA Nashua, NH	1.000	1.000
PMSA Nassau-Suffolk, NY	1.017	1.015	PMSA New Bedford, MA	1.000	1.000
PMSA New Haven-Meriden, CT	1.017	1.015	*New Orleans, LA	1.030	1.025

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 013095

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.016	1.016	*COUNTY Westchester, NY	1.016	1.016
PMSA Newark, NJ	1.017	1.015	PMSA Newburgh, NY-PA	1.017	1.015
PMSA Oakland, CA	1.016	1.017	*COUNTY Ohio, IN	1.015	1.001
PMSA Olympia, WA	1.014	1.010	PMSA Orange County, CA	1.000	1.000
*COUNTY Pendleton, KY	1.015	1.001	PMSA Philadelphia, PA-NJ	1.003	1.007
*COUNTY Pickens, GA	1.022	1.015	PMSA Pittsburgh, PA	1.014	1.018
PMSA Portland-Vancouver, OR-WA	1.026	1.026	PMSA Portsmouth-Rochester, NH-ME	1.000	1.000
PMSA Racine, WI	1.018	1.015	PMSA Riverside-San Bernardino, CA	1.000	1.000
*COUNTY St. James Parish, LA	1.032	1.025	MSA St. Louis, MO-IL	1.007	1.006
PMSA Salem, OR	1.027	1.026	MSA San Diego, CA	1.000	1.000
PMSA San Francisco, CA	1.016	1.017	PMSA San Jose, CA	1.016	1.017
PMSA Santa Cruz-Watsonville, CA	1.016	1.017	PMSA Santa Rosa, CA	1.016	1.017
PMSA Seattle-Bellevue-Everett, WA	1.013	1.011	PMSA Stamford-Norwalk, CT	1.017	1.015
PMSA Tacoma, WA	1.013	1.011	MSA Tampa-St. Petersburg-Clearwater, FL	1.019	1.018
PMSA Trenton, NJ	1.017	1.015	PMSA Vallejo-Fairfield-Napa, CA	1.016	1.017
PMSA Ventura, CA	1.000	1.000	PMSA Vineland-Millville-Bridgeton, NJ	1.003	1.007
*COUNTY Walton, GA	1.021	1.015	*COUNTY Warren, VA	1.000	1.000
*Washington, DC-MD-VA	1.000	1.000	PMSA Waterbury, CT	1.017	1.015
PMSA Wilmington-Newark, DE-MD	1.004	1.006	PMSA Worcester, MA-CT	1.000	1.000

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SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
MSA Anchorage, AK: Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr.Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
PMSA Los Angeles-Long Beach, CA: Los Angeles
PMSA Oakland, CA: Alameda, Contra Costa
PMSA Orange County, CA: Orange
PMSA Riverside-San Bernardino, CA: Riverside, San Bernardino
MSA San Diego, CA: San Diego
PMSA San Francisco, CA: Marin, San Francisco, San Mateo
PMSA San Jose, CA: Santa Clara
PMSA Santa Cruz-Watsonville, CA: Santa Cruz
PMSA Santa Rosa, CA: Sonoma
PMSA Vallejo-Fairfield-Napa, CA: Napa, Solano
PMSA Ventura, CA: Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder
PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

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CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Bridgeport, CT
Fairfield County part: Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
New Haven County part: Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town

PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

CONNECTICUT (NEW ENGLAND) cont.

Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town Salem town, Sprague town, Stonington town, Waterford town
New London County part: Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Chaplin town, Windham town, Canterbury town, Plainfield town

NONMETROPOLITAN COUNTIES
Hartford County part: Hartland town
Litchfield County part: Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part: Chester town, Deep River town, Essex town, Westbrook town
New London County part: Lyme town, Voluntown town
Tolland County part: Union town
Windham County part: Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Wilmington-Newark, DE-MD: New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

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FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES
PMSA Fort Lauderdale, FL: Broward
PMSA Miami, FL: Dade
MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor
Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES
*Atlanta, GA: Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding

*COUNTY Carroll County, GA
*COUNTY Pickens County, GA
*COUNTY Walton County, GA

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early
Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

GEORGIA (SOUTHEAST) cont.

Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
STATE Hawaii: Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES
*Chicago, IL: Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL: Dekalb
*COUNTY Grundy, IL: Grundy
PMSA Kankakee, IL: Kankakee
*COUNTY Kendall, Il: Kendall
MSA St. Louis, MO-IL: Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson

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ILLINOIS (MIDWEST) cont.

Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White
Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Dearborn
PMSA Gary, IN: Lake, Porter
*COUNTY Ohio, IN: Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida
Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa
Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee
Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton
*COUNTY Gallatin, KY: Gallatin
*COUNTY Grant, KY: Grant
*COUNTY Pendleton, KY: Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue
Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg
Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

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LOUISIANA (SOUTHWEST)

CPI AREAS: COUNTIES
*New Orleans, LA: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
*COUNTY St. James Parish, LA: St. James

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche Livingston, Ouachita, Rapides, St. Landry, St. Martin, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon Washington, West Carroll, West Feliciana, Winn

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Portsmouth-Rochester, NH-ME
York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES
Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part: Winterport town
York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND) cont.

NONMETROPOLITAN COUNTIES
Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington
Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation Whitney unorg., Winn town, Woodville town
Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

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MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD: Washington
*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES
Allegany

NONMETROPOLITAN COUNTIES
Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Boston, MA-NH
Bristol County part: Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part: Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part: Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part: Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

Plymouth County part: Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part: Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part: Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA
Bristol County part: Easton town, Raynham town
Norfolk County part: Avon town
Plymouth County part: Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA
Middlesex County part: Ashby town
Worcester County part: Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH
Essex County part: Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH
Middlesex County part: Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA
Bristol County part: Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part: Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT
Hampden County part: Holland town
Worcester County part: Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westboroughtown, West Boylston town, West Brookfield town, Worcester city

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MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES
Barnstable County part: Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part: Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part: Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Franklin County part: Sunderland town
Hampden County part: Agawam town, Chicopee city, East Longmeadow to, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part: Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES
Dukes
Nantucket
Barnstable County part: Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part: Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part: Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part: Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part: Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part: Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Ann Arbor, MI: Lenawee, Livingston, Washtenaw
PMSA Detroit, MI: Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI: Genesee

METROPOLITAN COUNTIES
Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES
Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES
MSA Minneapolis-St. Paul, MN-WI: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES
Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

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MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Hancock, Harrison, Hinds, Jackson, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Yellowstone

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

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NEW HAMPSHIRE (NEW ENGLAND) cont.

PMSA Lowell, MA-NH
Hillsborough county part: Pelham town
PMSA Manchester, NH
Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town
PMSA Nashua, NH
Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer
PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero
Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES
PMSA Buffalo-Niagara Falls, NY: Erie, Niagara
PMSA Dutchess County, NY : Dutchess
PMSA Nassau-Suffolk, NY: Nassau, Suffolk
PMSA New York, NY: Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY: Westchester
PMSA Newburgh, NY-PA: Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario
Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

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NEW YORK (NEW YORK/NEW JERSEY)

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES
PMSA Akron, OH: Portage, Summit
*COUNTY Brown, OH: Brown
*Cincinnati, OH-KY-IN: Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH: Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR: Marion, Polk

METROPOLITAN COUNTIES
Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

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PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Newburgh, NY-PA: Pike
PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES
Bristol County part: Barrington town, Bristol town, Warren town
Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Newport County part: Jamestown town, Little Compton town, Tiverton town
Washington County part: Charlestown town, Exeter town, Narragansett town, North Kingstown to, Richmond town, South Kingstown town
Washington County part: Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES
Newport County part: Middletown town, Newport city, Portsmouth town
Washington County part: New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

SOUTH CAROLINA (SOUTHEAST) cont.

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

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TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES
PMSA Brazoria, TX: Brazoria
*Dallas, TX: Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX: Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX: Galveston
*COUNTY Henderson, TX: Henderson
PMSA Houston, TX: Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES
Chittenden County part: Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part: Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part: Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor
Chittenden County part: Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part: Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part: Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Clarke, VA: Clarke
*COUNTY Culpeper, VA: Culpeper
*COUNTY King George, VA: King George
*COUNTY Warren, VA: Warren

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SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES
*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Bremerton, WA: Kitsap
PMSA Olympia, WA: Thurston
PMSA Portland-Vancouver, OR-WA: Clark
PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish
PMSA Tacoma, WA: Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Berkeley, WV: Berkeley
*COUNTY Jefferson, WV: Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Watzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Kenosha, WI: Kenosha
PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix
PMSA Racine, WI: Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

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SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
Pacific Islands

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culebra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 95–5457 Filed 3–6–95; 8:45 am]
BILLING CODE 4210–32–C

federal register

Tuesday
March 7, 1995

Part III

Environmental Protection Agency

40 CFR Parts 281 and 282
Hazardous Waste: Iowa State Underground Storage Tank Programs; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5166–9]

Iowa; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Iowa's application for final approval.

SUMMARY: The State of Iowa has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Iowa's application and has reached a final determination that Iowa's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Iowa to operate its program.

EFFECTIVE DATE: Final approval for Iowa shall be effective at 1:00 pm eastern time on May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the state in lieu of the Federal UST program. To qualify for final authorization, a state's program must be: (1) "No less stringent" than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of Section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and (2) provide for adequate enforcement (Section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

B. State of Iowa

On March 17, 1994, Iowa submitted an application for "complete" program approval. On April 25, 1994, Iowa submitted H.F. 2118 which amended Iowa Code § 455B.471(6) for inclusion in the application. This bill amended the definition of an "owner" of an underground storage tank and provided the conditions under which a "lender" might be exempted from that definition. Also, on June 7, 1994 Iowa modified its application so that it is not seeking authorization over Indian lands. Together, these comprise the Iowa application. The Iowa program provides for regulation of both petroleum and hazardous substance tanks. Iowa also regulates farm/residential tanks of 1,100 gallons or less capacity. However, this part of the Iowa program is broader in scope than the Federal program and is not included in this final approval. On August 9, 1994, EPA published a tentative decision announcing its intent to grant Iowa final approval. Further background on the tentative decision to grant approval appears at 59 FR 40507, August 9, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA did receive significant comments on the application and a public hearing was held on December 1, 1994 in Des Moines, Iowa.

C. Public Comments and Hearing

The following summarizes the comments and responds to the significant issues raised by those comments.

Twenty-three written comments were received during the public comment period, which ran from August 9, 1994, when the tentative program approval notice was published, until December 9, 1994. Nine commenters spoke at the public hearing. Commenters included owners of USTs, an association of petroleum marketers, an association of trucking companies and service providers to trucking companies, local government officials and the Iowa Department of Natural Resources (IDNR). The Iowa Comprehensive Petroleum Underground Storage Tank Fund provided a written comment following the public hearing.

The majority of comments concerned four major issues: (1) Whether the IDNR adequately enforces the financial responsibility requirements applicable to UST owners, (2) whether the IDNR adequately enforces the leak detection requirements applicable to UST owners, (3) whether the IDNR wastes resources for site assessments instead of actual cleanups, and (4) whether the IDNR should use risk-based cleanup standards.

Other commenters stated that owners who timely comply with the UST requirements are competitively disadvantaged when the IDNR does not enforce the rules for everyone, or when compliance deadlines are moved. Others criticized the IDNR for specific cleanup requirements imposed on sites which they owned. The IDNR was criticized for the high costs of site assessments and the costs of complying with the IDNR requirements for long-term monitoring after contaminated soils were removed. One commenter cited an example of contamination that recurred after a cleanup due to fluctuating water tables. Others cited diminished property values and lost economic development due to contamination.

While some of the commenters requested that the EPA deny program approval, the petroleum marketers association echoed the four major comments above but specifically requested approval of the Iowa program. However, the marketers association did request that the EPA continue providing the IDNR technical and administrative assistance to improve enforcement of UST regulations and the adoption of risk-based cleanup standards. The trucking association criticized the IDNR for wasting resources without doing enough cleanups and for not using risk-based cleanup standards, but did not request denial of program approval.

At the public hearing and in a written comment, the IDNR specifically addressed the four major issues identified above. However, not all of those four issues are within the scope of the EPA's review for state program approval. For the EPA the sole concerns are whether the state has the legal authorities, the program capability to meet the objectives of the federal UST requirements and provides adequate enforcement of compliance. Thus, even though the EPA encourages the effective use of state cleanup funds, such funds are not required elements for state program approval and Iowa's administration of its state cleanup fund was not reviewed by the EPA for program approval. Similarly, while the EPA encourages states to use risk-based decision-making in the corrective action process, there is no federal requirement for state program approval for any particular methodology. Nonetheless, in order to fully address the public's concerns the EPA has included in this responsiveness summary the IDNR's response to each of the major issues.

With respect to enforcement of the leak detection and financial responsibility requirements, the IDNR noted that the state's UST requirements follow the federal requirements. The federal UST regulation does not require compliance reporting by the owner to the regulating agency, but only that leak detection and financial responsibility records be kept on-site or reasonably accessible. Therefore, for the IDNR the only clear mechanism to enforce those requirements is on-site inspections of each facility. The IDNR has established an abbreviated enforcement procedure to deal with those specific violations, so that a large number of enforcement actions can be undertaken in a relatively short period of time. With its available resources, the IDNR performs over 400 on-site inspections each year.

In response to the comments alleging waste of cleanup resources, the IDNR attributed many of the public concerns to difficulties the agency has had in identifying the soil and groundwater contamination, and the resulting failure of nearly every remediation system that was installed. As a result, the IDNR is now requiring more detailed assessments of contaminated sites to determine the risks and necessary actions, and to provide assurance that the remediation will be successful.

Concerning risk assessment, the IDNR commented that since 1992 it has been applying a risk-based assessment to set the appropriate standards to protect human health and the environment, and was one of the first states in the nation to do so. Since then, 43 percent of assessed sites have been required to perform some form of remediation, and 57 percent have been allowed to either do nothing or to monitor only. There has been a continuous effort to improve on and reduce the amount of remediation required.

In response to the above comments, the EPA notes that none of the comments identified any problems with the scope of the Iowa UST program or whether the Iowa regulations are less stringent than the federal requirements. Although some commenters identified problems with the adequacy of enforcement of the leak detection and financial responsibility requirements, the EPA is satisfied that the IDNR is using its available resources to adequately enforce these requirements and will continue taking steps to achieve universal compliance at UST facilities in Iowa.

Additionally, the EPA considers the IDNR's efforts to achieve required cleanups to be adequate for program approval, but acknowledges the technical and financial difficulties in achieving cleanups. The IDNR is making progress in improving remediation efficiency through more detailed site assessments and the use of risk based cleanup standards.

Also, the EPA acknowledges that owners of USTs face sometimes enormous financial challenges in complying with the technical operating requirements and in performing required cleanups of contaminated sites. However, those requirements would be the same whether or not EPA approves the Iowa UST program. Further, upon approval the Iowa UST program would operate in lieu of the federal program and owners and operators would look only to the Iowa set of requirements to determine their compliance.

Finally, in response to the suggestion that the EPA should provide technical and administrative assistance to the IDNR, the EPA notes that after program approval the EPA will continue to provide the IDNR such assistance. Also, the EPA/State Memorandum of Agreement that is part of the program approval application provides for continued information exchanges between the EPA and the IDNR to monitor and improve site cleanups and enforcement activities.

D. Decision

I conclude that the State of Iowa's application for final approval meets all the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Iowa is granted final approval to operate its UST program. The State of Iowa now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Iowa also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Iowa's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c.

Dated: February 7, 1995.

Delores Platt,

Acting Regional Administrator.

[FR Doc. 95–5526 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–5164–5]

Underground Storage Tank Program: Approved State Program for Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Iowa's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective May 8, 1995, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of Iowa's underground storage tank program must be received by the close of business April 6, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of May 8, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to WSTM/RCRA/STPG, Underground Storage Tank Program, U.S. EPA Region

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7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Comments received by EPA may be inspected at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Underground Storage Tank Program, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to Iowa elsewhere in this issue of the **Federal Register**. Approval will be effective on May 8, 1995.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Iowa underground storage tank program. This codification reflects the state program in effect at the time EPA granted Iowa approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Iowa program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Iowa program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Iowa, the status of federally approved requirements of the Iowa program will be readily discernible. Only those provisions of the Iowa underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Iowa's underground storage tank program, EPA has added § 282.65 to title 40 of the CFR. Section 282.65 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.65 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Iowa enforcement authorities will not be incorporated by reference. Section 282.65 lists those approved Iowa authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.65 of the codification simply lists for reference and clarity the Iowa statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made, published elsewhere in this issue of the **Federal Register**, to approve the Iowa underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule.

This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: February 7, 1995.

Delores Platt,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is proposed to be amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.65 to read as follows:

§ 282.65 Iowa State-administered program.

(a) The State of Iowa is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Iowa Department of Natural Resources, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Iowa program on March 7, 1995 and it was effective on May 8, 1995.

(b) Iowa has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Iowa must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Iowa obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Iowa has final approval for the following elements submitted to EPA in Iowa's program application for final approval and approved by EPA on March 7, 1995. Copies may be obtained from the Underground Storage Tank Program, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa, 50319.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Iowa Statutory Requirements Applicable to the Underground Storage Tank Program, 1994

(B) Iowa Regulatory Requirements Applicable to the Underground Storage Tank Program, 1994

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: Code of Iowa, Chapter 455B, Sections 103(4), 109, 111, 112, 475, 476, 477 and 478.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) Code of Iowa, Chapter 455B, Sections 113, 114 and 115 insofar as they apply to certified laboratories; 479 insofar as it applies to account dispersion; Chapter 455G, Sections 1–20 insofar as they apply to the comprehensive petroleum underground storage tank fund.

(B) Iowa Administrative Code, Rule 567, Chapter 134.1–5 insofar as they apply to the registration of groundwater professionals; 135.3(4) insofar as it applies to farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Iowa on December 22, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Iowa to EPA, dated December 22, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application in March of 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application in March 1994, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 7 and the Iowa Department of Natural Resources, signed by the EPA Regional Administrator on June 22, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order "Iowa" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Iowa

(a) The statutory provisions include Code of Iowa, 1993; Chapter 455B, Jurisdiction of Department:

Section 101—Definitions
Section 103—Director's duties, except for 455B.103(4)
Section 105—Powers and duties of the commission, except for 105(5), 105(11)a(3) and 105(11)b
Section 471—Definitions
Section 472—Declaration of policy
Section 473—Report of existing and new tanks—fee
Section 473A—Petroleum underground storage tank registration amnesty program
Section 474—Duties of Commission—rules
Section 479—Storage tank management fee, except for the 2nd and 3rd sentences

(b) The regulatory provisions include Iowa Administrative Code, 1993, Rule 567, Environmental Protection Commission:

Chapter 131.1—Definitions
Chapter 131.2—Report of Hazardous Conditions
Chapter 133.1—Scope
Chapter 133.2—Definitions
Chapter 133.3—Documentation of contamination and source
Chapter 133.4—Response to contamination
Chapter 133.5—Report to commission
Chapter 135.1—Authority, purpose and applicability
Chapter 135.2—Definitions
Chapter 135.3—UST systems—design, construction, installation, and notification, except for 135.3(4)a, 3(4)b and 3(4)c
Chapter 135.4—General operating requirements
Chapter 135.5—Release detection
Chapter 135.6—Release reporting, investigation, and confirmation
Chapter 135.7—Release response and corrective action for UST systems containing petroleum or hazardous substances
Chapter 135.8—Site cleanup report
Chapter 135.9—Out-of-service UST systems and closure
Chapter 135.10—Laboratory analytical methods for petroleum contamination of soil and groundwater
Chapter 135.11—Evaluation of ability to pay
Chapter 136.1—Applicability
Chapter 136.2—Compliance dates
Chapter 136.3—Definition of terms
Chapter 136.4—Amount and scope of required financial responsibility
Chapter 136.5—Allowable mechanisms and combinations of mechanisms
Chapter 136.6—Financial test of self-insurance
Chapter 136.7—Guarantee
Chapter 136.8—Insurance and risk retention group coverage
Chapter 136.9—Surety bond
Chapter 136.10—Letter of credit
Chapter 136.11—Trust fund
Chapter 136.12—Standby trust fund
Chapter 136.13—Local government bond rating test
Chapter 136.14—Local government financial test
Chapter 136.15—Local government guarantee
Chapter 136.16—Local government fund
Chapter 136.17—Substitution of financial assurance mechanisms by owner or operator
Chapter 136.18—Cancellation or nonrenewal by a provider of financial assurance
Chapter 136.19—Reporting by owner or operator
Chapter 136.20—Record keeping
Chapter 136.21—Drawing on financial assurance mechanisms
Chapter 136.22—Release from the requirements
Chapter 136.23—Bankruptcy or other incapacity of owner or operator or provider of financial assurance

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Chapter 136.24—Replenishment of guarantees, letters of credit, or surety bonds.

[FR Doc. 95-5527 Filed 3-6-95; 8:45 am]
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federal register

Tuesday
March 7, 1995

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

VOL 60 ISS 44 MR 7 1995 UMI

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral, totaling $7.3 million, and two revised rescission proposals, totaling $106.7 million.

The revised deferral affects the Department of Health and Human Services. The revised rescission proposals affect the Department of Education and the Environmental Protection Agency.

William J. Clinton

The White House,
February 22, 1995.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Department of Health and Human Services	
	Social Security Administration	
D95-6A	Limitation on administrative expenses	7,321
	Total, deferral	7,321

Rescission No.	ITEM	Budgetary Resources
	Department of Education:	
	Office of Elementary and Secondary Education:	
R95-4A	School improvement programs	103,084
	Environmental Protection Agency	
R95-18C-1	Research and development	3,635
	Total, rescissions	106,719

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Deferral No. D95-6A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D95-6, which was transmitted to Congress on October 18, 1994.

This revision increases by $1,735 the previous deferral of $7,318,808 in the Department of Health and Human Services, resulting in a total deferral of $7,320,543. The increase results from a greater-than-anticipated level of unobligated funds being carried over from FY 1994.

Deferral No. 95-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority** (P.L. 103-333) $ 97,000,000
BUREAU: Social Security Administration	**Other budgetary resources** $ 233,129,554
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources** $ 330,129,554
	Amount to be deferred: Part of year $ ____ Entire year $ 7,320,543 *
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual [ ] Multi-year: ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

JUSTIFICATION: This account includes funding for construction, renovation, and expansion of Social Security Trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, MD. In FY 1995, the Social Security Administration has received an approved apportionment for $50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. Deferred funds are reserved for two purposes: (1) purchase of 9.8 acres of privately-owned land consisting of 14 scattered lots within the Social Security Administration complex. The Federal Government has made a commitment to the original owners to purchase the land and to pay relocation costs contingent upon the owners' decision to sell at some future date; and (2) construction, renovation, and expansion projects when a need for such projects is identified and determined to be necessary for the efficient operation of the Social Security Administration. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1994 (D94-7A).

* Revised from the previous report.

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Rescission No. 95-4A

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. R95-4, which was transmitted to Congress on February 6, 1995.

This revision to a rescission proposal for the Department of Education, Office of Elementary and Secondary Education, School improvement programs, decreases the amount previously reported from $138,084,000 to $103,084,000. The decrease of $35,000,000 would provide a small number of education infrastructure grants to school districts serving empowerment zones, supplemental empowerment zones, and enterprise communities.

R95-4A

DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

School improvement programs

Of the funds made available under this heading in Public Law 103-333, $103,084,000 are rescinded as follows: from the Elementary and Secondary Education Act, $28,000,000 for part C of title V, $5,899,000 for section 10602, $4,185,000 for part G of title X, and $65,000,000 for title XII: Provided, That notwithstanding sections 12004(b) and 12005(b) of P.L. 103-382, funds remaining available for title XII shall be used for awards only to local educational agencies serving an empowerment zone, a supplemental empowerment zone, or an enterprise community designated by the Department of Housing and Urban Development or the Department of Agriculture, for projects in education facilities within the boundaries of such zone or community.

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Rescission Proposal No. R95-4A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... $ 1,564,877,000 (P. L. 103-333)
BUREAU: Office of Elementary and Secondary Education	Other budgetary resources.. $ 31,000,000
Appropriations title and symbol: School improvement programs 91 5/61000 91 4/51000 9151000	Total budgetary resources... $ 1,595,877,000
	Amount proposed for rescission..... $ 103,084,000 *
OMB identification code: 91-1000-0-1-501	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☒ Multi-year: September 30, 1996 / September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

*JUSTIFICATION: The amount of $103,084,000 is proposed for rescission from the Ellender Fellowships ($4,185,000), the Instruction in Civics, Government, and the Law ($5,899,000), the Dropout Prevention Demonstrations ($28,000,000), and the Education Infrastructure ($65,000,000) programs. Support of Ellender Fellowship program is not an appropriate Federal responsibility. Other well-established programs have successfully institutionalized law education throughout the country, the same purpose served by the Instruction in Civics, Government, and the Law program. The Dropout Prevention Demonstration program accomplished its purpose in FY 1994, the final planned year. State and local governments have traditionally had the responsibility for providing adequate infrastructure for education. The Administration proposes to retain a small amount of infrastructure funding to support activities in empowerment zones, supplemental empowerment zones, and enterprise communities.

*ESTIMATED PROGRAM EFFECT: Ellender Fellowships and Instruction in Civics, Government, and the Law would be able to continue their programs with continued use of non-Federal funds. Continuation of the Dropout Prevention program would provide non-competitve assistance to incumbent grantees rather than support demonstrations, which have already been funded. Without major new Federal funding, State and local governments would continue to fund school construction and renovation. A targeted program of infrastructure grants to empowerment zones, supplemental empowerment zones, and enterprise communities would assist school districts facing overwhelming construction and renovation needs.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes *					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 200
1,591,656	1,579,286 *	-12,370	-70,097	-18,555	-2,062	---	---

* Revised from the previous report.

Rescission No. 95-18C-1

Supplemental Report
Report Pursuant to Section 1012 of Public Law 93-344

This report updates Rescission Proposal No. R95-18C, which was transmitted to Congress on February 6, 1995.

This revision to a rescission proposal for the Environmental Protection Agency's (EPA's) Research and development appropriation substitutes $735 thousand in additional procurement savings for the $735 thousand for agricultural/livestock pollution abatement research previously proposed for rescission. EPA reports that funds for this research were obligated in late- January, before being withheld pending rescission. The total amount proposed for rescission from the Research and development appropriation remains unchanged.

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R95-18C-1

ENVIRONMENTAL PROTECTION AGENCY

Research and development

Of the funds made available under this heading in Public Law 103-327, $3,635,000 are rescinded.

Rescission Proposal No. R95-18C-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Environmental Protection Agency	New budget authority..... (P.L. 103-327)	$	349,279,000
BUREAU:	Other budgetary resources..	$	50,000,000
Appropriation title and symbol: Research and development 685/60107	Total budgetary resources...	$	399,279,000
	Amount proposed for rescission.....	$	3,635,000
OMB identification code: 68-0107-0-1-304	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____		
Grant program: ☐ Yes ☒ No			
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____		

*JUSTIFICATION: This proposal would rescind $2.3 million in health effects research, academic training, and neurotoxicity research activities that were fully funded in the President's budget for all activities identified as priority research. In addition, $1.3 million in additional procurement savings is proposed for rescission due to recently enacted procurement reform legislation.

ESTIMATED PROGRAM EFFECT: The rescission of these funds would not affect the accomplishment of the Agency's mission.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
349,483	348,211	-1,272	-1,854	-400	-73	-36	—

* Revised from the previous report.

[FR Doc. 95-5490 Filed 3-6-95; 8:45 am]
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March 7, 1995

Part V

Department of Education

34 CFR Part 75
Direct Grant Programs; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 75

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Optional procedure for conducting fiscal year 1995 grant competitions under the Improving America's Schools Act of 1994.

SUMMARY: The Secretary establishes an optional procedure for conducting fiscal year (FY) 1995 grant competitions under the Improving America's Schools Act of 1994. The Secretary takes this action to reduce the need for Federal regulations, to ensure timely award of grants in FY 1995, and to provide an additional mechanism for awarding grants that addresses Congress' intent in enacting the affected program authorities.

EFFECTIVE DATE: This procedure takes effect April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Steven N. Schatken, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5100, FB10–B, Washington, D.C. 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Improving America's Schools Act of 1994 (IASA) was enacted on October 20, 1994 (Pub. L. 103–382). The IASA authorizes numerous discretionary grant programs under which the Secretary will be conducting competitions in FY 1995. The Secretary wishes to conduct these grant competitions as quickly as possible so that grantees will have adequate time for planning and preparation before the next school year begins. The Secretary also intends to keep Federal regulation to a minimum under the IASA in order to provide flexibility to State and local governments and other eligible applicants in designing effective programs to serve the intended beneficiaries of these programs.

The Secretary will be using several techniques to meet the goals of fewer regulations and expedited grant awards, including, for some programs, using procedures currently in the Education Department General Administrative Regulations (EDGAR) for programs that do not have regulations. For these programs, EDGAR provides selection criteria for choosing among competing grant applications (34 CFR 75.210). However, the EDGAR selection criteria are necessarily very general, and for some programs the EDGAR criteria may not adequately focus grant applications on specific provisions that are contained in the program statutes that govern the competitions. Therefore, the Secretary establishes the following procedure that may be used to create more targeted selection criteria in appropriate situations. The Secretary will soon publish a separate notice of proposed rulemaking in the **Federal Register** to amend EDGAR and make this a permanent option in future fiscal years for all of the Department's discretionary grant programs.

Procedure for Establishing Statutory Selection Criteria

Under this procedure, the Secretary may establish selection criteria for evaluating applications by assigning points to particular statutory provisions, such as allowable activities, application content requirements, or other pre-award and post-award conditions. Applications would be evaluated based on how well the applicants address each of those statutory provisions. The Secretary may also include any of the selection criteria in EDGAR (34 CFR 75.210), but the EDGAR criteria would not otherwise apply.

Each of the criteria, whether based on a statutory provision or taken from EDGAR, would be assigned a maximum number of points that an applicant could score under that criterion. The selection criteria would be included in the application package that the Department provides to all applicants.

This procedure applies only to fiscal year 1995 grant competitions under programs that were newly enacted in, or substantially revised by, the IASA. To the extent that any regulations in EDGAR are inconsistent with this procedure, those regulations would not apply if this procedure is used.

Example: A hypothetical program statute creates a discretionary grant program for support of innovative secondary school programs. Among other requirements, the statute provides that each application must describe how the applicant for a grant will address the needs of limited English proficient children.

Under this procedure, the Secretary would create a full set of selection criteria for the fiscal year 1995 grant competition from the statute and EDGAR, with a total maximum score for all of the criteria determined by the Secretary. (Usually, the Department's grant competitions are based on selection criteria that have a total maximum score of 100.) As one of the criteria, the Secretary could evaluate applications based on how well the applicant proposes to meet the needs of limited English proficient children. The Secretary might decide to award up to 10 points for this criterion. Applicants who best addressed the needs of limited English proficient children would score the highest number of points under this criterion.

Waiver of Public Comment

It is the practice of the Secretary to ask for public comment. However, in accordance with section 437(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)), the Secretary has determined that, in order to make timely grant awards in fiscal year 1995 under the IASA, it is necessary to waive public comment on this procedure. The Secretary will request public comment on this procedure for future fiscal years in a separate notice of proposed rulemaking.

Paperwork Reduction Act of 1980

This procedure has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Authority: Improving America's Schools Act of 1994 (Pub. L. 103–382).

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 28, 1995.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–5450 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday
March 7, 1995

Part VI

Department of Education

Challenge Grants for Technology in Education; Inviting Applications for New Awards for Fiscal Year 1995; Notices

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DEPARTMENT OF EDUCATION

Challenge Grants for Technology in Education

AGENCY: Department of Education.

ACTION: Notice of selection criteria, selection procedures, and application procedures.

SUMMARY: The Secretary establishes selection criteria, procedures for evaluating applications, and procedures for submission of applications under the Challenge Grants for Technology in Education Program. The program provides grants to consortia comprised of one or more local educational agencies and other appropriate entities for the purpose of improving and expanding new applications of technology to strengthen the school reform effort, improve student achievement, and provide sustained professional development of teachers, administrators, and school library media personnel. The Secretary establishes selection criteria and related procedures to make informed funding decisions on applications for technology projects having great promise for improving elementary and secondary education.

EFFECTIVE DATE: The provisions of this notice take effect April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, Interagency Technology Task Force, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5544. Telephone (202) 708–6001. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Challenge Grants for Technology in Education Program is authorized in Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846).

Under this program the Secretary makes grants to consortia. Each consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line, and may include other LEAs, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities.

The Secretary announces in this notice selection criteria for the FY 1995 competition. The program statute (20 U.S.C. 6846(c)) requires the Secretary to give priority in awarding grants to consortia that demonstrate certain factors in their applications. The Secretary carries out this mandate by incorporating the priority factors into the selection criteria. In addition, the Secretary believes that substantive selection criteria specifically framed for this program competition are necessary to enable the Secretary to evaluate how well the applicants address the purpose of the Challenge Grants for Technology in Education Program. The Secretary uses the following selection criteria instead of the selection criteria in the Education Department General Administrative Regulations, 34 CFR 75.200(b)(3) and 75.210.

Selection Criteria

The Secretary uses the following unweighted selection criteria to evaluate applications:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a creative, new vision for using technology to help all students to learn challenging standards or to promote efficiency and effectiveness in education; and contributes to the advancement of State and local systemic educational reform;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to enhance teaching, training, and student achievement or by other means;

(4) Will ensure ongoing, intensive professional development for teachers and other personnel to further the use of technology in the classroom, library, or other learning center;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities, and expanded markets for high-quality educational technology applications and services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that will be sustainable beyond the period of the grant;

(2) The members of the consortium or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Selection Procedures

The Secretary intends to evaluate applications using unweighted selection criteria. The Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications. Therefore, the Secretary will not apply the selection procedures in EDGAR, 34 CFR 75.217, which require a rank order to be established based on weighted selection criteria.

The Secretary also believes that due to the highly technical nature of the applications, it will be necessary to obtain clarifications and additional information from applicants during the selection process. In accordance with 34 CFR 75.109(b), an applicant may make changes to an application on or before the deadline date for submission of applications. In accordance with 34 CFR 75.231, the Secretary may request an applicant to submit additional information after the application has been selected for funding. For the purposes of the Challenge Grants for Technology in Education Program, the Secretary also permits an applicant to submit additional information, in response to a request from the Secretary, during the application selection process.

The Secretary will use the following selection procedures for the FY 1995 competition.

In applying the selection criteria, one or more peer review panels of experts will first analyze each application in terms of individual selection criteria. The reviewers assign to each application two separate qualitative ratings based on the extent to which the application has met the two individual selection criteria. The two ratings taken together yield a composite rating, representing each reviewer's total rating of each application. These reviewer ratings for each application are then combined to yield an overall rating for each application. The panels will also identify inconsistencies, points in need of clarification, and other concerns, if any, pertaining to each application.

The Secretary assigns each application to one of several groups based on the application's overall level of quality. Starting with the highest quality group and moving down in unbroken order, the Secretary then identifies the groups of applications of sufficiently high quality to be considered for funding. The Secretary may request each applicant whose application was identified as being in a group of sufficiently high quality applications to submit additional information or materials to address the concerns and questions, if any, identified by the peer review panels. Such requests are strictly limited to clarifications of a conceptual or technical nature, and are not meant to fill major gaps in information that reviewers identify in applications.

A second peer review panel then reevaluates each application in a group identified as being of sufficiently high quality, taking into account any additional information or materials, to determine the extent to which each application addresses the selection criteria. The Secretary then reassigns each reevaluated application to one of several groups based on the application's overall level of quality.

In the final stage of the selection process, the Secretary selects for funding those applications of highest quality based on the results of the second review panel. The Secretary may also consider the extent to which each application demonstrates an effective response to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology.

Application Deadline

In order to ensure timely receipt and processing of applications, the Secretary takes exception to 34 CFR 75.102(b) by requiring that for an application to be considered for funding it must be received on or before the deadline date announced in the application notice published in this issue of the **Federal Register**. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was (1) Sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102 (d) and (e). Applications delivered by hand must be received by 2:00 p.m. (Washington, D.C. time) on the deadline date. For the purposes of this competition, the Secretary does not apply 34 CFR 102(b) which requires an application to be mailed, rather than received, by the deadline date.

Waiver of Notice of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations that are not taken directly from statute. Ordinarily, this practice would have applied to the selection criteria, selection procedures, and application procedures in this notice. However, in order to make timely grant awards in fiscal year (FY) 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this notice of selection criteria, selection procedures, and application procedures, which will apply only to the FY 1995 grant competition.

Paperwork Reduction Act of 1980

These selection criteria contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department will submit a copy of these selection criteria to the Office of Management and Budget (OMB) for its review. [44 U.S.C. 3504(h))

The Department uses the information to make informed evaluations of grant applications. Annual public reporting burden for this collection of information is estimated to be as follows:

(1) Selection criteria—average 24 hours per response for 500 respondents.

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503: Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12373 and the regulations in 34 CFR Part 79. The objective of the executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 6846.

(Catalog of Federal Domestic Assistance Number 84.303, Challenge Grants for Technology in Education)

Dated: March 3, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5707 Filed 3–6–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.303]

Challenge Grants for Technology in Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The Challenge Grants for Technology in Education Program provides grants to consortia that are working to improve and expand new applications of technology to strengthen the school reform effort, improve student achievement, and provide sustained professional development of teachers, administrators, and school library media personnel.

Eligible Applicants: Only consortia may receive grants under this program. Consortia shall include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line. They may also include other local educational agencies, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, and other appropriate entities.

Note: In each consortium a participating LEA shall submit the application on behalf of the consortium and serve as the fiscal agent for the grant.

Deadline for Receipt of Applications: June 2, 1995

Requested Deadline for Receipt of Letters of Intent to Apply: April 4, 1995

Deadline for Intergovernmental Review: August 1, 1995

Applications Available: March 13, 1995

Available Funds: $27,000,000

Estimated Range of Awards: $500,000 to $3,000,000 per year

Estimated Average Size of Awards: $1,000,000 per year

Estimated Number of Awards: 14–18

Project Period: 5 years

Note: The Department is not bound by any estimates in this notice.

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Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except 34 CFR 75.102(b), 75.200(b)(3), 75.210, and 75.217), 77, 79, 80, 81, 82, and 85.

Other Requirements: The requirements in the notice of selection criteria, selection procedures, and application procedures published in this issue of the **Federal Register**.

Supplementary Information: The Challenge Grants for Technology in Education Program is authorized under Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846). This FY 1995 competition supports the first grants under the new program.

As catalysts for change, grants under this program will support communities of educators, parents, industry partners, and others who are working to transform their schools into information-age learning centers. These challenge grants will support the development and innovative use of technology and new learning content in specific communities. Each effort should clearly focus on integrating innovative learning technologies into the curriculum to improve learning productivity in the community.

The Secretary believes that the information superhighway is creating new possibilities for extending the time, the place, and the resources for learning. Challenge grant communities can use it to develop first-class learning environments that provide affordable access to quality education and training. Especially promising possibilities are anticipated from a creative synthesis of ideas generated by educators and software developers, telecommunications firms and hardware manufacturers, entertainment producers, and others who are extending the possibilities for creating new learning communities.

Challenge grant communities need not be limited by geography. The information superhighway can be used to create virtual learning communities linking schools, colleges, libraries, museums, and businesses across the country or around the world. Students of all ages, no matter where they live, could tap vast electronic libraries and museums containing text and video images, music, art, and language instruction. They could work with scientists and scholars around the globe who can help them use mapping tools, primary historical documents, or laboratory experiments to develop strong research and problem solving skills.

The Secretary encourages each community to view this competition as an opportunity to act on its most ambitious vision for education reform. It is essential, however, to guard against a future in which some communities have access to vast technological resources, while others do not. Low-income neighborhoods and other areas with the greatest need for technology should not be left behind in the acquisition of knowledge and skills needed for productive citizenship in the 21st century. A failure to include those communities will put their future, and the future of the country, at risk. For this reason, the Secretary gives special consideration to applications from consortia which are developing effective responses to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology.

Note: The Secretary encourages, but does not require, prospective applicants to submit a letter of intent to apply, prior to submitting an application. The Secretary requests the information in this letter in order to help the Secretary identify at the earliest possible stage of the competition the project characteristics for which peer reviewers with appropriate qualifications will need to be enlisted. The Secretary requests that prospective applicants limit their letters to three double-spaced pages. The letter should outline key elements of the proposed effort, including the educational needs and opportunities to be addressed, the concept for responding to those needs, the proposed technologies and applications to be used, and a general estimate of budget purposes. An applicant that does not submit a letter of intent to apply is in no way at a competitive disadvantage with respect to applicants submitting the requested letter. The Secretary requests that letters of intent to apply be submitted for receipt by April 4, 1995.

Project Activities

The statute authorizes the use of funds for activities similar to the following activities:

(a) Developing, adapting, or expanding existing and new applications of technology to support the school reform effort.

(b) Funding projects of sufficient size and scope to improve student learning and, as appropriate, support professional development, and provide administrative support.

(c) Acquiring connectivity linkages, resources, and services, including the acquisition of hardware and software, for use by teachers, students, and school library media personnel in the classroom or in school library media centers, in order to improve student learning by supporting the instructional program offered by such agency to ensure that students in schools will have meaningful access on a regular basis to such linkages, resources, and services.

(d) Providing ongoing professional development in the integration of quality educational technologies into school curriculum and long-term planning for implementing educational technologies.

(e) Acquiring connectivity with wide area networks for purposes of accessing information and educational programming sources, particularly with institutions of higher education and public libraries.

(f) Providing educational services for adults and families.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following unweighted selection criteria, as described in the notice of selection criteria, selection procedures, and application procedures for this program published elsewhere in this issue of the **Federal Register** and repeated below:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a creative, new vision for using technology to help all students learn to challenging standards or to promote efficiency and effectiveness in education; and contributes to the advancement of State and local systemic educational reform;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to enhance teaching, training, and student achievement or by other means;

(4) Will ensure ongoing, intensive professional development for teachers and other personnel to further the use of technology in the classroom, library, or other learning center;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities, and expanded markets for high-quality educational technology applications and services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that will be sustainable beyond the period of the grant;

(2) The members of the consortia or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Application Deadline

In order to ensure timely receipt and processing of applications, the Secretary requires that an application must be received on or before the deadline date announced in this application notice. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was (1) Sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102 (d) and (e). Applications delivered by hand must be received by 2:00 p.m. (Washington, DC time) on the deadline date. For the purposes of this program competition, the Secretary does not apply 34 CFR 75.102(b) which requires an application to be mailed, rather than received, by the deadline date.

Briefing for Prospective Applicants

A briefing for prospective applicants is scheduled from 9:30 a.m. to 12:30 p.m. on Friday, March 17, 1995, at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202–3564 (near National Airport in metropolitan Washington, DC). Telephone (703) 413–5500. No preregistration is required. Prospective applicants unable to attend this briefing may access a summary of questions and answers about the competition from the Department of Education's On-Line Library by using the Department's WWW Server at URL http://www.ed.gov/ or by using the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). For additional help accessing the On-Line Library, call 1–800–USA–LEARN. To receive a hard copy of the summary call (202) 708–6001.

For Applications or Information Contact: Telephone 1–800–USA–LEARN (1–800–872–5327). Individuals may also contact the Interagency Technology Task Force, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5544. Telephone (202) 708–6001. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between the hours of 8 a.m. and 8 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Information about the Department's funding opportunities, including copies of the application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6846.

Dated: March 3, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5706 Filed 3–6–95; 8:45 am]

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federal register

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Part VII

The President

Proclamation 6774—Save Your Vision Week

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Presidential Documents

Title 3—

The President

Proclamation 6774 of March 2, 1995

Save Your Vision Week, 1995

By the President of the United States of America

A Proclamation

Sight is a precious gift—one that we cannot afford to take for granted. To ensure that we enjoy a healthy view of the world for many years to come, all of us must make certain our eyes receive good care and attention throughout our lives.

Americans can take steps to guard their vision on a daily basis, while at home and on the job. Using face masks, goggles, or safety glasses can protect our eyes from the dangers of potentially harmful chemicals or machinery, and the appropriate protective eyewear is critical while playing sports. But perhaps the easiest and most effective way that we can protect our sight is with comprehensive eye examinations. Early eye tests can help secure good vision for our children from the start. And with regular eye exams, the threat of vision loss does not have to be a normal part of aging.

For Americans at special risk, preventive care takes on added importance. The 14 million individuals nationwide who have diabetes face the possibility of developing diabetic eye diseases, the leading cause of blindness among working-aged Americans. This condition may show no symptoms—even in advanced stages—and it must be detected as soon as possible to prevent vision loss.

Glaucoma, another potentially blinding eye disease, can be controlled when detected early. Approximately 3 million Americans suffer from this disease, which strikes silently, often without pain or noticeable symptoms. Especially at risk are African Americans age 40 and older and all people age 60 and older.

To remind Americans of how they can protect their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 5, 1995, as Save Your Vision Week. I urge all Americans to participate by making eye care and eye safety an important part of their lives. I invite eye care professionals, the media, and all public and private organizations committed to the goals of sight preservation, to join in activities that will make Americans more aware of the steps they can take to preserve their vision.

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IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-5793
Filed 3-6-95; 11:38 am]
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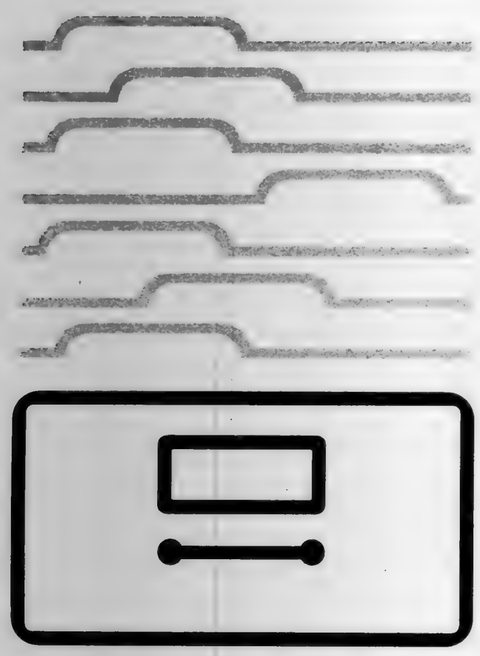

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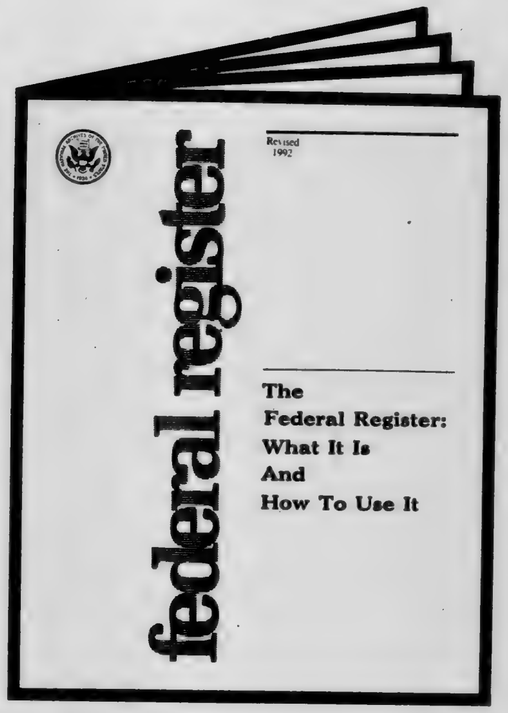

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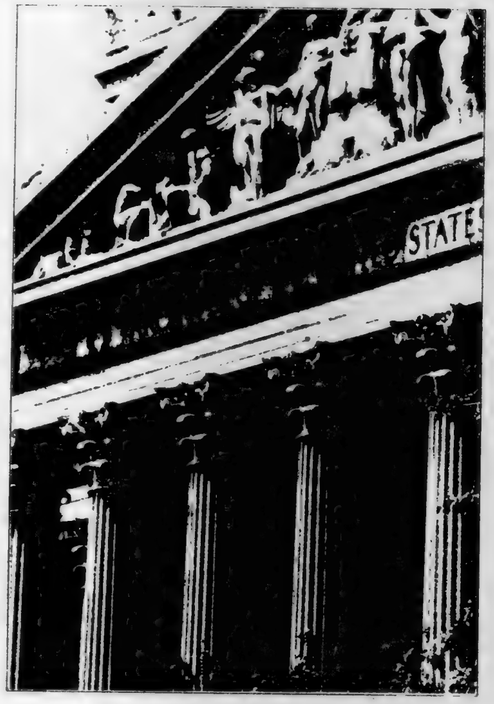

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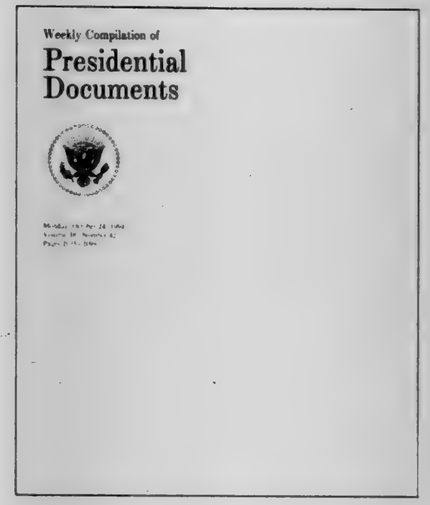

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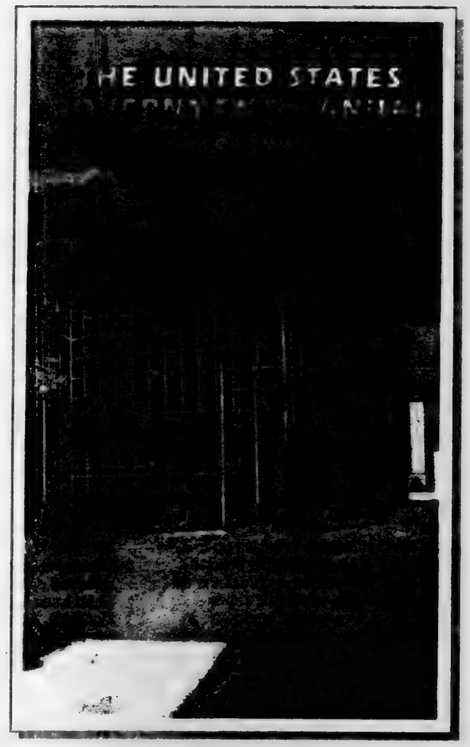

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final rule applies to any credit union that is insured by the National Credit Union Share Insurance Fund (NCUSIF) and that proposes to merge into or convert to any non credit union institution. The rule imposes new substantive requirements. The purposes of these requirements are to ensure that such transactions take place only pursuant to an informed vote of the credit union's members/owners, to prevent self-dealing and other abuses by individuals involved in the transactions and to ensure that these transactions do not present safety and soundness risks to the NCUSIF and the credit union system. State chartered NCUSIF insured credit unions may, on a case-by-case basis, obtain a waiver from NCUA's rules if state laws and procedures are determined to adequately address these concerns.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

In June 1994, the NCUA requested comments on proposed changes to part 708 of its regulations. At that time, part 708 only addressed situations where an NCUSIF insured credit union dropped NCUSIF insurance, either through a merger into a non NCUSIF insured credit union or through a voluntary termination or conversion of insurance. It did not cover the merger or conversion of a credit union into a non credit union institution. The Federal Credit Union Act, however, vests the NCUA Board with the responsibility to regulate such mergers or conversions. 12 U.S.C. 1785(b). The proposed changes to part 708 clarified that NCUA approval requirements apply to *all* mergers and conversions where the continuing institution is not insured by NCUSIF. 59 FR 33702 (June 30, 1994).

The proposal was in response to abuses that had occurred with bank and thrift conversions, some isolated instances in the credit union system, and recent solicitations by outside consultants and attorneys to federally insured credit unions for conversion to non credit union charters. The solicitations often appeared motivated by benefits to the attorneys, consultants and insiders, rather than the members. The amendment was deemed necessary "to provide NCUA with clear authority to prevent abuses in connection with conversions of insured status." 59 FR 33702. The comments to the proposal were generally positive and consistently stressed that the members need to be properly informed and that the NCUA needs to ensure that safety and soundness and members' interests are protected.

On September 16, 1994, the NCUA Board issued an interim final rule and request for further comment. The rule was effective upon publication on September 23, 1994. 59 FR 48790. The new rule, part 708a, established that the NCUA Board must approve any merger or conversion of a federally-insured credit union to any non credit union institution, including preapproval of any notices to members that are sent out in connection with the merger or conversion. At the same time, the Board requested further comment on a number of issues related to the application and approval process.

Summary of Comments and Discussion of Issues

In the June 1994, proposal, the NCUA Board requested comment on the general issue of NCUA regulation in this area and on the specific issue of uniform member notice. In the interim rule, comment was requested on a number of issues that the Board felt required further consideration and review. The NCUA received 16 comments on the proposed rule: 10 from credit unions; 4 from credit union trade groups; 1 from a bank trade group; and 1 from a credit union league. The NCUA received 19 comments on the interim rule: 6 from federal credit unions; 6 from federally insured state chartered credit unions (FISCUs); 3 from credit union trade groups; 2 from bank trade groups; and 2 from state regulators. The following is a combined summary of the comments received on the proposed rule and the interim final rule.

1. NCUA Oversight

In the proposed rule, 14 commenters addressed the issue of NCUA oversight. Twelve expressed general support for NCUA oversight and two expressed general opposition. The supportive commenters cited the following benefits of NCUA regulation: Eliminate confusion, prevent unnecessary litigation, protect the members from potential abuse, assure that the members know the advantages and disadvantages of any proposal, protect the assets and integrity of the NCUSIF and assure that financial benefits to insiders are fully disclosed. The two negative commenters were a bank trade group and a state chartered credit union. The bank trade group characterized the proposal as an overreaction by NCUA to a few isolated examples.

The issue of NCUA's jurisdiction over mergers or conversions by federally-insured state credit unions (FISCUs) was raised by 5 commenters on the interim rule. The five consisted of the professional group that represents state credit union supervisors (the National Association of State Credit Union Supervisors, or NASCUS), two FISCUs and two state regulators. All strongly opposed any NCUA regulation of mergers or conversions of FISCUs.

NASCUS made the point that only seven of the 48 states which charter credit unions allow them to merge with other financial institutions and only four states allow credit unions to convert into another form of financial institution. NASCUS' comment also recognized, however, that several states have statutes that are silent on the issue. It is those states which cause the Board the most concern. Without specific

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regulations in this area, there is potential for abuse.

The NCUA Board believes that basic regulatory standards applicable to all NCUSIF insured credit unions are necessary to safeguard the integrity of the process and to ensure that issues of safety and soundness and fiduciary duty are properly addressed. The Board has attempted, however, to balance these concerns with a deference to the important role of the state supervisors. As it is NCUA's intention to work with the state supervisor in cases involving federally-insured state credit unions, the Board has crafted a final rule that would allow FISCUs to merge or convert if they have the state's authority to do so. In those instances, the FISCU may file a written request with the NCUA Board for a waiver of compliance with the procedural portions of part 708a and instead follow the applicable state regulation. The request would have to demonstrate that the waiver would not be detrimental to the safety and soundness of the credit union, that there is no possibility of self-dealing or other breach of fiduciary duty by the credit union's management or others involved in the transaction, and that the members' interests are adequately protected.

2. Insider Preferences

The proposed rule asked whether directors and management officials involved in the conversion process should be allowed to receive any personal financial benefit from the transaction, other than that available to ordinary members. The ten commenters responding to this question agreed that directors and management should not be allowed to receive any compensation in excess of that available to other members. Several commenters suggested NCUA enact strong regulations in this area. As well as limiting the compensation available to insiders, one commenter suggested individuals should not be guaranteed employment at the continuing institution, noting that this would remove the incentive for insiders encouraging a merger that is not in the best interest of the members.

A related issue is that of what post-merger or post-conversion controls are needed to protect against improper insider preferences after the transaction is completed. Some of the suggestions of the five commenters who commented on this issue were that NCUA should prohibit stock acquisition by insiders for a period of five years and that both pre- and post-merger or conversion controls are necessary to prevent insider abuse. One of the trade groups suggested a way to avoid the problem would be to condition approval of the transaction "on a return of equal shares of equity to all members before the execution of the charter change."

The recommendations of the commenters have been modified and incorporated into the final rule as follows: For a period of two years after the transaction, directors may not receive any benefits not otherwise equally available to other members, and directors and senior management officials may not acquire stock in the continuing institution or its successor on terms not available to the other members of the credit union. These prohibitions on directors and senior management officials must remain in effect for at least two years following the merger. In order to enable NCUA to ensure compliance with these prohibitions, the affected individuals will be required to enter into written agreements with NCUA. The NCUA Board decided not to require a distribution of reserves and undivided earnings to members, as such a requirement would have the practical effect of prohibiting the transactions covered by the rule. Among the disclosures required to be provided to the members, however, is a clear explanation of the change in the nature of their ownership interest in reserves and undivided earnings that will result from the transaction.

3. Majority Approval

NCUA requested comment on whether a majority of eligible voting members should be required to approve the transaction. Comment was further requested on whether majority should be defined as a simple majority or a super majority, and, if a super majority, how it should be defined. The six commenters that addressed the issue all agreed that a majority of the voting members should be required for approval. Two defined majority as over 50%, two defined it as 60% to 63⅓%, one defined it as 70% to 80% and the other commenter did not define it.

Recognizing the importance of a clear mandate on an issue of such significance to the members, the final rule requires that a majority of all eligible voters approve any transaction covered by the rule.

4. Appraisal

In those cases the Board is aware of where credit unions have considered conversions or mergers to non credit union charters, the first step of the transaction would be to move from a credit union charter to a mutual savings bank charter. In cases where the ultimate goal is to become a stock institution, conversion from mutual to stock would be proposed as a second, but virtually simultaneous step.

For those cases involving this second step, the Board specifically asked for comment on how to properly appraise the value of the credit union for purposes of issuing stock. This issue is important to the members, who, as noted above, are entitled to acquire stock on the same terms and conditions as directors and senior management officials. Seven commenters had suggestions on this issue. One recommended that a professional appraisal be performed, three recommended that the value of the stock include accumulated capital and one suggested the new regulator determine the value of the stock. One trade group suggested it be handled as a liquidation and payout and another suggested NCUA turn to state law for guidance.

After considering the comments and reviewing the other agencies' rules in this area, the Board has determined to simply require that an appraisal be performed and included in the application. The Board will review the appraisal as part of its review of the application.

5. Uniform Member Notice

The proposal requested comment on whether the rule should include a uniform member notice. Nine of the ten commenters responding to this issue supported a uniform notice. Commenters suggested that a uniform notice would provide clear and consistent guidelines for merging institutions, ensure that important information is not withheld from the members and require less individual review. The Board agrees with these goals, but believes they can be accomplished more effectively through a listing of the information that must be included in the notice to members, rather than a form which may become outdated or not apply to all transactions.

Overview of Final Rule

The final rule adopts with minor modifications the interim rule and expands upon it to impose substantive and procedural requirements that the Board has determined are necessary to ensure an informed membership vote, to safeguard against potential safety and soundness problems and to prevent breaches of fiduciary duty. The final rule, part 708a, tracks in large part the current part 708b. Its key provisions are as follows: NCUA Board approval is required in advance of any transaction whereby a federally insured credit union transfers all or any part of its members' shares or similar accounts to any non credit union institution; a majority of all members of record must vote to approve the transaction; directors must agree to receive no benefits in excess of those available to the members; notice to members must be preapproved by the NCUA Board and must include all pertinent information required by the rule as well as any additional information deemed necessary on a case by case basis; FISCUs may only engage in the transaction if they obtain approval from the state authority to proceed with the merger or conversion; and FISCUs must follow part 708a unless they obtain a waiver from NCUA.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions. It is highly unlikely that small credit unions (those under $1 million in assets) would be engaged in a merger or conversion to a non credit union institution. The final rule merely clarifies statutory authority. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments do not change paperwork requirements.

Executive Order 12612

This rule applies to all federally insured credit unions. The rule clarifies existing statutory requirements of NCUA Board approval of certain transactions involving federally insured credit unions. Recognizing the interests of states and state regulators in supervising state chartered credit unions, the NCUA Board has included a provision in the final rule that allows FISCUs, on a case-by-case basis, to obtain a waiver from NCUA's rule and follow state procedures if those procedures are determined to adequately address the concerns of NCUA's rule. With this provision, the NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 1, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, the interim rule adding a new regulation in 12 CFR part 708a which was published at 59 FR 48790 on September 23, 1994, is adopted as a final rule with changes as follows:

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS TO NON CREDIT UNION STATUS: NCUA APPROVAL

1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785.

2. Sections 708a.1 and 708a.2 are revised to read as follows:

§ 708a.1 NCUA Board Approval.

Section 205(b)(1) of the Federal Credit Union Act requires NCUA Board approval in advance of any transaction whereby a federally-insured credit union transfers all or any part of its members' accounts to any non credit union institution. This part establishes rules and procedures for any merger, conversion or other transaction in which a federally-insured credit union's share accounts or similar member accounts are transferred to a non credit union institution. Transactions where a federally-insured credit union transfers member accounts to another credit union are subject to the provisions of part 708b of this chapter. Compliance with this part 708a is in addition to any other federal or state laws and regulations which may be applicable to the proposed transaction, including state corporate laws and state and federal securities laws.

§ 708a.2 Plan for Merger or Conversion to a Non Credit Union Institution.

(a) *Proposition for merger or conversion.* The board of directors of the credit union shall approve a proposition for merger or conversion.

(b) *Plan for merger or conversion.* Upon approval of a proposition for merger or conversion by the board of directors, a plan for the transaction shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report, if applicable;

(4) Contingencies;

(5) Explanation of any provisions for reserves, undivided earnings or dividends;

(6) Analyses of share values and explanation of any adjustments to member's share accounts;

(7) Analyses of the regulatory effect of the merger or conversion brought about by the change in government regulator;

(8) Explanation of any other relevant effects on the members; and

(9) Any additional information, as required by the NCUA Regional Director.

(c) *Nonpreferential treatment.* The plan for merger or conversion shall provide that, for a period of at least two years after the effective date of the transaction:

(1) No director of the credit union may receive any compensation or any benefits not provided or available to other members; and

(2) No director or senior management official of the credit union shall be allowed to acquire stock in the resulting or continuing institution or any successor institution, on any terms other than those readily available to all members of the former credit union. This prohibition would include stock issued for services rendered prior to the merger or conversion. For purposes of this section, *senior management official* means the credit union's chief executive officer, any assistant chief executive officers and the chief financial officer.

3. Sections 708a.3, 708a.4, 708a.5, 708a.6 and Appendix A are added to read as follows:

§ 708a.3 Submission of Proposal to NCUA.

(a) *Submissions to the NCUA Regional Director.* Upon approval of the plan by the board of directors of the credit union, the following will be submitted to the appropriate NCUA Regional Director:

(1) The plan, as described in § 708a.2(b) of this part;

(2) A resolution of the board of directors approving the plan;

(3) A written agreement from each member of the board of directors and each senior management official to comply with the terms of § 708a.2(c) (the agreement shall be executed by NCUA as well, in the event of approval of the transaction);

(4) A proposed merger or conversion agreement;

(5) A proposed Notice of Meeting, as described in Appendix A of this part;

(6) A copy of the form ballot and any accompanying materials to be sent to the members, as described in Appendix A of this part;

(7) A complete copy of the package [to be] submitted to any other regulatory agencies involved in the merger or conversion;

(8) A copy of an appraisal of the value of the credit union, if the proposal is to

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convert or merge the credit union either directly or indirectly into a stock institution, and any plan for sale or distribution of stock to the credit union's members, officials and employees; and

(9) In the case of a federally-insured state chartered credit union, evidence that the state supervisory authority is in agreement with the merger or conversion proposal.

(b) *Coordination with State Supervisory Authority.* In the event the proposal is filed with the NCUA prior to receiving consent from the state supervisory authority:

(1) The Board will coordinate with the state supervisory authority; and

(2) The Board will not approve any merger or conversion unless it is approved by the state supervisory authority.

(c) *Waiver of NCUA rules and approval by state supervisory authority.* A federally-insured state credit union may, on a case-by-case basis, request a waiver of this part 708a from the Board and receive authority to proceed under state rules and procedures. In making such a request, the credit union shall demonstrate that the concerns underlying this part 708a are adequately addressed and, in particular that:

(1) Proceeding under state rules present no financial risk to the credit union or the NCUSIF;

(2) Adequate safeguards exist against breach of duty by, or preferential treatment of directors, committee members and others involved in the transaction; and

(3) The transaction is otherwise fair to members and carried out pursuant to an informed and decisive membership vote.

§ 708a.4 Approval of Proposal by NCUA.

If NCUA finds that the proposal complies with the provisions of this part and does not present an undue risk to the NCUSIF or unduly prejudice the members, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the stated purposes of the proposal. No proposal will be approved that does not *clearly* inform the members of the fundamental rights they would be giving up if their credit union converts or merges into a non credit union institution.

§ 708a.5 Approval of Proposal by Members.

(a) *Notification of members.* The members shall:

(1) Have the option of voting on the proposal either in person at a membership meeting or by mail ballot.

(2) Be given advance notice of the membership meeting in accordance with the provisions of Appendix A of this part. The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 days nor less than 14 days prior to the date for the vote. The ballot to be used for the membership vote shall be in accordance with the provisions of Appendix A of this part. The notice and ballot shall be provided to the members at the same time. If applicable, the notice and ballot shall be provided in both English as well as the native language of the majority of the members.

(3) Be made aware that the complete application and proposal are available for inspection at the credit union's branch offices during normal business hours.

(b) *Vote by members.* The proposal must be approved by the affirmative vote of a majority of the credit union's members.

(c) *Notice of Approval to members.* If the proposal for merger or conversion is approved by the membership and the NCUA Board, prompt and reasonable notice shall be given to all members.

§ 708a.6 Certification and Completion of Merger or Conversion.

(a) *Certification of vote.* The board of directors shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

(b) *Completion.* Upon approval of the proposal by NCUA, the state supervisory authority (where the credit union is state chartered), the members and any federal agency with approval or regulatory authority for the transaction, the credit union may complete the merger or conversion.

(c) *Certification of completion.* Within 30 days after the effective date of the merger or conversion, the board of directors of the continuing institution shall certify the completion of the transaction to the Regional Director.

(d) *Cancellation of charter and insurance.* Upon NCUA's receipt of certification that the transaction has been completed, the charter of the federal credit union (if applicable) and the insurance certificate of the federally insured credit union will be canceled.

Appendix A to Part 708a—Notice to Members of Special Meeting, Disclosure and Ballot

(1) The Notice of Special Meeting must include the following:

(a) The date, time and place of the Meeting;

(b) A description of the matters to be voted upon at the Special Meeting;

(c) A statement in a prominent location in bold letters that "A DISCLOSURE STATEMENT HAS BEEN PROVIDED TO YOU WITH THIS NOTICE OF SPECIAL MEETING. THE DISCLOSURE MUST BE READ BEFORE VOTING ON THE PROPOSED ("CONVERSION" or "MERGER", as appropriate)", and

(d) A statement that a Mail Ballot for the Special Meeting is enclosed.

(2) The Disclosure provided with the Notice must at a minimum provide the following information to the members:

(a) Factual information about the credit union, i.e. name and address of credit union and telephone number of contact person;

(b) Summary of the proposal which shall contain but not necessarily be limited to current financial reports for the credit union and the other institution if a merger is proposed; a projected financial report for the continuing institution; analyses of share values; an explanation of any proposed share adjustments; and an explanation of any changes relative to insurance such as insurance of member accounts and life savings and loan protection insurance.

(c) Summary of the direct and indirect benefits to the credit union members, as well as any disadvantages, including a clear explanation of the nature of the change in the members' ownership interest in the reserves and undivided earnings of the credit union as a result of the merger or conversion;

(d) Summary of the direct and indirect benefits to management and other key persons at the credit union and at the new institution, including a comparison of salaries for those individuals employed by both the credit union and the new institution; copies of the certifications from the directors and committee members that they will receive no compensation either directly or indirectly from the new institution for a period of two years; and disclosure of any relationship by blood or marriage, of any of the officers, directors, key personnel or principal stockholders of the proposed institution to any officials or employees of the credit union.

(e) For each director, officer, key employee and consultant of the proposed institution, state in detail the names, positions, addresses, age and description of employment and educational background. Include any petitions for bankruptcy, civil judgments (indicate the plaintiff and the amount of the judgment), criminal conviction (indicate the nature of the charge) and any administrative action taken by a federal or state agency.

(f) Description of how the proposed merger/conversion results in a new financial institution without the unique characteristics of a credit union, for example, that the board of directors (that is, any new board members, since § 708a.2(c) prohibits compensation for a period of 2 years) may be compensated as officials instead of offering volunteer services, that the credit union will lose its tax exempt status, and any changes in the voting power of members.

(g) A dollar expenditure comparison chart of the estimated increases/decreases in regulatory and insurance fees;

(h) Itemized expenses incurred to date in the conversion process with an estimate as to future expenses;

(i) Management's discussion and analysis of the proposed conversion, including its economic advisability and how it will serve the needs of the members of the merging or converting credit union;

(j) Business and properties of the proposed institution—describe in detail the assets of the credit union and whether these assets will be transferred to the proposed institution and how the members will or will not benefit from the transfer;

(k) Description and comparison of the competition of the proposed institution and why the proposed institution believes it can effectively compete;

(l) In any transaction where the new or resulting institution is a stock institution, identify the principal owners of the proposed stock institution (those who will beneficially own directly or indirectly 1% or more of the common and preferred stock outstanding) starting with the largest common stockholder. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration. Indicate the number of shares to be individually owned by officers, directors and key personnel of the new institution; and

(m) State in bold on the cover "PLEASE READ THIS DISCLOSURE DOCUMENT. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR CREDIT UNION."

(3) The Mail Ballot must:

(a) State at the top in bold letters using 12 point pitch or greater that "THE ATTACHED DISCLOSURE STATEMENT MUST BE READ BEFORE VOTING ON THE PROPOSED ("CONVERSION" or "MERGER", as appropriate)";

(b) The issues for the member to vote on should be stated as follows:

Please vote for either (a) or (b) by checking the appropriate box.

(a) Approve the merger ☐

(b) Disapprove the merger ☐

(c) Advise the member of the right to terminate the mail ballot and attend and vote at the Special Meeting.

[FR Doc. 95–5593 Filed 3–7–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–02; Amendment 39–9170; AD 95–05–03]

Airworthiness Directives; Hamilton Standard 14RF Series, 14SF Series, and Hamilton Standard/British Aerospace Model 6/5500/F Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Hamilton Standard 14RF series, 14SF series, and Hamilton Standard/British Aerospace 6/5500/F series propellers, that currently requires a one-time ultrasonic shear wave inspection for cracks in the propeller blade taper bore. This amendment requires initial and repetitive ultrasonic shear wave inspections, and a one-time visual and borescope inspection of the taper bore for corrosion as a terminating action to the ultrasonic shear wave inspections. This amendment is prompted by reports of two incidents where a portion of the propeller blade was lost in flight. The actions specified by this AD are intended to prevent loss of a propeller blade due to cracks initiating in the blade taper bore, that can result in possible aircraft damage, and possible loss of aircraft control.

DATES: Effective March 23, 1995.

The incorporation by reference of the following Hamilton Standard Alert Service Bulletins (ASB) was approved by the Director of the Federal Register as of May 2, 1994: ASB's No. 14RF–9–61–A66, No. 14RF–19–61–A34, No. 14RF–21–61–A53, No. 14SF–61–A73, and No. 6/5500/F–61–A27, all dated April 18, 1994.

The incorporation by reference of all other Hamilton Standard ASB's and Service Bulletins listed in this AD is approved by the Director of the Federal Register as of March 23, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010; telephone (203) 654–3610. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On April 18, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94–09–06, Amendment 39–8894 (59 FR 19127, April 22, 1994), applicable to Hamilton Standard 14RF series, 14SF series, and Hamilton Standard/British Aerospace 6/5500/F series propellers, to require an ultrasonic shear wave inspection of the blade taper bore for cracks, and replacement, if necessary, with a serviceable propeller blade. That action was prompted by reports of two incidents where a portion of the propeller blade was lost in flight. On March 13, 1994, an ATR–42 commuter aircraft experienced an inflight loss of the right propeller and a portion of the associated engine gearbox. Later that month, on March 30, 1994, an Embraer EMB–120 commuter aircraft also experienced an inflight loss of a portion of a propeller blade. This blade fractured at approximately the 19-inch station and the remainder of the propeller blade, propeller, and gearbox remained intact.

Subsequent metallurgical examination of these fractured blades revealed that the fracture initiated in a small cavity or pit that formed on the inner surface of the taper bore inside the aluminum blade spar. Further laboratory investigations revealed these corrosion pits may develop occasionally when chlorine residue present in the cork used to seal the inner taper bore combines with water in the presence of oxygen. That condition, if not corrected, could result in loss of a propeller blade due to cracks initiating in the blade taper bore, that can result in possible aircraft damage, and possible loss of aircraft control.

Since the issuance of that AD, the FAA has conducted engineering and laboratory investigation and analysis of world-wide inspection results received from AD 94–09–06. This data indicates that either periodic ultrasonic shear wave inspection of the propeller taper bore should be conducted every 1,250 flight cycles in service (CIS) in order to discover cracks that may initiate in pits, or a one-time visual and borescope inspection of the taper bore should be conducted after removing the propeller inner taper bore cork seal to insure that no corrosion has occurred.

The FAA has reviewed and approved the technical contents of the following Hamilton Standard Service Bulletins (SB's) and Alert Service Bulletins (ASB's):

ASB's No. 14RF–9–61–A66, No. 14RF–19–61–A34, No. 14RF–21–61–A53, No. 14SF–61–A73, and No. 6/5500/F–61–A27, all dated April 18, 1994, that describe procedures for ultrasonic shear wave inspections of the

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blade taper bores for cracks. These ASB's are the same as those referenced in AD 94–09–06.

SB's No. 14RF–9–61–70, dated August 26, 1994; No. 14RF–19–61–37, dated August 29, 1994; No. 14RF–21–61–56, dated August 29, 1994; No. 14SF–61–75, dated August 29, 1994; and No. 6/5500/F–61–30, dated August 29, 1994. These SB's describe procedures to remove the propeller inner taper bore cork seal and inspect the inside surface of the taper bore for corrosion pits visually and by borescope. Blades found to be free of pits are marked and reidentified. Propeller blade maintenance logs shall also be annotated to show compliance with this AD. Blades found to have any corrosion pits during these inspections shall be removed from service prior to further flight and sent to an FAA-approved repair facility for disposition in accordance with the instructions of the appropriate SB.

ASB's No. 14SF–61–A74, Revision 1, dated October 5, 1994; No. 14RF–9–61–A69, Revision 1, dated October 5, 1994; No. 14RF–19–61–A36, Revision 1, dated October 5, 1994; No. 14RF–21–61–A55, Revision 1, dated October 5, 1994; and No. 6/5500/F–61–A29, dated August 29, 1994. These ASB's list the serial numbers of all blades with unpeened taper bores by model that require inspection. These ASB's present several options as to how to inspect the blade taper bores, and also give instructions to operators and repair facilities on how to report inspection data in order to show compliance with the AD.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes AD 94–09–06 to require initial and repetitive ultrasonic shear wave inspections and a one-time visual and borescope inspection of the taper bore for corrosion. Accomplishment of the visual and borescope inspection constitutes terminating action to the repetitive ultrasonic shear wave inspections. The actions are required to be accomplished in accordance with the SB's and ASB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–02." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8894, (59 FR 19127, April 22, 1994), and by adding a new airworthiness directive, Amendment 39–9170, to read as follows:

95–05–03 Hamilton Standard: Amendment 39–9170. Docket 95–ANE–02. Supersedes AD 94–09–06, Amendment 39–8894.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14SF–5, 14SF–7, 14SF–11, 14SFL11, 14SF–15, 14SF–17, 14SF–19, and 14SF–23; and Hamilton Standard/British Aerospace 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB 120–RT; SAAB-SCANIA SF 340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72; DeHavilland DHC–8–100 series, DHC–8–300 Series; Construcciones Aeronauticas SA (CASA) CN–235 series and CN–235–100; Canadair CL–215T and CL–415; and British Aerospace ATP airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a propeller blade due to cracks initiating in the blade taper bore, that can result in possible aircraft damage, and possible loss of aircraft control, accomplish the following:

(a) For propeller blades that have accumulated 1,750 or more flight cycles since ultrasonic shear wave inspection in accordance with AD 94–09–06, perform either paragraph (a) or (d) of this AD within 100 flight cycles of the effective date of this AD:

(1) Perform an ultrasonic shear wave inspection for cracks in the blade taper bore, in accordance with the procedures described in the following Hamilton Standard Alert Service Bulletins (ASB's), as applicable: No. 14RF–21–61–A53, dated April 18, 1994, and No. 14RF–21–61–A55, Revision 1, dated October 5, 1994; No. 14SF–61–A73, dated April 18, 1994, and No. 14SF–61–A74, Revision 1, dated October 5, 1994; No. 14RF–19–61–A36, Revision 1, dated October 5, 1994; No. 14RF–9–61–A66, dated April 18, 1994, and No. 14RF–9–61–A69, Revision 1, dated October 5, 1994; No. 6/5500/F–61–A27, dated April 18, 1994, and No. 6/5500/F–61–A29, dated August 29, 1994. Remove cracked propeller blades and replace with a serviceable blade prior to further flight.

(2) Thereafter, perform repetitive ultrasonic shear wave inspections at intervals not to exceed 1,250 CIS since last inspection in accordance with the applicable Hamilton Standard ASB's listed in paragraph (a)(1) of this airworthiness directive (AD). Remove cracked propeller blades and replace with a serviceable blade prior to further flight.

(3) No later than December 31, 1997, perform the visual and borescope inspection required by paragraph (d) of this AD.

(b) For propeller blades that have accumulated less than 1,750 flight cycles since ultrasonic shear wave inspection in accordance with AD 94–09–06, perform either paragraph (a) or (d) of this AD before accumulating 1,850 flight cycles since ultrasonic shear wave inspection in accordance with AD 94–09–06.

(c) For propeller blades that have not been inspected in accordance with AD 94–09–06, perform paragraphs (a)(1) or (d) of this AD prior to installing the blade in service and thereafter perform paragraph (a)(2) of this AD if applicable.

(d) Prior to December 31, 1997, remove and scrap the propeller inner taper bore cork seal and visually inspect the inside surface of the taper bore for corrosion pits in accordance with the applicable Hamilton Standard Service Bulletins (SB's): No. 14RF–9–61–70, dated August 26, 1994; No. 14RF–19–61–37, dated August 29, 1994; No. 14RF–21–61–56, dated August 29, 1994; No. 14SF–61–75, dated August 29, 1994; and No. 6/5500/F–61–30, dated August 29, 1994.

(1) For propeller blades found with any corrosion pits, remove from service prior to further flight and send the propeller blades to an FAA-approved repair facility for disposition in accordance with Hamilton Standard ASB's No. 14SF–61–A74, Revision 1, dated October 5, 1994; No. 14RF–9–61–A69, Revision 1, dated October 5, 1994; No. 14RF–19–61–A36, Revision 1, dated October 5, 1994; No. 14RF–21–61–A55, Revision 1, dated October 5, 1994; and No. 6/5500/F–61–A29, dated August 29, 1994; as applicable.

(2) For propeller blades found with no corrosion pits, mark the blade and return it to service in accordance with the Hamilton Standard SB's listed in paragraph (d) of this AD.

(3) Returning propeller blades to service in accordance with paragraph (d) of this AD constitutes terminating action to the repetitive ultrasonic shear wave inspections required by paragraph (a)(2) of this AD.

(e) For the purpose of this AD, a flight cycle is defined as one takeoff and the next landing of an aircraft.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(h) The requirements of this AD shall be done in accordance with the following Hamilton Standard ASB's and SB's:

Document No.	Pages	Revision	Date
ASB No. 14SF–61–A74	1–7	1	October 5, 1994.
Total pages: 7.			
ASB No. 14SF–61–A73	1–19	Original	April 18, 1994.
Total pages: 19.			
SB No. 14SF–61–75	1–17	Original	August 29, 1994.
Total pages: 17.			
ASB No. 14RF–9–61–A69	1–6	1	October 5, 1994.
Total pages: 6.			
ASB No. 14RF–9–61–A66	1–19	Original	April 18, 1994.
Total pages: 19.			
SB No. 14RF–9–61–70	1–17	Original	August 29, 1994.
Total pages: 17.			
ASB No. 14RF–19–61–A36	1–6	1	October 5, 1994.
Total pages: 6.			
ASB No. 14RF–19–61–A34	1–19	Original	April 18, 1994.
Total pages: 19.			
SB No. 14RF–19–61–37	1–17	Original	August 29, 1994.
Total pages: 17.			
ASB No. 14RF–21–61–A55	1–6	1	October 5, 1994.
Total pages: 6.			
ASB No. 14RF–21–61–A53	1–19	Original	April 18, 1994.
Total pages: 19.			
SB No. 14RF–21–61–56	1–17	Original	August 29, 1994.
Total pages: 17.			
ASB No. 6/5500/F–61–A29	1–5	Original	August 29, 1994.
Total pages: 5.			
ASB No. 6/5500/F–61–A27	1–19	Original	April 18, 1994.
Total pages: 19.			
SB No. 6/5500/F–61–30	1–17	Original	August 29, 1994.
Total pages: 17.			

The incorporation by reference of the following Hamilton Standard ASB's was approved by the Director of the Federal Register as of May 2, 1994: ASB's No. 14RF–9–61–A66, No. 14RF–19–61–A34, No. 14RF–21–61–A53, No. 14SF–61–A73, and No. 6/5500/F–61–A27, all dated April 18, 1994. The incorporation by reference of all other Hamilton Standard ASB's and SB's listed in this AD was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010; telephone (203) 654–3610. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 23, 1995.

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Issued in Burlington, Massachusetts, on February 28, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–5483 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–13–P

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–97–AD; Amendment 39–9157; AD 95–04–05]

Airworthiness Directives; Bombardier (Formerly Canadair) Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that requires various modifications of the passenger doors. This amendment is prompted by reports that some passenger doors froze shut during flight and could not be opened after landing the airplane. The actions specified by this AD are intended to prevent the passenger doors from freezing shut, and consequently, prohibiting the passengers from exiting the airplane in the event of an emergency.

DATES: Effective April 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7508; fax (516) 568–2716; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes was published in the **Federal Register** on October 28, 1994 (59 FR 54136). That action proposed to require various modifications of the passenger doors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

The final rule has been revised to reflect the manufacturer's corporate name change from Canadair to "Bombardier, Inc."

Additionally, as a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 67 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,945 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $254,405, or $14,965 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–05 Bombardier, Inc. (Formerly Canadair): Amendment 39–9157. Docket 94–NM–97–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 and subsequent, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of passengers to exit the airplane in the event of an emergency, accomplish the following:

(a) For airplanes having serial numbers 7004 through 7028, inclusive: Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 3 days until the action required by paragraph (e)(2) of this AD is accomplished, apply an anti-icing agent to the operating mechanisms of the passenger door in accordance with Canadair Alert Service Bulletin S.B. A601R–52–002, Revision 'C,' dated December 1, 1993.

(b) For airplanes having serial numbers 7004 through 7006, inclusive, and 7008 through 7010, inclusive: Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service until the actions required by paragraphs (e)(1) and (e)(3) of this AD are accomplished, apply grease to the passenger door latch-pin fittings in accordance with Canadair Service Bulletin S.B. 601R–52–007, Revision 'B,' dated December 1, 1993.

(c) For airplanes having serial numbers 7004 through 7006, inclusive, and 7008 through 7010, inclusive: Within 14 days after the effective date of this AD, deactivate the pull-out handle located on the outside of the passenger door, in accordance with Canadair Alert Service Bulletin S.B. A601R–52–008, Revision 'B,' dated December 1, 1993.

(d) For airplanes having serial numbers 7004 through 7019, inclusive: Within 14 days after the effective date of this AD, install sealed insulation packages to the interior of the passenger door in accordance with Canadair Service Bulletin S.B. 601R–52–006, Revision 'B,' dated December 1, 1993.

(e) Within 60 days or 600 hours time-in-service after the effective date of this AD, whichever occurs first, accomplish the procedures specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD:

(1) For airplanes having serial numbers 7004 through 7024, inclusive: Modify the passenger door latch pin fittings, and install grease retain, grease tube, and nipple assembly; and grease the latch pins in accordance with paragraphs 2A and 2B of the Accomplishment Instructions of Canadair Alert Service Bulletin S.B. A601R–52–009, Revision 'B,' dated December 1, 1993.

(2) For airplanes having serial numbers 7004 through 7028, inclusive: Modify the outer handle of the passenger door in accordance with Canadair Alert Service Bulletin S.B. A601R–52–021, Revision 'A,' dated December 7, 1993. Repetitive applications of an anti-ice agent, as required by paragraph (a) of this AD, must be discontinued upon accomplishment of the modification required by this paragraph.

(3) For airplanes having serial numbers 7004 through 7024, inclusive: Install placards adjacent to the door latch pins on the passenger door structure in accordance with Canadair Service Bulletin S.B. 601R–11–007, dated December 1, 1993.

(f) Accomplishment of the actions required by paragraphs (e)(1) and (e)(3) of this AD constitutes terminating action for the repetitive greasing requirements of paragraph (b) of this AD.

(g) For airplanes having serial numbers 7003 and subsequent: Within 300 hours time-in-service after accomplishing the applicable modifications required by paragraphs (e)(1), (e)(2), and (e)(3) of this AD, and thereafter at intervals not to exceed 300 hours time-in-service, accomplish the lubrication procedures in specified paragraphs (g)(1) and (g)(2) of this AD.

(1) Lubricate the passenger door latch pins in accordance with paragraph 2B, Part "A," Items (26) through (28), of the Accomplishment Instructions of Canadair Alert Service Bulletin S.B. A601R–52–009, Revision B, dated December 1, 1993.

(2) Lubricate the passenger door outer handle assembly in accordance with paragraph 2B, Item (28), of the Accomplishment Instructions of Canadair Alert Service Bulletin S.B. A601R–52–021, Revision A, dated December 7, 1993.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The actions shall be done in accordance with Canadair Alert Service Bulletin S.B. A601R–52–002, Revision 'C,' dated December 1, 1993; Canadair Service Bulletin S.B. 601R–52–007, Revision 'B', dated December 1, 1993; Canadair Alert Service Bulletin S.B. A601R–52–008, Revision 'B', dated December 1, 1993; Canadair Service Bulletin S.B. 601R–52–006, Revision 'B', dated December 1, 1993; Canadair Alert Service Bulletin S.B. A601R–52–009, Revision 'B', dated December 1, 1993; Canadair Alert Service Bulletin S.B. A601R–52–021, Revision 'A', dated December 7, 1993; and Canadair Service Bulletin S.B. 601R–11–007, dated December 1, 1993; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

This amendment becomes effective on April 17, 1995.

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4256 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–AWP–19]

Amendment to Class D Airspace; Luke Air Force Base (AFB), AZ

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the Class D airspace area description in a final rule that was published in the **Federal Register** on January 19, 1995. The FAA has obtained additional airport data and is revising the description of the Luke AFB, AZ Class D airspace area based on this data.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–1640.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 93–AWP–19, published on January 19, 1995 (60 FR 3741), revised the description of the Class D airspace at Luke AFB, AZ to provide adequate controlled airspace for instrument approach procedures. An error was discovered in the Class D airspace area description for Luke AFB AZ. The FAA has obtained additional airport data and is revising the description of the Luke AFB, AZ Class D airspace area based on this data.

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Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description of the Class D airspace area at Luke AFB, AZ, as published in the **Federal Register** on January 19, 1995 (60 FR 3741) and the description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.7, are corrected as follows:

§ 71.7 [Corrected]

On page 3742, in the second column, the description for the Luke AFB, AZ Class D airspace is corrected as follows:

AWP AZ D Phoenix, Luke Air Force Base, AZ [Corrected]

Phoenix Luke Air Force Base, AZ
(Lat. 33°32'06" N, long. 112°22'59" W)
Luke Air Force Base TACAN
(Lat. 33°32'16" N, long. 112°22'49" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.4-mile radius of the Luke AFB and within 2.0 miles each side of the Luke TACAN 220° radial, extending from the 4.4-mile radius to 5.2 miles southwest of the Luke TACAN, and excluding that portion within the Glendale, AZ Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on February 22, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–5642 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1262

RIN 2700–AC00

Equal Access to Justice Act in Agency Proceedings

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulations under the Equal Access to Justice Act by updating the definition of "Adversary Adjudication" to conform to the amendments of 5 U.S.C. 504(b)(1)(C); to delete references to the NASA Board of Contract Appeals in 14 CFR 1262.307(a), since its functions have been assumed by the Armed Services Board of Contract Appeals pursuant to an interagency Memorandum of Agreement dated June 28, 1993, and effective July 12, 1993; and to correct typographical errors in §§ 1262.104(b)(4) and 1262.309.

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sara Najjar-Wilson, Office of the General Counsel, 202–358–2465.

SUPPLEMENTARY INFORMATION: NASA published its final rule, 14 CFR Part 1262, "Implementation of the Equal Access to Justice Act in Agency Proceedings," in the **Federal Register** on April 23, 1986 (51 FR 15311). These changes to the rule are administrative in nature and do not require a period for public comment.

NASA has determined that this regulation is not a major rule as defined in Executive Order 12866.

This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

List of Subjects in 14 CFR Part 1262

Claims, Equal access to justice, Lawyers.

For reasons set forth in the Summary of the Preamble, 14 CFR Part 1262 is amended as follows:

PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEDURES

1. The authority citation of 14 CFR Part 1262 is revised to read as follows:

Authority: 5 U.S.C. 504; 42 U.S.C. 2473(c)(1).

2. Section 1262.101 is amended by revising paragraph (b)(1) to read as follows:

§ 1262.101 Purpose of these rules.

* * * * *

(b) * * *

(1) *Adversary adjudication* means:

(i) An adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license;

(ii) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act (CDA) of 1978, as amended (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of the CDA (41 U.S.C. 607);

(iii) Any hearing conducted under Chapter 38 of Title 31 (added by section 6104 of the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99–509, 100 Stat. 1948, Oct. 21, 1986), 31 U.S.C. 3801, et seq., as amended); and

(iv) The Religious Freedom Restoration Act (RFRA) of 1993 (added by section 4(b), of RFRA (Pub. L. 103–141, 107 Stat. 1489, Nov. 16, 1993), 42 U.S.C. 2000bb).

* * * * *

3. Section 1262.103 is revised to read as follows:

§ 1262.103 Proceedings covered.

(a) The Act applies to the following adversary adjudications conducted by the Agency:

(1) Adjudications under 5 U.S.C. 554 in which the position of NASA or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceedings;

(2) Appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Board of Contract Appeals (BCA) as provided in Section 8 of that Act (41 U.S.C. 607);

(3) Any hearing conducted under Chapter 38 of Title 31 (31 U.S.C. 3801, et seq., as amended); and

(4) Adjudications under the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb).

(b) The Act does not apply to:

(1) Any proceeding in which this Agency may prescribe a lawful present or future rate;

(2) Proceedings to grant or renew licenses (note, however, that proceedings to modify, suspend, or revoke licenses are covered if they are otherwise adversary adjudications); and

(3) Proceedings which are covered by a compromise or settlement agreement, unless specifically consented to in such agreement.

(c) NASA may also designate a proceeding as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Agency's failure to designate a proceeding as an adversary adjudication shall not preclude the filling of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(d) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

4. In Section 1262.104, paragraph (b)(4), the citation "12 U.S.C. 1441j(a))" is revised to read "(12 U.S.C. 1141j(a))"

5. Section 1262.307 is amended by revising paragraph (a) introductory text to read as follows:

§ 1262.307 Decision.

(a) The adjudicative officer shall issue an initial decision on the application with 90 calendar days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

* * * * *

§ 1262.309 [Amended]

6. In section 1262.309, last sentence, the word "amont" is revised to read "amount".

Dated: March 3, 1995.

Daniel S. Goldin,

Administrator.

[FR Doc. 95–5669 Filed 3–7–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket Nos. 89F–0011 and 93F–0384]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sources of radiation to irradiate frozen, packaged meats for use in the National Aeronautics and Space Administration (NASA) space flight programs. FDA is also amending the food additive regulations to permit the use of packaging materials that are not otherwise listed in the regulations regarding food irradiation in the irradiation of frozen, packaged meats for use in the NASA space flight programs. This action is in response to two petitions filed by NASA.

DATES: Effective March 8, 1995; written objections and requests for a hearing by April 7, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of February 6, 1989 (54 FR 5679), FDA announced that a food additive petition (FAP 9M4125) had been filed by NASA, Washington, DC 20546, proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process beefsteaks for use in space flight programs.

In a tentative final rule published in the **Federal Register** of December 8, 1993 (58 FR 64526), FDA announced its tentative decision to amend the food additive regulations to provide for the safe use of sources of radiation to irradiate frozen, packaged beefsteak for use in NASA's space flight programs. FDA also announced its tentative final decision to amend the food additive regulations to permit the use of packaging materials that are not listed in the regulations regarding food irradiation in the irradiation of frozen, packaged beefsteak for use in the NASA space flight programs. The agency published a tentative final rule before proceeding to final action because it was including provisions regarding the packaging materials to be used with the beefsteaks that it had not announced in the notice of filing for the petition (FAP 9M4125). Interested persons were given the opportunity to comment on FDA's tentative decision. FDA did not receive any comments in response to this tentative final rule.

In the meantime, in a notice published in the **Federal Register** of November 19, 1993 (58 FR 61093), FDA announced that a food additive petition (FAP 3M4394) had been filed by NASA, Lyndon B. Johnson Space Center, Houston, TX 77058, proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process certain prepackaged meats for use in NASA space flight programs and to permit the use of packaging materials that are not listed in the regulations regarding food irradiation in the irradiation of the meats for use in NASA space flight programs. Interested persons were given the opportunity to comment on the environmental assessment submitted in the petition. No comments were received.

The amendment to the food additive regulations proposed in FAP 9M4125 is encompassed by that proposed in FAP 3M4394. This rule is the agency's final decision with respect to both FAP 3M4394 and FAP 9M4125.

II. Evaluation of Safety

In assessing the safety of food additives, including the use of irradiation in the processing of food, the agency usually considers the effects of lifetime daily exposure to the additive. The requested use, however, is limited to NASA's space flight programs. The amount of irradiated meat that could be consumed by individuals in the programs would constitute an extremely small fraction of their diets when considered over a lifetime. Because of this factor, questions regarding acute hazards, including those resulting from pathogenic organisms that could be present in the food, are more significant in evaluating this petitioned use of a source of radiation than they would ordinarily be in deciding whether to list a food additive. The petitions have requested that FDA authorize the use of irradiation processing only under conditions that ensure the microbial sterility of the product and the integrity of the product packaging. NASA has stated that it will ensure these qualities of sterility and packaging integrity by requiring adherence to an irradiation processing protocol (scheduled process) that it submitted with both petitions (Ref. 1). NASA's protocol specifies a minimum dose of 44 kiloGrays (kGy) in order to ensure sterility of the treated meat (Ref. 1).

Having evaluated the data in the petitions and other relevant material in its files, the agency finds that radiation-sterilized meats will be at least as nutritious as those sterilized by conventional means. FDA also finds that the total amount of radiolytic products that are produced in the meats during irradiation processing, and that will be consumed by individuals in the space flight programs, will be too small to be of any toxicological significance. Likewise, FDA finds that the total amount of radiolytic products that could be formed in the packaging materials during irradiation processing, and then migrate to the food and subsequently be consumed by individuals in the space flight programs, is too small to be of any toxicological significance (Refs. 2 and 3).

Section 179.25(c) (21 CFR 179.25(c)) restricts packaging materials used in the irradiation of prepackaged foods to those materials listed in § 179.45 (21 CFR 179.45), namely, those that have been demonstrated to be safe for use during irradiation of prepackaged foods, assuming that those foods would be consumed daily over a lifetime. The agency finds that this restriction is unnecessary for packaging that is to be used only in space flight programs. The

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final regulation set forth below, therefore, exempts this packaging from the requirement in § 179.25(c) that packaging materials be restricted to those listed in § 179.45, provided that FDA has listed the packaging as safe for holding food in the applicable regulations ((parts 174 through 186) (21 CFR parts 174 through 186)).

III. Conclusions

The agency finds that meats irradiated at a minimum dose of 44 kGy and handled in accordance with the provisions of § 179.25(d) will meet current standards for commercial sterility and nutritional adequacy. The protocol submitted by NASA (Ref. 1) in its petitions is a scheduled process that satisfies the requirements of § 179.25(d) because, among other things, it sets forth procedures that will ensure that the minimum dose will be delivered. The agency concludes, therefore, that the proposed use of sources of radiation is safe, and that § 179.26 of the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 7, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Army Natick RD & E Center, "Space Food Prototype, Production Guide No. 60–C," April 13, 1993.

2. Memorandum from M. DiNovi, Chemistry Review Branch, CFSAN, FDA, to P. Hansen, Biotechnology Policy Branch, CFSAN, FDA, dated April 29, 1994.

3. Memorandum from H. Irausquin, Division of Health Effects Evaluation, CFSAN, FDA, to P. Hansen, Biotechnology Policy Branch, CFSAN, FDA, dated November 9, 1994.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 703, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 373, 374).

2. Section 179.26 is amended in the table in paragraph (b) by adding a new entry "7." under the headings "Use" and "Limitations" to read as follows:

§ 179.26 Ionizing radiation for the treatment of food.

* * * * *

(b) * * *

Use	Limitations
. . .	. . .
7. For the sterilization of frozen, packaged meats used solely in the National Aeronautics and Space Administration space flight programs.	Minimum dose 44 kGy (4.4 Mrad). Packaging materials used need not comply with § 179.25(c) provided that their use is otherwise permitted by applicable regulations in parts 174 through 186 of this chapter.

* * * * *

Dated: February 26, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–5672 Filed 3–7–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5165–3]

RIN 2060–AD97

National Emission Standards for Hazardous Air Pollutants Final Standards for Epoxy Resins Production and Non-Nylon Polyamides Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates final standards that limit emissions of hazardous air pollutants (HAP) from existing and new epoxy resins and non-nylon polyamides production operations that are located at major sources. The EPA is in the process of developing standards for a wide range of types of polymer and resin production facilities. The polymers and resins covered by this rule use epichlorohydrin as a feedstock. This rulemaking would affect epoxy resin manufacturers that produce basic liquid epoxy resin, which is often used to produce a cured resin with desired properties for adhesives, coatings, and other plastic applications. This rulemaking would also affect non-nylon polyamide resin manufacturers that use epichlorohydrin in the production of wet strength resin, which is used to increase the tensile strength of paper products. The rule is estimated to reduce emissions of HAP, mainly epichlorohydrin, by approximately 105 tons per year. Epichlorohydrin is considered a probable human carcinogen when inhaled and causes additional toxic effects. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other standards mandated by the CAA, will contribute to achieving the primary goal of the Act, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." These final standards implement section 112(d) and 112(h) of the Clean Air Act as amended in 1990 (the Act). The purpose of this final rule is to protect the public by requiring all new and existing major sources to control HAP emissions to the level corresponding to the maximum achievable control technology (MACT).

EFFECTIVE DATE: March 8, 1995.

ADDRESSES: *Docket.* Docket No. A–92–37, containing information considered by the EPA in developing the promulgated NESHAP for epoxy resins and non-nylon polyamides operations is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U. S. EPA Library (MD–35), Research Triangle Park, NC 27711; telephone number (919) 541–2777; or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650. Please refer to "Hazardous Air Pollutants from Epoxy Resins and Non-Nylon Polyamide Resins Production—Information for Promulgated Standards" (EPA–453/R–95–001b). The BID contains a summary of the public comments made on the proposed standards for epoxy resins and non-nylon polyamides and EPA responses to the comments.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald of the Organic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5402.

SUPPLEMENTARY INFORMATION:

Judicial Review

Under section 307(b)(1) of the Act, judicial review of national emission standards for hazardous air pollutants (NESHAP) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background
II. Summary of Promulgated Standards
III. Summary of Considerations Made in Developing This Rule
IV. Summary of Environmental, Energy, Cost, and Economic Impacts
V. Significant Changes to the Proposed Standards
  A. Public Participation
  B. Summary of Significant Comments and Changes
VI. Administrative Requirements
  A. Docket
  B. Enhancing the Intergovernmental Partnership Under Executive Order 12875
  C. Executive Order 12286
  D. Paperwork Reduction Act
  E. Regulatory Flexibility Act
  F. Miscellaneous

I. Background

Section 112(b) of the Act lists 189 HAP and requires the EPA to establish national emission standards for all major sources and some area sources emitting those HAP. On July 16, 1992 (57 FR 31576), EPA published a list of major and area sources for which NESHAP are to be promulgated, and on December 3, 1993 (58 FR 83941), EPA published a schedule for promulgating those standards. The epoxy resins and non-nylon polyamides production source categories are included in the list of major sources to be regulated for which the EPA is to establish national emission standards by November 1994.

This NESHAP was proposed in the **Federal Register** on May 16, 1994 (59 FR 25387). In addition, 11 letters commenting on the proposed rule were received.

II. Summary of Promulgated Standards

The affected sources subject to these standards are existing and new facilities producing basic liquid epoxy resins (BLR) and facilities producing non-nylon polyamide resins or "wet strength" resins (WSR), that are also classified as major sources per section 112(a) of the Clean Air Act, as amended. The standards do not apply to research and laboratory facilities which do not manufacture products for sale, except in a de minimis manner.

Table 1 summarizes the standards for both BLR and WSR facilities. Existing BLR sources are required to limit HAP emissions from process vents, storage tanks, and wastewater systems to 130 pounds per million pounds of product. In addition, existing BLR sources are required to control equipment leak emissions by implementing the leak detection and repair (LDAR) program specified in 40 CFR part 63, subpart H. Existing WSR sources are required to limit HAP emissions from process vents, storage tanks, and wastewater systems to 10 pounds per million pounds of product. There is no requirement to control equipment leak emissions for existing WSR sources; however, an alternative standard is specified whereby sources may implement the requirements of 40 CFR part 63, subpart H in lieu of meeting the emission limit of 10 lb/MM lb product.

TABLE 1.—SUMMARY OF STANDARDS

Emission source	Basic liquid epoxy resins	Wet strength resins	
			Equivalent standard
Existing Sources			
(1) Process vents, storage tanks, and wastewater.	HAP emission limit of 130 lb/MM lb product.	HAP emission limit of 10 lb/MM lb product.	No requirement.

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TABLE 1.—SUMMARY OF STANDARDS—Continued

Emission source	Basic liquid epoxy resins	Wet strength resins	
			Equivalent standard
(2) Equipment leaks	Requirements of 40 CFR 63, subpart H.	No requirement	Requirements of 40 CFR 63, subpart H.
New Sources			
(1) Process vents, storage tanks, and wastewater.	98 percent reduction of HAP emissions from the sum of uncontrolled emission points; or limit HAP emissions to 5,000 lb/yr.	HAP emission limit of 7 lb/MM lb product.	No requirement.
(2) Equipment leads	Requirements of 40 CFR 63, subpart H.	No requirement	Requirements of 40 CFR 63, subpart H.

New BLR sources must either reduce HAP emissions from process vents, storage tanks, and wastewater systems by 98 percent, or limit HAP emissions from this portion of the source to 5,000 pounds per year or less. New BLR sources must also implement the requirements of 40 CFR part 63, subpart H to control equipment leak emissions. New WSR sources have the option of either complying with a HAP emission limit of 7 pounds per million pounds of product for the process vents, storage tanks, and wastewater systems portion of the source, or implementing the LDAR program requirements of 40 CFR part 63, subpart H to control equipment leak emissions.

Owners or operators of existing affected sources are required to comply with these standards within 3 years after the effective date. All new and reconstructed sources must comply immediately upon startup.

Owners or operators of affected sources must demonstrate initial compliance following the compliance methods and procedures of § 63.525. Continuous compliance is demonstrated by conducting monitoring in accordance with § 63.526.

Section 114 (a)(3) of the Act requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring. Compliant monitoring parameter values are established according to procedures contained in § 63.526. A de minimis level is specified for the BLR source category for emission points below which monitoring is not required.

Owners or operators of affected sources shall maintain records and submit reports in accordance with §§ 63.527 and 63.528. Records are consistent with those required by 40 CFR part 63, subpart A, and also include the recordkeeping requirements associated with the LDAR program specified in 40 CFR part 63, subpart H where applicable.

The EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by the Office of Management and Budget (OMB) for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

III. Summary of Considerations Made in Developing This Rule

The Clean Air Act was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (the Act, section 101(b)(1)). As such, this regulation protects the public health by reducing emissions of epichlorohydrin from basic liquid resins and wet strength resins processes. Available emission data for the epoxy resins and non-nylon polyamides source categories indicate that epichlorohydrin is the primary pollutant listed in section 112(b)(1) of the CAA that is emitted in from sources in the source category.

In addition, note that epichlorohydrin is listed under section 112(r) of the CAA. The intent of section 112(r), Prevention of Accidental Releases, is to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release, and to minimize consequences should a release occur. Epichlorohydrin, along with the other substances listed under section 112(r)(3), is listed because it is known to cause, or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment (see 59 FR 4478, January 31, 1994). Sources that handle epichlorohydrin in greater quantities than the established threshold quantity under section 112(r)(5) will be subject to the risk management program requirements under section 112(r)(7) (see 58 FR 54190, October 20, 1993).

Epichlorohydrin is considered to be a probable human carcinogen when inhaled and can cause additional toxic effects. These effects include respiratory, skin, and eye irritation, pulmonary edema, renal lesions, and hematological and central nervous system effects. The severity of observed effects varies depending on the level and length of exposure. The exposure duration and level (that is, the amount inhaled from the air and absorbed within the body) are strongly influenced by source-specific characteristics such as emission rates and local meteorological conditions. The severity of effects also depends on multiple factors that affect human variability such as age, genetics, and general health status (e.g., presence of pre-existing disease). The EPA does not have the type of current detailed data on each of the BLR or WSR facilities covered by this rule, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to epichlorohydrin and resulting health effects. Therefore, EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the promulgated standard will substantially reduce emissions and exposures to the level achievable with maximum achievable control technology. However, due to the volatility and relatively low potential for bioaccumulation of epichlorohydrin, air emissions are not expected to deposit on land or water and cause subsequent adverse health or ecosystem effects.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing BLR and WSR sources, are based on process and emissions data received from every existing BLR and WSR facility known to be in operation. The EPA met with industry several times to discuss this data. In addition, facilities, State regulatory authorities, and environmental groups had the opportunity to comment on the proposed standards and provide additional information during the public comment period which followed proposal. Some facilities did provide comments; these comments were considered, and in some cases, the standards were changed in response to the comments. Of major concern to the commenters was the proposed format of the standards for new sources. After considering various alternatives, the EPA decided the format of the standard could be changed in a way which allays their concerns.

The final standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount allowed under the Clean Air Act (CAA). New facilities are required to comply with the standard upon startup. The EPA sees no reason why new facilities would not be able to comply with the requirements of the standards upon startup. The number of existing sources affected by this rule is less than 20; therefore, EPA does not believe that required retrofits or other actions cannot be achieved in the time frame allotted.

Included in the final rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, EPA has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections, depending on which method would be least confusing for a given situation.

As described in the preamble to the proposed rule, two regulatory alternatives above the MACT floor were considered for BLR and WSR. For BLR, the final standards reflect the option with the lowest overall cost effectiveness in dollars per megagram of HAP emission reduction. For WSR the MACT floor, as well as the two regulatory alternatives above the floor, were found to have relatively high cost effectiveness. However, an alternative standard was specified that allows facilities to implement the requirements of subpart H to control emissions from equipment leaks. The alternative standard is much more cost effective, and will result in a greater overall HAP emission reduction. However, the alternative standard is not being *required* because the cost was considered to be too high to justify requiring more control than that achieved at the MACT floor. Section 112(d) of the Clean Air Act requires standards to be set at a level no less stringent than the MACT floor but requires consideration of the cost of achieving further reductions before requiring reductions beyond the MACT floor.

Representatives from other interested EPA offices and programs, as well as representatives from State regulatory agencies, are included in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and must review and concur with the regulation before proposal and promulgation. Therefore, EPA believes that the implications to other EPA offices and programs has been adequately considered during the development of these standards.

IV. Summary of Environmental, Energy, Cost, and Economic Impacts

The environmental impacts for this rule were not impacted significantly by changes made to the rule between proposal and promulgation. The promulgated standards reduce HAP emissions from existing BLR sources by 95 megagrams per year (Mg/yr) (105 tons per year (tons/yr)) from the baseline level, a reduction of 78 percent from baseline. Emissions of HAP from existing WSR sources will decrease by 2 Mg/yr (2 tons/yr) if facilities elect to comply with the standard for process vents, storage tanks, and wastewater systems, a reduction of 7 percent from baseline. If facilities elect to comply with the alternative standard (comply with the 40 CFR part 63, subpart H requirements for equipment leaks), HAP emissions will decrease by 14 Mg/yr (15 tons/yr), a reduction of 52 percent from baseline.

No additional wastewater generation results from compliance with the standards as a result of changing the new source standard for BLR and WSR process vents, storage tanks, and wastewater systems emission sources from an equipment-based standard to a performance-based standard. No solid waste is generated from the BLR or WSR production processes.

The energy impacts for this rule were not affected by changes made to the rule between proposal and promulgation. The standards for the BLR source category require energy usage of 1.5×10^6 Btu per year (Btu/yr). Energy usage for the WSR will be 4×10^6 Btu/yr if sources comply with the standard for process vents, storage tanks, and wastewater systems; however, if sources choose to comply with the alternative standard (subpart H), the additional energy usage will be negligible. The cost impacts for this rule were not affected by changes made to the rule between proposal and promulgation. Nationwide, the total annual cost of the standard to the BLR industry will be $140,000. If all WSR sources choose to comply with the standard for process vents, storage tanks, and wastewater systems, the total cost of this regulation to the WSR industry will be $520,000. If all WSR sources decide to comply with the alternative standard (subpart H), the total annual cost will be $52,000.

V. Significant Changes to the Proposed Standards

A. Public Participation

Prior to proposal of this rule a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) was held to discuss the development of the draft rule for epoxy resins and non-nylon polyamide resins production. That meeting was held on November 18, 1992. The meeting was open to the public, and each attendee was given an

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opportunity to comment on the draft rule.

The proposed rule was published in the **Federal Register** on May 16, 1994 (59 FR 25387). The preamble to the proposal discussed the availability of the proposal BID (Emissions from Epoxy Resins Production and Non-Nylon Polyamides Production—Information for Proposed Standards (EPA–493/R–94–033a)), which describes in detail the regulatory alternatives considered and the impacts associated with those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were made available to interested parties.

The public comment period ended on July 15, 1994. A total of 11 comment letters were received. The comments were carefully considered, and, where determined by the Administrator to be appropriate, changes were made in the final rule.

Comments on the proposed rule were received from BLR and WSR manufacturers, State and local air pollution control agencies, and environmental organizations. A detailed discussion of these comments and responses can be found in the promulgation BID (see **ADDRESSES** section). The summary of comments and responses in the promulgation BID serves as the basis for the revisions that have been made to the rule between proposal and promulgation. The major comments and responses are summarized in this preamble.

For the purpose of orderly presentation, the comments have been categorized in the promulgation BID under the following topics:

1. Applicability of the Standard;
2. Description of Emission Control Technology;
3. Selection of MACT;
4. Selection of Compliance Dates;
5. Selection of Emission Limits or Equipment/Work Practice Specifications;
6. Selection of Compliance Methods and Monitoring Requirements;
7. Selection of Reporting and Recordkeeping Requirements;
8. Interaction of Polymers and Resins II NESHAP with the General Provisions;
9. Wording of the Standard; and
10. Miscellaneous.

B. Summary of Significant Comments and Changes

In response to public comments and as a result of additional evaluation by EPA, changes have been made to the standards. Significant changes are summarized below, and are explained fully in the promulgation BID.

1. Several commenters objected to the format of the standard for new BLR sources. The commenters pointed out the inflexibility of the equipment standard, which would have required certain control technology (water scrubbers) and venting configurations (manifolding all vents to common control), rather than allowing owners and operators the flexibility of controlling the process in a manner of their own choosing. In response to these comments, formats for the new source maximum achievable control technology (MACT) requirements for process vents, wastewater, and storage tank emissions for BLR and WSR have been changed. For BLR facilities, the standard is a 98 percent reduction of HAP from the sum of uncontrolled process vents, storage, and wastewater systems emission points or an emission limit of 5,000 pounds per year (lb/yr) HAP from the sum of process vents, storage, and wastewater systems emission points. For WSR, the requirement is a limit of 7 lb of HAP per million (MM) lb resin production from the sum of process vents, storage, and wastewater systems emission points. These changes in format for new source MACT requirements reflect the same level of control as the proposed equipment standard requirements.

2. One commenter argued that the methods proposed for determining emissions from storage tanks and wastewater systems, which were referenced from the emissions averaging section of the Hazardous Organic NESHAP (HON) are not appropriate for this regulation. Upon further review, EPA agrees with the commenter's arguments concerning estimating emissions from wastewater, but not those concerning storage tanks. Consequently, the methods of calculating emissions and determining the effectiveness of certain control measures on wastewater emission points have been corrected and now specify methodologies contained in the HON, appendix C. The required emission estimation methods for storage tanks did not change.

3. One commenter stated that sampling frequencies specified in the proposed performance test guidelines are not feasible for BLR sources. The EPA has reexamined the proposed sampling guidelines and agrees with the commenter's argument. Therefore, the frequency of flowrate and concentration sampling of emission stream characteristics during a performance test has been reduced. For continuous BLR emission points, sampling at 15-minute intervals for flowrate and concentration or 1-hour time-integrated sampling of concentration have replaced the requirement of simultaneous minute-by-minute measurements of flowrate and concentration. For WSR, sampling of flowrate every 15 minutes, or least once per batch step, and integrated concentration measurements over each step have replaced the minute-by-minute flowrate and concentration measurements. In addition, EPA has decided not to require three test runs for WSR process vents, due to the dynamic nature of batch emission stream characteristics. The data obtained from a batch test run may be representative of only that batch; therefore, running repeat tests may not be justified. The EPA has also specified that owners or operators of WSR sources perform a maximum of 8 hours of testing for batch emission episodes of duration greater than 8 hours. This provision was included to prevent the possibility of excessive testing costs for owners of batch processes containing very long emission episodes. Finally, the EPA has decided to allow owners or operators of WSR sources to test intermittently if they can provide evidence that the periods tested represent periods in which emissions are greater than the average emissions over the batch emission episode.

4. In response to comments relating to the averaging period for ongoing compliance determination, the averaging period for measurements taken to verify continuous compliance for continuous BLR sources has been increased from 1 hour to 24 hours. The target values for comparison of these continuous compliance measurements are the average of the maximum or minimum values obtained from the three 1-hour performance tests. The 24-hour averaging period results in an average obtained over 96, 15-minute readings. The EPA believes that calculating an average over 96 readings will sufficiently diminish the effect of excursions on the value of the average.

5. Two commenters stated that the de minimis levels specified in the HON for process vents, storage tanks, and wastewater systems are appropriate for BLR sources and should be included in the final rule. Because EPA has decided to change the format of the standard for new BLR sources to a 98 percent overall reduction from the total of uncontrolled process vents, storage tanks and wastewater systems or an absolute cap of 2.27 Mg/yr (5,000 lb/yr) from the total of these emission sources, EPA does not believe de minimis levels for controlling emission points are necessary, as owners and operators will be afforded the flexibility of deciding the degree of control for a particular emission point, provided that compliance with the overall emission limit is achieved.

However, EPA agrees with the commenters' suggestion that de minimis levels should be established for exempting emission points from monitoring, because monitoring emission points with emission stream flow rates and/or HAP concentrations below a certain de minimis level is not reasonable. Therefore, a de minimis level of 1 pound per year of uncontrolled HAP emissions has been established for emission points within BLR sources below which continuous monitoring is not required.

6. Two commenters stated that EPA should not specify in the rule the wastewater treatment system parameters to monitor. The commenters stated that the parameters specified in the proposed rule are not appropriate for all treatment systems; that the parameters are tailored to the treatment system, and that there should be flexibility to determine which parameters should be used in each instance. The commenters further argued that States, in their role as permitting authorities, set monitoring parameters as part of the NPDES permit system under the Clean Water Act. Therefore, the commenters maintained, it is unreasonable for facilities to monitor two different sets of parameters.

The wastewater monitoring provisions of the HON, which are referenced in the final rule, allow biological treatment system monitoring parameters to be determined on a case-by-case basis. In light of the issues raised above by the commenters, and in accordance with the wastewater monitoring provisions of the HON, the final rule has been changed to allow owners and operators to monitor the wastewater treatment system parameters specified by the permitting authority responsible for enforcing the Clean Water Act.

7. Several commenters requested clarification of the compliance dates for existing, new, and reconstructed sources, which were not stated in the proposed rule. In response to these comments, the final rule specifies that the compliance date is 3 years from the date of promulgation for existing sources; new sources are required to be in compliance upon startup of the source.

8. Several commenters requested clarification of the General Provisions to part 63 as they relate to this rule. In response to these comments, a table identifying the relationship of the General Provisions requirements has been added to the final regulation.

9. Several commenters stated that EPA should clarify that the modification of existing BLR sources is covered by the section 112(g) rule, and will be subject to "existing source MACT" as defined by the standard.

No additional language has been added to the regulatory text to address this comment. Instead, EPA has provided the following explanation to clarify the role of section 112(g) in determining the applicability of existing and new source MACT. Section 112(2)(B) of the Act requires that "after the effective date of a permit program under title V of this chapter, no person may modify any major source of hazardous air pollutants in such State, unless *the Administrator (or the State) determines that the maximum achievable control technology emission limitation for existing sources will be met.*" The EPA believes that the requirement for a "determination" suggests that an administrative review is needed when an affected source is subject to a MACT standard, and that affected source undergoes a physical change or change in the method of operation that meets the definition of "modification" in section 112(a) of the Act. The purpose of this section of the preamble is to clarify the types of administrative review for sources in the epoxy resins and non-nylon polyamides source categories.

As discussed in the preamble to the proposed rule implementing section 112(g) of the Act, the EPA believes that in many if not most cases, an emission increase that meets the definition of "modification" will not have a substantive effect on the emission and/or work practice standards that the affected sources will have to meet (see 59 FR 15504, April 1, 1994). Before and after the change, the affected source must continue to meet the "existing source MACT" level. The only circumstance which could affect the degree of control required is when the modification of a source creates an affected source above a threshold in an applicability definition after the change, which was under the applicability threshold before the change. For this rule, EPA believes there will be no such circumstances because the regulation contains no applicability threshold. The standard is an emission factor format which applies to BLR and WSR processes of any size.

The EPA believes that the process included in today's rule is sufficient to satisfy the requirement for a "determination" under section 112(g). Where a "modification" does not affect an affected source's applicability status, the proposed rule implementing section 112(g) requires that the source notify the permitting authority prior to startup of operation of the change (see proposed § 63.45(f)).

A similar "determination" is required for major source construction and reconstruction under section 112(g)(2)(A) of the Act. The administrative process for these determinations is contained in § 63.5 of the 40 CFR part 63, subpart A, General Provisions.

10. Revisions to definitions and phrasing have been made to clarify the regulation.

VI. Administrative Requirements

A. Docket

The docket for this rulemaking is A–92–37. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 we have involved State, local, and tribal governments in the development of this rule. These governments are not directly impacted by the rule; i.e., they are not required to purchase control systems to meet the requirements of this rule. They will collect permit fees which will be used to offset the resource burden of implementing the rule. One representative of the State governments has been a member of the EPA Work Group developing this rule. The Work Group has met numerous times, and comments have been solicited from the Work Group members, including the State representative; and their comments have been carefully considered in the rule development. In addition, all States were encouraged to comment on the proposed rule during the public comment period. The EPA fully considered comments from States in the final rulemaking.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and

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Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The EPA has submitted this action to OMB for review. The action was approved by OMB without comment.

D. Paperwork Reduction Act

Information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0290. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1681.02), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA 2136, Washington, DC 20460, or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 1,253 hours per respondent in the first year, 765 hours per respondent in the second year, and 589 hours per respondent in the third year. This includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch; EPA; 401 M Street, SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines for regulations like this one whose start action notifications (SAN's) were filed before April 1992 indicate that an economic impact should be considered significant if it meets one of the following criteria:

1. Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;

2. Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

3. Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

4. Regulatory requirements are likely to result in closures of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. All of the affected BLR and WSR producers are large enough not to satisfy the criteria for a small business. Consequently, no significant small business impacts will result from compliance with these standards.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this promulgated rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 5 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Parts 9 and 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 1235–1236y; 15 U.S.C. 2001, 2003, 2005, 2006. 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542. 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
63.525–63.528	2060–0290

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart W consisting of §§ 63.520 through 63.528 to read as follows:

Subpart W—National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

Sec.

63.520 Applicability and designation of sources.
63.521 Compliance schedule.
63.522 Definitions.
63.523 Standards for basic liquid resins manufacturers.
63.524 Standards for wet strength resins manufacturers.
63.525 Compliance and performance testing.
63.526 Monitoring requirements.
63.527 Recordkeeping requirements.
63.528 Reporting requirements.

Subpart W—National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

§ 63.520 Applicability and designation of sources.

The provisions of this subpart apply to all existing, new, and reconstructed manufacturers of basic liquid epoxy resins (BLR) and manufacturers of wet strength resins (WSR) that are located at a plant site that is a major source, as defined in section 112(a) of the Clean Air Act. Research and development facilities, as defined in § 63.522, are exempt from the provisions of this subpart. The affected source is also defined in § 63.522. If a change occurs to an existing source that does not constitute reconstruction then the additions have to meet the existing source requirements of the MACT standards. Any reconstruction of an existing source, or construction of a new source, must meet the new source standard. Affected sources are also subject to certain requirements of subpart A of this part, as specified in Table 1 of this subpart.

§ 63.521 Compliance schedule.

(a) Owners or operators of existing affected BLR and WSR sources shall comply with the applicable provisions of this subpart within 3 years of the promulgation date.

(b) New and reconstructed sources subject to this subpart shall be in compliance with the applicable provisions of this subpart upon startup.

§ 63.522 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Administrator means the Administrator of the U.S. Environmental Protection Agency, or any official designee of the Administrator.

Affected source means all HAP emission points within a facility that are related to the production of BLR or WSR, including process vents, storage tanks, wastewater systems, and equipment leaks.

Basic liquid epoxy resins (BLR) means resins made by reacting epichlorohydrin and bisphenol A to form diglycidyl ether of bisphenol-A (DGEBPA).

Batch emission episode means a discrete venting episode that may be associated with a single unit operation. For example, a displacement of vapor resulting from the charging of a vessel with HAP will result in a discrete emission episode that will last through the duration of the charge and will have an average flow rate equal to the rate of the charge. If the vessel is then heated, there will also be another discrete emission episode resulting from the expulsion of expanded vessel vapor space. Both emission episodes may occur in the same vessel or unit operation. There are possibly other emission episodes that may occur from the vessel or other process equipment, depending on process operations.

Batch process refers to a discontinuous process involving the bulk movement of material through sequential manufacturing steps. Mass, temperature, concentration, and other properties of a system vary with time. Addition of raw material and withdrawal of product do not typically occur simultaneously in a batch process.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from an emission point to a control device or back into the process.

Continuous process means a process where the inputs and outputs flow continuously throughout the duration of the process. Continuous processes are typically steady-state.

Drain system means the system used to convey wastewater streams from a process unit, product storage tank, or feed storage tank to a waste management unit. The term includes all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, down to the receiving waste management unit. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other drain systems, is excluded from this definition.

Equipment leaks means emissions of hazardous air pollutants from a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, or instrumentation system in organic hazardous air pollutant service.

Process vent means a point of emission from a unit operation. Typical process vents include condenser vents, vacuum pumps, steam ejectors, and atmospheric vents from reactors and other process vessels.

Production-based emission rate means a ratio of the amount of HAP emitted to the amount of BLR or WSR produced.

Research and development facility means laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Storage tank means a tank or other vessel that is used to store liquids that contain one or more HAP compounds.

Unit operation means those processing steps that occur within distinct equipment that are used, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. There may be several emission episodes within a single unit operation.

Waste management unit means any component, piece of equipment, structure, or transport mechanism used in storing, treating, or disposing of wastewater streams, or conveying wastewater between storage, treatment, or disposal operations.

Wastewater means aqueous liquid waste streams exiting equipment at an affected source.

Wastewater system means a system made up of a drain system and one or more waste management units.

Wet strength resins (WSR) means polyamide/ epichlorohydrin condensates which are used to increase the tensile strength of paper products.

§ 63.523 Standards for basic liquid resins manufacturers.

(a) Owners or operators of existing affected BLR sources shall operate sources such that the rate of emissions of hazardous air pollutants from all process vents, storage tanks, and wastewater systems combined shall not exceed 130 pounds per 1 million pounds of BLR produced.

(b) Owners or operators of new or reconstructed affected BLR sources shall reduce uncontrolled emissions from the sum of uncontrolled process vents, storage tanks, and wastewater systems by 98 percent, or limit the total emissions from these emission points to 5,000 pounds per year.

(1) For process vents, uncontrolled emissions are defined as gaseous emission streams past the last recovery device.

(2) For storage tanks, uncontrolled emissions are defined as emissions calculated according to the methodology specified in § 63.150(g)(3).

(3) For wastewater systems, uncontrolled emissions are the total amount of HAP discharged to the drain system.

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(c) Owners or operators of existing, new, or reconstructed affected BLR sources shall comply with the requirements of subpart H of this part to control emissions from equipment leaks.

§ 63.524 Standards for wet strength resins manufacturers.

(a) Owners or operators of existing affected WSR sources shall either:

(1) Limit the total emissions of hazardous air pollutants from all process vents, storage tanks, and wastewater systems to 10 pounds per 1 million pounds of wet strength resins produced; or

(2) Comply with the requirements of subpart H of this part to control emissions from equipment leaks.

(b) Owners or operators of new or reconstructed affected WSR sources shall either:

(1) Limit the total emissions of hazardous air pollutants from all process vents, storage tanks, and wastewater systems to 7 pounds per 1 million pounds of wet strength resins produced; or

(2) Comply with the requirements of subpart H of this part to control emissions from equipment leaks.

§ 63.525 Compliance and performance testing.

(a) The owner or operator of any existing affected BLR source shall, in order to demonstrate initial compliance with the applicable emission limit, determine the emission rate from all process vent, storage tank, and wastewater system emission points using the methods described below. Compliance tests shall be performed under normal operating conditions.

(1) The owner or operator shall use the EPA Test Methods from 40 CFR part 60, appendix A, listed in paragraphs (a)(1) (i) through (iii) of this section, to determine emissions from process vents. Testing of process vents on equipment operating as part of a continuous process will consist of conducting three 1-hour runs. Gas stream volumetric flow rates shall be measured every 15 minutes during each 1-hour run. Organic HAP or TOC concentration shall be determined from samples collected in an integrated sample over the duration of each 1-hour test run, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. If the flow of gaseous emissions is intermittent, determination of emissions from process vents shall be performed according to the methods specified in paragraph (e) of this section. For process vents with continuous gas streams, the emission rate used to determine compliance shall be the average emission rate of the 3 test runs. For process vents with intermittent emission streams, the calculated emission rate or the emission rate from a single test run may be used to determine compliance.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. A traverse shall be conducted before and after each 1-hour sampling period. No traverse is necessary when using Method 2A or 2D to determine flow rate.

(ii) Method 2, 2A, 2C or 2D of 40 CFR part 60, appendix A, as appropriate, shall be used for the determination of gas stream volumetric flow rate. If Method 2 or 2C is used, the velocity measurements shall be made at a single point, in conjunction with the traverse, to establish an average velocity across the stack.

(iii) Method 25A and/or Methods 18 and 25A of 40 CFR part 60, appendix A, as appropriate, shall be used to determine the concentration of HAP in the streams.

(iv) Initial determination of de minimis status for process vents may be made by engineering assessment, as specified in § 63.526(a)(1)(iv).

(2) Emissions from wastewater treatment systems shall be determined in accordance with the methods described in 40 CFR part 63, appendix C.

(3) Emissions from storage tanks shall be calculated in accordance with the methods specified in § 63.150(g)(3).

(b) The owner or operator of any existing affected BLR source shall determine a production-based emission rate for each emission point by dividing the emission rate of each emission point by the BLR production rate of the source. The production rate shall be based on normal operations.

(1) The production-based emission rate for process vents shall be calculated by dividing the average emission rate the average production rate.

(2) The production-based emission rate for storage tanks shall be calculated by dividing annual emissions for each storage tank emission point by the production rate for a one-year period. The production rate shall be calculated using the same data used to calculate the production-based emission rate in paragraph (b)(1) of this section, converted to an annual rate.

(3) The production-based emission rate for wastewater systems shall be calculated by dividing annual emissions for each wastewater system emission point by the production rate for one-year period. The production rate shall be calculated using the same data used to calculate the production-based emission rate in paragraph (b)(1) of this section, converted to an annual rate.

(c) The owner or operator of an existing affected BLR source shall calculate the total emissions per product produced by summing the production-based emissions for all process vent, storage tank, and wastewater system emission points according to the following equation:

$E = \Sigma PV + \Sigma ST + \Sigma WW$

where:

E=emissions, pounds (lb) HAP per million (MM) lb product;
PV=process vent emissions, lb HAP/MM lb product;
ST=storage tank emissions, lb HAP/MM lb product; and
WW=wastewater system emissions, lb HAP/MM lb product.

The source is in compliance with the standard for process vents, storage tanks, and wastewater systems if the sum of the equation is less than the applicable emission limit from § 63.523(a).

(d) The owner or operator of any new or reconstructed affected BLR source shall demonstrate compliance using the methods described in this section.

(1) Any owner or operator who elects to comply with § 63.523(b) by achieving 98 percent control of emissions from process vents, storage tanks, and wastewater systems shall demonstrate compliance according to the requirements of paragraphs (d)(1) (i) through (iv) of this section.

(i) The owner or operator shall perform testing as specified in paragraph (a)(1) of this section to determine controlled and uncontrolled emissions from process vents. Sampling points for determining uncontrolled emissions shall be located based on the definition of uncontrolled process vents in § 63.523(b)(1).

(ii) The owner or operator shall calculate controlled and uncontrolled emissions from storage tanks in accordance with the methods specified in § 63.150(g)(3).

(iii) The owner or operator shall determine controlled and uncontrolled emissions from wastewater systems using the methodology of 40 CFR part 63, appendix C. Uncontrolled emission calculations shall be consistent with the definition of uncontrolled wastewater system emissions in § 63.523(b)(3).

(iv) The owner or operator shall calculate the percent reduction in emissions from process vents, storage tanks, and wastewater systems combined. The affected source is in compliance if the emission reduction is greater than or equal to 98 percent.

(2) Any owner or operator who elects to comply with § 63.523(b) by limiting HAP emissions from process vents, storage tanks, and wastewater systems to 5,000 pounds per year or less shall demonstrate compliance according to the requirements of paragraphs (d)(2) (i) and (ii) of this section.

(i) Emissions from process vents, storage tanks, and wastewater systems shall be determined according to paragraphs (a) (1) through (3) of this section. Emissions shall be converted to annual emissions. Annual emission calculations shall reflect production levels representative of normal operating conditions.

(ii) The owner or operator shall calculate total emissions from all process vent, storage tank, and wastewater system emission points. The affected source is in compliance with the standard if total emissions are less than or equal to 5,000 lb/yr.

(e) The owner or operator of any existing, new, or reconstructed WSR source that chooses to comply with the emission limit for process vents, storage tanks, and wastewater systems shall demonstrate initial compliance by determining emissions for all process vent, storage tank, and wastewater systems emission points using the methods described in this section.

(1) Emissions of HAP reactor process vents shall be calculated for each batch emission episode according to the methodologies described in paragraph (e)(1) of this section.

(i) Emissions from vapor displacement due to transfer of material into or out of the reactor shall be calculated according to the following equation:

$$E = \frac{(y_i)(V)(P_T)(MW)}{(R)(T)}$$

$$E = \frac{\frac{\sum (P_i)_{T1}}{Pa_1} + \frac{\sum (P_i)_{T2}}{Pa_2}}{2} \times \Delta\eta \times MW_{HAP}$$

where:

E=mass of HAP vapor displaced from the vessel being heated up;
$(P_i)_{Tn}$=partial pressure of each HAP in the vessel headspace at initial (n=1) and final (n=2) temperature;
Pa_1=initial gas pressure in the vessel;
Pa_2=final gas pressure; and
MW_{HAP}=the average molecular weight of HAP present in the vessel.

The moles of gas displaced is represented by:

$$\Delta\eta = \frac{V}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right]$$

where:

$\Delta\eta$=number of lb-moles of gas displaced;
V=volume of free space in the vessel;
R=ideal gas law constant;
Pa_1=initial gas pressure in the vessel;
Pa_2=final gas pressure;
T_1=initial temperature of vessel; and
T_2=final temperature of vessel.

The initial pressure of the noncondensable gas in the vessel shall be calculated according to the following equation:

$$Pa_1 = P_{atm} - \sum (P_{ic})_{T1}$$

where:

Pa_1=initial partial pressure of gas in the vessel headspace;
P_{atm}=atmospheric pressure; and
$(P_{ic})_{T1}$=initial partial pressure of each condensable volatile organic compound (including HAP) in the vessel headspace, at the initial temperature (T_1).

The average molecular weight of HAP in the displaced gas shall be calculated as follows:

$$MW_{HAP} = \frac{\sum_{i=1}^{n} (\text{mass of HAP})_i}{\sum_{i=1}^{n} \frac{(\text{mass of HAP})_i}{(\text{HAP molecular weight})_i}}$$

where n is the number of different HAP compounds in the emission stream.

(2) Emissions of HAP from process vents may be measured directly. The EPA Test Methods listed in paragraph (e)(2) (i) through (iii) of this section, from 40 CFR part 60, appendix A, shall be used to demonstrate compliance with the requirements of § 63.524 by direct measurement. Testing shall be performed for every batch emission episode of the unit operation. Gas stream volumetric flow rates shall be measured at 15-minute intervals, or at least once during each batch emission episode. Organic HAP or TOC concentration shall be determined from samples collected in an integrated sample over the duration of each episode, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. Test conditions shall represent the normal operating conditions under which the data used to calculate the production rate are taken.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. A traverse shall be conducted before and after each sampling period. No traverse is necessary when using Method 2A or 2D.

(ii) Method 2,2A, 2C or 2D of 40 CFR part 60, appendix A, as appropriate, shall be used for the determination of gas stream volumetric flow rate. If Method 2 or 2C is used, the velocity measurements shall be made at a single point than can be used, in conjunction with the traverse, to establish an average velocity across the stack.

(iii) Method 25A and/or Methods 18 and 25A of 40 CFR part 60, appendix A, as appropriate, shall be used to

where:

E=mass emission rate;
yi=saturated mole fraction of HAP in the vapor phase;
V=volume of gas displaced from the vessel;
R=ideal gas law constant;
T=temperature of the vessel vapor space; absolute;
P_T=pressure of the vessel vapor space; and
MW=molecular weight of the HAP.

(ii) Emissions from reactor purging shall be calculated using the methodology described in paragraph (e)(1)(i) of this section, except that for purge flow rates greater than 100 standard cubic feet per minute (scfm), the mole fraction of HAP will be assumed to be 25 percent of the saturated value.

(iii) Emissions caused by heating of the reactor vessel shall be calculated according to the following methodology:

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determine the concentration of HAP in the streams.

(iv) The owner or operator may choose to perform tests only during those periods of the episode in which the emission rate for the entire episode can be determined, or when the emissions are greater than the average emission rate of the episode. The owner or operator who chooses either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances, and process stoichiometry. Previous test results may be used provided the results are still relevant to the current process vent stream conditions.

(v) For batch emission episodes of duration greater than 8 hours, the owner or operator is required to perform a maximum of 8 hours of testing. The test period must include the period of time in which the emission rate is predicted by the emission profile to be greater than average emission rate for the batch emission episode.

(f) The owner or operator of any affected WSR source that chooses to comply with the emissions limit for process vents, storage tanks, and wastewater systems shall calculate emissions from storage tanks in accordance with the methods specified in § 63.150(g)(3).

(g) The owner or operator of any affected WSR source that chooses to comply with the emission limit for process vents, storage tanks, and wastewater systems shall calculate emissions from wastewater treatment systems (if applicable) in accordance with the methods described in 40 CFR part 63, appendix C.

(h) The owner or operator of any affected WSR source that chooses to comply with the emission limit for process vents, storage tanks, and wastewater systems shall calculate the average amount of WSR product manufactured per batch, using data from performance tests or from emission calculations, as applicable, to determine the average WSR production per-batch production data for an annual period representing normal operating conditions.

(1) The owner or operator shall calculate an average emission rate per batch as the average of the results from the performance tests or calculations. The production-based emission rate shall be calculated by dividing the emissions per batch by the average production per batch.

(2) Compliance shall be determined according to the methodology described in paragraph (c) of this section. The source is in compliance with the standard for process vents, storage tanks, and wastewater systems if the sum of the equation in paragraph (c) of this section is less than the applicable emission limit from § 63.524.

(i) The owner or operator of any affected BLR source or any affected WSR source that chooses to comply with the requirements of subpart H of this part must demonstrate the ability of its specific program to meet the compliance requirements therein to achieve initial compliance.

§ 63.526 Monitoring requirements.

(a) The owner or operator of any existing, new, or reconstructed affected BLR source shall provide evidence of continued compliance with the standard. During the initial compliance demonstration, maximum or minimum operating parameters, as appropriate, shall be established for processes and control devices that will indicate the source is in compliance. If the operating parameter to be established is a maximum, the value of the parameter shall be the average of the maximum values from each of the three test runs. If the operating parameter to be established is a minimum, the value of the parameter shall be the average of the minimum values from each of the three test runs. Parameter values for process vents with intermittent emission streams shall be determined as specified in paragraph (b)(1) of this section. The owner or operator shall operate processes and control devices within these parameters to ensure continued compliance with the standard. A de minimis level is specified in paragraph (a)(1) of this section. Monitoring parameters are specified for various process vent control scenarios in paragraphs (a) (2) through (6) of this section.

(1) For affected BLR sources, uncontrolled emission points emitting less than one pound per year of HAP are not subject to the monitoring requirements of paragraphs (a) (2) through (6) of this section. The owner or operator shall use the methods specified in § 63.525(a), as applicable, or as specified in paragraph (a)(1)(i) of this section, to demonstrate which emission points satisfy the de minimis criteria, to the satisfaction of the Administrator.

(i) For the purpose of determining de minimis status for emission points, engineering assessment may be used to determine process vent stream flow rate and/or concentration for the representative operating conditions expected to yield the highest flow rate and concentration. Engineering assessment includes, but is not limited to, the following:

(A) Previous test results provided the tests are representative of current operating practices at the process unit.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, HAP emission rate, concentration, or other relevant parameter specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations,

(*2*) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities,

(*3*) Estimation of HAP concentrations based on saturation conditions.

(ii) All data, assumptions, and procedures used in the engineering assessment shall be documented in accordance with § 63.527(c).

(2) For affected sources using water scrubbers, the owner or operator shall establish a minimum scrubber water flow rate as a site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be considered to be out of compliance if the scrubber water flow rate, averaged over any continuous 24-hour period, is below the minimum value established during the initial compliance demonstration.

(3) For affected sources using condensers, the owner or operator shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be considered to be out of compliance if the condenser outlet gas temperature, averaged over any continuous 24-hour period, is greater than the maximum value established during the initial compliance demonstration.

(4) For affected sources using carbon adsorbers or having uncontrolled process vents, the owner or operator shall establish a maximum outlet HAP concentration as the site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be considered to be out of compliance if the outlet HAP concentration, averaged over any continuous 24-hour period, is greater than the maximum value established during the initial compliance demonstration.

(5) For affected sources using flares, the presence of the pilot flame shall be monitored every 15 minutes. The affected source will be considered to be out of compliance upon loss of pilot flame.

(6) Wastewater system parameters to be monitored are the parameters specified under 40 CFR part 414, subpart E. The affected source will be considered to be out of compliance with this subpart W if it is found to be out of compliance with 40 CFR part 414, subpart E.

(b) The owner or operator of any existing, new, or reconstructed affected WSR source that chooses to comply with the emission limit for process vents, storage tanks, and wastewater systems shall provide evidence of continued compliance with the standard. As part of the initial compliance demonstrations for batch process vents, test data or compliance calculations shall be used to establish a maximum or minimum level of a relevant operating parameter for each unit operation. The parameter value for each unit operation shall represent the worst case value of the operating parameter from all episodes in the unit operation. The owner or operator shall operate processes and control devices within these parameters to ensure continued compliance with the standard.

(1) For batch process vents, the level shall be established in accordance with paragraphs (b)(1) (i) through (iv) of this section if compliance testing is performed.

(i) If testing is used to demonstrate initial compliance, the appropriate parameter shall be monitored during all batch emission episodes in the unit operation.

(ii) An average monitored parameter value shall be determined for each of the batch emission episodes in the unit operation.

(iii) If the level to be established for the unit operation is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values determined in paragraph (b)(1)(ii) of this section.

(iv) If the level to be established for the unit operation is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values determined in paragraph (b)(1)(ii) of this section.

(2) Affected sources with condensers on process vents shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter, which must be measured every 15 minutes, or at least once for batch emission episodes less than 15 minutes in duration. The affected source will be considered to be out of compliance if the maximum condenser outlet gas temperature, averaged over the duration of the batch emission episode or unit operation, is greater than the value established during the initial compliance demonstration.

(3) For affected sources using water scrubbers, the owner or operator shall establish a minimum scrubber water flow rate as a site-specific operating parameter which must be measured and recorded every 15 minutes, or at least once for batch emission episodes less than 15 minutes in duration. The affected source will be considered to be out of compliance if the scrubber water flow rate, averaged over the duration of the batch emission episode or unit operation, is below the minimum flow rate established during the initial compliance demonstration.

(4) For affected sources using carbon adsorbers or having uncontrolled process vents, the owner or operator shall establish a maximum outlet HAP concentration as the site-specific operating parameter which must be measured and recorded every 15 minutes, or at least once for batch emission episodes of duration shorter than 15 minutes. The affected source will be considered to be out of compliance if the outlet HAP concentration, averaged over the duration of the batch emission episode or unit operation, is greater than the value established during the initial compliance demonstration.

(5) For affected sources using flares, the presence of the pilot flame shall be monitored every 15 minutes, or at least once for batch emission episodes less than 15 minutes in duration. The affected source will be considered to be out of compliance upon loss of pilot flame.

(6) Wastewater system parameters to be monitored are the parameters specified by 40 CFR part 414, subpart E. The affected source will be considered to be out of compliance with this subpart W if it is found to be out of compliance with 40 CFR part 414, subpart E.

(c) Periods of time when monitoring measurements exceed the parameter values do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility follows its startup, shutdown, and malfunction plan.

(d) The owner or operator of any affected WSR source that chooses to comply with the requirements of subpart H of this part shall meet the monitoring requirements of subpart H of this part.

§ 63.527 Recordkeeping requirements.

(a) The owner or operator of any affected BLR source shall keep records of daily average values of equipment operating parameters specified to be monitored under § 63.526(a) or specified by the Administrator. Records shall be kept in accordance with the requirements of applicable paragraphs of § 63.10 of subpart A of this part, as specified in the General Provisions applicability table of this subpart. The owner or operator shall keep records up-to-date and readily accessible.

(1) A daily (24-hour) average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(2) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status in § 63.9(h) of subpart A of this part. It may be from midnight to midnight or another continuous 24-hour period.

(3) In the event of an excursion, the owner or operator must keep records of each 15-minute reading during the period in which the excursion occurred.

(b) The owner or operator of any affected WSR source that elects to comply with the emission limit for process vents, storage tanks, and wastewater systems shall keep records of values of equipment operating parameters specified to be monitored under § 63.526(b) or specified by the Administrator. The records that shall be kept are the average values of operating parameters, determined for the duration of each unit operation. Records shall be kept in accordance with the requirements of applicable paragraphs of § 63.10 of subpart A of this part, as specified in the General Provisions applicability table in this subpart. The owner or operator shall keep records up-to-date and readily accessible. In the event of an excursion, the owner or operator must keep records of each 15-minute reading for the entire unit operation in which the excursion occurred.

(c) The owner or operator of any affected BLR source, as well the owner or operator of any affected WSR source that chooses to comply with the emission limit for process vents, storage tanks, and wastewater systems, who

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demonstrates that certain process vents are below the de minimis cutoff for continuous monitoring specified in § 63.526(a)(1)(i), shall maintain up-to-date, readily accessible records of the following information to document that a HAP emission rate of less than one pound per year is maintained:

(1) The information used to determine de minimis status for each de minimis process vent, as specified in § 63.526(a)(1)(i);

(2) Any process changes as defined in § 63.115(e) of subpart G of this part that increase the HAP emission rate;

(3) Any recalculation or measurement of the HAP emission rate pursuant to § 63.115(e) of subpart G of this part; and

(4) Whether or not the HAP emission rate increases to one pound per year or greater as a result of the process change.

(d) The owner or operator of any affected BLR source, as well as the owner or operator of any affected WSR source who elects to implement the leak detection and repair program specified in subpart H of this part, shall implement the recordkeeping requirements outlined therein. All records shall be retained for a period of 5 years, in accordance with the requirements of 40 CFR 63.10(b)(1).

(e) Any excursion from the required monitoring parameter, unless otherwise excused, shall be considered a violation of the emission standard.

§ 63.528 Reporting requirements.

(a) The owner or operator of any affected BLR source, as well as the owner or operator of any affected WSR source that elects to comply with the emission limit for process vents, storage tanks, and wastewater systems, shall comply with the reporting requirements of applicable paragraphs of § 63.10 of subpart A of this part, as specified in the General Provisions applicability table in this subpart. The owner or operator shall also submit to the Administrator, as part of the quarterly excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e)(3) of subpart A of this part, the following recorded information.

(1) Reports of monitoring data, including 15-minute monitoring values as well as daily average values or per-unit operation average values, as applicable, of monitored parameters for all operating days or unit operations when the average values were outside the ranges established in the Notification of Compliance Status or operating permit.

(2) Reports of the duration of periods when monitoring data is not collected for each excursion caused by insufficient monitoring data. An excursion means any of the three cases listed in paragraph (a)(2)(i) or (a)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (a)(2)(i) or (a)(2)(ii) of this section, this is considered a single excursion for the control device.

(i) When the period of control device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data, as defined in paragraph (a)(2)(iii) of this section, for at least 75 percent of the operating hours.

(ii) When the period of control device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iii) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (a)(2) (i) and (ii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour.

(3) Whenever a process change, as defined in § 63.115(e) of subpart G of this part, is made that causes the emission rate from a de minimis emission point to become a process vent with an emission rate of one pound per year or greater, the owner or operator shall submit a report within 180 calendar days after the process change. The report may be submitted as part of the next summary report required under § 63.10(e)(3) of subpart A of this part. The report shall include:

(i) A description of the process change; and

(ii) The results of the recalculation of the emission rate.

(b) The owner or operator of any affected BLR source, as well as the owner or operator of any affected WSR source who elects to implement the leak detection and repair program specified in subpart H of this part, shall implement the reporting requirements outlined therein. Copies of all reports shall be retained as records for a period of 5 years, in accordance with the requirements of 40 CFR 63.10(b)(1).

(c) The owner or operator of any affected BLR source, as well as the owner or operator of any affected WSR source that elects to comply with the emission limit for process vents, storage tanks, and wastewater systems shall include records of wastewater system monitoring parameters in the Notification of Compliance Status and summary reports required by subpart A of this part.

TABLE 1 TO SUBPART W.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
§ 63.1(a)(1)	Yes	Yes	Yes	Additional terms defined in § 63.522.
§ 63.1(a)(2)	Yes	Yes	Yes.	
§ 63.1(a)(3)	Yes	Yes	Yes.	
§ 63.1(a)(4)	Yes	Yes	Yes	Subpart W specifies applicability of each paragraph in subpart A to subpart W.
§ 63.1(a)(5)	N/A	N/A	N/A	Reserved.
§ 63.1(a)(6)	Yes	Yes	Yes.	
§ 63.1(a)(7)	Yes	Yes	Yes.	
§ 63.1(a)(8)	No	No	No	Discusses State programs.
§ 63.1(a)(9)	N/A	N/A	N/A	Reserved.

TABLE 1 TO SUBPART W.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W—Continued

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
§ 63.1(a)(10)	Yes	Yes	Yes.	
§ 63.1(a)(11)	Yes	Yes	Yes.	
§ 63.1(a)(12)–(14)	Yes	Yes	Yes.	
§ 63.1(b)(1)	No	No	No	§ 63.521 of subpart W specifies applicability.
§ 63.1(b)(2)	Yes	Yes	Yes.	
§ 63.1(b)(3)	Yes	Yes	Yes.	
§ 63.1(c)(1)	Yes	Yes	Yes	Subpart W specifies applicability of each paragraph in subpart A to sources subject to subpart W.
§ 63.1(c)(2)	No	No	No	Area sources are not subject to subpart W.
§ 63.1(c)(3)	N/A	N/A	N/A	Reserved.
§ 63.1(c)(4)	Yes	Yes	Yes.	
§ 63.1(c)(5)	Yes	Yes	No	Subpart H specifies applicable notification requirements.
§ 63.1(d)	N/A	N/A	N/A	Reserved.
§ 63.1(e)	Yes	Yes	Yes.	
§ 63.2	Yes	Yes	Yes	Additional terms are defined in § 63.522 of subpart W; when overlap between subparts A and W occurs, subpart W takes precedence.
§ 63.3	Yes	Yes	No	Other units used in subpart W are defined in that subpart; units of measure are spelled out for subpart H.
§ 63.4(a)(1)–(3)	Yes	Yes	Yes.	
§ 63.4(a)(4)	N/A	N/A	N/A	Reserved.
§ 63.4(a)(5)	Yes	Yes	Yes.	
§ 63.4(b)	Yes	Yes	Yes.	
§ 63.4(c)	Yes	Yes	Yes.	
§ 63.5(a)	Yes	Yes	Yes	Except replace the terms "source" and "stationary source" in § 63.5(a)(1) of subpart A with "affected source".
§ 63.5(b)(1)	Yes	Yes	Yes.	
§ 63.5(b)(2)	N/A	N/A	N/A	Reserved.
§ 63.5(b)(3)	Yes	Yes	Yes.	
§ 63.5(b)(4)	Yes	Yes	Yes.	
§ 63.5(b)(5)	Yes	Yes	Yes.	
§ 63.5(b)(6)	Yes	Yes	Yes.	
§ 63.5(c)	N/A	N/A	N/A	Reserved.
§ 63.5(d)(1)(i)	Yes	Yes	Yes.	
§ 63.5(d)(1)(ii)	Yes	Yes	Yes.	
§ 63.5(d)(1)(iii)	Yes	Yes	Yes.	
§ 63.5(d)(2)	Yes	Yes	Yes.	
§ 63.5(d)(3)–(4)	Yes	Yes	Yes.	
§ 63.5(e)	Yes	Yes	Yes.	
§ 63.5(f)(1)	Yes	Yes	Yes	Except replace "source" in § 63.5(f)(1) of subpart A with "affected source".
§ 63.5(f)(2)	Yes	Yes	Yes.	
§ 63.6(a)	Yes	Yes	Yes.	
§ 63.6(b)(1)–(2)	No	No	No	Subpart W specifies compliance dates.
§ 63.6(b)(3)–(4)	Yes	Yes	Yes.	
§ 63.6(b)(5)		Yes	No	Subpart H includes notification requirements.
§ 63.6(b)(6)	N/A	N/A	N/A	Reserved.
§ 63.6(b)(7)	No	Yes	No	Sources subject to subpart H must comply according to the schedule in § 63.520 of subpart W for new sources subject to subpart H.
§ 63.6(c)(1)–(2)	Yes	Yes	Yes	Except replace "source" in § 63.6(c)(1)–(2) of subpart A with "affected source".
§ 63.6(c)(3)–(4)	N/A	N/A	N/A	Reserved.
§ 63.6(c)(5)	Yes	Yes	Yes.	
§ 63.6(d)	N/A	N/A	N/A	Reserved.
§ 63.6(e)	Yes	Yes	Yes.	
§ 63.6(f)(1)	Yes	Yes	Yes.	
§ 63.6(f)(2)(i)–(ii)	Yes	Yes	Yes.	
§ 63.6(f)(2)(iii)	Yes	Yes	Yes.	
§ 63.6(f)(2)(iv)	Yes	Yes	Yes.	
§ 63.6(f)(3)	Yes	Yes	Yes.	
§ 63.6(g)	Yes	Yes	Yes	An alternative standard has been proposed for WSR; however, affected sources will have the opportunity to demonstrate other alternatives to the Administrator.
§ 63.6(h)	No	No	No	Subpart W does not contain any opacity or visible emissions standards.

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TABLE 1 TO SUBPART W.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W—Continued

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
§63.6(i)(1)	Yes	Yes	Yes.	
§63.6(i)(2)	Yes	Yes	Yes	Except replace "source" in §63.6(2) (i) and (ii) of subpart A with "affected source".
§63.6(i)(3)	Yes	Yes	Yes.	
§63.6(i)(4)(i)	Yes	Yes	Yes.	
§63.6(i)(4)(ii)	Yes	Yes	Yes.	
§63.6(i)(5)–(14)	Yes	Yes	Yes.	
§63.6(i)(15)	N/A	N/A	N/A	Reserved.
§63.6(i)(16)	Yes	Yes	Yes.	
§63.6(j)	Yes	Yes	Yes.	
§63.7(a)(1)	Yes	Yes	No	Subpart H specifies required testing and compliance procedures.
§63.7(a)(2)(i)–(vi)	Yes	Yes	No	Subpart H specifies that test results must be submitted in the Notification of Compliance Status due 150 days after the compliance date.
§63.7(a)(2)(vii)–(viii)	N/A	N/A	N/A	Reserved.
§63.7(a)(2)(ix)	Yes	Yes	Yes.	
§63.7(a)(3)	Yes	Yes	Yes.	
§63.7(b)(1)	Yes	Yes	Yes.	
§63.7(b)(2)	Yes	Yes	Yes.	
§63.7(c)	No	No	No.	
§63.7(d)	Yes	Yes	Yes	Except replace "source" in §63.7(d) of subpart A with "affected source".
§63.7(e)(1)	Yes	Yes	Yes	Subpart W also contains test methods specific to BLR and WSR sources.
§63.7(e)(2)	Yes	Yes	Yes.	
§63.7(e)(3)	Yes	Yes	No	Subpart H specifies test methods and procedures.
§63.7(f)	Yes	Yes	No	Subpart H specifies applicable methods and provides alternatives.
§63.7(g)(1)	Yes	Yes	No	Subpart H specifies performance test reporting.
§63.7(g)(2)	N/A	N/A	N/A	Reserved.
§63.7(g)(3)	Yes	Yes	Yes.	
§63.7(h)(1)–(2)	Yes	Yes	Yes.	
§63.7(h)(3)(i)	Yes	Yes	Yes.	
§63.7(h)(3)(ii)–(iii)	Yes	Yes	Yes.	
§63.7(h)(4)–(5)	Yes	Yes	Yes.	
§63.8(a)(1)	Yes	Yes	Yes.	
§63.8(a)(2)	Yes	Yes	Yes.	
§63.8(a)(3)	N/A	N/A	N/A	Reserved.
§63.8(a)(4)	Yes	Yes	Yes.	
§63.8(b)(1)	Yes	Yes	Yes.	
§63.8(b)(2)	Yes	Yes	No	Subpart H specifies locations to conduct monitoring.
§63.8(b)(3)	Yes	Yes	Yes.	
§63.8(c)(1)(i)	Yes	Yes	Yes.	
§63.8(c)(1)(ii)	Yes	Yes	Yes.	
§63.8(c)(1)(iii)	Yes	Yes	Yes.	
§63.8(c)(2)–(3)	Yes	Yes	Yes.	
§63.8(c)(4)–(8)	No	No	No	Subpart W specifies monitoring frequencies.
§63.8(d)	No	No	No.	
§63.8(e)	No	No	No.	
§63.8(f)(1)	Yes	Yes	Yes.	
§63.8(f)(2)	Yes	Yes	Yes.	
§63.8(f)(3)	Yes	Yes	Yes.	
§63.8(f)(4)	Yes	Yes	Yes.	
§63.8(f)(5)	Yes	Yes	Yes.	
§63.8(f)(6)	Yes	Yes	No.	
§63.8(g)	Yes	Yes	Yes.	
§63.9(a)	Yes	Yes	Yes.	
§63.9(b)(1)(i)–(ii)	Yes	Yes	Yes.	
§63.9(b)(1)(iii)	Yes	Yes	Yes.	
§63.9(b)(2)	Yes	Yes	Yes.	
§63.9(b)(3)	Yes	Yes	Yes.	
§63.9(b)(4)	Yes	Yes	Yes.	
§63.9(b)(5)	Yes	Yes	Yes.	
§63.9(c)	Yes	Yes	Yes.	
§63.9(d)	Yes	Yes	Yes.	

TABLE 1 TO SUBPART W.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W—Continued

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
§63.9(e)	No	No	No.	
§63.9(f)	No	No	No.	
§63.9(g)	No	No	No.	
§63.9(h)(1)–(3)	Yes	Yes	No	Separate Notification of Compliance Status requirements are specified for subpart H.
§63.9(h)(4)	N/A	N/A	N/A	Reserved.
§63.9(h)(5)–(6)	Yes	Yes	No	Subpart H specifies Notification of Compliance Status requirements.
§63.9(i)	Yes	Yes	Yes.	
§63.9(j)	Yes	Yes	Yes.	
§63.10(a)	Yes	Yes	Yes.	
§63.10(b)(1)	Yes	Yes	Yes.	
§63.10(b)(2)	No	No	No	Subparts H and W specify recordkeeping requirements.
§63.10(b)(3)	Yes	Yes	Yes.	
§63.10(c)(1)–(6)	No	No	No.	
§63.10(c)(7)–(8)	Yes	Yes	Yes.	
§63.10(c)(9)–(15)	No	No	No.	
§63.10(d)(1)	Yes	Yes	No	Subpart H specifies performance test reporting requirements.
§63.10(d)(2)	Yes	Yes	No	Subpart H specifies performance test reporting requirements.
§63.10(d)(3)	No	No	No.	
§63.10(d)(4)	Yes	Yes	Yes.	
§63.10(d)(5)	Yes	Yes	Yes.	
§63.10(e)(1)–(2)	No	No	No.	
§63.10(e)(3)	Yes	Yes	No.	
§63.10(e)(4)	No	No	No.	
§63.10(f)	Yes	Yes	Yes.	
§63.11–63.15	Yes	Yes	Yes.	

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40 CFR Part 52

[WA–18–1–5933a; FRL–5151–9]

Approval and Promulgation of Small Business Assistance Program: State of Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State of Washington Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA or Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: This final rule is effective on May 8, 1995, unless notice is received by April 7, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, and Washington State Department of Ecology, P.O.Box 47600, PV–11, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally-approved SIP. In addition, the CAA directs the EPA to oversee

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these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Washington has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State of Washington has met this requirement through participation in a Pacific Northwest regional effort designed to ensure collection and development of compliance methods and technologies for small businesses. In addition, Washington's SBAP is comprised of both proactive and reactive components. The proactive component includes agressive outreach to the business community with information which details their rights and obligations under the Act. The reactive component establishes an information network to respond to questions from small businesses concerning regulatory requirements, appropriate control technologies, and other specific inquiries such as pollution prevention opportunities.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by planning to provide direct support for these areas to small businesses. The SBAP can also draw upon the expertise of the Department of Ecology's pollution prevention program–the Washington Department of Ecology's Waste Reduction, Recycling, and Litter Control program (WRRLC). In conjunction with the WRRLC program, the SBAP has the ability to utilize consultation, information distribution, and general engineering assistance to support the pollution prevention needs of small businesses. The SBAP can also draw upon State expertise with Superfund Amendments and Reauthorization Act (SARA) Title III to address small business needs in the area of accidental release detection and prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by planning to have trained SBAP and/or local air pollution control agency staff available to help interpret Federal, State, and local air quality requirements, as well as provide permit assistance.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by planning to assure that small businesses receive information regarding their rights through various outreach mechanisms such as mass mailings and workshops. In addition, the SBAP commits to coordinating with regulatory development organizations, including local air pollution control agencies, so that small businesses have sufficient lead time to evaluate compliance methods and applicable requirements.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by planning to utilize activities such as on-site consultation/site assessments provided by the SBAP or local air control authority, or provide lists of qualified auditors on request.

The sixth requirement is to develop procedures for consideration of requests from small business stationary sources for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement through State law (RCW 70.94.181) which establishes these provisions.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by creating a Small Business Ombudsman position within the Washington Department of Ecology.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing a Compliance Advisory Panel comprised of these representatives.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by directing its Compliance Advisory Panel to address these areas of responsibility as their primary function.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Washington has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA.

The State of Washington has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Washington has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

5. Technical Assistance Visits

Washington submitted RCW 70.94.035, the statute authorizing Washington's PROGRAM as part of its SBAP submittal. Washington has another statute, RCW 43.21A.087, which also authorizes technical assistance visits which was not submitted as part of Washington's SBAP submittal. Importantly, each of these statutes places certain limits on the State's authority to bring enforcement actions for violations observed during technical assistance visits. RCW 70.94.035, which was enacted in 1991 and specifically applies to the air program, prohibits enforcement action "unless and until the facility owner or operator has been provided a reasonable time to correct the violation." According to an opinion of the Washington Attorney General, this provision does not prevent a permitting authority from commencing an enforcement action for a violation observed during a technical assistance visit, but merely requires the permitting authority to give the source a reasonable opportunity to comply before deciding whether enforcement action is appropriate. The Attorney General similarly interprets RCW 43.21A.087, enacted in 1992, which allows the permitting authority to reinspect the facility and take enforcement action "[i]f the owner or operator of the facility does not correct the violation." [3] The Attorney General also states that because RCW 70.94.035 applies specifically to the air program and specifically requires that the technical assistance program be consistent with the Federal Clean Air Act, this provision would prevail in the event of any conflict with RCW 43.21A.087, which applies to technical assistance visits under all of Ecology's environmental programs. EPA agrees that RCW 70.94.035 would allow enforcement action in such a case provided the enforcement action was commenced after the source had an opportunity to comply. EPA also believes that RCW 70.94.035, and not RCW 43.21A.087, applies in the case of technical assistance visits under the air program. EPA therefore believes that Washington's technical assistance statutes, as interpreted by the Attorney General, do not bar approval of Washington's SBAP PROGRAM.

III. This Action

In this action, EPA approves the SIP revision submitted by the State of Washington. Based on the Attorney General's opinion discussed above that RCW 70.94.035 is the statute that applies in the case of technical assistance visits under the Washington's SBAP PROGRAM, EPA is approving RCW 70.94.035 as part of Washington's SBAP SIP revision. The State of Washington has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA. At this time, the Small Business Assistance Program, the Ombudsman, and the Compliance Advisory Panel are all in place and functioning. EPA is therefore approving this submittal.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small business entities affected.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995 unless, by April 7, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 8, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

[3] Both statutes allow Ecology to commence immediate enforcement action for any violation that places anyone in imminent danger of death or substantial bodily harm or causes substantial property damage.

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Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 1, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(45) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(45) On November 16; 1992 the Director of the Washington State Department of Ecology submitted "State Implementation Plan for the Washington State Business Assistance Program," adopted November 13, 1992, as a revision to the Washington SIP.

(i) Incorporation by reference.

(A) November 13, 1992 letter from the Director of the Washington State Department of Ecology submitting "State Implementation Plan for the Washington State Business Assistance Program" to EPA.

(B) *State Implementation Plan for the Washington State Business Assistance Program*, including Appendix B, Revised Code of Washington (RCW) 70.94.035; Appendix D, Washington Administrative Code 173–400–180; Appendix E, RCW 70.94.181; and Appendix F, Business Assistance Program Guidelines (and exluding Appendices A, C, and G), dated November 1992, and adopted November 13, 1992.

* * * * *

[FR Doc. 95–5447 Filed 3–7–95; 8:45 am]

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40 CFR Part 52

[GA–15–1–6285a; GA–21–4–6514a: FRL–5153–3]

Approval and Promulgation of Implementation Plans Georgia: Approval of Part D New Source Review (NSR) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 15, 1986, and November 13, 1992, the Georgia Department of Natural Resources, Environmental Protection Division (EPD) submitted to EPA amendments to Georgia Air Quality Control Rules for Definitions and Permits. Georgia's definitions rule was amended to incorporate and adopt by reference definitions in Federal rules for application in designated nonattainment areas. Georgia's permit rule was amended to add new paragraphs to meet the requirements of the Clean Air Act (Act) as amended in 1977 and 1990. The New Source Review (NSR) revisions of the Georgia submittal fully meet the NSR requirements of the amended Act. Therefore, EPA is approving the submitted revisions.

DATES: This final rule is effective on May 8, 1995 unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Dick Schutt, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Copies of the documents relevant to this final action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Region 4 Air Programs Branch, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Please contact Dick Schutt of the EPA Region 4 Air Programs Branch at 404–347–3555, extension 4206, and at the above address.

SUPPLEMENTARY INFORMATION: On December 15, 1986, the Georgia Department of Natural Resources (DNR) submitted changes to Chapter 391–3–1. of their rules, Rules for Air Quality Control. Among the revisions were amendments to Georgia Air Quality Control Rules 391–3–1–.01, Definitions, and 391–3–1–.03, Permits. EPA proposed to approve these revisions in the June 3, 1988 **Federal Register** document (53 FR 20347).

In response to the 1990 Clean Air Act Amendments (CAAA), the DNR submitted on November 13, 1992, additional changes to the Air Quality rules. This submittal, along with the 1986 submittal, satisfies the new source review requirements for nonattainment areas in Georgia. Georgia Rule 391–3–1–.01, Definitions, was amended to incorporate and adopt by reference the definitions contained in 40 CFR 51.165(a)(1) (i)–(xix) for application in designated nonattainment areas. The definitions contained in the Federal rules include definitions for the following: stationary source, major stationary source, potential to emit, major modification, net emissions increase, emissions unit, secondary emissions, fugitive emissions, significant, allowable emissions, actual emissions, lowest achievable emission rate, federally enforceable, begin actual construction, commence, necessary

preconstruction approvals or permits, construction, and volatile organic compounds.

Georgia Rule 391–3–1–.03(8) provides for permitting of new and modified major sources. Paragraph 1 of Georgia Rule 391–3–1–.03(8)(c) was revised to conform to the statutory language in section 173(a)(1)(A) of the Act, concerning emission offsets. Paragraphs 2 and 3 were not changed and require a proposed source to comply with the lowest achievable emission rate and to demonstrate statewide compliance under the Act by the owner or operator of the proposed source. Paragraph 4 was revised to conform to the statutory language in section 173(a)(5) by requiring an analysis of alternatives to any proposed source. Paragraph 5 was not changed and requires a finding that the State Implementation Plan (SIP) is being carried out in accordance with the requirements of part D of Title I of the Act.

Georgia Rule 391–3–1–.03(8)(c), Permits, was amended in 1986 to add six new paragraphs (paragraphs 6 to 11) to meet the requirements of 40 CFR 51.165(a)(3)(i), (3)(ii)(C)–(D), (3)(ii)(F)–(G), and (4)(i)–(xxvii). The new paragraph of 391–3–1–.03(8)(c) specified as paragraph six (6) meets the requirements of 40 CFR 51.165(a)(3)(i). Paragraph six (6) is more stringent than the latter in stating that "the offset baseline for determining credits for emission reductions at a source is the applicable emission limit in this Chapter or the actual emissions at the time the application to construct is filed, whichever is less." Regulation 40 CFR 51.165(a)(3)(i) simply states that "the baseline for determining credit for emission reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which the offset credit is obtained * * *. In addition, paragraph six (6) incorporates the stipulation that "creditable reductions must occur within two years prior to the filing of the permit application and the time the newly permitted source emissions commence."

Georgia Rule 391–3–1–.03(8)(c), paragraph seven (7) specifies that in order to be used for offset credits, a "shutdown or curtailment of production" occurring prior to the date of the new source application must occur "less than one year prior to the date of permit application," and the new source must be a replacement for the shutdown in whole or in part. Paragraph seven (7) meets the requirements of 40 CFR 51.165(a)(3)(ii)(C).

Paragraph eight (8) of Georgia Rule 391–3–1–.03(8)(c) states, "No emission offset credit may be allowed for replacing one VOC compound with another of less reactivity." This paragraph is more stringent than the corresponding Federal regulation, 40 CFR 51.165(a)(3)(ii)(D), which allows for certain exceptions.

Paragraph nine (9) of Georgia Rule 391–3–1–.03(8)(c) is identical to 40 CFR 51.165(a)(3)(ii)(F), except in an apparent typographical error, paragraph nine refers to 40 CFR Part 52, Appendix S, rather than 40 CFR Part 51, Appendix S. Because there is no Appendix S to Part 52, EPA believes that a typographical error occurred and interprets the paragraph to refer to 40 CFR Part 51, Appendix S. Paragraph ten (10), although worded differently, is identical in meaning to 40 CFR 51.165(a)(3)(ii)(G). Paragraph eleven (11) is identical in meaning to 40 CFR 51.165(a)(4)(i)–(xxvii), but stated in a different manner.

Georgia Rule 391–3–1–.03(8)(c) was amended in 1992 to add two new paragraphs to meet the NSR requirements of the amended Act. Paragraph 12 was added to meet the offset requirements and paragraph 13 was added to identify additional provisions for the ozone nonattainment areas. Paragraph 12 is nearly identical to the statutory language in section 173(c) of the Act. Paragraph 13 is nearly identical to the statutory language in section 182(c), especially section 182(c)(6–8, 10), of the Act.

The 1992 submittal also deleted Georgia Rule 391–3–1.03(8)(f). The requirement in this paragraph regarding de minimis levels was incorporated in the paragraph (8)(c).

The 1986 submittal adopted the definition of "stationary source" which was promulgated on June 25, 1982 (47 FR 27554), by EPA. This definition excludes all vessel emissions in determining if the source is major. On January 17, 1984, the Court of Appeals for the District of Columbia Circuit overturned and remanded to EPA for further consideration the vessel emission exemption portion of EPA's new source review regulations. EPA has not yet completed its reconsideration of how vessel emissions are to be treated. However, Georgia has submitted a written statement specifying that waterways (of the appropriate depth and width) to afford passage of ships and barges are not located within the Atlanta nonattainment area, the only such area in Georgia. Therefore, EPA is approving the amendments to Georgia Rules 391–3–1–.01 and 391–3–1–.03.

The proposal (June 3, 1988 (53 FR 20347)) referenced that Georgia lacked provisions for source responsibility (40 CFR 51.165(a)(5)(ii)). The Georgia Environmental Protection Division notified EPA on February 28, 1989, that they intend to apply Georgia Rule 391–3–1–.03(8)(c) to any source which becomes a major source or undergoes modification due to a change in operation and not covered in an enforceable permit. EPA believes that this satisfies the requirement of 40 CFR 51.165(a)(5)(ii).

On October 14, 1981, the EPA revised the NSR regulations in 40 CFR Part 51 to give states the option of adopting the "plantwide" definition of stationary source which provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions from one piece of process equipment but reduced emissions by the same amount at another piece of process equipment, then there would be no net increase in emissions at the plant and therefore, no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 **Federal Register** document, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–50769). In EPA's view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of part D of the Act. The Act provided for reasonable further progress (RFP) and timely attainment of National Ambient Air Quality Standards (NAAQS), while also allowing for maximum state flexibility and economic growth. EPA recognized that the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states, under the demands of part D, eventually would have adequate SIPs in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767 col. 2].

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EPA also indicated that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, but the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate part D plans.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the state needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 Col. 2 and 50769 Col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of part D of the Act, and hence, well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 104 S. Ct. 2778 (1984). Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (*see* 104 S. Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision.

The SIP revision EPA is approving in this action substitutes a plantwide definition for a dual definition in Georgia's existing NSR program. The one nonattainment area to which this program applies (the 13-county metropolitan Atlanta area for ozone) has a part D plan previously approved by EPA, but nevertheless is still experiencing violations of the ozone NAAQS. In response to a 1984 SIP call, Georgia submitted a SIP addressing the nonattainment situation on May 22, 1985. Due to major deficiencies in the submittal EPA proposed disapproval (52 FR 26435, July 14, 1987). An updated and revised SIP was later submitted October 1, 1987. The SIP addressed many problems noted in the earlier submittal, however, a few minor problems still existed after a detailed review by EPA. In a letter to the Georgia Environmental Protection Division dated November 9, 1989, EPA identified a few remaining minor Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) issues that had to be resolved before EPA could approve the revision. Georgia resolved these issues and they have been approved by EPA in a **Federal Register** document dated October 13, 1992 (57 FR 46780). In fact Georgia has submitted several revisions required by the amended Act prior to the attainment of the NAAQS by 1999, the statutory attainment date for serious ozone nonattainment areas. Georgia has submitted revisions for VOC and NO_x Reasonable Available Control Technology, Stage II vapor recovery, clean fuel fleet regulations and 15% VOC reduction. These revisions will be acted on in subsequent actions. The State has shown that in obtaining EPA approval of its original part D SIP it did not rely on any emission reductions from the operation of its existing NSR program. Therefore, EPA approves the switch to a plantwide definition, in accordance with its 1981 action.

Georgia's plantwide definition of source is consistent with the NSR requirements for ozone nonattainment areas in the Clean Air Act Amendments of 1990. The Atlanta area is classified as a "serious" ozone nonattainment area. Therefore, the attainment date for Atlanta is now 1999 (see section 181(a)), and Georgia must meet an independent requirement to reduce VOC emissions by fifteen percent in the first six years after 1990 and three percent per year thereafter (see section 182 (b) and (c)(2)(B)). While Georgia must account for the impact of its plantwide definition of source in the attainment and reasonable further progress demonstrations it submits under the 1990 Amendments, it is clear that Congress anticipated States could use the plantwide definition of source when devising such plans.

The 1990 Amendments include provisions regulating the application of the plantwide definition of source, including a special rule for serious and severe ozone nonattainment areas for determining "de minimis" net increases in VOC emissions from source modifications (section 182(c)(6)). It is clear that Congress anticipates states will often continue to employ EPA's plantwide definition of source in ozone nonattainment areas (except in extreme areas, see section 182(e)(2)), provided the states can also meet the new reasonable further progress requirements in the Act. In addition, it is important to note that the 1990 Amendments' adoption of new future attainment deadlines for ozone has mooted concerns regarding the approvability of a plantwide source definition where a state has additional time to submit a revised SIP to provide for attainment by the revised deadline. As described above, Georgia has already begun to meet its obligations under the 1990 Amendments.

All of the amendments to Georgia Rules 391–3–1–.01 and 391–3–1–.03 are identical to or more stringent than corresponding federal regulations. Therefore, they will adequately protect the NAAQS and meet all requirements of the Act.

Public Comments

EPA received comments on the proposed approval of these SIP revisions from two sources. Both commenters questioned approval of the "plantwide" new source definition for nonattainment areas without an approved plan.

Response to Comments

As discussed earlier in this document, Georgia's submission, including the plantwide source definition, meets all applicable Federal regulations and policies. Further, the 1990 Amendments accommodate a plantwide definition of source and provide revised attainment deadlines. Finally, the State's previous attainment demonstration did not rely on NSR reductions from the dual source definition, and Georgia is making reasonable efforts to develop a complete and approvable ozone SIP in accordance with the 1990 Amendments. Therefore, EPA is approving this SIP revision.

Final Action

EPA is approving the aforementioned amendments to the Georgia rules submitted on December 15, 1986, and November 13, 1992.

EPA is publishing this action without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective on May 8, 1995 unless, by April 7, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 8, 1995.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. Environmental Protection Agency et al*, 96 S.Ct. 2518 (1976); 42 U.S.C. 7410(a)(2) and 7410(k).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(39) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(39) On December 15, 1986, and November 13, 1992, the Georgia Department of Natural Resources, Environmental Protection Division submitted regulations for Part D New Source Review.

(i) Incorporation by reference. Revisions to the following Rules of Georgia Department of Natural Resources, Environmental Protection Division, effective November 22, 1992:

(A) 391–3–1–.01 introductory paragraph

(B) 391–3–1–.03(8)(c)

(ii) Other material. Letter dated February 28, 1989, from the Georgia Department of Natural Resources, page 3 regarding change in operation of a source.

* * * * *

[FR Doc. 95–5441 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AR–3–1–5727a; FRL–5155–8]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Arkansas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: This final rule will become effective on May 8, 1995, unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6T–AP), Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7596.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National Ambient Air Quality Standards (NAAQS) and reduce the emissions of air toxics. Small businesses frequently lack the technical expertise and financial resources

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necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a Program are set out in section 507 of title V of the CAA. In February 1992, the EPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments", in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Arkansas submitted a SIP revision to the EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following three PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. All areas in the State are classified attainment for each of the NAAQS pollutants.

The Region used section 507 of the CAA and considered the "SIP Revision Approval Checklist for Section 507 Small Business Assistance Program" when reviewing the State submittal for approvability. The SIP revision, discussed in detail in the Technical Support Document, is briefly outlined below.

II. Analysis

A. Procedural Background

The State of Arkansas has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. Arkansas Act 251 (Senate Bill 347) enacted by the 79th General Assembly Regular Session in 1993 and approved by the Governor on February 26, 1993, provides authority for the State to establish a CAP for the PROGRAM as required by Section 507 of the CAA. The PROGRAM is to be administered by the Arkansas Department of Pollution Control and Ecology (ADPC&E), and is intended to help eligible small businesses understand and comply with the CAA. Included in the Act are provisions creating a CAP, establishing membership and terms of the CAP, and establishing CAP duties.

The State held a public hearing on October 19, 1992, to consider public comments on the proposed PROGRAM, which will amend the Arkansas SIP to add a revision entitled, "Arkansas Small Business Stationary Source Technical and Environmental Compliance Assistance Program SIP Revision". No public comments were received on the PROGRAM. The proposed SIP revision was adopted November 5, 1992, by the Arkansas Commission on Pollution Control and Ecology. The Arkansas PROGRAM was submitted to the EPA by the Governor of Arkansas on November 6, 1992, as a revision to the Arkansas SIP. Additional information (draft Arkansas CAP legislation) was submitted on January 6, 1993. The submittal was initially reviewed for completeness and was determined complete on January 15, 1993. Supplemental information (Arkansas Act 251) was submitted on April 23, 1993. The submittal was then reviewed for approvability by EPA Region 6 and EPA headquarters.

B. Plan Requirements

1. Small Business Assistance Program

The first PROGRAM element is the establishment of a SBAP to provide technical and compliance assistance to small businesses.

The State has met the first PROGRAM element by committing in its SIP revision, sections (c) "Small Business Assistance Program (SBAP)", and (g) "Schedule of Program Implementation", to establish an SBAP in the Air Division of the ADPC&E, which meets the six requirements set forth in section 507(a). (Details are presented in the EPA's Technical Support Document and the State's submittal.) It will be administered by an SBAP coordinator in the Air Division.

a. Section 507(a) sets forth six requirements[1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA.

The State has met this requirement. The SBAP coordinator will be charged with the duties of collecting, developing, and coordinating information on compliance methods and technologies for small business stationary sources. The SBAP will include a proactive component and a reactive component.

(i) Proactive Component. The SBAP coordinator will be responsible for operating the SBAP and will work in the Air Division of the ADPC&E. Small businesses that are, or will be, affected by CAA requirements will be placed in a computer database. The database will contain information such as the facility address, environmental contact, and Standard Industrial Classification code. Possible sources of data for this database are the existing ADPC&E data files and the Arkansas Industrial Development Commission database. This system will enable the SBAP to notify small businesses of the existence of the SBAP (through newsletters) and any new or upcoming applicable air pollution requirements of the CAA. Additionally, the SBAP coordinator will be available, upon reasonable request, to trade associations or industry groups representing small businesses for seminars and workshops.

(ii) Reactive Component. The SBAP coordinator will be responsible for handling questions from small businesses. The coordinator will act as an information clearinghouse, and will be responsible for making sure that small businesses receive the requested information either by phone or by mail. A small library of applicable literature will be maintained by the coordinator. If the coordinator cannot supply the requested information directly, he shall be responsible for seeking out the information from other available channels, such as the Air Division staff, EPA technical support services (including the Technology Transfer Network bulletin board), industry contacts, etc. The names and the direct telephone numbers of the SBAP coordinator and Ombudsman will be published in a newsletter to allow for quick access.

b. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

The State has met this requirement. The SBAP will address pollution prevention and accidental release detection and prevention.

(i) Pollution Prevention. The SBAP coordinator will conduct an information clearinghouse on small business pollution prevention topics. Available literature from the EPA Pollution Prevention Office and other sources will be kept in the SBAP library. The availability of such information will be announced in newsletters.

(ii) Accidental Release. The SBAP coordinator will conduct an information clearinghouse for prevention, detection, and monitoring of accidental chemical releases. Basic information will cover four areas: (1) Requirements under the accidental release provisions of the CAA; (2) related requirements under Superfund Amendments and Reauthorization Act title III; (3) the Occupational Safety and Health Administration process safety standard as required by the CAA; and (4) general information on prevention practices and technologies. EPA publications on this subject matter shall be kept in the SBAP library. The availability of such information will be announced in newsletters.

c. The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner.

The State has met this requirement. The SBAP coordinator shall be responsible for providing small businesses with information regarding applicability to CAA requirements and the ADPC&E permitting process (applications, fees, enforcement, etc.)

d. The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA.

The State has met this requirement. The SBAP coordinator will be responsible for notifying small businesses of their rights under the CAA. The SBAP computer database discussed above in II.B.1.a. will be used to notify small businesses in a timely manner of any upcoming regulations that could potentially affect them. This should give small businesses plenty of time to evaluate compliance methods far in advance of compliance dates. In addition, the SBAP coordinator shall operate an information clearinghouse on small business "legal rights" under the CAA.

e. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the CAA.

The State has met this requirement. The SBAP will address obligations and audits.

(i) Obligations. The SBAP coordinator will be responsible for notifying small businesses of their obligations under the CAA. The SBAP database and newsletters will be used to inform small businesses of their obligations.

(ii) Audits. The SBAP coordinator shall be responsible for keeping a list of qualified compliance auditors for small businesses to contact. This list shall contain qualified ADPC&E personnel and other qualified environmental consultants. Environmental consultants may be placed on the qualified auditors list by sending a written request and resume to the SBAP coordinator. Simple complimentary audits performed by ADPC&E personnel shall be done at the convenience of ADPC&E personnel commensurate with available resources, and there shall be no charge for the service. Any violations uncovered during an audit performed by ADPC&E personnel shall be dealt with immediately. Audits performed by qualified environmental consultants may entail a fee (to be paid by the audited business) at the discretion of the consultant.

f. The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The State has met this requirement. Procedures for the permitting of stationary source modifications are contained in Section 19.4 of the State Implementation Plan. No such request for permit modification shall be granted unless it meets all applicable State and Federal requirements. Application processing priority, to the extent practicable, will be given to applications requesting modifications necessary to achieve compliance with applicable regulations.

2. Ombudsman

The second PROGRAM element is the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process. Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources.

The State has met this requirement by committing to establish (prior to November 1994) a dedicated Small Business Ombudsman Office within the ADPC&E, as stated in section (d) "Ombudsman" of its SIP revision. The Ombudsman Office will not be within the Air Division, but will be within the agency. Thus, the Ombudsman's Office is going to be separate from the air quality regulatory branch of the State agency, and therefore can be an independent advocate for small businesses. The Ombudsman position will be filled prior to November 15, 1994. The Ombudsman Office will have sufficient resources to discharge its duties effectively.

The Ombudsman will have access to the Governor's office, the Director of the ADPC&E, and to other State agencies. He will have the ability to informally request information from other State agencies, and to formally obtain information from other agencies through the Governor's office. The Ombudsman, through the Director, will have a channel for proposing legislation or administrative action necessary to assist eligible small businesses.

3. Compliance Advisory Panel (CAP)

The third PROGRAM element is the creation of a CAP to determine and report on the overall effectiveness of the SBAP. Section 507(e) requires the State to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement actions; (2) to periodically report to the EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory

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Flexibility Act[2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP.

The State has met these requirements: (A) By enacting the State law creating the CAP and providing it with the enumerated responsibilities; and (B) by committing to appoint members to the Panel by November 1994. Sections 1.–2. of Arkansas Act 251 of 1993 creates the State Compliance Advisory Panel with responsibilities consistent with the requirements in title V of the Federal CAA and specifies the panel's make-up, qualifications, terms, and duties. Adequate support sources and sufficient resources to conduct business will be provided to the Panel by the ADPC&E through the SBAP administered by the Air Division, which shall serve as secretariat to the Panel. Section 2. of Act 251 (i.e., Arkansas Code 8–4–314(1)(A)(4)) authorizes the SBAP to serve as the secretariat to the Panel. Details of these commitments to appoint the members of the CAP as stated above, and to designate to the CAP the four responsibilities listed in the CAA, are discussed in section (e) "Compliance Advisory Panel" of its SIP revision.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Arkansas has established a mechanism for ascertaining the eligibility of a source to receive assistance under the Program, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in the State's narrative SIP revision, section (b) entitled "Eligibility and Program Scope".

The State of Arkansas has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State has also provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public hearing, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Arkansas for establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

The State of Arkansas has submitted a SIP revision for establishing each of the required PROGRAM elements required by section 507 of the CAA. The EPA has reviewed this revision to the Arkansas SIP and is approving it as submitted because the State's PROGRAM meets the requirements of section 507 of the CAA. The SIP includes a schedule of implementation which commits the State to have all three principal PROGRAM elements fully implemented by November 15, 1994. SIP schedule implementation milestones are being tracked and monitored by the Region as part of the State's normal Program review. Currently, the State has selected and staffed the SBAP coordinator and initiated the SBAP (i.e., in the Air Division of the ADPC&E), designated the State Office to serve as Small Business Ombudsman, hired the Ombudsman in November 1993, and created a CAP (and begun appointing its members).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, today's direct final action will be effective May 8, 1995 unless, by April 7, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 8, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[2] Section 507(e)(1)(B) of the CAA requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, the EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the SIP for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 24, 1995.

William B. Hathaway,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart E—Arkansas

2. Section 52.170 is amended by adding paragraph (c)(31) to read as follows:

§ 52.170 Identification of plan.

* * * * * *

(c) * * *

(31) The State is required to implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) as specified in the plan revision submitted by the Governor on November 6, 1992. This plan submittal, as adopted by the Arkansas Commission on Pollution Control and Ecology on November 5, 1992, was developed in accordance with section 507 of the Clean Air Act. On April 23, 1993, the Governor submitted Act 251 of 1993 which establishes the Compliance Advisory Panel (CAP) for the PROGRAM.

(i) Incorporation by reference.

(A) Act 251 of 1993 approved by the Governor on February 26, 1993. Included in this Act are provisions creating a CAP, establishing membership of the CAP, and addressing the responsibilities and duties of the CAP.

(B) Arkansas Department of Pollution Control and Ecology, Minute Order No. 92–81, adopted November 5, 1992.

(ii) Additional material.

(A) Revision entitled, "Arkansas Small Business Stationary Source Technical and Environmental Compliance Assistance Program SIP Revision", adopted November 5, 1992.

(B) Legal opinion letter dated November 5, 1992, from Steve Weaver, Chief Counsel, Arkansas Department of Pollution Control and Ecology, regarding legality of Commission teleconference meeting.

3. Section 52.183 is added to subpart E to read as follows:

§ 52.183 Small business assistance program.

The Governor of Arkansas submitted on November 6, 1992, a plan revision to develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to the EPA on the program's effectiveness. On April 23, 1993, the Governor submitted Act 251 of 1993 which establishes the Compliance Advisory Panel for the PROGRAM.

[FR Doc. 95–5442 Filed 3–7–95; 8:45 am]

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40 CFR Part 52

[IN39–3–6715; FRL–5158–1]

Approval and Incorporation of Employee Commute Option Program in the State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: On August 18, 1994, the United States Environmental Protection Agency (USEPA) approved the Employee Commute Options (ECO) regulation for Lake and Porter Counties, Indiana. On the same day (August 18, 1994), a proposed rule was also published which established a 30-day public comment period noting that, if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final rule and publish an additional final rule to address the public comments. Adverse comments were received during the public comment period from the Indiana Chamber of Commerce, the Northwest Indiana Forum, three affected employers, three motorcycle associations, and three individuals. This final rule summarizes these comments and USEPA's responses and finalizes the approval of the ECO program for Lake and Porter Counties.

EFFECTIVE DATE: This action will be effective on April 7, 1995.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Jessica Radolf at (312) 886–3198 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–3198.

SUPPLEMENTARY INFORMATION:

I. Background Information

The ECO regulations (326 Indiana Administrative Code Article 19) discussed in this rule were submitted on February 25, 1994, by the Indiana Department of Environmental Management (IDEM) for the severe ozone nonattainment area that includes Lake and Porter Counties. These rules were submitted to satisfy section 182(d)(1)(b) of the Clean Air Act (Act) which requires that employers in severe ozone nonattainment areas with 100 or more employees at a worksite participate in a trip reduction program. On August 18, 1994 (59 FR 42506) the USEPA approved the ECO regulation as a revision to the Indiana ozone SIP. (For further information refer to the August 18, 1994, final rule.) Because adverse comments were received regarding the direct final rule, USEPA removed the direct final rule on November 7, 1994 (59 FR 55368). This final rule addresses the comments which were received during the public comment period and announces USEPA's final action on the

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ECO regulation for Lake and Porter Counties.

II. Public Comments and USEPA Responses

Comment

Several commenters believe that employees will be forced to change their commuting habits. Employees note that driving is a privilege and that the USEPA is trying to take it away with the ECO program. There is concern that employees will face substantial penalties if they do not meet the ECO regulations. Employers believe they will be required to force their employees to change their commuting habits. The employers note that ECO will create opportunities for legal challenges from angry employees against employers put in the position of infringing on employee's commuting choices and personal schedules.

USEPA Response

There is nothing in the Act that would force an employee to change commuting habits. The Act requires employers to provide incentives to employees so that employees may choose alternatives to driving alone. The Act gives employers flexibility to use any incentives they choose to promote compressed work weeks, mass transit, vanpools, carpools, telecommuting, bicycling, and walking. An employee may accept or reject an employer's incentives to stop driving alone to work.

Many employees will benefit from the ECO program. Coordinated ridesharing programs will facilitate carpooling and vanpooling that can reduce employee stress and save employees money. Efforts by employers to support coordinated transportation planning at the regional level may improve transportation services, such as added bus routes, so that employees will have more choices in how they get to work. Guaranteed ride home programs have been found to cost employers very little and provide assurance to employees who do not drive to work that their transportation needs can be met in case an emergency arises.

Consequently, the privilege of driving is not being taken away with the ECO program and employees will not face penalties for not meeting the ECO requirements. Employees will voluntarily decide whether or not to change their commuting habits. Conversely, employers will not be required to force their employees to change their commuting habits. Employers will develop a program of incentives with the goal of influencing their employees to voluntarily decide to commute differently.

Comment

One commenter objects to the need for an ECO program since new cars are built to be much cleaner. The commenter notes that if the ECO program goes into affect, money developing these cleaner cars will have been wasted since people can't drive the clean cars.

USEPA Response

The Act requires implementation of an ECO program in those areas that have been classified as severe or extreme nonattainment for ozone or serious nonattainment for carbon monoxide. Fourteen areas in eleven States, including Lake and Porter Counties in Northwest Indiana, must implement an ECO program.

These severe and extreme ozone nonattainment areas will have to reduce emissions by a very large amount to achieve the health-based ambient air quality standard for ozone. A study currently being conducted for the Chicago, Milwaukee, and Northwest Indiana areas by the Lake Michigan Air Directors Consortium and the States of Indiana, Illinois, Wisconsin, and Michigan indicates that current levels of emissions, considering growth, will need to be reduced by as much as 40 to 60 percent, or more to achieve attainment of the ozone air quality standard by the year 2007. Implementation of numerous control measures for stationary, area, and mobile sources of emissions will have to occur to achieve this percentage reduction. Mobile sources, which include automobiles, account for almost 47 percent of the ozone pollution in Northwest Indiana.

The growth in the use of automobiles is one of the primary reasons it has been difficult to achieve better ozone air quality. Vehicle miles traveled have experienced a growth rate over the past 25 years which is nearly three times the rate of the population growth. While hundreds of millions of dollars have been invested over the past 25 years to reduce vehicle emissions by applying good technology to both the vehicles and the fuel, it is predicted that the growth in total emissions due to continued growth in vehicle miles traveled may eventually outweigh those gains.

The ECO program is part of the Act's strategy to address the growth in vehicle miles traveled. The purpose of the ECO program is to reduce air pollution caused by vehicle traffic and congestion through reductions in the number of work-related drive-alone trips. Although work-related commute travel is only about a third of all travel, it is uniquely suited to promote alternatives to single occupant vehicle travel. There are concentrations of people going to the same place at the same time who can share rides. The ECO program was mandated by Congress because Congress believes there is a need to address how people travel as a part of the solution to cleaning the air and reducing travel congestion.

Therefore, even though new cars are built to be much cleaner, there is a need for ECO and the money spent to develop cleaner cars will not have been wasted. The ECO is a means to reduce, not eliminate, automobile usage and, thus, maintain the emission reduction benefits derived from cleaner cars.

Comment

One commenter opposes ECO as a "band-aid" solution to the ozone problem. The commenter notes that the appropriate approach is for the Federal Government to mandate that the automobile manufacturers produce more natural gas powered vehicles. The commenter points out that natural gas is plentiful in this country, inexpensive and clean burning, and that the technology exists. The commenter notes that all that is needed is to make natural gas available to the consumer. The commenter suggests that the phase-in of natural gas vehicles should begin now, so future generations naturally have that option.

USEPA Response

A major goal of the Act is to promote vehicles that pollute less than conventional gasoline powered vehicles or not at all. Act initiatives include promotion of natural gas vehicles which are recognized as an available and clean technology.

The Clean Fuel Fleet (CFF) (section 246) program explicitly addresses the phase-in of lower emitting vehicles and trucks beginning in model year (MY) 1998 for fleets of 10 or more vehicles, that are either centrally fueled or determined to be "capable" of being centrally fueled, and which are located or primarily operated in an affected nonattainment area. The CFF program will require that specified percentages of a covered fleet operator's new vehicle acquisitions in a given model year consist of low emitting vehicles. The light-duty clean fuel vehicle (up to 8,500 pounds GVWR) phase-in requirements are 30 percent in MY 1998, 50 percent in MY 1999, and 70 percent thereafter. The heavy-duty clean fuel vehicle (8,500 to 26,000 pounds GVWR) phase-in requirement is 50 percent each year starting in MY 1998. Fleet owners will receive emission credits for purchasing ultra low emitting vehicles.

USEPA ECO guidance issued on December 17, 1992, recognizes the importance of encouraging the use of vehicles operated by means other than a gasoline or diesel operated internal combustion engine. For the purpose of calculating the average passenger occupancy (APO), States may develop factors to be applied to the vehicle count which would reflect the lower emission levels from alternatively fueled vehicles that include natural gas vehicles.

Comment

Several commenters believe the program will result in great costs to area ECO employers, but will not result in any environmental benefits. The commenters cite that the results of an ECO pilot project in Northwest Indiana show that despite great expense and sincere effort to make the program successful, employees simply were not responding.

USEPA Response

As discussed above, the ECO program is part of the Act's strategy for addressing the growth in vehicle miles traveled. Congress mandated ECO as a starting point for changing travel behavior so air quality problems associated with single-occupancy automobiles usage can be solved. The program should not be thought of as a short-term effort. It is really the beginning of a ten- or twenty-year effort to expand employees' choices and opportunities for travel. The funding provisions of the Intermodal Surface Transportation and Efficiency Act make it possible for Federal dollars to be used for public transportation projects which can support ECO long-term goals. The USEPA believes that the ECO program will play a significant role in making people aware of how they travel and this awareness will eventually extend beyond work-related trips to trips taken throughout the day. This awareness will have important implications related to traffic congestion, air quality, climate change and energy usage.

The results of the ECO pilot project cannot be used to substantiate claims that ECO will not work in Indiana. Employer plans only began to be implemented in the late spring of 1994 and there has not been enough time to evaluate effectiveness or costs. In addition, participants in the ECO pilot project were not required to develop the full scale compliance plans that will be required when the program is fully implemented.

Comment

Several commenters address the unlikely success of carpooling in Northwest Indiana. The commenters note that employees of any one company are spread out over a wide geographic area, and many worksites have multiple shifts beginning during the peak travel period of 6:00 a.m. to 10:00 a.m. The commenters also discuss that the nature of their work requires that employees have use of their car at all times. The commenters note that they often do errands on the way to and from work, such as taking children to and from daycare, and are concerned about handling a family emergency that may occur in the middle of the day.

USEPA Response

Carpooling and vanpooling will be important elements of many ECO programs. While there will always be employees that cannot carpool because of individual needs, there will be many employees that will be able to carpool. Moreover, the needs of commuters will change over time. For example, employees that must drop children off at daycare currently may be able to carpool in the future when their children are older. The ECO program provides an opportunity to establish commuting options, such as carpooling, public transit or other alternatives, to meet future commuting needs.

Employers cannot determine that their employees are spread out over too wide a geographic area for carpooling to succeed until they have conducted their APO surveys that include employee locations and attitudes. Even if employees are spread out over a large area, there may be small pockets of employees willing to carpool. In addition, more employers in close proximity may operate cooperative carpooling programs in which their employees would be given the opportunity to carpool together.

The potential success of carpooling in any area will largely be determined by the amount of effort by employers to provide educational programs and measures that support ridesharing. Guaranteed ride home programs provide assurance to employees who do not drive to work that their transportation needs can be met in case of a midday emergency. All of the participating employers in the Northwest Indiana ECO pilot project have included a guaranteed ride home program in their compliance plan. Employers may also establish on-site amenities that will make it less necessary for employees to have their own vehicle, including automatic teller machines, cafeterias, and daycare facilities.

Other support measures for carpooling include: offering preferential or subsidized parking for carpools and vanpools; charging drive alones for parking; cashing out parking with cash equivalents to free parking; sponsoring or subsidizing carpools and vanpools; providing comprehensive rideshare matching services; subsidizing shuttles during midday to local shopping areas; and providing company-owned vehicles for ridesharing.

Several alternative measures would address the concern over multiple shifts during the peak travel period. The ECO can be looked at as an opportunity for employers to reevaluate how they do business. At some worksites, it may be possible to reschedule shifts by reducing the number of starting times to consolidate the number of employees arriving at worksites at the same times. Other alternatives include changing work schedules to accommodate compressed work weeks in which employees work longer shifts over fewer days. This gives employers the opportunity to offer their employees more favorable schedules such as four day work weeks and three-day weekends. Some employers may want to allow certain employees to telecommute, or work at home, one or two days a week.

Employers can also adopt incentive programs to encourage employees to use public transit if it is available. Where public transit is not available, employers may want to turn to the private sector and sponsor subscription bus services. Employers can also improve facilities to promote bicycle use and walking options.

Comment

Several commenters object that the ECO program is required all year long, although the ozone season is only April through October. The commenters note that high ozone levels typically are recorded only during exceptionally hot and dry periods in June, July or August.

USEPA Response

The ozone season in Indiana is April through September, not October. However, excessive driving of single occupied vehicles during the 6 a.m. to 10 a.m. peak commuting period and the resulting traffic congestion occurs all year long. Indiana chose to implement its ECO program on an annual basis because the State believes it would be difficult to change commuting habits, such as reforming carpools, just in the spring and summer. The State believes

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it makes financial sense, as well as practical sense, to implement several of the alternative commuting measures on a year-round basis, thereby avoiding continual start-up costs and the initial resistance of commuters to changing their commuting habits.

Comment

Several commenters note that high ozone levels have been recorded only in one urbanized area of Lake County and no monitoring data exist to justify expansion of the ECO program to all of Lake County or any of Porter County.

USEPA Response

Lake and Porter Counties, Indiana are part of the Chicago consolidated metropolitan statistical area (CMSA) as determined by the census bureau. Section 107(d)(4)(A)(iv)of the Act requires that the boundaries of any ozone nonattainment area classified as serious, severe, or extreme by operation of law include the entire CMSA. Congress thus ensured that the entire area contributing ozone forming pollutants would be included in the nonattainment area. The inherent nature of ozone formation is that volatile organic compounds and oxides of nitrogen are emitted in one area and carried downwind while reacting in the presence of sunlight to form ozone. Thus, the highest concentrations of ozone are not necessarily experienced in the area producing the greatest amount of pollutants but instead the highest ozone readings may be recorded many miles downwind.

Section 181(a) of the Act also requires that the years to consider when determining the classification of an area were to be the years 1987 to 1989. In the case of Lake and Porter Counties, the monitoring site at Ogden Dunes in Porter County recorded 4 days during 1987, 10 days during 1988, and 0 days during 1989, with ozone exceeding the National Ambient Air Quality Standard (NAAQS). The highest 1-hour ozone level at the Ogden Dunes site was during 1988 and was 0.192 parts per million (ppm). The monitoring site in Lake County with the most ozone exceedances during this time period was in Hammond, Indiana which recorded 1 exceedance day during 1987, 5 days during 1988, and 0 days during 1989. The highest 1-hour ozone concentration was 0.186 ppm. However, the sites in Lake and Porter Counties were not the highest sites in the CMSA. The monitoring site with the highest recorded ozone levels in the CMSA is located in Kenosha County, Wisconsin. This site recorded 18 days during 1988 that exceeded the ozone NAAQS with the highest concentrations being 0.222, 0.193, 0.190 and 0.187 ppm. Thus, this site was used as the "design value" site and determined the classification of the entire CMSA, as required by the Act.

Therefore, the entire Chicago CMSA is, by operation of law, classified as a severe ozone nonattainment area and the Act requires that all counties in the area must be included in the ECO program.

Comment

Several commenters are concerned that employer monitoring of the success of ECO plans cannot be determined with any degree of accuracy. The commenters note that employer monitoring is unreasonable and requires resources unavailable to most employers.

USEPA Response

Employers in Northwest Indiana will be required to evaluate the success of their ECO program 1 year after the initial plan submittal and annually thereafter. Employers will be required to resurvey their employees to calculate the APO attained. The survey and survey methods will be the same as the initial survey conducted, insuring consistency between surveys. Employers will receive computer software developed by Purdue University—Calumet to electronically calculate the APO and do cross-tabulations.

During the year, employers can monitor participation in their programs to determine participation levels and whether there is a need to make program modifications. A variety of methods that are not beyond the means of Northwest Indiana employers can be used to monitor employee participation, including but not limited too: registering program participants; monitoring preferential parking; having supervisors complete weekly reporting forms; having employees complete weekly self-reporting forms; and conducting periodic surveys. The degree of accuracy in monitoring will be determined by the honesty of employees reporting how they are commuting. Since employees are not facing any penalties for not participating in an employer's program, there should be little incentive to be untruthful.

Comment

Several commenters are concerned that Northwest Indiana does not have a regional public transportation system in place. As such, most area employers do not have the option of encouraging or providing financial incentives to their employees to use transit. In addition, commenters note their concern over potential safety problems from their employees using transit in high crime areas or walking several blocks along dark roads from bus stops.

USEPA Response

ECO provides an opportunity for employers to get involved in regional transportation planning issues. The Northwest Indiana Regional Planning Commission has proposed extensive improvements in the transportation network in Lake and Porter Counties. The Indiana Transportation Association, the statewide organization of public and private transit providers, is working with local transit agencies and state representatives to develop a legislative initiative for funding transit improvements statewide, including Lake and Porter Counties.

There are full-scale public transit systems in place in the cities of Hammond and Gary and a small transit system in the city of East Chicago that can provide alternatives for employees. Hammond Transit has recently extended its bus service on Calumet Avenue into the town of Munster. There are also a number of private transit companies willing to work with employers subject to ECO to provide subscription bus services.

The Congestion Mitigation and Air Quality (CMAQ) provision of the Intermodal Surface Transportation and Efficiency Act (ISTEA) is providing money that is enabling the transit agencies in Northwest Indiana to provide expanded service. These funds have enabled the region to launch a tri-city link-up pilot project which involves the interconnection of bus services between the central business districts of Gary, East Chicago, and Hammond. This pilot project has proven extremely successful and will most likely be continued. The city of Gary has been doing a study of expanding transit service into the cities of Griffin, Highland, and Munster and linking up with the Hammond transit service in Munster. Gary Transit has recently submitted a proposal for CMAQ funds to run a pilot of the actual service. In addition, several new park-and-ride facilities, which will be staging areas for mass transit, vanpools, carpools, and subscription bus services, are being designed and will be paid for with CMAQ funds.

Concern over the lack of safety due to poor walking or safety conditions can be addressed by working with the appropriate entities to have lighting and walking facilities improved; relocating transit stops so they are closer to the worksite; or providing shuttle service from transit stops to the worksite.

Where transit is not an option, there are several measures discussed above that can be used to encourage employees to drive to work in a means other than a single occupied vehicle.

The funding available through ISTEA as well as the requirements of the ECO program should be seen as an opportunity to improve the provision of public transportation in Lake and Porter Counties and other similar areas.

Comment

One commenter opposes the mandate that public schools participate in the ECO program. The commenter noted that several characteristics of public schools will make them unable to comply successfully with the ECO program and will divert needed resources from the primary goal of educating students. The commenter explained that public school work schedules are inflexible prohibiting adjustment of work hours to accommodate flexible hours or compressed work weeks; and providing monetary incentives to staff is prohibited since funds can only be dispersed for educational expenses. The commenter noted the ECO program discriminates against employees of larger schools and favors employees of smaller schools; students account for the majority of drivers and are not included in the program; and the school district does not get credit in the average passenger occupancy calculation for the 6000 students that are transported by school bus.

USEPA Response

The USEPA is committed to finding ways for States to implement the ECO program so that the burden on affected employers is minimized. However, USEPA cannot categorically exempt any employers from any of the requirements of the ECO program. It is clear that public schools must be subject to the program and so long as they demonstrate a good faith effort to meet the target average passenger occupancy, they will not be penalized.

There are ways for public schools to encourage employees to commute differently that do not involve large expenditures or manipulation of work schedules. Because the school work schedule is fixed, there are a large number of employees arriving at the worksite at the same time making it possible to encourage ridesharing. Several of the measures listed above which would support ridesharing are inexpensive such as preferential parking for vehicles with more than one passenger; guaranteed ride home programs; comprehensive rideshare matching services; and educational programs that promote ridesharing.

The ECO program does not discriminate against employees of larger schools in favor of employees of smaller schools. Congress selected a threshold of 100 employees because it is Congress' intent to target employers who have enough employees arriving in the peak period to establish a viable ECO program. The USEPA recognizes there are situations in which the majority of an employer's workforce follows a non-standard schedule, and the number of employees arriving in the peak period is small enough to make ridesharing and special employer-provided services difficult. Therefore, under the December 17, 1994, USEPA ECO Guidance, a de minimis exemption may be made at the State's option whereby employers with worksites at which fewer than 33 employees report to work during the peak travel period are not subject to the requirements. The Indiana ECO rule has adopted this de minimis exemption. While the Indiana ECO rule applies to those employers which employ 100 or more employees at a single worksite, the worksite must have 33 or more employees reporting between 6 a. m. and 10 a.m. on any single day, Monday through Friday.

The Act does not require the inclusion of students in the State ECO program even though students may account for the majority of drivers in some schools. However, the Act does not preclude the State from developing a separate trip reduction regulation that would specifically address the commuting habits of students. In addition, students riding school buses are not included in the APO calculations because they are not employees commuting to the worksite. Other types of businesses and worksites, such as hospitals and shopping centers for example, have large numbers of nonemployees coming to the worksite as well.

Comment

Several commenters claim that ECO precludes the use of motorcycles as a commuting option without consideration of convenience, contributions to reduced congestion, economic hardship imposed by such prohibitions, or environmental benefits such as fuel efficiency and less manufacturing pollution. Commenters believe the Indiana ECO rule does not address the rights of those Indiana citizens who choose to commute to work using a motorcycle and recommend that motorcycles be exempted from the program. The commenters fear that ECO could lead to a ban of motorcycle operation between the hours of 6 a.m. and 10 a.m. Commenters believe that the methodologies used to calculate the average vehicle occupancy (AVO) and APO diminish the value of motorcycles.

USEPA Response

The ECO program requires employers with 100 or more employees to implement programs that will encourage their employees that arrive at their worksite between 6 a.m. and 10 a.m. to commute to work by a means other than a single occupied vehicle. Affected employers will conduct surveys to determine the APO of the vehicles arriving at their worksites between 6 a.m. and 10 a.m. and then develop a program to encourage their employees that arrive in single occupied vehicles to use an alternative means of commuting.

Motorcycles used to commute to an affected worksite will be counted as vehicles since they have internal combustion engines. While USEPA recognizes the need for additional information on motorcycle emissions and commute patterns, current data show that motorcycles emit significantly more pollutants that help to form ozone than do light-duty vehicles (e.g., passenger cars) on a grams/mile basis.

Individuals who ride a motorcycle to an affected worksite between 6 a.m. and 10 a.m. will be encouraged to find an alternative means of commuting to that worksite. However, as discussed above, there is nothing in the Act that would force motorcyclists to change commuting habits. Motorcyclists, like all employees, may accept or reject an employer's incentives to stop driving. Many motorcyclists could benefit by participating in carpools and vanpools, or using public transit programs that reduce stress and save money.

Consequently, it is not necessary to exempt motorcycles from the ECO program since motorcycles have the same rights under the program as all other vehicles. ECO does not preclude the use of motorcycles as a commuting option; and does not eliminate the rights of Indiana citizens who choose to commute by motorcycle. In addition, the methodologies used to determine the AVO and APO do not need to be modified since they appropriately identify the number of vehicles with internal combustion engines on the road during the 6 a.m. to 10 a.m. peak period and the number of people traveling in those vehicles.

III. Final Rulemaking Action

The State of Indiana has met the requirements of the Act by revising the Indiana ozone SIP to include an ECO

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program. Therefore, USEPA approves the ECO program for Lake and Porter Counties.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone.

Dated: February 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(92) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(92) On February 25, 1994, Indiana submitted an employee commute option rule intended to satisfy the requirements of section 182(d)(1)(B) of the Clean Air Act Amendments of 1990.

(i) *Incorporation by reference.* (A) Title 326 of the Indiana Administrative Code, Article 19 MOBILE SOURCE RULES, Rule 1, Employee Commute Options. Filed with the Secretary of State, October 28, 1993, effective November 29, 1993. Published at Indiana Register, Volume 17, Number 3, December 1, 1993.

* * * * *

[FR Doc. 95–5446 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC19–1–5031a; FRL–5166–7]

Approval and Promulgation of Implementation Plans State: Disapproval of Revisions to the South Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is disapproving South Carolina's generic bubble regulation submitted for approval into the State Implementation Plan (SIP) by the State of South Carolina through the South Carolina Department of Health and Environmental Control (DHEC) on June 5, 1985, because it does not comply with EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986, or the Economic Incentive Program Rules (EIP). The policy states that existing state generic bubble rules should be reviewed and that a notice be published identifying any deficiencies found in the review and giving a means and a schedule to correct them. However, since revision of their federally approved generic rule or withdrawal of the 1985 submittal will require legislative action by the State, South Carolina requested in a letter to John Hankinson, Regional Administrator, that EPA disapprove the submittal. Therefore, EPA is rescinding the previous approval of the generic bubble regulations and disapproving the June 5, 1985 submittal.

DATES: This final rule will be effective May 8, 1995 unless adverse or critical comments are received by April 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Kay T. Prince, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4221. Reference file SC19–1–5031.

SUPPLEMENTARY INFORMATION: On June 7, 1982 (47 FR 38887), EPA approved into the SIP the South Carolina generic bubble regulation as meeting all EPA

requirements at that time. On January 14, 1985, the State of South Carolina through DHEC submitted revisions to their generic bubble regulation, requesting concurrent review by EPA. On June 5, 1985, the State of South Carolina submitted the state-effective version of the bubble regulation (Regulation No. 62.5, Standard No. 6, Alternative Emission Limitation Options ("Bubble"). Subsequently EPA's revised ETPS was published on December 4, 1986. (51 FR 43814). The policy indicates that existing state generic bubble rules should be reviewed and notices published identifying any deficiencies and a means to correct them. It also gives EPA the option to rescind its previous approval of a generic bubble rule. (51 FR 43853) Following enactment of the 1990 Clean Air Act Amendments, EPA promulgated the EIP on April 7, 1994. (59 FR 16690)

EPA has reviewed both the approved and revised generic bubble rules and found them to be deficient with respect to the ETPS, the EIP, and the provisions of the 1990 Amendments. Following is a summary of the review of some of the deficiencies of the revised generic rule.

Section II—Conditions for Approval

The rule does not provide for federal enforceability. To assure that Clean Air Act requirements are met, each transaction which revises any emission limit upward must be approved by the state and be federally enforceable. (e.g., 51 FR 43832, 59 FR 16700) Revised limits can be made federally enforceable through source specific SIP revisions, federally approved generic bubble regulations, federally approved EIPs or construction permits issued through a federally approved permit program.

Emissions prior to and after the bubble from all points involved must be quantifiable, the total emissions resulting from the bubble must show a net decrease, and the procedures for determining the emissions from the bubble must be replicable. Replicability generally means a high likelihood that two decision-makers applying the rule to a given bubble would reach the same conclusion. The South Carolina generic bubble rule does not contain any provisions to ensure that the calculation procedures used to quantify the emissions are replicable. (e.g., 51 FR 43850, 59 FR 16713)

Bubble rules must contain provisions for determining a baseline emissions level beyond which the reductions must occur to be creditable. There are three baseline factors—emission rate, capacity utilization, and hours of operation—which must be used to compute pre- and post-bubble emission levels. Baseline factors differ depending on the status of SIP development for the area. The South Carolina rule does not address baseline factors. (e.g., 51 FR 43838, 59 FR 16697)

Section III—Part B.—Emissions of Volatile Organic Compounds

In general, generic bubble rules for volatile organic compounds (VOCs) must require that surface coating emissions be calculated on a solids-applied basis and specify a maximum time period over which emissions may be averaged in an acceptable compliance demonstration, usually not exceeding 24 hours. Averaging times greater than 24 hours must meet the criteria outlined in Appendix D of the ETPS. (51 FR 48857) The South Carolina rule does not include these requirements. The South Carolina rule also does not include the requirements to meet the extended averaging times provided in the EIP rule. (e.g., 59 FR 16706)

Final Action

EPA is disapproving the May 24, 1985, version of the South Carolina generic bubble rule, Regulation No. 62.5, Standard No. 6, as requested by the State on March 24, 1994, because it does not meet EPA requirements. Additionally, EPA is rescinding its approval of the May 28, 1982, version of the rule as approved in the **Federal Register** on June 7, 1982. (47 FR 38887) This action is being published without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 8, 1995 unless, by April 7, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 8, 1995.

The agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e. prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State request under section 110 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor

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does it impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 26, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2122, is amended by designating the introductory text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2122 Approval status.

* * * * *

(b) EPA disapproved South Carolina's generic bubble regulation submitted for approval into the State Implementation Plan (SIP) on June 5, 1985.

[FR Doc. 95–5574 Filed 3–7–95; 8:45 am]

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40 CFR Part 180

[PP 4F4328/R2112; FRL–4940–5]

RIN 2070–AB78

Pseudomonas Syringae; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of *Pseudomonas syringae* in or on all raw agricultural commodities when applied postharvest in accordance with good agricultural practices. EcoScience Corp. requested this exemption.

EFFECTIVE DATE: This regulation becomes effective March 8, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP4F4328/R2112], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Sheryl K. Reilly, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703)–308–8265.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 11, 1994 (59 FR 24429), EPA issued a notice that the EcoScience Corp., One Innovation Drive, Worcester, MA 01545, had submitted pesticide petition PP 4F4328 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the biological control agent, Bio-Save 10, containing the active ingredient *Pseudomonas syringae* in or on pears, apples, lemons, oranges, and grapefruit when applied postharvest in accordance with good agricultural practices.

There were no comments received in response to the notice of filing.

Pseudomonas syringae is naturally occurring and was originally isolated from apples.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study, an acute dermal toxicity study, an acute pulmonary toxicity/pathogenicity study, an acute intravenous toxicity/pathogenicity study, a primary eye irritation study, and a primary dermal irritation study.

The results of these studies indicated that the organism was not toxic to test animals when administered via oral, dermal, pulmonary, or intravenous routes.

The active ingredient was not infective or pathogenic to test animals in any of the studies. Minimal ocular irritation observed in the eye irritation study dissipated within 5 days; very slight skin irritation noted immediately following exposure to the compound dissipated within 2 days. There have been no reports of hypersensitivity related to the active ingredient. All of the toxicity studies submitted are considered acceptable.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of *Pseudomonas syringae* on all raw agricultural commodities when applied postharvest in accordance with good agricultural practices.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans by dietary exposure. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biological control agent.

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve

one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1145, to read as follows:

§ 180.1145 Pseudomonas syringae; exemption from the requirement of a tolerance.

Pseudomonas syringae is exempted from the requirement of a tolerance on all raw agricultural commodities when applied postharvest according to good agricultural practices.

[FR Doc. 95–5655 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4349/R2111; FRL–4940–3]

RIN 2070–AB78

Pesticide Tolerance for Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide/miticide amitraz and its metabolites in or on imported dried hops at 60 parts per million (ppm). AgrEvo (formerly Nor Am) Chemical Co. requested this regulation to establish the maximum permissible level for residues of the insecticide/miticide in or on the commodity.

EFFECTIVE DATE: This regulation becomes effective March 8, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4E4349/R2111], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 1995 (60 FR 3797), EPA issued a proposed rule that gave notice that the AgrEvo (formerly Nor Am) Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, had petitioned EPA under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to establish a tolerance for the insecticide/miticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino]methyl]-*N*-methylmethanimidamide) and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent compound) in or on imported dried hops at 75 ppm. An EPA review of the data concluded that a tolerance of 60 ppm was needed given the existing application rates.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

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There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 23, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.287, by amending the table therein by adding and alphabetically inserting the raw agricultural commodity dried hops, to read as follows:

§ 180.287 Amitraz; tolerances for residues.

* * * * *

Commodity	Parts per million
. . . . .	
Hops, dried	50
. . . . .	

[FR Doc. 95–5654 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F4285/R2110/FRL–4935–5]

RIN 2070–AB78

Pesticide Tolerance for Imidacloprid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites (common name "imidacloprid"), in or on the raw agricultural commodity mango at 0.2 part per million (ppm). Miles, Inc., requested this regulation to establish a maximum permissible level for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective March 8, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4285/R2110], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–3686.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 13, 1994 (59 FR 35718), which announced that Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120–0013, had submitted pesticide petition 4F4285 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (imidacloprid) in or on the raw agricultural mango at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to this notice of filing.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in males and 7.6 mg/kg/bwt in females) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog-feeding study with a NOEL of 1,250 ppm (41 mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.000985 mg/kg/bwt/day. This represents 2% of the RfD. The proposed tolerance contributes 0.000001 mg/kg/bwt/day. This represents no significant increase in the RfD. Dietary exposure from the existing uses and proposed use will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC–MS selective ion monitoring. Imidacloprid and its metabolites are stable in the commodities when frozen for at least 24 months. There are adequate amounts of geographically representative crop field trial data to show that combined residues of imidacloprid and its metabolites, all calculated as imidacloprid, will not exceed the proposed tolerance on mangoes at 0.2 ppm when use as directed.

There are currently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerance is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order, i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact qn a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, by amending paragraph (a) in the table therein by adding and alphabetically inserting the entry for mango, to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

(a) * * *

Commodity	Part per million
. . . . .	
Mango	0.2
. . . . .	

* * * * *

[FR Doc. 95–5653 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300374A; FRL–4933–7]

RIN 2070–AB78

3,5-Bis(6-Isocyanatohexyl)-2H-1,3,5-Oxadiazine-2,4,6-(3H,5H)-Trione, Polymer With Diethylenetriamine; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of 3,5-*bis*(6-isocyanatohexyl)-2*H*-1,3,5-oxadiazine-2,4,6-(3*H*,5*H*)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4), when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops. Miles, Inc., requested this regulation.

EFFECTIVE DATE: This regulation becomes effective March 8, 1995.

ADDRESSES: Written objections, identified by the document control number, [OPP-300374A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8470.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1995 (60 FR 2921), EPA issued a proposed rule that gave notice that Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120–0013, had submitted pesticide petition (PP) 4E4416 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of 3,5-*bis*(6-isocyanatohexyl)-2*H*-1,3,5-oxadiazine-2,4,6-(3*H*,5*H*)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4), when used as an inert ingredient (encapsulating agent) in growing crops under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
3,5-*Bis*(6-isocyanatohexyl)-2*H*-1,3,5-oxadiazine-2,4,6-(3*H*,5*H*)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823-33-4); minimum number average molecular weight 1,000,000..	.....	Encapsulating agent
* * * * * * *		

* * * * *

[FR Doc. 95–5652 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 6F3392/R2105; FRL–4933–1]

RIN 2070–AB78

Pesticide Tolerance for Clofentezine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide clofentezine in or on the raw agricultural commodity apples. AgroEvo USA Corp. (formerly Nor-Am Chemical Co.) requested this regulation to establish a maximum permissible level for residues of the insecticide.

EFFECTIVE DATE: This regulation is effective February 22, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6F3392/R2105], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. (703)–305–3686.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 4, 1986 (51 FR 20343), which announce that Nor-Am Chemical Co. of Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19803, had sumitted a pesticide petition to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Costmetic Act (FFDCA), 21 U.S.C. 346a(d), propose to amend 40 CFR 180.446 by establishing tolerances for residues of the insecticide clofentezine 3,b-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on the commodities apples at 0.05 part per million (ppm), meat at 0.05 ppm, meat byproducts at 0.05 ppm, milk at 0.01 ppm, and poultry and poultry byproducts at 0.05. A feed additive tolerance was proposed for dry apple pomace at 1.0 ppm.

Subsequent to the orginal notice of filing, EPA issued a notice, published **Federal Register** of May 27, 1992 (57 FR 22232), which announced that the Nor-Am Chemical Co. was amending pesticide petition 6F3392 by increasing the proposed tolerance in/on apples to 0.01 ppm, withdrawing the proposed feed additive tolerance, and withdrawing the petition for animal tolerances since they have already been established.

There were no comments or requests for referral to an advisory committee received in response to the notice of filings.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include a 1-year dog feeding study with a no-observed-effect level (NOEL) of 50 ppm (1.25 mg/kg/day); a mouse carcinogenicity study which was negative at the doses tested, 50 ppm (7.5 mg/kg/day), 500 ppm (75 mg/kg/day), and 5,000 ppm (750 mg/kg/day); a multi-generation rat study with a NOEL of 400 ppm (20 mg/kg/day) (highest dose tested (HDT); a rat teratology study which was negative at 3,200 mg/kg/day (HDT) and had a developmental NOEL of 3,200 mg/kg/day; a rabbit teratology study which was negative at 3,000 mg/kg/day (HDT) also had a NOEL of 1,000 mg/kg/day for maternal toxicity (reduced litter and fetal body weights); and a 2-year rat chronic feeding/carcinogenicity study which showed an increase in the incidence of centrilobular hepatocyte hypertrophy and showed a statistically significant increase in thyroid follicular cell tumors in male rats at 400 ppm (20 mg/kg/day (HDT). Gene mutation, chromosomal aberrations, and diet DNA damage tests were negative for genetic toxicity.

The registrant (Nor-AM) also submitted additional thyroid studies intended to show that there was an indirect mechanism for the follicular cell tumors associated with clofentezine's liver toxicity. The Agency has reviewed the data in accordance with criteria outlined in a draft document entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations," (December 15, 1987). While this document is still undergoing Agency review, and the assessment procedures set forth therein have not been adopted by the Agency, the draft does provide a useful framework in which to consider the issue. Although the additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity, the Agency believes that

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additional data are necessary to more completely define the mechanism of clofentezine's thyroid tumor induction in terms of the criteria listed in the above document. Based on the rat feeding/ carcinogenicity study, the Agency has classified clofentezine as a possible human carcinogen (Group C). The qualitative designation "C" refer to EPA's weight-of-evidence classification. The classification is based on the Agency's "Guidelines for Carcinogenic Risk Assessment," published in the **Federal Register** of September 25, 1996 (51 FR 33992). The Agency believes a quantitative risk assessment based on the thyroid incidence is not appropprate for the following reasons:

1. The increase tumor incidence was marginally increased above the control incidence only at the highest dose tested (20 mg/kg/day) in the chronic feeding study.

2. The increased incidence was observed only in male rats.

3. The thyroid tumor incidence in the chronic feeding study's highest dose group (20 percent) was slightly greater than the historical range provided by limited control group data (7.5 to 15 percent) from two other studies.

4. The additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity.

5. The mouse was negative for carcinogency effects at all dose levels, i.e., 50, 500, 5,000 ppm (equivalent to 7.5, 75, 750 mg/kg/day, respectively).

6. There are no close structural analogs with carcinogenic concerns identified.

7. Clofentezine is not mutagenic in several acceptable studies.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) also reviewed the weight-of-evidence consideration and classification of the carcinogenic potential of clofentezine. The SAP review included the additional thyroid studies submitted by Nor-Am that were available at that time. The SAP concluded that thyroid tumors in male rats from the chronic feeding/ carcinogenicity study with clofentezine did not provide adequate evidence of a potential carcinogenic hazard to humans and that the carcinogenic potential of clofentezine belongs to Group D (not classifiable as a human carcinogen).

The Panel's interpretation was based on observed increases in thyroid stimulation hormone (TSH) levels and the incidence of thyroid follicular cell hyperplasia which may be responses to decreases in blood levels of the circulating thyroid hormones (triiodothyroxine (T_3) and tetra-iodothyroxine (T_4) observed in clofentezine-treated rats. This sequence of reduced circulating thyroid hormones and increased TSH levels and follicular cell hyperplasia is known to lead to thyroid tumors in rats, and the Panel noted, "Exposure to agents that cause this sequence in rats has not resulted in increased TSH, hyperplasia, and thyroid tumors in humans." Therefore, the Panel concluded that there was inadequate data for suggesting human carcinogenicity or a quantitative risk assessment.

Nor-Am has since submitted additional thyroid studies intended to show the mechanism of clofentezine's thyroid tumor induction. The Agency has reviewed these data, but as previously stated, the Agency continues to believe that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction and that the available data are not sufficient to change the classification of clofentezine from Category "C" to Category "D." However, the Agency does agree with the SAP that a quantitative risk assessment is not appropriate.

The reference dose (RfD), based on the 1-year dog feeding/carcinogenic study with a NOEL of 1.25 mg/kg/bwt and 100-fold uncertainity factor, is calculated to be 0.013 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.000591 mg/kg/bwt/day. This represents 4.54 percent of the RfD. The proposed tolerance contributes .000231 mg/kg/bwt/day. This represents 1.78 precent of the RfD. Dietary exposure from the existing uses and proposed uses will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the residue is understood. An adequate analytical method, high-performance liquid chromatography (HPLC), is available for enforcement.

Also, in an editorial amendment to the clofentezine tolerances in 40 CFR 180.446, EPA is removing the sole entry in paragraph (a), for pears, and moving it to the table in paragraph (b). Paragraph (a) is redundant and is being removed and designated as "reserved."

There are currently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.446, by removing paragraph (a) and designating it as "reserved" and by amending paragraph (b) by revising the table therein, to read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) [Reserved]

(b) * * *

Commodity	Parts per million
Almonds, hulls	5.0
Almonds, nutmeat	0.5
Apples	0.01
Apricots	1.0
Cherries	1.0
Nectarines	1.0
Peaches	1.0
Pears	0.5
Walnuts	0.02

* * * * *

[FR Doc. 95–5651 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 281

[FRL–5168–1]

Utah; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on State of Utah application for final approval.

SUMMARY: The State of Utah has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Utah application and has reached a final determination that Utah's underground storage tank (UST) program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State to operate its program in lieu of the Federal program.

EFFECTIVE DATE: Final approval for Utah shall be effective at 1:00 pm Eastern Time on April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie Zawacki, Underground Storage Tank Program Section, U.S. EPA, Region 8, 8HWM–WM, 999 18th Street, Denver, Colorado 80202, phone: (303) 293–1665.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) is "no less stringent" than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

On September 20, 1993, Utah submitted an application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. The State of Utah established authority through the Utah Solid and Hazardous Waste Act to implement an underground storage tank program in February 1986, and further developed its authority in the UST Act in February 1989. The State adopted the federal rules and developed some additional rules in February 1989.

On October 27, 1994, EPA published a tentative decision announcing its intent to grant Utah final approval. Further background on the tentative decision to grant approval appears at 59 FR 53955, October 27, 1994. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA received no comments on the application and no request for a public hearing, therefore, a hearing was not held.

B. Decision

I conclude that Utah's application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Utah is granted final approval to operate its underground storage tank program in lieu of the Federal program. Utah now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except with regard to "Indian Country," as defined in 18 U.S.C. 1151, where EPA will retain and otherwise exercise regulatory authority. Utah also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: March 1, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–5657 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2720

RIN 1004–AB56

[WO–690–02–4120–24 1A; Circular No. 2658]

Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends 43 CFR part 2720 in order to streamline and clarify the procedures for conveying Federally-owned mineral interests to the owner of the surface estate overlying the mineral interests. Section 209 of the Federal Land Policy and Management Act (FLPMA) allows such conveyances when there are no known mineral values present, or when the reservation of the mineral rights is interfering with or precluding appropriate nonmineral development of the land that would be more beneficial than mineral development. The rule is necessary because the wording of the existing regulation has caused considerable confusion on the part of both the public and public land managers, and has been interpreted to require expensive mineral surveys in many cases where such surveys were unnecessary. The final rule will simplify the conveyance of Federally-owned mineral interests.

EFFECTIVE DATE: April 7, 1995.

ADDRESSES: Suggestions or inquiries should be sent to: Director (690), Bureau of Land Management, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Clyde Topping, (202) 452–0380.

SUPPLEMENTARY INFORMATION: Five sections of subpart 2720 are amended in this final rule. The amendments in two of these sections are substantive and are designed to meet the objectives stated above in the Summary, and are explained below in the discussion of the comments received on the rule. The remaining three sections—sections 2720.0–6, 2720.1–3, and 2720.3—contain minor clarifications and corrections in language that were explained in the preamble to the proposed rule published in the **Federal Register** on September 28, 1993 (58 FR 50536). The rule allowed 60 days for public comment. During this public comment period, 1 public comment was received.

The comment basically supported the rule. It also asked for a reaffirmation of BLM's policy regarding exchanges involving surface and mineral rights, which allows both parties to an exchange to reserve mineral rights or to convey other mineral rights in order to keep the exchange balanced. This final rule has no effect on this BLM policy.

The statute that is implemented in these regulations allows conveyance of the mineral rights when the Secretary of the Interior finds that there are no known mineral values or that the mineral reservation is interfering with or precluding appropriate nonmineral development that is more beneficial than mineral development. It requires payment of administrative costs and the current fair market value of the minerals conveyed. It does not require the retention of non-valuable minerals in Federal ownership where there is a beneficial use of the surface with which mineral development would interfere. If the Secretary finds that mineral development in a particular case may be more beneficial than the surface use planned by the non-Federal owner, the conveyance would not be allowed.

The definition of "known mineral value" has been amended in the final rule to make it clear that mineral values will be determined in light of the current market, and to refer to lands containing mineral formations rather than to lands with underlying formations.

Minor changes in style have been made in the regulatory text to improve clarity and readability.

The principal author of this final rule is Clyde Topping of the Biotic and Landscape Resource Team, assisted by the Regulatory Management Team, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. The BLM has made this determination under 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, which includes "regulations * * * the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case," because the environmental effects of the transactions covered by this rule (a great variety of possible proposed uses of non-Federal surface) are entirely speculative and conjectural, and the transactions covered by the regulations will be subject to the NEPA process on a case-by-case basis as they are proposed. The BLM further determined that the rule will not trigger any of the 10 exceptions disallowing categorical exclusions listed in 516 DM 2, Appendix 2. These 10 exceptions apply to individual actions, not broad regulations covering a multitude of possible individual actions.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the final rule will not have a significant economic impact on a substantial number of small entities. The rule, by clarifying provisions that have been misinterpreted in the past, obviates unneeded and expensive mineral exploration programs to prove the market value of reserved mineral rights that are not valuable in the market sense. The rule imposes no costs, and makes the regulatory process less cumbersome.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not require the taking of any property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The information collection requirements contained in part 2720 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0153.

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 2720

Administrative practice and procedure, Public lands-mineral resources, Public lands-sale.

Dated: March 2, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

For the reasons stated in the preamble, and under the authorities stated below, part 2720 of Group 2700, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as follows:

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

1. The authority citation for part 2720 is revised to read as follows:

Authority: 43 U.S.C. 1719 and 1740.

2. Section 2720.0–5(b) is revised to read as follows:

§ 2720.0–5 Definitions.

* * * * *

(b) *Known mineral values* means mineral rights in lands containing geologic formations that are valuable in the monetary sense for exploring, developing, or producing natural mineral deposits. The presence of such mineral deposits with potential for mineral development may be known because of previous exploration, or may be inferred based on geologic information.

* * * * *

3. Section 2720.0–6 is amended by revising the first sentence thereof to read as follows:

§ 2720.0–6 Policy.

As required by the Federal Land Policy and Management Act, the Bureau of Land Management may convey a federally owned mineral interest only when the authorized officer determines that it has no known mineral value, or that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. * * *

4. Section 2720.0–9 is added to read as follows:

§ 2720.0–9 Information collection.

(a) The Office of Management and Budget has approved under 44 U.S.C. 3507 the information collection requirements contained in part 2720 and assigned clearance number 1004–0153. The Bureau of Land Management is collecting the information to permit the authorized officer to determine whether the Bureau of Land Management should dispose of Federally-owned mineral interests. The Bureau of Land Management will use the information collected to make these determinations. A response is required to obtain a benefit.

(b) The Bureau of Land Management estimates the public reporting burden for this information to average 8 hours per response, including the time for reviewing regulations, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0153, Washington, D.C. 20503.

5. Section 2720.1–3 is amended by revising the concluding text of paragraph (b) to read as follows:

§ 2720.1–3 Action on application.

* * * * *

(b) * * *

The authorized officer, in reaching a determination as to whether there are any known mineral values in the land and, if so, the estimated costs of an exploratory program, if one is needed, will rely upon reports on minerals prepared by or reviewed and approved by the Bureau of Land Management.

* * * * *

6. Section 2720.2 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 2720.2 Determination that an exploratory program is not required.

(a) * * *

(b) The authorized officer will not require an exploratory program to ascertain the presence of mineral values where the authorized officer determines that a reasonable person would not make exploration expenditures with expectations of deriving economic gain from the mineral production.

(c) The authorized officer will not require an exploratory program if the authorized officer determines that, for the mineral interests covered by the application, sufficient information is available to determine their fair market value.

7. Section 2720.3 is amended by revising the fourth sentence of paragraph (a), and paragraph (b) in its entirety, to read as follows:

§ 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) * * * The notice must require the applicant to pay both the fair market value of the Federal mineral interests and the remaining administrative costs owed within 90 days after the date the authorized officer mails the notice.

* * * * *

(b) The Bureau of Land Management will convey mineral rights on lands for which this part does not require an exploratory program upon payment by the applicant of fair market value for those mineral interests and all administrative costs of processing the application to acquire the mineral rights.

[FR Doc. 95–5626 Filed 3–7–95; 8:45 am]

BILLING CODE 4310–84–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Cost Accounting Standards Board; Interim Interpretation 95–01, Allocation of Contractor Restructuring Costs Under Defense Contracts

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Interpretation.

SUMMARY: The Cost Accounting Standards Board is issuing an interim interpretation designed to address period cost assignment and allocability criteria for restructuring costs incurred under certain national defense contracts.

DATES: *Effective Date:* August 15, 1994. Comments on this interim interpretation must be in writing and must be received by May 8, 1995.

ADDRESSES: Comments upon this interim interpretation should be

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addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., Room 9001, Washington, DC 20503. ATTN: CASB Interpretation 95–01.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Background

Section 818 of the National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337, restricts the Department of Defense from reimbursing contractor restructuring costs associated with a business combination unless certain "net savings" provisions are met. Questions have arisen as to the methods to be used in measuring, assigning and allocating such restructuring costs. This interim interpretation is designed to address these questions. The Board would appreciate receiving comments concerning this interpretation.

B. Authority to Issue an Interpretation

Authority for issuance of this interpretation is provided by 41 U.S.C. 422(f)(1) and 48 CFR 9901.302(b).

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

Cost Accounting Standards Board Interim Interpretation 95–01, "Allocation of Contractor Restructuring Costs Under Defense Contracts"

(a) Questions have arisen as to the appropriate methodologies to be used for the allocation and period cost assignment of contract costs categorized or classified as "restructuring costs" under certain defense contracts. This Interpretation applies to the provisions of several Cost Accounting Standards, including, but not limited to CAS 9904.403, 9904.404, 9904.406, 9904.409 and 9904.418, as they relate to "restructuring costs" associated with CAS-covered contracts.

(b) "Restructuring costs" are incurred after an entity decides to make a significant nonrecurring change in its business operations or structure in order to reduce overall cost levels in future periods through work force reductions, the elimination of selected activities, and/or the combination of ongoing operations, including plant relocations. Restructuring activities do not include ongoing routine changes an entity makes in its business operations or organizational structure. Restructuring costs are comprised both of direct and indirect costs associated with contractor restructuring activities taken after a business combination is effected or after an internal corporate restructuring decision is made. Typical categories of costs that have been included as restructuring charges include severance pay, early retirement incentive, retraining, employee relocation, lease cancellation, asset disposition and write-offs, and relocation and rearrangement of plant and equipment. Restructuring costs do not include the cost of such activities when they do not relate either to business combinations or significant nonrecurring internal corporate restructuring decisions. Generally, activities giving rise to restructuring charges should normally be completed within one year.

(c) The costs of betterments or improvements of capital assets that result from restructuring activities shall be capitalized and depreciated in accordance with the provisions of CAS 9904.404 and 9904.409.

(d) When a procuring agency imposes a net savings requirement for the payment of restructuring costs, the contractor shall submit data specifying (1) restructuring costs by period, (2) restructuring savings by period (if applicable), and (3) the methods by which such costs shall be allocated.

(e) Under normal circumstances, most categories of costs that qualify as restructuring costs are recognized as current period cost in the period in which the cost is incurred. However, for contractor restructuring costs defined pursuant to this Interpretation, such costs may be deferred, and subsequently amortized, over a period during which the benefits are expected to accrue. A proposal to expense restructuring costs in the current period is acceptable when the Contracting Officer agrees that such treatment will result in a more equitable assignment of costs in the circumstances.

(f) If a contractor incurs restructuring costs but does not have an established or disclosed cost accounting practice covering such costs, the deferral of such restructuring costs may be treated as the initial adoption of a cost accounting practice (see 9903.302–2(a)). If a contractor incurs restructuring costs but has an existing established or disclosed cost accounting practice that does not provide for deferring such costs, any resulting change in cost accounting practice to defer such costs may be presumed to be desirable and not detrimental to the interests of the Government (see 9903.201–6). Changes in cost accounting practices for restructuring costs shall be subject to disclosure statement revision requirements (see CAS 9903.202–3), if applicable.

(g) Measurement of cost impact on existing CAS-covered contracts, shall be the difference between an estimate to complete before giving effect to the restructuring, and, an estimate to complete considering restructuring. The estimates to complete shall be based on the contractor's compliant cost accounting practices for the affected cost accounting periods, from the applicability date of the restructuring plan through the end of the period designated as the benefiting period.

(h) The amortization period for deferred restructuring costs shall not exceed five years. Straight line amortization should normally be used, unless another method results in a more appropriate matching of cost to expected benefits.

(i) Restructuring costs that are deferred shall not be included in the allocation based for cost of money purposes (see CAS 9904.414). Deferred charges are not tangible or intangible capital assets and therefore are excluded from the base for computation of facilities capital cost of money.

(j) Restructuring costs incurred at a home office level shall be treated in accordance with the provisions of CAS 9904.403. Restructuring costs incurred at the segment level that benefit more than one segment should be allocated to the home office and treated as home office expense pursuant to CAS 9904.403. Restructuring costs incurred at the segment level that benefit only that segment shall be treated in accordance with the provisions of CAS 9904.418. Restructuring costs that are not considered to meet the homogeneity requirements of CAS 9904.418 shall be grouped in indirect cost pools that are distinct from the contractor's current indirect cost pools.

(k) This Interpretation is applicable to contractor "restructuring costs" paid or approved on or after August 15, 1994.

[FR Doc. 95–5607 Filed 3–7–95; 8:45 am]

BILLING CODE 3110–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1517

[FRL–5168–6]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) on the use of options. This rule eliminates a provision on the use of options which is more restrictive than coverage in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260–9032, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (Mail Code 3802F).

SUPPLEMENTARY INFORMATION:

A. Background

Under this rule, EPA Contracting Officers (COs) will no longer need the approval of the Chief of the Contracting Office (CCO) (which includes the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park, NC, and Cincinnati, OH) when the use of options for increased quantities of supplies or services exceed 50% of the base quantity specified in the contract for a particular period. FAR coverage, which is less restrictive, is adequate.

Under this rule, EPA COs will no longer need the approval of the CCO when the use of options, combined with the base contract period, results in a total contract period of performance which exceeds thirty-six (36) months. CCO approval will be required only for total contract periods in excess of sixty (60) months, unless otherwise prohibited by statute.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866. Therefore no review is required at the Office of Information and Regulatory Affairs within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule will have no significant impact on small entities, since the rule eliminates a procedure internal to the Government. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Part 1517

Special contracting methods.

For the reasons set out in the preamble, Chapter 15 of Title 48, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 1517 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

§ 1517.202 [Removed]

2. Subpart 1517.2 is amended by removing section 1517.202.

3. Subpart 1517.2 is amended by adding section 1517.204 to read as follows:

1517.204 Contracts.

The CCO may approve a contract with a base contract period and option periods which total in excess of five (5) years, unless otherwise prohibited by statute.

Dated: February 27, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–5660 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

VOL 60 ISS 45 MR 8 1995 UMI

Proposed Rules

Federal Register
Vol. 60, No. 45
Wednesday, March 8, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–28–AD]

Airworthiness Directives; Piper Aircraft Corporation PA–28 and PA–32 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 76–25–06, which currently requires replacing certain engine oil hoses on Piper Model PA–28–140 airplanes, and inspecting for a minimum clearance between the oil hose assemblies and the front exhaust stacks and adjusting if proper clearance is not obtained. The proposed action would maintain the clearance inspection and hose replacement, require this inspection and replacement to be repetitive, and extend the applicability to include PA–32 series and other PA–28 series airplanes. It would also provide the option of installing an approved TSO–C53a, Type D, hose assembly as terminating action for the repetitive inspection requirement. Numerous incidents/accidents caused by oil cooler hose rupture or failure on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent these hoses from failing or rupturing, which could result in engine stoppage and subsequent loss of control of the airplane.

DATES: Comments must be received on or before May 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7373; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–28–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 76–25–06, Amendment 39–2788, currently requires replacing certain engine oil hoses on Piper Model PA–28–140 airplanes, and inspecting for a minimum clearance between the oil hose assemblies and the front exhaust stacks and adjusting if proper clearance is not obtained.

Since issuance of that AD, the FAA has received over 20 incident and accident reports on Piper PA–28 and PA–32 series airplanes where the oil cooler hoses either ruptured or failed. Many of these occurrences required the pilot to make an emergency landing. In some instances, oil spraying from these ruptured hoses contacted the hot engine and produced smoke in the cockpit or caused controllability problems when sprayed on the windshield.

Other airplane models have shown a history of oil cooler hose problems; however, most of these have been attributed to leaking hoses instead of ruptured or broken hoses as detailed in the incident/accident reports referenced above on the PA–28 and PA–32 series airplanes. The close proximity of the oil cooler hoses to the exhaust stacks in some of these airplanes also contributes to the hazardous nature of these oil cooler hose failures.

The Model PA–28–140 airplanes in the referenced incidents/accidents were in compliance with AD 76–26–05; however, that AD did not establish any repetitive oil cooler hose inspection or replacement requirements.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) the oil cooler assemblies should be repetitively inspected for clearance, and the oil cooler hoses should be replaced at certain time intervals; (2) the applicability of AD 76–26–05 should be extended to include other PA–28 series and the PA–32 series airplanes; and (3) AD action should be taken to prevent oil cooler hoses from failing or rupturing, which could result in engine stoppage and subsequent loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA–28 and PA–32 series airplanes of the same type design, the proposed AD would supersede AD 76–25–06, Amendment 39–2788, with a new AD that would retain the clearance inspection and hose replacement for the Piper Model PA–28–140 airplanes, and make the inspection and replacement repetitive for these airplane models as well as other PA–28 series and the PA–32 series airplanes. It would also provide the option of installing an approved TSO–C53a, Type D, hose assembly as terminating action for the repetitive inspection requirement.

The replacement compliance time for the proposed AD is presented in both hours time-in-service (TIS) and calendar time with the prevalent compliance time being that which occurs first. Deterioration or failure of the oil cooler hose assemblies could occur as a result of normal flight operation or as a result of time. Therefore, the FAA has determined that this proposed dual replacement compliance time is needed to assure that the oil cooler hose assemblies are replaced before they deteriorate and rupture or fail.

The FAA estimates that 25,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours (1 workhour inspection and 1 workhour replacement) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $110 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,750,000. This figure does not take into the account the cost of repetitive inspections or repetitive replacements. The FAA has no way of determining the number of repetitive inspections or replacements each owner/operator would incur over the life of the airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 76–25–06, Amendment 39–2788, and by adding a new airworthiness directive to read as follows:

Piper Aircraft Corporation: Docket No. 94–CE–28–AD; Supersedes AD 76–25–06, Amendment 39–2788.

Applicability: The following airplane models, all serial numbers, that are equipped with one of the applicable oil cooler hose assembly part numbers (specified below), certificated in any category:

Models	Part Nos.
PA–28–140	63901–69 or 63901–72.
PA–28–150, PA–28–160, PA–28S–160, PA–28–180, and PA–28S–180.	63635–00, 63636–00, 63701–00, 63901–20, 63901–26, 63901–43, or 63901–72.
PA–28R–180, PA–28R–200, and PA–28R–201.	63901–43.
PA–28–151 and PA–28–161.	63901–34 or 63901–49.
PA–28–181	63901–26, 63901–43, or 63901–50.
PA–28–235	61413–3, 63901–16, or 63901–26.
PA–28–236	35801 or 35801–7.
PA–32–260	63901–26.
PA–32–300, PA–32S–300, and PA–32–301.	63901–26, 63901–35, or 63901–73.
PA–32R–300, PA–32RT–300, PA–32R–301(SP), and PA–32R–301(HP).	63901–98, 63901–99, or 63901–100.
PA–32RT–300T, PA–32R–301T, and PA–32–301T.	63901–26 or 63901–91.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent oil cooler hoses from failing or rupturing, which could result in engine stoppage and subsequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect the oil cooler hoses to ensure that the hoses meet the criteria presented in the paragraphs below.

(1) For airplanes that have any oil cooler mounted at the front or back of the airplane, or both, the fire sleeve of the hose should not be soaked with oil or have a brownish or whitish color, and there should be no evidence of deterioration as a result of heat, brittleness, or oil seepage. Prior to further flight, replace any hose that is soaked with oil, has a brownish or whitish color, or has evidence of deterioration.

(2) On airplanes that have any oil cooler mounted in the front of the airplane, ensure that the following exists, and, prior to further flight, adjust accordingly:

(i) The hose passes underneath and behind the electrical ground cable and in front of the lower of the two engine mount struts when the hose is routed to the rear of the engine; and

(ii) The hose is tied to the engine mount strut and a clearance of at least 2 inches exists between the oil hose and exhaust stack.

Note 2: Figure 1 of this AD relates to the conditions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

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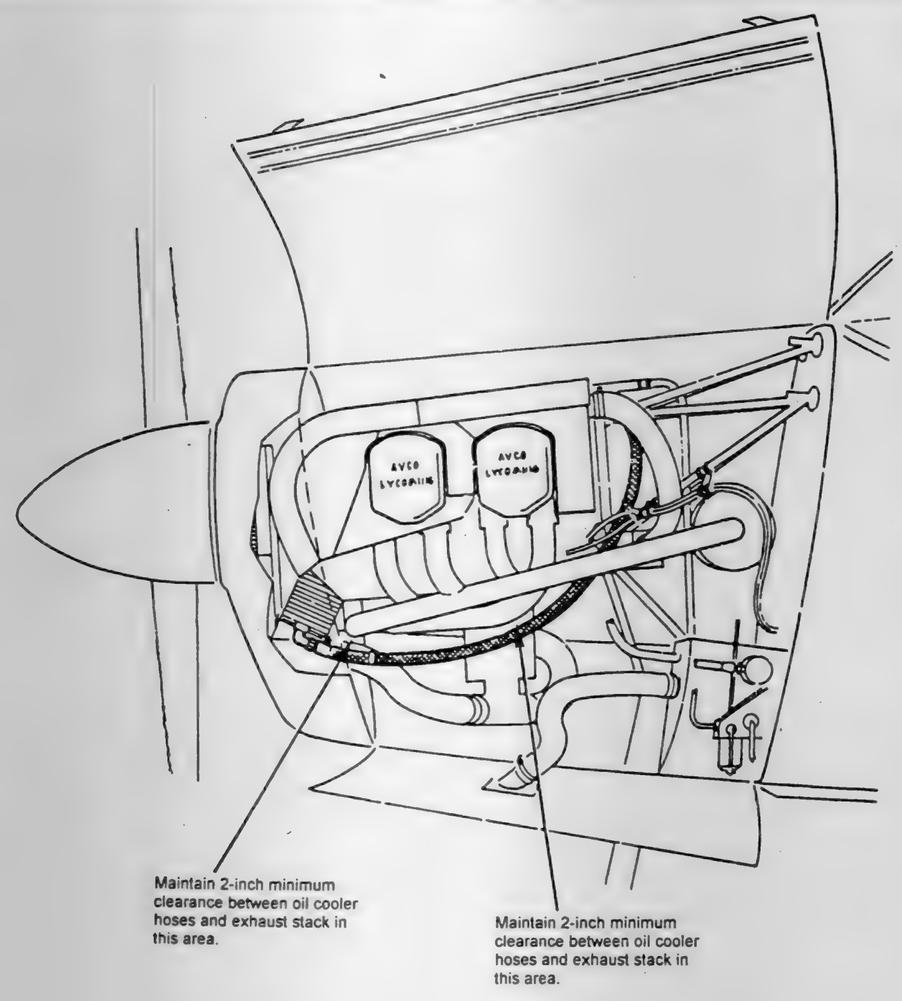

Figure 1

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(b) Upon the accumulation of 8 years or 1,000 hours TIS on the oil cooler assembly, whichever occurs first, and thereafter at every 8 years or 1,000 hours TIS (whichever occurs first), accomplish one of the following:

(1) Replace the oil cooler hose assembly with a part number specified in the APPLICABILITY section of this AD, and reinspect in accordance with paragraph (a) of this AD at intervals not to exceed 100 hours TIS; or

(2) Replace the oil cooler assembly with an approved TSO–C53a, Type D, hose assembly ensuring that there is a minimum of 2 inches between the oil cooler hoses and exhaust stacks (as applicable) upon installation.

(c) The replacement specified in paragraph (b)(2) of this AD may be accomplished at any time prior to the 8-year or 1,000-hour compliance time as terminating action for the 100-hour TIS repetitive inspection requirement of this AD.

(d) After adjusting or installing oil cooler hoses, prior to further flight, run the engine for 5 minutes to ensure that there are no oil leaks and that the 2-inch clearance is maintained (as applicable) when the engine is warm. Prior to further flight, replace any leaking oil cooler hoses and adjust the clearance accordingly.

Note 3: Although not required by this AD, it is recommended that a hose flexibility test be accomplished at each 100-hour TIS inspection interval. Hose flexibility may be determined by gently lifting the hose in several places from the bottom of its downward arc to the oil cooler. If the hose moves slightly either from side-to-side or upward with the hand at the center of an even arc, then some flexibility remains. If the hose appears hardened or inflexible, hose replacement is recommended.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) Figure 1 of this AD may be obtained from the Atlanta ACO at the address specified in paragraph (f) of this AD. This document or any other information that relates to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 76–25–06, Amendment 39–2788.

Issued in Kansas City, Missouri, on March 2, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5601 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–0720–AA27

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Provider Certification Requirements—Corporate Services Provider Class; Occupational Therapists

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule presents requirements to permit payment of professional or technical health care services rendered by certain corporate providers and to self-employed occupational therapists; makes changes to clarify the general requirements for individual professional providers; and adds standard provider participation agreement provisions when such agreements are otherwise required.

DATES: Comments must be submitted on or before May 8, 1995.

ADDRESSES: Office of CHAMPUS (PDD), Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Theresa R. Gilstrap, telephone (303) 361–1309.

SUPPLEMENTARY INFORMATION: The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplements the availability of health care in military hospitals and clinics. Services and items allowable as CHAMPUS benefits must be obtained from CHAMPUS authorized civilian providers to be considered for CHAMPUS payment. Requirements for CHAMPUS provider authorization are published as regulation.

This amendment proposes to create a fourth class of CHAMPUS provider consisting of freestanding corporations and foundations that render principally professional ambulatory or in-home care and technical diagnostic procedures. Such organizations are currently excluded as an allowable type of CHAMPUS-authorized institutional provider, and employees of these organizations are excluded as CHAMPUS-authorized individual professional providers.

The CHAMPUS currently has requirements for three classes of providers. The institutional provider class includes hospitals and other categories of similar facilities. The individual professional provider class includes physicians and other categories of licensed individuals who render professional services independently, and certain allied health and extra medical providers that must function under physician orders and supervision. The third class of providers consists of sellers of items and supplies of an ancillary or supplemental nature, such as durable equipment.

CHAMPUS payment depends upon a service being both allowable as a benefit and rendered by a CHAMPUS authorized provider. Consequently, it is currently possible that, for example, outpatient treatment by an occupational therapist employed by a hospital may be paid (to the hospital) while the same service provided by an employee of a freestanding clinic, home care agency, or self-employed occupational therapist is denied payment.

This administrative exclusion is difficult for beneficiaries to apply when seeking health care services because it requires an understanding of the underlying business structure of the provider. But the underlying business structure of a provider organization is important to CHAMPUS management decisions regarding quality assurance and payment methods.

Corporations, both not-for-profit and shareholder, and foundations are an alternative source of ambulatory and in-home care. The proposed addition of the corporate provider class will recognize the current range of providers within today's health care delivery structure and give beneficiaries access to another segment of the health care delivery industry.

This amendment proposes to allow qualified self-employed occupational therapists to be authorized for direct CHAMPUS payment for allowable services as individual professional providers.

This amendment proposes to more clearly establish that a professional corporation or association is not itself a provider but may file claims and receive payment on behalf of an individual professional provider member, and to more clearly state the other general requirements for these providers.

This amendment proposes to establish standard general provisions for agreements with certain providers when such agreements are otherwise required. These provisions will improve

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efficiency in CHAMPUS oversight of providers and will limit beneficiary liability related to claims denied due to provider noncompliance with CHAMPUS requirements.

This amendment proposes to remove two provisions which exclude CHAMPUS coverage of civilian diagnostic and consultation services requested by a Military Treatment Facility (MTF) physician in support of continued MTF care of a CHAMPUS-eligible beneficiary. Because MTFs vary in size and clinical capacity for the care of CHAMPUS-eligible beneficiaries, the lack of access to specialized diagnostic and consultation resources through CHAMPUS may result in the MTF purchasing the civilian services directly without the advantage of CHAMPUS price requirements; the beneficiary paying the total cost of such non-MTF services; or the beneficiary choosing to obtain all care in the civilian community in order to take advantage of CHAMPUS cost-share of all the necessary care. Removal of these exclusions will allow flexibility in the implementation of an MTF-based plan-of-care resulting in continuity of care at a lower cost to both the beneficiary and the government.

Executive Order 12866. OMB has determined this is not a significant rule as defined by Executive Order 12866.

The Regulatory Flexibility Act of 1980 requires that a federal agency prepare an analysis when the agency issues regulations which would have significant impact upon a substantial number of small entities. An estimated 2,200 occupational therapists in private practice; approximately 850 corporate or foundation physician groups; and approximately 4,500 freestanding Medicare certified in-home health care agencies would become eligible to apply for CHAMPUS provider status if this proposed rule is finalized. These changes are expected to competitively redistribute ambulatory care benefit costs for already existing benefits. We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980 requires all Departments to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record keeping requirements in a proposed or final rule. This proposed rule will, if adopted, require information from the provider applicant to document that the criteria for CHAMPUS-provider status are met.

List of Subjects in 32 CFR Part 199

Claims, Disability, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 is proposed to be to revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is proposed to be amended by revising the definition for "Participating provider," and by adding definitions for "Corporate services provider," "Economic interest," and "Qualified accreditation organization" in alphabetical order to read as follows:

§ 199.2 Definitions.

(b) * * *

Corporate services provider. A health care provider which meets the applicable requirements established by § 199.6(e).

* * * * *

Economic interest. (i) Any right, title, or share in the income, remuneration, payment, or profit of a CHAMPUS-authorized provider, or of an individual or entity eligible to be a CHAMPUS-authorized provider, resulting, directly or indirectly, from a referral relationship; or any direct or indirect ownership, right, title, or share, including a mortgage, deed of trust, note, or other obligation secured (in whole or in part) by one entity for another entity in a referral or accreditation relationship, which is equal to or exceeds 5 percent of the total property and assets of the other entity.

(ii) A referral relationship exists when a CHAMPUS beneficiary is sent, directed, assigned or influenced to use a specific CHAMPUS-authorized provider, or a specific individual or entity eligible to be a CHAMPUS-authorized provider.

(iii) An accreditation relationship exists when a CHAMPUS-approved accreditation organization evaluates for accreditation an entity that is an applicant for, or recipient of, CHAMPUS-authorized provider status.

* * * * *

Participating provider. A CHAMPUS-authorized provider that is required, or has agreed by entering into a CHAMPUS participation agreement or by act of indicating "accept assignment" on the CHAMPUS claim form, to accept the CHAMPUS-allowable amount as the maximum total charge for a service or item rendered to a CHAMPUS beneficiary whether the amount is paid for fully by the CHAMPUS or requires cost-sharing by the CHAMPUS beneficiary.

* * * * *

Qualified accreditation organization. A not-for-profit corporation or a foundation that:

(i) Develops process standards and outcome standards for health care delivery programs, or knowledge standards and skill standards for health care professional certification testing, using experts both from within and outside of the health care program area or individual speciality to which the standards are to be applied;

(ii) Creates measurable criteria that demonstrate compliance with each standard;

(iii) Publishes the organization's standards, criteria and evaluation processes so that they are available to the general public;

(iv) Performs on-site evaluations of health care delivery programs, or provides testing of individuals, to measure the extent of compliance with each standard;

(v) Provides on-site evaluations or individual testing on a national or international basis;

(vi) Provides to evaluated programs and tested individuals time-limited written certification of compliance with the organization's standards;

(vii) Excludes certification of any program operated by an organization which has an economic interest, as defined by § 199.2, in the accreditation organization or in which the accreditation organization has an economic interest;

(viii) Publishes promptly the certification outcome of each program evaluation or individual test so that it is available to the general public; and

(ix) Has been found by the Director to apply standards, criteria, and certification processes which reinforce CHAMPUS provider authorization requirements and promote efficient delivery of CHAMPUS benefits.

* * * * *

3. Section 199.4 is proposed to be amended by revising paragraph (c)(3)(x) and by removing and reserving (g)(70) and (g)(71) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(x) *Physical and occupational therapy.* Assessment and treatment services of a CHAMPUS-authorized physical or occupational therapist may be cost-shared when:

(A) The services are prescribed and monitored by a physician;

(B) The purpose of the prescription is to reduce the disabling effects of an illness, injury, or neuromuscular disorder; and

(C) The prescribed treatment increases, stabilizes, or slows the deterioration of, the beneficiary's ability to perform specified purposeful activity in the manner, or within the range considered normal, for a human being.

* * * * *

(g) *Exclusions and limitations*

(70)–(71)[Reserved]

* * * * *

4. Section 199.6 is proposed to be amended by adding new paragraphs (a)(13) and (a)(14); removing paragraph (b)(1)(ii); revising paragraphs (a)(8), (c)(1), (c)(2) and (c)(3)(iii)(I)(*3*), redesignating paragraph (e) as (a)(15) and paragraph (f) as (a)(16) and by adding a new paragraph (e) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(8) *Participating providers.* A CHAMPUS-authorized provider is a participating provider, as defined in § 199.2, under the following circumstances:

(i) *Mandatory participation.*

(A) All medicare-participating hospitals must be CHAMPUS participating providers for all inpatient CHAMPUS claims.

(B) Hospitals that are not Medicare-participating but are subject to the CHAMPUS-DRG-based payment methodology or the CHAMPUS mental health payment methodology as established by § 199.14(a), must enter into a participating agreement with the CHAMPUS for all inpatient claims in order to be a CHAMPUS-authorized provider.

(C) Corporate services providers authorized as CHAMPUS providers under the provisions of paragraph (e) of this section.

(ii) *Voluntary participation.*

(A) *Total claims participation: The participating provider program.* A CHAMPUS-authorized provider that is not required to participate by this part may become a participating provider by entering into an agreement or memorandum of understanding (MOU) with the Director, OCHAMPUS, which includes, but is not limited to, the provisions of paragraph (a)(14) of this section. The Director, OCHAMPUS, may include in a participating provider agreement/MOU provisions that establish between OCHAMPUS and a class, category, type, or specific provider, uniform procedures and conditions which encourage provider participation while improving beneficiary access to benfits and contributing to CHAMPUS efficiency. Such provisions shall be otherwise allowed by this part or by DoD Directive or DoD Instruction. Participating provider program provisions may be incorporated into an agreement/MOU to establish a specific CHAMPUS-provider relationship, such as a preferred provider arrangement.

(B) *Claim-specific participation.* A CHAMPUS-authorized provider that is not required to participate and that has not entered into a participation agreement pursuant to paragraph (a)(8)(ii)(A) of this section may elect to be a participating provider on a claim-by-claim basis by indicating "accept assignment" on each CHAMPUS claim form for which participation is elected.

* * * * *

(13) *Medical records:* CHAMPUS-authorized provider organizations and individuals providing clinical services shall maintain adequate clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and identify(ies) the individual(s) who provided the care. This applies whether the care is inpatient or outpatient. The minimum requirements for medical record documentation are set forth by all of the following:

(i) The cognizant state licensing authority;

(ii) The Joint Commission on Accreditation of Healthcare Organizations, or the appropriate Qualified Accreditation Organization as defined in § 199.2;

(iii) Standards of practice established by national medical organizations; and

(iy) This part.

(14) *Participation agreements.* Except for agreements in effect on September 30, 1994, a participation agreement otherwise required by this part shall include, in part, all of the following provisions requiring that the provider shall:

(i) Not charge a beneficiary for the following:

(A) Services for which the provider is entitled to payment from CHAMPUS;

(B) Services for which the beneficiary would be entitled to have CHAMPUS payment made had the provider complied with certain procedural requirements;

(C) Services not medically necessary and appropriate for the clinical management of the presenting illness, injury, disorder or maternity;

(D) Services for which a beneficiary would be entitled to payment but for a reduction or denial in payment as a result of quality review; and

(E) Services rendered during a period in which the provider was not in compliance with one or more conditions of authorization;

(ii) Comply with the applicable provisions of this part and related CHAMPUS administrative policy;

(iii) Accept the CHAMPUS determined allowable payment combined with the cost-share, deductible, and other health insurance amounts payable by, or on behalf of, the beneficiary, as full payment for CHAMPUS allowed services;

(iv) Collect from the CHAMPUS beneficiary those amounts that the beneficiary has a liability to pay for the CHAMPUS deductible and cost-share;

(v) Permit accessed by the Director to the clinical record of any CHAMPUS beneficiary, to the financial and organizational records of the provider, and to reports of evaluations and inspections conducted by state of private agencies or organizations;

(vi) Provide to the Director prompt written notification of the provider's employment of an individual who, at any time during the twelve months preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity by an agency or organization which is responsible, directly or indirectly for decisions regarding Department of Defense payments to the provider;

(vii) Cooperate fully with a designated utilization and clinical quality management organization which has a contract with the Department of Defense for the geographic area in which the provider renders services;

(viii) Obtain written authorization before rendering designated services or items for which CHAMPUS cost-share may be expected;

(ix) Maintain clinical and other records related to individuals for whom CHAMPUS payment was made for services rendered by the provider, or otherwise under arrangement, for a period of 60 months from the date of service;

(x) Maintain contemporaneous clinical records that substantiate the clinical rationale for each course of treatment, the methods, modalities or means of treatment, periodic evaluation of the efficacy of treatment, and the outcome at completion or discontinuation of treatment;

(xi) Refer CHAMPUS beneficiaries only to providers with which the referring provider does not have an

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economic interest, as defined in § 199.2; and

(xii) Limit services furnished under arrangement to those for which receipt of payment by the CHAMPUS authorized provider discharges the payment liability of the beneficiary.

* * * * *

(c) *Individual professional providers of care.*

(1) *General.*

(i) *Purpose.* This individual professional provider class is established to accommodate individuals who are recognized by 10 U.S.C. 1079(a) as authorized to assess or diagnose illness, injury, or bodily malfunction as a prerequisite for CHAMPUS cost-share of otherwise allowable related preventive or treatment services or supplies, and to accommodate such other qualified individuals who the Director may authorize to render otherwise allowable services essential to the efficient implementation of a plan-of-care established and managed by a 10 U.S.C. 1079(a) authorized professional.

(ii) *Professional corporation affiliation or association membership permitted.* Paragraph (c) of this section applies to those individual health care professionals who have formed a professional corporation or association pursuant to applicable state laws. Such a professional corporation or association may file claims on behalf of a CHAMPUS-authorized individual professional provider and be the payee for any payment resulting from such claims when the CHAMPUS-authorized individual certifies to the Director in writing that the professional corporation or association is acting on the authorized individual's behalf.

(iii) *Scope of practice limitation.* For CHAMPUS cost-sharing to be authorized, otherwise allowable services provided by a CHAMPUS-authorized individual professional provider shall be within the scope of the individual's license as regulated by the applicable state practice act of the state where the individual rendered the service to the CHAMPUS beneficiary or shall be within the scope of the test which was the basis for the individual's qualifying certification.

(iv) *Employee status exclusion.* An individual employed, directly, or indirectly by contract, by an individual or entity to render professional services otherwise allowable by this part is excluded from provider status as established by paragraph (c) of this section for the duration of such employment.

(v) *Training status exclusion.* Individual health care professionals who are allowed to render health care services only under direct and ongoing supervision as training to be credited towards earning a clinical academic degree or other clinical credential required for the individual to practice independently are excluded from provider status as established by paragraph (c) of this section for the duration of such training.

(2) *Conditions of authorization.*

(i) *Professional license requirement.* The individual must be currently licensed to render professional health care services in each state in which the individual renders services to CHAMPUS beneficiaries. Such license is required when a specific state provides, but does not require, license for a specific category of individual professional provider. The license must be at a full clinical practice level to meet this requirement. A temporary license at the full clinical practice level is acceptable.

(ii) *Professional certification requirement.* When a state does not license a specific category of individual professional certification by a Qualified Accreditation Organization, as defined in § 199.2 of this part is required. Certification must be at the full clinical practice level. A temporary certification at the full clinical practice level is acceptable.

(ii) *Education, training, and experience requirement.* The director may establish for each category or type of provider allowed by paragraph (c) of this section specific education, training, and experience requirements as necessary to promote the delivery of services by fully qualified individuals.

(iv) *Physician referral and supervision.* When physician referral and supervision is a prerequisite for CHAMPUS cost-sharing of the services of a provider authorized under paragraph (c) of this section, such referral and supervision means that the physician must actually see the patient to evaluate and diagnose the condition to be treated prior to referring the beneficiary to another provider and that the referring physician provides ongoing oversight of the course of referral related treatment throughout the period during which the beneficiary is being treated in response to the referral. Written contemporaneous documentation of the referring physician's basis for referral, and of ongoing communication between the referring and treating provider regarding the oversight of the treatment rendered as a result of the referral must meet all requirements for medical records established by this part. Referring physician supervision does not require physical location on the premises of the treating provider or at the site of treatment.

(3) * * *

(iii) * * *

(I) * * *

(*3*) Licensed registered physical therapists and occupational therapists.

* * * * *

(e) *Corporate services providers.*

(1) *General.*

(1) This corporate services provider class is established to accommodate individuals who would meet the criteria for status as a CHAMPUS authorized individual professional provider as established by paragraph (c) of this section but for the fact that they are employed directly or contractually by a corporation or foundation that provides principally professional services which are within the scope of the CHAMPUS benefit.

(ii) Payment for otherwise allowable services may be made to a CHAMPUS-authorized corporate services provider subject to the applicable requirements, exclusions and limitations of this part.

(iii) The Director may create discrete types within any allowable category of provider established by paragraph (e) of this section to improve the efficiency of CHAMPUS management.

(iv) The Director may require, as a condition of authorization, that a specific category or type of provider established by paragraph (e) of this section:

(A) Maintain certain accreditation in addition to or in lieu of the requirements of paragraph (e)(2)(v) of this section;

(B) Cooperate fully with a designated utilization and clinical quality management organization which has a contract with the Department of Defense for the geographic area in which the provider does business;

(C) Render services for which direct or indirect payment is expected to be made by the CHMPUS only after obtaining CHAMPUS written authorization; and

(D) Maintain Medicare approval for payment when the Director determines that a category, or type, of provider established by paragraph (e) of this section is substantially comparable to a provider or supplier for which Medicare has regulatory conditions of participation or conditions of coverage;

(v) Otherwise allowable services may be rendered at the authorized corporate services provider's place of business, or in the beneficiary's home under such circumstances as the Director determines to be necessary for the efficient delivery of such in-home services.

(vi) The Director may limit the term of a participation agreement for any category or type of provider established by paragraph (e) of this section.

(vii) Corporate services providers shall be assigned to only one of the following allowable categories based upon the predominate type of procedure rendered by the organization:

(A) Medical treatment procedures;

(B) Surgical treatment procedures;

(C) Maternity management procedures;

(D) Rehabilitation and/or habilitation procedures; or

(E) Diagnostic technical procedures.

(viii) The Director shall determine the appropriate procedural category of a qualified organization and may change the category based upon the provider's CHAMPUS claim characteristics. The category determination of the Director is conclusive and may not be appealed.

(2) *Conditions of authorization.* An applicant must meet the following conditions to be eligible for authorization as a CHAMPUS corporate services provider:

(i) Be a corporation or a foundation, but not a professional corporation or professional association, and

(ii) be institution-affiliated or freestanding as defined in § 199.2 and

(iii) Provide:

(A) Services and related supplies of a type rendered by CHAMPUS individual professional providers or diagnostic technical services and related supplies of a type which requires direct patient contact and a technologist who is licensed by the state in which the procedure is rendered for who is certified by a Qualified Accreditation Organization as defined in § 199.2 and

(B) A level of care which does not necessitate that the beneficiary be provided with on-site sleeping accommodations and food in conjunction with the delivery of services and

(iv) Complies with all applicable organizational and individual licensing or certification requirements that are extant in the state, county, municipality, or other political jurisdiction in which the provider renders services and

(v) Be approved for Medicare payment when determined to be substantially comparable under the provisions of paragraph (e)(1)(iv)(D) of this section or, when Medicare approved status is not required, be accredited by a qualified accreditation organization, as defined in § 199.2 and

(vi) Has entered into a participation agreement approved by the Director which at least complies with the minimum participation agreement requirements of this section.

(3) *Transfer of participation agreement.* In order to provide continuity of care for beneficiaries when there is a change of provider ownership, the provider agreement is automatically assigned to the new owner, subject to all the terms and conditions under which the original agreement was made.

(i) The merger of the provider corporation or foundation into another corporation or foundation, or the consolidation of two or more corporations or foundations, resulting in the creation of a new corporation or foundation constitutes a change of ownership.

(ii) Transfer of corporate stock or the merger of another corporation or foundation into the provider corporation or foundation does not constitute change of ownership.

(iii) The surviving corporation or foundation shall notify the Director in writing of the change of ownership promptly after the effective date of the transfer or change in ownership.

(4) *Pricing and payment methodology.* The pricing and payment of procedures rendered by a provider authorized under paragraph (e) of this section shall be limited to those methods for pricing and payment allowed by this part which the Director determines contribute to the efficient management of the CHAMPUS.

(5) *Termination of participation agreement.* A provider may terminate a participation agreement upon 45 days written notice to the Director and to the public.

Dated: March 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5377 Filed 3–7–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA–18–1–5933b; FRL–5152–1]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA or Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by April 7, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 1, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–5448 Filed 3–7–95; 8:45 am]

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40 CFR Part 52

[AR–3–1–5727b; FRL–5155–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Arkansas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 7, 1995. If no adverse comments are received, then the direct final rule will be effective on May 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6T–AP), Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Planning Section (6T–AP), EPA Region 6, telephone (214) 665–7596.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the final rules section of this **Federal Register**.

Dated: January 24, 1995.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 95–5443 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[GA–15–1–6285b; GA–21–4–6514b: FRL–5153–4]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Part D New Source Review (NSR) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Georgia for the purpose of establishing a New Source Review program for nonattainment areas. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by April 7, 1995.

ADDRESSES: Written comments should be addressed to: Dick Schutt, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the documents relevant to this final action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region 4 Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Please contact Dick Schutt of the EPA Region 4 Air Programs Branch at 404–347–3555 ext. 4206, and at the above address.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: February 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–5440 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SC19–1–5031b; FRL–5166–8]

Disapproval of Revision to the South Carolina SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to disapprove the State implementation plan (SIP) revision submitted by the State of South Carolina containing South Carolina's generic bubble regulation. In the final rules section of this **Federal Register**, the EPA is disapproving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the disapproval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by April 7, 1995.

ADDRESSES: Written comments should be addressed to Kay T. Prince, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4221. Reference file SC19–1–5031.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 26, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–5575 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–5168–3]

RIN 2060–AD02

Federal Standards for Marine Tank Vessel Loading and Unloading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading and Unloading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period.

SUMMARY: On May 13, 1994 (59 FR 25004), the EPA proposed standards to regulate the emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) from new and existing marine tank vessel loading and unloading operations which are part of major sources under section 112 of the Clean Air Act (CAA). The initial public comment period closed on July 18, 1994. With this document, the EPA reopens the comment period on the marine tank vessel loading and unloading operations to request comment on extending the proposed compliance dates of 2 years and 3 years for sections 183(f) and 112 of the CAA respectively.

DATES: Comments must be received on or before April 7, 1995.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to the EPA's Air and Radiation Docket and Information Center (6102), ATTN. Docket Number A–90–44, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dockets. Docket Number A–90–44 contains supporting information used in developing the proposed provisions. This docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 410 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Contact Mr. David Markwordt, Policy, Planning and Standards Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0837.

SUPPLEMENTARY INFORMATION: On May 13, 1994 (59 FR 25004), the EPA proposed standards to regulate the emissions of VOC and HAP from new and existing marine tank vessel loading and unloading operations which are part of major sources under sections 183(f) and 112 of the CAA. The comment period on the proposed rule ended on July 18, 1994. This notice reopens the public comment period for the proposed rule. However, only comments limited to the subject described below will be considered at this time.

The docket for the proposed rule for marine vessel loading and unloading operations received many comments concerning the 2 and 3 year compliance dates for section 183(f) and 112 of the CAA respectively (see Docket Number A–90–44 items IV–D6, 7, 8, 23, 24, 28, 30, 31, 32, 34, 36, 39, 41, 42, 47, 50, 51, 55, 56, 58, 68, 71, 75, 78, 86, and 103).

These comments provide information that, according to the commenters, show that the deadlines provided in the proposed rule are not practicable. The commenters also suggest that there are provisions in sections 112 and 183(f) which would allow the Agency to revise its deadline for compliance.

Section 183(f)

The American Petroleum Institute (API) suggests that, as the controls required under section 183(f) must be "reasonably available," the Agency cannot require implementation of controls within 2 years if such controls can not reasonably be completed in the 2-year time frame. API suggests that EPA should delay the compliance date to a date that is "reasonable." API also suggests a possible phase-in of the compliance date (see Docket Number A–90–44 item IV–D–103).

In addition, API notes that section 183(f)(1)(B) provides that a regulation issued pursuant to Section 183(f)

> shall take effect after such period as the Administrator finds * * * necessary to permit the development and application of the requisite technology, * * * except that the effective date shall not be more than 2 years after promulgation of such regulation.

According to API, this requirement that the "effective date" be no more than 2 years from promulgation does not necessarily mean that facilities necessarily must complete installation of control equipment within that period. Indeed, API notes that section 112(d) regulations are effective upon promulgation, but the Agency is free to establish a compliance date for existing sources of up to 3 years from the effective date.

According to API, the use of the term "reasonably available control technology" and imprecision of the term "effective date" in section 183(f)(1)(B), as well as the provision's directive that the Agency consider the "development and application of the requisite technology," would appear to provide EPA with the latitude to fashion a solution similar to the one the Agency arrived at arising under section 211. In a rulemaking pursuant to section 211(b), the Agency prescribed testing requirements for fuels and fuel additives. The Agency initially took the position that all testing had to have been completed and submitted to the Agency within 3 years of the Section 211 rule's promulgation date. API presented evidence demonstrating that it would be

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impossible for the industry to meet this deadline primarily because "the number of laboratory facilities currently available to conduct the required emission-based toxicological tests is very limited." 59 FR 33046 (June 27, 1994). The Agency added:

> [W]hile EPA believes that some groups could complete the testing required by the rule in 3 years, it is likely that not all of the fuels and fuel additives to be tested could complete the requirements in the 3-year time frame.

Id. The Agency resolved the issue in the final rule by requiring complete "Tier 2" test data submittal within 3 years of the rule's promulgation and a literature search, characterization of emissions, exposure analysis, and evidence of a contractual obligation, "a qualified laboratory to conduct the required tests," and submittal of complete Tier 2 test data within 6 years of promulgation. 59 FR 33046.

For the section 211(b) rulemaking, the Agency interpreted the term, "requisite information" as "either data required by Tier 1 and 2 or data required by Tier 1 and commitment to conduct Tier 2 testing." 59 FR 33047. Similarly, according to API, the 2-year "effective date" of Section 183(f) could be construed to require that facilities subject to the control requirements have contracts in place for the installation of equipment within 2 years of the rule's promulgation. Installation of equipment could be required by a reasonable date after the 2 year deadline. (API suggests 3 years after that date.)

Section 112

One option for extending the compliance date for the Section 112 rule is to utilize the authority of Section 112(i)(3)(B), which authorizes a 1-year extension "if * * * necessary for the installation of controls." As is noted in API's July 18, 1994 comments (see Docket Number A–90–44 item IV-D34), the Agency could use the precedent of the Benzene Waste Operations NESHAP to announce, in the final rule, that all facilities subject to control requirements will be afforded 4 years from the promulgation date to achieve compliance. 55 FR 8332 (March 7, 1990). According to API, because of the very large number of facilities that are likely to need extensions, an EPA requirement for individual applications—and processing of those applications—would be unnecessarily burdensome on both the facilities and the permitting authorities.

Another option for extending the compliance date for the section 112 rule, according to API, is based on the Agency's experience with the section 211 testing rule described above. The Agency could define "compliance" as having contracts in place for the installation of equipment.

Finally, the Agency has concluded, in the final hazardous organic NESHAP (HON) rule, that phasing in compliance with a section 112(d) regulation is warranted in circumstances where requiring simultaneous compliance by a large number of facilities would strain existing contractors. 59 FR 19402 (April 22, 1994). In the HON rule, the Agency allowed a phasing-in of the compliance date for equipment leaks for existing sources. 40 CFR 63.100(k). Process units subject to the rule were divided into five groups; Group V's compliance date is 1 year later than Group I's. Similarly, the Agency has proposed to allow phasing in of the compliance date for equipment leaks in thirds, over an 18-month period in the Refinery MACT rule. 59 FR 36130 (June 30, 1994).

The Agency could use a similar approach in the final marine loading and unloading rules. API suggested that one of several possible phase-in approaches would be to require compliance in the following order:

(1) facilities subject to the section 183(f) rule that are located in ozone nonattainment areas;

(2) facilities subject to the section 183(f) rule that are located in ozone attainment areas;

(3) facilities subject to the section 112 rule only.

The Agency requests comments on whether the rule can legally go beyond the 2 and 3 year compliance dates. And if extension of compliance dates beyond the 2 and 3 year requirements is legal, should the Agency extend the compliance schedules?

Administrative Requirements

A. Docket

Address: Docket. Docket No. A–90–44, containing supporting information used in developing the notice, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Agency's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

B. Executive Order 12866 Review

The Agency has determined that this action is not "significant" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 55 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act Compliance

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations.

Dated: March 1, 1995.

Mary D. Nichols.

Assistant Administrator.

[FR Doc. 95–5658 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–30, RM–8599]

Radio Broadcasting Services; Harwood, North Dakota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Conway Broadcasting seeking the allotment of Channel 264C3 to Harwood, ND, as the community's first local aural broadcast service. Channel 264C3 can be allotted to Harwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) southwest, at coordinates 47–05–00 North Latitude; 97–00–00 West Longitude, to avoid a short-spacing to Station KIKV-FM, Channel 264C1, Alexandria, Minnesota. Canadian concurrence in this allotment is required since Harwood is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 24, 1995, and reply comments on or before May 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Fremont Avenue, South, Minneapolis, MN 55409 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–30, adopted February 21, 1995, and released March 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5618 Filed 3–7–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–28; RM–8593]

Radio Broadcasting Services; Stamping Ground, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Scott County Broadcasting, Inc., proposing the substitution of Channel 241A for Channel 256A at Stamping Ground, Kentucky, to enable Station WKYI(FM) to increase its power to six kilowatts and eliminate interference within its protected contour. An engineering analysis has determined that Channel 241A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements at petitioner's requested site with a site restriction of 12.0 kilometers (7.5 miles) east to avoid short-spacings to the application and allotment site of Channel 242C3, Stanford, Kentucky, and Station WKID(FM), Channel 240A, Vevay, Indiana. The coordinates for Channel 241A at Stamping Ground are North Latitude 38–17–43 and West Longitude 84–33–10.

DATES: Comments must be filed on or before April 24, 1995 and reply comments on or before May 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Gray, President, Scott County Broadcasting, Inc., 10 Trinity Place, Fort Thomas, Kentucky 41075 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–28, adopted February 21, 1995, and released March 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–5617 Filed 3–7–95; 8:45 am]

BILLING CODE 6712–01–F

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), proposes to amend the Cost Accounting Standards (CAS) relating to treatment of gains or losses attributable to tangible capital assets subsequent to mergers or business combinations by government contractors.

To resolve the problems that have been identified in this area, the Board proposes to amend CAS 9904.404, "Capitalization of Tangible Assets" and CAS 9904.409, "Depreciation of Tangible Capital Assets". The proposed amendments are based on an approach involving a "no step-up, no step-down" of asset bases and no recognition of gain or loss on a transfer of assets following a business combination by contractors subject to CAS.

Section 26(g)(1) of the Office of Federal Procurement Policy Act requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, publish a Notice of Proposed Rulemaking (NPRM). This NPRM addresses the Board's proposal to amend CAS 9904.404 and CAS 9904.409 to deal with the issue of gains and losses subsequent to a merger or business combination.

DATES: Comments should be received by May 8, 1995.

ADDRESSES: Comments should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91–06N.

FOR FURTHER INFORMATION CONTACT: Dr. Rein Abel, Director of Research, Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules and regulations are codified at 48 CFR Chapter 99. Section

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26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. This process consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of a proposed Standard.

2. Promulgate an Advance Notice of Proposed Rulemaking.

3. Promulgate a Notice of Proposed Rulemaking.

4. Promulgate a Final Rule.

This proposal is step three in the four step process.

B. Background

Prior Promulgations

The issues addressed in this proposal were first identified by commenters in response to the Board's request for suggested agenda topics in November 1990. Subsequently two Staff Discussion Papers (SDPs) were issued.

The first, dated August 26, 1991 and titled "Recognition and Pricing of Changing Capital Asset Values Resulting from Mergers and Business Combination by Government Contractors." (56 FR 42079) raised broad issues such as the scope of the proposed project, the basis for any Government claim to gains or losses resulting from a business combination and the likely economic consequences of a policy that would prohibit revaluation of assets following a merger.

The responses to this SDP were used by the Board as the basis for discussing the basic issues involved in this case. As a result of this discussion, the Board decided to issue a second SDP dealing with a series of questions concerning the specific procedures needed to deal effectively with the recognition, allocation and recovery of the gain or loss subsequent to a merger or business combination. The second SDP, entitled "Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors," was issued on November 4, 1993 (58 FR 58882). On the basis of comments received to the SDP, an Advance Notice of Proposed Rulemaking (ANPRM) was developed and published in the **Federal Register** on August 24, 1994 (59 FR 26774). The responses to the ANPRM were of significant assistance to the Board in developing this NPRM.

Public Comments

Fourteen sets of public comments were received from government contractors, professional and industrial associations, Federal agencies, and accounting and consulting firms.

All three Government commenters supported the basic approach and format incorporated in the ANPRM. All the other commenters, with one exception, were clearly opposed to the basic approach adopted in the ANPRM., i.e., the no step-up, no step-down approach. One industry commenter, although critical of the ANPRM, did not reject its basic approach out of hand and reserved his most critical comments to the current FAR provision that, in effect, sanctions the use of "historical cost or fair value, whichever is lower" principle in cases of mergers or business combinations.

Irrespective of their support or opposition to the basic approach incorporated in the ANPRM, a number of commenters offered additional, detailed comments on the various specific provisions of the document. Some of these comments were clearly editorial while others were more substantive in nature.

These comments are discussed below in greater detail, under Section E., Public Comments. The Board and the CASB staff express their appreciation for the generally constructive and thoughtful responses provided by the commenters.

Benefits

After consideration of all the comments received in response to the ANPRM, the Board continues to believe that amendments to CAS 9904.404, "Capitalization of Tangible Assets," and CAS 9904.409, "Depreciation of Tangible Capital Assets," as set forth in the ANPRM and essentially restated in this NPRM, will significantly improve and clarify the implementation of CAS and related procurement regulations in accounting for tangible capital assets after completion of a merger or business combination. In particular, the Board continues to believe that the proposal embodied in this NPRM will clarify the current ambiguities in this area and thus should lead to reductions in negotiations and litigation. This point is of particular significance in the current economic and budgetary environment where further reductions in the defense budget can be expected to lead to additional mergers and business combinations among defense contractors. The Board believes that the potential benefit to the audit, negotiation, and general contract administration processes accruing from the added clarity and uniformity in the measurement of the cost of depreciation and cost of money subsequent to a business combination will be substantial and will greatly outweigh any added costs.

Summary of Proposed Amendments

A brief description of the proposed amendments follows:

a. The current subsection 9904.404–50(d) is deleted and is replaced by an amended section that prescribes:

(1) That for Federal contract costing purposes tangible capital assets following a business combination shall retain their net book value recognized prior to the business combination provided that the assets had previously generated costs that were charged either as direct or indirect costs to Federal government contracts subject to CAS.

(2) That the cost of tangible capital assets shall be restated after the business combination at a figure not to exceed the fair value at the date of the acquisition pursuant to a business combination where the assets prior to the business combination did not generate costs that were charged either as direct or indirect costs to Federal contracts subject to CAS.

b. A new subparagraph 9904.409–50(j)(5), is added to current subsection 9904.409–50(j). The purpose of this new subparagraph is to make it clear that the CAS 9904.409 provisions dealing with the recapture of gains and losses on disposition of tangible capital assets should not apply when assets are transferred subsequent to a business combination.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, and any associated rulemaking, because this proposal would impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this proposal on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this ANPRM will not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This NPRM was developed after consideration of the public comments received in response to the Board's ANPRM published on May 24, 1994 (59 FR 26774). The comments have provided valuable input to the Board's rulemaking process. The comments received and the action taken by the Board are summarized in the paragraphs that follow:

Comment: Most non-Government commenters disagreed with the Board's proposed "no step-up, no step-down" approach. They opposed the exception from generally accepted accounting principles (GAAP) and expressed the opinion that the proposed approach does not represent sound accounting. They also pointed out that the proposed approach would lead to inconsistencies in the accounting practices applied in cases of CAS-covered contracts as contrasted with non-CAS-covered contracts. In general, the alternative approaches suggested involved either continuation of the "status quo", combined with proposals to rescind FAR 31.205–52, or suggestions to explore ways to insure that the government participates, when appropriate, in gains and losses recognized from assets involved in mergers or business combinations.

Response: The Board adopted the "no step-up no step-down" approach after extensive consideration of the possible alternative approaches. In particular, the issues associated with the recognition, allocation and recovery of the gain or loss subsequent to a merger or business combination were extensively explored in a Staff Discussion Paper (SDP) entitled "Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors". It was only after careful consideration of the responses to this SDP that the Board decided to proceed with the "no step-up, no step-down" approach.

The Board cannot agree with the suggestions that the status quo should be, in essence, maintained. The issues addressed in this proposal were first identified as significant issues by commenters in responses to the Board's request for suggested agenda topics in November 1990. Furthermore, the FAR 31.205–52 provisions, which are part of the current regulatory environment in this area, have been generally recognized as leading to inequitable consequences from the perspective of contractors. One commenter stated: "* * * the FAR provision not only suffers from implementation and transition problems, but as written is patently unfair by using historical costs when the purchase method indicates increased asset values and using the purchase cost when it is lower than the historical values. This allows the government to choose the method of accounting which is most cost beneficial to it." Given these circumstance, the Board cannot agree that "no action" is the proper course to follow in this instance.

Comment: Several commenters discussed the need to solve the apparent conflict between the CAS allocability provisions and the Federal Acquisition Regulation (FAR) allowability provisions in this area. In particular, it was suggested the OFPP Administrator address any continuing conflict between the Cost Accounting Standards and FAR 31.205–52 pursuant to the authority conferred on the Administrator by 41 U.S.C. 422(j)(3).

Response: The Board is aware of the apparent conflict between the provisions of CAS 9904.404 and FAR 31.205–52. Once the proposed amendment to CAS has been promulgated, the OFPP Administrator will determine whether any changes may be necessary in the FAR cost principles to make them fully compatible with the amended CAS 9904.404 and 9904.409.

Comment: Several commenters stated that the proposed amendment is unfair to contractors as it would prevent them from recouping their investments through future contract prices. In particular, the contrast was drawn between the acquisition of individual assets through purchase and the acquisition of assets as part of a business combination. In one case, the GAAP rules regarding acquisition cost would be followed, whereas in the other, the new CAS rule would mandate adherence to historical cost.

Response: It is the intent of the Board to apply the proposed amendments to CAS 9904.404 and 9904.409 on a prospective basis only. Therefore, any assets acquired in business combinations that have been concluded prior to the promulgation of these amendments will not be affected by the proposed changes in CAS. As to business combination taking place after the promulgation of the amendments, it is assumed that the parties involved will take into account, while negotiating the merger agreement, that any future depreciation chargeable to Government contracts and corresponding cash flow projections, will be based on the historical costs of the tangible capital assets being transferred in the course of the merger.

As to the treatment of purchased assets in contrast to assets acquired through a business combination, it should be pointed out that in cases of individual tangible capital assets acquired from a CAS-covered contractor, any gain or loss from such a sale would be subject to recapture by the Government in accordance with the provisions of CAS 9904.409–50(j). It is precisely because the Board concluded that such a recapture would be impractical in cases of business combinations that it decided to proceed with the "no step-up, no step-down" approach in the proposed amendments.

Comment: One commenter argued that any Government claim to a share in a gain resulting from changes in asset values due to price level changes cannot be justified on the basis of payment of cost of money as a government contract cost. The commenter argued that cost of money was introduced as an offset to profit and therefore should not have an impact on cost measurement.

Response: At the time the CASB separately recognized cost of money in CAS 9904.414 as an imputed contract cost, it clearly acknowledged that prior to the promulgation of that Standard, this cost element had been a "consideration in determining contract profit compensation." However, this acknowledgement did not imply that the Board regarded cost of money as being part of, or having the characteristics of profit. It clearly recognized pre-CAS 9904.414 cost of money as an element of cost that implicitly was recognized as part of profit. CAS 9904.414 merely turned an implicitly recognized cost into an explicitly recognized cost.

Comment: Several commenters suggested that some type of materiality or significance criterion should be introduced to deal with those instances where the acquired entity has allocated only immaterial amounts of assets costs to CAS-covered contracts prior to the business combination or where such allocations were not made during the cost accounting period immediately preceding the business combination although they may have been made in the course of earlier periods.

Response: CAS 9904.404 and 9904.409 apply only in the case of full CAS coverage. Therefore, after the recent changes in the applicability criteria, the threshold for full CAS coverage has been increased to $25 million in contract awards during a cost accounting period. It is hard to conceive

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of circumstances where such an amount in contract awards would result, on a consistent basis, in insignificant depreciation and/or cost of money charges.

Comment: Some commenters believed that the term "generated costs chargeable" was too ambiguous.

Response: The word "chargeable" has been replaced by "charged either as direct cost or as indirect cost".

Comment: Several commenters were concerned about the perceived potential recordkeeping burden including massive studies and protracted audits.

Response: When CAS has been applied continuously, the proposed amendments do not create any need for new or additional data regarding tangible capital assets. The only requirement is that records regarding the net book values that were maintained prior to the business combination should be retained and kept up to date after the business combination.

It is only when the contractor believes that the historical costs used for CAS purposes do not represent the fair value to be used for financial reporting purposes that the creation of additional records (or at least additional entries on existing records) becomes necessary.

Comment: One commenter stated that an adequate definition of "business combination" is required.

Response: "Business combination" and "purchase method" are financial accounting terms that are already used in the current version of CAS 9904.404. CAS uses these terms in a derivative sense, i.e., it prescribes certain courses of action when events so described have been recognized for financial reporting purposes. The CASB is not an originator of these terms.

Comment: One commenter suggested that issues dealt with in the proposed amendment also apply to intangible assets and that these should also be addressed in this proposal.

Response: The proposed amendments are necessarily a part of CAS 9904.404 and 9904.409. Since the application of these two Standards is limited to tangible capital assets, the proposed amendment is not a suitable vehicle for extending the coverage to intangible assets. A separate project on intangible assets would be necessary for such a purpose.

Comment: One commenter in particular offered extensive editorial comments on the proposed amendments.

Response: Most of these editorial comments were accepted.

List of Subjects in 48 CFR Part 9904

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9904 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9904—COST ACCOUNTING STANDARDS

9904.404 Capitalization of tangible assets.

2. Section 9904.404–50 is proposed to be amended by revising paragraph (d) to read as follows:

9904.404–50 Techniques for application.

* * * * *

(d) For Federal Government contract costing purposes, acquisition costs of tangible capital assets acquired in a business combination and accounted for under the "purchase method" of accounting shall be assigned to these assets as follows:

(1) Tangible capital assets that generated costs charged either as direct costs or as indirect costs to Federal Government contracts prior to a business combination shall retain the same net book value(s) subsequent to a business combination as if the business combination had not taken place.

(2) Where acquired tangible capital asset(s) did not generate costs that were charged to Federal contracts subject to CAS at the time of the business combination, the asset(s) shall be assigned a portion of the cost of the acquired company not to exceed their fair value(s) at the date of acquisition. When the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the "purchase method," the value otherwise assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

* * * * *

3. Section 9904.404–63 is proposed to be amended by designating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

9904.404–63 Effective date.

(a) * * *

(b) The effective date of 9904.404–50(d) is [30 days after date of publication of the final rule in the **Federal Register**].

4. Section 9904.409–50 is proposed to be amended by adding a new paragraph (j)(5) to read as follows:

9904.409–50 Techniques for application.

* * * * *

(j) * * *

(5) The provisions of this subsection 9904.409–50(j) do not apply to business combinations. The carrying values of tangible capital assets subsequent to a business combination shall be established in accordance with the provisions of 9904.404–50(d).

* * * * *

6. Section 9904.409–63 is proposed to be amended by designating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

9904.409–63 Effective date.

(a) * * *

(b) The effective date of 9904.409–50(j)(5), is [30 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. 95–5566 Filed 3–7–95; 8:45 am]
BILLING CODE 3110–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD02

Endangered and Threatened Wildlife and Plants; Proposed Revisions for Proposed Designation of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule, proposed revisions to proposed designation of critical habitat.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces proposed exclusions from its previously published proposal to designate critical habitat for the Mexican spotted owl. The draft economic analysis upon which the exclusions are partly based has also been made available.

DATES: The original comment period on the proposed rule to designate critical habitat extended from December 7, 1994, to March 7, 1995. The comment period on the proposal and the proposed exclusions extends through May 8, 1995.

ADDRESSES: Requests for copies of the Service's Economic Analysis and comments concerning that document and the proposal to designate critical habitat for the Mexican spotted owl or proposed exclusions should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna NE, Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, New Mexico State Supervisor, at the above address, telephone (505) 761–4525.

SUPPLEMENTARY INFORMATION:

Background

The Service listed the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). At the time of the listing, the Service found that, although considerable knowledge of Mexican spotted owl habitat needs had been gathered in recent years, habitat maps in sufficient detail to accurately delineate these areas were not available. Subsequent to listing the owl, the Service began gathering the data necessary to develop the proposed rule to designate critical habitat. On February 14, 1994, several environmental groups and an individual filed a lawsuit in Federal District Court in Arizona against the Department of the Interior for failure to designate critical habitat for the Mexican spotted owl (*Dr. Robin Silver, et al.* v. *Bruce Babbitt, et al.*, CIV–94–0337–PHX–CAM). On October 6, 1994, the Court ordered the Service to "publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. Sec. 1533(b)(2), no later than December 1, 1994." The proposal was published on December 7, 1994 (59 FR 63162); since the Service had not yet completed an economic analysis on the potential effects of the designation, economic exclusions were not proposed at that time. A total of 4,770,223 acres was proposed for inclusion in critical habitat for the Mexican spotted owl.

The extent and trend of habitat loss and degradation was the basis for determining that protection under the Endangered Species Act (Act) was necessary. The vegetative communities and structural attributes used by the Mexican spotted owl vary across its range. In forested habitat types, the vegetative communities consist primarily of warm-temperate and cold-temperate forests, and, to a lesser extent, woodlands and riparian deciduous forests. Canyons, deep drainages, and other topographical features that influence vegetative associations are also essential components of owl habitat. Characteristics associated with forested Mexican spotted owl habitat usually develop with increasing forest age, but their occurrence may vary by location, past forest management practices, forest type, and productivity. The attributes of nesting and roosting habitat typically include a moderate to high canopy closure; a multi-layered canopy with large overstory trees, often with various deformities; large snags; and accumulations of fallen trees and other woody debris on the ground.

Currently, land managing agencies characterize Mexican spotted owl habitat under the term "suitable." Suitable habitat is often only applied to habitat able to sustain the combined nesting, roosting, and foraging needs of the species' life history. Additional habitat utilized only for foraging frequently comprises the majority of the surrounding habitat base. The term "capable" is applied to habitat that was suitable some time in the past, but whose condition has changed through natural or human-caused structural modifications, and that retains the potential to return to suitable conditions at some time in the future.

The Service's determination of the extent and trend of habitat loss and degradation was based on the assessment of the impacts of timber management in forested owl habitat. Under presently approved forest management plans, timber on the majority of lands on which the owl occurs is managed primarily under a shelterwood harvest regime. The shelterwood harvest method results in even-aged stands, rather than the uneven-aged, multi-layered stands used by Mexican spotted owls. In addition, the shelterwood silvicultural system calls for even-aged conditions in perpetuity. Thus, stands already changed from suitable to capable would not be allowed to return to a suitable condition, and acreage slated for future harvest would be similarly rendered perpetually unsuitable for Mexican spotted owls. National Forest plans currently in place in the Southwest Region allow for up to 95 percent of commercial forest (59 percent of suitable owl habitat) to be managed under a shelterwood system. The Service also considered the various Federal and State laws and agency management policies, and concluded that existing regulatory mechanisms were inadequate to protect the Mexican spotted owl.

Proposed Revisions to Proposed Critical Habitat

In analyzing potential areas of critical habitat for the owl, the Service evaluated the known and primary threats to the species: even-aged timber harvest practices, steep-slope timber harvests, and inadequate regulatory mechanisms. Areas of known or suspected threats were compared to areas containing habitats that support or could support the nesting, roosting, and foraging requirements of the owl. This process resulted in the identification of the approximately 4.8 million acres that were included in the proposed rule to designate critical habitat.

After the Service identified areas to be proposed for designation as critical habitat, information was submitted to the Service by the Jicarilla Apache Tribe concerning the occurrence of the Mexican spotted owl on its Reservation and the Tribe's plan for protecting the species and managing timber resources. After reviewing this information, the Regional Director of the Southwest Region of the Service (Regional Director) is of the opinion that the Jicarilla Apache Reservation lands do not require special Federal management considerations or protection. Therefore, for reasons discussed in more detail below, the Service is proposing to delete the reservation lands described below from the area proposed for critical habitat designation in the **Federal Register** on December 7, 1994.

Approximately 101,923 acres of Jicarilla Apache Tribal lands, in five discrete units (NM–JAIR–1, NM–JAIR–2, NM–JAIR–3, NM–JAIR–4, and NM–JAIR–5), were included in the proposed designation of critical habitat for the Mexican spotted owl. These critical habitat units (CHUs) run north-south along a series of canyon-incised mesas, and lie between the proposed CHUs in the Santa Fe National Forest to the south and the Colorado-New Mexico state line. A parallel north-south series of proposed CHUs in the Jicarilla Ranger District of the Carson National Forest lie 5 to 18 kilometers to the west. The majority of the high-potential breeding habitat (steep slopes, mixed conifer) receives little or no timber management, and the surrounding foraging habitat is managed primarily under uneven-age silviculture. Furthermore, there are only two known records for the Mexican spotted owl on the Jicarilla Reservation. Both records were documented in the 1980's approximately 3 miles west of the Town of Dulce. Additional records exist for areas adjacent to the Reservation. Extensive surveys between 1990 and 1994 were unsuccessful in locating any owls, nests, or roost sites on the Jicarilla Reservation.

Informal discussions between staffs of the Service's New Mexico Ecological Services State Office and Jicarilla Game and Fish Department on owl related issues were initiated during the data

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collection period for critical habitat development in early summer 1993. Continued discussions led to a mutual recognition of the significant differences between resource management and habitat conditions on federally administered lands and Jicarilla Apache Reservation lands. These differences afforded an opportunity to address the threats identified in the listing proposal through the development of a tribal management plan for the owl. Working independently, the Jicarilla Game and Fish Department developed a draft "Conservation Plan for the Mexican Spotted Owl on the Jicarilla Apache Reservation, New Mexico" and requested review of the document by the New Mexico Ecological Services State Office at a meeting on November 21, 1994. Reviews were conducted and recommendations provided by the Service at that meeting and during subsequent telephone conversations with representatives of the Tribe. On December 16, 1994, the Jicarilla Apache Tribal Council approved the plan and formally submitted it to the Service.

The plan addresses the identified threats to owl habitat by maintaining sufficient suitable habitat across the landscape and the site-specific retention of complex forest structure following timber harvest. Nest/roost habitats, primarily in mixed conifer and steep slope areas, are not managed for timber extraction and are to remain in suitable nest-roost condition. Foraging habitat consisting of ponderosa pine is to be managed almost entirely by uneven-aged methods. Timber harvest may lower the quality of a fraction of the foraging habitat base, but adequate residual structure remains so that the habitat may rapidly reattain suitable condition. At any point in time the majority of foraging habitat remains in suitable foraging condition across the landscape. Site-specific management of territories address both habitat conditions and behavioral disturbance within owl territories. Territorial management includes the establishment of 300-acre protected activity centers (PAC) around nest-roost sites. No timber, or oil and gas development is to occur within these areas, and no behaviorally disturbing activities are permitted within ¼ mile of any nest or roost site during the breeding season. Habitat in the areas surrounding the PACs are to be managed as described above.

The plan fully incorporates the Service's criteria for management of critical habitat. These criteria were adopted, in part, from the recommended guidelines outlined in the Draft Recovery Plan prepared by the Mexican Spotted Owl Recovery Team. In addition, the Jicarilla plan has increased protection in ponderosa pine foraging habitat above those levels identified in the Draft Recovery Plan.

Based on information provided during the initial public comment period by the Jicarilla Apache Indian Tribe, the Service has determined that identified threats to the species over the majority of its range have been removed on the Jicarilla Apache Indian Reservation through the establishment and enforcement of the Tribe's Mexican Spotted Owl Conservation Plan. Therefore, the Service proposes to delete the 101,923 acres in Critical Habitat Units NM–JAIR–1, NM–JAIR–2, NM–JAIR–3, NM–JAIR–4, and NM–JAIR–5, on the Jicarilla Apache Indian Reservation from the proposed rule to designate critical habitat based on the new information provided by the Tribe.

Section 4(b)(2) of the Act (16 U.S.C. 1533 (b)(2)) requires the Service to consider economic and other impacts of designating a particular area as critical habitat. In a final designation of critical habitat, the Service is required to balance the benefits of excluding a significantly impacted area against the benefits of including that area within the boundaries of critical habitat. In fulfillment of that requirement, the Service has prepared a draft economic analysis of the effects that may be caused by the designation of critical habitat. The Service will provide a copy of the Economic Analysis to interested parties upon request. Based on the data provided for the draft economic analysis, and the assessment of identified economic impacts, the lands of the Navajo Nation, and the Southern Ute, Mescalero Apache, and San Carlos Apache tribes are being proposed for exclusion under section 4(b)(2), contingent upon Service receipt and review of specific economic information for each of those tribes, and biological data concerning the presence, distribution, and habitat use of Mexican spotted owls on those tribal lands. Information provided for the draft economic analysis indicates that significant economic impacts may occur on lands of these tribes due to the designation of critical habitat. However, the information was not conclusive. In one instance, data were grouped together for three of the tribes: Jicarilla Apache, Mescalero Apache, and Southern Ute. Such aggregation does not allow specific impacts to be delineated for individual tribes. In another instance, information provided on economic impacts on the Navajo Reservation was contradictory and may require further review and analysis. While information is available regarding economic effects, biological information is lacking concerning the abundance, distribution and management of Mexican spotted owls on the Navajo, Southern Ute, Mescalero Apache, and San Carlos Apache reservation lands. Therefore, the Service is inviting submission of information and comment on these and any other relevant issues. A more detailed discussion of economic impacts is provided in the Economic Analysis. The Service will consider the critical habitat designation in light of all additional relevant information obtained during the comment period before making a final decision with respect to the proposed rule.

A series of public hearings have been scheduled in connection with the announcement of availability of the draft economic analysis; notice of the times and locations of the hearings appears elsewhere in today's issue of the **Federal Register**. Comments regarding the proposed exclusions described above will also be accepted at these hearings or in writing through the end of the comment period on May 8, 1995.

Author

The primary author of this notice is Jennifer Fowler-Propst, New Mexico State Supervisor, at the above address.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: March 6, 1995.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–5809 Filed 3–7–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AD02

Endangered and Threatened Wildlife and Plants; Notice of Document Availability, Notice of Public Hearings, and Reopening of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability, reopening of public comment period, notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability of a draft economic analysis of its proposal to designate critical habitat for the Mexican spotted owl. A comment period is opened and public hearings

will be held on the analysis and the proposal.

DATES: Comment: The original comment period on the proposed rule to designate critical habitat extended from December 7, 1994, to March 7, 1995. The comment period is now reopened until May 8, 1995.

Hearings: The Service will hold four public hearings at the times noted below. Public hearings will be held from 6 p.m. to 9 p.m. on the following dates: March 22, 1995, in Santa Fe, New Mexico; March 23, 1995, in Socorro, New Mexico; March 29, 1995, in Tucson, Arizona; and March 30, 1995, in Flagstaff, Arizona.

ADDRESSES: Hearings: The public hearings will be held at the following places: Santa Fe—Morgan Hall, 310 Old Santa Fe Trail, Santa Fe, New Mexico; Socorro—Galena Auditorium, New Mexico Institute of Mining and Technology, 1 Olive Lane, Socorro, New Mexico; Tucson—Rincon Room, Student Union, Second Floor, University of Arizona, Tucson, Arizona; Flagstaff—Flagstaff High School Auditorium, 400 West Elm Street, Flagstaff, Arizona.

Documents and comments: Requests for copies of the Service's Economic Analysis and comments concerning that document and the proposal to designate critical habitat for the Mexican spotted owl should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, New Mexico State Supervisor, at the above address, telephone (505) 761–4525.

SUPPLEMENTARY INFORMATION:

Background

The Service listed the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). A proposal to designate critical habitat was published on December 7, 1994 (59 FR 63162). A total of 4,770,223 acres was proposed for inclusion in critical habitat.

Section 4(b)(2) of the Act (16 U.S.C. § 1533 (b)(2)) requires the Service to consider economic and other impacts of designating a particular area as critical habitat. In a final designation of critical habitat, the Service is required to balance the benefits of excluding areas against the benefits of including those areas within the boundaries of critical habitat. In fulfillment of that requirement, the Service has prepared a draft economic analysis of the effects that may be caused by the designation of critical habitat. The Service will provide a copy of the economic analysis to interested parties upon request. The Service will consider the critical habitat designation in light of all additional relevant information obtained during the comment period before making a final decision with respect to the proposed rule.

The comment period on the proposal is reopened until May 8, 1995, to receive views and recommendations on both the proposed designation and the draft economic analysis. Public hearings on the proposal and the draft economic analysis will be held at the times and places listed above. Oral statements at the hearings may be limited to several minutes if there are many requests to speak. Oral comments presented at the public hearings are given the same weight and consideration as written comments. If the public hearings are of insufficient time to provide for all who wish to speak, all who are not accommodated will be asked to submit their comments in writing. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service.

Author

The primary author of this notice is Jennifer Fowler-Propst, New Mexico State Supervisor, at the above address.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: March 3, 1995.

Edward H. Cynar, II,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–5810 Filed 3–7–95; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 60, No. 45
Wednesday, March 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 3, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form numbers(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Forest Service
Baseline and Trend Information on National Forest Communication Use and Users
Individuals or households; business or other for-profit; 2,600 responses; 650 hours
Elizabeth L. Horn (406) 329–3089

New Collection

• Agricultural Marketing Service
Freight Forwarder Directory-Data Collection Form
TMD–7
Business or other for-profit; 1,343 responses; 443 hours
Ellen Welby (202) 690–1335

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 95–5634 Filed 3–7–95; 8:45 am]
BILLING CODE 3410–01–M

Food and Consumer Service

Child Nutrition Programs; Income Eligibility Guidelines

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1995 through June 30, 1996. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Commodity School Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FCS, USDA, Alexandria, Virginia 22302, or by phone at (702) 305–2618.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget. These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Child and Adult Care Food Program (7 CFR part 226), and Commodity School Program (7 CFR part 210), and the guidelines for free milk in Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to service free meals to all children from any household with income at or below 130 percent of the poverty guidelines. The Department also requires such schools and institutions to serve reduced price meals to all children from any household with income higher than 130 percent of the poverty guidelines, but at or below 185 percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program for Children may, at local option, serve free milk to all children from any household with income at or below 130 percent of the Poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9)

government civilian employee or military retirement; or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1995 through June 30, 1996. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the 1995 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

Authority: (42 U.S.C. 1758(b)(1)).

Dated: March 3, 1995.

William E. Ludwig,
Administrator.

INCOME ELIGIBILITY GUIDELINES
[Effective from July 1, 1995 to June 30, 1996]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	7,470	623	144	13,820	1,152	266	9,711	810	187
2	10,030	836	193	18,556	1,547	357	13,039	1,087	251
3	12,590	1,050	243	23,292	1,941	448	16,367	1,364	315
4	15,150	1,263	292	28,028	2,336	539	19,695	1,642	379
5	17,710	1,476	341	32,764	2,731	631	23,023	1,919	443
6	20,270	1,690	390	37,500	3,125	722	26,351	2,196	507
7	22,830	1,903	440	42,236	3,520	813	29,679	2,474	571
8	25,390	2,116	489	46,972	3,915	904	33,007	2,751	635
For each add'l family member add	+2,560	+214	+50	+4,736	+395	+92	+3,328	+278	+64
Alaska									
1	9,340	779	180	17,279	1,440	333	12,142	1,012	234
2	12,540	1,045	242	23,199	1,934	447	16,302	1,359	314
3	15,740	1,312	303	29,119	2,427	560	20,462	1,706	394
4	18,940	1,579	365	35,039	2,910	674	24,622	2,052	474
5	22,140	1,845	426	40,959	3,414	788	28,782	2,399	554
6	25,340	2,112	488	46,879	3,907	902	32,942	2,746	634
7	28,540	2,379	549	52,799	4,400	1,016	37,102	3,092	714
8	31,740	2,645	611	58,719	4,894	1,130	41,262	3,439	794
For each add'l family member add	+3,200	+267	+62	+5,920	+494	+114	+4,160	+347	+80
Hawaii									
1	8,610	718	166	15,929	1,328	307	11,193	933	216
2	11,550	963	223	21,368	1,781	411	15,015	1,252	289
3	14,490	1,208	279	26,807	2,234	516	18,837	1,570	363
4	17,430	1,453	336	32,246	2,688	621	22,659	1,889	436
5	20,370	1,698	392	37,685	3,141	725	26,481	2,207	510
6	23,310	1,943	449	43,124	3,594	830	30,303	2,526	583
7	26,250	2,188	505	48,563	4,047	934	34,125	2,844	657
8	29,190	2,433	562	54,002	4,501	1,039	37,947	3,163	730
For each add'l family member add	+2,940	+245	+57	+5,439	+454	+105	+3,822	+319	+74

[FR Doc. 95–5633 Filed 3–7–95; 8:45 am]
BILLING CODE 3410–30–M

Forest Service

Clearwater National Forest, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and revise the land and resource management plan (forest plan) for the Clearwater National Forest.

SUMMARY: The current Forest Plan for the Clearwater National Forest was completed in September, 1987 and has guided the management of the Forest since then. Forest Plans shall ordinarily be revised on a 10-year cycle or at least every 15 years. It also may be revised whenever the Forest Supervisor determines that conditions or demands in the area have significantly changed.

In January of 1993, two lawsuits were filed against the Forest Service alleging violations of the National Forest Management Act, National

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Environmental Policy Act, and the Administrative Procedures Act. The lead plaintiffs were the Sierra Club and the Wilderness Society, representing nine co-plaintiffs. A Settlement Agreement was signed on September 13, 1993 and the U.S. District Court has issued an order directing implementation of the Settlement Agreement.

The key component of the Settlement Agreement was a commitment by the Forest Service to begin the process of revising the Clearwater Forest Plan within 18 months of the settlement agreement being signed to provide long-term resolution between the parties. The settlement agreement was signed on September 13, 1993.

The Settlement Agreement also states that the current Forest Plan will remain in effect during the revision process but implementation would be modified using four interim measures. These interim measures provide additional direction related to the implementation of projects and activities in certain roadless areas, timber harvest, old growth and water quality.

Following the settlement agreement, the Clearwater National Forest began gathering background information necessary to begin the revision process. However, since September 1993, several other related Forest Service planning efforts have been initiated that involve the Clearwater National Forest. Most notable is the "Upper Columbia River Basin, Environmental Impact Statement" (UCRB), which will address issues relevant to the Clearwater National Forest and likely result in changes to Forest Plans in the UCRB. Notice of this effort and supporting information was previously published in the **Federal Register** on December 4, 1994.

The purpose of the Upper Columbia River Basin, EIS is to "* * * develop and analyze a scientifically sound, ecosystem-based strategy for management of lands administered by the United States Department of Agriculture (USDA) Forest Service. * * * The strategy will modify existing Forest Plans and will focus on forest, rangeland, and aquatic/riparian ecosystem health and the sustainability of threatened, endangered, and sensitive species." Clearly this effort will have a profound influence on the revision process for the Clearwater National Forest. Therefore, the revision schedule for the Clearwater National Forest is designed to coordinate with the information and decisions produced by the UCRB, EIS. As part of the revision schedule separate notices will go out for scoping, comments on the DEIS, and comments on the FEIS.

During the next 12–18 months, while the UCRB, EIS is in preparation, the Clearwater National Forest will continue to gather data and information, and conduct assessments of resource conditions to better frame the revision process. Tribal governments, state or federal agencies or the public are invited to send comments regarding their ideas concerning information or data that the Clearwater National Forest can be gathering and assessing during this 12–18 month period.

DATES: Comments concerning resource assessments or data gathering in support of the Clearwater Forest Plan revision, should be received in writing by 90 days following the publication of this notice in the **Federal Register**. A supplemental notice will be placed in the **Federal Register** announcing the beginning of formal scoping for the DEIS with an opportunity to comment following completion of the UCRB, EIS.

ADDRESSES: Send written comments concerning this proposal to James L. Caswell, Forest Supervisor, Clearwater National Forest, 12730 US Highway 12, Orofino, Idaho 83544.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Forest Planning Staff Officer or Harry Jageman, Acting Revision Team Leader, 12730 US Highway 12, Orofino, Idaho 83544, phone (208) 476–4541.

SUPPLEMENTARY INFORMATION: Preliminary tasks that have been identified for assessment and data gathering include: Land type descriptions, social/economic, old growth, watersheds, recreation, forest health and fire history. In general, these assessments will be conducted at a smaller, more localized scale than will occur for the entire UCRB.

Revision scoping meetings are tentatively planned for Moscow, Lewiston, Orofino, and Kooskia, in Idaho and Missoula Montana. Specific dates, times and locations will be announced in local newspapers of general distribution. These scoping meetings will begin following the completion of the UCRB, EIS presently scheduled for summer, 1996. The projected dates for the DEIS and FEIS will be posted in the **Federal Register** at a later date.

The alternatives considered in the revision of the Clearwater Forest Plan will be consistent with decisions made in the UCRB, EIS. The purpose and need, preliminary issues, and the scope of the Clearwater Forest Plan revision, will be further described in a separate **Federal Register** notice at a later date.

The responsible official for the revision of the Clearwater Forest Plan will be the Regional Forester, Northern Region, P.O. Box 7669, Missoula, Montana.

David F. Jolly,

Regional Forester.

[FR Doc. 95–5567 Filed 3–7–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[Order No. 730]

Foreign-Trade Zones Board; Approval of Export Processing Activity; Upstate Precision Mfg., Inc. (Office Furniture Systems) Within Foreign-Trade Zone 54, Clinton County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Clinton County Area Development Corporation, grantee of FTZ 54, Clinton County, New York, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Upstate Precision Mfg., Inc. (UPMI), to manufacture modular furniture panels for export within FTZ 54 (filed 11–23–94, FTZ Docket A(32b1)–4–94; Doc. 7–95, assigned 2/21/95);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and subject to the further condition that all textile products admitted to the zone for UPMI shall be of U.S. origin or shall be a good originating in the territory of a NAFTA country (Sec. 202, PL 103–182, 12–8–93).

Signed at Washington, DC, this 28th day of February 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

[FR Doc. 95–5562 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 734]

Foreign-Trade Zones Board; Expansion of Foreign-Trade Zone 21 Charleston, SC, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone No. 21, requesting authority to expand its general-purpose zone at sites in the Charleston and Georgetown Customs port of entry areas, and requesting authority to use zone procedures for the installation of foreign audio components into automobiles within FTZ 21, was filed by the Foreign-Trade Zones (FTZ) Board on September 14, 1993 (Docket 50–93, 58 FR 50330, 9/27/93) (amended, 8/9/94, 49 FR 40519; and, 11/10/94, 59 FR 56034);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone and conduct processing activity under zone procedures as requested in the application, as amended, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of February 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–5563 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 727]

Foreign-Trade Zones Board; Grant of Authority for Subzone Status; Smithkline Beecham Corporation (Pharmaceuticals) Bristol, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Industrial Board of Blount County, Tennessee, grantee of Foreign-Trade Zone 148, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing plant of SmithKline Beecham Corporation, in Bristol, Tennessee, was filed by the Board on November 8, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 55–93, 58 FR 61065, 11–19–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 148A) at the plant site of SmithKline Beecham Corporation, in Bristol, Tennessee, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of February 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration Alternate Chairman Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–5561 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–00007.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Florida Citrus Exports, L.C. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*
   Fresh citrus.
2. *Services*
   Inspection, quality control, marketing and promotional services.
3. *Technology Rights*
   Proprietary rights to all technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, trade secrets, and know-how.
4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights)*
   All export trade-related facilitation services, including, but not limited to: consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer

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and consumer preferences; communication and processing of export orders; inspection and quality control; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal, accounting and tax assistance; management information systems development and application; assistance related to participation in government export assistance programs, such as the Export Enhancement and Market Promotion programs.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products, Services and/or Technology Rights into the Export Markets, FCE and/or one or more of its Members may:

1. Design and execute foreign marketing strategies for its Export Markets;
2. Prepare joint bids, establish export prices for Members' Products and Services and establish terms of sale in Export Markets in connection with potential or actual bona fide opportunities;
3. Allocate export sales, international buyers and/or export markets among Members;
4. Grant exclusive and non-exclusive sales and distribution rights for Products in designated Export Markets to foreign agents or importers ("exclusive" meaning that FCE and Members may agree not to sell Products into designated Export Markets through any other foreign distributor, and that the foreign distributor may agree to represent only FCE in the Export Markets and none of FCE's competitors);
5. Design, develop and market generic corporate labels for use in Export Markets;
6. Engage in joint promotional activities directly targeted at developing Export Markets, such as: Arranging trade shows and marketing trips; providing advertising services; providing brochures and industry newsletters; providing product, service, and industry information; conducting international market and product research; and procuring international marketing, advertising, and promotional services;
7. Share the cost of joint promotional activities among the Members;
8. Conduct product and packaging research and development exclusively for export in order to meet foreign regulatory requirements, foreign buyer specifications, and foreign consumer preferences;
9. Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade barriers in Export Markets;
10. Establish and operate fumigation facilities and provide specialized packing operations and other quality control procedures to be followed by Members in the export of Products into Export Markets;
11. Assist each other in maintaining the quality standards necessary to be successful in Export Markets;
12. Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Members' Products, Services and/or Technology Rights into Export Markets;
13. Negotiate and enter into purchase agreements with buyers in Export Markets regarding export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;
14. Broker or take title to Products intended for Export Markets;
15. Purchase Products from non-Member producers to fulfill specific sales obligations, provided that FCE and/or Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances;
16. Solicit non-Member producers to become Members;
17. Jointly undertake the administrative tasks of processing export orders;
18. Procure, negotiate, contract, and administer transportation services for Products in the course of export, including overseas freight transportation, inland freight transportation from the packing house to the U.S. port of embarkment, leasing of transportation equipment and facilities, storing and warehousing, stevedoring, wharfage and handling, insurance, and freight forwarder services;
19. Arrange for trade documentation and services, customs clearance, financial instruments, and foreign exchange;
20. Arrange financing through private financial entities;
21. Bill and collect monies from foreign buyers, and arrange for or provide accounting, tax, legal and consulting services in relation to Export Trade Activities and Methods of Operation;
22. Enter into exclusive agreements with non-Members to provide Export Trade Facilitation Services;
23. Design, implement, and administer Foreign Sales Corporations as provided by the Internal Revenue Code;
24. Open and operate overseas sales and distribution offices and companies to facilitate the sales and distribution of Products into and within Export Markets;
25. Apply for and utilize applicable export assistance and incentive programs available within governmental sectors;
26. Negotiate and enter into agreements with governments and foreign persons to develop countertrade arrangements, provided that this Certificate does not protect any conduct related to the sale of goods in the United States that are imported as part of any countertrade transactions;
27. Refuse to deal with or provide quotations to other Export Intermediaries for sales of Members' Products into Export Markets;
28. Require common marking and identification of Members' Products sold in Export Markets;
29. Exchange information as necessary to carry out Export Trade Activities and Methods of Operation, including:
    (a) Information about sales, marketing efforts, and sales strategies in Export Markets, including pricing; projected demand in Export Markets for Products; customary terms of sale; and foreign buyer and consumer product specifications;
    (b) Information about the price, quality, quantity, source and delivery dates of Products available from the Members for export;
    (c) Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by FCE and/or Members;
    (d) Information about the terms and conditions of export orders necessary to process such orders;
    (e) Information about joint bidding opportunities;
    (f) Information about methods by which exports sales are to be allocated among Members;
    (g) Information about expenses specific to exporting to and within Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;
    (h) Information about U.S. and foreign legislation and regulations, including Federal marketing order programs that may affect sales to Export Markets; and
    (i) Information about FCE's or Members' export operations, including sales and distribution networks established by FCE or Members in Export Markets, and prior export sales by Members, including export price information.

Members (Within the Meaning of § 325.2(1) of the Regulations)

Florida Fresh Citrus Sales, Inc., Wabasso, Florida; Golden River Fruit Co., Vero Beach, Florida; Leroy E. Smith's Sons, Inc., Vero Beach, Florida; Ocean Spray Cranberries, Inc., Vero Beach, Florida; Seald-Sweet Growers, Inc., Vero Beach, Florida.

Definitions

1. *Export Intermediary* means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

2. *Member* means a person who has membership in FCE and who has been certified as a "Member" within the meaning of § 325.2(1) of the Regulations, set out in Attachment A and incorporated by reference.

Terms and Conditions of Certificate

1. Except as provided in paragraphs 29(b) and 29(g) of the Export Trade Activities and Methods of Operation, neither FCE nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchasing Member.

2. Each Member shall determine independently of other members the quantity of Products the Member will make available for export or sell through FCE. FCE may not solicit from any member specific quantities for export or require any member to export any minimum quantity of products.

3. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing) shall be in connection only with actual or potential bona fide export transactions or opportunities and shall include only those Members participating or having a genuine interest in participating in such transactions or opportunities; provided that FCE and/or the Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.

4. Meetings at which FCE allocates export sales among Members and establishes export prices shall not be open to the public.

5. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products, Services or Technology Rights in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to FCE, a copy of which FCE shall promptly transmit to the Secretary of Commerce and the Attorney General.

6. FCE and the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Protection Provided by Certificate

The Certificate protects FCE and its directors, officers, and employees acting on its behalf, as well as its Members, and their directors, officers, and employees acting on their behalf, from private treble damage actions and governmental criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

The Certificate continues in effect from the effective date indicated below until it is relinquished, modified or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in the Certificate prohibits FCE and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of the Certificate of Review to FCE by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of FCE or its Members or (b) the legality of such business plans of FCE or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of the Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985) ("Guidelines").

Dated: February 23, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–5668 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–DR–P

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Minority Business Development Agency

Business Development Center Applications: San Francisco, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its San Francisco Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the San Francisco, California Metropolitan Area. The award number of the MBDC will be 09–10–95015–01.

DATES: The closing date for applications is April 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before April 17, 1995. A pre-application conference will be held on April 3, 1995, at 10:00 a.m., at the San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, (415) 744–3001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $611,081. The total Federal amount is $519,419 and is composed of $506,750 plus the Audit Fee amount of $12,669. The application must include a minimum cost share of 15%, $91,662 in non-federal (cost-sharing) contributions for a total project cost of $611,081. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5682 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Jacksonville, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Jacksonville, Florida Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Jacksonville, Florida Metropolitan Area. The award number of the MBDC will be 04–10–95011–01.

DATES: The closing date for applications is April 14, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before April 14, 1995. A pre-application conference will be held on March 29, 1995, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariart, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant

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with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5684 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Baton Rouge, LA

AGENCY: Minority Business Development Agency.

ACTION: Correction.

SUMMARY: On page 9662, in the issue dated February 21, 1995, third column, third paragraph, the closing date for applications is corrected to read March 24, 1995.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Office, Minority Business Development Agency.

[FR Doc. 95–5676 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: On page 9664, first column, third paragraph, the closing date for applications is corrected to read March 24, 1995.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Office, Minority Business Development Agency.

[FR Doc. 95–5677 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Pittsburgh, PA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Pittsburgh Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Pittsburgh, Pennsylvania Metropolitan Area. The award number of the MBDC will be 03–10–95011–01.

DATES: The closing date for applications is April 10, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before April 10, 1995.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Levi Pace at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may

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terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–11, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, 26. Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, 28. Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–12, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–12 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–21, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)
Dated: March 3, 1995.

Donald L. Powers,
Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5681 Filed 3–7–95; 8:45 am]
BILLING CODE 3510–21–P

Business Development Center Applications: San Juan, PR

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its San Juan Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the San Juan, Puerto Rico Metropolitan Area. The award number of the MBDC will be 02–10–95012–01.

DATES: The closing date for applications is April 14, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before April 14, 1995. A pre-application conference will be held on March 29, 1995, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $388,898. The total Federal amount is $330,563 and is composed of $322,500 plus the Audit Fee amount of $8,063. The application must include a minimum cost share of 15%, $58,335 in non-federal (cost-sharing) contributions for a total project cost of $388,898. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)
Dated: March 3, 1995.

Donald L. Powers,
Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5683 Filed 3–7–95; 8:45 am]
BILLING CODE 3510–21–P

Native American Business Development Center Applications: North Dakota

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Correction.

SUMMARY: On page 9667, in the issue dated February 21, 1995, first column, second paragraph, the closing date for

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applications is corrected to read March 24, 1995.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5679 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: New Mexico

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: On page 9665, in the issue dated February 21, 1995, third column, second paragraph, the closing date for applications is corrected to read March 24, 1995.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5678 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: Oklahoma

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: On page 9668, second column, first paragraph, the closing date for applications is corrected to read March 24, 1995.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: March 3, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–5680 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–21–P

National Institute of Standards and Technology

Announcement of an Opportunity To Join a Cooperative Research and Development Consortium for Alternative Approaches to Nanometer-Level Overlay and CD Metrology for IC Manufacturing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting and notice of Government owned invention available for licensing.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on April 26, 1995 to discuss the possibility of setting up a cooperative research consortium to develop innovative approaches to overlay and CD metrology consistent with SIA-projected requirements. Parties interested in participating in the consortium should be prepared to invest adequate resources in the collaboration and be firmly committed to the goal of developing innovative approaches.

The program will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides Federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of materials, equipment, personnel, and/or funds. The program is expected to last 18 months. This is not a grant program.

DATES: Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below no later than April 7, 1995.

ADDRESSES: Technology Building, Room B360, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Michael W. Cresswell, Telephone: 301–975–2072; FAX: 301–948–4081.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) invites interested parties to participate in a cooperative research consortium to conduct modeling of overlay detection by electrostatic/magnetic sensors interacting with optical metrology target architectures commonly used in advanced IC manufacturing, examine enhancements deriving from target-geometry modifications and sensor-head innovations, design and evaluate a test implementation using Maxwell-equation-based simulation software and, formulate specifications of a candidate design for selected applications.

In conjunction with the opportunity to join this Cooperative Research and Development Consortium, the following invention is available for licensing:

NIST Docket No. 94–040CIP

Title: Method and Reference Standards for Measuring Overlay in Multilayer Structures, and for Calibrating Imaging Equipment as Used in Semiconductor Manufacture.

Description: Imaging instruments for overlay-measurement extraction from partially-processed semiconductor wafers, are calibrated by providing a reference test structure having features which can be located by electrical measurements not subject to tool-induced shift and water-induced shift experienced by the imaging instrument. The reference test structure is first qualified using electrical measurements, and is then used to provided the effect of the said shifts on the imaging-instrument measurements.

Dated: March 1, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–5662 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–13–M

Patent and Trademark Office

National Information Infrastructure (NII) Copyright Awareness Campaign

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Working Group on Intellectual Property Rights of the White House Information Infrastructure Task Force (IITF) issued a preliminary draft of its report, "Intellectual Property and the National Information Infrastructure," on July 7, 1994. One of the Working Group's findings announced in the preliminary draft is that effective education of the public about intellectual property rights is crucial to the successful development of the NII. The Working Group recognizes that the public's awareness of their own intellectual property rights, as well as those of others, will lead to increased respect for those rights.

In order to effectuate public awareness of copyright, the preliminary draft, on page 140, stated that the Working Group would sponsor a conference to develop curricula that may be used in schools and libraries to educate the public about intellectual property rights in the NII environment. The draft further stated that anyone who wished to participate in the conference should request to do so by sending a request to Terri A. Southwick by July 25, 1994. The participants have been chosen and notified. Every effort was made to ensure that a wide diversity of interests will be represented at the conference. All meetings will be open to the public. Information on subsequent meetings may be obtained by calling Alan Wright at (703) 305–9300.

DATES: The first meeting of the Copyright Awareness Campaign, will be held in Washington, DC, on Tuesday, March 21, 1995. It will begin at 2 p.m. and last until 5 p.m.

ADDRESSES: The first meeting will be held at the U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC, in the Barnard Auditorium.

FOR FURTHER INFORMATION CONTACT: Alan Wright, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone: (703) 305–9300; Fax: (703) 305–8885.

SUPPLEMENTARY INFORMATION: The Working Group on Intellectual Property Rights, chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman, was established as part of the White House Information Infrastructure Task Force. The Task Force, chaired by Secretary of Commerce Ronald H. Brown, was created to work with Congress and the private sector to develop comprehensive telecommunications and information policies aimed at articulating and implementing the Administration's vision for the National Information Infrastructure (NII).

The Working Group's concern for improved public education regarding intellectual property rights in the NII environment was expressed in the preliminary draft of its report. The Copyright Awareness Campaign will bring together public and private educators, representing all levels of elementary, secondary, and post-secondary education, as well as copyright owners and users to formulate public awareness strategies and develop model curricula regarding the use of protected intellectual property on the NII. In addition to developing substantive curricula, the campaign will also explore how best to disseminate such curricula. The ultimate goal of the campaign is to identify the intellectual property issues that the public must be aware of in the NII environment, and to determine the methods by which such information may be disseminated to the public. The campaign is not intended to be a forum for further elaboration on the issue of educational fair use, which is currently under discussion in the Conference on Fair Use that began last September. The campaign is concerned with educating the public on the importance of respecting intellectual property rights generally, with a particular focus on the NII environment.

Dated: March 3, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–5666 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

March 2, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: March 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 362 is being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 2, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on March 3, 1995, you are directed to amend the directive dated December 16, 1994 to increase the limit for Category 362 to 5,811,680 numbers [1], as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–5602 Filed 3–7–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Presidio Leadership Center Call for Public Participation

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation) has established the Presidio Leadership Center (PLC) to train and develop leaders for community service, including programs currently funded by the Corporation.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

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The Corporation, through the PLC, seeks information and input regarding the planning, development, implementation, and evaluation of leadership development and leadership training programs.

DATES: The Corporation seeks the participation of the public in this process until April 7, 1995.

ADDRESSES: Responses to this notice should be mailed to the Presidio Leadership Center, P.O. Box 2995, The Presidio of San Francisco, CA 94129.

FOR FURTHER INFORMATION CONTACT: The Presidio Leadership Center, at (415) 744–3016. For individuals with disabilities, the information contained in this notice will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: The Corporation is a government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides education opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, the Corporation may "conduct, directly or by grant or contract, appropriate training programs" to promote leadership development in national service programs. The Corporation has established the Presidio Leadership Center (PLC) to carry out this objective. The goals of the PLC's leadership development program include the following:

(1) To bring together people of diverse viewpoints in the field to exchange ideas and practices;

(2) To identify and develop leaders at various levels in the field;

(3) To create a sense to professional identity and purpose among leaders working at all levels in the national service field;

(4) To teach effective communication, problem-solving, decision-making, and management; and

(5) To extend and cement the infrastructure of the national service movement.

The PLC seeks input from persons and organizations with expertise in leadership training and development on how it can most effectively achieve the above-listed goals.

Dated: March 3, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95–5686 Filed 3–7–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0102]

Clearance Request for Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0102).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Prompt Payment.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the Federal Acquisition Regulation (FAR) and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts:

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontracts and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Pub. L. 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching, existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 4,000; responses per respondent, 3; total annual responses, 12,000; preparation hours per response, .33; and total response burden hours, 4,000.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 20,000; hours per recordkeeper, 18; and total recordkeeping burden hours, 360,000.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: March 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–5631 Filed 3–7–95; 8:45 am]

BILLING CODE 6820–34–M

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0012]

Clearance Request for Termination Settlement Proposal Forms—FAR (Standard Forms 1435 Through 1440)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0012).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *25* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *600*; responses per respondent, *1*; total annual responses, *600*; preparation hours per response, *25*; and total response burden hours, *15,000*.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440), in all correspondence.

Dated: March 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–5627 Filed 3–7–95; 8:45 am]

BILLING CODE 6820–34–M

Department of the Navy

Combined Notice of Intent To Prepare and Notice of Preparation for an Environmental Impact Statement for the Disposal and Reuse of the Naval Facilities Engineering Service Center, Formerly the Naval Civil Engineering Laboratory (NCEL) Property and Structures, Port Hueneme, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy in coordination with the City of Port Hueneme is preparing an Environmental Impact Statement (EIS) for the proposed disposal and reuse of the former Naval Civil Engineering Laboratory (NCEL) property and structures at Port Hueneme, California. The Defense Base Closure and Realignment Act (Public Law 101–510) of 1990, as implemented by the 1993 base closure process, directs the Navy to close the former NCEL. The City of Port Hueneme intends to use the EIS is place of an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15221.

The former NCEL is within the jurisdiction of the City of Port Hueneme, on the California coast midway between the cities of Los Angeles and Santa Barbara, and covers approximately 33 acres. The Navy facility is scheduled for operational closure in April 1996. The property is currently developed with office buildings, laboratory facilities, and an active Coast Guard lighthouse. The EIS will address disposal of the property and the potential impacts associated with reuse alternatives.

The EIS will address the potential impacts to the environment that may result from implementation of three reuse alternatives and a "no action" alternative. An NCEL Community Reuse Plan, developed by the City of Port Hueneme, shall constitute the preferred alternative. The Reuse Plan identifies a mix of three land use types: approximately 22 acres designated for coastal oriented use (such as aquaculture, marine education and training, research and development), 8 acres designated for port-related use (such as container and break-bulk cargo storage, warehousing and distribution of goods) and 3 acres for retention and enhancement of the public access to the Pacific coast shoreline. The second alternative identifies two land use types: approximately 30 acres designated for port-related industrial use and 3 acres public access to the Pacific coast shoreline. The third alternative identifies four land use types: approximately 11 acres designated for aquaculture and commercial visitor-serving (i.e., restaurant), 11 acres designated for educational and recreational, 8 acres designated for port-related uses, 3 acres for public access to the Pacific coast shoreline. The "no action" alternative would consist of federal government retention of the property in an "inactive" status.

Federal, state and local agencies, and interested individuals are encouraged to participate in the scoping process for the EIS to determine the range of issues and reuse alternatives to be addressed. A public scoping meeting to receive oral and written comments will be held on

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March 23, 1995, at 7:30 p.m., in the Port Hueneme City Hall, located at 250 North Ventura Road, Port Hueneme, California. In addition, written comments may be submitted within 30 days of the published date of this notice to Ms. Mary Doyle, Environmental Planning Branch (Code 09F2), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3024, fax (415) 244–3737. For further information regarding the Port Hueneme NCEL Community Reuse Plan, please contact Mr. Thomas Figg, Director of Community Development, 250 North Ventura Road, Port Hueneme, California 93041, telephone (805) 986–6514.

Dated: March 3, 1995.

M.D. Schetzsle,

Lt, JAGC, USNR, Alternative Federal Register Liaison Officer.

[FR Doc. 95–5648 filed 3–7–95; 8:45 am]

BILLING CODE 3810–FF–M

Notice of Intent To Prepare an Environmental Impact Statement for the Shock Testing of the Seawolf Submarine

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of shock testing the SEAWOLF Submarine at a site to be located off the east coast of the United States.

Pursuant to 40 CFR 1501.6, the National Marine Fisheries Service (NMFS) will be a cooperating agency in the preparation and development of the EIS.

A "shock test" is the name given to a series of underwater detonations that are used to propagate a shock wave through a ship's hull (similar to those encountered in combat). It is required to test the hull, all ship systems, and crew survivability of each new class of Navy ships. This test provides important information which will be used to improve the initial design and enhance the effectiveness and overall survivability of the ship and crew. The improvements are applied to follow-on ships of that class. The shock test of the lead ship of the class is an integral part of the Live Fire Test (LFT) Program mandated by Congress. Shock tests have proven their value as recently as the Persian Gulf War when ships were able to survive battle damage and continue their mission because of ship design, crew survivability, and crew training lessons learned during previous shock tests.

The proposed action would subject the SEAWOLF submarine to a total of five explosive charges, 10,000 lbs. each, while monitoring the results. The decision to be addressed in the Environmental Impact Statement is the siting of shock test. Important logistical considerations include: a Naval base proximate to the test location, and water depth of 500 feet, which, for the sites being considered, range from 70 to 100 miles offshore. The shock test is proposed to occur over a five week period between April 1 and October 1, of 1997.

Alternative sites that would be considered include a number of different sites off the eastern U.S. coast. These areas are off the coast of Norfolk, Virginia, and Jacksonville, Florida, due to the existence of supporting Naval Bases at those sites. The "no action" alternative of not conducting the shock test will be addressed in the EIS.

Physical and biological issues that will be addressed in the EIS include impacts on air and water resources, impacts to other uses of the area, and impacts to marine life including marine mammals and endangered and threatened species.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold three public scoping hearings to receive comments from the public on the proposed action. The first hearing will be held on March 23, 1995, at 10 a.m., in the auditorium of NMFS Office, 1335 East-West Highway, Silver Spring, Maryland. The second meeting will be on March 28, 1995, at 7 p.m., in the auditorium of the Granby High School, 701 Granby Street, Norfolk, Virginia. The last meeting will be on March 29, 1995, at 7 p.m., in the cafeteria of the Mayport Middle School, 2600 Mayport Road, Atlantic Beach, Florida. The meeting will be advertised in area newspapers.

A brief presentation will precede the request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than May 1, 1995 to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010 (Attention: Mr. Will Sloger, Code 064WS), telephone 803–743–0797, FAX 803–743–0993.

Dated: March 3, 1995.

M.D. Schetzsle,

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–5647 Filed 3–7–95; 8:45 am]

BILLING CODE 3810–FF–M

Notice of Public Hearing for the Draft Environmental Impact Statement for Seawolf Class Submarine Homeporting on the East Coast of the United States

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the US Environmental Protection Agency, the Draft Environmental Impact Statement (DEIS) for SEAWOLF Class Submarine Homeporting on the East Coast of the United States. The DEIS addresses the need, alternatives, and environmental consequences of homeporting three SEAWOLF Class submarines at three submarine facilities including the Naval Submarine Base New London, Groton CT; the Naval Submarine Base Kings Bay GA, and the Naval Station Norfolk VA. The Naval Submarine Base New London has been identified as the preferred alternative.

Dredging and the disposal of dredged material are required for SEAWOLF homeporting at each of the candidate homeports and have been identified as the significant issues of environmental concern. The DEIS quantifies and characterizes the dredge material and disposal options at each homeport alternative.

The DEIS has been distributed to various federal, state and local agencies, elected officials, special interest groups, the media, and concerned citizens. Copies of the DEIS have also been placed in local libraries in Connecticut, Virginia, and Georgia. A limited number of single copies are available at the address at the end of this announcement.

The Department of the Navy will hold four public hearings to inform the public of the DEIS findings and to solicit comments. The first meeting will be held on Monday, March 27, 1995 beginning at 1:00 PM in the Groton Municipal Building, Groton, Connecticut. The Groton Municipal Building is located at 295 Meridian Street. The second meeting will be held on Tuesday, March 28, 1995 beginning at 7 pm at the same location, the Groton Municipal Building. These meetings will be co-chaired by the New England Division, U.S. Army Corp of Engineers. The third meeting will be held on Wednesday, March 29, 1995 beginning at 7 pm at the Airport Hilton, Norfolk, Virginia. The Hilton is located at 1500 North Military Highway and Northhampton Avenue. The fourth meeting will be held on Thursday, March 30, 1995 beginning at 7 pm at Crooked River Elementary School, St Marys, Georgia. The school is located at 1820 Spur 40.

The public hearings will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearings. Oral statements will be heard and transcribed by a stenographer; however, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this action and will be given equal consideration.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing(s) and submitted in writing either at the hearing(s) or mailed to the address listed at the end of this notice. Written comments on the DEIS should be mailed to the address noted below and must be postmarked not later than April 10, 1995 to be part of the official record.

Additional information may be obtained by contacting Mr. Robert Ostermueller (Code 202) Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, PA 19113, telephone 610–595–0759.

Dated: March 3, 1995.

M.D. Schetzsle,

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–5646 Filed 3–7–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Urban Community Service Program

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary announces a competitive funding priority to focus funds for new urban community service projects on communities designated as Empowerment Zones (EZs) or Enterprise Communities (ECs) by the Department of Housing and Urban Development (HUD). Under the competitive funding priority, the Secretary awards five (5) additional points to an application that meets the priority.

EFFECTIVE DATE: This priority takes effect April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Sarah Babson, U. S. Department of Education, 600 Independence Avenue, SW (Portals C–80), Washington, DC 20202–5329. Telephone: (202) 260–3472. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background on the Empowerment Zone and Enterprise Community Initiative

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. It promotes comprehensive economic and community development through strategic planning. On December 21, 1994, the President announced the designation of six urban Empowerment Zones, two urban Supplemental EZs, 65 urban Enterprise Communities, and four Enhanced urban ECs. These areas will benefit from flexible social service block grants and tax breaks in accordance with Internal Revenue Code section 1392, as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Urban Empowerment Zones and Enterprise Communities were nominated by one or more local governments and their States and have been designated by HUD on the basis of the quality of their strategic plans. Interested individuals may contact HUD at 1–800–998–9999 for additional information on the Empowerment Zone and Enterprise Community program, including which communities have been selected for designation.

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative through the Urban Community Service Program by giving preference to proposed projects which are located in urban Empowerment Zones and Enterprise Communities. A list of the designated Empowerment Zones and Enterprise Communities will be included in the application package. The program's emphasis on coordinated planning to meet pressing urban needs makes it ideally suited to play a key role in the Empowerment Zone and Enterprise Community program.

Background on the Urban Community Service Program

The Urban Community Service Program is authorized under Title XI of the Higher Education Act of 1965, as amended. It uses the skills, experience and resources of institutions of higher education to help public and private organizations devise and carry out solutions to pressing and severe problems in their urban communities. The program makes discretionary grants of up to five years in duration to support collaborative projects that address problems confronting urban communities, ranging from work force preparation, economic development, urban poverty, crime, lack of health care services and access, underperforming school systems and students to urban housing and infrastructure deficits. Recipients may use program funds to carry out a variety of activities, such as planning, applied research, training, resource exchanges or technology transfers, delivery of services and other activities that the urban institution and its community partners agree have high priority.

Only institutions of higher education which have been designated as urban grant institutions are eligible to apply for funding. A designated urban grant institution has demonstrated to the Secretary that (a) it is a nonprofit municipal university established by the governing body of the city in which it is located and operating as of July 23, 1992, or that (b) it is an institution of higher education which meets all of the following criteria (a consortium of institutions is also eligible if at least one of its members meets all of the criteria). The institution—(1) is located in an urban area; (2) draws a substantial portion of its undergraduate student body from the urban area in which it is

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located or from contiguous areas; (3) carries out programs to make postsecondary educational opportunities more accessible to residents of the urban area or contiguous areas; (4) has the present capacity to provide resources pertinent to the needs and priorities of the urban area or contiguous areas; (5) offers a range of professional, technical or graduate programs sufficient to sustain the capacity of the institution to provide these resources; and (6) has demonstrated and sustained a sense of responsibility to the urban area and adjoining areas and the people in those areas.

On August 29, 1994 the Secretary published a notice of proposed priority for this program in the **Federal Register** (59 FR 44580).

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under the FY 1995 competition will be published in the **Federal Register** at a later date.

Analysis of Comments

Two parties submitted comments in response to the Secretary's invitation in the notice of proposed priority. An analysis of the comments follows:

Comment: One party commented that designations will be limited due to funding restraints and suggested expanding the definition of designated Empowerment Zones and Enterprise Communities to include areas that submitted Empowerment Zone and Enterprise Community designation requests.

Discussion: The Secretary believes that the Urban Community Service Program would be most effective in communities that are actually designated and have embarked on implementing their strategic plans.

Change: None.

Comment: The second party suggested giving a competitive preference to proposals that show partnerships with AmeriCorps.

Discussion: The program regulations already give an absolute preference (34 CFR 636.23) to applications that propose to conduct joint projects with other Federal, State or local programs. This would include partnerships with AmeriCorps. AmeriCorps is a new national initiative to foster community-based service and includes a wide variety of programs operated by grantees, the National Civilian Community Corps and Volunteers in Service to America (VISTA).

Change: None.

Priority

Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference to applications that meet the following priority:

Projects that use 75 percent or more of the project budget to address pressing and severe problems in an Empowerment Zone or Enterprise Community.

The proposed project must contribute to the strategic plan of the Empowerment Zone or Enterprise Community and be made an integral component of the Empowerment Zone or Enterprise Community activities. The Secretary awards five points to an application that meets this priority. These points will be added to any points the application earns under the selection criteria for the program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on procedures developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR Part 636.

Program Authority: 20 U.S.C. 1136–1136h.

Dated: March 2, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–5591 Filed 3–7–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Community Outreach

Pre-Application Conference and Notice of Availability of Cooperative Agreement Solicitation to Establish and Support the International Center for Applied Research (ICAR)

AGENCY: U.S. Department of Energy (DOE), Savannah River (SR) Office.

ACTION: Notice of pre-application conference and availability of grant solicitation.

SUMMARY: The U.S. Department of Energy (DOE) at SR is announcing a Pre-Application Conference for organizations wishing to be considered as the entity to establish and support the ICAR. The conference is scheduled for April 11, 1995 at the Savannah River Site (SRS), Aiken, SC, commencing at 8:30 a.m. and completing by 5 p.m. In addition to discussion regarding the objectives of ICAR and the criteria which will be used to select the ICAR Manager, the conference will also offer a tour of the Savannah River Technology Center whereby participants will have the opportunity to become familiar with available technologies. A solicitation for the ICAR Manager will be made available on or about March 20, 1995; applications are expected to be due May 11, 1995. Interested parties should note that funds are not presently available for this project.

SUPPLEMENTARY INFORMATION: ICAR is intended to facilitate private and public sector access to the technical and scientific capabilities of the SRS. ICAR will be responsible for organizational support (including incubation, maturation, and commercialization) for various technologies, to be identified through separate solicitations, that are available at SRS for development of commercial products and services. ICAR is to be established at or adjacent to the SRS and is to operate under a cooperative agreement with the DOE.

The objectives of ICAR are:

(1) To stimulate economic development in the regional area through the application of science and technology.

(2) To establish a technology development and incubation center utilizing SRS technologies and processes.

(3) To promote as a minimum, activities related to the following:

—The application in the United States of hydrogen technology research derived from tritium production;
—The development of beneficial uses of nuclear materials;
—The research and development of innovative methods for the treatment and disposal of nuclear materials; and
—Bioremediation of environmental hazards.

(4) To leverage applied research activities (of the nature listed above) to provide maximum dual-use benefit for the Government.

The ICAR Manager must be a non-profit entity or a consortium of non-profits chartered to accomplish economic development through applied science and technology. The ICAR Manager must have also demonstrated experience in management of diverse teams of organizations who have technical experience in industrial research and development of high-technology programs.

The estimated federal funding for ICAR management and technical programs is $12M in FY95; however, award of the cooperative agreement is subject to availability of funds. Interested parties should note that funds are not presently available for this project. The costs for the management and operating function should not exceed one quarter of the total available funding. Those who submitted an Expression of Interest (EOI) in response to the Department's November 1994 request for EOI's will automatically receive a copy of the solicitation. Notification to attend the conference and/or requests for copies of the solicitation should be received in writing or be transmitted via facsimile to (803) 725–8573 no later than close of business (4:00 p.m. Eastern Standard Time) March 15, 1995. Requests or notifications should be sent to Ms. Angela Sistrunk, Contracts Division, U.S. Department of Energy, P.O. Box A, Aiken, SC 29802. Telephonic requests will not be accepted.

Issued in Aiken, S.C., on February 22, 1995.

Robert E. Lynch,

Head of Contracting Activity Designee, Contracts Division, Savannah River Operations Office.

[FR Doc. 95–5661 Filed 3–7–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP95–220–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

March 1, 1995.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP95–220–000]

Take notice that on February 23, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–220–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate a new delivery point located on a platform in state waters, Timbalier Bay, LaFourche Parish, Louisiana (Caillou Island Platform), to supply natural gas to Union Oil Company of California (Unocal) for gas-lift purposes under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install on Tennessee's existing right-of-way a 2-inch side valve assembly between an existing 6-inch block valve and check valve and inspect Unocal's installation of the interconnecting piping and buy-back meter on the Caillou Island Platform. Tennessee states that Tennessee would install, own, operate and maintain the tie-in assembly and would operate the measurement facility. Unocal would install, own, operate and maintain the interconnect piping and install, own and maintain the measurement facility, it is indicated. Tennessee states that the estimated cost to install these facilities is $7,700, for which Tennessee would be reimbursed by Unocal. Tennessee states that the volumes to be delivered to Unocal after the delivery point is established would not exceed the total quantities authorized to be delivered and would have no impact on Tennessee's peak day and annual deliveries. National states that the addition of the new delivery point is not prohibited by Tennessee's existing tariff and Tennessee has sufficient capacity to accomplish deliveries at the new delivery point without detriment or disadvantage to Tennessee's other customers.

Comment date: April 17, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Co.

[Docket No. CP95–226–000]

Take notice that on February 24, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944 filed, in Docket No. CP95–226–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon one 149-horsepower compressor engine at the Left Hand Field No. 2 Compressor Station (Left Hand Field), located in Kiowa County Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the 149-horsepower compressor unit installed at Left Hand Field in 1979 is a single stage unit and low suction pressure is causing excessive vibration. CIG notes that the compressor is utilized to compress natural gas supplies from the Cavalry and Buscadero Fields to CIG's 20-inch transmission line. CIG indicates that the unit proposed to be abandoned will be replaced by a two-stage 123-horsepower unit to be installed at the existing site pursuant to the provisions and authority of CIG's blanket certificate issued in Docket No. CP83–21–000.

CIG asserts that the removal and replacement of the compressor unit will not affect the existing land use nor affect CIG's system design capacity or operation.

Comment date: March 22, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP95–227–000]

Take notice that on February 24, 1995, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–227–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sales service provided to its customers under Rate Schedule FS-G, to be effective November 1, 1994, which was authorized in Docket No. RS92–86–000 et al., all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco states that on March 3, 1993, it filed a revised Order No. 636 compliance filing in Docket Nos. RS92–86, RP92–137 and RP92–108 in which it proposed to eliminate bundled sales service to small customers under Rate Schedules G and OG and to replace that bundled service with (1) an unbundled firm transportation service under new Rate Schedule FT-G and (2) for those customers that elected FT-G service, an optional sales service under new Rate Schedule FS-G, to be available for a one-year period. Transco states that this service was approved for a period of one year by Commission order issued on October 4, 1993, in Docket Nos. RS92–86–000 et al. implementing Rate Schedule FS-G to become effective November 1, 1993. Transco further states that in compliance with the revised compliance filing, each Rate Schedule G or OG customer that elected Rate Schedule FS-G service had the option ninety days prior to the end of the one-year period to submit to Transco a one-time nomination specifying the portion, if any, of Rate Schedule FS-G sales service to be converted to Rate Schedule FS. Transco states that by August 1, 1994, ninety days prior to the termination date, no FS-G customer had elected to convert any of its FS-G entitlements to service under Rate Schedule FS, and that by letter dated September 6, 1994, Transco requested that each FS-G customer submit an election form confirming that they declined to convert all or part of their FS-G sales entitlement to transportation

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service under Rate Schedule FS. Transco states that eight out of ten customers declined to convert their service and the remaining two customers verbally confirmed their election not to convert.

Transco states that even though it believes it to be clear that the Commission contemplated that the one-year cost-based sales service to small customers, as embodied in Transco's Rate Schedule FS-G, would terminate automatically, Section 6 of Rate Schedule FS-G, as approved by the Commission, states that "* * * [s]ervice under this Rate Schedule is subject to the abandonment requirements of Section 7(b) of the Natural Gas Act." Accordingly, Transco requests authorization to abandon all service under its Rate Schedule FS-G and requests that such abandonment be made effective November 1, 1994.

Transco states that the subject application is the result of and consistent with Article II of Transco's Rate Schedule FS-G service agreements and with the provisions of Order No. 636, both of which clearly viewed service under Rate Schedule FS-G to be interim service available only for a period of one year.

Comment date: March 22, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Mississippi River Transmission Corp.

[Docket No. CP95–228–000]

Take notice that on February 27, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP95–228–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act to construct and abandon facilities necessary to modernize and improve the reliability of its Main Line System, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT states because of safety, system reliability and increasing operating cost concerns, MRT is proposing to implement the first portion of a 16-year system modernization program. MRT proposes in the first phase of the program to add compression at its Biggers and Tuckerman Compressor Stations, retire certain compressor engines at these compressor stations, and retire approximately 93 miles of its Main Line No. 1. It is indicated that, as a consequence of these additions and abandonments, MRT would also need to reconfigure the station piping at its Biggers, Tuckerman and Diaz Compressor Stations, and relocate interconnections serving 13 delivery points to other main line facilities.

MRT estimates construction costs during 1995 of $6.7 million and during 1996 of $7.2 million, to be financed with internally generated funds. MRT states that the proposed construction and abandonment would not affect the capacity of its Main Line System and would not affect service to any existing customer.

Comment date: March 22, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5622 Filed 3–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–115–002]

CNG Transmission Corp.; Notice of Compliance Filing

March 2, 1995.

Take notice that on February 27, 1995, CNG Transmission Corporation (CNG) pursuant to Section 4 of the Natural Gas Act, Section 154.63 of the Commission's Regulations, and the Commission's January 27, 1995, order in the referenced proceeding (Suspension Order), filed the following proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on February 1, 1995:

Substitute Sixth Revised Sheet No. 32
Substitute Sixth Revised Sheet No. 33

The Suspension Order accepted and suspended CNG's filing, allowing CNG's tariff sheets to become effective, subject to refund, and subject to three conditions: (1) CNG was required to provide an explanation of its agreement with Transcontinental Gas Pipe Line Corporation (Transco); (2) CNG was required to provide an explanation of its proposed exclusion of FTY-GSS and FTNN–GSS customers from operation of the Account No. 858 component of the stranded cost surcharge; and (3) CNG was required to provide work papers that detail the derivation of its billing determinants.

CNG states that its filing complies with each of the three conditions. In partial response to the Commission's second condition, CNG's filing would revise its tariff sheets to require its FT–GSS and FTNN–GSS customers to pay the Account No. 858 component of the stranded cost surcharge.

CNG states that it has posted and served its filing in accordance with the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.214 and 385.211). All motions or protests should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5599 Filed 3–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–182–007 and RP95–103–000]

Florida Gas Transmission Co.; Notice of Rescheduling of Technical Conference

March 2, 1995.

The Commission previously an order in the captioned proceeding establishing a technical conference to be held on March 22, 1994, regarding Florida Gas Transmission Company's proposed changes to its operating conditions. At the request of several interested parties the conference is rescheduled for 10:00 a.m. Thursday, March 23, 1995, at 810 First Street, N.E., Washington, D.C., in a room to be designated at that time. Any questions concerning the conference should be directed to John M. Robinson (202) 208–0808, or Kerry Noone (202) 208–0285.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5594 Filed 3–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–93–006]

K N Interstate Gas Transmission Co.; Notice of Revised Compliance Filing

March 2, 1995.

Take notice that on February 27, 1995, K N Interstate Gas Transmission Co. (KNI) tendered for filing revised tariff sheets in compliance with the Commission's February 10, 1995 Letter Order in the referenced proceeding. KNI states that the tariff sheets reflect revised pagination and correction of a typographical error.

KNI states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5596 Filed 3–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–111–001]

Northwest Pipeline Corp.; Notice of Compliance Report

March 2, 1995.

Take notice that on February 27, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing with the Federal Energy Regulatory Commission (Commission) a report in the above referenced docket.

Northwest states that the purpose of this filing is to comply with the Commission's letter order issued January 27, 1995 in Docket No. RP95–111–000 (Order). On December 29, 1994, Northwest proposed to direct bill the Account No. 191 amounts listed on Second Revised Sheet No. 292 to its Converting Customers. This tariff sheet was accepted subject to refund and conditions. The Order requires Northwest to show how the $17,955 debited to its Account No. 191 and included in the amounts listed on Second Revised Sheet No. 292 ties to the refund report accepted in Docket No. TM91–6–37–004.

Northwest states that a copy of this filing has been served upon each of Northwest's affected former jurisdictional sales customers, upon all intervenors in Docket No. RP95–111–000, and upon relevant state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5598 Filed 3–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–325–000]

Panhandle Eastern Pipe Line Co.; Notice of Informal Settlement Conference

March 2, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, March 9, 1995, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact J. Carmen Gastilo, (202) 208–2182 or Kathleen M. Dias, (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5597 Filed 3–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST95–1081–000 et al.]

Rocky Mountain Natural Gas Co.; Notice of Self-Implementing Transactions

March 1, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

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The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's regulations and Section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's regulations and Section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and Section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A "K–S " indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.*	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST95–1081	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp.	01–04–95	G–HT	1,500	N	I	06–01–94	Indef.
ST95–1082	Transok, Inc	ANR Pipeline Co., et al.	01–04–95	C	2,000	N	I	12–01–94	Indef.
ST95–1083	Transok, Inc	ANR Pipeline Co., et al.	01–04–95	C	6,200	N	I	12–01–94	Indef.
ST95–1084	Colorado Interstate Gas Co.	Montana Power Co	01–04–95	B	7,000	N	F	12–20–94	10–31–04.
ST95–1085	Colorado Interstate Gas Co.	Holnam, Inc., Ideal Cement Division.	01–04–95	G–S	130	N	F	12–09–94	09–30–95.
ST95–1086	K N Interstate Gas Trans. Co.	Aquila Energy Marketing Corp.	01–04–95	G–S	100,000	N	I	12–08–94	Indef.
ST95–1087	K N Interstate Gas Trans. Co.	Pennzoil Gas Marketing Co.	01–04–95	G–S	5,000	N	I	12–02–94	Indef.
ST95–1088	K N Interstate Gas Trans. Co.	American Westex Gas Services Co.	01–04–95	G–S	250,000	A	I	12–02–94	Indef.
ST95–1089	K N Interstate Gas Trans. Co.	K W Gas Marketing, Inc.	01–04–95	G–S	250,000	A	I	12–02–94	Indef.
ST95–1090	K N Interstate Gas Trans. Co.	Cibola Corp	01–04–95	G–S	350	N	F	12–01–94	11–30–95.
ST95–1091	K N Interstate Gas Trans. Co.	NGC Transportation, Inc.	01–04–95	G–S	100,000	N	I	12–02–94	Indef.
ST95–1092	K N Interstate Gas Trans. Co.	Post Rock Gas, Inc	01–04–95	G–S	1,580	N	F	12–01–94	02–28–95.
ST95–1093	Northern Natural Gas Co.	Conagra Energy Services Co.	01–04–95	G–S	2,000	N	F	12–01–94	10–30–95.
ST95–1094	Northern Border Pipeline Co.	Progras U.S.A., Inc	01–04–95	G–S	50,000	N	I	12–01–94	10–31–01.
ST95–1095	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	01–04–95	G–S	39,077	A	F	12–09–94	Indef.
ST95–1096	Transcontinental Gas P/L Corp.	Sonat Marketing Co., et al.	01–04–95	G–S	20,000	N	I	12–11–94	Indef.
ST95–1097	Transcontinental Gas P/L Corp.	Appalachian Gas Sales.	01–04–95	G–S	120,000	N	I	12–05–94	Indef.
ST95–1098	Transcontinental Gas P/L Corp.	Atlanta Gas Light Co.	01–04–95	B	20,000	N	I	12–01–94	Indef.
ST95–1099	Williams Natural Gas Co.	Sun Gas Services	01–05–95	G–S	100,000	N	I	01–01–95	08–01–95

Docket No.*	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST95–1100	Williams Natural Gas Co.	Rangeline Corp	01–05–95	G–S	20,000	N	I	12–23–94	12–01–95.
ST95–1101	Panhandle Eastern Pipe Line Co.	Citizens Energy Services Corp.	01–05–95	G–S	35,000	N	I	12–09–94	08–22–96.
ST95–1102	Florida Gas Transmission Co.	Orlando Utilities Commission.	01–06–95	G–S	10,000	N	I	12–08–94	Indef.
ST95–1103	Columbia Gas Transmission Corp.	C & L Petroleum	01–06–95	G–S	6,400	N	I	11–01–94	Indef.
ST95–1104	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	01–06–95	G–S	10,600	Y	F	01–01–95	03–31–95.
ST95–1105	Columbia Gas Transmission Corp.	Latrobe Steel Co	01–06–95	G–S	2,500	N	F	01–01–95	Indef.
ST95–1106	Columbia Gas Transmission Corp.	Phibro Energy, Inc	01–06–95	G–S	N/A	N	I	01–01–95	Indef.
ST95–1107	Columbia Gas Transmission Corp.	Border Resources, Inc.	01–06–95	G–S	N/A	N	I	11–01–94	Indef.
ST95–1108	Columbia Gas Transmission Corp.	Arcadia Energy Corp.	01–06–95	G–S	1,000	N	I	01–01–95	Indef.
ST95–1109	Columbia Gas Transmission Corp.	Stand Energy Corp	01–06–95	B	160	N	I	01–01–95	Indef.
ST95–1110	Columbia Gas Transmission Corp.	Stand Energy Corp	01–06–95	G–S	1,000	N	F	01–01–95	03–31–95.
ST95–1111	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	01–06–95	G–S	35,000	Y	F	01–01–95	03–31–95.
ST95–1112	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	01–06–95	G–S	5,000	Y	F	01–01–95	03–31–95.
ST95–1113	Columbia Gas Transmission Corp.	Conoco, Inc	01–06–95	G–S	2,500	N	F	01–01–95	11–30–95.
ST95–1114	Columbia Gas Transmission Corp.	Volunteer Energy Corp.	01–06–95	G–S	1,000	N	F	01–01–95	02–28–95.
ST95–1115	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	01–06–95	G–S	2,000	Y	F	01–01–95	03–31–95.
ST95–1116	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	01–06–95	G–S	15,400	Y	F	01–01–95	03–31–95.
ST95–1117	Northern Natural Gas Co.	St. Croix Valley Natural Gas Co.	01–06–95	G–S	10,000	N	I	11–30–94	Indef.
ST95–1118	Columbia Gulf Transmission Co.	Alatenn Energy Marketing Co., Inc.	01–09–95	G–S	60,000	N	I	12–10–94	Indef.
ST95–1119	Columbia Gulf Transmission Co.	Exxon Corp	01–09–95	G–S	20,000	N	F	12–22–94	12–21–96.
ST95–1120	Northern Natural Gas Co.	Interlink, A Div. of Minnegasco.	01–09–95	G–S	20,000	N	F	12–15–94	02–15–95.
ST95–1121	Transwestern Pipeline Co.	Teco Gas Marketing	01–09–95	G–S	100,000	N	I	12–14–94	12–14–94.
ST95–1122	Transwestern Pipeline Co.	Meridian Oil Trading, Inc.	01–09–95	G–S	20,000	N	F	12–01–94	02–28–00.
ST95–1123	Kern River Gas Transmission Co.	HUB Services, Inc	01–09–95	G–S	200,000	N	I	12–09–94	Indef.
ST95–1124	Northwest Pipeline Corp.	Mid-America Pipeline Co.	01–09–95	G–S	3,150	N	I	10–01–94	Indef.
ST95–1125	Transcontinental Gas P/L Corp.	Encina Gas Marketing, Inc.	01–09–95	G–S	40,000	N	I	12–20–94	Indef.
ST95–1126	Florida Gas Transmission Co.	Associated Natural Gas, Inc.	01–10–95	G–S	100,000	N	I	12–09–94	Indef.
ST95–1127	Northwest Pipeline Corp.	City of Ellensburg	01–10–95	G–S	1,500	N	F	11–01–94	Indef.
ST95–1128	ONG Transmission Co.	Natural Gas P/L Co. of America.	01–10–95	C	10,000	N	I	01–01–95	Indef.

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Docket No.*	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST95–1129	Transok, Inc	ANR Pipeline Co., et al.	01–10–95	C	14,000	N	I	12–19–94	Indef.
ST95–1130	Transok, Inc	ANR Pipeline Co., et al.	01–10–95	C	1,000	N	I	12–22–94	Indef.
ST95–1131	Transok, Inc	ANR Pipeline Co., et al.	01–10–95	C	7,000	N	I	12–22–94	Indef.
ST95–1132	Transok, Inc	ANR Pipeline Co., et al.	01–10–94	C	1,000	N	I	12–22–94	Indef.
ST95–1133	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	01–10–95	C	8,000	N	I	12–10–94	Indef.
ST95–1134	Colorado Interstate Gas Co.	Barrett Resources Corp.	01–11–95	G–S	7,000	N	F	01–01–95	12–31–96.
ST95–1135	Cove Point LNG Limited Part.	Washington Gas Light Co.	01–11–95	B	300,000	N	I	12–12–94	09–01–95.
ST95–1136	Algonquin Gas Transmission Co.	Norther Utilities, Inc	01–11–95	B	127	N	F	12–13–94	Indef.
ST95–1137	Algonquin Gas Transmission Co.	North Attleboro Gas Co.	01–11–95	B	32	N	F	12–12–94	Indef.
ST95–1138	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	01–11–95	B	2,683	N	F	12–11–94	Indef.
ST95–1139	Tennessee Gas Pipeline Co.	Delta Natural Gas Co., Inc.	01–11–95	B	129	N	F	12–19–94	Indef.
ST95–1140	Tennessee Gas Pipeline Co.	Texas-Ohio Gas Inc	01–11–95	G–S	5,000	N	F	01–01–95	Indef.
ST95–1141	Tennessee Gas Pipeline Co.	Virginia Electric & Power Co.	01–11–95	G–S	5,000	N	F	01–01–95	Indef.
ST95–1142	Tennessee Gas Pipeline Co.	CO Energy Trading Co.	01–11–95	G–S	7,500	N	F	01–01–95	Indef.
ST95–1143	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	01–11–95	G–S	5,000	N	F	12–15–94	Indef.
ST95–1144	Questar Pipeline Co	Conoco, Inc	01–12–95	G–S	3,600	N	F	01–01–95	01–31–95.
ST95–1145	K N Interstate Gas Trans. Co.	Maxus Exploration Co.	01–12–95	G–S	50,000	N	I	01–01–95	Indef.
ST95–1146	K N Interstate Gas Trans. Co.	Premier Gas Co	01–12–95	G–S	20,000	N	I	12–02–94	Indef.
ST95–1147	Midwestern Gas Transmission Co.	Eastex Hydro-carbons, Inc.	01–12–95	G–S	10,000	N	F	12–29–94	Indef.
ST95–1148	Algonquin Gas Transmission Co.	Boston Gas Co	01–13–95	B	5,862	N	F	12–13–94	Indef.
ST95–1149	Algonquin Gas Transmission Co.	Providence Gas Co	01–13–95	B	79	N	F	12–14–94	Indef.
ST95–1150	Natural Gas P/L Co. of America.	Wisconsin Natural Gas Co.	01–13–95	G–S	2,000	N	F	12–15–94	11–30–95.
ST95–1151	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	01–13–95	C	40,000	N	I	12–21–94	Indef.
ST95–1152	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	01–12–95	B	1,451	Y	F	01–01–95	Indef.
ST95–1153	Columbia Gas Transmission Corp.	Catex Energy, Inc	01–12–95	G–S	1,000,000	N	I	07–20–94	Indef.
ST95–1154	Columbia Gas Transmission Corp.	New England Power Co.	01–12–95	G–S	200,000	N	I	01–01–95	Indef.
ST95–1155	Colorado Interstate Gas Co.	Montana Power Co	01–12–95	B	9,545	N	F	09–02–94	12–31–99.
ST95–1156	Kern River Gas Transmission Co.	KCS Energy Marketing, Inc.	01–13–95	G–S	75,000	N	I	12–17–94	Indef.
ST95–1157	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	01–13–95	G–S	15,000	N	F	12–15–94	Indef.
ST95–1158	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	01–13–95	G–S	20,000	N	I	12–16–94	Indef.
ST95–1159	Midwestern Gas Transmission Co.	Appalachian Gas Sales.	01–13–95	G–S	30,000	N	I	12–15–94	Indef.
ST95–1160	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	01–13–95	C	75,000	Y	I	12–14–94	Indef.
ST95–1161	Williams Natural Gas Co.	Texaco Gas Marketing, Inc.	01–17–95	G–S	5,000	N	I	09–01–94	12–31–95.
ST95–1162	Williams Natural Gas Co.	Texaco Gas Marketing, Inc.	01–17–95	G–S	25,000	N	I	09–01–94	12–31–95.
ST95–1163	K N Interstate Gas Trans. Co.	Anadarko Trading Co.	01–17–95	G–S	30,000	N	I	12–02–94	Indef.

Docket No.*	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST95–1164	Texas Eastern Transmisson Corp.	Providence Gas Co	01–17–95	G–S	5,001	N	I	12–17–94	Indef.
ST95–1165	Panhandle Eastern Pipe Line Co.	Interstate Gas Supply, Inc.	01–17–95	G–S	4,000	N	I	02–18–94	01–01–99.
ST95–1166	Panhandle Eastern Pipe Line Co.	Citizens Energy Services Corp.	01–17–95	G–S	1,857	N	I	11–01–94	10–24–96
ST95–1167	Northern Natural Gas Co.	Noram Energy Services, Inc.	01–17–95	G–S	100,000	N	I	01–04–95	Indef.
ST95–1168	Northern Natural Gas Co.	Utilicorp United Inc .	01–17–95	G–S	25,000	N	I	12–06–94	Indef.
ST95–1169	Northern Natural Gas Co.	Industrial Energy Applications Inc.	01–17–95	G–S	300	N	F	01–03–95	03–31–95.
ST95–1170	Tennessee Gas Pipeline Co.	Conoco, Inc	01–17–95	G–S	1,500	N	F	01–01–95	Indef.
ST95–1171	Tennessee Gas Pipeline Co.	Equitable Gas Co	01–17–95	G–S	8,047	N	F	01–01–95	Indef.
ST95–1172	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	01–17–95	G–S	10,000	N	F	12–31–94	Indef.
ST95–1173	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	01–17–95	G–S	5,000	N	F	12–15–94	Indef.
ST95–1174	Tennessee Gas Pipeline Co.	Coastal Gas Marketing Co.	01–17–95	G–S	3,200	N	F	01–01–94	Indef.
ST95–1175	Kern River Gas Transmission Co.	Southwest Gas Corp.	01–17–95	B	30,000	N	F	12–01–93	02–28–07.
ST95–1176	Great Lakes Gas Trans., L.P.	Aig Trading Corp	01–17–95	G–S	20,000	N	F	12–09–94	12–31–94.
ST95–1177	Northern Illinois Gas Co.	Natural G/P/L Co. of America, et al.	01–17–95	G–HT	3,510	N	I	12–30–94	01–04–95.
ST95–1178	Northern Illinois Gas Co.	Natural G/P/L Co. of America, et al.	01–17–95	G–HT	7,805	N	I	12–30–94	01–31–95.
ST95–1179	Midwestern Gas Transmission Co.	Appalachian Gas Sales.	01–18–95	G–S	10,000	N	F	01–01–95	Indef.
ST95–1180	Midwestern Gas Transmission Co.	Southern Indiana Gas & Electric Co.	01–18–95	G–S	2,111	N	F	01–11–95	Indef.
ST95–1181	Transcontinental Gas P/L Corp.	Cornerstone Gas Resources, Inc.	01–18–95	G–S	500,000	N	I	01–01–95	Indef.
ST95–1182	Transcontinental Gas P/L Corp.	J. Aron & Co	01–18–95	G–S	300,000	N	I	01–01–95	Indef.
ST95–1183	Transcontinental Gas P/L Corp.	Superior Natural Gas Corp.	01–18–95	G–S	400,000	Y	I	01–01–95	Indef.
ST95–1184	Transcontinental Gas P/L Corp.	Algonquin Gas Transmission Co.	01–18–95	G	3,900,000	N	I	12–22–94	Indef.
ST95–1185	Transcontinental Gas P/L Corp.	Cornerstone Gas Resources, Inc.	01–18–95	G–S	40,000	N	I	01–04–95	Indef.
ST95–1186	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	01–18–95	G–S	21,000,000	A	I	01–01–95	Indef.
ST95–1187	Transcontinental Gas P/L Corp.	Chevron U.S.A., Inc	01–18–95	G–S	50,000	N	I	01–01–95	Indef.
ST95–1188	Columbia Gas Transmission Corp.	Fellow McCord & Associates, Inc.	01–18–95	G–S	N/A	N	I	01–05–95	Indef.
ST95–1189	Sea Robin Pipeline Co.	Hadson Gas Systems.	01–18–95	G–S	10,000	Y	I	01–13–95	Indef.
ST95–1190	U–T Offshore System.	Transco Gas Marketing Co.	01–18–95	K–S	10,000	N	F	12–01–94	02–28–95.
ST95–1191	U–T Offshore System.	Vastar Gas Marketing, Inc.	01–18–95	K–S	10,997	N	F	12–01–94	12–31–94.
ST95–1192	U–T Offshore System.	Catex Vitol Gas Inc	01–18–95	K–S	9,500	N	F	12–01–94	12–31–94.
ST95–1193	U–T Offshore System.	Coast Energy Group	01–18–95	K–S	60,000	N	F	12–01–94	12–31–94.
ST95–1194	U–T Offshore System.	CNG Producing Co	01–18–95	K–S	45,000	N	F	12–01–94	12–31–94.
ST95–1195	U–T Offshore System.	Columbia Energy Services Corp.	01–18–95	K–S	20,000	N	I	12–01–94	12–01–95.
ST95–1196	High Island Offshore System.	Coastal Gas Marketing Co.	01–18–95	K–S	500	A	F	12–01–94	12–31–94.
ST95–1197	High Island Offshore System.	Columbia Energy Services Corp.	01–18–95	K–S	20,000	N	I	12–01–94	12–01–95.
ST95–1198	High Island Offshore System.	Coastal Gas Marketing Co.	01–18–95	K–S	5,000	A	F	12–01–94	12–30–94.

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ST95–1199	Northwest Pipeline Corp.	Washington Natural Gas Co.	01–18–95	G–S	178,905	N	F	11–02–94	Indef.
ST95–1200	Northwest Pipeline Corp.	Washington Natural Gas Co.	01–18–95	G–S	9,467	N	F	12–04–94	Indef.
ST95–1201	Northwest Pipeline Corp.	Intermountain Gas Co.	01–18–95	G–S	29,987	N	F	11–02–94	Indef.
ST95–1202	Northwest Pipeline Corp.	Intermountain Gas Co.	01–18–95	G–S	72,000	N	F	11–01–94	Indef.
ST95–1203	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	01–18–95	G–S	15,000	N	F	11–03–94	04–30–95.
ST95–1204	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	01–18–95	G–S	16,595	N	F	11–22–94	Indef.
ST95–1205	Northwest Pipeline Corp.	Northwest Natural Gas Co.	01–18–95	G–S	9,467	N	F	11–02–94	Indef.
ST95–1206	Northwest Pipeline Corp.	Northwest Natural Gas Co.	01–18–95	G–S	60,100	N	F	12–28–94	Indef.
ST95–1207	Northwest Pipeline Corp.	Washington Water Power Co.	01–18–95	G–S	2,623	N	F	11–02–94	Indef.
ST95–1208	Northwest Pipeline Corp.	Washington Water Power Co.	01–18–95	G–S	19,200	N	F	11–02–94	Indef.
ST95–1209	Northwest Pipeline Corp.	Washington Water Power Co.	01–18–95	G–S	76,200	N	F	11–02–94	04–30–95.
ST95–1210	Noram Gas Transmission Co.	City of Willow	01–19–95	G–S	200	N	F	09–01–94	Indef.
ST95–1211	Chandeleur Pipe Line Co.	Murphy Exploration and Prod. Co.	01–19–95	K–S	7,700	N	F	01–01–94	01–31–94.
ST95–1212	Chandeleur Pipe Line Co.	Murphy Exploration and Prod. Co.	01–19–95	K–S	6,600	N	F	12–01–94	12–31–94.
ST95–1213	Oasis Pipe Line Co	El Paso Natural Co., et al.	01–20–95	C	50,000	N	I	10–01–94	Indef.
ST95–1214	Houston Pipe Line Co.	Transco Energy Marketing Co.	01–19–95	G–I	100,000	N	I	12–01–94	Indef.
ST95–1215	Houston Pipe Line Co.	Transco Energy Marketing Co.	01–19–95	G–I	25,000	N	I	10–01–94	Indef.
ST95–1216	Houston Pipe Line Co.	Transco Energy Marketing Co.	01–19–95	G–I	25,000	N	I	11–01–94	Indef.
ST95–1217	Houston Pipe Line Co.	Black Marlin Pipeline Co., et al.	01–20–95	C	25,000	N	I	10–01–94	Indef.
ST95–1218	Houston Pipe Line Co.	Black Marlin Pipeline Co., et al.	01–20–95	C	5,000	N	I	10–01–94	Indef.
ST95–1219	Houston Pipe Line Co.	Black Marlin Pipeline Co., et al.	01–20–95	C	50,000	N	I	11–01–94	Indef.
ST95–1220	Midcon Texas Pipeline Corp.	Eastex Hydrocarbons, Inc.	01–19–95	G–I	5,000	N	I	12–21–94	Indef.
ST95–1221	Williston Basin Inter. P/L Co.	Montana-Dakota Utilities Co.	01–20–95	G–S	50,000	A	I	12–21–94	11–30–96.
ST95–1222	Williston Basin Inter. P/L Co.	Interenergy Resources Corp.	01–20–95	G–S	150,000	A	I	12–21–94	12–12–96.
ST95–1223	Kern River Gas Transmission Co.	Wasatch Oil & Gas Corp.	01–20–95	G–S	5,000	N	I	12–22–94	Indef.
ST95–1224	Columbia Gas Transmission Corp.	Suburban Natural Gas Co.	01–20–95	G–S	N/A	N	I	01–13–95	Indef.
ST95–1225	Columbia Gas Transmission Corp.	Virginia Gas Distribution Co.	01–20–95	B	1,000	N	I	01–01–95	Indef.
ST95–1226	Columbia Gas Transmission Corp.	Pennzoil Products ..	01–20–95	B	1,470	N	I	01–01–95	Indef.
ST95–1227	Columbia Gas Transmission Corp.	Inco Alloys International, Inc.	01–20–95	G–S	500	N	F	01–16–95	02–28–95.
ST95–1228	Equitrans, Inc	Energy Sales Co	01–23–95	G–S	700	N	F	12–08–94	11–30–99.
ST95–1229	Equitrans, Inc	Peoples Natural Gas Co.	01–23–95	G–S	2,239	N	F	01–05–95	03–31–03.
ST95–1230	Sea Robin Pipeline Co.	Challenger Minerals, Inc.	01–23–95	G–S	3,500	Y	I	01–19–95	Indef.
ST95–1231	Southern Natural Gas Co.	City of Talbotton	01–23–95	G–S	156	N	F	01–02–95	10–31–95.
ST95–1232	Williams Natural Gas Co.	Sun Gas Energy	01–23–95	G–S	5,000	N	I	12–01–94	11–30–95.

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ST95–1233	Williams Natural Gas Co.	Barrett Resources, Inc.	01–23–95	G–S	3,000	N	I	12–01–94	11–30–95.
ST95–1234	Williams Natural Gas Co.	Michael Stephen, Inc.	01–23–95	G–S	1,000	N	I	12–01–94	11–30–95.
ST95–1235	Williams Natural Gas Co.	Amoco Energy Trading.	01–23–95	G–S	5,000	N	I	11–01–94	11–01–95.
ST95–1236	Panhandle Eastern Pipe Line Co.	Mountain Iron & Supply Co.	01–23–95	G–S	1,075	N	F	01–01–95	12–31–95.
ST95–1237	Panhandle Eastern Pipe Line Co.	Nucor Steel, A Div. of Nucor Corp.	01–23–95	G–S	5,000	N	F	01–01–95	12–31–96.
ST95–1238	Panhandle Eastern Pipe Line Co.	Anadarko Petroleum Corp.	01–23–95	G–S	36,000	N	F	01–01–95	01–31–95.
ST95–1239	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	01–23–95	G–S	2,000	N	F	01–01–95	03–31–95.
ST95–1240	Panhandle Eastern Pipe Line Co.	Archer Daniels Midland Co.	01–23–95	G–S	25,000	N	F	01–01–95	03–31–96.
ST95–1241	Panhandle Eastern Pipe Line Co.	NGC Transportation, Inc.	01–23–95	G–S	500,000	N	I	01–01–95	04–30–98.
ST95–1242	Northern Border Pipeline Co.	Koch Hydrocarbon Co.	01–23–95	G–S	20,000	Y	I	12–21–94	02–29–96.
ST95–1243	Northern Natural Gas Co.	Enron Oil & Gas Co	01–23–95	G–S	100,000	Y	F	01–01–95	06–30–97.
ST95–1244	Lone Star Gas Co ..	El Paso Natural Gas Co., et al.	01–23–95	C	50,000	N	I	12–22–94	Indef.
ST95–1245	Tennessee Gas Pipeline Co.	Essex County Gas Co.	01–23–95	G–S	2,455	N	I	01–15–95	Indef.
ST95–1246	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp., et al.	01–23–95	G–HT	8,000	N	F	12–01–94	Indef.
ST95–1247	Columbia Gulf Transmission Co.	Arcadian Fertilizer LP.	01–23–95	G–S	80,000	N	I	01–17–95	Indef.
ST95–1248	Columbia Gulf Transmission Co.	Brymore Energy Corp.	01–23–95	G–S	10,000	N	I	01–17–95	Indef.
ST95–1249	Columbia Gulf Transmission Co.	C&L Petroleum Co .	01–23–95	G–S	15,000	N	I	01–18–95	Indef.
ST95–1250	Columbia Gulf Transmission Co.	El Paso Gas Marketing Co.	01–23–95	G–S	12,000	N	I	10–01–94	Indef
ST95–1251	Columbia Gulf Transmission Co.	Energy Source, Inc .	01–23–95	G–S	100,000	N	I	01–18–95	Indef.
ST95–1252	Columbia Gulf Transmission Co.	Interenergy Gas Services Corp.	01–23–95	G–S	10,000	N	I	01–18–95	Indef.
ST95–1253	Columbia Gulf Transmission Co.	Nycotex Gas Transport.	01–23–95	G–S	7,000	N	I	01–18–95	Indef.
ST95–1254	Columbia Gulf Transmission Co.	Parker & Parsley Development, L.P.	01–23–95	G–S	500	N	I	01–17–95	Indef.
ST95–1255	Columbia Gas Transmission Corp.	National Fuel Gas Supply Corp.	01–23–95	G	500	N	I	11–01–93	Indef.
ST95–1256	Columbia Gas Transmission Corp.	Sonat Marketing Co	01–23–95	G–S	100,000	N	I	01–01–95	Indef
ST95–1257	Columbia Gas Transmission Corp.	Eastex Hydrocarbons, Inc.	01–23–95	G–S	50,000	N	I	11–01–95	Indef.
ST95–1258	Koch Gateway Pipeline Co.	Enron Capital & Trade Res. Corp.	01–24–95	G–S	92,600	N	F	01–10–95	05–10–95.
ST95–1259	Koch Gateway Pipeline Co.	Chevron U.S.A. Inc	01–24–95	G–S	800	N	F	01–10–95	04–10–95.
ST95–1260	Koch Gateway Pipeline Co.	Western Gas Resources, Inc.	01–24–95	G–S	15,000	N	F	01–10–95	04–10–95.
ST95–1261	Koch Gateway Pipeline Co.	Koch Gas Services Co.	01–24–95	G–S	10,000	Y	F	01–10–95	01–10–96.
ST95–1262	Koch Gateway Pipeline Co.	LGS Natural Gas Co.	01–24–95	G–S	7,500	N	F	01–10–95	12–10–95.
ST95–1263	Koch Gateway Pipeline Co.	Mississippi Marketing, Inc.	01–24–95	G–S	N/A	N	I	01–06–95	Indef.
ST95–1264	Koch Gateway Pipeline Co.	Mangum Gas Marketing, Inc.	01–24–95	G–S	N/A	N	I	01–01–95	Indef
ST95–1265	Iroquois Gas Trans. System, L.P.	Gaz Metropolitain and Co., L.P.	01–24–95	G–S	10,000	N	F	12–15–94	04–01–95.
ST95–1266	Iroquois Gas Trans. System, L.P.	Gaz Metropolitain and Co., L.P.	01–24–95	G–S	10,000	N	F	12–15–94	03–01–96.

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ST95–1267	Iroquois Gas Trans. System, L.P.	CNG Energy Services Corp.	01–24–95	G–S	25,000	N	F	12–15–94	12–02–95.
ST95–1268	Iroquois Gas Trans. System, L.P.	Phibro Division of Salomon Inc.	01–24–95	G–S	15,000	N	F	12–15–94	04–01–95.
ST95–1269	Delhi Gas Pipeline Corp.	Southern California Gas Co., et al.	01–24–95	C	20,000	N	I	12–23–94	Indef
ST95–1270	CNG Transmission Corp.	CNG Energy Services.	01–24–95	G–S	16,600	N	F	01–01–95	02–28–95.
ST95–1271	CNG Transmission Corp.	Public Service Electric & Gas.	01–24–95	G–S	60,000	N	I	01–09–95	05–01–95.
ST95–1272	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	50,000	N	I	01–01–95	Indef.
ST95–1273	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	10,000	N	I	01–01–95	Indef.
ST95–1274	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	10,000	N	I	01–01–95	Indef.
ST95–1275	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	5,000	N	I	12–01–94	Indef.
ST95–1276	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	50,000	Y	I	01–01–95	Indef.
ST95–1277	Transok, Inc	Mississippi River TR. Corp., et al.	01–25–95	C	15,000	N	I	01–01–95	Indef.
ST95–1278	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	10,000	N	I	08–01–94	Indef.
ST95–1279	Transok, Inc	ANR Pipeline Co., et al.	01–25–95	C	50,000	Y	I	01–01–95	Indef.
ST95–1280	Granite State Gas Trans., Inc.	Northern Utilities, Inc.	01–25–95	B	3,800	N	I	10–01–94	09–30–95.
ST95–1281	Granite State Gas Trans., Inc.	Northern Utilities, Inc.	01–25–95	B	1,210	N	I	12–15–94	12–14–95.
ST95–1282	Panhandle Eastern Pipe Line Co.	ONG Transmission Co.	01–25–95	B	36,518	N	I	01–01–95	03–31–95.
ST95–1283	Panhandle Eastern Pipe Line Co.	Union Gas Limited ..	01–25–95	G–S	35,129	N	F	11–01–94	10–31–95.
ST95–1284	Noram Gas Transmission Co.	Delta, Inc. of Arkansas.	01–25–95	G–S	450	N	F	01–01–95	Indef.
ST95–1285	Noram Gas Transmission Co.	Winburn Tile Manufacturing.	01–25–95	G–S	240	N	F	01–01–95	Indef.
ST95–1286	Noram Gas Transmission Co.	Associated Gas Services, Inc.	01–25–95	G–S	7,500	N	F	12–28–94	Indef.
ST95–1287	Noram Gas Transmission Co.	Baptist Medical Center.	01–25–95	G–S	1,185	N	F	01–01–95	Indef.
ST95–1288	Noram Gas Transmission Co.	Medical Center of South Arkansas.	01–25–95	G–S	332	N	F	01–01–95	Indef.
ST95–1289	Noram Gas Transmission Co.	NGC Transportation, Inc.	01–25–95	G–S	25,000	N	F	12–13–94	Indef.
ST95–1290	Noram Gas Transmission Co.	Noram Energy Services, Inc.	01–25–95	G–S	30,000	N	F	01–01–95	Indef.
ST95–1291	Natural Gas P/L Co. of America.	Bethlehem Steel Corp.	01–25–95	G–S	30,000	N	F	01–05–95	04–30–95.
ST95–1292	Natural Gas P/L Co. of America.	American Energy Management, Inc.	01–25–95	G–S	10,000	N	I	01–11–95	Indef.
ST95–1293	Williams Natural Gas Co.	City Utilities of Springfield.	01–25–95	B	10,000	N	F	01–04–95	Indef.
ST95–1294	Stingray Pipeline Co	Tauber Oil Co	01–26–95	K–S	100,000	N	I	01–06–95	Indef.
ST95–1295	Transcontinental Gas P/L Corp.	Southern Connecticut Gas Co.	01–26–95	G–S	1,408	N	F	01–02–95	06–01–08.
ST95–1296	Transcontinental Gas P/L Corp.	Scana Hydrocarbons, Inc.	01–26–95	G–S	30,000	N	F	01–01–95	01–31–95.
ST95–1297	Channel Industries Gas Co.	Tennessee Gas Pipeline Co., et al.	02–02–95	C	100,000	Y	I	01–01–95	Indef.
ST95–1298	Panhandle Eastern Pipe Line Co.	Utilicorp United, Inc	01–27–95	G–S	50,000	N	I	01–06–95	03–31–99.
ST95–1299	Panhandle Eastern Pipe Line Co.	Bring Gas Services Corp.	01–27–95	G–S	50,000	N	I	01–04–95	10–31–96.
ST95–1300	Trunkline Gas Co	Bethlehem Steel Corp.	01–27–95	G–S	77,625	N	I	01–04–95	Indef.
ST95–1301	Trunkline Gas Co	H & N Gas, LTD	01–27–95	G–S	100,000	N	I	01–01–95	Indef.
ST95–1302	Trunkline Gas Co	Energy Development Corp.	01–27–95	G–S	77,625	N	I	01–01–95	Indef.
ST95–1303	Trunkline Gas Co	Cargill, Inc	01–27–95	G–S	100,000	N	I	01–10–95	Indef.

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ST95–1304	K N Interstate Gas Trans. Co.	Transok, Inc	01–27–95	B	50,000	A	I	12–02–94	Indef.
ST95–1305	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co., et al.	01–27–95	C	20,000	N	I	01–01–95	Indef.
ST95–1306	Cypress Gas Pipeline Co.	Columbia Gulf Trans. Co., et al.	01–27–95	C	15,000	N	I	01–01–95	Indef.
ST95–1307	Kentucky West Virginia Gas Co.	Foothills Natural Gas Co.	01–30–95	G–S	250	N	I	12–01–94	Indef.
ST95–1308	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	01–27–95	G–S	30,000	N	F	01–01–95	01–31–95.
ST95–1309	El Paso Natural Gas Co.	Valero Transmission, L.P.	01–27–95	B	50,000	N	I	12–31–94	Indef.
ST95–1310	Florida Gas Transmission Co.	Cornerstone Gas Resources.	01–27–95	G–S	24,000	N	I	01–01–95	Indef.
ST95–1311	Florida Gas Transmission Co.	Hardee Power Partners Limited.	01–27–95	G–S	62,500	N	I	01–01–95	Indef.
ST95–1312	Florida Gas Transmission Co.	James River Paper Co. Inc.	01–27–95	G–S	500	N	F	01–01–95	Indef.
ST95–1313	Texas Gas Transmission Co.	Coast Energy Group	01–30–95	G–S	30,000	N	I	01–10–95	Indef.
ST95–1314	Texas Gas Transmission Co.	Coast Energy Group	01–30–95	G–S	30,000	N	I	01–10–95	Indef.
ST95–1315	Texas Gas Transmission Co.	Coast Energy Group	01–30–95	G–S	21,000	N	I	01–10–95	Indef.
ST95–1316	Texas Gas Transmission Co.	Coast Energy Group	01–30–95	G–S	30,000	N	I	01–11–95	Indef.
ST95–1317	Texas Gas Transmission Co.	Mobil Natural Gas, Inc.	01–30–95	G–S	150,000	Y	I	01–06–95	Indef.
ST95–1318	El Paso Natural Gas Co.	MBR Resources, Inc.	01–30–95	B	5,150	N	I	01–01–95	Indef.
ST95–1319	El Paso Natural Gas Co.	Channel Gas Marketing Co.	01–30–95	G–S	77,250	N	I	01–01–95	Indef.
ST95–1320	Texas Gas Transmission Co.	Colonial Gas Co	01–30–95	G–S	6,984	N	I	01–04–95	Indef.
ST95–1321	Texas Gas Transmission Co.	North Attleboro Gas Co.	01–30–95	G–S	100	N	I	01–05–95	Indef.
ST95–1322	Texas Gas Transmission Co.	Columbia Gas Transmission Corp.	01–30–95	G	35,000	N	I	01–03–95	Indef.
ST95–1323	Texas Gas Transmission Co.	United Cities Gas Co.	01–30–95	G–S	15,000	N	I	01–03–95	Indef.
ST95–1324	Texas Gas Transmission Co.	Global Petroleum Corp.	01–30–95	G–S	75,000	N	I	01–20–95	Indef.
ST95–1325	Texas Gas Transmission Co.	Eastex Hydrocarbons, Inc.	01–30–95	G–S	100,000	N	I	01–01–95	Indef.
ST95–1326	Texas Gas Transmission Co.	Eastex Hydrocarbons, Inc.	01–30–95	G–S	100,000	N	I	01–03–95	Indef.
ST95–1327	Texas Gas Transmission Co.	1 Source Energy Services Co.	01–30–95	G–S	15,000	Y	F	01–01–95	Indef.
ST95–1328	Algonquin Gas Transmission Co.	Appalachian Gas Sales, Inc.	01–30–95	G–S	1,000	N	F	01–01–95	01–31–95.
ST95–1329	Algonquin Gas Transmission Co.	Global Petroleum Corp.	01–30–95	G–S	10,000	N	F	01–01–95	02–28–95.
ST95–1330	Algonquin Gas Transmission Co.	Seitel Gas & Energy Corp.	01–30–95	G–S	5,000	N	F	01–01–95	03–31–95.
ST95–1331	Algonquin Gas Transmission Co.	Transco Energy Marketing Co.	01–30–95	G–S	5,000	N	F	01–01–95	03–30–95.
ST95–1332	Kern River Gas Transmission Co.	Mountain Fuel Supply Co.	01–30–95	B	10,000	N	F	01–01–95	01–31–95.
ST95–1333	Kern River Gas Transmission Co.	Amoco Energy Trading Corp.	01–30–95	G–S	10,000	N	F	01–01–95	01–31–95.
ST95–1334	Natural Gas P/L Co. of America.	Catex Vitol Gas, Inc	01–30–95	G–S	20,000	N	F	01–01–95	01–31–95.
ST95–1335	Natural Gas P/L Co. of America.	Tejas Gas Pipeline Co.	01–30–95	B	15,000	N	I	01–01–95	Indef.
ST95–1336	Natural Gas P/L Co. of America.	Petro-Hunt Corp	01–30–95	G–S	50,000	N	I	01–01–95	Indef.
ST95–1337	Natural Gas P/L Co. of America.	Catex Vitol Gas, Inc	01–30–95	G–S	50,000	N	F	01–18–95	01–31–95.
ST95–1338	Texas Eastern Transmission Co.	Columbia Gas of Pennsylvania.	01–30–95	G–S	170,000	N	I	01–16–95	Indef.

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Docket No.*	Transporter/ seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST95–1339	Tennessee Gas Pipeline Co.	Global Petroleum	01–30–95	G–S	15,000	N	I	12–29–94	Indef.
ST95–1340	Iroquois Gas Trans. System, L.P.	Enron Gas Marketing Inc.	01–30–95	G–S	5,000	N	F	01–01–95	04–01–95.
ST95–1341	Iroquois Gas Trans. System, L.P.	Renaissance Energy (U.S.) Inc.	01–30–95	G–S	8,000	N	F	01–01–95	02–01–95.
ST95–1342	Iroquois Gas Trans. System, L.P.	A–G Energy, L.P	01–30–95	G–S	16,500	N	F	01–05–95	02–01–95.
ST95–1343	Iroquois Gas Trans. System, L.P.	Coenergy Trading Co.	01–30–95	G–S	5,000	N	F	01–01–95	02–01–95.
ST95–1344	Iroquois Gas Trans. System, L.P.	St. Lawrence Gas Co.	01–30–95	G–S	36,500	N	I	01–18–95	Indef.
ST95–1345	Iroquois Gas Trans. System, L.P.	Wickford Energy Marketing.	01–30–95	G–S	50,000	N	I	01–20–95	Indef.
ST95–1346	Iroquois Gas Trans. System, L.P.	Transco Gas Marketing Co.	01–30–95	G–S	5,000	N	F	01–01–95	04–01–95.
ST95–1347	Iroquois Gas Trans. System, L.P.	Catex Vitol Gas Inc	01–30–95	G–S	10,000	N	F	01–01–95	02–01–95.
ST95–1348	Texas Gas Transmission Corp.	City of Benton	01–31–95	G–S	250	N	F	01–01–95	Indef.
ST95–1349	Williston Basin Inter. P/L Co.	Koch Gas Services Co.	01–31–95	G–S	300	A	F	01–01–95	02–28–95.
ST95–1350	Williston Basin Inter. P/L Co.	Amerada Hess Corp	01–31–95	G–S	45,000	A	I	01–01–95	12–31–96.
ST95–1351	Williston Basin Inter. P/L Co.	Rainbow Gas Co	01–31–95	G–S	2,716	A	F	01–01–95	01–31–95.
ST95–1352	Williston Basin Inter. P/L Co.	Amoco Energy Trading Corp.	01–31–95	G–S	50,000	A	I	01–01–95	12–31–96.
ST95–1353	Williston Basin Inter. P/L Co.	Cenex, Inc	01–31–95	G–S	12,000	A	I	01–01–95	12–31–95.
ST95–1354	Williston Basin Inter. P/L Co.	Retex Gathering Co., Inc.	01–31–95	G–S	33,000	A	I	12–21–94	09–30–96.
ST95–1355	Williston Basin Inter. P/L Co.	Interenergy Resources Corp.	01–31–95	G–S	10,000	A	I	01–01–95	12–31–95.
ST95–1356	Kern River Gas Transmission Co.	Mountain Fuel Supply Co.	01–31–95	B	300,000	N	I	01–04–95	Indef.
ST95–1357	Tennessee Gas Pipeline Co.	Alatenn Energy Marketing Co.	01–31–95	G–S	2,000	N	F	01–02–95	Indef.
ST95–1358	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	01–31–95	G–S	7,500	N	F	01–01–95	Indef.
ST95–1359	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	01–31–95	G–S	18,000	N	F	01–01–95	Indef.
ST95–1360	East Tennessee Natural Gas Co.	Unicoi County Utility District.	01–31–95	G–S	4,120	N	F	01–01–95	Indef.
ST95–1361	East Tennessee Natural Gas Co.	Catex Energy, Inc ...	01–31–95	G–S	3,000	N	I	01–01–95	Indef.
ST95–1362	Great Lakes Gas Trans., L.P.	AIG Trading Corp ...	01–31–95	G–S	20,000	N	F	01–01–95	03–31–95.
ST95–1363	Great Lakes Gas Trans., L.P.	Michigan Consolidated Gas Co.	01–31–95	G–S	30,000	N	F	01–03–95	03–31–95.
ST95–1364	Great Lakes Gas Trans., L.P.	ANR Gas Supply Co.	01–31–95	G–S	50,000	Y	F	01–07–95	11–30–95.
ST95–1365	Trunkline Gas Co ...	Columbia Energy Services Corp.	01–31–95	G–S	20,000	N	I	01–01–95	Indef.
ST95–1366	Mississippi River Trans. Corp.	Seagull Marketing Services, Inc.	01–31–95	G–S	20,000	N	I	01–13–95	Indef.
ST95–1367	Mississippi River Trans. Corp.	Amoco Energy Trading Corp.	01–31–95	G–S	5,132	Y	I	01–01–95	Indef.
ST95–1368	Mississippi River Trans. Corp.	Sonat Marketing Co	01–31–95	G–S	50,000	N	I	01–18–95	Indef.
ST95–1369	Mississippi River Trans. Corp.	Associated Gas Services, Inc.	01–31–95	G–S	300,000	Y	I	01–05–95	Indef.
ST95–1370	Midwestern Gas Transmission Co.	Mobil Natural Gas Inc.	01–31–95	G–S	4,500	N	F	01–01–95	Indef.

*Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

**Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

***Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 95–5621 Filed 3–7–95; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. GT95–21–000]

Transcontinental Gas Pipe Line Corp.; Notice of Report of Refunds

March 2, 1995.

Take notice that on February 6, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing with the Federal Energy Regulatory Commission (Commission), its refund report made to comply with the Commission's order dated September 21, 1994, in Docket Nos. RP93–106–000, *et al.* TGPL received refunds from Texas Gas Transmission Corporation (Texas Gas), in connection with Texas Gas's settlement of various matters in Docket No. RP93–106–000, *et al.*

TGPL states that it refunded $3,995,416.17, including interest to its FT–NT customers on February 1, 1995 for the period November 1993 through September, 1994, as a result of the approved Texas Gas settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 and 385.214. All such motions or protests should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5595 Filed 3–7–95; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5165–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 7, 1995.

FOR FURTHER INFORMATION CONTACT: For further information or a copy call Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 0596.05.

SUPPLEMENTARY INFORMATION:

OFFICE OF PESTICIDES AND TOXIC SUBSTANCES

Title: Application and Summary Report for an Emergency Exemption for Pesticides. (EPA ICR No. 0596.05; OMB No. 2070–0032). This is a request to extend the expiration date of a presently approved collection.

Abstract: Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, the EPA may temporarily authorize states, territories, and Federal agencies to ship and use unregistered pesticides in emergency situations. To ensure that an emergency actually exists, and that use of the pesticide will not pose an unreasonable risk to human health or the environment, the EPA requires exemption applicants to explain the circumstances necessitating the emergency use and to provide details on the pesticide and its proposed application. Following the application of the pesticide, applicants must submit a report to the EPA describing the pesticide treatment and its effectiveness, as well as any adverse effects.

Burden Statement: The public burden for this collection of information is estimated to average 101 hours per response for reporting and 2 hours per recordkeeper annually. This estimate includes the initial request for an emergency exemption and the time needed to complete and submit the summary report after the pesticide application. Included in this estimate is also the time needed to review instructions, search existing data sources, gather and maintain data needed, and review the collection of information.

Respondents: States, territories and Federal agencies.

Estimated No. of Respondents: 300.

Estimated No. of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 30,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the collection of information, including suggestion for reducing the burden (please refer to EPA ICR # 0596.05 and OMB # 2070–0032) to:

Sandy Farmer, EPA ICR # 0596.05, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, OMB # 2070–0032, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: March 2, 1995.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 95–5589 Filed 3–7–95; 8:45 am]
BILLING CODE 6560–50–F

[OPP–34072; FRL–4940–6]

Reregistration Eligibility Decision Documents for Bentazon, et. al.; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Reregistration Eligibility Decision documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the active ingredients from Lists A and C, and this notice also starts a 60-day public comment period. The REDs for the chemicals listed are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by May 8, 1995.

ADDRESSES: Three copies of comments identified with the docket number "OPP–34072" and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall 2 (CM–2), 1921 Jefferson Davis Highway, Arlington, VA. E-mail inquiries may be addressed to: SRRD@CAIS.COM.

FOR FURTHER INFORMATION CONTACT: Technical questions on the listed decisions should be directed to the appropriate Chemical Review Managers:

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List	Chemical name	Case No.	Chemical review manager	Telephone No.
List A	Bentazon	Case 0182	Eric Feris	(703) 308–8048
List A	Difenzoquat	Case 0223	Andrew Ertman	(703) 308–8063
List A	Hexazinone	Case 0266	Andrew Ertman	(703) 308–8063
List A	Metalaxyl	Case 0081	Judy Loranger	(703) 308–8056
List A	Oryzalin	Case 0186	Judy Coombs	(703) 308–8046
List C	BHAP	Case 3032	Frank Rubis	(703) 308–8184
List C	Piperalin	Case 3114	Jean Holmes	(703) 308–8008

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at 703–308–7224, which also can be reached on the Internet via fedworld.gov and from EPA's gopher server, gopher.epa.gov.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete. EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

List of Subjects

Environmental protection.

Dated: March 2, 1995.

Peter Caulkins,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–5650 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4244/T670; FRL 4936–8]

E.I. du Pont de Nemours & Co., Inc; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide Staple *pyrithiobac-sodium* derived from its application in or on the raw agricultural commodity cottonseed at 0.02 parts per million (ppm).

DATES: This temporary tolerance expires March 31, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5540.

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours & Co., Inc., Barley Mills Plaza, Walker's Mill, P.O. Box 80038, Wilmington, DE 19880–0038, has requested in pesticide petition (PP) 3G4244, the establishment of a temporary tolerance for residues of the herbicide Staple *pyrithiobac-sodium* derived from its application in or on the raw agricultural commodity cottonseed at 0.02 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 352–EUP–162, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours & Co., Inc. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 31, 1997. Residues not in excess of this amounts remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–5400 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30381; FRL–4937–2]

FMC Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 7, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30381] and the registration/file number, attention Product Manager (PM) 23, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: PM 23, Joanne I. Miller, Rm. 237, CM #2, (703–305–7830).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included In Any Previously Registered Products

1. File Symbol: 279–GRUO Applicant: FMC Corporation, 1735 Market St., Philadelphia, PA, 19103. Product name: Sulfentrazone Technical. Herbicide. Active ingredient: Sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide at 91 percent. Proposed classification/Use: None. For formulating use only on soybeans. Type registration: Conditional. (PM 23)

2. File Symbol: 279–GRUA. FMC Corporation, 1735 Market St., Philadelphia, PA, 19103. Product name: Sulfentrazone 4F. Herbicide. Active ingredient: Sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide at 39.6 percent. Proposed classification/Use: None. For the control of broadleaf weeds, grasses, and sedge when applied preplant and preemergence on soybeans. Type registration: Conditional. (PM 23)

3. File Symbol: 279–GRUI. FMC Corporation. Product name: Sulfentrazone 75DF. Herbicide. Active ingredient: Sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide at 75 percent. Proposed classification/Use: None. For the control of broadleaf weeds, grasses, and sedge when applied preplant and preemergence on soybeans. Type registration: Conditional. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 14, 1995

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–5398 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4210/T671; FRL 4938–7]

Iprodione; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the fungicide Iprodione and its metabolite in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire April 15, 1996.

FOR FURTHER INFORMATION CONTACT By mail: Connie Welch, Product Manager

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(PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of October 27, 1993 (58 FR 57827), announcing the establishment of temporary tolerances for the combined residues of the fungicide Iprodione [3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide] and its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the raw agricultural commodities tangerines and tangelos at 3.0 parts per million (ppm). These tolerances were issued in response to pesticide petition (PP) 3G4210, submitted by Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 264–EUP–94, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc Ag Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 15, 1996. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–5401 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30382; FRL–4940–1]

Mycotech Corp.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application submitted by Mycotech Corporation to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 7, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30382] and the file number (65626–T), to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Janet L. Andersen, Acting Director, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703–308–8712).

SUPPLEMENTARY INFORMATION: EPA received an application from Mycotech Corp., 630 Utah Avenue, P.O. Box 4109, Butte, MT 59702, to register the pesticide product Mycotrol WP Biological Insecticide (EPA File Sybmol 65626–T), containing the active ingredient *Beauvaria bassiana* Strain GHA, an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is proposed for use to control whiteflies, aphids, thrips, fungus psyllids, and mealybugs on vegetables, fruits, tree nuts, agronomic crops, herbs, ornamentals, turf, and forestry. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 24, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–5397 Filed 3–7–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 95–26; FCC 95–59]

Notice of Order to Show Cause; Commercial Realty St. Pete, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice of order to show cause.

SUMMARY: Commercial Realty St. Pete, Inc. (Commercial Realty), an Interactive Video and Data Services (IVDS) auction bidder, and its principals are ordered to show cause why they should not be barred from participating in any future Commission auction and from holding any Commission licenses. The Commission has determined that Commercial Realty and its principals have engaged in serious misconduct that call into question their basic qualifications to be a Commission applicant or licensee. The hearing will examine the misconduct to determine whether the abuses and violations should prohibit Commercial Realty and its principals from participating in Commission auctions and from being Commission licensees.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph Weber, Enforcement Division, Wireless Telecommunications Bureau (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Order to Show Cause in WT Docket 95–26, adopted February 15, 1995, and released February 16, 1995.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Order to Show Cause

The Commission has determined that Commercial Realty engaged in misconduct during the Commission's IVDS auctions. The Commission has found that a written declaration submitted by Commercial Realty contained false information about Commercial Realty's financial qualifications. The Commission has also determined that inappropriately claimed a bidding credit as a woman-owned company. Finally, the Commission determined that James C. Hartley, one of Commercial Realty's principals, engaged in improper communications with other IVDS bidders.

Pursuant to Section 312 of the Communications Act of 1934, as amended, Commercial Realty, James C. Hartley, and Ralph E. Howe are ordered to show cause why they should not be barred from future Commission auctions and from holding Commission licenses based upon the following issues listed below:

(1)(a) The facts and circumstances surrounding the aforementioned Declarations submitted to the Commission by Commercial Realty St. Pete, Inc.;

(b) Whether Commercial Realty and/or its principals misrepresented facts, lacked candor, or attempted to mislead the Commission;

(c) Whether, based on the evidence adduced pursuant to 1 (a) and (b), above, Commercial Realty and/or its principals should be subject to a forfeiture up to the statutory limit pursuant to Section 503 of the Communications Act, as amended, 47 U.S.C. 503.

(d) Whether, based on the evidence adduced pursuant to 1 (a) and (b), above, Commercial Realty and/or its principals should be barred from future auctions and from holding Commission licenses.

(2)(a) The facts and circumstances surrounding Commercial Realty's claim of a bidding credit as a woman-owned small business at the IVDS auctions;

(b) Whether Commercial Realty and/or its principals misrepresented facts, lacked candor, or attempted to mislead the Commission in claiming a bidding credit as a woman-owned small business;

(c) Whether, based on the evidence adduced pursuant to 2 (a) and (b), above, Commercial Realty and/or its principals should be subject to a forfeiture up to the statutory limit pursuant to Section 503 of the Communications Act, as amended, 47 U.S.C. 503;

(d) Whether, based on the evidence adduced pursuant to 2 (a) and (b), above, Commercial Realty's and/or its principals' conduct in requesting said bidding credit as a woman-owned small business warrants barring Commercial Realty and/or its principals from future auctions and from holding Commission licenses;

(3) Whether Commercial Realty's and/or its principals' improper communication with Christopher Pedersen of Interactive America Corporation should bar Commercial Realty and/or its principals from future auctions and from holding Commission licenses;

(4)(a) The facts and circumstances surrounding the letter sent by facsimile to other successful IVDS auction bidders;

(b) The facts and circumstances surrounding the press release caused to be released by Commercial Realty on, or about, August 5, 1994;

(c) Whether, based on evidence adduced pursuant to 4 (a) and (b), above, Commercial Realty and/or its principals abused the Commission processes and should be subject to a forfeiture up to the statutory limit pursuant to Section 503 of the Communications Act, as amended, 47 U.S.C. 503;

(d) Whether, based on the evidence adduced pursuant to 4 (a) and (b), above, Commercial Realty and/or its prinicpals abused Commission processes and should be barred from future auctions and from holding Commission licenses;

(5) Whether, based on the totality of the evidence adduced pursuant to 1 (a) and (b), 2 (a) and (b), 3, and 4 (a) and (b), above, and the violations of the Commission's Rules established in the Notice of Apparent Liability for Forfeiture, File No. 519WT0002, Commercial Realty and/or its principals

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should be barred from future auctions and from holding Commission licenses.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5569 Filed 3–7–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

First Southern Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 31, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Southern Bancshares, Inc., Florence, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Southern Bank, Florence, Alabama, a *de novo* bank.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens Financial Corporation Employee Stock Ownership Plan, Fort Atkinson, Wisconsin; to acquire 47.6 percent of the voting shares of Citizens State bank, Fort Atkinson, Wisconsin, and thereby indirectly acquire Citizens Financial Corporation, Fort Atkinson, Wisconsin.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Tule Bancorp, Inc., Tulia, Texas, and thereby indirectly acquire First Tule Bancorp of Delaware, Inc., Wilmington, Delaware, and First Tule National Bank of Tulia, Tulia, Texas.

2. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of New Braunfels Bancshares, Inc., New Braunfels, Texas, and thereby indirectly acquire Citizens Bank, New Braunfels, Texas.

Board of Governors of the Federal Reserve System, March 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5603 Filed 3–7–95; 8:45 am]

BILLING CODE 6210–01–F

Larry D. Peterson; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Larry D. Peterson, Moose Lake, Minnesota; to acquire an additional 1.3 percent, for a total of 25.5 percent, of the voting shares of First Financial Services of Moose Lake, Inc., Moose Lake, Minnesota, and thereby indirectly acquire First National Bank of Moose Lake, Moose Lake, Minnesota.

Board of Governors of the Federal Reserve System, March 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5604 Filed 3–7–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Native American Working Group, in Association With the Meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public Meeting of the Native American Working Group (NAWG), in association with the meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee.

Time and Date: 1 p.m.–5 p.m., March 15, 1995.

Place: WestCoast Ridpath Hotel, 515 West Sprague Avenue, Spokane, Washington 99204, telephone (509) 838–2711, FAX (509) 747–6970.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use.

HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of NAWG is part of these efforts. NAWG will work with the Hanford Health Effects Subcommittee to provide input on Native American health effects at the Hanford, Washington, site.

Purpose: The purpose of this meeting of NAWG is to discuss Native American membership and participation on the Hanford Health Effects Subcommittee, government-to-government working relations with ATSDR and CDC, and issues related to site restoration and waste management options at the Hanford DOE site.

Matters to be Discussed: Agenda items will include options for other types of relationships between the tribes and ATSDR and CDC regarding the study of health effects from past, current, or future release of radioactive and hazardous materials into the environment at Hanford and proposed actions based on the findings of ATSDR and CDC health research and public health activities.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: March 1, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–5623 Filed 3–7–95; 8:45 am]

BILLING CODE 4163–70–M

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Dates: 8 a.m.–5 p.m., March 16–17, 1995.

Place: WestCoast Ridpath Hotel, 515 West Sprague Avenue, Spokane, Washington 99204, telephone (509) 838–2711, FAX (509) 747–6970.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Purpose: The purpose of this meeting is to continue the subcommittee's work to update the public on the status of ATSDR's and CDC's community involvement plans, health research, and public health activities and to provide advice to ATSDR and CDC concerning these plans.

Matters to be Discussed: The subcommittee will consider a number of items including ATSDR's medical monitoring options, ATSDR's planning for a medical assistance program, current ATSDR health assessment activities and solicitation of concerns the subcommittee wants ATSDR and CDC to address, and issues relating to HHES Operational Guidelines and future subcommittee activities.

Agenda items are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the meeting due to administrative delays which constitute an exceptional circumstance.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: March 1, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–5624 Filed 3–7–95; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

Twenty-Fifth National Meeting of the Public Health Conference on Records and Statistics and the National Committee on Vital and Health Statistics' 45th Anniversary Symposium; Meeting

The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Twenty-Fifth National Meeting of the Public Health Conference on Records and Statistics and the National Committee on Vital and Health Statistics' 45th Anniversary Symposium.

Times and Dates: 9 a.m.–5 p.m., July 17–19, 1995; 9 a.m.–1 p.m., July 20, 1995.

Place: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Status: Open to the public, limited only by the space available.

Preregistration is recommended; however, there is no registration fee. Information regarding registration may be obtained from the contact person listed below.

Purpose: Papers presented will address the theme, "Data Needs in an Era of Health Reform," and the agenda will focus on health statistics needed for health reform relative to emerging public health issues and vulnerable populations.

Matters To Be Discussed: Public health issues to be discussed will consist of emerging issues in public health and the potential of health reform for vulnerable populations: a challenge for public health. The symposium will address ways to improve our existing data infrastructure by highlighting both the opportunities and tensions between financially-oriented data and data needed by other parts of the health care system to evaluate health status, health outcomes, and health services utilization.

Contact Person For More Information: Substantive program and registration information for the meeting may be obtained from Barbara Butler, Public Health Conference on Records and Statistics, Office of Planning and Extramural Programs, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7122.

Dated: March 1, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–5620 Filed 3–7–95; 8:45 am]

BILLING CODE 4163–18–M

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Food and Drug Administration

[Docket No. 93N-0405]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Final Approval by the Committee on Food Chemicals Codex; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of certain new and revised Food Chemicals Codex monographs. These monographs have been approved by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee) for inclusion in the fourth edition of the Food Chemicals Codex, which is scheduled for release in March 1996. Until the fourth edition is published, copies of the monographs may be obtained upon request to NAS/IOM.

ADDRESSES: Submit written requests for copies of the Food Chemicals Codex monographs to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to NAS/IOM to support the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before the inclusion of any specifications in a Food Chemicals Codex publication, an announcement is published in the **Federal Register** inviting all interested parties to comment and to make suggestions for consideration.

In the **Federal Register** of January 4, 1994 (59 FR 307), FDA announced that the committee was considering several new monographs and monograph revisions. The following monographs have now been approved by the committee for inclusion in the fourth edition:

I. New Monographs

Acesulfame potassium
Glyceryl monooleate

II. Current Revised Monographs

Calcium carbonate (lead and heavy metals limits)
Caramel (numerous revisions)
Carnauba Wax

No changes from what was previously offered for public review in the **Federal Register** of January 4, 1994, resulted from comments received on these monographs. Individual copies of these monographs are available from NAS/IOM (address above) until the fourth edition of the Food Chemicals Codex is published in 1996.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new monographs and monograph revisions into FDA's regulations without ample opportunity for public comment. If FDA decides to propose the adoption of changes and new monographs that have received final approval by the committee, such opportunity for public comment will be announced in a notice published in the **Federal Register**.

Dated: February 26, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–5673 Filed 3–7–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Survey Report Form; *Form No.:* HCFA–1557; *Use:* This survey form is an instrument used by the State agency to record data collected in order to determine compliance with the Clinical Laboratory Improvement Amendments. This information is needed for laboratory certification and recertification; *Respondents:* Business or other for profit, Federal Government, State or local government; *Number of Respondents:* 30,225; *Total Annual Responses:* 30,225; *Total Annual Hours Requested:* 16,321.5.

2. *Type of Request:* Extension; *Title of Information Collection:* Clinical Laboratory Improvement Amendments Application forms; *Form Nos.:* HCFA–14 and –116; *Use:* The application must be completed by entities performing laboratory testing on human specimens for health purposes; *Respondents:* Business or other for profit, Federal Government, State or local government; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours Requested:* 20,000.

3. *Type of Request:* New; *Title of Information Collection:* Quality Assurance for Phase II of the Home Health Agency Prospective Payment Demonstration; *Form No.:* HCFA–R–74; *Use:* This instrument will be used to collect information to implement an outcome-based quality assurance program to monitor the quality of care provided by agencies participating in Phase II of the Home Health Agency Prospective Payment Demonstration; *Respondents:* Business or other for profit, nonprofit institutions; *Number of Respondents:* 29,427 (episodes); *Total Annual Responses:* 58,854; *Total Annual Hours Requested:* 10,152.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 27, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–5572 Filed 3–7–95; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Coagulation, Platelets and Thrombosis in Sickle Cell Disease.

Date: March 29, 1995.

Time: 8:30 a.m.

Place: Hyatt Regency, Bethesda, Maryland.

Contact Person: Dr. Lynn Amende, 5333 Westbard Avenue, Room 5A10, Bethesda, Maryland 20892, (301) 594–7480.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Cytokine Effect on Hematopoiesis in AIDS Animal Models.

Date: May 1–2, 1995.

Time: 7 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Deborah Beebe, 5333 Westbard Avenue, Room 555, Bethesda, Maryland 20892, (301) 594–7418.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: March 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5643 Filed 3–7–95; 8:45 am]

BILLING CODE 4140–01–M

Uniform Biological Material Transfer Agreement: Discussion of Public Comments Received; Publication of the Final Format of the Agreement

AGENCY: National Institutes of Health (NIH), Public Health Service (PHS), DHHS.

ACTION: Notice.

SUMMARY: Following consideration of public comments, the NIH, as designated lead PHS agency for technology transfer activities, is issuing the final version of the Uniform Biological Material Transfer Agreement ("UBMTA") to be used by participating public and nonprofit organizations, an implementing letter to memorialize individual exchanges of biological material under the UBMTA, and a simple letter agreement for transferring nonproprietary biological materials among public and nonprofit organizations. For-profit organizations may also choose to adopt these agreements as well. The PHS recommends that the UBMTA be considered for general use in the exchange of biological material for research purposes among public and nonprofit entities.

FOR FURTHER INFORMATION CONTACT: Carol C. Lavrich, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804, phone: 301–496–7735 ext. 287, fax: 301–402–0220.

Background

Open access to the results of federally-funded research is a cornerstone of PHS's research policy. In the case of many research projects, this includes not only access to information provided through publications, but also access to biological research materials necessary to replicate or build on the initial results. Frequently, the exchange of research materials between scientists in separate organizations involves case-by-case negotiation of material transfer agreements ("MTAs"). In order to guide and facilitate the increasing number of such transfers, PHS issued in 1988, a "Policy Relating to Distribution of Unique Research Resources Produced with PHS Funding" (NIH Guide for Grants and Contracts, Vol. 17, No. 29, September 16, 1988: pg. 1; also published at pp. 8–25–8–26 of the PHS Grants Policy Statement, DHHS Publication No. (OASH) 94–50,000 (Rev.) April 1, 1994. This was followed in 1989 by adoption of a standard Material Transfer Agreement form for use by PHS scientists. MTAs are important because they require the recipient to exercise care in the handling of the materials, to maintain control over the distribution of the materials, to acknowledge the provider in publications, and to follow relevant PHS guidelines relating to recombinant DNA, protection of human subjects in research, and the use of animals. However, while most other organizations have adopted some standard material transfer agreement form, they are not all consistent.

Issue

Several issues have affected the sharing of research materials. These include delays in sharing of materials while conducting unnecessarily extensive negotiations on individual MTAs, required grants of invention rights to improvements to the materials or to inventions made using the materials, and required approval for publication. The negotiation of these complex issues has resulted in significant delays in sharing materials, undue administrative barriers to sharing, and in some cases, lack of availability of materials for further research by federal grantees. (For reports and discussion of these issues, please refer to The New Biologist, Vol. 2, No. 6, June 1990: pp 495–497; and Science, Vol. 248, 25 May, 1990: pp 952–957).

Proposal

The PHS, in conjunction with representatives of academia and industry, has coordinated the development of a proposed uniform biological material transfer agreement ("UBMTA") to address concerns about contractual obligations imposed by some MTAs and to simplify the process of sharing proprietary materials among public and nonprofit organizations. Since 1990, the Association of University Technology Managers ("AUTM"), and many individuals representing universities, law firms, and industry, have played leadership roles in furthering the development of common materials sharing practices. The consistent use of the UBMTA by public and nonprofit organizations could reduce the administrative burden of sharing materials as investigators come to rely on common acceptance of its terms by cooperating organizations.

The PHS recommends that the UBMTA be considered for general use in the exchange of materials for research purposes among public and nonprofit organizations. For-profit organizations may also choose to adopt this agreement as well. While use of the UBMTA may not be appropriate for every material transfer, if used for the majority of transfers, it could set standards for materials sharing that would be of long-term benefit to the research enterprise and to the public health.

As a further suggestion to simplify the process of materials sharing, it is proposed that the UBMTA be approved at the organizational level, and handled in a master agreement or treaty format, so that individual transfers could be made with reference to the UBMTA, without the need for separate negotiation of an individual document to cover each transfer. As a result, transfers of biological materials would be accomplished by an Implementing Letter (see sample) containing a description of the material and a statement indicating that the material was being transferred in accordance with the terms of the UBMTA. The Implementing Letter would be executed by the provider scientist, the recipient scientist, and any other authorized official(s) of the provider or recipient organization who might be required to sign on behalf of the organization. Thus, sharing of materials between organizations, each of which had executed the UBMTA, would be significantly simplified. At the same time, any organization would retain the

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option to handle specific material with unusual commercial or research value on a customized basis. Thus, the use of the UBMTA would not be mandatory, even for signatory organizations. Administration of the signatory process also may be organization-specific. For example, organizational policies may require additional, or fewer, signatures.

For non-proprietary materials, a Simple Letter Agreement also has been developed, which incorporates many of the same principles as the UBMTA. This Simple Letter Agreement also could be used where the organizations have not agreed to the UBMTA.

On behalf of PHS, NIH published the full text of the proposed version of the UBMTA, the draft Implementing Letter, and the draft Simple Letter Agreement in the **Federal Register** on June 21, 1994, and invited public comment. NIH received thirteen written comments from universities, research organizations, and various associations. The primary concerns raised by respondents and the NIH response to these comments are described in the comment section below.

Comments

The vast majority of the respondents were extremely supportive of the UBMTA concept as a means of simplifying and expediting biological material transfers among public and nonprofit organizations. Several respondents suggested that a comparable agreement be developed for transfers between for-profit and nonprofit organizations. The PHS fully supports this idea and recognizes the importance of streamlining this type of agreement with industry. The NIH, in conjunction with the working group listed above, developed a proposed model for UBMTA transfers from industry to nonprofit organizations which was circulated to AUTM membership on December 31, 1992. This was an adaptation of the original UBMTA format which grants the industrial provider an option to negotiate a license agreement to inventions made through the use of the provided material. It should be noted that government agencies will not be able to use this format unless a Cooperative Research and Development Agreement ("CRADA") is negotiated because of limitations in statutory authority to provide licenses or options to license intellectual property in other types of agreements. No format was ultimately created by the working group for the transfer of material from nonprofit organizations to industry because it was viewed as being essentially a license negotiation. Most organizations have license agreement formats for internal use of biological materials by commercial organizations, as well as for commercial sale of biological materials. The PHS will be soliciting further public commentary on the proposed model for UBMTA transfers from industry to nonprofit organizations.

Several respondents indicated that some of the UBMTA definitions were confusing. As appropriate, clarifications have been made. In particular, the definition relating to "Modifications" has been refined so that it is clear that Modifications are developed by the Recipient and contain or incorporate the Material. While the Modifications are owned by the Recipient who can license them for commercial use, this new use also may require a second commercial license or other evidence of agreement from the Provider since the Modifications incorporate the Material. The UBMTA also acknowledges that there may be other substances created by the Recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives of the Material, and are owned by the Recipient, who is free to license them. The UBMTA does not provide for any type of "reach-through" rights for the Provider of the Material, i.e. property rights in products developed by the Recipient through the use of the transferred material. Several definitions of "nonprofit organization" were proposed, and the final definition used was taken directly from the implementing regulations to the Bayh-Dole Act (37 CFR Part 401). We have also instituted a definition of Commercial Purposes to provide a clear distinction between academic research and activities which are considered commercial.

Other issues raised by respondents fell into two areas: issues regarding confidentiality with respect to protection of intellectual property rights, and issues regarding organizational policy variance on signature requirements from the suggested UBMTA signature requirements:

(1) Confidentiality Issues

Some respondents were concerned that the requirement for the Provider to provide the Recipient with specific information regarding patent status of the Material might impair an organization's ability to obtain patent protection and questioned the necessity for the Recipient to obtain such information. The PHS agrees that the provision of such information is not necessary and would create an additional administrative burden that would be inconsistent with the primary purpose of the UBMTA. We also agree that any commercial use or improper disclosure on the part of the Recipient could impair the Provider's ability to obtain suitable patent protection. Therefore, we have removed the requirement for the Provider to inform the Recipient about patent status and have included a provision that the Material may be the subject of a patent application. However, the Recipient is bound to inform the Provider upon filing patent applications which claim Modifications or method(s) of manufacture or use(s) of the Material so that the Provider may determine whether it believes joint inventorship is appropriate. The requirement to divulge the Provider's prior grant of rights to a third party (other than the customary rights granted to the federal government), that would substantially affect Recipient, has been eliminated since the agreement specifies that this transfer is for teaching and academic research purposes and that the Provider is under no obligation to widen the rights granted.

(2) Signature Requirement Issues

Some respondents were concerned that their organizational polices with respect to signing MTAs are different than those suggested in the UBMTA Implementing Letter. An organization may require an additional signature of an authorized official of the Recipient organization if the signatory scientist is not legally authorized to bind the organization. In this case, the legally binding signature of the authorized official of the Recipient organization would provide assurance to the Provider organization that the Recipient organization is a signatory to the UBMTA. This assurance is critical because if the Recipient organization is not a party to the UBMTA, it may not be bound by the terms of the UBMTA. The signatures of the scientists provide a necessary record for both organizations of the transfer of the Material. Of course, organizations are free to develop their own signatory policies regarding the UBMTA.

We hope to get practical guidance and constructive feedback from scientists and technology transfer professionals as they begin to use the UBMTA. It is anticipated that the UBMTA will be a "living" document which will be further refined and streamlined over time. Many of the definitions were intensively debated throughout the course of drafting the UBMTA and it is expected that they will be sharpened over time through use. We attempted to emphasize a fair allocation of rights between the Provider and the Recipient and had to draw lines especially in the definitions of Modifications and Commercial Purposes. The use of the UBMTA over time will ultimately determine whether the right decisions were made.

The Association of University Technology Managers ("AUTM") will be providing assistance in implementation of the UBMTA among its members and nonprofit organizations by notifying members of its availability in its newsletter, providing signature copies of the agreement at its annual meeting, assisting with training regarding material transfers, and maintaining a master list of signatories to the UBMTA. We anticipate that the master list of signatories will be published in the **Federal Register** annually. In order for AUTM to compile a master list of signatories, organizations should return an executed copy of the UBMTA Master Agreement to: The UBMTA Project, AUTM Headquarters, 71 East Avenue, Suite S, Norwalk, CT 06851–4903. A read only version of the signatory list will be made available on the Internet. A copy of this announcement also will be appearing in the NIH Guide For Grants and Contracts.

Complete texts of the final version of the UBMTA, the Implementing Letter, and the Simple Letter Agreement follow in the Appendix.

Dated: February 18, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

Appendix—Master Agreement Regarding Use of the Uniform Biological Material Transfer Agreement March 8, 1995

Upon execution of an Implementing Letter in the form attached which specifies the materials to be transferred, this organization agrees to be bound by the terms of the attached Uniform Biological Material Transfer Agreement ("UBMTA") published in the **Federal Register** on March 8, 1995.

Attachments:
UBMTA
Implementing Letter

Organization: _____
Address: _____
Authorized Official: _____
Title: _____
Signature: _____
Date: _____

Please return an executed copy of this Master Agreement to: The UBMTA Project, Association of University Technology Managers (AUTM), 71 East Avenue, Suite S, Norwalk, CT 06851–4903. AUTM will be maintaining signed originals and the official list of signatory organizations.

The Uniform Biological Material Transfer Agreement

March 8, 1995

I. Definitions:

1. PROVIDER: Organization providing the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.

2. PROVIDER SCIENTIST: The name and address of this party will be specified in an implementing letter.

3. RECIPIENT: Organization receiving the ORIGINAL MATERIAL. The name and address of this party will be specified in an implementing letter.

4. RECIPIENT SCIENTIST: The name and address of this party will be specified in an implementing letter.

5. ORIGINAL MATERIAL: The description of the material being transferred will be specified in an implementing letter.

6. MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL which are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.

7. PROGENY: Unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.

8. UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by the PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.

9. MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.

10. COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES *per se*, unless any of the above conditions of this definition are met.

11. NONPROFIT ORGANIZATION(S): A university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

II. Terms and Conditions of this Agreement

1. The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS.

2. The RECIPIENT retains ownership of: (a) MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and (b) those substances created through the use of the MATERIAL or MODIFICATIONS, but which are not PROGENY, UNMODIFIED DERIVATIVES or MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES). If either 2 (a) or 2 (b) results from the collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership may be negotiated.

3. The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:

(a) is to be used solely for teaching and academic research purposes;

(b) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER;

(c) is to be used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and

(d) will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER.

4. The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the

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RECIPIENT SCIENTIST's direct supervision. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the MATERIAL available, under a separate implementing letter to this Agreement or other agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at NONPROFIT ORGANIZATION(S)) who wish to replicate the RECIPIENT SCIENTIST's research; provided that such other scientists reimburse the PROVIDER for any costs relating to the preparation and distribution of the MATERIAL.

5. (a) The RECIPIENT and/or the RECIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.

(b) Under a separate implementing letter to this Agreement (or an agreement at least as protective of the PROVIDER's rights), the RECIPIENT may distribute MODIFICATIONS to NONPROFIT ORGANIZATION(S) for research and teaching purposes only.

(c) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

6. The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.

7. If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

8. The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

9. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

10. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

11. This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the MODIFICATIONS. The RECIPIENT SCIENTIST agrees to provide appropriate acknowledgement of the source of the MATERIAL in all publications.

12. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

13. This Agreement will terminate on the earliest of the following dates: (a) When the MATERIAL becomes generally available from third parties, for example, through reagent catalogs or public depositories, or (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written notice by either party to the other, or (d) on the date specified in an implementing letter, provided that:

(i) If termination should occur under 13(a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available sources; and

(ii) If termination should occur under 13 (b) or (d) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS; and

(iii) In the event the PROVIDER terminates this Agreement under 13(c) other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.

14. Paragraphs 6, 9, and 10 shall survive termination.

15. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested by the PROVIDER, the amount will be indicated in an implementing letter.

Implementing Letter

The purpose of this letter is to provide a record of the biological material transfer, to memorialize the agreement between the PROVIDER SCIENTIST (identified below) and the RECIPIENT SCIENTIST (identified below) to abide by all terms and conditions of the Uniform Biological Material Transfer Agreement ("UBMTA") March 8, 1995, and to certify that the RECIPIENT (identified below) organization has accepted and signed an unmodified copy of the UBMTA. The RECIPIENT organization's Authorized Official also will sign this letter if the RECIPIENT SCIENTIST is not authorized to certify on behalf of the RECIPIENT organization. The RECIPIENT SCIENTIST (and the Authorized Official of RECIPIENT, if necessary) should sign both copies of this letter and return one signed copy to the PROVIDER. The PROVIDER SCIENTIST will forward the material to the RECIPIENT SCIENTIST upon receipt of the signed copy from the RECIPIENT organization.

Please fill in all of the blank lines below:

1. PROVIDER: Organization providing the ORIGINAL MATERIAL:

Organization: _____

Address: _____

2. RECIPIENT: Organization receiving the ORIGINAL MATERIAL:

Organization: _____

Address: _____

3. ORIGINAL MATERIAL (Enter description):

_____

4. Termination date for this letter (optional):

5. Transmittal Fee to reimburse the PROVIDER for preparation and distribution costs (optional).

Amount: _____

This Implementing Letter is effective when signed by all parties. The parties executing this Implementing Letter certify that their respective organizations have accepted and signed an unmodified copy of the UBMTA, and further agree to be bound by its terms, for the transfer specified above.

PROVIDER SCIENTIST

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

RECIPIENT SCIENTIST

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

RECIPIENT ORGANIZATION CERTIFICATION

Certification: I hereby certify that the RECIPIENT organization has accepted and signed an unmodified copy of the UBMTA (May be the RECIPIENT SCIENTIST if authorized by the RECIPIENT organization):

Authorized Official: _____

Title: _____

Address: _____

Signature: _____

Date: _____

Simple Letter Agreement for Transfer of Non-Proprietary Biological Material

PROVIDER

Authorized Official: _____

Organization: _____

Address: _____

RECIPIENT

Authorized Official: _____

Organization: _____

Address: _____

In response to the RECIPIENT's request for the BIOLOGICAL MATERIAL identified as

_____

the PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following before the RECIPIENT receives the BIOLOGICAL MATERIAL:

1. The above BIOLOGICAL MATERIAL is the property of the PROVIDER and is made available as a service to the research community.

2. The BIOLOGICAL MATERIAL will be used for teaching and academic research purposes only.

3. The BIOLOGICAL MATERIAL will not be further distributed to others without the PROVIDER's written consent. The RECIPIENT shall refer any request for the BIOLOGICAL MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the BIOLOGICAL MATERIAL available, under a separate Simple Letter Agreement, to other scientists (at least those at nonprofit organizations or government agencies) who wish to replicate the RECIPIENT SCIENTIST's research.

4. The RECIPIENT agrees to acknowledge the source of the BIOLOGICAL MATERIAL in any publications reporting use of it.

5. Any BIOLOGICAL MATERIAL delivered pursuant to this Simple Letter Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE BIOLOGICAL MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the BIOLOGICAL MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

6. The RECIPIENT agrees to use the BIOLOGICAL MATERIAL in compliance with all applicable statutes and regulations, including, for example, those relating to research involving the use of human and animal subjects or recombinant DNA.

7. The BIOLOGICAL MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested, the amount will be indicated here: _____

The RECIPIENT and the RECIPIENT SCIENTIST should sign both copies of this letter and return one signed copy to the PROVIDER SCIENTIST. The PROVIDER will then forward the BIOLOGICAL MATERIAL.

PROVIDER SCIENTIST

Organization: _____

Address: _____

Name: _____

Title: _____

Signature: _____

Date: _____

RECIPIENT SCIENTIST

Organization: _____

Address: _____

Name: _____

Title: _____

Signature: _____

Date: _____

RECIPIENT ORGANIZATION APPROVAL

Authorized Official: _____

Title: _____

Address: _____

Signature: _____

Date: _____

[FR Doc. 95–5644 Filed 3–7–95; 8:45 am]

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Office of Refugee Resettlement

Refugee Resettlement Program: Proposed Allocations to States of FY 1995 Funds for Refugee Social Services and for Refugees Who Are Former Political Prisoners From Vietnam

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1995 funds for refugee [1]

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for

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social services and for refugees who are former political prisoners from Vietnam.

SUMMARY: This notice announces the proposed allocations to States of FY 1995 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former political prisoners from Vietnam, the Director has added to the formula allocation $2,000,000 in funds previously set aside for social services discretionary projects. In the final notice, allocation amounts could be adjusted slightly based on final adjustments in FY 1994 arrivals in some States.

EFFECTIVE DATES: Comments on the proposed allocations contained in this notice must be received by April 7, 1995.

ADDRESSES: Address written comments, in duplicate, to: Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) has available $80,802,000 in FY 1995 refugee social service funds as part of the FY 1995 appropriation for the Department of Health and Human Services (Pub. L. No. 103–333).

Of the total of $80,802,000, the Director of ORR proposes to make available to States $68,681,700 (85%) under the allocation formula set out in this notice. These funds would be made available for the purpose of providing social services to refugees. In addition, the Director of ORR proposes to make available $2,000,000 from discretionary social service funds to be allocated under the formula in this notice for additional services to former political prisoners from Vietnam. Although we had indicated in the FY 1994 social service allocations notice that FY 1994 would be the last year in which a special set-aside would be allocated for additional services for former political prisoners from Vietnam, we propose to continue this special set-aside in FY 1995 due to continued arrivals of this population in FY 1995.

A. Discretionary Social Service Funds for Vietnamese Political Prisoners

In recognition of the special vulnerability of refugees who are former political prisoners from Vietnam, the Director of ORR proposes to set aside $2,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement, based on the number of actual political prisoner arrivals in FY 1994. This formula allocation is shown separately in Table 1 (cols. 7 and 8). States are required to use this allocation to provide additional services, as described below, to recent arrivals from Vietnam who are former political prisoners and members of their families.

Allowable services for the above-cited funds for political prisoners include the following direct services: (1) Specialized orientation and adjustment services, including peer support activities; and (2) specialized employment-related services, as needed. Adjustment services include any service listed under 45 CFR 400.155(c) of the ORR regulations. Under no circumstances may these funds be used for direct cash payments or stipends, for the purchase of advertising space or air time, or for services covered under the Department of State Reception and Placement Cooperative Agreements.

Allowable services under this allocation for Vietnamese political prisoners are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

ORR intends to provide technical assistance to States and organizations that request it to assure effective program development and implementation.

Because these funds are proposed to provide specifically for services for former political prisoners from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects arrivals of this target population during FY 1994.

ORR strongly encourages States and other contracting jurisdictions, in selecting service providers for the above, to award these funds, to the extent possible, to qualified refugee mutual assistance associations (MAAs) with experience serving the target population. All contractors receiving these funds should have Vietnamese language capacity and Vietnamese cultural understanding.

States are required to provide to ORR program performance information on the Vietnamese political prisoner program that meets the reporting requirements contained in 45 CFR 92.40, under the terms and conditions of the social services grant awards to States. The information to be contained in the narrative portion of State quarterly performance reports must include: (1) Names of service contractors; (2) categories of activities provided; (3) numbers of persons served; and (4) outcomes, to the extent possible.

B. Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,681,700 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1994 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,300 in remaining social service funds (15% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. Grant announcements on discretionary initiatives will be issued separately.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. In keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds, based on population and service needs, as determined by the State, for services to newly arriving refugees who have been in the U.S. less than one year.

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs should not be limited exclusively to refugees who are cash assistance recipients. If a State intends to provide services to refugees who have been in the U.S. more than 3 years, 45 CFR 400.147(c) requires the State to specify and justify as part of its Annual Services Plan those funds that it proposes to use to provide services to those refugees.

ORR expects States to ensure that refugee social services are made available to special populations such as Amerasians and former political prisoners from Vietnam, in addition to special funding that ORR may designate to address the special needs of these populations.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, ORR expects States to ensure that a coherent plan of services is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. Each service plan should address a family's needs for both employment-related services and other needed social services.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services. For an employed refugee, day care funded by refugee social service dollars must be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, if a State's cash assistance dependency rate for refugees (as defined in § 400.146(b)) is 55% or more, funds awarded under this notice (with the exception of the political prisoner set-aside) are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services" (INA, section 412(a)(1)(B)). If refugee social service funds are used for the provision of English language training, such training should be provided concurrently, rather than sequentially, with employment or with other employment-related services, to the maximum extent possible. ORR also encourages the continued provision of services after a refugee has entered a job to help the refugee retain employment or move to a better job.

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees and (b) there are non-employment-related service needs

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refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

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which are so extreme as to justify an allowance above the basic 15%. Or

3. In accordance with section 412(c)(1)(C) of the INA, the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

Refugee social services should be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Refugee-specific social services should be provided which are specifically designed to meet refugee needs and are in keeping with the rules and objectives of the refugee program, particularly during a refugee's initial years of resettlement. When planning State refugee services, States are strongly encouraged to take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless services to refugees.

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Funding to MAAs

ORR no longer provides set-aside funds to refugee mutual assistance associations as a separate component under the social service notice; instead we have folded these funds into the social service formula allocation to States. Elimination of the MAA set-aside, however, does not represent any reduction in ORR's commitment to MAAs as important participants in refugee resettlement. ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, ORR expects States to use MAAs as service providers to the maximum extent possible. ORR strongly encourages States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

State Administration

States are reminded that under current regulations at 45 CFR 400.206 and 400.207, States have the flexibility to charge the following types of administrative costs against their refugee program social service grants, if they so choose: direct and indirect administrative costs incurred for the overall management and operation of the State refugee program, including its coordination, planning, policy and program development, oversight and monitoring, data collection and reporting, and travel. *See also* State Transmittal No. 88–40.

II. [Reserved for Discussion of Comments in Final Notice]

III. Allocation Formula

Of the funds available for FY 1995 for social services, $68,681,700 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1994, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

Proposed allocations for political prisoners are based on FY 1994 arrival numbers for this group in each State from the Refugee Data Center and are limited to States with 320 or more political prisoner arrivals. We have limited the population base to FY 1994 political prisoner arrival numbers because these funds are intended to serve recent arrivals. We have not included States with fewer than 320 former political prisoners in the political prisoner allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of political prisoners could be adequately served under the State's refugee social services program.

IV. Basis of Population Estimates

The population estimates for the proposed allocation of funds in FY 1995 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1994, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, and Cuban and Haitian entrants.

For fiscal year 1995, ORR's proposed formula allocations for the States for social services are based on the numbers of refugees and Amerasians who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1992, 1993, and 1994, based on final arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1991, and September 30, 1994, who are thought to be living in each State as of October 1, 1994. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1994. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because Form ORR–11 now covers the full 36-month period through September 30, 1994, there will no longer be a need for ORR to reconsider State secondary migration estimates based on additional evidence submitted by States during the public comment period for this notice. Therefore, we are eliminating Section VI—State Evidence on Refugee Population—in this notice.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1994, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); and the proposed allocation amounts after allowing for the minimum amounts (col. 5). Table 1 also shows the number of former political prisoner arrivals in FY 1994 (col. 6); and the proposed allocation amounts for services to this population (col. 7).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made to reflect final adjustments in FY 1994 arrival data in some States.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan, as required by 45 CFR 400.11(b)(2). The following amounts are proposed for allocation for refugee social services in FY 1995:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1995; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1995

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	Former political prisoner arrivals from Vietnam in FY 1994 (6)	Former political prisoner proposed allocation (7)
Alabama	760	22	782	$136,600	$136,600	18	$0
Alaska[a]	182	0	182	31,792	75,000	16	0
Arizona	3,759	138	3,897	680,727	680,727	299	0
Arkansas	323	0	323	56,422	97,688	84	0
California[b]	90,100	671	90,771	15,855,858	15,855,858	11,666	872,223
Colorado	3,617	1	3,618	631,991	631,991	359	26,841
Connecticut	3,362	138	3,500	611,379	611,379	154	0
Delaware	132	12	144	25,154	75,000	0	0
Dist. of Columbia	2,062	2	2,064	360,539	360,539	257	0
Florida	12,780	24,371	37,151	6,489,528	6,489,528	651	48,673
Georgia	9,479	66	9,545	1,667,318	1,667,318	1,784	133,383
Hawaii	905	0	905	158,085	158,085	172	0
Idaho	1,015	4	1,019	177,999	177,999	76	0
Illinois	13,606	116	13,722	2,396,956	2,396,956	526	39,327
Indiana	1,137	12	1,149	200,707	200,707	55	0
Iowa	3,147	2	3,149	550,067	550,067	323	24,150
Kansas	2,080	3	2,083	363,858	363,858	360	26,916
Kentucky[c]	1,942	28	1,970	344,119	344,119	205	0
Louisiana	2,316	116	2,432	424,821	424,821	458	34,243
Maine	580	0	580	101,314	101,314	4	0
Maryland	7,755	83	7,838	1,369,140	1,369,140	387	28,935
Massachusetts	11,454	347	11,801	2,061,396	2,061,396	772	57,720
Michigan	7,806	37	7,843	1,370,013	1,370,013	342	25,570
Minnesota	9,554	0	9,554	1,668,891	1,668,891	472	35,290
Mississippi	128	9	137	23,931	75,000	32	0
Missouri	5,432	14	5,446	951,306	951,306	367	27,439
Montana	167	0	167	29,172	75,000	3	0

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TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1995; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1995—Continued

State	Refugees	Entrants	Total population	Formula amount	Proposed allocation	Former political prisoner arrivals from Vietnam in FY 1994	Former political prisoner proposed allocation
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Nebraska	1,916	0	1,916	334,686	334,686	365	27,290
Nevada[c]	714	335	1,049	183,239	183,239	8	0
New Hampshire	559	0	559	97,646	100,000	192	0
New Jersey	7,410	704	8,114	1,417,352	1,417,352	255	0
New Mexico	1,153	479	1,632	285,077	285,077	95	0
New York	70,291	990	71,281	12,451,349	12,451,349	530	39,626
North Carolina	3,081	23	3,104	542,206	542,206	306	0
North Dakota	1,181	0	1,181	206,297	206,297	24	0
Ohio	6,067	39	6,106	1,066,595	1,066,595	183	0
Oklahoma	1,390	1	1,391	242,980	242,980	363	27,140
Oregon	6,201	81	6,282	1,097,338	1,097,338	792	59,215
Pennsylvania	11,125	89	11,214	1,958,859	1,958,859	365	27,290
Rhode Island	943	11	954	166,645	166,645	12	0
South Carolina	493	2	495	86,466	100,000	127	0
South Dakota	777	0	777	135,726	135,726	8	0
Tennessee	3,457	32	3,489	609,458	609,458	267	0
Texas	17,827	533	18,360	3,207,121	3,207,121	3,252	243,140
Utah	1,646	0	1,646	287,523	287,523	221	0
Vermont	748	0	748	130,660	130,660	73	0
Virginia	6,221	31	6,252	1,092,098	1,092,098	678	50,692
Washington	16,598	1	16,599	2,899,510	2,899,510	1,938	144,897
West Virginia	69	0	69	12,053	75,000	0	0
Wisconsin	5,991	1	5,992	1,046,681	1,046,681	20	0
Wyoming	11	0	11	1,921	75,000	0	0
Total	361,449	29,544	390,993	$68,298,569	$68,681,700	29,925	$2,000,000

[a] The Alaska allocation has been awarded for a Wilson/Fish demonstration project.
[b] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.
[c] The allocation for Kentucky and Nevada is expected to be awarded to continue a Wilson/Fish project.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: February 27, 1995.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 95–5667 Filed 3–7–95; 8:45 am]

BILLING CODE 4184–01–P

Social Security Administration

National Commission on Childhood Disability

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the third meeting of the National Commission on Childhood Disability (the Commission).

DATES: Friday, March 10, 1995, 9:00 a.m. to 12:00 p.m. and 1:15 p.m. to 5:00 p.m., Saturday, March 11, 1995, 11:00 a.m. to 1:00 p.m.

ADDRESSES: The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20002, Telephone: 202–628–2100. On March 10, 1995, the meeting will be held in the Montpelier Room. On March 11, 1995, the meeting will be held in the Sagamore Hill East Room.

FOR FURTHER INFORMATION CONTACT: Elaine Fultz, Commission Staff Director, (202) 272–2228.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Commission on Childhood Disability was established by Congress to assess the Social Security Administration's eligibility criteria for Supplemental Security Income (SSI) childhood disability benefits and to consider alternative criteria. The Commission is chaired by the Honorable Jim Slattery and consists of 14 members.

II. Agenda

At this meeting, the Commission will:

- hear testimony from teachers and school officials in Louisiana about the impact of the SSI childhood disability program on their students and communities; and
- continue to analyze the Social Security Administration's Individualized Functional Assessment of children with disabilities by, first, discussing with the General Accounting Office its recent report detailing problems with the IFA and, subsequently, considering approaches to revising the assessment.

The Commission will also meet in task forces during its Friday afternoon session to consider specific questions in its statutory mandate. On both Friday and Saturday, the Commission will hold sessions devoted to general policy discussion.

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and Social Security and SSI recipients may submit written comments on the issues considered by the Commission. The Commission will not take testimony from the general public at this meeting. Interpreter services for persons with hearing impairments will be provided.

A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the information contact shown above. The transcript and all written submissions will become part of the record of these meetings.

Dated: March 2, 1995.

Ron Sribnik,

Social Security Administration Regulations Officer.

[FR Doc. 95–5808 Filed 3–7–95; 8:45 am]

BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration

Minority Fellowship Program (MFP)

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of planned award for a competing renewal clinical training grant for the Minority Fellowship Program (MFP) to the American Psychiatric Association.

SUMMARY: The Center for Mental Health Services (CMHS), within SAMHSA, plans to award a competing renewal MFP grant to the American Psychiatric Association for the clinical training of psychiatry trainees who are ethnic minorities for entry into service careers in mental and addictive health areas. The project period for the competing renewal grant is anticipated to be 3 years. The first year will be funded with approximately $221,000. This is not a general request for applications. The competitive renewal clinical training grant will only be made to the American Psychiatric Association (APA) based on the receipt of satisfactory application that is recommended for approval by an Initial Review Group and the CMHS National Advisory Council.

AUTHORITY: The award will be made under the authority of section 303 of the Public Health Service (PHS) Act. The authority to administer this program has been delegated to the Director, CMHS. The Catalog of Federal Domestic Assistance number for this program is 93.244.

BACKGROUND: CMHS has the responsibility for mental health workforce development, including the clinical training of mental health professionals concerned with the treatment of underserved priority populations including: Seriously mentally ill adults; seriously emotionally disturbed children; and elderly, ethnic minorities and rural populations with mental and addictive disorders. CMHS also has the responsibility for training ethnic minorities to become mental health professionals, which is a very significant task in light of the gap between the growing ethnic minority populations requiring mental and addictive health services (approaching 25% of the total population) and the much smaller number of ethnic minority mental health professionals (less than 10% of the total).

Over the past several decades, the Federal mental health clinical training program at CMHS (and previously at NIMH) has addressed this gap primarily by attempting to increase the numbers of ethnic minority professionals. Ethnic minority professionals understand the customs and language of their own particular ethnic group and, therefore, are more likely to render high-quality mental health services to mentally ill minorities.

The CMHS MFP is designed to facilitate the entry of minority students into mental health careers. The long-term goal is to increase the number of professionals trained at the doctoral level to teach and provide mental health services, especially to ethnic minority groups.

The MFP was started at NIMH in the 1970s. This program for clinical training provides grants to each of the four core mental health professional organizations: the American Nurses Association, the American Psychological Association, and the American Psychiatric Association, and the Council on Social Work Education. These four MFP grantees, in turn, conduct national competitions to make individual graduate fellowship awards to minority students throughout the country. Each of the four professional organizations has unique access to those students entering its profession. Each has recruited the best students, assured that all program requirements were satisfied, and monitored the progress of fellows during and after the fellowship period. In short, there has been no reason to change the program structure or the grantees administering the four-discipline program; thus, the mechanism of a peer-reviewed competing renewal clinical training grant has been appropriate.

Therefore, because the American Psychiatric Association's MFP grant support will end in FY 1995, the CMHS is providing additional support for up to three years via a competing renewal grant award. The American Nurses Association, the American Psychological Association and the Council on Social Work Education have ongoing CMHS MFP grant support.

FOR FURTHER INFORMATION: Questions concerning the CMHS MFP may be directed to Paul Wohlford, Ph.D., Human Resources Planning and Development Branch, CMHS, Room 15C–18, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3503.

Dated: March 2, 1995.

Richard Kopanda,

Acting Executive Officer SAMHSA.

[FR Doc. 95–5674 Filed 3–7–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–934–95–1610–00]

Diamond Mountain Resource Area Approved Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, the Department of the Interior, Bureau of Land Management (BLM), Vernal District provides notice of the availability of the Approved Resource Management Plan (ARMP) and Record of Decision (ROD) for the Diamond Mountain Resource Area (DMRA). This ARMP/ROD supersedes the existing management framework plans and other related documents for managing BLM-administered lands. The DMRA is responsible for management of BLM-administered lands and minerals in all of Daggett and Duchesne Counties and that portion of Uintah County northwest of the Green River. These counties are located in northeastern Utah. The DMRA is administratively responsible for 854,000 acres of surface and subsurface lands.

ADDRESSES: Copies of the ARMP/ROD are available upon request by contacting the Vernal District Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078. The telephone number is (801) 789–1362.

FOR FURTHER INFORMATION CONTACT: Ron Trogstad, Diamond Mountain Resource Area Manager, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078. He can be reached by telephone at (801) 789–1362.

SUPPLEMENTARY INFORMATION: The Diamond Mountain ARMP/ROD is

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essentially the same as the Diamond Mountain Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS). No changes to the proposed decisions have been made. However, some clarifying language has been included as a result of four protests the BLM received on the PRMP/FEIS. The clarifying language concerned the intent of the priority management level concept as used in the PRMP/FEIS; current livestock forage assignments and practices as affected by wildlife reintroductions and recreation area developments; and corrective actions involving existing airports in trespass. Five alternatives that encompass a spectrum of realistic management options were considered in the planning process. The final plan is a mixture of the management objectives and actions that, in the opinion of the BLM, best resolve the issues and concerns that drove the preparation of the plan.

Wild and Scenic Rivers

The Upper Green River Segment (between Little Hole and the Colorado stateline) is determined to be suitable and recommended for designation as a scenic river.

The Lower Green River Segment (between public land boundary south of Ouray and the Carbon County line) is determined to be suitable as a scenic river. This segment is not recommended for designation because studies have not yet been completed on the adjacent downstream segment through Desolation Canyon.

Areas of Critical Environmental Concern (ACEC)

The plan designates the following seven areas as ACECs: Browns Park Complex (55,700 public acres), Lears Canyon (1,400 public acres), Lower Green River (7,900 public acres), Nine Mile Canyon (50,800 public acres), Pariette Wetlands (11,600 public acres), Red Creek Watershed (24,200 public acres), and Red Mountain-Dry Fork Complex (25,800 public acres). Coordinated resource management activity plans will be prepared for each ACEC to detail protective measures.

G. William Lamb,

Acting State Director.

[FR Doc. 95–5570 Filed 3–7–95; 8:45 am]

BILLING CODE 4310–DQ–P

[AK–932–1430–01; F–022963]

Conformance to Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the surveyed description for the Noatak National Guard Site at Noatak, Alaska. The site was withdrawn by Public Land Order No. 2020 for use by the Department of the Army. The plat of survey was officially filed in the Department of the Interior, Bureau of Land Management, Washington, D.C., on June 21, 1961. United States Survey No. 3778, Lot 3, containing 0.50 acre, represents the land that was previously described as follows:

A tract of land on the Noatak River, north of Kotzebue, at approximate latitude 67°35′ N., longitude 163°00′ W. Beginning at Corner No. 1 of U.S. Survey No. 2037, being the northwest corner thereof;
Thence along an extension of the west line of U.S. Survey No. 2037, N. 18°51′ E., 29 feet;
Thence N. 71°09′ W., 180 feet;
Thence N. 14°58′ W., 221.49 feet to the point of beginning;
Thence N. 68°18′ W., 140 feet;
Thence N. 21°42′ E., 200 feet;
Thence S. 68°18′ E., 220 feet;
Thence S. 21°42′ W., 200 feet;
Thence N. 68°18′ W., 80 feet to the point of beginning.

The area as described contained approximately 1.01 acres.

ADDRESSES: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 907–271–5477.

Dated: February 17, 1995.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 95–5571 Filed 3–7–95; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

Finding of No Significant Impact for an incidental Take Permit for the Proposed Westminster Glen Subdivision, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a residential development in northwest Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden—cheeked warbler.

The Applicant plans to construct single-family residences on 270 acres in northwest Travis County, Texas. The proposed development will comply with all local, regional, State, and Federal environmental regulations associated with this type of development. Details of the mitigation are provided in the MaBe, Inc., (Applicant) Westminster Glen Subdivision Environmental Assessment/Habitat Conservation Plan Guarantees for implementation are provided in the Implementing Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. Proposed action.
2. Wait for issuance of a Regional 10(a) permit.
3. No action.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction and operation of the Westminster Glen residential development in Travis County, Texas.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–5619 Filed 3–7–95; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same and Products Containing Same, Including Self-Stick Repositionable Notes; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Steven A. Glazer, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-captioned investigation instead of James B. Coughlan, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: February 28, 1995.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 95–5636 Filed 3–7–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–368]

Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same; Notice of Decision Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect to Respondents Yuasa Corp. and Yuasa-Exide, Inc. on the Basis of a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued on February 3, 1995, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainants Energy Conversion Devices, Inc. and Ovonic Battery Co., Inc. and respondents Yuasa Corp. and Yuasa-Exide, Inc. (collectively "the Yuasa companies") to terminate the investigation as to the Yuasa companies on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of certain rechargeable nickel metal hydride anode materials and batteries and products containing same, on September 8, 1994. Complainants allege infringement of claims 1–17, 22, 23, 25, 27, and 32 of U.S. Letters Patent 4,623,597 ("the '597 patent").

On January 18, 1995, complainants and the Yuasa companies filed a joint motion to terminate the investigation with respect to the Yuasa companies on the basis of a settlement agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to the Yuasa companies. Because the Yuasa companies were the only remaining respondents in the investigation, the ID also terminates the investigation in its entirety. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. 210.42.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Dated: February 28, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–5635 Filed 3–7–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 501X)]

CSX Transportation, Inc.—Abandonment Exemption—in Lucas and Wood Counties, OH

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 2.15 miles of railroad between milepost CO–14.31 at River Road in Lucas County, OH and milepost CO–16.46 at Bates in Wood County, OH.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 20, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 13, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 27, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5511 Filed 3–7–95; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 388 (Sub-No. 16)]

Intrastate Rail Rate Authority—Mississippi

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Mississippi to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective on April 7, 1995 and will expire on April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: February 28, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5615 Filed 3–7–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 166X)]

Southern Pacific Transportation Company—Abandonment Exemption—in Fort Bend and Wharton Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts Southern Pacific Transportation Company (SPT) from the prior approval requirements of 49 U.S.C. 10903–10904 to permit SPT to abandon two connecting branch lines, the Wharton Segment and the Palacios Segment, that meet in a "Y" shape at Wharton Jct., TX, and extend a total of 36.8 miles, in Fort Bend and Wharton Counties, TX. The exemption will be subject to standard employee protective conditions, environmental conditions, an historic condition, and a 90-day public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 7, 1995. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [1] must be filed by March 17, 1995, petitions to stay must be filed by March 23, 1995, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by March 28, 1995, and petitions to reopen must be filed by April 3, 1995.

ADDRESSES: Send pleadings, referring to Docket No. AB–12 (Sub-No. 166X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, D.C. 20423; and (2) Petitioner's representatives: John MacDonald Smith and Gary Laasko, Suite 800, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105; and Karl Morell and Louis E. Gitomer, Suite 1035, 1101 Pennsylvania Avenue NW., Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Decided: February 22, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5616 Filed 3–7–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–436X]

Bath and Hammondsport Railroad Company—Abandonment Exemption—In Steuben County, NY

Bath and Hammondsport Railroad Company (B&H) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately .31 miles of rail line between milepost 8.86 and the end of the line at milepost 9.17, in the Village of Hammondsport, Steuben County, NY

B&H has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[4] B&H states that the entire line is suitable for alternative public use and that it has contracted to sell the segment between milepost 9.07 and milepost 9.17 to the Town of Urbana, NY, for waterfront access and use as a park.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 [3] must be filed by March 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: William B. Joint, Cole & Latham, P.C., P.O. Box 232, 7 East Steuben Street, Bath, NY 14810.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

B&H has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 13, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.[4]

Decided: March 3, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5794 Filed 3–7–95; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–022)]

Intergovernmental Panel on Climate Change, Working Group II

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of the availability of draft report and request for comment.

SUMMARY: Working Group II of the Intergovernmental Panel on Climate Change (IPCC) has prepared a draft 1995 Assessment of Impacts, Adaptation, and Mitigation. The IPCC Secretariat requires comments on this report from national governments by April 28, 1995, so that the Secretariat can meet its obligations to member governments of the IPCC. The U.S. Government is expected to receive its copy of this assessment for formal government comment on March 6, 1995. Dr. Robert Harriss, Director, Science Division, Office of Mission to Planet Earth, on behalf of the U.S. Subcommittee on Global Change Research (SGCR) is responsible for coordinating the preparation of the comments of the United States Government. Through this notice, the SGCR is announcing the availability of the draft 1995 Assessment and requesting comments on this report from experts and interested groups and individual. These comments will be reviewed, combined, and incorporated as appropriate, in the process of preparing the set of official U.S. comments to the IPCC.

DATES: Written comments (hard copy and if possible on a 3.5 inch diskette in either Microsoft Word or WordPerfect format) on the draft 1995 Assessment should be submitted on or before March 31, 1995. the USGCRP does not anticipate extending this deadline because the member countries of the IPCC have established a timetable that requires input by April 28, 1995.

ADDRESSES: Comments should be submitted either by mailing to: IPCC WG II Comments, Office of the U.S. Global Change Research Program, 300 D Street, SW, Suite 840, Washington, DC 20024, or by E-mail in ASCII format on Internet to: wg2@usgcrp.gov".

A list of chapters making up the draft 1995 Assessment is included with this notice, Review is sought by those having specific expertise or interest in the various aspects of the assessment. Copies of individual chapters making up the draft 1995 Assessment can be obtained by: (1) Telephone request to Mr. Earley Green at (202) 651–8240; (2) sending E-mail to "office@usgcrp.gov"; (3) faxing a request to (202) 554–6715; or (4) sending a letter to the USGCRP Office directed to Mr. Earley Green at the address shown above.

FOR FURTHER INFORMATION CONTACT: Desiree Martinez, Science Division, Office of Mission to Planet Earth, at (202) 358–2102.

SUPPLEMENTARY INFORMATION:

I. Background

The Intergovernmental Panel on Climate Change (IPCC) was jointly established in 1988 by the United Nations Environment Programme and the World Meteorological organization to conduct periodic assessments of the state of knowledge concerning global climate change. The IPCC has formed working groups to study various aspects of climate change. Working Group I addresses the state of the science concerning what is happening and is projected to happen to the climate; Working Group II addresses the state of the science concerning (i) vulnerability to and impacts of climate change and (ii) adaptation and mitigation strategies; and Working Group III addresses the state of science and understanding concerning economics and cross-cutting issues associated with climate change. Each Working Group is charged with issuing periodic assessments. The first Scientific Assessment of Climate Change, for example, was prepared in 1990. Periodic assessment reports such as this provide a comprehensive statement of the state of knowledge concerning topics such as scientific information, environmental impacts, response strategies, and other issues concerning climate change. The draft 1995 Assessment represents the result of Working Group II efforts since its inception to address the consequences and impacts of climate change and response strategies focusing on mitigation and adoption.

II. Public Input Process

The member countries of the IPCC established a timetable that requires comments from governments be received by April 28, 1995, so that the IPCC Secretariat can meet its obligations for a timely completion of the 1995 IPCC Assessment. The Subcommittee on Global Change Research is responsible for coordinating preparation of the U.S. Government response, and through this notice is seeking the views of experts and interested groups and individuals to help in the formulation of its response. Comments that are provided will be reviewed, integrated, and used, as appropriate, in the preparation of the official U.S. comments.

In this review process, the emphasis should be on providing detailed recommendations on specific chapters for which the reviewer has established expertise or interest. To be most useful, comments should be specific in suggesting wording changes to the text of a particular chapter and, where appropriate, offer supporting

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information and peer-reviewed references supporting the proposed changes. Comments on the overall tone and scientific validity of the chapter and comments expressing agreement and disagreement with specific major points in the Executive Summary of the chapters are also solicited.

Reviewers should request for review those specific chapters of the IPCC Working Group II Second Assessment Report for which they have expertise or special interest. The material available for review includes 25 chapters (with introductory materials and two appendices, as outlined below. A copy of the draft Summary for Policymakers will also be provided for each reviewer in order to provide an opportunity for the reviewer to consider the consistency of the chapter and the selection and representation of its major points in the draft Summary for Policymakers.

A. Chapters Relating to Assessment of Impacts and Adaptation Option for Ecological, Climatic, or Physiographic Systems

1. Forests
2. Grasslands and Rangelands
3. Desert Regions
4. Land Degradation, including Desertification
5. Mountain Regions
6. Non-Coastal Wetlands
7. The Cryosphere
8. Oceans and Large Lakes
9. Coastal Zones and Small Islands
10. Freshwater Systems and Hydrology

B. Chapter Relating to Assessment of Impacts and Adaptation Options for Socio-Economic Systems

11. Energy, Industry, and Transportation
12. Human Settlement
13. Agriculture
14. Freshwater Supply and Quality
15. Forestry
16. Fisheries
17. Insurance
18. Human Health

C. Chapters Relating to Assessment of Mitigation Options

19. Energy Supply
20. Industry
21. Transportation
22. Human Settlements
23. Agriculture
24. Forests
25. Cross-Sectoral Options

D. Appendices Relating to Methodologies and Inventories

26. Assessments of Impacts and Adaptation Options (Not available for review, having been previously reviewed and approved by IPCC).
27. Assessments of Mitigation Options
28. Inventory of Technologies, Methods, and Practices

III. Request for Submission of Public Comments

Interested persons and scientific experts are invited to submit comments on the draft 1995 Assessment. An information sheet providing specific requests for formatting submissions will be provided with each mailing of a chapter. Comments should be submitted to the address shown in the **ADDRESSES** section, and must be received by the date indicated in the **DATES** section of this notice. Submission should be made by mail (preferably providing a computer diskette in addition to paper copy), by fax (for short submissions, only, please) or by E-mail on Internet; comments submitted orally will not be accepted. All comments received will be available for public inspection in the NASA Library, which is located in Room 1J20, of the NASA Office Building, 300 E Street SW., Washington, DC 20546.

Charles F. Kennel,

Associate Administrator, Office of Mission to Planet Earth.

[FR Doc. 95–5670 Filed 3–7–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Literary Advisory Panel (Professional Development/Special Projects/ Overview Sections); Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Literature Advisory Panel (Professional Development/Special Projects/Overview Sections) to the National Council on the Arts will be held on March 16–17, 1995. The Professional Development/Special Projects Section will meet from 9:00 a.m. to 7:00 p.m. on March 16 and the Overview Section will meet from 9:30 a.m. to 3 p.m. on March 17. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

The Overview Section of this meeting will be open to the public from 9:30 a.m. to 3:00 p.m. on March 17 for a program overview and policy and guidelines review.

The remaining portions of this meeting from 9:00 a.m. to 7:00 p.m. on March 17 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433

Dated: March 3, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts

[FR Doc. 95–5628 Filed 3–7–95; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel (Film/Video Production Section); Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 22–23, 1995. The panel will meet from 9:00 a.m. to 6:30 p.m. on March 22 and from 9:00 a.m. to 5:30 p.m. on March 23 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on March 23 from 4:30 p.m. to 5:30 p.m. for a policy discussion.

Remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on March 22 and from 9:00 a.m. to 4:30 p.m. on March 23 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: February 27, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–5629 Filed 3–7–95; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel (Overview Section); Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Overview Section) to the National Council on the Arts will be held on March 21–23, 1995 from 9:00 a.m. to 6:15 p.m. on March 21 and 22 and from 9:00 a.m. to 5:00 p.m. on March 23. This meeting will be held in Room M–14 on March 21 and 22 and Room 527 on March 23, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: March 3, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–5630 Filed 3–7–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Engineering Education and Centers (173).

Date and Time: March 23–24, 1995; 8 am to 5 pm.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lynn Preston, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1381.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5687 Filed 3–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Engineering Education and Centers (173).

Date and Time: March 21–22, 1995; 8:00 AM to 5:00 PM

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lynn Preston, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1381.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5688 Filed 3–7–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Co. of New York, Inc., Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2 (IP2) located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of September 19,

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1994, as supplemented on January 13, 1995, and February 3, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 24 months from the February 1995 refueling outage to the February 1997 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the February 1995 refueling outage, to the February 1997 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at IP2 to show good containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The NRC staff also notes that the IP2 Containment Penetration and Weld Channel Pressurization System provides a means for continuously monitoring potential containment leakage paths during power operation. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the New York State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 19, 1994, as supplemented by letters dated January 13, 1995, and February 3, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Dated at Rockville, Maryland, this 1st day of March 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5612 Filed 3–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., Receipt of Decommissioning Plan and Decommissioning Environmental Report and Opportunity for Public Comments; Trojan Nuclear Power Plant

By letter January 26, 1995, Portland General Electric Company (PGE or the licensee) submitted the Decommissioning Plan and a supplement to the Environmental Report describing the decommissioning of the Trojan Nuclear Plant (Trojan or the plant). The licensee is the holder of Facility Operating License No. NFP–1 that was issued on November 21, 1975. The permanently shut down nuclear plant is located on the west shore of the Columbia River in Columbia County, Oregon.

Pursuant to the 10 CFR 50.82(e) the U.S. Nuclear Regulatory Commission (NRC) is providing this notice to interested persons prior to approval of the Decommissioning Plan. The Decommissioning Plan does not contain any requests for amendments to the Trojan Operating License. Therefore, an opportunity for a hearing under 10 CFR part 2 of Commission regulations, is not being offered by this notice. Should the Commission determine that a license amendment is necessary in connection with the proposed Decommissioning Plan, that action will be noticed separately.

Interested persons are invited to submit written comments or questions on the Decommissioning Plan or Environmental Report. Any written comments should be limited to the contents of the Decommissioning Plan and Environmental Report.

The staff will review and consider all comments that are received before taking final action on the proposed Decommissioning Plan. Written comments should be submitted within 120 days of the publication date of this notice and addressed to: Michael T. Masnik, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition, the NRC is planning to hold a joint public meeting with the Oregon Department of Energy (ODOE) on Wednesday, March 29, 1995, at the St. Helens High School, U.S. Highway 30 and Gable Road, St. Helens, Oregon. The meeting will begin at 7:30 pm and will last approximately two hours. The purpose of the meeting is to provide the NRC and the ODOE an opportunity to explain their respective decommissioning review processes and to provide interested members of the public an opportunity to ask questions and provide comments on the decommissioning of the Trojan plant.

Copies of the Decommissioning Plan and Environmental Report are available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located on the fifth floor of the Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5613 Filed 3–7–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 6.9, "Establishing Quality Assurance Programs for the Manufacture and Distribution of Sealed Sources and Devices Containing Byproduct Material," provides guidance acceptable to the NRC staff on the essential elements needed to develop, establish, and maintain a quality assurance program for the manufacture and distribution of sealed sources and devices.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of February 1995.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 95–5609 Filed 3–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–318]

Baltimore Gas and Electric Co.; Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–69 issued to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located in Calvert County, Maryland.

The proposed amendment would revise the Calvert Cliffs, Unit No. 2, Technical Specifications (TSs). Specifically, TS 4.G.1.2 would reference 10 CFR part 50, Appendix J directly, and any approved exemptions to the Type A testing frequently requirements, rather than paraphrase the regulation. The proposed wording is consistent with that used in NUREG–1432, "Standard Technical Specifications—Combustion Engineering Plants," dated September 1992.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises Technical Specification 4.6.1.2.a to reference the testing frequency requirements of 10 CFR part 50, Appendix J, and to state that NRC-approved exemptions to the applicable regulatory requirements are permitted. The current Technical Specification 4.6.1.2.a paraphrases the requirements of Appendix J, paragraph III.D.1.(a) and necessitates a change to the Technical Specifications should the Appendix J language change or an exemption be granted. The proposed administrative revision simply deletes the paraphrased language and directly references Appendix J and any approved exemptions. No new requirements are added, nor are any existing requirements deleted. Any specific exemptions from the requirements of Appendix J, paragraph III.D.1.(a) will continue to require a submittal from Baltimore Gas and Electric Company under 10 CFR 50.12 and subsequent review and approval by the NRC prior to implementation.

The proposed change will provide a one-time exemption from the 10 CFR part 50, Appendix J, paragraph III.D.1.(a) leak rate test schedule requirement. This change will allow for a one-time interval between subsequent Type A test of approximately 72 months. It will also extend the second ten-year Type A testing service period to 12 years to coincide with the inservice inspection interval.

No physical or operational changes to the structure, plant systems or components would be made as a result of the proposed change. Furthermore, leak rate testing is not an initiating event in any accident, therefore this proposed change does not involve a significant increase in the probability of any accident previously evaluated.

Type A tests are capable of detecting containment leaks through containment penetrations and through the containment liner. The history at Calvert Cliffs Unit 2 demonstrates that Type B and C Local Leak Rate Tests (LLRTs) have consistently detected leakage through penetrations. With the exception of the first periodic Unit 2 Type A test in 1979, which failed and was promptly corrected, Type A tests have not

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detected excessive leakage from the containment.

Administrative controls govern the maintenance, modification and testing of containment penetrations such that the probability of excessive penetration leakage due to improper maintenance or valve misalignment is very low. Following maintenance or modifications to any containment penetration, a leak rate test is performed to ensure acceptable leakage levels. Following any LLRT on a containment isolation valve, an independent valve alignment check is performed. Therefore, Type A testing is not necessary to ensure acceptable leakage rates through containment penetrations.

While Type A testing is not necessary to ensure acceptable leakage rates through containment penetrations, Type A testing is necessary to demonstrate that leakage through the containment liner is within limits assumed in the accident analyses. Structural failure of the containment is considered to be a very unlikely event, and in fact, since Calvert Cliffs Unit 2 has been in operation, the Type A tests have demonstrated no evidence that containment leakage will exceed that assumed in the accident analyses prior to the 1999 Type A test. Therefore, a one-time exemption increasing the interval between subsequent Type A tests will not result in a significant degradation in our ability to determine the leak-tightness of the containment structure.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed Technical Specification amendment is administrative and will not create the possibility of a new or different type of accident form any accident previously evaluated.

The proposed exemption request does not affect normal plant operations or configuration, nor does it affect leak rate test methods. The proposed change allows a one-time test interval of approximately 72 months for the Type A tests. As the test history of Calvert Cliffs Unit 2 has demonstrated no evidence that containment leakage will exceed that assumed in the accident analyses prior to the 1999 Type A test, the relaxation in schedule should not significantly decrease the confidence in the leak-tightness of the containment.

The proposed change would not change the design, configuration or method of operation of the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The purpose of the existing schedule for Type A tests is to ensure that the release of radioactive materials will be restricted to those leak paths and leak rates assumed in accident analyses. A one-time extended interval between successive Type A tests does not change any frequency or methodology requirements for Type B and C LLRTs. Therefore, methods for detecting local containment leak paths and leak rates are unaffected by this proposed change. Given that the problems identified by the first periodic Type A test were promptly and effectively resolved, and the subsequent Type A test history for Unit 2 shows no containment degradation-related failures, a one-time increase of the test interval does not lead to a significant probability of creating a new leakage path or increased leakage rates.

The proposed Technical Specification change is administrative and eliminates the redundancy between the requirements of Technical Specification 4.6.1.2.a, and 10 CFR part 50, Appendix J, including any approved exemptions to Appendix J. It does not, in itself, change a safety limit, a Limiting Condition for Operation, or a surveillance requirement on equipment required to operate the plant. The NRC must approve any proposed change or exemption to Appendix J, paragraph III.D.1.(a) prior to implementation. As the proposed change does not affect the Type A test acceptance criteria, the margin of safety inherent in existing accident analyses is maintained.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Although the licensee has included an evaluation of a proposed exemption to 10 CFR part 50, Appendix J, requirements in the above determination of no significant hazards consideration, only the part related to the amendment is pertinent to this notice of proposed amendment. The exemption request will be considered as a separate matter on its own merits. The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As requiring by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves no significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 24, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland this 1st day of March 1995.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Regulation.

[FR Doc. 95–5611 Filed 3–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Power Company (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise Technical Specifications (TS) 3.8.2.1 and 3.8.3.1 to allow installation of a modification to replace the battery, main and tie breakers in response to an Electrical Distribution Systems Functional Inspection (EDSFI), conducted by the NRC in July 1991. The existing breaker arrangement could result in a trip of both the battery and main breakers if a fault occurs on one of the 125 VDC panelboards. The licensee committed to have these breakers replaced in 1995 with a better coordinated design to eliminate the concern.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

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hazards consideration, which is presented below:

Criterion 1

Operation of the facility in accordance with the requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. At no point during this temporary modification is power lost to the DC and AC panelboards. A normal plant procedure is used to transfer power for the AC panelboards back and forth between their inverters and their alternate regulated AC power supplies (1KRP and 2KRP). All inputs to the DC channel trouble alarm except those from the associated DC and AC panelboard undervoltage relays will be blocked during the 112 hour temporary modification period so that an undervoltage condition on any of the DC and AC panelboards this period will be detected immediately. Temporary cabling will satisfy cable separation criteria. Temporary cables and breakers meet all applicable safety class 1E and seismic requirements. There will be no degradation of distribution centers and panelboards as a result of temporary breakers being installed in them.

Criterion 2

Operation of the facility in accordance with the requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS changes will not create the possibility for an accident or malfunction of a different type that any previously evaluated. No new failure modes are being created by the proposed TS changes.

Criterion 3

Operation of the facility in accordance with the requested amendments will not involve a significant reduction in a margin of safety. The proposed TS changes will not reduce the margin of safety as described in the bases for any Technical Specifications. The bases for Tech. Specs. 3/4.8.2 and 3/4.8.3 (minimum specified independent and redundant A.C. and D.C. power sources and distribution systems to supple safety-related equipment for safe shutdown and mitigation/control of accident conditions) will not be impacted by these proposed TS changes. The proposed TS changes will not reduce the margin of safety since the temporary cables and breakers meet all applicable safety class 1E and seismic requirements. The use of temporary cables and breakers to facilitate the de-energization of a vital bus and connection of its loads to its same train vital bus for breaker replacement does not technically violate the applicable technical specifications since the intent of these technical specifications is to have uninterrupted power to the loads normally connected to this de-energized bus. Instrumentation during the temporary modification period remains valid to immediately detect an undervoltage condition in the affected DC and AC panelboards.

Based on the preceding analyses, Duke Power concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2,714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examines witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 23, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina.

Dated at Rockville, Maryland, this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5610 Filed 3–7–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co.; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (the licensee) to withdraw its August 25, 1993, application for proposed amendment to Facility Operating License Nos. NPF–39 and NPF–85, for the Limerick Generating Station, Units 1 and 2, respectively, located in Montgomery County, Pennsylvania.

The proposed amendment would have revised the Technical Specification Surveillance Requirement 4.5.1 to reduce the frequency for venting the Emergency Core Cooling System (ECCS) piping from once every 31 days to once every 6 months.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 29, 1993 (58 FR 50972). However, by letter dated December 21, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 25, 1993, and the licensee's letter dated December 21, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5614 Filed 3–7–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35422; File No. SR–BSE–95–05]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 21, 1995, the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which items have been prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to modify its rules to implement a three business day settlement standard for securities transactions.

[1] 15 U.S.C. 78s(b)(1) (1988).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement cycle for most securities transactions.[2] The rule will become effective June 7, 1995.[3]

The proposed rule change will amend BSE's definitions of transactions nominated as "Regular Way," "Buyer's or Seller's Option," and "Next Day" contained in Chapter II, Section 6 of BSE's rules and will amend Chapter X, Section 1 of BSE rules regarding the settlement of "Cash and Ex-Dividend Transactions." Under the proposed rule change, regular way settlement will occur on the third business day after the trade, and buyer's or seller's option trades will settle between four business days and 180 days following the contract date except that BSE may provide otherwise in specific issues or classes of securities. Next day trades will be able to settle on the first or second business day following the date of the contract. Securities will trade without (i.e., "ex") any dividend, right, or privilege on the second full business day preceding the record date except that when the record date is on a holiday the securities will trade "ex" on the third preceding full business day.

The proposed rule change also amends Chapter XV, Section 14 of BSE rules, "Claims and Reports against Specialist." This proposed change will shorten the time periods in which members can file claims of erroneous or omitted transactions against specialists. Claims regarding lack of a comparison of a reported transaction will have to be made within three days of the original trade date of five days to comport with the changes in the settlement cycle. Claims regarding the omissions of reports and erroneous trade comparisons will have to be made within five business days instead of ten business days. The latter changes still will exceed the settlement cycle; however, they will exceed the settlement cycle by only two days instead of five thus reducing the risk associated with such claims. Finally, Chapter XXVIII, subparagraph (4) requires that customers provide their agent instructions within certain time frames for delivery versus payment and receipt versus payment transactions. The time frames contained in subparagraph (4)(i) and (ii) will be shortened by two business days.

The BSE's implementation of this proposed rule change will be consistent with the "T+3" conversion schedule which the National Securities Clearing Corporation has proposed for industry use. The schedule is as follows:

Trade date	Settlement cycle	Settlement date
June 2 Friday ...	5 day ...	June 9 Friday.
June 5 Monday	4 day ...	June 9 Friday.
June 6 Tuesday	4 day ...	June 12 Monday.
June 7 Wednesday.	3 day ...	June 12 Monday.

If the Commission determines to alter the exemptions currently provided in Rule 15c6–1, BSE may need to undertake additional rule amendments. It is intended that the proposed rule change will become effective on the same date as Commission Rule 15c6–1.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of BSE.

All submissions should refer to File No. SR–BSE–95–05 and should be submitted by March 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secrtary.

[FR Doc. 95–5585 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[3] Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[Release No. 34–35430; File No. SR–CBOE–94–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Placement of CBOE Memberships Into Trusts

March 1, 1995.

I. Introduction

On December 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 3.25, which would enable an individual CBOE member to place his membership in trust for estate planning purposes, subject to certain requirements.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35220 (Jan. 11, 1995), 60 FR 3889 (Jan. 19, 1995). No comments were received on the proposal.

II. Description of the Proposals

The Exchange proposes to adopt new Rule 3.25, which would permit individual members to place their memberships into trusts under certain conditions. The proposed rule lays out the framework of a permissible trust and imposes substantive as well as procedural obligations on a member transferring his membership into a trust ("trust member").

The proposed rule provides the structure of a trust into which a member may transfer his membership. A trust member must be the sole trustee and sole beneficiary of the trust during his lifetime. The trust member must remain personally liable for all obligations and liabilities associated with the membership, which continues to be subject to the rules of the Exchange. Subject to the collateral deposit requirements of Rule 3.14(c), a membership in trust may be transferred during the lifetime of the trust member or at his death to an eligible family member who is approved for Exchange membership in accordance with Rule 3.14(c)(1) or during the lifetime of the trust member to a member organization in accordance with Rule 3.14(c)(3). A membership in trust may also be transferred back to the trust member to be held directly and not in a trust.

The proposed rule imposes substantive obligations on a member who seeks to transfer his membership by requiring that certain terms be included in the trust agreement. Specifically, a member's trust agreement must provide for a successor trustee for the purpose of transferring the membership in the event of the trust member's death, legal incompetence, or any other condition that substantially impairs the member's ability to transact ordinary business.[3] A legally qualified individual or institution may be appointed as successor trustee for this purpose.[4] A trust agreement also may provide the successor trustee with the authority to continue holding the membership in trust for the benefit of a trust member during any period of his legal incompetency or disability as long as the membership is leased during that period in accordance with Rule 3.16(b). In addition, the proposed rule requires trust agreements to exempt the Exchange from liability for any actions or inactions of the trust member or any successor trustee with respect to the administration of the trust or the management of the trust assets.

The proposed rule also contains procedural requirements in placing a membership in trust. The proposed rule requires an individual member who seeks to transfer his membership into a trust to provide the Exchange with a copy of the trust agreement with a certification by the attorney who prepared the agreement stating that it conforms to the requirements of proposed Rule 3.25. The Exchange reserves a right to disapprove the transfer if it finds that the trust agreement does not meet the requirements of the proposed rule. The Exchange will provide a member with a written notification if the proposed transfer is disapproved.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the new proposed Rule 3.25 achieves a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estate and its interest in regulating and protecting its membership. Under proposed Rule 3.25, a member may transfer his membership to a trust provided that the trust agreement contains certain provisions relating to (1) the applicable procedures for a subsequent transfer of the membership contained in the trust and (2) the exclusion of the CBOE from liability for certain trust actions or omissions.

Moreover, the trust agreement must be submitted to the Exchange for review and such trust agreement can be disapproved by written notice to a member if it fails to meet the above conditions or other requirements imposed by the proposed rule. The Commission believes that these conditions are an appropriate means of addressing the unique concerns in maintaining and/or transferring an exchange membership that is held in trust form. The proposed rule change does not affect the substantive requirements and duties of a member whose interest is held in trust. In particular, a "trust member" shall remain personally responsible for all obligations and liabilities associated with the membership and its use, and the membership will remain subject to all of the rules of the CBOE. Overall, this approach allows the Exchange to provide members with useful, but appropriately controlled estate planning flexibility.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–94–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5579 Filed 3–7–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] A physician who has personally examined or treated the trust member must certify in writing that the trust member has become disabled.

[4] The successor trustee must transfer the membership in accordance with the rules of the Exchange and subject to the right of the Exchange to offer the membership for sale in accordance with Rule 3.14(b)(1).

[5] 15 U.S.C. 78f(b) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

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[Release No. 34–35431; File No. SR–CHX–95–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to an Extension of a Pilot Program for Stopped Orders in Minimum Variation Markets

March 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 8, 1995, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The CHX has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for stopped orders in minimum variation markets for an additional four (4) month period. This is the fourth requested extension of the pilot, originally approved on January 14, 1992.[3] The first requested extension of the pilot was approved on March 10, 1993.[4] The second requested extension of the pilot was approved on June 11, 1993.[5] The third requested extension of the pilot was approved on March 21, 1994.[6] The pilot program is set to expire on March 21, 1995. The Exchange has submitted its current monitoring report under separate cover. The report covers the period December 20, 1994 through January 20, 1995 and includes detailed data for January 4, 1995.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See* Securities Exchange Act Release No. 30189 (January 14, 1992), 57 FR 2621 (January 22, 1992) (File No. SR–MSE–91–10) ("1992 Approval Order").

[4] *See* Securities Exchange Act Release No. 31975 (March 10, 1993), 58 FR 14230 (March 16, 1993) (File No. SR–MSE–93–04) ("March 1993 Approval Order").

[5] *See* Securities Exchange Act Release No. 32457 (June 11, 1993), 58 FR 33681 (June 18, 1993) (File No. SR–MSE–93–14) ("June 1993 Approval Order").

[6] *See* Securities Exchange Act Release No. 33790 (March 21, 1994), 59 FR 14434 (March 28, 1994) (File No. SR–CHX–93–30) ("1994 Approval Order").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot program implemented to establish a procedure regarding the execution of "stopped" market orders in minimum variation markets (usually an ⅛th spread market). In 1992, the Exchange adopted interpretation and policy .03 to Rule 37 of Article XX, on a pilot basis, to permit stopped market orders in minimum variation markets.[7] Prior to the pilot program, no Exchange rule required specialists to grant stops in minimum variation markets if an out-of-range execution would result. While the Exchange has a policy regarding the execution of stopped market orders generally, the Exchange believes it is necessary to establish a separate policy for executing stopped market orders when there is a minimum variation market.

The Exchange's general policy regarding the execution of stopped orders is to execution them based on the next primary market sale. If this policy were used in a minimum variation market, it would cause the anomalous result of requiring the execution of all pre-existing orders, even if those orders are not otherwise entitled to be filled.[8]

The Exchange's proposed policy would prevent unintended results by continuing a pilot program, established in 1992, for stopped market orders in minimum variation markets.[9] Specifically, the pilot program would require the execution of stopped market orders in minimum variation markets after a transaction takes place on the primary market at the stopped price or worse (higher for buy orders and lower for sell orders), or after the applicable Exchange share volume is exhausted. In no event would a stopped order be executed at a price inferior to the stopped price.[10] In the Exchange's view, the proposed policy would continue to benefit customers because they might receive a better price than the stop price, yet it also protects Exchange specialists by eliminating their exposure to executing potentially large amounts of pre-existing bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The Proposed rule change is consistent with Section 6(b) (5) in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

[7] *See* 1992 Approval Order, *supra*, note 3.

[8] For example, assume the market in ABC stock is 20–20 ⅛; 50 x 50 with ⅛th being out of range. A customer places an order with the Exchange specialist to buy 100 shares of ABC at the market, and a stop is effected. The order is stopped at 20⅛, and the Exchange specialist includes the order in his or her quote by bidding the 100 shares at 20. If the next sale on the primary market is for 100 shares at 20, adopting the Exchange's existing general policy to minimum variation markets would require the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would trigger the requirement for the Exchange specialist to execute all pre-existing bids (in this case, 5,000 shares) based on the Exchange's rules of priority and precedence. This is so even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, Exchange Rule 37 (Article XX) requires the Exchange specialist to fill orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would cause at most 100 of the 5,000 share limit order to be filled on the Exchange. However, the Exchange's general policy regarding stopped orders, if applied to minimum variation markets, would require the 100 share stopped market order to be filled, and, as a result, all pre-existing bids at the same price to be filled in accordance with Exchange Rule 16 (Article XX).

[9] *See* 1992 Approval Order, *supra*, note 3.

[10] Exchange Rule 28 (Article XX) states.

An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified. If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the differences between the two prices.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–04 and should be submitted by March 29, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5)[11] and Section 11(b)[12] of the Act. The Commission believes that proposed interpretation and policy .03 to Rule 37 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that offer primary market price protection for customers whose orders are granted stops, while still adhering to traditional auction market rules of priority and precedence.[13]

In its orders approving the pilot procedures,[14] the Commission asked the CHX to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the percentage of orders which received an out-of-range execution despite having been stopped; (2) whether limit orders on either side of the specialist's book were bypassed due to the execution of stopped orders at a better price (and to this end, the Commission requested that the CHX conduct a one-day review of all book orders in the five stocks receiving the greatest number of stops); and (3) specialist compliance with the pilot program's procedures.

The Exchange has submitted to the Commission several monitoring reports regarding its proposed interpretation of Rule 37. The Commission believes that, although these monitoring reports provide certain useful information concerning the operation of the pilot program, the Commission must conduct further analysis of the CHX data and, in particular, of the rule's impact on limit orders on the specialist's book before it can consider permanent approval thereof. To allow the Commission fairly and comprehensively to evaluate the CHX's use of its pilot procedures, without compromising the benefit that investors might receive under Rule 37, as amended, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995.

First, the Exchange's latest monitoring report indicates that relatively few orders received an out-of-range execution despite having been stopped and, thus, did not benefit from the CHX proposal.[15] The Commission believes that the pilot procedures provide a benefit to certain investors by offering primary market price protection to customers whose orders are granted stops in minimum variation markets. According to the CHX report, moreover, virtually all stopped orders were for 2,000 shares or less. In this respect, the proposed amendments should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

Second, the CHX does not appear to believe that its proposed policy significantly disadvantages customer limit orders existing on the specialist's book.[16] This conclusion is based on the Exchange's analysis of limit orders on the opposite side of the market at the time a stop was granted pursuant to the pilot program. As part of its analysis (which included a one-day review of the five stocks receiving the greatest number of stops), the CHX determined how often book orders which might have been entitled to an execution had the order not been stopped, in fact, were executed at their limit price by the close of the day's trading. In addition to aggregated data, the Exchange provided a detailed breakdown of the disposition of each order.

The Commission historically has been concerned that book orders may be bypassed when stock is stopped, especially in a minimum variation market.[17] Based on the CHX's prior experience, the Commission did not have sufficient grounds to conclude that this long-standing concern had been alleviated. The Commission acknowledges, however, that the CHX's latest monitoring reports provide new information on this aspect of the pilot program. As a result, the Commission finds that additional time is necessary for the Commission to review such information and to ensure that Rule 37, as amended, does not harm public customers with limit orders on the specialist's book.

As for book orders on the same side of the market as the stopped stock, the Commission believes that the proposed requirements make it unlikely that these limit orders would be bypassed. Under the Exchange's pilot procedures, a stopped order can receive price improvement only if all preexisting CHX share volume at that price has been exhausted.

As for the pilot program's effect on limit orders on the same side of the market as the stopped stock, the CHX report suggests that a substantial majority of limit orders at the bid (for

[11] 15 U.S.C. 78f (1988).

[12] 15 U.S.C. 78f (1988).

[13] For a description of CHX procedures for stopping stock in minimum variation markets, and of the Commission's rationale for approving those procedures on a pilot basis, *see* 1992 Approval Order, *supra*, note 3. The discussion in the aforementioned order is incorporated by reference into this order.

[14] *See supra*, notes 3–6.

[15] The Commission notes that this pilot program is intended to prevent orders from being executed outside the primary market range for the day (*i.e.*, from establishing a new high or new low). Consistent with that policy, the CHX requires the specialist to execute stopped stock based on the next primary market sale. Specifically, if the next sale is at a better price, the stopped stock may, depending on the depth of the specialist's limit order book at that price, receive price improvement. However, if the next primary market sale is at the stop price (or worse), the order can receive the stop price. If an order is executed at the stop price because the next sale creates a new primary market range, the pilot program may still have provided a benefit to investors, by preventing what would have been an out-of-range execution.

Conversely, an order may not benefit from the CHX proposal if, despite having been stopped, it ultimately receives an out-of-range execution. In a minimum variation market, this can occur if, by the close, (1) the primary market has not traded at the stop price and (2) *all* pre-existing limit orders on the CHX specialist's book at the better price have not been executed.

[16] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[17] *See, e.g.*, SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963). Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

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stopped buy orders) or offer (for stopped sell orders) with time priority were executed by the close. The Commission recognizes the unintended consequences that can arise from the interplay between a regional exchange's price protection rules and its procedures for stopping stock.[18] In the Commission's opinion, the CHX data suggests that stopped stock generally has been executed in accordance with traditional auction market principles.

Finally, the CHX has responded to the Commission's questions about compliance with the pilot program procedures; at this time, the Exchange staff is not aware of any market surveillance investigations or customer complaints relating to the practice of stopping stock in minimum variation markets.[19] In the event, however, that the CHX identifies any instances of specialist noncompliance with the pilot procedures, the Commission would expect the Exchange to take appropriate action in response.

During the pilot extension, the Commission requests that the Exchange continue to monitor the effects of stopping stock in a minimum variation market and to provide additional information where appropriate. In addition, if the Exchange determines to request permanent approval of the pilot program or an extension thereof beyond July 21, 1995, the CHX should submit to the Commission a proposed rule change by April 15, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[20]

It is therefore ordered, pursuant to Section 19(b)(2)[21] that the proposed rule change (SR–CHX–95–04) is hereby approved on a pilot basis until July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5578 Filed 3–7–95; 8:45 am]

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[18] *See supra*, note 8 and accompanying text.

[19] Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on February 28, 1995.

[20] No comments were received in connection with the proposed rule change which implemented these procedures. *See* 1992 Approval Order, *supra*, note 4.

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–35427; File No. SR–MSRB–94–10]

Self-Regulatory Organization; The Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Establishing Three Business Day Settlement Time Frame

February 28, 1995.

On August 9, 1994, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change to the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on August 24, 1994.[2] The Commission received four comment letters.[3] This order approves the proposal.

I. Description of the Proposal

The purpose of the proposed rule change is to establish three business days after execution of a trade ("T+3") as the standard settlement time frame for transactions in municipal securities. The proposal conforms the standard settlement time frame for municipal transactions to that for most other equity and debt securities transactions.[4] Currently, regular-way settlement is defined as five business days ("T+5") in MSRB rules G–12 ("Uniform Practice") and G–15 ("Confirmation, Clearance and Settlement Transactions with Customers"). The proposed rule change will be effective on June 7, 1995, the same day as the Commission's Rule 15c6–1.[5]

The proposed rule change allows alternate settlement time frames for municipal securities transactions in the secondary market by agreement of the parties at the time of each individual transaction. Thus, broker-dealers may not use standing instructions or master agreements to retain T+5 settlement as a standard practice.

The proposed rule change does not alter the current practice with respect to "when, as and if issued" transactions.[6] Currently, "when, as and if issued" transactions are not settled in five business days due to the various actions necessary to accomplish settlement with the issuer of municipal securities. Therefore, rule G–12(b) will continue to provide that "when, as and if issued" transactions will settle on a date agreed to by both parties but not earlier than the fifth day following the date the confirmation indicating the final settlement date is sent or the sixth day following the date the confirmation indicating the final settlement date is sent for transactions between a manager and a syndicate member.

The proposed rule change also will amend rule G–15(d)(i) relating to institutional customer delivery instructions on delivery versus payment or receipt versus payment ("DVP/RVP") settlements to reflect a T+3 rather than T+5 settlement cycle. Pursuant to the amendment, a broker-dealer must obtain a representation from a customer with DVP/RVP privilege that the customer will deliver instructions to its agent with respect to the receipt or delivery of the securities involved in the transaction promptly and "in a manner to assure that settlement will occur on settlement date." The MSRB has deleted references to specific agent instruction time frames.

II. Written Comments

In addition to the six comment letters the MSRB received prior to the filing of its proposal,[7] the Commission received

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 34541 (August 17, 1994), 59 FR 43603.

[3] Letters from R.N. Dillingham to Commissioners, Commission (September 12, 1994); Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, Commission (September 14, 1994); P. Howard Edelstein, President, Electronic Settlement Group, Thomson Trading Services, Inc. (A Thomson Financial Services Company), to Jonathan G. Katz, Secretary, Commission (September 16, 1994); and Diane M. Butler, Director—Operations & Fund Custody, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission (September 22, 1994). In addition, the MSRB received six comment letters prior to filing the proposed rule change with the Commission. *See infra* note 7.

[4] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act which establishes T+3 as the standard settlement cycle for most broker-dealer transactions. Rule 15c6–1 does not apply to transactions in municipal securities. While municipal securities were specifically exempt from the scope of the rule, the Commission stated its expectation that the MSRB would take the lead in moving municipal securities to a T+3 settlement time frame. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[5] Rule 15c6–1, as adopted, was to become effective June 1, 1995. In order to provide for an orderly and efficient transition from T+5 settlement to T+3 settlement, the Commission has changed the effective date of Rule 15c6–1 to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[6] "When, as and if issued" transactions are transactions in municipal securities which have not yet been issued.

[7] Letters from W. Pat Conners, Conners & Co., Inc., to Judy Somerville, MSRB (March 25, 1994); Steve Harris, Executive Vice President, Golden Harris Capital Group, Inc., to David Clapp, Chairman, MSRB (April 11, 1994); Ronald E. Ott, President, Davidson Securities, Inc., to Judy Somerville, MSRB (May 10, 1994); Roger Springate, Jr., Springate & Company, to MSRB (May 11, 1994); Frederick Stoever, President, Stoever Glass & Co., to Chris Taylor, Executive Director, MSRB (undated); and Gene J. d'Ercole, Executive Vice President, Wulff, Hansen & Co., to David Clapp, Chairman, MSRB (June 9, 1994).

four comment letters, two in support,[8] one in opposition,[9] and one suggesting that additional regulatory changes may be necessary to implement T+3 settlement.[10] Supporters cited benefits such as reduction in market risk and liquidity risk. Thomson Trading Services ("Thomson") suggested an amendment to MSRB rules that require use of a registered clearing agency's facilities for automated confirmations and acknowledgments. R.N. Dillingham opposed the proposed rule change and asserted an inability on the part of retail investors to meet settlement obligations.

Prior to filing with the Commission, the MSRB received six letters commenting on T+3 settlement for municipal securities.[11] All six commenters are small retail broker dealers which are concerned with their ability to comply with the proposal, the proposal's increased economic costs, and its effect on their relationship with individual investors.

III. Discussion

As discussed below, the Commission believes that the MSRB's proposed rule change is consistent with Sections 15B and 17A of the Act.[12] By adopting a T+3 settlement time frame for municipal securities, the settlement cycle for municipal securities will be consistent with the settlement cycle for most corporate and investment company securities. Separate settlement cycles would impose unnecessary cost and operational difficulties on industry participants.[13] As more fully described in the T+3 adopting release, the Commission believes that faster trade settlement can reduce the potential for gridlock and foster investor confidence in securities markets during periods of high volume and price volatility by reducing systemic risk and liquidity risk in the municipal bond market.[14] As the Investment Company Institute noted in its comment letter, the proposed rule change also addresses the problems associated with a mutual fund's obligation to redeem shares daily at the fund's net asset value upon request by its shareholders.[15]

Thus, the Commission believes that the proposed rule is consistent with Section 15B. Section 15B, among other things, requires that the MSRB's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[16] By reducing risk in the municipal securities market, the proposed rule change protects investors and the public interest. By eliminating the burden of separate settlement cycles, the proposal fosters cooperation and coordination with persons engaged in the clearing, settling, and facilitating transactions in municipal securities consistent with Section 15B.

In Section 17A, Congress set forth in its findings that linking all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.[17] While municipal securities generally are defined as exempt securities under the Act,[18] municipal securities are specifically included for purposes of Section 17A of the Act.[19] By shortening the settlement time frame for municipal securities so that it is the same as the settlement time frame for corporate securities, the proposal should forward the goal of developing uniform standards and procedures as set forth in Section 17A.

Commenters opposed to the proposed rule change raised concerns previously considered in connection with the adoption of Rule 15c6–1. Four commenters expressed concern that their customers would not or could not pay for their securities purchases by T+3, thus forcing the broker-dealer to finance the customer's purchases for two days.[20] Several commenters raised similar concerns during the adoption process for Rule 15c6–1. In the adopting release, the Commission stated that:

> The Commission is sensitive to the costs necessary for transition to a shorter settlement time frame but on balance believes that the benefits to the financial system outweigh those costs. Moreover, the Commission believes Rule 15c6–1 creates an incentive for broker-dealers, particularly retail firms, to encourage timely customer payments, and improve management of cash flows * * *. [T]he Commission expects broker-dealers will have adequate notice to educate customers about the need for prompt payment and will have adequate time and incentive to implement changes to reduce the need for financing.[21]

The Commission continues to believe that the benefits in risk reduction outweigh the costs involved.

Several commenters were concerned about the ability of retail customers to meet T+3 settlement obligations, particularly given their heavy reliance on the mail to receive confirms, make payments, and deliver physical stock certificates.[22] The Commission believes that matters such as these can be handled by broker-dealers educating their customers on the need to send payment immediately after execution of trades and through employment of methods to speed delivery of confirmations and stock certificates. In most instances, checks mailed on trade date should reach the broker-dealer by T+3.

One commenter stated that its relationship with individual investors will be affected adversely because customers will believe that their broker is experiencing financial difficulties or that the broker believes that the

[8] Letters from American Bankers Association and Investment Company Institute, *supra* note 3.

[9] Letter from R.N. Dillingham, *supra* note 3.

[10] Letter from Thomson Trading Services, Inc., *supra* note 3.

[11] *Supra* note 7.

[12] 15 U.S.C. 78o–4 and 78q–1 (1988).

[13] In its comment letter, the American Bankers Association supported the rule because, among other reasons, settling municipal securities on a T+5 basis while settling most other securities on a T+3 basis which require operating multiple settlement systems, which will be extremely burdensome and costly.

[14] By reducing the settlement time frame for municipal securities transactions from five business days to three business days, there will be fewer unsettled municipal securities trades subject to credit and market risk at any given time, and there would be less time between trade execution and settlement for the value of those trades to deteriorate. Such risk reduction was one of the major reasons the Commission adopted Rule 15c6–1.

[15] T+3 settlement for mutual funds could create problems in satisfying redemption requests, particularly for funds such as municipal bond mutual funds whose portfolios are invested largely in securities that are not subject to T+3. The Investment Company Institute states "if a municipal bond mutual fund has to sell portfolio securities to meet redemptions, it might be unable to satisfy its obligations if redemption proceeds has to be paid to redeeming shareholders within three days while the fund could not be assured of receiving the proceeds from selling its portfolio securities until two days later."

[16] 15 U.S.C 78o–4(B)(2)(C) (1988).

[17] 15 U.S.C 78q–1(a)(1)(D) (1988).

[18] 15 U.S.C 78c(a)(12)(A)(ii) (1988).

[19] 15 U.S.C 78c(a)(12)(B)(ii) (1988).

[20] Letters from Golden Harris Capital Group, Inc., Davidson Securities, Inc., Stoever Glass & Co., and Wulff, Hansen & Co., *supra* note 7.

[21] *Supra* note 4.

[22] Letters from Golden Harris Capital Group, Inc., Springate & Company, Conners & Co., Inc., R.N. Dillingham, and Wulff, Hansen & Co., *supra* notes 3 and 7.

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customer is less credit worthy.[23] The Commission believes that by educating investors about the requirements of T+3 settlement, broker-dealer can limit such customer confusion.

Another commenter, Thomson, supports MSRB's efforts to shorten the settlement cycle for municipal securities transactions. Thomson, however, believes that the MSRB should amend rule G–15(d)(ii), which requires the use of a registered clearing agency's facilities for automated confirmation and acknowledgement of all DVP/RVP transactions.[24] Since Thomson's letter,[25] the MSRB has issued a letter which denied Thomson's request and which stated the MSRB's believe that providers of confirmation/acknowledgment services should be subject to regulatory oversight and should be linked into other providers of such services.[26]

The Commission believes that the issues raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.[27] In denying Thomson's request, MSRB stated that it would consider any proposals arising from Thomson's discussions with the Commission. The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, the Commission believes that T+3 settlement of municipal securities should not be delayed while these issues are being resolved.

As discussed above, Thomson's letter suggests that approval of the proposed rule change without amendments to MSRB rule G–15(d)(ii) raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change approved by this order but rather by an existing MSRB rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that MSRB's proposal is consistent with Sections 15B and 17A of the Act.[28]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (File No. SR–MSRB–94–10) be, and hereby is, approved.[30]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5584 Filed 3–7–95; 8:45 am]

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[Release No. 34–35434; File No. SR–PTC–95–01]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Reduction of Certain Fees

March 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] ("Act"), notice is hereby given that on January 31, 1995, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PTC. On February 7, 1995, PTC amended the proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is as follows:

italics indicate additions

[brackets] indicate deletions

Participants Trust Company Schedule of Fees

FULL SERVICE PARTICIPANTS

[Effective April 1, 1995]

Service	Fee
Account Maintenance:	
First Six Business Accounts	$[2,500.00] *2,000.00*/month.
Additional Account	$250.00/account/month.
Book-Entry Delivery/Receipt*—(includes all DK's and FTX Transactions).	$[3.00] *2.00* each.
Repo Movement	$[3.00] *2.00* each.
Seg Movement ($.50/side)	$1.00 each.
MVC (Bulk Seg Movement—regardless of number of positions)	$50.00 each.

[23] Letter from Springate & Company, *supra* note 7.

[24] Thomson asserts that rule G–15(d)(ii) precludes vendors such as Thomson from competing with The Depository Trust Company ("DTC"), a registered clearing agency. Letter from Thomson, *supra* note 3. The self-regulatory organization confirmation rules limit confirmation and acknowledgment of institutional trades to the facilities of a registered securities depository.

[25] In an earlier letter, Thomson formally requested that the MSRB amend rule G–15(d)(ii). Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Trading Services, Inc. (A Thomson Financial Services Company), to Harold L. Johnson, Deputy General Counsel, MSRB (June 24, 1994).

[26] Letter from Harold L. Johnson, Deputy General Counsel, MSRB, to P. Howard Edelstein, President, Electronic Settlements Group, Thomson Financial Services (November 9, 1994).

[27] Securities Exchange Act Release No. 35332 (February 3, 1995), 60 FR 8102.

[28] 15 U.S.C. 78*o*–4 and 78*q*–1 (1988).

[29] 15 U.S.C. 78*s*(b)(2) (1988).

[30] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78*s*(b)(1) (1988).

[2] Letter from Leopold S. Rassnick, Senior Vice President, General Counsel and Secretary, PTC, to Jonathan Katz, Secretary, Commission (February 1 1995).

FULL SERVICE PARTICIPANTS—Continued

[Effective April 1, 1995]

Service	Fee
Position Maintenance/P&I Disbursement (includes custody, P&I processing, redemptions and repo accounting).	$[1.50] *1.25*/security/month.
	$.50/Serial Note/month.
Bulk Transfers (transfers of collateral into LPA accounts, or caused by a Participant merger).	*$50.00/transfer (regardless of number of positions).*
Deposits	*$3.00/certificate.***
[Manual]	[$4.00/certificate].
[Automated Bulk (200–1,000 pools)]	[$3.50/certificate].
[Automated Bulk (more than 1,000 pools)]	[$3.00/certificate].
Withdrawals	$15.00 each.****
CLF/BFT Movements	$.50/position/side with a maximum charge of $50.00/side.
HIC Segregation	$50.00 each.
Interim Accounting Adjustments	$10.00 each side.
Publications (Participant Operating Guide, Data Entry Guide and PTC Rules).	*$50.00 each copy (first set free).*

**Receive transaction fee waived for transfer of positions to a new Participant.*

*** Plus transfer agent fee, if applicable. GNMA MBS transfer agent fee is $10.00 per pool. PTC deposit fee is waived for new Participants.

**** Plus transfer agent fee, if applicable. GNMA MBS transfer agent fees are: $50.00 per certificate for same day availability, $25.00 per certificate for next day availability or $10.00 per certificate for two-business day availability.

LIMITED PURPOSE PARTICIPANTS

[Effective April 1995]

Service	Fee
Account Maintenance	$500.00/month.*
Book-Entry Delivery/Receipt**—(includes all DK's and FTX Transactions).	$[3.00] *2.00* each.
Seg Movement ($.50/side)	$1.00 each.
MVC (Bulk Seg Movement—regardless of number of positions)	$50.00 each.
Position Maintenance/P&I Disbursement (includes custody, P&I processing, redemptions and repo accounting).	$[1.50] *1.25*/security/month.
	$.50/Serial Note unit/month.
Bulk Transfers (transfers of collateral into LPA accounts, or caused by a Participant merger).	*$50.00/transfer (regardless of number of positions).*
Deposits	*$3.00/certificate.****
[Manual]	[$4.00/certificate].
[Automated Bulk (200–1,000 pools)]	[$3.50/certificate].
[Automated Bulk (more than 1,000 pools)]	[$3.00/certificate].
Withdrawals	$15.00 each.*****
CLF/BFT Movements	$.50/position/side with a maximum charge of $50.00/side
HIC Segregation	$50.00 each.
Interim Accounting Adjustments	$10.00 each side.
Publications (Participant Operating Guide, Data Entry Guide and PTC Rules).	*$50.00 each copy (first set free).*

*A Limited Purpose Account opened by a Full Service Participant is subject to the fee schedule for a Full Service Participant.

***Receive transaction fee waived for transfer of positions to a new Participant.*

**** Plus transfer agent fee, if applicable. GNMA MBS transfer agent fee is $10.00 per pool. PTC deposit fee is waived for new Participants.

***** Plus transfer agent fee, if applicable. GNMA MBS transfer agent fees are: $50.00 per certificate for same day availability, $25.00 per certificate for next day availability or $10.00 per certificate for two-business day availability.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce PTC's fees for five of its services (i.e., Account Maintenance, Book-entry Delivery and Receipt, Repo Movement, Position Maintenance/P&I Disbursement and Deposits) and to include additional fees with respect to certain incidental services that are not frequently utilized by PTC participants (i.e., Bulk Transfers and Publications). This proposed rule change will be effective April 1, 1995. PTC believes that the modification is appropriate based upon PTC's projected earnings and expenses, the desirability of paying dividends on its outstanding stock, and its level of capital.

PTC believes the proposed rule change is consistent with the requirements of the Act and specifically with Section 17A(b)(3)(D) of the Act because the proposal provides for the equitable allocation of fees amount PTC participants.

(B) Self-Regulatory Organizaton's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an

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impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. PTC will notify the Commission of any written comments received by PTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b–4(e)(2)[4] promulgated thereunder because the proposal effects a change in a dues, fee, or other charge imposed by PTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–95–01 and should be submitted by March 29, 1995.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[5]

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).
[4] 17 CFR 240.19b–4(e)(2) (1994).
[5] 17 CFR 200.30–3(a)912) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–5577 Filed 3–7–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–35429; File No. SR–Phlx–94–59]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Enhanced Specialist Participation in Parity Options Trades

March 1, 1995.

On November 18, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change: (1) clarifying when a specialist is entitled to receive an enhanced participation on parity equity and index options trades; and (2) altering the size of the enhanced specialist participation presently available pursuant to Phlx Rule 1014(g). Notice of the proposed rule change appeared in the **Federal Register** on December 30, 1994.[3] No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on December 20, 1994,[4] and Amendment No. 2 on February 9, 1995.[5] This order approves the Exchange's proposal, as amended.

On May 25, 1994, the Commission approved an enhanced specialist participation for "new equity option specialist units trading newly listed options classes where the specialist is on parity with two or more registered options traders ("ROTs") ("New Unit Split").[6] On August 26, 1994, the Commission approved, on a one-year pilot basis, an enhanced specialist participation whereby an equity option specialist on parity with one or more ROTs is counted as two crowd participants ("Two-for-One Split").[7]

When either the New Unit Split or the Two-for-One Split apply, no customer order on parity is restricted to a smaller participation than any other crowd participant, including the specialist.[8]

At this time, the Exchange proposes to amend both Rule 1014(g) and Commentary .17 thereto to specify that the enhanced splits apply where equity and index option specialists are on parity with controlled accounts, not just with ROTs. The term "controlled account" includes accounts controlled by or under common control with a member broker-dealer.[9]

In addition to defining the circumstances under which the Two-for-One Split and the New Unit Split will be applied, the current proposal also serves to replace, in certain situations, the Two-for-One Split with a percentage distribution. Those situations are where there are orders for more than five contracts and where only one or two controlled accounts are on parity with the specialist for such orders. In those cases: where there is one controlled account on parity with

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1992).
[3] *See* Securities Exchange Act Release No. 35141 (December 22, 1994), 59 FR 67744 (December 30, 1994).
[4] *See* Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated December 14, 1994.
[5] In Amendment No. 2, the Phlx withdrew Amendment No. 1, inserted the effective date of the Two-for-One Split (as defined herein) into new Rule 1014(g)(ii), corrected an erroneous cross-reference in new Rule 1014(g)(ii), and clarified that the proposed exceptions to the Two-for-One Split are mutually exclusive. *See* Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated February 9, 1995.
[6] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) ("Exchange Act Release No. 34109"). The New Unit Split was subsequently expanded to include index option specialists. *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994) ("Exchange Act Release No. 35028").
[7] The Two-for-One Split only applies to orders for more than five contracts. Additionally, it applies to all option classes listed after August 26, 1994, and to 50% of each specialist unit's issues listed prior to that date. Specifically, each specialist unit's issues are divided into quartiles based on the most recent quarterly contract volume; the specialist unit may choose one-half of the issues in each quartile, as long as the total number of issues does not exceed 50% of the unit's issues. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994) ("Exchange Act Release No. 34606") As with the New Unit Split, this provision was subsequently expanded to include index option specialists. See Exchange Act Release No. 35028, *supra* note 6.
[8] *See* Phlx Rule 1014(g) (Two-for-One Split) and Commentary .17 thereto (New Unit Split).
[9] A controlled account is defined as "any account controlled by or under common control with a member broker-dealer." *See* Phlx Rule 1014(g). Customer accounts are all accounts other than controlled accounts and specialist accounts. For purposes of Rule 1014(g), discretionary accounts are considered customer accounts. Telephone conversation between Edith Hallahan, Special Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on February 28, 1995. The Phlx represents that the rule will continue to prohibit the application of any such enhancement in instances that would lessen the pro rata participation of customer orders on parity.

the specialist, the specialist will receive 60% of the contracts and the controlled account will receive 40% of the contracts; and where there are two controlled accounts on parity, the specialist will receive 40% of the contracts and each controlled account will receive 30% of the contracts. In qualified situations where there are three or more controlled accounts on parity with the specialist, the existing Two-for-One Split will continue to apply whereby the specialist will be counted as two crowd participants.

The Exchange believes that in transactions where there are less than three controlled accounts on parity with the specialist, the current Two-for-One split becomes overly burdensome on those controlled accounts. For example, applying the Two-for-One Split to a 100 contract buy order in a trading crowd consisting of one ROT and the specialist, will result in the specialist selling 66 contracts and the ROT selling 34 contracts. Pursuant to the proposed amendment, in the above example the specialist's share will be reduced to 60 contracts and the ROT's share will increase to 40 contracts. As another example, where there are two ROTs on parity with a specialist, the present Two-for-One Split will entitle the specialist to sell 50 contracts and each ROT to sell 25 contracts. The proposal will reduce the specialist's share to 40 contracts and increase each ROT's share to 30 contracts. These results, the Exchange believes, demonstrate that while the specialist will continue to receive an enhanced split, the split will be reduced in small crowds where the impact on ROTs is more pronounced.

Finally, the Exchange also proposes to codify the Two-for-One and New Unit Split provisions, as amended herein, into new Options Floor Procedure Advice B–6 for ease of reference on the trading floor. Similarly, to improve the organization of Rule 1014, the Phlx also proposes to reorganize Phlx Rule 1014 by numbering the Two-for-One Split provisions as Rule 1014(g)(ii) and by moving the New Unit Split provisions from Commentary .17 to Rule 1014(g)(iii).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[10] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, as the Commission stated in approving the New Unit Split and the Two-for-One Split, enhanced specialist participation for equity and index option parity trades may serve to aid the Exchange in attracting and retaining well capitalized specialist units to the Exchange without unreasonably restraining competition or harming investors.[11]

Further, the Commission believes that it is appropriate to amend the Two-for-One and New Unit Splits to state that the enhanced participations apply when an equity or index option specialist is on parity with controlled accounts and not just with ROT orders. The Commission's main concern in originally approving the enhanced specialist participations was ensuring that customer orders were not disadvantaged by the application of the enhanced splits.[12] Because the definition of controlled account excludes customer accounts, the protection afforded to customer orders is not in anyway diminished by this proposal.

Finally, the only other substantive amendment in the current proposal is to alter the Two-for-One Split in situations where the specialist is on parity with less than three controlled accounts. Because the effect of this amendment is merely to reduce the benefit given to specialists on parity trades and, accordingly, to minimize the impact of the Two-for-One Split on controlled accounts, the Commission believes that the proposal does not raise any new issues that were not adequately addressed when the Two-for-One Split was originally approved.[13]

The Commission believes that the remaining proposed amendments are non-substantive and, therefore, do not raise any material regulatory issues. Specifically, the proposal to reorganize the structure of Rule 1014 and to incorporate the New Unit and Two-for-One Splits, as amended, into a new Options Floor Procedure Advice, may reduce potential confusion by providing easier to use references to the enhanced participation provisions.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 merely clarifies the manner in which the Two-for-One Split will be applied and corrects an erroneous cross-reference, neither of which raise any new regulatory issues that were not addressed in the original proposal. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–94–59 and should be submitted by March 29, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–94–59), as amended is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–5580 Filed 3–7–95; 8:45 am]
BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5) (1988).
[11] *See* Exchange Act Release Nos. 34109, *supra* note 6, and 34606 *supra* note 7.
[12] *Id.*
[13] *See* Exchange Act Release No. 34606, *supra* note 7.
[14] 15 U.S.C. 78s(b)(2) (1988).
[15] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20931; 812–8630]

Dean Witter Reynolds Inc., et al., Notice of Application

March 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Dean Witter Reynolds Inc. (the "Sponsor"); and Dean Witter Select Municipal Trust, Dean Witter Select

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Corporate Trust, Dean Witter Select Investment Trust, Dean Witter Select Equity Trust, and Dean Witter Select Government Trust (the "Trusts").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions for sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) to amend a prior order (the "Prior Order") granting relief from section 11(c).[1]

SUMMARY OF APPLICATION: Applicants seek to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

FILING DATES: The application was filed on October 8, 1993 and amended on October 31, 1994, January 30, 1995, and February 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942–0570 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each of the Trusts is a unit investment trust sponsored by the Sponsor. The Trusts are made up of one or more separate series ("Series"). Over seven hundred Series of the Trusts are currently outstanding.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities and deposits them with a trustee in exchange for certificates representing fractional undivided interests in the portfolio of securities ("Units"). Units currently are offered to the public through the Sponsor and other underwriters and dealers at a price based upon the aggregate offering side evaluation of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 1.50% to 5.50% of the public offering price. The Sponsor may offer a discounted sales charge to unitholders within a Series based on the quantity of Units purchased. The sales charge may also vary among Series depending on the terms of the underlying securities.

3. Applicants seek an order under section 6(c) exempting them from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) and rule 22c–1 thereunder to let them impose sales charges on Units on a deferred basis and waive the deferred sales charge in certain cases. Under applicants' proposal, the Sponsor will continue to determine the amount of sales charge per Unit at the time portfolio securities are deposited in a Series. The Sponsor will have the discretion to defer collection of all or part of this sales charge over a period ("Collection Period") following the settlement date for the purchase of Units. The Sponsor will in no event add to the deferred amount initially determined any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

4. The deferred sales charge ("DSC") may be (a) deducted from the proceeds of a sale, exchange, or redemption of units or termination of the Series ("Disposition Amount"); or (b) deducted from (i) amounts received on the sale of portfolio securities, (ii) amounts received on the maturity of portfolio securities, (iii) income distributions on the Units, or (iv) a combination thereof ("Distribution Deductions"). Alternatively, the trustee may advance the DSC on behalf of the Series on a periodic basis, in which case the trustee will be reimbursed from the principal account of the Series upon the receipt of proceeds from the maturity or sale of portfolio securities or from the income account of the Series. The total of all these amounts will not exceed the aggregate DSC per unit. The DSC may be paid out of the principal or income accounts of the Series and securities may be sold in order to pay any portion of the DSC due on a certain date.

5. For purposes of calculating the amount of the DSC due upon redemption or sale of Units, it will be assumed that Units on which the balance of the sales charge has been collected from installment payments are liquidated first. Any Units disposed of over such amounts will be redeemed in the order of their purchase, so that Units held for the longest time are redeemed first.

6. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales, exchange, or redemption proceeds, if necessary, so as not to jeopardize the tax-exempt nature of various investors such as Individual Retirement Accounts and employee benefits plans, if otherwise required for tax purposes, or for such other reasons as disclosed in the prospectus.

7. The Collection Period and the manner in which the Disposition Amount and/or Distribution deductions are calculated shall be stated in the prospectus, including the amount and date of each Distribution Deduction, if any. The prospectus for a Series will include disclosure that portfolio securities may be sold to pay the DSC if amounts in the income account are insufficient to pay the DSC or proceeds from portfolio securities are intended to pay the DSC. The confirmation received by a holder on the purchase, sale, exchange, or redemption of a Unit will indicate the sales charge as required by National Association of Securities Dealers, Inc. rules. The account statement of a holder will reflect a value of a Unit. The account statement, however, will not reflect the amount a holder paid for the up-front sales charge. At the end of every year, the Trust's annual report will reflect the aggregate amount of Distribution Deductions, both on a Series and per Unit basis.

8. The Prior Order permits applicants to allow unitholders to exchange Units of one Series for Units of another Series subject to a sales charge of up to 2.5% per Unit (generally 2.0% per Unit for equity Series and 2.5% per Unit for municipal bond series). When Units held for less than five months are exchanged for Units with a higher regular sales charge, the sales charge will be the greater of (a) the reduced sales charge or (b) the difference between the sales charge paid in acquiring the Units being exchanged and the regular sales charge for the quantity of Units being acquired, determined as of the date of the exchange.

9. Applicants seek to amend the Prior Order to permit offers of exchange of Units subject to a DSC. The DSC, including Distribution Deductions uncollected at the time of the exchange, would be imposed at the time of the exchange. The sales charge imposed will be fixed at the time of the exchange, will be equal to the greater of a fixed dollar amount or the amount of the DSC remaining on the Units acquired, and may be comprised of an upfront and/or deferred amount, which deferred amount, if applicable, would include any portion of the sales charge not collected at the time of exchange. In the case where a Unit subject to a DSC is being exchanged, the proceeds due to the exchanging investor will be net of the DSC due upon the sale of a Unit at such time. Such net proceeds will be used to purchase the acquired Units. Those Units may be subject to the greater of a sales load of a fixed dollar amount or the amount of the DSC remaining on the Units acquired in the exchange.

10. The Sponsor may offer certain Series that have intermediate or short-term stated maturities. Upon termination of such Series, the Sponsor may create a new Series with the same investment objective, the same type of portfolio securities as the terminating Series, and in certain instances some of the same portfolio securities. Applicants wish to make Units of the new Series available to the unitholders of the new Units plus a reduced sales charge on an up-front and/or deferred basis (the "Rollover Option"). Although applicants believe that the Prior Order already permits the Rollover Option, they request that the Prior Order be amended to cover the Rollover Option explicitly.

Applicants' Legal Analysis

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Because the imposition of the DSC defers the deduction of a portion of the sales charge, applicants seek an exemption from section 2(a)(32) so that Units subject to a deferred sales charge are considered redeemable securities for purposes of the Act.[2]

3. Section 2(a)(35) defines the term "sales load" to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a deferred sales charge is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a deferred sales charge may cause a redeeming unitholder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this section and rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d–1 was adopted to permit the sale of redeemable securities "at prices that reflect scheduled variations in, or elimination of, the sales load." Because rule 22d–1 may not be interpreted to extend to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit each Series to waive or reduce the DSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from Distribution Deductions or the principal account.

7. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the unitholders of the Trusts. Thus, granting the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 11(c) prohibits any offers of exchange of the securities of a registered until investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is justified by cost savings because that shareholder would require less explanation concerning the procedures and operations of the Trusts.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The amount of the sales charge per Unit collected from a holder at the time of any exchange or conversion of a Unit will be lower than the sales charge collected on the initial purchase of the same Unit at such time.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of From N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment

[1] Dean Witter Reynolds Inc., *et al.* Investment Company Act Release Nos. 14934 (Feb. 12, 1986) (notice) and 14987 (March 13, 1986) (order).

[2] Without an exemption, a trust selling units subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only "redeemable securities."

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companies) and a schedule setting forth the number and date of each installment payment.

For the Commission, by the Division of Investment, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5583 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20932; 812–9454]

Dean Witter Select Equity Trust, et al.

March 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Dean Witter Select Equity Trust and Dean Witter Reynolds Inc. ("Dean Witter").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act that would exempt applicants from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on January 26, 1995 and amended on February 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Dean Witter Reynolds Inc., Unit Trust Department, Two World Trade Center, New York, NY 10048, Attn.: Thomas Hines.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Dean Witter Select Equity Trust, a unit investment trust registered under the Act, consists of several series (each a "Series"). All of the Series currently outstanding are Select 10 Series ("Select 10 Series"). Dean Witter is the Series' sponsor. Applicants request that the relief sought herein apply to future Series for which Dean Witter serves as sponsor.

2. The investment objective of each Selection 10 Series is to seek a greater total return than the stocks comprising the entire related index (e.g., the Dow Jones Industrial Average, the Hang Seng Index, or the Financial Times Ordinary Share Index) (each an "Index"). Each Select 10 Series acquires approximately equal values of the tens stocks in the Index having the highest dividend yields as of a specified date, and holds those stocks for approximately one year. Dean Witter intends that, as each Select 10 Series terminates, a new Series based on the appropriate Index will be offered for the next year.

3. Each Series has a contemplated date (a "Rollover Date") on which holders of units in that Series (a "Rollover Series") may at their option redeem their units in the Rollover Series and receive in return units of a subsequent Series of the same type (a "New Series") which is created on or about the Rollover Date, and has a portfolio which contains securities ("Qualified Securities") which are (i) actively traded (i.e., have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (a "Qualified Exchange") which is either (a) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (b) a foreign securities exchange which meets the qualifications set out in the proposed amendment to rule 12d3–1(d)(6) under the Act as proposed by the SEC and which releases daily closing prices, and (ii) included in an Index.

4. There is normally some overlap from one year to the next in the stocks having the highest dividend yields in an Index and, therefore, between the portfolio of a Rollover Series and the New Series. In the case of the Select 10 Industrial Portfolio 94–1 as compared to the Select 10 Industrial Portfolio 95–1, eight of the ten securities were identical. In connection with its termination, Series 94–1 sold all of its securities on the New York Stock Exchange as quickly as practicable. Likewise, the portfolio of Series 95–1 was acquired in purchase transactions on the New York Stock Exchange. This procedure creates brokerage commissions on portfolio securities of the same issue that are borne by the holders of units of both the Rollover Series and the New Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

5. In order to minimize overreaching, applicants agree that Dean Witter will certify in writing to the trustee, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Qualified Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs Dean Witter orally of any such disagreement and returns the certificate within five days to Dean Witter with corrections duly noted. Upon Dean Witter's receipt of a corrected certificate, if Dean Witter can verify the corrected price by reference to an independently published list of closing prices for the date of the transactions, Dean Witter will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that Dean Witter disagrees with the trustee's corrected price, Dean Witter and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control may be considered affiliates of one another. The Series may be under common control because they have Dean Witter as a sponsor.

2. Pursuant to section 17(b), the SEC may exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Under section 6(c), the SEC may exempt classes of transactions if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of each Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees on sales of securities and is therefore contrary not only to the policies of the Series but to the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Qualified Securities by a Rollover Series to a New Series will be effected at the closing price of the securities sold on a Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of securities from a Rollover Series and the purchase of securities for deposit in a New Series and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5582 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20937; 813–136]

EIP Inc.; Notice of Application

March 2, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: EIP Inc.

RELEVANT ACT SECTIONS: Applicant seeks a conditional order under sections 6(b) and 6(e) granting an exemption from all the provisions of the Act, and the rules thereunder, except section 9, certain provisions of section 17 and the related rules thereunder, and sections 36 through 53, and the rules thereunder.

SUMMARY OF APPLICATION: Applicant seeks to form limited partnerships (the "Partnerships") of which it will be the general partner and which will be employees' securities companies within the meaning of section 2(a)(13) of the Act, and to engage in certain affiliated and joint transactions with the Partnerships.

FILING DATES: The application was filed on September 1, 1994, and amended on November 1, 1994, January 13, 1995, and February 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation and an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."). ML&Co. is a diversified financial services holding company that through its subsidiaries provides investment, financing, insurance, and related services. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), ML&Co.'s principal subsidiary, is a registered broker-dealer. ML&Co. and its affiliated companies are herein referred to as the "ML Group."

2. Applicant or another direct or indirect wholly-owned subsidiary of ML&Co. formed for such purpose will be the "General Partner" of each of the Partnerships.[1] The General Partner proposes to establish Partnerships from time to time for the benefit of highly compensated key employees of the ML Group. The Partnerships will be part of a program designed to create capital buildings opportunities competitive with those at other investment banking firms for ML&Co.'s professionals and managers and to facilitate its recruitment of professionals and managers. Each Partnership will operate as a non-diversified closed-end management investment company and will meet the definition of an

[1] The "General Partner" refers to applicant or another wholly-owned subsidiary of ML&Co. in its role as the general partner of a Partnership or the functional equivalent with respect to any Partnership organized as a business trust or limited liability company.

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"employees' securities company" in section 2(a)(13) of the Act.

3. Interests in the Partnerships (the "Interests") will be offered only to "Eligible Employees," who are current employees of the ML Group that meet the income standards for "accredited investors" of rule 501(a)(6) under Regulation D promulgated under the Securities Act of 1933 (the "Securities Act"). Eligible Employees will be experienced professionals in the investment banking and securities business, or in related administrative, financial, accounting, legal, or operational activities, and will be sophisticated investors. Eligible Employees will be senior employees of the ML Group and will know or be known to, and have direct access to, other Eligible Employees.[2] Eligible Employees will be advised that the Interests will be sold in a transaction exempt under section 4(2) of the Securities Act and thus offered without the protections afforded by registration thereunder, and that the Partnerships will be exempt from most provisions of the Act. An Eligible Employee becomes a limited partner of a Partnership (a "Limited Partner") by investing in the Partnership.

4. The applicable partnership agreement may provide that a Limited Partner make a capital contribution in its entirety upon the formation of a Partnership or in installments. A Limited Partner who fails to pay an installment when due must pay interest on such installment, remain personally liable for the amount of the default and, to the extent permitted by law, will not be entitled to participate as a Limited Partner when making approvals or decisions.

5. All of the Partnerships will have minimum capital contributions and restrictions with respect to transferability of Interests. Interests will be non-transferable except with the express consent of the General Partner and in any event will be transferable only to Eligible Employees and members of a Limited Partner's immediate family. Upon the death of a Limited Partner or such Limited Partner becoming incompetent, insolvent, incapacitated, or bankrupt, such Limited Partner's estate or legal representative may succeed to the Limited Partner's Interests as an assignee for the purpose of settling such Limited Partner's estate or administering such Limited Partner's property, but may not become a Limited Partner. Interests will not be redeemable, except that the estate of a deceased Limited Partner may elect to have the Limited Partner's Interests repurchased by the General Partner or the Partnership at a price equal to the value of the Interests determined at the next succeeding appraisal date.

6. The purchase price of an Interest acquired upon the termination of a Limited Partner's employment (other than termination for cause) or upon the Limited Partner's bankruptcy or adjudication of incompetence will equal the amount that the Limited Partner would have received had the Partnership been liquidated on the valuation date as of the end of the immediately preceding fiscal year. If termination is for cause, the General Partner has the right, but not the obligation, to acquire the Interest of the Limited Partner at the lesser of the amount equal to (a) what the Limited Partner would have received had the Partnership been liquidated on the valuation date as of the end of the immediately preceding fiscal year, less any distributions made after such valuation date, or (b) the cost of the Limited Partner's investment on such valuation date, plus any undistributed ordinary income.

7. The General Partner will be a registered investment adviser. The General Partner will manage, operate, and control the Partnerships and will have the authority to make all decisions regarding the acquisition, management, and disposition of the investments of the Partnerships (the "Investments"). All Investments and dispositions thereof will be approved by the General Partner's board of directors (the "Board"), which will consist of five members. When considering investments for the Partnerships, the Board will receive the advice of members of a committee of advisers. The Board may consider investments proposed by unrelated third parties and investments offered by Merrill Lynch in public offerings or private placements and investments presented to the Partnership by affiliates of the General Partner. All investments selected by the General Partner will be evaluated independently of each other and chosen only if a majority of the Board determines that they are suitable for and in the best interest of the Partnerships.

8. Pending investment, Partnership funds will be invested in "Temporary Investments," which consists of: (a) U.S. Government obligations with maturities of not longer than one year and one day; (b) commercial paper with maturities not longer than six months and one day and having a rating assigned to it by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither organization shall rate such commercial paper at such time, by any nationally recognized rating organization in the United States) equal to one of the two highest ratings assigned by such organization; (c) interest-bearing deposits in U.S. or Canadian banks with an unrestricted surplus of at least $250 million, maturing within one year; and (d) any money market fund distributed and managed by ML&Co. or any affiliated person thereof or successor thereof. Consistent with section 12(d)(1)(A)(i), no Partnership making a Temporary Investment will acquire more than 3% of the total outstanding voting securities of an investment company.

9. The General Partner will make no cash contribution to the Partnerships other than a nominal contribution upon their formation. The General Partner will be allocated and receive 1% of the income, profit, loss, credit, expense, and deductions of the Partnership. Distributable cash generally will be allocated 1% to the General Partner and 99% to the Limited Partners. The General Partner is obligated to pay the operating expenses of the Partnerships and is entitled to receive from each Partnership annually up to 1½% of the Limited Partners' capital contribution to reimburse the General Partner for incurring such operating expenses. The General Partner's net worth will be adequate to meet the requirements of classifying the Partnerships as partnerships rather than as associations taxable as corporations for federal income tax purposes.

10. It is expected that new Partnerships would be formed on a periodic basis but would not be formed until the capital of the prior Partnership has been invested or committed for investment, other than reserves maintained for follow-on investments or operating expenses. The General Partner may under certain circumstances deem it appropriate to allocate an investment between two Partnerships.

11. It is expected that a substantial percentage of Investments will be made available to a Partnership by the ML Group. Other affiliated persons of ML&Co. may also invest in the same Investments in which the Partnerships invest.

12. The General Partner will not have the power to require that a Limited Partner withdraw from a Partnership, except that the applicable partnership agreement may provide that the General Partner has the right, but not the obligation, to acquire the Interest of a Limited Partner following his or her termination of employment or bankruptcy. The General Partner may be removed by the vote of at least two-thirds of the outstanding Interests of a Partnership. The General Partner may assign or transfer its Interest to another wholly-owned subsidiary of ML&Co.

13. The General Partner has the right to dissolve the Partnership approximately six years after its formation. It is anticipated that the General Partner will dissolve the Partnership when a Partnership's equity investments have matured and disposition of other Investments can be effected.

Applicant's Legal Analysis

1. Section 17(a) prohibits an affiliated person of a registered investment company from selling to or purchasing from such investment company any security or other property. Applicant requests an exemption from section 17(a) to the extent necessary to permit a member of the ML Group to engage in principal transactions with a Partnership. The exemption would let the Partnerships (a) purchase Investments from members of the ML Group on a principal basis; (b) purchase interests or property in a company or other investment vehicle affiliated with ML&Co. or in which a member of the ML Group already owns securities; (c) sell, put or tender, or grant options in securities or interests in a company or other investment vehicle back to such entity, where that entity is affiliated with the ML Group; and (d) participate as a selling security holder in a public offering underwritten by a member of the ML Group or in which a member of the ML Group acts as a member of the underwriting or selling group. In addition, a Partnership may purchase from, or sell to, an affiliated person of such Partnership a Temporary Investment or other short-term investment. Applicant asserts that the requested exemption is consistent with the policy of the Partnerships and the protection of investors. The Limited Partners will be fully informed of the possible extent of the Partnerships' dealings with affiliates and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks.

2. Section 17(d) and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The section and rule might require the Partnerships to refrain from certain transactions in which any Limited Partner or a member of the ML Group is also a participant. Applicant requests an exemption from section 17(d) and rule 17d—1 to the extent necessary to let the Partnerships engage in transactions with "Co-investors," as defined in condition 3 below, who may be affiliated persons of the Partnerships. Applicant believes that joint participation by the Partnerships in transactions with Co-Investors is consistent with the provisions, policies, and purpose of the Act. Each Limited Partner will receive a pro rata share of the income, profit, loss, credit, expense, and deduction of a Partnership based on the Limited Partner's investment in the Partnership, after the allocation to the General Partner of 1% of each such item. Any Investment made concurrently by a Partnership and a Co-Investor will be made on the same terms, though not necessarily in the same amount.

3. Section 17(f) requires that every registered investment management company deposit its securities and similar investments in the custody of certain specified entities. Rule 17f–1 requires that a member of a national securities exchange serving as custodian of the securities and investments of an investment company must, among other things, operate under a written contract approved by a majority of the investment company's board of directors. Applicant requests an exemption from section 17(f) and rule 17f–1 to let Merrill Lynch act as custodian without a written contract. Applicant asserts that, since there is such a close association between the Partnerships and Merrill Lynch, requiring a written contract would expose the Partnerships to unnecessary burden and expense where none is necessary. Furthermore, any funds or securities of the Partnership held by Merrill Lynch will have the protection of fidelity bonds. Applicant further requests an exemption from rule 17f–1(b)(4), which requires that the investment company's securities and investments be verified by actual examination by an independent public accountant at certain specified times. Applicant does not believe the expense of retaining such an independent accountant is warranted, in light of the community of interest of all parties involved and the existing requirement for an independent annual audit. The Partnerships otherwise will comply with rule 17f–1.

4. Section 17(g) authorizes the SEC to require by rules thereunder that certain officers and employees of a registered management investment company be bonded against larceny and embezzlement. Rule 17g–1 requires, among other things, that a majority of the company's board of directors approve at least annually the arrangements regarding the custody and safekeeping of the company's assets. Applicant requests an exemption from section 17(g) and rule 17g–1 to let the Partnerships comply with rule 17g–1 by having the General Partner's officers and directors take actions and make determinations set forth in the rule. In all other respects, the partnerships will comply with rule 17g–1.

5. Rule 17j–1 requires that every access person of a registered investment company report to such company with respect to transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in the security. Applicant requests an exemption from the rule, except for the antifraud provisions set forth in rule 17j–1(a). Applicant asserts that the other provisions of the rule are burdensome and unnecessary as applied to the Partnerships and that the exemption is consistent with the policy of the Act. Applicant contends that the community of interests among the Limited Partners by virtue of their common association in ML&Co. is the best insurance against any abuse at which the rule is aimed.

6. Section 6(c) permits the SEC to exempt any person, security, or transaction from any of the provisions of the Act, or of the rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the requested exemption satisfies these standards.

[2] Pursuant to Merrill Lynch KECALP Growth Investments L.P. 1983, Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order), amended, Investment Company Act Release Nos. 20280 (May 5, 1994) (notice) and 20328 (June 1, 1994) (order), an indirect wholly-owned subsidiary of ML&Co. may establish limited partnerships (the "KECALP Partnerships") that meet the definition of "employees' securities companies" under the Act and are exempt from most provisions of the Act. Interests in the KECALP Partnerships are offered exclusively to certain employees of ML&Co. and its subsidiaries and to non-employee directors of ML&Co. It is expected that the number of persons eligible to invest in a Partnership will be significantly smaller than the number eligible to invest in a KECALP Partnership. All Eligible Employees are expected to be eligible to invest in KECALP Partnerships organized in the future. To avoid any conflicts of interests between the KECALP Partnerships and the Partnerships, ML&Co. had adopted a policy that, with respect to investment opportunities in which both a KECALP Partnership and a Partnership may invest, such opportunities will first be made available to the KECALP Partnership. In addition, no person may be a member of both the boards of directors of the General Partner and of KECALP Inc., the general partner of the KECALP Partnerships.

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7. The Partnerships will be conceived and organized by persons who will be investing in the Partnerships, either directly or indirectly, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities. Applicant asserts that the requested exemptions are necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs of the Eligible Employees.

Applicant's Conditions

Applicant agrees that the requested order shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the partners and do not involve overreaching of the Partnership or its partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the partners, the Partnership's organizational documents, and the Partnership's reports to its partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated persons of such a person, promoter, or principal underwriter.

3. As a condition to the relief requested from section 17(d) and rule 17d–1, the General partner will not invest the funds of any Partnership in any Investment in which a "Co-Investor," as defined below, has or proposed to acquire the same class of securities of the same issuer, where the Investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" means ML&Co. and any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) a subsidiary of ML&Co., or other company controlled by ML&Co. or its subsidiaries; (c) an officer or director of a subsidiary of ML&Co., or other company controlled by ML&Co. or its subsidiaries; (d) companies, partnerships, or other investment vehicles offered, sponsored, or managed by a member of the ML Group; (e) any entity with respect to which ML&Co. or its subsidiaries or controlled entities provides management, investment management, or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including, without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (f) a company in which an officer or director of the General Partner acts as officer, director, or General Partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–2(T) thereunder.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff.[4]

5. The General Partner will send to each Limited Partner who had an interest in the Partnership at any time during the fiscal year then ended partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the General Partner and deemed qualified by the General Partner to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets, and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the General Partner may revise the appraisal as it, in its good faith and sole discretion, deems appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during such a year.

6. In any case where purchases or sales are made from or to an entity affiliated with a partnership by reason of a 5% or more investment in such entity by a director, officer, or employee of ML&Co. or any of its affiliates, any such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5645 Filed 3–7–95; 8:45 am]

BILLING CODE 8010–01–M

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[4] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

[Investment Company Act Release No. 20934; International Series Release No. 789; 812–9262]

Mellon Bank, N.A.; Notice of Application

March 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Mellon Bank, N.A. ("MBNA").

RELEVANT ACT SECTIONS: Sections 6(c) and 17(f).

SUMMARY OF APPLICATION: MBNA seeks an order under section 6(c) of the Act granting an exemption from section 17(f). The order would allow United States registered investment companies other than investment companies registered under section 7(d) (a "U.S. Investment Company"), for which MBNA serves as custodian or subcustodian, to maintain foreign securities and assets in the United Kingdom with Mellon Europe Limited ("MEL"), a wholly-owned subsidiary of MBNA.

FILING DATES: The application was filed on September 29, 1994 and amended on February 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Mellon Bank, N.A., One Mellon Bank Center, Pittsburgh, Pennsylvania 15258-0001.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Mranagement, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. MBNA requests an order to allow MBNA, any U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, "assets") in the custody of MEL. For the purposes of this application, "foreign securities" includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof of by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. MBNA is a national banking association organized and existing under the laws of the United States. MBNA is regulated by the Office of the Comptroller of the Currency and is subject to the National Bank Act. As of December 31, 1993, MBNA had aggregate capital, surplus, and undivided profits in excess of $2,460,000,000. MBNA is a wholly-owned direct subsidiary of Mellon Bank Corporation ("Mellon"), a Pennsylvania corporation qualified as a bank holding company under the Bank Holding Company Act of 1956.

3. MEL is a wholly-owned subsidiary of MBNA and is regulated by the Bank of England under the Banking Act of 1987. As of December 31, 1993, MEL had shareholders' equity slightly in excess of $10,000,000.

4. Boston Safe Deposit and Trust Company ("Boston Safe") is a subsidiary of The Boston Company, Inc. Boston Safe is organized as a trust company under Massachusetts law and is regulated by the Massachusetts Commissioner of Banks. In May 1993, Mellon acquired The Boston Company, Inc. and its subsidiaries, including Boston Safe. A major business unit of Boston Safe is Global Securities Services, which provides international financial and securities processing services, including global custody, and is qualified to hold U.S. Investment Company assets under section 17(f) of the Act.

5. Mellon proposes to transfer the custody activities of the London branch of Boston Safe to MEL by transferring to MEL the operations and assets of the Global Custody Department of Boston Safe. Assets of U.S. Investment Companies held by the London branch of Boston Safe will not be transferred to MEL prior to the issuance of the requested order.[1] Thereafter, MBNA, as custodian or sub-custodian for a U.S. Investment Company, will deposit, or cause or permit a U.S. Investment Company to deposit, its assets with MEL. In the alternative, MEL, as custodian or subcustodian will receive and hold the assets of a U.S. Investment Company directly from such U.S. Investment Company, its custodian or subcustodian, other than MBNA but including Boston Safe.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A "bank", as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States which section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f-5 expands

[1] Until the requested order is issued, U.S. Investment Company assets will continue to be held by the London branch of Boston Safe or another custodian that qualifies under section 17(f) of the Act.

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the group of entities that are permitted to serve as foreign custodians. Rule 17f-5(c)(2)(ii) defines the term "Eligible Foreign Custodian" to include a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorporated or organized under the laws of country other than the United States and that has shareholders' equity in excess of $100,000,000. MBNA is a qualified U.S. bank since it is a bank as defined in rule 17f-5(c)(3) and it has aggregate capital, surplus, and undivided profits of at least $500,000.

3. MEL satisfies the requirements of rule 17f-5 insofar as it is a majority-owned direct or indirect foreign subsidiary of a qualified U.S. bank or bank holding company. MEL does not, however, meet the minimum shareholders' equity requirement of rule 17f-5. Accordingly, MEL is not an Eligible Foreign Custodian under rule 17f-5 and, absent exemptive relief, could not serve as a custodian for the assets of U.S. Investment Companies.

4. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by other, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. MBNA submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding MEL satisfy the requirements of rule 17f-5 in all respects other than MEL's level of shareholder equity.

2. MBNA, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit assets with MEL only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which MEL fails to satisfy the requirements of rule 17f-5 (and during which such assets remain deposited with MEL). Each Agreement will be three party agreement among (a) MBNA, (b) MEL, and (c) the U.S. Investment Company or any custodian for a U.S. Investment Company (including Boston Safe) pursuant to which MBNA or MEL, as the case may be, will undertake to provide specified custody services. If MBNA is to provide such services, the Agreement will authorize MBNA to delegate to MEL such of the duties and obligations of MBNA as will be necessary to permit MEL to hold in custody the U.S. Investment Company's assets. If MEL is to provide service directly, no such delegation will be necessary. However, in either case, the Agreement will provide that MBNA will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by MEL of its responsibilities under the Agreement to the same extent as if MBNA had itself been required to provide custody services under the Agreement. Further, the Agreement will provide that, in the event of loss, the U.S. Investment Company or its custodian may pursue a claim for recovery against MBNA, regardless of whether MEL acted as MBNA's delegate or as direct custodian or subcustodian.

3. MBNA currently satisfies and will continue to satisfy the minimum requirements for a qualified U.S. bank set forth in sections 2(a)(5) and 17(f) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5581 Filed 3-7-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Honolulu District Advisory Council Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting on Tuesday, March 14, 1995 at 9:30 a.m. at the Business Information and Counseling Center, 130 Merchant Street, Suite 1030, Honolulu, Hawaii, 96813 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2314, Honolulu, Hawaii 968503, (808) 541-2965.

Dated: February 27, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95-5608 Filed 3-7-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 2172]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Radiocommunications and Search and Rescue; Notice of Meetings

The Working Group on Radiocommunications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on Thursday, April 20, Wednesday, June 14, Thursday, August 17, Thursday, September 21, Thursday, October 19, Wednesday, November 15, and Thursday, December 21, 1995. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 1st Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is scheduled for February 19, 1996, at the IMO headquarters in London, England.

Among other things, the items of particular interest are:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

—Maritime Search and Rescue matters.

Further information, including meeting agendas, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center computer bulletin board, accessible by modem by dialing: (703) 313-5910. The computer is also accessible through Internet by entering: "Telnet fedworld.gov." logging on, and entering: "udd54", at the first menu.

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G-TTM), Room 6306, 2100 Second Street, SW., Washington, DC 20593-0001, by calling: (202) 267-1389, or by sending Internet electronic mail to cgcomms/g-t@cgsmtp.comdt.uscg.mil.

Dated: February 21, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95-5565 Filed 3-7-95; 8:45 am]

BILLING CODE 4710-70-M

[Public Notice 2173]

Shipping Coordinating Committee Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 am on Monday, April 10, 1995, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington DC 20593-0001. The purpose of the meeting is to review the outcome of the twenty-seventh session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), particularly as it relates to the revision of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and preparations for 1995 STCW Conference to be held at IMO from June 26 to July 7, 1995.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G-MVP-4), Room 1210, 2100 Second Street SW., Washington, DC 20593-0001 or by calling: (202) 267-0229.

Dated: February 21, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95-5564 Filed 3-7-95; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49152 and Order 95-2-44]

Order on Discussion Authority Regarding Limits and Conditions of Passenger Liability Established by the Warsaw Convention

SUMMARY: We are publishing the entire order as an appendix to this document.

DATES: Issued in Washington, D.C., February 22, 1995.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Bloch, U.S. Department of Transportation, Office of the Assistant General Counsel for International Law, Room 10105, 400 Seventh Street, S.W., Washington, D.C. 20590. (202) 366-9183.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Order

On September 24, 1993, the International Air Transport Association (IATA) filed an application requesting approval of, and antitrust immunity for, intercarrier discussions concerning the limits and conditions of passenger liability established by the Warsaw Convention (Convention).

IATA states that pending ratification and entry into force of Montreal Protocols Numbers 3 and 4 to the Convention, there is a need for interim passenger liability rules that are adequate to current day standards of compensation. The current regime, as embodied in the Montreal intercarrier agreement of 1966 (Agreement) and which covers all carriers serving the United States, establishes a liability limit of $75,000 for personal injury and death.[1] Adjusted for inflation, IATA notes that this amount would be over $300,000 in today's dollars. Despite this, adherence to the Agreement's $75,000 limit continues to be a condition for all carriers to operate to the Untied States. Against this background, IATA states that air carrier parties to the Agreement need the authority to discuss bringing the Agreement up to date. It states that such discussions may include possible amendments to, or replacements for, this Agreement. IATA states that its request for discussion authority and antitrust immunity is consistent with Department precedent.

No answers were filed in response to the IATA application.

Decision

The Department has decided to grant the requested discussion immunity subject to the conditions described below. The United States has a firmly-established policy that liability limits should be adequate to contemporary standards of compensation and that the current regime needs to be updated to provide sufficient protection to the traveling public. We are granting the application because the discussions proposed by IATA may bring about an interim solution that will serve either until Montreal Protocols 3 and 4 are ratified and enter into force, or until negotiation and entry into force of a new Convention meeting all U.S. requirements.

We may authorize intercarrier discussions and grant them antitrust immunity where we find that the discussions are necessary to meet a serious transportation need or to achieve important public benefits and that such benefits or need cannot be secured by reasonably available alternatives that are materially less anticompetitive.[2] 49 U.S.C. 41308, 41309.

The purpose of the discussions in this case is to secure the important public benefit of a liability regime that reflects contemporary standards of compensation. The discussions are consistent with a strong and long-standing Department policy of seeking a uniform set of passenger liability rules that meet today's needs.

We find that there are no reasonably available alternatives to the requested discussions having a materially less anticompetitive effect. The best alternative, of course, is an international agreement such as the Montreal Protocols and Supplemental Compensation Plan, but it is because that approach has proven to be such a complex and lengthy one, and given the pressing need to have an updated liability regime, that we are entertaining this discussion authority request. Another alternative would be to allow individual carriers to apply to the Department for modifications to their tariffs and conditions of carriage to implement individual new special contracts under Article 22 of the Convention. We do not believe that approach is workable. Some carriers would probably attempt this, while others would not. Those that did would likely offer contracts with different terms from one another. One clear and unacceptable result of such an approach would be that portions of the traveling public would not be adequately protected. A final alternative would be for the United States to unilaterally establish a regime that all carriers operating to the United States would have to abide by. This approach, however, could engender such significant opposition from our trading partners that our ability to implement the plan unilaterally could very well be jeopardized.

We also find that the requested approval and grant of antitrust immunity to discuss an interim liability regime is appropriately limited in nature and well-calculated to achieve a result consistent with our objective of having in place a liability regime that reflects contemporary standards of compensation. IATA seeks discussions geared toward producing a temporary arrangement, recognizing the immediate need to increase the liability limits through a uniform system of rules. This is fully consistent with our objectives. IATA would announce a place and date for such discussions and has said that it would invite all its member carriers.

IATA requests that we not impose conditions on such discussions that would restrict the ability of the participant carriers to consider all options in structuring a liability regime. We will not impose conditions other than those that we consider standard and which we have set out below. However, we believe that in constructing any intercarrier agreement, the participants should seek to reflect the basic objectives which we have pursued in our efforts to secure ratification of the Montreal Protocols and creation of a supplemental compensation

[1] The Warsaw Convention, to which the United States became a party in 1934, established a number of uniform rules regarding international air transportation, including in Article 22 an air carrier liability limit of approximately $10,000 for each passenger injury or death, absent a finding of willful misconduct. The Hague Protocol of 1955, which doubled the liability limit, was not ratified by the United States. Rather, in 1966, the carriers serving the United States agreed to adopt a special contract under Article 22, establishing what remains the current regime (Agreement CAB 18900, approved by Order E-23680, May 13, 1966) (Docket 17325). Under the Agreement's terms, these carriers also agreed not to avail themselves of the defense of non-negligence under Article 20(1) of the Convention for claims under that amount.

[2] We assume for the purposes of our decision here that the proposed discussions could reduce competition among carriers.

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plan. We have strived for a uniform international system that allows U.S. victims to receive fair recoveries within a reasonable period of time. Specifically, we would expect that any agreement reached by the carriers would be consistent with the following guidelines: first, with regard to passenger claims arising from international journeys ticketed in the United States, passengers would be entitled to prompt and complete compensation on a strict liability basis with no per passenger limits and with measures of damages consistent with those available in cases arising in U.S. domestic air transportation; second, this coverage should be extended to U.S. citizens and permanent residents traveling internationally on tickets not issued in the United States.

We have decided to grant the request for discussion authority and antitrust immunity in this order, rather than through a show-cause proceeding. The discussions sought by the applicants seek to carry out our established public policy goal, the modernization of passenger liability limits. Implementing that goal as soon as possible will redound to the immediate benefit of the traveling public and therefore provide important public benefits. We are willing to grant antitrust immunity in this instance because, unlike most situations where it has been sought, the purpose of the discussions at issue here is fully consistent with the public interest. Furthermore, any agreement reached by the carriers may not be implemented without our approval, and interested persons will have an opportunity to comment on any application for such approval.

In addition, to minimize any adverse impact on the public interest, we will condition our approval and grant of antitrust immunity upon the following express conditions: (1) The discussion authority is limited to 120 days from the date of publication of this order; (2) advance notice of any meeting shall be given to all U.S. and foreign air carriers as well as to the Department of Transportation and the Department of Justice; (3) representatives of the Department of Transportation and the Department of Justice shall be permitted to attend the meetings authorized by this order; (4) IATA shall file within 14 days with the Department a report of each meeting held including inter alia the date, place, attendance, a copy of any information submitted to the meeting by any participant, and a summary of the discussions and any proposed agreements; (5) any agreement reached must be submitted to the Department for approval and must be approved before its implementation; (6) the attendees at such meetings must not discuss rates, fares or capacity, except to the extent necessary to discuss ticket price additions reflecting the cost of any passenger compensation plan; and (7) the discussions will be held in the metropolitan Washington, D.C. area.

Accordingly

1. The Department approves the request for discussion authority filed by IATA in this docket, subject to the restrictions listed below, under section 41308 of title 49 of the United States Code, for 120 days from the date of publication of this order, for discussions directed toward producing a uniform set of passenger liability limits;

2. The Department exempts persons participating in the discussions approved by this order from the operation of the antitrust laws under section 41309 of Title 49 of the United States Code;

3. The Department's approval is subject to the following conditions:

(a) Advance notice of any meeting shall be given to all identifiably interested U.S. air carriers and foreign air carriers, as well as to the Department of Transportation and the Department of Justice;

(b) Representatives of the entities listed in subparagraph (a) above shall be permitted to attend all meetings authorized by this order;

(c) IATA shall file within 14 days with the Department a report of each meeting held including inter alia the date, place, attendance, a copy of any information submitted to the meeting by any participant, and a summary of the discussions and any proposed agreements;

(d) Any agreement reached must be submitted to the Department for approval and must be approved before its implementation;

(e) Attendees at such meetings must not discuss rates, fares or capacity, except to the extent necessary to discuss ticket price additions reflecting the cost of any passenger compensation plan;

(f) The Department shall retain jurisdiction over the discussions to take such further action at any time, without a hearing, as it may deem appropriate; and

(g) Any meetings authorized by this order shall be held in the metropolitan Washington, D.C. area.

4. Petitions for reconsideration may be filed pursuant to our rules in response to this order;

5. We will serve a copy of this order on all parties served by IATA in this docket, as indicated by the service list attached to its application; and

6. We will publish a copy of this order in the **Federal Register**.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95-5588 Filed 3-7-95; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

[Summary Notice No. PE-95-11]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 28, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 1, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27985
Petitioner: Captain Donald Herbert Fisher
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Captain Fisher to pilot an aircraft operated under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 27988
Petitioner: Mr. Everett Eugene York
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. York to be a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28002
Petitioner: Mr. Robert E. Salmen
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Salmen to be a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28035
Petitioner: Mr. Richard E. Randle
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Randle to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28036
Petitioner: Mr. Kenneth A. Urdahl
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Urdahl to be a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28065
Petitioner: Mr. Russell C. Hazelton
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Hazelton to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28075
Petitioner: Chelan County Fire District 1
Sections of the FAR Affected: 14 CFR parts 1 and 11; SFAR 38-2
Description of Relief Sought: To allow Chelan County to continue to operate its Bell UH-1B helicopter in a public aircraft status. The petitioner requests this exemption pursuant to the Public Aircraft Definition and Exemption Authority rule.

Dispositions of Petitions

Docket No.: 27122
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 61.31(a)(1)
Description of Relief Sought/Disposition: To extend Exemption No. 5651, as amended, which permits Air Tractor, Inc., and pilots of the Air Tractor models AT-802 and AT-802A to operate these airplanes without holding a type rating, although maximum gross weight of these airplanes exceeds 12,500 pounds. *Grant, January 18, 1995, Exemption No. 5651B*

Docket No.: 27966
Petitioner: Reeve Aleution Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a)
Description of Relief Sought/Disposition: To allow Reeve Aleution Airway, Inc., permanent exemption from § 121.356(a) of the FAR to the extent necessary to permit Reeve Aleution to operate its three remaining Lockheed L-188 aircraft within the State of Alaska, after April 1, 1995, without installation of TCAS II technology. *Denial, February 16, 1995, Exemption No. 6030*

Docket No.: 27845
Petitioner: Learjet Inc.
Sections of the FAR Affected: 14 CFR 25.571(e)(1)
Description of Relief Sought/Disposition: To permit Learjet Inc., to be exempt from the 4-pound bird strike requirement of § 25.571(e)(1) from Vc at sea level to 8,000 feet in favor of Vc at sea level or .85 Vc at 8,000 feet, whichever is greater. *Partial Grant, January 26, 1995, Exemption No. 6021*

[FR Doc. 95-5638 Filed 3-7-95; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-95-10]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 28, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 27, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 24466
Petitioner: Air Transport Association
Sections of the FAR Affected: 14 CFR 121.485
Description of Relief Sought: To extend Exemption No. 4317, as amended, which permits member carriers of the Air Transport Association to conduct flights of fewer than 12 hours duration with an airplane having a crew of three or more pilots and an additional flight crewmember without requiring the rest period following that flight to be twice the hours flown since the last rest period at his/her home base.

Docket No.: 28010
Petitioner: General Electric Company
Sections of the FAR Affected: 14 CFR 21.128(a)(2)
Description of Relief Sought: To permit General Electric to deliver certain pre-type-certificated prototype engines (CFM56-5C4) manufactured and assembled under conformity configuration control, without subjecting the engine to a test run that includes at least 5 hours of operation at rated maximum continuous power or thrust. For engines having a rated takeoff power or thrust higher than rated maximum continuous power or thrust, the 5-hour run must include 30 minutes at rated takeoff power or thrust.

Dispositions of Petitions

Docket No.: 23453
Petitioner: Hawaiian Airlines
Sections of the FAR Affected: 14 CFR 108.5(a)(1)
Description of Relief Sought/Disposition: To permit Hawaiian Airlines to utilize its DC-9 aircraft without a security program that meets the requirements of § 108.7. The DC-

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9 aircraft would be a last minute replacement for its DASH–7 equipment. Hawaiian Airlines has confirmed that this exemption is no longer necessary; therefore, this current exemption documents the termination of the original exemption. *Termination, February 8, 1995, Exemption No. 3796A*

Docket No.: 23980
Petitioner: United States Hang Gliding Association, Inc.
Sections of the FAR Affected: 14 CFR 103.1
Description of Relief Sought/ Disposition: To amend Exemption No. 4144, as amended, which allows unpowered ultralight vehicles to be towed aloft by powered ultralight vehicles operated by individuals authorized by the United States Hang Gliding Association, Inc. The amendment would have allowed an increase to the weight limit for single-place powered ultralight vehicles, used in air-to-air towing operations only, up to 360 pounds empty weight. Additionally, this petition would have allowed an increase to the weight limit for two-place powered ultralight vehicles, used in air-to-air towing operations only, up to 496 pounds empty weight. Exemption No. 4144, as amended, stand as is; the amendment is denied. *Denied, February 10, 1995, Exemption No. 6024*

Docket No.: 26067
Petitioner: SimuFlite Training International
Sections of the FAR Affected: 14 CFR appendix H of part 121; 135.293; 135.297; 135.299; 135.303; 135.337(a)(2), (a)(3), and (b)(2); and 135.339(a)(2), (b), and (c)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5187B, which permits SimuFlite, subject to certain conditions and limitations, to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check the pilots of part 135 certificate holders that contract with SimuFlite for training. The amendment restores the conditions and limitations that existed prior to the issuance of Exemption No. 5187B, except for some minor clarifications. *Grant, February 2, 1995, Exemption No. 5187C*

Docket No.: 26302
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR appendix H of part 121; 135.293; 135.297; 135.299; 135.337(a)(2), (a)(3), and (b)(2); and 135.339(a)(2), (b), and (c)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5241D, which permits FlightSafety International (FSI), subject to certain conditions and limitations, to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check the pilots of part 135 certificate holders that contract with FSI for training. The amendment restores the conditions and limitations that existed prior to the issuance of Exemption No. 5241D, except for some minor clarifications. *Grant, February 1, 1995, Exemption No. 5241E*

Docket No.: 27121
Petitioner: Tower Air
Sections of the FAR Affected: 14 CFR appendix H of part 121
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5596, as amended, which allows Tower Air to provide initial or upgrade training and checking in a Phase II (Level C) simulator and allows certain experienced pilots and flight engineers who have received training in a Phase II (Level C) simulator to be B747 seconds in command (SIC) in accordance with the training and checking provisions permitted under Phase III (Level D) of appendix H. The amendment revises the exemption to permit former military pilots with large turbojet experience to be trained and checked in a B747 Phase II (Level C) simulator without receiving any training or checking in the actual aircraft. *Grant, February 3, 1995, Exemption No. 5596C*

Docket No.: 27947
Petitioner: Jet Support Systems, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b)(6) and (7)
Description of Relief Sought/ Disposition: To allow Jet Support Systems, Inc., to operate turbojet aircraft in extended overwater operations equipped with one high frequency communication system. *Grant, February 8, 1995, Exemption No. 6026*

Docket No.: 27968
Petitioner: Corporate Air
Sections of the FAR Affected: 14 CFR 121.345(c)(2) and 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Corporate Air to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provision of parts 121 and 135. *Grant, February 7, 1995, Exemption No. 6025*

Docket No.: 27960
Petitioner: Atlas Air Inc.
Sections of the FAR Affected: 14 CFR appendix H of part 121
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5888, which allows Atlas Air Inc., to provide initial or upgrade training and checking in a Phase II (Level C) simulator and allows certain experienced pilots and flight engineers who have received training in a Phase II (Level C) simulator to be B–747 seconds in command (SIC) in accordance with the training and checking provisions permitted under Phase III (Level D) of appendix H. The amendment revises paragraph 4.a of the conditions and limitations to require two manual takeoffs and landings instead of the four manual takeoffs and landings currently required. *Partial Grant, February 3, 1995, Exemption No. 5888A*

Docket No.: 28058
Petitioner: Blackhawk International Airways
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Blackhawk International Airways to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, February 3, 1995, Exemption No. 6022*

Docket No.: 27859
Petitioner: Professional Airline Training, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/ Disposition: To permit Professional Airline Training, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR. *Grant, February 3, 1995, Exemption No. 5988*

[FR Doc. 95–5637 Filed 3–7–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Albany County Airport, Albany, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of intent to rule on application to use the revenues from a passenger facility charge (PFC) at Albany County Airport, Albany, New York.

SUMMARY: This correction incorporates information from the public agency's application which were omitted from the previously published notice.

In notice document 95–4211 beginning on Page 9717 in the issue of Tuesday, February 21, 1995, on the second column, the last paragraph should read as follows:

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 22, 1994, the FAA determined that the application to use the revenues from a PFC submitted by the County of Albany was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 22, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1994.

Proposed charge expiration date: April 1, 2005.

Total estimated PFC revenue: $40,726,364.

Brief description of proposed projects:

—Terminal Building Renovation
—Runway and Taxiway Improvements
—Flood Management Improvements
—Air Traffic Control Tower
—Environmental Remediation
—New Interior Roadways
—Airport Studies
—Airport Equipment

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Albany County Airport.

Issued in Jamaica, New York on February 28, 1995.

Anthony P. Spera,
Acting Manager, Airports Division.

[FR Doc. 95–5640 Filed 3–7–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport; Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 7, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Ave., Room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert W. O'Brien, Jr., Director of Aviation of the Springfield Airport Authority at the following address: Capital Airport, Springfield Airport Authority, Springfield, Illinois 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Ave., Room 258, Des Plaines, Illinois 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 17, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Springfield Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: February 1, 1994.

Estimated charge expiration date: January 31, 2006.

Total approved net PFC revenue: $4,585,443.00.

Brief description of proposed project(s):

1. Acquisition of Miller Property
2. Rehabilitate Entrance Road
3. Acquisition of Proximity Suits
4. Acquisition of a Front End Loader
5. Terminal Building Expansion

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On Demand Air Taxis.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on February 28, 1995.

Benito De Leon,
Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–5639 Filed 3–7–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lynchburg Regional Airport, Lynchburg, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and use the revenue from a PFC at Lynchburg Regional under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 7, 1995.

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ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to David E. Blain Airport Manager at the City of Lynchburg, Virginia at the following address: 4308 Wards Road, Suite 100, Lynchburg, Virginia 24502–3532.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lynchburg, Virginia under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lynchburg Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 29, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Lynchburg was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1995.

Proposed charge expiration date: June 30, 1999.

Total estimated PFC revenue: $921,000.

Brief description of proposed project:

—Purchase ARFF Equipment
—Upgrade Airfield Signage
—Remove Obstruction, Runway 17/35 Approach Zone
—Master Plan
—FAR 107.14 Airfield Security
—Purchase Handicap Lift
—Rehabilitate Runway 3/21 Lights
—Land Acquisition Noise Mitigation
—Land Acquisition Part 77
—Overlay Runway 17/35
—Purchase Snow Blower (Impose Only)
—Construct Snow Equipment Maintenance Building (Impose Only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ACTO) Filing FAA From 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lynchburg Regional Airport.

Issued in Jamaica, New York State on February 28, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–5641 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with Title 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number RSOP–94–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before April 10, 1995, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

American President Lines, Limited and APL Land Transport Services, Inc. (APL) (Waiver Petition Docket Number RSOP–94–4)

The American President Lines, Limited and the APL seek a permanent waiver of compliance with certain provisions of the Railroad Operating Practices regulation (49 CFR Part 218) for derail and blue signal requirements. APL is seeking relief from the requirements of § 218.29(c)(1) which states: "(c) Except as provided in paragraphs (a) and (b) of this section, when workers are on, under, or between rolling equipment on any track, other than main track: (1) A derail capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end [of] such equipment * * *"

A new container port facility and rail yard, which will be operated by an APL subsidiary, are being designed and built by the Port of Los Angeles. The new facility is designed to load and unload intermodal trains and is expected to be occupied by the first quarter of 1997. The yard will have the capacity to store up to 78 stack train cars with each such car being a maximum of 337 feet long. There will be 10 parallel spur tracks entering the yard from the north-end with a single run-around track to the north of the working tracks. The 10 spurs are arranged in sets of two parallel tracks which will be serviced by gantry cranes for loading and unloading. The 10 spurs rejoin at the south-end to service a single spur which runs along the wharf structure to a "dead end." In the center of the yard is a 70-foot wide crossing aisle that divides each spur. On each side of the aisle, APL plans to load and unload three to five stack cars on each of the 10 tracks. The 10 tracks will each be about 2,800 feet in length, and the yard will be approximately 3,700 feet in length by 500 feet in width. APL intends to load or unload trains on all 10 spurs simultaneously. To protect its workmen, APL plans to install blue lights and derailers 5 feet beyond the edge on both sides of the aisle. The 5-foot area between the edge of the aisle and the derailer and blue light signal will be a surface that will immediately dampen the progress of any car that is derailed, so that the car will stop moving before the face of the coupler reaches the aisle. The blue light, derail and red light will all be remotely and automatically controlled from a tower that is within 1,500 feet of the aisle and will have a continuous uninterrupted view of the yard. There will also be a blue light signal and derail across the aisle, 80 feet from the other blue light and derail, in essence providing dual protection for the workmen.

The facility will load and unload ships and intermodal unit trains. In a typical operation, a loaded train will enter the yard from the north, pulling enough cars to fill the first track. The speed limit in the yard will be 5 mph. The locomotive will pull these cars onto the first track, where a cut will be made just before the aisle, and those cars to be unloaded on the north side of the aisle will be set out. The locomotive will then pull the rest of the cars onto the track south of the aisle where they will be set out. The locomotive will then exit the first track, proceed north on the run-around track to the north of the yard and pick-up another cut of cars to fill the second track. This will continue until the incoming train is spotted or all 10 tracks are filled. Excess cars can be spotted in a storage yard northeast of and adjacent to the main yard. During the process, once each cut of cars is set out on the appropriate track, the blue lights and derails will be set.

At that point, from one to four gantry type cranes may be used to unload the railroad cars on any given spur. Tractors will move the trailers or containers either to a storage area, or directly to ships that are berthed at the facility. These tractors will use the aisle as the means of access to and from the yard with both chassis and containers. A similar process will be followed when loading unit trains from a ship or the container storage yard.

APL requests waiver of the 150 foot requirement for the blue lights and derail devices to be used in the center aisle in the yard. Each group of workmen will be protected by blue light signals 80 feet apart across the aisle. Each group of workmen will also be protected by two derail devices. The first will be within 5 feet of the coupling face, and the other will be 80 feet from the first derail device, across the aisle. Workmen will not begin working to load or unload the cars on any given spur until the cars have come to a complete stop and are protected as set out in this waiver request. They will be protected by two blue light signals and by two derail devices.

APL states that it "is working with the Port in the process of designing the yard. One important facet of this design is that workmen be able to work in close proximity to the aisle to increase efficiency. As indicated in the Notice of Proposed Rulemaking, when certain criteria are present, a railroad may safely use different approaches to afford blue signal protection." APL states they will meet those criteria. "First, slow speeds are involved since there is a 5 mph speed limit in the yard. Next, control over the movement of the equipment will be placed in the hands of individuals directly responsible for the people who need to be protected. In the Final Rule, FRA expressed its goal of assuring workers' safety." APL states that "the combination of very low speed, a movement dampening surface, and derails in close proximity to cars that are standing still will limit travel to not more than 5 feet after derailment which is well within FRA's goal to: assure that rolling equipment will not travel more than 50 feet after derailment."

APL states that "the waiver sought by APL will allow construction of a modern and efficient rail yard as part of an intermodal facility at the Port of Los Angeles. By operating with a reduced distance for blue lights and derail devices, APL will be able to fit the yard to the property available. This project will substantially increase the amount of rail business at the Port and in the region. Shorter train movements in the yard will also reduce air emissions in the Port, thereby reducing harm to the environment."

Issued in Washington, DC on February 23, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–5689 Filed 3–7–95; 8.45 am]

BILLING CODE 4910–6–P

Federal Transit Administration

Environmental Impact Statement on the North-South Rail Link, Boston, Cambridge and Somerville, MA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Massachusetts Bay Transportation Authority (MBTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on the proposed rail link connecting North and South Stations in Boston, Massachusetts. The FTA and the MBTA will prepare the EIS so that it also satisfies the requirements of the Massachusetts Environmental Policy Act (MEPA).

This effort will be performed in cooperation with the Massachusetts Highway Department and the Executive Office of Transportation and Construction.

The EIS/EIR will evaluate the following alternatives: A Build alternative consisting of an underground rail link tunnel (with an option of two or four tracks) connecting North and South Stations along the Central Artery alignment, a No-Build alternative, and a Transportation System Management alternative which will be identified during the scoping process. Although the Commonwealth of Massachusetts has elected to pursue the North-South Rail Link corridor within the Central Artery alignment, the FTA is interested in receiving comments regarding whether a rail link along the Congress Street alignment should be included in the Major Investment Study (MIS). Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State and local agencies, and through public meetings.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the MBTA by April 24, 1995. See **ADDRESSES** below. *Scoping Meeting:* A joint FTA and MEPA public scoping meeting will be held on Tuesday, March 21, 1995 at 2:00 p.m. at the State Transportation Building. See **ADDRESSES** below.

ADDRESSES: *Written comments* on the project scope should be sent to Mr. Andrew D. Brennan, Manager of Environmental Affairs, MBTA, 10 Park Plaza, Room 6720, Boston, MA 02116. A *Scoping Meeting* will be held at the following location: State Transportation Building, 10 Park Plaza, Boston, MA 02116.

See **DATES** above.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Beth Mello, Deputy Regional Administrator, Federal Transit Administration, Region 1, (617) 494–2055.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and MBTA invite written comments for a period of 45 days after publication of this notice (See **DATES** and **ADDRESSES** above.) During scoping.

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comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or less environmentally damaging which achieve similar objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the comment period for the Draft EIS.

If you wish to be placed on the mailing list to receive further information as the project continues, contact Mr. Andrew Brennan at the MBTA (see **ADDRESSES** above).

II. Description of Study Area and Project Need

The proposed project consists of an approximately 3 mile rail tunnel linking North and South Stations in Boston, Massachusetts. The northern tunnel portals will be located to the north of the Gilmore Bridge and west of the I–93 highway viaduct in Somerville, Massachusetts. There will be two southern tunnel portals: one on the southern side of the Massachusetts Turnpike between Harrison and Shawmut Avenues, and the other in the vicinity of the railroad yard south of the West Fourth Street Bridge in South Boston. Three underground passenger stations are proposed: (1) At the existing South Station, (2) near the MBTA Blue Line adjacent to the Aquarium Station, and (3) between Haymarket and North Stations. The project will also define options for creating regional MBTA rail service by combining the two currently separate north and south side commuter rail networks.

The construction of the rail link tunnel will close the gap in intercity rail service along the Atlantic seaboard, and will create a unified rail system for metropolitan Boston by combining the two currently separate north and south side commuter rail networks. This will reduce rapid transit system congestion in downtown Boston, increase operational capacity at South Station, and improve regional air quality by diverting automobile trips to the rail system.

III. Alternatives

The alternatives proposed for evaluation include: (1) No-action, which involves no change to existing rail facilities at North and South Stations,

(2) construction of a rail link tunnel connecting North and South Stations along the Central Artery alignment. A two-track and a four-track tunnel option will be considered, and

(3) a transportation system management alternative that will be identified during the scoping process.

Although the Commonwealth of Massachusetts has elected to pursue the North-South Rail Link corridor within the Central Artery alignment, the FTA is interested in receiving comments regarding whether a rail link along the Congress Street alignment should be included in the MIS.

IV. Probable Effects

FTA and the MBTA will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Impacts include changes in the natural environment (air and water quality, rare and endangered species), changes in the social environment (land use and neighborhoods, noise and vibration, aesthetics, park lands, historic/archeological resources), disposal of excavated material, public safety and changes in rail service and patronage. An operational analysis of combined north and south side commuter rail networks will be performed and project capital and operating costs and revenues will be estimated. The impacts will be evaluated both for the construction period and for the long term period of operation, and financial information in support of the MIS will be provided. Measures to mitigate significant adverse impacts will also be addressed.

Issued on: March 2, 1995.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 95–5587 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–57–P

National Highway Traffic Safety Administration

[Docket No. 92–50; Notice 4]

Autokraft Ltd.; Grant of Application for Renewal of Temporary Exemption From Motor Vehicle Safety Standard No. 208

Autokraft Limited of Weybridge, Surrey, England, applied for a renewal of NHTSA Exemption No. 92–6, exempting its AC MkIV until January 1, 1995, from compliance with paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on December 19, 1994, and an opportunity afforded for comment (59 FR 65428).

Autokraft was granted NHTSA Exemption No. 92–6 on December 21, 1992 (57 FR 60563), and its exemption from S4.1.4 of Standard No. 208 was scheduled to expire on January 1, 1995. Because the application for renewal of the exemption was filed "not later than 60 days before the termination date" (in this instance, October 27, 1994), the termination date has been stayed until the Administrator has acted upon the application (49 CFR 555.8(e)).

The applicant sought a further two-year exemption for its AC Mk IV passenger car, of which it has produced 15 in the year preceding the filing of its application. Although the company had projected sales of 150 units in the United States in the years 1992–94, in fact, there were only seven sales. According to its application, Autokraft "has continued the process of researching and developing the installation of a driver and passenger side airbag system" but "we have been unable to achieve the fitting of a suitable system mainly due to the chassis design being based upon a classic 1960's design and not easily adaptable to suit air bag installation." The delay is also due to "the project having insufficient funds generated by sales and available for completing the development."

Autokraft concluded that the adaptation of an existing automatic restraint system is the only viable alternative. Its continuation of compliance efforts has given it "significant knowledge into the areas of vehicle modification, computer simulation, design rough road testing and low, medium and high speed crash testing." Complicating its efforts is the need to use a different engine and transmission after October 1, 1995, and the possible effect that this will have upon compliance. It estimated the cost to achieve conformance would be $550,000, achievable by spreading these costs during the exemption period. Autokraft reported losses totalling 3,308,243 Pounds Sterling (approximately $5,624,000 at a rate of $1.70/1) for the years 1992–93, and projected a further loss for 1994.

The company argued that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it meets all applicable EEC standards, and all U.S. Federal motor vehicle safety standards with the exception of the automatic restraint requirements of Standard No. 208 (its 3-point driver and passenger restraints meet the previous requirements). The production of the car makes available to the public "at a realistic price" a replica of the original AC Cobra vehicle produced from the original AC Cobra tooling, manufactured during the 1960's predominantly for the American market. Autokraft is in the process of finalizing a U.S. distribution agreement and showed the car at the North American International Auto Show in Detroit in January 1995.

The applicant believes that it will comply with Standard No. 208 six months before January 1, 1997, when the 2-year extension of its exemption that it has requested would expire.

No comments were received on the petition.

Review of the application for renewal shows continued existence of the net loss position of the applicant upon which the agency first found that compliance would cause substantial economic hardship. The fact that only seven cars were sold in the United States under the previous two-year exemption demonstrates that the U.S. specification MkIV could not contribute to a significant offset of Autokraft's net losses. The examples on display at the Detroit Show were reported to have a suggested price of $95,000 each, making it unlikely that the applicant will increase its sales by a significant number of vehicles, even if it can enter a U.S. distribution agreement. The car, an open 2-seater, is of limited utility. NHTSA notes that the company's efforts to comply have been made more difficult by the vehicle's 1960's configuration, but that the company believes that it will be in a position to manufacture a fully-conforming vehicle by July 1996, thus it has not requested the maximum exemption of 3 years to which it would be entitled under the hardship provisions. NHTSA also recognizes that the MkIV is certified as meeting all applicable Federal motor vehicle safety standards except for S4.1.4 of Standard No. 208, and that each of its passenger positions is equipped with a three-point restraint system of a type that previously was sufficient to meet Standard No. 208's requirements for passenger cars. It is in the public interest that a variety of motor vehicles continue to be provided. Sales, even though small in number, will make a positive contribution to the economy through the employment afforded through the distribution, sales, and repair channels.

In consideration of the foregoing, it is hereby found that compliance with Standard No. 208 would cause substantial economic hardship to a manufacturer that tried to comply with the standard in good faith. It is hereby further found that an exemption is consistent with the public interest and 49 U.S.C. Chapter 301—*Motor Vehicle Safety*. Accordingly, NHTSA Temporary Exemption No. 92–6 from paragraph S4.1.4. of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* is extended to January 1, 1997.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: March 2, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–5690 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held March 29 and 30, 1995.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on March 29 and 30, 1995 in room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4 901 D Street SW., Washington, DC 20024. Telephone (202) 401–4128, (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on March 29 and 30, 1995 in room 118 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–5675 Filed 3–7–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Other On-the-Job Training Agreement and Apprenticeship Training Agreement and Standards, VA Form 22–8864, and Employer's Application to Provide Job Training, VA Form 22–8865

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s); if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than April 7, 1995.

Dated: February 28, 1995.

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By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Extension

1. Other On-the-Job Training Agreement and Apprenticeship Training Agreement and Standards, VA Form 22–8864, and Employer's Application to Provide Job Training, VA Form 22–8865.
2. VA uses the information requested on VA Form 22–8864 (for on-the-job training and apprenticeship training) to determine if the trainee is entering an approved training program. The information requested on VA Form 22–8865 is used by VA to determine if the statutory requirements are met for approval of an employer's job-training program.
3. Business of other for-profit—Not-for-profit institutions—Farms—Federal Government—State, Local or Tribal Government
4. Estimated Total Annual Reporting Hours—225 hours
   a. VA Form 22–8864 112.5 hours
   b. VA Form 22–8865 112.5 hours
5. Estimated Average Burden Hour Per Respondent—45 minutes
   a. VA Form 22–8864 30 minutes
   b. VA Form 22–8865 90 minutes
6. On occasion
7. Estimated Number of Respondents—300
   a. VA Form 22–8864 225 respondents
   b. VA Form 22–8865 75 respondents.

[FR Doc. 95–5691 Filed 3–7–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 45

Wednesday, March 8, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 Fed. Reg. 12032, March 3, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) March 14, 1995.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: March 6, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–5849 Filed 3–6–95; 3:51 pm]

BILLING CODE 6750–06–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee and Provision for the Delivery of Legal Services Committee; Joint Meeting and Hearing

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations and Provision for the Delivery of Legal Services Committees will hold a joint meeting and hearing on March 17, 1995. The meeting and hearing will commence at 10:30 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Discussion of Proposed Policy Statement on Private Attorney Involvement/ Engagement.
3. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 6, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–5816 Filed 3–6–95; 1:41 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on March 17, 1995. The meeting will commence at 1:30 p.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of February 17, 1995 Meetings.
3. Consider and Act Proposed Changes to the Corporation's Bylaws.
4. Consider and Act on Proposed Board Disclosure Form and Related Guidelines.
5. Consider Committee's Oversight Responsibilities for Corporate Operations.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 6, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–5819 Filed 3–6–95; 1:41 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Ad Hoc Structure Committee on Governance Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Ad Hoc Structure Committee on Governance will meet on March 17, 1995. The meeting will commence at 9:00 a.m.

PLACE: The Legal Services Corporation, 750 1st Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of February 16, 1995 Meeting.
3. Consider Board's Relationship With the Corporation's Inspector General.
4. Consider Board's Relationship With Corporation Management.
5. Consider Issues Related to Board Meetings.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 6, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–5820 Filed 3–6–95; 1:41 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on March 17, 1995. The meeting will commence at 1:30 p.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., 10th Floor, Conference Room, Office of the Inspector General, Washington, D.C. 20002, (202) 332–8800.

STATUS OF MEETING: Open.

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MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of January 27, 1995 Meeting.
3. Consider and Act on Status Report on the Client Engagement Initiative.
4. Report on Issues Related to the Provision of Technical Assistance to Grantees.
5. Report on Compliance Oversight of Grantees.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 6, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–5821 Filed 3–6–95; 1:41 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on March 18, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor; Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may hear and consider the General Counsel's report on litigation in which the Corporation is or may become a party. Finally, the Board may be briefed by the Inspector General on Office of the Inspector General Activities.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Section 552b(c)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of January 27–28, 1995 Meeting.
3. Approval of Minutes of January 27, 1995 Executive Session.
4. Chairman's and Members' Reports.
5. President's Report.
6. Inspector General's Report.
7. Consider and Act on Ad Hoc Structure Committee On Governance Report.
8. Consider and Act on Audit and Appropriations Committee Report.
9. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
10. Consider and Act on Operations and Regulations Committee Report.
    a. Consider and Act on Proposed Changes to the Corporation's Bylaws.
11. Public Comment.

Closed Session

12. Consideration of the General Counsel's Report on Litigation.
13. Briefing of Board by the Inspector General on Office of the Inspector General Activities.

Open Session: (Resumed)

14. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 6, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–5828 Filed 3–6–95; 3:05 pm]

BILLING CODE 7050–01–M

[1] Briefings do not constitute "meetings" as defined by the Government in the Sunshine Act. Notice of this briefing is being provided solely as a courtesy to the public.

Corrections

Federal Register
Vol. 60, No. 45
Wednesday, March 8, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 673

[Docket No. 950223058-5058-01; I.D. 022395A]

RIN 0648-AH93

Scallop Fishery Off Alaska; Closure of Federal Waters To Protect Scallop Stocks

Correction

In rule document 95–4942 beginning on page 11054 in the issue of Wednesday, March 1, 1995, make the following corrections:

1. On page 11055, in the third column, in the fourth line from the bottom, "optimum" was misspelled.

§ 673.2 [Corrected]

2. On page 11056, in the third column, in § 673.2, in the definition for *Exclusive Economic Zone (EEZ)*, in the second line, "*Scallops(s)* means" should begin on the third line.

BILLING CODE 1505–01–D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 703, 715, 731, 752, and Appendix G to Chapter 7

[AIDAR Notice 95-1]

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 95–4111 beginning on page 11911 in the issue of Friday, March 3, 1995, make the following corrections:

1. The CFR parts should appear as set forth above.

2. On page 11913, in the first column, remove "**PART 724—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**" and "**724.170 [Amended]**".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35326; File No. SR–Phlx–95–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Listing and Trading of Options on the Phlx USTOP Index

Correction

In notice document 95–3327 beginning on page 8104 in the issue of Friday, February 10, 1995 make the following correction:

On page 8104, in the third column, the formula for calculating the value of the Index was inadvertently omitted and should appear as follows:

The formula for calculating the value of the Index is as follows:[4]

$$\frac{(MV_1)+(MV_2)+\cdots(MV_{100})}{\text{Divisor}} \times 100$$

Where:

MV_n=Price × Shares outstanding for each component of the Index

Divisor=Number calculated to achieve a base value of 370 for the Index as of the close of trading on December 14, 1994.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 402

Amendments to Regulations for the Government Securities Act of 1986

Correction

In rule document 95–4941 beginning on page 11022 in the issue of Wednesday, March 1, 1995 make the following correction:

§402.2e [Corrected]

On page 11026, in the first column, in §402.2e(a)(1), in the third line "§402.2(a)" should read "§402.2"

BILLING CODE 1505–01–D

[4] The formula for calculating the value of the Index is the same as that previously approved by the Commission for calculating the value of the Phlx Big Cap Index. See Securities and Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994). Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on February 2, 1995.

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federal register

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Part II

Department of Health and Human Services

Administration for Children and Families

Office of Community Services Fiscal Year 1995 Job Opportunities for Low-Income Individuals Program (Demonstration Projects); Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–95–08]

Request for Applications Under the Office of Community Services Fiscal Year 1995 Job Opportunities for Low-Income Individuals Program (Demonstration Projects)

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' FY 1995 Job Opportunities for Low-Income Individual Program (Demonstration Projects).

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 505 of the Family Support Act of 1988, as amended.

CLOSING DATES: The closing date for submission of applications is April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401–5282, Contact: Nolan Lewis.

This Announcement is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, *A Guide to Accessing and Downloading* is available from Ms. Minnie Landry at (202) 401–5309.

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Part I—Preamble

A. Legislative Authority

The Senate Committee on Appropriations, in its recommendations, provides $5,500,000 for job creation demonstration activities authorized under section 505 of the Family Support Act of 1988, Pub. L. 100–485, as amended. Senate Report No. 103–318, 103d Cong., 2nd Session (1994), to accompany H.R. 4606. Section 505 of the Family Support Act of 1988 authorizes the Secretary to enter into agreements with not less than 5 nor more than 10 non-profit organizations (including community development corporations) for the purpose of conducting demonstration projects to create employment and business opportunities for certain low-income individuals. *The Social Security Act Amendments of 1994, Public Law 103–432, reauthorize Section 505 of the Family Support Act of 1988 through Fiscal Year 1996, and amends subsection (e) and changes the project period from three to six years. The six year project period applies only to grant awards beginning in Fiscal Year 1995.*

B. Eligible Applicants

Organizations eligible to apply for funding under this program are any non-profit organizations (including community development corporations) that are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code. Applicants must provide documentation of their tax exempt status. The applicant can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *and* by providing a copy of its Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled. Failure to provide evidence of non-profit status will result in rejection of the application.

C. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—*Budget Period:* The interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

—*Community-Level Data:* Key information to be collected by each grantee that will allow for a national-level analysis of common features of JOLI projects. This includes data on the population of the target area, including the percentage on AFDC and other public assistance, and the percentage whose incomes fall below the poverty line; the unemployment rate; the number of new business starts and business closings; and a description of the major employers and average wage rates and employment opportunities with those employers.

—*Community Development Corporation:* A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business, civic leaders, and/or public officials which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

—*Hypothesis:* An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example, the following is a hypothesis: "Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (are eighty hours of training sufficient to produce the result?).

—*Intervention:* Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.

—*Job Creation:* To bring about, by activities and services funded under this program, new jobs, that is, jobs that were not in existence before the start of the project. These activities can include self-employment/micro-enterprise training, the development of new business ventures or the expansion of existing businesses.

—*Non-profit Organization:* Any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such code.

—*Outcome Evaluation:* An assessment of project results as measured by collected data which define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for replicability. It should answer the question, *Did this program work?*

—*Private employers:* Third-party private non-profit organizations or third-party for-profit businesses operating or proposing to operate in the same community as the applicant and which are proposed or potential employers of project participants.

—*Process Evaluation:* The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: Who is receiving what services?, and are the services being delivered as planned? It is also known as *formative evaluation* because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred and how they were dealt with and recommend improved means of future implementation. It should answer the question: "How was the program carried out?" In concert with the outcome evaluation, it should also help explain, "Why did this program work/not work?"

—*Program Participant/Beneficiary:* Any individual eligible to receive Aid to Families with Dependent Children under Part A of Title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent Annual Revision of Poverty Income Guidelines published by the Department of Health and Human Services. (See Attachment A.)

—*Project Period:* The total time a project is approved for support, including any extensions.

—*Self-Sufficiency:* A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.

D. Purpose

The purpose of this program is to demonstrate and evaluate ways of creating new employment and business opportunities for certain low-income individuals through the provision of technical and financial assistance to private employers in the community, self-employment/micro-enterprise programs and/or new business development programs. A low-income individual eligible to participate in a project conducted under this program is any individual eligible to receive Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line. (See Attachment A.) Within these categories, emphasis should be on individuals who are unemployed, those residing in public housing or receiving housing assistance, and those who are homeless.

Part II—Program Priority Areas

A. General Projects 1.0

The Congressional Conference Report on the FY 1992 appropriations for the Department of Labor, Health and Human Services, and Education and related agencies directed the ACF to require economic development strategies as part of the application process to ensure that highly qualified organizations participate in the demonstration [H.R. Conf. Rep. No. 282, 102d Cong., 1st Sess. 39 (1991)]. These strategies should include descriptions of how projects financed and jobs created under this program will be integrated into a larger effort to promote job and business opportunities for eligible program participants. Applicants should demonstrate how their proposed projects will impact the overall community/communities served by the applicant. OCS will only fund projects that create new employment and/or business opportunities for eligible program participants. Projects funded under this program must demonstrate how the proposed project will enhance the participants' abilities and skills in their progress toward self-sufficiency. Therefore, proposed projects must show promise toward progress of achieving self-sufficiency among the target population. OCS expects that the jobs and/or business/self employment opportunities to be created under this program will contribute to the goal of self-sufficiency. The employment opportunities should provide hourly wages that *exceed* the minimum wage and also provide benefits such as health insurance, transportation, child care, and career development opportunities.

Applicants must show that the proposed project will create a significant number of new full-time permanent jobs through the expansion of a pre-identified business or new business development, by providing opportunities for self-employment to eligible participants, or by *creating new non-traditional employment opportunities for women and minorities in highway construction and maintenance or in the machine tool industry as described below.*

While projected employment in future years may be included in the application, it is essential that the focus of employment opportunities concentrate on new full-time, permanent jobs to be created during the duration of the grant project period and/or on the creation of new business development opportunities for low-income individuals. OCS is particularly interested in receiving proposals in three areas:

1. Local Initiative. In the spirit of "local initiative" OCS looks forward to innovative proposals that grow out of the experience of applicants and the needs of their clientele and communities, and will make the fruits of local creativity available broadly to others seeking solutions to similar problems.

2. Highway Construction and Maintenance. At the same time, OCS is particularly interested in receiving a number of applications which seek to create non-traditional employment opportunities for women and minorities in highway construction and maintenance.

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Approximately $20 billion a year goes to States for highway construction and repair, creating over 270,000 jobs with State Highway Agencies and 500,000+ jobs with contractors. The Federal Highway Administration (FHWA), in conjunction with the Department of Labor and the Women's Bureau, has been seeking ways to increase minority and women participation. State Highway Agencies now have the option to use up to ½ per cent of their Federal highway funds for On-the Job Training (OJT) and supportive services to expand employment opportunities for minorities and women, similar to programs such as Youth Build. In addition, the FHWA has developed and presented a training course, Women in Highway Construction, nationally to over 700 Federal and State Highway Agency personnel and highway contractors on strategies to increase participation of women on highway construction projects.

Because of the aging worker population, there is a serious shortage of qualified workers in highway construction and maintenance in many parts of the country. The shortages will become more critical as the population ages further. Consequently, unions are now taking advantage of opportunities to recruit women and minorities into non-traditional highway construction and maintenance jobs.

Applicants seeking further information about the efforts being undertaken by the FHWA, such as its training efforts and the OJT supportive services program, should contact the appropriate FHWA Regional Civil Rights Director. (See Attachment K.)

3. Machine Tool Industry. Another area from which OCS would welcome applications for creation of non-traditional employment opportunities is the machine tool industry. This industry is one into which it has traditionally been difficult for minority, women and low-income workers to gain entry. One possibility might be a strategy of small, high quality "micro-enterprise" machine shops organized in cooperative sub-contracting arrangements with existing industries or businesses.

The requirement for creation of new, full-time permanent jobs applies to all applications. OCS has determined that creation of non-traditional job opportunities for women and minorities in highway construction and maintenance and in the machine tool industry, which previously have been closed to these populations, meets the employment opportunity creation requirements of the JOLI legislation. OCS continues to require JOLI applications to propose the creation of jobs through the expansion of existing businesses, the development of new businesses, or the creation of employment opportunities through self-employment/microenterprise development. All applications for JOLI grantees must submit a signed written agreement with the State IV-A agency which administers the JOBS program and the appropriate local partners participating in the project. (See Part IV, Criterion VI).

The agreements should describe the cooperative partnerships and include the specific activities to be performed by each partner over the course of the grant period. For example, the agreement should include a description of the training to be provided the eligible participants and local hiring practices, apprenticeships arrangements, and relationship with local unions where applicable.

In the case of proposals for creating self-employment micro-business opportunities for eligible participants, the applicant must detail how it will provide training and support services to potential entrepreneurs. The assistance to be provided to potential entrepreneurs must include, at a minimum, technical assistance in basic business planning and management concepts, and assistance in preparing a business plan (See Part IV, Criterion III for requirements) and loan application.

Any funds that are used for training participants who are AFDC recipients and therefore eligible for JOBS support must be limited to providing specific job-related training to such eligible participants who have been selected for employment (expansion of an existing business, new business venture or non-traditional employment) and/or self-employment business opportunities. Where participants are not receiving AFDC and are therefore not eligible for JOBS support, project funds may be used to provide basic skills training and other support services.

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people. Favorable consideration also will be given to those applicants who show the lowest cost-per-job created for low-income individuals. For this program, OCS views $15,000 in OCS funds as the maximum amount for the creation of a job and, unless there are extenuating circumstances, will not fund projects where the cost-per-job in OCS funds exceeds this amount. Only those jobs created and filled by low-income people will be counted in the cost-per-job formula. (See Part IV, Criterion IV.)

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves such as skills training, job preparation, self-esteem building, etc. Financial assistance may be provided to the private employer as well as the individual.

If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses to create the planned jobs must be included with the application.

The creation of a revolving loan fund with funds received under this program is an allowable activity. However, OCS encourages the use of funds from other sources for this purpose. Points will be awarded in the review process to those applicants who leverage funds from other sources. (See Part IV, Criterion VI.) Loans made to eligible beneficiaries for business development activities must be at or below market rate.

Note: Interest accrued on revolving loan funds may be used to continue or expand the activities of the approved project.

Grant funds received under this program may not be used for construction.

A formal, cooperative relationship between the applicant and the agency responsible for administering the Job Opportunities and Basic Skills Training (JOBS) program (as provided for under title IV–A of the Social Security Act) in the area served by the project is a requirement for funding. The application must include a signed, written agreement between the applicant and the local State IV–A (public welfare) agency administering the JOBS program, or a letter of commitment to such an agreement within 6 months of a grant award (contingent only on receipt of OCS funds). The agreement must describe the cooperative relationship, including specific activities and/or actions each of these entities propose to carry out over the course of the grant period in support of the project.

The agreement, at a minimum, must cover activities that will be provided to the target population and which are related to one or more of the mandatory or optional components offered by the appropriate State's JOBS program. The mandatory activities offered by the States' JOBS programs consist of the following components and services: Basic educational activities (below secondary level i.e. H.S., GED, ESL; job skills training; job readiness activities; job development and job placement; childcare; and other supportive services (45 CFR 250.44 and 255.0). The optional services offered by the States' JOBS programs must include two (2) of the following components of group and individual job search assistance: on-the-job-training experience; work supplementation; or community work experience (45 CFR 250.45). (See Attachment I for a list of the State IV–A agencies.)

Projects also must include an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant funds in creating new jobs and/or business opportunities. (See Part I, C Definition of Terms, and Part IV, Criterion V).

Applications should include a plan for disseminating the results of the project after expiration of the grant period. Applicants may budget up to $2,000 for dissemination purposes.

Priority will be given to applications proposing to serve those areas containing the highest percentage of individuals receiving Aid to Families with Dependent Children (AFDC) under Title IV–A of the Social Security Act. (See Part IV, Criterion II.)

B. Community Development Corporations Set-Aside 2.0

For Fiscal Year 1995, a set-aside fund of $1 million will be included for Community Development Corporations. (For definition of Community Development Corporation, see Part I, C.)

Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Part II, General Projects 1.0.

Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

Part III—Application Requirements

A. Background Information

1. Project and Budget Periods

The Social Security Act Amendment of 1994 which reauthorized the JOLI program also lengthened the project duration from a 3-year period to a 6-year period. In our effort to implement this change, OCS will approve FY 1995 grants for a project period of six years and an initial budget period of 36 months, or three years. This initial 36-month budget period will be considered the Operational Phase of the project, during which the Work Plan described in this announcement is to be carried out. The second 36 months, or three years, of the Project Period is to be considered a period of tracking workers in the newly created jobs, of providing them, as needed, with modest support and assistance, and of continuing Project Evaluation. Applications for continuation grants funded under these awards beyond the 36-month budget period but within the six (6) year project period will be entertained in subsequent years on a non-competitive basis, in a modest amount commensurate with the reduced level of effort, and subject to the availability of funds, satisfactory progress of the grantee, and determination that this would be in the best interest of the government.

2. Availability of Funds and Grant Amounts

The Office of Community Services expects to award approximately $5,000,000 by September 30, 1995 for new grants under this program (*$1 million of which will be awarded pursuant to the Joint OCS/EPA Announcement/NOFA described above*).

A maximum of $500,000 for the *first 36-month budget period* will be awarded to selected organizations under this program in FY 1995. OCS will award no less than 5 and no more than 10 grants under this program.

For Fiscal Year 1995 up to $1 million in JOLI funds is being made available, along with up to $500,000 of Community Services Block Grant (CSBG) Discretionary Economic Development grant funds, as part of a Joint Program Announcement/Notice of Funds Availability (NOFA) issued by the Office of Community Services (OCS) and the U.S. Environmental Protection Agency (EPA) to fund up to three projects addressing Community-Based Lead Abatement Training and Career Development and Lead Poisoning Prevention Education. EPA will be providing up to $1.5 million to public agencies, which together with the OCS funding to private non-profit agencies, will make possible the funding of three $1 million projects with the public and non-profit grantee agencies in partnership, each Federal agency contributing $500,000 to each of the three projects. These will be projects of job creation in community based lead abatement within the requirements of JOLI and CSBG Discretionary Programs; and the EPA funds will be available for worker and community training and education. Prospective applicants for these projects should obtain copies of the Joint OCS–EPA Announcement/ NOFA which will contain all necessary information, instructions and forms. Copies of the Joint Announcement will be published in the **Federal Register** *and will be available for downloading from the OCS Electronic Bulletin Board by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, a Guide to Accessing and Downloading is available from Ms. Minnie Landry at (202) 401–5309*

3. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who mobilize cash and/or third-party in-kind contributions for direct use in the project. (See Part IV, Criterion VI.)

4. Program Participants/Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS and individuals eligible to receive AFDC under Part A of Title IV of the Social Security Act.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. They also are accessible on the OCS Electronic Bulletin Board for reading and/or downloading. (See **FOR FURTHER INFORMATION** at beginning of this announcement.)

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for this program.

5. Cooperative Partnership Agreement With State IV–A Agency (JOBS Program)

A signed written agreement, or letter of commitment to sign such an agreement within six months of a grant award, between the applicant and the local State IV–A agency must be submitted with the application in order to be reviewed and evaluated competitively. The agreement/letter must describe the cooperative relationship and include specific activities and/or actions that each of the entities proposes to carry out over the course of the grant period in support of the project. (Please review PART II, General Projects 1.0 for additional specific information related to this agreement.)

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6. Prohibition and Restrictions on the Use of Funds

The use of funds for new construction or the purchase of real property is prohibited. Costs incurred for rearrangement and alteration of facilities required specifically for the grant program are allowable when specifically approved by ACF in writing.

If the applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidelines.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act will result in the application being ineligible for funding consideration.

7. Multiple Submittals

Due to the limited number of grants that will be made under this program, only one proposal from an eligible applicant will be funded by OCS from FY 1995 JOLI funds, be it pursuant to this announcement (Program areas 1.0 and 2.0) or the aforementioned Joint Announcement/NOFA with EPA.

8. Continuation and Refunding

OCS will not provide continuation funding or refunding to a previously funded grantee to conduct the same demonstration in the same target area.

9. Third-Party Project Evaluation

Proposals must include provision for an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in creating new jobs and business opportunities. There must be a well defined Process Evaluation, and an Outcome Evaluation whose design will permit tracking of project participants throughout the second 36 months of the project. The evaluation must be conducted by an independent evaluator, i.e., a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third-party evaluator selected, and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program, in order to assure that data necessary for the evaluation will be collected and available.

10. Economic Development Strategy

In accordance with the legislative reference cited in Part II, Section A, applicants must include in their proposal an explanation of how the proposed project is integrated with and supports a larger economic development strategy within the target community. Where appropriate, applicants should document how they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan, such as that required for applying for Empowerment Zones/Enterprise Community (EZ/EC) status, to achieve both economic and human development in an integrated manner, and how the proposed project supports the goals of that plan. (See Review Criterion II (ii) in Part IV A below.)

11. Maintenance of Effort

The application must include an assurance that activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried out without Federal assistance.

Part IV—Application Review Process

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth assessment and review process will use the following criteria coupled with the specific requirements described in Part III. Scoring will be based on a total of 100 points.

Note: The following review criteria reiterate the collection of information requirements contained in Part VI of this announcement. These requirements are approved under OMB Control Number 0970–0062, expiration 09–30–95.

A. Criteria for Review and Assessment of Applications in Priority Areas 1.0 and 2.0

Criterion I: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 20 points)

(i) *Agency's commitment and experience in program area.* The application includes documentation which briefly summarizes two similar projects undertaken by the applicant agency and the extent to which the stated and achieved performance targets, including permanent benefits to low-income populations, have been achieved. Application notes and justifies the priority that this project will have within the agency including the facilities and resources that it has available to carry out the project. (0–10 points)

Note: The maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.

(ii) *Staff skills, resources and responsibilities.* The application must profile the two or three individuals who will have the most responsibility for shaping the project, connecting it to customers, and achieving performance targets. The focus should be on the qualifications, experience, capacity and commitment to the program of the Executive Officials of the organization and the key staff persons who will administer and implement the project. The person identified as Project Director should have supervisory experience, experience in finance and business, and experience with the target population. Because this is a demonstration project within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired.

The application must also include a resume of the third party evaluator, if identified or hired; or the minimum qualifications and a position description for the third-party evaluator, who must be a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third-party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program, in order to assure that data necessary for the evaluation will be collected and available. Plans for selecting an evaluator should be included in the application narrative. A third-party evaluator must have knowledge about and have experience in conducting process and outcome evaluations, evaluating issues in the job creation field, expansion of businesses and the creation of self-employment and small business opportunities for low-income neighborhoods and a thorough understanding of the range and complexity of the problems faced by the target population. The competitive procurement regulations (45 CFR Part 74, Appendix H) apply to service contracts such as those for evaluators when the costs of such service will exceed $25,000. (0–10 points)

Criterion II: Analysis of Need (Maximum: 15 points)

(i) *Target area and population description.* The application includes a brief description of the geographic area and population to be served, indicating what the unemployment rates are and (to the extent practicable) how the proposed businesses and subsequent jobs will impact on the nature and extent of the problem. It should also include (with an identification of the source of the information) the number and percentage of individuals receiving AFDC and the total number of individuals which make up the population in the area where the project will operate. (0–5 points)

(ii) *Nature and extent of problems to be addressed.* Application includes an analysis of the identified personal barriers to employment and greater self-sufficiency faced by the population to be targeted by the project. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for childcare, or poor self-image.) Application also includes an analysis of the identified community systemic barriers which the project will seek to overcome. These might include lack of jobs; lack of transportation; lack of suitable clothing or equipment; lack of markets; unavailability of financing, insurance or bonding; inadequate municipal services (water, sewage treatment, street lighting, trash collection, electricity, traffic control); high incidence of crime; inadequate health care; or environmental hazards (such as toxic dumpsites or leaking underground tanks). If the jobs to be created by the proposed project are themselves designed to fill one or more of the needs so identified, this fact should be included in the discussion. (0–5 points)

(iii) *Community empowerment consideration.* Special consideration will be given to applicants who are located in areas which are characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20%, designation as an EZ/EC, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. Applicants should document that they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner and how the proposed project supports the goal(s) of that plan. (0–5 points)

Criterion III: Work Program (Maximum: 20 points)

The work plan and business plan(s), where appropriate, must be both sound and feasible. If the applicant is proposing to use project funds to provide technical and/or financial assistance for the establishment of an identified business, or to a third-party private employer to develop or expand a pre-identified business, the application must include a complete business plan (see ii, below). An application that does not include a business plan where one is appropriate may be disqualified and returned to the applicant.

The project must be responsive to the needs and problems identified in the Analysis of Need and Problems to be Addressed.

(i) *Work plan.* The work plan must describe the proposed project activities, or interventions, and explain how they are expected to result in outcomes which will meet the needs of the program participants and assist them to overcome the identified personal and systemic barriers to employment and self-sufficiency. In other words, what will the project staff do with the resources provided to the project and how will what they do (interventions) assist in the creation of employment and business opportunities for program participants in the face of the needs and problems that have been identified. The application should include a hypothesis or hypotheses that is (are) significant and include(s) the key interventions, and which permit(s) measurement of the extent to which the target population can achieve greater self-sufficiency as a result of its involvement in the project. The key interventions should include the types and sources of technical and financial assistance to be provided the participants, as well as any education, training, and support services and the problems or barriers they are designed to overcome. If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses specifying their undertakings and levels of participation must be included with the application. The work program must set forth realistic quarterly time targets by which the various work tasks will be completed.

The application identifies and defines critical issues or potential problems that might impact negatively on the project and explains how they can be overcome and the project objectives reasonably attained despite such potential problems.

(ii) *Business plan (where required).* As noted above, a business plan is required whenever the applicant is proposing to establish a new, specific and identified business, or will be providing assistance to a private third-party private employer for the development or expansion of a pre-identified business. In these cases the business plan is one of the major components that will be evaluated by OCS to determine the feasibility of a jobs creation project.

Because the following guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

With this understanding, the business plan should be prepared in accordance with the following guidelines:

1. *The business and its industry:* This section should describe the nature and history of the business and provide some background on its industry

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry;

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold;

b. *Proprietary Position:* Describe proprietary features, if any, of the product, e.g. patents, trade secrets;

c. *Potential:* Features of the product or service that may give it an advantage over the competition;

3. *Market Research and Evaluation* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment.

b. *Market Size and Trends:* State the size of the current total market for the product or service offered;

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c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services;

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market;

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

a. Profit and Loss Forecasts-quarterly for each year;

b. Cash Flow Projections-quarterly for each year;

c. Pro forma balance sheets-quarterly for each year;

d. Initial sources of project funds;

e. Initial uses of project funds; and

f. Any future capital requirements and sources.

(iii) *Facilities.* If the rearrangement or alteration of facilities will be required in implementing the project, the applicant has described and justified such changes.

Criterion IV: Significant and Beneficial Impact (Maximum: 20 points)

(i) *Quality of JOBS/business opportunities.* The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community. Expected results are quantifiable in terms of the creation of permanent, full-time jobs or business opportunities developed (or the creation of non-traditional employment opportunities in highway construction and maintenance or the machine tool industry). In developing business opportunities and self-employment for AFDC recipients and low-income individuals the applicant proposes, at a minimum, to provide basic business planning and management concepts, and assistance in preparing a business plan and loan package.

The application documents that:

—The business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency; and/or

—Jobs to be created for eligible participants will contribute significantly to their progress toward self-sufficiency; they provide, for example, wages that exceed the minimum wage, plus benefits such as health insurance, transportation, child care and career development opportunities. (0–15 points)

(ii) *Cost-per-job.* During the project period the proposed project will create new, permanent jobs through business opportunities or non-traditional employment opportunities for low-income residents at a cost-per-job below $15,000 in OCS funds, (e.g. cost per job is calculated by dividing the total amount of grant funds requested ($420,000) by the number of jobs to be created (60) which equals the cost-per-job ($7,000)). If any other calculations are used, please include your methodology in this section. [Note: Except in those instances where independent reviewers identify extenuating circumstances related to business development activities, the maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.] (0–5 points)

Criterion V: Third-Party Evaluation (Maximum: 10 points)

A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstration project must be included in the application. Application indicates how the applicant will verify the extent to which the performance targets are achieved in this project.

The Evaluation Plan

—Includes a specific working definition of "self-sufficiency" (consistent with the broad definition contained in Part I) that permits the measurement of incremental progress of eligible individuals and their families from dependency toward self-sufficiency;

—Clearly defines the changes or benefits (outcomes) to be produced, the activities (interventions) that will produce the changes, and the measures of client progress toward self-sufficiency for which information will be collected (for example: increases in income, decreases in public assistance payments);

—Provides for the annual compilation of community-level data on the characteristics of the population in the project area, including percentage on public assistance, percentage below the poverty line, unemployment rate, business starts and failures, and major employers;

—Provides for the conduct of a *continuing process evaluation.* This should include the periodic assessment of the following: client characteristics, pertinent policies and procedures; staffing; cooperative partnerships with state and local agencies; use of other community resources; client outreach and recruitment; client service delivery; cost of services; and, level of technical and financial assistance to employers. The types of data and information, measures and indicators to be used for the process evaluation, as well as the methods and timeframe for collecting and analyzing the required data should be indicated;

—Provides for the completion of two interim evaluation reports and a final report comprising both *process and outcome evaluation.* The final evaluation report will describe the program design and any changes from the original workplan, outreach and recruitment results, interventions, and accomplishments. The measurement instruments, data collection procedures, and analysis techniques should be discussed, and the report should yield conclusions as to how well the program works and why. It should also discuss the program's potential for replication in other communities; and

—Includes a realistic plan for disseminating the project findings to other interested organizations and public agencies.

Criterion VI: Public-Private Partnerships (Maximum: 10 points)

—The cooperative partnership arrangements are fully described and clearly relate to the objectives of the proposed project, and the activities include one or more of the mandatory or optional components of the State's JOBS program as described in Part II, Section A.

—In the case of projects involved in the creation of non-traditional employment opportunities in highway construction and maintenance or the machine tool industry, agreements with the appropriate partners (for example: highway departments, contractors, unions or businesses) should clearly identify the undertakings of each partner in terms of training, support, apprenticeships, career opportunities, and the like.

—The application documents that the applicant will mobilize from public and/or private sources cash and/or third-party in-kind contributions. Applications that document that the value of such contributions will be at least equal to the OCS funds requested, and demonstrate that the cooperative partnership arrangements clearly relate to the objectives of the proposed project, will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented.

—Applicants should note that partnership relationships are not created via service delivery contracts; partners should be responsible for substantive project components or elements.

—The above requirements are also applicable to applications submitted in the area of non-traditional employment opportunities. (See Part II, A for minimum requirement to be included in the cooperative partnership agreement.)

Criterion VII: Budget Appropriateness and Reasonableness (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project.

The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost if an indirect cost rate has not been negotiated with the cognizant Federal agency (See Part VI, Section B, Line 6j).

The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part V—Application Procedures and Selection Process

A. Availability of Forms

Attachment B contains all of the standard forms necessary for the application for awards under this OCS program. This attachment and Parts VI and VII of this announcement contain all of the instructions required for submittal of applications. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction or accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this announcement.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments C and D.

Part VII, Section A contains instructions for the project narrative.

B. Application Submission

The closing date for submission of applications is noted under "*CLOSING DATE*" at the beginning of this Announcement.

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, (OCS–95–08) Washington, DC 20447, *Attention* Maiso Bryant, or

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U S Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 901 D Street SW., 6th Floor, ACF Guard Station, Washington, DC 20447 during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

3. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. *Extension of Deadline.* The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not

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waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted. One signed original application and four copies should be submitted.

C. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has sixty (60) days from the application deadline to comment on proposed new or competing continuation awards.

SPOCS are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment E of this announcement.

D. Application Consideration

Applications which meet the screening requirements in Part V, item E below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

E. Criteria for Screening Applicants

1. Initial Screening

The receipt of applications that meet the published deadline for submission will be acknowledged in writing with an assigned identification number. This number, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–9365.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

a. The application must contain a Standard Form 424 *Application for Federal Assistance* (SF–424), a budget (SF–424A), and signed *Assurances* (SF–424B) completed according to instructions published in Part VI and Attachment B of this Program Announcement.

b. A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 50 pages, typewritten on one side of the paper only with one-inch margins and type face no smaller than 10 characters per inch (cpi) or equivalent. Charts, exhibits, letters of support and cooperative agreements are not counted against this page limit. It is strongly recommended that you follow the format for the narrative in Part VII, A. 10.

c. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

d. Application must contain documentation of the applicant's tax exempt status as required under Part I, Section B.

2. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

a. *Eligibility:* Applicant meets the eligibility requirements described in Part I, Section B. Proof of non-profit status must be included in the Appendices to the Project Narrative (See Part VII, Section A, 11).

Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

b. *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to those types of low-income participants and beneficiaries described in Part III, Section A, Program Participants/ Beneficiaries.

c. *Grant Amount:* The amount of funds requested does not exceed the limits indicated in Part III, Section A, item 2.

d. *Cooperative Partnership Agreement.* The application contains a written agreement or letter of

commitment that includes, at a minimum, the activities cited in Part II, Section A. The agreement must be signed by an official of the State IV–A agency responsible for administering the JOBS program in the area to be served.

e. *Third-Party Project Evaluation.* A third-party project evaluation plan is included.

f. *Business Plan.* If a third-party private employer is part of the proposed project, a complete business plan is included in the application.

An application will be disqualified from the competition and returned if it does not conform to all of the above requirements.

Part VI—Instructions for Completing the SF–424

(Approved by the Office of Management and Budget under Control Number 0970–0062.)

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

A. SF–424—Application for Federal Assistance

Top of Page. Please enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. For the purposes of this announcement, all projects are considered *Applications;* there are no *Pre-Applications.*

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

Item 2. *Date Submitted* and *Applicant Identifier*—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. *Date Received by State*—N/A

Item 4. *Date Received by Federal Agency*—Leave blank.

Items 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled *Federal Identifier* located at the top right hand corner of the form.

Item 7. If the applicant is a non-profit corporation, enter *N* in the box and specify *non-profit* corporation in the space marked *Other.* Proof of non-profit status, such as IRS determination, Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

Item 8. *Type of Application*—Please indicate the type of application.

Item 9. *Name of Federal Agency*—Enter DHHS–ACF/OCS.

Item 10. *The Catalog of Federal Domestic Assistance* number for OCS programs covered under this announcement is *93.647.* The title is *Social Services Research Demonstration.*

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

JO—General Project
JS—Community Development Corporation Set-Aside

Item 12. *Areas Affected by Project*—List only the largest unit or units affected, such as State, county or city.

Item 13. *Proposed Project*—The ending date should be calculated based on a 72-month project period.

Item 14. *Congressional District of Applicant/Project*—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located.

Item 15a. This amount should be no greater than the amount specified under Part III, Availability of Funds and Grant Amounts.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the budget period requested.

Item 15f. N/A.

Item 15g. Enter the sum of Items 15a–15e.

B. SF–424A—Budget Information—Non-Construction Programs

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the *Federal Funds* budget entries will relate to the requested OCS funds only, and *Non-Federal* will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in *Non-Federal* entries.

Sections A, B, C and D of SF–424A should reflect budget estimates for the first budget period of the project.

Section A—Budget Summary

Lines 1–4

Col. (a):

Line 1—Enter *Social Services Research and Demonstration.*

Col. (b):

Line 1—Catalog of Federal Domestic Assistance number is 93.647

Col. (c) and (d):

Columns (c) and (d) are not relevant to this program and should not be completed.

Column (e)–(g):

For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project. (Maximum $500,000)

Line 5—Enter the figures from Line 1 for all columns completed (e), (f), and (g).

Section B—Budget Categories

Please Note: This information supersedes the instructions provided following SF–424A.

Columns (1)–(5):

Column 1: Enter the *first* budget period of 12 months.

Column 2: Enter the *second* budget period of 12 months.

Column 3: Enter the third budget period of 12 months.

Column 4: Leave blank.

Column 5: Enter the total requirements for Federal funds by the Object Class Categories of this section.

Allocability of costs are governed by the cost principles set forth in OMB Circular A–122 and 45 CFR Part 74.

Budget estimates for national administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class *other* identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives, large dollar amounts; local, regional, or other travels, new positions, major equipment purchases and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

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Personnel-Line 6a. Enter the total costs of salaries and wages.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel—Line 6c. Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Travel costs to attend two national workshops in Washington, D.C. by the project director and the third-party evaluator should be included.

Equipment—Line 6d. Enter the total costs of all non-expendable personal property to be acquired by the project. *Non-expendable personal property* means tangible personal property having a unit cost of $5000 or more and having a useful life of one year.

Justification: Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined above. (See Line 21 for additional requirements).

Supplies—Line 6e. Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) the estimated cost of the third-party evaluation contract; travel costs for the chief evaluator to attend two national workshops in Washington, D.C. should be included; (2) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (3) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this Form SF–424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions.

The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR Part 74, Appendix H. Free and open competition is encouraged for any procurement activities planned using ACF grant funds. Prior approval is required when applicants anticipate evaluation procurements that will exceed $25,000 and are requesting an award without competition.

The applicant's procurement procedures should outline the type of advertisement appropriate to the nature and anticipated value of the contract to be awarded. Advertisements are typically made in city, regional, and local newspapers; trade journals; and/or through announcements by professional associations.

Construction—Line 6g. Not applicable.

Other—Line 6h. Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i. Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j. Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a cognizant Federal agency other than the Department of Health and Human Services. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates,* and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k. Enter the total amounts of Lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of *non-Federal* resources that will be used to support the project. *Non-Federal* resources mean those other than OCS funds. Therefore, mobilized funds from other Federal programs should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Justification: Describe third-party, in-kind contributions, if included.

Grant Program—Line 8

Column (a): Enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and third-party in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program—Lines 9, 10, and 11 should be left blank.

Grant Program—Line 12.

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal—Line 13. Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Non Federal—Line 14. Enter the amount of cash from all other sources needed by quarter during the first 12-month budget period.

Totals—Line 15. Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

For new applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years).

Section F—Other Budget Information

Direct Charges—Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges—Line 22. Enter the type of HHS or other cognizant Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks—Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B Assurances—Non-Construction

All applicants must fill out, sign, date and return the *Assurances* with the application.

Part VII—Contents of Application and Receipt Process

A. Contents and Order of Application

Each application submission should include a signed original and four additional copies of the application. Each application should include the following in the order presented:

1. Table of Contents;

2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally. (Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization.)

3. *Budget Information—Non-Construction Programs* (SF–424A);

4. A narrative budget justification for each object class category required under Section B, SF–424A;

5. Filled out, signed, and dated *Assurances—Non-Construction Programs* (SF–424B);

6. By signing and submitting this application, the applicant is certifying that it will comply with the Federal requirements concerning debarment regulations set forth in attachments E and F.

7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.

8. Disclosure of Lobbying Activities, SF–LLL: Filled out, signed, and dated form found at Attachment H, if appropriate.

9. Certification Regarding Environmental Tobacco Smoke—Signature on the application attests to the applicants intent to comply with the requirements of the Pro-Children Act of 1994. A signed form does not have to be returned with application.

10. An Executive Summary—not to exceed 300 words;

11. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation

(ii) Organizational Experience and Staff Responsibilities

(iii) Analysis of Need

(iv) Project Design/Work Program

(v) Business Plan (If appropriate)

(vi) Third-Party Evaluation

(vii) Cooperative Partnership Agreement

(viii) Budget Appropriateness and Reasonableness

12. Appendices—proof of non-profit status as outlined in Part I, Section B; proof that the organization is a community development corporation, if applying under the CDC Set-aside; commitments from officials of businesses that will be expanded or from franchises, where applicable; partnership agreement with State IV–A (JOBS Program) agency; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.

The total number of pages for the narrative portion of the application package must not exceed 50 pages, excluding Appendices. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF–424 as Page 1. The application may also contain letters that show collaboration or substantive commitments to the project by organizations other than the JOBS agency. Such letters are not part of the narrative and should be included in the Appendices. These letters are, therefore, not counted against the fifty page limit.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized or folded materials

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Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

Attachment J provides a checklist to applicants in preparing a complete application package.

B. Acknowledgement of Receipt

Applicants who meet the initial screening criteria outlined in Part V, Section E, 1, will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program letter code, i.e., JO or JS, must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9234.

Part VIII—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

Project directors and chief evaluators will be required to attend two national evaluation workshops in Washington, D.C. A program development and evaluation workshop will be scheduled shortly after the effective date of the grant. They also will be required to attend, as presenters, the final evaluation workshop on utilization and dissemination to be held at the end of the project period.

Grantees will be required to submit semi-annual progress and financial reports (SF–269) as well as a final progress and financial report within 90 days of the expiration of the grant. Interim evaluation reports, along with a written policies and procedures manual based on the findings of the process evaluation, will be due 30 days after the first twelve months, and the second interim evaluation 30 days after the second twelve months, and a final evaluation report will be due 90 days after the expiration of the grant. This final report will cover 36 months of activities related to project participants. Reporting requirements for the remaining 36 months of the project period will be provided during the solicitation of applications.

Grantees are subject to the audit requirements in 45 CFR Parts 74 (non-profit organization) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the *non-appropriated* funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment F for certification and disclosure forms to be submitted with the applications for this program

Attachment G indicates the regulations which apply to all applicants/grantees under the Job Opportunities for Low-Income Individuals Program.

Dated: February 24, 1995

Donald Sykes,

Director, Office of Community Services

ATTACHMENT A.—1995 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

For family units with more than 8 members, add $2,560 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,340
2	12,540
3	15,740
4	18,940
5	22,140
6	25,340
7	28,540
8	31,740

For family units with more than 8 members, add $3,200 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$8,610
2	11,550
3	14,490
4	17,430
5	20,370
6	23,310
7	26,250
8	29,190

For family units with more than 8 members, add $2,940 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

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Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify) _____

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Column (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provided for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4). Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Column (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to compete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research.

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development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

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Attachment C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment D—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Service (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment E—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

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Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

Attachment F—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OA 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184-01-C

Attachment G—DHHS Regulations Applying to All Applicants/Grantees Under the Job Opportunities for Low-Income Individuals Program

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance; Subpart F—Drug Free Workplace Requirements
Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment H—Certification Regarding Maintenance of Effort

The undersigned certifies that:

(1) activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

Organization

Authorized Signature

Title

Date

Attachment I—Department of Health & Human Services Administration for Children and Families, Office of Family Assistance, Washington, DC 20447

February 1994

Jobs Program Directory

Alabama

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Connecticut

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Attachment J: Checklist for Use in Submitting OCS Grant Applications Job Opportunities for Low-Income Individuals (Optional)

The application should contain:

1. Table of Contents

2. A completed, *signed* SF–424, *Application for Federal Assistance*. The letter code for the priority area (JO) should be in the lower right-hand corner of the page.

3. A completed SF–424A, *Budget Information—Non-Construction*.

4. A narrative budget justification for each object class category required under Section B, SF–424A;

5. Filled out signed, and dated *Assurances—Non-Construction Programs* (SF–424B);

6. The applicant should sign Attachments E and F. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E.

7. A *signed* copy of *Certification Regarding Anti-Lobbying Activities*.

8. A completed Disclosure of Lobbying Activities, if applicable.

9. An Executive Summary—not to exceed 300 words;

10. A Project Narrative beginning with a Table of Contents that describes the project in the following order:

(i) Eligibility Confirmation

(ii) Organizational Experience and Staff Responsibilities

(iii) Analysis of Need

(iv) Project Design/Work Program

(v) Business Plan (If appropriate)

(vi) Third-Party Evaluation

(vii) Cooperative Partnership Agreement

(viii) Budget Appropriateness and Reasonableness

11. Appendices, including proof of non-profit status; proof that the organization is a community development corporation, if applying under the CDC Set-aside; a *signed* copy of the Cooperative Partnership Agreement or letter of commitment with State IV–A agency (JOBS Program); commitments from officials of businesses that will be expanded or from franchises, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.

12. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

Attachment K

Federal Highway Administration, Regional Civil Rights Directors

Region One—Includes CT, ME, MA, NH, NJ, NY, RI, VT, Puerto Rico, and the Virgin Islands
Mr. Dennis Perrott
Albany, NY
(518) 431–4224, ext. 247

Region Three—Includes DE, DC, MD, PA, VA, WV
Ms. Jo Blackstone
Baltimore, MD
(410) 962–4030

Region Four—Includes AL, FL, GA, KY, MS, NC, SC, TN
Mr. Charles Stinson
Atlanta, GA
(404) 347–4791

Region Five—Includes IL, IN, MI, MN, OH, WI
Mr. Joe Forst
Olympia Fields, IL
(708) 283–3924

Region Six—Includes AR, LA, NM, OK, TX
Mr. Humberto Martinez
Fort Worth, TX
(817) 334–3671

Region Seven—Includes IA, KS, MO, NE
Mr. Glen Smith
Kansas City, MO
(816) 276–2747

Region Eight—Includes CO, MT, ND, SD, UT, WY
Ms. Teresa Banks
Lakewood, CO

Region Nine—Includes AZ, CA, HI, NV, Guam, and American Samoa
Mr. Harold Dorell
San Francisco, CA
(415) 744–3114

Region Ten—Includes AK, ID, OR, WA
Mr. Willie Harris
Portland, OR
(503) 326–2067

Attachment L—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residence, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment.

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Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95-5512 Filed 3-7-95; 8:45 am]

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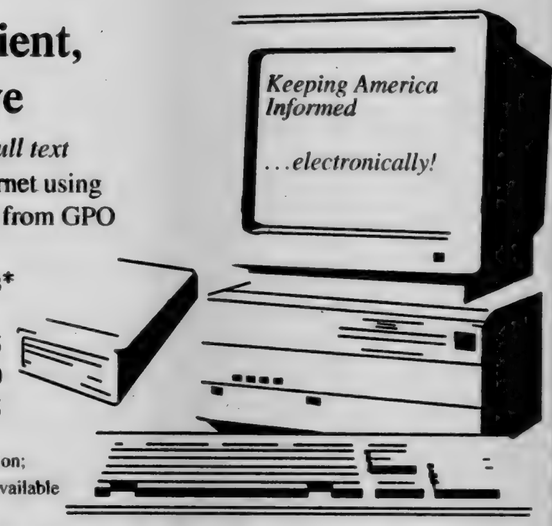

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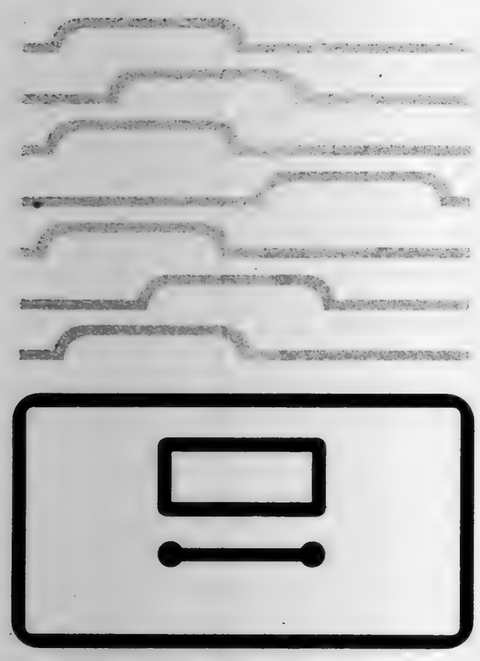

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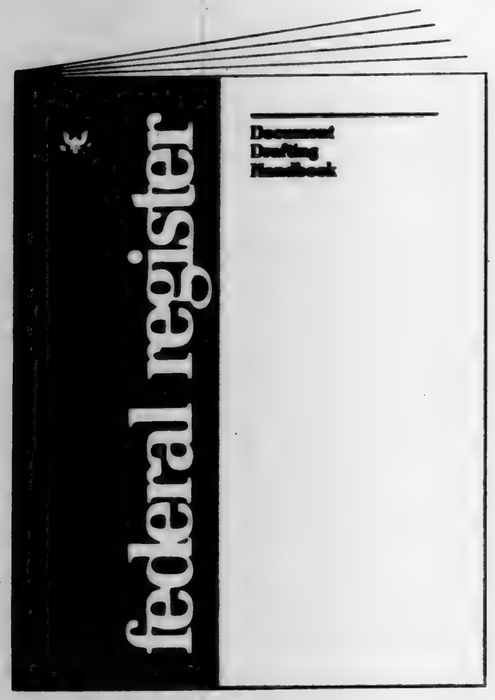

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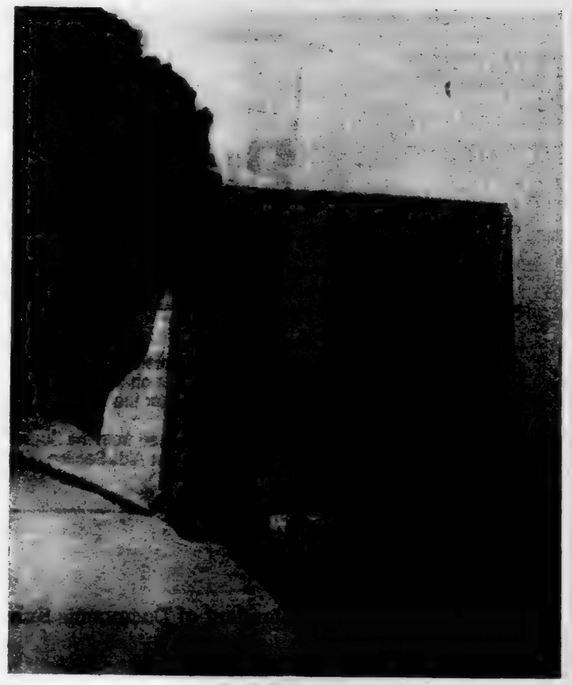

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The President

Presidential Determination No. 95–15 of February 28, 1995

Certifications for Major Narcotics Producing and Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, ("the Act"), I hereby determine and certify that the following major drug producing and/or major drug transit countries/dependent territories have cooperated fully with the United States, or taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

The Bahamas, Brazil, China, Dominican Republic, Ecuador, Guatemala, Haiti, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Panama, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in my by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following countries:

Bolivia, Colombia, Lebanon, Pakistan, Paraguay, and Peru.

Information on these countries, as required under section 490(b)(3) of the Act, is attached.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in section 490(b):

Afghanistan, Burma, Iran, Nigeria, and Syria.

I have made these determinations, taking into account the factors set forth in section 490 of the Act, and based on the information contained in the International Narcotics Control Strategy Report of 1995. Because the performance of these countries varies, I have attached an explanatory statement in each case.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 28, 1995.

STATEMENT OF EXPLANATION

The Bahamas

U.S.-Bahamian drug enforcement cooperation under Operation Bahamas and Turks & Caicos (OPBAT) has been excellent and resulted in a dramatic reduction in the flow of drugs through The Bahamas into the United States, as indicated by vastly reduced drug-seizure levels over the last several years. Nevertheless, The Bahamas remains a major transit country for U.S.-

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bound Colombian cocaine and Jamaican marijuana. As a major financial center, The Bahamas is vulnerable to money laundering. The Bahamas is a party to the 1988 UN Convention. The Ingraham government has taken a firm stand against drug trafficking, drug abuse and money laundering and worked diligently during 1994 to fulfill the goals and objectives of the UN Convention and U.S.-Bahamian bilateral counternarcotics accords.

During 1994, Bahamian maritime cooperation with the United States was excellent under the terms of several bilateral agreements and arrangements. The Government of the Commonwealth of the Bahamas (GCOB) moved to improve cooperation with the Cuban government when traffickers intensified their exploitation of Cuban territory to avoid OPBAT enforcement efforts. The GCOB generally responds positively to specific U.S. requests under our Mutual Legal Assistance Treaty. In 1994, the GCOB took judicial action against three public officials for drug-related corruption: a prison official, an immigration officer and a customs officer.

The GCOB took several strong steps to improve its drug-trafficking-control tools. The new U.S.-Bahamas extradition treaty entered into force in 1994. The GCOB also adopted legislation, based on U.S. law, making it a crime to engage in a continuing criminal enterprise related to narcotics trafficking. Working closely with the USG, the GCOB placed special emphasis on strengthening its judicial system by increasing its courts budget, implementing a court automation system, and enacting stronger bail and sentencing legislation.

In 1994, the GCOB drafted stronger money laundering legislation, which it expects Parliament to approve in 1995. When enacted, this legislation will criminalize money laundering. The GCOB agreed to an evaluation of its money laundering controls by the Caribbean Financial Action Task Force, also expected to take place during 1995. We urge continued vigilance by The Bahamas on possible money laundering through shell corporations and international business companies, which are proliferating in The Bahamas and elsewhere in the Caribbean. Although Bahamian law renders the assets of a convicted drug offender subject to forfeiture, in practice asset forfeiture has been difficult to implement. No procedures exist for civil asset forfeiture in narcotics cases.

Brazil

Brazil is a major transit country for cocaine from Colombia destined for the United States and Europe. Increased cocaine and precursor chemical trafficking and money laundering contribute to Brazil's escalating narcotics problem; corruption allegations against counternarcotics officials in Brazil persist.

Despite these problems, Brazil endeavors to meet the goals and objectives of the 1988 UN Convention, and has succeeded in some significant interdiction efforts. The government has made progress towards complying with the UN Convention in law enforcement, asset forfeiture, extradition, and anti-corruption. The Brazilian government generally meets the goals of bilateral counternarcotics agreements with the USG on enforcement and demand reduction.

Brazil's increased seizure rate in 1994 of 11 metric tons of cocaine marks both heightened trafficker use of Brazil and improved abilities of the Brazilian Federal Police Counternarcotics Unit (DPF/DRE). Brazilian non-governmental organizations (NGOs) hosted seminars by U.S. police in schools to voice the message against drug abuse. The DPF/DRE has targetted and disrupted major Cali-connected drug trafficking organizations.

However, the Brazilian government has not hired new police or provided increased funding for the DPF/DRE. The Brazilians have not yet enacted legislation first proposed in 1991 to implement effectively the goals and objectives of the 1988 UN Convention, nor has it drafted a national drug control strategy. Brazil has not yet proposed specialized anti-money laundering legislation, but requires reporting of cash transactions involving amounts over $10,000.

The international consultative forum, the Dublin Group, has focused worldwide donor attention on the need for Brazil to pay greater attention to counternarcotics issues and urged the GOB to take more vigorous action against its growing drug problem. Newly-elected President Cardoso is expected to take such action to confront narcotics traffickers.

Brazil's former President Franco signed a decree increasing the DPF's licensing and oversight responsibility for chemicals. The DPF/DRE initiated a sea/airport security program, and continued to seize drugs by riverine and ground law enforcement methods. Brazil continues to plan for a radar system (SIVAM), financed by the Export-Import Bank, to detect narcotics trafficking aircraft in the Amazon.

China

The Government of the People's Republic of China (PRC) is committed to combatting narcotics trafficking and use. China is a major transit route for heroin from neighboring Burma, Laos and Vietnam to the United States and other overseas markets. Drug addiction, which was effectively stamped out following the founding of the PRC in 1949, is once again on the rise. Thanks to China's expanding economy and increasing openness to the outside world, narcotics consumption within the PRC is growing. In addition, opportunities for investment in China provide greater potential for money laundering.

Chinese enforcement efforts continue to be vigorous and were stepped up in 1994. Strong laws based on a national directive issued in 1990 call for the death penalty for many drug-related crimes. Hundreds of drug criminals are executed in accordance with these laws annually. Narcotics trafficking in Yunnan province, which borders Burma, decreased in the latter part of 1994. The Chinese arrested major figures in two drug trafficking groups based in Burma, the Kokang and the Wa. Better surveillance of the Burmese border, improved intelligence work, and better control of precursor chemicals have also contributed to at least a temporary decrease in trafficking in Yunnan. PRC counternarcotics officials project no increase in national trafficking figures over 1993 levels. The PRC has taken a strong stand against official corruption, and has laws dealing specifically with government officials who are found guilty of the use, manufacture or delivery of narcotics.

The United States and China do not have a bilateral counternarcotics agreement in place. China has met, or is actively seeking to meet, the goals and objectives of the 1988 UN Convention, to which it is a party, by continuing its efforts to enhance law enforcement measures, public education, and international cooperation.

Illicit opium cultivation exists in remote, often roadless areas of Yunnan province and is suspected to exist in scattered pockets in other parts of China. The authorities are committed to eradicating opium cultivation when it is detected. Yunnan province cultivation is estimated at 1,965 hectares, capable of yielding approximately 25 metric tons of opium gum.

Impediments to bilateral cooperation remain. The Chinese frequently cite the 1993 U.S. court decision blocking the forced return to China of a Chinese drug trafficker ("goldfish case") as an obstacle to U.S.-China counternarcotics cooperation, but these same officials state that they would like to expand bilateral cooperation in the future.

Dominican Republic

The United States Government and the Government of the Dominican Republic (GODR) maintained close, effective counternarcotics cooperation in 1994, despite tensions over the disputed Dominican presidential election and over Haiti. The Dominican Republic intensified its counternarcotics effort and improved interagency/inter-service cooperation under the leadership of the new director of the National Directorate of Drug Control (DNCD).

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GODR personnel, working with U.S. law enforcement, made several multi-hundred kilo cocaine seizures in 1994. The GODR was especially helpful in arranging the return of several major drug figures who were fugitives from U.S. justice.

Threat assessments indicate an increased flow of narcotics into the Dominican Republic from Haiti, especially since the September 1991 coup in Haiti. Maritime shipments from Panama are also increasing. The DNCD and Dominican Navy, working in concert with DEA, interdicted one such maritime shipment on November 22, seizing nearly a metric ton of cocaine and uncovering a major smuggling operation.

During 1994, a wide range of USG-financed professional training (law enforcement, drug abuse prevention, financial investigations, and canine handling assessment) was provided to DNCD personnel and other military and civilian officials. The GODR complied fully with its commitments under the bilateral counternarcotics assistance agreement.

The Dominican Republic became a party to the UN Convention in late 1993 and has taken action consistent with the goals and objectives of the UN Convention. Additional legislation, however, is needed in areas such as money laundering and asset seizure to enable the GODR to comply more fully with the Convention. The GODR has been active in the Inter-American Drug Abuse Control Commission and the United Nations Drug Control Program. It hosted the 1994 United Nations Heads of Narcotics Law Enforcement Agencies Conference for Latin America and will host the Latin American International Drug Enforcement Conference in April 1995. It has established cooperative relationships with a number of other governments in the hemisphere, most recently signing a bilateral drug cooperation agreement with Venezuela.

The GODR still faces many challenges in establishing an effective national anti-drug effort. While it has taken steps to address narcotics-related and other official corruption, corruption continues to undermine GODR law enforcement efforts. Anti-drug legislation, while strengthened, has serious flaws; in the area of money laundering control, for example, the Dominican legislature removed prison sentences, leaving only moderate fines for bankers convicted of involvement in laundering activities. The GODR will resubmit the package in 1995 to correct this.

Ecuador

Ecuador is a bridge between the world's largest supplier of coca leaf, Peru, and the world's major processor of cocaine hydrochloride, Colombia. Traffickers use Ecuador as a transit point to ship 30–50 metric tons (mt) of cocaine per year to the United States and Europe, as well as to smuggle chemicals into Colombia for cocaine processing. Money launderers take advantage of Ecuador's loose banking laws and extensive offshore banking system to conceal the illicit nature of their proceeds.

Ecuadorian judges are subject to trafficker intimidation and subornation, which has obstructed efforts to bring Cali-connected kingpin Jorge Reyes Torres to justice. Corrupt judicial practices have precluded indictments in Reyes Torres-related cases, specifically the Banco De Los Andes case. Stronger resolve by the Government of Ecuador (GOE) to confront judicial corruption will be necessary to successfully conclude the Jorge Reyes Torres case and other counternarcotics initiatives.

Ecuador made significant strides this year toward complying with the 1988 UN Convention, to which it is a party. The government has taken steps to generally meet the goals of bilateral counternarcotics agreements with the USG on enforcement, demand reduction, and prosecutions of major narcotics traffickers. The GOE enacted a law based on OAS model legislation on asset sharing and completed a study to determine the amount of licit chemical use in Ecuador.

However, the Ecuadorians should strive to control trafficking in precursor and essential chemicals by creating an effective monitoring and control system based on the results of the completed study. Ecuador is making efforts to control money laundering by involving the police, Superintendency of Banks, and the National Drug Council (CONSEP) in collaborative investigations.

The USG has provided Thrush aircraft to identify illicit crop cultivation in Ecuador. None was discovered in 1994, but search flights will continue in 1995. Ecuador is progressing in implementing its National Drug Strategy. Ecuador signed an asset-sharing agreement with the USG in 1994. A limited amount of asset-sharing has already taken place based on this agreement. The Ecuadorians used the funds for law enforcement purposes. Ecuador continues to work toward sharing the remainder of $3 million in assets forfeited in the Reyes Torres investigation.

The USG counternarcotics assistance program helps Ecuador to reduce money laundering, control essential chemicals, and buttress the judiciary's ability to preserve democracy by enforcing the rule of law.

Guatemala

The Government of Guatemala (GOG) has successful programs to reduce demand, cultivation, and transit of illicit narcotics.

With USG technical support, specially trained units of the Guatemalan Treasury Police conduct ongoing eradication that has reduced opium poppy cultivation to minimal levels. Persistent attempts to revive poppy cultivation are the focus of a continuing suppression program which includes detection and eradication.

Guatemala's hundreds of small, unmonitored airfields connected by good roads appear to have almost been forsaken by traffickers moving cocaine in small planes to the United States from South America. In response to DEA's Operation Cadence and GOG vigilance in-country, traffickers are increasingly transporting drugs overland and by sea. During 1994, over 1.5 metric tons of cocaine were seized outside Guatemala as a result of Guatemalan-based intelligence. Almost two metric tons were seized in-country.

The GOG's aggressive investigation, interdiction and eradication operations are consistent with the goals of the 1988 UN Convention, to which Guatemala is a party. However, Guatemala lacks legislation needed to implement the Convention in areas such as money laundering and essential chemical control. Money laundering has not been criminalized in Guatemala and is not considered a significant problem.

Corruption, especially in the judicial branch, is a major problem in Guatemala. The GOG has begun to focus attention on corruption, particularly in the courts where several judges were relieved of their positions for releasing prisoners under allegedly questionable circumstances. The GOG does not, as a matter of policy or practice encourage or facilitate illicit narcotics production or distribution, or laundering of drug proceeds.

Guatemala continues to accomplish the goals of its bilateral narcotics agreements with the USG for drug eradication, interdiction, and demand reduction. The USG is working with the GOG to implement cost reductions while retaining the high level of effectiveness demonstrated by Guatemala's counternarcotics programs.

Haiti

Because of its ideal geographic location for smuggling, the island of Hispaniola has long been a significant transit point for cocaine destined for U.S. and European markets. The unstable political situation and weak government institutions in Haiti facilitated narcotics trafficking for many years. The opportunities for traffickers to take advantage of these conditions were even greater after the September 1991 coup which ousted President Jean Bertrand Aristide. Multi-hundred kilo and multi-ton shipments of cocaine

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transited the country frequently. The USG has received credible, but unsubstantiated, reports for many years that the Haitian military was involved in assisting traffickers. However, the USG was unable to determine the veracity of reports that the *de facto* regime or the military hierarchy secretly condoned such activity.

Until the legitimate government of Haiti was restored in September 1994, the USG maintained only limited counternarcotics cooperation with the *de facto* regime in Haiti, largely through the Haitian Center for Information Coordination (CICC), which the United States helped establish in 1987. The *de facto* government undertook some drug enforcement efforts and made a number of cocaine seizures in the 2–60 kg range in 1993–1994, some in cooperation with USG law enforcement personnel from the U.S. Embassy. However, suspected multi-ton shipments transited Haiti unimpeded until the country was subjected to an international maritime blockade in April 1994.

Drug trafficking was among the six issues President Clinton listed in early 1994 as key areas of U.S. concern relating to Haiti. Growing drug trafficker influence in Haiti may well have impeded the return of democracy, sound administration of justice and economic recovery. The Aristide administration, working with the international community, has initiated an extensive administration of justice and police reform program. Former military and police personnel suspected of involvement in drug trafficking are being excluded from the new civilian police corps and the reorganized military.

This massive and critical reform is the most important step that the Government of Haiti can take at this stage to attack the narcotics problem at its core. Since the restoration of the Aristide government, the USG-led Multinational Force and the International Police Monitors have played a large role in law enforcement in Haiti. These efforts have included control of the major ports and airfields, and supervising and monitoring the interim Haitian police. This, and all other relevant activity, is undertaken with the full concurrence of the Haitian government. The Aristide government cooperated completely with the United States in all aspects of this effort.

In the future, the restored Aristide government will need to take a number of other measures to address drug trafficking more effectively: it should become a party to the 1988 UN Convention, establish a national council to coordinate Haitian counternarcotics activities, implement money laundering controls, and forcefully address the problem of narco-corruption within the police and military forces.-

Hong Kong

Hong Kong is not a party to the 1988 UN Convention, but the territory's counternarcotics efforts effectively comply with most of the goals and objectives of the agreement. Hong Kong takes serious and effective measures to combat narcotics trafficking. Nevertheless, Hong Kong remains an important transshipment center for heroin from Southeast Asia. Due to enforcement efforts and changes in trafficking patterns, the volume of drugs passing through Hong Kong seems to be dropping. The amount of heroin detected transiting Hong Kong for Taiwan, Japan, and the United States fell during 1994 and heroin arriving in Hong Kong is increasingly intended for domestic consumption.

The USG is not aware of any narcotics-related corruption among senior government or law enforcement officials in Hong Kong. Hong Kong has a comprehensive anti-corruption ordinance that is effectively enforced by an independent commission that reports directly to the Governor.

Hong Kong continues to serve as a major center of money laundering of drug proceeds by local and regional groups trafficking in heroin. Passage of the new Organized and Serious Crimes Ordinance improves the Hong Kong Government's (HKG) ability to prosecute money launderers. The HKG is in the final stages of drafting amendments to the Financial Recovery

of Proceeds Act to conform more fully with the Financial Action Task Force recommendations and the UN Convention.

There is a bilateral narcotics agreement, which facilitates asset freezing and asset forfeiture. The Hong Kong Government and the USG have worked closely together on U.S. extradition requests, although there is some concern that overly strict application of Hong Kong evidentiary requirements has made extradition difficult in some cases. Overall bilateral cooperation on drug enforcement efforts is very good.

India

India is the world's largest producer of licit opium and the largest supplier to the U.S. pharmaceutical industry. Opium is diverted from legal production, and there is substantial illicit opium cultivation in certain districts. India is also a transit route for heroin from nearby producing countries, and an exporter of methaqualone and heroin precursor chemicals en route to the Middle East, Africa, Europe and North America.

As a licit producer of opium, India must meet an additional certification requirement. In accordance with Section 490(c) of the Foreign Assistance Act, it must maintain licit production and stockpiles at levels no higher than those consistent with licit market demand and take adequate steps to prevent significant diversion of its licit cultivation and production into illicit markets and to prevent illicit cultivation and production.

The United States and India conducted an intensive dialogue on narcotics issues, with meetings of a Joint Working Group and a 1994 visit by Dr. Lee Brown. With U.S. encouragement, India maintained during 1994 a promising narcotics dialogue with Pakistan on cross-border smuggling of heroin and precursor chemicals, despite poor bilateral relations in other areas.

Over the past several years, the Government of India (GOI) has taken steps to reduce licit opium stockpiles and the potential for diversion of licit opium to the illicit market. The total area licensed for cultivation was kept at about 14,000 hectares (ha) in the 1993/4 crop season and physical controls on harvested opium were enhanced. In 1994, in the course of taking the first physical inventory in many years, it became clear that real stocks on hand were far lower (by 800 metric tons) than official inventories and that supplies were insufficient to fulfill 1994 contractual requirements. An International Narcotics Control Board audit described the failure to have maintained adequate inventory records as a violation of the 1961 Single Convention on Narcotics Drugs. No adequate accounting of several hundred tons of the discrepancy between book stocks and real stocks has been made. New storage and accounting controls put into place in 1994 should reduce potential for diversion from licit stocks.

To combat large-scale diversion by growers, the GOI has slowly increased minimum qualifying yields (MQY) on licensed growers. MQY was raised from 40 kg per ha to 43 kg/ha for the 1994/5 growing season. An unreleased GOI crop survey reportedly suggests that MQY could be raised by a substantially greater amount. The United States raised with India the need for a scientific crop yield survey in the near future so that MQY can be raised to a level high enough to prevent substantial diversion to the illicit market.

To cope with the 1994 opium shortfall and rebuild an appropriate reserve stockpile, the GOI decided in 1994/5 to expand the cultivated area to about 24,000 hectares, but to improve security by concentrating production in a more limited region, granting additional hectarage to farmers with a history of high yields, and delicensing some 40,000 farmers whose opium deliveries to the GOI fell below the MQY. This expansion in cultivated area raises concern about the potential for increased diversion.

The Government of India cooperates well with the United States on individual cases of trafficking. There has been little success, however, in cracking major smuggling rings, pointing up a continuing lack of resources and personnel, including lack of intelligence-gathering capability and high-level politica

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support, allocated to narcotics enforcement. There were no seizures of heroin laboratories in 1994. The United States has no specific knowledge of any senior GOI officials encouraging or facilitating trafficking or money laundering. Allegations of corruption among lower-level judicial and law enforcement personnel are widespread, but successful prosecutions rare.

Illicit cultivation of opium is concentrated in the state of Jammu and Kashmir, in remote areas of Uttar Pradesh, and in other areas where political disturbances and inadequate enforcement resources kept GOI eradication efforts to a minimum. The GOI cited bureaucratic difficulties in turning down a U.S. offer of partial U.S. funding for an aerial crop survey in 1994. Illicit opium production is estimated to be in the range of 80 metric tons on 5,500 hectares, with reported eradication of about 100 hectares.

India is a party to the 1988 UN Convention and has made some progress toward precursor chemical control and law enforcement cooperation. However, India has not yet passed asset seizure legislation or implemented recommendations of the Financial Action Task Force. Although India did not sign a bilateral agreement with the United States in 1994, the goals of a 1993 agreement aimed at improving security at the opium factories are being achieved.

India fulfilled the requirement of FAA Section 490(c) to maintain licit production and stockpiles at levels no higher than consistent with market demand. The GOI addressed a number of the specific U.S. concerns expressed in 1994 bilateral narcotics consultations, which focussed on better controls on licit opium production. For 1994, India's efforts to impose necessary controls on licit opium and cooperation with DEA and other endorsement agencies justify continued certification. In 1995, significant additional steps will need to be taken if full certification is to continue. Areas of outstanding concern include: quantifying real licit opium yields; revising MQY to appropriate levels; eradicating illicit cultivation; taking effective action against major narcotics trafficking syndicates and kingpins; and implementing effective measures on money laundering and asset seizure.

Jamaica

Jamaica is both a major producer of marijuana and a flourishing transshipment site for South American cocaine en route to the United States, The Bahamas, Canada and Europe. There is scant evidence of money laundering at this point. Jamaica is not yet a party to the 1988 UN Convention. However, the Government of Jamaica (GOJ) took adequate steps during 1994 to fulfill the goals and objectives of both the Convention and U.S.-Jamaican counternarcotics agreements.

The GOJ made progress during 1994 in strengthening its narcotics control effort. Jamaica's Forfeiture of Assets Act, which allows for criminal but not civil forfeiture, went into effect in August. The GOJ also amended its Dangerous Drugs Act to provide for tougher fines and longer imprisonment for drug offenders. The GOJ continued work on money laundering control legislation and expects to present it to Parliament before April 1995. With the adoption of money laundering legislation, Jamaica will have the full range of implementing legislation for the 1988 UN Convention, which it then intends to ratify. In 1994, the GOJ submitted to Parliament enabling legislation to permit Jamaican ratification of the U.S.-Jamaica Mutual Legal Assistance Treaty, and the GOJ expects passage soon.

Throughout 1994, the GOJ continued its excellent cooperation on extradition. GOJ drug enforcement agencies also continued to cooperate well with the U.S. Drug Enforcement Administration (DEA). These agencies have recognized the need to bring major traffickers to justice and break up trafficker networks and are taking appropriate steps. Recognizing the necessity of prompt prosecution and conviction, the GOJ has begun to work with the USG on judicial reform, the objectives being to improve the flow of cases through Jamaica's court system and obtain more convictions. Although we know of no GOJ prosecutions of officials for corruption in 1994, the GOJ, and especially the Police Commissioner, has attempted to de-politicize the police force and control corruption, largely by transferring suspect personnel. The Commissioner fully supported the USG's revocation of the visas of several police officers suspected of drug trafficking, as permitted under U.S. law. The GOJ's major demand reduction program, a UNDCP-funded project, is not making appreciable progress at this time due to internal problems within the National Council on Drug Abuse.

During 1994, the GOJ revitalized its marijuana eradication program. In November, the Jamaica Defense Force (JDF), Jamaica Constabulary Force (JCF) and DEA cooperated to estimate the total amount of illegally-grown marijuana. The JDF and JCF quickly organized a task force to eradicate the marijuana detected during the estimation exercise. During 1994, the GOJ eradicated 692 hectares of marijuana, a 52 percent increase over 1993 eradication.

Laos

Laos is not a party to the 1988 UN Convention, but has drafted a comprehensive drug control program that commits it to the goals of the Convention. As part of this program, the government has pledged to become a party to the Convention no later than the year 2000. A letter of agreement on counternarcotics signed in 1989 is the basis for ongoing drug control projects funded by the USG. These projects consist of an alternative crop development project and a law enforcement support project. In 1994, police units supported by the law enforcement project became operational and began to make arrests. Road building, dam site preparation and other basic development work was undertaken in the crop development project.

Based on USG estimates, Laos remains one of the world's major producers of opium, although production has been on a declining trend since 1990. Due primarily to weather, opium cultivation and yield fell sharply during the 1993/4 growing season. USG estimates for the 1994 crop show a decrease in cultivation of approximately 29 percent, from 26,040 hectares in 1993 to 18,520 in 1994. Production of opium gum dropped even more significantly, from about 180 metric tons in 1993 to only 85 metric tons in 1994, a decline of 53 percent. Opium cultivation is not illegal under existing statutes.

In the past year, the Lao government has moved forward in its antinarcotics efforts through continuation of both bilateral and multilateral programs. Bilateral agreements signed with the USG continued the crop control project in Houaphan Province and the law enforcement project. An additional crop control project has been approved, which will be implemented by Norwegian Church Aid/UNDCP. An active UNDCP program also operates an alternative development program aimed at opium crop control. The Lao special counternarcotics unit, which was formed as a result of the 1992 bilateral USG-Lao law enforcement project agreement, is now functioning and had some successes in 1994 in heroin interdiction efforts. Lao customs has worked closely and effectively with the special unit in several significant seizures of illicit drugs and in follow-on investigations.

There have been allegations of military and official collusion in narcotics production and trafficking, but there is no solid evidence of official corruption. Lao government employees receive low pay, making them susceptible to corruption and low-level corruption is assumed to exist. There is no clear evidence that the Lao government as a matter of policy encourages or facilitates the illicit production or distribution of drugs or the laundering of drug money.

Malaysia

Malaysia ratified the 1988 UN Convention in 1993 and has worked cooperatively with the USG, as well as taking adequate steps on its own, to fulfill the Convention's goals and objectives. The USG and the Government of Malaysia (GOM) continue strong antinarcotics cooperation. Several important steps forward in bilateral cooperation were made this year. The two govern-

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ments renewed efforts to collect and analyze intelligence on international drug trafficking, and the Drug Enforcement Administration and the Royal Malaysian Police restored their cooperative relations. A bilateral agreement to assist in demand reduction programs is being implemented effectively. Negotiations for a new U.S.-Malaysia extradition treaty are proceeding.

The Government of Malaysia considers the narcotics problem a priority issue. Malaysia pursues an aggressive enforcement policy under one of the most severe drug laws in the world. A well-funded counternarcotics program emphasizes both enforcement and demand reduction.

Illicit heroin processing, heroin trafficking, and growing addiction continue to be serious problems in Malaysia. Traffickers smuggle heroin base into Malaysia from Thailand and Burma and refined heroin continues to transit Malaysia en route to the United States and other Western markets.

During 1994, there were no notable cases of corruption involving narcotics. However, Penang, where Chinese triad gangs control most narcotics trafficking, is still considered to be vulnerable to corruption and gang members are believed to be involved in attempts to engage law enforcement officials in various forms of corruption. Corruption continued to be addressed by law enforcement agencies. The Royal Malaysian Police continued to take precautions against potential corruption by a careful selection of officers for its anti-narcotics unit and frequent transfers within the unit. Although some law enforcement officials have been charged with corruption in the past, there has been no evidence of corruption among senior officials.

Despite severe legal penalties for both drug use and trafficking, drug trafficking remains a major problem. Illicit narcotics generally continue to be available at stable prices for the local addict population.

There is no evidence that Malaysia is a significant center for money laundering now, but the Malaysian government is concerned that a new offshore financial center may be vulnerable to money laundering activities and is looking for ways to head off this threat.

Mexico

The United States Government and the Government of Mexico (GOM) maintained close counternarcotics cooperation in 1994, the final year of the Salinas administration, in keeping with the commitments of the bilateral agreement on cooperation in combatting narcotics trafficking and drug dependency (Chiles Amendment Agreement). Mexico continued its multi-faceted national campaign against production, trafficking and abuse of illegal drugs, meeting many of the goals and objectives of the 1988 UN Convention. However, the results of this campaign were mixed, with cocaine seizures falling to the lowest level of Salinas' tenure (about 21 mt) and few major traffickers arrested and prosecuted. Narco-corruption remains a serious impediment to effective drug law enforcement. Eradication of opium poppy and cannabis also declined substantially. One factor causing the decline may have been the diversion of military personnel and resources to handle the political uprising in the state of Chiapas. On the positive side, heroin seizures increased to about 300 kilograms, more than the previous five years combined. Seizures of precursor and essential chemicals and destruction of clandestine laboratories likewise increased. Money laundering, particularly the large-scale conversion of cash from the United States, remains a major problem in Mexico, which the GOM has not yet effectively curbed.

The decline in cocaine seizures was due to a number of factors. Much of the Mexican Attorney General's Office was devoted to investigating the assassinations of the leading Presidential candidate and the Secretary General of the ruling PRI party. Also, to avoid detection by U.S. and Mexican air interdiction systems, traffickers increased the use of fast moving cargo jets, each transporting huge quantities of cocaine into Mexico. Only one of these aircraft was seized; the U.S. and Mexican governments are sharing intelligence and upgrading equipment to address this situation.

Despite commendable efforts by the Salinas administration to tackle endemic corruption with the Mexican police and judicial systems, including hundreds of dismissals and numerous prosecutions, the measures taken did not turn the tide. Anti-corruption actions, as well as efforts to build strong anti-drug institutions, were undermined by narco-influence (and money) and frequent personnel turnovers, especially in 1994.

The actions taken by newly-inaugurated President Ernesto Zedillo are encouraging. Zedillo stated publicly that narcotrafficking presented the single greatest threat to the national security of Mexico. Within a few weeks of taking office, he promulgated a sweeping judicial reform package, which was overwhelmingly approved by the Mexican Congress. The Zedillo administration has also pledged to pursue institutional reform of Mexican law enforcement agencies to counter official corruption and to strengthen legal controls over money laundering and precursor chemicals.

Panama

Panama is a major money laundering center, a producer of coca leaf, and a transit point for cocaine destined for the United States.

For most of 1994, Panama was preoccupied by election year politics and the transition of administration from President Endara to President Perez Balladares. Nonetheless, there were significant policy and legislative initiatives on the counternarcotics front.

Two important counternarcotics achievements were enacted by the Endara administration before it left office: the establishment of cross-border currency controls and the passage of Law 13 which expanded the Government of Panama's (GOP) ability to investigate and prosecute narcotics-related crime.

Since taking office in September 1994, the administration of Perez Balladares acknowledged that narcotrafficking and narcotics-related money laundering threaten Panama's political and economic stability. In an effort to prevent abuse of incorporation laws, the new President issued a decree mandating attorneys to follow "know-your-customer" practices. He then established a special commission to develop money laundering controls. The resulting policy statement prescribed a number of far-reaching changes. For example, it criminalized drug-related money laundering, mandated suspicious transaction reporting, and extended cash transaction reporting obligations to non-financial institutions. Moreover, Panama's new controls include strengthening the regulatory authority of the National Banking Commission and developing a financial analysis center, an investigations unit, and a prosecutor's office to develop cases of financial crime.

Panama was generally successful in meeting the goals and objectives of the 1988 UN Convention and bilateral counternarcotics agreements with the United States. The GOP's aggressive eradication efforts continued, and interdiction operations showed a marked improvement. To combat money laundering and corruption, the administration of Perez Ballardares moved rapidly on the policy front but was unable to begin implementation of controls before the end of the year. Several middle- and low-level officials were investigated for corruption and, in a few cases, dismissed. The GOP does not, as a matter of policy or practice, encourage or facilitate illicit narcotics distribution, corruption, or laundering of drug proceeds.

In 1994, Panama developed a framework on which it can wage a campaign against traffickers and money launderers. In 1995, the measure of the GOP's counternarcotics programs will be the degree to which it builds upon that framework by implementing controls, seizing assets, and prosecuting offenders.

Taiwan

Changing drug trafficking patterns in East Asia have created a growing heroin trafficking problem in Taiwan. Domestic demand for heroin has risen sharply, and Taiwan has also emerged as an important center for the transshipment of heroin. Over the past three or four years, Taiwan authorities

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have made drug enforcement a priority and heroin seizures have risen sharply, climbing to over one metric ton in 1993.

Taiwan is not a party to the 1988 UN Convention, but the vigorous drug enforcement campaign mounted by the Taiwan authorities demonstrates substantial progress toward meeting some of the goals of the Convention, and shows Taiwan is taking adequate steps on its own to address the problem of heroin trafficking. However, legislation and agreements do not yet exist to implement the provisions of the Convention regarding asset forfeiture, controlled delivery, extradition, mutual legal assistance and illicit traffic by sea. Taiwan authorities have expressed an interest in developing agreements in some of these areas. There were no reported incidents of police corruption involving drugs. There is no evidence of senior Taiwan officials being involved with the illegal drug trade.

Working cooperation between the Drug Enforcement Administration and both the Taiwan National Police and the Ministry of Justice Investigation Bureau has been good. Efforts are being made to enhance enforcement cooperation and Taiwan authorities have expressed interest in entering into a bilateral counternarcotics agreement under the auspices of the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan.

Thailand

Thailand is the main transit route for the illicit drug production from the Golden Triangle. Successful eradication and development efforts have reduced opium cultivation far below the amounts grown in the neighboring countries of Burma and Laos. Due to the efforts of the Thai Government authorities, 1994 cultivation of illicit opium was only 2,110 hectares, yielding 17 metric tons of opium.

Drug enforcement cooperation is very good and improved even further in 1994. In a precedent-setting cooperative law enforcement operation, the Royal Thai government in November 1994 arrested ten major traffickers under indictment in the United States who form part of drug lord Khun Sa's Shan United Army (SUA) infrastructure and proceedings to extradite the fugitives to the United States are now pending in Thai courts. During 1994, Thailand also took action to close off its northern border, reducing the flow of supplies and other logistical support to the SUA in Burma. Efforts continue to enhance judicial cooperation and the Thai Cabinet has just moved to permit the courts to consider the extradition of a former Thai Member of Parliament under indictment in the United States on large-scale marijuana smuggling charges.

Thailand is a leader in regional drug control programs and shares its expertise through agreements with neighboring countries and the United Nations and through training and cooperative enforcement activities.

Thailand remains vulnerable to money laundering due to the relatively low level of sophistication of the Thai banking system and the presence of an active quasi-legal non-bank financial system. Thailand is now in the process of drafting money laundering legislation. Drug-related corruption of some politicians and police officials remains a problem.

A bilateral agreement with the United States supports law enforcement cooperation and crop control, including eradication of opium poppies and Thailand has performed well under that agreement. Thailand is not a party to the 1988 UN Convention, but is a party to the 1961 Single Convention on Narcotic Drugs, its 1972 Protocol, and the 1971 Convention on Psychotropic Substances.

Venezuela

Venezuela is a major drug transit country. Traffickers ship an estimated 100–200 metric tons (mt) of cocaine annually through Venezuela. Precursor and essential chemical trafficking and money laundering are also serious problems in Venezuela. The Venezuelan judiciary's marginal ability to resist the corruptive influence of traffickers has hampered counternarcotics efforts in that country.

Venezuela has taken adequate steps to meet the goals and objectives of the 1988 UN Convention, to which it is a party, especially in its vigorous response to illicit crop cultivation. Venezuela quickly eradicated in 1994, with USG assistance, over 1,000 hectares of coca and opium poppy cultivation in Zulia state near its western border with Colombia. The government generally meets the goals of bilateral counternarcotics agreements with the USG. In addition, the Venezuela-Colombia border agreement to keep Venezuela free of narcotics traffickers and the successful eradication effort indicates serious Government of Venezuela (GOV) interest in preventing traffickers from making incursions into Venezuela.

Seizures of cocaine increased in 1994 to 5.0 mt, indicating both more trafficker use of Venezuela and better interdiction of cocaine by Venezuelan counternarcotics forces. Venezuela's bilateral agreement with the United States to conduct counternarcotics air interdiction operations reflects invigorated cooperation on strategic initiatives.

In 1994, the Guardia Nacional (GN) seized 5.0 mt of cocaine and 15 kilograms (kg) of heroin. However, the recent arrests of two GN members for trafficking 250 kg of cocaine through Maiquetia Airport evinces corruption problems at lower levels in the organization. The GN quickly removed the two soldiers and began an investigation of the unit.

Although President Caldera has spoken out strongly against narco-corruption, most recently at the December Summit of the Americas, corruption in Venezuela remains a serious problem. A convicted trafficker, Larry Tovar Acuna, fled to Colombia after fraudulently obtaining a pardon, and the Venezuelan government made an extradition request to Colombia for Tovar. In addition, a corrupt judge released members of the Sinforoso Caballero money laundering organization. The Venezuelan Supreme Court reopened the case and investigated the judge.

Venezuela has not yet approved its draft national counternarcotics strategy and has not begun to control precursor and essential chemicals. With more attention from President Caldera, Venezuela's compliance with bilateral agreements on chemical control and money laundering measures should improve.

Vietnam

The Socialist Republic of Vietnam has a significant opiate abuse problem and is emerging as a location for drug trafficking. Illicit opium production exceeded 1,000 hectares, but the precise extent of cultivation remains unclear. Estimates have ranged as high as 14,000 hectares during the 1992/3 growing season. The government is undertaking a serious eradication effort and has pledged to eliminate opium cultivation, which exists primarily in relatively inaccessible regions of the north.

Opiate addiction in urban areas is a serious problem. The government, with the aid of the United Nations International Drug Control Program (UNDCP), is formulating a drug control plan to combat both production and consumption in Vietnam. Economic reforms and the growing overall volume of the Southeast Asian heroin trade have made Vietnam an emerging transit point for heroin destined for Taiwan, the United States and other locations.

Corruption is a complicating factor in domestic enforcement efforts, but there is no evidence that the government tolerates, condones or profits from drug trafficking activity.

The government is not a party to the 1988 UN Convention, but is developing a program to work toward fulfillment of the goals and objectives of the Convention. This program is embodied in the drug control plan being drafted with the assistance of UNDCP. In coordination with UNDCP, the government is drafting legislation that meets the goals of the Convention.

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There is no bilateral counternarcotics agreement between the United States and Vietnam. However, informal discussions have begun between representatives of the Socialist Republic of Vietnam and the USG about counternarcotics cooperation and the Vietnamese response has been positive.

VITAL NATIONAL INTERESTS JUSTIFICATION

Bolivia

Bolivia is the world's second largest producer of coca leaf after Peru and the second largest producer of cocaine after Colombia. Most of the cocaine refined from Bolivian coca leaf is consumed in the United States.

Bolivia was highly successful in counternarcotics law enforcement operations during 1994. The Government of Bolivia (GOB) conducted four major operations designed to block trafficker movements, seized two large cocaine HCl laboratories, and arrested major traffickers with links to the Medellin drug mafia. GOB forces foiled Colombian traffickers and their Bolivian accomplices attempting a prison break at a maximum security facility and arrested the prison warden for complicity in the plot. Throughout 1994, the GOB continued its probe of alleged trafficker ties to former President Jaime Paz Zamora and members of his Movement of the Left (MIR) political party. In June, the Bolivian Congress removed two Supreme Court justices for corruption.

President Sanchez de Lozada is seeking to develop a strategy to eliminate illegal coca from the country without the use of measures he considers to be divisive, such as forced eradication. In 1994, however, the GOB made no measurable progress toward creating a plan to carry out this strategy.

In February 1994, the GOB briefly undertook a campaign of forced eradication which resulted in a violent reaction by coca growers. Voluntary, compensated eradication dropped off sharply and new plantings increased, resulting in a net increase in the area of coca under cultivation.

The Sanchez de Lozada administration has supported USG efforts to extradite drug traffickers, but such efforts stalled in the Bolivian Supreme Court in 1994. In early 1995, however, prominent trafficker Jose Faustino Rico Toro was declared extraditable. Thirty-five other extradition requests by the United States are pending with Bolivia. The GOB has declined to sign an extradition treaty negotiated in 1990, but in early 1995, the Sanchez de Lozada administration proposed a new draft treaty, which USG officials are reviewing.

It is in the vital national interests of the United States to maintain and increase the level of cooperation with Bolivia, the world's second largest coca and cocaine producer. Denial of certification would likely terminate much of Bolivia's multilateral development bank assistance, which would have an extremely harmful effect on the Bolivian economy. It would reduce significantly the resources available to the GOB to combat narcotics trafficking and would foster conditions in which more Bolivians would be driven to engage in illicit coca cultivation and trafficking.

Because the World Bank and Inter-American Development Bank are Bolivian's largest aid donors, USG opposition to loans to Bolivia by those institutions would result in strident calls within Bolivia for the GOB to cease its counternarcotics cooperation with the USG. Economic instability could lead to a loss of confidence throughout the country and thereby serve to undermine Bolivia's still-fledging democratic institutions. Should Bolivia's current democratically-elected government be followed by an authoritarian regime, narcotraffickers might gain a strong foothold, as they did in the corrupt dictatorships of the early 1980's. Preserving and promoting democracy in Bolivia is in the U.S. national interest of enhancing democracy throughout the Western Hemisphere.

In 1994, although the GOB's efforts and cooperation with the USG on interdiction and on broader political issues were substantial, its overall

counternarcotics efforts were not adequate to meet the goals and objectives of the 1988 UN Convention. Nevertheless, the risks posed to vital U.S. national interests from the possible consequences of terminating U.S. assistance, as noted above, greatly outweigh the risks posed by the lack of complete GOB cooperation on counternarcotics. With recent positive signs of action from the GOB, the USG will enter into further discussions to secure commitments for action in key areas.

Colombia

In 1994, Colombia remained the world's largest supplier of cocaine and the source of virtually all the cocaine imported into the United States. There are currently more than 111,000 acres (45,000 hectares) of coca being cultivated, a 13.3 percent increase over 1993 and, if such cultivation is not contained and crops are not eradicated, Colombia could soon surpass Bolivia as the second largest source of coca after Peru. Colombia is also a significant supplier of heroin and one of the largest cultivators of opium poppy in the world, along with Burma, Afghanistan and Laos. Recent data indicate that after having been suppressed over the last few years, Colombia's marijuana cultivation and export to the United States is again increasing. The expected diminution in the movement and flow of narcotics originating in Colombia as a result of the destruction of the Medellin syndicate in 1993 did not materialize. It is apparent that the removal of Pablo Escobar and his drug empire from the Colombia narcotics scene only benefited the now-dominant syndicate headquartered in the city of Cali.

During 1994, the USG and the Government of Colombia (GOC) collaborated on a number of fronts against the scourge of narcotics trafficking in both countries. The GOC had some successes. GOC performance on a number of critical issues, however, was inadequate. Among the successes attained by the GOC were ratification of the 1988 UN Convention which entered into force for Colombia in September 1994, the legalization of the herbicide glyphosate for use against coca cultivation, the defeat of a bill in Congress supported by narco-traffickers that would have diluted the existing illicit enrichment law, the indictment of Miguel Rodriguez Orejuela, and an aerial eradication campaign against illicit cultivation, which the GOC has pressed in the face of large-scale protests by the cultivators. Colombia remains the only producer of coca currently permitting aerial eradication of illegal crops.

Individual police and other officials operating at the ground level show considerable determination to bring narcotics traffickers to justice. Sporadic and ambivalent support by some quarters of the Colombian political establishment prevents significant damage to the Colombian drug syndicates. In 1994, the GOC took no legislative steps to reverse the 1993 revision of the criminal procedures code which made it more difficult to bring mid-level and senior syndicate heads to justice. As a result, following the trend set in 1993, there were no arrests, incarcerations, or fines imposed on such traffickers. In addition, a number of previously convicted traffickers were able to benefit from significant reductions in their sentences pursuant to Colombia's woefully lenient sentencing laws. The GOC's inability to protect and use information provided to them by the U.S. Justice Department has made impossible a full resumption of our previous law enforcement evidence-sharing relationship. The GOC has been informed that evidence obtained in the United States will not be provided for any new criminal cases pending a successful resolution of old cases for which we have provided evidence.

In 1994, total drug seizures through interdiction efforts were above those of 1993 but did not reach the levels accomplished in 1991 (86.35 mt) as the USG had recommended to the GOC. Performance on eradication has improved, but results to date have not met expectations. Even with increased USG-provided air and herbicide assets, the amount of opium poppy eradicated was almost 50 percent less than in 1993. As for coca the numbers are impressive (4,500+ hectares vs. 793 ha in 1993). They might have been

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greater had not local grower protests temporarily brought the program to a near halt in December.

In excess of 15,000 active criminal corruption investigations have been filed by the Attorney General against government officials, including 21 Colombian members of Congress. In 1994, there were no senior government officials indicted for corruption. Although Colombia and the United States in 1980 signed a Mutual Legal Assistance Treaty, Colombia has failed to ratify the treaty, and it has not entered into force. The Colombian Congress did not pass bills introduced by the Samper administration to counter money laundering activities and asset retention by illegal enterprises and those who participate in them. There was insufficient progress to detect and remove those corrupt officials primarily involved in counternarcotics efforts. There continues to be a problem with drug syndicate control of sovereign territory, such as San Andres Island.

The performance of two successive governments of Colombia during 1994 on the counternarcotics front did not meet the expectations agreed upon between our governments in numerous official and non-official meetings on the subject. Certain performance criteria were set out with the GOC in order to advance our joint commitments to this problem. Despite a national election and promises by the new government, Colombia did not meet these performance criteria nor did it take adequate steps on its own to achieve full compliance with the goals and objectives established by the 1988 UN Convention. As a result, the activities of the Colombian drug syndicates continue to ensure that the flow of cocaine, heroin and marijuana from Colombia to the United States remains undiminished.

There was a demonstrable absence of support by some quarters of the political establishment to buttress the gains achieved by GOC institutions operating at the ground level. There were no efforts made in the areas of judicial reform, capture and incarceration of syndicate heads, or the strengthening of executive institutions to counter the successful efforts of the trafficking syndicates. Lack of action by the Congress on GOC-introduced legislation also remains a problem.

Vital U.S. national interests would be at risk if we were to deny Columbia certification. As Colombia is the primary source of cocaine to the United States, continued cooperation with the GOC is very important to this country. A vital national interest certification will ensure that USG policy and assistance remain focused on developing more effective Colombian anti-drug efforts, while acknowledging that GOC actions to date have not had the desired impact on the flow of illegal narcotics to the United States. Further, such a certification allows the United States to continue working closely with Colombia on the other important issues on our bilateral agenda: promoting human rights, advancing free trade, and cooperating in international fora.

If Colombia were not certified, the USG would be required to vote against multilateral development lending. Termination of such assistance would have an adverse effect on the Colombian economy, reducing the resources available to the GOC to combat narcotics trafficking and fostering conditions in which more Colombians would be encouraged to engage in illicit coca cultivation and trafficking. Moreover, Colombia would find it more difficult to get international donors to help fund its projected alternative development scheme. Columbia's planned purchase of a U.S. radar system using Export-Import Bank financing would be cancelled, further reducing Colombia's interdiction capabilities.

While the GOC needs to do more in its efforts against drugs, the decrease in narcotics cooperation that would likely attend denial of certification would result in even more narcotics entering this country. Decertification would result in strident nationalistic calls on the GOC to cease its CN cooperation with the USG. In short, the risks associated with denying certification to Colombia are greater than the risks associated with Colombia's failure in the last year to cooperate fully with the United States, or to

take adequate steps on its own, to combat narcotics. Continued cooperation with the GOC will serve our drug control interests. Contrary to our national interests, the net result of decertification would be an increase in the flow of narcotics from Colombia to the United States and in the number of deaths among American drug victims.

Lebanon

Lebanon remained a major nexus for narcotics production and trafficking in 1994. Lebanese success in dramatically reducing the cultivation of both opium and cannabis in 1994 was offset by the continued processing of imported narcotics. Lebanese production facilities maintained pre-eradication levels of output. The Syrians have been cooperative in facilitating some advances in the Lebanese counternarcotics effort. However, no processing laboratories in Lebanon were dismantled in 1994 and the number of heroin and cocaine laboratories increased significantly. The volume of raw opium and cocaine flowing into Lebanon for processing and reexport offset the decreased volume of opium and cannabis cultivated in the Biqa' Valley.

In addition to significant successful eradication efforts, positive developments in Lebanon during 1994 include the lifting of immunity to permit prosecution of a legislator alleged to be corrupt, and the initiation of investigations of other public figures. There was also a marked increase in the number of small seizures and arrests reported in Lebanon, a major seizure of cocaine base in the port of Beirut was recorded, and a major importer of pharmaceuticals was also arrested on suspicion of diverting chemicals to illicit laboratories.

Although Lebanon has signalled its intent to accede, it is not yet a party to the 1988 UN Convention and has not met some of the goals and objectives of the Convention. Lebanon does not have a bilateral narcotics agreement with the United States.

The threat posed to the United States by drug trafficking and processing in Lebanon remains real. However, Lebanon's inability to confront in a wholly successful manner the narcotics threat, or to cooperate fully with the United States reflects, in part, the weakness of its institutions and regional political dynamics. Moreover, the stability, peace, and economic development of Lebanon are important to the stability of the Middle East region. The United States' vital national interests in continuing assistance to Lebanon and in furthering regional stability outweigh the threat posed by drug trafficking through Lebanon to the United States.

Pakistan

Pakistan is both a producer and an important transit country for opiates destined for international drug markets. Laboratories in Pakistan's Northwest Frontier Province process opium grown there and in neighboring Afghanistan. The USG estimates that about one-tenth of heroin consumed in the United States originates in Southwest Asia, much of it produced in the illegal labs in Pakistan. During the 1993–94 crop year, Pakistan produced about 160 metric tons of opium from about 7,300 hectares of poppy.

Despite limited progress in some areas, in 1994 the Government of Pakistan laid the foundation for significant progress in early 1995.

The GOP extended, by decree, the 1930 Narcotics Law to the tribal areas, increased significantly seizures of opium and heroin, increased financial resources devoted to combatting illicit narcotics processing and trade, and in several meetings with Government of India officials agreed to expand counternarcotics cooperation. It also initiated twelve new asset seizure cases in 1994 and used the media to alert the public to the GOP counternarcotics efforts and the dangers of narcotics.

There was limited progress in other areas. Despite the GOP extension of the 1930 Narcotics Law to the frontier areas, few major drug traffickers were arrested or prosecuted during calendar year 1994. None of the new asset seizure cases has been prosecuted. Pakistan marginally extended the

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opium cultivation ban while eradication equaled only 1993's total eradication. Poppy cultivation was up 16 percent in 1994, although the overall level of cultivation has remained more or less constant over the last five years.

By year end, Pakistan had drafted and vetted legislation to bring Pakistani law into conformance with the 1988 UN Convention, to which Pakistan is a party, and to prevent drug money laundering. President Leghari promulgated the legislative package as a temporary decree January 9, effective for 120 days after disagreements in the cabinet precluded submission to the National Assembly. Legislative action will be required to make it permanent. Politically difficult efforts to curb corruption in GOP law enforcement agencies and the courts have been modest.

Building on the foundation laid in 1994, Pakistan intensified its anti-narcotics efforts in 1995. The government began an eradication campaign in Bajaur Agency in January 1995 and created a demand reduction office. It also announced on January 25 that it had frozen $68 million in assets of narcotics traffickers. In a late January raid on a drug warehouse in the Northwest Frontier Province, 132 metric tons of drugs, primarily hashish, were seized. Recently, the GOP indicated a willingness to proceed expeditiously on outstanding extradition requests. Pakistan recently expanded the poppy ban in the NWFP.

Vital U.S. national interests could be damaged if Pakistan were to be denied certification. Pakistan is a strategically-located, moderate Islamic state with a nuclear weapons capability. Pakistan has provided troops for UN peacekeeping operations, most recently in Bosnia and Somalia, and has cooperated in the international fight against terrorists. The Government of Pakistan has also used its moderating influence with other Islamic countries. Decertification would be viewed in Pakistan as abandonment of a loyal ally and would endanger U.S./Pakistani dialogue and cooperation on these vital issues. It could also undermine Pakistan's ongoing efforts to address the drug problem, including cooperation by Pakistani anti-narcotics forces with DEA and the embassy narcotics affairs section.

The risk to these vital U.S. interests, and particularly our narcotics cooperation efforts, outweighs the potential gain from decertifying Pakistan for its inadequate efforts to combat narcotics. Pakistan is the conduit for opium and morphine base from Afghanistan, the second largest opium producer in the world. If the surge of Afghan drugs is to be stemmed, we need more Pakistani cooperation. Morale in Pakistan's anti-narcotics organizations could be adversely affected by decertification.

Although Pakistan is currently prohibited from receiving many forms of aid by the Pressler Amendment, denial of certification would add a requirement to vote against Pakistan in multilateral development banks. Access to such loans is vital to Pakistan. During the period of national interest certification, the USG will redouble its efforts to assist the GOP in improving its anti-narcotics performance to meet the criteria for full certification.

Paraguay

Paraguay is used as a transit route for cocaine shipped primarily from Bolivia, and perhaps increasingly from Colombia, to Argentina and Brazil for onward shipment to the United States and Europe. High-quality marijuana is exported to Argentina and Brazil and consumed within Paraguay. Paraguay is potentially a major money laundering center, based on its extensive re-export trade and its expanding and poorly regulated financial sector.

President Juan Carlos Wasmosy, Paraguay's first democratically-elected civilian President in over five decades, has stressed his personal commitment to combatting narcotics trafficking. He has continued authorization to stage USG counternarcotics surveillance aircraft in Paraquay and submitted to Congress legislation to control money laundering. Nevertheless, he failed in 1994 to act decisively when brought information relating to corruption within the GOP's counternarcotics leadership. As a result, Paraquay's co-

operation in drug law enforcement was weak in the first half of the year, and one criminal investigation was very probably compromised due to corruption. A lack of political will to uncover what is widely believed to be extensive official corruption led to an overall weak drug control program. Given this situation, Paraguay cannot be considered to be in compliance with the goals of the 1987 bilateral counternarcotics agreement with the USG, which seeks to eliminate the illicit production, processing, trafficking, and consumption of narcotics in Paraguay and the transit of narcotics through contiguous territorial waters.

Cooperation briefly improved in mid-year, resulting in a successful joint investigation with the Drug Enforcement Administration that netted 756 kilos of cocaine, the largest seizure ever in Paraguay. In October, the head of the anti-narcotics secretariat (SENAD) was assassinated, apparently in a personal dispute, disrupting further drug enforcement investigations for the remainder of the year. The new head of SENAD has expressed commitment to a cooperative drug control effort and has promised to carry out widespread changes in the composition of SENAD and the national anti-narcotics police. The USG remains concerned, however, that the Paraguayan military's control over SENAD will cloud any efforts to change the organization fundamentally.

The Government of Paraguay (GOP) made some progress toward meeting the goals and objectives of the 1988 UN Convention when the Paraguayan Congress ratified a financial information exchange agreement with the USG. However, until the GOP takes credible action to investigate allegations of corruption and to promote an aggressive investigative stance against those aiding drug trafficking, it cannot be considered to be fully cooperating with the United States, or to be taking adequate steps on its own, to comply with the goals and objectives of the 1988 UN Convention.

Despite its concerns about the GOP's lack of political will to seriously address drug trafficking, the USG is cognizant that Paraguay remains a young, fragile democracy. The consequences of decertification would likely have a significant adverse impact on Paraguay's ability to consolidate and sustain its fledgling democracy. The USG believes that its long-term counternarcotics goal for Paraguay, the promotion of strong, independent, credible institutions of government able to defeat drug trafficking, is best served by fully supporting the continued growth of democracy. Such support is in the vital national interest of the United States. Therefore, the vital U.S. national interest of promoting democracy outweighs the risks posed by the lack of full GOP cooperation on counternarcotics.

Peru

Vital U.S. national interests would be harmed if we deny certification to Peru. Peru remains the largest source of coca leaf in the world, making continued cooperation with the Government of Peru very important to the United States. In 1994, there was no measurable reduction in the flow of coca base from Peru to Colombia and no systematic mature coca eradication. While the amount of coca under cultivation remained the same, coca leaf production increased by six percent due to new, more productive coca plantings in expanded new areas that are superseding older areas, such as the Huallaga Valley. A vital national interests certification will ensure that U.S. Government policy and assistance remain focused on reducing the cultivation of coca and implementing the Peruvian drug strategy promulgated in 1994. Further, such a certification will allow the United States to continue working closely with Peru on other important issues such as democracy, economic reform and human rights.

In September, the Government of Peru (GOP) approved a national drug plan that defines measures to eliminate illegal drug production, trafficking and abuse, including eliminating all coca cultivation destined for illicit uses. It also established timetables and assigned responsibilities for implementing sectoral plans and programs, including a national alternative development program. In June, the GOP passed a stringent law with strict penalties

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for any aspect of opium poppy cultivation trafficking or use, which requires destruction of any poppy found in Peru. The GOP cooperated on most counternarcotics matters contained in its bilateral narcotics agreement with the United States, and took some steps to comply with the goals and objectives of the 1988 UN Convention. However, it made no progress toward the critical goal of reducing mature coca cultivations.

In 1994, there was concrete evidence of refined cocaine HCl processing and shipment from Peru to Mexico by Peruvian trafficking organizations, raising the specter of Peru as a potentially large-scale cocaine refining and shipping center, similar to Colombia. Police and armed forces seized over 9 mt of cocaine base through November 1994, exceeding the 1993 total. Nearly 6 mt were seized by the armed forces, using police intelligence. In January 1994, at GOP request, Colombia arrested major Peruvian trafficker Demetrio Limonier Chavez-Penaherrera ("Vaticano"). He was tried in Peru and is serving a 30-year sentence. There were similar successes against other major Peruvian trafficking organizations. The Peruvian Air Force (FAP) continued to implement an air intercept program with A–37s and Tucano aircraft, despite the USG shutdown of intelligence sharing in May (which has now resumed pursuant to a U.S. Presidential Determination).

The GOP has cooperated with UN Drug Control Program alternative development projects in parts of the Huallaga, Aguaytia, Pachitea and Urubamba valleys. Resumption of international financial institution lending was followed by World Bank and Inter-American Development Bank projects to rehabilitate over 1500 kilometers of roads, and improved electrical power facilities in areas affected by the coca economy. Such improvements in infrastructure facilitate the production and transport of alternative licit crops. Coca seedbed eradication was resumed in July, and has had a measurable impact on efforts to reduce the cultivation of coca in specific areas.

Alternative development programs in or near coca-producing regions will set the stage for future coca crop reduction. The GOP must integrate alternative development efforts with actual net reduction of coca cultivation and prevent the expansion of new coca cultivation areas in order to comply with 1988 UN Convention goals and U.S. and Peruvian drug plans.

A decrease in narcotics cooperation with the GOP would result in more cocaine entering the United States. The risks associated with denying certifi cation to Peru are greater than the risks associated with Peru's failure in the past year to cooperate fully with the United States, or take adequate steps on its own to reduce coca cultivations.

STATEMENT OF EXPLANATION

Afghanistan

In 1994, opium poppy cultivation in Afghanistan increased dramatically amid ongoing civil war, widespread lawlessness, and poor economic opportunities. According to USG estimates, opium production in Afghanistan rose 38 percent to approximately 950 metric tons of opium in 1994. Cultivated hectarage rose 39 percent to 29,180 hectares. USG analysis indicates Afghanistan remains the second largest opium producer in the world.

The nominal Government of Afghanistan was unable to eradicate systematically poppy plants, investigate or prosecute traffickers, or impede the transportation of opium, morphine base, or other narcotics. Few provincial leaders apart from Haji Qadir, Governor of poppy-rich Nangarhar, attempted to disrupt the cultivation or trafficking through the areas under their control. Haji Qadir in late 1994 began a campaign of plowing under Nangarhar's newly-planted poppy fields. Despite a demonstration of poppy-plowing for the benefit of U.S. and other international officials, we are unable to judge the extent or efficacy of Qadir's campaign.

Afghan traffickers continued development of new trafficking routes through the Newly Independent States, supplementing existing routes through Pakistan and Iran.

Reports continue to allege the direct involvement of some factional leaders, particularly small-scale independent "commanders," in narcotics production and trafficking and the indirect involvement of others who provide security to the narcotics trade in return for payment.

There is no functioning bilateral agreement between Afghanistan and the United States. While Afghanistan ratified the 1988 UN Convention in 1992, it has made virtually no progress in achieving its goals.

The tremendous increase in poppy cultivation during 1994, combined with the inadequate efforts to eliminate cultivation and trafficking, precludes a determination that Afghanistan has cooperated fully with the United States or taken adequate steps on its own to meet the goals and objectives established by the 1988 Convention. The core problem in Afghanistan is the absence of a functional central government. Although the USG has vital national interests in fostering the re-establishment of a functioning central government that could cooperate with us on regional security issues and drug eradication, USG assistance for such purposes falls largely outside the definition of U.S. assistance that would be cut off by denial of certification, at least this fiscal year. Accordingly, denial of certification is appropriate.

Burma

Burma remains the world's largest producer of illicit opium and heroin and the Government of Burma (GOB) continues to treat counternarcotics efforts as a matter of secondary importance. Estimated opium production in 1993/94 was 2,030 metric tons and illicit poppy cultivation covered 146,600 hectares. Opium production fell by 21 percent, due principally to poor weather. There were some modest signs of greater government efforts in counternarcotics. One of the results of a Burmese Army campaign against the Shan United Army (SUA) of Khun Sa was to restrict the opium supply and drug trafficking routes of the SUA. The GOB has also begun to show signs of willingness to cooperate in counternarcotics efforts and has agreed to facilitate an opium yield survey in 1995 and to allow the UN Drug Control Program (UNDCP) to perform an aerial survey of project areas. Domestic enforcement efforts have also shown some marginal improvement with regional task forces under the Burmese police becoming more active in drug enforcement. These efforts, however, fall short of what is required to address seriously the drug problem in Burma.

The government's ability to suppress Burma's opium and heroin trade is severely limited by lack of access to and control over the areas in which most opium is grown and heroin processed. Well-equipped ethnic armies sheltered in these remote mountainous regions have been permitted wide-ranging, local autonomy in exchange for halting their active insurgencies against Rangoon. At the same time, opium poppy cultivation has soared in the base areas of the insurgent groups, especially in the Wa hills, despite nominal commitments by insurgents and the government alike that efforts would be made to reduce opium growing. Direct government complicity in the drug trade does not appear to be a problem among senior officials, but narcotics corruption is a problem among lower level officials.

Multilateral drug control projects in enforcement and alternative development under the UNDCP involving cooperative efforts between Burma, China and Thailand are underway. These projects continue to receive support from the international community. Project scale is small, however, and the overall impact of these efforts on the huge opium cultivation problem in Burma has been extremely limited so far.

Burma is a party to the 1988 UN Convention and has enacted some legislation in conformity with the Convention, but has not made a strong effort to enforce these laws. There has been no bilateral counternarcotics

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agreement with the USG since the State Law and Order Restoration Council assumed power in 1988.

Iran

Iran is a major drug transit country. Reportedly, almost half the morphine base that arrives in Turkey monthly for processing as heroin passes through Iran. It also continues to grow opium poppy in remote provinces. Although the USG did not estimate production in 1994, the USG does not believe cultivation diminished significantly as we know of no eradication campaigns The 1993 estimate was about 3,500 hectares of cultivation with a yield of between 35 and 70 metric tons of opium.

Iran is a party to the 1988 UN Convention and has undertaken at least some activities to fulfill the goals and objectives the Convention established Since Iran and the United States do not have diplomatic relations and have not cooperated in counternarcotic efforts, the U.S. has been unable to ascertain the extent or adequacy of Iran's undertakings. There is no bilateral counternarcotics agreement in place between Iran's government and the USG.

According to both Iranian radio reports and Iranian government reports to the UN Drug Control Program (UNDCP), the Government of Iran (GOI) is waging a vigorous campaign to eradicate trafficking through Iran. Almost daily radio reports announce substantial morphine base and heroin seizures Reportedly many individuals are arrested and later executed for drug traffick ing. The USG cannot verify many of these reports as it has no representatives in Iran. UNDCP observers have viewed some seizures, including 30 tons of opium in one exhibit bond room. Interpol statistics for 1994, probably based on Iranian government reports, state Iran seized 112 tons of opium, 800 kilograms of heroin and 15 tons of morphine base. However, despite claims about the high level of Iran's counternarcotics effort, the level of drugs arriving in Syria and Turkey has not noticeably decreased.

UNDCP representatives have verified that Iran has fortified frontier guard posts with Pakistan and dug a trench to prevent crossing between posts in an effort to decrease trafficking. Intelligence reports suggest that border guards continue to be bribed to permit drug caravans through, however. The USG believes drug-related corruption continues to be a serious problem among Iran's law enforcement and security services. The USG does not know the extent to which Iran enforces its prominently advertised campaign to prevent and punish public corruption.

Human rights organizations and some Iranian exiles accuse Iran of executing dissidents on false charges of drug trafficking.

Nigeria

A major transit country for Asian heroin and Latin American cocaine destined for the United States and numerous other points around the world, Nigeria remains the focal point for most West African trafficking organizations. Corruption in the Nigerian Drug Law Enforcement Agency (NDLEA) and other law enforcement agencies has not been addressed adequately, thereby hindering counternarcotics efforts. The export of Nigerian drug traf ficking to Liberia and other West African counties is of particular concern. The NDLEA's focus in 1994 remained almost exclusively on drug couriers rather than on leaders of drug trafficking groups.

The Government of Nigeria (GON) did begin to show concern about international and domestic drug abuse during 1994. The GON prepared a draft national drug policy plan aimed at rooting out trafficking and substance abuse. The GON formed a ministerial level task force on drug abuse which will develop a drug control strategy by mid-1995. In late December, the GON appointed a special advisor on drugs, money laundering, and advance fee fraud whose task is to coordinate the anti-drug efforts of the NDLEA, the police, and the customs agency. In 1994, the GON returned to the United States three drug barons responsible for heroin rings.

These steps may have potential for significant improvement in Nigeria's anti-drug efforts. We will evaluate at an early stage if they and other steps are being implemented effectively and if these steps are followed by additional anti-drug measures.

While the United States welcomes the positive steps taken during the past year, Nigeria did not meet the goals and objectives of the 1988 UN Convention. Nigeria did not effectively implement its bilateral agreement with the United States.

Based on a complete and thorough review of the GON's counternarcotics actions throughout 1994, Nigeria's prominent role in international narcotics trafficking, and its failure in 1994 to make significant progress in meeting the goals and objectives of the 1988 UN Convention, the threat posed to the United States by drug trafficking by Nigerians through Nigeria and elsewhere justifies continued denial of certification.

Syria

Syria is a transit point for narcotics flowing through the Middle East to Europe and, to a lesser extent, the United States. In addition, Syria continues to have a responsibility for assisting Lebanese authorities in ending drug production and trafficking through Lebanon because of the presence of some 30,000 Syrian troops in the Bekaa Valley. In 1994, Syria continued and expanded its cooperation with Lebanese authorities to eradicate opium poppy and cannabis cultivation in the Bekaa Valley, significantly reducing opium and cannabis cultivation. Syrian forces increased seizures of cocaine, heroin, and hashish and raised the number of arrests of drug traffickers in Syria and Lebanon. Syrian military authorities in Lebanon assisted in a significant seizure of cocaine base delivered to Beirut's port during 1994. Despite these efforts, however, the flow of narcotics did not diminish in 1994.

The Syrian government has reiterated its willingness to pursue all information regarding the possible production of narcotics in Lebanon and Syria. However, neither the Syrian nor the Lebanese authorities moved successfully against cocaine or heroin laboratories operating in either country. There were a significant number of arrests in Syria for drug-related offenses, but despite reports of individual Syrian military officials profiting from the drug trade in Lebanon, no corruption investigations or charges were brought against any Syrian government or military officials in 1994.

The USG does not provide Syria with bilateral assistance and does not support loans for Syria in multilateral institutions.

Syria is a party to the 1988 UN Convention. While Syria greatly improved its performance in reducing illicit cultivation and increased seizures in Lebanon, it did not meet some of the other goals and objectives of the 1988 UN Convention. Syria does not have a bilateral narcotics agreement with the United States.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–012F]

Incorporation by Reference; Updating of Text; Net Weight Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods" and NIST Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Measuring Devices." A 1994 edition of NIST Handbook 44 was published in October 1993 and four supplements to NIST Handbook 133 were published in September 1990, October 1991, October 1992, and October 1994, subsequent to their incorporation by reference in certain sections of the Federal meat and poultry products inspection regulations. FSIS is amending the provisions in its regulations that reference the publications to reflect the most recent edition of NIST Handbook 44 and the supplements to NIST Handbook 133.

DATES: This rule will be effective on May 8, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 10, 1995.

ADDRESSES: Adverse comments or notice of intent to submit adverse comments should be sent in triplicate to Regulations Development, Policy, Evaluation and Planning Staff, Attention: Diane Moore, FSIS Docket Clerk, Food Safety and Inspection Service, Room 3171, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Comments should reference Docket No. 94–012F. All comments will be available for public inspection from 8:30 a.m. to 1 p.m. and 2 p.m. to 4:30 p.m., Monday through Friday, in Room 3171, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7164.

SUPPLEMENTARY INFORMATION:

Background

Title 1 of the Code of Federal Regulations (1 CFR Part 51) requires that an Agency seeking approval of a change to a publication that is approved for incorporation by reference in the Code of Federal Regulations publish a notice of the change in the **Federal Register** and amend the Code of Federal Regulations. The Agency must also ensure that a copy of the amendment or revision is on file at the Office of the Federal Register and notify the Director of the Federal Register in writing that the change is being made.

Accordingly, FSIS has reviewed the most recent publications, NIST Handbook 44 and supplements to NIST Handbook 133, pertaining to meat and meat food products and poultry and poultry products and FSIS' regulations that reference the Handbooks.

The following is a summary of the changes to NIST Handbooks 44 and 133 applicable to meat and poultry products.

NIST Handbook 44

The changes to the General Scales Codes of NIST Handbook 44 from 1990 through 1993 primarily recognize new features and capabilities of scales. These changes have the effect of giving scale manufacturers more flexibility in scale design and the ability to incorporate features that better meet the needs of the users. Although NIST Handbook 44 addresses a wide range of scales, the following summary describes the most significant changes to the Handbook as it applies to scales used to weigh meat and poultry products produced in meat and poultry establishments.

The most significant change is recognition of the use of electronic forms of audit trails to provide security to scale adjustments rather than requiring the use of a physical security seal to indicate when access to metrological parameters has occurred. Another change allows scales to incorporate an "initial zero-setting mechanism." The mechanism allows different types of scale platforms to be used while continuing to allow the scale to weigh to capacity. Marking requirements have been combined into a table format to make them more understandable and easily referenced. Additionally, automatic and semi-automatic calibration of scales using an internal calibration weight are permitted provided the calibration mechanism or the calibration process do not facilitate inaccurate adjustments to the scale. Finally, tolerances for scales manufactured before 1986 have been consolidated, in table format, for easy reference.

NIST Handbook 133

The changes to NIST Handbook 133 pertaining to meat and poultry products are primarily for clarification and consistency with the meat and poultry products inspection regulations. The following is a summary of the more significant changes to NIST Handbook 133 pertaining to meat and poultry products. The remaining changes were strictly editorial.

1. The definition of "used tare" and "dried used tare" were made consistent with procedures for meat and poultry products that permit drying in a microwave oven.

2. A reference to product for which no gray area has yet been determined was added.

3. The reference to bacon with free-flowing liquid as "subquality" was deleted.

4. Group 5 Lower Limits for Individual Weights was changed to 1 percent of labeled weight. The lower limit of 1.5 ounces for the largest weight of 160 ounces in Group 4 is equivalent to 0.94 percent of the labeled weight. A fixed lower limit of 2 ounces (or 4 ounces, depending upon the scale being used) in Group 5 (with labeled weight of 160 ounces and up) is too small as a percentage of the labeled weights. For example, a lower limit of 2 ounces for

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a labeled weight of 50 pounds is equivalent to 0.25 percent of the labeled weights.

5. Revisions were made to indicate that packaging materials must be cleaned before weighing tare and to specify a zero gray area for bacon packages with no free-flowing liquid inside as well as packages with no absorbent material.

6. Revisions were made to establish a definition of "fresh poultry" for net weight determinations and to clarify that the gray area should only be applied to raw, fresh poultry in retail packages when wet tare tests are conducted.

7. Revisions were made to specify procedures for cleaning tare materials and to add a paragraph on the repackaging of packages opened for tare determination.

8. A paragraph was added on procedures to follow when there is no free-flowing liquid or absorbent material in contact with the product.

9. A paragraph was expanded to include testing of bacon, sausage, or luncheon meats with no free-flowing liquid or absorbent tare material.

10. Revisions were made to reflect changes to the Category A sampling plans and to correct addresses and telephone numbers of FSIS regional offices.

Copies of the 1994 Edition of the NIST Handbook 44, NIST Handbook 133, and supplements to NIST Handbook 133 issued in September 1990, October 1991, October 1992, and October 1994, are on file at the Office of the Federal Register. Copies of the publications and supplements may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Effective Date

We are publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

Executive Order 12866

This rule has been determined not to be significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

List of Subjects

9 CFR 317

Incorporation by reference, Meat inspection, Net weight.

9 CFR 381

Incorporation by reference, Poultry products inspection, Net weight.

For the reasons set out in the preamble, 9 CFR parts 317 and 381 are amended as set forth below.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.19 is amended by revising the first sentence of paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 317.19 Definitions and procedures for determining net weight compliance.

(a) For the purpose of §§ 317.18 through 317.22 of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, September 1988, and Supplements 1, 2, 3, and 4 dated September 1990, October 1991, October 1992, and October 1994, respectively, which are incorporated by reference, with the exception of the NIST Handbook 133 and Supplements 1, 3, and 4 requirements listed in paragraphs (b) and (c) of this section. * * *

(b) * * *

(c) The following requirements of Supplement 1, dated September 1990, Supplement 3, dated October 1992, and Supplement 4, dated 1994, of NIST Handbook 133 are not incorporated by reference.

Supplement 1

Chapter 2 General Considerations

2.13.1. Polyethylene Sheeting and Film
2.13.2. Textiles
2.13.3. Mulch

Chapter 3 Methods of Test for Packages Labeled by Weight

3.11.4. Exhausting the Aerosol Container

Chapter 4 Methods of Test for Packages Labeled by Volume

4.6.4. Method D: Determining the Net Contents of Compressed Gas in Cylinders
4.7. Milk
4.16. Fresh Oysters Labeled by Volume

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting

Supplement 3

Chapter 3 Methods of Test for Packages Labeled by Weight

3.17. Flour and Dry Pet Food

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combination of Quantities

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.8. Baler Twine

Appendix A. Forms and Worksheets

Supplement 4

3.11 Aerosol Packages
3.11.1 Equipment
3.11.2 Preparation for Test
3.11.3 The Determination of Net Contents: Part 1
3.11.4 Exhausting the Aerosol Container
3.11.5 The Determination of Net Contents: Part 2

Appendix A. Report Forms

3. Section 317.20(a) is amended by revising the second sentence to read as follows:

§ 317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) * * * Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1994 Edition, October 1993, which is incorporated by reference. * * *

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

5. Section 381.121b is amended by revising the first sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 381.121b Definitions and procedures for determining net weight compliance.

(a) For the purpose of § 381.121b of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, September 1988, and Supplements 1, 2, 3, and 4 dated September 1990, October 1991, October 1992, and October 1994, respectively, which are incorporated by reference, with the exception of the NIST Handbook 133 and Supplements 1 and 3 requirements listed in paragraphs (b) and (c) of this section. * * *

(b) * * *

(c) The following requirements of Supplement 1 dated September 1990, Supplement 3 dated October 1992, and Supplement 4 dated October 1994, of NIST Handbook 133 are not incorporated by reference.

Supplement 1

Chapter 2 General Considerations

2.13.1. Polyethylene Sheeting and Film
2.13.2. Textiles
2.13.3. Mulch

Chapter 3 Methods of Test for Packages Labeled by Weight

3.11.4. Exhausting the Aerosol Container

Chapter 4 Methods of Test for Packages Labeled by Volume

4.6.4. Method D: Determining the Net Contents of Compressed Gas in Cylinders
4.7. Milk
4.16. Fresh Oysters Labeled by Volume

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting

Supplement 3

Chapter 3 Methods of Test for Packages Labeled by Weight

3.17. Flour and Dry Pet Food

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.6. Baler Twine

Appendix A. Forms and Worksheets

Supplement 4

3.11 Aerosol Packages
3.11.1 Equipment
3.11.2 Preparation for Test
3.11.3 The Determination of Net Contents: Part 1
3.11.4 Exhausting the Aerosol Container
3.11.5 The Determination of Net Contents: Part 2

Appendix A. Report Forms

6. Section 381.121c(a) is amended by revising the second sentence to read as follows:

§ 381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) * * * Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1994 Edition, October 1993, which is incorporated by reference. * * *

* * * * *

Done at Washington, DC, on: February 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–4500 Filed 3–8–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Unblocking of Vietnamese Assets

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to the claims settlement agreement entered into on January 28, 1995, between the Government of the United States and the Government of the Socialist Republic of Vietnam, the Office of Foreign Assets Control is unblocking assets in which Vietnam or a national thereof has an interest, blocked pursuant to the Foreign Assets Control Regulations.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

On February 3, 1994, President Clinton lifted the trade embargo against Vietnam and authorized new financial and other transactions with Vietnam and its nationals. Property blocked as of February 3, 1994, because of an interest therein of Vietnam or its nationals, however, remained blocked pending a claims settlement agreement between the two countries. On January 28, 1995, an agreement was reached between the United States Government and the Government of the Socialist Republic of Vietnam, in which Vietnam agreed to pay $208.5 million in settlement of outstanding U.S. private and government claims, and providing that the remaining Vietnamese property be unblocked. Accordingly, this rule amends the Foreign Assets Control Regulations, 31 CFR part 500 ("FACR"), to unblock assets held in the name of the Vietnamese Government or a national thereof on February 3, 1994.

Because the FACR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cambodia, Exports, Fines and penalties, Finance, Foreign investment in the United States, Foreign trade,

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Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1.The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.578 is revised to read as follows:

§ 500.578 Vietnamese property unblocked.

All transactions otherwise prohibited by this part which involve property in which a designated national of Vietnam has an interest are authorized.

Dated: February 22, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 23, 1995.

John Berry,

Deputy Assistant Secretary (Enforcement).

[FR Doc. 95–5858 Filed 3–6–95; 4:52 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH09

Special Monthly Compensation Ratings

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations concerning the rate of special monthly compensation payable to a veteran with a totally disabling service-connected disability who either has additional service-connected disability ratable at 60 percent or is permanently housebound by reason of service-connected disability. This change is necessary because of a General Counsel precedent opinion which held that the regulation restricts eligibility in a manner not authorized by the statute. The intended effect of this amendment is to bring the regulation into conformity with the statute.

EFFECTIVE DATE: This final rule is effective March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Special monthly compensation is a benefit established by Congress to be paid for specified disabilities independent of any other compensation authorized by Title 38 U.S.C. 1114(a)–(j). 38 U.S.C. 1114(s) provides for payment of special monthly compensation for a veteran who has a service-connected disability rated as total and (1) has additional service-connected disability or disabilities independently ratable at 60 percent or more, or (2) is permanently housebound by reason of a service-connected disability or disabilities. 38 CFR 3.350(i), the implementing regulation, provides that the special monthly compensation rate under 38 U.S.C. 1114(s) is payable where the veteran has a single service-connected disability rated as 100 percent "without resort to individual unemployability" and meets the other criteria.

In a precedent opinion dated February 2, 1994 (OGC Prec 2–94), VA's General Counsel held that the plain and unambiguous language of 38 U.S.C. 1114(s) does not restrict the nature of total ratings that may serve as a basis for entitlement to the rate of special monthly compensation which section 1114(s) authorizes. Based on that holding, the General Counsel found that the portion of 38 CFR 3.350(i) which precludes eligibility if the service-connected disability rated as total is so rated due to individual unemployability is an unauthorized restriction.

The General Counsel has recommended that the regulation be revised. We are, therefore, revising the text of 38 CFR 3.350(i) to remove the unauthorized restriction.

VA is issuing a final rule to amend the provisions of 38 CFR 3.350(i). Publication of this amendment as a proposed rule is unnecessary because this notice merely amends 38 CFR 3.350(i) to conform to the terms of the governing statute.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Persons with disabilities, Pensions, Veterans.

Approved: November 23, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The introductory text of paragraph 3.350(i) is amended by removing the phrase "without resort to individual unemployability".

[FR Doc. 95–5761 Filed 3–8–95; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7121

[OR–943–1430–01; GP5–039; OR–19083]

Partial Revocation of Executive Order Dated November 24, 1916; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 2.50 acres of land withdrawn for the Bureau of Land Management's Powersite Reserve No. 566. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through sale. This action will open the land to surface entry subject to temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/

Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated November 24, 1916, which established Powersite Reserve No. 566, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 1 N., R. 19 E.,
Sec. 14, S½S½SW¼SW¼SE¼.

The area described contains 2.50 acres in Gilliam County.

2. At 8:30 a.m. on April 10, 1995, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on April 10, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5697 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–33–P

43 CFR Public Land Order 7122

[CA–010–1430–01; CACA 7645]

Partial Revocation of Secretarial Order Dated July 9, 1927; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order dated July 9, 1927, insofar as it affects 160.02 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 183. The land is no longer needed for this purpose, and the revocation is necessary to facilitate the completion of a land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated July 9, 1927, which withdrew lands for Powersite Classification No. 183, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 17 N., R. 7 E.,
Sec. 2, lot 1, SE¼NE¼, and E½SE¼ (described as sec. 2, E½E½ in the original order).

The area described contains 160.02 acres in Yuba County.

2. The State of California, with respect to the land described in paragraph 1, has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988).

3. At 10 a.m. on June 8, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 8, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The land has been open to mining under the provisions of the Mining Claim Rights Restoration Act of 1955, 30 U.S.C. 621 (1988), and these provisions are no longer required.

Dated: February 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5698 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–40–P

43 CFR Public Land Order 7123

[AK–932–1430–01; AA–62904]

Revocation of Geological Survey Order dated April 23, 1948, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a Geological Survey order as it affects approximately 5,000 acres of land withdrawn for power purposes at Taiya River. The land, which includes public land and land which has been conveyed out of Federal ownership, is no longer needed for the purpose for which it was withdrawn. The public land lies within the Klondike Gold Rush National Historical Park; the remainder has been conveyed to the State of Alaska.

EFFECTIVE DATE: March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated April 23, 1948, as modified, which established Powersite Classification No. 396, is hereby revoked as it affects the following described land:

Copper River Meridian

Land located within T. 25 S., R. 60 E., T. 26 S., R. 59 E., and T. 26 S., R. 60 E., and more particularly described as:

Land located in approximate latitude 59°40′ N., and longitude 135°16′ W., being every smallest legal subdivision, any portion of which, when surveyed will be within ½ mile of Taiya River from the mouth of Nourse River to the International Boundary. The area described contains approximately 5,000 acres.

2. The public land described above will remain part of the Klondike Gold Rush National Historical Park as established by Public Law 94–323, 16 U.S.C. 410(bb)(1988). The remaining land described above has been conveyed out of Federal ownership subject to Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1988).

Dated: February 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5763 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Removal of Three Kangaroos From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has determined that three common species of kangaroos, the red kangaroo, the western gray kangaroo, and populations of the eastern gray kangaroo in mainland Australia, should be removed from the list of threatened species under the Endangered Species Act (Act or ESA). The Service also announces that it is denying a December 20, 1989, petition to reimpose a ban on the commercial importation of products from these three species of kangaroos from mainland Australia on procedural grounds. The Service, with this rule, also rescinds the existing special rule applicable to threatened kangaroo populations.

EFFECTIVE DATE: April 10, 1995.

ADDRESSES: The complete file for the rule is available for public inspection by appointment, from 8 a.m. to 4 p.m., in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, at the above address, or by phone (703–358–1708) or by fax (703–358–2276).

SUPPLEMENTARY INFORMATION:

Background

The term "kangaroo" in this rule refers to all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*) in mainland Australia, which are being removed from the list of endangered and threatened wildlife (50 CFR 17.11) under Act (16 U.S.C. 1531–1544). The subspecies of the eastern gray kangaroo (*M. g. tasmaniensis*), which occurs solely in Tasmania retains its endangered classification under the Act. The red kangaroo, western gray kangaroo, and the eastern gray kangaroo in mainland Australia were listed on December 30, 1974 (39 FR 44990), as threatened species pursuant to the Act and the commercial importation of kangaroos, their parts, and products was banned. A special rule to allow such importations into the United States after development of adequate State management plans accompanied the listing. The Service accepted the management programs for four Australian States and lifted the importation ban on April 29, 1981 (46 FR 23929), after kangaroo management plans and population survey techniques had been strengthened. The Service, in two **Federal Register** notices of April 8, 1983, proposed to delist the three species of kangaroos (48 FR 15428) and to continue the commercial importation of kangaroos (48 FR 15434). The final rule allowing the continuation of the importation of kangaroos was published on August 1, 1983 (48 FR 34757). The Service withdrew the proposed rule to delist the three kangaroo species on April 24, 1984 (49 FR 17555), after receiving new data from the Australian Government that the severe drought in the summer of 1982–3 had caused significant reductions in kangaroo populations. It was noted that the drought was broken in winter 1983, that kangaroos were again beginning to breed, but the ability of kangaroo populations to recover from the major 1982–3 population fluctuation was unknown. It was further noted that the delisting action could be reconsidered after the Service had a better understanding of how kangaroo populations recover from drought events.

The Service was petitioned on December 20, 1989, by Greenpeace USA, with subsequent support from other groups, "to reinstate the ban on commercial importation of kangaroos and of kangaroo products." The petitioners contended that Australia's management of kangaroos was inherently flawed and that Australian States did not have adequate and effective conservation programs that ensured the protection of the threatened species. The Service, in order to respond to the December 20, 1989, petition in a meaningful manner, sent three representatives to Australia in March 1990 to investigate the population status of the three kangaroo species (survey methods, numbers, and trends) and the implementation of management programs. In addition, the team received comments about the conservation benefit of management plans that allowed the harvest of kangaroos. The Service team spent 12 days meeting with selected members of Parliament, representatives of various nongovernmental organizations, scientists, State and federal natural resource managers, enforcement personnel, grain growers, and ranchers. The team also visited parks, open range, chillers, faunal dealers, ports and exporters. The team presented their findings in a June 5, 1990, report (Nichols et al. 1990). The Service, in a **Federal Register** notice of August 8, 1990 (55 FR 32276), announced the receipt of the Greenpeace petition and the availability of the June 5, 1990, Service report and requested comments on the status of the three species of kangaroos in Australia. The comment period on the status review for the December 20, 1989, petition was extended to November 6, 1990.

The Wildlife Legislative Fund of America submitted a petition dated November 6, 1990, which was received by the Service on the following day. That petition requested that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies *M. g. tasmaniensis*, be removed from the list of threatened species under the Endangered Species Act (Act).

The Wildlife Legislative Fund petition presented the June 5, 1990, report prepared by Service personnel as the principal basis for the petition. Among other things, the petitioners cited the conservative estimates of the 1987 kangaroo populations (red kangaroos—7.5 million, western gray kangaroos—1.7 million, and eastern gray kangaroos—4.7 million) and the fact that kangaroo conservation programs exist within individual range states as reasons for delisting the species.

The Service, in a **Federal Register** notice of June 12, 1991 (56 FR 26971), found that the action requested in the November 6, 1990, petition may be warranted and requested additional comments as part of a continuing status review of kangaroos and kangaroo management in Australia. The comment period was reopened until September 10, 1991. That comment period was later extended to September 24, 1991, in a **Federal Register** notice dated September 17, 1991 (56 FR 47060).

The Service published a proposed rule in the **Federal Register** on January 21, 1993 (58 FR 5341) proposing to remove the three species of kangaroos in mainland Australia from the list of threatened species under the Act. The Service had found that the four States that commercially harvest kangaroos (New South Wales, Queensland, South Australia, and Western Australia) had developed and implemented adequate and effective conservation programs that ensured the protection of these species. The Service additionally found that kangaroo populations were high and that the three species were protected by appropriate legislation, had their populations regularly monitored by direct and indirect procedures, and were managed by a complex licensing system which regulated the extent of the legal harvest. The Service in that **Federal Register** document also announced that it was deferring a decision on the December 20, 1989, petition by Greenpeace USA to reimpose the ban on the importation of kangaroo products until the final

decision on the proposed action was made. The Service also indicated that if the final decision was to delist the three species that it would then act to rescind the special rule allowing imports of kangaroo products from threatened populations into the United States.

The Service notes that a nonlisted status for these three species under the Act is wholly consistent with listing decisions made by other organizations. The three species of kangaroos are described as abundant by the Australian Conservation Foundation. The species are not on lists published by the Council of Nature Conservation Ministers, World Wide Fund for Nature Australia (WWF), or Fund for Animals Ltd., that variously identify species of Australian fauna they find to be endangered, threatened, or vulnerable. The status of the three species in mainland Australia is described as stable by the Species Survival Commission of the World Conservation Union's (IUCN/SSC) Australasian Marsupial and Monotreme Specialist Group in its 1992 publication (Kennedy 1992). That publication also indicates that the western gray kangaroo has declined less than 10 percent in geographic range since European settlement and that the eastern gray kangaroo and the red kangaroo may actually have increased their geographic range since European settlement. The IUCN/SSC publication also listed the three kangaroos as among those taxa for which there is no genetic concern—either because they are common in captivity, or readily available from the wild, requiring monitoring only by annual census.

Summary of Comments and Recommendations

The Service received about 740 comments in response to the January 21, 1993, request for comments published in the **Federal Register** (58 FR 5341). Virtually all correspondents supported the request to ban the importation of kangaroo products into the United States and/or advocated the retention of threatened status for the species. Most comments provided no substantive information on these issues.

The harvest of kangaroo products provides raw materials for a primary industry in Australia. Many individuals and organizations expressed dissatisfaction or distaste for this fact. For example, about 700 comments were in response to an Action Alert published by the Humane Society of the United States (HSUS) which stated that the Australian Government sanctioned the slaughter of 5.2 million kangaroos in 1992 to supply the domestic and international market for kangaroo skins. This was from a combined kangaroo population which the HSUS claimed only totaled 13.9 million. Respondents especially advocated the retention of threatened status (374 replies), or the retention of threatened status and the reimposition of the importation ban (260 replies).

The underlying concern expressed by the HSUS respondents as well as many other commentators regarded the commercial harvest and trade in these kangaroo species, which are protected species under Australian domestic legislation. Commenters frequently expressed (1) an outrage that a commercial harvest was allowed to occur by an industry that many persons characterized as illegitimate; (2) a view that market forces, if not at present, might in the future overwhelm conservation practices to the detriment of the species; and (3) a view that the threat of trade restrictions was necessary to ensure that Australian governments continue to manage kangaroos in a responsible manner.

The Service response to this recurring and significant concern is as follows. The determination to utilize, in commercial trade, kangaroo products from well-managed populations is a domestic issue that will ultimately be determined at the ballot box, in the legislatures, and in the courts of Australia. The Service has the responsibility to determine whether the species are threatened or endangered under the Endangered Species Act and to promulgate certain special rules if required. A finding of threatened or endangered is made after five specific listing criteria have been evaluated. The second of these criteria questions whether overutilization occurs, for among other reasons, commercial purposes. The Service has found, as indicated below, that the commercial quotas are related to kangaroo populations occurring within the commercial utilization area (CUA). The CUA is that portion of the range of the individual species where the commercial harvest is allowed to occur.

Kangaroo populations are known to cycle in abundance within the CUAs because much of inland Australia is an arid and drought-prone landscape where unregulated kangaroo numbers increase when water is plentiful and diminish in times of drought. Extensive annual surveys occur in South Australia, New South Wales and Queensland to estimate kangaroo populations in order to set harvest quotas for the subsequent calendar year. Those surveys using fixed-wing aircraft seem to reliably index kangaroo populations in open and arid landscapes but to significantly underestimate populations in woodlands, such as the mulga woodlands of southern Queensland. Aerial surveys conducted from helicopters seem to more reliably indicate kangaroo populations in the woodland habitats. The kangaroo populations in vast and thinly inhabited Western Australia are estimated every third year from aerial surveys and inferred in intermediate years from a variety of data.

Harvest quotas are usually established as a percentage of the estimated kangaroo population after considering potential range conditions as predicted from current rainfall data. Frequently, the harvest quota has totaled about 15–20 percent of the estimated kangaroo population and about 70 percent of the commercial harvest quota has been annually harvested. Kangaroo shooters are licensed, and can only kill kangaroos for commercial purposes on private properties after shooters have obtained permission from landowners. Commercial shooters can only sell their kangaroo hides and meat to licensed dealers. Products only from these commercially killed kangaroos can enter international commerce. The Service believes that the Commonwealth and State governments in Australia have a sincere interest in the preservation of their native wildlife species and act in a professional manner to manage these kangaroo species so they will occur in abundance into perpetuity. The Service has no reason to believe that market pressures will one day insidiously drive conservation activities in Australia, and notes that the United States and the international community could act to limit the trade in kangaroo products, should the status of these three kangaroo species be significantly reduced in the future.

The Service disagrees that threatened status should be retained for these abundant and sufficiently managed species, at this time, to ensure that a primary industry behaves or because one day the threatened status may somehow be useful in the management of kangaroos. The Service believes the lists of endangered and threatened species should only include those animals and plants whose current status fit the definitions of the Act. The Service has found that these three species of kangaroos are not threatened species (i.e., species in danger of extinction, within the foreseeable future, throughout all or a significant portion of their range).

Several comments stated that the threatened status should be retained for the three species of kangaroos because

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of the current quality of kangaroo management in Australia. These comments (A–M) are treated together in this assessment because they are closely related and actually pertain to a larger issue, which is "How much management is sufficient?" The comments and Service responses are listed below for comments A–M and this is followed by a discussion of the "sufficiency of management" question.

A. *Comment*: Survey methods, especially in Queensland, are unreliable. *Response*: Nichols *et al.* (1990) stated that "Australian biologists have been leaders in the development of aerial survey ethods for estimating animal population size. Current surveys are very extensive, properly standardized and well thought out. Some additional work needs to be done on the estimation of visibility correction factors, but such work is well underway. Current research indicates that previously-used correction factors may be too small. Published estimates of kangaroo population size thus are based on sound methodology but are probably too small." Additional studies have been conducted since 1990. Queensland is especially concerned about methods to more reliably estimate animal numbers in woodland habitats. Queensland has annually accomplished fixed-wing aerial surveys from 1984 to 1992, and helicopter surveys since 1991. Queensland plans to further review the results of population surveys using fixed-wing aircraft and helicopters to establish revised correction factors for use in surveys of woodland habitats.

B. *Comment*: The Commonwealth and State governments have failed to implement measures to make kangaroo plans adequate to protect kangaroos. *Response*: It is unclear whether this comment pertains to the apparent contradiction wherein different domestic statutes provide both protective status to the species and allow a commercial harvest of the species or to some perceived inadequacy in the kangaroo management plans. Any conflict in domestic legislation is an Australian domestic matter. The Service has found that the kangaroo management plans developed by the States and agreed to by the Commonwealth are sufficient to allow the species to be delisted.

C. *Comment*: The commercial slaughter of kangaroos constitutes a very real threat to the survival of the species. *Response*: For the reasons stated above, and later in this final rule, the Service has found that the current commercial harvest of these managed kangaroo species does not threaten the survival of these species in mainland Australia at present nor is it likely to in the foreseeable future.

D. *Comment*: The kangaroo slaughter is unnecessary. *Response*: The necessity and desirability of commercially harvesting kangaroos is an Australian domestic matter. The Service's assessment is only that the present managed harvest does not cause the Service to conclude that the kangaroo populations should be listed as threatened.

E. *Comment*: The development of a meat market will increase demands on kangaroo populations. *Response*: The decision to seek domestic and international markets for kangaroo meat is an Australian domestic issue. The Service believes that the present management is sufficient and notes that extensive non-use of kangaroo protein accompanies a skins-only harvest, and that a well run meat industry can more fully and more efficiently use the current harvest.

F. *Comment*: The adoption of a sustained use management principle for a protected species was accomplished without a public debate. *Response*: The Service considers this to be an Australian domestic matter and not a factor in making a listing decision under the Act.

G. *Comment*: The "threatened" listing was valuable because it allowed the Service to act as an international watchdog on the kangaroo industry. *Response*: The Service promotes the international conservation of species and the international enhancement of biodiversity. The Service is obligated to properly classify these species based on the criteria stipulated in the Act.

H. *Comment*: Kangaroos routinely carry such a high parasite load that they are unfit for human consumption. *Response*: It is the responsibility of the Commonwealth government to assure the citizens of Australia and the world, if such exports are allowed, about the quality of any kangaroo meat product. The Service notes this is clearly not an issue to consider when making an evaluation under the Act.

I. *Comment*: Tags placed on carcasses and skins are not species specific. *Response*: The Service agrees that species specific kangaroo tags would likely allow the States to have a better control over the kangaroo harvest and over the marketing of kangaroo products. The Service notes that the kangaroo harvest is sufficiently monitored in other ways such as the assessment of shooter's records, dealer's records, sex-age composition of the kill and descriptors of other biological attributes. These records help ensure that the kangaroo harvest is adequately managed.

J. *Comment*: Customs officers do not inspect all consignments of kangaroo products prior to their export. *Response*: The kangaroo harvest and exports are thoroughly reported and State and Federal enforcement personnel have authority for search and seizures that the Service believes will adequately control any significant illegal activities.

K. *Comment*: Harvest quotas do not include animals killed for the domestic market or for nuisance purposes. *Response*: The Service agrees that it would be beneficial to management if all kangaroos killed were tagged and reported. This effort would benefit the estimate of total harvest and would help curtail any movement of untagged animals into commerce. The Service notes that harvest quotas are based on estimates of the living population so that the establishment of a harvest quota is a function of all sources of mortality that have impacted kangaroo populations up to the time of quota determination. The Service further notes that kangaroos killed for the domestic market are part of the kill regulated by the harvest quotas but that kangaroos killed for pest control are outside the harvest quota. The kill for pest control, however, is limited. For example, the number of kangaroos killed for damage mitigation purposes is believed to be less than 1 percent of the population.

L. *Comment*: There is inadequate enforcement of animal welfare requirements. *Response*: The Service agrees that any wildlife harvest should be conducted in as humane a manner as is possible, but this is not a criterion to be considered in making listing determinations under the Act.

M. *Comment*: The State and Commonwealth governments have inadequate resources for kangaroo management. *Response*: The Service finds that resources available to conservation agencies in Australia are sufficient so these three species of kangaroos are adequately protected under present management.

A decision to list or delist species under the Act often requires a decision about the "sufficiency of management." No government or agency provides perfect management but many governments and agencies provide sufficient management so individual wildlife species can be used in a sustainable manner. A reasonable standard for the Service to use to determine sufficiency of management in any country is to compare the management of the foreign species with the management of a comparable species within the United States. The white-tailed deer in the United States is, in some ways, comparable to the kangaroo in Australia. The white-tailed deer analogy is utilized herein to provide a measure of scale. Scale is important for understanding the size of ranges, the size of populations, the size of the harvest, and the magnitude of management and law enforcement problems. It is fully understood that harvest mechanisms differ between deer (sport-hunting) and kangaroos (commercial harvest). That significant difference, however, is not directly relevant to the present discussion.

The white-tailed deer may be about as numerous in the United States as are the three kangaroos in Australia, and the white-tailed deer is sufficiently managed at about the same intensity as are the kangaroos. State and the Commonwealth governments in Australia accomplish a variety of aerial and ground censuses and computer simulations to estimate kangaroo populations, and these estimates become the basis for the establishment of harvest quotas. State governments in the United States use a variety of ground surveys and computer simulation models to estimate white-tailed deer populations, and these estimates become the basis for establishing desired levels of harvest. Some level of public comment is sought in establishing harvest levels in both countries. Some level of appraisal of habitat carrying capacity frequently occurs for both deer and the kangaroo species. The actual harvests of kangaroos in Australia and deer in the United States are regulated by complex licensing systems. Landholders seek harvest permits from State governments in Australia and professional hunters seek licenses from those State governments and hunt permission from individual landholders in order to legally kill kangaroos. The professional hunter then sells kangaroo hides and/or carcasses to licensed dealers. State governments in the United States establish hunting seasons and bag limits and sell licenses to individual hunters who must seek permission to hunt on private lands but who may also hunt on certain public lands. Deer hunters vary considerably in their hunting skills and deer products are for personal rather than commercial use. Some level of illegal kill occurs in each country because there are insufficient resources to police all levels of the kangaroo industry and all deer hunting events.

One major difference between deer and kangaroo management is that kangaroos in arid habitats seem more likely to experience large population fluctuations. A second difference between deer and kangaroo management is that in the United States 12 million licensed hunters annually kill 3 million deer for personal consumption, whereas in Australia 3 million kangaroos may be killed by about 1700 licensed professional hunters who each kill an average of 1800 kangaroos for commercial purposes. Neither species is threatened by its respective management regime, as both deer and kangaroos are managed in a way that is adequate to maintain harvestable populations over time.

The Center for International Environmental Law (CIEL) provided three comments that are answered individually, below. The first comment from CIEL stated that the proposal to delist the three species is a political action and is not a justified biological decision. CIEL maintained that Australia had put political pressure on the Bush administration, and that this delisting action was the last act of the Service during that Administration. CIEL also held that a brief 60-day comment period underscores the attempt to sneak a final rule past a new Administration.

The Service response is that the proposal to delist these species, published in the **Federal Register** on January 21, 1993, evolved from a request in a December 20, 1989, petition filed by Greenpeace USA, "to reinstate the ban on commercial importation of kangaroos and kangaroo products". That petition generated a review that was subsequently cited in a petition to delist the species filed on November 6, 1990, by the Wildlife Legislative Fund of America. The Service notes correspondence from the Center for International Environmental Law, dated April 9, 1992, requesting that the Service make a final decision on both petitions by the end of the summer of 1992. Consequently, the Service made every effort to arrive at a decision regarding the two petitions and to publish the required proposal in as timely a manner as possible. A Service biologist returned from a fact-finding trip to Australia on August 1, 1992, and prepared the proposed rule by mid-November. The intervening 2-month period from mid-November until publication in mid-January reflects normal Service review time and delays associated with the holiday season. The 60-day comment period on the proposed rule is not at all unusual. It is the same comment period specified in some other recent proposed rules involving foreign species such as the Queen Alexandra's Birdwing Butterfly in the March 1, 1989, **Federal Register** (54 FR 8574) and the Nile Crocodile in the August 3, 1992, **Federal Register** (57 FR 34095).

The second comment from CIEL declared that the proposal to delist the three species of kangaroos continues a pattern seen over the past few years during which time the Service has failed to add protection to, or has reduced protection for, several species of commercial interest.

The Service response is that it has not abrogated its responsibilities to world conservation and arbitrarily reduced protection to species because of their commercial value. The Service supports the sustainable use of wildlife if that use can be shown not to threaten the survival of the species. The Service, since 1989, has added foreign species to the list of endangered species under the United States Endangered Species Act (e.g., the chimpanzee, several snub-nosed monkeys, and a variety of birds, including psittacines, and turtles). The Service periodically reevaluates the status of species as new information becomes available and occasionally transfers species between lists or removes species from the lists of endangered and threatened species when justified. The Service-supported the listing of the African elephant and six species of fruit bats to Appendix I at the Seventh Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1989 and successfully proposed the addition of the Goffin's cockatoo and the bog turtle to Appendix I at the Eighth Meeting of the CITES Conference of the Parties in 1992. The Service also successfully proposed five other additions to Appendix II at the 1992 meeting and offered proposals to amend Appendices, in accordance with the 10-year review process of CITES. Some of those proposals required the transfer of species between Appendices. The Service sought to suspend commercial trade in certain wild bird species of concern that are listed in Appendix II of CITES at the 1992 CITES Convention and supported the passage of domestic legislation in 1992 (The Wild Bird Conservation Act of 1992) to ensure that U.S. bird imports do not jeopardize wild bird populations.

The third comment from CIEL states that the Service must retain the kangaroos on the list of threatened species and reinstate the import ban because the long and continuing drought constitutes an important natural factor affecting the existence of these species of kangaroos.

The Service notes that enclosures submitted by CIEL on March 22, 1993, clearly indicate extensive areas in New

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South Wales (NSW) and Queensland that retain a drought-declared designation as of March 1, 1993. These enclosures are presented as evidence that drought continues to devastate Australia and kangaroo populations. A February 5, 1993, letter from John Eveleigh, Assistant Regional Manager, Western Region, New South Wales, to the Director, Australian National Parks and Wildlife Service (ANPWS), clearly indicates that economic factors as well as rainfall totals determine the declaration of drought status by the Department of Agriculture.

An El Niño-related drought occurred in parts of Australia during 1991–2 and affected some populations of the three kangaroo species. Rainfall deficiencies from March through October 1991 occurred throughout nearly all of Queensland, in northcentral and northeastern New South Wales, some portions of the Northern Territory and in extreme northeastern Western Australia. Rains during November 1991 through January 1992 essentially reduced the rainfall-deficient area to the eastern two-thirds of Queensland, the northern portion of the Northern Territory and northern Western Australia. Additional rains during February 1992 further reduced the rainfall-deficient areas to southcentral Queensland and the northeastern coastal areas of Queensland, the northern portion of the Northern Territory and northern Western Australia. The rainfall-deficient area, by May 1992, was further reduced to southcentral Queensland, northcentral New South Wales, and the central and northern coasts of Queensland. The rainfall-deficient area for the 17-month period from March 1, 1991 to July 31, 1992, occurred in southcentral Queensland and extreme northcentral New South Wales. Much of this southcentral Queensland and northcentral New South Wales area experienced severe rainfall deficiencies and two small localized portions of this area recorded record rainfall deficiencies during this 17-month period. These portions of Queensland and New South Wales constitute important kangaroo habitat.

The 1991–1992 drought event ended in these kangaroo habitats because rainfall totals listed as highest on record were recorded throughout the southern portion of South Australia, southwestern New South Wales and much of Victoria from November 1, 1992 to January 31, 1993. Rainfall totals recorded as very much above average were recorded for much of the remainder of South Australia and western and central New South Wales during this same three month period. At least average rainfall fell over most of Queensland, including the most important kangaroo habitats, in the November 1, 1992 to January 31, 1993 period. Drought areas in New South Wales received reasonable rains in the first half of 1993 and even better rains in the second half of the year. Drought declarations in Queensland, by early 1994, occurred in about 46 percent of the State's land area. No rangelands are drought declared in Western Australia in early 1994, and South Australia has experienced good rainfall years from 1989–1993 in most parts of the State. The 1991–2 drought, at one time or another, affected northern New South Wales, most of Queensland, eastern and northern portions of the Northern Territory and northern Western Australia. The 1991–2 drought was not experienced in the other 60 percent of the continent.

About 70 percent of Australia is classified as arid or semi-arid and is characterized by high variability in rainfall. Drought periodically occurs to these landscapes, and its severity and duration can clearly affect pasture quality and kangaroo well-being and numbers. At least 47 major drought events have been recorded somewhere on the continent during the 100 year period from 1888 to 1988 (data provided by ANPWS and excerpted from "Water 2000: Consultants Report No 13—Water Resources Aspects of Drought in Australia" Dept. Resources and Energy (1983) and Bureau of Meteorology). Areas of deficient rainfall are to be expected on the Australian continent. Wildlife management specialists accept drought as a "normal" event and manage their resources accordingly by reducing kill during years when kangaroo populations are diminished and increasing harvest when populations are increased (see below). The 1991–1992 drought impacted kangaroos, especially in northern New South Wales and southern Queensland, but did not and does not threaten the continental population of these three species.

Drought areas were declared in most of New South Wales and some southern and eastern areas of Queensland in Australia's winter of 1994. The effect of this drought on kangaroo populations is not yet known, but as noted earlier, kangaroo populations have recovered from the previous severe drought of 1982–83 (longer in some areas). Furthermore, while 1995 kangaroo harvest quotas are not yet known, the Service has reviewed and discussed the State and Commonwealth management program and believes that appropriate quotas will be established to maintain kangaroo populations.

An additional comment expressed by several persons concerned the capability and willingness of wildlife managers to reduce the kangaroo kill when populations are diminished. They claimed that Australia's management plans do not reduce the kill quotas during droughts and the present drought has sharply reduced kangaroo populations and clearly placed the species in jeopardy.

The Service responds with a summary description of the management actions that one state, New South Wales (NSW), has undertaken to manage kangaroos during drought declared conditions in the 1980s and 1990s. NSW has about a third of the continent's population of red and gray kangaroos. This summary is excerpted from a letter from John Eveleigh, Assistant Regional Manager, Western Region, New South Wales National Parks and Wildlife Service, to the Director, Australian National Parks and Wildlife Service, dated February 5, 1993. A significant area of NSW was declared to be within a drought declared zone in 1982. A total harvest quota of 843,000 animals had previously been established for 1982, which was 12 percent of the 1981 estimated NSW population of 7 million kangaroos. A fixed quota was allocated for the first six months of 1982 and a notional quota was allocated for the second half of the year to be modified if climatic conditions dictated. The 1982 mid-winter (June-August) population survey estimated a total NSW kangaroo population of about 9.4 million animals with the population of red kangaroos still increasing but that of gray kangaroos being diminished by about 29 percent.

Because of the drought conditions the harvest quota for calendar year 1983 was maintained at 843,000, about 9 percent of the 1982 estimated population. Drought conditions prevailed throughout far western and eastern portions of NSW during 1983, but relieving rains fell throughout the central portion of the state. Quotas were allocated as in 1982. The mid-winter 1983 population estimate indicated a total NSW kangaroo population of 5.5 million, with some decline in red kangaroos and a significant decline in the number of gray kangaroos. A total harvest quota of 500,000 was established for 1984, which represented about 9 percent of the total 1983 population. The harvest quota for red kangaroos was set at 12 percent, but no culling was authorized in selected one-degree blocks within management zones. Culling of gray kangaroos was allowed in three management zones and was disallowed in seven other zones. In addition, properties of applicants for non-commercial culling of red or gray kangaroos within the closed areas were subject to physical inspection by NSW Rangers prior to license grant considerations.

Drought conditions continued to widen across NSW in 1984. The mid-winter 1984 population estimate indicated a total NSW kangaroo population of about 2.8 million with an increasing red kangaroo population, a static gray kangaroo population in the eastern management zones, and a decline in both red and gray populations in western management zones. A harvest quota of 300,000 (11 percent of the 1984 population) was established for 1985, but no harvest was allowed in areas containing estimated population densities of one or fewer red or gray kangaroos per sq km. Drought conditions still extended across NSW in early 1985, except for the extreme southwestern portion of the state. Drought-breaking rains fell in late 1985, and early 1986 and the state was declared drought-free in 1986. The mid-winter 1985 population estimate indicated a total kangaroo population of about 4.15 million with a recovery of both red and gray kangaroo populations. Some pockets with low populations remained, and no harvest was allowed during 1986 in areas with a kangaroo density less than or equal to one per sq km. A 1986 harvest quota of 577,000 was established (14 percent of the population) but 15 percent of the quota was withheld and not allocated.

Drought conditions did not occur in NSW from 1987–1991, and populations of both red and gray kangaroos and harvest quotas progressively increased each year. The total harvest also usually increased each year. The mid-winter 1990 population estimate indicated a total kangaroo population in NSW of 8.55 million with increases in both red and gray kangaroos. A 1991 harvest quota of 1.5 million was established which was 18 percent of the population estimate. Thirteen percent of the quota was held back and not allocated. Drought conditions began to extend southward from Queensland into the northern management zones of NSW. The mid-winter 1991 population estimate indicated a total kangaroo population in NSW of 9.1 million. A harvest quota of 2.1 million was established which was about 23 percent of the 1991 population estimate. Fifteen percent of the harvest quota was held back and not allocated. By January 1992, the 1991–2 drought had extended further into NSW and was declared to cover the northern and eastern portions of the state. Kangaroos reportedly moved to the south as the drought progressed and some quota allocations were transferred from northern management zones to more southern zones. The notional quotas for July-December 1992 were reviewed in July 1992. Preliminary 1992 survey figures indicated that central and southern populations were barely impacted by the drought and kangaroo populations were increasing in the most southern management zones.

By December 1992 the drought declarations indicated that the drought had retreated to the most northern management zones of NSW. The mid-winter 1992 population estimate indicated a total NSW kangaroo population of 8.04 million. A harvest quota of 1.66 million was established which was about 21 percent of the 1992 population estimate.

The 1992 survey indicated declines of the red kangaroo throughout the northern management zones, stability in the central management zones and increases in the southern management zones. Populations of the gray kangaroo were somewhat diminished in some management zones. Harvest quotas for 1993 were diminished for populations in those management zones where kangaroo populations were found to be reduced. Fourteen percent of the potential harvest quota was held back and not allocated.

The notional quota for the second half of 1993 was reviewed when preliminary mid-winter 1993 population estimates were available. February 1993 reports indicated that drought-breaking rains were widespread in NSW and that drought conditions were retracting to the north.

This synopsis indicates how New South Wales strives to manage kangaroos on ranges periodically impacted by droughts. It is not possible to attain and maintain a specific kangaroo population on such landscapes, and such populations are expected to cycle as periodic droughts overtake portions of the continent. Management strives to follow the cycle. This requires frequent monitoring of kangaroo populations and the setting of low harvest quotas when populations are low but allows for the setting of higher quotas when kangaroo populations are expanding. This is exhibited by the NSW data where a harvest quota of 300,000 was established for 1985 when the mid-winter 1984 NSW population was estimated at 2.7 million and a harvest quota of 2.07 million was established for 1992 when the 1991 mid-winter NSW kangaroo population was estimated at 9.11 million.

Harvest quotas represent the maximum number of kangaroos that can enter domestic or international commerce in a given year after having been taken in accordance with state-approved plans. About 70 percent of the quota has been harvested during recent calendar years. The maximum allowable kill is regulated as is the relative location of that kill. New South Wales has closed management zones to harvest, has closed degree blocks within management zones to harvest, has reallocated harvest quotas between management zones as a result of new population survey information, routinely issues the second half of the harvest quota in the second half of the calendar year, and routinely holds back some percentage of the commercial quota as a safety precaution. In addition, the legal harvesting of kangaroos is a licensed operation and all aspects of licensing can be suspended at any time during the calendar year if such actions are necessary. Other harvesting States also have regulatory measures that allow the reduction of take if environmental or other factors adversely impact kangaroo populations.

A comment supporting the Service's proposed rule was provided by The Wildlife Legislative Fund of America (WLFA) which had filed the November 6, 1990, petition to delist the three kangaroo species. WLFA stated it is a strong supporter of the Endangered Species Act when it is applied to species that truly require protection from over-exploitation or critical habitat destruction. WLFA also stated that listing species like these three species overburdens the system and detracts from the ultimate goal of protecting truly endangered species. WLFA stated that recovered species should be delisted as quickly as possible to encourage recovery efforts for other listed species and to focus the limited efforts of the Service on species and populations in greater need of scientific and public attention. WLFA stated that keeping these species on the threatened list could only be interpreted as bureaucratic red tape designed to stifle the legitimate trade in a closely controlled and monitored renewable resource. WLFA further stated that delisting does not foreclose continued efforts by the Service to selectively monitor the kangaroo management programs of Australia. The Service concurs.

The Australian National Parks and Wildlife Service, now known as the Australian Nature Conservation Agency (ANCA), also submitted comments

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about the extent and duration of the 1991–2 drought, the sensitivity of the kangaroo management plans of New South Wales to drought and environmental stress during the 1980s and 1990s, and the 1992 population estimates and the kangaroo harvest quotas determined for 1993.

The notice containing the proposed rule, published on January 21, 1993 (58 FR 5341), described a series of monitoring reports to be submitted annually from the Commonwealth to the Service. The Service, on January 27, 1994, received a report of the 1993 population surveys. The Service, because the additional information was received before the final rule was finalized, announced the new information and extended the comment period in a **Federal Register** notice on February 18, 1994 (59 FR 8163).

After the close of the 1993 comment period on the proposed rule, additional letters were received before the comment period was reopened. These were tallied with those received when the comment period was reopened in 1994, and all of these comments were considered in the preparation of this rule. Comments received during this combined period included 883 letters and 14 "petitions" containing an additional 310 signatures. Most of these letters received during the interim period continued to raise concerns about the inhumane aspects of the harvest, the effects of drought, the adequacy of management plans, high harvest quotas, and high unregulated or illegal killings. The Service's responses to these issues were addressed above in the responses to earlier comments. One commenter supported the delisting because of its perception that this would enable the species to be used in ranching. This is not relevant to our decision.

Several new comments were received in response to the February 18, 1994, **Federal Register** notice. CIEL submitted several comments that seem based on inadequate or incomplete information. In addressing those, the Service notes (1) that the information submitted by ANCA was in voluntary compliance with monitoring provisions listed in the January 21, 1993, **Federal Register** (58 FR 5341); (2) that the 1993 surveys were accomplished using standardized techniques that have been developed and improved upon for over a decade; (3) that the submitted numerical estimates represent additional data points in a long-term description of kangaroo populations in the commercial utilization areas of four different states; (4) that a substantial assessment of the status of kangaroos and kangaroo management is made in this final rule; (5) that the Service has actively sought input into the kangaroo issue by sending Service biologists to Australia in 1980, 1990 and 1992; (6) that the destructive fires of 1993 were largely outside the commercial utilization areas of New South Wales and Queensland; and (7) that the Service has a responsibility to delist species that are not presently threatened or endangered. The Service has considered and used the best available scientific and commercial information available in this decision and believes that no further data is necessary for it to make this delisting decision. The Service makes this decision based on all of the factors required by the Act as discussed specifically in this rule. In addition, the comment periods provided for consideration of this proposal met the requirements imposed by law; and this delisting will not breach the ESA duty to conserve the species as they are no longer threatened under the Act.

Other comments by CIEL pertaining to the alleged political nature of the listing decision, the perceived failure of the Service to exercise its responsibilities to provide protection to commercially utilized species, and the importance of drought as an environmental hazard threatening kangaroo populations are addressed above in this final rule.

The Kangaroo Protection Cooperative, Ltd., and the Australian Wildlife Protection Council believed the selection of large males in the commercial harvest would threaten the future fitness of the species. It is likely that this selective harvest will shorten the age structure in populations of wild kangaroos, but it is not evident whether it will adversely impact the gene pool of the species. The Species Survival Commission of the World Conservation Union (IUCN/SSC) Australasian Marsupial and Monotreme Specialist Group lists populations of the three species as stable with no genetic concerns (Kennedy 1992).

The Humane Society of the United States (HSUS), the Australian and New Zealand Federation of Animal Societies, Dr. John Auty, representing the Australian Wildlife Protection Council, and CIEL each expressed concern about the estimates of major reductions in the kangaroo populations of Western Australia, from 1990–1993, and the explanation for that decline offered by ANCA. Dr. Gerry Maynes, of the ANCA, in a March 4, 1994, letter to Mr. Chris Wold of CIEL, offered the following explanation for the Western Australian data:

"The results for 1990 may be distorted by population estimates for the two blocks 012 and 013, which together contributed 50% to the overall estimate (this contrasts with contribution of 20% and 22% in 1984 and 1987, respectively). The estimated density in the 012 block (45 per sq km) is far higher than in any previous year for either kangaroo species. This result may be an artifact of change placement in the transect line; in 1990 the flight line coincided exactly with the distinct vegetation ecotone of mallee and open plain (ideal habitat for kangaroos), but in previous years this may not have been so (navigational variation of a few kilometers is common, even with satellite navigation gear, and this could lead to such variation between years). Placement of only one line in each of these blocks in the 1990 and previous surveys would facilitate such possible random variation. We therefore suggest caution when interpreting the recent acceleration in population numbers, and recommend that in future surveys two lines be allocated to these blocks. Thus, while the long term increase is likely to be real, the estimated increase of 99% from 1987 to 1990 may be an overestimate of the increase."

The U.S. Fish and Wildlife Service believes the kangaroo populations in Western Australia should be more intensively monitored to enhance the quality of their management.

Several commenters suggested that the recent devastating fires in New South Wales and Queensland represented environmental disasters that threatened these species. Dr. Gerry Maynes of ANCA in a March 7, 1994, letter to Dr. C. Dane, indicated that:

"The area in which fires occurred was from the Queensland border to just north of the Victorian border. These fires had no effect on population numbers of kangaroos in the commercial harvest zone of New South Wales * * * Although the fires were widespread throughout the non-commercial zone they have had variable impacts on wildlife including kangaroos due to the variable areas involved and intensities of the fires. The New South Wales National Parks and Wildlife Service has initiated follow-up research in parks which were burnt to determine the effects of the fires and the recovery of wildlife populations. While fires have had localized impacts on wildlife populations, wildfires are only a significant threat to populations of wildlife which are restricted in distribution * * * or do not possess adaptations to avoid the immediate impacts of the fire or to recover quickly after the fire."

The HSUS indicated that the kangaroo species should be listed on CITES before being removed from the lists of endangered and threatened species. This is not a statutory pre-condition to delisting, and is not relevant in light of the Service's finding that Australian regulatory mechanisms are adequate. Neither the HSUS nor any other group or individual petitioned the Service to list these kangaroos on the CITES Appendices when the Service published a **Federal Register** notice on July 15, 1993 (58 FR 38112) inviting CITES proposals. In addition, neither the HSUS nor any other group or individual commented on the absence of these kangaroos from the proposed list of species to be considered by the Service for possible CITES action, (59 FR 3832, January 27, 1994).

Two comments dealing with the validity of the population estimates were received after the close of the February 18, 1994, comment period and are herein addressed. The first comment alleged that the Caughley correction factors overestimated the number of red kangaroos and the second comment alleged that the Caughley correction factors overestimated the number of gray kangaroos during extended drought conditions. The Service notes that a senior FWS biometrician traveled to Australia in 1990 and evaluated the procedures currently used to estimate kangaroo populations. His assessment, summarized in item A (above), indicates that current surveys are very extensive, properly standardized, well thought out, and that additional work to improve visibility correction factors is ongoing. Results from surveys, listed in Tables 1–4, indicate trends that are interpretable using data that have driven successful kangaroo management programs for over a decade. Further development of sampling procedures, including the additional refining of visibility correction factors, should further improve census data.

Other comments submitted in response to the February 18, 1994, **Federal Register** notice are also addressed above in this final rule. These comments concern the impact that a meat market might have on the commercial utilization of kangaroos, the belief that staff cuts to the U.S. Customs Service might lead to nefarious activities in commerce, the belief that cruelty is rampant in the harvest of kangaroos, the belief that population data and management activities and trade controls are inadequate in kangaroo management, the argument that harvest quotas should consider all forms of mortality, and the perception that droughts and periodic floods represent substantial hazards to kangaroo populations.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to or deleting species from the List of Endangered and Threatened Wildlife. A species shall be listed or reclassified on the basis of the best scientific or commercial data available after conducting a review of the species' status with regard to the five following evaluation factors: (A) The present or threatened destruction, modification or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and, (E) other natural or manmade factors affecting its continued existence.

This final rule is based on an assessment of the five listing criteria within the Act. The assessment considered the present biological status of the three kangaroo species in mainland Australia. The five factors, as they apply to eastern gray kangaroo (*Macropus giganteus*), western gray kangaroo (*Macropus fuliginosus*), and red kangaroo (*Macropus rufus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Extensive kangaroo habitats have been lost or seriously degraded where urbanization and several forms of intensive agriculture have occurred. The eastern gray kangaroo has lost important habitats to development and agriculture in eastern Queensland, New South Wales (NSWNPWS 1991a) and throughout Victoria. The species, however, is considered abundant and widespread over large areas of eastern Australia where annual rainfall exceeds 250 mm but has little seasonal trend or where summer rains exceed winter rains (ANPWS 1991b). That publication summarizes habitats for the eastern gray kangaroo as including semi-arid mallee scrub, woodland, and forest. The densities of eastern gray kangaroos are frequently low in the more arid portion of their potential range, where they may be confined to narrow belts of woodland bordering watercourses, and are sometimes high elsewhere. The 1991 density of gray kangaroos, for example, was estimated at about 1 per sq km in arid extreme northwestern New South Wales and averaged more than 10 per sq km on about 125,000 sq km of habitat in mesic northcentral New South Wales (NSWNPWS 1991b). Caughley, *et al.* (1987) listed densities for eastern gray kangaroos that were greater than 20 kangaroos per sq km on some transects in extreme southcentral Queensland as determined from 1980–1982 aerial surveys. The western border of the range of the species has apparently moved westward since European settlement because of the establishment of numerous semi-permanent watering points for stock. Pastoral development is considered to have generally favored the eastern gray kangaroo (NSWNPWS 1991a). The action plan for the conservation of Australasian Marsupials and Monotremes (Kennedy 1992) listed an increased geographic range since European settlement for eastern gray kangaroos.

The red kangaroo is considered abundant over much of inland Australia in areas receiving less than 500 mm annual rainfall (ANPWS 1991). The species occurs in mulga and mallee scrub, shrubland, woodland, grassland, and desert. The species seems to prefer open plains with scattered trees or shrubs. The 1991 density of red kangaroos was estimated at less than 3 per sq km in central NSW but at more than 14 per sq km on about 125,000 sq km of habitat in arid extreme northwestern NSW (NSWNPWS 1991a). Caughley, *et al.* (1987) listed densities greater than 20 per sq km for the red kangaroo on some transects determined from 1980–1982 aerial surveys. Red kangaroos occur in almost a continuous distribution but at varying densities over all the pastoral areas and a large portion of the interior of South Australia. The red kangaroo favors the open but better watered country inside the 2000 km dingo-proof fence in lands used primarily for sheep grazing. Red kangaroo densities are much lower outside the fence (SANPWS 1991). The habitat changes associated with sheep grazing such as closely spaced stock water, the production of shrubland with ephemeral grasses, and the exclusion of the dingo are considered favorable for the red kangaroo. The action plan for the conservation of Australasian Marsupials and Monotremes (Kennedy 1992) listed an increased geographic range since European settlement for the red kangaroo.

The western gray kangaroo occurs across the south of the continent from Western Australia to extreme southcentral Queensland but generally not east of the great divide. This distribution generally corresponds to the area where winter rainfall predominates. Caughley, *et al.* (1987) listed densities greater than 10 per sq km for transects in a relatively small

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area of southwestern New South Wales as determined from 1980–1982 aerial surveys. The increase of watering points to aid the pastoral industry has been beneficial to the western gray kangaroo but intensive agriculture has adversely impacted some habitats. Arnold (1990), for example, indicated that the sizes of some populations of western gray kangaroos have declined significantly where habitat fragmentation to favor intensive agriculture has occurred in southwestern Western Australia. Arnold (1990) further believes losses to kangaroo populations will continue in these areas as the remnant native vegetation continues to be degraded. The western gray kangaroo occurs widely through the southern agricultural area of South Australia and extends into the central pastoral areas. This macropod is considered to be basically a dweller of scrublands and woodlands that grazes at the edges of adjacent grasslands. That portion of the gray kangaroo's range in the pastoral zone of South Australia has been favored by management actions beneficial to sheep production. A portion of the gray kangaroo's range in the southern agricultural zone has been degraded or destroyed by extensive habitat destruction caused by the clearing of native vegetation for agricultural and industrial purposes and for urban and suburban developments (SANPWS 1991). The action plan for the conservation of Australasian Marsupials and Monotremes (Kennedy 1992) listed no change to a decline of less than 10 percent in the geographic range of the western kangaroo since European settlement.

The three species of kangaroos occur over a vast region of Australia. Census lines representative of about 2.25 million sq km of habitat are routinely surveyed by air to estimate kangaroo numbers. Kangaroos are abundant in major portions of this habitat. As indicated below, an extensive series of parks and reserves totaling over 400,000 sq km has been and is being established that will contribute directly to the conservation of macropods throughout their natural range. Current kangaroo populations could exceed those present before European man arrived on the continent. This seems possible because kangaroos have a reproductive capability efficiently attuned to the boom-or-bust nature of the usual precipitation-range forage cycle on arid lands and because kangaroos have been an impressive and inadvertent beneficiary of the sheep management system that included the clearing of woodlands, production of watering points, and the control of predators. Kangaroos that inhabit vast areas of Australia in impressive numbers cannot be considered threatened because of habitat and range conditions even though much native range is severely degraded. Kangaroos do well when habitats are in adequate condition due to sufficient rainfall and more poorly when droughts occur. This cyclic or fluctuating pattern in response to the vegetative condition of rangelands is a normal periodicity in the arid land system and does not in itself comprise a threat to the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The intent of kangaroo conservation in Australia is to maintain viable populations of the three species of kangaroos over their existing range and minimize any deleterious effects that high densities of these species could have on agricultural and pastoral products. Management is an art in the arid-zone ecosystems that comprise much of interior Australia where lands normally cycle in productivity in response to a variable rainfall. Viable kangaroo populations need to be maintained when range productivity and carrying capacities are low, but kangaroos can represent an additional range resource when populations and range productivities are increased. The ANCA and the Parks and Wildlife Services of the individual states regularly monitor population trends of red and gray kangaroos. The species are protected on National Parks and Reserves that total about 5 percent of the continental land area (over 400,000 sq km). Some of these lands represent important kangaroo habitats. The species can be legally killed, but not commercially utilized, by permitted actions in many urban, suburban, and agricultural areas for damage mitigation reasons. A major commercial harvest of kangaroos occurs in large designated areas of Queensland, New South Wales, South Australia, and Western Australia. The magnitude and characteristics of this commercial harvest are regulated by the ANCA as a wildlife management strategy. The total commercial harvest is conducted within the framework of a harvest quota system. The commercial quota is the maximum number of kangaroos of a designated species that may enter domestic or international commerce during a specific year after having been taken in accordance with approved State management plans.

The assessment of this factor did not evaluate whether the commercial utilization of kangaroos violates their protected status as provided by Australian legislation or the legitimacy of the commercial kangaroo industry. Those are Australian domestic issues. The Service assumed that kangaroo products are a legitimate product of the land if kangaroos are managed as a sustainable resource, and if Australian society approves of the harvest. The Service's evaluation in particular focused on whether the commercial enterprise threatened the existence of kangaroos, whether the Commonwealth and State governments adequately manage the kangaroo resource, and how harvest management responds to changes in kangaroo populations, especially during droughts.

Kangaroo population levels are estimated from large-scale aerial and/or ground surveys. These population estimates reflect the effects of all forms of mortality acting on kangaroos. Commercial harvest quotas are determined from estimates of the living population and are intended to regulate the harvest which is the principle human-caused form of mortality. The commercial harvesting of kangaroos is directly controlled through the licensing of shooters and their operations.

The population surveys are accomplished during winter (June-August), annually in South Australia, New South Wales, and Queensland and triennially in Western Australia. The raw data from surveys represent index values that can be compared to develop trends, or they can be expanded by the use of suitable correction factors to provide estimates of kangaroo populations. Correction factors strive to account for differences in the behavior of kangaroo species regarding their sightability and the ability to view kangaroos in different habitats. Research is ongoing to further enhance the quality of surveys and correction factors. In Western Australia, where aerial surveys are only accomplished at 3-year intervals, population status in the intervening years is assessed from monthly reports of the commercial harvest, the intermittent aerial surveys and ground surveys and patrols by appropriate staff (WADCLM 1991a and 1991b).

Harvest quotas are determined on the basis of population information, estimates of habitat quality, and the perceived or estimated requirements for damage mitigation. Conservation interests are considered to drive the establishment of harvest quotas because quotas are usually fixed as conservative proportions of the estimated populations. Individual States could temporarily set quotas at high rates if their stated management goal was to reduce statewide or localized kangaroo populations to more sustainable levels.

Tables 1–9 provide population estimates and data about the commercial harvest of kangaroos in Western Australia, South Australia, New South Wales, and Queensland. Population estimates, except for South Australia, usually include the mean and the standard error, which is a measure of the variance around the mean. Population estimates and data about the commercial harvest of red and western gray kangaroos from the Commercial utilization areas (CUAs) of Western Australia, from 1987–1993, are listed in Tables 1 and 2. Population data within the CUAs are only collected at 3-year intervals in Western Australia so status and trend data are weaker than in the other three states. Red kangaroo populations were apparently similar in 1987 and 1990 and significantly reduced in 1993, and populations of western gray kangaroos seemed increased in 1990 and significantly reduced in 1993. Australian authorities believe the reduced estimates of kangaroo populations in 1993 could be sampling anomalies, but this will remain unknown until additional population surveys have been conducted. Harvest quotas for red and western gray kangaroos in 1994 are each about 15 percent of the mean populations estimated in 1993. Because the commercial kill is consistently less than the commercial quota, it is expected that the 1994 harvest will be less than 15 percent of the estimated 1993 populations in Western Australia.

TABLE 1.—POPULATION ESTIMATES AND DATA ABOUT THE COMMERCIAL HARVEST OF RED KANGAROOS FROM WESTERN AUSTRALIA

	Population estimate (mean +/− SE) (total survey area)	Commercial quota	Commercial kill	Percent males in kill
1987	2,335,900±177,500	200,000	150,462	58.4
1988	NA	230,000	216,834	56.8
1989	NA	290,000	186,042	58.0
1990	2,365,500±165,600	290,000	224,423	56.6
1991	NA	290,000	186,749	55.2
1992	NA	350,000	107,605	50.1
1993	1,362,700±90,200	350,000	139,833	47.8
1994	NA	220,000	NA	NA

TABLE 2.—POPULATION ESTIMATES AND DATA ABOUT THE COMMERCIAL HARVEST OF WESTERN GRAY KANGAROOS FROM WESTERN AUSTRALIA

	Population estimate (mean +/− SE) (total survey area)	Commercial quota	Commercial kill	Percent males in kill
1987	691,000±167,500	45,000	40,092	55.1
1988	NA	45,000	29,061	55.2
1989	NA	45,000	28,355	53.0
1990	1,069,100±145,600	45,000	38,868	56.6
1991	NA	45,000	38,043	58.4
1992	NA	65,000	46,694	57.1
1993	433,500±170,900	65,000	47,070	NA
1994	NA	60,000*	NA	NA

Population estimates and data about the commercial harvest of red and western gray kangaroos from the commercial utilization area of South Australia, from 1987–1993, are listed in Table 3 and 4. Estimates of red kangaroo populations may not differ significantly at least from 1988–1993, and populations of the western gray kangaroo may be greater in 1992 and 1993 than in some of the earlier years. The 1993 commercial harvest of red kangaroos totaled 15 percent and that of western gray kangaroos totaled about 9 percent of the estimated 1993 populations, and the 1994 harvest quota totaled 19 percent and 14 percent, respectively, of the 1993 population estimates.

TABLE 3.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF RED KANGAROOS FROM SOUTH AUSTRALIA

	Population estimate (mean +/− SE)	Commercial quota	Commercial kill	Percent males in kill
1987	[1] 963,000	180,000	100,507	[2] NA
1988	1,491,900	146,000	118,232	NA
1989	1,428,500	260,400	124,173	NA
1990	1,950,000	276,300	172,793	NA
1991	1,669,100	408,600	213,628	NA
1992	1,647,400	317,700	219,338	NA
1993	1,483,700	290,400	227,056	55
1994	NA	286,500	NA	NA

[1] Population estimates that ANCA has received from South Australia do not include standard errors.
[2] Information is unavailable about the sex ratios of kangaroos killed in South Australia, except for 1993.

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TABLE 4.—POPULATION ESTIMATES AND DATA FOR THE COMMERICAL HARVEST OF WESTERN GRAY KANGAROOS FROM SOUTH AUSTRALIA

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	[1] 208,000	30,900	14,849	[2] NA
1988	222,600	31,700	13,778	NA
1989	253,200	33,000	11,546	NA
1990	193,900	36,850	18,593	NA
1991	272,600	31,700	14,533	NA
1992	358,100	35,500	18,999	NA
1993	380,800	48,600	32,798	67
1994	NA	55,600	NA	NA

[1] Population estimates that ANCA has received from South Australia do not include standard errors.
[2] Information is unavailable about the sex ratio of kangaroos killed in South Australia, except for 1993.

Population estimates and data about the commercial harvest of red, western gray, and eastern gray kangaroos from the commercial utilization areas of New South Wales, from 1987–1993, are listed in Tables 5 to 7. Populations of red kangaroos apparently increased to 1991 and have diminished since that time, possibly in response to locally severe drought conditions. The commercial kill in 1993 was about 13 percent of the 1993 population and the 1994 harvest quota is about 18 percent of the 1993 population estimate. The pattern of population change of western gray kangaroos also suggests a population increase to 1991 and a decrease since that time. The 1993 commercial kill was about 10 percent of the population estimated in 1993 and the 1994 commercial quota was set at about 21 percent of the 1993 population estimate. Populations of the eastern gray kangaroo on the Western Plains also increased to 1991 and have apparently diminished since that year. The 1993 commercial harvest totaled about 12 percent of the 1993 population estimate. The 1994 harvest quota has been set at 27 percent of the 1993 population estimate.

TABLE 5.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF RED KANGAROOS FROM NEW SOUTH WALES

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	2,777,000±189,400	313,000	270,467	[1] NA
1988	3,440,000±217,000	354,000	218,086	NA
1989	4,101,000±323,200	487,000	297,029	NA
1990	4,499,000±254,200	626,000	377,155	NA
1991	4,755,000±289,500	706,000	495,986	NA
1992	3,384,900±299,300	956,000	412,189	NA
1993	2,759,800±181,700	598,800	359,820	NA
1994	NA	483,850	NA	NA

[1] NSW does not calculate percent males on a regular basis, as they have found that it varies greatly due to shooter preference—averaging 70% but varying from 50–90%.

TABLE 6.—POPULATION ESTIMATES AND DATA FOR THE COMMERICAL HARVEST OF WESTERN GRAY KANGAROOS FROM NEW SOUTH WALES

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	741,500±61,908	75,000	62,926	[1] NA
1988	616,000±48,546	105,000	72,786	NA
1989	940,000±78,952	95,000	67,253	NA
1990	1,296,000±93,632	152,000	83,708	NA
1991	1,391,700±118,624	220,000	106,629	NA
1992	1,320,000±108,966	327,700	117,994	NA
1993	1,250,000±78,423	307,800	129,378	NA
1994	NA	268,050	NA	NA

[1] NSW does not calculate percent males on a regular basis, as they have found that it varies greatly due to shooter preference—averaging 70% but varying from 50–90%.

TABLE 7.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM NEW SOUTH WALES

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987	1,906,500±159,192	189,000	140,061	[1] NA

TABLE 7.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM NEW SOUTH WALES—Continued

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1988	1,442,000±113,654	271,000	130,335	NA
1989	2,007,000±168,548	222,000	136,073	NA
1990	2,755,000±198,968	394,000	170,766	NA
1991	2,957,000±252,076	584,000	253,791	NA
1992	2,683,000±221,434	790,300	264,447	NA
1993	2,440,000±153,077	757,000	284,344	NA
1994	NA	657,200	NA	NA

[1] NSW does not calculate percent males on a regular basis, as they have found that it varies greatly due to shooter preference—averaging 70% but varying from 50–90%.

Population estimates and data about the commercial harvest of red and eastern gray kangaroos from the commercial utilization areas of Queensland, from 1987–1993, are listed in Tables 8 and 9. Recent population trends are unclear in the data of Table 8 and 9 because two different techniques have been used to estimate populations. Queensland, from 1984–1992, annually surveyed over 500,000 sq km of habitat in the pastoral zone by fixed-wing (FW) aircraft and, since 1991, has surveyed selected 0.5 by 0.5 degree blocks by helicopters (Hel).

Surveys from FW aircraft seem to consistently produce low estimates of kangaroo populations in woodland habitats, such as the 190,000 sq km of mulga woodlands in southcentral Queensland. Presumably the "Caughley correction factors" developed in the sparsely vegetated zones of western New South Wales are not adequate multipliers for estimating kangaroo populations in the woodland habitats of southcentral Queensland. Data in Table 8 suggest that the population of red kangaroos may have diminished since 1991, presumably because of locally severe drought conditions, and that 1993 populations of eastern gray kangaroos may also be diminished from 1991 levels. The commercial kill of red kangaroos in 1993 was about 20 percent of the 1993 population estimate and the commercial quota for 1994 is about 20 percent of the 1993 population estimate. The 1993 commercial kill of eastern gray kangaroos was about 12 percent of the 1993 population estimate and the 1994 commercial quota has been set at about 15 percent of the 1993 population estimate (Table 9).

TABLE 8.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF RED KANGAROOS FROM QUEENSLAND

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987 (FW)	[1] 1,476,800±102,100	375,000	365,138	75
1988 (FW)	[1] 1,758,100±145,100	320,000	359,985	77
1989 (FW)	[1] 1,538,500±121,700	480,000	473,985	65
1990 (FW)	[1] 1,817,300±176,000	480,000	476,636	67.5
1991 (FW)	[1] 1,136,400±146,300	480,000	471,643	[2] NA
1991 (Hel)	[3] 4,630,000			
1992 (FW)	[1] 1,328,800±94,468	600,000	570,885	61.5
1992 (Hel)	[4] 3,070,000±910,000			
1993 (Hel)	[5] 2,960,000±950,000	600,000	595,488	55.5
1994 (Hel)		600,000		

[1] Fixed Wing estimates have been corrected using Caughley Correction Factors for Habitat but have not been corrected for temperature.
[2] ANCA does not have this data for 1991.
[3] Estimate received from the 1992 Quota application.
[4] Estimate received from the 1993 Quota application.
[5] Estimate received from the 1994 Quota application.

TABLE 9.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM QUEENSLAND

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1987 (FW)	[1] 3,341,200±176,700	1,300,000	1,231,889	79
1988 (FW)	[1] 2,916,700±192,600	1,300,000	1,292,196	79
1989 (FW)	[1] 2,598,500±172,300	1,500,000	1,143,314	56
1990 (FW)	[1] 2,278,300±232,000	1,500,000	1,097,890	62.5
1991 (FW)	[1] 1,736,900±155,600	1,300,000	1,017,086	[2] NA
1991 (Hel)	[3] 10,280,000			
1992 (FW)	[1] 2,782,400±184,700	1,500,000	919,234	62.5
1992 (Hel)	[4] 10,310,000±3,260,000			
1993 (Hel)	[5] 8,360,000±2,670,000	1,500,000	989,578	58.1

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TABLE 9.—POPULATION ESTIMATES AND DATA FOR THE COMMERCIAL HARVEST OF EASTERN GRAY KANGAROOS FROM QUEENSLAND—Continued

	Population estimate (mean +/− SE)	Commercial harvest quota	Commercial kill	Percent males in kill
1994	.....	1,250,000	.....	.....

[1] Fixed Wing estimates have been corrected using Caughley Correction Factors for Habitat but have not been corrected for temperature. Caughley correction factors for gray kangaroos are known to give very conservative estimates of total population numbers. They are maintained in the publicly published figures to enable comparisons in population trends with the earlier published data for gray kangaroos until an agreed revised set of correction factors is published for the species.
[2] ANCA does not have this data for 1991.
[3] Estimate received from the 1992 Quota application.
[4] Estimate received from the 1993 Quota application.
[5] Estimate received from the 1994 Quota application.

The total national commercial quota in 1992 for red and gray kangaroos in the commercial utilization areas was 4,942,000, which was about 19 percent of the estimated 1992 red and gray kangaroo population of 26.2 million (using the estimates developed for Queensland from 1992 helicopter counts, for New South Wales and South Australia from 1992 FW surveys, and for Western Australia from 1990 FW surveys). The 1992 commercial kill was 2,676,000, which was 54 percent of the commercial quota and about 10 percent of the presumed 1992 population estimate. The total national commercial quota in 1993 for red and gray kangaroos was 4,517,600 which was about 21 percent of the estimated 1993 red and gray kangaroo population of 21.4 million in the CUAs (data from 1993 helicopter counts in Queensland, and 1993 FW counts in South Australia, New South Wales, and Western Australia). The 1993 commercial kill was 2.8 million which was 62 percent of the 1993 commercial quota and 13 percent of the 1993 population estimate. The 1994 national commercial quota is set at 3.88 million, which is about 18 percent of the 1993 population estimate. An additional 153,000 red and gray kangaroos were reported killed during 1993 for damage mitigation purposes outside the commercial harvest quotas. This damage mitigation kill was an unknown small percent of the continental population of red and gray kangaroos (153,000 equals about 0.7 percent of the 1993 presumed population of red and gray kangaroos within the CUAs which comprise a fraction of the continental land area).

Queensland has received criticism in past years for its harvest management system. That system has been substantially modified in recent years (QNPWS 1992). Queensland now establishes its kangaroo harvest quota in the following manner. Survey data from aerial and ground surveys are utilized to provide population estimates. A conservative possible harvest quota is formulated from this mid-winter survey information. This statewide potential quota for the state, by management areas, is reviewed by the Area Director, Regional Director, and the Manager-Wildlife Management, Queensland. The potential quota is then passed before the Macropod Management Committee (a State Ministerial committee) to receive public input from the rural community, pastoralists, graziers, shooters, dealers, the Department of Primary Industries, conservation groups, and politicians whose constituents are impacted by kangaroos. The committee advises on the acceptability of the proposed quota and may make recommendations about the quota. The proposed quota and the comments are passed to the Queensland Minister, who determines the final quota to be submitted to the Commonwealth for approval. Commonwealth approval may be gained after the proposal has been reviewed by ANCA and the Commonwealth Minister's Scientific Advisory Committee on Kangaroos.

The CUA in South Australia occurs on about 282,000 sq km of pastoral landscape, which comprises about 28 percent of the State's land area. The harvest quota in South Australia is based on the winter aerial survey of the CUA and is developed for each of 10 kangaroo management zones within the CUA. The commercial quota is set as a best estimate of the maximum number of each species that may need to be killed to contain deleterious effects on stock, crops, or property without jeopardizing the viability of kangaroo populations (SANPWS 1991). The proposed quota has to be approved by the appropriate South Australian Minister before its submission to the Commonwealth. The Commonwealth Minister subjects the proposed quota to review by ANCA and the Minister's Scientific Advisory Committee on Kangaroos before any implementation of the kangaroo management program can occur.

The CUA covers the western two-thirds of New South Wales. The harvest quota in the State is based on population estimates from the most recent annual surveys, recent trends in population numbers and distribution, harvest monitoring data, information about nonharvest mortality and noncommercial harvest mortality, climatic conditions over at least the past year, current land use, the proportion of the population not subject to damage mitigation culling, and the demand for agricultural damage mitigation culling (NSWNPWS 1991a). The proposed quota is subject to peer review by the NSW Kangaroo Management Review Committee and must be approved by the appropriate New South Wales Minister before its submission to the Commonwealth. The quota must be approved by the Commonwealth Minister, after its review by ANCA and the Minister's Scientific Advisory Committee on Kangaroos, before the harvest program can be implemented.

The CUA may total about one-half of Western Australia. Parks, reserves, and State forest lands occupied by and providing protective status to western gray and/or red kangaroos may total 100,000 sq km within this vast state. The harvest quota in Western Australia is conservatively established on the basis of current population trends, seasonal conditions, the review of previous annual harvests, the proportion of the habitat and population not subject to harvesting, current land use practices, and the significance of the take outside the commercial quota (WADCLM 1991a and 1991b). The proposed quota is subject to peer review by the Kangaroo Management Advisory Committee and must be approved by the appropriate Western Australian Minister before being forwarded to the Commonwealth Government. The Commonwealth Minister (after review by ANCA and the Minister's Scientific Advisory Committee on Kangaroos) must approve the quota before the harvest program can be implemented.

Individual states have the capability to monitor their kangaroo harvest. For example, Queensland has recently established a Macropod Management System that is a new and large computerized database containing information about shooters' records, dealers' records, location of kill, date of kill, sex and species of kill, etc. The capability to track harvest information helps managers assess whether populations are being overharvested. A computerized database in Western Australia, built on harvest data, allows for the analysis of total commercial take by management area, trends in the sex ratio of the commercial take, trends in the average weight of kangaroos in the commercial take, and trends in the commercial take per unit effort (WADCLM 1991a and 1991b). South Australia is collecting, but not yet utilizing in its kangaroo management program, monitoring data about catch per unit of effort, sex ratio of the kill, and average weight of carcass by sex for each species (SANPWS 1991). New South Wales obtains specific information from trappers, chillers, and faunal dealers to determine catch per unit effort, average carcass weight by sex per species, sex ratios of kill, and the distribution of the harvest. This information is available by management zone and on a statewide basis (NSWNPWS 1991a).

The monitoring and assessment of population trends and harvest returns as specified in the approved kangaroo management programs are intended to ensure the conservation of the species.

The State and Commonwealth governments have the capability to police and regulate the commercial take of kangaroos. State governments control illegal trade in kangaroos through regular and random field inspections of shooter and dealer operations and checks on the returns required from them. Law enforcement staff may also respond to public reports of illegal activities. The primary focus in law enforcement activities at the State or Territory level is to detect illegal trade long before material may be proposed for export. This is feasible because of the relatively small number of people involved in the commercial kangaroo industry and the difficulties involved in obtaining and dealing in large quantities of kangaroo meat or skins in a secretive manner. There is also little incentive to become involved in illegal activities when quotas are not being reached (on average only about 70 percent of the total quotas have been taken in recent years) (ANPWS *in litt.*).

The Commonwealth capability to control illegal trade rests primarily with Customs officers and the Australian Federal Police. Checks on permitted exports of kangaroo products by Customs officers usually are restricted to the inspection of paperwork associated with the export. Customs officers will conduct more detailed inspections and enforcement activities where intelligence indicates that illegal activities may be occurring (ANPWS *in litt.*). The Wildlife Protection Squad formed within the ANPWS in 1992 is intended to coordinate enquiries/investigations into allegations of illegal trade in wildlife.

Annual surveys are useful indicators of the comparative health of kangaroo populations over time. Drought is the major natural event that influences the numbers of red and gray kangaroos throughout the CUAs. Annual surveys in New South Wales have been conducted for a sufficient time to indicate the influence of drought on populations. Combined populations of red and gray kangaroos in the CUAs of New South Wales from 1981–1993 (with numbers of animals commercially harvested listed in parentheses) are estimated as follows (population numbers are in millions of animals): 1981=7.05(0.49), 1982=9.40(0.66), 1983=5.50(0.40), 1984=2.74(0.23), 1985=4.16(0.33), 1986=4.66(0.45), 1987=5.43(0.47), 1988=5.50(0.42), 1989=7.05(0.50), 1990=8.55(0.63), 1991=9.10(0.86), 1992=7.39(0.79), and 1993=6.45(0.77). The data, unfortunately, provide an imperfect comparison because both census procedures and evaluation areas changed somewhat during the evaluation period. The trend seems clear, however: a population buildup to 1982, a major population reduction measured in 1983 and 1984 in response to the severe drought in summer 1982–1984, a gradual population recovery to 1991, with populations again declining in 1992 and 1993 as the sheep range of New South Wales was again impacted by a severe drought in 1991–2. The commercial harvest (numerically identified in the parentheses, above) is managed as a product of current kangaroo populations, which seem ultimately to be driven by current or recent rainfall conditions. Similar trends may exist for the other states, as well, but the data bases are not as complete or as extensive as those of New South Wales. For example, the data base in Queensland reflects the original use of FW aircraft and more recent use of helicopters in aerial survey efforts, and aerial surveys have been conducted only at 3-year intervals in Western Australia.

Nevertheless, population information for 1981, 1984, and 1987 (Fletcher, M. *et al.*, 1990) clearly indicates that kangaroo populations subject to harvesting can recover from significant droughts such as occurred in Eastern Australia in 1982–1984.

The major problem in the sheep range is too little herbage and too many herbivores. Efforts to implement a total grazing management policy call for the elimination of feral herbivores and introduced rabbits coupled with reductions in numbers of either sheep and kangaroos, or both.

Skill is required to manage animal populations that tend to respond to fluctuating environmental conditions. For example, New South Wales managed its kangaroo harvest during the drought by monitoring the progression of the drought and transferring harvest quotas from northern management zones where the drought was impacting habitats to more southerly management zones where drought effects were minimal and kangaroo populations were little affected. New South Wales did not reduce the notional quota for the second half of 1992 because the mid-winter 1992 surveys indicated that kangaroo populations remained high. However, New South Wales did hold back and did not allocate 15 percent of the potential harvest quota in case extensive habitat deterioration occurred after the mid-winter surveys were accomplished.

The Service finds that State and Commonwealth governments manage kangaroo populations sufficiently well to ensure that red and gray kangaroo populations are not being overutilized in mainland Australia at this time.

C. Disease or Predation

There is no evidence that kangaroos at this time are threatened by disease or predation. Predation by dingos may have been an important limiting factor before the arrival of Europeans. Dingo predation has been severely curtailed to enhance sheep husbandry, and kangaroos have incidentally benefitted from this action. Mortality of red and gray kangaroos, believed caused by an unidentified post-flood agent, was observed in southwestern Queensland following the April 1990 floods. The impact was short-term (ANPWS 1990), however, as regenerating vegetation stimulated increases in subsequent kangaroo populations.

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D. The Inadequacy of Existing Regulatory Mechanisms

Red and gray kangaroos have protected status in all parts of their respective distributional ranges throughout Australia under relevant State or Territory legislation. The responsibility for wildlife conservation rests with individual State or Territorial governments through their faunal conservation authorities (ANPWS 1991). The decision to provide for a commercial harvesting industry is determined by State or Territory government policy and legislation. The Commonwealth has no power in law to influence how States and Territories manage red and gray kangaroos except for those populations subject to export or international agreements. The Commonwealth would be powerless, for example, to directly intervene should any individual State or Territory, with no export program, develop or operate an intrastate program that was counter to the Commonwealth views of conservation and management. The ANCA, however, is aware of the level of protection provided in mainland States and Territories that do not seek to export kangaroo products, and the Commonwealth is satisfied that management in those mainland States and Territories (Victoria, Northern Territory, Australian Capital Territory) is in significant agreement with Commonwealth standards of conservation and management (ANPWS *in litt.*).

The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the harvest of kangaroos. Each of these four States has a kangaroo management program that includes provisions for the establishment of harvest quotas and for the reduction of harvests, if necessary, and each State has the responsibility to implement the provisions of its individual kangaroo management programs. The largest populations of red and gray kangaroos occur in the four States, and the Commonwealth Government does have a mechanism to enhance the protection of those populations. That mechanism exists through the Wildlife Protection (Regulation of Exports and Imports) Act of 1982 (WP(REI)A). The WP(REI)A consolidated wildlife controls into a single act so the Commonwealth could more effectively implement the objectives of CITES. Commercial trade is permitted only if it has been conclusively established that the native species will not become threatened because of the inadequate control of exports or through the import of some non-native species. The Commonwealth Minister for the Arts, Sport, the Environment and Territories can approve or disapprove of proposed management programs for individual species after having been advised of their merit by the ANCA and the Minister's Scientific Advisory Committee on Kangaroos. State governments in Western Australia, South Australia, New South Wales, and Queensland have each developed kangaroo management plans that have been approved by the Commonwealth so that an export trade in kangaroo products is allowed from each of those States. The kangaroo management plan for each State has a monitoring provision for both population trends. and harvest returns to ensure that conservation of the species is the foremost objective.

An approved kangaroo management program indicates that kangaroo products for export must be from kangaroos taken in a specified and approved manner. An approved kangaroo management program must contain sufficient biological information so it can be evaluated. There also needs to be ample proof that the biological information has been considered in developing the program, and discussions must have occurred between the State and Commonwealth governments so the management programs attain acceptable standards. The management program must ensure that taking in the wild will not be detrimental to the survival of the species, will be carried out at minimal risk to the continuing role of that species in the ecosystem, will occur in a humane manner, and that adequate periodic monitoring and assessment of the effects of the taking of specimens will occur to ensure the long-term survival of the species.

The kangaroo management programs are generally based on multiple-use tenets and are designed to ensure the continued survival of kangaroos throughout their range. The programs assume that kangaroos are successful native herbivores whose numbers frequently need to be controlled. The programs are based on population monitoring and use a licensing system to control the legal harvesting of animals. The individual States have the responsibility to ensure that the harvesting of kangaroos does not significantly affect the distribution and abundance of the species.

The general objectives of the kangaroo management programs are to (1) maintain viable populations of kangaroos throughout their natural range, (2) minimize the effects of kangaroos on pastoral and agricultural development, (3) maintain populations of kangaroos at levels that will not produce long-term adverse impacts to habitat, and (4) manage the species as a renewable resource. Implementation to achieve objectives includes enabling legislation and an administering organization with sufficient funding to accomplish appropriate research, management, and monitoring activities.

The New South Wales National Parks and Wildlife Service controls the harvest of kangaroos through the National Parks and Wildlife Act 1974. All kangaroos entering commercial trade must be legally taken in accordance with this Act, and it is an offense to kill kangaroos or have them in possession without an appropriate license. Landholders have to approach the NSWNPWS for a permit to kill kangaroos on their property, and tags are issued if the killing is found to be warranted. Shooters, commercial dealers, and tannery operators are each licensed so controls exist at several levels of the commercial harvest. The total allowable commercial harvest occurs within the framework of the commercial quota. The development of the quota has been described in a general manner under factor B above.

The legislation protecting and conserving nature in Queensland is the Faunal Conservation Act 1974, which has been replaced by the Nature Conservation Act 1992. The new Queensland Act has been implemented for kangaroos, replacing the existing legislation. The Nature Conservation Act 1992 creates classes of protected areas; designates classes of wildlife; and provides for development of conservation plans to protect, use, and manage protected areas, critical habitats, and classes of wildlife. The Queensland kangaroo management program describes how the activities of shooters and dealers are regulated, how the size and/or composition of the population is to be monitored, the harvest regulations and checks to prevent illegal harvest or over-harvest, and other measures to ensure the conservation of the species. The approval of Queensland's kangaroo management program by the Commonwealth Government indicates an assurance that commercialism will not threaten the survival of kangaroo populations throughout their range.

Kangaroos and all native fauna in South Australia are protected under the National Parks and Wildlife Act 1972. A permit is required to take any animal for damage mitigation purposes and any kangaroo that enters the commercial trade must be tagged with a species-specific tag. Quotas are developed after the direct monitoring of populations on an annual basis, and individual properties may be monitored through ground surveys and property inspections before receiving a quota. Quotas are released in stages so management can respond to changes in climatic conditions. Kangaroo shooters are licensed to shoot on individual properties.

The Department of Conservation and Land Management has the responsibility for the conservation and protection of all flora and fauna under the Western Australia Conservation and Land Management Act of 1984. The Department has authority under the Wildlife Conservation Act 1950 and associated regulations to control the killing of red and gray kangaroos. Landowners and their agents may take kangaroos non-commercially for damage mitigation purposes in open-season areas. Kangaroos can only be taken under a damage license specifically issued to particular properties in non-open-season areas. The harvest is monitored by using species-specific tags and by monitoring monthly reports from licensed shooters and dealers. Population trends are monitored on a triennial basis because of the State's vast area and because kangaroo densities are frequently low.

Critics of the kangaroo management program in Australia cite the incongruity of legislation granting a measure of protection to the species and the presence of a commercial industry that is responsible for the harvest of several million kangaroos per year. Critics also state that few studies substantiate claims that kangaroos are major depredators of range and agricultural crops, so that arguments that kangaroos are harvested to reduce damage especially to range products are specious, especially when sheep numbers remain too high for fragile ranges. The Service believes that any perceived incongruity in domestic laws needs to be resolved domestically and is not a reason for an ESA listing decision. It is additionally not necessary for the Service to address the argument that the commercial killing of kangaroos is solely for damage mitigation purposes to make a decision on a listing status. Kangaroos incidentally prosper at this time because of land management accomplished for other purposes. Active kangaroo management essentially only regulates kind and level of take so that overutilization does not occur and so that sustainable populations are maintained throughout their range. Regulatory mechanisms in place are adequate to perform this function.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Kangaroo populations fluctuate in response to environmental and climatic conditions. Appropriate wildlife management agencies routinely evaluate kangaroo populations over a wide area and monitor current harvest statistics to track population trends. This activity is intended to provide a sufficient understanding so that harvest activities, can be slowed or terminated if that becomes necessary. This may be appropriate, especially during drought, when kangaroo populations may become reduced and are most vulnerable to population control activities.

There is great concern among critics that management programs both for individual States and the Commonwealth are insensitive to the plight of kangaroos during environmental stress periods as during the 1982–1984 drought. The perceived insensitivity at that time was an apparent inability or unwillingness to reduce the commercial harvest of kangaroos in what critics considered a timely manner during an environmental stress period. The critics argue that demands from the pastoral industry and the commercial kangaroo industry superseded important kangaroo management decisions. The present concern with insensitivity occurred because some important kangaroo habitats experienced droughts during 1992 at a time when a record macropod harvest quota of 5.2 million animals (including 4,942,000 red and gray kangaroos) was established. The Commonwealth indicates (ANPWS *in litt.*) that the determination of quotas during a dry period as during a normal period is on the basis of estimated kangaroo populations.

Droughts are quite variable in their duration and distribution and kangaroo populations do not automatically decline in response to dry seasonal conditions. The 1983 harvest quotas were set at high levels because kangaroo populations measured during the June-August 1982 winter period were still high. The actual harvest during 1983 was considerably less than the actual quota and the quotas in 1984 and 1985 were maintained below 2 million animals as populations recovered.

Kangaroo populations have risen across Australia since that time and quotas have correspondingly increased. For example, the 1991 mid-winter kangaroo population in New South Wales was estimated at 9.1 million and the 1992 harvest quota in NSW was fixed at 2.1 million (23 percent of the 1991 population estimate). The mid-winter 1992 kangaroo population in NSW (obtained while the 1992 drought was still ongoing) was estimated at 8.04 million and a 1993 harvest quota of 1.66 million (21 percent of the 1992 population estimate) was established. The 1992 mid-winter survey indicated that statewide the populations of red kangaroos were diminished by about 40 percent (a statistically significant reduction, $P < 0.05$) and gray kangaroo populations were diminished about 8 percent (a statistically non-significant reduction). The 1992 mid-winter survey also indicated that kangaroo populations in central and southern management zones were little-changed from 1991 levels. The NSW National Parks and Wildlife Service, in mid-year, consequently switched some harvest quotas from northern to more southerly harvest management zones. The NSWNPWS also determined in mid-year that 15 percent of the 1992 harvest quota would be held back and not allocated during 1992. The NSW commercial kangaroo harvest during 1992, when a portion of the state was involved in a drought event, totalled about 800,000 kangaroos during a year when the potential harvest quota totalled 2.1 million. The kangaroo harvest strategy was thus to actively adapt and modify management plans as a dry season developed into a drought.

States have additional regulatory mechanisms to reduce actual harvest to levels below the commercial quota. Licenses to take animals may be amended to restrict the numbers taken in a particular area, to limit harvesting to certain species, or to cease hunting altogether. Thus, management may progressively restrict and then cease all harvesting of kangaroos in response to declining populations. Following the 1982–83 drought in New South Wales, a moratorium on harvesting was applied to some of the worst affected areas to enable populations to recover. Should a severe drought occur during the 1990's, States can be expected to respond in an appropriate manner to changes in the kangaroo populations. The ultimate assurance that conservation of the species will be given primary consideration is the approval and review of ongoing operations of State management programs by the Commonwealth Government (ANPWS *in litt.*).

Control over the methods used to kill kangaroos rests with State and Territory management personnel and is determined by relevant State and Territory legislation. Thus, new harvest

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technologies that could threaten kangaroo populations can not be introduced without governmental approval.

Summary of Findings

The Service finds that extensive kangaroo habitats remain in mainland Australia, that management for pastoral industries may favor kangaroo production, and that an extensive series of National Parks and Reserves have been established (some of which are important to kangaroos). The Service also finds that adequate kangaroo management plans have been developed and implemented. The application of these management plans has demonstrated their effectiveness in both drought and non-drought conditions. Kangaroo populations are systematically and periodically assessed, and population data, environmental conditions, and public consultation inputs are weighed in the development of harvest quotas. The harvest operation is found to be a licensed action that occurs on individual properties at the request and permission of landholders. Authorities within the States and the Commonwealth government have the responsibilities and capabilities to monitor the harvest so that overutilization will not threaten the substantial kangaroo populations existing within individual States. Disease and/or predation do not threaten these kangaroos species. The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the kangaroo harvest. The Commonwealth has the capability to approve, disapprove or require modification of kangaroo management programs from those States wishing to export kangaroo products so a consistency in planning and implementing management actions occurs within mainland Australia. The States have the responsibility to regulate all aspects of the kangaroo harvest, to provide adequate law enforcement, to conduct appropriate management and research, to monitor populations especially during drought events, and the States have the ability to modify harvests if environmental or other variables unexpectedly impact kangaroo populations. It is the present sufficiency in kangaroo management in mainland Australia that causes the Service to find that the action to delist the three species of kangaroos is warranted.

The Service's regulations at 50 CFR 424.11(d) allow a species to be delisted by reason of extinction, recovery, or because the original listing data were in error. The Service, with this action, delists these three species of kangaroos on the basis of their successful recovery because the best scientific and commercial information available indicates the species are now not likely to become an endangered species in the foreseeable future throughout all or a significant part of its range.

The Service, with this notice, also dismisses on procedural grounds, the December 20, 1989, petition filed by Greenpeace USA. The Service has no mechanism to reimpose an import ban on these non-endangered, non-threatened species from mainland Australia.

The Monitoring of Recovered Kangaroo Species

Requirements of the Act for the monitoring of recovered species also apply to foreign species. Those requirements include the implementation of a monitoring program to ensure that the species continues to fare well after delisting occurs. The Service is primarily dependent on input from the Commonwealth Government in the monitoring of these recovered species.

Monitoring plans frequently address population parameters, the distribution and well-being of the species, the condition of important habitats for the species, and any new threats identified as relevant to the species. The monitoring plan for the three kangaroos requires that the Commonwealth Government provide an annual report to the Service for each of 5 years. The first annual report is due March 1996. The monitoring plan is listed below. All information provided by the Commonwealth Government will be available for public review. The Service, on January 27, 1994, received a monitoring report which indicated results of the 1993 population surveys, and received additional monitoring information on May 30, 1994. The following presentation lists the monitoring question posed to the Commonwealth Government and the 1994 information on each monitoring question.

1. Provide the most current population estimates for each species within each harvest State using best technologies currently available, and describe the current harvest quotas established for the calendar year following those population estimates.

The 1993 population data for the three species, the commercial kill that was reported in 1993, and the planned harvest quota for 1994 are listed for each species in each state in Tables 1–9. There were no changes in the procedures used to monitor kangaroo numbers in New South Wales and South Australia in 1993. Nine monitoring blocks were identified for ongoing annual helicopter surveys in Queensland. The blocks will form the basis for future population trend analyses. The 1993 aerial survey in Western Australia followed in a general manner the standard survey methodology used in the 1987 and 1990 surveys. About 18 percent fewer degree blocks were surveyed in Western Australia in 1993 compared to 1990. Some consideration is being given to developing a systematic survey plan for conducting some type of annual survey in the commercial utilization area of Western Australia. Queensland continues to strive to standardize a systematic survey procedure utilizing helicopters.

2. Provide details of commercial and non-commercial mortalities, using best technologies currently available. The summary for a calendar year is due in March of the subsequent year. The time lapse is to ensure that summaries will provide data for the entire calendar year.

The extent of the commercial and non-commercial kill in 1993, is summarized in Table 10 (data about the non-commercial kill is not available for Western Australia).

TABLE 10.—COMMERCIAL AND NON-COMMERCIAL KILL IN 1993

State/province	Species	Type	Kill
NSW	Red kangaroos	Commercial	359,820
		Non-commercial	10,689
	Eastern grays	Commercial	284,344
		Non-commercial	85,696
	Western grays	Commercial	129,378
		Non-commercial	6,015

TABLE 10.—COMMERCIAL AND NON-COMMERCIAL KILL IN 1993—Continued

State/province	Species	Type	Kill
WA	Red kangaroos	Commercial	139,833
	Western grays	Commercial	47,077
SA	Red kangaroos	Commercial	227,056
		Non-commercial	1,618
	Western grays	Commercial	32,798
		Non-commercial	6,938
Qld	Red kangaroos	Commercial	595,488
		Non-commercial	8,915
	Eastern grays	Commercial	989,578
		Non-commercial	33,508

3. Describe any change in population or harvest estimation technologies, including, where appropriate, how the Commonwealth's Review Committee would deal with estimates using new technologies resulting in significantly higher standard errors. Such a discussion might include what sampling changes will be instituted to acceptably reduce the standard error, or what "alpha" level will be used to test for change in population or harvest, or how harvest quotas have been more conservatively set, or what programs would be instituted to relate estimates from new technologies to estimates using previous technologies.

This point was not included in the proposed rule, and no information was requested or provided in 1994.

4. Describe distribution of the species, using best technologies currently available. The intent of this provision is to note any significant change in the distribution of a species within a State with suggested explanations of causes of change.

No perceived changes in the distribution of the three kangaroo species exist for New South Wales, Western Australia, or Queensland. The distribution of western gray kangaroos in South Australia may now extend northward to approximately 31 degrees of latitude south. Otherwise, there are no perceived changes in the distribution of the species.

5. Describe the extent of lands set-aside for parks and reserves that provide protected and useful habitats for kangaroos.

Minor extensions were made to Parks and Reserves in New South Wales during 1993. Queensland added 6,974 sq km to its National Park System in 1993 and these lands provide protective and useful habitats for kangaroos. Western Australia added 3,394 sq km to its system of Nature Reserves, National Parks and Conservation Parks. Additional arid and semi-arid lands have also been added to the Park system in South Australia and some of these lands are suitable but marginal kangaroo habitats.

6. Describe changes in regulatory programs that impact the well-being of the species.

The basic regulatory programs remained unchanged in 1993 in New South Wales, Western Australia, and South Australia. The Nature Conservation Act 1992 has been implemented for kangaroos in Queensland, and replaces the Faunal Conservation Act 1974, National Parks and Wildlife Act 1975, and Native Plants Protection Act 1930. The 1992 Act provides for the protection of native wildlife and their habitats. A fundamental principle of the legislation requires that the use of protected wildlife must be ecologically sustainable. A draft "Macropod Harvesting Conservation Plan 1994" was released for public comment in December 1993. The new legislation provides for a comprehensive approach to the conservation of protected areas and wildlife and will enhance the conservation of all protected areas and species in Queensland.

7. Describe new threats to the species.

No new threats to the kangaroo species were identified during 1993.

8. Describe progress towards the successful implementation of any Total Grazing Management Policy (TGMP) that strives to balance the forage demands of all herbivore consumers with available range resources to enhance the conservation of range ecosystems.

In New South Wales, the concept of Total Grazing Management is being marketed through Landcare Groups, Rural Organizations, and a Commonwealth/State Rural Lands Reconstruction Program. The Department of Agriculture and the Department of Conservation and Land Management in Western Australia are cooperating on programs for rangeland conservation which emphasize the limitation of grazing pressures by commercial herbivores. In South Australia, the Pastoral Land Conservation and Management Act 1990 provides an attempt to enhance the conservation of range ecosystems. The major emphasis, at this time, is on the monitoring of vegetation conditions, modifying sheep and cattle stocking rates on the basis of current land condition, and the control of feral animals to enhance land condition. The Commonwealth Government, in association with State and Territory Governments has initiated the development of a National Rangelands Strategy, which among other things is intended to address the issue of managing total grazing pressure.

The U.S. Fish and Wildlife Service has the responsibility to annually review the monitoring reports, to assess the continued recovery of the species, and to conduct any other reviews it believes may be warranted. The Service can additionally invoke emergency listing procedures at any time in response to a significant threat to the well being of any of the three species. Three alternatives exist after the 5-year monitoring program has been concluded. They are: (1) If the species no longer meet the 5-factor test for recovery then they should be relisted using the emergency listing procedures; (2) if the species continue to fare well but threats are increasing, then the monitoring efforts should continue; and (3) if the species continue to fare well, threats are not increasing, and the 5-factor test is still met, then the monitoring effort can be discontinued.

Effects of This Final Rule

A special regulation was published in 1974 regarding the red, eastern gray, and western gray kangaroos that were listed as Threatened in 1974. The regulation made it unlawful to import these species, or their parts or products, into the United States for commercial purposes until the Australian States could assure the United States that they had effective management plans for the kangaroos, and that taking would not be detrimental to the survival of kangaroos.

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As threatened species, individuals could be imported into the United States, with suitable permits, for scientific purposes, enhancement of propagation or survival of the species, educational purposes, zoological exhibition, or special purposes consistent with the purposes of the Act. On April 29, 1981, the Australian States met the conditions for satisfactory management, and a special regulation was published in the **Federal Register** (46 FR 3938) that made it lawful to import the three species of kangaroos for commercial purposes provided the products were tagged or otherwise identified as removed from the wild in accordance with the management plans of the Australian States. The Service published a final rule on August 1, 1983 (48 FR 34757) permitting the commercial importation of kangaroos to continue.

The current action removes the mainland populations of these three kangaroo species from the List of Endangered and Threatened Wildlife. The effect of this delisting action will be negligible because the restrictions associated with the Threatened classification have already been largely relieved by the Special Rule at 50 CFR 17.40 (a). The eastern gray kangaroo (*Macropus giganteus*, all subspecies except *tasmaniensis*), the red kangaroo (*M. rufus*), and the western gray kangaroo (*M. fuliginosus*) are removed from the list of Endangered and Threatened Wildlife as codified in 50 CFR 17.11, with the publication of this final rule. Consequently, none of the restrictions, regulations, or prohibitions of the U.S. Endangered Species Act will apply to these three species in mainland Australia, as is presently the case.

The subspecies *M. g. tasmaniensis* is retained on the list of endangered species in § 17.11. No assessment of this subspecies or of kangaroo management in Tasmania was undertaken in this evaluation.

The special rule in 50 CFR 17.40 (a)(1)(i)(B) which allowed the import of eastern gray, red, and western gray kangaroos, including parts and products of such wildlife which have been tagged or otherwise identified as removed from the wild, in accordance with the management plans of Australian States, into the United States without permits for individual shipments, otherwise required by 50 CFR part 17(a), is hereby rescinded. *M. g. tasmaniensis* is restricted to Tasmania, and Tasmania has not prepared a kangaroo management plan for this subspecies so the Commonwealth Government has not allowed any export of *M. g. tasmaniensis* or their parts and products. The rescinding of § 17.40 (a) will therefore not be relevant to this non-traded but endangered subspecies.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

ANPWS. 1990. Australian National Parks and Wildlife Service response to the report "Review of kangaroo management March 1990." Aust. Nat. Parks Wildl. Serv., Canberra. 28pp.

ANPWS. 1991a. Australian National Parks Wildlife Service reply to the United States Fish and Wildlife Service's concerns raised in its **Federal Register** notice (vol. 58, no. 113) with regard to the management plans of three harvested kangaroo species (*Macropus rufus, M. fuliginosus* and *M. giganteus*). Aust. Nat. Parks Wildl. Serv., Canberra, 13pp.

ANPWS. 1991b. Overview of background information for kangaroo management in Australia. Draft document. Wildl. Monitoring Unit, Aust. Nat. Parks Wildl. Serv., Canberra. 92pp.

Arnold, G. 1990. Can kangaroos survive in the wheatbelt? Western Australia Jour. of Agric. 31: 14–17.

Caughley, G., N. Shepherd, and J. Short. 1987. Kangaroos: their ecology and management in the sheep rangelands of Australia. Cambridge Univ. Press, Melbourne. xiv + 253pp.

Fletcher, M., C.J. Southwell, N.W. Sheppard, G. Caughley, D. Grice, G.C. Griggs, and L.A. Beard. 1990. Kangaroo Population Trends in the Australian Rangelands, 1980–87. Search 21 (1):28–29.

Kennedy, M. 1992. Australasian Marsupials and Monotremes: An action plan for their survival. IUCN/SSC Australasian Marsupial and Monotreme Specialist Group. IUCN, Gland, Switzerland, vii + 103pp.

Nichols, J.D., S.R. Singer, and J.S. Smith. 1990. Review of kangaroo management, Australia, March 1990. U.S. Fish and Wildlife Service., unpubl. report. v + 71pp + Appendices.

NSWNPWS. 1991a. The New South Wales kangaroo management programme. New South Wales National Parks and Wildlife Service., Sydney. 17pp.

NSWNPWS. 1991b. Proposed kangaroo quotas for 1992 for New South Wales. New South Wales National Parks and Wildlife Service., Sydney. 24pp.

QNPWS. 1992. 1992–1994 management program for the commercially taken macropds in Queensland. Queensland National Parks and Wildlife Service., Brisbane. 13pp + Appendices.

SANPWS. 1991. The kangaroo conservation and management program in South Australia. Part A. Management of the large kangaroos. South Australia National Parks and Wildlife Service., Adelaide. 14pp + 13 Figs.

WADCLM. 1991a. Management program for the western grey kangaroo in Western Australia 1992–1994. Western Australia Department Conservation and Land Management, Perth. 11pp + 2 Figs. + App. A.

WADCLM. 1991b. Management program for the red kangaroo in Western Australia 1992–1994. Western Australia Department Conservation and Land Management, Perth. 11pp + 2 Figs. + App A.

Author

Dr. Henry L. Short, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subpart B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the three entries for the "Kangaroo, eastern gray", "Kangaroo, red", and "Kangaroo, western gray" under the section "Mammals" from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

3. Section 17.40(a) is removed and reserved.

Dated: February 24, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–5823 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 60, No. 46

Thursday, March 9, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[DA–95–10]

Milk in the Paducah, Kentucky, Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of order.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area. A proposed amended Paducah, Kentucky, order failed to receive the required two-thirds approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due on or before March 24, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would eliminate the regulatory impact of the order on dairy farmers and regulated handlers.

This proposed action has been reviewed under Executive Order 12866.

This proposed termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area is being considered.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before and coordinate the termination with amendatory action being taken on milk orders for neighboring markets. The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Paducah, Kentucky, marketing area.

On December 2, 1994, the Department issued a final decision on proposed amendments to all Federal milk orders, which was published December 14, 1994 (59 FR 64524). The final decision document contained proposed amended orders for all marketing areas, including the Paducah order. The document also included a referendum order for the Paducah, Kentucky, market to ascertain whether producers supplying that market approve the issuance of the proposed amended order. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

The enabling statute requires that at least two-thirds of the producers (measured in terms of either number or volume) voting in a referendum must approve the issuance of a marketwide pool order before it can be put into effect. Only 37.8 percent of the voting producers representing 59.8 percent of the milk produced by the dairy farmers who voted in the referendum approved the issuance of the proposed amended order for the Paducah, Kentucky, marketing area. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the enabling statute, and that the amended order was not approved by producers, it appears that continuation of the existing Paducah, Kentucky, order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR Part 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

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Dated: March 3, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95-5806 Filed 3-8-95; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93-076-5]

RIN 0579-AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule regarding the establishment of standards for "swim-with-the-dolphin" interactive programs. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 3-076-2 that are received on or before March 13, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 93-076-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738, (301) 734-8699.

SUPPLEMENTARY INFORMATION: On January 23, 1995, we published in the **Federal Register** (60 FR 4383-4389, Docket No. 93-076-2) a proposal to amend the Animal Welfare regulations to establish standards for "swim-with-the-dolphin" interactive programs.

Comments regarding the proposed rule were required to be received on or before February 22, 1995. During the comment period, we received a request that we extend the comment period beyond February 22. The requestor, a marine mammal industry association, stated that additional time was necessary to allow its members to meet and to formulate comments.

In response to this request, on February 28, 1995, we published a notice in the **Federal Register** (60 FR 10810, Docket No. 93-076-4), reopening and extending the comment period for Docket No. 93-076-2 through March 9, 1995. However, the March 9 date was an error. We had intended to extend the comment period through March 13, 1995. Therefore, in this notice, we are extending the comment period for Docket No. 93-076-2 through March 13, 1995. This will allow time for the requestor and other interested persons to develop comments on the proposed rule.

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 6th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-5807 Filed 3-8-95; 8:45 am]

BILLING CODE 3410-34-P

Notices

Federal Register

Vol. 60, No. 46

Thursday, March 9, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Special Supplemental Food Program for Women, Infants and Children (WIC): Poverty Income Guidelines

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FCS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305-2730.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal Poverty Income Guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1995 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on February 9, 1995 at 60 FR 7772. The guidelines published by DHHS are referred to as the poverty income guidelines.

Section 246.7(c)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals, or which are less than 100 percent of the Federal poverty income guidelines. Consistent with the method used to compute eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1995 through June 30, 1996. Consistent with Section 17(f)(18) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(18)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines July 1, 1995. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1995-JUNE 30, 1996

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	7,470	13,820
2	10,030	18,556

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EFFECTIVE JULY 1, 1995–JUNE 30, 1996—Continued

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
3	12,590	23,292
4	15,150	28,028
5	17,710	32,764
6	20,270	37,500
7	22,830	42,236
8	25,390	46,972
For each additional family member add	2,560	4,736
Alaska:		
1	9,340	17,279
2	12,540	23,199
3	15,740	29,119
4	18,940	35,039
5	22,140	40,959
6	25,340	46,879
7	28,540	52,799
8	31,740	58,719
For each additional family member add	3,200	5,920
Hawaii:		
1	8,610	15,929
2	11,550	21,368
3	14,490	26,807
4	17,430	32,246
5	20,370	37,685
6	23,310	43,124
7	26,250	48,563
8	29,190	54,002
For each additional family member add	2,940	5,439

Dated: March 3, 1995.
William E. Ludwig,
Administrator.

INCOME ELIGIBILITY GUIDELINES
[Effective from July 1, 1995 to June 30, 1996]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 contiguous United States, District of Columbia, Guam and Territories:									
1	7,470	623	144	13,820	1,152	266	9,711	810	187
2	10,030	836	193	18,556	1,547	357	13,039	1,087	251
3	12,590	1,050	243	23,292	1,941	448	16,367	1,364	315
4	15,150	1,263	292	28,028	2,336	539	19,695	1,642	379
5	17,710	1,476	341	32,764	2,731	631	23,023	1,919	443
6	20,270	1,690	390	37,500	3,125	722	26,351	2,196	507
7	22,830	1,903	440	42,236	3,520	813	29,679	2,474	571
8	25,390	2,116	489	46,972	3,915	904	33,007	2,751	635
For each add'l family member add	+2,560	+214	+50	+4,736	+395	+92	+3,328	+278	+64
Alaska:									
1	9,340	779	180	17,279	1,440	333	12,142	1,012	234
2	12,540	1,045	242	23,199	1,934	447	16,302	1,359	314
3	15,740	1,312	303	29,119	2,427	560	20,462	1,706	394
4	18,940	1,579	365	35,039	2,920	674	24,622	2,052	474
5	22,140	1,845	426	40,959	3,414	788	28,782	2,399	554
6	25,340	2,112	488	46,879	3,907	902	32,942	2,746	634
7	28,540	2,379	549	52,799	4,400	1,016	37,102	3,092	714
8	31,740	2,645	611	58,719	4,894	1,130	41,262	3,439	794
For each add'l family member add	+3,200	+267	+62	+5,920	+494	+114	+4,160	+347	+80
Hawaii:									
1	8,610	718	166	15,929	1,328	307	11,193	933	216
2	11,550	963	223	21,368	1,781	411	15,015	1,252	289
3	14,490	1,208	279	26,807	2,234	516	18,837	1,570	363

INCOME ELIGIBILITY GUIDELINES—Continued
[Effective from July 1, 1995 to June 30, 1996]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
4	17,430	1,453	336	32,246	2,688	621	22,659	1,889	436
5	20,370	1,698	392	37,685	3,141	725	26,481	2,207	510
6	23,310	1,943	449	43,124	3,594	830	30,303	2,526	583
7	26,250	2,188	505	48,563	4,047	934	34,125	2,844	657
8	29,190	2,433	562	54,002	4,501	1,039	37,947	3,163	730
For each add'l family member add	+2,940	+245	+57	+5,439	+454	+105	+3,822	+319	+74

* Increase of 2.36% over Income Eligibility Guidelines for the period of 7/1/94–6/30/95.

[FR Doc. 95–5709 Filed 3–8–95; 8:45 am]
BILLING CODE 3410–30–P

Forest Service

Boppin Basin EIS; Kootenai National Forest; Lincoln County, Montana; Cancellation of Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Environmental impact statement cancellation notice.

SUMMARY: Notice is hereby given that the Three Rivers Ranger District, Kootenai National Forest is withdrawing its plan to prepare an Environmental Impact Statement for the Boppin Basin project. Project proposals within this area will be incorporated into the Fry-Zim Environmental Impact Statement for fire and insect mortality recovery.

The Notice of Intent, published in the **Federal Register** of January 14, 1994 is hereby rescinded (FR document is FR 94–916 Filed 1–13–94).

FOR FURTHER INFORMATION CONTACT: Jack Zearfoss. Fry-Zim EIS Team Leader, Three Rivers Ranger District (406) 295–4693.

Dated: February 28, 1995.
Robert L. Schrenk,
Forest Supervisor, Kootenai National Forest.

[FR Doc. 95–5695 Filed 3–8–95; 8:45 am]
BILLING CODE 3410–11–M

Fry-Zim EIS; Kootenai National Forest; Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of fire recovery and salvage activities. The project is located on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, in the Northeast Yaak Phsiographic Area located about 34 air miles northeast of Troy, Montana. Part of the proposed activities lie within an Inventoried Roadless Area (IRA), Mt. Henry # 666.

The Proposed Action was developed in response to the major fire events that burned over 2,200 acres in the Fish Lakes and Zimmerman Hill areas in August 1994, and mortality caused by mountain pine beetle infestations in Basin Creek Compartment #29. The proposal is to salvage timber, construct and reconstruct roads, reduce fuel concentrations, revegetate with trees/native shrubs/grasses, and obliterate roads. These actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purpose of the Proposed Action's activities are to harvest fire- and insect-killed timber in a timely manner, manage road systems, reduce future potential for catastrophic fire, sustain site productivity, improve wildlife and riparian habitat (specifically for Threatened, Endangered, or Sensitive (TES) species), and accelerate watershed recovery.

Overall guidance of land management activities on the Kootenai National Forest, including timber harvest and road management, are regulated by the Kootenai National Forest Land and Resource Management Plan (Forest Plan, September, 1987). The Proposed Action was developed using various principles of Ecosystem Management. In doing so, the post-fire conditions are characterized at a broad scale with consideration to natural processes that historically shaped this ecosystem. Based on this analysis we developed a Proposed Action that would require a Forest Plan amendment to allow timber harvest in Management Area 2 (semi-primitive, non-motorized recreation). In addition, some areas previously designated as old growth which, due to the intensity of the fires no longer exhibit old growth characteristics, will be redesignated to other areas. Some of these burned areas will be harvested, meeting objectives of surrounding management areas.

DATES: Written comments should be received within 30 days following publication of this notice.

ADDRESSES: Send written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Michael L. Balboni, District Ranger, Three Rivers Ranger District, Kootenai National Forest, 1437 North Highway 2, Troy, Montana 59935.

FOR FURTHER INFORMATION CONTACT: Jack Zearfoss, Fry-Zim EIS Team Leader, Three Rivers Ranger District (406) 295–4693.

SUPPLEMENTARY INFORMATION: The timber salvage activities under consideration would occur within the 89,687 acre Northeast Yaak Physiographic Area. The general areas considered are the Fish Lakes, Windy Creek, and Basin Creek areas. Primary salvage activities would occur in two specific fire-affected areas: the Fish Fry Fire (1470 acres) located within all or portions of Sections 16 and 19, T36N, R30W, and Sections 11, 12, 13, 14, 23 and 24, T36N, R31W, PMM, Lincoln County, Montana: the Zimmerman Fire (733 acres) located within portions of Sections 3, and 4, T36N, R31W, and Sections 26 and 35, T37N, R31W, PMM, Lincoln County, Montana. Previous planning efforts (Boppin Basin Environmental Impact Statement) have identified other salvage opportunities outside of the fire-affected areas which have been incorporated into this proposal and are located within all or portions of Sections 20, 21, 22, 26, 27, 28, 29, 32, 33, and 34, T36N, R30W, PMM, Lincoln County, Montana.

Salvage harvest of dead and dying trees is proposed on 2536 acres of forested land within the two fire areas and the Basin Creek drainage.

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Helicopter, conventional cable, and ground-based logging systems would be utilized for harvest operations. This includes 480 acres within the 733 acre Zimmerman fire, 798 acres within the 1470 acre Fish Fry fire, and 1,258 acres within the 11,521 acre Basin Creek Compartment #29. Openings of greater than 40 acres in size would result from this Proposed Action. Fuel reduction accomplished in conjunction with harvest includes grapple piling and prescribed burning. Watershed restoration activities are proposed within and in the vicinity adjacent to the harvest areas. This includes road obliteration with an estimated 2.90 miles of recontouring, 11.80 miles of ripping and seeding, and 8.70 miles of seeding, plus the removal of approximately 21 in-stream culverts. Placement of woody debris would occur along about 1.0 mile of stream channel, and approximately 11 acres of riparian revegetation is proposed. Replanting would occur on approximately 2694 acres of land (of which 96 acres are burned plantations), including both conifer seedlings for reforestation and native shrubs and herbaceous plants for wildlife habitat (approximately 187 acres). The timber harvest operations would require approximately 3.88 miles of new road construction, 6.58 miles of reconstruction, and an estimated 1.70 miles of temporary road construction. Road maintenance would occur on about 13.73 miles of existing road.

Approximately 498 acres proposed for harvest lie within the Mt. Henry #666 IRA. An estimated 3.60 miles (of the 3.88 miles) of road construction would occur within this area.

The decision to be made is, what action (if any) should be taken in the Northeast Yaak Physiographic Area to:

(1) Recover the fire-affected areas and move the area towards the desired conditions of the physiographic areas involved.

(2) Provide goods and services to the local economy and U.S. citizens

(3) Reduce the risk for high-intensity wildfire in the future

(4) Develop and manage the road system to facilitate the removal of timber, post-harvest treatments, reduce sedimentation, restore stream channel equilibrium, and maintain or improve wildlife habitat.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed activities would occur within Management Areas 2, 12, 13, 14, and 19. Timber harvest would occur in all Management Areas except Management Area 13, which would be redesignated. Road construction would occur in Management Areas 13 and 14. Below is a brief description of the applicable management direction.

Management Area 2—These areas are characterized by a natural appearing environment offering roadless recreation opportunities and are within an unsuitable timber base.

Management Area 12—These are areas that contain productive timber lands which are suitable for timber harvest, provided that big game summer habitat objectives are met.

Management Area 13—These are areas that contain special habitat characteristics which are allocated as Old-Growth. Local road construction is permitted, provided that they are restricted following use to protect snag characteristics.

Management Area 14—These are areas that contain productive timber lands which are suitable for timber harvest, provided that grizzly bear habitat objectives are met.

Management Area 19—These are areas that contain steep slopes requiring only activities which minimize surface disturbance and maintain a healthy vegetative cover.

For Management Area 2, which is classified as unsuitable for timber production, an amendment to the Forest Plan would be required to implement the ecosystem management-based proposal or any alternative which would harvest timber in these management areas.

The Forest Service will consider a range of alternatives. One of these will be the "No Action" alternative, in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the desired conditions, as well as to respond to the issues and other resource values identified by the public.

The principle issues identified to date are related to:

1. The effects of the Proposed Action on the characteristics of Inventoried Roadless Areas and Management Areas designated as unsuitable for timber production.

2. The effects of the Proposed Action on water quality and fish habitat.

3. The effects of the Proposed Action on ecosystem health and the risk of catastrophic wildfires and insect or disease outbreaks.

4. The effects of the Proposed Action on Threatened, Endangered, and Sensitive (TES) species.

5. The effects of the Proposed Action on the socio-economics of the area.

Other issues commonly associated with salvage harvesting and road construction include: heritage resources, soils, and scenery management. This list may be verified, expanded, or modified based on public scoping for this proposal.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest Lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis. It will start with the initial scoping process (40 CFR 1501.7) which will begin with the publication of this notice. The public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the Proposed Action. Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.

2. Identify major issues to be analyzed in depth.

3. Eliminate minor issues or those which have been covered by a previous environmental analysis, such as the Kootenai Forest Plan EIS.

4. Identify alternatives to the proposed action.

5. Identify potential environmental effects of the Proposed Action and alternatives (i.e. direct, indirect, and cumulative effects).

6. Determine potential cooperating agencies and task assignments.

Consultation with the U.S. Fish and Wildlife Service has been ongoing with regard to listed species. The Montana Department of Health and Welfare-Division of Environmental Quality, Montana Department of Fish and Game, and the Kootenai Salish Indian Tribe will also be consulted.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS, which is expected to be filed with the EPA and available for public review in July, 1995. A 45-day comment period will follow publication of a Notice of Availability of the Draft EIS in the **Federal Register**. The final EIS is expected to be completed in November, 1995.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 30 day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, Supervisor's Office, 506 Hwy 2 West, Libby, MT 59923 is the Responsible Official. As the Responsible Official I will decide which, if any, of the proposed projects will be implemented. That decision will be documented in a Record of Decision. I have delegated the responsibility to prepare the Fry-Zim Environmental Impact Statement to Michael L. Balboni, District Ranger, Three Rivers Ranger District.

Dated: February 28, 1995.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 95-5696 Filed 3-8-95; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene on Monday, April 3, 1995, from 1:30 p.m. to 4:00 p.m. at the Sheraton Billings Hotel, 27 North 27th Street, Billings, Montana 59101. The purpose of the meeting is to update Committee members on the status of the project proposal and make plans for a future factfinding meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Donald D. Dupuis, 406-675-2770, or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303-866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95-5699 Filed 3-8-95; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030295A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the receipt of an application for a scientific research permit (P45R) and the receipt of applications for modifications to scientific research permit 823 (P503C) and incidental take stocking permit 908 (P503K).

Notice is hereby given that the National Biological Survey (NBS) in Corvallis, OR, has applied in due form for a scientific research permit (P45R) and that the Idaho Department of Fish and Game (IDFG) in Boise, ID, has applied in due form for Modification 2 to scientific research Permit 823 (P503C) and Modification 1 to incidental take stocking Permit 908 (P503K) to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

NBS requests authorization for a take of juvenile, endangered, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to provide information that will be used to: (1) Recommend siting of the bypass outfall to be constructed at the Dalles Dam; (2) evaluate the juvenile salmonid nighttime spill pattern at the Dalles Dam; (3) assess the relationship between flow rate and juvenile salmonid outmigration velocity in the Dalles pool and elsewhere; (4) evaluate juvenile salmonid passage routes at John Day Dam; (5) estimate juvenile salmonid mortality in the lower Columbia River; and (6) provide information on the vulnerability of salmonids to predation by northern squawfish (*Ptychocheilus oregonensis*). Listed fish will be collected at the John Day Handling Facility by NMFS personnel under the authority of Permit 822, anesthetized and implanted with radio telemetry transmitters (radio tags) by NBS personnel, held for 36-48 hours in tanks supplied with circulating river water to determine tag retention and delayed mortality, released near the mouth of the John Day River, and tracked to determine their fate. The requested duration of the permit is from April 15 to July 15, 1995.

Permit 823 authorizes IDFG to take endangered Snake River salmon while conducting a wide range of research activities in Idaho. For Modification 2 to the permit, IDFG requests an increase in the lethal take of juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) in Redfish Lake to optimize the evaluation of Redfish Lake fertilization/supplementation efforts in 1995 and beyond. In addition, IDFG requests to implement four other actions which will not require an increase in the take of listed species authorized in the permit. These four actions are: (1) The marking of juvenile, endangered, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) using caudal fin clips to estimate the number of fry that migrate downstream past juvenile fish traps to rear downstream from study sites; (2) a fish flush strategy designed to provide flushing flows through a seasonally dewatered stretch of the Lemhi River between the Barracks Lane Bridge and

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the Clark Steelhead Bridge during times of critical adult and juvenile salmon migrations; (3) the installation of a second juvenile fish trap upstream from the existing juvenile fish trap, the Sawtooth Hatchery weir, on the upper Salmon River to optimize trapping efficiency with the aim of developing more accurate estimates of anadromous fish survival rates and migration timing; and (4) the installation of a rotary screw trap in Rapid River upstream from the Rapid River Fish Hatchery to collect natural production information on wild steelhead salmon. Modification 2 would be valid for the duration of the permit. The permit expires on November 30, 1997.

Permit 908 authorizes IDFG for an incidental take of listed Snake River salmon as a result of their resident fish stocking program designed to increase the supplies of fish in the Salmon River and its tributary streams for sport angling. For Modification 1 to the permit, IDFG requests authorization to stock Redfish Lake with hatchery rainbow trout in 1995 and beyond to provide recreational fishing opportunity in the lake. NMFS denied IDFG's request to stock Redfish Lake with rainbow trout in 1993 because of concern over possible interactions between stocked rainbow trout and listed sockeye salmon in the lake, primarily diet overlap and predation. IDFG believes that hatchery rainbow trout releases in Redfish Lake will not undermine endangered sockeye salmon recovery efforts. Permit 908 expires on December 31, 1998.

Written data or views, or requests for a public hearing on any of these applications should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: March 3, 1995.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–5817 Filed 3–8–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Wholesale Power and Transmission Rates, Negotiated Pacific Northwest Coordinating Agreement Rates, and Transmission Terms and Conditions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Availability of Wholesale Power and Transmission Rates, Pacific Northwest Coordinating Agreement Rates and Transmission Terms and Conditions.

SUMMARY: *BPA File No:* WP–95, TR–95, TC–95. On December 28, 1994, Bonneville Power Administration (BPA) published a Notice of Intent to Revise Transmission Rates, 59 FR 66946 and Notice of Intent to Revise Wholesale Power Rates, 59 FR 66947. Subsequently, BPA also published **Federal Register** Notices of Proposed Wholesale Power Rate Adjustment (60 FR 8496), Proposed Transmission Rate Adjustment (60 FR 8505), and Hearing and Opportunity for Public Comment Regarding Proposed Comparable Transmission Terms and Conditions (60 FR 8511). In those Notices, BPA stated that Wholesale Power and Transmission Rates, the Rates for the Pacific Northwest Coordinating Agreement, and the Transmission Terms and Conditions would be published separately.

DATES: The following schedule information is provided for informational purposes. BPA's proposed schedule, as well as a schodule for additional prehearing conferences will be published later. The final schedule will be established by the Hearing Officer at the Prehearing/Settlement conference on March 15, 1995.

March 15, 1995—Settlement Conference on Scheduling

October 29, 1996—Final Record of Decision published

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the prehearing conference. A notice of the dates, times, and locations of the field hearings will be made later through a **Federal Register** Notice, mailings and public advertising.

ADDRESSES: The date for written comments by participants must be received by June 16, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager, Corporate Communications—CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519.

Information may also be obtained from:

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box 3621; Portland, OR 97232 (503–230–5356)

Mr. George Eskridge; Manager, SE Sales and Customer Service District; 1101 W. River, Suite 250; Boise, ID 83702 (208–334–9137)

Mr. Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201 (509–353–2518)

Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660 (360–418–8600)

Ms. Marg Nelson; Manager, NW Sales and Customer Service District; 201 Queen Anne Ave. N., Suite 400; Seattle, WA 98109–1030 (206–216–4272)

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates. Mr. Dennis Metcalf, BPA Transmission Team Lead, is the official responsible for development of BPA's transmission terms and conditions.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement
III. Transmission Terms and Conditions

I. Introduction

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS)

and other costs incurred by BPA. The Federal Power Act, as amended by the Energy Policy Act of 1992, provides that BPA may institute a regional hearing process on proposed transmission terms and conditions of general applicability.

BPA has determined that its initial power rate proposal should include a stable, 5-year rate for most, if not all, of its requirements service. BPA anticipates that the work necessary to assemble such a proposal will take until late March or early April of 1995. Since such a rate would cover the bulk of BPA's firm sales, its impact on BPA's overall proposal is fundamental. Thus, the information BPA is releasing now should be considered preliminary. Information in BPA's preliminary proposal concerning rate design, product definition and pricing, revenue requirement, and other matters should provide parties valuable information that will enable them to better assess BPA's initial proposal when it is released in late March or early April.

In the **Federal Register** notices published February 14, 1995 (60 FR 8497, 60 FR 8505, and 60 FR 8511), BPA stated that it would publish its preliminary proposed rate schedules in the **Federal Register**. However, due to the length of the preliminary proposed rate schedules and developments related to BPA's tiered rates proposal, the preliminary proposed Wholesale Power and Transmission Rate schedules will not be published in the **Federal Register**. They are available from BPA's Public Information Center. To request the preliminary proposed Wholesale Power and Transmission Rate Schedules, call BPA's document request line: (503) 230–3478 or call toll free 1–800–622–4520.

II. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement

All terms contained herein have the meaning accorded them in the Amended and Integrated Pacific Northwest Coordination Agreement.

A. Interchange Energy Imbalances

1. Initial Deliveries of Interchange Energy

$$\text{Energy Charge} = \frac{(\text{heat rate} * \text{fuel price})}{1{,}000} + \text{adder}$$

Heat rate=10,000 BTU/kWh

Fuel price=Average natural gas price at Sumas, Washington, in $/MMBTU (dollars per million BTUs), as published in *Inside FERC*, for the twelve months ending the immediately preceding June 30.

Adder=4.75 mills/kWh, adjusted each August 1 beginning August 1, 1997, by the change in the Consumer Price Index (for all urban consumers as published by the Bureau of Labor Statistics) for Portland, Oregon, for the twelve-month period ending the immediately preceding June 30.

2. Return of Interchange Energy

The Energy Charge for return of Interchange Energy shall be the charge in effect for initial deliveries of Interchange Energy at the time the energy being delivered as Return of Interchange Energy was delivered as an initial delivery of Interchange Energy.

B. Interchange Energy Service Charge

1. No charge for energy returned between 7:00 a.m. and 10:00 p.m., Monday through Saturday.

2. 2.50 mills per kilowatthour of energy returned at other hours, unless such energy was supplied during such other hours, or its return during such other hours was requested, in either of which events there shall be no charge.

C. Interchange Capacity and Emergency Capacity Imbalances

$2.00 per Kilowatt Week of Demand.

D. Transfers Due to Forced Outage

1. Transfer Due to Loss of Thermal Capability

The charge for Interchange Capacity Imbalances plus the greater of a) the charge for Interchange Energy Imbalances and b) the incremental costs of operating the resource used to supply the requested energy plus 4 mills per kilowatthour.

2. Transfer of Emergency Capacity

The charge for Emergency Capacity imbalances plus the greater of a) the charge for Interchange Energy Imbalances and b) the incremental costs of operating the resource used to supply the requested energy. In the event that BPA requires the receiving party to return the energy associated with the transfer of Emergency Capacity, only the charge for Emergency Capacity imbalances shall apply.

E. Holding Interchange Energy Service Charge

1. Basic Charge

2.00 mills per kilowatthour of Holding Interchange Energy on delivery to BPA and 1.50 mills per kilowatthour of Holding Interchange Energy on return from BPA (3.50 mills per kilowatthour total). A loss of Holding Interchange Energy because of spill will result in a refund of 2.00 mills per kilowatthour of Holding Interchange Energy that is converted to Stored Energy and spilled.

2. Reshaping Charge

2.50 mills per kilowatthour of energy, applied in each hour during which the energy delivered or returned is less than the hourly average of energy delivered or returned during that day, to the difference between the daily hourly average of energy delivered or returned during that day and the amount of energy delivered or returned during such hour. The reshaping charge is in addition to the basic charge.

F. Stored Energy Service Charge

1. Charges Paid On Delivery Of Energy To A Reservoir Party

a. 2.00 mills per kilowatthour of energy delivered to BPA on Light Load Hours.

b. 1.00 mill per kilowatthour of energy delivered to BPA on Heavy Load Hours.

c. No charge for energy delivered to BPA on Peak Load Hours.

2. Charges Paid On Return Of Energy Stored Less Than Two Weeks

a. 1.00 mill per kilowatthour of energy returned from BPA on Light Load Hours.

b. 3.50 mills per kilowatthour for energy returned from BPA on Heavy Load Hours.

c. 5.00 mills per kilowatthour for energy returned from BPA on Peak Load Hours.

3. Charges Paid On Return Of Energy Stored For Two Weeks Or More

a. No charge for energy returned from BPA on Light Load Hours.

b. 2.50 mills per kilowatthour for energy returned from BPA on Heavy Load Hours.

c. 4.00 mills per kilowatthour for energy returned from BPA on Peak Load Hours.

4. Charges Paid On Return Of Energy In Cases Of Imminent Spill

a. No charge for energy returned from BPA on Light Load Hours.

b. 2.50 mills per kilowatthour for energy returned from BPA on Heavy Load Hours.

c. 2.50 mills per kilowatthour for energy returned from BPA on Peak Load Hours.

5. Refund Of Storage Charges In Cases Of Spill

In the event that stored energy is not returned to a party because of spill on

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BPA's system, or in the event that BPA transfers the stored energy to another Reservoir Party to avoid spill and the transferred energy is later spilled, BPA will refund the charges paid under section F.1. in an amount equal to the the charges paid under such section, divided by the kilowatthours of energy delivered to BPA, multiplied by the kilowatt hours of stored energy that is spilled.

G. Transfers To Avoid Spill

1. No charge for stored energy transferred by a Reservoir Party to BPA in order to avoid spill.

2. The applicable Stored Energy Service charge shall apply in the event that BPA accepts the transfer of stored energy to avoid spill and then returns the stored energy to the original delivering party.

H. Transmission Service Charges

In any energy or capacity transaction that utilizes BPA transmission facilities where BPA acts solely as a transferor the following charges shall apply to both delivery and return of the energy, if applicable:

1. 1.60 mills per kilowatthour of Interchange Energy paid by the receiving party.

2. 1.75 mills per kilowatthour of Holding Interchange and Storage Energy paid by the party requesting the return.

3. No charge for In Lieu Energy, except when the supplying or receiving party requires BPA, under the terms of the PNCA, to provide transmission, in which case the charge shall be 2.00 mills per kilowatthour of In Lieu Energy paid by the party requiring BPA to provide such transmission.

4. 2.00 mills per kilowatthour of Provisional Energy paid by the Reservoir Party.

5. 2.00 mills per kilowatthour of energy associated with Interchange Capacity and FOR Capacity paid by the party requesting the delivery.

I. Special Storage Arrangements

1. Minimum Rate

a. 1.00 mills per kilowatthour for energy returned during Light Load Hours.

b. 3.00 mills per kilowatthour for energy returned at other hours.

2. Flexible Rate

The charges for special storage arrangements may be specified at a higher rate as mutually agreed between the party requesting the special storage arrangement and BPA.

III. Transmission Terms and Conditions

The following three comparable network transmission service tariffs are being released on a preliminary basis. They indicate how BPA would apply the three types of service tariffs developed by FERC's Litigation Staff to the BPA network. BPA and its customers are continuing their discussions aimed at mutual agreement on comparable network service which may be different from the following. BPA's will publish and submit its final comparable network service proposals pursuant to the schedule developed at the Prehearing/Settlement Conference.

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Proposed Network Integration Service Tariff

Bonneville will provide Network Integration Service to Eligible Customers pursuant to the terms and conditions of this Tariff.

1. Definitions

1.1 Annual Transmission Costs

The total annual cost of the Network Transmission System shall be the amount specified in the Network Integration Transmission Rate Schedule (NT–95) or its successor.

1.2 Application

A written request for Network Integration Service satisfying the provisions of this Tariff.

1.3 Bonneville Service Area

The area consisting of the States of Oregon, Washington, and Idaho; the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of 75 air miles from the just described area, which are a part of the service area of a rural electric cooperative customer served by Bonneville on the effective date of this Tariff which has a distribution system from which it serves both within and without such area.

1.4 Commission

The Federal Energy Regulatory Commission (FERC) or any successor Federal agency having regulatory jurisdiction over this Tariff.

1.5 Control Area

The set of generating units, electrical loads, and transmission facilities managed and overseen by a utility that is responsible for matching its generation and loads on an instantaneous basis.

1.6 Control Area Services (or Ancillary Control Area Services)

Any functions, practices, or services required by North American Electric Reliability Council (NERC), Western Systems Coordinating Council (WSCC), Northwest Power Pool (NWPP), or Bonneville Reliability Criteria and Standards (BRCS) for the safe and reliable operation of a Control Area and the connection of loads and resources to a Control Area.

1.7 Customer

An Eligible Customer that has executed a Service Agreement for Network Integration Service pursuant to this Tariff.

1.8 Customer Electric System

The electric system operated by a Customer to serve its Network Load in accordance with the terms of this Agreement and applicable reliability and operating criteria.

1.9 Direct Assignment Facilities

Transmission facilities which are not an integral part of, and do not support, the Network Transmission System and that are constructed by Bonneville to satisfy an Application under this Tariff, the addition of a new Member System, or addition of a new Network Resource and the costs of which Bonneville may recover directly from the Customer as provided in the NT–95 Rate Schedule or its successor.

1.10 Effective Date

The date upon which the Parties execute a Service Agreement in accordance with the terms and conditions of this Tariff.

1.11 Eligible Customer

A private or public corporation, governmental agency or authority, joint action agency, municipality, rural electric membership corporation or cooperative, person, or any lawful association of the foregoing which engages in the generation, transmission or distribution of electric energy at wholesale or retail and which will rely upon Bonneville's Network Transmission System to integrate effectively its Network Load and Network Resources. Bonneville's direct service industrial customers on the effective date of this Tariff shall be considered Eligible Customers. Other than Bonneville's direct service industrial customers, an Eligible Customer shall not include any entity for which the Commission is prohibited under sections 212(g) and (h) of the Federal Power Act (FPA) from ordering the provision of transmission service. An entity shall be an Eligible Customer only to the extent that it requests service to integrate some or all of the Network Loads of Eligible Customer(s) and a comparable amount of resources that have been designated Network Resources of such Eligible Customer(s).

1.12 Facilities Study

An engineering study conducted by Bonneville to determine the required modifications to Bonneville's Transmission System, including the cost and scheduled completion date for such modifications, which may be required in order to provide a requested Network Integration Service, to add a new Network Customer, to add a new Member System, or to add a Network Resource.

1.13 Good Utility Practice

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts.

1.14 Load Ratio Share

Ratio of a Customer's Network Load to Bonneville total load computed in accordance with the NT–95 Rate Schedule or its successor.

1.15 Member System

An Eligible Customer operating as a part of a lawful combination, partnership, association, or joint action agency composed exclusively of Eligible Customers.

1.16 Native Load Customers

Those wholesale and direct service industrial power sales customers on whose behalf Bonneville, by statute or contract, has an obligation to plan, construct and operate its system to provide reliable electric service.

1.17 Network Load

The designated load of a Customer in Bonneville's Service Area, including the entire load of all Member Systems designated pursuant to section 6. A Customer's Network Load shall not be reduced to reflect any portion of such load served by the output of any generating facilities owned, or generation purchased, by the Customer or its Member Systems.

1.18 Network Operating Agreement

An agreement that provides the technical and engineering provisions necessary to establish and operate a Customer Control Area utilizing Bonneville's Network Transmission System.

1.19 Network Resources

Designated non-Federal resources used by a Customer to provide electric service to its Network Load consistent with reliability criteria generally accepted in the region. Network Resources shall include all owned and purchased Customer non-Federal generating resources that are located in the Bonneville Control Area or connected to the Electric System of such Customer or any Member System. A Customer also may designate as Network Resources any non-Federal generating resources (or portion thereof) located in another utility's Control Area and power purchased by the Customer from another utility and used to provide reliable service to Network Load. Network Resources shall not include that portion of the capacity of any such generating resource that is committed on a firm basis for sale to third parties.

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1.20 Network Transmission System

The transmission facilities owned and/or operated by Bonneville excluding interties and generation integration facilities.

1.21 Network Upgrade

Upgrades to transmission facilities that are integrated with and support Bonneville's Network Transmission System and which are constructed by Bonneville to satisfy, at least in part, an Application, the addition of a new Member System, or the addition of a new Network Resource and the costs of which Bonneville may recover directly from the Customer as provided in the NT–95 Rate Schedule or its successor.

1.22 Opportunity Costs

Net loss of revenue or the net increase in generation cost caused by displacing one transaction with another when the transmission system is so constrained that both transactions cannot be handled at the same time. Opportunity costs do not include any loss of revenues resulting from competition or foregone revenues from purchase and resale transactions to serve other than Native Load Customer or Network Load.

1.23 Service Agreement

The initial agreement and amendments thereto between Bonneville and a Customer for Network Integration Service under this Tariff.

1.24 System Impact Study

An assessment by Bonneville of: (i) the adequacy of the Network Transmission System to accommodate a request for Network Integration Service; and/or (ii) the incremental new facilities or upgrades that would be needed by Bonneville in providing such service pursuant to the terms of this Tariff.

2. Nature of Network Integration Service

2.1 Scope of Service

Network Integration Service is a transmission service that allows Customers to efficiently and economically utilize their Network Resources and other generation resources to serve their Network Load located in Bonneville's Service Area. Network Integration Service requires the Customer to provide, or purchase from Bonneville, certain Ancillary Control Area Services. Bonneville will offer these Ancillary Control Area Services, pursuant to an appropriate service agreement, on a nondiscriminatory basis to any Customer required hereunder to purchase or provide such services as a precondition to receiving Network Service.

In the event that Bonneville provides a credit for the cost of certain Customer-owned transmission facilities pursuant to section 5.6, Bonneville shall be entitled to use such facilities, at no additional charge, to provide the same scope of services for its Native Load Customers and its Network Integration Service Customers, as those services made available to the Customer pursuant to this Tariff. In the absence of such a credit, Bonneville shall be entitled to such service pursuant to a FERC-approved tariff that provides service comparable to that which the Customer provides for its own load.

2.2 Firm Service

A Customer shall have the right to use this Tariff for the delivery of power from Network Resources to Network Loads on a basis that is comparable to Bonneville's use of its Network Transmission System to reliably serve its Native Load Customers. Except as otherwise provided in section 2.5, service over Bonneville's Network Transmission System for the delivery of power from Network Resources to Network Load shall have priority over all nonfirm uses of Bonneville's Network Transmission System by Bonneville or third parties.

2.3 Nonfirm Service

A Customer also may use this Tariff to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such deliveries shall be on a nonfirm basis, subject to available capacity, but on an equal basis with Bonneville's use of economy energy to service Native Load Customers, subject to section 2.5 below, and at no additional transmission charge. Curtailments of nonfirm service shall be governed by section 10 and shall be implemented on a nondiscriminatory basis among all other nonfirm uses of Bonneville's Network Transmission System, including Bonneville's nonfirm uses of the system, except where such service is displaced pursuant to section 2.5 below.

2.4 Restrictions on Use of Service

Network Integration Service shall not be used for: (i) wholesale sales of capacity or energy by the Customer or its Member Systems to third parties; or (ii) directly or indirectly providing transmission service by the Customer to third parties. An Eligible Customer may not receive service pursuant to more than one service agreement that applies this Tariff during any billing period.

2.5 Bonneville Right to Displace

Bonneville shall have the right to displace Customer Network Resources and nonfirm purchases, at a cost which keeps the Customer whole, in the event of a transmission bottleneck to the extent that such displacement reduces the bottleneck, if Bonneville finds it necessary in order to avoid spill on the Federal power system or on the systems of Network Integration Service Customers.

3. Availability of Network Integration Service

3.1 General Conditions

In accordance with the provisions of this Tariff, Network Integration Service shall be provided by Bonneville to allow a Customer to integrate, plan, economically dispatch, and regulate designated Network Resources to serve the Customer's consolidated Network Load, via Bonneville's Network Transmission System, as a single Control Area in the same manner that Bonneville performs those functions for Bonneville's Native Load Customers.

3.2 Control Area Requirement

As a condition of obtaining Network Integration Service, the Customer shall: (i) operate as a Control Area under applicable guidelines of the NERC, the WSCC, the NWPP, and BRCS; or (ii) satisfy its responsibility to be operated as a Control Area by contract with Bonneville; or (iii) by contract with another entity which Bonneville accepts as sufficient to satisfy NERC, WSCC, NWPP, and BRCS requirements. Bonneville shall not unreasonably refuse to accept contractual arrangements with another entity for such service.

3.3 Bonneville Responsibilities

Bonneville shall plan, construct, operate, and maintain its Network Transmission System in accordance with Good Utility Practice in order to provide the Customer with Network Integration Service within and across Bonneville's Control Area in accordance with this Tariff. Bonneville shall include the Customer's Network Load in its transmission system planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transmission capacity to deliver the Customer's Network Resources to serve Network Load on a basis comparable to Bonneville's delivery of its own generating and purchased resources to Bonneville's Native Load Customers. If the Customer meets its Control Area responsibilities without placing its loads and resources in Bonneville's Control Area, power scheduling will be provided consistent with normal utility practices for scheduling power between Control Areas.

3.4 Customer Redispatch Obligation

As a condition of receiving Network Integration Service, a Customer agrees to redispatch its Network and other resources as requested by Bonneville to create additional firm transmission capacity on Bonneville's Network Transmission System to allow Bonneville to provide new firm transmission service. Whenever a Customer redispatches its Network and other resources pursuant to this section it shall be compensated by Bonneville for the Opportunity Costs it incurs. To the extent practicable, the redispatch of resources pursuant to this section shall be on a least cost, nondiscriminatory basis as between all Network Integration Customers and Bonneville. The Customer shall be compensated for redispatching resources pursuant to the NT Rate Schedule or its successor.

4. Initiating Service

4.1 Conditions Precedent for Receiving Service

Subject to the terms and conditions of this Tariff, Bonneville shall provide Network Integration Service within Bonneville's Service Area to any Eligible Customer, provided that: (i) the Eligible Customer has completed an Application for Network Integration Service as provided under this Tariff; (ii) the Eligible Customer and Bonneville have completed the technical arrangements set forth in section 4.6 below; and (iii) the Eligible Customer has executed a Service Agreement.

4.2 Application Procedures

An Eligible Customer requesting service under this Tariff must submit a written Application to: Bonneville Power Administration, Attention: Manager, Transmission Business, P.O. Box 3621; Portland, Oregon, 97208–3621 as far as possible in advance of the calendar month in which service is to commence. A completed Application shall provide all of the following information:

(i) The identity, address, and telephone number of the party requesting service and of the party's designated contact person.

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under this Tariff.

(iii) A description of the Network Load (subdivided into the load of any Member Systems whose loads are designated as Network Load). This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Bonneville substation at the same transmission voltage level. The description should include a 10-year forecast of summer and winter load and resource requirements beginning with the first year after the Effective Date.

(iv) The amount and location of any interruptible loads included in the Network load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been curtailed), that portion of the load subject to curtailment, the conditions under which a curtailment can be implemented and any limitations of the amount and frequency of curtailments. An Eligible Customer should identify the amount of curtailed customer load (if any) included in the 10-year load forecast provided in response to (iii) above.

(v) A description of Network Resources (current and 10-year projection), which shall include, for each Network Resource: Data on the Eligible Customer's Network Resource characteristics in an appropriate dynamic data format (PSS/E or WSCC). Unit size and amount of capacity from that unit to be designated as Network Resource:

—Var capability of all generators
—Operating restrictions
—Any periods of restricted operations throughout the year
—Minimum loading level of unit
—Normal operating level of unit
—Any must-run unit designations required for system reliability or contract reasons
—Approximate variable generating cost ($/megawatthour) for redispatch computations.
—Arrangements governing sale and delivery of power to third parties from generating facilities located in the Bonneville control area, where only a portion of unit output is designated as a Network Resource.
—Description of purchased power designated as a Network Resource, including source of supply, Control Area location, transmission arrangements, and delivery point(s) to the Bonneville Network Transmission System.

(vi) Description of Eligible Customer's Transmission System:

—Data on the Eligible Customer's transmission system characteristics in an appropriate load flow format (PSS/E, or WSCC).
—Description of all lines and transformers operated at 50 kilovolt and higher
—Operating restrictions needed for reliability
—Operating guides employed by system operators
—Contractual restrictions or committed uses of the Eligible Customer's Transmission System, other than the Eligible Customer's Network Loads and Resources
—Location of Network Resources described in section 4.2(v)
—Ten (10)-year projection of system expansions or upgrades
—Transmission system maps that include any proposed expansions or upgrades
—Thermal ratings of Eligible Customer's Control Area transmission facilities

(vii) Service commencement date and the term of the requested Network Integration Service:

If an Application fails to meet the requirements of this Tariff, Bonneville shall notify the Eligible Customer requesting service within 10 days of receipt and specify the reasons for such failure. Whenever possible Bonneville shall attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer.

4.3 Insufficient Capacity

In the event that there is insufficient capacity to initially meet the request, Bonneville shall offer, at Customer's expense, to make sufficient capacity available through construction, redispatch or by otherwise rearranging its own use of the Network Transmission System.

4.4 Direct Assignment Facilities

At the Customer's request, when required to make deliveries hereunder, Bonneville shall also provide Direct Assignment Facilities provided that the Customer agrees to pay for such Direct Assignment Facilities. The Customer shall pay Bonneville for such facilities in accordance with the applicable rate schedule.

4.5 Queue Priority

Applications for Network Integration Service or requests to add service for new Network Resources or new Member Systems, along with applications for other Bonneville firm transmission services, will be assigned a priority according to the date on which the application is received, with the earliest application receiving the highest priority.

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4.6 Technical Arrangements to be Completed Prior to Commencement of Service

Service under this Tariff shall not commence until Bonneville and the Customer, or a third party which has contracted to provide Control Area Services, have installed all metering facilities, remote terminal units, communications equipment, and associated equipment necessary to ensure that the Customer's Network Loads and Network Resources operate in a Control Area that is consistent with NERC, WSCC, NWPP, and BRCS guidelines and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Network Transmission System. Bonneville shall exercise reasonable efforts, in coordination with the Customer, to complete such arrangements as soon as practical after the Effective Date.

4.7 Customer Facilities

Bonneville's provision of Network Integration Service shall be conditioned upon the Customer's constructing, maintaining, and operating the facilities on its side of each point of interconnection that are necessary to reliably interconnect and deliver power from the Network Transmission System to the Customer and/or its Member Systems. The Customer shall be solely responsible for constructing and/or installing and operating any incremental facilities on the Customer's side of each such interconnection point.

4.8 Termination of Service

A Customer may terminate service under this Tariff no earlier than 2 years after providing Bonneville with written notice of the Customer's intention to terminate. A Customer's provision of notice to terminate service under this Tariff shall not relieve the Customer of its obligation to pay Bonneville any rates, charges, or fees, including charges related to the construction of incremental facilities, for service previously provided under the applicable Service Agreement or the Network Operating Agreement, and which are owed to Bonneville as of the date of termination.

5. Network Resources

5.1 Designation of Network Resources

All of the owned and/or purchased resources that were serving such Customer's or its Member Systems' Network Loads under firm agreements entered into on or before the Effective Date shall be designated as Network Resources as of the Effective Date. A Customer may terminate the designation of a generating resource located within Bonneville's or the Customer's Control Area as a Network Resource if the Customer provides 30 days' written notification to Bonneville that the terminated resource will not be operated to serve any portion of the Customer's Network Load for the time period that such resource is not designated as a Network Resource. The Customer may later redesignate the resource as a Network Resource in accordance with the provision of section 5.4. The Customer also may terminate the designation of all or part of a generating resource not located within the Control Area of Bonneville or the Customer as a Network Resource upon 30 days' notice to Bonneville. If the Customer has committed to make a firm system sale (to a third party) using a portion of the capacity of more than one Network Resource, Bonneville will treat each Network Resource as making a representative portion of such capacity sale based on the likely loadings of each generating resource that will occur under representative system conditions (e.g., off-peak and on-peak).

5.2 Operation of Network Resources

A Customer shall not operate any of its generating facilities located in the Customer's or Bonneville's Control Areas such that the output of those facilities exceeds the sum of: (i) the capacity from those facilities that have been designated as Network Resources plus; (ii) the amount of power from those facilities scheduled for delivery to a third party. When a Customer sells power or energy from a Network Resource located within Bonneville's Control Area, the Customer shall arrange transmission service under the applicable Bonneville Transmission Service Tariff.

5.3 Transmission Arrangements for Network Resources Located Outside the Bonneville Control Area

It shall be the Customer's responsibility to make any transmission arrangements necessary for delivery of power produced from a Network Resource located outside the Bonneville Control Area to the Network Transmission System. If a Customer designates as a Network Resource less than the full amount of the maximum net dependable capability of a generating resource located within the Control Area of another utility, the Customer may request Bonneville to supply other transmission service for that portion of the maximum net dependable capability of the generating resource which is not designated as a Network Resource.

5.4 Designation of New Network Resources

A Customer may request the designation of a new Network Resource by providing Bonneville with as much advance written notice as practicable, but not less than 60 days. Bonneville must satisfy the requirements of applicable environmental statutes prior to committing to the additional service. In determining whether the Customer has provided sufficient notice for Bonneville to provide firm service from a newly designated Network Resource, Bonneville shall apply the same standards as it would apply to its own newly designated resources. Where a Customer proposes to substitute a new Network Resource for an existing Network Resource, Bonneville shall not unreasonably withhold agreement where agreement would impose no economic, technical, or unacceptable environmental burdens on Bonneville. To the extent insufficient notice is provided for Bonneville to construct transmission facilities or upgrades determined in accordance with section 7 as necessary for delivery of a new Network Resource to the Customer's Network Load, Bonneville shall not be obligated to deliver power from such Network Resource pursuant to this Tariff until all needed facilities or upgrades are completed and all environmental responsibilities have been satisfied. Notice of a Customer's intent to designate a new Network Resource shall include sufficient engineering, and technical information to permit Bonneville to perform a System Impact Study addressing the transmission requirements associated with delivery of such new Network Resource to the Customer's Network Load as set forth in section 4.2.

5.5 Reserve Margin Limitation on Designation of Network Resources

A Customer shall designate an amount (in MW) of Network Resources that enables the Customer to operate the Customer Control Area with an installed reserve margin not to exceed 25 percent of the Customer's reasonably forecasted consolidated Network Load. Once the designation of a Network Resource becomes effective, the Customer shall not be penalized if reasonably forecasted loads do not materialize. A Customer may designate a new Network Resource that would cause it to exceed the reserve margin limitation so long as the addition of such resource would be consistent with the Customer's obligations to serve its Network Load in accordance with Good Utility Practice and the Customer reasonably forecasts that its projected installed reserve margin will be in compliance with this reserve criterion within 3 years of the date on which such new Network Resource becomes operational.

Bonneville shall provide an exemption from the 25 percent reserve margin limitation if the Customer demonstrates that it must maintain a higher level of reserves to operate reliably under NERC, WSCC, NWPP, and BRCS guidelines and that it has undertaken reasonable efforts to procure coordination services (such as reserve sharing) that would reduce its required level of reserves. If an exemption applies, the Customer may designate an amount of Network Resources equal to the amount necessary to operate reliably under the above referenced guidelines.

Bonneville is subject to the above referenced requirements in determining the resources it needs to operate reliably. Bonneville may not maintain a reserve margin in excess of that permitted any Network Customer under this Tariff. Each year, Bonneville submits to WSCC a 10-year resource plan indicating the generating resources Bonneville will use to operate reliably under regional and national reliability standards. This plan shall be made available to the Customer upon request.

5.6 Customer Owned Transmission Facilities

The Customer will be entitled to receive a Customer Facilities Credit as defined in the NT–95 Rate Schedule or its successors if transmission facilities as described in such rate schedule are made available for use under this Tariff.

6. Designation of Member Systems for Customers Receiving Network Integration Service

6.1 Member Systems

A Customer may designate the individual Member Systems that will be included in the Customer Control Area and on whose behalf Bonneville shall provide Network Integration Service. The Member Systems as of the Effective Date shall be specified in the Service Agreement.

6.2 New Member Systems Connected With Bonneville

A Customer shall provide Bonneville with as much written notice as reasonably practicable of the designation of additional entities that will be added to its Control Area as new Member Systems. Bonneville shall provide Network Integration Service for any such new Member System, provided that: (i) Bonneville reasonably determines in accordance with section 7 that the Network Transmission System can reliably accommodate such new Member System; and (ii) the Customer agrees to pay the costs of any incremental transmission facilities upgrades that Bonneville reasonably determines must be installed to interconnect reliably such new Member System with the Bonneville Network Transmission System. The engineering and technical specifications for any such new interconnection shall be set forth in an amendment to the Service Agreement under the Tariff. Until such incremental facilities are completed, Bonneville shall agree to provide Network Integration Service out of existing transmission capacity, pursuant to the prioritization described in section 4.5 above, to the extent such service would not impair the reliability of service to Native Load Customers, firm transmission service customers, and other Network Service Customers. In addition if the Customer so elects, to the extent the requested service can be provided in whole or in part by redispatching the system, the Customer shall be assigned the incremental costs caused by the redispatch.

6.3 New Member Systems Not Connected with Bonneville

To the extent that a Customer desires to obtain transmission service for a Member System that is not connected to the Network Transmission System, the Customer shall have the option of: (i) electing to include such Member System in the Customer Control Area by including the entire load of that Member System as Network Load for all purposes under this Tariff and designating Network Resources in connection with such additional Network Load; or (ii) excluding the load of that Member System from its Network Load and purchasing Point-to-Point Transmission for power transfers between the Customer's Control Area and the new Member System not connected to Bonneville's system. Transmission across third-party systems is not covered by this Tariff. To the extent that a Customer gives notice of its intent to add a new Member System pursuant to this section and sufficient capacity is not available on the Network Transmission System to provide the requested service pursuant to the prioritization described in section 4.5 above, without impairing reliability to Bonneville's Native Load Customers and other firm uses of the system, the Customer shall be charged for the cost of any incremental facilities determined necessary by Bonneville to provide Network Integration Service. In addition, if the Customer so elects, to the extent the requested service can be provided in whole or in part by redispatching the system, the Customer shall be assigned the incremental costs caused by the redispatch. Bonneville shall be responsible for the cost of any incremental facilities or system redispatch costs associated with adding new resources to serve its Native Load Customers, as provided in section 7.

6.4 New Interconnection Points

To the extent a Customer desires to add a newly constructed interconnection point between the Network Transmission System and a Member System, the Customer shall provide Bonneville with as much written notice as reasonably practicable; however, Bonneville shall not be obligated to provide additional service with respect to such interconnection point until such new interconnection is established. Bonneville shall add such new interconnection point provided that Bonneville reasonably determines that the Bonneville Network Transmission System can reliably accommodate such new interconnection point. The Customer shall be responsible for the costs of any incremental facilities associated with such new interconnection. The engineering and technical specifications for such new interconnection point shall be set forth in a separate interconnection agreement to be negotiated by the Parties.

7. Transmission Facilities or Upgrades Related to Designation of New Network Resources and Member System

7.1 System Impact Study

Once a Customer provides Bonneville with notice of its intent to designate a new Network Resource pursuant to section 5.4 or a new Member System pursuant to section 6, Bonneville and the Customer shall execute an agreement under which Bonneville shall perform a System Impact Study to determine the incremental transmission facilities, if any, attributable to integrating such new Network Resource or new Member System into Bonneville's Network Transmission System. In performing the System Impact Study, Bonneville shall apply the same methods and criteria that it employs in integrating new owned or purchased resources acquired by Bonneville to serve Bonneville's Native Load Customers. Bonneville shall complete the System Impact Study within 60 days or will provide the Customer a written explanation of when

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the study will be completed and the reasons for the delay. A Customer shall be responsible for the cost of the System Impact Study and shall be provided with the results thereof, including relevant workpapers.

7.2 Facilities Study

Based on the results of the System Impact Study, Bonneville also may perform, pursuant to a separate agreement with the Customer, a Facilities Study addressing the detailed engineering, design, and cost of incremental transmission facilities. The Facilities Study shall be completed as soon as reasonably practicable and will be used by Bonneville to provide the Customer with an estimate of the cost for constructing incremental facilities. The Customer shall be responsible for the costs of the Facilities Study and shall be provided with the results thereof, including relevant workpapers. Bonneville shall be responsible for the costs of any Facilities Study undertaken to determine the costs of adding incremental facilities associated with Bonneville's addition of new owned or purchased resources used to serve Bonneville's load.

7.3 Due Diligence

Bonneville shall use due diligence to install any transmission facilities required to integrate a new Network Resource or to interconnect a new Member System designated by the Customer in accordance with section 6.3.

7.4 Incremental Transmission Costs Associated With Adding New Network Resources and New Member Systems

After the Effective Date, Customer and Bonneville each shall be responsible for the incremental transmission facility costs associated with integration of new Network Resources, new Member Systems and new Native Load Customers. The costs of any such incremental facilities directly assigned to Bonneville or the Customer shall not be included in the calculation of Bonneville's Annual Transmission Costs. The costs of such facilities shall be determined in a formal Bonneville rate hearing pursuant to section 7(i) of the Northwest Power Act. Any incremental facilities costs assigned to the Customer shall be reflected in an amendment to the Service Agreement.

7.5 Changes in Service Requests

Under no circumstances shall a Customer's decision to cancel or delay the addition of a new Network Resource and/or designation of a new Member System in any way reduce or relieve the Customer's obligation to pay the costs of any incremental facilities constructed by Bonneville and charged to the Customer pursuant to this section; provided, however, that upon receipt of a Customer's written notice of such a cancellation or delay, Bonneville shall use the same reasonable efforts to mitigate the costs and charges owed to Bonneville as it would to reduce its own costs and charges.

7.6 Annual Load and Resource Information Updates

A Customer shall provide Bonneville with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Service under this Tariff. The Customer also shall provide Bonneville with timely written notice of material changes in any other information provided in its Application relating to the Customer's Network Load, Network Resources, its transmission system, or other aspects of its facilities or operations affecting Bonneville's ability to provide reliable service under this Tariff.

8. Ancillary Services

A customer may purchase the ancillary services necessary for prudent utility operations from Bonneville or from another supplier where the purchase is technically feasible and consistent with NERC and WSCC requirements.

9. Transmission Losses

Transmission losses shall be determined on the basis of average estimated system losses. The Customer shall compensate Bonneville for losses by either providing additional energy for losses associated with service pursuant to this Tariff or by buying losses from Bonneville in accordance with Bonneville's Firm Power Products and Services Rate Schedule or its successor.

10. Curtailments

10.1 System Reliability

Notwithstanding any other provisions of this Tariff, Bonneville reserves the right, consistent with Good Utility Practice to curtail Network Integration Service, without liability on Bonneville's part, to make necessary adjustments to, changes in, or repairs on its lines, substations, and facilities, and in cases where the continuance of Network Integration Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Bonneville system or on any other system(s) directly or indirectly interconnected with the Bonneville system, Bonneville, consistent with Good Utility Practice, also may curtail Network Integration Service in order to: (i) limit the extent or damage of the adverse condition(s) or disturbance(s); (ii) prevent damage to generating or transmission facilities; or (iii) expedite restoration of service. Bonneville shall give Customers as much advance notice as is practicable in the event of such curtailments. Any curtailments of Network Integration Service will be not unduly discriminatory relative to Bonneville's use of the Network Transmission System on behalf of its Native Load Customers.

10.2 Transmission Constraints

During any period when Bonneville determines that a transmission constraint exists on the Network Transmission System, and such constraint may impair the reliability of the Bonneville system, Bonneville shall take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Bonneville system and to avoid curtailment of service. To the extent Bonneville determines that the reliability of the Network Transmission System can be maintained by redispatching resources (including reductions in off-system purchases and sales), Bonneville shall initiate procedures pursuant to the Network Operating Agreement or pursuant to provisions in individual service agreements to redispatch Bonneville's and its Customers' resources on a least-cost basis without regard to the ownership of such resources. To the extent and for the duration that it is determined necessary to relieve a transmission constraint to reliably serve Bonneville Native Load Customers and a Customer's Network Load, Bonneville and its Customers shall be required to redispatch their resources (including reducing purchases and sales), in accordance with the least-cost redispatch procedures implemented by Bonneville pursuant to the Network Operating Agreement or other agreement. Any redispatch under this section shall not be unduly discriminatory as between Bonneville and its Customers. To the extent reasonable, practicable, and consistent with Good Utility Practice, Bonneville shall curtail, on a pro rata basis, all similarly situated uses (e.g., nonfirm uses would be curtailed first, and then firm uses) that are affected by the emergency.

10.3 Cost Responsibility for Relieving Capacity Constraints

Whenever Bonneville implements least-cost redispatch procedures to relieve a capacity constraint, Bonneville shall determine the total Opportunity Cost impact of such procedures. Bonneville and its Customers shall each bear a proportionate share of the total redispatch cost impact based on the then-current Load Ratio Shares or as otherwise agreed.

10.4 Load Curtailments

To the extent that a transmission constraint on the Bonneville transmission system cannot be relieved through the implementation of least-cost redispatch procedures and Bonneville determines that it is necessary for Bonneville and the Customer to curtail load, the parties shall curtail such load as discussed below.

10.5 Curtailment Procedures

Prior to the Effective Date, and as a precondition to the commencement of service hereunder, Bonneville and the Customer shall discuss emergency programs for the curtailment of loads with the objective of relieving loadings on the Network Transmission System. The parties shall implement such agreed programs during any period when Bonneville determines that a transmission capacity constraint exists and such curtailment of loads is necessary to alleviate such constraint.

10.6 Curtailment Allocations

To the extent practicable and consistent with Good Utility Practice, any curtailment shall be shared by Bonneville and its Customers. Bonneville shall not direct a Customer to curtail load to an extent greater than Bonneville would curtail Bonneville's Native Load Customers under similar circumstances. A Customer's failure to implement such emergency load curtailment programs may be deemed by the Bonneville to be a default under the service agreements that apply this Tariff.

11. Rates and Charges

The Customer shall pay for services provided under this Tariff as provided in rates determined in a formal Bonneville rate hearing pursuant to section 7(i) of the Northwest Power Act.

12. Billing and Payment

Billing and payment provisions identified in Bonneville's General Rate Schedule Provisions or successor shall be applicable.

13. Booking of Costs Attributable to Bonneville

Bonneville and the Customer shall keep such records as may be needed to afford a clear history of all transactions under this Tariff. The originals of all such records shall be retained for a minimum of 2 years plus the current year (or such longer period as may be required by any regulatory commission having jurisdiction, and copies shall be delivered to the other party on request.

14. Indemnification and Liability

14.1 Western Interconnected Systems Agreement

If a Customer is a party to the Western Interconnected Systems Agreement Limiting Liability, such agreement shall continue in full force and effect as between the parties to the extent that such provisions may apply to the transactions contemplated by this Tariff.

14.2 No Western Interconnected Systems Agreement

If a Customer is not a party to the Western Interconnected Systems Agreement Limiting Liability, and there is no other agreement between Bonneville and the Customer governing liability and indemnification between them, then additional provisions for the protection of electric generation and transmission facilities liability and indemnification may be required. Such additional provisions shall be set forth in the Service Agreement.

14.3 Uncontrollable Forces

Bonneville shall not be liable for any claim of damage attributable to any interruption or reduction of service due to any uncontrollable force.

15. Regulatory Filings

Nothing contained in this Tariff or any Service Agreement shall be construed as affecting in any way the right of Bonneville to unilaterally make application to the Commission for a change in rates or charges.

Nothing contained in this Tariff or any associated Service Agreement shall be construed as affecting in any way the ability of any Customer receiving Network Integration Service under the Tariff to exercise its rights under the FPA or any successor statute and pursuant to the Commission's rules and regulations promulgated thereunder.

16. Operating Arrangements

16.1 Operation of the Customer Control Area

A Customer shall plan, construct, operate, and maintain the Customer Control Area in accordance with Good Utility Practice, which shall include, but not be limited to, all applicable NERC and WSCC guidelines, or become part of Bonneville's Control Area or the Control Area of another utility whose Control Area meets WSCC and NERC guidelines.

16.2 Network Operating Agreement

The terms and conditions under which the Customer shall operate the Customer Control Area and the technical and operational matters associated with the implementation of this Tariff shall be specified in a separate Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to: (i) operate and maintain equipment necessary for incorporating the Customer Control Area within the Bonneville transmission system (including, but not limited to, remote terminal units, metering, communication equipment, and relaying equipment); (ii) transfer data between control centers (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside Bonneville's transmission system, interchange schedules, unit outputs for dispatches required under section 10, voltage schedules, loss penalty factors, and other real-time data; (iii) design and implement software programs required for data links and constraint dispatching; (iv) exchange data on forecasted loads and resources necessary for long-term planning; and (v) address any other technical and operational considerations required for implementation of this Tariff.

17. Network Operating Committee

If needed, a Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under this Tariff including: (i) standards for the design, operation, and maintenance of the facilities necessary to integrate Customer Electric Systems with Bonneville's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment, and relaying equipment); (ii) information transfers between control centers (including, but not limited to, operational characteristics of Network Resources, generation schedules for units outside Bonneville's Transmission System, interchange schedules, unit outputs for dispatch, voltage schedules, loss penalty factors, and other real-time data); (iii) Software programs required for data links and constraint dispatching; (iv) information required

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for long-term planning; (v) load curtailment procedures in the event of transmission constraints or system emergencies; (vi) least-cost redispatch procedures; and (vii) other technical and operational considerations required for implementation of this Tariff. Each Customer and Bonneville shall have at least one representative on the Committee. The Committee may establish such subcommittees as it deems necessary to carry out its functions. The Committee shall meet from time to time as need requires, but no less than once each calendar year, unless other arrangements are mutually agreed upon.

18. Procedures to Resolve Transmission Complaints

Any complaint arising concerning implementation of this Tariff may be resolved, at the Customer's discretion, by either:

(a) A voluntary dispute resolution process, which may include mediation or arbitration or both, pursuant to the terms of a regional transmission association governing agreement, or such other dispute resolution rules as may be agreed to by Bonneville and the Customer; or

(b) A transmission complaint filed with the Commission.

19. Creditworthiness

For the purpose of determining the ability of the Customer to meet its obligations related to service hereunder, Bonneville may require reasonable credit review procedures which may include, but shall not be limited to, verification that the Customer is not operating under any State or Federal bankruptcy laws, is not subject to the uncertainty of pending liquidation or regulatory proceedings in State or Federal courts, and no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the Customer's ability, in Bonneville's determination, to remain solvent. This determination shall be made in accordance with standard commercial practices. In addition, Bonneville may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Tariff or an alternative form of security proposed by the Customer and acceptable to Bonneville that protects Bonneville against the risk of nonpayment. Any disputes over the terms of such security arrangements shall be subject to the arbitration provisions of this Tariff.

Proposed Bonneville Power Administration Point-to-Point (PTP) Firm Network Transmission Service Tariff

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Bonneville Power Administration Point-to-Point (PTP) Firm Network Transmission Service Tariff

The Bonneville Power Administration (Bonneville) will provide Point-to-Point (PTP) Firm Network Transmission Service to Eligible Customers pursuant to the terms and conditions of this Tariff.

1. Definitions

1.1 Applicant

An Eligible Customer who submits a completed Application.

1.2 Application

A written request by an Eligible Customer for PTP Firm Network Transmission Service submitted to Bonneville which satisfies the provisions of this Tariff, including provisions of section 5.2.

1.3 Commission

The Federal Energy Regulatory Commission or its successor.

1.4 Control Area

The set of generating units, electrical loads, and transmission facilities managed and overseen by a utility that is responsible for matching generation with such loads on an instantaneous basis.

1.5 Customer

An Eligible Customer that has executed a Service Agreement for Network PTP Transmission Service pursuant to this Tariff or is receiving service under a proposed Service Agreement.

1.6 Delivering Party

The entity supplying the electric energy to be transmitted over Bonneville's Network PTP Transmission System Facilities.

1.7 Direct Assignment Facilities

Transmission facilities which are not an integral part of, and do not support, Bonneville's Network PTP Transmission System Facilities and that are constructed by Bonneville to satisfy an Application under this Tariff, and whose costs Bonneville may recover directly from the Customer as provided in the PTP Firm Network Transmission rate schedules (PT–95), or its successor.

1.8 Effective Date

The date upon which Bonneville and an Eligible Customer execute a Service Agreement in accordance with the terms and conditions of this Tariff.

1.9 Eligible Customer

A private or public corporation, governmental agency or authority, joint action agency, municipality, rural electric membership corporation or cooperative, person, or any lawful association of the foregoing, which engages in the generation, transmission, or distribution of electric energy at wholesale or retail and which will rely on Bonneville's Network PTP Transmission System Facilities to transmit power from a control area or resource to another control area for the purpose of satisfying the commercial transmission needs of the customer. Bonneville's direct service industrial customers on the effective date of this Tariff shall be considered Eligible Customers. Other than Bonneville's direct service industrial customers, and Eligible Customer shall not include any entity for which the Commission is prohibited under Sections 212 (g) and (h) of the Federal Power Act (FPA) from ordering the provision of transmission service. A power marketing entity (marketer) will be considered to be an Eligible Customer only to the extent that it requests service to deliver capacity or energy that will be purchased by an Eligible Customer.

1.10 Good Utility Practice

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to produce the desired result at the lowest cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts.

1.11 Incremental Cost

The increase in Network PTP Transmission System Facilities revenue requirements incurred by Bonneville in providing the Customer's share of Network Upgrades which are required to provide Network Transmission Service as determined in a separate ratemaking process pursuant to Section 7(i) of the Northwest Power Act (16 U.S.C. § 839e(i)).

1.12 Native Load Customers

Those wholesale and direct service industrial power sale customers, other than Network Integration Service Customers, on whose behalf Bonneville, by statute, or contract, has undertaken an obligation to plan, construct, and operate its electric system to provide reliable electric service.

1.13 Network PTP Transmission System Facilities

The Integrated Network segment of the Federal Columbia River Transmission System operated by Bonneville.

1.14 Network PTP Transmission Service

Firm transmission service provided pursuant to this Tariff and an executed Service Agreement at 60 hertz, alternating current, three phase, over the Network PTP Transmission System Facilities.

1.15 Network Upgrade

Upgrades to transmission-facilities that are integrated with and support the Network PTP Transmission System Facilities and are constructed by Bonneville to satisfy, at least in part, an Application.

1.16 Opportunity Costs

Net loss of revenue or the net increase in generation cost caused by displacing one transaction with another when the transmission system is so constrained that both transactions cannot be handled at the same time. Opportunity costs do not include any loss of revenue resulting from competition, or foregone revenues from purchase and resale transactions to serve other than Native Load Customers or Network Load. or foregone revenues from purchase and resale transactions.

1.17 Point(s) of Delivery

Point(s) on Bonneville's Network PTP Transmission Facilities where Bonneville is interconnected with the Receiving Party or the Receiving Party's authorized agent and where Bonneville can deliver power transmitted pursuant to a Service Agreement.

1.18 Point(s) of Interconnection

Point(s) on Bonneville's Network PTP Transmission System Facilities where Bonneville is interconnected with the Delivering Party or the Delivering Party's authorized agent and where Bonneville can receive power transmitted pursuant to a Service Agreement.

1.19 Receiving Party

The entity receiving the electric energy to be transmitted over Bonneville's Network PTP Transmission System Facilities.

1.20 Reservation Charge

The charge the Customer must pay to reserve capacity for future use as described in the Point-to-Point (PT–95) Transmission Rate or its successor in Appendix A.

1.21 Service Agreement

The initial agreement and any supplements or amendments thereto entered into by the Customer and Bonneville in order to initiate service under this Tariff.

1.22 Study Agreement

An agreement under which Bonneville would agree to conduct a

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System Impact Study, and the Customer would agrees to compensate Bonneville in advance for the cost of conducting the System Impact Study.

1.23 System Impact Study

An assessment by Bonneville to determine whether sufficient transmission capacity exists to provide the requested transmission service initially and for the term of the request. The assessment study results shall include the cost, environmental review, and scheduled completion date for such modifications, which may be determined to be required in order to provide a requested Network PTP Transmission Service.

1.24 Transmission Demand

The maximum hourly amount of electric power that Bonneville agrees to transmit for the Customer over Bonneville's Network PTP Transmission System Facilities between the Point(s) of Interconnection and the Point(s) of Delivery. Transmission Demand shall be expressed in terms of whole megawatts on a 60-minute interval (commencing on the clock-hour) basis.

2. Character and Availability of Service

2.1 Nature of Service

PTP Firm Network Transmission Service is a service that permits Eligible Customers to serve Customer load or transactions with third parties. The service provides firm transmission capacity to Eligible Customers from one control area to another through Points of Interconnection and Points of Delivery. This service also permits nonfirm wheeling through "Secondary" Points of Interconnection and Delivery.

2.2 Term of Service

PTP Firm Network Transmission Service is available for a minimum of 1 month.

2.3 Service Agreement Requirements

A Service Agreement must be executed prior to the commencement of service under this Tariff except as provided in section 13.4.

2.4 Control Area Requirements

As a condition to obtaining Network PTP Transmission Service, the Customer shall: (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC), the Western Systems Coordinating Council (WSCC) the Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP); or (ii) satisfy its responsibility to be operated as a Control Area by contract with Bonneville pursuant to section 2.5; or (iii) by contract with another entity which Bonneville accepts as sufficient to satisfy NERC, WSCC, WSCC, and NWPP requirements. Bonneville shall not unreasonably refuse to accept contractual arrangements with another entity for such service.

2.5 Ancillary Services

This Tariff constitutes an offer to provide only Network PTP Transmission Service. Bonneville commits either to provide the Customer with services necessary for it to take Network PTP Transmission Service under this Tariff or to cooperate with the Customer so that the Customer can utilize its own resources or the resources of third parties to provide such services. Such services if provided by Bonneville are offered on a not unduly discriminatory basis, subject to resource, engineering, and reliability limitations.

3. Interconnection and Interchange

3.1 Designation of Transmission Demand, Point(s) of Interconnection, and Point(s) of Delivery

The Transmission Demand, Point(s) of Interconnection, and Point(s) of Delivery shall be as set forth in the Service Agreement. The Points of Interconnection and Delivery so designated in the Service Agreement are the "Primary" Points of Interconnection and Delivery. The total Transmission Demand shall be equal to the sum of the Transmission Demands at all Points of Interconnection which shall equal the sum of the Transmission Demands at all Points of Delivery.

3.2 Bonneville Responsibility

Bonneville shall deliver the capacity and energy required from Point(s) of Interconnection to Point(s) of Delivery as pursuant to the Service Agreement up to the Transmission Demand.

3.3 Metering

Electric capacity and energy transmitted under this Tariff shall be measured as appropriate by metering equipment provided by Bonneville and the Customer at such points and voltages as set forth in the Service Agreement.

3.4 Third Party Arrangements

The Customer need not be directly interconnected with Bonneville, but shall make any and all necessary arrangements for the delivery of power to the Point(s) of Interconnection and receipt from the Point(s) of Delivery, and Bonneville shall have no responsibility for such arrangements. The Customer shall furnish Bonneville with such necessary and appropriate information with respect to such arrangements as shall permit Bonneville to carry out its responsibilities under this Tariff. The Customer shall be responsible for resolution of operating problems and for making and arranging any necessary engineering, permitting, construction, and regulatory approval of transmission or distribution facilities on third party electric systems related to any transactions provided under this Tariff and for the costs associated with resolving those problems.

4. Rates

4.1 Transmission Charge

Payment hereunder shall be calculated pursuant to the rates and formulae in Appendix A, the PTP Firm Network Transmission rate (PT–95) or its successor.

4.2 Dual Transmission Charge

Where the installation of Network Upgrades does not fully eliminate a constraint, the Transmission Demand Charge shall be treated as two transactions for payment purposes, with the portion of the Transmission Charge for which the construction of Network Upgrades will eliminate the constraint priced in accordance with section IV.D. of PT–95 or its successor in Appendix A, and the residual portion of the Transmission Charge for which a constraint is not eliminated by the Network Upgrades priced in accordance with section II of PT–95 or its successor in Appendix A. The Transmission Charge and the Dual Transmission Charge are mutually exclusive charges. Bonneville may charge one or the other, but not both.

4.3 Direct Assignment Facilities

In addition to the payments made pursuant to sections 4.1 or 4.2 above, payment shall be made to Bonneville for the cost incurred by Bonneville for providing any Direct Assignment Facilities. The calculation of the Customer's monthly payment for Direct Assignment Facilities shall be in accordance with PT–95 or its successor in Appendix A.

4.4 Termination Charge

The Customer shall pay an appropriate charge to cover the costs of facilities added for the benefit of the customer under this Tariff the Service Agreement if the Customer terminates Network PTP Transmission Service prior to the termination date of the Service Agreement. The Customer shall receive a credit for any mitigation provided by the facilities to the Network PTP Transmission System revenues subsequently received by Bonneville for use of such facilities.

4.5 Reservation Charge

The Customer may pay a Reservation Charge pursuant to PT–95 or its successor in Appendix A, to preserve its priority for service with respect to other Applicants and Customers.

4.6 Transmission Losses

Transmission losses shall be determined on the basis of average estimated system losses. The Customer shall compensate Bonneville for losses by either providing additional energy to compensate for losses associated with the scheduled capacity or by buying losses from Bonneville in accordance with the Firm Power Products and Services (FPS–95) rate schedule or its successor in Appendix A.

4.7 Reactive Charge

The Customer shall pay for reactive power necessary to provide transmission services under this Tariff pursuant to the PTP Firm Transmission rate (PT–95) or its successor.

4.8 Control Area Services Charge

If a Customer elects to purchase Control Area services from Bonneville pursuant to the Ancillary Services in section 2.5, the Customer shall pay for such services pursuant to the FPS–95 rate schedule or its successor.

4.9 Revision to Rates, Charges, and Loss Factors

Bonneville may periodically revise rates, charges, and transmission loss factors and apply such revisions to its Service Agreements.

4.10 Commencement of Service

Within 30 days of the receipt of notice from Bonneville that service can commence, the Customer shall commence paying the Transmission Charge or Dual Transmission Charge and any other rates or charges required by section 4 hereof. Failure to do so will result in forfeiture by the Customer of all deposits and security and require immediate payment of any cost incurred by Bonneville to furnish the requested Network PTP Transmission Service; and the Customer's Application will no longer be considered valid or pending.

5. Initiating Service

5.1 Conditions Precedent for Receiving Service

Subject to the terms and conditions of this Tariff, Bonneville shall provide Network PTP Transmission Service over the Network PTP Transmission System Facilities to any Eligible Customer, provided that: (i) the Eligible Customer has completed an Application for Network PTP Transmission Service as provided below in section 5.2; (ii) the Eligible Customer and Bonneville have completed the technical arrangements set forth in section 9.4 below; and (iii) the Eligible Customer has executed a Service Agreement.

5.2 Application Procedures

For transactions of 1 month up to 1 year an Eligible Customer requesting service under this Tariff must submit a completed application to: Bonneville Power Administration, Attention: Manager, Short-Term Contracts; P.O. Box 491; Vancouver, Washington, 98666–0491.

For transactions of 1 year or more an Eligible Customer requesting Service under this Tariff must submit a completed Application to: Bonneville Power Administration, Attention: Manager, Transmission Business; Bonneville Power Administration; P.O. Box 3621; Portland, Oregon, 97208–3621. In order for an Application hereunder to be considered a "good faith request" for transmission service in accordance with the provisions of Section 213 of the FPA, the Application must contain the following information:

(a) The identity, address, and telephone number of the Applicant requesting a Network PTP Transmission Service;

(b) A statement that the entity requesting Network PTP Transmission Service hereunder is, or will be upon commencement of service, an Eligible Customer under this Tariff.

(c) The name and title of the contact person for the Applicant.

(d) The identity of the Delivering Party and the identity of the Receiving Party;

(e) The Primary Point(s) of Interconnection and the Primary Point(s) of Delivery;

(f) The proposed dates for initiating and terminating PTP Transmission Service hereunder;

(g) The Transmission Demand, expected load profile and load characteristics;

(h) The identity of the initial source of the power to be transmitted pursuant to the Application; and

(i) The identity of the Control Area in which the ultimate consumer of power is located.

Bonneville will notify the Applicant of receipt of the Application within 10 days of receipt. Bonneville reserves the right to ask for additional information necessary to determine the availability of transmission capacity and reliability impacts.

5.3 Notice of Deficient Application

If an Application fails to meet the requirements of this Tariff, Bonneville shall notify the party requesting service within 10 days of receipt of the Application of the reasons for such failure. Bonneville will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, Bonneville shall return the Application. Upon receipt of a new or revised Application that fully complies with the requirements of this Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

5.4 Identity of Ultimate Consumer

The Applicant may be required to identify the ultimate consumer of the power to be transmitted if such information is necessary for Bonneville to determine, pursuant to section 7 hereof, whether adequate transmission capacity will be available on its Network PTP Transmission System Facilities to provide the service initially and for the full term of the transaction requested by the Applicant. If the Applicant objects to a request by Bonneville under sections 5.3 or 5.4 that it provide the name of the ultimate consumer, then Bonneville shall have the right to seek an order from the Commission allowing Bonneville to require the Applicant to provide Bonneville with the identity of the ultimate consumer and the parties cannot otherwise resolve their differences, the Applicant may proceed under the provisions of section 19.

5.5 Mutually Exclusive Applications for Same Service

In order to determine whether Applications for Network PTP Transmission Service hereunder are duplicative or mutually exclusive of Applications filed by other parties, Bonneville may request further information, including, by way of illustration, a statement as to whether the Application is being made in response to a competitive solicitation. If certain requests for Network PTP Transmission Service give Bonneville a reasonable basis to believe that such requests are mutually exclusive, Bonneville may ask the Applicant making such a request to identify the ultimate purchaser of power and, if appropriate under the circumstances, Bonneville may contact the ultimate

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purchaser to determine whether the Applications are mutually exclusive. Should Bonneville confirm that particular Applications hereunder are mutually exclusive (e.g., the ultimate purchaser will buy from one but not all of the Eligible Customers who have submitted Applications), Bonneville reserves the right to process all such Applications as though they were a single Application.

5.6 Applications Filed By Bonneville

Applications filed by Bonneville pursuant to section 6.2 hereof. Bonneville will file applications for firm service to serve its own firm commercial transactions which do not constitute service to Native Load Customers. Such applications will be treated in the same manner as any Application under this Tariff and assigned a priority for determining transmission capacity availability according to the provisions set forth in section 7.1.

6. Priority of Requests

All requests for Network PTP Transmission Service and all other requests for firm transmission service, other than service to Native Load Customers and to Network Load of Network Integration Service Customers, shall be evaluated. Priority shall be determined on a first-come, first-served basis based on the date when Bonneville receives an executed Service Agreement, after meeting the obligations listed in section 8.2.

7. Capacity Availability and Expansion Obligations

7.1 Determination of Capacity Availability

Upon receiving a complying Application hereunder, Bonneville will determine the requirements, if any, to interconnect the Applicant with Bonneville's electric system and whether adequate capacity will be available on Bonneville's Network PTP Transmission System Facilities to provide the service initially and for the full term of the transaction requested by the Applicant. Such determination will be made as soon as possible, not to exceed 60 days from the date of interconnection, unless the number or complexity of Applications reasonably requires additional time. If additional time is required, Bonneville shall notify the Applicant on a timely basis and provide an estimate of the time needed to reach a final determination. If Bonneville determines that adequate capacity will be available on its Network PTP Transmission System Facilities to provide service for the highest priority Application, and subject to the requirements of the National Environmental Policy Act or any other applicable environmental laws, Bonneville will notify the Applicant and tender a Service Agreement pursuant to section 8.

7.2 Conditions on Capacity Availability

In determining whether adequate capacity will be available on its Network PTP Transmission System Facilities for the requested service both initially and for the full term of the requested transaction, Bonneville shall determine if capacity is available in excess of that required to accommodate: (1) the existing and forecasted loads of its Native Load Customers; (2) Bonneville's other customers to whom Bonneville has preexisting contractual obligations commitments for firm wholesale purchases, exchanges, deliveries, and sales; and (3) existing contractual, statutory, and regulatory commitments for firm transmission service; any existing contractual commitments providing for hydroelectric system coordination or forced outage reserves, as well as (4) transmission capacity reserved for reliability, regulation, and inadvertent flows based on Bonneville's historical use or planned use for such purposes; and (5) delivery of Federal and Network Integration Service Customers' hydroelectric power in times of actual or threatened spill. In making such determination, Bonneville shall use the WSCC's and Bonneville's "Reliability Criteria for Network PTP Transmission System Planning." Bonneville shall not take into consideration any other pending Application of lower priority for Network PTP Transmission Service. Network PTP Transmission Service shall also be subject to Good Utility Practice in order to take into account the physical characteristics and constraints on Bonneville's Network PTP Transmission System Facilities.

7.3 Partial Capacity Availability

If Bonneville determines to provide the requested service but that it will not have adequate capacity available on its Network PTP Transmission System Facilities to satisfy the full amount of the requested service, Bonneville will allow the Applicant to either: (a) sign a Service Agreement pursuant to section 8 hereof for the amount of Network PTP Transmission Service that can be provided immediately, and receive for the remainder of the requested service pursuant to section 9 hereof after the necessary facility upgrades and modifications have been installed; (b) sign a Service Agreement pursuant to section 8 hereof for the amount of Network PTP Transmission Service that can be provided immediately and withdraw the Application for the remainder of the service; (c) sign a Service Agreement to receive all the requested Network PTP Transmission Service pursuant to section 9 hereof after the necessary facility modifications are completed; or (d) withdraw the Application for Network PTP Transmission Service.

7.4 Withdrawal of Application or Failure to Execute Service Agreement

Should an Applicant withdraw all or part of its Application, or should an Applicant fail to execute a Service Agreement within the required time period provided in section 8.2, except as otherwise provided in section 13.4, Bonneville will reevaluate whether capacity is available on the Network PTP Transmission System Facilities which would satisfy any other Applications which could utilize such Network PTP Transmission System capacity and which had a lower priority than the withdrawn Application. Bonneville shall reevaluate such lower priority Applications in the order of their assigned priority. Should Bonneville determine that additional Network PTP Transmission System Facilities capacity is available for any Customer submitting a lower priority Application, Bonneville shall allow such Customer an option, to be exercised within 10 days to execute or to modify its Service Agreement shall offer such Customer a Service Agreement, pursuant to the provisions of this Tariff, to reflect the availability of such additional Network PTP Transmission System capacity.

7.5 Responsibility of Parties for Network PTP Transmission Facilities Modification

Where a determination is made by Bonneville that an Application for Network PTP Transmission Service pursuant to this Tariff will require modifications to the Network PTP Transmission System Facilities, or when an Applicant requests specific upgrades, Bonneville commits to use due diligence consistent with its statutory environmental obligations to make such modifications to the Network PTP Transmission Facilities within a reasonable time; provided, however, that the Applicant agrees to compensate Bonneville for the costs, determined pursuant to section 4 of all modifications to the Network PTP Transmission System Facilities reasonably required to provide such service. Bonneville will not increase or upgrade the capacity of its existing or planned transmission facilities in order to provide service under this Tariff if doing so would unduly impair system reliability or otherwise jeopardize service to its Native Load Customers and or other Customers to whom Bonneville has a preexisting contractual obligation. Unless otherwise agreed to by Bonneville and the Customer, Bonneville will own any additional electrical facilities or upgrades constructed pursuant to this Tariff. The Customer shall cooperate with Bonneville in the construction of any required facilities and shall take all reasonable steps to assist Bonneville in obtaining any necessary permits, authorizations, and rights-of-way.

8. Subsequent Requirements Where No New Facilities Are Needed

8.1 Notification of Applicant

When, pursuant to section 8 hereof, Bonneville determines that adequate capacity and facilities will be available on its electric system to provide the requested service initially and for the full term of the transaction requested, Bonneville shall so notify the Applicant in writing and tender a Service Agreement as soon as possible, not to exceed 30 days thereafter, to the Applicant.

8.2 Applicant Responsibilities

Within 30 days, unless otherwise agreed, after receipt of such Service Agreement, the Applicant must either: (a) execute the Service Agreement; (b) withdraw its Application; or (c) inform Bonneville that the Service Agreement is unacceptable as tendered and request that Network PTP Transmission Service commence pursuant to section 134. Failure to take any one of the foregoing actions within such 30 days, unless otherwise agreed, will be deemed to be a withdrawal of the Application. Nothing herein limits the right of the Applicant to file another Application for Network PTP Transmission Service immediately upon such withdrawal.

8.3 Extension of Service Date

A Customer that has entered into a contract with an Eligible Utility for the sale, purchase, or exchange of capacity and/or energy or provides Bonneville with sufficient evidence that such a sale is likely to be consummated, can reserve capacity by paying a Reservation Charge specified in section W of the Adjustments, Charges, and Special Rate Provisions.

9. Subsequent Requirements When New Facilities Are Needed

9.1 Applicant Notification

When, pursuant to section 9 hereof, Bonneville determines that an Application will require initially, or during the term of the transaction, Network Upgrades and/or Direct Assignment Facilities; in order to either provide the required Network PTP Transmission Service or to interconnect the Applicant to Bonneville's electric system, at the earliest possible date, not to exceed 60 days of receipt of the Application, Bonneville shall inform the Customer, in writing, of the requirement to perform a System Impact Study, and shall tender a Study Agreement.

9.2 System Impact Study

Upon receipt of the executed Study Agreement, Bonneville shall commence the System Impact Study. Upon completion of the System Impact Study, Bonneville will present the results, including workpapers, to the Applicant. If Bonneville determines that construction of such facilities is feasible and consistent with its environmental obligations, it shall and tender a Service Agreement under which the Applicant would agree to receive service upon completion of the facility modifications and to fully compensate Bonneville for the facility modifications, pursuant to section 4 herein.

9.3 Applicant Responsibility and Remedies

For the Application to remain valid and pending, within 90 days of the receipt of the System Impact Study and the Service Agreement, the Applicant must execute the Service Agreement. In order to protect Bonneville against the risk of nonpayment by the Applicant for the facility modifications, the Applicant and Bonneville shall negotiate reasonable security provisions acceptable to both parties. If Bonneville and the Applicant are unable to reach agreement on the amount and form of the security provisions, then the Applicant may proceed under the provisions of section 19.

9.4 Due Diligence in Completion of Facility Modifications

Upon receipt of the executed Service Agreement and the associated security provisions, Bonneville shall use due diligence to complete the necessary modifications within a reasonable time. Bonneville shall give the Customer 90 days written notice prior to the projected completion of the facility modifications. Promptly upon completion of such modifications, Bonneville shall notify the Customer in writing that service can commence. Service shall commence pursuant to section 4.8.

9.5 Coordination of Third Party System Additions

Where the need for Network Upgrades or Direct Assignment Facilities are identified, and such upgrades require the addition of transmission facilities on other system(s), Bonneville shall have the right to coordinate construction on its own system with the construction required by other(s). Bonneville, after consultation with the Customer and representatives of such other system(s), may defer construction of new transmission facilities on its own system pending the resolution of obstacles to the timely completion of new transmission facilities on other system(s) needed to provide the requested service.

10. Electronic Bulletin Board

Bonneville shall cooperate with Customers and utilities who are members of the WSCC to develop an electronic bulletin board that is compatible with and useful to all WSCC members. The purpose of the electronic bulletin board is to make known to users the available transmission capacity and any proposals to increase that capacity.

11. Scheduling

11.1 General Conditions

All capacity and energy to be transmitted by Bonneville hereunder shall be scheduled in advance pursuant to the terms of the Service Agreement and will reflect the procedures used by Bonneville in scheduling its own transactions. Bonneville will make schedule changes on short notice if reasonably practicable. The Customer shall provide written notification to Bonneville identifying all systems involved in the transaction and authorizing such systems to schedule all capacity and energy to be transmitted by Bonneville pursuant to the Service Agreement on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Interconnection.

11.2 Customer Responsibility for Third Party Arrangements

Any arrangements necessary for scheduling power flows on third party electric systems, including compensation for any associated costs, losses, or parallel flows on such systems, shall be the responsibility of the Customer requesting service.

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11.3 Flexibility Point(s) of Interconnection and Delivery

As an alternative to receiving service from Primary Points of Interconnection to Primary Points of Delivery, the Customer may request Bonneville to provide nonfirm Network PTP Transmission Service between interconnection and delivery points other than those specified in the Service Agreement ("Secondary Points of Interconnection and Delivery"), in amounts not to exceed its Transmission Demand, without incurring any additional charges, executing a new Service Agreement, or affecting its priority at Primary Points of Interconnection and Delivery. Service provided between Secondary Points of Interconnection and Delivery will be nonfirm only, on a capacity available basis and will not displace any firm or nonfirm service of higher priority previously scheduled by third parties or by Bonneville on behalf of its Native Load Customers and other customers to whom Bonneville has a preexisting contractual obligation and subject to higher priority schedules to: (1) serve Bonneville's Native Load; (2) serve Network Integration Service network load; and (3) deliver Federal and Network Integration Service hydroelectric power subject to spill or threatened spill.

11.4 Due Diligence

Bonneville and the Customer shall exercise due diligence and reasonable care and foresight in arranging for and operating their respective sources of supply and other facilities so that scheduled amounts of capacity and energy shall be delivered in accordance with section 12.1.

12. Priority of Service and Interruptions

12.1 Service Priority

Unless otherwise specified in the Service Agreement all service provided hereunder from Primary Points of Interconnection to Primary Points of Delivery shall have priority over nonfirm transmission service, including that which Bonneville provides itself and which otherwise has not been appropriately reserved by Bonneville in the Service Agreement to serve the needs of Native Load Customers or Network Integration Service Customers or to avoid spill of Federal or Network Integration Service hydroelectric power.

12.2 Bonneville Responsibilities

Bonneville will use due diligence to furnish the firm Network PTP Transmission Service available under this Tariff, but it does not guarantee uninterrupted transmission of electric energy or capacity. To the extent practicable, Bonneville will provide reasonable advance notice to the Customer of any scheduled interruptions, reductions, or other impairments of the Network PTP Transmission Service as specified in the individual Service Agreement.

12.3 Interruption of Service

Any interruption of service will not be on an unduly discriminatory basis as between Bonneville and similarly situated Customers.

13. Service Agreements

13.1 Requirement for a Signed Service Agreement

Subject only to the provisions of section 14.43 herein, Bonneville is obligated to provide Network PTP Transmission Service under this Tariff only to Customers that have signed a Service Agreement with Bonneville for the requested service. The Service Agreement shall contain a statement of service specifications, including without limitation, the amount of Transmission Demand; the term of such service; identification of Primary Point(s) of Interconnection, Primary Point(s) of Delivery, Delivering Party, Receiving Party; the rates and charges for such service, and where applicable, the cost of necessary facilities, including Direct Assignment Facilities and an appropriate allocation of Network Upgrades.

13.2 Modification or Amendment of the Service Agreement

Any request to modify Primary Points of Interconnection and/or Delivery or to increase the Transmission Demand will be analyzed in the same manner as a new Application, except that the Customer will not be obligated to pay any additional reservation fee if the additional transmission Demand does not exceed the Transmission Demand in the existing Service Agreement. While such new request is pending, the Customer shall retain its priority for service at the existing Primary Points of Interconnection and Delivery. If Demand is not available then the request will receive a service priority pursuant to section 8.

13.3 Commencement of Service in Absence of Signed Service Agreement

If Bonneville and an Applicant cannot agree on the terms of the Service Agreement, Bonneville may provide the requested service if Demand transmission capacity is available, as soon as reasonably practicable after receipt of a valid Application for transmission, subject to Good Utility Practice. Such service will be provided under terms and conditions deemed appropriate by Bonneville for the requested service. Bonneville will provide the requested service under terms and conditions ultimately determined by the Commission to be appropriate under Sections 211 and 212 of the FPA, within the constraints imposed by engineering and reliability limitations.

13.4 Customer Obligations in Absence of Signed Service Agreement

Notwithstanding any other provision of this Tariff, Bonneville is not obligated to provide Network PTP Transmission Service to a Customer until such Customer provides Bonneville with a binding written commitment to pay for any facility modifications determined by Bonneville under section 8 hereof to be reasonably necessary to provide the requested services.

13.5 Obligations on Acceptance of Service

Acceptance of service by the Customer pursuant to a Service Agreement filed under this Tariff commits the Customer both to the provisions of this Tariff and to the terms of the individual Service Agreement.

14. Billing

Bonneville shall bill in accordance with the billing information in the current General Rate Schedule Provisions, Appendix A or successor, or as they may from time to time be revised receipt.

15. Records

15.1 Recordkeeping Obligations

Bonneville and the Customer shall keep such records as may be needed to afford a clear history of all transactions under this Tariff and associated Service Agreement. The originals of all such records shall be retained for a minimum of 2 years plus the current year (or such longer period as may be appropriate) and copies shall be delivered to the other party on request.

15.2 Customer's Right to Examine Records

The Customer shall have the right, during normal business hours, to examine the accounting and other records for the last 2 calendar years relating to its transactions under this Tariff and shall have the right to make such audits and copies of records as it shall deem necessary or desirable. Such examinations shall be at the Customer's expense. Such audit shall be conducted no more frequently than once every 2 years.

16. Liability and Indemnification

16.1 Western Interconnected Systems Agreement

If an Applicant is a party to the Western Interconnected Systems Agreement Limiting Liability, such agreement shall continue in full force and effect as between the parties to the extent that such provisions may apply to the transactions contemplated by this Tariff.

16.2 No Western Interconnected Systems Agreement

If an Applicant is not a party to the Western Interconnected Systems Agreement Limiting Liability, and there is no other agreement on file with the Commission governing liability and indemnification between Bonneville and the Applicant, then, in such event, additional provisions for protection of electric generation facilities or transmission facilities and liability and indemnification may be required. Such additional provisions shall be set forth in the Applicant's Service Agreement.

17. Sale or Assignment of Network PTP Transmission Service

17.1 Right to Sell, Assign or Transfer

Subject to the approval of Bonneville, a Customer may sell, assign, or transfer all, or a portion of, its rights under the Service Agreement executed pursuant to this Tariff, but only to an entity that qualifies as an Eligible Customer. If the second Customer so purchasing or taking an assignment does not request any change in the Primary Point(s) of Delivery of or Primary Point(s) of Interconnection, subject to section 14.32, or a change in any other material term or condition set forth in the original Service Agreement, the second Customer will receive the same service as the first Customer. If the second Customer requests a change in any material term or condition set forth in the original Service Agreement, Bonneville will consent to such change subject to the provisions of section 14 herein, but only if to do so will not unduly impair the operation and reliability of Bonneville's generation, or transmission, or distribution systems, and on the condition that the second Customer agrees to compensate the Customer Bonneville for any additional costs resulting from such change. The Customer that received the assignment shall assume responsibility for scheduling. The Customer making the assignment shall continue to have responsibility for compliance with the Service Agreement including making payment to Bonneville.

17.2 Liability for Performance

The Customer that received the assignment shall assume responsibility for scheduling. The original Customer shall remain liable for the performance of all other obligations under the Service Agreement including making payment to Bonneville, except as specifically agreed to by the parties through an amendment to the Service Agreement. Bonneville will amend the Service Agreement only if the assignee: (a) meets the creditworthiness criteria of section 19; and (b) agrees to compensate Bonneville for Direct Assignment Facilities, and allocated Network Upgrades and costs resulting from changes in service; and (c) provides security equivalent to that provided by the original Customer.

18. Creditworthiness

For the purpose of determining the ability of the Customer to meet its obligations related to service hereunder, Bonneville may require reasonable credit review procedures which may include, but shall not be limited to, verification that the Customer is not operating under any State or Federal bankruptcy laws, is not subject to the uncertainty of pending liquidation or regulatory proceedings in State or Federal courts, and no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the Customer's ability, in Bonneville's determination, to remain solvent. In addition, Bonneville may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Tariff or an alternative form of security proposed by the Customer and acceptable to Bonneville that protects Bonneville's Native Load Customers against the risk of nonpayment. Any disputes over the terms of such security arrangements shall be subject to the provisions of the Tariff.

19. Procedures to Resolve Network Transmission Complaints

Any complaint arising from an Application hereunder may be resolved, at the Customer's discretion, by either:

(a) A voluntary dispute resolution process, which may include mediation or arbitration or both, pursuant to the terms of a regional transmission association governing agreement which both parties have executed, or such other dispute resolution rules as may be agreed to by Bonneville and the Customer; and

(b) A transmission complaint filed with the Commission.

20. Regulation

Service under this Tariff is subject to all existing or future applicable local, State, and Federal laws and to all existing or future duly promulgated orders and actions of governmental authorities having jurisdiction over the matters contained herein.

Proposed Bonneville Power Administration Energy Transmission Service Tariff

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Bonneville Power Administration
Energy Transmission Service Tariff

The Bonneville Power Administration (Bonneville) will provide short-term firm and nonfirm point-to-point transmission service under this Energy Transmission Tariff (ET) to Eligible Customers.

1. Definitions

1.1 Applicant

An Eligible Customer who submits a completed Application.

1.2 Application

A request by an Eligible Customer for nonfirm and/or firm Energy Transmission Service submitted to Bonneville which satisfies the provisions of this Tariff, including provisions of section 5.

1.3 Commission

The Federal Energy Regulatory Commission or its successor.

1.4 Control Area

The self-contained set of generating units, electrical loads, and transmission facilities managed and overseen by a utility that is responsible for matching generation with such loads on an instantaneous basis.

1.5 Customer

An Eligible Customer that has completed an Application for service and has executed a Service Agreement for Energy Transmission Service pursuant to this Tariff.

1.6 Delivering Party The entity supplying the electric energy to be transmitted over Bonneville's Energy Transmission Facilities.

1.7 Eligible Customer

A private or public corporation, governmental agency or authority, joint action agency, municipality, rural electric membership corporation or cooperative, person, or any lawful association of the foregoing, which engages in the generation, transmission, or distribution of electric energy at wholesale or retail. Bonneville's direct service industrial customers on the effective date of this Tariff shall be considered Eligible Customers. Other than Bonneville's direct service industrial customers, an Eligible Customer shall not include any entity for which the Commission is prohibited under Sections 212(g) and (h) of the Federal Power Act from ordering the provision of transmission service. A power marketing entity (marketer) will be considered to be an Eligible Customer only to the extent it requests service to deliver capacity or energy that will be purchased by an Eligible Customer.

1.8 Energy Transmission Facilities

The Federal Columbia River Transmission System facilities operated by Bonneville, excluding the Interties.

1.9 Native Load Customers

Those wholesale and direct service industrial power sale customers, on whose behalf Bonneville, by statute or contract, has undertaken an obligation to plan, construct, and operate its electric system to provide reliable electric service.

1.10 Point(s) of Delivery

Point(s) on Bonneville's Energy Transmission Facilities where Bonneville is interconnected with the Receiving Party or the Receiving Party's authorized agent and where Bonneville can deliver power transmitted pursuant to a Service Agreement.

1.11 Point(s) of Interconnection

Point(s) on Bonneville's Energy Transmission Facilities where Bonneville is interconnected with the Delivering Party or the Delivering Party's authorized agent and where Bonneville can receive power transmitted pursuant to a Service Agreement.

1.12 Receiving Party

The entity receiving the electric energy to be transmitted over Bonneville's Energy Transmission Facilities.

1.13 Service Agreement

The initial agreement and any supplements or amendments thereto entered into by the Customer and Bonneville in order to initiate service under this Tariff. For nonfirm Energy Transmission Service, the Service Agreement may be in the form of a standard umbrella agreement for Energy Transmission Service which provides for maximum flexibility in using Point(s) of Delivery and Point(s) of Interconnection, standard scheduling provisions and interruption rights, and billing information. For short-term firm Energy Transmission Service, the Service Agreement may be in the form of a transaction specific agreement for Energy Transmission Service which documents the terms and conditions of that transaction.

2. Character of Service and Availability

2.1 Nature of Service

Energy Transmission Service is a control area to control area service. The service delivers energy over transmission paths that may be nonfirm or short-term firm, consolidated by the Customer into a schedule, from one control area to another through Points of Interconnection and Points of Delivery. Short-term firm Energy Transmission Service shall be provided on a take-or-pay basis, unless curtailed by Bonneville.

2.2 Term of Service

Nonfirm Energy Transmission Service hereunder may only be prescheduled. Prescheduling is done in hourly increments up to a maximum of 24 hours from 1 working day to the next. Short-term Firm Energy Transmission Service may be provided for periods up to 1 month.

2.3 Priority of Service

Energy Transmission Service shall be provided over transmission capacity available after Bonneville meets its obligations to serve: (1) its existing and forecasted requirements to serve Native Load Customers; (2) its existing contractual commitments for firm wholesale purchases, exchanges, and sales; (3) its existing contractual, statutory, and regulatory commitments for firm transmission service; (4) transmission capacity reserved for reliability, regulation, and inadvertent flows based on Bonneville's historic use or planned use for such purpose; (5) delivery of Federal and Network Integration Customers' hydroelectric power in times of actual or threatened spill.

Priority to available capacity shall be provided to requests for firm service. All requests for nonfirm Energy Transmission Service hereunder, all other requests for nonfirm transmission service pursuant to Bonneville's other network transmission tariffs and Bonneville's own nonfirm network transmission uses, with the exception of Bonneville's and Network Integration Customers' economy energy purchases, and sales to avoid hydroelectric spill, shall be evaluated on a first-come, first-served basis.

2.4 Commencement of Service

A Service Agreement must be executed prior to the commencement of service under this Tariff.

2.5 Control Area Requirements

As a condition to obtaining Energy Transmission Service, the Customer shall: (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC), the Western Systems Coordinating Council (WSCC), and the Northwest Power Pool (NWPP); or (ii) satisfy its responsibility to be operated as a Control Area by contract with Bonneville pursuant to section 2.6 by contract with another entity which Bonneville accepts as sufficient to satisfy NERC, WSCC, and NWPP requirements. Bonneville shall not unreasonably refuse to accept contractual arrangements with another entity for such services.

2.6 Ancillary Services

This Tariff constitutes an offer to provide only Energy Transmission Service. Bonneville commits either to provide the Customer with services necessary for it to take Energy Transmission Service under this Tariff; or to cooperate with the Customer so that the Customer can utilize its own resources or the resources of third parties in order to provide such services. Such services offered by Bonneville are offered on a not unduly discriminatory basis, subject to resource, engineering, and reliability limitations.

3. Interconnection and Interchange

3.1 Bonneville Responsibility

Bonneville shall deliver the energy required from Point(s) of Interconnection to Point(s) of Delivery pursuant to the Service Agreement up to the amount of designated energy.

3.2 Metering

Electric energy transmitted under this Tariff shall be measured as appropriate by metering equipment provided by Bonneville and the Customer at such points and voltages as set forth in the Service Agreement.

3.3 Third Party Arrangements

The Customer need not be directly interconnected with Bonneville, but shall make any and all necessary arrangements for the delivery of power to the Point(s) of Interconnection and receipt from the Point(s) of Delivery, and Bonneville shall have no responsibility for such arrangements. The Customer shall furnish Bonneville with such necessary and appropriate information with respect to such arrangements as shall permit Bonneville to carry out its responsibilities under this Tariff. The Customer shall be responsible for scheduling arrangements and resolution of operating problems on third party electric systems related to any transactions provided under this Tariff and for the costs associated with resolving those problems.

4. Rates

4.1 Transmission Charge

Payment hereunder shall be calculated pursuant to the rates and formulae in Appendix A, the ET–95 rate schedule or its successor.

4.2 Transmission Losses

Transmission losses shall be determined on the basis of average estimated system losses. The Customer shall compensate Bonneville for losses by either providing additional energy for losses associated with the scheduled energy or by buying losses from Bonneville in accordance with the Firm Power Products and Services (FPS–95) rate schedule in Appendix A as specified in the Service Agreement.

4.3 Reactive Charge

The Customer shall pay for reactive power necessary to provide transmission services under this Tariff pursuant to the Firm PTP Transmission rate (PT–95) or its successor as specified in the Service Agreement.

4.4 Revision to Rates, Charges, and Loss Factors

Bonneville may periodically revise rates, charges, and transmission loss factors and apply such revisions to Service Agreements.

5. Initiating Service

5.1 Nonfirm Umbrella Service Agreement

To initiate nonfirm service an Applicant must submit a completed Application to Bonneville Power Administration; Attention, Manager, Short-Term Contracts; P.O. Box 491; Vancouver, Washington, 98666–0491. Such Application shall include:

(a) The identity, address, and telephone number of the Applicant;

(b) A statement that the Applicant is, or will be upon commencement of service, an Eligible Customer under this Tariff pursuant to section 1.7;

(c) The name, title, and phone number of the contact person for the Applicant;

(d) The proposed dates for initiating and terminating the Service Agreement.

The Application shall be used to prepare an 'umbrella' Service Agreement as discussed in section 8.1.

5.2 Short-Term Firm Service Agreement

To initiate short-term firm service, the Application shall include in addition to the above information the following additional information:

(a) The identity of the Delivering Party and Receiving Party;

(b) The Point(s) of Interconnection and the Point(s) of Delivery;

(c) The amount of power, including peak demand and total amount of energy;

(d) The identity of the Control Area(s) in which the resource and ultimate consumer of power is/are located.

The information in sections 5.1 and 5.2 shall be used to prepare a "short-term firm" Service Agreement as discussed in section 8.1.

6. Electronic Bulletin Board

Bonneville shall cooperate with Customers and utilities who are members of the WSCC to develop an electronic bulletin board that is compatible and useful to all WSCC members. The purpose of the electronic bulletin board is to make known to users the available transmission capacity and any proposals to increase that capacity.

7. Scheduling

7.1 General Conditions

All energy to be transmitted by Bonneville on a nonfirm basis hereunder shall be scheduled one working day prior to the day service is to commence, but changes may be made up to the hour preceding the hour of service when reasonably practicable which is the procedure used by Bonneville in scheduling its own Energy Transmission transactions. All power to be transmitted by Bonneville on a short-term firm basis hereunder shall be scheduled in advance pursuant to the terms of the Service Agreement and will reflect the procedures used by Bonneville in scheduling its own transactions. Bonneville will make schedule changes on short notice if reasonably practicable.

7.2 Due Diligence

Bonneville and the Customer shall exercise due diligence and reasonable care and foresight in arranging for and operating their respective sources of supply and other facilities so that scheduled amounts of energy shall be delivered in accordance with section 7.1.

7.3 Curtailment

In the event Bonneville is forced to curtail deliveries of Energy Transmission Service, Bonneville shall notify the Receiving Party. Recipients of nonfirm Energy Transmission Service shall be curtailed prior to other transmission services customers and on the same basis as Bonneville's and Network Integration Service Customers' economy transactions, except where necessary to deliver Bonneville's and

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Network Integration Customers' hydroelectric power subject to spill or threatened spill. The Receiving Party shall have responsibility for curtailing unless otherwise provided in the Service Agreement.

8. Service Agreements

8.1 Requirement for a Signed Service Agreement

Bonneville shall provide Energy Transmission Service under this Tariff only to Customers that have signed a Service Agreement with Bonneville. For nonfirm service hereunder, Bonneville and the Customer may enter into an "umbrella" Service Agreement that would provide the Customer transmission access to the Bonneville system to the extent that capacity is available on Bonneville's system, subject to the scheduling provisions set forth in section 7. The "umbrella" Service Agreement shall contain, among other provisions, the term, scheduling provisions and interruption rights, a statement that any Points of Interconnection or Points of Delivery on Bonneville's Energy Transmission Facilities may be used for transmitting and receiving energy, and billing information, including the rates and charges for such service. For short-term firm service hereunder, Bonneville and the Customer may enter into a transaction specific "short-term firm" Service Agreement that would provide the Customer transmission access to the Energy Transmission Facilities to the extent capacity is available on Bonneville's system. Such Service Agreement shall contain the same information that appears in the "umbrella" Service Agreement except that the Point(s) of Interconnection and the Point(s) of Delivery shall be specified. In addition, the "short-term firm" Service Agreement shall include both the demand and total amount of energy to be delivered.

8.2 Obligations on Acceptance of Service

Acceptance of service by a Customer pursuant to a Service Agreement under this Tariff commits the Customer and Bonneville both to the provisions of this Tariff and to the terms of the individual Service Agreement.

9. Billing

Bonneville shall bill in accordance with the billing information in Appendix A, General Rate Schedule Provisions, or successor, or as they may from time to time be revised.

10. Records

10.1 Recordkeeping Obligations

Bonneville and the Customer shall keep such records as may be needed to afford a clear history of all transactions under this Tariff. The originals of all such records shall be retained for a minimum of 2 years plus the current year (or such longer period as may be appropriate and copies shall be delivered to the other party on request.)

10.2 Customer's Right to Examine Records

The Customer shall have the right, during normal business hours, to examine the accounting and other records for the last 2 calendar years relating to its transactions under this Tariff and shall have the right to make such audits and copies of records as it shall deem necessary or desirable. Such examinations shall be at the Customer's expense and may be conducted no more frequently than once every 2 years.

11. Liability and Indemnification

11.1 Western Interconnected Systems Agreement

If an Applicant is a party to the Western Interconnected Systems Agreement Limiting Liability, such agreement shall continue in full force and effect as between the parties to the extent that such provisions may apply to the transactions contemplated by this Tariff.

11.2 No Western Interconnected Systems Agreement

If an Applicant is not a party to the Western Interconnected Systems Agreement Limiting Liability and there is no other agreement on file with the Commission governing liability and indemnification between Bonneville and the Customer, then in such event additional provisions for protection of electric generation facilities or transmission facilities and liability and indemnification may be required. Such additional provisions shall be set forth in the Applicant's Service Agreement.

12. Creditworthiness

For the purpose of determining the ability of the Customer to meet its obligations related to service hereunder, Bonneville may require reasonable credit review procedures which may include, but shall not be limited to, verification that the Customer is not operating under any State or Federal bankruptcy laws, is not subject to the uncertainty of pending liquidation or regulatory proceedings in State or Federal courts, and no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the Customer's ability, in Bonneville's determination, to remain solvent. In addition, Bonneville may require the Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under this Tariff or an alternative form of security proposed by the Customer and acceptable to Bonneville that protects Bonneville's Native Load Customers against the risk of nonpayment. Any disputes over the terms of such security arrangements shall be subject to the provisions of the Tariff.

13. Procedures to Resolve Transmission Complaints

Any complaint arising from an Application hereunder may be resolved, at the Customer's discretion, by either:

(a) A voluntary dispute resolution process, which may include mediation or arbitration or both, pursuant to the terms of a regional transmission association governing agreement, or such other dispute resolution rules as may be agreed to by Bonneville and the Customer; or

(b) A transmission complaint filed with the Commission.

Issued in Portland, Oregon, on February 17, 1995.

Jack Robertson,

Deputy Chief Executive Officer.

[FR Doc. 95–5816 Filed 3–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. EL95–26–000 and QF90–104–002]

Richmond Power Enterprises, L.P.; Notice of Extension of Comment Date

March 3, 1995.

Take notice that the date for filing of protests, motions to intervene or comments, in response to the notice issued February 16, 1995 (60 FR 10380, February 24, 1995) has been extended to May 25, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5714 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–119–000]

Steuben Gas Storage Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Thomas Corners Gas Storage Field Project and Request for Comments on Environmental Issues

March 3, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the Thomas Corners Gas Storage Field Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

Steuben Gas Storage Company (Steuben) requests Commission authorization to convert a depleted natural gas production field to storage use. It proposes to construct and operate:

- 13 injection/withdrawal wells (11 new wells drilled from one central location and two converted from existing gas production wells);
- One observation well;
- 0.6 mile of 4-inch-diameter well laterals;
- 0.3 mile of 12-inch-diameter well laterals;
- A 3,284-horsepower compressor station;
- 6.48 miles of 12-inch-diameter gathering header including a pipeline drip and storage tank; and
- Dehydration facilities.

Steuben indicates that the proposed storage field, when fully developed, would have a working gas capacity of 5,300,000 thousand cubic feet of gas. Customers interested in using Steuben's proposed storage service would have to arrange for their own transportation. Steuben's existing facilities are interconnected with the facilities of CNG Transmission Corporation (CNG) in the town of Woodhull, Steuben County, New York. The 6.48 miles of gathering header would connect the Thomas Corners Gas Storage Field to Steuben's existing facilities.

Steuben states that the storage facility would be developed in the nearly depleted Thomas Corners gas production reservoir. It lies about 2,000 feet below the surface. The areal extent of the reservoir is about 430 acres.

The location of the project facilities is show in appendix 1.[2]

Land Requirements for Construction

Steuben proposes to use a nominal 70-foot-wide right-of-way for construction of the 6.48 miles of 12-inch-diameter pipeline. Following construction, a 50-foot-wide easement would be permanently maintained; the remaining 20 feet would be restored and allowed to revert to its former use.

Additional working right-of-way width would be needed in areas of steep side slopes and in agricultural areas where topsoil would be segregated. Additional working space would also be needed adjacent to road and stream crossings. About 60 acres would be required for construction of the 12-inch diameter gathering header.

A total of 37 acres would be needed for construction of the Thomas Corners Storage Field. All new injection/withdrawal wells would be directionally drilled from one central pad area covering approximately 31 acres. The wells would be drilled at 150-foot centers around the perimeter of the pad area. All of the 4- and 12-inch diameter well laterals would be constructed within the central well pad area.

An additional 6-acre work space would be required adjacent to the pad area for drilling, completion, maintenance operations, and equipment staging. After construction is complete, this area would be used for the dehydration facilities.

The proposed compressor station would be located on Steuben's existing Adrian Compressor Station site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Hazardous waste.
- Air quality and noise.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Steuben. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed project would cross three perennial streams: Mud Hollow Brook, the Canisteo River, and an unnamed tributary of the Canisteo River.
- About 32 acres of upland forest would be disturbed.
- A new 3,284-horsepower compressor station would be constructed adjacent to Steuben's existing Adrian Compressor Station

[1] Steuben Gas Storage Company's application was filed with the Commission under section 7 of the Natural Gas Act and Parts 157 and 284 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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which may increase existing sound levels.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. you should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–119–000;
- Send a copy of your letter to: Mr. Howard J. Wheeler, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before April 10, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Wheeler at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Howard Wheeler, EA Project Manager, at (202) 208–2299.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5712 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective April 1, 1995:

Original Sheet No. 75A
Original Sheet No. 75B
Original Sheet No. 75C
Original Sheet No. 75D
Original Sheet No. 75E
Original Sheet No. 75F
Second Revised Sheet No. 155
Second Revised Sheet No. 156
Second Revised Sheet No. 159
Second Revised Sheet No. 160
Original Sheet No. 160A
Third Revised Sheet No. 161

ANR states that the above-referenced tariff sheets are being filed to streamline ANR's capacity release program. Specifically, ANR proposes (a) to reduce the time for submitting and posting bids and for making awards for released capacity; (b) to change the time for closing the bidding period to accommodate better ANR's nomination process; (c) to allow one service agreement to cover multiple release transactions; (d) to provide shippers the maximum feasible time to execute an agreement once capacity has been awarded; (e) to make conforming tariff changes; and (f) to treat releases that do not exceed thirty-one days or one calendar month as short-term releases.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5715 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–181–000]

ANR Pipeline Co. Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that, on February 28, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective March 1, 1995:

Ninth Revised Sheet No. 18
Second Revised Sheet No. 185

ANR States that the above-referenced tariff sheets are being filed to implement a true-up of its recovery of Above-Market Dakota Costs, as requirement by its currently effectively tariff mechanism. ANR advises that the filing proposes a negative reservation surcharge adjustment of $(0.021) to its currently effective, firm service Rate Schedules. ANR further advises that it is seeking to modify the currently effective mechanism, to provide for a more effective methodology for the implementation of the true-up mechanism in future filings, and to clarify its intent to include in the true-up calculation the 10% of Above-Market Dakota Costs that are not allocated to firm services.

ANR states that all of its Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5716 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–180–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its Second Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets, with an effective date of March 1, 1995:

Sixth Revised Sheet No. 8
Eighth Revised Sheet No. 9
Eighth Revised Sheet No. 13
Eighth Revised Sheet No. 16
Eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its tariff to implement recovery of $10.4 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR Proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective March 1, 1995.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5717 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1297–000]

Black Creek Hydro, Inc.; Notice of Filing

March 3, 1995.

Take notice that on February 15, 1995, Black Creek Hydro, Inc. tendered for filing a Certificate of Concurrence in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 17, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5718 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–22–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations, filed the tariff sheets listed below, for inclusion in Second Revised Volume No. 1 of its FERC Gas Tariff:

Fourth Revised Sheet No. 31
Seventh Revised Sheet No. 32
Seventh Revised Sheet No. 33
Fourth Revised Sheet No. 34
Fifth Revised Sheet No. 35
Fifth Revised Sheet No. 36

CNG requests that these tariff sheets be made effective on April 1, 1995. CNG states that the purpose of this filing is to revise CNG's rates to reflect its semi-annual TCRA rate adjustment. CNG submits this filing in compliance with Section 15.1 of the General Terms and Conditions of CNG's FERC Gas Tariff. This filing reduces the transportation costs from CNG's November 14, 1994, filing in Docket No. TM95–2–22, by $3.8 million. As more fully detailed in the attached workpapers, this decrease is mainly because of a reduction in rates by Tennessee Gas Pipeline Company.

CNG further states that copies of the filing were served upon affected customers and interested state commissions, reflected on the service list attached to its filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5719 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM95–3–32–000 and TM94–4–32–002]

Colorado Interstate Gas Co.; Notice of Tariff Filing

March 3, 1995.

Take notice that on February 28, 1995, Colorado Interstate Gas Company (CIG), filed Eleventh Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, reflecting a decrease in the quarterly fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.46% to (1.08%) to be effective April 1, 1995.

Take further notice that CIG's February 28, 1995 filing included Third Revised Sheet No. 230 in compliance with the February 15, 1995 Order on Docket No. TM94–4–32–000, *et al* (70 FERC ¶ 61,183), to provide for the use of the three-year average to compute storage fuel usage retention and the most recent twelve months data to compute the transportation fuel usage retention, effective April 1, 1995.

CIG states that copies of this filing have been served on CIG's jurisdictional

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customers and public bodies, and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5720 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–196–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Columbia Gas Transmission Corporation (Columbia), tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tenth Revised Sheet No. 25
Tenth Revised Sheet No. 26
Tenth Revised Sheet No. 27
Eleventh Revised Sheet No. 28
Sixth Revised Sheet No. 29
Sixth Revised Sheet No. 30
First Revised Sheet No. 395
First Revised Sheet No. 452
First Revised Sheet No. 453

The proposed tariff sheets bear an issue date of March 1, 1995 and a proposed effective date of April 1, 1995.

Columbia states that this filing comprises Columbia's annual filing pursuant to Section 36, Transportation Costs Rate Adjustment (TCRA), of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. The first six of the above referenced tariff sheets reflect changes to Columbia's TCRA rates as a result of this filing. First Revised Sheet No. 395 is a modification of GTC Section 20, discounting, in Columbia's FERC Gas Tariff, Second Revised Volume No. 1, to reflect Columbia's implementation of the Commission's change in policy in *Natural Gas Pipeline Company of America*, 69 FERC 61,029 (1994). First Revised Sheet Nos. 452 and 453 reflect revisions to the TCRA provision to also take into account *Natural*, and provide for its administration by separating the TCRA Adjustment into two portions: a Current Operational TCRA Rate and a Current Stranded TCRA Rate. These two components will continue to be calculated in the same manner as the TCRA Adjustment has been. Columbia is requesting a waiver to include certain refunds received in 1995 within the deferral period addressed in this annual filing.

Columbia states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washingtonm, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5721 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–194–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Columbia Gas Transmission Corporation (Columbia), tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1995:

First Revised Sheet No. 44
First Revised Sheet No. 405

Columbia states that the instant filing represents Columbia Gulf's annual filing pursuant to Section 35, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. Columbia states that its transportation retainage percentage or factor consists of a current and an unrecovered component for company-use, lost, and unaccounted for quantities. In this filing, Columbia is not adjusting the current component of the transportation retainage factor. The unrecovered component is being adjusted to account for an under recovery of these quantities during the deferral period.

Furthermore, Columbia is requesting a waiver to permit using a 14-month deferral period in calculating the unrecovered component. First Revised Sheet No. 44 sets forth the transportation retainage factors as a result of this filing. First Revised Sheet No. 405 is being filed to correct a typographical error in GTC Section 25.3(d), Gas Quality, to correctly refer to Sheet No. 44.

Columbia states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5722 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–195–000]

Columbia Gulf Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1995:

Fifth Revised Sheet No. 018
Fifth Revised Sheet No. 019

Columbia Gas states that the instant filing represents Columbia Gulf's annual filing pursuant to Section 33, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Columbia Gulf states that it currently has retainage factors for each of its three zones. Each factor consists of a current and an unrecovered component for company-use, lost, and unaccounted for quantities. In this filing, Columbia Gulf is adjusting the current component of each retainage factor to reflect a change in the estimate for company-use, lost and unaccounted for quantities. The uncovered component for each of the retainage factors is also being adjusted in this filing to account for an over recovery of these quanties during the deferral period.

Furthermore, Columbia Gulf is requesting a waiver to permit using a 14-month deferral period in calculating the unrecovered component.

Columbia Gulf states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5723 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–118–000]

East Tennessee Natural Gas Co.; Notice of Site Visit

March 3, 1995.

On March 9 and 10, 1995, the OPR staff, accompanied by representatives of East Tennessee Natural Gas Company (East Tennessee), will inspect the proposed location of East Tennessee's Roanoke Expansion Project. The proposed facilities would be in Washington County, Virginia and Morgan County, Tennessee.

Parties to the proceeding may attend. Those planning to attend must provide their own transportation. For further information, call John Wisniewski, (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5713 Filed 3–8–95; 8:45 am]

BILLING CODE 6718–01–M

[Docket No. TM95–4–34–000]

Florida Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective April 1, 1995, the following tariff sheets:

2nd Revised Eighth Revised Sheet No. 8A
Second Revised Sheet No. 8A.01
1st Revised Original Sheet No. 8A.02
1st Revised Seventh Revised Sheet No. 8B
1st Revised Original Sheet No. 8B.01

FGT states that the instant filing is submitted in conformance with the requirements of Section 27 of its FERC Gas Tariff, Third Revised Volume No. 1, which provides that FGT will file a Fuel Reimbursement Charge Adjustment to be effective each April 1 and October 1, as applicable.

Section 27A of FGT's tariff provides for the submission of workpapers supporting any revisions to the Fuel Reimbursement Charge Percentage at least thirty days prior to the proposed effective date of the adjustment. Further, Section 27C states that the Current Fuel Reimbursement Charge Percentage will be the quotient resulting from fuel used and lost and unaccounted for gas divided by volumes delivered during the six-month period commencing one year prior to the effective date of the Fuel Reimbursement Charge Adjustment.

The ratio of fuel usage and unaccounted for volumes to deliveries for the period April 1, 1994 through September 30, 1994, determined in accordance with Section 27 and reflected on the attached workpaper is 2.89%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5724 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–188–000]

NorAm Gas Transmission Co.; Notice of Filing

March 3, 1995..

Take notice that on March 1, 1995, NorAm Gas Transmission Company (NGT), tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1995:

First Revised Sheet No. 13

NGT states that the revised tariff sheet is filed in compliance with the Stipulation and Agreement (Stipulation) approved by Commission order in Docket No. RP91–49–000 on March 31, 1992. 58 FERC ¶ 61,359 (1992).

Pursuant to the Stipulation, NGT is making its third annual filing, proposing to continue to hold its CSC rate at $0.03.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5725 Filed 3–8–95; 8:45 am]

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[Docket No. RP95–184–000]

North Penn Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995

Take notice that on March 1, 1995, North Penn Gas Company (North Penn), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 3A, with a proposed effective date of April 1, 1995.

North Penn states that the purpose of the filing is to terminate North Penn's annual take-or-pay surcharge.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1995, as proposed.

North Penn states that copies of the letter of transmittal and all enclosures are being mailed to each of North Penn's affected customers and State Commissions shown on the service list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5730 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–178–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858–R.A. surcharges, both of which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Sixteenth Revised Sheet Nos. 50 and 51 to revised these surcharges effective April 1, 1995.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5726 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–179–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR surcharge which is designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed Seventeenth Revised Sheet Nos. 50 and 51 to revise the GSR surcharge, effective April 1, 1995.

Northern states that copies of this filing were served upon the Company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. All protests will be considered by the Commission in determing the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5727 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets set forth in Appendix A to the filing (Revised Tariff Sheets) to effectuate changes in the rates and terms applicable to Northern's jurisdictional service. The overall cost of service has increased approximately $31 million over the costs underlying Northern's current rates.

Northern also is submitting several proposals to enhance service flexibility and operational and economic efficiency on the Northern system. The changes reflected in the Revised Tariff Sheets to be effective April 1, 1995 are required to effectuate the rate increase and to make certain changes to Northern's Order No. 636 tariff, which was implemented by Northern on November 1, 1993, based on Northern's operating experience since that time. The Pro Forma Tariff Sheets reflect further changes to become effective prospectively from the effective date of a settlement or a Commission order on the merits in this proceeding. Northern reserves the right to supplement this Section 4 case with alternative pricing proposals pending the outcome of the Commission's Rulemaking proceeding in Docket No. RM95–6–000.

Northern proposes an effective date of April 1, 1995, for the Revised Tariff Sheets except for changes to Northern's deferred delivery (storage) services, which Northern requests be effective June 1, 1995, the beginning of the cycle period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations.

All such motions or protest should be filed on or before March 10, 1995. Protests will be considered by the Commission but will not serve to make protestors a party to the proceeding. Copies of Northern's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5728 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–187–000]

Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing as part of its FERC Gas Tariff the following tariff sheets with a proposed effective date of April 1, 1995:

Third Revised Volume No. 1

Fourth Revised Sheet No. 14
Third Revised Sheet No. 231
Original Sheet No. 231–A
Alternate Fourth Revised Sheet No. 14
Alternate Third Revised Sheet No. 231
Alternate Original Sheet No. 231–A

Original Volume No. 2

Fourteenth Revised Sheet No. 2.1
Alternate Fourteenth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to change fuel use requirements factors (Factors) for Rate Schedules TF–1, TF–2, TI–1, T–1 contained in Third Revised Volume No. 1 and for transportation service rate schedules contained in Original Volume No. 2 of Northwest's FERC Gas Tariff. Factors are determined each year to become effective April 1 pursuant to Section 14.12 of the General Terms and Conditions contained in Northwest's FERC Gas Tariff, Third Revised Volume No. 1, and pursuant to Section 5 of Sheet No. 2.1 in Northwest's FERC Gas Tariff, Original Volume No. 2.

Northwest states that it concurrently submitted another filing on March 1, 1995 with tariff sheets proposing new Factors to become effective April 1, 1995 for Northwest's transportation and storage rate schedules. Northwest states that the preferred and alternate proposals in the instant filing revise the methodology for calculating the Factors.

Under the preferred methodology, Northwest states that it would eliminate its past unrecovered volumetric investment in lost and unaccounted-for gas through a one-time catch-up adjustment to be amortized over a three-year period. Northwest would also propose to remain current prospectively in recovering such gas by projecting lost and unaccounted-for gas expected for each year the tariff provisions will be in effect, as compared to the current method of recovering such gas after the fact on a lag basis. Northwest states that the projection methodology would serve to improve the accuracy of the Factors, and customers would be protected from the consequences of any errors in the projections by the proposed true-up procedure. An alternative to the preferred methodology, which establishes carrying charges to be computed on a volumetric basis and calculated on Northwest's investment in gas purchases to fund lost and unaccounted-for gas, is also proposed by Northwest.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5729 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–176–000]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice on February 28, 1995, that Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is April 1, 1995.

Panhandle states that the purpose of this filing is to eliminate from Panhandle's rates the take-or-pay settlement and contract reformation volumetric surcharges and the associated provisions of Section 18.4 of the General Terms and Conditions of Panhandle's tariff which were the subject of Panhandle's filing in Docket No. RP92–118–000. The volumetric surcharge was established in Article VI, Sections 1(a) and 2(a) of Panhandle's Stipulation and Agreement (Settlement) dated July 15, 1992, for a 36-month period commencing April 1, 1992 and terminating on March 31, 1995, and approved by the Commission on August 28, 1992. With the expiration of the approved three year recovery period on March 31, 1995, Panhandle now is proposing to remove the agreed upon 0.31¢ from the current 1.50¢ TOP Volumetric Surcharge, thus reducing the surcharge to 1.19¢. In addition, Panhandle is proposing to cancel Section 18.4 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets, applicable state regulatory agencies, and parties to the proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5731 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–177–000]

Southern Natural Gas Co.; Notice of GSR Cost Recovery Filing

March 3, 1995.

Take notice that on February 28, 1995, Southern Natural Gas Company (Southern), set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs

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associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts during the period November 1, 1994 through January 31, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of April 1, 1995.

Sixteenth Revised Sheet No. 15
Sixteenth Revised Sheet No. 17
Sixteenth Revised Sheet No. 18
First Alternate Sixteenth Revised Sheet No. 15
First Alternate Sixteenth Revised Sheet No. 17
Thirteenth Revised Sheet No. 29
Thirteenth Revised Sheet No. 30
Thirteenth Revised Sheet No. 31

Southern submits alternate sheets to comply with the Commission's November 30, 1994 Order requiring Southern to recover its Account No. 858 costs and Southern Energy LNG costs through the same type of quarterly mechanism as the one currently in place for the recovery of Southern's gas supply realignment costs. Southern notes that the instant filing is made without prejudice to Southern's request for rehearing of the November 30, 1994 Order.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5732 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–221–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

March 3, 1995.

Take notice that on February 23, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–221–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point, including measurement and appurtenant facilities for service to South Carolina Pipeline Corporation (SCPC), in Jasper County, South Carolina, under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that SCPC, in turn, would provide natural gas service to South Carolina Electric and Gas Company for service to a new residential retirement community known as Sun City Hilton Head. The estimated cost of construction, it is said, is approximately $178,400 and the Maximum Daily Delivery Quantity would be 1,032 Mcf per day.

Southern states further that the installation of the proposed facilities would have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5733 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing certain tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed changes would generate additional jurisdictional revenues of approximately $132 million annually based upon the 12 month period ended November 30, 1994, as adjusted. The proposed effective date of the filing is April 1, 1995.

Transco states that the principal causes of the rate increase are (1) an increase in rate base resulting from additional plant and higher working capital requirements and a reduction in Accumulated Deferred Income Taxes; (2) an increase in operation and maintenance expenses; and (3) an increase in Transco's cost of capital resulting from an increase in the equity component of the capital structure used (this filing is based on the Transco pipeline capital structure) and in the cost of equity from the pre-filed rate of 14.45 percent to the proposed rate of return on equity of 15.25 percent.

Transco states that since its last rate case filing the Commission approved, in a series of orders in Transco's restructuring proceeding under Order No. 636 in Docket Nos. RS92–86 and RP92–137, the basic rate design and cost allocation methods which are reflected in this filing. Specifically, the instant filing reflects, among other things, continuation of the following Commission-approved methods: (1) straight fixed-variable (SFV) rate design for Transco's firm transportation rates; (2) the unbundling of system storage pursuant to order No. 636 reflected in Transco Rate Schedule ESS contract storage service; (3) the roll-in of Transco's Mobile Bay facilities; (4) separately-stated gathering charges; (5) a tracking mechanism to recover costs incurred by Transco on CNG Transmission Corporation in rendering Transco's Rate Schedule GSS service; and (6) a tracking mechanism to recover stranded Account No. 858 costs incurred by Transco under arrangements with upstream pipelines.

Transco states that the instant filing also reflects the continuation of other rate design and cost allocation methodologies which are being litigated in Transco Docket Nos. RP92–137, *et al.*

These methodologies are (1) Transco's IT-feeder rate design; (2) a systemwide cost of service; (3) interruptible transportation (IT) rates designed on a 100 percent load factor basis; (4) Transco's so-called volumetric costs being recovered on the basis of the same charge being applied to each dekatherm of throughput (rather than on a distance-sensitive basis); and (5) a single separately-stated gathering charge applicable to all non-Tilden gathering facilities and a different gathering charge applicable to sue of the Tilden facilities.

Transco states that changes reflected in the instant filing compared to the pre-filed methods in place on the Transco system are principally: (1) elimination of the Non-Gas Demand Charge under Rate Schedule FS; (2) refunctionalization of certain jointly owned transmission facilities to the gathering function pursuant to Commission orders issued since Transco's last rate case filing; (3) elimination of the IT revenue crediting mechanism based upon Transco's allocation of almost $87 million to interruptible transportation and gathering services which reflects the trend of Transco's operating experience under Order No. 636; (4) elimination of a reverse South Georgia adjustment due to the fact that as of September 1995 Transco will have flowed back to ratepayers the entirety of its formerly-overfunded deferred taxes; (5) elimination of revenue credits to cost of service for the transportation of liquefiables (because such transactions are herein reflected as part of the projection of IT throughput); (6) reduced FASB No. 106 expense resulting, in part, from flowback of a regulatory liability created during the Docket No. RP92–137 rate period; and (7) miscellaneous tariff revisions as described in the Statement of Nature, Reasons, and Basis.

Finally, the instant filing proposes on a prospective only basis the following changes to the pre-filed methods: (1) a new Rate Schedule ICTS (Interconnect Transfer Service) that provides short-haul transfer service between pipeline interconnects or third-party facilities connected to TGPL; (2) a new Rate Schedule GMS (Gas Management Service) that provides for the borrowing or parking of gas at designated pooling points; and (3) elimination of the "at-risk" certificate condition governing Transco's Mobile Bay facilities. These changes are proposed to be effective prospectively only after Commission approval.

Transco also has included in Statement Q a pro forma tariff sheet reflecting market-based IT rates for non-IT-feeder transactions. If the Commission, in response to interventions in this docket, sets the issue of Transco's IT rate design for hearing in this docket, the pro forma tariff sheet gives notice of Transco's position on IT rate design, i.e., that rates for non-IT-feeder IT service should be marked-based.

Transco states that copies of the filing have been served upon Transco's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5734 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–34–008]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on February 28, 1995, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1995:

111th Revised Sheet No. 5
7th Revised Sheet No. 5A.05

On November 23, 1993, Transwestern filed a Stipulation and Agreement (Settlement) to resolve all issues in Docket No. RP93–34–000. On March 30, 1994, the Commission issued an order approving the beforementioned Settlement. The Settlement became effective on April 1, 1994.

Under the terms of the Settlement Transwestern agreed to a four-year phase-in period to reach a Field Area Services ("FAS") rate that reflects the unbundling resulting from the net allocation to FAS of $84 million of gross plant. As part of the four-year phase-in mechanism under which the costs allocated to FAS are increased, there is a corresponding phase-in under which costs allocated to Transwestern's FTS–1 service from East of Thoreau to California are decreased.

Transwestern states that the purpose of the instant filing is to file tariff sheets in compliance with the terms of the Settlement.

Transwestern also states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5735 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–183–000]

West Texas Gas, Inc.; Notice of Petition for Waiver

March 3, 1995.

Take notice that on February 28, 1995, West Texas Gas, Inc. (WTG), filed with the Federal Energy Regulatory Commission a request for waiver of Sections 154.304 and 154.308 of the Commission's Regulations, to the extent necessary to permit a 15–day extension of time within which to file its Quarterly PGA filing in the referenced docket, which is currently due to be filed on March 1, 1995, to be effective April 1, 1995.

WTG states that because of its small size, WTG has not had a chance to compile all of the information necessary to file WTG's Quarterly PGA filing by March 1. WTG requests that the Commission grant an extension of the filing deadline to March 15, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 in accordance with § 385.211

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and 385.214 of the Commission's Rule and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5736 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–2–000]

Williams Natural Gas Co.; Notice of Technical Conference

March 3, 1995.

In the Commission's order issued on February 14, 1995 in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing.[1] The technical conference to address the issues has been scheduled for March 30, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5737 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–23–000]

Williams Natural Gas Co.; Notice of Technical Conference

March 3, 1995.

In the Commission's order issued on November 30, 1994 in the above-captioned proceeding, the Commission ordered that a technical conference is convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for March 29, 1995, at 1:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5738 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

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[1] Williams Natural Gas Company, 70 FERC ¶ 61,170 (1995).

[Docket No. RP95–190–000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that Williams Natural Gas Company (WNG), on March 1, 1995, tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of March 31, 1995:

Fourth Revised Sheet No. 9
Third Revised Sheet No. 10

WNG states that this filing is being made pursuant to Section 4 of the Natural Gas Act and Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, WNG proposes to recover approximately $1.2 million in unrecovered purchased gas costs. As provided in Article 14.1, WNG proposes to direct bill such amount to parties who were customers under WNG's former Rate Schedules F, PR(A), PR(B) and P on May 18, 1992 based on each customer's purchases as a percentage of total purchases by all customers under the above rate schedules during the twelve-month period ending September 30, 1993. Each customer's allocated amount is shown on Sheet Nos. 9 and 10. WNG proposes that payment be made in a lump sum or over an amortization period of no more than 36 months as provided by WNG's tariff, with interest determined pursuant to Section 154.67(c) of the Commission's regulations.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5739 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–193–000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Filing

March 3, 1995.

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Williston Basin states that the revised tariff sheets are being filed to make minor tariff modifications and housekeeping changes necessary to correct and clarify its tariff in light of experience gained since implementing Order Nos. 636, et seq. on November 1, 1993.

Williston Basin is requesting that the tariff sheets be made effective on April 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1995. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5740 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–192–000]

Williston Basin Interstate Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1995.

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being submitted to revise its Rate Schedule ST–1 to implement a provision whereby customers currently served under Rate Schedule ST–1 which were classified to such Rate Schedule for cost mitigation purposes will be billed under a two part rate structure, including a one part SFV designed reservation rate applicable to the Maximum Daily Delivery Quantity (MDDQ) at all point(s) listed on the applicable Service Agreement.

In addition, Williston Basin states it has revised the Gas Supply Realignment Tariff provisions included as Section 39 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to bill Rate Schedule ST–1 shippers which were classified to such Rate Schedule for cost mitigation purposes only, the GSR cost surcharge applicable to Rate Schedule FT–1 customers and remove the associated MDDQ from the development of the Rate Schedule ST–1 GSR cost surcharge.

Williston Basin has requested that the Commission accept this filing to become effective April 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5741 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–191–000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Filing

March 3, 1995.

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed pursuant to the Service Agreement applicable to Rate Schedule X–13 service between Williston Basin and Northern States Power Company. The rate for firm transportation hereunder has been restated to reflect the first biennial restatement under the terms of the Service Agreement. The restated rate reflects a reservation charge of $17.56792 per Mcf per month, excluding applicable surcharges.

Williston Basin has requested that the Commission accept this filing to become effective March 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5742 Filed 3–8–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2060]

Petition for Reconsideration of Actions in Rulemaking Proceedings

March 6, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed on or before March 24, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Transport Rate Structure and Pricing. (CC Docket No. 91–113)

Number of Petition Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5787 Filed 3–8–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011391–002.
Title: TMM/Tecomar Space Charter and Sailing Agreement.
Parties:
Transportacion Maritima Mexicana, S.A. DE C.V.
Tecomar, S.A. DE C.V.
Synopsis: The proposed amendment adds authority to the Agreement which would permit the parties to discuss rates, charges, classifications, rules, service items, and other matters of mutual concern. Adherence to any agreement reached is voluntary. It also restates the Agreement.

Agreement No.: 203–011490.
Title: Mitsui O.S.K. Lines, Ltd., Nedlloyd Lines B.V. and Orient Overseas Container Line, Inc. Space Charter and Sailing Agreement in the U.S. East Coast-Central America Trades.
Parties:
Mitsui, O.S.K. Lines, Ltd.
Nelloyd Lines B.V.
Orient Overseas Container Line, Inc.
Synopsis: The proposed Agreement authorizes the parties to charter and sub-charter space on each others vessels, and to rationalize sailings in the trade between U.S. Atlantic Coast ports and points and ports and points in Central and South America and the Caribbean. It also permits the parties to discuss rates, terms and conditions of service contracts and tariffs on a voluntary basis.

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Agreement No.: 224–200589–003.
Title: Jacksonville Port Authority/ Green Cove Maritime, Inc. Terminal Agreement.
Parties:
Jacksonville Port Authority
Green Cove Maritime, Inc.
Synopsis: The proposed amendment provides for annual rate increases to the Agreement.
Agreement No.: 224–200923.
Title: Tri-State Container Freight Station Association Agreement.
Parties:
John A. Steer & Company
Galasso Trucking Service, Inc.
S.T.S. International, Inc.
Rail Head Services Philadelphia
Evans Century Transportation Co.
Eastern America Trans. & Whrs.
Sea Bridge Container Transport, Inc.
Synopsis: The proposed Agreement authorizes the parties to establish a conference and provides for fixing and adherence of rates, charges, practices and conditions of service relating to marine terminal facilities.

By Order of the Federal Maritime Commission.

Dated: March 6, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–5804 Filed 3–8–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

Licensed Number: 2767
Name: Stiebel International Shipping, Inc.
Address: 116 Marlborough, Bloomfield Hills, MI 48302
Date Revoked: January 27, 1995
Reason: Failed to furnish a valid surety bond.

Licensed Number: 3632
Name: Transcontinental Marketing Corporation dba TRAMACO
Address: 7425 No. Mona Lisa Rd., Ste. 4, Tucson, AR 85741
Date Revoked: February 3, 1995
Reason: Failed to furnish a valid surety bond.

Licensed Number: 3641
Name: Kudley Trans-Port Service, Inc.
Address: 1714 Casery Blvd., Jacksonville, FL 32211
Date Revoked: February 4, 1995
Reason: Failed to furnish a valid surety bond.

Licensed Number: 3541
Name: C Port Miami Corporation
Address: 6960 N.W. 186th St., Ste 324, Miami, FL 33015
Date Revoked: February 11, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–5805 Filed 3–8–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Wells Fargo & Company; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 3, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Wells Fargo Bank (Arizona), National Association, Phoenix, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5783 Filed 3–8–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 021395 AND 022495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
First Empire State Corporation, Paul E. Scherer, Statewide Funding Corporation	95–0934	02/13/95
First Empire Corporation, Christopher Schmid, Statewide Funding Corporation	95–0935	02/13/95
Argosy Gaming Company, Mr. Steve Urie, Jazz Enterprises, Inc	95–1012	02/13/95
Creighton University, GKH Investments, L.P., GKH Investments, L.P	95–0894	02/14/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 021395 AND 022495—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
K N Energy, Inc., Burlington Resources, Inc., Meridian Oil Hydrocarbons Inc., Meridian Oil Storage	95–0899	02/14/95
Harnischfeger Industries, Inc., Rochling Industrie Verwaltung GmbH, Jagenberg Papiertechnik GmbH and Jagenberg Inc	95–0458	02/15/95
The Hillhaven Corporation, The Hillhaven Corporation, The Hillhaven Corporation	95–0987	02/16/95
Shurgard Storage Centers, Inc., Shurgard Incorporated, Shurgard Incorporated	95–0933	02/17/95
American International Group, Inc., Robert H. Ledbetter, Cobb Retail Associates	95–0938	02/17/95
American International Group, Inc., Stephen H. Whisenant, Cobb Retail Associates	95–0940	02/17/95
Harvest States Cooperative, H.J. Heinz Company, Portion Pac Inc	95–0941	02/17/95
Mitsui & Co., Ltd., H.J. Heinz Company, Portion Pac Inc	95–0950	02/17/95
Apache Corporation, DEKALB Energy Company, DEKALB Energy Company	95–0964	02/17/95
The Parsons Corporation, Sidney Epstein, A. Epstein and Sons International, Inc	95–0991	02/17/95
WHX Corporation, Ohio Coatings Company (Joint Venture), Ohio Coatings Company (Joint Venture)	95–0994	02/17/95
Dong Yang Tinplate Ind. Co., Ltd., Ohio Coating Company (Joint Venture), Ohio Coating Company (Joint Venture)	95–0995	02/17/95
Tostem Corporation, Alumax Inc., Washington Newco and Maryland Newco	95–1010	02/17/95
Mitsui & Co., Ltd., Alumax Inc., Washington Newco and Maryland Newco	95–1011	02/17/95
CPF Acquisition Co., Inc., William H. Kopman, Universal Premium Acceptance Corporation	95–0917	02/21/95
The Superior Gen. & Councilors/Franciscan Sisters Mercy, Oklahoma Orthopedic and Arthritis Foundation, Inc., Oklahoma Orthopedic and Arthritis Foundation, Inc	95–0919	02/21/95
Catholic Healthcare West, Daughters of Charity National Health System, Inc., Daughters of Charity National Health System-West, Inc	95–0936	02/21/95
K–III Communications Corporation, Jonathan Adler, The Adler Group, Inc, and WJA, Inc	95–0973	02/21/95
K–III Communications Corporation, Warren Adler, The Adler Group, Inc., and WJA, Inc	95–0974	02/21/95
The Travelers Inc., Warburg Pincus Investors, L.P., HealthSpring, Inc	95–0975	02/21/95
Metropolitan Life Insurance Company, Warburg Pincus Investors, L.P., HealthSpring, Inc	95–0976	02/21/95
Warburg, Pincus Investors, L.P., The Travelers, Inc., The MetraHealth Companies, Inc	95–0977	02/21/95
The Jaguar fund N.V., Peter Munk, Clark USA, Inc	95–1005	02/21/95
Tiger (a limited partnership), Peter Munk, Clark USA, Inc	95–1009	02/21/95
Credence Systems Corporation, EPRO Corporation, EPRO Corporation	95–1017	02/21/95
Wictor Forss, E.I. DuPont de Nemours and Company, Conoco	95–1018	02/21/95
Svenska Cellulosa Aktiebolaget SCA, Scott Paper Company, Scott Health Care (SHC) Health Care Company (HCC)	95–1021	02/21/95
A. Schulman Inc., J.M. Huber Corporation, J.M. Huber Corporation	95–1027	02/21/95
Fairview Hospital and Healthcare Services, Ebenezer Society, Ebenezer Society	95–1037	02/21/95
Renal Treatment Centers, Inc., Robert I. Falk, Healthcare Corporation	95–1044	02/21/95
Robert I. Falk, Renal Treatment Centers, Inc., Renal Treatment Centers, Inc	95–1045	02/21/95
Consolidated Electrical Distributors, Inc., Hughes Supply, Inc., Hughes Supply, Inc	95–0968	02/22/95
D & K Wholesale Drug, Inc., Krelitz Industries, Inc., Krelitz Industries, Inc	95–1000	02/22/95
Thayer Hotel Investors II L.P., Great Western Financial Corporation, Twinbrook Business Center Incorporated	95–1001	02/22/95
Ricoh Company, Ltd., Savin Corporation, Savin Corporation	95–1029	02/22/95
Ronald W. Burkle, Dodi Family L.L.C., Dodi, Inc	95–1038	02/22/95
National Medical Enterprises, Inc., South Dade Health Care Ventures, L.L.C., South Dade Health Care Ventures, L.L.C	95–0951	02/23/95
South Miami Health System, Inc., South Dade Health Care Ventures, L.L.C., South Dade Health Care Ventures, L.L.C	95–0952	02/23/95
AT&T Corp., LiteSpec Limited Liability Company, LiteSpec Limited Liability Company	95–0966	02/23/95
Ira Leon Rennert, UNR Asbestos-Disease Claims Trust, UNR Industries, Inc	95–1028	02/23/95
California Microwave, Inc., Microwave Networks Incorporated, Microwave Networks Incorporated	95–1007	02/24/95
Arthur W. Epley III, California Microwave, Inc., California Microwave, Inc	95–1008	02/24/95
Holland Chemical International, B.V., Philip M. Segal, Jr., Worth Chemical Corporation	95–1025	02/24/95
American Home Products Corporation, Affymax N.V., Affymax N.V	95–1049	02/24/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–5788 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3557]

American Home Products Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair method of competition—in connection with American Home Products Corporation's acquisition of American Cyanamid Company—this consent order requires, among other things, the New Jersey-based corporation to divest its tetanus and diphtheria vaccine business to a Commission-approved buyer; to license Cyanamid's rotavirus vaccine research to a Commission-approved licensee; and to change a previously established licensing agreement to ensure that it does not obtain certain competitively sensitive information. The consent order also prohibits, for ten years, the respondent from acquiring any interest in any entity engaged in the clinical development, manufacture, or sale of tetanus, diphtheria, or rotavirus vaccines in the United States without prior Commission approval.

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DATES: Complaint and Order issued February 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Monday, November 28,1994, there was published in the **Federal Register**, 59 FR 60807, a proposed consent agreement with analysis In the Matter of American Home Products Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–5787 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0002]

Boston Scientific Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, Boston Scientific Corporation, a Massachusetts-based manufacturer and marketer of catheters, to proceed with the proposed acquisitions of Cardiovascular Imaging Systems, Inc., and SCIMED Life Systems, Inc., but would require the respondent to grant a non-exclusive license to a specified package of patents and technology related to the manufacture, production and sale of intravascular ultrasound (IVUS) imaging catheters to the Hewlett-Packard Company or another Commission-approved licensee. When the consent becomes final, the license would have to be granted within ten days to Hewlett-Packard or within six months to another licensee. In addition, the consent agreement would require the respondent to obtain Commission approval, for ten years, before acquiring an interest greater than one percent in a company engaged in researching, developing or manufacturing IVUS catheters for sale in the United States.

DATES: Comments must be received on or before April 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse or Robert Tovsky, FTS/S–3627, Washington, D.C. 20580. (202) 326–2949 or 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisitions by Boston Scientific Corporation of Cardiovascular Imaging Systems, Inc. and SCIMED Life Systems, Inc., and it now appearing that Boston Scientific Corporation, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to license or divest certain assets, and to cease and desist from making certain acquisitions, and providing for other relief:

It Is Hereby Agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Boston Scientific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1 Boston Scientific Place, Natick, Massachusetts, 01760–1537.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to license, divest and cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to license, divest and cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that is has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "Boston Scientific" means Boston Scientific Corporation, its predecessors, successors, assigns, subsidiaries, divisions, and groups and affiliates controlled by Boston Scientific, their successors and assigns, and the directors, officers, employees, agents, and representatives of each.

B. "CVIS" means Cardiovascular Imaging Systems, Inc.

C. "SCIMED" means SCIMED Life Systems, Inc.

D. "Commission" means the Federal Trade Commission.

E. "CVIS Acquisition" means the acquisition by Respondent of CVIS voting securities that is the subject of an Agreement and Plan of Merger and Reorganization entered into on or about August 31, 1994.

F. "SCIMED Acquisition" means the acquisition of SCIMED voting securities that is the subject of an Agreement and Plan of Merger entered into on or about November 8, 1994.

G. "IVUS Catheters" means intravascular ultrasound catheters, intracardiac ultrasound catheters, removable imaging cores used in intravascular or intracardiac ultrasound imaging, and intravascular imaging guidewires.

H. "IVUS Technology Portfolio" means:

1. all rights of Boston Scientific, CVIS and SCIMED under United States and foreign patents and patent applications filed in any country relating to IVUS Catheters, including rights under patents issued in the future in any country based upon patent applications filed, or inventor's certificates and invention disclosures made, on or before the License Date, and rights under all substitutions, continuations, continuations-in-part, divisions, renewals, reissues and extensions based on said patents and patent applications, including but not limited to the right to manufacture, use, sell, or offer for sale for any purpose or application any product suitable for use as an IVUS Catheter;

2. all trade secrets, technology and know-how of CVIS and SCIMED relating to IVUS Catheters, including but not limited to, books and records, the results of research and development efforts, filings with the United States Food and Drug Administration, scientific and clinical reports, designs, manuals, drawings, and design, material and equipment specifications and any know-how used by CVIS or SCIMED in conjunction with the research and development, manufacturing or marketing of IVUS Catheters;

3. a copy of the IVUS Catheter customer lists of Boston Scientific and CVIS.

I. "SCIMED IVUS Technology" means all assets of SCIMED relating to IVUS Catheters, including but not limited to:

1. United States and foreign patents and patent applications filed in any country relating to IVUS Catheters;

2. all trade secrets, technology, and know-how of SCIMED relating to IVUS Catheters, including but not limited to, books and records, the results of research and development efforts, filings with the United States Food and Drug Administration, scientific and clinical reports, designs, manuals, drawings, and design, material and equipment specifications and any know-how used by SCIMED in conjunction with the research and development, manufacturing or marketing of IVUS Catheters; and

3. all IVUS Catheter prototypes.

J. "License Date" means the date on which the IVUS Technology Portfolio is licensed following Commission approval pursuant to Paragraph II or Paragraph V of this Order.

K. "Licensee" means the person to whom the IVUS Technology Portfolio is licensed pursuant to Paragraph II or Paragraph V of this Order.

L. "IVUS Consoles" means instruments used to deploy IVUS Catheters and to convert into display images signals transmitted by IVUS Catheters.

II

It Is Further Ordered that:

A. Within six (6) months of the date this Order becomes final, Respondent shall, absolutely and in good faith, grant pursuant to Paragraph II.B of this Order, at no minimum price and with no continuing royalties, a perpetual, non-exclusive license of the IVUS Technology Portfolio, together with the right to grant exclusive sub-licenses to any part of such IVUS Technology Portfolio, the right to grant exclusive sub-licenses to manufacture or sell any product pursuant to such IVUS Technology Portfolio, and the right to have IVUS Catheters manufactured and sold on its behalf by any person.

B. Respondent shall license the IVUS Technology Portfolio.

1. to Hewlett-Packard Company, within ten days after the date this Order becomes final, pursuant to, and in accordance with, the February 21, 1995 agreement between Respondent and Hewlett-Packard Company, which agreement is in Confidential Appendix II; or

2. to a person that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the license is to create an independent competitor in the development, production and sale of IVUS Catheters and to remedy the lessening of competition resulting from the CVIS Acquisition and the SCIMED Acquisition as alleged in the Commission's Complaint.

C. For a period of three (3) years after the date this Order becomes final, upon reasonable notice and reasonable request from the Licensee, Boston Scientific shall provide to the Licensee information, technical assistance and advice sufficient to effect the transfer to the Licensee of the IVUS Technology Portfolio, and to enable the Licensee to obtain all necessary United States Food and Drug Administration approvals or certifications obtained by CVIS or Boston Scientific with respect to, and to enable the Licensee to manufacture, all IVUS Catheters manufactured by CVIS at any time during the period commencing twelve (12) months prior to the date this Order becomes final and extending through the License Date. Upon reasonable notice and reasonable request from the Licensee, Boston Scientific shall also provide to the Licensee consultation with knowledgeable employees of Boston Scientific and training at the Licensee's facility for a period of time, not to exceed two (2) years, sufficient to satisfy the Licensee's management that its personnel are adequately trained in the design and manufacture of IVUS

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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Catheters. Respondent may require reimbursement from the Licensee for all its direct out-of-pocket expenses incurred in providing the services required by this Paragraph II.C of this Order.

D. Respondent shall not restrict any person employed by CVIS or SCIMED prior to the date this Order becomes final from accepting employment with the Licensee or, following employment of any such person by the Licensee, communicating to the Licensee any intellectual property included in the IVUS Technology Portfolio.

E. Pending the licensing of the IVUS Technology Portfolio, Respondent shall take such actions as are necessary to maintain the viability and marketability of the IVUS Technology Portfolio and to prevent the destruction, removal, wasting, deterioration, or impairment of the IVUS Technology Portfolio.

F. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as specified in the Agreement to Hold Separate.

III

It Is Further Ordered that Respondent shall supply to the Licensee, for such period as the Licensee may request, up to three (3) years, on reasonable commercial terms and provisions, at Boston Scientific's cost or at such lower price as Boston Scientific and the Licensee may otherwise agree, for distribution and sale by the Licensee, such quantities and types of IVUS Catheters as may be requested by the Licensee, upon reasonable notice, from among the various types manufactured and sold by Boston Scientific during the period of such supply arrangement.

IV

It Is Further Ordered that, for a period of five (5) years from the date this Order becomes final, Respondent shall not offer, renew, extend or enter into any exclusive contract or agreement, or enforce directly or indirectly any exclusivity provision thereof, with any manufacturer of IVUS Consoles, relating to the development, manufacture or distribution of such units or relating to compatibility between the IVUS Consoles produced by such manufacturer and IVUS Catheters produced by any person.

V

It Is Further Ordered that:

A. If Boston Scientific has not licensed the IVUS Technology Portfolio as required by Paragraph II of this Order, the Commission may appoint a trustee to license the IVUS Technology Portfolio and to divest CVIS together with the SCIMED IVUS Technology. In the event that the Commission or the Attorney General brings an action pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Boston Scientific shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If a trustee is appointed by the commission or a court pursuant to Paragraph V of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions, divestitures, and licensing. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to license the IVUS Technology Portfolio and to divest CVIS together with the SCIMED IVUS Technology.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the licensing or divestiture required by this Order.

4. The trustee shall have—

a. six (6) months from the date the Commission approves the trust agreement described in Paragraph V.B.3. to accomplish the licensing of the IVUS Technology Portfolio, which license shall be subject to the prior approval of the Commission. If, however, at the end of this six (6)-month period, the trustee has submitted a licensing candidate or believes that licensing can be achieved within a reasonable time, the licensing period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; and

b. if the trustee has not licensed the IVUS Technology Portfolio within the six (6)-month period described in Paragraph V.B.4.a., above, the trustee shall have an additional twelve (12) months to accomplish the divestiture of CVIS together with the SCIMED IVUS Technology, which divestiture shall be subject to the prior approval of the Commission. If, however, at the end of this twelve (12)-month period, the trustee has submitted a divestiture candidate or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the IVUS Technology Portfolio, CVIS and the SCIMED IVUS Technology and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the licensing or divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to license or divest at no minimum price. The licensing or divestiture shall be made in the manner and to a Licensee or acquirer approved by the Commission; provided, however, if the trustee receives bona fide offers from more than one entity, and if the Commission determines to approve more than one such entity, the trustee shall license or divest, as applicable, to the entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the licensing or divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's licensing the IVUS Technology Portfolio, or divesting CVIS and the SCIMED IVUS Technology.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the licensing or divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the IVUS Technology Portfolio, CVIS or the SCIMED IVUS Technology.

12. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the licensing or divestiture.

VI

It Is Further Ordered that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than one (1) percent of the stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in the research, development, or manufacture of IVUS Catheters for sale in the United States;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture of IVUS Catheters for sale in the United States; or

C. Acquire exclusive rights to any patent or other technology relating to the manufacture or sale of IVUS Catheters in the United States

Provided, however, that this Paragraph VI shall not apply to the acquisition of products or services in the ordinary course of business.

VII

It Is Further Ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II and V of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the Order, including a description of all substantive contacts or negotiations for the licensing and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning licensing.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VIII

It Is Further Ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

IX

It Is Further Ordered that Respondent, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on five day's notice to Respondent, shall permit any duly authorized representative(s) of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Without restraint or interference from Respondent, to interview Respondent's officers, directors, or employees, who may have counsel present, regarding such matters.

X

It Is Further Ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix I

Agreement To Hold Separate

[Docket No. C– , File No. 951–0002]

Agreement To Hold Separate

This Agreement to Hold Separate (the "Hold Separate") is by and among the Boston Scientific Corporation ("Boston Scientific"), a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 1 Boston Scientific Place, Natick, Massachusetts, 01760–1537, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on August 31, 1994, Boston Scientific entered into an agreement with Cardiovascular Imaging Systems, Inc. ("CVIS") providing for the acquisition (hereinafter the "CVIS

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Acquisition") of the voting securities of CVIS; and

Whereas, CVIS, with its principal office and place of business at 595 North Pastoria Avenue, Sunnyvale, California 94086, manufactures and sells intravascular ultrasound catheters and high frequency imaging units for use with such catheters; and

Whereas, on November 8, 1994, Boston Scientific entered into an agreement with SCIMED Life Systems, Inc. ("SCIMED") providing for the acquisition (hereinafter the "SCIMED Acquisition") of the voting securities of SCIMED; and

Whereas, SCIMED, with its principal office and place of business at One SCIMED Place, Maple Grove, Minnesota 55311–1566, is conducting research and development with respect to IVUS Catheters; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), the Commission will place it on the public record for a period of at least thirty (30) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of CVIS, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 30-day public comment period), divestiture resulting from any proceeding challenging the legality of the CVIS Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the CVIS Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of CVIS and the Commission's right to seek a viable competitor to Boston Scientific; and

Whereas, the Commission has filed suit in the United States District Court for the District of Columbia (Civil Action No. 1:95 CV00198) seeking a preliminary injunction with respect to the CVIS Acquisition pending an administrative trial, and the Commission has authorized its staff to seek a preliminary injunction with respect to the SCIMED Acquisition pending an administrative trial; and

Whereas, the purpose of the Hold Separate is to:

(i) Preserve CVIS as a viable and competitive business, independent of Boston Scientific, and engaged in the research and development, manufacture and sale of IVUS Catheters and IVUS Consoles, pending final acceptance or withdrawal of acceptance of the Consent Order by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules;

(ii) Preserve CVIS as a viable and competitive business, independent of Boston Scientific, and engaged in the research and development, manufacture and sale of IVUS Catheters and IVUS Consoles, pending licensing of the IVUS Technology Portfolio pursuant to Paragraph II of the Consent Order or pending licensing of the IVUS Technology Portfolio or divestiture of CVIS and the SCIMED IVUS Technology pursuant to Paragraph V of the Consent Order; and

(iii) Remedy any anticompetitive effects of the CVIS Acquisition; and

Whereas, Boston Scientific's entering into this Hold Separate shall in no way be construed as an admission by Boston Scientific that the CVIS Acquisition or the SCIMED Acquisition is illegal or would have any anticompetitive effects; and

Whereas, Boston Scientific understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, Therefore, the Parties agree, and in consideration of the Commission's agreement that, unless it determines to reject the Consent Order, it will not seek further relief from Boston Scientific with respect to the CVIS Acquisition or the SCIMED Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the Consent Order, once it becomes final, and in the event that the required licensing is not accomplished, to appoint a trustee to seek divestiture of CVIS and the SCIMED IVUS Technology, pursuant to the Consent Order, as follows:

1. Boston Scientific agrees to execute and be bound by the attached Consent Order.

2. If the Commission accepts the Consent Order for public comment, Boston Scientific and the Commission will move to stay the action for preliminary injunction pending in United States District Court with respect to the CVIS Acquisition until such time as the Commission withdraws such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules or finally accepts and issues the Consent Order; and, in the event the Commission finally accepts the Consent Order, the Commission will move to dismiss the preliminary injunction action.

3. The terms "IVUS Catheters," "IVUS Consoles," "IVUS Technology Portfolio," and "SCIMED IVUS Technology" have the same definitions as in the Consent Order;

4. Boston Scientific agrees that from the date this Hold Separate is accepted until the earliest of the dates listed in subparagraphs 4.a, 4.b, 4.c or 4.d, it will comply with the provisions of paragraph 5 of this Hold Separate:

a. May 26, 1995, if the Commission has not made the Consent Order final or withdrawn its acceptance of the Consent Order by that date;

b. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules;

c. the date the licensing required under Paragraph II or V of the Consent Order is completed.

d. the date the divestiture required under Paragraph V of the Consent Corder is completed.

5. Boston Scientific shall hold CVIS as it is constituted on the date the CVIS Acquisition is consummated, separate and apart on the following terms and conditions:

a. CVIS, as defined in Paragraph I.B. of the Consent Order, shall be held separate and apart and shall be operated independently of Boston Scientific (meaning here and hereinafter, Boston Scientific excluding CVIS and excluding all personnel connected with CVIS as of the date this Hold Separate is signed) except to the extent that Boston Scientific must exercise direction and control over CVIS to assure compliance with this Hold Separate or with the Consent Order.

b. Boston Scientific shall not exercise direction or control over, or influence directly or indirectly, CVIS, the New Board (as defined in subparagraph 5.d), or any of its operations or businesses; provided, however, that Boston Scientific may exercise only such direction and control over CVIS as is necessary to assure compliance with this Hold Separate or with the Consent Order and provided further that Boston Scientific may (a) direct CVIS to consent that patent litigation between Boston Scientific and CVIS be stayed; (b) direct CVIS to consent to acceptance of SCIMED's position in the arbitration proceeding pending between CVIS and SCIMED; and (c) direct that Boston Scientific and CVIS enter into a non-exclusive, royalty-free cross-license of all their IVUS Catheter patents, provided however no such cross-license shall limit rights conferred to CVIS except to the extent it imposes identical limits on rights conferred to Boston Scientific, and provided further that no such cross-license shall exclude any Boston Scientific patents relating to IVUS Catheters; and following execution of such cross-license, direct that the patent litigation between Boston Scientific and CVIS be dismissed.

c. Boston Scientific shall maintain the marketability, viability and competitiveness of CVIS, and shall not take such action that will cause or permit the destruction, removal, wasting, deterioration or impairment of CVIS, except in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of CVIS.

d. Boston Scientific shall elect a three-person Board of Directors for CVIS (the "New Board"). The New Board shall consist of two persons knowledgeable about IVUS Catheters, one of whom shall be named Chairman of the New Board, and who shall remain independent of Boston Scientific and competent to assure the continued viability and competitiveness of CVIS, and one New Board Member who is also an officer, agent or employee of Boston Scientific (the Boston Scientific New Board Member"). Except for the Boston Scientific New Board Member, Boston Scientific shall not permit any director, officer, employee or agent of Boston Scientific also to be a director, officer, employee or agent of CVIS. Each Board member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate.

e. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating and consummating the CVIS Acquisition, defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order, Boston Scientific shall not receive or have access to, or the use of, any material confidential information of CVIS or the activities of the New Board, not in the public domain. Boston Scientific may receive on a regular basis from CVIS aggregate financial information necessary and essential to allow Boston Scientific to file financial reports, tax returns and personnel reports. Boston Scientific and CVIS may also exchange confidential information, subject to appropriate confidentiality agreements, pursuant to agreements between CVIS and Boston Scientific for joint research or contract manufacture, on arms-length commercial terms, to the extent such agreements would be permissible between competitors under the antitrust laws. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used in this Hold Separate, means competitively sensitive or proprietary information not independently known to Boston Scientific from sources other than CVIS or the New Board, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. Except as permitted by this Hold Separate, the New Board member appointed by Boston Scientific ("Boston Scientific New Board Member") who is also an officer, agent, or employee of Boston Scientific shall not receive any CVIS material confidential information and shall not disclose any such information obtained through his or her involvement with CVIS to Boston Scientific or use it to obtain any advantage for Boston Scientific. The Boston Scientific New Board Member shall participate in matters that come before the New Board only for the limited purpose of considering any capital investment of over one million dollars ($1,000,000), approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing any material transactions described in paragraph 5.g, and carrying out Boston Scientific's responsibilities under Hold Separate and the Consent Order. Except as permitted by the Hold Separate, the Boston Scientific New Board Member shall not participate in any other matter.

g. All material transactions, out of the ordinary course of business and not precluded by paragraph 5 hereof, shall be subject to a majority vote of the New Board (as defined in paragraph 5.d hereof).

h. Boston Scientific shall not change the composition of the New Board unless the Chairman of the New Board consents, or unless it is necessary to do so in order to assure compliance with this Hold Separate or with the Consent Order. The Chairman of the New Board shall have the power to remove members of the New Board for cause and to require Boston Scientific to appoint replacement members of the New Board. Boston Scientific shall not change the composition of the management of CVIS except that the New Board shall have the power to remove management employees for any legal reason. If the Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 5.d. Boston Scientific shall circulate to the management employees of CVIS and appropriately display a notice of the Hold Separate and the Consent Agreement at a conspicuous place at all CVIS offices and facilities.

i. All earnings and profits of CVIS shall be retained separately by CVIS. If necessary, Boston Scientific shall provide CVIS with sufficient working capital to operate at current rates of operation, upon commercially reasonable terms.

j. Should the Federal Trade Commission seek in any proceeding to compel Boston Scientific to divest itself of CVIS or SCIMED or to compel Boston Scientific to divest any assets or businesses of CVIS and SCIMED that it may hold, or to seek any other injunctive or equitable relief, Boston Scientific shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the CVIS Acquisition or the SCIMED Acquisition. Boston Scientific also waives all rights to contest the validity of this Hold Separate.

6. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request and five day's notice to Boston Scientific, Boston Scientific shall permit any duly authorized representative(s) of the Commission:

a. Access during the office hours of Boston Scientific and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Boston Scientific or CVIS relating to compliance with this Hold Separate;

b. Without restraint or interference from Boston Scientific, to interview Boston Scientific's or CVIS' officers, directors or employees, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("the Commission") has accepted, for public comment, from Boston Scientific Corporation ("Boston Scientific"), an agreement containing a consent order. This agreement has been placed on the public record for thirty days for

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reception of comments from interested persons.

Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisitions by Boston Scientific of Cardiovascular Imaging Systems, Inc. ("CVIS") and SCIMED Life Systems, Inc. ("SCIMED"). The Commission's proposed complaint alleges that Boston Scientific and CVIS each develop, produce and market intravascular ultrasound ("IVUS") catheters for use throughout the world. It also alleges that SCIMED has been working on the development of these products, has manufactured and tested prototypes, and is a likely entrant into the IVUS catheter market. IVUS catheters are used in the diagnosis and treatment of artery disease.

The agreement containing a consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the production and sale of IVUS catheters in the United States. The Commission has reason to believe that the acquisitions would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The Commission has filed suit in the United States District Court for the District of Columbia to enjoin Boston Scientific's proposed acquisition of CVIS. That action is stayed by Commission acceptance of the proposed order for public comment, and would be dismissed in the event that the Commission makes final the order.

The Commission's proposed complaint in this matter alleges that Boston Scientific's proposed acquisition of CVIS would eliminate ongoing competition, result in substantially increased concentration, and allow Boston Scientific to exercise market power. It further alleges that Boston Scientific's proposed acquisition of SCIMED would eliminate ongoing competition between Boston Scientific and SCIMED in IVUS catheter research and development, and would eliminate SCIMED as a potential entrant into the IVUS catheter market. The effect of these acquisitions, the complaint alleges, is likely to be higher prices for IVUS catheters and diminished product innovation.

The order accepted for public comment contains provisions that would require Boston Scientific to license to Hewlett-Packard Company or to another person that receives the prior approval of the Commission a broad package of patents and technology relating to IVUS catheters. This package would include rights to Boston Scientific's IVUS catheter patents, as well as the patents and technology that Boston Scientific proposes to acquire from both CVIS and SCIMED.

The order also would require Boston Scientific to provide, on request by the licensee, certain technical assistance sufficient to facilitate the licensee's use of the licensed technology and patents to enter the IVUS catheter market. For IVUS catheters of the type currently offered by CVIS, this requirement includes assistance for a period of three years in manufacturing and obtaining regulatory approvals. It also requires Boston Scientific to allow the licensee, for a period of two years, to consult with Boston Scientific employees for training in the design and manufacture of IVUS catheters. The order would also require Boston Scientific to permit CVIS' and SCIMED's current employees to take employment with the licensee. In order to further facilitate entry into IVUS catheters, the order would prohibit Boston Scientific from entering into exclusive contracts with manufacturers of IVUS consoles that would exclude a new IVUS catheter producer from the market.

The order would further provide for an interim supply agreement between Boston Scientific and the licensee, to extend for a period of three years, which covers the time that such a licensee could be expected to require to enter the IVUS catheter market with commercial products that have obtained regulatory approval.

Under the terms of the order, Boston Scientific must, if it does not license Hewlett-Packard, grant a license to a Commission approved licensee within six months of the date the order becomes final. If Boston Scientific fails to do so, the Commission may appoint a trustee to license the IVUS patents and technology, and, if necessary, to divest CVIS together with SCIMED's IVUS technology and patents.

A hold separate agreement made a part of the consent requires Boston Scientific, until it accomplishes the licensing required by the order, or until the trustee accomplishes the licensing or divestiture required by the order, or until May 26, 1995 if the order is not made final by that date, to hold separate and preserve all of the assets and businesses acquired from CVIS.

For a period of ten years from its effective date, the order would also prohibit Boston Scientific from acquiring, without prior Commission approval, more than one percent of the stock of, or any other interest in, any company engaged in the research, development, or manufacture for sale of IVUS catheters in the United States, assets used or previously used for the manufacture of IVUS catheters for sale in the United States, or exclusive rights to patents or other technology used for the manufacture or sale of IVUS catheters in the United States.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,
Secretary.

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in Boston Scientific Corporation, File 951–0002

Today the Commission decides to publish for comment a proposed consent order to settle concerns arising from the proposed acquisitions by Boston Scientific of CVIS and SciMed. Although I have reason to believe that the proposed acquisitions would be unlawful and the proposed consent agreement appears likely to provide an appropriate remedy for the violations, two provisions of the proposed settlement are troubling: one is the negotiated agreement to curtail the public comment period; the second is the fixed date for the expiration of the hold separate agreement.

Although Boston Scientific may be able to show good reason why the public comment period under Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, should be curtailed from the usual 60 days, it has made no attempt to do so. Instead, without any proffered justification, Boston Scientific and the staff have negotiated a 30-day public comment period. It should go without saying that the requirements of the Commission's Rules of Practice should not be a matter for negotiation.[1] The Commission's acceptance of the negotiated term creates an unfortunate precedent. Future respondents are likely to seek comparable concessions, increasing both the public and private costs of law enforcement negotiations. To the extent that the order reduces the length of the period for public comment and no good cause for that departure from the Commission's rules having been shown, I dissent.

Nor should the commission condone fixing a date certain for termination of the hold-separate agreement.[2] This means that to preserve its options, the Commission must decide the matter by a date certain, which trivializes the decisionmaking process. The Commission can expedite matters and has done so when appropriate,[3] as consistent with a careful review of the merits. A willingness to act expeditiously is quite different from acquiescing in advance to a "drop dead date" that may leave the Commission unable fully to consider issues and conditions as they may then exist or as they may be revealed during the public comment period.[4]

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BILLING CODE 6750–01–M

[1] The rules have the force and effect of law and should not be taken lightly. Departing from the rules without justification leads to inequality of treatment and leaves the Commission open to charges of arbitrary and capricious decisionmaking.

The duration of the public comment period is not a trivial matter. *Cf.* the Tunney Act, 15 U.S.C. § 16, which requires a 60-day public comment period for Department of Justice antitrust consent orders. The Tunney Act also provides that the 60-day public comment period "shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest." 15 U.S.C. § 16(d).

[2] A hold separate agreement preserves a viable and competitive business, independent of the acquirer, in part to ensure the Commission's ability to require a divestiture. When the hold separate agreement expires, the parties are free to consummate their transaction.

[3] Expedited treatment for one respondent means moving that matter to the front of the queue. The Commission ordinarily has required a showing that such treatment is warranted.

[4] The Commission and the public interest would be disserved to the extent that useful comments from the public are abbreviated or perhaps not even submitted because of the shortened public comment period.

[Dkt. C–411]

The H.D. Lee Co., Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Set aside order.

SUMMARY: This order reopens a 1965 consent order—which settled allegations that the respondent discriminated in the offering of advertising or promotional payments to its customers in connection with the resale of its wearing apparel—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued May 1, 1963.* Set aside order issued February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, FTC/S–2115, Washington, DC 20580. (202) 326–2861.

SUPPLEMENTARY INFORMATION: In the Matter of The H.D. Lee Co., Inc. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 25 U.S.C. 13)

In the Matter of The H.D. Lee Co., Inc., a corporation; Order Reopening Proceeding and Setting Aside Order.

[Docket No. C–411]

Commissioners: Janet D. Steiger, Chairman Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney.

On October 26, 1994, The Lee Apparel Company, Inc., formerly The H.D. Lee Co., Inc. ("Lee") filed its Petition To Reopen and Set Aside Consent Order ("Petition") in this matter. Lee requests that the Commission set aside the 1965 consent order in this matter pursuant to Rule 1.51 of the Commission's Rules of Practice, 16 C.F.R. § 2.51, and the *Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders*, issued July 22, 1994, published at 59 Fed. Reg. 45,286–92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, Lee affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on December 15, 1994. No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."[1] The Commission's order in Docket No. C–411 became final on August 9, 1965, and has been in effect for more than twenty-nine years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C–411.

Accordingly, it is ordered that this matter be, and it hereby is, reopened:

It is further ordered that the Commission's order in Docket No. C–411 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95–5791 Filed 3–8–95; 8:45 am]
BILLING CODE 6750–01–M

* The consent order was made effective on August 9, 1965.

[1] *See* Sunset Policy Statement, 59 FR at 45,289.

[File No. 951 0012]

Service Corporation International; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Service Corporation International's acquisition of Uniservice Corporation—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Texas corporation to divest, to a Commission-approved acquirer, the Uniservice Corporation assets and businesses in Medford, Oregon, within twelve months or transfer responsibility for the divestiture to a trustee appointed by the Commission, and to obtain prior Commission approval, for a period of ten years, before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon.

DATES: Comments must be received on or before May 8, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: K. Shane Woods or Charles A. Harwood, FTC/Seattle Regional Office, 915 Second Ave., Suite 2806, Seattle, WA. 98174. (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will

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be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Service Corporation International, a corporation. File No. 951–0012.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition of the voting securities of Uniservice Corporation by Service Corporation International, SCI Oregon Funeral Services, Inc., and UC Acquisition Corp. (collectively, "SCI"), and it now appearing that SCI, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that

1. Proposed respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77019.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "SCI" means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Commission" means the Federal Trade Commission.

C. "Funerals" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but it not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

D. "Funeral establishment" means the Assets and Businesses of a facility that provides funerals.

E. "Cemetery services" means the provision of plots of land for, and the services associated with, the final disposition of human remains by burial.

F. "Cemetery" means the Assets and Businesses of a facility that provides cemetery services.

G. "Cremation" means the incineration of human remains.

H. "Crematory" means the Assets and Businesses of a facility that performs cremations.

I. "Assets and Businesses" include all assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, cemetery or crematory, including but not limited to, the following:

1. all right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. all right to serve as directors on the Board of the Siskiyou Memorial Park;

3. all vendor lists, management information systems and software used on-site, and all catalogs, sales promotion literature and advertising materials, except that SCI may delete from such materials the Uniservice name, trademark or other identification;

4. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

5. all right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), supplies, sales representatives, distributors, agents,

personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. all right, title and interest in the trade name of each funeral establishment, cemetery or crematory;

7. all right, title and interest in the books, records and files pertinent to any of the Properties to be Divested; and

8. a license to use the trade name "Carillon" in connection with the final disposition of cremains, a license to use the trademark "Life Centered Funeral Services" in connection with the sale of funerals, and a license to use the trademark "Life Trust" in connection with the sale of pre-need contracts, but in each case only in Medford and its environs.

J. "Properties to be Divested" means all of the Assets and Businesses of the following funeral establishment, cemeteries and crematories:

1. Perl Funeral Home, 426 W. 6th Street, Medford, OR 97501–2713
2. Perl With Siskiyou Funeral Service, 2100 Siskiyou Boulevard, Medord, OR 97504–8048
3. Siskiyou Memorial Park (cemetery), 2100 Siskiyou Boulevard, Medford, OR 97504–8048
4. Siskiyou Memorial Park (crematory), 2100 Siskiyou Boulevard, Medford, OR 95704–8048

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, the Properties to be Divested, including resigning as directors of the Siskiyou Memorial Park and appointing individuals specified by the acquirer or acquirers to fill the vacancies created by those resignations; provided, however, that if the acquirer or acquirers choose not to acquire the Assets and Businesses of the crematory at 2100 Siskiyou Boulevard, because the acquirer or acquirers do not need such assets to engage in the business of providing funerals and cemetery services, respondent shall not be required to divest such assets; and provided further that if the acquirer or acquirers choose not to acquire any of the licenses described in Paragraph I I. 8 of this order, respondent shall not be required to divest such asset or assets.

B. Respondent shall divest the Properties to be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Properties to be Divested is to ensure the continued use of the Properties to be Divested in the same business in which the Properties to be Divested are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the properties to be Divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the Properties to be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Properties to be Divested except for ordinary wear and tear.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the Properties to be Divested as required by this order.

III

It is further ordered that:

A. If SCI has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to be Divested within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the Properties to be Divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, SCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent and its counsel of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to be Divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to be Divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the

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Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to be Divested.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to be Divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the sale of funerals or cemetery services in Jackson County, Oregon; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) the sale of funerals or cemetery services in Jackson County, Oregon.

Provided, however, that this Paragraph IV shall not apply to new facilities constructed or developed by respondent.

V

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture as required by this order.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV of this order.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

Appendix I—Agreement To Hold Separate

In the matter of Service Corporation International, a corporation. File No. 951–0012.

This Agreement to Hold Separate ("Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et. seq. (collectively, "Parties").

Premises

Whereas, on or about October 5, 1994, SCI entered into an Agreement and Plan of Merger with Uniservice Corporation ("Uniservice"), in which (1) UC Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Uniservice, and (2) Uniservice shareholders would receive cash "Acquisition"); and

Whereas, both SCI and Uniservice own interests in funeral establishments that provide funerals, cemeteries that provide cemetery services and crematories that provide cremations to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("SCI/Uniservice Consent Agreement"), the Commission must place the SCI/Uniservice Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante and holding separate the assets and businesses of certain Uniservice funeral establishments, a cemetery and a crematory ("Hold Separate Assets") listed in Exhibit A attached hereto and made a part hereof until the divestitures contemplated by the SCI/Uniservice Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Uniservice Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments, a cemetery and a crematory as specified in the SCI/Uniservice Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that at the time it accepts for public comment that proposed order in the SCI/Uniservice Consent Agreement it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the SCI/Uniservice Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Uniservice Consent Agreement to which it is annexed and made a part, and the order, once it becomes final, and in the event that the required divestitures are not accomplished, to appoint a trustee to seek divestiture of the Hold Separate Assets pursuant to the SCI/Uniservice Consent Agreement, as follows:

1. SCI agrees to execute and be bound by the SCI/Uniservice Consent Agreement.

2. SCI shall hold the Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Uniservice Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Uniservice Consent Agreement are accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. During the term of this Agreement, SCI shall provide the Hold Separate Assets with the same or better quality of support services, including without limitation, payroll processing, accounting, management information systems, and computer support, as Uniservice provided to the Hold Separate Assets prior to the acquisition.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for each funeral establishment, cemetery and crematory within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' material confidential information not in the public domain, except as such information would be available to SCI in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Uniservice, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

3. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Uniservice stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Uniservice that it may hold, or seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the early termination of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this

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agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

b. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

This agreement shall not be binding until approved by the Commission.

Exhibit A

Hold Separate Assets

1. Perl Funeral Home, 426 W. 6th Street, Medford, OR 97501–2713
2. Perl With Siskiyou Funeral Service, 2100 Siskiyou Boulevard, Medford, OR 97504–8048
3. Siskiyou Memorial Park (cemetery), 2100 Siskiyou Boulevard, Medford, OR 97504–8048
4. Siskiyou Memorial Park (crematory), 2100 Siskiyou Boulevard, Medford, OR 97504–8048

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has provisionally accepted an agreement containing a proposed consent order with Service Corporation International ("SCI"), and has placed the proposed consent on the public record for sixty (60) days. Anyone interested in the proposed order may comment on it during this time. After sixty (60) days, the Commission will again review the agreement and any comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed consent order.

The proposed consent order stems from SCI's proposed acquisition of certain assets and businesses of Uniservice Corporation ("Uniservice"). According to the proposed complaint, this acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for funerals and perpetual care cemetery services in Medford, Oregon, and its immediate environs.

The proposed consent order would remedy this alleged violation by requiring that SCI either divest the Uniservice assets and businesses in this region within one (1) year (Order Paragraph II.A) or transfer responsibility for divestiture to a trustee appointed by the Commission (Order Paragraph III). Uniservice's crematory and trade names are among these assets and businesses because they may be important to a buyer's competitive viability in the markets for funerals or perpetual care cemetery services, but SCI's obligations with regard to them would cease if the buyer does not wish to purchase them. However divestiture is accomplished, SCI could sell only to an acquirer or acquirers approved in advance by the Commission (Order Paragraphs II.B and III.B.2).

Pending divestiture, the proposed order would preserve the status quo in two respects. First, to preserve the properties to be divested, SCI must maintain the viability and marketability of the properties and protect them from harm (Order Paragraph II.C). Second, to preserve competition between SCI and the properties to be divested, SCI must hold the properties separate from SCI's operations (Order Paragraph II.D).

In the remainder of the order, SCI agrees for ten (10) years to obtain prior approval from the Commission before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon (Order Paragraph IV), report to the Commission concerning its efforts to divest and comply with the prior approval requirement (Order Paragraph V), notify the Commission of any changes in SCI that might affect its compliance with the order (Order Paragraph VI), and permit Commission representatives to review documents and interview employees to ensure compliance with the order (Order Paragraph VII).

The purpose of this analysis is to assist public comment on the proposed order. It is not an official interpretation of the order or the accompanying settlement and is not intended to modify their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–5792 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 1995

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 1995. At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the **Federal Register**. In response to that recommendation, FDA is publishing its annual tentative schedule of meetings.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the **Federal Register**. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the **Federal Register**. FDA will, however, publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 1995:

Committee name	Dates of meetings
OFFICE OF THE COMMISSIONER	
Board of Tea Experts	February 27–28
Science Board to the Food and Drug Administration	June 27–28
	October 24–25
National Task Force on AIDS Drug Development	January 19
	February 6–7 (subcommittee meeting; Drug Discovery Issues)
	February 23–24
	June 1–2
	September 21–22
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	March 10
	May 18–19
	November 20–21
Biological Response Modifiers Advisory Committee	April 10–11
	July 13–14
	November 13–14
Blood Products Advisory Committee	March 15
	March 23–24
	June 22–23
	September 28–29
	December 14–15
Vaccines and Related Biological Products Advisory Committee	January 26–27
	March 17
	April 26–27
	July 6–7
	October 26–27
CENTER FOR DRUG EVALUATION AND RESEARCH	
Anesthetic and Life Support Drugs Advisory Committee	January 17–18
	July 10–11
	November 13–14
Anti-Infective Drugs Advisory Committee	April 20–21
	September 21–22
Antiviral Drugs Advisory Committee	January 11–12 (joint meeting with Nonprescription Drugs Advisory Committee)
	March 30–31 (subcommittee meeting; Immunosuppressive Drugs)
	April 3–4
	June 12–13
	October 19–20
Arthritis Advisory Committee	March 27–28 (joint meeting March 28, with Nonprescription Drugs Advisory Committee)
	May 25–26
	September 18–19
	December 4–5
Cardiovascular and Renal Drugs Advisory Committee	February 23–24
	June 1–2
	October 19–20
Dermatologic and Ophthalmic Drugs Advisory Committee (formerly Dermatologic Drugs Advisory Committee).	
	April 27–28
	November 3–4
Drug Abuse Advisory Committee	May 2–3
	August 2–3
	December 4–5
Endocrinologic and Metabolic Drugs Advisory Committee	January 19–20
	February 23–24
Fertility and Maternal Health Drugs Advisory Committee	June 29–30
Gastrointestinal Drugs Advisory Committee	July 13–14
Generic Drugs Advisory Committee	June 14–15
	September 28–29
Medical Imaging Drugs Advisory Committee	June 22–23
Nonprescription Drugs Advisory Committee	January 11–13 (joint meeting January 11–12 with Antiviral Drugs Advisory Committee)
	March 27–28 (joint meeting with Arthritis Advisory Committees)
	July 13–14
	September 28–29
	November 16–17
Oncologic Drugs Advisory Committee	February 14

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Committee name	Dates of meetings
	June 8–9
	September 18–19
	December 4–5
Peripheral and Central Nervous System Drugs Advisory Committee	June 5–6
	September 18–19
	December 4–5
Psychopharmacologic Drugs Advisory Committee	February 6
	April 24–25
	July 17–18
	October 16–17
Pulmonary-Allergy Drugs Advisory Committee	April 13–14
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee	February 22 (subcommittee meeting)
	May 8–9
	August 14–15
	November 6–7
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	June 6–7
Medical Devices Advisory Committee	
Anesthesiology and Respiratory Therapy Devices Panel	January 20
	April 21
	September 8
	November 17
Circulatory System Devices Panel	May 8–10
	August 14–15
	December 11–12
Clinical Chemistry and Clinical Toxicology Devices Panel	April 6–7
	July 27–28
	September 25–26
Dental Products Panel	April 3–5 (Plaque subcommittee meeting)
	April 18–20
	August 8–10
	August 15–17 (Plaque subcommittee meeting)
	December 4–6 (Plaque subcommittee meeting)
	December 5–7
Ear, Nose, and Throat Devices Panel	April 20–21
	July 20–21
	October 19–20
Gastroenterology-Urology Devices Panel	January 20
	April 21
	July 20–21
	October 19–20
General and Plastic Surgery Devices Panel	July 18–19
General Hospital and Personal Use Devices Panel	July 17–18
Hematology and Pathology Devices Panel	June 9
	September 22
Immunology Devices Panel	March 31
	June 23
	September 15
	December 1
Microbiology Devices Panel	April 27–28
Neurological Devices Panel	September 14–15
Obstetrics-Gynecology Devices Panel	April 24–25
	July 20–21
	October 23
Ophthalmic Devices Panel	January 26
	July 20–21
	October 19–20
Orthopedic and Rehabilitation Devices Panel	June 12
Radiological Devices Panel	March 6
	June 19
	September 11
	December 11
National Mammography Quality Assurance Advisory Committee	January 23–25
	April 24–26
	July 17–19
	October 16–18
Technical Electronic Product Radiation Safety Standards Committee	No meetings planned
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	May 10–11
	October 18–19

Committee name	Dates of meetings
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).	February 13–14
Science Board to the National Center for Toxicological Research	May 9

Dated: March 2, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–5824 Filed 3–8–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of April 1995:

Name: Advisory Committee on Infant Mortality.

Date & Time: April 6–7, 1995, 9:00 a.m.

Place: Embassy Row Hotel, 2015 Massachusetts Ave., NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.*

Agenda: Topics that will be discussed include: Presentation on Quality Assurance in Managed Care and Medicaid Waiver Programs; updates on the Healthy Start Program; Welfare Reform; Prenatal Care Issues; and swearing in of new Committee members.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Name: National Commission on Allied Health.

Date & Time: April 17–18, 1995, 8:00 a.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 920–3230.

The meeting is open to the public.

Purpose: The National Commission on Allied Health shall: (1) make recommendations to the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to: (A) The supply and distribution of allied health personnel throughout the United States; (B) current and future shortages or excesses of allied health personnel, particularly in medically underserved and rural communities; (C) priority research needs within the allied health professions; (D) appropriate Federal policies relating to the matters described in subparagraphs (A) through (C), including policies concerning changes in the financing of undergraduate and graduate allied health programs, changes in the types of allied health education, and the appropriate Federal role in the development of a research base in the allied health professions; (E) appropriate efforts to be carried out by health care facilities, schools and programs of allied health, and professional associations with respect to the matter referred to in subparagraph (A), including efforts for changes in undergraduate and graduate allied health education programs, and private support for research initiatives; (F) deficiencies and needs for improvements in existing data bases concerning the supply and distribution of training programs for allied health in the United States and steps that should be taken to eliminate such deficiencies; and (G) problems, and recommendations for the resolution of such problems, relating to the roles and functions of professionals within the allied health fields and other fields such as medicine and dentistry; and (2) encourage entities providing allied health education to conduct activities to voluntarily achieve the recommendations of the Commission.

Agenda: The agenda includes review by the Commission members of the Final Report incorporating materials from the four Committees (education, data, research, and workforce) and white papers; presentation of cross-cutting issues and final recommendation; discussion of issues and recommendations with professional associations, educators, licensing boards, third-party payers, consumer groups, and others.

Anyone requiring information regarding the Committee should contact Mr. Neil H. Sampson, Executive Secretary, National Commission on Allied Health, Bureau of Health Professions, Health Resources and Services Administration, room 8–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6853.

Name: National Advisory Council on Migrant Health.

Date and Time: April 22–23, 1995—8:00 a.m.

Place: Doubletree Hotel, 201 Marquette, NW., Albuquerque, NM 87102, 505/247–3344.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda includes a overview of Council general business activities and priorities. In addition, the Council will review and discuss the 1995/96 National Advisory Council on Migrant Health Recommendations.

The Council meeting is being held in conjunction with the National Association of Community Health Centers, Annual Migrant Health Conference, April 24–27, 1995.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, Staff Support to the National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration, 4350 East West Highway, Room 7A6–1, Rockville, Maryland 20857, Telephone (301) 594–4302.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: April 27, 1995—8:30 a.m. to 5:00 p.m.

Place: Woodmont Room, Crown Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Date and Time: April 28, 1995—8:30 a.m. to 3:00 p.m.

Place: Conference Room E, 3rd Floor, B Wing, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the Public 8:30 a.m.–5:00 p.m., April 27 and on April 28 from 8:30 a.m.–10:30 a.m. and from 1:00 p.m. for the remainder of the meeting.

Closed April 28, 10:30 a.m.–1:00 p.m.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Education and Practice Improvement Amendments of 1992 (P.L. 102–148). The Council also performs final review of selected grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: Agenda items for the meeting will cover announcements, considerations of minutes of the previous meeting, the reports of the Administrator, Health Resources and

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Services Administration, the Director, Bureau of Health Professions, the Director, Division of Nursing, and staff reports. The council will also meet in breakout groups to discuss current issues related to nurse education and practice.

The meeting will be closed to the public on April 28, 10:30 a.m. to 1:00 p.m. for review of grant applications for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact R. Margaret Truax, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Agenda items are subject to change as priorities dictate.

Dated: March 3, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–5693 Filed 3–8–95; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to establish a new routine use applicable to the system of records entitled Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058. Under agreement with participating States, the proposed routine use will allow SSA to disclose Social Security numbers assigned to newborn children to the State in which the births are registered.

We invite public comment on this publication.

DATES: We filed a report of a new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on February 28, 1995. The routine use will become effective as proposed, without further notice, on April 18, 1995, unless we receive comments on or before that date which would warrant preventing the routine use from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. (FAX number: 410/966–0869). All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Thomas E. Price, Social Insurance Specialist, Confidentiality and Disclosure Branch, Office of Disclosure Policy, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–6011.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

More than four million children are born each year in the United States. The Social Security Administration (SSA) has encouraged application for, and assignment of, Social Security account numbers (SSN) to children at birth since 1989. To that end, SSA's Enumeration at Birth (EAB) program allows parents of newborn infants in most States to request an SSN as part of the State's birth registration process. When the EAB program is not used, parents can apply for a child's SSN for income tax purposes at a local SSA field office. State bureaus of vital statistics (BVS) accumulate the birth registration information received from hospitals and periodically send SSA an electronic file with the data needed to assign SSNs to the individuals in the file. SSA processes the file, assigns the SSNs, and sends an SSN card for each newborn to the child's parents.

Under the EAB program, SSA does not send the child's SSN to the State BVS unless the parents have agreed. Seven States now ask for parental consent to allow the child's SSN to become part of the birth record.

The proposed routine use would permit SSA to send the SSNs of newborns, and as a one time disclosure, the SSNs of children born since December 31, 1990, to the State BVS in which a birth is recorded without having to secure parental consent. The SSN would become part of the confidential portion of the birth record. Parents would also be given the option of requesting that their child's SSN not be included in the birth record.

States could use these SSNs as the primary identifying numbers in administering public health and income maintenance programs and in statistical research and evaluation projects. Public health program uses of the SSNs would include, but are not limited to, establishing public immunization registries, ensuring complete birth record registration by matching vital records with neonatal test results, conducting studies of factors contributing to infant mortality by linking birth and death records, and evaluating the efficacy of intervention programs such as the Women, Infants and Children (WIC) nutrition program, "Healthy Start" or other health maintenance programs. Income maintenance program purposes for which the States could use the SSNs include verifying the identity of applicants for services to families and children.

In all research and statistical studies involving record linkages with other data bases, the SSNs provided under this routine use would serve as the primary matching key, but would not be released for public use. Once the records are linked and a data set created, the personal identifying information (including SSNs) is usually removed. The resulting data set is used for aggregate analysis. Personal identifiers are retained in the data set only when they are determined to be necessary to the outcome of the study by an Institutional Review Board (IRB). Internal IRBs review all proposals for health research on human subjects in institutions conducting such research. IRBs also examine proposed protocols of investigations to determine if any unwarranted harm to individuals would result from the use of identifying data.

One benefit of the proposed new routine use is the potential value of the SSN to statewide Childhood Immunization Registries. Ensuring that all children complete the recommended series of immunizations (14 to 15 doses of vaccines by the second birthday) is the main goal of immunization programs. Although approximately 95% of all children in the United States begin the recommended series of immunizations, only about half complete the series by two years of age, a critical period for childhood disease prevention.

Statewide immunization information systems are a partial response to the problem of incomplete immunizations. Evaluating the immunization status of individuals is difficult because roughly 40% of children receive their immunizations from two or more providers and many parents do not maintain accurate records. In a joint effort, State and Federal agencies are working together to create, in each State, a statewide childhood immunization registry which contains, for each individual, not the details of the immunization history, but the location of the immunization information system that contains the history.

In such a system, immunization details would be maintained locally by providers themselves in their own data systems. Subject to applicable privacy safeguards and requirements, including the consent of parents or guardians when legally required, a statewide record system would provide a means for exchanging immunization information between providers when (and only when) necessary, transferring immunization histories when individuals move from one State to another, and assessing the immunization status of the State and nation. Using the SSN as the primary identifying record number would facilitate the process and lower the cost of creating and operating a national network of coordinated statewide immunization registries. To ensure that the registries contain a complete census of preschool children for the purposes described in the routine use proposal, SSA will, on a one time, retroactive basis, provide the participating States' BVSs with the SSNs of children born after December 31, 1990.

SSA discloses information from its systems of records to certain entities that use the information for a purpose that is compatible with the purpose for which SSA collects it. Such disclosures may include providing an individual's correct SSN to an entity which has either no record of the individual's SSN or an incorrect one, or verifying only the fact that an entity has an individual's correct SSN. In the case of State BVSs, SSA would provide the correct SSN or verify correct SSNs under the proposed routine use.

The proposed routine use will read as follows:

To State vital records and statistics agencies, the SSNs of newborn children for administering public health and income maintenance programs, including conducting statistical studies and evaluation projects.

We are not publishing in its entirety the notice of the system of records to which we are adding the new routine use statement. A notice of that system, the Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058, was last published in the **Federal Register** at 60 FR 2144, January 6, 1995.

II. Compatibility of Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act of 1974 (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR 401.310).

As discussed above, the Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., for a purpose that is compatible with the purpose for which we collected the information. Consistent with the Privacy Act, under 20 CFR 401.310 we may disclose information under a routine use for administering our programs, for income or health maintenance programs of other agencies, and for epidemiological and similar research. SSA assigns SSNs to children as personal identifiers for efficient administration of the Social Security Act (Act), based in part on section 205(c)(2)(B)(i)(IV) of the Act, which authorizes SSA to take affirmative measures to assure that SSNs are assigned to below school age children at the request of their parents or guardians, and for helping detect and deter the illegal conduct described in section 208(a)(7) of the Act. States have authority under their own laws to create and maintain State registries of births. They have a compelling interest in protecting the integrity of their birth registries and in preventing birth certificate fraud. The internal use by States of SSNs for identification purposes, efficient administration of health and income maintenance programs, and statistical studies is compatible with the purposes for which SSA assigns and maintains SSNs and, thus, meets the criteria for the establishment of a routine use under the Privacy Act and the regulation.

III. Effect of the Proposal on Individual Rights

As discussed above, the proposed new routine use will permit SSA to send the SSNs of newborns to State BVSs in which the births are recorded. The SSN would thus become part of the confidential portion of the birth record and would be available only for State use in health and income maintenance administration and research. It would not appear on the public portion of the record, the birth certificate. Strict protection of the confidentiality of the SSN by the State is required by Federal law. SSA will follow all statutory and regulatory requirements for disclosure. Agreements between SSA and the States will govern access to the SSNs and will incorporate the required statutory and regulatory safeguards. In addition, the agreements will include a provision that requires States to notify parents that they may request that their child's SSN be removed from the birth record. Thus, we do not anticipate that the proposed disclosure to the States will have any adverse effect on the privacy or other rights of individuals.

Dated: February 28, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–5632 Filed 3–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3897]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before April 10, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

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proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 2, 1995.

Kay Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Customer Service Initiative Questionnaire.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: Complainants and respondents to Fair Housing cases will be interviewed as part of Fair Housing and Equal Opportunity's response to Executive Order part of Fair Housing and Equal Opportunity's response to Executive Order 12862, "Setting Customer Service Standards." This order sets customer standards to ensure that the Federal Government is providing the highest quality of service possible. The overall plan provides a comprehensive framework of customer satisfaction studies to determine the kind and quality of services the customers want and their satisfaction level with existing services.

Form Number: None.

Respondents: Individual or Households.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Questionnaire	350		1		.25		88

Total Estimated Burden Hours: 88.
Status: New.
Contact: Leon Garrett, HUD, (202) 708–2740; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 2, 1995.

[FR Doc. 95–5801 Filed 3–8–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–95–3898]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before April 10, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1995.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Land Sales Registration, Purchaser's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Interstate Land Sales Full Disclosure Act requires certain subdivision developers to register with the Department of Housing and Urban Development or to operate under certain exemptions. The addition of the Multiple Site Subdivision Exemption will alleviate certain developers of subdivisions, unique in nature, from complying with registration requirements.

Form Number: None.

Respondents: Individuals or Household and Businesses or Other For-Profit.

Report Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,230		10.7		1.43		18,913

Total Estimated Burden Hours: 18,913.
Status: Extension with changes.
Contact: Maurice D. Gulledge, HUD, (202) 708–0502; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 27, 1995

[FR Doc. 95–5802 Filed 3–8–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management (BLM)

[AA–810–1820–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paper Work Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contracting the Bureau's clearance officer at the telephone listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance office and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395–7340, with copies to Anges Sutphin, BLM NPR Team, Mail Stop 2464, 1849 C Street NW., Washington, DC 20240.

Title: BLM's Generic Customer Satisfaction Surveys and Focus Groups

Abstract: Annually, millions of individuals, and thousands of groups and businesses, contact the Bureau of Land Management by mail, in person, or by telephone to obtain information and/or products or services. The collections will obtain information for determining the level of satisfaction, customers values, and areas where improvements could be made in providing products and services by the Bureau of Land Management from the various customer segments and groups

Bureau Form Number: None

Frequency: On occasions, annually

Description of Respondents: Individuals; local, county, and state governments; Indian Alottees and Tribes; businesses and for-profit organizations, Federal Agencies or employees, non-profit institutions, small businesses and organizations

Estimated Time of Completion: 30 minutes

Annual Responses: 15000

Annual Burden Hours: 7500 hours

Bureau Clearance Officer: Mae Bowman (202) 452–5011.

Dated: January 10, 1995.

Nina Rose Hatfield,

Assistant Director Business and Fiscal Services.

[FR Doc. 95–5762 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–84–M

[CA–020–510–10–B039; CACA–31406, NVN–57250]

Notice of Availability of a Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior, Susanville District Office, California.

ACTION: Notice of Availability of a Draft Impact Statement (DEIS).

SUMMARY: The Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) have prepared a draft Environmental Impact Report/Statement (EIR/S) for the Alturas 345 Kilovolt (KV) transmission line project proposed by Sierra Pacific Power Company (SPPCo) in BLM application number CACA–31406. The draft EIR/S has been prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

The BLM and CPUC believe, subject to public comment, the approval of the proposed project, with appropriate mitigation measures, has the potential to significantly impact the environment. The draft EIR/S includes an evaluation of the proposed project. The draft EIR/S assesses the environmental impacts of the approval, construction, operation and maintenance of a 345KV overhead electric power transmission line approximately 164 miles long, from the vicinity of Alturas, California through Modoc, Lassen, and Sierra Counties, California, through Washoe County, Nevada to the vicinity of Reno, Nevada. The proposed project would affect Federal, State and private lands. The proposed project also includes the construction of two new electrical substations, one northwest of Alturas and one in Sierra County, California, just west of Border Town, Nevada, and the expansion of SPPCo's existing North Valley Road Substation.

The impact analysis in the draft EIR/S includes the identification of feasible mitigation measures and alternatives to the proposed project, which, if incorporated into the Project, would avoid or minimize impacts.

The draft EIR/S has been placed in the public files of the CPUC and the BLM, and is available for public inspection at:

California Public Utilities Commission, Central Files, 505 Van Ness Avenue, San Francisco, CA 94102, (415) 703–2045

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, CA 96130, (916) 257–5381

Copies of the DEIR/S are available for inspection at BLM offices in Alturas and Susanville, California, in Carson City, Nevada, and Washington, DC.; at the Modoc National Forest in Alturas and the Toiyabe National Forest in Sparks, NV; at public libraries in Alturas, Susanville and Reno, and at the City Hall in Loyalton. Copies have also been sent to interested Federal, State and local agencies and interested groups. An Executive Summary of the key issues and impacts addressed in the EIR/S will be available upon request.

DATES AND ADDRESSES: Any person wishing to comment on the draft EIR/S may do so. Comments should be filed as soon as possible, but must be received no later than May 3, 1995. Written comments on the draft EIR/S must reference CPUC Application No. 93–11–018 and BLM Application No. CACA–31406. Comments on the draft EIR/S and request for the Executive summary should be addressed to: Julie Halligan/Peter Humm, CPUC/BLM, c/o Aspen Environmental Group, 30423 Canwood Street, Suite 218, Agoura Hills, CA 91301.

In addition to asking for written comments, the public is invited to attend any of the public workshops and hearings that will be held at the times and locations listed below. The public workshops will be informal and will serve to help affected communities understand the project and the draft EIR/S and its findings.

The CPUC and BLM will hold public hearings near the end of the public review period to receive oral comments on the draft EIR/S. The hearings will be conducted before an Administrative Law Judge. A court reporter will record each hearing so that any comments will be accurately entered into the public record.

Locations and schedules for the workshops and hearings are:

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	Workshops	Hearings
Alturas, CA, City Hall, 200 North Street	Monday, 3/13/95, 6 p.m	Monday, 4/17/95, 6 p.m.
Susanville, CA, Monticola Club, 140 S. Lassen St	Tuesday, 3/14/95, 6 p.m	Tuesday, 4/18/95, 6 p.m.
Loyalton, CA, Loyalton High School, 700 Fourth Street	Wednesday, 3/15/95, 6 p.m	Wednesday, 4/19/95, 6 p.m.
Reno/Sparks, NV, Best Western, Airport Plaza Hotel, 1981 Terminal Way, Reno	Thursday, 3/16/95, 6 p.m	Thursday, 4/20/95, 6 p.m.

FOR FURTHER INFORMATION CONTACT: This Federal Notice of Availability of Draft EIR/S is issued by the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. For further information write to the District Manager or call Peter Humm, BLM Project Manager, at (916) 257–0456.

Dated: February 28, 1995.

Herrick E. Hanks,

District Manager.

[FR Doc. 95–5694 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Land Management

[WY–040–05–1310–01]

Texaco's Stagecoach Draw Unit; Wyoming; Availability of Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement (EIS).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of Texaco's Stagecoach Draw Draft EIS analyzing the environmental consequences of a proposed natural gas development and production operation in the Stagecoach Draw Unit approximately 7 miles southwest of Farson, Wyoming, Sweetwater County. The project area encompasses 23,575 acres within portions of Townships 22, 23, and 24 north, ranges 107 and 108 North.

DATES: Comments on the Draft EIS will be accepted for 45 days following the date that the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected to be published on March 10, 1995. There are presently no plans to hold a public hearing on the Texaco Stagecoach Draw Unit Draft EIS because of apparent lack of substantial environmental controversy concerning the proposed project. Reviewers are encouraged to visit the local BLM offices in Cheyenne and Rock Springs, Wyoming and talk with the Managers about any concerns. If enough people indicate a desire to testify by returning the tear-out sheet provided in the Draft EIS, a public hearing(s) will be scheduled. Information on the hearing(s) will be published in state and local newspapers and other media sources, and direct mailing to the recipients of the Draft EIS to give the public enough notice.

ADDRESSES: Comments on the Draft EIS should be sent to Bureau of Land Management, Bill McMahan (Project Coordinator), P.O. Box 1869, Rock Springs, WY 82902–1869.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes a proposed action, one development alternative, and the no action alternative. Texaco USA proposes to develop a 23,575 acre natural gas field by drilling 72 wells on an average spacing of 320 acres over the next 6 to 10 years. Texaco's plans and drilling schedules would be contingent upon both an increased demand for natural gas supplies in response to the Clean Air Act amendments of 1990 and an adequate price for the gas at the wellhead. The Draft EIS describes the physical, biological, cultural, historic, and socioeconomic resources in and surrounding the project area. The focus for impact analysis was based upon resource issues and concerns identified during the public scoping. Potential impacts of concern from development were to antelope migrations and crucial winter range; sage grouse and raptor breeding and nesting; sediment increases to the Big Sandy River; groundwater contamination; Oregon, Mormon Pioneer, Pony Express, and California Historic Trails condition and viewshed; changes in livestock and wild horse management; and cumulative effects. The Draft EIS, in compliance with Section 7(c) of the Endangered Species Act (as amended), includes the Biological Assessment for the purpose of identifying any endangered or threatened species which are likely to be affected by the proposed action.

Dated: March 2, 1995.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 95–5765 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–22–M

[ID–015–05–1430–01; IDI–30841]

Notice of Realty Action, Sale of Public Lands in Owyhee County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public lands in Owyhee County.

SUMMARY: The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than appraised fair market value. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian, Idaho

T. 5 S., R. 3 W.,
Sec. 6: Lot 70.

The area described contains .06 acres, more or less.

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provision of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Kelley Moore, Land Law Examiner, at the address shown above or (208) 384–3452.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Kenneth M. and Linda R. Jantz, and Erik A. Jantz, of Elkhorn, Nebraska, the current building owners, at fair market value in order to give the Silver City community a more permanent character and the building owners a tenure interest in the land on which the building is located. Selling this parcel to the building owners will provide incentive to maintain the building in the historical nature in which it was built, thus maintaining a valuable part of our early history in this historic mining district.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Boise District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

The reservations, terms and conditions of this sale are as follows:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, (43 U.S.C. 945).

2. All mineral deposits in the lands so patented pursuant to the Act of October 21, 1976, (90 Stat. 2757; 43 U.S.C. 1719), and to it, or persons authorized by it the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. Excepting and reserving to the public a right-of-way for existing roads over the lot for public access.

4. The patent will be subject to Silver City Zoning Ordinance No. 88–03, dated October 11, 1988.

Dated: March 1, 1995.

J. David Brunner,

Ecosystem Manager.

[FR Doc. 95–5764 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–GG–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–799196

Applicant: Patricia Wainright, New Brunswick, NJ.

The applicant request a permit to import dropped feathers and blood taken from captive Cuban parrots (*Amazona leucocephala*) in Cuba for the purpose of the survival of the species through scientific research.

PRT–799556

Applicant: Charles Whitlow, Nunica, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by J.B. Pohl, Shenfield, Grahamstown, Riebeek East, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 3, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–5708 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–55–P

Withdrawal of Proposed Guidelines on African Elephant Sport-hunted Trophy Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of withdrawal of proposed guidelines.

SUMMARY: The Fish and Wildlife Service (Service) announces the withdrawal of the proposed guidelines for the issuance of Scientific Authority advice on permit applications under the Convention on International Trade in Endangered Species on Wild Fauna and Flora (CITES) for the import of sport-hunted African elephant trophies.

SUPPLEMENTARY INFORMATION:

Background

At the seventh meeting of the CITES Conference of the Parties, held on October 9–20, 1989, the Party nations voted to transfer the African elephant from Appendix II to Appendix I, and this action became effective on January 18, 1990. As a result of this action, Appendix I import permits for the importation of the sport-hunted African elephant trophies are required under CITES.

Under CITES, Appendix I import permits can be issued if the Scientific Authority of the importing country has advised the Management Authority of the importing country that the import will be for purposes not detrimental to the survival of the species. Additional guidance for issuance of such advice was provided by CITES resolution Conf. 2.11 on "Trade in Hunting Trophies of Species Listed in Appendix I," which had been adopted at the second meeting of the Conference of the Parties in 1979. Paragraph c of that resolution called for the Scientific Authority to conduct a "comprehensive examination concerning the question of whether the importation is serving a purpose which is not detrimental to the survival of the species," including whether the killing of the animals whose trophies are intended for import would enhance the survival of the species.

In reviewing permit applications for the importation of sport-hunted African elephant trophies, the Service believes that the populations to be hunted should be of sufficient size and stability to allow for the projected off-take and that the country's management and enforcement authorities should have the ability to ensure adequate management of the species. In addition, the Service has considered whether the activity associated with the importation would enhance the survival of the elephant. For these reasons, the Service developed internal guidelines that described all of the factors that might be considered in issuing a Scientific Authority advice, especially if the expected off-take approached the maximum allowable to sustain a population. One aspect of the guidelines called for clear evidence that the sport hunting activities enhance the survival of the species.

In response to the Service's use of these guidelines, Safari Club International filed suit challenging the procedure and substantive adequacy of the guidelines, *see Safari Club International* v. *Lujan, Civ. No. 91–2523* (D.D.C., filed Oct. 8, 1991). As a consequence, the Service voluntarily sought public review and comments on its guidelines through a February 9, 1993, **Federal Register** notice of proposed guidelines (58 FR 7813).

The U.S. Scientific Authority has issued general "non-detriment" advices covering African elephant trophies lawfully taken in South Africa and Zimbabwe and has issued "non-detriment" advices for trophies taken in

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Namibia, Tanzania, and Cameroon. During 1993 and 1994, permits were issued for over 400 sport-hunted African elephant trophies (1 for Cameroon, 28 for Namibia, 31 for South Africa, 109 for Tanzania and 254 for Zimbabwe).

On June 10, 1994, the Government of Namibia submitted a proposed amendment to paragraph c of CITES resolution Conf. 2.11 to remove the expectation that the importing country's Scientific Authority would consider whether the killing of the animals whose trophies are intended for import would enhance the survival of the species. The amendment also proposed that the "Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species". In November 1994, at the ninth meeting of the Conference of the Parties to CITES, Namibia's proposal was revised by adding the phrase, "unless there are scientific or management data to indicate otherwise," in recognition of the requirement in Article III.3.a of CITES that the Scientific Authority of the importing country make an independent assessment. With this revision, the CITES Parties adopted the proposal to revise paragraph c of Conf. 2.11.

Because of the revision of paragraph c of CITES resolution Conf. 2.11 and the perception, not intended by the Service, that the proposed guidelines would preclude the importation of sport-hunted African elephant trophies from properly managed populations, the Service is hereby withdrawing the proposed guidelines. In evaluating applications to import African elephant trophies, the Service will follow the guidance set forth in Conf. 2.11, as revised, as well as other appropriate authorities. A summary of relevant authorities is discussed later in this notice.

Comments on Proposed Guidelines

The Service received 27 letters from wildlife professionals, safari operators, and national wildlife department representatives; 105 letters from private individuals, and petitions from safari and hunting clubs containing 956 signatures. In addition, the Service received a petition with 3,360 signatures representing rural Zimbabweans participating in Communal Areas Wildlife Management Programme for Indigenous Resources (CAMPFIRE). The majority of responses indicated that there was significant confusion on the scope and intent of the internal guidelines.

Although the Service is withdrawing the proposed guidelines a discussion of some of the issues raised in the comments on the proposed guidelines is useful.

Comment: Sport-hunting is beneficial to elephant conservation and local economies. It is small scale, taking less than 1 percent of the elephant population annually.

Response: The Service has always accepted the premise that sport-hunting of non-endangered, properly managed wildlife populations can be beneficial to the survival of the population.

Comment: In lieu of populations estimates, other measures such as weight limits for female and male tusks or surveys of trophy sizes and numbers would be sufficient to determine whether or not the level of harvest is sustainable.

Response: The Service agrees that other population indices or measures to ensure long-term population maintenance may be appropriate, and could be included in Scientific Authority findings by the exporting country.

Comment: Sport hunting provides needed revenue to local residents and governments.

Response: All such revenues may be used for purposes unrelated to the conservation of the African elephant, and monies may benefit an individual or group only for the immediate hunting season. The Service believes that when revenues are directed to management or enforcement activities or when there is long-term benefit to individuals or groups with proprietary interest in ensuring a viable elephant population, there is benefit to the survival of the elephant.

Comment: Some respondents felt that the guidelines should be a mechanism to allow dialogue with the exporting states.

Response: Although the guidelines are being withdrawn, the Service agrees that dialogue with the exporting states is important, and will endeavor to increase such dialogue when implementing the new CITES resolution Conf. 2.11 provisions.

Comment: The proposed guidelines are not stringent enough.

Response: Although the Service is withdrawing the proposed guidelines, the Service believes that its review of import permits for sport-hunted African elephant trophies is sufficient to ensure compliance with the Act and CITES.

Comment: Policies towards range states should be individually developed to support their strengths and "work against their weaknesses".

Response: The Service agrees that there may be significant differences in management situations in the different countries which should be considered.

African Elephant Conservation Act and CITES Quotas

Although the Service is withdrawing the proposed guidelines, the Service continues to be responsible for evaluating applications to import African elephant trophies based on applicable requirements of the African Elephant Conservation Act, the Endangered Species Act, and CITES, including Conf. 2.11, as revised.

The African Elephant Conservation Act authorizes individuals to import sport-hunted African elephant trophies "that have been legally taken in an ivory producing country that has submitted any ivory quota" to the CITES Secretariat. See 16 U.S.C. 4222(e). Before permit applications for sport-hunted African elephant trophies will be reviewed by the Service, the country in which the specimens are harvested must have submitted an ivory export quota for the year of export to the CITES Secretariat, and confirmation of receipt of this quota must be received by the Service (see discussion of the Endangered Species Act requirements later in this notice). This has led to some misunderstanding, because some trophy import permit applications have been received by the U.S. Management Authority almost a year before a CITES quota has been received from the country of origin. This has meant that final action on the applications had to be delayed until the Service received confirmation that the quotas had been received by the CITES Secretariat.

Before an importation can occur the importer must, in addition to having an import permit, have a valid CITES export permit from the country of origin, and the ivory specimens being imported must be marked in accordance with the marking requirements contained in the revised African Elephant special rule discussed in the next paragraph.

Endangered Species Act

The African elephant is listed as a threatened species under the U.S. Endangered Species Act (Act). Pursuant to section 4(d) of the Act, 16 U.S.C. 1533(d), the Service has promulgated a "special rule" for the African elephant (50 CFR 17.40(e)) that was most recently revised in 1992 (57 FR 35486, August 10, 1992). The special rule allows the import of sport-hunted elephant trophies into the United States subject to several provisos. First, the trophy must originate in a country for which the Service has received notice of an ivory quota for the year of export (50 CFR 17.40(e)(3)(iii)(A)). In addition, the trophy may not be imported unless the Service determines that the killing of the animal whose trophy is intended for import would enhance the survival of the species (50 CFR 17.40(e)(3)(iii)(C)). The Service has been able to make this finding for trophy import permit applications that have been submitted in the last few years.

CITES

Also applicable to the Service's procedures is the CITES requirement that the import permit be issued before the export permit, and it is obviously desirable for the sportsman to obtain, or at least have reasonable assurance of obtaining, the necessary import and export permits before committing to the safari hunt. Consistent with revised Conf. 2.11(c), the U.S. Scientific Authority will accept a "not detrimental" finding of the exporting country for that year, unless there are scientific or management data to indicate otherwise. If the scientific or management data indicate a concern about the reasonableness of an exporting country's "not detrimental" finding, the Service will consult with that country's Scientific and Management Authorities. Obviously, for the Scientific Authority advice and the subsequent export permit issued by the Management Authority to be accepted, the exporting country must have designated its Scientific Authority.

This notice was prepared under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*).

Dated: March 2, 1995.

George T. Frampton, Jr.,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 95–5771 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Availability of Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of New North American Datum (NAD) 83 Outer Continental Shelf Official Protraction Diagrams (OPD's).

Notice is hereby given that effective with this publication, the following NAD 83-based outer continental shelf (OCS) Official Protraction Diagrams (OPD's) for the Gulf of Alaska/Yakutat area are on file and available in the Alaska OCS Region office, Anchorage, Alaska. They reflect current baseline and boundary information portrayed on a metric NAD 83 cadastre. These OPD's should be used for the Offshore Program within the Gulf of Alaska/Yakutat area.

Description	Date
NP 06–08, Cordova	September 1, 1994.
NP 07–07, Bering Glacier	September 1, 1994.
NO 06–02, Middleton Island.	September 1, 1994.
NO 07–01, Icy Bay	September 1, 1994.
NO 07–02, Yakutat	September 1, 1994.
NO 07–03, (Unnamed)	September 1, 1994.
NO 07–04, Alsek Valley	September 1, 1994.
NO 08–03, Mt. Fairweather.	September 1, 1994.

ADDRESSES: Copies of these OPD's may be purchased for $2.00 each from the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 603, Anchorage, Alaska 99508–4302, Attention: Library, (907) 271–6435.

FOR FURTHER INFORMATION CONTACT: Technical comments or questions pertaining to these maps should be directed to Leasing and Environment, Chief, Leasing Activities Section, at the address stated above, or at (907) 271–6691.

Dated: February 22, 1995.

Judith C. Gottlieb,

Regional Director, Alaska OCS Region.

[FR Doc. 95–5766 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: March 27, 1995, 8 a.m. until 4:30 p.m.; March 29, 1995, 8 a.m. until 12 noon.

ADDRESSES: Radisson Barcelo Hotel, 2121 P Street NW., Hershwin Room, Washington, DC.

This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Alan M. Hutchings, Acting Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, or call 402–221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 29, 1990.

Dated: February 24, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 95–5692 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–372]

Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 1, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Crucible Materials Corporation, State Fair Boulevard, P.O. Box 977, Syracuse, New York 13201–0977. A supplement to the complaint was filed on February 23, 1995. The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain neodymium-iron-boron magnets, magnet alloys, and articles containing the same, by reason of direct and induced infringement of claims 1–3 of U.S. Letters Patent 4,588,439. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation

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and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39043 (August 1, 1994).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on March 3, 1995, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain neodymium-iron-boron magnets, magnet alloys, or articles containing the same, by reason of infringement of claims 1, 2, or 3 of U.S. Letters Patent 4,588,439, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Crucible Materials Corporation State Fair Boulevard P.O. Box 977 Syracuse, New York 13201–0977

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

San Huan New Material Research and Development, Inc., No. 8 South 3rd Street, Zhong Guam Gun Road, P.O. Box 603, Beijing 10080, People's Republic of China

Ningbo Konit Industries, Inc., Ningbo Economic and Technical Development Zone, Zhejiang Province, People's Republic of China,

San Huan/Tridus International, Inc., 8527 Alondra Boulevard, Suite 205, Paramount, California 90723

Novel Hightech, Limited, Room 404, 3rd Floor, 18 Cheung Lee Street, Chai Wan, Hong Kong

Hennaco Industrial Enterprises, Inc., 39 Alba Place, Parsippany, New Jersey 07054

Hennaco Excell, Inc., 39–01 Main Street, Suite 210, Flushing, New York 113354

Sino American Products, Ltd., 358 Fifth Avenue, New York, New York 10001

Injohnson Precision Industrial Co., Ltd., 3rd Floor, No. 166, Fu-Ho Road, Yung-Ho, Taipei, Taiwan.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–M, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39045 (August 1, 1994). Pursuant to 19 C.F.R. § 201.16(d) and section 210.13(a) of the Commission's Final Rules, 59 FR at 39045, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: March 3, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–5811 Filed 3–8–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203. Comments on the following assessment are due 15 days after the date of availability:

AB–3 (Sub-No. 121X), Missouri Pacific Railroad Co.—Abandonment Exemption—In Morris and Dickinson Counties, Kansas (Hoisington Subdivision). EA available 3/3/95.

AB–167 (Sub-No. 1144X), Consolidated Rail Corp.—Abandonment Exemption—In Cumberland and Dauphin Counties, Pennsylvania. EA available 3/3/95.

AB–32 (Sub-No. 60X) and AB–355 (Sub—no. 12X), Boston and Maine Corp., and Springfield Terminal Railway Co.—Abandonment and Discontinuance of Service—Hillsboro County, New Hampshire. EA available 3/3/95. Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub—no. 500, CSX Transportation, Inc.—Abandonment Between Tygart Jct. and Bergoo in Barbour Randolph, Pocahontas, and Webster Counties, West Virginia. EA available 2/28/95.

AB–425, Lone Star Railroad, Inc.—Abandonment and Discontinuance of Trackage Rights—In Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX.

AB–426, Southern Switching Co.—Discontinuance of Service—In Wichita, Archer, Baylor, Knox, Haskell and Jones, TX. EA available 3/3/95.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5795 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 10; notice of issuance of new procedural schedule.

SUMMARY: The Commission is issuing a new procedural schedule, which follows the Santa Fe Pacific Corporation (SFP) shareholders' and Burlington Northern Inc. (BNI) shareholders' vote on February 7, 1995, to approve the proposed BNI/SFP merger. This schedule will provide for issuance of a final decision no later than August 23, 1995. The Commission also is setting a 50-page limitation for briefs, which must be filed in accordance with the requirements at 49 CFR 1104.2. In addition, the Commission is requiring that a Preliminary Draft Environmental Assessment (PDEA) be submitted, where applicable, with each inconsistent and responsive application.

EFFECTIVE DATE: The effective date of this decision is March 9, 1995. All comments, protests, requests for conditions, and any other opposition evidence and argument are due on May 10, 1995. For further information, see the attached procedural schedule.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Stephen L. Grossman, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, N.E., Washington, DC 20426 and to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036–1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Julia Farr or Dugie Standeford, (202) 927–7513. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: On October 13, 1994, an application was filed for approval of BNI's acquisition of, control of, and merger with SFP, the resulting common control of Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe. Applicants also seek exemption from regulation for the merged holding company and merged railroad to control The Wichita Union Terminal Railway Company [Finance Docket No. 32549 (Sub-No. 1)] and for 11 construction projects related to the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)]. We accepted the application in our Decision No. 5, served and published in the **Federal Register** (59 FR 56089) on November 10, 1994, and we set certain filing dates under the procedural schedule previously adopted in our Decision No. 4, served October 5, 1994.[1]

In Decision No. 7, served December 5, 1994, we granted the requests of several parties and postponed the procedural schedule set forth in Decision Nos. 4 and 5 pending the outcome of an SFP shareholder vote. In Decision No. 7, we stated that upon approval of the proposed BNI/SFP merger by the shareholders, we would immediately issue a new schedule.[2] On February 7, 1995, the shareholders approved the proposed BNI/SFP merger.

By petition filed January 27, 1995, BNI, BN, SFP, and Santa Fe requested that we adopt a modified, expedited procedural schedule which tracks the schedule proposed by the Commission for public comment in Ex Parte No. 282 (Sub-No. 19).[3] In Decision No. 9 in this proceeding, served February 3, 1995, we requested public comments on the applicants' proposal to revise the procedural schedule to provide for the service of a final decision no later than 165 days from the date the Commission publishes its decision restarting the schedule for processing the proceeding. Additionally, we requested public comments on proposed page limitations on certain filings, on whether a preliminary scoping order should be issued, and on the feasibility of meeting all environmental review requirements within the proposed compressed schedule. Public comments on these issues were due on February 21, 1995.

Over 170 public comments were received in response to Decision No. 9. The vast majority of these comments were from shippers; however, comments were also filed by several Members of Congress, government parties, railroads, electric utilities, other shipper interests, and rail labor unions. In addition, the applicants responded to Decision No. 9.

Approximately 55 commenters specifically supported the applicants' proposed 165-day procedural schedule. There were a number of statements in support of a 180-day schedule as proposed by the Commission in New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995), and several parties suggested alternative 180-day schedules. Over 25 shippers approved an expedited merger process, but suggested no time limits.

By contrast, approximately 65 commenters stated their opposition to the proposed 165-day schedule, although not all of these entities specifically objected to the total time of 165 days; rather, some were more concerned with having only 30 days to comment on the application. Many of the opposing commenters asked the Commission to lengthen the review process to at least 9 months.

We have determined after review of all the comments that a 165-day procedural schedule will allow us time to consider fully all of the issues in this proceeding and to ensure that all parties are accorded due process.[4] We will agree, however, to giving additional time to interested parties, including the

[1] SP contends that the Supplemental Materials filed by applicants on February 17, 1995 (BN/SF–25) contain certain deficient information about the additional debt that applicants will incur in order to consummate their tender offers for SFP common stock. SP's concern relates to form rather than substance. Adequate information about this financing and its possible effects on applicants' pro forma projections of merged operations is ascertainable from information contained in the application filed October 13, 1994, and in the Supplemental Materials, primarily the Supplemental Verified Statement of Thomas N. Hund and Don S. Snyder and the Amendments to SEC Form S–4, filed by BNI and BNSF Corporation.

[2] In Decision No. 7, we stated that the new schedule would require comments to be filed 30 days later and adjust other schedule dates accordingly. As explained later in this decision, comments will not be due until 62 days from the date of publication of this decision.

[3] In New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995 and published at 60 FR 5890, January 31, 1995), we requested comments, due March 2, 1995, on our proposed establishment of more timely procedures for processing applications for major and significant rail combinations. We also served a copy of the notice on all parties on the service list in this merger proceeding and asked for comments on whether this case should be governed by the schedule originally adopted or the schedule proposed in Ex Parte No. 282 (Sub-No. 19).

[4] Technically, Appendix A to this decision envisions a 167-day procedural schedule. We found it necessary to add two additional days to the schedule so that no date on the schedule would fall on a Saturday, a Sunday, or a legal holiday.

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Department of Justice (DOJ) and the Department of Transportation (DOT), in which to file written comments and protests on the primary application (including any comments in opposition to the primary application), as well as requested conditions. These filings will be due 62 days after publication of this notice, which is the same date that inconsistent and responsive applications are due. All descriptions of anticipated inconsistent or responsive applications, as well as petitions for waiver or clarification, will be due 32 days after publication of this notice.

There were a few comments on the proposed page limitations. Most commenters were generally opposed, but were willing to accept some page limitations on briefs. To facilitate meeting the expedited deadline set out in this notice, the Commission will limit briefs to 50 pages, but will impose no page limitations on evidentiary submissions. Briefs must be filed in accordance with the requirements at 49 CFR 1104.2. Because reply briefs appear to be unnecessary to complete our review of a merger, we do not anticipate granting any requests to file reply briefs. Based on the lack of response to our proposed preliminary scoping order, we do not anticipate issuing such an order at this time. However, in pursuing discovery and in preparing pleadings, we encourage the parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues, as identified by the applicable statutory standards and our control regulations, including our merger policy statement (49 CFR 1180.1). For example, arguments that the transaction will cause competitive harm should be accompanied by a clear statement of how rates will be raised, service degraded, or both, in some identifiable market. Responses countering such competitive arguments should explain clearly why those adverse impacts will not occur.

In order for us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, inconsistent applications and responsive applications must contain certain environmental information. Anyone desiring to file an inconsistent or a responsive application involving significant operational changes or an action such as a rail line abandonment or construction under 49 CFR 1105.6(b)(4) of our environmental rules must include, with its application, a preliminary draft environmental assessment (PDEA). Generally, these types of actions require an environmental report under 49 CFR 1105.6(b)(4) which would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, because of the accelerated time frames, a PDEA is necessary at the outset.

The preparation of a PDEA should not be burdensome. Although the information would be presented in a somewhat different format, the PDEA should address essentially the same environmental issues that would have been covered by an environmental report. The PDEA, like the environmental report, should be based on consultations with the Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). SEA will be available to provide assistance as needed.

SEA will use the PDEA to expedite the environmental review process. If a PDEA is not submitted or is insufficient, we will not process the inconsistent or responsive application.

If an inconsistent or responsive application does not involve significant operational changes or an action such as an abandonment or construction, it generally is exempt from environmental review. The applicant must certify, however, that the proposal meets the exemption criteria under 49 CFR 1105.6(c)(2).

Anyone desiring to file an inconsistent application or responsive application should consult with SEA as early as possible regarding the appropriate environmental documentation.

If the parties wish to engage in any discovery or establish any discovery guidelines (see, e.g., the proposed discovery guidelines in BN/SF–24; see also the proposed discovery guidelines in KCS–3, Ex. D, pp. 4–7), they are directed to consult with Stephen L. Grossman, Administrative Law Judge. Judge Grossman is authorized to convene a discovery conference, if necessary and as appropriate, in Washington, DC, and to establish such discovery guidelines, if any, as he deems appropriate. However, Judge Grossman is not authorized to make adjustments to, or to modify, the dates in the procedural schedule. We believe the schedule as adopted allows sufficient time for meaningful discovery. Any interlocutory appeal to a decision issued by Judge Grossman will be governed by the stringent standard of 49 CFR 1115.1(c): "Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." *See* Union Pacific Corporation, Union Pacific Railroad Company And Missouri Pacific Railroad Company—Control—Chicago And North Western Transportation Company And Chicago And North Western Railway Company, Finance Docket No. 32133, Decision No. 17, at 9 (ICC served July 11, 1994) (applying the "stringent standard" of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by former Chief Administrative Law Judge Paul S. Cross).[5]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 3, 1995.

By the Commission, Chairman McDonald; Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

Appendix A—Final Procedural Schedule

April 10, 1995—Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due.
May 10, 1995—Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. DOJ and DOT comments due.
May 25, 1995—Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
June 9, 1995—Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application due.
June 19, 1995—Rebuttal in support of inconsistent and responsive applications due.
June 29, 1995—Briefs due, all parties (not to exceed 50 pages).
July 14, 1995—Oral argument (at Commission's discretion).
July 24, 1995—Voting Conference (at Commission's discretion).
August 23, 1995—Date for service of final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive and inconsistent applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[5] For the purposes of the present proceeding, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, any appeal to a decision issued by Judge Grossman must be filed within 3 working days of the service date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Commission itself in the first instance must also be filed within 3 working days.

[FR Doc. 95–5799 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32624]

Northern Nevada Railroad Corporation—Modified Rail Certificate—Between Cobre and McGill Junction, NV

On December 2, 1994, Northern Nevada Railroad Corporation (NNRC), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C—*Modified Certificate of Public Convenience and Necessity*, to operate over a line of railroad owned by the Department of Water and Power of the City of Los Angeles (Los Angeles) between Cobre, Elko County NV (milepost 0.0) and McGill Junction, White Pine County, NV (milepost 128.0), a total distance of 128.0 miles.

Prior to Los Angeles acquiring the line, the line was formerly owned and operated by Nevada Northern Railway Company. Department of Water and Power of the City of Los Angeles—Acquisition and Operation Exemption—The Nevada Northern Railway Company, Finance Docket No. 31030 (ICC served June 8, 1987). Subsequently, in Los Angeles Department of Water and Power D/B/A Nevada Northern Railway Company—Abandonment Exemption—Line in Nevada, Docket No. AB–285 (Sub-No. 1X) (ICC served Oct. 3, 1988), the line was authorized to be abandoned.

NNRC's notice indicates that the line will connect with the Southern Pacific Transportation Company at Cobre (milepost 0.0); with the Union Pacific Railroad Company at Shafter, NV (milepost 18.8); and with NNRC at McGill Junction (milepost 128.0). Los Angeles has entered into an operating agreement with NNRC which planned to begin operation during January 1995. Operations consist of moving about one train per week over the line in each direction. Operations will increase to daily service once NNRC's connecting line is constructed.[1]

The Commission's Section of Environmental Analysis (SEA), reviewed the proposed start up operations that are the subject of the modified certificate. Specifically, by letter dated January 13, 1995, NNRC sought clarification under 49 CFR 1105.6(d) that the start up operations under the modified certificate do not require environmental review. NNRC provided supporting data concerning commodities and the nature of the proposed operations. By letter dated January 27, 1995, based on the information available at that time, SEA notified NNRC that the modified certificate operations had independent utility and that no environmental review would be required to transport the commodities NNRC had identified. Accordingly, this modified certificate is issued only as to those identified commodities and, under the certificate, NNRC may conduct those operations prior to completion of the construction exemption proceedings in Finance Docket No. 32476.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, 50 F Street NW., Washington, DC 20001, and on the American Short Line Railroad Association, 1120 G Street NW., Suite 520, Washington, DC 20005.

Decided: March 1, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5797 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32623]

Northern Nevada Railroad Corporation—Modified Rail Certificate—Between McGill Junction and Keystone, NV

On December 2, 1994, Northern Nevada Railroad Corporation (NNRC), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C—*Modified Certificate of Public Convenience and Necessity*, to operate a line of railroad owned by the City of Ely between McGill Junction, NV, (milepost 128.0) and Keystone, NV, (milepost 146.152), a total distance of 18.152 miles. The line will connect at each end with another line operated by NNRC. NNRC planned to begin operation during January 1995. Operations consist of moving about one train per week over the line in each direction. Operations will increase to daily service once NNRC's connecting line is constructed.[1]

Prior to the City of Ely acquiring the line, the line was owned and operated by Nevada Northern Railway Company, a subsidiary of Kennecott Copper Corporation. In Nevada Northern Railway Company—Abandonment Exemption in White (Pine) County, NV, Docket No. AB–285X (ICC served July 6, 1987), the Commission authorized Nevada Northern Railway Company to abandon the line. Since that time, the line has been operated for the City of Ely by the White Pine Historical Railroad Foundation (WPHRR). WPHRR has entered into an operating agreement with NNRC.

The Commission's Section of Environmental Analysis (SEA), reviewed the proposed start up operations that are the subject of this modified certificate. Specifically, by letter dated January 13, 1995, NNRC sought clarification under 49 CFR 1105.6(d) that the start up operations under the modified certificate do not require environmental review. NNRC provided supporting data concerning commodities and the nature of the proposed operations. By letter dated January 27, 1995, based on the information available at that time, SEA notified NNRC that the modified certificate operations had independent utility and that no environmental review would be required to transport the commodities NNRC had identified. Accordingly, this modified certificate is issued only as to those identified commodities, and, under the certificate, NNRC may conduct those operations prior to completion of the construction exemption proceedings in Finance Docket No. 32476.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, 50 F Street NW., Washington, DC 20001, and on the American Short Line Railroad Association, 1120 G Street NW., Suite 520, Washington, DC 20005.

Decided: March 1, 1995.

[1] Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV, Finance Docket No. 32476 (ICC served Feb. 24, 1995).

[1] Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV, Finance Docket No. 32476 (ICC served Feb. 24, 1995).

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By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5798 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from Harkins Cunningham and Southern Pacific Lines (SP) for permission to use certain data from the 1992 and 1993 I.C.C. Waybill Samples. A copy of the request (WB470—1/30/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196

Vernon A. Williams,

Secretary.

[FR Doc. 95–5796 Filed 3–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

March 2, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills-({202} 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 {{202} 395–7316).

Type of Review: Extension
Agency: Occupational Safety and Health Administration
Title: Occupational Exposure to Bloodborne Pathogens
OMB Number: 1218–0180
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 3,248
Estimated Time per Respondent: .08 hours
Total Burden Hours: 261
Description: The Bloodborne Pathogen Standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to bloodborne pathogens. The Standard requires that the Occupational Safety and Health Administration have access to the employer's exposure control plan as well as the employee's training and medical records to ensure that employers are complying with the disclosure provisions of the Bloodborne Pathogen Standard.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Survivor's Claims for Benefits Under the Black Lung Benefits Act
OMB Number: 1215–0069
Agency Number: CM–912
Frequency: On occasion
Affected Public: Individuals or households
Number of Respondents: 1,200
Estimated Time per Respondent: 25 minutes
Total Burden Hours: 500
Description: A survivor of a coal miner must file a claim for benefits under the Black Lung Benefits Act, as amended, in order to receive benefits. The claim and support documentation are reviewed by claims examiners to determine the survivor's eligibility for benefits.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Miner's Claim for Benefits Under the Black Lung Benefits Act; Employment History; Miner Reimbursement
OMB Number: 1215–0052
Agency Number: CM–911; CM–911a; CM–915
Affected Public: Individuals or households

Collection	Frequency	Respondents	Average time per respondent
CM–911	On occasion	4,800	45 minutes.
CM–911a	On occasion	5,900	40 minutes.
CM–915	On occasion	42,000	10 Minutes.

Total Burden Hours: 14,533
Description: The CM–911 is the standard application form, filed by the miner, for benefits under the Black Lung Benefits Act. The CM–911a lists the coal miner's work history, and is completed by all applicants, miners, and survivors. The CM–915 is used by the miner or survivor for requesting reimbursement of medical expenses incurred and paid by the miner beneficiary.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Claims for Compensation by Dependents Information Reports
OMB Number: 1215–0155
Agency Numbers: CA–5, CA–5b, CA–1031; CA–1074; CA–1085; CA–1093; CA–1615; CA–1617; CA–1618
Affected Public: Individuals or households

Form	No. respondents	Average time per respondent	Frequency
CA–5	235	90 minutes	On occasion.
CA–5b	70	90 minutes	On occasion.
CA–1615	120	30 minutes	On occasion.
CA–1617	500	30 minutes	Semi-annually.
CA–1085	450	45 minutes	On occasion.
CA–1031	1,700	15 minutes	On occasion.
CA–1074	70	60 minutes	On occasion.
CA–1093	50	30 minutes	On occasion.
CA–1618	320	30 minutes	Semi-annually.

Total Burden Hours: 1,835
Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Type of Review: Extension
Agency: Employment Standards Administration
Title: 29 CFR Part 516—Records to be Kept by Employers
OMB Number: 1215–0017
Frequency: Recordkeeping
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal Government
Number of Respondents: 3.7 million
Estimated Time per Respondent: Time ranges from 15 minutes–1 hour
Total Burden Hours: 632,288
Description: These records are maintained in order that employer compliance with the Fair Labor Standards Act can be determined by the U.S. Department of labor.

Type of Review: Reinstatement
Agency: Employment and Training Administration
Title: Job Corps Placement and Assistance Record
OMB Number: 1205–0035
Agency Number: ETA 678
Frequency: On occasion
Affected Public: State, Local or Tribal Government; Business or other for-profit
Number of Respondents: 60,000
Estimated Time per Respondent: 30 minutes
Total Burden Hours: 30,000
Description: This information is used in evaluating overall program effectiveness. It provides placement agencies with basic information regarding terminated students and provides the Department of Labor with information on the status of students subsequent to termination from the program.

Type of Review: New
Agency: Bureau of Labor Statistics
Title: May 1995 CPS Supplement on Race and Ethnicity
Frequency: One-time
Affected Public: Individuals or households
Number of Respondents: 55,000 respondents
Estimated Time per Respondent: 9.1 minutes per response
Total Burden Hours: 8,342
Description: This supplement will gather information on different methods for measuring and/or classifying racial and ethnic groups. The information will assist OMB's review of possible changes to Statistical Policy Directive No. 15. These changes may be needed to more accurately reflect the characteristics of the current U.S. population.

Type of Review: New
Agency: Employment and Training Administration
Title: Youth Fair Chance Program Evaluation
Frequency: On occasion
Affected Public: Individuals or households

Form	Respondents	Average time per respondent	Total
Participant:			
Information Form	2,700	10 minutes	450 hours.
Community Survey Interviews:			
Initial Screening	21,870	5 minutes	1,823 hours.
Interviews	3,600	25 minutes	1,500 hours.

Total Burden Hours: 3,773 (1st year)
Description: Public Law 102–367, the 1992 Amendments to the Job Training Partnership Act, authorizes the Youth Fair Chance (YFC) program. The purpose of the YFC program is to expand community-based programs providing education, training, and complementary services for youth living in high-poverty areas. This information collection is designed to provide a thorough, independent evaluation of the YFC program and to assess the outcomes of youth participating in the program. This baseline information form and the community survey questionnaire are essential for addressing the legislated objectives of the evaluation.

Type of Review: Reinstatement
Agency: Mine Safety and Health Administration
Title: Safety Defects; Examination, Correction and Records
OMB Number: 1219–0089
Agency Number: MSHA–422
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 486,560
Estimated Time per Respondent: .083303 minutes
Total Burden Hours: 40,532
Description: Requires equipment operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Reports of uncorrected defects are required to be recorded by the mine operator and retained for MSHA review until the defect has been corrected.

Type of Review: Extension
Agency: Mine Safety and Health Administration
Title: Program to Prevent Smoking in Hazardous Areas

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OMB Number: 1219–0041
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 200
Estimated Time per Respondent: 30 minutes
Total Burden Hours: 100
Description: Requires coal mine operators to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives, magazines, etc. Mine operators are further required to submit the programs to MSHA for approval.
Type of Review: Extension
Agency: Mine Safety and Health Administration
Title: Certificate of Training
OMB Number: 1219–0070
Agency Number: MSHA Form 5000–23
Frequency: On occasion
Affected Public: Business or other for-profit
Number of Respondents: 28,610
Estimated Time per Respondent: 1.84 hours
Total Burden Hours: 52,642
Description: The Mine Safety Health Administration (MSHA) Form 5000–23 is a mandatory form used to record training received by miners. The form provides the mine operator with a recordkeeping form, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance requirement.

Kenneth A. Mills,
Departmental Clearance Officer.
[FR Doc. 95–5778 Filed 3–8–95; 8:45 am]
BILLING CODE 4510–27–M

Glass Ceiling Commission; Criteria and Application Process for the National Award for Diversity and Excellence in American Executive Management

SUMMARY: The Glass Ceiling Commission is announcing the procedure for applying for the Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management. The award is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

DATES: Applications are due by April 30, 1995.

ADDRESSES: Applications should be sent to: The Glass Ceiling Commission, Perkins-Dole Award, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–2313, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: René A. Redwood, Executive Director, The Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210. Telephone (202) 219–7342.

Background

The Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management was established pursuant to Public Law 102–166, The Glass Ceiling Act of 1991. The glass ceiling is defined as those artificial barriers based on attitudinal or organizational bias that prevent qualified minorities and women from advancing in their organizations into management and decisionmaking positions.

Purpose

The Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

Business Defined

For the purposes of this award, business includes:

1. Corporation including nonprofit corporations;
2. Partnerships;
3. Professional association;
4. Labor organization;
5. Business entity similar to any entity described in 1 through 4;
6. An education referral program, a training program, such as an apprenticeship or management training program or similar program; and
7. Joint program formed by a combination of any entities described in 1 through 6.

Evaluation Criteria

The business must demonstrate that it has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women in order to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of minorities and women, and deserves special recognition as a consequence. Demonstration of substantial effort in promoting work force diversity initiatives must include a formal process that is quantifiable and emulatable and must be designed to:

—Create a work environment where all employees are able to achieve their full potential within the organization;
—Eliminate barriers to the advancement of minorities and women;
—Share information on successful diversity management and its benefits

In addition, the business must provide its definition of what constitutes senior management and a detailed demographic breakout of the total number of women and men within each management level by race and ethnicity.

The policies, programs, achievements, of each applicant will be evaluated in the following areas.

Leadership

The CEO and senior executives must demonstrate personal involvement and leadership in developing and maintaining an environment for diversity management excellence. The applicant must describe how the requirements for such excellence are communicated and reinforced for all managers and supervisors and integrated into day-to-day leadership, management and supervision. Key methods of evaluating and improving the effectiveness and accountability of such leadership and involvement should be addressed. The result of effective leadership should also be discussed.

Recruitment, Selection, and Retention Practices

The applicant must demonstrate how the practices for filing management and decisionmaking positions take into consideration the diversity of the candidate pool for such positions. The applicant must describe the human resource recruitment practices as related to monitoring search firm referrals; word-of-mouth recruitment; designation of high potential employees and other strategies for recruiting. The selection procedures, including identification and selection of high potential employees must be described. The applicant must also describe successful results of recruitment and selection of a well diversified candidate pool for management and decisionmaking positions. Practices for retaining minorities and women must also be discussed.

Development Practices

The applicant must describe: the mechanisms for selecting employees for developmental experiences; the kinds of developmental practices provided, e.g., on-site and off-site training, rotational assignments, special projects, etc.; the extent to which the nature of the developmental opportunities reflect the race, ethnicity and sex characteristics of the total management candidate pool; the role of relocations and overseas assignments in advancement and the extent to which diversification of such assignments is assured; and to what extent and how this is monitored.

Successful Initiatives

In addition to the elements above, the applicant must describe how all other factors are combined to create a complete initiative which has resulted in a diverse management work force for both minorities and women. These initiatives may include, for example, family friendly workplace policies, antiharassment, training or prevention, anti-discrimination procedures, pay equity evaluations and adjustments and the like. The applicant must discuss the innovative aspects of the initiative, the key factors of success and what makes this initiatives worthy of special recognition.

Other Evaluation Considerations

There must be no indications based on recent or current EEO Compliance reviews, complaint investigations or other federal enforcement activity of substantial noncompliance by the applicant with any civil rights laws. Considerations shall be given to whether or not businesses that have been cited for specific EEO violations, such as unlawful discrimination, sexual harassment, etc., have been required to take corrective actions during the period for which the business is being considered for this award.

Evaluation Process

Applicants will be ranked based on the criteria outlined above. An on-site tour to each business ranked in the top five will be made and interviews with selected officials and other employees may also be conducted.

The Commission shall select the Perkins-Dole awardee from businesses ranked in the top three. Recognition may also be given for successful efforts in eliminating the glass ceiling for businesses ranked from two to five.

Publicity

A business that received this award may publicize the receipt of the award and use the award in advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of minorities and women to management and decisionmaking positions.

Application Procedures

Businesses wishing to be considered for the Frances Perkins/Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management shall submit a written application to the Glass Ceiling Commission. The application shall be in the form of a letter and shall include information that demonstrates that the business has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women to foster their advancement into senior management positions and deserves special recognition as a consequence.

The letter shall specifically address the following areas: (See Evaluation Criteria)

Leadership

Recruitment, Selection and Retention

Developmental Practices

Successful Initiatives

The application should also include statistical information relative to the business work force profile for middle and upper management race, ethnicity and gender for at least the period covered by the initiative, but no less than five years. This information will be held in strict confidence.

The application package should be no more than 40 pages, including exhibits. Send one original and four copies. The cover sheet should contain the following information:

1. Name of the organization.
2. Number of establishments.
3. Number of employees in each establishment.
4. Address, telephone and fax number.
5. Name of highest ranking official.
6. Name, address, telephone and fax number of contact person.

The letter and other material should be sent to: The Glass Ceiling Commission, Perkins-Dole Award, U.S. Department of Labor, 200 Constitution Avenue NW., Room C2313, Washington, DC 20210.

Applications should be received no later than April 30, 1995.

Signed at Washington, DC, this 3rd day of March, 1995.

René A. Redwood,
Executive Director, Glass Ceiling Commission.
[FR Doc. 95–5779 Filed 3–8–95; 8:45 am]
BILLING CODE 4510–23–M

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Appointment of Members

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of appointment of members to the Maritime Advisory Committee for Occupational Safety and Health (MACOSH).

SUMMARY: The Secretary of Labor has established an advisory committee to advise the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) on issues relating to the delivery of occupational safety and health programs, policies, and standards in the maritime industries of the United States. The committee will provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved. Committee members have been appointed from government agencies, the shipbuilding industries and longshoring, labor and professional associations.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue NW., Washington, DC 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234.

SUPPLEMENTARY INFORMATION: MACOSH is intended to address the concerns of the entire maritime community, focusing on the shipyard and marine cargo (longshoring) handling industries.

This committee will continue the efforts of the previously chartered Shipyard Employment Standards Advisory Committee as well as provide a more focused forum for ongoing discussions with the marine cargo handling community. MACOSH is consistent with the President's initiative to make the U.S. shipyard industry competitive in the worldwide community. Furthermore, MACOSH will be able to focus on the resolution of controversial issues, particularly those with international implications, that impact the longshoring and shipyard communities. The specific objectives of this committee are to make recommendations on issues related to: (1) Reducing injuries and illnesses in the maritime industries, (2) expanding OSHA's outreach and training programs through the use of innovative

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partnerships, and (3) expediting the development and promulgation of OSHA standards.

Committee Members

MACOSH is composed of approximately 15 members who have been selected to represent the divergent interests of the maritime community. The makeup of the membership complies with Section 7 (b) of the OSH Act which requires the following: at least one member who is a designee of the Secretary of Health and Human Services; at least one designee of a state safety and health agency; and equal numbers of representatives of employees and employers, respectively. Other members have been selected based on their knowledge and experience and include representatives from professional and other governmental organizations with specific maritime responsibilities. MACOSH is a comprehensive representation of the maritime community.

Appointees to the Committee include these representatives from labor, industry, public interests and government agencies. The appointees represent groups interested in or affected by the outcome of rulemaking. The 15 members are:

Labor Representatives

Charles Brasford—Director of Occupational Safety and Health, International Association of Machinists and Aerospace Workers.
Al Cernados—Executive Vice President, International Longshoremen's Association.
Chico McGill—Chairman, Safety and Health Committee, Local 733, International Brotherhood of Electrical Workers, Ingalls Shipyard
Richard Olsen—Coastal Committee, International Longshoremen's and Warehousemen's Union

Industry Representatives

Katherine Chumley—Chair, Environmental Safety and Health Committee, Shipbuilders Council of America, Atlantic Marine.
John Faulk—Safety and Health Director, Ryan Walsh Stevedoring.
Chet Mathews—Safety and Health Director, Bath Iron Works
Frank Scanlan—General Counsel and Secretary, National Maritime Safety Association.

Government and Professional Organizations

Lieutenant Julie Gahn—Hazardous Materials Division, U.S. Coast Guard.
Alexander Landsburg—Systems Safety and Human Factors Division, Maritime Administration.
Fran Lavelle—American Association of Port Administrators.
Elsie Munsel—Safety and Environmental Programs, U.S. Navy.
Larry Reed—Assistant Director for Policy, National Institute for Occupational Safety and Health.
Pete Schmidt—Specialty Compliance Programs, State of Washington.
James Thornton—American Industrial Hygiene Association.

Signed at Washington, DC this 3rd day of March 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5894 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

Maritime Advisory Committee for Occupational Safety and Health, Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); notice of meeting.

SUMMARY: Notice is hereby given that the Maritime Advisory Committee for Occupational Safety and Health, established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States will meet March 22 and 23, 1995 in Room C–5320, Seminar Room No. 6, of the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue NW., Washington, DC 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234.

SUPPLEMENTARY INFORMATION: The first meeting of the Marine Advisory Committee on Occupational Safety and Health will be held March 22 from 1 to 5, and March 23 from 9 to 5 in Room C–5320, Seminar Room 6, of the Department of Labor, 200 Constitution Avenue NW., Washington, DC. At this first meeting the newly appointed members will be introduced and then the Committee will establish committee goals, plan for future meetings, discuss OSHA's compliance programs, outreach and training initiatives, and standards setting process, and hear about the current agenda and direction of OSHA.

All interested persons are invited to attend the public meetings of MACOSH, including the first one at the time and place indicated above. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Theda Kenney at 202–219–8061, no later than March 17, 1995, to obtain appropriate accommodations.

MACOSH will meet as a whole and also in small focus groups. Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Signed at Washington, DC this 3rd day of March 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–5895 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–95]

Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of interpretation.

SUMMARY: This notice announces the Occupational Safety and Health Administration's (OSHA) clarification of the types of programs and procedures that Nationally Recognized Testing Laboratories (NRTL) may engage in under the OSHA/NRTL recognition program, 29 CFR 1910.7. This notice addresses in particular those programs under which the NRTL controls and audits, but does not itself generate, the data relied upon for product certification. OSHA invites currently recognized NRTLs as well as new applicants to request approval for any of these acceptable procedures.

EFFECTIVE DATE: March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1984, (49 FR 8326), the Occupational Safety and Health Administration proposed a comprehensive overhaul of its regulatory procedures related to OSHA's requirements for safety testing or certification of certain workplace equipment and materials. The goals of the proposal were:

(1) To assure that products required to be tested and certified would be reliably tested and certified;

(2) To implement testing and certification requirements and procedures which would be administratively workable; and

(3) To take advantage of developments by others in organizing and evaluating product certification systems and in accrediting laboratories for testing.

In the proposal, OSHA stated that it was attempting to build upon the self regulatory efforts of the private sector, particularly in the fields of electrical and fire safety. OSHA intended to take full advantage of the mechanisms which existed in the private sector or in government, and to keep its long-term involvement in these activities to a minimum (see 53 FR 12103 second column, first paragraph). A three day informal public hearing was held on September 25, 26, and October 1, 1984. Based on the comments received and a review of the testimony in the record, the Agency modified its original proposal and, on April 12, 1988, (53 FR 12102), promulgated a new section, 1910.7—Definition and requirements for a nationally recognized testing laboratory, and a new Appendix A to section 1910.7—OSHA Recognition Process for Nationally Recognized Testing Laboratories.

The cornerstone of this regulation is the definition of the regulatory term "NRTL", with respect to specific elements. There are four elements that are identified as NRTL requirements: capability to test and evaluate equipment; control of certified products; independence; and procedures to produce creditable findings. These four elements that define an NRTL are incorporated into the criteria for the various types of procedures which OSHA approves and, when followed, provide OSHA with a reasonable degree of assurance that the products may be used safely in the workplace.

As noted above, capability to test and evaluate equipment, and independence are two of the elements required of an NRTL. These elements are discussed in the preamble to the final rule.

Capability to test does not mean that all testing will be done by the NRTL. OSHA stated in the preamble that while it expected generally that most applicants would do the testing in-house this was not a requirement of the standard. OSHA recognized that, in some cases, laboratories would subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs. Anticipating this occurrence, OSHA stated that the laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

Independence also does not mean that an NRTL has to carry out all of its functions totally separate from other entities, including the manufacturer. Simply put, the independence requirement means that the analytical and decision making processes, which are the critical functions that must be performed, are accomplished by an organization which is financially independent of manufacturers, vendors, and users of certified products. As long as the NRTL retains these functions, the credibility of the testing and approval process will be maintained.

OSHA believes that this understanding of the concept of independence was implicit in the rule from the time of its adoption. Thus the OSHA rule was intended to build upon the system of testing and certification already in existence, not to supplant it. The existing system did not require a rigid barrier between NRTL and manufacturer, for example, which would completely prevent the NRTL from utilizing the manufacturer's testing or other information sources. As long as the NRTL, which was not economically affiliated with the manufacturer, had ultimate authority and responsibility for the approval of the product and use of the certification mark, the needs of independence would be satisfied. The current clarification is consistent with and fleshes out the past practice.

OSHA intended a pragmatic application of the elements of independence and capability to perform testing, as well as the other elements that go into defining an NRTL. This can be seen from the general discussion in the preamble to the final rule, and specifically from the decision to grandfather the operations of UL and FMRC for a five-year period.

Thus, in the final rule, OSHA grandfathered some of the procedures that were in existence at the time of the rule. "It seems reasonable that product testing systems already in place should be able to continue their operations without Agency rulemaking on the testing standards, methods and procedures they are using now and have successfully used in the past. The operation of already existing product testing systems, such as UL and FMRC, could be seriously disrupted if the Agency attempted to undertake rulemaking on the testing standards, methods and procedures they are using." (See 53 FR 12108, second column, last paragraph). The initial assessment for renewal of UL and FMRC in 1993 and 1994, identified mature and functioning procedures, some over thirty years old, which included the acceptance of test data from other sources and use of contract organizations for other services.

In addition, OSHA's intent in the 1988 rule was to allow a level of flexibility in meeting the mandatory requirements. OSHA recognized that procedures may operationally vary from laboratory to laboratory, and still be acceptable. For example, the preamble to the final rule stated that, ". . . while the record indicates that current safety testing standards and practices may vary slightly among the third party safety testing organizations, the testing laboratories themselves indicate that they have compensating mechanisms and controls built into their particular systems which are intended to assure that the ultimate result will fall within an acceptable range" (TR 534,550). "The laboratories claim that they use those testing standards, methods and procedures which adequately address all necessary safety concerns and thereby justify their decision to "pass" the item in question and to allow the use of the laboratory's listing or identifying mark" (Ex 38, p 3; TR 552,

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553). (53 FR 12108, third column, first paragraph).

Thus, OSHA recognized that there were testing practices that might vary and differ among laboratories. OSHA also recognized that the compensating mechanisms and controls for each system and laboratory depends upon the confidence the laboratory has in the final result leading to use of the mark.

OSHA's review of the applications for renewal of recognition submitted by UL and FMRC have lead to the conclusion that it is appropriate to provide further clarification of acceptable NRTL procedures. In order for other NRTLs and future applicants to utilize these types of procedures, OSHA has provided specific criteria that will identify the critical elements of the various procedures. These criteria, as discussed earlier, were derived from the four elements that define an NRTL. By providing such criteria, an NRTL may tailor its methods and testing techniques to any procedure the NRTL would like to include.

The identification of criteria discussed in this document will provide guidance to applicants utilizing the various procedures, while still allowing the flexibility that was identified in the discussion of the regulation.

Clarification

The Occupational Safety and Health Administration is clarifying the types of testing and certification procedures which may meet the requirements for acceptance under section 1910.7.

The Agency has previously determined that an NRTL may, but is not obligated to, accept test data, component or product approvals, or other information or data from another NRTL, as long as it is satisfied with their appropriateness. The NRTL has the prerogative to retest or reapprove, as it deems necessary.

OSHA is aware that in addition to the procedures which were previously clearly understood to be acceptable, NRTLs also utilize procedures involving entities such as contractors, manufacturers, and other laboratories, for the performance of many of their functions. These other procedures are acceptable with certain controls in place. OSHA recognizes that to maintain credibility of these procedures, a higher level of expertise and controls by the NRTL will be required. Therefore, applicants for these will be assessed and audited by OSHA to more stringent guidelines. Generally, all acceptable procedures fall within one or more of the following.

1. The basic procedure where all product testing and evaluation is performed in-house by the NRTL that will certify the product
2. Acceptance of testing data from independent organizations, other than NRTLs
3. Acceptance of product evaluations from independent organizations, other than NRTLs
4. Acceptance of witnessed testing data
5. Acceptance of testing data from non-independent organizations
6. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing)
7. Acceptance of continued certification following minor product modifications by the client
8. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
9. Acceptance of services other than testing or evaluation performed by subcontractors or agents

Certain procedures are unacceptable. Included among these are manufacturer self-declaration, client self-certification, and other similar procedures that permit non-NRTLs to determine conformance with the product standard, i.e., certify the product.

A number of procedures encountered during on-site investigations by OSHA assessors have existed in one form or another prior to the existence of the NRTL program in 1988. Most of these procedures appear to have matured to a degree necessary to maintain product safety in the workplace and included controls necessary for conformity with NRTL program requirements.

This Notice discussed procedures and criteria to be utilized by OSHA assessors and auditors in evaluating each of them. OSHA will continue to closely monitor progress under these criteria and evaluate the effectiveness of the procedures.

The specific criteria utilized for evaluating the procedures of an applicant for recognition as a nationally recognized testing laboratory are based upon "national consensus standards and international guides".

Three basic principles, to assure that product certifications would provide necessary levels of safety, were derived from the rule.

These principles are as follows:

(1) The NRTL shall be capable of performing all aspects of a product certification scheme on its own.

- The NRTL shall be recognized to perform the tests, evaluations, and other services before it can accept such services from other organizations.

(2) Where the services of other organizations are used, the NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall have procedures consistent with the appropriate national standards and international guides for granting, maintaining, and extending its qualification of an organization or service.
- The NRTL shall use assessors who met the competence requirements of the appropriate national standards and international guides to evaluate the organization.
- The NRTL shall ensure that all aspects of certification work performed by others—including participants, locations of testing, witnessing, and evaluations—are identified in the NRTL and client records and reports.

(3) The NRTL shall ensure that each organization providing data, product evaluations, or other services to the NRTL is capable of doing so, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall be able to demonstrate that each organization it employs is capable of providing data, product evaluations, or other services that meet, or exceed, the quality of those provided by the NRTL.
- The NRTL shall maintain reports of its assessments of such organizations; these assessments shall conform to appropriate national standards and international guides.
- The NRTL shall have a documented surveillance program to ensure continued compliance with the NRTL's qualification procedures; this surveillance program shall be consistent with the appropriate national standards and international guides.
- The NRTL shall not be economically affiliated with any of these outside organization.

Procedures and specific criteria for each, were then developed from the basic principles. These principles, wherever they are applicable, shall be an integral requirement of the following procedures.

1. The Basic Procuredure—All Product Testing and Evaluation is Performed In-House by NRTL That Will Certify the Product

This is the basic procedure utilized by an NRTL under conditions where it is feasible. The first and second basic principles are applicable to this procedure.

2. Acceptance of Testing Data From Independent Organizations, Other Than NRTLS

As was noted previously in reference to the preamble to the final rule, OSHA anticipated that most testing by an NRTL would be done in-house, but did not make this a requirement of the standard. Subcontracting out of some of the tests was anticipated by OSHA, when it noted that the laboratory actually doing the work must have the necessary capability to conduct the tests, and the laboratory applying for recognition would retain primary responsibility for fulfilling the requirements of the standard and complying with the procedures set out in Appendix A.

An NRTL may accept testing conducted by an independent organization provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall review each test package and complete the product evaluations required by the test standards.
- The NRTL shall ensure that all data in the test data package originated with an organization that the NRTL qualified.

The NRTL shall ensure that each organization providing testing data is capable of conducting the test and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall have a written program for assessing the qualification of the organization to perform testing for each product type it may be required to test.
- This qualification program shall include procedures for evaluating the organization's independence, facilities, utilities, environmental controls, personnel, testing and calibration equipment, written testing procedures, calibration procedures, quality assurance program, and other elements as outlined in the appropriate national concensus standards and international guides.

3. Acceptance of Product Evaluations From Independent Organizations, Other Than NRTLS

Although no clear distinction between testing and evaluation is made in the final rule (29 CFR 1910.7), such distinction exists.

Many NRTLs utilize outside organizations for specific or unique tests. In these instances, the NRTL stipulates the tests and defines the testing procedures to be utilized and, finally, evaluates the test results to determine conformance of the product to the product standard and certifies the product where it does conform.

In this type procedure, the outside organization both tests and evaluates the results of the tests to determine conformance of a product to a standard, and them issues a test and evaluation report to the NRTL. The NRTL, in return, weighs the report for validity and conformance of the product to the product standard in order to decide whether the product is certifiable.

Authorization for an NRTL to accept product evaluations significantly expands the scope of the services which may be provided to the NRTL from an outside source. Acceptance of product evaluations will require the NRTL to establish a more formalized, long-term relationship with the independent organization to acquire confidence in its evaluation procedures.

An NRTL may accept product evaluations prepared by an independent organization provided the following criteria, in addition to the requirements in Procedure 1, are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall review each evaluation package, and complete the product evaluations required by the test standards before the product certification is issued.
- The NRTL shall ensure that evaluations are obtained from an organization which it has qualified.
- The NRTL shall ensure that data relied upon have been developed under the program established by the NRTL.
- The NRTL shall require the organization to establish and maintain a system to document technical correspondence and test standard interpretations.
- The NRTL shall assure that the organization, in preparing the evaluation package, follows the written procedures established by the NRTL.

The NRTL shall ensure that each organization providing product evaluations is capable of conducting the tests and performing the evaluations, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL's qualification program shall be used to assess the organization's procedures and personnel to determine its qualifications relative to each product type it may be asked to evaluate.
- The qualification program shall establish a minimum period and level of mutual effort between the NRTL and the organization for confidence-building. During this period the NRTL will witness evaluations, verify the evaluations through inter-organizational comparisons, and validate the competence of personnel to perform product evaluations.

4. Acceptance of Witnessed Testing Data

This procedure involves technical personnel from the NRTL witnessing product testing generally carried out at a location other than that of the NRTL. The organization carrying out the tests may or may not be independent.

The majority of testing witnessed by representatives of the NRTL is consistent with the statement in the preamble to the final rule that * * * in some cases, laboratories may wish to subcontract out the testing of a certain product or aspect thereof due to unique or special testing needs.

Representatives of an NRTL may witness testing provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

- The NRTL shall train its own personnel to take an active role in witnessing each phase of the tests.
- This training shall include specific testing procedures for each product type the trainees may witness.

The NRTL shall assure that the organization providing the testing data is capable of conducting the tests and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

- The NRTL shall have a written program for assessing the qualification of the organization to perform testing for each product type it may be required to test.
- This qualification program shall include procedures for evaluating the outside organization's facilities, utilities, personnel, testing and calibration equipment, written testing procedures, calibration procedures, environmental controls, and other elements as outlined in the appropriate national consensus standards and international guides.
- The NRTL shall qualify the outside organization using the NRTL's own staff.

5. Acceptance of Testing Data From Non-Independent Organizations

This program involves test data generated by an organization that has a vested interest in the outcome of the test results.

Data submitted under this program shall not include products intended for use in hazardous (classified) locations

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(see 29 CFR 1910.307). A substantial number of tests of products intended for use in hazardous locations involves subjective analysis and have levels of complexity well beyond that required for tests of products meant for use only in ordinary locations.

An NRTL may accept testing conducted by a non-independent organization provided the following criteria are complied with, in addition to the requirements in Procedure 1, with the exception for the need to document the independence of the organization:

The NRTL shall establish procedures and maintain records which will demonstrate that the test data are unbiased.

The NRTL shall ensure that the organization providing the data is capable of conducting the tests and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

• The NRTL's qualification procedures shall establish a minimum time period for confidence-building. During this period the NRTL will witness tests and verify them by duplicate testing at the NRTL's facility.

• The NRTL's surveillance program shall include annual site evaluations, review of test packages, random samples and retests by the NRTL, and other controls outlined in the appropriate national standards and international guides.

6. Acceptance of Evaluation Data From Non-Independent Organizations (Requiring NRTL Review Prior To Marketing)

This type of procedure enables an organization to evaluate a product in which it has a vested interest. However, the product shall not be released to the market until the NRTL has reviewed and concurred with the evaluation.

An NRTL may accept product evaluations prepared by a nonindependent organization provided the following criteria are complied with:

Except for the requirement for independence, the specific program criteria in Procedures 1, 2, and 4 shall apply to product evaluations by non-independent organizations. The following additional program criteria shall also be required:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

• The NRTL shall establish and maintain records of procedure and product deficiencies identified, and the corrective actions taken by it and the organization.

• The NRTL shall establish and maintain a program to monitor and confirm the organization's evaluations.

• The NRTL shall assure that no product is released to the market until it has verified the organization's testing data and concurred with its evaluation of the product.

The NRTL shall assure that each organization providing data and evaluations is capable of performing these functions and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

• The NRTL shall establish and maintain records that demonstrate that the organization continues to be proficient in testing and evaluation.

• The NRTL shall demonstrate that the organization's laboratory has sustained the quality of its performance in testing before being considered for this program.

7. Acceptance of Continued Certification After Minor Product Modifications by the Manufacturer

This type of procedure would allow a manufacturer to make minor changes to a certified product, test and evaluate the change or changes, and continue to use the certification mark on the modified product.

With all the controls in place and a clear understanding of what a "minor" product modification encompasses, there should be no reason to consider this procedure as not falling within the scope of the NRTL program. A minor product modification is one which involves the use of an interchangeable component in a previously accepted product. Examples are the substitution of an equivalent switch from a different manufacturer, or the replacement of a motor with a comparable one of different horsepower.

An NRTL may accept minor product modifications from a manufacturer without requiring recertification provided the following criteria, as well as the criteria in Procedures 1, 2, 4, and 5 (except for the requirements for independence), are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

• The NRTL shall clearly define what is meant by "minor" modifications.

• The NRTL shall review each test and evaluation report for each product modification.

The NRTL shall assure that each manufacturer providing the test data and evaluation is capable of conducting the tests and making the product evaluations, and that the relationship between the NRTL and the organization does not compromise the NRTL's independence.

• The NRTL shall demonstrate that the client has sustained the quality of its performance in both testing and product evaluation before being considered for this program.

8. Acceptance of Product Evaluations From Organizations That Function As Part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme

The IEC–CB scheme authorizes organizations accredited as certified bodies to exchange product test data and evaluation reports with each other.

An NRTL may accept product evaluations from organizations that are part of the IEC–CB scheme provided the following criteria are complied with:

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

• The NRTL shall physically evaluate each product.

• The NRTL shall review each test and evaluation report and certificate of certification to determine that the correct nationally recognized standards has been used to test the product and, where applicable, that the US deviations have been properly applied.

• The NRTL shall have written procedures for the evaluation of products, and for the interpretation of any results.

• The NRTL shall establish records that demonstrate that the organizations furnishing test and evaluation reports continue to be competent. These records will include documentation to demonstrate that the organization understands the US deviations and has correctly applied them.

• The NRTL shall determine that the components used in the product are tested to a standard comparable to the appropriate nationally recognized standard.

• The NRTL shall determine that components used in the product have been certified through an appropriate regulatory authority's scheme, and that the scheme includes routine evaluation of the manufacturer's process.

9. Acceptance of Services (Other Than Testing or Evaluation) Performed by Subcontractors or Agents

Services under this heading include follow-up activities, calibration activities, and equipment maintenance accomplished by subcontractors or agents.

Athough there do not appear to be any references in 29 CFR 1910.7 or in the preamble to the final rule that specifically address this issue, testing laboratories, including the larger organizations, have historically contracted for certain activities. Most common are activities such as repair and calibration of test and measurement instrumentation, security services, and quality system accreditation. Assuming proper controls for such activities by the NRTL, they should not affect the ability of the NTRL to produce credible findings. It was never OSHA's intent to discourage or limit activities such as the use of national or international standards for quality assurance qualification and registration of a manufacturer by organizations other than the NRTL. Such accreditation and services can be useful tools for an NRTL as long as the NRTL retains ultimate control and responsibility.

The NRTL shall retain control of, and responsibility for, all aspects of the product certification scheme.

• The NRTL shall assure that subcontractors or agents performing service which may affect the certification of a product have been assessed and qualified by the NRTL.

• The NRTL shall assure that subcontractors agents use the follow-up procedures established by the NRTL.

• The NRTL shall maintain records of the results of the follow-up visits.

The NRTL shall assure that each agent or subcontractor providing a service is capable of performing that service and that the relationship between the agent or subcontractor does not compromise the NRTL's independence.

• The NRTL shall be able to demonstrate that all subcontractors and agents are capable of providing services equivalent to that provided by the NRTL.

• The NRTL shall have written procedures to qualify subcontractors or agents, to monitor their performance, to communicate effectively with them, and to maintain manufacturer confidentiality.

• The NRTL's qualification rpocedures shall include: qualification requirements; the subcontractor's or agent's quality assurance and self-auditing programs; the NRTL's monitoring program; and the documentation requirements for both the NRTL and the subcontractor or agent.

• The NRTL's records shall include documentation to demonstrate that the subcontractor or agent complies with the NRTL's program.

• The NRTL shall use its own staff to qualify the subcontractor or agent.

• The NRTL shall have the means to ensure that only follow-up inspectors who are qualified for the task are utilized.

• The NRTL's surveillance program shall include routine audits of the facilities, staff, and procedures involved in its follow-up program.

• The follow-up procedures in foreign countries shall be as stringent as those required in the US.

• The follow-up program shall include an initial assessment of the manufacturers' procedures, the quality control system, maintenance procedures, recordkeeping and other elements from the appropriate national standards and international guides.

• The follow-up program shall have the capability to identify variations in the manufacturers' ability to control the quality of production.

• The NRTL shall periodically inspect samples of products for compliance.

The Use of An "NRTL" Certification Mark for Products Tested and Certified In Accordance With OSHA's Requirements

OSHA has received requests from several NRTL participants to initiate action that would implement a requirement for the use of a unique mark for the NRTL certified products. As a result of these requests, OSHA will publish a separate document in the **Federal Register** explaining how such a program may be implemented, as well as describing the requirements which are considered to be part of such a program.

In this separate document, OSHA will request comments on the advantages and disadvantages of implementing such a program and invite suggestions as to the proper approach OSHA should take. The document will include the concerns of the Agency and will seek public information that will enable it to determine the appropriate action.

Authority

Section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed at Washington, DC, this 3rd day of March 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–5780 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–29–M

Maryland State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated September 9 and October 7, 1994, from Henry Koellein, Jr., Commissioner of the Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) Amendments, corrections, additions and revisions to 29 CFR 1910.132, 1910.133, 1910.136, and 1910.138, pertaining to the Personal Protective Equipment Standard for General Industry, as published in the **Federal Register** of April 6, 1994 (59 FR 16360); (2) amendments, corrections, and additions to 29 CFR 1910.146, pertaining to the Permit-Required Confined Spaces Standard for General Industry, as published in the **Federal Register** of May 19, 1994 (59 FR 26115); and (3) an amendment to 29 CFR 1926.62, pertaining to the Lead in Construction Standard for the Construction Industry, as published in the **Federal Register** of May 4, 1993 (58 FR 26627). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on April 15 and July 22, 1994. These standards became effective on August 29 and September 26, 1994, respectively.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

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3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 191204; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, Room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Maryland State plan as proposed changes the making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting the requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 9, 1995.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 26th day of January 1995.

Linda R. Anku,

Regional Administrator.

[FR Doc. 95–5776 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–25–M

Maryland State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1593.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated January 10 and January 30, 1995, from Henry Koellein, Jr., Commissioner of the Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to amendments, corrections, and revisions to: (1) amendments, corrections, additions and revisions to 29 CFR 1910.137 and 1910.269, pertaining to the Electric Power Generation, Transmission and Distribution Standard and the Electrical Protective Equipment Standard for General industry, as published in the **Federal Register** of June 30, 1994 (59 FR 33660); (2) amendments, corrections, additions and revisions to 29 CFR 1910.120, pertaining to the Hazardous Waste Operations and Emergency Response Standard for General Industry, as published in the **Federal Register** of August 22, 1994 (59 FR 43270); (3) amendments, corrections, additions and revisions to 29 CFR 1910.132, 1910.133, 1910.136, and 1910.138, pertaining to the Personal Protective Equipment Standard for General Industry, as published in the **Federal Register** of July 1, 1994 (59 FR 33910); (4) amendments to 29 CFR 1910.1201, 1926.21, and 1928.21, pertaining to the Retention of Department of Transportation Markings, Placards and Labels, as published in the **Federal Register** of July 19, 1994 (59 FR 36700); (5) amendments, corrections, additions and revisions to 29 CFR 1926.1101, including Appendices A, B, D, F, H, I, and K, pertaining to the Occupational Exposure to Asbestos Standard for General Industry, as published in the **Federal Register** of August 10, 1994 (59 FR 41131); and (6) amendments to 19 CFR 1926.500–.503, including Appendices A–E, Safety Standards for Fall Protection in the Construction Industry, and related amendments, corrections, additions and revisions to 29 CFR 1910.169(g)(2)(i); 1926.104; 1926.753; 1926.105; 1926.107 (b), (c) and (f); 1926.250(b)(2); 1926.550 (c)(2) and (g)(4)(i)(C); 1926.651(l); 1926.701(f)(2); and 1926.951(b)(4)(i), as published in the **Federal Register** of August 9, 1994 (59 FR 40729). These standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on September 8 and October 28, 1994. These standards became effective on January 2 and January 30, 1995, respectively.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry. 501 St. Paul Place, Baltimore, Maryland 21202, and the OSHA Office of State Programs, U.S. Department of Labor, Room N3700, 3rd Street and Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 9, 1995.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 8th day of February 1995.

Linda R. Anku,

Regional Administrator.

[FR Doc. 95–5777 Filed 3–8–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Achives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before April 24, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency, or origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Defense (N1–330–95–3). Database relating to imagery requirements.

2. Department of Labor, Office of Labor-Management Standards (N1–317–95–1). Annual reports filed by surety companies that issue bonds under the Labor-Management Reporting and disclosure Act.

3. Department of State (N1–76–93–2). Administrative and duplicative records relating to the arbitration over the U.S. embassy in Moscow.

4. Department of State (N1–84–94–4). Records relating to fine and decorative art maintained at Foreign Service Posts.

5. Commission on the Social Security Notch Issue (N1–220–95–3). Petitions, mass mailings and other routine public correspondence.

6. Defense Logistics Agency (N1–361–95–1). Records relating to Foreign Military Sales (FMS) Transportation Case Files.

7. Environmental Protection Agency, Office of Pesticides Programs (N1–412–92–3). Administrative records such as correspondence, status reports, budget and inspection records maintained in chemical disposal case files.

8. Federal Aviation Administration (N1–237–95–1). Administrator's Hotline Files.

9. Federal Energy Regulatory Commission (N1–138–91–2). Hydropower Licensing Case Files.

10. National Aeronautics and Space Administration (N1–255–94–1). Agency-wide organizational, administrative. legal and technical records (Chapters 1 and 2 of the NASA Records Retention Handbook).

11. United States District Courts, Northern District of Texas (N1–21–95–1). Paper copies of judgments and orders (record copy is preserved on microfiche).

12. Office of Technology Assessment (N1–444–95–1). Library reference files.

Dated: February 27, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–5711 Filed 3–8–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Integrated Performance Assessment Process (IPAP); Public Information Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing its plans to conduct a public meeting to discuss its proposed Integrated Performance Assessment Process (IPAP) for commercial, operating, nuclear power plant licensees. The IPAP was developed to improve the NRC's integration of objective information related to the performance of reactor licensees. In addition, the IPAP will provide a check on the effectiveness of NRC's integration and planning processes and will provide feedback on the effectiveness of regulatory programs.

This notice also announces the availability of background material in the NRC Public Document Room (PDR). The following background documents are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC:

- IP 93XXX, "Integrated Performance Assessment Process." This document describes the IPAP.
- SECY–94–210, "Customized Inspection Planning Process—Trial Activity." This document describes the IPAP and provides the results of the first trial assessment.
- NRC Inspection Report 50–498/94–25; 50–499/94–25. This document provides the results of an IPAP trial assessment.
- NRC Inspection Report 50–369/94–14; 50–370/94–14. This document provides the results of an IPAP trial assessment.
- NRC Inspection Report 50–272/94–201; 50–311/94–201. This document provides the results of an IPAP trial assessment.

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• NRC Inspection Report 50–334/94–81; 50–412/94–81. This document provides the results of an IPAP trial assessment and will be placed in the NRC PDR when issued.

The objectives of the public meeting are to provide a brief description of the Integrated Performance Assessment Process, answer questions on the process, and receive feedback from interested members of the public.

DATES: The meeting will be held on April 11, 1995, from 8:30 a.m. to 12:30 p.m. Persons planning to attend the public information meeting should submit a completed registration form (see below) by April 3, 1995. Interested persons unable to attend the meeting may submit written comments. Submit comments by April 18, 1995. Comments received after this date will be considered if practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: The meeting will be held at the United States Nuclear Regulatory Commission, Two White Flint North, Auditorium, 11545 Rockville Pike, Rockville, MD.

Send completed registration forms to Mr. David L. Gamberoni, M/S OWFN 12–E–4, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Send comments to Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Copies of the comments received may be examined or copied for a fee at the NRC Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Gamberoni, M/S OWFN 12–E–4, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC, 20555. Telephone (301) 415–1144.

SUPPLEMENTARY INFORMATION: The Integrated Performance Assessment Process (IPAP) is a four phase process for systematically evaluating nuclear power plant licensee's safety performance. The IPAP also develops inspection recommendations that customize the inspection program for the next inspection period based on licensee strengths and weaknesses, and provides feedback to improve the effectiveness and implementation of regulatory programs.

The four IPAP phases include:

• Integrated Review of Licensee Performance

• Site Assessment Visit

• Final Analysis and Inspection Recommendation Development

• Assessment of Regulatory Programs

The NRC staff intends to make a brief presentation on the contents of the IPAP at the meeting. However, the main focus of the meeting will be to address any questions regarding the process and solicit comments. The NRC staff will consider the comments received during this public meeting as well as written comments in finalizing its recommendations to the Commission on the Integrated Performance Assessment Process.

Dated at Rockville, Maryland, this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Chief, Performance Evaluation and Assessment Section, Inspection Program Branch, Directorate for Inspection and Support Programs, Office of Nuclear Reactor Regulation.

(Attachment to Notice of Meeting (IPAP))

Registration Form—United States Nuclear Regulatory Commission Integrated Performance Assessment Process Public Information Meeting TWFN, Auditorium, Rockville, Maryland

April 11, 1995.

Name _____

Title _____

Company/Organization _____

_____

_____

Address _____

_____

_____

Telephone Number _____

Comments _____

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[FR Doc. 95–5775 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northwest Utilities, Millstone Nuclear Power Station, Unit 1, License No. DPR–21; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 15, 1995, Anthony J. Ross (Petitioner) has requested that the Nuclear Regulatory Commission take action with regard to Northeast Utilities. The Petition was submitted as a supplement to a letter submitted by the Petitioner on October 28, 1994, in which he requested that "accelerated" enforcement action be taken against Northeast Utilities for violations at Millstone involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner alleges that since August 1993 violations in these areas have increased significantly when compared to previous like periods, that many of these violations have never been assigned a severity level, and that when the repetitive nature and duration of these violations are considered, and these violations are considered collectively together with violations that have been assigned a severity level, escalated enforcement action is warranted. By letter dated February 8, 1995, the Petitioner provided additional information in support of his Petition.

The request, as supplemented, is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation.

A copy of the Petition and the February 8, 1995, supplement are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document room for Millstone Unit 1 located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of the Nuclear Reactor Regulation.

[FR Doc. 95–5772 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Exemption

In the Matter of Consumers Power Co. (Palisades Plant).

I

The Consumers Power Company (the licensee) is the holder of Facility Operating License No. DPR–20, which authorizes operation of the Palisades Plant at a steady-state reactor power level not in excess of 2530 megawatts thermal. This facility consists of one pressurized water reactor located at the licensee's site in Van Buren County, Michigan. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

The regulation 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-water Nuclear Power Reactors for Normal Operation," states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the ASME Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water-solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to maintain seal integrity of the reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the ASME Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the rector coolant pumps during normal operation.

The licensee proposed in a letter dated February 10, 1995, that in determining the design setpoint for LTOP events for the Palisades Plant, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by Appendix G to 10 CFR part 50. Designated Code Case N-514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee but not yet approved for use in Regulatory Guide 1.147. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated February 10, 1995, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Palisades reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Using the licensee's proposed safety factors instead of ASME Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required, but will provide added margin to prevent normal operating surges from lifting the PORVs or cavitation of the reactor coolant pumps. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will

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provide adequate margins of safety to the reactor vessel during LTOP transients, thus providing an acceptable level of quality and safety. Accordingly, the use of the Code case will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements for normal operation and anticipated operational occurrences.

IV

For the foregoing reason, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Consumers Power Company an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the ASME Appendix G curves for P/T limits are not exceeded by more than 10% in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has prepared an environmental assessment and determined that the granting of this exemption will not have a significant effect on the quality of the human environment (February 27, 1995, 60 FR 10615).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of March 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5774 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Exemption

In the Matter of Northern States Power Co. (Prairie Island Units 1 and 2)

I

Northern States Power Company (NSP, the licensee) is the holder of Facility Operating Licenses Nos. DPR–42 and DPR–60 which authorize operation of Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. The units are pressurized water reactors (PWR) located in Goodhue County, Minnesota. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section III.G.1 of Appendix R to 10 CFR part 50 requires, in part, that fire protection features shall be provided for structures, systems, and components important to safe shutdown so that one train of systems necessary to achieve and maintain hot shutdown conditions be free of fire damage. The staff has interpreted these provisions as requiring that features shall be such that one train of safe shutdown systems remains operable, notwithstanding a fire or consequences therefrom, without one having to perform any repair. In this context, the staff considers manually pulling fuses to isolate certain systems as a repair. Accordingly, the staff interprets Section III.G.1 of Appendix R as not permitting the pulling of fuses in order to be in compliance.

By letter dated May 2, 1994, the licensee requested an exemption to permit it to manually remove fuses from the power-operated relief valve control circuit in the event of a fire, in lieu of modifying plant hardware which would otherwise be required to achieve compliance with Section III.G.1 of Appendix R. The licensee's submittal initially referenced Section III.G.2 of Appendix R as providing the requirements from which the licensee was seeking an exemption, but in a follow-up telephone conversation with the staff the licensee concurred that Section III.G.1 is the appropriate reference.

This exemption was requested by the licensee in response to inspection findings identified in inspection reports 50–282/87–004, 50–282/88–013, 50–282/92–011 and 50–282/94–004. These findings addressed a concern with circuit failure modes that could adversely affect the ability to maintain hot shutdown in the event of a control room fire. This condition could occur if the power operated relief valves (PORV) block valves were not shut and a hot short damaged the PORV control circuit causing the PORV to open and remain open. Specifically, this involves the high/low pressure interface spurious signal concerns associated with Unit 1 PORVs CV–31231 and CV–31232 and their associated block valves MOV–32195 and MOV–32196 and with Unit 2 PORVs CV–31233 and CV–31234 and their associated block valves MOV–32197 and MOV–32198. As a precaution to prevent the potential loss of reactor coolant system (RCS) inventory during a control room fire, the licensee has proposed to close the PORV block valves prior to control room evacuation. The licensee also proposed to remove the PORV control circuit fuses to prevent a hot short or short to ground which may cause the PORV to open or be maintained open. As stated above, removal of fuses for isolation in such circumstances is considered a repair and, therefore, does not meet Appendix R, Section III.G.1, as interpreted by the staff.

The licensee's proposed actions of closing the PORV block valves and removing the control circuit fuses was reviewed by the staff and was found to be an effective means of assuring that a control room fire will not result in a sustained loss of RCS inventory.

The substance of the licensee's submittal was reviewed by Region III inspectors during the inspection conducted from July 18–22, 1988. The inspection findings were documented in NRC Inspection Report No. 50–282/88–013 and 50–306/88–013. The inspectors walked down the control room evacuation shutdown procedures. Step 3.3.1 of Procedure F5, Appendix B, "Control Room Evacuation (Fire)," directs the operators to remove/pull the fuses for the PORVs as an immediate action in response to a control room evacuation. The inspectors found that the fuse panels were readily accessible and the fuses were clearly identified in the panels. The inspectors also found that sufficient space is available to permit access for pulling fuses and that emergency lights and the fuse pullers had been provided in the vicinity of each panel. A training program has been established for all plant operators to enhance the familiarity with and proper response to the control room evacuation. Additionally, as a part of Emergency Operating Procedures (EOP) training, all the operators are trained on the above-mentioned procedures to ensure their familiarity with respect to the removal of fuses during hot shutdown. Therefore, operators are trained and experienced in removing the fuses.

On the basis of this evaluation, the Commission concludes that the proposed action to close the PORV block valves prior to control room evacuation and to remove fuses from the PORV control circuit provides reasonable assurance that safe shutdown can be achieved in the event of a control room fire and is acceptable.

III

The Commission has determined, pursuant to 10 CFR Part 50.12, that this exemption as described in Section II above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Furthermore, the Commission has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii), are present in that application of the regulation, as interpreted by the staff, in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Section III.G.1 of Appendix R is to ensure that safe shutdown can be achieved notwithstanding a fire or the consequences therefrom. Application of this section to the extent it precludes the removal of fuses as a fire protection feature is not necessary to achieve the underlying purpose of the rule because the licensee's proposal still provides reasonable assurance that one safe shutdown train will be operable and free of fire damage.

IV

Accordingly, the Commission hereby grants an exemption from the requirements of Section III.G.1 of Appendix R to 10 CFR Part 50 to allow removal of fuses from the PORV control circuit in the event of a control room fire.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (59 FR 62415).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5773 Filed 3–8–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Notice of Commission Visits

March 3, 1995.

Notice is hereby given that members of the Postal Rate Commission and certain advisory staff members will visit the facilities of the following businesses to observe their operations:

Penton Press, Cleveland, Ohio and then meet with officials from Lands End, Inc. in Milwaukee, Wisconsin on March 7, 1995.

Quad/Graphics, Hartford, Wisconsin on March 8, 1995.

Hallmark Cards, Kansas City, Missouri, March 9, 1995.

Reports of these visits will be placed on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission at 202–789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–5813 Filed 3–8–95; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Placement Service.

(2) *Form(s) submitted:* ES–2, ES–20a, ES–20b, ES–21, ES–21c, UI–35.

(3) *OMB Number:* 3220–0057.

(4) *Expiration date of current OMB clearance:* April 30, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit, State, Local or Tribal Government.

(7) *Estimated annual number of respondents:* 27,700.

(8) *Total annual responses:* 31,250.

(9) *Total annual reporting hours:* 1,981.

(10) *Collection description:* Under the RUIA, the Railroad Retirement Board provides job placement assistance for unemployed railroad workers. The collection obtains information from job applicants, railroad and non-railroad employers, and State Employment Service offices for use in placement, for providing referrals for job openings and reports of referral results and for verifying and monitoring claimant eligibility.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–5767 Filed 3–8–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35437; File No. SR–CBOE–95–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Buy-Write Options Unitary Derivatives

March 2, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives ("BOUNDs"). As described in more detail below, BOUNDs are long term options which the CBOE believes have the same economic characteristics as a covered call writing strategy.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE believes the purchase of a BOUND will be substantially equivalent to a "buy-write" transaction (*i.e.*, the simultaneous writing of a call option and purchase of the underlying stock). Unlike an actual buy-write transaction, however, the purchase of a BOUND is effected in a single exchange transaction. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDs traded on the Exchange.

As with OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of every such order will increase BOUNDs open interest. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

A BOUND holder will be in essentially the same economic position as a covered call writer except that a BOUND is not subject to exercise before expiration. BOUND holders will profit from the stock's movement up to the strike price and will receive payments equivalent to the cash dividends paid on the underlying stocks. On the ex-date for a stock dividend, OCC will debit all short BOUND accounts and credit all long BOUND accounts with an amount equal to the dividend on the underlying stock.

Like put and call options, BOUNDS will trade in standardized contract units of 100 shares of underlying stock per BOUND contract. At expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. Persons who have sold BOUND contracts will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This is the same economic result that accrues to a covered call writer who holds the position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of an XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND contract will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call is in the money at expiration and is exercised, i.e., the writer would receive an amount equal to 100 shares times the strike price and, because he would be required to deliver the stock, would forfeit any appreciation above that price.

The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying stock options. The Exchange anticipates that it will list BOUNDs on the same underlying securities on which Long-Term Equity Option Series ("LEAPs") are listed. BOUNDs will be listed at the same strike prices and expiration dates as their respective LEAPs except that BOUNDs will be listed only at strike prices that are at (or very near) or below the then current price of the underlying stock. BOUNDs will be listed with up to 39 months until expiration.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration date and exercise price will approximate the market price of the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying stock, it is anticipated that arbitrage activity will tend to bring the price relationships back into line.

There is also a relationship between the settlement at expiration of a LEAP and a BOUND having the same underlying security, strike price and expiration date. If at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the seller of a BOUND position. if, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the strike price times 100 in cash from the short BOUND. While it seems unlikely that an investor would be long both a LEAP and a BOUND at expiration, it is illustrative to consider how such a position would be settled. To continue with the above example where XYZ closes above the $50 strike price at expiration, an investor long both a LEAP and a BOUND contract would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

The settlement of the LEAP and BOUND at expiration are equally well harmonized from the perspective of the writer. For example, if a writer of both instruments is covered with the underlying stock and the stock closes above the strike price, at expiration, the writer delivers the stock to the long LEAP call and receives in return payment of the strike price times 100, which amount is then delivered to the long BOUND. A covered writer's position, therefore, effectively is closed upon the delivery of the covering stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP call upon payment of the strike price times 100. The writer of the BOUND then delivers 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas BOUNDs are European-style in that they cannot be "exercised" prior to expiration.[1] The Exchange believes that a European-style BOUND will have greater acceptance among investors than an American-style product since a European-style BOUND will permit purchasers to enjoy the enhanced yield that the BOUND provides for a certain period of time. Furthermore, because some type of performance—either delivery of the underlying stock or payment of the strike price—is always required at expiration, the CBOE believes that notice of exercise is not necessary and, therefore, will not be required.

[1] A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

Customer Margin. The Exchange proposes to apply options margin treatment to BOUNDs as explained below.

A. Long BOUND Positions

Long BOUND positions will be given no loan value and payment in full will be required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDs in BOUND spread positions.

B. Short BOUND Positions

The BOUND seller receives the full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to the "add on" percentage used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. Examples of the margin treatment for a short BOUND position follow:

1. Assume a stock price of $50, a margin add-on percent of 20% and the BOUND trading at $40. In this case, the short seller would have to pay $48 to margin the position, *i.e.*, $40 BOUND price plus 20% of $40 ($8), or $48.

2. Assume a stock price of $60, an exercise price of $50, a margin add-on of 20% and the BOUND trading at $45. In this case, the calculated margin would be $54, *i.e.*, $45 BOUND price plus 20% of $45 ($9) or $54. However, since the maximum margin for a short BOUND is the strike value, the margin would be $50.

3. Assume a stock price of $40, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $35. In this case, the margin would be $42, *i.e.*, $35 BOUND price plus 20% of $35 ($7), or $42.

C. Covered Positions

Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

D. Spread Positions

Same Expiration—Different Strike Prices

There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

Different Expiration—Same Strike Price

No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

Different Expiration—Different Strike Prices

There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and short the distant expiration when the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

Sales Practices

BOUNDs will be subject to the sales practice and suitability rules applicable to standardized options.

Adjustments for Corporate Transactions

BOUNDs will be subject to adjustments for corporate and other actions in accordance with the rules of The Options Clearing Corporation.

Positions Limits

BOUNDS will be subject to the position limits for equity options set forth in Exchange Rule 4.11. In addition, BOUNDs will be aggregated with equity options on the same underlying stock for the purpose of calculating position limits. However, since BOUND, to the holder, is a "bullish" position (*i.e.*, it is the equivalent of a short put position where the strike price has been prepaid), long BOUNDS will be aggregated with long call and short put positions. Similarly, since the BOUND, to the seller, is a "bearish" position (*i.e.*, it is the equivalent of a long put position where the strike price has been prepaid), short BOUNDS will be aggregated with short call and long put positions.

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 9(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, S.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5702 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35438; File No. SR–NASD–95–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Subscriber Fees For Non-NASD Members Receiving the Nasdaq Workstation™ II Functionality

March 2, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to extend to non-NASD members (*e.g.*, institutional investors) receiving the second generation of Nasdaq Workstation™ functionality ("NWII") the same subscriber fees that members must now pay. The Commission published notice of the proposed rule change in the **Federal Register** on February 2, 1995.[2] No comments were received in response to the notice. For the reason discussed below, the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

On December 14, 1994, the NASD submitted a proposed rule change—File No. SR–NASD–94–76—to the Commission that established a new fee schedule for NASD member firms receiving the second generation of NWII.[3] The fee schedule contained in File No. SR–NASD–94–76 became effective upon receipt by the SEC in accordance with Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(a) thereunder.[4] As specified in File No. SR–NASD–94–76, the new subscriber fees for NWII will add to Sections A(9) and E(5) of Part VIII of Schedule D to the NASD By-Laws.

The NASD then filed the instant rule change to extend to non-NASD members (*e.g.*, institutional investors) receiving NWII functionality the same subscriber fees that members must now pay: (a) a service charge of $100/month per server; (b) a display charge of $500/month per presentation device; and (c) a charge of $1,150/month for additional circuits. This rule change does not, however, entail any further modification to the fee schedule language for NWII that was set forth in File No. SR–NASD–94–76.

The sole purpose of this rule change is to extend to non-NASD members receiving the NWII, the same fees that now apply to NASD members that subscribe to the NWII. Currently, non-NASD members can access Level 2 Nasdaq Workstation service by subscription to the original version of the Nasdaq Workstation service ("NWI"). The NASD, however, is in the process of replacing NWI with NWII.[5] As the NWII roll-out proceeds, it will completely replace the existing NWI for all classes of subscribers. The instant rule change will ensure that the same NWII charges are paid by all subscribers, including those that are not members of the NASD.

II. Commission Findings

The Commission believes that the rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other changes among members, issuers, and other persons using any facility or system that the Association operates or controls. This rule provides that the newly established fees for members receiving the NWII functionality will also be paid by non-member subscribers receiving the NWII.[6] This, in turn, effectuates fairness in the recovery of the applicable costs from the entire subscriber base. As described in this notice, NWII is being implemented in phases with all current NWI subscribers in a defined area being converted to NWII. Also non-NASD members that are converted to NWII will be liable for the new fees; NWI subscribers (i.e., members and non-members) will continue to pay the NWI service fees until they are converted. The extension of the new NWII fees schedule to non-members will result in the imposition of uniform fees and an equitable allocation of operating costs among all subscribers receiving the NWII functionality.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–01 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5701 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35435 File No. SR–NASD–94–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filing Requirements Under Article III, Section 44 of the NASD Rules of Fair Practice Regarding Modified Guaranteed Annuity Contracts and Modified Guaranteed Life Insurance Contracts

March 2, 1995.

On January 12, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change[2] that amends Subsection 44(b)(8) to Article III of the NASD Rules of Fair Practice ("Corporate Financing Rule"). The Commission published notice of the proposed rule change in the **Federal Register** on January 30, 1995.[3] For the reasons discussed below the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

The rule change amends Subsection 44(b)(8) of the Corporate Financing Rule to exempt modified guaranteed annuity contracts and modified guaranteed life insurance contracts (collectively, "Contracts") from the filing requirements under Subsection 44(b). The Corporate Financing Rule requires members to file with the NASD documents and information relating to a public offering of securities for review of the fairness of underwriting compensation and arrangements. The filing requirements in the Corporate Financing Rule also apply to Schedule E of the NASD By-Laws and Article III, Section 34 of the NASD Rules of Fair Practice.[4] The Corporate Financing Rule filing requirements apply to public offerings of debt, equity and public limited partnership securities, and provide that certain offerings of securities shall be exempt from the filing requirement under Subsection 44(b)(8) of the Rule. The exemptions in Subsection 44(b)(8) include, among others, open-end investment company securities registered under the Investment Company Act of 1940 (except closed-end investment company securities) and variable contracts. In addition, the exemptions include securities defined as "exempt securities" under Section 3(a)(12) of the Act and securities exempt from registration with the SEC pursuant to Sections 4(1), 4(2) and 4(6) of the Securities Act of 1933 ("1933 Act") and Rules 504 (unless considered a public offering), 505 and 506 adopted under the 1933 Act.

The Contracts did not fall within any of the exemptions contained in the Corporate Financing Rule filing requirements. The Contracts are similar to variable annuity contracts in that they are issued by an insurance company, offered on a continuous basis, subject to the registration requirements and regulatory scheme of state insurance law, and, shift investment risk to the contract owner by offering variable, non-guaranteed rates of return under certain circumstances. That is, the Contracts are subject to a market value adjustment upon a Contract surrender or partial withdrawal prior to the end of a guarantee period. However, unlike variable annuities, the individual account values of the Contracts do not reflect the investment experience of one or more separate accounts registered under the Investment Company Act of 1940. Instead, like traditional fixed annuities, the Contracts are backed by the general account assets of the insurance issuer and are registered only as insurance contracts under state insurance law.

The review of the fairness and reasonableness of underwriting terms and arrangements is the central requirement of the Corporate Financing Rule. The issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned. The structures of the instruments are that of insurance products which traditionally have been regulated under state insurance law and the terms of the Corporate Financing Rule were not developed to address such products. The Commission is therefore approving the NASD's proposal to amend the Corporate Financing Rule by adopting as new Subsection 44(b)(8)(E) an exemption from the filing and other requirements of the Corporate Financing Rule for the Contracts and to reletter the remaining sections accordingly. The amended rule thus exempts such Contracts from the filing and review requirements of the Corporate Financing Rule.[5] Listed below is the text of the rule change approved by the Commission. New language is italicized; proposed deletions are in brackets.

The Corporate Financing Rule Underwriting Terms and Arrangements

Sec. 44

* * * * *

(b) Filing Requirements

* * * * *

(8) Exempt Offerings

Nothwithstanding the provisions of paragraph (1) above, the following offerings are exempt from this Section, Schedule E to the By-Laws, and Article III, Section 34 of the Rules of Fair Practice. Documents and information relating to the following offerings need not be filed for review:

(A) securities exempt from registration with the Securities and Exchange Commission pursuant to the provisions of Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 or Rule 506 adopted under the Securities Act of 1933, as amended;

(B) securities which are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;

(C) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act;

(D) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;

(E) modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the values of which are guaranteed if held for specified periods, and the nonforfeiture values of which are based upon a market-value adjustment formula for withdrawals made before the end of any specific period;

[(E)]*(F)* offerings of municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, as amended;

[(F)]*(G)* tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended; and

[(G)]*(H)* securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended.

II. Commission Findings

The Commission believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which require that the rules of the Association promote just and equitable principles of

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 35284 (January 27, 1995), 60 FR 6582.

[3] The computer facilities that support the provision of NWII are operated by the Nasdaq Stock Market, Inc. ("NSMI"), a wholly-owned subsidiary of the NASD.

[4] *See* Release No. 34–35189 (January 3, 1995), 60 FR 3014 (January 12, 1995).

[5] The NWII roll-out will occur in five phases with the final phase scheduled for completion in mid-1996. Each phase consists of installing NWII at all subscriber sites in a defined geographic area. Thus, while the roll-out proceeds, some subscribers will continue to utilize NWI and will pay the existing charges for that service.

[6] NWI and NWII both permit the delivery of either Level 2 or Level 3 Nasdaq service. Subscription to Level 3 is limited to NASD members that meet the financial and operational requirements for market making. Subscription to Level 2 Nasdaq service is open to non-members as well as members because it does not provide the functionality needed to enter quotations as a market maker.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The NASD originally submitted the proposed rule change on November 21, 1994. On December 1, 1994 and January 12, 1995, the NASD filed amendments to its filing.

[3] Securities Exchange Act Release No. 35266 (January 23, 1995), 60 FR 5744.

[4] Under Subsection 44(b)(1) of the NASD Rules of Fair Practice "[n]o member or person associated with a member shall participate in any manner in any public offering of securities subject to this Section, Schedule E to the By Laws, or Article III, Section 34 of the Rules of Fair Practice unless documents and information as specified herein relating to the offering have been filed and reviewed by the NASD." (Emphasis added).

[5] In addition, Article III, Sections 26 and 29 of the NASD Rules of Fair Practice are not applicable, since the Contracts are not within the definition of "variable contract" and do not include a separate account registered under the Investment Company Act of 1940. However, as securities, sales of the Contracts are subject to other applicable Rules of Fair Practice when sold by associated persons of a member and the rules and regulations of the Commission, particularly the antifraud provisions thereof.

[6] 15 U.S.C. Sec. 78o–3.

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trade and protect investors and the public interest since the issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned; the structures of the instrument are that of insurance products which traditionally have been regulated under state insurance law; the terms of the Corporate Financing Rule were not developed to address such products.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–61 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5705 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35439; File No. SR–NYSE–94–38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendment to Exchange Rule 104.13

March 2, 1995.

On October 26, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 104.13 regarding investment account transactions of specialists and related parties.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35019 (November 29, 1994), 59 FR 62762 (December 5,6, 1994). No comments were received on the proposal.

Rule 104 provides that a specialist may not effect any purchase or sale of a security in which the specialist is registered ("specialty stocks") for the account of an approved person associated with the specialist's organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets. Currently, NYSE Rule 104.13 requires that transactions in specialty stocks for the accounts of specified persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place ("tick" restrictions).[3] The rule applies to the accounts of employees or parties active in the business of a specialist or persons active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption under NYSE Rule 98.[4]

The Rule change expands the restrictions contained in NYSE Rule 104.13 to transactions in specialty stocks effected "for the benefit of" the specified parties. This rule change will apply the Rule 104.13 restrictions to transactions that, although not effected directly for the "account" of a specified party, are effected for an account in which a specified party has a beneficial interest.

The rule change also extends to affiliated persons the Rule 104.13 restriction against specialists' originating orders in speciality stocks for any accounts over which they exercise investment discretion.[5] In addition, the rule change specifies that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the rule change is consistent with Section 11(a) of the Act[6] which generally makes it unlawful, with certain exceptions, for any member of a national securities exchange to effect a transaction on such exchange for his own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. The Commission also believes that the rule change is consistent with Section 6(b)(5) of the Act[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that extending the restrictions on transactions in specialty stocks to those effected "for the benefit of" affiliated parties in appropriate and consistent with prohibiting or restricting certain interested transaction that may involve potential conflicts of interest. The rule change is designed to ensure that affiliated persons will not be permitted to effect transactions in specialty stocks, whether or not they use accounts in their own names, outside of the restrictions contained in NYSE Rule 104.13. The Commission believes that the rule change will further the purpose of the NYSE Rule and will prevent affiliated persons from avoiding the Rule 104.13 restrictions.

The Commission further believes that the rule change to extend to affiliated persons the Rule 104.13 restrictions against specialists' originating orders in specialty stocks for any accounts over which they exercise investment discretion is consistent with Sections 6 and 11(a) of the Act.[8] The Commission believes that the rule change is an appropriate limitation on specialists' and affiliated persons' trading and is designed to prevent fraudulent and manipulative actions. In addition, the Commission believes that it is appropriate to specify in the rule that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–94–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5703 Filed 3–8–95; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The tick restrictions provide that acquisitions may only be made at prices below the last different price—on "minus" or "zero minus" ticks, and liquidations may only be made at prices above the last different price—on "plus" or "zero plus" ticks. *See* NYSE Rule 104.13(b).

[4] NYSE Rule 98 and its Guidelines provide exemptions from various NYSE rules affecting approved persons affiliated with specialist, including Rule 104.13. The exemptions are predicated on the existence of procedures to achieve a functional separation between the specialist organization and the approved person. The rule change amends the reference to Rule 104.13 in Rule 98 so that it reflects the changes to Rule 104.13 being approved herein.

[5] Currently, the restriction states that specialists should not originate orders in specialty stocks for any accounts over which they may have discretion.

[6] 15 U.S.C. 78k(a)(1988).

[7] 15 U.S.C. 78f(b)(1988).

[8] The Commission approved the Rule 104.13(d) restriction against specialists originating orders in specialty stocks for any account over which they may have investment discretion in Securities Exchange Act Release No. 34231 (June 17, 1994), 59 FR 32722 (June 24, 1994).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(A)(12) (1994).

[Rel. No. IC–20938; File No. 812–9314]

The Northwestern Mutual Life Insurance Company, et al.

March 3, 1995.

AGENCY: Securities and Exchange Commission (the "Commission" or the SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Northwestern Mutual Life Insurance Company ("Northwestern"), NML Variable Annuity Account B ("Account B") and Northwestern Mutual Investment Services, Inc. ("NMIS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of Account B under certain flexible premium variable annuity contracts (the "Contracts") and any materially similar contracts offered in the future by Account B.[1]

FILING DATE: The application was filed on November 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 28, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Northwestern, a mutual life insurance company organized under the laws of Wisconsin, is licensed to do business in all fifty states and the District of Columbia.

2. Northwestern established Account B as a separate account under Wisconsin law to fund the Contracts. Account B is registered as a unit investment trust under the 1940 Act. Account B has nine subdivisions ("Divisions"), each of which invests in shares of the corresponding portfolio ("portfolio") of Northwestern Mutual Series Fund, Inc. ("Fund"), which is registered under the 1940 Act as an open-end management investment company. Shares of each Portfolio are purchased by Northwestern for the corresponding division of Account B at net asset value.

3. NMIS, a wholly-owned second tier subsidiary of Northwestern, is the underwriter of the Contracts and is the investment adviser for the Fund.

4. The Contracts are individual periodic payment deferred variable annuity contracts that are intended to be used in connection with retirement plans qualified under Sections 403(b), 408, and 457 of the Internal Revenue Code ("Code") or by other purchasers in situations which do not qualify for special treatment under the Code, and for roll-over of termination benefits from tax qualified corporate or HR–10 plans or trusts. A contract owner may allocate purchase payments and/or the accumulation value among the Divisions of Account B. The Contract owner may select among annuity payment options that include variable or fixed annuity options.

5. The Contracts are offered as either Front Load or Back Load Contracts. The minimum initial purchase payment for the Front Load Contracts is $10,000. For the Back Load Contracts, the minimum is $25 for plans qualified under Sections 403(b), 408 (except individual retirement annuities ("IRAs")) and 457 of the Code; $100 for IRAs and non-tax qualified Contracts; and $3,500 for roll-over of termination benefits from tax-qualified corporate or HR–10 plans.

6. Front Load Contracts have a maximum front-end sales load of 4% deducted from each purchase payment. There are no withdrawal charges for Front Load Contracts. Back Load Contracts have no front-end sales load deducted from purchase payments. Withdrawals for Back Load Contracts are subject to a contingent deferred sales load at a maximum rate of 8%, and up to 10% of the Contract's accumulated value as of the last Contract anniversary can be withdrawn without a withdrawal charge subject to restrictions described in the Contract. The withdrawal charge reduces by 1% per year.

7. The withdrawal charge for current and future Contracts will not exceed 8.5% of the purchase payments under the Contract. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the contingent deferred sales load.

8. Contract owners may make unlimited transfers among the Divisions during the accumulation period, subject to a minimum of the lesser of $100 or the entire amount in the Division from which the transfer is made. A transfer fee of $25 may apply for each transfer in excess of twelve per Contract year.

9. The Contracts are subject to an annual Contract fee of $30 which will be deducted on each Contract anniversary in proportion to the values in each Division. Applicants represent that the amounts collected will not exceed the corresponding administrative costs as defined by the applicable standards of Rule 262–1 under the 1940 Act.

10. The Contracts permit, after the first Contract anniversary, deduction from purchase payments or from Contract benefits paid of premium taxes incurred. Northwestern currently waives this deduction by administrative practice.

11. Northwestern reserves the right to charge for any tax liability it pays or reserves for resulting from the maintenance or operation of Account B or any of its Divisions.

12. Northwestern imposes a charge as compensation for bearing certain mortality and expense risks under the Contracts. The charge is assessed daily and is based on the net asset value of Account B. The mortality and expense risk charge will not exceed .75% of the net assets of Account B attributable to the Front Load Contracts, and 1.25% of the net assets of Account B attributable to the Back Load Contracts. Northwestern intends to charge at the annual rate of .40% of the net asset value of Account B attributable to Front Load Contracts, of which .15% is for the mortality risk and .25% is for the expense risk, but reserves the right to increase or decrease the charge for these risks subject to a maximum of .75%. For the Back Load Contracts, the mortality and expense risk charge will be deducted on a daily basis at an annual rate of 1.25%, of which .50% is for the mortality risk and .75% is for the expense risk. For contracts offered in

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[1] Applicants represent that they will amend the application during the Notice Period to reflect this representation.

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the future that are materially similar to the Front Load Contracts and the Back Load Contracts all charges and expenses will be identical to, or lower than, the corresponding charges and expenses for the Front Load Contracts and the Back Load Contracts, respectively, as described in the application.[2]

13. The mortality risk borne by Northwestern under both versions of the Contracts arises from its obligation to make annuity payments regardless of how long an annuitant may live. The mortality risk is the risk that annuitants will live longer than Northwestern's actuarial projections indicate, resulting in higher than expected annuity payments.

14. The expense risk borne by Northwestern under the Contracts is the risk that the charges for administering the Contracts, which are guaranteed for the life of each Contract, may be insufficient to cover the actual costs of issuing and administering the Contracts.

15. The mortality and expense risk is higher for the Back Load Contracts than for the Front Load Contracts for several reasons. Collection of a significant front end load inherently reduces the risk that charges will fall short of corresponding expenses since receipt of deferred loads is far less certain. The Front Load Contracts require a minimum initial purchase payment of $10,000, compared with $25, $100 or $3,500 for Back Load Contracts. The economies of scale associated with larger units reduce the expense risk. Northwestern asserts that an additional mortality risk for the Back Load Contract exists because the withdrawal charge does not apply upon the death of the annuitant.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction from Account B of the mortality and expense risk charges under the Contracts. Applicants request that the order also permit the deduction of the mortality and expense risk charges described herein from the assets of Account B pursuant to other contracts offered in the future through Account B, to the extent that such contracts are materially similar to the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that their request for an order that applies to materially similar contracts offered in the future by Account B is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for Northwestern to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Northwestern to seek repeatedly exemptive relief regarding the same issues addressed in the application.

4. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts comparable to the Front Load Contracts and the Back Load Contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of expense and annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation. Similarly, prior to making available any materially similar contracts through Account B, Applicants will represent that the mortality and expense risk charges under any such contracts will be within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

5. Applicants represent that Account B will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not interested persons as defined under Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

6. Applicants do not expect the front-end sales load or contingent deferred sales load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any shortfall will be made up from Northwestern's general assets which will include amounts derived from the mortality and expense risk charges. Northwestern has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit Account B and the Contract owners. Northwestern will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under materially similar contracts offered in the future by Account B, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5814 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Applicants represent that they will amend the application during the Notice Period to reflect the representations in this paragraph.

[Release No. 34–35436; File No. SR–PSE–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives ("BOUNDs")

March 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives ("BOUNDs").[1] As described in more detail below, BOUNDs are long term options which the PSE believes have the same economic characteristics as a covered call writing strategy.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to list for trading BOUNDs. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDs traded on the Exchange. As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of such orders will increase the open interest in BOUNDs. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDs with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration and exercise price will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, should bring the price relationships back into line.

BOUNDs will have the same strike prices and expiration dates as their respective LEAPs except that the Exchange will list only a strike price that is at or very close to the price of the underlying stock at the time of listing, or that is below the price of the stock at that time. For example, at the time of initial listing, the strike prices for a BOUND with the underlying stock trading at $50 per share, would be set at $40 and $50. The Exchange would not list a BOUND with a strike price of $60 in this example.

The Exchange anticipates that it will list new complementary LEAPs and BOUNDs on the same underlying securities annually, or at more frequent intervals, depending on market demand. The Exchange has the current authority to list LEAPs with up to 39 months until expiration and, therefore, seeks to introduce BOUNDs with up to the same 39 month duration.

BOUNDs will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDs can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDs and credit all accounts with long positions in BOUNDs with an amount equal to the cash dividend on the underlying stock.

Like regular options, BOUNDs will trade in standardized contract units of 100 shares of underlying stock per BOUND so that at expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND contract holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. BOUND writers will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This settlement design is similar to the economic result that accrues to an investor who has purchased a covered call (*i.e.*, long stock, short call) and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of the XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, i.e., the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price.

The settlement mechanism for the BOUNDs will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the short BOUND. If, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the $50 strike price at expiration, would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

The Exchange believes the settlement of the LEAP and BOUND at expiration are equally well harmonized from the perspective of the writer. For example, an investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which amount will then be delivered to the long BOUND. Accordingly, the Exchange believes a covered writer's position is effectively closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP

[1] The PSE notes that BOUNDs is a service mark of The American Stock Exchange, Inc.

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call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas BOUNDs are European-style.[2] The Exchange believes that it would be inappropriate for the BOUND holder to have an American-style exercise right since the BOUND will tend to trade at a discount to the stock and strike price.

Sales Practices

BOUNDs will be subject to the Exchange's sales practice and suitability rules applicable to standardized options set forth in Rule 9.

Adjustments

BOUNDs will be subject to adjustments for corporate and other actions in accordance with the rules of OCC.

Position Limits

BOUNDs will be subject to the position limits for equity options set forth in Exchange Rule 6.8. In addition, BOUNDs will be aggregated with other equity options on the same underlying stock for purposes of calculating position limits. According to the Exchange, since a BOUND to holder is a bullish position (i.e., the equivalent of a short put position where the strike price has been prepaid), the Exchange proposes that long BOUNDs be aggregated with long call and short put positions in the related equity options. Similarly, since the Exchange believes the BOUND, from the perspective of the seller, is a "bearish" position (*i.e.*, it is the equivalent of a long put position where the strike price has been prepaid), it proposes to aggregate short BOUNDs with short call and long put positions in the related equity options.

Customer Margin

The Exchange proposes to apply options margin treatment to BOUNDs as follows:

1. *Long BOUND Positions:* Full payment required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDs in BOUND spread positions.

2. *Short BOUND Positions:* The BOUND seller receives full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to an "add-on" used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. For example:

A. Assume a stock price of $50, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $40. In this case, the short seller would have to pay $48 to margin the position, *i.e.*, $40 BOUND price plus 20% of $40.

B. Assume a stock price of $40, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $35. In this case, the margin would be $42, *i.e.*, $35 BOUND price plus 20% of $35.

3. *Covered Positions:* Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

4. Spread Positions

i. *Same Expiration—Different Strike Prices:* There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

ii. *Different Expiration-Same Strike Price:* No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

iii. *Different Expiration-Different Strike Prices:* There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and short the distant expiration where the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–5704 Filed 3–8–95; 8:45 am]

BILLING CODE 8010–01–M

[2] A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

[3] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Privacy Act System of Records

AGENCY: Small Business Administration.

ACTION: Notice of Amendment to the Ageny's Privacy Act System of Records.

SUMMARY: The Small Business Administration (SBA) is amending the Agency's Privacy Act System of Records SBA 145, Temporary Disaster Employees. This System is being amended to expand the categories of individuals covered.

DATES: This amendment is effective on March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 8th floor, 409 3rd Street, SW, Washington, DC 20416; 202–205–6734.

SBA 145

SYSTEM NAME:

Former and Current Disaster Employees—SBA 145.

SYSTEM LOCATION:

Office of Disaster Assistance, Central Office, See Appendix A for location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have been previously employed within the Office of Disaster Assistance and some current employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Former employees within the Office of Disaster Assistance and some current employees. These records contain name, address, telephone number where person can be reached, SSN, Disaster Area where employed, series and grade, job title, dates of employment and reason for termination, name and job title of supervisor, and summary of supervisor's evaluation. Also included is information, if any, concerning violations of the Agency's Standards of Conduct (13 CFR Part 105) and information, if any, concerning official investigations and disciplinary actions taken with regard to the employee. Special skills and bilingual capabilities are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 834(b)(6), 44 U.S.C. 101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The records will be used by Disaster Area Directors and personnel officers assigned to each Disaster Area to verify previous SBA disaster assistance employment history when a former employee is considered for reemployment and to locate current or former employees with special skills or language capabilities needed in special situations.

Disclosures may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures may be made to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OR RECORDS IN THE SYSTEM:

These records will be maintained in card files and in a computer database.

RETRIEVABILITY:

These records will be filed alphabetically by the individual's last name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosures.

RETENTION AND DISPOSAL:

Destroy when no longer necessary.

SYSTEMS MANAGER(S) AND ADDRESS:

Privacy Act Officer and Associate Administrator for Disaster Assistance, Central Office. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to the manager(s) listed above.

RECORDS ACCESS PROCEDURE:

In response to a request by an individual to determine whether the

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system contains a record pertaining to him or her, the system manager will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individual desiring to contest or amend information maintained in the system should direct their requests to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Disaster Area Directors.

Dated: February 23, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–5815 Filed 3–8–95; 8:45 am]

BILLING CODE 6025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2178]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restrictions on the ground that such exemptions were in the national interest. The restriction was extended for additional one year periods on February 18, 1992, February 23, 1993, and February 26, 1994.

Although armed hostilities have ended, conditions in Iraq remain unsettled and hazardous. Regional conflicts continue in northern Iraq between Kurdish ethnic groups and Iraqi security forces. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions. Basic modern medical care and medicines may not be available to our citizens in case of emergency.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for illegal entry into the country. Athough our interests are represented by the Embassy of Poland in Bagdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate.

In light of these circumstances, I have determined that Iraq continues to be a country "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991, who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: March 3, 1995.

Warren Christopher,

Secretary of State.

[FR Doc. 95–5822 Filed 3–8–95; 8:45 am]

BILLING CODE 4710–10–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Water Supply Development for the Duck River Region, South Central Tennessee

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will cooperate with the Tennessee Duck River Development Agency (TDRDA) to prepare an Environmental Impact Statement (EIS) on water supply development and alternatives for the Columbia Dam component of the Duck River project. Located on the Duck River in south central Tennessee, the Columbia Dam cannot be completed as originally planned due to the presence of endangered species. This EIS will consider a range of alternatives to provide an adequate and reliable water supply for the Columbia area, including Bedford, Marshall, Maury, and southern Williamson counties. Alternatives to be considered will include construction of a water supply dam and impoundment on Fountain Creek; installation of one or more water pipelines from existing reservoirs or streams; use of groundwater wells; and other alternatives identified during the scoping process. With this notice, TVA and TDRDA invite comments on the scope of this EIS. This notice is provided in accordance with the National Environmental Policy Act (NEPA) and TVA's implementing procedures.

DATES: Written comments on the scope of the EIS must be received at the address below on or before June 5, 1995.

ADDRESSES: Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, WT 10C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, phone (615) 632–7183.

SUPPLEMENTARY INFORMATION: TVA and local officials in the upper Duck River watershed area, south central Tennessee, began a cooperative effort in 1964 to advance economic growth and provide an adequate and dependable water supply for the region. As the TDRDA, a State agency, worked to develop a water supply system to connect the five largest cities in the watershed, TVA was requested to investigate water resource development. In 1965, TVA concluded that multipurpose reservoir development on the mainstem of the Duck River offered the best potential for meeting the area's water supply needs. The construction of dams on the river would control flooding, create water supply sources, and provide opportunities for water-based recreation. After further study, TVA proposed construction of two dams: one at Duck River Mile (DRM) 136.7, near Columbia, and an upstream dam at DRM 248.6 near Normandy. The proposed dams and reservoirs were presented in a 1968 planning report as components of the Duck River Project.

Following the enactment of NEPA, TVA issued a draft EIS on the Duck River Project in June 1971. A public hearing was held in August 1971 and a final EIS (TVA–OHES–EIS–72–5) was issued in April 1972. The final EIS was supplemented in June 1974 to correct identified deficiencies.

Construction of the 3,230-acre Normandy Dam and Reservoir was completed in 1976 and is currently in operation. Construction of the 12,600-acre Columbia Dam and Reservoir began in 1973. Construction was slowed in the mid-to-late 70s and eventually halted in 1983 because consultation with the U.S. Fish and Wildlife Service indicated that the reservoir could jeopardize the continued existence of two endangered species. These two species, the birdwing pearly mussel and the Cumberland monkeyface pearly mussel, had been listed as endangered in 1975 under provisions of the 1973 Endangered Species Act (ESA). Subsequent fieldwork and ESA listings indicated that two additional endangered Mussel species (tan riffleshell and pale lilliput pearly mussel) and an endangered plant (leafy prairie clover) also occurred in the Columbia Dam area. Other species known to occur in the area were proposed for endangered status or were identified as candidates for possible ESA listing. The presence of those endangered species in the project area is the basis for TVA not being able to complete Columbia Project as originally planned.

During the dry times of the year, water supplies and water quality are stressed in the Duck River watershed area of middle Tennessee. During periods of drought, instream water quality is primarily sustained by minimum flows from Normandy Dam. Projected growth for the region indicates a worsening of the situation. TVA and TDRDA will evaluate alternatives to meet the water supply needs of the area. Analysis of water supply needs will include domestic, industrial, and agricultural uses; water quality; flood protection; and recreation uses. For planning purposes, projected benefits and costs will be evaluated for a 30 to 50 year period, depending on the alternative under consideration. Conservation effects on water use will also be considered.

In addition to assisting TDRDA In the analysis of water supply needs and alternative water supplies, TVA may be involved in several other ways depending on the outcome of the analysis. This could include making available some of the property acquired for the Columbia Reservoir for a smaller reservoir, approving any new dam structure under Section 26a of the TVA Act, and/or providing design assistance. TDRDA would be responsible for financing any water supply project that may be pursued as a result of the analysis.

The first step in the preparation of the EIS will be the determination of the scope of the EIS. It is anticipated that the scope will include possible construction of a surface impoundment on Fountain Creek (TVA already owns most of the land) and other potential water supply sources including in-stream flows, pumped storage, and pipeline sources. Different design concepts will also be addressed. Potentially important issues for discussion in the EIS include:;

1. Effects on stream discharge, water quality, and availability;

2. Impacts on terrestrial and aquatic ecology, including threatened and endangered species;

3. Impacts on floodplains, wetlands, recreation, and existing land uses; and

4. Socioeconomic, historic, archaeological, and cultural effects associated with completion of the project and alternatives to it.

This list is not intended to be all inclusive, nor is it intended to be a predetermination of impacts. As scoping and preparation of the EIS proceeds, other issues may be revealed which will necessitate further analyses.

TVA and TDRDA invite comments on the above issues. The agencies also request comments on environmental issues which should not be viewed as important and which should not be discussed in detail in the EIS.

A public meeting will be held on May 2, 1995, at 7 p.m. CDT at Culleoka School, Culleoka, Tennessee, in Maury County to receive oral comments about the scope of this EIS. Details about this meeting will be announced in area newspapers. Comments received at this meeting will be accorded the same weight as written comments.

The United States Army Corps of Engineers (Nashville District) will participate in this EIS process as a cooperating agency. The U.S. Fish and Wildlife Service may also become a cooperating agency.

After the scoping process and the initial environmental analysis are completed, TVA and TDRDA will prepare a draft EIS. A Notice of Availability of the draft EIS, soliciting public comments, will be published in the **Federal Register** and area newspapers. Those persons who choose not to comment on the scope of the document at this time but wish to receive a copy of the draft for their review and comment should send their names and addresses to Dale V. Wilhelm at the address listed above. TVA anticipates releasing a final EIS on this project in about 24 months.

Dated: March 3, 1995.

Kathryn J. Jackson,

Senior Vice President, Resource Group. Tennessee Valley Authority.

[FR Doc 95–5770 Filed 3–8–95; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 28, beginning at 1:30 p.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the ninth of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on March 28, 1995. The meeting was announced on February 17, 1995 (60 FR 9424). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

* Improved frontal crash protection,
* Head and neck injury research,
* Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by February 28, 1995, in response to the announcement published February 17, 1995.

As announced on February 17, 1995, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by 4:15 p.m. on March 21, 1995, to George L. Parker

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Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590, FAX number: 202/366–5930.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: March 3, 1995.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 95–5769 Filed 3–8–95; 8:45 am]

BILLING CODE 4910–59–M

Office of Commercial Space Transportation

Environmental Impact Statement; Sierra and Doña Ana Counties, NM; Correction

AGENCY: Office of Commercial Space Transportation (OCTS), U.S. DOT.

ACTION: Correction.

SUMMARY: On February 23, 1995 the Office of Commercial Space Transportation (OCST), DOT; published a Notice of Intent at 60 FR (10139). The Notice gave the wrong date and location for the second scoping meeting. The date was given as March 23, 1995 and should have been March 21, 1995. The location was given as the Convention Center, 300 Daniel Street. The correct location should have been listed as Council Room, City Council Chambers, 400 West 4th. This notice makes correction to the Notice of Intent. In FR DOC 95–4392, 3rd Column, para 1, make the following correction:

* * * "(2) March 21, 1995, 7:00–9:00 pm, Council Room, City Council Chambers, 400 West 4th, Truth or Consequences, New Mexico."

Dated: March 3, 1995.

Sharon D.W. Beddie,

Office of Commercial Space Transportation.

[FR Doc. 95–5768 Filed 3–8–95; 8:45 am]

BILLING CODE 4910–62–M

UNITED STATES INFORMATION AGENCY

Support to Develop and Facilitate Access to Exchange Opportunities for Post-Secondary International Students

ACTION: Notice; request for proposals.

SUMMARY: The Advising and Student Services Branch of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations or consortia meeting the provisions described in IRS regulation 501(c)(3) may apply to provide an administrative mechanism to develop and facilitate exchanges between post-secondary school students enrolled at institutions in the United States and in other countries of the world. Preference will be given to the organization which maximizes the number of participants from all world regions and presents the most flexible mechanism for administering the exchanges. The applicants must clearly demonstrate how the proposed project differs from traditional "junior year abroad" programs and how it will create accessibility to international exchange for students who otherwise would not able to have an overseas study experience. USIA anticipates awarding up to $350,000 to one organization to administer this program

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and project must conform with Agency requirements and guidelines outlined in the Solicitation Package. The USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–95–13.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 21, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 21 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Advising and Student Services, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619–5434, Fax: (202) 401–1433, E-mail: ahatteme@usia.gov, to request a Solicitation Package, which includes all application forms and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer, Alexandria Hattemer, on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to E/ASA or submitting their proposals. Once the RFP deadline has passed, E/ASA may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package and send only complete applications to: U.S. Information Agency, Ref.: E/ASA–95–13, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

An ideal proposal should describe an administrative mechanism capable of developing and facilitating exchanges between post-secondary students enrolled at institutions in the United States and their counterparts in Europe, Latin America, the Middle East, South Asia, Africa and East Asia (including Oceania). Numbers of incoming and outgoing students should be approximately equal. A minimum of forty percent of the exchanges must take place outside of Western Europe within a broad range of non-traditional study abroad countries, although preference will be given to applicants who can demonstrate a higher number of non-European exchanges. All world regions must be represented in this program; the applicant should especially target exchanges with Africa, the Near East, South and East Asia.

Exchange students should be drawn from the broadest possible range of universities and colleges. These institutions should be diverse—representing both public and private institutions, offering the greatest possible choice of location, academic discipline, size, and cost; and allowing the use of financial aid for study abroad when at all possible. Recruitment of student populations not usually involved in international exchanges should be stressed. A funding level of up to $350,000 is available for this program.

Guidelines

The proposal should describe how colleges and universities in the U.S. and abroad will be recruited to participate, the standards established for participation, and the means to evaluate compliance with those standards. The proposal should describe the criteria for student participation, the obligations of the student (including financial), and the services which the applicant will provide to the student and why this assistance is not available from other sources. The proposal should describe methods of evaluating the effectiveness of the exchange mechanism (See Review Criteria for further information). Programs must comply with J–1 visa regulations.

Proposed Budget

The applicant is required to submit a comprehensive administrative line item budget, based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a breakdown of the administrative budget. USIA's grant assistance, up to $350,000 in total, is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support.

Grnats awarded to eligible organizations with fewer than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel, although the Agency reserves the right not to fund travel to Western Europe;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses, auditing costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIS posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity, specifically the ability to increase exchanges with non-traditional regions. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Proposal should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages with the maximum number of exchanges and number of countries.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment of promoting the awareness and understanding of diversity and should target diverse locations for exchanges as well as creating access to international exchange for students from all backgrounds and ethnic groups.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements of past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures the USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original projects objectives. USIA requires an evaluation survey return rate of at least 70 percent. Award-receiving organizations/institutions will be expected to submit biannual reports.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct-funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desks and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in the RFP are binding and may not be modified by the USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

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Dated: February 28, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–5506 Filed 3–8–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 46

Thursday, March 9, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Friday, March 17, 1995.

PLACE: Francis Perkins Hearing Room, Ninth Floor, 1120 Vermont Avenue, N.W., Washington, D.C., 20419.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Establishment of task force to recommend changes in the structure of the Board that will allow the Board to meet budgetary requirements of National Performance Review II through fiscal year 2000.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: March 7, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–5980 Filed 3–7–95; 3:17 pm]

BILLING CODE 7400–01–M

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Corrections

Federal Register
Vol. 60, No. 46
Thursday, March 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28072; Notice No. 95-2]

RIN 2120-AF29

Advanced Simulation Plan Revisions

Correction

In proposed rule document 95-3132 beginning on page 8490 in the issue of Tuesday, February 14, 1995, make the following correction:

On page 8492, in the third column, under **Costs**, in the first line, "improve" should read "impose".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 543, 552, and 571

[No. 94-158]

RIN 1550-AA76

"De Novo" Applications for a Federal Savings Association Charter

Correction

Proposed rule document 95-5315 was inadvertently published in the Rules and Regulations section of the issue of Monday, March 6, 1995 beginning on page 12103. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

federal register

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Part II

Department of Transportation

Federal Aviation Administration
14 CFR Part 135
Improved Flammability Standards for Materials Used in the Interiors of Airplane Cabins; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 26192, Amendment No. 135–56]

RIN 2120–AD28

Improved Flammability Standards for Materials Used in the Interiors of Airplane Cabins

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment removes an unintended requirement in recently-issued amendment 135–55 to part 135 of the Federal Aviation Regulations (FAR) which clarified standards adopted in 1986 concerning the flammability of components used in the cabins of certain transport category airplanes. This action is necessary to ensure that commuter category airplanes operated under part 135 are not grounded for failing to comply with certain unintended requirements that become effective on March 6, 1995.

DATES: Effective March 6, 1995.

Comments must be received on or before April 10, 1995.

ADDRESSES: Comments may be mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (ACC–200), Docket No. 26192, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC. Comments delivered must be marked Docket No. 26192. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m., and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), FAA, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments in the information docket may be inspected weekdays, except Federal holidays, between 7:30 a.m., and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue Southwest, Renton, Washington 98055–4056; telephone (206) 227–2194.

SUPPLEMENTARY INFORMATION:

Comments Invited

This action removes an unintended requirement in recently-issued Amendment 135–55 (60 FR 6616, February 2, 1995). By doing so, this rule ensures that commenter category airplanes operated under part 135 are not grounded for failing to comply with the unintended requirements that become effective on March 6, 1995. Although this action is in the form of a final rule that was not preceded by notice and an opportunity for public comment, comments are invited on this action. Interested persons are invited to submit such written data, views, or arguments as they may desire. Commenters should identify the regulatory docket number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator and this final rule may be amended in light of comments received. All comments will be available in the Rules Docket, before and after the closing date for comments for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26192." The postcard will be date stamped and returned to the commenter.

Background

The FAA has become aware that recently promulgated Amendment 135–55 (60 FR 6616, February 2, 1995) contains a new requirement that was not intended. Specifically, new § 135.170(b) states that no person may operate a large airplane unless it meets the flammability requirements contained § 135.170(b) (1) and (2). Section 135.170(b)(2) states that seat cushions, except for flight crewmember seat cushions, must comply with the fire-blocking standards of § 25.853(c) that became effective on November 26, 1984.

Large airplanes are identified in part 1 of the Federal Aviation Regulations (FAR) as those of "more than 12,500 pounds maximum certificated takeoff weight." Commuter category airplanes type certificated under part 23 of the FAR may have a maximum certificated takeoff weight as great as 19,000 pounds, and each model type certificated in the commuter category to date does in fact have a maximum certificated takeoff weight greater than 12,500 pounds. Under the definition in part 1, these commuter category airplanes are "large" airplanes. Under the Amendment 135–55 wording of § 135.170(b), operators of these commuter category airplanes would have to comply with the seat cushion fire-blocking standards. Prior to Amendment 135–55, these operators were not required to comply with the fire-blocking standards. Although the seats of these commuter category airplanes were not previously required to meet the seat cushion fire-blocking standards of part 135, they have been required to meet the applicable flammability standards of part 23 of the FAR.

The desired fire-blocking requirements in part 135 were previously contained in § 135.169(a), which referenced § 121.312, which in turn referenced § 25.853(c) and appendix F to part 25 for the specific requirements. Section 135.169(a), however, specifically excluded commuter category airplanes from having to comply with the requirements of § 121.312. This exclusion was inadvertently dropped from Notice of Proposed Rulemaking (NPRM) 90–12, which ultimately resulted in Amendment 135–55. The lack of intent on the part of the FAA to require part 135 operators of commuter category airplanes to meet these additional seat cushion flammability standards can be seen in the preamble to the NPRM. In that regard, the title of Amendment 135–55 refers specifically to transport category airplane cabins and does not refer to those of commuter category airplanes. Under NPRM's Regulatory Evaluation, the FAA stated "the proposed amendment to part 135 is merely a non-substantive editorial change which would cause no additional burden to any person." Requiring operators to provide fire-blocked seat cushions would have been more than a non-substantive editorial change.

In response to the NPRM, several commenters submitted comments related to the omission of the exception for commuter category airplanes. One commenter expressed concern that the proposed § 135.170(b) would apply to all large airplanes and would appear to add substantial requirements to airplanes certificated under Special Federal Aviation Regulation (SFAR) 41. The FAA responded that an airplane type certificated under SFAR 41 would not be required by new § 135.170(b) to comply because it is defined within the SFAR as a "small airplane for purposes of parts 21, 23, 36, 121, 135 and 139." Nonetheless, for clarity purposes, the adopted language refers to SFAR 41 aircraft in the exclusion.

Another commenter proposed that the lead-in sentence for § 135.170(b) start with the phrase "Except for commuter category airplanes." The commenter's proposed addition was considered unnecessary due to the erroneous belief that commuter category airplanes, like those type certificated under SFAR 41, were not "large" airplanes. Because the FAA did not change the proposed rule language in the final rule to clarify this result, the rule language must now be amended.

This further amendment to the final rule is being handled in the most expeditious manner available, and is being made effective immediately, since the final rule is effective March 6, 1995. In the absence of this further amendment, SFAR 41 and commuter category airplanes without fire-blocked seat cushions and operated under part 135 would not be considered to be in compliance with the regulation. Explicitly excluding commuter category from having to comply with the requirements of § 135.170(b)(1) is not necessary because that section impacts only airplanes with a passenger seating capacity of 20 or more which does not apply to the commuter category. Nonetheless, because of frequent confusion among operators on that point, the FAA has decided to insert the commuter airplane category exclusion in § 135.170(b) rather than in § 135.170(b)(2) to make the applicability of these requirements clear.

Because this action imposes no additional burden on any person and since it relieves industry of the unintended burden that would be imposed if the new wording of § 135.170(b) was unchanged, it has no adverse economic impact and imposes no additional burden on any person. Accordingly, good cause exists to make this action effective immediately, but public comments are invited.

It should be noted that this action does not preclude the FAA from proposing that commuter category airplanes should comply with the seat cushion flammability standards of § 135.170(b)(2) in future rulemaking if such compliance is deemed necessary in the interest of safety. The FAA anticipates issuing by the end of this month a proposal that would contain such a requirement applicable to current part 135 operators.

The FAA has determined that this regulation must be issued immediately to preclude grounding a large portion of the U.S. commuter air carrier fleet and placing an unintended economic burden on operators of commuter category airplanes. The FAA has also determined that this action is not a "significant regulatory action" under Executive Order 12866.

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

Adoption of the Amendment

Accordingly, 14 CFR part 135 of the Federal Aviation Regulations (FAR) is amended as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431 and 1502; 49 U.S.C. 106(g); 49 CFR 1.47(a).

2. By amending § 135.170 by revising the introductory text of paragraph (b) to read as follows:

§ 135.170 Materials for compartment interiors.

* * * * *

(b) Except for commuter category airplanes and airplanes certificated under Special Federal Aviation Regulation No. 41, no person may operate a large airplane unless it meets the following additional airworthiness requirements:

* * * * *

Issued in Washington, DC, on March 6, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–5834 Filed 3–6–95; 4:23 pm]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 341
Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Proposed Amendment of Monograph for OTC Bronchodilator Drug Products; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 94N–0247]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Proposed Amendment of Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) bronchodilator drug products to remove pressurized metered-dose aerosol container dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. This action is being taken because the OTC marketing of such drug products will require an approved application containing certain information not required by the monograph. The agency is also proposing to amend the regulation that lists nonmonograph active ingredients to add any ingredient(s) in a pressurized metered-dose aerosol container for OTC bronchodilator drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by May 23, 1995; written comments on the agency's economic impact determination by May 23, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments or objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 2, 1986 (51 FR 35326), FDA issued a final monograph establishing conditions under which OTC bronchodilator drug products are generally recognized as safe and effective and not misbranded. Section 341.76(d)(2)(i) (21 CFR 341.76(d)(2)(i)) provides for products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride for use in a pressurized metered-dose aerosol container (hereinafter referred to as an inhaler or MDI).

In the final monograph (51 FR 35326 at 35333, comment 10), the agency responded to a comment that agreed that bronchodilators in a MDI dosage form should be available OTC, but objected to allowing them to enter the marketplace without preclearance by FDA through approval of applications (new drug (NDA) or abbreviated new drug (ANDA)). The comment contended that the complexities of pressurized MDI aerosol dosage forms for inhalation are such that agency preclearance is necessary to assure the safety and effectiveness of these drug products. The comment stated that the proposed rulemaking was deficient because it did not discuss the complexities of the design, control, manufacture, and market use of MDI drug delivery systems and the monograph did not set forth manufacturing standards for MDI delivery systems. The comment suggested that a full application would not be required, but that preclearance of "manufacturing controls information and bioavailability data" by the agency should be required.

Based on the data and other information available when the final monograph for OTC bronchodilator drug products was published, the agency disagreed with the comment, stating its belief that the state of the technology for MDI drug delivery systems was such that bronchodilator drug products in MDI dosage forms could be generally recognized as safe and effective. The agency indicated that it had reviewed data available at that time from its Drug Product Problem Reporting System computerized data base for all bronchodilator drug products in MDI dosage forms. The agency noted that no problems related to metered-dose mechanisms had been reported for these OTC drug products between 1980 and 1984. Therefore, the agency concluded that the technology available to produce reliable MDI mechanisms allowed the agency to generally recognize MDI dosage forms for OTC bronchodilator drug products containing epinephrine preparations as specified in the final monograph.

The agency also pointed out in the final rule (51 FR 35326 at 35334), however, that agency regulations in 21 CFR 2.125(d) state that the use of a chlorofluorocarbon (CFC) as a propellant in a self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided the drug has an NDA. Therefore, all OTC bronchodilator drug products in MDI's that contain a CFC as a propellant (which include all marketed OTC MDI products containing epinephrine) were marketed only under an approved application. The agency anticipated that MDI products would continue to contain a CFC propellant and that marketing would continue under approved applications containing information on manufacturing controls for the MDI.

Since publication of the final monograph for OTC bronchodilator drug products, several developments have changed the agency's views about pressurized MDI dosage forms. These include: (1) Legislation that requires a phaseout of ozone-depleting substances, including CFC propellants in MDI drug products; (2) the need for safety data on the alternative propellants that will replace CFC's in MDI dosage forms, as well as evidence that the new MDI's deliver the drug effectively; (3) recent publications reporting chemistry, manufacturing, and controls problems resulting from changes to the container and closure system of redesigned MDI dosage forms; (4) the need for safety and effectiveness data for the new drug products as a result of these chemistry, manufacturing, and controls changes; and (5) international workshops and FDA advisory committee discussions focusing on regulatory requirements for modifications to an approved innovator MDI and bioequivalence of generic MDI aerosol products. These issues have caused the agency to reconsider the inclusion of MDI dosage forms in the final monograph for OTC bronchodilator drug products. The agency has determined that an assessment of the safety and effectiveness of each product must be made. The agency's discussion of these issues follows.

II. New Issues That Affect MDI Drug Products

A. Proposed Replacement of CFC Propellants

The Clean Air Act Amendments of 1990, Title VI (Pub. L. 101–549), signed into law on November 15, 1990, requires the phaseout of ozone-depleting substances. The Environmental Protection Agency (EPA) has promulgated regulations implementing the phaseout provisions contained in section 604 of the Clean Air Act Amendments of 1990 (58 FR 65018, December 10, 1993). Ozone-depleting substances covered by the Clean Air Act Amendments of 1990 include CFC's and hydrochlorofluorocarbons. The international community has agreed to adjust the phaseout schedule for CFC's to reduced levels of production and consumption (production plus imports minus exports) of 25 percent of baseline level in 1994 and 1995, with a complete phaseout by 1996 (58 FR 65018 at 65020). Existing supplies of previously manufactured products will continue to be marketed until supplies are exhausted. All pressurized MDI antiasthma drugs (both the OTC products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride and numerous antiasthma drugs available by prescription only) contain CFC's as the propellant. A procedure has been established for obtaining essential-use exemptions of ozone-depleting substances used in medical products from this production phaseout. Because there are no currently approved inhalation products that can fully substitute for drugs in MDI's used to treat the symptoms of asthma and chronic obstructive pulmonary disease (COPD) (Ref. 1), FDA and EPA have supported essential use exemptions (Refs. 2 and 3).

In the **Federal Register** of October 18, 1994 (59 FR 52544 at 52546), EPA announced that the Montreal Protocol Technology and Economic Assessment Panel had recommended that essential use exemptions for 1996 and 1997 be granted for CFC's used in MDI's. At an October 1994 meeting, the Parties to the Montreal Protocol on Substitutes that Deplete the Ozone Layer reviewed these recommendations and granted essential use exemptions for 1996 and 1997 for MDI's for the treatment of asthma and COPD (Ref. 4).

Beginning in the late 1980's, the pharmaceutical and other industries began searching for appropriate CFC alternatives. Currently two compounds, HFC–134a and HFC–227ea, are being investigated as alternative propellants to replace CFC's in MDI's. Reformulation of currently approved MDI drug products with these new propellants will require toxicological and clinical studies to establish the safety and efficacy of the new drug products. The agency intends to require sponsors to submit NDA's for these new drug products. These NDA's must be approved before the new products can be marketed.

References

(1) Letter from M. R. Taylor, FDA, to M. H. Shapiro, EPA, December 21, 1993, in OTC Vol. 04BFMA8.

(2) Petition from Sterling Winthrop, Inc., to EPA, August 20, 1993, in OTC Vol 04BFMA3.

(3) "Metered Dose Inhalers: A Special Case," International Pharmaceutical Aerosol Consortium, July 19, 1993, page 31 and Appendix A, page 1, in OTC Vol. 04BFMA3.

(4) Report of the 6th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, October 6–7, 1994, in OTC Vol. 04BFMA3.

B. Safety and Effectiveness Data for Alternative Propellants

MDI's offer a convenient way to administer aerosolized bronchodilator drugs for the treatment of asthma and COPD. Response to drugs administered by inhalation is prompt, often very specific with minimal side effects, and faster in onset than responses to drugs given orally (Ref. 1). With most drugs, MDI response approaches the rapidity of intravenous therapy. Drugs that normally are decomposed in the gastrointestinal tract can be administered safely by inhalation. The MDI dosage form makes inhalation therapy simple, convenient, and more acceptable than atomizers and nebulizers, which are bulky and require cleaning.

Bronchodilator drugs in pressurized MDI aerosols are widely available. Many formulations contain a drug either suspended or dissolved in CFC propellants at high pressure in a small canister. In addition to supplying the necessary force to expel the product, the propellant blend also acts as a vehicle and diluent. Thus, the propellant has much to do with determining the characteristics of the product as it leaves the container. Desirable vapor pressures, stability, and reactivity of CFC propellants are of prime importance in the formulation and manufacture of MDI aerosols. From a solubility standpoint, CFC's are miscible with most nonpolar solvents over a wide range of temperature and are capable of dissolving many substances (Ref. 1). The CFC propellants used in MDI's are not miscible with water. A cosolvent, typically ethanol, must be included in present formulations to increase the solubility of polar drug molecules.

As noted above, manufacturers may need to reformulate their MDI aerosols to replace the CFC propellants with suitable alternatives. The agency is concerned that the use of new excipients, including non-CFC-containing propellants, could change the distribution characteristics of the drug in the airways, produce a pharmacologic interaction, or enhance toxicity of the active drug substances. Reformulation of pressurized MDI aerosols containing non-CFC-containing propellants might also result in changes in drug deposition patterns within the lung. These changes might alter pulmonary absorption, potentially resulting in changes in safety and/or therapeutic effectiveness of the bronchodilator.

Propellants can affect the therapeutic effectiveness of bronchodilators. A 1983 study (Ref. 2) measured the effects of two different albuterol (salbutamol) MDI products containing the same amount of drug per inhalation. In this double-blind, crossover study, 46 subjects with stable asthma were challenged with methacholine to produce a moderate bronchial obstruction. Following the methacholine challenge, the subjects were randomized into two groups. Each group received two inhalations from one of two different brands of albuterol MDI aerosol preparations. The peak expiratory flow (PEF) was measured three times in 10 minutes after the inhalation of the drug product. The test was repeated after 3 days to 1 month by giving the subjects the test aerosol that they had not received in the first test. PEF values were determined in the same manner as described for the initial inhalation test product. The data indicated that one preparation relieved bronchial obstruction more effectively than the other preparation. The author suggested that, because both MDI aerosols contained the same drug, the significant difference of the relaxing effect on the bronchial obstruction with these aerosols in the same subject may be due to the properties of the vehicle (propellant).

Currently, MDI aerosols are self-pressurized with CFC propellants that provide a fixed volume of propellant and drug each time the canister valve is pressed. A fixed amount of drug is aerosolized by the pressure of the propellant into small droplets that evaporate to produce smaller respirable particles. These droplets should be between 2 to 5 microns (μm) for maximum delivery of drug to the respiratory tract and to minimize deposition in the oropharynx (Ref. 3).

Propellant vapor pressure, which affects both the droplet size and the velocity at which the particle leaves the MDI device, is important in determining drug deposition in the lung (Ref. 4). Newman et al. (Ref. 5) measured the effects of changes in metered volume and propellant vapor pressure on deposition in the lungs of a pressurized MDI aerosol in 10 subjects with obstructive airway disease. Radiolabeled

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particles of Teflon (3.2 μm mass median aerodynamic diameter) were incorporated into canisters formulated with two different metered volume sizes (25 and 50 microliters) and with two different propellant vapor pressures. The study indicated that the majority of the dose from a pressurized MDI aerosol is deposited in the oropharynx and that only a small amount reaches the lungs. Increasing the metered volume had no effect on the quantity of aerosol deposited in the lungs, but produced a significantly more central pattern of deposition within the bronchial tree. An increase in vapor pressure, however, resulted in a significant increase in whole lung deposition and a significant reduction in extrathoracic deposition. The authors concluded that changes in formulation alter the deposition pattern of MDI aerosols and, consequently, might bring about changes in clinical effectiveness.

In addition to vapor pressure and velocity characteristics of the propellant, the surfactant and cosolvent in a solution product are other important formulation considerations. Surfactants lubricate the MDI canister valve and prevent aggregation of the individual drug particles. Surfactants also influence droplet evaporation, particle size, and overall hydrophobicity (degree of insolubility in water) of the particles reaching the respiratory passageways and pulmonary fluids (Ref. 1). Variations in the rate of evaporation of propellants and the cosolvent, if present, may lead to a particle size distribution containing a higher or lower proportion of fine particles (Ref. 6), which could have a significant impact on the safety and effectiveness of the new drug product.

A considerable and variable amount of drug is deposited in the oral cavity and thus is swallowed and subject to absorption from the gastrointestinal tract (Ref. 7). The agency is concerned with the possibility that new non-CFC propellants in an MDI product may interact with a cosolvent or other components (e.g., surfactants, valve components, or antioxidants) to produce an irritant or potentially hazardous formulation, or a less effective formulation, when applied to the respiratory system. The agency concludes that additional data will be necessary to demonstrate that inhalation and ingestion of new formulations will not result in local tissue irritation effects or other undesirable consequences, such as loss of effectiveness or local retention, resulting from inappropriate drug deposition characteristics. These additional data will include information on the absorption, distribution, and retention characteristics of new propellant systems in man following inhalation. This information needs to include an assessment of the likely systemic burden of the propellant. Therefore, the agency considers premarket approval to be essential for any MDI aerosol drug products that combine a known active ingredient with a new propellant system or new valve.

References

(1) Sciarra, J. J., and A. J. Cutie, "Aerosols," in Remington's Pharmaceutical Sciences, 18th ed., edited by A. R. Gennaro, Mack Publishing Co., Easton, PA, pp. 1694–1721, 1990.

(2) Parkkali, L., "Comparison of Two Different Salbutamol Inhalation Aerosols in Release of Bronchial Obstruction," *Current Therapeutic Research*, 33:539–542, 1983.

(3) Rees, P. J., and T. J. H. Clark, "The Importance of Particle Size in Response to Inhaled Bronchodilators," *European Journal of Respiratory Diseases*, Suppl. 119, 63:73–78, 1982.

(4) Transcripts of the FDA Generic Drugs Advisory Committee Meeting with Pulmonary-Allergy Drugs Advisory Committee Representation, September 14–15, 1993, identified as TS, Docket No. 94N–0247, Dockets Management Branch.

(5) Newman, S. P. et al., "The Effect of Changes in Metered Volume and Propellant Vapour Pressure on the Deposition of Pressurized Inhalation Aerosols," *International Journal of Pharmaceutics*, 11:337–344, 1982.

(6) Dalby, R. N., and P. R. Byron, "Comparison of Output Particle Size Distribution from Pressurized Aerosols Formulated as Solutions or Suspensions," *Pharmaceutical Research*, 5(1):36–39, 1988.

(7) Wong, B. J. O., and F. E. Hargreave, "Bioequivalence of Metered-dose Inhaled Medications," *Journal of Allergy and Clinical Immunology*, 92(3):373–379, 1993.

(8) The Report of the Commission of the European Communities' Committee for Proprietary Medicinal Products, "Matters Relating to the Replacement of CFCs in Medicinal Products," December 15, 1993, in OTC Vol. 04BFMA3.

C. Chemistry, Manufacturing, and Controls Concerns

The agency believes that careful consideration must be given to the interactions that can occur between the drug substance, the container and closure system, and the excipients of a MDI aerosol product. Unlike dosage forms composed only of excipients and drug, a MDI consists of the container, the valve, the actuator (mouthpiece), and the formulation. These components collectively constitute the drug product that delivers the drug substance in the desired form to the biological target. Variability in the performance of a MDI may result from the physical characteristics of the drug substance, formulation differences, valve and actuator design, and the adequacy of control parameters, specifications, and test methods for each component and the drug product. Design modifications of the MDI may result in significant alterations of the dose delivered to the lung. Changes in the source or the composition of any component of the MDI drug product may introduce unknown contaminants (Ref. 1). Impurities (extractables) may occur when the propellant comes in contact with the plastic or rubber components of the MDI canister.

The agency is concerned about the possible association of impurities and extractables with paradoxical bronchospasm as well as with more general toxicity. In one study (Ref. 2), a 24-year-old asthmatic patient who had reported acute wheezing immediately after using an aerosol of beclomethasone dipropionate was challenged with several aerosols. The subject experienced immediate bronchoconstriction after two puffs of an aerosol containing beclomethasone dipropionate and also after inhalation of the vehicle (all the components of the aerosol less the beclomethasone). When the patient was challenged with a different brand of beclomethasone aerosol, however, no bronchospasm occurred. Because the contents of the two beclomethasone aerosols were similar, the authors concluded that rubber or plastic derivative(s) present in the metering valve may have been responsible for the bronchospasm. The authors noted that the manufacturers of the beclomethasone aerosols had confirmed that their internal metering valves were different. The authors also pointed out that the conclusion drawn in a similar study (Ref. 3) suggested that the substance(s) responsible for the reaction might be derived either from the metering valve or the aluminum can.

Most MDI aerosol canisters are made of aluminum. Aluminum is essentially inert, but will react with certain solvents and other chemicals (Ref. 4). Although aluminum can be used without an internal organic coating for certain aerosol formulations (especially those which contain only active ingredient and propellant), many MDI aluminum canisters are internally coated with epon- or epoxy-type resin for added resistance to formulation interaction. The agency is concerned about what interactions might occur between the aluminum canister and the epon- or epoxy-type resin coating and new non-CFC propellants that may eventually be used in these products.

The formulation, actuator, and valve determine the performance of a pressurized MDI aerosol (Ref. 4). The metering valve must accurately deliver a measured amount of product and should be reproducible not only for each dose delivered from the same package but from package to package. An integral part of the MDI valve is the metering chamber that is responsible for the delivery of the desired amount of drug. MDI valves function by filling the metering chamber with product, sealing off this chamber from the remaining formulation in the canister when the valve stem is partially depressed, and then releasing the contents of the chamber through the valve stem upon further depression (actuation) (Ref. 5). The valves should retain their prime charge over fairly long periods of time (Ref. 4). However, it is possible for material in the chamber to return slowly to the main body of product. The degree to which this can occur varies with the construction of the valve and the length of time between uses (actuations). Puff-to-puff dosage variability due to inadequate valve priming may lead to therapeutic failure and a subsequent asthma attack requiring emergency room and hospital treatment.

One study (Ref. 6) compared the relative bronchodilator effectiveness of two puffs from two different albuterol MDI aerosols containing the same concentration of active ingredient. The study was a randomized, single-blind, crossover clinical trial involving 17 adults with intermittent or mild chronic asthma. Initially, each subject received two puffs of the generic albuterol MDI and two puffs of the brand name albuterol MDI drug product on two occasions at least 3 days apart. The test dose was the first two puffs out of each canister; neither inhaler was primed. Pulmonary function was measured before each test dose and at frequent intervals over an 8–hour period after drug inhalation. Results of this portion of the study indicated that the bronchodilator response was greater with the generic MDI than with the brand name MDI product.

The study was repeated with both MDI products primed prior to the test dose (i.e., two puffs were first discharged into a wastebasket) in 11 subjects willing to return for further testing. Retest data indicated that there was no significant difference in bronchodilation between the two primed inhalers. The results suggested that failure to prime the MDI canister could alter the therapeutic response. The authors explained that variations in valve and actuator design or factory quality control procedures could account for the difference in therapeutic effectiveness of the two products. They added that modifications in valve design or storage position may account for the loss of valve prime and, thus, be responsible for puff-to-puff dosage variability. On the basis of this study, the authors stated that MDI manufacturers must conduct in vitro studies to determine the frequency of valve priming required for their product, the effect storage position has on valve priming, and the uniformity of drug content of each of several puffs after priming.

Accurate assessment of drug deposition profiles, both the quantity of drug reaching the respiratory airways and its depth of penetration, is critically important in evaluating the bioavailability of MDI aerosol products (Ref. 4). The aim of the MDI drug product is to deliver the maximum amount of drug to the respiratory tract and minimize deposition in the oropharynx (Ref. 7). The portion of the drug product that is ultimately deposited at the desired biological target consists of a mixture of micronized or solubilized active drug substance in a residue matrix of oily excipient material and/or low volatile propellant and/or solvent (Ref. 1). A particle size range less than 5 μm is generally considered more effective than larger particles in producing bronchodilatation (Ref. 8). MDI formulations currently available consist of drugs suspended in CFC propellants or drugs dissolved in propellants containing a significant proportion of less volatile solvents. Particle size distribution from MDI's containing drugs dissolved or suspended in propellant/cosolvent mixtures is governed by the physical characteristics of the valve and the actuator, the concentration of nonvolatile components in the mixture, the initial droplet size (which depends on such factors as actuator design, spray characteristics, and physicochemical characteristics of the solution being sprayed), and the volatile propellant evaporation rate (Ref. 7). The agency is concerned how new non-CFC propellants will affect particle size and particle size distribution.

The effectiveness of two albuterol MDI aerosol products (brands A and B) was compared in a double-blind study involving 31 asthmatics (Ref. 9). Each subject received sequential treatment (0.2 mg albuterol/dose) on two successive days (day 1, inhalation sequence A then B; day 2, inhalation sequence B then A). Results of this study indicated that all subjects had a significantly greater bronchodilation response to the B MDI product than to the A MDI product. Further, in the sequence A-B, the B MDI always produced further bronchodilation while in the sequence B-A sequence, there was no further bronchodilation response to the A MDI. The study indicated that 0.2 mg of B was as effective as 0.4 mg of A. The study showed that two different albuterol inhalers containing the same active ingredients in the same dose can differ significantly in therapeutic effectiveness. The author suggested that the bioavailability of albuterol MDI's may differ from brand to brand because of differences in aerosol particle size or distribution, concentration, and/or the physicochemical characteristics of the propellant.

Factors influencing the ultimate deposition of stable small inhalation particles include the formulation of the products, design of components (specifically the valves or actuators), administrative skills and techniques of the product user, and the anatomical and physiological status of the respiratory system (Ref. 4). Besides the previously mentioned effects of propellant vapor pressure and the metered volume of propellants on drug deposition in the lungs, the selection of the appropriate surfactant (required in pressurized suspension MDI aerosols) and its concentration are important considerations in MDI aerosol drug formulations. As discussed above, surfactants influence droplet evaporation, particle size, and overall hydrophobicity of the particles reaching the respiratory passageways and pulmonary fluids (Ref. 4).

Particle size distribution is also influenced by the MDI component design. Changes in component design, including the actuator and adapter, have been shown to alter the particle size distribution and consequently the penetration and deposition of the active ingredient in the lung. The agency is aware that a variation of particle size distribution up to 40 percent could result from altering the actuation type, valve dimensions, distance from actuator, and other device component variables (Ref. 4). Because the valve and actuator of an approved MDI product may be proprietary to the innovator firm, and therefore unavailable to other drug manufacturers, use of a different valve or actuator for products containing active ingredients currently included in the monograph for OTC bronchodilator drug products may require data to support safety and effectiveness.

Given the complexity of the MDI formulations and the interdependence of each of the MDI components, the agency believes that pressurized MDI aerosol drug products must be carefully evaluated for safety and therapeutic effectiveness. Based on agency

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preclearance under existing NDA's, currently marketed OTC MDI drug products are not in question. However, the agency would have great concerns about the safety and effectiveness of new OTC drug products entering the marketplace without agency preclearance, for the reasons discussed in this document. The agency would have still greater concerns if new non-CFC-containing propellants were to be used in new products without agency evaluation of the reformulated products.

The agency noted in the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35334) that the use of a CFC-containing self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided the drug has an approved NDA. OTC MDI bronchodilator drug products that contain a CFC-containing propellant may therefore be marketed only under an approved NDA. Similarly, based on the intended phaseout of CFC-containing propellants in MDI aerosol dosage forms, the agency now concludes that it is essential that any MDI aerosol reformulation (including use of a new propellant) or component design alterations require premarket approval under an approved NDA to ensure the safety and effectiveness of the bronchodilator drug product.

References

(1) Adams, W. P. et al., "Regulatory Aspects of Modifications to Innovator Bronchodilator Metered Dose Inhalers and Development of Generic Substitutes," *Journal of Aerosol Medicine*, 7:119–134, 1994.

(2) Godin, J., and J. L. Malo, "Acute Bronchoconstriction Caused by Beclovent and Not Vanceril," *Clinical Allergy*, 9:585–589, 1979.

(3) Bryant, D. H., and J. Pepys, "Bronchial Reactions to Aerosol Inhalant Vehicle," *British Medical Journal*, 1:1319, 1976.

(4) Sciarra, J. J., and A. J. Cutie, "Aerosols," in Remington's Pharmaceutical Sciences, 18th ed., edited by A. R. Gennaro, Mack Publishing Co., Easton, PA, pp. 1694–1721, 1990.

(5) Fiese, E. F. et al., "Test Method for Evaluation of Loss of Prime in Metered-Dose Aerosols," *Journal of Pharmaceutical Sciences*, 77(1):90–93, 1988.

(6) Blake, K. V. et al., "Evaluation of a Generic Albuterol Metered-Dose Inhaler: Importance of Priming the MDI," *Annals of Allergy*, 68:169–174, 1992.

(7) Dalby, R. N., and P. R. Byron, "Comparison of Output Particle Size Distribution from Pressurized Aerosols Formulated as Solutions or Suspensions," *Pharmaceutical Research*, 5(1):36–39, 1988.

(8) Rees, P. J., and T. J. H. Clark, "The Importance of Particle Size in Response to Inhaled Bronchodilators," *European Journal of Respiratory Diseases*, Suppl. 119, 63:73–78, 1982.

(9) Chhabra, S. K., "Differing Bioavailability of Salbutamol Metered-Dose Inhalers," *Journal of Asthma*, 24:215–218, 1987.

D. International Workshops and FDA Advisory Committee Discussions

Both the agency and the international community recognize the need to significantly reduce the production and consumption of substances which deplete the ozone layer. One class of substances currently under discussion are CFC's, which are highly resistant to biotic and abiotic decomposition and, therefore, pass undecomposed from the atmosphere to the stratosphere. Because of the deleterious effect of CFC's on the ozone layer, international consensus is that products containing CFC propellants, including MDI's, must be phased out or reformulated with a suitable non-CFC-containing propellant.

Several international workshops and agency advisory committee discussions have taken place to identify the regulatory requirements necessary to determine the safety and effectiveness of reformulated MDI bronchodilator drug products. On December 15, 1993, the Commission of the European Communities (CEC) issued a guideline report (Ref. 1) that identifies quality, safety, and effectiveness considerations to be addressed by companies in submissions in support of replacements for CFC propellants in an already authorized medicinal product. The report specifies the following major clinical requirements: (1) Ensure safety and effectiveness of the reformulated product, and (2) demonstrate that the change in formulation due to a change in excipients has no adverse effect on the benefit/risk ratio to users in comparison with the existing CFC-containing product.

The report stated that clinically validated studies, including pharmacodynamic, pharmacokinetic, and in vivo and/or in vitro deposition studies, can be used to determine the effectiveness of the reformulated MDI product. Data on the absorption, distribution, and retention of the new propellant(s) in adults and children under 12 years of age following inhalation are needed to assess the likely systemic burden of the propellant(s) (e.g., heart rate, serum potassium, and assessment of paradoxical bronchospasm). The report cautioned that any change in excipients (including propellants) might result in changes in drug deposition patterns within the lung and might affect absorption and systemic safety. The guideline emphasizes that monitoring the introduction of new non-CFC-containing products is necessary in order to identify rare or unexpected adverse effects.

The Drug Information Association held a workshop on October 18 and 19, 1993 (Ref. 2) to discuss the regulatory and data requirements needed to reassure the clinical community and patients that reformulated MDI aerosol products are safe and effective. The workshop summarized the chemistry and manufacturing concerns of the CEC and other regulatory health organizations regarding the safety and effectiveness of reformulated MDI aerosol products. Participants discussed how small changes in MDI aerosol product formulation or component design can significantly affect the safety and effectiveness of a bronchodilator aerosol drug product. Careful consideration was given to bioequivalence issues involving puff-to-puff variability, unit spray content, storage conditions, new propellants, particle size, and extractables and impurities profiles. The workshop's conclusions agreed with the international approach to premarket approval of pressurized MDI bronchodilator drug products. These conclusions would apply to both prescription and OTC drug products.

On September 14 and 15, 1993, the agency's Generic Drugs Advisory Committee with representation from the Pulmonary-Allergy Drugs Advisory Committee (hereinafter referred to as the Committee) met to discuss the agency's current policy concerning the documentation of bioequivalence for suspension and solution MDI aerosol products (Ref. 3). The Committee stated that premarket approval is essential to ensure the identity, strength, quality, and purity of generic MDI aerosol products. In addition to the in vitro data required for a new or reformulated existing MDI aerosol under an approved NDA, the Committee recommended in vivo bioequivalence documentation for generic suspension MDI aerosol products for oral inhalation. The Committee also recommended the following bioequivalence testing guidelines for MDI oral inhalation solution products: (1) If excipients are essentially the same, in vitro studies only would be acceptable with the same device, and (2) whether the excipients are or are not essentially the same, in vivo and in vitro studies are required with different devices. Furthermore, the Committee concluded that products with excipients that are not essentially the same may need additional studies (e.g., for safety) (Ref. 3).

Adams et al. (Ref. 4) indicated that, unlike most dosage forms, inactive ingredients in MDI aerosol formulations and the container and closure system are important contributors to the safety and effectiveness and, thus, to the therapeutic equivalence of these products. The agency is aware that different pharmacodynamic effects in aerosolized drugs have been hypothesized to occur due to differential deposition of drugs in various segments of the respiratory tract, resulting in different absorption characteristics. Such differences between test and reference products could arise from differences in characteristics of the suspension formulation or in the performance characteristics of the delivery devices (valve and actuator) used in the products.

FDA's Division of Bioequivalence (the Division), in the Office of Generic Drugs, has developed interim guidance that recommends methods to generic applicants to document in vivo bioequivalence of albuterol MDI aerosols and recommends a safety evaluation study as part of the documentation of in vivo bioequivalence (Ref. 5). The Division advises that the methods presented therein are not rigid and are not considered by the Division to be the sole methods of documenting bioequivalence. However, because limited experience exists in the application of these methods to the determination of bioequivalence of different albuterol MDI aerosol drug products, the report encouraged sponsors to assess the general applicability and reliability of the methods recommended.

In response to this interim guidance, one comment (Ref. 6) requested that the agency withdraw the guidance because it would permit a generic version of albuterol MDI aerosol to be released for marketing without long-term safety studies. The comment referred to data presented by another MDI aerosol manufacturer during the September 14 and 15, 1993, Committee meeting (Ref. 3). The comment explained that clinical comparison of two nearly identical MDI aerosol products produced similar pharmacodynamic responses, but exhibited significant differences in safety profiles (changes in serum potassium and glucose, finger tremor, and heart rate). Because of safety concerns, the MDI aerosol manufacturer withdrew its request for agency approval of its product. The comment pointed out that the manufacturer's data presented at the meeting demonstrate that even minor changes in drug delivery may affect patient safety. The comment added that different valves and new suppliers of drug substances and excipients used in MDI aerosol products may lead to patients being exposed to new valve extractives and to new impurities. The comment emphasized that although some minor changes may be evident in single-dose studies, longer-term clinical trials are needed to assess the full side effect liability of changed products (i.e., new excipients or component design alterations) for regular or intermittent administration.

Wong and Hargreave (Ref. 7) discuss the need for premarket approval and subsequent bioequivalence requirements for reformulated and generic MDI aerosol products. The authors state that there is a need to demonstrate clinical bioequivalence and relative potency of MDI aerosols before marketing generic versions, new types of delivery devices, and new products of the same class of drug. The authors explain that certain characteristics of the inhaled aerosols are known to influence effectiveness, e.g., particle size, coalescence of droplets and evaporation of propellants, rate of delivery, concentration of the drug during nebulization, plume geometry, and the constituents (i.e., drug, propellants, and surfactants). Other factors, such as the valve assembly, rubber seals, and actuator mouthpiece in a pressurized MDI, can also influence drug availability and, therefore, need consideration and regulation to ensure adequate drug deposition in the lungs. The authors point out that although several in vitro tests and in vivo radioaerosol studies can be used to predict or measure the deposition of inhaled particles in the airway, none of these studies can yet be relied on to ensure clinical bioequivalence. The authors conclude that both in vitro and in vivo testing of clinical effect should be required to establish the bioequivalence of generic MDI aerosols.

As part of the required premarket approval process, the agency is continuing to review methodology for in vitro and in vivo bioequivalence testing for reformulated and generic MDI aerosol products. The agency has also sponsored pharmacodynamic studies to help develop that methodology. The agency agrees with the conclusion in the CEC's report that changes in propellants should be considered major changes in pressurized MDI aerosol products and that extensive premarket testing is required prior to market approval of MDI aerosols reformulated with non-CFC propellants. The agency also agrees with the Committee's recommendation that in vivo bioequivalence documentation should be provided for generic suspension MDI aerosol products for oral inhalation.

References

(1) Report of the Commission of the European Communities' Committee for Proprietary Medicinal Products, "Matters Relating to the Replacement of CFCs in Medicinal Products," December 15, 1993, in OTC Vol. 04BFMA3.

(2) Drug Information Association, "MDI's in the New Millennium: Workshop on Regulatory Issues of Efficacy, Safety, and Quality with Metered Dose Inhalers (MDI's) Drug Dosage Forms-October 18 and 19, 1993," in OTC Vol. 04BFMA3.

(3) Transcripts of the FDA Generic Drugs Advisory Committee Meeting with Pulmonary-Allergy Drugs Advisory Committee Representation, September 14–15, 1993, identified as TS, Docket No. 94N–0247, Dockets Management Branch.

(4) Adams, W. P. et al., "Regulatory Aspects of Modifications to Innovator Bronchodilator Metered Dose Inhalers and Development of Generic Substitutes," *Journal of Aerosol Medicine*, 7:119–134, 1994.

(5) FDA Division of Bioequivalence, Office of Generic Drugs, "Interim Guidance for Documentation of In Vivo Bioequivalence of Albuterol Inhalation Aerosols (Metered Dose Inhalers)," January 27, 1994, in OTC Vol. 04BFMA3.

(6) Petition from Glaxo Inc., to FDA, April 6, 1994, in OTC Vol. 04BFMA3.

(7) Wong, B. J. O., and F. E. Hargreave, "Bioequivalence of Metered-Dose Inhaled Medications," *Journal of Allergy and Clinical Immunology*, 92(3):373-379, 1993.

III. Summary of Agency's Proposed Changes

The agency is proposing that all MDI aerosol dosage forms must have premarket approval to ensure their safety and effectiveness. This proposal is based on a reconsideration of the nature of these products, potential future reformulations to include new propellants, and the recommendations of the agency's Committee (discussed above).

This proposed amendment removes the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride in pressurized MDI aerosol dosage forms from the final monograph for OTC bronchodilator drug products. It does not affect the monograph status of these ingredients when used in a hand-held rubber bulb nebulizer. Such products will remain in the final monograph for OTC bronchodilator drug products.

All currently marketed OTC pressurized MDI aerosol drug products are the subject of approved applications. The agency has explained in this document why it concludes that agency approval remains essential for these

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products. A statutory phaseout of CFC propellants used in these MDI aerosol products exists, although an exemption for MDI's for the treatment of asthma and COPD exists through 1997. Based on this phaseout, manufacturers may eventually decide or need to reformulate their existing MDI aerosol products with non-CFC-containing propellant systems. The agency considers it essential that any such reformulated products be evaluated and approved by the agency before they are marketed.

Consequently, the agency is proposing to amend § 341.76(d)(2) of the final monograph for OTC bronchodilator drug products to remove § 341.76(d)(2)(i)(*a*) and (d)(2)(i)(*b*). The agency proposes amending § 310.545(a)(6) for bronchodilator drug products by adding new paragraph (C) and listing thereunder "any ingredient(s) in a pressurized metered-dose aerosol container." The proposal would also remove § 341.76(e) from the final monograph because that information now appears in § 330.1(i) (21 CFR 330.1(i)) as part of the general labeling policy for OTC drug products.

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. All currently marketed MDI aerosol drug products are currently the subject of an approved application. This proposed amendment of the monograph will not affect the status of any currently marketed product. As is currently the case for marketed MDI aerosol products, an approved application will be required for any product that is reformulated to contain a non-CFC propellant. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator MDI aerosol drug products that contain epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation. A period of 75 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before May 23, 1995, submit written comments or objections to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before May 23, 1995. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 341 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv) and (d)(26) and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) *Bronchodilator drug products.*

(A)—(B) [Reserved]

(C) Approved as of April 10, 1995. Any ingredient(s) in a pressurized metered-dose inhaler container.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(26) of this section.

* * * * *

(26) April 10, 1995, for products subject to paragraph (a)(6)(iv)(C) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 341.76 [Amended]

4. Section 341.76 is amended by removing paragraphs (d)(2)(i) and (e); by redesignating paragraph (d)(2)(ii) as (d)(2), and revising the paragraph heading to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(d)* * *

(2) *For products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride identified in § 341.16(d), (e), and (g) for use in a hand-held rubber bulb nebulizer.* * * *

* * * * *

Dated: February 6, 1995.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

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To amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea. (Mar. 7, 1995; 109 Stat. 47; 1 page)

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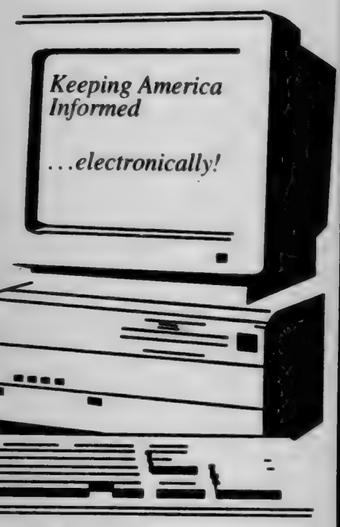

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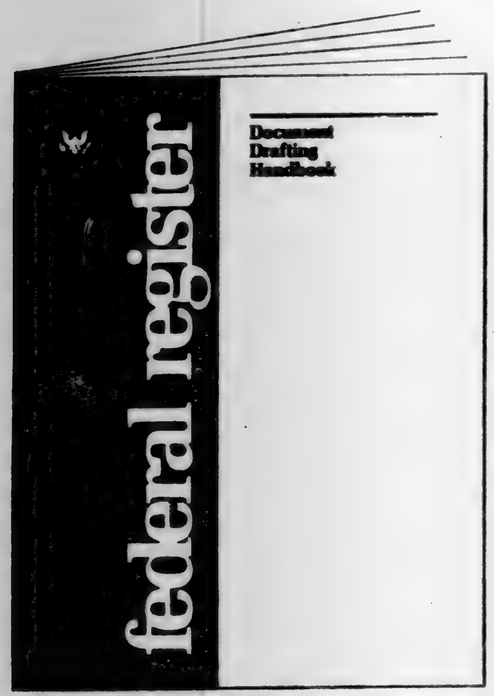

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12954 of March 8, 1995

Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts

Efficient economic performance and productivity are directly related to the existence of cooperative working relationships between employers and employees. When Federal contractors become involved in prolonged labor disputes with their employees, the Federal Government's economy, efficiency, and cost of operations are adversely affected. In order to operate as effectively as possible, by receiving timely goods and quality services, the Federal Government must assist the entities with which it has contractual relations to develop stable relationships with their employees.

An important aspect of a stable collective bargaining relationship is the balance between allowing businesses to operate during a strike and preserving worker rights. This balance is disrupted when permanent replacement employees are hired. It has been found that strikes involving permanent replacement workers are longer in duration than other strikes. In addition, the use of permanent replacements can change a limited dispute into a broader, more contentious struggle, thereby exacerbating the problems that initially led to the strike. By permanently replacing its workers, an employer loses the accumulated knowledge, experience, skill, and expertise of its incumbent employees. These circumstances then adversely affect the businesses and entities, such as the Federal Government, which rely on that employer to provide high quality and reliable goods or services.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 486(a) and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees. All discretion under this Executive order shall be exercised consistent with this policy.

Sec. 2. (a) The Secretary of Labor ("Secretary") may investigate an organizational unit of a Federal contractor to determine whether the unit has permanently replaced lawfully striking workers. Such investigation shall be conducted in accordance with procedures established by the Secretary.

(b) The Secretary shall receive and may investigate complaints by employees of any entity covered under section 2(a) of this order where such complaints allege lawfully striking employees have been permanently replaced.

(c) The Secretary may hold such hearings, public or private, as he or she deems advisable, to determine whether an entity covered under section 2(a) has permanently replaced lawfully striking employees.

Sec. 3. (a) When the Secretary determines that a contractor has permanently replaced lawfully striking employees, the Secretary may make a finding that it is appropriate to terminate the contract for convenience. The Secretary shall transmit that finding to the head of any department or agency that contracts with the contractor.

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(b) The head of the contracting department or agency may object to the termination for convenience of a contract or contracts of a contractor determined to have permanently replaced legally striking employees. If the head of the agency so objects, he or she shall set forth the reasons for not terminating the contract or contracts in a response in writing to the Secretary. In such case, the termination for convenience shall not be issued. The head of the contracting agency or department shall report to the Secretary those contracts that have been terminated for convenience under this section.

Sec. 4. (a) When the Secretary determines that a contractor has permanently replaced lawfully striking employees, the Secretary may debar the contractor, thereby making the contractor ineligible to receive government contracts. The Secretary shall notify the Administrator of the General Services Administration of the debarment, and the Administrator shall include the contractor on the consolidated list of debarred contractors. Departments and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors unless the head of the agency or his or her designee determines, in writing, that there is a compelling reason for such action, in accordance with the Federal Acquisition Regulation.

(b) The scope of the debarment normally will be limited to those organizational units of a Federal contractor that the Secretary finds to have permanently replaced lawfully striking workers.

(c) The period of the debarment may not extend beyond the date when the labor dispute precipitating the permanent replacement of lawfully striking workers has been resolved, as determined by the Secretary.

Sec. 5. The Secretary shall publish or cause to be published, in the **Federal Register**, the names of contractors that have, in the judgement of the Secretary, permanently replaced lawfully striking employees and have been the subject of debarment.

Sec. 6. The Secretary shall be responsible for the administration and enforcement of this order. The Secretary, after consultation with the Secretary of Defense, the Administrator of the General Services, the Administrator of the National Aeronautics and Space Administration, and the Administrator of the Office of Federal Procurement Policy, may adopt such rules and regulations and issue such orders as may be deemed necessary and appropriate to achieve the purposes of this order.

Sec. 7. Each contracting department and agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions under this order.

Sec. 8. The Secretary may delegate any function or duty of the Secretary under this order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Sec. 9. The Secretary of Defense, the Administrator of the General Services, and the Administrator of the National Aeronautics and Space Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, shall take whatever action is appropriate to implement the provisions of this order and of any related rules, regulations, or orders of the Secretary issued pursuant to this order.

Sec. 10. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

Sec. 11. The meaning of the term "organizational unit of a Federal contractor" as used in this order shall be defined in regulations that shall be issued by the Secretary of Labor, in consultation with affected agencies. This order shall apply only to contracts in excess of the Simplified Acquisition Threshold.

Sec. 12. (a) The provisions of section 3 of this order shall only apply to situations in which contractors have permanently replaced lawfully striking employees after the effective date of this order.

(b) This order is effective immediately.

William J. Clinton

THE WHITE HOUSE,
March 8, 1995.

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Rules and Regulations

Federal Register
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Friday, March 10, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 582

RIN 3206—AF83

Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel management (OPM) is finalizing its interim regulations for processing garnishment actions affecting Federal employees' pay for commercial indebtednesses and tax obligations due to State and local governments. This part provides procedures and guidance for Executive Branch agencies of the Federal Government, not including the Postal Service or the Postal Rate Commission, to process commercial garnishment orders affecting the pay of civilian employees.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

SUPPLEMENTARY INFORMATION: On October 6, 1993, Congress enacted the Hatch Act Reform Amendments of 1993, Public law 103–94, section 9, 5 U.S.C. 5520a, which waived the Federal Government's sovereign immunity to permit compliance with garnishment orders for commercial debts and tax indebtednesses to State and local governments. On February 3, 1994, the President signed Executive Order Number 12897 which delegated responsibility to OPM to issue implementing regulations for most of the Executive Branch, and on March 29, 1994, OPM issued an interim rule with request for comments. (59 FR 14541) In addition to receiving comments from more than twenty Federal agencies, private organizations, and individuals in response to this publication, OPM expressly elicited additional guidance from the Office of Management and Budget, the Department of Justice, the Department of Labor, the Federal Retirement Thrift Investment Board, and the United States Postal Service.

Several commenters requested clarification concerning whether moneys payable to contractors would be subject to garnishment. In response to these requests, we have amended the definition of employee in § 582.102(2). The amended definition provides that an individual whose employment is based on a contract is not an *employee* under this part. This amendment is consistent with judicial decisions which have recognized that Federal employment is not contractual. *See*, e.g., *United States* v. *The Citizens & Southern National Bank*, 889 F.2d 1067 (Fed. Cir. 1989). An employee organization was concerned that reemployed annuitants had been excluded from the definition of *employee*. In fact, reemployed annuitants are included in the definition of *employee* in § 582.102(2). However, we have amended the definition of *employee* to clarify that the pay of reemployed annuitants and reemployed retired members of the uniformed services is subject to garnishment.

An employee organization suggested that OPM's regulations indicate that regulations pertaining to the garnishment of the salaries of members of the uniformed services were to be promulgated by a separate authority. In response to this suggestion, we have added two additional sentences to the definition of agency in § 582.102(1). This employee organization also suggested that the definition of *person* be amended to include courts. In response to this suggestion, we have amended the definition of *person* in § 582.102(4) to include courts and other entities that are authorized to issue *legal process*.

Two commenters suggested that Federal agencies be permitted to use commercial garnishment as a method to collect debts due the United States. OPM has determined that as enacted. Public Law 103–94 does not provide for commercial garnishment actions by Federal agencies. OPM's determination is based on several factors. The primary reason being that Public Law 103–94 does not expressly provide for garnishment by the Federal Government, and there is no legislative history reflecting such an intent. Additionally, the principles of statutory interpretation require that all of the provisions of a statute be read together. *See United States* v. *Fausto*, 484 U.S. 439, 453 (1988). In accordance with this principle, OPM is mindful that in processing commercial garnishment orders, Congress has provided that debts due the United States are to be treated quite differently than commercial indebtednesses. To appreciate this difference, compare the exclusion provision in section 462(g) of the Social Security Act as incorporated in 5 U.S.C. 5520a(g) with the limitation provisions of section 1673 of title 15 of the United States Code (section 303 of the Consumer Credit Protection Act, as amended) as incorporated in 5 U.S.C. 5520a(b). In addition, there are several recent United States Supreme Court decisions which recognize a rebuttable presumption that the term *person* does not include the sovereign. *See International Primate Protection League* v. *Tulane Educ. Fund*, 111 S.Ct. 1700, 1707–1708 (1991); *Will* v. *Michigan Department of State Police*, 491 U.S. 58, 64 (1989); and *Mesa* v. *California*, 489 U.S. 121, 136 (1989). In an effort to clarify the matter, OPM has amended the definition of *person* in § 582.102(4) to expressly exclude the United States or an agency of the United States.

OPM has considered, but rejected a labor organizations' comment that the definition of *pay* in § 582.102(5) not include sick pay. We believe that the inclusion of sick pay is mandated by express language of 5 U.S.C. 5520a(a)(4) which expressly defines *pay* to include sick pay. In accordance with guidance received from the Department of Labor, we have expressly excluded "amounts received under any Federal program for compensation for work injuries" from the definition of *pay* in § 582.102(5).

One of the Federal agencies that provides payroll services to a host of Federal agencies advised OPM that they were treating support garnishment orders as exclusions under § 582.103. We have amended § 582.103 to clarify that amounts withheld in compliance with garnishment orders based on child and/or alimony obligations are *not* exclusions under this part.

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One agency requested clarification concerning the exclusion in § 582.103(b)(1) of amounts withheld for benefits payable under title II of the Social Security Act. After consulting with the Social Security Administration, we have deleted that provision and renumbered the section.

Two commenters noted the exclusion in § 582.103(e) of all amounts contributed to the Thrift Savings Fund and asked whether amounts deducted for Thrift Savings Fund loan repayments were also to be excluded. In response to this comment, OPM requested guidance from the Federal Retirement Thrift Investment Board. OPM concurs with the Board's conclusion that these repayment amounts should not be added to the list of exclusions in § 582.103.

One agency commented that some of its employees were attempting to reduce their liability for garnishment orders by increasing their voluntary allotments. We would emphasize that only the items listed as exclusions in § 582.103 may be deducted from an employee-obligor's pay before a garnishment is processed. It may, therefore, be necessary to terminate a voluntary allotment in order to comply with a commercial garnishment order.

While one agency correctly noted that our exclusion for debts due the United States in § 582.103(a) does not list the various types of debts due the United States or the order of precedence for such debts, the General Accounting Office already maintains such a list.

While three Federal agencies expressed disagreement with the statement in § 582.202(a) that legal process need not expressly name the agency as a garnishee, this statement is mandated by the decision of the United States Court of Appeals for the Federal Circuit that was announced in *Millard* v. *United States*, 916 F.2d 1 (Fed. Cir. 1990). We have amended § 582.202(a) in response to one agency's comment to expressly include interrogatories.

One commenter noted that the interim regulations permitted State courts to garnish the salaries of persons who live and work in a different State and concluded that this raised "a possible constitutional question" as to the legality of the regulations. In fact, the Federal Government has been honoring garnishment orders based on child support and alimony obligations that extended beyond State boundaries for many years and OPM disagrees with any suggestion that such orders or the regulations that provide for the processing of such orders might be unconstitutional merely because they effect employee-obligors who live and/or work in other States. More importantly, OPM believes that this is another area where the Federal Government's responsibilities as an employer are limited and that an employing Federal agency is not required to review each order to determine whether the court that issued the order had lawfully acquired jurisdiction over the out-of-State obligor. *See United States* v. *Morton*, 467 U.S. 822, 828–830 (1984). This same commenter also suggested that the regulations be amended to require that in addition to providing the employee-obligor with a copy of the legal process, Federal agencies should be required to provide employee-obligors with copies of any other documents submitted with the legal process. OPM is confident that Federal agencies will use their discretion to provide their employees with copies of any accompanying documents that will be helpful or informative to the employee. However, to require that employing agencies provide all documentation regardless of relevance or potential value to the employee-obligor would, we believe, place an undue burden on Federal agencies.

Two agencies commented on the fact that § 582.202(b) does not mandate service by certified or registered mail. This provision is in accordance with the express language of 5 U.S.C. 5520a(c)(1) and does reflect a change from the provisions applicable to service of process for garnishment of child support and alimony obligations. OPM emphasizes that agencies may not construe *may* to mean *must;* it was the clear intent of Congress to permit less restrictive service of process under this part.

Several commenters, including an employee organization and a law firm that wrote on behalf of a collectors association, expressed a need to clarify the fact that a creditor need not necessarily know or provide all of the information listed in § 582.203(a), particularly the employee-obligor's date of birth or social security number, in order to have a garnishment order processed by a Federal agency. In an effort to clarify this fact, we have amended § 582.203(a). In response to a request from the Treasury Department, we have added a new section, § 582.204, concerning electronic disbursement.

Several commenters noted that two provisions in the interim regulations—§ 582.303(a) which reiterates the requirement in 5 U.S.C. 5520a(d) that agencies respond to interrogatories and § 582.306(c) which states that agencies shall provide information concerning subsequent employment—may conflict with the Privacy Act, 5 U.S.C. 552a, as implemented by numerous Federal regulations including OPM's own disclosure regulations codified at 5 CFR 297.402, which permit disclosure in response to legal process only where the legal process is signed by a judge. While it might be argued that 5 U.S.C. 5520a(d) should be construed as an implicit exception to the Privacy Act and to the regulations that agencies have promulgated to implement the Privacy Act, OPM strongly recommends that agencies establish routine uses that will enable them to respond to interrogatories served in accordance with this part and, where appropriate, to provide subsequent employment information, notwithstanding the absence of a judge's signature or some other omission otherwise barred by the agency's disclosure restrictions.

An employee organization commented that OPM exceeded its statutory authority by providing in § 582.303(a) that agencies may respond to garnishment orders after 30 days where a longer period is provided by local law as well as by State law as expressly stated in 5 U.S.C. 5520a(d). While OPM concurs that section 5520a(d) expressly refers only to State law, references to State law have historically included both State and local law. *See*, e.g., *Ex parte Virginia*, 100 U.S. 339 (1879), as discussed in *Civil Rights Cases*, 109 U.S. 3, 57–58 (1883) (Harlan, J., dissenting). For the same reason, we have declined to amend § 582.402 to exclude references to local law.

One agency suggested that § 582.303(a) be amended to clarify that agencies need only respond once to legal process. We have amended § 582.303(a) in response to this suggestion.

One agency commenter noted that § 582.303 was redundant and suggested that the word *effectively* be replaced with the word *validly*. We have amended this section in response to these comments.

OPM received conflicting agency recommendations concerning the action to be taken where an employee-obligor appeals a garnishment action, and we have decided not to amend § 582.305(c) at this time.

An association of collection attorneys commented that in the collection world there are two major areas: *commercial* and *retail* with *commercial* referring to the collection of debts from firms and *retail* referring to collection from consumers. While we appreciate the fact that our terminology is not consistent with the nomenclature used by some private attorneys, we have determined

that no other term would be as generally understood as the term *commercial* for the purpose of distinguishing garnishment actions under this part from garnishment actions based on child support and alimony obligations.

Several commenters requested that the regulations clarify the effect of a garnishment order for child support and/or alimony on the processing of a commercial garnishment order. In response to these requests, we have amended §§ 582.305(f) and 582.402(a) to better explain the interrelationship between the two types of legal process.

One commenter requested that OPM delete § 582.305(k) because by permitting Federal agencies to charge fees in commercial garnishment actions while not having a similar provision relating to support garnishment actions, OPM's regulations were possibly discriminatory against women. OPM would emphasize that while the child support and alimony garnishment provisions in the Social Security Act do not provide for administrative costs or processing fees, Congress has expressly provided for such fees in the processing of commercial garnishment actions. See 5 U.S.C. 5520a(j)(2).

In response to an employee organization's suggestion, we have amended § 582.305(k) concerning the administrative fees. Three commenters suggested that OPM establish uniform administrative fees. Instead, OPM has deferred to individual agencies to determine whether administrative fees should be assessed and in what amounts based on their own cost figures. OPM has been advised that several agencies have established and have begun to assess administrative fees based on their costs in processing commercial garnishment orders.

While 5 U.S.C. 5520a(h)(1) provides that legal process shall be processed on a first come, first served basis, the laws in several jurisdictions, including California and the District of Columbia, provide that legal process may only be satisfied on a "one at a time" basis. Based on this information, we have amended § 582.402(a) in an effort to eliminate any confusion that may exist in these jurisdictions. In accordance with guidance received from the Department of Labor, we have also amended § 582.402(a) to provide that administrative costs or fees provided under § 582.305(k) must be included in the amounts subject to the garnishment restrictions of the Consumer Credit Protection Act. In other words, an agency may not withhold more than 25% of an employee-obligor's aggregate disposable earnings in order to offset administrative costs. Rather, the amount to be withheld in compliance with the legal process would have to be reduced in order that the administrative costs could be recovered without exceeding the maximum garnishment limitations.

OPM received comments from two Federal agencies concerning the processing of garnishment orders where the employee-obligor has filed a bankruptcy petition. We have amended § 582.305(l) in accordance with these recommendations. One individual commented that the regulations failed to recognize exemptions which employees may be entitled to under various provisions of State law. We would direct the commenter to § 582.402(a) which encompasses these exemption provisions.

However, we would also emphasize that it is primarily the employee-obligor's responsibility and not the employee-obligor's employer's responsibility to ensure that the debtor is allowed all of the exemptions to which the employee-obligor is entitled under State law.

Four commenters recommended that § 582.402(b) be amended to apply only where the bankruptcy action is under Chapter 13, and one agency commented that § 582.402(b) should also include Federal tax levies. In response to these comments and after conferring with the Department of Labor which administers the Consumer Credit Protection Act, we have amended § 582.402(b) to incorporate these recommendations.

While OPM is sympathetic to agencies and individuals who complained that the time limitations, particularly with regard to notifying employees stationed overseas, are too short, these time limitations are statutory and OPM's implementing time limit provisions only repeat these statutory limits. See 5 U.S.C. 5520a(d). OPM does not believe that it has the authority to extend these time limits even where the garnishment order being processed will affect the pay of an employee stationed overseas. *See Federal Election Commission* v. *Democratic Senatorial Campaign Committee*, 454 U.S. 27, 32 (1981).

Two commenters expressed concern regarding whether any time limit existed concerning the age of the underlying judgment that the garnishment order was attempting to enforce. Because Public Law 103–94 does not address this issue, we believe that the answer would depend on the law of the jurisdiction from which the garnishment order was issued and that, in any event, as long as the order was "regular on its face," it would not be the employing agency's burden to determine whether the garnishment order had been issued in accordance with the limitation provisions of the jurisdiction from which the order was issued. *See United States* v. *Morton*, *supra*, at 828–830 (the Federal Government need only ascertain that legal process is "regular on its face"). In other words, this is an issue that the employee-obligor would be responsible for contesting rather than the employing agency. Similarly, we do not believe that the agency bears the burden of determining when garnishment orders themselves expire, except, of course, where the order, on its face, indicates when it will expire.

While most of the comments focused on the interim regulations, several commenters stressed the need for a garnishment application form. In response to these requests, OPM sought and obtained approval from the Office of Management and Budget to issue a voluntary garnishment application form. In addition, OPM has elicited suggestions from several other Federal agencies concerning a voluntary application form and is currently reviewing those suggestions.

One agency requested additional guidance concerning what action should be taken where an agency is advised that the garnishment action should either be terminated or that the amount being garnished should be reduced as a result of a payment having been made or an agreement having been reached between the parties. While OPM has not attempted at this time to promulgate regulations that would dictate the actions that must be taken in such situations, OPM urges agencies to exercise their discretion in determining when a garnishment action should be terminated or modified as a result of such payments or agreements between the parties.

An issue that provoked numerous comments concerned the payment of interest. For the most part, it is our understanding that agencies have had no particular difficulty in garnishing amounts for interest that were included in the judgment total or judgment amount provided in the garnishment order, but several States, including Maryland and Hawaii, issue orders that do not expressly state a dollar figure for all of the interest that may be subject to garnishment. While 5 U.S.C. 5520a(b) provides that Federal agencies will be "subject to legal process in the same manner and to the same extent as if the agency were a private person," section 5520a(a)(3)(B) defines *legal process*, in pertinent part, as a writ, order, or summons that orders the employing agency to withhold "an amount" from the employee-obligor's pay. There is, therefore, an ambiguity in the statute as

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concerns the garnishment of sums such as interest that are not expressly included in the order, and absent clearer statutory language, OPM declines at this time to promulgate a regulation that would require agencies to compute and pay interest that is not included in the amount specified in the garnishment order.

A process serving company in the District of Columbia advised OPM that while some agencies facilitate service of process on their employees, other agencies did not. In response to this information, OPM requested guidance from the Justice Department and was advised that when it comes to gaining access to restricted Governmental worksites, process servers have no more rights than anyone else and that a regulatory provision concerning this matter would be inappropriate.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to Federal employees and their creditors.

List of Subjects in 5 CFR Part 582

Claims.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is revising part 582 of title 5, Code of Federal Regulations as follows:

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

Subpart A—Purpose, Definitions, and Exclusions

Sec.

582.101 Purpose.
582.102 Definitions.
582.103 Exclusions.

Subpart B—Service of Legal Process

582.201 Agent to receive process.
582.202 Service of legal process.
582.203 Information minimally required to accompany legal process.
582.204 Electronic disbursement.

Subpart C—Compliance With Legal Process

582.301 Suspension of payment.
582.302 Notification of employee-obligor.
582.303 Response to legal process or interrogatories.
582.304 Nonliability for disclosure.
582.305 Honoring legal process.
582.306 Lack of entitlement by the employee-obligor to pay from the agency served with legal process.

Subpart D—Consumer Credit Protection Act Restrictions

582.401 Aggregate disposable earnings.
582.402 Maximum garnishment limitations.

Subpart E—Implementation by Agencies

582.501 Rules, regulations, and directives by agencies.

Appendix A to part 582—List of Agents Designated to Accept Legal Process

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897

Subpart A—Purpose, Definitions, and Exclusions

§ 582.101 Purpose.

Section 5520a of title 5 of the United States Code provides that with certain exceptions set forth in this part, pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person. The purpose of this part is to implement the objectives of section 5520a as they pertain to each executive agency of the United States Government, except with regard to employees of the United States Postal Service, the Postal Rate Commission, and the General Accounting Office.

§ 582.102 Definitions.

In this part—(1) *Agency* means each agency of the executive branch of the Federal Government, excluding the United States Postal Service, the Postal Rate Commission, and the General Accounting Office; *agency* does not include the government of the District of Columbia or the territories and possessions of the United States. (Section 5520a(j)(1) of title 5 of the United States Code provides that separate implementing regulations shall be promulgated by the legislative branch and the judicial branch; section 5520a(k) provides that separate implementing regulations shall be promulgated with regard to members of the uniformed services; and Executive Order 12897 provides that separate implementing regulations shall be promulgated with regard to employees of the United States Postal Service. The regulations promulgated for employees of the United States Postal Service also apply to employees of the Postal Rate Commission.)

(2) *Employee* or *employee-obligor* means an individual who is employed by an *agency* as defined in this section, including reemployed annuitants and retired members of the uniformed services who are employed by an agency. *Employee* does not include a retired employee, member of the uniformed services, a retired member of the uniformed services, or an individual whose service is based on a contract, including individuals who provide personal services based on a contract with an agency.

(3) *Legal process* means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or tax levy from a State or local government, which—

(i) Is issued by:

(A) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia. As stated in § 582.101, pay is subject to legal process in the same manner and to the same extent as if the agency were a private person. There is, therefore, no requirement in this part that, for example, legal process be signed by a Judge; or,

(B) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(C) A State agency authorized to issue income withholding notices pursuant to State or local law; and

(ii) Orders an agency to withhold an amount from the pay of an employee-obligor and to make a payment of such withholding to a *person*, for a specifically described satisfaction of a legal debt of the employee-obligor, or recovery of attorney fees, interest, or court costs;

(4) *Person* may include an individual, partnership, corporation, association, joint venture, private organization or other legal entity, and includes the plural of that term; *person* may include any of the entities that may issue *legal process* as set forth in § 582.102(3)(i)(A), (B), and (C), and a State or local government as well as a foreign entity or a foreign governmental unit, but does not include the United States or an agency of the United States.

(5) In conformance with 5 U.S.C. 5520a, *pay* means basic pay; premium pay paid under chapter 55, subchapter V, of title 5 of the United States Code; any payment received under chapter 55, subchapters VI, VII, or VIII, of title 5 of the United States Code; severance pay and back pay under chapter 55, subchapter IX, of title 5 of the United States Code; sick pay, and any other paid leave; incentive pay; locality pay (including interim geographic adjustments, special pay adjustments for law enforcement officers, and locality-based comparability payments); back pay awards; and any other compensation paid or payable for personal services, whether such compensation is demoninated as pay, wages, salary, lump-sum leave payments, commission, bonus, award, or otherwise; but does not include amounts received under any Federal program for compensation for work injuries; awards for making suggestions, reimbursement for expenses incurred by an individual in connection with employment, or allowances in lieu thereof as determined by the employing agency.

§ 582.103 Exclusions.

In determining the amount of pay subject to garnishment under this part, there shall be excluded amounts which:

(a) Are owed by the employee-obligor to the United States;

(b) Are required by law to be deducted from the employee-obligor's pay, including, but not limited to amounts deducted in compliance with the Federal Insurance and Contributions Act (FICA), including amounts deducted for Medicare and for Old Age, Survivor, and Disability Insurance (OASDI);

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the employee-obligor claimed all dependents to which the employee-obligor were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the employee-obligor presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary;

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Federal Employees' Group Life Insurance premiums for "Basic Life" coverage are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and any life insurance premiums paid for by allotment are considered to be supplementary.

(g) Amounts withheld in compliance with legal process based on child support and/or alimony indebtedness are not exclusions.

Subpart B—Service of Legal Process

§ 582.201 Agent to receive process.

(a) Except as provided in appendix A to this part, appendix A to 5 CFR part 581 lists agents designated to accept service of process under part 581 and this part.

(b) United States Attorneys are not considered appropriate agents to accept service of process.

§ 582.202 Service of legal process.

(a) A person using this part shall serve interrogatories and legal process on the agent to receive process as explained in § 582.201. Where the legal process is directed to an agency, and the purpose of the legal process is to compel an agency to garnish an employee's pay, the legal process need not expressly name the agency as a garnishee.

(b) Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service only upon the agent to receive process as explained in § 582.201, or if no agent has been designated, then upon the head of the employee-obligor's employing agency. The designated agent shall note the date and time of receipt on the legal process.

(c) Parties bringing garnishment actions shall comply with the service of process provisions in this section. Service will not be effective where parties fail to comply with the service of process provisions of this section, notwithstanding whether the person bringing the garnishment action has complied with the service of process requirements of the jurisdiction issuing the legal process.

§ 582.203 Information minimally required to accompany legal process.

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the agency. Parties seeking garnishment actions, therefore, should provide as many of the following identifying pieces of information concerning the employee-obligor as possible:

(1) Full name;

(2) Date of birth;

(3) Employment number or social security number;

(4) Component of the agency for which the employee-obligor works;

(5) Official duty station or worksite; and

(6) Home address or current mailing address.

(b) If the information submitted is not sufficient to identify the employee-obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time prior to the time limits imposed in § 582.303, an attempt should be made to inform the person who caused the legal process to be served, or the person's representative, that it will not be honored unless adequate identifying information is supplied.

§ 582.204 Electronic disbursement.

The party designated to receive the garnished funds may forward a written request to the garnishing agency to have the funds remitted by electronic funds transfer, rather than by paper check. The request shall include the designated party's name, address, and deposit account number, and the name, address, and 9-digit routing transit number of the designated party's financial institution. Written requests accompanying service of process will be honored beginning with the first remission of garnished funds. Written requests received by the agency subsequent to service of process will be honored in as timely a manner as the agency deems feasible.

Subpart C—Compliance With Legal Process

§ 582.301 Suspension of payment.

Upon proper service of legal process as specified in §§ 582.202 and 582.203, the agency shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.

§ 582.302 Notification of employee-obligor.

(a) As soon as possible, but not later than 15 calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the employee-obligor, at his or her duty station or last known home address, written notice that such process has been served, including a copy of the legal process;

(b) The agency may provide the employee-obligor with the following additional information:

(1) Copies of any other documents submitted in support of or in addition to the legal process;

(2) Notice that the United States does not represent the interests of the employee-obligor in the pending legal proceedings; and

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(3) Advice that the employee-obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert.

§ 582.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process, the agent shall respond within 30 calendar days after receipt, or within such longer period as may be prescribed by applicable State or local law. The agent shall also respond within this time period to interrogatories which accompany legal process. Notwithstanding State law, an agent need only respond once to legal process.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within 30 calendar days after being validly served, or within such longer period as may be prescribed by applicable State or local law.

§ 582.304 Nonliability for disclosure.

(a) No agency employee whose duties include responding to interrogatories pursuant to § 582.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, an agency would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

§ 582.305 Honoring legal process.

(a) The agency shall comply with legal process, except where the process cannot be complied with because:

(1) It is not regular on its face.

(2) The legal process would require the withholding of funds not deemed pay as described in § 582.102(a)(5).

(3) It does not comply with section 5520a of title 5 of the United States Code or with the mandatory provisions of this part; or

(4) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the agency.

(b) While an agency will not comply with legal process which, on its face, indicates that it has expired or is otherwise no longer valid, legal process will be deemed valid notwithstanding the fact that the underlying debt and/or the underlying judgment arose prior to the effective date of section 5520a of title 5 of the United States Code.

(c) While the filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action, if the employee-obligor establishes to the satisfaction of the employee-obligor's agency that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action will be suspended during an appeal and if the employee-obligor establishes that he or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(d) Under the circumstances set forth in § 582.305 (a) or (b), or where the agency is directed by the Justice Department not to comply with the legal process, the agency shall respond directly to the court, or other authority, setting forth its reasons for non-compliance with the legal process. In addition, the agency shall inform the person who caused the legal process to be served, or the person's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or appears imminent, the agency shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, agencies which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(e) In the event that an agency is served with more than one legal process or garnishment order with respect to the same payments due or payable to the same employee, the agency shall satisfy such processes in priority based on the time of service: *Provided*, That in no event will the total garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 582.402. *Provided further*, That processes which are not limited in time shall preserve their priority based on time of service until fully satisfied. Generally, a modified order will retain its original priority while a time limited order will lose its priority after it has expired.

(f) Legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) for the enforcement of an employee's legal obligation to provide child support or to make alimony payments, including child support or alimony arrearages, shall have priority over any legal process to which an agency is subject under this part. In addition to having priority, compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act may exhaust the moneys available for compliance with legal process under this part. See § 582.402(a).

(g) Neither the United States, an executive agency, nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. Where an agency initially determines that legal process should not be honored, if it subsequently determines that its initial determination was erroneous, it may correct its initial determination and honor the legal process. If an agency corrects an error or is required to do so by a court or other authority, under no circumstances will the agency be required to pay more than if it had originally honored the legal process.

(h) Agencies affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored, to the extent that the legal process may be satisfied, during the next disbursement cycle within the limits set forth in § 582.402. The fact that the legal process may have expired during this period would not relieve the agency of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the agency to the employee-obligor, the agency shall follow the procedures set forth in § 582.306.

(i) Agencies need not establish escrow accounts in order to comply with legal process. Therefore, even if the amount garnished by an agency in one disbursement cycle is not sufficient to satisfy the entire indebtedness, the agency need not retain those funds until the amount retained would satisfy the entire indebtedness. On the contrary, agencies will, in most instances, remit the garnished amount after each disbursement cycle. Agencies need not pro-rate payments for less than a full disbursement cycle.

(j) If an agency receives legal process which is regular on its face, the agency shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the employee-obligor.

(k) At the discretion of the executive agency, the agency's administrative costs in executing a garnishment may be added to the garnishment amount and the agency may retain costs recovered as offsetting collections. To facilitate recovery of these administrative costs, an administrative fee may be assessed for each legal process that is received and processed by an agency, provided that the fee constitutes the agency's administrative costs in executing the garnishment action.

(l) Where an employee-obligor has filed a bankruptcy petition under section 301 or 302 of title 11 of the United States Code, or is the debtor named in an involuntary petition filed under section 303 of title 11, the agency must cease garnishment proceedings affected by the automatic stay provision, section 362(a) of title 11. Upon filing a petition in bankruptcy or upon learning that he or she is the debtor named in an involuntary petition, the employee-obligor should immediately notify the agency. To enable the agency to determine if the automatic stay applies, the employee-obligor should provide the agency with a copy of the filing or a letter from counsel stating that the petition was filed and indicating the court and the case number, the chapter under which the petition was filed, whether State or federal exemptions were elected, and the nature of the claim underlying the garnishment order.

§ 582.306 Lack of entitlement by the employee-obligor to pay from the agency served with legal process.

(a) When legal process is served on an agency and the individual identified in the legal process as the employee-obligor is found not to be entitled to pay from the agency, the agency shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, the agency shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that the identified employee-obligor is not entitled to any pay from the agency.

(b) Where it appears that the employee-obligor is only temporarily not entitled to pay from the agency, the court, or other authority, shall be fully advised as to why, and for how long, the employee-obligor's pay will not be garnished, if that information is known by the agency and if disclosure of that information would not be prohibited.

(c) In instances where an employee-obligor separates from employment with an agency that had been honoring a continuing legal process, the agency shall inform the person who caused the legal process to be served, or the person's representative, and the issuing court, or other authority, that the garnishment action is being discontinued. In cases where the employee-obligor has been employed by either another agency or by a private employer, and where this information is known by the agency, the agency shall provide the person with the designated agent for the new employing agency or with the name and address of the private employer.

Subpart D—Consumer Credit Protection Act Restrictions

§ 582.401 Aggregate disposable earnings.

In accordance with the Consumer Credit Protection Act, the *aggregate disposable earnings* under this part are the employee-obligor's pay less those amounts excluded in accordance with § 582.103.

582.402 Maximum garnishment limitations.

Pursuant to section 1673(a)(1) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended) and the Department of Labor regulations to title 29, Code of Federal Regulations, part 870, the following limitations are applicable:

(a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings subject to garnishment to enforce any legal debt other than an order for child support or alimony, including any amounts withheld to offset administrative costs as provided for in § 582.305(k), shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek. As appropriate, State or local law should be construed as providing a lower maximum limitation where legal process may only be processed on a one at a time basis. Where an agency is garnishing 25 percent or more of an employee-obligor's aggregate disposable earnings for any workweek in compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act, no additional amount may be garnished in compliance with legal process under this part. Furthermore, the following dollar limitations, which are contained in title 29 of the Code of Federal Regulations, part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings:

(1) If the employee-obligor's aggregate disposable earnings for the workweek are in excess of 40 times the Fair Labor Standards Act (FLSA) minimum hourly wage, 25 percent of the employee-obligor's aggregate disposable earnings may be garnished. For example, when the FLSA minimum wage rate is $4.25 per hour, this rate multiplied by 40 equals $170.00 and thus, if an employee-obligor's disposable earnings are in excess of $170.00 for a workweek, 25 percent of the employee-obligor's disposable earnings are subject to garnishment.

(2) If the employee-obligor's aggregate disposable earnings for a workweek are less than 40 times the FLSA minimum hourly wage, garnishment may not exceed the amount by which the employee-obligor's aggregate disposable earnings exceed 30 times the current minimum wage rate. For example, at an FLSA minimum wage rate of $4.25 per hour, the amount of aggregate disposable earnings which may not be garnished is $127.50 [$4.25×30]. Only the amount above $127.50 is garnishable.

(3) If the employee-obligor's aggregate disposable earnings in a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee-obligor's earnings may not be garnished in any amount.

(b) There is no limit on the percentage of an employee-obligor's aggregate disposable earnings that may be garnished for a Federal, State or local tax obligation or in compliance with an order of any court of the United States having jurisdiction over bankruptcy cases under Chapter 13 of title 11 of the United States Code. Orders from courts having jurisdiction over bankruptcy cases under Chapter 7 or Chapter 11 of the United States Code are subject to the maximum garnishment restrictions in § 582.402(a).

Subpart E—Implementation by Agencies

§ 582.501 Rules, regulations, and directives by agencies.

Appropriate officials of all agencies shall, to the extent necessary, issue implementing rules, regulations, and/or directives that are consistent with this part.

Appendix A to Part 582—List of Agents Designated To Accept Legal Process

Note: The agents designated to accept legal process are listed in appendix A to part 581 of this chapter. This appendix A to part 582 provides listings only for those executive agencies where the designations differ from those found in appendix A to part 581 of this chapter.

I. Departments

Department of Defense. Defense Finance and Accounting Service, Cleveland Center, Office of General Counsel.

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Attention: Code L, P.O. Box 998002, Cleveland, OH 44199–8002, (216) 522–5301.

Agents for receipt of all legal process for all Department of Defense civilian employees except where another agent has been designated as set forth below.

For requests that apply to employees of the Army and Air Force Exchange Service or to civilian employees of the Defense Contract Audit Agency (DCAA) and the Defense Logistics Agency (DLA) who are employed outside the United States: See appendix A to part 581 of this chapter.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, serve the following offices:

Army Corps of Engineers. U.S. Army Corps of Engineers, Omaha District, Central Payroll Office, Attn: Garnishments, P.O. Box 1439 DTS, Omaha, NE 68101–1439, (402) 221–4060.

Army Nonappropriated Fund Employees in Europe. Commander, 266th Theater Finance Command, NAF Payroll, Unit #29001–07, APO AE 09007–0137, 011–49–6221–57–7752, DSN 379–7752.

National Security Agency. General Counsel, National Security Agency/ Central Security Service, 9800 Savage Rd., Ft. George G. Meade, MD 20755–6000, (301) 688–6705.

Defense Intelligence Agency. Office of General Counsel, Defense Intelligence Agency, Pentagon, 2E238, Washington, DC 20340–1029, (202) 697–3945.

Air Force Nonappropriated Fund Employees. Office of General Counsel, Air Force Services Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216–4138, (210) 652–7051.

For civilian employees of the Army, Navy and Marine Corps who are employed outside the United States, serve the following offices:

Army Civilian Employees in Europe. Commander, 266th Theater Finance Command, ATTN: AEUCF–CPF, APO AE 09007–0137, 011–49–6221–57–6303/2136, DSN 370–6303/2136.

Army Civilian Employees in Japan. Commander, U.S. Army Finance and Accounting Office, Japan, ATTN: APAJ–RM–FA–E–CP, Unit 45005, APO AP 96343–0087, DSN 233–3362.

Army Civilian Employees in Korea. Commander, 175th Finance and Accounting Office, Korea, ATTN: EAFC–FO (Civilian Pay), Unit 15300, APO AP 96205–0073, 011–822–791–4599, DSN 723–4599.

Army Civilian Employees in Panama. DCSRM Finance & Accounting Office, ATTN: SORM–FAP–C, Unit 7153, APO AA 34004–5000, 011–507–287–6766, DSN 287–5312.

Navy and Marine Corps Civilian Employees Overseas. Director of the Office of Civilian Personnel Management, Office of Counsel, Office of Civilian Personnel Management (OCPM–OL), Department of the Navy, 800 N. Quincy Street, Arlington, VA 22203–1990, (703) 696–4717.

Navy and Marine Corps Nonappropriated Fund Employees. The agents are the same as those designated to receive garnishment orders of Navy and Marine Corps nonappropriated fund personnel for the collection of child support and alimony, published at 32 CFR part 734 (1994 ed.), except as follows:

For non-civil service civilian personnel of the Navy Exchanges or related nonappropriated fund instrumentalities administered by the Navy Exchange Service Command: Commander, Navy Exchange Service Command, ATTN: Human Resources Beverly Building, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23453–5274, (804) 631–3675.

For non-civil service civilian personnel of Marine Corps nonappropriated fund instrumentalities, process may be served on the Commanding Officer of the employing activity ATTN: Morale, Welfare and Recreation Director.

Department of the Interior. Chief, Payroll Operations Division Attn: Code: D–2605, Bureau of Reclamation. Administrative Service Center, Department of the Interior, P.O. Box 272030, 7201 West Mansfield Avenue, Denver, CO 80227–9030, (303) 969–7739.

[FR Doc. 95–5951 Filed 3–9–95; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Part 843

RIN 3206–AF91

Federal Employees Retirement System—Computation of the Basic Employee Death Benefit for Customer Officers

AGENCY: Office of Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the use of overtime and premium pay in determining the final annual rate of basic pay of customs officers under the Federal Employees Retirement System (FERS). These regulations establish the methodology (similar to the one that OPM uses for other flexible schedule employees) that the employing agency will use to compute customs officers' "final annual rate of basic pay" for determining FERS "basic employee death benefit." The regulations are necessary to implement the changes in the statutory definition of basic pay under FERS made by the Omnibus Budget Reconciliation Act of 1993.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On October 5, 1994, we published (at 59 FR 50705) proposed regulations to implement section 13812 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, concerning the use of overtime and premium pay in determining the final annual rate of basic pay of customs officers under the Federal Employees Retirement System (FERS). Section 13812 of Pub. L. 103–66 amended section 8331(3) of title 5, United States Code, the definition of basic pay under the Civil Service Retirement System (CSRS), to include, as basic pay for CSRS computations, certain overtime pay for customs officers. Section 8401(4) of title 5, United States Code, provides that the CSRS definition of basic pay in section 8331(3) applies to FERS. For customs officers, basic pay includes the regular pay under the general schedule, any applicable locality pay, and allowable overtime pay up to $12,500 per *fiscal* year. Basic pay is used to compute final salary for the basic employee death benefit under FERS.

We proposed a methodology for determining final salary similar to the one used for determining the "final annual rate of basic pay" of intermittent employees for the FERS basic employee death benefit established in section 843.102 of Title 5, Code of Federal Regulations. We received no comments on the proposed regulations. We are now issuing final regulations to adopt that methodology.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

2. In the definition of *final annual rate of basic pay* in section 843.102, paragraph (d) is added to read as follows:

§ 843.102 Definitions.

* * * * *

Final annual rate of basic pay * * *

(d) The annual pay for customs officers is the sum of the employee's general schedule pay, locality pay, and the lesser of—

(1) Two times the employee's final hourly rate of pay times the number of hours for which the employee was paid two times salary as compensation for overtime inspectional service under section 5(a) of the Act of February 11, 1911 (19 U.S.C. 261 and 267) plus three times the employee's final hourly rate of pay times the number of hours for which the employee was paid three times salary as compensation for overtime inspectional service under section 5(a) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in pay status; or

(2) $12,500.

* * * * *

[FR Doc. 95–5835 Filed 3–9–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 28108; Amdt. No. 388]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The rule specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, navigation (air).

Issued in Washington, DC on February 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, March 30, 1995:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, and 40120; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995

From	To	MEA
§ 95.1001 Direct Routes—U.S. 95.48 Green Federal Airway 8 is Amended to Read in Part		
Eilee, AK NDB	Crack, AK FIX	#*5000

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REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
*4100—MOCA #VHF COMMS avbl 5000 MSL and above #HF COMMS only below 5000 MSL		
Crack, AK FIX ..	Saldo, AK NDB	#*3000
*2300—MOCA #VHF/UHF COMMS avbl 9000 MSL and below #HF COMMS only below 9000 MSL		
Saldo, AK NDB	Copps, AK FIX .	*6000
*4400—MOCA		
Copps, AK FIX .	Kachemak, AK NDB.	6000
Campbell Lake, AK NDB.	Glennallen, AK NDB.	10200
§ 95.50 Green Federal Airway 10 is Amended by Adding		
Cape Newenham, AK NDB. #HF COMMS required below 8000	St Paul Island, AK NDB/DME.	#4000
St Paul Island, AK NDB/DME.	Bilbe, AK FIX ...	3000
Bilbe, AK FIX	Elfee, AK NDB .	*6000
*3800—MOCA		
Woody Island, AK NDB.	Kachemak, AK NDB.	6000
Is Amended to Read in Part		
Elfee, AK NDB .	Port Heiden, AK NDB/DME.	*5000
*4100—MOCA		
Port Heiden, AK NDB/DME.	Width, AK FIX ..	9000
Width, AK FIX ..	Woody Island, AK NDB.	*9000
*6300—MOCA		
§ 95.299 Red Federal Airway 99 is Amended by Adding		
St Paul Island, AK NDB/DME. #HF COMMS required below 8000 MSL	Dutch Harbor, AK NDB/DME.	#4700
Dutch Harbor, AK NDB/DME.	Saldo, AK NDB	*9000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
*6300—MOCA		
Is Amended to Read in Part		
Iliamna, AK NDB/DME.	Copps, AK FIX .	*6000
*5300—MOCA		
Copps, AK FIX .	Kachemak, AK NDB.	6000
§ 95.637 Blue Federal Airway 37 is Amended to Read in Part		
Sumner Strait, AK NDB.	Elephant, AK NDB.	*7000
*6400—MOCA		
Elephant, AK NDB.	*Sparl, AK FIX .	**6000
*15000—MRA		
**5100—MOCA		
Bahama Route 4 Lima is Amended to Read in Part		
Rubin, FL NDB .	Mrlin, FL FIX	2000
Mrlin, FL FIX	Thong, BF FIX .	2000
Thong, BF FIX ..	Bimini, BF NDB	2000
Bahama Route 7 Lima is Amended to Delete		
Freeport, BF NDB.	West End/ DCMSND, BF NDB.	*2000
*1400—MOCA		
West End/ DCMSND, BF NDB.	Halbi, FL FIX	*2000
*1300—MOCA		
Halbi, FL FIX	Rubin, FL NDB	*2000
*1500—MOCA		
Bahama Route 8 Lima is Amended to Delete		
Plantation, FL NDB.	Janus, FL FIX ..	*2000
*1400—MOCA		
Janus, FL FIX ...	Padus, BF FIX .	*2000
*1200—MOCA		
Padus, BF FIX ..	Freeport, BF NDB.	*2000
*1400—MOCA		
Bahama Route 10 Lima is Amended to Read in Part		
Plantation, FL NDB.	Mrlin, FL FIX	2000
Mrlin, FL FIX	Islands, BF NDB.	2000
Bahama Route 20 Lima is Amended to Delete		
Satellite, FL NDB.	Axxel, BF FIX ...	*2000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
*1500—MOCA		
Axxel, BF FIX ...	West End/ Dcmsnd, BF NDB.	*2000
*1500–MOCA		
West End/ Dcmsnd, BF NDB.	Freeport, BF NDB.	*2000
Bahama Route 21V is Amended to Read in Part		
Freeport, BF VOR/DME.	Halbi, BF FIX ...	2000
Halbi, BF FIX	Walik, FL FIX ...	6000
Walik, FL FIX ...	Palm Beach, FL VORTAC.	2000
Bahama Route 49L is Amended to Delete		
Andrew, FL NDB/DME.	Junur, FL FIX ...	2000
Junur, FL FIX ...	Clami, FL FIX ...	6000
Bahama Route 49V is Amended by Adding		
Virginia Key, FL VOR/DME.	Junur, FL FIX ...	2000
Junur, FL FIX ...	Fowee, FL FIX .	6000
Bahama Route 53 Lima is Amended to Delete		
Andrew, FL NDB/DME.	Refee, FL FIX ..	2000
Reefe, FL FIX ...	Bkene, BF FIX .	4000
Bkene, BF FIX ..	Swimm, BF FIX	4000
Swimm, BF FIX	Wooze, BF FIX	4000
Wooze, BF FIX .	Rajay, BF FIX ..	4000
Bahama Route 53V is Amended by Adding		
Virginia Key, FL VOR/DME.	Bkene, BF FIX .	4000
Bkene, BF FIX ..	Swimm, BF FIX	5000
Swimm, BF FIX	Wooze, BF FIX	9000
Wooze, BF FIX .	Rajay, BF FIX ..	11000
Bahama Route 54V is Amended to Read in Part		
Palm Beach, FL VORTAC.	Mrlin, FL FIX	2000
Mrlin, FL FIX	Nimro, FL FIX ..	2000
Nimro, FL FIX ...	Isaac, BF FIX ...	6000
Isaac, BF FIX ...	Oysta, BF FIX ..	8000
Oysta, BF FIX ..	Linle, BF FIX	6000
Bahama Route 55V		
Palm Beach, FL VORTAC.	Mrlin, FL FIX ....,	2000
Mrlin, FL FIX	Nimro, FL FIX ..	2000
Bahama Route 63V		
Palm Beach, FL VORTAC.	Turps, FL FIX ...	2000
Turps, FL FIX ...	Halbi, FL FIX	4000
Halbi, FL FIX	Freeport, BF VOR/DME.	2000
Bahama Route 64V is Amended by Adding		
Virginia Key, FL VOR/DME.	Heatt, FL FIX ...	5000
Is Amended to Read in Part		
Heatt, FL FIX	Mrlin, FL FIX	5000
Mrlin, FL FIX	Munro, BF FIX .	5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
Munro, BF FIX ..	Freeport, BF VOR/DME.	2000
Bahama Route 65V		
Freeport, BF VOR/DME.	Rapps, BF FIX .	3000
Rapps, BF FIX .	Stiff, BF FIX	8000
Stiff, BF FIX	Elder, FL FIX ...	8000
Elder, FL FIX	Adoor, FL FIX ..	2500
Bahama Route 66V		
Virginia Key, FL VOR/DME.	Janus, FL FIX ..	2000
Janus, FL FIX ...	Padus, BF FIX .	4000
Padus, BF FIX ..	Freeport, BF VOR/DME.	2000
Bahama Route 68V		
Fort Lauderdale, FL VOR/DME.	Mrlin, FL FIX	6000
Mrlin, FL FIX	Munro, BF FIX .	5000
Munro, BF FIX ..	Freeport, BF VOR/DME.	2000
Bahama Route 69V is Amended by Adding		
Freeport, BF VOR/DME.	Mayko, BF FIX .	3000
Mayko, BF FIX .	Bahma, BF FIX	3000
Bahma, BF FIX	Bimini, BF VORTAC.	3000
Is Amended to Read in Part		
Palm Beach, FL VORTAC.	Walik, FL Fix	2000
Berth, BF FIX ...	Jolts, BF FIX	4000
Walik, FL FIX ...	Berth, BF FIX ...	4000
Berth, BF FIX ...	Jolts, BF FIX	4000
Jolts, BF FIX	Benzi, BF FIX ..	4000
Benzi, BF FIX ...	Freeport, BF VOR/DME.	3000
Bahama Route 70V is Added to Read		
Fort Lauderdale, FL VOR/DME.	Turbo, FL FIX ..	2000
Turbo, FL FIX ...	Padus, BF FIX .	7000
Padus, BF FIX ..	Freeport, BF VOR/DME.	2000
Atlantic Route AR 1 is Amended to Read in Part		
Virginia Key, FL VOR/DME.	Lonni, FL FIX ...	5000
Lonni, FL FIX ...	Heatt, FL FIX ...	5000
Heatt, FL FIX	Blufi, FL FIX	5000
Blufi, FL FIX	Tarpo, FL FIX ..	14000
Tarpo, FL FIX ...	Rsnik, FL FIX ...	24000
Rsnik, FL FIX ...	Hobee, FL FIX .	24000
Atlantic Route AR 7		
Bimini, BF NDB	Vally, FL FIX	2000
Vally, FL FIX	Zappa, BF FIX .	2000
Zappa, BF FIX ..	Benzi, BF FIX ..	3000
Benzi, BF FIX ...	Permt, FL FIX ..	6000
Permt, FL FIX ...	Adoor, FL FIX ..	25000
Atlantic Route AR 10		
Fort Lauderdale, FL VOR/DME.	Turbo, FL FIX ..	2000
Turbo, FL FIX ...	Zappa, BF FIX .	6000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
Atlantic Route AR 11 is Amended by Adding		
Virginia Key, FL VOR/DME.	Janus, FL FIX ..	2000
Janus, FL FIX ...	Vally, FL FIX	5000
Is Amended to Delete		
Miami, FL VORTAC.	Kupec, BF FIX .	*5000
*2000–MOCA		
Atlantic Route A301 is Amended to Read in Part		
Bimini, BF NDB	Bkene, FL FIX ..	2000
Bkene, FL FIX ..	Fowee, FL FIX .	3000
Fowee, FL FIX .	Zolla, OA FIX ...	3000
Zolla, OA FIX ...	Ursus, OA FIX .	3000
Atlantic Route A509		
Cook, FL NDB ..	Ellee, BF FIX ...	3000
Ellee, BF FIX	Ursus, BF	3000
Atlantic Route A699		
Palm Beach, FL Vortac.	Permt, FL FIX ..	6000
Permt, FL FIX ...	Stiff, BF FIX	8000
Stiff, BF FIX	Nucar, BF FIX ..	8000
§ 95.6003 VOR Federal Airway 3 is Amended to Read in Part		
Key West, FL VORTAC.	*Bipin, FL FIX ..	15000
*14100–MCA BIPIN FIX, WBND		
Bipin, FL FIX	Mnate, FL FIX ..	*5000
*1400–MOCA		
Mnate, FL FIX ..	Miami, FL VORTAC.	*5000
*2800–MOCA		
Miami, FL VORTAC.	Fort Lauderdale, FL VOR/DME.	*4000
*2000–MOCA		
§ 95.6007 VOR Federal Airway 7 is Amended to Read in Part		
Lee County, FL VORTAC.	Jocks, FL FIX ...	2500
Jocks, FL FIX ...	*Hulla, FL FIX ..	**2000
*5000–MRA		
**1500–MOCA		
Hulla, FL FIX	Lakeland, FL VORTAC.	2000
§ 95.6051 VOR Federal Airway 51 is Amended to Delete		
Miami, FL VORTAC.	Pahokee, FL VORTAC.	2000
§ 95.6097 VOR Federal Airway 97 is Amended to Read in Part		
Miami, FL VORTAC.	Hamme, FL FIX	*2000
*1300–MOCA		
Hamme, FL FIX	Winco, FL FIX ..	*3000
*1400–MOCA		
Winco, FL FIX ..	La Belle, FL VORTAC.	*3000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
*1400–MOCA		
§ 95.6157 VOR Federal Airway 157 is Amended to Readd in Part		
Miami, FL VORTAC.	Thndr, FL FIX ..	*3000
*1300—MOCA		
Thndr, FL FIX ...	La Belle, FL VORTAC.	*3000
*1600—MOCA		
§ 95.6159 VOR Federal Airway 159 is Amended by Adding		
Virginia Key, FL VOR/DME.	Nitny, FL FIX	2000
Is Amended to Read in Part		
Nitny, FL FIX	Vero Beach, FL VORTAC.	2500
Vero Beach, FL VORTAC.	Orlando, FL VORTAC.	2000
Is Amended to Delete		
Fort Lauderdale, FL VOR/DME.	Nitny, FL FIX	2000
§ 95.6267 VOR Federal Airway 267 is Amended by Adding		
Miami, FL VORTAC.	Pahokee, FL VORTAC.	*2000
*1400—MOCA		
§ 95.6295 VOR Federal Airway 295 is Amended by Adding		
Virginia Key, FL VOR/DME.	Stoop, FL FIX ..	*5000
*1800—MOCA		
§ 95.6308 VOR Federal Airway 308 is Amended to Delete		
Quinhagak/ DCMSND VOR/DME.	Bethel, AK VORTAC.	*2000
*1400—MOCA		
§ 95.6328 VOR Federal Airway 328 is Amended to Read in Part		
Kipnuk, AK VOR/DME.	Quinh, AK FIX ..	2000
Quinh, AK FIX ..	Warrt, AK FIX ..	*15000
*5000—MOCA		
Warrt, AK FIX ...	Perci, AK FIX ...	5000
§ 95.6437 VOR Federal Airway 437 is Amended by Adding		
Miami, FL VORTAC.	Pahokee, FL VORTAC.	*2000
*1400—MOCA		
§ 95.6471 VOR Federal Airway 471 is Amended to Read in Part		
Bangor, ME VORTAC.	Millinocket, ME VORTAC.	2400

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REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—AMENDMENT 388 EFFECTIVE DATE, MARCH 30, 1995—Continued

From	To	MEA
§ 95.6509 VOR Federal Airway 509 is Amended to Read in Part		
St Petersburg, FL VORTAC. *5000—MRA **2500—MOCA	*Hulla, FL FIX ..	**5000
Hulla, FL FIX .... *1600—MOCA	Hallr, FL FIX	*6000
§ 95.6511 VOR Federal Airway 511 is Amended by Adding		
Thndr, FL FIX ... *1300—MOCA	Miami, FL VORTAC.	*3000
Is Amended to Read in Part		
Lakeland, FL VORTAC. *1800—MOCA	Hallr, FL FIX	*4000
Hallr, FL FIX ..... *1600—MOCA	Thndr, FL FIX ..	*5000
§ 95.6521 VOR Federal Airway 521 is Amended to Read in Part		
Miami, FL VORTAC. *1300—MOCA	Hamme, FL FIX	*2000
Hamme, FL FIX *1400—MOCA	Winco, FL FIX ..	*3000
Winco, FL FIX ..	Lee County, FL VORTAC.	*3000
*1500—MOCA		
§ 95.6599 VOR Federal Airway 599 is Added to Read		
Miami, FL VORTAC. *1300—MOCA	Thndr, FL FIX ..	*3000
Thndr, FL FIX ... *1500—MOCA	Lee County, FL VORTAC.	*3000
§ 95.7020 Jet Route No. 20 is Amended to Read in Part		
Orlando, FL VORTAC. 45000	Virginia Key, FL VOR/DME.	18000
§ 95.7043 Jet Route No. 43 is Amended to Read in Part		
Miami, FL VORTAC. 45000	La Belle, FL VORTAC.	18000
§ 95.7045 Jet Route No. 45 is Amended to Read in Part		
Virginia Key, FL VOR/DME. 45000	Vero Beach, FL VORTAC.	18000
§ 95.7053 Jet Route No. 53 is Amended by Adding		
Miami, FL VORTAC. 45000	Pahokee, FL VORTAC.	18000
Pahokee, FL VORTAC.	Orlando, FL VORTAC.	18000
45000		
§ 95.7055 Jet Route No. 55 is Amended to Read in Part		
Miami, FL VORTAC. 45000	Craig, FL VORTAC.	18000
§ 95.7073 Jet Route No. 73 is Amended to Read in Part		
Miami, FL VORTAC. 45000	La Belle, FL VORTAC.	18000
§ 95.7081 Jet Route No. 81 is Added to Read		
Miami, FL VORTAC. 45000	Pahokee, FL VORTAC.	18000
Pahokee, FL VORTAC. 45000	Orlando, FL VORTAC.	18000
Orlando, FL VORTAC. 45000	Cecil, FL VOR ..	18000
Cecil, FL VOR .. 45000	Noway, GA Fix .	18000
Noway, GA Fix . 4500	Colliers, SC VORTAC.	18000
§ 95.7113 Jet Route No. 113 is Added to Read		
Virginia Key, FL VOR/DME. 45000	Craig, FL VORTAC.	18000

§ 95.8003 VOR Federal Airways Changeover Points

Airway segment		Changeover points	
From	To	Distance	From
V–97 is Amended by Adding			
Miami, FL VORTAC	La Belle, FL VORTAC	35	Miami.
V–159 is Amended to Delete			
Vero Beach, FL VORTAC	Orlando, FL VORTAC	32	Vero Beach.
Green Federal Airway 10 is Amended by Adding			
Port Heiden, AK NDB/DME	Woody Island, AK NDB	90	Port Heiden.

[FR Doc. 95–5871 Filed 3–9–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–120, Amendment Number 94–6]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to the Indiana Surface Mining rules pertaining to the procedures for the application and renewal or blaster certification. The amendment is intended to revise language which was inadvertently repealed.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46202. Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background Information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 29, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Proposed Amendment

By letter dated December 7, 1994 (Administrative Record No. IND–1416), Indiana submitted a proposed amendment to its program pursuant to SMCRA to revise language that was inadvertently repealed and pertains to the procedures for the application and renewal of blaster certification. Indiana proposed to revise 310 IAC 12–8–4.1 Application for Certification and 310 IAC 12–8–8.1 Renewal.

OSM announced receipt of the proposed amendment in the December 30, 1994, **Federal Register** (59 FR 67691), and in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 30, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

310 IAC 12–8–4.1 Application for Certification. This new section is added to provide the following. Section 4.1(a)–(c) require that an application for certification as a certified blaster be submitted to the Department of Natural Resources (Department) in writing on forms furnished by the Department and completed in accordance with the instructions. Section 4.1(d) states that an application is incomplete if the form does not contain all required information or contains incorrect information. The applicant will be notified on any deficiencies and if the required information is not provided within 30 days of the notice, the application will be terminated. Section 4.1(e) provides for the verification by the Department of the information on the application. Section 4.1(f) states that if an application has been terminated, the person will not be considered for certification. A new application may be submitted at any time by complying with subsections (b) and (c) of this section.

There are no direct Federal counterparts. However, the Federal regulations at 30 CFR 850.15(a) pertaining to the certification of blasters require that the regulatory authority certify for a fixed period those candidates qualified to accept the responsibility for blasting operations. The Director finds that the proposed regulations at 310 IAC 12–8–4.1 are consistent with the Federal regulations at 30 CFR 850.15(a).

310 IAC 12–8–8.1 Renewal. Section 8.1(a) requires that a certified blaster renew his/her certification every three years. A request for renewal of certification must be in writing on a form furnished by the Department. The request must be received by the Department not later than 30 days prior to the expiration of the certificate. Section 8.1(b) specifies that the renewal will be approved if the certified blaster has worked at least 12 months of the preceding 36 months as a certified blaster and is not in violation of the provisions of 310 IAC 12–8–9 (Suspension or Revocation of Certification). Section 8.1(c) states that when a certification is not renewed for more than one year after expiration, the certification will not be renewable. If certification is sought, the person must submit an application and will be considered a new applicant. Sections 8.1 (d) and (e) state that a renewal notice will be sent to each registrant to the last address given by the registrant not less than two months prior to the expiration date of the certification. Failure to receive a renewal notice does not relieve the certified blaster of the obligation to obtain a renewal of the certification as required.

The Federal regulations at 30 CFR 850.15(c) pertaining to recertification permit the regulatory authority to require the periodic re-examination, training, or other demonstration of continued blaster competency. As described above, Indiana requires a periodic demonstration of continued blaster competency when a blaster must triennially demonstrate that he/she has worked as a certified blaster for at least 12 out of the last 36 months and is not in violation of 310 IAC 12–8–9, which section lists prohibited activities that are causes for the suspension/revocation of a blaster's certification. Therefore, the Director finds that the proposed regulations at 310 IAC 12–8–8.1 are no less effective than the Federal regulations at 30 CFR 850.15(c).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. The U.S. Department of the Interior, Bureau of Mines, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Indiana on December 7, 1994.

The Federal regulations at 30 CFR part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of

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State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 3, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding paragraph (fff) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(fff) The following amendment (Program Amendment Number 94–6) submitted to OSM on December 7, 1994, is approved effective March 10, 1995. 310 IAC 12–8–4.1 concerning application for blaster certification and 310 IAC 12–8–8.1 concerning renewal of blaster certification.

[FR Doc. 95–5920 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 936

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). (SMCRA). The proposed amendment consists of revisions to Oklahoma's coal mining rules concerning its Small Operator Assistance Program (SOAP). The amendment revises the Oklahoma program to be consistent with SMCRA and the corresponding Federal regulation.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Submission of Amendment

By letter dated September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–964). Oklahoma submitted the proposed amendment at its own initiative with the intent of revising the Oklahoma program to be consistent with the corresponding Federal regulations.

Oklahoma proposed to revise its SOAP rules at Oklahoma Administrative Code (OAC) sections 460:20–35–3, eligibility for assistance; 460:20–35–6, program services and data requirements; and 460:20–35–7, applicant liability. Here and herein after, OSM refers to these revised rules by their new codified numbers because Oklahoma proposed in a different amendment recodification of its coal mining rules in accordance with the standards set forth by the Oklahoma State Legislature and the Office of Administrative Code (See proposed rule **Federal Register** notice, 59 FR 49223, September 27, 1994).

OSM announced receipt of the proposed amendment in the September 27, 1994 **Federal Register** (59 FR 49225), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. OK–964.03). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 27, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Oklahoma's rules at OAC 460:20–35–3(a)(2), percentage of ownership and control of the SOAP applicant; OAC 460:20–35–6 (a) and (b), extension of SOAP funding to other program services and requirements for collection of specific kinds of data; and OAC 460:20–35–7, liability periods. OSM notified Oklahoma of the concerns by letter dated November 22, 1994 (administrative record No. OK–964.09).

Oklahoma responded in a letter dated December 20, 1994, by submitting additional explanatory information and revisions to these rules (administrative record No. OK–964.11). In addition, Oklahoma proposed revisions to OAC 460:20–35–1, definitions.

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by Oklahoma, OSM reopened the public comment period in the December 30, 1994, **Federal Register** (59 FR 67693, administrative record No. OK–964.12). The public comment period ended on January 17, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Oklahoma on September 14, 1994, and as revised by it on December 20, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Oklahoma's Rules

Oklahoma proposed revisions to the following previously-approved rules that are nonsubstantive in nature (the corresponding Federal regulation provisions are listed in parentheses):

OAC 460:20–35–3 (a)(2)(D) and (b), (30 CFR 795.6 (a)(2)(iv) and (b)), eligibility for assistance;

OAC 460:20–35–6(d), (30 CFR 795.9(d)), program services and data requirements; and

OAC 460:20–35–7(a), (30 CFR 795.12(a)), applicant liability.

Because Oklahoma's proposed revisions of these previously-approved rules are nonsubstantive in nature, the Director finds that the proposed rules are no less effective than the Federal regulations and is approving them.

2. Substantive Revisions to Oklahoma's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Oklahoma proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

OAC 460:20–35–1, (30 CFR 795.3), definitions;

OAC 460:20–35–3(a)(2), (a)(2) (A), and (B), (30 CFR 765.6(a)(2), (i) and (ii)), eligibility for assistance;

OAC 460:20–35–6 (a) and (b) (1) through (6), (30 CFR 795.9 (a) and (b) (1) through (6)), program services and data requirements; and

OAC 460:20–35–7(a) (2) and (3), (30 CFR 795.12(a) (2) and (3)), applicant liability.

Because the proposed revisions to these Oklahoma rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

IV. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (administrative record No. OK–964.02).

The Bureau of Mines responded in a letter dated September 27, 1994, that it had no comment on Oklahoma's proposed revisions (administrative record No. OK–964.04).

The U.S. Army Corps of Engineers stated in a letter dated September 30, 1994, that it found the changes to be satisfactory (administrative record No. OK–964.05).

The Bureau of Land Management responded in a letter dated October 12, 1994, that the modification to Oklahoma's SOAP provisions seemed appropriate (administrative record No. OK–964.06).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Oklahoma proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. OK–964.02). It responded on October 13, 1994, that it had no objections to the approval of Oklahoma's proposed regulations (administrative record No. OK–964.07).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record No. OK–964.02). Neither the SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Oklahoma's proposed amendment as submitted on September 14, 1994, and as revised on December 20, 1994.

The Director approves, as discussed in: Finding No. 1, OAC 460:20–35–3 (a)(2)(D) and (b), eligibility for assistance, OAC 460:20–35–6(d), program services and data requirements, and OAC 460:20–35–7(a), applicant liability; and finding No. 2, OAC 460:20–35–1, definitions, OAC 460:20–35–3(a)(2) (A) and (B), eligibility for assistance, OAC 460:20–35–6 (a) and (b) (1) through (6), program services and data requirements, and OAC 460:20–35–7(a) (2) and (3), applicant liability.

The Director approves the rules as proposed by Oklahoma with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

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2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 3, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (o) to read as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(o) Revisions to the following provisions of the Oklahoma Coal Rules and Regulations concerning the small operator assistance program, as submitted to OSM on September 14, 1994, and as revised on December 20, 1994, are approved effective March 10, 1995:

Oklahoma Administrative Code (OAC) 460:20–35–1, definitions;
OAC 460:20–35–3 (a)(2), (a)(2) (A), (B), and (D), and (b), eligibility for assistance;
OAC 460:20–35–6 (a), (b) (1) through (6), and (d), program services and data requirements; and
OAC 460:20–35–7 (a), (a) (2) and (3), applicant liability.

[FR Doc. 95–5921 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 12–36–6669; FRL–5167–9]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 29, 1990, the United States Environmental Protection Agency (USEPA) promulgated a Federal Implementation Plan (FIP) which contains stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. Included in USEPA's rules was a requirement that major non-Control Technique Guideline (CTG) sources be subject to 40 CFR 52.741 (s), (u), (v), (w), or (x). The major non-CTG limits in 40 CFR 52.741(x) (would, if not for this rule) apply to the hot and cold aluminum rolling operations at the Reynolds Metals Company's (Reynolds) McCook Sheet & Plate Plant in McCook, Illinois (in Cook County). On August 19, 1991, Reynolds requested that USEPA reconsider the application of 40 CFR 52.741(x) to its facility in McCook, Illinois, and on October 17, 1991, Reynolds requested that USEPA promulgate site-specific RACT limits for its hot and cold rolling mills. USEPA agreed to reconsider the RACT control requirements for Reynolds' aluminum rolling operations and, on September 22, 1993, proposed site-specific RACT control requirements for these operations. In this rule the USEPA is promulgating these site-specific RACT limits.

EFFECTIVE DATE: This rule is effective April 10, 1995.

ADDRESSES: The docket for this action (Docket No. A–92–67), which contains the public comments, is located for public inspection and copying at the following addresses. A reasonable fee may be charged for copying. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Rachel Romine (202/245–3639) before visiting the Washington, D.C. location.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 18th Floor, Southwest, 77 West Jackson Blvd., Chicago, Illinois 60604.

Office of Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, Docket No. A–92–67, Room M1500, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, USEPA Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

Part D of the Clean Air Act (Act), 42 U.S.C. 7401 et seq., requires that states adopt rules for major non-CTG [1] sources.

[1] Control techniques guideline documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category.

This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372). On July 21, 1988, Illinois submitted a rule which covered major (100 tons per year or more) non-CTG VOC sources. This rule was disapproved by USEPA on June 29, 1990 (55 FR 26814), primarily because its applicability provisions were inconsistent with USEPA requirements. Among other defects, Illinois' non-CTG rule did not regulate the rolling operations at Reynolds' McCook facility.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis.

On May 25, 1988, USEPA released a guidance document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Blue Book"). The purpose of this VOC guidance document was to identify deficiencies which must be removed from existing State Implementation Plans (SIP) and disapproved in any proposed SIPs. This document specifies USEPA's non-CTG RACT requirements.

On January 18, 1989, the District Court in *Wisconsin* v. *Reilly* ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement called for the use of a more sophisticated air quality model, allowed more time for USEPA to promulgate a FIP using the model,[2] and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM [3] RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989, USEPA proposed major non-CTG rules consistent with its May 25, 1988, VOC guidance (54 FR 53080). The non-CTG rules proposed for promulgation by USEPA covered Reynolds' aluminum rolling operations. On June 29, 1990, USEPA took final action to promulgate major non-CTG rules. 55 FR 26814.

On August 29, 1990, Reynolds filed a petition for review of USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al.* v. *Reilly*, No. 90–2778.

On August 19, 1991, Reynolds requested that USEPA reconsider the FIP rule as it applies to its aluminum rolling operations and on October 17, 1991, Reynolds requested the adoption of site-specific RACT limits for its hot and cold rolling mills. On November 20, 1991, USEPA announced its intention to reconsider its non-CTG rules as they apply to Reynolds, and issued a three-month stay of the applicable rule pending reconsideration, pursuant to section 307(d)(7)(B) of the Act, 42 U.S.C. 7607(d)(7)(B). 56 FR 58501. In addition, on November 20, 1991, USEPA proposed to extend the three-month stay, but only as long as necessary to complete reconsideration. 56 FR 58528. On June 23, 1992, USEPA extended the stay beyond the 3-month period, for as long as necessary to complete reconsideration of its non-CTG rules for Reynolds' aluminum rolling operations. 57 FR 27935.

As a result of USEPA's decision to reconsider the Federal rules as applied to Reynolds, USEPA reviewed information regarding Reynolds' rolling operations and, on September 22, 1993 (58 FR 49254), proposed to promulgate site-specific RACT control requirements for Reynolds' aluminum rolling operations. On October 20, 1993, Reynolds submitted comments in response to the proposed rule.

[2] USEPA is no longer required to promulgate a FIP using the modeling results because the settlement agreement relieves USEPA of such responsibility in the event that amendments to the Act establish new deadlines for States to achieve attainment of the ozone standard. The primary responsibility for developing any remaining revisions to Illinois' SIP belongs to Illinois because the Clean Air Act Amendments of 1990 establish such new deadlines.

[3] The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to USEPA's term "VOC."

II. Discussion of Reynolds' Comments

Reynolds stated in its comments on the proposal that it supports USEPA's promulgation of the site-specific RACT control requirements for its aluminum rolling operations. However, it requested "the following minor changes to the proposed rule to better reflect our current operations." These comments were clarified in a July 20, 1994, discussion with the author of Reynolds' comments. Reynolds' comments and USEPA's analysis of these comments follow.

A. Reynolds stated that the preamble should be made consistent with the regulatory language regarding lubricant cooling requirements. Reynolds requested that the part of the preamble titled "RACT Demonstration for Cold Rolling Operations" be modified by stating that "* * * RACT should reasonably require that sump oil temperatures be maintained at 150 degrees F or less." instead of "* * * RACT should reasonably require that sump oil temperatures be maintained at 150 degrees F." USEPA agrees with the point of Reynolds' comment and clearly intended for 150 degrees F to be a maximum temperature because VOC emissions are reduced at lower temperatures. The regulation that USEPA is promulgating for Reynolds is consistent with a maximum temperature requirement of 150 degrees F.

B. In its notice of proposed rulemaking (NPR), USEPA specified the use of "severely hydrotreated mineral seal oil" (a lubricant) for Reynolds' cold rolling mills. USEPA further specified that the initial and final boiling points of the lubricant must be between 460 degrees F and 635 degrees F, as determined by a distillation range test using ASTM method D86–90.

Reynolds requested that it be allowed some flexibility in the specification of the cold rolling lubricant type that is allowed in case improved lubricants become available. More specifically, it requested the ability to use a low vapor pressure (as determined by the distillation range test discussed above) organic lubricant and not be limited to the use of "severely hydrotreated mineral seal oil." Reynolds' request is reasonable because the lubricant emissions are a function of the initial boiling point and it has not requested that the initial boiling point of 460 degrees F be changed. This lubricant RACT control requirement is, therefore, revised in this final rule, consistent with Reynolds' request.

C. The proposed rule limits the inlet sump rolling lubricant temperature to 150 degrees F for Reynolds' cold rolling

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mills and 200 degrees F for its hot rolling mills. In its comments Reynolds states that, in some cases, the lubricant is heated or cooled after the sump but prior to the lubricant nozzles. Thus, measuring temperature in the inlet sump may not always be representative.

USEPA agrees with Reynolds that the temperature of the inlet lubricant supply measured after the inlet sump would be more reflective of the as-applied lubricant temperature and, therefore, the final rule allows temperature measurement after the inlet sump.

D. The proposed rule requires chart recorders for coolant temperature monitoring and coolant temperature recording charts to satisfy recordkeeping requirements. Although Reynolds has installed chart recorders, it would like the option of moving to an electronic data system in the future. USEPA agrees that the use of electronic temperature recorders is an acceptable alternative, and could greatly facilitate data review. Therefore, the final rule allows use of electronic data recorders.

III. Specific RACT Control Requirements and Test Methods

A. Cold Rolling Mills

RACT for the aluminum sheet cold rolling mills Nos. 1 and 7 at the McCook Sheet & Plate plant is the use of a low vapor pressure (as determined by distillation range testing) organic lubricant and a maximum inlet supply rolling lubricant temperature of 150°F. Compliance shall be demonstrated by a monthly distillation range analysis of a grab rolling lubricant sample from each operating mill and daily rolling lubricant temperature readings in the inlet supply feeding each mill.

All incoming shipments of lubricant for the Nos. 1 and 7 cold mills must be sampled and each sample must undergo a distillation range test using ASTM method D86–90, "Standard Test Method for Distillation of Petroleum Products." The initial and final boiling points of the lubricant must be between 460°F and 635°F. Also, for the cold mills, samples of the as-applied lubricants must be taken on a monthly basis to verify, using ASTM method D86–90, that the boiling points are between 460°F and 635°F.

B. Hot Rolling Mills

RACT for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch and 145 inch mills, at the McCook Sheet & Plate plant is the use of an oil/water emulsion (rolling lubricant) not to exceed 15% by weight of petroleum-based oil and additives and a maximum inlet supply rolling lubricant temperature of 200°F. Compliance shall be demonstrated by a monthly analysis of a grab rolling lubricant sample from each operating mill and daily temperature readings in the inlet supply feeding each mill.

The lubricants at each hot mill must be sampled and tested, for the percentage of oil and water, on a monthly basis. ASTM Method D95–83 (Reapproved 1990), "Standard Test Method For Water in Petroleum Products and Bituminous Materials by Distillation", shall be used to determine the percent by weight of petroleum-based oil and additives.

C. Coolant Temperature Monitoring

Coolant temperatures shall be monitored at all of the rolling mills by use of thermocouple probes and chart recorders or electronic data recorders. The probes sense the coolant temperatures at the supply side to the mills.

D. Recordkeeping

All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts and/or temperature data obtained from electronic data recorders, and all oil/water emulsion formulation records shall be kept on file, and be available for inspection by USEPA, for three years.

IV. Compliance Date

A compliance date of four months from promulgation is required so that Reynolds has adequate time to comply with revised recordkeeping requirements.

V. Summary and Conclusions

This rule establishes site-specific RACT requirements, revised recordkeeping requirements, and revised test methods for Reynold's aluminum rolling mills. These requirements are consistent with USEPA's notice of proposed rulemaking as modified by Reynolds' comments. The use of lower VOC emitting lubricants and lubricant temperature control has been previously approved by USEPA as RACT for another aluminum rolling mill (55 FR 33904). Compliance with the revised emission limits and recordkeeping requirements must be achieved four months from USEPA's publication of this rule. Also, as proposed, the USEPA is withdrawing the June 23, 1992, stay.

USEPA is taking this action pursuant to its authority under section 110(k)(6) of the Act to correct through rulemaking any plan or plan revision.[4] The USEPA is interpreting this provision to authorize USEPA to make corrections to a promulgated regulation when it is shown to USEPA's satisfaction that the information made available to USEPA at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and other information persuasively supports a change in the regulation. See 57 FR 6762 at 6763 (November 30, 1992). In this case, the information made available to USEPA during the rulemaking for Reynolds was clearly inadequate for the development of a site-specific RACT determination.[5]

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action involves only one source, Reynolds Metals Company. (Reynolds is not a small entity.) Therefore, USEPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

[4] Since USEPA is taking this action pursuant to section 110(k)(6), USEPA believes that section 193 of the Act (the savings clause) is inapplicable. By its terms, section 110(k)(6) does not require any additional submission or evidence. Section 193 requires an assurance of equivalency for any revision. In order to provide for equivalency, the State would need to provide for compensating reductions. USEPA believes that this conflict should be resolved concluding that section 110(k)(6) is not constrained by the savings clause requirement of equivalent reductions. USEPA believes that the state and the sources within the state should not have to bear the burden of additional reductions where USEPA lacked important site-specific information at the time of an initial promulgation. This is particularly true in the case of FIPs, where USEPA takes the lead in developing the regulations and is not merely acting on state-submitted regulations.

[5] As discussed earlier, USEPA was required to promulgate the June 29, 1990 FIP regulations under the tight timeframe ordered by the Court in *Wisconsin* v. *Reilly*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

Section 52.741 is amended by adding a new paragraph (x)(7) and revising paragraph (z)(4) as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(x) * * *

(7) The control, recordkeeping, and monitoring requirements in this paragraph apply to the aluminum rolling mills at the Reynolds Metals Company's McCook Sheet & Plate Plant in McCook, Illinois (Cook County) instead of the control requirements and test methods in the other parts of paragraph (x), and the recordkeeping requirements in paragraph (y) of this section. All of the following requirements must be met by Reynolds on and after July 7, 1995.

(i) Only organic lubricants with initial and final boiling points between 460 degrees F and 635 degrees F, as determined by a distillation range test using ASTM method D86–90, are allowed to be used at Reynolds' aluminum sheet cold rolling mills numbers 1 and 7. All incoming shipments of organic lubricant for the number 1 and 7 mills must be sampled and each sample must undergo a distillation range test to determine the initial and final boiling points using ASTM method D86–90. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample must undergo a distillation range test, to determine the initial and final boiling points, using ASTM method D86–90.

(ii) An oil/water emulsion, with no more than 15 percent by weight of petroleum-based oil and additives, shall be the only lubricant used at Reynolds' aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample shall be tested for the percent by weight of petroleum-based oil and additives by ASTM Method D95–83.

(iii) The temperature of the inlet supply of rolling lubricant for aluminum sheet cold rolling mills numbers 1 and 7 shall not exceed 150 °F, as measured at or after (but prior to the lubricant nozzles) the inlet sump. The temperature of the inlet supply of rolling lubricant for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills shall not exceed 200 °F, as measured at or after (but prior to the lubricant nozzles) the inlet sump. Coolant temperatures shall be monitored at all the rolling mills by use of thermocouple probes and chart recorders or electronic data recorders.

(iv) All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts and/or temperature data obtained from electronic data recorders, and all oil/water emulsion formulation records, shall be kept on file, and be available for inspection by USEPA, for three years.

* * * * *

(z) * * *

(4) 40 CFR 52.741(e), only as it applies to Riverside Laboratories Incorporated, is stayed from June 12, 1992, until USEPA completes its reconsideration for Riverside.

* * * * *

[FR Doc. 95–6002 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[FRL–5170–1]

Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Coke Oven Batteries; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting delegation of authority to the State of Utah to implement and enforce the National Emission Standards for Coke Oven Batteries. The Governor of Utah requested delegation from EPA Region VIII in a letter dated August 18, 1994. EPA has reviewed the application and has reached a decision that the State of Utah has satisfied all of the requirements necessary to qualify for approval of delegation. The effect of this action allows the State of Utah to implement and enforce Clean Air Act standards for coke oven batteries.

DATES: This action is effective May 9, 1995 unless adverse comments are received by April 10, 1995. If the effective date is delayed due to comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be submitted to Patricia D. Hull, Director, Air, Radiation & Toxics Division, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and concurrently to Russell A. Roberts, Director, Division of Air Quality, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114–4820. A docket containing State of Utah's submittal is available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: T. Scott Whitmore at (303) 293–1758.

SUPPLEMENTARY INFORMATION:

Background

The 1990 Amendments to the Clean Air Act provide a congressional mandate to establish emission standards regulating coke oven emissions. Under section 112(d)(8), the EPA must promulgate standards based on specified minimum requirements and work practice regulations. On October 27, 1993, the EPA met this requirement by promulgating in the **Federal Register** (58 FR 57534) the national standards for coke oven emissions. The standard applies to all existing coke oven batteries, including by-product and nonrecovery coke oven batteries, and to all new coke oven batteries constructed on or after December 4, 1992.

On August 18, 1994 the Governor of Utah requested delegation of authority to implement and enforce 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries. Prior to this request, the State of Utah implemented the criteria for delegation as described in 40 CFR 63.91(b), *Criteria common to all approval options.* Criteria for approval to delegate include a written finding by the State Attorney General that the State has the necessary legal authority to implement and

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enforce the rule; state statutes, regulations, and other provisions that contain the appropriate authority to implement and enforce the rule, a demonstration of adequate resources, a schedule demonstrating expeditious implementation of the rule, and a plan that assures expeditious compliance by all sources subject to the rule. Utah, concurrently with its request for delegation, submitted documentation demonstrating it meets the criteria necessary for granting approval.

As required by 40 CFR 63.91(a)(2), the EPA is seeking public comments for 30 days. The comments shall be submitted concurrently to the State of Utah and to EPA. The State of Utah can then submit a response to the comments to EPA.

EPA is approving the State of Utah's request for delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to this rule, this **Federal Register** notice will serve as the final notice of the approval to delegate the implementation and enforcement of this program. The effective date will be 60 days from the date of this publication and no further activity will be contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the accompanying proposed rule which appears in the Proposed Rule Section of this **Federal Register**. However, EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Final Action

Through review of the documentation submitted to EPA and knowledge of Utah's implementation activities for these standards, EPA has determined that the State of Utah meets all of the statutory and regulatory requirements established by Section 112 of the Clean Air Act, as amended in 1990, and 40 CFR Part 63 for the implementation and enforcement of the National Emission Standards for Coke Oven Batteries. Therefore, pursuant to Section 112(l) of the Clean Air Act, as amended in 1990, 42 U.S.C. 7412(l), and 40 CFR Part 63, EPA hereby delegates its authority to the State of Utah for the implementation and enforcement of the National Emission Standards for Coke Oven Batteries for all sources located, or to be located in the State of Utah.

Please note that not all authorities for the NESHAP can be delegated to the state. The EPA Administrator retains authority to implement those portions of the national emission standards and their general provisions that require approval of equivalency determinations and alternative test methods, decision-making to ensure national consistency, and EPA rulemaking to implement. Sections not delegable include, but are not limited, to the authorities listed as not delegable in 40 CFR part 63, subpart L, under Delegation of Authority.

As these National Emission Standards for Coke Oven Batteries are updated, Utah should revise its rules and regulations accordingly and in a timely manner.

EPA retains concurrent enforcement authority. If at any time there is a conflict between the state and federal regulations, the federal regulations must be applied if they are more stringent than the state regulations.

Effective May 9, 1995 all notices, reports, and other correspondence required under 40 CFR part 63, subpart L, should be sent to the State of Utah rather than to EPA Region VIII, Denver, Colorado.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations.

Authority: 42 U.S.C. 7412.

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 95–5978 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[NM002; FRL–5169–6]

Clean Air Act Interim Approval of Operating Permits Program; City of Albuquerque Environmental Health Department, Air Pollution Control Division

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: The EPA published without prior proposal a **Federal Register** (FR) notice promulgating interim approval of the operating permits program submitted by the New Mexico Governor's designee, Mr. Lawrence Rael, for the City of Albuquerque as Chief Administrative Officer, and for Bernalillo County as the administrative head of the Albuquerque/Bernalillo County Operating Permits Program, for the purpose of complying with the Federal requirements of an approved program to issue operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands. This submittal for the operating permits program was made by the City of Albuquerque on April 4, 1994. EPA's direct final approval was published on January 10, 1995 (60 FR 2527).

The EPA subsequently received comments from the American Forest and Paper Association (AF&PA) on the action. Two comments were received from this commenter: one with respect to the definition of "Title I modification" and the other regarding the implementation of section 112(g). A letter from National Environmental Development Association/Clean Air Regulatory Project was received by the EPA approximately two weeks after the close of the public comment period. That letter set out the same comments expressed by the AF&PA, and will be added to the EPA's docket for the approval of the Albuquerque Operating Permits Program although not discussed further in this notice.

With respect to the definition of Title I modification, the AF&PA noted that the Albuquerque definition of "Title I modification" does not include changes reviewed under a minor source preconstruction review program ("minor NSR changes"). AF&PA stated its belief that this was consistent with the relatively narrow definition of Title I modification which AF&PA believed is contained in the current Part 70 rules. The AF&PA also noted that EPA has recently proposed changing its current definition of "Title I modification" to expressly include virtually any change that constitutes a modification under any provision of Title I of the Act. 59 FR 44572 (August 29, 1994). The AF&PA noted that EPA in prior months had conditioned either interim or full approval of several States' operating permit programs on the adoption of such a definition, which is broader than that contained in the Albuquerque Operating Permits Program. However, the AF&PA noted that EPA was now taking no position on the Albuquerque Operating Permits Program definition of "Title I modification" as grounds for either interim approval or disapproval of the program. The AF&PA in its comments stated that it supports this new approach by EPA of not taking a position on Albuquerque's narrower definition.

Because this comment is not adverse to the position taken by EPA in its Direct Final Rule approving the Albuquerque Operating Permits Program, it does not require the withdrawal of the Direct Final Rule promulgating interim approval of the City's Program.

In its comment involving the implementation of Federal Clean Air Act section 112(g), the AF&PA objected to EPA's proposed approval of Albuquerque's stated intention to use its preconstruction permit process to implement the section 112(g) requirements of its operating permits program prior to the promulgation of a final Federal 112(g) rule. The AF&PA acknowledged that, based on comments submitted by AF&PA and others, the EPA might revise its position that section 112(g) requirements take effect upon approval of a State's Title V program, and instead allow States to defer implementing the modification provisions of section 112(g) until sometime after the final Federal rule is promulgated, an action which AF&PA stated it believes would be appropriate [1].

On February 8, 1995, the Administrator of EPA signed an interpretive notice which was published at 60 FR 83333 (February 14, 1995), delaying the implementation of section 112(g) for both new and existing sources. This delay of implementation of section 112(g) renders AF&PA's comment moot.

Accordingly, the direct final interim approval of the Albuquerque Operating Permits Program will not be withdrawn and will remain final as published January 10, 1995 (60 FR 2527).

EFFECTIVE DATE: Will be effective on March 13, 1995 as published in 60 FR 2527.

FOR FURTHER INFORMATION CONTACT: Ms. Adele D. Cardenas, New Source Review Section (6T-AN), Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7210.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedures, Intergovernmental relations, Operating permits.

Authority: 42 U.S.C. 7401, *et seq.*

Therefore, the final rule appearing at 60 FR 2527, January 10, 1995, remains as published and will be effective March 13, 1995.

[1] Section 112(g) of the Clean Air Act requires the case-by-case establishment of Maximum Achievable Control Technology standards for any "modified" major sources of hazardous air pollutant emissions. The source is "modified" whenever a "physical change or change in the method of operation" results in a greater than de minimis increase in actual emissions of hazardous air pollutants, unless that increase will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous. 42 U.S.C. § 7412(g)(1)(A).

Dated: March 3, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 95–5982 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400082B; FRL–4929–2]

Toxic Chemical Release Reporting; Community Right-to-Know; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: This document corrects seven errors and clarifies one listing in the final rule published in the **Federal Register** of November 30, 1994, in which EPA promulgated the addition of 286 chemicals and chemical categories to section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. Five of the errors are typographical errors, two for the Chemical Abstracts Service (CAS) registry numbers for isophorone diisocyanate and metribuzin and three for the spelling of the chemical names for acifluorfen, sodium salt, dicamba, and 4-methyldiphenylmethane-3,4-diisocyanate. The sixth correction is to remove the listing for flumetralin, which the Agency has deferred for listing, from the CAS order list in the regulations. The seventh correction is an editing error in the chemical formula for the polychlorinated alkanes category. In addition, EPA is clarifying the listing for the polychlorinated alkanes category. This document corrects these errors and makes the above referenced clarification.

EFFECTIVE DATE: This document is effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Project Manager, 202–260–9592 for specific information on this document. For general information on EPCRA contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. CAS Number Corrections

In the **Federal Register** of November 30, 1994 (59 FR 61432), EPA issued the final rule adding chemicals to the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 list of toxic chemicals. The Chemical Abstract Service (CAS) number for isophorone diisocyanate was incorrectly published as "004098–71–0" in the preamble on: (1) Page 61436, second column of the table, seventh entry, (2) page 61454, second column, eighth line from the bottom, and (3) in the regulatory text, § 372.65(c), on page 61484, 11th entry under the diisocyanates category. The correct CAS number for isophorone diisocyanate is "004098–71–9". In addition, the CAS number for metribuzin was incorrectly published in the preamble as "021087–64–5" on page 61437, second column of the table, 26th entry, and in the regulatory text, § 372.65(a), as "21087–64–5" on page 61477, second column of the table, ninth entry, and page 61483, first column of the table, 26th entry. The correct CAS number is "21087–64–9".

The chemical name for acifluorfen, sodium salt was spelled incorrectly in the preamble as "[5-(2-Chloro-4-(triflouromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt]" on: (1) Page 61434, first column of the table, third entry, and (2) in the regulatory text, § 372.65(a), page 61473, first column of the table, third entry, and § 372.65(b), page 61484, second column of the table, 12th entry. The correct spelling is "acifluorfen, sodium salt [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt]".

The chemical name for dicamba was incorrectly spelled in the preamble as "(3,6-Dichloro-2-methyoxybenzoic acid)" on: (1) Page 61435, first column of the table, 38th entry, and (2) in the regulatory text, § 372.65(a), page 61475, first column of the table, 12th entry, and § 372.65(b), page 61482, second column of the table, 13th entry. The correct spelling is "dicamba (3,6-Dichloro-2-methoxybenzoic acid)".

In the regulatory text, § 372.65(c), page 61484, first column, the 12th entry under the diisocyanates category was incorrectly listed as "4-methyldiphenylmethane-3,4-diisocyante". The correct spelling is "4-methyldiphenylmethane-3,4-diisocyanate".

II. Chemical Listing Corrections and Clarification

Also in the **Federal Register** of November 30, 1994 (59 FR 61432), the chemical flumetralin was listed in the regulatory text, § 372.65(b), on page 61484. EPA did not finalize the addition of flumetralin in this rulemaking and it should not be listed in the regulations. Therefore, EPA is removing the entry for flumetralin from § 372.65(b). EPA has deferred final action on the listing of flumetralin under EPCRA section 313 until a later date (see 59 FR 61439).

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The chemical formula for the polychlorinated alkanes category was shown as "$C_xH_{2x-y}Cl_y$" in: (1) The preamble on page 61463, second column, first full paragraph, line seven, and (2) the regulatory text, § 372.65(c), on page 61485, column one of the table, first entry. The correct formula for the polychlorinated alkanes category is "$C_xH_{2x-y+2}Cl_y$". EPA is also clarifying the listing for the polychlorinated alkanes category. The listing for this category is changed to "polychlorinated alkanes (C_{10} to C_{13})". This clarification is intended to provide more consistency between the name of the category and the chemical formula. All other information pertinent to this category is correct in the final rule.

Dated: February 27, 1995.

Susan B. Hazen

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65 by revising the entries for acifluorfen, sodium salt [5-(2-Chloro-4-(triflouoromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt], dicamba (3,6-Dichloro-2-methyoxybenzoic acid), and metribuzin in paragraph (a), revising the entries for 1918–00–9, 21087–64–5, and 62476–59–9 and removing the entry for 62924–70–3 in paragraph (b), and revising under the Diisocyanates category, the entries for isophorone diisocyanate and 4-methyldiphenylmethane-3,4-diisocyanate, and revising the category entry for polychlorinated alkanes in paragraph (c) to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

(a) * * *

Chemical Name	CAS No.	Effective Date
. . . . .	.	.
Acifluorfen, sodium salt [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt]	62476–59–9	1/1/95
. . . . .	.	.
Dicamba (3,6-Dichloro-2-methoxybenzoic acid)	1918–00–9	1/1/95
. . . . .	.	.
Metribuzin	21087–64–9	1/1/95
. . . . .	.	.

(b) * * *

CAS No.	Chemical Name	Effective Date
. . . . .	.	.
1918–00–9	Dicamba (3,6-Dichloro-2-methoxybenzoic acid)	1/1/95
. . . . .	.	.
21087–64–9	Metribuzin	1/1/95
. . . . .	.	.
62476–59–9	Acifluorfen, sodium salt [5-(2-Chloro-4-(trifluoromethyl) phenoxy)-2-nitrobenzoic acid, sodium salt]	1/1/95
. . . . .	.	.

(c) * * *

Category Name		Effective Date
. . . . .		.
Diisocyanates		
. . . . .		.
004098–71–9	Isophorone diisocyanate	1/1/95
075790–74–0	4-Methyldiphenylmethane-3,4-diisocyanate	1/1/95
. . . . .		.
Polychlorinated alkanes (C_{10} to C_{13}): Includes those chemicals defined by the following formula: $C_xH_{2x-y+2}Cl_y$ where x= 10 to 13; y= 3 to 12; and where the average chlorine content ranges from 40–70% with the limiting molecular formulas $C_{10}H_{19}Cl_3$ and $C_{13}H_{16}Cl_{12}$.		1/1/95

Category Name	Effective Date
. . . . .	.

[FR Doc. 95–5984 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7127]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: New Haven County.	Town of Madison	January 4, 1995, January 11, 1995, *Shoreline Times*.	Mr. Thomas Rylander, First Selectman for the Town of Madison, Eight Campus Drive, Madison, Connecticut 06443.	December 22, 1994.	090079 C

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State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Orange County	Unincorporated areas ..	January 18, 1995, January 25, 1995, *Orlando Sentinel.*	Ms. Jean Bennett, Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802–1393.	January 11, 1995.	120179 C
Georgia: Cobb County .	Unincorporated areas ..	December 6, 1994, December 13, 1994, *Marietta Daily Journal.*	Mr. William J. Byrne, Chairman of the Board of Commissioners, 100 Cherokee Street, Suite 300, Marietta, Georgia 30090–9680.	November 29, 1994.	130052 F
Georgia: Gwinnett County.	Unincorporated areas ..	January 10, 1995, January 17, 1995, *Gwinnett Post Tribune.*	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Supervisors, 75 Langley Drive, Lawrenceville, Georgia 30245.	April 17, 1995.	130322
Illinois: Unincorporated Areas.	Cook County	September 2, 1994, September 9, 1994, *The Chicago Tribune.*	Mr. Richard J. Phelan, President of the Cook County Board of Commissioners, 118 North Clark Street, Suite 537, Chicago, Illinois 60602.	August 26, 1994.	170054 B
Illinois: McHenry County.	Lake-In-The-Hills (Village).	January 20, 1995, January 27, 1995, *The Northwest Herald.*	Ms. Christine Thornrose, President of the Village of Lake-In-The-Hills, 1115 Crystal Lake Road, Lake-In-The-Hills, Illinois 60102.	April 27, 1995.	170481 C
Indiana: Vigo County	Unincorporated areas ..	December 30, 1994, January 6, 1995, *Tribune-Star.*	Mr. John A. Scott, President of the Vigo County, Board of Commissioners, Vigo County Security Annex, 201 Cherry Street, Terre Haute, Indiana 47807.	April 5, 1995	180263
North Carolina: Gaston County.	City of Gastonia	January 17, 1995, January 24, 1995, *The Gaston Gazette.*	The Honorable James B. Garland, Mayor of the City of Gastonia, P.O. Box 1748, Gastonia, North Carolina 28053–1748.	January 10, 1995.	370100 D
Ohio: Franklin and Delaware Counties.	City of Westerville	January 18, 1995, January 25, 1995, *Westerville News and Public Opinion.*	Mr. David Lindimore, Manager of the City of Westerville, 21 South State Street, Westerville, Ohio 43081.	April 25, 1995.	390179 F
Pennsylvania: Berks County.	Borough of Wyomissing.	December 19, 1994, December 26, 1994, Times-Eagle.	Mr. David Y. Bausher, Manager of the Borough of Wyomissing, 22 Reading Boulevard, Wyomissing, Pennsylvania 19610–2083.	December 12, 1994.	421375 A
South Carolina: Lexington County.	Unincorporated areas ..	December 14, 1994, December 21, 1994, *The State.*	Mr. Bruce Rucker, Chairman of the Lexington County Council, 212 South Lake Drive, Lexington, South Carolina 29072.	December 7, 1994.	450129

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–5972 Filed 3–9–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Delaware	
Bethany Beach (town), Sussex County (FEMA docket No. 7093)	
Atlantic Ocean:	
At Maplewood Street extended	*15
At intersection of Wiegand Lane and Central Boulevard	*7
Maps available for inspection at the Town Hall, 214 Garfield Parkway, Bethany Beach, Delaware.	
Bethel (town), Sussex County (FEMA docket No. 7093)	
Broad Creek:	
Approximately 1.3 miles downstream of County Road 493 (Bethel Bridge)	*6
Approximately 2,100 feet downstream of County Road (Bethel Bridge)	*6
Maps available for inspection at the Town Hall, Sailors Path, Bethel, Delaware.	
Bridgeville (town), Sussex County (FEMA docket No. 7093)	
Bridgeville Branch:	
Approximately 1,300 feet downstream of Business U.S. Route 13 (Main Street)	*32
Approximately 1,650 feet upstream of North Cannon Street	*38
Maps available for inspection at the Town Hall, 101 North Main Street, Bridgeville, Delaware.	
Dagsboro (town), Sussex County (FEMA docket No. 7093)	
Pepper Creek:	
At confluence of Pepper Creek Fork 1	*8
At confluence of Pepper Creek Fork 3	*15
Pepper Creek Fork No. 1:	
At confluence with Pepper Creek	*8
Approximately 0.4 mile upstream of CONRAIL bridge	*23
Pepper Creek Fork 2:	
Approximately 20 feet upstream of confluence with Pepper Creek	*10
Approximately 0.4 mile upstream of CONRAIL	*31
Pepper Creek Fork 3:	
At confluence with Pepper Creek	*15
Approximately 1,200 feet upstream of County Road 406 (Swamp Road) ..	*33
Maps available for inspection at the Town Hall, 504 Main Street, Dagsboro, Delaware.	
Dewey Beach (town), Sussex County (FEMA docket No. 7093)	
Atlantic Ocean:	
At Cullen Street (extended)	*15
Approximately 500 feet east of intersection of State Route 1 and Read Avenue	#2
Rehoboth Bay:	
Approximately 800 feet west of intersection of U.S. Route 1 and Dagsworthy Avenue	**8
Maps available for inspection at the Town Hall, 105 Rodney Avenue, Dewey Beach, Delaware.	
Fenwick Island (town), Sussex County (FEMA docket No. 7093)	
Atlantic Ocean:	
At Cannon Street (extended)	*15
Approximately 300 feet west of intersection of Houston Street and State Route 1	*7
Little Assawoman Bay:	
At intersection of Schultz Road and Dagsboro Street	*6
Maps available for inspection at the Town Hall, 800 Coastal Highway, Fenwick Island, Delaware.	
Frankford (town), Sussex County (FEMA docket No. 7093)	
Vines Creek:	
Upstream side of County Road 376 (Main Street)	*30
Upstream corporate limits	*31
Maps available for inspection at the Frankford Town Hall, 5 Main Street, Frankford, Delaware.	
Greenwood (town), Sussex County (FEMA docket No. 7093)	
Cart Branch:	
Approximately 1,700 feet downstream of Governors Avenue	*45
Approximately 650 feet upstream of CONRAIL	*51
Maps available for inspection at the Town Hall, The Plaza, Greenwood, Delaware.	
Henlopen Acres (town), Sussex County (FEMA docket No. 7093)	
Atlantic Ocean:	
At Rolling Road (extended)	*15
At intersection of Rolling Road and Duneway Avenue (east side of Duneway Avenue)	*9
Lewes and Rehoboth Canal:	
Approximately 500 feet northeast of intersection of Tidewaters Road and Rolling Road	*7
Approximately 1,000 feet west of intersection of Tidewaters Road and Zwaanendael Road	*7
Maps available for inspection at the Town Hall, 104 Tidewaters Road, Henlopen Acres, Delaware.	
Laurel (town), Sussex County (FEMA docket No. 7093)	
Broad Creek:	
Approximately 100 feet upstream of Delaware Avenue	*6
Downstream side of Willow Street	*6
Rossakatum Branch:	
At confluence with Broad Creek	*6
Approximately 0.7 mile upstream of Oak Lane Drive	*23
Georgetown Road Branch:	
Approximately 100 feet upstream of confluence with Records Pond	*12

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,400 feet upstream of County Road 466 (Delaware Avenue)	*22
Little Creek:	
At confluence with Broad Creek	*6
Approximately 1.0 mile upstream of County Road 492 (West Sixth Street)	*13
Maps available for inspection at the Town Hall, Poplar and Mechanics Streets, Laurel, Delaware.	
Lewes (city), Sussex County (FEMA docket No. 7093)	
Delaware Bay:	
At Roosevelt Inlet	*14
At intersection of Indiana Avenue and Bay Avenue	*10
Maps available for inspection at the City Hall, East Third Street, Lewes, Delaware.	
Milford (city), Sussex County (FEMA docket No. 7093)	
Presbyterian Branch:	
At downstream side of Kings Highway	*11
Approximately 1,350 feet upstream of U.S. Route 113	*21
Mispillion River:	
At downstream side of State Route 1 (Rehoboth Boulevard)	*9
Approximately 0.6 mile downstream of State Route 1 (Rehoboth Boulevard)	*9
Deep Branch:	
At downstream side of Star Route 1	*9
At confluence of Mispillion River	*9
Maps available for inspection at the City Hall, 201 South Walnut Street, Milford, Delaware.	
Millsboro (town), Sussex County (FEMA docket No. 7093)	
Iron Branch:	
At confluence with Whartons Branch	*8
Approximately 0.5 mile upstream of U.S. Route 113	*19
Indian River:	
Approximately 0.8 mile downstream of State Route 24 (Main Street)	*8
Approximately 50 feet downstream of confluence of Bark Pond and Mirey Branch	*10
Betts Pond:	
At confluence with Millsboro Pond	*9
Approximately 750 feet downstream of U.S. Route 13	*15
Maps available for inspection at the Town Hall, 322 Wilson Highway, Millsboro, Delaware.	
Millville (town), Sussex County (FEMA docket No. 7093)	
White Creek:	
Approximately 900 feet upstream of Old Mill Road	*8
Approximately 150 feet upstream of Warren Road	*12
Maps available for inspection at the Millville Service Center, Corner of County Road 347 and Route 26, Millville, Delaware.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Milton (town), Sussex County (FEMA docket No. 7093)	
Ingram Branch:	
At confluence with Wagamons Pond	*9
Approximately 200 feet downstream of CONRAIL	*9
Round Pole Branch:	
At upstream side of County Road 88 (Atlantic Avenue)	*9
Approximately 700 feet upstream of Cannery Bridge	*20
Maps available for inspection at the Town Hall, 101 Federal Street, Milton, Delaware.	
Ocean View (town), Sussex County (FEMA docket No. 7093)	
Indian River Bay Affecting White Creek:	
Approximately 0.6 mile downstream of confluence of White Creek Ditch	*8
At confluence of White Creek Ditch	*8
Indian River Bay Affecting White Creek Ditch:	
At confluence with White Creek	*8
Approximately 0.4 mile upstream of County Road 84 (Central Avenue)	*8
Maps available for inspection at the Town Hall, 32 Oakwood Avenue, Ocean View, Delaware.	
Rehoboth Beach (city), Sussex County (FEMA Docket No. 7093)	
Atlantic Ocean:	
At Delaware Avenue (extended)	*15
Approximately 750 feet northeast of intersection of Surf Avenue and Henlopen Avenue	*9
Lewes and Rehoboth Canal:	
Intersection of Lewes and Rehoboth Canal and Rehoboth Avenue	*7
Approximately 2.3 miles north of intersection of Lewes and Rehoboth Canal and Rehoboth Avenue	*10
Maps available for inspection at the City Hall, Building and Licensing Office, 229 Rehoboth Avenue, Rehoboth Beach, Delaware.	
Seaford (city), Sussex County (FEMA docket No. 7093)	
Herring Run (Williams Pond):	
At confluence with Clear Brook (Williams Pond)	*10
At upstream corporate limits	*30
Nanticoke River:	
Approximately 0.6 mile downstream of CONRAIL	*6
Approximately 0.5 mile upstream of confluence of Clear Brook	*6
Clear Book (Williams Pond):	
At confluence with Nanticoke River	*6
Approximately 450 feet upstream of U.S. Route 13	*10
Maps available for inspection at the City Hall, 302 East King Street, Seaford, Delaware.	
Selbyville (town), Sussex County (FEMA Docket No. 7093)	
Buntings Branch:	
Approximately 1,000 feet downstream of State Route 54	*12
At confluence of Polly Branch	*25
Sandy Branch:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence of Polly Branch	*25
At downstream side of County Road 60 (Gumboro Road)	*38
Maps available for inspection at the Town Hall, 68 West Church Street, Selbyville, Delaware.	
Slaughter Beach (town), Sussex County (FEMA docket No. 7093)	
Delaware Bay:	
At Virginia Avenue (extended)	*14
At intersection of Slaughter Neck Road and Bay Avenue	*9
Maps available for inspection at the Town Office/Slaughter Beach Fire Hall, Bay Avenue, Slaughter Beach, Delaware.	
South Bethany (town), Sussex County (FEMA docket No. 7093)	
Atlantic Ocean:	
At South 9th Street (extended)	*15
At intersection of Canal Drive and West 8th Street	*6
Approximately 300 feet east of intersection of State Route 1 and Indian Street	#2
Maps available for inspection at the Town Hall, 402 Evergreen Road, South Bethany, Delaware.	
Sussex County (unincorporated Areas) (FEMA docket No. 7093)	
Bridgeville Branch:	
Upstream of U.S. Route 13	*31
Approximately 900 feet upstream of U.S. Route 13	*32
Broad Creek:	
At downstream corporate limits for Town of Bethel	*6
Downstream side of U.S. Route 13	*12
Bark Pond:	
At confluence with Millsboro Pond	*10
Approximately 100 feet upstream of County Road 328	*12
Betts Pond:	
At confluence with Millsboro Pond	*9
Downstream side of U.S. Route 113	*15
Pepper Creek Fork 1:	
At confluence with Pepper Creek	*8
Approximately 0.4 mile upstream of CONRAIL	*28
Pepper Creek Fork 3:	
Approximately 75 feet upstream of confluence with Pepper Creek	*15
Approximately 0.2 mile upstream of County Road 406	*33
Georgetown Road Branch	
At confluence with Broad Creek	*12
Approximately 0.3 mile upstream of County Road 466	*22
Round Pole Branch:	
Approximately 200 feet upstream of Front Street	*9
Approximately 700 feet upstream of Cannery Bridge	*20
Broadkill River:	
Approximately 1 mile downstream of confluence of Round Pole Branch	*9
At confluence of Round Pole Branch	*9
Cart Branch:	
At upstream side of U.S. Route 13	*45
Approximately 650 feet upstream of CONRAIL	*51
Cedar Creek:	
At upstream side of State Route 30	*12

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.8 mile upstream of U.S. Route 113	*40
Church Branch:	
At upstream side of County Road 224	*12
Approximately 50 feet upstream of County Road 227	*48
Clear Brook:	
At confluence with Nanticoke River	*6
Approximately 0.3 mile upstream of County Road 48	*32
Deep Creek:	
At confluence with Nanticoke River	*6
Approximately 0.7 mile upstream of confluence of Tubbs Branch	*6
Deep Branch:	
Just upstream of State Route 1	*14
At Marshall Street	*15
Chapel Branch:	
At confluence with Burton Pond	*9
Approximately 1.2 miles upstream of confluence with Burton Pond	*10
Herring Creek:	
Approximately 0.8 mile downstream of confluence of Hopkins Prong	*7
At confluence of Chapel Branch	*9
Hopkins Prong:	
At confluence with Herring Creek	*7
At confluence of Phillips Branch	*8
Unity Branch:	
At confluence of Phillips Branch	*8
Approximately 0.5 mile upstream of County Road 302	*12
Indian River:	
At confluence of Warwick Gut	*8
At confluence of Bark Pond and Mirey Branch	*10
Ingram Branch:	
At confluence with Pemberton Branch (Wagamons Pond)	*9
Approximately 50 feet upstream of County Road 319	*19
Iron Branch:	
At confluence with Whartons Branch	*8
Approximately 0.5 mile upstream of U.S. Route 113	*19
Little Creek:	
At confluence with Broad Creek	*6
Approximately 1.2 miles upstream of County Road 492	*15
Love Creek:	
At upstream side of State Route 24	*7
Approximately 0.8 mile upstream of confluence of Goslee Creek	*8
Mirey Branch:	
At confluence with Millsboro Pond	*10
Approximately 0.5 mile upstream of County Road 326	*20
Nanticoke River:	
At confluence of Morgan Branch	*6
Approximately 3.3 miles upstream of confluence of Deep Creek	*9
Pepper Creek:	
Approximately 2.4 miles downstream of confluence of Pepper Creek Fork 1	*8
At confluence of Pepper Creek Fork 1	*8
Martin Branch (Red Mill Pond):	
At upstream of State Route 1	*9
Approximately 1.1 miles upstream of County Road 261	*16
Rossakatum Branch:	
Approximately 150 feet downstream of County Road 69	*15
Approximately 0.7 mile upstream of County Road 69	*23
Sowbridge Branch:	
Approximately 500 feet downstream of Northbound State Route 1	*9

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,100 feet upstream of U.S. Route 226	*46
Tantrough Branch:	
Approximately 600 feet upstream of U.S. Route 113	*16
Approximately 0.6 mile upstream of confluence of Beaverdam Branch	*35
Vines Creek:	
Approximately 0.8 mile downstream of County Road 92	*16
Approximately 0.5 mile upstream of County Road 376	*31
Whartons Branch:	
At confluence with Indian River	*8
Approximately 75 feet upstream of County Road 334	*17
White Creek:	
Approximately 0.7 mile downstream of confluence of White Creek Ditch	*8
Approximately 150 feet upstream of Warren Road	*12
Buntings Branch:	
Approximately 1,000 feet downstream of State Route 54	*12
At confluence of Polly Branch	*25
Sandy Branch:	
At confluence of Polly Branch	*25
Approximately 75 feet upstream of Gumboro Road	*38
White Creek Ditch:	
At confluence with White Creek	*8
Approximately 0.4 mile upstream of County Road 84 (Central Avenue)	*8
Slaughter Creek:	
Approximately 0.3 mile downstream of State Route 1	*9
At State Route 1	*9
Pemberton Branch (Wagamons Pond):	
At confluence with Broadkill River	*9
Approximately 50 feet downstream of CONRAIL	*11
Delaware Bay:	
Approximately 2,000 feet north of intersection of Farm Lane and County Road 201	*11
Approximately 1 mile northeast of intersection of State Route 36 and County Road 203	*14
Delaware Bay (Break Water Harbor):	
Approximately 1.5 miles south of intersection of U.S. Route 19 and Engineering Road	*8
Rehoboth Bay:	
At intersection of County Road 298 and Guinea Creek	*7
Approximately 1,000 feet east of intersection of State Route 1 and Key Box Road	*15
Indian River Bay:	
At Gut Point	*8
At Indian River Inlet	*15
Little Assawoman Bay:	
At intersection of Dirickson Creek and County Road 384	*6
Approximately 1,000 feet east of intersection of State Route 1 and Ocean Park Lane	*15
Chesapeake Bay: Nanticoke River and Broad Creek	*6
Herring Run:	
At confluence of Clear Brook (Williams Pond)	*10
Approximately 0.7 mile upstream of Alternate U.S. Route 13	*26
Atlantic Ocean:	
Approximately 1,500 feet northeast of intersection of County Road 267 and Access Road	*11
At Beach Avenue extended	*15

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Planning and Zoning Office, Courthouse Circle, Georgetown, Delaware	
INDIANA	
Fort Wayne (city), Allen County (FEMA docket No. 7120)	
Maumee River:	
Approximately 2 miles downstream of U.S. Route 24	*751
At confluence with St. Joseph River	*757
St. Joseph River:	
At confluence with Maumee River	*757
Approximately 0.7 mile upstream of confluence of Becketts Run	*768
St. Marys River:	
At confluence with St. Joseph River	*757
Approximately 1.8 miles upstream of Bluffon Road	*763
Spy Run Creek:	
At confluence with St. Marys River	*757
Approximately 0.2 mile downstream of State Boulevard	*757
Junk Ditch:	
At confluence with St. Marys River	*759
Approximately 0.4 mile upstream of confluence with St. Marys River	*759
Maps available for inspection at the City County Building, One Main Street, Fort Wayne, Indiana.	
Monroe County (unincorporated Areas) (FEMA docket No. 7116)	
Jacks Defeat Creek:	
Approximately 0.64 mile downstream of Harbison Road	*695
Approximately 0.3 mile upstream of CSX Transportation Railroad	*768
Tributary One:	
At confluence with Jacks Defeat Creek	*707
Approximately 0.36 mile upstream of Nursery Road	*779
Maps available for inspection at the Monroe County Courthouse, Courthouse Square, Bloomington, Indiana.	
New Haven (city), Allen County (FEMA docket No. 7120)	
Maumee River:	
Approximately 3.7 miles downstream of U.S. Route 24	*750
Approximately 2.6 miles downstream of U.S. Route 24	*750
Maps available for inspection at the City Administration Building, 1235 Lincoln Highway East, New Haven, Indiana.	
MAINE	
Farmington (town), Franklin County (FEMA docket No. 7112)	
Sandy River:	
Approximately 0.5 mile downstream of State Route 41	*340
Approximately 2.6 miles upstream of State Route 4 bridge (corporate limits)	*389
Wilson Stream:	
At confluence with Sandy River	*345
Approximately 0.4 mile upstream of State Route 133 bridge (corporate limits)	*377
Temple Stream:	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Sandy River	*355
Approximately 0.9 mile above Russels Mill Road bridge (corporate limits)	*457
Barker Stream:	
At confluence with Sandy River	*368
Approximately 800 feet upstream of Old State Route 27	*533
Cascade Brook:	
At confluence with Sandy River	*352
Approximately 180 feet above State Route 43 bridge (Allens Mill Road)	*484
Beaver Brook:	
At confluence with Sandy River	*357
Upstream side of Middle Street bridge	*395
Clear Water Pond: Entire shoreline within community	*563
Maps available for inspection at the Farmington Municipal Building, 147 Lower Main Street, Farmington, Maine.	
NEW HAMPSHIRE	
Freedom (town), Carroll County (FEMA docket No. 7112)	
West Branch:	
At confluence with Ossipee Lake	*414
Upstream side of Ossipee Lake Road	*446
Ossipee Lake: Entire shoreline within community	*414
Broad Bay: Entire shoreline within community	*414
Leavitt Bay: Entire shoreline within community	*414
Maps available for inspection at the Town Office Building, Old Portland Road, Freedom, New Hampshire.	
Ossipee (town), Carroll County (FEMA docket No. 7110)	
Lovell River:	
Approximately 0.5 mile upstream of confluence with Ossipee Lake	*415
Approximately 1,000 feet upstream of State Route 16/25	*434
West Branch:	
Approximately 0.6 mile upstream of confluence with Ossipee Lake	*414
At upstream corporate limits	*446
Maps available for inspection at the Town Hall, Main Street, Center Ossipee, New Hampshire.	
OHIO	
Malvern (village), Carroll County	
Big Sandy Creek:	
Approximately 600 feet downstream of downstream corporate limits	*994
Approximately 600 feet upstream of upstream corporate limits	*998
Maps available for inspection at the Village Hall, 116 West Main Street, Malvern, Ohio.	
OKLAHOMA	
Midwest City (city), Oklahoma County (FEMA docket No. 7058)	
Soldier Creek:	
Approximately 100 feet upstream of confluence with Crutcho Creek	*1,168
At S.E. 29th Street	*1,222
Soldier Creek Tributary 4:	
At confluence with Soldier Creek	*1,185
At Douglas Boulevard	*1,210
Soldier Creek Tributary 6:	
At confluence with Soldier Creek	*1,198
At Post Road	*1,231
Crutcho Creek:	
Approximately 1,700 feet downstream of N.E. 36th Street	*1,157
At S.E. 29th Street	*1,204
Choctaw Creek:	
Approximately 0.45 mile downstream of East Reno Avenue	*1,165
Approximately 0.65 mile upstream of S.E. 15th Street	*1,223
Choctaw Creek Tributary:	
At confluence with Choctaw Creek	*1,190
At upstream side of S.E. 15th Street	*1,217
Crutcho Creek Tributary D:	
At confluence with Crutcho Creek	*1,169
Approximately 1,300 feet upstream of confluence with Crutcho Creek	*1,170
Maps available for inspection at the Midwest City Hall, 100 N. Midwest Boulevard, Midwest City, Oklahoma.	
SOUTH CAROLINA	
Cayce (city), Lexington County (FEMA docket No. 7078)	
Tributary SM–2:	
At North Eden Drive	*150
Approximately 125 feet upstream of Old Frink Street	*170
Maps available for inspection at the Cayce City Hall, Community Development Office, 1800 12th Street, Cayce, South Carolina.	
SOUTH CAROLINA	
Columbia (city), Lexington and Richland Counties (FEMA docket No. 7078)	
Tributary K–2:	
Approximately 285 feet upstream of the unnamed road	*244
Approximately 510 feet upstream of the unnamed road	*248
Maps available for inspection at the City Hall, Public Information Office, 1737 Main Street, Columbia, South Carolina.	
Lexington County (unincorporated areas) (FEMA docket Nos. 7078 and 7110)	
Yost Creek:	
Approximately 500 feet upstream of confluence with Rawls Creek	*205
Approximately 60 feet upstream of Lincreek Road	*308
Tributary SM–2:	
Approximately 70 feet upstream of confluence with Six Mile Creek	*144
Approximately 130 feet upstream of Old Frink Street	*170
Savana Branch:	
Approximately 1,850 feet upstream of confluence with Congaree Creek	*145
At downstream side of Edmund Highway	*160
Tributary K–2:	
Just upstream of Piney Grove Road	*222
Approximately 285 feet upstream of the unnamed road	*243
Twelve Mile Creek:	
At Corley Mill Road	*192
Approximately 1.4 miles upstream of Mineral Springs Road	*243
Fourteen Mile Creek:	
At confluence with Twelve Mile Creek	*192
Approximately 0.6 mile upstream of Old Chapin Road	*359
Tributary SM–5:	
Approximately 75 feet upstream of Rainbow Drive	*224
Approximately 825 feet upstream of Rainbow Drive	*226
Stoop Creek:	
Approximately 60 feet downstream of CSX Transportation	*183
Approximately 0.5 mile upstream of Interstate 26	*223
Shallow Flooding: Area between Savana Branch and Congaree Creek south of Old Dunbar Road	#2
Senn Branch:	
Approximately 200 feet downstream of Epharata Drive	*224
Just upstream of Hebron Drive	*301
Tributary SM–3:	
A point approximately 100 feet downstream of Edmund Highway (Route 302)	*176
Approximately 0.4 mile upstream of dam at Lexington Drive	*214
Stoop Creek:	
Approximately 70 feet upstream of Fairway Lane	*200
Approximately 200 feet downstream of Interstate Highway 26	*210
Maps available for inspection at the Lexington County Administration Building, Planning and Development Office, 212 South Lake Drive, Lexington, South Carolina.	
Lexington (town), Lexington County (FEMA docket No. 7078)	
Fourteen Mile Creek:	
Approximately 2,275 feet upstream of Whiteford Way	*282
Approximately 0.6 mile upstream of Old Chapin Road	*359
Twelve Mile Creek:	
Approximately 1.0 mile upstream of Mineral Springs Road	*239
Approximately 900 feet downstream of confluence of Tributary TM–1	*252
Maps available for inspection at the Lexington Town Hall, Building Department, 111 Maiden Lane, Lexington, South Carolina.	
Pine Ridge (town), Lexington County (FEMA docket No. 7078)	
Shallow Flooding: Area between Savana Branch and Congaree Creek south of Old Dunbar Road	#2
Maps available for inspection at the Pine Ridge Town Hall, 1015 Fish Hatchery Road, West Columbia, South Carolina.	
Springdale (town), Lexington County (FEMA docket No. 7078)	
Tributary SM–5:	
At Rainbow Drive	*220
Approximately 75 feet upstream of Rainbow Drive	*224
Maps available for inspection at the Springdale Town Hall, 2915 Platt Spring Road, Springdale, South Carolina.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–5973 Filed 3–9–95; 8:45 am]

BILLING CODE 6718–03–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2543

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Corporation for National and Community Services regulations to incorporate the changes established by revised OMB Circular 1–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," published by the Office of Management and Budget (OMB) on November 29, 1993. Consistent with the Circular, this rule applies to Corporation for National and Community Service awards to institutions of higher education, hospitals, and other non-profit organizations.

EFFECTIVE DATE: March 10, 1995.

ADDRESSES: The Corporation for National and Community Service, 1201 New York Ave. NW., Washington, DC. 20525.

FOR FURTHER INFORMATION CONTACT: Rina Tucker, (202) 606–5000 x257 between the hours of 9 a.m. and 5 p.m. This document will be made available in an alternative format upon request.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In November of 1990, OMB established an interagency task force to review the Circular with a view toward its revision based on recommendations solicited from affected organizations such as universities and other non-profit groups. The task force developed a proposed revision of the Circular, which OMB published on August 27, 1992 (57 FR 39018). After considering the over 200 comments from a wide variety of federal and non-federal respondents, OMB published the final revised Circular in the **Federal Register** on November 29, 1993 (58 FR 62992).

OMB Circular A–110 sets forth government-wide standards governing Federal agency administration of grants and other agreements with institutions of higher education, hospitals, and other non-profit organizations. Federal agencies must apply the provisions of the Circular in making awards to the covered entities; all primary recipients (including governments) of Federal awards must also apply the Circular's provisions to any subawards they make to such entities. Those provisions that affect Federal agencies were effective on December 29, 1993 (58 FR 62992–93). With respect to the Circular's application to recipients of Federal agency awards, OMB's notice directed each affect agency to promulgate its own rules adopting the provisions of the Circular (58 FR 62992–93).

Accordingly, the Corporation is publishing this final rule whose primary purpose is to incorporate the provisions of OMB Circular A–110 into the Corporation's grants administration regulations at 45 CFR part 25. Consistent with the Circular, this rule applies to Corporation awards made to institutions of higher education, hospitals and other non-profit organizations.

II. Regulatory Impact Analysis

In keeping with the requirements of 44 U.S.C. 3504(h), the information collection requirements contained in this rule have been approved by OMB as Standard Forms. This rule will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. In addition, the Agency has determined that implementation of this action will not have any significant impact on the quality of the human environment pursuant to the National Environmental Policy Act.

List of Subjects in 45 CFR Part 2543

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social, Grants administration, Reporting and recordkeeping requirements.

Dated: March 2, 1995.

Terry Russell,

General Counsel.

Accordingly, as set forth in the preamble, the Corporation amends title 45, chapter XXV of the Code of Federal Regulations by adding part 2543 to read as follows:

PART 2543—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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2543.88 Debarment and Suspension

Authority: 42 U.S.C. 12501 et seq.

Subpart A—General

§ 2543.1 Purpose.

This Circular establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in Sections 2543.4, and 2543.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 2543.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in paragraphs § 2543.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an

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accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 2543.3 Effect on other issuances.

For awards subject to this Circular, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Circular shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section § 2543.4.

§ 2543.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this Circular when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Circular shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 2543.5 Subawards.

Unless sections of this Circular specifically exclude subrecipients from coverage, the provisions of this Circular shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 53 FR 8034.

Subpart B—Pre-Award Requirements

§ 2543.10 Purpose.

Sections § 2543.11 through § 2543.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 2543.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 2543.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 2543.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 2543.14 Special award conditions.

If an applicant or recipient:

(a) has a history of poor performance,

(b) is not financially stable,

(c) has a management system that does not meet the standards prescribed in this Circular,

(d) has not conformed to the terms and conditions of a previous award, or

(e) is not otherwise responsible,

Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 2543.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 2543.16 Resource Conservation and Recovery Act.

Under the Act Resource Conservation and Recovery Act (42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254).

Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 2543.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 2543.20 Purpose of financial and program management.

Sections 2543.21 through 2543.25 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 2543.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 2543.51. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business With the United States."

§ 2543.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) financial management systems that meet the standards for fund control and accountability as established in § 2543.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

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(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements, or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless:

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this Circular, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 2543.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this Circular, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal

awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation, or.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award:

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching, or.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 2543.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) below, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 2543.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards. (See § 2543.28 through § 2543.36.)

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 2543.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related

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to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this Circular and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever (1), (2) or (3) apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Section § 2543.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 2543.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and Federal awarding agency regulations implementing OMB Circular A–128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

§ 2543.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 2543.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Property Standards

§ 2543.30 Purpose of property standards.

Sections 2543.31 through 2543.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 2543.31 through § 2543.37.

§ 2543.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 2543.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 2543.33 Federally-owned and exempt property.

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals"). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

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§ 2543.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project; then

(2) activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 2543.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 2543.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award, and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of paragraph § 2543.34 (g).

§ 2543.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 2543.40 Purpose of procurement standards.

Sections § 2543.41 through § 2543.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 2543.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 2543.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 2543.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be

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rejected when it is in the recipient's interest to do so.

§ 2543.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items,

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government, and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 2543.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 2543.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) basis for contractor selection;

(b) justification for lack of competition when competitive bids or offers are not obtained; and

(c) basis for award cost or price.

§ 2543.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 2543.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.

Reports and Records

§ 2543.50 Purpose of reports and records.

Sections § 2543.51 through § 2543.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 2543.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section § 2543.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph § 2543.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 2543.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for

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annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in Section § 2543.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 2543.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Evaluation

§ 2543.60 Purpose of termination and enforcement.

Sections § 2543.61 and § 2543.62 set forth uniform suspension, termination and enforcement procedures.

§ 2543.61 Termination.

(a) Awards may be terminated in whole or in part only if:

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award,

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated, or

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph § 2543.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 2543.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in Section § 2543.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable, and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see Section § 2543.13).

Subpart D—After-the-Award Requirements

§ 2543.70 Purpose.

Sections § 2543.71 through § 2543.78 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 2543.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Sections § 2543.31 through § 2543.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 2543.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in Section § 2543.26.

(4) Property management requirements in Sections § 2543.31 through § 2543.37.

(5) Records retention as required in Section § 2543.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph § 2543.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 2543.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the

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recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the recipient,

(3) Taking other action permitted by statute, or

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Subpart E—Statutory Compliance

§ 2543.80 Contract Provisions.

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

§ 2543.81 Equal Employment Opportunity.

All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

§ 2543.82 Copeland "Anti-Kickback" Act.

All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

§ 2543.83 Davis-Bacon Act.

When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

§ 2543.84 Contract Work Hours and Safety Standards Act.

Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 2543.85 Rights to Inventions Made Under a Contract or Agreement.

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

§ 2543.86 Clean Air Act and the Federal Water Pollution Control Act.

Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

§ 2543.87 Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

§ 2543.88 Debarment and Suspension.

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 95–5625 Filed 3–9–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 94–32; FCC 95–47]

Spectrum Below 5 GHz Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This First Report and Order adopts allocations for 50 megahertz of spectrum that has been transferred from Federal Government use to private sector use. This action is necessary to comply with provisions of the Omnibus Budget Reconciliation Act of 1993 (Reconciliation Act) that require the Commission to allocate, and propose regulations to assign, this spectrum within 18 months of adoption of the Reconciliation Act. A companion Notice of Proposed Rule Making, published elsewhere in this issue, proposes rules to govern use of the spectrum allocated in this Report and Order. Our goal in taking this action is to provide for use of spectrum transferred from Federal Government to private sector use in a way that will benefit the public by providing for the introduction of new services and devices and enhance existing services and devices.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Office of Engineering and Technology, (202) 739–0723.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, ET Docket No. 94–32, FCC 95–47, adopted February 7, 1995, and released February 17, 1995. The full text of this First Report and Order is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, room 239, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of First Report and Order (R&O)

1. The purpose of this R&O is to adopt allocations for 50 megahertz of spectrum that has been transferred from Federal Government to private sector use as required by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, section 6001(a)(3), 107 Stat. 312 (approved August 10, 1993) (Reconciliation Act).

2. In compliance with the provision of the Reconciliation Act, the Department of Commerce released a report on February 10, 1994, which made a preliminary identification of 200 megahertz of spectrum for reallocation from Federal Government to private sector use, including 50 megahertz at 2390–2400 MHz, 2402–2417 MHz, and 4660–4685 MHz identified for immediate availability. The Reconciliation Act requires that, by February 10, 1995, the Commission allocate, and propose regulations to assign, the 50 megahertz of spectrum that is immediately available. On November 8, 1994, we released a Notice of Proposed Rule Making, 59 FR 59393 (11/17/94), in this proceeding proposing that all 50 megahertz of immediately available spectrum be allocated for Fixed and Mobile service. As an alternative to allocating this spectrum generally for Fixed and Mobile services, the Notice of Proposed Rule Making requested comment on the possible allocation of these bands for specific communications services including an aeronautical audio/visual service to provide real time information and entertainment aboard aircraft, wireless local loop service, broadcast auxiliary services to support advanced television, unlicensed PCS, low-power communications, either on a licensed or unlicensed basis, and continued use of some of this spectrum by the amateur community.

3. Based on the record in this proceeding, the Commission determined that an approach that provides spectrum for both unlicensed devices and Fixed and Mobile services would best serve the public interest. Taking into account the unique nature of some of the bands under consideration, the current communications environment, and the suggestions of the commenting parties, we find it is desirable to allocate 25 megahertz for specific services and devices and 25 megahertz for Fixed and Mobile operations. In particular, we are providing 25 megahertz for use by unlicensed devices and the Amateur service and 25 megahertz for Fixed and Mobile operations. Specifically, we are allocating the 2390–2400 MHz band for use by unlicensed asynchronous Personal Communications Services (PCS) devices, providing for continued use of the 2402–2417 MHz band by devices operating in accordance with Part 15 of our Rules, allocating both of these bands for use by the Amateur service on a primary basis, and allocating the band 4660–4685 MHz for use by Fixed and Mobile services. The 2390–2400 MHz and 2402–2417 MHz bands will be governed by existing applicable rules. In a companion Second Notice of Proposed Rule Making, the Commission proposed rules for use of the 4660–4685 MHz band. The allocations adopted in this Report and Order will benefit the public by providing for the introduction of new services and devices and the enhancement of existing services and devices. These new and enhanced services and uses will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

Final Regulatory Flexibility Analysis

1. Need and purpose of this action: This Report and Order allocates 50 megahertz of spectrum that was transferred from Federal Government to private sector use. Transfer and allocation of this spectrum was required by the Omnibus Budget Reconciliation Act of 1993.

2. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

3. Significant alternatives considered: Commenters in this proceeding supported allocating the spectrum under consideration for a number of various services. These services include wireless local loops, a ground-to-air aeronautical audio/video service, mobile satellite service, private services, unlicensed PCS devices, other unlicensed devices, amateur service, interactive data, audio and video services, fixed service, mobile services, and broadcast auxiliary services. This Report and Order considers all of these uses and provides analysis regarding each. As a result of this analysis, the Commission determined that the action taken in this Report and Order would provide the most beneficial use of the spectrum under consideration.

Paperwork Reduction

This proposal has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, disclosure or record retention requirements and will not increase the burden hours imposed on the public.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 15

Communications equipment, Computer technology, Labeling, Radio.

VOL 60 ISS 47 MR 10 1995 UMI

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 2 and 15 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended to read as follows:

a. In the 2390–2450 MHz band and the 4500–4800 MHz band, revise all columns to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
			Government	Non-Government		
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Allocation MHz	Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2300–2450 FIXED. MOBILE. Amateur. Radiolocation.	2300–2450 FIXED. MOBILE. RADIO-LOCATION. Amateur.	2300–2450 FIXED. MOBILE. RADIO-LOCATION. Amateur.	2300–2310 RADIOLOCATION. Fixed. Mobile.	2300–2310 Amateur.	Amateur (97).	
			US253 G2 2310–2360 Mobile. Radiolocation. Fixed. 751B US276 US327	US253 2310–2360 BROADCASTING-SATELLITE. Mobile. 751B US276 US327		Digital Audio Radio Services.
			US328 G2 G120 2360–2390 MOBILE. RADIOLOCATION. Fixed.	US328 2360–2390 MOBILE.		
			US276 G2 G120 2390–2400	US276 2390–2400 AMATEUR.	Radio Frequency Devices (15).	
			G122		AMATEUR (97)	
			2400–2402 RADIOLOCATION. 664 752 G2	2400–2402 Amateur. 664 752	Amateur (97).	
664 751A 752	664 750B 751 751B 752	664 750B 751 751B 752	2402–2417	2402–2417 AMATEUR.	AMATEUR (97). Radio Frequency Devices (15).	
			664 752 G122 2417–2450 RADIOLOCATION. 664 752 G2	664 752 2417–2450 Amateur. 664 752	Amateur (97).	
4500–4800 FIXED. FIXED-SATELLITE (space-to-Earth) 792A. MOBILE.	4500–4800 FIXED. FIXED-SATELLITE (space-to-Earth) 792A. MOBILE.	4500–4800 FIXED. FIXED-SATELLITE (space-to-Earth) 792A. MOBILE.	4500–4660 FIXED. MOBILE. US245	4500–4660 FIXED-SATELLITE (space-to-Earth). 792A US245		
			4660–4685	4660–4685 FIXED. FIXED-SATELLITE (space-to-Earth). MOBILE. 792A US245		
			G122 4685–4800 FIXED. MOBILE. US245	4685–4800 FIXED-SATELLITE (space-to-Earth). 792A US245		

b. Government footnote G2 is revised and Government footnote G122 is added to read as follows:

Government (G) Footnotes

* * * * *

G2 In the bands 216–225, 420–450 (except as provided by US 217), 890–902, 928–942, 1300–1400, 2300–2390, 2400–2402, 2417–2450, 2700–2900, 5650–5925, and 9000–9200 MHz, the Government radiolocation is limited to the military services.

* * * * *

G122 The bands 2390–2400, 2402–2417 and 4660–4685 MHz were identified for immediate reallocation, effective August 10, 1994, for exclusive non-Government use under Title VI of the Omnibus Budget Reconciliation Act of 1993. Effective August 10, 1994, any Government operations in these bands are on a non-interference basis to authorized non-Government operations and shall not hinder the implementation of any non-Government operations.

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.301 is revised to read as follows:

§ 15.301 Scope.

This subpart sets out the regulations for unlicensed personal communications services (PCS) devices operating in the 1910–1930 MHz and 2390–2400 MHz frequency bands.

3. Section 15.303 is amended by revising paragraph (g) to read as follows:

§ 15.303 Definitions.

* * * * *

(g) *Personal Communications Services (PCS) Devices [Unlicensed].* Intentional radiators operating in the frequency bands 1910–1930 MHz and 2390–2400 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses.

* * * * *

4. Section 15.311 is revised to read as follows:

§ 15.311 Labelling requirements.

In addition to the labelling requirements of § 15.19(a)(3), all devices operating in the frequency band 1910–1930 MHz authorized under this subpart must bear a prominently located label with the following statement:

Installation of this equipment is subject to notification and coordination with UTAM, Inc. Any relocation of this equipment must be coordinated through, and approved by UTAM. UTAM may be contacted at [insert UTAM's toll-free number].

5. Section 15.319 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 15.319 General technical requirements.

(a) The 1910–1920 MHz and 2390–2400 MHz bands are limited to use by asynchronous devices under the requirements of § 15.321. * * *

* * * * *

6. Section 15.321 is amended by revising the heading, paragraphs (a) and (b) and the first sentence of paragraph (e) to read as follows:

§ 15.321 Specific requirements for asynchronous devices operating in the 1910–1920 MHz and 2390–2400 MHz bands.

(a) Operation shall be contained within either or both of the 1910–1920 MHz and 2390–2400 MHz bands. The emission bandwidth of any intentional radiator operating in these bands shall be no less than 500 kHz.

(b) All systems of less than 2.5 MHz emission bandwidth shall start searching for an available spectrum window within 3 MHz of the band edge at 1910, 1920, 2390, or 2400 MHz while systems of more than 2.5 MHz emission bandwidth will first occupy the center half of the band. Devices with an emission bandwidth of less than 1.0 MHz may not occupy the center half of the band if other spectrum is available.

* * * * *

(e) The frequency stability of the carrier frequency of intentional radiators operating in accordance with this section shall be ±10 ppm over 10 milliseconds or the interval between channel access monitoring, whichever is shorter. * * *

* * * * *

[FR Doc. 95–5382 Filed 3–9–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

Defense Federal Acquisition Regulation Supplement; Institutions of Higher Education

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to preclude award of contracts to, or consent to subcontracts with institutions of higher education which have been determined to have a policy of denying, or effectively preventing the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campus, or access to directory information pertaining to students. The rule also requires that departments and agencies shall make no further payments under existing contracts and shall initiate termination action if institutions are determined to have such a policy.

DATES: *Effective Date:* March 6, 1995.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before May 9, 1995 to be considered in formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Ms. Linda Holcombe, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D310 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Linda S. Holcombe, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 558 of the National Defense Authorization Act for Fiscal year 1995 (Pub. L 103–337) provides that no funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that either (1) has a policy of denying, or (2) effectively prevents the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to directory information pertaining to students.

This interim rule establishes a requirement for all solicitations and contracts with institutions of higher education to include a clause which requires the contractor to represent that it does not now have and will not in the future adopt a policy of denying or effectively preventing the Secretary of Defense from obtaining for military recruiting purposes entry to their campuses, access to students on campuses, or access to directory information pertaining to their students. Institutions found to have such policies are ineligible for contract award and payments under existing contracts. In addition, the Government shall terminate the contract for the contractor's material failure to comply with the terms and conditions of award.

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B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule restricts agencies from soliciting offers from, awarding contracts to, or consenting to subcontracts with institutions of higher education which are determined to have a policy of denying, or effectively preventing, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to directory information pertaining to students. In addition, the interim rule requires that departments and agencies shall make no further payments under existing contracts and shall initiate termination action if institutions are determined to have such a policy. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Ms. Linda Holcombe, Defense Acquisition Regulations Council, 3062 Defense Pentagon, Washington, D.C. Comments are invited. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D310 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 209 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Subpart 209.4 is amended to add Sections 209.470, 209.470–1, 209.470–2, and 209.470–3 as follows:

Subpart 209.4—Debarment, Suspension, and Ineligibility

* * * * *

209.470 Military recruiting on campus.

209.470–1 Policy.

(a) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337), provides that no funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that either—

(1) Has a policy of denying—

(i) Entry to campuses or access to students on campus; or

(ii) Access to directory information pertaining to students; or

(2) Effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(i) Entry to campuses or access to students on campus; or

(ii) Access to directory information pertaining to students.

(b) Institutions of higher education that are determined under the procedures prescribed by the Secretary of Defense to have the policy or practice in paragraph (a) of this subsection shall be listed as ineligible on the list of Parties Excluded From Federal Procurement Programs published by the General Services Administration (GSA). (See FAR 9.404).

209.470–2 Procedures.

(a) Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with ineligible contractors.

(b) After a determination of ineligibility, departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

209.470–3 Contract clause.

Use the clause at 252.209–7007, Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.209–7007 is added to read as follows:

252.209–7007 Military Recruiting on Campus

As prescribed in 209.470–3, use the following clause:

Military Recruiting on Campus (Mar 1995)

(a) *Definitions.* "Directory information," as used in this clause, means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student. Students are individuals who are 17 years of age or older.

(b) *General.* An institution of higher education that has been determined, using procedures established by the Secretary of Defense to implement section 558 of Pub. L. 103–337 (1994): (1) To have a policy of denying, or (2) to prevent effectively the Secretary of Defense from obtaining for military recruiting purposes entry to their campuses, access to students on campuses, or access to directory information pertaining to students, access to students on campuses, is ineligible for contract award and payments under existing contracts. In addition, the Government shall terminate this contract for the contractor's material failure to comply with the terms and conditions of award.

(c) *Agreement.* The contractor represents that it does not now have and agrees that during performance of this contract it will not adopt a policy of denying, and that it does not, is not, and will not during performance of the contract, effectively prevent the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to directory information pertaining to students.

(End of clause)

[FR Doc. 95–5958 Filed 3–9–95; 8:45 am]
BILLING CODE 5000–04–M

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48 CFR Part 219

Defense Federal Acquisition Regulation Supplement; Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the authority through September 30, 1997, for contractors to claim credit towards their small business subcontracting goals for subcontracts with qualified nonprofit agencies for the blind and severely disabled.

DATES: *Effective date:* February 27, 1995.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 9, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: LTC Edward C. King Jr, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D312 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: LTC Edward C. King Jr, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 804 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337) extends the authority through September 30, 1997, for contractors to claim credit towards their small business subcontracting goals for subcontracts with qualified nonprofit agencies for the blind and severely disabled. DFARS Subpart 219.7 is amended to permit contractors to receive credit when awarding subcontracts to such entities.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to large business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D312 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. Information collection requirements imposed by this rule were cleared under OMB control number 9000–0007 for Standard Form 295, Summary Subcontract Report.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule as an interim rule as it is necessary to authorize prime contractors to receive credit toward their subcontracting goals as permitted by Section 804 of Pub. L. 103–337. However, comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 219

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 219 is amended as follows:

1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.703 is amended by revising paragraph (a) introductory text to read as follows:

219.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Commission for Purchase from People Who Are blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48), are eligible as a result of Section 9077 of Pub. L. 102–396, and subsequent Appropriations Acts, and Sections 808 of Pub. L. 102–484 and 804 of Pub. L. 103–377 through September 30, 1997, to participate in the program. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1997.

* * * * *

[FR Doc. 95–5959 Filed 3–9–95; 8:45 am]
BILLING CODE 5000–04–M

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48 CFR Parts 223 and 252

Defense Federal Acquisition Regulation Supplement; Hazardous Materials

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add an exception to the statutory prohibition on storage and disposal of non-DoD-owned toxic and hazardous materials at military installations.

DATES: *Effective Date:* March 6, 1995.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 9, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: LTC Edward C. King Jr., PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: LTC Edward C. King Jr, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 325 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337) amends 10 U.S.C. 2692 to add an exception to the prohibition on storage and disposal of non-DoD-owned toxic and hazardous materials at military installations. DFARS Subpart 223.71 and the clause at 252.223–7006 are amended to add the exception in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because of the limited applicability of the rule to industrial-type facilities located on military installations. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected subpart and clause will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D309 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule as an interim rule without prior opportunity for public comments because it is necessary to add the exception authorized by Section 325 of Pub. L. 103–337. However, comments received in response to this interim rule will be considered in formulating the final rule.

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List of Subjects in 48 CFR Part 223 and 252

Government Procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 223 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 223 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 223.7102 is amended by adding paragraph (a)(9) to read as follows:

§ 223.7102 Exceptions.

(a) * * *

(9) The treatment and disposal of any non-DoD-owned material if the Secretary of the military department concerned—

(i) Determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type facility of that military department; and

(ii) Enters a contract with that person that—

(A) Is consistent with the best interest of national defense and environmental security; and

(B) Provides for that person's continued financial and environmental responsibility and liability with regard to the material.

* * * * *

3. Section 223.7103 is revised to read as follows:

223.7103 Contract clause.

(a) Use the clause at 252.223–7006, Prohibition on Storage and Disposal of Toxic and Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

(b) Use the clause at 252.223–7006 with its Alternate I, when the Secretary of the military department issues a determination under the exception at 223.7102(a)(9).

3. Section 252.223–7006 is amended by revising the introductory text and by adding an Alternate I to read as follows:

252.223–7006 Prohibition on storage and disposal of toxic and hazardous materials.

As prescribed in 223.7103(a), use the following clause:

* * * * *

Alternate I (Mar 1995)

As prescribed in 223.7103(b), add the following paragraphs (c) and (d) to the basic clause:

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous material on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor's treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Contractor shall include this clause, including this subparagraph (d) in each subcontract.

[FR Doc. 95–5957 Filed 3–9–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 235

Defense Federal Acquisition Regulation Supplement; Federally Funded Research and Development Centers

AGENCIES: Department of Defense (DoD)

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to allow DoD-sponsored FFRDCs that function primarily as research laboratories to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology.

DATES: Effective date: March 3, 1995.

Comment date: Comments on the interim rule should be submitted in writing at the address shown below on or before May 9, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulation Council, ATTN: Mr. R.G. Layser, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax Number (703) 602–0350. Please cite DFARS Case 94–D306 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 217 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) allows DoD-sponsored FFRDCs that function primarily as research laboratories to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology. This interim DFARS rule implements this allowance.

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment because Section 217 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) became effective upon enactment of the Act, October 5, 1994. This interim rule is necessary to ensure that DoD contracting activities become aware of the statutory allowance of DoD-sponsored FFRDCs that function primarily as research laboratories to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The proposed changes to DFARS Part 217, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule allows a very limited number of FFRDCs to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology. The rule is expected to benefit small entities involved in technology research, development, demonstration or transfer who can establish teaming arrangements with FFRDCs. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this rule does not impose any new recordkeeping, information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR part 235

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for 48 CFR Part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 235.017–1 is added to read as follows:

§ 235.017–1 Sponsoring agreements.

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103–337).

[FR Doc. 95–5956 Filed 3–9–95; 8:45 am]

BILLING CODE 5000–04–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Final rule.

SUMMARY: The ICC amends its regulations to reflect the *status quo* with respect to the rules for filing electronic and printed tariffs, and terminates the Ex Parte No. 444 proceeding. This action codifies in the regulations the tariff filing rules which have existed for the past five years as a result of the partial stay of the Commission's 1989 decision in Ex Parte No. 444, and ends the proceeding.

EFFECTIVE DATES: The amendments in this final rule are effective April 8, 1995. Effective April 8, 1995, the rule removing part 1312, which was published at 54 FR 6404 and stayed at 54 FR 10533 and 54 FR 42959, is withdrawn and part 1312 continues in effect. The effective date of part 1314, which was added at 54 FR 6404 and stayed at 54 FR 10533 and 54 FR 42959, is November 8, 1989.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927–5602, or Thomas A. Mongelli, (202) 927–5150. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served December 15, 1994, and published at 59 FR 64646 (1994), we proposed to amend parts 1312 and 1314 of our regulations to codify the tariff filing rules which have been in effect for the past five years as a result of a partial stay of an earlier Commission decision,[1] and to terminate the Ex Parte No. 444 proceeding. The current rules authorize electronic tariff filing by rail carriers but not by other carriers; in the NPR we indicated our willingness to consider individual special tariff authority requests for electronic filing by non-rail carriers. Comments were filed by two interested parties,[2] both of which support the Commission's proposal.

HGCBC states that, although it understands the reasons for and supports the Commission's decision, it is disappointed in the termination of the effort to develop methods and standards for filing electronic tariffs. HGCBC believes that electronic tariff filing has merit, and it indicates its willingness to assist the Commission in a renewed effort to develop an electronic tariff filing system if circumstances change.

NITL strongly endorses the Commission's proposal. NITL states that it has participated in the Ex Parte No. 444 proceeding from the beginning, and that its position throughout the proceeding has been that, if tariff filing is to be retained, tariff filing rules must promote efficient and simple tariff use. NITL expresses its view that the enactment of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA) has eliminated the need for electronic tariff filing, and that the likelihood of further statutory changes to tariff filing requirements makes it unnecessary to expend limited resources on this issue at this time.

After careful consideration, we have decided to amend the regulations and terminate the proceeding as proposed.[3]

Regulatory Flexibility

The rules adopted herein do not impose additional burdens on tariff filers or others; rather, they merely codify the rules that are currently in effect as a result of the partial stay of an earlier Commission decision.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1312

Household goods freight forwarders, Motor carriers, Moving of household goods, Pipelines, Tariffs, Water carriers.

49 CFR Part 1314

Railroads, Tariffs.

Decided: February 17, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1312 and 1314 of the Code of Federal Regulations are amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS OF MOTOR, PIPELINE AND WATER CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The heading of part 1312 is revised to read as set forth above.

2. The authority citation for part 1312 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762 and 10767.

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS OF RAIL CARRIERS

3. The heading of part 1314 is revised to read as set forth above.

4. The authority citation for part 1314 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10708, 10761, and 10762.

[FR Doc. 95–5943 Filed 3–9–95; 8:45 am]

BILLING CODE 7035–01–P

[1] *Electronic Filing of Tariffs*, 5 I.C.C.2d 279 (1989); 54 FR 6403 and 9052 (1989).

[2] The Household Goods Carriers' Bureau Committee (HGCBC), and The National Industrial Transportation League (NITL). The Association of American Railroads and each Class I Railroad, while not filing formal comments, submitted a letter indicating that they did not object to the course of action outlined in the NPR.

[3] We will correct the heading of part 1312 to include reference to household goods freight forwarders, which was inadvertently omitted from the proposed rule.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950306066–5066–01; I.D. 111594A]

RIN 0648–AH46

Northeast Multispecies Fishery; Emergency Interim Rule Extension and Amendment to Allow Vessel Transiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; amendment and extension of effectiveness.

SUMMARY: An emergency interim rule, as amended, in effect through March 12, 1995, is extended from March 13, 1995, through June 10, 1995, because conditions warranting the emergency rule still exist. This rule also amends the emergency interim rule to allow vessels to transit closed areas, provided that there is a demonstrable safety reason and fishing gear is properly stowed. The intent of this extension and amendment is to provide interim protection to various multispecies finfish stocks, especially haddock, cod, and yellowtail flounder while a more comprehensive set of management measures is developed to protect and begin rebuilding abundance levels of these species.

EFFECTIVE DATE: These amendments are effective March 13, 1995, through June 10, 1995. The emergency interim regulations published at 59 FR 63926, December 12, 1994, and amended at 60 FR 3102, January 13, 1995, in effect through March 12, 1995, are extended from March 13, 1995, through June 10, 1995.

ADDRESSES: Copies of the Environmental Assessment (EA) supporting this action may be obtained from Jon C. Rittgers, Acting Regional Director, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, Northeast Region, NMFS, 508–281–9252.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), NMFS promulgated an emergency interim rule (59 FR 63926, December 12, 1994) that implemented protective measures for multispecies finfish for the period December 12, 1994, through March 12, 1995. The emergency interim rule implemented: (1) A simultaneous closure of redefined Closed Area I, the Nantucket Lightship Closed Area, and Closed Area II; (2) a prohibition on scallop vessels in the closed areas; (3) a disallowance of any fishery utilizing mesh smaller than the minimum mesh size allowed for regulated species, with the exception of fisheries that have been determined to have a catch of less than 5 percent by weight of regulated species; (4) a prohibition on the possession of regulated species while fishing with small mesh; (5) a requirement that all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of mid-water trawl and purse seine vessels, use 6–inch (15.24–cm) square mesh codends; and (6) an increase in the minimum mesh size in the Southern New England and Nantucket Lightship Regulated Mesh Areas to 6–inch (15.24–cm) diamond or square mesh.

An amendment to the December 12, 1994, emergency interim rule (60 FR 3102, January 13, 1995) made several modifications and clarifications, beginning January 10, 1995. That amendment, among other things, added allowable bycatch species to the exempted fisheries as defined in the December 12 emergency interim rule, allowed a bycatch fishery for longhorn sculpin in the Northern Shrimp Exemption Area, and allowed transitting in Closed Area I and the Nantucket Lightship Closed Area for vessels seeking safe haven.

At the request of NMFS, the New England Fishery Management Council (Council) is preparing a Framework Adjustment (Framework Adjustment 9) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) to implement these emergency measures on a permanent basis while a more comprehensive FMP amendment (Amendment 7) to address the long-term objective of stock rebuilding is developed. On February 15, 1995, the Council voted to recommend extension of the emergency interim rule, as amended, for an additional 90 days as provided for in the Magnuson Act. NMFS agrees with the recommendation, because conditions warranting the emergency rule still exist. Therefore, under provisions of section 305(c)(3)(B) of the Magnuson Act, NMFS extends the emergency interim rule, as amended, an additional 90 days, through June 10, 1995.

Since Amendment 6 to the FMP (59 FR 32134, June 22, 1994) extended the timeframe for closure of Closed Area II through June of each year, extension of the Closed Area II provisions of the December 12 emergency rule has no impact on the fishery. However, the provisions in § 651.21(d)(2) are extended for simplicity and revised to reflect U.S. Coast Guard policy as discussed below.

In § 651.21, paragraphs (d)(1), (2), and (3) are amended to reflect current U.S. Coast Guard policy that allows a fishing vessel to transit closed areas, provided that the vessel operator has a compelling and demonstrable safety reason and provided that the vessel's fishing gear is properly stowed. Paragraph (d)(1)(iv) is added to § 651.21 as a stowage provision for hook gear vessels using gear other than pelagic hook gear.

Classification

The Assistant Administrator, NOAA, finds that good cause exists under 5 U.S.C. 553(b)(B) to waive the requirements to provide prior notice and opportunity for public comment for the amendments to the interim emergency rule made by this action because they are made to reflect current U.S. Coast Guard practices and providing opportunity for public comment would serve no useful purpose. The changes made by the amendment portion of this action were in response to public comments received by the Council at two of its recent meetings since the original emergency rule action first became effective. Further, because the amendment to the emergency rule contained in this action relieves a regulatory restriction under 5 U.S.C. 553(d)(1), it is not subject to a 30-day delay in effective date. This action has been determined to be not significant under E.O. 12866.

This rule is exempt from procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment. No analysis has been prepared.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Regulations published at 59 FR 63926, December 12, 1994, effective December 12, 1994, through March 12, 1995, and amended at 60 FR 3102, January 13, 1995, effective January 10, 1995, through March 12, 1995, are extended from March 13, 1995, through June 10, 1995.

3. In § 651.21, as temporarily amended at 59 FR 63926, December 12, 1994, and 60 FR 3102, January 13, 1995, paragraphs (d)(1)(ii)(B), (d)(2)(ii)(B), and (d)(3)(ii)(C) are revised, and (d)(1)(iv) is added, effective March 13, 1995, through June 10, 1995, to read as follows (Note: § 651.20(a)(b), and (c) are temporarily suspended through June 10, 1995; § 651.20(d), as amended, remains temporarily added, through June 10, 1995):

§ 651.21 Closed areas.

* * * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Transitting for compelling safety reasons, as determined by the fishing vessel operator, provided that fishing net gear is stowed in accordance with § 651.20(c)(7), and scallop dredge gear and hook gear is stowed in accordance with paragraphs (d)(1)(iii) and (iv) of this section. A fishing vessel operator that cannot demonstrate a compelling safety reason for being in the closed area shall be subject to enforcement action.

* * * * *

(iv) Hook gear vessels using gear other than pelagic hook gear and transitting closed areas as specified under paragraphs (d)(1), (2), and (3) of this section may not have fishing gear available for immediate use and must secure all anchors and buoys, and have all hook gear, including jigging machines, covered.

(2) * * *

(ii) * * *

(B) Transitting for compelling safety reasons, as determined by the fishing vessel operator, provided that fishing net gear is stowed in accordance with § 651.20(c)(7), and scallop dredge gear and hook gear is stowed in accordance with paragraphs (d)(1)(iii) and (iv) of this section. A fishing vessel operator that cannot demonstrate a compelling safety reason for being in the closed area shall be subject to enforcement action.

(3) * * *

(ii) * * *

(C) Transitting for compelling safety reasons, as determined by the fishing vessel operator, provided that fishing net gear is stowed in accordance with § 651.20(c)(7), and scallop dredge gear and hook gear is stowed in accordance with paragraphs (d)(1)(iii) and (iv) of this section. A fishing vessel operator that cannot demonstrate a compelling safety reason for being in the closed area shall be subject to enforcement action.

[FR Doc. 95–5999 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 030695D]

Groundfish of the Gulf of Alaska; Pacific Cod in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the offshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 7, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the offshore component in the Western Regulatory Area was established by the final groundfish specifications (60 FR 8470, February 14, 1995), as 2,010 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the offshore component in the Western Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 1,510 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 6, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–5987 Filed 3–7–95; 2:29 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 60, No. 47
Friday, March 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. A0–150–A6; FV–92–945–2]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 945

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the subject marketing agreement and order (order) and provides potato producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the order. The proposed changes would include authority to: regulate shipments of potatoes within the production area, change representation and quorum procedures of the committee, set container marking and labeling requirements, and require the committee to consider, at least every six years, changes in committee size or reapportionment of committee membership. Also, other proposals would change committee fiscal operations, add confidentiality and verification provisions to the order, and make other miscellaneous changes that would be consistent with the proposed amendments. These changes are being proposed to improve order operations.

DATES: The referendum shall be conducted from April 3 through April 17, 1995. The representative period for the purpose of the referendum herein ordered is August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer or Jim Wendland, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456, telephone: 202–205–2829 or 720–2170 respectively, or Fax 202–720–5698; or Gary Olson, OIC, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon, 97204; telephone: 503–326–2725, or Fax 503–326–7440.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the **Federal Register** on August 11, 1993 (58 FR 42696). Recommended Decision and Opportunity to File Written Exceptions issued on November 23, 1994, and published in the **Federal Register** on November 30, 1994 (59 FR 61286).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Idaho Falls, Idaho, on September 8, 1993, to consider the proposed amendment of the Marketing Agreement and Order No. 945, regulating the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Idaho-Eastern Oregon Committee (committee) established under the order to assist in local administration of the program.

The proposals would: (1) Redefine "ship or handle" to include shipments of potatoes within the production area; (2) provide seed producers with representation on the committee and add authority for the committee to recommend to the Secretary changes in the committee size and composition; (3) update "districts" to show the current composition; (4) require the committee to consider, at least every six years, whether to recommend changes in committee size or reapportionment of committee membership; (5) change committee quorum procedures; (6) remove an outdated assessment limitation of $1 per carload and allow the committee to impose late payment or interest fees, or both, on late assessment payments, accept advance payments, and borrow monies in an extreme emergency for program administration; (7) add authority for the committee to recommend container marking and labeling requirements; and (8) specify confidentiality requirements for handler reports submitted to the committee. The Department of Agriculture proposed authority for adding requirements regarding verification of reports and to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 30, 1994, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 30, 1994. None were filed.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are

brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1992–93 crop year, 66 handlers were regulated under Marketing Order No. 945. In addition, there are about 2,200 producers of potatoes in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the potato marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendments to the marketing agreement and order include amending: § 945.20 Establishment and membership pertaining to operations of the committee, including providing seed producers representation on the committee; § 945.23 Redistricting and reapportionment authorizing changes in committee size, composition, and representation; § 945.30 Procedure regarding quorum requirements; and § 945.42 Assessments removing a $1 per carload maximum assessment rate and allowing the committee to impose late payment and interest fees on late assessment payments and borrow monies in an extreme emergency for program administration. These proposed amendments would provide an opportunity for a broader based representation on the committee and more flexibility to adjust to future changes in industry structure, potato production and financial operations. These changes are designed to enhance the administration and functioning of the order and would have negligible, if any, economic impact on small businesses.

The proposal amending § 945.9 Ship or handle would revise the definition of these terms to include the handling of potatoes in the current of commerce within the counties covered by the order's production area, broadening the scope of the order. This would require all regulated shipments of potatoes for fresh market to be inspected and meet order requirements, including grade, size, quality, pack, and payment of assessments. This proposal would improve the market for potatoes handled within the production area. This would benefit both producers and handlers because minimum grade, size and quality requirements established under the order are important to the industry in fostering consumer satisfaction, increasing the demand for Idaho-Eastern Oregon potatoes, and improving industry returns; and the additional assessment income would improve the financial operations of the order. Any added burden on small businesses should be outweighed by the added benefits accruing to them.

The proposed change to allow the rate of assessment to be based on a hundredweight of potatoes rather than an outdated maximum amount of $1 per railroad carload would improve the financial operations of the order and not adversely impact small businesses. This change would provide more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years and the current maximum rate specified will likely not be sufficient to properly fund committee operating costs beyond the next few years if costs continue to rise.

Another recommended change would amend § 945.52 Issuance of regulations to add authority to require accurate and uniform marking and labeling of the containers in which production area potatoes are shipped. The benefits of the expected higher returns that could result from increases in buyer and consumer satisfaction due to accurate marking and labeling should outweigh any potential burden on small businesses.

Another proposed amendment, to § 945.80 Reports, would provide confidentiality requirements for reports submitted to the committee. This would safeguard handlers' proprietary information, including that for small businesses, without imposing any burden on them. Additionally, new § 945.80 provisions would add authority for the Secretary and the committee to verify the correctness of reports filed by handlers, and to verify handler compliance with recordkeeping requirements. The requirement would not have a significant impact on small entities in the industry.

The proposal to make other miscellaneous changes that would be consistent with the proposed amendments is necessary so that all sections of the order would be consistent if any or all of the amendments are adopted. These changes include deleting and redesignating certain sections of the order.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the proposed revisions of the order would not have a significant economic impact on handlers or producers.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed amendments will be submitted to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

Findings and Conclusions and Rulings on Exceptions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 30, 1994, issue of the **Federal Register** (59 FR 61286) are hereby approved and adopted without change.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon." This document has been decided upon as the detailed and appropriate means of

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effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1993, through July 31, 1994.

The agents of the Secretary to conduct such referendum are hereby designated to be Valerie L. Emmer and Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, D.C. 20250–6456, telephone 202–475–3920 and 720–2170, respectively; and Gary D. Olson, Officer-in-Charge, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204, telephone: 503–326–2725.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Dated: March 2, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 945 (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, as hereby proposed to be further amended, regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of potatoes grown in the production area; and

(5) All handling of potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1994, and published in the **Federal Register** on November 30, 1994, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.9 is revised as follows:

§ 945.9 Ship or handle.

Ship or *handle* means to pack, sell, consign, transport or in any other way to place potatoes grown in the production area, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided*, That the definition of *ship* or *handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

3. Section 945.20 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall currently be producers of potatoes for the fresh market who produced such potatoes during at least three of the last five years; at least one member shall be a producer predominately of potatoes for seed during a similar period; and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and/or handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

* * * * *

(d) At least every six years, the committee shall review committee size, composition, and representation and recommend to the Secretary whether changes should be made, as provided in § 945.23.

4. Sections 945.22 through 945.24 are revised to read as follows:

§ 945.22 Districts.

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided*, That these districts may be changed as provided in § 945.23.

(a) *District No. 1*: The counties of Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

(b) *District No. 2*: The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3*: Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

§ 945.23 Redistricting and reapportionment.

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and/or handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between producer and handler members, including their alternates. At least every six years, the committee shall review committee size, composition and representation and recommend to the Secretary whether changes should be made. In recommending any such changes, the committee shall give consideration to:

(1) Shifts in potato acreage within districts and within the production area during recent years;

(2) the importance of new potato production in its relation to existing districts;

(3) the equitable relationship between committee membership and districts;

(4) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation or such other representation as recommended by the committee and approved by the Secretary:

(1) Three producer members, including at least one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;

(2) One producer member and one handler member, with their respective alternates, from District No. 2; and

(3) One producer member and one handler member, with their respective alternates, from District No. 3.

§ 945.24 Selection.

Members and alternates of the committee shall be selected by the Secretary on the basis specified in § 945.23 (b) from nominations made pursuant to § 945.25 or from other eligible persons.

5. In § 945.30, paragraph (a) is revised to read as follows:

§ 945.30 Procedure.

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. At any assembled meeting, all votes shall be cast in person.

* * * * *

6. In § 945.42, paragraph (b) is revised and new paragraphs (d) and (e) are added to read as follows:

§ 945.42 Assessments.

* * * * *

(b) Assessments shall be levied upon handlers at a rate per hundredweight of potatoes or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

* * * * *

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against that handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

7. In § 945.52, paragraph (a)(3) is revised to read as follows:

§ 945.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimensions, pack, labeling or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

* * * * *

8. Section 945.80 is amended by designating the existing undesignated text as paragraph (a) and adding new paragraphs (b) through (d) to read as follows:

§ 945.80 Reports.

(a) * * *

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least two succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section. The committee, with the approval of the Secretary, may prescribe rules and regulations issued pursuant to this section specifying handler records and reports which the committee may need to perform its functions.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

[FR Doc. 95–5671 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–02–P

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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Animal and Plant Health Inspection Service

9 CFR Parts 160 and 161

[Docket No. 94–027–1]

Standards for Accredited Veterinarian Duties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, accredited veterinarians to issue official animal health documents for animals in herds or flocks under regular health maintenance programs for up to 30 days after inspection. For all other animals, we are proposing to allow accredited veterinarians to issue official animal health documents up to 10 days following inspection. Last, we are proposing to require that all official animal health documents be valid for only 30 days following inspection, regardless of the date of issuance. We would continue to require that accredited veterinarians issue official animal health documents only for animals that they have inspected.

These actions would extend the time period allowed between inspection and the issuance of official animal health documents. We believe these actions would both alleviate the burden placed by the current time requirement on accredited veterinarians and reduce the costs of health inspection for the livestock industry, without significantly increasing animal disease risk.

DATES: Consideration will be given only to comments received on or before May 9, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 94–027–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. J. A. Heamon, Senior Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD, 20738. The telephone number for the agency contacts will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–6954 (Hyattsville); (301) 734–6954 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

In accordance with 9 CFR parts 160, 161, and 162 (referred to below as the regulations), some veterinarians are accredited by the Federal Government to cooperate with the Animal and Plant Health Inspection Service (APHIS) in controlling and preventing the spread of animal diseases throughout the country and internationally. Accredited veterinarians use their professional training in veterinary medicine to perform certain regulatory tasks.

Section 161.3 of the regulations contains the Standards for Accredited Veterinarian Duties. Currently, under § 161.3(a), we require accredited veterinarians, when issuing or signing a certificate, form, record, or report regarding any animal, to have inspected the animal within 7 days prior to signing the document. We have received numerous letters from veterinarians, veterinary associations, and livestock producers maintaining that this 7-day requirement is impractical, burdensome, and expensive for both veterinarians and producers. All of the correspondents request that we allow accredited veterinarians additional time to issue official animal health documents following inspection.

Many of the correspondents argue that the 7-day requirement makes it difficult for accredited veterinarians involved in intensive livestock practices to issue, in a timely manner, official animal health documents required for the interstate or international transport of animals. Large livestock facilities sell animals continuously. So, in order to issue the health documents near the date of an animal's shipment, if 7 days have passed since the animal's most recent inspection, the veterinarian must revisit the facility where it is housed. This time requirement places a burden on veterinarians with busy practices; many of the veterinarians who have written state that it is impossible for them to visit their clients frequently enough so as not to impede livestock sales and shipments. Furthermore, livestock facilities also are negatively impacted by the 7-day requirement, as they must pay for numerous veterinary inspections if they wish to sell and ship animals frequently.

Other letters cite inspection delays caused by biosecurity requirements at large livestock facilities as a reason for extending the time period allowed for issuing official animal health documents. Biosecurity requirements commonly prohibit veterinarians from entering a facility within 72 hours of being in contact with animals of the same species at other sites. If an accredited veterinarian is under contract to several large livestock facilities with biosecurity requirements, it can be difficult for him or her to inspect animals frequently enough so as not to impede livestock sales and shipments.

Finally, many of the letters remark that often veterinarians do not receive laboratory test results soon enough after inspection to issue official animal health documents within the 7-day period. Thus, a veterinarian can be forced to reinspect an animal shortly after the previous inspection due to laboratory delays beyond his or her control.

Therefore, we are proposing to allow, under certain conditions, accredited veterinarians to issue official animal health documents for animals in herds or flocks under regular health maintenance programs for up to 30 days after inspection. We are proposing to define regular health maintenance program in the regulations as "an arrangement between an accredited veterinarian and a livestock producer whereby the veterinarian inspects every animal on the premises of the producer at least once every 30 days." This kind of arrangement is very common in the livestock industry. Typically, livestock facilities contract with a veterinarian for health inspection of every animal every 30 days as a practical way to protect the health of animals and to facilitate their sale and shipment.

Over time, veterinarians who inspect herds or flocks as part of a regular health maintenance program become very familiar with health conditions in those herds or flocks. They are able to discover current, and anticipate future, health problems more accurately than veterinarians who inspect individual animals, herds, or flocks sporadically. We believe that accredited veterinarians may inspect a herd or flock as part of a regular health maintenance program and then issue relevant official animal health documents for up to 30 days following inspection, with no significant increase in disease risk. Notably, we would continue to require that accredited veterinarians issue official animal health documents only for animals that they have inspected.

Because a veterinarian would have to inspect a herd or a flock several times before he or she could become familiar with the health conditions therein, we are proposing to allow veterinarians the 30-day issuance period only after the third inspection of a herd or flock as part of a regular health maintenance program. Following the first two inspections of a herd or flock as part of a regular health maintenance program, we are proposing to allow accredited veterinarians to issue official animal health documents for only 10 days after inspection.

For all animals not part of a regular health maintenance program, we are proposing to allow accredited veterinarians to issue official animal health documents for up to 10 days following inspection. We believe that providing accredited veterinarians with an additional 3 days following inspection to issue relevant official animal health documents will give them greater flexibility without presenting a significant increase in disease risk.

Finally, we are proposing to require that all official animal health documents be valid for only 30 days following the date of inspection, regardless of the date of issuance. We would require accredited veterinarians to indicate both the date of issuance and the date of expiration on all official animal health documents.

Miscellaneous

We are also proposing to revise the regulations under §§ 160.1 and 161.3 (a), (b), (c), and (k) for the sake of clarity. Currently, the regulations in these sections require that various conditions be met any time an accredited veterinarian "issue[s] or sign[s] any certificate, form, record or report" reflecting the health of an animal. However, "issue" is not defined in the regulations. We are proposing to define "issue" as follows: "The distribution by an accredited veterinarian of an official animal health document that he or she has signed."

Also, because under the proposed definition, "issuance" entails distributing a signed official animal health document, to avoid redundancy we are proposing to delete the word "sign" from § 161.3 (a), (b), (c), and (k). Moreover, we are proposing to remove "sign" from these sections because the phrase "issue or sign" implies that accredited veterinarians could issue an animal health document without signing it.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations to allow, under certain conditions, accredited veterinarians to issue official animal health documents for animals in herds or flocks under regular health maintenance programs for up to 30 days after inspection. For inspection of other animals, we are proposing to allow up to 10 days between the inspection of animals and the issuance of official animal health documents.

Currently, under § 161.3(a), we require accredited veterinarians, when issuing or signing a certificate, form, record, or report regarding any animal, to have inspected the animal within 7 days. This requirement places an economic burden on large livestock facilities that sell and ship animals continuously. That is, large livestock facilities must have their animals inspected frequently, in order for veterinarians to issue, in a timely manner, the health documents required for the frequent sale and shipment of animals. Such frequent visits can be expensive.

If veterinarians were allowed additional time to issue official animal health documents following inspection, they could inspect animals less frequently. Therefore, primarily, this proposal would economically benefit large livestock facilities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0032 and there are no new requirements.

List of Subjects

9 CFR Part 160

Veterinarians.

9 CFR Part 161

Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 160 and 161 would be amended as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for part 160 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 160.1 would be amended by adding, in alphabetical order, the following definitions:

§ 160.1 Definitions.

* * * * *

Issue. The distribution by an accredited veterinarian of an official animal health document that he or she has signed.

* * * * *

Regular health maintenance program. An arrangement between an accredited veterinarian and a livestock producer whereby the veterinarian inspects every animal on the premises of the producer at least once every 30 days.

* * * * *

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 161.3 would be amended as follows:

a. By revising paragraphs (a) and (b) to read as set forth below.

b. In paragraph (c), by removing the phrase "or sign" in the first sentence.

c. In paragraph (k), by removing the phrase "or sign" in the first sentence.

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

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(a) An accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her with respect to any animal, other than those in regular health maintenance programs, unless he or she has personally inspected that animal within 10 days prior to issuance.

(1) Following the first two inspections of a herd or flock as part of a regular health maintenance program, an accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her with respect to any animal in that program, unless he or she has personally inspected that animal within 10 days prior to issuance.

(2) Following the third and subsequent inspections of a herd or flock in a regular health maintenance program, an accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her with respect to any animal in that program, unless he or she has personally inspected that animal within 30 days prior to issuance.

(b) An accredited veterinarian shall not issue, or allow to be used, any certificate, form, record or report, until, and unless, it has been accurately and fully completed, clearly identifying the animals to which it applies, and showing the dates and results of any inspection, test, vaccination, or treatment the accredited veterinarian has conducted, except as provided in paragraph (c) of this section, and the dates of issuance and expiration of the document. Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document. The accredited veterinarian shall distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

* * * * *

Done in Washington, DC, this 6th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5992 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Navajo Abandoned Mine Lands Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Navajo AMLR plan (hereinafter referred to as the "Navajo plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA, 30 U.S.C. 1201 *et seq.*). The revisions for the Navajo Nation's proposed statute pertain to the reclamation of interim program coal sites. The amendment is intended to revise the Navajo plan to be consistent with SMCRA, and to improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.s.t., March 27, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Navajo plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102

The Navajo Nation, P.O. Box 308, Window Rock, Arizona 86515, Telephone: (602) 871–4941.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and waters eligible for reclamation under title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations at 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribe program. Approval granted the State or Tribe exclusive authority to administer its plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100–71) that authorized the Crow and Hopi Tribes and Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State's or Tribe's plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR Part 886.

II. Background on the Navajo Plan

On May 16, 1988, the Secretary of the Interior approved the Navajo plan. General background information on the Navajo plan, including the Secretary's findings, the disposition of comments, and the approval of the Navajo plan can be found in the May 16, 1988, **Federal Register** (53 FR 17186). Approval of the Navajo plan is codified at 30 CFR 756.13. Subsequent actions concerning the Navajo plan and plan amendments can be found at 30 CFR 756.14.

III. Proposed Amendment

By letter dated January 12, 1995, the Navajo Nation submitted a proposed amendment to its AMLR plan pursuant to SMCRA (administrative record No. NA–227). The Navajo Nation submitted the proposed amendment at its own initiative and in response to the final rule **Federal Register** notice acknowledging that the Navajo Nation would amend its AMLR Code of 1987 to provide for the reclamation of interim program coal sites (59 FR 49178, 48181, finding No. 1(f), September 27, 1994; administrative record No. NA–225). The Navajo Nation proposed the addition of new language at section 404(b) of its AMLR Code to provide for such reclamation.

OSM announced receipt of the proposed amendment in the February 10, 1995, **Federal Register** (60 FR 7926), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NA–232). Because no one has requested a public hearing or meeting, none has been held. The public comment period ends on March 10, 1995.

OSM would like to take this opportunity to correct an error in the February 10, 1995, **Federal Register** document. In the first column on page 7927, part of the original language of the proposed amendment submitted by the Navajo Nation is incorrectly cited. Subsection 404(b)(4) should read as follows:

> The site qualifies as a priority one or two site pursuant to section 403(a) (1) and (2) of SMCRA. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

During its review of the proposed amendment, OSM identified concerns relating to the provisions of the Navajo AMLR Code of 1387 at section 404(b)(2) pertaining to (1) the dates used to define interim program coal sites, and (2) the requirement that a determination be made that any funds available for reclamation or abatement pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site. OSM notified the Navajo Nation of the concerns in a telephone conversation on February 23, 1995 (administrative record No. NA–233). The Navajo Nation responded in a letter dated February 23, 1995, by submitting a revised amendment (administrative record No. NA–234).

The Navajo Nation proposes revisions to section 404(b)(2) of the Code as it pertains to the dates used to define interim program coal sites, and the addition of the requirement that there be insufficient funds for completion of reclamation or abatement activities.

IV. Public Comment Procedures

OSM is extending by an additional 15 days the comment period on the proposed Navajo plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Navajo plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

V. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribe AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribe AMLR plans and revisions thereof categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 756

Abandoned mine land reclamation program, Indian lands.

Dated: March 3, 1995.

Charle E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–5924 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 773

RIN 1029–AB80

Notification and Permit Processing

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) published a proposed rule in response to a petition for rulemaking regarding notification and permit processing provisions of 30 CFR part 773. OSM has received requests to hold a public hearing on the proposed rule and is announcing that public hearings will be held, and the comment period reopened in order to accommodate the hearing.

DATES: *Public Hearings:* A public hearing is scheduled for March 16, 1995, in Vincennes, Indiana, at 6 p.m. local time.

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Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on March 23, 1995.

ADDRESSES: *Public Hearings:* The public hearing will be held at the Executive Inn, One Executive Boulevard, Vincennes, Indiana.

Written Comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660 NC, 1951 Constitution Avenue NW, Washington, DC 20240.

Comments may also be sent electronically through the INTERNET to: OSMRULES@OSMRE.GOV. Please note that this address is different from the address specified in the proposed rule (59 FR 53884).

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, Room 640 NC, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–3938.

SUPPLEMENTARY INFORMATION: On October 26, 1994 (59 FR 53884), OSM published a proposed rule which would amend its regulations in response to a petition for rulemaking. The rulemaking would require that the regulatory authority provide to each person who was a party to an informal conference its written findings granting, requiring modification of, or denying a permit application. The rulemaking would also require both that an approved permit contain in its permit area only lands for which the applicant has established a right-to-enter and commence surface coal mining and reclamation operations, and that compliance with an approved permit be based on activities to be conduced solely upon such lands.

On December 23, 1994 (59 FR 66286), as a result of a commenter's request, the comment period was extended to February 27, 1995. OSM has received requests to hold a public hearing on the proposed rule. Therefore, in order to accommodate the public hearing, OSM will reopen the comment period. Comments will now be accepted until 5 p.m. local time on March 23, 1995.

Refer to **DATES** and **ADDRESSES** for the times, dates and locations for the hearing. The hearing will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Any disabled individual who needs special accommodations to attend this public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 7, 1995.

Mary Josie Blanchard,

Acting Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 95–6027 Filed 3–7–95; 5:02 pm]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5170–2]

Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Coke Oven Batteries; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant delegation of authority to the State of Utah to implement and enforce the National Emission Standards for Coke Oven Emissions. The Governor of Utah requested delegation from EPA Region VIII in a letter dated August 18, 1994. In the Final Rules Section of this **Federal Register**, EPA is approving the State of Utah's request for delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. EPA's rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 10, 1995.

ADDRESSES: Written comments should be submitted to Patricia D. Hull, Director, Air, Radiation & Toxics Division, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and concurrently to Russell A. Roberts, Director, Division of Air Quality, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114–4820. Copies of State of Utah's submittal are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: T. Scott Whitmore at (303) 293–1758.

SUPPLEMENTARY INFORMATION: See the information provided in the final action which is located in the Final Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Hazardous substances.

Authority: 42 U.S.C. 7412.

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 95–5979 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[OK001; AD-FRL–5170–3]

Clean Air Act Proposed Interim Approval Operating Permits Program; the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Oklahoma Department of Environmental Quality (ODEQ) through the Governor of Oklahoma on January 12, 1994, for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, with the exception of sources on Indian country.

DATES: Comments on this proposed action must be received in writing by April 10, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval rule are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, 4545 North Lincoln Boulevard., Suite 250, Oklahoma City, Oklahoma 73105–3483.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, New Source Review Section (6T–AN), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources, with the exception of sources on Indian country.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR part 70, and where a State requests source category-limited interim approval, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the November 15, 1993, date or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If the EPA were to finalize this proposed source category-limited interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Oklahoma would be protected from sanctions, and the EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State of Oklahoma. Permits issued under a program with interim approval have full standing with respect to part 70, and the State will permit sources based on the transition schedule submitted with the source category-limited approval request. This schedule may extend for no more than five years beyond the interim approval date.

Following final interim approval, if Oklahoma has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, the EPA would start an 18-month clock for mandatory sanctions. If Oklahoma then failed to submit a corrective program that the EPA found complete before the expiration of that 18-month period, the EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until the EPA determined that the State of Oklahoma had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, the EPA were to disapprove Oklahoma's complete corrective program, the EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Oklahoma had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Oklahoma has not timely submitted a complete corrective program or the EPA has disapproved a submitted corrective program. Moreover, if the EPA has not granted full approval to Oklahoma's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, the EPA must promulgate, administer, and enforce a Federal permits program for Oklahoma upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator a part 70 program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Under the signature of Governor David Walters, ODEQ requested approval with full authority to administer the State part 70 program in all areas of the State of Oklahoma.

The Governor's letter makes no reference to Indian country and specifically requests full authority over the State of Oklahoma. Because the Oklahoma permitting authorities have not demonstrated, consistent with applicable principles of Indian law and Federal Indian policies, legal authority to regulate sources in Indian country under the Act, the proposed interim approval of the Oklahoma part 70 program will not extend to any lands within the exterior boundaries of Indian country. Though the State has made no demonstration of jurisdiction over Indian country, the State may at a later time make an adequate demonstration of authority. Title V sources located within the exterior boundaries of Indian country in the State of Oklahoma will be subject to the Federal operating permit program, to be promulgated at 40 CFR part 71, unless a tribe is delegated a part 70 program. Regulations for delegation of tribal programs are being developed pursuant to section 301(d) of the Act. Tribes may also have inherent sovereign authority to regulate air pollutants from sources on Indian country.

The Oklahoma submittal addresses the program description as required at 40 CFR 70.4(b)(1) by describing how ODEQ intends to carry out its responsibilities under the part 70 regulations. The program description is addressed in the following areas: (I) Complete Program Description, (II) State Permitting Regulations, Guidelines, Policies, and Procedures, (III) Attorney General's Opinion, (IV) Permitting Program Documentation, (V) Provisions for Implementing the Operating Permits Program, (VI) Permit Fee Demonstration, (VII) Compliance Tracking and Enforcement, and (VIII) Provisions Implementing the Requirement of Other Titles of the Act (40 CFR 70.4(b)(3) (i) and (v)). The program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel, hereafter AG) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Oklahoma submitted an AG's Opinion in section III of the "Program Description" and a Supplemental AG's Opinion on February 28, 1994, demonstrating adequate legal authority as required by Federal law and regulation. The Supplemental AG's Opinion addresses the delegation of authority for signature from the

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Attorney General to the Chief Counsel for the Air Quality Division who has full authority to represent the State in all matters relating to the Department's environmental programs. This opinion with the supplement adequately addresses the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)–(xiii).

The State statutes cited in the AG's Opinion authorize the imposition of criminal fines in the amount of $10,000 per violation as required by 40 CFR 70.11(a)(3)(ii) for knowing violations of applicable requirements, permit conditions, as well as fee and filing requirements. Further, these statutes authorize the fine amounts to be imposed on a per day per violation basis as required by 40 CFR 70.11(a)(3)(ii). The statute at Title 27A O.S. Supplement. 1993, Section 2–5–116, appears to establish a cap in the amount of $250,000 on criminal penalties. The State is requested to supplement the Attorney General's Opinion again to clarify that this limit will not impede the State or EPA from enforcing daily violations with a $10,000 per day per violation fine. This supplemental AG Opinion should be submitted to the EPA before the publication of the final interim approval notice.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its program. The State addresses this requirement in its program submittal under Attachment 39—"Instructions for Title V Part 70 Operating Permit Application and General Permit Application Completeness Checklist", Attachment 40—"Permit Form", Attachment 41—"Permit Reporting Forms", and Attachment 42—"Inspection Protocol, Point Source Inspection Form."

2. Regulations and Program Implementation

The State of Oklahoma has submitted the Oklahoma Air Quality Council Regulations (OAC) 252:100–8 "Operating Permit Regulations" and OAC 252:100–8–9 "Permit Fee Requirements," for implementing the State's part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the package on January 7, 1994, showing evidence of adoption which was sent to the EPA in the State's original submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The State submitted as Attachment 1, OAC 252–100–8 titled "Operating Permits (Part 70)" (Subchapter 8), as required at 40 CFR 70.4(b)(2). Subchapter 8 follows the rule at 40 CFR part 70 very closely. Supporting documentation of procedurally correct adoption and copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program. Subchapter 8 received written comments from May 7 through October 19, 1993, and public hearings were held July 13, August 17, September 14, and October 19, 1993. The response to comments was made by ODEQ on October 19, 1993. Sufficient evidence of their procedurally correct adoption was submitted and meets the requirements of 40 CFR 70.4(b)(2).

The following requirements, set out in the EPA's part 70 rule, are addressed in the State's submittal: (a) provisions to determine applicability (40 CFR 70.3(a)), OAC 252–100–8–3; (b) provisions to determine complete applications (40 CFR 70.5(a)(2)), OAC 252–100–8–5; (c) public participation (40 CFR 70.7(h)), OAC 252–100–8–7(i); (d) provisions for minor permit modifications (40 CFR 70.7(e)(2)), OAC 252–100–8–7(e); (e) provisions for permit content (40 CFR 70.6(a)), OAC 252–100–8–6; (f) provisions for operational flexibility (40 CFR 70.4(b)(12)), OAC 252–100–8–6(h); and (g) enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)), OAC 252–100–8–6(b-c) and the AG Opinion.

Following is a discussion of certain specific provisions in the State's submission as they relate to requirements of 40 CFR part 70:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2) and 70.3(a)): Applicability criteria are listed at OAC 252:100–8–3 with "applicable requirement" defined at OAC 252:100–8–2. The regulations at OAC 252:100–8–2 defines a "major source." The State included a paragraph (4) to this definition which does not allow aggregation of emission sources at oil and gas wells, compressor stations, and pump stations for criteria pollutants. Paragraph (4) is in conflict with the rule because oil and gas sources may not be aggregated to determine major source status for Hazardous Air Pollutants only. Therefore, as a condition for full approval, the regulations at OAC 252:100–8–2, "major source," must be revised to delete paragraph (4).

Oklahoma's "major source" definition creates the possibility that sources that would otherwise be major under part 70 would not be major due to the non-aggregation provision for oil and gas facilities. Non-aggregation of oil and gas units is provided only for the emission of hazardous air pollutants in the Federal rule. 40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping to be considered as the same source. The Oklahoma permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met. The EPA considers Oklahoma's misinterpretation of the non-aggregation provision for criteria pollutants to allow an unknown number of oil and gas facilities to avoid title V of the Act. The EPA expects that any permits issued by the State will address all applicable requirements, as required by 40 CFR 70.7(a)(1)(iv).

The State of Oklahoma submitted under the signature of the Executive Director of the ODEQ, Mark Coleman, a request dated January 23, 1995, for the EPA to grant source category-limited interim approval allowing more time to permit these extra sources and correct the regulations. In the original submittal the Governor of Oklahoma delegated the authority to submit non-regulatory changes under the signature of the Executive Director of the ODEQ. Because the request for source category-limited interim approval requires a regulatory change, the EPA must receive a formal request under the Governor's signature before the EPA can publish final interim approval in the **Federal Register**. The request included a revised transition schedule that demonstrates the State will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The request is consistent with the policy memo from John Seitz, Director of the Office of Air Quality Planning and Standards dated August 2, 1993. The EPA can grant source category-limited interim approval to States whose programs do not provide for permitting all required sources if the State makes a showing that two criteria were met: 1) that there were "compelling reasons" for the exclusions and 2) that all required sources will be permitted on a schedule that "substantially meets" the requirements of part 70. The EPA considers Oklahoma's misinterpretation of use of the non-aggregation provision

for criteria pollutants to be a compelling reason for granting this type of interim approval. Further, the revised transition plan demonstrates that all part 70 sources will be permitted on a schedule that substantially meets the requirements of part 70.

The EPA is therefore proposing to grant Oklahoma source category-limited interim approval. Source category-limited interim approval will allow Oklahoma to implement the revised transition schedule to permit all part 70 sources during the transition period after the permit regulations have been revised. As a condition of this interim approval, the State must revise the regulations at OAC 252:100–8–7(a)(5)(A) and OAC 252:100–8–5(b)(2) to reflect the new transition schedule for permitting existing sources consistent with the rule at 40 CFR part 70. For full part 70 approval, the ODEQ will be required to revise its permit regulations so no source or portion of a source which would be defined as a major under 40 CFR 70.2 will be exempt from part 70 requirements because the emissions of an oil or gas unit have not been aggregated. Additionally, the State must formally request source category-limited interim approval under the Governor's signature because this approval action requires the regulatory changes outlined above. This formal request under the Governor's signature must be received by the EPA before this approval action can be published as final in the **Federal Register**.

The regulations at OAC 252:100–8–3(e) address insignificant activities. Emissions of one pound per hour of criteria pollutants or emissions of toxic pollutants less than the de minimis listed at OAC 252:100–41–43(a)(5) are considered insignificant. Further, the State regulations consider increases in potential to emit at a facility to be insignificant if the increase is less than 10% of the permit limit or 10% of the facility's baseline potential to emit. This insignificant level is available to any permit action (modification or renewal) and must be identified in the application. Emissions of 1 lb/hr based on the source's potential to emit are reasonable. However, to consider a percentage change in the potential to emit or a permit limit as insignificant is not reasonable. As the regulations are currently written, a permitted source could exceed a permit limit by 10% without liability. Also, 10% of a high permit limit could mask a permit modification from preconstruction review. For these reasons, the language at OAC 252:100–8–3(e)(3) must be revised to delete the allowance of any percentage of the permit limit or change in the potential to emit as an insignificant emission level. Further, the language at OAC 252:100–8–3(e)(1) must be amended to base the 1 lb/hr insignificant emissions level on the source's potential to emit.

The ODEQ will maintain a list of insignificant activities that need not be quantified on the application as well as a list of activities the Department considers to be "trivial." Trivial activities are not required to be identified on the application. The Federal rule at part 70 allows a list of insignificant activities and emission levels which need not be included in permit applications be submitted as part of a State's part 70 program, and approved by the Administrator. However, the list of insignificant activities and the list of trivial activities mentioned in the State regulations were not submitted as part of the part 70 program, and part 70 does not allow for the substitution of the State permitting authority's approval for the Administrator's approval, which is required by 40 CFR 70.5(c). Furthermore, 40 CFR 70.5(c) clarifies that if the insignificant activities are exempted because of size or production rate, a list of these insignificant activities must be included in the application. Therefore, for full part 70 approval, the regulations at OAC 252:100–8–3(e) must be revised to reflect the requirements at 40 CFR 70.5(c).

The State's insignificant emissions levels will allow for an emissions threshold that could allow significant emissions to avoid appearing on the application. As a condition of full approval, the State must amend the language at OAC 252:100–8–3(e) so that the insignificant emissions rate of 1 lb/hr for criteria pollutants will be based on potential to emit instead of actual emissions. Additionally, the language at OAC 252:100–8–3(e)(3) must be revised to delete the allowance of any percentage of the permit limit or change in the potential to emit as an insignificant emission level. An application may not omit information needed to determine the applicability of, or to impose any applicable requirement, or to evaluate the fee amount required. Further, any list of insignificant activities or trivial activities must be approved by the EPA prior to its use.

(b) Provisions to determine complete applications are listed at OAC 252:100–8–5(d) and 5(b)(8). Complete application forms, model permit forms, permit reporting forms, and instructions are located in Attachments 39, 40, 41, and 42. These application forms may be amended without rulemaking to facilitate changes required by new applicable requirements. These provisions meet the requirements of 40 CFR 70.5 (a)(2) and (c).

(c) Provisions for public participation are found at OAC 252:100–8–7(i) and review by the EPA and affected States at OAC 252:100–8–8. The State regulations provide for adequate public participation and notice to affected States for permit issuance, renewals, and reopenings. The regulations provide standing only for those who have provided written comments during public review. The State must clarify that judicial review is available to all affected parties for all final permit actions including minor modifications and administrative amendments. As a condition of full approval, the provision at OAC 252:100–8–7(j) must be clarified to assure that all final permit actions are subject to judicial review.

The regulations at OAC 252:100–8–7(i)(1)(E) and at OAC 252:100–8–7(j)(2)(A) provide standing for written comments only during public review. As a condition of full approval, these provisions in the regulations must be revised to delete the word "written," thus providing standing for oral comments during the public participation process. With these required changes, the provisions meet the requirements of 40 CFR 70.7(h).

(d) The rule at 40 CFR 70.7(e)(2)(i) specifies criteria for minor permit modifications. These criteria are adequately incorporated in the State regulations at OAC 252:100–8–7(e)(1)(A). These provisions are more stringent than the rule at 40 CFR 70.7(e) because they include State-only requirements as well as federally enforceable requirements. The provisions at OAC 252:100–8–7(e) meet the requirements at 40 CFR 70.7(e).

The EPA has noted two deficiencies in the administrative amendments procedure at OAC 252:100–8–7(d). This procedure is designed to make simple changes to the permit that do not require public, affected State, or EPA review. The rule at 40 CFR 70.7(d)(1)(iii) allows administrative amendments to be used to require more frequent monitoring at the facility. The regulations at OAC 252:100–8–7(d)(1)(C) allow "... more or less ..." frequent monitoring. Also, OAC 252:100–8–7(d)(1)(E) allows changes processed under Subchapter 7 using enhanced New Source Review (NSR) procedures to be incorporated into the operating permit under an administrative amendment.

The administrative amendment procedure cannot be used to make the

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monitoring requirements less stringent. Therefore, as a condition for full approval, the State must revise the administrative amendment procedure to delete the words ". . . or less . . ." from OAC 252:100–8–7(d)(1)(C).

The regulations do not define or specify the NSR procedures mentioned and therefore require clarification. The rule at 40 CFR 70.7(d)(1)(v) requires that the procedures used for enhanced NSR are substantially equivalent to the requirements of 40 CFR 70.7 and 40 CFR 70.8 that would be applicable to the change if it were subject to review as a permit modification, and has compliance requirements substantially equivalent to those contained in 40 CFR 70.6. Subchapter 7 has not been submitted as a SIP revision and the EPA will reserve comment on Subchapter 7 until it is submitted. Until the EPA has completed its review of the State Implementation Plan (SIP) revision and has approved it, the EPA expects that the State will interpret the term "enhanced" in OAC 252:100–8–7(d)(1)(E) consistent with the EPA's definition of that term, so that changes processed under the State's NSR program will be eligible for incorporation into the title V permit through administrative amendment only if those changes have been processed consistent with the requirements of 40 CFR 70.7(d)(1)(v), as explained above. Interpreted in this way, the State's program is eligible for interim approval.

Therefore, as a condition for full approval, the State must revise the regulations at OAC 252:100–8–7(d)(1)(E) to define or specify "Enhanced New Source Review procedures" and to submit a SIP revision for Subchapter 7 that reflects these procedures.

(e) Provisions for permit content are found at OAC 252:100–8–6. The State regulations contain all of the provisions at 40 CFR 70.6. The language in the State regulations is often verbatim with the rule. Adequate provisions are made for permit duration, permit shield, general permits, temporary sources, and emergency situations. The regulations at OAC 252:100–8(a)(3)(C)(iii)(I) define "prompt" reporting of exceedances as 24 hours after the occurrence. The provisions at OAC 252:100–8–6(a) include the phrase "To the extent practicable . . ." This phrase indicates that the State has discretion in what constitutes an applicable requirement. In order to receive full approval, the State must remove the phrase "to the extent practicable." Until this revision is made, the permits issued by the State shall meet the requirements of 40 CFR 70.6 and include all applicable requirements.

(f) Provisions for operational flexibility and alternative scenarios are listed at OAC 252:100–8–6(h). This section meets the requirements of 40 CFR 70.4(b)(12), 70.5(c)(7), and 70.6(a)(10).

(g) Provisions for compliance tracking and enforcement are described in Section VII of the submittal. The State commits to submit annual information concerning the State's enforcement activities in part A of this section. Attachment 42 contains an Inspection Protocol and Point Source Inspection Form. Attachment 48 is the latest Enforcement Memorandum of Agreement. Attachment 49 contains the Air Quality Program Enforcement Action Report. Attachment 50 contains a tracking list for Administrative Orders and Consent Orders. The AG Opinion discussed above outlines the State's authority to enforce all aspects of the program. These submission elements meet the requirements for compliance tracking and reporting at 40 CFR 70.4(b)(4)(ii) and (5). These submission elements meet the enforcement authority requirements at 40 CFR 70.4(b)(2), 70.4(b)(3)(vii), and 70.4(9).

The State of Oklahoma has the authority to issue a variance from requirements under Title 27A O.S. Supplement. 1993, Section 2–5–109. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, the EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

3. Permit Fee Demonstration

The regulations at OAC 252:100–8–9 specify an annual fee of $25 per ton per year based on actual or allowable emissions at the facility as reflected in the emission inventory. This fee is based on 1995 dollars for the first year and will be adjusted each year afterward to reflect the difference between the Consumer Price Index (CPI) for the previous year to the CPI for 1989. The original submittal from the State did not contain a detailed fee analysis. Instead, the regulations at OAC 252:100–8–9(d)(1)(B) specify that the ODEQ must complete a detailed workload analysis mandated by State law to be conducted by an independent consultant with a review of the fee and adjustment of the fee as necessary. The State submitted the workload analysis and fee demonstration to the EPA for review on November 7, 1994. The formal submission to the program was made in a letter dated January 23, 1995, from the Executive Director of the ODEQ to the EPA. The fee demonstration recommends a fee of $15.19 per ton in 1995 dollars and will be adjusted each year to the 1989 CPI as provided for in the regulations.

Though the fee reflected in the fee demonstration is less than the $25 per ton fee listed in the Act, the State has shown that it will provide sufficient funding based on the applicable requirements in effect at the time of the program submittal. Based on the anticipated emissions, the State expects the $15.19 per ton fee to generate over $4,250,000 the first year. These funds will adequately pay for the anticipated costs of the program as demonstrated in the detailed workload analysis.

Therefore, based on its review, the EPA proposes approval for the fee structure and workload analysis of the Oklahoma part 70 program. The EPA solicits comment on the fee during the comment period for this proposed approval action and will respond to any comments before taking final action. The EPA is recommending approval of the $15.19 per ton fee and deems the analysis and fee demonstration adequate in accordance with 40 CFR part 70.

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Oklahoma acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources. Upon receiving approval under section 112(l), the State may receive delegation of any new authority required by section 112 of the Act through the delegation process.

The State also has the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations.

The radionuclide National Emission Standard for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct or modify any major source of hazardous air pollutants unless the State determines that the maximum achievable control technology (MACT) emission limitation under section 112(g) will be met. Such determination must be made on a case-by-case basis where no applicable limitations have been established by the Administrator. During the period from the title V effective date to the date the State has taken appropriate action to implement the final section 112(g) rule (either adoption of the unchanged Federal rule or approval of an existing State rule under 112(l)), Oklahoma intends to implement section 112(g) of the Act through the State's preconstruction process.

The State of Oklahoma commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112 and 129 of the Act, and all MACT standards promulgated in the future, in a timely manner.

The regulations at OAC 252:100–8–6(i) provide for the permitting of acid rain sources. The EPA commented on these regulations on October 1, 1993, and recommended that the State incorporate by reference the Federal acid rain permit requirements. The State has agreed to change OAC 252:100–8–6(i) to incorporate by reference the acid rain permit requirements and has drafted this revision as an emergency rule. The State must submit this regulatory revision for incorporation by reference of the acid rain permitting rules before this approval action can be published as final in the **Federal Register**.

5. Enforcement Provisions

The State describes compliance tracking and enforcement under Section VII of the submittal. Oklahoma commits to submit annual information concerning the State's enforcement activities in part A of this section. As required at 40 CFR 70.4(b)(4)(ii) and 70.4(b)(5), the Enforcement Memorandum of Understanding, signed by the State and the EPA on July 22, 1993, appears in the submittal as Attachment 48. Attachment 42 contains an Inspection Protocol and Point Source Inspection Form. Attachment 49 contains the Air Quality Program Enforcement Action Report. Attachment 50 contains a tracking list for Administrative Orders and Consent Orders. The AG Opinion discussed above outlines the State's authority to enforce all aspects of the program. This statement of authority is required at 40 CFR 70.4(b)(3)(vii).

The compliance tracking and enforcement information in the submittal serves to describe the current processes in place to track air permits and conduct enforcement actions. These elements meet the requirements for compliance tracking and reporting at 40 CFR 70.4(b) (4)(ii) and (5). Further, these elements meet the enforcement authority requirements at 40 CFR 70.4(b)(2), 70.4(b)(3)(vii), and 70.4(9).

6. Technical Support Document

The results of this review will be shown in a document entitled "Technical Support Document," which will be available in the docket at the locations noted above. The technical support documentation shows that all operating permits program requirements of 40 CFR part 70 and relevant guidance were met by the submittal with the exception of those requirements described below.

7. Summary

The State of Oklahoma submitted to the EPA, under a cover letter from the Governor, the State's operating permits program on January 7, 1994. The submittal has adequately addressed all sixteen elements required for full approval as discussed in part 70 with the exception of the issues described in section B below. The State of Oklahoma addressed appropriately all requirements necessary to receive source category-limited interim approval of the State operating permits program pursuant to title V of the Act, 1990 Amendments and 40 CFR part 70. The EPA is proposing source category-limited interim approval for the part 70 program submittal for the State of Oklahoma.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant source category-limited interim approval to the operating permits program submitted by the State of Oklahoma on January 7, 1994. Interim approvals under section 502(g) of the Act do not create any new requirements, but simply approve requirements that the State is already imposing.

If promulgated, the State must make the following changes to receive full approval:

(1) Criminal Penalty Cap

As discussed in section A.1 above, the State must provide a supplemental Attorney General's Opinion to clarify the implementation of the criminal penalty statute in such a way that preserves the integrity of the Act. This supplement must be submitted to the EPA before final action on this proposal is taken.

(2) Definition of "Major Source"

As discussed in section A.2.a above, the State must revise OAC 252:100–8–2, "major source" by deleting paragraph (4). This revision will make the definition consistent with the rule at part 70. Also, the State must revise the regulations to reflect the transition schedule proposed for source category-limited interim approval.

(3) Revision of Insignificant Activities

As discussed in section A.2.a above, the State must amend the language at OAC 252:100–8–3(e) so that the insignificant emissions rate of 1 lb/hr for criteria pollutants will be based on potential to emit instead of actual emissions. Further, the language at OAC 252:100–8–3(e)(3) must be revised to delete the allowance of any percentage of a permit limit or change in the potential to emit as an insignificant emission level. Also, an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required. Further, any list of insignificant activities or trivial activities must be approved by the EPA prior to its use, as required at 40 CFR 70.5(c).

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(4) Revision of Permit Content

The regulations at OAC 252:100–8–6(a) must be revised to remove the phrase "To the extent practicable. . . ." Until this revision is made, the permits issued by the State shall meet the requirements of 40 CFR 70.6 and include all applicable requirements.

(5) Revision to Provide Standing

As discussed in section A.2.c above, the State must revise OAC 252:100–8–7(i)(1)(E) and OAC 252:100–8–7(j)(2)(A) to delete the word "written" so that oral comments have standing with judicial review of the permitting process. Also, the State must clarify OAC 252:100–8–7(j) so that judicial review is available to all affected parties for all final permit actions including minor modifications and administrative amendments.

(6) Administrative Amendment Procedure

As discussed in section A.2.d above, the State must revise OAC 252:100–8–7(d)(1)(C) to delete the words, ". . . or less . . .". Further, the provisions at OAC 252:100–8–7(d)(1)(E) must be clarified to require enhanced NSR procedures that are substantially equivalent to the requirements of 40 CFR 70.7 and 40 CFR 70.8 for a change subject to review as a permit modification and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. The State must submit a SIP revision for Subchapter 7 that incorporates enhanced NSR procedures that meet the requirements listed at 40 CFR 70.7 and 40 CFR 70.8 for a change subject to review as a permit modification, and has compliance requirements substantially equivalent to those contained in 40 CFR 70.6.

(7) Review of the Fee

As discussed in section A.3 above, the EPA has reviewed the workload analysis and fee demonstration submitted November 7, 1994, and is recommending approval of the proposed fee of $15.19 per ton. The EPA will consider comments made during the comment period for this approval action and will reserve final action on the fee for the final interim approval notice.

(8) Acid Rain Incorporation by Reference

As discussed in section A.4 above, the State must revise OAC 252:100–8 to incorporate the acid rain requirements and submit this revision to the EPA before final action on this proposal is taken.

Evidence of these regulatory revisions and their procedurally correct adoption must be submitted to the EPA within 18 months of the EPA's approval of the Oklahoma part 70 program. This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and the EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to 40 CFR part 70, and the State will permit sources based on the transition schedule submitted with the source category-limited approval request. This schedule may extend for no more than five years beyond the interim approval date.

If the interim approval is converted to a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement.

The scope of Oklahoma's part 70 program that the EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State of Oklahoma, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–18 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.

III. Proposed Rulemaking Action

In this action, the EPA is proposing source category-limited interim approval of the part 70 program submitted by the State of Oklahoma. The program was submitted by the State to the EPA for the purpose of complying with Federal requirements found at the 1990 Amendments, title V and at part 70, which mandates that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources and certain other sources, with the exception of Indian country. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA has reviewed this submittal of the Oklahoma part 70 program and is proposing source category-limited interim approval. Certain defects in the State's regulations preclude the EPA from granting full approval of the State's part 70 program at this time. The EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory revisions within 18 months after the Administrator's approval of the Oklahoma title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by April 10, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities, (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Part 70 program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal part 70 program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning part 70 programs on such grounds, (Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. section 7410(a)(2)).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Checklist, Environmental protection, Intergovernmental relations, Memorandum of understanding, Operating permits, Options for approval/disapproval and implications, Permit fee demonstration.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 1995.

William B. Hathaway,

Acting Regional Administrator (6M).

[FR Doc. 95–5981 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 761

[OPPTS–660019B; FRL–4938–5]

Disposal of Polychlorinated Biphenyls (PCBs); Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Informal Hearing.

SUMMARY: On December 6, 1994, EPA's Office of Pollution Prevention and Toxics published a proposed rule [59 FR 62788] to amend its rules under the Toxic Substances Control Act (TSCA) for polychlorinated biphenyls (PCBs). Changes proposed by EPA would affect the disposal, marking, storage, use, reporting and recordkeeping requirements for PCBs. In that notice, EPA said it would conduct one or more informal public hearings in the Washington, DC, area on the proposal, to be held after the closure of the written comment period on April 6, 1995. This notice announces the time and location of that hearing.

DATES: The hearing will take place on Tuesday, May 2, 1995, from 9:00 a.m. to 5:00 p.m. If necessary, the hearing will be extended to 9:30 p.m., and it may also be continued the following day, Wednesday, May 3, 1995, beginning at 9:00 a.m. Written requests to participate in the hearing must be received on or before April 6, 1995.

ADDRESSES: The hearing will be held at the Holiday Inn of Arlington at Ballston, 4610 North Fairfax Drive, Arlington, Virginia 22203, telephone (703) 243–9800. Three copies of the request to participate in the informal hearing, identified with the docket number OPPTS–660019B must be submitted to: OPPT Document Control Officer, Attn: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Rm. G–99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. See SUPPLEMENTARY INFORMATION for the type of information that must be included in the request and who may participate. Statements must be limited to 15 minutes. Requests for a waiver to participate in the informal hearing by those organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 7404, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: The procedures for rulemaking under section 6 of the Toxic Substances Control Act (TSCA) are identified in 40 CFR part 750, subpart A. The following summarizes the procedures and logistics associated with this informal hearing pursuant to 40 CFR part 750. Participants and/or commenters are advised to see 40 CFR part 750 for greater detail. Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the OPPT Document Control Officer (see ADDRESSES above). The request shall be received on or before April 6, 1995. The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required (not to exceed 15 minutes); and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted by the Record and Hearing Clerk (see ADDRESSES above) or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.6(a)).

A panel of EPA employees shall preside at the hearing, and one panel member will chair the proceedings. The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination will normally not be permitted at this stage. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions (40 CFR 750.7(a) and (b)). See 40 CFR 750.7(c) for the rule governing the submission of additional material by the hearing participants.

After the close of the hearing, any participant in the hearing may submit a written request for cross-examination. The request shall be received by EPA no later than 1 week after a full transcript of the hearing becomes available (to determine when the transcript is available, interested persons may contact the Environmental Assistance Division (see FOR FURTHER INFORMATION CONTACT above)). See 40 CFR 750.8 for a description of the information that shall be included in such a request.

Interested persons may file reply comments. Reply comments shall be received no later than 2 weeks after the close of all informal hearings, including any hearing to allow cross-examination. Reply comments shall be restricted to comments on: (1) other comments; (2) material in the hearing record; and (3) material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due on April 6, 1995. (40 CFR 750.4(a) and (b)). Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.4(c). Reply comments and a transcript of the hearing will be placed in the Nonconfidential Information Center as part of the rulemaking record for the proposed rule (docket number OPPTS–660019B). A full list of these materials is available for inspection and copying in the TSCA Nonconfidential Information Center, Rm. B607, Northeast Mall, 401 M St., SW.,

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Washington, DC, from 12 noon to 4 p.m. However, any information claimed as Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which information claimed as CBI has been excluded, is available for inspection. The address for the TSCA Docket Receipts appears under the "ADDRESSES" section of this notice.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and Recordkeeping requirements.

Dated: March 2, 1995.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–5986 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7128]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	East Lyme (Town) New London County.	Latimer Brook	Approximately 0.3 mile downstream of Rock Fill Dam.	None	*79
			Approximately 1,100 feet upstream of Chapman Drive.	None	*98

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Office of Zoning Enforcement, Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut. Send comments to Mr. David L. Cini, First Selectman, Town of East Lyme, P.O. Box 519, Niantic, Connecticut 06357.					
Connecticut	Montville (Town) New London County.	Latimer Brook	Approximately 280 feet downstream of Silver Falls Road.	None	*99
			Approximately 380 feet upstream of Beckwith Road.	None	*150
		Trading Cove Brook	Approximately 300 feet upstream of confluence of Ford Brook and Great Plain Brook.	*29	*30
			Approximately 300 feet upstream of the confluence of Goldmine Brook.	*70	*71
Maps available for inspection at the Office of Planning and Zoning, 310 Norwich-New London Turnpike, Uncasville, Connecticut. Send comments to The Honorable Wayne Scott, 310 Norwich-New London Turnpike, Uncasville, Connecticut 06382.					
Kentucky	Pineville (City) Bell County.	Cumberland River	At downstream corporate limits approximately 0.52 miles downstream of Tennessee Avenue.	*1018	*1019
			At corporate limits approximately 530 feet upstream of Route 119.	*1025	*1027
		Straight Creek	At its confluence with Cumberland River	*1021	*1022
			At its upstream corporate limit, approximately 0.48 mile upstream of its confluence with Cumberland River.	*1021	*1022
Maps available for inspection at the City Hall, Corner of Walnut and Virginia, Pineville, Kentucky. Send comments to The Honorable Robert L. Madon, Mayor of the City of Pineville, Bell County, P.O. Box 688, Pineville, Kentucky 40977.					
Maine	Madison (Town) Somerset County.	Kennebec River	At downstream corporate limits	*184	*193
			At approximately 500 feet upstream of upstream corporate limits.	*272	*275
		Jones Brook	At confluence with Kennebec River	*231	*234
			At approximately 0.66 mile downstream of Jones Street.	*275	*276
		Cold Brook	At approximately 1,800 feet downstream of Snowmobile bridge.	None	*205
			At approximately 30 feet upstream of Snowmobile bridge.	None	*206
		Hayden Brook	Approximately 50 feet upstream of the confluence with Wesserunsett (Hayden) Lake.	*337	*338
			At approximately 60 feet upstream of U.S. Route 201.	None	*357
		Unnamed Brook	At approximately 0.3 mile downstream of U.S. Route 201.	None	*267
			At approximately 0.24 mile upstream of U.S. Route 201.	None	*319
Maps available for inspection at 26 Weston Avenue, Madison, Maine. Send comments to Mr. Richard Michaud, Manager of the Town of Madison, Somerset County, P.O. Box 190, Madison, Maine 04950.					
Michigan	Midland (City) Bay and Midland Counties.	Chippewa River	At corporate limits (approximately 2.58 miles upstream of the confluence with Tittabawassee River).	None	*617
			Approximately 1 mile upstream of corporate limits (approximately 3.53 miles upstream of the confluence with Tittabawassee River).	None	*617
		Inman Drain	At Dublin Road	None	*616
			Approximately 1,375 feet upstream of Dublin Road.	None	*617
		Sturgeon Creek	Approximately 0.4 mile upstream of Cemetary Entrance Road.	None	*616
			Approximately 0.5 mile upstream of Cemetary Entrance Road.	None	*616
		Tittabawassee River	East of Miller Road	None	*612
			At Dublin Road to approximately 1.2 miles upstream of Dublin Road.	None	*617

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Midland City Planning Department, City Hall, 333 West Ellsworth, Midland, Michigan. Send comments to Mr. Karl Tomion, Midland City Manager, 333 West Ellsworth, Midland, Michigan 48640.					
Michigan	Montrose (Township) Genesee County.	Armstrong Creek	At confluence with Flint River	None	*626
			At Frances Road	*679	*683
		Flint River	Approximately 3.1 miles upstream of Willard Road.	None	*619
			Approximately 3.0 miles upstream of the confluence of Armstrong Creek.	None	*637
Maps available for inspection at the Office of the Township of Montrose, 139 South Saginaw Street, Montrose, Michigan. Send comments to Mr. Mark Walker, Township of Montrose Supervisor, 139 South Saginaw Street, Montrose, Michigan 48457.					
New Jersey	Delran (Township) Burlington County.	Swedes Run	Approximately 0.82 mile uptream of Broad Street.	*11	*12
			Approximately 850 feet upstream of Bridgeboro Road.	31	*34
Maps available for inspection at the Township Clerk Office, 1050 Chester Avenue, Delran, New Jersey. Send comments to The Honorable Thomas A. DiLauro, Mayor of the Township of Delran, 1050 Chester Avenue, Delran, New Jersey 08075.					
New York	Schroon (Town) Essex County.	Schroon Lake	Paradox CreekEntire shoreline within community.	None	*812
		Paradox Lake	Entire shoreline within community	None	*824
		Schroon River	At confluence with Schroon Lake	None	*812
			At the upstream side of U.S. Route 9	None	*833
		Paradox Creek	At confluence with Schroon River	None	*823
			At downstream side of Fraternaland Road	None	*846
Maps available for inspection at the Town Hall, South Street, Schroon Lake, New York. Send comments to Mr. John J. Kelly, Supervisor of the Town of Schroon, Town Hall, P.O. Box 578, Schroon, New York 12870.					
New York	Wilmington (Town) Essex County.	West Branch Ausable River.	Approximately 270 feet downstream of downstream corporate limit.	None	*805
			At State Route 86 (upstream crossing)	None	*1075
Maps available for inspection at the Community Center, Springfield Road, Wilmington, New York. Send comments to The Honorable Tom Sibalski, Town of Wilmington Supervisor, P.O. Box 180, Community Center, Springfield Road, Wilmington, New York 12997.					
North Carolina	McDowell County Unincorporated Areas.	Catawba River	At Yancey Road	*1210	*1202
			Approximately 2.6 miles upstream of State Route 1273.	*1532	*1525
		Mill Creek	Approximately 1,350 feet upstream of Norfolk Southern Railway.	*1454	*1449
			Approximately 0.4 mile upstream of State Route 1401.	*1487	*1483
Maps available for inspection at the McDowell County Administration Building, 10 East Court, Marion, North Carolina. Send comments to Mr. Charles Abernathy, McDowell County Manager, 10 East Court, Marion, North Caroliina 28752.					
North Carolina	Old Fort (Town) McDowell County.	Catawba River	At the confluence of Curtis Creek	*1378	*1375
			Approximately 1,300 feet downstream of Catawba Avenue.	*1421	*1412
		Mill Creek	At the confluence with the Catawba River	*1416	*1409
			At the State Route 1119	*1459	*1455
Maps available for inspection at the Old Fort City Hall, 106 South Catawba, Old Fort, North Carolina. Send comments to The Honorable Wayne Stafford, Mayor of the Town of Old Fort, P.O. Box 908, Old Fort, North Carolina 28762.					
Pennsylvania	Allenport (Borough) Washington County.	Monongahela River	Approximately 0.4 mile downstream of Tributary 1.	*763	*766
			Approximately 2.3 miles upstream of confluence of Hooders Run	*765	*768

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Borough Building, Main Street, Allenport, Pennsylvania. Send comments to The Honorable Dennis Martinak, Mayor of the Borough of Allenport, P.O. Box 47, Allenport, Pennsylvania 15412.					
Pennsylvania	Belle Vernon (Borough) Fayette County.	Monongahela River	Approximately 40 feet upstream of bridge (I–70) (at downstream corporate limit).	*762	*764
			Approximately 0.88 mile upstream of bridge (I–70) (at upstream corporate limit)	*763	*765
Maps available for inspection at the Borough Hall, 61 Sampson Street, Belle Vernon, Pennsylvania. Send comments to The Honorable Frank Ferreri, Mayor of the Borough of Belle Vernon, 61 Sampson Street, Belle Vernon, Pennsylvania 15012.					
Pennsylvania	Brownsville (Borough) Fayette County.	Monongahela River	Approximately 0.38 mile downstream of U.S. Route 40 bridge.	*771	*774
			Approximately 1.06 miles upstream of Bridge Street bridge	*772	*775
		Dunlap Creek	At confluence with Monongahela River	*771	*775
			Approximately 0.85 mile upstream of Brownsville Avenue bridge.	*771	*775
Maps available for inspection at the Borough Hall, 2nd and High Street, Brownsville, Pennsylvania. Send comments to The Honorable Sam Nicola, Mayor of the Borough of Brownsville, 2nd and High Street, Brownsville, Pennsylvania, 15417.					
Pennsylvania	Brownsville (Township) Fayette County.	Monongahela River	Approximately 1,500 feet downstream of Conrail Bridge.	*770	*774
			Approximately 47 miles upstream of Conrail Bridge	*771	*774
		Dunlap Creek	Approximately 750 feet downstream of Conrail Bridge.	*771	*775
			Approximately 1,870 feet downstream of Conrail Bridge.	*772	*775
		Redstone Creek	At the confluence with Monongahela River.	*770	*774
			Approximately 0.83 mile upstream of Conrail Bridge.	*770	*774
Maps available for inspection at the Tax Collector's Office, Union Street, Brownsville, Pennsylvania. Send comments to Mr. Homer Yeardie, Chairman of the Board of Supervisors, 220 Lynn Road, Brownsville, Pennsylvania 15417.					
Pennsylvania	Carroll (Township) Washington County.	Monongahela River	Downstream corporate limits	*755	*756
			Approximately 525 feet upstream of upstream corporate limits	*760	*761
		Pigeon Creek	At State Route 481	*755	*756
			Approximately 0.9 mile downstream of State Route 481.	*755	*756
Maps available for inspection at the Township Hall, 130 Baird Street, Carroll, Pennsylvania. Send comments to Mr. Lewis Resovich, Chairman of the Township of Carroll Board of Supervisors, 130 Baird Street, Monongahela, Pennsylvania 15063.					
Pennsylvania	Centerville (Borough) Washington County.	Monongahela River	Approximately 1.70 miles downstream of the confluence of Two Mile Run.	*772	*775
			Approximately 1.57 miles upstream of Maxwell Locks and Dam	*778	*781
Maps available for inspection at the Borough Building, National Pike West, Centerville, Pennsylvania. Send comments to The Honorable Iris Holleran, Mayor of the Borough of Centerville, 176–D, R.D. One, Fredericktown, Pennsylvania 15333.					
Pennsylvania	Dickinson (Township) Cumberland County.	Yellow Breeches Creek	Approximately 1,050 feet downstream of Burnthouse Road (T–474).	None	*533
			At upstream corporate limits	None	*597
		Yellow Breeches Creek Northern Split.	At confluence with Yellow Breeches Creek.	None	*558
			At divergence from Yellow Breeches Creek.	None	*569

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Building, 219 Mountain View Road, Mount Holly Springs, Pennsylvania. Send comments to Ms. Deborah K. Westbrook, Secretary/Treasurer of the Township of Dickinson Board of Supervisors, 219 Mountain View Road, Mount Holly Springs, Pennsylvania 17065–1503.					
Pennsylvania	Eulalia (Township) Potter County.	Allegheny River	Approximately 700 feet downstream of the Township of Eulalia's downstream corporate limits.	None	*1579
			Approximately 0.4 mile upstream of the Township of Eulalia's upstream corporate limits.	None	*1632
Maps available for inspection with Ms. June Bunnell, Township Secretary, RD 3, Coudersport, Pennsylvania. Send comments to Mr. James Lane, Chairman of the Township of Eulalia, RD 1, Coudersport, Pennsylvania 16915.					
Pennsylvania	Fayette City (Borough) Fayette County.	Monongahela River	At the downstream corporate limits (Approximately 675 feet downstream of Downers Run).	*764	*766
			At the upstream corporate limits (Approximately 1,050 feet upstream of Lamb Lick Run)	*764	*767
Maps available for inspection at the Borough Hall, 238 Main Street, Fayette City, Pennsylvania. Send comments to The Honorable Herbie Vargo, Mayor of the Borough of Fayette City, 238 Main Street, Fayette City, Pennsylvania 15438.					
Pennsylvania	Henderson (Township) Hutingdon County.	Juniata River	Approximately 0.57 mile upstream of State Route 829.	*603	*602
			At upstream corporate limits	*618	*614
Maps available for inspection at the Chairman of the Board of Supervisors Home, R.D. 3, Box 223, Huntingdon, Pennsylvania. Send comments to Mr. William L. Snyder, Chairman of the Board of Supervisors for the Township of Henderson, Huntingdon County, R.D. 3, Box 223, Huntingdon, Pennsylvania 16652.					
Pennsylvania	Newell (Borough) Fayette County.	Monongahela River	At downstream corporate limits	*768	*769
			At upstream corporate limits	*766	*771
Maps available for inspection at the Newell Borough Building, Second Street, Fayette City, Pennsylvania. Send comments to The Honorable Albert Staley, Mayor of the Borough of Newell, 244–L, R.D. 1, Box 522, Fayette City, Pennsylvania 15438.					
Pennsylvania	North Charleroi (Borough) Washington County.	Monongahela River	Downstream corporate limits (approximately 1,000 feet downstream of North Charleroi bridge).	*760	*761
			Upstream corporate limits (approximately 1,600 feet upstream of Monessen North Charleroi bridge)	*760	*762
Maps available for inspection at the Borough Secretary's Office, 301 Isabelle Avenue, North Charleroi, Pennsylvania. Send comments to The Honorable Henry J. Michaloski, Mayor of the Borough of North Charleroi, 452 Isabelle Avenue, North Charleroi, Pennsylvania 15022.					
Pennsylvania	Rices Landing (Borough) Greene County.	Monongahela River	Approximately 0.9 mile downstream of the confluence of Pumpkin Run (At the downstream corporate limits).	*781	*785
			Approximately 0.88 mile upstream of the confluence of Pumpkin Run (At the upstream corporate limits)	*783	*786
Maps available for inspection at the Borough Building, 100 Water Street, Rices Landing, Pennsylvania. Send comments to Ms. Linda Smith, Emergency Coordinator for the Borough of Rices Landing, 137 Main Street, Rices Landing, Pennsylvania 15357.					
Pennsylvania	Roscoe (Borough) Washington County.	Monongahela River	Downstream corporate limits	*765	*768
			Upstream corporate limits	*766	*769
Maps available for inspection at the Borough Secretary's Office, 503 Underwood Street, Roscoe, Pennsylvania. Send comments to The Honorable Harold J. Donaldson, Mayor of the Borough of Roscoe, Washington County, P.O. Box 83, Roscoe, Pennsylvania 15477.					
Pennsylvania	Speers (Borough) Washington County.	Monongahela River	Approximately 0.70 mile downstream of CONRAIL bridge.	*762	*764
			Approximately 0.75 mile upstream of Interstate 70	*763	*765

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).	
				Existing	Modified
Maps available for inspection at the Borough Building, 300 Phillips Street, Speers, Pennsylvania. Send comments to The Honorable Joseph Hurley, Mayor of the Borough of Speers, 330 Phillips Street, Speers, Pennsylvania 15022.					
Pennsylvania	Stockdale (Borough) Washington County.	Monongahela River	Downstream corporate limits	*765	*767
			Upstream corporate limits	*765	*768
Maps available for inspection at the Borough Building, 438 Locust Street, Stockdale, Pennsylvania. Send comments to The Honorable Gary Pascoe, Mayor of the Borough of Stockdale, 438 Locust Street, Stockdale, Pennsylvania 15483.					
Pennsylvania	Union (Township) Washington County	Monongahela River	At downstream corporate limits	*751	*752
			At upstream corporate limits	*753	*755
Maps available for inspection at the Municipal Building, Finleyville-Elrama Road, Union, Pennsylvania. Send comments to Mr. Larry A. Spahr, Chairman of the Township of Union Board of Supervisors, P.O. Box 43, Gastonville, Pennsylvania 15336.					
Rhode Island	Warren (Town) Bristol County	Palmer River	Approximately 400 feet north of the intersection of North Main Street and Crescent Street.	*12	*10
			At the confluence with Barrington and Warren Rivers.	*18	*14
		Warren River	Approximately 600 feet west from the intersection of Johnson Street and Westminster Street.	*18	*14
			Approximately 1,000 feet west of the intersection of Bridge Street with CONRAIL.	*19	*18
		Kickamuit River	Approximately 1,000 feet north from the intersection of Bardbury Street and Touisset Point.	*15	*18
Maps available for inspection at the Town Hall, 514 Main Street, Warren, Rhode Island. Send comments to Mr. Walter S. Felag, President of the Town of Warren Council, 514 Main Street, Warren, Rhode Island 02885.					
Tennessee	Lauderdale County Unincorporated Areas .	Cane Creek	Approximately 105 feet upstream of U.S. Route 51.	*324	*323
			At Illinois Central Gulf Railroad	*334	*335
Maps available for inspection at the Lauderdale County Executive's Office, County Courthouse, 100 Court Square, Ripley, Tennessee. Send comments to Mr. Rozelle Criner, Lauderdale County Executive, County Courthouse, 100 Court Square, Ripley, Tennessee 38063.					
West Virginia	Westover (City) Monongalia County.	Monongahela River Dents Run.	At confluence of Dents Run	*812	*813
			Approximately 560 feet upstream of U.S. Route 19 (Westover Bridge)	*813	*814
		Dents Run	At confluence with Monongahela River	*812	*813
			Approximately 0.71 mile above confluence with Monongahela River.	*812	*813
Maps available for inspection at the City Hall, 500 Dupont Road, Westover, West Virginia. Send comments to The Honorable Sheila Landis, Mayor of the City of Westover, 500 Dupont Road, Westover, West Virginia 26505.					
Wisconsin	Clintonville (City) Waupaca County.	Honey Creek	Just upstream of South Main Street	None	*812
			Just downstream of West 1st Street	None	*820
		Pigeon River	Approximately 50 feet upstream of Klemp Road.	*795	*794
			Just upstream of Hemlock Street	*809	*808
Maps available for inspection at the City Hall, 50 Tenth Street, Clintonville, Wisconsin. Send comments to The Honorable Gib Johnson, Mayor of the City of Clintonville, 50 Tenth Street, Clintonville, Wisconsin 54929.					
Wisconsin	Ephraim (Village) Door County.	Lake Michigan (Green Bay).	Entire shoreline within the community	None	*585
Maps available for inspection at the Village of Ephraim Administration Office, 10005 Norway Road, Ephraim, Wisconsin. Send comments to Ms. Diane Kirkland, Village of Ephraim Zoning Administrator, Box 138, Ephraim, Wisconsin 54211.					
Wisconsin	Platteville (City) Grant County.	Roundtree Branch	Approximately 0.12 miles downstream Southwest Road bridge.	None	*852
			Approximately 0.23 miles upstream 500 Line Railroad bridge.	None	*931

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Department of Community Planning and Development, 75 North Bonson Street, Platteville, Wisconsin.					
Send comments to Ms. Rosemarie E. Kulow, Platteville City Manager, 75 North Bonson Street, P.O. Box 780, Platteville, Wisconsin 53818–0780.					
Wisconsin	Verona (City) Dane County.	Badger Mill Creek	Approximately 1,300 feet downstream of Bruce Street.	*937	*939
			Approximately 740 feet upstream of the upstream corporate limits.	*950	*951
		Dry Tributary to Badger Mill Creek.	Approximately 1,200 feet downstream of the Chicago and Northwestern Railroad.	None	*938
			Approximately 1,200 feet upstream of Edward Street.	None	*973
Maps available for inspection at the Building Inspection Department, 116 Paoli Street, Verona, Wisconsin.					
Send comments to The Honorable Arthur Cresson, Mayor of the City of Verona, P.O. Box 930188, Verona, Wisconsin 53593–0188.					
Wisconsin	Watertown (City) Dodge and Jefferson Counties.	Rock River	At downstream corporate limits	*793	*792
			Approximately 0.9 mile upstream of Oconomowoc Avenue	None	*826
		Silver Creek	At Spaulding Street	*812	*813
			At upstream corporate limits	None	*824
Maps available for inspection at the Engineering Department, 106 Jones Street, Watertown, Wisconsin.					
Send comments to The Honorable Frederick Smith, Mayor of the City of Watertown, 106 Jones Street, Watertown, Wisconsin 53094.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–5974 Filed 3–9–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[ET Docket No. 94–32; FCC No. 95–47]

Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Second Notice of Proposed Rule Making, proposes rules to govern assignment and use of the 50 megahertz of spectrum transferred from Federal Government use to private use and allocated in the companion First Report and Order, published elsewhere in this issue. This action is necessary to comply with provisions of the Omnibus Budget Reconciliation Act of 1993 (Reconciliation Act), that require the Commission to allocate, and propose regulations to assign, this spectrum within 18 months of adoption of the Reconciliation Act. Our goal in taking this action is to provide for use of spectrum transferred from Federal Government to private sector use in a way that will benefit the public by providing for the introduction of new services and devices and enhance existing services and devices.

DATES: Comments must be filed on or before March 20, 1995, and reply comments must be filed on or before April 4, 1995.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Karen Rackley, Wireless Telecommunication Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Notice of Proposed Rule Making, ET Docket No. 94–32, FCC No. 95–47, adopted February 7, 1995, and released February 17, 1995 (Notice). The full text of this Notice is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, Room 239, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Second Notice of Proposed Rule Making

1. By this action, the Commission proposes rules governing the use of 50 megahertz of spectrum, at 2390–2400 MHz, 2402–2417 MHz, and 4660–4685 MHz, that has been transferred from Federal Government to private sector use. In the First Report and Order, the Commission allocated the 2390–2400 MHz band for use by unlicensed Personal Communications Services (PCS) devices, provided for continued use of the 2402–2417 MHz band by devices operating in accordance with Part 15 of the Commission's Rules allocated both of these bands for use by the Amateur service on a primary basis, and allocated the 4660–4685 MHz band for use by Fixed and Mobile services.

2390–2400 MHz

2. Because the Commission already has rules in place governing unlicensed PCS, the Notice does not seek additional comment on services rules. The Notice, however, seeks comment on whether some allowance should be made to accommodate operations that combine use of the 2390–2400 MHz with the adjacent 2400–2483.5 MHz band for use as a single, large Part 15 band. The Notice proposes to specifically prohibit aeronautical use of unlicensed PCS devices operating at 2390–2400 MHz as requested by some commenters, but does not proposed to restrict use of unlicensed PCS devices in the vicinity of the National Astronomy and Ionospheric Center. Finally, the Notice requests comment on whether it is unnecessary to propose any formal standards for sharing between unlicensed PCS and Amateur service, whether there is a need to restrict certain uses by either the Amateur service or unlicensed PCS devices that might be particularly disruptive, or whether the Commission should seek to implement rules for coordination of Amateur/PCS use.

2402–2417 MHz

3. Both the Amateur service and Part 15 devices operating at 2402–2417 MHz continue to be governed in accordance with current applicable technical and operational rules. However, the Commission seeks comment on whether any changes should be made to the Commission's rules to facilitate use of this band by the Amateur service and Part 15 devices.

4660–4685 MHz

A. Service Rules

4. The Notice proposes to create the General Wireless Communications Service (GWCS), a new service for licensing of the 4660–4685 MHz band, which would allow a licensee to provide any Fixed or Mobile service, consistent with the allocation of this band and the Commission's proposed rules described below. The Notice also seeks comment on the possibility of better accommodating the needs of users by prescribing rules that provide for utilization of the 4660–4685 MHz frequency band only by specific services.

B. Use of Spectrum

5. The Notice tentatively concludes that the principal use of this spectrum under the proposed General Wireless Communications Service will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals, thus enabling the Commission to propose competitive bidding as the assignment method for this spectrum. To help the Commission make an accurate determination regarding the extent to which this spectrum will be used for subscriber-based services, the Notice requests that commenters describe their spectrum needs and provide an indication of the degree of competition expected within a particular geographic service area, because the likelihood of subscriber use may vary among geographic areas.

C. Assignment Methods

6. Sections 309(j)(1) and 309(j)(2) of the Communications Act permit auctions where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. As described in the preceding section, the Commission believes that the principal use of this spectrum will meet these requirements. In order to comply with Section 309(j)(2)(b) of the Communications Act, the Notice also tentatively concludes that the use of competitive bidding to assign licenses in the 4660–4685 MHz band bill promote the objectives described in Sections 1 and 309(j)(3) of the Communications Act. Thus, the Commission tentatively concludes that competitive bidding should be used to award licenses in the 4660–4685 MHz band in the new General Wireless Communications Service if mutually exclusive applications are filed.

7. Although the Notice proposes the use of a system of competitive bidding to assign licenses for the General Wireless Communications Service in the 4660–4685 MHz band, the Commission also seeks comment regarding whether the Commission should utilize a different assignment method.

8. One important aspect of any assignment method is determining whether applications are mutually exclusive. The Notice proposes to use a 30-day filing window or other application cut-off method to allow for competing initial applications. The Notice seeks comment on this proposal, particularly whether some other type of filing group would be more appropriate for determining whether initial applications are mutually exclusive.

D. Channelization; Aggregation

9. The Notice proposes that the 4660–4685 MHz band be licensed in five blocks, each of which would be 5 megahertz wide. Based on available information about the likely services to be provided in this band, the Commission tentatively concludes that no licensee would need more than 15 megahertz in a single market area. Therefore, the Notice proposes to limit a single entity from obtaining more than three of these blocks in a single geographic licensing area. The Commission also proposes that, regardless of the specific service to be provided, this spectrum will not count against the 45 MHz spectrum cap that applies to certain commercial mobile radio service (CMRS) licensees.

E. License Area

10. The Notice proposes that all licenses issued in the GWCS be based on Major Trading Areas (MTA). The Commission does not propose to restrict the number of MTAs in which a party may obtain a license. Because an MTA may be too large for some licensees, the Notice proposes to permit licensees to lease the rights to operate a general wireless communication system within portions of their authorized geographic service area or transfer a portion of their license to geographically partition their service area, allowing another party to be licensed in the partitioned area.

11. If the Commission determines that a mix of subscriber, non-subscriber, and private-based services is likely in the 4660–4685 MHz band, the Commission may issue licenses based on different geographic regions for different portions of the bands or for different areas of the Nation. Commenters that seek spectrum for non-subscriber based services should address the issue of whether the Commission should allow licensees to sell or lease their excess capacity and specify under what circumstances such transfer or lease would be allowed.

F. Eligibility

12. If the Commission determines that it is reasonably likely that the services to be provided will be commercial services, the Notice proposes no restrictions on eligibility to apply for licenses in this band other than those foreign ownership restrictions that apply to CMRS and common carrier fixed system licensees, and the restriction on foreign governments or their representatives related to the holding of private service licenses.

G. Competitive Bidding Issues

13. The Notice proposed that, to the extent that the Commission determines that it is reasonably likely that some or all of the 4660–4685 MHz band will be used for services that meet the criteria for issuing licenses pursuant to auctions, the Commission will use auctions to issue licenses. The Commission believes that simultaneous multiple round bidding should be the preferred method for licensing of the proposed 5 MHz-wide MTA spectrum blocks. The Notice tentatively concludes that simultaneous multiple round bidding is most likely to award MTA licenses to bidders who value them the most highly and who are most likely to deploy new technologies and services rapidly. The Notice asks commenters to address this tentative conclusion and whether any other competitive bidding designs might be more appropriate for the licensing of this spectrum.

14. In addition, the Notice also seeks comments on which blocks should be auctioned together, the intervals between rounds in each auction, and the sequencing of each auction. The

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Commission's tentative view is that all 255 licenses (51 MTA licenses on each of 5 spectrum blocks) should be auctioned simultaneously because of the relatively high value and significant interdependence of the licenses.

15. The Commission also seeks comment on bidding procedures to be used in the 4660–4685 MHz auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. The Notice generally proposes to follow the procedural, payment, and penalty rules established in Subpart Q of Part I of the Commission's Rules, but seeks comment on whether any service-specific modifications of these rules are needed based on the particular characteristics of the 4660–4685 MHz band licenses.

16. In keeping with the general parameters set forth in the Competitive Bidding docket, PP Docket No. 93–253, the Notice proposes specific measures and eligibility criteria for small businesses, rural telephone companies, and minority- and women-owned businesses (collectively, "designated entities") in the 4660–4685 MHz band designed to ensure that such entities are given the opportunity to participate both in the competitive bidding process and in the provision of service in the 4660–4685 MHz band.

H. Technical Rules

17. The fact that the Commission is proposing a new radio service for this band that can be used to provide any mobile or fixed communications service, regardless of whether that service is subscriber based or not, argues for general minimal technical restrictions. Specifically, the Notice proposes to limit the field strength at licensees' service area boundaries to 55 dBu unless licensees operating in adjacent areas agree to higher field strengths along their mutual border. The Notice does not propose to establish adjacent-channel interference limits at the frequency boundaries between licensees in this band, but the Commission would encourage licensees to resolve adjacent channel interference problems. The Commission, however, proposes to require licensees to attenuate the power below the transmitter power (P) by at least 43 plus $10\log_{10}(P)$ or 80 decibels, whichever is less, for any emission at the edges of the 4660–4685 MHz band. The Notice also requests comment on whether a maximum transmitter power or maximum effective radiated power is necessary or whether licensees should be permitted to use any power that they believe is appropriate, provided that they do not exceed the maximum permissible field strength at the border of their licensed area. Commenters should also specifically address the need for out of band emission at the edges of the entire 4660–4685 MHz.

I. License Term

18. For services in the 4660–4685 MHz band, the Notice proposes to establish a term of 10 years for licenses in this band, with a renewal expectancy based on that of PCS and cellular telephone licensees. The Commission notes, however, the commenters have proposed using this band for auxiliary broadcast service and the statute requires that the term of any license for the operation of any auxiliary broadcast station or equipment must be concurrent with the term of the license for such primary television station. Therefore, commenters should address whether the Commission should allow differing license terms in this band.

J. Construction Requirements

19. The Notice proposes to require build-out rules modeled on those adopted for broadband PCS. Specifically, the Commission proposes that within five years, licensees in this band offer service to one-third of the population in the area in which they are licensed. Further, licensee would have to serve two-thirds of the population in the area in which they are licensed within ten years of being licensed. Failure by any licensee to meet these construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

K. Regulatory Status

20. The Communications Act and Commission regulation often apply differing requirements based on the type of service and the regulatory status of licensees. In addition recent changes to the Communications Act have created different standards for Fixed and Mobile services for determining the regulatory status of a licensee.

21. The Commission has decided to propose a new GWCS for the 4660–4685 band that would allow licensees to provide a variety or combination of Fixed and Mobile services. Under this service, both Fixed and Mobile applications would be permitted and an individual licensee could provide a number of Fixed and Mobile services. The commission notes that, under the proposed approach, it may be difficult to determine the regulatory status of each licensee. The Notice proposes to rely on applicants to specifically identify the type of service or services they intend to provide, and that they include sufficient detail to enable the Commission to determine if the service will be Fixed or Mobile, and whether it will be offered as a commercial mobile radio service, a private mobile radio service, a common carrier Fixed service, or a private Fixed service. The Notice requests comment on the most efficient manner in which to administer the requirements of the Communications Act and the Commission's rules, and grant licensees as much operational flexibility as possible.

22. The Notice requests comment on whether the Commission should develop a new application long form for this GWCS or require an applicant to be responsible for filing the appropriate license application based upon the nature of the service designated by the applicant. Based on the showing made in the application form and actual service provided, the licensee would be subject to those rules and statutory requirements that apply to such service.

L. Licensing Issues

23. The Notice requests comment on whether the Commission is required or should find it is in the public interest to adopt additional licensing rules in order to comply with the statutory requirement that the Commission adopt assignment rules before August 10, 1995. For example, because some licensees may provide common carrier service, the Notice seeks comment on whether the Commission should adopt public notice and petition to deny procedures for some or all applicants in the 4660–4685 MHz band. The Notice requests comment on whether any existing application or regulatory fees would apply if the Commission develops a new service. In addition, the Notice requests comment on specific rules the Commission should adopt in order to implement Section 310(d) of the Communications Act for purposes of licensing services in the 4660–4685 MHz frequency

Initial Regulatory Flexibility Analysis

1. *Reason for Action:* The proposals for technical rules, service rules, and licensing mechanisms proposed in the Notice are for use of spectrum that has been transferred from Federal Government to private sector use. The Commission adopted allocations for this spectrum on February 7, 1995. Accordingly, these proposals are necessary to provide a structure for non-Government entities to use the spectrum.

2. *Objectives:* The Commission seeks to provide service rules, technical rules, and to issue licenses, for use of this spectrum in a manner that provides the greatest potential benefit to the public by providing for the introduction of new services and the enhancement of existing services. These new and enhanced services will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

3. *Legal Basis:* The legal basis for these rule changes is found in Section 4(i), 303(g), 303(r), 309(j), 322(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), 309(j) (332)(a), and 403 and Section 115(a) of the National Telecommunications and Information Administration Organization Act, 47 U.S.C. 925(a).

4. *Reporting, Recordkeeping, and Other Compliance Requirements:* The proposals under consideration in this Notice of Proposed Rulemaking may impose certain reporting and recordkeeping requirements on licensees and others utilizing this spectrum.

5. *Federal Rules Which Overlap, Duplicate or Conflict With these Rules:* None.

6. *Description, Potential Impact, and Number of Small Entities Involved:* Many small entities could be positively affected by this proposal because the proposal will provide for the introduction of new, competitive communications and will foster new technologies resulting in new jobs, economic growth, and improved access to communications by industry, including small entities. The full extent of the impact on small entities cannot be predicted until various issues raised in the proceeding have been resolved. After evaluating the comments filed in response to the Notice, the Commission will examine further the impact of all final rules in this proceeding on small entities and set forth its findings in the final Regulatory Flexibility Analysis.

7. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:* This *Second Notice of Proposed Rule Making* solicits comments on a variety of alternatives, including as to how our licensing mechanism, service rules, and technical rules can be structured to serve a variety of needs.

8. *IRFA Comments:* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines specified in the summary above.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5371 Filed 3–9–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension and Reopening of Public Comment Period on the Proposed Rule to List the Barton Springs Salamander as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the deadline to determine whether the Barton Springs salamander (Eurycea sosorum) is an endangered species is being extended for up to 6 months. The comment period on the proposal is reopened.

DATES: The new deadline for final action on the proposed listing of the Barton Springs salamander as an endangered species is August 17, 1995. The reopened comment period closes May 17, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Texas State Administrator, U.S. Fish and Wildlife Service, Ecological Services, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (telephone [512] 490–0057, fax [512] 490–0974).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule to list the Barton Springs salamander as an endangered species was published on February 17, 1994 (59 FR 7968). The primary threat to this species is contamination of the waters that supply Barton Springs by potential catastrophic events and chronic degradation resulting from urban activities. Also of concern are disturbances to the salamander's surface habitat (the waters in Barton Springs, Eliza Pool, and Sunken Garden Springs) and reduced groundwater supplies resulting from increased groundwater withdrawal.

The comment period on the proposed rule originally closed April 18, 1994. It was reopened May 26, 1994, and closed July 1, 1994. During the comment periods and subsequent to the close of comment on this proposal, the Service has received recommendations and information relevant to a final decision on the listing of the salamander. In order to adequately incorporate all available pertinent information in the deliberation leading to a decision and to ensure an opportunity for public comment on as complete an administrative record as possible, the deadline for final action on this proposal is being extended and the comment period reopened.

The Service has received several comments regarding the adequacy of search efforts to determine if the currently known distribution is restricted solely to the Barton Springs complex. Comments received from scientific experts refer to extensive search efforts in springs throughout a several-county area. However, a few caves were identified that may support the salamander, but that had not been adequately surveyed.

On September 19, 1994, the Barton Springs/Edwards Aquifer Conservation District submitted a report titled, Barton Springs/Edwards Aquifer Hydrogeology and Water Quality, to the Service. The report appears to contain significant new information regarding water quality throughout the Barton Springs/Edwards Aquifer system. Water quality data contained in this report may provide important information on the effects of existing and historical land use on water quality, and potential threats to the Barton Springs salamander. The Service considers it important that this report be entered into the record and made available for public comment before a final decision is made on the listing.

In October 1994 the Texas Parks and Wildlife Department appointed an Aquatic Biological Advisory Team specifically to consider the conservation and research needs of three species of *Eurycea*, including the Barton Springs salamander. The team will not report its findings and recommendations for several more months; the Service believes that this team's results should be considered in reaching a final listing decision.

In February 1995 the Governor of Texas requested that the Secretary of the

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Interior delay final decision on the proposal for 6 months to provide the State an opportunity to take conservation measures for the salamander that would make federal listing unnecessary. The Texas Parks and Wildlife Department (TPWD) also supported an extension, indicated that all reasonable actions in support of conserving the species had not been exhausted, and expressed reservations concerning the documentation of the range of the species and threats to it. TPWD also expressed interest in using the extension to better ascertain the status of biological issues and to pursue State and local conservation options; the Service will welcome any assistance the State of Texas might provide toward these ends. The Act pays special deference to the views of the States in the listing of species, requiring that State identification of a species as in danger of extinction be considered in listing species under the Act (section 4(b)(1)(B)(ii)), that States be notified of proposed listings (section 4(b)(5)(A)(ii)), and that States be provided specific explanations of listing decisions that are counter to State recommendations (section 4(i)). The Service intends to further consider the possible relevance of State conservation efforts to the final listing decision.

The Endangered Species Act allows extension of the normal 1-year deadline for taking final actions on a proposal to list species for up to 6 months when there is a "substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination." The Service believes that the several unresolved issues enumerated above are directly relevant to the sufficiency and accuracy of the available data upon which a listing decision may be made and consequently is extending the deadline for a decision.

In order to allow full public comment on these issues as well as the proposed listing itself, the Service is reopening the comment period until May 17, 1995. Written comments should be submitted to the Service office in the Addresses section above. Comments submitted during previous comment periods will be considered and need not be resubmitted.

Author

The primary author of this notice is Sam D. Hamilton, Texas State Administrator, 10711 Burnet Road, Suite 301, Austin, Texas 78758.

Authority

The Authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: March 6, 1995.

(Notice: Extension of comment period on proposal to list Barton Springs salamander).

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–5880 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950301062–5062–01; I.D. 021695C]

RIN 0648–AH40

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Revise Product Recovery Rate for Pollock

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to revise the standard product recovery rate for pollock, deep skin fillets, and product code 24. The proposed revision is necessary to respond to new information on the current recovery rate achieved by the groundfish processing industry for this product type. This action is intended to further the objectives of the fishery management plans (FMPs) for the groundfish fisheries off Alaska.

DATES: Comments must be received at the following address by April 10, 1995.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Individual copies of the environmental assessment/regulatory impact review prepared for rulemaking establishing standard product recovery rates may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) are managed by NMFS in accordance with the FMP for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and are implemented by regulations that appear at 50 CFR parts 672, 675, and 676. General regulations that also govern the groundfish fisheries appear at 50 CFR part 620.

Regulations at §§ 672.20(j) and 675.20(k) establish standard product types and standard product recovery rates (PRR). This rule proposes to revise the pollock deep skin fillet PRR from the current standard of 0.13 to 0.16. It is based on results of 49 recovery tests conducted by NMFS-certified observers during the 1994 fishing year.

This test method calculated the ratio of the product weight of deep skin fillets to the round weight of a basket sample of pollock that had been weighed before processing. The tests used an aggregate of 315 metric tons (mt) of pollock deep skin fillets produced from 1,936 mt of round-weight pollock, yielding an average recovery rate of 0.16, with a range of 0.09 to 0.22. On average, NMFS has determined that a recovery rate of 0.13 is inaccurate and that a recovery rate of 0.16 best represents that achieved by the industry. The proposed revision is within the scope of issues addressed in the final rulemaking for standard product recovery rates set forth at §§ 672.20(j) and 675.20(k) as published in the **Federal Register** (59 FR 50699, October 5, 1994).

NMFS uses standard PRRs for each groundfish product to calculate fee assessments for purposes of funding the North Pacific Fisheries Research Plan (Research Plan), which is a program designed to pay for certified observers who collect information used for fishery conservation and management purposes. NMFS uses the best available information for specifying standard PRRs to calculate round weight equivalents for purposes of determining exvessel values of retained groundfish to assess Research Plan fees.

If the standard PRR of 0.13 were to remain unchanged, the impact on the Research Plan fee assessment program could have the following economic impacts. In 1994, 23,302 mt of pollock deep skin fillets were produced off Alaska. The round-weight equivalents of this amount are 179,246 mt and 145,638 mt, using a PRR of 0.13 and 0.16, respectively, which is a difference of 33,608 mt. Under the Research Plan, processors must pay a fee in an amount not to exceed 2 percent of the exvessel value of the round-weight equivalents of retained fish, including pollock, as defined in the final rule implementing the Research Plan (59 FR 46126, September 6, 1994). At $0.08 per lb, 33,608 mt (74 million lbs) would have a calculated exvessel value of $5.9 million. Processors would be charged unnecessarily an additional fee assessment of $118,400 if the PRR were to remain at 0.13 compared to 0.16. Other uses by NMFS of standard PRRs are summarized in final rulemaking (59 FR 50699, October 5, 1994).

Based on the above reasons, NMFS has preliminarily determined that a standard PRR of 0.16 best represents the average recovery rate currently achieved by vessels producing pollock deep skin fillets. NMFS proposes this standard PRR for public comment. Should a final rule be promulgated to implement this new standard PRR, §§ 672.20(i)(3) and 675.20(j)(3) also would be revised by changing the standard PRR for pollock deep skin fillets from 0.13 to 0.16 for purposes of calculating retainable amounts of pollock roe.

Classification

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH FISHERY OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (i)(3) table, entry 24 is revised, and in Table 1 to § 672.20 Product Codes 15 through 32 are amended by revising the entry for pollock to read as follows:

§ 672.20 General limitations.

* * * * *

(i) * * *

(3) * * *

Product code	Product description	Standard product recovery rate
.	.	.
24	Deep skin fillets	0.16
.	.	.

TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 675.20(a)(1)

FMP species	Species code	Product Code												
		Pectoral girdle	Heads	Cheeks	Chins	Belly	Fillets: With skin and ribs	Fillets: Skin on no ribs	Fillets: With ribs no skin	Fillets: Skinless/ boneless	Fillets Deep skin	Surimi	Mince	Meal
		15	16	17	18	19	20	21	22	23	24	30	31	32
.	.													
Pollock	270	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.21	0.16	[1]0.16 [2]0.17	0.22	0.17
.	.													

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through September.

* * * * *

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.20, paragraph (j)(3), Table, entry 24 is revised to read as follows:

§ 675.20 General limitations.

(j) * * *

(3) * * *

Product code	Product description	Standard product recovery rate
.	.	.
24	Deep skin fillets	0.16
.	.	.

* * * * *

[FR Doc. 95–5990 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–22–W

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Notices

Federal Register
Vol. 60, No. 47
Friday, March 10, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–121–2]

Availability of Determination of Nonregulated Status for Gentically Engineered Potato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that certain potato lines genetically engineered for resistance to the Colorado potato beetle by the Monsanto Company are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Monsanto Company petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: March 2, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1994, the Animal and Plant Health Inspection Service (APHIS) received a petition from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that seven Russet Burbank potato lines designed at BT6, BT10, BT12, BT16, BT17, BT18, and BT23, that have been genetically engineered for resistance to the Colorado potato (CPB) (hereinafter CPB-resistant potato lines) do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On December 2, 1994, APHIS published a notice in the **Federal Register** (59 FR 61866–61867, Docket No. 94–121–1) announcing receipt of the Monsanto petition and announcing that the petition was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject potato lines and food products derived from them. In the notice, APHIS solicted written comments from the public as to whether the subject potato lines posed a plant pest risk. The comments were to have been received by APHIS on or before January 31, 1995.

APHIS received a total of 61 comments on the Monsanto petition. Comments were received from the following categories of respondents, with the categories containing the larger number of respondents listed first: potato farmers; universities; registered dietitians; regional and national potato growers' association, councils, and boards; cooperative extension service offices; State departments of agriculture; high school educators; individuals; potato marketing services; a potato research company; an agricultural experiment station; the department of agriculture of a foreign government; a food company; an international technology transfer agency; a potato processor; and a member of the U.S. House of Representatives. Fifty-eight of the commenters urged approval of the petition or provided information in support of nonregulated status for the subject potato lines. Three of the 61 commenters did not directly or indirectly support approval of the petition: one of the three did not address the APHIS approval process; another endorsed the concept of the development of a CPB-resistant patato but expressed certain concerns; and one commenter asked that APHIS deny the petition. APHIS has provided a summary and discussion of the comments in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

The Monsanto CPB-resistant potato lines have been genetically engineered to express a gene from the common soil bacterium *Bacillus thuringiensis* subsp. *tenebrionis* (*Btt*) the encodes a highly selective insecticidal delta-endotoxin crystalline protein, CryIIIA. This insect control protein is identical in amino acid sequence to one of the proteins naturally produced by *Btt* and found in commercial microbial *Btt* formulations. According to Monsanto, the protein is highly selective in controlling CPB and is expressed at an effective level in the potato foliage throughout the growing season. The expression of the insect control protein in the subject potato lines is regulated by an enhanced 35S promoter derived from the plant pathogen cauliflower mosaic virus and by the nontranslated region of the small subunit of ribulose-1,5-bisphosphate carboxylase referred to as E9 3′ derived from pea plants. The CPB-resistant patato lines also express a selectable marker gene derived from the prokaryotic transposon Tn*5* encoding the enzyme neomycin phosphotransferase II (*nptII*). The expression of the *nptII* gene in the subject potato lines is regulated by the 35S promoter and the nontranslated 3′ region of the nopaline synthase gene derived from the plant pathogen *Agrobacterium tumefaciens*. The expression of *nptII* in the subject potato lines allows for selective growth of transgenic plant cells on the antibiotic kanamycin during plant tissue culture. These genes were stably transferred into the genome of potato plants through an *A. tumefaciens*-mediated transformation.

The subject potato lines have been considered "regulated articles" under APHIS' regulations in 7 CFR part 340 because their noncoding regulatory sequences were derived from the plant pathogens *A. tumefaciens* and cauliflower mosaic virus. However, evaluation of field data reports from field tests of the subject potato lines conducted since 1991 in the major potato-growing areas of the country indicate that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject patato lines' release into the environment.

Determination

Based on its analysis of the data submitted by Monsanto, a review of other scientific data, the comments received from the public, and a review of field tests of the subject potato lines, APHIS has determined that the subject patio lines: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become weeds than CPB-resistant potato lines that could potentially be developed by traditional breading techniques; (3) are unlikely to increase the weediness potential of any other cultivated plant or native wild species with which the organisms can interbreed; (4) will not cause damage to processed agricultural commodities; (5) are unlikely to harm other organisms, such as bees or earthworms, that are beneficial to agriculture; and (6) should pose no greater threat to the ability to control CPB in potatoes and other crops than that posed by the widely-practiced method of applying insecticides to control CPB on potatoes. APHIS has also concluded that there is a reasonable certainty that new varieties developed from the subject potato lines will not exhibit new plant pest properties, i.e., properties substantially different from any observed in the field-tested potato lines, or those observed in standard potatoes in traditional breeding programs.

The effect of this determination is that the seven Russet Burbank potato lines designated as BT6, BT10, BT12, BT16, BT17, BT18, and BT23 and all other lines developed from them are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject potato lines or their progeny. However, the importation of the subject potato lines and any potato nursery stock or seeds capable of propagation is still subject to the restrictions from in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS NEPA Procedures. Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject potato lines and other lines developed from those lines are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 6th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–5993 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–34–M

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish, in accordance with 7 CFR 1421.5558(b), a schedule of fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehouse operators requesting to: (a) enter into a storage agreement; or (b) renew an existing storage agreement.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Closson, Warehouse and Inventory Division, Consolidated Farm Service Agency, United States Department of Agriculture, Room 5968—South Building, P.O. Box 2415, Washington, DC 20013, (202) 720–4018.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

The Uniform Grain and Rice Storage Agreements are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFP part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The fees set forth in this Notice do not generate any new or revised information collection or recordkeeping requirements on the public.

Regulatory Flexibility Act

It has been determined that this Notice will not significantly impact a substantial number of small entities. Contracting with CCC under the Uniform Storage Agreements is strictly voluntary. CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a Notice of proposed rulemaking with respect to the subject matter of this Notice. Therefore the Regulatory Flexibility Act is not applicable to this notice, and a Regulatory Flexibility Analysis was not prepared.

Executive Order 12612

It has been determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Background

In accordance with the provisions of CCC's Charter Act (15 U.S.C. 714 *et seq*), CCC enters into storage agreements with private grain and rice warehouse operators to provide for the storage of commodities owned by CCC or pledged as security to CCC for price support loans.

The regulation, 7 CFR 1421.5558, requires that all non-federally licensed grain and rice warehouse operators in States that do not have a cooperative agreement with CCC for warehouse examinations and who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and inspection fee prior to CCC conducting the original warehouse examination. Such grain or rice warehouse operator who is already a party to a storage agreement with CCC must pay the annual contract fee in

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advance of the renewal date of the agreement.

A review of the revenue collected for application and inspection fees and contract fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning with the 1995–96 contract year, the fees are changed by increasing by 30 percent those fees applicable to the 1994–95 contract year.

Determination

The fees set forth herein will be collected by the Commodity Credit Corporation (CCC) from non-Federally licensed warehouse operators in States which do not have a Cooperative Agreement with CCC for warehouse examination services and who have entered into a storage agreement with CCC or who are seeking to enter into a storage agreement with CCC.

Application and Inspection Fees

The fee will be computed at the rate of $13 for each 10,000 bushels of storage capacity or fraction thereof, but the fee will be not less than $130 nor more than $1,300.

Contract Fees

The contract fee will be collected by CCC from warehouse operators who have entered into or will enter into a storage agreement with CCC but who do not have a Federal warehouse license or a State warehouse license issued by a State having a Cooperative Agreement with CCC for warehouse examination services.

TWELVE-MONTH CONTRACT FEE SCHEDULE

Location capacity (bushels)	Contract fees (dollars)
1 to 150,000	$130
150,001 to 250,000	260
250,001 to 500,000	390
500,001 to 750,000	520
750,001 to 1,000,000	650
1,000,001 to 1,200,000	780
1,200,001 to 1,500,000	910
1,500,001 to 2,000,000	1,040
2,000,001 to 2,500,000	1,170
2,500,001 to 5,000,000	1,300
5,000,001 to 7,500,000	1,430
7,500,001 to 10,000,000	1,560
10,000,001 +	[1] 1,560

[1] Plus $40 per million bushels above 10,000,000 or fraction thereof.

Signed at Washington, D.C. on March 3, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–5994 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Pilot Creek Environmental Impact Statement, Six Rivers National Forest, Humboldt County, CA; Revised Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Forest Service published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** (56 FR 3068) on January 15, 1991 for the proposed timber management project in the Pilot and Torrey Compartments of the Mad River Ranger District. The draft EIS was delayed due to a change in project objectives. A revised NOI was published in the **Federal Register** (57 FR 30715) on June 19, 1992. The objectives of the project were modified to implement a strategy that would accelerate the development of late seral habitat characteristics and result in timber production. The draft EIS was expected to be available for public review in June 1993. The draft EIS was delayed due to anticipated changes resulting from President Clinton's Forest Conference held in April of 1993.

As a result of the Forest Conference, The Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD) was signed on April 13, 1994. Subsequently, as required by the ROD, a Watershed Analysis for the Pilot Creek watershed was developed. Survey protocol requirements were also completed for marbled murrelet within the Pilot Creek project area.

The objectives of the Pilot Creek project have been modified to bring the project in line with ecosystem management concepts and to be consistent with direction contained within the ROD and the Six Rivers National Forest Land and Resource Management Plan (LRMP), scheduled for implementation April 1995.

The revised project objectives are to:

1. Maintain existing late seral conifer stands.
2. Accelerate the development of late seral characteristics within conifer stands.
3. Restore currently degraded conditions which pose risks to riparian and aquatic ecosystems.
4. Maintain or enhance oak woodland habitat.
5. Reduce the risk of catastrophic loss due to wildfire.
6. Contribute to the short-term demand for timber and the socio-economic well-being of local communities.

Substantial scoping has been conducted on this project and includes public meetings, written correspondence, field trips and one-on-one discussions. The driving issues that were used to develop project alternatives focused on water quality and the released roadless area. Five alternatives were developed that will be redesigned to incorporate the expanded objectives and brought into consistency with the ROD and LRMP.

The project area has been expanded to encompass the entire Pilot Creek watershed and now covers 25,442 acres. The project area is within the Hayfork Adaptive Management Area which, as described in the ROD, is designed for the development, testing, and application of forest management practices.

The draft EIS is now expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June 1995. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The final EIS is now scheduled to be completed in November 1995.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's Notice of Availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

FOR FURTHER INFORMATION CONTACT: Marcia Andre, District Ranger, Mad River Ranger District, Star Route Box 300, Bridgeville, California 95526 or telephone Janice Stevenson, Project Planner (707) 574–6233.

Dated: February 22, 1995.

Harold J. Slate,

Acting Forest Supervisor.

[FR Doc. 95–5840 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–11–M

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces an open house in which the public is invited to participate in information exchange regarding alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement, as they affect the Sequoia National Forest area.

DATES AND TIME: April 10, from 7 p.m. to 9:00 p.m.

ADDRESS: Kernville Elementary School, 13350 Sierra Way, Kernville, CA 93238.

CONTACT PERSON FOR FURTHER INFORMATION: Judy Schutza, Hot Springs Ranger District, Route 4, Box 548, California Hot Springs, CA 93207. (805) 548–6503.

SUPPLEMENTARY INFORMATION: The Forest Service has released a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to exchange information with the public regarding the Draft Environmental Impact Statement and the preferred alternative.

The meeting will be informally structured. A member of the team that prepared the DEIS will be available to answer questions and discuss the DEIS. Visual media depicting the alternatives and selected environmental consequences will be displayed.

Judy Schutza,

District Ranger.

[FR Doc. 95–5931 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–11–M

Food Safety and Inspection Service

[Docket No. 95–002N]

Exemption for Retail Stores; Adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the dollar limitation currently in effect on the annual sales of poultry products that can be sold by retail stores exempt from Federal inspection requirements to consumers other than household consumers, such as hotels, restaurants and similar institutions, has been adjusted to conform with price change for poultry products as indicated by the Consumer Price Index. The dollar limitation for poultry products increased from $34,500 to $35,700 for calendar year 1995. The dollar limitation for meat products remains at $38,900 for calendar year 1995.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7164.

Background

Federal inspection of meat and poultry products prepared for sale or distribution in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) state that the general requirement of routine Federal inspection "* * * shall not apply to operations of types traditionally and usually conducted at retail stores * * * when conducted at any retail store * * * for sale in normal retail quantities * * * to consumers * * *."

FSIS regulations (9 CFR 303.1(d) and 381.10(d)) define retail stores that qualify for exemption from routine Federal inspection under the FMIA or PPIA. Under the regulations, whether an establishment is an exempt retail establishment depends, in part, upon the percentage and volume of its trade with consumers other than household consumers, such as hotels, restaurants and similar institutions. Accordingly, the Federal meat and poultry products inspection regulations state in terms of dollars the maximum amount of meat and poultry products which may be sold to nonhousehold consumers if the establishment is to remain an exempt retail establishment. During calendar year 1994, the maximum amount for meat products was $38,900; for poultry products, the amount was $34,500.

The Federal meat and poultry products inspection regulations (9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*)) further provide that the dollar limitation on product sales by retail stores to consumers other than household consumers will be automatically adjusted during the first quarter of each calendar year whenever the Consumer Price Index, published by the Bureau of Labor Statistics (BLS), Department of Labor, indicates a change during the previous year in the price of the same volume of product exceeding $500, upward or downward. The regulations also require that notice of the adjusted dollar limitation be published in the **Federal Register.**

The BLS Consumer Price Index for 1994 indicates an average annual price increase in meat products of 0.6 percent and an average annual price increase in poultry products of 3.4 percent. When rounded off to the nearest $100, the price increase for meat products amounts to $200 and the price increase for poultry products amounts to $1,200. As a percentage of the existing dollar limitation, change in excess of $500 is indicated for poultry products only.

Accordingly, FSIS, in accordance with §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, has maintained the dollar limitation of permitted sales of meat products at $38,900 and raised the dollar limitation of permitted sales for poultry products from $34,500 to $35,700.

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Done at Washington, DC, on February 28, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95-5830 Filed 3-9-95; 8:45 am]

BILLING CODE 3410-DM-P

[Docket No. 95-009N]

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Notice of Scientific/ Technical Conference and Request for Papers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a scientific/technical conference, "New Technology to Improve Food Safety," on April 12–13, 1995, at the Holiday Inn O'Hare Airport, Rosemont, Illinois. The purpose of the conference is to discuss ways of developing and subsequently introducing new technologies to improve food safety.

ADDRESSES: Papers should be to sent to: Dr. Pat Basu, Director, Technology Transfer and Coordination Staff, Science and Technology, FSIS, USDA, Room 302 Cotton Annex, 300 12th Street, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Pat Basu at (202) 720–8623.

SUPPLEMENTARY INFORMATION: On February 3, 1995, FSIS published a proposed rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (60 FR 6774). In that document, the Agency proposed a number of regulatory changes applicable to Federal- and State-inspected meat and poultry establishments. The proposed changes were designed to reduce the occurrence and numbers of pathogenic microorganisms in meat and poultry products, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

In the proposed rule, FSIS stated its intent to review its current policies and procedures governing review and approval of in-plant technologies that improve the safety of meat and poultry products, and to convene a public meeting to gain information on ways the Agency might improve its role in fostering and overseeing the implementation of such technologies. FSIS believes that the development and proper use of technology can contribute significantly to improving the safety of the food supply. FSIS recognizes that members of the regulated industry have complained that some of the Agency's control mechanisms stifle innovation, potentially impeding progress that could improve food safety. The Agency also recognizes consumer groups' concern that technologies be proven effective and safe before use, and that the scientific processes used by FSIS to evaluate technologies be open to public scrutiny and participation. To discuss these issues, FSIS is hosting a scientific/ technical conference.

The first conference, "New Technology to Improve Food Safety" will be held on April 12–13, 1995, at the Holiday Inn O'Hare Airport, 5440 North River Road, Rosemont, IL 60018, (708) 671–6350. The conference will begin each day at 8:30 a.m. and end at 4:30 p.m. on April 12th; at noon on April 13th.

Conference Agenda

The conference will consist of three sessions as follows:

Session I: "The Role of Innovation in Enhancing the Safety of Meat and Poultry Products"

Speakers will give examples of new food safety technologies that have been introduced.

Session II: "Models for Government Facilitation of Technology Development and Transfer"

U.S. Government representatives and a representative from a foreign country will discuss various government models used in the United States and abroad to encourage the development and implementation of new technologies.

Session III: "New Technologies for Reducing Pathogens, Especially *Escherichia coli O157:H7*"

Speakers will address promising new technologies developed to reduce food pathogens.

Thomas J. Billy, Associate Administrator, FSIS will moderate and be joined by a panel consisting of: Patricia Stolfa, Associate Deputy Administrator for Science and Technology, FSIS; Gene Lyons, Research Leader, Richard Russell Research Center, Agricultural Research Service; a consumer representative; and an industry representative.

At each session, invited speakers from FSIS, other government agencies, industry, and academia groups will give presentations relevant to that session's topic. At Sessions I and III, selected participants that have sent papers to FSIS (see below for details of paper submission) will give a 5 minute presentation. Finally, the panel will have an opportunity to ask the presenters questions.

Submission of Papers

For Sessions I and III, interested persons may submit a paper to FSIS. For Session I, FSIS solicits papers detailing experiences and examples of innovative technologies that have improved food safety. For Session III, FSIS solicits papers presenting information on new technologies for reducing pathogens, especially *Escherichia coli O157:H7*. Papers should present information pertaining to effectiveness and cost of the technology, employee safety, and consumer acceptance of the technology. Session II consists of presentations from representatives from U.S. government agencies and a representative from a foreign country, and papers will not be presented.

Selected persons submitting papers will be invited to give a 5 minute presentation summarizing their paper. If the same subject is covered in more than one paper, FSIS will have the authors combine their presentation for a single 5 minute presentation or select the first paper submitted on the issue and have that author give a presentation.

All papers must be received by March 31, 1995, to be considered for the conference. Please indicate if the paper is for Session I or Session III. Two copies of each paper should be submitted (See **ADDRESSES**), along with hard copies of any slides to be used in the presentation.

Availability of Information

After the conference, the panel will prepare a report of the proceedings addressing the issues presented. This report will include information on how FSIS can assist in the development and introduction of new technologies to improve food safety. Any reports by the panel, transcripts of the conference, and copies of all the papers received will be available in the FSIS Docket Clerk's Office, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Attendance and Hotel Reservations

Please call Ms. Betsy Kogan at (202) 205–0699 if you plan to attend the conference. Additionally, FSIS has reserved a block of rooms at the hotel for $85 per night. Reservations may be made by contacting the hotel at (708) 671–6350.

Done at Washington, DC, on March 6, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety

[FR Doc. 95-5995 Filed 3-9-95; 8:45 am]

BILLING CODE 3410-DM-P

Grain Inspection, Packers and Stockyards Administration

Pilot Programs Allowing More Than One Official Agency To Provide Official Services Within A Single Geographic Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice With Comment Period.

SUMMARY: Amendments in 1993 changed the United States Grain Standards Act, as amended (Act). One of these changes provides that GIPSA may conduct pilot programs allowing more than one official agency to provide official services within a single geographic area. GIPSA is requesting comments on the two proposed pilot programs described below.

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by May 5, 1995.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection during regular business hours at the above address located at 1400 Independence Avenue, S.W.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

Sections 7(f) and 7A of the Act were amended by the U.S. Grain Standards Act Amendments of 1993 (Public Law 103–156) on November 24, 1993, to authorize GIPSA's Administrator to conduct pilot programs allowing more than one official agency to provide official services within a single geographic area without undermining the declared policy of the Act. The purpose of the pilot programs is to evaluate the impact of allowing more than one official agency to provide official services within a single geographic area.

Comments were requested on five possible pilot programs in the March 14, 1994, **Federal Register** (59 FR 11759). Comments were due by April 22, 1994. Forty-one comments were received on these possible pilot programs: fifteen official agencies and two licensed inspectors opposed pilot programs; six official agencies supported pilot programs, and two official agencies were neutral; five trade associations, ten grain firms, and one laboratory supported pilot programs.

The comments submitted by official agencies expressed their concern over being pressured to grade more leniently or risk losing customers, the possible issuance of multiple original grades on a single lot of grain, losing major customers to competing official agencies, being forced to give preferential treatment to large customers over small customers, maintaining a relatively uniform inspection volume sufficient to preserve their personnel base, and minimizing their management and supervision problems.

Comments from the grain trade noted difficulty in getting services when needed to avoid additional charges and the possibility of better service and/or lower cost if they could choose the official agency to provide such services. They also indicated a desire for pilot programs encompassing all services, a more specific proposal to comment on, and a concern that the structure of a pilot program could determine its success or failure.

After considering these comments and other information, GIPSA has developed and is asking for comments on two proposed pilot programs, one of which was proposed in the March 14, 1994, notice. The remaining four proposed pilot programs; barges on selected rivers or portions of rivers; exceptions; commercial inspections, and submitted samples were determined to be too narrow in scope to conduct an appropriate pilot program. Comments are requested on the following two proposed pilot programs.

1. Timely Service. This pilot program would allow official agencies to provide official services outside their assigned geographic area when these official services can not be provided in a timely manner by the official agency designated to serve that area. A timely manner would be considered to be:

- 6 hours - When a service request is received between 6 a.m., and noon Monday through Friday by the official agency designated to provide service;
- 12 hours - When a service request is received any other time by the official agency designated to provide service.

Customers unable to obtain service within these time limits may request such services from another official agency. Customers using this provision to request official services from an official agency not designated to serve them must maintain sufficient information to establish that they could not receive timely service from the agency designated to serve them. Customers must submit requests for service under this pilot program by FAX. This includes both the initial request for service that could not be provided in a timely manner and any subsequent request for the same service to an official agency not designated to serve them. Official agencies must handle customer requests for service in the order received where practicable. Official agencies and customers using this pilot program must maintain sufficient records to verify eligibility to use this option.

The definition of timeliness in this pilot program supersedes the definition currently stated in section 800.46(b)(5) of the regulations (7 CFR 800.46(b)(5). This section states that official personnel may not be available to provide requested services if the request is not received by 2 p.m., the preceding business day.

2. Open Season. This pilot program would allow official agencies an open season during which they may attempt to sell their services to customers outside their assigned geographic area where no official sample-lot or official weighing services have been provided in the previous 6 months. Official agencies would submit their plans to provide official services to customers outside their assigned geographic area to Compliance Division for review in consultation with the field office supervising the agency. Upon approval, official agencies would be permitted to provide such official services.

Official agencies participating in these pilot programs would be allowed to provide, during the test period, any official services for which they are designated. Official agencies participating in pilot programs must arrange for any equipment (including laboratories and access to D/Ts) that may be needed to provide official services at each site outside the area they are currently designated to serve.

These pilot programs will be for a maximum of 1 year. If, after this time period, GIPSA determines that these programs strengthen the official system, GIPSA will consider extending the time period or recommending other appropriate action.

GIPSA will monitor these pilot programs. If, at any time, GIPSA determines that a pilot program is having a negative impact on the official system, the pilot program will be discontinued.

Commenters are encouraged to submit reasons and pertinent data for support or objection to the pilot programs described above. All comments and suggestions must be submitted to the

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Compliance Division at the above address. Comments and other available information will be considered in determining which pilot programs to conduct. FGIS will publish notice of any pilot programs to be conducted.

Any information collection or recordkeeping requirements that may result from a pilot program will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 3, 1995.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 95–5996 Filed 3–9–95; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: West Coast Salmon Northwest Emergency Assistance Plan.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 11,706 burden hours.

Number of Respondents: 5,445.

Avg Hours Per Response: Varies depending on the requirement but ranges between 1 and 40 hours.

Needs and Uses: A Federal financial assistance program has been established for fishermen in the Northwest who can document losses resulting from the resource disaster in the salmon fishery. Fishermen will be able to apply for two short–term job programs or apply for participation in a fishing permit buy–back program.

Affected Public: Individuals. businesses or other for–profit organizations, not–for–profit institutions, state, local or tribal government.

Frequency: Varies by requirement from one–time to quarterly.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 6, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organizations.

[FR Doc. 95–5932 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of Economic Analysis

[Docket 950–3020–64–5064–01]

Final Redefinition of the BEA Economic Areas

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of final changes.

SUMMARY: This is the third and final Federal Register notice relating to the redefinition of the BEA economic areas (EA's). In the first notice (56 FR 13049, March 9, 1993), BEA announced its "Intent to Revise the Boundaries of the BEA Economic Areas" and presented the procedures used to define the then-current EA's. In the second notice (59 FR 55416, November 7, 1994), BEA presented for public comment a "Proposed Redefinition of the BEA Economic Areas," which reduced their number from 183 to 174. This third notice presents the 172 EA's of the final redefinition, which reflects changes based on the comments received. In Alaska and western Montana, BEA is combining two EA's into one; and in Washington and Minnesota, BEA is reassigning a county from one EA to another.

EFFECTIVE DATE: April 10, 1995, BEA's regional economic measurement, analysis, and projections programs will use the new set of 172 EA's whenever EA data are presented.

ADDRESSES: Written inquiries may be sent to Kenneth Johnson, U.S. Department of Commerce, Bureau of Economic Analysis BE–61, Regional Economic Analysis Division, Washington, DC 20230; fax (202) 606–5321. Inquiries also may be sent by electronic mail on the Internet to "kenneth.johnson@bea.doc.gov".

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, (202) 606–9219; fax (202) 606–5321.

SUPPLEMENTARY INFORMATION:

Part I: Background

Under authority granted in 15 U.S.C. ¶ 175 et seq., BEA develops and presents geographically detailed economic data and facilitates regional economic analysis. As part of this obligation, in 1977, BEA defined 183 economic area (EA's) covering the entire nation. The 1995 redefinition is necessary to maintain the analytical usefulness of the areas in light of the substantial changes in area commuting patterns shown by the 1990 Census of Population.

Each EA consists of one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes. (Metropolitan areas include metropolitan statistical areas (MSA's), primary metropolitan statistical areas (PMSA's), and New England county metropolitan areas (NECMA's).) Commuting patterns are the main factor used in determining the economic relationship among counties. The EA definition procedure requires that, as far as possible, each area include both the place of work and the place of residence of its labor force.

For some analyses, government agencies and businesses need data that are more geographically detailed than EA data. Government agencies often use relatively small areas for design of their program regulations or implementation of their licensing programs. Businesses need such detail for determining plant locations and for defining sales and marketing territories. BEA is responding to these needs as part of the EA redefinition by first defining a set of 348 "Component Economic Areas" (CEA's) and then using these as building blocks for redefining the larger EA's.

Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. Of the nodes, 90 percent are metropolitan, and 10 percent are nonmetropolitan. Each metropolitan area is the node of a different CEA; with minor exceptions, the nonmetropolitan nodes are nonmetropolitan counties where newspapers widely read in these areas are published.

In general, the procedure used to redefine the EA's is similar to that used in 1977. First, nodes are identified. Then, non-nodal counties are assigned to nodes, mainly based on commuting patterns and on newspaper circulation. A procedural difference is that now node identification and the assignment to nodes of non-nodal counties are done in a more systematic way and at a more geographically detailed level. The procedure first results in the definition of CEA's, which then are aggregated to form EA's.

Part II: Summary of Comments and Responses

In the previous Federal Register notice (59 FR 55416, November 7, 1994), BEA proposed the definition of 348 CEA's and 174 EA's. Persons who wished to comment on the proposal were given until December 22, 1994, to do so. Of 12 comments received, seven suggested no changes, and five suggested changes. In response to the comments, in two instances, BEA is combining two EA's into one and thus is reducing their number from 174 to 172; in two other instances, BEA is reassigning a county from one EA to another. In one comment, a change was proposed in the criteria for identifying CEA's, and in another comment, a delay was proposed in the date when the new EA's become effective; neither of these comments affects the final EA definition.

1. Economic Area Combinations

In the previous notice, BEA proposed two EA's, each a CEA as well, for Alaska—Anchorage and the Panhandle; a mountain range limits economic ties between the areas. In one comment, it was noted that for the two proposed EA's, a consistent set of regional economic data could be provided only for 1980 forward; prior to 1980, the Bureau of the Census used different boundaries for the "Divisions" of Alaska for which it assembled data. To overcome the data limitation, the final redefinition combines the two proposed EA's into one statewide EA, named for Anchorage. The proposed CEA's are retained, and they are subject to the data limitation.

In addition, in the previous notice, BEA proposed two EA's, each a CEA as well, for western Montana—Missoula and Butte. In one comment, it was suggested that commuting across these EA boundaries is not minimal; in contrast, in another comment, the proposed EA's were endorsed. In response to the first comment, the final redefinition combines the two proposed EA's into one EA, named for Missoula. In response to the second comment, the proposed CEA's are retained.

2. County Reassignments

In the previous notice, BEA proposed to assign Koochiching County, MN, to the Minneapolis EA and Kittitas County, WA, to the Seattle EA. In comments, it was noted that shopping opportunities attract many Koochiching residents to the Duluth EA and many Kittitas residents to the Richland EA. In addition, Koochiching residents are attracted by Duluth's recreational opportunities. In a further review of commuting data, BEA confirmed that nearly as many Koochiching residents commute to work to the Duluth EA as to the Minneapolis EA; and nearly as many Kittitas residents commute to work to the Richland EA as to the Seattle EA. Accordingly, Koochiching is reassigned to the Duluth EA, and Kittitas is reassigned to the Richland EA.

3. Identification of CEA's Having Nonmetropolitan Nodes

In the previous notice, BEA proposed that each CEA that has a nonmetropolitan node should contain at least five counties that are linked by ties of labor-force commuting, as well as of newspaper circulation. In one comment, it was suggested that newspaper circulation data should play a larger role in the identification of such CEA's. In particular, counties that are locations of newspapers read by specified numbers of persons could be identified as nonmetropolitan nodes, regardless of the number of counties economically tied to the nodes. In BEA's view, economic ties among counties should be given substantial weight in the identification of CEA's.

4. Effective Date for the New Economic Areas

The U.S. Department of Transportation's Bureau of Transportation Statistics (BTS) presents data from its Commodity Flow Survey for regions the regions, called National Transportation Analysis Regions (NTAR's), are groupings of the EA's previously published. This new set of EA's might entail a new set of NTAR's. In comments on the previous notice, BTS requested that BEA delay the effective date for the new EA's by one or two years in order to provide enough time for BTS and BEA to coordinate their area redefinitions. BEA cannot accommodate this request because it is committed to preparing economic projections for the redefined EA's as part of the set of BEA regional projections to be prepared this year (1995).

Part III: Map and List of the New 172 BEA Economic Areas

Codes from 001 to 172 are assigned to the new EA's in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Analysts are cautioned that these codes differ from those in the previous notice. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EA's that mainly correspond to consolidated metropolitan statistical areas (CMSA's), each EA is named for the metropolitan area or city that is the node of its largest CEA and that is usually, but not always, the largest metropolitan area or city in the EA. The following list provides EA codes and names. EA boundaries and codes are shown on the map following the list.

EA code	Name
001	Bangor, ME.
002	Portland, ME.
003	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.
004	Burlington, VT.
005	Albany-Schenectady-Troy, NY.
006	Syracuse, NY.
007	Rochester, NY.
008	Buffalo-Niagara Falls, NY.
009	State College, PA.
010	New York-No. New Jersey-Long Island, NY–NJ–CT–PA (CMSA–70)
011	Harrisburg-Lebanon-Carlisle, PA.
012	Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD (CMSA–77)
013	Washington-Baltimore, DC–MD–VA–WV (CMSA–97)
014	Salisbury, MD.
015	Richmond-Petersburg, VA.
016	Staunton, VA.
017	Roanoke, VA.
018	Greensboro-Winston-Salem-High Point, NC.
019	Raleigh-Durham-Chapel Hill, NC.
020	Norfolk-Virginia Beach-Newport News, VA–NC.
021	Greenville, NC.
022	Fayetteville, NC.
023	Charlotte-Gastonia-Rock Hill, NC–SC.
024	Columbia, SC.
025	Wilmington, NC.
026	Charleston-North Charleston, SC.
027	Augusta-Aiken, GA–SC.
028	Savannah, GA.
029	Jacksonville, FL.
030	Orlando, FL.
031	Miami-Fort Lauderdale, FL (CMSA–56).
032	Fort Myers-Cape Coral, FL.
033	Sarasota-Bradenton, FL.
034	Tampa-St. Petersburg-Clearwater, FL.
035	Tallahassee, FL.
036	Dothan, AL.
037	Albany, GA.
038	Macon, GA.
039	Columbus, GA–AL.
040	Atlanta, GA.
041	Greenville-Spartanburg-Anderson, SC.
042	Asheville, NC.
043	Chattanooga, TN–GA.
044	Knoxville, TN.

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EA code	Name
045	Johnson City-Kingsport-Bristol, TN–VA.
046	Hickory-Morganton, NC.
047	Lexington, KY.
048	Charleston, WV.
049	Cincinnati-Hamilton, OH–KY–IN (CMSA–21).
050	Dayton-Springfield, OH.
051	Columbus, OH.
052	Wheeling, WV–OH.
053	Pittsburgh, PA.
054	Erie, PA.
055	Cleveland-Akron, OH (CMSA–28).
056	Toledo, OH.
057	Detroit-Ann Arbor-Flint, MI (CMSA–35).
058	Northern Michigan, MI.
059	Green Bay, WI.
060	Appleton-Oshkosh-Neenah, WI.
061	Traverse City, MI.
062	Grand Rapids-Muskegon-Holland, MI.
063	Milwaukee-Racine, WI (CMSA–53).
064	Chicago-Gary-Kenosha, IL–IN–WI (CMSA–14).
065	Elkhart-Goshen, IN.
066	Fort Wayne, IN.
067	Indianapolis, IN.
068	Champaign-Urbana, IL.
069	Evansville-Henderson, IN–KY.
070	Louisville, KY–IN.
071	Nashville, TN.
072	Paducah, KY.
073	Memphis, TN–AR–MS.
074	Huntsville, AL.
075	Tupelo, MS.
076	Greenville, MS.
077	Jackson, MS.
078	Birmingham, AL.
079	Montgomery, AL.
080	Mobile, AL.
081	Pensacola, FL.
082	Biloxi-Gulfport-Pascagoula, MS.
083	New Orleans, LA.
084	Baton Rouge, LA.
085	Lafayette, LA.
086	Lake Charles, LA.
087	Beaumont-Port Arthur, TX.
088	Shreveport-Bossier City, LA.
089	Monroe, LA.
090	Little Rock-North Little Rock, AR.
091	Fort Smith, AR–OK.
092	Fayetteville-Springdale-Rogers, AR.
093	Joplin, MO.
094	Springfield, MO.
095	Jonesboro, AR.
096	St. Louis, MO–IL.
097	Springfield, IL.
098	Columbia, MO.
099	Kansas City, MO–KS.
100	Des Moines, IA.
101	Peoria-Pekin, IL.
102	Davenport-Moline-Rock Island, IA–IL.
103	Cedar Rapids, IA.
104	Madison, WI.
105	La Crosse, WI–MN.
106	Rochester, MN.
107	Minneapolis-St. Paul, MN–WI.
108	Wausau, WI.
109	Duluth-Superior, MN–WI.
110	Grand Forks, ND–MN.
111	Minot, ND.
112	Bismarck, ND.
113	Fargo-Moorhead, ND–MN.
114	Aberdeen, SD.
115	Rapid City, SD.
116	Sioux Falls, SD.
117	Sioux City, IA–NE.
118	Omaha, NE–IA.
119	Lincoln, NE.
120	Grand Island, NE.
121	North Platte, NE.
122	Wichita, KS.
123	Topeka, KS.
124	Tulsa, OK.
125	Oklahoma City, OK.
126	Western Oklahoma, OK.
127	Dallas-Fort Worth, TX (CMSA–31).
128	Abilene, TX.
129	San Angelo, TX.
130	Austin-San Marcos, TX.
131	Houston-Galveston-Brazoria, TX (CMSA–42).
132	Corpus Christi, TX.
133	McAllen-Edinburg-Mission, TX.
134	San Antonio, TX.
135	Odessa-Midland, TX.
136	Hobbs, NM.
137	Lubbock, TX.
138	Amarillo, TX.
139	Santa Fe, NM.
140	Pueblo, CO.
141	Denver-Boulder-Greeley, CO (CMSA–34).
142	Scottsbluff, NE.
143	Casper, WY.
144	Billings, MT.
145	Great Falls, MT.
146	Missoula, MT.
147	Spokane, WA.
148	Idaho Falls, ID.
149	Twin Falls, ID.
150	Boise City, ID.
151	Reno, NV.
152	Salt Lake City-Ogden, UT.
153	Las Vegas, NV–AZ.
154	Flagstaff, AZ.
155	Farmington, NM.
156	Albuquerque, NM.
157	El Paso, TX.
158	Phoenix-Mesa, AZ.
159	Tucson, AZ.
160	Los Angeles-Riverside-Orange County, CA (CMSA–49)
161	San Diego, CA.
162	Fresno, CA.
163	San Francisco-Oakland-San Jose, CA (CMSA–84).
164	Sacramento-Yolo, CA (CMSA–82)
165	Redding, CA.
166	Eugene-Springfield, OR.
167	Portland-Salem, OR–WA (CMSA–79).
168	Pendleton, OR.
169	Richland-Kennewick-Pasco, WA.
170	Seattle-Tacoma-Bremerton, WA (CMSA–91)
171	Anchorage, AK.
172	Honolulu, HI.

BILLING CODE 3510-06-M

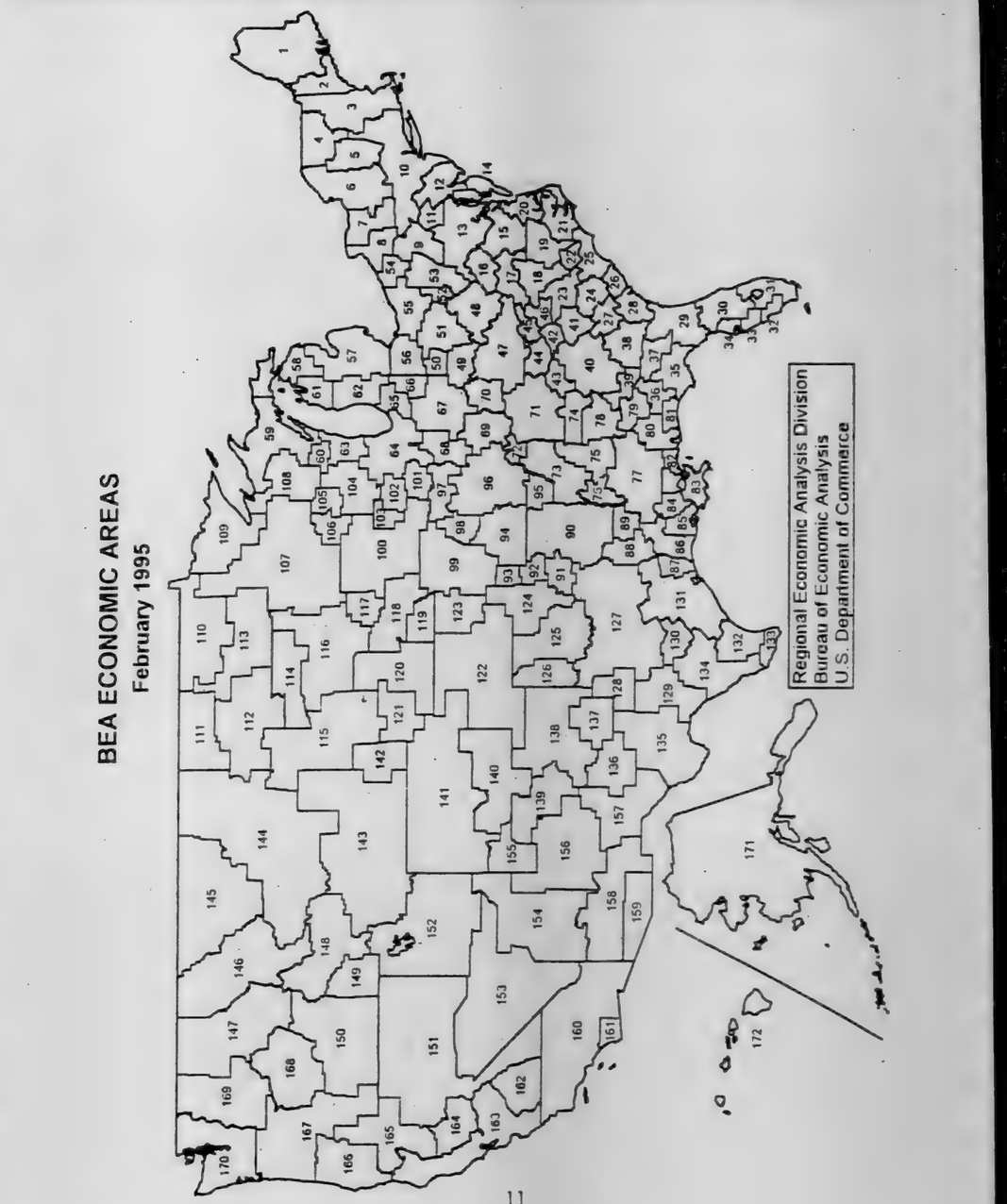

BILLING CODE 3510-06-C

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Part IV: Availability of Additional Information

The codes, names, and numerical counts of the counties contained in each EA and CEA and of the CEA's contained in each EA are available through two electronic services from the Commerce Department's STAT-USA: For the Economic Bulletin Board (EBB), use a personal computer and modem, dial (202) 482-3870, and follow the instructions. For Internet, access the EBB using Telnet address "ebb.stat-usa.gov" for remote login, and download the file named "eacodes.exe." For prices and other information about these services, call (202) 482-1986.

The codes, names, and numerical counts are also available on a 3½-inch, high-density diskette for $20. When ordering, please specify the BEA Accession Number 61-95-40-101. Send your order, along with a check or money order payable to "Bureau of Economic Analysis," to Public Information Office, Order Desk BE-53, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. For further information or to order using MasterCard or VISA, call (202) 606-3700.

Carol S. Carson,

Director.

[FR Doc. 95-6008 Filed 3-9-95; 8:45 am]

BILLING CODE 3510-06-M

Bureau of Export Administration

Materials Technical Advisory Committee; Open Meeting

A meeting of the Materials Technical Advisory Committee will be held April 6, 1995, 10:30 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th & Pennsylvania Avenue NW., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation by the Office of Strategic Industries and Economic Security on the services it provides to companies engaged in the export of controlled commodities.
4. Presentation by the Office of Chemical and Biological Controls and Treaty Compliance and agreements affecting export of Category 1 commodities.
5. Discussion on ECCN 1C60C: Precursor and intermediate chemicals used in the production of chemical warfare agents. Specifically, on whether or not control on Item 25, hydrogen fluoride, includes hydrofluoric acid.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address:

Ms. Lee Ann Carpenter
TAC Unit/OAS/EA—Room 3886C
Bureau of Export Administration
U.S. Department of Commerce
Washington, DC 20230

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482-2583.

Dated: March 7, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95-6009 Filed 3-9-95; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 731]

Grant of Authority for Subzone Status; Amoco Oil Company (Oil Refinery) Texas City, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Texas City Foreign Trade Zone Corporation (formerly Foreign Trade Zone of Texas City-Gulf Coast, Inc.), grantee of Foreign-Trade Zone 199, for authority to establish special-purpose subzone status at the oil refinery complex of Amoco Oil Company, in Texas City, Texas, was filed by the Board on March 10, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 8-93, 58 FR 16396, 3-26-93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 199A) at the Amoco Oil Company refinery complex, in Texas City, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000-# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—products for export; and,

—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 3rd day of March 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95-6010 Filed 3-9-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-357-810]

Amended Preliminary Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC. 20230; telephone (202) 482-3464 or (202) 482-1673, respectively.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This investigation does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.00, 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.00, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.00, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.00, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.10, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.50, 7304.20.50.60, 7304.20.50.75, 7304.20.60.10, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.50, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

References to the Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments (57 FR 1131, January 10, 1992) (concerning correction of ministerial errors in a preliminary determination), which were withdrawn on January 3, 1995 (60 FR 80), are provided solely for further explanation of the Department's practice and procedures with respect to correction of ministerial errors. The subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act.

Amendment of Preliminary Determination

In accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)), on February 2, 1995, the Department of Commerce (the Department) published its preliminary determination that OCTG from Argentina were being sold at less than fair value (60 FR 6503, February 2, 1995).

On February 3, 1995, Siderca S.A.I.C. (Siderca), the respondent in the investigation, timely alleged that the Department had made a ministerial error in its preliminary determination and requested that the Department correct this error. This alleged error involved different U.S. further manufacturing costs associated with the same control number. Siderca stated that the reported control numbers were based on the merchandise as imported into the United States. Certain products that were identical as imported and therefore had identical control numbers were further manufactured into different products with different corresponding costs.

Siderca argued that the Department incorrectly averaged different U.S. manufactured costs by imported product (i.e. control number) instead of matching the individual sales transactions with the submitted costs applicable to that transaction. Siderca stated that correcting for the error would change the preliminary antidumping margin to 0.42%, a *de minimis* amount, and therefore the preliminary determination would be negative.

Pursuant to 19 CFR 353.28(c)(1994), the Department may correct "ministerial errors" in its calculations. A "ministerial error" is defined in 19 CFR 353.28(d)(1994) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." We agreed with Siderca that matching sales to further manufacturing costs based on control number was a ministerial error (see the February 27, 1995, memorandum from the team to Barbara R. Stafford).

Furthermore, in accordance with the proposed regulations concerning the correction of ministerial errors, 19 CFR 353.15(g)(4)(ii) (57 FR 1131, 1133, January 10, 1992), the Department will correct ministerial errors in a preliminary determination if the errors constitute "significant ministerial errors." Under the proposed rules, a ministerial error would be "significant" if the correction of the error:

(A) Would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the dumping margin calculated in the original (erroneous) preliminary determination; or

(B) Would result in a difference between a dumping margin of zero (or *de minimis*) and a margin of greater than *de minimis*.

After correcting for the ministerial error, the margin for Siderca changed to 0.42%, a *de minimis* amount. Therefore, this error is "significant" as defined in the Department's proposed regulations. Thus, the Department is hereby amending its preliminary determination to correct for this ministerial error.

Discontinuation of Suspension of Liquidation

Since the amended margin for Siderca is now *de minimis*, we are directing the Customs Service to discontinue suspending liquidation of all entries of OCTG from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995, the date of publication of the original preliminary determination in the **Federal Register**. Furthermore, we are directing the Customs Service to refund all cash deposits or postings of a bond which

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have been collected on the subject merchandise from Argentina.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our amended preliminary determination.

In accordance with section 735(b)(3), if our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 75 days after the date of that affirmative final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies may be submitted by any interested party to the Assistant Secretary for Import Administration no later than May 2, 1995, and rebuttal briefs no later than May 9, 1995. We request that parties in this case provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on May 19, 1995, at 10:00 a.m. at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: March 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6011 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–DS–P

(A–570–839)

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202–482–5288) or Michelle Frederick (202–482–0186), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATION: On November 21, 1994, the Department of Commerce ("the Department") initiated an antidumping duty investigation of certain partial-extension steel drawer slides with rollers ("drawer slides") from the People's Republic of China (PRC) (59 FR 60773, November 28, 1994). The notice of initiation stated that if this investigation proceeds normally, the Department would issue its preliminary determination on or before April 9, 1995.

On December 15, 1994, the U.S. International Trade Commission determined that there is a reasonable indication that a U.S. domestic industry is threatened with material injury by reason of imports of drawer slides from the PRC (59 FR 65787, December 21, 1994).

This investigation is rendered extraordinarily complicated by the novel issue of government ownership of exporters of subject merchandise. Furthermore, information available to the Department indicates that there are many producers/exporters of the subject merchandise. The process of identifying all exporters who sold subject merchandise to the United States during the POI caused significant delays in issuing our questionnaire. In addition, we determine at this time that respondent parties in this investigation appear to be cooperating.

For these reasons, pursuant to sections 733(c)(1)(B)(i) (II) and (III) of the Tariff Act of 1930, as amended (the Act), we determine that this investigation is extraordinarily complicated and that additional time is necessary to make the preliminary determination in accordance with 733(c)(1)(B)(ii) of the Act. Therefore, we are postponing our preliminary determination in this investigation until no later than May 30, 1995.

This notice is published pursuant to section 733(c)(2) of the Act of 1930, as amended, and 19 CFR 353.15(d).

Dated: March 3, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 95–6012 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Wednesday, April 5, 1995, from 8:30 a.m. to 5:00 p.m. The Board of Overseers consists of nine members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on April 5, 1995, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and Technology (NIST) and the Judges Panel of the Malcolm Baldrige National Quality Award. These reports and discussions will cover the following topics: overview of the Award process; status of the 1994/1995 Award cycles and application trends; update on pilot programs; status of legislation; the responsibility of Judges and Overseers; and technology transfer discussions regarding the Conference Board regional series, the Quest for Excellence Conference and State and local networks.

DATES: The meeting will convene April 5, 1995, at 8:30 a.m., and adjourn at 5 p.m. on April 5, 1995.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

Dated: March 6, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–5954 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–13–M

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, April 4, 1995, from 8:30 a.m. to 5 p.m., and a public meeting on Wednesday, April 5, 1995, from 8:30 a.m. to 5 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The meeting will be composed of two parts. On April 4, 1995, the Judges Panel will meet to hold final review of the 1994 Award cycle; establish the 1995 Award cycle, including examiner selection and training; review of evaluations of applicants not selected for an award; review improvements on the feedback and judging processes, and discuss future plans for the Award program. Review and discussion of applications contain trade secrets and proprietary commercial information submitted to the Government in confidence. This meeting will include a working lunch. On April 5, 1995, there will be a combined meeting of the members of the Judges Panel and the Board of Overseers. The purpose of this meeting will be for the Board of Overseers to receive and then discuss reports from the Judges Panel and the National Institute of Standards and Technology (NIST). These reports and discussions will cover the following topics: overview of the Award process; status of the 1994/1995 Award cycles and application trends; update on pilot programs; status of legislation; the responsibility of Judges and Overseers; and technology transfer discussions. The meeting on April 4, 1995, scheduled to begin at 8:30 a.m. and end at 5 p.m., will be closed.

DATES: The meeting will convene April 4, 1995, at 8:30 a.m. and adjourn at 5:00 p.m. on April 5, 1995.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 3, 1994, that the meeting of the Panel of Judges will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: March 6, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–5955 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 022195F]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P492A and P492B).

SUMMARY: Notice is hereby given that Dr. Graham A.J. Worthy, Marine Mammal Research Program, Texas A&M University, 4700 Avenue U, Galveston, TX 77551–5923 (co-investigators: Alan Abend and Lisl K.M. Shoda), has applied in due form for a permit to obtain skin, blubber, blood, and muscle samples, and to import/export samples from various species of cetaceans and pinnipeds for purposes of scientific research.

DATES: Written comments must be received on or before April 10, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Southeast Region, NMFS, 9720 Executive Center Drive, N., St. Petersburg, FL 33702–2532 (813/570–5312); and

Southwest Region, NMFS, 501 W. Ocean Boulevard, Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Dr. Worthy and Mr. Abend (P492A) request a permit to biopsy two captive beluga whales (*Delphinapterus leucas*) at the Aquarium of Wildlife Conservation, and obtain, import, and export skin, blubber, and blood samples from various other species of pinnipeds and cetaceans. Samples to be imported from/exported to Canada, Norway, and the Netherlands will be obtained from other permitted researchers and stranded animals. The objectives are to determine the actual tissue turnover rates of marine mammals using stable isotope tracers, determine which tissues are suitable for fatty acid tracing of marine mammal diets, and apply the turnover rates to free-ranging marine mammals to identify prey and movement.

Dr. Worthy and Ms. Shoda (P492B) request a permit to biopsy 30 rehabilitating beached/stranded northern elephant seals (*Mirounga angustirostris*) at Sea World and/or The Marine Mammal Center. The objectives of the study are to determine the pattern of toxin redistribution as northern

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elephant seals improve from a thin blubber layer emaciated state to a thick blubber layer fattened state, determine whether there are detectable changes in cellular immune function as animals gain body condition, and characterize the relationship between cellular immune responsiveness and OC levels.

Dated: March 3, 1995.

P.A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–5925 Filed 3–9–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 10, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 19, December 23, 1994 and January 13, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 42821, 66300 and 60 FR 3196) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities, Mineral Oil, Lanolated, 6505–01–009–2897, 6505–00–890–2027

Services, Janitorial/Custodial, Des Moines International Airport, Air National Guard Base, Des Moines, Iowa

Janitorial/Custodial, NISE East Building, 4600 Marriot Drive, North Charleston, South Carolina

Operation of Recycling Center, Minot Air Force Base, North Dakota

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–5952 Filed 3–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 10, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the military resale commodities and services.

3. The action will result in authorizing small entities to furnish the military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following military resale commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Military Resale Commodities

Mitt, Barbecue
M.R. 891
NPA: The Lighthouse for the Blind in New Orleans
New Orleans, Louisiana

Chester County Branch of the Pennsylvania Association for the Blind, Inc., Coatesville, Pennsylvania
Mop, Sponge, Block
M.R. 990
NPA: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi

Services

Conversion of Magazines to Braille
Library of Congress
National Library Service for the Blind and Physically Handicapped, Washington, DC

(for the following magazines: Better Homes & Garden, Boys Life, Consumer Research, Cooking Light, Fortune, Inside Sports, Isaac Asimov's Science Fiction, Ladies Home Journal, Musical Mainstream, National Geographic, New York Times, PC Computing, Playboy, Popular Communications, Popular Mechanic, and Science News)
NPA: The Clovernook Center, Opportunities f/t Blind, Cincinnati, Ohio

Janitorial/Custodial
U.S. Coast Guard Air Station
Clearwater, Florida
NPA: The Pinellas Association for Retarded Children, St. Petersburg, Florida

Mailroom Operation
U.S. Army Corps of Engineers
Cold Regions Research & Engineering Laboratory
Hanover, New Hampshire
NPA: West Central Services, Lebanon, New Hampshire

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

Item proposed to be deleted to the Procurement List:

Cocoa Beverage Powder
8960–01–323–9627

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–5953 Filed 3–9–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Collegiate Education Advisory Committee; Meeting

AGENCY: U.S. Army Cadet Command, DOD.

ACTION: Notice of meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Collegiate Education Advisory Committee.

Date of Meeting: 11–12 April 1995.

Place of Meeting: Virginia Military Institute (VMI), Lexington, Virginia.

Time of Meeting: 0830–1700—11 April 1995; 0830–1000—12 April 1995.

Proposed Agenda: Review and discussion of the status of Army ROTC since the July '94 meeting at Fort Bragg, North Carolina.

1. Purpose of meeting: The Committee will review the significant changes in ROTC scholarships, missioning, advertising strategy, marketing, camps and on-campus training, the Junior High School Program and ROTC Nursing.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intent to attend the 11–12 April 1995 meeting.

3. Any member of the public may file a written statement with the Committee before, during or after the meeting. Based on the extent that time permits, the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Mr. Roger Spadafora, U.S. Army Cadet Command, Attn: ATCC–TE, Fort Monroe, Virginia 23669–5000. Telephone: (804) 727–4595.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–5841 Filed 3–9–95; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Defense Science Board Task Force on Depot Maintenance Operations and Management

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Depot Maintenance Operations and Management will meet in closed session on March 14, 1995 at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will provide advice, recommendations and suggested implementations of improvements to the Department's depot maintenance operations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 6; 1995.

Patricia L. Toppings,

Alternate OSD Federal Register, Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5832 Filed 3–9–95; 8:45 am]

BILLING CODE 5000–04–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transporation Allowance Committee, DOD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 182. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 182 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 1995.

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SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000-04-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
05-15--09-30	147		64		211	05-15-95
10-01--05-14	81		57		138	03-01-95
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	105		83		188	11-01-93
BETHEL	76		67		143	02-01-94
BETTLES	65		45		110	12-01-90
COLD BAY	110		54		164	07-01-93
COLDFOOT	95		59		154	10-01-92
CORDOVA						
05-01--09-30	79		76		155	05-01-95
10-01--04-30	67		73		140	03-01-95
CRAIG	67		35		102	07-01-91
DENALI NATIONAL PARK	113		68		181	05-01-94
DILLINGHAM	85		64		149	11-01-93
DUTCH HARBOR-UNALASKA	113		67		180	05-01-92
EIELSON AFB						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
ELMENDORF AFB						
05-15--09-30	147		64		211	05-15-95
10-01--05-14	81		57		138	03-01-95
EMMONAK	62		61		123	10-01-93
FAIRBANKS						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
05-15--09-30	147		64		211	05-15-95
10-01--05-14	81		57		138	03-01-95
FT. WAINWRIGHT						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
HOMER						
05-01--09-30	71		60		131	05-01-94
10-01--04-30	60		58		118	02-01-94

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LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
JUNEAU						
04-30--09-14	$ 88		$ 72		$160	04-30-95
09-15--04-29	77		71		148	03-01-95
KATMAI NATIONAL PARK	89		59		148	12-01-90
KENAI-SOLDOTNA						
04-02--09-30	104		74		178	04-02-94
10-01--04-01	67		71		138	01-01-94
KETCHIKAN						
05-01--09-30	90		69		159	05-01-95
10-01--04-30	73		68		141	03-01-95
KING SALMON 3/	75		59		134	12-01-90
KLAWOCK	75		36		111	07-01-91
KODIAK	79		65		144	03-01-95
KOTZEBUE	133		87		220	05-01-93
KUPARUK OILFIELD	75		52		127	12-01-90
METLAKATLA						
06-01--10-01	95		58		153	06-01-94
10-02--05-31	72		56		128	02-01-94
MURPHY DOME						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
NELSON LAGOON	102		39		141	06-01-91
NOATAK	133		87		220	05-01-93
NOME	71		67		138	10-01-93
NOORVIK	133		87		220	05-01-93
PETERSBURG	77		54		131	03-01-95
POINT HOPE	99		61		160	12-01-90
POINT LAY 6/	106		73		179	12-01-90
PRUDHOE BAY-DEADHORSE	73		60		133	11-01-93
SAND POINT	64		67		131	08-01-94
SEWARD						
05-01--09-30	100		55		155	05-01-95
10-01--04-30	83		53		136	03-01-95
SHUNGNAK	133		87		220	05-01-93
SITKA-MT. EDGECOMBE						
05-15--09-30	93		64		157	05-15-95
10-01--05-14	83		63		146	03-01-95
SKAGWAY						
05-01--09-30	90		69		159	05-01-95
10-01--04-30	73		68		141	03-01-95

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LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
SPRUCE CAPE	$ 79		$ 65		$144	03-01-95
ST. GEORGE	100		39		139	06-01-91
ST. MARY'S	77		59		136	06-01-93
ST. PAUL ISLAND	62		63		125	10-01-93
TANANA	71		67		138	10-01-93
TOK						
05-02--09-30	64		56		120	05-02-95
10-01--05-01	50		52		102	03-01-95
UMIAT	97		63		160	12-01-90
VALDEZ						
05-01--09-14	95		70		165	05-01-95
09-15--04-30	79		69		148	03-01-95
WAINWRIGHT	90		75		165	12-01-90
WALKER LAKE	82		54		136	12-01-90
WRANGELL						
05-01--09-30	90		69		159	05-01-95
10-01--04-30	73		68		141	03-01-95
YAKUTAT	77		58		135	11-01-93
OTHER 3, 4, 6/	63		48		111	01-01-93
AMERICAN SAMOA	73		48		121	11-01-94
GUAM	155		75		230	05-01-93
HAWAII:						
ISLAND OF HAWAII: HILO	73		61		134	06-01-93
ISLAND OF HAWAII: OTHER	111		69		180	01-01-95
ISLAND OF KAUAI	105		70		175	01-01-95
ISLAND OF KURE 1/			13		13	12-01-90
ISLAND OF MAUI	99		76		175	01-01-95
ISLAND OF OAHU	100		67		167	01-01-95
OTHER	79		62		141	06-01-93
JOHNSTON ATOLL 2/	22		22		44	08-01-94
MIDWAY ISLANDS 1/			13		13	12-01-90
NORTHERN MARIANA ISLANDS:						
ROTA	48		77		125	05-01-94
SAIPAN	89		80		169	05-01-94
TINIAN	50		72		122	05-01-94
OTHER	20		13		33	12-01-90

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LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:						
BAYAMON						
05-01--11-24	$107		$ 75		$182	11-01-94
11-25--04-30	130		77		207	11-25-94
CAROLINA						
05-01--11-24	107		75		182	11-01-94
11-25--04-30	130		77		207	11-25-94
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)						
04-16--12-10	65		52		117	10-01-93
12-11--04-15	110		52		162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)						
05-01--11-24	107		75		182	11-01-94
11-25--04-30	130		77		207	11-25-94
MAYAGUEZ	85		65		150	08-01-92
PONCE	96		75		171	09-01-93
ROOSEVELT ROADS						
04-16--12-10	65		52		117	10-01-93
12-11--04-15	110		52		162	12-11-93
SABANA SECA						
05-01--11-24	107		75		182	11-01-94
11-25--04-30	130		77		207	11-25-94
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)						
05-01--11-24	107		75		182	11-01-94
11-25--04-30	130		77		207	11-25-94
OTHER 7/	63		52		115	08-01-92
VIRGIN ISLANDS OF THE U.S.:						
ST. CROIX						
04-15--12-14	119		73		192	08-01-94
12-15--04-14	169		78		247	12-15-94
ST. JOHN						
06-01--12-14	255		78		333	11-01-94
12-15--05-31	370		90		460	12-15-94
ST. THOMAS						
04-17--12-17	141		106		247	08-01-94
12-18--04-16	220		114		334	12-18-94
WAKE ISLAND 2/	30		25		55	10-01-94
ALL OTHER LOCALITIES	20		13		33	12-01-90

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FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

6/ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily Rate
DOD Personnel	$13

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7/ (Eff 9-1-94) A per diem rate of $200 (lodging $148; M&IE $52) will be in effect for Las Croabas, Puerto Rico, during the Annual Conference of the National Association of State Boating Law Administrators (NASBLA) being held at the El Conquistador Resort and Country Club. This rate will be in effect from 4-12 September 1994 only for travelers attending the conferernce and only for travelers staying at the El Conquistador Resort.

BILLING CODE 5000-04-C

Dated: March 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-5870 Filed 3-9-95; 8:45 am]

BILLING CODE 5000-04-M

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Reserve Center, Coconut Grove, Miami, FL

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Reserve Center, Coconut Grove, Miami, FL, the surplus property that is located at that closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300, telephone (703) 325-0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419-9010, telephone (803) 743-0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact one of the above.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Reserve Center, Coconut Grove, Miami, FL, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on June 7, 1991, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103-421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 12, 1994, the City of Miami, FL, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Reserve Center, Coconut Grove, Miami, FL, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Reserve Center, Coconut Grove, Miami, FL, purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Miami, FL. Day to day operations of the commission are handled by Mr. Cesar H. Odio, City Manager, P.O. Box 330708, Miami, FL 33233-0708, telephone (305) 250-5400 and facsimile (305) 285-1835.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Reserve Center, Coconut Grove, Miami, FL, that were declared surplus to the federal government on June 7, 1991.

Land

Approximately 3.27 acres of fee simple land at the Naval Reserve Center, Coconut Grove, Miami, FL.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes. Property numbers are available on request.

—Administrative building (one structure). *Comments:* Approx. 12,330 square feet.

—Garage (one structure). *Comments:* Approx. 6,300 square feet with an attached paint storage shed of approx. 1,956 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Reserve Center, Coconut Grove, Miami, FL, shall submit to the City of Miami, FL, a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the City of Miami shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Miami, FL, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 12, 1994.

Dated: February 27, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95-5842 Filed 3-9-95; 8:45 am]

BILLING CODE 3810-FF-P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Station, Dallas, TX—Duncanville Housing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Duncanville Housing, Dallas, TX, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300, telephone (703) 325-0474; or E. R. Nelson, Real Estate Division, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, SC 29419-9010, telephone (803) 743-0494. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Mr. Dave McAdams, Base Transition Office, Naval Air Station, Dallas, TX 75211, telephone (214) 266-6102.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Air Station, Dallas, TX, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on December 3, 1993, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103-421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 7, 1994, the City of Duncanville, TX, submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Station, Duncanville Housing, Dallas, TX, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Air Station, Duncanville Housing, Dallas, TX, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Duncanville, TX. Day to day operations of the City are handled by Mr. Larry Shaw, Assistant City Manager. The address of the City is P.O. Box 380280, Duncanville, TX 75138-0280, telephone (214) 780-5002 and facsimile (214) 780-5077.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Air Station, Duncanville Housing, Dallas, TX, that were declared surplus to the Federal government on December 3, 1993.

Land

Approximately 3.00 acres of improved and unimproved fee simple land at the Naval Air Station, Duncanville Housing, Dallas, TX.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the Station closes in September 1997, unless otherwise indicated. Property numbers are available on request.

—Family Housing (9 units). Comments: Approx. 1,254 to 1,550 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Duncanville Housing, Dallas, TX, shall submit to said city a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the City shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Dallas, TX, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Commission elected to proceed under the new statute, i.e., December 7, 1994.

Dated: February 27, 1995.

M. D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95-5845 Filed 3-9-95; 8:45 am]

BILLING CODE 3810-FF-P

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Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Civil Engineering Laboratory, Port Hueneme, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Civil Engineering Laboratory, Port Hueneme, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or Joanne Alsterlind, Real Estate Division, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3821. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Commander Dick Turnwall, Naval Civil Engineering Laboratory, 560 Center Drive, Port Hueneme, CA 93043–4328, telephone (805) 982–1646.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Civil Engineering Laboratory, Port Hueneme, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on July 11, 1994, declared surplus to the federal Government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 9, 1994, the City of Port Hueneme submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Civil Engineering Laboratory, Port Hueneme, CA, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Civil Engineering Laboratory, Port Hueneme, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Port Hueneme Surplus Property Authority for the City of Port Hueneme whose chief executive officer is the City Manager. The Port Hueneme Surplus Property Authority has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing base. This committee is known as "The NCEL Reuse Advisory Task Force." A cross section of community interests is represented on the committee. Day to day operations of the committee are handled by the City of Port Hueneme Community Development Director. The address of the committee is NCEL Reuse Advisory Task Force, c/o City of Port Hueneme, 250 North Ventura Road, Port Hueneme, CA 93041, telephone (805) 488–3625, and facsimile (805) 986–6511.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Civil Engineering Laboratory, Port Hueneme, CA, that were declared surplus to the federal government on July 11, 1994.

Land

Approximately 33 acres of improved and unimproved fee simple land at the U.S. Naval Civil Engineering Laboratory, Port Hueneme, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on April 30, 1996, unless otherwise indicated. Property numbers are available on request.

—Administration/Office Buildings (15 structures). Comments: Approx. 105,060 square feet.
—Laboratories (31 structures). Comments: Approx. 112,798 square feet.
—Maintenance Shops (2 structures). Comments: Approx. 8,741 square feet.
—Miscellaneous Structures (16 structures). Comments: Fences, roads, sidewalks, etc.
—Sewage Facility (1 structure). Comments: Approx. 189 square feet.
—Storage facility (1 structure). Comments: Approx. 4,275 square feet.
—Utility facilities (8 structures). Comments: Measuring systems vary. Telephone, electric, gas, sewage, and water utility systems.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local government, representatives of the homeless, and other interested parties located in the vicinity of the Naval Civil Engineering Laboratory, Port Hueneme, CA, shall submit to said redevelopment authority a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Port Hueneme, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Port Hueneme elected to proceed under the new statute, i.e., December 9, 1994.

Dated: February 27, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–5844 Filed 3–9–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Shipyard, Mare Island, Vallejo, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Shipyard, Mare Island, Vallejo, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474; or Hansel N. Harrison Jr., Real Estate Center, Engineering Field Activity West (Code 241), Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3813. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plans, sanitary facilities, exact street address, etc.), contact Commander John Becker, Base Closure Officer (Code 100B), Naval Shipyard, Mare Island, Vallejo, CA 94592–5100, telephone (707) 646–1920.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Shipyard, Mare Island, Vallejo, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on July 11, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 14, 1994, the City of Vallejo submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Shipyard, Mare Island, Vallejo, CA, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Naval Shipyard, Mare Island, Vallejo, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Vallejo, whose chief executive officer is the Mayor. The City has established a committee to provide advice to the redevelopment authority on the redevelopment for the closing shipyard. A cross section of community interests is represented on the committee. Day to day operations of the committee are handled by a Project Manager. The address of the redevelopment authority is Mr. Alvaro P. da Silva, Director of Community Development, City of Vallejo, 555 Santa Clara Street, P.O. Box 3068, Vallejo, CA 94590, telephone (707) 648–4444 and facsimile (707) 648–4499.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Shipyard, Mare Island, Vallejo, CA, that were declared surplus to the federal government on July 11, 1994.

Land

Approximately 4,050 acres of improved and unimproved fee simple land at the U.S. Naval Shipyard, Mare Island, Vallejo, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on April 1, 1996, unless otherwise indicated. Property numbers are available on request.

—Ammunition storage (11 structures). Comments: Approx. 48,172 square feet.
—Bachelor quarters housing (20 structures). Comments: Approx. 401,411 square feet. Most have individual rooms.
—Chapels (2 structures). Comments: Approx. 13,611 square feet.
—Family housing (1,081 units). Comments: Approx. 1,259,907 square feet. Single family and multi-unit buildings, built between 1863 and 1966.
—Fire protection facilities (6 structures). Comments: Approx. 24,343 square feet.
—Fuel storage and distribution facilities (9 structures). Comments: Approx. 74 miles of pipeline and 213,135 gallons of storage capacity.
—Industrial/Shipyard facilities (172 structures). Comments: Approx. 32,647,461 square feet. Includes drydocks, slipways, machine shops, electrical shops, sawmill.
—Maintenance facilities (56 structures). Comments: Approx. 988,858 square feet. Electronic, automotive, housing, utility, and weapons systems maintenance.
—Medical and dental facilities (3 structures). Comments: Approx. 68,000 square feet.
—Mess and dining facilities (2 structures). Comments: Approx. 27,664 square feet. Enlisted and Officers' dining facilities.
—Marine improvements (31 structures) Comments: Piers, breakwalls, moorings, ferry slip.
—Office/administration buildings (65 structures). Comments: Approx. 675,891 square feet.
—Police Station (1 structure). Comments: Approx. 5,500 square feet.

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—Recreational facilities, indoor (75 structures). Comments: Approx. 275,393 square feet. Gymnasium, field house, indoor pool, hobby shop, picnic sheds, bowling alley, clubs.

—Recreational facilities, outdoor (18 structures). Comments: Pools, playing fields, golf course.

—Stores and services facilities (12 structures). Comments: Approx. 66,769 square feet. Small retail facilities.

—Training facilities (31 structures). Comments: Approx. 734,435 square feet.

—Utilities. Comments: Measuring systems vary. Telephone, electrical, sanitary sewer, steam, railroads, roads, and water utility systems.

—Warehouse/storage facilities (45 structures). Comments: Approx. 1,348,120 square feet.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Shipyard, Mare Island, shall submit to said redevelopment authority a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Vallejo, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Vallejo elected to proceed under the new statute, i.e., December 14, 1994.

Dated: February 25, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–5843 Filed 3–9–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 10, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherril at the address specified above.

Dated: March 6, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Interim Title I State Plan for the State Vocational Rehabilitation Services Program and the Title VI, Part C State Plan Supplement for the State Supported Employment Services Program
Frequency: Annually
Affected Public: Individuals or households; Not-for-profit institutions; State, Local or Tribal Government
Reporting Burden:
Responses: 82
Burden Hours: 1,548,160
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Rehabilitation Act of 1973, as amended, requires each State to submit a State Plan for VR services and a supplement for supported employment services to receive Federal funds. The State Plan is the basis upon which RSA monitors State VR agency compliance with statutory and regulatory provisions.

Office of Postsecondary Education

Type of Review: Revision
Title: Paul Douglas Teacher Scholarship Program Performance Report
Frequency: Annually
Affected Public: Federal Government; State, Local or Tribal Government
Reporting Burden:
Responses: 57
Burden Hours: 285
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This performance report is completed by State agencies that have participated in the Paul Douglas Teacher Scholarship Program. The U.S. Department of Education uses the information collected to assess the accomplishments of the program goals and objectives and to aid in effective program management.

[FR Doc. 95–5867 Filed 3–9–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 31, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 6, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Organization for Economic Cooperation and Development (OECD) Cross Curricular Competency Pilot Test
Frequency: Annually
Affected Public: Individuals and households; Not-for-profit institutions
Reporting Burden:
Responses: 1,200
Burden Hours: 1,200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study is being conducted to test the reliability of a student test developed by the OECD. This instrument only includes questions previously tested and used in at least one country. All respondents will be tenth grade students. Topics to be assessed are civics and survival skills.

Additional Information: An expedited review is requested. OMB clearance of the OECD Cross Curricular Competency Pilot Test by April 31, 1995 will allow adequate time to administer the test during this school year, and to incorporate any needed changes into the full scale version.

[FR Doc. 95–5868 Filed 3–9–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 8, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill. (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice

Dated: March 6, 1995.

Gloria Parker,

Director, Information Resources Group

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: Application for Grants—Public Charter Schools Program
Frequency: Annually
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government
Reporting Burden:
Responses: 1,000
Burden Hours: 200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: State educational agencies, authorized public chartering agencies, and charter schools must submit an

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application to receive funds. applications are analyzed to ensure that funds are distributed fairly and projects are cost effective

Additional Information: Clearance for this information collection is requested for March 8, 1995. An expedited review is requested in order for SEAs to have sufficient time to conduct their competitions and award subgrants so that the charter schools that they fund can begin in September 1995.

[FR Doc. 95–5869 Filed 3–9–95; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.999F]

The National Assessment of Educational Progress (NAEP) Program Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: To conduct data collection for the national component of NAEP in 1996, 1997, and 1998; to monitor data collection for the State component of the 1996 and 1998 NAEP assessments; and to prepare sampling weights for the State and national components of the 1996, 1997, and 1998 assessments. It is anticipated that the 1996 NAEP will be conducted at the national level in reading, mathematics and science in grades 4, 8 and 12 and at the State level in mathematics and science in grade 8 and possibly at grade 4. The 1997 NAEP will be a national assessment of the arts (dance, theater, music, visual arts) conducted in grade 8 only, with a smaller than normal sample of students. (However, increases in the scope of the arts assessment are possible.) It is anticipated that the 1998 NAEP will assess reading, writing and mathematics at the national level, and reading and writing at the State level in grades 4, 8, and 12. NAEP supports the National Education Goals by providing measures of progress toward National Education Goal Three, student competency over challenging subject matter.

Eligible Applicants: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applications: April 25, 1995.

Applications Available: March 15, 1995.

Available Funds: The Department estimates that about $800,000 can be made available in fiscal year 1995 for this project.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86; and (b) The regulations in 34 CFR Part 98 (Students Rights in Research, Experimental Activities, and Testing).

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress is authorized by Section 411 of the National Education Statistics Act of 1994, Title IV of the Improving America's Schools Act (20 U.S.C. 9010). Section 412 (20 U.S.C. §§ 9011) of this law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. Copies of these guidelines are available from the Department. One cooperative agreement is currently in effect to develop, field test, revise, and prepare for a State and national component of NAEP in 1996. There will be a separate announcement for scoring, analyzing, and reporting data from the 1996, 1997, and 1998 assessments. This notice is limited to seeking applications for activities in connection with the 1996, 1997 and 1998 NAEP assessments.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. §§ 9010–9011, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary, under 20 U.S.C. §§ 9010–9011, funds under this competition only applications that meet this absolute priority:

Collection of data for the 1996, 1997, and 1998 NAEP and preparation of sampling weights for the State and national components of the 1996, 1997, and 1998 assessments.

The grantee must perform these activities in accordance with guidelines developed by the NAGB.

Invitational Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Conduct Transcript Study based upon graduating seniors in the 1996 NAEP sample.

Selection Criteria

Applications are evaluated according to the selection criteria in 34 CFR 75.210. Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the selection criteria to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Steven Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 308b, Washington, DC 20208–5653. Telephone: (202) 219–1761. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 9010, 9011.

Dated: March 6, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5898 Filed 3–9–95; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for the Lower Red River Meadow Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: BPA proposes to fund the Red River Meadow Juvenile Chinook Habitat Restoration Project in a cooperative effort with the Idaho Soil and Water Conservation District, Nez Perce National Forest, Idaho Department of Fish and Game, and Nez Perce Tribe of Idaho. The proposed action would allow the sponsors to secure long-term agreements with private and public landowners to conduct stream restoration and fisheries habitat enhancement activities located in Idaho County, Idaho, near Elk City (T28, R9E, Secs. 18 and 19).

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

DATES: Comments are due to the address below no later than April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Beraud, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–621, phone number 503–230–3599, fax number 503–230–5699, or Robert Shank, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5115.

SUPPLEMENTARY INFORMATION: BPA proposes to stabilize the stream channel, restore fishery habitat features, and re-establish a riparian shrub community. The project area is roughly 7.1 km (4.4 miles) of state and privately owned land located adjacent to the Red River. The majority of the land is currently used for cattle grazing. The proposed activities are necessary to partially mitigate for juvenile chinook salmon spawning and rearing habitat adversely affected by construction and operation of the lower Snake and Columbia River dams and reservoirs.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on March 2, 1995.

John M. Taves,

NEPA Compliance Officer, Office of Environment/Fish and Wildlife.

[FR Doc. 95–6020 Filed 3–9–95; 8:45 am]
BILLING CODE 6450–01–P

Notice of Wetlands Involvement for the Skyline Farm Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Wetlands Involvement.

SUMMARY: Today's notice announces BPA's proposal to transfer Skyline Farm's water rights from agricultural use to in-stream use for fish. Skyline Farm encompasses about 3640 hectares (9,000 acres) with approximately 50,000 acre-feet of water rights and is located in Malheur County, Oregon. In July 1994, BPA entered into a 1- to 3-year purchase option and water use agreement with the main owner of Skyline Farm. This agreement allows BPA to file application with the state to temporarily transfer use of 16,000 acre-feet of water per year from agricultural use to in-stream use for fish and hydropower generation and evaluate the effects. The purpose of this agreement is to carry out part of the Northwest Power Planning Council's program to increase stream flows in the upper Snake River Basin for salmon and steelhead. This proposal could impact wetlands that occur on the Skyline Farm property. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 C.F.R. Part 1022), BPA will prepare a wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the National Environmental Policy Act.

DATES: Comments are due to the address below no later than April 17, 1995.

ADDRESSES: Submit comments to the Public Involvement and Information Manager, Bonneville Power Administration—CKP, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION, CONTACT: Nancy A. Wittpenn, Bonneville Power Administration—ECN–500, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–3297, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: On the Skyline Farm property, palustrine emergent wetlands occur in drainages located in sections 2, 3, and 4 within Township 18 South, Range 46 East, and in sections 1, 2, 10–17, 20–23, 26–28, and 32–35 within Township 17 South, Range 46 East. Palustrine scrub-shrub wetlands associated with water impoundments within Jacobsen Gulch occur in sections 10, 14, and 16 within Township 17 South, Range 46 East.

Maps and further information are available from BPA at the address above

Issued in Portland, Oregon, on March 2, 1995.

John M. Taves,

NEPA Compliance Officer, Office of Environment/Fish and Wildlife.

[FR Doc. 95–6019 Filed 3–9–95; 8:45 am]
BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: Switzerland to the United Kingdom for the purpose of reprocessing 140 irradiated fuel assemblies containing approximately 57,000 kilograms of uranium and containing 460 kilograms of the isotope uranium-235 (enriched to approximately 0.81 percent) and 590 kilograms of plutonium from the Gosgen nuclear power station. This subsequent arrangement is designated as RTD/EU(SD)-80.

The United States has received assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section

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131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Issued in Washington, DC on March 6, 1995.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

FR Doc. 95–6029 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Kemp Development Corporation

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01–95EE15622 to Kemp Development Corporation. The proposed grant will provide funding in the estimated amount of $99,995 by the Department of Energy for the purpose of saving energy through development of the inventor's "Automated Thermal Treatment of Metals With a Mechanically Fluidized Vacuum Machine".

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Kemp Development Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The new technology is expected to provide energy savings of 50 percent and will incorporate a number of new features including computer control and rapid cooling. The inventor and principal investigator, Willard Kemp, is the president of Kemp Development Corporation. He has 54 U.S. patents in various fields and is a registered professional engineer in Ohio and Texas. Kemp Development Corporation will use its engineering facilities for designing, constructing, and operating the prototype unit. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.21, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, D.C. on February 27, 1995.

Lynn Warner,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–6017 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 94–2 of the Defense Nuclear Facilities Safety Board, Conformance With Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 94–2, concerning Conformance with Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites, in the Federal Register on September 15, 1994 (59 FR 47309). Section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e) requires the Department of Energy to transmit an implementation plan to the Defense Nuclear Facilities Safety Board by February 14, 1995, or submit a notification of extension for an additional 45 days. The Secretary's notification of extension for an additional 45 days follows.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's notification to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 27, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

Dear Mr. Chairman: This is to advise you, pursuant to 42 USC 2286d(e), that the Department of Energy (Department) needs an additional 45 days to respond to the Defense Nuclear Facilities Safety Board Recommendation 94–2, Conformance with Safety Standards at Department of Energy Low-Level Nuclear Waste and Disposal Sites.

The Department has established a Headquarters/Field task force to develop the Implementation Plan, which is receiving considerable input from the field. An integrated systems approach is being used to develop the Implementation Plan. Discussions between the Department and the Board staff have been constructive in developing a responsive plan. However, a 45-day extension is required to more clearly define a cost-effective and efficient approach for conducting the complex-wide riview necessary to establish the dimensions of the low-level waste disposal problem. The Implementation Plan for Recommendation 94–2 will be provided by March 31, 1995.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–6022 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

Motor Challenge Meeting

AGENCY: Department of Energy (DOE), Office of Industrial Technologies.

ACTION: Notice of Motor Challenge Roundtable on Market Transformation Strategies for Electric Motor Systems.

SUMMARY: The Department of Energy's Motor Challenge Program is convening a Roundtable on Market Transformation. The purpose of the Roundtable is to draw from the experience of the roundtable participants and seek their independent opinions and ideas for developing and implementing the market transformation aspect of the Motor Challenge Program. The roundtable will be comprised of 60 experts from across the country.

DATES: Tuesday, April 18, 1995, 1:00–5:30 PM; and Wednesday, April 19, 1995, 8:30 am to 4:30 pm.

ADDRESSES: Hyatt Regency O'Hare, 9300 West Bryn Mawr Avenue, Rosemount, IL 60018.

FOR FURTHER INFORMATION CONTACT: Motor Challenge Information Clearinghouse 925 Plum Street, SE, Bldg. 4, Olympia, WA 98504. 1–800–862–2086.

SUPPLEMENTARY INFORMATION: Market Transformation is an industry-driven process whereby industrial users, equipn ent suppliers, utilities, government agencies and the efficiency community work to facilitate and implement initiatives aimed at enhancing the market for higher performance electric motor system equipment that meets user performance and service needs.

Market transformation is envisioned to be a series of well-coordinated market enabling and technology commercialization activities. Many of the activities will be designed to encourage the development and adoption of enhanced products and services to capture systems integration opportunities which represent the vast majority of energy savings opportunities.

I. Market Transformation Strategies for Electric Motor Systems Report

Over the past year the Department of Energy's Motor Challenge Program has been working with industry, utilities and other organizations to gather input and guide the development of strategies to capitalize on motor systems efficiency opportunities. Drawing on inputs received from the public over the past year, DOE has prepared a draft report on Market Transformation Strategies for Electric Motor Systems. The contents of the report will be the focus of the discussions at the Roundtable.

A. Topics presented in the draft report include:

(1) Description of the market-oriented process employed to formulate the market transformation strategies;

(2) Identification of factors that can produce market change, and the characteristics of a transformed market;

(3) Identification of a series of consistent, voluntary "win-win" strategies for transforming the three targeted industrial market segments;

(4) Identification of the potential roles of private and public sector market players, and proposed partnerships;

(5) Estimated direct impacts and indirect benefits; and

(6) Discussion of how market players can get involved in the market transformation process.

II. Market Transformation Process

With regard to Motor Systems, the market transformation process involves the development and promotion of economically viable energy efficiency products and services, development of the market infrastructure, and enhancing awareness of the benefits of developing and using efficient and environmentally friendly technologies, products and services.

Examples of strategies to sustain transformation of the motor systems market include:

(A) Enabling actions to strengthen/develop market infrastructure:

(1) Voluntary specifications & protocols—(e.g., performance measurement and test procedures, guidelines, certification, product labeling, product directories, etc.)

(2) Marketing & consumer education of the systems approach concept

(3) Information and decision tools

(4) Showcase Demonstrations & field validation

(5) Motor system management training (motors, drives, and motor systems)

(B) Direct market actions to aid in product & services commercialization:

(1) Voluntary commitments & recognition

(2) Market aggregation mechanisms (common user specifications, purchasing commitments to create guaranteed markets)

(3) Performance system ortimization services

(4) Voluntary product labeling

(5) Government procurement (Federal, federal/state procurement partnerships)

(6) Technology development (improved engineering designs that meet user-driven performance characteristics)

(7) Activities encouraging more rapid retirement of inefficient equipment by end-users

Documents

The DOE draft report on Market Transformation Strategies for Electric Motor Systems, and other documents relating to the Roundtable meeting will be publicly available at the meeting, and thereafter available for public inspection at the Department of Energy, Freedom of Information Reading Room, Room 1E190, 1000 Independence Avenue, S.W., Washington, DC 20585, between the hours 9:00 am to 4:00 pm, Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 23, 1995.

Kurt D. Sisson,

Acting Associate Deputy Assistant Secretary for Industrial Technologies, Energy Efficiency and Renewable Energy.

[FR Doc. 95–6018 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM95–4–30–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1995.

Take notice that on March 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 1995:

Eighth Revised Sheet No. 6
Eighth Revised Sheet No. 7
Eighth Revised Sheet No. 8
Eighth Revised Sheet No. 9
Eighth Revised Sheet No. 10

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that the revised tariff sheets filed herewith reflect: (1) a (0.41)% decrease (Field Zone to Zone 2), a (0.45)% decrease (Field Zone to Zone 1B), a (0.37)% decrease (Field Zone to Zone 1A), a (0.21)% decrease (Field Zone only), a (0.31)% decrease (Zone 1A to Zone 2), (0.35)% decrease (Zone 1A to Zone 1B), a (0.15)% decrease (Zone 1B to Zone 2), a (0.27)% decrease (Zone 1A only), a (0.19)% decrease (Zone 1B only) and a (0.07)% decrease (Zone 2 only) to the Current Fuel Reimbursement Percentages, pursuant to Section 22.3; and (2) continuation of the 0.13% to all zones for the Annual Fuel Reimbursement Surcharge, pursuant to Section 22.4

Trunkline states that copies of this filing have been served on all jurisdictional transportation customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

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available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5893 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–10–29–000]

Transcontinental Gas Pipe Line Corp.; Notice of Filing

March 6, 1995.

Take notice that on March 1, 1995 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing certain revised tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff enumerated in Appendix A attached to the filing.

TGPL states that the instant filing is submitted pursuant to Section 38 of the General Terms and Conditions of TGPL's FERC Gas Tariff which provides that TGPL will file, to be effective each April 1, a redetermination of its fuel retention percentages applicable to transportation and storage rate schedules. The derivation of the revised fuel retention percentages included therein are based on TGPL's estimate of gas required for operations (GRO) for the forthcoming annual period April 1995 through March 1996 plus the balance accumulated in the Deferred GRO Account at January 31, 1995.

TGPL states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5892 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–93–001 and RP91–212–014]

Stingray Pipeline Co.; Notice of Compliance Filing

March 6, 1995.

Take notice that on March 1, 1995, Stingray Pipeline Company (Stingray), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective February 15, 1995:

Third Revised Sheet No. 5
Fourth Revised Sheet No. 56
Third Revised Sheet No. 57

Stingray states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Denying Request For Extension Of Experimental Program," issued February 14, 1995, 70 FERC Paragraph 61,171 (1995). Stingray was directed to eliminate references to its experimental market-based interruptible rate program.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective February 15, 1995.

Stingray states that copies of its filing were served on all parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a motion to protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5891 filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–28–000]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

March 6, 1995.

Take notice that on March 1, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A hereto. The proposed effective date of these revised tariff sheets is April 1, 1995.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages:

(1) A .01% increase in the Gathering Fuel Reimbursement Percentage;
(2) A .08% increase in the Field Zone Fuel Reimbursement Percentage;
(3) No change in the Market Zone Fuel Reimbursement Percentage;
(4) No change in the Field Area Storage Percentages; and
(5) No change in the Market Area Storage Percentages.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

Appendix A—Panhandle Eastern Pipe Line Company, FERC Gas Tariff, First Revised Volume No. 1

Effective April 1, 1995

Fourteenth Revised Sheet No. 4
Fourteenth Revised Sheet No. 5
Fourteenth Revised Sheet No. 6
Fourteenth Revised Sheet No. 7
Fourteenth Revised Sheet No. 8

[FR Doc. 95–5890 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–31–001]

Northwest Pipeline Corp.; Notice of Refund Report

March 6, 1995.

Take notice that on March 1, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in the above referenced docket.

Northwest states that the refund detailed in the instant filing was ordered by the Commission on November 26, 1993. The refund was paid on January 31, 1995 and is comprised of the remaining ten percent of 1992 Gas Inventory Charge revenues plus accrued interest through January 31, 1995.

Northwest states that a copy of this filing has been served upon all affected customers and relevant state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5889 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–37–000]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

March 6, 1995.

Take notice that on March 1, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets and a proposed effective date of April 1, 1995:

Third Revised Volume No. 1

Third Revised Sheet No. 14

Original Volume No. 2

Thirteenth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to implement new fuel use requirements factors (Factors) for Northwest's transportation and storage rate schedules. The Factors are determined each year to become effective April 1 pursuant to Section 14.12 of the General Terms and Conditions contained in Northwest's FERC Gas Tariff, Third Revised Volume No. 1, and pursuant to Section 5 of Sheet No. 2.1-in Northwest's FERC GAs Tariff, Original Volume No. 2.

Northwest states that coincidental with the submission of this filing Northwest is submitting another superseding filing with the same proposed effective date of April 1, 1995 to propose changes to the methodology for calculating the Factors. Northwest states that the changes will provide Northwest with a mechanism to recover certain costs related to its investments necessary to maintain gas supplies to replace lost and unaccounted-for volumes.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5888 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–5–000]

Midwestern Gas Transmission Company; Tariff Filing

March 6, 1995.

Take notice that on March 1, 1995, Midwestern Gas Transmission Company (Midwestern), filed Substitute Original Sheet No. 6 of its FERC Gas Tariff, Second Revised Volume No. 1, for an effective date of September 1, 1993.

Midwestern states that this tariff sheet is filed pursuant to Section 2 of Midwestern's Rate Schedule LMS–MA which provides that Midwestern shall automatically adjust the rates associated with its no-notice, Daily Demand Service (DDS) to reflect any changes in the rates charged by Tennessee Gas Pipeline Company (Tennessee) for its LMS–MA service.

Midwestern further states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR Sections 385.211 and 385.214. All such petitions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5887 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–26–000]

El Paso Natural Gas Company; Tariff Filing

March 6, 1995.

Take notice that on March 1, 1995, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act, certain revised tariff sheets to its Second Revised Volume No. 1–A, and Third Revised Volume No. 1, FERC Gas Tariff.

El Paso states that the tendered tariff sheets reflect an address change applicable to payments made other than by wire transfer which are remitted to El Paso. El Paso proposes to revise the applicable tariff provisions to state that payment should be received at a depository designated by El Paso rather than in El Paso's offices.

El Paso respectfully requests that the Commission accept the tendered tariff sheets for filing and permit them to become effective on April 1, 1995, which is not less than thirty (30) days after the date of the filing.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system customers

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and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5886 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–33–000]

El Paso Natural Gas Company; Tariff Filing

March 6, 1995.

Take notice that on March 1, 1995, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to Part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act, a revision to the rates and charges for El Paso's Take-or-Pay Buyout and Buydown Cost Recovery for interest in accordance with Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of its Second Revised Volume No. 1–A and Third Revised Volume No. 1 FERC Gas Tariff, respectively.

El Paso states that the interest revision results in a Take-or-Pay Throughput Surcharge of $0.0348 per dth (a decrease of $0.0006. El Paso also states that its Monthly Direct Charges have been fully amortized for the currently authorized amounts. However El Paso proposes to recover the remaining interest related to the Monthly Direct Charge as a one-time adjustment which totals only $3,152.00.

El Paso requests that the Commission accept the tendered tariff sheets for filing and permit them to become effective April 1, 1995, which is not less than thirty (30) days after the date of filing.

El Paso states that it has served a copy of the filing, together with all enclosures, except for the diskettes, on all affected interested pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–5885 Filed 32–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–25–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

March 6, 1995.

Take notice that on March 1, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 1100
Fifth Revised Sheet No. 1101
Fifth Revised Sheet No. 1102
Fifth Revised Sheet No. 1103
Fifth Revised Sheet No. 1104
Fifth Revised Sheet No. 1105
Fifth Revised Sheet No. 1106
Fifth Revised Sheet No. 1107
Fifth Revised Sheet No. 1108
Fourth Revised Sheet No. 1109

The proposed effective date of the tariff sheets is April 1, 1995.

Algonquin states that the purpose of this filing is to revise Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5584 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[P–7264–008]

Notice of Application

March 6, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License and Approval of Lease.

b. Project No: 7264–008.

c. Date Filed: October 5, 1994.

d. Applicants: Fox Valley Corp., Appleton Machine Co., and Appleton Mills.

e. Name of Project: Appleton Middle Dam Project.

f. Location: Fox River, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Donald H. Clarke, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. FERC Contact: Patricia A. Massie, (202) 219–2681.

j. Comment Date: March 30, 1995.

k. Description of Transfer and Lease: Applicants jointly and severally apply for transfer of the license from Fox Valley Corp., Appleton Machine Co., and Appleton Mills to Fox River Paper Company. A–C Compressor Corporation, Valmet-Appleton Incorporated, and N.E.W. Hydro, Inc. Applicants also request Commission approval of the lease of certain project facilities to N.E.W. Hydro, Inc. consistent with the terms of the transfer. N.E.W. intends to renovate, restore, and remodel the Powerhouse, resulting in improved efficiency of that generating unit.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5883 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–96–007 et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

March 2, 1995.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Company

[Docket No. ER93–96–007]

Take notice that on February 24, 1995, Delmarva Power and Light Company tendered for filing supplemental information to its compliance report filed in the above-referenced docket on February 3, 1995.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket Nos. ER93–150–006 and EL93–10–005]

Take notice that on February 21, 1995, Boston Edison Company tendered for filing its compliance report in the above-referenced dockets.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Rainbow Energy Marketing Corporation

[Docket No. ER94–1061–003]

Take notice that on February 7, 1995, Rainbow Energy Marketing Corporation filed a letter reporting no activity for the quarter ending December 31, 1994.

4. Arizona Public Service Company

[Docket No. ER95–427–000]

Take notice that on February 24, 1995, Arizona Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Electric Generating Company

[Docket No. ER95–573–000]

Take notice that on February 1, 1995, Southern Electric Generating Company (SEGCo) tendered for filing information concerning the adoption of certain accounting methods for accumulated deferred income taxes benefits other than pensions as set forth in the Statement of Financial Accounting No. 109 by the Financial Accounting Standards Board.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Energy, Inc.

[Docket No. ER95–590–000]

Take notice that an February 10, 1995, Midwest Energy, Inc. (Midwest), tendered for filing electric service tariffs for municipal electric systems located in Central and Western Kansas, a municipal transmission service tariff and an electric transmission tariff related to wholesale electric transmission service to one customer, Sunflower Electric Power Corporation.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER95–612–00]

Take notice that on February 8, 1995, Louisville Gas and Electric Company (LG&E) tendered for filing a Notice of Cancellation of Rate GSS between LG&E and CNG Power Services.

Comment date: March 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Bangor Hydro-Electric Company

[Docket No. ER95–623–000]

Take notice that on February 21, 1995, Bangor Hydro-Electric Company (Bangor), tendered for filing Rate Schedule No. FERC No. 52 (Fifteenth Revision) for full requirements service to Isle Au Haut Electric Power Company.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota)

[Docket No. ER95–627–000]

Take notice that on February 21, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing the Construction Agreement between NSP and the City of Sleepy Eye (Sleepy Eye) dated January 25, 1995. This agreement allows Sleepy Eye to add a new switch at the Sleepy Eye substation to eliminate the need to energize the entire substation for maintenance work.

NSP requests that the Commission accept for filing this agreement effective as of the date of execution, January 25, 1995, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule No. 393, the rate schedule for previously filed agreements between NSP and Sleepy Eye.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–629–000]

Take notice that on February 21, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Pennsylvania Power & Light Company (PP&L), dated February 2, 1995. This Service Agreement specifies that PP&L has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff)

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designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and PP&L to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy to negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 2, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER95–630–000]

Take notice that on February 21, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide non-firm transmission service to Bio Energy Corporation (BEC) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to BEC.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER95–632–000]

Take notice that on February 21, 1995, Southern California Edison Company tendered for filing as an initial rate schedule the following agreement with State of California, Department of Water Resources (CDWR):

Mojave Siphon, Additional Facilities and Firm Transmission Service Agreement Between Southern California Edison Company and State of California Department of Water Resources (Agreement)

The Agreement specifies the terms and conditions under which Edison will install, own, operate, and maintain Additional Facilities, as defined in the Agreement, to accommodate interconnection of CDWR's Mojave Siphon Hydroelectric Power Plant (Mojave Siphon). Additionally, the Agreement provides for 28 MW of firm transmission service from Mojave Siphon to Edison's Vincent Substation. Edison requests an effective date of April 1, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER95–633–000]

Take notice that on February 21, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with Rainbow Energy Marketing Corporation under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER95–634–000]

Take notice that on February 22, 1995, Florida Power Corporation tendered for filing a tariff providing for comprehensive transmission service. Florida Power states that the tariff provides for transmission service on a basis comparable to the uses the Company makes of its transmission system to service its own requirements customers.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Georgia Power Company

[Docket No. ER95–631–000]

Take notice that on February 21, 1995, Georgia Power Company filed a letter agreement dated January 6, 1995 revising the Contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Georgia Power Company. The letter agreement extends the term of the existing Contract to allow the parties to continue negotiations of a new arrangement.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. The Cincinnati Gas & Electric Company

[Docket No. ER95–625–000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) on February 21, 1995, tendered for filing its proposed changes in its FERC Electric Service Tariff, First Revised Volume No. 1, which cancel and supersede rate schedule WS–S in said tariff. The proposed changes would increase revenues from jurisdictional sales and service by $351,000 based on the 12 month period ending December 31, 1995.

The reasons stated by CG&E for the change in rate schedule are (a) to implement the June 1, 1995 rates set forth in the Service and Rate Agreements as filed with this Commission in Docket No. ER91–353–000 and, (b) to satisfy requirements imposed in Docket Nos. EC93–6–000 and EC93–6–001.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley, and the City of Lebanon, municipalities in the State of Ohio; The Union Light, Heat and Power Company, a wholly-owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the Commonwealth of Kentucky; The West Harrison Gas and Electric Company, a wholly-owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana; the Public Utilities Commission of Ohio; the Kentucky Public Service Commission; and the Indiana Utility Regulatory Commission.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota)

[Docket No. ER95–628–000]

Take notice that on February 21, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing the Construction Agreement between NSP and the City of New Ulm (New Ulm) dated January 31, 1995. This agreement allows New Ulm to add a remote terminal unit (RTU) and associated equipment in NSP's Fort Ridgely substation providing the interface between NSP's equipment and New Ulm's Master Station (SCADA system).

NSP requests that the Commission accept this agreement for filing effective as of the date of execution, January 31, 1995, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule No. 398, the rate schedule for previously filed agreements between NSP and New Ulm.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5966 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–113–000]

KN Interstate Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Casper-Douglas Pipeline Loop and Spur Project and Request for Comments on Environmental Issues

March 6, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Casper-Douglas Pipeline Loop and Spur Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

KN Interstate Gas Transmission Company (KN) presently owns and operates a natural gas processing plant in Casper, Wyoming (Casper Plant) constructed in 1965. Because of the dated technology used to remove heavy hydrocarbons from the gas, the Casper Plant is outmoded and environmentally inefficient to operate. The plant requires large volumes of fuel gas, and freon, as a refrigerant. Because the production of freon has ceased and the existing supply of freon at the plant is finite, KN proposes to close the Casper Plant.

KN wants to reconfigure its main natural gas transmission system in order to transfer natural gas processing operations from the Casper Plant to another existing processing plant near Douglas, Wyoming (Douglas Plant). KN requests Commission authorization, in Docket No. CP95–113–000, to construct and operate the following facilities needed to transfer the processing operations:

- 43.9 miles of 16-inch-diameter pipeline loop (Casper-Douglas Pipeline Loop) in Natrona and Converse Counties, Wyoming;[2]
- 8.0 miles of new 16-inch-diameter pipeline (Douglas Spur) in Converse County, Wyoming; and
- 2,000 horsepower (hp) of new compression at KN's existing Guernsey Compressor Station in Platte County, Wyoming.

The general location of the project facilities and route maps are shown in appendix 1.[3]

Land Requirements for Construction

The Casper-Douglas Pipeline Loop would be installed within newly acquired, 100-foot-wide construction rights-of-way generally parallel to the right-of-way for an existing 12-inch pipeline. A 66-foot-wide permanent right-of-way centered on the new pipeline would be used for long-term maintenance activities. About 532 acres of land would be disturbed if all 100 feet of construction right-of-way along the pipeline route is used. The permanent right-of-way would consist of about 351 acres of land.

The Douglas Spur would be installed within newly acquired, 100-foot-wide construction rights-of-way. A 66-foot-wide permanent right-of-way centered on the new pipeline would be used for long-term maintenance activities. Two temporary staging areas, about 250 by 300 feet, one on each side of the river, would be required for the crossing of the North Platte River and associated wetlands. A total of about 100 acres of land would be disturbed if all 100 feet of construction right-of-way along the pipeline route is used. The permanent right-of-way would consist of about 64 acres of land.

Private roads/lanes and the existing rights-of-way would be used for access to the pipeline during construction and removal. These roads may require repair and upgrading to support increased traffic.

The additional 2,000-hp compressor unit would be installed at KN's existing Guernsey Compressor Station. The compressor unit would be placed on an existing foundation adjacent to the current compressor. No new land for construction will be required.

The EA Process

The National environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be

[1] KN Interstate Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline system at the location in which the loop is installed.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified a number of issues that we think deserve attention, based on a preliminary review of the proposed facilities and the environmental information provided by KN. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. The currently identified issues are:

- The construction of new pipeline could affect seven separate wetlands.
- The project could cross habitat of the piping plover, least tern, bald eagle, whooping crane, peregrine falcon, black-footed ferret, pallid sturgeon (all federally listed endangered species), and the mountain plover (a category 2 candidate species).
- Construction of a 2,000-hp compressor at the Guernsey Compressor Station may increase ambient noise levels in the vicinity of the compressor station.
- About 2.5 miles of the pipeline are proposed to cross the Old Fort Fetterman Reservation, a historic site established in 1867.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–113–000;
- Send a *copy* of your letter to: Mr. Bob Kopka, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so they will be received in Washington D.C. on or before April 7, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Kopka at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. In certain cases, environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Bob Kopka, EA Project Manager, at (202) 208–0282.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5881 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

Yukon Pacific Company L.P.; Notice of Availability of the Final Environmental Impact Statement for the Yukon Pacific LNG Project

March 6, 1995

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a final environmental impact statement (FEIS) on the construction and operation of the liquefied natural gas (LNG) liquefaction plant, LNG storage and marine loading facilities, and LNG tanker transport proposed in the above referenced docket.

The staff prepared the FEIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed action, with appropriate mitigating measures as recommended, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternative to various components of the proposals.

Yukon Pacific Company L.P. (Yukon Pacific) is seeking approval of a specific site at Anderson Bay, Port Valdez, Alaska to export LNG to destinations in Japan, Korea, and Taiwan. The proposed action involves construction of:

- A 2.1 billion cubic feet per day LNG liquefaction plant.
- Four aboveground 800,000-barrel LNG storage tanks;
- A marine facility to load two tankers within a 12-hour period; and
- A cargo/personnel ferry docking facility.

In addition, Yukon Pacific proposes to operate a fleet of 15 LNG tankers, each having 125,000 cubic meters of cargo capacity. The fleet would make 275 trips per year. Construction of the project would take 8 years with a peak work force of nearly 4,000 workers in the fifth year.

The FEIS will be used in the regulatory decision-making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, libraries, newspapers, individuals who have requested the FEIS, and other parties to this proceeding.

Limited copies of the FEIS are available from:

Mr. Chris Zerby, Environmental Project Manger, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Room 7312, Washingtbn, DC 20426, (202) 208–0111

Mr. Jerry Brossia, State Pipeline Coordinator, 411 West 4th Avenue, Suite #2, Anchorage, Alaska 99501, (907) 278–8594

Lois D. Cashell,

Secretary.

[FR Doc. 95–5882 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2056–013, et al.]

Hydroelectric Applications [Northern States Power Co., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.
b. Project No: 2056–013.
c. Date Filed: November 14, 1994.
d. Applicant: Northern States Power Company (NSPC).
e. Name of Project: St. Anthony Falls Project.
f. Location: On the Mississippi River, within the City of Minneapolis, Hennepin County, Minnesota.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Jack J. Schutz, P.E., Senior Environmental Engineer, Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401–1927, (612) 330–5621.
i. FERC Contact: Mohamad Fayyad, (202) 219–2665.
j. Comment Date: April 6, 1995.
k. Description of Amendment: NSPC proposes to delete an authorized redevelopment of a powerhouse at its Lower Dam development. The powerhouse was authorized by a Commission order amending license issued on November 14, 1990, with an installed capacity of 16 MW.[1] Since NSPC decided not to rebuild the powerhouse the entire Lower Dam development must be deleted from the license for the St. Anthony Falls Project; start of construction deadline for rebuilding the powerhouse was November 13, 1994.
l. This notice also consists of the following standard paragraphs: B, C2, and D2.

2 a. Type of Application: Amendment of License.
b. Project No.: P–472–014.
c. Date Filed: November 25, 1994.
d. Applicant: PacifiCorp.
e. Name of Project: Oneida.
f. Location: On the Bear River in Franklin County, Idaho.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact:
Stanley A. deSousa, Director of Hydro Resources, PacifiCorp, 920 SW Sixth Avenue, Suite 610, Portland, Oregon 97204, (503) 464–5343
Thomas H. Nelson, Stoel Rives Boley Jones & Grey, 900 SW Fifth Avenue, Suite 2300, Portland, Oregon 97204–1268, (503) 294–9281

[1] 51 FERC ¶ 62,155 (1990).

i. FERC Contact: Regina Saizan, (202) 219–2673.
j. Comment Date: April 6, 1995.
k. Description of Project: The licensee requests that its license be amended to extend the expiration date of the license from June 30, 2000 to October 1, 2001.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. Type of Application: Minor License.
b. Project No.: P–11519–000.
c. Date Filed: February 10, 1995.
d. Applicant: Wisconsin Edison Corporation.
e. Name of Project: Stoughton Hydro Project.
f. Location: On the Yahara River in Dane County, near Dunkirk, Wisconsin.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Peter H. Burno, 1343 Veek Road, Stoughton, WI 53589, (608) 873–8656.
i. FERC Contact: Ed Lee (202) 219–2809.
j. Comment Date: 60 days from the filing date in paragraph c.
k. Description of Project: The existing project would consists of: (1) An existing dam and intake structure; (2) an existing 82-acre reservoir; (3) a powerhouse containing two generating units for a total installed capacity of 192 Kw; (4) a 300-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 450 Mwh for the project. All lands and project works are owned by the City of Stoughton, Wisconsin.
l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.
m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

4 a. Type of Application: Minor License.
b. Project No.: P–11520–000.
c. Date Filed: February 10, 1995.
d. Applicant: Wisconsin Edison Corporation.
e. Name of Project: Stebbinsville Hydro Project.
f. Location: On the Yahara River in Rock County, near Porter, Wisconsin.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Peter H. Burno, 1343 Veek Road, Stoughton, WI 53589, (608) 873–8656.
i. FERC Contact: Ed Lee (202) 219–2809.
j. Comment Date: 60 days from the filing date in paragraph c.
k. Description of Project: The existing project would consists of: (1) An existing dam and intake structure; (2) an existing 80-acre reservoir; (3) a powerhouse containing a single 375-kW generating unit; (4) a 40-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,500 MWh for the project. All lands and project works are owned by the applicant.
l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.
m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5 a. Type of Application: Major Relicense.
b. Project No.: 2705–003.
c. Date filed: September 30, 1992.
d. Applicant: Seattle City Light.
e. Name of Project: Newhalem Creek.
f. Location: On Newhalem Creek in Whatcom County, Washington, wholly within the Ross Lake National Recreation Area.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Gary Zarker, Superintendent, Seattle City Light, 1015 Third Avenue, Seattle, WA 98104–1198, (206) 684–3200.
i. FERC Contact: James Hunter at (202) 219–2839.
j. Deadline Date: See attached paragraph D10. The Commission's due date for filing a final amendment of this application is 60 days from issuance of this notice.

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k. Status of Environmental Analysis: The application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The existing project consists of: (1) A 45-foot-long, 10-foot-high concrete overflow dam, crest elevation 1,012 feet, across Newhalem Creek with a combination sluiceway and intake structure; (2) water conveyance facilities including a 5-foot-square, 54.5-foot-long, vertical rock shaft, a 6-foot by 7-foot, 2,452-foot-long rock tunnel, and a 33-inch-diameter, 925-foot-long penstock; (3) a 30-foot-wide, 56-foot-long, wood-framed powerhouse containing a generating unit with an installed capacity of 2.3 MW; (4) two timber flumes that discharge into a 350-foot-long tailrace returning project flows to the Skagit River; (5) a 4,387-foot-long, 7.2-kV transmission line tying into the Gorge powerhouse of Project No. 553; (6) about 2.5 miles of access roads to the diversion and powerhouse; and (7) appurtenant facilities.

m. Purpose of Project: The average annual generation of the Newhalem Creek project is 18 GWh. Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraph: D10.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Seattle City Light's offices at 1015 Third Avenue, Seattle, Washington.

6 a. Type of Application: Exemption 5 MW or less.

b. Project No.: 11316–002.

c. Date filed: January 31, 1995.

d. Applicant: Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.

e. Name of Project: Tazimina.

f. Location: On the Tazimina River, near Iliamna, Newhalen, and Nondalton, Section 24, Range 32 West, Township 3 South, Seward Meridian, in Southcentral Alaska.

g. Filed Pursuant to: Section 2407 of the Energy Policy Act of 1992 and the Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Brent Petrie, General Manager, INNEC, P.O. Box 210, Iliamna, Alaska 99606, (907) 571–1259.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. Comment Date: May 2, 1995.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D5.

l. The proposed project would consist of: (1) A 2-foot-high and 100-foot-long channel control sill consisting of precast 4-foot-long concrete blocks with a trapezoidal section; (2) an intake structure about 50 feet downstream and on the opposite side of the concrete sill; (3) a 5-foot-diameter, 430-foot-long welded steel penstock; (4) a powerhouse with two 350-Kw units; (5) a 6.7-mile-long transmission line; and (6) other appurtenances.

m. This notice also consists standard paragraphs B1 and D5.

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D5. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 2, 1995 for Project No. 11316–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 16, 1995 for Project No. 11316–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (May 2, 1995 for Project No. 2705–003). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 16, 1995 for Project No. 2705–003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 6, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5967 Filed 3–9–95; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of November 14 Through November 18, 1994

During the week of November 14 through November 18, 1994, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Brenda Wolfenbarger, 11/16/94, VFA–0007

Brenda Wolfenbarger (Wolfenbarger) filed an Appeal under the Freedom of Information Act of a September 30, 1994 Determination Letter issued to her by the Department of Energy's (DOE's) Oak Ridge Operations Office (Oak Ridge). Wolfenbarger had requested all medical and personnel records held by Oak Ridge concerning her father, who had worked for a contractor at Oak Ridge during the 1940's. On Appeal, Wolfenbarger contended that the DOE's search for responsive documents was inadequate. After considering her Appeal, the DOE found that Oak Ridge's search for responsive documents was adequate and therefore denied her Appeal.

Robert Heitmann, 11/16/94, VFA–0005

Robert Heitmann filed an Appeal from a denial by the FOI and Privacy Acts Branch, Reference and Information Management Division, at the Department of Energy Headquarters (DOEHQ) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that one office had not adequately searched for responsive documents, and that the records of the searches of two other offices were contradictory. The matter was therefore remanded for a new search of these three offices.

Requests for Exception

Leonard Wall Oil Co., 11/18/94, LEE–0155

Leonard Wall Oil Company (Leonard Wall) filed an Application for Exception requesting permanent relief from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that Leonard Wall was not experiencing a serious hardship, gross inequity or an unfair distribution of burdens as a result of the requirement that it file Form EIA–782B. On September 26, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Leonard Wall's Application for Exception.

Shuster Oil Co., Inc., 11/17/94, LEE–0142

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Shuster Oil Company, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On September 13, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Shuster's Application for Exception.

Tommy Carr's Tire and Automotive Service Center, Inc., 11/18/94, LEE–0151

Tommy Carr's Tire and Automotive Service Center, Inc. (Carr) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Carr should be granted exception relief for a period of three years because it was experiencing a gross inequity. The recent destruction of the business by fire as well as pressing financial obligations in Mr. Carr's personal life, i.e., the facial operations his newborn baby has received, made the filing of Form EIA–782B unusually burdensome. Accordingly, exception relief was granted.

Supplemental Order

Ronald A. Sorri, 11/18/94, LWX–0014

This Decision supplements an Initial Agency Decision, dated December 16, 1993, issued by an OHA Hearing Officer in a case involving a "Whistleblower" complaint filed by Ronald A. Sorri (Sorri) under the DOE Contractor Employee Protection Program, 10 CFR Part 708. In the December 16 Decision, the Hearing Officer determined that Sorri should be awarded backpay lost as a result of the reprisals taken against him, as well as all costs and expenses reasonably incurred by him in bringing his complaint.

After submitting a full accounting of his hourly charges for attorney's fees together with costs, expenses, and expert witness fees incurred in representing Sorri, Thad M. Guyer (Guyer), attorney for Complainant, filed a Motion for attorney's fees and costs on September 26, 1994. In considering the motion, the Hearing Officer found that Guyer's request for attorney's fees, legal assistant costs, and litigation costs and expenses was reasonable and should be approved. Accordingly, Guyer's Motion for attorney's fees and costs was granted. The Hearing Officer awarded Guyer $25,356.43 in attorney's fees and costs.

Refund Applications

Hay & Forage Industries, 11/16/94, RF272–92459

The DOE issued a Decision and Order concerning one Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Hay & Forage Industries. The DOE determined that Hay & Forage Industries was not entitled to a refund since a parent company had filed a Surface Transporters Escrow Settlement Claim Form and Waiver. In this filing, a parent company of Hay & Forage Industries requested a Stripper Well refund from the Surface Transporters escrow, thereby waiving Hay & Forage Industries' right to a Subpart V crude oil refund. Accordingly, the DOE denied Hay & Forage Industries' Application for Refund.

Nekoosa Papers, Inc., et al., 11/14/94, RC272–257, et al.

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Subpart V crude oil refund proceeding by four affiliates of Great Northern Nekoosa Corporation: Nekoosa Papers, Inc., Bibler Bros., Inc., Great Northern Paper Company, and Great Southern Paper Company. The DOE previously granted crude oil refunds to these four applicants. The four applicants, however, were subsequently found to have been affiliated with both Chattahoochee Industrial Railroad (Chattahoochee) and Great Southern Plywood (Plywood) on August 7, 1986. Chattahoochee had filed a refund claim in the Rail and Water Transporters Stripper Well proceeding, and Plywood had filed a refund claim in the Surface Transporters Stripper Well proceeding. In doing so, Chattahoochee and Plywood had executed waivers and releases waiving their rights and the rights of their affiliates on August 7, 1986, to receive crude oil overcharge refunds. Accordingly, this Decision rescinded the original refunds granted to the four applicants.

Scalzo Utilities, Inc., 11/18/94, RF272–92378

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The Application for Refund was based on purchases of kerosene and residual fuel the applicant purchased and resold during the crude oil price control refund period. The DOE determined that the applicant had filed to show that it has been unable to pass on the crude oil overcharges in its sales of kerosene and residual fuel. Therefore, the DOE concluded that the claimant was not injured by any of the overcharges associated with the gallons that it purchased. Accordingly, the DOE denied the Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Anaheim Union High School District et al	RF272–79602	11/14/94
Arundel Corporation	RF272–85	11/17/94
Atlantic Richfield Company/Ray Lumber Co. et al	RF304–14624	11/17/94
Atlantic Richfield Company/Searles Arco et al	RF304–14720	11/18/94
Chambersburg Area School District et al	RF272–95574	11/18/94
Clark Oil & Refining Corp./Commonwealth Edison Company	RF342–325	11/17/94
D.L. Stowe Trucking et al	RF272–91020	11/17/94
E.D.G. Inc./Smith Oil Company, Inc	RR311–2	11/18/94
Gulf Oil Corporation/Winston C. Bresett	RR300–258	11/16/94
Macke Laundry Service et al	RF272–97127	11/17/94
Newark Housing Authority	RF272–68961	11/18/94
Ralston Purina Company et al	RC272–261	11/17/94
Stanley G. Flagg & Co. et al	RF272–92009	11/18/94
Texaco Inc./Art and Speck's Texaco et al	RF321–17165	11/18/94

Texaco Inc./Hershey Foods Corporation	RF321–17106	11/16/94
Texaco Inc./Richmond Texaco et al	RF321–20188	11/14/94
Texaco Inc./Rodriguez Service Station et al	RF321–20852	11/18/94
Texaco Inc./Shorts Oil Co., Inc	RF321–20443	11/14/94
T.B. Smith Co., Inc	RF321–20651	
Texaco Inc. V&F Svara, Inc	RF 321–20946	11/18/94
V&F Svara, Inc	RF321–20951	
Texaco Inc./Windsor Texaco	RF321–16854	11/17/94
Delsea Texaco Service Station	RF321–16855	
Burlington Texaco	RF321–16856	
Woodbury Service Station	RF321–16857	

Dismissals

The following submissions were dismissed:

Name	Case No.
Cass County, MN	RF272–86744
Edmonson County Trucking Co	RF300–21532
General Motors Saginaw Division	RF272–93270
Homer Tesoro Service	LEE–0165
Jessee Rogers Sand & Gravel	RF272–95291
L.P. Shanks Company	RF272–94627
Mt. Sinai School of Medicine	RF321–20801
Philip Morris Management Corp	RF272–93294
Rodriguez Texaco	RF321–20642

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 28, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–6013 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of January 9 Through January 13, 1995

During the week of January 9 through January 13, 1995, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Gulf Oil Corporation/Donati's Auto Repair, 1/9/95, RF300–15980

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by the owner of Donati's Auto Repair, a retailer of Gulf petroleum products. The applicant requested reconsideration of an Application for Refund that he filed in a previous Gulf refund proceeding. The DOE had dismissed that application: The applicant filed his request nearly five years after his previous Application was dismissed, and did not provide any reason as to why his claim should be reconsidered. In addition, the DOE had disbursed all of the remaining funds in the proceeding's escrow account pursuant to the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986. Accordingly, the DOE determined that it would not be appropriate to reopen the earlier proceeding and denied the Application.

Shell Oil Company/Briggs Transportation Company; Texaco Inc./Briggs Transportation Company 1/11/95, RF315–10286, RF321–21054

The DOE issued a Supplemental Order rescinding refunds granted to Brigg Transporation Company (Briggs) in the Shell Oil Company and Texaco Inc. special refund proceedings. Prior to the filing of Briggs' refund applications, Briggs had filed for bankruptcy. The Trustee in Bankruptcy authorized a private filing service, LK, Inc. (LK), to file the two applications. Pursuant to the Trustee's request, the DOE ordered each refund check to be made payable to Briggs and mailed to LK. When LK received each check, it deposited the check in its account, retained its commission and sent the remainder to the Trustee. The Trustee later informed the DOE that because the Bankruptcy Court found the proposed distribution to Briggs' creditors to be inefficient, the refunds should be returned to the DOE. The Trustee also enclosed Briggs' share of the two refunds. Accordingly, the DOE rescinded the refunds issued to Briggs and ordered the two checks received from the Trustee deposited in the Texaco Inc. and Shell Oil Company escrow accounts. Further, it ordered LK to repay its commissions, but did not assess interest on the commissions for the period of time during which LK had use of these funds.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Burholme Fuel Oil Co. et al	RF304–13599	01/12/95
Atlantic Richfield Company/Kim's Arco	RF304–15466	01/12/95
Butte Public Schools et al	RF272–79708	01/11/95
Campbell's Auto Express et al	RF272–97029	01/11/95
Carlton Towers et al	RF272–77813	01/09/95
Chickasaw Cnty Secondary Road Department	RF272–96151	01/09/95

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Chickasaw Cnty Secondary Road Department	RF272–97101	
City of Venice	RF272–94410	01/11/95
Lexington Electric Systems	RF272–94456	
KSI Trucking	RA272–63	01/12/95
Metropolitan Petroleum & Fuel/Abelardo Obregon	RF349–20	01/09/95
Orleans Trans Service et al	RF272–94966	01/11/95

Dismissals The following submissions were dismissed:

Name	Case No.
Altamont Community Unit School District 10	RF272–79620
Avon Products, Inc	RF272–86689
Browning & Herdrich Oil Corp	RF321–20539
Citizens Gas & Coke Utility	RF321–20426
Consumer and Professional Products	RF321–20785
Deep Creek Texaco	RF321–7714
Del's Texaco Service	RF321–16298
First and Main Texaco	RF321–20893
FMC Corporation	RF321–20777
Fort Findlay Texaco	RF321–9192
Freeway Texaco	RF321–20894
Georgia Pacific	RF321–20786
Globe Union/Johnson Controls	RF321–20795
Grow Group, Inc	RF321–20784
Hale Area Schools	RF272–79622
Hill's Texaco Service Center	RF321–8055
Johnson County School District	RF272–78720
Keller Industries	RF321–20803
Kelseyville Unified	RF272–79726
Lookout Heights Texaco	RF321–10444
McKenna & Cuneo	VFA–0016
New ULM-Hanska School District	RF272–79720
New York City Housing Authority	RF321–20799
Nick Montallegro	RF304–14735
North Muskegon Public Schools	RF272–79623
Oil Chem, Inc	RF321–20621
Perryville School District	RF272–78938
Pleasant Point Resort	RF321–12933
Pyramid Supply, Inc	RF321–12185
Riggs Oil Co., Inc	RF321–20448
S.C: Loveland Co., Inc	RF272–89221
Savannah River Operations Office	VSO–0010
Scotus Central Catholic Secondary School	RF272–78187
Spearfish Texaco	RF321–530
Third and Main Texaco	RF321–20923
Top Deck Texaco	RF321–20924
Tri-City Gas, Inc	RF272–89756
Valley Rentals/Tn Rentals	RF304–14742
Walker's Texaco	RF321–19993
Williamsburg Community School District	RF272–79757

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 28, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–6014 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of February 6 Through February 10, 1995

During the week of February 6 through February 10, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Personnel Security Hearing

Albuquerque Operations Office, 2/9/95, VSO–0005

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the DOE Operations Office had presented sufficient derogatory information concerning the individual's abuse of alcohol, her use of illegal drugs, and her false statements to the DOE concerning her illegal drug use to support its revocation of her access authorization. The Hearing Officer also found that the individual failed to present sufficient evidence of rehabilitation or reformation to mitigate this derogatory information, and that it would be clearly inappropriate to extend the proceeding for a year or more to enable the individual to establish rehabilitation. Finally, the Hearing Officer found that he lacked authority to review the determination of the Office of Security Affairs to deny the individual admission to the Employee Assistance Program Referral Option, and that Executive Order 12564 clearly did not require the DOE to maintain an individual's access authorization pending their completion of a drug rehabilitation program. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund applications

Coca-Cola Co. of Los Angeles, et al., 2/8/95, RC272–268, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Subpart V crude oil refund proceeding by former affiliates of Beatrice Co., Inc.: Coca-Cola Co. of Los Angeles, Beatrice Cheese, Americold (MA), Tropicana Products, Inc., Swift Eckrich, Inc., Americold Corp. (OR), Ozarka Spring Co., and Great Bear Spring Co. The OHA previously granted crude oil refunds to these eight Applicants. We have subsequently found, however, that they were affiliated with Arrowhead Drinking Water Company (Arrowhead) on August 7, 1986. Arrowhead had filed in the Surface Transporters Stripper Well proceeding. In doing so, Arrowhead had executed a waiver and release waiving its right and the right of its affiliates on August 7, 1986, to receive crude oil overcharge refunds from OHA under Subpart V. Accordingly, this Decision rescinded the refunds granted to the eight applicants.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Arrow Lakes Dairy	RC272–278	02/08/95
Asphalt Supply & Service, Inc., et al	RF272–94934	02/08/95
Atlantic Richfield Company/Mack Amini Arco et al	RF304–14635	02/06/95
Atlantic Richfield Company/Mystic Fuel, Inc	RF304–12953	02/06/95
Bergen County, et al	RF272–86500	02/06/95
Borden, Inc	RC272–279	02/08/95
City of Norfolk, et al	RF272–95583	02/06/95
Contractual Carriers, Inc., et al	RF272–96600	02/06/95
John Curry, Inc., et al	RF272–97031	02/06/95
Texaco Inc./Paramount Texaco Service Quick-N-Split	RF321–19712	

Dismissals

The following submissions were dismissed:

Name	Case No.
Bish Arco	RF304–15357
Borough of Hightstown	RF272–84730
Charlie's Texaco	RF321–19753
Chicago Milwaukee Corp	RF321–19937
Chicago, Milwaukee, St. Paul & Pacific Railroad	RF321–20783
City of Baker	RF272–84894
City of Belton	RF272–84711
City of Chicopee	RF272–84841
City of Conneaut	RF272–84865
City of Girard	RF272–84908
City of Gretna	RF272–84829
City of Jeffersonville	RF272–84677
City of Jonesboro	RF272–84969
City of Lake Alfred	RF272–84815
City of Lawrenceville	RF272–96562
City of Live oak	RF272–84887
City of Logan	RF272–84752
City of Marksville	RF272–84836
City of McAlester	RF272–84890
City of Meridian	RF272–84950
City of Oregon	RF272–84770
City of Osage City	RF272–84740
City of Sleepy Eye	RF272–84737
City of Springfield	RF272–84834
Coldwater Regional Mental Health Center	RF272–88897
County of Ingham, MI	RF272–86274
County of Schuylkill	RF272–84966
Darcelle Jae Nichols Thrall	VFA–0017
Hannaford Oil Co	RF300–21303
Holmes County School District	RF272–84897
Housing Authority of Newark	RF321–20173
Mansfield I.S.D	RF272–96552

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Name	Case No.
Manuel's Arco	RF304–14991
Manuel's Arco	RF304–14992
Mike's Texaco	RF321–20578
Palmer Paving Corporation	RF321–20452
Rocky Creek Texaco	RF321–20495
Rodriguez Texaco	RF321–19752
Skip's Arco	RF304–9107
Town of Bethany	RF272–84761
Town of Bristol	RF272–84693
Town of Canton	RF272–84628
Town of Chelmsford	RF272–96576
Town of Garner	RF272–84886
Town of La Grange	RF272–84970
Town of Mount Pleasant	RF272–84673
Town of St. Johnsbury	RF272–84785
Town of Winchendon	RF272–84662
Town of Winchester	RF272–84669
Village of Ponton Beach	RF272–84968
Village of Yellow Springs	RF272–84715

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 28, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–6015 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of January 16 Through January 20, 1995

During the week of January 16 through January 20, 1995, the decisions and orders listed below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bardahl Manufacturing Corp	RA272–64	01/20/95
City of Hendersonville	RF272–94604	01/20/95
Town of Brookline	RF272–94648	
Cook County Government	RF272–94607	01/19/95
Gulf Oil Corporation/Glasscock Trucking Co	RF300–21817	01/20/95
Aline Manire & Mary E. Young Guinn	RF300–21818	
Emery Investments, Inc	RF300–21819	
Gulf Oil Corporation/Greyhound Rent-a-Car et al	RF300–13998	01/19/95
Gulf Oil Corporation/Wham Petroleum Corportion	RF300–19785	01/20/95
Indiana Bell Telephone et al	RF272–93731	01/20/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Al's Texaco	RF321–20526
Altamont Comm Unit Sch Dist 10.	RF272–79620
Antwerp Local School District.	RF272–79958
Beverly Park Texaco	RF321–20869
City of Attalla	RF272–84551
City of Cabot	RF272–84330
City of Clyde	RF272–85901
City of Lynwood	RF272–84595
City of Mount Rainier	RF272–84511
City of Mount Vernon	RF272–84575
City of Oakdale	RF272–84516
City of Taylor	RF272–85947
City of West Columbia	RF272–84394
Dallam County	RF272–85526
Darling of Delaware Co., Inc	RF272–94433
Decorative Specialities, Intl	RF272–95079
Durham Schools	RF272–79966
Eby's Inc	RF321–20889
Goshen County School District #1.	RF272–82545
Hale Area Schools	RF272–79622
Harrington Park School Dist	RF272–79959
Hatch Valley School District	RF272–79844
Headquarters	VSO–0009
John's Texaco Station	RF321–20906
Kelseyville Unified	RF272–79726
Keystone School District	RF272–79792
L'Anse Creuse Public Schools.	RF272–79873
Laraway CC School District 70C.	RF272–84383
Lisbon Schools	RF272–79965
Loy's Texaco	RF321–20880
Magnet Cove School District	RF272–79767
McKenna & Cuneo	VFA–0016
Meridian Texaco	RF321–20401
Money Oil Co	RF304–15069
Moniteau County School District.	RF272–84589
New Knoxville Local School District.	RF272–79991
New Ulm-Hanska School District.	RF272–79720
North Muskegon Public Schools.	RF272–79623
Orange County Highway	RF272–96209
Orlando Utilities Commission	RF321–20809
Passaic County Regional High School District.	RF272–79997
Pinter Brothers Co	RF272–89150
Polk County Environmental Services.	RF272–97091
Rantoul Township HS District.	RF272–79892

Name	Case No.
Rocky Flats	VSO–0007
Salem School District 43–3	RF272–82403
Scarborough Schools	RF272–79919
Shore Oil Company, Inc	HRO–0077
South Central Local School District.	RF272–84133
South Williamsport A School District.	RF272–79933
Totawa School District	RF272–79927
Town of Bellingham	RF272–82667
Town of Coventry	RF272–84530
Town of Lutcher	RF272–84573
Town of Nahant	RF272–85365
Town of Thomaston	RF272–84414
Valley Local School District	RF272–79936
Village of Babylon	RF272–84388
Village of Fox River Grove	RF272–82889
Village of New Richmond	RF272–85785
Village of Wauconda	RF272–84526
West Jefferson Hills School District.	RF272–82580
Williamsburg Comm Sch Dist.	RF272–79757

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 28, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–6016 Filed 3–9–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5168–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 10, 1995.

FOR FURTHER INFORMATION CONTACT: For further information or a copy call Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 1741.01.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxics

Title: Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Control Substances Inventory (EPA ICR No. 1741.01). This is a new collection.

Abstract: Members of the chemical industry, who misreported chemical substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory, may submit corrections on Form C. The information on Form C allows OPPT to establish a correct chemical identity which accurately reflects the substance the submitter manufacturers.

Burden Statement: Burden for this collection of information is estimated to average 1 hour per respondent for reporting. There is no recordkeeping requirement. This estimate includes the time needed to review instructions, gather and submit the information, and report the information.

Respondents: Manufacturers and importers of chemical substances.

Estimated number of respondents: 200 respondents.

Estimated number of responses per respondents: 1.

Estimated total annual burden on respondents: 200 hours.

Frequency of collection: As need arises.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, EPA ICR # 1741.01, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 3, 1995

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 95–5989 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4720–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed February 28, 1995 Through March 03, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950066, Final EIS, FHW, CA, CA–41 Route Adoption of Alignment Project, between El Paso Avenue and CA–145, Funding, Right-of-Way Acquisition and COE Section 404 Permit, Fresno and Madera Counties, CA, Due: April 10, 1995, Contact: Dennis A. Scoville (916) 498–5034.

EIS No. 950067, Draft Supplement, FHW, CA, Devil's Slide Bypass Improvement, CA–1 from Half Moon Bay Airport to Linda Mar Boulevard, Preferred Alternative Estimated Future Project-Generated Noise Study, Funding, Pacifica and San Mateo Counties, CA, Due: April 24, 1995, Contact: Contact: John R. Schultz (916) 498–5041.

EIS No. 950068, Draft EIS, BLM, CA, NV, Alturas 345 kilovolt (kv) Electric Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV, Due: May 03, 1995, Contact: Peter Humm (916) 257–0456.

EIS No. 950069, Draft EIS, BLM, WY Texaco's Stagecoach Draw Unit Natural Gas Field Development Project, Implementation, Application for Permit to Drill, Right-of-Way Grant, Temporary Use-Permit and COE Section 404 Permit, Farson, Sweetwater County, WY, Due: April 25, 1995, Contact: Bill McMahan (307) 382–5350.

EIS No. 950070, Final EIS, FRC, AK, Yukon Pacific Liquefied Natural Gas (LNG) Liquefaction Plant Construction and Operation, Approval, Anderson Bay, Port Valdez, AK, Due: April 10, 1995, Contact: Chris Zerby (202) 208–0111.

EIS No. 950071, Draft EIS, FTA, CA, Mid-Coast Corridor Mass Transit Improvement Project, Funding, San Diego County, CA, Due: May 08, 1995, Contact: Robert Hom (415) 744–3116.

EIS No. 950072, Final EIS, VAD, HI, Veterans Affairs Medical and Regional Office Center Relocation to Tripler Army Medical Center, Construction and Renovation, Approval and NPDES Permit, Oahu, HI, Due: April 10, 1995, Contact: Eugene Keller (202) 233–2463.

EIS No. 950073, Draft EIS, BLM, AZ, Grand Canyon National Park General Management Plan, Implementation, Coconino and Mohave Counties, AZ, Due: April 24, 1995, Contact: Larry I. Norris (303) 969–2267.

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Amended Notices

EIS No. 940501, Draft EIS, AFS, ID, Stibnite Gold Mine Expansion Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Payette National Forest, Krassel Ranger District, Valley County, ID, Due: February 28, 1995, Contact: Jane Wurster (206) 634–0614.

Published FR 12–16–94—Officially Withdrawn by Preparing Agency.

EIS No. 950041, Draft EIS, SFW, NV, Desert Tortoises (Gopherus Agassizii) Habitat, Issuance of Permit to Allow Incidental Take, Federal Land and Non-Federal Land, Clark County, NV, Due: April 11, 1995, Contact: Sherry Barrett (702) 784–5227.

Published FR—02–10–95 Due Date Correction

Dated: March 7, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–5998 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4721–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 6, 1995 Through February 10, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–K65166–CA Rating EO2, Cottonwood Fire Restoration Project, Implementation, Tahoe National Forest, Sierraville Ranger District, Sierra County, CA.

Summary: EPA expressed environmental objections over the potential adverse impacts to soil productivity, hydrology, and water quality from the proposed extensive use of ground-based logging systems, the associated road creation, and proposed harvesting within the stream management zones (SMZs). EPA suggested modifications to the preferred alternative which would reduce the use of ground-based logging systems in the most damaged or vulnerable watersheds, minimize entrance into the sensitive SMZ areas, and implement riparian rehabilitation activities and road obliterations as soon as possible.

ERP No. D–COE–E32193–GA Rating EC2, Savannah Harbor Navigation Project, Operation and Maintenance, Long Term Management Strategy Study, Chatham County, GA and Jasper County, SC.

Summary: EPA expressed environmental concerns over the long-term environmental consequences of implementation of the management plan. EPA requested additional information to more precisely define the uncertainties associated with the proposed operational changes.

ERP No. D–FRC–K02023–00 Rating EC2, Tuscarora Natural Gas Pipeline Project, Construction and Operation, Right-of-Way Grant, Special-Use-Permit, NPDES Permit and COE Section 404 Permit, Lassen County, CA; Washoe and Storey Counties, NV and Klamath County, OR.

Summary: EPA expressed environmental concerns over the proposed project, and requested additional information on impacts to air quality, wetlands, and cultural resources.

ERP No. D–IBR–K39037–CA Rating EC2, Cachuma Water Supply Project, Implementation, Long-term Contract Renewal, Santa Ynez Valley, Bradbury Dam, Santa Barbara, CA.

Summary: EPA commented that the draft EIS present a good examination of a wide range of alternative, but also expressed concern that more information was needed regarding water conservation, groundwater injections and socio-economic impacts.

ERP No. D–NPS–K60100–AZ Rating EC2, Programmatic EIS—Juan Bautista de Anza National Historic Trail Comprehensive Management Plan, Implementation, several counties, AZ and CA.

Summary: EPA expressed environmental concerns and requested that the final EIS include a "no action" alternative analysis, a conformity determination, analysis of potential trail carrying capacity, and address issues related to environmental justice, threatened and endangered species and wetlands.

ERP No. D–NRC–K01008–00 Rating EO2, Crownpoint Uranium Solution Mining Project, Construction and Operation, Leasing and Licensing, McKinley County, NM.

Summary: EPA expressed environmental objections to the proposed project based on its proximity to domestic supply wells and residences and insufficient hydrogeologic modelling and field testing to ensure a completely closed system. Additional information is needed in the Final Environmental Impact Statement (FEIS) regarding the results of hydrogeologic modelling and field tests, including the potential for, and environmental impacts of, contaminated groundwater migrating off-site as a results of injection activities; aquifer restoration; and effects of drawdown of supply wells for the City of Crownpoint. The final EIS should also include additional information on permitting, spill response, management of sludge and process wastes, and Radionuclude National Emissions Standards for Hazardous Air Pollutants.

ERP No. DS–FAA–C51013–NJ Rating EC2, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Updated Information, Implementation, NJ.

Summary: EPA continued to have environmental concerns about the noise impacts of the proposed project. Additional information is needed to address the "conflict points" that were the basis for rejecting the Ocean Routing Proposal, to characterize noise levels in specific towns, and to justify the use of an unverified noise model.

Dated: March 7, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–5997 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Transfer Agent Registration and Amendment Form.

Form Number: Form TA–1.

OMB Number: 3064–0026.

Expiration Date of OMB Clearance: November 30, 1996.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks wishing to register with the FDIC as transfer agents.

Number of Respondents: 37.

Number of Responses Per Respondent: 1.

Total Annual Responses: 37.

Average Number of Hours Per Response: 0.52.

Total Annual Burden Hours: 19.25.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0026, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before May 9, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q) requires a bank to register with the appropriate federal regulator prior to performing any transfer agent function. Under FDIC regulation 12 CFR 341, an insured nonmember bank uses Form TA–1 to register with the FDIC.

Dated: March 6, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–5831 Filed 3–9–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Unsafe and Unsound Practices—Extension of Credit to Executive Officers.

Form Number: N/A.

OMB Number: 3064–0108.

Expiration Date of OMB Clearance: May 31, 1995.

Frequency of Response: On occasion.

Respondents: Executive officers of insured nonmember banks.

Number of Respondents: 4,000.

Annual Hours Per Recordkeeper: 2.0.

Total Recordkeeping Hours: 8,000.

OMB Reviewer: Milo Sunderhauf, (202) 395–7316, Office of Management and Budget, Paperwork Reduction Project (3064–0108), Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before April 10, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Executive officers of insured nonmember banks must file a report with their bank's Board of Directors within ten days of incurring any indebtedness to any other bank in an amount in excess of the amount the insured nonmember bank could lend to the officer.

Dated: March 6, 1995.

Federal Deposit Insurance Corporation.

Robeft E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–5942 Filed 3–9–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA–1044–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated January 10, 1995, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 1995:

Kings County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–5975 Filed 3–9–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Cass Commercial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

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banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 24, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Cass Commercial Corporation, St. Louis, Missouri; to acquire Cass Information Systems, Inc., St. Louis, Missouri (formerly Cass Logistics, Inc.), and thereby engage in acquiring and holding credit card receivables generated by an affiliated bank, including acting as the soliciting agent for the affiliated bank, pursuant to § 225.25(b)(1)(ii), of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire, through its subsidiary Norwest Mortgage Inc., Des Moines, Iowa, the mortgage origination and servicing business of First National Bank of Parker, Parker, Colorado, and thereby engage in mortgage lending and servicing activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5928 Filed 3–9–95; 8:45 am]

BILLING CODE 6210–01–F

Charles H. Deters; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-4972) published on page 11096 of the issue for Wednesday, March 1, 1995.

Under the Federal Reserve Bank of Cleveland heading, the entry for Charles H. Deters, is revised to read as follows:

1. Charles H. Deters, Walton, Kentucky; to acquire an additional 45.5 percent, for a total of 50 percent, of the voting shares of Commonwealth Trust Bancorp, Inc., Butler, Kentucky, and thereby indirectly acquire Farmers Bank, Butler, Kentucky.

Comments on this application must be received by March 15, 1995.

Board of Governors of the Federal Reserve System, March 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5929 Filed 3–9–95; 8:45 am]

BILLING CODE 6210–01–F

First Interstate BancSystem of Montana, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 3, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Interstate BancSystem of Montana, Inc., Billings, Montana; to acquire 100 percent of the voting shares of First Park County Bancshares, Inc., Livingston, Montana, and thereby indirectly acquire First National Park Bank in Livingston, Livingston, Montana.

Board of Governors of the Federal Reserve System, March 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5930 Filed 3–9–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Publication of "Made in the USA" Provisions of the Violent Crime Control and Law Enforcement Act of 1994

AGENCY: Federal Trade Commission.

ACTION: Notice of provisions of statute.

SUMMARY: On September 13, 1994, Congress enacted the Violent Crime Control and Law Enforcement Act of 1994 ("Crime Bill"). Section 320933 of the Crime Bill states, *inter alia*, that "Made in the U.S.A." or "Made in America" claims or their equivalent shall be consistent with decisions and orders of the Federal Trade Commission ("Commission"). Section 320933 further states that it "shall be effective upon publication in the **Federal Register** of a Notice of the provisions of this section." This notice implements the latter requirement.

DATES: Section 320933 of the Crime Bill is effective on March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, telephone 202/326–3029.

SUPPLEMENTARY INFORMATION: Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, directs the Commission to prevent "deceptive acts and practices," including deceptive claims of domestic origin. Although goods manufactured in the United States generally are not required to have a label identifying domestic content, a manufacturer may choose to make an unqualified or a qualified domestic origin claim for its products.[1] An example of an unqualified claim is that a product is "Made in USA," while an example of a qualified claim is that a product is "Made in USA of foreign components." The Commission reviews Made in USA claims principally under its section 5 authority to prohibit deceptive acts or practices.[2]

On September 13, 1994, Congress enacted the Crime Bill, P.L. 103–322, 108 Stat. 2135. Section 320933 of the Crime Bill (15 U.S.C. 45a) governs the use of certain Made in USA claims. Section 320933 states, *inter alia*, that "Made in the U.S.A." or "Made in America" claims or their equivalent shall be consistent with decisions and orders of the Federal Trade Commission. The section further states that the section "shall be effective upon publication in the **Federal Register** of a Notice of the provisions of this section. The Commission shall publish such notice within six months after the enactment of this section."

The text of Section 320933 of the Crime Bill is as follows:

> To the extent that any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 5 of the Federal Trade Commission Act. This section only applies to such labels. Nothing in this section shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 5 of the Federal Trade Commission Act and may from time to time issue rules pursuant to section 553 of Title 5, United States Code for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 18 of the Federal Trade Commissions [sic] Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the **Federal Register** of a Notice of the provisions of this section. The Commission shall publish such notice within six months after the enactment of this section.

Section 320933 provides that Made in USA claims are to be consistent with section 5 of the FTC Act, 15 U.S.C. 45 ("unfair or deceptive acts or practices"), and that the Commission may reexamine the application of its legal standard to particular facts as circumstances warrant. This provision authorizes the Commission to issue rules with respect to certain Made in USA claims. The Commission has made no determination whether rulemaking would be appropriate. However, the comments the Commission has received in response to a proposed consent agreement in *Hyde Athletic Industries, Inc.*[3] *suggests that additional guidance may be appropriate in this area. Should the Commission so determine, further opportunity for public input will be considered.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–5876 Filed 3–9–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Some statutes require disclosure of domestic origin or domestic content for certain products: *E.g.*, Textile Products Identification Act, 15 U.S.C. 70; Wool Products Labeling Act, 15 U.S.C. 68 (both enforced by the Federal Trade Commission); American Automobile Labeling Act, 15 U.S.C. 1950 (enforced by the U.S. Department of Transportation).

[2] The Commission will find deception "if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." Letter dated October 14, 1983, from the Federal Trade Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce U.S. House of Representatives ("Deception Statement"), *reprinted in Cliffdale Associates, Inc.* 103 F.T.C. 110, 176 (1984).

[3] File No. 922–3236 (accepted for public comment Sept. 20, 1994, Commissioners Azcuenaga and Owen dissenting). In that mater, the Commission alleged that the company falsely implied that all, or virtually all, of the component parts of its product and all, or virtually all, of the labor used in assembling its product was domestic when, in fact, a substantial portion of the firm's product line was assembled overseas of foreign component parts, and a substantial portion of the products assembled in the United States was composed of foreign component parts. The proposed order provided that unqualified Made in USA claims will be permitted "so long as all, or virtually all, of the component parts of the footwear are made in the United States and all, or virtually all, of the labor in assembling the footwear is performed in the United States." 59 FR 48892, 48893 (1994). After reviewing the comments received, the Commission will issue a public notice of its disposition in *Hyde*. (A consent agreement that the Commission has accepted subject to final approval is placed on the public record for a 60-day comment period, after which the Commission decides whether to make the agreement final. *See* Rule 2.34 of the Commission's Rules of Practice, 16 CFR 2.34).

At the same time that it published its proposed consent agreement with Hyde, the Commission also issued a complaint against New Balance Athletic Shoe, Inc., Docket No. 9268 (Commissioner Azcuenaga dissenting). That matter is currently in litigation before an administrative law judge.

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Spring 1995 meeting on Monday, April 10, 1995, through Wednesday, April 12, 1995, in Arlington, Virginia. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday, 8 a.m. until 5 p.m. on Tuesday, and from 8:30 a.m. until 10:30 a.m. on Wednesday. The sessions will be held at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Rosslyn Westpark for anyone needing hotel accommodations. Telephone: 800–368–3408 or 703–527–4814; FAX: 703–522–8864. Please specify the Depository Library Council when you contact the hotel. Room cost per night is $87.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–5939 Filed 3–9–95; 8:45 am]

BILLING CODE 1505–01–M

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold two public meetings for Federal, state and local government agencies, and others interested in an overview and demonstration of the Government Printing Office's online service GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Two sessions are available on Wednesday, March 29, 1995, from 9 a.m. to 10:30 a.m. and from 11 a.m. to 12:30 p.m. Both sessions will be held at the University of Illinois-Chicago, Chicago Illini Union, 828 Walcott, Chicago, Illinois 60612.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in-service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills; Public Laws; and U.S. Code.

Individuals interested in attending either session should contact the GPO's Office of Electronic Information Dissemination Services, John Berger, Product Manager, on 202–512–1525; (FAX) 202–512–1262; or by Internet e-mail at help@eids05.eids.gpo.gov. Seating reservations will be accepted through Friday, March 24, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–5941 Filed 3–9–95; 8:45 am]

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The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state, and local government agencies, and others interested in an overview and demonstration of the Government Printing Office's online service *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The session is available on Wednesday, April 5, 1995, from 1 p.m. to 2:30 p.m. The training session will be held at the Dallas Public Library, Library Auditorium, 1515 Young Street, Dallas, Texas 75201.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index*, including the *History of Bills;* Congressional Bills; Public Laws; and *U.S. Code.*

Individuals interested in attending the training session should contact the GPO's Office of Electronic Information Dissemination Services, John Berger, Product Manager, on 202–512–1525; (FAX) 202–512–1262; or by Internet e-mail at help@eids05.eids.gpo.gov. Seating reservations will be accepted through Friday, March 31, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–5940 Filed 3–9–95; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92D–0039]

Animal Drug Manufacturing; Revised Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised four-part guideline entitled, "Animal Drug Manufacturing Guidelines, 1994" prepared by the Center for Veterinary Medicine (CVM). These guidelines describe the data and information for the manufacturing portions of abbreviated new animal drug applications, new animal drug applications, and supplements for pharmaceutical dosage forms.

DATES: Written comments on these guidelines may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the revised guidelines entitled, "Animal Drug Manufacturing Guidelines, 1994: I. Pilot Batch Manufacture, II. Tentative Expiration Dates, III. Manufacturing Sites, and IV. New Animal Drug Substance Sources" to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the revised guidelines to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the revised guidelines and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0678.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is announcing the availability of the revised four-part guideline entitled, "Animal Drug Manufacturing Guidelines, 1994: I. Pilot Batch Manufacture, II. Tentative Expiration Dates, III. Manufacturing Sites, and IV. New Animal Drug Substance Sources" prepared by CVM. These guidelines are intended to be used by both pioneer and generic manufacturers of veterinary drug products so that they are informed of the type of information that FDA believes will provide an acceptable submission to support the manufacturing requirements for new animal drug applications, abbreviated new animal drug applications, and supplemental applications for pharmaceutical dosage forms. In the **Federal Register** of August 21, 1992 (57 FR 37979), FDA issued a notice of availability of the four CVM guidelines entitled, "Animal Drug Manufacturing Guidelines, 1992." Comments by the public were requested to be submitted at any time so that future revisions of the guidelines could be developed in consideration of the remarks.

The agency received three comments on the 1992 guidelines. The comments came from two drug manufacturers and one trade association. The 1992 guidelines have been revised as a result of these comments and from internal discussions within CVM.

Many editorial comments were made about all four guidelines. The editorial comments were adopted in the revised guidelines when the agency deemed that they were appropriate and provided clarification. Technical comments about "Guideline I. Pilot Batch Manufacture" focused on the CVM recommendations for the size of the test batch and the type of equipment or production facility that is appropriate for manufacturing test lots. A suggestion was made to allow bridging data in cases where the recommendations for batch size, production facility, equipment, and standard operating procedures are not practicable. Technical comments about "Guideline II. Tentative Expiration Dates" centered on a clarification of the definition of exaggerated storage conditions for different dosage forms and the application of expiration dating to all manufacturing sites for one drug product. Technical comments about "Guideline III. Manufacturing Sites" included criticisms of the definitions of the different types of manufacturing sites, the option for the agency to request bioequivalence data, and the appropriate location of sterile process validation data in the drug application. Technical comments about "Guideline IV. New Animal Drug Substance Sources" were made regarding the definitions of primary and alternate sources of the new animal drug substance, test batch and stability data for supplemental applications, and bioequivalence data requirements for mastitis products. All of these comments were considered in the revision of the manufacturing guidelines.

One of the most significant changes to the 1992 guidelines is to allow bridging data to be submitted when the recommendations for batch size, production facility, equipment, and standard operating procedures for pilot batches are not practicable. The sponsor may create an alternative plan to that recommended in order to compare the bioavailability and stability characteristics of the test and production batch. Another major change to the guidelines is the provision of an alternate means by which sponsors may meet the supplemental application recommendations for alternate manufacturing sites and alternate sources of bulk drug substance when multiple NADA's and ANADA's are affected. The sponsor may request that pilot batches of representative drug products within the same dosage form class be manufactured instead of producing pilot batches of all affected drug products.

These "Animal Drug Manufacturing Guidelines, 1994" are not intended to be individual stand-alone documents. Much of the information presented in one guideline may be equally important to the correct interpretation of the other guidelines. Therefore, all four guidelines are being issued concurrently.

Guidelines state procedures or practices that may be useful to the persons to whom they are directed, but are not legal requirements. The agency is in the process of revising §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)). Therefore, these guidelines are not being issued under authority of present §§ 10.85(d) and 10.90(b). A person may follow the guideline or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. A guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered to determine if further revision of the guideline is necessary.

Dated: March 6, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–6006 Filed 3–9–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0058]

Drug Export; Bulk Drug Substance Paclitaxel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that NaPro BioTherapeutics, Inc., has filed an application requesting approval for the export of the bulk human drug substance Paclitaxel for formulation, filling, and packaging into Anzatax™ Injection Concentrate 30 milligrams (mg) paclitaxel in 5 milliliter (mL) vials to Australia.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that NaPro BioTherapeutics, Inc., 4725 Walnut St., suite 100, Boulder, CO 80301, has filed an application requesting approval for the export of the bulk human drug substance Paclitaxel for formulation, filling, and packaging into Anzatax™ Injection Concentrate 30 mg paclitaxel in 5 mL vials to Australia. This product is indicated for the treatment of refractory ovarian cancer. The application was received and filed in the Center for Drug Evaluation and Research on October 21, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 20, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 2, 1995.

Edward Miracco,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–6005 Filed 3–9–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on February 10, 1995. (Call Reports

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Clearance Officer on (410) 965–4142 for copies of package.)

1. Real Property Current Market Value—0960–0471. The information on form SSA–2794 is used by the Social Security Administration to determine the value of non-home real property owned by applicants for or recipients of Supplemental Security Income. The respondents are persons experienced in estimating the current market of real property.

Number of Respondents: 6,188
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 2,063 hours

2. Employer Verification of Earnings After Death—0960–0472. The information on form SSA–L4112 is used by the Social Security Administration to determine whether wages reported by an employer are correct, when SSA records indicate the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 8,333 hours

3. Farm Self-Employment Questionnaire—0960–0061. The information on form SSA–7156 is used by the Social Security Administration to determine whether an agricultural trade or business exists and possible covered earnings for Social Security entitlement purposes. The respondents are claimants for benefits who allege covered earnings from agricultural self-employment.

Number of Respondents: 47,500
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 7,917 hours

4. SSI PE Returned Check Questionnaire—0960–NEW. The information on form SSA–281 will be used by the Social Security Administration to improve the accuracy of the SSA PE returned check process. The purpose of the questionnaire is to collect statistical information needed to identify areas which are deficient, thereby improving service to the public and reducing Government expenditures. The respondents are SSI beneficiaries or their representative payees.

Number of Respondents: 1,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 250 hours

5. Report by Former Representative Payee—0960–0112. The information on form SSA–625 is used by the Social Security Administration to determine if State institutions or agencies which were formerly payees for Social Security benefits have properly used such funds. The respondents are State institutions or agencies who have terminated representative payee services.

Number of Respondents: 8,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 2,000 hours

6. Certificate of Support—0960–0001. The information on form SSA–760 is used by the Social Security Administration to determine if a parent of a deceased wage earner or a spouse receiving a Government pension meets the one-half support requirement for entitlement to benefits. The respondents are parents of deceased wage earners and spouses who are entitled to receive a Government pension.

Number of Respondents: 18,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 4,500 hours

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: March 6, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–5829 Filed 3–9–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. R–95–1771/3881; FR–3844/3859–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1995.

David S. Cristy,

Acting Director, Information Resources and Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Enterprise Zones Homeownership Opportunity Grant (EZ Homes) (FR–3844/3859).

Office: Housing.

Description of the Need for the Information and its Proposed Use: Section 186 of the Housing and Urban Development Act of 1992 (HCDA 1992) (P.L. 102–550, approved October 28, 1992), authorizes HUD to provide assistance through grants to non-profit organizations to carry out enterprise zone homeownership opportunity programs to promote homeownership in Federally approved and equivalent State-approved enterprise zones. The purpose of the program is to provide an opportunity for those families who otherwise would not be financially able to realize their dream of owning a home, and to also create sound and attractive neighborhoods.

Form Number: None.

Respondents: Not-For-Profit Institutions, Individuals or Households, and State, Local, or Tribal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications Reports	30		1		8		240
Reports	10		130		1.1		1,390

Total Estimated Burden Hours: 1,630.

Status: New.

Contact: Joan Morgan, HUD, (202) 708–0614; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 27, 1995.

[FR Doc. 95–5970 Filed 3–9–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 10, 1995.

ADDRESSES: For further information, contact William Molster, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 3, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–5803 Filed 3–9–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–95–1310–01]

Continental Divide Natural Gas Project; Wyoming; Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and to Conduct Scoping for the Continental Divide Natural Gas Project, Carbon and Sweetwater Counties, Wyoming.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Rawlins District Office, will direct the preparation of an EIS on the potential impacts of a proposed natural gas field development project. Between 500 and 2,000 gas wells and associated facilities could be constructed on approximately 660,000 acres of private, Federal, and State lands, over a 10-year development period. The project area is located in Carbon and Sweetwater Counties, Wyoming. Affected Federal land is public land administered by the BLM Rawlins and Rock Springs Districts. The EIS will be prepared by a third party contractor.

DATES: Comments on the scoping process will be accepted through April 7, 1995. Public Scoping Meetings are not planned at this time.

ADDRESSES: Comments should be sent to Bureau of Land Management, Rawlins District Office, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, WY 82301, phone number 307–324–7171.

SUPPLEMENTARY INFORMATION: Amoco Production Company and other oil and gas companies have proposed a 10-year field development project. The proposed project area, referred to as the Continental Divide Area, is generally located in Townships 15 through 23 North, Ranges 91 through 99 West of Carbon and Sweetwater Counties in south-central Wyoming. The project area is located approximately 25 miles west of Rawlins and 40 miles east of Rock Springs and is bisected by Interstate Highway 80 from east to west. The project area is approximately 660,000 acres in size. Landownership is 52% Federal, 47% private, and 1% State. Federal land in the project is public land administered by the BLM Rawlins and Rock Springs Districts.

Four alternatives are proposed for analysis in the EIS. A low development alternative will analyze the impact of a possible 250 wells (one well for every four square miles). The proposed action will analyze the impact of a possible 1,250 wells (one well per square mile). A high development alternative will analyze the impact of a possible 2,000 wells (two wells per square mile). The no action alternative will also be analyzed.

If the project is approved, site-specific environmental assessments (EAs) will be tiered from this EIS for individual authorizations (Permits to Drill or Right-of-Way Grants). Drilling of exploratory or delineation wells on existing Federal leases will be permitted during the preparation of the EIS on a case-by-case basis. A site-specific EA will be prepared for each of these applications.

This EIS will consider cumulative impacts from other proposed oil and gas projects, especially recently completed EISs for the Mulligan Draw Gas Field Project, the Creston/Blue Gap Natural Gas Project, and the Greater Wamsutter II Natural Gas Project. Potential issues to be addressed in the EIS include, but are

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not limited to: prevention of Federal mineral drainage, access road development and transportation management, erosion control, reclamation, protection of cultural resources, noxious weed control, impacts to wildlife populations and their habitat, and cumulative impacts.

Public comments and participation on three previous EISs adjacent to the Continental Divide Project area was low. Public scoping meetings were not held for these projects. No scoping meeting is scheduled for this project. Written comments on the scope and content of the EIS will be accepted until the close of the scoping period.

Dated: March 6, 1995.

Alan R. Pierson,

State Director, Wyoming.

[FR Doc. 95–5927 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–1430–01; MTM 82056]

Opening of Land in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 160 acres of National Forest System land for protection of quartz crystals in the Snowbird Mine expires on April 21, 1995, and the land will be opened to mining. It has been and remains open to surface entry and mineral leasing.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 58 FR 21474–21475, April 21, 1993, which segregated the land described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System land. The 2-year segregation expires April 20, 1995. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Principal Meridian, Montana.

T. 12 N., R. 25 W.,
sec. 19, SW¼.

The area described contains 160 acres in Mineral County.

At 9 a.m. on April 21, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record.

Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: March 1, 1995.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 95–5853 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–DN–P

[NM–030–1430–01; NMNM 91746]

Realty Action; Noncompetitive Lease of Public Land in Otero County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following-described parcel of public land is being considered for long-term lease under Section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1782), at not less than fair market value:

New Mexico Principal Meridian

T. 22 S., R. 8 E.,
Sec. 14, SE¼SW¼SW¼NE¼.

The parcel comprises 1.7 acres.

The land is being proposed for lease to Mrs. Yvette A. Mullen to settle unauthorized occupancy of public land. The proposal is consistent with land use planning for the site, and the land is considered generally suitable for the proposed use. The proposal will be evaluated in accordance with the National Environmental Policy Act to assess impacts upon the filing of an application.

DATES: Interested parties may submit comments to the Area Manager, Bureau of Land Management, Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005 by April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Judith Waggoner, Realty Specialist, Caballo Resource Area at the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico or by calling (505) 525–4403.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the Las Cruces District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objection, this proposed realty action will become final.

Dated: February 28, 1995.

Tim L. Sanders,

Acting Area Manager, Caballo Resource Area.

[FR Doc. 95–5854 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–FB–P

[CA–010–03–1110–01]

Seasonal Visitation Restriction Order for the Carrizo Plain Natural Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a seasonal visitation restriction order on public lands within the Carrizo Plain Natural Area of the Caliente Resource Area, Bakersfield District, CA.

SUMMARY: This emergency action restricts public access on BLM-administered rock outcrops within the Carrizo Plain Natural Area due to the presence of sensitive species of birds of prey during a critical part of their life cycle, and restricts vehicular use of certain roads due to seasonal fire hazard. The public lands affected by this restriction are located within Kern and San Luis Obispo counties, California.

SUPPLEMENTARY INFORMATION: Effective March 13, 1995, and pursuant to 43 CFR 8360 and 43 CFR 8364.1(a), all visitation within 0.25 miles of any rock outcrop in the vicinity of and including Painted Rock is unlawful. This prohibition includes all outcrops within public lands in T32S, R20E, Sections 8, 16 and 17, Mount Diablo Base and Meridian. Access shall be limited to persons carrying written permission from the Authorized Officer, or those participating in an authorized guided tour.

Pursuant to 43 CFR 8360 and 43 CFR 8364.1(a), roads presenting a fire hazard due to vegetation growth will be closed to vehicle use during the dry fire season. All such roads will be posted with appropriate signs to advise of the closure. This Seasonal Visitation Restriction Order will be in effect until June 30, 1995 for the Painted Rock area, and on an as needed basis for the road closures, generally from June 1 until September 30.

This emergency visitor restriction is necessary in order to limit disturbance to nesting birds of prey to a level compatible with successful nesting while allowing for educational and recreational use; and to reduce accidental fires caused by vehicle travel on roads overgrown with vegetation. Maps of the affected area, and information concerning guided tours, are available from the Caliente Resource Area Office, 3801 Pegasus Drive, Bakersfield, California 93308–6837.

Bureau of Land Management employees and Carrizo Plain cooperators are exempt from this order while in the course of their official duties.

Any person failing to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in 43 CFR 8360.0–7.

Dated: March 2, 1995.

Steve Larson,

Acting Area Manager, Caliente Resource Area.

[FR Doc. 95–5856 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–40–M

[OR–100–95–6332–00; GP5–072]

Recreation Management; Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules for recreation areas.

SUMMARY: The Roseburg District is establishing new supplementary rules to set the standards of conduct for persons using public lands and the penalties that may be imposed for failure to obey the regulations. The rules apply primarily to developed recreation areas, however, some apply to all public lands where recreation uses may occur. The rules are designed to augment existing laws contained in the Code of Federal Regulations; and to ensure safe, enjoyable and environmentally sound visitation on the public lands, free from unwarranted disturbance. These rules supersede other supplementary rules established in November, 1989.

Camping Limits

1. Overnight camping is prohibited in designated Research Natural Areas unless otherwise permitted by the authorized officer.

2. Within the North Umpqua Wild and Scenic River Corridor, overnight camping is prohibited except at designated campgrounds and camping along the North Umpqua Trail between one-hundred feet and five-hundred feet from the trail, or by special permit issued by the authorized officer.

3. In designated campgrounds and all other public lands open to camping, overnight camping is restricted to 14 days, either through a number of separate visits or through continuous occupation, subject to payment of camping fees at developed sites. Upon reaching the 14 day limit, occupants and all their possessions must leave Roseburg District BLM lands for a minimum of 14 consecutive days.

Restrictions at Designated Campgrounds

1. Payment of campground fees must be made within one-half hour after arrival.

2. Campground users must occupy a campsite the first night of their stay; pre-payment to hold an unoccupied campsite is not allowed. After the first night, users may not leave personal property unattended for more than 24 hours, unless otherwise permitted by the authorized officer.

3. Use of shower facilities is restricted to campground occupants who have paid the campsite registration fee, unless otherwise permitted by the authorized officer.

4. No person shall operate or use any audio or motorized equipment, or create or allow obtrusive noises (human or animal) in a manner that disturbs other visitors between 9 p.m. and 6 a.m.

Day-Use Areas

1. Animals are not allowed in day-use areas except in areas designated for pets, or situations requiring a seeing eye or hearing ear dog. Pets must be restrained and under control of a person at all times.

2. A Recreation Use Permit is required for pavilion use by groups of 25 people or more.

3. Millpond, Cavitt Creek, Rock Creek and Tyee Day Use Areas must be vacated one-half hour after sunset unless otherwise permitted by the authorized officer.

4. No person may leave personal property unattended in designated day-use areas for more than 24 hours, except for vehicles and non-occupied trailers parked at trailheads.

Trail Restrictions: Motorized vehicle use is prohibited on trails designated for hikers, mountain bikers or horseback riders, unless otherwise permitted by the authorized officer.

Fire Restrictions: Open-pit campfires are prohibited on the south side (trail area) of the North Umpqua Wild and Scenic River Corridor during fire season. Dates of fire season are determined annually by Douglas Forest Protective Assoc.

Firearm Restrictions: No person shall discharge a firearm within one-half mile of a developed recreation site or area; or across or within 100 feet of any designated recreation trail. A list of trails is maintained in the Roseburg District Office.

DATES: These supplementary recreation rules shall be effective March 30, 1995, and remain in effect until further notice

FOR FURTHER INFORMATION CONTACT: Gregg Morgan, Bureau of Land Management, 777 N.W. Garden Valley Blvd., Roseburg, Oregon 97470 Telephone (503) 440–4930.

SUPPLEMENTARY INFORMATION: Camping limits are established to reduce the incidence of long-term unauthorized occupancy, while permitting legitimate camping on the public lands administered by the Roseburg District. Authority of these supplementary rules is contained in 43 CFR, chapter II, subpart 8360.0–3 and 8365.1–6. Persons who fail to comply with these provisions may be subject to the penalties provided in 43 CFR 8360.0–7 and 43 CFR 9262.1, which include a fine not to exceed $1000.00 and/or imprisonment for not to exceed 12 months.

Dated: March 1, 1995.

David R. Baker,

Acting District Manager.

[FR Doc. 95–5848 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–33–P

[MT–020–1610–00]

Availability of Proposed Final Big Dry Resource Management Plan and Environmental Impact Statement; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 and Section 202(C) of the National Environmental Policy Act of 1969, the final resource management plan (RMP) and environmental impact statement (EIS) have been prepared for the Big Dry Resource Area planning area. The RMP and EIS describe and analyze future options for management of approximately 1.7 million federal surface acres and 7.6 million federal mineral acres managed by the Bureau of Land Management. These federal acres are located in all or portions of Carter,

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Custer, Daniels, Dawson, Fallon, Garfield, McCone, Prairie, Richland, Roosevelt, Rosebud, Sheridan, and Wibaux Counties. The RMP and EIS provide a comprehensive plan for managing federal resources administered by the Bureau of Land Management.

PUBLIC PARTICIPATION: The draft RMP and EIS were available for public review from March 19, 1993, to June 18, 1993. A **Federal Register** notice asking for comments on two newly proposed areas of critical environmental concern was published on November 26, 1993, with the comment period ending January 25, 1994. Written comments were received from agencies, organizations, and individuals. All comments were considered during the preparation of the final RMP and EIS.

Reading copies will be available at each public library in the counties listed above. Public reading copies will also be available at the following Bureau of Land Management locations:

Office of External Affairs, Main Interior Building, Room 5800, 18th and C Streets NW, Washington, DC 20240.
External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, MT 59107.
Miles City District Office, Garryowen Road, Miles City, Montana 59301.
Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301.

The RMP process includes an opportunity for review through a plan protest to the Bureau of Land Management's Director. Any person or organization who participated in the planning process and has an interest which is, or may be, adversely affected by approval of this RMP may protest the plan. Careful adherence to the following guidelines will assist in preparing a protest:

Only those persons or organizations who participated in the planning process may protest.

A protesting party may raise only those issues which were commented on during the planning process.

Additional issues may be raised at any time and should be directed to the Miles City District for consideration in plan implementation as potential plan amendments or as otherwise appropriate.

In order to be considered complete, a protest must contain, at a minimum, the following information:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue being protested.

A statement of the portion of the plan being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, and maps in the proposed RMP.

A copy of all documents addressing the issue submitted during the planning process or a reference to the date the issue was discussed for the record.

A concise statement explaining why the BLM State Director's decision is believed to be incorrect is a critical part of the protest. Take care to document all relevant facts and reference or cite the planning documents, environmental analysis documents, and available planning records (meeting minutes, summaries, correspondence). A protest without any data will not provide the BLM with sufficient information, and the Director's review will be based on existing analysis and supporting data.

The period for filing protests begins when the Environmental Protection Agency publishes in the **Federal Register** a Notice of Receipt of the final EIS containing the proposed RMP. The protest period lasts 30 days. There is no provision for any extension of time. To be considered "timely," the protest must be sent to the Director of the BLM and must be postmarked no later than the last day of the 30-day protest period. Although not a requirement, sending a protest by certified mail, return receipt requested, is recommended.

ADDRESSES: All protests must be filed in writing to: Director (480), Resource Planning Team, Bureau of Land Management, P.O. Box 65775, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mary Bloom, RMP/EIS Team Leader, Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, 406–232–7000.

SUPPLEMENTARY INFORMATION: The proposed final RMP and EIS analyzes four alternatives to resolve two issues: special management designations and resource accessibility and availability. Each alternative represents a complete management plan. The alternatives can be summarized as:

(1) Current management or no action, (2) resource protection, (3) resource production, and (4) the preferred alternative, which may be a combination of the previous three.

The RMP and EIS designates 12 areas of critical environmental concern.

The Big Sheep Mountain Cultural Site (360 public surface acres) in Prairie County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Hoe Cultural Site (144 public surface acres) in Prairie County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Jordan Bison Kill Cultural Site (160 public surface acres) in Garfield County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Powder River Depot Cultural Site (1,386 public surface acres) in Prairie County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided on the Powder River Depot

Special Recreation Management Area (171 acres) located within the Powder River Depot Area of Critical Environmental Concern, and rights-of-way construction would be avoided.

The Seline Cultural Site (80 public surface acres) in Dawson County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Ash Creek Divide Paleontology Area (7,931 public surface acres) in Garfield County would be designated an area of critical environmental concern. This area would be managed to enhance and protect paleontology resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Bug Creek Paleontology Area (3,840 public surface acres) in McCone County would be designated an area of critical environmental concern. This area would be managed to enhance and protect paleontology resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be permitted.

The Hell Creek Paleontology Area (19,169 public surface acres) in Garfield County would be designated an area of critical environmental concern. This area would be managed to enhance and protect paleontology resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be permitted.

The Sand Arroyo Paleontology Area (9,056 public surface acres) in McCone County would be designated an area of critical environmental concern. This area would be managed to enhance and protect paleontology resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be permitted.

The Black-Footed Ferret Area (11,166 public surface acres) in Prairie and Custer Counties would be designated an area of critical environmental concern. This area would be managed as a potential black-footed ferret reintroduction area and for associated species. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable mineral entry would be allowed, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with controlled surface use on 5,164 public mineral acres, geophysical exploration would not be permitted on 5,164 public mineral acres, prairie dog colonies would be allowed to expand within the 11,166 acre area of critical environmental concern, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Piping Plover Wildlife Site (16 public surface acres) in Sheridan County would be designated an area of critical environmental concern. This area would be managed to enhance and protect the piping plover. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from mineral entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would not be allowed, and rights-of-way construction would be avoided.

The Smoky Butte Area (80 public surface acres) in Garfield County would be designated an area of critical environmental concern. This area would be managed to protect the unique geologic values. Management actions affecting this area are: The area would be closed to motorized vehicles, locatable minerals would be withdrawn from mineral entry subject to valid existing rights, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would be permitted, livestock grazing would be allowed, and rights-of-way construction would be excluded.

Management prescriptions for these areas of critical environmental concern vary by alternative and are described in the RMP and EIS.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in October 1989. Since that time several public meetings, mailings, and briefings were conducted to solicit comments and ideas. All comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of areas of critical environmental concern and the requirements of the Final Revised USDI–USDA Guidelines for Eligibility, Classification, and Management of Rivers (47 FR 39454).

Dated: March 1, 1995.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 95–5852 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–DN–P

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled

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to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 50 N., R. 73 W., accepted February 15, 1995
T. 51 N., R. 73 W., accepted February 14, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protests(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: March 1, 1995.

John P. Lee,

Chief Branch of Cadastral Survey.

[FR Doc. 95–5847 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–22–M

[OR–942–00–1420–00: G5–066]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian.

Oregon

T. 37 S., R. 3 E., accepted November 30, 1994
T. 11 S., R. 25 E., accepted November 30, 1994
T. 17 S., R. 1 W., accepted February 17, 1995
T. 21 S., R. 4 W., accepted December 19, 1994
T. 30 S., R. 12 W., accepted December 19, 1994 (2 Sheets)

Washington

T. 36 N., R. 40 E., accepted January 17, 1995
T. 37 N., R. 40 E., accepted January 17, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: February 28, 1995.

Tempe T. Berggren,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–5855 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–33–M

[AZ–930–1430–01; AZA–28980]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On January 19, 1995, the U.S. Postal Service filed application AZA–28980 to withdraw approximately 2.514 acres (109,510 square feet) of public land as a post office site for the community of San Luis, Arizona. The land is located within the San Luis Townsite in Yuma County. The withdrawal is to be from mineral entry only.

DATES: Comments and requests for a meeting should be received on or before June 8, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014–5080.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–650–0518.

SUPPLEMENTARY INFORMATION: On January 19, 1995, the U.S. Postal Service filed application AZA–28980 to withdraw the following described public land from location and entry under the United States mining laws, subject to valid existing rights.

The legal description of the proposed withdrawal is as follows:

Gila and Salt River Meridian

T. 11 S., R. 25 W.,
sec. 12, lots 1–5, block 26 of the San Luis Townsite delineated and designated on the approved Townsite Plat 35–300–68;

The area described aggregates 2.514 acres, more or less, or 109,510 square feet of public land in Yuma County, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or canceled or the withdrawal is approved prior to that date.

Dated: February 28, 1995.

Herman L. Kast,

Deputy State Director, Resource Planning, Use & Protection Division.

[FR Doc. 95–5851 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications and Amendment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Amendment of Blanket Permit PRT–778102 to remove the Arctic peregrine falcon (*Falco peregrinus tundrius*); add the Aleutian shield fern (*Polystichum aleuticum*) and the Steller's eider (*Polysticta stelleri*); and change the permittee and principal officer from the Regional Director to the Assistant Regional Director, Ecological Services.

The following applicant has applied for a permit to conduct certain activities with an endangered species and a proposed threatened species, if listed, and requested removal of a delisted species from the blanket permit. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Permit No. PRT–778102

Applicant: Assistant Regional Director, Ecological Services, Anchorage, Alaska.

The applicant requests amendment to their current permit to remove the Arctic peregrine falcon (*Falco peregrinus tundrius*) from the Regional Blanket Permit No. PRT–778102. Effective October 5, 1994, this species was delisted (59 FR 50796).

The applicant also requests amendment to their current permit to add the endangered Aleutian shield fern (*Polystichum aleuticum*) to the blanket permit in order to conduct certain research activities. Activities will benefit the recovery of the species and include scientific research and enhancing propagation and survival of the species as prescribed by Fish and Wildlife Service recovery documents. The applicant also requests the addition of the Steller's eider (*Polystichum stelleri*) if and when it becomes federally listed as endangered or threatened under the Endangered Species Act. All activities for the Aleutian shield fern and Steller's eider will be in compliance with the general permit conditions included under Permit Number PRT–778102.

The applicant also requests amendment to their current permit to change the permit applicant and principal officer from the Regional Director to the Assistant Regional Director, Ecological Services. This proposed change is consistent with the delegation of Native Endangered and Threatened Species Take and Interstate Commerce Recovery Permits from the Director to Regional Directors on May 16, 1994.

Written data or comments in regard to the application should be sent to the address provided below. Documents and other information submitted in conjunction with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Assistant Regional Director, Ecological Services, 1011 East Tudor Road, Anchorage, Alaska 99503. Phone (907) 786–3544 or FAX (907) 786–3306.

Dated: February 28, 1995.

Janet E. Hohn,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 95–5846 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–55–P

Finding of No Significant Impact for an Incidental Take Permit for the Construction and Operation of the Davenport Ranch Subdivision in Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered black-capped vireo (*Vireo atricapillus*) during the construction and operation of a residential development in western Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(2) of the Endangered Species Act to authorize the incidental take of the black-capped vireo.

The Applicant plans to construct single-family residences on approximately 210 acres in western Travis County, Texas. The proposed development will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the Davenport Ranch Subdivision Environmental Assessment/Habitat Conservation Plan. Guarantees for implementation are provided in the Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. No action,
2. Development of the 107.8 acres of the 210-acre tract (Preferred Alternative),
3. A reduced development plan,
4. Alternative location, and
5. Wait for issuance of a Regional 10(a)(1)(B) incidental take permit.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction and operation of the Davenport Ranch Subdivision development in Travis County, Texas.

A. Robyn Thorson,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–5926 Filed 3–9–95; 8:45 am]

BILLING CODE 4310–55–M

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INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32562 (Sub-No. 2)]

Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., Wisconsin & Southern Railroad Company and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission

Wisconsin [1] and Calumet Railroad Company, Inc. (WICT), Wisconsin & Southern Railroad Company (WSOR), and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission (WRRTC), have agreed to grant non-exclusive overhead trackage rights and certain industry access to Soo Line Railroad Company d/b/a CP Rail System (CPRS), over and upon WRRTC's line of railroad (owned in conjunction with the Wisconsin Department of Transportation and leased and operated by WICT and WSOR). The trackage is located between the division of ownership with the Chicago Transit Authority (operated as METRA) at Fox Lake, IL, milepost 49.8 +/− and the CPRS connection at milepost 94.49 +/− at Janesville, WI. The trackage rights will offer CPRS an alternative and additional route to handle traffic between Janesville and Chicago, IL. The trackage rights were to become effective on or after August 29, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Wayne C. Serkland, 1000 Soo Line Bldg., 105 South 5th St., Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5946 Filed 3–9–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32562 (Sub-No. 1)]

Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., and Wisconsin & Southern Railroad Company

Wisconsin [1] and Calumet Railroad Company, Inc. (WICT) and Wisconsin & Southern Railroad Company (WSOR), have agreed to grant non-exclusive overhead trackage rights to Soo Line Railroad Company d/b/a CP Rail System (CPRS), over a line of railroad (primary line), between milepost 138.58 +/− in Madison, WI to milepost 141.66 +/− near Middleton, WI, and a line segment extending from its junction with the primary line at milepost 140.0 +/− to milepost 167.06 +/− in Madison. The trackage rights will allow CPRS to continue to handle overhead traffic between Middleton and Madison, after the sale of CPRS's line of railroad between Middleton and Madison to WSOR.[2] The trackage rights were to become effective on or after August 29, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[3] The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Wayne C. Serkland, 1000 Soo Line Bldg., 105 South 5th St., Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5947 Filed 3–9–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32562]

Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption [1]—Wisconsin and Calumet Railroad Company, Inc., Wisconsin & Southern Railroad Company and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission

Wisconsin and Calumet Railroad Company, Inc. (WICT), Wisconsin & Southern Railroad Company (WSOR) and Wisconsin River Transit

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[1] Notices of Exemption were concurrently filed in *Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., Wisconsin & Southern Railroad Company and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission*, Finance Docket No. 32562, and *Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., and Wisconsin & Southern Railroad Company*, Finance Docket No. 32562 (Sub-No. 1).

Under the Commission's rules of practice at 49 CFR 1180.4(g)(2)(ii), this notice and the notices in Finance Docket No. 32562 and Finance Docket No. 32562 (Sub-No. 1), should have been published within 20 days of filings. It was recently discovered that, through oversight, the notices had not been published.

[2] The United Transportation Union filed a petition to revoke on September 1, 1994. That petition is currently pending.

[1] Notices of Exemption were concurrently filed in *Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., Wisconsin & Southern Railroad Company and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission*, Finance Docket No. 32562, and *Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., Wisconsin & Southern Railroad Company and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission*, Finance Docket No. 32562 (Sub-No. 2).

Under the Commission's rules of practice at 49 CFR 1180.4(g)(2)(ii), this notice and the notices in Finance Docket No. 32562 and Finance Docket No. 32562 (Sub-No. 2), should have been published in the **Federal Register** within 20 days of filings. It was recently discovered that, through oversight, the notices had not been published.

[2] WSOR filed a petition for exemption to purchase CPRS's line of railroad between Middleton and Madison, WI, in *Wisconsin & Southern Railroad Co.—Purchase, Lease and Operation Exemption—Canadian Pacific Rail Services*, Finance Docket No. 32546 (ICC served Aug. 5, 1994).

[3] The United Transportation Union filed a petition to revoke on September 1, 1994. That petition is currently pending.

[1] Notices of Exemption were concurrently filed in *Soo Line Railroad Company d/b/a CP Rail System—Acquisition of Trackage Rights Exemption—Wisconsin and Calumet Railroad Company, Inc., Wisconsin & Southern Railroad Company and Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission*, Finance Docket No. 32562 (Sub-No. 2).

Under the Commission's rules of practice at 49 CFR 1180.4(g)(2)(ii), this notice and the notices in Finance Docket No. 32562 (Sub-No. 1) and Finance Docket No. 32562 (Sub-No. 2), should have been published in the **Federal Register** within 20 days of filings. It was recently discovered that, through oversight, the notices had not been published.

Commission d/b/a Wisconsin River Rail Transit Commission (WRRTC) have agreed to grant non-exclusive overhead trackage rights and certain industry access to Soo Line Railroad Company d/b/a CP Rail System (CPRS), over and upon WRRTC's line of railroad (owned in conjunction with the Wisconsin Department of Transportation and leased and operated by WICT and WSOR). The trackage is located between Madison, WI, milepost 138.58 +/− and a connection with the Chicago and North Western Transportation Company (CNW) [2] at milepost 48.80 +/− in Janesville, WI. The trackage rights will (1) allow CPRS access to WRRTC's lines and WICT's and WSOR's leased trackage between Madison and a connection with the CNW in Janesville, and (2) offer CPRS an alternative and additional route for handling traffic between Madison and Janesville. The trackage rights were to become effective on or after August 29, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[3] The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Wayne C. Serkland, 1000 Soo Line Bldg., 105 South 5th St., Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5944 Filed 3–9–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–50]

Michael Schumacher; Denial of Registration

On May 18, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Schumacher, General Television (Respondent), of Urbana, Illinois, proposing to deny his application for a DEA Certificate of Registration as a manufacturer. 21 U.S.C. 823(a) (1992). The statutory basis for the Order to Show Cause was Respondent's lack of authorization to manufacture controlled substances in the State of Illinois. 21 U.S.C. 824(a)(3). In addition, the Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(a) and 824(a)(4).

The Order to Show Cause was sent to Respondent's registered location by registered mail on May 18, 1994, and on June 10, 1994, Respondent filed a request for hearing with the Office of Administrative Law Judges. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. This case was then consolidated with Docket No. 94–37 wherein Normaco of Delaware, Inc. (Normaco) had requested a hearing pursuant to 21 CFR 1301.43(a) (1994), in response to a notice of Respondent's application for registration as a bulk manufacturer of various Schedule II controlled substances (58 FR 60061 (1994)). On June 28, 1994, the administrative law judge granted Normaco's request to withdraw from this matter.

Counsel for the Government filed a motion for summary disposition on July 18, 1994, based on an order of the Illinois Department of Professional Regulation (DPR), dated July 10, 1992, denying Respondent's application for a state license to manufacture and conduct medical research under the Illinois Controlled Substances Act. Respondent did not file a response to the Government's motion.

On September 29, 1994, the administrative law judge issued her opinion and recommended decision. The administrative law judge granted the Government's motion for summary disposition finding that Respondent is not eligible for a DEA registration as a bulk manufacturer of Schedule I and II controlled substances and therefore a hearing would serve no purpose. The administrative law judge found that Respondent currently lacks state authorization to handle controlled substances in the State of Illinois because Respondent was denied a state license to manufacture controlled substances by the Illinois DPR on July 10, 1992. As the administrative law judge noted, DPR's denial was based on findings that Respondent was unaware what substances were controlled under Illinois law, that Respondent did not have a background in those sciences pertaining to controlled substances, and that Respondent failed to demonstrate that its application should be granted. The administrative law judge noted that 21 U.S.C. 823(a), the provision requiring registration of manufacturers of Schedule I and II controlled substances, contains no express threshold requirement of state authorization. Nonetheless, she concluded that where as here state law requires manufacturers of controlled substances to obtain a state

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[Finance Docket No. 32664]

The Georgia Department of Transportation—Acquisition Exemption—Georgia Central Railway

The State of Georgia Department of Transportation (GDOT), a noncarrier, has filed a notice of exemption to acquire 33.65 miles of railroad and right-of-way from Georgia Central Railway (GC) between milepost 577.85 at Vidalia and milepost 611.50 at Helena, in Dodge and Telfair Counties, GA.[1] Under a new lease arrangement with GDOT, GC will continue to operate the line. The lease provides for GC to operate and maintain the line, including the crossing agreement with Norfolk Southern Railway at Helena, on an abandoned segment of track.

Consummation of the proposed transaction is scheduled to take place on or after March 8, 1995.

Any comments must be filed with the Commission and served on: George P. Shingler, 40 Capitol Square, Atlanta, GA 30334.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5945 Filed 3–9–95; 8:45 am]

BILLING CODE 7035–01–P

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[2] Effective May 6, 1994, the Chicago and North Western Transportation Company changed its name to the "Chicago and North Western Railway Company"

[3] The United Transportation Union filed a petition to revoke on September 1, 1994. That petition is currently pending

[1] GDOT proposes to acquire fee title from GC and rehabilitate the line for the purpose of continued rail operations. GC will sell the line to GDOT by quitclaim deed. GC's residual common carrier obligation as lessor will be transferred to GDOT and GC will have no common carrier obligation once the transaction has been completed.

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license, it would be pointless to grant a Federal registration when Respondent lacked state authority. The administrative law judge then recommended that in those cases where an applicant for a DEA registration as a manufacturer of controlled substances has had a state license or registration denied, suspended, revoked, or restricted by a state regulatory agency with jurisdiction to take that action, DEA should not grant greater authority to handle controlled substances than has been granted by the state. Consequently, the administrative law judge granted Government's motion for summary disposition and recommended that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to the opinion and recommended decision. On November 2, 1994, the administrative law judge transmitted the record to the Deputy Administrator.

The Deputy Administrator has carefully considered the entire record in this matter and hereby adopts the administrative law judge's opinion and recommended decision. The Deputy Administrator, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth. It is undisputed that Respondent is not authorized to manufacture controlled substances in the State of Illinois. Because 21 U.S.C. 824(a)(3) provides that denial or revocation of a state license or registration constitutes grounds to revoke a DEA registration, if Respondent were granted a registration, DEA would immediately have grounds to revoke it. It is well-settled that the agency need not grant a license on one day only to revoke it the next. Kuen H. Chen, 58 FR 65401 (1993) (quoting Serling Drug Co. and Detroit Prescription Wholesaler, Inc., 40 FR 1118, 11919 (1975). Further, inasmuch as DEA must consider "compliance with applicable State and local law" when determining whether to grant a DEA registration to manufacture controlled substances, 21 U.S.C. 823(a)(2), DEA's grant of a registration to Respondent would put him in jeopardy of Illinois law. Finally, despite the lack of a state authority threshold for manufacturer registrations, the Deputy Administrator concludes that, inasmuch as Illinois had denied Respondent a state license, DEA cannot grant Respondent's application for a DEA Certificate of Registration. *Cf.* Nathaniel S. Lehrman, M.D., 59 FR 44780 (1994) (holding that DEA has consistently held that it cannot maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he practices); accord Franz A. Arakaky MD., 59 FR 42074 (1994); Elliott Monroe, M.D., 57 FR 23246 (1992).

The Deputy Administrator concurs with the administrative law judge's granting of the Government's motion for summary disposition. In the absence of a question of material fact, a plenary adversary administrative proceeding is not required. Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, N.D.*, 43 FR 11873 (1978); see also *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *U.S.* v. *Consolidated Mines and Smelting Co. Ltd.*, 44 F.2d 432, 453 (9th Cir. 1971).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Michael Schumacher, General Television, be, and it hereby is, denied. This order is effective April 10, 1995.

Dated: March 3, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–5833 Filed 3–9–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Special Counsel for Immigration Related Unfair Employment Practices

Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") announces the availability of up to $1.5 million for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $50,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provision of INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, trade associations, industry groups, professional organizations, or other nonprofit entities providing information services to potential victims of discrimination and/or employers. Applications will not be accepted from individuals or public entities, including state and local government agencies, and public educational institutions.

APPLICATION DUE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, PO Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers and/or members of the protected class, or to those who can fill a particular need not currently being met.

BACKGROUND: On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, which amended the INA. Additional provisions were signed into law by President Bush in the Immigration Act (IMMACT 90) on November 29, 1990. IRCA and subsequently, IMMACT 90, makes hiring aliens without work authorization unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

During the debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted Section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee. Citizens and certain classes of work authorized individuals are protected from citizenship status discrimination. Protected non-citizens include permanent residents, temporary residents under the amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs) programs, refugees and asylees who apply for naturalization within six months of being eligible to do so. Citizens and *all* work authorized individuals are protected from discrimination on the basis of national origin. However, this prohibition applies to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

Congress created the OSC to enforce Section 102. OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal. OSC also initiates independent investigations of possible Section 102 violations.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

PURPOSE: OSC seeks to educate both potential victims of discrimination about their rights and employers about their responsibilities under the antidiscrimination provision of INA. Because previous grantees have developed a wealth of materials (*e.g.*, brochures, posters, booklets, information packets, and videos) to educate these groups, OSC has determined that the focus of the program should be on the actual delivery of said education. More specifically, in keeping with the purpose of the grant program, OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions.

PROGRAM DESCRIPTION: The program is designed to develop and implement cost effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. Applications may propose to educate potential victims only, employers only, or both in a single campaign. *Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, D.C. at the beginning of the grant period (late Autumn).* Proposals should outline the flowing key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should directed to (1) work authorized non-citizens who are protected individuals, since this groups is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or to (3) employers. The proposals should define the characteristics of the work authorized population or the employer group(s) targeted for the educational campaign, and the applicant's qualifications to credibly and effectively reach large segments of the campaign targets.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible targeted audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, proposals should include in their budgets the costs for printing from camera-ready materials received from OSC or from current/past OSC grantees. To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials *must* be approved by OSC to ensure legal accuracy and proper emphasis prior to production. It should be noted that proposed revisions/translations of OSC approved materials must also be submitted for clearance. All information distributed should also include mention of the OSC as a source of assistance, information and action, and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired).

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts.

Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign.

SELECTION CRITERIA: The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

Proposals will be submitted to a peer review panel. OSC anticipates seeking assistance from sources with specialized knowledge in the areas of employment and immigration law, as well as in evaluating proposals, including the agencies that are members of the Antidiscrimination Outreach Task Force: the Department of Labor, the

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Equal Employment Opportunity Commission, the Small Business Administration, and the Immigration and Naturalization Service. Each panelist will evaluate proposals for effectiveness and efficiency with emphasis on the various factors enumerated below. The panel's results are advisory in nature and not binding on the Special Counsel. Letters of support, endorsement, or recommendation will not be accepted or considered.

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 points)

Sound program design and cost effective strategies for educating the targeted population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the target group(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to effectively reach the target. (10 points)

c. A cost effective campaign strategy for educating targeted employers and/or members of the protected class, with a justification for the choice of strategy. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provides.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of subcontractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 points)

Applictions will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

ELIGIBLE APPLICANTS: This grant competition is open to nonprofit organizations that serve potential victims of discrimination and/or employers. Applications will not be accepted from individuals or public entities, including state and local government agencies, and public educational institutions.

GRANT PERIOD AND AWARD AMOUNT: It is anticipated that several grants will be awarded and will range in size from $50,000 to $150,000.

During evaluation, the panel will closely examine those proposals that guarantee maximum exposure and penetration in the employer or potential victims target populations. Thus, a campaign designed to reach a very large proportion of employers (or potential victims) in the state of Texas would take precedence over a campaign designed to reach a more limited number of employers (or potential victims) nationwide.

Publication of this announcement does not require OSC to award any specific number of grants, to obligate the entire amount of funds available, or to obligate any part thereof. The period of performance will be twelve months from the date of the grant award. Those grantees who successfully achieve their goals may be considered for supplementary funding for a second year based on the availability of funds.

APPLICATION DEADLINE: All applications must be received by 6:00 p.m. EDT, April 24, 1995 at the Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave. NW., Suite 9000, PO. Box 27728, Washington, DC 20038–7728. Applications submitted via facsimile machine will not be accepted or considered.

APPLICATION REQUIREMENTS: Applicants should submit an original and two (2) copies of their complete proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).
2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).
3. An abstract of the full proposal, not to exceed one page.
4. A program narrative of not more than fifteen (15) double-spaced typed pages which include the following:
   a. A clear statement describing the approach and strategy to be utilized to complete the tasks identified in the program description;
   b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;
   c. The proposed staffing plan (NOTE: if the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and
   d. Description of how the project will be evaluated.
5. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the Federal cognizant agency must accompany the budget.

Note: Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, D.C. at the beginning of the grant period (late Autumn).

6. Copies of resumes for the professional staff proposed in the budget.
7. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave. NW., Suite 9000 P.O. Box 27728, Washington, DC 20038–7728. (Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

Dated: March 6, 1995.

Approved:

William Ho-Gonzalez,

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 95–5960 Filed 3–9–95; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its Committees will be held on March 29 and 30, 1995. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, March 29, 1995

10:00–11:30 a.m.—Committee on Price Indexes
1. Current CPI issues and plans
2. Other business

1:30–3:00 p.m.—Committee on Productivity and Foreign Labor
1. Proposed change in name of the committee
2. Review of recent developments in the Office of Productivity and Technology
3. New index number method for industry labor productivity data
4. New index number method for major sector labor productivity data
5. Chartbook on international labor statistics comparisons

3:30–5:00 p.m.—Committee on Employment Projections
1. Defense expenditures
2. Plans for further research on college graduates
3. Analysis of the implications of employment changes for the characteristics of jobs: the good jobs/bad jobs issue

Thursday, March 30, 1995

8:30–10:00 a.m.—Committee on Employment and Unemployment Statistics
1. The National Wage Record Database
2. America's Labor Market Information System (ALMIS)
3. Restart of the Mass Layoff Statistics (MLS) program
4. Plans for establishing a longitudinal database of ES–202 program establishments
5. American Statistical Association's recommendations for the improvement of the CES and ES–202 programs
6. Duration of unemployment
7. Elect Vice chairperson

10:30–12:00 p.m.—Council Meeting
1. Chairperson's opening remarks
2. Commissioner Abraham's address and discussion
3. Business session
4. Chairperson's closing remarks

1:30–3:30 p.m.—Committee on Compensation and Working Conditions
1. An initiative to redesign compensation statistics
2. Current and future changes to the Occupational Compensation Survey Program (OCSP) job list
3. The recent Employee Benefits Survey bulletin: a general overview
4. Surveys of Employer-Provided Training: an update

The meetings are open to the public. persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5887, for appropriate accommodations.

Signed at Washington, DC the 3rd day of March 1995.

Katharine G. Abraham,

Commissioner.

[FR Doc. 95–5917 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specific classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determinations, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest

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in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room s-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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MA950002 (Feb. 10, 1995)
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MA950008 (Feb. 10, 1995)
MA950009 (Feb. 10, 1995)
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MA950021 (Feb. 10, 1995)

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of March 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–5710 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,659; Johnson Controls Battery Group, Inc., Owosso, MI

TA–W–30,591; Pigeon Manufacturing, Bad Axe, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,656; Becton Dickinson & Co., Franklin Lakes, NJ

Under the terms of the Trade Act of 1974, employment declines in activities supporting export sales cannot be used as the basis for certification.

TA–W–30,617; Shaw Pipe, Inc., Highspire, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,589; Fenestra Corp., Erie, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–30,602, TA–W–30,603, TA–W–30,604, TA–W–30,605 TA–W–30,606, TA–W–30,607, TA–W–30,608, TA–W–30,609, TA–W–30,610; System, Shade/Allied, Inc., Green Bay, WI, Bellville, TX, Buena Park, CA, DePere, WI, Denison, TX, Gainesville, GA, Kent, WA, Lancaster, PA, Leipsic, OH

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,650; Lynn Allison Manufacturing Co., Pittston, PA

A certification was issued covering all workers separated on or after January 5, 1994.

TA–W–30,729; Oxford of Belton, Belton, SC

A certification was issued covering all workers separated on or after February 3, 1994.

TA–W–30,683; Amphenol Aerospace, Sidney, NY

A certification was issued covering all workers separated on or after January 14, 1994.

TA–W–30,612; Bravo Fashions, Inc., Wilkes Barre, PA

A certification was issued covering all workers separated on or after December 22, 1993.

TA–W–30,735; Washington Public Power Supply System, Nuclear Projects, WPN–2, Richland, WA

TA–W–30,735 A & B Washington Public Power Supply System, Nuclear Projects, WPN–1, Richland, WA and WPN–3—Satsop, WA

A certification was issued covering all workers separated on or after January 27, 1994.

TA–W–30,594; General Motors Corp., Powertrain Danville Plant, Danville, IL

A certification was issued covering all workers separated on or after December 16, 1993.

TA–W–30,586; Columbus Sportswear, Columbus, IN

TA–W–30,587; Indiana Sportswear, Clinton, IN

A certification was issued covering all workers separated on or after December 15, 1993.

TA–W–30,615; Colonial Shoe, Inc., Littlestown, PA

TA–W–30,616; Colonial Shoe, Inc., Salunga, PA

A certification was issued covering all workers separated on after December 20, 1993.

TA–W–30,757; Xerox Corp., Oak Brook, IL

A certification was issued covering all workers separated on or after October 20, 1993.

TA–W–30,589; Garfield Sportswear, Garfield, NJ

A certification was issued covering all workers separated on or after October 31, 1993.

TA–W–30,705; M.W. Carr Co., Inc., Somerville, MA

A certification was issued covering all workers separated on or after January 20, 1994.

TA–W–30,740; Wirekraft Industries, Marion, OH

A certification was issued covering all workers separated on or after February 9, 1994.

TA–W–30,564; Brookshire Knitting Mils, Dallas, TX

A certification was issued covering all workers separated on or after December 1, 1993.

TA–W–30,592; Santa Fe Minerlas, Inc., Dallas, TX and Operating in Following Other States: A; AR, B; LA, C; OK

A certification was issued covering all workers separated on or after December 13, 1993.

TA–W–30,640; Hanel Lumber Co., Inc., Hood River, OR

A certification was issued covering all workers separated on or after December 29, 1993.

TA–W–30,642; Malco Division of UNI—Star Industries, Montgomeryville, PA

A certification was issued covering all workers separated on or after December 29, 1993.

TA–W–30.715; Hanover Shoe Co., Marlington, WV

TA–W–30,716; Hanover Shoe Co., Franklin, WV

A certification was issued covering all workers separated on or after January 25, 1994.

TA–W–30,670, TA–W–30,671, TA–W–30,672; TA–W–30,673, TA–W–30–674; KBM Well Service, Inc., Williston, ND, Tioga, ND, Keene, ND, Mohall, ND and Lignite, ND

A certification was issued covering all workers separated on or after January 2, 1994.

TA–W–30,590; Rose Marie Reid (AKA Imerman, Inc.), New York, NY

A certification was issued covering all workers separated on or after December 10, 1993.

TA–W–30,695; Malcolm Clothing Corp., Passaic, NJ

A certification was issued covering all workers separated on or after February 25, 1995.

TA–W–30,619; Warnaco, Inc., Long Island City, NY

A certification was issued covering all workers separated on or after December 23, 1993.

TA–W–30,717; 3M Co., Freehold, NJ

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A certification was issued covering all workers separated on or after January 26, 1994.

TA–W–30,614; Yocom Knitting Co., Stowe, PA

TA–W–30,614A; Linden Knitting Wear, Mohrsville, PA

A certification was issued covering all workers separated on or after December 22, 1993.

TA–W–30,570, Chevron USA Production Co., Houston, TX and Operating at the Following Other Locations: A; AL, B; CA, C; CO, E; KS, F; LA, G; MS, H; NM, I; ND, J; OK, K; TX, L; UT, M; WY

A certification was issued covering all workers separated on or after July 9, 1994.

TA–W–30,570 D; Chevron USA Production Co., Washington, DC

A certification was issued covering all workers separated on or after December 19, 1993.

TA–W–30,758; W.E. Kautenberg Co., Freeport, IL

A certification was issued covering all workers separated on or after January 25, 1994.

TA–W–30,626; A-Tek, Brainerd, MN

A certification was issued covering all workers separated on or after December 21, 1993.

TA–W–30,597; Fisher Scientific Co., Indiana, PA

A certification was issued covering all workers separated on or after February 24, 1995.

TA–W–30,631; Melnor, Inc., Moonachie, NJ

A certification was issued covering all workers separated on or after December 21, 1993.

TA–W–30,679; Mr. Carmen, Inc., Selinsgrove, PA

A certification was issued covering all workers separated on or after January 12, 1994.

TA–W–30,666; Dick Lynott, Inc., dba English Square, Duluth, GA

A certification was issued covering all workers separated on or after January 12, 1994.

TA–W–30,699; Novelle Industries, Inc., Miami, FL

A certification was issued covering all workers separated on or after January 18, 1994.

TA–W–30,601; Marktill Corp., Rome Plow Div., Cedartown, GA

A certification was issued covering all workers separated on or after August 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determination regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased;

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFT–TAA

NAFTA–TAA–00341; Statler Tissue Co., Augusta, ME

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import tissue from Mexico or Canada. The investigation findings show that customer imports from Canada or Mexico did not contribute importantly to worker separations at the subject firm.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00333; A-Tek, Brainerd, MN

A certification was issued covering all workers at A-Tek, Brainerd, MN separated on or after January 18, 1994.

NAFTA–TAA–00338; Burns Philip Food Fleischmann's Yeast, Inc., Sumner, WA

A certification was issued covering all workers of Burns Philip Food's Fleischmann's Yeast, Inc., Sumner, WA separated on or after January 17, 1994.

NAFTA–TAA–00337; Allied Signal, Inc., Filter & Spark Plugs Group, Greenville, OH

A certification was issued covering all workers of Allied Signal, Inc., Filter and Spark Plugs Group, Greenville, OH separated on or after January 10, 1994.

NAFTA–TAA–00355; Luken's Medical Corp., Rio Rancho, NM

A certification was issued covering all workers of Luken's Medical Corp., Rio Rancho, NM separated on or after January 17, 1994.

I hereby certify that the aforementioned determinations were issued during the month of February, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 6, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5912 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,620]

Woodward Governor Company; Stevens Point, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 1995 applicable to the workers engaged in employment related to the production of aircraft fuel controls at the subject firm.

The certification notice will soon be published in the **Federal Register**.

At the request of the State Agency and the company, the Department reviewed the certification for workers of the subject firm. The findings show that some production was in hydromatic controls. The workers were not entirely separately identifiable by product line and the plant will close in 1995. Accordingly, the Department is amending the certification to include all workers at Woodward Governor Company in Stevens Point, Wisconsin.

The intent of the Department's certification is to include all workers who were adversely affected at Stevens Point, Wisconsin by increased imports.

The amended notice applicable to TA–W–30,620 is hereby issued as follows:

"All workers of Woodward Governor Company, Stevens Point, Wisconsin who became totally or partially separated from employment on or after December 22, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 3rd day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5910 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

TA–W–30,089; Sara Lee Knit Products, Cleveland Avenue, Martinsville, VA; TA–W–30,089A; Sara Lee Knit Products, Gretna, VA; TA–W–30,089B; Sara Lee Knit Products, Quaker Meadows Plant, Morganton, NC; TA–W–30,090; Sara Lee Knit Products, Midway Georgia Plant, Midway, GA; TA–W–30,091; Sara Lee Knit Products, Cloverleaf Knitting, Martinsville, VA; TA–W–30,092; Sara Lee Knit Products, Central Distribution, Martinsville, VA

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of Sara Lee Knit Products at the Cleveland Avenue plant in Martinsville, Virginia; Midway, Georgia; Cloverleaf Knitting in Martinsville, Virginia; and the Distribution Center in Martinsville, Virginia. The certification notice was issued on August 26, 1994 and was published in the **Federal Register** on October 4, 1994 (59 FR 50625). The certification was amended on September 16, 1994 to include workers at the Gretna, Virginia plant of Sara Lee Knit Products.

At the request of the company, the Department again reviewed the certification for workers producing men's, women's and children's fleecewear at the subject firm. The findings show that the Morganton plant ceased operations on February 17, 1995 and its production and sales data were included in the corporate statistics provided by Sara Lee.

The amended notice applicable to TA–W–30,089 through TA–W–30,092 is hereby issued as follows:

"All workers of Sara Lee Knit Products, Martinsville, Virginia (TA–W–30,089) Gretna, Virginia (TA–W–30,089A) Morganton, North Carolina (30,089B) Midway, Georgia (TA–W–30,090); Cloverleaf Knitting, Martinsville, Virginia (TA–W–30,091) and the Central Distribution Center, Martinsville, Virginia (TA–W–30,092), respectively, who were engaged in employment related to the production of men's, women's and children's fleecewear and provided administrative, office, warehousing and distribution services who became totally or partially separated from employment on or after June 27, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 23rd day of February, 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5909 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,332]

Intera Information Technologies, Inc.; Denver, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on February 2, 1995 applicable to all workers of the subject firm.

The certification notice was published in the **Federal Register** on February 14, 1995 (60 FR 8417).

At the request of one of the workers, the Department reviewed the certification for workers of the subject firm. Some workers were laid off a few months prior to the impact date.

The investigation findings show that the Department can go back to February 2, 1993 in setting its impact date.

Accordingly, the Department is deleting its previous impact date of September 2, 1993 and inserting a new impact date of February 2, 1993.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,332 is hereby issued as follows:

"All workers of Intera Information Technologies, Inc., in Denver, Colorado who became totally or partially separated from employment on or after February 2, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 23rd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5908 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 20, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 20, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 27th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

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APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articlesproduced
Hecla Mining Co (Wkrs)	Republic, WA	02/27/95	01/09/95	30,762	Gold and Silver.
Oxford of Hamlet (Co)	Hamlet, NC	02/27/95	02/17/95	30,763	Yound Men's Jackets.
Oxford of Royston (Co)	Royston, GA	02/27/95	02/17/95	30,764	Young Men's Jackets.
Dexter Shoe Company (Wkrs)	Dexter, ME	02/27/95	02/10/95	30,765	Leather Footwear.
Dexter Shoe Company (Wkrs)	Newport, ME	02/27/95	02/10/95	30,766	Leather Footwear.
Fairchild Fasteners USA (Wkrs)	City of Industry, CA	02/27/95	02/15/95	30,767	Steel & Titanium Aerospace Fasteners.
Kelly Oil Corporation (Co/Wks)	Houston, TX	02/27/95	02/07/95	30,768	Oil and Gas.
Chevron Pipeline Co. (Wkrs)	Crane, TX	02/27/95	02/14/95	30,769	Crude Oil.
AT&T Communications (Wkrs)	Odessa, TX	02/27/95	02/09/95	30,770	Telephone Service.
Jantzen Inc. (Co)	Statesville, NC	02/27/95	02/16/95	30,771	Sweaters.
Anne Klein (Wkrs)	New York, NY	02/27/95	02/16/95	30,772	Ladies' Apparel.
Blanche Industries (Wkrs)	Blue Bell, PA	02/27/95	02/14/95	30,773	Ladies' Sleepwear.
Cleveland Twist Drill Co. (USWA)	Cranston, RI	02/27/95	02/13/95	30,774	Cutting Tools.
Swiss Maid Emblems (Wkrs)	Fairview, NJ	02/27/95	02/08/95	30,775	Patches and Emblems.
M-I Drilling Fluids Co (Wkrs)	Anchorage, AK	02/27/95	01/31/95	30,776	Drilling Fluids.
Ace Comb Co (BBF)	Boonville, AR	02/27/95	02/15/95	30,777	Combs and Brushes.
General Cable Corp. (USWA)	Woonsocket, RI	02/27/95	02/15/95	30,778	Electrical Cord.
KAO Infosystems Co (Wkrs)	Plymouth, MA	02/27/95	01/31/95	30,779	Floppy Computer Disk.
Rhone-Poulene Loctite VSI (Wkrs)	Troy, NY	02/27/95	02/10/95	30,780	Silicon Molds.
Names, Inc. (Wkrs)	Allentown, PA	02/27/95	01/16/95	30,781	Children's Sportswear.
Perry Manufacturing Co (Wkrs)	Elk Creek, VA	02/27/95	02/16/95	30,782	Ladies' Knit Apparel.

[FR Doc. 95–5907 Filed 3–9–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–29,920]

Goody Products, Inc.; Kearney, NJ; Operating in the Following States; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–29,920A Alabama; TA–W–29,920B California; TA–W–29,920C Georgia; TA–W–29,920D Florida; TA–W–29,920E Kentucky; TA–W–29,920F Virginia; TA–W–29,920G Ohio; TA–W–29,920H Pennsylvania; TA–W–29,920I New York; TA–W–29,920J North Carolina; TA–W–29,920K Washington; TA–W–29,920L Connecticut

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1994, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on August 25, 1994 (59 FR 43867).

At the request of the State Agency, the Department again reviewed the certification for workers of the subject firm. New findings show that the subject firm's account representatives operating in the above cited states should be included under the certification.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,920 is hereby issued as follows:

"All workers of Goody Products, Inc., New Jersey and operating in the following States: Alabama, California, Georgia, Florida, Kentucky, Virginia, Ohio, Pennsylvania, New York, North Carolina, Washington and Connecticut engaged in employment related to the production and sale of hair barrettes who became totally or partially separated from employment on or after May 18, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 23rd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5906 Filed 3–6–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,738]

F. & M. Hat Company, Inc.; Denver, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1995 in response to a worker petition which was filed on behalf of workers at F. & M. Hat Company, Inc., Denver, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5905 Filed 3–9–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,649]

Dee Exploration, Inc.; Whitesboro, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 17, 1995 in response to a worker petition which was filed on behalf of workers at Dee Exploration, Inc., Whitesboro, Texas.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose.

Signed in Washington, DC this 3rd day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5904 Filed 3–9–95; 8:45 am]
BILLING CODE 4510–30–M

Public Meeting; Federal Committee on Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on March 28, 1995, at The Madison Hotel, 15th and M Street, NW., Arlington Room, Washington, DC. 20005.

The agenda will include:

8:30 a.m.—Call to Order
Administrative Matters
- Committee Operating Procedures (Reference Guide Package)
- Meeting Logistics

Approval of Minutes
Bureau of Apprenticeship and Training Report
Work Group Reports and Recommendations
- Reauthorization/funding—Carl Perkins Vocational Education Act
- Pilot test projects for promotion/expansion of registered apprenticeship
- National Registered Apprenticeship Award Program
- Regulatory Barriers to Expansion of Registered Apprenticeship
- National conference on Registered Apprenticeship
- Legislation affecting registered apprenticeship

National Association of State and Territorial Apprenticeship Directors (NASTAD) Report
National Association of Governmental Labor Officials (NAGLO) Report
Public Comments
Other Business
4:00 p.m.—Adjournment

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion M. Winters at (202) 219–5943 no later than *March 13, 1995*, if special accommodations are needed.

Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Designated Federal Official at any time prior to the meeting. His address is: Mr. Anthony Swoope, Director, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4649, Washington, DC 20210.

Fifteen duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by March 17. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, D.C., this 6th day of March 1995.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 95–5911 Filed 3–9–95; 8:45 am]
BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Notice of Hearings

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The hearings will be held from 3:30 p.m. to 5:30 p.m. on April 5 and from 3:45 p.m. to 5:30 p.m. on April 6 at the River Place Grand Heritage Hotel, 1000 River Place, Detroit, Michigan.

PUBLIC PARTICIPATION: The hearings will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the hearing.

SUBMITTING WRITTEN STATEMENTS: Individuals or organizations wishing to submit written statements should send fifteen (15) copies to Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, D.C. 20210. Statements must be received not later than March 22, 1995.

PRESENTING ORAL STATEMENTS: Individuals or organizations wishing to present oral statements should send a written request to Ellen S. Calhoun, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4206, Washington, D.C. 20210. Requests for presenting oral statements should indicate a daytime phone number. Time slots will be assigned on a first-come, first-served basis. All such requests must be received not later than March 22, 1995.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, D.C. 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, D.C., this 2nd day of March 1995.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 95–5950 Filed 3–9–95; 8:45 am]
BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Notice of Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4407, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to 5:30 p.m. on April 5 and from 10:30 a.m. to 5:30 p.m. on April 6 at the River Place Grand Heritage Hotel, 1000 River Place, Detroit, Michigan.

AGENDA: The agenda for the meeting is as follows:

(1) Federal-State relationships in the unemployment insurance system;
(2) Administrative Funding;
(3) Appeals; and
(4) Experience Rating.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be

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available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT:

Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, DC, this 2nd day of March 1995.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 95–5949 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00343]

Woodward Governor Co., Stevens Point, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on January 23, 1995 in response to a petition filed on behalf of workers at Woodward Governor Company in Stevens Point, Wisconsin.

On March 3, 1995 an amendment was made to NAFTA–TAA–00319 to include all workers of Woodward Governor Company in Stevens Point, Wisconsin. Because the subject workers have been included in the amendment certification of NAFTA–TAA–00319, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5916 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00352, 00352A]

Washington Public Power Supply System Nuclear Project, SATSOP, and Richland, WA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on January 27, 1995 in response to a petition filed on behalf of workers at Washington Public Power Supply WNP–1 located in Richland and WNP–3 located in Satsop, Washington.

The investigation revealed that workers of Washington Public Power Supply were certified on January 13, 1995, based on increased imports of articles like or directly competitive and contributed importantly to the declines in sales and production and to total or partial separation of workers at the affiliated companies. On February 21, 1995 an amendment was made to NAFTA–TAA–00302 to include all workers of Washington Public Power Supply WNP–1 located in Richland and WNP–3 located in Satsop, Washington.

Because the subject workers at WNP–1 and WNP–3 have been included in the amendment certification of NAFTA–TAA–00302, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 24th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5915 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00168, 00168A, 00168B]

Sara Lee Knit Products, Martinsville, VA, Gretna, VA, Morganton, NC; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Titlte II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 5, 1994, applicable to all workers of the several plants and facilities of Sara Lee Knit Products in Martinsville, Virginia.

At the request of the company the Department reviewed the certification for workers of the subject firm. New findings show that the production at Sara Lee Knit Products in Gretna, Virginia and Morganton, North Carolina was intergrated with that of Martinsville.

Other findings show that company imports from Mexico increased in the first six months of 1994 compared to the same period in 1993. Production ceased at Gretna in September 1994 and at Morganton in February, 1995 when all workers were laid off.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the Martinsville certification to include workers at Gretna, Virginia and Morganton, North Carolina.

The amend notice applicable to NAFTA–00168 is hereby issued as follows:

All workers of the Martinsville, Virginia plants of Sara Lee Knit Products and the Gretna, Virginia and Morganton, North Carolina plants of Sara Lee Knit Products who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1994.

Signed at Washington, DC, this 3rd day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5914 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00282; 00282A]

Tecnol Medical Products, Inc. Sports Supports, Inc., Division Konawa, OK, and Express Temporary Services, Inc. ADA, OK; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 22, 1994, applicable to the workers of the Sports Supports, Inc., a Division of Tecnol Medical Products, Inc., located in Konawa, Oklahoma. The certification notice was published in the **Federal Register** on January 20, 1995 (60 FR 4197).

At the request of the State Agency, the Department is amending the certification to include leased employees from Express Temporary Services, Inc., Ada, Oklahoma who were employed exclusively at Tecnol Medical Products, Inc., Sports Supports, Inc., Division in Konawa, Oklahoma in the production of backbelts and braces.

The intent of the Department's certification is to include all workers at Tecnol Medical Products' Sports Supports Division, Konawa, Oklahoma including leased workers who were affected by the shift in production of backbelts and braces to Mexico.

The amended notice applicable to NAFTA—00282 is hereby issued as follows:

All workers of the Sports Supports Division of Tecnol Medical Products, Inc., Konawa, Oklahoma and leased workers from Express Temporary Services, Inc., Ada, Oklahoma engaged in employment related to the production of backbelts and braces and who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5913 Filed 3–9–95; 8:45 am]

BILLING CODE 4510–30–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps*USA National Direct, Application Assistance

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National Service (the Corporation) will provide application technical assistance to AmeriCorps*USA National Direct new and renewal applicants through a series of meetings and conference calls during the month of March. During these meetings and calls, Corporation staff will answer questions related to the application guidelines. These meetings and calls will not serve as an opportunity for prospective applicants to obtain individual feedback on proposal ideas. The Corporation staff will assume that conference call participants and those attending meetings have read the application guidelines thoroughly.

DATES: Renewal applicants must register by 5:00 pm Eastern Standard Time, Wednesday, March 15, 1995. New Applicants must register by 5:00 pm Eastern Standard Time, Tuesday, March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Renewal Applicants should contact Demetri Moshoyannis, The Corporation for National Service, Room 9509–A 1201 New York Avenue, N.W., Washington, D.C. 20525; (202) 606–5000 x. 446. New applicants should contact David Premo, The Corporation for National Service, Room 8612–C, 1201 New York Avenue, N.W., Washington, D.C. 20525; (202) 606–5000 x. 278.

SUPPLEMENTARY INFORMATION:

I. Renewal Applicants

The Corporation will provide application technical assistance via a series of meetings and conference calls during March. The meetings and conference calls are scheduled for the following times:

Date	Time	Type of assistance	Location
March 16, 1995	2:00pm–5:00pm	Meeting	1201 New York Ave., N.W., Room 8410.
March 17, 1995	3:00pm–5:00pm	Conference Call	NA.
March 21, 1995	3:00pm–5:00pm	Conference Call	NA.
March 22, 1995	12:00pm–2:00pm	Conference Call	NA.

If you would like to attend a meeting or participate in a conference call, please call Demetri Moshoyannis at (202) 606–5000 ext. 446, or fax your response to (202) 565–2786.

II. New Applicants

The AmeriCorps*USA National Direct program provides grants to national nonprofits, federal agencies, professional corps programs and multi-state programs to establish AmeriCorps*USA programs. The Corporation is offering the following application technical assistance for new programs:

Date	Time	Type of assistance	Location
March 16, 1995	9:30am–11:00am	Meeting	Truman Room, White House Conference Center.
March 17, 1995	12:00pm–2:00pm	Conference Call	NA.
March 21, 1995	12:00pm–2:00pm	Conference Call	NA.
March 22, 1995	3:00pm–5:00pm	Conference Call	NA.

If you are interested in attending the meeting or participating in a conference call please contact David Premo at The Corporation for National Service, Room 8612–C, 1201 New York Avenue, N.W., Washington, D.C. 20525; (202) 606–5000 x. 278, before 5:00 pm Eastern Standard time on Tuesday, March 14, 1995. For the meeting, participation will be limited to the seating capacity of the room. Availability will be on a first come-first serve basis for the meeting. These meetings and calls will not serve as an opportunity for prospective applicants to obtain individual feedback on proposal ideas. The Corporation staff will assume that conference call participants and those attending meetings have read the application guidelines thoroughly.

Authority: 42 U.S.C. 12501 et seq.

Dated: March 7, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–6001 Filed 3–9–95; 8:45 am]

BILLING CODE 6050–28–P

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure

AGENCY: National Labor Relations Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2

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(1972), and 29 CFR 102.136 (1993), the National labor Relations Board has established a National Labor Relations Board Advisory Committee on Agency Procedure, the purpose of which is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite case processing and improve Agency service to the public. A notice of the establishment of the Advisory Committee was published in the **Federal Register** on May 13, 1994 (59 FR 25128).

As indicated in that notice, the Committee consists of two Panels which will meet separately, one composed of Union-side representatives and the other of Management-side representatives. Pursuant to Section 10(a) of FACA, the Agency hereby announces that the next meetings of the Advisory Committee Panels will be held on March 27 (Union-side) and March 29, 1995 (Management-side).

TIME AND PLACE: The meeting of the Union-side Panel of the Advisory Committee will be held at 10:00 a.m. on Monday, March 27, 1995, at the National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C., in the Board Hearing Room, Rm 11000. The meeting of the Management-side Panel of the Advisory Committee will be held at 10:00 a.m. on Wednesday, March 29, 1995, at the same location.

AGENDA: The agenda at the meetings of both Advisory Committee Panels will concern the Agency's representation casehandling procedures. Specific topics to be discussed will include: (1) The General Counsel's new time targets for expediting representation cases; (2) Suggestions for shortening or making more meaningful the time period from the filing of the representation petition to the hearing; (3) Issues which have been raised regarding the representation hearing process which were not involved or decided in *Angelica Healthcare Services Group, Inc.*, 315 NLRB No. 175 (1995); (4) Whether there is a need to shorten the time frame from the representation hearing to the election and ways that might be done; and (5) Whether post-election procedures could be made more efficient by adopting certain procedures.

PUBLIC PARTICIPATION: The meetings will be open to the public. As indicated in the Agency's prior notice, within 30 days of adjournment of the later of the Advisory Committee Panel meetings, any member of the public may present written comments to the Committee on matters considered during the meetings. Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, N.W., Suite 11104, Washington, D.C. 20570–0001; telephone: (202) 273–2864.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, N.W., Suite 11104, Washington, D.C. 20570–0001; telephone: (202) 273–2864.

Dated, March 6, 1995.

By direction of the Board:

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 95–5948 Filed 3–9–95; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Science, Technology & Society; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name: Advisory Panel for Science, Technology and Society (#1760).

Date and Time: March 31, 1995, 9:00 a.m. to 6:00 p.m.; April 1, 1995, 9:00 a.m. to 2:00 p.m.

Place: Galleria Park Hotel—The Palm Room/Second Floor, 191 Sutter Street, San Francisco, CA 94104, Telephone: (415) 781–3060—FAX (415) 433–4409.

Contact Person: Dr. Ronald J. Overmann, Program Director for Science Technology Studies, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1743 Ext. 6989, Room 995.

Agenda: To review and evaluate science and technology studies proposals as part of the selection process for awards.

Date and Time: May 11–12, 1995—8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 320—4201 Wilson Blvd.—Arlington, VA.

Contact Person: Dr. Rachelle D. Hollander, Program Director for Ethics and Values Studies, National Science Foundation, Room 995, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1743 Ext. 6991.

Agenda: To review and evaluate ethics and values studies proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5902 Filed 3–9–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).

Date and time: March 29–30, 1995.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. John H. Hopps, Jr., Director, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1810.

Purpose of Meeting: To provide input for consideration at the April 24–25, 1995, Meeting of the Advisory Committee for Mathematics and Physical Sciences.

Agenda:

March 29th 6:00–9:00 PM Working Dinner Session. Introductory Remarks (At Arlington Renaissance Hotel/Ballston, 950 North Stafford Street, Arlington, VA 22203).

March 30th 9:00 AM–5:00 PM Room 1235, National Science Foundation Discussion of Division of Materials Research management and operational issues, programmatic update, Fiscal Year 1997 planning issues, formulation of suggestions for future materials research and educational activities.

Dated: March 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5901 Filed 3–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: March 30, 1995, 8:30 am to 5:00 pm.

Place: National Science Foundation, Conference Room 390, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. LaVerne Hess, Program Director, Electronic Materials, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1837.

Purpose of Meeting: To provide advice and recommendations concerning support for NSF Faculty Early Career Development (CAREER) Program.

Agenda: Evaluation of proposals.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

Dated: March 6, 1995.

[FR Doc. 95–5902 Filed 3–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer and Computation Research (#1192)

Date and Time: March 27, 1995, 8:30 a.m.–5 p.m.

Place: Room 1145 National Science Foundation, 4201 Wilson Blvd., Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. Gerald L. Engel, Program Director, Special Projects, Computer and Computation Research, Room 1145, NSF, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1910.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Phase 2 Small Business Innovation Research proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5899 Filed 3–9–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Date and Time: March 30, 31, and April 1, 1995.

Place: Rooms 920 and 970, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Daniel Newlon, Program Director for Economics, Division of Social, Behavioral and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1753.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5900 Filed 3–9–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision or extension:* Revision.

2. *The title of the information collection:* Agreement States Program as authorized by section 274(b) of the Atomic Energy Act.

3. *The form number is applicable:* Not applicable.

4. *How often the collection is required:* One time or as needed.

5. *Who will be required or asked to report:* 29 States who have signed section 274(b) agreements with NRC.

6. *An estimate of the total number of responses:* 320.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,000 hours (approximately 3 hours per response.)

8. *An indication of whether section 3504(h) Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* There are unique instances in which Agreement States must be surveyed on a one-time or as needed basis, i.e., in response to a specific incident, to gather information on licensing and inspection practices and other technical and statistical information. The results of such information requests, which are authorized under section 274(b) of the Atomic Energy Act, are utilized by the Commission for preparing responses to Congressional inquiries and requests for information from other sources.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20037.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0029), NEOB–10202, Office of Management and Budget, Washington, DC. 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Md., this 2nd day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–5933 Filed 3–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–312 and 50–366]

Georgia Power Company, et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 195 and 135 to Facility Operating License Nos. DPR–57 and NPF–5, respectively, issued to Georgia Power Company, et al. (the licensee), which revised the Technical Specifications (TS) and associated Bases for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in

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Appling County, Georgia. The amendment is effective as of the date of issuance and shall be implemented within 150 days from the date of issuance.

The amendments replaced the current TS and associated Bases with a set based on the new Boiling Water Reactor (BWR) Owners Group Standard Technical Specifications, NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4," with one exception. The staff was unable to conclude, without further evaluation, that the proposed increase in the local power range monitor calibration interval is justified. Therefore, the change has not been incorporated in these amendments.

The application for the amendments (dated February 25, 1994), as supplemented July 8, August 8 and 31, September 23, October 19, November 1, 1994, and January 19, 1995 (two letters), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The August 31, September 23, October 19, November 1, 1994, and January 19, 1995 (two letters) letters provided additional and clarifying information that did not change the initial proposed scope of the licensing action. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 18, 1994 (59 FR 42607). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment (59 FR 61349 dated November 30, 1994).

For further details with respect to the action see (1) the application for amendments dated February 25, 1994, as supplemented July 8, August 8 and 31, September 23, October 19, November 1, 1994, and January 19, 1995 (two letters), (2) Amendment Nos. 195 and 135 to License Nos. DPR–57 and NPF–5, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Md, this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5937 Filed 3–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–281]

Virginia Electric and Power Company (Surry Power Station Unit No. 2); Exemption

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. DPR–37, which authorizes operation of Surry Power Station, Unit 2 (the facility), at a steady-state reactor power level not in excess of 2441 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Surry County, Virginia. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) of the primary containment, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection program.

III

By letter dated February 14, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 15 months (from the February 1995 refueling outage, to the May 1996 refueling outage) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The licensee points out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at Surry Unit 2 during the Type A tests conducted from 1985 to date, that the Type A tests have not identified any significant sources of leakage in addition to those found by the Type B and C tests.

During operation, the Surry Unit 2 containment is maintained at a subatmospheric pressure (approximately 10.0 psia) which provides a good indication of the containment integrity. Technical Specifications require the containment to be subatmospheric whenever Reactor Coolant System temperature and pressure exceeds 350°F and 450 psig, respectively. Containment air partial pressure is monitored in the control room to ensure Technical Specification compliance. If the containment air partial pressure increases above the established Technical Specification limit, the unit is required to shut down.

IV

In the licensee's February 14, 1995, exemption request, the licensee stated that special circumstances 50.12(a)(2)(ii) is applicable to this situation, i.e., that application of the regulation is not necessary to achieve the underlying purpose of the rule.

Appendix J states that the leakage test requirements provide for periodic verification by tests of the leak tight integrity of the primary reactor containment. Appendix J further states that the purpose of the tests "is to assure that leakage through the primary reactor containment shall not exceed the allowable leakage rate values as specified in the Technical Specifications or associated bases". Thus, the underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee's record of ensuring a leak-tight containment has improved markedly since 1985. All "as-found" Type A tests since 1985 have passed and the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licensee will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The Surry Unit 2 containment is of the subatmospheric design. During operation, the containment is maintained at a subatmospheric pressure (approximately 10 psia) which provides for constant monitoring of the containment integrity and further obviates the need for Type A testing at this time. If the containment air partial pressure exceeds the established Technical Specification limit, the unit must be shut down.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on those considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at Surry, Unit 2, would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not needed to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix Type A test, provided that the general containment inspection is performed, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 11997).

This Exemption is effective upon issuance and shall expire at the completion of the 1996 refueling outage.

Dated at Rockville, Maryland this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5938 Filed 3–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co., LaSalle County Station, Units 1 and 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. NPF–11 and NPF–18, issued to Commonwealth Edison Company (the licensee), for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

Environmental Assessment

Identification of Proposed Action

Section III.D.1(a) of Appendix J to 10 CFR part 50 requires the performance of three Type A tests (overall integrated leakage rate tests) (ILRT), at approximately equal intervals during each 10-year service period, with the third test of each set being conducted when the plant is shut down for the 10-year plant inservice inspections. Section III.A6(b) of Appendix J to 10 CFR part 50 specifies additional requirements if two consecutive periodic Type A tests fail to meet the applicable acceptance criteria. The additional requirements entail performing Type A tests at each plant shut down for refueling or eighteen month interval, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria, after which, the testing schedule of Section III.D can be resumed. LaSalle County Station, Unit 2, experienced Type A test failures for the "as-found" condition at the first, third and fourth refueling outages as a result of penalties from local leak rate test (LLRT) (Type B and C) failures. Pursuant to the requirements of Section III.A6(b), a Type A test was performed during the fifth refueling outage for Unit 2 and the results satisfied the applicable acceptance criteria. Without the requested exemption, another Type A test will need to be performed during the sixth refueling outage for Unit 2 (scheduled for early 1995) due to the requirements of both, Section III.A6(b) which requires two consecutive successful tests prior to resuming the normal testing interval and Section III.D.1(a) because the sixth refueling outage is the last refueling outage of the first 10-year plant inservice inspections period. The licensee proposes to resume the testing interval of Section III.D. based upon the successful test during the fifth refueling outage and the creation of a corrective action plan for Type C test failures, and decouple the Type A test schedule from the inservice inspection period. The result of this proposal would be that the next scheduled Type A test would be performed during the seventh refueling outage for Unit 2 (currently scheduled for late 1996) in accordance with a test interval of between thirty and fifty months.

An example is provided in 10 CFR 50.12(a)(2)(ii) of a special circumstances for which the NRC will consider granting exemptions that involve cases for which the application of the

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regulation is not necessary to achieve the underlying purpose of the rule. The licensee completed a successful ILRT test during the fifth refueling outage for Unit 2 and has developed a corrective action plan for leakage through specific containment penetrations. Strict application of Appendix J would require performance of another ILRT during the sixth refueling outage in order to address the additional testing requirements of Appendix J, Section III.A.6(b) and the Section III.D.1(a) requirement to perform an ILRT during the 10-year plant inservice inspections. In order to avoid performance of an ILRT during the sixth refueling outage, the licensee has proposed a one-time exemption from Section III.A.6(b) (additional testing requirements) and a permanent exemption from Section III.D.1(a), in order to de-couple the Appendix J ILRT test schedule and the 10-year inservice inspection periods. Granting the exemption would result in the performance of the next Unit 2 ILRT during the seventh refueling outage, which in consistent with the regular testing interval of approximately once per forty months.

The Need for the Proposed Action

The proposed exemption would allow the licensee to resume a normal ILRT testing interval and thereby preclude the need to perform an ILRT during the sixth refueling outage of LaSalle, Unit 2. Performance of an ILRT during the upcoming Unit 2 refueling outage would result in the collection of significant radiation dose, approximately 3 person-rems, by licensee personnel. The need for the exemption results from the requirement to perform the ILRT during refueling outages associated with the 10-year plant inservice inspections and the requirements to perform additional ILRT testing in the event that consecutive ILRT's fail, even if those failures are a result of leakage through identified penetrations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that granting the one-time relief from Section III.A.6(b) and granting relief from Section III.D.1(a) of Appendix J to 10 CFR part 50 does not affect the configuration of plant systems or plant operating practices. The proposed exemption is limited to the scheduling of a required Type A test during the sixth refueling outage of Unit 2 and a subsequent decoupling of the Type A tests from the inservice inspection period. Previous testing has demonstrated the integrity of the containment structure. Leakage through containment penetrations and values would continue to be identified by performance of LLRT. Therefore, no increase in the release of radioactive materials following an accident would result from the revision of the Type A test schedule. Changes to the Type A test schedule do not affect the radioactive effluent release during normal operation. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption only involves the scheduling of ILRT testing. It does not affect nonradiological plant effluents and there are no other nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concludes that there are no significant environmental impacts that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested exemption and require the licensee to conduct the ILRT during the sixth refueling outage of LaSalle, Unit 2. Denial would not significant reduce the environmental impact of plant operation and would result in lost electrical generation and expense of significant licensee resources.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the LaSalle County Station dated November 1978.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and consulted with the Illinois State official. The State Official had no comments regarding the NRC's proposed action.

Finding of no Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption dated October 24, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois.

Dated at Rockville, MD., this 1st day of March 1995.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Acting Director, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5934 Filed 3–9–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Pheonomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on March 27 and 28, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss Westinghouse Electric Corporation proprietary information pursuant to (5 U.S.C. 552b(c)(4)).

The agenda for the subject meeting shall be as follows: Monday, March 27, 1995–8:30 a.m. until the conclusion of business and Tuesday, March 28, 1995–8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC research program to modify the RELAP5/MOD3 code for use in the AP600 design certification review. The focus of this meeting will be on the development of the Phenomena Identification and Tanking Table (PRT) in this regard. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may ask only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff eningeer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: March 6, 1995.

Sam Duraiswamy

Chief Nuclear Reactors Branch.

[FR Doc. 95–5935 Filed 3–9–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Meeting on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on March 29 and 30, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to (5 U.S.C. 552b(c)(4)), with the exception of a one to two hour portion that will be open to the public. At this time, the open session is scheduled to be held during the afternoon of the second day (March 30, 1995) of the meeting.

The agenda for the subject meeting shall be as follows:

Wednesday, March 29, 1995–8:30 a.m. until the conclusion of business and Thursday, March 30, 1995–8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Westinghouse test and analysis programs associated with the AP600 Passive Containment System. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statement may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: March 6, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–5936 Filed 3–9–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of SF 2802, SF 2802B, and RI 36–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a reclearance of an information collection. SF 2802, Application for Refund of Retirement Deductions (CSRS), must be completely filled out and signed before OPM pays a refund of retirement contributions. SF 2802B must also be complete if there are spouse(s) or former spouse(s) who must be notified of the employee's intent to take a refund. RI 36–7 is needed when the SF 2802 is incomplete as to the applicant's marital status.

Approximately 35,000 SF 2802s are completed annually. We estimate that it takes 45 minutes to fill out the form. the annual burden is 26,250 hours. Approximately 31,500 SF 2802Bs are completed annually. We estimate that it takes 15 minutes to fill out the form. the annual burden is 7,875 hours. Approximately 21,050 RI 36–7s are completed annually. We estimate that it takes 10 minutes to fill out the form. The annual burden is 3,508 hours. The combined total annual burden is 37,633 hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8564.

DATES: Comments on this proposal should be received by no later than April 10, 1995.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Forms Analysis and Design, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–5837 Filed 3–9–95; 8:45 am]

BILLING CODE 6325–01–M

Notice of Request for Reclearance of Form SF 2800

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection, Form SF 2800, Application for Death Benefits Under the Civil Service Retirement

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System, is used to collect information so that OPM can pay death benefits to the survivors of federal employees and annuitants.

Approximately 70,000 applications are completed annually. It takes an estimated 30 minutes to complete the form. The total annual burden is 35,000 hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8564.

DATES: Comments on this proposal should be received by no later than April 10, 1995.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–4025.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–5836 Filed 3–9–95; 8:45 am]

BILLING CODE 6325–01–M

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the next meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet April 19, 1995, from 1:30 to 3:30 p.m., in the Wellington Ballroom of the Westin Hotel, 909 North Michigan Avenue, Chicago, IL 60611.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: The date and location of the Council's April meeting was chosen to coincide with OMP's '95 Human Resource Management Conference, which meets in Chicago from April 18–20, 1995. This will be an interactive meeting. There will be two partnership presentations followed by an audience participation segment. Persons seated in the audience will be permitted to ask questions from the floor. The meeting will end with a discussion of various Council workplan items.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by April 14, in order to be considered at the April 19, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–5839 Filed 3–9–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, April 13, 1995
Thursday, April 27, 1995
Thursday, May 11, 1995
Thursday, May 25, 1995
Thursday, June 8, 1995
Thursday, June 22, 1995

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: February 28, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–5838 Filed 3–9–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: March 27 and 28, 1995. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place NW, Washington, DC 20500.

TYPE OF MEETING: Open, with one closed session.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) will meet in open session on Monday, March 27, 1995, at approximately 9:00 AM to be briefed on current activities of the Office of Science and Technology Policy (OSTP) and of the National Science and Technology Council (NSTC). This session will end at approximately 12:00 Noon. The Committee will reconvene in closed session at approximately 1:30 PM to discuss various aspects of cooperative efforts between the United States and the Russian Federation to control and account for fissile materials. This session will last approximately 60 minutes, and will be closed to the public, pursuant to Title 5, U.S. Code, Section 552b(c)(1). The Committee will convene in open session at approximately 2:30 PM, to discuss various components of the Committee's work plan. This session will end at approximately 6:00 PM. Either of the morning or afternoon sessions may be interrupted for the PCAST to gather at the White House to be introduced to the President of the United States.

The Committee will meet again in open session on Tuesday, March 28, at approximately 9:00 AM to discuss several activities of the National Science and Technology Council. This session will end at approximately 12:00 Noon, and may be interrupted for the PCAST to gather at the White House to be introduced to the President of the United States.

FOR FURTHER INFORMATION: For information regarding time, place, and agenda please call Laurel Kayse or Mike Kowalok, (202) 456–6100, prior to 3:00 p.m. on Friday, March 24, 1995. Other questions may be directed to Angela Phillips Diaz, Executive Secretary of PCAST, or Mike Kowalok, (202) 456–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

March 7, 1995.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 95–6000 Filed 3–9–95; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW. Washington, DC 20549.

Amendments:

Rule 34b–1—File No. 270–305.

Form N–1A—File No. 270–21.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, the Securities and Exchange Commission ("Commission") has submitted for OMB approval an amendment to the approval previously granted by the OMB for amendments to rule 34b–1 under the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. 80a, and to Form N–1A under the Investment Company Act and the Securities Act of 1933, 15 U.S.C. 77a. The purpose of the amendment is to reflect (i) the reduced number of burden hours associated with the amendments to Form N–1A, and (ii) that the Commission has determined not to adopt the proposed amendments to rule 34b–1.

In December 1993, the Commission proposed for public comment new rule 18f–3 and amendments to certain other rules and forms, including rule 34b–1 and Form N–1A. In response to comments received on the proposal, the Commission determined to revise certain disclosure requirements that were proposed as amendments to Form N–1A and not to adopt rule 34b–1.

Form N–1A is the registration statement used by open-end management investment companies other than small business investment companies and insurance company separate accounts. The Form as amended will require substantially less disclosure in the prospectuses of multiple class and master-feeder funds than under the original proposal. The average additional burden to registrants imposed by the amendments to Form N–1A as amended is estimated to be approximately 25 minutes per multiple class or master-feeder fund registrant. The amendment also notes that the number of registrants using Form N–1A has increased to approximately 3,000. Thus, the total annual burden for Form N–1A for all registrants would be 3,188,364 hours.

Rule 34b–1 governs the use of performance information in investment company sales literature. In connection with the proposal, it was estimated that the proposed amendment to rule 34b–1 would impose an average additional burden of 431 hours per respondent each year. Because the Commission has determined not to adopt the proposed amendments, however, this additional burden will not be imposed, and the estimated total burden per respondent will be 3,444 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and SEC Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–0307 for Form N–1A and 3235–0346 for rule 34b–1), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–5862 Filed 3–9–95; 8:45 am]

BILLING CODE 8717–01–M

[Release No. 35–26244]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 3, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete

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statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 27, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Notice of Proposal to Amend Certificate of Incorporation and Adopt and Implement Shareholder Rights Plan; Order Authorizing Solicitation of Proxies

The Columbia Gas System, Inc. (70–8565)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company and a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code ("Code"), has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

Columbia proposes to amend its certificate of incorporation ("Charter") to change the description of preferred stock, as presently authorized, in order to permit the use of preferred stock pursuant to a proposed shareholder rights plan ("Rights Plan"). Shareholder approval of the amendment to the Charter will be sought at Columbia's annual meeting scheduled for April 28, 1995. The adoption and implementation of the Rights Plan is subject to the approval of the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") and this Commission.

Rights plans are designed to allow a board to take additional time to negotiate with potential acquirors and enhance the probability that competing bids will emerge. They may permit a board to thwart an inadequate offer. Under Columbia's Rights Plan, existing shareholders would be granted a right to purchase preferred stock that has voting and dividend rights equivalent to common stock at a substantial discount to common stock if a triggering event occurs. The triggering event in the Rights Plan is the acquisition of 10% or more of Columbia's common stock. If a triggering event occurs, the rights held by the acquiror would be void and the exercise of the rights by other stockholders would result in a dilution of the value and voting power of the potential acquiror. If the Columbia board of directors determines that an acquisition should be allowed, it has the option of redeeming the rights to permit a proposed offer to proceed. The Rights Plan would terminate eighteen months after the effective date of Columbia's plan of reorganization under the Code subject to extension if an offer to purchase 10% or more of Columbia's common stock is pending.

The Charter amendment would change the par value of Columbia's preferred stock from $50 to $10 per share and delete provisions in the Charter which subject Columbia to certain restrictions on dividends and on unsecured debt while any preferred stock is outstanding and which define the voting rights and liquidation rights of the preferred stock in a manner inconsistent with the voting and liquidation rights proposed for the Series A Participating Preferred Stock to be utilized in the Rights Plan ("Preferred Stock") should the rights become exercisable. Columbia currently has no preferred stock outstanding. Instead of being set forth in the Charter, voting rights, liquidation rights, and dividend and other terms of each issue of preferred stock would be set forth in the individual certificates of designation to be authorized to Columbia's board of directors and filed with the secretary of state of Delaware.

Each one-one thousandth of a share of Preferred Stock would be equivalent to one share of common stock for dividend, voting and liquidation process. Once a person (an "Acquiror") has acquired 10% or more of the Columbia's common stock, each shareholder other than the Acquiror would be entitled to purchase for $100 that number of fractions of Preferred Stock which is equal to the number of shares of common stock with a market value totalling $200 at the time of purchase.

Dividends on the Preferred Stock will consist of: (1) Dividends payable quarterly (each a "Quarterly Dividend Payment Date") in the amount of $10.00 per whole share less the amount of all cash dividends declared on the Preferred Stock pursuant to the following clause (2) since the immediately preceding Quarterly Dividend Payment Date (the total of which shall not be less than zero); and (2) dividends payable in cash on the payment date for each cash dividend declared on the common stock in an amount per whole share equal to the Formula Number then in effect times the cash dividends then to be paid on each share of common stock.[1] In addition, if Columbia shall pay any dividend or make any distribution on common stock payable in assets, securities or other forms of noncash consideration (other than dividends or distributions solely in shares of Columbia common stock), then Columbia shall simultaneously pay or make on each outstanding whole share of Preferred Stock a dividend or distribution in like kind equal to the Formula Number than in effect, times such dividend or distribution on each share of common stock.

Each holder of Preferred Stock shall be entitled to a number of votes equal to the Formula Number then in effect, for each share of Preferred Stock held of record on each matter which holders of common stock or stockholders generally are entitled to vote, multiplied by the maximum number of votes per share which any holder of common stock or stockholders generally have with respect to such matter (assuming any requirement to vote a greater number of shares is satisfied).

Except as otherwise provided in the certificate of designation or by applicable law, the holders of shares of Preferred Stock and the holders of shares of common stock shall vote together as one class for the election of directors of Columbia and on all other matters submitted to a vote of stockholders of Columbia.

If, at the time of any annual meeting of stockholders for the election of directors, the equivalent of six quarterly dividends (whether or not consecutive) payable on any share of Preferred Stock are in default, the number of directors constituting the board shall be increased by two. In addition to voting together with the holders of common stock for the election of other directors of Columbia, the holders of Preferred Stock (and of any other stock on a parity with the Preferred Stock and also entitled to vote due to a default), voting separately as a class to the exclusion of the holders

[1] Since each 1/1,000th of a share of Preferred Stock is designed to be equivalent to one share of common stock, the "Formula Number" is 1,000 subject to adjustment in the event of stock dividends, stock splits or similar events.

of common stock, shall be entitled at said meeting of stockholders (and at each subsequent annual meeting of stockholders), unless all dividends in arrears have been paid or declared and set apart for payment prior thereto, to vote for the election of two directors of Columbia. If and when such default shall cease to exist, the holders of Preferred Stock shall be divested of the foregoing special voting rights, subject to revesting in the event of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall terminate and the number of directors constituting the board shall be decreased by two. Except as provided in the certificate of designation or by application law, holders of Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of common stock as described above) for authorizing or taking any corporate action.

Upon the liquidation, dissolution or winding up of Columbia, whether voluntary and involuntary, no distribution shall be made: (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Preferred Stock unless, prior thereto, the holders of shares of Preferred Stock shall have received an amount equal to the accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (x) $10.00 per whole share or (y) an aggregate amount per share equal to the Formula Number then in effect times the aggregate amount to be distributed per share to holders of Common Stock; or (2) to the holders of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Preferred Stock, except distributions made ratably on the Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

The Preferred Stock will rank junior to all other series of preferred stock of Columbia unless the board shall specifically determine otherwise in fixing the special rights of such series and the limitations thereof. Declarants state, however, that there is no expectation that the rights would become exercisable and the above described Preferred Stock issued.

The board of directors may at its option satisfy the rights by issuing one half the securities that would be issuable for the purchase price or by issuing sufficient common stock to be equivalent to the preferred stock that would be issuable, (each one one-thousandth of a share of preferred stock being the equivalent of one share of common stock).

Columbia requests authority to solicit proxies from its stockholders for approval of the amendment to the Charter. Columbia has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated pursuant to Rule 62(d).

It appearing to the Commission that Columbia's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to rule 62(d):

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith under rule 62(d), and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–5866 Filed 3–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26243]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 3, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 27, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–8571)

New England Electric System ("NEES"), a registered holding company, New England Energy, Incorporated ("NEEI"), a wholly owned subsidiary company of NEES, and New England Power Company ("NEPCO"), also a wholly owned subsidiary company of NEES, all of 25 Research Drive, Westborough, Massachusetts, 01582, have filed an application-declaration under sections 6, 7, 9(a) and 10 of the Act.

NEES, NEEI, and NEPCO seek Commission authorization for NEEI to refinance its present bank debt through an agreement ("the New Credit Agreement") for loans of up to $225 million with a syndicate of banks ("the Banks"). NEES, NEEI, which engages in activities relative to oil and gas fuel supplies for the NEES system and for non-affiliates, and NEPCO, which engages in wholesale electric power generation and transmission for the retail electric utility subsidiary companies within the NEES system, also propose to amend and extend a Fuel Purchase Contract between NEEI and NEPCO as well as a Capital Funds Agreement, a Loan Agreement, and a Capital Maintenance Agreement between NEEI and NEES.

On the basis of cash flow projections and bank debt retirements, and in order to reduce its capital costs, NEEI has decided to refinance its present credit agreement.

The New Credit Agreement would provide a revolving fund of $225 million that is reduced each year under an established schedule ("Revolving Facility Availability"). NEEI has the right, upon notice, to reduce the unused portion of Revolving Facility Availability. The New Credit Agreement would be for a term of seven years with an option to extend for an additional year. It would provide several interest rate options.

First, NEEI can borrow at a periodic fixed Eurodollar rate with maturities of up to 12 months at the applicable LIBOR plus a margin over LIBOR,

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payable on each interest period or quarterly for interest periods beyond three months. Second, NEEI can borrow at the base rate of Credit Suisse, the principal Bank, payable quarterly in arrears and calculated on the basis of a 365/366 day year. Third, NEEI can borrow at a rate obtained through competitive bids from the Banks for funds in amounts over $10 million.

Under the New Credit Agreement, a facility fee will be payable on the percentage amount of the obligation of each Bank to make advances to NEEI. The facility fee is payable upon each commitment, irrespective of usage, and will be calculated on the basis of the actual number of days elapsed in a year of 360 days. A one-time arrangement fee of $40,000 also will be payable to Credit Suisse.

Credit Suisse will administer the New Credit Agreement for an annual fee of $20,000, payable upon closing and once each year. An additional charge of $750 will be payable for each NEEI request for a competitive bid.

To secure the funds borrowed, NEEI proposes to assign to the Banks its rights under the Fuel Purchase Contract with NEPCO and the Capital Funds Agreement and the Loan Agreement with NEES. Upon termination of the Fuel Purchase Contract, the funds will be secured by rights under the Capital Maintenance Agreement.

The effective cost of funds over the life of the New Credit Agreement will be approximately 32.5 basis points over LIBOR, based upon current NEPCO senior secured long-term debt ratings. Under the present credit agreement, the current effective spread over LIBOR is ⅝%, which would increase to ⅞% between 1996 through 1998.

National Fuel Gas Company (70–8579)

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(b) of the Act and rule 45 thereunder.

National proposes to issue and sell, from time to time through December 31, 2000, up to 2,000,000 shares of its authorized but unissued common stock, $1.00 par value ("Common Stock"), to Chemical Bank (or such other bank or trust company as National may from time to time designate), as agent for the participants in National's Dividend Reinvestment and Stock Purchase Plan ("Plan"). The price of shares of Common Stock sold by National to the Plan will be the average of the daily high and low sales prices of National's common stock on the New York Stock Exchange on the 15th day of the applicable month, or, if the New York Stock Exchange is not open for trading on that date, such average on the next succeeding date on which the New York Stock Exchange is open for trading.

National proposes to use the proceeds from the sale of the Common Stock to repay existing short-term and long-term debt, to pay interest and dividends, to make additional capital contributions to its wholly owned subsidiaries and for other corporate purposes. The amount of proposed capital contributions to each subsidiary will not, in any one year, exceed the amount that the subsidiary is authorized by the Commission to borrow from National's money pool, pursuant to HCAR No. 25964 (File No. 70–8297) or any subsequent money pool authorization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–5865 Filed 3–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20940/812–9396]

Norwest Funds, et al.; Notice of Application

March 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Norwest Funds, Norwest Select Funds, Core Trust (Delaware), Forum Funds, Inc. (collectively, the "Funds"), Norwest Bank Minnesota, N.A. ("Norwest"), Forum Advisors, Inc. ("FAI"), and H.M. Payson & Co., Inc. ("Payson") (collectively, the "Advisers").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) to exempt applicants from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain money market funds to sell their shares to affiliated investment companies.

FILING DATE: The application was filed on December 21, 1994 and amended on February 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 31, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Norwest Funds, Norwest Select Funds, 61 Broadway, New York, New York 10006; Core Trust, Forum Funds, Inc., Forum Advisors, Inc., Two Portland Square, Portland, Maine 04101; H.M. Payson & Co., Inc., One Portland Square; Portland, Maine 04101.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company and is comprised of multiple series. Norwest Funds and Forum Funds offer both non-money market series and money market series. Norwest Select Funds and Core Trust offer only non-money market series. All existing and future non-money market series of the Funds relying on the relief granted are hereinafter referred to as "Non-Money Market Series." The existing and future money market series of the Funds relying on the relief granted are hereinafter referred to as "Money Market Series." Applicants request relief on behalf of any future series or registered investment company advised by the Advisers or any investment adviser controlling, controlled by or under common control with the Advisers.

2. Norwest is the investment adviser for each series of Norwest Funds and Norwest Select Funds, and for two series of Core Trust. FAI serves as investment adviser for each of the Forum Funds series, except for the Payson Balanced Fund and Payson Value Fund, which are advised by Payson. Each of the Advisers is registered under the Investment Advisers Act of 1940. Applicants request relief on behalf of any investment adviser controlling, controlled by, or under common control with the Advisers. Forum Financial Services, Inc. is the principal underwriter and manager for each series of Norwest Funds, the Norwest Select Funds, and Forum Funds.

3. Each Non-Money Market Series will hold a portion of its net assets in cash or short-term investments ("Uninvested Cash") pending investment in portfolio securities, or for meeting expected redemptions or other purposes. Applicants propose that: (a) each Non-Money Market Series advised by Norwest would be permitted to invest its Uninvested Cash in shares of one or more Money Market Series advised by Norwest; and (b) Non-Money Market Series advised by FAI or Payson would be permitted to invest in shares of one or more Money Market Series advised by FAI or Payson. Where a Non-Money Market Series would have more than one Money Market Series available for investment, the decision as to which Money Market Series in which it would invest (if any) will be made by the investment adviser of the Non-Money Market Series solely on the basis of the investment adviser's view as to the suitability and investment merits of the respective Money Market Series as compared to all available, competitive short-term instruments. Where a Money Market Series offers more than one class of securities, each Non-Money Market Series would invest only in the class with the lowest expense ratio at the time of investment.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act and under rule 17d–1 thereunder permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1. The order would permit: (a) the Non-Money Market Series to purchase, utilizing Uninvested Cash, and to redeem shares of the Money Market Series; (b) the Money Market Series to sell and redeem their shares to and from the Non-Money Market Series; and (c) the advisers to effect such purchases and redemptions of shares of the Money Market Series as investment adviser to the Funds.[1]

2. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security to, or purchase any security from, such investment company. Since the series of Norwest Funds and Norwest Select Funds share a common board of trustees and the series of Forum Funds share a common board of trustees, the series of each such Fund may be "affiliated persons" of each other under section 2(a)(3)(C) of the Act by virtue of the possibility that they may be deemed under common control with each other. Additionally, since the series of Norwest Funds, Norwest Select Funds, and Core Trust have the same investment adviser, they also may be "affiliated persons" of each other under section 2(a)(3)(C). Because of these potential affiliations, the sale of shares of the Money Market Series to the Non-Money Series, and the redemption of such shares from the Money Market Series, could be prohibited under section 17(a).

3. Section 17(b) of the Act provides that the SEC may, upon application, grant an order exempting applicants from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any persons concerned; (b) the proposed transaction is consistent with the policy of each investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Under section 6(c) of the Act, the SEC may exempt transactions from any provision of the Act or any rule or regulations thereunder "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. Applicants request relief under sections 6(c) and 17(b) because they wish to engage in a series of transactions, rather than a single transaction.

4. Under the proposed transactions, the Non-Money Market Series will retain their ability to invest their cash balances directly in money market instruments as authorized by their respective investment objectives and policies. Under the proposal, shares of the Money Market Series will be purchased and redeemed at their net asset value, which is the same consideration paid and received for these shares by any other shareholder. These shares will be purchased and sold by the Non-Money Market Series on the same terms and on the same basis as shares are purchased and sold to all other shareholders.

5. On the other side of the proposed transactions, each Money Market Series reserves the right to discontinue selling shares to any Non-Money Market Series if the board of trustees of such applicants determine, based on then current facts and circumstances, that such sales would adversely affect its portfolio management and operations. In order to ensure that the Non-Money Market Series will not exert any undue influence on the voting process for any matter submitted to a vote by the shareholders of the Money Market Series, the Non-Money Market Series will vote their shares of each of the Money Market Series in proportion to the vote by all other shareholders of such Money Market Series. Based on the above, applicants believe that the proposed transactions satisfy the standards of sections 6(c) and 17(b).

6. Section 17(d) of the Act and rule 17d–1 thereunder provide that it is unlawful for an affiliated person of a registered investment company, acting as principal, to participate in any joint enterprise or other joint arrangement in which any such registered company is a participant. Rule 17d–1 provides that the SEC may issue an order permitting applicants to participate in a joint transaction after considering certain factors. The Money Market Series would purchase and redeem shares from the Non-Money Market Series. In addition, the Advisers manage assets of the Money Market and Non-Money Market Series. Due to the relationships between the Advisers and the Money Market and Non-Money Market Series, the proposed transactions between the Money Market and Non-Money Market Series could be deemed a joint enterprise or other joint arrangement.

7. The investment by the Non-Money Market Series in shares of the Money Market Series would be on the same basis and would be indistinguishable from any other shareholder account maintained by the Money Market Series. To the extent that any of the Non-Money Market Series invest in the Money Market Series as proposed, applicants believe that the Non-Money Market Series will participate on a fair and reasonable basis in the returns and expenses of the Money Market Series. Thus, applicants believe that relief is appropriate.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Series sold to and redeemed from the Non-Money Market Series will not be subject to a sales load, redemption fee,

[1] Applicants will comply with the percentage limitations set forth in section 12(d)(1) of the Act.

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or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act.

2. The investment advisers and their respective affiliates, in their capacities as service providers for the Money Market Series, will remit to the respective Non-Money Market Series, or waive their fees with respect to the Non-Money Market Series, in an amount equal to all fees received by them or their affiliates under their respective agreements with the Money Market Series to the extent such fees are based upon the Non-Money Market Series' assets invested in shares of the Money Market Series. Any of these fees remitted or waived will not be subject to recoupment by the Series' investment advisers or their affiliates at a later date.

3. For the purpose of determining any amount to be waived and/or expenses to be borne to comply with an Expense Waiver, the adjusted fees for a Non-Money Market Series (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 2. Adjusted fees then will be reduced by the amount waived pursuant to condition 2. If the amount waived pursuant to condition 2 exceeds adjusted fees, the Non-Money Market Series' investment adviser also will reimburse the Non-Money Market Series in an amount equal to such excess.

4. The Non-Money Market Series will vote their shares of each of the Money Market Series in the same proportion as the votes of all other shareholders in such Money Market Series.

5. The Non-Money Market Series will receive dividends and bear their proportionate share of expenses on the same basis as other shareholders of such Money Market Series. A separate account will be established in the shareholder records of each of the Money Market Series for each of the acquiring Non-Money Market Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 95–5965 Filed 3–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35443; File No. SR–PSE–95–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to New Organizational Structures

March 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 21, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend articles V and VIII of its Constitution to allow for the admission of entities with new organizational structures as member organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PSE Constitution currently allows members of the Exchange to confer the privileges of their memberships on a firm which may be either a partnership or a corporation. Recent changes to state corporate laws, however, have expanded the types of organizational structures available to such members. Accordingly, the Exchange is proposing to amend its Constitution to permit the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts, limited liability companies and other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships.[1]

Specifically, the Exchange is proposing to amend Article VIII, Section 1(a) of its Constitution to provide that the Exchange may, in its discretion, and on such terms as the Exchange may prescribe, approve as a member firm entities that have characteristics essentially similar to corporations, partnerships, or both. The proposed change states that such entities and persons associated therewith shall upon approval, be fully, formally and effectively subject to the jurisdiction, and to the Constitution and Rules, of the Exchange to the same extent and degree as are any other member organizations and persons associated therewith.

The Exchange is also proposing to amend Article V, Sections 4, 5, and 7 of the PSE Constitution (definitions of "member firm," "member organization," and "associated person") to be consistent with the proposed change to Article VIII, Section 1(a). Accordingly, the Exchange is proposing to add the phrase "other Organization" to the definitions of "member firm" and "member organization" and to add the phrases "member of a Limited Liability Company" and "trustee of a business trust" to the definition of "associated person."

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] The Exchange stated that noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act since this is a prerequisite to becoming an Exchange member organization. Telephone conversation between Michael D. Pierson, Senior Attorney, PSE and Elisa Metzger, Senior Counsel, SEC, on March 3, 1995.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–06 and should be submitted by March 31, 1995.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–5864 Filed 3–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35442; File No. SR–NSCC–95–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Provide a One Day Settling Capability

March 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on January 24, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–95–02) as described in Items I and II below, which items have been prepared primarily by NSCC. On January 31, 1995, and March 1, 1995, NSCC filed amendments to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's rules and procedures in order to provide a one day settling capability for trades that are compared or recorded one day prior to normal settlement date and thereafter. The proposed rule also will revise NSCC's trade guarantee to provide that NSCC will guarantee one day settling items at the time that NSCC completes the trade comparison process for trades which NSCC compares or the trade recording process for trades which NSCC receives in a lock-in capacity.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The test of these statement may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Karen Saperstein, General Counsel, NSCC, to Jerry Carpenter, Assistant Director, Office of Securities Processing, Division of Market Regulation, Commission (January 31, 1995 and March 1, 1995).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) In the current environment where trades are settled five business days after the trade ("T+5"), trades that are compared or recorded at NSCC after the third business day after the trade date ("T+3") do not settle until two days later. Thus, a trade which is compared or is recorded on T+4 is not included in the normal settlement cycle for settlement on T+5. NSCC's system assigns a new settlement date to these items which is two business days after the trade is compared or recorded, which in this case would be T+6. Under this processing system, when the T+3 settlement cycle is implemented, trades which are compared or recorded on T+2 would not settle until T+4.[3] Without a change in this process it is estimated that a substantial number of transactions could miss timely settlement.

In order to allow as many compared trades as possible to settle in a normal cycle, NSCC proposes to provide a processing capability that will permit items processed one day prior to the normal settlement day or later to settle the next business day instead of settling two business days after processing. This enhancement will be implemented first in the processing of trades settling in the five day settlement cycle and will include trades processed on T+4 prior to the cut off time, which initially will be 9:00 p.m.[4] T+4, trades processed prior to the daily cut off time also will be subject to next day settlement. Trades processed after the daily cut off time will continue to settle two business days following comparison or recordation. Transactions in securities which are not eligible for NSCC's Continuous Net Settlement ("CNS") system received prior to the cut off time on T+4 (in a T+5 settlement cycle) or on T+2 (in a T+3 settlement cycle) will be processed on a trade for trade basis for settlement the next business day.

One day settling items will be reported back to members on the morning of the settlement day in a separate section of the Consolidated Trade Summary ("CTS"). Unlike other trades listed on the CTS, these trades

[3] On October 6, 1993, the Commission adopted Rule 15c6–1 which became effective June 7, 1995, establishes T+3 as the standard settlement cycle. Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order approving Rule 15c6–1); 34952 (November 9, 1994), 59 FR 59137 (order changing the effective date of Rule 15c6–1).

[4] In a T+3 settlement environment, one day settlement will be provided for any transaction processed on T+2 prior to the cut off time.

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will be shown as individual items instead of as net positions.[5] No contract output will be provided for one day settling items. Currently, a member's obligation to receive and pay for CNS securities is fixed at the time the CTS is made available to the member. With respect to obligations due to settle that day, the obligation of a member to receive and pay for CNS securities and the obligation of a member to deliver CNS securities will be fixed at the time NSCC completes CNS processing.

CNS transactions received or compared on T+4 prior to cut off time in a T+5 cycle or on T+2 in a T+3 cycle will be included in either the night time allocation cycle or the day time allocation cycle depending on when the data is received from the marketplace or member. Positions which remain open after the evening cycle may be changed as a result of one day settling trades. To avoid creating a customer segregation problem for members with respect to short positions first appearing as compared on settlement day, all one day settling CNS items will automatically be exempted from CNS delivery to the extent they create or increase an existing short position. Members will have the ability through daily instructions to override this exemption for specific issues or through standing instructions to override this exemption for all issues. The proposal also will prohibit members with a long position to which an exercise privilege attaches from submitting an exercise notice with respect to one day settling items.

Currently, NSCC guarantees the settlement of CNS trades as of midnight of the day they are reported to members as compared and the settlement of non-CNS trades from the morning of T+4 through and including T+5. Since one day settling items will appear on the CTS initially on T+5 settlement day, they could settle before midnight of the day they are first reported as compared (*i.e.*, CNS trades could settle before the guarantee becomes effective). NSCC believes that one day settling transactions should receive the same guarantee of completion as other trades settling the same day. Accordingly, a secondary purpose of the rule proposal is to revise NSCC's trade guarantee rules to provide that for CNS one day settling items, the guarantee will be effective at the time NSCC completes the trade comparison process for trades which NSCC compared or at the time NSCC completes the trade recording process for trades which NSCC receives in a locked-in capacity.[6] With respect to non-CNS one day settling items, NSCC will guarantee such trades from completion of comparison or recording through T+5. If a party to a one day settling trade is a member of an interfacing clearing corporation, such guarantee will not be applicable unless an agreement to guarantee such trade exists between NSCC and the interfacing clearing corporation.

Additionally, the proposal provides that transactions in securities which are subject to a voluntary corporate reorganization, have a trade date on or before the expiration of the voluntary corporate reorganization, and are compared or received after T+3 and at least one day prior to the end of the protect period[7] will be processed on a trade-for-trade basis. The proposal also includes certain technical corrections to NSCC's rules and procedures by deleting any reference to the National Institutional Settlement System ("NISS") or TAD[8] and by reclassifying Miscellaneous Delivery Order ("MDO") as simply a Delivery Order ("DO").

The primary purpose of the rule change is to modify NSCC's rules and procedures in order to provide a one day settling capability. NSCC believes that members should have the opportunity to become familiar with this new settlement feature before T+3 is implemented. Accordingly NSCC plans to implement this enhancement while still in the T+5 cycle.

(b) NSCC believes the proposed rule change is consistent with the requirements of the Act, specifically section 17A of the Act, and the rules and regulations thereunder because the rule proposal will facilitates the prompt and accurate clearance and settlement of securities transactions.

[5] The CTS will continue to indicate a net position of CNS and non-CNS trades scheduled to settle the next business day and also will show individual positions in all one day settling items scheduled to settle that day. The member's actual settlement position of that day will be a combination of the net positions reported the day before and the one day settling items reported that day on the CTS. Settlement of the one day settling items may occur prior to the issuance of the CTS reporting such trades.

[6] This guarantee applies to all trades that settle on the next business day. For example, trades processed on T+5 prior to the cut off time will be guaranteed at that time. A trade processed on T+5 after cut off time, however, will still be guaranteed as of midnight of the day it is reported.

[7] The protect period is a period during which NSCC provides protection to members' positions in securities that are subject to a voluntary reorganization. The protect period begins two business days before the expiration date of a tender offer through such time as NSCC determines, which generally is five business days after the date of the tender offer.

[8] These references are no longer needed because they represent defunct organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[9] of the Act requires the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's one day settling capability should help promote prompt and accurate clearing and settlement because it will increase the number of trades that are included in the normal settlement cycle. Thus, the number of failed trades and the time required for settlement should be reduced.

As discussed above, as of June 7, 1995, a new settlement cycle of T+3 will be mandated by Commission Rule 15c6-1. The Commission believes that settlement of trades in a shorter time frame will reduce risk to the securities market, including risk to clearing corporations as a result of member failure. Without a one day settling feature, it is possible that many trades may fail to settle according to this settlement time frame. Thus, the proposal is consistent with Section 17A(b)(3)(F)[10] of the Act in that it should enhance NSCC's ability to safeguard securities and funds under its control.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because participants should have the opportunity to become familiar with the one day settling capability prior to the implementation of T+3 settlement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

[9] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[10] 15 U.S.C. 78q-1(b)(3)(F) (1988).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-NSCC-95-02 and should be submitted by March 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-95-02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 95-5863 Filed 3-9-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35454; File No. SR-NASD-94-62, Amendment No. 2]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Protection for Member-to-Member Limit Order Handling on Nasdaq

March 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[11] 17 CFR 200.30-3(a)(12) (1994)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD recently proposed to amend SR-NASD-94-62 relating to limit order protection for member-to-member limit order handling in The Nasdaq Stock Market.[1] Currently, the NASD's Interpretation to the Rules of Fair Practice[2] makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. That amendment clarified that the "terms and conditions" exception to the Interpretation applies only to limit orders from institutional accounts, whether such limit orders come from a firm's own customers or are member-to-member limit orders. The term "institutional account" is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice.[3] The NASD now is proposing to amend the proposed rule change to provide that the "terms and conditions" exception to the Interpretation also applies to limit orders that are 10,000 shares or more, unless such orders are less than $100,000 in value, as well as to limit orders from institutional accounts. Below is the text of the proposed rule change. Proposed new language, including the language that was added in the original proposal, is italicized; language to be deleted is bracketed.

Limit Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of [their] customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle [their] customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Interpretation

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from a customer (whether its own customer or a customer of another member) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, [under the specific terms and conditions by which the order was accepted by the firm,] shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order.

[1] *See* Securities Exchange Act Release No. 35391 (Feb. 16, 1995), 60 FR 9878 (Feb. 22, 1995). Notice of the proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35122, Dec. 20, 1994) and by publication in the **Federal Register** (59 FR 66389, Dec. 23, 1994).

[2] NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.07.

[3] NASD Manual, Rules of Fair Practice, Art. III, Sec. 21 (CCH) ¶ 2171.

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and provided further, that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice; or (2) 10,000 shares or greater, unless such orders are less than $100,000 in value. Nothing in this section, however, requires members to accept limit orders from *any* customer(s).

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

* * * * *

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment to the proposed rule change is to expand the Interpretation's "terms and conditions" exception to the protection of limited orders. The NASD is amending its proposal to permit member firms to negotiate terms and conditions for certain larger sized customer orders from accounts other than institutional accounts ("retail accounts").

The NASD believes that the terms and conditions exception to the handling of limit orders should apply not only to customer orders from institutional accounts, but also to other orders that are usually perceived of as "institutional" in nature. To ensure that markets makers are able to negotiate regarding the handling of such orders, the NASD is proposing to permit markers to negotiate terms and conditions with respect to orders of retail accounts that are 10,000 shares or greater, unless such orders are less than $100,000 in value. This numerical size limit is intended to ensure that ordinary limit orders from detail accounts are not subject to the terms and conditions exception.

The provision allows market makers to negotiate specific order handling procedures with parties that deal in larger sized orders. Therefore, market makers can employ appropriate strategies in filling larger sized orders. The order sizes contained in this amendment are intended to ensure that the Interpretation provides limit order protection for retail investors, while maintaining the ability of market makers to negotiate with respect to institutional-sized orders, whether account customers constitute institutional accounts or retail accounts.

Accordingly, the amendment provides that a member firm that accepts a limit order from a person or entity that does not fall with the definition of institional account may not initiate the negotiation of any terms and conditions on the acceptance of that limit order, unless that order is for 10,000 shares or more and is for a price of $100,000 or greater. For example, if an order were for 10,000 shares, but the price per share were only $5.00, the total order value would be $50,000. The order would not qualify for the terms and conditions exception because the total value of the order would be less than $100,000. This amendment does not affect the ability of a member firm to negotiate special terms and conditions with the customer of an institutional account, or its representative, that permit the firm to trade ahead of or at the same price as the limit order, regardless of the size or value of that order. The amended Interpretation would apply to limit orders placed by the firm's own customers and member-to-member limit orders.

The NASD believes that this approach accurately reflects the ordinary framework in which firms and institutions typically negotiate the conditions under which an institution's limit order is to be handled. Moreover, in its approval of the original NASD Interpretation regarding the handling of customer limit orders,[4] the Commission specifically indicated its view that the terms and conditions language of the original Interpretation was included in the NASD Rule to permit special treatment for institutional customer limit orders. In addition, in its own proposal regarding customer limit order protection of Nasdaq securities[5] the Commission solicited comment on the "terms and conditions" provisions in its rule, which would allow a market maker to set special conditions to allow it to employ the appropriate strategy in filling an institutional customer's order without being subjected to the requirements of the proposed rule. In the course of that discussion, the Commission proposed that measurable characteristics, such as numbers of shares, or dollar value of the order, should be used as means to distinguish retail orders from institutional orders with respect to terms and conditions.

Of course, the clarification of the Interpretation continues to permit a member to establish with its customers

[4] See Securities Exchange Act Release No. [illegible] (June 29, 1994), 59 FR 34883 (July 7, 1994).

[5] Securities Exchange Act Release No. [illegible] (Sept. 29, 1994), 59 FR 50867 (Oct. 6, 1994) (proposing 17 CFR 240.15c5-1)

or the order entry firm commissions or commission-equivalents regarding the handling of a limit order, provided that the member makes those charges clear to the customer. In this connection, the NASD notes that Nasdaq market makers are free to negotiate additional compensation from order routing firms to the extent that such compensation is economically and competitively justified. Similarly, the Interpretation continues in place the understanding that nothing in the Interpretation would obligate a market maker to accept limit orders from any or all customers or member firms.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) in that these proposed changes are designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, to remove impediments to and to perfect the mechanism of free and open market and a national market system, and in general to protect investors and the public interest.

(b) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Accordingly, while the NASD will monitor carefully for any adverse competitive effects of the Interpretation, it believes that any adverse effects are far outweighed by the enhanced execution opportunities provided public investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR-NASD-94-62, Amendment No. 2 and should be submitted by March 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-6088 Filed 3-8-95; 12:34 pm]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2176]

Imposition of Chemical and Biological Weapons Proliferation Sanctions on Foreign Persons

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that three companies have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: February 18, 1995.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202-647-4930).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), Sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (P.L. 102-182), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign persons, currently operating in the Asia-Pacific region, have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. Asian Ways Limited
2. WorldCo Limited
3. Mainway International

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons; and

(B) Import Sanction.—The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These sanctions apply not only to the companies described above, but also to their divisions, subunits, and any successor entities. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on February 18, 1995, they will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: March 1, 1995.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 95-6007 Filed 3-9-95; 8:45 am]

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[Public Notice 2175]

Proposed UNIDROIT Multilateral Treaty (Convention) on the International Return of Stolen or Illegally Exported Cultural Objects; Request for Public Comment

The International Institute for the Unification of Private Law (UNIDROIT) and the Government of Italy have scheduled a diplomatic conference for June, 1995 which will seek to conclude the draft convention prepared under UNIDROIT auspices on the International Return of Stolen or Illegally Exported Cultural Objects. The Department seeks public comment and recommendations on this draft convention.

UNIDROIT has undertaken this effort at the request of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The proposed UNIDROIT convention does not affect rights and obligations arising under the 1970 UNESCO convention on the protection of cultural property, to which the United States is a party.

The proposed UNIDROIT convention has essentially two parts, the first covering claims for the international return of stolen objects which may be brought by individual parties; the second covering claims by States for return of illegally exported objects. The Department has stated that the convention could only apply prospectively with regard to any claims for return made in the United States. Commentators on the draft convention should also take into account the following: First, there is no commitment by any federal agency at this stage to support U.S. ratification of this proposed convention; that determination can only be made after a final convention text is available. Second, ratification by the Untied States would need to be accompanied by federal implementing legislation which would further define and clarify what rights can be enforced and in what manner. In the event such legislation is proposed in the future, public comment would be sought at that time on all matters to be covered by such legislation.

The draft convention and additional treaty technical provisions are available from the Office of the Assistant Legal Adviser for Private International Law (L/PIL), 2100 K Street, NW., room 501, Washington, DC 20037–7180. Additional available documentation includes a report on the fourth inter-governmental drafting session and an explanatory report prepared by the Secretariat which does not necessarily reflect the views of participating States.

Comments on the draft convention from persons requesting these documents should be received not later than April 15. For further information, contact Harold S. Burman, Executive Director, Advisory Committee on Private International Law, at the above address or by fax at (202) 653–9854.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law.

[FR Doc. 95–5857 Filed 3–9–95; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 3, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50159
Date filed: February 27, 1995
Parties: Members of the International Air Transport Association
Subject: TC2 Telex Mail Vote 731, Switzerland-Greece fare application (RESO 072g)
Proposed Effective Date: April 1, 1995

Docket Number: 50172
Date filed: March 1, 1995
Parties: Members of the International Air Transport Association
Subject: MV/PSC/101 dated January 11, 1995, Mail Vote S067, r-1—RP1718a r-2—RP1718c
Proposed Effective Date: June 1, 1995

Docket Number: 50177
Date filed: March 3, 1995
Parties: Members of the International Air Transport Association
Subject: TC2 Telex Mail Vote 732, Kenya-Tanzania fares
Proposed Effective Date: April 1, 1995

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–5961 Filed 3–9–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 3, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50160
Date filed: February 27, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1995
Description: Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 41101, requests a certificate of public convenience and necessity for authority to offer scheduled foreign air transportation of persons, property and mail between points in the United States and Kiev and Odessa, Ukraine, via intermediate points in Europe (including but not limited to Frankfurt, Germany).

Docket Number: 50161
Date filed: February 27, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 27, 1995
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in foreign air transportation of persons, property and mail between any point in the United States and any point in Canada, subject to a condition that service to Vancouver and Montreal must be separately authorized for a period of two years, and service to Toronto must be separately authorized for a period of three years, consistent with the phase-in provisions for those three cities in the U.S. Canada Air transport Agreement signed on February 24, 1995.

Docket Number: 50163
Date filed: February 27, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1995
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and subpart Q of the Regulations, applies for a certificate of public convenience and necessity to provide scheduled foreign air transportation of passengers, property and mail between points in the United States and Kiev, Ukraine, via Amsterdam. Pursuant to the Department's Notice, Northwest further requests that the Department allocate three (3) U.S.-Ukraine frequencies to Northwest so that Northwest may operate the third-country code-share services proposed herein. Northwest requests that the certificate be made effective for a period of five years.

Docket Number: 50164
Date filed: February 27, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and subpart Q of the Regulations, applies for (1) a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation between a point or points in the United States, on the one hand, and Kiev and Odessa, Ukraine, on the other hand, via an intermediate point in Europe, and (2) an allocation of seven (7) weekly round-trip frequencies.

Docket Number: 50165
Date filed: February 27, 1995
Due Date for Answers; Conforming Applications, or Motion to Modify Scope: March 27, 1995
Description: Application of Air Caraibes Exploitation, pursuant to 49 U.S.C. Section 41301 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to engage in the foreign air transportation of persons, property and mail to conduct foreign charter air transportation of persons, property and mail with small aircraft between points in the French West Indies (Guadeloupe, Martinique, St. Barthelemy and St. Martin) and Puerto Rico, the U.S. Virgin Islands and Miami, Florida.

Docket Number: 50170
Date filed: February 28, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 1995
Description: Application of Phoenix Leasing Corporation, pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between points in the United States and Loretto, Cabo San Lucas and Huatulco, Mexico.

Docket Number: 50173
Date filed: March 1, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 29, 1995
Description: Joint Application of Federal Express Corporation and Evergreen International Airlines, Inc., pursuant to 49 U.S.C. Section 41105 of the Act and Subpart Q of the Regulations, respectfully request approval of the transfer to FedEx of the authority held by Evergreen to transport property and mail between points in the U.S. and points in the People's Republic of China, pursuant to Evergreen's Experimental Certificate of Public Convenience and Necessity for Route 638 and related exemptions and frequency allocations. The Joint Applicants request that the Department act expeditiously under non-oral show cause procedures. FedEx and Evergreen have entered into a Route Purchase and Transfer Agreement for the purchase and transfer of Evergreen's U.S.-China authority.

Docket Number: 50179
Date filed: March 3, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 31, 1995
Description: Application of Air Espana, S.A. trading as Air Europa, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for renewal of the Foreign Air Carrier Permit it was issued in 1990. Air Europa seeks Third and Fourth Freedom authority to continue to engage in charter foreign air transportation of persons and property between any point or points in Spain and any point or points in the United States. Air Europa also seeks Fifth Freedom charter authority to the maximum extent permitted by the Department, and subject to the Department's prior authorization requirements.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–5962 Filed 3–9–95; 8:45 am]

BILLING CODE 4910–62–P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that LaSalle National Bank, National Association, with offices at 120 South LaSalle, Street, Chicago, Illinois 60603, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: March 6, 1995.

By Order of the Maritime Administrator

Joel C. Richard,

Acting Secretary.

[FR Doc. 95–5827 Filed 3–9–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 94–105; Notice 2]

Decision That Nonconforming 1973 Triumph Spitfire MkIV Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonforming 1973 Triumph Spitfire MkIV passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1973 Triumph Spitfire MkIV passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1973 Triumph Spitfire MkIV), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an

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opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to decide whether 1973 Triumph Spitfire MkIV passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on January 4, 1995 (60 FR 525) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of the vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 108 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1973 Triumph Spitfire MkIV not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1973 Triumph Spitfire MkIV originally manufactured for importation into and sale in the Untied States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 6, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–5963 Filed 3–9–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–11; Notice 1]

Ford Motor Co.; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its windows fail to comply with the light transmittance requirements of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Ford has also applied to be exempt from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Standard No. 205, which incorporates by reference, the American National Standards Institute (ANSI) "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANSI Z26.1), specifies that automotive glazing materials used in front, side and rear windows of passenger cars shall have a regular luminous transmittance of not less than 70 percent of the light, at normal incidence, when measured in accordance with "Light Transmittance, Test 2" of ANSI Z–26.1–1980.

During the period of October 1994 through January 21, 1995, Ford manufactured approximately 8,250 1995 Continental vehicles on which the front door windows had a luminous transmittance of approximately 68 percent. According to Ford, miscommunication between Ford Glass production and fabrication plants concerning the properties and intended use of the glass resulted in its being used in the fabrication of windows for use in Continental production. Beginning with vehicle production on January 23, 1995, front door windows with a luminous transmittance of greater than 70 percent have been installed.

Ford supports its application for inconsequential noncompliance with the following:

In Ford's judgment, the condition is inconsequential as it relates to motor vehicle safety. Computer modeling studies and in-car evaluations previously conducted by Ford to assess the effect of reduced light transmittance windshields showed that even a 5 point reduction in the percentage of light transmittance, from 65 to 60 percent, resulted in a reduction in seeing distance of only 1 to 2 percent during night time driving, and little or no reduction in seeing distance during dusk and daytime driving. Based on these studies, the subject Continental front door windows with 68 percent light transmittance (67.5 percent at the door window installed angle) would be expected to result in no significant reduction (less than 1 percent) in seeing distance during night time driving, and virtually no reduction during dusk and daytime driving, compared to glass with a 70 percent transmittance. Reductions in seeing distances 2 percent or less have no practical or perceivable effect on driver visibility based on observers' reports in vehicle evaluations by Ford of windshields with line-of-sight transmittance in the 60 to 65 percent range.

The stated purpose of FMVSS No. 205 to which the light transmittance requirements are directed is "to ensure a necessary degree of transparency in motor vehicle windows for driver visibility." NHTSA, in its March, 1991 "Report to Congress on Tinting of Motor Vehicle Windows," concluded that the light transmittance of windows of the then new passenger cars that complied with Standard No. 205 did not present an unreasonable risk of accident occurrence. The "new passenger cars" that were considered to not present an unreasonable risk had effective line-of-sight light transmittance through the windshields as low as approximately 63 percent (determined by a 1990 agency survey, the results of which were included in the report). While light transmittance and driver visibility through front door windows is important to safe operation of motor vehicles, it is not as important as driver visibility through vehicle windshields. It follows that if light transmittance levels as low as 63 percent through windshields do not present an unreasonable risk to safety, then the side window glass in the subject Continentals also present no unreasonable risk to safety.

Therefore, while the use of front window glazing with luminous transmittance less than 70 percent is technically a noncompliance, we believe the condition presents no risk to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street NW, Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extend possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 10, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–5964 Filed 3–9–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding an information collection titled Examination Questionnaire.

DATES: Comments on this information collection are welcome and should be submitted by March 31, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding the following information collection:

Type of Review: Expedited.

Title: Examination Questionnaire.

Description: The OCC will collect information from each recently examined financial institution regarding bank management's views on the OCC examination. The OCC will use this information to resolve identified difficulties in the examination process, and to improve its service to the banking industry. This is a revision of a similar information collection approved under the same OMB Control Number and titled Customer Service Information Collections.

Form Number: CC 2000–01.

OMB Number: 1557–0199.

Respondents: Businesses or other for-profit.

Number of Respondents: 3,200.

Total Annual Responses: 4,800.

Average Hours Per Response: 10 minutes.

Total Annual Burden Hours: 800.

OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: March 6, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–5877 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–33–P

Information Collection Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for OMB review of an information collection titled (MA)—Reports of Condition and Income (Interagency Call Report).

DATES: Comments on this collection of information are welcome and should be submitted by March 27, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact at the Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219. ATTN: 1557–0081.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has submitted to the Office of Management and Budget (OMB) a request for OMB review of the following information collection:

Type of Review: Revision—Expedited.

Title: (MA)—Reports of Condition and Income (Interagency Call Report).

Description: National banks file reports pursuant to 12 U.S.C. 161 and other statutes. Data are used to evaluate and monitor the financial condition and earnings performance of individual banks as well as the entire banking industry.

The more significant proposed changes include expanded disclosures about a bank's involvement with off-balance-sheet activities, certain types of securities and certain reciprocal demand balances needed for deposit insurance assessment purposes. Further, the agencies would delete certain existing items, such as information regarding mandatory convertible debt, quarterly reconcilement of the agricultural loan loss deferral account, recoveries of "Special-Category Loans." Finally, the agencies would make several clarifying changes to the instructions.

Form Number: FFIEC 031, 032, 033, and 034.

OMB Number: 1557–0081.

Respondents: Businesses or other for-profit.

Number of Respondents: 3,400.

Total Annual Responses: 13,600.

Average Number of Hours Per Response: 37.9.

Total Annual Burden Hours: 515,440.

OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0081, Office of Management and Budget, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: March 6, 1995.

James F. E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–5878 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–33–P

[Docket No. 95–05]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for the OCC's determination of whether Federal law preempts the application of a Texas regulation that prescribes certain requirements relating to the signs and advertising used to identify branch

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banking facilities located in Texas. This notice and request for comment is provided pursuant to section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. It is intended to provide interested persons with an opportunity to provide comments prior to the OCC's issuance of a final opinion letter responding to the request.

DATES: Comments should be submitted on or before April 10, 1995.

ADDRESSES: Comments should be sent to the Communications Division, 250 E Street SW., Third Floor, Washington, DC 20219. Attention: Docket No. 95–05. Comments will be available for inspection and photocopying at the same location. Appointments for inspection of comments can be made by calling (202) 874–4700.

FOR FURTHER INFORMATION CONTACT: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure Division, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (section 114), Pub. L. 103–328 (12 U.S.C. 43), generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption determinations. The OCC must publish this notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches (four designated areas). The OCC must give interested persons at least 30 days to submit written comments, and must consider the comments in developing the final opinion letter or interpretive rule. The OCC must publish in the **Federal Register** any final opinion letter or interpretive rule that concludes that Federal law preempts State law in the four designated areas. Section 114 also provides certain exceptions, not applicable to the present request, to the **Federal Register** publication requirements.

Specific Request for OCC Preemption Determination

The OCC has been asked to determine whether Federal law preempts the application of Texas Rule 3.92, 7 Tex. Admin. Code Section 3.92 (Rule), "Naming and Advertising of Branch Facilities," in its entirety, to national banks. The Rule was adopted by the Texas State Finance Commission on August 19, 1994, pursuant to Texas Civil Statutes Section 342–917, "Identification of Facilities," which generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank.

The Rule prohibits advertising of a branch facility in a manner which implies or fosters the perception that a branch facility is a separate bank. While the Rule applies to all banks located in Texas, its provisions and prohibitions would most directly affect those banks that have what might be termed a "generic name" followed by a "geographic modifier" (*e.g.*, First National Bank of Dallas, Second State Bank of Austin), rather than what the Rule terms a "unique legal name" such as "Jones National Bank" or "Smith Bank." The principal provisions of the Rule include the following:

1. Upon acquisition of one bank to serve as a branch of another bank, use of the prior name of the extinguished bank to identify the acquired bank facility is prohibited on all signs, advertising and bank documents.

2. A sign directing the public to a branch facility must contain either the legal name of the bank or a unique logo, trademark, or service mark of the bank. If a separate identifying name is used for the branch facility that either contains the word "bank" or does not contain the word "branch" and further does not identify the facility as a branch, then an additional sign at the branch facility must identify the legal name of the bank and identify the facility as a branch. This additional sign, for example, could consist of lettering on the entrance door or any other lettering visible to the public.

3. The legal name of a bank is the full bank name as reflected in its charter, except that in signs and advertising a bank may omit terms which are either indicators of corporate status (N.A., Inc., Corp., L.B.A.) or geographic modifiers. However, where a bank without a unique legal name proposes to establish a branch facility (other than one within the city of domicile) within the same city as or within a 30-mile radius of a pre-existing facility of a bank with the same or substantially similar legal name, the bank must either include the geographic modifier on its signs, disclose the city of its domicile on all signs directing the public to the branch, or else put up a separate sign notifying the public that the facility is a branch.

4. If a bank without a unique legal name chooses not to place the signs as described in the foregoing paragraph, then the Rule requires the bank to provide notice to all existing bank facilities of other banks within the same banking market as the proposed branch location that have the same or substantially similar legal name, disregarding geographic modifiers, specifically advising the recipient of the name to be used in connection with the proposed branch facility. Banks so notified then have the opportunity to file a protest regarding the name of the proposed branch with the Texas State Banking Commission (for state banks) or with the OCC (for national banks).

5. While banks in Texas, like other businesses, may operate under an assumed or professional name, they may not use an assumed name to evade the Rule.

6. The Rule does not prescribe specifics such as number, size, or location of signs, size of lettering, and so on. Further, it does not require that branch names, signs, or advertising be approved by any regulatory authority.

Request for Comments

The OCC requests comments on all aspects of the request for a determination of whether the application of the Rule to national banks is preempted by Federal law.

Dated: March 6, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–5879 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–33–P

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 13; 4–00236]

Harco National Insurance Company; Surety Companies Acceptable on Federal Bonds; Redomestication

Harco National Insurance Company has redomesticated from the state of New York to the State of Illinois effective December 31, 1994. The company was last listed as an acceptable surety on Federal bonds at 59 FR 34158, July 1, 1994.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 revision, on page 34158 to reflect this change.

Questions concerning this notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, 3700 East West Highway, Rm. 6F04, Hyattsville, MD 20782, telephone (FTS/202) 874–6507.

Dated: March 3, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–5859 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994—Rev., Supp. No. 11; 4–00236]

Municipal Bond Investors Assurance Corporation; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Municipal Bond Investors Assurance Corporation of Armonk, New York, under the United States Code, Title 31, Sections 9304–9308 to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 59 FR 34166, July 1, 1994, and subsequently suspended effective December 20, 1994, at 60 FR 531, January 4, 1995.

With respect to any surety bonds currently in force with Municipal Bond Investors Assurance Corporation, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Hyattsville, MD 20782, telephone (202/FTS) 874–6779.

Dated: February 28, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–5860 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1994 Rev., Supp. No. 12; 4–00236]

Reliance Surety Company; Surety Companies Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34174 to reflect this addition:

Reliance Surety Company. Business Address: 4 Penn Center Plaza, Philadelphia, Pennsylvania 19103. Phone: (215) 864–4000. Underwriting Limitation *b/*: $1,262,000. Surety Licenses *c/*: AL, AK, AZ, AR, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WV, WI, WY. Incorporated in: Delaware.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD, telephone (202) 874–6905.

Dated: March 3, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–5861 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

March 2, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Comptroller of the Currency (OCC)

OMB Number: 1557–0124.

Form Number: TA–1.

Type of Review: Revision.

Title: Uniform Form for Registration and Amendment to Registration as a Transfer Agent.

Description: This form is used by national banks and national bank subsidiaries for registration and amendment to registration as a transfer agent.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 105.

Estimated Burden Hours Per Recordkeeper: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 46 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–5874 Filed 3–9–95; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

March 3, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0367.

Form Number: IRS Forms 4804 and 4801.

Type of Review: Revision.

Title: Transmittal of Information Returns Reported Magnetically/ Electronically (4804); Transmittal of Information Returns Reported Magnetically/ Electronically (Continuation of Form 4804) (4802).

Description: 26 U.S.C. 6041 and 6042 require all persons engaged in a trade or business and making payments of taxable income must file reports of this income with the Internal Revenue Service (IRS). In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are used to provide a signature and balancing totals for magnetic media filers of information returns.

Respondents: Individuals or households, Business or other for-profit,

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Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 37,640.

Estimated Burden Hours Per Respondent:

Preparing form 4804—18 min.
Preparing form 4802—20 min.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 45,406 hours.

OMB Number: 1545–1226.

Regulation ID Number: FI–59–89 Final.

Type of Review: Extension.

Title: Proceeds of Bonds Used for Reimbursement.

Description: The rules require record maintenance by a State or Local Government or section 501(c)(3) organization issuing tax-exempt bonds ("Issuer") to reimburse itself for previously-paid expenses. This recordkeeping will establish that the Issuer had an intent, when it paid an expense, to later issue a reimbursement bond.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 2,500.

Estimated Burden Hours Per Recordkeeper: 2 hours, 24 minutes.

Frequency of Response: On occasion, Weekly, Monthly, Quarterly, Semi-annually, Annually, Biennially, Other.

Estimated Total Recordkeeping Burden: 6,000 hours.

OMB Number: 1545–1296.

Regulation ID Number: PS–27–91 (TD 8442) Final.

Type of Review: Extension.

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

Description: Section 6302(c) authorizes the use of Government depositaries. These regulations provide reporting and recordkeeping rules relating to the use of Government depositaries for taxes imposed by chapter 33 of the Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 9,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—60 hours.

Reporting—30 minutes.

Frequency of Response: On occasion, Quarterly, Other.

Estimated Total Recordkeeping Burden: 241,850 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–5875 Filed 3–9–95; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 47

Friday, March 10, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORD REVIEW BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 9722, Feb. 20, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1:30 p.m., March 7, 1995.

CHANGES IN THE MEETING: The place of the meeting has been changed to: Fifth Floor Theater, National Archives and Records Administration, 7th and Pennsylvania Ave., NW, Washington, D.C. 20408.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, D.C. 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

Sheryl L. Walter,

General Counsel.

[FR Doc. 95–6112 Filed 3–8–95; 2:55 pm]

BILLING CODE 6820–TD–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:13 a.m. on Tuesday, March 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a close meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–6084 Filed 3–8–95; 11:10 am]

BILLING CODE 6714–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: March 15, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 626th Meeting—March 15, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 2587–003, Northern States Power Company—Wisconsin
CAH–2.
Project No. 11459–002, Washington County Water Conservancy District
CAH–3.
Project No. 1869–011, Montana Power Company
CAH–4.
Omitted
CAH–5.
Project No. 4632–019, Clifton Power Corporation
CAH–6.
Omitted
CAH–7.
Omitted
CAH–8.
Project No. 7192–003, Eagle Hydro Partners
CAH–9.
Project No. 11240–000, Swanton Village, Vermont
Project No. 11241–000, Vermont Hydro Associates

Consent Agenda—Electric

CAE–1.
Docket Nos. ER95–457–000, ER94–961–001 and ER95–469–000, Florida Power Corporation
CAE–2.
Docket No. ER94–1561–000, Citizens Utilities Company
CAE–3.
Docket No. ER95–342–000, PacifiCorp
CAE–4.
Docket No. ER94–1114–000, Puget Sound Power & Light Company
CAE–5.
Docket No. ER92–242–000, Allegheny Generating Company
Docket No. EL92–10–000, Consumer Advocate Division of The West Virginia Public Service Commission, et al. v. Allegheny Generating Company
Docket No. EL94–24–000, Consumer Advocate Division of the West Virginia Public Service Commission, et al. v. Allegheny Generating Company
CAE–6.
Docket No. TX94–5–000, Old Dominion Electric Cooperative, Inc.
Docket No. ER94–1319–000, Delmarva Power & Light Company
CAE–7.
Docket No. ER94–692–001, Concord Electric Company
CAE–8.
Docket Nos. ER93–523–000, 002, ER93–533–000 and 002, Western Resources, Inc. and Kansas Gas & Electric Company
CAE–9.
Docket Nos. ER94–1625–001 and ER95–264–001, Wisconsin Electric Power Company
CAE–10.
Docket No. AC91–110–001, PacifiCorp
CAE–11.
Docket No. ER94–1691–002, AIG Trading Corporation
CAE–12.
Docket No. QF83–333–004, Cal Ban Corporation
CAE–13.
Docket No. RM92–12–001, Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978
CAE–14.
Docket No. RM93–20–001, Electronic Filing of Form No. 1 and Delegation to Chief Accountant
CAE–15.
Docket No. EL95–27–000, CGE Fulton, L.L.C.
CAE–16.
Docket No. AC95–53–000, Appalachian Power Company

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Consent Agenda—Oil and Gas

CAG–1.
Docket Nos. RP92–237–012, 013, 014, 015, RP95–60–001 and RP95–168–000, Alabama-Tennessee Natural Gas Company
CAG–2.
Docket No. RP95–160–000, Texas Gas Transmission Corporation
CAG–3.
Docket No. RP95–164–000, Texas Eastern Transmission Corporation
CAG–4.
Docket No. TM95–8–29–000, Transcontinental Gas Pipe Line Corporation
CAG–5.
Docket No. RP95–170–000, Granite State Gas Transmission, Inc.
CAG–6.
Docket No. RP95–161–000, Northern Natural Gas Company
CAG–7.
Docket No. RP95–165–000, Pacific Gas Transmission Company
CAG–8.
Omitted
CAG–9.
Omitted
CAG–10.
Docket No. GT94–50–000, East Tennessee Natural Gas Company
CAG–11.
Docket No. GT95–10–000, Texas Eastern Transmission Corporation
CAG–12.
Docket Nos. RP94–157–000, TM95–2–21–001, 002 and TM95–3–21–001, Columbia Gas Transmission Corporation
CAG–13.
Docket No. RP94–341–001, Texas Gas Transmission Corporation
CAG–14.
Docket No. RP95–119–000, Columbia Gas Transmission Corporation
CAG–15.
Docket No. TM95–2–22–000, CNG Transmission Corporation
CAG–16.
Docket Nos. CP93–505–000, 003, 004 and RP95–162–000, Panhandle Eastern Pipe Line Company
Docket No. CP93–506–003 and 004, Panhandle Gathering Company
CAG–17.
Omitted
CAG–18.
Docket No. RP92–122–003, Trunkline LNG Company
CAG–19.
Docket Nos. RP93–184–002, RP93–185–003 and RP94–76–001, Carnegie Natural Gas Company
CAG–20.
Docket Nos. RP95–26–000, RP94–218–000 and RP94–106–000, Pacific Gas Transmission Company
CAG–21.
Docket No. RP94–394–000, Panhandle Eastern Pipe Line Company
CAG–22.
Omitted
CAG–23.
Docket No. RP95–56–000, Questar Pipeline Company
CAG–24.
Omitted
CAG–25.
Docket No. RP93–14–000, Algonquin Gas Transmission Company
CAG–26.
Docket No. PR94–11–000, Olympic Pipeline Company
CAG–27.
Omitted
CAG–28.
Docket Nos. RP94–179–002, RP94–86–002 and RP94–252–002, Natural Gas Pipeline Company of America
CAG–29.
Omitted
CAG–30.
Docket No. RP94–286–001, Richmond Power Enterprise, L.P.
CAG–31.
Docket No. RP95–22–001, ANR Pipeline Company
CAG–32.
Docket No. RP95–30–001, Koch Gateway Pipeline Company
CAG–33.
Docket No. RP95–37–002, South Georgia Natural Gas Company
CAG–34.
Docket Nos. RP85–39–019 and 020, Wyoming Interstate Company, Ltd.
CAG–35.
Docket Nos. TM94–4–34–004 and 005, Florida Gas Transmission Company
CAG–36.
Docket No. RP91–203–051, Tennessee Gas Pipeline Company
CAG–37.
Docket No. RP95–97–000, Questar Pipeline Company v. PacifiCorp
CAG–38.
Omitted
CAG–39.
Omitted
CAG–40.
Docket No. CP93–200–003, CNG Transmission Corporation
Docket No. CP93–198–003, Big Sandy Gas Company
CAG–41.
Docket No. CP93–258–004, Mojave Pipeline Company
CAG–42.
Docket No. CP93–412–001, Northwest Pipeline Corporation
CAG–43.
Docket No. CP93–552–002, Carnegie Natural Gas Company and Carnegie Interstate Pipeline Company
CAG–44.
Docket No. CP94–109–001, Transcontinental Gas Pipe Line Corporation
CAG–45.
Docket No. CP94–219–001, Tennessee Gas Pipeline Company
CAG–46.
Docket No. CP94–286–001, Northern Natural Gas Company
Docket No. CP94–574–001, Peach Ridge Pipeline, Inc.
CAG–47.
Docket Nos. CP92–184–004, 007 and 009, Texas Eastern Transmission Corporation
CAG–48.
Docket No. CP94–740–000, Williams Natural Gas Company
CAG–49.
Docket No. CP95–179–000, Havre Pipeline Company, LLC
CAG–50.
Docket No. CP94–319–000, TCP Gathering Company
CAG–51.
Docket No. CP94–672–000, Colorado Interstate Gas Company
CAG–52.
Docket No. CP94–575–000, El Paso Natural Gas Company
CAG–53.
Docket No. CP94–591–000, Williams Natural Gas Company
CAG–54.
Docket No. CP89–1525–006, Northwest Pipeline Corporation
CAG–55.
Omitted
CAG–56.
Docket No. PR94–10–000, AIM Pipeline Company
CAG–57.
Docket No. RP95–169–000, K N Interstate Gas Transmission Company
CAG–58.
Docket Nos. RP94–422–000 and 001, Texas Gas Transmission Corporation
CAG–59.
Docket Nos. RP93–198–003 and 004, Alabama-Tennessee Natural Gas Company

Hydro Agenda

H–1.
Docket No. RM93–7–000, Charges and Fees for Hydroelectric Projects. Final Rule.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: March 8, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6167 Filed 3–8–95; 3:51 pm]

BILLING CODE 6717–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 15, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed amendments to Regulation E (Electronic Fund Transfers) regarding identification of consumer accounts on terminal receipts at automated teller machines (ATMs). (Proposed earlier for public comment; Docket No. R–0859)
2. Proposed amendments to Regulation Z (Truth in Lending) concerning "reverse mortgages" and high-rate or high-fee mortgages. (Proposed earlier for public comment; Docket No. R–0858).
3. Any items carried forward from a previously announced meeting.

Discussion Agenda

Please Note That No Discussion Items Are Scheduled For This Meeting.

Note: If the items are moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6074 Filed 3–8–95; 10:56 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, March 15, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6075 Filed 3–8–95; 10:56 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting—Changes

PREVIOUS FEDERAL REGISTER CITATION: 60 FR 12824.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: The Legal Services Corporation Board of Directors will meet on March 18, 1995. The meeting will commence at 9:00 a.m. on March 18, 1995.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 2002, (202) 336–8800.

CHANGES TO THE MEETING:

TIME AND DATE: The Legal Services Corporation Board of Directors has increased the number of days it will meet to two. The two-day meeting will now commence at 4:00 p.m. on March 17, 1995, and will reconvene at 9:00 a.m. on March 18, 1995.

The agenda published originally remains unchanged. However, it is anticipated that proposed changes to the Corporation's bylaws will be considered on Friday, March 17, 1995. All other agenda items are expected to be taken in order.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: March 8, 1995.

Patricia D. Batie

Corporate Secretary.

[FR Doc. 95–6102 Filed 3–8–95; 8:45 am]

BILLING CODE 7050–01–M

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Corrections

Federal Register
Vol. 60, No. 47
Friday, March 10, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 372

[Docket No. 93-165-3]
RIN 0579-AA33

National Environmental Policy Act Implementing Procedures

Correction

In rule document 95–2450 beginning on page 6000 in the issue of Wednesday, February 1, 1995, make the following corrections:

§ 372.5 [Corrected]

1. On page 6004, in the first column, in § 372.5(d), in the eighth line, the second "and" should read "an".

§ 372.6 [Corrected]

2. On page 6004, in the second column, in § 372.6, in the second line from the bottom, "opportunities" should read "opportunity".

§ 372.7 [Corrected]

3. On page 6004, in the second column, in § 372.7, in the second line, "programs" should read "program".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95-007-1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

Correction

In notice document 95–4182 beginning on page 9656 in the issue of Thursday, February 21, 1995, make the following corrections:

1. On page 9656, in the second column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the third line, "Information" should read "Introduction".

2. On the same page, in the third column, in the second full paragraph, in the sixth line, "protein" should read "protoxin"; and in the seventh line from the bottom, "market" should read "marker".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-139-1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Cotton

Correction

In notice document 95–3290 beginning on page 7746 in the issue of Thursday, February 9, 1995, make the following corrections:

1. On page 7746, in the second column, in the last paragraph, in the third line from the bottom, "Bollgard" was misspelled.

2. On the same page, in the third column, in the second full paragraph, in the fourth line, "phosphotransferase" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-128-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

Correction

In notice document 95–423 beginning on page 2372 in the issue of Monday, January 9, 1995, make the following correction:

On page 2372, in the table, in the second entry, in the last column, "Illinois." was omitted.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-1220-00-24-1A]

Supplemental Shooting Regulations

Correction

Notice document 95-3273, beginning on page 7743 in the issue of February 9, 1995, was inadvertently published in the proposed rule section of that issue. It should have appeared in the Notices section and the ≥43 CFR Part 8360≥ citation should not have been included as part of the document.

BILLING CODE 1505–01–D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Appendix G to Chapter 7

[AIDAR Notice 95-1]

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 95–4111 beginning on page 11911 in the issue of Friday, March 3, 1995, make the following corrections:

Appenix G to Chapter 7 [Corrected]

On page 11913, in the first column, in Appendix G to Chapter 7, in 2.(a), the last two lines should read "negotiate and execute contracts (see AIDAR Appendix A).".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-59-91]
RIN 1545-AQ86

Debt Instruments With Original Issue Discount; Contingent Payments

Correction

In proposed rule document 94–30728 beginning on page 64884 in the issue of Friday, December 16, 1994, make the following correction:

§ 1.1275-4 [Corrected]

On page 64899, in the first column, in § 1.1275-4(b)(9), in the second line, insert "apply" after "(b)(9)".

BILLING CODE 1505–01–D

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Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Medium and Heavy Vehicles; Stability and Control During Braking, Stopping Distance Requirements for Vehicles Equipped With Air and Hydraulic Brake Systems; Final Rules

49 CFR Part 393

Antilock Brake Systems for Commercial Motor Vehicles; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 5]
[Docket No. 93–69; Notice 2]

RIN 2127–AA00
RIN 2127–AE75

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In response to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, this final rule amends Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, to require medium and heavy vehicles to be equipped with an antilock brake system (ABS) to improve the directional stability and control of these vehicles during braking. For truck tractors, the ABS requirement is supplemented by a 30-mph braking-in-a-curve test on a low coefficient of friction surface using a full brake application. By improving directional stability and control, these requirements will significantly reduce deaths and injuries caused by jackknifing and other losses of directional stability and control during braking.

In addition, this final rule requires all powered heavy vehicles to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other towing trucks are required to be equipped with two separate in-cab lamps: one indicating malfunctions in the towing truck ABS and the other indicating malfunctions in the towed trailer or dolly ABS. Trailers produced during an initial eight-year period must also be equipped with an external malfunction indicator that will be visible to the driver through the rearview mirror of the towing truck or tractor. More specifically, the external trailer indicator will indicate an ABS malfunction to the driver, if the trailer is being towed by an older vehicle that is not equipped with an in-cab lamp for trailer ABS malfunction indication. In general, the indicators will provide valuable information about ABS malfunctioning to the driver and to maintenance and Federal and State inspection personnel.

DATES: *Effective Dates:* The amendments to 49 CFR 571.105 become effective on March 1, 1999. The amendments to 49 CFR 571.121 become effective on March 1, 1997. Compliance to § 571.121 with respect to air-braked trailers and single unit trucks and buses will be required as of March 1, 1998.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 10, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 92–29; Notice 5 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5892.

SUPPLEMENTARY INFORMATION:

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I. Overview

As part of NHTSA's plans to improve the braking performance of medium and heavy vehicles,[1] this final rule amends the agency's two brake standards for those vehicles by adopting requirements to improve the directional stability and control characteristics of these vehicles while braking. The two Federal Motor Vehicle Safety Standards (FMVSSs) are Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*. In formulating this final rule, NHTSA has relied on extensive fleet studies of tractor trailer combinations equipped with antilock systems, road testing of such vehicles at the agency's Vehicle Research Test Center (VRTC), review of its Fatal Accident Reporting Systems (FARS) data and other crash data, the positive experience with ABS-equipped heavy vehicles in Europe and throughout the world, comments to the public docket about this rulemaking, and other available information.

In order to fully understand the safety problem being addressed by this rulemaking, it is necessary to examine in detail the reasons for wheel lockup and the consequences of such lockup. Moreover, in order to fully understand the reasons for the agency's decision to require that heavy vehicles be equipped with a closed-loop ABS, it is necessary to understand the general characteristics of brake systems, the force-generating characteristics of tires, and the interactions between brake systems and tires.

To provide the reader with a means for gaining this understanding, NHTSA has included an Appendix in this document, which provides a discussion of basic service brake systems, loss-of-control crashes, and ABS characteristics. The Appendix discusses the types of heavy brake systems that

[1] Hereinafter referred to as "heavy vehicles."

are currently in use, how brake systems work, and why lockup occurs. It also discusses the force-generating characteristics of tires and how they are affected by varying levels of wheel slip and the need to take these characteristics into account in addressing the problem of loss-of-control crashes. Finally, the Appendix discusses the need for ABS and describes their method of operation. Several terms, such as "wheel slip" that are used throughout this notice are discussed in detail and defined in the Appendix. When terms whose precise meaning affects the understanding of the agency's rationale are introduced, the reader could refer to the Appendix for a discussion of the term.

Therefore, readers who lack a technical background and who desire a more complete understanding of this rulemaking may wish at this point to read the Appendix before moving on to the rest of the preamble.

NHTSA has decided to require the installation of "closed-loop"[2] antilock systems on all heavy vehicles. The agency, in accordance with Supreme Court precedent that required the agency to consider mandating the installation of a particular type of automatic restraint system (i.e., "airbags only") for passenger cars,[3] is adopting a rule that defines antilock brake systems, in performance terms, as systems that "automatically control the degree of rotational wheel slip[4] during braking" through sensors and transmitters that measure, transmit, and generate signals concerning the rate of wheel angular rotation to controlling devices which adjust brake application pressure to prevent wheel lockup. In addition, for truck tractors, the rule prescribes a 30-mph braking-in-a-curve dynamic test on a low coefficient of friction surface.

Although some commenters characterized NHTSA's definition as an impermissible design standard, NHTSA has specifically sought to avoid imposing unnecessary design restrictions or impeding the future development of ABS, by adopting a definition that permits any antilock brake system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to excessive wheel slip. To the extent that NHTSA's definition restricts design choices, e.g., by requiring a "feedback" system in which control devices must respond to signals that monitor wheel slip, the requirements are stated broadly and in performance terms. Such an approach is consistent with that adopted in numerous other Federal Motor Vehicle Safety Standards, including Standard No. 108 which requires vehicles to be equipped with specified lamps and reflective devices, Standard No. 111 which requires that vehicles be equipped with rearview mirrors, and Standard No. 208 which requires vehicles be equipped with safety belts.

Moreover, the United States Court of Appeals for the Sixth Circuit has upheld a dimensional restriction on rectangular headlamps, reasoning that "uniformity of headlamp size is an element of headlamp performance."[5] Accordingly, NHTSA has decided to reject the conceptual objections to "closed-loop" ABS systems expressed by commenters whose economic self-interest militates against the requirement, including manufacturers of alternative, non-electronic braking systems that are incapable of sensing and adjusting braking pressures to control that wheel slip, and an association of fleet owners that may wish to avoid incurring the added expense of purchasing vehicles that are equipped with electronic ABS systems.

Currently, all powered[6] heavy vehicles equipped with ABS are required to be equipped with an in-cab ABS malfunction indicator lamp indicating malfunctions in the powered vehicle's ABS. Today's final rule requires trucks (including truck tractors) equipped to tow another air-braked vehicle to be equipped with another, separate in-cab lamp indicating malfunctions in the ABS(s) of the towed vehicle(s). For an eight-year period, the amendment requires trailers to be equipped with an external ABS malfunction indicator that will be visible to the driver of the towing truck or truck tractor through the rearview mirror. In particular, the external trailer indicator lamp will provide information to the driver, if the trailer is being towed by an older vehicle that is not equipped with an in-cab lamp indicating trailer ABS malfunctions. In general, the indicators will provide valuable information about ABS malfunctioning to the driver and to maintenance and Federal and State inspection personnel.

In separate, related documents published elsewhere in today's **Federal Register**, NHTSA announces its decision to reinstate stopping distance requirements for air-braked heavy vehicles and to establish such requirements for hydraulically-braked heavy vehicles. In addition, to carry out the antilock requirement, the Federal Highway Administration (FHWA) is announcing its intent to require such systems on heavy vehicles to be operational.

NHTSA is issuing this final rule on directional stability and control pursuant to the Motor Carrier Act of 1991, a part of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 4012 directs the Secretary of Transportation to initiate rulemaking concerning methods for improving braking performance of new commercial motor vehicles,[7] including truck tractors, trailers, and their dollies. Congress specifically directed that such a rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. The Act requires that the rulemaking be consistent with the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31147) and be carried out pursuant to, and in accordance with, the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) (49 U.S.C. 30101 *et seq.*).

NHTSA notes that, in the mid-1970's, Standard No. 121 was amended to include stringent stopping distance requirements, coupled with a "no lockup" requirement, which had the effect of requiring heavy vehicles to be equipped with antilock brake systems. In response to a legal challenge, the U.S. Court of Appeals for the 9th Circuit invalidated the stopping distance and "no lockup" requirements in Standard No. 121, along with certain other provisions, holding that the standard was "neither reasonable nor practicable at the time it was put into effect."[8]

As explained throughout this document, the underlying conditions related to equipping heavy vehicles with antilock brake systems differ markedly from 20 years ago when the petitioners challenged the agency in *PACCAR*. First, antilock brake technology has advanced dramatically since the mid-1970's, and antilock brake systems are now in widespread, everyday use, both in this country and

[2] A closed-loop (control) system is one which examines the output of the system and adjusts the input to the system in response to that output. This inclusion of the output (or some function of the output) as part of the input to such a system is referred to as feedback.

[3] (*Motor Vehicle Manufacturers' Association* v. *State Farm Insurance*, 463 U.S. 29, (1983))

[4] See the Appendix for a discussion of this term and directional stability.

[5] *Chrysler Corp.* v. *DOT*, 515 F.2d 1053, 1058–59 (1975).

[6] By powered vehicle, the agency means a vehicle equipped with an engine that propels the vehicle. In contrast, a non-powered vehicle, such as a trailer, is towed by another vehicle.

[7] Vehicles with a gross vehicle weight rating (GVWR) of 26,001 or more pounds.

[8] *PACCAR* v. *NHTSA*, 573 F.2d 632 (9th Cir. 1978), *cert. denied*, 439 U.S. 862 (1978)

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throughout the world. Second, NHTSA's extensive fleet study about heavy vehicle antilock systems demonstrates that these systems are reliable when placed in use. Third, the agency's testing of truck tractors equipped with antilock systems indicates that they provide significantly improved directional stability and control compared to vehicles without antilock systems. Fourth, while the antilock systems used in the mid-1970s also incorporated significantly larger, more aggressive foundation brakes, which were sometimes incompatible with less aggressive systems on existing vehicles when the antilock system malfunctioned, the requirements being adopted today do not necessitate such aggressive brakes. Therefore, they do not have the potential for creating a more dangerous highway environment. Fifth, the performance requirements adopted in today's final rule do not raise practicability concerns. Based on these and other considerations discussed throughout this document, NHTSA believes that today's final rule satisfies the concerns raised by the *PACCAR* court.

II. Background

A. The Safety Problem: Loss of Control Crashes

Crashes involving heavy vehicles result in a significant number of fatalities and injuries, and a significant amount of property damage each year. Based on available statistics, NHTSA has estimated the number of crashes in 1992 for several different groups of heavy vehicles. For heavy combination vehicles, the agency estimates that there were about 168,000 crashes. These crashes resulted in about 13,600 injuries and 387 fatalities to the occupants of heavy combination vehicles and about 51,500 injuries and 2,452 fatalities to the occupants of the other vehicles involved. For truck tractors operating without a trailer, also known as "bobtail" truck tractors, the agency estimates that there were about 8,400 crashes, resulting in about 1,200 injuries and 39 fatalities to truck tractor occupants and about 2,600 injuries and 178 fatalities to occupants of other involved vehicles. For heavy single-unit trucks and school buses, the agency estimates that there were about 192,600 crashes, resulting in about 15,700 injuries and 165 fatalities to truck and school bus occupants and about 48,300 injuries and 891 fatalities to occupants of other involved vehicles. For transit and intercity buses, the agency estimates that there were about 49,500 crashes, resulting in about 19,500 injuries and 28 fatalities to bus occupants and about 9,100 injuries and 230 fatalities to occupants of other involved vehicles.

Based on analyses of both national and state accident data, NHTSA estimates that between 10 percent and 15 percent of the crashes involving heavy combination vehicles (including bobtail truck tractors) involved in a jackknife or other braking-induced instability or loss of control. For a more detailed discussion of the injury statistics, the reader should refer to the Final Economic Assessment (FEA) for this rulemaking.

This rulemaking focuses on crashes involving loss-of-control. Such incidents result from braking-induced wheel lockup with subsequent loss of the ability of the vehicle's tires to generate "stabilizing forces."[9] This loss of tire stabilizing forces can result in either vehicle directional instability if it occurs at the vehicle's rear wheels or loss of steering control if it occurs at the vehicle's steering (front) wheels.

B. Braking Systems, Tires, Wheel Lockup, and Loss of Control Crashes

When a vehicle driver makes a brake application that is too "hard" for conditions, the driver is likely to lock some or all of the vehicle's wheels (i.e., the wheels will be "sliding" rather than "rolling"). Locking up wheels is more likely to occur under conditions where the maximum forces that can be generated by the vehicle's tires are reduced, i.e., when the vehicle is lightly loaded or empty and/or when the road is slippery. When wheel lockup occurs, vehicle loss-of-control can result. Incorporation of an ABS decreases the likelihood of wheel lockup, and increases the driver's ability to maintain control during severe braking maneuvers, that would otherwise lead to wheel lockup and resultant loss of directional stability and control, if the vehicle is not equipped with an ABS.

III. US and Foreign Activities Related to Stability and Control During Braking Performance

A. Early US Regulatory History

NHTSA has been concerned about the safety of heavy vehicle braking systems since the agency's inception. On October 11, 1967, the predecessor of NHTSA, the FHWA's National Highway Safety Bureau, published a notice of its intention to promulgate brake standards for hydraulic and air-braked trucks and buses, and air-braked trailers. (32 FR 14279.) The initial notice of proposed rulemaking (NPRM) for air-braked systems proposed various requirements, including requiring vehicles equipped with such systems to stop within certain distances, from certain speeds, without leaving a 12-foot wide lane and without lockup of any wheel "more than momentarily." (35 FR 10368, June 25, 1970.) A companion NPRM for hydraulic brake systems proposed essentially identical performance requirements for heavy vehicles equipped with those systems. (35 FR 17345, November 11, 1970.) These notices proposed that heavy vehicles would have to stop from 60-mph within 216 feet on a surface with a skid number of 75.[10] The "no lockup" provision was intended to minimize skidding, spinning, and jackknifing due to wheel lockup and loss of directional stability.

In the final rule establishing Standard No. 121, the agency decided to increase the 60-mph stopping distance from 216 feet to 245 feet. (36 FR 3817, February 27, 1971.) The final rule amending Standard No. 105 to extend its applicability to heavy vehicles, also increased the 60-mph stopping distance for those vehicles to 245 feet. (37 FR 17970, September 2, 1972.) The requirements for air-braked vehicles were to become effective on September 1, 1973, and those for hydraulic-braked vehicles, on September 1, 1974.

Although neither standard specifically required antilock, NHTSA anticipated that manufacturers would equip heavy vehicles with antilock brake systems to comply with these requirements. The agency explained that the less stringent stopping distance was being required to reflect more accurately the vehicle performance given the test track road surface's friction characteristics.

Since the required stopping distances were shorter than the stopping performance achieved by certain heavy vehicles, new, more aggressive foundation braking systems were necessary for those vehicles. In particular, vehicles with short wheelbases needed to have considerably more aggressive front axle brakes to meet the shorter stopping distance requirements. If not kept properly adjusted, these more aggressive front brakes might produce a brake "pull" to one side, which was disconcerting to drivers, particularly on vehicles without power steering. In addition, drivers were concerned about loss of steering control caused by wheel lockup on the steering axle. At the time, most manufacturers equipped their vehicles with antilock devices because the standards required stops to be made without more than momentary lockup of the wheels. These devices served to prevent steering axle lockup problems as well, but there was concern that safety problems could result on short-wheelbase, high-center-of-gravity vehicles, in the event that the antilock system should malfunction.

NHTSA extended the effective dates for the stopping distance requirements in Standard No. 105 and Standard No. 121. (37 FR 3905, February 24, 1972; 38 FR 3047, February 1, 1973; 39 FR 17550, 17563, May 17, 1974.) Prior to the final effective date for Standard No. 105, the amendments pertaining to heavy vehicles were withdrawn, so the requirements for heavy hydraulic-braked trucks and buses never went into effect. (40 FR 18411, April 28, 1975.) Standard No. 121 became effective on January 1, 1975, for trailers, and on March 1, 1975, for trucks and buses. At that time, the 60-mph stopping distance requirement remained at 245 feet. However, after several revisions to the stopping distance requirements, NHTSA amended the standard by extending the 60-mph stopping distance requirement to 293 feet, as requested by Freightliner in a petition for reconsideration. (41 FR 8783, March 1, 1976.)

B. PACCAR Case

In January 1975, PACCAR (a truck manufacturer), the American Trucking Associations (ATA), and the Truck Equipment and Body Distributors Association (TEBDA) sued the agency, challenging the stopping distance requirements in Standard No. 121, which they believed required the use of antilock brake systems.

Specifically, the petitioners challenged the 245-foot stopping distance. The subsequent increase to 293 feet, a distance that did not necessitate such aggressive front brakes, occurred after the suit was filed. The petitioners argued that the agency failed to demonstrate a safety need for the standard and that the testing procedures were not objective, impracticable, and unreasonable. TEBDA objected to the standard's certification requirements.

In response to the suit, the stopping distance and "no lockup" requirements in Standard No. 121, along with certain other provisions, were invalidated by the United States Court of Appeals for the 9th Circuit in *PACCAR*. The court held that NHTSA was justified in promulgating a standard requiring improved air brake systems and stability mechanisms. However, after reviewing the record about reliability problems with antilock brake systems then in use, the court further held that the standard was "neither reasonable nor practicable at the time it was put into effect." *Id.* at 640. Among the court's other findings were that the agency had a responsibility (1) to examine the results of its rulemakings by investigating more fully the safety of vehicles in use, (2) to assure that the new systems it requires are reliable when placed in use, and (3) to determine that its regulations do not produce a more dangerous highway environment than that which existed prior to government intervention. Based on these findings, the court stated that

> * * * those parts of the Standard requiring heavier axles and the antilock device should be suspended. The evidence indicates that this can be accomplished if we hold, as we do, that the stopping distance requirements from 60 mph are invalid * * * We hold only that more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation.

Id. at 643.

The court also ruled on the objectivity and practicability of the testing procedures in Standard No. 121. First, the court stated that road surface skid numbers used for testing certified vehicles were "ill-chosen" where they assumed the use of a particular tire no longer in production. *Id.* at 644. Second, the skid number method of testing was not objective. *Id.* at 644. Third, the testing procedure was not practicable because fluctuations in skid numbers on a given road surface made it impracticable for manufacturers to conduct tests that assure that their vehicles will exactly meet the objective standard when tested by NHTSA. *Id.* at 644. Fourth, manufacturers are entitled to testing criteria that they can rely on with certainty. *Id.* at 644. Fifth, the standard failed to specify formal and reasonably specific testing criteria about the time intervals between tests, the duration of permissible wheel lockup during tests, and the amount of curving in testing track roadways. *Id.* at 645. Sixth, the agency's suggestions of alternative methods of satisfying the Safety Act's "due care" provision were inadequate since such alternatives were not set forth in the regulations. Id. at 645.

The court remanded the matter to NHTSA to clarify certain provisions in Standard No. 121. In response to *PACCAR*, the agency issued several notices amending the standard to be consistent with the decision. (43 FR 39390, September 5, 1978; 43 FR 48646, October 19, 1978; 43 FR 58820, December 18, 1978; 44 FR 46849, August 9, 1979.) In the September 1978 notice, the agency amended the standard to specify test procedures and conditions for frictional characteristics of the test track surface, duration of time intervals between road tests, duration of permissible wheel lockup during road tests, the amount of curving in the test track, and the means for establishing the frictional resistance of the road test surface. In the October 1978 notice, the agency set forth its interpretation of *PACCAR* to guide continuing compliance with the standard. Specifically, the notice explained that the court had invalidated the "no lockup" provisions in S5.3.1 and S5.3.2 as they apply to trucks and trailers, along with the related stopping distances established for 60-mph stopping tests for heavy vehicles. That notice also amended the requirements to provide for "due care certification." In the December 1978 notice, NHTSA responded to petitions for reconsideration of certain aspects of the September 1978 notice, including vehicle exclusions and road test procedures. The agency withdrew the changes to specification of initial brake temperatures, skid number ranges, and duration of wheel lockup that were made in the September notice. In the August 1979 notice, the agency further clarified its interpretation of certain findings of *PACCAR*.

C. US and Foreign Experience With ABS Since PACCAR

As a result of the 1978 *PACCAR* decision, U.S. manufacturers chose to halt development and production of ABS for heavy vehicles. For instance, before the 1978 ruling, A-C Sparkplug, a domestic manufacturer of ABS, produced about 180,000 ABS units per year. By 1984, it was producing only about 500 units annually.

NHTSA continued to study the effectiveness of heavy truck antilock brake systems. Among other things, the agency studied the in-use experience with ABS in other countries, conducted performance testing of ABS equipped heavy vehicles, and conducted an extensive domestic fleet in-use test of ABS equipped heavy vehicles.

In response to section 9107 of the Truck and Bus Regulatory Reform Act of 1988, NHTSA submitted a report to Congress titled "Improved Brake Systems for Commercial Vehicles" (Report No. DOT HS 807 706). (April 1991) After discussing crash data concerning heavy vehicle brake systems, the report examined factors related to braking effectiveness, stability and

[9] See the Appendix which defines and discusses this term.

[10] A skid number describes the friction properties of pavement. A skid number of 75 is representative of a dry surface with a relatively high coefficient of friction. See the Appendix for a discussion of this term.

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control during braking, and braking system compatibility of heavy combination vehicles. Among other things, the report indicated that the stopping distances and directional stability of heavy vehicles could be improved by equipping those vehicles with ABS.

With respect to the in-use experience with ABS in other countries, NHTSA conducted a study of the performance, reliability, and maintainability of in-service commercial air-braked vehicles equipped with ABS in Europe and Australia.[11] At the time of the study in 1987, there were approximately 1.5 million ABS-equipped trucks and tractors, and 0.9 million ABS-equipped trailers in use in Western Europe, and 92,000 trucks and tractors and 80,000 trailers in Australia. ABS market penetration, at that time, in Western Europe was estimated to be 4.5 percent for trucks and tractors and 5.6 percent for trailers, while in Australia the comparable figures were 1.3 percent for trucks and tractors, and less than 1 percent for trailers. Based on data derived from interviews with fleets which were using ABS and surveys conducted by ABS and vehicle manufacturers, the reliability of ABS when equipped on European vehicles was estimated to be 1 to 2 ABS component failures per 1000 vehicles per month. Based on those data, it was predicted that between 4 and 20 malfunctions would occur with the 200 ABS-equipped truck tractors involved in the NHTSA-sponsored two-year in-service fleet study, which was subsequently performed between 1989–91. In fact, nineteen ABS components failed, which is within the range predicted by the European study.

Among the study's other findings were that maintenance was done only when a malfunction indicator activated; malfunction indications did not cause drivers to disrupt their operations and stop en route; no special maintenance was performed on the ABS beyond routine periodic inspections; no problems with electronic and radio frequency interference (RFI) were reported; with proper maintenance, ABS life was expected to equal that of the vehicle; and carriers reported that drivers liked driving ABS-equipped vehicles. Although some problems were encountered with wiring and connector failures, ABS manufacturers believed that their systems were generally reliable and expected future improvements.

Since the completion of NHTSA's study, several European countries have issued regulations requiring heavy vehicles to be equipped with antilock brake systems. Specifically, the Economic *Commission for Europe*[12] (ECE) Regulation No. 13 includes technical requirements for antilock systems in Annex 13 of its regulation.[13] Annex 13 sets forth definitions of antilock brake systems and component parts, various "types" of antilock systems, and test procedures. ECE's Annex 13 specifies a design requirement and dynamic performance requirements. The European Economic Community (EEC Common Market) directive has identical requirements. As a result, since October 1, 1991, all heavy trucks (with GVWR greater than 16 metric tons), interurban buses (with GVWR greater than 12 metric tons), and heavy trailers (with GVWR greater than 10 metric tons) submitted for new type approvals in European countries adopting the standard have been required to be equipped with ABS. Accordingly, ABS have been installed on tens of thousands of European heavy vehicles that have traveled millions of miles over the last few years. All vehicles for which ABS is mandatory under Annex 13 are required to have a Category 1 system. Such systems are essentially the same as those required by today's final rule.

With respect to performance testing, NHTSA has issued two reports on the stopping distance capability of several different types of heavy air-braked vehicles at various loading conditions.[14] The agency also tested some vehicles equipped with ABS, thus allowing comparisons about stopping distances with and without these devices. At the beginning of each test series, these vehicles were equipped with new tires and with new original equipment brake system components to provide consistency in test results. At the beginning of each testing series, the tests were conducted on various vehicles (school buses, transit buses, single unit trucks, tractor trailers) at the loaded and empty conditions and with various equipment (with ABS activated and deactivated). All the tests were straight line stops from 60 mph on a dry concrete surface. The test results indicated that: (1) All stops made with ABS were stable, regardless of whether the vehicle was operating fully loaded or empty, and (2) stopping distance improvements with ABS (compared to no ABS) were greatest in the bobtail configuration (+47 percent in one case), were significant with an empty trailer (+29 percent in one case) and were smallest (+4 percent) in the fully loaded condition.[15]

NHTSA's fleet testing program of ABS-equipped truck tractors evaluated the reliability, maintainability, and durability of 200 truck tractors equipped with ABS. The fleet study found that current generation ABSs are reliable and can be successfully installed on commercial motor vehicles.[16] The agency added trailers to the fleet study program in 1990–1991 and found similar results. A copy of that study has been submitted to the public docket.[17] The findings of the fleet testing program are discussed later in this preamble.

IV. Advance Notice of Proposed Rulemaking (ANPRM)

On June 8, 1992, NHTSA responded to Congress' 1991 mandate in ISTEA by publishing an advance notice of proposed rulemaking (ANPRM) announcing the agency's interest in measures to improve the directional stability and control of heavy vehicles during braking. (57 FR 24212.) The advance notice stated the agency's tentative conclusion that ABS represents the best available and most reliable technology to reduce jackknifing and other loss-of-control crashes during braking. The notice posed questions about such matters as the occurrence of loss-of-control crashes; the availability and performance of systems to improve directional stability and control under all conditions of braking and vehicle load; potential regulatory approaches to improve the directional stability and control of heavy vehicles during braking, including anticipated performance requirements, test procedures, and equipment requirements; a schedule for implementing requirements; diagnostic equipment to ensure in-use functioning of the systems; and anticipated costs of such requirements.

[11] "European/Australian Experience with Antilock Braking Systems in Fleet Service," U.S. Department of Transportation, NHTSA, DOT HS 807 269, March 1988.

[12] The Economic Commission for Europe (ECE) is a United Nations organization comprised of European countries plus the United States and Canada, which establishes requirements applicable to the type approval of motor vehicles and other products for sale in those nations that choose to apply the requirements.

[13] Annex 13 is titled "Requirements Applicable to Tests for Braking Systems Equipped with Anti-Lock Devices (Wheel-Lock Preventers)." It is Annex 13 of ECE Regulation No. 13, which is titled "Uniform Provisions Concerning the Approval of Vehicles with Regard to Braking." Regulation No. 13 is Addendum 12 of the "United Nations Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts," done at Geneva on March 20, 1958, which is commonly known as the "1958 Agreement."

[14] "NHTSA Heavy Duty Vehicle Brake Research Program Report No. 9, Stopping Distances of 1988 Heavy Vehicles," (DOT HS 807 531, February 1990)

[15] DOT HS 807 531, Table 4, page 19; Table 5, page 23; Table 6, page 25)

[16] "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors," (DOT HS 807 846, Final Report, March 1992.)

[17] "An In-Service Evaluation of the Performance, Reliability, Maintainability, and Durability of Antilock Braking Systems (ABSs) for Semitrailers" (DOT HS 808 059, Final Report, October 1993.)

V. Agency Proposal

On September 28, 1993, NHTSA proposed to amend Standard No. 105 and Standard No. 121, to add requirements that would improve the directional stability and control of heavy vehicles during braking. (58 FR 50738.) NHTSA decided to propose that each heavy vehicle must be equipped with an antilock braking system that satisfies the agency's proposed definition of ABS. In addition, as a verification of the performance of the ABS, the agency proposed that a heavy vehicle comply with a braking-in-a-curve test.

NHTSA stated that, in proposing these amendments, its overriding goal was to ensure the directional stability and control of heavy vehicles during braking. The agency stated that, to ensure adequate ABS performance by means of dynamic test requirements, it would need to establish a broad array of performance requirements that would test the directional stability and control of vehicles under a number of loading conditions, travel speeds, and deceleration rates, and on a wide variety of road surfaces, including roads that are dry, wet, icy, and "split mu." In addition, to ensure that directional stability and control are not provided at the expense of stopping distance, each of these tests would need to require the vehicle to stop within a specified distance.

NHTSA explained, however, that an approach that relied exclusively on dynamic test requirements would raise serious practicability concerns, given the inherent variability of stopping distance performance on low coefficient of friction surfaces and the costs associated with requiring such an extensive array of dynamic performance test requirements. NHTSA, therefore, focused its efforts on expressly requiring that heavy vehicles be equipped with ABS, and on supplementing that requirement with feasible and practicable dynamic tests that check the directional stability and control, and stopping distance of vehicles under a limited set of circumstances that may be experienced in the real world.

The proposal that heavy vehicles be equipped with antilock systems would have required that the front axle and at least one rear axle of each heavy vehicle be equipped with an ABS that would automatically control rotational wheel slip during braking by (1) sensing the rate of angular rotation of the wheels, (2) transmitting signals regarding the rate of wheel angular rotation to one or more devices which interpret those signals and generate controlling output signals, and (3) transmitting those controlling signals to one or more devices which adjust brake actuating forces in response to those signals. The agency stated its belief that these characteristics, specified in the definition of ABS, would permit the installation of any antilock braking system, provided that it is a "closed-loop" system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to excessive wheel slip. NHTSA tentatively concluded that these criteria were necessary to ensure the introduction of systems that control wheel slip and sustained wheel lockup under a wide variety of real world conditions and thus would significantly improve safety.

In addition, the NPRM contained a detailed discussion of the braking-in-a-curve test, including the test track's configuration, lane width, and test surface, the vehicle's test speed, the type and number of brake applications, loading conditions, control trailer requirements, and the initial brake temperature.

NHTSA also proposed requirements for the ABS malfunction lamps and the power source for trailer antilock systems. The agency also addressed such considerations as requirements for diagnostic systems, the types of vehicles to be covered by the rulemaking, the implementation schedule for the proposed requirements, the rulemaking's potential effects on intermediate and final stage manufacturers and trailer manufacturers, and its costs and benefits.

VI. Comments on the Proposal

NHTSA received over 60 comments in response to the NPRM. Commenters included heavy vehicle manufacturers, brake manufacturers, safety advocacy groups, heavy vehicle users, trade associations, State entities, and other individuals.

Most commenters agreed that the agency should issue requirements to improve the stability and control of heavy vehicles during braking, thereby reducing the number of loss-of-control crashes. Advocates for Highway and Auto Safety (Advocates), the Heavy Duty Brake Manufacturers Council (HDBMC), the Insurance Institute for Highway Safety (IIHS), and Rockwell WABCO generally supported the agency's proposal to require heavy vehicles to be equipped with an ABS. These commenters stated that ABS will improve vehicle safety by providing improved braking performance and vehicle stability and control during braking.

The American Automobile Manufacturers Association (AAMA)[18], the American Trucking Associations (ATA), and fleet operators expressed mixed support for the rulemaking. AAMA stated that it "reluctantly accepts the design specific proposal," given its concerns about the proposed braking-in-a-curve test procedure. ATA stated that it supports the use of ABS, but is concerned that the proposed effective dates would require universal use of ABS too soon to assure safety and reliability. AAMA and ATA stated that they would fully support the rulemaking, if the agency revised various aspects of the proposals. AAMA was primarily concerned about the practicability of the braking-in-a-curve test. ATA was primarily concerned about the ABS equipment requirement and alleged problems with the reliability of separate tractor-to-trailer electrical cables/connecters. The agency notes that some of ATA's requested revisions would be major departures from the original proposal.

The National Private Truck Council (NPTC), the National Truck Equipment Association (NTEA), the National Association of Fleet Administrators (NAFA), and the National Association of Trailer Manufacturers (NATM) opposed requiring heavy vehicles to be equipped with ABSs. These commenters were primarily concerned about the costs that an ABS requirement would impose on fleets, final stage manufacturers of vehicles produced in multiple stages, and small trailer manufacturers. NTEA stated that it would be impracticable for final stage manufacturers to certify compliance with the braking-in-a-curve test.

Commenters also addressed specific issues raised in the NPRM, including the proposal to require vehicles to be equipped with ABS, the type of and definition for ABS, the braking-in-a-curve test procedure, the implementation schedule for the

[18] AAMA submitted joint comments on behalf of eight major domestic manufacturers of heavy vehicles: Chrysler, Ford, Freightliner, General Motors (GM), Mack Trucks, Navistar, PACCAR, and Volvo-GM).

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requirements, the malfunction indicator requirements, the power requirement, and the rulemaking's cost. A more specific discussion of the comments, and the agency's responses, are set forth below.

VII. Agency's Supplemental Proposal

Based on its analysis of comments on the NPRM and other available information, NHTSA issued a supplemental notice of proposed rulemaking (SNPRM) proposing a modified implementation schedule for the requirements in the agency's September 1993 NPRM and a requirement for independent wheel control on at least one axle. (59 FR 17326, April 12, 1994.)

With respect to leadtime, the agency proposed concurrent effective dates for the heavy vehicle stability and control requirements and for the heavy vehicle stopping distance requirements. Specifically, the agency proposed the following implementation schedule for both sets of requirements:

Truck tractors—2 years after final rule (1996)
Trailers—3 years after final rule (1997)
Air-braked single unit Trucks and buses—3 years after final rule (1997)
Hydraulic-braked single unit trucks and buses—4 years after final rule (1998)

With respect to independent wheel control, NHTSA proposed to require heavy vehicles to be equipped with an ABS that controls the wheels on at least one front and one rear axle, and independently controls the wheels on at least one of these two axles. The agency tentatively concluded that this would provide a necessary level of stopping distance performance on low mu and split mu surfaces. The agency posed a number of questions about the need for independent wheel control.

VIII. Comments on the Supplemental Proposal

NHTSA received comments from AAMA, other vehicle manufacturers, brake manufacturers, safety advocacy groups, ATA, and others.[19] Aside from ATA, almost all the commenters favored the proposed implementation schedule. Several commenters, including AAMA, Ford, Bendix, and Midland-Grau were concerned that the proposed requirements addressing independent wheel control were unreasonably design restrictive.

Among the other issues raised by commenters were whether the proposal is a performance requirement, alleged reliability and maintenance problems with ABS, alleged safety problems caused by ABS, the regulation's benefits and costs, its applicability to hydraulic systems, and the possible need for a phased-in implementation schedule and a separate power circuit for operating the ABS.

IX. Agency Decision

A. Requirement for and Definition of ABS[20]

In developing the proposal for this rulemaking, NHTSA considered what requirements are necessary to ensure improved stability and control for heavy vehicles. Among other things, the agency considered whether adequate performance relating to stability and control could be ensured solely by means of dynamic vehicle performance test requirements.

The agency stated in the NPRM its belief that, in order for an approach relying solely on dynamic tests to be successful, it would be necessary to establish a broad array of dynamic performance requirements that would test the directional stability and control of vehicles under a variety of loading conditions, travel speeds, and deceleration rates, and on a variety of road surfaces, including ones that have coefficients of friction that are low, high, and split mu. In addition, in order to ensure that stopping distance performance is not compromised in the attempt to improve directional stability and control during braking, it would be necessary for these performance requirements to specify maximum stopping distances.

NHTSA explained, however, that the poor correlation between stopping distance performance and the peak friction coefficient[21] (PFC) of low coefficient of friction surfaces, combined with the costs associated with such an extensive array of dynamic performance requirements, would, at this time, raise serious practicability concerns about any approach that included such an array of dynamic test requirements.[22] NHTSA therefore focused its efforts on a single provision expressly requiring that heavy vehicles be equipped with antilock systems, and on identifying feasible and practicable dynamic tests that could supplement that provision by directly assessing the directional stability, control and stopping distance of vehicles under some of the wide variety of circumstances that may be experienced in the real world.

This section discusses the proposed provision expressly requiring that heavy vehicles be equipped with antilock systems. More specifically, NHTSA proposed to require that each heavy vehicle be equipped with an ABS that satisfies the following definition:

"*Antilock braking system*" means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:
(1) sensing the rate of angular rotation of the wheels;
(2) transmitting signals regarding the rate of wheel angular rotation to one or more devices which interpret those signals and generate responsive controlling output signals; and
(3) transmitting those controlling signals to one or more devices which adjust brake actuating forces in response to those signals.

In developing this definition, the agency specifically sought to avoid unnecessary design restrictions or impede the future development of ABS. NHTSA stated in the NPRM that it believed that the proposed requirement would permit any ABS, provided that it was a closed-loop system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to changes in wheel slip.

For a number of reasons discussed in the NPRM (and below), NHTSA tentatively concluded that a device that satisfies these criteria is necessary in order to prevent wheel lockup under a wide variety of real world conditions, thereby significantly improving safety.

A number of commenters, including vehicle manufacturers and brake manufacturers, recognized the practicability problems currently associated with some dynamic performance requirements and accordingly supported the agency's proposal to require heavy vehicles to be equipped with ABSs. AAMA stated that despite its strong preference for what it termed "performance requirements," it would accept an explicit ABS requirement, provided that the braking-in-a-curve test is not adopted and the effective date for the proposed stopping distance requirement is made concurrent with the other effective dates for this rulemaking.[23] That organization stated that, in general, manufacturers "much prefer performance over design specifications because performance

[19] Comments on the SNPRM will be specifically labeled as such. Other comments will be assumed to be in response to the NPRM.

[20] The reader may wish to review the Appendix which provides a technical explanation of how antilock brakes work, including various methods of wheel control.

[21] See the Appendix for a discussion of this term.

[22] "MVMA/NHTSA/SAE Round Robin Brake Test," Transportation Research Center of Ohio, Report No. 001194, August 26, 1991.

[23] AAMA's specific concerns about the braking-in-a-curve test are discussed in a later section of this document.

requirements allow new, improved and more cost-efficient technological means to achieve desired safety ends." Nevertheless, AAMA indicated that it was willing to accept an ABS equipment requirement because it believes there are significant practicability problems associated with various dynamic tests that the agency has considered, including the braking-in-a-curve test.

Similarly, Rockwell WABCO stated that it "reluctantly accepts the proposal for an ABS equipment standard rather than a performance standard." That commenter stated that it normally opposes equipment standards since they have the potential of restricting the implementation of new technology. However, it stated that, in this case, "the current difficulty in formulating valid, repeatable performance criteria prohibit a true performance standard at this time." Rockwell WABCO concluded that "the proposed combination of an equipment specification and a performance test is both understandable and acceptable" for now.

Advocates stated that it is convinced that:

> The agency's resolve to mandate a basic level of ABS as required equipment on all tractors, trucks, trailers, and buses with verification of desirable safety performance gained through a single major operating test, is the most appropriate way to ensure that the substantial safety benefits of heavy vehicle ABS are realized quickly.

Midland-Grau stated that the characteristics specified in the proposed definition will permit any antilock brake system, provided that it is a "closed-loop" system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to changes in wheel slip.

Mr. John Kourik, a brake engineer, stated that the proposed definition:

1. Selects the proper technology to assure optimum stability and control, [and]
2. Supplements the intent of the original definition with a high degree of sophistication. This should eliminate the inferior mechanisms and devices that have been offered by 'toying' with the brevity of the original definition while making representations and distorted claims to suggest equivalency to ABS. Thus, the new definition should end the "smoke and mirrors" promotions of alleged substitutes for ABS.

According to Mr. Kourik, the proposed definition would preclude the use of unsophisticated equipment that does not sense changes in the wheel rotation rate, e.g., equipment such as mechanical devices, pneumatic dampeners, hydraulic dampeners, hydro/mechanical units, and electro/mechanical units.

Other commenters strongly opposed the proposed ABS requirement. ATA argued that NHTSA had proposed a "design standard for ABS" that is "unlawful because it is contrary to the agency's statutory mandate to issue only performance standards." Citing the statutory definition of "motor vehicle safety standard," that organization stated that, under the Safety Act, the requirements in Federal motor vehicle safety standards must prescribe performance, not design obligations.

ATA claimed that, despite the statutory mandate, much of the agency's proposal represents design requirements. Specifically, ATA stated that there were additional impermissible design aspects to the proposal, including the definition of ABS, and the requirements for trailer electrical power to be transmitted by a separate circuit specifically provided for that purpose and for warning systems to be electrical.

ATA also argued that the proposed definition for ABSs is unnecessarily design-restrictive, and would stifle innovation and require continual updating of the standard. ATA stated that the requirements would preclude anything but electronic systems, thereby prohibiting mechanical systems. That organization also argued that the requirements would impair efforts to develop new electronic technologies.

Several small companies which manufacture or sell brake products also argued that the proposed requirements are inappropriately design-restrictive. They argued that NHTSA should change the proposed definition of ABS so that devices other than computerized ABS can be used to meet the requirements. Trade International Corporation (TIC) argued that the proposed definition for ABS is fundamentally flawed because it does not specify what the system is supposed to accomplish but rather specifies how the system is supposed to work. It argued that a system could satisfy the definition but not accomplish the desired function.

After carefully considering the comments, NHTSA has decided to adopt the proposed requirement for and definition of ABS. The agency's response to the comments, including a more detailed discussion of some of the comments summarized above, is presented in the sections which follow.

1. Legal Authority

NHTSA disagrees with ATA's allegation that the agency does not have the statutory authority to issue a "design standard." NHTSA's longstanding position[24] on this subject, which is presented in the form of a hypothetical discussion concerning the agency's authority to regulate the width of motor vehicles, is set forth below:

> We believe that the National Traffic and Motor Vehicle Safety Act * * * would permit issuance of a safety standard that regulated or limited vehicle width, if it were found that such a regulation "meets the need for motor vehicle safety" (§ 103(a), 15 U.S.C. 1392(a)). As is true with every motor vehicle safety standard, however, it would be necessary to establish a reasonable, objective basis for the conclusion that this regulation can be justified by safety benefits obtainable, to avoid a judicial conclusion that the action is "arbitrary, capricious, [or] an abuse of discretion." (5 U.S.C. 706). The issue, in other words, would not be one of basic authority, but of justification.
>
> Although it may be argued that such a safety standard would be a regulation of "design, and not performance", for reasons set forth below we feel that this argument is insubstantial and reflects an inadequate understanding of the Act and the safety standards * * *.
>
> Section 102(2) of the Act (15 U.S.C. 1391) defines a motor vehicle safety standard as "a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria." Section 103(f) of the Act also requires the standards to be "reasonable, practicable and appropriate for the particular type of motor vehicle * * * for which it is prescribed."
>
> It has sometimes been suggested that the inclusion of the word "performance" in this definition suggests the existence of a dichotomy between vehicle design and performance. We do not, however, consider that there is a dividing line between standards that regulate performance and standards that affect design. Senator Magnuson recognized the absence of any dichotomy when he said that some safety standards would necessarily determine the configuration of some vehicle components. (112 C.R. 20600 (Aug. 31, 1966.)). In fact, all safety standards have a strong *effect* on vehicle or equipment design, in spite of their being phrased in "performance" terms. This is necessarily so since the design of vehicles and equipment determines the quality of their performance. (Some confusion over "design" may arise from the common use of the word to mean appearance or shape. In our work, however, the word means the sum of all of the characteristics that a product is intended to have, e.g., size, weight, interrelationship of components, materials, and markings.)
>
> Each of our safety standards meets the need for motor vehicle safety by specifying requirements for the performance of a particular vehicle or item of equipment. Any design that will satisfy the requirements may be used for the system or item of equipment. The extent to which the choice of a design

[24] This discussion has been presented in past NHTSA letters, including a May 2, 1979 letter to the Insurance Institute for Highway Safety.

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is restricted by a particular standard is purely a matter of degree, depending on the specificity of the requirement. We try, in carrying out the congressional mandate, to make the requirements as broad as the safety need allows. We will probably never have to reach the level of a true "design specification" as an engineer would use the term, i.e., a detailed description of every significant aspect of a product including the materials and manufacturing processes used. This is true because the standards deal only with the safety-related *characteristics* of the regulated items, e.g., the height, width, and strength of a head restraint and the light output of a headlamp.

In some cases, the *configuration* of a vehicle component or item of equipment is the characteristic that relates to safety. A good example of this is our standard on transmission shift levers (No. 102), which standardizes the position of Park, Reverse, etc., on all our passenger cars today. There, standardization of at least some external aspects of the component is needed for safety's sake. A second example is our standard on control identification (No. 101), where again an enforced similarity in the words and symbols used to identify vehicle controls is the heart of the safety requirement . . .

Thus, if the width of a vehicle is, in fact, the characteristic that is found to require regulation for safety purposes (analogously to the spacing of headlamps in Standard 108 or the width of a head restraint in Standard 202), there should be no doubt of NHTSA's authority to regulate it.

NHTSA's requirements for specified safety equipment are at the heart of many of the Federal motor vehicle safety standards. Indeed, thousands of the lives saved and the injuries reduced or prevented by Federally-mandated safety features are the direct result of requirements for specific types of equipment. Most prominent among these requirements is the 25-year-old requirement in Standard No. 208, *Occupant Crash Protection*, for the installation of specific types of safety belts. This is the most heavily judicially and Congressionally scrutinized safety standard, and no question has ever been raised about the agency's authority to issue such a standard.

Equipment requirements are critical for helping to ensure that vehicles have many of the items necessary to guarantee safety. For example, it is critical for drivers to be able to see where they are going, and for their vehicle to be seen by other drivers. The safety standards therefore require items that are critical for driver visibility and vehicle conspicuity in the rain and at night. Standard No. 104 requires vehicles to have a windshield wiping system, Standard No. 108 requires vehicles to be equipped with specified lamps and reflective devices, Standard No. 111 requires that vehicles be equipped with rearview mirrors, and Standard No. 205 specifies the types of glazing which may be used in various locations.

Many other safety standards, including the existing brake standards, specify equipment requirements that meet equally important safety needs. Thus, the extremely narrow reading of the word "performance" advocated by ATA is inconsistent with the entire history of the Federal program for motor vehicle safety standards, and indeed with a majority of the existing standards.

The case law addressing this issue has clearly upheld NHTSA's authority to issue safety standards that directly affect design. In *Chrysler v. DOT*, 515 F.2d 1053 (6th Cir. 1975), for example, the court upheld a dimensional restriction on rectangular headlamps. That court reasoned that:

> Uniformity of headlamp size is an element of headlamp performance. Design freedom would inhibit safety, and certainly the congressional purpose of encouraging safety-related competition among manufacturers is meaningless in this context.
>
> We conclude that the dimension restriction at issue here essentially serves to ensure proper headlamp performance and lies within the regulatory authority granted by Congress to the NHTSA.

515 F.2d at 1058, 1059.

Moreover, in *Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. 29 (1983), the United States Supreme Court held that, before rescinding a general requirement for automatic restraints because one type of automatic restraint (e.g., the detachable automatic safety belt) might be ineffective, NHTSA must consider establishing an airbag-only requirement. The Court further stated that the agency could prohibit detachable automatic safety belts if the agency determined that they would not provide effective passenger protection. Therefore, the Supreme Court clearly recognized NHTSA's authority both to require specific safety equipment deemed to provide superior safety protection and to prohibit specific equipment that the agency deemed to provide inferior safety protection.

NHTSA therefore rejects ATA's argument concerning the agency's authority to require specified safety equipment. However, as indicated above, the agency does, in carrying out its statutory mandate, attempt to make its safety requirements as broad as the safety need allows. The relevant issue for this rulemaking is thus not whether the agency proposed an unlawful "design standard," but instead whether the proposed requirement/definition for ABS is unnecessarily design-restrictive. For the reasons discussed below, NHTSA has concluded that each element of the proposed requirement/definition for ABS is necessary to meet the safety need for improved stability and control.

2. Elements of the Requirement/Definition for ABS

Far from proposing a detailed "design requirement," NHTSA simply proposed to require vehicles to be equipped with an ABS consistent with the generally understood meaning of that term among brake engineers. The agency used this approach precisely to avoid imposing unnecessary design restrictions or impeding the future development of ABS. As discussed in the NPRM, the definition is sufficiently broad to permit the installation of any antilock braking system, provided that it is a "closed-loop" system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to changes in wheel slip.

In developing the proposed definition, the agency relied on the Society of Automotive Engineers[25] (SAE) J656 (Apr88) "Automotive Brake Definitions and Nomenclature" and the Economic Commission for Europe's Regulation 13, Annex 13 (1988). SAE J656 refers to ABSs as "wheel slip brake control systems" that automatically control rotational wheel slip during braking. Among the terms related to ABS that are defined in SAE J656 are "modulator" and "wheel slip sensor." These terms are used in SAE's test procedure for antilock systems, as specified in SAE J46 (JUN80) "Wheel Slip Brake Control System Road Test Code." Similarly, Annex 13 of ECE Regulation 13 refers to "anti-lock devices" as systems which automatically control the degree of slip, in the direction of rotation of the wheel(s). The Annex 13 definition of ABS also states that such devices include "a sensor or sensors, a controller or controllers and actuating valves." The agency's proposed definition of ABS incorporated the terms set forth in SAE J656 and ECE Regulation 13 to reflect the attributes of antilock systems as commonly understood by the automotive engineering industry.

The proposed equipment requirement specifies simply that vehicles must be equipped with an ABS which is defined

[25] The Society of Automotive Engineers is a voluntary professional organization that establishes recommended practices related to various aspects of motor vehicles.

as a system that automatically controls the degree of rotational wheel slip during braking, by (1) sensing the rate of wheel rotation, (2) transmitting signals regarding the rate of wheel rotation to a device which interprets those signals and generates responsive controlling signals, and (3) transmitting those controlling signals to a device which adjusts brake actuating forces in response to those signals. For reasons discussed below, each of these elements is necessary to meet the need for safety. In addition, the definition only states the *performance* required of the ABS components, not *how* the components must detect wheel rotation, etc.

As discussed earlier in this preamble, the safety problem being addressed by this rulemaking is that whenever the driver applies the brakes with too much force relative to extant tire and road conditions, sustained wheel lockup occurs. This usually results in loss of vehicle directional stability and/or steering control; i.e., a jackknife, spin-out or skid, and often a crash. Such sustained lockup most often occurs when the road is slippery or when the vehicle is lightly loaded or has no cargo. This is because drivers are likely to make a hard brake application in a panic situation, and the resulting braking forces easily cause lockup when the road is slippery or when the vehicle is lightly loaded or empty. Moreover, drivers are unable to sense lockup quickly enough to control it.[26]

In order to address this safety problem, NHTSA has determined that it is necessary to prevent the brake system from generating forces that result in uncontrolled lockup. This need is addressed in part by the first element of the requirement/definition: each ABS must automatically control the degree of rotational wheel slip during braking.[27] Automatic control is necessary since drivers cannot control lockup in an emergency situation. By the time a driver can sense that lockup has occurred, it is often too late to prevent the sustained lockup that results in loss of directional stability or control.

The second element of the requirement/definition (sensing rate of wheel rotation and transmitting signals about the rate to a device that generates responsive control signals) is necessary to ensure that lockup will be prevented or controlled for all road surfaces and under all load conditions, and also to ensure that stability is not provided at the expense of stopping distance. The prevention of sustained lockup, and resulting loss of directional stability and control, should not be accomplished simply by putting weak brakes on the vehicle or lowering braking forces under all conditions. Thus, in addressing this safety problem, the agency must consider the twin goals of preventing/controlling lockup *and* ensuring good stopping distance under all road surface and load conditions.

In a braking situation, the more the driver depresses the brake pedal, and thereby increases braking forces, the more quickly the vehicle will stop, so long as the braking force is not so high that it causes wheel lockup. Thus, if stopping distances are to be minimized during braking, it is necessary to permit the hydraulic or air pressure to rise to a point just below the point where lockup would occur.

Moreover, the amount of pressure that causes lockup will vary dramatically depending on the road surface and vehicle loading. In order to ensure that braking force rises to a point just below the point where lockup would occur, it is necessary for an ABS to sense *either* each of the factors on which lockup is dependent, i.e., road surface friction, vehicle loading, dynamic weight transfer during braking, condition of brake linings, etc., *or* the product of all of those factors, i.e., the rate of wheel rotation from which wheel slip can be determined. Since it may not be technologically feasible for an ABS to sense all of the factors which may lead to lockup, the definition specifies that an ABS must sense the product of those factors, i.e., the rate of wheel rotation.

The rest of the second element of the definition is necessary to ensure that an ABS uses the relevant information, i.e., rate of wheel rotation, to control wheel slip and prevent lockup. The relevant information must be transmitted to a device which interprets the information and generates responsive controlling signals. Those controlling signals must then be transmitted to a device which adjusts brake actuating forces in response to those signals.

NHTSA has determined, based on all available information, that a device that lacks any one of the elements specified in the definition could not meet the need for safety addressed by this rulemaking, since, for the reasons discussed above, its operation would not be dependent on factors that are relevant to the desired safety performance.

The agency notes that while several commenters asserted that the proposed definition is unnecessarily design restrictive, none attempted to explain how a device not meeting one or more of the elements could ensure stability and control for heavy vehicles for a wide range of test surfaces and loading conditions.

Most of the commenters arguing that the proposed definition is unnecessarily design restrictive were small companies which manufacture or sell brake products. In essence, they wished the agency to change the proposed definition of ABS so that their devices can be used to meet the requirements. These companies are, of course, free to develop and sell products that meet the definition. Also, to the extent that these companies produce products that do not meet the definition, they are free to sell them as supplemental equipment, so long as the products do not create compliance problems or contain safety defects. However, for the reasons discussed above, and expanded on below in the context of these comments, products which do not meet the definition would not prevent sustained wheel lockup.

Strait-Stop, a company which manufactures what it calls a "noncomputerized ABS," argued that the proposed ABS definition is discriminatory and excessively design-restrictive because it necessitates the use of electronic computerized systems with wheel speed sensors. It argued that the agency's tests "(do) not prove, conclusively, that the computerized ABS is the only alternative to accomplish stability and control." Strait-Stop also stated that NHTSA's fleet study indicated that computerized ABS activated very rarely, only 1.4 times per 10,000 brake applications or 1.1 times per 10,000 miles driven, and that it is a tool with which drivers will not gain familiarity. In contrast, Strait-Stop stated that its device activates approximately 98 percent of the time that the driver applies the brakes, thereby enabling drivers to become familiar with the system. While Strait-Stop did not describe how its "non-computerized ABS" works or precisely what it does, that company stated that its device uses "modulation but not reduction of braking pressure." Moreover, literature about its system indicates that the air flow from the foot (treadle) valve to the relay valve is interrupted through the Strait-Stop system and pulsates the brake chambers. The "system intermittently repeats the on and off cycle at a pre-set rate."

Jenflo Brake-Aid (Jenflo) also argued that the proposed ABS definition is discriminatory, and that the definition should be revised to permit braking devices other than the ones tested by the

[26] "Improved Brake Systems for Commercial Motor Vehicles," DOT 807 706 Section 3.2.2; pages 3–5.

[27] As discussed in the Appendix, wheel slip refers to the proportional amount of wheel/tire skidding relative to vehicle forward motion, and lockup is simply the condition of 100 percent wheel slip.

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agency. Jenflo manufactures a device for air brake systems which causes a "pulsing (or air pressure to) the brake actuators hundreds of times per minute, (that will) cause the tires to approach lock-up, then the brakes are off for a 'small' fraction of a second and are just as rapidly reapplied." As a result, the air pressure is continually released and reapplied on all the controlled wheels during all but "normal" braking.

Trade International Corporation (TIC) stated that the proposed ABS definition is unnecessarily narrow and could preclude the use of available, beneficial products and technologies, and also impede the development of other useful products and technologies. TIC argued that a system which continuously modulates the braking force applied to every wheel whenever braking force is applied would not satisfy the definition because it lacks the specified sensing and transmitting functions, regardless of its ability to prevent wheel lockup and/or enhance braking effectiveness.

The devices referred to by Strait-Stop, Jenflo Brake-Aid, and TIC all "pulse" the air pressure for essentially all but normal brake applications. These commenters did not explain in detail how these products work. However, based on the available information, they provide the same "pulsing" of air pressure at a fixed pulsation rate for all brake applications above some braking or turning threshold. Regardless of how they work, however, the devices cannot ensure the twin goals of preventing/controlling lockup *and* ensuring good stopping distance under all road surface and load conditions, if they do not meet the proposed definition. This is because, for the reasons explained above, their operation would not be dependent on the factors that are relevant to the desired safety performance. Only by continuously sensing and responding to what is actually happening at the tire/road surface interface can an ABS system optimize the braking pressure so as to both prevent lockup and minimize stopping distances. As discussed in the ABS Wheel Slip Control Strategies section of the Appendix, one effect of varying road surface and vehicle load conditions on the operation of ABSs is the varying controlling frequencies that are needed to adapt to these varying conditions. The fact that these other devices incorporate a fixed pulsation rate demonstrates their lack of adaptability to varying road surface and vehicle load conditions. As shown in Figures 17 and 18 in the Appendix, the ABS controlling frequency needs to be relatively slow, between 1 and 2 cycles per second, in order to prevent sustained excessive wheel slip on very low friction surfaces and needs to be much faster, approaching 10 cycles per second, in order to achieve very short stopping distances on high friction surfaces. The increase in stopping distance on high friction road surfaces that would result from a system which exhibited a slower than optimum ABS controlling frequency may not be great. However, the impact of a much faster than optimum ABS controlling frequency on a very low friction surface would be sustained and excessive wheel lockup. As shown in Figure 17 in the Appendix, wheel lockup can occur very rapidly. Figure 17 also shows that from the time that the ABS solenoid is activated to reduce brake pressure it takes about 0.25 seconds before the wheel even begins to spin up, about 0.35 seconds for the wheel to reach one-half of the vehicle's speed and more than 0.6 seconds for the wheel to reach the vehicle's speed. If the devices referred to by Strait-Stop and Jenflo Brake-Aid pulse the brakes several times a second, the "off" portion of pulsation cycle would not be sufficiently long to allow the locked wheel to spin up prior to the next "on" portion of the cycle which would result in sustained wheel lockup.

The basic problem with devices that do not incorporate feedback on what is happening at the tire/road surface interface (as required by the definition of ABS mandated by this amendment) such as those described by Strait-Stop, Jenflo and TIC, is that they are "blind" to the road and surface conditions on which the vehicle is operating and thus make the same response each time, regardless of whether that response is appropriate for the existing circumstances. In other words, the systems cannot appropriately adjust their cycle rate or the degree of pressure variation to compensate for the effects that load condition and road surface friction can have on the lockup and spinup times of a vehicle's wheels. This lack of "adaptability" to changes in load and road surface conditions results either in sustained wheel lockup (and resultant loss of stability and control) or in stopping distances that are much longer than the vehicle would otherwise be able to achieve under those conditions for which the system was not optimized. As a result, even if these systems enhanced vehicle stability on one type of surface, they would provide inferior braking on a different surface. For instance, the relatively high brake pressure required for short stopping distance on a high coefficient of friction surface would lock the wheels on a slippery surface because wheel lockup occurs when the braking force at the tire/road surface interface, needed to resist the torque generated by the brake, is greater than that which can be generated from the available surface friction. Because wet surfaces have lower friction levels, vehicles on these roads will lock up at lower levels of brake pressure. Conversely, if the pulsating mechanical system were designed so that brake pressure was reduced in a manner that ensured that lockup would not occur during hard braking on a slippery surface, stopping distances would be very long when braking on high coefficient of friction surfaces.

NHTSA also notes that in order to optimize stopping distance and maintain vehicle stability, an antilock system must be capable of reducing, holding, and reapplying braking pressure to each controlled wheel. The wheel speed sensor monitors the rotational speed of the wheel. When a monitored wheel approaches a lockup condition, there is a sharp rise in peripheral wheel deceleration and in wheel slip. If this rise exceeds the designed threshold levels, the ECU sends signals to the modulator device to hold or reduce the build-up of wheel brake pressure until the danger of wheel lockup has passed. The brake pressure must then be increased again to ensure that the wheel is not underbraked for the road surface conditions. During automatic brake control, it is important for the wheel speed to be constantly monitored so that the maximum braking force for the conditions could be achieved by a succession of pressure-reduction, pressure-holding, and pressure-reapplication phases. The agency notes that the systems described by Strait-Stop, Jenflo and TIC reduce and reapply pressure, without reference to road conditions, brake forces, or impending wheel lockup.

With respect to Strait-Stop's argument that drivers will not gain familiarity with the kinds of ABS systems tested by NHTSA because the systems activate only rarely, the agency notes that no special familiarity is necessary to operate the system properly. ABS is a safety device which operates automatically in emergency situations.

Strait-Stop also alleged that the system defined and tested by NHTSA does not prevent lockup. While that company did not explain this comment, the agency assumes that Strait-Stop is distinguishing between momentary lockup and sustained lockup. All of the systems tested by NHTSA prevent sustained lockup.

Strait-Stop argued that the inference that the screened-out systems would not meet the braking-in-a-curve test requirement is unsupported since the agency has not tested and, in some cases has refused to provide testing for them. As discussed above, it is possible that a system not meeting the proposed definition could be optimized to provide enhanced stability for a particular test on a particular test surface. However, such a system would provide inferior braking performance on other surfaces and/or under different test conditions.

There is no requirement or reason for the agency to test every invention identified by commenters in a rulemaking proceeding. The agency can use its technical and engineering analysis to determine what performance attributes are necessary to meet the need for safety, and it can also often make determinations about whether particular devices would provide safety benefits by the same means.

NHTSA has also analyzed another type of device, from Emergency Brake Technologies, described by Dr. Barry Wells. This is an emergency braking device that is manually activated by the driver through a dash-mounted switch that activates arms that drop polyurethane wedges and rubber flaps under the vehicle's wheels. After the device is activated, the vehicle must be stopped and reversed so that the wedges can be removed from beneath the wheels. Emergency Brake Technologies claims that this device "could stop a fully loaded vehicle in the same distance as an automobile and completely eliminate jackknifing." While NHTSA does not have any opinion concerning whether this device might provide benefits in some emergency stopping situations, the device would not meet the need for safety being addressed by this rulemaking, i.e., ensuring stability and control during braking. In fact, the dropping of polyurethane wedges and rubber flaps under the wheels would create essentially the same condition as fully-locked wheels, and therefore could result in a loss of control. Once the driver activated this system, the driver would be committed to a quick, sliding stop. The driver would have no capability to release the device once applied, and could also have difficulty steering around a problem. While such a device could provide short stopping distances under dry-road conditions, it would do so by sacrificing vehicle stability and control.

ATA and Strait-Stop commented that the proposed definition would preclude anything but electronic systems, thereby prohibiting mechanical systems. NHTSA notes that this is incorrect, since the definition does not require electronics for the sensing of the wheel rotation, or transmission of wheel rotation or controlling signals. Such functions could be performed using pneumatic, hydraulic, optic, or other mechanical means. The agency notes that it is likely that electronic systems will be used, given currently available technologies. All ABSs currently marketed in the United States are electronic in nature.

In the case of an ABS that does not require electrical power for operation, the only mandatory electrical requirement in this rulemaking (addressed later in this document) is for malfunction indicator lamps used to signal a problem in the ABS.

ATA also argued that the requirements would impair efforts to develop new electronic technologies. ATA stated that the restrictions would limit engineers' abilities to develop electronic braking (brake-by-wire) systems (EBS) by forcing the logic for such systems to be based on existing ABS designs. According to ATA, EBS is designed to handle all braking functions: compatibility, load sensing/brake proportioning, balance, timing, ABS, traction control, and failure control. ATA stated that successful development of these systems may require that designers not be tied to a rotational slip view of wheel lockup.

NHTSA disagrees that the proposed ABS requirements will impair efforts to develop EBS. The agency notes that Robert Bosch GmbH currently markets the Bosch-ELB Electronically Controlled Commercial Vehicle Brake, in Europe. This system includes ABS, traction control, and electronic service braking (with pneumatic backup) functions, and uses the same wheel speed sensor arrangement as does Bosch's ABS sold without EBS. This indicates that EBS is fully compatible with current ABS technology, including wheel speed sensors. Furthermore, a combination-unit vehicle with good brake balance, compatibility, and timing may still be capable of being over-braked by the driver, especially when operated lightly-loaded or on slippery road surfaces, and such a vehicle would still require ABS to prevent wheel lockup when operated under these conditions. The development of the Bosch electronic braking system proves that the rotational slip view of wheel lockup does not hinder the development of successful EBS.

ATA also stated that the requirements could "hold back" disc brake technology since disc brakes are "virtually incompatible" when used together with drum brakes on a combination vehicle. ATA appears to believe that because EBS can make the "decisions" to compensate for those major differences, it is needed for disc brake technology to come into general use. The agency notes that, according to product literature, the Bosch-ELB system measures wheel speeds and brake actuator pressures at each wheel position, and microcomputers in the electronic control unit store and process these data and transmit the correcting commands accordingly. This system could, therefore, compensate for incompatibilities in brake force balance on a vehicle, and would permit safe introduction of disc brakes on vehicles. This system incorporates ABS technology that complies with the agency's proposed ABS requirements, as well as ECE Regulation 13. Therefore, NHTSA disagrees with ATA's argument that ABS requirements will hold back disc brake technology.

In a somewhat different vein, TIC argued that a system could satisfy the proposed definition but not accomplish the desired function of preventing lockup. As part of this argument, TIC stated that the proposed definition for ABS is fundamentally flawed because it does not specify what the system is supposed to accomplish but rather specifies how the system is supposed to work. TIC's comment in essence raises the issue of whether the definition is sufficient, by itself or with other requirements, to meet the need for safety.

As indicated at the beginning of this section, the agency developed a broad definition precisely to avoid imposing unnecessary design restrictions or impeding the future development of ABS. The ABS definition is based on the premise that wheel lockup is the source of a vehicle's loss of directional stability and steering control during braking, and that any device designed to improve such stability during braking must control the source of that instability. Hence, the definition establishes a linkage between the input, signals that sense wheel lockup, and the output, modulated brake pressure to prevent wheel lockup. This is essentially the extent of the design constraints established by the agency, and it gives the industry considerable latitude to design and develop individual components, ranging from sensor design and placement, to the ECU control algorithm and to brake pressure modulation frequency.

NHTSA rejects TIC's argument that the definition does not specify what the system is supposed to accomplish but rather how the system is supposed to work. Modulating brake pressure in

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response to information about rate of angular rotation is part of what is supposed to be accomplished. As discussed above, the rate of angular rotation reflects what is happening at the tire/surface interface.

NHTSA further concludes that the requirement/definition for ABS is sufficient at this time to meet the need for safety. In arguing that a system can satisfy the definition but not accomplish the desired function, TIC provided the following "extreme example":

> Consider the following system: (1) a set of angular rate of rotation sensors, one on every wheel; which (2) transmit signals whose level is proportional to the rate of angular wheel rotation to a device which compares the signals and generates control signals; and (3) transmits those control signals to devices which *increase* the braking force applied to any wheel which has an angular rotation rate higher than the wheel which has the lowest angular rotation rate. Such a system satisfies every element of the proposed definition, however, the result of implementing such a system would be that if any wheel locked up during braking *all wheels would lock up*!

While TIC itself acknowledged that its example was "extreme," NHTSA notes that its basic premise also is silly, since it assumes that a manufacturer would deliberately build a brake system that could not work. In considering the impacts of its standards, NHTSA must assess how manufacturers are likely to respond, not unrealistic hypothetical situations. The basic premise underlying this rulemaking is that manufacturers will respond to the definition/requirement for ABS by providing systems that will prevent wheel lockup. This view is confirmed by the comments of the vehicle and brake manufacturers. There is no evidence that manufacturers would respond by deliberately building systems that do not prevent lockup but instead cause lockup.

Moreover, the definition for ABS does not stand in a theoretical vacuum. Manufacturers must design their brake systems to meet other safety requirements (including stopping distance requirements and, for some vehicles, the braking-in-a-curve test). It might not be possible to meet those requirements with systems that did not prevent lockup but instead caused lockup. Manufacturers are also subject to Federal requirements concerning safety-related defects. And, of course, manufacturers must ensure customer satisfaction.

The agency also notes that there is absolutely no incentive for manufacturers to provide ABS systems that do not function as they intended. TIC's comment essentially raises the possibility that a manufacturer might spend all the money necessary to meet the definition of ABS and then include a faulty ECU control algorithm. However, there is no basis to believe that this would happen. The agency only addresses unreasonable safety risks in developing safety standards and need not address unrealistic hypothetical possibilities.

3. Dynamic Versus Equipment Requirements

As discussed in the NPRM and above, NHTSA considered whether adequate performance relating to directional stability and control could be ensured solely by means of dynamic test requirements, but concluded that, at this time, there would be practicability problems associated with the broad array of dynamic test requirements that would be associated with such an approach. The agency therefore decided to propose a single provision expressly requiring that heavy vehicles be equipped with antilock systems, and on identifying feasible and practicable dynamic tests that could supplement that provision by directly assessing the directional stability, control and stopping distance of vehicles under some of the wide variety of circumstances that may be experienced in the real world.

ATA commented that the desired result from mandating the installation of ABS is ensuring that a vehicle can be controlled during a stop, and asserted that the proposed braking-in-a-curve performance requirement, with certain changes, would accomplish this conceptually. However, ATA did not substantiate its assertion about the efficacy of such a requirement, standing by itself. ATA did not address the practicability problems of adopting a set of dynamic performance requirements, or even the practicability problems associated with applying the braking-in-a-curve requirement to all affected vehicles. ATA did, however, suggest that the agency initiate additional research and development for what it called "true performance tests."

While NHTSA plans to continue research on dynamic performance tests for trucks, buses and trailers, it has concluded that the desired safety benefits of ABSs could be achieved now by means of a specific equipment requirement for ABS and (as discussed below) a dynamic performance test requirement applicable to truck tractors only. NHTSA is charged by the Safety Act with promulgating safety standards that meet the need for safety. Moreover, Congress was sufficiently concerned about the directional stability and control problems associated with heavy vehicles that it specifically required NHTSA to conduct a rulemaking that examines and could result in requiring the installation of ABSs in these vehicles. The agency has concluded that large safety benefits can be obtained by requiring ABSs on heavy vehicles, and has developed requirements that will ensure installation of this safety equipment.

NHTSA disagrees with the suggestion that it delay implementation of this life-saving rule while it conducts further research in search of the type of rule ATA desires. The overall history of agency rulemaking is one of gradual progression, when and where practicable and beneficial to safety, toward increasingly sophisticated and increasingly more dynamic performance standards. However, relying exclusively on dynamic performance requirements has never been a statutorily mandated requirement. Were it so, there would be many fewer Federal motor vehicle safety standards today—and many thousands more deaths and injuries, occurring annually.

B. Independent Wheel Control

In the NPRM, NHTSA proposed to require that the antilock brake system monitor and control the wheels of the front axle (i.e., steering axle) and the wheels of at least one rear axle. NHTSA believed that this would ensure that the wheels on the steering axle and the wheels on the selected rear axle were directly controlled by the ABS. By "directly controlled," the agency meant that the signal provided at the wheel or on the axle of the wheel would directly modulate the braking forces of that wheel or axle. The agency tentatively concluded that it is necessary to specify that the ABS directly control the steering axle because some ABSs control only a vehicle's drive-axle, which could result in the loss of steering control if the front wheels locked during braking.

Several commenters addressed the need for front wheel control. ATA strongly opposed mandating ABS for the steering axle of single-unit trucks and suggested that the agency reconsider the requirement for tractors. In contrast, Rockwell, WABCO, Freightliner, AAMA, Advocates, and IIHS favored requiring that an ABS be installed on front axles. AAMA favored equipping each vehicle with an ABS that has at least one independent channel of control for the wheels on a front axle and at least one independent channel of control for the wheels on a rear axle. However, AAMA objected to mandating more than two independent channels of control.

NHTSA did not specifically address the concept of independent control in the NPRM, but addressed it in the SNPRM by proposing that the wheels on at least one axle be independently controlled. The agency in today's final rule defines an "independently controlled wheel" to mean a directly controlled wheel for which the modulator device does not modulate the brake forces at any other wheel on the same axle. This means that a side-by-side control strategy on a tandem axle could have the wheels on the sensed axle of the tandem being independently controlled by a modulator, and the wheels of the other axle of the tandem being indirectly controlled by the modulator for the wheel on the sensed axle on the same side of the vehicle.

Rockwell, Freightliner, Advocates, and IIHS commented that the regulatory language in the NPRM requiring each axle to be directly controlled by an ABS would allow select low[28] antilock systems on any axle. These commenters believed that an antilock system must provide independent control at each wheel of a heavy vehicle to ensure good, overall ABS performance in the areas of stability and stopping distance. Accordingly, they recommended that the equipment requirement include language that would require "independent control of each wheel" of the axles that are required to be ABS-controlled. They believed that the inclusion of such a requirement would prevent significant degradation in stopping performance, particularly on a split mu surface. Bosch recommended a minimum requirement of a four-sensor, three- modulator-valve (which is referred to as a 4S/3M system) ABS. Freightliner favored requiring at least four independent channels of control, i.e., two for each axle, to allow independent control of each wheel on the front and a rear axle. Similarly, IIHS favored requiring the brakes for each wheel on the front axle and the brakes for each wheel on one rear axle to be independently controlled. Advocates recommended that the ABS be functional on all axles, not just one axle in each multiple axle set on a heavy vehicle.

Based on its analysis of these comments and other available information, NHTSA issued an SNPRM proposing modifications to the NPRM to require heavy vehicles to be equipped with systems that independently control each wheel on at least one axle of a truck, a truck tractor, or a bus (i.e., 4S/3M systems). As explained in the SNPRM, the agency tentatively concluded that a minimum requirement that ABS provide independent wheel control on at least one axle would provide an acceptable level of stopping distance performance on low mu and split mu surfaces. The agency believed that a vehicle with independent ABS wheel control would stop in a shorter distance than either a vehicle equipped with an axle-by-axle "select low" control ABS, or a non-ABS equipped vehicle operated by a driver making his or her best efforts to minimize stopping distance through manually modulating the brake pedal. The agency also proposed to prohibit tandem control[29] by an ABS, by requiring that no more than two wheels be controlled by one modulator valve. NHTSA requested comments about its proposal for independent control of each wheel on at least one axle and about prohibiting tandem control by an antilock system.

In response to the SNPRM, NHTSA received comments from Ford, AAMA, Strait-Stop, GM, Navistar, White GMC, Bosch, PACCAR, Eaton, Midland-Grau, Truck Trailer Manufacturers Association (TTMA), Advocates, and ATA about the proposal to require independent control on at least one axle. Aside from Freightliner, WABCO, Bosch, Advocates, and IIHS, most other commenters opposed the proposal claiming that requiring independent control would be unreasonably design-restrictive. Bosch stated that the proposal is appropriate since at least one of the axles that contributes most to vehicle deceleration in the loaded condition should have the ability to have its wheels individually controlled. Ford, AAMA, GM, Navistar, PACCAR, Eaton, and Midland-Grau stated that the agency should specify direct control as a minimum requirement but not require independent control. AAMA stated that the standard should permit any control system that provides stability without substantial degradation in stopping distance. Ford claimed that any requirement that ABS must employ more than two channels of control would not result in any safety advantage over its two-channel system, but would result in substantial and unnecessary incremental costs to Ford and might jeopardize its ability to meet early implementation dates. Midland-Grau strongly opposed the SNPRM's approach, claiming that it presented a major change in scope from performance requirements and minimal design requirements. Specifically, it complained that the SNPRM changed the rulemaking's focus from directional stability and control to stopping distance on split mu surfaces.

Consistent with their comments on control philosophies, AAMA, GM, White GMC, PACCAR, and Midland-Grau also opposed the proposed definition of "independently controlled wheels."[30] AAMA and PACCAR claimed that the proposed definition does not accommodate widely used ABS algorithms and control technologies. It requested that the word "only" be omitted since its inclusion in the definition would inappropriately preclude antilock systems that "rely on wheel speed information from both wheels on an axle to modulate brake pressure at each of the wheels."

Ford, AAMA, GM, Navistar, White GMC, PACCAR, Eaton, and Midland-Grau opposed prohibiting tandem control. TTMA requested that trailers equipped with more than three axles be excluded from the requirements, claiming that it would be very expensive to equip these vehicles, which account for only four percent of trailer production, with ABS.

ATA and Strait-Stop opposed specifying the type of wheel control, claiming that doing so creates an impermissible design requirement. Strait-Stop stated that the proposed approach prohibits creativity in the development of other technology that may accomplish the performance standards more effectively with greater economic efficiency.

Several commenters submitted test data about various ABS configurations. WABCO and Freightliner submitted simulated test data showing that 4S/2M systems on truck tractors provide very poor stopping distance performance on split mu surfaces, compared with 4S/4M systems. These commenters reported that the 4S/2M systems they tested took between 316 percent and 353 percent of the norm to stop on a split mu surface, with driver best effort being defined as the norm, or 100 percent. Ford and Bendix submitted simulated data showing that 4S/2M systems incorporating the modified select high regulation (MSHR[31]) wheel slip control strategy on truck tractors perform acceptably. Bendix also submitted vehicle test data showing that the stopping distance performance with

[28] See the Appendix for a discussion of this term.

[29] As explained in the appendix, tandem control refers to having two adjacent axles being controlled by the same modulator valve. Specifically, while each axle has its own wheel speed sensor, the brakes on two axles are controlled by one modulator valve.

[30] The agency proposed to define "Independently Controlled Wheel" as a "wheel at which the degree of rotational wheel slip is sensed and corresponding signals are transmitted to one controlling device that adjusts the brake actuating forces only at that wheel in response to those signals."

[31] See the Appendix for a discussion of this term.

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tandem control ABS incorporating the MSHR wheel slip control strategy (2S/1M) on trailers is comparable to the performance of a 2S/2M system.

As explained above, in establishing the requirements applicable to the stability and control of heavy vehicles, NHTSA has decided that, at a minimum, wheels on the steering axle and at least one rear axle of a powered vehicle must be controlled by a closed-loop antilock system. Similarly, the wheels on at least one axle of a semitrailer and dolly, and the wheels of at least one front axle and one rear axle of a full trailer must be controlled by a closed-loop antilock system. The agency has decided that requiring a closed-loop antilock system is necessary to ensure the directional stability and control of heavy vehicles during braking.

NHTSA emphasizes that requiring a closed-loop antilock system is a *minimum* requirement that the agency believes will ensure the safety of heavy vehicles. The agency has also decided to establish supplementary requirements beyond these minimum requirements that address the type of wheel control for various types of vehicles. In establishing these supplementary requirements, the agency has sought an approach that is responsive to the many and oftentimes disparate views of the commenters and that ensures safety performance objectives, while considering practicability, costs and, to the extent possible, stated industry practice.

The supplementary equipment requirements, which specify the type of wheel control, are based on the philosophy that, for the reasons set forth below, an incrementally higher level of stability performance during braking is warranted for truck tractors compared to that which is appropriate and needed for trailers, single-unit trucks, and buses. First, truck tractors, when used in a combination vehicle, are articulated and therefore are more likely to lose control than single-unit vehicles. Second, truck tractors typically have shorter wheelbases than single-unit trucks, trailers and buses and therefore are more susceptible to locked wheel-induced, unrecoverable loss of control than are any of these other vehicle types. This loss of control typically manifests itself as a jackknife when tractors are coupled to semitrailers. Third, truck tractors typically travel approximately five times more annual miles than single-unit trucks, three times more miles than trailers (since there are proportionally three times as many trailers in use than there are tractors which tow them), and approximately seven times as many miles as buses. This substantially larger use proportionally increases a truck tractor's exposure to risk. Fourth, truck tractors typically operate on roads (i.e., interstate highways and rural State and U.S. routes) that have comparatively higher posted speed limits and vehicle operating speeds than the roads on which single-unit trucks and many buses generally operate. A higher operating speed exacerbates the consequences of braking-induced wheel lockup and loss-of-control. This is a significant contributing factor to the high proportion of heavy vehicle braking instability-related crashes, fatalities and injuries that involve combination-unit trucks.

Based on the above considerations, NHTSA has decided that the requirements for truck tractors must be more stringent than those for the other vehicle types. Specifically, on at least one of the truck tractors's axles, each wheel must be independently controlled by an ABS modulator. With respect to a given wheel, "independently controlled" means a wheel at which the degree of rotational wheel slip is sensed and corresponding signals are transmitted to a modulator that adjusts the brake actuating forces at that wheel on the axle or at other wheels on other axles. The agency has decided to revise the definition in response to AAMA's comment on the definition of independently controlled, since its inclusion might inadvertently prohibit acceptable systems. Requiring independent control ensures that a wheel provides optimal braking forces on all surfaces, enabling the vehicle to achieve near optimal braking on all surfaces, especially split mu ones.

In most cases, the axle with independent wheel control will likely be the tractor's drive axle(s). Commenters, including AAMA, Midland-Grau, and Bendix, submitted to the agency road testing data about how certain antilock systems improved the braking efficiency and directional control and stability of various vehicle configurations. Based on these data, the agency believes that independently controlling the drive axle(s) will result in incrementally better braking performance on split mu road surfaces than the other ABS equipment configurations that are permitted on the other vehicle types covered by this rule.

Rockwell WABCO correctly stated that allowing select low ABS on all axles will result in substantially longer stopping distances on split mu surfaces, particularly when the differences between the coefficients of friction on the two surfaces is large. Notwithstanding this shortcoming, the agency believes that a select low system is appropriate for the front axle for the following reasons. First, since the front axle brakes typically provide about 25 percent of the braking on a truck tractor, the stopping distance degradation with select low on the front axle will be small. Second, having equal braking forces at each wheel alleviate steering wheel "pull" that would occur on a split mu surface with ABS independently controlled front brakes. Third, current antilock systems installed on the front axle of heavy vehicles tend to use SLR, MSHR, or MIR wheel slip control strategies.[32] No vehicle manufacturer uses a system in which front axle control is purely independent wheel control. Accordingly, the agency has determined that it would be inappropriate and impracticable to prohibit the use of select low control on front axles.

NHTSA has also decided that it is necessary to prohibit tandem control on tractors to further ensure the safe braking performance for tractor trailers. This decision is based on test data[33] which indicate that tandem control does not provide an acceptable level of stopping distance performance for truck tractors, even though it may ensure a heavy vehicle's stability and control.

Notwithstanding its decision to prohibit tandem control on truck tractors, NHTSA has decided that tandem control is appropriate for vehicles other than truck tractors, such as trailers and single unit vehicles. Vehicle test data submitted by Ford, Bendix, and Midland showed comparable vehicle stopping distance performance, and in some cases superior performance, of tandem control (2S/1M) systems compared with side-by-side control (2S/2M) systems, without any difference in vehicle stability performance. Vehicle test data also showed comparable ABS performance with MSHR tandem control on trailer axles. Accordingly, today's requirements permit direct control 2S/1M systems for converter dollies, semitrailers, and the front axles of full trailers. The agency further notes that single unit vehicles equipped with 4S/2M systems have been approved for use in Europe as "Category 1" systems.

C. Braking-In-A-Curve Test

1. General Considerations

As explained in the previous section on equipment requirements, NHTSA proposed requiring heavy vehicles to be

[32] SLR, MSHR, MIR and other wheel slip control strategies are discussed in the Appendix.

[33] "Improved Brake Systems for Commercial Motor Vehicles," DOT HS 807 706, April 1991.

equipped with antilock systems, and supplementing that requirement with dynamic performance requirements to check the directional stability, control and stopping distance of such vehicles. The agency proposed only those dynamic performance requirements that it believed would be feasible and practicable for checking the directional stability of a vehicle when it is maximally braked. Specifically, in its September 1993 NPRM, the agency proposed a "braking-in-a-curve requirement" on a low coefficient of friction surface without a stopping distance requirement. Under this proposed requirement, heavy vehicles would have to be capable of stopping without loss of directional stability or control, while turning on a slippery surface during an aggressive or "hard" stop. Separately, in its February 1993 NPRM, the agency proposed braking effectiveness requirements through the use of high speed (60 mph) stopping distance requirements on a high coefficient of friction road surface.

NHTSA explained, in the September 1993 NPRM, its tentative conclusion that the braking-in-a-curve test on a low mu surface is an objective, repeatable, and practicable procedure for evaluating a heavy vehicle's directional stability and directional control. The agency further explained that the proposed braking-in-a-curve test is consistent with industry's views, since the Antilock Test Procedure Task Force of the Motor Vehicle Safety Research Advisory Committee (MVSRAC) recommended this procedure and the SAE has proposed it in Recommended Practice J1626, *Braking, Stability, and Control Performance Test Procedures for Air-Brake-Equipped Truck Tractors.*

In response to the NPRM, Advocates stated that the agency's proposal to specify both an equipment and dynamic performance requirement was the most appropriate way to ensure that the substantial safety benefits of heavy vehicle ABS are realized quickly. Rockwell WABCO reluctantly supported the proposed combination of an equipment specification and a dynamic performance test, given the current difficulty in formulating valid additional, repeatable performance criteria. Midland-Grau favored this approach for truck tractors since it believed that merely issuing an ABS requirement, without an accompanying performance requirement, would allow ineffective systems in the marketplace.

Allied Signal supported the braking-in-a-curve test for truck tractors, but opposed the test for other vehicles, stating that vehicles other than truck tractors have not been tested using this maneuver. Midland-Grau was also concerned that very little test data have been collected on vehicle types other than truck tractors. Volvo-GM stated that the test is unsafe for many vehicles, and that a dynamic performance requirement is not necessary, given the provision requiring ABSs. AAMA stated that although it generally favors performance-based dynamic requirements for Federal Motor Vehicle Safety Standards, it opposes the braking-in-a-curve test given what it perceives as its "overwhelming practicability and objectivity problems." Among AAMA's concerns were that (1) there has been no test program by NHTSA to decide whether the test is suitable for single-unit trucks, buses, and trailers, (2) the braking-in-a-curve test alone cannot evaluate the effectiveness of an ABS, (3) there is a lack of repeatability of the braking-in-a-curve test procedure, and (4) no suitable test facilities exist for vehicle manufacturers to conduct compliance testing. Given these concerns, AAMA favored adopting, on an interim basis, an equipment requirement only.

ATA, Strait-Stop, and several other commenters supported a dynamic performance-based requirement instead of an equipment requirement. They believed that this approach would encourage further development of antilock technology and would enable users to find the system that best suits their operation. ATA was concerned that an equipment requirement would preclude the development of more effective systems for different applications.

TTMA believed that the braking-in-a-curve test is inappropriate for trailers. It stated that trailer manufacturers, many of which are small entities, do not have the financial resources or the facilities to conduct road testing.

After reviewing the comments and other available information, NHTSA has decided to amend the Standard to include the braking-in-a-curve test for certain vehicles. The agency considered requiring surface transition tests (i.e., a test maneuver in which vehicle braking begins on a high coefficient of friction surface and then completes the stop on a low mu surface, and vice versa), a lane change test, and split mu or side-to-side differential coefficient of road surface friction tests, to achieve that objective. The tests would ideally be conducted at various speeds with different loading conditions and test surfaces. However, the agency has decided that it would be unnecessarily burdensome and costly to impose such an array of tests on heavy vehicle manufacturers. NHTSA has determined that the performance testing and equipment requirements imposed in today's final rules are the most appropriate method of ensuring directional control and stability.

NHTSA has decided at this time to apply the braking-in-a-curve test to truck tractors, but not to other heavy vehicles. The agency believes that opposition by AAMA, Volvo-GM, and Midland Grau to the braking-in-a-curve test requirement is based primarily on uncertainty about whether the test would also be required for single-unit vehicles, since the MVSRAC ABS Task Force developed the braking-in-a-curve test procedure for testing only truck tractors. Since neither the agency nor the Task Force included single-unit vehicles in the test program, NHTSA believes that AAMA and the others are concerned about whether the braking-in-a-curve test would appropriately evaluate directional stability and control of single-unit vehicles. Accordingly, NHTSA's decision to apply the braking-in-a-curve test at this time only to truck tractors should reduce the concerns of AAMA and other commenters that opposed this dynamic performance test.

With respect to truck tractors, NHTSA has concluded that the road tests performed by the agency and the ABS Task Force provide sufficient justification to apply the braking-in-a-curve test to these vehicles. The agency notes that the industry, through the MVSRAC, previously endorsed and recommended to the agency, essentially the same dynamic performance test that is contained in this final rule. The Task Force test data and final report indicate that the braking-in-a-curve procedure is safe, practicable, and repeatable for truck tractors. Accordingly, the agency believes that this recommendation remains valid for tractor trailers.[34]

NHTSA has decided not to require single unit trucks, buses, and trailers to comply with the braking-in-a-curve test requirement at this time. The agency's limited testing of single unit trucks to the braking-in-a-curve maneuver revealed no specific safety problems. However, additional testing on a wider variety of trailers, dollies, and single-unit vehicles, including buses and trucks, would be appropriate to ensure that these vehicles could be safely tested to the braking-in-a-curve maneuver. Specifically, the agency is concerned that certain vehicles, especially ones with a high center of gravity, might be prone to roll over or otherwise lose control during such tests. NHTSA intends to develop performance test requirements equivalent to the braking-

[34] TRC of Ohio, Report No. 091194, page 4, August 26, 1991.

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in-a-curve test for the other vehicle types covered by this rule, assuming that future research indicates it possible to conduct the test in a safe fashion and to obtain meaningful, repeatable results. The agency anticipates conducting additional research and road tests to decide whether heavy vehicles other than truck tractors should be subject to this road test.

Today's notice, including the agency's decision not to apply the braking-in-a-curve test to vehicles other than truck tractors, completes the comprehensive rulemaking to establish directional stability and control requirements that was initiated by the June 1992 ANPRM. If NHTSA decides that it is in the interest of motor vehicle safety to apply the braking-in-a-curve test to single-unit vehicles or trailers, then it will issue a new proposal to initiate a subsequent rulemaking on this matter.

2. *Test Surface*

In the NPRM, NHTSA proposed that the braking-in-a-curve test be conducted on a test surface with a peak friction coefficient (PFC) of 0.5 to represent a low coefficient of friction surface. In formulating the proposal, NHTSA considered whether the proposed test surface specification raised practicability or objectivity concerns in light of *PACCAR*. The agency specifically requested comments on the proposed test surface specification.

Three commenters addressed the test surface specification. Midland-Grau stated that since maintaining a precise PFC value is not feasible, reasonable fluctuations of ±10 percent are to be expected. Notwithstanding these inherent fluctuations, Midland-Grau commented that its testing shows that variability in the test surface PFC value of less than 10 percent does not affect the braking-in-a-curve test since no stopping distance is prescribed. AAMA stated that it is not possible to maintain a surface at a precise PFC. It further stated that it is not apparent whether it would be more conservative to conduct testing at a higher PFC than the proposed PFC. AAMA stated that the variability in the peak to slide ratio is significantly greater on wet surfaces than on dry surfaces, and that this ratio directly affects performance. Mr. Robert Crail, a brake engineer, stated without elaboration that using PFC rather than skid numbers will ensure that the test surfaces and test conditions will be reasonable and repeatable during actual vehicle testing.

Before addressing the specific comments about the test surface, the following discussion summarizes the *PACCAR* decision's findings with respect to variability and how today's rulemaking responds to that ruling. As a result of that case, NHTSA has considered ways to better specify test surface adhesion. Prior to the Standard No. 135, *Passenger Car Brake Systems*, rulemaking, NHTSA defined road test surfaces by specifying skid numbers. A skid number is the frictional resistance of a pavement measured in accordance with a test procedure defined by the American Society for Testing and Materials (ASTM). However, given the fluctuations of skid numbers on a given surface, the *PACCAR* ruling invalidated certain aspects of Standard No. 121's reliance on this measure based on its potential impracticability. In the rulemaking proposing Standard No. 135, several commenters advocated specifying the peak friction coefficient as an alternative measure of a test surface's adhesion. The agency has concluded that PFC is more relevant for the stopping distance tests required by the standard because, unlike a skid number, the maximum attainable deceleration in a non-locked wheel stop is more directly related to PFC. As discussed in the Appendix, the skid number characterizes the slide (locked wheel) value of the coefficient of friction of a given road surface, and the PFC characterizes the peak (rolling wheel) value of the coefficient of friction of a given road surface. Since the agency's brake test procedures generally prohibit or limit wheel lockup during brake testing, specifying the peak friction coefficient is more relevant than specifying the skid number of the surface.

NHTSA has also conducted "Round Robin" testing to understand further how fluctuations of PFC affect the stopping performance of heavy vehicles. Based on the above, NHTSA has decided that the braking-in-a-curve test should be performed on a test surface with a PFC of 0.5, which appropriately represents a typical low coefficient of friction road surface. Moreover, in today's companion rule adopting stopping distance requirements, the agency has decided it is appropriate to perform the primary 60 mph stopping distance tests on a test surface with a PFC of 0.9. Agency and industry testing indicate that a PFC of 0.9 represents a typical dry road surface.

The requirement to specify test surfaces in terms of PFC rather than skid numbers also responds to *PACCAR*'s concern about practicability problems caused by skid number fluctuations. Because the PFC values of surfaces measured may also indicate some fluctuation, the agency has considered whether the fluctuation significantly affects the requirement's objectivity. In an earlier rulemaking about Standard No. 208, the agency explained that since some variability in any test procedure is inherent, the agency need only be concerned about preventing "unreasonable" or "excessive" variability to avoid causing manufacturers to "overdesign" vehicles to exceed the minimum levels of protection specified by the Federal safety standards. (49 FR 20465, May 14, 1984; 49 FR 28962, July 17, 1984.) With respect to the braking-in-a-curve test, variability of the PFC value of the test surface will have a negligible impact on a vehicle's ability to comply with the requirements, which is to stay within the 12-foot lane. Since the test speed is set at the lesser of 30 mph or 75 percent of the maximum drive-through speed [35] of the vehicle in the curve, any variability in the test surface will be compensated for by an increase or decrease of the maximum drive-through speed of the vehicle. If the maximum drive-through speed is less than 40 mph, this will result in a corresponding increase or decrease of the test speed, which cannot be higher than 30 mph. As a result, the variability of the test surface is not as critical an issue for the braking-in-a-curve test as it is for a stopping distance test on a high coefficient of friction surface, which includes a stopping distance measurement that is more affected by test surface variation. Based on these considerations, the agency has determined that the results of the braking-in-a-curve test will not be affected by minor variations in the test surface.

The road surface requirements comply with *PACCAR*'s holding that manufacturers are entitled to testing criteria that they can rely on with certainty, since they include objective terms and requirements, i.e., the test surface is at a PFC of 0.5. For the same reason, the requirements also comply with *PACCAR*'s requirement that all methods to demonstrate compliance with the requirement be set forth in the regulation.

In evaluating the requirement's practicability, NHTSA has considered possible difficulties with respect to building and maintaining test surfaces with a PFC of 0.5 for the braking-in-a-curve test and 0.9 for the high coefficient stopping test. (Those interested in building and maintaining a test surface should refer to NHTSA's "Manual for the Construction and Maintenance of Skid Surfaces," (DOT HS 800 814.) Variations in PFC for high coefficient of friction surfaces do not affect stopping distance test results appreciably. Moreover, while variations in PFC for low coefficient friction surfaces may affect the distance in which a vehicle stops, such variations are not relevant for the braking-in-a-curve test, which requires a vehicle to remain stable while it is stopped, not that it stop within a specified distance. After reviewing the comments and available information, NHTSA has concluded that specified test surfaces can be achieved and maintained. As explained above, recent "Round Robin" testing related to research about heavy vehicle braking by the agency and others on several test tracks indicates that the test surface specification does not raise practicability or objectivity concerns.[36]

One of the *PACCAR* court's concerns was that the road surface skid numbers were based on an out-of-production tire. That concern is not relevant to today's final rule since it specifies a currently-produced tire. The requirements comply with *PACCAR*'s concern about the testing method's objectivity because the peak coefficient of friction is an objective measure.

NHTSA disagrees with AAMA's comment that it is not apparent whether it would be more conservative to conduct testing at a higher PFC than the proposed PFC. Data from the round-robin testing and other sources show that the stringency of a braking-in-a-curve test increases as the PFC of the test surface decreases, if the tests are conducted at the same vehicle speed. Since the requirement specifies a test speed based on the vehicle's maximum drive-through speed, which decreases as the test sequence PFC decreases, the resulting test speed will also be lower as the PFC decreases. Hence, the stringency of the braking-in-a-curve test should not change with minor changes in the PFC of the test surface.

NHTSA has decided that AAMA's other comments about the test surface requirement are without merit. That organization did not provide any data to substantiate its statements. Nor did it explain why it believes that "variability in the peak to slide ratio" is relevant. Similarly, AAMA's comment about "simultaneously maintaining a given surface at a precise PFC and sliding coefficient (i.e., skid number) [being] completely infeasible" is irrelevant to this rulemaking. The agency has never proposed a test surface requirement that specifies both the PFC and skid number values.

3. Test Speed

In the NPRM, NHTSA proposed that the braking-in-a-curve test be conducted at 30 mph, unless the vehicle could not stay within the 12-foot lane when driven through the curve at 30 mph. If the vehicle could not do so, the braking-in-a-curve test would be conducted at 75 percent of the maximum drive-through speed. NHTSA believed that the proposed vehicle test speed was sufficiently high to test ABS performance, but low enough so as not to pose an unsafe condition during the maneuver to the test driver of most vehicles, based on testing conducted by the agency [37] and SAE J1626 Proposed Recommended Practice. The agency requested comments about the proposed test speed.

Advocates opposed any reduction in the test speed below 30 mph. Specifically, it opposed permitting vehicles that cannot negotiate the curve at 30 mph to be tested at the 75 percent drive-through speed because it believed that this would be a "free-floating criterion" that could lead to ineffective antilock systems.

Rockwell WABCO, Allied Signal, Midland-Grau, and AAMA requested that the test speed be clarified. Rockwell WABCO recommended that the vehicle test speed requirement be revised to read "stopped from 30 mph or 75% of the maximum drive through speed, whichever is less." Similarly, Allied Signal suggested that the vehicle test speed be clarified to say that testing cannot exceed 30 mph. Midland-Grau recommended that the agency revise the requirement so that the test be conducted at only 75 percent of the maximum drive-through speed capability. It further stated that conducting the braking-in-a-curve test at speeds greater than 30 mph on a low mu surface could cause safety problems. AAMA stated that the NPRM incorrectly applied SAE J1626, which requires testing at 75 percent of drive-through speed to a maximum of 30 mph braking speed. It stated that under the proposal, a vehicle with a drive-through speed of 30 mph would be tested at 30 mph, while a vehicle with a drive-through speed of 29 mph would be tested at less than 22 mph. In opposing the proposed requirement, AAMA further stated that the determination of the drive-through speed is highly sensitive to driver skill, subtle vehicle maneuvers, and environmental conditions, and is therefore not repeatable.

ATA recommended that NHTSA establish stopping or snubbing distance requirements for vehicles in a curve, using a braking speed which is between 95 and 100 percent of their maximum drive through speed.

After reviewing the comments and available information, NHTSA has decided to specify that a vehicle's test speed for the braking-in-a-curve test is "30 mph or 75% of the maximum drive-through speed, whichever is less." This modification responds to the comments by Rockwell WABCO, Allied Signal, and Midland-Grau that the proposal was not consistent with SAE J1626. The agency believes that making the speed consistent with SAE 1626 will eliminate the possibility of discontinuities in the test's stringency for different vehicles. As AAMA correctly stated, the proposed test speed created an anomaly that benefitted vehicles with a maximum drive-through speed slightly below 30 mph. For example, a vehicle with a maximum drive-through speed of 29 mph would have been tested at 22 mph, while a vehicle with a maximum drive-through speed of 30 mph would have been tested at 30 mph. This would have meant that a 1 mph difference in maximum drive-through speed would have resulted in a 8 mph difference in test speed. This could have caused significant variations in test results for vehicles with slight differences in maximum drive-through speed. By establishing a test speed that is adjusted for differences in maximum drive-through speed and that would be more specific and distinct for each vehicle and test surface, the agency has minimized potential compliance testing problems that might occur due to variability in the test speeds for different vehicle and road test surface conditions.

NHTSA notes that ATA's requested test speed and test conditions have not been tested by the agency or industry and therefore their adoption would not be appropriate at this time. The agency may evaluate ATA's proposal in future test programs.

NHTSA believes that Advocates' opposition to permitting test speeds below 30 mph is unfounded. Similarly, the agency believes that AAMA's concern about the drive-through speed being unrepeatable is irrelevant. By allowing vehicles to be tested at 30 mph or 75 percent of maximum drive-through speed, whichever is less, the effects of test surface variation are eliminated.[38]

[35] Maximum-drive-through-speed is defined as "the highest possible constant speed that the vehicle can be driven through 200 feet of a 500-foot radius curve arc without leaving the 12-foot lane."

[36] TRC Report, August 21, 1991, page 6.

[37] TRC Report, August 26, 1991.

[38] TRC Report, page 10.

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4. Type of Brake Application

In the NPRM, NHTSA proposed that the stops be achieved through full brake applications in which the pressure at the treadle valve must reach 100 psi within 0.2 seconds after the application is initiated. The agency believed that these values properly represent full brake applications, in terms of both the application's degree of force and its duration. The agency stated that the stability and control requirements should evaluate worst case braking applications in an aggressive or "hard" stop and that full brake applications are more readily repeatable than the "driver best effort" applications.

Midland-Grau agreed with the proposal to specify a full treadle application of 100 psi in 0.2 seconds for air braked vehicles. According to Midland-Grau's test data, full treadle applications at 100 psi were achieved in 0.12 to 0.18 seconds, with the measurement taken at the treadle valve's primary output circuit located at the rear axle brakes. However, more time is needed to reach 100 psi at the secondary circuit located at the front axle brakes because its output supplies air to the quick release valves and then to the front axle brake chambers. Allied Signal stated that it is not possible to reach 100 psi within 0.2 seconds at the front axle output circuit of the treadle valve.

After reviewing these comments, NHTSA has decided to revise the brake application requirement for air braked vehicles to require 100 psi in at least one of the treadle valve's output circuits within 0.2 seconds, thereby allaying Allied Signal's concern. This modification to the test condition should eliminate potential ambiguity concerning where the application pressure is to be measured.

5. Number of Test Stops for Certification

In the NPRM, NHTSA proposed that a vehicle comply with the proposed braking-in-a-curve test in each of three consecutive stops for each combination of weight and road conditions. In contrast, the vehicle stopping performance tests in Standard No. 105 and Standard No. 121 specify that the vehicle must meet the requirements at least once in six attempts through a best effort brake application. The agency tentatively concluded that six stops should not be needed to achieve the required performance in the braking-in-a-curve test, given the presence of an antilock brake system. The agency requested comments about the number of brake applications that should be required.

Advocates, Midland-Grau, and Mr. Crail stated that three stops are sufficient for a vehicle with an antilock brake system to display compliance with the braking-in-a-curve test. They stated that without stopping distance requirements, this test procedure entails a simple performance test for the vehicle to maintain control in the 12-foot lane. Midland-Grau added that it uses three stops when conducting ABS performance tests, and that this number of brake applications is consistent with the SAE J1626 Recommended Practice and with the MVSRAC Antilock Brake System Task Force's final recommendations.

AAMA argued that specifying three passes in three consecutive stops places an unrealistic burden on the driver to control the vehicle immediately with no opportunity to become familiar with the vehicle or test surface. AAMA recommended that manufacturers be given the option of conducting ten or more stops and certifying that the vehicle stayed within the 12-foot lane for any three consecutive stops.

After reviewing the comments and the available information, NHTSA has decided that requiring compliance with the braking-in-a-curve requirements during three consecutive stops is appropriate. The agency notes that specifying three consecutive full treadle test stops is consistent with both the agency's own testing at VRTC and its testing in conjunction with the motor vehicle industry through the MVSRAC ABS Task Force. The use of full treadle brake applications to test an ABS-equipped vehicle to the braking-in-a-curve maneuver requires less driver skill than the use of a driver's-best-effort modulated brake application (i.e., the type of application used in stopping distance performance tests) because the ABS automatically modulates the brakes. Further, more than three stops are unnecessary since the braking-in-a-curve test requirement is not coupled with a stopping distance requirement. Therefore, NHTSA has decided not to adopt AAMA's suggestion that manufacturers be given the option of complying with only three of ten stops. Adopting that suggestion would make the braking-in-a-curve requirement unreasonably lenient.

6. Test Weight

In the NPRM, NHTSA proposed that single unit trucks, buses and bobtail truck tractors be tested at their curb weight (including full fuel tanks) plus 500 pounds to account for the driver and instrumentation. The agency also proposed to allow a manufacturer to conduct the braking-in-a-curve test with a roll bar structure weighing up to an additional 1,000 pounds to protect the driver, based on a recommendation by the MVSRAC ABS Task Force. The agency requested comments about the appropriate unloaded test weight.

Rockwell WABCO recommended that unloaded heavy vehicles be allowed to have less than 500 pounds added in the unloaded condition.

After reviewing Rockwell WABCO's comment, NHTSA has decided to amend the test condition in the braking-in-a-curve test to specify the weight in the unloaded condition to be "up to 500 pounds" for driver and instrumentation.[39] The agency notes that instrumentation hardware has been getting more compact and lightweight. Using the regulatory language "up to 500 pounds" will simplify the test condition since manufacturers will not have to add ballast to ensure that the weight is 500 pounds. This change provides manufacturers with greater incentive to use the newer, lighter hardware. The agency believes that this modification will have no measurable effect on a vehicle's performance during the braking-in-a-curve test since a weight range of a few hundred pounds is of little significance in relation to a tractor's typical empty weight of more than 26,000 pounds.

7. Loading Conditions

In the NPRM, NHTSA proposed that braking-in-a-curve tests be performed in both the empty and loaded conditions, since a vehicle's braking performance varies depending on the amount of load that it is carrying. With respect to testing truck tractors in the loaded condition, the agency proposed two alternatives regarding the use of control trailers: (1) use a braked control trailer and (2) use an unbraked control trailer.

Most commenters, including AAMA, Rockwell WABCO, and Midland-Grau, supported the unbraked control trailer alternative. These commenters believed that using an unbraked control trailer instead of a braked control trailer would eliminate many sources of variability and would provide more consistent and repeatable test data. AAMA stated that if the braked control trailer alternative were adopted, every aspect of the control trailer brake system would have to be precisely specified because the tractor's performance is directly affected by the performance of the control trailer. Midland-Grau stated that using an unbraked control trailer is consistent with SAE J1626 and the testing

[39] The final rule also adopts the 1,000 pound allowance for a roll bar.

performed by the MVSRAC ABS Task Force.

Similarly, commenters on the February 1993 stopping distance NPRM strongly supported the unbraked control trailer alternative. Those commenters believed that the agency would have great difficulty defining the required performance of a braked control trailer and its ABS if the braked control trailer alternative were adopted.

Mr. Crail and Strait-Stop stated that a truck tractor should be tested with an ABS-equipped control trailer because it is not normal for a combination vehicle to be operated with an unbraked control trailer. They believed that a braked control trailer would more closely reflect real world braking. Mr. Crail also stated that an unbraked control trailer could result in instability during testing.

After reviewing the comments and other available information, NHTSA has decided to specify that truck tractors be tested with an unbraked control trailer for the braking-in-a-curve test. As the agency explained in the NPRM, the unbraked control trailer eliminates certain types of variability and provides more repeatable test data. Moreover, this approach eliminates the need for the agency to specify and vehicle manufacturers to comply with detailed foundation brake design requirements for the control trailer. Accordingly, the unbraked control trailer will provide more readily comparable test data among vehicles and more repeatable test parameters for manufacturers.

NHTSA acknowledges that an unbraked control trailer does not represent a typical operating condition for a combination vehicle. As a result, real world combination vehicles will stop more effectively than a test combination vehicle that has brakes on its tractor but not on its trailer. Nevertheless, as most commenters stated, the unbraked control trailer provides significant benefits for testing a loaded truck tractor. Further, using the unbraked control trailer is consistent with SAE J1626 and the testing performed by the MVSRAC Task Force.

As for Mr. Crail's concern about stability problems during testing, NHTSA does not agree that the use of an unbraked control trailer will result in such problems. It is true that using an unbraked control trailer will result in the kingpin receiving additional forces, since the trailer will still be pushing on the kingpin while the tractor is braking. However, the agency and industry conducted several braking-in-a-curve tests with unbraked control trailers that indicated that these additional kingpin forces will not increase a vehicle's instability during testing.[40]

8. Initial Brake Temperature

In invalidating parts of Standard No. 121, the court in *PACCAR* stated that the standard failed to specify formal and reasonably specific testing criteria about the time intervals between tests. The time interval between tests is important because it may affect brake temperature and thus brake lining performance. In response to *PACCAR*, the agency amended the standard to specify that the average brake lining temperature of the hottest axle be between 150° and 200 °F before performance tests could be conducted.

In the February 1993 NPRM on stopping distance and the September 1993 NPRM on stability during braking, NHTSA proposed that the average brake lining temperature of the hottest axle be between 250° and 300° F before performance tests could be initiated. This range was based on testing conducted by VRTC[41]. The agency believed that compared to current requirements, this provision would allow tests on heavy vehicles to be conducted within a shorter time between measurements at temperatures representative of in-service conditions, without affecting brake performance.

Only Advocates commented on the proposal in the stability and control NPRM to increase the initial brake temperature from 150–200 °F to 250–300 °F. Advocates supported the higher temperature range, stating that it is reasonable and representative of in-service temperature conditions. However, NHTSA received numerous comments about this issue in response to the stopping distance NPRMs. All commenters addressing the issue of initial brake temperature in those rulemakings strongly opposed the proposed change in temperature from 150–200 °F to 250–300 °F. Lucas argued that the higher initial brake temperature would be detrimental to drum brake performance. Lucas, HDBMC, and Rockwell WABCO stated that the proposed initial brake temperature would invalidate the vehicle manufacturer's data bank from Standard No. 121 testing at 150–200 °F, which has been accumulating since the 1970s. Midland-Grau commented that, among other things, the higher initial brake temperature would lead to more aggressive lining materials and vehicle compatibility problems.

[40] TRC Report #091194, page 4.

[41] "Heavy Duty Vehicle Brake Research Program—Report No. 1," April 1985.

Abex, AAMA, and HDBMC stated that the proposed higher initial brake temperature would shorten testing time between 5 and 10 hours. However, they believed that problems associated with brake fade resulting from the higher initial brake temperature would far outweigh the nominal cost savings obtained by having a shorter test time. Test data provided by AAMA showed that while the higher initial brake temperature has a slight adverse effect (a 7–28 foot increase) on full service brake stopping distance, it has a significant adverse effect (a 25–98 foot increase) on emergency brake stopping distance.

Rockwell WABCO stated that the perceived benefits of the higher initial brake temperature do not justify the increased vehicle testing and redesign that would be required to meet the proposed initial brake temperature.

After reviewing the comments, the test data, and other available information, NHTSA has decided that an initial brake temperature in the 150 °F to 200 °F range is more appropriate than the proposed temperature range. As the commenters stated, testing using the 150 °F to 200 °F temperature range is more repeatable and results in less variation between runs, compared to testing conducted using an initial brake temperature of 250 °F to 300 °F, particularly for the emergency brake stops. The agency further notes that an initial brake temperature of 150 °F to 200 °F is within the 150 °F to 300 °F range recommended by the VRTC test report. The agency is aware that the lower temperature range increases the total test time by 5 to 10 hours. Nevertheless, because the other advantages to the lower temperature range outweigh this concern, NHTSA has decided not to change the specification that the initial brake temperature be between 150 to 200 °F.

9. Transmission Position

In the NPRM, NHTSA proposed that the transmission be in neutral or the clutch pedal be depressed (clutch disengaged).

ATA commented that, in real world panic stops, drivers will neither put the transmission in neutral nor depress the clutch pedal before making a brake application. Nevertheless, ATA acknowledged that retardation by the drivetrain could cause vehicle instabilities that would necessitate testing at speeds lower than the drive through speed.

NHTSA has concluded that testing with the transmission in neutral or the clutch disengaged is appropriate to ensure that engine retardation does not affect a test which is intended to

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evaluate the influence of brake systems on vehicle dynamic stability. Engine and drivetrain retardation forces vary from vehicle to vehicle and can affect vehicle stability on low coefficient of friction surfaces. Nevertheless, this is not the purpose of this test. By requiring that the transmission be placed in neutral for brake testing, the standard attempts to reduce these drive-train related braking influences on the service brake performance. Therefore, testing with the transmission in neutral or the clutch disengaged will eliminate influences that engine or drivetrain retardation would have on braking performance. This test condition therefore helps to ensure test repeatability and reproducibility.

10. Summary of General Test Conditions

For the convenience of the reader, this section summarizes the general test conditions being adopted in this notice, as follows:

- Vehicle Position—Centered in the test lane at the initiation of braking.
- Steering—Driver to steer as necessary during braking to maintain vehicle control.
- Initial Brake Temperature—The average brake lining temperature of the hottest axle between 150 to 200 °F.
- Transmission—Neutral (or clutch pedal depressed).
- Loading for Truck Tractors

Empty (Bobtail): Curb Weight (including full fuel tanks) plus up to 500 pounds for driver and instrumentation, and, at the manufacturer's option, a roll bar weighing up to 1,000 pounds.

Loaded: Tractor is loaded with an unbraked control trailer, loaded above the kingpin only, so that the tractor is at GVWR and the trailer axle is at 4500 pounds. Tractor weight is distributed in accordance with the Gross Axle Weight Ratings (GAWRs). If the tractor's fifth wheel is fixed, preventing such loading, then the trailer is loaded until any one tractor axle reaches its GAWR.

- Brake Burnish—Follow procedures in S6.1.8(b) of Standard No. 121.

Low Mu Braking-In-A-Curve Test

- Run vehicle, empty and loaded.
- Test Surface—PFC of 0.5, as determined with the ASTM E1136 SRTT tire on ASTM traction trailer using ASTM E1337–90 procedure.
- Track Configuration—500 foot radius at lane center line.
- Test Speed—30 mph or 75 percent of the maximum drive-through speed, whichever is less. Maximum drive-through speed is the highest constant speed at which the vehicle can be driven through 200 feet of curve arc without any part of the vehicle leaving the 12-foot lane.
- Brake Application—Three full-treadle applications (i.e., air pressure of 100 psi at any treadle valve output circuit within 0.2 second) for each loading condition.
- Test Failure Condition—Vehicle must stay within the 12- foot lane during all three stops in order to comply with requirement.

D. Reliability and Maintenance

In response to the SNPRM, ATA, United Parcel Service (UPS), and Tramec expressed concern about the durability, reliability, and maintenance of ABSs. ATA stated that the rule, if adopted, would result in significant maintenance problems, especially with respect to failures of electrical circuits and of the power source. It claimed that ABS components fail too often and that real world failure rates are higher than those in NHTSA's demonstration program. ATA further stated that it is inappropriate to compare the failure rates of ABS components that are not subject to wear with the rates for components, like brake linings and tires, that are subject to wear. ATA stated that existing connectors fail in large numbers and that what it mistakenly termed a "separate connector requirement" would double the failure rate, resulting in unreasonable costs.[42] It also stated that there have been many problems resulting from inadequate installation of ABSs, since malfunctions are frequently due to design problems, faulty installation, and lack of knowledge about ABS maintenance. ATA also stated that NHTSA did not take seriously enough malfunctions noted during the agency-sponsored in-service fleet study, which were rectified with only the expenditure of labor, namely corrections that involved inspections or minor adjustments.

ATA and UPS stated that new ABS equipped heavy vehicles have a high percentage of "direct from factory" ABS failures. UPS stated that "these systems are still plagued by incidents of failure that far exceed the normal level of problems encountered with other components of heavy duty trucks." ATA also stated that NHTSA did not take labor only failures (i.e., malfunctions that can be fully corrected through the use of labor without the need for new parts) seriously enough. ATA believes that they are a costly and serious problem that takes vehicles out of service.

To evaluate the reliability of current-generation ABSs, NHTSA has conducted extensive field studies of ABS-equipped heavy truck tractors and semitrailers in developing this final rule. In response to the *PACCAR* decision, these studies were structured to assess whether current-generation heavy vehicle antilock brake systems were reliable and fail-safe, whether they inordinately increased vehicle maintenance costs, and whether they could be successfully maintained and would remain functioning in typical U.S. heavy truck operating environments.

Between 1988 and 1993, NHTSA tracked the maintenance performance histories of 200 truck tractors and 50 semitrailers equipped with ABS, as well as the histories of a comparison group of 88 truck tractors and 35 semitrailers not equipped with ABS, to determine the incremental maintenance costs and patterns associated with installing ABS on these heavy vehicles. Additionally, special on-board vehicle recorders were used to monitor the functioning and performance of the ABSs. Finally, drivers and mechanics at the participating test fleets were periodically interviewed to ascertain their views about the ABS test vehicles' performance and ease of maintenance. This multimillion dollar program was the largest of its kind that has ever been conducted by the agency or throughout the world. The study's authors concluded that, based on the data collected during the fleet study, currently available antilock braking systems are reliable, durable and maintainable.

While ABS is not a zero-cost maintenance item, its presence on a vehicle did not substantially increase maintenance costs (less than 1 percent for tractors, less than 2 percent for trailers) or decrease vehicle operational availability. Specifically, ABS use does not involve appreciably more intensive maintenance than present brake systems. The agency finds that the average annualized increase in lifetime maintenance costs ($3.47–$27.49 per vehicle) occasioned by the use of ABS, as indicated in the Final Economic Assessment (FEA) for this rulemaking, is a reasonable amount of additional maintenance. Further, the agency notes that a significant portion of the costs noted during the fleet study (i.e., those attributed to intermittent malfunction warning indications for which no problem was found and the system was simply reset or a simple adjustment was made) are likely to be reduced or eliminated as the algorithms inside the ECU that trigger ABS malfunction warnings are further refined to make them more discriminating, and as

[42] The agency notes that it is requiring powering through a separate circuit, not a separate connector.

quality control and installation skill improve.

NHTSA further emphasizes that system malfunctions do not render the vehicle's braking system unsafe, since the brake system merely reverts to one without an ABS; in other words, foundation brakes are unchanged when ABS is added. The few incidents noted during the test program in which an ABS malfunction did compromise the vehicle's underlying brake system performance involved defective components.

In both the tractor and the trailer studies, some test vehicles either arrived in the test fleets with faulty ABS or had ABS malfunction indications shortly thereafter, as a result of what was termed installation or pre-production design related problems. In general, these problems were easily remedied. Many were corrected by adjustments or minor repairs. Most were at least partially attributable to the prototype nature of many of the installations accomplished for this test program.

The following examples illustrate the relatively minor nature of correcting most of the problems. (The agency notes that none of the problems listed affected vehicle braking.)

- The electrical power source for the ABS ECU on a group of four trucks was incorrectly wired, at the time of installation, through the starter solenoid. These four trucks had to be rewired to make the ABS function properly.
- Intermittent failure warnings were noted on three trucks from the beginning of their operation. Upon inspection, the trucks were found to have an incompletely assembled connector in the wiring harness. When this problem was corrected, the failure warnings ceased.
- A group of 23 tractors had to be rewired to provide a separate electrical power source for the dash-mounted failure warning lamp so that it could function properly. The miswiring occurred during installation.
- The ABS modulator valves on a group of 12 tractors had to be relocated on the vehicles' frame rails to eliminate an inadvertent physical interference problem with the vehicles' driveshafts. This problem occurred as a result of an oversight during installation.
- On one truck, a sensor cable needed to be rerouted and resecured because of an interference/pinching problem with the wire and the steering gear.

NHTSA emphasizes that these problems and others like them do not reflect inherent design flaws with ABS's principal components (i.e., the ECU, modulators, and wheel speed sensing hardware). Instead, they involve wiring and installation problems. This highlights the importance of using high quality wiring components and paying close attention to installation details. The agency anticipates that the frequency of these problems will be lower than that experienced during the agency's test program once ABS production/installations increase to a level high enough to enable the quality control programs typically utilized by suppliers and truck manufacturers to take effect.

An average of 1.35 labor hours and $106.46 in replacement component parts costs per test truck tractor were necessary to rectify these installation/pre-production design related problems. Comparable figures for semitrailers were 1.9 labor hours and $65.36 in parts costs. All these costs are usually recovered by fleets under the terms of typical warranties offered by ABS suppliers and/or truck manufacturers. NHTSA notes that the start-up or installation/pre-production design related problems that the test fleets experienced are similar to the experiences that fleets were reported to have had with other devices such as electronically-controlled engines when they were first introduced on heavy trucks in the mid-1980's.

During the two-year period in which the reliability of these systems was evaluated, 200 ABS-equipped test tractors accumulated 39,818,659 miles of travel. During that time period, 126 trucks (63 percent) needed ABS-related maintenance that could best be attributed to normal service wear factors rather than installation or pre-production design related problems. A total of 421 incidents of this type occurred with the 125 trucks, the majority (321 or 76 percent) of which involved inspections/adjustments. The remainder (100 or 24 percent) involved repairs/replacements. All brands of the ABSs involved in the test program experienced incidents of this type at one time or another during their in-service operation.

Forty vehicles experienced more than one failure warning, interspersed over time, with two vehicles experiencing 35 and 31 separate indications (23 percent of the total resets), respectively, without the source of the problem being uncovered. Two other trucks experienced 12 and 10 separate indications respectively. These four vehicles (4.5 percent of the trucks experiencing this problem) accounted for 30 percent of the total intermittent failure warning indications and resets.

All five ABS suppliers' systems experienced intermittent failure indications with at least one of their forty test trucks involved in the test program. In each case, the ABS was either manually reset or the warning light did not reactivate when the truck's ignition was turned off and subsequently turned on again at some later time. However, 61 percent of the total failure warning indications of this type, and 34 percent of the vehicles experiencing intermittent failure indications, were attributable to one supplier's ABS. Another supplier's system accounted for another 18 percent of total failure warning indications and an additional 28 percent of the total vehicles involved. Since the time of the agency's test, both suppliers' systems have been modified to reduce the number of these false-positive malfunction indications.

The table shown below indicates the maintenance related to in-service wear that was required during the tractor portion of the program on each of the ABS components. Data are displayed by maintenance category (adjustments/inspections and repairs/replacements). Inspections and ECU resets associated with intermittent failure warning indications were the principal occurrence. In general, most of the work did not involve parts replacements. Parts replacement incidents totaled 40, with 55 percent of these (22) involving failure warning lamp bulbs or fuses. The total average number of in-service wear related maintenance incidents, including all inspections, adjustments, repairs and replacements was 2.11 incidents per truck over the two-year period of the test.

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ABS In-Service Wear Related Maintenance Incidents Over the Two-Year Period of the Test, by System Component Needing Work

ABS component	Number of trucks requiring inspections, adjustments, or repairs on this component	Number of trucks requiring replacement of this component
Wiring Cables	26	4
Wiring Connectors	19	2
Sensors and Related Parts	22	3
Modulator Valves and Related Parts	3	2
ECUs	19	7
Fuses and Lamps	7	18
System Resets	84	0
Total No. of Trucks per Column	118	32
Overall No. of Trucks Involved in the In-Service Related Incidents	125	

Note: Columns are not additive.

Replacing the 19 faulty major ABS components, and performing all the other inspections, adjustments and repairs that were in-service wear related, resulted in approximately 403 hours of labor expenditure and $4,068 for parts replacements. At a standard hourly rate of $35 per hour, the total cost of $18,173 for labor and parts amounts to 0.046 cent-per-mile (based on 39,818,659 total miles of travel) for the cost of maintaining the ABSs over the two-year period.

Inspections/ECU resets, which only involved labor expenditure, accounted for 45 percent of these total costs. Even though they occurred infrequently, ECU replacements tend to be costly, accounting as they did for 21 percent of the in-service wear related maintenance costs.

Similar findings were noted for the 50 ABS-equipped semitrailers that also were evaluated. The test vehicles accumulated 4,001,369 miles of in-service use during almost two years of operation during the program. During that time period, 23 semitrailers (46 percent) needed ABS-related maintenance that could best be attributed to normal service factors, rather than installation or pre-production design related problems. This compares favorably to the 63 percent of tractors requiring ABS service during the tractor program. A total of 44 incidents of this type occurred with the semitrailers, with the majority (29, or 66 percent) involving inspections or adjustments. The remainder (15, or 34 percent) involved repairs or replacements. These percentages are similar to the 76 percent for adjustments and inspections and 24 percent for repairs and replacements seen during the tractor program.

The following table shows in-service trailer maintenance that was required during the program for each category of ABS components. Inspections and ECU resets associated with failure warning indications were the principal occurrence. Parts replacement incidents totaled six, with three of these being status light bulbs and three speed sensors. In general most of the work did not involve parts replacement.

The average number of in-service maintenance incidents, including all inspections, adjustments, repairs, and replacements was 0.88 incidents per semitrailer over the two-year test period. This compares well with the 2.11 incidents per tractor seen during the tractor portion of this program.

Replacing six faulty ABS components, plus performing all other inspections, adjustments, and repairs that were in-service related, resulted in about 44 man-hours of labor expenditure and $234 for parts replacements. At a standardized hourly rate of $35 per hour, the total cost of maintaining the ABSs, for labor and parts, over two years ($1774) amounts to 0.044 cents-per-mile (based on 4,001,369 total miles of travel). The inspections and ECU resets (which only involved labor expenditure) accounted for 35 percent of the total costs. Comparable tractor figures are 0.046 cents-per-mile for total costs and 45 percent of the total costs for inspection and ECU reset, indicating that semitrailers performed very much like tractors.

ABS In-Service Wear Related Maintenance Incidents Over the Two-Year Test Period by System Component Needing Work

ABS component	Number of semitrailers requiring inspections, adjustments or repairs on this component	Number of semitrailers requiring replacements of this component
Wiring Cables	4	0
Wiring Connectors	2	0
Sensors and Related Parts	10	3
Inspection, with No Problem Found (NPF)	12	0
ECUs	4	0
Fuses and Lamps	3	3

ABS In-Service Wear Related Maintenance Incidents Over the Two-Year Test Period by System Component Needing Work—Continued

ABS component	Number of semitrailers requiring inspections, adjustments or repairs on this component	Number of semitrailers requiring replacements of this component
Total No. of Semitrailers per Column	23	6
Overall No. Semitrailers Involved in the In-Service Related Incidents	23	

Note: Columns are not additive.

At the completion of the overall 5-year test program, NHTSA conducted a final follow-up survey among the participating fleets. Among the 13 fleets that were continuing to maintain the ABS on the original test tractors, 97 percent of those tractors had functioning ABS. On the other hand, ABSs were not functioning on two-thirds of the original test tractors in the three fleets surveyed that chose not to continue maintaining the systems. This demonstrates that fleets must be willing to maintain the ABS if it is to be kept operational. An analogy can be drawn between the need to periodically inflate tires and the need to periodically perform minor, routine maintenance of ABS systems. Even though neither is time-consuming or costly, this type of maintenance is necessary if anticipated performance is to be achieved.

ATA commented on the SNPRM that the ABS repair/replacement rate (14–33 incidents per 100 vehicles per year) indicated in the agency's fleet study significantly understated the actual rate, citing the experience of one of its member carriers which recorded six to thirteen times as many "repair incidents."

Although NHTSA has not had the opportunity of reviewing the records ATA cited, the agency is inclined to believe that the difference in rates may be attributable to a difference in the definition of a "repair incident." The agency fleet study data cited by the ATA (i.e., 14–33 incidents per 100 vehicles per year) were for "repairs/replacements" of ABS components. They did not include instances in which "inspections" or "adjustments" were made. For instance, adjustments of wheel speed sensors are not included in this total. This exclusion was necessary because comparable inspection/adjustment data were not available for the other vehicle components whose maintenance histories were being compared in the fleet study to that for the ABSs.

The above discussion accounts for all the in-service maintenance activity that was performed on the test ABSs. The "monitoring" to which ATA refers did not in any way contribute to or detract from the reliability data for the ABSs under evaluation. That monitoring was intended to ensure that all the maintenance work that was performed was recorded, so that a complete picture could be portrayed of the extent and nature of maintenance work that could be expected if U.S. heavy trucks were equipped with ABSs. Based on those data, the agency concludes that, overall neither unreasonable amounts or excessively costly additional maintenance will be imposed on U.S. heavy truck operators in order to maintain ABS. Thus, the agency disagrees with ATA's assessment that significant maintenance problems will arise "* * * when the equipment is used outside the close monitoring it received in the NHTSA demonstration program."

ATA further stated that ABSs are "* * * not yet as durable as they must be for successful operation * * * in the U.S." That organization cited the fact that, as described above, three of the original participating fleets which ceased participating in the test program had appreciable proportions of non-functioning ABSs on their original test vehicles because they no longer maintained the systems.

NHTSA notes that this outcome could be anticipated with many other components besides ABS, that are installed on motor vehicles, for example, tires, engines, etc. All such components require periodic, and occasionally non-periodic, non-scheduled maintenance, in order to remain functional. Notwithstanding, the agency believes that the data contained in the two fleet study reports indicate that equipping vehicles with ABS is appropriate. Taken in total, those data indicate that, while ABS is not a zero-maintenance component, it is neither difficult nor unduly expensive to maintain. The fleet test results indicate that the level of maintenance attention needed to keep ABS functional is reasonable relative to the safety benefits that are estimated to result from use of these systems.

ATA also disagreed with the comparisons that were made in the agency's fleet study of repair and malfunction rates of ABS compared to other components on the vehicle that were susceptible to wear-related replacement. In the fleet study, comparisons were made between the maintenance histories of ABS and comparable histories for wheels/hubs, foundation brake components, pneumatic brake components, electrical system components, and tires.[43] These items were chosen because the agency believed that the maintenance patterns and costs of only these components could have been affected by the presence of ABS on the vehicle. The agency decided that it would be inappropriate to compare ABS maintenance results to items, such as engines and other drivetrain components, whose maintenance histories and costs would be unaffected by the presence of ABS.

ATA also questioned whether maintenance problems could have been underreported by a factor of 2.5 because the on-board recorders used during the trailer fleet study recorded less miles of travel (1.6 million vehicle miles of travel) than were accumulated by all the test trailers (4 million miles) during the test program. NHTSA notes that the maintenance history and cost data reported in the two studies were not affected by this discrepancy. The recorders were primarily used to obtain statistical information on the relative frequency of ABS activations per mile of travel. While their secondary purpose was to monitor ABS functioning, this was done only as a backup to the standard maintenance reporting and

[43] DOT HS 8070846, pages 3–24; DOT HS 808–059, pages 3–19, 3–20.

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record-keeping activities of the participating fleets. The ABS maintenance histories that are reported in the fleet studies were derived from those maintenance records and are known to be thorough and complete.

ATA further believed that NHTSA's fleet studies underreported ABS maintenance problems. That organization cited incidents in which drivers failed to couple the second tractor-to-trailer electrical connector that was installed to power the ABS and instances in which drivers drove for an extended time period without reporting an ABS malfunction.

NHTSA believes that ATA's additional concerns about maintenance problems with ABSs are without merit. With regard to the first point, even though a limited number of drivers did not, in some instances, couple the separate tractor-to-trailer electrical connector, this fact does not affect whether those trailers' antilock systems received electrical power. The trailer ABSs in question were all wired redundantly to accept backup power from the stop lamp circuit on the other tractor-to- trailer electrical connector that the drivers did connect. Therefore, the ABSs on these trailers were functioning throughout the test using backup power from the standard tractor-to-trailer electrical connector, and were exposed to the possibility of malfunctioning just as much as the other test trailers in the study were.

As to ATA's claim that some drivers did not report a malfunction for an extended period of time, there were only a few instances of drivers driving for a time with non-functioning ABSs. The functional status of ABSs on test vehicles was checked, no less than monthly, by test study personnel, and often more frequently by fleet maintenance personnel. Therefore, in each case, the existence of a nonfunctioning ABS was detected after only a limited number of trips were made under that condition.

ATA attached to its comments letters from some of its members, including Consolidated Freightways, Inc. (Consolidated), UPS, and Ruan Transportation Management Systems (Ruan). ATA characterized these letters as indicating that ABS "* * * failures are still happening and that other things are going wrong also". Consolidated's submittal contained a sample listing of maintenance shop orders describing various repairs performed on ABS installed on its vehicles.

NHTSA could not ascertain the statistical prevalence of these incidents in Consolidated's fleet, given the way Consolidated presented its data. Thus, these incidents have only anecdotal value. Nevertheless, the nature and description of these incidents parallels those experienced and recorded during the agency's fleet study. For instance, several incidents cited by Consolidated involved faulty wheel bearings that knocked wheel speed sensors out of adjustment. NHTSA believes that these incidents should not be viewed as ABS failures. Further, other carriers have suggested that the ABS' ability to detect faulty wheel bearing conditions, which fail regardless of whether a vehicle is equipped with ABS, is a safety and maintenance benefit, not a detriment. The majority of other incidents cited by Consolidated involved minor wiring/connector problems that can be readily solved by tractor manufacturers' use of higher quality wiring/connector components or better attention to installation quality control. Carriers may address such situations through traditional warranty and customer complaint channels and, if necessary, through buying vehicles from manufacturers with higher overall product quality ratings.

UPS cited data indicating that the ABS malfunction warning light on 40 percent of a sample of ABS-equipped vehicles received from the factory since 1990 was activated when the vehicles were delivered. UPS did not provide detailed information listing the causes of these malfunction indications. Further, UPS did not explain whether the problems were remedied by simple adjustments of the same sort that are typically done during "dealer preparation," prior to a dealer's delivering a vehicle to the customer. The agency notes that many large fleets such as UPS assume the dealership role when they receive large orders of vehicles directly from the factory. As a result, they assume responsibility for making this type of minor "make-ready" adjustments.

UPS also cited high proportions of ABS "hard repairs or replacements," but did not define what constituted a "hard repair." Thus, it is not possible for NHTSA to determine whether some of these might have been considered "inspections/adjustments" under the reporting scheme used in the agency fleet study or to put any of these figures in context or interpret them relative to the study's findings.

Ruan indicated that it was having difficulty getting an ABS supplier to respond to its requests for problem-solving help. Ruan listed a series of problems, similar to those noted in the agency's fleet study and cited by other carriers. Ruan's comments were anecdotal in nature and did not include any statistical information that would help portray the extent to which this affected their overall maintenance activities or costs. Nevertheless, all of the ABS suppliers and the major truck manufacturers have indicated, in the discussions they held with the agency on May 3, 4, and 19, 1994[44], that they are committed to providing field service support staff, training, maintenance information, and other help to remedy the problems cited by Ruan and others. NHTSA has repeatedly stated that manufacturers must make service support available to fleets to ensure the success of this rulemaking effort. The agency anticipates that the ABS suppliers and major truck manufacturers will provide this support, given their statements in response to the NPRM that they are prepared to and are now doing so.

In response to ATA's comment about the occurrence of ABS malfunctions due to out of adjustment wheel speed sensors, NHTSA believes that there are several reasons other than faulty ABS design for this phenomenon. Among the most common reasons observed during the agency's fleet study were sensor misadjustment during initial installation; faulty sensor retaining clips; sensor wires being installed with too little slack, resulting in the sensor's being partially pulled out from its mounting block when the vehicle's steering gear or suspension moved; faulty or improperly installed wheel bearings; or failure to readjust the sensor after performing maintenance work in the wheel end area that results in the sensor being knocked out of adjustment. NHTSA emphasizes that the relative frequency of these types of incidents was not high. Five of the two hundred test trucks experienced problems of this type before being, or shortly after being placed in service. In addition, twenty-two of the trucks experienced problems of this type over the two year, 40 million mile test program. With the exception of the faulty clip problem, which has been permanently rectified, all the remaining reasons for the occurrence of this condition are the result of installation quality control lapses, faults with other components, or misinformed maintenance practices. The failures were not caused by faulty sensor design. The agency anticipates that the rate of incidence of even these few events will decrease as quality control efforts and mechanics' awareness and skill in maintaining ABS improves.

[44] Memos about these meetings have been placed in the public docket.

In response to ATA's comment that mechanics will have difficulty installing and maintaining ABS, NHTSA recognizes that mechanic training will be necessary to ensure the long term viability of ABS systems. However, based on the agency's fleet test results, the agency finds that, once trained, mechanics can successfully maintain the systems. The study's results indicate that those fleets committed to providing mechanics the support needed to deal with ABSs can keep the systems operational with relative ease and efficiency and at reasonable cost. ABS suppliers and truck manufacturers have indicated a commitment to providing field service support for the systems. If fleets begin utilizing these services now, mechanics will be capable of maintaining the systems as more ABS-equipped vehicles are introduced into fleet service.

Based on its anecdotal experience with electronic engines, ATA stated that truck manufacturers will not correct the wiring and installation related problems evidenced in the test. Specifically, ATA stated that "* * * none of the OEM's yet follow the engine manufacturer's guidelines on how wiring/sensors are to be placed and no two of them do it the same way".

NHTSA believes that ATA's comparison between electronic engines and ABS is not relevant. That organization's comparison fails to portray the extent of problems that were reported to have occurred with electronic engines when they were first introduced in the mid to late 1980's. The lower malfunction rates now being experienced with electronic engines are the result of having worked through initial design and installation problems, a pattern the agency notes is now repeating with ABS, as it becomes more widely installed and used. In addition, ATA's comments about wiring/sensor placement on electronic engines appear to imply that the lack of uniformity in this regard adds complexity to the task of maintaining these engines, rather than implying that truck manufacturers are improperly or inadequately installing engines in vehicles they produce. Unless there is some compelling reason or requirement for manufacturers to install a given component in a single way, the fact that they do it differently is to be expected, given the need and desire for design flexibility. The same flexibility is likely to be true with ABS installations. Electronic engines are in widespread use within the trucking industry today. It is therefore reasonable to infer that truck manufacturers are installing them properly. Based on the data collected in its two fleet studies, the agency believes that the carriers can and will be able to successfully maintain ABS as well.

ATA further stated that the agency's thinking was "* * * seriously flawed * * *" because the agency-supported fleet study contained listings of ABS malfunctions that were remedied with only the expenditure of labor and did not require repair or replacement of a component part, with added parts-associated costs. ATA claimed that the report's inclusion of these type malfunctions implied "* * * some lesser class of failure". ATA's reference in this regard was to instances in which a false- positive ABS malfunction indication occurred which necessitated an inspection and system reset, with no other problem being found or remedy needed.

NHTSA disagrees. Rather than minimizing the consequences of these occurrences, the inclusion of them in the two reports highlighted the agency's concern about such events. During the tractor portion of the study, they occurred comparatively frequently with 88 of the 200 test tractors experiencing a total of 290 intermittent malfunction warning indications.[45] The situation improved markedly, however, in the later trailer portion of the study. Here, 12 of the 50 test trailers experienced a total of 15 of these false-positive malfunction warnings.[46] The cost impact of these occurrences is noted in the fleet study reports. The reports further noted that such malfunctions accounted for 45 percent of the total in-service maintenance costs for tractors and 35 percent for trailers. Notwithstanding these findings, the fact that a significant reduction in the frequency of these occurrences was noted between the time of the tractor and trailer portions of the study, indicates that the reliability of the components greatly improved.

ATA further implied that these types of failures resulted in lost vehicle productivity, because an affected vehicle would have to be taken out of service to remedy the situation. Contrary to ATA's assertion, none of the test vehicles were pulled out of operational service by the fleets as a result of these malfunction indications. Instead, corrections were made when the vehicle returned to its dispatch point and before it was next dispatched. Further, no dispatch opportunities were missed because of these incidents.

NHTSA notes that the agency's fleet study summarized the cost impact of "false-positive" ABS malfunctions. Specifically, these incidents accounted for 45 percent of the total in-service maintenance costs for tractors and 35 percent for trailers. The agency's fleet study report summarized the cost impacts as follows: In the case of tractors, those costs were $0.00021 per mile, while for trailers the figure was $0.00015 per mile. These figures are reasonable, given that it costs $1.38–$1.54 per mile to operate a truck with a driver.[47] Moreover, based on the trailer fleet study, NHTSA expects these costs to decrease significantly over time, since many of them were associated with ECU malfunction warning algorithms that ABS suppliers have since modified to make them less prone to inappropriate activation.

Based on the above considerations, NHTSA concludes that there is no basis for accepting ATA's position that more leadtime beyond that specified in this final rule is needed to successfully implement ABS use in heavy vehicles. NHTSA further concludes that maintenance costs associated with ABS are neither excessive nor unreasonable compared to other maintenance costs and that these costs will not be significantly reduced if the implementation dates of this rule are further delayed.

E. Requirements for Durability, Reliability, and Maintainability

ATA requested that the Standard include requirements to address the durability, reliability, and maintainability of ABSs. ATA was concerned that premature degradation of ABS performance would create a safety risk associated with loss of ABS. Specifically, that organization requested requirements addressing corrosion resistance and electromagnetic susceptibility. It stated that such requirements are "necessary to assure that the equipment provided to meet the stability and control requirements proposed in this standard can do so repeatedly.[48]"

NHTSA concludes that separate requirements addressing the durability, reliability, and maintainability of ABS are not needed at this time. As detailed above, the ABS fleet evaluation conducted by the agency on 200 tractors and 50 trailers demonstrated that current generation ABSs are durable, reliable, and maintainable. Based on the fleet study and comments by manufacturers, NHTSA concludes that

[45] DOT HS 807–846, page 3–17.

[46] DOT HS 808 059, page 3–14.

[47] *Modern Bulk Transport* Magazine, June 1994, page 84.

[48] NHTSA responds to the issue of the alleged safety risk in the next section.

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separate component tests are not necessary.

F. Alleged Safety Problems

ATA contends that current-generation ABSs can fail "unsafe," i.e., ABS malfunction can result in the foundation brakes becoming inoperative. That organization states that this is a "significant * * * safety problem" and cites five incidents, two of which occurred during the agency's fleet studies, as corroboration for this suggestion. No other commenter alleged that current-generation ABSs fail in an unsafe manner.

The issue raised by ATA concerns the likelihood of ABS malfunctions that would either reduce brake system performance or render a vehicle's underlying brake system completely inoperative. Based on the data collected during the NHTSA's in-service fleet evaluation of ABS, the agency finds that the likelihood of such occurrences is negligible. Therefore, NHTSA concludes that ATA's concern is unwarranted and unsubstantiated.

During the two-year evaluation of 200 ABS-equipped truck tractors, a total of 421 incidents were recorded involving in-service wear related ABS malfunctions. The vast majority (99.8 percent) of these malfunctions were benign. When the ABS became inoperative, the vehicle reverted to a normally-braked vehicle without ABS protection and remained fully operational until the malfunction was remedied. Similarly, during the two-year evaluation of 50 ABS-equipped semitrailers, 44 such incidents were noted. All (100 percent) were benign.

Only one ABS malfunction incident occurred during the tractor fleet study that resulted in the vehicle having reduced, braking performance. Even this incident, which involved a manufacturing defect in the surface coating of a piston slide valve in the modulator section of a drive-axle-only ABS on one tractor, did not totally compromise the brake performance. When the ABS supplier involved found the cause of this failure, a design change was made to rectify the problem and all the other test units in the fleet study were retrofitted with the improved design. Despite making this change, the ABS supplier involved subsequently chose not to produce this system. The agency emphasizes that this failure did not result in the complete loss of braking power on the vehicle. When the failure occurred, the vehicle experienced reduced braking capability on two of its five axles. The driver was able to maintain control of the vehicle and stop it. Despite the fact that it took longer than usual for the vehicle to stop, there were no adverse consequences as a result of this incident.

As ATA acknowledged in its comments, failures such as this are rare. In this case, the failure was the result of a manufacturing defect, an atypical situation. This incident is not indicative of a general flaw in presently designed ABS systems of the type that would support the contention that ABSs typically fail unsafely.

By comparison, during the same time period, the fleet studies reported 580 incidents involving the tractors, and 170 incidents involving the trailers, in which repairs or replacements were made to brake system components that were not related to the ABS.[49] These malfunctions could have compromised the brake system performance of the affected vehicles. Included among these were repairs or replacements of leaking or faulty relay or quick release valves, leaking or worn brake chambers or air hoses, and other miscellaneous repairs of leaking fittings. The agency notes that, despite their potential gravity, these failures went unheralded, and were simply repaired when detected. Fleet maintenance personnel expressed no special concern about this type of malfunction, treating them as routine occurrences.

NHTSA's fleet study experience parallels the experience found during roadside inspections of heavy vehicles. FHWA's Office of Motor Carriers[50], reports that in 1992, 1,655,668 heavy vehicles were inspected by state and federal officials under the Motor Carrier Safety Assistance Program (MCSAP), and 461,715 (28 percent) of these were placed out-of-service for mechanical defects that were deemed significantly hazardous enough to warrant repairs at that location before the vehicle was operated again. A total of 908,184 out-of-service defects were noted, 54 percent (487,238) of which were brake system related. The majority of these (68 percent) involved out-of-adjustment brakes, but the remainder (157,717) involved defects in either the foundation or pneumatic portions of the system (e.g., cracked brake drums, chafed or worn air hoses, leaking brake chamber diaphragms, etc.), all of which could significantly compromise brake system performance in a severe braking maneuver. These data indicate that, on average, nearly one of every ten in-use heavy vehicles is operating with at least one significant non-adjustment related brake system defect, that, for whatever reason, goes unnoticed and/or is not repaired by fleet personnel, until the condition is discovered in an inspection. The National Transportation Safety Board[51], among others, has concluded that this situation is already serious enough to warrant more "* * * consistent attention to brake system maintenance."

Problems associated with the foundation brakes appear to far exceed those caused by a potential malfunction to the ABS. Moreover, neither the frequency of ABS malfunctions nor their consequences, as noted in the fleet study, indicate that adding ABS will worsen this situation. In fact, the agency concludes that adding ABS will significantly contribute to improving it by partially compensating for brake system force imbalances that result from poorly performing or inoperative individual brakes on a vehicle. Ordinarily, under lightly loaded or empty operating conditions, the operative/properly performing brakes attempt to compensate for the reduced braking power absent from the inoperative/poorly performing brake(s). As a result, they over-brake and tend to lock up as increasing levels of brake pressure are applied in an effort to stop the vehicle. Although ABS is not a substitute for proper maintenance, under these conditions, its addition to a vehicle's braking system will be beneficial, since it will prevent lockup.

NHTSA emphasizes that the one isolated incident identified in its fleet study that involved an ABS malfunction that compromised the vehicle's braking performance is markedly different from those described in *PACCAR*. In that case, it was argued that when an ABS failed, the vehicle's underlying brake system was unsafe. The circumstances that gave rise to such concerns are very different from those of today. ABS technology for motor vehicles was very new in the 1970s. In response to aggressive stopping distance requirements and a prohibition against wheel lockup, manufacturers equipped their vehicles with ABSs and extensively redesigned the pneumatic and foundation brake portions of their braking systems. The new foundation brakes in many cases incorporated highly aggressive brake linings. When malfunctions occurred with a vehicle's ABS, the vehicle was left with a much more aggressive and powerful foundation brake system than the brake

[49] DOT HS 808 059, page 3–18; DOT 807 846, page 3–23.

[50] *Annual Report on Program Quality and Effectiveness, Fiscal Year 1992*, U.S. Federal Highway Administration, Office of Motor Carriers, June 1993

[51] *Heavy Vehicle Air Brake Performance*, National Transportation Safety Board Report No. SS–92/01, April, 1992.

systems that had been in general use. Additionally, since the pneumatic portion of the system was different from what had been in use, brake application and release timing on vehicles with malfunctioning ABSs were also different. Thus, for example, if the ABS on an ABS equipped tractor became inoperative, and the tractor was coupled to a non-ABS-equipped trailer, the tractor's brakes still functioned but were extremely incompatible with those of the trailer. The tractor's brakes applied and released differently and were much more aggressive. These differences led to braking force imbalance problems that were very disconcerting to drivers. While situations such as this did not constitute brake failures per se, drivers nevertheless perceived the performance of their vehicles to be very unacceptable and termed these situations brake system failures.

In the 1970s, there were several highly publicized incidents in which radio frequency interference (RFI) problems caused the ABS to cycle continuously during a brake application, thereby greatly diminishing braking power by venting brake system air pressure. The agency notes that manufacturers have completely eliminated the potential for RFI problems since current generation ABSs have been designed with shielded wiring systems and more sophisticated electronics that are better able to recognize spurious signals. No RFI problems have been reported with current-generation ABSs.

The numerous complaints of brake system malfunctions reported by drivers prompted the *PACCAR* court to find that the agency had a responsibility to determine that its regulations do not produce a more dangerous highway environment than that which existed prior to government intervention.

NHTSA has determined that today's final rule requiring heavy vehicles to be equipped with ABSs will result in a significantly safer highway environment than if no regulation were issued. Unlike 20 years ago, the manufacturers will not need to significantly redesign their braking system or use aggressive brake linings to meet stopping distance requirements. Further, ABS is no longer an immature technology. It has undergone 20 more years of development, been installed on tens of thousands of European vehicles pursuant to the 1991 ECE requirement, and been fleet tested extensively in this country by NHTSA and the industry.

NHTSA is aware of no consistent pattern of incidents in this country in which current generation antilock systems have experienced malfunctions like those that concerned the *PACCAR* court. As for the incidents cited by ATA alleging that an ABS malfunction resulted in an unsafe condition, the first one involving a manufacturing defect is discussed above. The second incident involved leaking air in the relay valve portion of a combined relay valve/ABS modulator valve on the steer axle of one truck involved in the agency's fleet study. Strictly speaking, this is not an ABS malfunction, since the air leak that occurred involved the service brake portion of this combined ABS/relay valve. The leakage was caused by oily sludge in the air system, which clogged the relay valve, thereby allowing service brake air pressure to vent, rather than being directed to the brake chamber controlled by that relay valve. The vehicle was equipped with an aftercooler type air cleaner/dryer. Such a leak would result in reduced braking performance, not total loss of the vehicle's brakes. This type of failure is similar to the non ABS related malfunctions that are described above and which were noted in both the fleet study and during roadside MCSAP inspections.

ATA's comments implied that the ABS suppliers' recommended solution for this problem (i.e., that tractors be equipped with desiccant style air cleaners, in order to provide cleaner air), was unacceptable and that to use such cleaner/dryers demonstrates that ABS require a higher level of maintenance. NHTSA believes that it is reasonable to expect that fleets will use desiccant air dryers, or another type of comparably performing air cleaning system, since such systems will enhance the durability and safety of tractor and trailer braking systems by keeping the pneumatic portion of the brake system cleaner. The marketplace appears to have recognized this fact and is responding accordingly. Air cleaning/drying systems are now being installed on more than 80 percent of all new air brake-equipped powered heavy vehicles, with more than 90 percent of these being the desiccant type. Based on current usage, the agency anticipates that air cleaning/drying systems will be in almost universal use within the next few years.

ATA provided few details about the third incident cited in its comments. That incident involved an ABS equipped tractor trailer combination participating in an ATA test program. That organization stated that the vehicle was "* * * generating consistent stopping distance results when, in the middle of one run, there was a loss of braking which significantly increased the stopping distance." ATA offered no explanation or reason for this outcome, except to indicate that "* * * no indication of an ABS failure by either the tractor or trailer ABS warning lamps * * *" was noted. Since ABS malfunction was not indicated as the reason for the unexplained increase in stopping distance that occurred during the test of one of its fleet member's trucks, there is no reason to believe that this incident is indicative of an ABS problem.

The fourth incident ATA cited involved a vehicle that was retrofitted with an ABS by the carrier and experienced reduced braking effectiveness during a test stop. Agency discussions with ATA staff and with the ABS supplier indicate that the vehicle was a truck tractor that was tested after the tractor had been equipped with an upgraded ABS. The ABS supplier subsequently concluded that a soldered connection had broken in the ECU and that this may have caused intermittent activation of one of the four modulators controlled by the ECU. Based on its investigation of the ECU in question, and its knowledge of how the ABS was configured, the ABS supplier believed that the truck had experienced a reduction in braking, but not a total loss of braking power. NHTSA emphasizes that this incident is atypical and not indicative of normal ABS performance, since the fleet study identified no similar incident.

The fifth and final incident described by ATA is reminiscent of the "phantom failures" that were reported to have occurred with early 1970's vintage ABSs. The causes of most of those "failures" were neither fully explained nor linked to ABS flaws. In this incident, the accident report simply claimed that "* * * the vehicle would not stop." ATA's account of this incident indicates that no problems were found in either the tractor's or the trailer's braking system after this incident.

NHTSA notes that other factors such as slippery road conditions or improperly adjusted brakes are just as likely as ABS malfunction to have caused the driver to believe that the vehicle would not stop or that it was stopping too slowly. Without additional information, it is not possible for the agency to assess the cause of this incident, or respond to the implication that the incident is somehow indicative of an inherent ABS flaw.

Contrary to ATA's allegations that existing ABSs have significant safety problems, most commenters, including vehicle and brake manufacturers, appear to agree with NHTSA's assessment that current generation ABSs are safe and

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reliable. Unlike the 1970's when several vehicle and brake manufacturers objected to the rulemaking, and ATA, TEBDA, and PACCAR challenged the antilock standard in court, comments to the September 1993 NPRM indicate that vehicle and brake manufacturers now generally believe that the proposal was appropriate and today's antilock systems provide significant safety benefits. Along with the safety advocacy groups, HDBMC, AAMA, GM, Rockwell WABCO, Midland-Grau, and Bendix generally supported the agency's September 1993 proposal to require heavy vehicles to be equipped with an antilock brake system. No vehicle or brake manufacturer opposed the rulemaking, aside from objecting to details in the proposal. These commenters stated that ABS will improve vehicle safety by providing improved braking and vehicle stability and control. Specifically, such systems will prevent wheel lockup, thereby preventing jackknifing and other loss of control accidents. Neither the vehicle nor brake manufacturers expressed concern that today's ABSs would fail in such a way as to compromise basic braking performance, as ATA alleges.

Strait-Stop stated that computerized ABSs will not prevent brake fade since these systems do not avoid or minimize heat build up. As a result, it alleged that computerized ABSs will not avert accidents related to runaway trucks. In contrast, it stated that its system results in cooler and therefore better brakes. The agency is not in a position to respond to Strait-Stop's claim that its product minimizes brake heat build up. Strait-Stop did not submit any data to substantiate its claim and the agency has no data of its own on this issue.

NHTSA emphasizes that Strait-Stop has not suggested that an ABS will contribute to brake heat build-up, but merely stated that it will not reduce brake heating. Reducing brake heating, and thus the potential for brake fade, is not one of the design goals of an ABS, nor is it the focus of this rulemaking. ABS is intended to prevent wheel lockup. Brake fade is most typically caused by one or more of the brakes on a vehicle being out of adjustment, thereby causing the other properly adjusted brakes to have to absorb a disproportionate share of the kinetic energy that needs to be dissipated when a fully loaded heavy truck attempts to descend a grade. In this situation, the properly adjusted brakes are overworked, causing them to overheat and fade. This in turn results in a loss of braking power. Equipping a vehicle with either ABS or the Strait-Stop product will not rectify brake maladjustment(s). Likewise, equipping a vehicle with ABS will not decrease the motor carriers' existing need to properly adjust their vehicles' brakes in order to avoid brake overheating and fade on downgrades.

G. ABS Malfunction Indicator Lamps

Since the discussion on ABS malfunction indicator lamps is lengthy, NHTSA first summarizes its decisions regarding this subject and then addresses the details of each decision. In today's final rule, NHTSA is amending Standard No. 105 and Standard No. 121 to require all powered heavy vehicles to be equipped with an in-cab lamp for indicating a malfunction of the ABS on that vehicle. In addition, the final rule requires truck tractors and other trucks that are equipped to tow trailer(s) to be equipped with a second in-cab lamp. The purpose of the second lamp is to indicate malfunctions in the trailer ABS. Finally, trailers manufactured during an interim eight-year period are required to be equipped with an external malfunction indicator lamp.

Each of these ABS malfunction indicator lamps is required to activate whenever there is a malfunction affecting the generation or transmission of response or control signals in the ABS that it is monitoring. In addition, the lamp is required to store information about a malfunction in that ABS until the next start up. Vehicle manufacturers are prohibited from equipping their vehicles with a device to disable any malfunction indicator lamp.

NHTSA also has amended the failed ABS system requirements to prohibit any change in brake timing in the event of an ABS malfunction that affects the generation or transmission of response or control signals.

1. Number and Location; Duration of Trailer Requirement

Standard No. 121 now requires that each tractor, truck, and bus be equipped with an in-cab lamp that indicates malfunctioning in the ABS of that vehicle. In the NPRM, the agency proposed that truck tractors be equipped with a second in-cab lamp that would indicate malfunctions in the trailer ABS. The agency proposed further that the in-cab lamps be required to be "mounted in front of and in clear view of the driver." The agency noted that this requirement is essentially the same as the current requirements in Standard No. 105 and Standard No. 121. These existing provisions require a continuous message to a driver when the ignition is in the "on" or "run" position.

NHTSA has decided to adopt its proposal that each truck tractor and single unit vehicle be equipped with an in-cab lamp to indicate malfunctions in the ABS of that vehicle. The agency believes that it is essential that a driver be notified about an ABS malfunction, so that the problem can be corrected. The commenters, including vehicle manufacturers and brake manufacturers, generally supported the proposal for an in-cab malfunction indicator. Only Strait-Stop opposed this proposal, stating that it would necessitate the use of an electrical ABS.

NHTSA proposed to require that each trailer equipped with ABS be capable of sending a signal about a malfunction in the trailer ABS to a towing vehicle, and that all powered towing vehicles equipped with ABS have an in-cab lamp that would be activated when the towing vehicle receives signals indicating malfunctions in a trailer ABS. In addition, the agency proposed to require the installation of an external ABS malfunction lamp on trailers and dollies manufactured during the eight-year period after trailers are first required to be equipped with ABS.[52] The agency believed that the external lamp would not be necessary on new trailers manufactured after the end of that period because, by that time, a significant majority of tractors in the heavy vehicle fleet, which would be responsible for the vast majority of miles driven by tractors, would be manufactured in compliance with the requirement for an in-cab lamp capable of receiving a malfunction signal from a trailer.

Commenters offered mixed views about requiring each towing vehicle to have a separate in-cab lamp to indicate a malfunction in a trailer ABS. Bosch, Midland-Grau and several other commenters supported the agency's proposal for requiring tractors to have two separate in-cab ABS malfunction indicator lamps: one indicating malfunctions in the tractor ABS, and the other, malfunctions in the trailer ABS. They stated that a driver would be able to respond to and possibly alter braking actions in the event of an ABS malfunction during emergency situations if the driver knew whether the malfunction was in the tractor ABS or in the trailer ABS. Midland-Grau strongly opposed having a single indicator, claiming that the tractor lamp sequence would camouflage the situation in which the trailer ABS lacked power. Midland-Grau further

[52] The eight-year time period for this interim proposal was intended to represent the average lifespan of a truck tractor.

stated that a single lamp would make it difficult to identify which vehicle had a malfunction without using separate diagnostic equipment.

ATA, Allied Signal and fleet operators opposed the proposal that tractors have a separate in-cab malfunction lamp for the trailer ABS, claiming that these indicators were "neither needed nor practicable at this time." AAMA supported a single in-cab malfunction lamp for each tractor to indicate an ABS malfunction on either the tractor or the trailer. It believed that there is no safety need for the driver to know immediately whether the ABS malfunction is in the tractor or the trailer. While AAMA stated that separate indicators would cause needless complexity to the instrument panel, it did not state that such a requirement would be impracticable.

After reviewing the comments and other available information, NHTSA has decided to require each powered towing vehicle to have one in-cab malfunction lamp for the towing vehicle's ABS and another in-cab lamp for the trailer ABS. The agency believes that the ABS trailer fleet study final report[53] indicated that drivers are more likely to observe an in-cab malfunction indicator for a trailer than a malfunction indicator lamp on the front of the trailer, particularly if the trailer ABS is powered through the stoplamp circuit. This is so because the stoplamp circuit only activates when the brake is applied, a time when the driver will be paying more attention to the traffic conditions ahead. The report also indicated that ABS malfunctions were present on some vehicles for a long time, but were not reported, primarily because the drivers "spent very little time looking in their mirrors while stopping" and did not notice that the trailer ABS malfunction lamp was lighted.

NHTSA does not agree with AAMA's recommendation for a single in-cab malfunction lamp for both the tractor and trailer antilock systems. As Midland-Grau stated, a driver would not be able to identify which vehicle in a combination was experiencing an ABS malfunction if only a single in-cab malfunction indicator lamp were required, since a single in-cab lamp would result in some trailer ABS malfunctions being camouflaged. Further, notwithstanding comments by AAMA and ATA that separate in-cab lamps add unnecessary complexity, combination vehicles in Europe have been equipped with such indicators for several years.

NHTSA believes that it is appropriate also to require an external malfunction lamp on trailers and dollies for the eight-year period during which some non-ABS-equipped tractors are likely to be towing ABS-equipped trailers. The external lamp will indicate trailer ABS malfunctions to the driver of a non-ABS tractor, and will also assist Federal or State inspectors in determining the operational status of a trailer's antilock system. Nevertheless, notwithstanding Midland-Grau's recommendation to require the external trailer lamp permanently, the agency has decided not to do so, since after the transition period, the vast majority of trailer malfunctions would be expected to be indicated in-cab.

In response to the SNPRM, TTMA stated that instead of locating the trailer lamp on the "roadside nose of trailer, it should be located near the electronic control unit where the driver can check it during his walk-around inspection of the tractor trailer combination." It stated that some ABS may require that the trailer be moved at a low speed (less than 5 mph) to activate the check function (i.e., some antilock systems check the status of wheel speed sensors by looking for proper signals as the vehicle goes from 0 to 8 mph). TTMA also commented that it is not practical to mount an ABS malfunction lamp on converter dollies in a location in which the lamp will be visible in a driver's rearview mirror, yet not be susceptible to damage.

While NHTSA recognizes the possibility of some susceptibility to damage, placing the external malfunction lamp in a different location on dollies would largely negate its benefits, because it would not be visible to the driver. For that reason, the agency has decided that the requirement will apply to dollies as well as other trailers.

NHTSA is revising Standard No. 101, *Controls and Displays*, to clarify that the malfunction indicator lamp must be labeled with the words "ABS" or "Antilock" for trucks and truck tractors with air brakes. The agency notes that Table 2 in Standard No. 101 currently refers to Standard No. 105, but makes no reference to Standard No. 121. For the in-cab trailer ABS malfunction indicator, NHTSA is adopting the identification of controls in Standard No. 101 (i.e., "Trailer ABS" or "Trailer Antilock") as proposed in the NPRM.

2. Conditions for Activation

Before this amendment, S5.1.6 of Standard No. 121 required the ABS warning signal to activate "in the event of total electrical failure." In the NPRM, NHTSA proposed that the malfunction indicator lamp activate "in the event of any malfunction in the system." The agency tentatively concluded that a driver needs to be informed about any malfunction because every ABS malfunction could affect the way in which drivers respond to a safety problem. The agency invited comments about when and in what situations the malfunction lamp should be required to activate.

Fleet operators, AAMA, Rockwell WABCO, HDBMC, and Midland-Grau stated that the proposal to require the ABS malfunction lamp to activate upon "any" malfunction in the antilock system is impracticable, unreasonably costly, and overly broad. These commenters believed that it is only practicable and realistic for current technology to detect certain types of electrical malfunctions, namely those involving electrical discontinuities or electronic malfunctions, not mechanical failures of ABS components. AAMA and HDBMC stated that it would be unreasonably costly to provide continuous monitoring of all ABS malfunctions because many possible malfunctions are temporary in nature or may not directly affect ABS performance.

Commenters suggested various ways to narrow the requirement. Rockwell WABCO recommended that the ABS malfunction indicator activate whenever a "malfunction occurs affecting the generation and/or transmission of response and control signals." It stated that this should be a minimum requirement applicable to electrical faults in sensors, control valves and associated wiring. ATA, Allied Signal and fleet operators stated that a more practicable requirement for the ABS malfunction indicator would be to require activation in the event of (1) failure to sense angular rotation, (2) failure of the controlling device to generate controlling output signals, and (3) failure to transmit controlling signals to devices that modulate brake actuating forces.

Based on the comments and other available information, NHTSA has decided to require ABS malfunction indicator lamps to activate for any malfunction that affects the generation or transmission of response or control signals in the vehicle's antilock brake system. The requirement does not apply to malfunctions such as sticking solenoid valves, small air leaks in the solenoid valve, or mechanical binding of a valve. The agency agrees with the commenters' arguments that the malfunction indicator requirement

[53] "An In-Service Evaluation of the Performance, Reliability, Maintainability, and Durability of Antilock Braking Systems for Semitrailers," (October 1993).

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should be modified because requiring activation in the case of "any" malfunction might have been impracticable. Under the modified requirement, only those malfunctions that are directly related to the antilock brake system must be indicated. Applying the indicator requirement to the "generation" of response and control signals serves to cover the components in the ABS that produce these signals. These components include wheel speed sensors which produce response signals for the control unit, and the control unit which produces control signals for input into the valves that modulate brake pressure. Applying the indicator requirement to the "transmission" of response and control signals serves to cover the components in the ABS through which the generated signals are transmitted. These components include wiring, connectors, belts used in mechanical systems, and all components through which a generated signal can be transmitted.

NHTSA notes that the generation and transmission of signals in ABSs are typically electrical in nature. Nevertheless, the agency has decided not to include the term "electrical" in the requirement so that the malfunction indicator requirements are applicable to non-electrical, i.e., mechanical, ABSs as well. Accordingly, mechanical ABSs will have to comply with the malfunction indicator requirements.

3. Activation Protocol for Malfunction Indicators

In the NPRM, NHTSA proposed standardizing the ABS malfunction indicator lamp system so that trucks and trailers would have the same activation pattern [54] and same colored lamps to indicate an ABS malfunction. The agency believed that such a common indicator pattern would reduce ambiguity and confusion and expedite Federal and state inspections. The agency proposed that each ABS malfunction indicator lamp be yellow and activate when a problem exists but not activate when the system is functioning properly. In addition, the proposal would have required that whenever the ABS receives electrical power, the indicator lamp would provide a continuous visible indication until a function check of the ABS was completed. Under the proposal, the check function would have to be completed and the lamp extinguished (assuming that there was no underlying condition that warranted activating the lamp) before the vehicle was driven.

Rockwell WABCO stated that both the existing format in which a continuous signal is activated upon the ABS's total electrical failure and the proposed format for the ABS malfunction lamp are acceptable approaches. That company strongly recommended that the agency adopt a single approach for all heavy vehicles. Midland-Grau accepted the agency's proposal to require the lamp to extinguish before the vehicle is driven, even though it was concerned about an incomplete sensor check function.

AAMA stated that the agency "should allow the ABS malfunction indicator to be either illuminated or extinguished during low speed drive away after key-on." That organization requested that the agency affirm its view that the proposed language did not require the ABS indicator to be either illuminated or extinguished during low-speed driveaway after key-on. That organization was concerned that the proposal might prohibit certain existing systems that have an illuminated indicator until the vehicle reaches a speed of five to seven mph after key-on.

Bosch recommended that an "on-off-on" blink sequence be used to indicate an ABS malfunction when the ignition is turned to the "on" or "run" position. It believed that this pattern would inform a relief driver of the presence of a malfunction and would assist Federal and State inspectors in determining the operational status of the vehicle's ABS.

After reviewing the comments and other available information, NHTSA has decided to require the malfunction indicator lamp to activate when a problem exists and not activate when the system is functioning properly. Under this requirement, the indicator lamp is required to provide a continuous indication until a function check of the ABS is completed. The agency believes that this ABS malfunction lamp format, together with the requirement that the system stores malfunctions until the next key-on, is necessary to enable Federal and State inspectors to determine the operational status of an ABS without moving the vehicle. Elsewhere in today's **Federal Register**, the FHWA's Office of Motor Carrier Standards is issuing a notice explaining its intent to issue a companion regulation requiring that the ABSs on heavy vehicles be operational.

NHTSA further notes that all vehicles will be required to have a continuously burning lamp in response to a malfunction. Accordingly, this requirement will standardize the activation format for all vehicles. Under that format, the ABS malfunction lamp extinguishes after a function check, and before the vehicle is driven. Since light vehicle ABSs currently use this format, the agency believes that heavy vehicle drivers will find it easier to understand the heavy vehicle ABS malfunction indicator if the same format is used. Furthermore, the adopted format is also consistent with the ECE requirement and therefore is consistent with the goal of international harmonization.

NHTSA has concluded that the "on-off-on" blink sequence recommended by Bosch to indicate a malfunction during vehicle start-up would place an unwarranted burden on the driver, who would have to pay close attention to the malfunction lamp to observe the blink sequence during vehicle start-up and drive-away. Therefore, the agency rejects this recommendation.

4. Signal Storage

In the NPRM, NHTSA proposed that the ABS indicator lamp system be capable of storing information regarding any malfunction that existed when the ignition was last turned to the "off" position. For instance, if the wheel speed sensors were malfunctioning before the vehicle was turned "off," the system would be required to store a signal for that malfunction. As a result, the malfunction would be displayed when the vehicle was turned "on" again, as part of the function check.

AAMA, Midland-Grau, Rockwell WABCO and several other commenters opposed the proposal to require the storage of ABS malfunctions that exist when the ignition is turned to the "off" position. AAMA stated that it is not appropriate to mandate this capability, claiming that many error messages are spurious or represent transient conditions, and therefore do not warrant automatic reactivation the next time the key is turned to the "on" position. It further stated that if a malfunction is non-transient, then the warning will reappear and that therefore it need not be stored. Midland-Grau believed that the proposal was design restrictive and would eliminate systems that do not have non-volatile memory (i.e., a system that remembers malfunctions when the system is shut down). Rockwell WABCO stated that this area does not need to be regulated, even though it acknowledged that all current electronic ABS have non-volatile memories to store and communicate current and past malfunctions. After reviewing the comments and other available information, NHTSA has decided that the malfunction storage requirement is necessary to ensure that relief drivers and Federal and State inspectors are advised about any malfunctions in a vehicle's ABS without having to move the vehicle. This capability is important since inspectors would need to determine the operational status of the vehicle's ABS without moving the vehicle. Moreover, this capability is necessary since the agency has decided to require that the ABS malfunction indicator lamp extinguish before the vehicle is driven, provided that there is no existing ABS malfunction that warrants activation of the indicator.

NHTSA disagrees with AAMA's claim that nontransient malfunctions will always reappear at the next key-on and therefore do not need to be "stored." A nontransient malfunction of the wheel sensor, which involves the generation of a wheel speed signal, is typically detected only when the vehicle is moving at a speed exceeding 8 to 10 mph, since a signal is only produced when the wheel rotates at some threshold wheel speed. Therefore, no signal is generated and hence no sensor malfunction is indicated if the vehicle is stationary. As explained in the NPRM and in the previous paragraph, one reason for requiring malfunctions to be stored is to ensure that preexisting malfunctions involving sensors are indicated before the vehicle is driven.

5. Disabling Switch

NHTSA, in response to a rulemaking petition from ATA, proposed in a separate NPRM to allow a switch that a driver could use to turn "off" and "on" the in-cab malfunction lamp for a vehicle's ABS. (58 FR 50732, September 28, 1993.)

Advocates and vehicle and brake manufacturers strongly opposed the proposal. AAMA, Bosch, and Midland-Grau believed that such a switch would encourage drivers to disable the malfunction indicator of an important safety system, and thus set an undesirable precedent for allowing mechanisms that would disable other vehicle safety systems. These commenters stated that a constant reminder of a malfunction is the best way to inform drivers of a malfunction condition and encourage them to seek a repair of an ABS malfunction. In addition, they claimed that if the switch were used to turn off the malfunction lamp and the ignition remained "on," a relief driver would not necessarily be informed of an ABS malfunction unless the relief driver used the switch to reactivate the malfunction indicator.

ATA, Allied Signal, and fleet operators supported the proposal to allow an optional switch for turning the ABS malfunction indicator off, claiming it would enable the driver to prevent the malfunction indicator from being a distraction, especially at night when the amber light can appear to be excessively bright.

NHTSA recognizes that some drivers view the malfunction indicator as an annoyance and thus might favor having a switch to turn it off. The agency is also aware of isolated cases in the truck tractor ABS fleet study in which malfunction indicators were disabled or taped over. Nevertheless, NHTSA agrees with AAMA and the brake manufacturers that permitting a disabling switch is inconsistent with motor vehicle safety. The information about a malfunction of an important safety system such as an antilock brake system should be communicated to the driver and should not be disregarded. Allowing drivers to turn off the ABS malfunction indicator would reduce the likelihood that a malfunction would be reported and corrected in a timely fashion. Use of such a switch might mask a potential safety problem, since an ABS malfunction could go undetected by the driver, if the disabling switch were activated. Allowing such a switch would also implicitly condone actions by some drivers that disable the malfunction indicator, since the agency would be allowing a disabling switch based on the argument that without a disabling switch drivers would defeat the switch. Moreover, allowing a malfunction indicator to be turned off would be inconsistent with Standard No. 101. Based on the above considerations, NHTSA has decided not to permit an optional disabling switch.

NHTSA notes that ATA's concern about driver distraction may be reduced if the antilock malfunction indicator is dimmed at night. In specifying requirements for the illumination of various controls and displays including the ABS malfunction indicator, Section S5.3.4(b) of Standard No. 101 states that

> The means for providing the required visibility may be adjustable manually or automatically, except that the telltales and identification for brakes, highbeams, turn signals, and safety belts may not be adjustable under any driving condition to a level that is invisible.

Under this provision, an ABS malfunction lamp may be manually or automatically dimmed, provided that it is still visible to the driver. Nevertheless, the agency emphasizes that a malfunction indicator that is not visible to the driver would be prohibited.

6. ABS Failed System Requirements

Section S5.5.1 of Standard No. 121 currently requires that the application and release times of the service brakes not increase when there is an electrical failure in the ABS. In the NPRM, NHTSA proposed removing the word "electrical." That change would prohibit any malfunction in an ABS, whether or not electrical, from increasing the application and release times of the service brakes. The change would also make the requirement applicable to nonelectronic ABSs.

ATA stated that the proposed requirement in Standard No. 121 for failed ABSs would be difficult to meet. It further stated that the failed ABS requirement for heavy vehicles in Standard No. 105 is more reasonable than the proposed requirements in Standard No. 121,[55] since some types of ABS malfunctions in a vehicle with air brakes, such as a leaky valve, could result in an increase in service brake actuation and release times.

NHTSA acknowledges that the proposed failed ABS requirement for heavy vehicles in Standard No. 121 is more stringent than the requirement in Standard No. 105. The agency could resolve this difference by making Standard No. 105 more stringent by deleting the word "electrical" or by amending Standard No. 121 to prohibit any change in brake timing in the event of certain, but not all, ABS malfunctions.

After reviewing the alternatives, NHTSA has decided to revise Standard No. 121 to prohibit any change in brake timing in the event of those ABS malfunctions that affect the generation or transmission of response or control signals. The agency believes that this modification will ensure that the brake system reverts to normal braking without antilock control, in the event of such a malfunction in the antilock system. NHTSA notes that this modification parallels the change the agency made to the requirements governing the types of malfunctions that must be indicated by the malfunction lamp. This requirement will not apply to mechanical ABS malfunctions such as sticky valves. While mechanical malfunctions do happen, electrical malfunctions are far more prevalent. The agency believes that simply deleting the word "electrical" would have made the requirement too broad and potentially impracticable, while

[54] By pattern, the agency meant a common way that an indicator would react in response to a malfunction. Specifically, upon a failure, the indicator would activate and provide a continuous yellow signal.

[55] Section S5.5.2 of Standard No. 105 requires that in the event of any failure in the antilock system, the vehicle must be capable of meeting the stopping distance requirement of 613 feet, as specified for a service brake system partial failure.

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leaving the word in without additional changes would make the requirement too narrow.

NHTSA notes that Standard No. 105's stringency cannot be increased in this final rule because the agency did not propose amending that Standard's failed ABS requirements. Nevertheless, the agency may conduct future rulemaking to make Standard No. 105's ABS failed systems requirements more consistent with the requirements in Standard No. 121 and proposed Standard No. 135.

H. Power Source

Section S5.5.2 currently permits the power source for trailers equipped with ABSs to be either the stop lamp circuit or a separate electrical circuit specifically provided to power the trailer ABS. In the NPRM, NHTSA proposed that ABSs be required to receive full-time power through a separate circuit, and to have backup powering through the stop lamp circuit. The agency tentatively decided that a full-time power source would be necessary to ensure that adequate power for the trailer's ABS is available, particularly for doubles and triples, and that a driver is aware of any ABS malfunction related to the trailer, since the stop lamp circuit is powered only when brakes are applied.

The commenters had mixed views about whether full-time power for trailer ABSs should be provided through a separate circuit. AAMA, ABS suppliers, TTMA, and Advocates believed that the agency's proposed approach is appropriate and that the industry will be able to develop appropriate voluntary standards through the SAE for electrical circuits or connectors. Upon standardizing with one approach, uniformity would be ensured. Midland-Grau stated that it "strongly supports" the agency's proposal for full-time powering for the following reasons:

1. The antilock systems being produced today are very reliable, but only as reliable as the power supply circuit which is supplying power to the antilock system.

2. Having continuous power to the trailer ABS will allow for full-time diagnostics continually updating the driver of the status of the trailer antilock system, and not just during braking.

3. A separate electrical circuit is needed to have adequate and reliable power available should all the solenoids in the control valves be activated in double and triple combinations.

4. To provide incentive to the industry (SAE, TTMA, TMC, etc.) to develop a "common" circuit for ABS on trailers, which may or may not ultimately involve a separate connector.

5. To facilitate the use of higher capability trailer antilock systems, along with other electronic systems such as low air pressure, height sensing, and electronic braking.

Midland-Grau further stated that "Because of cost, most fleets would prefer to power through the stop lamp switch not realizing that they are asking for the ABS reliability problems of the late 1970s to reappear again."

ATA and fleet operators opposed requiring full-time power for trailer ABSs. ATA stated that this requirement is an untested, unnecessary, and costly burden that NHTSA did not justify on a safety basis. ATA is concerned that a full-time power requirement would result in significant maintenance and reliability problems, basing its claims on the agency's fleet study. ATA also stated that requiring full-time power is premature since the industry is working on multiplexing systems,[56] which, when fully developed and proven, would provide many opportunities for powering accessories on trailers.

In response to the SNPRM, ATA elaborated on its initial comments opposing a requirement that trailer ABSs be electrically powered using a separate electrical circuit. ATA alleged that the requirement could not be justified and that no practicable method had been demonstrated for providing this separate source of power. Specifically, it stated that NHTSA's fleet study did not identify a single electrical powering system that performed in a reliable manner in the test. ATA further stated that it is impermissible for the agency to require a separate dedicated circuit after it had permitted stop signal powering as an option. (57 FR 30911, July 13, 1992.) It claimed that the agency has not justified what it terms a "proposed rescission of the prior rulemaking decision to allow power through the stop lamp circuit."

NHTSA has decided to adopt the proposed full-time power requirement for trailer ABSs. The wording of the standard has also been amended to clarify that towing vehicles must have a corresponding separate circuit. By requiring a separate circuit, the agency will ensure the strongest possible source of electrical power from the tractor to ensure the functioning of all the ECUs and modulators that are employed in the antilock brake system, or systems, on single trailers, or multiple trailers and converter dollies in multitrailer combinations. Another important safety justification is that a separate circuit will ensure a continuous malfunction indication whenever a malfunction exists. As noted above, an ABS malfunction indicator powered by a stop lamp circuit would function only when the driver is applying the brakes. During braking, a driver would most likely be concentrating on traffic conditions ahead, and would therefore be less likely to see an ABS malfunction indication on the trailer. However, a driver is more likely to be aware of a trailer ABS malfunction, if the tractor has an in-cab malfunction indicator for the trailer ABS, since a continuous malfunction indication could be more noticeable.

Typically, shared circuits that power other electrical devices besides the trailer ABS, such as stoplamps, cannot provide as much electrical power to the ABS as can a separate circuit dedicated to powering only the trailer ABS. This was demonstrated during the agency's trailer fleet study[57] in which all the alternative approaches that utilized a separate dedicated electrical circuit to power the ABS, (except one approach involving the trailer battery approach, which has been abandoned by the ABS supplier that suggested it), provided higher voltage levels than did the shared stoplamp circuit system approach. The data shown in the table cited in Footnote 33[58] were for single semitrailer combinations. Voltage levels would have been even lower had doubles or triples combinations been part of the fleet study.

If electrical voltage levels drop below 7–10 volts, an ECU cannot function properly and will automatically shut down. The system will automatically reset itself if sufficient power is once again provided. However, during periods of low power, the ABS will not operate. The likelihood of power dropping below the point at which the trailer ABS shuts down increases as the number of additional stoplamps, or other power draining devices, such as ABS ECUs and modulators, increases.

Trailer ABS systems on a single semitrailer typically consist of one ECU and one or two modulators. A two-trailer combination (i.e., a double) would utilize 3 ECUs and 3 to 6 modulators, while a three-trailer combination (i.e., a triple) would utilize 5 ECUs and 5 to 10 modulators. While the electrical current draw of ECUs is minimal, modulators typically draw 2–2.5 amps each. Depending on a system's configuration, the ABS on a single semitrailer could draw 2–5 amps, that

[56] Multiplexing is the process of combining several measurements for transmission over the same signal path.

[57] Reference Table 3.4, DOT Report No. HS 808 059.

[58] DOT HS 808 059, Table 3.4, page 3–27.

on a doubles combination could draw 6–15 amps, and that on a triple combination 10–25 amps. If a stoplamp circuit of the existing 7-pin cable connector/plug system were used to power the trailer ABS, the current draw of the stop lamp bulbs, added to that of the ABS, would create an overall current draw that could exceed 45 amps on a triples combination. Under such levels of current draw, there is a greatly increased likelihood that the ABS will no longer function on the second and third trailers in a triples combination.

At present, standard industry practice throughout the trucking industry is to provide electrical power for a trailer from the tractor through a cable and connector/plug assembly, the SAE J560 connector. This connector uses a 7-pin configuration, with six power circuits and one common ground. All six power pins are now utilized for one electrical function or another.

Although never directly stated, ATA's comments appear to be based on the premise that NHTSA's proposed requirement for a *separate circuit* is a directive that a *second separate tractor-to-trailer cable and connector/plug system* be used. Such a requirement would preclude the continued exclusive use of a single SAE J560 connector. However, the agency wishes to clarify that a second separate connector is not required. Accordingly, the agency has not specified a set method for providing the separate circuit. The agency intentionally left this choice to the industry in an effort to provide design latitude.

NHTSA notes that there are many alternative ways of providing a separate circuit to power ABS. During the trailer fleet study, the agency evaluated several alternative methods of providing electrical power. To provide a baseline for comparisons with other approaches, the stoplamp circuit of the standard tractor-to-trailer electrical cable/connector supplied power to the trailer ABSs for two of the five participating fleets. For these systems, the ABS received power every time the stoplamps were activated, but received no power when the brakes were not being applied.

In addition, NHTSA evaluated three distinct methods of supplying a constant source of electrical power to trailer ABSs. First, one fleet used a 15-pin "halo" cable/connector/plug system (supplied by the Cole Hersee Company,[59] which completely replaced the SAE J560 cable/connector/plug. Two of the additional 8 pins (one for power, the other for a separate ground as well) were used to power the trailer ABSs. Second, another fleet used a second 6-pin connector/plug/cable, with backup power provided by the stoplamp circuit of the SAE J560 connector. Third, another fleet used an auxiliary battery which was mounted on the semitrailer and was charged by electrical power from the semitrailer's refrigeration unit.

NHTSA is studying the SAE J560 stoplamp-circuit-powered approach further, using ABS-equipped LCV combinations (known as Rocky Mountain doubles and triples). This study is part of the joint NHTSA/FHWA operational test program being conducted in response to Section 4007(d) of ISTEA. The basis for wiring these combinations in this manner was not, as ATA suggested in its comments, a decision by the agency that "* * * there is no safety need for separate new requirements related to the ABSs electrical system." Instead, the agency's decision was based on the need to determine the ability of the redundant stoplamp-circuit to provide sufficient electrical power to operate the ABSs on all the trailers and dollies of a triples combination. In this test, the stoplamp circuit was wired in parallel with additional heavy duty wiring to the ABS, in an effort to maximize the possibility of success.

NHTSA evaluated two aspects of the separate connector powering for trailer ABS in its in-service fleet studies: (1) the ability of each approach to provide a robust source of electrical power, through a separate dedicated circuit, to the trailer ABS, and; (2) the durability, reliability, and maintainability of these secondary powering approaches as well as the incremental costs associated with using any of those approaches. With respect to the first point, the data contained in Table 3.4, DOT Report No. HS 808 059, page 3–27 indicate that all but one of the separate connector/separate circuit approaches provided higher voltage levels than did the shared stoplamp-circuit-system approach. The exception was the battery approach which, as previously stated, has been abandoned. NHTSA has concluded that these data justify the requirement for separate circuit powering of ABS.

NHTSA has also concluded that providing a separate source of power to trailers can be done practicably and economically. Regardless of whether a separate circuit or a shared circuit is used to power trailer ABS, ATA and other truck users have stated their preference for only one electrical cable/connector/plug system between tractors and trailers. The principal reason for wanting only one cable/connector is cost. All else being equal, utilizing two connectors would double the truck-user's replacement maintenance costs for these items, regardless of (and separate from) any costs associated with maintaining trailer ABSs by themselves. UPS commented that, on average, it already replaces two entire SAE J560 cable/connectors for each of their 15,791 vehicles each year. TNT Red Star Express fared somewhat better in this regard, reporting that it replaces 1.2 of these connectors per vehicle per year.

In comparison, in NHTSA's fleet study of electrical system maintenance, the agency found that 0.4 SAE J560 cable/connector repairs/replacements were made per vehicle per year. This is a level substantially better than either UPS or TNT reported but, nevertheless twice the repair/replacement rate noted for ABS components (0.2 per vehicle per year). Since the cost of these cables/connectors is less than ABS component part costs, repair/replacement costs were less for these SAE J560 cable/connectors ($0.0002 per mile) than the overall repair replacement costs for all the ABS components ($0.00044 per mile).

ATA commented that the overall cost of ABS-related maintenance would be on the order of 50 percent higher than indicated in the fleet study (i.e., $0.0002 + $0.00044 = $0.00064 per mile), if trailer ABS use necessitated a second tractor-to- trailer cable/connector/plug.

As NHTSA has stated repeatedly, although today's final rule requires a separate *circuit*, it in no way mandates that a second *cable/connector be used. The agency has left the decision to the industry about what approach to use. Moreover, even if the industry decides to use two connectors temporarily or permanently, the agency believes the associated incremental maintenance costs associated with doing so are reasonable.*

NHTSA expects that one of four approaches will be chosen with respect to trailer ABS powering. First, the industry, through the SAE committees that are now considering this issue, could voluntarily settle on a new pin/circuit assignment scheme for the existing SAE J560 connector, thereby "freeing up" a dedicated power circuit for the ABS. This approach could involve multiplexing of some signals. Second, the industry could develop and standardize a variant of the SAE J560 connector that is compatible with the existing connector but which provides additional pins/circuits. Third, the industry could develop a totally new connector that will handle present and future tractor-to-trailer powering and signalling/communication needs, and a transition could be made away from the

[59] Herein after referred to as the 15-pin plug.

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SAE J560 connector to this new connector. Fourth, the industry could decide to use a separate connector in addition to the existing SAE J560 connector.

NHTSA is aware that the industry, through the SAE and the ATA's Maintenance Council, is actively considering the first three of these alternatives and that prototypes and, in some cases, production versions representing each alternative are currently available and being evaluated. A connector for the fourth approach has been standardized by the International Organization for Standardization (ISO). This connector (ISO 7638) is mandated for ABS connections in Europe, and thus is commercially available and in widespread use. The agency does not wish to hinder industry options in this regard or limit the design development process. Therefore, the agency has not specified the exact method for providing a separate circuit to trailer ABSs. NHTSA notes that hardware for one of these approaches is currently commercially available, and hardware for the other three may evolve within the time period between now and the effective date for implementing trailer ABS. Thus, practicable methods for achieving the separate circuit requirement are currently available, and either market forces or industry consensus is all that is needed to determine which will be the standardized method.

Advocates were concerned that allowing the industry to develop a connector without government regulation could result in several connectors being available, which in turn would lead to incompatibility between tractors and trailers. AAMA stated that it was developing appropriate standards for trailer ABS power supply in cooperation with trailer manufacturers. In addition, SAE is interested in standardizing the ABS power supply.

Based on the available information, NHTSA believes that the industry will decide on an appropriate electrical circuit and standardized connector to meet the proposed full-time power and in-cab malfunction lamp requirements, without the need for a detailed requirement. The agency emphasizes that it is important that the industry standardize on only one approach, to ensure compatibility between towing vehicles and their trailers. If the industry cannot voluntarily agree on a single approach, additional rulemaking may be necessary.

NHTSA is aware that the industry is also working on multiplexing for tractor trailer electrical circuits, which could reduce the number of electrical wires needed for the various systems on the trailer. Nevertheless, multiplexing for combination vehicles is still in the developmental stage for most tractor trailer applications. The agency further notes that requiring that trailer ABSs receive full-time power will not prohibit multiplexing. Therefore, the agency believes that ATA's comments about multiplexing are not relevant.

NHTSA further notes that ATA has misinterpreted the agency's previous 1992 rule to permit powering through either the stop lamp circuit or through a separate circuit. That rulemaking responded to a petition for rulemaking from WABCO, a brake manufacturer, to amend Standard No. 121 to eliminate a design restriction. Specifically, while trailer ABS was required to be powered by the stop lamp signal circuit prior to the amendment, the amendment permitted trailer ABS powering through either the stop lamp signal circuit or a separate circuit. The agency was concerned that the pre-amendment requirement might inhibit the use of some state-of-the-art trailer ABS that have more performance features, but also have higher power requirements. Therefore, contrary to ATA's statements that the agency was acting prematurely thereby preventing the development of multiplexing, the 1992 amendment broadened the flexibility afforded to manufacturers rather than limited it. In the notice adopting that amendment, NHTSA stated that the approach it adopted to remove the design restriction will provide truck and trailer manufacturers and operators the flexibility needed to develop and use new trailer ABS systems. By providing such flexibility, the agency anticipates that more vehicle operators will decide to purchase ABS-equipped trailers. This is consistent with the agency's attempt [at that time] to foster voluntary adoption of trailer ABS by avoiding the specification of costly regulations that would act as disincentives for voluntarily equipping trailers and converter dollies with ABS. 57 FR at 30914.

Moreover, in the September 1993 NPRM proposing a full-time power requirement, NHTSA emphasized that the 1992 amendment was issued to "provide regulatory relief to manufacturers in developing new trailer ABS designs, at a time when trailer ABS was optional" and that "the agency would revisit the issue of trailer ABS powering in the context of rulemaking in which trailer ABS would be required."

Today's final rule culminates precisely the type of rulemaking envisioned in the 1992 notice. In today's final rule mandating that heavy vehicles be equipped with ABSs, the agency is addressing an entirely different situation from the one it was considering in 1992. NHTSA is analyzing how best to ensure safety through a mandatory requirement, not how to encourage the use of an optional safety device.

I. Applicability of Amendments

In the NPRM, NHTSA proposed applying the ABS requirements to all vehicles with GVWRs exceeding 10,000 pounds. The agency explained that this proposal went beyond ISTEA's statutory directive for the agency to initiate rulemaking concerning methods for improving braking performance of "new commercial motor vehicles," which are defined as vehicles with a GVWR of 26,001 or more pounds, including truck tractors, trailers, and their dollies.

1. Trailers With Hydraulic or Electric Brakes

Manufacturers of trailers with electric or hydraulic brakes commented that they could not comply with the requirement because ABSs are not available for these types of vehicles.

NHTSA wishes to clarify that the equipment requirement in today's final rule applies to powered heavy vehicles and to air-braked trailers and dollies, but not to trailers equipped with hydraulic or electric brakes. NHTSA notes that no FMVSS addresses vehicles equipped with electric brakes and that Standard No. 105 applies "to passenger cars, multipurpose passenger vehicles, trucks and buses with hydraulic service brake systems." (see S3 "Application.") Since electric brakes are not covered by any FMVSS and Standard No. 105 does not cover trailers equipped with hydraulic brakes, today's amendment is not applicable to trailers with these types of brakes. The agency notes, however, that a trailer equipped with an air-over-hydraulic brake system will have to comply with the ABS requirement, since an air-over-hydraulic system is a subsystem of an air-braked system, and is therefore subject to Standard No. 121.

2. Hydraulically Braked Vehicles

NAFA stated that it is premature to mandate ABSs on medium vehicles with a GVWR between 10,000 and 26,000 pounds, claiming that there are no accident or safety data supporting an ABS requirement for these vehicles. In response to both the NPRM and the SNPRM, ATA commented that the agency should not require ABSs on hydraulically braked commercial vehicles until proven ABSs are available. It stated that it is not aware of any proven ABS for hydraulic systems nor of any effort by the government to obtain such systems for fleet tests, which it believed is necessary before mandating such equipment. In response to the SNPRM, UPS stated that this requirement should not be adopted because NHTSA has performed no tests or demonstrations on hydraulically braked vehicles. Moreover, it stated that it is aware of no proven technology that could be applied to satisfy the new NHTSA rule.

Allied Signal and Midland-Grau, two antilock brake system manufacturers, commented on the proposed requirements for ABSs on hydraulically braked heavy vehicles. Allied Signal stated that the technology for ABSs on heavy vehicles is the same as that used on passenger cars and light trucks and should not present significant technological problems. It indicated that some components such as the modulator and ECU are identical or nearly identical to those used in light vehicle applications. In addition, wheel speed sensors for hydraulically braked heavy vehicles incorporate the same technology used in wheel speed sensors for light vehicles and air braked heavy vehicles. Allied Signal commented that the agency's time frame can be achieved with proven technology. (i.e., ABS are increasing in use in this country on vehicles under 10,000 pounds GVWR). Midland-Grau commented that the industry is only about three years away from having ABSs for hydraulic braked single-unit trucks. In response to the SNPRM, AAMA stated that it is optimistic that validated ABSs will be available for all hydraulic vehicles within the proposed time frames. Nevertheless, because the availability of such systems is uncertain, it stated that there may be delays for certain types of hydraulic vehicles if development problems arise.

Based on the available information, NHTSA believes that a March 1999 effective date for requiring antilock brake systems on hydraulic braked single-unit trucks and buses provides sufficient time for vehicle manufacturers and ABS manufacturers to complete the development and testing of these systems. In addition, some Japanese and European manufacturers are currently marketing ABS for medium and large hydraulically braked vehicles. In their comments, brake manufacturers expressed confidence that such antilock systems will be available in this country.

NHTSA notes that ATA and UPS are incorrect in their belief that the agency can only issue a requirement after conducting tests or demonstrations on that specific subcategory of vehicles. Nothing in the Safety Act mandates such specific vehicle testing. Based on comments by vehicle and ABS manufacturers and the positive experience in other countries with ABS-equipped hydraulic vehicles, NHTSA has determined that requiring hydraulic vehicles with ABS is practicable and appropriate. Moreover, the agency notes that manufacturers, which have fully developed antilock systems for hydraulic brakes on passenger cars and light vehicles, will be able to apply the underlying technology (i.e., wheel speed sensors, ECU, and modulators) to heavy vehicles. The agency has provided a lead time of four years to ensure that manufacturers will have sufficient time to develop and test antilock systems for hydraulic braked heavy vehicles.

The agency is aware that Isuzu and Mitsubishi Fuso have marketed hydraulic braked heavy trucks with GVWRs of up to 16,000 pounds, with optional ABS since 1991. The ECU of the hydraulic ABS available on the Isuzu trucks is manufactured by Akebono and the remainder of the system is manufactured by Transtron. The hydraulic ABS on the Mitsubishi Fuso Trucks is manufactured by Japan ABS Co. Mercedes-Benz, offers hydraulic-braked heavy trucks with GVWRs of up to 26,000 pounds, with Bosch's ABS.

Based on this information on the current availability of hydraulic ABS in Europe and Japan and comments by vehicle and ABS manufacturers, NHTSA is confident that there will be sufficient time for the development and testing of reliable antilock brake systems for hydraulically braked vehicles. Accordingly, NHTSA believes that it is appropriate and necessary for motor vehicle safety to require hydraulically-braked vehicles to be equipped with antilock brake systems. Nevertheless, the agency plans to monitor this development closely and could modify the implementation schedule if development of antilock systems for hydraulically braked vehicles faced unexpected development problems.

J. Implementation

In the NPRM, NHTSA stated that its goal is to achieve significant improvements in braking performance at a reasonable cost to manufacturers and consumers. The agency proposed the following implementation schedule:

Truck Tractors	2 years after final rule (1996).
Trailers, including converter dollies.	3 years after final rule (1997).
Single-unit trucks	4 years after final rule (1998).
Buses	5 years after final rule (1999).

NHTSA stated that this implementation schedule was appropriate, given the current state of ABS technology. The agency believed that the schedule would provide the industry, ABS manufacturers, and maintenance personnel sufficient leadtime to prepare for the changes that would be required to accommodate the new technology.

AAMA recommended that the effective dates for the proposed heavy vehicle stability and control requirements and the previously proposed stopping distance requirements be "synchronized for the various vehicle types."[60] AAMA recommended that the agency adopt the following effective dates for both the stability and control requirements and the stopping distance requirements, assuming that the two rules are issued before September 1994:

Truck tractors	2 years after final rule (1996).
Trailers, including converter dollies.	3 years after final rule (1997).
Air-braked single-unit trucks and buses.	3 years after final rule (1997).
Hydraulic-braked single-unit trucks and buses.	4 years after final rule (1998).

Similarly, HDBMC requested that the implementation schedule for the directional stability and control requirements be accelerated and that the effective dates of this rulemaking and the stopping distance rulemaking be "made coincident to allow the industry to maximize its efforts by effectively utilizing its limited resources."

ATA recommended effective dates of December 31, 1999 for tractors and December 31, 2001 for trailers, claiming that this schedule would permit each fleet, through its own tests, to determine which ABS is best suited to its operations and to phase in ABS accordingly. In contrast, Advocates favored the proposed implementation schedule and opposed any schedule that moved the compliance calendar to the next century.

Based on its analysis of these comments, NHTSA issued a SNPRM that proposed the following implementation schedule for both sets of requirements:

Truck Tractors	2 years after final rule (1996).
Trailers, including converter dollies.	3 years after final rule (1997).

[60] On February 23, 1993, NHTSA proposed that the stopping distance requirements take effect two years after the final rule for all applicable vehicles. (58 FR 11009)

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Truck tractors	2 years after final rule (1996).
Trailers	3 years after final rule (1997).
Air-braked single-unit trucks and buses.	3 years after final rule (1997).
Hydraulic-braked single unit trucks and buses.	4 years after final rule (1998).

The agency stated that making the effective dates for the two rulemakings concurrent would facilitate a more orderly implementation process, avoid the need for manufacturers to redesign the brakes on individual vehicles twice, and reduce the development and compliance costs that manufacturers would face as a result of these regulations. NHTSA requested comments about the implementation schedule proposed in the supplemental notice.

AAMA, HDBMC, Ford, GM, White GMC, Bosch, Eaton, Midland-Grau, Allied Signal, Advocates, and Gillig favored the implementation schedule proposed in the SNPRM. AAMA stated that the supplemental proposal would provide a more orderly and cost effective implementation of new requirements, thereby helping to avoid unnecessary redesign and redundant testing. Ford requested that the agency specify that the requirements have September 1 effective dates. Strait-Stop favored keeping the stopping distance requirements separate from the stability and control ones.

ATA favored a phased in implementation schedule under which manufacturers would be required to sell (or consumers would be required to purchase) air braked powered vehicles with at least 25 percent ABS in 1996, 50 percent in 1997, 75 percent in 1998, and 100 percent in 1999. Trailers would have a similar phase-in beginning in 1998. ATA stated that a phase-in is necessary to allow manufacturers the opportunity to offer a wider selection of ABS and to provide time to improve existing systems. Moreover, ATA claimed that a phase-in was essential to users because it would allow experimentation with different systems, thereby increasing public acceptance of the ABS mandate. Similarly, Tramec favored introducing the requirements over a period of time instead of all at once. Eaton cautioned that unforeseen manufacturing problems may impact product quality and availability. Therefore, it stated that a gradual increase in ABS usage would reduce concerns about manufacturer capacity and end-user support abilities.

After reviewing the available information, NHTSA has decided to adopt an implementation schedule similar to the one proposed in the SNPRM. Specifically, truck tractors manufactured on or after March 1, 1997 will have to be equipped with ABS and comply with the braking-in-a-curve test and high coefficient of friction stopping distance requirements; trailers and single-unit air braked trucks and buses manufactured on or after March 1, 1998 will have to be equipped with ABS, and single-unit air braked trucks and buses will also have to comply with the high coefficient of friction stopping distance requirements; and hydraulic braked trucks and buses manufactured on or after March 1, 1999 will have to be equipped with ABS and comply with the high coefficient of friction stopping distance requirements. The agency has decided that these effective dates, which were widely supported by vehicle manufacturers, brake manufacturers, and safety advocacy groups, will provide for an efficient implementation of Congress's desire that NHTSA require heavy vehicles to be equipped with ABSs. This implementation schedule phases in ABS for heavy vehicles over a three-year period. Truck tractors, the vehicle type with the largest potential safety benefit from ABS, are required to comply with the rule first.

This phase-in should facilitate consumer acceptance, since truck tractors, the most standardized type of heavy vehicle, will be subject to the regulation first. Only after this relatively uniform type of vehicle is equipped with ABS, will single unit vehicles which include more niche vehicles (e.g., dump trucks) be required to comply with the regulation?

In deciding on the most appropriate implementation schedule, NHTSA gave serious consideration to ATA's suggestion that the requirements of this rule be phased in on a percentage basis over a four-year period. However, for the reasons set forth below, NHTSA has determined that the implementation schedule being adopted in today's final rule will provide the most benefits in the most cost effective manner. The agency emphasizes that adopting ATA's recommended phase-in would have resulted in needless and protracted delay, thereby resulting in a significantly less safe highway environment.

Such a delay is unnecessary given the current state of development for ABS. At the time of publication of this final rule, six of the seven major U.S. manufacturers of heavy trucks, Freightliner Corporation, Peterbilt Motors Corporation, Kenworth Truck Company, Ford Motor Company, Mack Corporation, and Navistar International Corporation, have publicly announced that some or all of their product line of truck tractors, and in some cases single-unit trucks, will be equipped with ABS, as standard equipment, beginning with the 1995 model year. For heavy vehicle manufacturers, that model year began the summer of 1994. Thus, it appears that the marketplace has already addressed ATA's concern that manufacturers cannot meet increasing market demand for ABS. Also, manufacturers are typically warranting ABS for 300,000 miles or three years, a fact that should allay ATA's concerns that manufacturers will not support their product offerings.

NHTSA further notes that the final rule includes a phase-in requirement in which the vehicles for which braking stability is the greatest concern (truck tractors and trailers) are required to be equipped with ABS first. Single-unit trucks and buses follow at a later date. This will facilitate vehicle manufacturers' efforts to engineer these systems into their entire line of product offerings over a period of time spanning four years, instead of having to do it all in one year. This should substantially reduce burdens on manufacturers and give them sufficient time to engineer and accomplish high quality installations of ABS, which is a major concern of ATA.

K. Intermediate and Final Stage Manufacturers/Trailer Manufacturers

In the NPRM, NHTSA provided an extensive discussion about the potential effect of the proposed requirements on intermediate, final stage, and trailer manufacturers. The agency explained that it is aware of the concerns of final stage and intermediate stage manufacturers about road testing their vehicles. In particular, the agency explained how an incomplete vehicle manufacturer could pass through certification to the final stage manufacturer and how a final stage manufacturer could certify compliance with the proposed requirements.

NTEA commented that many of its members, most of whom are final stage manufacturers of vehicles produced in two or more stages, would not be able to use the pass-through certification because it believed that the guidelines provided by the incomplete vehicle manufacturer would be very restrictive. NTEA stated that these final stage manufacturers would, therefore, have no practicable and objective means of demonstrating compliance with the braking-in-a-curve requirement because they have neither the financial nor engineering resources to conduct their own compliance testing. NTEA

therefore requested that the agency exclude from this requirement all "multi-staged produced vehicles that are equipped with a cargo-carrying body or work-related equipment." Likewise, Midland-Grau stated that final stage manufacturers do not have the resources to certify their vehicles, and believed that it would be difficult for chassis manufacturers to establish comprehensive guidelines for final stage manufacturers to follow. AM General commented that small vehicle manufacturers will face undue burdens, and suggested that the rulemaking be limited to only Class 7 and 8 vehicles (which are the largest heavy vehicles, typically truck tractors over 26,000 pounds).

As explained above, NHTSA has decided to apply the braking-in-a-curve test only to truck tractors at this time. These vehicles are manufactured almost exclusively by large, single stage manufacturers. This final rule does not require manufacturers of single-unit vehicles and trailers, such as NTEA's members, to establish compliance with today's amendments through road testing. While incomplete single unit vehicles and trailers will have to be equipped with ABSs, the final stage and trailer manufacturers can ensure the presence of the equipment on their vehicles and can reasonably rely on a brake manufacturer's assurances that its ABS complies with the standard. Specifically, certification of compliance with the equipment requirement for ABS does not necessitate road testing.

Nothing in the preceding discussion should be understood as indicating that the agency agrees with NTEA's comment that it would be impracticable for a final stage manufacturer to certify compliance with the braking-in-a-curve test. As explained in the NPRM, while a manufacturer must certify that its vehicles meet all applicable safety standards, a manufacturer need not necessarily conduct the specific tests set forth in an applicable standard. Certifications may be based on, among other things, engineering analyses, actual testing, and computer simulations. Moreover, a manufacturer need not conduct these operations itself. A manufacturer can utilize the services of independent engineers and testing laboratories. It can also join together with other manufacturers through trade associations to sponsor testing or analysis. Finally, it can rely on testing and analysis performed by other parties, including the brake manufacturers.

L. Benefits

As detailed in the FRE, NHTSA estimates that the use of ABS on all heavy vehicles will help prevent between 320 and 506 fatalities, between 15,900 and 27,413 injuries, and between $458 million and $553 million of property damage each year. Based on its evaluation, NHTSA believes that the rulemaking is cost beneficial since a significant number of crashes resulting in fatalities and property damage will be prevented by this rulemaking.

In its comments, ATA questioned NHTSA's benefit analysis, arguing that recent accident data analyses have indicated that ABS on passenger cars does not result in significant reductions in crashes. The agency believes that it is neither appropriate nor possible to project effectiveness estimates for ABS, or for that matter, other safety equipment/features from one type of vehicle to another. As ATA is aware, vehicle loading characteristics for heavy vehicles differ significantly from those of passenger cars. Although the study upon which NHTSA based its benefit estimates did not specifically analyze whether heavy vehicles equipped with ABS have statistically lower accident rates, the results of that study carefully analyzed and reconstructed heavy vehicle crashes to estimate the likely benefit of ABS. The agency believes that its benefit analysis accurately estimates the benefits of heavy vehicle ABS.

ATA also argues that "the presence of ABS did not lead to a reduction in the accident rate, since in NHTSA's tractor fleet study, the proportion of crashes involving ABS-equipped tractors is the same as their proportion of the total fleet. NHTSA disagrees with this contention. The agency's fleet studies of ABS were never intended to result in estimates of the safety benefit of ABS. The total number of crashes that occurred during the tractor fleet study, fourteen, is too small to draw any statistically significant conclusions about the relative safety of ABS-equipped versus non-ABS-equipped vehicles.

M. Costs

In the ANPRM, NHTSA estimated that the unit cost to a manufacturer for a complete six-channel ABS installed on a 6 x 4 tractor would be approximately $1400 or approximately $1100 for a full Select Low ABS. It estimated that the unit cost to a manufacturer to install ABS on a trailer would be $900.

In response to comments to the ANPRM, NHTSA reevaluated its initial cost estimates to include several additional components including the wiring harnesses, mounting hardware, and in-cab warnings. As the Preliminary Regulatory Impact Analysis (PRIA) explained in detail, the agency estimated that the unit cost for a vehicle purchaser to comply with the proposed requirements (including the connectors and cables that provide full-time power) would be approximately $2900 for the average truck tractor, $2350 for the average single-unit truck and bus, $1850 for a non-towing trailer, $1700 for a towing trailer, and $1475 for a trailer converter dolly. Based on these estimates of consumer costs and estimated annual production of 137,000 truck tractors, 160,000 single unit trucks and school buses, and 7000 transit and intercity buses, the agency estimated that the annual costs for these vehicles would be $790 million. For trailers, these consumer cost estimates together with an annual production of 115,000 non-towing trailers, 32,000 towing trailers, and 3,000 trailer converter dollies yields an estimated annual cost of $272 million.

Since the preparation of the PRIA, NHTSA has completed a detailed engineering process-cost analysis study in which antilock braking systems from three ABS manufacturers were evaluated. The cost evaluation entailed a physical tear-down of the system, in which the cost of each part was determined based on the actual manufacturing process used in its production. The study estimated the weight and various costs related to the production and installation of three 4S/4M tractor ABS, each from a different ABS manufacturer, and three different trailer ABS configurations, a 6S/3M, a 4S/2M and a 2S/1M, each from a different manufacturer. Based on that cost information, the agency estimates that the cost for the minimum ABS needed to comply with the requirements in this amendment would be: $749.33 for a truck tractor, $682.51 for a single-unit truck, and $439.64 for a trailer. Separate analyses estimated the cost and weight of tractor-to-trailer connectors/cables and related wiring ($93.97 for a truck tractor, $39.52 for a non-towing trailer, and $133.49 for a towing trailer or trailer converter dolly), and of in-cab ABS malfunction indicator lamps (MIL) for tractors and trailer-mounted ABS MILs for trailers ($13.66 for a truck tractor, $9.47 for a single-unit truck, and $9.43 for a trailer). The total estimated cost to the vehicle purchaser is estimated to be: $856.96 for a truck tractor, $691.98 for a single-unit truck or bus, $488.59 for a non-towing trailer, and $582.56 for a towing trailer or trailer converter dolly. Based on these estimates of increased cost to the vehicle purchaser and estimated annual production of 147,600 truck tractors, 248,300 single unit trucks and school

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buses, and 7000 transit and intercity buses, the agency estimates that the annual costs for these vehicles would be $303 million. For trailers and trailer converter dollies, these estimates of increased cost to the vehicle purchaser together with an annual production of 139,400 non-towing trailers, 46,700 towing trailers, and 2,900 trailer converter dollies yields an estimated annual cost of $97 million. Therefore, the agency estimates that the total annual increased cost for equipping heavy vehicles with ABS will be $400 million.

Along with estimating the cost increases to the new vehicle purchaser, NHTSA also estimated the increases in the cost of operating heavy vehicles equipped with ABS. Three categories of operating costs were examined: lifetime maintenance costs, lifetime fuel costs due to the additional weight of the ABS, and lifetime revenue loss due to payload displacement. The range of the increase in total lifetime operating costs related to equipping heavy vehicles with ABS is from $201.47 to $786.65. Since the estimates for these various operating costs are dependent upon the type of fuel used for powered vehicles and on the estimated lifetime vehicle miles travelled (VMT) for the various vehicle types, the heavy vehicles were divided into 18 different fuel type/VMT categories. The total estimated increase in vehicle operating costs associated with ABS for all heavy vehicles is $232 million. The reader is referred to the FEA for a detailed discussion of the costs for these different categories.

In its comments, ATA questioned NHTSA's portrayal of the increases in vehicle maintenance costs as not being significant compared to overall cost of maintaining the air brake system on heavy vehicles. ATA did not, however, question the actual increased maintenance cost per mile estimates derived from the agency's fleet studies. It is these estimates of the increased maintenance cost per mile that were used in estimating the total cost impact of this rulemaking and determining that the amendment is cost effective. As such, the agency believes that the relative increase in vehicle maintenance that would result in different fleets is not the important factor in evaluating the impact of this Final Rule.

IX. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and determined that it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. In addition, the Office of Management and Budget has determined that it is "significant" within the meaning of Executive Order 12866. The agency has prepared a Final Economic Assessment describing the economic and other effects of this rulemaking action. Summary discussions of those effects are provided above. For persons wishing to examine the full analysis, a copy is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis.

The primary cost effect of the requirements will be on manufacturers of heavy vehicles which are generally large businesses. However, final stage manufacturers are generally small businesses. A detailed discussion about the anticipated economic impact on these businesses is provided in the FRIA.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Section 571.3, Standard No. 101, *Controls and Displays*, Standard No. 105, *Hydraulic Brake Systems* and Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

2. Part 571.3 is amended in paragraph (b) to add a definition of "Full Trailer" as follows:

§ 571.3 Definitions.

* * * * *

Full trailer means a trailer, except a pole trailer, that is equipped with two or more axles that support the entire weight of the trailer.

* * * * *

3. In § 571.101, Table 2 is revised to appear as follows:

§ 571.101 Standard No. 101; Controls and Displays.

* * * * *

BILLING CODE 4910-59-P

Table 2
Identification and Illustration of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	*Telltale Color*	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Turn Signal Telltale	Green	Also see FMVSS 108	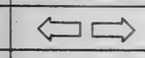	—
Hazard Warning Telltale		Also see FMVSS 108		—
Seat Belt Telltale	—[7]	Fasten Belts or Fasten Seat Belts Also see FMVSS 208		—
Fuel Level Telltale		Fuel	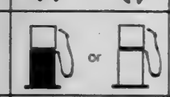	—
Gauge	—			Yes
Oil Pressure Telltale		Oil		—
Gauge	—			Yes
Coolant Temperature Telltale		Temp		—
Gauge	—			Yes
Electrical Charge Telltale		Volts, Charge or Amp		—
Gauge	—			Yes
Highbeam Telltale	Blue or Green [4]	Also see FMVSS 108	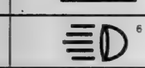 [6]	—
Brake System [8]	Red [4]	Brake, Also see FMVSS 105 & 135	—	—
Malfunction in Anti-Lock or	Yellow	Antilock, Anti-lock, or ABS. Also see FMVSS 105 & 135	—	—
Variable Brake Proportioning System [8]	Yellow	Brake Proportioning Also see FMVSS 135	—	—
Parking Brake Applied [8]	Red [4]	Park or Parking Brake Also see FMVSS 105 & 135	—	—
Malfunction in Antilock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock. Also see FMVSS 121	—	—
Brake Air Pressure Position Telltale		Brake Air, Also see FMVSS 121	—	—
Speedometer	—	MPH [5]	—	Yes
Odometer	—	—[11]	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes

[1] The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
[2] Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning telltale.
[3] If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear; otherwise, no identification is required.
[4] Red can be red-orange. Blue can be blue-green.
[5] If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.
[6] Framed areas may be filled.
[7] The color of the telltale required by S4.5.3.3 of Standard No. 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.
[8] In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

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4. Section 571.105 is amended in S4 by removing the definition of "Antilock system" and by adding the definitions of "Antilock brake system," "Directly controlled wheel," "Indirectly controlled wheel," and "Peak friction coefficient;" by revising S5.1, S5.3, S5.3.1(c), S5.3.3; and S5.5; and adding S5.3.3(a), S5.3.3(b), S5.5.1 and S5.5.2 to read as follows:

§ 571.105 Standard No. 105, hydraulic brake systems.

* * * * *

Antilock brake system or *ABS* means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

* * * * *

Directly Controlled Wheel means a wheel at which the degree of rotational wheel slip is sensed and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels in response to the same signal[s].

* * * * *

Indirectly Controlled Wheel means a wheel at which the degree of rotational wheel slip is not sensed, but at which the modulator of an antilock braking system adjusts its brake actuating forces in response to signals from one or more sensed wheels.

* * * * *

Peak friction coefficient or *PFC* means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased.

* * * * *

S5.1 *Service brake systems.* Each vehicle shall be equipped with a service brake system acting on all wheels. Wear of the service brake shall be compensated for by means of a system of automatic adjustment. Each passenger car and each multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less shall be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each school bus with a GVWR greater than 10,000 pounds shall be capable of meeting the requirements of S5.1.1 through S5.1.5 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each multipurpose passenger vehicle, truck, and bus (other than a school bus) with a GVWR greater than 10,000 pounds shall be capable of meeting the requirements of S5.1.1, S5.1.2, and S5.1.3 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Except as noted in S5.1.1.2 and S5.1.1.4, if a vehicle is incapable of attaining a speed specified in S5.1.1, S5.1.2, S5.1.3, or S5.1.6, its service brakes shall be capable of stopping the vehicle from the multiple of 5 mph that is 4 to 8 mph less than the speed attainable in 2 miles, within distances that do not exceed the corresponding distances specified in Table II. If a vehicle is incapable of attaining a speed specified in S5.1.4 in the time or distance interval set forth, it shall be tested at the highest speed attainable in the time or distance interval specified.

* * * * *

S5.3 *Brake system indicator lamp.* Each vehicle shall have a brake system indicator lamp or lamps, mounted in front of and in clear view of the driver, which meet the requirements of S5.3.1 through S5.3.5. A vehicle with a GVWR of 10,000 pounds or less may have a single common indicator lamp. A vehicle with a GVWR of greater than 10,000 pounds may have an indicator lamp which is common for gross loss of pressure, drop in the level of brake fluid, or application of the parking brake, but shall have a separate indicator lamp for antilock brake system malfunction. However, the options provided in S5.3.1(a) shall not apply to a vehicle manufactured without a split service brake system; such a vehicle shall, to meet the requirements of S5.3.1(a), be equipped with a malfunction indicator that activates under the conditions specified in S5.3.1(a)(4). This warning indicator shall, instead of meeting the requirements of S5.3.2 through S5.3.5, activate (while the vehicle remains capable of meeting the requirements of S5.1.2.2 and the ignition switch is in the "on" position) a continuous or intermittent audible signal and a flashing warning light, displaying the words "STOP-BRAKE FAILURE" in block capital letters not less than one-quarter of an inch in height.

* * * * *

S5.3.1 * * *

(c) A malfunction that affects the generation or transmission of response or control signals in an antilock brake system, or a total functional electrical failure in a variable proportioning brake system.

* * * * *

S5.3.3 (a)Each indicator lamp activated due to a condition specified in S5.3.1 shall remain activated as long as the malfunction exists, whenever the ignition (start) switch is in the "on" (run) position, whether or not the engine is running.

(b) For vehicles with a GVWR greater than 10,000 pounds, each message about the existence of a malfunction in an antilock brake system shall be stored after the ignition switch is turned to the "off" position and automatically reactivated when the ignition switch is turned to the "on" position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" (run) position. The indicator lamp shall be deactivated at the end of the check of the lamp function unless there is a malfunction or a message about a pre-existing malfunction.

* * * * *

S5.5. *Antilock and Variable Proportioning Brake Systems.*

S5.5.1 Each vehicle with a GVWR greater than 10,000 pounds, except for any vehicle that has a speed attainable in 2 miles of not more than 33 mph, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

S5.5.2 In the event of any failure (structural or functional) in an antilock or variable proportioning brake system, the vehicle shall be capable of meeting the stopping distance requirements specified in S5.1.2 for service brake system partial failure.

* * * * *

§ 571.121 Standard No. 121, air brake systems.

5. Section 571.121 is amended in S4 by removing the definitions of "Antilock system" and "skid number" and by adding the definitions of "Antilock brake system," "Directly Controlled Wheel," "Full-treadle brake application," "Independently Controlled Wheel," "Indirectly Controlled Wheel," "Maximum drive-through speed," "Peak friction coefficient;" by revising S5.1.6 and adding S5.1.6.1, S5.1.6.2, and S5.1.6.3; by adding S5.2.3, S5.2.3.1, S5.2.3.2, and S5.2.3.3; by revising S5.3; by adding S5.3.6, S5.3.6.1, and S5.3.6.2; by revising S5.5.1, S5.5.2, S6.1.7, S6.1.10, S6.1.10.2, S6.1.10.3, and S6.1.10.4; by removing and reserving S6.1.10.1; by removing S6.1.10.5, S6.1.10.6, and S6.1.10.7, and by adding S6.1.15 to read as follows:

§ 571.121 Standard No. 121; air brake systems.

* * * * *

Antilock Brake System or *ABS* means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

* * * * *

Directly Controlled Wheel means a wheel at which the degree of rotational wheel slip is sensed and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels in response to the same signal[s].

* * * * *

"Full-treadle brake application" means a brake application in which the treadle valve pressure in any of the valve's output circuits reaches 100 psi within 0.2 seconds after the application is initiated.

* * * * *

Independently Controlled Wheel means a directly controlled wheel for which the modulator does not adjust the brake actuating forces at any other wheel on the same axle.

* * * * *

Indirectly Controlled Wheel means a wheel at which the degree of rotational wheel slip is not sensed, but at which the modulator of an antilock braking system adjusts its brake actuating forces in response to signals from one or more sensed wheel(s).

* * * * *

"Maximum drive-through speed" means the highest possible constant speed at which the vehicle can be driven through 200 feet of a 500-foot radius curve arc without leaving the 12-foot lane.

* * * * *

Peak friction coefficient or *PFC* means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased.

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S5.1.6 *Antilock Brake System.*

S5.1.6.1(a) Each single-unit vehicle manufactured on or after March 1, 1998 shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

S5.1.6.1(b) Each truck tractor manufactured on or after March 1, 1997 shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle, with the wheels of at least one axle being independently controlled. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system. A truck tractor shall have no more than three wheels controlled by one modulator.

S5.1.6.2 *Antilock Malfunction Circuit and Signal.*

(a) Each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall be equipped with an electrical circuit that is capable of signalling a malfunction that affects the generation or transmission of response or control signals in the vehicle's antilock brake system.

(b) Each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall have an indicator lamp, mounted in front of and in clear view of the driver, which is activated whenever there is a malfunction that affects the generation or transmission of the response or control signals in an antilock brake system. The indicator lamp shall remain activated as long as the malfunction exists, whenever the ignition (start) switch is in the "on" (run) position, whether or not the engine is running. Each message about the existence of a malfunction in an antilock brake system shall be stored after the ignition switch is turned to the "off" position and automatically reactivated when the ignition switch is turned to the "on" position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" or "run" position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a pre-existing malfunction.

(c) Each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 that is equipped to tow another air-braked vehicle, shall be equipped with an electrical circuit that is capable of transmitting information about a malfunction in the antilock brake system on one or more towed vehicle(s) (e.g., trailer(s) and dolly(ies)). Each such vehicle shall also be equipped with an indicator lamp, mounted in front of and in clear view of the driver, capable of receiving, from one or more antilock equipped towed vehicle(s), information transmitted about a malfunction of a towed vehicle's antilock system and then activating the indicator lamp when there is a malfunction in the towed vehicle's antilock brake system. The indicator lamp shall remain activated as long as the malfunction exists, whenever the ignition (start) switch is in the "on" (run) position, whether or not the engine is running. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" or "run" position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a pre-existing malfunction.

S5.1.6.3 *Antilock Power Circuit for Towed Vehicles.* Each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 that is equipped to tow another air-braked vehicle shall be equipped with one or more separate electrical circuits, specifically provided to power the antilock system on the towed vehicle(s). Such a circuit shall be adequate to enable the antilock system on each towed vehicle to be fully operable.

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S5.2.3 *Antilock Brake System.*

S5.2.3.1(a) Each semitrailer (including a trailer converter dolly) manufactured on or after March 1, 1998 shall be equipped with an antilock brake system that directly controls the wheels of at least one axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

(b) Each full trailer manufactured on or after March 1, 1998 shall be equipped with an antilock brake system that directly controls the wheels of at least

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one front axle of the vehicle and at least one rear axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

S5.2.3.2 *Antilock Malfunction Circuit and Signal.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 that is equipped with an antilock brake system shall be equipped with an electrical circuit that is capable of signalling a malfunction in the trailer antilock brake system, and shall comply with the requirements of S5.2.3.3. A trailer manufactured on or after March 1, 1998 that is not designed to tow another air brake equipped trailer shall have the means for connection of the antilock malfunction signal circuit and ground, at the front of the trailer. A trailer manufactured on or after March 1, 1998 that is designed to tow another air brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock systems of additional trailers in a combination and shall have means for the connection of the antilock malfunction signal circuit and ground, at both the front and rear of the trailer. Each message about the existence of a malfunction in an antilock brake system shall be stored whenever power is no longer supplied to the system. The indicator lamp shall also be activated as a check of lamp function whenever power is supplied to the antilock brake system. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a pre-existing malfunction.

S5.2.3.3 *Antilock Malfunction Indicator.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2006 shall be equipped with a lamp indicating a malfunction of a trailer's antilock brake system. Such a lamp shall remain activated as long as the malfunction exists whenever the power is supplied to the antilock brake system. The display shall be visible within the driver's forward field of view through the rearview mirror(s), and shall be visible once the malfunction is present and power is provided to the system.

* * * * *

S5.3 *Service Brakes—road tests.* The service brake system on each truck tractor manufactured before March 1, 1997 shall, under the conditions of S6, meet the requirements of S5.3.3 and S5.3.4, when tested without adjustments other than those specified in this standard. The service brake system on each truck tractor manufactured on or after March 1, 1997 shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck (other than a truck tractor) manufactured before March 1, 1998 shall, under the conditions of S6, meet the requirements of S5.3.3, and S5.3.4, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck (other than a truck tractor) manufactured on or after March 1, 1998 shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each trailer shall, under the conditions of S6, meet the requirements of S5.3.3, S5.3.4, and S5.3.5 when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not meet the requirements of S5.3.

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S5.3.6 *Stability and Control During Braking—Truck Tractors.* When stopped three consecutive times for each combination of weight, speed, and road condition specified in S5.3.6.1 and S5.3.6.2, each truck tractor manufactured on or after March 1, 1997 shall stop each time within the 12-foot lane, without any part of the vehicle leaving the roadway.

S5.3.6.1 Using a full-treadle brake application, stop the vehicle from 30 mph or 75% of the maximum drive-through speed, whichever is less, on a 500-foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

S5.3.6.2 Stop the vehicle with the vehicle

(a) loaded to its GVWR, and

(b) at its unloaded weight plus up to 500 pounds (including driver and instrumentation), or at the manufacturer's option, at its unloaded weight plus up to 500 pounds (including driver and instrumentation) and plus not more than an additional 1000 pounds for a roll bar structure on the vehicle.

* * * * *

S5.5.1 *Antilock System Malfunction.* On a truck tractor manufactured on or after March 1, 1997 and a single unit vehicle manufactured on or after March 1, 1998 that is equipped with an antilock brake system, a malfunction that affects the generation or transmission of response or control signals of any part of the antilock system shall not increase the actuation and release times of the service brakes.

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S5.5.2 *Antilock System Power—Trailers.* On a trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 that is equipped with an antilock system that requires electrical power for operation, the power shall be obtained from one or more separate electrical circuits specifically provided to power the trailer antilock system. The antilock system shall automatically receive power from the stop lamp circuit, if the separate power circuit or circuits are not in use. Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 that is equipped to tow another air-braked vehicle shall be equipped with one or more separate electrical circuits specifically provided to power the antilock system on the towed vehicle(s). Such circuits shall be adequate to enable the antilock system on each towed vehicle to be fully operable.

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S6.1.7 Unless otherwise specified, stopping tests are conducted on a 12-foot wide level, straight roadway having a peak friction coefficient of 0.9. For road tests in S5.3, the vehicle is aligned in the center of the roadway at the beginning of a stop. Peak friction coefficient is measured using an ASTM E1136 standard reference test tire in accordance with ASTM method E1337–90, at a speed of 40 mph, without water delivery for the surface with PFC of 0.9, and with water delivery for the surface with PFC of 0.5.

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S6.1.10 In a test other than a static parking test, a truck tractor is tested at its GVWR by coupling it to an unbraked flatbed semi-trailer (hereafter, control trailer) as specified in S6.1.10.2 to S6.1.10.4.

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S6.1.10.1 [RESERVED]

S6.1.10.2 The center of gravity height of the ballast on the loaded control trailer shall be less than 24 inches above the top of the tractor's fifth wheel.

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S6.1.10.3 The control trailer has a single axle with a gross axle weight rating of 18,000 pounds and a length, measured from the transverse centerline of the axle to the centerline of the kingpin, of 258 ± 6 inches.

S6.1.10.4 The control trailer is loaded so that its axle is loaded at 4,500 pounds and the tractor is loaded to its GVWR, loaded above the kingpin only, with the tractor's fifth wheel adjusted so that the load on each axle measured at the tire-ground interface is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of the tractor's axle or axles or control trailer's axle.

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S6.1.15 *Initial Brake Temperature.* Unless otherwise specified, the initial brake temperature is not less than 150 °F and not more than 200 °F.

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Issued on: March 1, 1995.

Ricardo Martinez,

Administrator.

Note.—The following appendix will not appear in the Code of Federal Regulations:

Appendix—Braking Systems, Tires, Wheel Lockup, and Loss-of-Control Crashes

1. Introduction

NHTSA is providing a brief discussion [1] of braking systems, tires, wheel lockup, and loss-of-control crashes in this Appendix; interested persons are referred to several agency reports [2] for a more complete discussion.

An ABS is a closed-loop feedback control system that, above a preset minimum speed, automatically modulates brake pressure in response to measured wheel speed performance to control the degree of wheel slip during braking and provide improved utilization of the friction available between the tires and the road. These systems, therefore, could justifiably be called antilock brake/tire systems since their function is to balance brake torque with tire/road friction to obtain that wheel slip which optimizes braking performance. Antilock system designers must take into consideration the characteristics of brake systems and tires—both must be understood in order to optimize the performance of antilock systems.

2. Heavy Vehicle Brake Systems

The function of a motor vehicle's brake system is to slow or stop the vehicle or to hold it stationary. Service brake systems [3] consist of foundation brake assemblies (the portion of the system that actually creates brake torque and the resulting retarding forces at the tire/road interface) and a service brake control system.

There are two principal types of foundation brakes in use: drum and disc brakes. Drum brakes create retarding friction by pressing contoured brake linings against the inside walls of brake drums that are attached the vehicle's wheels. Disc brakes perform the same function by squeezing or clamping both sides of a brake rotor between two or more brake pads.

There are two principal types of service brake control systems, hydraulic and pneumatic. These service brake control systems consist of the components necessary to distribute and control the fluid pressure to the foundation brake assemblies. In the case of an air brake system, this is pneumatic pressure; i.e., compressed air, and in the case of an hydraulic brake system, this is hydrostatic pressure; i.e., pressurized brake fluid.

In the case of an air brake system, the service brake control system modulates the air pressure in the service brake system. Pressurized (compressed) air stored in reservoirs is supplied through a foot-actuated service brake control valve (treadle valve). This air pressure, which varies in proportion to how far the treadle valve is depressed, is then applied through a series of pneumatic valves (relay valves, and in the case of vehicles equipped with antilock brake systems, modulator valves) to the service brake chambers located near each wheel on the vehicle. This air pressure in the service brake chambers in turn applies forces to the brake linings or pads within the foundation brakes to create brake torque. Pneumatic systems are open, in that air, once utilized at a brake chamber, is exhausted to atmosphere. Air pressure levels in reservoirs are maintained by an engine-driven compressor.

Hydraulic brake systems utilize an incompressible fluid (a petroleum-based brake fluid), metered through a combined valve and reservoir (brake master cylinder), to create variable amounts of hydrostatic pressure within a closed system of brake lines. The brake lines transmit this pressure to wheel cylinders or brake caliper pistons which, in turn, apply force to the brake linings or pads in proportion to the amount of manual force being applied to the brake pedal.

It should be noted that hydraulic foundation brake assemblies (either drum or disc brakes) are sometimes used in air brake systems (commonly called air-over-hydraulic brake systems) with the hydraulic pressure produced by a hydraulic master cylinder which is powered by an air brake chamber.

One important characteristic of brake systems that effects the control modes used by ABSs to control wheel slip is the hysteresis [4] of both the service brake control systems and foundation brakes. In the case of service brake control systems, the hysteresis of concern is the time lag between the ECU signalling the modulator valve to release (reduce) or apply (increase) brake application pressure and the time at which that increased or decreased pressure is actually applied at the foundation brakes. This pneumatic hysteresis time lag can be up to several tenths of a second for an air braked system, but for a hydraulic brake system, this time lag is very short, usually less than one-tenth of a second.

The foundation brakes' hysteresis significantly affects ABS design. This hysteresis is characterized by the foundation brake's torque output not immediately falling in response to and in proportion to a reduction in brake application pressure. This is shown in Figure 1 for an air-actuated foundation brake. As is the case for service brake control systems, the hysteresis in hydraulic foundation brakes is much less than that of air-actuated foundation brakes.

The amount of deceleration that a braking vehicle can attain is dependent on three factors: the amount of brake torque that can be generated; tire-friction properties; and road surface friction characteristics.

The ability to generate braking torque is primarily dependent upon the size of the foundation brake components used (i.e., brake drums, linings, and actuating chambers or pistons) and the amount of hydraulic or pneumatic pressure delivered to these components. Brake system designers size systems to provide sufficient brake torque generating capability to lock (or come relatively close to locking) the brakes (wheels) on the vehicle (except those on the steering axle) when it is loaded with the maximum weight it is designed to carry and when operating on all types of road surfaces. It is necessary to provide such brake torque generating capability if a vehicle is to have adequate stopping distance performance when it is fully loaded.

Most heavy trucks built today can thus generate sufficient brake torque to lock (or come relatively close to locking) all their wheels (except those on the steering axle) on all road surfaces at all loading conditions. If a brake is "big" enough to lock a wheel, the issue of stopping capability of that wheel then focuses on tire properties and not the brake since, in effect, any further increase in braking torque cannot be utilized. The limit of tire traction in such a case determines the maximum capability of each wheel (brake) to contribute to the vehicle's stopping ability.

For passenger cars, maximum loaded weight includes the empty weight of the vehicle, up to as many as six adult passengers, assorted luggage or cargo, and a full tank of fuel. For a heavy truck, maximum loaded weight includes the empty weight of the vehicle, typically one or two passengers, a full load of fuel, and the maximum weight of cargo that can be carried in the truck. The ratio of loaded to empty weight for passenger cars is generally in the range of 1.5 to 1 or less. For heavy vehicles, especially combination-unit trucks, this ratio can exceed 3 to 1.

Standard design practice in the U.S. is to use fixed brake force distributions on heavy vehicles (i.e., a brake force distribution that does not change with axle load changes). The

[1] Much of the discussion which follows is adapted from *U.S.* v. *General Motors Corp.*, 656 F.Supp 1555, 1562–1566 (D.D.C. 1987,), "The Anatomy of a Tractor Trailer Jackknife" by Richard Radlinski, Vehicle Research and Test Center, National Highway Traffic Safety Administration, and "Antilock Systems for Air-Braked Vehicles" by William A. Leasure, Jr. and Sidney F. Williams, Jr., National Highway Traffic Safety Administration, SP–789, Society of Automotive Engineers, Inc., February 1989.

[2] A vehicle's brake system includes both the service brake system which the driver uses to slow or stop the vehicle, and the parking brake system which the driver uses to hold the vehicle stationary while unattended. The notice only addresses the service brake system and does not discuss parking brake system performance.

[4] Hysteresis is:

1. the time lag exhibited by a body in reacting to changes in the forces affecting it, and

2. the phenomenon exhibited by a system in which the reaction of the system to changes is dependent upon its past reactions to change.

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force distribution is established by selecting particular "size" or torque capacity brakes for each axle. Because load distribution is so variable on heavy vehicles, a fixed brake balance is a compromise and cannot be expected to provide high braking efficiency (i.e., high braking rates without locking wheels) under all conditions. Generally speaking, heavy vehicle brakes are balanced for the fully loaded, low deceleration stop. This results in too much braking at the rear axle(s) when the vehicles are empty.

Heavy vehicles have a comparatively much greater propensity for brake-induced wheel lockup than passenger cars for two reasons. The first is the much less than optimum brake force distribution in the lightly loaded and empty load conditions, which leads to rear wheel lockup under such conditions. The second is the difference in loaded to empty weight ratio and the resulting difference in brake sizing. Since a heavy vehicle's brakes must be sized for the fully loaded condition, such a vehicle tends to be very overbraked when it operates lightly loaded or empty or when it operates on a slippery, low friction road surface. Under either of these operating conditions, and especially when both conditions exist, it is very easy for the driver to inadvertently lock some or all of the vehicle's wheels, even when making only a moderate or light brake application.

3. Tire/Road Friction

Ultimately, the retarding (braking) forces at the tire/road interface, that result from the braking torque that is applied to the vehicle's wheels, are transmitted to the road surface at that interface. Tire and road surface friction properties that affect these forces are significant factors in determining the amount of deceleration that the vehicle can achieve. In fact, the forces and moments[5] that the vehicle's tires are capable of generating at the tire/road interface are not only the only means by which a driver is able to control the velocity of the vehicle (not only slowing and stopping the vehicle by applying the brakes, but also accelerating the vehicle by actuating the accelerator), but they are also the only means by which the driver is able to control the direction and path of a vehicle by turning the steering wheel.

These forces and moments result when the driver turns the steering wheel, applies the brakes and/or actuates the accelerator and are reactions to the inertial forces[6] and moments[7] that act on the vehicle. Therefore, in order to understand those factors that influence the control and stability (and the loss thereof) of a vehicle, it is necessary to understand how tires generate those forces and moments.

Tire-road friction is an interaction between the tire and the road resulting in reaction forces and moments acting in the plane of the road at the tire-road interface. Reaction forces and moments result from control inputs (e.g., braking, accelerating, steering) and/or external disturbances (e.g., wind, road geometry and condition, etc.). The direction and magnitude of the resultant reaction forces and moments are determined by these inputs.

Before discussing these tire-road friction properties, several terms need to be defined. In order to understand the conditions under which a tire generates forces at the tire-road interface, the axis system used to define a tire's operating condition needs to be defined.[8] First, the position of the tire is defined by the wheel plane, the road plane, and the center of tire contact. The wheel plane is the central plane of the tire, normal (perpendicular) to the spin axis, which is the axis of rotation of the wheel (tire). The road plane is the plane of the road surface. The center of tire contact is the intersection of the wheel plane and the vertical projection of the spin axis of the wheel onto the road plane. The axis system is then defined as follows:

1. The origin of the tire axis system is the center of the tire contact.

2. The X′ axis is the intersection of the wheel plane and the road plane with a positive direction forward. The X′ axis defines the longitudinal[9] axis of the tire and is positive in the direction in which the tire is pointed.

3. The Z′ axis is perpendicular to the road plane with a positive direction downward. If the road surface is flat and level, the Z′ axis is vertical.

4. The Y′ axis is in the road plane, its direction being chosen to make the axis system orthogonal and right-handed. The Y′ axis defines the lateral[10] axis of the tire and is perpendicular to the direction in which the tire is pointed and positive to the right when looking in the direction in which the tire is pointed.

With this axis system as a basis, the tire angles which affect the forces and moments generated by a tire are defined as follows:

1. Slip angle is the angle between the X′ axis and the direction of travel of the center of tire contact. In simple terms, the slip angle is the angle between the direction in which the tire is pointed and the direction in which the tire is moving.

2. Inclination (camber) angle is the angle between the Z′ axis and the wheel plane. In simple terms, the inclination angle is a measure of how far the top of the tire is tilted to one side or the other when looking in the direction in which the tire is pointed.

The other important operating condition of a tire is that which produces braking and driving forces. This condition, which is referred to as longitudinal slip in the SAE terminology, is also called percent slip, wheel slip, or simply, slip. Throughout this notice, the term wheel slip is used and is defined as: the ratio of the longitudinal slip velocity to the spin velocity of the straight free-rolling tire, expressed as a percentage, where:

1. the longitudinal slip velocity is the difference between the spin velocity of the driven or braked tire and the spin velocity of the straight free-rolling tire, with both spin velocities measured at the same linear velocity at the wheel center in the X′ direction,

2. the spin velocity is the angular velocity of the wheel on which the tire is mounted, about its spin axis, and

3. the straight free-rolling tire is a loaded rolling tire operated without application of driving or braking torque moving in a straight line at zero inclination angle and zero slip angle.

It should be noted that wheel slip is sometimes expressed as the ratio of the difference between the velocity of the wheel center and the velocity of a point on the tread of the tire that is not in contact with the road to the velocity of the wheel center. Using this definition, a free-rolling tire operates at a small amount of wheel slip, usually less than 1 or 2 percent, due to the rolling resistance of the tire. Throughout the preamble, the definition of longitudinal slip given above is used.

The final terms that need to be defined are those that describe the forces and moments generated by the tire. Tire force is the external force acting on the tire by the road. Longitudinal force is the component of tire force in the X′ direction, i.e., in the direction which the tire is pointed. Braking force is the negative longitudinal force resulting from braking force application. Lateral force is the component of tire force in the Y′ direction, i.e., perpendicular to the direction the tire is pointed. Normal force is the component of tire force in the Z′ direction. Vertical force is the normal reaction of the tire on the road which is equal to the negative of the normal force. Braking force coefficient, mu_X, is the ratio of the braking force to the vertical load. Lateral force coefficient, mu_Y, is the ratio of the lateral force to the vertical load.

With these definitions as a basis, the following discusses the forces and moments generated by a tire, how those forces are affected by wheel slip, and how those forces influence a vehicle's control and stability.

Tire-road traction properties determine the maximum limits of forces and moments which can be developed at the tire-road interface at given operating and environmental conditions. They also affect tire force and moment slip characteristics, i.e., relationships between lateral tire force and slip angle (and camber angle);[11] and braking or driving torque and wheel slip. These properties have a substantial effect on a vehicle's dynamics and its control and stability characteristics.

[5] A moment, or the moment of a force, is a torque, and is a measure of the tendency of that force acting on an object to produce torsion and rotation of that object about an axis.

[6] Inertial forces are those forces occurring within an object that resist the tendency of external forces on the object to accelerate the object. They are defined by Newton's Second Law, which basically states that an object at rest tends to remain at rest and an object in motion tends to remain in motion, and are equal to the mass of the object times its rate of acceleration.

[7] Inertial moments are those moments occurring within an object that resist the tendency of external moments on the object to accelerate the rotation of the object. They are also defined by Newton's Second Law and are equal to the moment of inertia of the object times its rate of rotational acceleration.

[8] The following definitions are based on those which appear in "SAE J670e—Vehicle Dynamics Terminology, Society of Automotive Engineers, Inc. July 1976. The reader is referred to that document for a more complete description of these terms.

[9] Similarly for the vehicle, the vehicle's longitudinal axis, direction, is the direction in which the vehicle is pointed.

[10] Similarly for the vehicle, the vehicle's lateral axis, direction, is perpendicular to the direction in which the vehicle is pointed.

[11] Throughout the remainder of this discussion, the effects of camber angle are not addressed, and when discussing the operating condition of a tire, the camber angle is assumed to be zero.

a. Braking (Longitudinal) Friction

Application of braking torque inputs to a wheel, rolling at zero slip and camber angles, results in a longitudinal force acting parallel to the wheel plane in a direction opposite to the direction of wheel motion. Longitudinal reaction force is modified by the rolling resistance of the tire which increases braking force.

As the braking force at the wheel is increased, slippage will occur between the tire and the road surface. To generate slippage, the rotational speed of the tire must be less than the speed of the wheel center and, therefore, the vehicle. This slippage between the tire and road surface is the longitudinal slip defined earlier.

Longitudinal friction properties of tires have been measured and tabulated for numerous combinations of tire/load/road/environmental conditions in the form of mu_X-slip curves. (This type of data is quite prevalent in the public domain for passenger car tires while similar data for truck tires are sparse.)

The braking force that a tire is capable of developing varies with wheel slip in accordance with the typical curve shown in Figure 2. The shape of the mu_X-slip curve illustrates the classic features of longitudinal force generation. The braking or longitudinal force is zero when the tire is free rolling, reaches a peak at about 10–20 percent slip and then falls off to a somewhat lower level when the tire is operating at 100 percent slip, i.e., fully locked (sliding).

The initially steep increase of longitudinal force with increasing slip reflects the circumferential elasticity of the tire's carcass and tread structure. As the brakes are applied with increasing amounts of torque, the elastic capability of the tire in the footprint area is exceeded and sliding begins to take place at the rear of the footprint. Beyond the elastic region, the force output reaches a peak as all of the tread elements traversing the contact patch begin to slide relative to the roadway. Beyond peak friction, any increase in brake torque causes sliding across the entire footprint and the tire rapidly goes into full lockup. In this regime, frictional coupling between the tire and road degrades due to rubbing speed and heating effects, hence, the characteristically negative slope at high slip level.

The shape of this curve (see Figure 3) is dependent upon the tire characteristics and the road surface properties. Typically, the peak is relatively high on dry roads but tire force fall-off is small. On wet roads, the peak is lower and the fall-off as the wheel locks is much greater.

Another form of hysteresis that affects ABS design is related to the braking force versus wheel slip characteristics. As both the peak and slide coefficients of friction become lower on more slippery road surfaces, the time necessary for a locked (or nearly locked) wheel to spin up to near the vehicle's velocity increases. This results from the reduced force generating capability of tires on low friction road surfaces together with mass of the rotating components that include the wheel. On the drive axles of heavy vehicles, this mass, which includes the tire, wheel, axle assembly and axle differential components, can be great enough to require more than one-half second for a locked wheel to spin up to the vehicle's speed on very slippery road surfaces such as ice.

For pneumatic tires, the magnitude of the braking force is dependent upon tire construction properties, tread depth, amount of loading, wheel speed (velocity), the type and condition of the road surface and the amount of slippage between the tire and the roadway. With regard to maximum braking capability, the pertinent features of the mu_X-slip curve are the peak value of braking force coefficient, the peak coefficient of friction, and the slide value under the locked-wheel condition at 100 percent slip, the sliding coefficient of friction.

In the preamble of this notice, the terms skid number and peak friction coefficient (PFC) are used. These terms represent the results of a test to determine the longitudinal friction characteristics of a road surface using a specific test procedure, the American Society for Testing and Materials (ASTM) Method E1337–90 procedure, a specific tire, the ASTM E1136 SRTT tire, and a specific test device, an ASTM traction trailer. Skid number is the result of the ASTM test which characterizes the slide value of the friction coefficient between the ASTM tire and the road surface being measured. The peak friction coefficient, PFC, is the result of the ASTM test which characterizes the peak value of the friction coefficient between the ASTM tire and the road surface being measured.

The friction force potential of truck tires is significantly less than that for car tires. The difference is due primarily to the rubber compounding used to achieve the high tread life typically achieved with truck tires and the higher pressures in the tires that result in higher footprint loading. The braking performance of any vehicle is ultimately limited by its tire properties. Thus, given current truck tire properties, heavy vehicles cannot perform as well as passenger cars in braking situations even if they have braking systems that are 100 percent efficient (i.e., a braking system that would utilize all of the available tire/road friction).

b. Cornering (Lateral) Friction

In addition to braking forces, tires must also generate lateral—or cornering—forces to direct the vehicle in accordance with steering inputs from the driver or in response to other lateral forces such as crosswinds.

Tire friction characteristics in cornering are described by the relationship between lateral force coefficient and slip angle.

The lateral force that an unbraked tire is capable of developing varies with slip angle in accordance with the typical curve shown for the free rolling tire in Figure 4. The single most important feature of the force generating capability of a tire, as it relates to vehicle control and stability, is the ability of a rolling tire to generate forces perpendicular to the tire's direction of travel.

c. Combined Braking/Cornering Friction

When braking a vehicle, it is necessary to generate both braking and cornering forces at the wheels if the vehicle is to be stopped without deviating from its intended path. The situation is identical when a driver must brake severely while negotiating a curve or lane change where cornering forces are required to keep the vehicle from sliding towards the outside of the turn while the braking forces decelerate the vehicle.

In braking-in-a-curve maneuvers, tire friction properties are determined primarily by the peak and slide values of the resultant braking-cornering coefficients. Figure 4 shows the lateral force coefficient versus slip angle relationships for a free rolling tire and for a braked tire at different amounts of wheel slip, including 100 percent (locked wheel condition). All of the curves converge at a slip angle of 90° as expected, since the tire is perpendicular to the direction of travel.

At small slip angles, the lateral force capability under locked wheel conditions is much lower than that of a free-rolling wheel. It should be noted that although this figure shows that the tire is capable of generating lateral force in the locked wheel, 100 percent wheel slip condition, this force is "lateral" in relation to the tire itself. In this situation, the only force generated by the tire is opposite to its direction of travel, and its "lateral" component results from the tire's being steered away from its direction of travel. This locked wheel, "lateral" force is basically equal to the sliding coefficient of friction of the tire times the vertical load on the tire times the sine of the slip angle.

Lateral is a relative term whose meaning depends upon the object or direction to which it relates, i.e., lateral in relation to the vehicle is not the same as lateral in relation to a tire steered relative to the vehicle, and is also not the same as lateral with respect to the vehicle's direction of travel.[12] Earlier in this notice and in the previous notices related to this Final Rule, the phrase lateral stability has been used to describe whether or not a vehicle can resist yawing or spinning in response to some external lateral force acting on the vehicle. As long as the vehicle's direction of travel is the same as or very close to the direction in which the vehicle is pointed no significant confusion results. However, once a vehicle has begun to yaw or spin and its direction of travel is significantly different than the direction in which the vehicle is pointed, confusion can result regarding the meaning of lateral stability and lateral tire forces. To eliminate any confusion, the term directional stability (or directional stability and control) will be used throughout the remainder of this notice in place of lateral stability (or lateral stability and steering control).

With respect to the tire forces related to a vehicle's directional stability and control, the phrase, "stabilizing tire forces" will be used to describe tire forces that act perpendicular to the vehicle's direction of travel, instead of

[12] To eliminate confusion regarding the meaning of lateral, several technical terms are defined that will be used throughout the remainder of this notice.

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the phrase "lateral tire forces" the meaning of which can be unclear relative to the vehicle's direction of travel. As indicated earlier, a tire's ability to generate such "stabilizing tire forces" is the single most important feature of the force generating capability of a tire, as it relates to vehicle directional control and stability.

The graph in Figure 4 can be used to illustrate how tire traction characteristics influence vehicle directional stability. For example, if a single-unit vehicle negotiates a cornering maneuver with the front wheels at 4° slip angle and the rear wheel at 3° slip angle, and the application of braking pressure results in 20 percent slip at the front tires while the rear tires become locked, the data indicate that the lateral force coefficient at the front would decrease from 0.55 to 0.25 while the corresponding decrease at the rear would be from 0.45 to 0.03. In this case, the lateral force capability at the front would be eight times greater than at the rear. Because of the greatly reduced stabilizing forces on the rear tires, they would no longer be capable of resisting the vehicle yaw induced by the forces on the front tires, and the vehicle would spin out.

Tire loading also affects the amount of slip which occurs at the various wheels on a vehicle. For example, weight is transferred from the inside to the outside wheels of a vehicle when it is driven around a corner. Therefore, the wheels on the inside of the vehicle will operate at a lighter tire load and hence, when generating the same braking force, will operate at a higher percentage of wheel slip than their counterparts on the outside of the vehicle. In tractor-trailer combinations, improper load distribution can produce unequal axle loadings between the tractor and trailer. If both the tractor and trailer brakes are applied equally, increased wheel slip will occur at the wheels which are carrying the lightest load. If the improper load distribution is severe enough, wheel lockup and skidding can occur at otherwise normally acceptable deceleration rates.

4. Vehicle Loss of Control

Heavy vehicles are likely to experience wheel lockups in maximum braking situations because of the friction properties of their tires and the less than optimal force distributions of their brake systems. Lockup of all of the wheels on one or more of a vehicle's axles, if not responded to by the driver, will usually result in either a loss of steering control or loss of the vehicle's directional stability.

a. Single-Unit Trucks

A single-unit truck behaves much like a passenger car when wheel lockup occurs. Figure 5 shows a simple single unit vehicle (car or truck) with only its front wheels locked. Such a vehicle, with only the front wheels locked and the rear wheels rolling, will experience a loss of steering control. The vehicle cannot be steered, but it is stable due to the stabilizing forces provided by the rolling rear wheels and does not tend to yaw or spin out.

Figure 6 shows a simple single unit vehicle (car or truck) with only its rear wheels locked. In this case, the vehicle will experience a loss of directional stability. It is very unstable and the slightest side force disturbance (i.e., lateral force due to steering, side slope or road crown, crosswind, unequal front axle braking, etc.) results in the vehicle yawing significantly or spinning out.

If all wheels are locked, the vehicle cannot be steered but is not as likely to spin.

b. Combination-Unit Vehicles

With combination-unit vehicles, the effect of wheel lockup is more complex but can easily be inferred from the simple single-unit vehicle case by treating each vehicle in the combination as a single-unit vehicle.

If the wheels on the steering axle lock, the vehicle, experiencing a loss of steering control, will travel essentially in a straight path, stable but unsteerable, as illustrated in Figure 7. Usually a driver immediately senses this condition and, if conditions permit, can modulate the brakes to allow the steering axle wheels to spin up and regain steerability.

If the trailer wheels lock, the trailer will experience a loss of directional stability and (if side force disturbances are present) will swing to the outside of the vehicle path, as shown in Figure 8. However, because trailer wheelbases are long in comparison to the tractor, this unstable yawing response is slower. Thus, a driver again, if conditions permit and if the driver is aware of the condition soon enough, may have time to modulate the brakes to spin up the trailer wheels and bring the trailer back in line. As a trailer becomes shorter, this possibility of correction becomes less likely.

If the tractor's drive axle wheels lock, the truck tractor will experience a loss of directional stability and the combination vehicle will begin to jackknife if a side force disturbance exists, as shown in Figure 9. When this occurs, the process usually becomes irreversible as the driver is unable to react fast enough to prevent total loss of vehicle control, particularly when the tractor has a short wheelbase. This instability condition is the one which a driver is least likely to be able to control.

As more units (and more articulation points) are added to the combination, the situation becomes more complex and the modes of instability increase in number.

5. The Need for Antilock

As mentioned earlier, the only means by which a driver is able to control the direction, velocity, and path of a vehicle is to apply steering, braking, and/or accelerator inputs to the vehicle which in turn result in forces and moments being generated by the vehicle's tires. A tire can only generate a limited amount of frictional force. As the tire is required to generate more force for braking, its capability to generate stabilizing force is reduced. Since the capability of a tire to generate both braking (longitudinal) and stabilizing (lateral) forces is determined by the amount of wheel slip at which the tire is operating, controlling wheel slip is the only means by which it is possible to have a tire generate a significant amount of longitudinal force to decelerate a vehicle while still maintaining the capability to also produce sufficient amounts of stabilizing force to steer the vehicle and to retain directional stability.

As illustrated earlier, when the wheel slip goes beyond the point at which maximum (peak) braking force occurs, the tire's stabilizing force capability drops dramatically, leading to a situation that can result in loss of vehicle control. By sensing and controlling wheel slip, an antilock system automatically reduces the amount of brake application pressure to prevent prolonged, excessive wheel slip which would compromise the vehicle's directional stability by reducing the stabilizing force capabilities of the vehicle's tires. An antilock system which operates in such a manner is referred to as a closed-loop system. The basic closed-loop control algorithm for an ABS is as follows:

1. The driver actuates the brake pedal (or treadle valve) resulting in an application of brake pressure to the vehicle's foundation brakes,

2. this generates brake torque at the vehicle's wheels that creates braking forces at the tire/road interface,

3. this results in wheel slip (as discussed above), the level of which is determined by the ABS by sensing the rotational speed of the vehicle's wheels,

4. if the amount of wheel slip is not within an "acceptable" range (which is determined by the ECU, based on a predetermined set of logic) the brake application pressure is adjusted to return the level of wheel slip to the acceptable range; i.e., if the level of wheel slip is excessive, the brake application pressure is reduced and if the level of wheel slip is too low, the brake application pressure is increased, but never to a level higher than that which results from the driver's actuation of the brake pedal (or treadle valve).

Vehicles equipped with ABS, operating in such a manner, usually have shorter stopping distances compared to the same vehicle without ABS, particularly on low mu surfaces.[13] An antilock system which controls the wheel slip at the level that results in the maximum amount of braking force at the tire/road interface maximizes a vehicle's stopping capability and also provides some directional stability enhancement. On the other hand, antilock systems which control wheel slip at levels below that which results in peak braking force generation will result in a greater degree of directional stability but provide lower levels of braking force resulting in longer stopping distances.

6. General Antilock System Operation

The following discussion addresses three different aspects of ABS operation. The first aspect discussed is the control strategies used by an ABS to monitor wheel rotational speed and adjust brake application pressure to control wheel slip at an individual wheel. The second relates to the various component configurations that are used to control the wheels on an axle or a tandem axle set. The third is the control strategies used to control the wheels on an axle or tandem axle set.

[13] A low mu surface is one that is relatively slippery and thus provides lower levels of braking force and poorer directional stability and control during braking. These surfaces, which are typical on wet roads, are also referred to as low coefficient of friction surfaces.

a. ABS Wheel Slip Control Strategies

The goal of an antilock system is to prevent wheel slip on the controlled wheels from exceeding that which provides a good compromise between providing near maximum levels of braking force and providing sufficient levels of stabilizing forces to assure that the vehicle will remain directionally stable without reducing the wheel slip below that which produces braking force which utilizes most of the friction (adhesion) that is available at the tire/road interface. Once wheel slip goes beyond the point which provides peak braking traction, both braking and cornering traction are reduced, as shown in Figure 10 for a truck tire cornering at an 8° slip angle.

Early mechanical antilock systems controlled slip by the use of an assembly at the wheel which contained an inertia disc that rotated freely with the wheel when brakes were not applied. Braking the wheel caused it to decelerate while the inertia disc tried to continue to rotate at the original speed, but was restrained by a triggering mechanism. This triggering mechanism controlled an air valve (modulator valve) which when activated, shut off air pressure to the foundation brake air chambers and exhausted pressure already in the chambers. When deceleration of the wheel exceeded about "1g," the inertia of the disc generated enough force to trip the mechanism activating the modulator valve. As braking force decreased and the wheel speeded up, the force exerted by the inertia disc decreased, allowing the trip mechanism to deactivate the modulator valve, thus, reapplying the brakes.

Electronic antilock systems act in a manner similar to the early mechanical systems except they are more sophisticated as a result of their computational capability. With electronic systems, the mechanical wheel assembly is replaced by a wheel speed sensor and an electronic control module (ECU). Wheel speed sensors, which are located at the wheels or within the axle housings, constantly monitor wheel speed (or a component whose speed is proportional to the wheel speed) sending electrical signals to the ECU which are proportional to the wheel speed. The ECU determines wheel speed and changes in wheel speed (acceleration and deceleration) based on these signals.

The following discusses two basic control modes[14] used by electronic ABSs to control brake applications at a wheel in response to wheel speed sensor signals.

In the acceleration/deceleration threshold mode of operation, the ECU recognizes the rapid wheel deceleration that occurs as wheel slip exceeds the peak friction wheel slip (Figure 11), and electrically commands the modulator valve to reduce brake application pressure and, thus, brake torque. When brake torque decreases enough to cause braking force to be less than the friction force at the tire/road interface, the wheel stops decelerating and begins to accelerate. The rate of acceleration increases with the increasing friction associated with a reduction in wheel slip. When wheel slip falls to the level corresponding to peak braking force, the acceleration rate peaks and starts to decrease with wheel slip. The ECU senses this change in acceleration rate and commands the modulator valve to start increasing brake application pressure and the cycle repeats.

In the reference speed mode of operation, the ECU tracks wheel speed information which it uses to estimate vehicle speed. The antilock system uses this estimated speed to compute a "reference speed" which is less than the estimated speed by a preprogrammed factor. The reference speed is updated throughout a stop as illustrated in Figure 12. This figure also illustrates how the ECU in one manufacturer's 1970's system uses this reference speed as a cue to modulate the brake application pressure. When the brakes are applied as shown in the figure, the wheel starts decelerating. As wheel speed falls below the reference speed (point "G–1"), the antilock system acts to reduce brake pressure. After brake pressure has been reduced long enough to allow the wheel speed to roll up to that of the reference speed (point "G–2"), the antilock system acts to increase brake pressure. This cycle continues until the vehicle is stopped.

Today's antilock systems usually combine acceleration/deceleration threshold logic and speed reference logic in some fashion. Both are believed necessary to improve the efficiency of antilock systems to account for the variance of tractor performance with surface (Figure 13), slip angle (Figure 14, vehicle speed (Figure 15), etc.

If an antilock system waits for the threshold deceleration associated with peak braking friction under some conditions, the ability of the wheel to provide cornering friction will have been compromised severely. Therefore, a threshold reference speed needs to be established around 30 percent to prevent excessive wheel slip.

Figure 16 shows a typical control cycle for one manufacturer's antilock system which uses a "hold" pressure phase, as well as a release pressure phase. This ECU uses two wheel slip thresholds (K1 and K2) and two deceleration thresholds (−b and b) in making decisions regarding control of the modulator. The ECU tracks the information from all of the vehicle's wheel speed sensors (even when the brakes are not applied) and uses this information to compute a reference speed which it continually updates. In the panic stop in Figure 16, the wheel decelerates until the wheel speed sensors indicate a deceleration which the vehicle cannot physically attain (point 1). At this point, the reference speed, which until this instant has corresponded to the wheel speed, now separates from the wheel speed and decreases according to an empirically determined rate of deceleration.

At point 2, the deceleration threshold −b is reached and the wheel runs into the unstable range of the traction curve. The wheel has exceeded the maximum braking force and any further increase in braking torque only increases wheel deceleration. Brake pressure is, therefore, quickly reduced and wheel deceleration falls after a short time. This deceleration time is determined by the hysteresis time lag between the time the modulator valve actuates to release the air pressure to the time that the air pressure in the air brake chamber, the hysteresis of the foundation brakes and the hysteresis related to the time needed for the wheel (and its associated rotating components) to spin up after it has been locked. Only after this delay does a further pressure fall also lead to reduction of wheel deceleration.

The deceleration signal −b is traversed at point 3 and brake pressure is held constant for a fixed time T1. Normally wheel acceleration will rise above the threshold +b at a point 4 within this holding time T1.

Provided this happens, brake pressure will continue to be held constant. (Were the +b signal not produced within the time T1, as with very low friction surfaces, then brake pressure would be again reduced in response to the slip signal. The time constant, T1, is determined for each vehicle/brake system based on the influences of the various kinds of hysteresis previously discussed).

During the constant pressure phase, the wheel accelerates in the stable slip range, the +b signal being traversed again at point 5 at which time utilized adhesion is just below the maximum on the traction curve. The +b threshold is used this time to signal a rapid pressure increase over time T2 to overcome brake hysteresis.

The time T2 is preprogrammed for the first control cycle and then recalculated for each subsequent control operation depending upon the response of the wheels. After this rapid pressure increase stage, brake pressure is raised again but at a lesser gradient by alternate pressure increase and hold pulses.

As a rule, the deceleration threshold −b is again reached during the pulsing phase at point 9, and brake pressure falls. The procedure repeats itself as long as the brake pedal is depressed too forcefully for the existing road conditions or until the vehicle speed drops below a specified value.

The logic presented here in principle is not fixed, but, matched by microcomputers to the dynamic response of the wheel under differing adhesion conditions. Not only are ABSs capable of "adapting" to various conditions by employing complex algorithms to control wheel slip, but they are also able to "adapt" the parameters of those algorithms, as with the T2 parameter discussed above, to improve the system's ability to control wheel slip over the broad range of road surface and vehicle load conditions under which heavy vehicles operate. One obvious result of this adaptability is the range of ABS cycle times, or controlling frequencies, that result when controlling wheel slip under various road surface and vehicle load conditions.

Figures 17 and 18 illustrate the effects of two very different situations of load and road surface conditions on the ABS cycle times and how an air brake ABS adapts its control of wheel slip. Figure 17 shows treadle valve pressure, and brake chamber pressure, wheel speed and ABS modulator solenoid activity

[14] The following discussion, which is largely based on the previously referenced Leasure and Williams SAE, paper specifically addresses ABS control modes for air brake systems. Similar control strategies are used in hydraulic ABSs with the specific parameters of the control modes differing due to differences in the brake torque versus brake pressure application characteristics of air and hydraulic brake systems.

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for the left wheel of the intermediate drive axle for a full treadle application stop of a Freightliner 6x4 conventional truck tractor with a WABCO 6S/6M ABS in a lightly loaded condition on a very low friction surface, ice. The figure shows the first five ABS cycles for that stop. To characterize ABS cycle time, the ABS cycle is assumed to begin when brake pressure begins to rise in the brake chamber and that rising brake chamber pressure leads to excessive wheel slip or wheel lockup. This excessive wheel slip is sensed by the ECU which actuates the modulator valve to decrease brake chamber pressure to reduce wheel slip to an acceptable level. This "initial" rise in brake chamber pressure can result from an increase in the driver's level of brake application, i.e., rising treadle valve pressure, or from an increase resulting from the ECU signaling the modulator valve to increase brake chamber pressure. The ABS cycle ends when, after the reduction in brake chamber pressure resulting from actuation of the modulator valve, the brake chamber pressure begins to again rise in response to the ECU signaling the modulator valve to increase brake chamber pressure. For the five "ABS cycles" shown in Figure 17–a, the ABS cycle times range from 0.72 seconds to 0.80 seconds, i.e., an ABS controlling frequency of from about 1.2 to 1.4 cycles per second.

Two things shown in Figure 17–b are of note. The first is the time required for the wheel to lock after the initial brake application which is very short, about 0.04 seconds. The second is the time required for the wheel's speed to increase to that of the vehicle after the wheel has locked, i.e., the wheel's spin up time. The spin up times shown in Figure 17–b range from 0.20 seconds for the fourth ABS cycle (wheel spin up begins at about 3 seconds on the time scale) to 0.34 seconds for the first ABS cycle (wheel spin up begins at about 0.5 seconds on the time scale). The rate of wheel spin up can be characterized by the acceleration of the outer surface of the tire, i.e., the tread of the tire, relative to the wheel center. In the case of the wheel spin up during the first ABS cycle, the spin up time is 0.34 seconds and the change in wheel speed over that time is 11.3 mph; the wheel's acceleration is therefore 33.2 mph per second or 48.8 feet per second per second.

In contrast to the ABS cycle time and wheel spin up rates shown in Figure 17, Figure 18 illustrates a situation where the ABS cycle times are much shorter and the wheel spin up rates are much faster. Figure 18 shows treadle valve pressure, and brake chamber pressure, wheel speed and ABS modulator solenoid activity for the left wheels of the tandem drive axles for a full treadle application stop of a Volvo-GM 6x4 conventional truck tractor with a Bosch 6S/4M ABS in a lightly loaded or bobtail condition on what is believed to be a high friction surface. The reason for the uncertainty of the conditions under which this stop took place is that this data resulted from the monitoring and recording of ABS event occurrences during the agency's truck tractor fleet study and no details are available regarding the exact circumstances of this stop. However, given the high average deceleration rate of this stop, more than 16 feet per second per second which if sustained during a stop from 60 mph would result in a stopping distance of less than 240 feet, it is reasonable to assume that the surface had a rather high coefficient of friction. Given this and the low level of brake chamber pressure at which excessive wheel slip occurs, between 15 and 30 psi, it is reasonable to assume that the vehicle was lightly loaded and may even have been a bobtail situation.

It should be noted that the various data traces shown in Figure 18 are rough "stairsteps" during the first second of data. The reason for this is that the data monitoring/recording equipment used in the truck tractor fleet study used a data sampling rate of 10 samples per second while monitoring ABS activity. When an "ABS braking event" was detected the equipment began to use a data sampling rate of 50 samples per second. The equipment then stored the data for the one second prior to the "ABS braking event" at a 10 sample per second rate and for the entire "event" at a 50 sample per second rate.

With regard to the ABS controlling frequency shown in Figure 18, unlike the situation shown in Figure 17, the ABS cycles are not discrete cycles where the wheel goes to complete lockup and then the brake application pressure is reduced to zero. To estimate the ABS controlling frequency in this situation, an ABS cycle is characterized by a decrease in brake chamber pressure followed by an increase in brake chamber pressure where these pressures are less than the treadle valve pressure so as to be sure that the brake chamber pressure is being controlled by the ABS. Using this criteria, Figure 18–a shows that between two and three seconds on the time scale the brake chamber pressure goes through about 9 such "cycles", i.e., an ABS controlling frequency of about 9 cycles per second. This is more than 6 times faster than the fastest ABS controlling frequency shown in Figure 17–a for the stop on an ice surface.

With regard to the wheel spin up time for the stop shown in Figure 18–b, just after time equals 3 seconds, there is a large decrease in wheel speed for left rear drive wheel followed by a steep increase in speed of that wheel. This wheel speed increase is 7.3 mph and occurs over 0.06 seconds, i.e., a wheel acceleration of 121.7 mph per second or 178.4 feet per second per second. This is more than 3.5 times higher than the wheel acceleration rate for the "ice" stop shown in Figure 17–b. Since, as indicated earlier, hydraulic brake systems generally have much lower levels of hysteresis than air brake systems, everything tends to happen faster in hydraulic brake systems and, as such, the controlling frequency for hydraulic brake ABS can be significantly higher. The logic used in different systems also varies with the control strategy utilized and the number of wheel speed sensors.

A difficult task for air brake antilock systems, with regard to controlling slip, is the prevention of wheels going into "deep cycles" (wheel slips in the high wheel slip part of the friction curve where both braking and cornering friction are reduced). Deep cycles are particularly undesirable in the first cycle of an antilock system operation where the demand for cornering friction can be the highest because of the speed of the vehicle. The extent to which an antilock system goes into a deep cycle depends on how effectively the modulator controls air into and out of the air chambers. Figure 19 shows how a 1970's antilock system was not able to reduce the air pressure fast enough in a panic application to prevent some wheel lockup. The electronic antilock systems of today, because of the versatility of digital technology (and compatible pneumatic valving) have an expanded control range that provides for better air pressure control to respond to conditions and to prevent overpressurizing air chambers. This makes possible the reductions in deep cycling shown in Figure 20.

The hysteresis of foundation brakes can have significant effect on the ability of an antilock system to prevent "deep cycles." Although an antilock system may quickly detect impending wheel lock and rapidly actuate the modulator valve to reduce the air pressure in the air chambers, the three types of brake system hysteresis discussed earlier may prevent an immediate reduction in brake torque and rapid spin up of the wheel causing deeper wheel cycles than desired. Figure 19 shows an example of how the inherent hystereses of the pneumatic components and foundation brakes of air brake systems, and the hysteresis related to wheel spin up times affect how quickly an ABS can respond to and control wheel slip. The effect of the pneumatic hysteresis can easily be seen in the release of chamber pressure portions of the ABS cycles. It takes from 0.08 to 0.22 seconds for the chamber pressure to decrease to 3 pounds per square inch, the chamber pressure at which wheel spin up begins for several of the ABS cycles. The effect of foundation brake hysteresis can not be estimated without data on the brake torque acting on the wheel. However, it may not be significant since this type of hysteresis is most significant at high brake chamber pressures. As shown in Figure 17, the hysteresis time lags related to wheel spin up range from 0.20 to 0.34 seconds. The ABS cycle times of up to 0.80 seconds shown in Figure 17, are the result of these properties of the foundation brakes and tires used on heavy vehicles today.

The inherent hystereses of the pneumatic components and foundation brakes of air brake systems and in the tire spin up rates of heavy vehicle wheel/tire assemblies have to be considered in the design of antilock systems. It also has to be recognized that different brake types/configurations can have different amounts of hysteresis. An antilock system which works efficiently with one type of brake may not work as efficiently with another type of brake.

b. ABS Single and Tandem Axle Component Configurations

Several types of ABS configurations are currently available for heavy vehicles. In order of decreasing complexity and cost, the systems for tractors include those with: (1) individual control of the wheels on an axle; (2) side-to-side control of the wheels on a tandem axle set; (3) axle-by-axle control of the wheels on a tandem axle set; and (4) tandem control of all of the wheels on a tandem set. With individual wheel control, the most complicated and costly type of ABS, each of the wheels on an axle is individually monitored and controlled using wheel-speed sensors and modulator control valves for each wheel. This prevents lockup at each wheel and thus provides optimum stability and control, especially on a split mu surface.[15] With side-to-side control,[16] all of the wheels on one side of a tandem axle set are controlled together by one modulator in response to wheel speed sensor signals from one or more of those wheels. With axle-by-axle (or simply, axle) control, the wheels on an axle (either on a single axle or on each axle of a tandem axle set) are controlled together by one modulator in response to wheel speed signals from the wheels on that axle. With tandem control,[17] all four (or in some cases, six) wheels on a tandem (or tridem) axle set are controlled together by one modulator in response to wheel speed signals from the wheels on one or more of the axles in the tandem (or tridem) axle set.

ABS technology has improved dramatically in recent years given the use of computerized components. Unlike the antilock brake systems in the 1970s that primarily relied on an analog control technology, current generation antilock systems use advanced digital control technology that enhances the systems' efficiency. Digital logic permits the use of more complex and sophisticated control strategies and reduces the time lags in the antilock computer. More generally, digital technology applied to motor vehicles has been significantly refined in the last twenty years to control motor vehicle fuel systems so that vehicles can comply with fuel efficiency and pollution prevention regulations.

c. ABS Single and Tandem Axle Control Strategies

As discussed above, there are several different component configurations used to equip an axle or axles with ABS.

For each of the configurations for which more than one wheel is controlled by one modulator, different wheel slip control strategies can be used by the ABS to control wheel slip of those wheels. These are select low regulation (SLR), select high regulation (SHR), and modified select high regulation (MSHR), also called "Select Smart" (Bendix) or select low high regulation (SLHR).

The select low regulation strategy modulates the brake pressure application at both wheels of an axle at the same level based on the wheel speed signals from the wheel that experiences the higher level of wheel slip. On split mu surfaces, this control strategy results in near peak braking force on the wheel that experiences the higher level of wheel slip (the wheel that is on the lower friction side of the road) and less than peak braking force on the wheel with the lower level of wheel slip (the wheel on the higher friction side of the road). One wheel operating at a lower level of wheel slip and on a surface with a higher friction level means that wheel has a greater capability to provide additional stabilizing force; therefore, providing a higher level of directional stability and control for the vehicle. However, on split mu surfaces with the coefficient of friction on one side of the road surface being very different than on the other side, this can result in extended stopping distances since the wheel on the high coefficient of friction side is providing much less than the maximum level of braking force than can be provided by that surface.

The select high regulation strategy modulates the brake pressure application at both wheels of an axle at the same level based on the wheel speed signals from the wheel that experiences the lower level of wheel slip. On split mu surfaces, this control strategy results in lockup of the wheel that experiences the higher level of wheel slip, which results in that wheel providing less than peak braking force and near peak braking force on the wheel with the lower level of wheel slip. One wheel operating at a locked wheel condition means that wheel has essentially no capability to provide any stabilizing force, and the other wheel operating at a higher level of braking force (near the maximum available on the high friction side of the road) means that wheel would have a reduced capability to provide stabilizing force. This results in a reduced level of directional stability and control for the vehicle compared to the SLR strategy. However, on split mu surfaces with the coefficient of friction on one side of the road surface being very different than on the other side, SHR results in shorter stopping distances compared to the SLR strategy since the wheel on the high coefficient of friction side is providing near peak braking force.

The modified select high regulation strategy combines the SLR and SHR control strategies. At the beginning of a stop which results in excessive wheel slip at one wheel, the ABS controls wheel slip using the SLR strategy. While doing so, the ECU monitors the level of wheel slip on the wheel which has the lower level of wheel slip (the wheel on the high friction side of the road), and from that information, the ECU estimates the ratio of the coefficient of friction on the high friction side of the road to that on the low friction side. If this ratio exceeds a preset threshold and the vehicle speed is above a preset threshold, the ECU increases the brake application pressure to the wheels which increases the braking force provided by the wheel with the lower level of wheel slip (the wheel on the high friction side of the road) and which locks the wheel with the higher level of wheel slip (the wheel on the low friction side of the road). The ECU then begins to control wheel slip using the SHR strategy which results in a higher level of vehicle deceleration (shorter stopping distance) than would result from the use of the SLR strategy. However, as noted above, this results in a reduced capability of the both wheels to provide stabilizing forces, therefore reducing the vehicle's overall level of directional control and stability. Another feature of the MSHR strategy is that even when the vehicle velocity and ratio of coefficients of friction of the split mu surface thresholds are exceeded, the ECU does not immediately switch to the SHR control strategy to reduce the risk that the driver will be surprised by an unexpected steering wheel "pull" that can result in that control mode. Instead, the time period over which the system transitions from SLR to SHR control is adjusted based on the vehicle's velocity.

For the individual wheel control configuration in which each wheel is controlled by its own modulator, there are two wheel slip control strategies: independent regulation (IR) and modified independent regulation (MIR). As its name implies, the independent regulation control strategy controls the wheel slip of each wheel on the axle independently, allowing each wheel's ABS to modulate the brake application pressure to each wheel in response to the signals from the wheel speed sensor at that wheel to maximize braking forces while maintaining sufficient capability to produce stabilizing forces to ensure vehicle directional stability. Although this control strategy is the most effective at both minimizing stopping distance as well as ensuring vehicle stability, when used on the steering axle of trucks, truck tractors and buses, this can lead to significant steering wheel "pull" on split mu surfaces which can be difficult for the driver to control. Therefore, ABS manufacturers have developed the MIR control strategy in which the wheel slip is controlled using the SLR strategy at the beginning of the stop. This results in equal braking forces at each wheel which alleviates steering wheel "pull" that would occur on a split mu surface with IR control of the steering axle brakes. After a short period of time, the ECU smoothly transitions to true IR control so that the buildup of any steering wheel pull is gradual so that it can easily be controlled by the driver. NHTSA understands that MIR control strategy is used exclusively by all vehicle manufacturers on vehicles which have independent sensor/modulator ABS on the steering axle. It should be noted that the SLR strategy also eliminates the problem of steering wheel "pull" on split mu surfaces, but as indicated above does not provide as effective use of the friction available on the high friction side of such surfaces, resulting in longer stopping distances.

[15] With a split mu surface, the road is divided along its length so that the wheels on one side of the vehicle are on a high friction surface and the wheels on the other side are on a low friction surface. One example of a split mu surface is when one portion of a lane is dry and another part is covered with ice.

[16] Side-by-side control ABS can have two different wheel speed sensor configurations. Either all of the wheels on the tandem axle set have their own wheel speed sensors, or only the wheels on one axle of the tandem axle set have wheel speed sensors.

[17] Tandem control ABS can have two different wheel speed sensor configurations. Either all of the wheels on the tandem axle set have their own wheel speed sensors, or only the wheels on one axle of the tandem axle set have wheel speed sensors.

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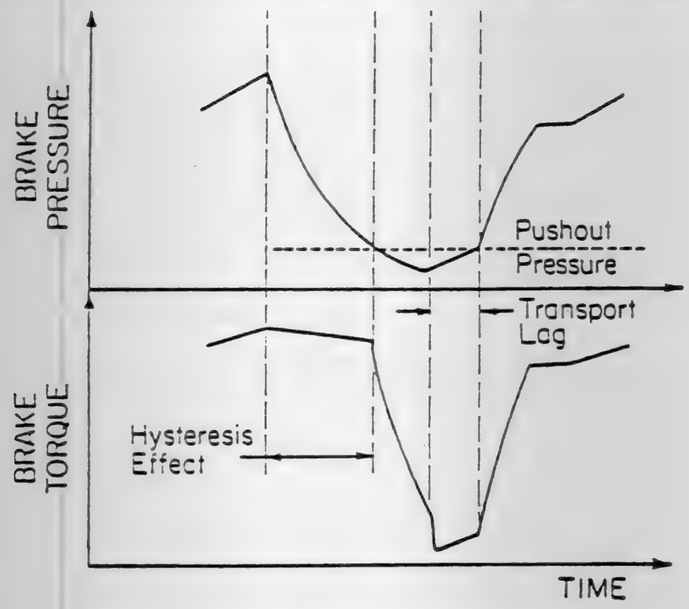

Figure 1 - Effect of Foundation Brake Hysteresis on Brake Torque vs. Brake Application Pressure

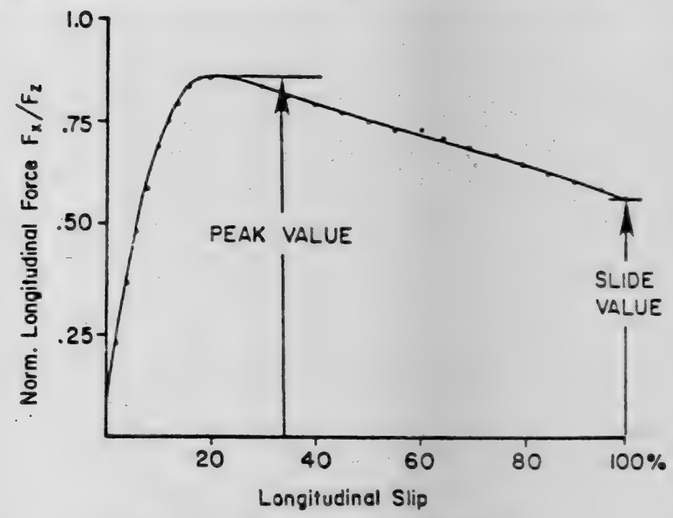

Figure 2 - Example Mu-Slip Curve

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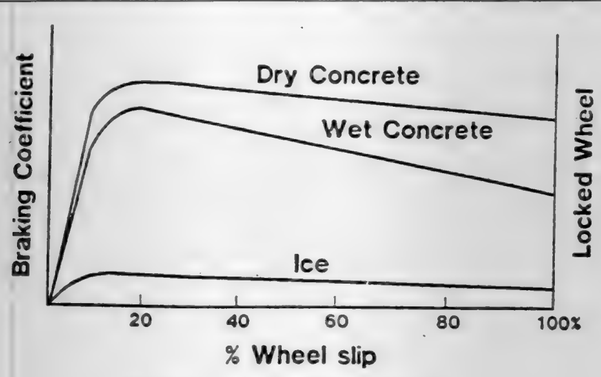

Figure 3 - Mu-Slip Curves
Dry Concrete, Wet Concrete, and Ice

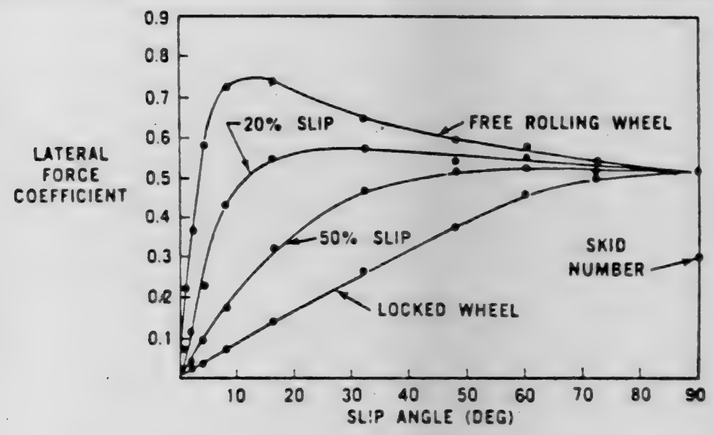

Figure 4 - Lateral Force Coefficient vs. Slip Angle
for a J78-15 Passenger Car Tire
Both Free Rolling and Braked Wheel
Skid Number 30 - Wet Road Surface

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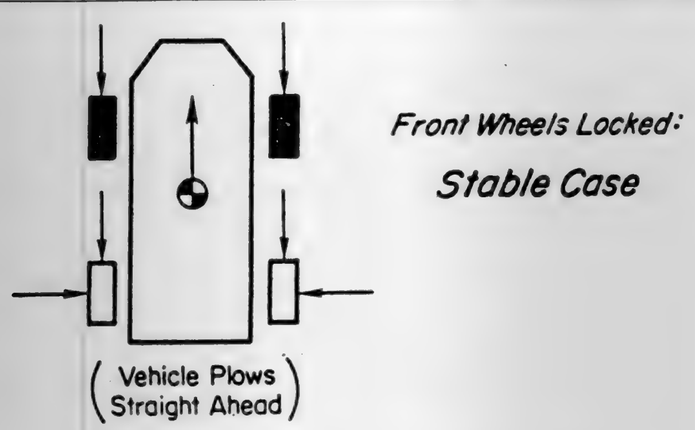

Figure 5 - Dynamics of a Single-Unit Vehicle
Front Wheels Locked - Stable Case

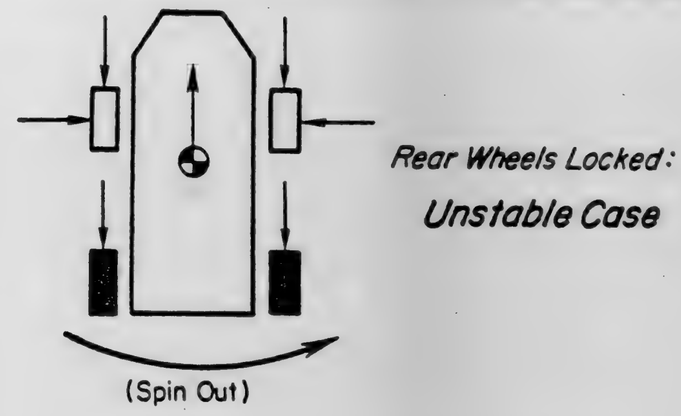

Figure 6 - Dynamics of a Single-Unit Vehicle
Rear Wheels Locked - Unstable Case

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STEERING AXLE LOCK-UP

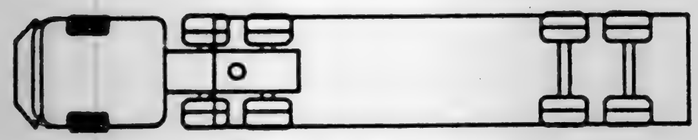

VEHICLE REMAINS DIRECTIONALLY STABLE

STEERING CAN BE RECOVERED

Figure 7 - Steering Loss

TRAILER AXLE LOCK-UP

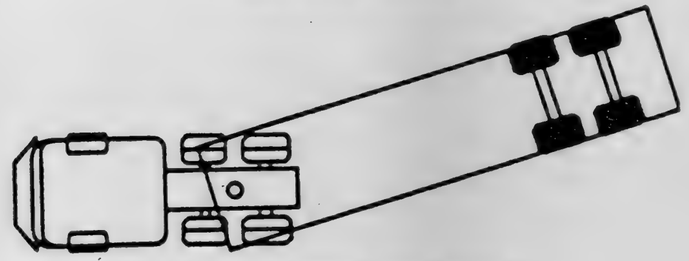

TRAILER SWINGS OUT SLOWLY

RELEASING BRAKES WILL CORRECT

Figure 8 - Trailer Swing

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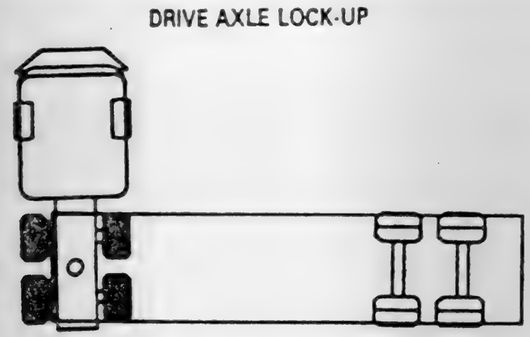

Figure 9 - Jackknife

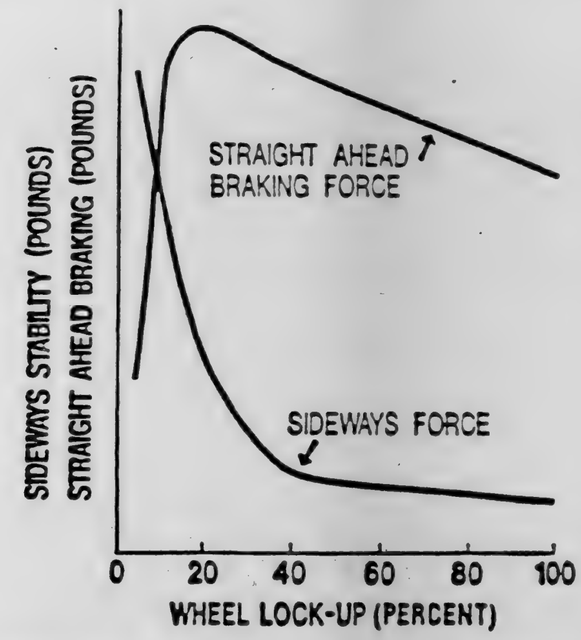

Figure 10 - Combined Tire/Road Friction Performance of a Heavy Truck Tire

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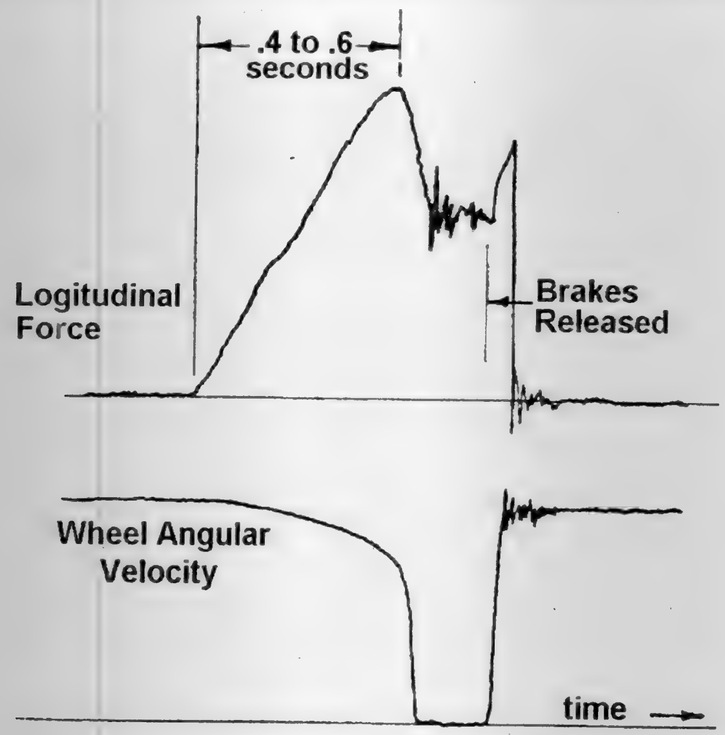

Figure 11 - Approximate Time Scale
of a Typical Lockup Cycle

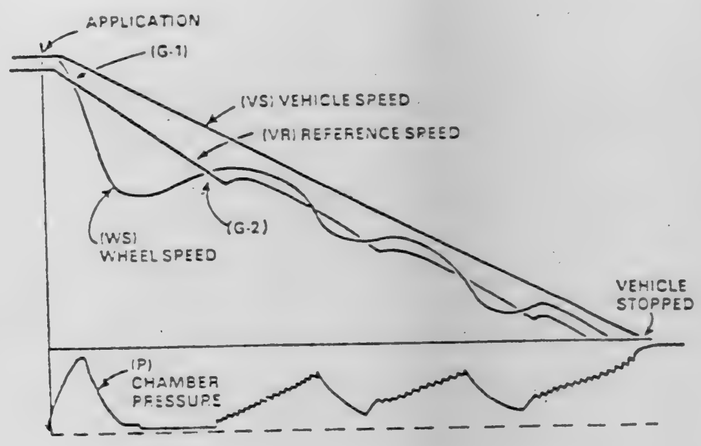

Figure 12 - Reference Speed Control Cycle

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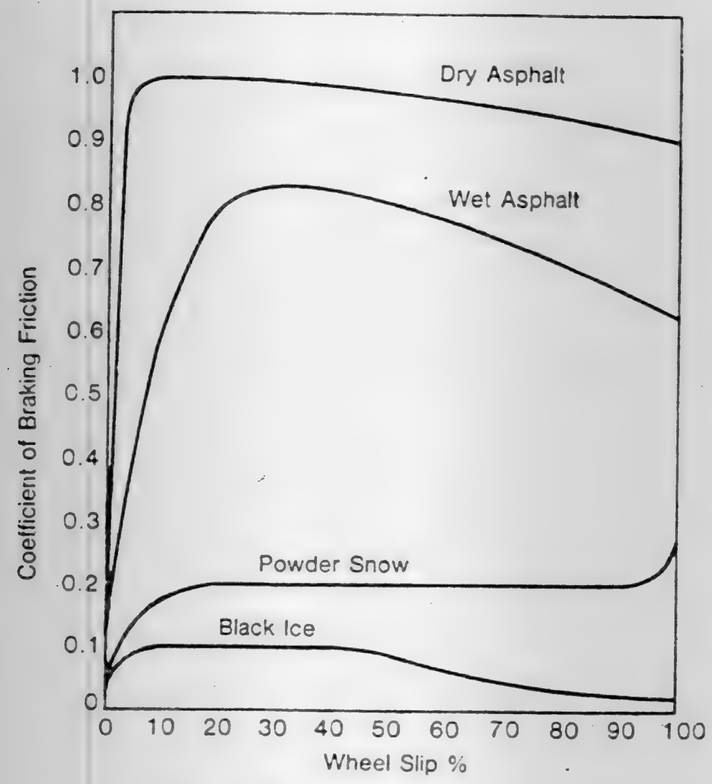

Figure 13 - Effect of Surface on Braking Friction

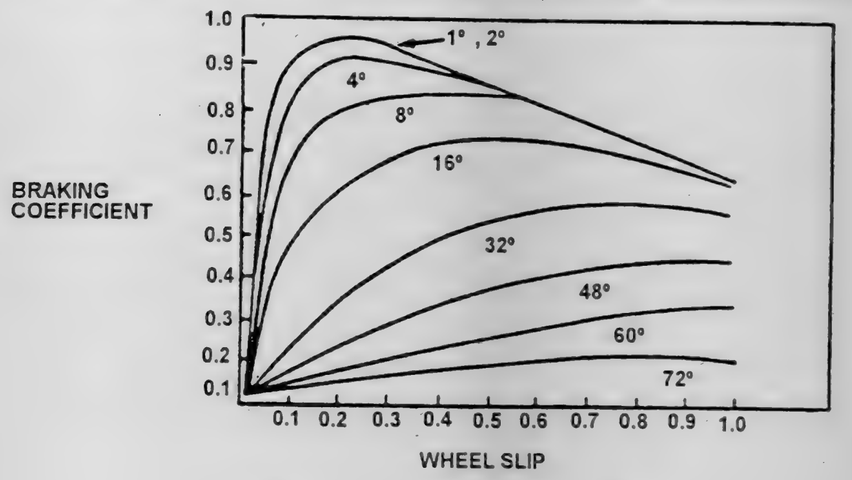

Figure 14 - Effect of Slip Angle on Braking Friction

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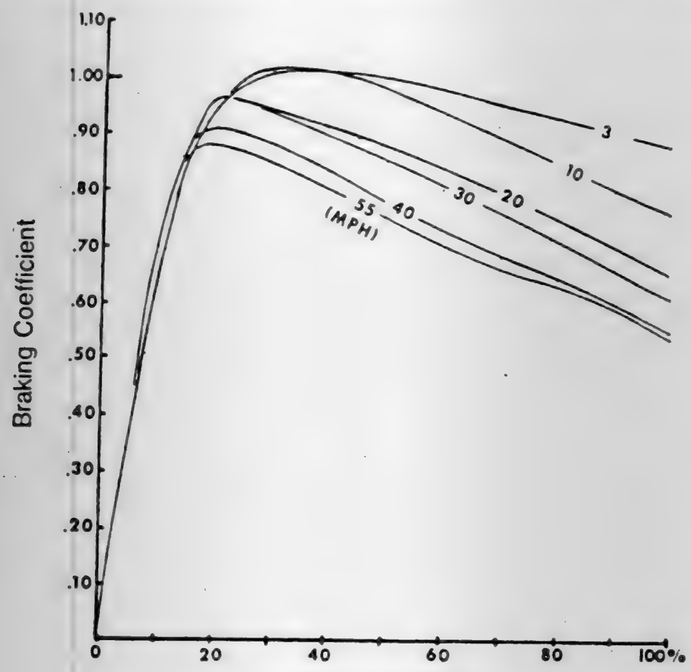

Figure 15 - Effect of Vehicle Speed on Braking Friction

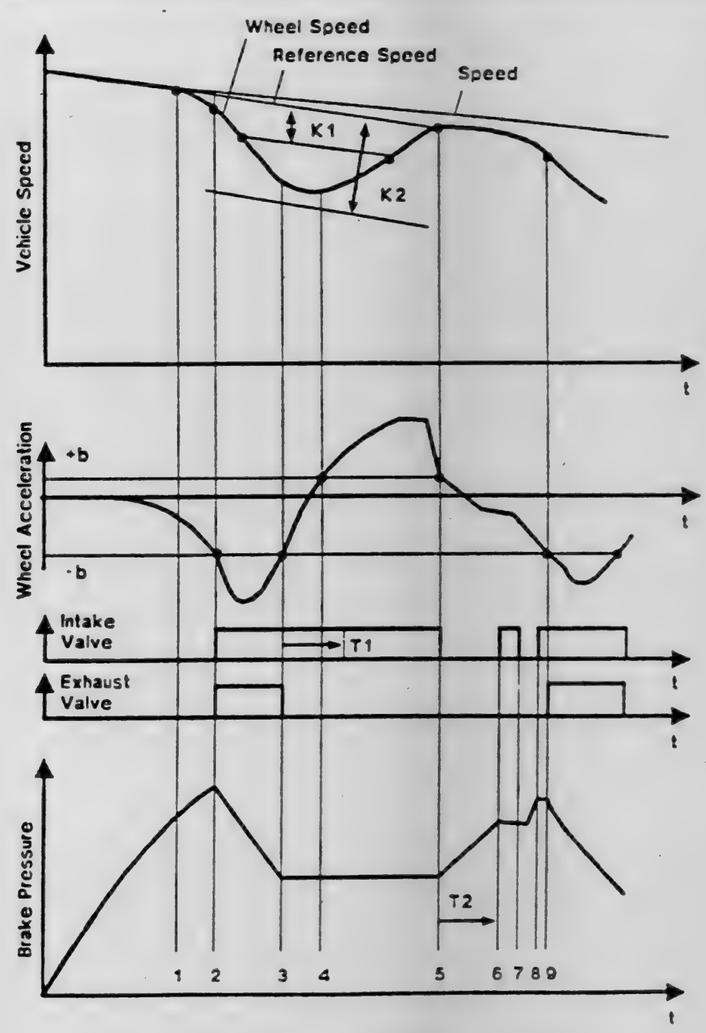

Figure 16 - An Antilock Control Cycle

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Figure 17-a
Brake Chamber Pressure, Treadle Valve Pressure and ABS Modulator Activity

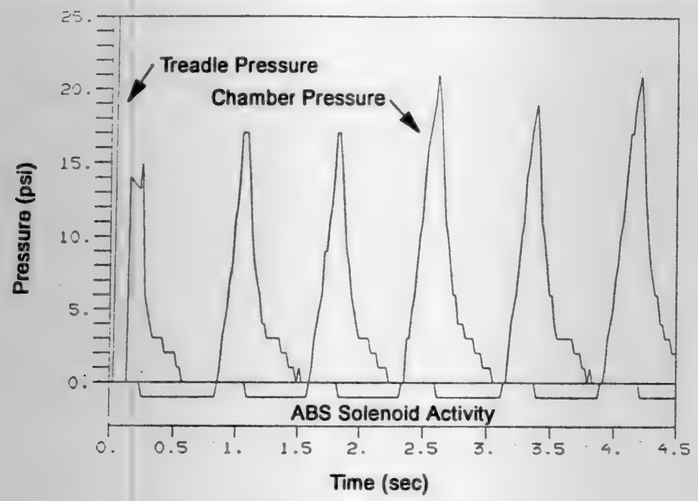

Figure 17-b
Wheel Speed and ABS Modulator Activity

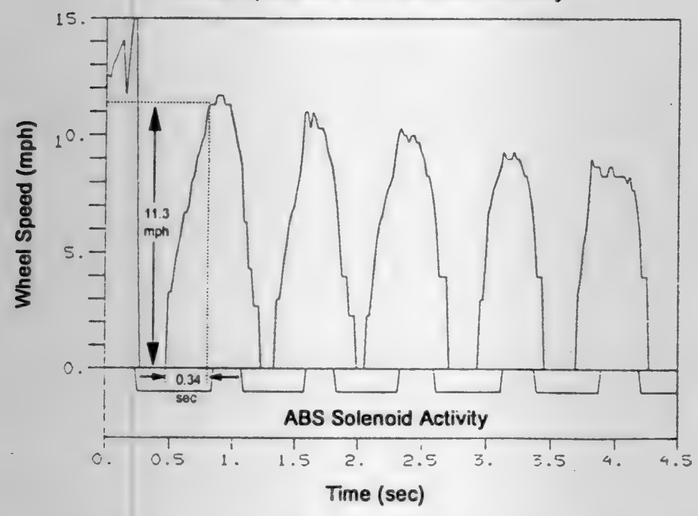

Figure 17
Data for the Left Wheel of the Intermediate Drive Axle of a·6X4 Truck Tractor with a 6S/6M ABS During a Lightly Loaded, Full Treadle Application Stop on Ice

Figure 18-a
Brake Chamber Pressure and Treadle Valve Pressure

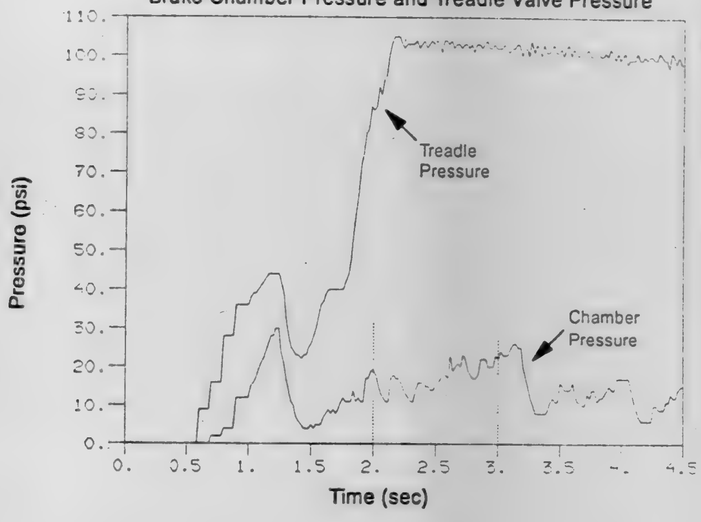

Figure 18-b
Wheel Speed

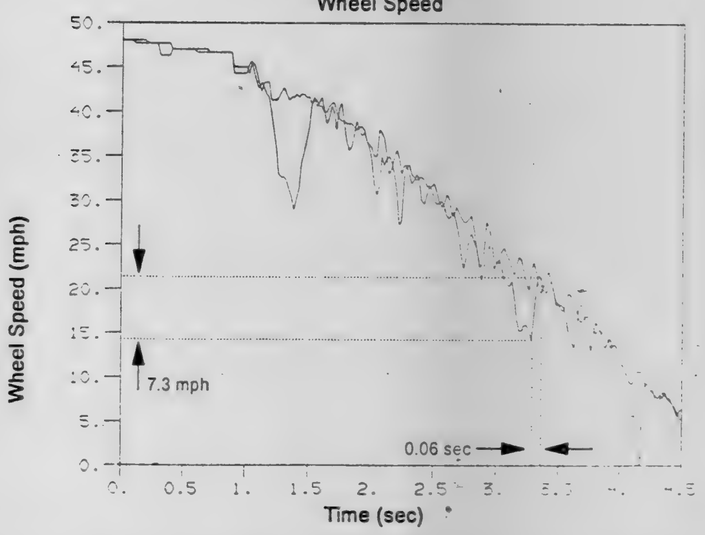

Figure 18
Data for the Left Wheels of theTandem Drive Axle of a 6X4 Truck Tractor with a 6S/6M ABS During a Lightly Loaded, Full Treadle Application Stop on aHigh Friction Surface.

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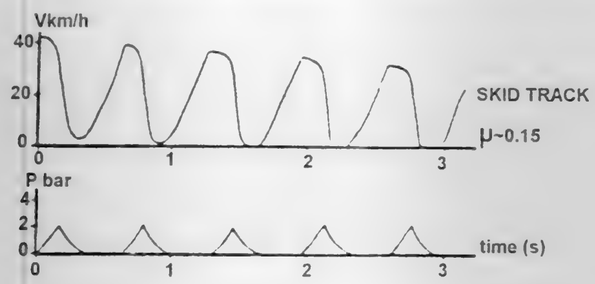

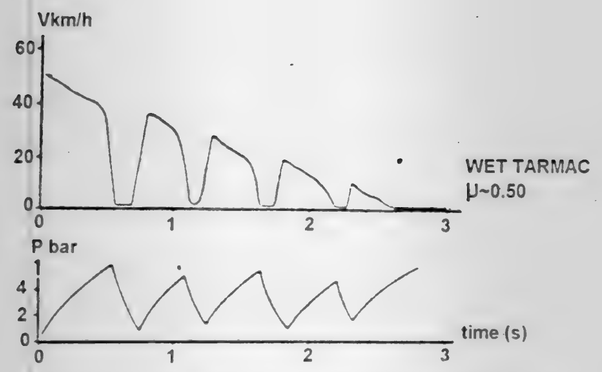

Figure 19 - Wheel Speed and Brale Pressure Response - 1970's Antilock System

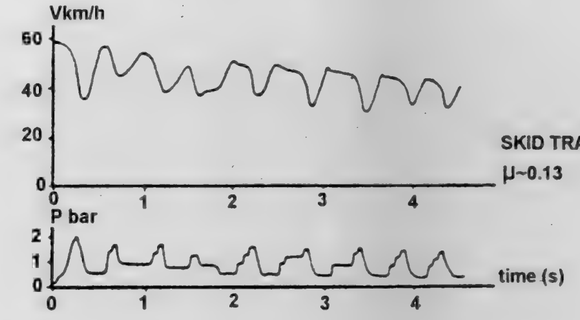

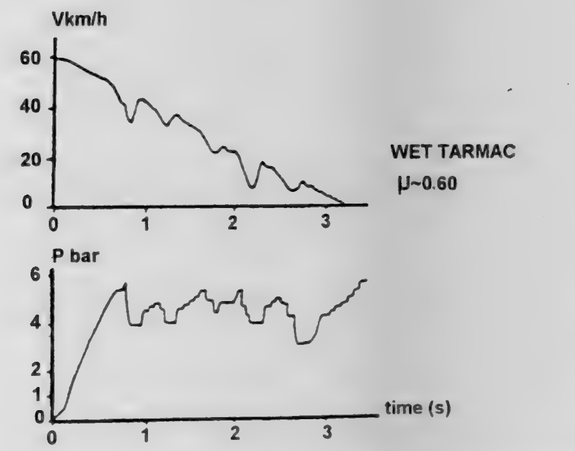

Figure 20 - Wheel Speed and Brale Pressure Response - 1980's Antilock System

[FR Doc. 95–5410 Filed 3–7–95; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–06; Notice 3]

RIN 2127–AD07

Federal Motor Vehicle Safety Standards; Stopping Distance Requirements for Vehicles Equipped With Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice reinstates stopping distance performance requirements in Standard No. 121, *Air Brake Systems*, for medium and heavy vehicles that are equipped with air brake systems. The requirements specify distances in which different types of medium and heavy vehicle configurations must come to a complete stop from 60 mph on a high coefficient of friction surface. The requirements are designed to reduce the number and severity of crashes.

This notice is one part of the agency's comprehensive effort to improve the braking ability of heavy vehicles. In another final rule published elsewhere in today's **Federal Register**, the agency is adopting identical stopping distance requirements for medium and heavy vehicles that are equipped with hydraulic brake systems. In a third final rule that responds to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the agency is requiring medium and heavy vehicles to be equipped with an antilock brake system (ABS) to improve the lateral stability and control of these vehicles during braking.

DATES: *Effective Dates:* The amendments become effective on March 1, 1997 Compliance to § 571.121 with respect to trailers and single unit trucks and buses will be required as of March 1, 1998.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 10, 1995

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93–06; Notice 3 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590

FOR FURTHER INFORMATION CONTACT: Mr George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5892).

SUPPLEMENTARY INFORMATION:

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C. Heavy Vehicle Safety Report to Congress
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I. Background

A. Brake Related Crashes

Medium and heavy vehicles [1] are involved in thousands of motor vehicle crashes each year. One of the most important factors that contributes to these crashes is brake system performance. Crashes in which braking is a contributory factor can be further subdivided into (1) crashes due to brake failures or defective brakes, (2) runaways on downgrades, due to maladjusted or overheated brakes, (3) crashes in which vehicles are unable to stop in time, and (4) skidding, jackknifing, or loss-of-control crashes due primarily to locked wheels during braking.

This final rule, reinstating stopping distance requirements for air-braked vehicles and the companion final rule specifying stopping distance requirements for hydraulically braked heavy vehicles will reduce the severity of or prevent crashes attributable to a heavy vehicle's inability to stop in time.[2] In these crashes, the heavy vehicle's brakes function, but do not stop the vehicle quickly enough to avoid a crash. One way to reduce the severity or number of such crashes is to improve heavy vehicle braking performance by reducing the distance needed to stop a vehicle. Even if crashes of this type were not totally prevented by such improvements in performance, the improvements would reduce collision impact speeds, and thus reduce crash severity.

The following estimates regarding heavy vehicle crashes are from NHTSA's 1992 General Estimates System (GES) which is based on data transcribed from a nationally representative sample of state police accident reports (PARs) and the Fatal Accident Reporting System (FARS). NHTSA estimates that in 1992 there were about 168,000 crashes involving heavy combination vehicles (excluding truck tractors when operating bobtail, *i.e.*, without a trailer). These crashes resulted in about 13,600 injuries and 387 fatalities to truck occupants and about 51,500 injuries and 2,452 fatalities to occupants of other involved vehicles. For bobtail truck tractors alone, the agency estimates that there were about 8,400 crashes resulting in about 1,200 injuries and 39 fatalities to truck occupants and about 2,600 injuries and 178 fatalities to occupants of other involved vehicles. For heavy single-unit trucks, the agency estimates that there were about 192,600 crashes resulting in about 15,700 injuries and 165 fatalities to truck occupants and about 48,300 injuries and 891 fatalities to occupants of other involved vehicles. In addition, crashes involving heavy vehicles result in more expensive and severe property damage than crashes involving light vehicles.

It is very difficult to quantify the number of crashes in which a vehicle's brakes are unable to stop the vehicle in time. NHTSA estimates that in 1992 there were about 18,000 crashes involving heavy combination vehicles (excluding bobtail truck tractors). These crashes resulted in about 1,800 injuries and 57 fatalities to truck occupants and about 8,400 injuries and 754 fatalities to occupants of other involved vehicles. For bobtail truck tractors alone, the agency estimates that there were about 260 crashes resulting in about 100 injuries and 7 fatalities to truck occupants and about 240 injuries and 48 fatalities to occupants of other involved vehicles. For heavy single-unit trucks, the agency estimates that there were about 30,100 crashes resulting in about 4,200 injuries and 17 fatalities to truck occupants and about 15,000 injuries and 276 fatalities to occupants of other involved vehicles. The Final Economic Analysis (FEA) provides greater detail about how today's final rules will reduce injuries and fatalities resulting from such crashes.

The agency emphasizes that not all inability-to-stop-in-time crashes are preventable. Nevertheless, improvements to heavy vehicle brake systems should prevent or reduce the severity of a significant number of these crashes.

B. Braking Devices

In order to understand the discussion of braking in this preamble, it is necessary to be familiar with several devices used in braking systems. Therefore, the agency provides a brief explanation of those devices below.

Automatic front axle limiting valves (ALVs) automatically limit the amount of braking pressure applied at steering axle brakes. ALVs are typically installed to allay the concern of some drivers about loss of steering control due to front wheel lockup during hard braking and to reduce steering pull due to unequal brake adjustment on the front wheel brakes. However, these devices can actually increase the likelihood of drive axle and trailer lockup because the brakes on the front axle do less than their proportional share of the braking. Therefore, drivers must apply brakes harder to stop the vehicle. Accordingly, stopping distance performance could, in most cases, be improved by eliminating the use of ALVs.

Bobtail proportioning valves (BPVs) automatically reduce brake application pressure to the drive axles of a bobtail truck tractor, thereby allowing greater use of the vehicle's steering-axle braking power. Bobtail tractors demonstrate the worst stopping capability of all vehicle types, primarily because the braking systems of tractors are designed to optimize their stopping distance when they are towing a loaded trailer. Without the trailer, the lack of load on the tractor drive axles can cause premature wheel lockup and reduced stopping capability. An agency study found that, on average, the stopping distance of bobtail tractors is approximately 122 feet longer than that of tractors when connected to loaded trailers.[3] However, significantly shorter stops have been obtained when bobtails are equipped with BPVs.

Load-Sensing Proportioning Valves (LSVs) reduce the likelihood of premature wheel lockup by mechanically sensing drive-axle suspension deflection that results from weight transfer during braking, and adjusting brake proportioning based on different loading conditions. However, LSVs cannot prevent lockup of a vehicle's brakes if they are applied too hard, particularly on a low coefficient of friction surface.

Antilock brake systems (ABSs) automatically control the amount of braking pressure applied to a wheel so as to prevent wheel lock, thus increasing stability and control in emergency stops by preventing skidding, spinning, and jackknifing. Today's stability and control final rule provides a detailed discussion of these devices.

II. NHTSA Activities

A. Regulatory History

In the notice of proposed rulemaking (NPRM) to reinstate stopping distance requirements for air-braked vehicles, NHTSA provided a detailed discussion of the regulatory and judicial history of the stopping distance requirements for air braked vehicles. (58 FR 11009, February 23, 1993). When last in effect, the stopping distance requirements in Standard No. 121 required all heavy vehicles to stop within 293 feet from a speed of 60 mph on a high coefficient of friction surface (*i.e.*, a nonslippery surface typical of dry concrete). (41 FR 8783, March 1, 1976).

In response to a suit challenging Standard No. 121's stopping distance requirements, the United States Court of Appeals for the 9th Circuit invalidated the Standard's stopping distance and "no lockup" requirements for trucks, buses, and trailers in *PACCAR* v. *NHTSA*, 573 F.2d 632, (9th Cir. 1978) *cert. denied*, 439 U.S. 862 (1978). The court held that NHTSA was justified in promulgating a standard requiring improved air brake systems and stability mechanisms. However, after reviewing the record about reliability problems with antilock brake systems then in use, the court held that the standard was "neither reasonable nor practicable at the time it was put into effect."

The court further stated that:

* * * those parts of the Standard requiring heavier axles and the antilock device should be suspended. The evidence indicates that this can be accomplished if we hold, as we do, that the stopping distance requirements from 60 mph are invalid * * * We hold only that more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation.

The stability and control final rule contains a detailed discussion about the *PACCAR* decision and how the agency has responded to the findings in that decision. The Agency has decided to specify different stopping distances for different configurations of heavy vehicles. Today's requirements can further be distinguished from those invalidated in the 1970s by the fact that manufacturers will not need to significantly redesign their brakes or use overly aggressive foundation brakes to comply with the requirements being established in today's final rule.

Even though the stopping distance requirements being specified in today's final rule are generally less stringent for some configurations than those invalidated by the *PACCAR* decision, the agency believes that the braking requirements in today's final rules, taken as a whole, significantly enhance the overall braking performance of air-braked vehicles given the agency's decision to require these vehicles to be equipped with ABS.

B. Agency Research

As a part of its review of heavy vehicle braking, NHTSA has issued two reports on the stopping distance capability of several different types of heavy air-braked vehicles in various loading conditions.[4] The agency also tested some vehicles equipped with ALVs, BPVs, and ABS, thus allowing comparisons of stopping distances with and without these devices. The tests were conducted on school buses, transit buses, single unit trucks, tractor trailers in the loaded and empty conditions and with various equipment (with ABS activated and deactivated, and with and without ALVs and BPVs). Among the conclusions reached by the agency on the basis of the test data were: (1) ALVs significantly degrade straight line stopping performance, especially in the bobtail configuration (with stopping distances as long as 531 feet); (2) BPVs significantly reduce the stopping distances of bobtail tractors; (3) ABSs are effective in providing short, stable stops in all operating conditions; (4) ABSs provide the greatest performance gain in the bobtail configuration, where stable stops as short as 233 feet were obtained; (5) braking performance of bobtail tractors and empty single unit

[1] Hereafter referred to as heavy vehicles

[2] Today's companion final rule to require heavy vehicles to be equipped with antilock brake systems (ABS) will prevent braking-induced loss-of-control crashes.

[3] "NHTSA Heavy Duty Vehicle Brake Research Program Report No. 1, "Stopping Capability of Air Braked Vehicles," (DOT HS 806 738, April 1985) and Report No. 9, "Stopping Distances of 1988 Heavy Vehicles."

[4] NHTSA Heavy Duty Vehicle Brake Research Program Report No. 1, "Stopping Capability of Air Braked Vehicles," (DOT HS 806 738, April 1985) and Report No. 9, "Stopping Distances of 1988 Heavy Vehicles." DOT HS 807 531, February 1990.

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trucks could be improved by removing ALVs from both vehicle types and installing BPVs on bobtails; and (6) a stopping distance performance requirement for truck tractors with empty trailers would not provide any additional performance benefits that could not be achieved through specifying requirements for either the bobtail or loaded condition.

C. Heavy Vehicle Safety Report to Congress

In response to section 9107 of the Truck and Bus Regulatory Reform Act of 1988, NHTSA submitted a report to Congress titled "Improved Brake Systems for Commercial Vehicles." (DOT HS 807 706, April 1991.)[5] After discussing crash data concerning heavy vehicle brake systems, the report explained the factors that are related to braking effectiveness, stability and control during braking, and braking system compatibility. The report indicated that stopping distances and vehicle stability could be improved by not equipping heavy vehicles with ALVs and instead equipping them with BPVs, load-sensing proportioning valves, and antilock brake systems.

III. Agency Proposal

On February 23, 1993, NHTSA proposed to amend Standard No. 121 to reinstate stopping distance performance requirements for stops from 60 mph on a high coefficient of friction surface for trucks, truck tractors, and buses that are equipped with air brake systems (58 FR 11009). Based on testing at VRTC, the Agency proposed different stopping distances for different configurations of heavy vehicles. Specifically, the Agency proposed that unloaded single unit trucks and bobtail tractors stop within 335 feet, loaded single unit trucks stop within 310 feet, and all buses stop within 280 feet. The Agency proposed two alternatives for testing a truck tractor in the loaded condition and stated that one of the alternatives would be chosen for the final rule. The first alternative proposed that the truck tractor be tested with a braked control trailer and stop within 280 feet, while the second alternative proposed that the truck tractor be tested with an unbraked control trailer and stop within 355 feet. The Agency explained that its long-term objective is to upgrade the braking efficiency of heavy vehicles to enable them to make controlled, stable stops, under all loading and road surface conditions. The Agency believed that the proposed requirements would reduce the disparity in braking ability between heavy vehicles and passenger cars. On the same day, the Agency proposed identical stopping distance requirements for heavy vehicles equipped with hydraulic brakes (58 FR 11003). The Agency stated that many vehicles were already able to comply with the proposed requirements. The inadequate performance of those vehicles that were not able to comply was due to either poor brake torque balance between the vehicles' axles resulting in premature lockup of the wheels on the vehicles' rear axles or a lack of sufficient total brake torque capability. Those vehicles that exhibited poor brake balance could be brought into compliance by installing ABS, or by adding BPVs and/or eliminating ALVs. Those vehicles that lack sufficient total brake torque capability could be brought into compliance by incorporating relatively minor changes to their foundation brake components involving the substitution of other currently available components.

NHTSA proposed that air-braked vehicles would have to come to a complete stop within a 12-foot-wide lane with restrictions on which wheels would be permitted to lockup during the stop. The proposal requested comments about whether and to what degree wheel lockup during testing would be permitted. Specifically, the Agency proposed to allow unlimited lockup below 20 mph and defined two types of wheel lockup allowed above 20 mph: "permissible wheel lockup," which is defined as 100 percent wheel slip of one or more wheels for a duration of one second or less[6] for testing purposes, and "limited lockup," which is defined as lockup of not more than one wheel per axle or two wheels per tandem. In addition, NHTSA proposed test conditions related to the road test surface, the use of a braked or unbraked control trailer, and the initial brake temperature. NHTSA also proposed specifying a threshold pressure to enhance brake force compatibility between tractors and trailers.

IV. Comments on the Proposal

NHTSA received 49 comments in response to the NPRM. Commenters included heavy vehicle manufacturers, brake manufacturers, safety advocacy groups, heavy vehicle users, industry trade associations, and other individuals. The American Automobile Manufacturers Association (AAMA) submitted joint comments on behalf of the eight major domestic manufacturers of heavy vehicles: Chrysler, Ford, Freightliner, General Motors (GM), Mack Trucks, Navistar, PACCAR, and Volvo-GM.

All the commenters supported the Agency's decision to reinstate stopping distance requirements for heavy vehicles equipped with air brakes. However, they offered mixed views about the specific stopping distances being proposed. GM, Navistar, Heavy Duty Brake Manufacturers Council (HDBMC), and Rockwell WABCO stated that the proposed stopping distance requirements are appropriate. In contrast, the Insurance Institute for Highway Safety (IIHS), the Coalition for Consumer Health, and Advocates for Highway Safety (Advocates) believed that the required distances should be much shorter for trucks and buses. Advocates stated that the proposal did little more than "grandfather" existing braking capabilities and therefore would not result in the best available braking performance for large trucks.

The American Trucking Association (ATA), IIHS and several other commenters suggested that the Agency should merge the proposed stopping distance and stability requirements into a common rulemaking, thereby allowing the industry to implement a more effective test program.

Commenters also addressed specific issues raised in the NPRM, including vehicle test speed, the test surface specification, the control trailer, wheel lockup restrictions, the initial brake temperature, the failed system test, vehicle loading, the threshold pressure requirements, the parking brake test, the burnish procedures, and the implementation schedule for the requirements. More specific discussions of these comments, and the Agency's responses to them, are set forth below.

V. Agency Decision

A. Overview

Based on the Fatal Accident Reporting System (FARS) and other crash data, test data from the agency's heavy vehicle brake research program, comments on the NPRM, and other available information, NHTSA has decided to amend Standard No. 121 to reinstate stopping distance performance requirements for heavy vehicles that are equipped with air brake systems. Separate requirements for stopping from 60 mph on a high coefficient of friction surface are specified for four different heavy vehicle configurations. The requirements are designed to reduce the distance needed for these vehicles to come to a complete stop, thereby reducing the severity and number of crashes.

As noted above, this notice is one part of the Agency's comprehensive effort to improve the braking ability of heavy vehicles. In a second final rule published elsewhere in today's **Federal Register**, the Agency is adopting identical stopping distance requirements for heavy vehicles that are equipped with hydraulic brake systems. The Agency believes that it is appropriate to specify identical stopping distance requirements for similar vehicles. In a third final rule, the Agency is responding to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 by requiring each heavy vehicle to be equipped with an antilock brake system to improve its lateral stability and control during braking.

B. Stopping Distance Performance

1. Stopping Distance Requirements

Based on its testing at VRTC, NHTSA proposed different stopping distances for various categories of vehicles when tested at a speed of 60 mph on a surface with a peak friction coefficient (PFC) of 0.9, as follows:

Loaded and Unloaded Buses	280 ft.
Loaded Truck Tractors with Braked Control Trailer	280 ft.
Loaded Truck Tractors with Unbraked Control Trailer	355 ft.
Loaded Single-Unit Trucks	310 ft.
Unloaded Single-Unit Trucks & Truck Tractors (Bobtail)	335 ft.

The agency proposed different requirements, instead of a single across-the-board requirement like the one invalidated by the *PACCAR* court, because a single requirement for all heavy vehicles with fully operational service brakes would be too stringent for bobtail tractors and unloaded single unit trucks, but not stringent enough for buses and for tractor trailers in the loaded condition.

AAMA and most other industry commenters agreed with the stopping distance values proposed for the various vehicle configurations. AlliedSignal commented that these requirements are compatible with its view of using BPVs to achieve increased deceleration on air-braked tractors, while maintaining lateral stability in the bobtail mode. Nevertheless, it requested that ALVs not be prohibited since it believed that these devices are appropriate on some vehicles, particularly those with large front brakes. AlliedSignal recommended that if an ALV is used on a vehicle, it should be automatically deactivated when the tractor is in the bobtail mode.

ATA agreed with the proposal to specify different stopping distances for different types and loadings of vehicles. It also agreed with specifying the same stopping distances for air-braked and hydraulically-braked vehicles of the same type and with the same loading.

Other commenters opposed some of the proposed stopping distance values on the ground that they were too stringent. HDBMC stated that certain vehicles would have difficulty complying with the proposed stopping distances because they are over-braked when the rear axles are unloaded, and under-braked during emergency system stops. Lucas was concerned that the service brake stopping distances obtained during the agency's testing do not have a 10 percent margin less than the proposed 280 feet from 60 mph. In order to obtain an acceptable margin, Lucas stated that vehicle manufacturers will have to equip certain vehicles with larger front brakes, which would represent a major change on some vehicles.

In contrast, other commenters stated that the proposed stopping distances were not sufficiently stringent. Advocates stated that the proposed stopping distances simply ratify the braking distances currently achieved by manufacturers and do not seek to improve real-world braking performance. It stated that except for the 280-foot requirement for buses and loaded tractors with a braked control trailer, all of the other proposed stopping distances are longer than the 293 feet established before *PACCAR*. Similarly, IIHS stated that the proposals do not go far enough toward requiring the best available braking for heavy vehicles.

Based on the comments and other available information, NHTSA has decided to adopt the stopping distances proposed in the NPRM for the following categories of vehicles when tested at a speed of 60 mph on a surface with a PFC of 0.9:

Loaded and Unloaded Buses[7]	280 ft.
Loaded Truck Tractors with Unbraked Control Trailer[8]	355 ft.
Loaded Single-Unit Trucks	310 ft.
Unloaded Single-Unit Trucks & Truck Tractors (Bobtail)	335 ft.

As it stated in the NPRM, NHTSA agrees with HDBMC that a small number of vehicles will have to be modified to comply with the reinstated stopping distance requirements. The agency notes that the companion final rule requiring heavy vehicles to be equipped with antilock brake systems will improve the braking of those vehicles whose braking performance is limited due to poor brake torque balance, and will enable them to comply with the stopping distance requirements. For those vehicles that will require changes to their foundation brakes, so as to provide greater brake torque capability, the agency believes that adequate leadtime is being provided to minimize the task of achieving compliance with the requirement.

NHTSA notes that while the companion final rule requiring heavy vehicles to be equipped with ABSs will reduce the need to eliminate front axle ALVs on single unit trucks and truck tractors and to install rear axle BPVs on truck tractors, the agency would still encourage vehicle manufacturers to do so. Vehicles without ALVs and/or with BPVs can be braked at higher levels of deceleration before the vehicle's ABS is activated, which the agency believes will improve the vehicle's driveability. The Agency is aware of at least one manufacturer of ABSs that currently recommends the incorporation of BPVs on truck tractors equipped with ABS.

2. Stopping Distance Test Conditions

a. Test Surface Specification

In the NPRM, NHTSA proposed that the 60-mph stopping distance tests be performed on a test surface with a PFC of 0.9, which is typical of dry concrete. In formulating the proposal, the agency considered whether the proposed test surface specification raises practicability or objectivity concerns in light of *PACCAR*. Based on its testing, the agency tentatively concluded that specifying a test surface with a high PFC would reasonably represent stopping on a dry surface and would not be a significant source of variability in the stopping distance tests. The Agency requested comments on the proposed test surface specification.

Several commenters addressed the appropriate PFC for the test. AAMA and Navistar commented that the test surface should be specified at a PFC of 1.0 because that PFC value would remove the influence of test road variability from compliance testing. AAMA provided data that showed that in the course of six months, the PFC varied between 0.85 and 0.95, and averaged 0.90 over ten readings taken approximately twice each month. According to Navistar, its data showed PFCs that ranged from 0.91 to 0.98.

[5] This report may be examined at the Agency's Technical Reference Office, room 5108, at no charge. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161 for a small charge.

[6] As explained below, the final rule refers to this concept as "momentary wheel lockup."

[7] The final rule amending Standard No. 105 discusses in detail the stopping distances applicable to hydraulic-braked school buses.

[8] As explained in the section below titled "control trailers," the agency proposed but decided not to adopt a revised braked control trailer test condition.

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AAMA argued that since the majority of actual test surfaces nominally exceed PFC 0.9, a specification of 0.9 would impose a cost burden on manufacturers trying to maintain the test surface near, but below, the 0.9 value. AAMA stated that "worldwide support" has been expressed for specifying a test surface with a PFC of 1.0. Volvo GM provided results of the Motor Vehicle Safety Research Advisory Committee (MVSRAC) Antilock Brake System (ABS) Task Force "Round Robin" testing, which showed that on high coefficient of friction surfaces with PFCs ranging from 0.87 to 1.00, the stopping distances of the three test vehicles remained relatively constant when tested in the bobtail condition. This indicates stopping performance on a dry surface is not significantly affected by variability. Strait-Stop requested that a tolerance of ± 0.1 relative to 0.9 should be specified to accommodate real-world limitations.

Based on the industry-government cooperative testing to evaluate the effect of fluctuations of PFC on vehicle stopping performance, NHTSA reaffirms its belief that a PFC of 0.9 reasonably represents a typical dry surface and will not be a significant source of variability in the stopping distance tests. (Public Files Docket PF88–01, MVSRAC ABS Task Force, Round Robin No. 1). Testing indicates that the expected minor variability of a high coefficient of friction surface appears to have a negligible impact on vehicle stopping distance performance. Variation of the average stopping distances for the six different surfaces (with PFCs ranging from 0.89 to 0.94) was small, with the deviation from the average being only 5 feet. Accordingly, the agency believes that any variability in the stopping performance on a high coefficient of friction surface is more likely due to variation in the vehicle's performance rather than test surface variability. NHTSA has decided that a test road surface specification of PFC 1.0 would result in practicability problems for the agency, since it would have to conduct compliance testing on a surface with a PFC higher than 1.0. Such a surface is difficult to find. The agency also notes that General Motors conducted an extensive survey of actual road surfaces, which indicated that a PFC of 0.9 is fairly typical.

NHTSA notes that AAMA's claim that there is worldwide support for specifying a PFC of 1.0 is incorrect. The agency notes that when the issue was discussed by the ECE in the context of the international harmonization of brake standards, the decision was to specify a PFC of 0.9[9]. Moreover, when the Organization International des Constructeurs d'Automobiles (OICA) proposed adopting a PFC of 1.0, no country supported such a requirement.

NHTSA has decided not to adopt Strait-Stop's request to specify a tolerance for the test surface. The agency notes that in specifying the test conditions applicable to the test surface, the agency does not provide a range of permissible test surfaces. Instead, the braking standards set forth specific, objective criteria for the test surface according to which the agency conducts its compliance testing.

b. Wheel Lockup Restrictions

In the NPRM, NHTSA proposed that the straight line stopping distance test be conducted without locking more than one wheel per axle or two wheels per tandem at speeds greater than 20 mph. In addition, the agency proposed to allow unlimited lockup at 20 mph or below, and to allow permissible wheel lockup for testing purposes. NHTSA believed that allowing limited wheel lockup combined with permissible wheel lockup at speeds above 20 mph would ensure a safe and reasonably repeatable test condition, while providing an indication of a vehicle's stability up to the vehicle's braking performance limit. These provisions addressing wheel lockup were based on the previously mentioned stopping distance tests conducted at VRTC. NHTSA requested comments about the degree to which lockup should be permitted and under what circumstances, including whether to allow unrestricted wheel lockup of test vehicles.

Commenters addressed four distinct issues with respect to the wheel lockup restrictions: (1) Specifying various types of lockup that would be allowed; (2) applying the wheel lockup restrictions to ABS equipped axles; (3) applying the wheel lockup restrictions to certain other axles; and (4) applying the wheel lockup restrictions to emergency system stops.

AlliedSignal, ATA, AAMA, and Strait-Stop commented that the wheel lockup restrictions were not clear. AlliedSignal suggested that "permissible" and "limited" be replaced by one term, and that wheel lockup be defined as 100 percent wheel slip at both wheels on an axle or more than two wheels on a tandem for a duration greater than one continuous second. AAMA requested that "wheel lock restriction" be defined "as 100 percent wheel slip of both wheels of an axle, or more than two wheels on a tandem, for a duration greater than one continuous second." Strait-Stop requested that permissible wheel lockup be defined as lockup of one or more wheels at 100 percent slip for a reasonable time. ATA stated that the proposed regulatory language does not clearly indicate whether unlimited wheel lockup is permitted at speeds below 20 mph.

After reviewing these comments, NHTSA has decided to adopt the proposed concepts pertaining to wheel lockup restrictions in the stopping distance test, with some modifications to enhance the provision's clarity. Aside from defining wheel lockup as 100 percent slip, and renaming "permissible wheel lockup" as "momentary wheel lockup," NHTSA has decided that it is clearer to specify the concept directly in the stopping distance requirement in S5.3.1 instead of defining the various types of lockup (*e.g.*, momentary (permissible) lockup, limited lockup, unlimited lockup) and then referencing them in S5.3.1. Accordingly, a vehicle is required to stop with wheel lockup permitted under the following conditions. At vehicle speeds above 20 mph, one wheel on any axle or two wheels on any tandem may lock up for any duration. At vehicle speeds above 20 mph, wheels on certain axles (*i.e.*, nonsteerable axles other than the two rearmost nonliftable, nonsteerable axles) may lock up for any duration. At vehicle speeds above 20 mph, any wheel not permitted to lock, as described in the two conditions above, may lock up repeatedly, with each lockup condition having a duration of one second or less. At vehicle speeds of 20 mph or less, any wheel may lock up for any duration. These exceptions allowing certain types of lockup are based on the above-mentioned tests conducted at VRTC.

In establishing the requirements applicable to wheel lockup restrictions, NHTSA examined the commenters' recommended definitions for wheel lockup restriction. The Agency believes that these definitions achieve only part of the Agency's objective in establishing wheel lockup restrictions. The Agency interprets AAMA's definition as allowing both wheels on an axle to lock up (100 percent slip) for up to one second. However, AAMA's recommended definition is unclear about whether one wheel is allowed to remain locked up for the duration of the stop. NHTSA believes that it would be necessary to add additional wording to AAMA's definition to achieve the same

[9] Eleventh Informal Meeting on Harmonization of Brake Standards, August 26–27, 1991 and 29th Meeting of Experts on Brakes and Running Gear, August 28–30, 1991.

objective that is already achieved by the Agency's requirements.

Several commenters stated that the wheels on any axle controlled by ABS should be excluded from wheel lockup constraints. Rockwell International stated that the proposed stopping distance regulation will become obsolete soon, since the references to permissible and limited wheel lockup will be superseded by the ABS regulation. Rockwell WABCO stated that the proposed stability and control rulemaking will resolve problems with respect to the wheel lockup definitions. AAMA expressed its concern that imposing wheel lockup constraints on ABS-equipped vehicles could pose practicability problems during tests. For example, AAMA said that the test driver could be required to modulate brake pressure in order to prevent wheel lockup on axles not equipped with ABS, at the same time the ABS is cycling.

NHTSA believes that the requirements in S5.3.1 continue to be necessary, notwithstanding the Agency's decision to require heavy vehicles to be equipped with antilock brake systems. The Agency believes that the limited lockup and momentary lockup restrictions will not impose any unreasonable or currently unachievable performance requirement on antilock systems during the stopping distance test, since the amount of lockup allowed by these restrictions is considerably greater lockup than allowed by any currently available antilock system. The antilock requirement specifies that an ABS on a truck tractor must control "the wheels of at least one front axle of the vehicle and the wheels of at least one rear axle * * *" Therefore, if a vehicle is equipped with ABS on only one axle of a rear tandem, the limited and momentary lockup requirements ensure that the vehicle can be braked without excessive wheel lockup of the wheels, including those controlled by ABS. Even if both non-ABS-controlled wheels of the tandem lock for the duration of the stop (they meet the limited lockup requirement test), the ABS-controlled wheels would then be allowed to lock for a duration of one second or less, at speeds above 20 mph. The Agency, therefore, does not agree with the claims that the backup restrictions would prohibit ABS on some vehicles, or that they would pose practicability problems for test drivers.

NHTSA believes that AAMA's concern about problems with specifying wheel lockup restrictions is unrealistic. The Agency is unaware of any currently used antilock system that would allow wheel lockups that would not comply with the above restrictions.

Rockwell WABCO further stated that the wheel lock issue can be resolved by requiring the vehicle to remain in the 12-foot-wide lane during testing to the stopping distance requirements.

NHTSA believes that Rockwell WABCO's suggestion that the sole requirement be that a vehicle stay within a 12-foot-wide lane does not adequately take into consideration that on a smooth, flat, and straight surface, a vehicle with locked wheels might possibly stay within the lane. Accordingly, such a stop would not fully demonstrate the capability of a vehicle to provide stable stops at the limit of the vehicle's braking performance.

Several commenters recommended that the wheel lockup restrictions not be applicable to emergency system stops. AAMA recommended that wheel lockup constraints only apply to full service stops "to avoid compromises to full system performance for the sake of partial system wheel lock."

NHTSA agrees with these comments. In its present form, the restrictions on wheel lockup in Standard No. 121 appear in S5.3.1, and thus do not apply to the emergency stops specified in S5.7.1. The NPRM did not propose to extend those restrictions to emergency braking, and the Agency is not making such a change in this final rule.

c. Control Trailer

In the NPRM, NHTSA proposed two alternatives for testing a truck tractor in the loaded condition. The first alternative proposed the use of a braked control trailer, which would be similar to the current braked control trailer. The second alternative proposed the use of an unbraked control trailer.

AAMA, ATA, HDBMC and Rockwell WABCO supported the use of an unbraked control trailer. They believed that its use would eliminate many sources of test result variability and would produce test results that are consistent, comparable, and useful. Rockwell WABCO stated that a braked control trailer with ABS could lead to test performance variations since there are many different trailer antilock systems now available. It believed that it would be extremely difficult to define the required performance of the control trailer and the antilock system necessary to have a consistent "test fixture" for the stopping distance standard.

Strait-Stop objected to the use of an unbraked control trailer, stating that its use would render the stopping distance performance of the combination vehicle meaningless. Trade International Corporation (TIC) did not explicitly support either of the two control trailer alternatives, but objected to the mandated use of "electronically controlled systems" to the exclusion of any other type of system, for the braked control trailer ABS.

NHTSA has decided to specify the use of an unbraked control trailer to test a truck tractor in the loaded condition. The Agency notes that this decision, which is consistent with the views of most commenters, will eliminate test variability and produce test results that are consistent, comparable, and useful. Contrary to Strait-Stop's assertion, the Agency, along with most commenters, believes that the test results on unbraked control trailers provide meaningful comparative information. This is so because the stopping ability of all tractors will be evaluated in the same relative context (*i.e.*, all tractors would be mated to a similar unbraked control trailer). An unbraked control trailer is easier to standardize than a braked control trailer since there is no need to specify the foundation brakes and the antilock brake system. The section on control trailers in the stability and control final rule provides a more extensive discussion of this issue.

d. Vehicle Loading

In the NPRM, NHTSA proposed that tractors would be loaded with an unbraked control trailer, which would be loaded above the kingpin only, such that the tractor is at GVWR and the trailer's axle is at 4,500 pounds, with the tractor's fifth wheel adjusted so that the load on each axle is proportional to the axle's respective GAWR. (See alternative 2, S6.1.10.4.)

AAMA requested that the Agency add the phrase "without exceeding the GAWR of any tractor or trailer axle." AAMA stated that for some vehicles, it is impossible to load the tractor to its GVWR through the kingpin without exceeding the drive axle GAWR. Due to limited fifth wheel adjustment on some vehicles, virtually all of the ballast added at the fifth wheel is borne by the tractor's rear axle, with very little transferred to the front axle.

After reviewing AAMA's comment, NHTSA has decided to amend S6.1.10.4 to include the phrase "without exceeding the GAWR of any tractor or trailer axle." The Agency believes that this modification is consistent with the proposal's intent to have the loading proportional to each axle's respective GAWR. The Agency is aware that this modification will result in some tractors being tested slightly below their GVWR. However, since actual users will be similarly incapable of loading the vehicle to its GVWR without exceeding

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GAWR, the reduced amount should not adversely affect motor vehicle safety.

e. Initial Brake Temperature

In the NPRM, NHTSA proposed an initial brake temperature of 250 °F to 300 °F. The Agency tentatively concluded that specifying a high brake temperature would reduce cooling time between stops and therefore allow vehicle testing to proceed faster. All the commenters that addressed this issue opposed the proposed adoption of such a high initial brake temperature.

Based on these comments and the available test data, NHTSA has concluded that an initial brake temperature of between 150 °F to 200 °F range is more appropriate than the proposed temperature range. As explained in detail in the stability and control final rule, testing using the 150 °F to 200 °F temperature range is more repeatable and results in less variation between runs, compared to testing conducted at an initial brake temperature of 250 °F to 300 °F, particularly for the emergency brake stops.

f. Emergency Stopping Distance Requirements

Although the NPRM did not propose to change the current emergency stopping distance requirements in Standard No. 121, several commenters recommended changes. AMA, ATA, Allied Signal, HDBMC, and Rockwell International recommended that the Agency eliminate the stopping distance performance requirements for a loaded truck tractor's emergency braking system when tested with an unbraked control trailer. They stated that a failed primary or a failed secondary brake system does not realistically simulate any real-world vehicle situation that can occur during a single brake system failure. They further stated that this requirement would impose extremely unrealistic loads on the functioning truck tractor brakes. AAMA stated that the emergency brake systems are not designed to stop a loaded unbraked control trailer, and that Standard No. 121 already includes a requirement in S5.7.3(c) stating that a loss of primary or secondary tractor brakes should not result in a loss of trailer brakes. Test data submitted by AAMA and Allied Signal showed stopping distances in excess of 2,000 feet for the failed primary (rear) brakes on a tractor with a loaded unbraked control trailer. The stopping test distances submitted for failed secondary (front) brakes on the tractor with a loaded unbraked control trailer were within the current requirement of 613 feet. Based on these considerations, the commenters recommended that the tractor's emergency brake system be tested in the bobtail configuration only.

After reviewing the comments and other available information, NHTSA has decided to apply the emergency brake system test for truck tractors only in the unloaded (bobtail) condition for both the failed primary and failed secondary conditions. According to test data obtained through the Agency's testing and provided by commenters, emergency brake system testing presents a unique problem for a loaded truck tractor with an unbraked control trailer. With either a primary or secondary failure of the tractor's brakes, the loaded combination would be braked only by the front axle or rear axle brakes, since the control trailer is unbraked. As a result, the stopping distances would be extremely long, particularly in the case of the failed rear brakes system. In addition, such a situation does not realistically simulate failed truck tractor systems since in real-world situations, the trailer brakes are intact.

g. Burnish Procedure

Even though this rulemaking did not address burnish procedures, AAMA and HDBMC requested that the Agency indefinitely allow using the old or the new burnish procedure as an option.

The Agency believes that the effective date for the "new" burnish procedure should be considered in Docket No. 70–27, Notice 33, and Docket No. 83–07, Notice 5, independently from the stopping distance effective dates.[10] Given that the industry has been aware since August 1993 that the new burnish procedures would be required after September 1994, NHTSA believes that vehicle manufacturers have had sufficient time to conduct any additional testing and to make any necessary design changes in order to meet the requirements of Standard No. 121 with the new burnish procedure. Moreover, since the new procedures have been in effect since September 1, 1994, the issue of extending the option formerly allowed is moot. Therefore, NHTSA has decided to terminate the rulemaking on the burnish issue.

[10] On August 30, 1993, NHTSA issued an interim final rule and an NPRM addressing whether the old burnish procedures should be allowed indefinitely (58 FR 45459). Optional compliance with the "new" procedures had been permissible since 1988 and was extended to September 1994. The Agency also proposed extending optional compliance until March 1996. The Agency requested comments about whether the new burnish procedures should become the sole specified procedures or whether the old burnish procedures should be allowed for an additional period of time.

h. Parking Brake Test

AAMA requested that the agency modify the parking brake procedure in this rulemaking by specifying an initial brake temperature of 150–200 °F, and a "compounding technique" for consistency of grade holding and drawbar procedures. Compounding is described as a full treadle service brake application preceding the application of the parking brakes. AAMA claimed that during its testing to respond to the stopping distance NPRMs, it realized that different manufacturers use different parking brake test procedures. Therefore, its stated reason for proposing a change is to avoid having compliance issues arise due to alleged test procedure ambiguities.

NHTSA has neither addressed this issue in the NPRM nor conducted research about compounding. Therefore, the Agency has determined that it would be inappropriate at this time to modify the Standard to specify such a compounding test procedure. If the Agency were to decide in the future that it may be desirable to amend the Standard to require this test condition, it would issue an NPRM to provide the industry and other interested parties an opportunity to comment about such a modification.

As discussed above, NHTSA has agreed to AAMA's request to specify an initial brake temperature of between 150–200 °F for the service brake performance tests. As so modified, the parking brake test procedure explicitly specifies that the parking brake test be conducted "under the conditions of S6.1," which specifies the initial brake temperature for the test. Therefore, any ambiguity that allegedly results from the higher initial brake temperature is no longer present.

C. Threshold Pressure Requirement

In the NPRM, NHTSA proposed to establish a requirement for threshold pressure [11] levels of 6.0±0.5 psi for truck tractors and trailers equipped with an air brake system. The Agency tentatively concluded that such a requirement would improve the brake balance on combination vehicles and reduce the potential for vehicle instability when lightly loaded. The Agency requested comments about the need for establishing threshold pressures and whether the proposed threshold pressure and its range were appropriate and feasible.

All commenters recognized the need to improve tractor trailer compatibility

[11] "Threshold pressure" is the brake application pressure at which the brakes actually begin to generate braking torque.

and supported the intent of the proposed threshold pressure requirement. However, AAMA, Midland-Grau, and Rockwell opposed establishing a threshold pressure requirement until additional research could be conducted.[12] The commenters requested that the Agency not issue such a requirement until a cooperative industry and government effort can be conducted to better define the performance and safety improvements of a threshold pressure and tolerance requirement.

Most commenters believed that selecting a target threshold pressure value of 6.0 psi, which was approved by the SAE Brake Committee in 1985, would not be realistic for current combination vehicles. In addition, HDBMC stated that small differences in threshold pressure are irrelevant to whether a tractor trailer combination can achieve the prescribed stopping distances. HDBMC noted that SAE Recommended Practice J1505, "Brake Force Distribution Test Code" (May 1985) was developed primarily to reduce maintenance costs by improving brake drum and lining life and to enable fleets to standardize threshold pressures. It further stated that the testing conducted to establish SAE J1505 was limited to S-Cam brakes and vehicles with a GAWR of 16,000 to 20,000 pounds. S-Cam brakes on larger vehicles, wedge brakes (which have higher threshold pressures) and disc brakes were not tested.

Several commenters addressed the threshold pressure level that should be established if the Agency decided to adopt a threshold pressure requirement. Mr. Crail recommended that the tolerance range be increased from 6.0±0.5 psi to 6.0±1.0 psi to accommodate the variation in relay valves, brake chamber return springs and foundation brake return springs. AAMA stated that a tolerance for air brake components of ±3.73 psi was appropriate. Lucas suggested a tolerance of +3 psi and that the Agency should apply this tolerance to only tractor drive axles and trailer axles with 16.5 inch S-cam drum brakes. ATA recommended a tolerance of between 2 to 11 psi.

After reviewing the comments and other available information, NHTSA has decided not to establish a pressure threshold requirement at this time. The Agency notes that additional research and testing needs to be conducted on this matter since there currently is insufficient information to set a threshold pressure tolerance for combination vehicles. The brake components that affect the threshold pressure, such as internal friction in the relay valves and the return springs in the brake chamber and foundation brakes, provide a tolerance close to 4 psi. Therefore, establishing a threshold pressure requirement, even with a broad tolerance, could pose compliance problems for the industry. In addition, additional research needs to be conducted on brakes other than S-cam brakes.

NHTSA emphasizes that after additional cooperative testing is completed, a threshold pressure requirement could be proposed that would improve the braking performance of a combination vehicle, particularly at low application pressures typical of normal stops.

D. Requirements for Brake Linings

ATA and Mack Trucks requested that NHTSA issue a rule requiring replacement brake linings to be of the same quality and have the same friction characteristics as the linings used by original equipment manufacturers.

The issue of aftermarket brake linings is the subject of a separate NHTSA rulemaking action, and will not be addressed by this notice. If the Agency tentatively concludes that such requirements for aftermarket brake linings are in the interest of motor vehicle safety, then it will issue a proposal to adopt such requirements.

E. Implementation Schedule

In the NPRM, NHTSA proposed that the stopping distance requirements become effective two years after the final rule's publication.

AAMA supported the proposed effective date, provided that the agency incorporated its recommended modifications in the final rule. Rockwell recommended that the stopping distance requirements and the stability performance requirements be combined so that the effective dates for both rulemakings are concurrent. Several commenters on the stability and control NPRM, including AAMA, made the same suggestion. AAMA noted that since ABS can directly influence achievable stopping distance, it is important to optimize brake system performance by taking both stopping distance and stability into account.

On April 12, 1994, NHTSA published a supplemental notice of proposed rulemaking that proposed the following implementation schedule for both the stopping distance and lateral stability and control requirements:

Truck tractors—2 years after final rule (1996)
Trailers—3 years after final rule (1997)
Air-braked single unit trucks and buses—3 years after final rule (1997)
Hydraulic-braked single unit trucks and buses—4 years after final rule (1998).
(59 FR 17326).

The Agency reasoned that making the effective dates for the two rulemakings concurrent would promote a more orderly implementation process, avoid the need for manufacturers to redesign the brakes on individual vehicles twice, and reduce the development and compliance costs that manufacturers would face as a result of these regulations. NHTSA requested comments about the implementation schedule proposed in the supplemental notice.

As the stability and control final rule discusses in detail in the section titled "implementation schedule," NHTSA has decided to adopt an implementation schedule similar to the one proposed in the SNPRM. Specifically, truck tractors manufactured on or after March 1, 1997 will have to be equipped with ABS and comply with the braking-in-a-curve test and high coefficient of friction stopping distance requirements; trailers and single-unit air-braked trucks and buses manufactured on or after March 1, 1998 will have to be equipped with ABS, and, except for trailers, comply with the high coefficient of friction stopping distance requirements; and hydraulic-braked trucks and buses manufactured on or after March 1, 1999 will have to be equipped with ABS and comply with the high coefficient of friction stopping distance requirements. The Agency has decided that these effective dates, which were widely supported by vehicle manufacturers, brake manufacturers, and safety advocacy groups, will provide for an efficient implementation of the heavy vehicle braking rulemakings.

F. Intermediate and Final Stage Manufacturers/Trailer Manufacturers

Vehicle manufacturers must certify that each of their vehicles complies with all applicable Federal motor vehicle safety standards. While this statutory certification requirement is straightforward with respect to vehicles produced by a single manufacturer, it is more complex for vehicles produced in two or more stages. With such multistage vehicles, one or more manufacturers produce an "incomplete vehicle" which requires further manufacturing operations by another manufacturer to become a completed vehicle. As defined in 49 CFR 568.3, an incomplete vehicle includes, at a

[12] Only Mr. Robert Crail, a brake engineer, favored adopting a requirement to improve pressure compatibility between tractors and trailers.

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minimum, a frame and chassis structure, power train, steering system, suspension system, and braking system. Incomplete vehicles may be grouped in two categories: (1) Chassis-cabs (which are incomplete vehicles with fully completed occupant compartments that require only the addition of cargo-carrying, work-performing, or load-bearing components to perform their intended functions and become completed vehicles (49 CFR 567.3)) which are certified by the chassis-cab manufacturer (49 CFR 567.5), and (2) incomplete vehicles other than chassis-cabs ("non chassis-cabs"), which are not certified by the incomplete vehicle manufacturer.

The National Truck Equipment Association (NTEA) commented that manufacturers of multi-stage vehicles may not be able to demonstrate compliance with the proposed amendments because they may not be able, in all cases, to "pass through" the incomplete vehicle manufacturer's certification. NTEA claims that these manufacturers will not have a practicable and objective means of demonstrating compliance, since they lack the financial resources and capabilities to sponsor testing to the requirements. Therefore, NTEA suggested that the Agency exclude multi-stage vehicles from the proposed road testing requirements.

As explained below, NHTSA has concluded that the stopping distance requirements do not pose an unreasonable burden for final stage manufacturers. NHTSA is aware of the concerns of final stage manufacturers about road testing their vehicles. However, the final stage manufacturers can avoid the necessity of conducting independent testing by staying within the limits ("the envelope") set by the incomplete vehicle manufacturer. In fact, S6 of Standard No. 121 currently provides that "Compliance of vehicles manufactured in two or more stages may, at the option of the final-stage manufacturer, be demonstrated to comply with this standard by adherence to the instructions of the incomplete manufacturer provided with the vehicle in accordance with § 568.4(a)(7)(ii) and § 568.5 of title 49 of the Code of Federal Regulations."[13] In the final rule adding this provision in response to the 9th Circuit's decision in *PACCAR*, the Agency stated that it provides directly in the regulation "an alternative to road testing * * * that would constitute 'due care' in certification by any final-stage manufacturer that adopted it, whatever its resources and engineering expertise." (43 FR 48646, October 19, 1978.)

With respect to chassis-cabs, the name of each manufacturer in the chain of production is required to appear on one or more certification labels that are permanently affixed to the vehicle. (49 CFR Parts 567 and 568.) Under these regulations, certification of an incomplete vehicle that is a chassis-cab can "pass through" to the final stage manufacturer, provided that the final stage manufacturer takes the precautions necessary to ensure it does not invalidate the certification. The final stage manufacturer must ensure that it completes the vehicle without exceeding the GVWR and GAWRS assigned by the chassis-cab manufacturer, altering any brake system component, moving the center of gravity of the completed vehicle with the body installed outside the "envelope" of specifications provided by the chassis manufacturer, or otherwise violating that envelope. If the final stage manufacturer complies with all of the chassis-cab manufacturer's specifications, the final stage manufacturer can base its certification of compliance with the braking standard entirely upon the statement of the chassis-cab manufacturer and therefore will not have to recertify the vehicle.

The provision in S6 also applies to non-chassis-cabs, since the manufacturer of a non-chassis-cab is required to furnish documentation that indicates a means of compliance with applicable standards to intermediate or final stage manufacturers (49 CFR 568.4), and the final stage manufacturer is required to identify the incomplete manufacturer on the certification label that the final stage manufacturer places on the completed vehicle. As with chassis-cabs, the final stage manufacturer can avoid the necessity of conducting independent testing by staying within the envelope set by the incomplete manufacturer.

Based on the above considerations, the final stage manufacturer would only be required to certify compliance independently in those cases in which the final vehicle violates those specifications. NTEA commented that there are situations in which the final stage manufacturer "must exceed the 'envelope' of restrictions provided by the chassis manufacturer due to customer specifications." The Agency believes that in virtually all such cases the body or equipment that is specified by the customer could be fitted on a different truck chassis having a larger "envelope". Moreover, when the customer has an overriding need to specify a particular truck chassis that cannot be completed with the desired body or equipment without exceeding the envelope, it is reasonable to expect the customer to bear the additional cost burden of assuring that the completed vehicle complies with the standard. In such situations, it is reasonable to require the final stage manufacturer to accept responsibility for certification, given the important safety concerns discussed below. The Agency emphasizes, however, that it is not necessary for final stage manufacturers to make this choice. They can instead select an appropriate incomplete vehicle that can be completed without departing from the envelope specified by the incomplete vehicle manufacturer.

Some of the manufacturers that build multi-stage vehicles and choose not to stay within the envelope are small businesses that may be unable to conduct their own road tests. While manufacturers must certify that their vehicles meet all applicable safety standards, this does not mean that every final stage manufacturer must independently conduct the specific tests set forth in an applicable standard. A final stage manufacturer may also certify compliance to the stopping distance standard based on, among other things, engineering analyses and computer simulations. Moreover, manufacturers need not conduct these operations themselves. They can utilize the services of independent engineers and testing laboratories. They can also join together through trade associations to sponsor testing or analysis. Finally, they can rely on testing and analysis performed by other parties, including brake manufacturers. Brake manufacturers typically perform extensive analyses and tests of their products and, in order to sell those products, have a strong incentive to provide their customers, the vehicle manufacturers, with information that can be used to certify the vehicle to the applicable brake standards. Some manufacturers of motor vehicle components currently provide this type of information to vehicle manufacturers. Based on the above considerations, NHTSA has concluded that manufacturers can certify compliance with the stopping distance requirements by means other than road testing.

Moreover, road testing to establish compliance with the braking requirements does not involve expensive and destructive crash testing, which cost $18,000 or more, not

[13] In today's **Federal Register** notice amending Standard No. 105 with respect to stopping distances of hydraulically-braked vehicles, the Agency is also modifying that Standard to include identical language about compliance by final stage manufacturers so that this concept expressly applies to hydraulic-braked vehicles manufactured in two or more stages, as well.

including the cost of the vehicle which is destroyed as a result of the test. Thus, while brake testing does involve some expense (the Agency estimates that a complete compliance test series for Standard No. 121 would cost $5,000), it should be feasible for manufacturers, including small manufacturers (especially in groups or through associations), to certify compliance, particularly since the road testing does not require destruction of their vehicles.

Furthermore, NHTSA is not authorized when establishing safety standards to differentiate between manufacturers on the basis of their size or financial resources. While the agency must "consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed," (49 U.S.C. 30111(b)(3), formerly section 103(f)(3) of the Vehicle Safety Act), the legislative history of the Vehicle Safety Act reveals that any differences between standards for different classes of vehicles "of course [are to] be based on the type of vehicle rather than its place of origin *or any special circumstances of its manufacturer*." S. Rept. 1301, 2 U.S. Code, Cong. & Admin. News, 2714 (1966), cited in *Chrysler Corp.* v. *D.O.T.*, 472 F.2d 659, 679 (6th Cir. 1972).

Strong policy reasons underlie Congress' refusal to differentiate between vehicles on the basis of the manufacturers' "special circumstances." To protect unsuspecting members of the public from exposure to unreasonable risks posed by unsafe vehicles, there is good reason to require that every vehicle meet all "minimum performance standards" that are prescribed for vehicles of its type.

Moreover, the statute does not authorize NHTSA to grant permanent exemptions from safety standards to small manufacturers who otherwise would be covered by those standards. See *Nader* v. *Volpe*, 475 F.2d 916, 918 (D.C. Cir. 1973). While Nader involved a single manufacturer that sought to be permanently exempted from safety standards, its reasoning applies equally to classes of manufacturers that seek such exemptions. Although the Safety Act was amended after the Nader decision to permit small manufacturers to seek temporary exemptions from safety standards if they can demonstrate that compliance with the standard would cause them "substantial economic hardship" and that they have made a good faith effort to comply (49 U.S.C. 30113, formerly section 123 of the Vehicle Safety Act), Congress has severely restricted the agency's authority to grant such exemptions to very narrow, limited circumstances. NTEA is in effect seeking a permanent exemption from Standard No. 121 that the statute does not permit.

NHTSA emphasizes that there are important safety reasons that necessitate having a final stage manufacturer certify the completed vehicle if it does not stay within the envelope set by the incomplete vehicle manufacturer. For instance, if a final stage manufacturer adds additional components so that the completed vehicle's GVWR exceeds the recommended maximum GVWR weight specified in the envelope for the vehicle, the vehicle's braking performance could be adversely affected. As an example, a brake system designed to bring a 15,000 pound vehicle to a stable and short stop would obviously not be able to safely stop a 20,000 pound vehicle. Moreover, the brakes on such an underbraked vehicle would be prone to overheating. While it is relatively easy to understand the degradation in performance in such a gross example, the potential for reduced, safety-related performance also exists in situations were the "violation" of the envelope is much smaller. Similarly, if the center of gravity is made too high, a vehicle would likely be overbraked on its rear axle(s) and thus be prone to instability caused by wheel lockup.

NHTSA emphasizes that the kinds of crashes that result when a heavy vehicle is unable to stop to avoid another vehicle are very serious. As part of the cost effectiveness analysis contained in the Final Economic Analysis (FEA) for this final rule, the agency used 1992 GES data to identify a group of crashes involving heavy vehicles defined as "unable-to-stop-in-time" crashes. The agency examined these crashes and the number and severity of the resulting injuries in evaluating the impact of this regulation. One means of comparing the relative severity of various types of crashes is to "convert" the injuries at different levels of severity into "equivalent fatalities" [14] and to divide that by the number of crashes that resulted in those injuries. The resulting ratio, equivalent fatalities per crash, can be calculated for various types of crashes and compared to indicate the relative severity of different crash types. Using 1992 GES data, estimates were made of the equivalent fatalities per crash for multiple-vehicle crashes involving all types of vehicles, 0.01402 equivalent fatalities per crash, for multiple-vehicle crashes involving heavy vehicles, 0.02089 equivalent fatalities per crash, and for the "unable-to-stop-in-time" crashes mentioned above, 0.03634. Comparing the rates of equivalent fatalities indicate that not only are multiple-vehicle crashes involving heavy vehicles 49% more severe than all multiple-vehicle crashes, but the "unable-to-stop-in-time" crashes, which are the types of crashes affected by this final rule, are 159% more severe than all multiple-vehicle crashes in general. Also using 1992 GES data, the agency made separate estimates of the rate of equivalent fatalities per crash for the heavy vehicle occupants and the occupants of other involved vehicles. This was done for both multiple-vehicle crashes involving heavy vehicles and for the "unable-to-stop-in-time" crashes. The comparison of these rates shows that the "unable-to-stop-in-time" crashes are 31% more severe in terms of injuries to the heavy vehicle occupant and 79% more severe for the occupants of other involved vehicles than multiple-vehicle crashes involving heavy vehicles.

G. Costs

As explained in detail in the FEA, the costs associated with the rulemaking involve additional testing costs and hardware/equipment costs. The agency estimates the minimum initial testing costs associated with reinstating stopping distance requirements for all heavy air-braked vehicles would be about $6 million. As noted in the FEA, the estimated annual compliance testing costs in years following the effective dates of this final rule are estimated to be about $2 million. Assuming the industry continues to produce about 208,500 heavy Class 5–8 air-braked vehicles per year (which are the largest heavy vehicles and tractor trailers), the initial testing cost per vehicle would be about $29 and for later years the testing cost per vehicle would be about $10.

The hardware and equipment costs of meeting the proposed stopping distance requirements for air braked heavy vehicles are based on the anticipated improvements to heavy vehicles. The agency notes that all of the changes made to meet these requirements would affect vehicles operating in the fully loaded, or nearly fully loaded configurations.

These improvements in braking performance, which are achieved by substituting air chambers, slack adjusters and brake linings, are estimated to be necessary on about 104,000 air-braked vehicles, including both truck tractors and single-unit trucks. The average cost per vehicle of

[14] The basic methodology used to convert injuries at various levels of severity into equivalent fatalities is outlined in the FEA for this final rule.

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these changes is estimated to be $50, resulting in a total cost of $5.21 million, which is the total estimated cost for vehicle modifications necessitated by this final rule.

The total estimated initial cost impact of this proposal is $11.21 million ($6.0 million in compliance test costs plus $5.21 million in vehicle modification costs), which for an estimated annual production of 208,500 air-braked equipped vehicles, is an average of about $54 per vehicle.

The total estimated outyear cost impact of this proposal is $7.21 million ($2.0 million in compliance test costs plus $5.21 million in vehicle modification costs), which for an estimated annual production of 208,500 air braked equipped vehicles, is an average of about $35 per vehicle.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866. NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under those policies and procedures.

A FEA setting forth the agency's detailed analysis of the benefits and costs of this rulemaking (along with the other rules issued today) has been prepared and been placed in the docket. This rulemaking is based on the FEA and all additional data available to the agency. The Agency estimates that reinstating the stopping distance requirements for Standard No. 121 will result in an average of approximately 3.2 lives saved per year and 84 injuries prevented per year. As mentioned above, the agency estimates that the initial annual costs attributable to these requirements are approximately $11.21 million ($6.00 million for compliance testing and $5.21 million for net equipment costs) and the outyear annual costs attributable to these requirements are approximately $7.21 million ($2.00 million for compliance testing and $5.21 million for net equipment costs).

Based on its analysis, the agency concludes that the requirements will improve safety by ensuring that all heavy vehicles are capable of stopping within a specified, safe distance. Based on information detailed in the previous section, the agency believes that implementing the stopping distance requirements for heavy vehicles will not result in significant costs since most of these vehicles currently comply with the reinstated requirements. For those vehicles that do not currently comply with the requirements, the agency believes that they could be upgraded by substituting other with currently produced braking components for those now used on these vehicles.

Since these components are not significantly more expensive than those used in poorer performing brake systems, the net cost of substituting these components will not be significant and is estimated to be about $50 for each vehicle that requires such changes.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. There may be a small number of intermediate and final stage manufacturers that are small businesses that may be impacted by this final rule, but as discussed previously, the Agency does not believe that that impact is substantial, particularly in comparison to the possible crash-related consequences of vehicles produced by such manufacturers not complying with the rule.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this rule.

D. National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment. No changes in existing production or disposal processes will result, except that there is a reduction in these factors resulting from the removal of the ALV. There will be a weight increase of a few pounds per tractor with the installation of a BPV on tractors, but such a small increase should not have any significant effect on fuel consumption. Nor should production and disposal processes have a significant adverse affect on the environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications warranting the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, this notice amends Standard No. 121, Air Brake Systems, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. Section 571.121, is amended by removing the undesignated text following paragraph (g) in S3; in S4 by adding the definition for "Wheel lockup;" by revising S5.3.1, S5.3.1 1, and Table II; by deleting S5.3.2, S5.3.2.1, and S5.3.2.2; by reserving S5.3.2, and by revising S5.7.1 to read as follows:

* * * * *

Wheel lockup means 100 percent wheel slip.

* * * * *

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of vehicle type, weight, and speed specified in S5.3.1 1, in the sequence specified in Table I, each truck tractor manufactured on or after March 1, 1997 and each single unit vehicle manufactured on or after March 1, 1998 shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway, and with wheel lockup permitted only as follows:

(a) At vehicle speeds above 20 mph, any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles may lock up, for any duration. The wheels on the two rearmost nonliftable, nonsteerable axles may lock up according to (b).

(b) At vehicle speeds above 20 mph, one wheel on any axle or two wheels on any tandem may lock up for any duration.

(c) At vehicle speeds above 20 mph, any wheel not permitted to lock in (a) or (b) may lock up repeatedly, with each lockup occurring for a duration of one second or less.

(d) At vehicle speeds of 20 mph or less, any wheel may lock up for any duration.

Table I.—Stopping Sequence

1 Burnish.
2 Stops with vehicle at gross vehicle weight rating:

Table I.—Stopping Sequence—Continued

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle.
(b) 30 mph service brake stops on a peak friction coefficient surface of 0.5, for a truck tractor with a loaded unbraked control trailer.
(c) 60 mph emergency brake stops on a peak friction coefficient surface of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.
3. Parking brake test with vehicle loaded to GVWR.
4. Stops with vehicle at unloaded weight plus up to 500 lbs.
(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.
(b) 30 mph service brake stops on a peak friction coefficient surface of 0.5, for a truck tractor.

Table I.—Stopping Sequence—Continued

(c) 60 mph emergency brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.
5. Parking brake test with vehicle at unloaded weight plus up to 500 lbs.
6. Final inspection of service brake system for condition of adjustment.

S5.3.1.1 Stop the vehicle from 60 mph on a surface with a peak friction coefficient of 0.9 with the vehicle loaded as follows: (a) loaded to its GVWR, (b) in the Bobtail configuration (truck-tractors only) plus up to 500 pounds, and (c) at its unloaded vehicle weight (except for a truck tractor) plus up to 500 pounds (including driver and instrumentation). If the speed attainable in two miles is less than 60 mph, the vehicle shall stop from a speed in Table II that is 4 to 8 mph less than the speed attainable in 2 miles.

TABLE II.—STOPPING DISTANCE
[In feet]

Vehicle speed in miles per hour	Service brake				Emergency brake	
	PFC 0.9 (1)	PFC 0.9 (2)	PFC 0.9 (3)	PFC 0.9 (4)	PFC 0.9 (5)	PFC 0.9 (6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	298	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaaded truck tractors.

* * * * *

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 0.9, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway.

* * * * *

Issued on: March 1, 1995.

Ricardo Martinez, M.D.

Administrator.

[FR Doc. 95–5413 Filed 3–7–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 93–07; Notice 3]

RIN 2127–AE21

Federal Motor Vehicle Safety Standards; Stopping Distance Requirements for Vehicles Equipped With Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule establishes stopping distance performance requirements in Standard No. 105, Hydraulic Brake Systems, for trucks,

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buses, and multipurpose passenger vehicles (MPVs) that have a gross vehicle weight ratings (GVWRs) over 10,000 pounds and that are equipped with hydraulic brake systems. The requirements specify the distances in which different types of medium and heavy vehicles must come to a complete stop from a speed of 60 mph on a high coefficient of friction surface. The requirements are designed to reduce the number and severity of crashes involving these vehicles.

This notice is one part of the agency's comprehensive effort to improve the braking ability of medium and heavy vehicles. In another final rule published elsewhere in today's **Federal Register**, the agency is adopting identical stopping distance requirements for medium and heavy vehicles that are equipped with air brake systems. In a third final rule, that responds to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the agency is requiring medium and heavy vehicles to be equipped with an antilock brake system (ABS) to improve the lateral stability and control of these vehicles during braking.

DATES: *Effective Dates:* The amendments become effective on March 1, 1999.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 10, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93–07; Notice 3 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5892).

SUPPLEMENTARY INFORMATION:

I. Background
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I. Background

A. Brake Related Crashes

Medium and heavy vehicles [1] are involved in thousands of motor vehicle crashes each year. One of the most important factors that contributes to these crashes is brake system performance. Crashes in which braking is a contributory factor can be further subdivided into (1) crashes due to brake failures or defective brakes, (2) runaways on downgrades, due to maladjusted or overheated brakes, (3) crashes in which vehicles are unable to stop in time, and (4) loss-of-control crashes due primarily to locked wheels during braking.

This final rule amending Standard No. 105, Hydraulic Brake Systems, to establish stopping distance requirements for hydraulically braked vehicles,[2] and the companion final rule amending Standard No. 121, Air Brake Systems (49 CFR 571.121), to reinstate stopping distance requirements for air braked heavy vehicles, will reduce the severity of or prevent crashes attributable to a vehicle's inability to stop in time.[3] In these crashes, the heavy vehicle's brakes function, but do not stop the vehicle quickly enough to avoid a crash. One way to reduce the severity or number of such crashes is to improve heavy vehicle stopping performance by reducing the distance needed to stop a vehicle. Even if crashes of this type were not totally prevented, improvements in stopping distance performance reduce collision impact speeds, and thus reduce crash severity.

The following estimates regarding heavy vehicle crashes are from NHTSA's 1992 General Estimates System (GES) which is based on data transcribed from a nationally representative sample of state police accident reports (PARs) and the Fatal Accident Reporting System (FARS). NHTSA estimates that in 1992 there were about 168,000 crashes involving heavy combination vehicles (excluding truck tractors when operating bobtail, i.e., without a trailer). These crashes resulted in about 13,600 injuries and 387 fatalities to truck occupants and about 51,500 injuries and 2452 fatalities to occupants of other involved vehicles. For bobtail truck tractors alone, the agency estimates that there were about 8,400 crashes resulting in about 1,200 injuries and 39 fatalities to truck occupants and about 2,600 injuries and 178 fatalities to occupants of other involved vehicles. For heavy single-unit trucks, the agency estimates that there were about 192,600 crashes resulting in about 15,700 injuries and 165 fatalities to truck occupants and about 48,300 injuries and 891 fatalities to occupants of other involved vehicles. In addition, crashes involving heavy vehicles result in more expensive and severe property damage than crashes involving light vehicles.

It is very difficult to quantify the number of crashes in which a vehicle's brakes are unable to stop the vehicle in time. NHTSA estimates that in 1992 there were about 18,000 crashes involving heavy combination vehicles (excluding bobtail truck tractors). These crashes resulted in about 1,800 injuries and 57 fatalities to truck occupants and about 8,400 injuries and 754 fatalities to occupants of other involved vehicles. For bobtail truck tractors alone, the agency estimates that there were about 260 crashes resulting in about 100 injuries and 7 fatalities to truck occupants and about 240 injuries and 48 fatalities to occupants of other involved vehicles. For heavy single-unit trucks, the agency estimates that there were about 30,100 crashes resulting in about 4,200 injuries and 17 fatalities to truck occupants and about 15,000 injuries and 276 fatalities to occupants of other involved vehicles. The Final Regulatory Evaluation (FRE) provides greater detail about how today's final rules will reduce injuries and fatalities resulting from such crashes.

The agency emphasizes that not all inability-to-stop-in-time crashes are preventable. Nevertheless, improvements to heavy vehicle brake systems should prevent or reduce the severity of a significant number of these crashes.

B. Brake Designs and Equipment

In order to understand the discussion of braking in this preamble, it is necessary to be familiar with several devices employed in braking systems. As explained in greater detail in the companion final rules about stopping distances for air-braked vehicles and about lateral control and stability, manufacturers have developed several devices related to the braking of hydraulically-braked heavy vehicles, including load proportioning valves (LPVs) and antilock brake systems (ABS). LPVs change the brake proportioning to the drive axle after mechanically sensing the vehicle's load, and ABSs automatically control the amount of braking pressure applied to a wheel so as to prevent wheel lockup, thus increasing stability and control in emergency stops. As explained in the companion notices, these devices can also reduce stopping distances.

[1] Hereafter, these vehicles which have a gross vehicle weight rating (GVWR) of 10,000 pounds or more are referred to as heavy vehicles.

[2] Hydraulic brake systems are used on most single unit vehicles with gross vehicle weight ratings (GVWRs) of 26,000 pounds or less and on many medium and heavy trucks and buses with GVWRs between 26,000 pounds and 33,000 pounds. Hydraulic brakes are available on single unit vehicles with GVWRs up to 46,000 pounds, but are used to a lesser degree with such vehicles. Heavy vehicles not equipped with hydraulic brakes are equipped with air brake systems.

[3] Today's companion final rule to require heavy vehicles to be equipped with antilock brake systems (ABS) will prevent braking-induced loss-of-control crashes.

II. NHTSA Activities

A. Regulatory History

As initially promulgated, Standard No. 105, Hydraulic Brake Systems (49 CFR 571.105), set performance requirements for motor vehicles with hydraulic service brakes. (37 FR 17970, September 2, 1972.) The 1972 rule required, among other things, that heavy vehicles stop from 60 mph within 245 feet when in the lightly loaded condition and within 553 feet under partial failure conditions. Some petitions for reconsideration challenged the setting of stopping distance requirements for hydraulically-braked vehicles that were more stringent than those set for air-braked vehicles in Standard No. 121. While the initial stopping distance requirement of 245 feet in Standard No. 121 was identical to Standard No. 105's requirement, Standard No. 121 was later revised to require stopping within 258 feet and then 293 feet.

The requirements for air-braked vehicles were to become effective on September 1, 1973, and those for hydraulic-braked vehicles, on September 1, 1974. NHTSA extended the effective dates for the stopping distance requirements in Standard No. 105 and Standard No. 121. (37 FR 3905, February 24, 1972; 38 FR 3047, February 1, 1973; 39 FR 17550, 17563, May 17, 1974.) Prior to the final effective date for Standard No. 105, the amendments pertaining to heavy vehicles were withdrawn, so the requirements for heavy hydraulic-braked trucks and buses never went into effect. (40 FR 18411, April 28, 1975.) The agency concluded that the requirements that were being withdrawn could not be justified "on the basis of the data available at this time." The agency noted that its decision to withdraw the amendment implementing requirements for vehicles other than passenger cars was based on uncertainty as to the achievable safety benefits relative to the costs of meeting those requirements, rather than on an explicit determination that the requirements were not justified. Notwithstanding this decision, the agency emphasized that "truck braking is in many cases substantially poorer than passenger car braking, and that the generally longer stopping distances and the greater severity of truck accidents justify a safety standard for these vehicles."

There are two primary reasons for the substantial costs that would have been involved in meeting those requirements. The first reason was the level of stringency of the requirements: the stopping distance requirement from 60 mph was 246 feet, which was the original requirement implemented for air-braked vehicles in Standard No. 121 that was later revised to 293 feet. The second reason relates to the state-of-the-art of hydraulic brake system technology in 1975 versus that of today. As discussed in detail in the Final Regulatory Evaluation (FRE), the requirements being implemented by this notice will not require any changes in the design or performance of hydraulically-braked heavy vehicles.

Since its decision in 1975 to narrow Standard No. 105's applicability, NHTSA has issued several amendments extending its applicability to certain types of vehicles. In 1976, the agency extended the Standard's applicability to all school buses. (41 FR 2391, January 16, 1976.) In 1981, it extended the standard's applicability on a general basis (with some limitations) to trucks, all types of buses, and MPVs with a GVWR of 10,000 pounds or less. (46 FR 55, January 2, 1981.) As for trucks, buses, and MPVs with a GVWR greater than 10,000 pounds, the agency extended the requirements for braking with partial hydraulic system failures and power booster unit failures. However, the service and parking brake performance requirements, including those for stopping distances, have not been re-adopted for hydraulically-braked trucks and non-school buses with GVWRs over 10,000 pounds. The reader should refer to the February 1993 NPRMs and today's companion final rules for a detailed discussion of the regulatory history.

These requirements have received a great deal of agency and judicial attention. (58 FR 11009, February 23, 1993.) Along with certain other provisions, the stopping distance requirements for air-braked vehicles were invalidated by the United States Court of Appeals for the 9th Circuit in *PACCAR* v. *NHTSA*, 573 F.2d 632, (9th Cir. 1978) cert. denied, 439 U.S. 862 (1978).

While PACCAR involved air-braked vehicles, it is relevant to hydraulically-braked vehicles as well. The stability and control final rule contains a detailed discussion about PACCAR and how the agency has responded to that decision. As mentioned earlier, the stopping distance requirements in this final rule are significantly longer than those that were rescinded in 1975.

However, as also discussed earlier, the same stopping distance requirements that were implemented in 1975 for air-braked vehicles were later extended to levels that are close to those included in this notice. One significant difference between the original requirements in 1975 for hydraulically braked, heavy vehicles and those contained in today's final rule is that the agency has decided to specify different stopping distances for different configurations of heavy vehicles. Today's requirements can further be distinguished from those invalidated in the 1970s, since manufacturers will not need to significantly redesign their brakes or use overly aggressive foundation brakes to comply with today's requirements.

Even though the stopping distance requirements being specified in today's final rule are less stringent for some vehicle configurations than those invalidated by PACCAR for air-braked vehicles, the agency believes that the braking requirements in today's final rules, taken as a whole, significantly enhance the overall braking performance of hydraulically-braked vehicles given the agency's decision to require these vehicles to be equipped with ABS.

B. Agency Research

As part of its review of heavy vehicle braking, NHTSA issued a report entitled "NHTSA Heavy Duty Vehicle Brake Research Program Report No. 4—Stopping Capability of Hydraulically Braked Vehicles" (DOT HS 806 860, October 1985). That report was based on a comprehensive testing of twelve hydraulically-braked vehicles ranging in weight from 14,800 to 46,000 pounds in both the empty and loaded conditions. The straight line stopping distance tests measured the shortest possible stop within a 12-foot-wide lane without locking up more than one wheel per axle or two wheels per tandem axle at speeds greater than 20 mph. At 60 mph, stopping distances ranged from 214 feet to 396 feet. Among other things, the agency found that the ability to stop in a short distance without loss of control is primarily a function of front/rear braking force distribution. Vehicles with brake force distributions closest to their dynamic weight distributions were the best performers.

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C. Heavy Vehicle Safety Report to Congress

In response to section 9107 of the Truck and Bus Regulatory Reform Act of 1988, the agency submitted a report to Congress entitled "Improved Brake Systems for Commercial Vehicles." (DOT HS 807 706, April 1991)[4] While the report focuses on air brakes systems, much of the information is relevant to hydraulically-braked heavy vehicles. After discussing crash data concerning heavy vehicle brake systems, the report explained factors related to braking effectiveness and stability and control during braking. The report mentioned that stopping distances and vehicle stability could be improved by equipping heavy vehicles with LPVs and ABS.

III. Agency Proposal

On February 23, 1993, NHTSA proposed to amend Standard No. 105 to establish different stopping distance requirements for different types of heavy vehicles equipped with hydraulic brake systems, when making stops from 60 mph on a high coefficient of friction surface. (58 FR 11003.) The agency tentatively concluded that establishing the same stopping distance requirement for all heavy vehicles with fully operational service brakes would be inappropriate, since it would be too stringent for unloaded single unit trucks but not stringent enough for buses. The proposed stopping distances were based on the agency's analysis of the available data, especially the stopping distance results in the VRTC reports.

NHTSA explained that its long-term objective is to upgrade the braking efficiency of heavy vehicles to enable them to make controlled, stable stops, under all loading and road surface conditions. The agency believed that the proposed requirements would reduce the disparity in stopping distance performance between heavy vehicles and passenger cars, while assuring that the requirements' costs are reasonable. The agency proposed stopping distance requirements for vehicles equipped with hydraulic brake systems consistent with the stopping distance requirements for air-braked heavy vehicles. These requirements would take effect two years after issuance of the final rule. The agency decided not to propose the first effectiveness test, which involves the preburnish condition. However, it proposed the second effectiveness test, where the vehicle is tested at its GVWR to assure full braking power, and the third effectiveness test where the vehicle is tested in the lightly loaded vehicle condition to assure reasonable brake balance.

IV. Comments on the Proposal

NHTSA received 29 comments in response to the NPRM. Commenters included heavy vehicle manufacturers, brake manufacturers, safety advocacy groups, heavy vehicle users, industry trade associations, and other individuals. The American Automobile Manufacturers Association (AAMA) submitted joint comments on behalf of the eight major domestic manufacturers of heavy vehicles: Chrysler, Ford, Freightliner, General Motors (GM), Mack Trucks, Navistar, PACCAR, and Volvo-GM.

The commenters generally supported the agency's decision to establish stopping distance requirements. However, they offered mixed views about the specific stopping distances being proposed. GM, Navistar, Heavy Duty Brake Manufacturers Council (HDBMC), and Rockwell WABCO stated that the proposed stopping distance requirements are appropriate. In contrast, the Insurance Institute for Highway Safety (IIHS), the Coalition for Consumer Health, and Advocates for Highway Safety (Advocates) believed that the required distances for trucks and buses should be shorter. Advocates stated that the proposal did little more than "grandfather" existing braking capabilities and therefore would not result in the best available braking performance for large trucks.

Commenters also addressed specific issues raised in the NPRM, including the requirements' applicability to school buses, the need for the first and fourth effectiveness tests, the vehicle test speed, the test surface specification, the wheel lock up restrictions, the initial brake temperature, the failed system test, the vehicle loading, the parking brake test, the burnish procedures, and the implementation schedule for the requirements. More specific discussions of these comments, and the agency's responses to them, are set forth either below or in the stopping distance rule for Standard No. 121.[5]

V. Agency Decision

A. Overview

Based on the FARS and other crash data, test data from the agency's heavy vehicle brake research program, comments to the NPRM, and other available information, NHTSA has decided to amend Standard No. 105 to establish stopping distance performance requirements for heavy vehicles that are equipped with hydraulic brake systems. The requirements, which apply to 60 mph stops on a high coefficient of friction surface, specify different stopping distance requirements for three different types of heavy vehicle configurations: (1) loaded and unloaded buses, (2) loaded single unit trucks, and (3) empty single unit trucks. The requirements are designed to standardize the distance needed for all heavy vehicles to come to a complete stop, thereby reducing the number and severity of crashes.

This notice is one part of the agency's comprehensive effort to improve the braking ability of heavy vehicles. In another final rule published elsewhere in today's **Federal Register**, the agency is adopting identical stopping distance requirements for comparable heavy vehicles that are equipped with air brake systems. The agency believes that it is appropriate to specify the same stopping distance requirements for similar vehicles. In a third final rule, the agency is responding to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 by requiring heavy vehicles to be equipped with an antilock brake system to improve the lateral stability and control of these vehicles during braking.

B. Stopping Distance Requirements

Based on its testing at VRTC, NHTSA proposed different stopping distances for various categories of vehicles, as follows:

Loaded and Unloaded Buses	280 ft.
Loaded Single-Unit Trucks	310 ft.
Empty Single-Unit Trucks	335 ft.

The agency reasoned that a single stopping distance requirement for all heavy vehicles with fully operational service brakes would be too stringent for unloaded single unit trucks, but not be stringent enough for buses. Based on the VRTC test results, the agency anticipated that manufacturers would not have to make changes to the hydraulic braking systems of their vehicles to comply with the proposed stopping distance requirements.

AAMA and most other industry commenters agreed with the stopping distance values proposed for the various vehicle configurations. GM, Navistar, Heavy Duty Brake Manufacturers Council (HDBMC), and Rockwell WABCO commented that they believed that the proposed stopping distance requirements are appropriate. ATA agreed with the proposal to specify different stopping distances for different types and loadings of vehicles. It also agreed with specifying the same stopping distances for the same types of air-braked and hydraulically-braked vehicles under the same loading conditions.

In contrast, other commenters stated that the proposed stopping distances were not sufficiently stringent. Advocates stated that the proposed stopping distances simply ratify braking distances currently achieved by manufacturers and do not seek to improve real-world braking performance. It stated that except for the 280-foot requirement for buses, the other proposed stopping distances are longer than the 293 feet established before PACCAR. Similarly, IIHS stated that the proposals do not go far enough toward requiring the best available braking for heavy vehicles.

Based on the public comments and other available information, especially the VRTC test results, NHTSA has decided to specify different stopping distances for three separate categories of vehicles, when tested at a speed of 60 mph on a surface with a PFC of 0.9, as follows:

Loaded and Unloaded Buses	280 ft.
Loaded Single-Unit Trucks	310 ft.
Unloaded Single-Unit Trucks	335 ft.

NHTSA believes that these stopping distances, combined with the stability and control final rule, will ensure that heavy vehicles make short stable stops within a reasonable distance. The agency further notes that the companion notice to require heavy vehicles to be equipped with antilock brake systems will also help to improve the braking performance of those vehicles enough to enable them to comply with the stopping distance requirements.

C. First Effectiveness Test

The first effectiveness test in Standard No. 105, which is commonly known as the "preburnish test," measures brake performance very early in a vehicle's life. School buses are the only heavy vehicle type currently subject to the first effectiveness test (and to Standard No. 105's other stopping distance requirements.)

In the NPRM, NHTSA did not propose applying the preburnish test to other heavy vehicles. The agency stated that the first effectiveness test would continue to apply to school buses, since it did not want to modify the Standard's current requirements. The agency reasoned that subjecting school buses (but not other heavy vehicles) to the first effectiveness test was appropriate given the provisions in the vehicle safety law pertaining to school buses (codified as 49 U.S.C. 301), and the "stop-and-go" duty cycle of school buses. The agency requested comment on whether to apply the first effectiveness test to heavy vehicles in general and whether to retain the test for school buses.

AAMA, AlliedSignal, and HDBMC stated that heavy vehicles, including school buses, should not be subject to the first effectiveness test and the 30-mph second effectiveness test. AlliedSignal commented that excluding hydraulically braked school buses from the first effectiveness test would be consistent with the agency's intent for consistency between hydraulically braked and air-braked vehicles. AlliedSignal also stated that the intended usage of non-school buses and school buses is nearly identical, and that chassis components are nearly identical. AAMA commented that school buses and non-school buses should have standardized braking requirements. AAMA disagreed with the agency's statement that the school bus provisions of the law have a bearing on the need for a first effectiveness or 30-mph second effectiveness requirements for school buses. Straight-Stop and Arent Fox recommended that transit buses and school buses be tested at speeds typical of their normal use such as 20 to 30 mph. Chrysler agreed with the agency's proposal not to apply the first effectiveness test to heavy vehicles, except for school buses.

Advocates requested that the agency apply the first effectiveness test to all hydraulic braked vehicles, not just school buses. It claimed that the new non-asbestos linings tend to swell early in the service lives of new brakes. As a result, it believed that the stopping distance would be degraded during this period, a phenomenon that would be detrimental to safety. Advocates argued that the agency cannot arbitrarily dismiss the first effectiveness test with an assertion that it is not aware of any "green brake" crashes.

After reviewing the comments and other available information, NHTSA has decided not to apply the preburnish test to all heavy vehicles equipped with hydraulic brakes. It has also decided that the test should not apply to school buses. As explained in the NPRM, NHTSA is not aware of any crashes involving hydraulically braked heavy vehicles caused by "green" brake linings. Therefore, the agency has determined that there is no need to apply the preburnish test to heavy vehicles. The agency notes that its decision not to apply the preburnish test to heavy vehicles results in the requirements in Standard No. 105 and Standard No. 121 being consistent for similar vehicles given the absence of a preburnish test in FMVSS No. 121 for air-braked school buses.[6]

With respect to non-asbestos linings, NHTSA agrees that there is a tendency for such linings to swell early in the life of the new brakes. However, the agency has already addressed this issue in greater detail in a NPRM on the brake adjustment procedure for brake burnish of heavy vehicles (56 FR 66395, December 23, 1991). The agency concluded that the swelling of the non-asbestos linings has no effect on their service life or on the service brake performance of the vehicle.

D. Second Effectiveness Test

The second effectiveness test in Standard No. 105 assesses brake performance when a vehicle is in its fully loaded condition. In the NPRM, NHTSA proposed extending the second effectiveness test to hydraulically-braked heavy vehicles. The agency explained that this test replicates one of the most common loading conditions for heavy vehicles. The agency tentatively concluded that it would be in the interests of safety to establish stopping distance requirements for hydraulically-braked heavy vehicles in the fully loaded condition (at GVWR).

NHTSA notes that, unlike the requirements in Standard No. 121 which specify 60-mph stops, the second effectiveness test includes 30-mph stops as well as 60-mph stops. The agency proposed applying the 30-mph test to school buses, since it is similar to their in-service stop-and-go operation. Although there is no similar 30-mph road test for air-braked school buses, the brake assemblies of these vehicles are required to be tested on a dynamometer under section S5.4 of Standard No. 121. These tests evaluate the capability of a brake assembly in a stop-and-go duty cycle. Section S5.4.2, Brake Power, requires that the brake be capable of making 10 consecutive decelerations from 50 mph to 15 mph at an average deceleration rate of 9 feet per second. Therefore, the agency further believed that the 30-mph portion of the second effectiveness tests should be retained for school buses only, given their stop-and-go duty cycle.

[4] The report may be examined at the agency's Technical Reference Office, room 5108, at no charge. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161 for a small charge.

[5] The stopping distance rule for air-braked vehicles discusses the issues of the test surface, wheel lock restrictions, initial brake temperature, the failed system test, vehicle loading, the parking brake test, and burnish procedures.

[6] The agency decided not to include a preburnish test in Standard No. 135, reasoning that few vehicles are driven any length of time in an unburnished condition.

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AlliedSignal was the sole commenter on the issue of the 30-mph stopping distances. It stated that its testing of a current system showed that the proposed requirement of 70 feet for the 30-mph second effectiveness test would be difficult to meet without major brake redesign. It therefore recommended that the requirement be increased to at least 78 feet if the agency decides not to exclude school buses from this test.

NHTSA has decided to apply the test requirement to school buses with a stopping distance of 70 feet, as proposed. The agency notes that no vehicle manufacturer objected to the proposed stopping distance value. Further, NHTSA's test data (NHTSA Heavy-Duty Vehicle Brake Research Program Report No. 4—Stopping Capability of Hydraulically-Braked Vehicles) show that 70 feet is a reasonable requirement from 30 mph for the second effectiveness test.

NHTSA acknowledges that some transit buses have stop-and-go duty cycles similar to school buses. However, such vehicles are typically equipped with air brake systems, and would therefore be required to have their brake assemblies dynamometer tested. The 30-mph second effectiveness test would not apply to these vehicles because they are not school buses.

E. Leadtime

In the NPRM, NHTSA proposed that the stopping distance requirements become effective two years after the final rule's publication.

AAMA supported the proposed effective date, provided that the agency incorporated its recommended modifications in the final rule. Rockwell recommended that the stopping distance requirements and the stability performance requirements be combined so that the effective dates for both rulemakings are concurrent. Several commenters to the stability and control NPRM, including AAMA, made the same suggestion. AAMA noted that since ABS can have a direct influence on achievable stopping distance, it is important to optimize brake system performance by taking both stopping distance and stability into account.

On April 12, 1994, NHTSA published a supplemental notice of proposed rulemaking (59 FR 17326) that proposed the following implementation schedule for both the stopping distance and lateral stability and control requirements:

Truck tractors ....2 years after final rule (1996)
Trailers.....3 years after final rule (1997)
Air-braked single unit trucks and buses .....3 years after final rule (1997)
Hydraulic-braked single unit trucks and buses....4 years after final rule (1998).

The agency reasoned that making the effective dates for the two rulemakings concurrent would facilitate a more orderly implementation process, avoid the need for manufacturers to redesign the brakes on individual vehicles twice, and reduce the development and compliance costs that manufacturers would face as a result of these regulations. NHTSA requested comments about the implementation schedule proposed in the supplemental notice.

As the stability and control final rule discusses in detail in the section titled "Implementation Schedule," NHTSA has decided to adopt an implementation schedule similar to the one proposed in the SNPRM. Specifically, hydraulically-braked heavy vehicles manufactured on or after March 1, 1999 will have to be equipped with ABS and comply with the high coefficient of friction stopping distance requirements. The agency has decided that these effective dates, which were widely supported by vehicle manufacturers, brake manufacturers, and safety advocacy groups, will provide for an efficient implementation of the heavy vehicle braking requirements.

F. Costs

As indicated earlier, NHTSA does not anticipate the need for vehicle manufacturers to change the design of the foundation brake system of heavy, hydraulically braked vehicles in order to comply with the requirements of this final rule. The only costs associated with this rulemaking are those related to compliance testing costs. As detailed in the FRE, the agency estimates these costs to be $1.030 million, or an average per-vehicle cost of $5.30.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866. NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under those policies and procedures.

A FRE setting forth the agency's detailed analysis of the benefits and costs of this rulemaking (along with the other rules issued today) has been prepared and been placed in the docket. As mentioned above, the agency estimates that the costs attributable to these requirements are approximately $1.03 million for testing costs.

Based on its analysis, the agency concludes that the requirements will improve safety by ensuring that all heavy vehicles are capable of stopping within a safe distance. The agency believes that implementing the stopping distance requirements for heavy vehicles will not result in significant costs since the braking performance of currently produced vehicles is adequate for these vehicles to comply with the reinstated requirements.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. As mentioned above, most heavy vehicles will comply with the requirements without the need for significant changes. In addition, the agency is not aware of any manufacturer of heavy vehicles or hydraulic brake systems that is considered to be a small entity. There are no added costs associated with modifying a vehicle's brake system to comply with the requirements implemented by this final rule. The industry test cost per vehicle to assure compliance with the proposal is very small: $5.30. Accordingly, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment. No changes in existing production or disposal processes will result, except that there is a reduction resulting from the removal of the ALV. Nor should production and disposal processes have a significant adverse affect on the environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 105, Hydraulic Brake Systems, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. Section 571.105 is amended by adding the definition of "wheel lockup" in S4 and by revising Table II, S5.1.1, S5.1.1.2, S6, S6.9, and S6.10; and by adding S6.9.1, S6.9.2, S6.10.1 and S6.10.2 to read as follows:

* * * * *

Wheel lockup means 100 percent wheel slip.

* * * * *

TABLE II.—STOPPING DISTANCES

Vehicle test speed (miles per hour)	Stopping distance in feet for tests indicated															
	I—1st (prebumished) & 4th effectiveness; spike effectiveness check				II—2d effectiveness				III—3d (lightly loaded vehicles) effectiveness					IV—Inoperative brake power and power assist unit; partial failure		
	(a)	(b)	(c)	(d)	(a)	(b) & (c)	(d)	(e)	(a)	(b)	(c)	(d)	(e)	(a)	(b) & (c)	(d) & (e)
30	[1] 57	[1,2] 65	[1,2] 69 (1st) [1,2] 65 and spike)	[1,2] 88 (4th	[1] 54	[1] 57	[1] 78	70	51	57	65	84	70	114	130	170
35	74	83	[1] 72		70	74	106	96	67	74	83	114	96	155	176	225
40	96	108	91	132	91	96	138	124	87	96	108	149	124	202	229	288
45	121	137	119	173	115	121	175	158	110	121	137	189	158	257	291	358
50	150	169	150	218	142	150	216	195	135	150	169	233	195	317	359	435
55	181	204	185	264	172	181	261	236	163	181	204	281	236	383	433	530
60	[1] 216	[1,2] 242	224	326	[1] 204	[1] 216	[1] 310	280	[1] 194	[1] 216	[1] 242	[1] 335	280	[1] 456	[1] 517	[1] 613
80	[1] 405	[1] 459	[1,2] 267	[1,2] 388	[1] 383	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
95	[1] 607	NA	[1] 510	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
100	[1] 673	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

[1] Distance for specified tests. [2] Applicable to school buses only. NA=Not applicable.

NOTE: (a) Passenger cars; (b) vehicles other than passenger cars with GVWR of less than 8,000 lbs; (c) vehicles with GVWR of not less than 8,000 lbs and not more than 10,000 lbs; (d) vehicles with GVWR greater than 10,000 lbs; (e) buses, including school buses, with GVWR greater than 10,000 lbs.

* * * * *

S5.1.1 *Stopping distance.*

(a) The service brakes shall be capable of stopping each vehicle with a GVWR of less than 8,000 pounds, and each school bus with a GVWR between 8,000 pounds and 10,000 pounds in four effectiveness tests within the distances and from the speeds specified in S5.1.1.1, S5.1.1.2, S5.1.1.3, and S5.1.1.4.

(b) The service brakes shall be capable of stopping each vehicle with a GVWR of between 8,000 pounds and 10,000 pounds, other than a school bus, in three effectiveness tests within the distances and from the speeds specified in S5.1.1.1, S5.1.1.2, and S5.1.1.4.

(c) The service brakes shall be capable of stopping each vehicle with a GVWR greater than 10,000 pounds in two effectiveness tests within the distances and from the speeds specified in S5.1.1.2 and S5.1.1.3.

* * * * *

S5.1.1.2 In the second effectiveness test, each vehicle with a GVWR of 10,000 pounds or less and each school bus with a GVWR greater than 10,000 pounds shall be capable of stopping from 30 mph and 60 mph, and each vehicle with a GVWR greater than 10,000 pounds (other than a school bus) shall be capable of stopping from 60 mph, within the corresponding distances specified in Column II of Table II. If the speed attainable in 2 miles is not less than 84 mph, a passenger car or other vehicle with a GVWR of 10,000 pounds or less shall also be capable of stopping from 80 mph within the corresponding distances specified in Column II of Table II.

* * * * *

S6 *Test conditions.* The performance requirements of S5 shall be met under the following conditions. Where a range of conditions is specified, the vehicle shall be capable of meeting the requirements at all points within the range. Compliance of vehicles manufactured in two or more stages may, at the option of the final-stage manufacturer, be demonstrated to comply with this standard by adherence to the instructions of the incomplete manufacturer provided with the vehicle in accordance with § 568.4(a)(7)(ii) and § 568.5 of title 49 of the Code of Federal Regulations.

* * * * *

S6.9 *Road Surface.*

S6.9.1 For vehicles with a GVWR of 10,000 pounds or less, road tests are conducted on a 12-foot-wide, level roadway, having a skid number of 81. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

S6.9.2 For vehicles with a GVWR greater than 10,000 pounds, road tests are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 0.9 when measured using an American Society for Testing and Materials (ASTM) E 1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

* * * * *

S6.10 *Vehicle Position and Wheel Lockup Restrictions.* The vehicle is aligned in the center of the roadway at the start of each brake application. Stops, other than spike stops, are made without any part of the vehicle leaving the roadway.

S6.10.1 For vehicles with a GVWR of 10,000 pounds or less, stops are made with wheel lockup permitted only as follows:

(a) At vehicle speeds above 10 mph, there may be controlled wheel lockup on an antilock-equipped axle, and lockup of not more than one wheel per vehicle, uncontrolled by an antilock system. (Dual wheels on one side of an axle are considered a single wheel.)

(b) At vehicle speeds of 10 mph or less, any wheel may lock up for any duration.

(c) Unlimited wheel lockup is allowed during spike stops (but not spike check stops), partial failure stops, and inoperative brake power or power assist unit stops.

S6.10.2 For vehicles with a GVWR greater than 10,000 pounds, stops are made with wheel lockup permitted only as follows:

(a) At vehicle speeds above 20 mph, any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles may lock up for any duration. The wheels on the two rearmost nonliftable, nonsteerable axles may lock up according to (b).

(b) At vehicle speeds above 20 mph, one wheel on any axle or two wheels on any tandem may lock up for any duration.

(c) At vehicle speeds above 20 mph, any wheel not permitted to lock in (a) or (b) may lock up repeatedly, with each lockup occurring for a duration of one second or less.

(d) At vehicle speeds of 20 mph or less, any wheel may lock up for any duration.

(e) Unlimited wheel lockup is allowed during partial failure stops, and inoperative brake power or power assist stops.

Issued on March 1, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–5412 Filed 3–7–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR PART 393

[FHWA Docket No. MC–94–31]

RIN 2125–AD46

Parts and Accessories Necessary for Safe Operation; Antilock Brake Systems

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent; request for comments.

SUMMARY: This document requests comments on the intent of the FHWA to initiate a rulemaking concerning requirements for antilock brake systems (ABS) on commercial motor vehicles engaged in interstate commerce. The National Highway Traffic Safety Administration (NHTSA) has issued a final rule, published elsewhere in today's **Federal Register**, requiring certain newly manufactured vehicles to be equipped with ABS. The FHWA intends to initiate a rulemaking addressing requirements for motor carriers to maintain the ABS on those vehicles which are subject to the NHTSA's final rule and address certain other ABS issues related to vehicles subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA requests comments on this action.

DATES: Comments must be received on or before May 9, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–94–31, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2157) directs the Secretary of Transportation to initiate a rulemaking concerning methods for improving braking performance of new commercial motor vehicles,[1] including truck tractors, trailers, and their dollies. Congress specifically directed that such a rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. The ISTEA requires that the rulemaking be consistent with the Motor Carrier Safety Act of 1984 (49 U.S.C. 31147(b)) and be carried out pursuant to, and in accordance with, the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. 30111 *et seq.*).

The NHTSA Rulemaking

In response to the ISTEA, the NHTSA has issued a final rule (which is published elsewhere in today's **Federal Register**) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 105, Hydraulic Brake Systems, and FMVSS No. 121, Air Brake Systems, to require medium and heavy vehicles to be equipped with an antilock brake system (ABS) to improve the lateral stability (i.e., traction) and steering control of these vehicles during braking. For truck tractors, the ABS requirement is supplemented by a 30-mph braking-in-a-curve test on a low coefficient of friction surface using a full brake application. By improving lateral stability and control, these requirements will significantly reduce jackknifing and other losses of control during braking as well as the deaths and injuries caused by those control problems.

In addition, the NHTSA final rule requires all powered heavy vehicles to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other trucks equipped to tow air-braked trailers are required to be equipped with two separate in-cab lamps: one indicating malfunctions in the towing vehicle ABS and the other in the trailer ABS. Trailers produced during an initial eight-year period must also be equipped with an external malfunction indicator that will be visible to the driver of the towing tractor. These indicators will provide valuable information about ABS malfunctioning to the driver in the event that the trailer is towed by a vehicle that is not equipped with an in-cab ABS malfunction indicator for trailers.

The amendments to FMVSS No. 105 become effective on March 1, 1999. The amendments to FMVSS No. 121 become effective on March 1, 1997, with respect to truck tractors, and on March 1, 1998, with respect to air-braked trailers, converter dollies, single unit trucks and buses.

In the 1970's, FMVSS No. 121 included stopping distance requirements which essentially required heavy vehicles to be equipped with antilock brake systems. In response to a legal challenge, the United States Court of Appeals for the 9th Circuit invalidated the stopping distance and "no lockup" requirements in Standard No. 121, along with certain other provisions, holding that the standard was "neither reasonable nor practicable at the time it was put into effect." *PACCAR* v. *NHTSA*, 573 F.2d 632 (9th Cir. 1978), cert. denied, 439 U.S. 862 (1978).

As explained in NHTSA's final rule, the preconditions for an ABS requirement for heavy vehicles differ markedly from 20 years ago when the petitioners challenged the agency in PACCAR. First, NHTSA's extensive fleet study of heavy vehicle antilock systems demonstrates that these systems are reliable. Second, the agency's testing of truck tractors equipped with antilock systems indicates that they provide significantly improved lateral control and stability compared to vehicles without antilock systems. Third, unlike air brake systems in existence in the mid-1970's that relied on significantly larger, more aggressive foundation brakes, which could possibly create safety problems if the antilock system malfunctioned, the requirements being adopted today do not necessitate such aggressive brakes. Fourth, antilock brake systems are now in widespread, everyday use in this country and throughout the world. Fifth, the performance requirements adopted in today's final rule are objective and practicable. Based on these and other considerations discussed throughout its final rule, NHTSA believes the final rule satisfies the concerns raised in the PACCAR case.

To evaluate the reliability of current-generation ABS designs, the NHTSA conducted extensive field studies of ABS-equipped heavy truck tractors and

[1] For the purposes of section 4012, the term "commercial motor vehicle" means any self-propelled or towed vehicle used on highways to transport passengers or property if such vehicle has a gross vehicle weight rating (GVWR) of 11,794 kilograms (kg) (26,001 pounds) or more. The NHTSA's final rule on ABS applies to medium and heavy vehicles with a GVWR of 4,536 kg (10,001 pounds) or more.

semitrailers[2] in developing its final rule. In response to the PACCAR case, these studies were structured to assess whether current-generation heavy vehicle antilock brake systems were reliable and fail-safe, whether they inordinately increased vehicle maintenance costs, and whether they could be successfully maintained and would remain functioning in typical U.S. heavy truck operating environments.

The NHTSA Research

Between 1988 and 1993, the agency tracked the maintenance performance histories of 200 truck tractors and 50 semitrailers equipped with ABS, as well as the histories of a comparison group of 88 truck tractors and 35 semitrailers not equipped with ABS, to determine the incremental maintenance costs and patterns associated with installing ABS on these heavy vehicles. Additionally, special on-board vehicle recorders were used to monitor the functioning and performance of the ABSs. Finally, drivers and mechanics at the participating test fleets were periodically interviewed to ascertain their views about the ABS test vehicles' performance and ease of maintenance. The study authors concluded that, based on the data collected during the fleet study, currently available antilock brake systems are reliable, durable and maintainable. While ABS is not a zero-cost maintenance item, its presence on a vehicle did not substantially increase maintenance costs (less than one percent for tractors, less than two percent for trailers) or decrease vehicle operational availability. Moreover, the NHTSA study found that system malfunctions would not render the vehicle's braking system unsafe, since the brake system would merely revert to one without an ABS; foundation brakes are unchanged when ABS is added. The incidents noted during the test program in which an ABS malfunction did compromise the vehicle's underlying brake system performance involved defective components.

The NHTSA's research report indicates that in both the tractor and the trailer studies, many of the test vehicles either arrived in the test fleets with faulty ABS or had ABS malfunction indications shortly thereafter. These problems were the result of what was referred to as installation or pre-production design-related problems. In general, these problems were easily remedied, with most of the ABSs requiring only adjustments or minor repairs. Problems of this nature were at least partially attributable to the prototype nature of many of the installations accomplished for this test program.

The NHTSA emphasizes that the problems encountered in the test program do not reflect inherent design flaws with the principal components (i.e., the electronic control units (ECU), modulators, and wheel-speed sensing hardware) of ABS. Instead, they highlight the importance of using high quality wiring components and paying close attention to installation details. The NHTSA anticipates that the frequency of these problems will be lower than that experienced during the agency's test program once ABS production/installation increases to a level high enough to enable the quality control programs typically utilized by suppliers and truck manufacturers to take effect.

An average of 1.35 labor hours and $106.46 for replacement components per test truck tractor were necessary to rectify these installation/pre-production design-related problems. Comparable figures for semitrailers were 1.9 labor hours and $65.36 for parts. All these costs are usually recovered by fleets under the terms of typical warranties offered by ABS suppliers and/or truck manufacturers. The NHTSA notes that the start-up or installation/pre-production design-related problems that the test fleets experienced are similar to the experiences that fleets were reported to have had with electronically controlled engines when they were first introduced on heavy trucks in the mid-1980's.

During the two-year period in which the reliability of these systems was evaluated, 200 ABS-equipped test tractors accumulated 39,818,659 miles of travel. During that period, 126 trucks (63 percent) needed ABS related maintenance that could best be attributed to normal service wear factors rather than installation or pre-production design-related problems. A total of 421 incidents of this type occurred with the 126 trucks, the majority (321 or 76 percent) of which involved inspections/adjustments. The remainder (100 or 24 percent) involved repairs/replacements. All brands of the ABSs involved in the test program experienced incidents of this type at one time or another during their in-service operation.

Forty vehicles experienced more than one failure warning, the reason for which could not be discovered. Two vehicles experienced 35 and 31 such indications (23 percent of the total ECU resets (clearing the failure message from the ECU memory)) respectively. Two other trucks experienced 12 and 10 separate indications, respectively. These four vehicles (4.5 percent of the trucks with failure warning problems) accounted for 30 percent of the total intermittent failure warning indications and ECU resets.

All five ABS systems (Bendix, Bosch, Midland, Rockwell, and WABCO) experienced intermittent failure indications with at least one of the forty test trucks each had involved in the test program. In each case, the ABS was either manually reset or the warning light did not reactivate when the truck's ignition was turned off and subsequently turned on again at some later time. However, 61 percent of the total failure warning indications of this type, and 34 percent of the vehicles experiencing intermittent failure indications, were attributable to one supplier's ABS. Another supplier's system accounted for 18 percent of total failure warning indications and 28 percent of the total vehicles involved. Since the time of the agency's test, both suppliers' systems have been modified to reduce the number of these false-positive malfunction indications.

The NHTSA's final rule summarizes the maintenance related to in-service wear that was required during the tractor portion of the program on each of the ABS components. Inspections and ECU resets associated with intermittent failure warning indications were the principal occurrences. In general, most of the work did not involve parts replacements. Parts-replacement incidents totaled 40, with 55 percent of these (22) involving failure warning lamp bulbs or fuses. The average number of in-service wear-related maintenance incidents, including all inspections, adjustments, repairs, and replacements, was 2.11 incidents per truck over the two-year period of the test.

Replacing faulty major ABS components, plus performing all other inspections, adjustments and repairs that were in-service wear-related, required approximately 403 hours of labor and $4,068 for parts replacements for all tractors in the test. At a standard hourly rate of $35, this amounts to $18,173, or 0.046 cents per mile (based on 39,818,659 total miles of travel) for the cost of maintaining the ABSs over the two-year period. The inspections/ECU resets, which only involved labor

[2] "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors," DOT Report No. 807 846, March 1992, and "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Semitrailers," DOT Report No. 808 059, October 1993.

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expenditure, accounted for 45 percent of these total costs. Although they occurred infrequently, ECU replacements were costly, accounting for 21 percent of the in-service wear-related maintenance costs.

Similar findings were noted for the 50 ABS-equipped semitrailers that were evaluated. The test vehicles accumulated 4,001,369 miles of in-service use during almost two years of operation. In that period, 23 semitrailers (46 percent) needed ABS-related maintenance that could best be attributed to normal service factors, rather than installation or pre-production design-related problems. This compares favorably to the 63 percent of tractors requiring ABS service during the tractor program. A total of 44 incidents of this type occurred with the semitrailers, with the majority (29, or 66 percent) involving inspections or adjustments. The remainder (15, or 34 percent) involved repairs or replacements. These percentages are similar to the 76 percent for adjustments and inspections and 24 percent for repairs and replacements seen during the tractor program.

In summarizing the in-service maintenance that was required for ABS components during the trailer portion of the test program, the NHTSA notes that inspections and ECU resets associated with intermittent failure warning indications were the principal occurrences. Parts-replacement incidents totaled six, with three of these being status light bulbs and three speed sensors. In general, most of the work did not involve parts replacement.

The average number of in-service maintenance incidents, including all inspections, adjustments, repairs, and replacements, was 0.88 incidents per semitrailer over the two-year test period. This compares well with the 2.11 incidents per tractor seen during the tractor portion of this program.

Replacing faulty ABS components, plus performing all other inspections, adjustments, and repairs that were in-service related, required approximately 44 hours of labor and $234 for parts replacements. At a standardized hourly rate of $35, the total cost of maintaining the ABSs over the two-year period ($1,774) amounts to 0.044 cents per mile (based on 4,001,369 total miles of travel). The inspections and ECU resets (which only involved labor expenditure) accounted for 35 percent of the total costs. The comparable tractor figures are 0.046 cents per mile for total costs and 45 percent of the total costs for inspection and ECU reset, indicating that the semitrailers performed very much like the tractors.

Maintenance of ABS

At the completion of the overall 5-year test program, the NHTSA conducted a final follow-up survey among the participating fleets. Among the 13 fleets that were continuing to maintain the ABS on the original test tractors, 97 percent of those tractors had functioning ABS. On the other hand, the ABSs were not functioning on two-thirds of the original test tractors in the other three fleets surveyed that chose not to continue maintaining the systems. This demonstrates that fleets must be committed to maintaining the ABS if it is to be kept operational.

Antilock brake systems require some periodic, and occasionally non-periodic, non-scheduled maintenance in order to remain functional. Nonetheless, the NHTSA believes that the data contained in the two fleet study reports indicate that equipping vehicles with ABS is appropriate. Taken in total, those data indicate that, while ABS is not a zero-maintenance component, it is neither difficult nor unduly expensive to maintain. The fleet test results do not indicate that the level of maintenance attention needed to keep ABS functional is unreasonable relative to the safety benefits that will result from use of these systems.

FHWA Intention

The FHWA has concluded that a rulemaking should be initiated proposing to amend the FMCSRs to include ABS requirements for certain commercial motor vehicles subject to those regulations. At a minimum, the rulemaking would propose that motor carriers be required to maintain the ABS units on all vehicles subject to the NHTSA rule.

The agency is not offering for comment at this time any proposed language for amendments to the FMCSRs. The FHWA does, however, solicit comments on its decision to initiate a rulemaking on ABS. Following a careful review of the docket comments sent in response to this notice, the FHWA will publish a notice of proposed rulemaking containing specific regulatory language. The FHWA anticipates that this rulemaking will be concluded prior to the effective date of the NHTSA's ABS requirement.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Due to the preliminary nature of this document and lack of necessary information on costs, however, the FHWA is unable to evaluate fully the economic impact of the potential regulatory changes being considered in this rulemaking. Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with various alternative requirements. Comments, information, and data are solicited on the economic impact of the potential changes.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate fully the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48

Issued on: March 1, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–5414 Filed 3–7–95; 8:45 am]

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Friday
March 10, 1995

Part III

Department of Labor
Employment and Training Administration

Department of Education
Office of Vocational and Adult Education

School-to-Work Opportunities Act, State Implementation Grants; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

School-to-Work Opportunities Act; State Implementation Grants

AGENCIES: Department of Labor and Department of Education.

ACTION: Notice of proposed selection criteria and a proposed definition of administrative costs for School-to-Work Opportunities State Implementation Grants to be made in fiscal year 1995 and succeeding years.

SUMMARY: The Departments of Labor and Education jointly propose selection criteria to be used in evaluating applications submitted under the School-to-Work Opportunities State Implementation Grant (State Implementation Grants) competition in fiscal year (FY) 1995 and succeeding years, authorized under section 212 of the School-to-Work Opportunities Act of 1994 (the Act). State Implementation Grants will enable States to implement their plans for offering young Americans access to programs designed to prepare them for a first job in high-skill, high-wage careers and for further education and training. The Departments also propose a definition for administrative costs that would apply to State Implementation Grants funded under the Act.

DATES: Comments must be received on or before April 10, 1995.

ADDRESSES: Comments should be addressed to Janet Moore, National School-to-Work Office, 400 Virginia Avenue, S.W., Suite 210, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Janet Moore, National School-to-Work Office (202) 401–3822 (this is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Labor and Education intend to reserve funds appropriated for FY 1995 under the School-to-Work Opportunities Act of 1994 (the Act) (Pub. L. 103–239) for a competition for State Implementation Grants authorized under section 212 of the Act. The Departments propose a definition of administrative costs and selection criteria that will be used in evaluating applications submitted in response to the FY 1995 State Implementation Grant competition. States are advised that applications for State Implementation Grants must meet all of the requirements in the Act. In addition to applying the proposed selection criteria during the review of applications, the Departments will evaluate applications utilizing the considerations and approval criteria in section 214 of the Act. The Departments intend to apply the Department of Labor regulations pertaining to enforcement and administrative requirements for grants in 29 CFR parts 33, 93, 95, 96, 97, 98 to this State Implementation Grant competition.

Proposed Definition and Selection Criteria

The Departments propose to apply the definition of administrative costs and the selection criteria in this notice to the FY 1995 competition for State Implementation Grants. Unless modified, the definition and selection criteria will be used for future State Implementation Grants in succeeding fiscal years. The Departments solicit comments on the proposed definition and selection criteria, and will announce the final definition and selection criteria in a notice in the **Federal Register** after taking into account the responses to this notice and other considerations of the Departments.

Note: This notice of proposed selection criteria does not solicit applications. A notice inviting applications for School-to-Work Opportunities State Implementation Grants will be published in the **Federal Register** concurrent with or immediately following publication of the notice of final selection criteria.

Definition

All definitions in the Act apply to School-to-Work Opportunities systems funded under this and future State Implementation Grant competitions. The Act does not contain a definition of "administrative costs" as used in section 217 of the Act. The Departments propose that the following definition be applied to this and future competitions for State Implementation Grants:

The term "administrative costs" means the activities of a State or local partnership that are necessary for the proper and efficient performance of its duties under the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the program's allowable activities listed in section 214(b) (4) and (5) and section 215(c) of the Act. Administrative costs may be both personnel and non-personnel, and direct and indirect. Costs of administration shall include, but not be limited, to:

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in:

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments to them;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Providing State or local officials and the general public with information about the initiative (public relations);
- Developing systems and procedures, including management information systems, for assuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act;
- Coordinating the resolution of audit findings;
- Evaluating system results against stated objectives;
- Performing administrative services;

B. Costs for goods and services required for administration of the system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grant management or administrative activities.

Selection Criteria

Selection Criterion 1: Comprehensive Statewide System

Points: 35.

Considerations: In applying this criterion, reviewers will consider:

A. *20 points.* The extent to which the State has designed a comprehensive statewide School-to-Work Opportunities plan that——

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change in the way youth are educated and prepared for work and for further education, across all geographic areas of the State, including urban and rural areas, within a reasonable period of time.
- Includes strategic plans for effectively aligning other statewide priorities, such as education reform, economic development, and workforce development into a comprehensive system that includes the School-to-Work Opportunities system and supports its implementation at all levels—State, regional and local;
- Ensures all students will have a range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs; and
- Ensures coordination and integration with existing local education and training programs and resources, including those School-to-Work Opportunities systems established through local partnership grants and Urban/Rural Opportunities grants funded under Title III of the School-to-Work Opportunities Act, and related Federal, State, and local programs.

B. *15 points.* The extent to which the State plan demonstrates the State's capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including——

- The work-based learning component that includes the statutory mandatory activities and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences, such as mentoring, job-shadowing, unpaid work experiences, school-based enterprises, and paid work experiences;
- The school-based learning component that will provide students with high level academic skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;
- A connecting activities component to provide a functional link between students' school and work activities and employers and educators; and
- A plan for an effective process for assessing students' skills and issuing portable skill certificates that are benchmarked to high quality standards such as those the State establishes under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process.

Selection Criterion 2: Commitment of Employers and Other Interested Parties

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

- The extent to which the State has obtained the active involvement of employers and other interested parties critical to the success of the School-to-Work Opportunities system, such as the parties listed in section 213(d)(5) of the Act, as well as State legislators.
- Whether the State plan demonstrates an effective and convincing strategy for continuing the commitment of employers and other interested parties in the statewide system, such as the parties listed in section 213(d)(5) of the Act, as well as State legislators.
- The extent to which the State plan proposes to include private sector representatives as joint partners with educators in the oversight and governance of the overall School-to-Work Opportunities system.
- The extent to which the State has developed strategies to provide a range of opportunities for employers to participate in the design and implementation of the School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula and determining outcomes; providing worksite experience for teachers; helping to recruit other employers; and providing worksite learning activities for students, such as mentoring, job shadowing, unpaid work experiences, and paid work experiences.

Criterion 3: Participation of All Students

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

- The extent to which the State will implement effective strategies and systems to ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs.
- Whether the plan identifies potential barriers to the participation of any students, and the degree to which the plan proposes effective ways of overcoming these barriers.
- The degree to which the State has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including nontraditional jobs.
- The feasibility and effectiveness of the State's strategy for serving students from rural communities with low population densities.
- The State's methods for ensuring safe and healthy work environments for students.

Note: Experience with the FY 1994 School-to-Work Opportunities State Implementation grant applications has shown that many applicants do not give adequate attention to designing programs that will serve school dropouts and programs that will serve students with disabilities. Therefore, the Departments would like to remind applicants that reviewers will consider whether an application includes strategies to specifically identify the barriers to participation of dropouts and students with disabilities and proposes specific methods for effectively overcoming such barriers and for integrating academic and vocational learning, integrating work-based learning and school-based learning, and linking secondary and postsecondary education for dropouts and students with disabilities. Applicants are reminded that JTPA Title II funds may be used to design and provide services to students who meet the appropriate JTPA eligibility criteria.

Selection Criteria 4: Stimulating and Supporting Local School-to-Work Opportunities Systems

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

- The extent to which the State assists local entities to form and sustain effective local partnerships serving communities in all parts of the State.
- Whether the plan includes an effective strategy for addressing the specific labor market needs of localities that will be implementing School-to-Work systems.
- The effectiveness of the State's strategy for building the capacity of local partnerships to design and implement local School-to-Work Opportunities systems that meet the requirements of the School-to-Work Opportunities Act.
- The extent to which the State will provide a variety of assistance to local partnerships, as well as the effectiveness of the strategies proposed for providing this assistance, including such services as: developing model curricula and innovative instructional methodologies, expanding and improving career and academic counseling services, and assistance in the use of technology-based instructional techniques.
- The ability of the State to provide constructive assistance to local partnerships in identifying critical and emerging industries and occupational clusters.

Selection Criterion 5: Resources

Points: 10.

Considerations: In applying this criterion, reviewers will consider:

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• The amount and variety of other Federal, State, and local resources the State will commit to implementing its School-to-Work Opportunities plan, as well as the specific use of these funds, including funds for JTPA Summer and Year-Round Youth programs and Perkins Act programs.

• The feasibility and effectiveness of the State's long-term strategy for using other resources, including private sector resources, to maintain the statewide system when Federal resources under the School-to-Work Opportunities Act are no longer available.

• The extent to which the State is able to limit administrative costs in order to maximize the funds spent on the delivery of services to students, as required in section 214(b)(3) of the Act, while ensuring the efficient administration of the School-to-Work Opportunities system.

Criterion 6: Management Plan

Points: 10.

Considerations: In applying this criterion, reviewers will consider:

• The adequacy of the management structure that the State purposes for the School-to-Work Opportunities system.

• The extent to which the State's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.

• Whether the plan includes feasible measurable goals for the School-to-Work-Opportunities system, based on performance outcomes established under section 402 of the Act, and an effective method for collecting information relevant to the State's progress in meeting its goals.

• Whether the plan includes a regulatory scheduled process for improving or redesigning the School-to-Work Opportunities implementation system based on performance outcomes as established under section 402 of the Act.

• Whether the plan includes a feasible workplan for the School-to-Work Opportunities system that includes major planned objectives over a five-year period.

Additional Priority Points

As required by section 214 of the Act, the Departments will give priority to applications that show the highest level of concurrence among State partners with the State plan, and to applications that require paid, high quality work-based learning experiences as an integral part of the School-to-Work Opportunities system by assigning additional points—above the 100 points described in the criteria—as follows:

1. Highest Levels of Concurrence—5 Points

Up to 5 points will be awarded to applications that can—

• Fully demonstrate that each of the State partners listed in section 213(b)(4) concurs with the State School-to-work Opportunities plan, and that the State partners' concurrence is backed by a commitment of time and resources to implement the plan.

2. Paid, High-Quality Work-Based Learning—10 Points

Up to 10 points will be awarded to applications that demonstrate that the State—

• Has developed effective plans for requiring, to the maximum extent feasible, paid, high-quality work experience as an integral part of the State's School-to-Work Opportunities system, and for offering the paid, high-quality work experiences to the largest number of participating students as is feasible; and

• Has established methods for ensuring consistently high quality work-based learning experiences across the State.

Invitation to Comment: Interested persons are invited to submit comments on the proposed selection criteria and the proposed definition of administrative costs contained in this notice. Interested persons are also invited to comment on the Departments' proposal that States be required to submit their applications for new State Implementation Grant awards within 30 days of the publication of a notice of final selection criteria. The Departments recognize that for the FY 1994 State Implementation Grant competition they provided applicants with 60 days in which to submit their applications following the publication of the notice of final selection criteria and priorities.

However, the selection criteria proposed for the FY 1995 State Implementation Grant competition are very similar to those that applied to the FY 1994 competition and the States have been actively engaged in the planning of their School-to-work Opportunities systems with State Development Grant funds since initial development grants were awarded in early 1994. Accordingly, and in the interest of designing an application submission and review process that enables the Departments to make FY 1995 awards in as timely a fashion as possible, the Departments propose to provide States with 30 days in which to submit their applications for new FY 1995 State Implementation Grants.

Finally, under section 213(a)(2) of the Act, where a Governor has been unable, in accordance with section 213(d)(4) of the Act, to obtain support for the State plan from all of the individuals and entities listed in 213(b)(4) (A) through (J), the Governor must provide those non-concurring individuals and entities with a copy of the State's final application and provide those individuals and entities with 30 days in which to submit their comments on that application. Under section 213(a)(2)(C) of the Act, the governor must include any such comments in the State's application. In order to adhere to these statutory requirements while providing the same application submission deadlines and ensuring timely application reviews for all States, the Departments propose that a State submit its final application simultaneously to the Departments and to any of the individuals and entities listed in section 213(b)(4) (A) through (J) who must be given an opportunity to comment under section 213(a)(2). Any comments received as a result of this opportunity will be provided to the Departments immediately upon receipt of those comments by the State, but no later than 30 days after the request for comments is made by the Governor under section 213(a)(2)(B). Once all such comments have been received, applications will be considered to be complete.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in the National School-to-Work Office, 400 Virginia Avenue SW., Suit 210, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 29 CFR Part 17. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Departments' specific plans and actions for this program.

Applicable Regulations: 29 CFR parts 33, 93, 95, 96, 97, 98.

Dated: March 7, 1995.

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

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Part IV

Department of Transportation

Coast Guard

33 CFR Parts 155 and 157
46 CFR Parts 30, 32, 70, 90, and 172
Double Hull Standards for Vessels Carrying Oil in Bulk; Final Rule

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Coast Guard

33 CFR Parts 155 and 157; 46 CFR Parts 30, 32, 70, 90, and 172

[CGD 90–051]

RIN 2115–AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In an interim final rule (IFR) published on August 12, 1992, the Coast Guard established regulations for the design standards of double hull vessels pursuant to the requirements of section 4115 of the Oil Pollution Act of 1990 (OPA 90 or the Act) (Pub. L. 101–380). This rule adopts the IFR as final with minor changes to definitions.

EFFECTIVE DATE: This rule is effective on April 10, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Office of Marine Safety, Security and Environmental Protection (G–MVI), telephone (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Robert M. Gauvin, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 5, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Double Hull Standards for Tank Vessels Carrying Oil" in the **Federal Register** (55 FR 50192). On September 6, 1991, the Coast Guard published a notice in the **Federal Register** (56 FR 44051) reopening the comment period until October 7, 1991.

On August 29, 1991, the Coast Guard published a notice in the **Federal Register** (56 FR 42763) announcing a public meeting to obtain the views of interested parties regarding the scope of the environmental assessment. The Coast Guard subsequently held the scoping meeting on September 26, 1991.

On January 15, 1992, the Coast Guard published a notice in the **Federal Register** (57 FR 1854) announcing the availability of the Interim Regulatory Impact Analysis (IRIA) and Environmental Assessment (EA). In response to the IRIA and EA, the Coast Guard received a total of 112 letters commenting on this rulemaking.

On August 12, 1992, the Coast Guard published an IFR entitled "Double Hull Standards for Vessels Carrying Oil in Bulk" in the **Federal Register** (57 FR 36222), which requested comments be received on or before October 13, 1992. On December 18, 1992, the Coast Guard opened a second comment period for the IFR by publishing a notice in the **Federal Register** (57 FR 60402). The Coast Guard received 61 letters during the IFR comment periods and the Coast Guard considered all comments received to the rulemaking up to the close of the second comment period on February 26, 1993. All comments considered by the Coast Guard on or relating to this rulemaking are in the docket. A public hearing was not requested and none was held.

Background and Purpose

Section 4115 of OPA added section 3703a to Title 46 U.S. Code. Section 3703a(a) requires a double hull to be fitted on a vessel if it is constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue. A vessel that is constructed or undergoes a major conversion under a contract placed on June 30, 1990, or later must have a double hull fitted at the time of construction or major conversion (with certain exceptions in the Act). An existing vessel that is constructed or that undergoes a major conversion under an earlier contract must be fitted with a double hull in accordance with a timetable in 46 U.S.C. 3703a(c)(3), which commences January 1, 1995.

Section 3703a does not provide technical standards for a double hull. This final rule provides marine transportation and shipbuilding industries with the technical standards necessary to meet the double hull requirements.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2–90. This NVIC provides policy guidance on double hull construction for a vessel undergoing construction or major conversion under a contract awarded on or after June 30, 1990, but prior to the effective date of the IFR which was September 11, 1992. A vessel which is built to plans that have been approved in accordance with NVIC 2–90 under a contract awarded before the effective date of the IFR will satisfy the double hull requirements in this final rule. NVIC 2–90 may not be used for a vessel which undergoes construction or major conversion under a contract awarded on or after September 11, 1992. Change 1 of NVIC 2–90, published by the Coast Guard on November 24, 1992, clarifies the effective dates of NVIC 2–90 as between June 30, 1990, and September 11, 1992.

A substantial amount of oil imported into the United States is transported aboard foreign flag vessels. Since the Act applies to all vessels in U.S. waters, including foreign vessels, the Coast Guard recognized that U.S. double hull regulations would have a significant global impact. Therefore, the Coast Guard has also worked at the international level to establish double hull standards. The International Maritime Organization (IMO) is a specialized United Nation agency which oversees international maritime affairs. IMO has been responsible for developing various international conventions, such as the International Convention for the Safety of Life at Sea, 1974, (SOLAS 74), and the International Convention for the Prevention of Pollution by Ships, 1973, as amended by the Protocol of 1978 (MARPOL 73/78). The Coast Guard represents the United States at IMO deliberations. In November 1990, the United States submitted a proposal to IMO's 30th session of the Marine Environment Protection Committee (MEPC) for international standards to require double hulls for tank vessels. This proposal resulted in a draft Regulation 13F of Annex I to MARPOL 73/78. At the 31st session of the MEPC in July 1991 (MEPC 31), the Committee approved draft Regulation 13F for circulation to IMO member states for their consideration.

In November 1991, a MEPC working group subsequently refined Regulation 13F, which was further refined and formally adopted at MEPC 32 on March 6, 1992. The United States reserved its position during the adoption of Regulation 13F, due to technical differences with OPA 90 regarding the applicability of double hull requirements to certain categories of vessels and the allowance of the mid-deck concept as an alternative to a double hull. The double hull dimensions prescribed in the IFR and this final rule are consistent with those in Regulation 13F as adopted at MEPC 32.

The MEPC also adopted Regulation 13G to Annex I of MARPOL at its 32nd session. Regulation 13G contains a schedule for retrofitting (with double hulls) or retiring existing single hull tank vessels at 25 or 30 years after delivery. Regulation 13G also requires vessels built prior to requirements for protectively located segregated ballast (pre-MARPOL tankers) to convert tanks protecting 30 percent of the sides or 30 percent of the bottom to non-oil carrying wing tanks or double bottom spaces no later than 25 years after delivery. The United States also reserved its position during the adoption of Regulation 13G of Annex I to MARPOL.

On December 23, 1992, the U.S. deposited a declaration with IMO regarding the U.S. acceptance and enforcement of Regulations 13F and 13G. This declaration stated that the express approval of the U.S. Government would be necessary before Regulations 13F and 13G would enter into force within the U.S. A **Federal Register** Notice (58 FR 39087) was published on July 21, 1993, discussing the U.S. position on Regulations 13F and 13G. The two major technical differences between the domestic and international standards were: (1) The acceptance by IMO of the mid-deck tanker design as an alternative to the double hull; and (2) variances in phase-out schedule for existing single hull tank vessels.

A copy of IMO paper MEPC 32/WP.3, which contains Regulations 13F and 13G, has been placed in the public docket. Regulations 13F and 13G, as adopted at MEPC 32, also appeared as an appendix to the preamble of the IFR for the convenience of the reader.

Discussion of Comments and Changes

The Coast Guard thanks the many interested parties who submitted a total of 61 documents to the public docket. These comments provided very useful information and afforded valuable assistance to the completion of this final rule.

This section discusses the comments received as well as the Coast Guard's responses and changes to the IFR. This section is divided into two subsections. The first subsection discusses comments regarding the specific CFR sections, and the second subsection discusses nonspecific comments concerning other issues relating to this rulemaking and double hull requirements in general.

Comments Relating to Specific CFR Sections

All comments and changes to each section of the rule are discussed within the following paragraphs, and the paragraphs are numbered in the order of their appearance in the CFR.

1. 33 CFR 157.03(n). Two comments were received regarding the determination of the definition of oil. One comment disagreed with the applicability of the definition to include vegetable oils and the other discussed the need to harmonize the definition with the MARPOL Convention.

The Coast Guard has researched the definition of oil and found its development based upon 46 U.S.C. 2101(20). To change this definition would require amendment of 46 U.S.C. 2101(20), which OPA 90 has not done. OPA 90 has reinforced the need for tougher, and more restricted controls over oil transportation. The Coast Guard has chosen to implement the double hull standards to the full extent of the definition of oil. Therefore, the definition of oil under this regulation will include animal and vegetable oils.

The Coast Guard recognizes that the definition of oil in 46 U.S.C. 2101(20) is inconsistent with the definition of oil under Annex I of MARPOL. Non-petroleum based oil, such as animal and vegetable oils are specifically designated as Category D noxious liquid substances (NLS) under Annex II of MARPOL. As OPA 90 does not allow for administrative interpretation of the definition of oil, existing regulations applicable to oceangoing vessels carrying NLS apply to a vessel carrying animal and vegetable oil in bulk, in addition to the new double hull requirements under this rule.

For the purpose of this rule the definition of oil shall not be limited to petroleum oils and shall include animal and vegetable based oils for the double hull requirements.

2. 33 CFR 157.03(v). Four comments addressed the applicability of this rule to vessels other than a tank barge or a tankship designed primarily to carry oil. One comment requested that offshore supply vessels (OSVs) be exempt from the requirements of the double hull standards under this rule. The three other comments strongly opposed the application of this rule to freight vessels involved in the Maritime Prepositioning Ship (MPS) Program, which under a National Defense Waiver (NDW) issued by the Secretary of the Navy, carry a secondary cargo of oil used to fuel the vessel's main cargo of military vehicles.

OPA 90 double hull requirements apply to a tank vessel as defined in 46 U.S.C. 2101(39). On November 4, 1992, Pub. L. 102–587 and on December 20, 1993, Pub. L. 103–206 were enacted, with sections which clarified the meaning of the tank vessel definition in 46 U.S.C. 2101(39).

Section 5209 of Pub. L. 102–587, entitled, "Tank Vessel Definition Clarification," stated that the following vessels are deemed not to be a tank vessel for the purpose of any law: (1) An OSV; and (2) a fishing or fish tender vessels of not more than 750 gross tons that transfers fuel without charge to a fishing vessel owned by the same person.

Section 321 of Pub. L. 103–206, entitled, "Fishing and Fishing Tender Vessels," stated that a fishing vessel or fish tender vessel of not more than 750 gross tons, when engaged only in the fishing industry, shall not be deemed to be a tank vessel for the purpose of any law.

Therefore, an OSV would not be required to meet this rule for the use of tanks onboard which carry oil (including drill mud that contains oil) as bulk cargo. Likewise fishing and fish tender vessels of not more than 750 gross tons, when engaged only in the fishing industry, are not required to meet the design standards of this rule.

Due to Section 5209 of Pub. L. 102–587 and Section 321 of Pub. L. 103–206, § 157.03(v) has been amended to show the clarification of a tank vessel definition under the meaning of tank vessel in 46 U.S.C. 2101(39).

On December 18, 1992, a **Federal Register** Notice (57 FR 60402), was published by the Coast Guard reopening the original IFR comment period until February 26, 1993. This was done to provide the public a further opportunity to comment on the IFR regarding: existing double hull vessel design requirements; and double hull requirements for non-traditional tank vessels carrying oil in bulk. Verbal and written public comments received by the Coast Guard suggested there was some uncertainty as to the applicability of the Act to vessels that carry oil in bulk or cargo residue, as a secondary cargo.

Subject to the provisions of section 4115 of the Act, this rule applies to all vessels which carry oil in bulk or cargo residue, which includes tank vessel, tank barge, and a vessel certificated as a cargo or passenger vessel that carries limited quantities of oil in bulk.

The Maritime Prepositioning Ship Program was initiated through the U.S. Navy and Marine Corps, using time chartered U.S. commercially operated dry cargo vessels, to carry military logistic supplies in a pre-loaded condition. These existing vessels are certificated to carry a limited quantity of bulk oil, to fuel their primary cargo of military vehicles.

The Coast Guard has no discretion to waive or exempt requirements of double

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hull protection by the Act. Cargo tanks on these vessels must be protected in accordance with this rule. The Secretary of the Navy may extend the NDW for these vessels to include the double hull requirements for their cargo oil tanks. Presently, these vessels are not required to meet the double hull rules until 23 years into their time charter with the U.S. Government.

The notes provided in 46 CFR 70.05 and 46 CFR 90.05 to clarify the applicability of this rule to cargo and passenger vessels, have not changed due to these comments.

3. 33 CFR 157.03(aa). Four comments were received requesting interpretations on the cargo tank length definition. These four comments were from vessel designers or classification societies, who felt unsure on the meaning of the IFR stated definition for cargo tank length and requested how the definition was to be interpreted for actual proposed double hull tank vessel designs. Two additional comments were received recommending that the cargo tank length definition of the IFR be harmonized with the definition provided by the term "L_t", in § 157 Appendix C. The definition of the term "L_t" in § 157 Appendix C is the same as the definition of cargo tank length provided by Regulation 13E of Annex I, MARPOL 73/78.

The Coast Guard's intent, as specified in the IFR preamble, was to be consistent with the international double hull design standards and to ensure that compliance and enforcement was equal for U.S. and foreign vessels meeting these rules. The existing cargo tank length definition in § 157.03 was promulgated under the segregated ballast requirements of the Port and Tanker Safety Act of 1978.

The Coast Guard modified this definition in the development of the IFR to ensure it not only addressed tankships, but also barges. The above comments illustrate that the IFR definition still may cause confusion regarding the cargo tank length of the vessel requiring double hull protection.

Also, the Coast Guard has noted that non-standard tank vessels, such as dry cargo, break bulk, or passenger vessels, which carry oil as a secondary cargo, may not fit the cargo tank length definition in the IFR.

To ensure consistency with international standards, allow use with non-standard tank vessels, and assist in the conversion of existing single hull tankships to double hulls, the cargo tank length definition has been amended in § 157.03(aa) to harmonize it with the definition of "L_t" in § 157 Appendix C, and thus MARPOL 73/78.

Various designs for rebuilding, converting, and installing new double hull bodies on existing single hull tankships, have been provided to the Coast Guard for review and interpretation under the IFR. The IFR definition has been found to limit the ability to redesign existing hull configurations where a cargo pump room is located forward of the engine room's forward bulkhead. In these designs, fuel tanks integral with the engine room extend over or around the cargo pump room. To double hull these fuel tanks would limit the fuel capacity of the vessel and its ability to trade, but would not increase the protection of the cargo tank block. Risk of damage in this after area of the vessel is historically low and in most designs the cargo pump room extends below the fuel tanks providing them with bottom void protection, that equals or exceeds double bottom height standards.

Changing the cargo tank length definition will not affect barges. The after perimeter for cargo tank length of barges would be the same under the U.S. and international definitions.

4. 33 CFR 157.10d(b). Ten comments recommended an expansion of § 157.10d(b)(1) to permit alternatives to double hulls. These comments support a number of design alternatives which were discussed in the IFR.

A report was provided to Congress by the Coast Guard in December 1992, titled, "Alternatives to Double Hull Tank Vessel Design." The report, required by Section 4115(e) of OPA 90, evaluated alternative tank vessel designs to the double hull, to determine which, if any, could provide protection to the environment equal to or exceeding the double hull.

The report's conclusions were: (1) At this time, the Coast Guard has not identified equivalent designs to the double hull tanker for the prevention of oil outflow due to groundings; (2) shortcomings exist in the current tanker evaluation methodology; (3) environmental performance standards and a specific methodology for the evaluation of alternative designs in terms other than oil outflow are not fully developed; and, (4) probabilistic computer modeling shows promise as a useful tool for initial evaluation of future designs.

The report's recommendations were: (1) That no change in the present OPA 90 legislation be made at the time of the report; (2) that the Coast Guard continue to evaluate novel designs and technology submitted, reporting any suitable alternatives to double hulls to Congress as they are identified; (3) that the Coast Guard support continued research in the development of an evaluation and prediction capability that will enable a more accurate assessment of oil outflow due to grounding based on the recommendations outlined in the Carderock Division, Naval Surface Warfare Center (formerly the David Taylor Model Basin) test results; (4) that the Coast Guard, on behalf of the United States, continue to support efforts of the IMO to develop international environmental performance standards for tankers, by participation in finalizing the guidelines for the evaluation of alternative designs already circulated to IMO member governments; and, (5) that the Coast Guard, on behalf of the United States, continue to support the efforts of IMO to develop an internationally approved probabilistic methodology which can be applied to oil outflow analysis, risk assessment and vessel survivability.

OPA 90, section 4115, accepts only the double hull design. An amendment to OPA 90 would be needed to allow for acceptance of any alternative tank vessel designs. Twelve comments support that the double hull be the only acceptable design for use in U.S. waters. These comments provide a number of reasons why the double hull is a superior design to protect the environment which are in accord with the Coast Guard's report on alternative tank vessel designs.

One additional comment favored further research on the probability of oil outflow for the determination of equivalency designs to the double hull.

Work on the probability of oil outflow is being completed by an IMO Working Group to establish guidelines for equivalency to Regulation 13F of Annex I of MARPOL 73/78. The United States submitted the above Coast Guard report to Congress with its enclosures to IMO as an information paper at MEPC 34 (MEPC 34/INF.18) in July 1993. The United States is actively involved and supporting the studies of the MEPC Working Group to ensure that the international and U.S. standards may parallel the guidelines of acceptance for alternative tank vessel designs.

Two comments were received on the allowable strength of double hull design and one on alternative materials acceptable for double hull tank vessel construction.

Under 46 CFR 31.10–1 the U.S. accepts the American Bureau of Shipping (ABS) standards, "Rules for Building and Classing Steel Vessels," for the minimum requirements of strength and reliability of hulls, boilers, and machinery for tank vessels. Specific standards for the strength and scantling

of tankship and tank barge construction are in 46 CFR 32.60 and 32.63.

The U.S. also accepts approved plans and the certificates of ABS, or other recognized classification societies, for classed vessels as evidence of structural sufficiency for a vessel's hull. This is not to say that alternative materials to steel will not be acceptable. The Coast Guard, pursuant to recommendations in its report to Congress, has responded to questions by designers, owners, and operators of tank vessels regarding the use of alternative materials to meet the double hull standards of the IFR.

This rule does not prescribe standards for vessel strength or scantlings. Strength and scantling requirements are reviewed in the initial approval or acceptance of a vessel design prior to the vessel's inspection for certification by the Coast Guard. Actions are being taken through the newly established Flag State Implementation (FSI) Sub-Committee at IMO, in conjunction with the International Association of Classification Societies (IACS), to examine classification society and international vessel construction strength rules. Areas of concern involve the use of high tensile steels, reduced corrosion levels in scantlings, and designs in which scantlings or other structural members are susceptible to fatigue fracturing.

5. 33 CFR 157.10d(c). Three comments addressed the dimensions for double bottom height prescribed in § 157.10d(c)(2). Two comments supported larger protective double bottom spacing (B/15 or 2 meters, whichever is greater), while one comment suggested that the height for a vessel's double bottom spacing be determined using a mean sized vessel's beam which would enhance inspection and maintenance capabilities for smaller beamed vessels and not penalize beamier vessels (specifically barges) that usually operate at a shallower draft.

The major concern stated was that larger vessels, specifically those over 100,000 deadweight tons (DWT), would be allowed to default to a height of 2 meters under the IFR requirement of B/15 or 2 meters, whichever is less. It was also stated in the comment that the National Research Council (NRC) recommended the dimension requirement for double bottom height be, "B/15 or 2 meters, which ever is greater," in their study, "Tanker Spills: Prevention by Design." The Coast Guard notes that in that study's Executive Summary, the NRC recommended that more research was needed to determine the spacing between hulls that best satisfies all concerns.

What is not taken into account by the comment is that the double bottom height of the larger vessels will also be affected by the requirement of § 157.10d(c)(4). For larger tank vessels to meet the trim and stability aggregate volume ballast requirements of this section, a 2 meter spacing of the double bottom and double side voids, is generally not large enough to provide the volume of ballast required. Thus, either the double bottom or side spacing, or both, must be expanded to meet this trim and stability requirement, and results in the height or width of these spaces being larger than required by the minimum standards.

The Coast Guard considers the double hull dimensions of the IFR to appropriately balance economic and environmental concerns. There have been two recent groundings of vessels which met the B/15 or 2 meters criteria. In both instances the outer hulls were breached but the inner hulls were not damaged enough to allow any loss of cargo. Both vessels were able to offload their cargoes safely, and proceed in ballast to shipyards for major bottom hull repairs.

This design standard has received strong public consensus and been incorporated in IMO's accepted Regulation 13F of Annex I of MARPOL 73/78 for international vessel double hull design standards. The Coast Guard considers international consistency to be extremely important due to the global nature of the marine transportation of oil. Therefore, this final rule makes no change to the parameter of the double bottom spacing standards for double hull design.

6. 33 CFR 157.10d(c), continued. Two comments were received regarding the double hull protection required by § 157.10d(c) (1) and (2) to include fuel tanks. One comment supported the IFR standard for protection of fuel oil tanks only within the cargo tank length as discussed in paragraph 3, while the second comment stated that the IFR violated OPA 90 by failure to require double hull protection for bunker fuel tanks throughout the vessel's length.

As discussed in detail in the IFR, the Coast Guard does not concur that OPA 90 requires the protection of fuel oil tanks outside of vessel's cargo tank length. Thus, no change has been made and fuel oil tanks aft of the cargo tank length (defined in 33 CFR 157.03(aa)) are not required to be double hull protected.

7. 33 CFR 157.10d(c), continued, and 157.10d(d). Eight comments recommended that existing double hull tank vessels be permitted to continue operating, even if the dimensions of such vessel, specifically the double bottom height, do not meet the existing vessel double hull standards of § 157.10d(c)(2)(iii). Two comments supported that the existing double hull dimension standards remain as published in the IFR.

The Coast Guard previously responded to comments such as these in the IFR preamble for vessels contracted before June 30, 1990, and reduced the dimensional requirements for existing double hulls in § 157.10d(c)(1)(iii) for double side width, and § 157.10d(c)(2)(iii) for double bottom height. These dimensional standards are consistent with the international standards of Regulations 13G of Annex I of MARPOL, as adopted by MEPC 32.

The comments received did not provide significant information to support a need to reduce the double bottom minimum dimension standards. To reduce these standards further would restrict existing double hull vessels from trading internationally. As noted below, domestic vessels on limited routes do have reduced double hull spacing standards.

The Coast Guard has not changed the minimum dimensions acceptable for existing double hull tank vessels in this final rule. The owners of those existing double hull tank vessels that do not meet the minimum dimensions in this rule may request an equivalency determination under the provisions of § 157.07. If the Coast Guard determines that this has a substantial impact on existing vessels because they are unable to meet the equivalency provisions, the Coast Guard may consider a future change to this rulemaking.

One comment stated that the dimension requirements of § 157.10d(d)(3) which allows vessels less that 10,000 DWT that operate exclusively on inland and certain coastwise routes to reduce double hull design standards due to route are not warranted. This comment did not provide any documentation which supported the need for larger dimensional spacing for double hull standards on these vessels of limited size and route. The Coast Guard does not concur with this comment.

All vessels which are constructed or adapted to carry, or carry, oil in bulk as cargo or cargo residue must be double hulled under OPA 90 mandate. Vessels under 10,000 DWT (roughly 5,000 gross tons) are not exempt from this requirement. Under section 4115 of OPA 90, "a vessel of less than 5,000 gross tons equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of the discharge

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of oil * * *," may be exempted from the requirement for a double hull. To date, the Coast Guard has not accepted any double containment system proposals.

8. 33 CFR 157.10d(d). One comment stated that the use of minimum dimensions for double hull spaces could limit access for the proper inspection and maintenance of tank vessels. Nothing in this rule requires the use of minimum dimensions for double hull vessel design and construction. The Coast Guard encourages designers and builders to consider equally the inspection and safety requirements for access of personnel to double hull areas. Recent presentations to the Coast Guard by companies and individuals designing vessels with double hull configurations, met or exceeded expectations for access, inspection, and human engineering allowance for double hull spaces.

As the Coast Guard reviews and approves plans for U.S. flag vessels before construction or major modification, these areas will be closely examined. No change to this rule was made.

9. 33 CFR 157.11(g)(1). One comment recommended that a new subparagraph be added to this section which prohibited the placement of cargo piping in voids or duct keels within the double bottom space. The discussion of this recommendation stated that cargo piping located within the cargo tank offers some degree of protection from damage due to groundings and it is likely that such an arrangement would allow the piping system to be available for transfer of cargo in salvage operations in all but the most severe of incidents.

The Coast Guard agrees with the discussion of this recommendation in part, but does not agree that a subparagraph needs to be added to this section. § 157.19 already ensures the height of cargo piping from vessel's bottom plating which similarly protects it from damage in a grounding situation.

Duct keels, which can be used for the pathway of cargo piping through a vessel's cargo block area within a box keel, must be isolated from double bottom ballast tanks, as cargo piping is not allowed in these spaces under § 157.11(g)(1)(ii). Duct keels have been used extensively in the design of liquid bulk oil carriers to allow for a separation of cargo lines from the ballast tanks while making the pipes available to examination and repair even when the vessel is in operation.

The duct keel, which has the heaviest scantlings of the vessel bottom, including bottom plating, assists in the protection of the cargo piping system in this design. The rule was not changed due to this recommendation.

10. 33 CFR 157.19. One comment stated that the cargo tank size limitation requirement of this section, for vessels under 5000 DWT, was arbitrary and its restriction would cause operational oil pollution increases. Further, it stated that many existing double hull inland river box barges carry approximately 10,000 barrels of cargo in two cargo compartments of 5,000 barrels each. This section will necessitate addition of a third compartment to vessels of this DWT size, with tank capacities limited to less than 4,400 barrels.

As discussed in the IFR, size limitation is a provision of Regulation 13F, paralleled in U.S. regulations. This requirement limits the size of individual cargo tanks on new vessels under 5,000 DWT, to no more than 700 cubic meters (4,400 bbls), unless double sides are fitted. The IFR and this final rule require a vessel of that size to have double sides and double bottoms.

The Coast Guard has not made any changes to § 157.19, as the double hull protection required for tank vessels by this rule surpasses the requirements of double side protection required by Regulation 13F. As any new tank barges will require double hull protection, the 4,400 bbls cargo tank size limit will not apply.

11. 46 CFR 32.53. One comment recommended that inert gas requirements for double hull spaces be closely evaluated, as proposed in the IFR, prior to future rulemaking. Actions are continuing in this area of concern at IMO.

At the 61st session of IMO's Maritime Safety Committee (MSC 61), Resolution MSC.27(61) was adopted as an amendment to SOLAS 74, regarding new equipment and operation standards for new and existing vessels. This resolution was accepted on April 1, 1994, as a specified majority of the Parties signatory to SOLAS 74 did not declare objection to the resolution.

The Resolution was published in total as part of NVIC No. 3–93 on April 12, 1993. In Resolution MSC.27(61), Regulation 59—"Venting, purging, gas-freeing and ventilation," was amended by adding a new paragraph 4 to the existing regulation. The amended Regulation 59 is republished below for the readers information:

"*4 Inerting, ventilation and gas measurement*

4.1 This paragraph shall apply to oil tankers constructed on or after 1 October 1994.

4.2 Double hull and double bottom spaces shall be fitted with suitable connections for the supply of air.

4.30 On tankers required to be fitted with inert gas systems:

.1 double hull spaces shall be fitted with suitable connections for the supply of inert gas;

.2 where such spaces are connected to a permanently fitted inert gas system, means shall be provided to prevent hydrocarbon gases from the cargo tanks entering the double hull spaces through the system;

.3 where such spaces are not permanently connected to an inert gas system, appropriate means shall be provided to allow connection to the inert gas main.

4.4.1 Suitable portable instruments for measuring oxygen and flammable vapor concentrations shall be provided. In selecting these instruments, due attention shall be given for their use in combination with the fixed gas sampling line systems referred to in paragraph 4.4.2.

4.4.2 Where atmosphere in double hull spaces cannot be reliably measured using flexible gas sampling hoses, such spaces shall be fitted with permanent gas sampling lines. The configuration of such line systems shall be adapted to the design of such spaces.

4.4.3 The materials of construction and the dimensions of gas sampling lines shall be such as to prevent restriction. Where plastic materials are used, they should be electrically conductive.

This SOLAS amendment does not require permanently inerted double hull voids, since inert gas poses a danger to personnel and may also tend to accelerate corrosion in ballast tanks. This amendment requires that connections be available to supply both air and inert gas to ballast tanks within the double hull, and requires the capability to ensure that safe atmospheres are available within them for operational and personnel safety.

The Coast Guard is reviewing enforcement and regulatory requirements due to the acceptance of IMO Resolution MSC.27(61) amendments. If regulatory action is deemed necessary for vessels other than those on international routes which must meet SOLAS 74 regulations, the Coast Guard will propose regulations in a future rulemaking.

General Comments (Non-CFR Specific)

12. Ten comments recommended that the IFR be adopted as a final rule with no changes, and that the double hull rules be the only accepted design standards. Various reasons were provided, most with the implication that the double hull would be the best for providing protection to the environment. Except for changes discussed above, the Coast Guard agrees with these recommendations.

13. Two comments recommended that double hull designs require continuous centerline bulkhead standards or stability limitations, as this design would have a tendency to react erratically due to free surface effect during loading and offloading situations where the vessel's tanks are in a partially loaded condition.

The Coast Guard notes that some new double hull tanker designs without longitudinal bulkheads, though meeting MARPOL and IFR double hull design standards, have inferior intact stability characteristics than tankers with longitudinal bulkheads. The Coast Guard, working with IMO's Stability, Loadlines and Fishing Vessels Safety (SLF) Sub-Committee, is conducting an ongoing review of the need for additional longitudinal bulkhead requirements on double hull designs. Most designs, even without centerline bulkheads, can be safely operated by vessel officers following loading and discharge instructions in the vessel's loading manual.

Review and study of these intact stability requirements are being completed and the Coast Guard is proposing the implementation of new stability requirements under a separate rulemaking (CGD 91–206). Interim guidance on stability for double hull tankers has been provided in NVIC 4–92.

Regulatory Evaluation

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). An analysis of the double hull rules is in the public docket. Implementation is projected to gradually increase the transportation cost of oil by four-tenths of a cent per gallon over the next 25 years.

This double hull rulemaking is one of several rules which are being issued in accordance with Titles IV and V of OPA 90. Some of these rules interact with each other. The overall impact of these rules may not equal the cumulative total impact of each rule considered individually. For example, the beneficial impact of the double hull rule is the reduced amount of oil spilled after certain grounding or collision casualties. However, the impact of this rule will be reduced by other OPA 90 rulemakings and other actions that will improve operational and navigational safety of vessels which carry oil in bulk. These other actions will reduce the numbers of collisions and groundings which, in turn, reduce the overall benefits of (or, total spill reduction attributable to) double hull construction.

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all Title IV and V OPA 90 rules, once they are all completed and issued. This comprehensive RIA will evaluate the interaction of the rules relative to each other, and assess their impacts in total. However, since the rules are being developed and issued individually over several years, each rule is being evaluated by itself through an interim regulatory impact analysis (Interim RIA).

Accordingly, an Interim RIA of this rule was prepared and placed in the public docket. The Interim RIA addresses the need for this rulemaking, the standards adopted in this rule, the alternatives to this rule, and the anticipated economic impacts of this action. A Notice of Availability of the Interim RIA was published in the **Federal Register** on January 15, 1992 (57 FR 1854), and public comments on the Interim RIA were invited. Six comments were received; none of the comments resulted in revision of the Interim RIA. However, an addendum to the Interim RIA has been placed in the public docket to reflect an increase in the projected economic benefits of spill prevention. A discussion of this increase is included in the summary of public comments on the cost of this rule published in the IFR of August 12, 1992 (57 FR 36222). In that there is so little change in this rule from the IFR, the Interim RIA, as amended, is adopted as a final assessment under Executive Order 12866.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard has evaluated the impact of harmonizing the U.S. cargo tank length definition with the international definition of Regulation 13E of Annex I, MARPOL 73/78 on vessels owned and operated by small business entities. Most vessels owned or operated by small business entities are barges and do not have after cargo pump rooms or main machinery spaces underdeck. The change in the cargo tank length definition in 33 CFR 157.03(aa) will not change the length of a barge required to be double hull protected by the U.S. double hull standards of 33 CFR 157.10d. The only affect of the change in definition will be on tankships. The Coast Guard reviews and approves U.S. vessel construction designs before they are built and has verified that no small entity tankships will be adversely affected by the change in the definition of cargo tank length. The modification of the definition should reduce the construction and operating costs for new tankships designed to meet the double hull standards. Converting existing single hull tankships to meet the double hull standards, when these vessels can no longer operate as single hull vessels, should also be less costly.

Because it expects the impact of this rulemaking to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no additional collection-of-information requirements. Section 33 CFR 157 was revised by the IFR to require the submission of plans verifying compliance with this rule. No additional information collection burden is imposed due to this modification of the cargo tank length definition. Compliance with this rule can be verified from other information that is currently submitted under 33 CFR 157.24 and 46 CFR 31.10.

Under the IFR, the Coast Guard has submitted the information collection requirements in this rule to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is 46 CFR 157.24 and the corresponding OMB approval numbers are OMB Control Numbers 2115–0503 and 2115–0106.

Federalism

The Coast Guard has analyzed this rulemaking under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

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This final rule amends standards for the construction of double hull tank vessels. The authority to regulate tank vessel construction standards is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute.

Since tank vessels move between U.S. ports in the national marketplace, and between U.S. and foreign ports in the international marketplace, tank vessel construction is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. The Coast Guard received no comments addressing the federalism implications during the comment periods of the IFR. Therefore, the Coast Guard continues the long-established practice of preempting State action addressing the same subject matter.

Environment

The Coast Guard environmental assessment (EA) for Double Hull Design Requirements for Tank Vessels was prepared in accordance with Commandant Instruction M16475.1B, the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190), and the Council of Environmental Quality Regulations of July 1, 1986 (40 CFR parts 1500–1508).

This rule adopts the IFR as final with minor changes to definitions implementing the double hull provisions in Section 4115(a) of OPA 90 (46 U.S.C. 3703a), and is not expected to result in significant impact on the quality of the human environment, as defined in NEPA. The Coast Guard has placed a Finding of No Significant Impact (FONSI) in the public docket.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Marine safety.

Accordingly, the interim rule amending 33 CFR parts 155 and 157, and 46 CFR parts 30, 32, 70, 90, and 172, which was published at 57 FR 36222 on August 12, 1992, is adopted as a final rule with the following changes:

TITLE 33 CFR PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

2. Section 157.03 is amended by revising paragraphs (v) and (aa) to read as follows:

§ 157.03 Definitions.

* * * * *

(v) *Tank vessel* means a vessel that is constructed or adapted primarily to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States. This does not include an offshore supply vessel, or a fishing vessel or fish tender vessel of not more than 750 gross tons when engaged only in the fishing industry.

* * * * *

(aa) *Cargo tank length* means the length from the forward bulkhead of the forwardmost cargo tanks, to the after bulkhead of the aftermost cargo tanks.

* * * * *

Dated: March 1, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 95–5573 Filed 3–9–95; 8:45 am]

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federal register

Friday
March 10, 1995

Part V

Department of Education

Jacob K. Javits Gifted and Talented Students Education Program; Final Priorities and Notice Inviting Applications for New Awards for Fiscal Year 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 206A–1]

Jacob K. Javits Gifted and Talented Students Education Program

Notice inviting applications for new awards for fiscal year 1995.

Purpose of Program: To provide grants to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students; to encourage the development of rich and challenging curricula for all students; and to supplement and make more effective the expenditures of State and local funds for the education of gifted and talented students.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian organizations.

Deadline for Transmittal of Applications: April 25, 1995.

Deadline for Intergovernmental Review: June 26, 1995.

Applications Available: March 27, 1995.

Estimated Available Funds: $5,000,000.

Estimated Range of Awards: For Absolute Priority 1: $100,000–$250,000; For Absolute Priority 2: $150,000–$300,000.

Estimated Average Size of Awards: For Absolute Priority 1: $200,000; For Absolute Priority 2: $225,000.

Estimated Number of Awards: For Absolute Priority 1: 19; For Absolute Priority 2: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this grant program in 34 CFR part 791, subject to the revised definitions of "institutions of higher education", "local educational agency" and "state educational agency" set forth in 20 U.S.C. 8801.

Priorities: The notice of final priorities as published in this issue of the **Federal Register** applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 791.21.

The program regulations in 34 CFR 791.20 provide that the Secretary may award up to 115 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of Operation (34 CFR 791.21(c)). 5 points are added to this criterion for a possible total of 35 points.

Evaluation Plan (34 CFR 791.21(f)). 10 points are added to this criterion for a possible total of 25 points.

For Applications or Information Contact: Carolyn Warren, U.S. Department of Education, 555 New Jersey Avenue, NW., room 504, Washington, DC 20208–5644. Telephone: (202) 219–2206.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8031–8036.

Dated: March 6, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5896 Filed 3–9–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Students Education Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces absolute priorities and a competitive preference priority under the Jacob K. Javits Gifted and Talented Students Education Program. The Secretary takes this action to focus Federal financial assistance on specific approaches to identifying and serving gifted and talented students and to developing ways in which the programs and services developed for gifted and talented students can be used to benefit all children. The priorities bring special attention to programs and services for students (including economically disadvantaged individuals, individuals of limited-English proficiency, and individuals with disabilities) who may not be identified and served through traditional gifted and talented programs. The priorities also encourage programs and projects to develop and improve the capability of schools in an entire State or region of the Nation to plan, conduct, and improve programs in schools using, where appropriate, methods and materials developed in gifted and talented programs to improve the educational opportunities for all children. These projects must involve cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, such as business, industry, and labor.

EFFECTIVE DATE: These priorities take effect April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Carolyn Warren, U.S. Department of Education, 555 New Jersey Avenue NW., Room 504, Washington, DC 20208–5572. Telephone: (202) 219–2206. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Jacob K. Javits Gifted and Talented Students Education Program is designed to build nationwide capability in gifted and talented education and encourage rich and challenging curricula for all children.

The Secretary seeks to improve the education of gifted and talented children, and to use the strategies developed in gifted and talented education programs to improve the education of all children in a school. The Secretary believes that this is an integral part of the National Education Goals, which require that every student attain higher standards of academic excellence. Gifted and talented education programs can contribute to systemic reform by modeling a coordinated system of high standards, assessments, challenging curricula, and teacher preparation to improve education. In addition, the Secretary believes that the educational needs of gifted and talented students from populations historically underserved by gifted and talented education programs must be addressed.

In order to carry out these improvements, the Secretary announces a priority that would support the development of model demonstration programs that focus on economically disadvantaged children, children with limited English proficiency or children with disabilities. The projects are required to involve a school or schools that serve at least 50 percent low-income children and to incorporate professional development of staff and training of parents into their programs.

In addition, the Secretary announces a second priority that encourages cooperative efforts of technical assistance and information dissemination throughout a State or region that focus on how programs and methods for teaching gifted and talented students, where appropriate, could be adapted to improve instruction for all students in schools.

In both absolute priorities, the projects must be based on challenging content and performance standards in one or more of the core subject areas. These priorities focus on projects that incorporate challenging content and performance standards in the core subjects because the Secretary believes that this is the most promising way to raise students' achievement.

The Secretary estimates that at least 75 percent of available funds will be used to support model projects in schools, and 25 percent of available funds will support technical assistance and dissemination projects.

For the first priority involving model programs, the Secretary shall direct financial assistance to projects that primarily benefit urban or rural areas that have been designated as Empowerment Zones or Enterprise Communities in accordance with Section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act (OBRA) of 1993.

Background on Empowerment Zone and Enterprise Community Program

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is the first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

On December 21, 1994, the President announced the designation of 6 urban and 3 rural empowerment zones and 65 urban and 30 rural enterprise communities in accordance with Internal Revenue Code section 1311, as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). A list of these empowerment zones and enterprise communities will be included in the application package.

To have been eligible for designation, an area must have been nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the Internal Revenue Code.

In the Empowerment Zone and Enterprise Community program communities were invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities were designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zones and Enterprise Community program contact HUD at 1–800–998–9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Communities Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education is giving preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well suited for inclusion in a comprehensive approach to economic and community development. For example, the Department has already given preference in the following programs: the Urban Community Service program, Rehabilitation Act Projects with Industry program, the Rehabilitation Act Special Demonstration Projects program, the Parent Training program, and the Early Childhood Education program under the Individuals with Disabilities Education Act. In addition to the Javits Gifted and Talented Students Education Program described in this notice, the Department intends to give preferences to Empowerment Zones and Enterprise Communities in a variety of discretionary programs under the Elementary and Secondary Education Act. Notices concerning those programs will be published at a later date.

The Empowerment Zone and Enterprise Community initiative and the Javits Gifted and Talented Students Education Program share some common features. Both programs are concerned with the educational advancement of students caught in high-poverty communities. Under the Javits Gifted and Talented Students Education Program, at least one-half of the grants in any given year must serve students who are economically disadvantaged, limited English proficient or who have disabilities.

Communities that are designated under the Empowerment Zone and Enterprise Community program will already have demonstrated a capacity for the type of cooperative planning that allows communities to use, where appropriate, methods and materials developed in gifted and talented programs to improve the educational opportunities for all children.

On October 28, 1994, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (59 FR 54368).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under these priorities for fiscal year 1995 is published in a separate notice in this issue of the **Federal Register**.

Analysis of the Comments and Changes

In response to the Secretary's invitation on the notice of proposed priorities, two of the five parties submitting comments made recommendations. One of the commenters expressed support for the priority without making recommendations for change. Two of the commenters asked for more information on Empowerment Zones and Enterprise Zones when this information is available. An analysis of the recommendations submitted by two commenters follows.

Comments: One commenter asked for clarification on the term "technical assistance" used in Priority 2.

Discussion: "Technical assistance" refers to a broad array of activities designed to help schools and local communities serve students more effectively. The Secretary believes that technical assistance could include such activities as professional development

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of teachers and administrators, consultation with local schools and community groups on promising practices, demonstrations by staff of successful projects, evaluation of current practices in a school or of an individual educator with recommendations for improvement, brokering of resources to serve a school or community better, mentoring of novice educators by more experienced educators, and establishing networks of educators interested in specific topics.

Changes: None.

Comments: One commenter objected to the idea of commingling the worthwhile objectives to serve disadvantaged students with those objectives devoted to gifted and talented students, as the commenter believes they are not the same. The commenter urged the withdrawal of these proposed priorities.

Discussion: The legislation creating the Jacob K. Javits Gifted and Talented Students Education Program gives priority to programs serving economically disadvantaged, limited English proficient, and disabled students who are gifted and talented. The Secretary believes that there are many gifted and talented students who come from disadvantaged backgrounds, and who are not recognized or served by traditional gifted and talented education programs. He believes that these projects will serve as models for ways to identify and serve these students more effectively.

Changes: None

Priorities

The Secretary announces that at least 75 percent of available funds will support model projects in schools developed under absolute priority number 1, and 25 percent of available funds will support technical assistance and dissemination projects developed under absolute priority number 2.

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following two priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Absolute Priority 1—Model Programs

Projects that establish and operate model programs for serving gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Projects must include students who may not be served by traditional gifted and talented programs, including economically disadvantaged students, individuals of limited English proficiency and individuals with disabilities. The projects must incorporate high-level content and performance standards in one or more of the core subject areas as well as utilize innovative teaching strategies. The projects must provide comprehensive ongoing professional development opportunities for staff. The projects must incorporate training for parents in ways to support their children's educational progress. Projects must also include comprehensive evaluation of project activities.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Within this absolute priority concerning model projects, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority. These points would be in addition to any points the application earns under the selection criteria for the program:

Projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community. Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community program.

Absolute Priority 2—Technical Assistance and Information Dissemination Throughout a State or Region

Projects to provide technical assistance and disseminate information throughout a State or region to improve the capability of schools to plan, conduct and improve programs for serving gifted and talented students. Projects must include assistance and information on how programs and methods for teaching gifted and talented students can be adapted, where appropriate, to improve instruction for all students in schools. These projects must be based on challenging content and performance standards in one or more of the core subject areas, and incorporate innovative teaching strategies. The projects must involve cooperative efforts among State and local education agencies, institutions of higher education, and/or other public and private agencies and organizations (including business, industry, and labor).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Regulations: 34 CFR part 791.

Program Authority: 20 U.S.C. 8031–8036.

(Catalog of Federal Domestic Assistance Number 84.206A, Jacob K. Javits Gifted and Talented Students Education Program)

Dated: March 6, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–5897 Filed 3–9–95; 8:45 am]

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federal register

Friday
March 10, 1995

Part VI

Department of Justice

Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31
Formula Grants; Final Rule

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1045]

RIN 1121–AA28

Formula Grants

AGENCY: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing the final revision of the existing Formula Grants Regulation, which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992.

The 1992 Amendments reauthorize and modify the Federal assistance program to State and local governments, and private not-for-profit agencies for juvenile justice and delinquency prevention improvements. The final revision to the existing Regulation provides clarification and guidance to States in the formulation, submission and implementation of State Formula Grant plans and determinations of State compliance with plan requirements. It provides additional flexibility and guidance to participating States while strengthening several key provisions related to the mandates of the JJDP Act.

EFFECTIVE DATE: This regulation is effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The 1992 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program (28 CFR part 31). These statutory changes include: a formula grant fund allocation minimum base for participating States and territories; elimination of the "substantial compliance criteria" with respect to the Deinstitutionalization of Status Offenders (DSO) and Jail and Lockup Removal requirements because full compliance is required; a requirement that there be separate juvenile and adult staff with respect to management, security and direct care in juvenile detention facilities that are collocated with an adult jail or lockup; and a provision that a status offender alleged or found in a judicial hearing to have violated a valid court order (VCO) may be held in a secure juvenile detention or correctional facility only if enhanced due process and procedural protections have been provided.

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, September 13, 1994) amended the DSO provision of the JJDP Act to exclude juveniles charged with or adjudicated for possessing a handgun from coverage under the DSO requirement.

The final regulation details revised procedures and requirements for States participating in the Formula Grants Program resulting from the 1992 Amendments to the JJDP Act (Pub. L. 102–586, November 18, 1992).

Description of Major Changes

Formula Grant Allocations

Section 222(a) of the JJDP Act, provides for a "floating minimum" for the allocation of formula grants to States and Territories that is tied to the total appropriation level for Title II in a given fiscal year (FY). For FY's 1994 and 1995, the total appropriation for Title II exceeded $75 million and Congress appropriated sufficient funds to maintain each State at least at its FY 1992 funding level and raise the minimum allocation for each State and Territory to $600,000 and $100,000 respectively.

Application Deadline

The submission requirement for formula grant applications is changed to require that FY 1995 applications and all subsequent applications be submitted to OJJDP no later than March 31 of the fiscal year for which the funds were allocated.

State Agency Structure—Staffing

The regulation is revised to require the assignment of one full-time Juvenile Justice Specialist to manage the Formula Grants Program.

Collocated Juvenile and Adult Facilities

The regulation clarifies the existing four criteria for a juvenile detention facility that is collocated with an adult jail or lockup by providing for: (1) Total separation in spatial areas of juvenile and adult facilities can be achieved by providing for no common use areas, including time-phasing; (2) total separation in juvenile and adult program activities requires the formulation of an independent and comprehensive operational plan for the juvenile facility which provides a full range of separate program activities for juveniles; (3) separate juvenile and adult staff includes all management, security and direct care personnel; and (4) in States that have standards or licensing requirements for secure juvenile detention facilities, a collocated facility must meet the standards on the same basis as separate facilities and be licensed as appropriate.

OJJDP intends these clarifications to enhance and strengthen the four separate facility requirements for States completing final steps to achieve and maintain full compliance with the jail and lockup removal requirement. State certification and oversight responsibilities are strengthened by requiring annual on-site review. The 1992 Amendments require States to review and ensure compliance with the separate staff criterion in all collocated facilities, including those classified as such by the State and concurred with by OJJDP prior to the effective date of this regulation.

OJJDP believes the ideal or most optimal setting for a juvenile detention facility is one in which the facility is not collocated with an adult jail or lockup. Further, OJJDP believes that jurisdictions and States should not rely upon collocated facilities as a primary or long-term strategy for achieving and maintaining compliance with the jail and lockup removal mandate. However, OJJDP believes that where there is a demonstrated need for an existing or planned collocated facility, jurisdictions should have the flexibility to use such a facility, but only where the enhanced requirements, critical to ensuring an appropriate environment for detained youth, are met. Collocated juvenile detention facilities approved by the State and concurred with by OJJDP prior to March 31, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments.

OJJDP's concurrence on all collocated facilities submitted for OJJDP review after March 31, 1995 is limited to one year and, thereafter, would be reviewed on an annual basis. An on-site review of the facility must be conducted by the compliance monitoring staff for the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence may also require on-site review by OJJDP staff. Additionally, in order to receive OJJDP's initial and subsequent concurrence, a juvenile detention facility approved after March 31, 1995 must, pursuant to a written policy and procedure, only provide secure custody for: juvenile criminal-type offenders; status offenders accused of violating a VCO; and adjudicated delinquents and VCO order violators who are awaiting disposition hearings or transfer to a long-term juvenile correctional facility.

Criteria for Compliance with DSO, Adult Jail and Lockup Removal, Separation, and Minority Over-representation

The regulation deletes the "substantial compliance" criteria from Section 31.303(c)(3) and (e)(4). Pursuant to the 1992 Amendments, participating States are required to be in full compliance with the DSO and Jail and Lockup Removal mandates and demonstrate compliance with the Separation and Enhanced Disproportionate Minority Confinement (DMC) in order to be eligible for FY 1994 and subsequent year Formula Grant funds. Therefore, the regulatory provision recognizing "progress" toward compliance with the Separation mandate is being deleted. Also, enhanced criteria and specific time lines are established for the DMC Mandate.

Deinstitutionalization of Status Offenders

The regulation brings the DSO requirement in line with the Section 223(a)(14) Jail and Lockup Removal requirement by eliminating the monitoring report exclusion for status offenders and nonoffenders securely detained or confined in an adult jail or lockup for less than twenty four hours exclusive of weekends and holidays. This reflects OJJDP's determination that there are no longer any circumstances in which the secure custody of noncriminal juveniles in adult jails and lockups can be justified or sanctioned. To the extent that inadvertent or isolated violations occur, or where violations result from emergency situations, the de minimis criteria for full compliance should continue to provide sufficient latitude to permit States to maintain full compliance with the DSO requirement. Monitoring information to reflect this change must be included in the State Monitoring Report due by December 31, 1995, and subsequent monitoring reports.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the **Federal Register** on July 25, 1994 (59 FR 37866), for public comment. Written comments were received on ten issues addressed by the proposed regulation. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses by OJJDP:

1. Comment: One respondent felt that States should be allowed to submit their Annual Performance Reports ninety days after the end of their reporting period, but no later than June 30th.

Response: States are allowed under the final formula grants regulation to submit their Annual Performance Report, ninety days after the end of their reporting period, but no later than June 30th. The regulation merely formalizes the existing policy of States submitting their required Performance Reports by June 30th of each year.

2. Comment: Another respondent was of the opinion that a person who routinely provides legal representation to youth in juvenile court should be added to the State Advisory Group membership requirement.

Response: Section 223(a)(3) already requires representation of "law enforcement and juvenile justice agencies" including "counsel for children and youth" on the State Advisory Group.

3. Comment: With respect to DMC, States need more time to achieve compliance because the issue is too complex. States were given more time to achieve compliance with DSO, Separation, and Jail Removal. Several respondents indicated that more research is needed before effective interventions can be designed and implemented. Respondents expressed concern that the problem of DMC goes beyond the juvenile justice system and other systems need to be addressed. One respondent suggested that States should be required to review and address the effects of legislation on minority over-representation. A recommendation was also made that States' multi-year formula grant plans and annual plan updates should identify and explain any anticipated action steps from a previous formula grant plan that have not been carried out.

Response: States had five years to reach full compliance on DSO, and eight to reach full compliance on Jail and Lockup Removal. Congress initially addressed DMC in 1988. Congressional action on the 1992 Reauthorization of the JJDP Act makes it clear that States are expected to move forward on DMC. The OJJDP regulation reflects the additional priority Congress has attached to DMC.

The experience of OJJDP and most States supports the public comment about the complexity of DMC. OJJDP recognizes that successful approaches to DMC include lessons learned from DSO, Separation, and Jail Removal. For instance, addressing the relationship between attitudes and behavior, and ensuring local ownership of program initiatives, contributed significantly to progress on the earlier mandates. Ultimate success on DMC will, however, require a concerted and comprehensive approach that goes beyond the earlier mandates. Accordingly, the implementation phase activities set forth in the regulation acknowledge the need to look beyond a narrow focus on police, probation, courts, and corrections. Meaningful prevention (including health, mental health, education and vocational) and intervention resources must be available on an equitable basis, and States need to assess the impact of executive, legislative, and judicial policies on DMC.

The final regulation establishes an expectation that States will examine legislative initiatives which may inadvertently contribute to DMC. Also, the final regulation includes a modification that has States explain in their formula grant plans, any previously slated DMC activities that were not carried out.

4. Comment: One respondent stated that there is no difference between a court intake agency preparing the advisory report required prior to a dispositional commitment to a secure facility for violation of a VCO, and an intake unit operated by a human service agency completing the report. Another respondent questioned whether an advisory report would be allowable if it was prepared by a multidisciplinary review team comprised entirely of court and law enforcement agency workers. Other respondents expressed concern that the report could not be completed between apprehension and an initial hearing; that the report would allow a third party to influence the court's decision making process; and, that the new advisory report requirement makes the VCO violation process too restrictive. One commentator was uncertain about the difference between a VCO violation and contempt of court. A question was raised about whether an advisory report would be required for an adjudicated delinquent who absconds from a court-ordered secure treatment facility. One person recommended that the regulation contain an explicit requirement for legal representation of youth during the VCO violation process.

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Response: The statute requires that the advisory report be prepared by an appropriate public agency (other than a court or law enforcement agency). A review team composed only of court and law enforcement officials is probably not amenable to the term "multidisciplinary." Nonetheless, if the team were operating under the auspices of, and answerable to, an agency other than a court or law enforcement agency, preparation of the report by this review team would be permissible.

The advisory report does not have to be completed between apprehension and the initial court hearing. The advisory report is only required prior to commitment to a secure facility as a disposition, viz., post adjudication. While the report is not binding on the court, it is intended as an additional, objective source of information upon which the court can base its case planning and decision making. As such, Congress intended the report to "influence" judicial actions with respect to status offenders adjudicated for violating a VCO.

OJJDP disagrees with the comment that the VCO process is so restrictive that it is impossible to securely detain accused or adjudicated VCO violators. Those portions of the existing regulation that specifically address the detention of VCO violators have not been changed. The changes being made implement amendments to the JJDP Act that require due process protections from the very beginning of the VCO process, and an advisory report prior to a dispositional commitment to a secure facility. The 1992 Amendments to the JJDP Act reflect Congressional concern about the possible overuse of the VCO exception in order to incarcerate status offenders and circumvent the deinstitutionalization of status offenders provision of the JJDP Act.

Regarding status offenders charged with contempt of court for behavior that would result in the same charge for an adult, OJJDP agrees that this is not a status offense. If, however, the court is using a contempt process in place of the VCO violation process, OJJDP and the State would look to see that all of the VCO requirements had been met before allowing the VCO exception.

Where allowable under State law, adjudicated delinquents that abscond from secure treatment facilities could be held in a juvenile detention center without new charges, and without violating the JJDP Act. In response to the comment about legal counsel, it is noted that the current formula grants regulation requires legal counsel for youth in VCO cases.

5. Comment: Status offenders in jails and lockups already violate jail and lockup removal, and therefore, this should not be counted as a violation of DSO. The respondent also assumed that this did not effect VCO detentions.

Response: Under current regulations, a status offender or nonoffender securely detained in a jail or lockup for less than twenty four hours would violate the jail and lockup removal provision of the JJDP Act, but not the DSO provision. This conflict in the regulations (issued at different points in time) is not acceptable. It is the position of Congress and OJJDP, that there is no excusable reason for securely detaining juveniles in a jail or lockup, who are not being charged with a criminal offense.

Status offenders accused of, or adjudicated for violating a VCO, remain status offenders under OJJDP regulations, and therefore can not be securely detained in jails and lockups.

6. Comment: A respondent expressed concern over the sound separation standard. Specifically, the "no conversation possible" standard was criticized as being too vague. Respondent suggested that sound separation be expanded to mean "any communication from incarcerated adults." Further, it was recommended that the regulation should explicitly indicate that haphazard and accidental contact are no longer permissible.

Response: The final regulation will indicate that sound contact means any oral communication between incarcerated adults and juveniles. In response to the 1992 Amendments of the JJDP Act, "haphazard and accidental" contact were deleted from the proposed formula grants regulation. OJJDP believes this deletion to be sufficient.

7. Comment: Two respondents questioned the total amount of time allowed for the new distance/lack of ground transportation portion of the rural area (non-MSA) exception to jail and lockup removal. Specifically, one respondent recommended that "distance" be defined as three hours by automobile, and that the total period of incarceration be limited to seventy two hours. This recommendation allows for the original twenty four hours grace period plus the new forty eight hours period provided by Congress, but would not then recognize weekends and holidays as currently allowed for in the statute. The other respondent asserted that the total period of incarceration under the distance/lack of ground transportation provision should not exceed forty eight hours. A recommendation was also made that the regulation require youth specific admissions screening in connection with use of the non-MSA exception, and that continuous visual supervision be provided by a trained person.

Response: OJJDP stands by its interpretation of the statute to mean forty eight hours *in addition* to the first twenty four hours "grace period." Because the statute excludes weekends and holidays, the total time may exceed seventy two hours. States are reminded, however, that each use of the expanded rural area exception must be carefully documented. OJJDP concurs with the comment on youth-specific admissions screening, but this will be added to the final regulation as a recommended practice, not a requirement. The existing regulation addresses continuous visual supervision as a recommended practice.

8. Comment: Respondents questioned the proposal to increase the number of waivers from three to four, for failure to achieve full compliance with jail and lockup removal. Opposition was also expressed toward revising the existing criteria used by OJJDP to assess waiver requests. Specifically, respondents disagreed with the proposal to modify the waiver criterion related to the removal of status and nonoffenders from adult jails and lockups.

Response: There is only one State that is possibly in need of another (fourth) waiver in order to access FY 1993 formula grant funds. Starting with FY 1994 formula grant funds, there is no longer a waiver provision for failure to achieve full compliance with jail and lockup removal.

A preliminary review of the subject State's situation suggests that, if a fourth waiver is needed, the waiver criteria could be complied with. If a fourth waiver is needed and justified for this State, it will be granted in the discretion of the Administrator. The waiver provision of the criteria in the existing regulation are being deleted, as they are no longer applicable.

9. Comment: The 1992 Amendments to the JJDP Act restructure State's eligibility for formula grant funds, such that each of the four major mandates is associated with twenty five percent of the grant. As amended, the Act also requires States receiving reduced allocations for noncompliance to expend all remaining funds to achieve compliance, absent a waiver of this requirement from the Administrator. One respondent questioned the ability of States to adequately address the mandates if all funds must be expended on one noncompliant mandate. Another respondent asked OJJDP to clearly delineate the criteria to be used in assessing States' requests for a waiver from the requirement to expend all

funds to achieve compliance with the noncompliant mandate(s), viz., how will OJJDP determine if a State has achieved substantial compliance.

Response: The concern about States' ability to maintain compliance with all of the major mandates when funds must be focused on one noncompliant mandate, is contemplated by the statutory scheme established by Section 223(c)(3)(B)(ii) of the JJDP Act. A waiver of the dedicated funding provision can be granted if the State has achieved substantial compliance with the mandate(s) for which funding was reduced. In addition, the State must have an unequivocal commitment to achieving full compliance with the noncompliant mandate. The final regulation sets forth specific criteria for determining whether a State has achieved substantial compliance want OJJDP to continue the practice.

10. Comments: The proposed regulation reflected the statutory amendment requiring totally separate staff for juvenile detention facilities collocated with adult jails and lockups. In addition, OJJDP proposed eventually ending the practice of concurring with State classifications and approval of juvenile detention facilities located in the same building as adult jails and lockups. Several national organizations responded in support of the proposed regulation's position on collocated facilities. The basis for this support is that the existing criteria for collocated facilities, even when fully implemented, do not ensure adequate protection and services for juveniles. In the opinion of these organizations, the existing criteria do not result in jail and lockup removal.

A number of States on the other hand, argued that the existing criteria are adequate, the burgeoning juvenile detention populations necessitate that as many options as possible be available, and that it is essential for States and local units of government to retain their discretion in juvenile detention planning and operations.

Response: The final regulation attempts to balance the interests presented on the collocated facility issue during the public comment period. Specifically, OJJDP will work with the States to implement a three-prong approach to collocated facilities that is consistent with Section 223(a), Paragraphs (13) and (14) of the JJDP Act. The first prong involves a formal assessment of detention needs in a particular jurisdiction or region prior to moving ahead with the approval process for a collocated facility.

OJJDP's technical assistance provider will work with jurisdictions interested in a collocated facility to collect and analyze the necessary information for sound juvenile detention services planning. The second prong involves strengthened regulatory criteria for States and OJJDP to use in the approval and concurrence processes, respectively. Specifically, OJJDP will return to its original (1984) standard of not permitting time-phased use of spatial areas in collocated juvenile and adult facilities and will fully implement the 1992 Amendment to the JJDP Act requiring totally separate staff for juvenile detainees. The third prong consists of a requirement that approved collocated facilities receive an annual on-site visit by the State Formula Grant Agency. The purpose of the visit is to reassess the facility's compliance with the collocated criteria, and to revisit the need to collocate facilities in the jurisdiction or region.

Issues Not Addressed by Public Comments

1. Deadline for Monitoring Reports—The current regulation says December 31st of each year. Timely submission of State monitoring reports will be tied to State eligibility for reverted funds, as is the case with formula grant plans and performance reports.

2. The JJDP Act says the State advisory group "shall" consist of * * * and the proposed regulation says "should consider." The final regulation will reflect this correction.

3. Youth Handgun Safety Act—The Violent Crime Control and Law Enforcement Act of 1994 amended the DSO provision of the JJDP Act to exclude juveniles charged with handgun possession. This occurred after publication of the proposed regulation. The final regulation will reflect this change in the definition of status offender.

Executive Order 12866

This final regulation is not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order 12866.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 31, States must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to sixty days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the OJJDP Formula Grants Regulation, 28 CFR Part 31, is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 is revised to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*

2. Section 31.3 is revised to read as follows:

§ 31.3 Formula Grant Plans and Applications.

Formula Grant Applications for each fiscal year should be submitted to OJJDP by August 1 (sixty days prior to the beginning of the fiscal year) or within sixty days after the States are officially notified of the fiscal year formula grant allocations. Beginning with FY 1995 and each subsequent fiscal year, all Formula Grant Applications must be submitted no later than March 31 of the fiscal year for which the funds are allocated.

3. Section 31.101 is revised to read as follows:

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and

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administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 299(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority

4. Section 31.102 is amended by adding two sentences at the end of paragraph (c) to read as follows:

§ 31.102 State agency structure.

* * * * *

(c) * * * At a minimum, one full-time Juvenile Justice Specialist must be assigned to the Formula Grants Program by the State agency. Where the State does not currently provide or maintain a full-time Juvenile Justice Specialist, the plan must clearly establish and document that the program and administrative support staff resources currently assigned to the program will temporarily meet the adequate staff requirement, and provide an assurance that at least one full-time Juvenile Justice Specialist will be assigned to the Formula Grants Program by the end of FY 1995 (September 30, 1995).

5. Section 31.203 is revised to read as follows:

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency, its supervisory board established pursuant to Section 299(c) and the State advisory group established pursuant to Section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and maintenance of records relating to their functions.

6. Section 31.301 is amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 31.301 Funding.

(a) *Allocation to States.* Funds shall be allocated annually among the States on the basis of relative population of persons under age eighteen. If the amount allocated for Title II (other than Parts D and E) of the JJDP Act is less than $75 million, the amount allocated to each State will not be less than $325,000, nor more than $400,000, provided that no State receives less than its allocation for FY 1992. The territories will receive not less than $75,000 or more than $100,000. If the amount appropriated for Title II (other than Parts D and E) is $75 million or more, the amount allocated for each State will be not less than $400,000, nor more than $600,000, provided that Parts D and E have been funded in the full amounts authorized. For the Territories, the amount is fixed at $100,000. For each of FY's 1994 and 1995, the minimum allocation is established at $600,000 for States and $100,000 for Territories.

* * * * *

(c) *Match.* Formula Grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100 percent cash match (dollar for dollar), and construction projects funded under Section 299C(a)(2) of the JJDP Act which also require a 100 percent cash match.

(d) *Funds for administration.* Not more than ten percent of the total annual Formula Grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to Section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under Section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, removal of juveniles from adult jails and lockups, and/or reducing the disproportionate confinement of minority youth in secure facilities. Absent a request for extension which demonstrates compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the proceedings under Section 223(d), formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will, beginning with FY 1994, be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be awarded to eligible recipients pursuant to program announcements published in the **Federal Register**.

7. Section 31.302 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 31.302 Applicant State agency.

(a) Pursuant to Section 223(a)(1), Section 223(a)(2) and Section 299(c) of the JJDP Act, the State must assure that the State agency approved under Section 299(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) * * *

(2) Shall consider in meeting the statutory membership requirements and responsibilities of Section 223(a)(3) (A)–(E), appointing at least one member who represents each of the following: a locally elected official representing general purpose local government; a law enforcement officer; a juvenile or family court judge; a probation officer; a juvenile corrections official; a prosecutor; a person who routinely provides legal representation to youth in juvenile court; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing programs of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning learning disabilities, child abuse, neglect and youth violence.

* * * * *

8. Section 31.303 is amended by revising paragraphs (a) and (b) to read as follows:

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with Sections 223(a) (1), (2), (3), (4), (5), (6), (7), (8)(c), (9), (10), (11), (16), (17), (18), (19), (20), (21), (22), and (25), and Sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application kit provides a form and guidance for the provision of assurances. OJJDP interprets the Section 223(a)(16) assurance as satisfied by an affirmation that State law and/or policy clearly require equitable treatment on the required bases; or by providing in the State plan that the State agency will require an assurance of equitable treatment by all Formula Grant subgrant

and contract recipients, and establish as a program goal, in conjunction with the State Advisory Group, the adoption and implementation of a statewide juvenile justice policy that all youth in the juvenile justice system will be treated equitably without regard to gender, race, family income, and mentally, emotionally, or physically handicapping conditions. OJJDP interprets the Section 223(a)(25) assurance as satisfied by a provision in the State plan for the State agency and the State Advisory Group to promulgate policies and budget priorities that require the funding of programs that are part of a comprehensive and coordinated community system of services as set forth in Section 103(19) of the JJDP Act. This requirement is applicable when a State's formula grant for any fiscal year exceeds 105 percent of the State's formula grant for FY 1992.

(b) *Serious juvenile offender emphasis.* Pursuant to Sections 101(a)(10) and 223(a)(10) of the JJDP Act, OJJDP encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

* * * * *

§ 31.303 [Amended]

9. Section 31.303 is amended by revising paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) *Federal wards.* Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

* * * * *

10. Section 31.303 is amended by revising paragraph (c)(4) to read as follows:

* * * * *

(c) * * *

(4) *DSO compliance.* Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(12)(A) may, in lieu of addressing paragraphs (c) (1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

* * * * *

11. Section 31.303 is amended by revising paragraphs (d)(1) (i) and (ii) to read as follows:

* * * * *

(d) * * *

(1) * * *

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" is defined to include any sight and sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. Sound contact is further defined to mean no oral communication between incarcerated adults and juveniles. Separation must be accomplished in all secure areas of the facility which include, but are not limited to: sallyports within the secure perimeter of the facility, other entry areas, all passageways (hallways), admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, health care, and other areas as appropriate.

(ii) In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and confined adults.

* * * * *

12. Paragraph (d)(2) of § 31.303 is revised to read as follows:

* * * * *

(d)* * *

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State.

* * * * *

13. Paragraph (e)(3) in § 31.303 is revised to read as follows:

* * * * *

(e)* * *

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups. Juvenile facilities collocated with adult facilities are not considered adult jails or lockups when the criteria set forth in paragraph (e)(3)(i)(D) of this section are complied with.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or those that are allowable under paragraph (e)(3)(i)(C) of this section.

(B) The State, with OJJDP concurrence must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in Paragraph (e)(3)(i)(D) of this section for the purpose of monitoring compliance with Section 223(a), Paragraphs 12(A), (13) and (14) of the JJDP Act.

(C) A needs based analysis must precede a jurisdiction's request for State approval, and OJJDP concurrence that a collocated facility qualifies as a juvenile detention facility. Specifically, consideration should be given to such factors as excessive travel time to an existing juvenile detention center; crowding in an existing facility (despite the use of objective detention criteria); and in areas where there are no juvenile detention facilities, a measurable increase in the need for juvenile detention beds. This list is not considered exhaustive. OJJDP's technical assistance provider to the States should be involved in the needs based analysis (without cost to the State or local jurisdiction). The needs based analysis must take into consideration and be coordinated with the State's plans and efforts toward a continuum of detention services for juvenile offenders.

(D) Each of the following four criteria must be met in order to ensure the requisite separateness of the two facilities:

(*1*) Total separation between juvenile and adult facility spatial areas such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Total separation of spatial areas can be achieved architecturally, and must provide for no common use areas (time-phasing is not permissible).

(*2*) Total separation in all juvenile and adult program areas, including recreation, education, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. However, equipment and other resources may be used by both populations subject to security concerns

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and the criterion in paragraph (e)(3)(i)(A) of this section.

(*3*) Separate staff for the juvenile and adult populations, including management, security staff, and direct care staff. Specialized services staff who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations, subject to State standards or licensing requirements. The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population.

(*4*) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, then the jurisdiction must cooperate in a preapproval review of its physical plant, staffing patterns, and programs by an organization selected and compensated by OJJDP. This review will be based on prevailing national juvenile detention standards, and will inform the State's approval process and concurrence by OJJDP.

(ii) The State must initially determine that the four criteria are fully met. Upon such determination, the State must submit to OJJDP a request for concurrence with the State finding that a separate juvenile detention facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each criterion has been met. It is incumbent upon the State to make the initial determination through an on-site facility (or full plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile facility is maintained by continuing to fully meet the four criteria set forth in paragraph (e)(3)(i)(D) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before March 31, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(C) of this section. Unless otherwise indicated, review of previously approved collocated facilities is expected to occur as part of the State's regularly scheduled monitoring activities.

(iv) OJJDP's concurrence on facilities considered after March 31, 1995 is limited to one year and thereafter, on an annual basis. An on-site review of the facility must be conducted by the compliance monitoring staff person(s) in the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence is required annually, and may involve on-site review by OJJDP staff. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(A) through (D) of this section is being maintained, and to assess the continuing need for the collocated facility and the jurisdiction's long term plan to move to a free-standing facility (single jurisdiction or regional) or other detention alternatives unless the juvenile detention center is part of a justice center, in which case the annual review will look solely at the four regulatory criteria. An example of a justice center is a building or a set of buildings in which various agencies are housed, such as law enforcement, courts, State's attorneys, public defenders, and probation, in addition to an adult jail or lockup, and a juvenile detention facility.

(v) In order to receive OJJDP's initial and any subsequent concurrences, a juvenile detention facility approved after March 31, 1995 must, pursuant to a written policy and procedure, only provide secure custody for juvenile criminal-type offenders; status offenders accused of violating a VCO; and adjudicated delinquents and VCO violators who are awaiting disposition hearings or transfer to a long term juvenile correctional facility.

* * * * *

14. Paragraph (e)(4) in § 31.303 is removed and paragraph (e)(5) is redesignated as paragraph (e)(4) and revised to read as follows:

* * * * *

(e) * * *

(4) *Jail removal compliance.* Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(14) may, in lieu of addressing paragraphs (e)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

* * * * *

15. Paragraph (f)(3)(i) in § 31.303 is amended by adding a sentence to the end of the paragraph to read as follows:

* * * * *

(f) * * *

(3) * * *

(i) * * * Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

* * * * *

16. Paragraph (f)(3)(iv) in § 31.303 is amended by revising the last sentence to read as follows:

* * * * *

(f) * * *

(3) * * *

(iv) * * * A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

* * * * *

17. Paragraph (f)(3)(vi) in § 31.303 is amended by adding three sentences to the end of the paragraph to read as follows:

* * * * *

(f) * * *

(3) * * *

(vi) * * * This determination must be preceded by a written report to the judge that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency). A multidisciplinary review team that operates independently of courts or law enforcement agencies would satisfy this requirement even if some individual members of the team represent court or law enforcement agencies.

* * * * *

18. Paragraph (f)(4)(v) in § 31.303 is amended by revising the last sentence to read as follows:

* * * * *

(f) * * *

(4) * * *

(v) * * * OJJDP strongly recommends that jails and lockups that incarcerate juveniles be required to provide youth specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

* * * * *

19. Paragraph (f)(4)(vi) in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(4) * * *

(vi) Pursuant to Section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirements as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty four hours period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty four hours, so that a brief (not to exceed an additional forty eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty four hours initial court appearance standard required by paragraph (f)(4)(i) of this section. States must document and describe in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ ground transportation, and weather allowances.

* * * * *

20. Paragraph (f)(5) in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(5) *Reporting requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for Section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six months. The report shall be submitted to the Administrator of OJJDP by December 31 of each year.

(i) To demonstrate compliance with Section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) dates covered by the current reporting period;

(B) total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site;

(C) the total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty four hours (not including weekends or holidays), excluding those held pursuant to the VCO provision as set forth in paragraph (f)(3) of this section or pursuant to Section 922(x) of Title 18 United States Code Section or a similar State law;

(D) the total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, (excluding juveniles held for VCO violations and Title 18 U.S.C. Section 922(x) violators) held in any secure detention or correctional facility for less than twenty four hours for purposes other than identification, investigation, release to parent(s), or transfer to a nonsecure facility;

(E) the total number of accused status offenders (including VCO violators but excluding 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for less than twenty four hours;

(F) the total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the VCO provision or pursuant to Title 18 U.S.C. Section 922(x);

(G) the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision set forth in paragraph (f)(3) of this section or Title 18 U.S.C. Section 922(x) violators; and

(H) the total number of juvenile offenders held pursuant to Title 18 U.S.C. Section 922(x).

(ii) To demonstrate the extent to which the provisions of Section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with Section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past twelve months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders NOT separated in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities;

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP that were not separated from the security or direct care staff of the adult portion of the facility;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been concurred with by OJJDP, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State and concurred with by OJJDP, that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with Section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours (including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this Section);

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails and lockups (including collocated facilities not concurred with by OJJDP) for less than six hours for purposes other than

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identification, investigation, processing, release to parent(s), or transfer to a juvenile facility;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups (including collocated facilities not concurred with by OJJDP) for any length of time;

(I) The total number of accused and adjudicated status offenders (including VCO violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not approved by the State and concurred with by OJJDP, for any length of time;

(J) The total number of adult jails, lockups, and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than twenty four hours in adult jails or lockups (including collocated facilities not approved by the State and concurred with by OJJDP) pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of twenty four hours but no more than an additional forty eight hours in adult jails or lockups (including collocated facilities not approved by the State and concurred with by OJJDP) pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of twenty four hours, but no more than an additional twenty four hours after the time such conditions allow for reasonably safe travel, in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, due to adverse weather conditions.

* * * * *

21. Paragraph (f)(6) introductory text in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(6) *Compliance.* The State must demonstrate the extent to which the requirements of Sections 223(a)(12)(A), (13), (14), and (23) of the Act are met. If the State fails to demonstrate full compliance with Sections 223(a)(12)(A) and (14), and compliance with Sections 223(a)(13) and (23) by the end of the fiscal year for any fiscal year beginning with 1994, the State's allotment under Section 222 will be reduced by twenty five percent for each such failure, provided that the State will lose its eligibility for any allotment unless: the State agrees to expend all remaining funds (except planning and administration, State advisory group set-aside funds and Indian tribe pass-through funds) for the purpose of achieving compliance with the mandate(s) for which the State is in noncompliance; or the Administrator makes discretionary determination that the State has substantially complied with the mandate(s) for which there is noncompliance and that the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time. In order for a determination to be made that a State has substantially complied with the mandate(s), the State must demonstrate that it has: Diligently carried out the plan approved by OJJDP; demonstrated significant progress toward full compliance; submitted a plan based on an assessment of current barriers to DMC; and provided an assurance that added resources will be expended, be it formula grants or other funds to achieve compliance. Where a State's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than State advisory group set-aside, will be reduced because they are based on the reduced allocation.

* * * * *

22. Paragraph (f)(6)(i) in Section 31.303 is revised to read as follows:

* * * * *

(f) * * *

(6) * * *

(i) Substantial compliance with Section 223(a)(12)(A) can be used to demonstrate eligibility for FY 1993 and prior year formula grant allocations if, within three years of initial plan submission, the State has achieved a seventy five percent reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities, or removal of 100 percent of such juveniles from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance by FY 1994. Full compliance is achieved when a State has removed 100 percent of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria published in the **Federal Register** of January 9, 1981. (Available from the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.)

* * * * *

23. Paragraph (f)(6)(iii)(A) in § 31.303 is removed and paragraphs (f)(6)(iii) (B), (C), (D), and (E) are redesignated as paragraphs (f)(6)(iii) (A), (B), (C), and (D), respectively.

24. Paragraph (f)(7) in Section 31.303 is revised to read as follows:

* * * * *

(f) * * *

(7) *Monitoring report exemptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Sections 223 (a)(12)(A), (a)(14), and compliance with Section 223(a)(13) of the JJDP Act and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, law enforcement lockups, detention facilities, to enable an annual determination of State compliance with Sections 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a) (12)(A), (13), and (14) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

* * * * *

25. Paragraph (g) introductory text in Section 31.303 is revised to read as follows:

* * * * *

(g) *Juvenile crime analysis.* Pursuant to Section 223(a)(8), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions. The analysis and needs assessment must include educational needs, gender specific services, delinquency prevention and

treatment services in rural areas, and mental health services available to juveniles in the juvenile justice system. The analysis should discuss barriers to accessing services and provide a plan to provide such services where needed.

* * * * *

26. Paragraph (h) in § 31.303 is amended by adding a sentence at the end of the paragraph to read as follows:

* * * * *

(h) * * * The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, e.g., during a reporting period, activities may have been funded from two or more formula grant awards.

* * * * *

27. Paragraph (j) in § 31.303 is revised to read as follows:

* * * * *

(j) *Minority detention and confinement.* Pursuant to Section 223(a)(23) of the JJDP Act, States must demonstrate specific efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., in most States, youth between ages ten-seventeen are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. Compliance with this provision is achieved when a State meets the requirements set forth in paragraphs (j)(1) through (3) of this section:

(1) *Identification.* Provide quantifiable documentation (State, county and local level) in the State's FY 1994 Formula Grant Plan (and all subsequent Multi-Year Plans) Juvenile Crime Analysis and Needs assessment to determine whether minority juveniles are disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population. Guidelines are provided in the OJJDP Disproportionate Minority Confinement Technical Assistance Manual (see Phase I Matrix). (Available from the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.) Where quantifiable documentation is not available to determine if disproportionate minority confinement exists in secure detention and correctional facilities, jails and lockups, the State must provide a time-limited plan of action, not to exceed six months, for developing and implementing a system for the ongoing collection, analysis and dissemination of information regarding minorities for those facilities where documentation does not exist.

(2) *Assessment.* Each State's FY 1994 Formula Grant Plan must provide a completed assessment of disproportionate minority confinement. Assessments must, at minimum, identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of prehearing detention in and dispositional commitments to secure facilities of minority youth in the juvenile justice system, and transfers to adult court (see Phase II Matrix). If a completed assessment is not available, the State must submit a time-limited plan (not to exceed twelve months from submission of the Formula Grant Application) for completing the assessment.

(3) *Intervention.* Each State's FY 1995 Formula Grant Plan must, where disproportionate confinement has been demonstrated, provide a time-limited plan of action for reducing the disproportionate confinement of minority juveniles in secure facilities. The intervention plan shall be based on the results of the assessment, and must include, but not be limited to the following:

(i) *Diversion.* Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system, such as police diversion programs;

(ii) *Prevention.* Providing developmental, operational, and assessment assistance (financial and/or technical) for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations (including non-traditional organizations) that serve minority youth;

(iii) *Reintegration.* Providing developmental, operational, and assessment assistance (financial and/or technical) for programs designed to reduce recidivism by facilitating the reintegration of minority youth in the community following release from dispositional commitments to reduce recidivism;

(iv) *Policies and procedures.* Providing financial and/or technical assistance that addresses necessary changes in statewide and local, executive, judicial, and legal representation policies and procedures; and

(v) *Staffing and training.* Providing financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority youth in secure facilities.

(4) The time-limited plans of action set forth in paragraphs (j)(1), (2) and (3) of this section must include a clear indication of current and future barriers; which agencies, organizations, or individual(s) will be responsible for taking what specific actions; when; and what the anticipated outcomes are. The interim and final outcomes from implementation of the time-limited plan of action must be reported in each State's Multi-Year Plans and Annual Plan Updates. Final outcomes for individual project awards are to be included with each State's annual performance report (see paragraph (h) of this section).

(5) Technical assistance is available through the OJJDP Technical Assistance Contract to help guide States with the data collection and analysis, and with programmatic elements of this requirement. Information from the OJJDP Special Emphasis Initiative on Disproportionate Minority Confinement pilot sites will be disseminated as it becomes available.

(6) For purposes of this statutory mandate, minority populations are defined as: African-Americans, American Indians, Asians, Pacific Islanders, and Hispanics.

* * * * *

28. Section 31.403 is revised to read as follows:

§ 31.403 Civil Rights Requirements.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by Section 299(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964, as amended;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975;

(f) The Department of Justice NonDiscrimination regulations, 28 CFR Part 42, Subparts C, D, E, and G;

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(g) The Department of Justice regulations on disability discrimination, 28 CFR Parts 35 and 39; and

(h) Subtitle A, Title II of the Americans with Disabilities Act (ADA) of 1990.

Office of Juvenile Justice and Delinquency Prevention.

Shay Bilchik,

Administrator.

[FR Doc. 95–5919 Filed 3–9–95; 8:45 am]

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Friday
March 10, 1995

Part VII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Water Quality for Fiscal Year 1995, Solicitation of Applications; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Water Quality for Fiscal Year 1995; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program, Water Quality for Fiscal Year 1995

Authority and Funding

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i(c)(1)(A)). This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of the U.S. Department of Agriculture (USDA). (The CSREES was established by Section 251(d)(1) of Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, and the functions of the Cooperative State Research Service were transferred to the CSREES by Section 2.b(7) of the Secretary of Agriculture's Memorandum 1010–1, dated October 20, 1994.) Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Funds will be awarded on a competitive basis to support water quality research within the scope of the program. A total of approximately $1,000,000 will be available for this program in Fiscal Year 1995. Funding requested for each proposal submitted in Fiscal Year 1995 shall not exceed $500,000 for a period of one year. Two proposals are expected to be funded in Fiscal Year 1995. Under this program, the maximum total funding that may be requested over a funding period of five years shall not exceed $2,000,000 per proposal. Funding for years two through five will depend upon the availability of funds and progress toward the objectives.

Pursuant to Section 712 of Public Law 103–330, (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995), funds available in Fiscal Year 1995 to pay indirect costs on research grants awarded competitively by CSREES may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to Section 719(b) of Public Law No. 103–330, in case any equipment or products may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

Regulations applicable to this program include the following: (a) the administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991) which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051 (58 FR 41410, August 3, 1993); (e) the Governmentwide Debarment and Supervision (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (f) New Restrictions on Lobbying, 7 CFR part 3018.

Program Description

Program-related questions should be directed to either of the following:

Dr. Maurice L. Horton
Dr. Berlie L. Schmidt
Phone No. (202) 401–4504
Fax No. (202) 401–1706

The scope of research includes developing principles to better understand the processes and interactions occurring in soil and crop management systems involving the use of certain pesticides, fertilizers and wastes which may impact water quality. The research should have a holistic point of view including products to be developed and a plan for transfer of new technology.

The focus of the Fiscal Year 1995 research is to develop new and innovative agricultural management strategies for use by farmers and public officials to reduce or prevent pollution of water sources. The research must address water quality problems at the landscape—watershed scale. Traditional small plot research is not excluded but must be integrated into an overall project where direct evidence is obtained at the watershed scale. The proposed strategies for reducing pollution should be developed in partnership with Federal, State and local agencies, universities, private industry, public interest groups or other stakeholders. Economic and environmental impacts upon water quality are to be considered. The final product of the research should be agricultural management systems that will be effective in reducing pollution on a watershed scale, economical to implement, sustainable, acceptable to producers, and in compliance with policy guidelines.

In the water quality program, the term "AGRICULTURE" encompasses the production of food, feed, fiber, and industrial crops, trees and livestock, and includes rural residences and rural communities, forests and wooded areas. Proposals on health risk problems are excluded.

Format for Research Grant Proposals

The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in 7 CFR part 3400.4(c). In accordance with 7 CFR part 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR part 3400.4(c), the provisions of this solicitation shall apply.

The sections of the proposal shall be assembled in the following order: (1) Application for Funding, (2) Title of Project, (3) Abstract, (4) Key Words, (5) Justification, (6) Objectives, (7) Procedures, (8) Research Timetable, (9) Literature Review, (10) Current Research, (11) Facilities and Equipment, (12) Collaborative Arrangements, (13) Curriculum Vitae of Investigators, (14) Budget, (15) Assurance Statements(s), if applicable, (16) Current and Pending Support, and (17) NEPA statement. Items (2) through (9) are limited to 25 pages, including any figures or tables. The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, do not include meetings attended, seminars given, or personal data such as birth date, marital status, or community activities. The vitae shall be no more than 2 pages each in length, excluding publications listings. A chronological list of all relevant publications in referred journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list those non-referred technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference.

Application for Funding. Attach a completed and signed Application for Funding, Form CSRS–661, to the front of the proposal. The original copy of Form CSRS–661, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Form CSRS–661 and other required forms and certifications are contained in the Application Kit.

Type and Paper Size. Type should be no smaller than 12 characters per inch (12 pitch or 10 point), single-spaced on one side of 8 ½"×11" paper with margins of one inch or greater. Total length of the proposal text shall not exceed 25 pages as stated above. Reduction by photocopying or other means for the purpose of meeting above-stated page limits is not permitted. Attachment of appendices is not permitted. Proposals which do not fall within the guidelines of this solicitation will be eliminated from the competition and will be returned to the applicant, as stated in Section 3400.14(a) of the Administrative Provisions governing the Special Research Grants Program.

Abstract and Key Words. The body of the proposal should be prefaced by an abstract and key words which are used to classify the proposal.

Abstract. Include factual, concise, and clear statements of proposed research as phrases or sentences. Limit the length of the abstract to about one-half page.

Key Words. Select two double words or four single words that describe the research emphasis, such as water quality, conservation tillage, nitrates, tillage, models, or contaminants.

Justification. Describe the water quality problems, or potential problems, including: where they occur; relevance to site-specific, watershed, regional, State, and national size-scales. The expected application or use of resulting information should be explained; for example: value to the economy, methods of chemical analyses, need for specific model, basis of recommendations, understanding of processes, or relevancy to a specific water quality research program.

Multi-Institutions/Organizations. Multi-disciplinary and multi-institution collaboration is required. Collaborators must demonstrate significant contributions to the planning and conduct of the research. Collaborators or cooperative arrangements may include universities, other research organizations, or federal or state agencies such as the Agricultural Research Service, Natural Resources Conservation Service, Cooperative State Research Education, and Extension Service (except Natural Resources and the Environment, which will be the unit within CSREES awarding the special grant), State Agricultural or Natural Resource Agencies, Economic Research Service, U.S. Geological Survey, and the Environmental Protection Agency. Projects such as Hydrologic Unit Areas, Management Systems Evaluation Areas (MSEA), Demonstration Sites, Farmstead Assessment, and Area Studies provide excellent opportunities for collaboration. Evidence, such as letters of intent, should be provided to assure peer reviewers that the collaborators involved have agreed to render their service.

Budget, Form CSRS–55. A copy of Form CSRS–55, along with instructions for completing it, is included in the Application Kit. Applicants should note the special instructions shown below when completing Form CSRS–55.

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS–55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified. It should be noted that the terms and conditions of any grant awarded under this program will require Principal Investigators, as defined at 7 CFR 3400.2(c), to participate in at least one annual regional or national research reporting, evaluation, and planning workshop or conference, for the purpose of interstate, interagency, and interdisciplinary coordination in this water quality program. Funds may be requested under this budget category for these workshop/conference costs.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.

Compliance With the National Environmental Policy Act

As outlined in 7 CFR part 3407 (the CSREES regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6(a)(2))

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

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(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSRS–1234, "NEPA Exclusions Form" (copy enclosed), must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. The information submitted shall be identified in the Table of Contents as NEPA Considerations and Form CSRS–1234 and supporting documentation shall be place after the Form CSRS–661, "Application for Funding," in the proposal.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Review Criteria

Proposals will be evaluated by a peer review group of qualified scientists selected in accord with Section 3400.11 of the administrative provisions governing the Special Research Grants Program. Pursuant to 7 CFR part 3400.5(a), the following selection criteria for proposals will be used in lieu of those which appear in Section 3400.15 of the administrative provisions:

Selection Criteria—Maximum Score

Overall Scientific and Technical Quality—40
- —Creative and innovative scientific approach
- —Clear, concise, and achievable objectives
- —Technical soundness of procedures
- —Feasibility of attaining objectives
- —Applicability to watershed scale systems

Justification, Review of Literature and Current Research—15
- —Importance of the problem
- —Relevance of proposed research to solution of the problem
- —Literature focused on specific research approach and objective

Budget, Resources, and Personnel—15
- —Necessary facilities, resources, and personnel available
- —Funds contributed by other agencies
- —Budget appropriate for proposed research
- —Demonstrated scientific capability of investigators

Collarboration—20
- —Evidence of significant contributions by collaborators
- —Evidence and justification of multi-disciplinary and/or multi-institutional and multi-agency collaboration

Application of Research Results—10
- —Planned application and implementation of research results
- —Extension, transferability, and publication of results
- —Potential for results to enhance agricultural sustainability

Total—100

How To Obtain Application Materials

Copies of this solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR Part 3400, may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Ag Box 2245; Washington, DC 20250–2245; Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@morrill.esusda.gov. which states that you want a copy of the application materials for the Fiscal Year 1995 Special Research Grants Program, Water Quality. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Applicants should note that separate but complementary programs in water resources assessment and protection, soils and soil biology, and agricultural systems exist within the CSREES National Research Initiative Competitive Grants Program. For further information on that program, contact the Proposal Services Branch at the address listed above. Proposals should be submitted to the most appropriate program—submission of duplicate proposals or proposals with substantial overlap to both programs is discouraged.

What To Submit

An original and twelve copies of each proposal, prepared in accordance with the instructions found above, must be submitted. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When To Submit Applications

To be considered for funding during Fiscal Year 1995, proposals must be submitted by April 28, 1995.

Proposals submitted through the regular mail must be postmarked by April 28, 1995, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Ag Box 2245; Washington, D.C. 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals must be submitted to an express mail or courier service by April 28, 1995, or brought to the following address by 4:30 p.m. on April 28, 1995: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is: (202) 401–5048.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200.

For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 6th day of March 1995.

K. Jane Coulter,

Acting Administrator, Cooperative State Research, Education, and Extension Service

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UNITED STATES DEPARTMENT OF AGRICULTURE
COOPERATIVE STATE RESEARCH SERVICE

OMB Approved 0524-0033
Expires 6/97

National Environmental Policy Act Exclusions Form

Principal Investigator/Project Director Name	Institution
Address	

Under 7 CFR Part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), environmental data or documentation is required in order to assist CSRS in carrying out its responsibilities under NEPA, which includes determining whether proposed research requires the preparation of an environmental assessment or an environmental impact statement, or whether such research can be excluded from this requirement on the basis of several categories. Therefore, it is necessary for the applicant to advise CSRS whether the proposed research falls into one of the following Department of Agriculture or CSRS categorical exclusions, or whether the research does not fall into one of these exclusions (in which case the preparation of an environmental assessment or an environmental impact statement may be required). Even though the applicant considers that a proposed project may or may not fall within a categorical exclusion, CSRS may determine that an environmental assessment or an environmental impact statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Please Read All of the Following and Check All Which Apply

☐ **The proposed research falls under the categorical exclusion(s) indicated below:**

Department of Agriculture Categorical Exclusions
(found at 7 CFR 1b.3 and restated at 7CFR 3407.6 (a)(1)(i) through (vii))

- ☐ (i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions
- ☐ (ii) Activities that deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds
- ☐ (iii) Inventories, research activities, and studies such as resource inventories and routine data collection when such actions are clearly limited in context and intensity
- ☐ (iv) Educational and informational programs and activities
- ☐ (v) Civil and criminal law enforcement and investigative activities
- ☐ (vi) Activities that are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation
- ☐ (vii) Activities related to trade representation and market development activities abroad

CSRS Categorical Exclusions
(found at 7 CFR 3407.6(a)(2)(i) through (ii))

The following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

- ☐ (A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts
- ☐ (B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment
- ☐ (C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials

☐ (ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity

OR

☐ **Proposed research does *not* fall into one of the above categorical exclusions**
(**NOTE**: If checked, please attach an explanation of the potential environmental impacts of the proposed research. May require completion of an environmental assessment or an environmental impact statement.)

Please refer all questions regarding the completion of this form to the USDA National Biological Impact Assessment Program at (202) 401-4892.
Form CSRS-1234 (4/94)

[FR Doc. 95-5991 Filed 3-9-95; 8:45 am]
BILLING CODE 3410-22-C

Federal Register

Friday
March 10, 1995

Part VIII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92
Eligible Applicants for the HOME Investment Partnerships Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R–95–1775; FR–3860–F–01]

RIN 2501–AB90

Eligible Applicants for the HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the existing interim rule for the HOME Investment Partnerships Program by making it conform with the program definition for eligible applicants in the Indian Community Development Block Grant Program. This revision will eliminate confusion and simplify administration of Native American Tribal Programs. This final rule is intended to be effective for the Fiscal Year 1995 funding cycle, for which applications are due April 14, 1995.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing & Community Development Division, Office of Native American Programs, room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–0068 (this is not a toll-free number). Hearing- or speech-impaired persons may use the TDD number by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) (a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The HOME Investment Partnerships Program (HOME) was enacted under title II (42 U.S.C. 12701–12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990). One of the purposes of the HOME program is to provide funds to Indian tribes in order to expand the supply of decent, safe, sanitary, and affordable housing for very low-income and low-income Americans. HUD's implementing regulations for the Indian HOME Program are found at 24 CFR part 92. In a separate rulemaking, the Department is relocating these regulations to a new 24 CFR part 954.

At the present time, applicants eligible for grant assistance under the Indian HOME program are defined as Indian tribes. This has caused confusion among constituents for assistance under HUD-administered tribal programs, especially in Alaska, and is inconsistent with the definition of eligible applicant for grant assistance under the Indian Community Development Block Grant program. This final rule amends the existing interim rule for the HOME Investment Partnerships Program by making it conform with the program definition for eligible applicants in the Indian Community Development Block Grant Program in order to simplify administration of Native American Tribal Programs. The revision is intended to be effective for the Fiscal Year 1995 funding cycle, for which applications are due April 14, 1995.

II. Justification for Final Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted, if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that in this case prior public comment is contrary to the interest of the public. This final rule merely amends 24 CFR part 92 by incorporating the definition of "eligible applicants" found in the Indian Community Development Block Grant Program in order to eliminate confusion and simplify administration of Native American Tribal Programs.

III. Other Matters

A. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Impact

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

C. Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this final rule would not have significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Regulatory Agenda

This final rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR part 92

Administrative practice and procedure, Grant programs—housing and communitiy development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 92, is amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Section 92.602 is revised to read as follows:

§ 92.602 Eligible Applicants for HOME Funds for Indian Tribes.

(a) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

(e) Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively.

Dated: March 2, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–5969 Filed 3–9–95; 8:45 am]

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Part IX

Department of the Treasury

Customs Service

19 CFR Part 12

Prehistoric Artifacts From El Salvador; Final Rule

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 95–20]

RIN 1515–AB70

Prehispanic Artifacts From El Salvador

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain prehispanic artifacts from El Salvador. These restrictions are being imposed pursuant to an agreement between the United States and the Republic of El Salvador which has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document also contains the Designated List of Archaeological Material representing Prehispanic cultures of El Salvador which describes the articles to which the restrictions apply.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Donnette Rimmer, Intellectual Property Rights Branch (202) 482–6960.

Operational Aspects: Louis Alfano, Office of Trade Compliance (202) 927–0005.

SUPPLEMENTARY INFORMATION

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention.

During the past several years, import restrictions have been imposed on a emergency basis on archaeological and cultural artifacts of a number of signatory nations as a result of requests for protection received from those nations.

Now, for the first time, import restrictions are being imposed as the result of a bilateral agreement entered into between the United States and a signatory nation. This agreement has been entered into in March 1995, pursuant to the provisions of 19 U.S.C. 2602. Accordingly, the Customs Regulations are being amended to reflect the imposition of the restrictions. Section 12.104g(a) is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and the Republic of El Salvador.

This document contains the Designated List of Archaeological Material representing Prehispanic cultures of El Salvador which are covered by the agreement. Importation of articles on this list is restricted unless the articles are accompanied by an appropriate export certification issued by the Government of the Republic of El Salvador.

Because this agreement includes categories of objects from the Cara Sucia Archaeological Region of El Salvador which have been subject to emergency import restrictions, and because those restrictions are about to expire, Customs is also amending paragraph (b) of this section by removing the entry for El Salvador.

Designated List of Archaeological Material Representing Prehispanic Cultures of El Salvador

Pursuant to an agreement between the United States and the Republic of El Salvador, the following contains descriptions of the cultural materials for which the United States imposes import restrictions under the Convention on Cultural Property Implementation Act (P.L. 97–446), the legislation enabling implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The Designated List below subsumes those categories of objects from the Cara Sucia Archaeological Region of El Salvador for which emergency import restrictions have been in place since 1987. With publication of the Designated List below, protection of the Cara Sucia material continues without interruption.

What follows immediately is a list of terms for time periods and their subdivisions. Please note that some terms are overlapping and are used to distinguish pivotal intervals in regional prehistory (these terms are: Protoclassic, Terminal Classic, and Protohistoric). Different references may vary slightly as to the beginning and end dates for the periods listed here.

Archaic Period: circa 8000–1700 B.C.

Preclassic Period: 1700 B.C.–200 A.D.

Early Preclassic: 1600 B.C.–800 B.C.
Middle Preclassic: 800 B.C.–400 B.C.
Late Preclassic: 400 B.C.–200 A.D.

Classic Period: 200–900 A.D.

Protoclassic: 200 B.C.–200 A.D.
Early Classic: 200–600 A.D.
Late Classic: 600–900 A.D.
Terminal Classic: 800–900 A.D.

Postclassic Period: 900–1520 A.D.

Early Postclassic: 900–1200 A.D.
Late Postclassic: 1200–1520 A.D.
Protohistoric: circa 1400–1550 A.D.

The following Designated List is representational and may be amended as appropriate.

1. Figurines

1a. Preclassic Figurines.

Most are solid ceramic figurines representing women with broad torsos and thighs, and small or virtually flat breasts. These are portrayed in a sitting or standing position. The eyes and mouth were typically represented by jabbing small holes into the still wet clay (punctation), many times with two or three holes used to depict each eye. Although the bodies are crafted without much detail, elaborate coiffures are commonly shown.

Dating: Most Preclassic figurines date to the Late Preclassic (corresponding to the Chul and Caynac Ceramic Complexes of western El Salvador, and the Uapala Phase of eastern El Salvador).

Appearance: Often cream to white, but may also be red or brown (ranging from dark brown to tan). Usually of very fine textured clay.

Size: Most range between 4" (10 cm) to 8" (20 cm) in height. Examples smaller than about 4" may be perforated for use as pendants. Rare figurines 16" (40 cm) or more in height have been reported.

Important Variants: Some of the larger figurines are hollow rather than solid. Very rare examples have movable arms, with sockets set into the shoulders and separate arm pieces that were actuated by means of strings. Some figurines depict women cradling infants. Whistle mechanisms are very rarely present. Painted designs in black or other colors are very rare on these figurines.

Formal Names: Bolinas figurines (Boggs 1973a); Kulil, Xiquin, and Tat Complex figurines (Dahlins 1978); Quelepa Figurine Types 1 and 2 (Andrews 1976).

1b. Lepa Figurines

Most are solid ceramic figurines representing standing humans, while others are animal effigies that function as whistles, whistle flutes, or wheeled figurines incorporating whistle flutes.

Human figurines: These figurines have a generally flattened appearance and heads are usually crowned by a broad and narrow headband (or hairdo) resembling a long bar. Eyes are shown by a single punctuation (to represent the pupil) between two ridges defining the eye itself. Feet are usually split in a "Y" shape to help support the figurine. The figurines may be adorned with necklaces shown by a series of clay pellets. Rarely is enough detail included to determine which sex is intended (in such cases women are usually represented).

Pelleted Tubular Whistle Flutes: Tubes with a whistle mechanism (blow-hole) at one end and a rolling pellet within, that produces a continuously varying tone when blown and tilted up and down. Simple bird or monkey heads may be added to the instrument's body.

Wheeled Figurines: Human or animal effigies with four tabular legs, each with a perforation to accept wooden sticks as axles for the front and rear wheels (the wheels themselves were ceramic discs rarely found together with these artifacts). Decoration is mostly through applique using relatively thick strips and pellets of clay.

Animal Effigy Whistle flutes: Made from a small sphere of clay with very simple (schematic) applique to represent humans, birds, turtles, armadillos, opossums, and other animals. In addition to the whistle mechanism, these have one or two finger holes in their bodies that vary their tone when covered. The most elaborate examples may have punctate and ridge eyes like those found in the Lepa human figurines. May be perforated for suspension.

Dating: Late Classic Lepa Phase of central and eastern El Salvador, represented in Quelepa, Tehuacán, and other sites.

Appearance: Usually reddish brown to brick red, with a rough or only moderately smoothed surface. Some have a polished white slip that, when well preserved, may have elaborate designs painted in black, red, and/or yellow. Pelleted tubular whistle flutes have been noted with fugitive (post-firing) white and/or blue paint.

Size: Most human figurines range in height between 5" (12 cm) to 10" (25 cm). Unusually large examples are known to reach 15" (38 cm) in height, and these tend to bear painted designs more often than the normal sized figurines. The pelleted tubular whistle flutes known are 7" (18 cm) or slightly shorter in length. The wheeled figurines known range from about 3.5" (9 cm) to 5" (13 cm) in length. The animal effigy whistle flutes measure about 2–3" (5–8 cm) in maximum length.

Important Variants: Larger figurines may be hollow rather than solid, and may either contain pellets to act as a rattle, or may be equipped with holes for use as a flute ("ocarina").

Formal Names: The human figurines have been classed as Lower Lempa Culture figurines (Haberland 1961) and as Quelepa Figurine Type 3 (Andrews 1976). The wheeled figurines have been termed Oriental Type (Boggs 1973b). The animal effigy whistle flutes have been referred to as Lepa Phase whistles (Andrews 1976; see also Boggs 1974).

1c. Cotzumalhuapa Figurines and Molds

Ceramic figurines, usually hollow and typically mold made in part (especially heads). About half the known examples represent women and most of the remainder depict a variety of animals (men are rare). Some representations of plants and furniture (litters) are known. Whistle mechanisms were optional for all forms of Cotzumalhuapa figurines. Pelleted tubular whistle flutes and recently identified Cotzumalhuapa wheeled figurines are also included here.

Molds: The molds used to produce these figurines were press molds made of coarse textured fired clay, usually brick red or reddish brown in color. The working faces of these molds present a complicated depressed area that produces the impression, while the opposite side of the mold is usually rounded and carelessly finished. A sheet of wet clay was pressed into the mold and then carefully extracted with the impression of, for examples, the front half of a female figurine (the other half was added by hand modeling, as were optional details like headgear should these be absent from the mold used).

Female Figurines: The figurines representing women have been referred to as "bell-form" due to the shape of their conical hollow bases. They usually portray elaborately dressed women, adorned with necklaces, earplugs, and large headgear of variable shape (but often resembling a half moon). The uniformity in portrayal suggests that we are dealing with a personage, and it is not too speculative to suggest that she was an important Cotzumalhuapa goddess. Rare figurines exist where the female's body is covered by cacao pods, indicating a relationship to agricultural production and, in these latter example, with the intensive production of cacao that has been documented as an important Cotzumalhuapa economic focus. Whistle mechanisms, when present, are usually worked into one shoulder (the larger female figurines tend not to possess whistle mechanisms).

Male Figurines: The very rare male figurines are known to include representations of warriors (with clubs and shields) and injured or diseased individuals (one example shows an individual with patches of flesh missing from the maxillary area and nose).

Animal Figurines: Among the animals present in Cotzumalhuapa figurines are: parrots, vultures, owls, doves, monkeys, felines (probably jaguars are intended), bats, dogs, deer, frogs or toads, turtles, iguanas, snakes, crocodiles, fish, clams, crabs, and others. These reflect the rich fauna of the Cotzumalhuapa area, which included mangrove lined estuaries, the adjoining coastal plains, and nearby mountain ranges. Monkeys and parrots are, however, the most common animals depicted. Most animal figurines have whistle mechanisms. Because of the complicated forms required for animals, use of molds may sometimes be limited

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to face areas, and some are entirely hand modeled.

Plant Figurines: Representations of corn cobs and cacao pods have been found.

Pelleted Tubular Whistle Flutes: Tubes with a whistle mechanism (blow-hole) at one end and a rolling pellet within, that produces a continuously varying tone when blown and tilted up and down. One example is apparently a bat effigy, with a bat head and disk (representing the wings?) added to the tubular body of the instrument.

Wheeled Figurines: Cotzumalhuapa wheeled figurines have recently been identified. One has a tubular body with four tabular supports, each with a perforation to accept the wooden sticks that acted as axles for the front and rear wheels. A mold-made dog head was added to one end of the tube, and a tail to the other.

Other Figurines: Two figurines have been documented representing the litters that were probably used to transport Cotzumalhuapa elites. They resemble a small rectangular box with a canopy, supported by four spiked feet. A pair of holes at each extreme permitted two sticks to be inserted to act as the carrying poles. On one example the canopy was modeled to represent the stretched skin of a crocodile arranged with the head at one extreme and the tail at the other, with a spiked crest running between the two. Other Cotzumalhuapa modeled clay artifacts that may be included as figurines include objects resembling scepters, bells, lidded boxes, and plaques with human faces.

Dating: Late Classic products of the Cotzumalhuapa culture which in El Salvador included the western coastal plain to the upper drainage of the Paz River; trade brought examples into Payu Ceramic Complex contexts elsewhere in western and central El Salvador.

Appearance: Most are brown (from tan through reddish brown) to red (brownish red to brick red), with a coarsely finished to moderately smoothed surface. Rare examples are of Tiquisate Ware (characterized by a very smooth, lustrous, and hard surface, cream to orange in color), and may be ancient imports from the Pacific coast of Guatemala. Traces of paint may be present (blue, black, red, yellow, and white have been documented); the paint was usually applied after firing and tends to be easily eroded. Those parts of figurines made without the benefit of molds tend to be rather carelessly modeled.

Size: Female figurines usually range in height from 4" (10cm) to 12" (30cm), but some rare specimens reach 24" (60cm) and perhaps more in height. Animal and plant figurines tend to be small, typically ranging from 3" (8cm) to 6" (16cm) in their maximum dimension, though larger examples occur. The pelleted tubular whistle flute mentioned measures 6" in length (16cm). A measurement for a wheeled figurine is 5.5" (14cm) in length. The models of litters are approximately 9" (23cm) in length.

Important Variants: Cotzumalhuapa use of clay was very creative and the observer should expect figurine forms not mentioned here.

1d. Payu Figurine Flutes and Whistles

Most Payu ceramic figurines known are musical instruments that have been classified as whistles, whistle flutes, and flutes (commonly called "ocarinas"). Although their decoration varies considerably, important hallmarks (when present) are the decorative use of parallel strips of clay (sometimes with longitudinal grooves), and applique of clay pellets with a distinctive dimple in their center. Molds were sometimes employed to render the faces of humans and monkeys. Human faces may include details commonly associated with Classic Maya conventions, including cheek decorations (from tatoos or scarification), extension of the bridge of the nose to above eye level, and/or a steeply inclined forehead (representing cranial deformation).

Globular Flutes ("ocarinas"): Payu figurine globular flutes have a very distinctive construction. Three spheres of clay were joined together in a column or in an "L" shape (and pierced at the junctures). The uppermost sphere was equipped with a blow-hole. Clay was then packed around this assembly and decorative elements added. All the "L" shaped flutes known were decorated to represent a standing quadruped animal whose open mouth forms the blow-hole. The other (straight) flutes were almost always modeled to represent a human (either full-body or just the head portion).

Tubular Whistle Flutes: Basically a tubular form with a whistle mechanism (blow-hole) in one end and three to five finger holes along the body of the tube. The appliqued head and arms or a monkey or human are always present next to the blow-hole.

Whistle Flutes: A small, spherical body with a whistle mechanism and one or two finger holes is hidden to a lesser or greater degree under effigy decoration. This decoration tends to be notably more carefully executed and detailed than Lepa or Cotzumalhuapa examples. Examples include effigies of: humans (full-body or heads), monkeys, dogs, birds, and reptiles. Smaller whistle flutes may be perforated for suspension.

Dating: An artifact class belonging to the assemblage associated with the Payu Ceramic Complex (Late Classic Period).

Appearance: Most Payu figurines are of medium textured clay with a moderately smoothed surface (and almost always unslipped). Color is usually reddish brown but may range from tan to brick red. Traces of paint are rare and may include blue-green, white, yellow, red, or black. Painted decoration, when present, was usually added after firing and tends to easily wear away.

Size: Globular flutes=3–8" (8–21 cm); tubular whistle flutes=6–8" (15–21 cm); whistle flutes=2–8" (5–20 cm).

Formal Names: None. Many examples are illustrated in Boggs 1974 (noted as Late Classic, from western and part of central El Salvador).

1e. Guazapa Figurines

Early Postclassic ceramic figurines whose style is derived from central Mexico and form part of the Guazapa Phase of central and western El Salvador. The Guazapa Phase has been interpreted as marking the large-scale migration of Nahua speakers into this area, these being the ancestors of the historical Pipil.

Mazapan-Related Figurines: Very flat figurines whose rendition of the human figure has been compared to gingerbread cookies. These objects were made by pressing a sheet of clay into a mold, obtaining a thin (0.75–1" or 2–3 cm) solid figurine. The rear portion of the figurine is left unfinished and may exhibit finger marks from when the clay was pressed into its mold. The front displays a woman with a blouse with a triangular front, coming to a point in the middle of the waist. This type of blouse was referred to as a *quechquemitl* in central Mexico at the time of the Conquest, when its use was restricted to images of goddesses and goddess impersonators. These figurines are so-named for their close similarity to figurines of the Mazapan (Toltec) Phase of central Mexico.

Toad Effigies: Hand modeled large hollow toad effigies. They are usually shown as sitting as erect as possible for a toad, looking upwards. The front and rear of the toad's body is decorated with strips and buttons of clay meant to represent festive ribbons and bows. The tongue may be shown hanging from the mouth. In Postclassic Nahua mythology, toads were considered as Tlaloc's (the rain god) helpers, and it was they who announced the coming of the rains (the extended tongues are probably meant to represent their thirsty anticipation of rain). Due to this association, some examples are known of toad effigies that include two rings around the eyes (a diagnostic trait of Tlaloc himself).

Tlaloc Bottles: Bottles with a more or less spherical body crowned by a straight tubular neck with a flat, flaring rim. The body is decorated with the face of the rain god Tlaloc whose most distinctive trait is a ring around each eye. Many Tlaloc Bottles are in fact plugged in the neck or body and could not have actually functioned as vessels. Tlaloc was considered to dwell in the mountain peaks and pour out the rains from a bottle; these artifacts were probably household votive images of that bottle.

Very Large Effigy Figurines or Statues: Hand modeled hollow figurines representing jaguars and gods or god impersonators. The larger examples reach life size and may truly be considered as ceramic statuary (in any case, they have been included under "Figurines" to facilitate discussion). Known examples of gods or god impersonators represent the gods Tlaloc (identifiable by the rings around his eyes), Mictlantecutli (represented as a skeletal personage) and Xipe Totec (portrayed as wearing a flayed human skin). The largest figures may be crafted in several mating parts (for example, a Xipe Totec effigy was made in two large halves joining at the waist, with a separate head). Seventeen jaguar effigies were found in one excavation at Cihuatán; all of these portray a jaguar sitting on its haunches decorated with necklaces and a few bulbous objects placed on different parts of the body.

Small Solid Figurines: Hand modeled figurines of humans that are usually solid or mostly so, and that occasionally employed molds to form the face. Most appear to represent males who may carry war equipment (such as a dart thrower or *atlatl*) and large headgear. These figurines tend to be relatively small and crudely modeled.

Wheeled Figurines: Small wheeled figurine, consisting in a tubular hollow body with four tabular supports, each with a hole to accept wooden sticks acting as axles for the front and rear wheels. The wheels are flat ceramic disks. A tail was added to one end of the tubular body and a head to the other. Examples are known with deer heads with antlers, and dog heads with tongue extended over the lower lip.

Dating: Artifacts of the Early Postclassic Guazapa Phase of central and western El Salvador (at Cihuatán, Igualtepeque, El Cajete, Ulata, Santa María, Pueblo Viejo Las Marías, and other sites).

Appearance: Generally reddish brown to brick red, but may be as light as tan in color. The surface may be smoothed but not polished and has a sandy texture. Many give the impression of having been hastily made. Traces of white, black, blue, yellow, and/or red fugitive paint have been found on some figurines.

Size: Height of Mazapan-related figurines=6–10" (15–25 cm); height of toad effigies=6–9" (15–23 cm); height of Tlaloc bottles=4–10" (10–25 cm); height of very large effigy figurines or statues=24–55" (61–140 cm); height of small solid figurines=6–18" (15–30 cm); length of wheeled figurines=5.5–8.5" (14–22 cm).

Formal Names: Encompassed by the Guazapa Phase, the type site of which is Cihuatán (see Boggs 1944, 1963, 1973b, 1976; Bruhns 1980; Fowler 1981, 1990).

2. Other Small Ceramic Artifacts

2a. Spindle Whorls or Malacates

Small ceramic disc-shaped artifacts with a central perforation. As viewed in section, these are thicker toward the center. They may have incised or mold-made decoration. These are often mistaken for ceramic beads and many may be strung together for transport or display.

Dating: Late Classic to Protohistoric Periods. Different varieties are documented in relation to Late Classic Phases and ceramic complexes (Lepa, Payu, Tamasha) through the Postclassic (Guazapa, Cuscatlán, and others).

Appearance: Carefully formed and smoothed. Many were slipped, and run the full range of black through brown through red. Fugitive white paint has been noted as a rare filler for incised designs.

Size: 0.8–1.2" (2.1–3.2cm) in diameter. Holes are always close to 0.25" (0.6cm) in diameter.

Formal Names: Referred to as spindle whorls or malacates (see for example Longyear 1944; Sharer 1978; Andrews 1976).

2b. Ceramic Seals

Ceramic seals present a high-relief pattern on clay surface and are thought to have been used with paint to stamp designs for body and/or textile decoration. Some were used to impress designs on still-wet pottery objects. Some seals have been found still covered with red pigment.

Seals may be flat, with a spike handle on the rear, or cylindrical and used by rolling. Cylinder seals usually have a central perforation that would have allowed a stick to be passed through and facilitate their use like rolling pins.

Dating: To date, seals have been found in El Salvador in contexts ranging from the Late Preclassic and Late Classic Periods (in relation to the Chul, Caynac and Payu Ceramic Complexes and the Tamasha Phase).

Appearance: Well-smoothed and sometimes slipped surfaces. Color ranges from black-brown through reddish-brown and red.

Size: Flat seals=1.2–5" (3–13cm) in diameter; cylinder seals may be 2.4–5" (6–12cm) in length.

Formal Names: Usually referred to as seals or stamps, flat or cylindrical (see Sharer 1978; Demarest 1986; Amaroli 1987).

2c. Miniatures

Very small ceramic objects made in the form of jars or flasks. Often made of a very fine cream colored ceramic. These may be modeled to resemble squash effigies, or may include stamped designs include Maya glyphs, humans forms, or animals. Miniature vessels often contain residuals of red pigment. Late Classic Period.

Size: 1.5–4" (4–10cm) in height.

Formal Names: None.

2d. Spools

This category includes several varieties of spool-shaped artifacts that functioned as earspools and as labrets. Often a short tab extends from one side, while the other may have modeled (and sometimes mold made) decoration. Alternatively, the spool sides may have incised decoration. Early Preclassic through Postclassic Periods (Sharer 1978; Amaroli 1987).

Size: Normally do not exceed 1.3" (3.4cm) in their maximum dimension.

3. Ceramic Vessels

3a. Polychrome Vessels

Copador Polychrome Vessels: Hemispherical bowls, bowls with composite walls, cylindrical vases, and jars with painted designs in red, black and optionally yellowish orange on a cream to light orange base. The red paint used is almost always specular (small flecks of crystals flash as the vessel is moved in strong light). Copador paste is cream colored (or sometimes very light brown) and is not very hard or dense. Designs (usually on the exterior) may include bands of motifs derived from Maya glyphs, seated individuals, individuals in a swimming position, melon-like stripes, birds or other animals, and others. Rare examples have excavated lines or

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patterns. Copador Polychrome may usually be distinguished on the basis of its specular red paint and cream colored paste.

Dating: Late Classic Period (defined as a member of the Payu Ceramic Complex, also found commonly in Tamasha Phase deposits (Cara Sucia)).

Size: Bowl diameter may vary from 4–12" (10–30 cm), the height of cylindrical vases may range from 6–12.5" (15–32 cm), and jar height ranges from approximately 5–11" (12–28 cm).

Formal Names: Referred to as the Copador Ceramic Group (Sharer 1978).

Gualpopa Polychrome: This type is closely related to Copador Polychrome, with which it shares a cream colored paste and the hemispherical bowl form (rarer forms in Gualpopa are: flat bottomed bowls with vertical walls, and composite walled bowls). Designs in Gualpopa are painted in red (which unlike Copador is not specular) and black on a cream-orange base. Gualpopa motifs are simpler than Copador. Most common are geometric designs (spirals, "melon" bands, chevrons, and others), but repeating birds, monkeys, or designs derived from Maya glyphs may be found.

Dating: Late Classic, especially the first part of this period. Defined as a member of the Payu Ceramic Complex.

Size: Diameters range from 6–15" (16–38 cm).

Formal Names: Termed as the Gualpopa Ceramic Group (Sharer 1978).

Arambala Polychrome: Formerly referred to as "false Copador" due to its close resemblance to Copador Polychrome. Arambala may be differentiated from Copador by its reddish paste (contrasting with Copador's cream paste) and the use of a dull red paint (rather than Copador's specular red paint). Apart from these two differences, however, Arambala closely duplicates Copador's repertoire of vessel forms, dimensions, and decoration (please refer to the description for Copador Polychrome for this information). A cream-orange slip was added over Arambala's reddish paste to approximate Copador's base color, but this slip often has a streaky appearance.

Dating: Late Classic Period. A member of the Payu Ceramic Complex and present in the Tamasha Phase of Cara Sucia.

Size: (See the description for Copador Polychrome)

Formal Names: Defined as the Arambala Ceramic Group (Sharer 1978).

Campana Polychrome Vessels: Flat bottomed bowls with flaring walls, usually large. Provided with 4 hollow supports that may take the form of pinched cylinders or cylinders with human or animal effigies. Intricate painted designs were executed in black-brown, dull red, and orange, on a cream to cream-orange base. A large portrayal of a human or animal is featured on the interior center of these vessels, and the rims often have a distinctive encircling twisted rope and dot design. Some examples have a few curving lines of broad (up to 0.5" or 1.3 cm) Usulután negative decoration. Campana Polychrome paste is dense, hard, and brick red. Other forms include small bowls without supports, with flat bottoms and flaring walls, and cylindrical vases with bulging and sometimes faceted midsections and occasionally short ring bases. The cylindrical vases usually feature panels on opposing side of the vessel with human or animal designs, and may have very short and wide tabular supports.

Dating: Late Classic Period. Present in association with the Payu Ceramic Complex (Sharer 1978), the Lepa Phase (Andrews 1976), and the Tamasha Phase (Amaroli 1987).

Size: The large bowls with supports range from 10–20" (25–50 cm) in diameter. The small bowls without supports are usually 6–9" (16–22 cm) in diameter. Cylindrical vases range in height from 7–10" (18–25 cm).

Formal Names: Termed as the Campana Polychrome Ceramic Group (Sharer 1978).

Salua Polychrome: Mostly cylindrical vases, usually with very short and wide tabular supports. The larger examples may have two opposing modeled head handles just below the rim representing monkeys or other animals. Bold designs are painted on a cream to orange base, using different combinations of black, dull red, dark orange, and yellow. The normally invisible paste is brick red. Black was often used to create ample panels (or even to cover almost the entire vessel) as a backdrop for featured designs. The principal designs are strikingly displayed and can include: mat patterns (*petates*), twisted cord patterns, animals (jaguars, parrots, owls, and others), humans, sea shells, ballcourts (represented by a two or four colored "I"-shaped drawing) and other motifs. Humans are often arrayed in finely detailed costumes and may be represented playing musical instruments, sowing with a digging stick, armed for battle, seated within a structure, or in other attitudes. A decorative option was to excise or stamp designs in panels or registers.

The remainder of the vessel (or, if a featured motif is lacking, all of the vessel) is decorated with panels and registers with circumferencial bands near the rim and geometric patterns elsewhere. Other vessel forms known for Salua are short cylinders ranging grading into bowls, convex walled bowls (i.e., with bulging sides), composite walled bowls, and jars. Strangely enough, despite their exceptional decoration, colored stucco was sometimes used to cover areas of Salua vessels (when eroded this stucco leaves chalky traces). Salua vessels have rarely been found filled with red pigment.

Dating: Late Classic (associated with the Payu Ceramic Complex and the Lepa Phase).

Size: The cylindrical vessels grade into vertical walled bowls over a range of heights from 3.5–12.5" (9–32 cm). Bowl diameters range from 6–12" (15–30 cm).

Formal Names: The name Salua is a local term employed in the National Museum of El Salvador. It has been long recognized that probably several different ceramic groups are lumped under this term, and that at least some of these groups probably correspond with the so-called Ulua or Sula Valley Polychromes of neighboring Honduras (which in recent years have been divided among several ceramic groups). Sharer (1978) cites Salua as a special group of the Payu complex, termed Special: Polychrome B, and he also mentions the name Salua Polychrome. At Quelepa it was noted as an unnamed ceramic group referred to as Dark Orange and Black on Orange (Andrews 1976). Several examples are illustrated in Longyear 1944 and 1966. It is interesting to note the relative abundance of Salua Polychrome in national and private collections in El Salvador in comparison with Honduran collections.

Quelepa Polychrome: Hemispherical and composite wall bowls, and jars; bowls may have basal flanges or slight angle changes near the rim. Bowls may have small solid or larger hollow supports. Quelepa Polychrome has a hard and very white base (slip) over a fine red paste. On this white base were painted designs in orange (often applied as a wash over most of the vessel), red and black; very rarely a purple paint may be present. Designs include "checkerboards", sunbursts, circles, bands, wavy lines, and others. Animals may be depicted on the interior or exterior (jaguars, birds, and monkeys have been noted).

Dating: Late Classic (a member of the Lepa Ceramic Complex).

Size: Bowls may measure from 4.5–15" (11–38 qcm) in diameter

Formal Names: Termed as the Quelepa Polychrome Ceramic Group in Andrews 1976.

Los Llanitos Polychrome: Flaring walled bowls, most or all with solid tabular supports (supports may have effigy decoration). A cream colored slip was applied a red paste. Orange paint was applied to the entire interior of the bowl and in small areas bordered by black on the exterior. In addition to orange and black, colors may include dull red, sepia, and rarely purple. Two designs diagnostic of Los Llanitos Polychrome are a "five-fingered flame" and stacks of three or four horizontal bars of decreasing length.

Dating: Late Classic (a member of the Lepa Ceramic Complex).

Size: 7–12.5" (18–32 cm) in diameter.

Formal Names: Termed Los Llanitos Polychrome by Longyear (1944) and as the Los Llanitos Polychrome Ceramic Group by Andrews (1976).

"Chinautla" Polychrome: Flaring walled bowls with flat bases and 3 or 4 hollow conical supports with simple applique. Red and black-brown designs were painted over a cream slip in registers, including spirals, stepped frets, bars, and dots.

Dating: Late Postclassic (a member of the Ahal Ceramic Complex).

Size: 6.5–10" (17–26 cm) in diameter.

Formal Names: First defined in Chalchuapa as the Chinautla Ceramic Group in Sharer (1978) due to its similarities with the "Chinautla Polychrome tradition" found mostly in the Guatemalan highlands. Most would probably now agree that this tradition may be subdivided into several distinct and locally distributed ceramic groups, of which the Chalchuapa variety would be one.

Machacal Purple Polychrome: Bowls (hemispherical, composite walled, or vertical walled with convex bases). With the exception of vertical walled bowls, these may be supported by ring bases, pedestal bases or 4 hollow cylindrical supports. Possesses an orange base slip with red and dark purple designs. Purple designs in the form of an horizontal "S" on the vessel exterior are common. Vessel bottoms usually have a simple purple design that some people have considered to vaguely resemble a bird. The generous use of purple paint on an orange base slip is a distinctive characteristic of this variety.

Dating: End of the Early Classic and beginning of the Late Classic.

Size: 5–11.5" (13–29 cm) in diameter

Formal Names: Termed Red and Purple on Orange by Boggs (in Longyear 1944), and Machacal Purple-polychrome by Sharer (1978).

Nicoya Polychrome: Hemispherical bowls, bowls with rounded to almost flat bases and flaring walls (these may have three hollow cylindrical or conical supports with effigy decoration as an option, often in the form of bird heads), cylindrical vases with ring bases, jars. Red, black, and yellow paint was applied over a very smooth white slip with a "soapy" texture. Usually over half of the vessel was left white. Designs include registers with geometric designs, human figures, and others. Rare vessels may have unusual forms and appendages.

Dating: Early Postclassic.

Size: Bowls range from 6–11" (15–28 cm) in diameter; cylindrical vases range from 6.5–12" (17–30 cm) in height.

Formal Names: Long called Nicoya Polychrome due to its relationship with the different varieties grouped under that name first defined for Nicaragua and Costa Rica. The variety found in El Salvador differs sufficiently from those varieties in forms and decoration to be considered as an additional type.

Chancala Polychrome: Hemispherical bowls, often slightly flaring from just under the rim. A cream base slip (often streaky in appearance) was painted with designs in brown-black and red. Animals rendered in a distinctive silhouette style were painted on opposing sides of the exterior (monkeys, lizards, and birds seem to be represented), with large solid circles, squares or cross-hatch designs between the two. The upper portion of the exterior body is divided by bands in a register holding step frets, circles, and/or other designs.

Dating: Late Classic.

Size: 6–8" (15–20 cm) in diameter.

Formal Names: Termed Chancala Polychrome by Boggs (1972).

Salinitas Polychrome: Known in bowl forms with a streaky cream to orange base slip. Black circumferencial bands define registers that usually enclose alternating spirals and stylized animals outlined in black with orange infilling.

Dating: Late Classic Period.

Formal Names: Termed Salinitas Polychrome by Boggs.

3b. Vessels With Usulután Decoration

Here are included several different varieties of ceramics that prominently feature Usulután decoration as their distinctive trait. Usulután decoration is a negative technique, resulting in light-colored lines against a darker background. The light lines were achieved by applying a resist substance and then covering the vessel with a slip that fired a darker color. Since this failed to adhere to the areas with resist, these maintained their lighter shade (a simplified explanation). In its most elaborate version, the resist substance was applied with a multiple brush with as many as seven small brushes fastened in a row, allowing the creation of swirling parallel lines. The base color on these vessels ranges from salmon pink to dark yellow, with the lines being a lighter shade of the same. Some varieties have red paint added as rim bands or (in the case of the Chilanga Ceramic Group) simple designs. Formal names for the ceramic groups considered here are: Jicalapa, Puxtla, Izalco, and Chilanga (Sharer 1978, Demarest 1986, Andrews 1976).

3c. Plumbate Vessels

Unpainted vessels with a glazed appearance. Surface color ranges from dark brown-black to lead-colored to salmon-orange, and sometimes all are found on a single vessel. Some areas may be iridescent. This is an extremely hard ceramic and "rings" when tapped. Vessel forms include a variety of forms of jars, bowls, cylindrical vases, and may even include figurines. Effigy decoration is common.

Dating: Terminal Classic (San Juan variety) and Early Postclassic (Tohil variety).

Formal Names: Both San Juan and Tohil varieties are found in El Salvador (Sharer 1978). It is interesting to note that approximately one third of all Tohil vessels recorded in the only pan-Mesoamerican inventory to date were from El Salvador (Shepard 1948).

3d. Olocuilta Orange and Santa Tecla Red Vessels

These two distinctive varieties of Late Preclassic ceramic vessels share many forms and types of decoration. Forms include a variety of bowls that may have very wide everted rims with scalloped and incised designs (in extreme cases the rims may be extended to form fish or other animal effigies when viewed from above). Bowls may also include faceted flanges. Some bowls may take the form of toad effigies. Usulután decoration (very often poorly preserved) may be present. The Santa Tecla Red variety is distinguished by its dense dark red slip, while Olocuilta Orange has a light orange slip (often with a powdery texture when slightly eroded). Santa Tecla Red may have graphite rubbed into grooves.

Dating: Late Preclassic (Chul and Caynac Ceramic Complexes).

Formal Names: Santa Tecla and Olocuilta Ceramic Groups (Sharer 1978; Demarest 1986). Please note that in these sources "Olocuilta" (which is the name of a Salvadoran town) was misspelled "Olocuitla".

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3e. Incised or Excised Vessels

Here are considered different varieties of ceramic vessels whose salient visual trait is decoration based on incision or excision.

Pinos: Pinos vessels have a smooth streaky black to brown slip with (post-slip) incisions on the exterior forming geometric designs. These incisions are sometimes filled with red or white pigment. Forms include a variety of bowl forms. Defined as part of the Chul and Caynac Ceramic Complexes of the Late Preclassic Period (Sharer 1978; Demarest 1986).

Lolotique: A variety of bowl forms of a dark and dull red color with fine post-slip incised geometric patterns. Defined as part of the Chul and Caynac Ceramic Complexes of the Late Preclassic Period (Sharer 1978; Demarest 1986).

Chalate Carved: Cylindrical vessels with a band of false glyphs or geometric designs carved below the rim. Details within this excavated band may be emphasized with incision. Vessel bodies are usually tan colored, and cream slip was sometimes added over the exterior, avoiding the carved band which sometimes was painted with red slip. When the cream slip is present, negative designs of dots, circles, water lilies, or egrets may be barely visible on the vessel body. The name of this Late Classic type is provisional and was proposed by Boggs based on its abundance in the Chalatenango area.

Red Excised: Cylindrical vessels with a band of false glyphs or geometric decoration excised below the rim and vertical excised grooves usually covering the rest of the exterior, sometimes with two opposing excised panels representing animal heads or other designs. Slipped with a dark red-orange color. Short solid tabular or nubbin supports may be present. Provisional name for a Late Classic type common in central El Salvador.

Cotzumalhuapa Incised Cylindrical Vases: Cylindrical vases, orange to brown in color, with fine incision including geometric motifs and monkeys. The rim area is distinguished by a band or groove. Late Classic Period.

3f. Vessels With Red Decoration

Here are grouped together varieties of ceramic vessels whose principal decoration was executed in red paint.

Marihua Red on Buff: Forms include: hemispherical bowls, bowls with rounded bases and flaring walls (these usually have three hollow or cylindrical supports, sometimes in the form of bird heads), and jars with three handles. Broad red lines form geometric designs on the buff colored interior of bowls and the exterior of jars. Designs include arcs, crosses, step frets, ehecatcozcatl (split snail shell motif), and others. Very rare are finely incised designs in a band on the exterior of bowls. Postclassic Period (Haberland 1964).

Guarumal: Almost all known examples are jars. Part of the jar exterior (reddish brown in color) is painted with a dense and hard red paint that is finely crazed. The paint may cover the upper portion of vessels, or may be distributed as panels, large dots or arcs. Rarely the entire vessel exterior is covered in red. A decorative option was to apply white paint in circles (applied with a hollow cane) and/or zigzagging lines. This white paint is also very hard and was applied over red painted areas. A small rabbit applique may appear on the vessel body. Late Classic Period (Beaudry 1983).

Delirio Red on White: Hemispherical bowls (sometimes made into an armadillo effigy by means of a shingled exterior and appliqued head and tail), bowls with flat or slightly rounded bottoms and flaring walls (these may have hollow cylindrical supports), jars (which may have a pair of effigy head handles below the rim), and other minor forms. A hard white slip was painted in red with very intricate geometric designs. Naturalistic forms are very rare. Late Classic Period (Lepa Ceramic Complex—Andrews 1976).

Cara Sucia Red Painted: Jars with dull red-orange paint over a cream-orange slip. The lower body is divided by vertical pairs of bands. Birds or other motifs may be painted on the shoulder of the vessel. Late Classic Period.

3g. Jars With Modeled Effigy Faces

Here are grouped together different varieties of ceramic jars that sharing the presence of effigy faces or heads applied to the vessel neck. Motifs include: old man, man with goatee and closed eyes, monkey, bird, and schematic humans.

3h. Tiquisate Vessels

Tiquisate vessels are entirely orange (ranging from light cream-orange to deep orange in color). Their surface is very hard and may "ring" when tapped. Vessel forms include hemispherical bowls and cylindrical vases. Decoration may take the form of rows of bosses, incised geometric designs, or stamped scenes of humans, animal heads, twisted bands, or other designs. Late Classic.

3i. Fine Paste Vessels

Forms include small flat bottomed bowls with vertical walls and hollow rattle supports, and piriform vessels with ring bases. Vessels walls are very thin and "ring" when tapped. An orange may be applied to the vessel with the exception of the base. Fine incising may be found on the exterior of bowls and may retain white and blue post-fire paint. Terminal Classic Period.

3j. Cara Sucia Pedestal-based Bowls

A distinctive type of bowl with a tall pedestal base. The bowls often have a basal flange, and red painted zones are sometimes found on the interior. Late Classic Period.

3k. Stuccoed Vessels

Here are grouped a variety of vessel forms and types whose common denominator for the purposes at hand is the presence of stuccoed decoration. The stucco involved is usually a white kaolin clay with blue, blue-green, red, yellow, or brown pigment mixed in, and probably had (originally) an organic binder or agglutinate. Since that binder long since ceased to function, the stuccoed decoration tends to be very fragile. Designs are usually simple bands or geometric motifs, but occasionally human or animal figures may be represented. Entirely stuccoed vessels seem to be most common in the Late Classic, and perhaps especially so in the Terminal Classic.

3l. Guazapa Scraped Slip Vessels

Jars with a brown body, over which was applied a cream colored slip that was finger dragged (like finger painting) while it was still wet, creating curving or wavy designs. A reddish-orange wash was sometimes applied over the scraped slip. Early and Late Classic Periods.

3m. Ancient Imports: Late Classic Palmar and Other Lowland Maya Ceramics

Several vessels of so-called "Peten Glossware" have been found in El Salvador that include the formally defined Palmar Ceramic Group, and may also include examples of the Saxche Ceramic Group and others (Sharer 1978). To date, three such vessels have been found in scientific excavation (one in a Tazumal tomb in the 1940's, a Palmar vessel in an offering with an eccentric flint in San Andrés in the 1970's, and a Palmar vessel in a grave on the outskirts of San Salvador in 1993). Several others have been documented in looting situations, including three recorded by Sharer (1978), and in private collections. Although these vessels were not made in the territory of El Salvador, they were definitely ancient imports and as such form part of Salvadoran cultural heritage, providing important testimony relative to long-distance social and economic relationships.

Forms include bowls with flat or slightly rounded bottoms and walls ranging from slightly flaring (nearly vertical) to broadly flaring walls; shallow simple bowls; tecomates (spherical forms with a small orifice); and cylindrical vases. Bowls may have ring bases, hollow cylindrical supports, or other forms of supports. Decoration consists of an orange or cream base slip over which were painted designs in black, red, and sometimes yellow. Designs include: glyph bands; humans standing, seated, dancing, or in other attitudes; heads (human, animal, God K, and others); animals in different positions; and other themes rendered in Late Classic Lowland Maya style.

4. Ceramic Drums

Ceramic drums comprise a globular body with a short rim on one extreme (over which the drum surface was stretched) and a long open shaft on the other extreme (which served as a stand). The body may have incised decoration. Surfaces are usually slipped and well polished, and may range from dark brown-black to brown to brownish red in color. Late Classic Period.

5. Incense Burners

5a. Ladle Censers

This category groups together a variety of different spoon or ladle shaped incense burners. These have a handle (which may be a hollow tube or a flattened loop) which supports the "spoon" or "ladle" that actually held the embers over which incense was sprinkled. The ladle portion may have holes perforated to facilitate the circulation of air, and in the taller, more cup-like versions these holes may take the form of crosses or step frets (these are the so-called "Mixteca-Puebla" style censers). Animal heads, claws, or other effigies may be added to end of the handle.

5b. Three-pronged Censers

Standing cylinders with three vertical prongs at the top and two long vertical flanges on the sides. Effigy faces may be added to the vessel bodies (bats have been noted). Post-fire paint added in red, orange, and white. Late Preclassic and Early Classic Periods (Sharer 1978).

5c. Lolotique Spiked Censers

The bowl-shaped censer body is supported by a tall pedestal base with perforations in the form of two large squares or circles, or slits. Short spikes cover the base and body. May retain remnants of post-fire red or white paint. Late Classic Period (Andrews 1978).

5d. Las Lajas Spiked Censers

Large hourglass-shaped censer covered by short spikes. Incised or modeled decoration may be found on the everted rims found at top and bottom. An internal shelf may be present to hold the large clay dish that supported the embers. Early Postclassic Period (Fowler 1981).

5e. San Andrés Stone Censers

Squat barrel-shaped censers of hard volcanic stone with columns of spikes on part of the exterior. The upper part of these censers have a dish-like depression to contain embers. Late Classic Period.

5f. Large Effigy Censers

Different varieties of censers whose common traits are their relatively large size and the prominent presence of elaborate effigies covering much or all of the censer body. In extreme cases, the censer is entirely concealed within a virtual ceramic sculpture. As an alternative to a single large effigy, some present several figures on a single censer, or a single element (like a head) repeated several times. Recorded effigies have included: the god Tlaloc (identifiable by a large ring around each eye); an individual with bulbous protruding eyes; the god Xipe Totec (appearing as an individual wearing a flayed human skin); jaguars; monkeys; iguanas; large saurians (so-called Earth Monsters), GIII (a manifestation of the Sun god identifiable by a twisted cord extending vertically between the eyes and catfish-like barbels curling from the sides of the mouth); and others. Mostly Late Classic and Postclassic Periods.

5g. Cotzumalhuapa Goblet Censers

Large goblet shaped vessel forms (essentially a large bowl with walls that begin as vertical and midway to the rim moderately flare outward, with a pedestal base), usually with signs of burning on the interior base. These censers may be unadorned, or may have two or three hollow head effigies rising directly from the rim, or they may have many small effigy heads attached in a row around the vessel just below its rim (monkey and iguana heads have been documented). Lids, when present, may appear as inverted bowls, with or without an effigy figure on top (one example has a large seated monkey). Late Classic Period.

6. Mushroom Effigies

Though some regard these as phallic effigies, most agree that mushrooms are represented. Two varieties are presented here.

6a. Ceramic Mushroom Effigies

Tall hollow bases rise from a flaring base and taper upwards to support the mushroom "cap". The body may be plain or may carry red paint and fine incisions (usually in the form of rows of triangles). Probably Late Preclassic and Early Classic Periods.

6b. Stone Mushroom Effigies

Usually made of fine-grained volcanic stone. The shaft of the mushroom rises from a base that may be cylindrical or square, and occasionally has short supports. Near the "cap" may often be found two raised bands representing the point from which the cap separates from its stem as it opens. Late Preclassic and Early Classic Periods.

7 Stone Sculpture

7a. Preclassic Animal Head Sculptures

Monumental sculptures in volcanic stone representing very stylized animal heads (Demarest 1986). These have usually been interpreted as jaguar heads, but reptilian elements may also be present. These were apparently architectural elements associated with Late Preclassic Period pyramids.

7b. Cotzumalhuapa Sculpture

Monumental sculptures in volcanic stone in the Cotzumalhuapa style (see Parsons 1967, 1969). Themes known from El Salvador include: a snake emerging from the ground, a skeletal figure with a hat resembling a derby, a coiled snake, and a disk with a jaguar face. Some of these are made from two stones which connect by means of a hidden tenon. Late Classic Period.

7c. Tenoned Head Sculptures

Long sculptures of volcanic stone with an animal head at one end and an undecorated tenon at the other, intended to be mounted in monumental architecture. The heads usually represent a bird or reptile. Late Classic Period.

7d. Balsamo Sculpture

These portable sculptures are usually made of vesicular volcanic stone and represent a human form in a squatting position. The vertebrae are usually indicated as a notched ridge on the individual's back. Although this form predominates, a grasshopper sculpture is also documented. Postclassic Period.

7e. Yugos

"U"-shaped ballgame yugos (yokes) made of dense volcanic stone. Very rare examples may carry carved decoration. Late Classic Period.

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7f. Hachas

Thin ballgame hachas usually representing animal or human heads (a variety of other designs are also found, such as a coiled snake and a skull). Made of fine-grained volcanic stone. Some examples have iron pyrite "eyes" and traces of red paint. Late Classic Period.

7g. Effigy Metates

Metates with a thin and slightly curving body, with an animal head at one end. A tail may be present at the other end. These are usually supported by three tall supports. Made of dense volcanic stone. Late Classic and Early Postclassic Periods.

8. Small Stone Artifacts

8a. Jade or Similar Greenstone Artifacts

Lustrous and hard green-colored stone crafted into: beads (spherical, globular, tubular, discoidal); pendants (plain or with human or animal effigies, including so called "axe gods" and canine tooth effigies); plaques (or pectorals) with elaborate designs; masks; mosaics; earspools; animal or human effigies (heads or full figure); or schematic squatting human forms (similar to examples from the El Cajón area of Honduras).

8b. Eccentric Chipped Stone

Flint, chert, or obsidian flaked into eccentric forms. These may include: a zigzag lance point form, a disc with three prongs or spike on one side, and elaborate large effigy eccentrics apparently meant to serve as scepters (similar to those found in caches at Copán, Quiriguá, and other sites). Late Classic Period.

8c. Obsidian Artifacts in General

Prismatic blades, bifacial artifacts (lance points, arrow points, "knives"), cores, and other objects made from obsidian (a black colored volcanic glass).

8d. Pyrite Mosaic "Mirrors"

A mosaic of carefully fitted plaques of iron pyrite placed on a thin disc-shaped backing made of stone or clay that may have designs on one side. When new, the pyrite reflected light brilliantly, but archaeological specimens have often lost their shine due to oxidation (the pyrite may convert to a brownish black crust). Late Classic and perhaps other periods.

8e. Paint Pallets

Small artifacts of vesicular volcanic stone with a dish shaped or squared depression on one surface. Some pallets are simple, being essentially natural cobbles of a flattened oblong shape with the depression worked on one surface, or sometimes two depressions on opposing surfaces. Others are elaborately carved and may include four supports and animal or human head effigies. Traces of red pigment have been found on some pallets. Late Classic and possibly other periods.

8f. Translucent Stone Bowls

Thin bowls carved from light colored translucent stone (which in different cases has been labeled as marble, alabaster, and onyx). At least some of these may be ancient imports from the territory of Honduras. Late Classic Period.

8g. Barkbeaters

Tabular dense stone artifacts with numerous longitudinal parallel incisions worked on one or both broad faces. On one variety (Classic and Postclassic Periods), three of the four narrow sides have a broad groove meant to receive a very pliable stick wound around it as a handle. The other variety considered here has an integral stone handle (Late Preclassic).

8h. Celts

These were originally mounted on wood handles for use as hatchets or adzes. Made of very dense, fine-grained stone and are often highly polished near the bit and sometimes over the entire body. Some examples are made of jade or stone resembling jade.

9. Metal Artifacts

9a. Copper Celts

Mounted on wooden handles for use as hatchets or adzes. Long copper celts with a rectangular cross section. May have a dark patina. Postclassic Period.

9b. Copper Rings

Copper finger rings made with the lost wax technique. Documented examples include filigree details or effigy heads. Terminal Classic and Postclassic Periods.

9c. Copper Bells

Copper bells, plain or with effigies, usually made by the lost wax technique. Postclassic Period.

9d. Tumbaga Artifacts

Tumbaga is an alloy of copper and gold. Artifacts made of Tumbaga may present a mottled surface looking golden in parts. Tumbaga artifacts documented for El Salvador include small animal figurines made by the lost wax technique, and a small hammered sheet mask with eyes and mouth cutouts. Late Classic Period.

Inapplicability of Notice and Delayed Effective Date

Because this amendment is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to § 553(a)(1) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Rules and Regulations, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority is revised and specific authority citation for Part 12, in part, continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104–12.104i also issued under 19 U.S.C. 2612.

2. Paragraph (a) of § 12.104g is added to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) The following is a list of agreements imposing import restrictions on the described articles of cultural property of State Parties. The listed Treasury Decision contains the Designated Listing with a complete description of specific items or categories of archaeological or ethnological material designated by the agreement as coming under the protection of the Convention on Cultural Property Implementation Act. Import restrictions listed below shall be effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. Any such extension is indicated in the listing.

State party	Cultural Property	T.D. No.
El Salvador ..	Archaeological material representing Prehispanic cultures of El Salvador.	T.D. 95–20

* * * * *

§ 12.104g [Amended]

3. Paragraph (b) of § 12.104g is amended by removing, from the listing of emergency import restrictions, the entry for El Salvador.

George J. Weise,

Commissioner of Customs.

Approved: March 7, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–6122 Filed 3–9–95; 8:45 am]

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Part X

The President

Executive Order 12955—Nuclear Cooperation With EURATOM

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Presidential Documents

Title 3—

The President

Executive Order 12955 of March 9, 1995

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Order Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, 12629, 12670, 12706, 12753, 12791, 12840, and 12903, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States nonproliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to December 31, 1995. Executive Order No. 12903 shall be superseded on the effective date of this Executive order.

William J. Clinton

THE WHITE HOUSE,
March 9, 1995.

[FR Doc. 95–6211
Filed 03–09–95; 10:56 am]
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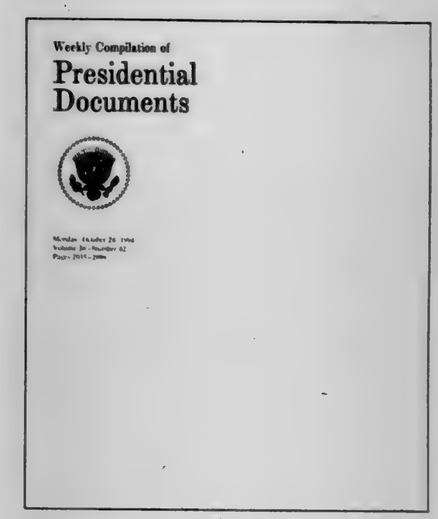

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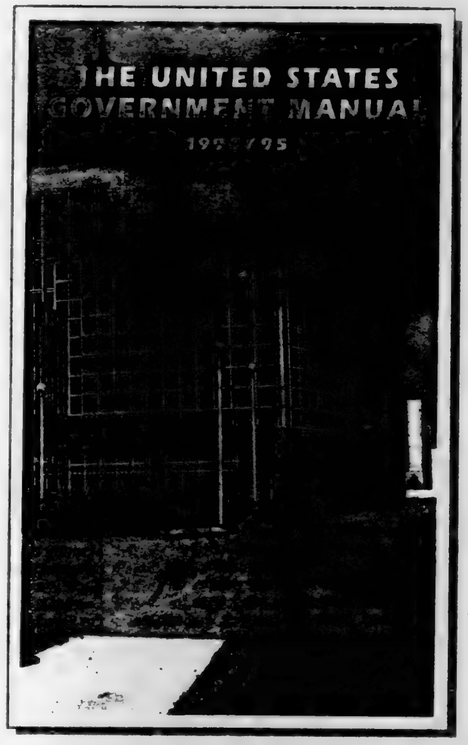

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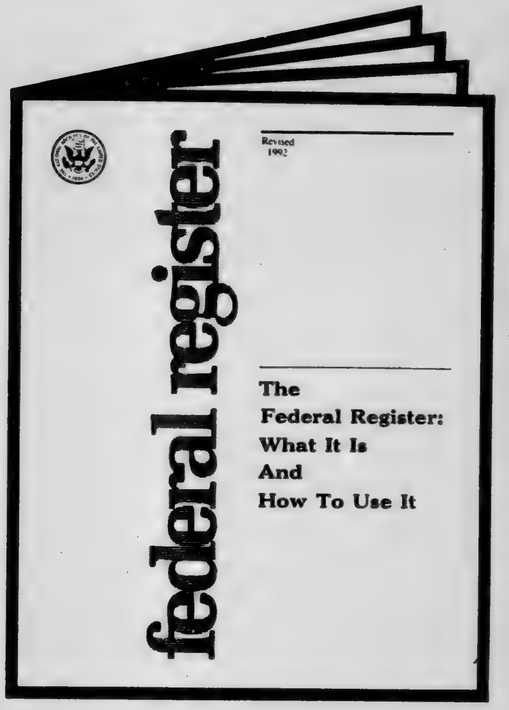

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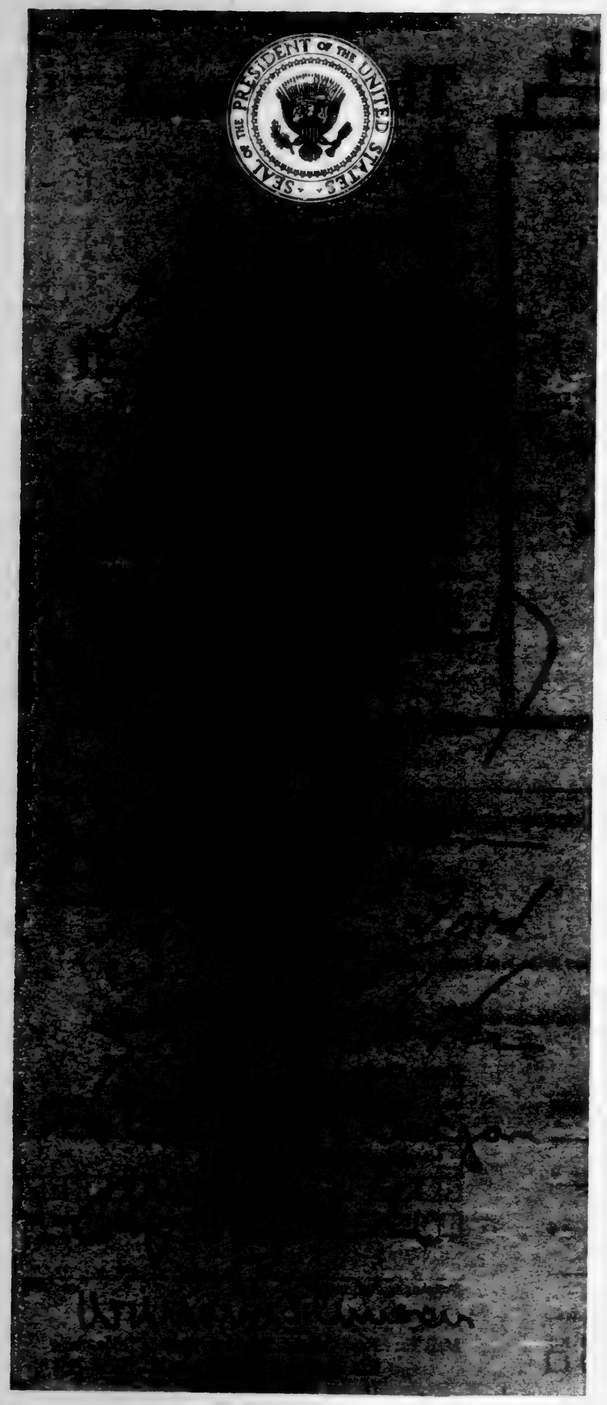

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Federal Register
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Monday, March 13, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of informal conference.

SUMMARY: On January 21, 1981, the Secretary of the Interior conditionally approved Utah's program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (see 46 FR 5899). On February 7, 1995, OSM notified the Director of the Utah Division of Oil, Gas and Mining (DOGM) that it had reason to believe that violations of the Utah surface coal mining regulatory program approved under SMCRA were resulting from the failure of the State to enforce all or any part of the program effectively with respect to the State's regulation of mine access and haul roads (see "Supplementary Information" below).

Under the provisions of OSM's regulations at 30 CFR 733.12(c), OSM will hold an informal conference to discuss the facts surrounding such a notification if an informal conference is requested by the State. By letter dated February 22, 1995, DOGM requested an informal conference. Accordingly, OSM hereby notifies Utah and the public that it will hold an informal conference. All interested persons may attend the informal conference.

DATES: OSM has scheduled an informal conference on Tuesday, March 14, 1995, beginning at 10:00 a.m, m.s.t.

ADDRESSES: The conference will be held in the Red Butte Room on the second floor of the Double Tree Hotel, 215 West South Temple, Salt Lake City, Utah 84180.

Copies of the Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Ehmett, Acting Assistant Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102. Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program (46 FR 5899).

On February 7, 1995, OSM notified the Director of the Utah Division of Oil, Gas and Mining (DOGM) that it had reason to believe that violations of the Utah surface coal mining regulatory program approved under SMCRA were resulting from the failure of the State to enforce all or any part of the program effectively with respect to the State's regulation of mine access and haul roads (administrative record No. UT–1023).

Since the approval of Utah's program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with DOGM officials about the State's performance. Recent discussions and investigations have centered on inadequacies of DOGM's implementation of the approved program in areas set forth below.

1. *Mine Access and Haul Roads:* Failure to regulate mine access and haul roads included within the Utah program definition of "coal mining and reclamation operations" at Utah Administrative Rule (Utah Admin. R.) 645–100–200 and the virtually identical Federal definition of "surface coal mining and reclamation operations" at 30 CFR 700.5.

2. *Exclusion of Public Roads From Regulation:* Both the State and Federal definitions include all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of mining-related activities and for haulage or excavation purposes. Contrary to the manner in which Utah is implementing its program, the corresponding Federal definition of "surface coal mining operations" in section 701(28) of SMCRA does not exclude, as asserted by Utah, all roads designated as public roads or open to public use except when deeded by mine operators to public entities to avoid compliance with SMCRA.

In the February 7, 1995, notification, OSM specified a date for DOGM to present a plan to correct the deficiencies in the implementation of its program. On February 22, 1995, DOGM responded that its position with regard to OSM's wish to have the Division reconsider its permitting decisions is set forth in the complaint filed in *Utah v. Lujan*, 92–C–063–G (D. Utah). DOGM also responded that the facts and legal argument set forth in the complaint were being incorporated as its response to OSM's February 7, 1995, letter. Lastly, DOGM requested that OSM hold an informal conference to discuss the facts supporting the assertions of the February 7, 1995, letter (administrative record No. UT–1024).

Section 733.12(c) of 30 CFR requires OSM to provide the State regulatory authority an opportunity for an informal conference.

The informal conference may pertain to the facts of the deficiencies or the time period for accomplishing remedial actions.

Conference Rules

The informal conference is an opportunity for OSM to discuss the status of the implementation of Utah's program with Utah officials.

No testimony from the public will be taken but a verbatim transcript of the meeting will be kept.

Dated: March 2, 1995.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–5923 Filed 3–10–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[VA37-1-6812a; FRL-5170-9]

Designation of Areas for Air Quality Planning Purposes; Virginia; Withdrawal of Final Rule Pertaining to the Clean Air Act Promulgation of Reclassification of the Hampton Roads Ozone Nonattainment Area in Virginia and Attainment Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On January 17, 1995, EPA published a final rule to reclassify the Norfolk-Virginia Beach-Newport News area (Hampton Roads) in Virginia from marginal to moderate nonattainment for ozone. The January 17, 1995 document also set forth the method that EPA will use henceforth to determine if areas have attained an air quality standard. These actions were published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on these actions, EPA is withdrawing the January 17, 1995 final rule actions pertaining to the Hampton Roads reclassification and EPA's method to determine if areas attained an air quality standard.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597-9337.

SUPPLEMENTARY INFORMATION: On January 17, 1995, EPA published a final rule to reclassify the Norfolk-Virginia Beach-Newport News area (Hampton Roads) in Virginia from marginal to moderate nonattainment for ozone (60 FR 3349), because the area failed to meet its November 15, 1993 attainment date. The action was based on air quality monitoring data for ozone. The January 17, 1995 document also set forth the method that EPA will use henceforth to determine if areas have attained an air quality standard. EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as non-controversial and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (60 FR 3349). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 3366). By publishing a document announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period. Therefore, EPA is withdrawing the January 17, 1995 final rulemaking actions pertaining to the Hampton Roads reclassification and EPA's method to determine if areas attained an air quality standard. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

The January 17, 1995 action also determined that a number of marginal ozone nonattainment in the states of Delaware, Pennsylvania, New Jersey, Ohio, and West Virginia have ambient air monitoring data that meets the ozone air quality standard. Those determinations were based on monitored air quality readings for ozone during the years 1991-1994. The January 17, 1995 action was not a redesignation action for these marginal areas for which air quality monitoring data indicates attainment of the standard. The Clean Air Act requires that a separate redesignation request be submitted by the appropriate states to EPA. These determinations are not affected by this withdrawal document. This withdrawal document only pertains to the final rulemaking actions on the Hampton Roads reclassification and EPA's method to determine if areas have attained an air quality standard.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: March 1, 1995.

Stanley Laskowski,

Acting Regional Administrator.

For the reasons set out in the preamble, 40 CFR part 81 is amended by withdrawing the final rule published on January 17, 1995 at 60 FR 3349.

[FR Doc. 95-6110 Filed 3-10-95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 81

[WI44-02-6881; FRL-5168-4]

Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of Oshkosh, Wisconsin, to Attainment for Carbon Monoxide; Correction

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule, correction.

SUMMARY: On August 17, 1994 the USEPA published a final rule approving the redesignation Oshkosh, Wisconsin to attainment status for carbon monoxide (59 FR 42168). The supplementary information to the final rule included several typographical errors, and the final rule incorrectly listed the date the rule was to take effect. This correction clarifies the intent of the supplementary information and provides the correct effective date of October 17, 1994.

The USEPA regrets any inconvenience caused by these errors.

EFFECTIVE DATE: This correction is effective March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-0669.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

Correction of Publication

Accordingly, the final rule published on, August 17, 1994 at 59 FR 42168 FR Doc. 94-20172, is corrected as follows:

1. On page 42169 of the final rule, at the top of the first column, the "Action" heading is incorrectly labelled as "C;" the correct label is "B." In the same column, the "Miscellaneous" heading is labelled as "IV;" the correct label is "III." Similarly, in column two, the "Petitions for Judicial Review," heading is labelled as "D;" the correct label is "C."

§ 81.350 [Corrected]

2. On page 42169, in § 81.350, in the Wisconsin carbon monoxide table, in the entry for "Winnebago County" the designation date in column 2 and the classification date in column 4 are corrected to read "October 17, 1994".

[FR Doc. 95-5659 Filed 3-10-95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382 and 391

[FHWA Docket No. MC-93-2]

RIN 2125-AD47

Controlled Substances Testing; Recordkeeping and Reporting Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the controlled substances and alcohol testing regulations to require a motor carrier to prepare an annual summary of alcohol and controlled substances test results only upon the demand of an FHWA representative, either as part of an inspection, investigation, or special study; or as part of the anti-drug management information system (MIS). The FHWA will use the data to conduct investigations, to analyze its current approach to deterring and detecting alcohol and controlled substances misuse within the motor carrier industry, and to modify program goals, as appropriate.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: For information regarding program issues: Mr. Ronald Finn, Office of Motor Carrier Standards, (202) 366-0647, and for information regarding legal issues: Mr. David Sett, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA published a final rule in the **Federal Register** on November 21, 1988, requiring motor carriers to test commercial motor vehicle drivers for the use of controlled substances (53 FR 47134). The rule also required all carriers to compile a report containing certain information about their current controlled substances testing program. The FHWA published a final rule on December 23, 1993, under FHWA Docket No. MC-93-2, which amended 49 CFR 391.87(h) to modify the controlled substances testing information required to be maintained. The final rule also required that the report be submitted to the FHWA, if requested, as part of the FHWA anti-drug management information system (MIS) (58 FR 68220). On February 15, 1994, the FHWA published a final rule under FHWA Docket Nos. MC-116, MC-92-19, and MC-92-23, which amended 49 CFR Part 382 to apply these same MIS requirements to employers subject to the new controlled substances and alcohol testing program mandated by the Omnibus Transportation Employee Testing Act of 1991 (59 FR 7484).

On January 21, 1994, the American Trucking Associations, Inc. (ATA), filed a petition under 49 CFR 389.35 for reconsideration of the December 23, 1993, rulemaking. The ATA requested that the requirement that an annual summary be prepared and maintained by all employers be limited to those relatively few employers who have been selected to submit the annual summaries to the FHWA MIS. On February 3, 1994, the American Movers Conference filed a letter in support of the ATA's petition. Because the MIS reporting provisions in the December 23, 1993, rule are the same as those appearing in the new rules for drug and alcohol testing under 49 CFR Part 382, the FHWA's response to the petition applies in the same manner to both 49 CFR Part 382 and § 391.87(h).

The ATA's petition has been granted in part and denied in part. The FHWA's response to the petition is reprinted here as appendix A but will not appear in the Code of Federal Regulations.

Consistent with the response to the petition, the controlled substances and alcohol testing regulations at 49 CFR Parts 382 and 391 are amended to require a motor carrier to prepare an annual summary only upon the demand of an FHWA representative, either as part of an inspection, investigation or special study; or as part of the MIS. The new requirements will apply as of March 13, 1995 and begin with the annual summaries for the year 1994.

Also included in this document as appendix B are MC-154 and MC-155 for use in filing reports with the FHWA MIS. The MIS forms were printed as an appendix to the February 15, 1994, final rule. The "EZ" form was inadvertently published without part D, Alcohol Testing Information. The MIS forms are being reprinted here in their entirety and will not appear in the Code of Federal Regulations. They are meant merely as examples of the forms that will be sent to employers who have been selected to submit reports to be used in the MIS. For employers who have not been selected to submit MIS reports, but who do compile annual summaries, any form may be used. This includes electronic storage as long as all the required data elements are available in paper form.

The Office of the Secretary published a final rule on August 19, 1994 (59 FR 42996), changing 49 CFR 40.29(g)(6) to require laboratories to submit quarterly instead of monthly statistical summary reports to employers. The FHWA is changing the reference in 49 CFR 391.81(h)(1) from monthly laboratory summaries to quarterly laboratory summaries in order to be consistent with 49 CFR Part 40.

Rulemaking Analyses and Notices

The FHWA finds that further notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) inasmuch as the annual summary issue has already been the subject of notice-and-comment rulemakings (RIN 2125-AC85, 2125-AC81, and 2125-AD06), including three December 15, 1992, notices of proposed rulemaking (57 FR 59516, 59539, and 59567). In addition, the FHWA believes that further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation. In light of the earlier opportunities to comment on this subject, and the comments actually received on this issue, the FHWA does not anticipate that providing an additional comment period would result in the receipt of useful information.

The FHWA also believes that this final rule is exempt from the 30-day delayed effective date requirement of the Administrative Procedure Act under 5 U.S.C. 553(d)(1) because it "grants or recognizes an exemption or relieves a restriction." This final rule removes the requirement that all employers prepare an annual summary and instead requires only those employers directed by the FHWA to submit such reports, either as part of an investigation or the MIS, to prepare them. Therefore, the FHWA finds that good cause exists to proceed directly to a final rule.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 nor significant under the Department of Transportation's regulatory policies and procedures. In this final rule, the FHWA removes the requirement that all employers prepare an annual summary. Instead, only those employers required to submit annual summaries or make them available in safety inspections must prepare them. It is anticipated that the economic impact of this rulemaking will not be substantial although this

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action will reduce employers' costs of complying with the FHWA controlled substances and alcohol use and testing regulations. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. In this final rule only those employers required to submit annual summaries or make them available in safety inspections must prepare them by March 15 of the year following the date that a final test result determination is made. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in this rule are approved until March 31, 1997, by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and have been assigned OMB control number 2125–0543.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382 and 391

Alcohol concentration, Alcohol testing, Controlled substances testing, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subchapter B, chapter III, parts 382 and 391 as set forth below.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.* and 31502: 49 CFR 1.48.

2. Section 382.401 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 382.401 Retention of Records.

* * * * *

(b) * * *

(1) * * *

(vi) A copy of each annual calendar year summary required to be completed pursuant to § 382.403.

* * * * *

3. Section 382.403 is amended by revising paragraph (a) to read as follows:

§ 382.403 Reporting of Results in a Management Information System.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

* * * * *

PART 391—QUALIFICATION OF DRIVERS

4. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31136, and 31502; and 49 CFR 1.48.

§ 391.87 [Amended]

5. In 49 CFR 391.87(h)(1) remove the word "monthly" and add in its place the word "quarterly."

6. Section 391.87 is amended by revising paragraph (h)(3) and adding paragraph (h)(4) to read as follows:

§ 391.87 Notification of test results and recordkeeping.

* * * * *

(h) * * *

(3) A motor carrier shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or any of its drivers. The information shall be made available for inspection at the motor carrier's principal place of business within two business days of the request.

(4) If, during the month of January, a motor carrier is provided with forms by the Federal Highway Administration on which to report the motor carrier's annual calendar year summary information, the motor carrier shall complete the forms and submit them to the Federal Highway Administration by March 15 of that year. The motor carrier shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A to Preamble—Response to Petition for Reconsideration

Before the Federal Highway Administration

Decision

In the matter of: American Trucking Associations, Inc., Petitioner.

Petition for Reconsideration No. 94–11

On January 21, 1994, the American Trucking Associations, Inc. (ATA) filed a timely petition under 49 CFR § 389.35 for reconsideration of a Federal Highway Administration (FHWA) rulemaking: Controlled Substances Testing; Recordkeeping and Reporting Requirements; Final Rule. 58 Fed. Reg. 68220 (1993). The ATA requests that the rule's requirement that an annual summary be prepared and maintained by motor carriers be limited to those carriers which have been selected to submit the summaries to the FHWA. Attached to the letter is a copy of comments which the ATA submitted to the rulemaking docket (MC–93–2). On February 3, 1994, the American Movers Conference filed a letter in support of the ATA's petition. The motion is considered as a petition for reconsideration of a rule under 49 CFR 389.35. For the reasons set forth below, the petition is granted in part and denied in part.

The rule establishes a management information system (MIS) for FHWA drug testing regulations. Certain information relating to a carrier's drug testing program (e.g., number of tests administered and number of tests with verified positive results) is required to be compiled and maintained on an annual basis as part of the MIS. Prior to the December 23, 1993, rulemaking, the FHWA already required substantially the same information to be compiled and maintained. 49 CFR 391.87(h). In addition to deleting some items of information and adding others, the subject rulemaking amended § 391.87(h) to require that annual summaries, required to be maintained by all carriers, be submitted, in the form provided in the rulemaking, to the FHWA by a relatively small number of selected carriers each year for statistical purposes.

The MIS provisions in the subject rulemaking are similar to those appearing in the new rules for drug and alcohol testing. 49 CFR Part 382. Therefore, any discussion or amendment of § 391.87(h) pursuant to the petition applies in the same manner to Part 382.

The ATA petitions the Administrator to reconsider the requirement that all carriers be required to complete annual summary forms. The ATA recommends that only carriers which have been selected to submit annual summaries to the FHWA be required to complete them.

The ATA states that it "supports reasonable recordkeeping requirements * * * [but] opposes recordkeeping requirements which are unduly complex and exceed legitimate needs for monitoring compliance." The ATA argues that requiring all carriers to complete annual summaries is unreasonable and constitutes a "severe paperwork burden" without commensurate safety benefits.

As mentioned above, the rulemaking made no significant substantive changes to the information already required to be maintained and prepared in § 391.87. Annual summaries have been required since the inception of the drug testing program in 1989.

The rule, therefore, does not increase, but only continues, any data maintenance burden on carriers.

The rule also does not significantly increase the procedural burden. Contrary to the assumption in the petition, the rule does not require all motor carriers to complete annual summary forms. Only those carriers which have been selected to submit data are required to put that data on a form, and mail it to the FHWA. Thus, the ATA's cost estimate, based on FHWA's computation of time to complete one form, of $1.3 to $5.4 million for 270,000 carriers to complete the forms is not accurate. In actuality, only a fraction of those 270,000 carriers will be required to complete and submit a form in any given year.

The rule does continue the requirement of preparing and maintaining certain testing information. For the vast majority of carriers, this means that the information, which consists of yearly totals in various categories, must be culled from the carrier's files and kept in one place. No forms need to be completed. Indeed, the form of the summary is not specified at all. The carrier can choose the form best suited to its operations, including computer technology. § 390.31. Such electronic data storage and retrieval systems should facilitate the generation of the summaries.

Though an assessment of the burden of compliance with the annual summary requirement should not properly include the cost of form preparation, it must be acknowledged that a cost is incurred simply in the compiling and maintaining of the summary information. Though difficult to quantify, the cost, added to an already costly drug testing program, may be significant, given the large number of carriers subject to the rules. The addition of alcohol testing to drug testing, along with the inclusion of intrastate with interstate carriers subject to testing, will only increase the overall cost of data maintenance. Given these costs, the question becomes, can the regulatory benefit to the FHWA in the context of the program as a whole justify the imposition of the addition costs associated with the annual summary?

The ATA argues that a summary of a year's activity is of no value in determining compliance, because drug testing requirements are driver and trip specific. Even the rate at which the employer is actually randomly testing its drivers cannot be determined from review of an annual summary, the ATA asserts, because "the summary provides only the number of covered employees, while the random selection criteria is based on driver positions."

It is correct that an employer must test its employees at a given rate based on the number of its driving positions during the course of the year, and that the annual summary includes a different number—the total number of drivers subject to testing during the year. It is incorrect, however, that the annual summary is of no use in determining a carrier's compliance with the random testing rate. In most, but not all, instances, the number of random tests performed will appear on the annual summary, which is part of the rate equation. No other information on the annual summary can be used directly to enforce compliance with drug testing requirements, however.

The annual summary also has value in indirect enforcement of drug testing requirements. Nowhere else is information on a carrier's drug testing program compiled in one location. Drug testing data is usually maintained in individual driver qualification files. The annual summary gives an overall picture of the drug testing program, and may alert FHWA representatives to irregularities which can be further investigated through other employer records.

A collateral benefit lies in the picture which an annual summary presents a carrier of its program as a whole. With testing information scattered about in individual files, and perhaps in different locations, it may be difficult for a carrier to determine the overall effectiveness of its program. Inconsistencies and flaws which might otherwise be missed may be highlighted by the annual summary, allowing the carrier to make any changes to the program necessary to ensure compliance. Yet, mandating completion of an annual summary is a one size fits all management approach. Many carriers may have alternative, and less costly, methods of accomplishing the same oversight.

In summary, the annual summary offers limited benefits to the FHWA in direct enforcement of testing requirements, and perhaps greater benefits in indirect enforcement. It may be helpful, though not essential, for an FHWA inspector to have the information available. On the other hand, these marginal benefits are never realized in regard to the vast majority of carriers neither asked to submit the summaries they labored to complete, nor made the subject of a compliance audit.

It is not reasonable or cost effective in terms of enforcement, therefore, to require all carriers to complete an annual summary by March 15 of each year, when only a mere fraction of those summaries are ever reviewed by FHWA officials. Many prudent carriers may very well wish to prepare and maintain a summary each year as a management aid or in anticipation of an inspection or submission request, but they should not be required to do so.

For carriers that are inspected, however, it may be beneficial for an FHWA inspector to review an annual summary. Therefore, the rule will be amended to require a carrier to produce an annual summary only upon the demand of an FHWA representative, either as part of an inspection, investigation or special study; or for statistical purposes. Thus, the ATA's petition to restrict the summary requirement to statistical purposes is denied, though the instances in which the summaries must be completed is being greatly reduced consistent with the petition.

This scheme will operate well with the requirements in the new alcohol and drug testing regulations to be implemented on January 1, 1995, and 1996. The new regulations, Part 382, contain an MIS for drug and alcohol testing similar to that in Part 391 for drug testing. Part 391 will sunset as Part 382 testing is implemented. Both Parts 382 and 391 now provide for prior notice. Sections 382.401(d) and 391.87(h)(3) allow the employer to make all records required to be maintained in Part 382 or § 391.87 "available at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration." Upon request, the carrier would gather the records together, along with

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the most current annual summary, and present them to the FHWA representative.

Wherefore, the petition of the American Trucking Associations, Inc. for reconsideration of the FHWA final rule at 58 Fed. Reg. 68220 (January 21, 1994,) is hereby denied in part and granted in part consistent with the foregoing. The FHWA will publish a final rule accordingly.

Dated: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

Appendix B to Preamble—Information Systems Data Collection Forms

Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

Instructions

The following instructions are to be used as a guide for completing the drug and alcohol testing information sought by the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) in the Drug and Alcohol Testing MIS Data Collection Form. These instructions explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii–iv (for drug results) and v–vi (for alcohol results) as an example to facilitate the process of completing the form correctly.

This reporting form is comprised of four sections. Collectively, these sections address the data elements required in the FHWA and the DOT drug and alcohol testing regulations. The four sections, the page number for the instructions, and the page location on the reporting form are shown below.

Section	Instructions page	Reporting form page
A. Motor Carrier Employer Information.	i	1
B. Covered Employees.	i	1
C. Drug Testing Information.	ii–iv	2
D. Alcohol Testing Information.	iv–vi	3

Page 1—MOTOR CARRIER EMPLOYER INFORMATION (Section A) requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature, date, and current telephone (including the area code) must be entered by the person certifying to the correctness and completeness of the report.

Page 1—COVERED EMPLOYEES (Section B) requires a count for each driver that must be tested under DOT regulations. There is only one category of covered employees for FHWA regulated employers, and that is "Drivers". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION, requires that you identify the number of drivers, who are covered employees, under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under *all* appropriate operating administrations.

Page 2—DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing.

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on random, post-accident/non-fatal, post-accident/fatal, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

(1) The number of specimens collected in each testing category;

(2) The number of specimens tested which were verified negative and verified positive for any drug(s); and

(3) Individual counts of those specimens which were verified positive for each of the five drugs.

Do *not* include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, PRE–EMPLOYMENT TESTING

Information on actions taken with those persons testing positive is required at the end of Section C. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Three types of information are necessary to complete the left side of this table. The first column ("NUMBER OF SPECIMENS COLLECTED"), requires a count for all collected specimens. It *should not* include refusals to test. The second column ("NUMBER OF SPECIMENS VERIFIED NEGATIVE"), requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO).

The third column ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS"), refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of thee table ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG"), requires counts of positive tests for each of the five drugs for which tests were completed (i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines). The number of positive specimens for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results should be included once in each of the appropriate columns (marijuana *and* cocaine).

A sample table is provided on page iii with example numbers.

Page 2—Below the table for drug testing information is a box ("Number of persons denied a position as a covered employee following a verified positive drug test"). This is a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2—Also following the table that summarizes DRUG TESTING INFORMATION, you must provide counts for employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

Sample Applicant Test Results Table

The following example is for Section C, DRUG TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses "Pre-Employment" testing to illustrate the correct procedures for completing the form.

A. Urine specimens were collected for 157 job applicants for driver positions during the reporting year. This information is entered in the first column of the table in the row marked "PRE-EMPLOYMENT".

B. The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for driver positions were negative (i.e., no drugs were detected). Enter this information in the second column of the table in the row marked "PRE-EMPLOYMENT".

C. The MRO for your company reported that 4 of those 157 specimens from applicants for driver positions were positive (i.e., a drug or drugs were detected). Enter this information in the third column of the table in the row marked "PRE-EMPLOYMENT".

D. With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana.
#2	Amphetamines.
#3	Marijuana and Cocaine (Multi-drug specimen).
#4	Marijuana.

Type of test	Number of specimens collected	Number of specimens verified negative	Number of specimens verified positive for one or more of the five drugs	Number of specimens verified positive for each type of drug				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Pre-employment	157	153	4	3	1	0	0	1

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in the table, SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG.

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2—SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG requires information on specimens that contained more than one drug. First, indicate the NUMBER OF VERIFIED POSITIVES. Then, specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 specimens, then you would write "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 2—EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required by FHWA regulation.

Page 2—DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

Page 3—ALCOHOL TESTING INFORMATION (Section D) requires information for alcohol testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in covered positions only (i.e., "Drivers"). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. A sample table is provided on page vi with example numbers.

Four types of information are necessary to complete this table. The first column ("NUMBER OF SCREENING TESTS"), requires a count of all screening alcohol tests performed. It *should not* include refusals to test. The second column ("NUMBER OF CONFIRMATION TESTS") requires a count of all confirmation alcohol tests performed.

The third column ("NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04"), refers to the number of test results equal to or greater than 0.02, but less than 0.04.

The fourth column ("NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04"), refers to the number of specimens with a result equal to or greater than 0.04. Note: For return to duty testing, a confirmation test result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.

Page 3—Below the table for alcohol testing information is a box ("Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater"). This is a count of those persons who were not placed in a covered position because their alcohol test indicated an alcohol concentration of 0.04 or greater.

Page 3—Also following the table that summarizes ALCOHOL TESTING INFORMATION, you must provide a count of the "Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)". This information should be available from the personnel office and/or drug and alcohol program manager.

Sample Applicant Test Results Table

The following example is for ALCOHOL TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other reasons for testing in the table which require you to summarize testing results for employees. This example will use "Pre-Employment" testing to illustrate the procedures for completing the form.

A. Screening tests were performed on 157 job applicants for driver positions during the reporting year. This information is entered in the first blank column of the table in the row marked "PRE-EMPLOYMENT".

B. Confirmation tests were necessary for 6 of the 157 applicants for driver positions. Enter this information in the second blank column of the table in the row marked "PRE-EMPLOYMENT". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C. The confirmation test results for 2 of the applicants for driver positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked "PRE-EMPLOYMENT".

D. The confirmation test results for 3 of the applicants for driver positions were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked "PRE-EMPLOYMENT".

Type of test	Number of screening tests	Number of confirmation tests	Number of confirmation test results equal to or greater than 0.02, but less than 0.04	Number of confirmation test results equal to or greater than 0.04
Pre-employment	157	6	2	3

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Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section D.

Page 3—Number of employees administered drug *and* alcohol tests at the same time resulting in a verified positive drug test *and* an alcohol test indicating an alcohol concentration of 0.04 or greater, requires that a count of all such employees be entered in the indicated box.

Page 3—VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION, requires information on the NUMBER OF COVERED EMPLOYEES committing such a violation, a description of the VIOLATION committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the ACTION TAKEN in response to the violation.

Page 3—EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

Page 3—ALCOHOL TRAINING/EDUCATION requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA Drug and Alcohol Testing MIS Data Collection Form OMB No. 2125–0543

A. Motor Carrier Employer Information

Company _____
Year Covered by This Report: _____
Principal Place of Business for Safety:
Physical Address _____
Mailing Address _____
_____
_____
_____
U.S. DOT Number _____
ICC Number _____
_____

I, the undersigned, certify that the information provided on this Federal Highway Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____
Signature

_____
Date of Signature

_____
Title

_____
Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 2 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS–1); Federal Highway Administration; 400 7th St., SW., Washington, DC 20590; OR Office of management and Budget, Paperwork Reduction Projects (2125–0543); Washington, DC 20503.

B. COVERED EMPLOYEES

Employee category	Covered Employees					
	Number of FHWA covered employees	Number of employee covered by more than one DOT operating administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

Read Before Completing the Remainder of this Form:

1. All items refer to the current reporting period only (for example, January 1, 1994–December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

- Results should be reported only for employees in COVERED POSITIONS as defined by FHWA/DOT drug and alcohol testing regulations.
- The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, amphetamines, and alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in the tables entitled "EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG (or AN ALCOHOL) TEST". Do *not* include refusals for testing in other sections of this report.

4. Do *not* include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. DRUG TESTING INFORMATION

Type of test	Number of specimens collected	Number of specimens verified negative	Number of specimens verified positive for one or more of the five drugs	Number of specimens verified positive for each type of drug				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Pre-employment								
Random								
Post-Accident/non-fatal								
Post-Accident/fatal								
Reasonable suspicion								
Return to duty								
Follow-up								

Number of persons denied a position as a covered employee following a verified positive drug test:

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG

Number of verified positives	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

Employees who refused to submit to a drug test	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation	
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation	

Drug training/education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

Type of Test	Number of screening tests	Number of confirmation tests	Number of confirmation test results equal to or greater than 0.02, but less than 0.04	Number of confirmation test results equal to or greater than 0.04
Pre-employment				
Random				
Post-accident/non-fatal				
Post-accident/fatal				
Reasonable suspicion				
Return to duty				
Follow-up				

Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater:

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Number of employees administered drug *and* alcohol tests at the same time resulting in a verified positive drug test *and* an alcohol test indicating an alcohol concentration of 0.04 or greater:

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION

Number of covered employees	Violation	Action taken
	Driver used alcohol while performing safety-sensitive function	
	Driver used alcohol within 4 hours of performing safety-sensitive function	
	Driver used alcohol before taking a required post-accident alcohol test	

Employees who refused to submit to an alcohol test	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation	
Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation	

Alcohol Training/Education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations	

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Drug and Alcohol Testing Management Information System (MIS) "EZ" Data Collection Form

Instructions

The following instructions are to be used as a guide for completing the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) Drug and Alcohol Testing MIS "EZ" Data Collection Form. This form should only be used if there are no positive drug tests and no alcohol misuse to be reported by your company. These instructions explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FHWA and DOT drug and alcohol testing regulations.

SECTION A—MOTOR CARRIER EMPLOYER INFORMATION requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature and title, date, and current telephone (including the area code) must be entered by the person certifying the correctness and completeness of the report.

SECTION B—COVERED EMPLOYEES requires a count for each employee category that must be tested under FHWA regulations. There is only one category of covered employees for FHWA, and that is "Drivers". The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under *all* appropriate operating administrations.

SECTION C—DRUG TESTING INFORMATION requires information for drug testing, refusals for testing, and training/education. The first table requests information on the NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE in each category for testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only (i.e. "Drivers"). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. "COLL" requires the number of specimens collected for each category of testing. "NEG" requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO). Do *not* include results of quality control (QC) samples submitted to the testing laboratory in any of the categories.

Following the table for drug testing data you must provide counts for drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FHWA regulation.

DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

SECTION D—ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the NUMBER OF SCREENING TESTS CONDUCTED in each category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in covered positions only (i.e., "Drivers"). Enter the number of alcohol screening tests conducted for each category of testing. These numbers do not include refusals for testing.

Following the table that summarizes ALCOHOL TESTING INFORMATION, you must provide a count of the "Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)". This information should be available from the personnel office and/or drug and alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

ALCOHOL TRAINING/EDUCATION requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA Drug and Alcohol Testing MIS "EZ" Data Collection Form OMB No. 2125–0543

A. Motor Carrier Employer Information

Company _____

Year Covered by This Report: _____

Principal Place of Business for Safety:

Physical Address _____

Mailing Address _____

_____

_____

_____

U.S. DOT Number _____

ICC Number _____

I, the undersigned, certify that the information provided on the attached Federal Highway Administration Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____

Signature

_____

Date of Signature

_____

Title

_____

Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statement or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS–1); Federal Highway Administration; 400 7th St., SW., Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125–0543); Washington, DC 20503.

B. COVERED EMPLOYEES

Covered Employees						
Employee Category	Number of FHWA Covered Employees	Number of Employees Covered by More Than One DOT Operating Administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

C. DRUG TESTING INFORMATION

Number of Specimens Collected and Verified Negative														
Employee Category	Pre-Employment		Random		Post-Accident/ Non-Fatal		Post-Accident/ Fatal		Reasonable Suspicion		Return to Duty		Follow-up	
	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg
Drivers														

Number of drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

Employees who refused to submit to a drug test	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation: Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:	

Drug training/education	Number
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

Number of alcohol screening tests conducted							
Employee category	Pre-employment	Random	Post-Accident/non-fatal	Post-Accident/fatal	Reasonable suspicion	Return to duty	Follow-up
Drivers							

Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Employees who refused to submit to an alcohol test	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation: Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation:	

Alcohol training/education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations:	

[FR Doc. 95–6043 Filed 3–10–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 950301063–5063–01; I.D. 032194D]

RIN 0648–AF38

Pacific Coast Groundfish Fishery; Gear Modification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the groundfish trawl regulations and simplifies the marking requirements for commercial vertical hook-and-line gear that is closely tended in the Pacific Coast Groundfish fishery. This rule promotes the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by enhancing the effectiveness of minimum mesh size used in trawl gear, making trawl gear

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requirements consistent for all bottom trawl gear and less likely to be circumvented, updating the regulations to be more consistent with changes in gear technology, and removing unnecessary burdens on the industry.

EFFECTIVE DATES: September 8, 1995, except § 663.22(c) is effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule, based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides a socioeconomic framework procedure under which gear regulations may be changed without amending the FMP. A proposed rule was published at 59 FR 40511 (August 9, 1994) requesting comments through September 6, 1994, on changes to the regulations for trawl gear and commercial vertical hook-and-line gear (also called Portuguese longline). Two comments were received and are addressed below.

Comment 1: One comment was received from the American Factory Trawler Association, which represents at-sea processing vessels and the catcher vessels that deliver to them. They were concerned that prohibiting chafing gear from encircling the net would also prohibit the use of protective gear which is needed under choker, transfer, and lifting straps on the codends of pelagic trawls. The straps are used to transfer and lift a full codend onboard a vessel and to empty it. Protective gear is needed to cover the entire circumference of the net under the straps, because the straps will damage any unprotected portion of the net they contact.

Response: NMFS agrees that this type of protective gear, which has been in use for some time, was not meant to be prohibited. The proposed rule for pelagic trawls has been revised to allow a band of mesh no wider than 16 meshes to encircle the net under chokers, lifting straps or transfer cables, but over riblines and restraining straps that are attached to the net.

Comment 2: A fisherman using Scottish seine gear to catch sanddabs off California was concerned that the 4.5-inch (11.5-cm) minimum mesh size throughout the net would enable his target species to escape. Most of the mesh in his gear would satisfy the 4.5-inch (11.5-cm) minimum mesh size—he uses 4.5-inch (11.5-cm) mesh in the last 70 meshes of the net, and over 5-inch (12.8-cm) mesh in the wings and behind the footrope and headrope. However, he needs smaller mesh in the intermediate portion of the net. In his initial letter he stated that he uses 3.5-inch (9.0-cm) mesh in the intermediate portion of the net. In a second letter, he explained that he modified his gear and found that 4.0-inch (10.3-cm) mesh in the intermediate portion of the net could be used, but that 4.5-inch (11.5-cm) mesh still allowed sanddabs to escape.

Response: The requirement to apply the minimum mesh size throughout the net was proposed to enhance escapement of juvenile fish, reduce bycatch, make it impossible to reduce mesh size by cinching off the codend, and facilitate enforcement by using consistent regulations for all bottom trawls. The information provided by the commenter does not justify changes to the proposed rule. However, the commenter may wish to supply additional information to the Council in support of his position and seek modification of this final rule. He also may submit an application for an experimental fishing permit (EFP), which enables fisheries to be conducted that otherwise would be prohibited. If the issue is found to warrant further consideration, an EFP may be issued for the purpose of gathering information to determine if and how the regulation should be changed. The Council then could reconsider the appropriateness of the minimum mesh size for Scottish seine gear.

Changes or Clarifications to the Proposed Rule

The only substantive change to the rule is made as a result of comment #1, described above. Several additional clarifications and editorial changes also have been made, which are consistent with the rule as proposed. (1) The corners of the terminal end of chafing gear may be attached to the net (§ 663.22(b)(3)). (2) The minimum mesh size requirements in existing rules for chafing gear no longer apply. Escapement is provided for by limiting chafing gear to only one-half the circumference of the net. (3) Section 663.22(b)(5) is edited slightly to clarify that the first 20 ft (6.15 m) of pelagic trawls must be bare rope or net with a minimum mesh size of 16-inches (40.6-cms), or any combination of bare rope and 16-inch (40.6-cm) mesh. (4) The type of identification needed to mark fixed gear is clarified. (5) The description of authorized fishing gear at § 663.22(a) is clarified to explain that "set net" includes anchored gillnet or trammel net.

Summary of the Final Rule

The text of the final rule is summarized below, incorporating the above changes. Additional background and rationale are found in the proposed rule and Environmental Assessment (EA) prepared for this action.

1. *Apply the trawl minimum mesh size throughout the net.* Currently, the minimum mesh size applies to the last 50 meshes of the trawl net. This final rule applies the minimum mesh size requirements throughout the net. This is intended to eliminate the practice of tying off the net in front of the last 50 meshes above which smaller mesh could be used legally.

2. *Remove the legal distinction between bottom and roller trawls and the requirement for continuous riblines.* Once the minimum mesh size became identical for bottom and roller trawls in May 1992 (57 FR 12212, April 9, 1992), there was no longer a need to distinguish between the two in the regulations. This rule also eliminates the requirement for continuous riblines to be sewn to bottom and roller trawls, if the vessel has onboard a net with less than 4.5-inch (11.43-cm) mesh.

3. *Clarify the distinction between bottom and pelagic (midwater) trawls.* Current pelagic-trawl requirements state that the footrope at the trawl mouth must be unprotected and that sweeplines, including the bottom of the bridle, must be bare.

This rule adds two requirements to discourage dragging small-mesh pelagic trawls on the sea floor by making the nets more fragile. First, rollers, bobbins, tires, discs, or any other similar device used to protect the net from the sea floor may not be used anywhere in the net. Second, for at least 20 ft (6.15 m) immediately behind the footrope or headrope of the net, bare ropes or 16-inch (40.6-cm) minimum mesh must encircle the net.

4. *Modify chafing gear requirements.* Chafing gear is webbing or other material attached to a trawl net to protect the net from wear, particularly the codend as it scrapes the sea floor or slides onto the vessel. If attached in certain ways, chafing gear could reduce the effective mesh size by compressing or covering the webbing. The current regulations require that: Chafing gear not be connected directly to the terminal end of the net; in bottom trawls, chafing gear have a minimum mesh size of 15 inches (38.1 cm) unless only the bottom half of the codend is covered; and in roller trawls in the Vancouver, Columbia, and Eureka subareas, and in pelagic trawls in all subareas, chafing gear covering the upper one-half of the codend must have a minimum mesh size of 6 inches (15.24 cm). These provisions are changed to provide the necessary gear protection without unduly impeding escapement of fish through the webbing, and to be consistent with changes in the technology and requirements for bottom and roller trawls. This rule provides that: (a) Chafing gear may cover no more than 50 percent of the circumference of the net, except for 16-mesh "skirts" (designed to protect the underlying gear) under the lifting or splitting straps (chokers), or the transfer cables on pelagic trawls; (b) no section of chafing gear may be longer than 50 meshes of the net to which it is attached; (c) except at its corners, the terminal end of each section of chafing gear must not be connected to the net; (d) chafing gear must be attached outside any riblines or restraining straps; and (e) there is no limit on the number of sections of chafing gear that may be used. This rule removes the minimum mesh size requirements applicable to chafing gear.

5. *Modify marking requirements for commercial vertical hook-and-line gear.* Current marking requirements required for fixed gear (pole, flag, light, radar reflector, and buoy) were found to be a burden for vessels closely tending their commercial vertical hook-and-line gear. Although the gear is anchored, it is lightweight and can be dragged by prevailing winds and currents. Also, the cost of the radar reflector, lights, and buoys is substantial in comparison to the cost of the gear itself. Since most vessels using this gear stay in the immediate vicinity of the gear, tending the lines frequently, there appears to be less need for such extensive marking requirements. This rule relaxes the marking requirement for commercial vertical hook-and-line gear that is closely tended by requiring only a single buoy clearly identifying the vessel's owner or operator.

6. *Correct a mesh definition.* Reference to double-ply mesh at 50 CFR 663.2 is changed to "double-bar mesh". Ply refers to the number of strands twisted together to make twine. The regulation was intended to mean two lengths of twine tied together in one knot, or "double-bar" mesh.

For the reasons stated above and in the proposed rule at 59 FR 40511 (August 9, 1994), NMFS concurs with the Council's recommendations and herein announces the final rule.

Classification

This final rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), has determined that it is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for this rule (contained in the EA/Regulatory Impact Review) and the Assistant Administrator concluded that there would be no significant impact on the environment.

This rule has been determined to be not significant for purposes of E.O. 12866.

Under section 553(d)(1) of the Administrative Procedure Act, the change to the fixed gear-marking requirements at 50 CFR 663.22(c) is made effective upon publication in the **Federal Register** because it relieves a restriction on commercial vertical hook-and-line fishermen who closely tend their gear. In contrast, changes to the definitions and trawl gear requirements at 50 CFR 663.2 and 663.22(a) and (b) are effective 6 months after filing with the Office of the Federal Register to allow time for fishermen to modify gear to comply with these new requirements. The Council recommended, and the Assistant Administrator agrees, that this 6-month delay in effectiveness reduces the economic burden on the industry by enabling it to replace at least some of its gear after it is worn out rather than requiring an immediate and abrupt change to all trawl nets.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 663.2 is amending the definition for "Commercial fishing" by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) respectively, and amending the definition for "Fishing gear" by redesignating paragraphs (a) through (w) as paragraphs (1) through (23), respectively and by revising newly redesignated paragraphs (1) through (3), (6), (14), (16), and (18) to read as follows:

§ 663.2 Definitions.

* * * * *

Fishing gear:

(1) *Bobbin trawl* means the same as a roller trawl, and is a type of bottom trawl.

(2) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls and Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls at § 663.22(b)(6) is a bottom trawl.

(3) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

* * * * *

(6) *Double-bar mesh* means two lengths of twine tied into a single knot.

* * * * *

(14) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

* * * * *

(16) *Roller trawl (bobbin trawl)* means a trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

* * * * *

(18) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

* * * * *

3. In § 663.22, paragraphs (a), (b)(2) through (b)(4), and (c) are revised; paragraph (b)(5) is removed; and paragraph (b)(6) is redesignated as paragraph (b)(5) and revised to read as follows:

§ 663.22 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) * * *

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending.

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on the gear being measured) less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE
[In Inches][1]

Trawl Type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.6 centimeters; 4.5 inches = 11.4 centimeters.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net, and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy except as provided in paragraph (c)(2) of this section; and

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within ¼ nautical mile (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or paragraph (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

* * * * *

[FR Doc. 95–6044 Filed 3–8–95; 9:30 am]
BILLING CODE 3510–22–P

50 CFR Part 681

[Docket No. 950224060–5060–01; I.D. 021395A]

RIN 0648–AH85

Western Pacific Crustacean Fisheries; 1995 Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 1995 final quota for crustaceans; request for comments.

SUMMARY: NMFS announces a 1995 quota of zero lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. This action is necessary to ensure protection and conservation of lobsters in this fishery. Also, fishermen who wish to participate in an Experimental Fishing Program in this fishery during 1995 are encouraged to contact the Director, Southwest Region, NMFS (Regional Director). The purpose of any experimental fishery would be to allow for a precisely controlled harvest designed to acquire data for assessing the status of the spiny and slipper lobster stocks.

DATES: Effective July 1, 1995. Comments are invited until April 12, 1995.

ADDRESSES: Comments about this notice and requests for information about the Experimental Fishing Program should be sent to Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, 310–980–4034; or Alvin Z. Katekaru, 808–973–2985.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by NMFS according to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP), which was prepared by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. Regulations affecting this fishery appear at 50 CFR part 681.

Ordinarily, an annual quota for the NWHI crustacean fishery is announced in two steps. First, based on previous years' fishery data, sampling during research cruises, and other available data, the Regional Director determines an initial quota, which is announced in the **Federal Register**, usually in February each year. Next, a final quota is announced as soon as possible on or after August 15 of the fishing year. The final quota is based on actual commercial fisheries data collected during the first month of fishing, which begins July 1 (when there is a quota).

A substantial decrease in lobster landings and catch-per unit-of-effort (CPUE) in 1990 raised concern that fishing effort was excessive. Low lobster CPUE continued into the early part of 1991, prompting an emergency closure of the fishery from May through November 1991.

Amendment 7 to the FMP, which was approved by NMFS in February 1992, created an annual 6-month closed season and an adjustable annual fleet

harvest quota determined by a formula. This quota is established as described above. The initial quota for 1992 was forecast at 750,000 lobsters; however, a research cruise to the NWHI in June 1992 indicated that recruitment had not improved. Based on the CPUE information from the first month of the commercial fishery and the data collected on the research cruise, the final quota was set at 438,000 lobsters.

In 1993, the FMP quota formula yielded an estimated quota of zero, and there was no commercial fishing in the NWHI.

In 1994, the FMP quota formula yielded an initial quota of 200,000 lobsters; however, data obtained during the first month of fishing yielded a revised quota of 20,900 lobsters. However, by the time the final quota was determined, it had been exceeded and the fishery was closed by emergency rule.

A review panel established by the Council, consisting of the Crustacean Plan Team, Advisory Panel, and reviewers with stock assessment and quota management experience, suggested a new quota system tied to overfishing guidelines rather than maximum sustainable yield, which is used in the current formula. An analysis by the Council and NMFS to evaluate the new quota proposal, as well as modification to the existing quota setting procedures, is underway, but has not been completed.

The review panel recommended that NMFS conduct additional statistical analyses to determine if use of new statistical procedures would produce more reliable results. After conducting these analyses, NMFS determined that a new statistical procedure should be used and applied it in deriving the initial quota for 1995.

Despite the quota derived from the FMP formula, NMFS concludes that the initial and final quota should be zero, and the NWHI commercial lobster fishery should be closed in 1995. There are two reasons for this determination. First, managing the fishery to ensure that such a low quota is not exceeded would be difficult to accomplish. There are 15 permits in force for the fishery. While it is unlikely that all permit holders would gear up for the fishery, five to seven vessels might participate in a "derby" fishery, with each trying to maximize its share of the quota. Data from the 1994 fishery show that the cumulative daily catch by the five vessels that participated averaged almost 4,000 lobsters. With seven vessels, the expected cumulative daily catch would be about 5,600 lobsters. Even with daily catch reports, given the requirement that 7-day notice be given to fishermen prior to prohibiting further landings, there would be potential for exceeding the quota.

Second, the low 1995 quota is likely to result in a "derby" fishery, which would be economically inefficient and would encourage fishermen to take safety risks. Given the substantial cost to prepare a vessel for fishing, once outfitted, a vessel operator would be under pressure to maximize catch, regardless of weather and sea conditions, in order to recoup expenses and make a profit. However, since an initial quota of 38,513 lobsters would generate only about $250,000 in total ex-vessel revenues for the entire commercial fishery, the likelihood that all participants would benefit from fishing is small, and certainly does not outweigh the risk of a "derby" fishery.

Nevertheless, in the interest of improving the scientific basis for future management, NMFS will consider allowing controlled fishing under an Experimental Fishing Permit program, which could be authorized under § 681.26 of the regulations. Controlled fishing under an experimental fishing program could provide added information regarding rebuilding of the stocks, to the extent stock rebuilding has existed since late 1994, while ensuring that the harvest of 38,513 lobsters is not exceeded. In conjunction with the data from the planned 1995 research cruise, any information obtained from fishing under an Experimental Fishing Program could be important for deriving the initial quota for 1996. However, data obtained from any experimental fishing would not be used to modify the 1995 quota. Also, NMFS encourages fishermen who wish to participate in an Experimental Fishing Program in this fishery during 1995 to contact the Regional Director.

Classification

This action is authorized by 50 CFR part 681 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–6051 Filed 3–10–95; 8:45 am]
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Proposed Rules

Federal Register
Vol. 60, No. 48
Monday, March 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–102–1]

Importation of Fruit Trees From France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. plants (except seeds) to be imported into the United States as restricted articles, if grown in private nurseries in France and certified by the French plant protection service to be free of various diseases. This action would relieve restrictions on the importation of these articles from France without presenting a significant risk of introducing plant pests into the United States.

We are also proposing to remove Laredo, TX, from the list of ports equipped with plant inspection stations.

DATES: Consideration will be given only to comments received on or before April 12, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–102–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–102–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange or Mr. Peter Grosser, Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, MD, 20737–1238, (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction of plant pests into the United States.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. The regulations prohibit or restrict the importation of most plants, roots, bulbs, seeds, and other plant products. These articles are classified as either "prohibited articles" or "restricted articles."

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ), APHIS, has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Under § 319.37–5(b) of the regulations, articles (except seeds) of the genera *Chaenomeles* (flowering quince), *Cydonia* (quince), *Malus* (apple, crabapple), *Pyrus* (pear), and certain species of the genus *Prunus* (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) may be imported into the United States as restricted articles if grown in government or private nurseries in Belgium, Canada, Great Britain, the Federal Republic of Germany, or The Netherlands. They may be imported from France as restricted articles only if grown in government nurseries. All of these restricted articles must be accompanied by a phytosanitary certificate of inspection stating where the article was grown and certifying that the article was found by the plant protection service of the country in which grown to be free of various plant diseases. Also, all of the restricted articles listed above, except those grown in Canada, are subject to a 2-year postentry quarantine period, as specified in § 319.37–7. In postentry quarantine, restricted articles are grown in isolation and observed in order to detect plant pests undetectable by inspection at the port of entry.

The French Ministry of Agriculture has asked that species of the above mentioned genera grown in private nurseries in France be allowed to enter the United States as restricted articles. In response to this request, APHIS representatives visited France in June 1994, to review France's fruit tree certification program. Following that review, APHIS determined that the process by which the French plant protection service certifies these articles to be "disease-free" is sufficient to allow their entry into the United States without increasing the risk of plant pest introduction. Therefore, we are proposing to amend the regulations to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. grown in private nurseries in France to be imported as restricted articles into the United States under the same conditions already applied to those same articles when grown in government nurseries in France.

Also, for the sake of clarity, we are proposing to incorporate the provision in § 319.37–5, footnote 7, concerning *Prunus* spp. not immune to plum pox virus, into a new paragraph (b)(2) in § 319.37–5, and to remove footnote 7.

Port of Laredo Plant Inspection Station

Some restricted articles may be imported into the United States only under a written permit issued by APHIS. Permits are required for these restricted articles because the articles appear to present a substantial risk of carrying plant pests at the time of importation. Section 319.37–3(a) of the regulations lists the categories of restricted articles that require a written permit for importation.

Section 319.37–14(b) of the regulations contains a list of the approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a written permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest risk, may be imported only through ports equipped with special inspection and treatment facilities (plant inspection stations). Ports equipped with plant inspection stations are indicated on the list by an asterisk.

We are proposing to amend the regulations by removing the port of Laredo, TX, from the list of ports with plant inspection stations in § 319.37–14(b). The fumigation chamber at the Laredo plant inspection station was found to be in violation of State clean air regulations by the Texas Natural Resources and Conservation Commission on July 7, 1994, and has not been used since that date. Since the volume of plant material requiring written permits and entering through Laredo has been low and because fumigation without a fumigation chamber would be difficult, APHIS elected to close the plant inspection station on October 1, 1994. As a result, certain plants and plant products can no longer be imported through Laredo, but must go to another port instead.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow species of the genera *Chaenomeles*, *Cydonia*, *Malus*, *Pyrus*, and certain species of *Prunus* (those resistant to plum pox virus) grown in private nurseries in France to be imported into the United States. Currently, under 7 CFR 319.37–5, APHIS allows restricted articles of these five genera to be imported if grown in government or private nurseries in Belgium, Canada, Great Britain, the Federal Republic of Germany, or The Netherlands, but from France only if grown in government nurseries.

During the first nine months of fiscal year 1994, approximately 312,893 fruit trees valued at $1.64 million were imported into the United States. *Malus* spp. accounted for 99.9 percent (312,840) of imported fruit trees. Thirty-two trees of *Prunus* spp. and 21 of *Pyrus* spp. were also imported. There were no imports of *Chaenomeles* spp. or *Cydonia* spp. Prices of imported fruit trees averaged about $5.25 per tree.

Annually, domestic producers market about 20 million fruit trees of these five genera, valued at approximately $105 million. Domestic tree prices range from $5 to $6 per tree.

Imported fruit trees, therefore, currently account for only about 1.5 percent of fruit trees available in the U.S. market. We anticipate, as a result of this rule, that private French nurseries could export an additional 20,000 to 30,000 trees to the United States each year. This additional number of fruit trees would account for less than one-half of one percent of the U.S. supply. Furthermore, these additional fruit tree imports from France probably would compete directly with imports from The Netherlands, thus lessening the impact on the total domestic supply. We anticipate, therefore, that this proposed rule would not have a significant economic impact on total domestic fruit tree supply and thus would not have a significant economic impact on domestic fruit tree producers or other small entities.

Also, we have determined, using the Small Business Administration definition of small business (having 100 or fewer employees), that there are currently about 9,097 small retail nurseries and 11,347 wholesale shippers of flowers and nursery stock in the United States. We expect that these small businesses may benefit, if only slightly, from this rule. They would gain access to a greater variety of imported fruit trees, possibly at lower prices.

We are also proposing to remove the port of Laredo, TX, from the list of ports with plant inspection stations. About 400 million plants are imported through plant inspection stations into the United States annually. Only 24 shipments of 21,429 plants (less than one percent of 400 million) were imported through the plant inspection station at Laredo in 1993. In view of the low volume of plants imported into the United States through the Laredo plant inspection station, we do not believe that this rule would have a significant economic effect on businesses or other entities, large or small. Moreover, any plants requiring written permits and previously imported through Laredo could be diverted to the ports of Brownsville or El Paso, TX, which still retain plant inspection stations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 319.37–5 would be amended as follows:

a. In paragraph (b)(1), the first sentence would be amended by removing the reference to "(b)(2)" and adding a reference to "(b)(3)" in its place.

b. Footnote 7 and its reference would be removed.

c. Paragraph (b)(2) would be redesignated as paragraph (b)(3) and a new paragraph (b)(2) would be added to read as set forth below.

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§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(b) * * *

(2) Species of *Prunus* not immune to plum pox virus (species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) and grown in Belgium, France, Germany, Great Britain, or The Netherlands may be certified only from the government operated nurseries (research stations) where the original parent stock is indexed for the appropriate national fruit tree certification program.

* * * * *

§§ 319.37–6, 319.37–7, 319.37–8, and 319.37–13 [Amended]

3. Footnotes 8 through 12 and their references would be redesignated as footnotes 7 through 11.

§ 319.37–14 [Amended]

4. In § 319.37–14, paragraph (b), under the list of ports of entry in Texas, the asterisk immediately preceding the entry for Laredo would be removed.

Done in Washington, DC, this 7th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6098 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–94–008]

Pork Promotion, Research, and Consumer Information Program—Change in Requirements for Annual Financial Audits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and termination order.

SUMMARY: This proposed document would terminate the provision of the Pork Promotion, Research, and Consumer Information Order (Order) containing requirements for submission of annual financial reports to the National Pork Board (Board) by organizations that receive less than $10,000 in annual distributed assessments; and issue new requirements in the regulations to implement the Order provisions. The new requirements would raise the minimum annual revenue requiring a certified public accountant audit from $10,000 to $30,000. The proposed change would facilitate the cost-effective preparation and submission of annual financial reports.

DATES: Comments must be received by April 12, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2624–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2624, South USDA Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an Order may file a petition with the Secretary stating that the Order, a provision of the Order, or an obligation imposed in connection with the Order is not in accordance with law, and requesting a modification of or an exemption from the Order. Petitioners have an opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's decision, if the petitioner files an appeal not later than 20 days after the date the petitioner receives notice of that decision.

This action has also been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

This proposed action would allow State Pork Producer Associations (SPPAs) that receive less than $30,000 in assessments annually to submit unaudited annual financial statements to the Board.

Most SPPAs would be classified as small businesses under the RFA. Raising the minimum dollar amount of distributed annual assessments that would trigger the requirement that a SPPA must submit an audited annual financial statement from $10,000 to $30,000, would minimize the cost of preparing annual financial reports for smaller SPPAs. The cost savings would result in increased funds available for financing promotion and research programs.

For these reasons the Administrator of AMS has determined that this proposed action will not have a significant economic effect on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessments on import porcine animals, pork, and pork products. That rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986. The Order is administered by the 15-member Board established pursuant to § 1230.50 of the Order.

Section 1230.74(b) of the Order requires that organizations that receive distributions of funds from the Board shall furnish the Board with an annual report audited by a certified public accountant (CPA) of all funds distributed to them.

There are 45 SPPAs as defined in § 1230.25 who receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72 (a) and (b). However, § 1230.74(c) provides that SPPAs that receive less than $10,000 in such annual distributions may submit to the Board annual, unaudited financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that such statements are certified by two members of the State association. In addition, State associations that receive less than $10,000 annually must submit to the Board a CPA audited financial statement at least every 5 years. Financial statements of SPPAs that receive less than $2,000 annually in distributed assessments are audited by the Board.

The annual minimum dollar amounts of distributed assessments of $10,000 and $2,000 referenced above were established effective August 11, 1988 (53 FR 30243). These minimum dollar requirements were established to enable the smaller SPPAs that receive relatively smaller amounts of annual assessments to minimize the cost of CPA audits, which could represent a significant proportion of their total assessments.

Since then, the annual amount of assessments distributed by the Board to the SPPAs has increased as a result of an increase in the assessment rate effective December 1, 1991 (56 FR 51635), and some annual increases in domestic hog prices and in the number of hogs marketed. Consequently, it is the Board's view that the minimum dollar amount now is not high enough to enable a sufficient number of the smaller SPPAs to minimize the costs of preparing and submitting annual financial reports and thus have additional funds available to finance promotion and research projects.

The amount of annual assessments distributed to the 45 SPPAs in 1993 ranged from less than $1,000 to nearly $1.4 million. Seventeen State associations received less than $30,000, and four of those State associations received less than $2,000. To minimize the costs of CPA audits for the 13 State associations whose annual assessments are more than $2,000, but less than $30,000, the Board has recommended that the annual minimum dollar amount of distributed assessments that triggers the requirement of an annual CPA audit be increased from $10,000 to $30,000. The provision that the Board audits financial statements of SPPAs that receive less than $2,000 in annual distributed assessments would remain unchanged.

Since the establishment in 1988 of the initial minimum dollar amount of assessments for which a CPA audit is required, neither the Board nor the Department has encountered any problems with SPPAs preparing and submitting financial statements or the safeguarding of assessments. Accordingly, based on the Board's findings and its recommendations discussed above, we propose that the provisions of § 1230.74(c) of the Order containing the requirements for the SPPA's submission of annual financial audits to the Board be terminated.

Further, we propose that the requirements for submission of annual audits be revised based on the Board's recommendations and published in the rules and regulations implementing the Order. The revised requirements would provide that SPPAs that receive less than $30,000 in assessments would be required to submit unaudited financial statements to the Board. The other requirements of § 1230.74(c) would remain unchanged.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. In § 1230.74, paragraph (b) is revised to read as follows:

§ 1230.74 [Amended]

* * * * *

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

* * * * *

3. A new § 1230.115 would be added to Subpart B—Rules and Regulations, to read as follows.

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in § 1230.25, that receive distributions of assessments pursuant to § 1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of § 1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

Dated: March 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–6096 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–23]

Steve Gannis, Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–20–23) from Steve Gannis. The petition is being denied on the basis that the proposed action is not necessary because: current public dose limits adequately protect the health and safety of the public; the requirement that doses are as low as is reasonably achievable (ALARA) provides an ample margin of safety; and the proposed 1 mrem/yr limit is not supported by the recommendations of the International Commission on Radiological Protection (ICRP), the National Council on Radiation Protection and Measurements (NCRP), or Presidential guidance.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charleen T. Raddatz, Office of Nuclear Regulatory Research, U.S. Nuclear

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Regulatory Commission, Washington, DC 20555, telephone (301) 415–6215.

SUPPLEMENTARY INFORMATION:

The Petition

By letter dated January 8, 1994, Mr. Steve Gannis filed a petition for rulemaking with the NRC. The petitioner requested that the NRC reduce the limit for radiation dose to members of the public from the current 100 mrem/yr to 1 mrem/yr.

As a basis for the requested action, the petitioner cited the NRC policy statement on radiation doses that should be considered "Below Regulatory Concern" (BRC)(issued July 3, 1990; FR 27522, and withdrawn August 24, 1993; 58 FR 44610). Table 1 (July 3, 1990; 55 FR 27527 and 55 FR 27232) of that policy statement shows that if a person received the maximum allowable dose every year of the average 70-year lifespan, he or she would have an additional 1 in 285 chance of death from cancer as a result of that dose. The petitioner further contends that non-fatal cancers would result at the same rate.

Public Comments on the Petition: Summary and Analysis

On April 14, 1994 (59 FR 17746), the NRC published a notice of the receipt of a petition for rulemaking in the **Federal Register**. Interested persons were invited to submit written comments concerning the petition by June 28, 1994. The NRC received 34 letters of comment from 30 individuals in response to the notice. Two commenters submitted addenda to their comments which were docketed separately. These are summarized in Table 1. Table 1.

TABLE 1

Comments	Category	For	Against
6	Individuals	4	2
5	Radiation Protection Professional Organizations Representatives.		5
12	Environmental Group Representatives.	11	1
7	NRC Licensee Representatives.		7

Comments in Favor of the Petition

Several commenters in favor of the petition gave no reasons for their support. These commenters only repeated the position in the petition. One commenter believed that no more than 2.5 mrem/yr limit was reasonable. One commenter said that only a zero dose limit was acceptable. Another commenter said that having reviewed the application for a low-level waste storage facility, it is evident that 1 mrem/yr is achievable for that facility and, therefore, reasonable for all facilities under NRC jurisdiction. Many of those who commented in support of the petition stated that they were appalled that NRC would condone the thousands of unnecessary deaths caused each year by doses to members of the public from exposure to NRC-licensed material.

NRC Response

None of the commenters in favor of the petition presented any information that was convincing concerning the need for a lower dose limit for members of the public. Annual doses to members of the public from natural and man-made sources are summarized in Table 2 (from NCRP Reports, Numbers 92, 93, 94, and 95).

TABLE 2

Source	Average annual dose	
	in mSv	mrem
Naturally occurring radon	2.0	200.0
Other naturally occurring	1.0	100.0
All occupational exposures	0.009	0.9
Nuclear fuel cycle	0.0005	0.1
Other consumer products	0.1	10.0
Diagnostic medical x-rays	0.39	39.0
Nuclear medicine	0.14	14.0
Total	3.64	364.0

Inspection data since 1982 shows that effluents and direct radiation dose rates continue to decline. As doses to members of the public are calculated from these, it is reasonable to assume that public doses have continued to decline as well.

While those who live nearest to NRC-licensed facilities are in principle allowed to receive up to the limit of 100 mrem/yr, most receive only a small fraction of this. The reason for this is that ALARA programs in place to supplement the dose limit result in a system of dose control which achieves doses significantly below the limit. As a consequence of this approach, the average dose to most members of the public from NRC-licensed facilities is well below 1 mrem/yr. Naturally occurring radioactivity is responsible for an average of 300 mrem/yr. In some areas, the dose from naturally occurring radioactivity is considerably higher (up to 900 mrem/yr according to NCRP Report No. 93). The ICRP, in its 1990 recommendations on dose limits in Report Number 60, confirmed that there is no new biological evidence that suggests that there should be a reduction in the limit for members of the public. The ICRP recommendation for dose to members of the public is 100 mrem/yr with certain provisions for deviations up to 500 mrem/yr. The NCRP reached the same conclusions in Report Number 116.

One commenter stated that the Environmental Protection Agency (EPA) limit for members of the public is only 10 mrem/yr. Therefore, the NRC limit of 100 mrem/yr does not protect the health and safety of the public. However, 10 mrem/yr is the EPA Clean Air Act limit for dose from a single pathway of exposure; namely, the dose a member of the public might receive from airborne releases of radioactive material from a facility. Members of the public might receive doses from other pathways as well, including radioactive material in food, water, on the ground, and in the soil, and direct radiation from the facility in which the radioactive material is stored or used. Presidential Guidance to Federal Agencies on dose limits for Public Exposure (May 18, 1960; 25 FR 4402), signed by former President Eisenhower, recommends a value of 500 mrem/yr for all pathways. This guidance is currently under consideration for revision and is expected to be revised to 100 mrem/yr from all pathways (see proposed revision published December 23, 1994 (59 FR 66414). NRC's limit of 100 mrem/yr from all pathways, from licensed and unlicensed sources, under the control of the licensee, including the provision that any dose must be as low as is reasonably achievable, has the effect of being at least as protective as EPA regulations. In a survey conducted by the EPA to determine if NRC licensees were releasing radioactive materials to the environment in excess of EPA Clean Air Act limits, the EPA found that none of the NRC licensees surveyed had airborne effluents resulting in doses greater than 10 mrem/yr and the vast majority resulted in doses less than 1 mrem/yr to the member of the public likely to receive the highest dose.

Comments Opposed to the Petition

Commenters opposed to the petition presented a variety of reasons for their opposition. Most commenters stated that some current uses of radioactive materials could not continue under a 1 mrem/yr limit for members of the public. Further, some of the commenters stated that it would be impossible to demonstrate compliance with a limit so low that it could not be measured. Many commenters stated that there would be no significant increase in the protection of public health and safety. Other commenters concluded that the lower limit would result in a significant decrease in protection of the health and safety of the public. Some commenters came to this conclusion based on the estimated risks from effluents, waste, and radiation dose from alternate methods for production of electric power (e.g., coal, oil). Other commenters based the conclusion on the increased risk from surgical procedures and alternate chemical treatments for patients now treated with radioactive materials. Some commenters argued that economic considerations would preclude certain uses of radioactive material such as some medical uses. Therefore, the mortality risk from certain cancers would be much higher without the use of radioactive materials in treatment. Radioactive treatments performed to reduce pain and suffering in the last months of life for many cancer patients would also have to be stopped.

Many commenters opposed to the petition believed that the risk was exaggerated in the petition. They stated that the risk estimate referenced by the petitioner assumed that every individual would receive the maximum allowable dose every year of his or her life. Some commenters believed it inappropriate to use the conservative linear non-threshold model to extrapolate from doses between a few thousand mrem and millions of mrem, delivered in a fraction of a second, to the 100 mrem/yr limit. They believed it unreasonable to give no consideration to possible repair mechanisms or to the existence of any tolerance to radiation dose. Further, commenters contended that licensees must demonstrate compliance with the limit for members of the public by assuming that a member of the public is present at the location of highest dose rate, 24 hours a day, 365 days a year. The commenter therefore concluded that the actual risk is much smaller than the petitioner believes.

Most commenters opposed to the petition cited the recent recommendations of both the ICRP and the NCRP. Both organizations recommend that dose to members of the public not exceed 500 mrem in any one year and not average more than 100 mrem/yr. NCRP states that a dose of 500 mrem in a year is not especially hazardous if the same group does not receive that dose year after year.

One commenter compared 1 mrem/yr exposure to common radiation sources. Some of the examples given were: (1) Flying from New York City to Los Angeles exposes each passenger and crew member to 5 mrem; (2) a one week Colorado ski trip raises your annual exposure by 11 mrem; and (3) sleeping in bed with another person exposes each person to 0.1 mrem/yr from exposure to radioactive material in the other person's body. This commenter argued that radiation is the most studied hazard agent on earth. This commenter stated that after 99 years and billions of research dollars, no statistically significant negative effects of low levels of radiation have been shown in well controlled studies, and in fact, some studies suggest that there may be benefits from chronic, low level radiation exposure, possibly because, by stimulating enzyme production, the organism is protected from damage by stronger radiation and toxic chemicals. This commenter's argument is based, in part, on the observation that background radiation levels in Colorado are about twice that of the rest of the United States, yet cancer rates are tied for the third lowest in the nation.

NRC Response

For the reasons stated as the basis for the denial, the NRC agrees with those commenters who were opposed to the petition.

Reasons for Denial

The NRC has considered the petition, the public comments received, and other related information and has concluded that the issues raised by the petition are insufficient to justify rulemaking to reduce the limit for members of the public. The following is a discussion of the details of that conclusion.

The primary concern of the petition is the perception that the 100 mrem/yr limit for radiation exposure from radioactive sources under the control of NRC licensees poses an unacceptable risk to the population of the United States. In 1994, the ICRP Main Commission fully discussed the issue of dose limits for members of the public together with the statements to the 1994 United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR). The ICRP confirmed that there was no new biological evidence that suggested that there should be a revision to the cancer risk estimates in ICRP Publication 60 and no reason to revise the recommendation that the average dose over a five year period not exceed 100 mrem/yr for members of the public (allowing for infrequent exposures up to 500 mrem/yr). The NCRP examined the UNSCEAR 1988 report, the report by the National Academy of Sciences/National Research Council Committee on the Biological Effects of Ionizing Radiation (BEIR V) (NAS/NRC, 1990), and the recommendations of the ICRP and issued recommendations that United States regulatory agencies establish limits for exposure to man-made radiation sources by members of the public to an annual average not to exceed 100 mrem/yr with allowances for infrequent exposures up to 500 mrem/yr.

The petitioner contends that the NRC limit of 100 mrem/yr doubles the average background radiation dose to which members of the public are exposed. In fact, the NRC system of dose control includes the ALARA concept that doses should be controlled below the dose limits and to levels which are as low as reasonably achievable. As a consequence, the actual doses from licensed activities are only a very small fraction of the annual background dose to members of the public which averages 300 mrem/yr in the United States.

The petitioner states that "Federal Government standards on how much cancer can be caused among the public by cancer-causing pollutants and contaminants generally permit, at most, approximately 1 cancer per million people." However, the EPA National Emission Standards for Hazardous Air Pollutants (NESHAPS); Radionuclides (54FR51655) states that "a principle that accompanies these numerical goals is that the state of art of risk assessment does not enable numerical risk estimates to be made with comparable confidence. Therefore, judgment must be used in

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deciding how numerical risk estimates are considered with respect to these goals." The NESHAPS standard for emissions of radioactive material from NRC licensed facilities is 10 mrem/yr for the air effluent release pathway alone. While the results of the 1993 reports to EPA have not been provided to NRC, a survey of NRC licensed facility air emissions performed by EPA in 1992 revealed that no NRC licensed facility surveyed exceeded that value. Almost all of the facilities surveyed in 1992 had air effluents which resulted in doses an order of magnitude lower for the maximally exposed individuals.

Taking these considerations into account, with respect to reducing the radiation dose limit to members of the public from 100 mrem/yr to 1 mrem/yr, the petition fails to recognize the net effect of the NRC's system of dose control and the role played by the dose limit and ALARA programs.

When these are taken into account, NRC's judgment is that the public is adequately protected, the health risks from NRC licensed activities are low, and no change in basic radiation protection standards, as petitioner suggests, is warranted.

Dated at Rockville, Maryland, this 2nd day of March, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–6069 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: The NCUA Board is proposing amendments to its regulation regarding the appraisal of real estate, adopted pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The proposed amendments simplify compliance with regulatory requirements for credit unions by changing provisions of the appraisal regulation that govern: the publication of the Uniform Standards of Professional Appraisal Practice; minimum appraisal standards; appraisals to address safety and soundness concerns; unavailable information; additional appraisal standards developed by credit unions; and appraiser independence. The proposed amendments should reduce costs without affecting the reliability of appraisals used in connection with federally related transactions.

DATES: Comments must be postmarked or received by May 12, 1995.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or via NCUA's electronic bulletin board to Becky Baker at 703–518–6480.

FOR FURTHER INFORMATION CONTACT: Kent Buckham, Deputy Director, (703) 518–6360, Herbert Yolles, Director, Department of Risk Management, Office of Examination and Insurance, (703) 518–6360 or Michael McKenna, Staff Attorney, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 et seq., directed NCUA and the other financial institution regulatory agencies to publish appraisal rules for federally related real estate transactions within the jurisdiction of each agency. Section 1121(4) of FIRREA, 12 U.S.C 3350(4), defines a federally related transaction as a real estate-related financial transaction that, among other things, requires the services of an appraiser. A real estate-related financial transaction is defined as any transaction that involves (i) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (ii) the refinancing of real property or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities. *See* 12 U.S.C. 3350(5).

In July of 1990, the Board published regulations to meet the requirements of Title XI of FIRREA. *See* 55 FR 30199, July 25, 1990. The Board recognized that not all real estate-related financial transactions would require an appraisal. Accordingly, in the original appraisal regulation, NCUA did not require a state-certified or -licensed appraiser for real estate-related transactions having a transaction value less than or equal to $50,000. In July of 1993, the Board raised the de minimus amount for an appraisal performed by a state-certified or -licensed appraiser to $100,000 (*See* 58 F.R. 40040, July 27, 1993). The dollar threshold was raised because NCUA had not found any evidence indicating that there had been a significant increase in the defaults on real estate-related loans of less than $50,000 and that the increase would not represent a threat to the safety and soundness of credit unions but rather would reduce unnecessary costs and paperwork requirements.

Recently, the other federal financial institution regulatory agencies [1] have increased the threshold to $250,000. *See* 59 FR 29482, June 7, 1994. The Board has considered whether the de minimus level should be increased for federally-insured credit unions. At this time, the Board does not perceive a need to increase the threshold. Many credit unions do not have the on-staff expertise to prepare appraisals. In addition, although credit unions are well capitalized, they are generally much smaller than other financial institutions. As a result, the relative size of an average real estate loan to capital is generally much higher for a credit union, which translates to much greater relative risk. A major portion of the losses to the National Credit Union Share Insurance Fund in the past ten years has been associated with real estate lending.

For credit unions that do engage in real estate lending, the greatest single risk protection they can obtain is a licensed or certified appraisal to support the loan-to-value ratio. The current thresholds of $100,000 for residential real estate and $50,000 for commercial property are sufficiently high to preclude most home equity or second trust lending from the appraisal requirement, but are low enough to ensure that professional appraisals are obtained for higher-dollar value real estate lending. Therefore, the Board is not proposing to increase either of these dollar thresholds. However, the Board believes that the appraisal regulation can be revised to provide clarity and ease the regulatory burden on credit unions for some categories of transactions.

B. Proposed Amendments

While in most cases an appraisal is an essential part of a sound underwriting decision, the Board believes that NCUA should not require Title XI appraisals where they impose costs without significantly promoting the safety and soundness of credit unions or furthering the purposes of Title XI of FIRREA. Accordingly, the Board is proposing to amend its appraisal regulation to clarify

[1] The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

and expand the circumstances in which a Title XI appraisal is not required.

It is also NCUA's experience that the current minimum standards applicable to federally related transactions and requirements concerning the independence of appraisers can be simplified without significantly affecting the reliability of Title XI appraisals. Therefore, the Board is proposing to amend the appraisal regulation to eliminate standards that parallel standards in the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Standards Board of the Appraisal Foundation. In addition, the Board is proposing to amend the regulation concerning appraiser independence to permit credit unions to use appraisals prepared for other financial service institutions. The Board also proposes to simplify compliance with regulatory requirements for both credit unions and appraisers by changing provisions of the appraisal regulation that govern: (i) publication of USPAP; (ii) unavailable information; (iii) appraisals to address safety and soundness concerns and (iv) additional appraisal standards developed by credit unions. The proposed changes should reduce costs without affecting the reliability of appraisals used in connection with federally related transactions.

1. Exemptions

The "Abundance of Caution" Provision

The Board proposes to amend the regulation to clarify and expand the scope of the exemption for real estate liens taken in an "abundance of caution." NCUA's appraisal regulation currently provides that an appraisal is not required when a lien on real estate has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien. *See* 12 CFR 722.3(a)(2).

NCUA's experience with implementing the appraisal regulation indicates that the existing abundance of caution exemption has been interpreted too narrowly. Therefore, to emphasize the broader scope of the abundance of caution exemption, the Board proposes to delete the word "solely" from the current exemption. However, this amendment would still not allow a credit union to use this exemption when there is a change to the terms of the loan because the credit union also received a lien on real estate.

Liens for Purposes Other Than the Real Estate's Value

As defined in NCUA's Regulations, an appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of real estate. *See* 12 CFR 722.2(a). When the market value of the real estate as an individual asset is not part of the credit union's decision to take a lien against real estate, no purpose is served by requiring the institution to obtain an appraisal. The Board is proposing a new exemption for transactions in which a credit union takes a lien on real estate for a purpose other than the value of the real estate. On occasion a credit union takes a real estate lien to protect the legal rights to other collateral and not because of the value of the real estate as an individual asset. For instance, where the collateral for a loan is a small business, a credit union may take a lien against the land and improvements in order to be able to sell the entire business as a going concern if the borrower defaults. Similarly, in lending associated with agriculture, credit unions may take a lien against the real estate upon which the growing crops sit to ensure their access to the agricultural product.

Requirements for Renewals, Refinancing and Other Subsequent Transactions

The Board is proposing to clarify the exemption for renewals, refinancings, and other transactions resulting from an existing extension of credit to simplify the conditions under which the exemption applies. NCUA's appraisal regulation currently provides that an appraisal is not required for a subsequent transaction that results from a maturing extension of credit if: (i) The borrower has performed satisfactorily according to the original terms; (ii) no new monies are advanced other than as previously agreed; (iii) the credit standing of the borrower has not deteriorated; and (iv) there has been no obvious and material change in the market conditions or physical aspects of the property which would threaten the credit union's collateral protection. *See* 12 CFR 722.3(a)(4). It has been NCUA's experience that the current exemption may not provide sufficient flexibility to credit unions and borrowers when a transaction is refinanced before its maturity. This is especially true when the member is seeking a more favorable interest rate. The proposed amendment would exempt a subsequent transaction provided no new monies are advanced other than funds necessary to cover reasonable closing costs and there has been no obvious and material change in the market conditions or physical aspects of the property which would threaten the credit union's collateral protection. This exemption would not be applicable if a member refinances a mortgage with a new lender.

Transactions Involving Real Estate Notes

The Board is proposing to amend the exemption regarding the purchase of real estate-secured loans, loan participations, pooled loans, interests in real property, and mortgage-backed securities. The proposed amendment would allow credit unions to purchase, sell, invest in, exchange, or extend credit secured by real estate notes or interests in real estate without obtaining a new Title XI appraisal if each note or real estate interest is supported by an appraisal that meets the regulatory appraisal requirements for the institution at the time the real estate-secured note was originated. (The transaction would, of course, have to meet other statutory and regulatory requirements applicable to federally-insured credit unions.) The current exemption simply refers to the purchase of these interests. In addition, the Board is proposing to change the text of this exemption to more clearly state the appraisal requirements that the underlying notes must meet.

The Board believes that the proposed amendment would serve federal public policy interests by helping to ensure that the appraisal regulation does not unnecessarily inhibit secondary mortgage market transactions that involve real estate-secured loans and real estate interests. The proposed amendment would make clear that a credit union need not obtain a new Title XI appraisal for loans originated before the effective date of NCUA's regulation in order to buy or sell them in the secondary mortgage market.

Transactions Insured or Guaranteed by a United States Government Agency or United States Government Sponsored Agency

NCUA's appraisal regulation currently provides that loans insured or guaranteed by an agency of the United States government are exempt from NCUA's appraisal requirements. *See* 12 CFR 722.3(a)(6). The Board is proposing to amend this provision in the regulation by deleting the requirement that the transaction be supported by an appraisal that conforms to the requirements of the insuring or guaranteeing agency. In order to receive the insurance or guarantee, the transaction must meet all underwriting

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requirements of the insurer or guarantor, including real estate appraisal or evaluation requirements. The Board believes that the standards of these loan programs are sufficient to protect the safety and soundness of credit unions.

Transactions that Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

NCUA proposes to not require a Title XI appraisal for any transaction that meets the qualifications for sale to any United States government agency or government sponsored agency. The Board believes that the appraisal standards of U.S. government agencies or government sponsored agencies established to maintain a secondary market in loans are sufficient to protect federal financial and public policy interest in the loans those government or government sponsored agencies purchase. The Board also believes that compliance with these standards will protect the safety and soundness of credit unions. By referring to any U.S. government agency or U.S. government sponsored agency, the proposed amendment would include not only loans sold to federal agencies, but also any transaction that meets the qualifications for sale to agencies established or chartered by the federal government to serve public purposes specified by the U.S. Congress. These government sponsored agencies are:

* Banks for Cooperatives.
* Federal Agricultural Mortgage Corporation (Farmer Mac).
* Federal Farm Credit Banks.
* Federal Home Loan Banks (FHLBs).
* Federal Home Loan Mortgage Corporation (Freddie Mac).
* Federal National Mortgage Association (Fannie Mae).
* Student Loan Marketing Association (Sallie Mae).
* Tennessee Valley Authority (TVA).

If a federally insured credit union is otherwise authorized to originate, hold, buy or sell transactions that meet the qualifications for sale to any U.S. government agency and the above listed government sponsored agencies, this proposal would allow them to do so without obtaining a separate appraisal conforming to NCUA's Regulations. The Board believes that permitting credit unions to follow these standardized appraisal requirements, without the necessity of obtaining an appraisal or appraisal supplement, will increase a credit union's ability to buy and sell these loans and also their liquidity if necessary.

2. Appraisals to Address Safety and Soundness Concerns

The Board is proposing to amend its regulations to clarify that the agency may require Title XI appraisals to address safety and soundness concerns. Under this provision, NCUA could require appraisals where real estate-related financial transactions present greater-than-normal risk to individual credit unions. For example, NCUA may require a troubled credit union to obtain an appraisal for transactions below the threshold level. This amendment would simply and explicitly clarify NCUA's current authority.

3. Minimum Appraisal Standards

The Board is proposing to reduce the number of minimum appraisal standards applicable to Title XI appraisals for federally-related transactions from the thirteen appraisal standards found in § 722.4(a) of NCUA's Regulations (12 CFR 722.4(a)) to five and eliminate the current prohibition on the use of the USPAP Departure Provision in connection with federally-related transactions.

Title XI of FIRREA states that each federal financial institution regulatory agency shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally-related transactions under the jurisdiction of each such agency. These rules require, at a minimum that: (i) Real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the Appraisal Standards Board of the Appraisal Foundation; and (ii) that such appraisals shall be written appraisals. Under Title XI, each agency may require compliance with additional standards if it makes a determination in writing that such additional standards are necessary in order to properly carry out its statutory responsibilities. *See* 12 U.S.C 3339.

At the time NCUA began drafting its appraisal regulation,[2] the Appraisal Standards Board was in the process of amending its appraisal standards. Because of uncertainty about the content of the standards and interpretations that would be promulgated by the Appraisal Standards Board, the Board included within its appraisal regulation thirteen minimum standards that paralleled existing or proposed USPAP standards, including compliance with USPAP. NCUA also prohibited the use of the USPAP Departure Provision in connection with federally-related transactions. The Departure Provision permits an appraiser to prepare an appraisal without complying with certain recommended provisions of the USPAP if the appraisal report is not rendered misleading.

Minimum Appraisal Standards and USPAP

The Board has gained considerable experience with the Appraisal Standards Board and its appraisal standards and believe that it is no longer necessary to include all the additional standards in its appraisal regulation. The Board believes that the Departure Provision of the USPAP may appropriately be used in connection with federally-related transactions. Therefore, the Board is proposing to simply require all appraisals for federally related transactions to: (i) Conform to generally accepted appraisal standards as evidenced by the USPAP; (ii) be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction; (iii) analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units; (iv) be based upon the definition of market value as set forth in the regulation; and (v) be performed by State licensed or certified appraisers.

The Board believes these five standards will simplify compliance with the appraisal regulation without affecting the usefulness of the Title XI appraisals prepared for federally related transactions. The proposed amendments would allow credit unions to make use of the USPAP's Departure Provision and eliminate several regulatory standards that parallel existing USPAP standards. Under these proposed standards, the USPAP is referenced but would no longer be part of NCUA's Regulations. This approach would no longer require NCUA to republish changes to the USPAP adopted by the Appraisal Standards Board, and thus references to USPAP in the regulation could be assumed to always refer to the most current edition. The Board believes this approach minimizes potential conflicts between an institution's duty to follow NCUA's appraisal requirements and an appraiser's professional obligation to follow the latest USPAP version. If the Board adopts this approach in the final rule, the USPAP provisions applicable to federally-related transactions will no longer be published as Appendix A to NCUA's appraisal regulation. Therefore, the Board is proposing to delete Appendix A from its appraisal regulation.

The Board would like to make clear that if this amendment is adopted in final, the principles of safe and sound lending may require credit unions to comply with stricter standards than the USPAP. Although the credit union has the primary responsibility for obtaining a Title XI appraisal that meets its needs, NCUA may by regulation or guidance identify USPAP standards that are inappropriate for federally related transactions. For example, the USPAP allows an appraiser to appraise property even though the appraiser may have a direct or indirect interest in the property, if the interest is disclosed in the appraisal report. However, the Board believes that federal financial and public policy interests are better served by requiring that an appraiser for a federally related transaction not have any direct or indirect interest, financial or otherwise, in the transaction or the property. This requirement is discussed further in the section addressing appraiser independence.

Departure Provision

The proposed minimum standards would also permit credit unions to use appraisals prepared in accordance with the USPAP Departure Provision for federally related transactions. The Departure Provision permits limited exceptions to specific guidelines in the USPAP. Appraisers preparing appraisals using the Departure Provision still must comply with all binding requirements of the USPAP and must be sure that the resulting appraisal is not misleading. The Board believes that if this amendment is adopted in final that credit unions should be allowed to determine, with the assistance of the appraiser, whether an appraisal to be prepared in accordance with the Departure Provision is appropriate for a particular transaction and consistent with principles of safe and sound lending. The proposed amendment would make clear that the written appraisal must contain sufficient information and analysis to support the credit union's decision to engage in the transaction. This would put credit unions on notice of their responsibility to have appraisals that are appropriate for the particular federally related transaction.

Deductions and Discounts

The Board is proposing to retain the current standard in the appraisal regulation regarding deductions and discounts. *See* 12 CFR 722.4(a)(8). The USPAP provision on this subject requires the appraiser to include a discussion of deductions and discounts only when it is necessary to prevent an appraisal from being misleading. The Board believes it is appropriate to emphasize the need to include an appropriate discussion of deductions and discounts applicable to the estimate of value in Title XI appraisals for federally related transactions. For example, in order to properly underwrite a loan, a credit union may need to know a prospective value of a property, in addition to the market value as the date of the appraisal. A prospective value of a property is based upon events yet to occur, such as completion of construction or renovation, reaching a stabilized occupancy level, or some other event to be determined. Thus, more than one value may be reported in an appraisal as long as all values are clearly described and reflect the projected dates when future events could occur.

The standard on deductions and discounts is intended to make clear that appraisers must analyze, apply and report appropriate discounts and deductions when providing values based on future events. In financing the purchase of an existing home, there typically would be no need to apply any discounts or deductions to arrive at the market value of the property since the credit union's financing of the project does not depend on events such as further development of the property or the sale of units in a tract development.

Remaining Standards

The Board is also proposing to retain the current standard in the appraisal regulation on market value that requires the appraisal to be based on the definition of market value in NCUA's Regulations. *See* 12 CFR 722.4(a)(2). Finally, the Board is proposing a new standard that makes clear that all appraisals for federally related transactions must be prepared by licensed or certified appraisers. This requirement is mandated by Title XI of FIRREA and is repeated in other parts of the appraisal regulation.

4. Elimination of the Provision on Unavailable Information

The Board is proposing to delete the current provision that requires appraisers to disclose and explain when information necessary to the completion of an appraisal is unavailable. *See* 12 CFR 722.4(b). The USPAP currently requires appraisers to disclose and explain the absence of information necessary to completion of an appraisal that is not misleading. *See* USPAP Standard Rule 2–2(k). Moreover, when information that may materially affect the estimate of the value is unavailable, the Board believes that generally accepted appraisal standards require appraisers to explain the absence of that information and its effect on the reliability of the appraisal. Therefore, the elimination of this provision would not result in a substantive change in the requirements applicable to appraisals for federally related transactions since the Board is proposing to require appraisals to conform to the USPAP.

5. Elimination of the Provision on Additional Appraisal Standards

The Board is proposing to delete the current provision that merely confirms the authority of credit unions to require appraisers to comply with additional standards. *See* 12 CFR 722.4(c). The regulation's minimum appraisal standards for federally related transactions do not prevent a credit union from requiring an appraiser to follow additional standards or provide addition information to satisfy the credit union's business needs and thus it is unnecessary to regulate this in the appraisal regulation.

6. Appraiser Independence

The Board is proposing to amend and clarify its appraisal regulation to permit the use of appraisals prepared for financial service institutions other than institutions subject to Title XI of FIRREA. NCUA's current appraisal regulation provides that fee appraisers must be engaged by the credit union or its agent. An exception to this requirement is permitted if the appraiser is directly engaged by another institution that is subject to Title XI of FIRREA. *See* 12 CFR 722.5(b).

The current provision was adopted to help ensure that appraisers would not be subject to conflicts of interest as a result of having been engaged by borrowers. However, the Board believes that the current provision is too restrictive. It requires a credit union to obtain a new appraisal if the borrower originally sought the loan from an institution that is not subject to Title XI of FIRREA and is not an agent of the credit union. There also has been uncertainty about the meaning of agent in these cases.

The Board proposes to permit a credit union to use an appraisal that was prepared for any financial services institution, including mortgage bankers. The appraiser would not be allowed to have a direct or indirect interest, financial or otherwise, in the property

[2] NCUA coordinated with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision when it drafted its original appraisal regulation. All the federal financial institution regulatory agencies adopted substantially similar appraisal regulations in 1990.

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or the transaction, and must have been directly engaged by the non-regulated institution. Further, the credit union would be required to ensure that the appraisal conforms to the requirements of the regulation and is otherwise acceptable. The prohibition on the credit union using an appraisal prepared for the borrower would remain in effect.

Age of Appraisal

Some have suggested that NCUA's appraisal regulation contain a maximum allowable age of an appraisal for use by a credit union. They believe that there should be a maximum age (time from date of the appraisal to date of the application of the loan) for an appraisal, but that the age should not be so short as to unnecessarily require another appraisal be prepared in the uncommon instance where a mortgage is refinanced within a reasonably short time or a credit union is using an appraisal prepared for another financial service institution. Hence, the Board realizes that any specific time period will not be appropriate in all situations. The Board has specifically decided to permit each institution to determine the allowable period for an appraisal, but recommends that any appraisal over six months old not be used.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendments reduce regulatory burden and are less restrictive than current requirements. Overall, the Board expects the changes to benefit members and federally-insured credit unions regardless of size by reducing costs without substantially increasing the risk of loss. In addition, most small credit unions do not offer real estate loans. Accordingly, the Board determines and certifies that the proposed rule is not expected to have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule will apply to all federally-insured credit unions. The proposed rule will reduce regulatory requirements for all federally-insured credit unions. The Board has determined that the proposed amendments would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed rule, if adopted, will decrease paperwork requirements for a credit union. The paperwork requirements will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on the paperwork requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20530. Attn: Milo Sunderhauf. NCUA will publish a notice in the **Federal Register** once OMB action is taken on the submitted requirement.

List of Subjects in 12 CFR Part 722

Appraisals, Credit unions, State-certified and State-licensed appraisers

By the National Credit Union Administration Board on March 1, 1995.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA proposes to amend 12 CFR part 722 as follows:

PART 722—APPRAISALS

1. The authority citation for Part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and Pub. L. No. 101–73.

2. Section 722.3 is amended by revising the section heading, revising paragraphs (a) and (d) and adding a new paragraph (e) to read as follows:

§ 722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $100,000 or less except if it is a business loan and then the transaction value must be $50,000 or less;

(2) A lien on real property has been taken as collateral through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lien on real estate has been taken for purposes other than the real estate's value;

(4) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(5) The transaction involves an existing extension of credit at the credit union, provided that:

(i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs and

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction;

(6) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met the requirements of this paragraph, if applicable, at the time of origination;

(7) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency; or

(8) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate.

* * * * *

(d) *Valuation Requirement.* Secured transactions exempted from appraisal requirements pursuant to paragraphs (a)(1) and (a)(5) of this section and not otherwise exempted shall be supported by a written estimate of market value, as defined in this part, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

(e) *Appraisals to address safety and soundness concerns.* NCUA reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

3. Section 722.4 is revised to read as follows:

§ 722.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in § 722.2(f); and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

4. Section 722.5 is amended by revising paragraph (b) to read as follows:

§ 722.5 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the credit union or its agent, and have no direct or indirect interest, financial or otherwise in the property or the transaction.

(2) A credit union also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution; if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or transaction; and

(ii) The credit union determines that the appraisal conforms to the requirement of this part and is otherwise acceptable.

Appendix A [Removed]

5. Appendix A to part 722 is removed.

[FR Doc. 95–5592 Filed 3–10–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–59–91]

RIN 1545–AQ86

Debt Instruments With Original Issue Discount; Contingent Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (FI–59–91), which was published in the **Federal Register** for Friday, December 16, 1994 (59 FR 64884). The proposed regulations relate to the tax treatment of debt instruments that provide for one or more contingent payments.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations (other than § 1.1275–6), Andrew C. Kittler, (202)622–3940, or William E. Blanchard, (202) 622–3950; concerning § 1.1275–6, Michael S. Novey, (202) 622–3900; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 1275 of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking contains a typographical error that is in need of correction.

Correction of Publication

Accordingly, the publication of proposed regulations (FI–59–91), which was the subject of FR Doc. 94–30728, is corrected as follows:

On page 64885, column 1, in the preamble under the heading "*Background*", paragraph 2, line 6, the language "February 4, 1994, the IRS published in" is corrected to read "February 2, 1994, the IRS published in".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–6028 Filed 3–10–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–118]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, by leaving the draw in the open position except for the passage of trains. The proposed change to these regulations are, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw bridge while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before May 12, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to Room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at Room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–118) and the specific section of this proposal of which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting

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acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations governing the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, be changed to leave the bridge in the open position, except when a train is passing over the bridge. A bridgetender would be available only during the times of train crossings to close the bridge and, after the train had cleared, to reopen the bridge to navigation. There would not be a full-time bridgetender employed at the bridge.

The current regulations require the bridge to remain in the open position from 3:30 p.m. to 11:30 p.m. At all other times, the draw opens on signal. The Albemarle and Chesapeake Railroad Company leases these tracks from Norfolk and Southern Railroad Company. The current schedule for the railroad bridge was used by Norfolk and Southern during the time they were operating their trains across the bridge. The Albemarle and Chesapeake Railroad Company has requested a change to these regulations.

The Albemarle and Chesapeake Railroad Company originally requested that the Coast Guard change the current regulations by allowing the draw to remain closed to navigation Monday through Friday, from 9 a.m. to 3 p.m., with openings only for emergencies. At all other times, the bridge would remain in the open position except for the passage of trains. This request was denied because the proposed hours of bridge closures were considered too restrictive to recreational and commercial navigation, since the bridge is located across the busy Atlantic Intracoastal Waterway—Alternate Route. The Coast Guard also received strong opposition from the boating community and the City of Elizabeth City. Coast Guard Auxiliarists provided data reflecting the number of boats that transit this waterway. In 1992, the number of boaters was 1,971 and in 1993, the number was 1,530, with the heaviest months occurring from April to October of each year.

As a result of the Coast Guard's denial of their request, the Albemarle and Chesapeake Railroad Company requested a meeting with the Coast Guard, Union Camp, the Mayor of Elizabeth City, and local Coast Guard Auxiliarists to discuss a new operating schedule for the railroad bridge.

Since the railroad company was not receptive to employing a full-time bridgetender, all in attendance agreed that the most acceptable schedule would be to leave the bridge in the open position, except for the passage of trains. This would eliminate the need for a full-time bridgetender; however, this proposed schedule would require the railroad company to employ a part-time bridgetender to operate the drawspan.

In developing this proposed schedule, the Coast Guard considered all views, and believes this proposed rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for passage of trains.

Regulatory Evaluation

This proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.833 is revised to read as follows:

§ 117.833 Pasquotank River

The draw of the Albemarle & Chesapeake railroad bridge, mile 47.7, at Elizabeth City, North Carolina, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–6031 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD05–94–117]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, at Chesapeake, Virginia, by leaving the draw in the open position except for the passage of trains. The proposed changes to these regulations are, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before May 12, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–117) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice.

Drafting Information: The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations for the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, in Chesapeake, Virginia, be changed to allow them to leave the bridge in the open position, except when a train is passing over the bridge. Since the bridge would be left in the open position, a bridge tender would only be available to close the bride for a train crossing, and, after the train cleared, to reopen the bridge to navigation.

The current regulations require the bridge to open on demand. These regulations require a full-time bridge tender. Leaving the bridge open, except for the passage of trains, alleviates the need for a full-time bridge tender.

The Albemarle and Chesapeake Railroad Company originally requested that the Coast Guard change the current regulations by leaving the draw closed to navigation, Monday through Friday, from 12 noon to 2:30 p.m., with openings only for emergencies. At all other times, the bridge would remain in the open position except for the passage of trains. This request was denied because of the proposed hours of bridge closures were considered too restrictive to recreational and commercial navigation, since the bridge is located across the busy Atlantic Intracoastal Waterway.

As a result of the Coast Guard's denial, the Albemarle and Chesapeake Railroad Company requested a meeting with the Coast Guard, Union Camp, the Mayor of Elizabeth City, and local Coast Guard Auxilarists to discuss a new operating schedule for the railroad bridge. Since the railroad company was not receptive to employing a full-time bridge tender, all in attendance agreed that the most acceptable schedule would be to leave the bridge in the open position, except for the passage of trains. This would eliminate the need for a full-time bridge tender; however, this proposed schedule would require the railroad company to employ a part-time bridge tender to operate the drawspan.

In developing this proposed schedule, the Coast Guard considered all views, and believes this proposed rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for the passage of trains.

Regulatory Evaluation

This proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has been determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.997, paragraph (g) is redesignated as (h) and a new paragraph (g) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(g) The draw of the Albemarle & Chesapeake Railroad bridge, mile 13.9, in Chesapeake, Virginia, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

* * * * *

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–6032 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–266; FCC 95–80]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Further Notice of Proposed Rule Making*, the Commission proposes rules in response to the pioneer's preference directives contained in the legislation implementing domestically the General Agreement on Tariffs and Trade (GATT), as well as on its own motion. The objective of this proposal is to implement the GATT legislation's modifications to the Communications Act and to make additional changes to the pioneer's preference rules to increase their efficiency.

DATES: Comments are due March 29, 1995; reply comments are due April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making*, adopted February 28, 1995, and released March 1, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

Summary of Further Notice of Proposed Rule Making

1. In the *Notice of Proposed Rule Making* (*Notice*) in this proceeding, 58 FR 57578 (October 26, 1993), the Commission sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and its experience administering them, or whether these rules should be repealed. In the *First Report and Order*, 59 FR 8413 (February 22, 1994), the Commission determined that it would not apply amendments to its rules to three proceedings in which tentative pioneer's preference decisions had been issued; and in the *Second Report and Order*, adopted simultaneously with the *Further Notice of Proposed Rule Making*, modified certain rules to increase the efficiency of the pioneer's preference program.

2. The GATT legislation, enacted December 8, 1994, requires that the Commission complete by June 8, 1995, a rulemaking prescribing the procedures and criteria to be used in evaluating pioneer's preference requests accepted for filing after September 1, 1994. The legislation mandates that the Commission specify the procedures and criteria by which the significance of a pioneering contribution will be determined; that there be an opportunity for review and verification of the contribution by experts not employed by the Commission; and that the Commission use such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of a pioneering contribution justifies any reduction in the amounts paid for comparable licenses. The GATT legislation also requires pioneer's-preference licensees whose preference requests were accepted for filing after September 1, 1994 to pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Finally, the GATT legislation sunsets the pioneer's preference program on September 30, 1998.

3. In the *Further Notice of Proposed Rule Making*, the Commission proposes to establish a peer review process on a permanent basis under the direction of the Chief of its Office of Engineering and Technology. The Chief, OET, would select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are not employed by either the Commission or any applicant seeking a pioneer's preference in the same or similar communications service. The Commission's staff would evaluate on a case-by-case basis how much outside assistance is required.

4. With respect to the unjust enrichment directive of the GATT legislation, the Commission stated that its concerns about unjust enrichment are lessened by the statutorily-mandated payment requirement for pioneer's preference grantees in auctionable services and the formula for calculating per capita bid amounts, but that it remains concerned about the effect of competitive bidding on the pioneer's preference program. It said that in services in which competitive bidding is used to assign licenses, the need to guarantee a license may not be as strong as in services in which another assignment method is used, and noted that there may be circumstances in which the guarantee of a license at or close to the market price may stimulate research such that the innovator receives certainty in obtaining financing to perform the necessary research and to pay for the license.

5. Accordingly, the Commission seeks comment on an additional showing that a pioneer's preference applicant would have to make to qualify for a preference in services in which licenses are awarded by competitive bidding. Specifically, it seeks comment on whether the applicant should have to demonstrate that the Commission's public rulemaking process inhibits the applicant from capturing the economic rewards of its innovation unless granted a pioneer's preference license; *i.e.*, whether the applicant must show that it may lose its intellectual property protection because of this public process. If this requirement were to be adopted, the applicant would have to demonstrate that it would be able to capture the rewards from its innovation only by being granted a guaranteed license.

6. With regard to determining which licenses are most reasonably comparable for purposes of the GATT legislation payment formula, the Commission proposes implementing this provision of the legislation on a case-by-case basis. However, it seeks comment on any standards for comparing licenses and excluding anomalous licenses, as well as comment on whether eligibility for installment payments should be limited to small businesses or other entities as has been done under the general auction rules.

7. In accord with the GATT legislation, the Commission proposes to sunset the pioneer's preference program on September 30, 1998. It also proposes to modify the pioneer's preference rules by limiting the award of preferences to services in which a new allocation of spectrum is required. Finally, it proposes to apply any rules adopted in response to the *Further Notice of Proposed Rule Making* to all pioneer's preference requests granted after adoption of these rules, except in proceedings in which tentative decisions have been made. The Commission stated that it will not issue final decisions in pioneer's preference proceedings that have not reached the tentative decision stage until after it has issued a Third Report and Order regarding final rules that will apply to pending requests.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–6080 Filed 3–10–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 36, 42, 44, 46, 47, 49, 52, and 53

[FAR Case 94–790]

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Change of date for meeting on proposed rule.

SUMMARY: At 60 FR 11198; March 1, 1995, a proposed rule was issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement the revised statutory authorities for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors at all levels. Instead of meeting on the date given in that document, the FAR Council is rescheduling its public meeting at the GSA Auditorium in Washington, DC, for April 3, 1995.

The purpose of the meeting is to enable the public to present its views on the proposed rule, FAR case 94–790—Acquisition of Commercial Items, and to exchange ideas and opinions with respect to the implementation of the Act. Interested members of the public may obtain copies of the proposed rule from the FAR Secretariat, Room 4037, GSA Building, 18th and F Sts., NW, Washington, DC 20405, (202) 501–4755. The public is encouraged to attend this meeting and must provide, to the FAR Secretariat, a written statement on the views they would like to present not later than March 29, 1995.

Organizations or groups with similar views should select a representative speaker.

DATES: The meeting will be held on April 3, 1995, at 1:00 p.m.

ADDRESSES: The meeting will be held at the GSA Auditorium, 8th & F Streets NW., First Floor, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Project Deputy for the Implementation of the Federal Acquisition Streamlining Act of 1994 at (202) 501–4547 or the FAR Secretariat, General Services Administration, (202) 501–0692.

Dated: March 7, 1995.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–5971 Filed 3–10–95; 8:45 am]

BILLING CODE 6820–34–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Initiation of Status Review for a Petition To List the Southern Population of the Walleye as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the southern population of walleye (*Stizostedion vitreum vitreum*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on January 26, 1995. Comments and materials should be submitted to the Service by May 12, 1995, to be considered in the 12-month finding.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield, Biologist, at above address (601–695–4900, ext. 25).

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SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service announces a 90-day finding on a petition requesting the Service to list as endangered the southern population of the walleye (*Stizostedion vitreum vitreum*). The petition, dated August 20, 1994, was submitted by Robert R. Reid, Jr. of Birmingham, Alabama, and was received by the Service on August 22, 1994. The petition requested that the southern population of the walleye be emergency listed as endangered. The petitioner stated that the southern population of the walleye is a genetically distinct population, deserving of specific or subspecific rank, which merits listing because: (1) It has declined in the Tombigbee River drainage, (2) remaining populations in the Tombigbee River drainage are threatened by existing and proposed water projects, and (3) it is rare in other Mobile River Basin drainages in Alabama.

The Service has reviewed the petition, the literature cited in the petition, other literature, information available in the Service's files, and has consulted with knowledgeable fisheries biologists. On the basis of the best scientific and commercial information available, the Service finds the petition presents substantial information that listing this species may be warranted. Emergency listing is allowed under the Act whenever immediate protection is needed to prevent extirpation of a species. Based on currently available information, emergency listing is not needed for the southern population of walleye.

Electrophoretic analyses (Murphy 1990) and mitochondrial DNA comparisons (Billington *et al.* 1992) have confirmed the genetic uniqueness of the upper Tombigbee River population of walleye. Ongoing studies of walleye populations in the Mobile River basin drainages of Alabama have indicated that this distinct Gulf Coast strain of walleye extends into that State (Mike Mecina, University of Auburn, Alabama, pers. comm. 1994). The relationship of other Gulf Coast drainage populations of walleye (e.g., Apalachicola River, Florida, Georgia; Pearl River, Mississippi) to the Mobile River Basin population is unknown and needs further investigation.

Populations of walleye appear to be low in the Tombigbee River drainage of Mississippi. Recent reports of walleye are documented in several Tombigbee River tributaries in Mississippi, including the Buttahatchee River, Sipsey, Bull Mountain, Yellow, Luxapalila, Sucarnoochee, and Hashuqua Creeks (Dennis Riecke, Mississippi Department of Wildlife, Fisheries, and Parks, pers. comm. 1994). Current information on the distribution of walleye in the Mobile Basin drainages of Alabama is limited. Walleye collection localities within the past 10 years in Alabama include the Black Warrior, Alabama, Little Cahaba, Locust Fork, and lower Tallapoosa Rivers, and Euphappee, Oakmulgee, and Hatchet Creeks (Fred Harders, Alabama Department of Conservation, pers. comm. 1994; Malcolm Pierson, Alabama Power Company, pers. comm. 1994).

Service records indicate that potential walleye habitat throughout the Mobile River Basin may have been affected or eliminated due to impoundment of approximately 1,000 miles of river habitat, and/or by extensive stream channelization. Erosion due to headcutting, a proposed channelization project, and proposed impoundments pose additional threats to the population. Walleye appear to require clean, relatively swift streams for reproduction (Schultz 1971). Potential threats to stream habitat quality in the Mobile River Basin include various point source effluents (e.g. coal surface mining and sand/gravel mining), as well as sediments, nutrients, and toxicants from non-point runoff.

The Service solicits further information regarding occurrence and distribution of the species, threats to its continued existence, and any additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the southern population of the walleye. Of particular interest is information regarding:

(1) Genetic composition of other walleye populations in Gulf Coast drainages;

(2) Additional historic and current population data that may assist in determining range and long-term population trends;

(3) Pertinent information on biology and life history; and,

(4) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to populations of the southern walleye.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), the Service will prepare a 12-month finding.

References Cited

Billington, N., R.J. Barrette, and P.D.N. Hebert. 1992. Management implications of mitochondrial DNA variation in walleye stocks. North American Journal of Fisheries Management 12:276–284.

Murphy, B.R. 1990. Evidence for a genetically unique walleye population in the upper Tombigee River system of northeastern Mississippi. SFC Proceedings (22):14–16.

Schultz, C.A. 1971. Survey of the walleye population and related parameters in the Tombigee River system in Mississippi. Mississippi Game and Fish Commission Final Report, Project F–23.

Author: The primary author of this document is Paul Hartfield, Jackson, Mississippi, Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 26, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–6143 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 60, No. 48

Monday, March 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–190–5]

Animal Damage Control Program; Record of Decision Based on Final Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public of the Animal and Plant Health Inspection Service's record of decision for the Animal Damage Control program. The decision is based on the final environmental impact statement for the program.

ADDRESSES: Copies of the final environmental impact statement on which the record of decision is based are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC;

Operational Support Staff, Animal Damage Control, APHIS, USDA, 4700 River Road, Riverdale, MD;

Eastern Regional Office, Animal Damage Control, APHIS, UDDA, Suite 370, 7000 Executive Center Drive, Brentwood, TN;

Denver Wildlife Research Center, Building 16, Denver Federal Center, Denver, CO; and

Western Regional Office, Animal Damage Control, APHIS, USDA, 12345 W. Alameda Parkway, Suite 313, Lakewood, CA.

Interested persons may obtain a copy of the final environmental impact statement by writing to Mr. William H. Clay at the address listed below under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. William H. Clay, Director, Animal and Plant Health Inspection Service, Animal Damage Control, Operational Support Staff, 4700 River Road Unit 87, Riverdale, MD 20737–1228, (301) 734–8281.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1990, the Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (55 FR 24597–24598, Docket No. 90–099) to inform the public of the availability of a draft environmental impact statement (EIS) for the Animal Damage Control program. The draft EIS evaluated environmental impacts associated with wildlife damage control activities.

On January 14, 1993, APHIS published a notice (58 FR 4404–4405, Docket No. 92–190–1) informing the public of our intention to make available a supplement to the draft EIS for the Animal Damage Control program; the supplement was made available through a **Federal Register** notice published on February 12, 1993 (58 FR 8252, Docket No. 92–190–2). We requested public comments on the supplement to the draft EIS for a 45-day period ending on March 29, 1993. On the last day of the comment period, we published a notice in the **Federal Register** (58 FR 16520, Docket No. 92–190–3) extending the comment period until April 28, 1993. All comments received on the draft EIS and its supplement were considered in the final EIS.

On May 6, 1994, APHIS published in the **Federal Register** (59 FR 23683–23684, Docket No. 92–190–4) a notice advising the public of the availability of the final EIS for the Animal Damage Control program. The final EIS addresses the function, methods of operation, and locations of the Animal Damage Control program and the biological, sociocultural, economic, and physical impacts of reasonable alternatives to the program.

This notice contains the agency's record of decision, based on the final EIS, for the Animal Damage Control program. This record of decision has been prepared in accordance with: (1) The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 7th day of March 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

The agency record of decision is set forth below.

United States Department of Agriculture; Animal and Plant Health Inspection Service

Record of Decision: Animal Damage Control Program; Final Environmental Impact Statement

Introduction

This decision is the culmination of the environmental impact statement (EIS) process for the Animal and Plant Health Inspection Service (APHIS), Animal Damage Control (ADC) program. The final programmatic EIS document underlying this decision develops at great length and specific detail the strategies, methods, and processes through which the mission of ADC is accomplished. Numerous examples ("decision model" applications presented in Appendix N, for instance), of how the program has approached some of its environmental responsibilities in the past are provided. Information concerning categorizing classes of action and individual documentation requirements could not be specified in the final EIS because the development of APHIS regulations concerning compliance with the National Environmental Policy Act (NEPA) was not yet completed. Subsequently, the APHIS regulations have been published (60 FR 6000–6005, February 1, 1995) and became effective on March 3, 1995. ADC will fully comply with these implementation procedures and any amendments to those procedures.

The Council on Environmental Quality's (CEQ) regulations implementing NEPA tell decisionmakers what information must be included in records of decision. Section 1505.2 of the CEQ regulations provides that records of decision contain:

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- A statement of what the decision is;
- The identification of all alternatives considered by the agency, including the environmentally preferable alternative(s);
- A discussion of factors (economic, technical, and agency statutory mission) and essential considerations of national policy balanced in the decisionmaking process and how each factor weighs in the decision; and
- An explanation of whether the decision (the alternative selected) is designed to avoid or minimize environmental harm and, if not, why not.

The final EIS prepared by ADC is programmatic in nature. The EIS process was undertaken to explore issues and alternatives associated with program implementation, to identify data elements and other information necessary to evaluate effects at the programmatic and project levels, and to assist in the development of a flexible framework within which effects of various alternatives may be considered in site-specific contexts that are consistent with the documentation and procedural requirements of NEPA.

Program Alternatives

The final EIS rigorously explored and objectively evaluated, in detail, five alternative strategies that may be utilized by program personnel in different site-specific settings. In addition, eight other alternatives that involved restructuring or broadly applied, single-focus approaches, were presented and briefly considered. The five alternative strategies considered in detail are:

- The current program (the integrated pest management alternative), which consists of various practices and techniques, including both nonlethal and lethal actions, that are available for formulating a damage control strategy consistent with applicable State and local requirements, cooperative agreements, and interagency arrangements
- A system of compensation, as a replacement for ADC program actions, to pay partially or fully, for agricultural losses due to damages by wildlife;
- No action, under which USDA–APHIS funded wildlife damage control activities would cease with no specified provisions for replacement measures—compensation or other;
- Use and recommendation of only nonlethal methods to control wildlife-caused damage, precluding the use or recommendation of any and all methods that are directly lethal to wildlife; and
- A requirement that practical nonlethal methods of wildlife damage control be recommended or used in each situation prior to recommending or using any lethal methods.

Integrated pest management (the current alternative) has been identified by ADC as both its "preferred" alternative and the "environmentally preferable" alternative.

A principal function of an EIS is its use by Federal officials, in conjunction with other relevant materials, to plan actions and make decisions. As a practical matter, the integrated pest management alternative includes nearly all animal damage control options and tools available to ADC officials at the project level. How these or other options will be developed and integrated efficiently into program planning and decisionmaking consistent with NEPA and other environmental mandates are addressed in the new APHIS NEPA implementing procedures. Specifically, ADC reaffirms its intention that nonlethal control methods as the means of achieving project goals will be considered, recommended, and, when appropriate, applied prior to recommending or using lethal methods (ADC Directive 2.101).

The APHIS Framework for Environmental Decisionmaking

The starting point for environmental decisionmaking by agencies of the Federal Government is NEPA. The CEQ implementing regulations require agencies to integrate the NEPA process into their planning and to establish procedures to facilitate compliance with the Act. The final EIS prematurely asserted that APHIS had new, finalized NEPA compliance procedures. In fact, as stated above, APHIS only recently promulgated its new NEPA compliance procedures (60 FR 6000–6005, February 1, 1995). The ADC program has adapted its planning and decisionmaking practices to these new procedures. ADC, in compliance with the APHIS Regulations, is structuring a cost-effective environmental compliance system that will be published in the APHIS *Environmental Manual*.

The programmatic EIS process has functioned as a catalyst to focus on environmental issues raised both by the public and internally and to provide environmental information to public officials and citizens before decisions have been made. For its part, ADC has sought a useful decisionmaking "model" (outlined in Chapter 2 of the final EIS and assessed in Appendix N) that is compatible with both its mission and NEPA. ADC will use this "decision model" process, in conjunction with the general outline of NEPA compliance contained in the final EIS, the CEQ regulations (40 CFR 1500, *et seq.*), the Department's NEPA implementing regulations (7 CFR 1b and 3100.40), and the APHIS implementing regulations (7 CFR 372, *et seq.*, 60 FR 6000–6005), as its system for compliance with NEPA. In this process, ADC also will assure continued compliance with all other environmental statutes and regulations, including section 7 of the Endangered Species Act, at the local level. The program is cooperating with the Forest Service, the Bureau of Land Management, other Federal and State agencies, and the public, to coordinate the environmental assessment process through which use of the decision model will be appropriately documented and applied. CEQ recently agreed to assist in this endeavor.

The ADC program will continue to assure that its environmental compliance processes comply with the new APHIS NEPA procedures. Consistent with CEQ's regulations implementing NEPA, the public has been informed and had ample opportunity to participate in the formation of APHIS' and ADC's overall environmental compliance system.

Decision and Rationale

Aspects of most of the alternatives analyzed in the final EIS are currently being used in specific situations in the United States or its Territories. Since this final EIS is programmatic in nature and national in scope, a single alternative as the sole, all-encompassing focus of the ADC program may not adequately cover all wildlife damage problems and situations. Therefore, my decision is to send forward to regional and local decisionmakers the viable alternatives discussed in the final EIS for consideration as management approaches, when appropriate, practical, and reasonable, in preparation of local and site-specific documents and actions. This approach provides a complete range of wildlife damage control strategies available as part of an overall integrated management approach. Application of appropriate methods will be determined following the processes defined in the ADC decision model (EIS, Chapter 2, pages 23–35) and completion of local analyses subject to the NEPA process.

Minimizing Environmental Harm

The final EIS developed a host of mitigation measures that would augment the numerous existing program policies, procedures, and continuing research efforts, to minimize or eliminate environmental impacts. These may be applied at virtually every level of consideration and for each appropriate alternative strategy. Programmatically, ADC has proposed (and in some instances is already implementing) a number of measures, including:

- Environmental compliance training for supervisors and managers;
- The standardization of data collection and reporting;
- Consultation, monitoring, and periodic evaluations; and
- An outreach element, including publishing literature and providing training on the application of nonlethal wildlife damage control alternatives.

Many of the programmatic mitigation measures will be incorporated into ADC's site-specific environmental compliance documents and actions.

For possible mitigation at the local level, the final EIS listed 24 specific measures for consideration, for example:

- Placing greater emphasis on nonlethal animal damage control strategies and techniques;
- Insisting upon the use of more human capture devices and practices; and
- Proving nonlethal control tools to resource managers.

The complete listing provides a menu to which program decisionmakers may refer in various site-specific contexts.

Conclusions

In this decision, I have determined that:

- All currently feasible Animal Damage Control program alternatives have been adequately developed and explored, although the program intends to continue searching for other environmentally preferable means of achieving its mission;
- Program decisionmakers will appropriately consider any significant environmental impacts and the viable alternatives developed in the final EIS in the context of the NEPA process for local actions;
- An environmental compliance system, including APHIS' new NEPA compliance procedures and ADC's specific accommodation of such procedures, will be implemented immediately;
- ADC will use the decisionmaking model explained in Chapter 2 of the final EIS and will follow CEQ regulations and the USDA, APHIS, and ADC NEPA compliance procedures.
- A satisfactory environmental mitigation strategy at both the programmatic and local level has been developed and will be implemented, as appropriate.

Executed in Washington, D.C., this 7th day of March 1995.

Lonnie J. King,

Acting Administrator.

[FR Doc. 95–6097 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on March 28 and 29, 1995, at the Sheraton Portland Airport Hotel, 8235 N.E. Airport Way, Portland, Oregon 97230. The purpose of the meeting is to discuss the role of the committee in the implementation of the Northwest Forest Plan. The meeting will begin at 1:30 p.m. on March 28 and continue until 4:30 p.m. It will resume at 8:30 a.m. on March 29, concluding at 3:00 p.m. Agenda items to be covered include: (1) background on the Northwest Forest Plan; (2) introduction of members and general orientation; (3) operating guidelines and ground rules; (4) a summary of actions taken by the federal agencies regarding plan implementation; and (5) a discussion of topics to be addressed at future meetings. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled prior to adjourning on March 28 for brief oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: March 7, 1995.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 95–6057 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

PME–6 Southwest White Lake Shore Protection Demonstration Project

AGENCY: Natural Resources Conservation Service, formerly Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Southwest White Lake Shore Protection Demonstration Project, Vermilion Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, United States Department of Agriculture, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not necessary for this project.

This project concerns the stabilization and protection of the southwest shoreline of White Lake in Vermilion, Parish. The planned project work consists of planting emergent vegetation in shallow water at the lake's edge. As the vegetation becomes established, it will function as a buffer against the erosive wave energy created by the wide fetch of the lake and artificially high water levels. Shoreline erosion rates will be reduced and interior fresh marshes will remain protected from incorporation into White Lake.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is being conducted under the provisions of Public Law 101–646—Coastal

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Wetlands Planning, Protection, and Restoration Act.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 95–6047 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 950120021–5021–01]

RIN 0693–AB12

Approval of Federal Information Processing Standards Publication 194, Open Document Architecture (ODA) Raster Document Application Profile (DAP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 194, Open Document Architecture (ODA) Raster Document Application Profile (DAP).

On January 28, 1994, notice was published in the **Federal Register** (59 FR 4032) that a Federal Information Processing Standard (FIPS) for Open Document Architecture Raster Document Application Profile was being proposed for Federal use.

NIST reviewed written comments submitted by interested parties and other available material. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard become effective September 1, 1995.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Frankie Spielman, (301) 975–3257, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

EXECUTIVE ORDER 12866: This FIPS notice has been determined to be "not significant" for purposes of E.O. 12866.

Dated: March 7, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 194

(Date)

Announcing the Standard for Open Document Architecture (ODA) Raster Document Application Profile (DAP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Open Document Architecture (ODA) Raster Document Application Profile (DAP), (FIPS PUB 194).

2. Category of Standard. Software Standard, Graphics.

3. Explanation. This Federal Information Processing Standard adopts the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 12064–1 International Standard Profile (ISP) FOD112, Open Document Format: Image Applications—Simple Document Structure—Raster Graphics content architecture, Part 1: Document Application Profile (DAP). This FIPS PUB defines three levels of conformance, the complete specification is in section 10.

ISO/IEC 12064–1 specifies the use of a subset of the ODA standard and, in this FIPS PUB, is referred to as the ODA Raster DAP. The ODA standard is defined in a joint ISO/IEC and International Telecommunications Union Telecommunication Standardization Sector (ITU–T) document ISO/IEC 8613–ITU–T Recommendation T.410 Series, Open Document Architecture (ODA) and Interchange Format.

The ODA standard supports the interchange of compound documents containing up to three types of contents: character (text), raster graphics, and geometric graphics. Developed by international standards organizations, the ODA standard specifies rules for describing the logical and layout structures of documents as well as rules for specifying character, raster graphics, and geometric graphics content of documents, thus providing for the interchange of complex documents. The ODA standard was developed primarily by the ISO/IEC Joint Technical Committee (JTC1) and ITU–T, formerly the Consultative Committee on International and Telegraph (CCITT).

A DAP is a functional subset of the ODA standard and facilitates the interchange of documents among different document systems by specifying the constraints on document structure and content according to the rules of the ODA Standard. The ODA Raster DAP specifies an interchange format suitable for the transfer of formatted structured documents between systems designed for raster graphics applications. The documents supported by this standard are based on a paradigm of an electronic engineering drawing, illustration, or other electronic image. Within an ODA document, only raster graphics content is allowed and supported by this FIPS.

The ODA Raster DAP was initially developed by an ad-hoc Continuous Acquisition and Life-Cycle Support (CALS) Tiling Task Group. CALS, formerly known as the Computer-aided Acquisition and Logistic Support, is a Department of Defense (DoD) initiative. The ODA Raster DAP was further developed by vendors and users of computer networks/systems participating in the Open Systems Environment Implementors' Workshop (OIW), and finally harmonized with the International organizations participating in the Profile Alignment Group for ODA (PAGODA). Finally, it was submitted to ISO/IEC JTC1/Special Group on Functional Standards (SGFS) for processing as part 1 of the ISP.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory).

6. Cross Index.

a. ISO/IEC 8613:1994—ITU–T 410 Recommendation Series (1993), Information Processing—Text and Office Systems Open Document Architecture (ODA) and Interchange Format Standard.

b. NIST Special Publication 500–224, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 8, Edition 1, December 1994.

C. ANSI/AIIM MS53–1993, Standard Recommended Practice—File Format for Storage and Exchange of Images—Bi-Level Image File Format.

7. Related Documents. Related ISO and ITU documents are listed in the normative reference section of the ODA Raster DAP. Other related documents are:

a. FIPS PUB 149, Telecommunications: Facsimile Coding Schemes and Coding Control Functions for Group 3 Facsimile Apparatus.

b. FIPS PUB 150, Telecommunications: Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

c. NISTIR 5108, Raster Graphics: A Tutorial and Implementation Guide.

8. Objectives. The FIPS for ODA Raster DAP permits Federal departments and agencies to exercise more effective control over the production, management, and use of Government's raster graphics applications. The primary objectives of this standard are:

—To promote interchange of structured documents containing raster graphics images between image processing systems of different manufacturers,

—To facilitate the use of advanced technology by the Federal Government,

—To contribute to the economic and efficient use of image and document processing system resources, and

—To avoid the proliferation of vendor-unique solutions.

9. Applicability. The ODA Roster DAP is available for use by Federal Government agencies when acquiring and developing ODA raster graphics applications. This FIPS applies to systems processing, generating, and receiving raster graphics images utilizing the ODA standard in a structured document environment. It specifies the structure and parameters for describing and interchanging bi-level untiled compressed images as well as tiled raster images. Each system acquired or developed by Federal agencies to support the ODA Raster DAP shall include appropriate system-to-DAP and DAP-to-system translators, such that incoming data streams are interpreted correctly and that outgoing data streams are generated correctly. These translators may be acquired separately from the acquisition of the application system when it is in the best interest of the Federal agency to do so. Use of the standard is independent of the communications used to transfer documents produced by these applications; that is, this standard may be used within the existing framework of communication protocols. There are three levels of applicability defined to satisfy different implementation requirements.

10. Specifications. This FIPS adopts the provisions of ISO/IEC 12064–1 by defining three levels of implementation support. All levels must conform to the document and raster layout specifications of [ITU–T Rec. T.410 series—ISO/IEC 8613] and ISO/IEC ISP 12064–1 that are essential for raster graphics applications. The specifications for ODA data streams are also defined in [ITU–T Rec. T.410 series—ISO/IEC 8613] and ISO/IEC ISP 12064–1 and apply to all levels defined in this FIPS. The levels are: ANSI/AIIM MS–53 (Untiled), Intermediated ODA Raster DAP, and Full ODA Raster DAP.

10.1. ANSI/AIIM MS–53 (Untiled). This level of implementation supports ANSI/AIIM MS–53–1993, Standard Recommended Practice—File Format for Storage and Exchange of Images—Bi-Level Image File Format: Part 1. Files written in conformance with any of the pre-defined file formats described in the ANSI/AIIM MS–53 standard can be imported into an ODA implementation. Each of six file formats can be implemented without either technical knowledge or understanding of the ODA format. This implementation does not support tiled raster images but does support both ITU–T Recommendation T.6 (Group 4) and ITU–T Recommendation T.4 (Group 3) compression algorithms.

10.2. Intermediate ODA Raster DAP. This level of implementation supports raster graphics images in either the untiled or tiled format. The following restrictions apply to this level of implementation.

a. The ITU–T Recommendation T.4 (Group 3) one-dimensional and two-dimensional compression algorithms are not supported.

b. If the image is tiled, the tile size must be restricted to 512 X 512 pels.

c. The uncompressed escape option defined in FIPS PUB 150 (ITU–T Recommendation T.6) will not be used.

d. The bit ordering will be restricted to only the most significant bit (MSB) to least significant bit (LSB), the "down" bit order.

e. Only the "Document-reference" attribute within the Document Profile Document Management attributes is supported.

10.3. Full ODA Raster DAP. This level of implementation supports raster graphics images in either the untiled or tiled format. It fully supports all aspects of the ODA Raster DAP.

10.4. Miscellaneous requirements. A bitmap image or tile represents the "information" in a document by one bits and the "background" by zero bits. This FIPS requires that the encoding programs exporting document images for interchange must produce the image with a pel line dimension which is a multiple of eight pels.

10.5. Conformance requirements. All implementations, regardless of implementation level, claiming conformance to this FIPS must adhere to the specific requirements defined in the "Conformance" clause of the ODA Raster DAP and to the general rules below.

Conformance Rules for Data Streams. A conforming data stream shall be syntactically, semantically, and structurally correct as defined in this standard.

Conformance Rules for Generators. A generator which claims conformance to this standard shall create only conforming data streams which correctly represent the raster graphics image which was input to the generator.

Conformance Rules for Receivers. A receiver which claims conformance to this standard shall be capable of reading and correctly processing any conforming data stream without halting or aborting such that it produces the correct results.

11. Implementation. The implementation of this standard involves three areas of consideration: acquisition of raster graphics implementations, interpretations of the standard, and validation of ODA Raster DAP implementations.

11.1. Acquisition of Raster Graphics Applications. This standard becomes effective September 1, 1995. For a period of twelve (12) months after the effective date, agencies are permitted to acquire alternative software that provides equivalent functionality to the ODA Raster DAP. Agencies are encouraged to use this standard for solicitation proposals for new raster processing systems to be acquired after the effective date. This standard is mandatory for use in all solicitation proposals for new ODA raster application products acquired twelve (12) months after the effective date.

11.2. Interpretation of the Standard. NIST provides for the resolution of

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questions regarding FIPS for ODA Raster DAP specifications and requirements, and issues official interpretations as needed. Procedures for interpretations are specified in FIPS PUB 29–3. All questions about the interpretation of FIPS for ODA Raster DAP should be addressed to: Computer Systems Laboratory, Attn: Raster Graphics Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.3. Validation of ODA Raster DAP Implementations. Implementations of FIPS ODA Raster DAP shall be validated in accordance with NIST Computer Systems Laboratory (CSL) validation procedures for FIPS ODA Raster DAP. The goal of the NIST ODA Raster DAP Validation Test Service is to maximize the probability of successful interchange between conforming systems.

Validation testing provides a way of determining the degree to which an implementation conforms to a standard. The testing of ODA Raster DAP implementations to determine the degree to which they conform to the standard may be required by Government agencies in accordance with Federal Information Resources Management Regulation (FIRMR) 201–20.303, 201–20.304, 201–39.1002, and the associated Federal ADP and Telecommunications Standard Index.

The agency is advised to refer to the NIST publication Validated Products List for information about the validation status of products.

Information concerning the NIST Raster Graphics Validation Test Service and validation procedures can be obtained by contacting the: National Institute of Standards and Technology, Computer Systems Laboratory, ATTN: Raster Graphics Test Service, Building 225, Room A266, Gaithersburg, MD 20899, (301) 975–3257.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to FIPS. The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement-sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 194 (FIPSPUB194), and title. Specify microfiche, if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 95–6100 Filed 3–10–95; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 950120022–5022–01]

RIN 0693–AB25

Federal Information Processing Standards Publication 119–1, Ada

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 119–1, Ada. This revised standard adopts the American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995, which specifies the form and meaning of programs written in Ada.

SUMMARY: On July 11, 1994 (59 FR 35315–35317), notice was published in the **Federal Register** that a revision to Federal Information Processing Standard 119, Ada was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to the revised standard was reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

The FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This revised standard becomes effective July 10, 1995.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Dashiell, telephone (301) 975–2490, National Institute of Standards and Technology, Gaithersburg, MD 20899.

EXECUTIVE ORDER 12866: This FIPS notice has been determined to be "not significant" for purposes of E.O. 12866.

Dated: March 7, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 119–1

(date)

Announcing the Standard for Ada

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111 (d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Ada (FIPS PUB 119–1).

2. Category of Standard. Software Standard, Programming Language.

3. Explanation. This publication is a revision of FIPS PUB 119 and supersedes that document in its entirety.

This publication announces the adoption of American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers. interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995.

7. Related Documents.

a. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, April 1994 (updated periodically).

b. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

c. FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992.

d. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

e. NIST, Validated Products List, (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

f. ISO 6429: 1992(E)—Information Technology—Control Functions for Coded Character Sets.

g. ISO 646 Information Processing—7-bit Single-Byte Coded Character Set.

h. ISO 8859–1:1987(E)—Information Processing—8 bit Single-Byte Coded Character Sets—Part 1: Latin Alphabet No. 1.

i. ISO 10646–1:1993 Information Technology—Universal Multiple-Octet Coded Character Set (UCS)—Part 1: Architecture and Balic Multilingual Plane.

8. Objectives. Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Governmentwide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

a. Federal standards for high level programming languages should be used for computer applications that are either developed or acquired for government use. FIPS Ada is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Ada is suitable for use in programming and any applications for which there is no specific language available specifically targeted to that application.

b. The use of FIPS Ada is recommended for the following applications and situations:

—those involving control of real-time or parallel processes.

—very large systems.

—systems with requirements for very high reliability.

—systems which are to be developed with reusable software packages.

—when it is anticipated that the life of an application will be longer than the life of the presently utilized equipment.

—the application or program is under constant review for updating of the specifications, and changes may result frequently.

—the application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—the program will or might be run on equipment other than that for which the program is initially written.

—the program is to be understood and maintained by programmers other than the original ones.

—the advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language.

—the program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

10. Specifications. FIPS Ada specifications are the language specifications contained in American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995 standard.

The American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995 standard document specifies the form of a program written in Ada, the effect of translating and

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executing a program, predefined library entities that must be supplied, and detection of compilation and/or link errors.

The standard does not specify limits on the size or complexity of programs, the results when the rules of the standard fail to establish an interpretation, the means of supervisory control of programs, or the means of transforming programs for processing.

11. Implementation. The implementation of FIPS Ada involves four areas of consideration: the effective date, acquisition of Ada processors, interpretation of FIPS Ada, and validation of processors.

11.1 Effective Date. This revised standard becomes effective July 10, 1995. Ada Processors acquired for Federal use after this date should conform to FIPS PUB 119–1.

A transition period provides time for industry to produce Ada language processors conforming to the standard. The transition period begins on the effective date and ends March 1, 1997. The provisions of FIPS PUB 119–1 apply to orders placed after the effective date of this publication. If, during the transition period, a processor conforming to FIPS PUB 119–1 is not available, a processor conforming to FIPS PUB 119 may be acquired for interim use during the transition period.

This transition period is intended to give implementations that conform to FIPS PUB 119 time to make the enhancements necessary to enable conformance to FIPS PUB 119–1. No further transitional period is necessary.

11.2 Acquisition of Ada Processors. Conformance to FIPS Ada should be considered whether Ada processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS Ada is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 1.

11.3 Interpretation of FIPS Ada. The National Institute of Standards and Technology provides for the resolution of questions (see FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992) regarding the specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS Ada Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@alpha.ncsl.nist.gov.

11.4 Validation of Ada Processors. Implementations of FIPS Ada shall be validated in accordance with the NIST Computer Systems laboratory (CSL) validation procedures for FIPS Ada. Recommended procurement terminology for validation of FIPS Ada is contained in the U.S. General Services Administration (GSA) publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 2. This GSA publication provides terminology for three validation options; Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication Validated Products List for information about the validation status of Ada products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the Ada implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the Ada implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g. the same parameter settings to be used in a performance benchmark. An agency with a single/license procurement may review the Validated Products List to determine the applicability of existing VSRs or Certificates tot he agency's hardware/software environment.

Ada implementations shall be evaluated using a NIST approved test suite.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS Ada Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@alpha.ncsl.nist.gov.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, Attn: FIPS Waiver Decisions, technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 119–1 (FIPSPUB119–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 95–6099 Filed 3–10–95; 8:45 am]
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National Oceanic and Atmospheric Administration

[Docket No. 940961–4261]

RIN 0648–ZA11

NOAA Seasonal-to-Interannual Climate Prediction Program Research Centers, Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: NOAA invites interested institutions to submit letters of intent indicating interest in establishing a cooperative agreement with NOAA to participate in a multinational network of Research Centers within the proposed Seasonal to Interannual Climate Prediction Program (SCPP).

The proposal to establish an end-to-end, multinational SCPP is based on the evolution of existing program efforts to observe, understand, predict, and assess the ocean and the atmosphere. The programmatic strength of these efforts has been derived from the support of individual federal agencies working together within the context of the U.S. Global Change Research Program (GCRP). These interrelated efforts provide the foundation which has enabled the research community to provide useful predictions of climate variability on seasonal to interannual time scales and are each a component of a comprehensive Program.

The U.S. proposes to initiate a multinational planning process intended to lead to the establishment of the multinational infrastructure needed to generate and transfer useful climate information and forecasts. This Announcement of Opportunity is intended to result in the establishment of NOAA-designated Research Centers to pursue the development of ENSO forecast techniques in anticipation of the full multinational structure which will evolve for SCPP. NOAA intends to ask one or a group of such Centers selected through this announcement to assume specific responsibilities for establishing a center to prepare and disseminate regularly an experimental forecast to all interested countries. Recognizing the value of El Niño-Southern Oscillation (ENSO) forecasting to countries throughout the world, this center is referred to as the International Research Institute (IRI) in the U.S. proposal to establish a Seasonal-to-Interannual Climate Prediction Program. This action on the part of U.S. will represent the first step in the process of initializing the participation of all interested countries, and therefore NOAA wishes to emphasize that extensive multinational consultation will be an integral part of the process leading to a U.S. site for an International Research Institute for SCPP.

Funding for activities supported under this announcement will be provided through the National Oceanic and Atmospheric Administration (NOAA) Climate and Global Change Program administered by the NOAA Office of Global Programs.

DATES: Letters of intent should be submitted to J. Michael Hall, Director, NOAA Office of Global Programs no later than April 12, 1995. Response letters will be issued from NOAA by April 26, 1995. Those institutions which are encouraged to submit full proposals should do so by June 16, 1995. Designation of U.S. Research Centers for SCPP will be completed by July 14, 1995, with appropriate funding action initiated at that time. Selection of the institution(s) which the U.S. will offer as a host site for the Institute is planned to be completed by September 1, 1995.

ADDRESSES: Letters of Intent and Proposals should be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5063, Attn.: Dr. J. Michael Hall.

An Applications Kit can be obtained from: Grants Management Division, National Oceanic and Atmospheric Administration, 1325 East West Highway, Room 5426, Silver Spring, MD 20910, Attn: Michael Nelson.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Mooney, NOAA/Office of Global Programs, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603; 301–427–2089, Internet: mooney@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

A total of $5.0 million is available for first-year awards under this announcement. Of this amount, $4.0 million is envisioned to establish an International Research institute for SCPP and $1.0 million is to support work at designed SCPP Research Centers.

This Program Announcement is for projects to be conducted over a three-year period. NOAA believes that the SCPP will benefit significantly from a strong partnership with outside investigators. The funding instrument will be a cooperative agreement based on need for substantial NOAA involvement in the implementation of the project for which an award is to be made. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Program Authority

Authority: 49 U.S.C. 1463; 33 U.S.C. 883d and 883e; 15 U.S.C. 2907; 15 U.S.C. 2931

(CFDA No. 11.431)—Climate and Atmospheric Research

Program Objectives

The multinational network of research, application and operational centers is designed to catalyze the international scientific community in a coordinated research effort to produce the best possible climate forecasts a season to a year to two in advance and to provide forecasts guidance products which are socially and economically useful to countries of the world vulnerable to the impacts of climate variability. The network's Research Centers will promote research efforts designed to continually develop coupled models of the global atmosphere, ocean, and land surface to serve as a basis for improved climate prediction one season or one year or more in advance. Research Centers will transfer model improvements to the International Research Institute for SCPP and to national operational centers.

The International Research Institute will have the responsibility of producing, assessing, and distributing experimental climate forecast guidance products on an international basis and will seek funding from non-U.S. sources as well as from the U.S. The Institute will generate and disseminate experimental forecast guidance and analyses to Regional Application Centers, located around the world, which will refine the forecast based on analyses of local and regional conditions and distribute products of social and economic benefit to users. The U.S. will assist as appropriate in the establishment of Application Centers through a separate process. All of the NOAA-designated Research Centers will work closely with interested national and international operational centers, such as NOAA's National Meteorological Center, which have responsibilities for routine delivery of climate products.

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Program Priorities

All proposals should provide detailed three-year plans for modeling research, education and training which build upon the existing program outlined in the letter of intent. Proposals from institutions also interested in hosting the IRI for SCPP should also include detailed information describing the unique qualifications of the institution(s) which will enable it (them) to combine the research and operational activities required to effectively coordinate the program. The following areas should be addressed in the proposal: Creation and maintenance of a climate data base; proposed mechanisms for the development and implementation of model improvements; strategy for generating experimental forecasts guidance products; evidence of capacity for assessing and distributing forecast guidance and supporting analyses to Application Centers and national operational weather prediction centers; support for the preparation for new forecast guidance products based on Application Center needs; and commitment to providing education and training for scientists and potential users of climate information.

Eligibility

Extramural eligibility is limited to U.S. institutions. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement.

Award Period

Proposal for SCPP Research Centers are expected to be of three-year duration.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address the Program Priorities listed above and meet the following evaluation criteria. Equal weight is assigned to each of the criteria.

(1) Scientific Merit: Intrinsic scientific value of the proposed research program.

(2) Relevance: Importance and relevance to the goal of the SCPP.

(3) Methodology: Focused scientific objective and strategy, including modeling research, education and training considerations; project milestones; and final products.

(4) Readiness: Quality of the larger research and education environment; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages: Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, and inclination towards ability to function within a network of institutions with an international perspective.

(6) Costs: Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments. Matching funding is encouraged, but is not required.

Selection Procedures

Upon completing the evaluation of the letters of intent, institutions will be either discouraged or encouraged to submit full proposals for designation as a SCPP Research Center or as a SCPP Research Center/and proposed U.S. host for the International Research Institute for SCPP. All proposals will be evaluated and ranked using the above evaluation criteria by a NOAA review panel which may include NOAA and non-NOAA experts in the field. Their recommendations and evaluations are considered by the Program Manager in final selections. Those ranked by the panel and rated by the Program Manager as not recommended for funding are not given further consideration and are notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the Program Manager will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Letters of Intent: (1) Letters of Intent are required prior to submission of a full proposal. (2) Letters of Intent should be no more than ten pages in length and include the name(s) and institution(s) of principal investigator(s); detailed description of the resources and unique capabilities that the institution would bring to the network, specifically scientific expertise, specialized facilities, ongoing research activities, educational and training programs, and university faculty positions. Explicitly identify existing resource levels for TOGA and other relevant research projects supported by NOAA and other agencies. Letters of intent from institutions interested in designation as a SCPP Research Center which would then, individually or in concert, provide host facilities for the Institute should indicate in addition specific interest in and capability for serving as the host site for a center which will take on the responsibility for systematic production, assessment and distribution of experimental climate forecast guidance products (the International Research Institute). (3) An original, signed letter of intent is required by the deadline date. Facsimile and electronic mail submission of letters of intent will not be accepted. (4) Evaluation will be by program management, according to the selection criteria for full proposals described above. (5) Projects deemed unsuitable during program review should not be submitted as full proposals.

(a) Full Proposals: (1) Applicants are not required to submit more than an original and two copies of applications. (2) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for three-year duration. Required government standard forms are not included in the page limit. (3) An original, signed proposal is required by the deadline date. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigators(s), total proposed cost and budget period.

(3) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the SCPP, and the program priorities listed above. Benefits of proposed project to the general public and the scientific community should be discussed. Results from related projects supported by NOAA and other agencies should be included. The statement of work, excluding figures and other visual materials, must not exceed 15 pages of text. Appended information may not be used to circumvent the page length limit. Investigators wishing to submit group proposals that may exceed the 15 page limit should discuss this possibility with the Program Manager prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 10 pages of overall project description plus up to 5 pages per person of individual project descriptions.

(4) Budget: Applicants must submit a detailed budget using the Standard Form 424a(4–92), Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Unless otherwise directed by the Program Manager, proposals should indicate a target start date of September 1, 1995.

(5) Vitae: Abbreviated Curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(6) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(c) Other requirements:

Primary applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

(1) Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

(2) Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(5) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(6) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(7) Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(8) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(9) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(11) Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged to the extent feasible, to purchase American-made equipment or products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Section 607 (a) and (b).

(12) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephone Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 am–4:30 pm.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms have been approved by

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the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Dated: January 9, 1995.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 95–6108 Filed 3–10–95; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits and Amendment of a Restraint Period and Visa Requirements for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

March 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and amending a restraint period and visa requirements.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding (MOU) dated February 6, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, the current Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended and extended, is being converted to a twelve-month calendar year agreement.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period to extend through December 31, 1994. The current limits are being amended and new limits are being established for Categories 434 and 440. Also, limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. The 1995 limits for Categories 331/631, 334/634, 335/835, 336/636/836, 340/640, 341/641, 347/348/847, 351/651, 352/652, 635 and 840 have been reduced for carryforward and special carryforward applied to the 1994 agreement period. The 1994 limits for Categories 314 and 347/348/847 will be filled upon opening. Goods shipped in excess of these limits are being charged to the corresponding limits for the 1995 period. The visa arrangement is being amended to no longer require a 340–Y/640–Y visa for goods produced or manufactured in Sri Lanka and exported from Sri Lanka.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 53 FR 34573, published on September 7, 1988; and 59 FR 14152, published on March 25, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 22, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1994 and extends through June 30, 1995.

Effective on March 14, 1995, you are directed, pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding dated February 6, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, to amend the current restraint period to begin on January 1, 1994 and extend through December 31, 1994 at the levels listed below. The sublimit for Categories 340–Y/640–Y [1] is being eliminated.

Category	1994 twelve-month limit [a]
237	267,674 dozen.
314	3,600,000 square meters.
331/631	3,330,773 dozen pairs.
333/633	29,041 dozen.
334/634	867,071 dozen.
335/835	334,700 dozen.
336/636/836	658,706 dozen.
338/339	1,244,751 dozen.
340/640	1,343,974 dozen.
341/641	1,868,738 dozen of which not more than 1,245,825 dozen shall be in Category 341 and not more than 1,174,163 dozen shall be in Category 641.
342/642/842	508,054 dozen.
345/845	113,332 dozen.
347/348/847	1,573,138 dozen.
350/650	59,280 dozen.
351/651	338,285 dozen.
352/652	1,329,966 dozen.
359–C/659–C [b]	960,102 kilograms.
360	1,200,000 numbers.
363	7,881,596 numbers.
369–D [c]	726,248 kilograms.
369–S [d]	689,784 kilograms.
434	7,000 dozen.
435	15,750 dozen.
440	10,000 dozen.
611	4,700,000 square meters.
635	461,873 dozen.
638/639/838	758,023 dozen.
644	258,635 numbers.
645/646	45,526 dozen.
647/648	777,128 dozen.
840	250,000 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[d] Category 369–S: only HTS number 6307.10.2005.

Textile products in Categories 434 and 440 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and the Memorandum of Understanding dated February 6, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka exported during the period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following restraint limits:

Category	1995 twelve-month limit [a]
237	257,932 dozen.
314	3,850,560 square meters.
331/631	1,833,374 dozen pairs.
333/633	48,553 dozen.
334/634	324,274 dozen.
335/835	166,086 dozen.
336/636/836	199,574 dozen.
338/339	1,137,937 dozen.
340/640	851,963 dozen.
341/641	1,650,443 dozen of which not more than 1,100,295 dozen shall be in Category 341 and not more than 1,133,370 dozen shall be in Category 641.
342/642/842	591,726 dozen.
345/845	153,244 dozen.
347/348/847	1,087,585 dozen.
350/650	106,207 dozen.
351/651	277,668 dozen.
352/652	1,032,228 dozen.
359–C/659–C [b]	1,168,664 kilograms.
360	1,283,520 numbers.
363	11,000,049 numbers.
369–D [c]	825,855 kilograms.
369–S [d]	688,211 kilograms.
434	7,081 dozen.
435	15,174 dozen.
440	10,116 dozen.
611	5,027,120 square meters.
635	221,448 dozen.
638/639/838	810,870 dozen.
644	455,175 numbers.
645/646	182,069 dozen.
647/648	976,192 dozen.
840	233,480 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[d] Category 369–S: only HTS number 6307.10.2005.

Imports charged to the category limits for the period January 1, 1994 through December 31, 1994 shall be charged to those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the 1995 levels set forth in this directive.

You are directed to amend further the directed dated September 1, 1988 to no longer require a part-category visa for 340–Y/640–Y for goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after March 14, 1995. Goods exported during the period March 14, 1995 through April 13, 1995 shall not be denied entry if visaed as 340–Y/640–Y.

The limits set forth above are subject to adjustments in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–6124 Filed 3–10–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Request for Public Participation in Formulating Children's Health Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation) is considering establishing a summer service program targeted at children's health. The Corporation seeks input from community-based organizations and other agencies or persons knowledgeable in the area of children's health. The Corporation seeks information and input regarding the most effective means to address the health needs of children through national service.

DATES: The Corporation seeks the participation of the public in this process until March 20, 1995.

ADDRESSES: Responses to this notice should be sent to Cecilia Calvo at the Corporation for National Service. Address: 1201 New York Avenue NW, Room 8403–D, Washington, D.C. 20525. Fax: (202) 565–781.

FOR FURTHER INFORMATION CONTACT: The Corporation for National Service, at (202) 606–5000, ex. 341. For individuals with disabilities, the information contained in this notice will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: The Corporation is a government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.*, the Corporation may make grants to States, subdivisions of States, Indian tribes, U.S. territories, public or private nonprofit organizations, Federal agencies and institutions of higher education to carry out national service programs.

Early childhood development is among the Corporation's priorities for fiscal year 1995. The Corporation is considering the establishment of a limited summer program targeted at children's health. This program, if established, will be implemented by programs that are already funded by the Corporation and by organizations in partnership with programs already funded by the Corporation.

The Corporation seeks specific information on the following issues: (1) Which children's health needs can most appropriately and expeditiously be addressed through the Corporation's national service programs; (2) whether existing organizations have sufficient capacity and expertise to implement an effective children's health program; (3) ways in which existing organizations or

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persons have successfully implemented programs addressing children's health needs; of particular interest to the Corporation are strategies on planning, development, implementation, and evaluation of children's health programs that can be created and completed in a short period of time.

Dated: March 8, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95–6123 Filed 3–10–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICE ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0015]

Clearance Request for Contractor Inventory Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0015).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Inventory Schedules.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4655.

SUPPLEMENTARY INFORMATION:

A. Purpose

The series of standard forms covering contractors' inventories are essential for reporting, redistribution, and disposal of excess Government property at contractor plants (upon contract completion) and contractor termination inventory in support of contractor termination settlement proposals.

The contractor who is accountable for the property or who is submitting a termination settlement proposal is responsible for completing the inventory schedules.

These inventory schedules are the only means by which contractors report excess contractor inventory and by which the Government is able to achieve screening, redistribution and disposal of such property. They are also the only means of contractors supporting the inventory portion of their termination settlement proposals and accounting for Government property in their possession. Thus, this information is not available to those requiring it from any other source.

A variety of activities utilize these inventory schedules. Thus, the Termination Contracting Officer and the cognizant audit agency use the schedules in evaluating the termination charges being claimed under terminated Government contracts. The Property Administrator of the contract administration office uses the schedules to ensure that the contractor has accounted for all Government property in its possession.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *12,500*; responses per respondent, *4*; total annual responses, *50,000*; preparation hours per response, *1*; and total response burden hours, *50,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0015, Contractor Inventory Schedules, in all correspondence.

Dated: March 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–6114 Filed 3–10–95; 8:45 am]

BILLING CODE 6820–34–M

Department of the Army

MTMC's Consideration to Employ Full-Service Contracts to Improve the Department of Defense Personal Property Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Request for comments.

SUMMARY: The evolving Defense environment encompasses a smaller uniformed force, less overseas basing, reducing funding, and diminished staffing of support activities. These changes will directly affect quality of life issues for the military service members and their families. In light of these significant changes in the defense environment, the Military Traffic Management Command (MTMC) is engaged in an effort to simplify current processes, control program costs, and ensure quality of service by performing a reengineering of the existing DOD Personal Property Program. This reengineering effort will adopt, to the fullest extent possible, commercial business processes characteristic of world-class customers and suppliers and relieve carriers of DOD unique terms and conditions. It will also focus on the customer, reward results, foster competition, and seek excellence of vendor performance.

DATES: Comments must be received by May 12, 1995.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–Q, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ann Gibson, MTOP–QS, (703) 756–1590.

SUPPLEMENTARY INFORMATION: An alternative business process being considered is competitively acquiring personal property services through use of long-term, full-service contracts under the Federal Acquisition Regulation (FAR). Under this alternative, MTMC would competitively select full service contractor(s) for defined regions. The contractor(s) selected for each region would be responsible for all management, administrative, and operational functions currently performed by PPSO (Personal Property Shipping Offices), PPPOs (Personal Property Processing Offices), and carriers. PPSO and PPPO functions includes, but are not limited to, service member counseling, shipping document preparation, management report generation, arranging movement of all types of domestic and international outbound shipments, managing the storage and delivery of all types of domestic and international inbound shipments, managing long term storage, and evaluation of performance and customer satisfaction. Carrier functions include, but are not limited to, pre-move surveys, shipment packaging, onward shipment movement, storage-in-transit, long term storage, shipment delivery, shipment unpacking, and claims settlement.

Under this proposed contracting approach, subcontracting goals will be included to ensure capability (particularly during the peak season) and continued visibility of small, small disadvantaged, and women-owned carriers.

In formulating comments, the following issues should be considered: The ability to expand operations during emergencies or during peak shipping season; subcontracting, specifically to small, small and disadvantaged, and women-owned businesses; the ability to manage the movement of all types of personal property shipments, to include, but not limited to, unaccompanied baggage, household goods, mobile homes, and boats; the ability manage administrative processes, to include, but not limited to, methods for billing and payment of transportation and transportation related charges, direct settlement with property owners for loss and/or damage claims; establishment of rate structures; establishment of performance evaluation criterion; and management of long and short term storage.

If this alternative business practice is pursued, the carrier industry will also be afforded the opportunity to comment on a draft solicitation, as well as to attend pre-solicitation and pre-proposal conferences.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–6046 Filed 3–10–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Station, Alameda, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Alameda, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or William R. Carsillo, Real Estate Center, Engineering Field Activity West (Code 2411), Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3815. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Ben Quiroz, Facilities Management (Code 51), Bldg. 114, Room 204, Naval Air Station Alameda, 250 Mall Square Alameda, CA 94501–5000, telephone (510) 263–3712.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Air Station, Alameda, CA, and its tenant activity, the Naval Aviation Depot, Alameda, were designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on May 20, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 23, 1994, the Alameda Reuse and Redevelopment Authority submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Station, Alameda, CA, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Air Station, Alameda, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Alameda Reuse and Redevelopment Authority (ARRA), which was formed through a joint powers agreement between the City of Alameda and Alameda County. ARRA is supported by the Alameda Base Reuse Advisory Group (BRAG), established to provide advice to ARRA for redevelopment of the closing air station. A cross section of community interests is represented on BRAG. Day-to-day operations of ARRA and BRAG are handled by a professional staff. For further information contact Ms. Julie Montrom, Alameda Reuse and Redevelopment Authority, Postal Directory Bldg. 90, Naval Air Station, Alameda, CA 94501–5012, telephone (510) 263–2870 and facsimile (510) 521–3764.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Air Station, Alameda, CA, that were declared surplus to the federal government on May 20, 1994.

Land

Approximately 1,046 acres of improved and unimproved fee simple land at the U.S. Naval Air Station, Alameda, City of Alameda, Alameda County, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on September 30, 1997 unless otherwise indicated. Property numbers are available on request.

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—Administration/Office facilities (10 structures). Comments: Approx. 524,593 square feet.
—Aircraft maintenance/Industrial facilities (97 structures). Comments: Approx. 2,878,982 square feet.
—Bachelor quarters housing (6 structures). Comments: Approx. 505,774 square feet. Most have individual rooms.
—Bakery (1 structure). Comments: Approx. 5,100 square feet.
—Community facilities (13 structures). Comments: Approx. 50,249 square feet.
—Family housing (single and multi-family structures with 931 individual housing units). Comments: Approx. 1,449,596 square feet. Built between 1941 and 1969.
—Fuel storage facilities (38 structures). Comments: Approx. 454,985 gallon capacity and 6 miles of pipeline.
—Laboratory (1 structure). Comments: 10,248 square feet.
—Maintenance facilities (29 structures). Comments: Approx. 380,570 square feet. Automotive, ships, ammunition, electronics, and public works maintenance facilities.
—Medical clinic (1 structure). Comments: Approx. 32,983 square feet.
—Operations buildings (7 structures). Comments: Approx. 41,544 square feet.
—Piers and wharves (6 structures). Comments: Approx. 46,043 square yards.
—Police Station (1 structure). Comments: Approx. 5,196 square feet.
—Recreational facilities, indoor (20 structures). Comments: Approx. 264,568 square feet. Bowling alley, boathouse, clubs, library, gym, and hobby shops.
—Recreational facilities, outdoor (15 structures). Comments: Playing fields, playing courts, pool, marina, and skeet range.
—Stores and service facilities (11 structures). Comments: Approx. 260,777 square feet.
—Training buildings (5 structures). Comments: Approx. 96,459 square feet.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, roads, railroads, sewage, and water.
—Warehouse/storage facilities (49 structures). Comments: Approx. 787,845 square feet. Includes ammunition, cold storage, general, and hazardous material storage facilities.
—Open storage areas. Comments: Approx. 337,427 square yards.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Alameda, shall submit to the redevelopment authority (ARRA) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Alameda, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the ARRA elected to proceed under the new statute, i.e., December 23, 1994.

Dated: March 7, 1995

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6091 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Oak Knoll Naval Hospital, Oakland, CA

AGENCY: Department of the Navy, DOD.

ACTION: NOTICE.

SUMMARY: This Notice provides information regarding the City of Oakland's resolution to create an "Oakland Base Reuse Authority" whose principal focus will be to determine the appropriate reuse of Oak Knoll Naval Hospital, Oakland, CA, the surplus property that is located at that base closure site, and the notification by the City of Oakland and its Task Force to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Mr. Jesse W. J. Myres, Real Estate Center, Engineering Field Activity West (Code 2411JWJM), Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3819 and facsimile (415) 244–3803. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Commander Juanita A. Buda, Head, Planning Department, 8750 Mountain Blvd., Oakland, CA 94627–5000, telephone (510) 633–4549 and facsimile (510) 633–6512.

SUPPLEMENTARY INFORMATION: In 1993, Oak Knoll Naval Hospital, Oakland, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–10, as amended. Pursuant to this designation, the majority of the land and facilities at this base closure site were on July 11, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–21) was signed into law. Section 2 of this statute provides the local reuse authority at base closure sites the option of proceeding under new procedures with regard to the manner in which redevelopment plans for the closing base are formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 22, 1994, the City of Oakland and its Task Force submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding surplus property at the Oak Knoll Naval Hospital, Oakland, CA, is published in the **Federal Register**.

Redevelopment Authority

The City of Oakland has passed a resolution (Resolution No. 71598 and Redevelopment Agency of the City of Oakland No. 95–1) to create an "Oakland Base Reuse Authority" whose principle focus will be to determine the appropriate reuse of Oak Knoll Naval Hospital, Oakland, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended. For information regarding the creation of the "Oakland Base Reuse Authority" and to submit all written expressions of interest for surplus property contact Mr. Jim Rinehart, Office of Economic Development and Employment, 3333 Broadway, 9th Floor, Oakland, CA, 94612, telephone (510) 238–3015 and facsimile (510) 238–3691.

Surplus Property Descriptions

The following is a listing of the land and facilities at Oak Knoll Naval Hospital, Oakland, CA, that were declared surplus to the federal government on July 11, 1994.

Land

Approximately 183 acres of improved and unimproved fee simple land at Oak Knoll Naval Hospital, Oakland, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available once the base closes. Currently, the base is scheduled to close on October 1, 1996, unless otherwise indicated. Property numbers are available on request.
—Administration/Office facilities (8 structures). Comments: Approx. 122,272 square feet.
—Bachelor quarters housing (2 structures). Comments: Approx. 69,658 square feet.
—Community facilities (4 structures). Comments: Approx. 58,930 square feet.
—Family housing (39 structures with 81 individual housing units). Comments: Approx. 125,331 square feet. Built between 1943 and 1974.
—Medical Hospital facilities (2 structures). Comments: Approx. 460,724 square feet.
—Helicopter landing pads (2 pads). Comments: Approx. 25,000 square feet.
—Laboratories (2 structure). Comments: Approx. 15,690 square feet.
—Maintenance facilities (7 structures). Comments: Approx. 12,948 square feet. Automotive, grounds, and public works maintenance facilities.
—Operations buildings (3 structures). Comments: Approx. 8,410 square feet.
—Fire safety/station facility (1 structure). Comments: Approx. 2,020 square feet.
—Recreational facilities, indoor (5 structures). Comments: Approx. 41,737 square feet; gym and hobby shops.
—Recreational facilities, outdoor. Comments: Playing fields, playing courts, pool, barbecue areas, and picnic areas.
—Stores and service facilities (1 structure). Comments: Approx. 22,112 square feet.
—Training buildings (2 structures). Comments: Approx. 31,894 square feet.
—Utilities (10 structures). Comments: Measuring systems vary. Telephone, electrical, gas, sewage, and water utility systems.
—Warehouse/storage facilities (15 structures). Comments: Approx. 61,735 square feet.
—Miscellaneous Structures. Comments: Roads, fences, walkways, etc.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of Oak Knoll Naval Hospital, Oakland, CA, shall submit to the City of Oakland (Oakland Base Reuse Authority), a written notice of interest of such governments, representatives, and parties in the above described surplus property, or any portion thereof. Such written notices of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the City of Oakland (Oakland Base Reuse Authority) shall assist all interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the County of Alameda and City of Oakland, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Oakland and its Task Force elected to proceed under the new statute, i.e., December 22, 1994.

Dated: March 1, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6092 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Department of Defense, Housing Facility, Novato, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Department of Defense, Housing Facility, Novato, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Beverly Freitas, Supervisory Realty Specialist, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3804. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Leonard Bastian, Officer in Charge, Department of Defense, Housing Facility, Bldg. 1000, Novato, CA 94949, telephone (415) 382–4112.

SUPPLEMENTARY INFORMATION: In 1993, the Department of Defense, Housing Facility, Novato, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

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Pursuant to this designation, the majority of the land and facilities at this installation were on December 19, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 9, 1994, the City of Novato submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Department of Defense, Housing Facility, Novato, CA, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Department of Defense, Housing Facility, Novato, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Hamilton Reuse Planning Authority, Multi-Agency Board. The Board has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing facility. A cross section of community interests is represented on the committee. Day-to-day operations of the committee are handled by a Project Manager. The address of the Hamilton Reuse Planning Authority, Multi-Agency Board is 900 Sherman Avenue, Novato, CA 94945, telephone (415) 897–4311 and facsimile (415) 897–4354.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Department of Defense, Housing Facility, Novato, CA, that were declared surplus to the federal government on December 19, 1994.

Land

Approximately 555.03 acres of improved and unimproved fee simple land at the Department of Defense, Housing Facility, Novato, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on September 30, 1996, unless otherwise indicated. Property numbers are available on request.

—Warehouse space. Comments: Approx. 1,161 square feet in Building 191; 10,200 square feet in Building 801; 2,700 square feet in Building 820; 6,300 square feet in Building 821; 4,000 square feet in Building 826; 800 square feet in Building 827; 9,600 square feet in Building 829.
—Recreation Centers. Comments: Approx. 4,712 square feet in Building 206; 1,846 square feet in Building 915; 1,500 square feet in Building 916; 1,750 square feet in Building 933; 4,850 square feet in Building 934; 2,580 square feet in Building 935; 2,257 square feet in Building 973.
—Shop/Storage Space. Comments: Approx. 164 square feet in Building 514; 4,469 square feet in Building 914; 3,697 square feet in Building 960; 630 square feet in Building 965; 3,108 square feet in Building 969; 18,088 square feet in Building 972.
—Office/Administrative Space. Comments: Approx. 3,612 square feet in Building 111; 22,294 square feet in Building 203; 13,510 square feet in Building 504; 3,807 square feet in Building 802; 4,921 square feet in Building 1000; 940 square feet in Building 4041.
—Bachelor Officer Quarters. Comments: Approx. 21,328 square feet in Building 201.
—Credit Union. Comments: Approx. 5,880 square feet in Building 930.
—Nursery/Child Care Facility. Comments: Approx. 15,416 square feet in Building 227 and 1,771 square feet in Building 531.
—Chief Petty Officer's Club. Comments: Approx. 17,890 square feet in Building 508.
—Chapel. Comments: Approx. 10,689 square feet in Building 603.
—Auto/Hobby Shop. Comments: Approx. 10,850 square feet in Building 816.
—Theater. Comments: Approx. 6,027 square feet in Building 507.
—Bath House. Comments: Approx. 1,064 square feet in Building 204.
—Navy Commissary. Comments: Approx. 9,333 square feet in Building 803 and 30,203 square feet in Building 804.
—Navy Exchange. Comments: Approx. 39,626 square feet in Building 971.
—Gas Station. Comments: Approx. 4,454 square feet in Building 970.
—Library. Comments: Approx. 680 square feet in Building 540.
—Bowling Alley/Gymnasium. Comments: Approx. 19,694 square feet in Building 115.
—Outdoor Swimming Pools. Comments: Located in Buildings 205, 208, and 209.
—One racquetball court in Building 113, eight tennis courts, and four ball fields.
—Water Tower. Comments: Located in Building 539.
—Radio Station (MARS) & Antenna. Comments: Approx. 2,592 square feet in Building 549 with 161 foot antenna.
—Latrine. Comments: Approx. 114 square feet in Building 550.
—Electrical Power Shed. Comments: Approx. 120 square feet in Building 193.
—Capehart Housing. Comments: 379 family housing units; single unit dwellings, duplexes, and townhouses.
—Spanish Housing. Comments: 132 family housing units; single unit dwellings and duplexes.
—Knolls Housing. Comments: 125 family housing units; apartments.
—Hillside Housing. Comments: 121 family housing units; apartments.
—Rafael Village Housing (offsite). Comments: 503 family housing units; single unit dwellings and duplexes.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, roads, railroads, sewage, water, etc.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Department of Defense, Housing Facility, Novato, CA, shall submit to said redevelopment authority (Hamilton Reuse Planning Authority) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Novato, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Hamilton Reuse Planning Authority elected to proceed under the new statute, i.e., December 9, 1994.

Dated: March 1, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate **Federal Register** Liaison Officer.

[FR Doc. 95–6093 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Treasure Island, San Francisco, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Station, Treasure Island, San Francisco, CA, the surplus property located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or K. Spake, Realty Specialist, Real Estate Division, Engineering Field Activity West, Naval Facilities Engineering Command, San Bruno, CA 94066–006, telephone (415) 244–3808.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Station, Treasure Island, San Francisco, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on July 11, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 14, 1994, the City of San Francisco submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Station, Treasure Island, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Station, Treasure Island, San Francisco, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of San Francisco. The City of San Francisco has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing station. A cross section of community interests are represented on the committee. Day-to-day operations of the committee are handled by a Project Manager. The address of the San Francisco Redevelopment Agency is 770 Golden Gate Avenue, San Francisco, CA 94102, telephone (415) 749–2400 and facsimile (415) 749–2528.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Station Treasure Island, that were declared surplus to the federal government on July 11, 1994.

Land

Approximately 717 acres (403 acres uplands and 314 acres submerged lands) of improved and unimproved fee simple land at the Naval Station Treasure Island.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on September 30, 1997, unless otherwise indicated. Property numbers are available on request.

—Petroleum Oil Lubricants Pipeline. Comments: Approx. 2,185 square feet.
—Utilities. Comments: Measuring systems vary. Communication lines, electrical transmissions, electrical power, sewage treatment and dispensary, sewage collection, water supply treatment and storage, fire protection, water distribution system, fire and other alarm system, miscellaneous utilities.
—Port Control Office. Comments: Approx. 6,177 square feet in Building 3.
—Photo Building. Comments: Approx. 3,105 square feet in Building 1.
—Armory. Comments: Approx. 1,107 square feet in Building 454.
—Operational Storage. Comments: Approx. 5,459 square feet in Building 111; 512 square feet in Building 112; 2,000 square feet in Building 113; 2,880 square feet in Building 130; 2,880 square feet in Building 131; 79 square feet in Building 143; 765 square feet in Building 290; 980 square feet in Building 355; 100 square feet in Building 361; 3,280 square feet in Building 362.
—Training Facilities. Comments: Approx. 138,661 square feet in Building 2; 14,000 square feet in Building 29; 13,696 square feet in Building 40; 10,957 square feet in Building 92; 9,700 square feet in Building 96; 1,280 square feet in Building 114; 810 square feet in Building 141; 30,834 square feet in Building 180; 3,110 square feet in

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Building 335; 1,188 square feet in Building 346; 216 square feet in Building 358; 1,755 square feet in Building 384; 4,000 square feet in Building 445; 672 square feet in Building 448.
—Chemical Lab. Comments: Approx. 18,790 square feet in Building 233.
—Environmental Lab. Comments: Approx. 2,880 square feet in Building 129.
—Electronic, communications, and electrical systems Facility. Comments: Approx. 8,027 square feet in Building 498.
—Ready Magazine. Comments: Approx. 256 square feet in Building 458.
—General Warehouse/Bulk. Comments: Approx. 16,383 square feet in Building 96; 21,778 square feet in Building 99; 148,483 square feet in Building 260 (multi-use bldg). — Servmarts. Comments: Approx. 8,300 square feet in Building 260 (multi-use bldg).
—Administrative/Office. Comments: Approx. 81,000 square feet in Building 1; 85,000 square feet in Building 7; 620 square feet in Building 64; 8,000 square feet in Building 99; 210 square feet in Building 157; 2,000 square feet in Building 229; 41,230 square feet in Building 258; 2097 square feet in Building 260; 60,000+ square feet in Building 450.
—Telephone Exchange Building. Comments: Approx. 3,972 square feet in Building 1.
—Shore Intermediate Maintenance Activity. Comments: Approx. 55,590 square feet in Building 3.
—Administrative Storage. Comments: Approx. 2,132 square feet in Building 69; 1,440 square feet in Building 128; 13,808 square feet in Building 1.
—Flagpole/Billboard/Marker (Five total). Comments: One at Building 405, one at Building 472, two at Building 474, and one at Building 475.
—Community Center. Comments: Approx. 7,788 square feet in Building 271.
—Bachelor Enlisted Quarters (E5–6). Comments: Approx. 104,318 square feet in Building 452 and 57,896 square feet in Building 453.
—Bachelor Enlisted Quarters (E7–9). Comments: Approx. 75,867 square feet in Building 452 and 75,867 square feet in Building 453.
—Fire Station. Comments: Approx. 2,739 square feet in Building 92 and 9,995 square feet in Building 157.
—Brigade. Comments: Approx. 28,971 square feet in Building 195; 33,923 square feet in Building 222; 25,110 square feet in Building 670; 1,200 square feet in Building 671.
—Police Station. Comments: Approx. 11,448 square feet Building 107.
—Gate Sentry House. Comments: Approx. 675 square feet in Building 146.
—Misc. Weather Shelters. Comments: Approx. 240 square feet in Building 93, 240 square feet in Building 124, and 176 square feet in Building 184.
—Public Toilets. Comments: Approx. 16,383 square feet in Building 69 and 308 square feet in Building 480.
—Miscellaneous. Comments: Approx. 132 square feet in Building 70 and 196 square feet in Building 421.
—Employee parking area. Comments: Approx. 30,393 square feet at Building 1.
—Chapel. Comments: Approx. 9,884 square feet in Building 187.
—Post Office. Comments: Approx. 6,622 square feet in Building 258.
—Exchange Retail Store. Comments: Approx. 53,349 square feet in Building 201.
—Exchange Cafe. Comments: Approx. 10,967 square feet in Building 202.
—Exchange service outlets. Comments: Approx. 10,748 square feet total in Buildings 91, 201, 202.
—Red Cross/Navy Relief. Comments: Approx. 1,904 square feet in Building 257.
—Family Service Center. Comments: Approx. 9,974 square feet in Building 257.
—Amusement Center. Comments: Approx. 2,000 square feet in Building 261.
—Service Station. Comments: Approx. 4,030 square feet in Building 330.
—Hobby Shop. Comments: Approx. 9,000 square feet in Building 215.
—Special Service Center. Comments: Approx. 850 square feet in Building 7, 6650 square feet in Building 41, and 4,496 square feet in Building 265.
—Auto Hobby Shop. Comments: Approx. 11,250 square feet in Building 225 and 3,502 square feet in Building 180.
—Bowling Alley. Comments: Approx. 10,714 square feet in Building 261.
—Gymnasium. Comments: Approx. 26,485 square feet in Building 402.
—Indoor Swimming Pool. Comments: Approx. 26,000 square feet in Building 261.
—Youth Center. Comments: Approx. 8,500 square feet in Building 29; 8,543 square feet in Building 215; 18,000 square feet in Building 229; 2,100 square feet in Building 257.
—Theater. Comments: Approx. 10,824 square feet in Building 401.
—Commissary. Comments: Approx. 19,038 square feet in Building 34.
—Officer's Club. Comments: Approx. 24,169 square feet in Building 140.
—Chief Petty Officer's Club. Comments: Approx. 13,200 square feet in Building 227.
—Retail Store. Comments: Approx. 5,760 square feet in Building 497.
—Child Care Center. Comments: Approx. 5,136 square feet in Building 257.
—Library. Comments: Approx. 3,896 in Building 265.
—Miscellaneous Commissary Storage. Comments: Approx. 58,140 square feet in Building 216; 5,929 square feet in Building 257; 9,487 square feet in Building 261; 174 square feet in Building 381; 240 square feet in Building 483.
—Recreation Pavilion. Comments: Approx. 640 square feet in Building 183.
—Indoor Playing Courts. Comments: Approx. 4,080 square feet in Building 402.
—Retail Warehouse. Comments: Approx. 29,050 square feet in Building 201 and 10,598 square feet in Building 202.
—Boat House. Comments: Approx. 1,188 square feet in Building 298 and 780 square feet in Building 496.
—Education Center. Comments: Approx. 9,084 square feet in Building 29.
—Playing Courts. Comments: Located in Buildings 397, 398, and 478.
—Playing Field. Comments: Located in Building 407.
—Skeet range. Comments: Located at Building 459.
—Recreation Grounds. Comments: Located at Building 492.
—Recreation Pier. Comments: Located at P23.
—Museum/Memorial. Comments: Approx. 12,500 square feet in Building 1.
—Incinerator. Comments: Approx. 361 square feet in Building 481.
—Storm Water Pump. Comments: Approx. 265 square feet in Building 493.
—Medical Clinic. Comments: Approx. 28,085 square feet in Building 257.
—Communications Center. Comments: Approx. 12,886 square feet in Building 449 and 2,520 square feet in Building 1.
—Stand-by Generator Building. Comments: Approx. 1,225 square feet in Building 469.
—Applied Instruction Building. Comments: Approx. 310,233 square feet in Building 217; 11,727 square feet in Building 36; 12,706 square feet in Building 293; 8,020 square feet in Building 342; 8,020 square feet in Building 343; 1,920 square feet in Building 352; 1,920 square feet in Building 353; 41,353 square feet in Building 461; 2,305 square feet in Building 462; 531 square feet in Building 463; 17,030 square feet in Building 600.
—Training Material Storage. Comments: Approx. 9,198 square feet total in Buildings 215, 379, and 461.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Station Treasure Island, shall submit to said redevelopment authority (City of San Francisco) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in San Francisco the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the San Francisco Redevelopment Agency of the City of San Francisco elected to proceed under the new statute, i.e., December 14, 1994.

Dated: March 1, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6094 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00. Request for copies of the patents must include the patent number.

Copies of the patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside the North American Continent). Requests for copies of the patent applications must include the patent application serial number. Claims are deleted from the copies of the patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent No. 5,259,055: Fiber Optic Microcable Produced with Radiation Cured Composite; filed May 23, 1988; patented November 2, 1993.

Patent Application Serial No. 07/199,820: Process for Manufacturing a Fiber Reinforced Optic Microcable with a UV Cured Resin; filed May 26, 1988.

Patent Application Serial No. 08/255,129: Fiber Optic Microcable Produced with Fiber Reinforced Ultraviolet Light Cured Resin and Method for Manufacturing same; filed June 7, 1994.

Patent Application Serial No. 08/316,710: Fiber Optic Microcable Produced with Radiation Cured Composite: filed November 22, 1993.

Dated: March 7, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6089 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–AE–M

Exclusive Patent License; American Pipe Lining, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; American Pipe Lining, Incorporated.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American Pipe Lining, Incorporated, a revocable, nonassignable, partially exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application Serial No. 08/355,581, entitled "Epoxy Pipelining Composition and Method of Manufacture," filed December 14, 1994 in the field of internal coating of pipelines.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ORN 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: March 7, 1995.

M.D. Schetzsle,

Lt. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6090 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

It was published in the November 14, 1994 **Federal Register** with the title "Color Changing Pigments for Solar Energy Controllable Patents and Coatings." This title is in error. The correct title is printed below.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 08/097,802: Reversible Thermochromic Pigments; filed July 27, 1993.

Dated: March 3, 1995.

M.D. Schetzsle,

Lt. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6095 Filed 3–10–95; 8:45 am]

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DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 15, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room, 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency or collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: Expedited.
Title: Application for New Grants Under Bilingual Education and Foreign Language Programs.
Frequency: Annually.
Affected Public: Not-for-profit organizations; State, Local or Tribal Governments.
Reporting Burden:
Responses: 1,500.
Burden Hours: 180,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State and local Educational agencies, institutions of higher education, and community-based organizations to apply for funding under the Bilingual Education and Foreign Language Programs. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for March 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of the Under Secretary

Type of Review: Expedited.
Title: Application for Emergency Immigrant Education Program.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 57.
Burden Hours: 9,177.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Emergency Immigrant Education Program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for March 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Plan Instructions for Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies.
Frequency: Annually.
Affected Public: State, Local, or Tribal Governments.
Reporting Burden:
Responses: 52.
Burden Hours: 2,080.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: To receive Title I, Part A funds, the statute requires that State agencies develop and submit State plans to the Department of Education for approval.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Application for State Grants Under Title VI—Innovative Education Program Strategies.
Frequency: Annually.
Affected Public: State, Local, or Tribal Governments.
Reporting Burden:
Responses: 52.
Burden Hours: 1,040.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state educational agencies (SEAs) to apply for Title VI grants and to ensure that SEAs fulfill statutory requirements in their State plans.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Application for the State Educational Agency Under Title I of the Safe and Drug-Free Schools and Communities Act (SDFSCA).
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Governments.
Reporting Burden:
Responses: 57.
Burden Hours: 1,824.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The SDFSCA provides Federal financial assistance to SEAs and Governor's Offices for grants to local educational agencies and educational service agencies and consortia and community-based organizations to establish, operate, and improve local programs of school drug and violence prevention.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Title II, Dwight D. Eisenhower Professional Development Program Application.
Frequency: Annually.
Affected Public: Not-for-profit; Federal Government; State, Local or Tribal Government.
Reporting Burden:
Responses: 16,604.
Burden Hours: 82,912.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This will be used by State educational agencies and State agencies for higher education to apply for grants under Title II, Part B, Dwight D. Eisenhower Professional Development Program. The program office needs this information to assure that statutory mandates are followed in implementing this program.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Application for Grants Under the Migrant Education Program—Chapter 1.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 31.
Burden Hours: 1,240.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State Education Agencies must submit an application to operate a Migrant Education Program to meet the special education needs of migrant children.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Application for the Office of the Governor Under Title IV of the Safe and Drug-Free Schools and Communities Act (SDFSCA).
Frequency: Annually.
Affected Public: Not-for-profit; State, Local or Tribal Government.
Reporting Burden:
Responses: 57.
Burden Hours: 1,824.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The SDFSCA provides Federal financial assistance to State educational agencies and Governor's Offices for grants to local educational agencies and educational service agencies and consortia and community-based organizations to establish, operate and improve local programs of school drug and violence prevention.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Plan Instructions for Title I, Part D Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 52.
Burden Hours: 2,080.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: To receive Title I, Part D funds, the statute requires that State agencies develop and submit State plans to the Department of Education for approval.
Additional Information: Clearance for this information collection is

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requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–6130 Filed 3–10–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 12, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 8, 1995.

Gloria Parker,
Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Individuals With Disabilities Education Act (IDEA), Part B Implementation of FAPE Requirements
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 58
Burden Hours: 208,452
Recordkeeping Burden:
Recordkeepers:
Burden Hours: 0
Abstract: This package provides instructions and forms for States to report the setting in which children with disabilities served under IDEA–B receive special education and related services. The Department will use the information to report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Infants and Toddlers With Disabilities Program (Part H) Under the Individuals with Disabilities Education Act (IDEA)
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 54
Burden Hours: 810
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: States are required to submit an annual report to the Secretary from the state lead agency on the status of early intervention programs operating in the state for eligible children. This is to include a description of the services and how funds are budgeted. The Department will use the information to report to Congress.

Office of Postsecondary Education

Type of Review: Revision
Title: Federal Perkins Loan (formerly National Direct Student Loan)
Frequency: Annually
Affected Public: Individuals and households; Business or other for-profit; Not-for-profit institutions
Reporting Burden:
Responses: 17,078
Burden Hours: 12,559
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The conditions under which an institution may defer repayments on a Federal Perkins Loan or a Direct Loan made on or after July 1, 1993 due to economic hardship reasons.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Performance Report for Title VI National Resource Centers and Foreign Language and Area Studies Fellowships Programs
Frequency: Annually
Affected Public: Not-for-profit institutions
Reporting Burden:
Responses: 137
Burden Hours: 768
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: EDGAR requires grantees to submit annual performance reports. The information in these reports allows the Department to determine whether grantees have made substantial progress toward their project goals, monitor grant activities, evaluate outcomes of projects and of the programs, determine program priorities, and provide improved technical assistance to the constituency. The respondents are institutions of higher education.

[FR Doc. 95–6125 Filed 3–10–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: As expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 11, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 8, 1995.

Gloria Parker,
Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: 1996 National Household Education Survey (NHES: 96)
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 93,300
Burden Hours: 18,530
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The NHES: 96 will be a telephone survey of households on the topics of Parent/Family Involvement in Education and Adult and Youth Civic Involvement. Respondents will be parents of children age 3 through 12th grade, youths enrolled in grades 6 through 12, and adults age 18 and older. The collection will provide information on the National Education Goals which concern parent involvement (Goals 1 and 8) and citizenship (Goals 3 and 6).

Additional Information: Clearance for this information collection is requested for April 11, 1995. An expedited review is requested in order to perform a field test on April 18–20, 1995 to allow adequate time for retooling the computer-assisted telephone interviewing system and, if necessary, to request any needed changes from the Office of Management and Budget in time for the full scale survey.

[FR Doc. 95–6131 Filed 3–10–95; 8:45 am]
BILLING CODE 4000–01–M

Office of Postsecondary Education; State Postsecondary Review Program

AGENCY: Department of Education.
ACTION: Notice extending the closing date for receipt of State applications for fiscal year 1994 funds.

SUMMARY: On July 12, 1994, the Assistant Secretary for Postsecondary Education published a notice in the **Federal Register** (59 FR 35501) that established September 30, 1994 as the closing date for the receipt of applications for fiscal year 1994 funds under the State Postsecondary Review Program (SPRP). The purpose of this notice is to extend the September 30 closing date to March 15, 1995. This will allow States that failed to submit their applications before the previously published deadline date to receive fiscal year 1994 SPRP funds if their applications are received by March 15, 1995. The Secretary takes this action because the Secretary strongly believes that it is important for all States to participate in the SPRP and to begin to review referred institutions, as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Waters, Branch Chief, State Liaison Branch, U.S. Department of Education, 600 Independence Avenue, SW, Room 3036, ROB–3, Washington, DC 20202–5244. Telephone: (202) 708–7417.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–1099a–3.

(Catalog of Federal Domestic Assistance Number 84.267, State Postsecondary Review Program)

Dated: March 8, 1995.

David A. Longanecker,
Assistant Secretary for Postsecondary Education.

[FR Doc. 95–6132 Filed 3–10–95; 8:45 am]
BILLING CODE 4000–01–P

[CFDA No. 84.031A, CFDA No. 84.031G]

Extension of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year (FY) 1995 for the Strengthening Institutions and Endowment Challenge Grant Programs

The Department of Education published a notice in the **Federal Register** of February 6, 1995 (60 FR 7047) that established March 27, 1995 as the closing date for submission of applications to be designated as an eligible institution under the Strengthening Institutions and

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Endowment Challenge Grant programs for Fiscal Year 1995. The Department is reopening and extending the application period to April 3, 1995 because the requisite applications will not be available until March 1, 1995. FOR APPLICATIONS OR INFORMATION CONTACT: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600, Portals Building, Washington, D.C. 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: March 8, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–6136 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Strategy for Management and Disposal of Greater-Than-Class C Low-Level Radioactive Waste

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Department of Energy, Office of Environmental Management, is soliciting public and stakeholder input to the development of a strategy for management and disposal of greater-than-Class C low-level waste (GTCC LLW). Public workshops to discuss strategy options will be held in April 1995. The Department is inviting interested parties to prepare written input for use in developing the strategy, and to present their views at the workshops.

DATES AND ADDRESSES: Two public workshops are planned for the purpose of obtaining public and stakeholder input to the DOE's strategy for management and disposal of GTCC LLW. Those planning to attend the workshops are requested to notify the identified DOE contact office by telephone to assure adequate meeting room space is provided. Attendees should also notify the DOE in advance of the workshops, if they would like a specific time allocation for presentation of their views or have comments that will be useful in developing the workshop agendas. Dates and locations for the two workshops are as follows:

April 11, 1995—Washington, DC, area (near Dulles International Airport), Hyatt Dulles, 2300 Dulles Corner Boulevard, Herndon, VA 22071, Telephone (703) 713–1234 or toll-free 1–800–233–1234. A block of lodging rooms for workshop attendees will be held until April 1, 1995, under the heading "GTCC DOE Strategy Workshop."

April 13, 1995—Portland, Oregon, Red Lion Hotel Lloyd Center, 1000 N.E. Multnomah, Portland, OR 97232, telephone (503) 281–6111, or toll-free 1–800–541–1111. A block of lodging rooms for workshop attendees will be held until March 29, 1995, under the heading "GTCC Strategy Workshop."

The decision to convene two workshops in separate locations was based solely on consideration of attendee convenience; the workshops will be identical in planned format. Each workshop will begin at 8:30 a.m. The morning session will be devoted to presentations by DOE and contractor personnel that provide background information on the GTCC LLW program strategy development, summaries of the two program reassessment reports, and description of the DOE's tentative program management strategy. Adequate time will be allowed during these presentations for question-and-answer discussions pertinent to the material presented. The afternoon session will be devoted to discussion of stakeholder comments and suggestions on the GTCC LLW management and disposal strategy options.

A verbatim transcription will be made of the workshop proceedings. Written comments will also be incorporated into the proceedings, if received by the DOE no later than April 28, 1995. Workshop attendance is not required for submittal of written comments. All stakeholder comments and suggestions, both written and oral, will be addressed by the DOE in further developing and finalizing the GTCC LLW program strategy.

FOR FURTHER INFORMATION CONTACT: Questions or comments regarding this strategy development process, plans for the public workshops, or submittal of comments should be addressed to Mr. Terry L. Plummer, U. S. Department of Energy, Office of Environmental Management (EM–32), Trevion II, Washington, DC 20585–0002, Telephone: (301) 903–7176.

SUPPLEMENTARY INFORMATION:

Background

Greater-Than-Class C low-level waste (GTCC LLW) is commercially generated low-level waste that exceeds the quantitative Class C limits presented in Title 10, Code of Federal Regulations, part 61 (10 CFR 61), entitled "Licensing Requirements for Land Disposal of Radioactive Waste." In accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Public Law 99–240, referred to herein as "the Act"), the federal government is responsible for disposal of GTCC LLW that is generated by licensees of the Nuclear Regulatory Commission (NRC). Although the Act does not describe the particular approach or schedule for providing disposal capability, it requires that such disposal must be performed in a facility licensed by the NRC. NRC indicates that this material requires more stringent disposal methods than Class C LLW, and in the absence of specific proposals for disposal of such waste in a disposal site licensed pursuant to part 61 that are approved by the Commission, such wastes must be disposed of in a geologic repository as defined in part 60 (see 10 CFR 61.55(a)(2)(iv)). The Department of Energy (DOE) is assumed to be the Federal agency responsible for GTCC LLW disposal.

Preliminary schedule forecasts indicate that GTCC LLW disposal capability may not be available for about 20 years or more. The DOE recognizes that during that time, some waste generators may be unable to provide continued safe storage for their GTCC LLW while disposal capability is being developed. Therefore, the DOE's strategy to date has maintained an option for DOE acceptance of GTCC LLW for storage prior to disposal, subject to terms and conditions that have not yet been established.

In recent years, GTCC LLW characterization studies have shown that projected GTCC LLW quantities (roughly 2,000 cubic meters through year 2035) are low relative to other radioactive waste types and earlier estimates. In addition, economic evaluations of alternative disposal concepts that would meet 10 CFR 61 licensing requirements have indicated

that the unit costs for separate GTCC LLW disposal would be much higher than is warranted by the low quantities and potential hazards of the waste. Therefore, the DOE initiated a program reassessment activity to identify strategy revisions that could effectively minimize the potential adverse impacts of GTCC LLW management and disposal scenarios.

Relationship to the Department's Preliminary Environmental Impact Statement (PEIS)

The PEIS does not address specific management options for GTCC LLW, but indicates that future options will be developed. These stakeholder workshops will begin the process of identifying GTCC LLW management options. The final management strategy selected for GTCC LLW will be addressed in supplemental National Environmental Policy Act (NEPA) documentation to be consistent with the PEIS.

Strategy Development

Two independent program reassessment activities have been performed under the DOE's GTCC LLW Management Program: (1) a reassessment performed by EG&G Idaho, Inc. (now Lockheed Idaho Technologies Company) was based on proposed resolutions for known programmatic issues, and (2) a reassessment by Rogers and Associates Engineering Corporation postulated approaches for minimizing adverse cost, environmental, institutional, and safety impacts. The results of both reassessment studies have been used by DOE in the tentative selection of a strategy for GTCC LLW management and disposal. Copies of the reassessment reports are available from the DOE upon request.

The Department is evaluating the feasibility of recovering radioactive material, including sealed source material, under the authority of the Atomic Energy Act. DOE is considering a recycle/reuse program for such recovered material that the Nuclear Regulatory Commission (NRC) has identified as material of public health and safety concern. The Department has recovered sealed sources in the past that represented immediate threats to public health and safety at the request of NRC. Supplemental NEPA documentation will be required. Depending on its characteristics, any sealed source material that is not recycled may be added to the inventory of GTCC LLW for disposal.

Strategy Options

(1) Pursue co-disposal of GTCC LLW with spent nuclear fuel and high-level waste in a geologic repository as the preferred co-disposal option. The repository will be an NRC-licensed facility that the NRC deems acceptable for GTCC LLW disposal, as well as for spent nuclear fuel and High Level Waste. Most of the projected GTCC LLW will be generated by nuclear utilities, and these utilities already have entered into Standard Contracts for repository disposal of their spent nuclear fuel and certain nonfuel-bearing components. Co-disposal of the remaining small quantity of non-utility GTCC LLW in the repository should also be feasible.

(2) Pursue co-disposal of GTCC LLW with DOE Special Case Waste as an alternative or supplemental co-disposal option. Some GTCC LLW types may be deemed unsuitable for repository disposal. Therefore, an option for GTCC LLW co-disposal with DOE Special Case Waste will also be maintained. The term Special Case Waste (SCW) denotes DOE waste having characteristics similar to those of GTCC LLW, and generally lacking firm disposal plans. Progress in developing this option will necessarily be tied to the development of disposal plans for DOE's SCW inventory. There is a regulatory issue to be resolved where GTCC LLW requires licensed disposal but SCW does not.

(3) Provide DOE storage capability for small quantities of GTCC LLW that DOE might accept for public health and safety reasons. Nuclear utilities generally have capability, and may prefer, to provide onsite storage capability for their GTCC LLW until disposal capability becomes available. However, some non-utility GTCC LLW generators may be financially unable to provide long-term storage for their GTCC LLW. Therefore, DOE storage for small amounts of GTCC LLW will be provided as needed to mitigate potential public health and safety issues. This contingency storage may be provided in conjunction with DOE's near-term acceptance program for sealed sources.

(4) Develop fee determination and collection methods to recover DOE's costs for GTCC LLW management and disposal. Cost recovery for DOE's GTCC LLW management and disposal services is implied by the Act, and is required by the Nuclear Waste Policy Act of 1982, as amended, for repository disposal. Preliminary information on this subject will be developed using the best available assumptions regarding probable methods for DOE storage, treatment, and disposal.

(5) Develop waste acceptance criteria for GTCC LLW co-disposal options. Waste acceptance criteria will be developed for the GTCC LLW co-disposal scenarios under consideration. These waste acceptance criteria are dependent upon the performance requirements that are imposed on the disposal facility, and may also be subject to constraints imposed by disposal facility design and siting considerations. Thus, the schedule for developing waste acceptance criteria will be tied to that of disposal facility development.

Issued in Washington, DC, on March 7, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–6120 Filed 3–10–95; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 94–3 of the Defense Nuclear Facilities Safety Board, Rocky Flats Seismic and Systems Safety

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 94–3, concerning Rocky Flats Seismic and Systems Safety, in the **Federal Register** on October 4, 1994 (59 FR 50581). Section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e) requires the Department of Energy to transmit an implementation plan to the Defense Nuclear Facilities Safety Board by February 25, 1995, or submit a notification of extension for an additional 45 days. The Secretary's notification of extension for an additional 45-days follows.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's notification to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 24, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,

Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004

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Dear Mr. Conway: This is to advise you, pursuant to 42 U.S.C. 2286d(e), that the Department of Energy will require an additional 45 days to respond to the Defense Nuclear Facilities Safety Board Recommendation 94–3, regarding seismic and systems safety at the Rocky Flats Environmental Technology Site.

The Department recently made some management changes at the Rocky Flats Environmental Technology Site. Because of these changes, and the need for the development of acceptance criteria for safety adequacy and systems for identifying facility upgrades, more time is necessary to respond. In addition, the Department believes that it is necessary to integrate its response to Recommendation 94–3 with Recommendation 90–5, (Systematic Evaluation Program). The Implementation Plan for Recommendation 94–3 will be provided to the Board by April 10, 1995.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–6023 Filed 3–10–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Notice of Cultural Resources Industry Outreach Training Course

March 7, 1995.

The Office of Pipeline Regulation (OPR) staff will convene another session of its cultural resources compliance training course. The one-day training course will be held on May 3, 1995. The session is being offered in conjunction with the Society for American Archaeology 60th Annual Meeting in Minneapolis, Minnesota, May 3–7, 1995. However, attendance at the course is independent of attendance at the annual meeting for other purposes. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of:

- How the Commission gives the industry and the public an opportunity to assist the Commission in meeting its responsibilities under the National Historic Preservation Act (NHPA) and other historic preservation laws and regulations; and
- What cultural resources information the industry needs to file with the Commission before and after the Commission issues a certificate.

We encourage interested organizations and the public to take advantage of this course.

The course will include the following topics:

- Objectives and requirements of the Commission regarding compliance with § 106 of the NHPA and related historic preservation laws;
- Guidance for reporting on cultural resources investigations;
- Definition of cultural resources terms used by the Commission in the compliance process; and
- Efficient strategies for planning and conducting cultural resources investigations.

OPR's training course will be held at the Minneapolis Hilton and Towers, 1001 Marquette Avenue South, Minneapolis, Minnesota. For hotel reservations, call (612) 376–1000 and identify yourself as an attendee of the course offered in conjunction with the Society for American Archaeology Conference. Special hotel room rates are available until April 11, 1995.

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor, will conduct the training. There is no fee for the course, but you must pre-register. A cultural resources training session is also being planned for Denver, Colorado in September 1995.

If you would like to attend the May 3, 1995 session, or indicate your preference for other courses and locations, please call the telephone number listed below to obtain a pre-registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone: (617) 542–8805, FAX: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the Commission's training course.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6078 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[1] The registration form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

[Docket No. ER95–626–000 et al.]

PSI Energy Inc., et al.; Electric Rate and Corporate Regulation Filings

March 6, 1995.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER95–626–000]

Take notice that PSI Energy, Inc. (PSI) on February 21, 1995, tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume No. 1 (15th Revision) and Original Volume No. 2 (13th Revision), and its Electric Rate Schedule FERC Nos. 233, 234, 241 and 256.

The proposed changes would increase annual revenues from jurisdictional sales and service by $7,414,000, based on the twelve (12)-month period ending December 31, 1995.

PSI has indicated that the filing of new tariffs and rates has been mandated by inadequate earnings on its jurisdictional sales. The average rate of return on such sales is, in its opinion, inadequate to attract the capital required by PSI to pay for necessary expansion of its electric plant and increased operating expenses. PSI also indicated that the filing has been made to satisfy the requirements of the Federal Energy Regulatory Commission in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, the City of Logansport, Indiana, Jackson County Rural Electric Membership Corporation, the Indiana Municipal Power Agency, the Wabash Valley Power Association, Inc., and the Indiana municipalities of Brooklyn, Coatesville, Dublin, Dunreith, Hagerstown, Knightstown, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorton, Veedersburg and Williamsport.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Co.

[Docket No. ER95–635–000]

Take notice that on February 22, 1995, Tucson Electric Power Company (Tucson), tendered for filing a Service Agreement, effective as of January 23, 1995 (the Agreement) between Tucson and Gulfstream Energy (Gulfstream). The Agreement provides for the sale by Tucson to Gulfstream of economy energy from time to time at negotiated rates in accordance with Service Schedule A of Tucson's Coordination Tariff, Volume 1, Docket No. ER94–1437–000. Tucson requests an effective date of January 23, 1995, and therefore requests any applicable waivers.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Co.

[Docket No. ER95–636–000]

Take notice that on February 22, 1995, Tucson Electric Power Company (Tucson) tendered for filing a Service Agreement, effective as of January 23, 1995 (the Agreement) between Tucson and Electric Clearinghouse, Inc. (Clearinghouse). The Agreement provides for the sale by Tucson to Clearinghouse of economy energy from time to time at negotiated rates in accordance with Service Schedule A of Tucson's Coordination Tariff, Volume 1, Docket No. ER94–1437–000. Tucson requests an effective date of January 23, 1995, and therefore requests any applicable waivers.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corp.

[Docket No. ER95–637–000]

Take notice that on February 22, 1995, that New York State Electric & Gas Corporation (NYSEG), tendered for filing as an initial rate schedule, an agreement with Vermont Public Power Supply Authority (VPPSA). The Agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to VPPSA and VPPSA will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 23, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and VPPSA.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–638–000]

Take notice that on February 22, 1995, PacifiCorp tendered for filing a Notice of Termination of Supplement No. 21 to PacifiCorp's Rate Schedule FERC No. 123.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER95–639–000]

Take notice that on February 22, 1995, Entergy Services, Inc. (Entergy Services) on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Central and South West Services, Inc., acting as agent for Southwestern Electric Power Company (SWEPCO). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide SWEPCO non-firm transmission service under Entergy Services Transmission Tariff.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. ICPM, Inc.

[Docket No. ER95–640–000]

On February 23, 1995, pursuant to Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 CFR Sections 385.205 and 385.207, ICPM, Inc. ("ICPM") filed a petition for waivers, blanket approvals and an order approving its Rate Schedule No. 1, to be effective within 60 days of the date of filing or on the date of the Commission's Acceptance Letter, whichever is earlier.

ICPM, a subsidiary of Indeck Capital, Inc., intends to engage in the marketing of electric energy and capacity. In such transactions, ICPM will purchase energy and capacity from electric utilities, qualifying facilities and independent power producers and resell such energy and capacity to other purchasers. The rates charged by ICPM will be mutually agreed upon by the parties to each particular transaction.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Co.

[Docket No. ER95–641–000]

Take notice that on February 23, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated February 4, 1995, which established InterCoast Power Marketing Company as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of February 4, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. St. Joseph Light and Power Co.

[Docket No. ER95–642–000]

Take notice that on February 24, 1995, St. Joseph Light & Power Company (SJLP), submitted for filing an addendum to its coordination rate schedules to provide for the recovery of the cost of emission allowances, effective January 1, 1995.

SJLP states that copies of this filing were served on the parties identified in Exhibit II of the filing.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Co.

[Docket No. ER95–643–000]

Take notice that on February 24, 1995, Portland General Electric Company (PGE,) tendered for filing an Unsigned Service Agreement under FERC Electric Tariff, Original Volume No. 2 (PGE–2) with LG&E Power Marketing Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE has requested that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Unsigned Service Agreement to become effective February 27, 1995.

Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6077 Filed 3–10–95; 8:45 am]

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[Docket No. CP95–52–000, et al.]

Granite State Gas Transmission, Inc., et al.; Natural Gas Certificate Filings

March 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Granite State Gas Transmission, Inc.

[Docket No. CP95–52–000]

Take notice that on November 3, 1994, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP95–52–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity and an order authorizing the abandonment of facilities and services, all as more fully set forth in the application and a subsequent supplemental filing which are on file with the Commission and open to public inspection.

Granite State seeks authorization to:

(1) Construct and operate a liquefied natural gas (LNG) tank in the Town of Wells (York County) Maine, with a capacity to store the equivalent of 2 Bcf of natural gas, together with vaporization equipment, metering equipment and delivery lines to deliver vaporized LNG into Granite State's adjacent 8-inch main pipeline;

(2) Provide an LNG storage and vaporization service for its distributor customer, Northern Utilities, Inc. (Northern Utilities) under a proposed Rate Schedule LNG–1 in its FERC Gas Tariff, Third Revised Volume No. 1;

(3) Abandon, upon expiration of the lease on March 31, 1997, the operation of an 18-inch pipeline which Granite State leases from Portland Pipe Line Corporation (Portland Pipe Line) and converted to natural gas service in 1987 under a certificate issued in Docket No. CP87–39–000 [1];

(4) Abandon transportation services provided for Bay State Gas Company (Bay State) and Northern Utilities over the leased pipeline;

(5) Abandon such facilities as Granite State constructed to interconnect the leased pipeline with its pipeline in the vicinity of Portland, Maine;

(6) Abandon Granite State's firm transportation services for Bay State under Rate Schedules FT-NN and FT–1 upon termination of the lease;

(7) Institute a new Rate Schedule FTX for transportation and exchange services rendered to Bay State upon termination of the lease; and

(8) Increase the firm transportation service for Northern Utilities under Rate Schedule FT-NN from 28,768 Dth a day to 78,770 Dth a day coincident with the inauguration of the proposed Rate Schedule LNG–1 service.

According to Granite State, since November 1987, it has received supplies of Canadian gas at the U.S.-Canadian border into a former crude oil pipeline which Granite State leased from its owner, Portland Pipe Line, and converted to natural gas service, pursuant to the certificate issued August 4, 1987 in Docket No. CP87–39–000. The leased 18-inch pipeline extends 166 miles from the border near North Troy, Vermont, to a connection with Granite State's pipeline in the vicinity of Portland, Maine. Granite State says that it receives up to 31,036 MMBtu a day at the border into the leased pipeline, which is immediately resold to Bay State and Northern Utilities, and transported for their accounts over the leased pipeline and pipeline facilities owned by Granite State.

Granite State also states that the proposed 2 Bcf LNG facility will provide the necessary gas supply to maintain gas deliveries to Northern Utilities after the expiration of the extended Portland Pipe Line lease on March 31, 1997. The LNG tank will be filled with LNG purchased and stored for the account of Northern Utilities. Northern Utilities intends to purchase its LNG supply from Distrigas of Massachusetts Corporation (DOMAC) and take delivery at DOMAC's marine terminal in Everett, Massachusetts, in cryogenic tank trucks for over-the-road transportation to the site of the facility in the Town of Wells. Granite State says that it will construct the facility, which is estimated to cost $44,221,000, and store and vaporize the LNG for Northern Utilities pursuant to a new incremental Rate Schedule LNG–1 in its FERC Gas Tariff, Third Revised Volume No. 1, which is submitted with its application. Granite State proposes to finance the construction phase of the LNG facility with short-term loans, and permanent financing will consist of long-term loans and equity contributed by its parent, Bay State.

The projected date for the receipt and storage of LNG for the account of Northern Utilities is September 1997. Granite State further says that, coincidental with the in-service date, it will increase the firm transportation service for Northern Utilities under Rate Schedule FT-NN from 28,768 Dth per day to 78,770 Dth per day, reflecting the transportation of the vaporized gas in its pipeline.

Because the configuration of its operations will change significantly after the expiration of the Portland Pipe Line lease on March 31, 1997, and Bay State's actual use of Granite State's pipeline system will be reduced, Granite State says that it will abandon its existing Rate Schedule FT-NN and Rate Schedule FT–1 services for Bay State and substitute a new Rate Schedule FTX which will reflect the on-going use of its system by Bay State.

Granite State's application contains an estimated initial Deliverability Charge, a Capacity Charge and a Vaporization Charge for its firm Rate Schedule LNG–1 service, and an estimated rate for interruptible storage and vaporization service based on the cost of service for operating and maintaining the LNG facility. Granite State says that Northern Utilities will own all the LNG in the tank (except for the heel), and Granite State's entire initial capability to store and deliver vaporized LNG as proposed in the application would be required by Northern Utilities as a replacement supply of gas after March 31, 1997, barring another extension of the Portland Pipe Line lease. Granite State also says that it will not offer Rate Schedule LNG–1 service to other customers on a firm basis. Granite State further says that it operates as a restructured pipeline under Part 284 of the Commission's regulations and intends to offer interruptible storage, vaporization and transportation utilizing the LNG facility. According to Granite State, ninety days before the in-service date of the LNG facility, it will file initial rates with the Commission for its incremental Rate Schedule LNG–1 service.

Comment date: March 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP95–224–000]

Take notice that on February 23, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–224–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate bi-directional facilities in Acadia Parish, Louisiana to be used for receipt and delivery of natural gas under Trunkline's blanket certificate authorizations issued in Docket Nos. CP83–84–000 and CP86–586–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline proposes to construct and operate a 16-inch tee-tap and 16-inch pipe valve on its Line 300–1–26" located in Acadia Parish, Louisiana. Trunkline states that it would also install 50 feet of 16-inch pipeline extending from the tee-tap to its right-of-way. Trunkline mentions it would use these facilities to inject and withdraw up to 300 MMCF of gas per day at the LA1 Storage Field owned by Egan Gas Storage Company, Inc (Egan). Trunkline asserts that the $195,000 cost of its proposed facilities would be reimbursed by Egan. Trunkline also states that Egan would install and own 1,100 feet of 16-inch pipeline and a new metering and regulating station to enable Trunkline to use the LA1 Storage Field.

Comment date: April 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Mojave Pipeline Company and Kern River Gas Transmission Company

[Docket No. CP95–229–000]

Take notice that on March 1, 1995, Mojave Pipeline Company (Mojave), P.O. Box 10269, Bakersfield, California 93389, and Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–229–000 a joint request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization for Kern River to abandon by transfer to Mojave and for Mojave to own and operate a 4/11 interest in certain tap, metering and appurtenant facilities for the delivery of gas to Bear Mountain Limited at a point located in the City of Bakersfield, California, under Kern River's and Mojave's blanket certificates issued in Docket Nos. CP89–2048 and CP89–002, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The applicants state that the portion of Kern River and Mojave's facilities that runs from Daggett, California to the terminal points in Kern County is jointly-owned by Kern River and Mojave as tenants-in-common (Common Facilities). The applicants also state that on October 28, 1994, Kern River made a prior notice filing in Docket No. CP95–44–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations to construct, own and operate the Bear Mountain Delivery Point. It is further stated that no person filed a protest within the time specified by the Commission's Regulations, thus Kern River has obtained the necessary authorization through the operation of Sections 157.205 and 157.212.

The applicants state that the instant filing is necessary to implement a subsequent agreement between Mojave and Kern River to transfer a 4/11 ownership interest in the Bear Mountain Delivery Point facilities to Mojave. It is stated that this transfer will provide for the same percentage ownership in the Bear Mountain Delivery Point facilities that currently exists for the Common Facilities, including all existing delivery points located on and included within the Common Facilities. The applicants state that the transfer will conform ownership interests in the Bear Mountain Delivery Point to all other Common Facility delivery points and will thereby facilitate uniform cost allocations and accounting treatment of the Common Facilities pursuant to the Construction, Operation and Maintenance Agreement (COM Agreement) among Mojave, Kern River and Mojave Pipeline Operating Company (MPOC). In order to effectuate this transfer, Kern River requests that it be authorized to abandon by transfer to Mojave, and Mojave requests that it be authorized to acquire from Kern River and to own and operate, a 4/11 interest in the Bear Mountain Delivery Point facilities. It is stated that following transfer of the 4/11 interest in the facilities, both Kern River and Mojave shippers will be permitted to deliver gas to Bear Mountain, in accordance with the provisions of the COM Agreement regarding delivery points located on the Common Facilities.

It is stated that following completion of construction, the Bear Mountain Delivery Point will consist of a 6-inch tap, a meter station with two 4-inch meter tubes and appurtenant facilities, and an 150-foot section of 6-inch lateral pipeline located immediately downstream of the meter station.

It is stated that the deliver point will have a nominal design capacity of 12,500 Mcf per day. It is further stated that the delivery point will be operated and maintained on behalf of Mojave and Kern River by MPOC as operator of the Common Facilities pursuant to the COM Agreement.

Comment date: April 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP95–230–000]

Take notice that on March 1, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No. CP95–230–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon a sales meter station in Las Animas County, Colorado, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

CIG proposes to abandon its Trinidad Power Plant Sales Meter Station [2] by sale to the City of Trinidad. CIG states that it would sell the meter station to the City of Trinidad at the net book value of $1,314. CIG would continue to deliver natural gas to the City of Trinidad via the meter station following the sale of the facilities.

Comment date: April 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ozark Gas Transmission System

[Docket No. CP95–231–000]

Take notice that on March 1, 1995, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon service rendered to Columbia Gas Transmission Corporation (Columbia) under Ozark's Rate Schedule T–1, certificated in Docket No. CP78–532.[3] In addition, in its application, Ozark requests permission and approval to charge Columbia a negotiated Exit Fee in consideration for Ozark's agreement to the early termination and abandonment of Ozark's Rate Schedule T–1 service for Columbia,[4] and to the extent authority is necessary, to refund excess deferred income taxes that Ozark owes or will owe to Columbia and to receive from Columbia payment of previously unpaid demand charges owed to Ozark. The proposed abandonment of service would be effective upon the date both the Bankruptcy Court [5] and the Commission have issued final orders approving a Stipulation negotiated between Columbia and Ozark dated December 9, 1994 in form and substance satisfactory to Ozark and Columbia. The Stipulation is pending before the Commission in

[1] 40 FERC ¶ 61,165.

[2] See order at 22 FPC 828 (1959).

[3] See, 16 FERC ¶ 61,099 (1981).

[4] Ozark states the contract expires February 28, 1997.

[5] Ozark states that all obligations of Columbia are subject to Chapter 11 procedures in Case Nos. 91–803 and 91–804 in the United States Bankruptcy Court for the District of Delaware.

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Docket No. RP95–98–000.[6] The application is on file with the Commission and open to public inspection.

Comment date: March 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Co.

[Docket No. CP95–234–000]

Take notice that on March 1, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–234–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities in Essex County, Massachusetts under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install, own, operate, and maintain data acquisition and control equipment, one six-inch hot tap assembly, approximately 2,100 feet of 8 inch pipe, and measurement facilities in order to deliver gas to Colonial Gas Company.

Comment date: April 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6079 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–P

[6] Filed December 20, 1994.

[Docket No. GT95–27–000]

Mississippi River Transmission Corp.; Notice of Proposed Flowthrough of Account No. 858 Refund

March 7, 1995.

Take notice that on March 3, 1995, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the proposed flowthrough of an Account No. 858 refund received by MRT from Panhandle Eastern Pipe Line Company.

MRT states that subject to the receipt of Commission approval it proposes to refund by check on April 7, 1995, each customer's respective portion of the refund including interest through April 6, 1995.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6035 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–186–000]

Natural Gas Pipeline Co. of America; Notice of Report on Storage Utilization

March 7, 1995.

Take notice that on March 1, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing its report on storage utilization during the first year of Natural's operation under Order Nos. 636, *et seq.*

Natural states that the report is responsive to four specific requirements set out in Natural's restructuring orders in Docket No. RS92–45.

Natural states that copies of the filing are being mailed to each of Natural's customers, and the parties in Docket No. RS92–45–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 10426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6036 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–004]

NorAm Gas Transmission Co.; Notice of Filing

March 7, 1995.

Take notice that on March 2, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective February 1, 1995:

Second Sub Original Sheet No. 9
Substitute Original Sheet No. 35
Original Sheet No. 35A
Substitute Original Sheet No. 127
Original Sheet No. 127A
Substitute Original Sheet No. 215
Original Sheet No. 215A
Substitute Original Sheet No. 225
Substitute Original Sheet No. 226
Original Sheet No. 226A
Substitute Original Sheet No. 236

NGT is modifying Sections 5.7(c)(ii)(3), 10.1, 10.3, and 14.1 of NGT's General Terms and Conditions, and Section 2.4 of Rate Schedule PS, in compliance with the Commission's January 31, 1995 Order Ruling on Tariff Terms and Conditions in this matter. The modification of Section 2.4 of Rate Schedule PS and Section 5.7(c)(ii)(3) permits shippers to net monthly imbalance volumes across zones. The modification of Section 14.1 deletes language providing for a set-off by NGT against amounts owed to its shippers. The revisions to Sections 10.1 and 10.3 clarify sections of the General Terms and Conditions dealing with the acceptance of service requests and nominations and with changes in economic value under service agreements.

NGT is also revising Section 3.1(e) of Rate Schedule FT and its NNTS Out-of-Zone Adjustment rates to correct an error that would have resulted in overcharges.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6037 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–199–000]

NorAm Gas Transmission Co.: Notice of Filing

March 7, 1995.

Take notice that on March 2, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 1995:

Second Revised Sheet No. 13

NGT states that these tariff sheets are filed in compliance with Section 5.7(c)(ii)(2)(B), Second Revised Sheet Nos. 214 and 215 of NGT's tariff.

Pursuant to said tariff provision, the proposed tariff sheets adjust NGT's cashout balancing revenue credit for the period October through December 1994.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6038 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–198–000]

Northwest Pipeline Corp.; Notice of Petition for Grant of Expedited Limited Waiver of Tariff

March 7, 1995.

Take notice that on March 7, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Expedited Limited Waiver of Tariff.

Northwest seeks waiver of Section 25.3(a) of the General Terms and Conditions addressing posting of available pipeline capacity and Section 11.3 of Rate Schedule TF–1 addressing the availability for receipt and delivery changes of capacity associated with expiration of a firm transportation contract, both set forth in Third Revised Volume No. 1 of Northwest's FERC Gas Tariff, as well as waiver of any other necessary tariff provisions, in order to allow Northwest to repost the availability of 25,000 MMBtu/day of capacity and to defer disposition of such capacity until after March 20, 1995.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6039 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–232–000]

Ozark Gas Transmission System; Notice of Application

March 7, 1995.

Take notice that on March 1, 1995, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, LB–10, Dallas, Texas 75201, filed in Docket No. CP95–232–000, an application pursuant to Section 7 (b) and (c) of the Natural Gas Act (NGA) for permission and approval to abandon the transportation of natural gas for Tennessee Gas Pipeline Company (Tennessee) under Rate Schedule T–1, and for a certificate of public convenience and necessity authorizing the acquisition of a lateral line from Tennessee and the charge of an Exit Fee in consideration for Ozark's

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agreement to the early termination of transportation of transportation service under Rate to the early termination of transportation service under Rate Schedules T–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark states that pursuant to a Transportation Agreement between Ozark and Tennessee dated March 1, 1982, (Agreement), Ozark provides Tennessee firm transportation of a maximum daily volume of fifty percent of Ozark's capacity or 85,000 Mcf per day under Ozark's Rate Schedule T–1. Ozark states that Columbia Gas Transmission Corporation (Columbia) is entitled to the remaining fifty percent of Ozark's capacity under Rate Schedule T–1. Ozark asserts that the Agreement expires on February 28, 1997. Ozark further asserts that Order No. 636 virtually eliminated Tennessee's merchant function and thereby stranded Tennessee's capacity on Ozark.

Ozark states that pursuant to a Stipulation dated December 9, 1994, Ozark and Tennessee agreed to the terms and conditions for the early termination of the Agreement. Ozark states the terms of the Stipulation include Ozark's abandonment of service to Tennessee under Rate Schedule T–1, Ozark's acquisition of Tennessee's X3–100 lateral line; and Ozark's charging Tennessee a negotiated exit fee. Ozark requests authority to implement the terms of the Stipulation. Ozark states that the Stipulation would be effective upon the date the Commission has issued final orders approving without modification both this Stipulation and the stipulation between Ozark and Columbia also dated December 9, 1994, setting forth the terms and conditions of Ozark's abandonment of firm transportation to Columbia under Rate Schedule T–1. Ozark further states that Tennessee filed in Docket No. RP95–144 on January 27, 1995 for approval of the Stipulation and Columbia filed in Docket No. RP95–98 on December 20, 1994 for approval of the stipulation between Ozark and Columbia.

Ozark requests that the order approving the Stipulation authorize under specific circumstances the reinstatement of the Agreement; service under the Agreement; and Ozark's minimum bill and demand charges.

Ozark states that the proposed Exit Fee would be calculated using a formula set forth in the Stipulation. Ozark further states the amount which Tennessee would be obligated to pay pursuant to the Exit Fee formula would depend on the date the Stipulation becomes effective and the amount of excess capacity at that time.

Ozark states that the X3–100 lateral line consists of 4.76 miles of 12-inch line that interconnects Ozark with Texas Eastern Transmission Corporation. Ozark states that Tennessee would no longer have any use for this line after the abandonment of Ozark's service to Tennessee. Ozark proposes to acquire the line from Tennessee at a price equal to the lower of $1.7 million or the actual net book value of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its won motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Ozark to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6040 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–55–004]

Trailblazer Pipeline Co.; Notice of Refund Report

March 7, 1995.

Take notice that on February 16, 1995, Trailblazer Pipeline Company (Trailblazer) filed its Report of Distribution of Refunds for Docket No. RP93–55 for the period August 1, 1994 through October 31, 1994.

Trailblazer states that the refund was made in compliance with the provisions of Article 2.4 of the Stipulation and Agreement (Settlement) filed on August 19, 1994 in the above-referenced proceeding and was approved by a Commission order issued October 31, 1994. On December 30, 1994, Trailblazer paid its jurisdictional customers the refunds owed to them.

Trailblazer states that copies of the filing were served upon each of Trailblazer's jurisdictional customers, intervenors and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6041 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–245–000]

West Texas Utilities Co.; Notice of Filing

March 7, 1995.

Take notice that on March 3, 1995, West Texas Utilities Company (WTU) tendered for filing an amendment to its Coordination Sales Tariff, filed November 30, 1994. Under the Coordination Sales Tariff, WTU will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Service available to customers upon mutual agreement. The amendment lowers the rate for purchase and resale transactions.

WTU has asked for an effective date of January 31, 1995. Copies of this filing were served on the Public Utility Commission of Texas and are available for public inspection at WTU's offices in Abilene, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 17, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6042 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–15: Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). The HGP is a coordinated, multidisciplinary, goal-oriented, research effort aimed at improving technologies that will lead to a detailed understanding of the human genome at the molecular level. This particular research notice encompasses research grants that address ethical, legal, and social issues that may arise from the use of information and knowledge resulting from the HGP.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., July 13, 1995, to be accepted for merit review in September 1995 and to permit timely consideration for award in Fiscal Year 1996.

ADDRESSES: Formal applications referencing Program Notice 95–15 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, D.C. 20585, Attn: Program Notice 95–15. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Health and Environmental Research, ER–72 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, D.C. 20585, (301) 903–6488.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications to conduct multidisciplinary, empirical research on privacy issues from the creation, use, maintenance, and disclosure of genetic information. This may include (but is not limited to) issues of ownership and control of genetic information and the protection of the privacy of genetic information in various settings including the workplace. Applications should demonstrate knowledge of the relevant literature and should include detailed plans for the gathering and analysis of factual information and the exploration of the specific issues of interest. All applications should include, where appropriate, detailed discussion of human subjects protection issues; e.g., storage of, manipulation of, and access to data. Where appropriate, provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience.

The DOE is also soliciting applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance public understanding of both the scientific aspects and the ethical, legal, and social aspects of the HGP. In addition, the DOE is encouraging applications for the support of conferences focusing on specific issues or areas of concern related to the ethical, legal, and social implications of the HGP. This may include (but is not limited to) implications of advances in the genetic characterization of complex traits and diseases. Educational and conference applications should also demonstrate awareness of the relevant literature, and include detailed plans for the accomplishment of project goals, including, where appropriate, video productions. In the case of applications that propose the production of series for broadcast, audiovisuals or other educational materials, the DOE strongly recommends that samples of previous similar work by the producers and writers be submitted along with the application. In the case of all educational activities, the DOE strongly recommends inclusion of assessments of effectiveness of the proposed activities. In the case of all conferences, a fairly detailed and complete roster of committed speakers is necessary. At the completion of the conference, a summary or report is required. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience.

Potential applicants are strongly encouraged to submit a brief preapplication, in accordance with 10 CFR 600.10(d)(2), that consists of two to three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications referencing Program Notice 95–15 should be received by April 13, 1995, and sent to Dr. Daniel W. Drell, Office of Health and Environmental Research, ER–72 (GTN), Washington, D.C. 20585. Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 30 days of receipt.

It is anticipated that approximately $700,000 will be available for grant awards during FY 1996, contingent upon availability of appropriated funds. Multiple-year funding of grant awards is expected and is also contingent upon availability of funds. Previous awards have ranged from $60,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years. Similar award sizes are anticipated for new grants.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The Application Guide is available from the

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U.S. Department of Energy, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72 (GTN), Washington, D.C. 20585. Telephone requests may be made by calling (301) 903–6488.

As part of its grant regulations, ER requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986) or such later revision of those guidelines as may be published in the **Federal Register**.

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE Human Genome Program. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 95–6107 Filed 3–10–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5169–7]

Acid Deposition Standard Feasibility Study

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment on draft report.

SUMMARY: EPA announces a 21-day (3 week) extension of the public comment period for the draft report entitled The Acid Deposition Standard Feasibility Study. The report is required by Section 404, Appendix B of the Clean Air Act (CAA). The extension begins on March 12, 1995, the day after the original 30-day public comment period is due to expire, and will expire on April 1, 1995.

ADDRESSES:

Availability: To obtain a copy of the draft Report to Congress contact the Office of Air and Radiation Docket and Information Center at 202–260–7548 or 202–260–7549 or by fax at 202–260–4400. Refer to Docket # AR–95–01.

Comments: Written statements should be submitted (in duplicate if possible) to: Rona Birnbaum, Acid Rain Division (6204–J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rona Birnbaum, Acid Rain Division (6204–J), Office of Atmospheric Programs, Office of Air and Radiation. U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Telephone (202) 233–9076.

Dated: March 6, 1995.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 95–5985 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5170–8]

Acid Rain Program: Notice of Final New Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final new unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year new unit exemptions in accordance with the Acid Rain Program regulations (40 CFR part 72) to the following 9 utility units at 4 plants in Minnesota: Alliant Techsystems unit 1; Blue Earth Water and Light Department units 7, 8, and 9; United Health Care units 1 and 2; and United Hospital units 5, 6, and 7.

FOR FURTHER INFORMATION CONTACT: Allan Batka at (312) 353–7316, EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: February 24, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–6109 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–P

[WH-FLR–5170–7]

Tribal Assistance; Grants for Wastewater Facility Construction for Native American Tribes Under Section 518(c) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Changes in the Guidelines for Applying for Grants from the Indian Set-Aside Program.

SUMMARY: This notice announces: the use of the Sanitary Deficiency System (SDS) of the Indian Health Service (IHS) for determining priorities and selecting projects for funding under the Indian Set-Aside (ISA) Program; and the availability of an Addendum detailing changes in the process for applying for grants from the ISA program.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Bell, Municipal Support Division, Office of Wastewater Management (202) 260–7255.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency, Office of Wastewater Management, manages an Indian Set-Aside Grant Program under Section 518(c) of the Clean Water Act. Public Law 102–389 allows the Administrator to reserve up to one-half of one percent of the funds appropriated for Fiscal Year 1993 and, thereafter, from the State Revolving Fund for making grants to Indian Tribes and Alaska Native Villages. The grants are for construction of wastewater treatment facilities. The SDS, which is the current IHS system of identifying wastewater treatment needs and costs, will be used to determine priorities and to select projects to receive funding for Fiscal Year 1995 and thereafter. The Addendum to the "Guidelines for Applying for Grants from the Indian Set-Aside Program" details several changes in the ISA Program as a result of EPA's adoption of the SDS. The Addendum may be obtained by calling Sylvia Bell at (202) 260–7255.

Dated: March 6, 1995.

Robert Perciasepe,

Assistant Administrator Office of Water.

[FR Doc. 95–6111 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5169–1]

Report on the Status of Urban Area Source Research Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the public availability of an EPA report titled "EPA's Urban Area Source Research Program—A Status Report on Preliminary Research." The Clean Air Act calls for EPA to produce this report.

DATES: This report will be available at the addresses indicated below on March 13, 1995.

ADDRESSES: Copies of the report may be obtained by writing or phoning: March 13, 1995 to April 15, 1995:

Ms. Gloria J. Koch, Technical Information Officer, Atmospheric Research and Exposure Assessment Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919–541–4109

After April 15, 1995: U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Dr. Larry T. Cupitt, Director, Methods Research and Development Division, Atmospheric Research and Exposure Assessment Laboratory (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919–541–2454.

SUPPLEMENTARY INFORMATION: EPA is announcing the public availability of a report titled "EPA's Urban Area Source Research Program—A Status Report on Preliminary Research." The report was called for under section 112(k) of the Clean Air Act, 42 U.S.C. 7412(k). Issuance of the report does not represent final agency action.

The report summarizes the status of the Agency's urban area source research program. The report presents the preliminary research findings on area sources of hazardous air pollutants located in urban areas. The report does not make EPA policy determinations about area sources as possible sources of hazardous air pollutants and does not affect any legal rights or impose any obligations. Information collected through the research program will be considered by the Administrator when developing the national urban area source strategy required by Section 112(k)(3) of the Clean Air Act.

Dated: March 3, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–5988 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

AMBANC Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 6, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. AMBANC Corp., Vincennes, Indiana; to merge with First Robinson Bancorp, Robinson, Illinois, and thereby indirectly acquire The First National Bank in Robinson, Robinson, Illinois.

Board of Governors of the Federal Reserve System, March 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6071 Filed 3–10–95; 8:45 am]

BILLING CODE 6210–01–F

Larch Bancorporation, Inc., et al.; Acquisition of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 27, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Larch Bancorporation, Inc., Larchwood, Iowa; to acquire from its subsidiary Security Savings Bank, Parchwood, Iowa, Security Insurance Agency, Inwood, Iowa, and thereby engage in general insurance activities in a town of less than 5,000. These activities will be conducted in Inwood, Illinois, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to acquire United Financial Bancorp, Inc., Vincennes, Indiana, and United Federal Savings Bank of Vincennes, Vincennes, Indiana, and thereby engage in indirectly acquiring, controlling, and operating a federally-chartered savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. Turner Bancshares, Inc., Belgrade, Missouri; to acquire HDJ Turner Company, Potosi, Missouri, previously

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operating as Potosi Abstract, Potosi, Missouri, and thereby engage in the sale of title insurance in a town of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in Potosi, Missouri.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Ainsworth Company, Ainsworth, Nebraska; to engage in performing insurance activities in a town having a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Bassett, Nebraska.

Board of Governors of the Federal Reserve System, March 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6072 Filed 3–10–95; 8:45 am]

BILLING CODE 6210–01–F

Mellon Bank Corporation, Pittsburgh, Pennsylvania; Application to Engage in Certain Nonbanking Activities

Mellon Bank Corporation, Pittsburgh, Pennsylvania (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire the shares of Mellon Investment Products Corporation (Company) from its subsidiary bank, Mellon Bank, N.A. (Bank), both of Pittsburgh, Pennsylvania, and to engage in the following activities:

1) Underwriting and dealing to a limited extent in municipal revenue bonds (including certain industrial development bonds and unrated municipal revenue bonds), mortgage-related securities, consumer-receivable-related securities and commercial paper;

2) Underwriting and dealing in bank-eligible instruments pursuant to 12 CFR 225.25(b)(16);

3) Acting as agent in the private placement of securities, including providing related advisory services;

4) Acting as riskless principal in the purchase and sale of all types of securities on behalf of customers;

5) Providing securities brokerage services pursuant to 12 CFR 225.25(b)(15), including selling bank-ineligible securities underwritten or dealt in by Company to retail customers;

6) Providing investment advisory services pursuant to 12 CFR 225.25(b)(4); and

7) Providing foreign exchange advisory and transactional services pursuant to 12 CFR 225.25(b)(17).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984).

Applicant maintains that the Board previously has determined that the proposed activities are closely related to banking. *See* 12 CFR 225.25 (b)(4), (15), (16) & (17); *PNC Financial Corp.*, 75 Federal Reserve Bulletin 396 (1989) (section 20 company providing securities brokerage services to retail customers with respect to bank-ineligible securities underwritten or dealt in by the section 20 company); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989)(acting as agent in the private placement of securities and purchasing and selling securities on the order of investors as a riskless principal); *Citicorp*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom.* Securities Industry Ass'n v. Board of Governors of the Federal Reserve System, 839 F.2d 47 (2d Cir. 1988), *cert. den.*, 486 U.S. 1059 (1988), and *Chemical New York Corporation*, 73 Federal Reserve Bulletin 731 (1987) (underwriting and dealing to a limited extent in municipal revenue bonds (including certain industrial development bonds), mortgage-related securities, consumer-receivable-related securities and commercial paper); and Letter dated December 5, 1994, to Bruce Moland, Assistant General Counsel, Norwest Corporation, from William W. Wiles, Secretary of the Board (underwriting and dealing to a limited extent in unrated municipal revenue bonds). Applicant states that it would conduct the proposed activities in accordance with the Board's orders, regulations and related interpretations, with two exceptions. In particular, Applicant proposes to establish up to two interlocking directors between Bank and Company. These directors would not be officers or employees of either Bank or Company. Applicant maintains that the Board previously has permitted similar interlocks. *See SunTrust Banks, Inc.*, 80 Federal Reserve Bulletin 938 (1994). Applicant also proposes that Company be permitted to have offices in buildings in which Bank also has offices. Applicant states that it would take a number of steps to ensure that Company's offices are separate and distinct from those of Bank.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and enable Applicant to offer its customers a broader range of products. Applicant also maintain that its proposal would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, March 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6073 Filed 3–10–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars warded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from January 1, 1994 to December 31, 1994. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after April 1, 1995.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 1, 2, 5, 6, 7, 9 and the National Capital Region in SIC Group 15, Regions 2, 5 and 9 for individual SIC code 1794, and Regions 1, 3, 4, 5, 7, 9 and the National Capital Region for individual SIC code 1796) shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 1, 2, 5, 6, 7, 9, and the National Capital Region, for individual SIC code 1794 in Regions 2, 5 and 9, and for individual SIC Code 1796 in Regions 1, 3, 4, 5, 7, 9, and the National Capital Region, shall be set aside for small business when there is a reasonable expectation of obtaining competition for two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 1 encompasses the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William In Virginia.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (all PSC Codes under the Demonstration Program):

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Region 4 for service code C119, and in Region 9 for service code C219) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in Region 4 for service code C119 and in Region 9 for service code C219 shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurement will be conducted on an unrestricted basis.

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

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Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: March 2, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 95–6113 Filed 3–10–95; 8:45 am]

BILLING CODE 8820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0059]

Drug Export; Abbott HTLV–I/HTLV–II EIA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories, Inc., has filed an application requesting approval for the export of the human biological product HTLV–I/HTLV–II EIA to Australia, Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Inc., One Abbott Park Rd., Abbott Park, IL 60064, has filed an application requesting approval for the export of the human biological product Abbott HTLV–I/HTLV–II EIA to Australia, Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Sweden, Switzerland, and The United Kingdom. The test is intended as a screen for donated blood to prevent transmission of HTLV–I and HTLV–II to recipients of cellular blood products and as an aid in the clinical diagnosis of HTLV–I and HTLV–II related diseases. The application was received and filed in the Center for Biologics Evaluation and Research on January 9, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 23, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 28, 1995.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–6127 Filed 3–10–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Blood Products Advisory Committee

Date, time, and place. March 15, 1995, 1:30 p.m., Food and Drug Administration, Nicholson Lane Research Center, conference room 244B, 5516–B Nicholson Lane, Kensington, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, March 15, 1995, 1:30 p.m. to 2:35 p.m.; closed committee deliberations, 2:35 p.m. to 3:35 p.m.; open public hearing, 3:35 p.m. to 4:35 p.m., unless public participation does not last that long; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–6700, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the contact person.

Open committee discussion. The committee will discuss the intramural scientific program of the Laboratory of Hepatitis, Division of Transfusion Transmitted Diseases.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

FDA regrets that it was unable to publish this notice 15 days prior to the meeting held on March 15, 1995, due in part to scheduling conflicts. FDA is giving less than 15 days public notice of this Blood Products Advisory Committee meeting because the agency believes that it is in the public interest to provide committee input into the FDA process for reviewing intramural research, even if there is not sufficient time for the customary 15-day public notice. FDA does not believe it appropriate to wait until the next available regularly scheduled meeting of the committee on June 22 and 23, 1995.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

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Dated: March 8, 1995.
Linda A. Suydam,
Interim Deputy Commissioner for Operations.
[FR Doc. 95-6126 Filed 3-8-95; 4:20 pm]
BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. March 17, 1995, 3 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 3 p.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; Nancy T. Cherry or Stephanie A. Milwit, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person.

Open committee discussion. The committee will discuss the influenza virus vaccine formulation for 1995-1996.

FDA regrets that it was unable to publish this notice 15 days prior to the March 17, 1995, Vaccines and Related Biological Products Advisory Committee meeting because of the need to update the committee on late developing influenza activity and to formulate a vaccine for the 1995-1996 year based on that data while providing manufacturers sufficient lead time to develop and produce the vaccine. This meeting is a followup to the January 1995 advisory committee meeting. The agency decided that it was in the public interest to hold this meeting in mid-March even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 7, 1995
Linda A. Suydam,
Interim Deputy Commissioner for Operations.
[FR Doc. 95-6061 Filed 3-10-95; 8:45 am]
BILLING CODE 4160-01-F

Health Care Financing Administration

[BPD-833-N]

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces two meetings of the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The meetings are open to the public.

DATES: The March meeting is scheduled for March 22, 1995, from 10 a.m. until 5 p.m. e.s.t., and March 23, 1995, from 9 a.m. until 3 p.m. The April meeting is scheduled for April 11, 1995, from 10 a.m. until 5 p.m. e.s.t., April 12, 1995, from 9 a.m. until 5 p.m., and April 13, 1995, from 9 a.m. until 3 p.m.

ADDRESSES: The meetings will be held at the Sheraton City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Jennifer Carter, (410) 966-4615.

SUPPLEMENTARY INFORMATION: Under the authority of the Negotiated Rulemaking Act of 1990 (Pub. L. 101-648, 5 U.S.C. 581-590), the Secretary of the Department of Health and Human Services has established the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The Committee will make recommendations with respect to the content of a proposed rule on the wage index used to adjust payment rates for hospice care under the Medicare program to reflect local differences in area wage levels. The Committee consists of representatives of interests that are likely to be significantly affected by the proposed rule.

The Committee will meet on March 22-23 and April 11-13, 1995. The Committee will undertake the following activities:

- Discussion of analyses using Bureau of Labor Statistics data.
- Review issues in light of the BLS and hospital data.
- Attempt to develop a consensus document.

Individuals or organizations who wish to attend the meeting or make oral presentations may do so. However, the number of presentations may be limited by the time available. Individuals may also submit written statements for the Committee's consideration. For information on how to do this, please contact the Committee facilitator, Judy Ballard at (202) 690-7419.

(Section 10(a) of Public Law 92-463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11
(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: March 7, 1995.
Bruce C. Vladeck,
Administrator, Health Care Financing Administration.
[FR Doc. 95-6083 Filed 3-8-95; 12:34 pm]
BILLING CODE 4120-01-P

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: March 29, 1995.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 352, Telephone Conference.
Contact Person: Dr. Gertrude McFarland, Scientific Review Admin., 5333 Westbard Ave., Room 352, Bethesda, MD 20892; (301) 594-7080.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 11, 1995.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., Room 226, Bethesda, MD 20892; (301) 594-7167.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 12, 1995.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., Room 226, Bethesda, MD 20892; (301) 594-7167.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95-6056 Filed 3-10-95; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Railroad Retirement Board)

AGENCY: Social Security Administration, HHS.
ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966-5138, or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for

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individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements.

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Railroad Retirement Board (RRB) With Social Security Administration (SSA)

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

To identify supplemental security income recipients and applicants who receive benefits payable by the RRB. For such individuals, the income received due to benefits payable by the RRB may affect eligibility for or the amount of SSI benefits.

C. Authority for Conducting the Matching Program

Section 1631(e)(1)(B) and section 1631(f) of the Social Security Act, as amended.

D. Categories of Records and Individuals Covered by the Matching Program

The RRB will provide SSA with a magnetic tape file containing annuity payment information from its system of records entitled Checkwriting Integrated Computer Operation Benefits Payment Master. SSA will then match the RRB data with information maintained in the Supplemental Security Income Record, HHS/SSA/OSR, 09–60–0103.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 95–6105 Filed 3–10–95; 8:45 am]

BILLING CODE 4190–29

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Amended routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to amend a routine use applicable to SSA's system of records entitled "Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058." The proposed routine use would provide for disclosure from the system of records to the Department of the Treasury, United States Secret Service (USSS), for purposes of investigating crimes (within the jurisdiction of the USSS) involving violations of the Social Security Act. The disclosure under the relevant routine use is currently limited to the Department of Justice (the Federal Bureau of Investigation and United States Attorneys Offices).

We invite public comment on this publication.

DATES: We have filed a report of a new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 3, 1995. The routine use will become effective, as proposed, without further notice April 14, 1995, unless we receive comments on or before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. John Kattler, Social Insurance Specialist, Standards and Compliance Branch, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1738.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Routine Use

A. Background

We propose to add a routine use to the system of records entitled "Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058." The proposed routine use is necessary for the USSS to carry out its responsibilities to investigate various crimes involving violations of the Social Security Act.

B. Disclosures to Law Enforcement and Security Agencies

SSA discloses information from this system of records to certain entities that use the information for a purpose that is compatible with the purpose for which SSA collects it. One such category of disclosures is to the Department of Justice (the Federal Bureau of Investigation (FBI) and United States Attorneys Offices) for purposes of investigating or prosecuting violations of the Social Security Act. Disclosures are most often made from the system to investigate or prosecute those violations of section 208 of the Social Security Act (42 U.S.C. 408) involving criminal misuse of the SSN.

SSA proposes to alter the system by amending an existing routine use to authorize disclosure of SSN information to the USSS for use in investigating crimes involving violations of the Social Security Act. We are doing this because the investigative jurisdiction of the USSS includes various offenses which often involve violations of the Social Security Act. These offenses include fraud associated with electronic fund transfers; crimes involving financial institutions; the counterfeiting or fraudulent use of identification documents; the fraudulent use of "access devices" such as credit and debit cards; and certain crimes involving computer fraud (18 U.S.C. 1029, 1030, 3056; Pub.L. 101–509, Title V, section 528, November 5, 1990, 104 S. 1427). In many such cases, violators utilize SSNs which are not their own to obtain credit or apply for goods or services. Because the misuse of the SSN is an integral part of the criminal activities investigated by the USSS, that agency is in a position to pursue the investigation of violations and to recommend prosecution under 42 U.S.C. 408. Without information from SSA, USSS cannot pursue the issue of SSN misuse when it arises during the course of an investigation.

In circumstances involving investigations under the jurisdiction of the USSS, SSA proposes to provide the same SSN information to the USSS that it now provides to the FBI and United States Attorneys Offices when those entities are investigating violations of the Social Security Act.

II. Compatibility of the Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulations (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. The disclosures that will be made under the proposed routine use will facilitate the investigation and prosecution of violations of the Social Security Act which may potentially interfere with effective use of the relevant system of records, thereby adversely affecting Social Security programs dependent upon these records. The disclosures contemplated under this routine use therefore are compatible with the purpose of the accurate and effective administration of Social Security programs, for which the records were collected, and meet the compatibility requirement for routine uses under the Privacy Act.

III. Effect of the Proposed Routine Use on Individuals

As with previous disclosures for similar purposes under the existing routine use, SSA will follow all statutory and regulatory requirements for disclosure. Therefore, we do not anticipate that the proposed disclosures will have any unwarranted effect on the privacy or other rights of individuals.

IV. Other Changes

We are also making some minor corrections for purposes of accuracy.

Dated: March 3, 1995.

Shirley S. Chater,

Commissioner of Social Security.

09–60–0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 N. Greene Street, Baltimore, MD 21201.

Records may also be maintained at contractor sites (contact the system manager at the address below to obtain contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each individual who has applied for and obtained an SSN and of each individual whose application was supported by documents which are suspected to be fraudulent and are being verified with the issuing agency, or have been determined to be fraudulent.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for SSNs (e.g., name, date and place of birth, sex, both parents' names, and race/ethnic data), and any changes in the information on the applications that are submitted by the SSN holders. It also contains applications supported by evidence suspected or determined to be fraudulent, along with the mailing addresses of the individuals who filed such applications and descriptions of the documentation which they submitted. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Act.

PURPOSE(S):

Information in this system is used by the Social Security Administration (SSA) to assign SSNs. The information also is used for a number of administrative purposes, such as:

- By SSA components for various title II, XVI, and XVIII claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the SSN record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;
- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services, for auditing benefit payments under Social Security programs;
- By the HHS Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and
- By the HHS Health Care Financing Administration for administering Title XVIII claims.

Information in this system is also used by SSA to prevent the processing of an SSN card application for an individual whose application is identified as having been supported by evidence that either:

- Is suspect and being verified, or
- Has been determined to be fraudulent.

With this system in place, clerical investigation and intervention is required. Social Security offices are alerted in case an applicant attempting to obtain an SSN might visit other offices and might attempt to find one which would unwittingly accept fraudulent documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSNs of employees in order to complete their records for reporting wages to SSA pursuant to the Federal Insurance Compensation Act and section 218 of the Act.

2. To State welfare agencies, upon written request, of the SSNs of Aid to

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Families with Dependent Children applicants or recipients.

3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorneys Offices, and to the Department of the Treasury, United States Secret Service, for investigating and prosecuting violations of the Social Security Act.

4. To the DOJ, Immigration and Naturalization Service, for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Railroad Retirement Board for:

(a) Administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment; and

(b) Administering the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.

8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the Internal Revenue Code (IRC) (26 U.S.C. 6103); and

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.

10. To the Department of State for administering the Act in foreign countries through facilities and services of that agency.

11. To the American Institute of Taiwan for administering the Act on Taiwan through facilities and services of that agency.

12. To the Department of Veterans Affairs (VA), Philippines Regional Office, for administering the Act in the Philippines through facilities and services of that agency.

13. To the Department of the Interior for administering the Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor for:

(a) Administering provisions of the Black Lung Benefits Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To VA for the following purposes:

(a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by VA to SSA for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.

17. To the DOJ, to a court, to another tribunal, or to another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to disclosure provisions of the IRC will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

20. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Act).

21. To third party contacts when the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ, Criminal Division, Office of Special Investigations, for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub L. 97–86).

24. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations or agencies such as prison systems that are required by law to furnish SSA with SSN information.

26. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984.

27. Disclosure of SSNs and dates of birth may be made to VA or third parties under contract to that agency for the purpose of conducting VA medical research and epidemiological studies.

28. SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering its pension program for retired Federal Civil Service employees.

29. Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

30. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

31. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary.

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

32. Corrections to information that resulted in erroneous inclusion of individuals in the Death Master File (DMF) may be disclosed to recipients of erroneous DMF information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form (e.g., paper lists, punch cards, Forms SS–5 (Application for an SSN), and systems generated forms); magnetic media (e.g., magnetic tape and disc with on-line access); and in microfilm and microfiche form.

RETRIEVABILITY:

Records of SSN holders are indexed by both SSN and name. Records of applications that have been denied because the applicant submitted fraudulent evidence, or that are being verified because the evidence is suspected to be fraudulent, are indexed either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Systems Security Handbook. This includes maintaining the magnetic tapes and discs within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms are retained for 5 years after they have been filmed or entered on tape and the accuracy has been verified. They then are destroyed by shredding. All tape, discs, microfilm, and microfiche files are updated periodically. Out-of-date magnetic tapes and discs are erased. Out-of-date microfiches are disposed of by applying heat.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Data Support and Enumeration, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown under "System manager and address" above. (Furnishing the SSN is voluntary, but it makes searching for an individual's record easier and avoids delay.) If the SSN is unknown or no SSN has been assigned because the evidence presented with the application is being verified or has been determined to be fraudulent, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents which they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, requesters should reasonably identify the record, specify the information which they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 95–6104 Filed 3–10–95; 8:45 am]

BILLING CODE 4190–29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3870; FR–3798–C–02]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Notice of Fund Availability; Correction of Application Due Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability for fiscal year 1995; correction of application due date.

SUMMARY: On February 24, 1995 (60 FR 10452), the Department published in the **Federal Register**, a Notice of Fund Availability that announced HUD's funding for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages for Fiscal Year 1995. The application due date was computed incorrectly and ends on May 14, 1995, which is a Sunday afternoon. This incorrect date appears in the "DATES" section, and also appears on page 10464 of the February 24, 1995 notice in paragraph II.(c).

The purpose of this document is to correct the application due date by extending it until 3 p.m. on Monday, May 15, 1995, in both of the places referred to above.

DATES: Applications must be received by the appropriate field office of the HUD Office of Native American Programs (ONAP) no later than 3 p.m., May 15, 1995. Application materials will be available from each field office. General program questions may be directed to the field office serving your area or by contacting Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW., Washington, DC 20410. Telephone (202)

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755–0068. The Telecommunications Device for the Deaf (TDD) number is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 95–4451, the Notice of Fund Availability for Fiscal Year 1995 for Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, published in the **Federal Register** on February 24, 1995 at 60 FR 10452, is corrected as follows:

1. On page 10452, in the first column, in the **DATES** section, in line 5, the date "May 14, 1995" is corrected to read "May 15, 1995".

2. On page 10464, in the first column, in paragraph II.(c), in the last line in the column, correct "May 14, 1995" to read "May 15, 1995".

Dated: March 6, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–6052 Filed 3–10–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. N–95–3846; FR–3786–N–02]

Notice of Amendment to NOFA for Fiscal Year 1995 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of amendment to notice of funding availability (NOFA) for fiscal year (FY) 1995 for Indian Applicants for HOME Investment Partnerships Act (the HOME Act) programs, referred to as the HOME program.

SUMMARY: This notice amends the FY 1995 Indian HOME NOFA published on January 17, 1995 (60 FR 3520), to conform with the recent interim regulation which expanded the number of eligible applicants. It also makes corrections or clarifications to several statements in the text of the NOFA, including a modification to Appendix 1, List of Local Offices of Native American Programs.

DATES: The application due date remains the same. Applications must be RECEIVED by the Office of Native American Programs (ONAP) having jurisdiction over the applicant on or before 3 p.m. (ONAP local time) on April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Division of Housing and Community Development, Office of Native American Programs, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–0068 (this is not a toll-free number). Hearing- or speech-impaired persons may use the TDD number by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339)(a toll-free number).

SUPPLEMENTARY INFORMATION: On January 17, 1995 (60 FR 3520) the Department published the FY 1995 Indian HOME NOFA. This notice makes a number of corrections or clarifications to several statements in the text of the NOFA:

Eligible Applicants

Section I.(c)(1) on page 3521, pertaining to eligible applicants, is revised to reflect an amendment made to the HOME rule at 24 CFR Part 92. This amendment broadens the category of eligible applicants to include Tribal organizations.

Number of Copies of Application

This notice specifies that applicants must submit an original and two copies of the application. This requirement is added to the end of the paragraph headed "Summary," on page 3520, and to the Checklist of Eligibility Requirements and Application Submission Requirements, on page 3521.

Typographical Error

On page 3522, the designation of the section on "Economic Opportunities for Low and Very Low Income Persons" is corrected from "E" to "G".

Building Codes

On page 3522, section I.(d)(2)(vii) in the second column requires the submission of "A statement documenting the codes for the project". This requirement ties in with the selection criterion, "Project feasibility," in the first column on page 3524 at section I.(e)(1)(ii)(E) and item (5) in the last paragraph in the column, which both refer to building codes. The requirement and the references are being deleted because they are not in accord with the regulation (24 CFR 92.621) that is cited for building codes.

Benefits to Very Low-Income and Low-Income Members of the Tribe

A clarification is made regarding the formula in section (1)(i)(D) on page 3523 of the NOFA, "Benefits to Very Low and Low-Income Members of the Tribe." The formula must use the total of all the families with unmet housing needs, rather than only the families with unmet needs in the particular category for which the application is made. An example is provided. Clarification of the effect of a mixed project on the formula is also provided. A mixed project may be mixed as to tenure (e.g., rental, home ownership), but it may not be mixed as to type (i.e., a combination of acquisition, rehabilitation, new construction). If the project is mixed, that fact is of no consequence in using the formula.

Staffing Plan During Implementation

On page 3526 of the NOFA, column 1, "(iii) Staffing Plan during Implementation," the narrative reads, "A propbsal having highly experienced/competent personnel will receive 11–15 points." The scoring guide (Table 11) doesn't allow for a range of points. It assigns 15 points for Good, 7 for Fair, 0 for Unsatisfactory. This notice amends the text to delete the range and make clear that 15 points will be awarded if the criterion is met.

Points for Geographic Diversity

The NOFA on page 3520, column 2, and page 3521, column 1, in discussing the new geographic diversity provision refers to an application which scores over 50 points. However, on page 3527, column 2, in citing geographic diversity, the NOFA refers to an application that scores at least 50 points. To clarify that the Department means at least 50 point, i.e., 50 or above, a correction is made to the statements at the referenced locations.

This notice also includes a modification to Appendix 1.—List of Local Offices of Native American Programs, to add that Utah tribes apply to Northern Plains ONAP and Iowa tribes apply to Eastern/Woodlands ONAP.

Accordingly, the Department amends the FY 1995 Indian HOME NOFA published on January 17, 1995 (60 FR 3520) as set forth below:

1. A new sentence is added to the paragraph headed "Summary," in the first column on page 3520 to read as follows:

* * * Applicants must submit an original and two copies of the application.

2. On page 3520, the fifth paragraph which appears in the second column is revised to read as follows:

This year there is a geographic diversity requirement in the NOFA which assures that for every ONAP Region with a fundable application which scores at least 50 points there will be one award which goes to the highest scoring application from that ONAP Region.

3. On page 3521, section I.(b)(2), which appears in the first column, is revised to read as follows:

(2) For FY 1995, there is a geographic diversity requirement which assures that for every ONAP Region with a fundable application which scores at least 50 points there will be one award which goes to the highest scoring application from that ONAP Region.

4. On page 3521, section I.(c)(1), which appears in the first column, is revised to read as follows:

(1) *Eligible Applicants.* (i) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(ii) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply for funds under this NOFA on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that Act when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(iii) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(iv) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (i) of this section, or as a Tribal organization, as provided in paragraph (ii) of this section, by the application submission date.

(v) Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively.

5. On page 3521 in the third column, section I.(d)(1)(vii) is added to read as follows:

(vii) _____ Submitted with an original and two copies.

6. On page 3522, in the first column, "(E) Economic Opportunities for Low and Very Low Income Persons" is corrected to read "(G) Economic Opportunities for Low-Income and Very Low-Income Persons".

7. On page 3522, in the second column, section I.(d)(2)(vii) is removed and reserved.

8. On page 3523, section I.(e)(1)(i)(D), which appears in the third column, is revised to read as follows:

(D) Benefits to Very Low-Income and Low-Income Members of the Tribe (5 points maximum). Under this factor, the applicant with the larger ratio of unmet low-income and very low-income need receives more points. The ratio consists of a numerator, which is the number of very low-income and low-income families of the tribe in need of housing divided by a denominator, which is the total number of very low-income and low-income families of the tribe. The result is multiplied by 5 to determine the number of points received under this criterion. The number of points should be rounded to 2 decimal places. See Table 4.

The total of all the low-income and very low-income families with unmet housing needs is the number that is considered for the numerater in the formula used in this criterion, regardless of the particular activity for which funding is sought in the application. For example, if the applicant is applying for funds to rehabilitate 10 units and there are 100 low-income and very low-income families in need of rehabilitated units but the total number of low-income and very low-income families with housing needs of all types (rental, new construction, and rehabilitation) is 500, the number that would be used in the formula as the numerator is 500. If the project is mixed, that fact is of no consequence in using the formula (A mixed project may be mixed as to tenure of the families to be assisted, i.e., rental or home ownership, but it may not be mixed as to type of project activity, i.e., a combination of acquisition, rehabilitation, new construction).

For example, a tribe has 20 low-income and very low-income families in need of housing and a total of 100 low-income and very low-income families. Substitute these values in the formula:

5×(20/100)=
5×0.20=
1.00 point.

9. On page 3524, in the first column, section I.(e)(1)(ii)(E) and item (5) in the last paragraph in the column are removed and reserved.

10. On page 3526, section I.(e)(2)(iii)(A), which appears in the first column, is revised to read as follows:

(A) Implementation Plan. The staffing plan must identify key personnel, and their experience relative to the proposed project, who will be employed during the implementation phase of the project, i.e., during acquisition, rehabilitation, construction. In order to be properly rated, experience identified must demonstrate the competence of key personnel in relation to the tasks required in implementing the proposed project. A proposal having highly experienced/competent personnel will receive 15 points. Proposed staff will be rated in varying degrees of competence in accordance with Table 11 below.

11. On page 3529, Appendix 1, List of Local Offices of Native American Programs, is amended by revising the first and third entries to read as follows:

APPENDIX 1.—LIST OF LOCAL OFFICES OF NATIVE AMERICAN PROGRAMS

Tribes located	ONAP address
East of the Mississippi River (including all of Minnesota and Iowa).	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TDD Numbers: 1–800–927–9275 or 312–886–3741.
Colorado, Iowa, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TDD Number: 303–844–6158.

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Dated: March 6, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6053 Filed 3–10–95; 8:45 am]

BILLING CODE 4210–33–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket Nos. N–95–3486; FR–3288–N–06 and N–95–3719; FR–3473–N–08]

Applicants for Preservation Technical Assistance Grants; Intermediaries To Administer Preservation Technical Assistance Grants

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On September 3, 1992, HUD published a Notice of Funding Availability (NOFA) (57 FR 40570) for Low Income Housing; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils. The September 3, 1992 NOFA (1992 NOFA) is now cancelled and new applicants must now apply for grants under a NOFA published on April 6, 1994 (59 FR 16366) (1994 NOFA) for Intermediaries to Administer Preservation Technical Assistance Grants. If the HUD Area/State Office has already received a Preservation Technical Assistance Grant (PTAG) application, under the 1992 NOFA, but has not yet funded it, the applicant may withdraw the application and resubmit a new application to the Intermediary without penalty or may proceed under the 1992 NOFA if funds are available. If a grantee under the 1992 NOFA is currently proceeding under the 1992 NOFA, they will continue to receive funds until all funds have been utilized or all grant activities are completed, or they can choose to close out the PTAG grant and apply under the 1994 NOFA. Any applications under the 1992 NOFA approved for Phase I funding after March 1, 1995, may inquire through the Resident Initiative Specialist (RIS) in the HUD Area/State Office, if there are funds available to proceed to the next phases or may apply to the Intermediary under the 1994 NOFA.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Mulholland, Acting Chief, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0614, Extension 2649. The TDD number for the hearing impaired is (202) 1–800–877–8339. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice announces to applicants for Preservation Technical Assistance Grants (PTAGs) that the Department of Housing and Urban Development's Area/State Offices will no longer be accepting applications under the September 3, 1992 NOFA, Low Income Housing; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils. Starting on March 6, 1995 eligible applicants may apply for Technical Assistance Grants through Intermediaries that were selected under the NOFA published in the **Federal Register** on April 6, 1994, NOFA for Intermediaries to Administer Preservation Technical Assistance Grants. The April 6, 1994 NOFA describes in Appendix A the eligibility requirements for Technical Assistance Applicants. Interested applicants may obtain application kits from the Intermediaries listed below.

SELECTED INTERMEDIARIES

Contact information	State(s)
Amador Toulumne Community Action Agency—Ms. Diane Bennett, Jackson, CA 94105, Phone: (209) 533–1397, Fax: (209) 533–1034.	Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, Utah, Wyoming.
Cedac Community Economic Development Association—Mr. Vince O'Donnell, 19 Temple Place, Suite 200, Boston, MA 02111, Phone: (617) 727–0506, Fax (617) 727–0705.	Massachusetts.
Community Action Council of Lexington, Inc.—Mr. Scott Brannon, 913 Georgtown Street, Lexington, KY 40511, Phone: (606) 244–2210, Fax: (603) 244–2219.	Kentucky
Community Services of West Alabama, Inc.—Ms. Diane Schussel, 601 17th Street, Tuscaloosa, AL 35401, Phone: (205) 752–5429, Fax: (205) 758–7229.	Alabama.
Connecticut Housing Investment Fund—Mr. Lou Trajeuski, 121 Tremont Street, Hartford, CT 06105, Phone: (203) 233–5165, Fax: (203) 233–3920.	Connecticut.
Department of Trade and Economic Development—Mr. Al D'Alessandro, 906 Columbia St., S.W., P.O. Box 48300, Olympia, WA 98504–83000, Phone: (206) 586–3370, Fax: (206) 586–5880.	Washington.
Lisc Kansas City Office—Mr. Jim White, 3822 Summit, Suite 200, Kansas City, KS 64111, Phone: (816) 753–0055, Fax: (816) 753–6397.	Kansas, Missouri (West).
Little Dixie Community Action Agency—Mr. Tom Martindale, 506 West Duke Street, Hugo, OK 74743, Phone: (405) 326–6441, Fax: (405) 326–6655.	Nebraska, North Dakota, Oklahoma, South Dakota.
Low Income Housing Fund—Mr. Cort Gross, 605 Market Street, Suite 200, San Francisco, CA 94105, Phone: (415) 777–9804, Fax: (415) 777–9195.	California, Delaware, Florida, Texas.
Minnesota Housing Partnership—Mr. Chip Halbach, 122 West Franklin Avenue, Suite 522, Minneapolis, MN 55404, Phone: (612) 874–0112, Fax: (612) 874–9685.	Minnesota.
National Center for Tenant Ownership G.T. Law—Mr. Ben Hecht, 777 N. Capital St., N.E., Suite 405, Washington, DC 20002–4239, Phone: (202) 371–9200, Fax: (202) 371–2404.	Arkansas, Caribbean, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland (North), Michigan, Mississippi, Missouri (East), Ohio, South Carolina, Tennessee, Virgin Islands, Virginia (South), West Virginia.
Neighborhood Preservation Coalition NYS., Inc.—Ms. Cecilia Tkaczyk, 303 Hamilton Street, Albany, NY 12210, Phone: (518) 432–6757, Fax: (518) 432–6758.	New York.
New Hampshire Housing Finance Authority—Ms. Amy Facey, 244 Constitution Drive, Bedford, NH 03110, Phone: (603) 472–8623, Fax: (603) 471–1043.	New Hampshire.

SELECTED INTERMEDIARIES—Continued

Contact information	State(s)
New Mexico Region II Authority—Ms. Teresa Baca, 220 Bernalillo Street, Las Vegas, NM 87701, Phone: (505) 454–0654, Fax: (505) 454–1603.	New Mexico.
North Carolina Housing Finance Agency—Ms. Mary Rica Todd, 1801 Lake Boone Trail, Raleigh, NC 27607, Phone: (919) 571–4808, Fax: (919) 781–5623.	North Carolina.
Oregon Housing and Community Development—Ms. Elizabeth Boylston, 1600 State Street, Salem, OR 97310, Phone: (503) 287–9750, Fax: (503) 287–9761.	Oregon.
Pennsylvania Housing Finance Agency—Ms. Lisa Yaffee, 2101 North Front Street, P.O. Box 8029, Harrisburg, PA 17105, Phone: (717) 780–3882, Fax: (717) 780–3905.	Pennsylvania.
Rhode Island Housing and Mortgage Finance Corp.—Ms. Christina Hannifan, 60 Eddy Street, Providence, RI 02903, Phone: (401) 457–1113, Fax: (401) 457–1140.	Rhode Island.
State of New Jersey—Dept. of Community Affairs—Mr. Meyer Pincelli, 101 S. Broad Street, CN 806, Trenton, NJ 08625–0806, Phone: (609) 633–6303, Fax: (609) 984–8454.	New Jersey.
Vermont Housing Finance Agency—Mr. Paul Cummings, One Burlington Square, Burlington, VT 05401, Phone: (802) 864–5743, Fax: (802) 864–5746.	Vermont.
Washcog—Ms. Peggy Sand, 777 North Capital Street, N.E., Suite 300, Washington, DC 20002–4239, Phone: (202) 962–3268, Fax: (202) 962–3204.	Maryland (South), Virginia (North), Washington, DC.
Wiscap—Mr. Robert Jones, 1310 Mendota Street, Suite 103, Madison, WI 53714, Phone: (608) 244–0466, Fax: (608) 244–4064.	Wisconsin, (Resc).
Wisconsin Housing & Economic Development—Ms. Carol Winge, 1 S. Pinckney Street, Suite 500, Madison, WI 53701, Phone: (608) 267–1453, Fax: (608) 267–1099.	Wisconsin (Pred).

Dated: March 6, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–6103 Filed 3–10–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Accohannock Indian Tribal Association, Inc., c/o Ann Buck MacKay, 427 Loblolly Lane, Salisbury, MD 21801–6851, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 18, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: February 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6140 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Ani-Stohini/Unami Nation, c/o Misty Dawn Thomas, Route #1, Box #335, Ivanhoe, Virginia 24350, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on July 8, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: February 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6139 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

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Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Occaneechi Band of Saponi Nation, c/o Lawrence Dunmore, 4006 Mary's Grove Church Road, Mebane, North Carolina 27302 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 6, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: February 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6141 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–02–M

National Park Service

General Management Plan; Grand Canyon National Park, Arizona; Notice of Availability; Draft Environmental Impact Statement

Summary: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) that describes and analyzes a proposed action and four alternatives for the general management plan for Grand Canyon National Park. The official responsible for a decision on the proposed action is the Regional Director, Western Region, National Park Service.

Comments: Comments on the DEIS should be received no later than April 24, 1995. Dates for public meetings regarding the DEIS will be from March 25 to 29, 1995 in various locations in Arizona and Utah. Written responses to the DEIS should be submitted to Planning Team Leader, Grand Canyon General Management Plan, National Park Service, Denver Service Center-TWE, P.O. Box 25287, Denver, CO 80225–0287.

Public Meetings: All of the public meetings are to be held evenings from 6:00–9:00 pm. The March 25 meeting will be at the Best Western Red Hills Hotel, 124 W. Center, Kanab, Utah. The March 27 meeting will be at the Grand Canyon School Multipurpose Room, Boulder St., Grand Canyon, Arizona. The March 28 meeting will be at the Woodlands Plaza Hotel, 1175 W. Route 66, Flagstaff, Arizona. The March 29 meeting will be at the Ramada Camelback Hotel, 502 W. Camelback Rd., Phoenix, Arizona.

Review Copies: Public reading copies of the DEIS will be available for review at three locations: [1] Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW, Washington, DC 20240 (202) 208–6843; [2] Western Regional Office, National Park Service, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372 (415) 415–744–3968; [3] Headquarters, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 (602) 638–7701.

A limited number of copies of the DEIS are available on request from: Rob Arnberger, Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 (602) 638–7701; or the Planning Team Leader, Grand Canyon General Management Plan, National Park Service, Denver Service Center-TWE, P.O. Box 25287, Denver, CO 80225–0287 (303) 969–2210.

Supplementary Information: This general management plan provides management objectives and visions for the entire park, with alternative plans for the park's developed areas (South Rim, North Rim, Tuweep, and corridor trails). The proposed action, the no-action alternative, and three other alternatives are presented in this document, and their environmental consequences are analyzed.

The proposed action (alternative 2) would emphasize regional cooperation for information distribution, regional resource preservation, and a quality visitor experience. A major shift away from the use of private automobiles would occur. Alternative modes of transportation would be emphasized throughout the region, with staging areas linked to regional private transit services in outlying communities and a public transit system within the park. Private vehicles would be removed from the heaviest use areas in the park, creating pedestrian-only areas. The number of private vehicles allowed into the park at any one time would be limited in certain areas. The adaptive use of historic structures and other structures would be maximized. The construction of new facilities within the park would be almost entirely within disturbed areas. The visitor experience would be defined by the unique qualities of each individual area, and the number of visitors allowed into some areas of the park would be determined by a carrying capacity analysis. With respect to environmental consequences, the proposed action would stabilize the growth of infrastructure within the park, enhance natural and cultural resource preservation, improve significantly the visitor experience, create better living and working conditions for park employees, and benefit local economies.

The other alternatives include: Continuing existing conditions (the no-action alternative), a minimum requirements alternative (alternative 1), reduced development within the park (alternative 3), and increased development within the park (alternative 4).

The responsible official for a decision on the proposed action is the Regional Director, Western Region, National Park Service.

Dated: February 28, 1995.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 95–6101 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States v. Mundet-Hermetite, Inc.*, Civil Action No. 95–0009–L, was lodged on February 24, 1995 with the United States District Court for the Western District of Virginia. The Consent Decree settles an action brought under Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7413, seeing an injunction and civil penalties for defendant's violation of the Prevention of Significant Deterioration (PSD) requirements of 42 U.S.C 7470, *et. seq.*, and the regulations promulgated thereunder. Pursuant to the Consent Decree, defendant has agreed to pay a civil penalty of $90,000, to cease the plant process which was the source of the violation, and not to recommence that process except in compliance with the Clean Air Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Mundet-Hermetitite, Inc., DOJ Ref.* #90–5–2–1–1949.

The proposed consent decree may be examined at the office of the United States Attorney, 105 Franklin Rd. SW, Suite 1, Roanoke, VA 24011; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6048 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree for Claims Under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy notice is hereby given that on February 10, 1995, a proposed Partial Consent Decree in *United States* v. *Smuggler-Durant Mining Corporation, et al.*, Civil Action No. 89–C–1802, was lodged with the United States District Court for the District of Colorado. The Complaint in this case was brought under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, against several parties who are owners or operators of facilities at which hazardous substances are being released into the environment, or who owned or operated facilities at a time when hazardous substances were disposed of there. The United States' Complaint sought recovery of costs incurred and to be incurred by the United States in connection with the clean up of hazardous substances at the Smuggler Mountain Superfund Site ("Site") in and adjacent to the City of Aspen, Colorado.

The proposed partial Consent Decree involves the MAXXAM, Inc. and Top of Aspen, Inc. ("MAXXAM"). This decree settles claims brought by the United States against MAXXAM under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and provides the MAXXAM a covenant not to sue for past and future response costs or response actions under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973 as well as a limited covenant for natural resource damages on Operable Unit 1 of the Site. In return, MAXXAM will reimburse the United States $1,700,000,00 for response costs incurred in connection with the Site. Finally, the decree resolves potential counterclaims by MAXXAM against the United States for any activities conducted on-site by any instrumentality of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. Smuggler-Durant Mining Corporation, et al.*, DOJ Ref. No. 90–11–2–174.

The proposed Consent Decree may be examined at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, 202–624–0892. Copies of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of *$8.25* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6049 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment; Bardahl Manufacturing Corporation, et al.

Notice is hereby given that defendant Bardahl Manufacturing Corporation ("Bardahl") has filed with the United States District Court for the Western District of Washington a motion to terminate the Final Judgment in *United States* v. *Bardahl Manufacturing Corporation, et al.*, Civil No. 83–71; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Final Judgment but has reserved the right for at least seventy (70) days after the publication of the notice to withdraw its consent. The complaint in this case (filed June 30, 1969) alleged that Bardahl and other companies affiliated with Bardahl had conspired to fix uniform prices and allocate exclusive geographical sales territories for the sale of motor oils, greases and lubricants manufactured by Bardahl and sold by Bardahl distributors in the United States.

The Final Judgment (entered August 11, 1969) enjoined the defendants from selling any finished Bardahl products to any person upon any conditions which restrict the persons to whom, the prices at which, or the territory within which such products may be sold.

The Department has filed with the court a memorandum setting forth the reasons why the Government believes that termination of the Final Judgment would serve the public interest. Copies of the Complaint and Final Judgment, Bardahl's motion papers, the stipulation containing the Governemnt's consent, the Government's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection at Room 10–437, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20001, and at the Office of the Clerk of the United States District Court for the Western District of Washington, 1010 Fifth Avenue, Room 215, Seattle, Washington 98104. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be received by the Division within sixty (60) days and will be filed with the court by the Government. Comments should be addressed to Christoper S.

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Crook, Acting Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone: (415) 556–6300).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–6050 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

United States, State of Florida and State of Maryland, v. Browning Ferris Industries, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(c)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States, State of Florida and State of Maryland* v. *Browning Ferris Industries, Inc.*, Civil Action No. 94–2588, filed in the United States District Court for the District of Columbia, together with the United States' responses to those comments.

Copies of the comments and responses are available for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. and for inspection and copying at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C.

Constance K. Robinson,

Director of Operations.

Comments on the Proposed Final Judgment and the United States' Responses to the Comments

United States of America, State of Florida, by and through its Attorney General Robert A. Butterworth, and State of Maryland, by and through its Attorney General J. Joseph Curran, Jr., Plaintiffs vs. Browning-Ferris Industries, Inc., Defendant. Civil Action No.: 1:94CV02588.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States hereby files the attached comments on the proposed Final Judgment in the above-captioned civil antitrust proceeding, together with the United States' responses to those comments.

This action was commenced on December 1, 1994, when the United States, the State of Maryland ("Maryland") and the State of Florida ("Florida") filed a Complaint that the acquisition by Browning-Ferris Industries, Inc. ("BFI") of the ordinary voting shares of Attwoods plc ("Attwoods") violated Section 7 of the Clayton Act because the effects of the acquisition may be substantially to lessen competition in interstate trade and commerce for small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland.

At the same time the United States, Maryland, and Florida filed a proposed Final Judgment, a Stipulation signed by the parties stipulating to entry of the Final Judgment, and a Hold Separate Stipulation and Order. Shortly thereafter the United States filed a Competitive Impact Statement. The proposed Final Judgment requires BFI to divest certain Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. It also requires BFI to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area. The Hold Separate Stipulation and Order requires BFI to preserve, hold, and continue to operate the assets that may be divested under the Final Judgment as separate ongoing businesses. The Stipulation provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA.

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on December 15, 1994 and terminated on February 13, 1995. During this period, the United States received two comments on the proposed Final Judgment. The United States considered the comments and sent written responses to the commenting parties.[1]

Pursuant to 15 U.S.C. 16(e), the proposed Final Judgment can be entered only after the Court determines that the Judgment is in the public interest. The focus of this determination is whether the relief provided by the proposal Final Judgment is adequate to remedy the antitrust violation alleged in the Complaint.[2]

Both comments expressed concern about the contracts used by BFI with its small containerized hauling customers. One of the comments expressed concern that the contract currently in use by BFI in the greater Baltimore metropolitan area is one-sided. The other comment stated that the new contracts required to be used by BFI in Broward County, FL under the proposed Final Judgment were being used by BFI as marketing tools to the disadvantage of small haulers. That comment suggested that BFI should be required to cancel all its existing contracts immediately and implement the new contracts all at one time. The comment went on to suggest that the combination of BFI and Attwoods' municipal franchises would permit BFI to subsidize cheaper prices in the small containerized hauling service market to the detriment of other haulers.

The United States explained in its responses to these comments that, in the greater Baltimore area, the concern about BFI's use of restrictive customer contracts has been expressly rectified by the proposed Final Judgment. BFI is required to use less restrictive customer contracts that do not have the effects complained of in the comment. The Department also explained that, in Broward County, FL, BFI was being required to phase in the new contracts rapidly—within one year. The proposed Final Judgment requires that the new contracts be made available immediately to all new customers and all customers signing new contracts. A one year period to convert all other customers seemed reasonable in order to avoid unnecessary confusion and the probable higher cost of immediately converting all customers to the new contract. Finally, the Department explained that using franchised business, in which municipal entities solicit bids and award contracts to serve consumers within their boundaries, to subsidize the small containerized hauling market would likely occur only if bidding for franchises is not competitive. The Department was not persuaded, given the number of actual and potential bidders for municipal franchises in the Florida markets, that the acquisition raised any concerns in the market for bidding on municipal franchises.

After careful consideration of the comments, the United States continues to believe that, for the reasons stated in the responses to the comments and in the Competitive Impact Statement, the proposed Final Judgment would be adequate to remedy the risks to competition presented by the proposed acquisition and, therefore, the proposed Final Judgment is in the public interest.

After the comments and responses have been published in the Federal Register, pursuant to 15 U.S.C. 16(d) of the APPA, the United States will move this Court for entry of the proposed Final Judgment.

Dated: March 2, 1995.

Respectfully submitted,

Nancy H. McMillen,

Peter H. Goldberg,

Eva Almirantearena,

Attorneys, Antitrust Division, Department of Justice.

Eastern Trans-Waste of Maryland, Inc.

December 15, 1994.

Anthony V. Nanni,
Chief, Litigation I Section, Antitrust Division,
U.S. Dept. of Justice, 1401 H Street NW.,
Suite 4000, Washington, DC 20530

Re: BFI's Settlement

Dear Mr. Nanni: As I am sure you are well aware the matter of EWI's takeover by BFI is of grave concern. I am an owner of a small women-owned refuse business and I am writing this letter to voice my awareness regarding various unethical procedures being practiced by big business. Small business concerns are being gobbled up by big business. This development should alert all interested in economic fairplay, because these unfair and illegal practices can lead to monopoly control and higher prices for the consumer.

Two such deceitful practices that I would like to bring to your attention are BFI's attempts to restrain trade with their one-sided contracts and their new attempt to gain control by backing a small-disadvantaged refuse company.

Specifically, Browning-Ferris regularly restrains trade by having their customers sign one-sided refuse service agreements. Once the customer gets into these deceptive agreements it seems impossible to get out.

Exhibit A

December 6, 1994.

Basically, the contract states that in order to terminate service you have to give them sixty day written notice (Certified Mail) before end of contract date. However, if you do not give this notice before the sixty day period the contract means the agreement is automatically renewed for three years. Being that most customers do not anticipate a formidable increase, the notification period usually passes unnoticed.

So, consequently BFI waits for the sixty days to pass and then proceeds to inform the customer the service price will increase. The increase is usually substantially higher than the original contract price and when the customer tries to seek a more competitive price BFI threatens to sue for the remainder of the contract. Although there is a contract, it is unfair and deceptive not allowing the customer any recourse action once the price increase is established. Under these circumstances the customer is able to void the contract due to deceitful terms, but the majority of the customers are ignorant to this fact. To illustrate this matter Fleet Maintenance, a small business located in Clinton, Maryland, was engaged in a contract with BFI and the price was considerably raised. Fleet proceeded to search for a more competitive price, so they contacted my company, Eastern Trans-Waste (ETW). ETW quoted a price that was fifty percent lower than BFI's price. Consequently, Fleet informed BFI that they would be cancelling service and if they didn't like it they would have to sue them. However, BFI didn't attempt to sue, instead they lowered the price of service, but only to drive out the competitor. In the majority of similar cases customers are intimidated by the contract and feel caught in a legal trap, which results lead to accepting the higher price. This depicts how trade is restrained by not allowing customers to shop for preferable prices, which seriously demeans our beliefs that we life in a fair and competitive society.

The other method that reflects the current situation would be BFI's attempt to gain control by backing a small-disadvantaged refuse business. Bethesda Naval Hospital recently put out to bid a recycling job which was offered only to small disadvantaged concerns. Due to this fact only one company submitted a bid. Consequently the contract was awarded to Heritage Recyclers; at an exorbitant price for the scope of the contract. Needless to say BFI has furnished all the equipment on this job with their name on said equipment and is performing the services.

As a result BFI has been gaining a larger market share by utilizing a variety of unfair and unethical tactics. All of the methods they employ undermine the long-term interests of small business in the refuse field. Therefore, you must see how this takeover of EWI is of crucial importance to the small business owner.

Although I have been concentrating on BFI and their unethical practices, I would like to point out that Waste Management also participates in these same methods that undermine the long-term interests of small business: Whereas, ETW is only one small business voicing this complaint there are others who have had business taken from them by big business and would be willing to reveal the scandalous procedures that were utilized.

Knowing that you are a busy person I would like to thank you for this opportunity to express my feelings on this matter and I look forward to a response.

Sincerely,

Kimberly A. Robb,

President, Eastern Trans-Waste of Maryland, Inc.

Department of Justice, Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM
60–4953–0059

Kimberly A. Robb,
President, Eastern Trans-Waste of Maryland, Inc., 1402 Richie Marlboro Road, Capitol Heights, Maryland 20743

Re: United States V. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Ms. Robb: This letter responds to your letter dated December 15, 1994 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Attwoods plc ("Attwoods") by Browning-Ferris Industries, Inc. ("BFI"). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

You expressed concern that BFI regularly restrains trade by having their customers sign one-sided refuse service agreements. You note that once the customer signs one of these agreements "it seems impossible to get out." Letter at p. 1. You specifically mention a provision requiring the customer to give BFI written notice 60 days or more before the end of the contract and that if this date is missed, the agreement is automatically renewed for three years. You further state that, once the contract is renewed, BFI increases its price to the customer and threatens to sue the customer if the customer tries to seek a more competitive price.

The Department believes the proposed Final Judgment eliminates the concerns expressed in your letter. Specifically, Parts VIII A and B of the proposed Final Judgment require BFI to offer contracts to small containerized hauling customers in your area[1] that make it considerably easier for a customer to benefit from price competition for that customer's business. The initial term of the new contract is only one year (instead of the three year current term). The renewal term is only one year, instead of three. The customer can give notice much later under the new contract (up to 30 days from the end of the contract term rather than prior to 60 days from the end of the term), making it more likely the customer will have time to terminate the contract should it receive an attractive offer from a competitor. Furthermore, the liquidated damages provision of BFI's contract has been substantially decreased from six times the customer's average monthly charges. Under the proposed Final Judgment, customers may terminate the contract during their first 10 months as a BFI customer by paying only two times its prior average monthly charges and, after 10 months, an amount equal to one month's average charges. The Department believes these changes reduce a substantial barrier to entry into small containerized hauling service and will increase the likelihood that the customer will not "feel caught in a legal trap" (letter at p. 2).

Your letter expresses a second concern. You appear to describe a situation in which a small business set-aside bid was performed by BFI, rather than the small business that was awarded the bid. The acquisition that is the subject matter of this complaint and proposed Final Judgment has no effect on the alleged conduct you describe. This is not the type of matter that is subject to being remedied as part of a proposed acquisition and does not appear to be a matter within the jurisdiction of the Antitrust Division. The Department does appreciate your interest in enforcing the antitrust laws and any information relevant to that enforcement in the appropriate forum is welcome.

We appreciate you bringing your concerns to our attention, and hope that this information will help to alleviate them. Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

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[1] The Comments and Responses are attached as Exhibit A.

[2] United States v. Bechtel Corp., 1979–1 Trade Cases (CCH) ¶ 62,430 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660, 665 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1982).

[1] The area in Maryland affected by this portion of the proposed Final Judgment is Anne Arundel County, Baltimore City, Baltimore County, Calvert County, Carroll County, Harford County, Howard County, Montgomery County and Prince George's County.

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Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

Coastal Carting Limited, Inc.

Garbage and Trash Removal, 2316 S.W. 56th Terrace, West Hollywood, Florida 33021

February 8, 1995.

Anthony V. Nanni,

Chief, Litigation One Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530

Re: Browning-Ferris Industries, Acquisition of Attwoods PLC, Civil action No.: 94–2588, United States of America, State of Florida, and State of Maryland vs. Browning-Ferris Industries, Inc., United States District Court for the District of Columbia

To Whom It May Concern: I am writing because I am very concerned about the acquisition of Attwoods by Browning-Ferris Industries and its effect upon my business.

Finally, BFI has utilized the Contract that as attached Exhibit "B" of the proposed Final Judgment as a marketing tool to discredit the smaller haulers. BFI is out in the market place telling the customer if he is not happy with the service provided by BFI, they can terminate the contract with minimum cost to the customer.

My suggestion is to terminate all the existing agreements immediately and then have BFI compete with us with them using the new Contract.

Finally, BFI will be able to subsidize their competitive commercial work by the monies made on the "combined" franchises of BFI and Attwoods allowing BFI to subsidize competitive prices, thereby, keeping the small hauler from competing in the market place where they can compete.

Once again, I am concerned about the effect this transaction will have on the market place and my business. Please feel free to contact me at your earliest convenience regarding these issues and I hope you will strongly consider my concerns.

Very truly yours,

Frank D'Agostino,

President, Coastal Carting Ltd., Inc.

Department of Justice.Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM

60–4953–0059

Frank D'Agostino,

President,

Coastal Carting Limited, Inc.,

2316 SW. 56th Terrace,

West Hollywood, Florida 33021

Re: United States v. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Mr. D'Agostino: This letter responds to your letter dated February 8, 1995 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Attwoods plc ("Attwoods") by Browning-Ferris Industries, Inc. ("BFI"). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

Your letter expresses concern that BFI is using the less restrictive contracts the proposed Final Judgment requires it to use in Broward County, FL as a marketing tool to discredit the smaller haulers. You suggest that BFI should be required immediately to terminate all of its existing, more restrictive contracts, and compete using only the new contract. The Department considered requiring BFI to terminate all existing contracts immediately and to switch all of its customers to the new contract at once. The Department believed that this would result in much confusion and potentially high cost. Part VIII D of the proposed Final Judgment requires BFI to offer the new contract to all new customers and all customers that sign contracts effective beginning on the date BFI acquires a majority of the Attwoods' ordinary shares. That paragraph also requires that BFI offer the new contract to all other customers by December 1, 1995. As a result, BFI is required to offer the new contract to all of its Broward County customers within one year of the filing of the Complaint and proposed Final Judgment. The Department believes that this rapid phase-in of the contracts will enhance competition by getting the contracts into use quickly, but without the confusion and cost of an immediate switch of all customers to the new contract.

You also state that you are concerned that BFI will be able to subsidize their competitive commercial work through monies obtained from franchises previously controlled by Attwoods. The Department understands you to be referring to franchises for residential (and sometimes residential and commercial) solid waste hauling periodically put up for bid by municipal authorities.

Your concern appears to be that combining Attwoods' franchises with those already controlled by BFI will enable BFI to offer lower prices to its commercial small containerized hauling customers, undercutting your ability to compete with BFI in the commercial small containerized hauling market. This assumes that BFI will be able to obtain supracompetitive profits from the franchises to undercut other firms in the commercial small containerized hauling market. This subsidization could only happen if the bidding for franchises is not competitive. The Department is not aware of any evidence that the market for bidding on franchises in your area is not competitive.

While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the Complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

Certificate of Service

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, a copy of the foregoing Comments on the Proposed Final Judgment and the United States' Responses to the Comments upon the following persons, counsel for defendant in the matter of *United States of America* v. *Browning-Ferris Industries, Inc.*:

Rufus Wallingford, Esquire, Executive Vice President and General Counsel, 757 North Eldridge Street, Houston, Texas 77079, (713) 870–7670

Martha J. Talley, DC Bar No. 246330, Dewey Ballantine, 1775 Pennsylvania Ave. NW., Washington, DC 20006, (202) 862–1014

Dated: March 2, 1995.

Nancy H. McMillen,

Attorney, Litigation I Section, Antitrust Division, Department of Justice.

[FR Doc. 95–6045 Filed 3–10–95; 8:45 am]

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Drug Enforcement Administration

Robert E. Sylvester, D.O.; Denial of Application

On June 23, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert E. Sylvester, D.O., (Respondent) of Fairfax, South Carolina, proposing to deny his application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest based on Respondent's lack of authorization to handle controlled substances in the State of South Carolina; that Respondent issued various controlled substances prescriptions for himself and others and such prescriptions were not in the usual course of his professional practice and not for a legitimate medical reason; that he had previously surrendered a DEA Certificate of Registration for cause; that he materially falsified an application for a DEA Certificate of Registration; that he had previously been convicted of a felony relating to controlled substances; and that he submitted false medicaid claims.

The Order to Show Cause was served on Respondent by registered mail. On July 14, 1994, Respondent, through counsel, submitted a written statement waiving a hearing, admitting all allegations except those pertaining to the false medicaid claims and the material falsification of his DEA application. The Deputy Administrator has considered this statement along with the investigative file. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file and the written statement submitted by Respondent. 21 CFR 1301.57.

The Deputy Administrator finds that effective September 18, 1991, Respondent's medical license was revoked, pursuant to an Administrative Consent Agreement, by the State of South Carolina, Department of Health and Environmental Services (DHES). As a result of the DHES's action, Respondent is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of South Carolina.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the State in which he/she practices. *See* 21 U.S.C. 832(f). The Deputy Administrator and his predecessors have consistently so held. *See Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since Respondent lacks State authorization to handle controlled substances, it is not necessary for the Deputy Administrator to decide the other issues alleged in the Order to Show Cause.

Respondent does not contest that he is not currently authorized to handle controlled substances in South Carolina. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration, submitted by Robert E. Sylvester, D.O., be, and it is hereby denied. This order is effective March 13, 1995.

Dated: March 7, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–6115 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–20; Exemption Application No. D–09690, et al.]

Grant of Individual Exemptions; Iron Workers Pension Trust of Colorado, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Iron Workers Pension Trust of Colorado (The Pension Plan); and Colorado Iron Workers (Erection) Statewide Joint Apprenticeship and Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Denver, Colorado

[Prohibited Transaction Exemption 95–20; Exemption Application Nos. D–09690 and L–09691]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the loan (the Loan) of $141,601.36 by the Pension Plan to the Apprenticeship Plan, under the terms described in the notice of proposed exemption, provided the following conditions are satisfied: (a) The Loan represents less than 25% of the assets of the Pension Plan; (b) the terms of the Loan are not less favorable to either Plan than those obtainable in arm's-length transactions with unrelated parties; (c) the trustees of each Plan approved the Loan as being appropriate for, and in the best interest of each Plan; (d) no trustee of either Plan made such determination on behalf of the other Plan; and (e) the property securing the Loan has been appraised by a qualified, independent appraiser as having a fair market value in excess of 150% of the principal amount of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 4, 1995 at 60 FR 488.

EFFECTIVE DATE: This exemption is effective August 11, 1992.

WRITTEN COMMENTS: The Department received two written comments with respect to the proposed exemption. One comment sought further information

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about the proposed exemption, which the Department provided to the commentator by telephone. The other comment did not address any issues relevant to the proposed exemption. After consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Wadco, Inc. Profit Sharing Plan and Trust (the Plan) Located in Spring, Texas

[Prohibited Transaction Exemption 95–21; Application No. D–09820]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain shares of stock (the Stock) by the Plan to Peter Aswad, a disqualified person with respect to the Plan.[1]

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Plan receives a sales price equal to the fair market value of the Stock as determined by an independent, qualified appraiser; (5) the trustees of the Plan determine that the Sale is appropriate for the Plan and is in the best interests of the Plan and their participants and beneficiaries; and (6) within ninety days of the grant of this exemption, Wadco files Forms 5330 with the Internal Revenue Service and pays all applicable excise taxes due with respect to past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1995 at 60 FR 3661.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Treasure Valley Transplants, Inc. Money Purchase Pension Plan (the Plan) Located in Boise, Idaho

[Prohibited Transaction Exemption 95–22; Application No. D–09874]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale (the Sale) of certain real property (the Property) by the Plan to Dr. George Holzer, D.V.M. (Dr. Holzer), a disqualified person with respect to the Plan;[2] provided that the following conditions are satisfied:

(1) The Sale is a one-time transaction for cash;

(2) The Plan does not incur any expenses in connection with the proposed transaction; and

(3) The consideration paid for the Property is no less than the fair market value of the Property as determined by an independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5728.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Terry Segal, P.C. Retirement Plans Located in Boston, MA

[Prohibited Transaction Exemption 95–23; Exemption Application No. D–09891]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed purchase by Terry and Harriet Segal of an interest (the Interest) in a limited partnership from Mr. Segal's individually-directed account (the Account) in the Terry Segal, P.C. Pension Plan (the Pension Plan), provided: (1) The purchase is a one-time transaction for cash; (2) the Pension Plan Account is not required to pay any fees or commissions in connection therewith; (3) the Interest is appraised by a qualified, independent appraiser; and (4) the Pension Plan Account receives an amount which reflects the fair market value of the Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5729.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 8th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–6117 Filed 3–10–95; 8:45 am]

BILLING CODE 4510–29–P

[1] Since Peter Aswad and his wife, Judith Aswad, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] Since Dr. Holzer is the sole shareholder of the Employer, and the only participant in the Plan, there is no jurisdiction under Title I of the Act, pursuant to 29 CFR 2510.3–3(c)(1). There is, however, jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[Prohibited Transaction Exemption 95–18; Application No. D–09893]

Transaction Between Employee Profit Sharing-Savings Plan and Trust Agreement of Modern Globe, Inc. and VF Corporation, the Sponsoring Employer

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Correction.

SUMMARY: In 60 FR published at page 10879 on Tuesday, February 28, 1995, make the following correction: On page 10879, in the first column under the section designated "Exemption" on the sixth line insert the word "not" between the words "shall apply", so as to read "shall not apply" (Emphasis added).

Signed at Washington, D.C., this 8th day of March 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–6119 Filed 3–10–95; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–09595, et al.]

Proposed Exemptions; Norwest Bank Minnesota, N.A., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Norwest Bank Minnesota, N.A. Located in Minneapolis, MN

[Application No. D–09595]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Exemption for the In-Kind Transfer of Assets

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, as of September 30, 1994, to the in-kind transfer of assets of plans for which Norwest Bank Minnesota, N.A. or any of its affiliates (collectively, the Bank) serves as a fiduciary (the Client Plans), including plans established or maintained by the Bank (the Bank Plans; collectively, the Plans), that are held in certain collective investment funds (the CIFs) maintained by the Bank, in exchange for shares of the Norwest Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which the Bank acts as investment adviser, custodian, and shareholder servicing agent, in connection with the termination of such CIFs provided that the following conditions are met:

(a) No sales commissions or other fees are paid by a Bank Plan or a Client Plan in connection with the purchase of shares of the Funds through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares of the Funds.

(b) All of the assets of a Bank Plan or a Client Plan that are held in the CIFs are transferred in-kind to the Funds in exchange for shares of such Funds. A Plan not electing to participate in the Funds receives a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation takes place.

(c) Each Bank Plan and each Client Plan receives shares of the Funds which have a total net asset value that is equal to the value of such Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the Investment Company Act of 1940 (the '40 Act), as

[1] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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amended, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure, which includes but is not limited to, the following information concerning the Funds:

(1) A current prospectus for each portfolio of the Funds in which a Bank Plan or a Client Plan is considering investing;

(2) A statement describing (i) the fees for investment advisory or similar services that are to be credited back to a Client Plan, (ii) the fees retained by the Bank for Secondary Services, as defined in paragraph (g) of Section III below, and (iii) all other fees to be charged to or paid by the Bank Plan or the Client Plan and by such Funds to the Bank or to unrelated third parties. Such statement also includes the nature and extent of any differential between the rates of the fees;

(3) The reasons why the Bank considers such investment to be appropriate for the Bank Plan or the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Bank Plan or a Client Plan may be invested in the relevant Funds, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted.

(e) On the basis of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Bank Plan's or the Client Plan's CIF assets to a Fund in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, the fees received by the Bank in connection with its services to the Funds and, in the case of a Client Plan only, the purchase by such Client Plan of additional shares of the corresponding Funds with the fees credited back to the Client Plan by the Bank. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations and duties imposed on fiduciaries under Part 4 of Title I of the Act.

(f) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act;

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities.

(g) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information:

(1) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units;

(2) The number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(h) The conditions set forth in paragraphs (c), (d), (e), (o) and (p) of Section II below as they would relate to all Plans are satisfied.

Section II. Exemption for the Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, as of November 11, 1994, to (1) the receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds; and (2) the receipt and proposed retention of fees by the Bank from the Funds for acting as custodian or shareholder servicing agent to the Funds, as well as for any other services provided to the Funds which are not investment advisory services (i.e., the Secondary Services), in connection with the investment in shares of the Funds by the Client Plans, other than the Bank Plans, for which the Bank serves as fiduciary.

The aforementioned transactions are subject to the following conditions:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in paragraph (d) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director, purchases from or sells to any of the Client Plans shares of any of the Funds.

(d) The combined total of all fees received by the Bank for the provision of services to the Client Plans, and in connection with the provision of services to any of the Funds in which the Client Plans invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 of the '40 Act (the 12b–1 Fees) in connection with the transactions involving the Funds.

(f) Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by the Bank, including any investment advisory fees paid by the Bank to third party sub-advisers, within not more than one business day after the receipt of such fees by the Bank.

(g) The Second Fiduciary receives, in advance of investment by a Client Plan in the Funds, full and detailed written disclosure of information concerning the relevant Funds as set forth above in Section I(d).

(h) On the basis of the information described in paragraph (d) of Section I, the Second Fiduciary authorizes in writing:

(1) The ongoing investment of assets of the Client Plans in shares of the Funds, in connection with the transactions set forth in Section II;

(2) The investment portfolios of the Funds in which the assets of the Client Plans may be invested; and

(3) The fees to be paid by the Funds in which Client Plans invest to the Bank and the purchase of additional shares of the Funds by the Client Plan with the fees credited to the Client Plan by the Bank.

(i) The authorization referred to in paragraph (h) is terminable at will by the Client Plan, without penalty to the Client Plan. Such termination will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan but not more than one business day following receipt by the Bank from the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (h) of Section III below, or any other written notice of termination; provided that, if due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

(j) In the event of an increase in the contractual rate of any fees paid by the Funds to the Bank regarding investment advisory services or fees for similar services that had been authorized by the Second Fiduciary in accordance with paragraph (h) of this Section II, the Bank provides written notice to the Second Fiduciary in a prospectus for the Funds or otherwise, of any increases in the contractual rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited to the Client Plans as required by paragraph (f) of Section II.

(k) In the event of an additional Secondary Service, as defined in paragraph (g) of Section III below, provided by the Bank to the Funds for which a fee is charged or an increase in the contractual rate of any fee due from the Funds to the Bank for any Secondary Service, as defined in paragraph (g) of Section III below, that results from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increased, provide written notice to the Second Fiduciary explaining the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees of the affected Fund. Such notice will be accompanied by the Termination Form, as defined in paragraph (h) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k) and (m) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. The termination will be effected by the Bank selling the shares of the Funds held by the Client Plans requesting termination within the period of time specified by the Client Plan, but not later than one business day following receipt by the Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale of shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the form on behalf of the Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of the Client Plan.

(m) The Second Fiduciary is supplied with a Termination Form, at least once in each calendar year, beginning with the calendar year that begins after the date of the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (m) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraph (k) of this Section II, except to the extent required by said paragraph (k) of this Section II to disclose an increase in fees.

(n) On an annual basis, the Bank will provide the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and upon such fiduciary's request, a copy of the Statement of Additional Information which contains a description of all fees paid by the Funds to the Bank.

(2) A copy of the annual financial disclosure report prepared by the Bank which contains information about the portfolios of the Funds and includes audit findings of an independent auditor (the Auditor) within 60 days of the preparation of the report.

In addition, the Bank will respond to oral or written responses to inquiries of the Second Fiduciary as they arise.

(o) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(p) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (q) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and

(2) No party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (q) of Section II below; and

(q)(1) Except as provided in paragraph (p)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (p) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of the Funds owned by the Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (q)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Bank" means Norwest Bank Minnesota, N.A. and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of the Bank includes—

(1) Any person directly or indirectly through one or more intermediaries,

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controlling, controlled by, or under common control with the Bank. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "Fund" or "Funds" refers to the Norwest Funds or to any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other "Secondary Service" (as defined below in paragraph (g) of this Section IV) which as been approved by such Funds.

(d) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, affiliate, employee, or relative of such Second Fiduciary is an officer, director, partner or employee of the Bank or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption; provided, however that with respect to Bank Plans, the Second Fiduciary may receive compensation from the Bank in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in such transactions.

With the exception of the Bank Plans, if an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change of fees charged to or paid by the Client Plan, any of the transactions described in Sections I and II above, then paragraph (f)(2) of this Section IV, shall not apply.

(g) The term "Secondary Service" means a service, other than investment advisory or similar services which is provided by the Bank to the Funds, including, but not limited to, custodial or shareholder services. However, the term "Secondary Service" does not include any brokerage services provided by the Bank to the Funds.

(h) The term "Termination Form" means the form supplied to the Second Fiduciary at the times specified in paragraphs (i), (k), (l), and (m) of Section II which expressly provides an election to the Second Fiduciary to terminate on behalf of a Plan the authorization described in paragraph (h) of Section II. Such Termination Form is to be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plan and to notify the Bank in writing to effect such termination by selling the shares of the Fund held by the Plan requesting termination not later than one business day following receipt by the Bank of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of September 30, 1994 with respect to the transactions described in Section I and as of November 11, 1994 with respect to the transactions described in Section II.

Summary of Facts and Representations

1. The parties or entities involved in the subject transactions are described as follows:

a. *The Bank* and its affiliates are direct or indirect wholly owned subsidiaries of Norwest Corporation, a bank holding company. The Bank is a national bank that is principally located in Minneapolis, Minnesota. It serves as trustee, directed trustee, investment manager or custodian to approximately 7,500 employee benefit plans. As custodian or directed trustee of a plan, the Bank has custody of a Client Plan's assets but it has no duty to review investments or make investment recommendations with respect to such assets. Instead, it must act only as directed by an authorized third party. When the Bank serves as a discretionary trustee or investment manager of a Client Plan, it generally invests, with the sponsor's approval, the assets of a Client Plan account in a series of CIFs it manages. The Bank may also provide investment advice to other fiduciaries who have investment discretion over a Client Plan's assets or manage an individual investment portfolio for a Client Plan.

As of December 31, 1992, the Bank had discretionary and nondiscretionary pension and welfare plan assets under management totaling $16.25 billion. Of this total, $3.2 billion of pension and welfare plan assets were held in 30 CIFs maintained by the Bank. Also as of December 31, 1992, the Bank had total discretionary assets under management for all trust clients, CIFs and investment advisory clients of approximately $22.35 billion and total trust assets (both discretionary and nondiscretionary) of approximately $90.75 billion.

With respect to the CIFs discussed herein, the Bank receives a single, Plan-level management fee negotiated with each Client Plan. The typical annualized fee range for the management fee is from .25 percent to 1.50 percent of invested Client Plan assets. The management fee is dependent upon such factors as asset class and negotiation. The Bank charges a minimum fee of $500 to $1,000 for small accounts but it charges no fee for Secondary Services (e.g., shareholder and custodial services) provided to a Client Plan.

b. *The Funds* individually constitute a separate investment portfolio or a series of portfolios having a separate prospectus and representing a distinct investment vehicle. In the aggregate, the Funds comprise a Delaware business trust currently registered as an open-end investment company under the '40 Act. The Funds include seventeen new portfolios ranging from money market funds to bond funds. In some situations, the shares of a Fund will be divided into different classes and charge different levels of expenses. Except for these differences, the shares of each Fund will represent the same proportionate interest in the assets of that Fund.

c. *The Board of Trustees (the Trustees)* manages the Funds, negotiates the investment advisory contracts and contracts for Secondary Services described below. A majority of the Trustees are independent of the Bank. The Trustees are elected by the shareholders of the Funds, except that in certain cases following a vacancy on the Board of Trustees, the Trustees can appoint a new Trustee without advance shareholder approval.

The Bank serves as the investment adviser to each Fund and receives investment advisory fees from the Funds. The Bank also serves as custodian, shareholder servicing agent and transfer agent to the Funds and is compensated by the Funds for the Secondary Services it renders to such Funds in these capacities.

d. *Forum Financial Services (FFS)*, a Delaware corporation which is wholly independent of the Bank, serves as distributor of the shares of the Funds and provides administrative and accounting services to the Funds. FFS is compensated and reimbursed by the Funds for certain expenses it incurs in performing these functions.

e. *The Bank Plans* consist of the Norwest Corporation Master Savings Trust (the Savings Trust) and the Norwest Corporation Master Pension Trust (the Pension Trust). As of June 30, 1994, the Savings Trust had total assets of $747,976,484 and two participating Bank Plans, the Norwest Corporation Savings-Investment Plan (the Norwest Savings Plan) and the Ford Bank Group, Inc. Savings Plan (the Ford Savings Plan). Also, as of June 30, 1994, the Norwest Savings Plan and the Ford Savings Plan had 32,259 participants and 616 participants, respectively.

The Pension Trust holds the assets of the Norwest Corporation Pension Plan (the Norwest Plan), the First Minnesota Employee's Pension Plan (the First Minnesota Plan) and the United Bank of Colorado, Inc. Retirement Income Plan (the United Bank Plan). As of June 30, 1994, the Pension Trust had total assets of $625,781,748. As of January 1, 1994, the Norwest Pension Plan had 27,725 participants, the First Minnesota Plan had 868 participants and the United Bank Plan had 3,437 participants.

f. *The Client Plans* include various pension, profit sharing, and stock bonus plans as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, Keogh Plans and IRAs for which the Bank presently serves (or will serve in the future) as a fiduciary (including those plans whose assets are currently invested in the Bank's CIFs).

g. *Wilmington Trust Company (WTC)* of Wilmington, Delaware, has been retained by the Bank to serve as the Second Fiduciary for the Bank Plans proposing to invest in the Funds. WTC, the primary subsidiary of Wilmington Trust Corporation, was established in 1903. WTC is wholly independent of the Bank and its affiliates.

As of December 31, 1993, WTC exercised discretionary investment authority over approximately $25.7 billion of fiduciary assets, including approximately $14.5 billion of assets of plans covered by the Act and non-qualified employee benefit plans. As of December 31, 1993, WTC also served as directed trustee, agent or custodian with respect to more than $2.5 billion of assets of plans covered by the Act and non-qualified employee benefit plans.

Description of the Transactions

2. The Bank maintains CIFs in which both Bank Plans and Client Plans have invested. To better serve the interests of these Plans, the Bank has decided, subject to approval of such Plans, to terminate twelve of its CIFs and transfer the assets currently invested in the CIFs to the corresponding Funds. The Bank notes that mutual funds are subject to supervision by the SEC, place greater emphasis on participant disclosure than do bank CIFs and provide an effective mechanism for disclosure. Moreover, the Bank represents that Plan sponsors and participants will be able to monitor more easily the performance of their investments in the Funds on a daily basis since information concerning investment performance of the Funds will be available in daily newspapers of general circulation.

Accordingly, the Bank requests retroactive exemptive relief with respect to the transfer of a Bank Plan's or a Client Plan's assets from certain terminating CIFs to the Funds. In addition, the Bank requests prospective exemptive relief for the receipt of fees from the Funds in connection with the investment of assets of Client Plans for which the Bank acts as a trustee, directed trustee, investment manager, or custodian, in shares of the Funds in instances where the Bank is an investment adviser, custodian, and shareholder servicing agent for the Funds.[2] The exemptive relief provided for the receipt of fees would cover Client Plans only, specifically those Plans for which the Bank exercises investment discretion as well as Client Plans where investment decisions are participant-directed by a Second Fiduciary.

In-Kind Transfers to the Funds by Bank Plans and Client Plans

3. During the weekends of September 30, 1994–October 2, 1994 and November 11–13, 1994, the Bank began transferring the assets of 12 terminated CIFs to the Funds. Specifically, during the weekend beginning September 30, 1994, the Bank transferred the assets of two CIFs, namely, "Stock Fund S" and "Bond Fund R" to the "Contrarian Stock Fund" and the "Total Return Bond Fund." Then, during the weekend of November 11–13, 1994, the Bank terminated the assets of the ten remaining CIFs. Once terminated, the assets from these CIFs were transferred to fifteen "Advantage Funds" portfolios which also comprise the Funds. Following the transfers, the Bank commenced offering shares in the Funds to the Bank Plans and the Client Plans.[3]

To the extent legally permissible, all transfers were effected in-kind. However, because certain CIFs had already invested in other mutual funds and transfers of those mutual fund investments to the Funds would violate federal securities laws applicable to the

[2] The Bank is not requesting an exemption for investments in the Funds by the Bank Plans. The Bank represents that Bank Plans may acquire or sell shares of the Funds pursuant to Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department expresses no opinion on whether any transactions with the Funds by the Bank Plans would be covered by PTE 77–3.

[3] At present, the Bank does not intend to terminate or convert two other CIFs, the "Short Term Investment Fund" and the "Stable Return Fund." Nevertheless, if at some future date the Bank were to decide to terminate and convert these two CIFs as well, the Bank represents that it will comply with the conditions of the final exemption and it will value the assets of both the CIFs and the transferee Funds in accordance with Rule 17a–7 of the '40 Act, as amended, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. (See Representation 3.)

Although the Bank does not currently anticipate that either of these CIFs will invest in the Funds, if such an investment were to be made, the fee arrangements will be structured to comply with Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977). In pertinent part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser of the investment company.

The Bank also represents that it will continue to comply with PTE 77–4 in connection with the crediting of fees paid to it or its affiliates by the Total Return Bond Fund and the Contrarian Stock Fund.

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mutual funds, the Bank decided to liquidate those investments on the date of the transfer. The Funds then purchased substantially the same securities held by the mutual funds in whose shares the CIFs had previously been invested.

The Bank represents that the transfers of assets were conducted in accordance with Rule 17a–7 of the '40 Act and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets so as to make the transactions ministerial and as nondiscretionary in nature as possible.[4] In this regard, the asset transfers to the funds occurred over one or more weekends selected by the Trustees using market values as of the close of business on the preceding Friday. Thus, the transfers of the securities were completed on Friday prior to the opening of business on Monday, the next business day. As of that day, a Bank Plan or a Client Plan whose assets were transferred from a CIF would hold shares in the corresponding Fund. The value of the Plan's assets in the Fund would be at the same aggregate value as the units held in the CIF as of the close of trading on the preceding Friday. The value of a CIF's portfolio was determined by FFS in coordination with the Bank. In this regard, it is represented that the current market price for specific types of CIF securities involved in the in-kind transfers was determined as follows:

a. If the security was a "reported security" as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or if there were no reported transactions in the Consolidated System that day, the average of the highest independent bid and the lowest independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business; or

b. If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange; or if there were no reported transactions on such exchange that day, the average of the highest independent bid and lowest independent offer on such exchange as of the close of business; or

c. If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business; or

d. For all other securities (i.e., securities not listed on an exchange and for which no bid and ask quotations are readily available), valuation determined by (1) averaging prices obtained from at least three independent matrix pricing services [5] or (2) averaging bid and ask quotations as of the close of trading on the Friday preceding the in-kind transfers from three independent brokers.

In essence, the Bank represents that the transfer transactions were ministerial, performed in accordance with procedures prescribed by Rule 17a–7 and previously approved by the disinterested members of the Fund's Board of Trustees. The Bank also represents that the pricing of the securities was accomplished by reference to independent sources such that the transaction would result in an affected Bank Plan or Client Plan holding mutual fund shares of equal aggregate value to the previously-held CIF units. No sales commissions or redemption fees were or would be paid by a Bank Plan or a Client Plan in connection with investments of shares in the Funds. In addition, no fees for distribution expenses pursuant to Rule 12b–1 under the '40 Act were or would be paid to FFS or the Bank by a Bank Plan or a Client Plan with respect to transactions involving the Funds. Any fees charged by the independent brokers for bid and ask prices were the responsibility of the Bank. Further, the Bank represents that neither it nor its affiliates, including any officer or director of the Bank, had purchased or would purchase from or sell to any Bank Plan or Client Plan shares of any of the Funds.[6]

4. As stated above, prior to investing a Plan's assets in the Funds, the Bank was required to obtain the affirmative written approval of an independent Second Fiduciary who is typically, in the case of a Client Plan, the named fiduciary, trustee or sponsoring employer. In the case of a Bank Plan, the Bank retained the services of WTC to approve the in-kind transfer of assets of such Plan to the Funds.

The Bank provided advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds to the Second Fiduciary of a Bank or Client Plan. In this regard, the Bank provided the Second Fiduciary with a current prospectus for each portfolio of the Funds in which a Bank or Client Plan is investing. The disclosure statement described the fees for investment advisory or similar services to be credited back to the Client Plan, including any fees for Secondary Services and all other fees to be charged to or paid by a Bank Plan, a Client Plan or by the Funds to the Bank. Such disclosure included the nature and extent of any differential between the rates of fees. The disclosure statement also explained why the Bank believed that the investment in the Funds by a Bank Plan or a Client Plan was appropriate. As applicable, the disclosure statement further described any limitations on the Bank regarding which Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[7] Upon request of the Second Fiduciary, the Bank is required to provide a copy of the proposed exemption and/or a copy of the final exemption, if granted.

On the basis of information noted above, the Second Fiduciary could authorize, in writing, that the Bank transfer a Bank Plan's or a Client Plan's CIF assets to a Fund in exchange for shares of the Funds and invest the Plan's assets in corresponding portfolios of the Funds. For Client Plans, the written authorization also allowed the Bank to receive fees from the Funds and to purchase additional shares of the Funds with the fees credited back to the Client Plan by the Bank.

5. The Bank anticipated that the transfer of assets from the CIFs to the Funds would be accomplished in stages as sufficient numbers of approvals were received from Second Fiduciaries.[8] If the Second Fiduciary had not provided the Bank with approval of investment in the Funds by the time the last transfer of assets from a terminating CIF to a Fund was to occur, a pro rata portion of the assets of the terminating CIF was distributed in cash to the trust account of a Bank Plan or a Client Plan before the final liquidation of the CIF took place.

6. Following each in-kind transfer, the Bank provided each affected Plan with a written confirmation statement. This statement set forth the number of CIF units held by the Plan immediately before the conversion, the related per unit value and the total dollar amount of the CIF units. The confirmation statement also included the number of shares in the Funds that were held by the Bank Plan or the Client Plan following the conversion, the related per share net asset value and the total dollar amount of the shares. The confirmation statement further disclosed (a) the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4); (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities.

For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will send by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information: (a) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act; (b) the price of each such security involved in the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities. In addition, for all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will send by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information: (a) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (b) the number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

Representations of the Second Fiduciary for the Bank Plans Regarding the In-Kind Transfers

7. As stated above, the Bank retained WTC as the Second Fiduciary to oversee the in-kind transfers of CIF assets to the Funds as such transactions affect the Bank Plans. In such capacity, WTC represented that it understood and would accept the duties, responsibilities and liabilities in acting as a fiduciary for the Bank Plans, including those imposed on fiduciaries under the Act.

WTC stated that it considered the effect of the in-kind transfer transactions on the Bank Plans and noted that this investment opportunity was being offered to Client Plans on the same terms and conditions as the Bank Plans. Based on the foregoing, WTC believed that the terms of the in-kind transfers were fair to participants of the Bank Plans and comparable to and no less favorable than the terms that would have been reached among unrelated third parties. Accordingly, WTC represented that the in-kind transfer transactions were in the best interest of the Bank Plans and their participants and beneficiaries for the following reasons: (a) The impact of the in-kind transfers on the Bank Plans was de minimus because the Funds substantially replicate the CIFs in terms of the investment policies and objectives; (b) the Funds would probably continue to experience relative performance similar in nature to the CIFs given the continuity of investment objectives and policies, management oversight and portfolio management personnel; (c) the in-kind transfers would not adversely affect the cash flows, liquidity or investment diversification of the Bank Plans; and (d) the benefits to be derived by the Bank Plans and their participants by investing in the Funds (e.g., broader distribution permitted of the Funds to different types of plans impacting positively on asset size of the Funds and resulting in cost savings to shareholders) would more than offset the impact of minimum additional expenses that may be borne by the Bank Plans.

In opining on the appropriateness of the in-kind transfers, WTC represented that it conducted an overall review of the Bank Plans, including the Bank Plan documents. WTC stated that it also examined the total investment portfolios of the Bank Plans to ascertain whether or not the Bank Plans were in compliance with their investment objectives and policies. Further, WTC stated that it examined the liquidity requirements of the Bank Plans and reviewed the concentration of the Bank Plans' assets invested in the CIFs as well as the portion of the CIFs comprised of the assets of the Bank Plans. Finally, WTC stated that it reviewed the diversification provided by the investment portfolios of the Bank Plans. Based on its review and analysis of the foregoing, WTC represented that the in-kind transfer transactions would not adversely affect the total investment portfolios of the Bank Plans, compliance by such Plans with their stated investment objectives and policies, or the cash flows, liquidity or diversification requirements of the Bank Plans.

As Second Fiduciary, WTC represented that it was provided by the Bank with the confirmation statements described in Representation 6. In addition, WTC stated that it supplemented its findings following review of the post-transfer account information to confirm whether or not the in-kind transfer transaction had resulted in the Bank Plans' receipt of shares in the Funds equal in value to the Plans' pro rata share of assets of the CIFs on the conversion date. WTC further represented that it would take such action as it deemed necessary to safeguard the interests of the Bank Plans in the event the confirmation statements did not confirm the foregoing.

Other Opportunities Available for a Client Plan to Invest in the Funds

8. Besides the one-time, in-kind transfer of assets from the CIFs to a comparable Fund, a Client Plan's assets may be invested in the Funds in three other ways. First, a Client Plan may purchase shares in the Funds directly through the Bank. Second, the Bank may transfer a Client Plan's assets from one Fund to another Fund. Third, the Bank may effect a daily automated sweep of uninvested cash of a Client Plan into one or more Funds designated by the Bank.[9] However, all investments

[4] In pertinent part, Rule 17a–7 mandates that such transactions be effected at the "independent current market price" for such security, involve no brokerage commissions or other remuneration, and comply with valuation procedures adopted by the board of directors of the investment company to ensure that all requirements of the Rule are satisfied.

[5] According to the applicant, the SEC has permitted securities not listed on an exchange and for which no bid and ask quotations are readily available to be valued by a matrix pricing methodology. The applicant explains that matrix pricing methodology is intended to approximate what the actual market values of securities would be if an active secondary market for those securities exists and takes into account a variety of factors such as the most recent market activity with respect to a subject security, liquidity, yield, rating, type of industry, coupon rate, maturity and economic conditions. If a matrix pricing service is used, the applicant explains that the pricing entity will not be affiliated with the Bank or the Funds.

[6] The Department notes that this representation is not intended to limit the ability of Client Plans to deal with the Bank's account representatives on matters involving the funds and is not meant to prohibit purchases or sales of shares of the Funds that are placed through personnel of the Bank when such personnel are acting as agents for the Client Plans.

[7] Section II(d) of PTE 77–4 requires, among other things, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

[8] According to the applicant, the conversion of the CIFs into the Funds could be accomplished in stages for reasons of efficiency and economy. Given the large number of Plans that had interests in the CIFs, the applicant anticipated that it would take an extended period of time to gather all of the necessary consents from Second Fiduciaries. If consent was given promptly, the applicant saw no reason to delay a Plan's investing in the Funds since a Second Fiduciary would desire the timely investment of the Plan's assets.

Further, the applicant did not believe a staggered conversion would operate to the detriment of a Plan. This was because all asset transfers would be effected at fair market value and proratably among the Plans. Therefore, Plans would have the same asset value immediately before and after the conversion.

[9] The Bank represents that shares of the Funds may also be purchased through CIFs that are not being terminated particularly if the relevant CIF seeks to invest in cash equivalents such as those being held in money market funds. The Bank

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for Client Plans in the Funds must be made pursuant to the Second Fiduciary's written authorization.

With respect to sweep services, where the Bank has investment discretion over a Client Plan, it will not charge separately for the provision of sweep services for uninvested cash balances. Instead, the Bank will charge a single, Plan-level fee, which covers both the sweep service and the management of assets in the sweep vehicle (generally, a short-term investment fund). Such single fee is determined as a percentage of the assets so invested. If the Bank does not have investment discretion with respect to a Client Plan's assets invested in the Funds, it may charge a separate fee for sweep services.[10]

Receipt of Fees by Bank

9. To avoid charging its existing Client Plans any additional Fund-level fees in connection with investment in the Funds and to accommodate the specific needs of certain new Client Plans, the Bank is implementing a fee structure under which, depending on each Client Plan's provisions and the fee arrangements negotiated with the Second Fiduciary, the Plan will not be required to bear any part of the investment advisory fees charged to the Funds by the Bank.[11] This fee structure is an alternative to the crediting mechanisms provided under PTE 77–4, which is also available if (a) negotiated by the Second Fiduciary (provided the conditions contained in PTE 77–4 are met) or (b) investments in the Total Return Bond Fund and Contrarian Stock Fund are involved.[12]

For providing custody and shareholder services to the Funds, the Bank is retaining fees for Secondary Services.[13] With respect to fees for Secondary Services, the Funds are paying the Bank monthly transfer agency fees ranging from .10 percent to .30 percent of the daily net asset value of the Funds.[14] In some instances, fees for Secondary Services may be determined on a per item or a per account basis subject to a cap based on the Funds' daily net asset value.

10. Under the fee structure, the Bank is charging its previously agreed upon Plan-level fees to each Client Plan for services rendered to such Plans as a trustee, directed trustee, investment manager or custodian.[15] All such fees are billed on a quarterly basis and may be paid by the Client Plan sponsor rather than the Client Plan.

The Bank is entitled to receive Fund-level investment advisory fees at a different rate for each Fund that is based on the average net assets for the respective Fund. The investment advisory fees range from .10 percent to .85 percent for the Advantage Funds. With respect to the Ready Cash Investment Fund, the investment advisory fees are tiered. For example, Client Plans investing in the Ready Cash Investment Fund will pay the Bank .40 percent for the first $300 million of average daily net assets of the Fund, .36 percent of the next $400 million and .32 percent for any additional average daily net assets. (At present, the Bank has agreed to waive any fees in excess of .30 percent of average daily net assets until further notice.)

The investment advisory agreements and any changes in the fees will be approved by a majority of the independent members of the Trust's Board of Trustees. The investment advisory fees paid by each of the Funds will be accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees have accrued.

11. For most Client Plans,[16] at the beginning of each month and on the same business day as the receipt of such fees by the Bank, the Bank will credit to each Plan such Plan's pro rata share of all investment advisory fees charged by the Bank to the Funds[17] (including investment advisory fees paid by the Bank to third party subadvisers[18]) pursuant to a credit procedure (the Credit Method). The Bank represents that the credited fees will be paid to the Client Plan in cash, except that the credit may be effectuated through the purchase of additional shares of the Funds if the Client Plan makes an election. The purchase of additional shares will occur in lieu of the cash credit on the same day that such credit would have been paid to the Client Plan. Again, all decisions regarding the use of the Credit Method will be made by the Second Fiduciary at the time such fiduciary provides its original written approval of the investment of a Plan's assets in the Funds.

12. The Bank notes that Section II(c) of PTE 77–4 (*id.* at 18733) prohibits the payment of double fees to the fiduciary/investment adviser, by requiring that the plan not pay the investment adviser a plan-level investment management or advisory-type fee with respect to plan assets that are invested in mutual fund shares. The Bank also explains that the condition against duplicate fees can be complied with either by excluding the affected plan assets in determining the plan-level investment management/advisory fee (the Offset Method) or by subtracting a credit representing the plan's pro rata share of the mutual fund-level advisory fee from the plan-level fee (the Subtraction Method).

The Bank represents that the Credit Method satisfies the objective of the double fee prohibition by netting out any additional fees generated for the Bank by investment in the Funds. However, instead of reducing the fees charged at the Plan-level, as is done by the Offset and Subtraction Methods, the Bank states that the Credit Method assesses full fees at both levels and then credits back the Fund-level fees (with the exception of fees for Secondary Services) directly to the Client Plan. Thus, on an ongoing basis, the Bank indicates that Client Plans would pay only the fees previously agreed upon between the Bank and the Second Fiduciary for investment management services without regard to the conversions.

The Bank explains that the Subtraction Method would accomplish essentially the same economic result as the Credit Method. However, under the Subtraction Method, the Bank notes that its fees from the Funds would be deducted from the amounts billed to the Client Plan by the Bank for services, rather than being credited directly to the Client Plan. The Bank states that the Credit Method will restore a Client Plan's investment in the Funds (or overall investment position if it receives the credit in cash) to the level it would have been if the Client Plan had not been charged the Bank's Fund-level fees. The Bank represents that the Credit Method will allow the Bank to maintain its fiduciary fee schedules for its services to Client Plans which is more efficient and less costly than a system employing credits against fiduciary fees. Finally, the Bank explains that use of the Credit Method will permit the Client Plans to retain their fiduciary fee structures despite the change to a new investment vehicle.

Authorization Requirements for Client Plans

13. As stated in Representation 4, the transfer of a Bank Plan's or a Client Plan's assets in exchange for shares of the Funds must be preceded by the prior written authorization of the Second Fiduciary. The Second Fiduciary must also approve the fees to be paid by the Funds to the Bank and, in the case of a Client Plan, the purchase of additional shares of such Funds by the Client Plan with fees credited to the Client Plan by the Bank. In the case of the Bank Plans, the Bank has represented that it intends to use PTE 77–3 with respect to the purchase or sale of shares of the Funds by the Bank Plans and for the receipt of compensation by the Bank.[19] Accordingly, the following authorization requirements would apply to Client Plans only.

For a Client Plan, the authorization is terminable at will by the Second Fiduciary without penalty to the Client Plan upon receipt by the Bank of written notice of termination. A Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form will be supplied to the Second Fiduciary. In general, the Termination Form will be furnished by the Bank to the Second Fiduciary at least once every twelve months or whenever there are increases in the contractual rates of fees due from the Funds to the Bank, for Secondary Services. (See Representation 14.) Termination will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan but not more than one business day following receipt by the Bank from the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that, if due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will have one additional business day to complete such sale.

The Termination Form will instruct the Second Fiduciary of a Client Plan that the authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by the Bank of written notice from the Second Fiduciary, and that failure to return the form will result in the continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

14. In the event of an increase in the contractual rate of any fees paid by the Funds to the Bank regarding investment advisory services or fees for similar services that had been authorized by the Second Fiduciary, the Bank will provide written notice to the Second Fiduciary in a prospectus for the Funds or otherwise, of any increases in the rate of such fees even though these fees will be rebated by the Bank to the Client Plans. Although the notice will explain the nature and amount of the fee increase of the affected Fund or Funds, it will not be accompanied by the Termination Form. This is because all increases in investment advisory or similar fees will be subject to the annual reauthorizations described in Representation 16.

15. In the event of an addition of a Secondary Service provided by the Bank to the Funds for which a fee is charged or an increase in the contractual rate of any fee due from the Funds to the Bank for any Secondary Service that results from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan, the Bank will provide, to the Second Fiduciary, at least 30 days in advance of the implementation of such increase, written notice explaining the nature and amount of the additional service for which a fee is charged or fee increased for the affected Fund.[20] Under these circumstances, the notices will be accompanied by the Termination Form with instructions on the use of such form. The instructions will expressly provide an election to the Second Fiduciary to terminate at will any prior authorizations without penalty to the Client Plan and stipulate that failure to return the form will result in the continuation of all authorizations

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explains that CIFs that are not being terminated may invest in shares of mutual funds with similar objectives or in money market funds. The Bank further explains that the authorizations of Second Fiduciaries will be contained in adoption agreements for these CIFs and purchases of shares of the Funds for the CIFs will be effected in accordance with PTE 77–4. The Department, however, offers no opinion on whether PTE 77–4 would apply to investments in the Funds by the non-terminating CIFs.

[10] The Department in a letter, dated August 1, 1986, to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, addressed the application of section 408(b)(2) of the Act to arrangements involving "sweep services." In that letter, the Department set forth several examples to illustrate various circumstances under which violations of section 406(b) of the Act would arise with respect to such arrangements. Conversely, the letter provided that, if a bank provides "sweep" services without the receipt of additional compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services), then the provision of "sweep" services by the bank would not, in itself, constitute a violation of section 406(b) of the Act. Moreover, including "sweep" services under a single fee arrangement for investment management services which is calculated as a percentage of the market value of the total assets under management would not, in itself, constitute an act described in section 406(b)(1), because the bank would not be exercising its fiduciary authority or control to cause a plan to pay an additional fee.

In addition, the letter also discusses the applicability of the statutory exemptions under section 408(b)(6) of the Act (fees for "ancillary services") and under section 408(b)(8) of the Act (investments in collective trust funds maintained by such bank) to such "sweep" service arrangements.

[11] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Client Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[12] PTE 77–4 conditions exemptive relief on a plan not paying an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act. Section II(c) states further that this condition does not preclude the payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[13] As stated above, the term "Secondary Service" does not include brokerage services. In this regard, the applicant anticipates that neither it nor its affiliates will provide brokerage services to the Funds.

[14] The Bank represents that it will continue its practice of waiving secondary fees for the Contrarian Stock Fund and the Total Return Bond Fund. As mentioned previously, the Bank states that PTE 77–4 will apply to transactions involving these Funds.

[15] The applicant represents that all fees paid by the Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act. The Department notes that to the extent there are prohibited transactions under the Act as a result of any services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2) and the regulations thereunder, no relief is being proposed herein for such transactions.

[16] As stated in Representation 9, a Second Fiduciary of a Client Plan who is not interested in using the rebate mechanism discussed in this proposed exemption will invest in the Funds pursuant to PTE 77–4.

[17] As stated above, investments in the Total Return Bond Fund and the Contrarian Stock Fund will be made in conformance with PTE 77–4 and not in accordance with the rebate mechanism described herein.

[18] The Bank notes that if the fee it credits to a Client Plan already includes a third party sub-adviser's fee, no additional credits will be required with respect to the portion of such fee actually paid by the Bank to the sub-adviser.

[19] The Department is not expressing an opinion herein on the applicability of PTE 77–3 with respect to ongoing investments by the Bank Plans in shares of the Funds or to the receipt of fees from the Funds by the Bank.

[20] An increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Client Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstituting the fee at an amount greater than previously disclosed would necessitate the Bank providing notice of the fee increase and a Termination Form.

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previously given to the Second Fiduciary. Termination of the authorization by a Client Plan to invest in the Funds will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan, but not later than one business day following receipt by the Bank of the Termination Form or any other written notice of termination. If, due to circumstances beyond the control of the Bank the sale cannot be executed within one business day, the Bank will have one additional day to complete such sale.

16. The Second Fiduciary will be supplied with a Termination Form at least once each year beginning with the calendar year that begins after the date of the notice granting this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to the Bank or changes in other matters in connection with the services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in the event of an addition of a Secondary Service for which a fee is charged or an increase in any fees for Secondary Services paid by the Funds to the Bank, then such Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of an addition of a Secondary Service for which a fee is charged or any increase in any fees for Secondary Services.

Audit Requirements

17. The Bank is responsible for establishing and maintaining a system of internal accounting controls for the crediting of the fees. In this regard, the Bank has retained the services of KPMG Peat Marwick, an independent accounting firm, to audit annually the crediting of fees to Client Plans under this program. Such audits will provide independent verification of the proper crediting to the Client Plans. Information regarding fees may be used in the preparation of required financial disclosure reports of the Funds for the benefit of the Client Plans.

By letter dated November 11, 1993, the Auditor has described the procedures that will be utilized in the annual audit of the Credit Method program. Specifically, in performing its audit, the Auditor will: (a) Review and test compliance with the specific operational controls and procedures established by the Bank for making credits; (b) verify, on a test basis, the daily credit factors transmitted to the Bank (or its affiliates) by the Funds; (c) verify, on a test basis, the proper assignment of credit identification fields to the Client Plans; (d) verify, on a test basis, the credits paid in total to the sum of all credits paid to each Client Plan; (e) recompute, on a test basis, the amount of the credit determined for selected Client Plans and verify that the proper credit was made to the proper Client Plan. The Bank and FFS will be the sources of the factual information upon which the Auditor will rely.

In the event that either the internal audit by the Bank or the independent audit by the Auditor identifies an error made in the crediting of fees to the Client Plans, the Bank will correct the error. With respect to any shortfall in credited fees to a Client Plan involving cash credits, the Bank will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by the Bank for the period involved. With respect to any shortfall in credited fees involving a Client Plan where the Second Fiduciary's prior election was to have credited fees invested in shares of a particular Fund, the Bank will make a cash payment to the Client Plan equal to the amount of the error plus interest based on the greater of either (a) the money market rate offered by the Bank for the period involved or (b) the total rate of return for shares of the Funds, including dividends, that would have been acquired during such period. Any excess credits made to a Client Plan will be corrected by an appropriate deduction and reallocation of cash during the next payment period to reflect accurately the amount of total credits due to the Plan for the period involved.

Ongoing Disclosures to Client Plans

18. On an annual basis, the Bank will provide the Second Fiduciary of a Client Plan with a copy of the current prospectus for the Funds and upon such fiduciary's request, a copy of the Statement of Additional Information which contains a description of all fees paid by the funds to the Bank. In addition, the Bank will provide the Second Fiduciary with a copy of a financial disclosure report prepared by the Bank which contains information about the portfolios of the Funds and includes the Auditor's findings within 60 days of the preparation of the report. Further, the Bank will respond to oral or written responses to inquiries of the Second Fiduciary as they may arise.

19. In summary, the Bank represents that the transactions described herein will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Funds will provide the Bank Plans and Client Plans with a more effective investment vehicle than the CIFs maintained by the Bank without any increase in investment advisory or similar fees paid to the Bank.

(b) With respect to the transfer of a Bank Plan's or a Client Plan's CIF assets into a Fund in exchange for Fund shares, a Second Fiduciary has or will authorize in writing, such transfer prior to the transaction only after full written disclosure of information concerning the Fund.

(c) Each Bank Plan or Client Plan has or will receive shares of the Funds in connection with the transfer of assets of a terminating CIF which have a total net asset value that is equal to the value of such Plan's pro rata share of the CIF assets on the date of the transfer as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the Funds which comply with Rule 17a-7 of the '40 Act, as amended, and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets.

(d) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will send by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information: (1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) of the '40 Act; (2) the price of each such security involved in the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(e) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will sends by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information: (1) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (2) the number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(f) The price that has been or will be paid or received by a Bank Plan or a Client Plan for shares of the Funds is the net asset value per share at the time of the transaction and is the same price for the shares which was or would have been paid or received by any other investor at that time.

(g) No sales commissions or redemption fees have or will be paid by a Bank Plan or a Client Plan in connection with the purchase of shares of the Funds.

(h) The Bank has not and will not receive any 12b-1 fees in connection with the transactions.

(i) Any authorizations made by a Client Plan regarding investments in a Funds and fees paid to the Bank (including increases in the contractual rates of fees for Secondary Services that are retained by the Bank) will be terminable at will by the Client Plan, without penalty to the Client Plan and will be effected within one business day following receipt by the Bank, from the Second Fiduciary, of the Termination Form or any other written notice of termination, unless circumstances beyond the control of the Bank delay execution for no more than one additional business day.

(j) The Second Fiduciary has received or will receive written notice accompanied by the Termination Form with instructions on the use of the form at least 30 days in advance of the implementation of any increase in the rate of any fees for Secondary Services that the Bank provides to the Funds.

(k) All dealings by or between the Client Plans, the Funds and the Bank will be on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons who have investments in the terminating CIFs and from whom approval is being sought for the transfer of Plan assets to the Funds. In this regard, interested persons will include WTC, the Second Fiduciary of the Bank Plans; active participants in the Bank Plans; and Second Fiduciaries of the Client Plans. Notice will be provided to each Second Fiduciary by first class mail and to active particpants in the Bank Plans by posting at major job sites. Such notice will be given to interested persons within 14 days following the publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and give interested persons the right to comment on and/or to request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within 44 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Motors Hourly-Rate Employees Pension Plan; General Motors Retirement Program for Salaried Employees; Saturn Individual Retirement Plan for Represented Team Members; and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (Collectively, the Plans) Located in New York, New York

[Application Nos. D–09694 thru D–09697]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the stock index "exchange of futures for physicals" (EFP) transaction between the General Motors Retirement Program for Salaried Employees (the Salaried Plan) and the General Motors Hourly-Rate Employees Pension Plan, Saturn Individual Retirement Plan for Represented Team Members, and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (together, the Hourly Plan) which occurred on November 30, 1993 in the amount of approximately $730 million, provided the following conditions were met:

(a) The terms of the EFP transaction were at least as favorable to the Plans as the terms which would have been available in an arm's-length EFP transaction involving unrelated parties;

(b) Each Plan received a price in the EFP transaction which was equal to the midpoint between the highest independent bid and lowest independent offer for buying and selling the futures involved on November 30, 1993, based on EFP quotations obtained from at least six independent broker-dealers capable of engaging in such an EFP at the time of the transaction;

(c) Wells Fargo Institutional Trust Company, N.A. (WFITC), as an independent fiduciary for the Salaried Plan, determined that the EFP transaction was prudent and in the best interests of the Salaried Plan and its participants and beneficiaries at the time of the transaction;

(d) WFITC monitored the EFP transaction on behalf of the Salaried Plan and took whatever action was necessary to safeguard the interests of the Salaried Plan at the time of the transaction;

(e) General Motors Investment Management Corporation (GMIMCo), as the fiduciary for the Hourly Plan, determined that the EFP transaction was prudent and in the best interests of the Hourly Plan and its participants and beneficiaries at the time of the transaction; and

(f) GMIMCo monitored the EFP transaction on behalf of the Hourly Plan and took whatever action was necessary to safeguard the interests of the Hourly Plan at the time of the transaction.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective November 30, 1993.

Summary of Facts and Representations

1. The Plans were established by General Motors Corporation (GMC) to provide retirement benefits for eligible hourly and salaried employees of GMC and its affiliates. The aggregate fair market value of the assets of the Plans was approximately $40.5 billion as of September 30, 1993. The Plans covered a total of approximately 831,532 active and retired participants or their beneficiaries as of October 1, 1993.

The assets of the Plans involved in the transaction described herein were held by: (i) Mellon Bank, N.A., acting as directed master trustee and custodian; (ii) Bankers Trust Company, acting as directed master trustee and custodian; (iii) WFITC, acting as custodian for assets its manages; and (iv) Chemical Bank, acting as custodian for certain assets managed by other investment managers.

2. The Pension Investment Committee of GMC (the PIC) is a committee established by the Finance Committee of the Board of Directors of GMC (the Finance Committee). The Finance Committee is the "named fiduciary" for the Plans. Certain fiduciary responsibilities have been delegated by the Finance Committee to the PIC, including the responsibility for allocating funds among asset classes within broad investment guidelines, recommending changes in broad investment guidelines to the Finance Committee, and monitoring the investment performance of the assets of the Plans. The PIC is comprised of officers of GMC and its affiliates.

The PIC carries out its in-house investment oversight responsibility through GMIMCo, a separately-

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incorporated, wholly-owned subsidiary of GMC. Certain members of the PIC serve on the Board of Directors of GMIMCo. All GMIMCo activities are subject to the general direction of the PIC.

The Finance Committee, as the "named fiduciary" for the Plans, reviews the actions of the PIC to evaluate performance and to assure that the Finance Committee's delegation of authority continues to be prudent.

3. On November 30, 1993, the Plans entered into an EFP with each other in the amount of approximately $730 million. An EFP is an integrated transaction where one party buys the underlying (or "physical") commodity/security and simultaneously sells a related futures contract while the other party sells the underlying commodity/security and simultaneously buys a futures contract.[21] However, unlike an exchange-traded futures contract, an EFP is privately negotiated and is not required to be competitively executed in an exchange trading pit.[22] The parties to an EFP typically negotiate a private contract outside the trading pit covering the terms of the exchange of the underlying commodity/security and the futures position. The price, quantity and characteristics of the underlying commodity/security that is bought or sold will affect the final price and quantity of the futures position exchanged.

In a typical stock-index EFP, a customer (such as an employee benefit plan) will sell a portfolio of common stocks which generally replicates the Standard & Poors 500 Composite Stock Price Index (the S&P 500 Index). In exchange for the stocks, the customer will receive cash in an amount equal to the current value of the stock portfolio and a corresponding long S&P 500 futures position.[23] To effect the transaction, the customer will contact its various broker-dealer/futures commission merchants ("broker-dealers"), and will offer the stocks in return for (1) a cash payment equal to the market price of the stocks at the close of the New York equities market (e.g. the New York Stock Exchange or American Stock Exchange) on that date and (2) a corresponding long S&P 500 futures position established through that broker-dealer and priced at a "basis" between the index and the futures such that the cash plus futures is roughly equivalent in both value and market exposure to the stocks.[24]

However, the applicant states that two customers may negotiate such an EFP transaction between themselves and use the broker-dealer merely to facilitate the trade's execution by reporting and documenting the stock and futures trades, as required by exchange rules.

4. On November 30, 1993, the Hourly Plan sold approximately $730 million of stock and simultaneously purchased approximately $730 million of S&P 500 futures contracts in an EFP transaction with the Salaried Plan.[25] Thus, the Salaried Plan purchased approximately $730 million of stocks and sold approximately $730 million of S&P 500 futures in the transaction. WFITC acted as an independent fiduciary for the Salaried Plan in the EFP transaction (as discussed further below).

The Hourly Plan

5. With respect to the Hourly Plan, the applicant states that in November 1993 the Plan needed to raise cash for upcoming benefit payments to the participants and beneficiaries. In addition, the PIC had modified the Hourly Plan's asset allocation strategy by increasing the allocation for investments in asset classes other than the Canadian and U.S. large capitalization equity securities.

GMIMCo was responsible for implementing the PIC's asset allocation strategy in the most cost-effective manner. GMIMCo analyzed the Hourly Plan's equity holdings, futures positions, overall asset mix, allocation of assets among equity investment managers, and upcoming liquidity needs. Based on this review, GMIMCo determined that approximately $730 million of equity holdings, managed by twelve equity managers, eleven of whom were external investment advisers, should be liquidated to raise cash to meet benefit payments and to fund investments in other asset classes to meet the PIC's asset allocation guidelines.

GMIMCo also determined that, simultaneous with the sale of stocks, the Hourly Plan should purchase approximately $730 million of S&P 500 futures contracts so that the designated funds would continue to be exposed to the equity markets until the cash was either used to pay benefits or placed with managers in other investment areas. The PIC had previously authorized the use of futures to facilitate the Hourly Plan's asset allocation objectives.

6. GMIMCo evaluated the following alternatives for selling stocks and purchasing equity futures for the Hourly Plan:

(a) Direct each of the twelve investment managers to independently liquidate securities in the open market and GMIMCo would independently purchase futures;

(b) Direct each of the twelve investment managers to transfer stocks to a central account and GMIMCo would sell the stocks via portfolio trades in the open market with simultaneous futures purchases;

(c) Engage in an EFP with a broker-dealer; or

(d) Engage in an EFP with the Salaried Plan.

7. GMIMCo states that separate open market trades through the investment managers under alternative (a) would have involved the greatest risks and potentially the highest costs. Under this alternative, as each manager sold stocks, the manager would have advised GMIMCo of its actions and GMIMCo would have then purchased futures to maintain the overall equity exposure. Since each individual stock could have moved in a different direction and by a different amount relative to the broader equity index (i.e. "tracking error"),[26] the Hourly Plan could have incurred significant costs. Since the futures purchases would not have been simultaneous with the stock sales, the Hourly Plan would have also experienced "timing mismatches" which could have resulted in significant costs. GMIMCo states that tracking error and timing mismatches could have resulted in costs in excess of $4 million and concluded that there was no incentive to undertake these risks when lower cost alternatives were available.

In addition, under alternative (a), the market impact cost associated with the stock transactions could have been approximately $7 million. GMIMCo calculated this cost by considering such factors as: (i) The managers in the aggregate held over 1500 stocks, and over 600 were stocks common to more than one manager, which would have caused the managers to compete with each other in selling the stocks; (ii) for over 50% of the individual stocks in the portfolio, the amount of the stock held represented more than 10% of the average daily trading volume for such stock; (iii) for about 25% of the individual stocks in the portfolio, the amount of the stock held exceeded 50% of the average daily trading volume for such stock; and (iv) for over 10% of the individual stocks in the portfolio, the amount of the stock held represented more than one day's trading volume for such stock. The market impact costs associated with the futures transactions, which would have represented about 10% of the daily volume on the CME, were estimated to be at least $1 million.

Under alternative (a), GMIMCo estimated that the commission costs at approximately $.06/share on 21.1 million shares would have been approximately $1.3 million. With twelve managers with over 1500 stock names, GMIMCo estimated that the master trustee recordkeeping fees would have been approximately $30,000.

In total, GMIMCo estimated that alternative (a) would have cost the Hourly Plan approximately $13 million.

8. With respect to separate open market trades through GMIMCo under alternative (b), GMIMCo states that such transactions would have resulted in lower costs resulting from tracking error (approximately $2 million). In addition, the timing mismatches would have been eliminated because GMIMCo could have simultaneously executed both the sale of the stocks and the purchase of the futures. GMIMCo states that alternative (b) would have resulted in lower market impact cost (approximately $3.5 million) since the time period for execution would have been more effectively controlled and one manager would not be selling in competition with another manager. However, the market impact cost for the futures would still have been approximately $1 million.

GMIMCo states that the commission costs on equity portfolio trades versus individual stock trades would have been lower (approximately $.5 million) under alternative (b), but master trustee fees would have been higher at about $50,000.

In total, GMIMCo estimated that alternative (b) would have cost the Hourly Plan approximately $7 million.

9. With respect to an EFP with a broker-dealer under alternative (c), GMIMCo states that such a transaction would have eliminated the timing mismatch risk and incorporated the market impact, tracking error and commission costs into the pricing of the EFP quoted by the broker-dealer. Therefore, on November 30, 1993, the date of the proposed EFP, GMIMCo sought EFP bids and offers from eight broker-dealers—First Boston, Goldman Sachs, J.P. Morgan, Lehman Bros., Merrill Lynch, Morgan Stanley, Paine Webber, and Salomon Brothers. GMIMCo requested bid and offer quotes from each broker-dealer on the proposed transaction. GMIMCo provided the broker-dealers with the characteristics of the portfolio, for example, how many stocks traded on exchanges such as the NYSE and AMEX and on the NASDAQ. The broker-dealers were advised that the portfolio was valued at approximately $730 million, based on the prior day's closing value, and involved approximately 21,147,800 shares. The broker-dealers also were advised regarding the tracking error of the portfolio versus the S&P 500 Index. The broker-dealers were provided with the general liquidity characteristics of the portfolio, including the fact that: (i) For over 50% of the individual stocks in the portfolio, the amount of stock held represented more than 10% of the average daily trading volume for such stock, (ii) for about 25% of the individual stocks in the portfolio, the amount of the stock held exceeded 50% of the average daily trading volume for such stock, and (iii) for over 10% of the individual stocks in the portfolio, the amount of the stock held represented more than one day's trading volume for such stock.

Based on these characteristics, two broker-dealers declined to participate. The remaining six broker-dealers provided the following EFP quotations, with a bid to buy the futures and an offer to sell the futures expressed as a discount or premium on the S&P 500 Index closing price on the date of the transaction, as noted in the table below. In each case, the broker-dealers agreed to buy or sell the stocks involved at the S&P 500 Index closing price as of the date of the transaction.

Broker-dealer (B–D)	B–D's bid to buy futures	EFP quotes	B–D's offer to sell futures
A	−2.37		1.86
B	−2.39		3.29
C	−3.15		3.85
D	−3.95		4.55
E	−5.50		5.90
F	−5.37		6.07
Best Prices	−2.37		1.86
Midpoint Between Best Prices		−0.255	
S&P 500 Index Close (11–30–93)		461.79	
EFP Futures Price (agreed to by parties based on midpoint)		461.535	

Of all of the broker-dealers providing quotes, Broker-Dealer A offered the best price for the Hourly Plan to buy futures—i.e. 1.86, the lowest premium above the S&P 500 Index closing price.

GMIMCo determined that an EFP with the Salaried Plan under alternative (d) would be the least costly alternative. Under this alternative, the Hourly Plan would engage in the EFP with the Salaried Plan at the midpoint of the best EFP bid quoted by the broker-dealers to sell stocks and buy futures (i.e. −2.37) versus the best EFP offer quoted by the broker-dealers to buy stocks and sell futures (i.e. 1.86). Thus, alternative (d) provided the Hourly Plan with a better price to buy the futures because the price of the futures based on the −0.255 midpoint (i.e. 461.79 − 0.255 = 461.535) would be more favorable to the

[21] A futures contract is an agreement in which one party agrees to sell and another party agrees to buy a specific quantity of a commodity at a future date. Upon entering into a futures contract, the parties establish the price for the future sale or purchase. The Commodity Futures Trading Commission (CFTC) is the federal agency responsible for regulating futures trading in all tangible and intangible "commodities" including securities. Unless exempted by the CFTC, all futures contracts must be traded on CFTC-designated exchanges called contract markets.

[22] See Section 4c(a) of the Commodity Exchange Act and CFTC Rule 1.38 (17 CFR 1.38(a)) which require that all futures transactions be executed openly and competitively except for transactions which are executed noncompetitively in accordance with written rules of the exchange which have been submitted to and approved by the CFTC, specifically providing for the noncompetitive execution of such transactions. The applicant states that this exception applies to EFPs and that all futures exchanges have CFTC-approved rules permitting EFPs to be consummated.

[23] The futures contract "bought" by the customer represents a commitment to pay the cash value of the portfolio of S&P 500 securities at a specified time in the future.

[24] The applicant states that the market price of an S&P 500 futures contract will normally exceed the market price of the underlying portfolio of stocks comprising the index (the "cash price") by a certain amount (i.e. the "basis") primarily due to the "cost of carry." The "cost of carry" relates to the difference between the U.S. Treasury Bill rate and the dividend yield on the stock portfolio. In addition, the "basis" reflects the deliverable supply of the underlying stocks and the expectations of market participants.

[25] The applicant represents that GMIMCo consulted with the Chicago Mercantile Exchange (CME) and the CFTC, both of which advised that an EFP between the Plans would be consistent with their applicable rules.

[26] Tracking error is the mismatch of price movement on the individual stock versus the index.

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Hourly Plan than the price offered by Broker-Dealer A based on the 1.86 premium above the closing price of the index (i.e. 461.79 + 1.86 = 463.65).

GMIMCo states that alternative (d) saved the Hourly Plan approximately $3.4 million, which otherwise would have been paid to Broker-Dealer A. This cost savings resulted from the fact that the difference between 463.65 (the best price at which the Hourly Plan could have bought futures in an EFP with Broker-Dealer A) and 461.535 (the price at which the Hourly Plan bought futures in the EFP with the Salaried Plan) was 2.115 index points or approximately 46 basis points.[27]

GMIMCo states that the transaction eliminated the tracking error, timing mismatch risk and market impact costs. The Hourly Plan also reduced costs under alternative (d) since the stock transfers were directly between the respective investment managers via master trustee bookkeeping entries, which reduced one layer of stock transfers and resulted in savings of approximately $30,000.

GMIMCo determined that it was in the best interests of the Hourly Plan and its participants and beneficiaries to sell the stocks and purchase the futures through an EFP with the Salaried Plan. Accordingly, on November 30, 1993, the Hourly Plan purchased from the Salaried Plan 948 December S&P 500 futures contracts at a price of 461.50 and 2216 December S&P 500 futures contracts at a price of 461.55 or 3164 total contracts for an average price of 461.535.

The Salaried Plan

10. On November 19, 1993, GMIMCo appointed WFITC to act as an independent fiduciary for the Salaried Plan for the proposed EFP with the Hourly Plan. GMIMCo granted WFITC complete discretion to act on behalf of the Salaried Plan for the proposed transaction and to take any appropriate action necessary to safeguard the interests of the Salaried Plan. WFITC was engaged as independent fiduciary prior to the transaction with the understanding that it would determine whether it was in the best interests of the Salaried Plan and its participants and beneficiaries: (i) To purchase stocks and sell futures in the amount of approximately $730 million; (ii) to engage in an EFP for the purchase of stock and the sale of futures; and (iii) to engage in the EFP with the Hourly Plan.

[27] Note: 2.115/461.79 = .00458 = .458% or 45.8 basis points, since .01% equals one basis point. Thus, the Hourly Plan would have paid Broker-Dealer A approximately $3.4 million ($730 million × .0046).

11. With respect to the determination for the Salaried Plan to purchase stocks and sell futures, WFITC represents that the Salaried Plan's holdings in equities and equity futures were approximately equal to the PIC's designated asset allocation to the U.S. and Canadian equity markets. The policy structure for the Salaried Plan established by the PIC had allocated a specified percentage of the Plan's assets to large capitalization U.S. and Canadian equity securities. This fact coupled with the fact that the Plan held futures in an amount valued well in excess of the value of the proposed transaction led WFITC to conclude that the sale of long futures and their replacement by purchasing U.S. and Canadian equity securities would be consistent with the asset allocation policy of the PIC. In this regard, WFITC believed that the PIC's asset allocation strategy for the Salaried Plan was reasonable. Thus, WFITC concluded that the proposed sale of the futures by the Salaried Plan would be appropriate for and in the best interest of the Salaried Plan. This conclusion was based upon WFITC's view that while financial futures are a legitimate method of achieving temporary exposures to markets, there are differences in holding financial futures as opposed to securities for the long term. These differences include "tracking error risk" and "basis risk."

WFITC states that "tracking error risk" is defined in this instance as the variance in performance of a given portfolio of securities as compared to the index underlying a particular stock index futures contract. In the case of the proposed transaction, WFITC determined that such tracking error risk existed between the stock index futures contracts held temporarily by the Salaried Plan and the portfolio of cash securities that it had determined by policy to hold for the long term. Therefore, WFITC concluded that the best interests of the Salaried Plan would be served by replacing the stock index futures contracts with stocks reflecting the strategies of the selected investment managers.

WFITC states further that "basis risk" is defined in this instance as the variance in value between an index and a fully collateralized position in stock index futures contracts that is based on the return of the same index. Such variance in value arises because, while stock index futures are priced to equal the underlying index at expiration, prior to expiration they are priced in an auction market that is partially independent of the auction markets in which the securities in the underlying index are priced. Therefore, WFITC concluded that the interests of the Salaried Plan would be served by eliminating the basis risk of the Salaried Plan by replacing the stock index futures contracts with stocks in an amount up to $730 million reflecting the strategies of the selected investment managers.

12. With respect to the determination for the Salaried Plan to engage in an EFP, WFITC evaluated the various methods the Plan could use in selling futures and purchasing equity securities. WFITC began its analysis with the premise that the Salaried Plan should reduce or eliminate transaction costs, including brokerage commissions, dealer bid/offer spreads, market impact and opportunity costs. Based on WFITC's experience in the futures and equity markets, WFITC believed that EFP transactions are often the most cost effective method for simultaneously selling index futures and buying equity securities. WFITC states that because in an EFP both the sale of futures and the purchase of securities is achieved in a single simultaneous transaction with a single counterparty, all sources of transaction costs are subsumed in a single negotiated price, reflected in the price at which the futures in the EFP are traded.

WFITC represents that the negotiated price of an EFP can be readily compared for cost-effectiveness against an ideal hypothetical transaction with no transaction costs whatsoever. Such an ideal transaction would consist of simultaneously (1) buying stocks at the last reported sale price for each stock as of the moment of the transaction, and (2) selling the stock index futures position such that the futures are priced at or above a "fair economic value" with no brokerage commissions, dealer bid/offer spread, market impact, or opportunity cost.

WFITC determined the fair economic value of the futures by calculating the difference between (1) the interest income foregone through the expiration date of the futures by having to liquidate positions in money-market instruments in order to provide cash required to settle the stock purchases, and (2) the dividend income estimated to be earned by holding stocks rather than futures contracts through the expiration date of the futures. On November 30, 1993, the date of the transaction, there were 20 days remaining until the expiration of the futures contracts held by the Salaried Plan. WFITC states that the prevailing money market interest rates at the time were 3.10%. Therefore, the amount of interest that would have been earned for 20 days on the cash required to settle the stock purchases, expressed in S&P 500 Index points based on the closing price of 461.79, was equal to a premium of approximately 0.78 index points.[28] In addition, WFITC represents that the dividend income that was expected to be earned on the stocks through the expiration date of the futures, expressed in S&P 500 Index points based on the closing price of 461.79, was equal to a premium of approximately 0.59 index points.[29] Given these factors, WFITC calculated that the fair economic value of the futures contracts to be equal to a premium of 0.19 S&P 500 Index points above the quoted price of the index.[30] Thus, with the S&P 500 Index published at 461.79 at the close of trading, the fair economic value of the futures contracts as of November 30, 1993 was calculated by WFITC to be 461.98 (i.e. 461.79 + 0.19 = 461.98). The applicant states that the actual closing price for the December futures contracts on November 30, 1993 was 461.85, as traded on the CME.

WFITC also represents that the negotiated price of an EFP can be readily compared for cost-effectiveness against the estimated transaction costs of selling the futures in the open futures market and purchasing stock in the open stock market. For purposes of this analysis, WFITC assumed that the transaction would be approximately $730 million of stocks reflecting the then current value of the securities held by the selected investment managers. WFITC estimated commissions by assuming a rate of $.01 per share. At this rate, the Salaried Plan would have paid brokerage commissions for purchasing listed securities of approximately $186,286 or 2 basis points (expressed as a percentage of the total value of the stocks).[31] WFITC estimated the dealer bid/offer spread by measuring the difference between the last reported sale for each security and its quoted offered price. Using this technique, the Salaried Plan would have paid a total dealer bid/offer spread of approximately $2,050,384 or 28 basis points.[32] WFITC states that it did not estimate any savings to the Salaried Plan for brokerage commissions on the sale of the futures contracts because such commissions would have been paid regardless of whether the transaction was made in the open market or through an EFP.[33] WFITC states further that it made no estimate of market impact or opportunity costs. Thus, WFITC estimated that the total costs to execute the transactions in the open market would have been at least $2,236,670 or approximately 30 basis points.

Using the pricing methodology described below, WFITC determined that the total cost to the Salaried Plan of transacting the EFP with the Hourly Plan would be approximately $701,225 or 9.6 basis points (expressed as a percentage of the total value of the stocks). This cost figure was calculated by comparing the price of the futures contracts negotiated in the EFP based on the midpoint between the best EFP quotations (461.535) to the fair economic value of the futures as calculated by WFITC based on a premium of 0.19 S&P 500 Index points above the closing price of the index (461.98), resulting in a difference of 0.445 S&P 500 Index points (461.98 − 461.535 = 0.445). The difference of 0.445 index points represented approximately 9.6 basis points based on the S&P 500 Index closing price of 461.79.[34]

WFITC compared the cost of 9.6 basis points to transact the EFP with the Hourly Plan to the estimate of approximately 30 basis points to execute the proposed transaction in the open market, and concluded that there was an advantage of 20.4 basis points to transacting the EFP with the Hourly Plan (or approximately $1,535,445). WFITC believed that a projected savings of 20.4 basis points for the EFP transaction was a conservative estimate of the advantages for the Salaried Plan because, in establishing the cost estimates for the open market alternative, WFITC had assumed a low commission rate of $.01 per share and had assumed no market impact or opportunity costs for open market trading. Thus, WFITC believed that 20.4 basis points would be the minimum advantage to transacting the EFP with the Hourly Plan.

13. WFITC determined that it would permit the Salaried Plan to engage in an EFP only if the price determination methodology was fair to the Salaried Plan, was in the best interests of the Salaried Plan and was consistent with general market standards. In this regard, WFITC represents that it was involved in the EFP transaction, including the pricing determinations that would be made, throughout the proceedings. For example, prior to the consummation of the transaction, WFITC determined along with GMIMCo the broker-dealers from which bids should be solicited.

WFITC reviewed the information that was delivered to these brokers as to the nature of the securities portfolios to be transacted as part of the EFP. Additionally, WFITC performed an analysis of the portfolio, using analytic software provided by BARRA, an independent investment technology firm. This analysis provided WFITC with the correlation between the securities in the portfolio and the S&P 500 futures contracts.

WFITC and GMIMCo each determined independently that a single broker—Broker-Dealer A—had quoted both the highest bid and the lowest offer of any of the brokers who provided EFP quotations. Specifically, Broker-Dealer A bid to sell the stocks at the closing price of the S&P 500 Index and buy the futures at a discount of 2.37 S&P 500 Index points below the closing value of the S&P 500 Index. Since the other brokers had bid larger discounts to buy the futures, Broker-Dealer A's bid was the best price from the prospective of the Salaried Plan. As noted above in the discussion involving GMIMCo, Broker-Dealer A had also offered to buy the stocks at the S&P 500 Index closing price and sell the futures at a premium of 1.86 S&P 500 Index points, or approximately 40 basis points above the closing price of the S&P 500 Index. Since no other broker had offered to sell futures at a lower premium relative to the index, Broker-Dealer A's offer price was also best from the perspective of the Hourly Plan.

WFITC determined that the Salaried Plan's transacting the EFP with the Hourly Plan at the midpoint between Broker-Dealer A's bid price and offered price was better than trading in an EFP directly with Broker-Dealer A at its bid price. Specifically, by trading with the Hourly Plan, the Salaried Plan bought stocks at the closing price of the S&P 500 Index and sold futures at a discount of 0.255 S&P 500 Index points, or approximately 5 basis points below the

[28] Note: 0.78/461.79 = .00168 = .168% or approximately 16.8 basis points. The interest income expected through expiration would have been calculated in dollars as follows: $730 million × .00168 = 1,226,400.

[29] Note: 0.59/461.79 = .00127 = .127% or approximately 12.7 basis points. The dividend income expected through expiration would have been calculated in dollars as follows: $730 million × .00127 = $927,100.

[30] Note: 0.19/461.79 = .00041 = .041% or approximately 4.1 basis points. The fair economic value of the futures contracts would have been calculated in dollars as follows: $730 million × .00041 = $299,300.

[31] Note: $186,286/$730 million = .0002 or .02%.

[32] Note: $2,050,384/$730 million = .0028 or .28%.

[33] With respect to the futures portion of the EFP, WFITC and GMIMCo mutually agreed upon an independent CME clearing member broker-dealer that presented the EFP to the CME, and conducted the necessary reporting and documentation, ensuring that the EFP was accepted by the CME and that the futures positions were properly recorded. The broker-dealer received the customary commission for such services from each Plan. Neither WFITC nor GMIMCo received any of this compensation.

[34] Note: 0.445/461.79 = .00096 or .096%, which is 9.6 basis points.

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closing price of the S&P 500 Index.[35] If the Salaried Plan had traded with Broker-Dealer A directly, it would have bought stocks at the identical price that was transacted via the EFP (i.e. the closing price of the S&P 500 Index). However, the Salaried Plan would have sold futures to Broker-Dealer A at a discount of 2.37 S&P 500 Index points, or approximately 51 basis points below the value of the S&P 500 Index.[36] Thus, the price for selling the futures would have been 46 basis points lower than the price the Salaried Plan received in the EFP transaction with the Hourly Plan.

WFITC determined that the price determination methodology was fair to the Salaried Plan, was in the best interests of the Salaried Plan, and was consistent with general market standards, because the methodology included a thorough exploration of EFP prices in the marketplace. WFITC states that the EFP price achieved for the Salaried Plan was at least as favorable as any price the Plan could have received from an independent broker-dealer capable of executing the transaction on November 30, 1993.

14. In summary, the applicant represents that the transaction met the statutory criteria contained in section 408(a) of the Act because: (a) The terms of the EFP were at least as favorable to both the Salaried Plan and the Hourly Plan as the terms which either Plan could have received in an arm's-length transaction involving an unrelated party; (b) each Plan received a price in the EFP transaction which was equal to the midpoint between the highest independent bid and lowest independent offer for buying and selling the futures involved, based on EFP quotations obtained from independent broker-dealers capable of engaging in such an EFP at the time of the transaction; (c) WFITC, as an independent fiduciary for the Salaried Plan, determined that an EFP with the Hourly Plan was in the best interests of the Salaried Plan and its participants and beneficiaries; (d) WFITC monitored the EFP transaction and took appropriate actions necessary to safeguard the interests of the Salaried Plan; (e) GMIMCo, as fiduciary for the Hourly Plan, determined that an EFP with the Salaried Plan was in the best interests of the Hourly Plan and its participants and beneficiaries; and (f) GMIMCo monitored the EFP transaction and took appropriate actions necessary to safeguard the interests of the Hourly Plan.

[35] Note: 0.255/461.79 = .0005 or .05%.
[36] Note: 2.37/461.79 = .0051 or .51%.

Notice to Interested Persons

The applicant states that notice to interested persons shall be made within twenty (20) business days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption (the Proposal) as published in the **Federal register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. The applicant will post a copy of the Proposal and the supplemental statement in areas customarily used for notices to employees regarding employee benefit and labor relations matters at GMC locations where employees covered by the Plans are employed. The applicant will send to each of the unions representing such employees a copy of the Proposal and will request that each union post these materials at local union halls within twenty (20) business days of the publication of the Proposal in the **Federal Register**. Finally, the applicant will send a copy of the Proposal and supplemental statement to the presidents (or comparable officers) of the approximately 230 GMC retiree organizations and clubs as a reasonable means of providing notice to Plan participants who are retirees of GMC or an affiliate.

Comments or requests for a public hearing must be received by the Department within sixty (60) days following the publication of the Proposal in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 219–8194. (This is not a toll-free number.)

Law Offices of Bryson and Berman, P.A. Employees' Pension Plan and Trust (Pension Plan) and Law Offices of Bryson and Berman, P. A. Employees' Profit Sharing Plan and Trust (P/S Plan, Collectively; the Plans) Located in Miami, Florida

[Application Nos. D–09884 and D–09885]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the two individual accounts in the Plans of Rodney W. Bryson of two adjacent parcels of vacant land (Lots 3 and 4, collectively; the Lots) to Mr. Rodney Bryson (Mr. Bryson), a trustee of the Plans and a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Accounts in this transaction will receive the current fair market value of the Lots established at the time of the sale by an independent qualified appraiser; and

(c) the Accounts will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plans were established in 1976 and have a total of three participants, including Mr. Bryson and Mark S. Berman (Mr. Berman). Mr. Bryson and Mr. Berman are the trustees of the Plans and are also the sole stockholders of Law Offices of Bryson and Berman, P.A. (the Employer). The Plans are a money purchase pension plan and a profit sharing plan. The Plans provide for individually directed accounts. As of June 30, 1994, the Pension Plan and the P/S Plan had $386,380 and $487,419 in net assets, respectively. As of the same date, Mr. Bryson's account in the Pension Plan (P/P Account) and the P/S Plan (P/S Account, collectively; the Accounts) had $175,201 and $214,134 in net assets, respectively. The Employer is a professional association incorporated in the State of Florida, which specializes in trial law.

2. The Lots were originally acquired as follows. Pursuant to the direction of Mr. Bryson, on December 14, 1989, the Accounts purchased twenty acres of vacant land located in Broward County, Ft. Lauderdale, Florida, from Suzanne F. Sinaiko, an unrelated third party for a total consideration of $375,000. On the same day, the Accounts sold one half of the twenty acres to Richard French and Mrs. Claudia French (the Frenchs), unrelated third parties, for $187,500. As a result, at the close of business on December 14, 1989, the Accounts owned ten acres of vacant unimproved land (the Land) in Broward County, Ft. Lauderdale, Florida. The applicant represents that at the time of acquisition, the Lots represented 38% of the P/P Account and 38% of the P/S Account.[37]

[37] The Department expresses no opinion as to whether the Plans' acquisition and holding of the Lots in the Accounts violated any provision of part 4 of title I of the Act.

3. Consequently, the Accounts, in conjunction with the Frenchs, made certain improvements to the Land. These improvements were made by independent third party companies, and consisted of platting the Land, constructing an access road, providing fill and landscaping. In this regard, it is represented that the P/P Account paid $16,628 in capital improvement costs, and the P/S Account paid $20,322 in capital improvement costs. The Land was platted into two residential lots of approximately 5 acres each (Lots 3 and 4). The Lots were allocated among the Accounts as follows. The P/P Account owned 45% of Lot 3 and Lot 4 (two 45% Interests), and the P/S Account owned 55% of Lot 3 and Lot 4 (two 55% Interests, collectively; Four Interests).

4. Lot 3 was appraised on April 19, 1994 (the Appraisal), by Thomas R. Wachtstetter A.S.A, I.F.A., an independent general appraiser certified in the State of Florida (Mr. Wachtstetter). In the Appraisal, Mr. Wachtstetter stated that Lot 3 contains 4.98 acres and is vacant land. In establishing the fair market value of Lot 3, Mr. Wachtstetter relied on the sales comparison approach to value and determined that the fair market value of Lot 3 was $135,000. On October 26, 1994, Mr. Wachtstetter submitted an addendum to the Appraisal (the Addendum), which addressed the fair market value of Lot 4. In the Addendum he stated that all information contained in the Appraisal of Lot 3 is also applicable in estimating the value of Lot 4. Specifically, Mr. Wachtstetter represented that Lot 3 and Lot 4 are adjacent, nearly the same size, and neither Lot has any apparent easements, encroachments or environmental concerns which would adversely affect the value of that Lot. Mr. Wachtstetter concluded that the estimated value of each Lot is $135,000 each, for an aggregate fair market value of $270,000. Mr. Wachtstetter also addressed the assemblage value of Lots 3 and 4 as a ten acre parcel, and concluded that the aggregate fair market value of the Lots does not exceed the fair market value of five acre Lot 3 or Lot 4, if purchased separately. The applicant represents that the Lots are currently not encumbered by any debt, and that the Lots were never used by any related persons, and are not adjacent to other real property owned by Mr. Bryson or other parties in interest or related persons. Since original acquisition, the Lots have remained vacant and unutilized by any person, and have yielded no income to the Accounts.

5. Mr. Bryson now desires to purchase the Lots from the Accounts in a one-time cash transaction for their current aggregate fair market value in order to build a personal residence. Once the transaction is consummated, the P/S Account will receive fifty five percent (55%) of the sale proceeds and the P/P Account will receive forty five percent (45%) of the sale proceeds. It is represented that the proposed transaction is in the best interest of the Accounts because the transaction will enable the Accounts to divest of a non-income producing asset which constitutes a relatively high percentage of the Accounts' assets, and will provide the Accounts with liquidity. The transaction is protective of the Accounts because as a result of the sale the Accounts will receive the current fair market value of the Lots, and the Accounts will incur no expenses as a result of the proposed transaction. The applicant maintains that a real estate broker has been attempting to sell the Lots since the summer of 1993, but the Accounts received no reasonable offers.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The Accounts will receive the current fair market value of the Lots established at the time of the sale by an independent qualified appraiser;

(c) The Accounts will pay no expenses associated with the sale; and

(d) The sale will enable the Accounts to diversify its investment portfolio and will provide the Accounts with liquidity.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana

[Application No. D–09890]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain improved real property (the Property) located in Evansville, Indiana, to WANC Leasing Company (WANC), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price of no less than the greater of (1) $8,555,000, or (2) the Property's fair market value as of the sale date; and

(C) The Plan does not incur any expenses with respect to the transaction.

Summary of Facts and Representations

Introduction: The Plan owns the Property, which is improved real property leased to and occupied by the Plan sponsor, Welborn Clinic (the Employer), as its principal place of business. The Employer requires substantial improvements of the Property to accommodate updated and modernized operations, but the Plan trustee has determined that it is not in the best interests of the Plan to finance such improvements. Instead, WANC (a partnership owned by principals of the Employer) proposes to purchase the Property from the Plan, complete the necessary improvements, and lease the Property to the Employer. The exemption proposed herein would enable the Plan's sale of the Property to WANC as described below.

1. The Plan is a defined contribution plan with 643 participants and total net assets of $55,721,511 as of December 31, 1993. The Employer is a multi-specialty group medical practice with its principal place of business situated in the Property, located at 421 Chestnut Street in the downtown sector of Evansville, Indiana. The Employer is an Indiana business trust which is controlled by the physicians who hold staff memberships with the Employer. The trustee of the Plan is the Citizens National Bank of Evansville (the Trustee), which represents itself to be independent of and unrelated to the Employer, except as Plan Trustee. WANC is an Indiana general partnership in which all of the 65 general partners are staff member physicians of the Employer.

2. The Property is owned by the Plan and leased to the Employer (the Employer Lease) pursuant to an individual administrative exemption, PTE 89–4 (54 FR 2241, January 19, 1989). The rights of the Plan with respect to the Property, including the Employer Lease and PTE 89–4, are represented for all purposes by the Trustee. The Property is a 4.437 acre

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parcel of land located in downtown Evansville, Indiana, and is improved with a three-level, 99,500 square foot medical office building (the Main Building) which constitutes the main facility for the Employer's medical clinic (the Clinic). The entire Clinic consists of three components: (1) the Main Building, (2) a nearby medical facility building owned by WANC (the WANC Building) and leased to the Employer, and (3) a two-story structure (the Connector Building), owned by WANC and leased to the Employer, connecting the Main Building with the WANC Building. Pursuant to an additional administrative exemption, PTE 93–24 (58 FR 8991, February 18, 1993), the Employer Lease was modified in 1993 to enable an exchange of land parcels between the Plan and WANC in connection with WANC's construction of the Connector Building. As a result of the property exchange covered by PTE 93–24, the Plan acquired a parking lot (the New Parking Lot) adjacent to the Main Building, and WANC acquired a parcel of property abutting both the Main Building and the WANC Building, on which it constructed the Connector Building. The Connector Building and the land underlying it are owned by WANC, leased to the Employer, and utilized between the Main Building and the WANC Building as the main entrance and reception area for the Clinic. Only the Main Building is located on the Property owned by the Plan, which includes the New Parking Lot.

The Trustee represents that the Employer has complied with, and continues in compliance with, all terms and conditions of the Employer Lease and the individual exemptions, PTE 89–4 and PTE 93–24.

3. The Employer represents that with the aid of consultants, it has determined that the Main Clinic is in need of at least $3,000,000 of expansion and renovation work in order to satisfy the Employer's needs. As a result of WANC's 1993 construction of the Connector Building and a recent renovation of the WANC Building, those two components of the Clinic are new, updated medical facilities. However, the Employer represents that the Main Building remains in need of substantial refurbishing and refitting to provide updated, modernized workspace for surgery, urology, oncology, hematology, dermatology, allergy, ear/nose/throat, eyecare, the Employer's health maintenance organization, and administrative/business offices. The Trustee is unwilling to commit Plan assets to finance the necessary renovations of the Main Building because the Trustee considers such expenses to be the obligation of the Employer, and because the Trustee finds that the participants and beneficiaries would receive very little short-term or intermediate-term benefit from such additional investment of capital in the Clinic. The Employer, as tenant and occupant of the Main Building, is unwilling to bear the expense of the renovations because the improvements to the Main Building would eventually increase the Employer's rent under the Employer Lease, assuming such improvements would increase the Property's fair market value. The Employer represents that even if it were willing to finance renovations currently required, it is likely a similar problem would arise again in the future, whereby the Main Building would require renovations and the Trustee, on behalf of the Plan, and the Employer would each be unwilling to finance the improvements. The principals of WANC, however, have expressed a willingness to finance the necessary renovations of the Main Building pursuant to a proposed purchase of the Property from the Plan and its lease to the Employer.

4. Accordingly, the Trustee, the Employer and WANC propose that the Plan sell the Property to WANC, and are requesting an exemption for the sale transaction. The proposed sale transaction will proceed in accordance with a written agreement (the Agreement) executed between the Trustee, on behalf of the Plan, and WANC after the exemption proposed herein, if granted, is published in the **Federal Register**.

Under the Agreement, the Plan will sell the Property, consisting of the Main Building, the underlying land, and the New Parking Lot, for a cash purchase price of no less than $8,555,000 (the Minimum Purchase Price). In an appraisal of the Property effective June 24, 1994, Brian D. Shelton and William R Bartlett II, MAI, SRA (Shelton and Bartlett), determined that the fair market value of the Property, inclusive of the Employer Lease, was $8,250,000. Shelton and Bartlett are professional real estate appraisers with Appraisal Company, Inc. in Evansville, Indiana. In another appraisal of the Property, inclusive of the Property, C. David Matthews (Matthews) determined that the Property had a fair market value of $8,860,000 as of December 31, 1993. The Minimum Purchase Price represents the mean of the two appraisals. Pursuant to the Agreement, the Property will be reappraised by Matthews and Bartlett (the Reappraisals) no earlier than the date of the Agreement and no later than 30 days after the date of the Agreement. If the mean of the Reappraisals is higher than $8,555,000, then the purchase price of the Property shall be the mean of the Reappraisals. In no event will the purchase price be lower than the Minimum Purchase Price.

5. The Trustee represents that the agreement to set the purchase price for the Property at no less than the Minimum Purchase Price resulted from arm's-length negotiations between the Trustee and WANC over a two-month period. The Trustee initially proposed a sale of the Property to WANC for a purchase price of $8,860,000, consistent with Matthews' 1993 appraisal. The Trustee states that WANC considered this price to be excessive, in light of the more recent appraisal by Shelton and Bartlett, and WANC counter-proposed a purchase price of $8,250,000. The Trustee represents that the two appraisals were reviewed and analyzed by the Trustee's appraisal expert, Darrell Woehler (Woehler), who noted differences in the approach of the two appraisers and determined that substantial subjectivity could be expected among such appraisals. Woehler noted that Matthews had considered the current rent under the Employer Lease to be in excess of fair market rent, whereas Shelton and Bartlett had found the current rent to be equivalent to fair market rent. After Woehler's review, the Trustee continued discussions with representatives of WANC, until both parties agreed on the Minimum Purchase Price and the Reappraisals. The Trustee represents that the Plan's depreciated net cost basis of the Property was $3,751,070.42 as of December 31, 1993.

6. The Trustee represents that after careful consideration of all facts and circumstances surrounding the proposed sale of the Property to WANC, it has determined that it will be in the best interests and protective of the participants and beneficiaries of the Plan. The Trustee states that it has determined that the proposed purchase price of at least $8,555,000 is not less than the fair market value of the Property, and the Reappraisals ensure that the Plan will benefit from any increase in fair market value as of the date of the sale. The Trustee states that although the Plan has benefitted from favorable returns on the Property, it is time for the Plan to dispose of the Property and invest in other assets, in light of the pressing need for renovations and modernization of the Property's improvements.

The Trustee notes that due to the nature of the Property as a component in a three-part medical facility, the other two parts of which are owned by WANC, it would be very difficult to find a buyer other than WANC willing to offer a purchase price as favorable to the Plan as that offered by WANC.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will receive a cash purchase price of no less than the Minimum Purchase Price, subject to possible upward adjustment pursuant to the Reappraisals, which the Trustee has determined to be no less than the fair market value of the Property; (2) The Plan will incur no costs or expenses relating to the transaction; (3) The Trustee has determined that retention of the Property would not be in the best interests of the Plan due to the necessity of renovation expenses; and (4) The Trustee has determined that the Plan is unlikely to secure an unrelated buyer willing to pay a purchase price for the Property as favorable to the Plan as the proposed purchase price under the Agreement.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration Department of Labor.

[FR Doc. 95–6118 Filed 3–10–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 3, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Subventions Program applications in Classics, the Renaissance and Early Modern Studies, submitted to the Division of Research Programs, for projects after September 1, 1995.

2. *Date:* April 10, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Subventions Program applications in History and American Studies, submitted to the Division of Research Programs, for projects beginning after September 1, 1995.

3. *Date:* April 12, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Subventions Program applications in Literature and Cultural Studies, submitted to the Division of Research Programs, for projects beginning after September 1, 1995.

4. *Date:* April 17–18, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives during the March 10, 1995 deadline, submitted to Division of Public Programs, for projects beginning after June 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–6144 Filed 3–10–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Call for Nominations for Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is inviting nominations of qualified candidates to consider for appointment to its Nuclear Safety Research Review Committee (NSRRC). Nominations will be accepted until April 20, 1995.

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ADDRESSES: Submit nominations to: Ms. Jude Himmelberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. George Sege, Designated Federal Officer for the NSRRC, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–6593.

SUPPLEMENTARY INFORMATION: The Committee advises the Director of the NRC's Office of Nuclear Regulatory Research—and through him the Commission—on the quality and conduct or NRC research activities and makes recommendations concerning the overall management and direction of the nuclear safety research program.

The 12-member Committee is composed of senior experts in nuclear engineering or science capable of providing technical advice on the broad range of topics that are the subject of nuclear safety research for nuclear power plants and other facilities. Maintaining balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members. Committee members serve a two-year term and may be reappointed for up to two additional two-year terms.

Over the next two years, the Committee will be examining such issues as quality of nuclear safety research relative to the needs of the user of the research products, the long-range direction of the nuclear safety research programs, the peer review process of research products and the capability of individuals and facilities where nuclear safety research is conducted.

In order to maintain a good balance of capabilities on the Committee, candidates should have expertise in nuclear engineering and nuclear safety, with emphasis on demonstrated capabilities in the area of thermal-hydraulic performance of nuclear power reactor systems.

Selection for membership will be based on demonstrated capability and professional accomplishment in the indicated area of specialization, in the conduct or management of scientific or engineering research and in applying research to nuclear safety issues.

Nominations for membership must include a résumé describing the educational and professional qualifications of the nominee and the nominee's current address and daytime telephone number. Nominees must be U.S. citizens and be able to devote about 80 hours per year to Committee business.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–6060 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit No. 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would relax the setpoint tolerance for the pressurizer safety valves and the main steam safety valves from ±1% to ±3%.

The proposed action is in accordance with the licensee's application for amendment dated August 4, 1994.

The Need for the Proposed Action

The proposed action would revise the setpoint tolerance to assure both pressurizer safety valves and main steam safety valves remain within technical specification tolerances and reduce the potential for filing unnecessary Licensee Event Reports.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the relaxation of the setpoint tolerance for the pressurizer safety valves and the main steam safety valves from ±1% to ±3% is acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 4, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6063 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–10]

Northern States Power Co.; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from certain requirements of its regulations, to Northern States Power Company (NSP), located in Minneapolis, Minnesota. The requested exemption would allow NSP to submit the report of preoperational test acceptance criteria and test results at least three days (instead of 30 days) prior to the receipt of fuel at its independent spent fuel storage installation (ISFSI) at the Prairie Island plant (Docket Nos. 50–282/306) located near Red Wing, Minnesota.

Environmental Assessment

Identification of Proposed Action: The request, proposed by NSP letter dated January 4, 1995, would exempt NSP from the requirements of 10 CFR 72.82(e), which states that "A report of the preoperational test acceptance criteria and test results must be submitted * * * at least 30 days prior to the receipt of spent fuel or high-level radioactive waste." NSP proposed to submit this report three days prior to the receipt of spent fuel at its ISFSI. Granting the exemption at this time would enable NSP to proceed with activities to support its scheduled Unit 2 refueling outage.

The Need for the Proposed Action: NSP request for exemption is to ensure the availability of adequate storage space in the spent fuel pool in order to support NSP's scheduled Unit 2 refueling outage. A fuller discussion of the need for the exemption follows.

In July 1993, NSP suspended cask fabrication and site construction activities until the Minnesota State Legislature authorized the Prairie Island ISFSI on May 10, 1994. After authorization, the ISFSI construction resumed and the facility was completed in November 1994, and the first cask was received on January 26, 1995.

NSP plans to receive new fuel, in March 1995, for the refueling outage which is scheduled to begin May 13, 1995. Subsequent to receipt, new fuel is transferred from the new fuel storage racks into the spent fuel pool in preparation for refueling activities. Because the Prairie Island spent fuel pool is nearly full, and because there is limited space in the spent fuel pool area, the multiple activities, associated with storage cask loading and the refueling outage, cannot be conducted at the same time. Therefore, the first storage cask must be loaded and transported to the ISFSI prior to receipt of new fuel.

NSP estimates that approximately 30 days will be required for the preoperational testing of the first cask and the associated equipment, and about two weeks will be required to load the cask and transport it to the ISFSI. Including the 30-day waiting period required in 10 CFR 72.82(e), it will take about two and one-half months from cask receipt until it is placed on the storage pad. Even if cask loading started before the end of the waiting period (which is allowed under 10 CFR 72.82(e)— there would not be enough time to complete the activities prior to receipt of new fuel, assuming the full 30-day waiting period.

The purpose of the 30-day period, for the licensee to submit a report of the preoperational test acceptance criteria and test results, is to establish a sufficient hold point so as to ensure that the NRC has enough time to inspect a new licensee's preparations and, if necessary, exercise its regulatory authority before fuel is received at an ISFSI. For example, an ISFSI located at an away-from-reactor site may not have a resident inspector; therefore, the full 30-day period might be necessary to provide enough time for the NRC to review the licensee's records and preoperational test results and, if needed, send inspectors to the site. The Prairie Island ISFSI is located on a reactor site that has resident inspectors, and the resident and other NRC inspectors will both be present at the ISFSI to observe portions of the preoperational testing activities while they are being conducted. The NRC inspectors will also have ongoing access to the licensee's test procedures and test results in order to be able to conduct the appropriate review. Thus, in view of the NRC's oversight presence during the preoperational testing phase at Prairie Island, as well as the NRC's immediate access to the licensee's procedures and test results, the Commission concludes that the full 30 days, provided for in the rule, will not be needed in order for NRC to complete its inspection activities and determine whether any further regulatory action is needed before spent fuel is received at the Prairie Island ISFSI. Therefore, the licensee's submission of the required report in less time than the required 30-day period, before fuel receipt at the ISFSI, is acceptable. However, based on the ongoing observations of preoperational tests by inspectors, NRC may determine that more time than the three-day period, requested by the licensee, is needed to review additional licensee records and preoperational test results. Therefore, in granting the requested exemption, NRC reserves the right to require additional time, if necessary, to complete its activities.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impacts of the proposed action. The NRC reviewed the Prairie Island Safety Analysis Report (SAR), and in July 1933, issued a Safety Evaluation Report (SER) approving the SAR. On July 28, 1992, the NRC issued an Environmental Assessment and Finding of no Significant Impact for the ISFSI (57 FR 34319, dated August 4, 1992). On the basis of these reviews NRC concluded that spent fuel could be stored in the ISFSI at Prairie Island without significant environmental impact.

The proposed exemption will not alter or affect the impacts of operation of the ISFSI previously evaluated by NRC. Rather, it merely allows NSP to submit the report of preoperational test acceptance criteria and test results three days prior to receipt of fuel at the ISFSI instead of the required 30-day period. As previously noted the 30-day period is to provide the NRC sufficient opportunity to review the licensee's submittals. With inspectors of site, a shorter period will, in this case, provide the same, sufficient opportunity. In addition, the proposed exemption does not involve any change that increases the probability or consequences of accidents, that changes the types of any effluents that may be released offsite, or that would significantly increase the allowable individual or cumulative occupational radiation exposure. The Commission accordingly concludes that this proposed exemption will have no significant radiological or nonradiological environmental impacts.

Alternative to the Proposed Action: Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The staff considered the alternative of denying the requested exemption. Denial could result in the delay of the plant refueling outage planned for May 13, 1995, and would not reduce or change the environmental impacts that currently exist.

Agencies and Persons Consulted: The Commission's staff reviewed NSP's request and did not consult other agencies or persons.

Finding of No Significant Impact: Based upon the foregoing environmental

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assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the request for exemption dated January 4, 1995, and other documents are available for public inspection and for copying (for a fee) at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located in the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

Dated at Rockville, Maryland, this 6th day of March, 1995.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–6062 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket 70–364]

Babcock and Wilcox Co., Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 5, 1994, Citizens' Action for a Safe Environment (CASE) and the Kiski Valley Coalition to Save Our Children (The Coalition) (together referred to as Intervenors) filed a joint request for an informal hearing pursuant to 10 C.F.R. Part 2, Subpart L, with regard to Babcock & Wilcox Company's (Licensee) application for renewal of Special Nuclear Materials License SNM–414 issued to the Licensee by the Nuclear Regulatory Commission (Commission) for the Pennsylvania Nuclear Service Operation facility located in Parks Township, Armstrong County, Pennsylvania (Parks Township facility). In its Initial Decision, dated January 3, 1995, authorizing the renewal of the materials license, the Atomic Safety and Licensing Board, consistent with 10 C.F.R. 2.1205(k)(2), referred to the Commission's Executive Director for Operations for consideration as requests for action under 10 CFR 2.206, twelve areas of concern (see Sections B, H, I, M, P, Q, S, T, U, W, X, and Y, Initial Decision at pages 63 to 70) raised in that proceeding by the Intervenors. These concerns were referred to the Director of the Office of Nuclear Material Safety and Safeguards. Each of these concerns has been reviewed with respect to the requirements of 10 CFR 2.206. Sections B, H, I, M, P, S, T, U, W and Y have failed to satisfy the requirement of Section 2.206 that a request pursuant to section 2.206 must "specify the action requested and set forth the facts that constitute the basis for the request." However, Section B, H, M, P, S, T, U, W, and Y were addressed by the Commission staff in Michael A. Lamastra's affidavit dated September 22, 1994, and Section I was addressed by the Commission staff in Heather M. Astwood's affidavit dated September 22, 1994, filed in the Parks Township proceeding.

Section Q has been interpreted as a request for the Commission to test for radioactive contamination in the general vicinity of Kepple Hill and Riverview in Parks Township. The apparent concern is that this area is downwind of the Apollo facility which the Intervenors assert had been releasing radioactivity at a rate above regulatory limits. The Intervenors rely on letters dated April 20, 1966, and May 26, 1969, concerning the need for experimental data for an air surveillance program at the Apollo plant and authorization by the Commission's predecessor, the Atomic Energy Commission, for the discharge of radioactive materials in concentrations exceeding 10 CFR Part 20 limits.

Section X has been interpreted as a request for the Commission to investigate radiological contamination on the Farmers Delight Dairy Farm (apparently located in Parks Township). The apparent concern is that past operations of the Parks Townships facility caused radioactive contamination of the farm. As basis for this request, Intervenors assert that there is information in a 1966 U.S. Department of Agriculture (USDA) study that indicates that the cattle on the farm were having thyroid problems and that radionuclides were show-up in the cow's milk.

As provided by Section 2.206, appropriate action will be taken on these two requests within a reasonable period of time.

A copy of the Petition and Initial Decision is available for inspection in the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–6065 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting and Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project (STP), Unit 1, located in Matagorda County, Texas.

The proposed amendment would modify the steam generator tube plugging criteria in Technical Specification 3/4.4.5, Steam Generators, and the allowable leakage for Unit 1 in Technical Specification 3/4.4.6.2, Operational Leakage, and the associated Bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Structural Considerations

Industry testing of model boiler and operating plant tube specimens for free span tubing at room temperature conditions shows typical burst pressures in excess of 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements at or below the structural limit of 4.0 volts. One model boiler specimen with a voltage amplitude of 19 volts also exhibited a burst pressure greater than 5000 psi. Burst testing performed on one intersection pulled from STP Unit 1 with a 0.51 volt indication yielded a measured burst pressure of 8900 psi at room temperature. It is noted that the industry burst pressure tests do not reflect the effects of temperature and material properties in terms of the realized reduction in strength. However, even correcting for the effects of temperature on material properties (which represents about 80% of the strength at room temperature from ASME [American Society of Mechanical Engineers] Code Section III Appendix 1 values) yields effective burst pressures of about 4000 psi which is above the RG [Regulatory Guide] 1.121 limit of 3790 psi (1.43 times the MSLB [main steam line break] pressure differential) at 4.0 volts. The STP Unit 1 data point (0.51 volt) would yield an effective burst pressure of about 7100 psi, which is well above the 95% lower tolerance limit (LTL) prediction per the burst correlation data used. Additional benefit is realized during normal operation since the proximity of the TSP [tube support plate] will reinforce the tube, further reducing the likelihood of tube burst.

The projected end-of-cycle (EOC) voltage compares favorably with the 4 volt structural limit considering the EPRI [Electric Power Research Institute] voltage growth rate for indications at STP. Using the methodology of the NRC Draft Generic Letter 94–XX, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning-of-cycle (BOC) repair limit which should preclude EOC indications from growing in excess of the structural limit. The non-destructive examination (NDE) uncertainty to be applied per EPRI is approximately 21 percent. The EPRI recommended growth allowance of 35 percent/EFPY [effective full power years] is also applied. This growth value is conservative for STP Unit 1 based on previous inspection history. By adding NDE uncertainty allowances and a crack growth allowance to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 4 volts can be represented as:

$RL + (0.20 \times RL) + (0.53^* \times RL) = 4$ volts,

which yields RL of 2.3 volts.

*The 35% growth rate for 1 EFPY was scaled up to the cycle length used at South Texas.

This repair limit (2.3 volts) reasonably could be applied for APC [alternate plugging criteria] implementation to repair bobbin indications greater than the 1.0 volt criterion specified by NRC Generic Letter 94–XX and is independent of RPC [rotating pancake coil] confirmation of the indications. Houston Lighting & Power has chosen to use a steam generator tube upper repair limit of 2.3 volts to assess tube integrity for those bobbin indications which are above 1.0 volt but do not have confirming RPC calls. This 2.3 volt upper limit for non-confirmed RPC calls is consistent with the NRC Generic Letter 94–XX which establishes 2.7 volts as the upper limit for 3/4 tubing. Since the upper bound for repair of non-confirmed RPC is limited to a value far less than the structural limit associated with full alternate criteria, the establishment of the repair limits are determined to be reasonable and conservative with respect to the industry pulled tube data base used.

Leakage Considerations

As part of the implementation of APC, the distribution of EOC cracking indications at the TSP intersections has been used to calculate the primary to secondary leakage which is bounded by the maximum leakage required to remain within applicable dose limits (10 CFR 100, NUREG–0800 and GDC [General Design Criterion] 19). This limit was calculated using the Technical Specification RCS [reactor coolant system] Iodine–131 transient spiking values consistent with NUREG–0800. Applications of the APC criteria requires the projection of postulated MSLB leakage based on the projected EOC voltage distribution for the beginning of the cycle. Projected EOC voltage distribution is developed using the most recent EOC eddy current results and a voltage measurement uncertainty. Draft NUREG–1477 requires that all indications to which APC is applied must be included in the leakage projection.

The projected MSLB leakage rate calculation methodology prescribed in EPRI TR–100407 will be used to calculate the EOC leakage. A Monte Carlo approach will be used to determine the EOC leakage, accounting for all of the ECT [eddy current testing] uncertainties, voltage growth, and an assumed probability of detection (POD) of 0.6 for a 1.0 volt repair limit. The fitted logarithmic function probability of leakage correlation will be used to establish the STP MSLB leak rate used for comparison with a bounding allowable leak rate in the faulted loop which would result in radiological consequences which are within applicable dose limits. Due to the relatively low voltage levels of indications at STP and low voltage growth rates, it is expected that the actual calculated leakage values will be far less than this limit. Currently, the leakage projected for EOC–05 at STP Unit 1 is 0.02 gpm [gallons per minute] (<21 gpd [gallons per day]) which is negligible in comparison to the allowable limit.

Therefore, implementation of APC does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable does consequences. The proposed amendment does not result in any increase in the probability of consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube alternate plugging criteria for ODSCC [outer diameter stress corrosion cracking] at the TSP intersections does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the TSP elevations since no ODSCC has been identified outside the thickness of the TSPs. It is therefore expected that for all plant conditions, neither a single nor multiple tube rupture event would occur in a steam generator where APC has been applied.

Specifically, Houston Lighting & Power will implement, for Unit 1, a maximum leakage rate of 150 gpd per steam generator (SG) to help preclude the potential for excessive leakage during all plant conditions. The current technical specification limits on primary-to-secondary leakage at operating conditions are 1 gpm for all steam generators or 500 gpd for any one SG. The RG 1.121 criterion for establishing operational leakage rate limits governing plant shutdown be based [*sic*] upon leak-before-break (LBB) considerations to detect a free span crack before potential tube rupture as a result of faulted plant conditions. The 150 gpd limit is intended to provide for leakage detection and plant shutdown in the event of an unexpected crack propagation resulting in excessive leakage. RG 1.121 acceptance criteria for establishing operating leakage limits are based on LBB considerations such that plant shutdown is initiated if the permissible crack is exceeded.

The predicted EOC leakage for STP is based on a 35% growth rate and does not take credit for the TSP proximity during normal operation. The total current projected leakage for EOC 05 is 20.5 gpd for the limiting SG (C) at STP Unit 1 which is considerably less than the 150 gpd limit. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during the secondary side blowdown of a MSLB. Typically, it is expected for the vast majority of intersections that only partial uncovery will occur. Thus, the proximity of the TSP will enhance the burst capacity of the tube.

Steam generator tube integrity is continually maintained through inservice inspection and primary-to-secondary leakage monitoring. Any tubes falling outside the APC repair limits are removed from service. Therefore, the possibility of a new or different kind of accident from any accident previously developed is not created.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage based bobbin probe for dispositioning ODSCC degraded tubes within TSP intersections by APC is demonstrated to maintain steam generator tube integrity in accordance with the requirements of RG 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking are removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevation is not expected to leak to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of loss of coolant accident (LOCA) and safe

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shutdown earthquake (SSE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case at STP as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA [loss of coolant accident] rarefaction wave and SSE loadings. The resulting secondary-to-primary pressure differential on the deformed tubes may cause some of the tube to collapse.

There are two concerns associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction on flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that through wall cracks in tubes could sufficiently enlarge during tube deformation or collapse, causing sufficient in-leakage of secondary water back to the core which dilutes the poisoning effect of boron injection from the emergency cooling system. Again, an increase in core PCT may result.

Consequently, since the LBB methodology is applicable to the STP reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator, RHR [residual heat removal], or the pressurizer surge line break. The analysis identifies tube located adjacent to wedge regions that are subject to potential collapse during combined LOCA and SSE. These tubes will be excluded from application of APC. Thus, existing tube integrity requirements apply to these tubes and the margin of safety is not reduced.

Implementation practices using the bobbin probe voltage based tube plugging criteria bounds RG 1.83 considerations by:

(1) Using enhanced eddy current inspection guidelines consistent with those used by EPRI in developing the correlations. This provides consistency in voltage normalization,

(2) Performing a 100 percent bobbin coil inspection for all hot leg tube support plate intersections and all cold leg intersections down to the lowest cold leg tube support plate with outer diameter stress corrosion cracking (ODSCC) indications. The determination of the tube support plate intersections having ODSCC indications shall be based on the performance of at least a 20% random sampling of tubes inspected over their full length, and

(3) Incorporating RPC inspection for all tubes with larger indications left inservice. This further establishes the principal degradation morphology as ODSCC.

Implementation of APC at TSP intersections will decrease the number of tubes which must be repaired. Since the installation of tube plugs (to remove ODSCC degraded tubes from service) reduces the RCS flow margin, APC implementation will help preserve the margin of flow that would otherwise be reduced.

The projected EOC primary-to-secondary leakage rate allowed is bounded by a leak rate which limits the radiological consequences of a EOC MSLB to within applicable dose limits. Therefore, this change does not involve a significant reduction in the margin to safety.

It is therefore concluded that the proposed license amendment request does not result in a significant reduction in the margin of safety as defined in the plant Final Safety Analysis Report or Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, Washington, DC.

The filing of requests for hearing for petitions for leave to intervene is discussed below.

By April 12, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall be set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is award and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6067 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting and Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project (STP), Unit 1, located in Matagorda County, Texas.

The proposed amendment would change Technical Specification 3/4.4.5, Steam Generators, and the associated Bases to allow the use of an alternate plugging criteria (known in the industry as F*) on steam generator tubes that are defective or degraded within certain areas within the tubesheet.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Steam Generator section of Technical Specifications do not affect any accident initiators or precursors and do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident. The requirements approved by the NRC will not be reduced by this request. Since F* utilizes the "as rolled" tube configuration that exists as part of the original steam generator design, all of the design and operating characteristics of the steam generator and connected systems are preserved. The F* joint has been analyzed and tested for design, operating and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. At worst case, a tube leak would occur with the result being a primary to secondary leak.

Should a tube leak occur, the impact is bounded by the ruptured tube evaluation submitted by HL&P [Houston Lighting & Power] for the STP Unit 1 operating license. No new or unreviewed accident conditions are created by the use of F* criteria. The potential for a tube rupture is not increased from the original submittal, thus there is no impact on accidents evaluated as the design

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basis. Therefore use of the F* criteria will not increase the probability of occurrence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the proposed F* alternate plugging criteria will not introduce significant or adverse changes to the plant design basis. The failure of a tube which remained unplugged in accordance with the F* criteria would result in a tube leak, which is a previously analyzed condition. Since this leak would occur below the secondary face of the tubesheet, its leak rate would be limited by the tube-to-tubesheet interface. Qualification testing and previous experience indicates that normal and faulted leakage would be well below the technical specification limits creating no threat associated with tube rupture type leakages. This conclusion is consistent with previous F* programs approved and used at other operating plants.

However, in the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore, preventing any interaction with neighboring tubes. If the tube severs at a point above the F* region, then it is covered by the tube rupture event as a part of the UFSAR [updated final safety analysis report]. Thus, the possibility of a new or different type of accident from any accident previously evaluated is not credited.

3. The proposed change does not involve a significant reduction in a margin of safety.

Based on previous responses (above), the protective boundaries of the steam generator are preserved. A tube with degradation can be kept in service through F* criteria which provided an un-degraded expanded interface with the tubesheet and which satisfies all of the necessary structural and leakage requirements per Reg. Guide 1.121 and the Technical Specifications. Since the joint is constrained within the tubesheet bore there is no additional risk associated with tube rupture. Since the UFSAR analyzed accident scenarios remain bounding the use of an F* criteria does not reduce the margin of safety.

Thus, these changes do not involve a significant reduction in the margin of safety. Therefore, based on the above evaluation, Houston Lighting & Power has concluded that these changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 12, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6068 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station Unit No. 1; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by the Niagara Mohawk Power Corporation (NMPC) to withdraw a portion of their July 21, 1994, application, for a proposed amendment to Facility Operating License DPR–63 for the Nine Mile Point Nuclear Station Unit No. 1, located in Oswego County, New York.

The proposed amendment would have revised Technical Specifications (TSs) 2.1.2 (Fuel Cladding Integrity), 3.1.7 (Fuel Rods), 3.6.2/4.6.2 (Protective Instrumentation), and the associated Bases to allow the use of Range 10 on the Intermediate Range Neutron Flux Monitors (IRMs) with the Reactor Protection System low pressure trip for main steam line isolation valve closure not in bypass. Changes were also proposed to TS Tables 3.6.2.a/4.6.2a (Instrumentation that Initiates Scram) and TS Tables 3.6.2g/4.6.2g (Instrumentation that Initiates Control Rod Withdrawal Block) to extend the calibration frequency of the Source Range Neutron Flux Monitors (SRMs) and the IRMs from prior to startup and shutdown to once per operating cycle. The proposed change would have also changed the Instrument Channel Test interval for the SRMs and IRMs from prior to startup and shutdown to once per week. Associated changes to TSs Setpoints, Bases, References, and Notes for TSs 2.1.2, 3.1.7, and 3.6.2/4.6.2 were also proposed.

By letter dated February 1, 1995, NMPC requested to withdraw that portion of the proposed amendment associated with the extension of the calibration frequency for the SRMs and IRMs.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing which was published in the **Federal Register** on August 31, 1994 (59 FR 45028).

For further details with respect to this action, see the application for amendment dated July 21, 1994, as supplemented on December 5, 1994, December 14, 1994, and January 11, 1995, and the licensee's letter dated February 1, 1995, which withdrew the portion of the application for license amendment associated with the extension of the calibration frequency for the SRMs and IRMs. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6064 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., Wisconsin Power and Light Co. Madison Gas and Electric Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company, (the licensee) to withdraw its application dated April 21, 1994, for a proposed amendment to Facility Operating License No. DPR–43

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for the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have modified the facility technical specifications by adding requirements for the steam exclusion system.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 3, 1994 (59 FR 39600). However, by letter dated February 27, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 21, 1994, and the licensee's letter dated February 27, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 53401.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorage III–3, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95–6066 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management

Notice of Proposed Revisions to OMB Circular No. A–123, "Management Accountability and Control"

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Proposed Revisions to OMB Circular No. A–123.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to OMB Circular No. A–123, "Management Accountability and Control."

FOR FURTHER INFORMATION CONTACT: Cindy Salavantis, OMB, Office of Federal Financial Management, (202) 395–6911.

Dated: March 7, 1995.

John B. Arthur,

Associate Director for Administration.

Attachment

Management Accountability and Control

AGENCY: Office of Management and Budget.

ACTION: Proposed Revisions to OMB Circular No. A–123.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular No. A–123, "Management Accountability and Control." The Circular, which was previously titled "Internal Control Systems," implements the Federal Managers' Financial Integrity Act of 1982 (FMFIA).

Also, this action seeks comments on a proposal to streamline agency FMFIA reporting, which has not yet been incorporated into this proposed revision to Circular No. A–123. OMB is permitted by the Government Management Reform Act (GMRA) of 1994 (P.L. 103–356) to consult with the Congress on modifications to current reporting requirements. A possible modification affecting FMFIA reporting is under consideration (see Supplementary Information below for further details).

DATES: All comments on this proposal should be in writing, and must be received by April 12, 1995. Late comments will be considered only to the extent practicable. When comments are sent in by facsimile, they should be followed up with an original printed copy.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Management Integrity Branch, Room 6025, New Executive Office Building, Washington, DC 20503. For a copy of the current Circular, contact Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Cindy Salavantis, Office of Federal Financial Management, Management Integrity Branch, telephone (202) 395–6911 and fax (202) 395–3952.

SUPPLEMENTARY INFORMATION: The proposed revision alters current requirements for executive agencies on evaluating management controls, consistent with recommendations made by the National Performance Review. The proposed revision integrates many of the current policy issuances on management control into a single document, and provides a framework for integrating management control assessments with other work now being performed by agency managers, auditors and evaluators.

The proposed revision emphasizes that management controls should benefit rather than encumber management, and should make sense for each agency's operating structure and environment. By giving agencies the discretion to determine which tools to use in arriving at the annual assurance statement to the President and the Congress, the Circular represents an important step towards a streamlined management control program that incorporates the reinvention principles of this Administration.

The proposed revision is presented in five sections:

Section I. Introduction. This section describes a framework for agency management control programs. Particular attention is directed to the integration of agency management control activities with other management requirements and policies, such as the Government Performance and Results Act, the Chief Financial Officers (CFOs) Act, the Inspector General Act, and other congressional and Executive Branch requirements. The foundation of this proposed policy is that management control activities are not stand alone management practices, but rather are woven into the day-to-day operational responsibilities of agency managers.

Agencies are encouraged to plan for how the requirements of the Circular will be implemented. Agencies are also encouraged to establish senior level management councils to address management accountability and related issues within the broad context of agency operations.

Section II. Establishing Management Controls. This section defines management controls, and requires agency managers to develop and implement appropriate management controls. Included in this section are general and specific management control standards, drawn in large part from the standards issued by the General Accounting Office.

By including these standards in this proposed revision, OMB is continuing its efforts to integrate various management control policies into a single document. It is anticipated that this effort will make it easier for Federal managers to implement good management controls.

Section III. Assessing and Improving Management Controls. This section states that agency managers should continuously monitor and improve the effectiveness of management controls. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual assessment of and report on management controls.

Agencies are encouraged to use a variety of information sources to arrive at the annual assurance statement to the President and the Congress. Several examples of sources of information are included in this section.

Agency managers and the agency's senior management council will consider and make recommendations to the agency head regarding the annual assurance statement required by FMFIA, and which deficiencies in management controls should be considered material and included in the agency head's FMFIA Report.

Section IV. Correcting Management Control Deficiencies. This section states that agency management is responsible for taking timely and effective action to correct management control deficiencies. Correcting these deficiencies is an integral part of management's responsibilities and must be considered a priority by the agency.

Section V. Reporting on Management Controls. This section describes the required components of the agency's annual FMFIA report and the suggested report distribution to the President and the Congress.

Periodically, questions are raised as to FMFIA coverage by government corporations. This section presents FMFIA requirements as they pertain to government corporations pursuant to the CFOs Act. 31 U.S.C. 9106.

Finally, as noted in the Summary above, this Notice also seeks input on a proposal to streamline agency FMFIA reporting, which has not yet been incorporated into this proposed revision to Circular No. A–123. Respondents are encouraged to comment on a possible modification affecting FMFIA reporting which has been proposed by the CFO Council.

Under this proposal, agencies would consolidate FMFIA information with other performance-related reporting into a broader "Accountability Report" to be issued annually by the agency head. This report would be issued as soon as possible after the end of the fiscal year, but no later than March 31 for agencies producing audited financial statements and December 31 for all other agencies. The other components of the proposed "Accountability Report" include: audited financial statements; agency management's followup on audit recommendations; financial reporting data on prompt payment and civil monetary penalties; and available information on agency performance compared to its stated goals and objectives, in preparation for implementation of the Government Performance and Results Act. While financial data would be reported for the fiscal year just ended, the most current information available at the time the report is issued would be included on management controls and audit followup issues.

John B. Arthur,

Associate Director for Administration.

To the Heads of Executive Departments and Establishments

Subject: Management Accountability and Control

1. *Purpose and Authority.* As Federal employees develop and implement strategies for reengineering agency programs and operations, they should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls. This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls.

The Circular is issued under the authority of the Federal Managers' Financial Integrity Act of 1982 as codified in 31 U.S.C. 3512.

The Circular replaces Circular No. A–123, "Internal Control Systems," revised, dated August 4, 1986, and OMB's 1982 "Internal Controls Guidelines" and associated "Questions and Answers" document, which are hereby rescinded.

2. *Policy.* Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

Management controls are the organization, policies, and procedures used to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable information is obtained, maintained, reported and used for decision making.

3. *Actions Required.* Agencies and individual Federal managers must take systematic and proactive measures to (i) develop and implement appropriate, cost-effective management controls for results-oriented management; (ii) assess the adequacy of management controls in Federal programs and operations; (iii) identify needed improvements; and (iv) take corresponding corrective action.

4. *Effective Date.* This Circular is effective upon issuance.

5. *Inquiries.* Further information concerning this Circular may be obtained from the Management Integrity Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, 202/395–6911.

6. *Copies.* Copies of this Circular may be obtained by telephoning the Executive Office of the President, Publication Services, at 202/395–7332.

[to be signed by Director, OMB]

Attachment

I. Introduction

The proper stewardship of Federal resources is a fundamental responsibility of agency managers and staff. Federal employees must ensure that government resources are used efficiently and effectively to achieve intended program results. Resources must be used consistent with agency mission, in compliance with law and regulation, and with minimal potential for waste, fraud, and mismanagement.

To support results-oriented management, the Government Performance and Results Act (GPRA, P.L. 103–62) requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals. As the Federal government implements this legislation, these plans and goals should be integrated into (i) the budget process, (ii) the operational management of agencies and programs, and (iii) accountability reporting to the public on performance results, and on the integrity, efficiency, and effectiveness with which they are achieved.

Management controls—organization, policies, and procedures—are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA).

Framework. The importance of management controls is addressed, both explicitly and implicitly, in many statutes and executive documents. The Federal Managers' Financial Integrity Act (P.L. 97–255) establishes specific expectations with regard to management controls. The agency head must establish controls that reasonably ensure that: (i) obligations and costs comply with applicable law; (ii) assets are safeguarded against waste, loss,

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unauthorized use or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted for. 31 U.S.C. 3512 (c)(1). In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs. 31 U.S.C. 3512 (d)(2). The Act encompasses program and administrative areas as well as accounting and financial management.

Instead of considering controls as an isolated management tool, agencies should integrate their efforts to meet the requirements of FMFIA with other efforts to improve effectiveness and accountability. Thus, management controls should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. They should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

For example, good management controls can assure that performance measures are complete and accurate. The management control standard of organization would align staff and authority with the program responsibilities to be carried out, improving both effectiveness and accountability. Similarly, accountability for resources could be improved by more closely aligning budget accounts with programs and charging them with all significant resources used to produce the program's outputs and outcomes.

Meeting the requirements of the Chief Financial Officers Act (P.L. 101–576, as amended) should help agencies both establish and evaluate management controls. The Act requires the preparation and audit of financial statements for 23 Federal agencies. In this process, auditors report on internal controls and compliance with laws and regulations. Therefore, the agencies covered by the Act have a clear opportunity both to improve controls over their financial activities, and to evaluate the controls that are in place.

The Inspector General Act (P.L. 95–452, as amended) provides for independent reviews of agency programs and operations. Offices of Inspectors General (OIGs) and other external audit organizations frequently cite specific deficiencies in management controls and recommend opportunities for improvements. Agency managers, who are required by the Act to follow up on audit recommendations, should use these reviews to identify and correct problems resulting from inadequate, excessive, or poorly designed controls, and to build appropriate controls into new programs.

Federal managers must carefully consider the appropriate balance of controls in their programs and operations. Fulfilling requirements to eliminate regulations ("Elimination of One-Half of Executive Branch Internal Regulations," Executive Order 12861) and streamline staffing (the Federal Workforce Restructuring Act of 1994, P.L. 103–226), should reinforce to agency managers that too many controls can result in inefficient and ineffective government, and therefore that they must ensure an appropriate balance between too many controls and too few controls. Managers should benefit from controls, not be encumbered by them.

Agency Implementation. Appropriate management controls should be integrated into each system established by agency management to direct and guide its operations. A separate management control process need not be instituted, particularly if its sole purpose is to satisfy the FMFIA's reporting requirements.

Agencies need to plan for how the requirements of this Circular will be implemented. Developing a written strategy for internal agency use may help ensure that appropriate action is taken throughout the year to meet the objectives of the FMFIA. The absence of such a strategy may itself be a serious management control deficiency.

Identifying and implementing the specific procedures necessary to ensure good management controls, and determining how to evaluate the effectiveness of those controls, is left to the discretion of the agency head. However, agencies are encouraged to streamline their management control efforts in accordance with the recommendations of the National Performance Review.

The President's Management Council, composed of the major agencies' chief operating officers, has been established to foster governmentwide management and cultural changes ("Implementing Management Reform in the Executive Branch," October 1, 1993). Many agencies are establishing their own senior management council, often chaired by the agency's chief operating officer, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of management controls; recommending to the agency head which control deficiencies are sufficiently serious to report in the annual FMFIA report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section III of this Circular.)

II. Establishing Management Controls

Definition of Management Controls. Management controls are the organization, policies, and procedures used by agencies to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable information is obtained, maintained, reported and used for decision making.

Management controls, in the broadest sense, include the plan of organization, methods and procedures adopted by management to ensure that its goals are met. Management controls include processes for planning, organizing, directing, and controlling program operations. A subset of management controls are the internal controls used to assure that there is prevention or timely detection of unauthorized acquisition, use, or disposition of the entity's assets that could have a material effect on its financial statements.

Developing Management Controls. As Federal employees develop and implement strategies for reengineering agency programs and operations, they should design management structures that help ensure accountability for results. As part of this process, agencies and individual Federal managers must take systematic and proactive measures to develop and implement appropriate, cost-effective management controls. Such controls guarantee neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but they are a means of managing the risk associated with Federal programs and operations. To help ensure that controls are appropriate and cost-effective, agencies should consider the extent and cost of controls relative to the importance and risk associated with a given program.

Standards. Agency managers should incorporate basic management controls in the strategies, plans, guidance and procedures that govern their programs and operations. Controls should be consistent with the following standards, which are drawn in large part from the "Standards for Internal Control in the Federal Government," issued by the General Accounting Office (GAO).

General management control standards are:

• Compliance With Law. All program operations, obligations and costs must comply with applicable law. Resources should be efficiently and effectively allocated for duly authorized purposes.

• Reasonable Assurance and Safeguards. Management controls must provide reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. Management controls developed for agency programs should be logical, applicable, reasonably complete, and effective and efficient in accomplishing management objectives.

• Integrity, Competence, and Attitude. Managers and employees must have personal integrity and are obligated to support the ethics programs in their agencies. The spirit of the Standards of Ethical Conduct requires that they develop and implement effective management controls and maintain a level of competence that allows them to accomplish their assigned duties. Effective communication within and between offices should be encouraged.

Specific management control standards are:

• Delegation of Authority and Organization. Managers should ensure that appropriate authority, responsibility and accountability are delegated to accomplish the mission of the organization, and that an appropriate organizational structure is established to effectively carry out program responsibilities. To the extent possible, controls and related decision-making authority should be in the hands of line managers and staff.

• Separation of Duties and Supervision. Key duties and responsibilities in authorizing, processing, recording, and reviewing official agency transactions should be separated among individuals. Managers should exercise appropriate oversight to ensure individuals do not exceed or abuse their assigned authorities.

• Access to and Accountability for Resources. Access to resources and records should be limited to authorized individuals, and accountability for the custody and use of resources should be assigned and maintained.

• Recording and Documentation. Transactions should be promptly recorded, properly classified and accounted for in order to prepare timely accounts and reliable financial and other reports. The documentation for transactions, management controls, and other significant events must be clear and readily available for examination.

• Resolution of Audit Findings and Other Deficiencies. Managers should promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations. Managers should complete, within established timeframes, all actions that correct or otherwise resolve the appropriate matters brought to management's attention.

Other policy documents may describe additional specific standards for particular functional or program activities. For example, OMB Circular No. A–127, "Financial Management Systems," describes government-wide requirements for financial systems. The Federal Acquisition Regulations define requirements for agency procurement activities.

III. Assessing and Improving Management Controls

Agency managers should continuously monitor and improve the effectiveness of management controls associated with their programs. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual assessment of and report on management controls, as required by the FMFIA. Agency management should determine the appropriate level of documentation needed to support this assessment.

Sources of Information. The agency head's assessment of management controls can be performed using a variety of information sources. Management has primary responsibility for monitoring and assessing controls, and should use other sources as a supplement to—not a replacement for—its own judgment. Sources of information include:

• Management knowledge gained from the daily operation of agency programs and systems.

• Management reviews conducted (i) expressly for the purpose of assessing management controls, or (ii) for other purposes with an assessment of management controls as a by-product of the review.

• IG and GAO reports, including audits, inspections, reviews, investigations, outcome of hotline complaints, or other products.

• Program evaluations.

• Audits of financial statements conducted pursuant to the Chief Financial Officers Act, as amended, including: information revealed in preparing the financial statements; the auditor's reports on the financial statements, internal controls, and compliance with laws and regulations; and any other materials prepared relating to the statements.

• Reviews of financial systems which consider whether the requirements of OMB Circular No. A–127 are being met.

• Reviews of systems and applications conducted pursuant to the Computer Security Act of 1987 and OMB Circular No. A–130, "Management of Federal Information Resources."

• Annual performance plans and reports pursuant to the Government Performance and Results Act.

• Reports and other information provided by the Congressional committees of jurisdiction.

• Other reviews or reports relating to agency operations, e.g. for the Department of Health and Human Services, quality control reviews of the Medicaid and Aid to Families with Dependent Children programs.

Use of a source of information should take into consideration whether the process included an evaluation of management controls. Agency management should avoid duplicating reviews which assess management controls, and should coordinate their efforts with other evaluations to the extent practicable.

If a Federal manager determines that there is insufficient information available upon which to base an assessment of management controls, then appropriate reviews should be conducted which will provide such a basis.

Identification of Deficiencies. Agency managers and employees should identify deficiencies in management controls from the sources of information described above. A deficiency should be reported if it is or should be of interest to the next level of management. Agency employees and managers generally report deficiencies to the next supervisory level, which allows the chain of command structure to determine the relative importance of each deficiency.

A deficiency that the agency head determines to be significant enough to be reported outside the agency (i.e. included in the annual FMFIA report to the President and the Congress) should be considered a "material weakness." This designation requires a judgment by agency managers as to the relative risk and significance of deficiencies. Agencies may wish to use a different term to describe less significant deficiencies, which are reported only internally in an agency. In identifying and assessing the relative importance of deficiencies, particular attention should be paid to the views of the agency's IG.

Agencies should carefully consider whether systemic problems exist that adversely affect management controls across organizational or program lines. The Chief Financial Officer, the Senior Procurement Executive, the Senior IRM Official, and the managers of other

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functional offices should be involved in identifying and ensuring correction of systemic deficiencies relating to their respective functions.

Agency managers and staff should be encouraged to identify and report deficiencies, as this reflects positively on the agency's commitment to recognizing and addressing management problems. Failing to report a known deficiency would reflect adversely on the agency.

Role of Senior Management Council. Many agencies have found that a senior management council is a useful forum for assessing and monitoring deficiencies in management controls. The membership of such councils generally includes both line and staff management; consideration should be given to involving the IG. Such councils generally recommend to the agency head which deficiencies are deemed to be material to the agency as a whole, and should therefore be included in the annual FMFIA report to the President and the Congress. (Such a council need not be exclusively devoted to management control issues.) This process will help identify deficiencies that although minor individually, may constitute a material weakness in the aggregate. Such a council may also be useful in determining when sufficient action has been taken to declare that a deficiency has been corrected.

IV. Correcting Management Control Deficiencies

Agency managers are responsible for taking timely and effective action to correct deficiencies identified by the variety of sources discussed in Section III. Correcting deficiencies is an integral part of management accountability and must be considered a priority by the agency.

The extent to which corrective actions are tracked by the agency should be commensurate with the severity of the deficiency. Corrective action plans should be developed for all material weaknesses, and progress against plans should be periodically assessed and reported to agency management. Management should track progress to ensure timely and effective results. For deficiencies that are not included in the FMFIA report, corrective action plans should be developed and tracked internally at the appropriate level.

A determination that a deficiency has been corrected should be made only when sufficient corrective actions have been taken and the desired results achieved. This determination should be in writing, and along with other appropriate documentation, should be available for review by appropriate officials. (See also role of senior management council in Section III.)

As managers consider IG and GAO audit reports in identifying and correcting management control deficiencies, they must be mindful of the statutory requirements for audit followup included in the IG Act, as amended. Under this law, management has a responsibility to complete action, in a timely manner, on audit recommendations on which agreement with the IG has been reached. 5 U.S.C. Appendix 3. (Management must make a decision regarding IG audit recommendations within a six month period and implementation of management's decision should be completed within one year to the extent practicable.) Agency managers and the IG share responsibility for ensuring that IG Act requirements are met.

V. Reporting on Management Controls

Reporting Pursuant to Section 2. 31 U.S.C. 3512(d)(2) (commonly referred to as Section 2 of the FMFIA) requires that annually by December 31, the head of each executive agency submit to the President and the Congress (i) a statement on whether there is reasonable assurance that the agency's controls are achieving their intended objectives; and (ii) a report on material weaknesses in the agency's controls. OMB may provide guidance on the composition of the annual report.

- *Statement of Assurance.* The statement on reasonable assurance represents the agency head's informed judgment as to the overall adequacy and effectiveness of management controls within the agency. The statement must take one of the following forms: statement of assurance; qualified statement of assurance, considering the exceptions explicitly noted; or statement of no assurance.

In deciding on the type of assurance to provide, the agency head should consider information from the sources described in Section III of this Circular, with input from senior program and administrative officials and the IG. The agency head must describe the analytical basis for the type of assurance being provided, and the extent to which agency activities were assessed. The statement of assurance must be signed by the agency head.

- *Report on Material Weaknesses.* The FMFIA report should include agency plans to correct the material weaknesses and progress against those plans.

Reporting Pursuant to Section 4. 31 U.S.C. 3512 (d)(2)(B) (commonly referred to as Section 4 of the FMFIA) requires an annual statement on whether the agency's financial management systems conform with government-wide requirements. These financial systems requirements are presented in OMB Circular No. A–127, "Financial Management Systems," section 7. If the agency does not conform with financial systems requirements, the statement should discuss the agency's plans for bringing its systems into compliance.

If the agency head judges a deficiency in financial management systems and/or operations to be material when weighed against other agency deficiencies, the issue should be included in the annual FMFIA report in the same manner as other material weaknesses.

Distribution of FMFIA Report. The assurance statements and information related to both Sections 2 and 4 should be provided in a single FMFIA report. Copies of the report should be transmitted to the President; the Director of OMB; the President of the Senate; the Speaker of the House of Representatives; and the Chairpersons and Ranking Members of the Senate Committee on Governmental Affairs, the House Committee on Government Operations, and the relevant authorizing and appropriations committees and subcommittees. In addition, 10 copies of the report should be provided to OMB's Management Integrity Branch.

Government Corporations. Section 306 of the Chief Financial Officers Act established a reporting requirement related to management controls for corporations covered by the Government Corporation and Control Act. 31 U.S.C. 9106. These corporations must submit an annual management report to the Congress not later than 180 days after the end of the corporation's fiscal year. This report must include, among other items, a statement on control systems by the head of the management of the corporation consistent with the requirements of the FMFIA.

The corporation is required to provide the President, the Director of OMB, and the Comptroller General a copy of the management report when it is submitted to Congress.

[FR Doc. 95–6024 Filed 3–10–95; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on December 28, 1994 (59 FR 66980). Individual authorities established or revoked under Schedules A and B and established under Schedule C between December 1, 1994, and January 31, 1995, appear in the listing below. Also appearing below is a Schedule A authority that was revoked effective September 1, 1994. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

No Schedule A authorities were established or revoked between December 1, 1994, and January 31, 1995.

The following exception was revoked:

Department of the Interior

National Park Service. Temporary intermittent and seasonal Park Ranger and support positions with employment up to 180 working days a year. Revoked effective September 1, 1994. These positions are now a part of the competitive service.

Schedule B

No Schedule B authorities were established or revoked between December 1, 1994, and January 31, 1995.

Schedule C

Administrative Conference of the United States

Special Assistant to the Chairman, Administrative Conference of the United States. Effective December 14, 1994.

Commission on Civil Rights

Special Assistant to the Staff Director, Office of the Staff Director. Effective January 24, 1995.

Deputy General Counsel to the General Counsel, Office of the General Counsel. Effective January 24, 1995.

Corporation for National and Community Service

Director, Higher Education and Youth Communication to the Director, Public Affairs. Effective December 19, 1994.

Director of Constituency Relations to the Director of Public Liaison. Effective December 19, 1994.

Deputy Director to the Director, Domestic Volunteer Service Programs. Effective December 19, 1994.

Public Affairs Officer to the Chief External Affairs Officer. Effective January 25, 1995.

Department of Agriculture

Deputy Director, Special Projects to the Director, Office of Communications. Effective December 2, 1994.

Special Assistant to the Director, Office of Public Affairs. Effective December 13, 1994.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective December 13, 1994.

Confidential Assistant to the Assistant Secretary for Science and Education. Effective January 12, 1995.

Special Assistant to the Deputy Assistant Secretary. Effective January 17, 1995.

Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service. Effective January 26, 1995.

Department of Commerce

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 7, 1994.

Confidential Assistant to the Deputy Assistant Secretary for International Economic Development. Effective December 7, 1994.

Deputy Director to the Director, Office of Public, Congressional and Intergovernmental Affairs. Effective December 12, 1994.

Special Assistant to the Director, Office of White House Liaison. Effective December 19, 1994.

Special Assistant to the Director, Bureau of Census. Effective January 10, 1995.

Assistant Director for Operations to the Director for Strategic Planning. Effective January 17, 1995.

Special Assistant to the Deputy Chief of Staff. Effective January 26, 1995.

Confidential Assistant to the Deputy Chief of Staff. Effective January 26, 1995

Special Advisor to the Director, Oceanic and Atmospheric Administrator. Effective January 26, 1995.

Director of Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective January 26, 1995.

Department of Defense

Staff Assistant to the Deputy Assistant Secretary of Defense (Inter-American Affairs). Effective December 12, 1994.

Defense Fellow to the Assistant Secretary of Defense for International Security Affairs. Effective December 14, 1994.

Intergovernmental Affairs Specialist to the Under Secretary of Defense (Personnel and Readiness). Effective December 21, 1994.

Confidential Assistant to the Assistant Secretary of Defense, Force Management Policy. Effective December 21, 1994.

Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense (Special Operation and Low Intensity Conflict). Effective December 23, 1994.

Program Analyst to the Deputy Under Secretary (Environmental Secretary). Effective January 26, 1995.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective December 19, 1994.

Confidential Assistant to the Director, Office of Intergovernmental and Constituent Affairs. Effective December 23, 1994.

Confidential Assistant to the Special Assistant to the Secretary. Effective December 23, 1994.

Special Assistant to the Director, White House Initiative on Hispanic Education Staff. Effective December 23, 1994.

Special Assistant to the Under Secretary for Policy, Planning and Administration. Effective December 23, 1994.

Special Assistant to the Senior Advisor on Education. Effective December 30, 1994.

Special Assistant to the Commissioner, Rehabilitation Service Administration. Effective January 10, 1995.

Department of Energy

Staff Assistant to the Assistant Secretary for Human Resources and Administration. Effective January 10, 1995.

Staff Assistant to the Principal Deputy Assistant Secretary for Human Resources and Administration. Effective January 10, 1995.

Special Assistant for Communications to the Director, Office of Energy Research. Effective January 10, 1995.

Staff Assistant to the Assistant Secretary for Environmental Management. Effective January 26, 1995.

Special Liaison (Federal Power Marketing Administration) to the

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Assistant Secretary for Energy Efficiency and Renewable Energy. Effective January 26, 1995.

Department of Health and Human Services

Executive Assistant to the Assistant Secretary for Legislation. Effective December 23, 1994.

Special Assistant to the Surgeon General, Public Health Service. Effective December 23, 1994.

Executive Assistant for Legislative Affairs to the Assistant Secretary for Health. Effective January 24, 1995.

Special Assistant to the Deputy Secretary. Effective January 26, 1995.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective January 26, 1995.

Department of Housing and Urban Development

Executive Assistant to the Assistant Secretary for Community Planning and Development. Effective December 13, 1994.

Director, Hospital Mortgage Insurance Staff to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective January 10, 1995.

Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing Recovery. Effective January 10, 1995.

Special Assistant to the Secretary's Representative. Effective January 17, 1995.

Department of the Interior

Special Assistant to the Deputy Director, External Affairs, U.S. Fish and Wildlife Service. Effective December 20, 1994.

Special Assistant (Advance) to the Deputy Chief of Staff. Effective January 10, 1995.

Deputy Scheduler to the Deputy Chief of Staff. Effective January 26, 1995.

Department of Justice

Counsel to the Deputy Attorney General. Effective December 13, 1994.

Department of Labor

Director of Scheduling and Advance to the Chief of Staff. Effective December 1, 1994.

Special Assistant to the Secretary. Effective December 14, 1994.

Project Director to the Assistant Secretary for Public Affairs. Effective December 19, 1994.

Chief of Staff to the Assistant Secretary for Public Affairs. Effective December 19, 1994.

Chief Technical Advisor to the Assistant Secretary for Mine Safety and Health. Effective December 23, 1994.

Special Assistant to the Director, Women's Bureau. Effective December 23, 1994.

Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective January 10, 1995.

Director of Communications and Public Information to the Assistant Secretary for Employment and Training. Effective January 17, 1995.

Special Assistant to the Assistant Secretary for Policy. Effective January 18, 1995.

Special Assistant to the Assistant Secretary for Administration and Management. Effective January 20, 1995.

Legislative Office to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 22, 1995.

Staff assistant to the Deputy Under Secretary for International Labor Affairs. Effective January 26, 1995.

Department of State

Secretary to the Assistant Secretary, Consular Affairs. Effective December 23, 1994.

Policy Analyst to the Deputy Assistant Secretary for Environment and Development. Effective December 23, 1994.

Secretary (Steno) to the United States Ambassador and U.S. Representative to the United Nations. Effective January 25, 1995.

Department of Transportation

Special Assistant to the Assistant Secretary for Governmental Affairs. Effective December 13, 1994.

Special Assistant to the Director of External Communications. Effective December 23, 1994.

Special Assistant to the Deputy Secretary of Transportation. Effective January 26, 1995.

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective January 26, 1995.

Department of the Treasury

Confidential Assistant to the Secretary of the Treasury. Effective December 8, 1994.

Environmental Protection Agency

Counsel to the Assistant Administrator for Policy, Planning and Evaluation. Effective December 13, 1994.

Equal Employment Opportunity Commission

Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective January 10, 1995.

Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective January 26, 1995.

Export-Import Bank of the United States

Personal and Confidential Assistant to the Vice Chairman. Effective December 28, 1994.

Administrative Assistant to the Board of Directors and the Chairman. Effective December 28, 1994.

Federal Communications Commission

Special Assistant to the Director, Office of Public Affairs. Effective January 24, 1995.

Special Assistant to the Chief, Common Carrier Bureau. Effective January 24, 1995.

Federal Maritime Commission

Counsel to the Commissioner. Effective January 24, 1995.

National Aeronautics and Space Administration

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective January 10, 1995.

Office of Management and Budget

Confidential Assistant to the Associate Director, Health and Personnel, to the Associate Director, Health and Personnel. Effective January 10, 1995.

Confidential Assistant to the Associate Director, Natural Resources, Energy and Science. Effective January 10, 1995.

Office of National Drug Control Policy

Legislative Analyst to the Director, Office of Public Affairs and Legislative Affairs. Effective January 10, 1995.

Office of Personnel Management

Special Assistant to the Director of the Office of Communications. Effective January 5, 1995.

Coordinator, Interagency Affairs to the Director of Agency Initiatives. Effective January 6, 1995.

Official Residence of the Vice President

Special Assistant to the Special Assistant to the Vice President and Chief of Staff to Mrs. Gore. Effective December 14, 1994.

President's Commission on White House Fellowships

Education Director to the Director, President's Commission on White House Fellowships. Effective December 13, 1994.

Small Business Administration

Special Assistant to the Associate Deputy Administrator for Economic Development. Effective January 26, 1995.

U.S. Arms Control and Disarmament Agency

Secretary (Office Automation) to the Assistant Director, Intelligence, Verification and Information Support Bureau. Effective December 23, 1994.

United States Information Agency

Director, Office of Thematic Programs to the Associate Director, Bureau of Information. Effective December 19, 1994.

Senior Assistant to the Director, United States Information Agency. Effective December 19, 1994.

Senior Advisor to the Associate Director, Bureau of Information. Effective January 10, 1995.

Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs. Effective January 12, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–6026 Filed 3–10–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Employees Health Benefits Program; Invitation for Applications and Benefits Change Proposals

AGENCY: Office of Personnel Management.

ACTION: Notice of the acceptance of applications from new comprehensive medical plans (HMO's) for participation in the Federal Employees Health Benefits (FEHB) Program, and benefits change proposals from plans currently participating in the FEHB Program, for contract year 1996.

SUMMARY: Notice is hereby given that the Office of Personnel Management (OPM) will consider new applications from HMO's for the FEHB Program contract year beginning January 1, 1996. OPM will also consider benefits change proposals from plans currently in the FEHB Program.

SUPPLEMENTARY INFORMATION: Section 890.203 of title 5, Code of Federal Regulations, authorizes OPM to invite applications from HMO's to participate in the FEHB Program, and to consider changes in rates and benefits for health benefits plans currently participating in the Program, when it determines that it is in the best interests of enrollees and the Program to do so. By this notice, OPM is officially announcing its decision to consider applications from new HMO's, and benefits change proposals from participating plans, for contract year 1996.

OPM is extending the deadline for the submission of the completed application from January 31 to March 31, 1995. Plans must submit evidence demonstrating they meet all requirements for approval by March 31, 1995. However, that date would be extended, if OPM requests additional information, to 30 days from the date of OPM's request. All rate and benefits submissions are due by May 31, 1995.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–6116 Filed 3–10–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Public Hearings on Establishment of a Tariff-Rate Quota on Imported Tobacco

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearings.

SUMMARY: Pursuant to section 125(f) of the Trade Act of 1974, the Office of the United States Trade Representative has scheduled a public hearing on the potential establishment of a tariff-rate quota on certain imported tobaccos.

DATES: The public hearing will be held on Tuesday, April 4, 1995.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public hearings and/or public comments, contact Carolyn Frank, Executive Secretary, Trade Policy Staff Committee (TPSC) (202–395–9557). All other questions should be directed to Thomas Hushek, Senior Economist for Agricultural Affairs (202–395–6127).

SUPPLEMENTARY INFORMATION: On June 28, 1994, the United States notified the Secretariat of the General Agreement on Tariffs and Trade 1947 (GATT 1947) of its proposal to modify certain concessions with respect to tobacco, in accordance with the provisions and procedures of Article XXVIII, paragraph 5 of the GATT 1947. (This notification was provided again on February 27, 1995 to the Secretariat of the World Trade Organization, in accordance with Article XXVIII of the GATT 1994). In July 1994, the United States entered into negotiations and consultations pursuant to Article XXVIII with qualifying GATT contracting parties (initial negotiating rights holders and principal and substantial suppliers).

Pursuant to Article XXVIII, the United States proposes to establish a tariff-rate quota on nine current tariff categories of the Harmonized Tariff Schedule of the United States (HTSUS) (2401.10.60, 2401.20.30, 2401.20.80, 2401.30.30, 2401.30.60, 2401.30.90, 2403.10.00, 2403.91.40, and 2403.99.00) to cover flue-cured, burley and other light air-cured tobaccos that are imported to be used in the manufacture of cigarettes for domestic consumption. The in-quota tariff rates would be equal to the Uruguay Round concession rates. The over-quota tariff rates would be as high as 350 percent *ad valorem*.

Other tobaccos, including oriental and cigar type tobaccos, would not be subject to the quantitative limitations of the tariff-rate quota. Imported flue-cured, burley and other light air-cured tobaccos used to manufacture products other than cigarettes would also not be subject to the tariff-rate quota.

Imported flue-cured, burley and other light air-cured tobaccos used to manufacture exported cigarettes would be eligible for manufacturing duty-drawback on an identity-preserved basis. Under section 422 of the Uruguay Round Agreements Act, upon proclamation of the tariff-rate quota, section 1106(a) of the Omnibus Budget and Reconciliation Act of 1993 (7 U.S.C. 1314i), which concerns domestic marketing assessments for imported tobacco, would not be in effect for any calendar year other than 1994.

Section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135) provides that whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to that Act, section 350 of the Tariff Act 1930 or section 201 of the Trade Expansion Act of 1962, withdraws or modifies any obligation with respect to the trade of any foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. As amended by section 421 of the Uruguay Round Agreements Act, section 125(c) authorizes the President to proclaim increased duties on the nine tariff categories of tobacco of up to 350% above the rates existing on January 1, 1975.

Before taking any action under section 125 to increase duties, the President is required by section 125(f) to provide for public hearings at which time interested

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persons will be given a reasonable opportunity to be present, to produce evidence and to be heard.

NOTICE OF PUBLIC HEARINGS: Pursuant to section 125(f) of the Trade Act of 1974 (19 U.S.C. 2135), the Trade Policy Staff Committee (TPSC), chaired by the Office of the United States Trade Representative, has scheduled a public hearing beginning at 10:00 a.m., on Tuesday, April 4, 1995, at the White House Conference Center, 726 Jackson Place, Washington, DC.

REQUESTS TO PRESENT ORAL TESTIMONY: Parties wishing to testify orally at the hearings must provide written notification of their intention by noon, March 24, 1995 to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 501, 600 17th Street N.W., Washington, D.C. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; and (3) a brief summary of their presentation, including the product(s), with HTSUS numbers. Those parties presenting oral testimony must also submit a written brief, in 20 copies by noon, March 24, 1995. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide 30 typed copies of their oral statement at the time of the hearings. Any confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

WRITTEN BRIEFS: Those persons not wishing to participate in the hearing may submit written comments, in twenty typed copies, no later than noon, March 29, 1995 to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 501, 600 17th Street, N.W., Washington, D.C. Comments should state clearly the position taken and describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room. An appointment to review the file may be made by calling Brenda Webb (202–395–6186).

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–6055 Filed 3–10–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

Notice of Commission Visit

Members of the Commission staff will attend a meeting in the Arlington Ballroom in the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia on March 13, 1995. At the meeting, representatives of the United States Postal Service will discuss potential proposals to amend the Domestic Mail Classification Schedule with mailers interested in reclassification. The meeting is scheduled to begin at 1:00 pm and conclude at approximately 4:00 pm.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–6150 Filed 3–8–95; 4:20 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35449; File No. SR–CHX–95–5]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Authority of the Committee on Floor Procedure

March 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 10, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 1, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

At present, Rule 3 of Article XII provides the Committee on Floor Procedure with the authority to summarily fine members and exclude them from the Exchange premises under certain circumstances. The Exchange proposes to amend Rule 3 and interpretation .02 thereunder to provide the Committee on Floor Procedure with the same authority over persons associated with a member.[2] Under the current Rule 3, the Committee on Floor Procedure or an appropriately designated subcommittee has the authority to summarily fine and exclude from the Exchange a member whose conduct is deemed to be improper and to recommend investigations pursuant to Rule 1 of Article XII regarding any conduct on the floor of the Exchange. Specifically, any member of the Floor Committee or a member of its appropriately designated subcommittee may summarily fine any member for conduct classified as Class B[3] in an amount not to exceed $100. For conduct classified as Class A offenses,[4] any member of the Floor Committee or a member of its appropriately designated subcommittee with the concurrence of two other floor officials (floor governors if immediately available) may summarily fine a member in an amount not to exceed $2,500 and summarily exclude a member from the Exchange for no longer than the remainder of the trading day.

For either class of offenses, a member, who has been adversely affected by any action taken under Rule 3, except for a summary exclusion,[5] by any person or body, other than the full Floor Procedure Committee, may appeal to the full Floor Procedure Committee within five days of receiving notice of the action by making a written request. Upon appeal, the full Floor Procedure Committee may increase or decrease the amount of a summary fine or the length of an exclusion from the Exchange. The Floor Procedure Committee, however, may not fine a member in an amount in excess of $2,500 or exclude a member from the Exchange in excess of five full business days. The decision of the Floor Procedure Committee is deemed final with respect to any action involving no more than a $100 fine.

By written request, a member may appeal a determination of the full Floor Procedure Committee involving more than a $100 fine to the Executive Committee. The Executive Committee will review the report of the action as certified by the Secretary unless it decides to open the record for additional evidence. The Executive Committee may increase or decrease the amount of a summary fine or the length of an exclusion after review. The Executive Committee, however, may not fine a member in an amount in excess of $2,500 or exclude a member from the Exchange in excess of five full business days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

At present, CHX Rule 3 of Article XII describes the ability of the Exchange's Committee on Floor Procedure to summarily fine *members* and exclude them from the Exchange premises. The purpose of the proposed rule change is to give the Committee on Floor Procedure the same authority over *persons associated with a member.*

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–5 and should be submitted by April 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6086 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] *See* letter from David Rusoff, Foley & Lardner, to Jennifer Choi, SEC, dated February 27, 1995. The original filing incorrectly references Rule 3 of Article IV of the Exchange Rules as the rule to be amended. Amendment No. 1 alters the proposed rule change to reference Rule 3 of Article XII as the correct rule to be amended.

[2] The Exchange does not specifically define the term "associated person" in its Rules. For purposes of Rule 3, Article XII, the Exchange refers to an associated person as defined in Section 3(a)(18) of the Securities Exchange Act of 1934. Conversation with David Rusoff, Foley & Lardner, and Jennifer Choi, Attorney, SEC, dated February 27, 1995. Section 3(a)(18) defines an "associated person of a broker or dealer" as any "partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer * * *."

[3] Class B violations involve minor offenses such as dress code and smoking violations.

[4] Class A represents more serious violations than Class B and includes such conduct as fighting, threatening speech, and other conduct that is detrimental to the interest or welfare of the Exchange.

[5] A member summarily excluded has the right to petition for reinstatement after a sufficient "cooling-off" period has elapsed.

[Release No. 34–35448; File No. SR–CSE–95–03]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Preferencing of Agency Orders by Approved Dealers

March 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1995, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to permanently adopt Exchange Rule 11.9(u) and related portions of Rule 11.9(a) and (m). The rules were approved by the Commission on a pilot basis on February 7, 1991, and have been in effect since then.[1] The current pilot expires May 18, 1995.

The Exchange is also requesting that, in granting permanent approval, the Commission not impose two restrictions related to payment for order flow and the number of securities in which an Exchange specialist may preference. These conditions appear only in the text of certain Commission releases approving and extending the pilot program; they are not part of the text of the Exchange's rules. The text of the proposed rule change is as follows

[1] *See*, Securities Exchange Act Release Nos. 28866 (February 7, 1991), 56 FR 5854 (February 13, 1991); 29524 (August 5, 1991), 56 FR 38160 (August 12, 1991), 30353 (February 7, 1992), 57 FR 5918 (February 18, 1992); 31011 (August 7, 1992), 57 FR 38704 (August 26, 1992); 32280 (May 7, 1993), 58 FR 28424 (May 13, 1993); 33975 (April 28, 1994), 59 FR 23243 (May 5, 1994); 34493 (August 5, 1994), 59 41531 (August 12, 1994).

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whereby the additions are *italicized* and deletions are [bracketed]:

Rule 11.9 National Securities Trading System

(a) through (k)—No change.

(l) Public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers in the System at the same price. Subject to the foregoing condition,

(1) All bids entered in the System shall be queued for execution so that the highest price bid shall be the first to be executed and so that, in the case of bids at the same price, *except in the case of Approved Dealer bids entered pursuant to subparagraph (u),* the bid entered earliest in time shall be the first to be executed; and

(2) all offers entered in the System shall be queued for execution so that the lowest price offered shall be the first to be executed and so that, in the case of offers at the same price, *except in the case of Approved Dealer* [bids] *offers entered pursuant to subparagraph (u),* the offer entered earliest in time shall be the first to be executed.

(m) It shall be the responsibility of each Approved Dealer or other Proprietary Member when trading on the Exchange for his own account or as agent for professional agency orders in round lots of designated Issues to effect such transactions through the System and, in so doing, to yield priority to:

(1) all public agency orders in the System at prices equal to, or better than, his order, bid, or offer; and

(2) all orders, bids and offers of Approved Dealers and other Proprietary Members for their own accounts and as agents for professional agency orders in the System at prices better than his order, bid or offer or at the same price in the event any such orders, bids or offers were entered in the System (i) at an earlier time than his order, bid or offer, or *(ii) in the case of Approved Dealers, for the purpose of trading for their own account against public agency orders which such approved Dealers are representing as agent pursuant to subparagraph (u).*

(n) through (t)—No change.

(u) Public agency market and marketable limit orders which an Approved Dealer represents as agent may be preferenced to such Approved Dealer in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m). Notwithstanding subparagraphs (c) and (n), an Approved Dealer shall be Dealer of the day with respect to orders preferenced under this subparagraph (u). Additionally, Designated Dealers shall be allowed to preference their customer order flow that is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average ("DJIA") declines by fifty points or more from the previous day's closing value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent Rule 11.9(u) and selected portions of Rule 11.9(l) and (m), which were approved by the Commission on a pilot basis in February, 1991. The rules provide an exception to the Exchange's time priority requirements between competing specialists when one specialist is interacting with his or her own customer order flow.

On the New York Stock Exchange ("NYSE") and other exchanges, a unitary specialist can, without the price competition of other specialists, internalize the order flow of his or her firm or an affiliated firm. On CSE, however, a competing specialist system limited the ability of a specialist to interact with his or her own order flow. Therefore, in order to provide the same advantage which specialists on other exchanges have vis-a-vis their own customer order flow, the CSE modified its time priority rules in order to permit one specialist to step ahead of another specialist at the same price when that first specialist is trading with his or her own customer order. This is the essence of the Exchange's program. All other aspects of a traditional auction market are preserved on CSE: public orders in the CSE book continue to have priority over all competing specialist interest, and a specialist who participates in the program must still provide "best execution" to his customer's order.

CSE's pilot has been operating for over four years and as documented within the Exchange's "Quality of Markets Analysis" dated January 18, 1995,[2] the program has served as a means of improving the Exchange's market. In light of the favorable impact the program has exhibited on CSE's market and CSE's participation in the National Market System, the Exchange is requesting that the rules be approved on a permanent basis.

The Exchange is also requesting that the Commission eliminate two of the three restrictions imposed on the pilot when permanently approving the rules. When the pilot was first approved, Approved Dealers could only execute preferenced trades in 60 securities to which they had been appointed. With the approval of subsequent pilot extensions the number has been raised to 350 securities, where it has been capped for over two years. The Exchange believes that this restrictive cap should be removed since it serves no regulatory purpose.

The second restriction, prohibiting preferencing specialists from making direct cash payments for retail orders, conflicts with the practice of specialists on other regional markets. When the CSE program was initially approved, the Commission had not yet reached a determination and was studying what impact the payment for order flow had on the market. Recently, the Commission reached a conclusion and decided that payment for order flow should be addressed through enhanced disclosure requirements to make investors aware of how their orders were handled. CSE specialists must abide by these disclosure standards just as their counterparts on other markets. On the other hand, CSE specialists currently have the additional restrictions that prohibits payment for order flow. The Exchange believes that this restriction is now unnecessary in light of the Commission's decision.

The third restriction addresses trading when the Dow Jones Industrial Average declines by more than fifty points from the previous day's closing value. The Exchange has included this restriction as part of paragraph (u).

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system as required by Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

[2] The report is available in the Commission Public Reference room.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On February 10, 1995, the Exchange requested comments from the participants of the Intermarket Trading System ("ITS") pursuant to Section 8(e)(iii) of the ITS Plan. On February 17, 1995, the NYSE submitted a brief comment letter in which they had only one substantive and one procedural comment. The NYSE believes that the CSE mischaracterized the functioning of NYSE specialists and misapplied the term "internalize" within the Statement of Purpose of the filing. The NYSE contends that the term "internalize" is inapplicable to the NYSE. The CSE, within the Statement of Purpose, states "On the NYSE and other exchanges, a unitary specialist *can* (emphasis added), without the price competition of other specialists, internalize order flow of his or her firm or an affiliated firm."

Regarding the procedural comment, the NYSE states that the CSE has not summarized or responded in detail to prior comments made on CSE's preferencing pilot. The CSE has not received any comments, prior to this NYSE letter, on either CSE's initial filing proposing preferencing (SR–CSE–90–06, Release No. 34–27910) or any of the six amendments/extensions subsequently approved by the Commission. However, on August 25, 1993, the NYSE took the opportunity to include within their comment letter regarding the Boston Stock Exchange's Competing Specialists proposal (SR–BSE–93–12, Release No. 34–32549), comments on the preferencing pilot at the CSE. The CSE, in a letter to Brandon Becker, Director, Division of Market Regulation dated March 18, 1994, accordingly addressed certain assertions concerning the CSE which appeared in correspondence from the NYSE. The CSE, under separate letter, requested the Secretary to place copies within files SR–CSE–93–03 and SR–CSE–94–01.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. (SR–CSE–95–03 and should be submitted by April 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6085 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35447; File No. SR–MSTC–95–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to the Legal Expert System Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 27, 1995, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to waive the fees associated with the Legal Expert System until March 1, 1995.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed change is to waive the fees for the Legal Expert System until March 1, 1995.

The text of the proposed rule change is as follows with additions italicized:

MSTC LEGAL EXPERT SYSTEM

Terminal inquiry	
1–2,500 inquiries per month.	$0.50/inquiry.
2,501–5,000	0.35/inquiry.
5,001–10,000	0.26/inquiry.
10,001 and over	0.17/inquiry.

MSTC full legal deposit participants will receive a free inquiry for each legal deposit submitted to MSTC. The free inquiries are only valid in the month the legal deposit is made.

The above terminal inquiry fees are waived until March 1, 1995.

The proposed rule change is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable fees and other charges among participants using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose a

[2] For a complete description of the Legal Expert System, refer to Securities Exchange Act Release Nos. 33756 (March 11, 1994), 59 FR 13350 [File No. SR–MSTC–94–02] (order approving a rule change regarding the Legal Expert System's fees and a clarification disclaiming any liability on MSTC's part for any misinformation contained in the Legal Expert System) and 35098 (December 13, 1994), 59 FR 65551 [SR–MSTC–94–17] (order modifying the pricing structure of the Legal Expert System).

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burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(e)[4] thereunder in that it establishes or changes a due, fee, or other charge imposed by MSTC. At any time within sixty days of the filing of such rule change, the Commission summarily may abrogate such rule change if it appears to the Commission that such act is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MSTV. All submissions should refer to File No. SR–MSTC–95–03 and should be submitted by April 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6087 Filed 3–10–95; 8:45 am]

BILLING CODE 8015–01–M

[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] 17 CFR 240.19b–4(e) (1994).

[5] 17 CFR 200.30(a)(12) (1994).

[Release No. 34–35446; File No. SR–MSRB–94–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G–8 on Recordkeeping

March 6, 1995.

On August 18, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission")[1] a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends rule G–37 on political contributions and prohibitions on municipal securities business, and rule G–8 concerning recordkeeping.[4]

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34630, September 1, 1994) and by publication in the **Federal Register** (59 FR 46682, September 9, 1994). Eleven comment letters were received.[5] This order approves the proposed rule change.

I. Introduction

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[6] In response to numerous inquiries received by the Board concerning the application of the rule, on May 24, 1994, the Board filed with the Commission a Question and Answer ("Q&A") interpretation of the rule.[7] On June 3, 1994, the Commission approved amendments to the rule which (i) provide a procedure whereby dealers may seek relief from the rule's prohibition on business, in limited circumstances, and (ii) clarify certain definitions in the rule.[8] The Board has filed with the Commission subsequent Q&A interpretations of the rule.[9] The rule change approved herein also is intended to address concern over certain aspects of rule G–37.

II. Amendments to Rule G–37 and Rule G–8

The rule change approved today amends rule G–37 and rule G–8 by: (i) amending the definition of municipal finance professional by designating as a municipal finance professional any associated person who is both (a) a municipal securities principal or a municipal securities sales principal and (b) a supervisor of any person primarily engaged in municipal securities representative activities or who solicits municipal securities business; (ii) amending the definition of municipal finance professional so that any person designated as a municipal finance professional will keep that designation for two years after the last activity which would trigger that designation; (iii) requiring brokers, dealers and municipal securities dealers to disclose all *payments* made to political parties, even if the payments do not constitute *contributions* as defined in the rule; and (iv) amending the definition of "issuer" to exclude all issuers of separate securities, as defined in Rule 3b–5 under the Act.

A. Supervisors of Municipal Finance Professionals

Rule G–37(g)(iv) provides that the term "municipal finance professional" means:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G–3(a)(i);

(B) any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) any associated person who is a direct supervisor of such persons up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a); or

(D) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G–1) executive or management committee or similarly situated officials, if any.

Each person listed by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G–8(a)(xvi) is deemed to be a municipal finance professional.

A municipal finance professional is defined to include any direct supervisor of a municipal finance professional up through including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a).

For example, a person from the corporate department will be deemed a municipal finance professional if that person assist the municipal department in soliciting municipal securities business and all direct corporate department supervisors of that person also will be deemed municipal finance professionals under rule G–37, regardless of whether that person's municipal securities activities are subject to the supervision of a principal in the municipal securities department. Concern has been expressed that this part of the definition unnecessarily covers persons whose duties and activities do not provide them with an opportunity or incentive to make political contributions for the purpose of influencing the awarding of municipal securities business by issuer officials.

The MSRB noted in its initial filing of rule G–37 that the definition of municipal finance professional includes those individuals who have a pecuniary interest in soliciting municipal securities business on behalf of a dealer. It is those persons who may be in a position to make political contributions for the purpose of influencing the awarding of such business by issuer officials. Such persons could include those in the public finance department, as well as underwriters, traders and institutional and retail sales persons primarily engaged in municipal securities representative activities. However, a corporate department supervisor typically does not have a pecuniary interest in soliciting municipal securities business, and typically does not acquire such an interest solely because a person supervised by that supervisor assists the municipal department by soliciting work from a municipal issuer.

The MSRB believes that amending the definition of municipal finance professional to designate as a municipal finance professional only a supervisor of any person primarily engaged in municipal securities representative activities or who solicits municipal securities business who also is a municipal securities principal or a municipal securities sales principal will facilitate compliance with rule G–37. Thus, in the example given above, the corporate department supervisors would not be included in the definition of municipal finance professional.

The MSRB continues to believe that if a retail sales person becomes a municipal finance professional by virtue of soliciting municipal securities business, then the municipal securities principal responsible for supervising that person's municipal securities activities should be designated a municipal finance professional. In most cases, this would include the sales person's branch manager (a municipal securities sales principal). Such supervisory personnel continue to be included within the definition of municipal finance professional because the MSRB is concerned that retail sales persons may solicit municipal securities business at the request of, or at least with the knowledge of, their supervisors. Thus, the amendment is intended to ensure that, if retail sales persons are soliciting municipal securities business, the supervisors of such persons also are deemed to be municipal finance professionals.

Finally, the definition of municipal finance professional has been amended to clarify that the supervisors of the municipal securities principals and municipal securities sales principals included within the definition also are deemed to be municipal finance professionals.

B. Designation as a Municipal Finance Professional

The MSRB has been asked whether a dealer can establish its own standards under which someone who solicits municipal securities business could relinquish municipal finance professional status upon completing the solicitation activity.[10] The rule change approved today amends rule G–37(g)(iv) to provide that each person designated by a dealer as a municipal finance professional shall retain this designation for two years after the last activity or position which gave rise to the designation. For instance, if an associated person is designated a municipal finance professional due to that person's solicitation activities, then that designation shall extend for two years from the date of the particular solicitation. Moreover, if this person continues to solicit municipal business, then each such solicitation triggers a new two-year period. Thus, if a municipal finance professional wants to divest himself of this designation, he must forego all soliciting of municipal business for two years (as well as avoid the other situations, set forth in rule G–37(g)(iv), giving rise to the designation of municipal finance professional). So too, if an institutional sales person primarily engaged in municipal securities representative activities is transferred to the corporate department, such person's contributions to officials of issuers and payments to political parties must be recorded for two years after such transfer.[11] The amendment is intended to ensure that contributions and payments by municipal finance professionals are not being made to influence the awarding of municipal

[1] On November 9, 1994, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 withdraws from the filing the proposed amendment to rule G–37(g)(iv)(A). The MSRB had proposed to amend the definition of "municipal finance professional" contained in rule G–37(g)(iv)(A) to exempt retail sales persons from being deemed "municipal finance professionals."

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] The Board published the text of the proposed rule change in the August 1994 *MSRB Reports*, Vol. 14, No. 4, at 27–32.

[5] Letter from Mark D. Schwartz, Esq. ("Schwartz") to Arthur Levitt, Chairman, Commission, dated September 18, 1994 ("Schwartz Letter"); Letter from Heather L. Ruth, President, Public Securities Association ("PSA") to Jonathan G. Katz, Secretary, Commission, dated September 18, 1994 ("PSA Letter"); Letter from Patrick J. Manning, President, Chemical Securities Inc. ("Chemical") to Jonathan G. Katz, Secretary, Commission, dated September 30, 1994 ("Chemical Letter"); Letter from Rhonda G. Kirschner, Senior Attorney and Corporate Vice President, Paine Webber Inc. ("Paine Webber") to Jonathan G. Katz, Secretary, Commission, dated September 30, 1994 ("Paine Webber Letter"); Letter from Robin L. Wiessmann, Principal, Artemis Capital Group, Inc. ("Artemis") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Artemis Letter"); Letter from W. Robb Hough, Jr., President, William R. Hough & Co. ("Hough") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Hough Letter"); Letter from Robert K. Dalton, Vice Chairman and William H. Coughlin, President, George K. Baum & Co. ("Baum") to Jonathan G. Katz, Secretary, Commission, dated September 28, 1994 ("Baum Letter"); Letter from Brian C. Underwood, Vice President—Director of Compliance, A.G. Edwards & Sons, Inc. ("Edwards") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Edwards Letter"); Letter from Samuel J. Winer, Esq., Arter & Hadden to Jonathan G. Katz, Secretary, Commission, dated October 20, 1994 ("Arter & Hadden Letter"); Letter from A. George Saks, Executive Vice President, Secretary and General Counsel, Smith Barney Inc. ("Smith Barney") to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 ("Smith Barney Letter"); Letter from Steven D. Vander Clay, Vice President, NBD Bank, N.A. ("NBD") to Jill C. Finder, Assistant General Counsel, MSRB, dated October 20, 1994 ("NBD Letter").

[6] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994) ("Approval Order"). The rule applies to contributions made on and after April 25, 1994.

[7] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994). The interpretations were published in the June 1994 MSRB Reports.

[8] Securities Exchange Act Release No. 34160 (June 3, 1994); 59 FR 30376 (June 13, 1994).

[9] *See* Securities Exchange Act Release No. 35128 (December 20, 1994), 59 FR 66989 (December 28, 1994); Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994). *See also MSRB Reports*, Vol. 14, No. 5, at 8 (December 1994); Vol. 14, No. 4, at 27–32 (August 1994). The interpretations also are available for inspection and copying at the Commission's public reference room and at the Board.

[10] *See* Letter from Heather L. Ruth, President, PSA to Diane G. Klinke, General Counsel, MSRB (July 25, 1994) ("July PSA Letter"), *supra* n. 6.

[11] However, rule G–37 does not require a firm to monitor and record the activities of a municipal finance professional that it no longer employs.

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securities business. The amendment also will allow dealers, after this two-year period, to remove these persons from their list of municipal finance professionals.

C. Contributions and Other Payments Made to Political Parties

Contributions to political parties do not trigger rule G–37's prohibition on business. Such contributions, however, are subject to the rule's recordkeeping and reporting provisions, as set forth in rule G–8(a)(xvi). These disclosure requirements are intended to help ensure that dealers do not circumvent the prohibition on business in the rule by indirect contributions to issuer officials through contributions to state or local political parties. For example, if a contribution to a political party is earmarked or known to be provided to an official or officials of a particular issuer, then the dealer would violate the rule's proscription against indirect violations, thereby triggering the two-year prohibition on business with that issuer.

Certain dealers and other industry participants have notified the MSRB that certain political parties currently are engaging in fundraising practices which, according to these political parties, do not invoke application of rule G–37. For example, some of these entities currently are urging dealers to make payments to political parties earmarked for expenses other than political contributions (such as administrative expenses or voter registration drives). Since these payments would not constitute "contributions" under the rule, the recordkeeping and reporting provisions would not apply. The MSRB is concerned, based upon this information, that the same pay-to-play pressures that motivated the Board to adopt rule G–37 may be emerging in connection with the fundraising practices of certain political parties described above.

The purpose of those disclosure requirements in rule G–37 pertaining to political parties is to ensure that funds contributed to political parties by dealers, Political Action Committees ("PACs"), municipal finance professionals and executive officers do not represent attempts to make indirect contributions to issuer officials, in contravention of rule G–37. The rule change approved today amends the recordkeeping and reporting provisions of rule G–37 (as set forth in rule G–8(a)(xvi)) to require dealers to record and disclose all payments made to political parties. The term "payment" is defined as any gift, subscription, loan, advance or deposit of money or anything of value. This definition is derived from the definition of "contribution" in rule G–37(g)(i), but does not include the limits on the purposes for which such money is given, as currently set forth in the definition of contribution.

Thus, the amendment will require dealers to record and report any payments to political parties by dealers, PACs, municipal finance professionals and executive officers, regardless of whether those payments constitute contributions. These disclosure requirements are intended to assist in severing any connection between payments to political parties and the awarding of municipal securities business. The amendment is not intended to restrict the personal volunteer work of municipal finance professionals for political parties.

D. Definition of Issuer

Under rule G–37, the term "issuer" is defined as any governmental issuer specified in Section 3(a)(29) of the Act (*i.e.*, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one or more states) and the issuer of any separate security, including a separate security as defined in Rule 3b–5 under the Act. In most instances, the issuers of separate securities are corporate obligors of industrial revenue bonds and bank issuers of letters of credit.

As noted above, rule G–37 was adopted in order to cleanse the municipal securities market of pay-to-play pressures. However, pay-to-play pressures do not exist when the issuer of a separate security is a corporate obligor of industrial revenue bonds or a bank issuer of a letter of credit. The Board itself recognized this when it noted in its May 1994 Q & A that, when filing Form G–37, dealers do not have to include corporate issuers in industrial development bond issues because no contributions (as defined in rule G–37) would be made to such corporations.[12] Therefore, the rule change amends the rule G–37 definition of issuer by omitting issuers of separate securities from the definition of issuer.

III. Comment Letters

A. Supervisors of Municipal Finance Professionals

Chemical and Artemis express unqualified support for designating as municipal finance professionals only those supervisors of municipal finance professionals who are also municipal securities principals or municipal securities sales principals. The PSA Letter also expresses general support for this amendment. The Edwards Letter expresses support for the views expressed in the PSA Letter; therefore. Edwards generally supports this amendment.

Schwartz opposes this amendment. The Schwartz Letter asserts that the amendment would "open a loophole further" because political fundraising has been happening across departments. The Commission notes that the amendment does not purport to exclude all supervisors of municipal finance professionals. Furthermore, the MSRB stated that the amendment was designed to cover situations in which retail sales persons are soliciting municipal securities business at the request of, or at least with the knowledge of, their supervisors.

The Arter & Hadden Letter also expresses opposition to this amendment. The Arter & Hadden Letter reasons that the supervisor of a retail sales person involved in municipal securities solicitation activity may not be involved in supervising that person's solicitation activity. The Arter & Hadden Letter argues that the MSRB was correct to amend rule G–37 so that a supervisor of persons primarily engaged in municipal securities representative activities or who solicit municipal securities business is deemed a municipal securities professional only if that supervisor is also a municipal securities principal or a municipal securities sales principal. However, the Arter & Hadden Letter criticizes the proposed amendment because, it asserts, the MSRB states that it would deem a branch manager and a branch manager's supervisor to be municipal finance professionals if a retail sales person in that branch office was soliciting municipal securities business. Arter & Hadden asserts that a branch manager does not have the background or expertise to supervise the solicitation activities of a retail sales representative; therefore, a branch manager should not be restricted in the same manner as a person who does have the background and expertise to supervise the solicitation activities of a retail sales representative.[12]

[12] Pursuant to rule G–37, a contribution is defined as "any gift, subscription, loan advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state or local office; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for state or local office." Thus, by definition, any funds given to corporate issuers would not constitute a "contribution", since such corporations are not the issuers or issuer officials contemplated by the rule.

Smith Barney also opposes this amendment. The Smith Barney Letter objects to the MSRB deeming a branch manager and a branch manager's supervisor to be municipal finance professionals if a retail sales person in that branch office was soliciting municipal securities business. It notes that the MSRB is concerned about situations in which retail sales persons are soliciting municipal securities business at the request of, or at least with the knowledge of, their supervisors; Smith Barney does not consider those reasons sufficient to justify the apparent breadth of the amendment. Smith Barney states that a simpler approach would be to interpret solicitation as asking others to solicit, and that the MSRB should not be concerned about supervisors who simply know that their sales persons are soliciting municipal securities business. The Commission believes that, while Smith Barney may be correct in theory, as a practical matter, Smith Barney's solution will make enforcement of the rule much more difficult. It believes that the practical difficulties of enforcing the rule if it were amended as Smith Barney suggests outweigh any compliance burdens imposed by the amendment. The Commission thus believes that the need for a prophylactic provision also outweighs the concerns expressed by Arter & Hadden concerning the burden imposed upon branch managers.[13]

B. Designation as a Municipal Finance Professional

Chemical and Artemis also express support for requiring each person designated by a dealer as a municipal finance professional to retain this designation for two years after the last activity or position which gave rise to the designation. The Chemical Letter states that the two year designation period matches the two year disqualification length contained in rule G–37(b) and provides clarity.

NBD opposes this amendment. NBD states that this amendment will create an undue reporting burden and would be unworkable from a supervisory standpoint. The NBD Letter reasons that if the designated municipal finance professional left the firm at which the professional engaged in the activity that gave rise to the designation, then that firm no longer would maintain any supervisory control over that individual, and therefore, any political activities of the individual would no longer benefit that firm and would be impossible to monitor. The NBD Letter also argues that if an employee is transferred to another department, then supervisory authority is severed. NBD regards it as "unlikely" that an employee would be transferred to another department in order to circumvent rule G–37.

With respect to the issue of monitoring municipal finance professionals who have left a firm, the Commission notes that rule G–37 does not require a firm to monitor the activities of a municipal finance professional that it no longer employs. With respect to the issue of whether a firm receives any continuing benefits from a municipal finance professional no longer employed by that firm, the Commission believes that whether or not a firm benefits from the political activities of an individual that occur after the individual leaves the firm, or is transferred, a firm may continue to enjoy the benefits that flow from that employee's activities even after that employee left the firm or was transferred. Rule G–37 reflects a reasoned judgment that certain activities may corrupt the awarding of municipal securities business, not only at the time of the activity, but for a certain period of time thereafter.

C. Miscellaneous Comments

Chemical and Artemis expressed support for the remainder of the rule change.

The PSA believes that the MSRB should further amend rule G–37 to:

- establish a threshold percentage of commissions below which a registered representative would not be considered a municipal finance professional;
- establish guidelines concerning how frequently they must review their records to identify registered representatives as municipal finance professionals;
- clarify that the MSRB will not retroactively apply the municipal finance professional designation to persons who were not initially identified by the broker, dealer or municipal securities dealer as a registered representative, but subsequently engage in activities that would trigger application.
- codify procedures for brokers, dealers and municipal securities dealers to follow to ensure that municipal finance professionals are being identified.

The Commission believes that the MSRB may address these comments in the context of a separate proposed rule change filed with the Commission. It does not believe that these comments must be addressed in the context of this rule change.

[13] The Commission notes that the amendment does not add any compliance burden that is not imposed under the current version of rule G–37

IV. Discussion and Findings

The Commission finds that the rule change is consistent with the provisions of Section 15B(b)(2)(C)[14] of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Commission believes that the rule change is in the public interest and removes impediments to and perfects the mechanism of a free and open market in municipal securities in that the amendments: (i) tailor the application of rule G–37 to those persons who may be in a position to make political contributions for the purpose of influencing the awarding of municipal securities business by issuer officials; (ii) require disclosure of certain payments which may have the effect of influencing the awarding of municipal securities business; and (iii) eliminate the restrictions imposed by rule G–37 with respect to certain transactions and practices which are not likely to influence the awarding of municipal securities business by issuer officials.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–MSRB–94–14 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6029 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20941; No. 812–9232]

Security Benefit Life Insurance Company, et al.

March 6, 1995.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security Benefit Life Insurance Company ("SBL"), T. Rowe Price Variable Annuity Account ("SBL Separate Account"), Pioneer National

[14] 15 U.S.C. § 78o–4.

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Life Insurance Company ("SBL–NY," together with SBL, the "Insurance Companies"), T. Rowe Price Variable Annuity Account of First Security Benefit Life Insurance and Annuity Company of New York ("NY–Separate Account," together with SBL Separate Account, the "Accounts") and T. Rowe Price Investment Services, Inc. ("Investment Services").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2), and pursuant to Section 11 approving the terms of a payment arrangement.

SUMMARY OF APPLICATION: Applicants seek an order (1) pursuant to Section 6(c) of the 1940 Act, permitting the deduction of a mortality and expense risk charge from the assets of: (a) the Accounts in connection with the offer and sale of certain variable annuity contracts ("Current Contracts"); (b) the Accounts in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Current Contracts ("Future Contracts," together with Current Contracts, the "Contracts"); and (c) any other separate account established in the future by the Insurance Companies in connection with the issuance of Contracts; and (2) pursuant to Section 11 of the 1940 Act, approving the terms of a payment arrangement involving certain mutual funds and variable annuity contracts.

FILING DATE: The application was filed on September 16, 1994, and amended on February 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 31, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Roger K. Viola, Esq., Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, Kansas 66636, and Nancy M. Morris, Esq., T. Rowe Price Investment Services, Inc., 100 East Pratt Street, Baltimore, Maryland 21202. Copies of Jeffrey S. Puretz, Esq., Dechert Price & Rhoads, 1500 K Street, N.W., Suite 500, Washington, D.C. 20005 and Steven B. Boehm, Esq., Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Kevin Kirchoff, Senior Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. SBL is a mutual life insurance company organized under the laws of the State of Kansas. SBL–NY is a domestic stock life insurance company organized under the laws of the State of Kansas. All of SBL–NY's outstanding stock is owned by Pioneer National Corporation, a Kansas corporation ("PNC"), which is a wholly-owned subsidiary of Security Benefit Group, Inc., ("SBG"), a wholly-owned subsidiary of SBL. SBL–NY will be merged into a newly-formed New York insurance company in the near future with the resulting entity to be named the "First Security Benefit Life Insurance and Annuity Company of New York" for the purpose of marketing a form of the Contracts in New York.

2. The Accounts are separate investment accounts established by the Insurance Companies for the purpose of investing purchase payments received under the Contracts. Each of the Accounts is a unit investment trust which has filed a registration statement on Form N–4 under the Securities Act of 1933 to register the offering of the Contracts.

Each Account is currently divided into five Subaccounts that will invest exclusively in shares of the corresponding portfolio of one of the following mutual funds: (1) T. Rowe Price International Series, Inc.; (2) T. Rowe Price Equity Series, Inc.; and (3) T. Rowe Price Fixed Income Series, Inc. (collectively the "Funds"). Each of the Funds is a Maryland corporation and is currently registered under the 1940 Act as an open-end management investment company. The shares of the Funds are purchased by the Insurance Companies for the Subaccounts at the Fund's net asset value per share.

The Insurance Companies may in the future establish additional separate accounts to support variable annuity contracts substantially similar in all material respects to the Contracts.

3. T. Rowe Price Associates, Inc. ("T Rowe Price") serves an investment adviser to each Fund, except the T. Rowe Price International Series, Inc. Rowe Price-Fleming International, Inc. ("Price-Fleming"), an affiliate of T. Rowe Price, serves as investment adviser to the T. Rowe Price International Services, Inc. Each of T Rowe Price and Price-Fleming is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

4. Investment Services will be the principal underwriter of the Contracts. Investment Services is a wholly-owned subsidiary of T. Rowe Price. Investment Services is a broker-dealer registered under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. Investment Services receives no compensation for acting as principal underwriter under distribution agreements with the Insurance Companies. Investment Services also is the distributor of shares of the T Rowe Price Public Funds, currently consisting of 36 open-end management investment companies. Each such fund is offered directly to the public and is managed by T. Rowe Price, Price Fleming, or an affiliate thereof.

5. The Contracts are available for purchase as non-tax qualified retirement plans. The Contracts are also eligible for use in connection with tax qualified retirement plans that meet the requirements of Sections 403(b) and 408 of the Internal Revenue Code of 1986, as amended (the "Code"). The minimum initial premium is $10,000 ($5,000 if made pursuant to an automatic investment program) to purchase a Contract in connection with a non-tax qualified retirement plan and $2,000 ($25 if made pursuant to an automatic investment program) to purchase a Contract in connection with a qualified plan. Subsequent premium payments are flexible, although they must be for at least $1,000 ($200 if made pursuant to a automatic investment program) for Contracts purchased in connection with a non-tax qualified retirement plan, and $500 ($25 if made pursuant to an automatic investment program) for Contracts purchased in connection with a tax qualified plan. The Insurance Companies may reduce the minimum premium requirements under certain circumstances, such as for group or sponsored arrangements

6. Premiums that are intended to accumulate on a variable basis may be allocated to one or more of the Subaccounts of the Accounts with respect to the Contracts. Premiums that are allocated to a Subaccount are invested exclusively in shares of the corresponding portfolio of the Funds. Amounts held in a Subaccount will increase or decrease in dollar value depending on the investment performance of the corresponding portfolio of the Fund in which the Subaccount invests. The Owner bears the investment risk for amounts allocated to a Subaccount.

Premiums that are intended to accumulate on a fixed basis may be allocated to the Insurance Company's Fixed Account. Amounts allocated to the Fixed Account earn interest at a guaranteed annual effective rate of at least 3%, compounded daily.

7. Contract owners may change the allocation of Contract Value up to six times a year. Additional changes in allocation may be made under allocation programs made available in connection with the Contracts. Contract owners may make partial withdrawals within limits and surrender their Contracts at any time before the annuity date. Each partial withdrawal must be for at least $500 and, after the withdrawal, the remaining value in the Contract must be at least $2,000.

8. Contract owners may apply their Contract Value to any of the several annuity options offered under the Contracts. Both fixed and variable options are available.

9. The Contracts also provide for the payment of a death benefit. If the Owner (or Annunitant, if the Owner is not a natural person) dies during the Accumulation Period, the Insurance Companies will pay death benefit proceeds to the Beneficiary upon receipt of due proof of the Owner's death and instructions regarding payment to the Beneficiary.

10. The death benefit proceeds will be the death benefit reduced by any outstanding Contract debt and any uncollected premium taxes. If the Owner dies during the Accumulation Period and the issue age of each Owner was 75 or younger on the date the Contract was issued, the amount of the death benefit will be the greater of (1) the Contract's value as of the date that due proof of death and instructions regarding payment are received by an Insurance Company at its Home Office, (2) the aggregate premium payments received less any reductions caused by previous withdrawals, or (3) the stepped-up death benefit. The stepped-up death benefit is (a) the highest death benefit on any annual Contract anniversary that is both an exact multiple of five and occurs prior to the oldest Owner attaining age 76, plus (b) any purchase payments made since the applicable fifth annual Contract anniversary, less (c) any withdrawals since the applicable fifth annual Contract anniversary. If the Owner dies during the Accumulation Period and the Contract was issued after age 75, the amount of the death benefit will be the Contract's value as of the date that due proof of death and instructions regarding payment are received by an Insurance Company at its Home Office. On the death of any Owner on or after the annuity payout date, any guaranteed payments remaining unpaid will continue to be paid to the Annuitant pursuant to the Annuity Option in force at the date of death. No death benefit will be paid if the Owner dies after the annuity payout date.

11. The Insurance Companies will deduct a daily charge from the assets of the Accounts for mortality and expense risks and costs assumed by them under the Current Contracts. The mortality and expense charge under the Current Contracts is equal to an annual rate not to exceed .55% of the average daily net assets of each Subaccount that funds the Contracts. The .55% charge consists of approximately .30% for mortality risk and .25% for expense risk and costs. This charge is intended to compensate the Insurance Companies for certain mortality and expense risks and costs the Insurance Companies assume in offering and administering the Current Contracts and in operating the Accounts.

The mortality risk borne by the Insurance Companies is the risk that the persons on whose lives annuity payments depend, as a group, will live longer than the Insurance Companies' actuarial tables predict. In this event, the Insurance Companies guarantee that annuity payments will not be affected by a change in mortality experience that results in the payment of greater annuity income than assumed under the Annuity Options in the Contract. The Insurance Companies also assume a mortality risk in connection with the death benefit under the Contract.

The Contracts do not include charges for administrative expenses. All administrative charges related to the Contracts are paid by the Insurance Companies. The Insurance Companies expect a profit from the mortality and expense risk charge that may be used to pay administrative costs. The expense risk borne by the Insurance Companies is that the anticipated profits from the mortality and expense risk charge will be insufficient to pay for the administrative expenses.[1]

12. The mortality and expense risk charge under the Current Contracts is equal to an annual rate of .55% of the average daily net assets of each subaccount that funds the Contracts. The Insurance Companies may issue Future Contracts with a mortality and expense risk charge not exceeding 1.00%.

13. The Insurance Companies may realize a profit from this charge to the extent it is not needed to cover mortality and administrative expenses, but the Insurance Companies may realize a loss to the extent the charge is not sufficient. The Insurance Companies may use any profit derived from this charge for any lawful purpose, including payment of any distribution expenses.

14. Contract purchasers and owners may own shares of a T. Rowe Price Public Fund(s), and may desire to transfer funds from a T. Rowe Price Public Fund(s) to a Contract as a premium payment. In addition, Contract owners may desire to invest proceeds from a redemption, withdrawal or surrender under the Contracts or annuity payments payable thereon, in shares of a T. Rowe Price Public Fund(s). Investment Services proposes to accommodate such investors with a payment arrangement facilitating such transfers. Use of this arrangement would be entirely elective; no Contract owner or purchaser would be required to use the payment arrangement to purchase a Contract or shares of a T. Rowe Price Public Fund.

15. Because neither the T. Rowe Price Public Funds nor the Contracts impose sales load charges, there is no possibility that any sales load would be deducted in connection with the application of redemption proceeds from a T. Rowe Price Public Fund to premium payments on a Contract, or the application of redemption proceeds or annuity payments from a Contract to the purchase of shares of T. Rowe Price Public Fund. However, applicable premium taxes may be deducted in connection with the first annuity payment or the payment of redemption proceeds under the Contract.

Applicants' Legal Analysis and Conditions

1. Applicants request an order of the Commission under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the

[1] Applicants have undertaken to amend their application during the notice period to include these representations.

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deduction of a maximum charge of 1.00% for the assumption of mortality and expense risks from the assets of: (a) the Accounts in connection with the issuance of the Current Contracts; (b) the Accounts in connection with the issuance of any Future Contracts; and (c) any other separate account established in the future by the Insurance Companies in connection with the issuance of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that their request for exemptive relief for deduction of a maximum 1.00% mortality and expense risk charge from the assets of the Accounts, or any other separate account established by the Insurance Companies in the future, in connection with the issuance of Future Contracts, would promote competitiveness in the variable annuity contract market by eliminating the need for the Insurance Companies to file redundant exemptive applications, thereby reducing the Insurance Companies' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair the Insurance Companies' ability effectively to take advantage of business opportunities as they arise. Further, if the Insurance Companies were required repeatedly to seek exemptive relief with respect to the same issues regarding a mortality and expense risk charge addressed in this Application, investors would not receive any benefit or additional protection thereby. Thus, Applicants believe that the requested exemptions regarding a mortality and expense risk charge are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the maximum 1.00% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of similar industry products, taking into account such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the means of promotion, the market for the contracts, investment options under the contracts, and the tax status of the contracts. Applicants represent that the Insurance Companies will maintain at their home offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, their comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses. The Insurance Companies have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Insurance Companies at their home offices and will be made available to the Commission. Applicants represent that Future Contracts will be offered only if the Insurance Companies conclude that the proposed distribution financing arrangement will benefit such Future Contracts and the Accounts or other separate accounts established in connection with their issuance and the Contract owners. The basis for such conclusion will be set forth in a memorandum which will be maintained by the Insurance Companies at their home offices and will be made available to the Commission.[2]

[2] Applicants have undertaken to amend their application during the notice period to include these representations.

7. Applicants also represent that the Accounts will invest only in underlying open-end management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of such company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

8. Section 11(a) of the 1940 Act makes it unlawful, in relevant part, for a registered open-end investment company or any of its principal underwriters:

> To make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made.

9. Section 11(c) of the 1940 Act provides that, irrespective of the basis of exchange, subsection (a) shall be applicable:

> (1) to any offer of exchange of any security of a registered open-end investment company for a security of a registered unit investment trust * * *; and (2) to any type of offer of exchange of the securities of registered unit investment trusts * * * for the securities of any other investment company

10. The Commission has promulgated Rules 11a–2 and 11a–3 under Section 11, each of which permits the making of certain exchange offers without prior Commission approval provided that specified conditions are met.

Rule 11a–2 permits offers of exchange to be made by registered insurance company separate accounts to holders of variable contracts supported by separate accounts having the same or an affiliated insurance company depositor or sponsor, provided that, with respect to variable annuity contracts, (1) the exchange is made on the basis of the relative net asset values of the securities to be exchanged (less any administrative fee disclosed in the offering account's registration statement); and (2) any sales loads which may be imposed are calculated and deducted in accordance with the terms and conditions of Rule 11a–2.

Rule 11a–3 permits a fund or its principal underwriter to make exchange offers to shareholders in that fund or another fund in the same group of funds on a basis other than net asset value. The rule permits the imposition of certain sales loads and/or other fees in connection with the exchange, provided that (1) any administrative fee or scheduled variation thereof is applied uniformly to all security holders of the specified class; (2) any redemption fee or scheduled variation thereof is applied uniformly and does not exceed the redemption fee applicable to the redemption of the exchanged security in the absence of an exchange; (3) adequate disclosure is made with respect to the fees charged and the limitations and any rights of termination applicable to an exchange offer; and (4) sales loads are calculated and deducted in accordance with the terms and conditions of Rule 11a–3.

Rule 11a–2 thus permits offers of exchange between insurance company separate accounts having the same or affiliated depositor or sponsor and Rule 11a–3 permits certain exchange offers between funds in the same group of funds. However, neither rule permits exchanges between a publicly-offered management investment company and a separate account.

11. Applicants state that, because neither the T. Rowe Price Public Funds nor the Contracts impose sales load charges, no sales load will be deducted in connection with the application of redemption proceeds from a T. Rowe Price Public Fund to premium payments on a Contract, or the application of redemption proceeds or annuity payments from a Contract to the purchase of shares of T. Rowe Price Public Fund. Thus, there is no possibility of the abuse contemplated by Section 11(a) (*i.e.*, offers of exchange made solely for the purpose of assessing additional selling charges). The payment arrangement is consistent with the intent and purposes of Rules 11a–2 and 11a–3 and would satisfy the conditions established by those rules if the Applicants were eligible to rely on them.

12. Applicants believe that exemptive relief is necessary, appropriate and fully consistent with the purpose of Section 11 of the 1940 Act, and that the payment arrangement would not result in any of the abuses the section was enacted to prevent. The payment arrangement provides substantial benefits to Contract purchasers and owners by providing a convenient means of making premium payments and of investing proceeds from a redemption, withdrawal or surrender under the Contracts. The payment arrangement is consistent with the protection of investors and with the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6030 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airbus Industrie Proposal To Establish a Maximum Passenger Capacity for the Model A321 Airplane Without Conduct of a Full-Scale Evacuation Demonstration; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) for the purpose of soliciting and reviewing information from the public on a proposal by Airbus Industrie to establish a maximum passenger capacity for the model A321 airplane without conduct of a full-scale evacuation demonstration. Interested parties are invited to make presentations or submit material for the record.

DATES: The public meeting is scheduled for Friday, April 14, 1995. On-site registration will begin at 7:30 a.m., and the public meeting will begin at 8:30 a.m.

REGISTRATION: Persons planning to attend the public meeting should preregister by contacting the person identified later in this notice as the contact for further information. Arrangements for oral presentations must be made by March 25, 1995.

ADDRESSES: The public meeting will be held at the Holiday Inn, SeaTac International Airport, 17338 International Blvd., Seattle, Washington 98188.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Transport Standards Staff, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a public meeting to be held on April 14, 1995 at the Holiday Inn, SeaTac International Airport in Seattle, Washington. The purpose of this meeting is to hear comments from the general public regarding a proposal by Airbus Industrie to establish the maximum passenger capacity for the A321 airplane, without conduct of a full-scale evacuation demonstration. This proposal includes utilization of previous full-scale evacuation data from a similar airplane model, in combination with partial evacuation testing and analysis. This approach would represent a departure from previous FAA-approval methods for new airplane models, although the European Joint Aviation Authorities have already approved the airplane using this method. The A321 is a derivative of the A320 airplane, and includes replacement of the two Type III overwing exits with two pairs of improved Type I exits. While this subject is being addressed by the Emergency Evacuation Issues Group of the Aviation Rulemaking Advisory Committee (ARAC), that group has not yet reached a consensus on the procedures to follow in such a case. In the absence of a formal recommendation from ARAC, the FAA is inviting the interested public to comment on the Airbus proposal. The FAA will consider information presented at the public meeting in the course of making its decision on the acceptability of the Airbus proposal.

The agenda for the meeting will include:

Regulatory Background
Certification Test Procedures
Airbus Presentation of Proposed Compliance Method
Presentations from the Public

Attendance is open to the interested public, but will be limited to the space available.

Requests To Be Heard

Persons planning to present data or comments at the public meeting are requested to provide the FAA an abstract of their presentation by March 25, 1995. The abstract should include an estimate of the time needed to make the presentation, and should be mailed to the person identified earlier in this notice as the contact for further information. Following each presentation, a discussion period will be allowed and all persons will be given the opportunity to open discussions on the presentation.

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Public Meeting Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at the Holiday Inn, SeaTac at a single room rate of $74.00 plus tax. Persons wishing to attend the public meeting are encouraged to make reservations by March 23, 1995, by contacting the Hotel direct at 206–248–1000. Be sure to identify yourself as an FAA public meeting attendee to receive this special rate.

Persons who plan to attend the public meeting should be aware of the following procedures which are established to facilitate the workings of the meeting.

1. The meeting will be open on a space available basis to all persons registered. If practicable, the meeting will be accelerated to enable adjournment in less than the time scheduled.

2. The meeting will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcribe will be docketed.

3. The FAA will consider all materials presented at the meeting by participants. Position papers and other handout material may be accepted at the discretion of the chairperson. Enough copies should be provided for distribution to all conference participants.

4. Statements made by FAA participants at the meeting will not be taken as expressing final FAA positions.

Issued in Renton, Washington, on March 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–5872 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Motor Carrier Advisory Committee. The Committee acts in an advisory capacity to the Federal Highway Administrator. It makes recommendations intended to improve the safety and productivity of the motor carrier industry and the effectiveness of the FHWA's programs and policies. The Committee reviews research projects, regulations, and programs including those involving commercial motor vehicle licensing and taxation, uniformity, and safety. The focus of the meeting will be issues and concerns of the motor carrier community, including: (1) Regulatory Updates, (2) Overview of the Truck and Bus Safety Summit, and (3) Intelligent Transportation Systems.

DATES: The meeting will be from 8:30 a.m. to 4:30 p.m. on April 4, 1995, and from 8:30 a.m. to 12:00 p.m. on April 5, 1995.

ADDRESSES: Federal Highway Administration, 400 Seventh Street, SW., Room 2201, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Rea, HMT–2, Room 3103, 400 Seventh Street, SW., Washington, DC, 20590; (202) 366–1724.

Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–6059 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–22–P

[FHWA Docket No. 95–4]

Highway Investment Needs at and Approaching International Ports of Entry

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This document requests comments on a study of highway investment needs at and approaching international ports of entry. This study would supplement an earlier report on international ports of entry and transportation corridors for North American trade which the Department of Transportation (DOT) submitted to the Congress in January 1994, in accordance with sections 1089 and 6015 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914. The Congress has asked the FHWA to conduct a study to review its distribution of funds to border regions, to develop and report recommendations to improve the distributions of such funds, to give high priority to the transportation needs of border regions, and to work with State and local governments in border regions (including requests for information about funding distribution) to assist them with planning. This will be a two-part study. The States have asked for the expansion of this study to include other international ports of entry. This will be the second study conducted by the FHWA.

DATES: Comments must be received on or before April 1, 1995, for inclusion in part one of the report to the Congress on international border crossing ports of entry; on or before July 31, 1995, for the second part of the border crossing report; and by September 1, 1995, for a subsequent report which will cover other maritime, rail, air, and intermodal international ports of entry. This docket will remain open indefinitely to accept comments on the reports after they are issued.

ADDRESSES: Submit written, signed comments to the FHWA Docket No. 95–4, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington DC 20590. Interested parties are requested to identify themselves for inclusion on a mailing list for future notifications concerning the study by providing their names and mailing addresses to the above docket. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Esther Strawder, Office of Policy Development, Federal Highway Administration (HPP–22), 400 Seventh Street, SW., Washington, D.C. 20590, Attention: Highway Investment Study (telephone 202/366–6949, fax 202/366–3297).

SUPPLEMENTARY INFORMATION:

Background

The conference report (H.R. Conf. Rep. No. 752, 103d Cong., 2d Sess. (1994)) of the Department of Transportation's Appropriations Act for Fiscal Year 1995 (Pub. L. 103–331, 108 Stat. 2471) includes a discussion of and requirements related to infrastructure issues of the border regions.

The congressional report references an earlier report prepared by the FHWA and submitted by the Secretary of Transportation to the Congress in January 1994, in accordance with section 1089, Feasibility of International Border Highway Infrastructure Discretionary Program, and section 6015, Border Crossings, of the ISTEA. The report is entitled "Assessment of Border Crossings and Transportation Corridors for North American Trade." A copy of the Executive Summary of the Report follows as background. A list of the detailed reports which resulted from that study and are available from the National Technical Information Service is also included.

In the conference report, Congress has asked the FHWA to review its distribution of funds to border regions, including reexamination of a dedicated border infrastructure investment program; to develop and report recommendations to improve the distribution of such funds; to give high priority to the transportation needs of border regions, and to work with State and local governments in border regions, including requests for information about funding distribution, to assist them with planning. The House Appropriations Committee requested the recommendations to improve the distribution of the funds by May 1, 1995. A draft of that report is expected to be completed by March 1, 1995. A second phase addressing broader issues and including international ports of entry will be completed by the end of calendar year 1995.

Through the American Association of Highway and Transportation Officials Planning Committee, the States will be working with the FHWA to develop the data to address these congressional concerns for the land border crossing and the highway infrastructure investment issues associated with all international ports of entry. Comments must be received on or before April 1, 1995, for inclusion in part one of the report to the Congress on international border crossing ports of entry; on or before July 31, 1995, for the second part of the border crossing report; and by September 1, 1995, for a subsequent report which will cover other maritime, rail, air, and intermodal international ports of entry. This docket will remain open indefinitely to accept comments on the reports after they are issued.

Policy Questions and Comments

Responses to the following questions are solicited from any parties interested in highway infrastructure issues associated with border crossings and other international ports of entry. The following key policy questions will be considered:

1. What are the current priority highway investments at or in the vicinity of land border crossings or other international ports of entry?

2. What factors define a high priority highway investment at or in the vicinity of land border crossings or other international ports of entry?

3. Historically, how have Federal funds been distributed to the border regions?

4. (a) If there were no dedicated highway infrastructure investment program for roads associated with international ports of entry and the State and local governments made decisions through their usual planning processes, what could be done to assure that each State's transportation plan included consideration of highway or other access to the international ports of entry? (b) If there were a dedicated infrastructure investment program for highways associated with international ports of entry, how should it be structured for highways and for other surface transportation modes?

5. Comment on the following proposed criteria for defining roadway segments that provide access to or egress from international ports of entry. These roadway segments are often referred to as being "at and/or approaching the international ports of entry." The criteria are intended to provide uniformity in the data used in analysis and in developing highway investment strategies. The criteria described are for international ports of entry for which the U.S. Customs Service has listed a valid Automated Commercial System District/Port Code. These ports of entry may be for land (highway and rail), water, or air.

Proposed Criteria

To be considered as a highway segment providing access to or egress from an international port of entry one of the following three criteria must apply:

1. The roadway segment from the international port of entry to its intersection with the first principal arterial.

2. The roadway segment(s) on which half of the traffic is destined for or is coming from the international port of entry.

3. The roadway segment(s) carrying more than half of the traffic that crossed or entered at the international port of entry.

Authority: Secs. 1089 and 6015, Pub. L. 102–240, 105 Stat. 1914 (1991); 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

Assessment of Border Crossings and Transportation Corridors for North American Trade—Executive Summary of Report to Congress Pursuant to Intermodal Surface Transportation Efficiency Act of 1991—Public Law 102–240, Sections 1089 and 6015

Authority

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240

ISTEA Section 1089: Feasibility of International Border Highway Infrastructure Discretionary Program

(a) The Secretary shall conduct a study of the advisability and feasibility of establishing an international border highway infrastructure discretionary program. The purpose of such a program would be to enable States and Federal agencies to construct, replace, and rehabilitate highway infrastructure facilities at international borders when such States, agencies, and the Secretary find that an international bridge or a reasonable segment of a major highway providing access to such a bridge

(1) is important;

(2) is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence;

(3) poses a safety hazard to highway users;

(4) by its construction, replacement, or rehabilitation, would minimize disruptions, delays, and costs to users; or

(5) by its construction, replacement, or rehabilitation, would provide more efficient routes for international trade and commerce.

(b) Report.—Not later than September 30, 1993, the Secretary shall transmit to Congress a report on the results of the study conducted under this section, together with any recommendations to the Secretary.

ISTEA Section 6015. Border Crossings

(a) Identification.—The Secretary, in cooperation with other appropriate Federal agencies, shall identify existing and emerging trade corridors and transportation subsystems that facilitate trade between the United States, Canada, and Mexico.

(b) Priorities and Recommendations.—The Secretary shall investigate and develop priorities and recommendations for rail, highway, water, and air freight centers and all highway border crossings for States adjoining Canada and Mexico, including the Gulf of Mexico States and other States whose transportation subsystems affect the trade corridors. The recommendations shall provide for improvement and integration of transportation corridor subsystems, methods for achieving the optimum yield from such subsystems, methods for increasing productivity, methods for increasing the use of advanced technologies, and methods to encourage the use of innovative marketing techniques, such as just-in-time deliveries.

(c) Minimum Elements.—The highway border crossing assessment under this section shall at a minimum—

(1) determine whether or not the border crossings are in compliance with current

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Federal highway regulations and adequately designed for future growth and expansion;

(2) assess their ability to accommodate increased commerce due to the United States-Canada Free Trade Agreement and increased trade between the United States and Mexico; and

(3) assess their ability to accommodate increasing tourism-related traffic between the United States, Canada, and Mexico.

The review shall specifically address issues related to the alignment of United States and adjoining Canadian and Mexican highways at the border crossings, the development of bicycle paths and pedestrian walkways, and potential energy savings to be realized by decreasing truck delays at the border crossings and related parking improvements.

(d) Consultation.—In carrying out this section, the Secretary shall consult with appropriate Governors and representatives of the Republic of Mexico and Canada.

(e) Report.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall report to Congress and border State Governors on transportation infrastructure needs, associated costs, and economic impacts identified and propose an agenda to develop systemwide integration of services for national benefits.

Assessment of Border Crossings and Transportation Corridors for North American Trade—ISTEA Section 1089 and Section 6015 Report to Congress

Executive Summary

Congressional Mandate

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240, directs the Secretary of Transportation to conduct two studies relating to the movement of international trade.

Section 1089 calls for a study of the "advisability and feasibility of an international border highway infrastructure discretionary program."

Section 6015 calls for the Department of Transportation (Department) to conduct an assessment of existing and emerging international trade corridors between the United States, Mexico, and Canada, and to make recommendations on how to improve the integration and operation of trade-related transportation subsystems. Section 6015 requires that Mexico and Canada be consulted; both countries have cooperated in the study effort.

While the Congressional mandate does not specifically mention the North American Free Trade Agreement (NAFTA), Section 6015 stipulates that the "review shall specifically address issues related to the alignment of United States and adjoining Canadian and Mexican highways at the border crossings." The legislation also requires an assessment of the ability of highway border crossings to "accommodate increased commerce due to the United States-Canada Free Trade Agreement and increased trade between the United States and Mexico."

Much of the motivation for the study stems from long standing complaints of lengthy delays and backups of trucks and cars at international border crossings. There is a concern that trade among the three North American nations, which has increased significantly over the past seven years, may outstrip the ability of the nations' transportation systems to handle additional traffic, further exacerbating border congestion. The study team concluded that there are several factors involved in border congestion, and a number of difficulties in assessing the condition and future of trade corridors.

Study Approach and Methodology

The study team examined the border crossings and the access channels leading to them. The team visited most of crossings on both the northern and southern borders and drove over and observed traffic on many of the access roads. With assistance from the U.S. Customs, the team observed cargo and passenger clearance operations and transportation operations at the border crossings.

In addition, the team conducted a series of public outreach and information gathering meetings at locations throughout the United States. Participants at these meetings included shippers, carriers, customs brokers, and officials from concerned Federal, state, provincial, and local governments. Much of the information gathered in these sessions was anecdotal in nature, and reflective of local perspectives. However, there was value in learning the views of border communities and understanding the effects they perceive their proximity to heavily travelled border crossings have on local and regional transportation systems. Following completion of these studies and at the invitation of the Federal governments of Canada and Mexico, meetings were also held in Canada and Mexico to gain the perspectives of interested parties in those countries. Results of these meetings will be reported separately.

Statistical data on cross-border trade gathered from sources in all three countries were also used to the extent possible in assessing trade patterns and conditions at the borders. The statistical data, however, suffer from a number of shortcomings. The U.S. Census Bureau, for example, has not historically classified cross-border transits by mode of transportation. Ideally, transportation statistics are compiled in terms of ton miles or numbers of vehicles, but data were not readily available in that form. Furthermore, the three countries involved do not compile data in a standard way

Current U.S. Trade With Canada and Mexico

Canada is the United States' largest trading partner. In 1992, merchandise trade between the two countries totaled $189 billion, with U.S. imports exceeding exports by about 9 percent. Trade between the United States and Canada is growing. Between 1985 and 1992, the value of U.S.-Canadian trade increased by about $33 billion, or 21 percent. Trade with Canada currently accounts for about 20 percent of U.S. total merchandise trade with the world.

Total trade with Mexico has even stronger growth, fueled by Mexico's liberalization of tariff and trade restrictions in 1986. From 1986 through 1992, total trade grew from approximately $30 billion to $76 billion, an increase of 153 percent. Mexico is now the United States' third largest export market; U.S. exports increased from $12.4 billion in 1986 to $40.6 billion in 1992.

North American Free Trade Agreement

The United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA) on December 17, 1992. The NAFTA will create the largest free trade zone in the world, comprising over 360 million consumers with a combined annual output of $6 trillion. Through progressive reductions, the NAFTA eliminates all tariffs on industrial and agricultural goods produced by the three countries. Approximately 50 percent of U.S. exports to Mexico will enter Mexico completely duty-free on the day the agreement enters into force. Mexican tariffs on all remaining industrial products and most agricultural items will be phased out over 5 to 10 years. Reductions in tariffs on trade between the United States and Canada were negotiated in 1987 and incorporated into a U.S.-Canada Free Trade Agreement. This agreement remains in effect, augmented by additional changes included in the NAFTA.

Judging from recent experience, the NAFTA should result in further increases in U.S. trade with Mexico. For example, the U.S. Department of Commerce estimates that the NAFTA will result in increases in U.S. automotive exports to Mexico of up to $1 billion in the NAFTA's first year alone due to the lowering of various Mexican tariff and non-tariff barriers.

The dramatically increased trade with Mexico over the past seven years has aggravated conditions at an already congested U.S.-Mexican land border. Similar problems exist on the U.S.-Canadian border as well. While the NAFTA would help boost trade among the three countries, the degree to which it would increase border congestion is unclear. The NAFTA will eliminate a number of transportation practices and restrictions currently in place that contribute significantly to congestion at land border crossings. At some crossings, as many as 20 percent of commercial vehicles cross empty because of current limitations on access in both countries. Thus, while the NAFTA's tariff reduction provisions will tend to boost trade and vehicle traffic across the southern border, the NAFTA's provisions will also tend to reduce the number of empty commercial vehicles crossing the border.

Both Mexico and the United States restrict access for motor carriers from the other country. U.S. trucks are prohibited from crossing the border into Mexico, for example, while Mexican trucks are permitted in the United States only as far as the commercial zones along the border which are designated by the Interstate Commerce Commission.

The NAFTA creates a timetable for the removal of barriers to the provision of cross-border motor carrier services, thereby permitting international passengers and cargo to be transported more efficiently. The NAFTA's transportation provisions will eliminate the need to transfer cargoes and trailers at the border, thereby reducing the number of trucks that cross the border empty and eliminating a significant cause of congestion at border ports of entry.

Patterns of Trade

Canada

The largest concentration of trade with Canada, both to and from a single region of the United States, is in the Great Lakes area, including Wisconsin, Michigan, Ohio, Indiana, and Illinois. In 1992, this region alone accounted for 39 percent of the value of U.S. imports from Canada and 36 percent of the value of U.S. exports. Much of this is accounted for by the high value automobile trade focused between Michigan and Ontario.

The second largest regional concentration of trade is in the mid-Atlantic area, which includes New York, New Jersey, and Pennsylvania. The third largest is in the New England states. Together, states in the three eastern regions account for 65 percent of Canada's exports to the United States and 60 percent of U.S. exports to Canada when measured as value of trade.

Mexico

The largest concentration of trade with Mexico to date has been in the southern border region. Texas dominates U.S. export trade with Mexico, with over $17 billion in 1992. California is second, followed by Arizona, Michigan, and Illinois. The principal destinations in the United States for imports from Mexico are Texas, California, and Michigan.

Transportation Patterns

In terms of value, most cargo transported between the United States and Canada and the United States and Mexico travels by highway or rail—80.2 percent of total U.S.-Canadian trade in 1992; 86 percent of total U.S.-Mexican trade in 1992. Between the United States and Canada, movements by air account for about 10 percent of cargo transported. Between the United States and Mexico, water transportation accounts for a 10 percent share of total cargo transported in terms of value.

On the northern border, the eastern ports of entry in Michigan, New York, and New England handle more than 80 percent of cross-border traffic. Of the remaining traffic, the Washington ports of entry handle about 70 percent of northwestern cross-border trade and highway traffic volume. Along the U.S.-Mexico border trade flow is heavily concentrated at seven major border ports of entry—El Paso, Otay Mesa, Laredo, Brownsville, Calexico, Nogales, and Hidalgo. The busiest port of entry for commercial trucks is at El Paso; the busiest port of entry for rail traffic is Laredo.

Trade Flow Transportation Patterns

The report addresses trade flow patterns rather than trade corridors for the major areas of North America. The study team did not find a firm definition of what constitutes a trade corridor for all modes of transportation.

Most trade flow patterns between the United States and Mexico and the United States and Canada can best be described as intraregional in nature. The communities on both sides of the northern and southern borders have developed regional economies that are truly binational.

There are high levels of cross-border commuting, shopping, and movement of goods and services to support these binational regional economies. These movements are best accommodated by regional transportation systems.

In addition, there are trade movements between production regions and between production and consumption regions. Often, these areas are far apart; occasionally, the trade is between contiguous regions, such as between the densely populated manufacturing sections of the eastern United States and Canada.

Eastern U.S.-Canadian Trade Flow Transportation Patterns

Groups of individual land border crossings are called frontiers or gateways in this report. The Niagara and Michigan frontiers are at the center of the major trade between the United States and Canada. In addition, these frontiers account for the largest portion of U.S.-Mexican trade that does not originate in Texas or California. While the largest portion of freight to and from Mexico crosses the Texas border at Laredo, it is carried on transportation routes originating in Montreal, Toronto, Buffalo, southeast Michigan, and Chicago. These routes are critical to an integrated North American market.

Western U.S.-Canadian Trade Flow Transportation Patterns

The pattern of U.S.-Canadian trade in the west tends to be organized into three somewhat distinct cross-border trading subregions: the Pacific Northwest, the Rocky Mountains, and the Upper Plains. The flow of trade at the border is focused through relatively few major crossings. While some dominant interregional flows are associated with trade to and from these border gateways, trade flows beyond the border are highly diffuse, with as many east-west flows as north-south flows to and from the border.

U.S.-Mexican Trade Flow Transportation Patterns

Three existing and two emerging trade areas, linked to major border ports of entry, were identified: South Texas, West Texas, New Mexico, Arizona, and California. These are not broad continental corridors in the sense that they connect regions of the United States with regions in Mexico or regions in Mexico with regions in Canada. Rather, they tend to be the funnels through which trade and people pass. Beyond the border region, trade flows in a more diffuse pattern. In addition to serving as convenient crossing points for binational trade, these areas also serve local economies of integrated services, industries, and trade.

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Principal Findings

• Volumes of trade and traffic will continue to increase among the three North American countries. The traffic growth rate at both the U.S.-Canadian and U.S.-Mexican borders has been increasing at rates significantly higher than average national growth rates, particularly at the southern border.

• Passenger traffic through U.S.-Canadian ports of entry in the eastern region is projected to increase at a rate of 6.2 percent a year through 1997. Total trade through eastern ports of entry is projected to reach $160 billion by 1997, resulting in an increase in commercial traffic to between 8 and 9 million vehicles or an average annual growth rate of between 5 and 7 percent through 1997.

• U.S.-Canadian trade processed through border ports of entry in the western region is also expected to increase. U.S. exports to Canada are projected to increase by 16 to 24 percent in the next ten years. Canada exports to the United States are projected to increase 24 to 34 percent over the same period.

• With ratification of the NAFTA, the projected increase in trade between the United States and Mexico will be much larger. U.S. exports to Mexico are projected to increase between 65 and 70 percent by 2000. Mexican exports to the United States through the South Texas ports of entry are projected to increase 120 percent; exports through the West Texas-New Mexico ports of entry should increase by 110 percent; exports through Arizona are projected to grow by 85 percent; and exports through California are projected to increase by over 200 percent.

• The facilities immediately at the border crossings, principally bridges and tunnels plus facilities housing Federal inspection agencies (the U.S. Customs Service, the U.S. Immigration and Naturalization Service, the U.S. Department of Agriculture and their Mexican and Canadian counterparts), are adequate and will remain so for the foreseeable future, even with the anticipated increased in trade. The General Services Administration (GSA) is completing a $364.5 million Southwest Border Capital Improvement Program that will enable southern border crossing facilities to accommodate 8.4 million trucks annually. Approximately 2.3 million trucks entered the United States from Mexico during Fiscal Year 1992.

• Arterials leading to and from border crossing sites are part of the border approach infrastructure. Today they are under stress and will be hard pressed to handle significantly greater amounts of cross-border traffic. The GSA improvements cited above are confined to facilities at border crossings which handle traffic and inspection. The GSA improvements do not extend beyond the immediate crossing area to roads and other transportation channels. These arterials connect border crossings to the main interstate and interregional transportation system within the United States. They are badly in need of repair and upgrading.

• In addition to needed improvements in access to the border crossing points, some incremental improvements to transportation systems in the United States may be necessary to handle increases in both domestic and international trade. These include improvements in access to inland ports, seaports, airports, and intermodal transfer facilities.

• Communities that adjoin busy international border crossings face special problems resulting from the concentration of trade-related traffic, including congestion of local arterials with accompanying delays in travel times for local residents and deterioration of air quality, safety risks associated with heavy vehicle traffic, and increased deterioration of highway infrastructure.

• Border states, in distributing Federal highway funds, seem not to have allotted sufficient funds to border communities for improvements to border crossing approaches. The reason, in some cases, is because of competing priorities within states and in other cases because of legal limitations prior to ISTEA on the use of such funds for access roads to certain crossings (e.g. toll bridges). New sources of infrastructure funding and improved methods for its allocation appear necessary.

• A significant proportion of the delays at border crossings are not due to a lack of adequate infrastructure, but is caused by volume of trade, by complexities of inspection requirements, and by less than optimal traffic management and cargo clearance procedures. The responsibilities of the inspection agencies require that many vehicles undergo lengthy, thorough inspections. Inadequate or incomplete paperwork accompanying cross-border shipments is common and constitutes another source of delay. Improvements appear to be needed in a combination of partnerships and technology applications to resolve some delay problems.

• Inspection agency staffing shortages can lead to excessive waiting time at border crossings. Traffic at most crossings is typically concentrated during peak hours, and border facilities often are idle for long periods during off-peak hours. More efficient use of border facilities could spread traffic over a longer period during the day, and thus alleviate some congestion.

• Policies and practices of foreign governments often contribute to congestion at the border. For example, inspection agencies on both sides of the border work different hours.

• Infrastructure and facilitation planning for major border crossings is fragmented and inadequate. The Federal government maintains an interagency group that coordinates review of proposals for additional crossings on the southwest border, but it does not deal with border communities or with planning of ancillary roadway or other needs beyond the crossings themselves. Adequate planning will require improved coordination among public and private entities, and among Federal, state, and local governments. Such planning should be binational and applied to both the northern and southern borders. The Federal Government should have the lead role as regards the involvement of foreign government entities. The Federal Government should also take on a leadership role as facilitator and convener of the mix of domestic government entities.

• There is insufficient linkage between available data on trade and transportation to permit the establishment of a firm definition of what constitutes existing or emerging international trade corridors for all modes of transportation.

Principal Recommendations

Transportation Infrastructure Investment—Section 1089 of the ISTEA directs the Department to evaluate the feasibility and advisability of establishing a discretionary border infrastructure investment program. While the Department is certainly capable of implementing such a program if it were established by the Congress, we do not believe it to be an advisable course of action. Even though the Department finds that investment is needed to address deficiencies in highway approaches to ports of entry and intermodal facilities, a number of alternative actions to the discretionary program are recommended:

• Fully fund the ISTEA to provide additional resources for states to allocate to trade-related and other high priority projects.

• With state and local governments, private financial institutions, carriers, and other private interests, develop a range of funding options for infrastructure improvements, emphasizing existing Federal, non-Federal, and potential private sources. Identify, and eliminate wherever possible, impediments in Federal programs to innovative public/private collaborative efforts.

• As part of a future surface transportation authorization bill, develop Federal-aid program options to improve transportation infrastructure related to international trade, including border approach roads and connections to port, airport, and other intermodal facilities.

Border Station Congestion—The Department will support a task force or multi-task forces composed of Federal, state and local government agencies, and the private sector to address congestion at border crossings in general or at specific gateways or crossings. The purpose of the task force(s) is to identify critical border initiatives and to aggressively promote the use of new technologies and other non-capital intensive methods of facilitating the movement of people, cargo, and vehicles through major border crossings. Any initiatives should be closely coordinated with the Mexican and Canadian governments. A limited number of pilot projects could be undertaken through a competitive process to address congestion at various gateways. Funding for these projects could include a variety of Federal, state, local or private resources.

Transportation Planning and Data Needs—To assure that planning for future border trade-related infrastructure and technology requirements for all modes is included in state and national planning processes, the Department of Transportation and other Federal agencies should establish binational planning zones to engage in an integrated binational planning process. Planning for infrastructure and technology improvements in these zones would be coordinated with Federal, state, local, and private sector organizations that would identify improvement priorities. Cross-border consultation and coordination would be an integral part of the overall process.

To further assist in future border region and trade corridor transportation system planning, it is advisable to develop and implement a program for improving methods of collecting and analyzing data on cross-border trade and traffic flows.

These detailed reports are (where PB numbers are listed) or will be available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4634 All reports are numbered FHWA-PL–94–009-xx. The suffix (xx) is shown following the title listed below

Title	PB
ASSESSMENT OF BORDER CROSSINGS AND TRANSPORTATION CORRIDORS FOR NORTH AMERICAN TRADE: REPORT TO CONGRESS	94–215806
ISTEA SECTION 1089 STUDY:	
Feasibility Study for an International Border Highway Infrastructure.	
Discretionary Program (01)	94–214319
ISTEA SECTION 6015 STUDY:	
SOUTHEAST	
An Assessment of the Adequacy of East Coast and Gulf of Mexico Port Infrastructure to Accommodate Trade with Mexico. (02)	95–124111
U.S. Border Crossings with Canada and Mexico-Port Facilities, Inventory, and Constraints. Volume 1 (03)	95–124228
U.S. Border Crossings with Canada and Mexico-Port Facilities, Inventory, and Constraints. Volume 2. (04)	95–112215
NORTHEAST:	
An Assessment of the Adequacy of U.S.-Canadian Infrastructure to Accommodate Trade through Eastern Border Crossings. (05)	95–112041
Appendices:	
1. Descriptive Profiles of Maine Frontier. (06)	95–106860
2. Descriptive Profiles of Montreal South Frontier. (07)	95–112223
3. Descriptive Profiles of Eastern New York Frontier. (08)	95–112231
4. Descriptive Profiles of Niagara Frontier. (09)	95–112249
5. Descriptive Profiles of Michigan Frontier. (10)	95–112256
Summary of International Border Crossings Roundtable Meeting Held in Buffalo, New York, June 7, 1993. (11)	95–124194
Summary of International Border Crossings Roundtable Meeting Held in St. Louis, Missouri, June 9, 1993. (12)	95–124178
Summary of International Border Crossings Roundtable Meeting Held in Norfolk, Virginia, June 11, 1993. (13)	95–124186
WEST:	
Making Things Work: Transportation and Trade Expansion in Western North America	
Volume 1: A Summary Report. (14)	95–141253
Volume 2: Transportation and Trade Expansion in Western U.S. and Canada. (15)	95–112264
Volume 3: Transportation and Trade Expansion between the U.S. and Mexico. (16)	95–122891
Volume 4: Profiles of Western U.S.-Canada Border Crossings. (17)	94–192218
Volume 5: Profiles of U.S.-Mexico Border Crossings. (18)	95–122453
Volume 6: Reaching Out: A Compendium of Stakeholder Views. (19)	95–106852
Trade and Transportation in the Intermountain West. (20)	95–112066
U.S.-Mexico Transportation: A Trade Perspective (21)	95–124236
Western U.S.-Canada Trade and Transportation Perspectives from the Northern Border. (22)	95–112272
Western U.S.-Mexico Trade and Transportation Perspectives from the Southern Border. (23)	95–123949
Future Assessment of North American Border: Perspectives on Key Factors Affecting North American Trade and Transportation. (24)	95–106837
Volume 7: Commissioned Special Reports. (25)	95–
Disparities in the Law and Practice of Surface Transportation of Goods between the U.S. and Mexico. (26)	95–142733
Financing Options for U.S.-Mexico Border Transportation Projects. (27)	95–106845
Transportation Technology Trends and North American Trade. (28)	95–112290
Case Study: The Sweetgrass, Montana and Coutts, Alberta Border Crossing. (29)	95–112298
Working Paper on Trends in International Trade and Impacts on North American Transportation. (30)	94–192226
Working Paper on the Impact of Expanded U.S.-Mexico Trade on the Western States (31)	95–112306
Section 6015 Study Results of the Futures Assessment Process. (32)	95–112314

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Title	PB
Future Assessment Reference Book, Whitefish, Montana, July 8–9, 1993. (33)	95–123816
Future Assessment Workbook, Whitefish, Montana, July 8–9, 1993. (34)	95–123824
Future Assessment Reference Book, New Orleans, Louisiana, July 21–22, 1993. (35)	95–123832
Future Assessment Workbook, New Orleans, Louisiana, July 21–22, 1993. (36)	95–123840
Future Assessment Reference Book, Detroit, Michigan, July 12–13, 1993. (37)	95–123857
Future Assessment Workbook, Detroit, Michigan, July 12–13, 1993. (38)	95–
Future Assessment Reference Book, Tucson, Arizona, July 23–24, 1993. (39)	95–123865
Descriptive Report on Trade and Transportation Patterns in the Western U.S.-Canada Region. (40)	95–123873
Descriptive Report of Cross-border Traffic and Transportation in the Western U.S.-Canada Region. (41)	95–112322
Working Paper on Intermodal Requirements on the U.S.-Canadian Border in Western North America. (42)	95–112881
Working Paper on the Role of Government in Trade and Transportation between U.S.-Canada in Western North America. (43)	95–144622
Working Paper Analysis of Sub-Regional Economic Trends Potentially Affecting U.S.-Canada Trade Patterns. (44)	95–123899
Descriptive Report on Trade and Traffic Patterns between U.S.-Mexico. (45)	94–192234
Working Paper on the Impact of Western Economic Growth on Trade with Mexico. (46)	95–112348
Working Paper on the Role of Government in Trade and Transportation Between U.S.-Mexico. (47)	95–112355
Working Paper on Intermodal Requirements on the U.S.-Mexico Border. (48)	95–112363
Descriptive Report on Cross-Border Travel Activity between the U.S., Canada and Mexico. (49)	95–
Working Paper Inventory of Institutional and Legal Barriers to Seamless Interstate Borders within the United States. (50)	95–112371
Regional Data Base and Working Paper on Regional Computerized Data Base. (51)	95–142865
Institutional Profile Data Base and Working Paper on Institutional Profiles for Continental Trade and Transportation in the Western United States. (52)	95–142741
Inventory of Existing Trade, Traffic and Visitor Flow Data Sources. (53)	95–112389
Working Summary of Key Methods of Forecasting Trade and Traffic Patterns. (54)	95–142758
Working Paper on Data Requirements for Intermodal Planning and Analysis. (55)	95–112397

[R Doc. 95–6145 Filed 3–10–95; 8:45 am]
BILLING CODE 4910–22–P

[FHWA Docket No. 95–5]

Comprehensive Truck Size and Weight Study

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of public meetings and availability of report.

SUMMARY: This notice announces that the FHWA will hold two public meetings as part of its Comprehensive Truck Size and Weight Study (CTS&WS). The first meeting will be held on March 21, 1995, in Denver, Colorado. The second one will be held on April 5 and 6, 1995, in Washington, D.C. This three phase study was originally announced in a notice published in the **Federal Register** on February 2, 1995, at 60 FR 6587. This notice also announces the availability for public review of the summary report for Phase I of the study.

DATES: This docket will remain open until the study is completed. However, in order for statements for the record to be considered during the critical early stages of the study, they should be received no later than May 1, 1995.

ADDRESSES: Submit written, signed statements to FHWA Docket No. 95–5, FHWA, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590.

All statements received in Docket No. 95–5 will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of their statements must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr Philip Blow, Office of Policy Development, at (202) 366–4036; Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis, at (202) 366–2212, or Mr. Charles Medalen, Office of Chief Counsel, at (202) 366–1354, FHWA, DOT, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

This study is being conducted partly in response to a legislative proposal in the 103rd Congress, H.R. 4496, that would extend Federal truck size and weight (TS&W) control to the National Highway System. This bill, or similar legislation, could have a significant impact on the public and private sectors and on the safety and efficiency of the total transport system. The Study will summarize a wide array of information on the many related aspects of TS&W policy. An extensive set of policy questions are described in the notice published on February 2, 1995, in the **Federal Register** at 60 FR 6587 announcing the CTS&WS for which we are seeking public input.

Public Meetings

The first public meeting will be held on March 21, 1995, in the Conference Room on the third floor of the Federal Building located at 555 Zang Street, Lakewood, Colorado. The meeting will begin at 8:30 a.m. and conclude at approximately 5:00 p.m., m.t.

The second meeting will be held on April 5 and 6, 1995, in Washington, D.C. at the DOT Headquarters, Nassif Building located at 400 Seventh Street, SW., in Room 2230. It has been scheduled in conjunction with the National Motor Carrier Advisory Committee meeting being held in Washington, D.C. on April 4 and 5. The public meeting for the CTS&WS will be held from 1:00 p.m., to 5:00 p.m. e.t. on April 5 and from 9:00 a.m. until approximately 12:00 Noon e.t. on April 6.

The public is invited to appear at these meetings and present information for consideration during the study including responses to the questions contained in the notice published on February 2, 1995, in the **Federal Register** at 60 FR 6587 and comments on the interim report made available in the docket. Oral presentations will be limited to 10 minutes, but complete statements may be submitted for the record by being placed in FHWA Docket No. 95–5.

Those wishing to make an oral presentation are asked to provide their name, organization, address, and telephone number to Ms. Ryan Rose, Walcoff Associates, 12015 Lee-Jackson Highway, Suite 500, Fairfax, Virginia 22033 (Telephone Number 703–934–9848) for scheduling their presentations. Persons making presentations may request a particular time, but they will be accommodated on a first-come-first-served basis.

Phase I Summary Report

The Summary Report for Phase I of the study developed as an interim product for the Federal Highway Administrator will be placed in the docket for public review and comment by March 10, 1995.

Authority: 23 U.S.C. 315; 49 U.S.C. 301, 302, 305; Pub. L. 102–548, 106 Stat. 3646.

Issued On: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–6070 Filed 3–10–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding an information collection titled Agricultural Loan Loss Amortization (12 CFR 35).

DATES: Comments on this information collection are welcome and should be submitted by May 12, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding the following information collection:

Type of Review: Regular.

Title: Agricultural Loan Loss Amortization (12 CFR 35).

Description: The OCC is proposing to remove 12 CFR Part 35 and the attendant information collection, effective January 1, 1999. The OCC published 12 CFR Part 35 to implement title VIII of the Competitive Equality Banking Act (12 U.S.C. 1823(j)). Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1, 1999.

Form Number: None.

OMB Number: 1557-0186.

Respondents: Businesses or other for-profit.

Number of Respondents: 4.

Total Annual Responses: 4.

Average Hours Per Response: 15 minutes.

Total Annual Burden Hours: 1.

OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0186, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0186), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: March 7, 1995.

James F.E. Gillespie,

Director, Legislative and Regulatory Activities.

[FR Doc. 95–6106 Filed 3–10–95; 8:45 am]
BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Department of Defense (DOD) Defense Manpower Data Center (DMDC) active duty records with VA disability Compensation records.

The goal of this match is to identify VA disability compensation benefit recipients who return to active duty, and to adjust or terminate benefits, if appropriate.

The Department of Veterans Affairs (VA) plans to match records of veterans who receive disability compensation from VA with active duty records maintained by DOD. The match with DOD will provide VA with data from the Defense Manpower Data Center Data Base. VA will use the data to update the master records of VA beneficiaries receiving disability compensation benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's return to active duty is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of return to active duty.

Records to be Matched: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1991 compilation, Volume II, pages 967–971 as amended. The DOD records consist of information from the system of records identified as S322.10 DMDC Defense Manpower Data Center Data Base published at 58 FR 10872, February 22, 1993.

In accordance with Title 5 U.S.C., subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match is estimated to start June 1, 1995, but will start no sooner than 40 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 273–7258.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act

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of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: March 2, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–6025 Filed 3–10–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 48
Monday, March 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. § 2286b to gather additional information on technical issues underlying the Board's Recommendation 93–5.

TIME AND DATE: 6:00 p.m., March 29, 1995.

PLACE: Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington 99352.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The importance of characterizing high-level radioactive waste to support safe storage, retrieval, pretreatment and immobilization programs, and the implications of program delays.
2. The status of implementing Board Recommendation 93–5.
3. The proposed change to the characterization strategy, including: the technical justification for changing strategies, and the advantages and disadvantages of the proposed strategy, with emphasis on characterization requirements for safe storage, retrieval, pretreatment, and immobilization.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Anderson, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board has repeatedly expressed the view that the Department of Energy needs to accelerate its current schedule for characterization of high-level radioactive waste in underground tanks at the Hanford Site. On July 19, 1993, the Board formally recommended to the Secretary of Energy (Recommendation 93–5) that DOE accelerate its actions to sample and characterize the Hanford tank wastes. The Secretary accepted the Board's recommendation; however, the Department's efforts to date to implement the Board's recommendation have been disappointing. The program for characterization of the waste is well behind schedule. The Board is informed that recent deferrals of a number of actions threaten to cause even further delays.

In accordance with the powers granted to the Board, a public hearing will be conducted by the Board in an open meeting. The Board has requested staff members of the Department of Energy, Westinghouse Hanford Company, and representatives from other organizations to brief the Board on the current status of activities under the Secretary's implementation plan for Recommendation 93–5. These participants are expected to answer Board questions based on their experience and technical knowledge and to provide additional documents as necessary. This hearing is an information gathering function. Examination of those appearing before the Board will be limited to the questions put to them by the Board. An opportunity will be available for comments by members of the interested public at the conclusion of the presentations and the Board's questioning of the participants.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. The Board will hold the record open until April 12, 1995, for the receipt of additional materials.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington, D.C. office and at the DOE's Public Reading Room, Richland Operations Office, 100 Sprout Road, Room 130 West, Richland, WA 99352.

Recommendation 93–5 in its entirety is on file at DOE's Public Reading Room, Richland Operations Office, 100 Sprout Road, Room 130 West, Richland, WA 99352, and at the Defense Nuclear Facilities Safety Board's Washington, D.C. office. It is also set forth in the **Federal Register** at 58 FR 40409.

The Board reserves its right to further schedule and otherwise regulate the course of this meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, and otherwise excise its power under the Atomic Energy Act of 1954, as amended.

Dated: March 9, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–6239 Filed 3–9–95; 2:24 pm]

BILLING CODE 3670–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. March 20, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 21, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 8, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–6243 Filed 3–9–95; 2:24 pm]

BILLING CODE 6760–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–05]

TIME AND DATE: March 23, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–360–361 and 731–TA–688–695 (Final) (Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela)—briefing and vote.
5. Outstanding action jackets:
   1. ID–95–010, Annual report in Inv. No. 332–237, Production Sharing: Use of U.S.-Made Components and Materials in Foreign Assembly Operations, 1990–1993.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

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Issued: March 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-6181 Filed 3-9-95; 9:19 am]

BILLING CODE 7025-02-P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Time and Date, and Place of Meeting

The National Credit Union Administration Board determined that its business requires the previously announced open meeting (Federal Register, Vol. 60, No. 43, page 12283, Monday, March 6, 1995) scheduled for 1:00 p.m., Friday, March 10, 1995 in the Board Room, 7th Floor, Room 7047, at 1775 Duke Street, Alexandria, Virginia, to be rescheduled and changed as follows:

TIME AND DATE: 10:00 a.m., Monday, March 13, 1995.

PLACE: Doubletree Hotel, Salon III of the Ballroom, 201 Marquette NW., Albuquerque, New Mexico 87102, (505) 247-7000.

The previously announced items are:

1. Final Interpretive Ruling and Policy Statement (IRPS) 95-1, Supervisory Review Committee.
2. Establishment of the Position of Ombudsman.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95-6240 Filed 3-9-95; 8:45 am]

BILLING CODE 7535-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1474]

TIME AND DATE: 10 a.m. (EST), March 15, 1995.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on February 15, 1995.

Action Items

New Business

C—Energy

C1. Approval for Transmission/Power Supply Group to award a contract to ABB Power T & D Company for four 500-kV power transformers for the Lowndes, Mississippi, Substation.

C2. Approval for Transmission/Power Supply Group to supplement Contract Nos. TV-89287V with Parsons Main, Inc., TV-90216V with EGS Corporation; and TV-90206V with Mesa Associates, Inc., for support services to supplement TVA's in-house resources.

C3. Approval for Purchasing to award a contract to Browning-Ferris Industries of Tennessee, Inc., to implement and manage a comprehensive solid waste disposal and recycling services program.

C4. Approval for Fossil and Hydro Power to award a contract to Roberts & Schaefer Company to provide engineering and design, materials and equipment, and field supervision of the installation and testing of a systemwide coal handling systems upgrade at TVA fossil plants.

C5. Approval for TVA Nuclear to enter into a personal services contract with Tennessee Board of Regents to provide instructional services for TVA Nuclear's onsite degree programs, subject to satisfactory negotiations and final review prior to execution.

C6. Approval for the Resource Group to supplement Contract No. TV-89601V with Fish and Wildlife Associates, Inc., to assist TVA in conducting biological research.

E—Real Property

E1. Grant of permanent easement to James A. and Gina Gilbert for access to adjacent privately-owned property and grant of an easement for a house and yard affecting approximately 0.09 acre and 0.16 acre, respectively, of Tract No. ACOR-2S of the Fabius properties in Jackson County, Alabama.

F—Unclassified

F1. Filing of condemnation cases.

Information Items

1. Grant of easement to the State of Tennessee affecting 21 acres on Cherokee Lake in Grainger County, Tennessee.
2. Revision of TVA's administrative cost recovery regulations.
3. Expansion of the Testing and Restart Program.
4. Amendment of the firm transmission service agreement between TVA and Entergy Power, Inc.
5. Approval of a condemnation case.

FOR MORE INFORMATION: Please call TVA Public Relations at (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999.

Dated: March 8, 1995.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 95-6298 Filed 3-9-95; 3:41 pm]

BILLING CODE 8120-08-M

Corrections

Federal Register
Vol. 60, No. 48
Monday, March 13, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-94-32]

Tobacco Inspection; Growers' Referendum Results

Correction

In rule document 95-5537 beginning on page 12400 in the issue of Tuesday, March 7, 1995 make the following correction:

On page 12400, in the second column, under **EFFECTIVE DATE:**, in the first line, "April 6, 1992." should read "April 6, 1995."

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV-93-706FR-A]
RIN0581-AB21

Watermelon Research and Promotion Plan; Amendments to the Plan, Rules and Regulations, and Rules of Practice for Petitions

Correction

In rule document 95-4736 beginning on page 10795 in the issue of Tuesday, February 28, 1995, make the following corrections:

1. On page 10796, in the third column, in the 1st full paragraph, in the 18th line, insert a period after "vacancy".

§ 1210.322 [Corrected]

2. On page 10798, in the third column, in § 1210.322(b), in the first line, "mid term" should read "mid-term"; and insert a period at the end of paragraph (d).

§ 1210.341 [Corrected]

3. On page 10798, in the third column, in amendatory instruction 15. to § 1210.341, the third line from the bottom should read "removing in redesignated paragraph (f)"

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-95-1766; FR-3337-I-01]

RIN 2502-AF87

Supportive Housing for Persons With Disabilities; Management

Correction

In rule document 95-4889 beginning on page 11836 in the issue of Thursday, March 2, 1995 make the following correction:

On page 11836, in the first column, under **DATES:**, in the first line, "April 13, 1995." should read "April 3, 1995."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-066-1430-01; CACA-13781]

Realty Actions; Sales; Leases; Etc.: California; Correction

Correction

In notice document 95-4559 beginning on page 10105 in the issue of Thursday, February 23, 1995, in the third column, under **ACTION**, in the second line from the bottom, "1994" should read "1984".

BILLING CODE 1505-01-D

LIBRARY OF CONGRESS

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[Docket No. 95-1 CARP DD92-94]

Ascertainment of Controversy for 1994 Digital Audio Recording Royalty Funds

Correction

In notice document 95-5329 beginning on page 12251 in the issue of Monday, March 6, 1995, make the following correction:

On page 12251, in the third column, in the **DATES** section, in the first line "April 15, 1995" should read "April 5 1995".

BILLING CODE 1505-01-D

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Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 58

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. R–95–1770; FR–3811–I–01]

RIN 2501–AB88

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements provisions enacted in the Multifamily Housing Property Disposition Reform Act of 1994 that provide for the assumption of environmental review responsibilities by States and units of general local government, including those that are not recipients, under certain public and Indian housing programs, special projects, and the FHA multifamily housing finance agency risk sharing pilot program.

DATES: *Effective Date:* This rule is effective on April 12, 1995, except for §§ 58.1(c)(6)(i), and 58.2(a)(4)(v)(A) which will become effective October 14, 1996, unless this interim rule is published as a final rule or the Department publishes a subsequent document in the **Federal Register**.

Sunset Provision: Sections 58.1(c)(6) through (8), 58.2(a)(4)(v through (4)(vii), and 58.11(b) through (d) shall expire and shall not be in effect after October 14, 1996, unless this interim rule is published as a final rule or the Department publishes a document in the **Federal Register** to extend their effectiveness. If the interim rules cited in the sunset provision expire, HUD will publish a document in the **Federal Register** removing them.

Comments Due Date: May 12, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2894. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708–4346. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, enacted April 11, 1994; hereafter referred to as "MHPDRA") provides authority for States and units of general local government (including Indian tribes or Alaska native villages) to carry out the Federal environmental review responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347 (NEPA), and such other provisions of law as the Secretary shall specify, for recipients of HUD assistance under four HUD programs. These programs are: (1) Public and Indian housing programs and the Section 8 program under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (USHA of 1937) (see MHPDRA section 305(b)); (2) special projects appropriated under an appropriations act for HUD, such as special projects under the head "Annual Contributions for Assisted Housing" in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (see MHPDRA section 305(c)); and (3) the FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (see MHPDRA section 307(b)(4)). This interim rule amends the existing regulations at 24 CFR part 58 to implement these provisions of the MHPDRA.

Congress previously authorized recipients under certain HUD programs to assume Federal environmental responsibilities, beginning with recipients under the Community Development Block Grant program under title I of the Housing and Community Development Act of 1974. However, the MHPDRA amendments mark the first time that States and units of general local governments (including Indian tribes and Alaska native villages) that are *not* recipients may assume these responsibilities. (Under the public and Indian housing programs, the Section 8 program, and the Risk Sharing Pilot Program covered by the MHPDRA provisions, the recipients include public housing agencies, Indian housing authorities and qualified housing finance agencies, rather than States units of general local government, Indian tribes or Alaska native villages Under the Section 8 program for moderate rehabilitation of single room occupancy (SRO) dwellings for homeless individuals, the recipient may also be a nonprofit organization. In that case, a PHA or IHA may administer the Section 8 assistance. In these circumstances, the PHA or IHA will be considered the recipient for the purpose of this rule. In the case of special projects, recipients may be either States, units of general local governments, Indian tribes or Alaska native villages, or non-profit organizations.)

On August 26, 1994 (59 FR 44258), HUD published an interim rule implementing other MHPDRA environmental provisions pertaining to the HOME Investment Partnerships Program and the Lead-based Paint Hazard Reduction and Abatement Program. The amendments to 24 CFR part 58 in today's interim rule contain changes to provide that the part 58 procedures for the assumption and carrying out of responsibilities for environmental review, decisionmaking and action apply to public and Indian housing programs, the Section 8 Program other than Section 8 assistance under 24 CFR part 886 to projects with HUD-insured or HUD-held mortgages and in connection with the disposition of HUD-owned projects, special projects, and the FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program covered by the MHPDRA amendments. Unlike the MHPDRA provisions regarding the HOME Investment Partnership Program, the MHPDRA provisions affecting these programs were not under a statutory deadline for issuance of effective rules.

It should be noted that the MHPDRA provisions do not permit assumption of environmental review responsibilities under all public and Indian housing programs. Section 26 of the United States Housing Act of 1937 (USHA), as added by section 305(b) of MHPDRA, authorizes the Secretary of HUD to "provide for the release of funds for projects or activities under this title (i.e., title I of the USHA), as specified by the Secretary upon the request of a public housing agency (including an Indian housing authority) under this section, if the State or unit of general local government, as specified by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action * * *"

Thus, the MHPDRA and this rule do not provide for the assumption of environmental review responsibilities under activities carried out under titles other than title I of the USHA, such as HOPE activities under title III of the USHA. Moreover, since a public housing agency or Indian housing authority must request the release of funds under the assumption procedure authorized by MHPDRA, the procedure does not apply to any Section 8 activity in which HUD works directly with a private owner, with no public housing agency or Indian housing authority involvement.

It should be noted, however, that HUD has determined that activities under the Indian Mutual Help program provided for in Section 202 of the USHA do qualify as activities under title I and will be subject to the environmental review procedures authorized by Section 26. The Department notes that Section 202(b)(1) of the USHA provides that the mechanism for providing financial assistance for the development, acquisition, operation and improvement of Mutual Help housing is that the Secretary "may enter into contracts with Indian housing authorities *under title I*" (emphasis added). Moreover, Section 201(b)(1) of the USHA provides that (except as otherwise provided in title II) the provisions of title I shall apply to low-income housing developed or operated pursuant to a contract between the Secretary and an IHA. Accordingly, environmental review for Indian Mutual Help activities will be conducted under the provisions of 24 CFR part 58.

The amendments to 24 CFR part 58 in this interim rule change the definition of recipient to include, for the first time, recipients other than States, units of general local government, Indian tribes and Alaska native villages. These recipients include public housing agencies or Indian housing authorities, direct grantees of HUD for special projects, and qualified housing finance agencies. This interim rule also provides that a "responsible entity" will assume the responsibility for carrying out environmental review requirements.

Under the programs covered by the MHPDRA amendments, the responsible entity may be a State, unit of general local government, Indian tribe or Alaska native village that is not a recipient. In § 58.2(a)(6), the regulation designates the appropriate governmental unit that will act as the responsible entity under the programs covered by the MHPDRA provisions. Under these programs, recipients other than States, units of general local government, Indian tribes or Alaska native villages are required to request a responsible entity (i.e., the unit of general local government, the State or the Indian tribe or Alaska native village) with jurisdiction, to provide the requisite environmental review, decisionmaking and action for assisted projects.

In such cases, the interim rule provides that the State, unit of general local government, or Indian tribe or Alaska native village that is the responsible entity must send the Request for Release of Funds (RROF) and Certification to the recipient. The recipient in turn submits the certification of the responsible entity to HUD with a cover letter requesting the release of funds and indicating that the recipient agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed changes in the scope of the project or any change in environmental conditions. For documentation purposes, the interim rule mandates that if the responsible entity determines that some of the activities are exempt under applicable provisions of Part 58, the responsible entity shall advise the recipient that the recipient may incur costs on these activities as soon as programmatic authorization is received from HUD. This finding shall be documented in the environmental review record maintained by the responsible entity and in the recipient's project files.

Finally, the Department is still working out implementation issues and logistics for the public housing programs. Therefore, while this rule covers the public housing programs, this rule also delays implementation of Part 58 for the public housing programs until the Department resolves all implementation concerns. In the future, the Department will publish a notice in the **Federal Register** which makes this rule effective for the public housing programs.

II. Findings and Certifications

Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made to part 58 by this interim rule shall expire on the eighteen-month anniversary date of the effective date of this interim rule unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the eighteen-month anniversary date of the effective date of this interim rule.

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public comment is contrary to public interest because this rule will expedite the receipt of necessary funding by allowing States and units of local government to conduct the Federal environmental review.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulation at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will allow states and units of general local government (including Indian Tribes and Alaska native villages) to carry out Federal environmental review responsibilities for some recipients of HUD assistance. However, because it most cases the environmental review will be paid for with HUD assistance funds, this rule is not expected to have a significant economic impact on a substantial number of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the

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rule is not subject to review under the order. Specifically, this rule will allow states and units of general local government (including Indian Tribes and Alaska native villages) to carry out Federal environmental review responsibilities for some recipients of HUD assistance. However, because in most instances the Federal environmental review will be funded by HUD, this rule is not expected to have a substantial effect on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 58

Environmental protection, Community development block grants, Environmental Impact Statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 58 of title 24 of the Code of Federal Regulations is amended as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

1. The authority citation for part 58 is revised to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

2. The heading for part 58 is revised as set forth above.

3. In paragraph (c) of § 58.1, the word "and" is removed at the end of paragraph (c)(4), the period at the end of paragraph (c)(5) is removed and a semicolon is added in its place, and new paragraphs (c)(6), (c)(7), (c)(8), are added to read as follows:

§ 58.1 Purpose, scope and applicability.

* * * * *

(c) *Applicability.* * * *

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(ii) Indian Housing Programs under Title I of the United States Housing Act of 1937, including the Mutual Help Program (42 U.S.C. 1437 *et seq.*); and

(iii) Assistance administered by a public housing agency or Indian housing authority under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), except for assistance provided under 24 CFR part 886.

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the head "Annual Contributions for Assisted Housing" in title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts; and

(8) The FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note).

4. In § 58.2, paragraph (a)(4) is revised, and new paragraphs (a)(6) and (a)(7) are added, to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) * * *

(4) Recipient means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(c):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) (A) With respect to Public Housing Programs under § 58.1(c)(6)(i), a public housing agency;

(B) With respect to Indian Housing Programs under § 58.1(c)(6)(ii), an Indian housing authority;

(C) With respect to Section 8 assistance under § 58.1(c)(6)(iii), a public housing agency or Indian housing authority;

(vi) Any direct grantee of HUD for a special project under § 58.1(c)(7); and

(vii) With respect to the FHA Multi-Family Housing Finance Agency Risk-Sharing Pilot Program under § 58.1(c)(8), a qualified housing finance agency.

* * * * *

(6) *Release of funds.* In the case of FHA Multifamily Housing Finance Agency Risk-Sharing Pilot Program under § 58.1(c)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter.

(7) *Responsible entity* means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(c)(1) through (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(c)(6) through (8), a State, unit of general local government, Indian tribe or Alaska native village. Nonrecipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State; and

(D) For Indian housing authorities, the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority.

* * * * *

5. In § 58.4, paragraph (b) is revised to read as follows:

§ 58.4 HUD Legal authority.

* * * * *

(b) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decisionmaking, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities, other than units of general local government that receive assistance from a State, assume these responsibilities by execution of either a grant agreement with HUD or a legally binding document, such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to recipients, the State must provide for appropriate procedures by which these recipients will evidence their assumption of environmental responsibilities.

* * * * *

6. In § 58.6, paragraph (a)(2) is revised to read as follows:

§ 58.6 Other requirements.

* * * * *

(a) * * *

(2) Where a recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

* * * * *

7. A new section 58.7 is added to subpart A to read as follows:

§ 58.7 Effective date of regulation.

This section, §§ 58.1(c)(6) through (8), 58.2(a)(4)(v) through (4)(vii), and 58.11(b) through (d) shall expire and shall not be in effect after October 14, 1996, unless the interim rules listed in this section are published as a final rule or the Department publishes a document in the **Federal Register** to extend their effectiveness. If the interim rules cited in this section expire, HUD will publish a document in the **Federal Register** removing them.

8. Section 58.10 is revised to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(c) in accordance with procedural provisions of NEPA and the CEQ regulations (40 CFR parts 1500 through 1508), as well as the procedures set forth in this part, unless otherwise provided for in program regulations. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5.

9. Section 58.11 is revised to read as follows:

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part should contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case by case basis.

(b) If a public housing, Indian housing, or special project recipient objects to the nonrecipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review .

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

10. Section 58.34 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 58.34 Exempt activities.

(a) A responsible entity does not have to comply with the environmental requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

* * * * *

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

11. Section 58.46 is revised to read as follows:

§ 58.46 Time delays for exceptional circumstances.

Under the circumstances described in paragraphs (a), (b), and (c) of this section, the responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF. These circumstances are:

(a) When there is considerable interest or controversy concerning the project;

(b) When the proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) When the project is unique and without precedent.

12. Section 58.47 is revised to read as follows:

§ 58.47 Re-evaluation of assessment findings.

(a) A responsible entity must re-evaluate the EA findings when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project and its cost estimate;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient selects an alternative not considered in the original EA.

(b) The purpose of the responsible entity's re-evaluation of the EA is to determine if the FONSI is still valid. If the FONSI is still valid but the data or conditions upon which it was based have changed, the responsible entity must amend the original assessment and update its ERR by including this re-evaluation and its determination based on its findings. If the responsible entity determines that the FONSI is no longer valid it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section or new circumstances or environmental conditions under paragraph (a)(2) of this section and must permit the responsible entity to re-evaluate the EA before proceeding.

13. Section 58.64 is revised to read as follows:

§ 58.64 Supplemental environmental impact statements.

A supplement to the DEIS or FEIS must be prepared when a recipient proposes substantial changes in the proposed project or when significant new circumstances or information

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become available during the environmental review process. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes or significant new circumstances or information and must permit the responsible entity to prepare a supplement before proceeding. Supplements may be used to modify or update EIS's which the responsible entity has determined to be valid and are being adopted for use. Supplemental EIS's are subject to the requirements set forth in 40 CFR 1502.9.

14. In the list below, for each entry indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
58.1(a)	Recipients of HUD assistance.	Recipients of HUD assistance and other responsible entities.
58.1(a), last word of paragraph	Recipients	Recipients of HUD assistance and other responsible entities.
58.1(b)	Recipients of HUD assistance.	Responsible entities.
58.1(c), introductory text	Recipients	Recipients or other responsible entities.
58.2(a)(3)	Grant recipient	Recipient.
58.4(b)	Recipients	Responsible entities.
58.5, introductory text	Recipient	Responsible entity.
58.6, introductory text and paragraph (c)	Recipient	Responsible entity.
58.6, introductory text	Recipient's	Responsible entities.
58.12	Recipient	Responsible entity.
58.13, introductory text and paragraph (a)	recipient's	responsible entity's.
58.13(a) and (b)	Recipient	Responsible entity.
58.14	Recipient	Responsible entity.
58.14	Grant recipient	Responsible entity.
58.15, introductory text	Recipient	Responsible entity.
58.15, introductory text and concluding text	Grant recipient	responsible entity.
58.30	Recipient	Responsible entity.
58.30	Recipient's	Responsible entity's.
58.32(a)	Recipient	Responsible entity.
58.32(b)	Recipient's	Responsible entity's.
58.35(b), (c) introductory text and (d)	Recipient	Responsible entity.
58.36	Recipient	Responsible entity.
58.37(a)(2)	Recipient's	Responsible entity's.
58.37(a)(6),(b)	Recipient	Responsible entity.
58.40	Recipient	Responsible entity.
58.41	Recipient	Responsible entity.
58.42	Recipient	Responsible entity.
58.43	Recipient	Responsible entity.
58.43	Recipient's	Responsible entity's.
58.44, introductory text and concluding text	Recipient	Responsible entity.
58.50	Recipient	Responsible entity.
58.50	Recipient's	Responsible entity's.
58.52	Recipient	Responsible entity.
58.55	Recipient	Responsible entity.
58.56	Recipient	Responsible entity.
58.57	Recipient	Responsible entity.
58.59	Recipient	Responsible entity.
58.59	Recipient's	Responsible entity's.
58.60	Recipient	Responsible entity.
58.61	Recipient	Responsible entity.
58.61	Recipient's	Responsible entity's.
58.62	Recipient	Responsible entity.
58.63	Recipient	Responsible entity.
58.65	Recipient	Responsible entity.
58.65	Recipient's	Responsible entity's.
58.66	Recipient	Responsible entity.
58.66	Recipient's	Responsible entity's.
58.70	Recipient	Responsible entity.
58.73	Recipient's	Responsible entity's.
58.74	Recipient's	Responsible entity's.
58.75(b), (c), (d), (e)(2), (e)(3), and (g)	Recipient	Responsible entity.
58.75, introductory text and paragraph (a)	Recipient's	Responsible entity's.
58.76, introductory text and paragraph (e)	Recipient's	Responsible entity's.

15. Section 58.71 is revised to read as follows:

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the responsible entity's Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(c). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD has approved its request for release of funds. The RROF and certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD with a cover letter requesting the release of funds and indicating that it agrees to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this Part, the responsible entity shall advise the recipient that it may incur costs on these activities as soon as programmatic authorization is received. This finding shall be documented in the environmental review record maintained by the responsible entity and in the recipient's project files.

16. Section 58.77 is amended by revising paragraph (b) and paragraphs (d)(1) introductory text, (d)(1)(ii), (d)(1)(iv), and (d)(2), to read as follows:

§ 58.77 Effect of approval of certification.

* * * * *

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It shall be HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the state, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

* * * * *

(d) *Responsibility for monitoring training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring of the environmental activities performed by responsible entities that have assumed responsibilities for environmental review, decisionmaking and action under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

* * * * *

(ii) HUD may require attendance by staff of the responsible entity at HUD sponsored or approved training, which will be provided periodically at various locations around the country;

* * * * *

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

* * * * *

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.17 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

Dated: January 31, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–6054 Filed 3–10–95; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[A–91–73; FRL–5168–2]

RIN 2050–AD26

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On October 20, 1993, EPA proposed risk management program regulations, mandated under the accidental release provisions of the Clean Air Act (CAA). The purpose of the proposed rule is to reduce the number and severity of chemical accidents. Based on information presented during public hearings and in comments on the proposed rule, EPA is requesting additional comment on the following regulatory options and issues: approaches for increasing compliance flexibility and decreasing cost while still ensuring preparedness by tiering the regulatory requirements to take into consideration differences between various types, classes, and kinds of sources, devices, and systems; the hazard assessment approaches (including worst-case scenarios); accident information reporting; public participation in risk management program and plan oversight; inherently safer approaches for sources' design and operations; and the implementation of CAA section 112(r) regulations, including methods of integrating these requirements into the title V permitting requirements and the codification of approved state section 112(r) requirements.

DATES: *Comments:* Comments must be submitted on or before May 12, 1995.

Hearings: The Agency will hold a hearing on March 31 from 9 a.m. until 4 p.m.

ADDRESSES: *Comments:* Written comments may be mailed or submitted to: U.S. Environmental Protection Agency, Attn: Docket (A–91–73), Room 1500, 401 M Street, SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may also be faxed to the docket at 202–260–4400, as long as faxes are followed by hard copies.

Hearings: The hearing will be held at the EPA Auditorium, 401 M Street, SW, Washington, DC. People who want to testify at this hearing should call 703–934–3158 by March 27

Docket: Supporting information used in developing the accidental release prevention regulations is contained in Docket No. A–91–73. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at the address listed above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr Lyse D. Helsing at (202) 260–6128, Chemical Emergency Preparedness and Prevention Office (5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hotline at 1–800–535–0202.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
- A. Statutory Authority
- B. Relationship of Section 112(r) to Other Requirements of the Clean Air Act
- C. Summary of the Proposed Risk Management Program Rule

II. Discussion of Issues and Approaches
- A Approaches for Tiering the Regulatory Requirements
- B Hazard Assessment
- C. Accident Information Reporting
- D Public Participation
- E. Inherently Safer Approaches
- F Implementation and Integration of Section 112(r) with State Programs

III Required Analyses
- A. Executive Order 12866
- B. Regulatory Flexibility Act
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I. Introduction and Background

A. Statutory Authority

This supplemental notice of proposed rulemaking is being issued under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r) and 7601(a)(1)).

B. Relationship of Section 112(r) to Other Requirements of the Clean Air Act

The Clean Air Act Amendments of 1990 amend CAA section 112 and add a new paragraph (r). The intent of CAA section 112(r) is to prevent accidental releases to the air and minimize the consequences of releases by focusing preventive measures on chemicals that pose the greatest risk to the public and the environment. For a summary of the statutory requirements of section 112(r) and related statutory provisions, see the notice of proposed rulemaking (NPRM) (58 FR 54190; October 20, 1993).

Since the October 20, 1993, notice, the Environmental Protection Agency (EPA) has taken various additional regulatory actions relevant to the section 112(r) program. EPA promulgated the *List of Regulated Substances and Thresholds for Accidental Release Prevention* on January 31, 1994 (59 FR 4478). The list of regulated substances and thresholds will determine which sources must comply with the accident prevention regulations.

CAA section 112(l) contains the statutory authority for EPA to approve and delegate specific Federal authorities to states. EPA promulgated a rule under section 112(l) on November 26, 1993 (58 FR 62262) that addresses the approval of both state programs for section 112 that mirror the Federal requirements and programs that differ from Federal requirements. Approval of state rules addressing section 112(r) requirements is addressed in the section 112(l) rule.

Certain other regulatory actions that predate the October 20, 1993, NPRM are relevant to today's supplemental notice. Specifically, section 112(r) is addressed in CAA title V, operating permits, and the subsequent rulemaking in 40 CFR part 70 (part 70) published on July 10, 1992 (57 FR 32250). Section 112(r) listed substances are "regulated air pollutants," and the accident prevention regulations developed under section 112(r)(7) are "applicable requirements" for the purposes of CAA title V and part 70.

C Summary of the Proposed Risk Management Program Rule

The proposed rule would require sources to:

- Register with EPA not later than three years after publication of the final rule;
- Develop and implement a risk management program that includes a hazard assessment, prevention program, and emergency response program, and maintain on-site documentation of the program's implementation. The hazard assessment would include offsite consequence analyses and a five-year accident history;
- Develop and submit to Federal, state, and local authorities a risk management plan (RMP) that documents the risk management program. This plan will be available to the public; and
- Update the risk management program and plan as required by rule, audit, or process or chemical changes at the source.

The risk management program addresses the general requirements of CAA section 112(r)(7)(B) for regulations to provide for accidental release detection and prevention. The risk management plan, referred to as the RMP in this notice, addresses the specific requirements of CAA section 112(r)(7)(B) for a plan that provides governmental entities and the public with information on the hazards found at sources and the source's plans for addressing the hazards. These hazards would be identified and addressed through implementation of the risk management program elements. Therefore, the RMP would summarize the results of hazard assessments and the implementation of the risk management program requirements. The proposed rule also contains a system to audit the RMPs, including criteria for selecting sources for audits.

II. Discussion of Issues and Approaches

During public hearings on the proposed rule, in comments provided on the proposed rule, and through additional sources, EPA has learned that six areas of the proposed rule need clarification and further comment prior to development of a final rule. In addition to the regulatory provisions and alternatives in the proposed rule, EPA is requesting comment on regulatory options under consideration in the following areas: approaches for tiering the regulatory requirements to take into consideration differences between various types, classes, and kinds of sources, devices and systems; the hazard assessment approaches (including worst-case scenarios); accident information reporting; public participation in risk management program and plan oversight; inherently safer approaches for design and operation, and the implementation of section 112(r) regulations including methods of integrating these requirements into the title V permitting requirements. All regulatory provisions and alternatives under the proposed rule remain as options for the final rule. EPA will consider carefully comments already submitted. Therefore, commenters on this notice should not duplicate comments already submitted, but should focus on the issues in this notice.

A. Approaches for Tiering the Regulatory Requirements

Many commenters asked for a tiered approach (i.e., applying different requirements to different sources). Commenters have presented several reasons why a tiered approach is needed:

- Commenters stated that, if a source cannot cause offsite impacts, the source should not have to meet the requirements of the rule.
- Commenters stated that the rule should be streamlined to ensure that the requirements are appropriate for each type of source covered and eliminate duplicative coverage where possible. Commenters argued that CAA section 112(r)(7)(B)(i) allows EPA to take into account differences in size, operations, processes, class and categories of sources, and voluntary actions.
- Commenters, particularly states, were concerned about whether the final rule can be implemented effectively Substantial requirements imposed on lower risk sources may undermine the program because implementing agencies and the public will find it more difficult to identify and focus on the most serious risks. Resources spent on unproductive regulatory requirements better might be used to analyze and develop new accident prevention technologies.
- Commenters have stated that, based on their experience implementing similar accident prevention rules in New Jersey, California, and Delaware, and implementing the OSHA PSM standard, the rule would impose substantially higher costs on affected sources than EPA had originally estimated. These commenters argued that the costs of the rule should reasonably be related to benefits obtained. Commenters noted that EPA is required under CAA section 112(r)(7)(C) to consider the effects on small businesses.

In light of data and information supplied by commenters during the initial comment period and developed by EPA subsequent to publication of the initial proposed rule, EPA believes that it would be unreasonable to apply the proposed rule prevention program to all sources subject to part 68. EPA is considering a tiered approach to achieve the program objectives of ensuring that the effort is appropriate to the potential risk and recognizing the prevention steps that sources are already required to take under other regulatory programs. EPA believes a tiered implementation framework may be a reasonable way to reduce the cost without sacrificing accident prevention benefits.

EPA is proposing the use of three tiers, representing increasing levels of effort, in defining requirements for sources. The tiers would apply to different categories and classes of sources based on their potential risk and steps already being taken. In light of the various comments summarized above, EPA does not believe that the third tier, which would be the proposed prevention program and would entail the greatest level of effort among the alternatives discussed below should apply to all sources. EPA solicits comments on this position.

Under the Common Sense Initiative (CSI), the Agency is working with a broad cross section of stakeholders to examine regulations affecting six industry sectors. These sectors are petroleum refining, metal finishing, iron and steel, automobile manufacturing, electronics and computers, and printing. Under CSI, the Agency and stakeholders together will be looking for approaches that provide more environmental protection at less cost for these industry sectors. The tiering approaches discussed in this notice incorporate these CSI principles.

Discussion of Issues and Approaches

The CAA mandates that each source with more than a threshold quantity of a regulated substance develop and implement a risk management plan that includes an offsite consequence analysis, a five-year accident history, a prevention program, and an emergency response program. Under its proposed rule, EPA would require the submission of an RMP that summarizes each of the elements listed. The risk management program specifies the activities required for each of the broad elements. The original proposal would require every source affected by the rule to complete all specified activities and submit an RMP EPA is proposing today to create the following three tiers of risk management programs:

Tier 1 A brief RMP would demonstrate and certify that the source's worst-case release would not reach any public or environmental receptors of concern.

Tier 2: A streamlined risk management program would require sources to conduct an offsite consequence analysis, document a five-year accident history, implement prevention steps, have an emergency response plan, and submit an RMP The rule would not require specific steps to comply with the prevention and emergency response programs..

Tier 3: The full risk management program and plan would be that described in the proposed rule.

In addition to the approach in the proposed rule, EPA has developed two alternative approaches to assigning sources to the tiers in a way that takes into consideration risk as well as differences between types, classes, and kinds of sources.

Approach 1 Sources that could meet the requirements of Tier 1 would comply with Tier 1, manufacturers with 100 or more full-time employees (FTEs) producing pulp (SIC code 2611), chlor-alkalis (2812), industrial inorganics, not elsewhere classified

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(nec) (2819), plastics and resins (2821), industrial organics, nec (2869), nitrogen fertilizers (2873), agricultural chemicals, nec (2879), and petroleum refineries (2911) would comply with Tier 3 requirements; all other sources would comply with Tier 2 requirements. In addition, eight years after the effective date of the rule, sources in SIC codes 2812, 2819, 2869, 2873, and 2911 with 20 to 99 FTEs would be required to meet Tier 3 requirements.

Approach 2: Sources that could meet the requirements of Tier 1 would comply with Tier 1; other sources with fewer than 100 full-time employees (FTEs) would comply with Tier 2 requirements; all other sources would comply with Tier 3 requirements.

Discussion of Tier Requirements

Tier 1 (No Impact Tier). A source in Tier 1 would be a source that is subject to part 68 because it has more than a threshold quantity of a regulated substance, but that does not pose a risk to public or environmental receptors. A source would be eligible for Tier 1 if the owner or operator can demonstrate that, in a worst-case release, there are no public and environmental receptors of concern within the impact distances specified by rule. Sources would not be eligible for Tier 1 if they have had a significant accidental release (as defined in the proposed rule) in the previous five years. To ensure that emergency responders are aware of the hazards at the sites, sources that exceed a threshold only for flammable or explosive regulated substances (i.e., they have no listed toxics above the threshold quantity) would need to post a sign at all normal access routes that warns the public and emergency responders about the hazard (fire or explosion) and lists an emergency contact telephone number. The owner or operator of a source eligible for Tier 1 that handles a regulated toxic substance would need to show that the local emergency response plan prepared under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 303, 42 U.S.C. 11003, specifically addresses their source. For regulated substances that are not extremely hazardous substances (EHSs) under EPCRA, the owner or operator of the source would need to certify that source emergency response planning and measures have been coordinated with local first responders. EPA requests comments on this approach. Sources meeting these criteria would be required to register, submit an RMP consisting of the registration and standard one-paragraph statement (see rule text), and maintain records of compliance with these requirements.

The provisions described above would satisfy each element of section 112(r)(7)(B)(ii) while recognizing that it is reasonable for this class of sources to be addressed in a simple manner. The hazard assessment element of the program would be satisfied by verifying that there were no receptors within the potential impact zone of the worst-case accidental release and by the absence of any significant accidental release within the previous five years. In addition, EPA proposes that, in lieu of obtaining a professional survey, an owner or operator could rely on visual approximations of the distances surrounding the source to public and environmental receptors for comparison to the distance generated by the worst-case release. The prevention program would not require additional prevention activities because the characteristics of the process are such that there are no potential public or environmental impacts. A standardized RMP ensures that local emergency planners and the state know that the source has been assessed by the owner or operator.

EPA believes that Tier 1 will be most suitable for operations that handle flammable substances or explosive substances in locations that are relatively distant from the public. In lieu of presenting a distance table for explosives in this part, EPA would allow a source to be eligible for Tier 1 if it maintained a distance to the public and environmental receptors consistent with 27 CFR part 55 or 30 CFR parts 56, 57, or 77. These regulations, promulgated by the Bureau of Alcohol, Tobacco and Firearms (BATF) and the Mine Safety and Health Administration (MSHA) incorporate the American Table of Distances (ATD). The distances identified in the ATD are more conservative than the EPA listing criteria and should, therefore, protect the public and the environment from the effects that caused EPA to list explosives.

Based on the known properties of flammable substances and explosives, it is possible to use conservative assumptions and calculate the maximum distance at which an overpressure or heat effect of concern can be detected. Distances for potential impacts of accidental releases for flammable substances and processes could be determined by consulting distance tables or derived using the following calculation method described in Flammable Gases and Liquids and Their Hazards:

$$D = C \times (nE)^{1/3},$$

where D is the distance in meters to a 1 psi overpressure, C is a constant for damages associated with 1 psi overpressures or 0.15, n is a yield factor of the vapor cloud explosion derived from the mechanical yield of the combustion and is assumed to be 10 percent (or 0.1) and E is the energy content of the explosive part of the cloud in Joules. E can be calculated from the mass of substance in kilograms times the heat of combustion (hc) in Joules per kilogram as follows:

$$E = \text{mass} \times hc$$

Combining these two equations gives.

$$D = 0.15 \times (0.1 \times \text{mass} \times hc)^{1/3}$$

If distances to receptors are greater than the distance given by the calculation method, then a source could be eligible for Tier 1.

EPA has received a study addressing the potential consequences of accidental releases from oil and gas exploration and production (E&P) sources that may provide a more suitable method for calculating impact distances from these sources than the general formula presented above. The study, *Hazard Assessment of E&P Facilities Potentially Subject to the EPA's Risk Management Program Regulations*, was submitted by the American Petroleum Institute in January 1995 and is available in the docket (see **ADDRESSES** section of this rule). Generally the study purports to show that given the composition of produced hydrocarbons at the source and certain physical characteristics of an E&P source, such as operating phase and piping size, one may estimate the potential impact distances for vapor cloud explosions and radiant heat effects of an accidental release. EPA is announcing the availability of this study and seeks comment on whether EPA should allow E&P sources to use the results of the study to determine worst-case release impact distances.

For listed toxic substances, EPA is proposing that sources use the lookup tables discussed in Section B below. Sources would use the lookup tables to determine the impact distance for their worst-case releases. If a source can demonstrate that there are no public or environmental receptors of concern within the distance, the source would be eligible for Tier 1.

EPA seeks comment on whether Tier 1 is appropriate for the sources discussed above. In particular, EPA seeks comment on whether Tier 1 is appropriate for sources that have toxic regulated substances present in more than a threshold quantity. Should sources be allowed to determine that they have no offsite impacts for toxics based on site-specific analyses rather than the lookup tables? Is the criterion of no significant accidental release in the previous five years appropriate as a condition for Tier 1 eligibility? Are additional response preparedness activities necessary beyond what has been specified for sources in this tier?

Tier 2 (Streamlined Program). Sources would be required to register with EPA, conduct a hazard assessment, develop a five-year accident history, prevention program, and emergency response program, and submit an RMP summarizing these elements.

The rule would not specify the prevention program in detail, but a source's program would have to cover the statutory elements of training, maintenance, safety precaution, and monitoring. The prevention program section of the RMP would describe the steps the source takes to train employees and maintain the facility, the safety precautions used, and monitoring. Sources may be able to meet these requirements through compliance with other, already existing Federal regulations. For example, almost all sources are subject to OSHA regulations. The Hazard Communication Standard (29 CFR 1910.1200) requires training on hazards and preventive actions. OSHA has numerous rules related to safety precautions. Certain industries (e.g., handlers of anhydrous ammonia and LPG) have specific OSHA standards. Propane handlers are also generally subject to state and local laws based on NFPA–58, a storage and handling standard for propane. Sources could cite compliance with these standards as part of their description of their prevention steps. Sources that are in compliance with the OSHA process safety management (PSM) standard or with chemical and refinery industry standards would be able to cite compliance with these because they parallel EPA's proposed prevention program.

One mandated prevention element not usually addressed in regulations, except OSHA PSM, is maintenance. Sources would be required to describe how they maintain a safe facility; EPA would not, however, specify maintenance steps. EPA emphasizes that, under CAA section 112(r)(1), all sources already are required to identify their hazards and design and maintain a safe facility and would continue to be subject to this general duty under today's proposed rule.

The response program would document procedures for informing the public and local entities about accidental releases, procedures to be used on site to respond to an accidental release, and a description of employee training measures regarding emergency situations. EPA requests comment on whether Tier 2 sources should be required to exercise the emergency response program under proposed § 68.45 or whether a streamlined response program would be sufficient. EPA notes that, for both Tier 2 and Tier 3 (described below), compliance with other Federal contingency and emergency response planning requirements (e.g., RCRA, OPA–90) would be considered adequate to meet the emergency response requirements of the rule. EPA asks for comment on what other Federal emergency response measures would satisfy the requirements of section 112(r)(7)(B)(ii)(III). In particular, does HAZWOPER (29 CFR 1910.120) fulfill the requirement for "a response program providing for specific actions * * * so as to protect human health and the environment"? If a source is specifically addressed in an emergency plan under EPCRA section 303, should that satisfy the response program element of the CAA? Should EPA require that the LEPC meet the membership, planning process, and public availability requirements of EPCRA sections 301, 303 and 324 for a source to rely on an EPCRA local emergency plan?

The streamlined approaches under Tier 2 fulfill the statutory provisions of section 112(r)(7)(B)(ii), while exercising the discretion granted under section 112(r)(7)(B)(i) to recognize ongoing prevention activities at classes of sources. Requirements for hazard assessments and response programs for sources would be similar to those in the original proposal as modified by other portions of today's notice. The five-year accident history would be based on the proposed rule. The prevention program would place less burden on sources that are subject to other governmental or industrial programs or that seem to present a lesser risk of a significant accidental release than other sources, based on public data and inferences drawn from such data. The RMP will fulfill the right-to-know aspects of section 112(r) by requiring a source to summarize data about its hazard assessment, prevention, and response program activities and make this information available to the public. EPA seeks comments on the proposed Tier 2 requirements. Specifically, EPA seeks comment on whether additional, specific prevention activities should be required to address safety precautions, maintenance, monitoring, and training (e.g., any particular requirements of the proposed rule targeted at these activities) and on whether there are additional governmental regulations and industry or third-party standards which fulfill the mandate of a prevention program under section 112(r).

Tier 3—Full Rule. Tier 3 sources would be required to comply with the detailed prevention program of the rule, as finalized. The RMP would address hazard assessment, the prevention program, and the emergency response program. EPA intends that the final prevention program will be the OSHA PSM standard plus the requirement for a management system.

Discussion of Assignment to Tiers

Sources would be eligible for Tier 1 based on a demonstration and certification of no impact on public or environmental receptors. All other sources would be allocated to either Tier 2 or Tier 3. Tier 2 is a default tier for those sources not specifically assigned to Tier 3.

EPA's preferred approach would assign sources in specific four-digit SIC codes to Tier 3. To identify such SIC codes, EPA analyzed its ARIP database for the period from 1987 through 1993. EPA believes that SIC codes in which more than 10 sources with 100 or more full-time employees reported regulated substance releases (not limited to accidental releases under part 68) and more than 20 percent of such sources had releases that had impacts onsite or offsite would be candidate SIC codes for Tier 3 during the initial implementation of part 68. EPA also considered the quantities released and the number of sources in the SIC code as reported in Census data. EPA used some judgment when looking at SIC codes in Census data because the Census reports only the one SIC code per source that represents the greatest financial activity even when many SIC codes apply. Thus, the Census may be likely to understate the total number of sources in a 4-digit SIC code, especially in the chemical industry, because sources in certain industries typically involve many different operations. EPA believes that chemical releases that are not accidental releases and releases in which workers were injured should be included in an analysis of accidental releases for the purposes of section 112(r) because all such releases may indicate a failure of company safety practices. EPA requests comments on this conclusion and data indicating that this assumption is valid (or not) for the groups discussed below.

Based on the analysis described above, EPA identified eight four-digit SIC codes that have a release history that supports requiring sources in such codes to implement a Tier 3 program.

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These SIC codes are: 2611 (pulp mills), 2812 (chlor-alkali), 2819 (industrial inorganics nec), 2821 (plastics and resins), 2869 (industrial organics nec), 2873 (nitrogen fertilizer), 2879 (agricultural chemicals nec), and 2911 (refineries). In all of these industries, the number of facilities reporting releases was more than 20 percent of the number in each SIC code using Census data.

Four industrial categories that EPA does not believe would be appropriate under the accident history criteria for Tier 3 are 2865 (cyclic crudes), 3312 (steel mills), 2816 (industrial inorganic pigments), and 4911 (electric utilities). Less than 20 percent of the releases reported from cyclic crude sources and steel mills had impacts. In the cyclic crude industrial category, while 16 sources reported releases (approximately 25 percent of the SIC code), only three sources had releases with impacts. The largest release at 11 of the cyclic crude sources exceeded 1,000 pounds, and three of these sources had largest releases exceeding 10,000 pounds. Given the size of releases from cyclic crude sources, EPA requests comments on whether they should be required to meet Tier 3 requirements. In the steel mill sector, while 18 sources reported releases (approximately 14 percent of the industry), only 3 had impacts. However, six of these sources reported releases exceeding 10,000 pounds. The industrial inorganic pigment industry was just below the candidate SIC code criteria for facilities reporting releases and percentage of impact releases. While nearly half the industry reported releases, only two facilities had releases that were more than 1000 pounds, and none had releases that exceeded 10,000 pounds. Although there were a high number of releases reported by electric utilities, only about 2 percent of the industry accounted for the reported releases.

EPA would initially limit Tier 3 to sources in the eight categories with 100 or more full-time employees because these sources have the most significant accident histories. However, certain smaller sources also have accident histories that would support eventual Tier 3 treatment. EPA conducted an analysis of sources with 20–99 full-time employees and identified five categories that, based on accident history, would become Tier 3 sources 8 years after promulgation: 2812, 2819, 2869, 2873, and 2911. The flammable substance accident history for refineries with 20–99 full-time employees supports eventually requiring these sources to comply with Tier 3. The four other industries all had a significant percentage of impact releases relative to the number of facilities reporting toxic releases. Three groups (industrial inorganics, industrial organics, and nitrogen fertilizer) had more than ten facilities reporting toxic releases, while two groups (chlor-alkali and nitrogen fertilizer) had more than 30 percent of the SIC code reporting releases. EPA may review this determination based on data gathered during the eight-year period. The full program would be phased in to allow these sources to benefit from the expertise gained by governmental agencies and larger industry during initial implementation of the full program; the phase in would also ease the cost burden on these smaller companies by giving them more time to implement the program. EPA would calculate full-time employees based on the definition in 40 CFR 372.3. Full-time employees would include contractors on site.

EPA also requests comment on a second approach to tiering. EPA would include in Tier 3 all sources with more than 100 FTEs. Larger sources not eligible for Tier 1 would be subject to Tier 3 because of the size of their operations and the likelihood that they have larger quantities of regulated substances on site, as well as because of their technical capabilities to undertake the program relative to most small manufacturers and non-manufacturers. EPA does not favor this approach, however, because many of these large sources do not have a significant record of accidental releases.

EPA requests comment on the two alternatives or on other criteria for placing sources in tiers under the risk management program. EPA may adopt, in whole or in part, any or all of the approaches to eligibility for Tier 2 in the final rule. The first approach focuses on industry segments that have a history of releases from a number of sources. This approach would remove from Tier 3 individual sources that may have had a history of accidents, but are part of sectors that have not had numerous accidents. It would also remove from Tier 3 entire sectors based on an accident history, which in the future may change. Should a change occur, EPA would revise the rule to include these sectors in Tier 3. Should such sources and segments be exempt from adopting process safety management principles until problems in the industry become pervasive? In addition to placing sources in Tier 3 based on industry segment, should a source be placed in Tier 3 if it has had one or more significant accidental releases in a five-year period? Conversely, should a source in an industry segment in Tier 3 be allowed to move to Tier 2 if it has not had a significant accidental release in the past five years? The Agency requests comment on the oversight and compliance burdens that would be placed on implementing agencies and sources by a site-specific tiering approach. Should proximity to significant numbers of people (either residential population, workers, or other people) be used (alone, or in conjunction with other criteria discussed above) to qualify a source for potential Tier 3 treatment? Should EPA structure the audit provisions of proposed § 68.60 to allow for implementing agencies to require Tier 2 sources to undertake more specific prevention activities if an audit uncovers inadequate risk management programs? Are there additional industries (two-digit or four-digit SIC codes) that should not be eligible for Tier 2 under either approach? Under approach 2, are there sources with more than 100 FTEs that should be eligible for Tier 2 because of industry-specific standards or the simplicity and nature of their processes? EPA believes the preferred approach is the most appropriate level for national implementation. EPA notes that state implementing agencies have the authority under the CAA to impose more stringent requirements.

Qualified Third Party. EPA is seeking comments on whether provisions should be made to employ a "qualified third party," under implementing agency oversight, to assist certain regulated sources in achieving and maintaining compliance with the RMP rule. In raising this issue, EPA is cognizant of the recent National Performance Review recommendations to OSHA on the use of third parties, and growing reliance on "qualified third parties" to facilitate compliance with other regulations, to audit the performance of regulated third parties, and verify compliance status on a periodic basis. Such arrangements, thereby, assist both the regulated community and the regulating agencies in ensuring compliance with regulations. EPA requests comments whether to use qualified third parties for this program as well as specific suggestions on how appropriately to include qualified third parties in the present rulemaking.

One way to incorporate "qualified third party" review into the RMP tiering framework might be to assign certain sources that participate in the Voluntary Protection Program (VPP) to Tier 2. The VPP is a voluntary program sponsored by OSHA and industry that recognizes strong safety practices, including process safety management Within VPP, a "Star" rating indicates the highest level of worker safety practices in all aspects measured by the program, while a "Merit" rating indicates sound practices with specific qualifications. One commenter suggested that EPA should integrate Star and Merit status into the risk management program. It is not clear whether Star and Merit ratings are relevant to protecting the public and the environment from accidental releases because the VPP only directly measures worker safety impacts. EPA invites comment on whether a source that obtains Star rating or a Merit rating without qualifications related to process safety management should be eligible for Tier 2 even when it is part of an industry sector that otherwise is subject to Tier 3. Should implementing agencies and the public rely on Star or Merit status as a good indicator that the source poses a lesser risk of a significant accidental release than other sources in the same industry sector?

Comments on other types of "qualified third party" options to facilitate responsible self-enforcement of the RMP rule will also be useful, particularly as they relate to subsectors of regulated sources which have demonstrated the capacity for establishing and enforcing voluntary safety procedures, or to subsectors in which the regulated sources or their associations have indicated an interest in developing such capacity. Comments from state and local officials, emergency responders, and the public regarding the use of third party arrangements are sought.

B. Hazard Assessment

EPA received substantial comments on hazard assessment topics during the four public hearings, the comment period, and a one-day forum on worst-case scenarios. Commenters made the following main points:

- Commenters questioned the intended use of the worst case, arguing that EPA failed to provide a clear description of its purpose.
- Commenters questioned whether EPA would require sources to conduct separate analyses for each hazard for substances that are both flammable and toxic. Commenters suggested that the number of assessments could be limited by analyzing only the substance that has the potential for the most serious offsite impacts.
- Commenters stated that, although the proposed definition of worst case as instantaneous loss of the total contents of a process may be possible for sources that have simple systems, instantaneous loss of the total process contents is not technically feasible for complex systems and, therefore, would provide no useful information to the public or the source.
- Commenters stated that failure to account for at least well-designed passive mitigation systems reduces the incentive for installation of such systems.
- Commenters argued that EPA should specify in the final rule certain methodological assumptions that sources would use to analyze release scenarios.
- Several commenters argued that the worst-case meteorological conditions defined in the proposed rule (F stability and 1.5 meters/second wind speed) were too conservative.
- Commenters expressed concern that the results of the offsite consequence analyses would be difficult to compare between sources without specification of the assumptions.
- Commenters asked for clarification of what EPA expects sources to do to define offsite populations and environmental impacts.

Clarification of the Purpose of Worst-Case Analyses. Sources and the public need to assess and understand the extent of the impact associated with an uncontrolled major accident. EPA does not intend that worst-case analyses should be used as the sole or primary basis for emergency planning or accident prevention actions. The results of the worst-case analyses, in combination with other more likely release scenario assessments, as contained in the RMP, should be used to build a dialogue and a working partnership between the source and the public, response agencies, workers, and various levels of government for chemical accident prevention, response, and preparedness.

Worst-Case Release Definition

EPA is considering alternatives to the definition of worst-case release in proposed § 68.3. EPA is proposing to redefine a worst-case release as the release of the largest quantity of a regulated substance resulting from a vessel or process piping failure. The worst-case analysis would involve a 10-minute release under worst-case meteorological conditions (F stability and 1.5 meters per second wind speed) and would consider passive mitigation measures.

The 10-minute release time is used in the Technical Guidance for Hazards Analysis. EPA believes that this release duration is reasonable and accounts for comments arguing that an "instantaneous" release is not realistic. As described in the Technical Guidance, a 10-minute release is intended to represent modeling of a continuous release rather than a "puff" release. Therefore, for modeling purposes, the release rate (per minute) to the air for gases would be the quantity released divided by 10. Liquids would be assumed to form a pool in 10 minutes, with the release rate to the air determined by volatilization rate. This approach to liquid releases differs from that of the Technical Guidance, which specifies an instantaneous release. Alternatively, the Technical Guidance could be used, but no time frame would be specified; the liquid quantity would be assumed to form a pool for calculation of the volatilization rate. EPA requests comments on the appropriate release duration and justification for its basis.

EPA is considering the revision of proposed § 68.15(c) to incorporate the effects of passive mitigation systems, but not active mitigation systems, into the worst-case release scenario, if such systems are capable of withstanding destructive events (e.g., fires, explosions, floods, hurricanes, and earthquakes). Passive systems would include dikes, catch basins, and drains for liquids, and enclosures for both liquids and gases. EPA requests comment on its definition of "passive mitigation system" and requests examples of other such devices. Scenarios involving passive mitigation systems that have connections to the environment (such as a rainwater drain valve) would have to assume failure of that connection. The threat of natural disasters would be specific to certain geographic regions, and sources could certify that their passive mitigation meets or exceeds local natural disaster design standards as capable of withstanding destructive natural events. Underground storage tanks might also be considered a passive mitigation system for liquids to the degree that overlying soils would reduce the volatilization rate to the air in the event of a worst-case accidental release. However, overlying soil is not likely to contain high pressure gas releases. EPA requests comment on this issue.

Incorporation of passive mitigation measures into the worst-case release analysis could be left to implementing agency discretion. Such discretion would result in an increased administrative burden on that agency and cross-jurisdictional differences in the methodology used for worst-case analyses. EPA is considering allowing the incorporation of active mitigation measures in the hazard assessments for more likely accidental release scenarios.

EPA seeks comment on several possible ways to define the relevant quantity of regulated substance in a

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vessel or process piping for a worst-case release scenario. One alternative would be to define the quantity as the maximum possible vessel inventory, without regard for operational practices and administrative controls. This quantity would represent a physical maximum, but would exaggerate the potential worst case for sources that never operate at the physical maximum inventory of the vessel. The process piping failure scenario would assume that the inventory contained in vessels or other process equipment on either side of the piping failure location would be released through the pipe break at full pipe flow.

A second, preferred alternative would be to require that the determination of the worst-case release scenario be based on the maximum possible vessel inventory unless there are internal administrative controls (written procedural restrictions) that restrict inventories to less than the maximum. The operational limit would be described in the worst-case release analysis in the RMP. Exceedance of any administrative control on vessel inventory would be a violation of § 68.15 (failure to perform a worst-case analysis) unless the administrative control was revised and the worst-case analysis updated to reflect any changes in the analysis. An exceedance would also result in a violation of § 68.50 unless the RMP was updated within the timeframes set out in that section. Acknowledgement of such administrative controls would reflect the efforts of sources that have intentionally reduced inventories of regulated substances for process safety reasons. EPA seeks comment on whether administrative controls are sufficiently reliable or whether a mechanical control should be required in addition to the administrative control.

A third alternative for defining the relevant quantity would be to base the quantity on historic or projected maximum operating inventories without regard for administrative controls. The maximum operating inventory would be specified in the RMP. Exceedance of the maximum operating inventory also would be a violation of §§ 68.15 and 68.50 as described above. EPA does not favor this third alternative because it does not believe that historic or projected operating practices represent the maximum possible amount of a chemical that could be stored in a vessel unless there is a specific management operational restriction at the source.

EPA is also considering providing the implementing agency with the discretion to determine the appropriate quantity for the worst-case release scenario on a site-specific or industry-specific basis. Implementing agency discretion would result in an increased administrative burden on the implementing agency and cross-jurisdictional differences in the methodology used for the worst case analyses. EPA also requests comment on whether the scenario should consider the additional amount of substance that could potentially drain or flow from process equipment interconnected with the failed vessel or pipeline.

Applicability of the Hazard Assessment Requirements

A number of commenters stated that multiple analyses of similar substances would not improve the information provided to the public. EPA is proposing the following requirements for substances and processes affected by the rule:

- A single worst-case release scenario would be analyzed for all flammables on site; only one flammable substance would be analyzed for other more likely scenarios as well;
- A single worst-case release scenario would be analyzed for all explosives on site; only one explosive substance would be analyzed for other more likely scenarios as well; and
- A single worst-case release scenario would be analyzed for all toxic substances at the source; other more likely release scenarios would be analyzed for each toxic substance covered by the rule.

The appropriate hazard category would be the hazard for which the regulated substance was listed. This proposal would reduce to a maximum of three the number of worst-case analyses required of each source in the RMP. Additional screening analyses to determine the appropriate worst-case scenario may be necessary, but only one worst-case release scenario would be reported for each hazard category. Sources would, within the constraints of the worst-case release definition, describe the greatest offsite impacts presented by potential catastrophic accidents involving regulated toxic, flammable, and explosive substances. The potential worst-case impacts of substances and processes not described in the RMP would be less than those described. As an alternative, EPA could require analysis of only one worst-case scenario by each stationary source. This approach would require the analysis of the one scenario that presents the worst offsite consequences. A significant drawback to a one-scenario analysis is that the different types of worst-case hazards (for toxics, flammables and explosives) would not all be described.

EPA would require more likely release scenarios per hazard category for flammables and explosives, but per substance for listed toxics. Toxic substances each have different exposure concentrations of concern, but flammables and explosives can be treated uniformly within hazard categories. EPA seeks comment on whether a single toxic substance could be considered representative of all toxic substances at a source or in a process.

Hazard Assessment Methodology and Calculations

EPA intends to develop "lookup" tables for all listed substances to assist sources in determining the impact distances for their release scenarios. The tables will specify potential impact distances for releases of substances under conditions that are relevant to dispersion. Sources will only have to define their release scenarios and develop the information, such as release rate, needed to use the tables. The tables will provide impact distances that sources can then map. For explosives, the American Table of Distances will serve as the lookup table. For toxics and flammables, the lookup tables will be developed and made available for public review and comment prior to the publication of the final rule. The tables, and accompanying guidance, will represent a revision of the Technical Guidance for Hazards Analysis. The tables will provide distances under varying conditions, including worst-case. In developing the tables, EPA will select one level of concern value for each toxic substance. EPA seeks further comment on whether it should use a single endpoint to the extent possible to develop the tables (e.g., the 1/10 IDLH unless one does not exist for a substance), or a hierarchy of endpoints (e.g., ERPG–3; if one does not exist, then the 1/10 IDLH; and finally toxicity data if no other value is available). For flammables, should EPA use overpressure or both overpressure and radiant heat effects as endpoints? EPA requests comment on the lookup table approach. The tables and the methodology used to develop them will be made available for public review and comment.

The purpose of providing lookup tables is three-fold. First, if each source conducts its own dispersion modeling, the results will be extremely difficult to compare among sources; different models and different assumptions can produce widely varying results. Second, because of the differences in models and the impact of changing assumptions (e.g., a different wind speed), the results of dispersion modeling are best used to provide a general idea of impact; models do not have a level of predictive accuracy that can reliably differentiate between, for example, a release with a four-mile zone and one with a five-mile zone. Third, dispersion modeling is expensive, especially for sources that are outside of the chemical industry. Given that the results of sophisticated modeling may not be more accurate than results derived from simple tables, EPA decided that a simpler approach that would provide comparable data among sources was preferable. Sources that wish to conduct more sophisticated modeling may, but would not be required to do so, under the rule. For sources that want to do modeling, a number of models available in the public domain exist; EPA has published guidance on the use of these models. An alternative approach would be to limit use of the lookup tables to Tier 2 sources and require Tier 3 sources to conduct air dispersion modeling. EPA requests comments on this alternative.

Offsite Consequence Analysis

EPA agrees with commenters that further direction is necessary with respect to assessments of potentially affected populations and the environment. Section 68.15(e)(3) of the proposed rule requires an analysis of populations within distances of potential exposure. The preamble to the proposed rule specified that sensitive populations potentially affected by a release should be identified. Although much of this information is readily available, identification of some sensitive populations, such as day care centers and nursing homes, could require considerable effort, especially where the vulnerable zone crosses several jurisdictions. In addition, sources in the same area would be required to duplicate each other's efforts.

To limit the effort required to define offsite populations, EPA is proposing that offsite populations be defined using available Census data. Information on the number of children and people over 65 may be considered a proxy for sensitive populations. With the assistance of the Bureau of the Census and NOAA, EPA is developing a geographic information system, LandView, that will facilitate analysis of resident populations. In addition, EPA may require sources to identify public arenas or institutions that are potentially affected. These arenas or institutions would be limited to those identified on available street maps or Census TIGER files.

EPA has proposed that sources analyze both potential human health impacts and environmental impacts in hazard assessments and consider such impacts in designing prevention and response programs. "The environment" is specifically mentioned twice in section 112(r)(7)(B) as a receptor to be protected by emergency response measures. First, section 112(r)(7)(B)(i) states that regulations under subparagraph B "shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment." Second, under the response program provisions of the risk management plan, the plan must address "specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment." Also, a third reference to "the environment" is ambiguous and may refer not only to response measures, but also to other aspects of risk management plans (CAA 112(r)(7)(B)(ii)).

The structure of the CAA's accidental release provisions integrates the assessment of potential hazards and the prevention of accidents with response planning to prevent potentially hazardous conditions from resulting in accidents and ensure that the response measures are adequate in the event of an accidental release. EPA supports this integrated approach to planning with respect to accidents. EPA believes it is reasonable for sources to address not only human health impacts, but also environmental impacts in the hazard assessment. In light of the mandatory CAA language requiring that the environment be addressed as a receptor for purposes of emergency response, EPA invites comments on this approach.

EPA recognizes that one of the concerns of commenters about addressing the environment in a hazard assessment was that the proposed rule discussion of environmental impacts was not specific enough. Consequently, EPA would revise § 68.15(e)(4) of the proposed rule to require identification of sensitive environments (rather than analysis of potential environmental damage) within the radius determined by the worst-case and more likely accidental release scenario analyses. In addition, EPA would revise § 68.15(h)(3)(v) to require sources to list the sensitive environments within the accidental release scenario radii in the RMP. To identify receptors, the source could call the appropriate state or Federal agencies to determine if any sensitive environments were within the impact distances.

EPA requests comments on the use of all or part of Appendix I of the NOAA Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments (59 FR 14714, March 29, 1994) for determination of sensitive environments. Appendix I lists the following sensitive environments and identifies responsible Federal agencies: wetlands (as defined in 40 CFR part 230.3); critical habitat for designated or proposed endangered/threatened species; habitat used by designated or proposed endangered/threatened species or marine mammals; national marine sanctuaries; national parks; Federal wilderness areas; national estuary program areas; near coastal waters program areas; clean lakes program critical areas; national monuments; national recreational areas; national preserves; national wildlife refuges; coastal barrier resource system; national river reach designated as recreational; Federal or state designated wild and scenic rivers; national conservation areas; hatcheries; waterfowl management areas; cultural resources; areas of critical environmental concern; and the national forest system. Accidental releases of volatile substances may not represent a major threat to certain of the sensitive environments listed above. For example, wetlands, national marine sanctuaries, national monuments, national estuary program areas, near coastal waters program areas, and clean lakes program critical areas may not be threatened by accidental releases to the air. They could, however, be threatened by volatile liquid releases. In addition, deposition of listed substances from accidental releases of toxics to the air could also represent a threat to these sensitive environments. EPA requests comment on whether these, and other, specific sensitive environments should be removed from consideration for identification of sensitive environments.

C. Accident Information Reporting

The proposed rule addresses emergency notification (§ 68.45(b)) and self-investigation of accidental releases (§ 68.40). However, other than the five-year accident history in the RMP and emergency reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA, sources are not required to report any accident data or results of accident investigations. Certain accidental release information that otherwise is not available could be useful to states and EPA to learn which types of sources are having problems, understand more about accident causes, track trends in chemical accidents and

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prevention activities, monitor the progress of the risk management program, focus future prevention activities, and avoid overregulation of industry sectors or substances.

EPA is evaluating how such accidental release information needs might be met so as to impose a minimal burden on sources and avoid redundancy. One approach would be to require submission of information on any accidental release of a regulated substance if the release results in death, injury, evacuation, property damage, or offsite environmental impacts. If the source experiencing such an accident is subject to the OSHA PSM requirements or Tier 3 requirements described above, then the owner or operator could submit to EPA and the state a copy of the accident investigation report generated under 29 CFR 1910.119(m)(4) or 40 CFR 68.40. For sources not subject to these requirements, or alternatively all sources, owners or operators could submit an accidental release information survey form to collect a brief, but accurate description of the event and its consequences, the substance and amount released, root causes, initiating events and contributing factors causing the release, and changes or potential changes at the source to prevent a recurrence. EPA requests specific information on the types of questions that should be included. EPA also seeks comments on which accidents should be reported (e.g., should any investigated deviation be reported?), reporting triggers (e.g., threshold quantities or reportable quantities released), whether reporting formats can be used to streamline or eliminate duplicative reporting, and if the submission of these data raises liability concerns.

Another approach EPA is considering would be to have EPA request information developed under existing regulations, such as OSHA PSM accident investigation requirements or EPCRA section 304 follow-up notices. Under this approach, sources would not need to develop any new information for EPA, but could provide EPA with documents prepared under other regulations. EPA could supplement such information as necessary by undertaking surveys to acquire specific data on accidents based on these existing documents. EPA requests comment on this approach. Specifically, EPA seeks information on what the appropriate mechanism for obtaining data on accidents would be.

The approach outlined above would not affect a source's current obligations to report releases of certain regulated substances under CERCLA section 103 or EPCRA section 304. For purposes of CERCLA section 101(10)(H), part 68 is not a control regulation, and the RMP is not a permit allowing the accidental release of any specific quantity of a regulated substance.

D. Public Participation

A number of commenters have asked that EPA require sources to involve the public in development and review of the risk management program. Several commenters have identified key points at which public involvement is appropriate, including at the outset of the planning process, upon completion of the process hazard analysis (PHA), prior to submittal of the RMP, prior to RMP revisions, after an accident, after an accident investigation, and during response drills involving action outside the plant.

EPA believes that the public is a key stakeholder in preventing chemical accidents and that sources have the responsibility to make the public aware of the hazards associated with potential accidental releases. EPA is committed to encouraging public involvement. EPA's favored approach would encourage sources to use existing groups, primarily the local emergency planning committees (LEPCs), as a conduit for communications between the source and the public. Many sources covered under part 68 are already obligated to participate on, and perform emergency preparedness and planning activities with their LEPCs under EPCRA. In areas where there is no functioning LEPC or its equivalent, sources, local first responders, citizens, and others need to develop and support the LEPC or its equivalent. EPA expects sources to work with the LEPC during the development of the RMP as well as after its submission. Similarly, EPA expects the public to contact the LEPC for information from the source whenever it has questions or concerns. EPA notes that the RMP is not a one-time document; the RMP reflects the risk management program at the source and will change as activities at the source change. Sources, therefore, should be involved in a continuing dialogue with the LEPC about the prevention and emergency response programs as they evolve to address changes at the source. EPA prefers this approach because, just as one size of risk management program is not appropriate for all sources, a rigid set of public participation requirements would not be reasonable for all sources.

A second approach would require a source to take steps to involve the public in discussions concerning the content of its RMP and describe those steps in the RMP. EPA would not specify the steps, but would provide guidance on ways a demonstration could be made. The source could describe its community outreach efforts during the planning process in on-site records that would be available to the public or could summarize these activities in the RMP. Similarly, a source could maintain a record on site of community outreach actions taken after submittal of the RMP. EPA would provide guidance on ways such a demonstration could be made. For example, sources could choose to notify the public through a general circulation newspaper that the RMP was available and make copies available; the source could publish the RMP in a newspaper or on electronic bulletin boards; or the source could hold a public meeting on the RMP or use local TV public service channels to target a local audience or to broadcast logistics for upcoming meetings. EPA requests comment on whether public participation activities should be limited to Tier 3 sources. Another suggested approach for public participation was to allow the public, by petition, to trigger audits of completed RMPs by the implementing agency. EPA does not favor this approach because it could generate an excessive burden for implementing agencies.

E. Inherently Safer Approaches

The manufacture, processing, and use of chemicals is inherently risky. EPA believes that fulfillment of the risk management program requirements entails ongoing attention to hazard identification, hazard analysis, risk management (assessment, reduction and control, or elimination), and public outreach. This process should lead to continuous improvement and the evolution of safer sources through a wide range of actions involving reduction of the inherent risk and control or mitigation of the hazards. During the proposed rule hearings, several presenters argued that, like pollution prevention, accident prevention could be more successful if the program were to focus on the elimination of hazards to make processes inherently safer rather than on an attempt to control or mitigate existing hazards. It was suggested that sources be required to examine different approaches or technologies through a process of technology options analysis (TOA), or a "state-of-the-art" search and analysis of safety alternatives as required by New Jersey in its Toxic Catastrophe Prevention Act regulations, to find, and adopt, inherently safer chemical pathways and processing techniques. In addition to TOA and state-of-the-art searches, the Center for Chemical Process Safety has published a guideline containing a checklist for evaluating the inherent safety of processes (Guidelines for Engineering Design for Process Safety, CCPS, 1993). Commenters suggested that EPA formalize the search for alternative technologies by making TOA or similar reviews a required part of PHAs and by requiring sources to document and share the results in the RMP.

Such costly analyses are probably best conducted during the design of new processes, when, according to industry commenters, they often are already part of the design process to identify cost-effective approaches to improving safety. In addition, if alternative technologies are discovered, whether for new or existing processes, further analysis is necessary to determine whether risks are inadvertently being transferred by the new technology from one location to another. Adoption of new technologies without such analyses may inadvertently impose greater individual or societal risk. EPA recognizes, however, that there are many opportunities to make processes inherently safer without large-scale adoption of new technologies. These opportunities may become apparent through the PHA. Some sources have already performed such analyses and have successfully taken action to make their processes inherently safer. Consequently, EPA does not favor inclusion of a specific requirement in the initial program for an analysis of the inherent safety of processes or for adoption of new technologies. EPA, however, strongly encourages industry to consider implementing inherently safer approaches when appropriate and include a discussion of any such studies and actions it takes in RMP updates. EPA is considering further study of this issue with all stakeholders and requests comment on this issue.

F. Implementation and Integration of Section 112(r) With State Programs

Section 112(r) places responsibility on sources to prevent accidents and share information about their accident prevention efforts. However, EPA believes, and Congress intended, that successful chemical emergency prevention, preparedness, and response efforts require active state and local involvement. The legislative history and CAA section 112(r) requirements support and build on the existing state and local infrastructure by requiring that RMPs be submitted to states and local planning entities. [See, e.g., S. Rep. No. 228, 101st Congress, 1st session, at 193 and 225.] EPA encourages and supports any state or local efforts to develop comprehensive plans for coordination and integration of section 112(r) with state and local programs mandated under the CAA, EPCRA, and other environmental statutes and planning and safety programs under OSHA and other agencies.

The ways in which state and local organizations are, or could become, involved in the implementation and integration of section 112(r) are described in more detail below. About 15 percent of the sources subject to the section 112(r) requirements will already have or will need to get operating permits from state air permitting authorities under part 70 by the time the RMPs are due. In the final part 68 rule, EPA intends to clarify the responsibilities of sources subject to part 70 permitting requirements and section 112(r), the air permitting authority with respect to section 112(r), and state or local agencies who elect to implement section 112(r) for all other sources. EPA worked closely with and directly involved several state and local air program officials and state emergency response and prevention representatives in the development of the preamble and regulatory language to prepare approaches detailed in the following sections. These approaches best reflect the concerns of the states about air permit program implementation and the needs for comprehensive participation in chemical accident prevention, preparedness, and response at the state and local level.

Applicable Requirements and Permitting Authority Responsibilities for Section 112(r)

Under CAA section 504(a) and EPA's implementing regulations (§ 70.6(a)(1)), part 70 permits must contain conditions sufficient to assure compliance with all CAA applicable requirements. Part 70 defines "applicable requirement" to include any standard or requirement of section 112, and includes any requirement concerning accident prevention under section 112(r)(7).

In the preamble to part 70 (57 FR 32275, July 21, 1992), EPA stated its belief that section 112(r) was not intended to be implemented or enforced primarily through part 70 permits. EPA cited the provisions of section 112(r)(7)(F), which provides that, notwithstanding title V, no source must obtain a permit solely because it is subject to the requirements of section 112(r). The part 70 preamble stated that it was sufficient for a part 70 source subject to 112(r) to "indicate in its permit [application] that it has complied with any requirement to register an RMP, or alternatively to indicate in its compliance plan and schedule of compliance its intent to comply with such requirement." Thus the preamble set forth the view that all that was required of a part 70 source with respect to 112(r) was a statement in its permit application that it has registered the RMP or has submitted a schedule to do so. By stating explicitly that section 112(r) requirements were not to be implemented or enforced primarily through the permit, the preamble defined a narrow role for the permit: one of ensuring submittal of the RMP, but not ensuring the quality of the RMP or the implementation or enforcement of section 112(r) regulations in any particular way. The preamble also did not say what conditions must be in the permit to assure compliance with applicable 112(r) requirements (even though the preamble went on to provide that the RMP itself need not be included in a title V permit). Finally, the preamble was silent on the issue of responsibilities the permitting authority might have in assisting the implementing agency in assuring compliance with section 112(r) requirements.

This view was necessarily preliminary, since it was developed before any part 68 rulemaking that could clarify how the permit must assure compliance with "applicable requirements" relative to section 112(r) The part 70 preamble does not preclude part 68 rulemaking from clarifying and even expanding the responsibilities of permitting authorities (e.g., a completeness review of the RMP) with respect to implementation of section 112(r) requirements through part 70 permits.

Today's proposal would go beyond the part 70 preamble, principally by setting forth the part 70 measures necessary to "assure compliance with" applicable section 112(r) requirements. In addition, today's proposal would establish limits on the responsibilities of the air permitting authority for assuring compliance with section 112(r) within the part 70 program as opposed to the greater responsibilities envisioned for an implementing agency.

"Applicable Requirements" for Part 70 Sources

One principal objective of the regulations proposed today is to clarify the minimum content of part 70 permits with respect to section 112(r) "applicable requirements." EPA also intends to revise the definition in part 70 of "applicable requirement" relative to section 112(r). This definition will include the requirements of part 68,

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when promulgated, to which part 70 sources are subject. EPA expects to define this term to mean §§ 68.10 to 68.58 or specific provisions within those sections. The part 70 rulemaking would be done as part of the phase II rulemaking addressing remaining issues raised by the part 70 litigants. This rulemaking is expected to be proposed this fall and finalized in early 1996.

EPA does not believe that each permit must restate every requirement in section 112(r) or part 68 as a permit condition to comply with the part 70 applicable requirement definition. The permit could instead meet this requirement by containing a set of standard conditions that require compliance by the source with applicable section 112(r) requirements.

These permit conditions are proposed in § 68.58 and would require that each permit contain, at a minimum, conditions that require source action consistent with the following:

(1) Registration with the implementing agency (EPA or the appropriate state or local agencies) and submittal of an RMP, or a revised plan, to the part 70 permitting authority or other state or local agency designated by the state for this purpose, by the deadline under this part and certification upon submission that the plan is complete and accurate;
(2) Submittal of any additional information required for completeness;
(3) Annual certification of implementation of the risk management program as described by the RMP; and
(4) If the permit is issued prior to the RMP submittal date, a compliance schedule for submittal of the RMP.

In addition, the RMP would be a reporting and recordkeeping requirement under part 70. There is no requirement to include the RMP in the permit.

EPA proposes that a "complete" RMP would be one certified by the source to contain all necessary elements in sufficient detail to meet part 68. The necessary elements of an RMP are contained in proposed § 68.50, and new §§ 68.13 and 68.14. As general criteria for completeness, an RMP would need to address all aspects of the three main elements of the risk management program, i.e., hazard assessment, prevention program, and emergency response program. EPA intends to issue guidance to assist sources and permitting authorities in determining completeness of RMPs, including a checklist addressing the required elements of an RMP.

The completeness review of the RMP would be independent of the completeness determination for the permit application. While the RMP may be submitted with the permit application, in most situations the RMP will be submitted separately on its own deadline, since almost all permit applications will have been submitted well in advance of the RMP deadline. Accordingly, if another state or local agency has received 112(l) delegation as the implementing agency for section 112(r), EPA presumes that agency, under a cooperative agreement with the permitting authority, could determine completeness of the RMP. In this situation, the state should establish appropriate procedures to ensure review of the plan for completeness. For example, the agreement could specify that the permit authority would not be obligated to review the RMP for completeness and could write the permit to require submittal of the RMP only to the state or local implementing agency, rather than to the permitting authority. Or, the state might decide that the permitting authority should retain the responsibility to review the RMP for completeness, even if another state or local agency has been designated as the implementing agency. EPA requests comment on this approach and whether a designated agency should also include EPA, provided that EPA and the permitting agency agree that EPA should take on the completeness review responsibility as the implementing agency.

The proposed permit conditions should ensure a complete RMP submittal, because failure to comply with these conditions would be enforceable as a permit violation. Other permit conditions would call for the source to submit a compliance schedule if it has not yet completed its RMP, to provide any information requested to determine the RMP's completeness, and to revise, update, and resubmit existing RMPs according to part 68 criteria. For example, when a source covered by section 112(r) and part 70 revises its process to add or eliminate a regulated substance, the source would need to prepare a revised RMP according to § 68.50(h) and submit it to the air permitting agency within 6 months. Failure to do so would potentially be a violation of both parts 68 and 70. Further, the permit would require a certification of the source's implementation of its risk management program, as described by the RMP. With the possible exception of the compliance schedule, EPA believes these permit conditions will be standard terms applicable to all part 70 sources subject to 112(r). EPA believes these standard terms would live on in the permit after submittal of the RMP, and there would be no reason to change them after an RMP is submitted or revised.

EPA is not proposing any specific requirements for part 70 permit applications beyond those already required in § 70.5, particularly the requirements that sources must cite and describe all applicable requirements, certify compliance with those requirements, or submit compliance schedules as necessary. Sources that submit applications after promulgation of part 68 would cite and describe part 68 as the applicable requirement, certify compliance (or that the source will comply in the future), and submit a compliance schedule for meeting section 112(r) deadlines. Sources that handle greater than threshold quantities of section 112(r) regulated substances should be able to identify themselves as potentially subject to section 112(r) in their initial part 70 applications. EPA is not requiring that the RMP be submitted with the permit application. Given the expected promulgation date of part 68 and the three-year compliance date for submittal of the RMP, EPA expects submittal of permit applications and issuance of most permits will occur long before the submittal deadline for RMPs (with the possible exception of part 70 programs with source-category limited interim approvals where it could take five years from interim approval to issue all permits).

EPA also believes it is not necessary to require submittal of the RMP as a permit revision at the submittal deadline for the RMP. EPA is concerned that permitting authorities may be required by state law or regulation to process the application and to incorporate RMP information in the permit if the RMP were included as part of the formal permit application. This result obviously would not be desired. The purpose of reviewing the RMP for completeness is to obtain a complete RMP, not to initiate any form of permit action. EPA seeks comment, however, on whether it should require the RMP as part of the permit application, or as an addendum to the application or to allow the permitting authority the option to ask for the RMP in either form for permit applications after the date plans must be submitted.

Role of Part 70 Permitting Authority

Under today's proposal the part 70 permitting authority or the designated agency (for completeness review) would be responsible for:

(1) Verifying that an RMP was submitted when required and that it is complete, i.e., it contains the elements required under §§ 68.50, 68.13, or 68.14;
(2) Verifying that the source has submitted an annual certification that it is properly implementing a risk management program as required by part 68 and as described by the RMP;
(3) Taking enforcement action (including penalties) for failure to submit a complete RMP revised plan, or the annual certification; and
(4) Incorporating and enforcing permit conditions specifying a compliance schedule for submittal of a complete RMP.

These four tasks are the extent of the responsibilities of the permitting authority, unless it is granted delegation under section 112(l) as the implementing agency. Tasks (1) and (2) could be transferred to another state or local agency designated by the state under a cooperative agreement.

The first task of the permitting authority or designated agency would be to determine if the RMP is complete. The permit would require the source to submit the RMP by the part 68 deadline; part 68 would require the source to certify as to the RMP's completeness. If the RMP or any revisions were determined to be incomplete, the permitting authority or designated agency would notify the source that the submittal was incomplete, state the deficiencies, and give the source a deadline to submit the requested information and/or revise the RMP. EPA requests comment on the definition of a complete RMP.

The obligation to submit an RMP to the permitting authority or designated agency is a reporting requirement of a permit, but the contents of the RMP are not permit terms or conditions. Under today's rule, the completeness determination required under proposed § 68.58(b)(1) is independent of the completeness determination required by CAA section 502(b)(6). It is not necessary for the permitting authority to provide public notice of completeness findings. The permitting authority may, however, wish to document and provide the public with a notice of completeness findings using electronic bulletin boards or other mechanisms. EPA seeks comments on this approach. EPA also seeks comment on whether it should establish deadlines for the determination of completeness by the permitting authority. EPA could select the 60-day deadline used for part 70 application completeness; however, EPA is aware that some states may find this deadline too short if a high number of part 70 sources are subject to 112(r). EPA solicits comments on other possible deadlines: six months, one year, or by permit renewal.

The permitting authority or designated agency must be able to determine if a source is subject to the requirement to submit an RMP. EPA believes that this capability is already required under part 70 since, under that regulation, a permitting authority must be able to ask for any specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements [§ 70.5(c)(5)]. Thus, if a source fails to mention whether it is subject to 112(r) in its permit application, the permitting authority must have the authority to ask for information on the application to determine section 112(r) applicability. This information must be included in permit applications due before the promulgation of part 68, since the permitting authority or designated agency must determine which permits will require reopening after part 68 is promulgated if standard permit conditions reflecting part 68 are not added. EPA believes this approach is sufficient and is prepared to rely on the resourcefulness of permitting authorities in identifying sources subject to 112(r), but solicits comment on whether EPA should make more specific demands of permitting authorities in determining applicability with respect to section 112(r) requirements.

The implementing agency will have the authority under § 68.60 to require revisions to the RMP. Permitting authorities may find, as a result of the completeness review or during regular part 70 inspections, that revisions are necessary. The permitting authority should share this information with the implementing agency for appropriate action. The implementing agency should also share findings from RMP reviews and source audits with the permitting authority. EPA requests comment on whether the permitting authority should be able to require sources to make revisions to an RMP whenever the permitting authority determines revisions are necessary.

In light of the possibility that at least some permitting authorities may need to expand their capabilities to meet these new responsibilities, states should reexamine several aspects of their current part 70 program. First, states should assess whether they have adequate legal authority to review RMPs for completeness, or to require their submission if not part of a permit application. Second, states should determine if they have adequate statutory and regulatory authority to determine whether a source is subject to part 68. This authority may be vested in an emergency response agency. Third, many permitting authorities may face resource or budget constraints if additional workload were taken on to implement section 112(r) requirements. This might require an adjustment in fee schedules, because there is no reason to assume a decrease in other workload costs. States may wish to consider raising title V fees for all sources, raising permit fees only for sources subject to both parts 70 and 68, or imposing a fee on all sources subject to part 68 to provide resources for state and local program implementation. Permitting authorities may be limited on the amount of fees collectable for permit activities. EPA requests comment on alternative funding mechanisms or the resource reductions in other programs that may be necessary to complete the responsibilities described in this notice Fourth, some permitting agencies may need to obtain technical training in the implementation of section 112(r) requirements. EPA intends to provide training and technical assistance to implementing agencies and permitting authorities.

Given these expectations, EPA is prepared to presume that approved part 70 permit programs are adequate to carry out the additional section 112(r) requirements proposed today, unless the Agency receives specific information to the contrary. EPA also assumes that if modifications to state part 70 permit programs are necessary, they can be made with minimal burden.

Finally, under the CAA provisions, permitting authority liability would generally be determined by state law. Congress's intent in enacting section 112(r) was not to expand liability for any government entity. Liability associated with implementation of section 112(r) is addressed below.

Incorporation of Part 68 Requirements Into Part 70 Permits

According to the CAA, once part 68 requirements are promulgated, existing sources have three years to comply with these requirements. New sources constructed after promulgation of part 68 must comply by three years after promulgation except that sources constructed later than 3 years after promulgation must comply upon startup. However, until the risk management program rule is promulgated, the only applicable requirement for sources is the List of Regulated Substances and their Thresholds rule under section 112(r)(3)–(5). Thus, EPA expects that when a

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source submits a part 70 application before part 68 is final, it would identify to the permitting authority those activities at the source that are subject to the part 68 requirements according to the list rule criteria, but state that the risk management program requirements are not yet applicable to it. This identification is consistent with the requirement in § 70.5(c)(5) for the permit application to include specific information necessary to determine whether the source is subject to applicable requirements.

Permits issued before promulgation of part 68 will presumptively need to be reopened at the time of promulgation of part 68 and revised within 18 months to include the part 68 permit requirements. Alternatively, the permitting authority could place the standard part 68 permit conditions in a permit issued before promulgation of part 68 and make the conditions effective upon promulgation of part 68. Unlike most MACT standards, EPA believes the part 68 permit requirements will be essentially standard conditions with little source-to-source variation. Consequently, incorporating part 68 requirements (unless they were included during initial permit issuance) should require only the part 70 administrative amendment process. As proposed in the part 70 revisions for MACT standards, the permitting authority or designated agency should provide to the public a list of sources whose permits are proposed to be reopened. Public comment on the list of sources could help the permitting authority identify other sources subject to section 112(r).

Reopened and reissued permits would include all permit requirements of § 68.58, including a compliance schedule for submittal of the RMP according to part 68 deadlines. After part 68 is promulgated, part 70 permits and applications will be required to contain compliance schedules which, in part, require the submittal of a complete RMP.

Solicitation of Comment on Alternatives

Although no specific alternatives are proposed, EPA seeks comment on two other approaches for the definition of applicable requirements, permitting authority responsibilities, and permit content with respect to section 112(r). EPA will consider various alternatives offered by commenters between these two approaches as alternatives to the approach described above.

The first option places no additional responsibilities on the permitting authority beyond those set forth in EPA's guidance contained in an April 13, 1993, policy memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors (available in the docket). In that memorandum, EPA required part 70 permitting authorities to obtain legal authority sufficient to: (1) Determine whether a source is obligated to register and submit an RMP; (2) secure verification from part 70 sources that any required submittal was prepared and submitted; (3) obtain annual certifications from sources that the plan is being implemented; and (4) include as a permit condition a compliance schedule for submitting a plan if the source fails to submit the plan when originally due. Unlike today's proposal, this option does not require the permitting authority to determine completeness of the plan. It does not make specific requirements with respect to the content of part 70 permits. This option would not rely significantly on part 68 to expand or clarify the April 13 guidance.

An advantage of this approach is that it imposes no additional expectation on part 70 agencies or sources subject to both part 68 and part 70 beyond the April 13, 1993, policy memorandum. Therefore, permitting authorities would not be expected to reassess current legal authority, resources or fee structure for adequacy in implementing section 112(r).

However, the April 13 policy guidance was prepared before the risk management program rule was proposed and before public comments were received indicating that the relationship between part 70 and part 68 was not clear. Further, the April 13 criteria do not account for implementation of the risk management program by the source (as opposed to implementation of the plan) and there is no review of the RMP by the permitting authority to ensure that the plan contains the elements required by part 68. Consequently, in a June 24, 1994, memorandum (available in the docket) from John Seitz and Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office (CEPPO), to EPA Regional Division Directors, EPA indicated that the "approval criteria in the April 13 memorandum * * * may not be sufficient to ensure compliance with all 'applicable requirements' established in the risk management program rule." By not requiring a review of the RMP for completeness or setting forth standard permit conditions that would assure compliance with part 68, the permitting authority's role in implementing section 112(r) relies mainly on the certification of submittal of the RMP by the source. Air permitting authorities would be unable to assure compliance with the requirements of part 68 as required unless another state or Federal implementing agency agrees to become the designated agency for that state and is willing to certify for the air permitting authority that the RMP is complete. Such a program may fall short of minimal title V statutory requirements of assuring compliance with all applicable requirements. The Agency requests comment on whether the permitting agency may be able to satisfy title V by certification by the implementing agency.

A second approach at the opposite end of the spectrum would require permits to address all the hazard assessment, prevention program, and emergency response program activities under part 68, in addition to the registration, RMP submission, program implementation and plan revision requirements. Each requirement in part 68 would be specified as a permit condition. For example, the permit would include a requirement for pre-startup safety reviews of all process changes or that accidental release mitigation equipment at the source (e g spray curtains) be tested monthly. Upon part 68 promulgation, all existing permits at part 70 sources would need to be reopened to add permit conditions relative to section 112(r). The permitting authority would need to examine carefully each RMP and risk management program at each permitted source to make sure it is complete and to craft the permit conditions specific to each source and then issue a new permit. Permitting authorities would be expected to perform periodic inspections of each permitted source to verify whether the risk management program was being implemented as described by the RMP, to examine program implementation to verify compliance with permit conditions, and to determine whether the RMP needed to be revised as a result of permit conditions or changes at the source.

This approach would be consistent with approaches for implementation of emission standards or other air toxics provisions under titles III and V of the Clean Air Act because it would consolidate the essential elements of the source's compliance requirements in the permit and would ensure the full involvement of the permitting authority in chemical accident prevention. It also would provide significant enforcement leverage through the permit and through inspections to ensure compliance with the source's risk management program and with the part 68 requirements.

This approach still does not call for the permitting authority to perform audits or to examine the quality of the RMP or program, which EPA believes is the responsibility of the implementing agency. It does, however, impose considerable resource and expertise burden on the permitting authority. EPA does not believe it is appropriate to include risk management program elements as permit conditions since these elements will be highly source-specific and subject to change as the source develops and implements its program. The permit would need to be changed every time the program or plan changed. This approach appears to go well beyond the need for part 70 permits to assure compliance with applicable section 112(r) requirements and duplicates other local, state, and Federal efforts.

There may be alternatives to the two extremes described in this section and to the proposed approach. EPA requests comment on other alternatives. EPA also requests that if other approaches are offered, commenters address the advantages and disadvantages of the approach with respect to the parts 68 and 70 programs and to the overall chemical emergency prevention, preparedness, and response effort.

Implementation of Section 112(r) for All Sources

Congress intended a Federal-state partnership in implementing all of section 112, including section 112(r). The implementation envisioned by Congress for accident prevention focuses on coordination and sharing of accident prevention information among various state and local agencies within the same state. Implementation of section 112(r) means that the implementing agency takes responsibility for the compliance and enforcement of section 112(r) requirements. Further, section 112(r)(7)(B)(iii) indicates that EPA shall establish, by rule, an auditing system to review regularly and, if necessary, require revision in RMPs. Although permitting authorities are responsible for assuring part 70 source compliance with part 68 requirements, EPA believes that the implementing agency should take responsibility for RMP reviews and audits. Consequently, EPA believes the implementing agency must: (1) Receive part 68 registrations; (2) inspect sources for compliance, regulatory development, and enforcement; (3) receive, review, and periodically audit RMPs according to § 68.60; and (4) require revision of plans when necessary to ensure compliance with the requirements of part 68.

In the proposed rule, "implementing agency" was not defined. EPA is proposing to define implementing agency as the state or local agency that obtains delegation for an accidental release prevention program under subpart B of part 63 under section 112(l). The implementing agency could, but is not required to be the state or local air permitting authority. EPA encourages the permitting authority to assess its capabilities with respect to carrying out the duties of the implementing agency and, if appropriate, seek delegation for part 70 sources. If a state or local agency does not take delegation, EPA would assume the responsibility for implementation of section 112(r).

EPA is also proposing that implementing agencies develop their own scheme to prioritize RMP reviews, audits, and source inspections using criteria as proposed in § 68.60. EPA would not specify the number of inspections, reviews, or audits to be completed. Alternatively, EPA could require that an implementing agency review all RMPs within five years of submission, or that no less than all Tier 3 submissions be reviewed and audited within five years of submission, or that a certain percentage (for example, 1.5 percent of all plans or only those in certain tiers), be reviewed and audited within five years of submission. In addition, while paper reviews of the RMPs are important, it is critical that implementing agencies perform audits at facilities to examine and compare actual prevention practices at the source with information contained in the RMP. EPA recognizes that this effort can consume considerable resources and require particular expertise for implementing agencies. EPA plans to issue guidance for implementing agencies on review and audit criteria and to develop training for inspections, reviews, and audits. In addition, EPA would propose that implementing agencies make use of safety audits performed by sources, as required by OSHA PSM (29 CFR part 1910.119(o)) and proposed § 68.38, as part of this inspection process. The implementing agency can use this information not only to determine whether the source is making progress toward accident prevention, but also to offer assistance to sources. EPA requests comment on whether a minimum number of reviews and audits should be established and, if so, the minimum number, Tier and the basis for the minimum number and Tier, and the tools and training that should be developed to assist implementing agencies with audits at sources.

State and local involvement in the implementation of the section 112(r) requirements for all sources is critical to the success of the accident prevention program. In addition, air pollution control, worker safety, pollution prevention, and public safety goals can be achieved most effectively only through the direct involvement of state and local officials. EPA expects that SERCs, LEPCs, and other state and local emergency preparedness and response organizations will make full use of the chemical emergency prevention, preparedness, and response information in the RMP, regardless of which agency is implementing the section 112(r) requirements.

A streamlined and cohesive section 112(r) program will be best achieved if a state or local agency takes delegation to be the implementing agency for all section 112(r) sources. The use of tiered approaches to implement the 112(r) program would assist states by enabling them to focus their greatest accident prevention efforts on those sources that pose the greatest potential risk to the community. These approaches attempt to minimize the additional effort needed by states to cover all section 112(r) sources. Table 1 below shows the kinds of effort and expertise necessary for review and audit of RMPs. If a state or local organization has the resources and expertise and is willing to become an implementing agency for part 70 sources, EPA encourages it to consider becoming an implementing agency for all 112(r) sources, since the organization would have had the experience of dealing with the most complex RMPs, reviews, and audits of part 70 sources. EPA believes that divided implementation of 112(r) for part 70 sources and non-part 70 sources, between EPA and state and local agencies, could cause considerable confusion for the regulated community and lead to ineffective and uncoordinated chemical accident prevention. Implementation for all sources by one state organization could serve to bring the state and local coordination needed to achieve broad environmental, worker, and public safety goals.

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TABLE 1.—COSTS TO IMPLEMENTING AGENCY

Risk management program and plan activity	National annualized implementation costs ($mm)					
	Until 1999		1999 to 2004		Yearly after 2004	
	Approach 1	Proposed rule	Approach 1	Proposed rule	Approach 1	Proposed rule
Program management	1.3	1.3	1.8	1.8	1.8	1.8
Auditor training	0.3	0.3				
Technical help for sources	0.5	0.5	0.3	0.3	0.08	0.08
Workshops/training	0.4	0.4	0.15	0.15		
RMP filing			0.06	0.06	0.05	0.05
Initial review of plan			0.5	1.1	0.5	1
Audits			0.6	1.9	0.5	1.6
Totals	2.6	2.6	3.5	5.4	2.6	4.2

[Note that the columns do not add to the total because EPA-only activities including registration and regional oversight are not included in the table. All costs are annualized and discounted at a 4 percent rate. Approach 1 refers to the Tiering section. It assumes accident history is used to segregate sources into tiers. The initial review and audits of Tier 2 sources should take 1 hour and 2 hours, respectively and that all Tier 2 manufacturers would be audited every 10 years. Non-manufacturers would be audited every 10 or 20 years. These figures are likely to be upper-bound estimates; actual costs will vary based on the degree of selective program oversight necessary and cost savings as experience is gained.]

State or local organizations that want to become an implementing agency for section 112(r) can seek delegation under section 112(l). Section 112(l) contains the processes for (1) formally transferring implementation and enforcement responsibility from EPA to a state or local agency; (2) transferring responsibility for ensuring source compliance with section 112 requirements to an agency other than the permitting authority; and (3) allowing states to implement and enforce their own toxics requirements in lieu of Federally promulgated section 112 requirements. EPA's implementing regulations for section 112(l) outline several mechanisms for approval of state and local air toxics programs and for delegation of federal authorities to state or local agencies (58 FR 62262; November 26, 1993). Permitting authorities with approved part 70 programs are well equipped to seek delegation as the implementing agency for part 70 sources, since the state's permit program contains adequate authorities, adequate resources for implementation, and an expeditious compliance schedule as required under section 112(l)(5).

Each state has the flexibility to place the program in an appropriate agency, including with the air permitting agency if it so desires. A state may want to consolidate both its occupational safety and process safety management programs in its worker safety agency. Some states may wish to have an agency that is currently a member of the SERC, but not the air permitting authority, serve as the implementing agency, provided it can meet the approval criteria of section 112(l) and coordinate its activities with other affected state/local programs. In states where the SERC itself is a state agency, the state may want the SERC to be the implementing agency. EPA is requesting that states that provide comments on this notice indicate if they plan to implement the program, and if so, whether an agency that currently is a member of the SERC, or if the SERC itself will take responsibility.

EPA recognizes that states have concerns about resources, availability of expertise, and possible liability associated with accidental release prevention. EPA plans to develop guidance and training and provide assistance to states to help build expertise and to illustrate how effective programs can be developed and implemented. EPA seeks input on the types of training and technical assistance states and local agencies will need to promote efficient and effective implementation of section 112(r) regulations for all sources. The model RMPs being developed for specific industry sectors and technical guidance to help sources comply with the accidental release prevention requirements also are designed to minimize the burden on state and local programs. EPA seeks input on the types of guidance in support of program implementation that would be most useful to states.

EPA agrees that Congress did not provide funding for implementation of non-part 70 sources. EPA is exploring the possible expansion of CAA section 105 grants to fund state programs that will cover non-part 70 112(r) sources. State and local organizations may also wish to consider opportunities for collecting fees specifically for section 112(r) activities, similar to fee-based systems used for funding EPCRA activities. Some states have established "polluter-pays" type fee systems that are based on multiples of the threshold quantity of extremely hazardous substances or section 112(r)(3) regulated substances handled at the source. Sources could be required to submit a fee to the implementing agency with their registration or with their RMP. EPA seeks comment on these approaches, particularly with respect to the experience of states that have tried or are developing user fee systems.

Finally, states have raised concerns about possible liability associated with the section 112(r) program. Section 112(r), unlike other CAA requirements that deal primarily with chronic hazards, involves acute hazards with the potential for catastrophic accidents resulting in immediate deaths and injuries. Generally, the liability of state and local entities for their actions in handling section 112(r) information would be controlled by state law concerning governmental immunity. As the CAA and the legislative history of section 112(r) make clear, Congress did not intend to create new liability for governmental entities when it enacted the accident prevention provisions.

Specific language in section 112(r)(1) was included to provide liability protection to governments and to avoid arguments from industry that the filing of plans with emergency planners somehow immunized a company from liability. Section 112(r)(1) states that, "Nothing in [section 112(r)] shall be interpreted, construed, implied, or applied to create any liability or basis for compensation for bodily injury or any other injury or property damages to any person which may result from accidental release of such substances." The Environment and Public Works Committee inserted the above-quoted provision into the Senate's version of the CAA Amendments explicitly because of EPA's concern that the general duty clause and other portions of the accident prevention provisions would create some governmental liability in the event of an accidental release. (S. Rep. No. 228, 101st Cong., 1st sess., at 210 (1989).) EPA expressed concern that liability in the event of an accident would shift to the government if a source identified a potential event in a hazard assessment, and the Agency failed to require the source to remove or reduce the hazard. (*Id.*) Another fear was that an owner or operator would argue that the Agency's failure to require a hazard to be addressed would be a defense for a source in a liability suit for injuries or damages caused to a third party. (*Id.*) To prevent either result, the Environment and Public Works Committee included in the precursor of section 112(r)(1) virtually identical language to that quoted above. (*Id.*)

State and local agencies are encouraged to work with their attorneys general to determine the extent of their sovereign immunity under state law. Under common law or statute, nearly all states have retained some immunity from tort suit. One common law theory of sovereign immunity that may apply in several states would be the immunity that extends to purely governmental activities, as distinguished from proprietary activities. Emergency prevention and response activities would be examples of traditional governmental activities under this theory. Another immunity theory that may apply provides immunity for discretionary activities (activities that involve judgment). Other states may have enacted specific legislation that prevents governments from being sued for activities connected to emergency response. If a state, in the judgment of its attorney general, lacks sufficient sovereign immunity to ensure state and local agencies will not be subject to liability for bodily injury or property damage in the event of an accidental release, then EPA encourages the state to enact legislation specifically providing immunity for state and local agencies carrying out functions under section 112(r). Of course, even with sovereign immunity from tort suits, EPA, states, and local entities may remain subject to FOIA suits, penalties for violation of trade secret protections under section 114(c), or mandatory duty suits (such as EPA's failure to promulgate regulations or act on listing petitions) that may allow for attorney's fees.

III. Required Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action."

EPA prepared a draft regulatory impact analysis for the proposed list rule and an addendum to the analysis for the proposed risk management program rule. EPA has prepared a revised economic impact analysis (EIA) for the risk management program rule to reflect the final list rule, the impacts of the options being considered in this notice, and comments on the draft regulatory impact analysis. The revised EIA is available in the docket.

In developing its supplemental notice, EPA considered creating three tiers for risk management program requirements described above. EPA analyzed the three options for assigning sources to the tiers, approaches 1 and 2 described in Section IIA above and the application of the proposed rule to all sources as approach 3. Total annual costs and benefits for each approach are presented in Table 2. This table does not include projected costs or benefits associated with three issues upon which EPA is taking comment in this notice: public participation, accident reporting, and inherently safer approaches because EPA's preferred approaches on these issues would impose no additional requirements on sources.

TABLE 2.—TOTAL ANNUALIZED COSTS AND BENEFITS

Approach	Number of sources	Annual cost of program	Annual benefits of programs
1	49,200 (Tier 1) 72,100 (Tier 2). 1,300 (Tier 3).	$104 million	$121.5 million.
2	49,200 (Tier 1) 57,100 (Tier 2). 16,300 (Tier 3).	$339 million	$175 million.
3	122,600 (Tier 3)	$696 million	$299 million

Based on the final list and thresholds, EPA estimates that approximately 122,600 sources would be affected by the proposed rule. The primary cost for Tier 2 was assumed to be the RMP. Tier 3 costs are strongly influenced by the tiering assumptions and by whether sources are expected to be covered by the OSHA PSM standard. The analysis assumed that a source in compliance with the OSHA PSM standard for a process would incur no additional costs to comply with many elements of EPA's prevention program. In addition, for some prevention program elements (e.g., training), some sources were assumed to be in compliance because of current activities; the only additional cost for these sources was documentation for the element. Large chemical companies and all refineries were assumed to be complying with industry standards that are the equivalent of the prevention program. These sources were assumed to bear no additional costs for some elements of the prevention program (for processes not covered by OSHA). Because EPA will require sources to submit, in the RMP, information on their hazards and steps being taken to reduce risks, EPA expects that sources and processes currently implementing PSM under OSHA or industry standards will take additional steps to ensure that their PSM programs are effective. Specifically, the EIA assumed that

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sources covered by other programs would provide more program oversight, would conduct more training and refresher training, and carry out more maintenance activities; sources were also assumed to implement more capital improvements. EPA notes that because of a lack of data, the EIA made a number of assumptions on which the cost estimates are based. For example, the analysis assumed the number of listed toxic substances at large chemical companies ranged from 4 to 12; the analysis also assumed that the number of covered processes was equal to the number of substances. EPA seeks comments and any data commenters may be able to provide on whether these assumptions are reasonable.

The draft RIA prepared for the proposed list rule based its benefits calculations on the assumption that manufacturers and certain other sources would have two significant releases per year. Many commenters stated that this assumption was not justified, based on existing accident data. Consequently, the benefits analysis has been revised to reflect actual accident data and is based on EPA databases, other accident databases, and searches of newspaper reports. Based on these data, the annualized cost of all U.S. accidents involving listed toxic substances was estimated at $245 million; the annualized cost of all accidents involving listed flammables was estimated at $767 million. The costs of accidents includes deaths, injuries, evacuations, property damage, lost business, environmental damage, and litigation.

Benefits attributable to the risk management program rule are affected by two factors: The extent to which other, similar rules already provide the benefit and the expected effectiveness of these rules when fully implemented. Most of the processes covered by EPA's rule are also covered by the OSHA PSM rule. When OSHA adopted the PSM standard, it estimated, based on anecdotal evidence, that by 1997 the standard would prevent 80 percent of the accidents at OSHA-covered sources. EPA believes that the risk management program rule will increase compliance with the OSHA standard and cause many OSHA- and EPA-affected sources to achieve a higher level of safety because of the public availability of the RMP and the reviews and audits that will be conducted by implementing agencies. The RMP submission will provide implementing agency officials with a better basis for identifying and targeting problem sources; EPA expects that the RMP information will also benefit state and Federal OSHA inspectors.

Based on an industry study, the analysis estimated that the effectiveness of the EPA standard in accident reduction would be 50 percent. Accident reduction from the EPA standard applies to processes not covered by the OSHA standard and to the 20 percent of accidents not prevented by the OSHA standard. EPA estimates that the annual, quantifiable benefits of the rule will range from $121.5 million to $299 million, depending on the approach.

The quantifiable benefits are probably understated. Although the EIA assigns a value to the likelihood of a Bhopal-scale accident occurring in the U.S. in any single year, the analysis did not attempt to assign values to other catastrophic accidents that have occurred elsewhere in the world, but have not as yet occurred in the U.S. For example, the 1984 explosion at a LPG gas terminal in Mexico City killed more than 400 people offsite; an explosion in Flixborough, England, damaged more than 1,000 buildings offsite. Similar sources exist in the U.S. and have the potential to have catastrophic accidents with offsite impacts. Because of the difficulty of assigning probabilities and values to such incidents, the EIA does not include them among the quantifiable benefits, but these sources are covered by the proposed rule, and compliance with the rule will reduce the likelihood of such catastrophic accidents.

Other, intangible benefits are also attributable to the rule. For example, the definition of offsite populations, using Census data, will assist both sources and the public to identify areas where environmental justice concerns need to be addressed. The process hazard analysis is likely to identify areas where pollution prevention steps can be implemented, which may produce cost savings and reduce potential health effects offsite.

Most importantly, the information available in the RMP will have an intrinsic value to the public. EPA has not attempted to measure the value of this information, but experience with EPCRA Toxic Release Inventory (TRI) data indicates that such information creates many benefits. The simple requirement to make information public under TRI has stimulated industry to take steps to reduce emissions to avoid public concern and assure the local community that the source is a good neighbor. The public benefits from the reduced risk; the source benefits from better relations with the community. The latter can have direct, economic benefits to the source. Industry commenters on the rule noted that when the public distrusts a source, the public has resisted permit changes or zoning variances that the source needs to improve operations. Better information and the public-industry dialogue that follows can make it easier for sources to gain public support for needed changes. Government agencies and public interest groups can target their efforts at those sources that pose the greatest potential risk, rather than assuming that all sources pose a high level of risk or misdirecting their efforts toward sources that have effective safety programs.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce the effects. EPA has prepared an analysis of the effects on small entities, available as Chapter 8 of the EIA. EPA believes that the rule as proposed in 1993 would create a severe, adverse effect on small manufacturers. For the smallest chemical manufacturers, the initial costs of the initial proposed rule could equal their annual net income; for chemical companies with 20 to 99 employees, the initial cost of the proposed rule would approach their annual net incomes. The initial proposed rule imposes lower costs on non-manufacturers and, therefore, is less likely to create an adverse impact on them. The tiering approach considered in this notice would reduce the impact on small businesses significantly. Under the tiering approach, the impact on small business would be small. The tiering approach would also substantially reduce the impact on small communities.

C. Enhancing the Intergovernmental Partnership

The Clean Air Act requires EPA to develop chemical accident prevention regulations under section 112(r)(7) that include release prevention and response provisions, including RMPs. As discussed above, Congress intended the states to play a key role in implementing the rule. Both state and local agencies are mandated to receive the RMPs. This interrelationship of Federal, state, and local agencies is a continuation of the philosophy developed under EPCRA, where each level of government is seen as a stakeholder with important roles to play. To consult in a regular and meaningful way with state, local, and tribal officials in the development of the risk management program rule, EPA has met with state and local officials. Before the proposed rule was drafted, EPA conducted focus groups with state and local officials in three states that had risk management program laws. EPA invited these states and several others to attend a two-day seminar to elicit further information. EPA has held meetings with states several times during the rule-making process, working through its Regions and through associations of state officials likely to be involved in implementing the rule. In addition, a large number of state and local agencies attended the four public hearings and submitted comments on the proposed rule. During the development of the implementation and integration provisions (§ 68.58), EPA consulted with state and local air and emergency planning agencies. EPA will seek further input from states during development of the final rule.

D. Paperwork Reduction Act

The information collection requirements in this notice have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et sec.* An Information Collection Request document has been prepared by EPA (EPA No. 1656.02) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW (Mail Code 2136), Washington, DC 20460 or by calling (202) 260-2740.

This collection of information has an estimated reporting burden averaging 3 to 4 hours per response for Tier 1, 16 to 30 hours per response for Tier 2, and for Tier 3 10 to 88 hours per response for non-chemical manufacturers and 392 to 3720 hours per response for chemical manufacturers. There is no annual recordkeeping burden for Tiers 1 and 2; in Tier 3 there is an estimated annual recordkeeping burden per respondent averaging 11 hours (for the non-chemical industry) to 1000 hours (for the chemical industry). These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA, 401 M Street, SW (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Hazardous substances, Intergovernmental relations.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, the proposal published on October 20, 1993 (58 FR 54190) is amended as set forth below.

PART 68—[AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601

2. Section 68.3 as proposed is now amended by revising the introductory text, adding five definitions and revising one proposed definition "Worst case release" to read as follows:

§ 68.3 Definitions.

As used in this part, all terms not defined shall have the meaning given to them by the Clean Air Act (42 U.S.C. 7401 *et seq.*). For purposes of § 68.58 of this part, terms such as "permitting authority," "applicable requirement" and "source" have the same meaning given to them in part 70 of this chapter unless otherwise defined in this section.

* * * * *

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

* * * * *

Designated agency means the state or local agency designated by the air permitting authority as the agency responsible for the review of an RMP for completeness.

Full-time employee means 2,000 hours per year of full-time equivalent employment. A source would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

Implementing agency means the state or local agency that obtains delegation for an accidental release prevention program under section 112(l) of CAA which is subpart E of part 63. The implementing agency may, but is not required to be, the state or local air permitting agency. If a state or local agency does not take delegation, EPA will be the implementing agency for that state.

Mitigation means activities, technologies or equipment that are designed to capture or control substances after they are released to the environment or upon loss of containment. Passive mitigation means equipment, devices or technologies that function without human, mechanical or other energy input.

* * * * *

Worst case release means the release of the largest quantity of a regulated substance resulting from a vessel or process line failure.

3. Section 68.10 as proposed is revised to read as follows:

§ 68.10 Applicability.

(a) *Tier 1.* The owner or operator of a stationary source with a covered process that meets the eligibility criteria of § 68.13 shall comply with §§ 68.12—68.13 no later than [three years from the date of final rule publication].

Alternative 1 for paragraphs (b), (c) and (d):

(b) *Tier 2.* Except as provided in paragraphs (a), (c), and (d) of this section, the owner or operator of a stationary source with a covered process shall comply with §§ 68.12 and 68.14 no later than [three years after the date of final rule publication].

(c) *Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source with 100 or more full-time employees shall comply with §§ 68.12 and 68.15 through 68.55 no later than [three years from the date of final rule publication] for any covered process in Standard Industrial Classification Code 2611, 2812, 2819, 2821, 2869, 2873, 2879, or 2911. For all other covered processes at the stationary source, the owner or operator shall comply with §§ 68.12 and 68.14.

(d) *Deferred Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source that has 20 or more full-time employees and a covered process in Standard Industrial Classification Code 2812, 2819, 2869, 2873, or 2911 shall:

(1) Comply with §§ 68.12 and 68.14 no later than [three years from the date of final rule publication]; and

(2) Comply with §§ 68.12 and 68.15 through 68.55 no later than [eight years from the date of final rule publication].

Alternative 2 for paragraphs (b) and (c):

(b) *Tier 2.* Except as provided in paragraphs (a) and (c) of this section, the owner or operator of a stationary source with a covered process shall comply with §§ 68.12 and 68.14 no later than [three years after the date of final rule publication].

(c) *Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source with

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a covered process shall comply with §§ 68.12 and 68.15 through 68.55 no later than [three years from the date of final rule publication] if the stationary source has 100 or more full-time employees.

4. Section 68.13 is proposed to be added to subpart B to read as follows:

§ 68.13 No impact sources (Tier 1).

(a) *Sources that exceed a threshold quantity only for flammable or explosive regulated substances.*

(1) *Eligibility.* The owner or operator of a stationary source that is subject to this part and that does not exceed the threshold quantity for a toxic substance shall comply with paragraph (a)(2) of this section if the source has not had significant accidental release for 5 years and:

(i) For a source that exceeds the threshold for an explosive regulated substance, the source is subject to 27 CFR part 55 or 30 CFR parts 56, 57, or 77 and the distance from the process to a public or environmental impact is no closer than the distance to inhabited buildings provided in the American Table of Distances (27 CFR 55.218) for the quantity of explosives in the process; or

(ii) For a source that exceeds the threshold for a flammable regulated substance, the distance from the point of release under the worst case release scenario to a public or environmental impact is greater than the distance as calculated using the following formula for the maximum quantity present in the process:

$$\text{Distance (meters)} = 0.15 \times (0.1 \times \text{mass} \times hc)^{1/3}$$

where mass is the quantity of flammable substance in kilograms, and hc is the heat of combustion in Joules per kilogram.

(2) *Program and plan requirements.* (i) The owner or operator shall place a sign at all normal access routes that warns the public and emergency responders concerning the hazard presented by the regulated substance at the site and provides an emergency contact telephone number. Such sign shall be in English and any other language commonly spoken as a primary language in the area.

(ii) The owner or operator shall submit the following as a risk management plan to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), the Local Emergency Planning Committee with jurisdiction for the area where the source is located:

(A) A copy of the registration required by § 68.12 (this copy may be before the certification required by § 68.12(b)(6));

(B) The following statement:

Based on the criteria in 40 CFR 68.13(a)(1), the worst case accidental release for the source described on the attached form (registration) presents no potential for public or environmental impact given the nature of the process and the chemicals stored at the source. For the past 5 years, this source has not had a significant accidental release, as defined in 40 CFR 68.3. No additional measures are necessary to prevent public and environmental impacts from accidental releases. In the event of a fire or a release of the regulated substance indicated on the registration, entry within [distance for given quantity of regulated substance under American Table of Distances or paragraph (a)(1)(ii) of this section] of the source may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the contact person indicated on the registration. The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature].

(iii) The owner or operator shall maintain for five years documentation of the determination of eligibility under paragraph (a)(1) of this section and a copy of the risk management plan under paragraph (a)(2)(ii) of this section.

(b) *Sources that exceed a threshold quantity for toxic regulated substances.*

(1) *Eligibility.* The owner or operator of a stationary source that exceeds the threshold quantity for a toxic substance shall comply with paragraph (b)(2) of this section if:

(i) The stationary source has not had a significant accidental release in the last five years,

(ii) The stationary source can demonstrate the lookup table distance for a worst-case release is less than the distance to a public or environmental receptor; and

(iii) The emergency response plan under 42 U.S.C. 11003 addresses appropriate response to an accidental release at the source.

(2) *Plan and program requirements.* (i) The owner or operator of a stationary source that meets the eligibility criteria of paragraph (b)(1) of this section shall submit the following as a risk management plan to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), and the Local Emergency Planning Committee with jurisdiction for the area where the source is located:

(A) A copy of the registration required by § 68.12 (this copy may be before the certification required by § 68.12(b)(6));

(B) The following statement:

Based on the criteria in 40 CFR 68.13(b)(1), the worst case accidental release for the source described on the attached form (registration) presents no potential for public or environmental impact within _____ kilometers of the source given the nature of the process and the chemicals stored at the source. For the past 5 years, this source has not had a significant accidental release, as defined in 40 CFR 68.3. No additional measures are necessary to prevent public and environmental impacts from accidental releases. In the event of an accidental release of the regulated substance indicated on the registration, emergency response should be conducted according to the emergency response plan under 42 U.S.C. 11003, which is available at [location]. Therefore, public emergency responders should not enter this area except as provided under that plan. The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature].

and

(ii) The owner or operator shall maintain for five years documentation of the determination of eligibility under paragraph (b)(1) of this section and a copy of the risk management plan under paragraph (b)(2)(i) of this section.

5. Section 68.14 is proposed to be added to subpart B to read as follows:

§ 68.14 Streamlined risk management program (Tier 2).

(a) The owner or operator of a stationary source eligible for this part shall comply with § 68.15.

(b) The owner or operator of a stationary source shall establish a prevention program which includes safety precautions and maintenance, monitoring and employee training measures to be used at the source to prevent accidental releases. The prevention program shall identify other federal accident prevention requirements to which the source is subject, including national voluntary standards and measures required by 42 U.S.C. 7412(r)(1).

(c) The owner or operator of a stationary source shall prepare an emergency response program which documents specific actions to be taken in an emergency response to an accidental release, including:

(1) Procedures for informing the public and local entities about accidental releases;

(2) Procedures to be used on site to respond to an accidental release; and

(3) A description of the employee training measures used to educate employees regarding emergency situations.

(d) The owner or operator of a stationary source shall submit a risk management plan summarizing paragraphs (a) through (c) of this section to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), and the Local Emergency Planning Committee with jurisdiction for the area where the source is located. The owner or operator shall retain a copy of the risk management plan for 5 years.

6. Section 68.58 is proposed to be added to subpart B to read as follows:

§ 68.58 Permit content and air permitting authority requirements.

(a) The requirements in this section apply to sources subject to both part 68 and part 70 of this Chapter. Each part 70 permit shall contain conditions requiring the following provisions, for any activity and/or emission unit subject to this part:

(1) By the deadlines set out in this part, the source shall register and submit an RMP or revised plan and shall certify upon submission that such plan is accurate and complete. Submission of the plan by deadlines required under this part shall satisfy the reporting requirements of 40 CFR 70.6(a)(3)(ii)(A).

(2) The source shall submit any additional information requested by the permitting authority or other designated state or local agency necessary to determine completeness of the RMP.

(3) The source shall annually certify compliance with, and implementation of, risk management program requirements described in this part and as described by the submitted RMP or revised plan.

(4) For part 70 permits that are issued prior to the deadline required for registering and submitting the RMP and do not contain permit conditions meeting the provisions of paragraphs (a)(1) through (3) of this section, the source no later than *[3 years from the effective date of the final rule]* shall submit an application for a permit revision consistent with § 70.7 of this chapter to establish conditions consistent with these required in paragraphs (a)(1) through (3) of this section.

(5) For part 70 permits issued on or after the deadline required for registering and submitting the RMP, the source shall register and submit any plan required by this part no later than *[3 years from the effective date of the final rule]*.

(6) For new emissions units or activities at previously permitted part 70 sources which become subject to this part after *[the effective date of the final rule]*, the source shall submit an application for permit revision consistent with the provisions of § 70.7 of this chapter upon startup of such units and/or activities or no later than *[3 years from the effective date of the final rule]*, whichever is later.

(7) If a previously permitted part 70 source has not submitted an RMP as required, then the source shall provide:

(i) A compliance plan, including a compliance schedule for the submittal of the required plan; and

(ii) An application for a permit revision to establish permit conditions meeting paragraphs (a) (1) through (7) of this section unless such conditions are already contained within the part 70 permit.

(b) The permitting authority must, at a minimum, perform the following tasks to meet § 70.4(b)(3)(i) of this chapter with respect to part 70 sources subject to section 112(r) of CAA and this part.

(1) Verify that an RMP or a revised plan is submitted when required by this part, and that it is complete, i.e., it contains the elements required under §§ 68.50, 68.13, or 68.14;

(2) Verify that the source has submitted an annual certification that it is properly implementing a risk management program as required by this part and as described by the applicable RMP;

(3) Take enforcement action (including penalties) on sources that fail to submit a complete plan or a revised plan, an annual certification, or accidental release report as required by this part;

(4) Incorporate and enforce permit conditions that specify a compliance schedule for submittal of a complete RMP, for permits issued prior to reporting deadlines of this part or if a part 70 source subject to this part fails to submit a complete plan as required.

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Part IV

Department of the Interior

Bureau of Indian Affairs

Preliminary Adjustments to Specific Tribal Trust Fund Balances; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preliminary Adjustments to Specific Tribal Trust Fund Balances

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) through reconciliation and certification of investment trust fund systems, (MoneyMax system to the Finance system), must post preliminary adjustments to certain tribal accounts. The Office of Trust Funds Management (OTFM) will convert the MoneyMax and Finance systems to a new computer system on April 1, 1995. Currently tribes obtain their statements from Finance and MoneyMax systems which are not in a balance. The conversion will use MoneyMax balances, since reconciliation and certification have confirmed that these balances are correct. The problem is, that the daily figure OTFM provides Treasury for investment in an overnight security is taken from the Finance system. This means that the figure provided to Treasury to invest is incorrect and therefore the interest earnings are also incorrect. This occurs each day the preliminary adjustments are not posted. These preliminary adjustments will either increase or decrease the following tribal fund balances: Sioux Nation, Blackfeet Tribe, Crow Tribe, Seneca-Cayuga Tribe of Oklahoma, Hoopa Yurok Settlement, Pueblo of Laguna, Southern Ute Tribe, San Luis Rey Tribe, Creek Nation of Oklahoma, Pueblo of Zuni, Choctaw Nation of Oklahoma, Three Affiliated Tribes, and the Alaskan Native Escrow Fund.

DATES: Posting to occur no later than March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Christie, Special Assistant to the Deputy Commissioner of Indian Affairs, Office of Trust Funds Management (OTFM), BIA, 505 Marquette NW., Suite 1000, Albuquerque, NM 87102–4804, phone number (505) 766–3703, facsimile number (505) 766–3774.

SUPPLEMENTARY INFORMATION: Under the Trust Fund Management Reform Act of 1994 (Pub. L. 103–412), notice is given that the Director, Office of Trust Funds Management (OTFM) must reconcile and certify tribal trust fund balances as of September 30, 1995.

The proposed preliminary adjustments are those from the MoneyMax to Finance backward reconciliation (they correct variances between the two systems as of September 30, 1992). Current reconciliation has been ongoing from October 1, 1992 to present, and adjustments are posted concurrently. It was agreed within this backward reconciliation and certification that the OTFM would not adjust balances until the affected tribes and Congress had a chance to review. Although these preliminary adjustments are a product of the backward reconciliation and have been certified, they are still pending tribal and Congressional review. The dollar affect to each tribe can be obtained by contacting Mr. Christie.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6137 Filed 3–10–95; 8:45 am]

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Part V

Department of Transportation

Coast Guard

33 CFR Part 143, et al.
Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 143

46 CFR Part 2

[CGD 91–030]

RIN 2115–AD78

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 requires the Coast Guard to establish user fees for Coast Guard services related to the inspection and examination of U.S. and foreign commercial vessels. Fees in this rule are based on existing vessel inspection program requirements and services. The fees are established for the purpose of recovering costs associated with providing Coast Guard vessel inspection services.

EFFECTIVE DATE: This rule is effective on May 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

For inquiries and payment information during initial implementation of the rule, call, toll-free, 1–800–941–3337.

FOR FURTHER INFORMATION CONTACT: Denise J. Mursch, Planning Staff (G-MP–2), Office of Marine Safety, Security and Environmental Protection, (202) 267–0785.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR John J. Kelly, Project Manager, and LCDR J.K. Gillespie, Office of Marine Safety, Security and Environmental Protection, and C.G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 18, 1991, the Coast Guard published in the **Federal Register** (56 FR 65786) a notice of proposed rulemaking (NPRM) entitled "Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels." On December 24, 1991, the Coast Guard published a correction to the proposed rule (56 FR 66766). This correction added Appendix A, a summary of the preliminary Regulatory Evaluation, to the NPRM published on December 18, 1991. The initial public comment period closed on February 18, 1992.

The Coast Guard received numerous comments requesting that public hearings be held in connection with the vessel inspection user fee rulemaking. The Coast Guard determined that public hearings would significantly contribute to this rulemaking, and published a Notice in the **Federal Register** on March 24, 1992 (57 FR 10149) to reopen the public comment period and announce the scheduling of nine public hearings. The nine public hearings were held between April 13, 1992, and May 1, 1992, at the following locations: Baltimore, MD; Secaucus, NJ; Boston, MA; Miami, FL; New Orleans, LA; Chicago, IL; Seattle, WA; San Francisco, CA; and San Diego, CA. The public comment period closed on May 18, 1992.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 and removed long-standing prohibitions against imposing certain user fees.

As amended by the Act, 46 U.S.C. 2110 now requires the establishment and collection of user fees for Coast Guard services provided under Subtitle II of Title 46, United States Code. The Coast Guard is developing Subtitle II user fees in several separate rulemakings, each of which covers services provided in an identifiable program area. On March 19, 1993 (58 FR 15228), the Coast Guard published the final rule on User Fees for Marine Licensing, Certification of Registry, and Merchant Mariner Documentation (CGD 91–002). On November 15, 1993 (58 FR 60256), the Coast Guard published the final rule on User Fees for Documentation of Vessels and Recording of Instruments (CGD 89–007). In addition to the fees for inspection or examination of U.S. and foreign commercial vessels in this rule, the Coast Guard also plans to establish fees for services related to Coast Guard equipment approval and factory inspections (CGD 92–013); inspections for the initial Certificate of Inspection (COI), such as new vessel construction inspections, inspections of existing vessels undergoing rebuilding, reflagging, or major conversion; and for commercial vessel plan review.

Overview of the Rulemaking

This rule revises 46 CFR Part 2 and creates user fees for Coast Guard inspections or examinations of existing U.S. and foreign commercial vessels as follows:

For U.S. Vessels

(1) An annual vessel inspection fee which covers all periodic inspections and follow-on inspections conducted during the course of a given year for commercial vessels required to have a Coast Guard COI.

(2) An overseas inspection fee for inspections conducted outside the United States and its territories, except for inspections conducted in Canada, Mexico, and the British Virgin Islands.

For Foreign Vessels

(1) A fee for the biannual Letter of Compliance (LOC) examination and for the annual reexamination of tankships carrying hazardous liquids or liquefied gases in bulk in U.S. waters;

(2) A fee for the annual examination of tankships carrying oil in bulk in U.S. waters;

(3) A fee for the LOC examination of mobile offshore drilling units (MODUs) operating on the U.S. outer continental shelf;

(4) An annual vessel inspection fee for all vessels required to have a Coast Guard COI, including Canadian tank barges and vessels of nations not signatory to the International Convention for Safety of Life at Sea (SOLAS).

(5) An overseas examination fee for examinations conducted outside the United States and its territories, except for examinations conducted in Canada, Mexico, and the British Virgin Islands.

Vessels Not Covered

This rule does not apply to foreign passenger vessels, to training vessels operated by State maritime academies, or to public vessels of the United States which are excluded from the provisions of subtitle II of Title 46 U.S. Code.

Waivers

Collection of vessel inspection fees is waived for all vessels whose fees would be paid directly using Federal appropriated funds.

Exemptions

No exemptions were proposed in the NPRM; however, the final rule contains one exemption for charitable, not-for-profit, youth-oriented organizations which use their vessel(s) exclusively for training youths in boating, seamanship, and navigation skills. This exemption is discussed more fully in the section of this document entitled *Exemptions*.

Fee Limit for Tank Barges

Annual vessel inspection fees calculated for tank barges in various service and route categories all exceeded $500. However, the Act provides that a user fee for inspection or examination of a non-self-propelled tank barge may not exceed $500 per year. Thus, the Coast Guard set the annual vessel inspection fee for tank barges at the statutory limit of $500.

Types of Inspections Covered under this Rule

Fees established by this rule are based on Coast Guard costs of providing inspection and examination services. These costs include marine inspector hours, travel time, mileage costs, administrative support costs, training costs, and overhead costs. In establishing these fees, the Coast Guard reviewed all inspection requirements contained in 46 CFR part 2, as well as the technical requirements for inspections found in 46 CFR parts 31, 71, 91, 105, 107, 108, 109, 151, 167, 175, 176, 189, and 190 and in 33 CFR parts 140, 143, 151, 155, and 157.

Depending on vessel type, commercial vessels are subject to periodic inspections at quarterly, 1 year, 1.5 year, 2 year, 2.5 year, 3 year, 5 year or 10 year inspection intervals. Typically, Coast Guard marine inspectors visit each U.S. commercial vessel a minimum of once each year to either: Inspect the vessel for reissuance of the COI; to conduct the annual reinspection; or to inspect the vessel's hull. The amount of time it takes to conduct any given inspection is often a function of the type of inspection being conducted, the specific category of vessel being inspected, the length and in some cases the tonnage of the vessel being inspected, and the maximum number of passengers the vessel is authorized to carry under the vessel's COI. These three periodic inspections, namely the inspection for certification, the reinspection (or mid-period inspection), and the hull (or drydock) inspection, generally require the same amount of inspection time for the majority of vessels in each vessel category.

Follow-on inspections ensure that a vessel remains in compliance with its COI. The purpose of follow-on inspections varies from one vessel to the next. However, these inspections typically include, but are not limited to, any of the following four activities:

(a) Certifying that deficiencies noted during a previous inspection have been satisfactorily corrected;

(b) Surveying either damaged ship structures or propulsion systems, or lifesaving, navigation, or firefighting equipment which has failed;

(c) Inspecting, testing, or approving repairs either to damaged ship structures or propulsion systems, or to lifesaving, navigation, or firefighting equipment which has failed; or

(d) Verifying that vessel modifications or alterations meet regulatory requirements.

Wide variations exist relative to the amount of time required to conduct follow-on inspections, which include, but are not limited to: Drydock extension inspections; MARPOL compliance inspections; inspections to clear outstanding requirements issued by a Coast Guard marine inspector on Coast Guard Form CG–835; damage surveys; repair inspections; permit to proceed inspections; and non-credit drydock inspections. These variations are attributable to many factors, including: The degree to which the vessel is made ready for inspection by the owner or operator; the knowledge, training, and experience of shipyard personnel and the ship's crew; the knowledge and training of the marine inspector; the vessel owner's or operator's management and operating procedures; the level of coordination with third party contractors; the nature and extent of the repairs required; and the size and extent of any deficiency list to be inspected or cleared. Generally, there are no accurate predictors as to the amount of time each type of follow-on inspection should take.

Inspection and Examination Fees

For the purposes of this rule, vessels required to have a COI are inspected, and foreign vessels not required to have a COI are examined. Annual vessel inspection fees are payable each year on or before the vessel's user fee anniversary date and entitle a vessel owner or operator to all periodic and follow-on inspection services needed during the year. All other inspection or examination-related fees are payable by the vessel's owner or operator prior to the time that the Service is provided.

Vessels of nations which are party to SOLAS are examined by the Coast Guard only to the extent necessary to verify compliance with their own nation's inspection laws, the requirements of various international treaties, and any additional domestic regulations which may be imposed by the United States. This rule does not establish fees for SOLAS compliance examinations.

Derivation of the Annual Vessel Inspection Fee

Depending on the specific vessel category, COIs are issued for a period of one, two, or three years. Reinspections are conducted during the intervening years, on or about the anniversary date of the vessel's COI. Hull inspection intervals vary from once every twelve months to once every ten years, depending on the vessel category and whether the vessel operates in salt water or fresh water. Follow-on inspections, on the other hand, can occur at any time.

The length of the period for which a COI is issued is only one factor in the annual vessel inspection fee calculation. Using vessel inspection data, the Coast Guard determined the average amount of time needed to conduct periodic and follow-on inspections for vessels in each vessel category during a twelve month period. For Coast Guard data capture purposes, hull inspections also included internal structural inspections, fuel oil tank inspections, and tailshaft inspections, since these inspections most often coincide or are associated with the hull inspection.

The annual vessel inspection fee is based upon an equation which calculates the average expected value (in terms of annual inspector hours) of inspection services provided to each vessel category during any given year. The average expected value is the average number of hours it takes to conduct a type of inspection multiplied by the probability of that inspection taking place during any given year. It assumes that the average time to conduct an inspection is representative for all vessels within a given vessel category; that the distribution of the average inspection time about the mean is normal; and that the average inspection time has a relatively small standard deviation. However, while use of the average expected value worked well for periodic inspections, it did not work as well for follow-on inspections, because the standard deviation for many follow-on inspections was several times the mean.

Constructing annual vessel inspection fees predicated on full recovery of follow-on inspection costs would have resulted in shipowners who require less inspection services subsidizing shipowners who require significantly greater inspection services. For this reason, the Coast Guard proposed to base charges for follow-on inspections at 50% of cost. Charging only 50% of the cost associated with conducting follow-

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on inspections minimized the impact of the large standard deviations and reduced the potential for inequities within vessel categories and subcategories. No comments on the NPRM suggested that there was any disagreement with the proposal. The annual vessel inspection fees in this final rule are thus based on the total cost of conducting periodic inspections and half of the costs of conducting follow-on inspections.

The Coast Guard developed its vessel inspection and examination fees using information from a workload analysis study, vessel inspection data contained in the Coast Guard's Marine Safety Information System (MSIS), and costs associated with conducting vessel inspection and examination activities by personnel assigned to Coast Guard Marine Safety Offices and Coast Guard Marine Inspection Offices.

Vessel inspection and examination fees were developed to generate receipts approximating the total vessel inspection program costs of providing those services. Vessel inspection program costs include the cost of personnel, local travel costs for inspectors, a portion of the annual cost of operating MSIS, and the associated overhead required to provide Coast Guard inspection and examination services (i.e., office space; office equipment and supplies such as telephones, computers and copiers; special training; and other personnel-related costs). Using information derived from a workload analysis study, the hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310.1), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11), the Coast Guard calculated the total cost of the vessel inspection program to be approximately $28.7 million. Of this amount, an estimated $2.9 million will be the subject of a separate rule covering fees for inspections associated with new vessel construction and for commercial vessel plan review services.

Based on the workload analysis study and the total vessel inspection program cost, the Coast Guard calculated a basic hourly rate for vessel inspection services of $87 per qualified inspector hour. A detailed discussion of the calculation of this figure is set out in the Regulatory Evaluation.

Each fee was calculated based upon the time the Coast Guard would reasonably expect to spend inspecting or examining vessels in specific categories during an average year, including travel time to and from the inspection site. All fees were rounded down to the nearest $5.00 increment. The costs associated with inspecting the different types of MODUs were determined using Coast Guard historical information, because workload data was not captured based on the type of drilling unit.

Consistent with guidance provided by the Office of Management and Budget (OMB) Circular A–25, and except where otherwise mandated by statute, the Coast Guard's goal in establishing user fees for Subtitle II services is full cost recovery. This rule will recover an estimated $17.2 million of the $25.8 million annual cost of providing Coast Guard vessel inspection and examination services. An estimated $8.6 million in costs will not be recovered by user fees due to statutory prohibitions or limitations; lack of statutory authority; exemptions in the rule from payment of fees; and administrative reductions during development of the final fee schedule. These unrecovered costs are listed in Appendix E of the Regulatory Evaluation for this rule.

OMB Circular No. A–25 requires that all user fees be reviewed periodically to determine if adjustments or changes to the fees are necessary. The fees in this rule will be revised if costs change due to inflation or deflation; if the Coast Guard changes the manner in which inspection or examination services are provided; or if otherwise deemed appropriate. Revisions to the fees would be done through rulemaking.

Optional Prepayment of Annual Vessel Inspection Fee

The final rule allows a vessel owner or operator to prepay the annual vessel inspection fee for any period of not less than three years and not more than the design life or expected remaining service life of the vessel. The Coast Guard will calculate the prepayment amount using the net present value of each annual payment during the requested prepayment period. The net present value is a discounted amount which, if deposited in an interest bearing account until the payment year and when added to the accumulated interest, would equal the payment amount due. The interest rate used in calculating net present value will be the 10-year Treasury note rate in effect at the time of calculation, as adjusted for inflation using the projected rate for Federal pay increases. Entitlement to inspection services during the prepayment period is transferable to a subsequent owner of the vessel, but the entitlement is not transferable to a different vessel. If a vessel certificated for a single service changes service during the prepayment period, the fee for the remainder of the prepayment period must be recalculated using the vessel's new category. The remaining prepaid balance will be applied to the fee calculated for the remaining years in the vessel's new category, commencing with the next user fee anniversary date. With the exception of a vessel that is removed from Coast Guard certification, as discussed in § 2.10–105(e), prepayments of fees are non-refundable.

Overseas Inspection and Examination Fees

Approximately 40,000 inspector hours are expended annually in the overseas inspection of U.S. commercial vessels. These overseas inspections are conducted at the request of the vessel owner. Vessel owners and operators reimburse the Coast Guard (under 46 U.S.C. 3317) for travel and per diem expenses of the marine inspectors, but not for the personnel costs associated with conducting overseas inspections. Personnel hours expended during travel to the overseas inspection site and at the overseas inspection site waiting for a vessel to be made ready for inspection constitute the extra costs associated with providing inspection and examination services at overseas locations which are not included in the annual vessel inspection fees.

The Coast Guard proposed an additional flat fee for each overseas inspection. The total marine inspector hours expended in conducting overseas inspections divided by the number of overseas inspections conducted provides an average time for each inspection of approximately 53 hours travel and delay time. At $87 per qualified inspector hour, this rule sets the fee for each overseas inspection at $4,585.

Foreign Tankship Fees

Foreign tankships which carry hazardous liquids or liquefied gases in bulk are issued a LOC, which is valid for two years. These tankships are also examined annually, at which time the vessel's LOC is endorsed. Foreign tankships carrying oil in bulk, on the other hand, are issued a Tank Vessel Examination (TVE) Letter, which is valid for one year. The time involved to conduct each of these tankship examinations is essentially the same. The fee for each of the three examinations, therefore, is the same amount, namely $1,100.

Foreign MODU Fees

Foreign MODUs are examined under the authority of the Outer Continental Shelf Lands Act, codified in 43 U.S.C. 1356. The regulation requiring a foreign MODU to obtain a LOC is published in 33 CFR 143.210. LOCs for foreign MODUs are valid for one year or until the MODU departs the outer continental shelf, whichever occurs first. Since certain other foreign vessels are required to pay user fees for inspections and examinations, and since U.S. MODUs are generally inspected by and pay fees to foreign agencies when operating in foreign waters, the Coast Guard has established user fees for examination services provided to foreign MODUs. Foreign MODU fees are collected under the authority of 14 U.S.C. 664 and 31 U.S.C. 9701.

Foreign MODU examinations are conducted under 33 CFR 143.207 and 143.210 to ensure compliance with one of the following: (a) The design and equipment standards for MODU's in 46 CFR part 108; (b) the design and equipment standards of the documenting nation, if those regulations have been found to meet or exceed U.S. standards; or, (c) the standards issued by the International Maritime Organization.

Since examinations conducted to ensure compliance with (a) above involve essentially the same inspection services provided to U.S. MODUs, the fees for these foreign MODU examinations are identical to the annual vessel inspection fees for U.S. MODUs. Likewise, since the scope of the examinations conducted to ensure compliance with categories (b) and (c) above are essentially the same, and involve the same amount of time, the fee for each of these foreign MODU examinations is the same amount, namely $1,830.

Foreign Passenger Vessel Fees

The Coast Guard examines foreign passenger vessels of nations that are party to SOLAS to verify that these vessels are in substantial compliance with the laws of their flag state and the controls imposed by appropriate international treaties. The Coast Guard initially proposed to charge the same fee for each initial, annual, and quarterly foreign passenger vessel examination. However based on further review and research, the Coast Guard has subsequently determined that the reciprocity provision contained in 46 U.S.C. 3303(b) does not allow imposition of a fee for the examination of a foreign passenger vessel except to the extent that a foreign country charges vessels of the United States trading to the ports of that country. Since there are no U.S. passenger vessels being charged examination fees by a foreign country, and no clear indication that any such fees would be charged, the Coast Guard has not established a fee for the examination of foreign passenger vessels under 46 U.S.C. 3303.

Fee Collections

The Coast Guard has established a vessel user fee anniversary date for each existing vessel currently inspected by the Coast Guard. This was accomplished by checking MSIS data for the COI anniversary date of all Coast Guard inspected vessels and assigning the vessel's user fee anniversary date as the first day of the next month after the COI anniversary date, exclusive of the year. Once established, the vessel user fee anniversary date remains the same for the service life of the vessel. Annual vessel inspection fees are due on or before the vessel's user fee anniversary date. Coast Guard inspection services will not be provided until the annual vessel inspection fee for that year has been paid in full. For new vessels entering service after the effective date of this rule, the vessel user fee anniversary date will be based upon the vessel's initial COI issuance date. This same method will be used for existing vessels coming under Coast Guard certification for the first time.

Annual vessel inspection fees and foreign vessel examination fees must be mailed to the address specified in 46 CFR 2.10–20. Overseas inspection and examination fees, on the other hand, must accompany each request for an overseas inspection or examination as required by § 2.10–120.

Fees generated by this rulemaking will be deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities. This means that the fees will not be added to current Coast Guard appropriations; nor will the fees directly affect future appropriations used for administration of the Coast Guard's marine safety programs. The Coast Guard considers this to be an advantage, since funding for these programs is more predictable when based on firm appropriations, and administration of the vessel inspection program will not be dependent on the amount of fees collected during any given year.

Discussion of the Comments

Overview

During the comment period, the Coast Guard received a total of 1,092 written comments to the docket. In addition, 176 persons either testified or submitted written statements during the nine public hearings.

All segments of the industry generally objected to the proposed imposition of any user fees for the inspections of their vessels. They also objected to the proposed fee amounts being too high. Many requested an after-the-fact billing system to charge for the actual inspection time rather than the proposed annual fees.

The largest number of comments came from owners and operators of small passenger vessels who were primarily concerned with the cumulative economic impact of local, State, and Federal fees and the effect of the fees on their income.

Numerous comments were also received from the freight barge industry. The industry's primary concerns were that they were not included in the fee cap for tank barges and that they would be charged twice for what appears to be identical services conducted by the Coast Guard and American Bureau of Shipping (ABS).

The oceangoing merchant fleet industry was primarily concerned that the proposed fees would place their vessels at a competitive disadvantage relative to their foreign counterparts; that foreign countries may choose to reciprocate and charge U.S. vessels fees for operating in their ports; that the Coast Guard should delegate more of its inspection responsibilities to ABS; that charging an hourly rate would provide an incentive for owners to have their vessels ready for inspection; and that if the industry must pay for vessel inspection services, the Coast Guard needs to improve its efficiency and the quality of its inspection corps.

The offshore oil industry also submitted numerous comments. The primary concerns of this industry segment related to the economic impact the fees would have on individual vessel operators supporting their industry, i.e. offshore supply vessels (OSVs).

Some comments requested that more information be provided which specifically shows how the annual inspection fees were derived. The Coast Guard has included a detailed example of an annual fee calculation in the final Regulatory Evaluation for this rule.

Exemptions

Under 46 U.S.C. 2110(g), the Coast Guard may exempt a person from paying fees if it is determined to be in the public interest to do so. In the NPRM the Coast Guard did not propose any exemptions, but invited comments on exemptions that could be considered to be in the public interest. Over 40 exemption requests were received, spanning a wide range of vessel categories. The categories for which exemptions were requested included: State, local, and private ferries; vessels

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operated by youth-oriented, not for profit, charitable or educational organizations; vessels operated by nonprofit organizations or foundations; oceangoing merchant vessels; small passenger vessels less than 30 feet in length; certain historic vessels; small entities; small passenger vessels; U.S. vessels engaged in foreign commerce; small passenger vessels built before December 31, 1990; vessels whose gross profit was less than 20% of the proposed annual vessel inspection fee; companies engaged in providing passenger transportation services; auxiliary sailing vessels; sailing school vessels less than or equal to 65 feet in length; yacht club launches carrying 12 passengers or less; any small entity negatively impacted by the fees; tourism vessels; U.S. flag liner vessels; small passenger vessels less than 100 gross tons; small passenger vessels less than 100 gross tons and engaged in recreational diving and fishing activities; foreign vessels; and U.S. vessels in general. Of this list, the greatest number of comments came from the Boy Scouts of America (BSA); state, local, and private ferries; and various not for profit organizations. Comments from these groups presented a variety of reasons to support their requests for exemption.

Most other requests for exemptions simply suggested an exemption category but failed to provide an articulated rationale in support of their request.

Several comments requested an exemption for ferries which are owned and operated by local, state, or private entities and which support local transportation systems. The comments indicated that ferries reduced vehicle traffic congestion on area roads and provided access to remote sites, such as to a barrier island State park, or to the islands of Martha's Vineyard and Nantucket. The comments also indicated that many ferries operate on a nonprofit basis in an effort to keep their fares as low as possible, with fare increases often regulated by a State Public Utilities Commission. One State transportation department indicated that it received some type of subsidy from the Federal Transit Administration (FTA) and stated that it is not logical for the Federal Government to subsidize water-based nonprofit operations on the one hand, while imposing a fee for Coast Guard inspection services on the other hand.

A substantial number of comments requested exemptions for vessels owned or operated by organizations that are charitable, not for profit, and youth-oriented, such as the BSA, including the Sea Scouts and Sea Explorers, Girl Scouts of the United States of America (GSA), and the Young Men's Christian Association (YMCA) of the United States of America. These organizations are involved in teaching youths maritime skills, such as boating, seamanship, and navigational skills. These organizations argued that since many of their programs rely solely on volunteers, fund-raising activities, and private donations for their total funding and support, their ability to continue offering these programs would be adversely affected if fees were charged for the inspection of their vessels.

In addition to organizations discussed above, several other nonprofit organizations requested exemptions for their vessels. These organizations provide the public with educational programs having an environmental or historical focus, rather than teaching youths maritime skills. One organization provides charitable medical care and therefore has a humanitarian focus.

The Coast Guard acknowledges that there are many charitable organizations which provide services to the public, and that even commercial operations, such as ferries, benefit the general public. However, the Coast Guard does not agree that all organizations which serve or benefit the public in some manner should be exempted from the vessel inspection fees.

The Coast Guard has a long-standing record of supporting national youth programs (Coast Guard Public Affairs Manual—COMDTINST M5728.2B). Charging fees for inspecting these vessels would not be in keeping with this long-standing support, nor would it be consistent with other Coast Guard user fee rulemakings such as the recreational vessel user fee and merchant marine licensing user fees which have established a similar exemption. Therefore, consistent with past practice, the Coast Guard has decided to exempt vessels which are owned or operated by not for profit, charitable, youth-oriented organizations and which are used exclusively by those organizations for training youths in boating, seamanship, and navigation skills.

A vessel meeting the criteria set out in the final rule may be eligible for an exemption. Vessel owners and operators, including the BSA, GSA, and YMCA organizations, desiring an exemption must submit a written request to Commandant (G-MP) via the Officer in Charge, Marine Inspection (OCMI) of the Marine Inspection Zone in which the vessel normally operates. Since some of the vessels owned or operated by the BSA, GSA, and YMCA organizations may not be used exclusively by those organizations for training youths in boating, seamanship, and navigation skills, it is expected that some of these vessels may not be eligible for this exemption.

Historic Vessels

Several comments to the docket asserted that the proposed annual vessel inspection fees will have an adverse impact on vessels listed on the National Register of Historic Places and other vessels possessing either historical character or historical significance. Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their actions on historic properties and to seek comments from an independent reviewing agency, the Advisory Council on Historic Preservation (ACHP). The purpose of the Section 106 process is to prevent unnecessary harm to historic properties arising from Federal actions. Regulations for the Section 106 process are contained in 36 CFR part 800.

Because a number of inspected vessels are listed on the National Register of Historic Places, the Coast Guard referred this matter to the Advisory Council on Historic Preservation. In November 1993, the Advisory Council determined that this rule does not constitute an undertaking under Section 106 of the National Historic Preservation Act, therefore the Coast Guard did not do a Section 106 analysis.

Specific Comments

Several comments expressed the opinion that their taxes had already paid for the cost of providing Coast Guard inspection services, and that charging fees amounted to nothing more than "double taxation." Some comments stated that the primary beneficiaries of Coast Guard inspection services include the public, the ship's crew and its passengers, and the environment, and that fees should be reduced substantially in recognition of that fact.

The Coast Guard does not agree. The Omnibus Budget Reconciliation Act of 1990 tasked the Coast Guard with establishing user fees for services provided under Subtitle II of Title 46, United States Code. This congressional mandate was aimed at recovering costs associated with providing Coast Guard services from the recipients of those services. OMB Circular No. A–25, dated July 15, 1993, states that when a service or privilege provides special benefits to an identifiable recipient beyond those that accrue to the general public, a

charge will be imposed to recover the full cost to the Federal Government for providing the special benefit, or the market price. The Circular also provides that when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.

Just as a business cannot operate legally without applicable State and city business licenses, a U.S. commercial vessel of a certain size or tonnage cannot legally carry passengers or cargo in U.S. waters unless it has a valid COI issued by the Coast Guard. The Coast Guard's position is that the vessel owner or operator is the primary beneficiary of Coast Guard inspection services.

A few comments asserted that there were no cost controls inherent in the proposed fees that would help ensure that the fees were competitive, reasonable, and cost effective. Still others questioned having 416 FTE (full time equivalents or man-years, as opposed to actual personnel) associated with the total vessel inspection program cost, because only about half of the FTE could be accounted for by the MSIS inspection workload data.

Personnel such as the Chief of the Inspection Department, the Assistant Chief of the Inspection Department, marine inspector trainees, clerical and support personnel, and to a lesser extent the Executive Officer and the Commanding Officer at each of the Marine Safety Offices, all contribute to the 416 FTE associated with the administration of the Coast Guard's vessel inspection program. However, the hours for these support personnel are not in the MSIS inspection workload data which tracks mainly those who are directly involved in doing the inspection or processing the reports. The support and administrative costs not tracked in MSIS are nonetheless necessary to the vessel inspection program, as are the marine inspectors actually conducting the onboard inspections.

Others asserted that the Coast Guard intended to charge a separate fee for reinspections and follow-on inspections.

All reinspections, hull inspections, and follow-on inspections are encompassed within the annual vessel inspection fee. With the exception of the overseas inspection fee, the annual vessel inspection fee represents the only inspection fee most U.S. vessel owners will pay during any given year. Payment of the annual vessel inspection fee entitles each owner or operator to a full year of periodic and follow-on inspections, regardless of when the COI, or any other inspection, is conducted.

Some comments stated that the Coast Guard's de facto COI issuance policy is shortening the inspection cycle, causing inspections to occur more frequently than statutorily required. They indicated the current Coast Guard practice of listing the COI issuance date as the date that the inspection was conducted (versus the actual expiration date of the COI) would cause owners to pay an annual vessel inspection fee while receiving less than 12 months of Coast Guard inspection services.

The annual vessel inspection fee will be due on the same date each year, namely the user fee anniversary date, for as long as the vessel remains in service. Therefore, the COI issuance date will have no bearing on the amount of annual vessel inspection services provided.

A few comments suggested that inspectors may become even more vigilant during future inspections so as to find discrepancies and thereby generate additional user fee receipts for the U.S. Treasury.

Since the annual vessel inspection fee includes all periodic and follow-on inspections conducted during the course of the year, there exists no incentive for inspectors to uncover additional discrepancies to increase fee collections.

A number of comments took exception to the Coast Guard's use of the term "privilege of inspection" in the NPRM and suggested that since inspections are required by Coast Guard regulations a more appropriate phrase would be either "right to be inspected," "eligibility for inspection," or "entitlement to inspection." The Coast Guard agrees, and the phrase "privilege of inspection" has been replaced by language more correctly indicating that payment of the annual vessel inspection fee entitles a vessel owner or operator to a full year of periodic and follow-on inspection services.

Numerous comments suggested that the proposed $500 cap on tank barge inspection fees was discriminatory and inequitable, especially when compared to the fees proposed for small passenger vessels and the fees proposed for freight barges.

The tank barge cap was part of the Act passed by Congress. The calculated fees for tank barges ranged from an annual fee of $778 to $1,015. Because the fees as calculated exceeded the statutory limit of $500, and the Act prohibits charging a fee exceeding $500 per year for these vessels, the Coast Guard set the annual vessel inspection fee at the maximum amount allowed by Congress.

Some comments expressed the opinion that in response to the fees established for foreign vessels under this rule, countries may elect, in turn, to charge fees for U.S. vessels operating in foreign ports.

The Coast Guard acknowledges the possibility that foreign countries may consider charging reciprocal fees. However, the Act requires that fees be established for services provided under Subtitle II of Title 46 United States Code, except as otherwise provided in Title 46 and to the extent that the fees are not in conflict with the international obligations of the United States. The Coast Guard has determined that user fees are enforceable for TVE and LOC examinations conducted on foreign tankships and MODUs. These examinations are required by 46 U.S.C. Chapter 37 and are not based solely on any international convention or agreement; rather, they are based on U.S. domestic port entry requirements aimed at ensuring the protection of U.S. ports, its waterways, and the environment.

Several comments suggested that annual vessel inspection fees will place U.S. vessels at a competitive disadvantage relative to foreign vessels engaging in U.S. or international commerce. One commercial shipping representative commented that his company was attempting to compete in an international market, where his competitor's costs associated with regulatory bodies are limited to those of a classification society. He objected to having to pay Coast Guard vessel inspection fees in addition to classification fees stating that the increased fee burden placed his company at a competitive disadvantage.

Just as the Coast Guard inspects the U.S. commercial vessel fleet, SOLAS signatory nations inspect vessels belonging to their commercial vessel fleets. Most of these nations charge their fleets fees for providing these inspection services. Since these vessels have been inspected by their "flag state," and have been issued appropriate international convention certificates prior to entering U.S. waters, Coast Guard examinations are limited to ensuring compliance only with U.S. regulations which may supersede international requirements. These LOC and TVE examinations take less time to conduct than an inspection for a COI. Thus, these examinations

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have lower fees. Vessels of foreign nations not party to SOLAS, and vessels to which SOLAS does not apply are subject to the same inspection requirements as U.S. vessels. Because these latter vessels require the same amount of Coast Guard inspection services as their U.S. counterparts, they must pay a vessel inspection fee equal to the annual vessel inspection fee paid by U.S. vessels of the same vessel service category. Thus, foreign vessels using U.S. ports pay the equivalent amounts for Coast Guard inspection services as U.S. vessels.

One comment suggested that the proposed vessel examination fee schedule should be expanded to include inspections of foreign cargo vessels of nations that are signatory to SOLAS.

As authorized by 46 U.S.C. 3303 and required under 46 CFR 90.05–1, foreign vessels of a country having inspection laws and standards similar to those of the United States, and which have an unexpired COI issued by proper authority of its respective country, receive only a port state control examination to ensure that the condition of the vessel is as stated on its COI. User fees solely for port state control examinations would be inconsistent with the operation of customary international practice and they are not included in this rule.

A few comments stated that every vessel carrying passengers for hire should be inspected by the Coast Guard. Others stated that the law concerning bareboat charters should be changed.

These suggestions would require changes to inspection statutes and regulations which are beyond the scope of this rulemaking. However, should additional categories of commercial vessels become subject to Coast Guard inspection in the future, user fees will be established for these vessels as well. For example, the Passenger Vessel Safety Act of 1993 now requires that certain additional vessels carrying passengers for hire be inspected by the Coast Guard. Therefore, the fees established in this rule also apply to these vessels.

A few comments expressed the concern that fees charged for vessel inspection services were, in reality, paying for other Coast Guard services provided to recreational and fishing vessels for which user fees have not been proposed. The Coast Guard disagrees.

This rule establishes annual vessel inspection fees for those vessels subject to Coast Guard inspection under 46 U.S.C. 3301. Recreational vessels and fishing vessels are not currently required to be inspected.

One comment suggested that the proposed annual vessel inspection fee for liquefied natural gas tankships (LNG) was not based on the actual time spent inspecting such vessels. The comment stated that the proposed fee for LNG tankships was 244% higher than the proposed fee for a non-LNG tankship, despite the fact that both tankship categories should take essentially the same amount of time to inspect.

The Coast Guard agrees that if vessel size was the only factor, LNG tankships should take essentially the same amount of time to conduct the required inspections as non-LNG tankships. However, Coast Guard-inspected LNG vessels operate almost exclusively in the overseas trade. MSIS data indicates that most reinspections of LNG tankships occur while the vessel is underway, and most drydockings often require the services of a dedicated inspector for extended periods. The annual vessel inspection fee for LNG tankships also includes Coast Guard costs associated with conducting the annual testing of firefighting systems. All of these factors increase the average annual inspection time.

Because there are only 10 active vessels in the LNG tankship fleet, the Coast Guard reviewed MSIS data on each of the 10 vessels dating back to 1987 to establish a more reliable average inspection time. Data which clearly exceeded the mean inspection time was intentionally eliminated from this analysis. The results indicated that a reduction in the proposed annual vessel inspection fee for LNG tankships was, in fact, justified. However, the recalculated annual vessel inspection fee for LNG tankships remains almost twice as high as the annual vessel inspection fee for a conventional tankship.

One comment asked whether a separate fee would be assessed to a vessel operating part of the year in one region of the country and operating the rest of the year in another region of the country.

Only one annual vessel inspection fee will be charged per vessel, regardless of the number of regions in which a vessel operates during any given year. Payment of the annual vessel inspection fee entitles a vessel owner to a full year of periodic and follow-on inspections, regardless of where in the country the vessel chooses to operate and how often the vessel is inspected.

Several comments suggested that the Coast Guard should consider billing at the conclusion of the inspection. Other comments expressed the opinion that fixed annual fees do not provide an incentive for owners to have their vessels "ready for inspection." These comments argued that paying an annual fee, in effect, rewards those owners and operators who are not prepared for the inspection at the expense of those who are prepared. One commenter said he objected to having his annual fee become higher because of another company which makes no attempt to maintain its vessels or prepare adequately for an inspection. He suggested the Coast Guard establish a published guideline of thresholds. When the number of visits exceeds that threshold, the annual fee for that vessel should increase on its next anniversary, and hopefully other more cooperative and prepared companies' fees should decline. Generally, these comments stated that charging for each inspection at a fair, hourly rate would not only be more equitable, but would also ensure that the fees reflected the actual amount of time spent on board the vessel.

Hourly fees would more accurately reflect the actual time an inspector spends on board a vessel and would also likely result in lower fees for those owners whose vessels were "ready for inspection" compared to owners whose vessels were "not ready for inspection." However, the average expected value of services provided each year is representative of the majority of vessels in each vessel category. In addition to the average annual amount of time spent on board each vessel, annual vessel inspection fees also include travel and administrative (paperwork, review, and research) time.

Billing at the conclusion of each inspection poses essentially the same problems as charging at an hourly rate. Charging at an hourly rate would require creating and staffing a billing system that would increase collection costs by an estimated $1.75 million, resulting in higher fees for vessel owners and operators. Moreover, OMB Circular No. A–25 guidance states that user charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services. Thus, the Coast Guard decided not to bill at the conclusion of the inspection using an hourly rate.

The small passenger vessel industry was particularly concerned with the impact of the proposed fees on the ability of many operators, especially small entities, to stay in business. Citing the poor state of the economy and their declining revenues in general, they commented on the cumulative adverse impact of the growing number of Federal, State, and local fees and

regulations. The comments cited more than 60 different fees and assessments, with the number of fees applicable to any given vessel owner depending upon such considerations as the type of operation, the vessel's size, the geographic area of operation, and the number of passengers carried on board a given vessel. Included were such fees as harbor maintenance fees; drug testing fees; State gaming fees; tonnage fees; Animal and Plant Health Inspection Service fees; State agricultural inspection fees; Bureau of Land Management fees; State saltwater fishing license fees; Customs fees; St. Lawrence Seaway tolls; Federal Communications Commission (FCC) inspection fees; State vessel registration fees; State and Federal water use fees; dockage fees; National Marine Fisheries Service permit fees; municipal business registration fees; commercial use permit fees; Federal reef fishing fees; State business license fees; Gulf of Mexico Fishery Management Council fees; International Pacific Halibut Commission permit fees; Mexican Fish Commission permit fees; State fish and game permit fees; retail fish license fees; lobster license fees; and Public Utility Commission fees. Other comments mentioned State and Federal income taxes; State sales and excise taxes; fuel taxes; corporation taxes; municipal head taxes; self-employment taxes; unemployment taxes; winter boat storage fees; lift fees; insurance and maintenance costs; proposed Coast Guard user fees for marine licensing, vessel documentation, and plan review; and compliance with the Oil Pollution Act of 1990, the Americans with Disabilities Act, and the proposed Subchapter T, liferaft, and EPIRB regulations.

While admitting that the proposed vessel inspection fees alone would not likely cause them to consider leaving the industry, comments stated that the increasing costs of operating small passenger vessels is so overwhelming that some owners or operators will have little choice but to exit the industry. They were also concerned that if they went out of business there would be resulting loss of jobs and revenues in the local communities which often rely on tourist dollars for their income. Some small passenger vessel owners stated they were reluctant or unable to pass on the cost of Coast Guard fees by raising their fees to customers. Other small passenger vessel owners were concerned that their customers would be unwilling to pay higher fares, and would seek other, less costly leisure or tourist activities.

The Coast Guard considered the impact that the annual vessel inspection fees would have, particularly on the ability of small passenger vessel operators to remain in business. The Coast Guard held nine public hearings on the proposed rule in order to gather more data on the likely economic impact of the proposed fees. Based upon the comments received, both in writing to the docket and during the public hearings, the Coast Guard reviewed its proposed fees. The Coast Guard recognizes that the economic impact on each owner or operator depends on a myriad of factors including seasonal operation, number of passengers, status of the economy, weather, and the ability to pass on new costs to paying passengers. While the Coast Guard can calculate the dollar amount of impact on individual vessel owners, it cannot calculate the overall economic impact on each vessel owner and the data in the comments did not support a finding of a significant impact on a substantial number of small entities.

In the NPRM, the Coast Guard divided the U.S. fleet into 29 different vessel subcategories for the purpose of establishing annual vessel inspection fees. The Coast Guard selected the fee subcategories after observing patterns in the amount of time it takes to conduct an inspection as a function of inspection type, vessel type, and other factors.

Many comments stated that the costs for inspecting smaller vessels appeared too high and did not accurately reflect the inspection time required for these vessels. In response to these comments, the Coast Guard reexamined its inspection data and found that other breakpoints could be used to establish additional subcategories (see Figure 1). By establishing these additional subcategories, the Coast Guard was able to tier the fees differently in order to achieve a more precise allocation of program costs. While reexamining the inspection data, the Coast Guard also identified some outliers in the data that skewed the average mean inspection time for all vessels of that category. By disregarding these data outliers in computing the mean inspection time, the Coast Guard was able to develop mean inspection times that more precisely represent the average inspection time for each vessel category resulting, in many cases, in lower fees.

FIGURE 1.—NUMBER OF ANNUAL VESSEL INSPECTION FEE SUBCATEGORIES

Vessel category	NPRM[1]	Final rule
Freight Barges	1	3
Freight Ships	1	3
Ready Reserve Fleet Freight Ships	1	[1]
Industrial Vessels	1	2
Mobile Offshore Drilling Units	4	4
Offshore Supply Vessels	1	2
Offshore Supply Vessels in the Alternate Reinspection Program	0	[2]
Oceanographic Research Vessels	1	3
Sea-going Towing Vessels	1	1
Tank Barges	1	1
Tankships	1	3
Ready Reserve Fleet Tankships	1	[1]
Liquefied Gas Tankships	1	1
Small Passenger Vessels	6	9
Sailing School Ships[2]	0	3
Passenger Barges	1	4
Passenger Ships	5	5
Nautical School Ships	1	3
All Other Inspected Vessels	1	1
Totals	29	50

Notes:
[1] Ready Reserve Fleet Freight Ship and Ready Reserve Fleet Tankship are not included as categories in the final rule.
[2] Sailing School Ships were included with Small Passenger Vessels in the NPRM.

For instance, the Coast Guard initially proposed a single fee subcategory for all small passenger vessels less than or equal to 54 feet in length. The annual inspection fee proposed for all vessels in this category was $820. However, during the review of the proposed fees for small passenger vessels, the Coast Guard determined that the inspection data supported creating another subcategory based on length, and recalculated the annual vessel inspection fees based on these new subcategories. The Coast Guard also examined its inspection data for DUKW vessels (ex-Army 2½ ton amphibian trucks), hydrojet boats, swamp tour boats, and yacht club launches. Comments stated that due to these vessels' simplified design, the time required to conduct an inspection on these types of vessels was considerably less than the time required for other small passenger vessels. However, MSIS inspection data supported the creation of separate fee categories for DUKW vessels and hydrojet boats, but did not

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indicate a significant difference in the mean inspection time for "swamp tour boats" and yacht club launches when compared to other small passenger vessels of the same length. Therefore the following new subcategories were created for small passenger vessels (SPVs):

New subcategories	Annual inspection fee
—DUKW vessels	$450
—Hydrojet boats	470
—SPVs length not greater than 30 feet	545
—SPVs more than 30 feet but not more than 54 feet	670

Several comments stated that fees should be linked to some measure of a vessel's ability to generate revenue, such as the number of passengers a vessel can carry. Others stated that fees should take into account a vessel's actual gross earnings for the year. For instance, several comments asserted that the fees failed to take into account the seasonal nature of many vessel operations, and that vessels operating 3–5 months a year should not be charged the same annual fees as vessels which operate year-round.

The Coast Guard does not agree. The number of passengers for which a vessel is certificated is not a direct measure of actual revenues, it is a measure of potential revenues. The authorized total number of passengers is not necessarily the same as the actual number of passengers a vessel carries during any given voyage. Indeed, many small passenger vessel owner comments indicated that their vessels frequently sail with fewer than half the authorized number of passengers on board. Nor is the number of months a vessel may operate during the year an effective predictor of revenues for that year. For instance, revenue generated by a vessel carrying one-half its passenger capacity for twelve months would be comparable to a similar vessel carrying full passenger capacity for six months.

Although the economic impact of an annual fee may be greater for a vessel with a short operating season, than for a similar vessel with a longer season, the amount of resources expended by the Coast Guard to inspect these vessels is the same whether a vessel operates for one month or for twelve. The Coast Guard based its annual vessel inspection fees on the average cost to the Coast Guard of inspecting each category of vessels.

Some comments expressed the opinion that Coast Guard travel costs ought to reflect the proximity of the inspector to the job site, instead of attributing a fixed amount of average travel time to each vessel per year. Others pointed out that many small passenger vessel owners and operators, especially those located in remote areas, often coordinate inspections with other vessel owners and operators in an effort to minimize Coast Guard travel time.

Coordinating inspections is a common practice within the small passenger vessel industry. This practice most often applies to inspection sites located several hours from the Coast Guard inspection unit. However, Coast Guard MSIS data shows that travel time averages just over two hours per inspection, regardless of the number of inspections conducted during a particular inspection trip. It is not uncommon for inspectors to travel three hours each way to get to an inspection site. In other cases, one inspector may inspect three vessels in the same day. The practice of doing multiple inspections during a single inspection trip allows the Coast Guard to minimize its travel costs; otherwise, average Coast Guard travel costs would be greater. Thus, the Coast Guard considers it reasonable that it include in the vessel owner's annual vessel inspection fee an average of about two hours travel time per vessel per year.

Comments from various industry segments recommended that the Coast Guard not impose any user fees until all the proposed user fee rules have been published, so that the cumulative economic impact of these fees on owners and operators could be properly evaluated.

The user fee rules under development by the Coast Guard may impact some of the same segments of the regulated marine community. One example is the small passenger vessel industry, where vessels are often owned and operated by the same individual who may be subject to both marine licensing fees (CGD 91–002) and inspection fees from this rule. On December 18, 1991, the Coast Guard reopened the comment period for the Marine Licensing NPRM to run concurrently with the comment period for the Commercial Vessel Inspection NPRM. Establishing the concurrent comment period did not provide any new information to the marine licensing user fee rule, or to this rule concerning cumulative impact of the fees. Since these two rules are the most likely to have affected the same segments of the regulated community, and since the Coast Guard did not receive data from the licensing rule comments during the concurrent comment period that necessitated changes in this final rule, the Coast Guard decided not to delay publication of this final rule pending comments on remaining user fee proposals.

A number of comments expressed concern over the apparent duplication of inspection services by Coast Guard, ABS, and other parties for which fees are charged. One commercial shipping representative suggested that when a classed vessel is surveyed by ABS that the survey be accepted by the Coast Guard. One barge company stated that barge owners will incur inspection charges for essentially the same service from both Coast Guard and ABS, i.e., an inspection and survey to ensure the structural integrity of the vessel.

The Coast Guard is aware that inspections or surveys done by other agencies such as FCC, by classification societies like ABS, and by marine surveyors are subject to fees. Although activities of the same type done by different agencies may appear to be at least partially duplicative, the activities have a different purpose. Other third party inspections or surveys, such as those conducted by marine surveyors, are also for a different purpose, usually to meet insurance company requirements.

The Coast Guard agrees that cost savings could result if some inspections or surveys done by one agency could be used by other agencies or third parties for several purposes. Acceptance of third party inspections or surveys as evidence of compliance with Coast Guard regulations is an issue which is being reviewed by the Coast Guard as part of its Maritime Regulatory Reform initiative, and could result in changes to the Coast Guard's marine inspection program. However, such program changes are beyond the scope of this rule.

A few comments suggested that the Coast Guard should consider revising its vessel inspection intervals so that the various inspection requirements such as hull inspection interval and mid-period inspection or COI inspection interval coincide, thereby reducing the number of required Coast Guard inspections. One commercial shipping representative stated that presently, the rules call for drydocking deep-draft vessels twice in five years with a maximum of three years between drydockings. In addition, there are two inspections for certificate renewal and three annual inspections. As it stands now, some owners will schedule an inspection for certificate renewal at the two year interval and then drydock the vessel 6 to 12 months later and again request a new certificate. The existing certificate expiration schedule and the new drydock provisions do not complement each other and cause both parties additional inspection time and delays. He suggested that adopting a 2.5 year COI with a 15 month reinspection schedule would rectify this situation.

Because the Coast Guard is currently unable to apportion its hull inspection costs more precisely, it chose to compute the annual vessel inspection fee based upon the longest hull inspection interval applicable to each vessel category or subcategory. Although the Coast Guard is reexamining this subject with a view to minimizing the intervals to the extent allowed by law, this and other similar suggestions to revise the Coast Guard inspection intervals would involve program changes which are beyond the scope of this rule.

Some comments recommended deferring follow-on overseas inspections until the next scheduled reinspection or inspection for certification. Follow-on inspections can often be scheduled around or in conjunction with a periodic inspection. Only in extreme cases is it necessary to dispatch an inspector overseas solely for the purpose of conducting a follow-on inspection. Certain deficiencies may impact a vessel's overall safety and must be corrected prior to the next scheduled periodic inspection. The OCMI may extend the compliance date for certain deficiencies which do not jeopardize the safety of the vessel, its passengers, or its crew. Other deficiencies can be cleared administratively by the vessel's master or chief engineer submitting written servicing reports or certifications. The cognizant OCMI possesses the authority to determine whether a deficiency's compliance timeframe can be extended or whether it can be cleared administratively. If it requires a separate overseas trip, then another overseas fee must be paid. The overseas inspection and examination fee will apply to each periodic and follow-on inspection conducted overseas, as well as to each foreign vessel examination conducted overseas.

Some comments indicated that the overseas inspection or examination fee would be excessive for inspections or examinations conducted in locations near the continental U.S. These comments indicated that it may take less time to travel to the inspection site outside the continental U.S. than to travel to other inspection sites within the continental U.S. For instance, one commenter indicated that on occasion his firm, and at least one other U.S. shipping company, has used a Canadian shipyard requiring approximately 35 miles of inspector travel from the Marine Safety Office in Buffalo, New York, for required inspections.

The Coast Guard agrees. The overseas inspection or examination fee in the final rule does not apply to inspections or examinations conducted in Canada, Mexico, or the British Virgin Islands. The overwhelming majority of inspections or examinations conducted in these countries involve only a short commute by either car, boat, or plane. For example, it is not uncommon for Coast Guard inspectors to travel to sites in Canada and Mexico by car or short plane trip, and sites in the British Virgin Islands by short boat trip. Coast Guard data indicates that it actually takes less time to travel to some of these sites than it does to travel to a remote inspection site in the continental United States. For this reason the Coast Guard will not charge the additional overseas inspection or examination fee for these inspections or examinations.

Another comment stated that it would be more equitable to owners whose vessels operate overseas if the Coast Guard charged just one overseas inspection fee per vessel per year instead of charging an overseas inspection fee each time an overseas inspection is conducted.

Overseas inspections involve travel and delay time of approximately 40,000 hours annually. Much of this time is expended in direct support of conducting periodic inspections; however, some of the time is expended conducting follow-on inspections, such as clearing deficiencies (i.e., CG–835s).

Several comments suggested that the Coast Guard should consider expanding the OSV alternate reinspection program for mid-period inspections to MODUs operating outside the U.S. for extended periods. Currently, OSVs under 400 gross tons, operating outside the continental U.S., have the option to participate in an alternate reinspection program, under the regulations contained in 46 CFR 91.27–13. If accepted into the alternate reinspection program, OSV owners perform an alternate reinspection of their vessel, in lieu of having a Coast Guard marine inspector perform the inspection, and then submit results to the OCMI for review.

This rule establishes a lower annual vessel inspection fee for OSVs participating in the alternate reinspection program than for those OSVs which do not participate in the alternate reinspection program. This lower fee reflects the fact that since a marine inspector is not needed for the inspection, it takes less time for the Coast Guard simply to review the results of the alternate reinspection. Although expansion of the alternate reinspection program to include U.S. MODUs operating overseas is beyond the scope of this rule, the Coast Guard will examine this issue independently of this rule.

A few comments suggested that vessel owners should receive either credit or a refund for "unused certificate time" to cover that portion of a year during which a vessel may be laid up or otherwise taken out of service.

If the vessel owner pays the annual vessel inspection fee, and the vessel is subsequently laid up or taken out of service for part of the year, the Coast Guard will not issue a refund for the portion of the year for which the vessel was laid up or taken out of service. If a vessel is laid up or out of service on its user fee anniversary date, and the vessel is expected to remain laid up or out of service until its next user fee anniversary date (twelve months later), the vessel owner or operator will not be required to pay the annual vessel inspection fee for that year. When the vessel is placed back in service, however, the owner or operator will be required to pay the full annual vessel inspection fee before the vessel is inspected.

Additionally, OSVs will occasionally surrender their COI in order to operate as an oceanographic research vessel. Upon compliance with the procedures set forth in 46 CFR 3.10, the OCMI issues a Letter of Designation as an Oceanographic Research Vessel. Uninspected vessels may also be issued a Letter of Designation. For the purposes of this rule, vessels operating under a Letter of Designation as an Oceanographic Research Vessel will not be charged an annual vessel inspection fee. However, if the vessel returns to inspected service, it must pay the annual vessel inspection fee for that year before any inspection services are provided.

Several comments suggested Coast Guard marine inspectors should conduct FCC radio inspections, thereby saving vessel owners the cost of the FCC radio inspection fee.

When Coast Guard marine inspectors conduct inspections for COIs or reinspections, they do not conduct the FCC radio inspection. They only verify that a vessel has a valid Safety Radiotelephone Certificate issued by the FCC and ensure that the vessel's radio equipment passes an operational test. The Coast Guard and FCC have previously considered this issue and determined it was not feasible to combine these inspection activities.

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Several comments expressed the opinion that if an OSV were to change its service to a freight vessel at any time during the course of a given year, the vessel owner should not have to pay the higher annual vessel inspection fee applicable to freight vessels. Another commenter suggested that since many OSV crewboats and utility boats are inspected under Subchapter T, these vessels should not have to pay an OSV fee that is any higher than the fee for a corresponding small passenger vessel.

Annual vessel inspection fees for vessels certificated for single service will not be adjusted for the year in which a change in vessel service occurs. The vessel's service at the time of its user fee anniversary date will thus determine which annual vessel inspection fee the owner must pay. Regardless of whether or not a crewboat or a utility boat is inspected under Subchapter T or Subchapter I, the vessel is still an OSV. Annual vessel inspection fees are based on the COI, reinspection, and hull inspection intervals applicable to each vessel category, and the average amount of time it takes to conduct each of these inspections. Thus, since small passenger vessel COIs are valid for three years and OSV COIs are valid for two years, an OSV owner should expect to pay a higher annual vessel inspection fee in comparison to a small passenger vessel of equivalent size.

A few comments asked which fee would apply on vessels operating in more than one service under their COI. Vessels which are authorized to operate in more than one service are referred to as "dual-certificated." In such instances, the vessel owner will pay the higher annual vessel inspection fee of the two.

Several questions were raised regarding the examination of foreign vessels and applicable fee payment procedures. For instance, how will fees be collected, and what billing system will be in place?

As with U.S. vessels, foreign vessel fees must be paid before the examination is conducted. The fee may be paid by either the vessel owner, the vessel operator, or some other designated vessel representative (e.g. the vessel's agent); however, the primary responsibility for payment of the fees resides with the vessel owner. Since it is not uncommon for a vessel to arrive in a U.S. port with an expired TVE Letter or LOC, foreign vessel representatives will need to plan accordingly. Payment must be received before the examination is conducted.

The fees listed in § 2.10–125 apply for foreign tank vessel examinations required by the Coast Guard. For vessels receiving a LOC, which is valid for two years, the $1,100 fee must be paid for each initial (or biennial examination, as appropriate), and for the examination conducted in the intervening years. For foreign tank vessels receiving a TVE, which is valid for one year only, the $1,100 fee applies to each annual TVE letter examination. As with annual vessel inspection fees, follow-up visits necessary for corrections of deficiencies related to the above examinations are included in the fees established for TVE and LOC examinations.

Foreign vessel examination fees are based on the cost of providing required examination services, regardless of how many or how few port calls are made during the course of a given twelve month period. If a foreign tank vessel carrying oil in bulk has a TVE conducted one year and does not make another U.S. port call until three years later, its TVE letter will have expired and the $1,100 fee must be paid before another TVE is conducted. If, on the other hand, a chemical tankship has a LOC examination conducted one year and doesn't return to U.S. waters until thirteen months later, its intervening annual examination will be due and the $1,100 fee must be paid before the LOC endorsement examination is conducted.

Comments Beyond the Scope of the Rule

The Coast Guard received many other suggestions for changing the way the Coast Guard conducts its inspection program. These persons believed these changes would result in more efficient use of Coast Guard resources and would reduce the fees. For instance, several small passenger vessel owners recommended that the Coast Guard accept inspections by non-Coast Guard inspectors, such as insurance industry inspectors; qualified members of the marine surveying community belonging to a recognized professional organization; or qualified marine surveyors certified by the Coast Guard. These comments asserted that private sector companies could conduct vessel inspections in a more cost-effective manner.

Also, a few comments indicated that it takes a significant amount of time just to inspect lifejackets on large passenger vessels. They suggested that this activity should be performed by an individual whose services would cost less than a marine inspector, such as a Coast Guard petty officer.

All these comments are beyond the scope of this rule, and the Coast Guard will examine these issues independently of this rule.

Other Changes

In addition to changes discussed in the preceding sections, the Coast Guard made other substantive changes to the proposed regulations.

Applications for Inspections

In the NPRM, the Coast Guard proposed in § 2.01–1, *Applications for inspections*, that application forms would be accompanied by applicable fees, that evidence of payment would be endorsed on the COI, and that payment of fees would be verified before the inspection was scheduled. The Coast Guard has determined that this language is now redundant or inconsistent with the requirements of subpart 2.10 and, therefore, has been deleted from the final rule.

Definitions

Most vessel definitions are based on regulations or statutes. In addition to a few minor revisions to certain proposed definitions which are editorial in nature, the definition for "Towing vessel" has been changed to "Sea-going towing vessel." A definition for "Submersible vessel," the "user fee anniversary date" and the "vessel identification number," the latter two of which relate to the collection process, have been added, and the definition for Oceanographic research vessel has been corrected to conform with the definition in 46 U.S.C. 2101.

Also, definitions of the following have been revised to conform to revisions made by the Passenger Vessel Safety Act of 1993:

1. Offshore supply vessel
2. Passenger vessel
3. Sailing school vessel
4. Small passenger vessel

The revised definitions in the final rule do not change the category in which a vessel would have been placed by the NPRM. However, the Passenger Vessel Safety Act of 1993 has resulted in certain previously uninspected charter vessels now coming under Coast Guard inspection requirements. When the NPRM was published, these vessels were not inspected by the Coast Guard and, therefore, were not subject to inspection user fees. To comport with the statutory change, these vessels (most of which are now included in the small passenger vessel category) are subject to Coast Guard inspection and to the corresponding fees established in this rule.

The language in Table 2.10–101 has been revised so that the definition for "all other inspected vessels" is no longer needed and has been deleted from the final rule.

Public Vessels of the United States and Other Vessels Owned or Operated by Federal Agencies

Under 46 U.S.C. 2109, most public vessels of the United States are excluded from the vessel inspection requirements of Subtitle II of Title 46 United States Code. The provisions of Subtitle II apply only to those public vessels of the United States owned or operated by the Department of Transportation, except for Saint Lawrence Seaway Development and Coast Guard vessels. That means the Maritime Administration is the only Federal agency subject to user fees for subtitle II services provided to their public vessels. Maritime Administration public vessels include vessels of the Ready Reserve Fleet and training vessels operated by the U.S. Merchant Marine Academy and State maritime academies.

Under specific Memorandums of Understanding, the Coast Guard does inspect public vessels of other agencies such as the Military Sealift Command. However, these inspections are not required by Subtitle II, and the cost of providing these services is not recoverable through user fees; nor can these costs be reallocated to other vessels. In addition, Federal agencies may own or operate vessels which are not "public vessels" because they are engaged in commerce, or are required for some other reason to be inspected under Subtitle II. The Coast Guard could charge inspection fees for these vessels; however, there would be no benefit to charging fees to these agencies for required inspections. The user fee provisions of the Act are intended to help reduce the Federal budget deficit and the fees collected by the Coast Guard are deposited into the general fund of the U.S. Treasury. Payment of the fees by a Federal agency would result in a payment from a Federal agency to the U.S. Treasury; it would not increase the revenues to the U.S. Treasury. Thus, the Coast Guard has decided to waive collection of annual vessel inspection fees which would be paid directly using Federal appropriated funds.

Overtime Compensation for Civilian Inspectors

Overtime compensation for civilian inspectors is authorized by 46 U.S.C. 2111 and is currently located in 46 CFR 2.01–60 of the regulations. The Coast Guard proposed to update § 2.01–60 and include it with other inspection fees in new Subpart 2.10.

However, the Coast Guard decided not to move this section on overtime compensation regulations into the user fee regulations. Although the Coast Guard's intent was to locate requirements for all inspection fees together, the Coast Guard decided that this action could cause confusion. The overtime compensation fees are required by a different statute and are not part of the user fees established in this rule. Also, since the Coast Guard is authorized to directly recover these amounts to pay for civilian overtime, different accounting procedures are in place.

Although the Coast Guard proposed to update the existing regulations in § 2.01–60, the Coast Guard has decided against doing so at this time. Instead, these regulations will be revised in a future rulemaking. Therefore, the regulations in § 2.01–60 have not been changed in this rulemaking and apply to inspections where civilian inspector overtime is involved.

Excursion Permit Fee

The NPRM proposed to charge a fee for excursion permits. Vessel operators desiring to carry passengers in excess of the number listed on the vessel's COI must apply to the cognizant OCMI for issuance of an excursion permit. Excursion permits are issued by the OCMI only after the vessel has been inspected to ensure that the proposed excursion would meet minimum safety requirements. The MSIS data indicates that only a limited number of these permits are issued each year (79 in 1989, 56 in 1990, and 85 in 1991), despite verbal comments during the public hearings which suggested that a substantially greater number of such permits are issued annually. Because the MSIS data on these permit inspections is incomplete, proposed section 2.10–105 has been deleted from this rule. The Coast Guard may, however, propose an excursion permit fee when more data becomes available in the future.

Collection Procedures

Since the NPRM was published, a collection system has been established for the payment of annual vessel inspection fees, foreign vessel examination fees, and overseas inspection fees. As a result, specific collection procedures have been added to this rule.

This rule specifies that payments may be made by check or money order only. Wire transfers and credit cards are not available payment options at this time. If desired, vessel owners and operators may pay inspection or examination fees for several different vessels in the same transaction, provided that the vessel name and vessel identification number of each vessel for which a payment is being made accompanies the payment. All inspection and examination fees must be paid before the inspection or examination service is provided.

Regarding payment of the annual vessel inspection fee, proposed § 2.10–101(b) indicated that a U.S. vessel owner would pay the annual vessel inspection fee on the anniversary date of the COI. This requirement has been changed. The vessel owner must pay the annual inspection fee on or before the vessel's user fee anniversary date, as defined in § 2.10–25. Approximately six weeks prior to this date, the Coast Guard will send a user fee notification letter to the owner of each U.S. commercial vessel inspected by the Coast Guard. The notification letter will include the vessel's name, its official number, the vessel's user fee anniversary date (payment due date), the amount due, and the address to which the payment must be sent to ensure that the fee is credited to the proper vessel.

All user fee payments will be processed by NationsBank in Atlanta, Georgia. Inspection and examination fee payments will not be accepted at Coast Guard Marine Safety or Marine Inspection Offices. The only exception to this policy involves payment of overseas inspection and examination fees, which must accompany the request for an overseas inspection or examination. Under the computerized payment tracking system established by the Coast Guard, all payment histories should be updated within one business day following receipt of the payment by NationsBank. An 800 number has also been established to handle start-up user fee inquiries and to provide payment information. The number, 1–800–941–3337 will remain in effect during initial implementation of the rule.

Penalties for Failure To Pay

Section 2110 of Title 46 U.S.C. authorizes a civil penalty of up to $5,000 for failure to pay fees and authorizes the Secretary of the Treasury to withhold customs clearance for vessels which fail to pay fees, when so requested by the Secretary of Transportation. Inspection and examination services will not be provided unless the Coast Guard can verify that the appropriate fees have been paid. The Coast Guard will treat checks returned due to insufficient funds, account closed, or any other such reason, as a delinquent payment and will seek to recover appropriate collection and enforcement costs from the appropriate party as permitted by law.

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Renumbered Sections

This rule renumbers and reorganizes many of the sections in the proposed regulations (see Figure 2).

FIGURE 2.—CHANGES TO SECTION NUMBERS IN THE REGULATION

NPRM	Final Rule
(None)	§2.10–1
(None)	§2.10–5
(None)	§2.10–10
§2.10–11	(None)
(None)	§2.10–20
§2.10–1	§2.10–25
§2.10–101	§2.10–101
§2.10–103	§2.10–105
§2.10–105	§2.10–115
§2.10–106	(None)
§2.10–107	§2.10–120
§2.10–109	§2.10–125
§2.10–110	§2.10–130
§2.10–13	§2.10–135

Regulatory Evaluation

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 but does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Fees are mandated by the Omnibus Budget Reconciliation Act of 1990, which amended 46 U.S.C. 2110 to remove long-standing prohibitions against charging fees for Coast Guard commercial vessel inspection and examination services.

The Act required the Coast Guard to establish fees for services provided under Subtitle II of Title 46 United States Code. These services include: Licensing and documentation of merchant marine personnel; commercial vessel documentation; commercial vessel inspections and examinations; equipment approval and factory inspections; and vessel plan review and new vessel construction. Whereas the total cost of these user fees is expected to be less than $35 million, this rulemaking deals only with vessel inspection user fees, which are estimated at $17.2 million annually. Projected receipts are well below the $100 million threshold which would make this subject to the provisions of section 6(a)(3) of Executive Order 12866, however the Coast Guard has prepared a final Regulatory Evaluation. The Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES.** It concluded that the financial impact on the public, including most of the individuals subject to the user fees in this rule, is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Based upon a careful review of the public comments and public testimony, the Coast Guard developed a fee structure which is intended to help reduce the impact on owners and operators of small business entities. Based on the establishment of additional vessel subcategories, which resulted in lower fees in many instances, the Coast Guard certifies under 5 U.S.C. 605(b) that these fees are not expected to have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Existing requirements for applications for inspection are covered under OMB control number 2115–0007. Additional requirements under this rule involve the collection of funds, and of such information as is required to calculate the annual vessel inspection fee due and to ensure proper collection of fees. This information includes the name of the vessel, the vessel identification number, and other identifying information which will permit follow-up action if an incorrect fee amount is submitted or a payment instrument fails to clear NationsBank.

A new requirement is established for those owners choosing to pay annual vessel inspection fees for future years in advance. The owner must, in a written request to the Coast Guard, indicate the vessel identification number and the number of years for which the owner desires to prepay the annual vessel inspection fee. If a vessel is permanently removed from Coast Guard certification, the owner may seek a refund of the remaining prepayment amount by submitting a written request to the Coast Guard.

Another new requirement is established for organizations seeking an exemption from the annual vessel inspection fee for vessels owned or operated by their organization. In order to be eligible for an exemption, organizations must submit a written request to the Coast Guard and provide evidence that their organization is charitable in nature, not for profit, and youth-oriented, and that each vessel is owned or operated by the organization and is used exclusively for training youths in boating, seamanship, and navigation skills.

Finally, a new requirement is established for Federal agencies owning or operating inspected vessels for which fees would be paid directly using Federal appropriated funds. The Coast Guard will waive collection of the annual vessel inspection fee for these vessels. However, by October 1 of each year, agencies owning or operating eligible vessels must provide the Coast Guard with the name and the vessel identification number of each vessel to which the waiver will apply.

The additional collection of information burden placed on the public by this rule is expected to be minimal. These new collection of information requirements were approved by OMB and are covered under OMB control number 2115–0617.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule establishes user fees for vessel inspection and examination services. This rule will result in the payment of fees by States, State agencies, and local governments for inspection services provided to vessels owned by such entities. The impact of these fees on these entities is expected to be minimal. While some States and local governments may be required to pay fees, the fees will be solely due to the fact that the entity owns or operates the vessel, not due to a mandate imposed on them as a government entity.

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. Section 2.B.2 of that instruction excludes "administrative actions and procedural regulations and policies which clearly do not have any environmental impacts." A Categorical Exclusion Determination is available in the docket for inspection or copying

List of Subjects

33 CFR Part 143

Continental shelf, Fees, Marine safety, Occupational safety and health, Vessels

46 CFR Part 2

Fees, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends Title 33, Chapter I, Subchapter N, Part 143 and Title 46, Chapter I, Subchapter A, Part 2 as follows:

Title 33—[Amended]

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 143—DESIGN AND EQUIPMENT

1 The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46; section 143.210 is also issued under 14 U.S.C. 664 and 31 U.S.C. 9701

2. Section 143.210 is amended by adding a new paragraph (c) to read as follows:

§143.210 Letter of Compliance.

* * * * *

(c) The owner or operator of a foreign mobile offshore drilling unit requiring a letter of compliance examination must pay the fee prescribed in 46 CFR 2.10–130

Title 46—[Amended]

SUBCHAPTER A—PROCEDURES APPLICABLE TO THE PUBLIC

PART 2—VESSEL INSPECTIONS

3 The authority citation for Part 2 is revised to read as follows:

Authority: 14 U.S.C. 664, 31 U.S.C. 9701, 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703, 5115, 8105; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277, 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

PART 2—VESSEL INSPECTIONS

4. In section 2.01–1 paragraph (b) is revised to read as follows:

§2.01–1 Applications for inspections.

(a) * * *

(b) *To whom submitted.* The completed form must be submitted to the Officer in Charge, Marine Inspection, in the Marine Inspection Zone within which the inspection is to be conducted

* * * * *

5 In section 2.01–6 the section heading is revised, paragraph (a)(2) is redesignated as paragraph (a)(2)(i) and a new paragraph (a)(2)(ii) is added to read as follows:

§2.01–6 Certificates issued to foreign vessels.

(a) * * *

(2) (i) * * *

(ii) Letter of Compliance—issued to Foreign Mobile Offshore Drilling Units engaged in Outer Continental Shelf activities under 33 CFR 143.210.

* * * * *

6. A new Subpart 2.10 is added to read as follows:

Subpart 2.10—Fees

Sec

2.10–1 Applicability
2.10–5 Exemptions
2.10–10 Waivers
2.10–20 General requirements
2.10–25 Definitions.
2.10–101 Annual vessel inspection fee
2.10–105 Prepayment of annual vessel inspection fees.
2.10–115 Changes in vessel service
2.10–120 Overseas inspection and examination fees
2.10–125 Fees for examination of foreign tankships.
2.10–130 Fees for examination of foreign mobile offshore drilling units
2.10–135 Penalties.

Subpart 2.10—Fees

§2.10–1 Applicability.

(a) This subpart establishes vessel inspection fees for all vessels required to have a Certificate of Inspection and vessel examination fees for all foreign vessels required to have either a Letter of Compliance or a Tank Vessel Examination Letter

(b) The fees in this subpart do not apply to:

(1) Vessels being inspected for the initial issuance of a Certificate of Inspection;

(2) Foreign passenger vessels;

(3) Training vessels operated by State maritime academies; and

(4) Public vessels of the United States, except for Maritime Administration vessels.

§2.10–5 Exemptions.

(a) Vessels owned or operated by an organization which is charitable in nature, not for profit, and youth-oriented may be exempted from the fees required by this subpart provided that the vessels are used exclusively for training youths in boating, seamanship, and navigation skills.

(b) Vessel owners or operators must submit a written request for exemption to the Officer in Charge, Marine Inspection of the Marine Inspection Zone in which the vessel normally operates. The exemption request must provide the vessel name, the vessel identification number, and evidence that the organization and the vessel meet the criteria set forth in paragraph (a) of this section

§2.10–10 Waivers.

The Commandant (G–MP) will waive collection of vessel inspection fees in this subpart for a Federally-owned or operated vessel if the fee would be directly paid by an agency acting as the vessel owner using Federal appropriated funds. By October 1 of each year, Federal agencies shall provide Commandant (G–MP) with a list of the names and vessel identification numbers of vessels for which a fee waiver is requested

§2.10–20 General requirements.

(a) Unless otherwise specified, vessel owners must pay the fees required by this subpart before inspection or examination services are provided

(b) Fees required by this subpart must be paid in U.S. currency by check or money order, drawn on a U.S. bank, and made payable to the U.S. Treasury

(c) All payments must be accompanied by the vessel name and its vessel identification number.

(d) Unless otherwise specified, fees required by this subpart must be mailed to the following address: USCG Inspection Fees, PO Box 105663, Atlanta, GA 30348–5663

(e) For purposes of this subpart, the address for Commandant (G–MP) is Commandant (G–MP), United States Coast Guard, 2100 Second Street S.W., Washington, DC 20593–0001.

(f) Information concerning a vessel's user fee anniversary date may be obtained from any Coast Guard Marine Safety or Marine Inspection Office

§2.10–25 Definitions.

The following definitions apply to this subpart:

Drill ship MODU means a mobile offshore drilling unit with a ship shape displacement hull intended for operation in the floating condition

Freight barge means a non-self-propelled vessel carrying freight for hire.

Freight ship means a self-propelled freight vessel.

Freight vessel means a motor vessel of more than 15 gross tons that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel

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Industrial vessel means a vessel which, by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. For the purposes of this subpart, this classification includes such vessels as dredges, cable layers, derrick barges, and construction and wrecking barges, but does not include vessels which carry passengers or freight for hire, OSVs, oceanographic research vessels, or vessels engaged in the fisheries.

Liquefied gas tankship means a self-propelled vessel equipped with cargo tanks primarily designed to carry liquefied or compressed gases in bulk.

Mobile offshore drilling unit (MODU) means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources that is: seagoing and 300 or more gross tons and self-propelled by machinery; Seagoing and 100 or more gross tons and non-self-propelled, or more than 65 feet in length and propelled by steam.

Nautical school vessel means a vessel operated by or in connection with a nautical school or an educational institution under section 13 of the Coast Guard Authorization Act of 1986, Public Law 99–640

Oceanographic research vessel means a vessel that is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

Offshore supply vessel means a motor vessel that is of at least 15 gross tons and less than 500 gross tons, and that regularly carries goods, supplies, individuals in addition to the crew, and equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Passenger barge means a non-self-propelled passenger vessel, including a prison barge or a barge which carries occupied recreational vehicles.

Passenger ship means a self-propelled passenger vessel

Passenger vessel means a vessel of at least 100 gross tons:

(1) Carrying more than 12 passengers, including at least one passenger for hire,

(2) That is chartered and carrying more than 12 passengers; or

(3) That is a submersible vessel carrying at least one passenger for hire

Sailing school vessel means a vessel of less than 500 gross tons, carrying more than 6 individuals who are sailing school instructors or sailing school students, principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion, and owned or demise chartered and operated by a qualified organization during such times as the vessel is operated exclusively for the purposes of sailing instruction

Sea-going towing vessel means a seagoing commercial vessel engaged in or intending to engage in the service of pulling, pushing or hauling alongside, or any combination of pulling, pushing or hauling alongside.

Self-elevating MODU means a mobile offshore drilling unit with movable legs capable of raising its hull above the surface of the sea.

Semi-submersible MODU means a mobile offshore drilling unit with the main deck connected to an underwater hull by columns or caissons, that is intended for drilling operations in the floating condition

Small passenger vessel means a vessel of less than 100 gross tons:

(1) Carrying more than 6 passengers, including at least one passenger for hire;

(2) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers,

(3) That is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers, or

(4) That is a submersible vessel carrying at least one passenger for hire

Submersible MODU means a mobile offshore drilling unit intended for drilling operations in the bottom-bearing condition, having the main deck connected to an underwater hull or pontoons by way of columns or caissons.

Submersible vessel means a vessel that is capable of operating below the surface of the water

Tank barge means any tank vessel not equipped with means of propulsion

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue

Tankship means any tank vessel propelled by power or sail, including an integrated tug and barge designed to operate together only in the pushing mode

User fee anniversary date means the date on which a vessel's annual inspection fee is due each year Once established by the Coast Guard, a vessel's user fee anniversary date remains fixed for as long as the vessel remains in service

Vessel identification number (VIN) means a U.S. official number, a number assigned by a State, a number assigned by the Coast Guard, or a Lloyd's Register of Shipping identification number issued to a U.S. or foreign commercial vessel for purposes of vessel identification. For U S. vessels, VIN means the number listed on the Certificate of Inspection. For foreign vessels, VIN means either the Lloyd's Register of Shipping identification number or the number assigned by the Coast Guard.

§ 2.10–101 Annual vessel inspection fee.

(a)(1) Unless otherwise provided by this subpart, each vessel required to have a Certificate of Inspection is subject to the annual vessel inspection fee listed in Table 2 10–101 for its vessel category

(2) A vessel certificated for more than one service must pay only the higher of the two applicable fees in Table 2 10–101 of this section.

(b) The vessel owner or operator must pay the annual vessel inspection fee each year on or before the vessel's user fee anniversary date, unless the fee has been prepaid under § 2 10–103 of this subpart

(c) Payment of the annual vessel inspection fee entitles a vessel to all inspection services related to compliance with its Certificate of Inspection, including but not limited to the inspection for renewal of the Certificate of Inspection, reinspections (midperiod inspections), hull (drydock) inspections, deficiency inspections, damage surveys, repair and modification inspections, change in vessel service inspections, permit to proceed inspections, drydock extension inspections, and all inspections required for the issuance of international certificates.

(d) Entitlement to inspection services for the current year remains with the vessel if it is sold. The entitlement to inspection services may not be transferred to any other vessel

TABLE 2.10–101.—ANNUAL VESSEL INSPECTION FEES FOR U.S. AND FOREIGN VESSELS REQUIRING A CERTIFICATE OF INSPECTION

Any inspected vessel not listed in this table	$1,030
Freight Barges:	
Length not greater than 150 feet	495
More than 150 feet but not more than 300 feet	610
More than 300 feet	955
Freight Ships:	
Length not greater than 100 feet	1,425
More than 100 feet but no more than 300 feet	1,870
More than 300 feet	5,410
Industrial Vessels:	
Length not greater than 200 feet	1,435
More than 200 feet	2,550
Mobile Offshore Drilling Units (MODUs):	
Drill ship MODUs	6,710
Submersible MODUs	4,695
Self-elevating MODUs	4,695
Semi-submersible MODUs	8,050
Nautical School Vessels:	
Length not greater than 100 feet	835
More than 100 feet but not more than 200 feet	1,450
More than 200 feet	7,205
Oceanographic Research Vessels:	
Length not greater than 170 feet	840
More than 170 feet but not more than 240 feet	1,980
More than 240 feet	3,610
Offshore Supply Vessels:	
Length not greater than 140 feet	1,135
More than 140 feet	1,470
Offshore Supply Vessels: Alternate Reinspection Program*	
Length not greater than 140 feet	940
More than 140 feet	1,260
Passenger Barges:	
Less than 100 gross tons and:	
Certified for fewer than 150 passengers	825
Certified for 150 or more passengers	1,110
100 gross tons or more and:	
Certified for fewer than 150 passengers	2,215
Certified for 150 or more passengers	2,525
Passenger Ships:	
Length not greater than 250 feet:	
Certified for fewer than 150 passengers	3,600
Certified for 150 or more passengers	4,050
More than 250 feet but not more than 350 feet	5,330
More than 350 feet but not more than 450 feet	6,835
More than 450 feet	14,650
Sailing School Vessels:	
Length not greater than 30 feet	530
More than 30 feet but not more than 65 feet	560
More than 65 feet	980
Sea-going Towing Vessels	2,915
Small Passenger Vessels.	
DUKW vessels	450
Hydrojet boats	470
All other small passenger vessels.	
Length not greater than 30 feet	545
More than 30 feet but not more than 54 feet	670
More than 54 feet but not more than 65 feet	750
More than 65 feet but not more than 130 feet	975
More than 130 feet but not more than 160 feet:.	
Certified for fewer than 150 passengers	1,215
Certified for 150 or more passengers	2,585
More than 160 feet	2,585
Tank Barges	500
Tankships.	
Length not greater than 100 feet	1,295
More than 100 feet but not more than 300 feet	2,310
More than 300 feet	5,805
Liquefied Gas Tankships	12,120

*Note: Eligibility for the reduced annual vessel inspection fee for Offshore Supply Vessels is contingent upon the vessel's continued acceptance in the alternative reinspection program by the cognizant Officer in Charge, Marine Inspection

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§ 2.10–105 Prepayment of annual vessel inspection fees.

(a) Vessel owners may prepay the annual vessel inspection fee for any period of not less than three years, and not more than the design life or remaining expected service life of the vessel.

(b) To prepay the annual vessel inspection fee for a period of three or more years, the owner must submit a written request to Commandant (G–MP) specifying the vessel identification number and the period for which prepayment is to be made.

(c) The total of the annual fees for the requested prepayment period will be discounted to its net present value using the following formula:

$$PV = \sum_{t=0}^{n} \frac{R_0(1+\pi)^t}{(1+i)^t}$$

Where:

PV is the Present Value of the series of annual user fees to be prepaid (the net amount to be prepaid)
R_0 is the published user fee of the vessel
i is the interest rate for 10-year Treasury notes at the time of prepayment calculation
π is the rate of inflation (based on projected military personnel costs at the time of prepayment calculation)
n is the total number of years to be prepaid
t is the number of years after prepayment of the fee, for each annual increment (t=0, 1, 2, 3 ... n)

(d) When the annual vessel inspection fee has been prepaid, the entitlement to inspection services for the prepayment period attaches to the vessel and remains with the vessel if it is sold. The entitlement to inspection services may not be transferred to any other vessel.

(e) If a vessel is removed from Coast Guard certification and the vessel owner surrenders the vessel's Certificate of Inspection, the owner may request a refund of the remaining prepayment amount. The annual vessel inspection fee will not be refunded for the year in which the Certificate of Inspection is surrendered. The request for refund must be submitted to the Officer in Charge, Marine Inspection to whom the Certificate of Inspection is surrendered.

§ 2.10–115 Changes in vessel service.

(a) If a vessel certificated for a single service changes service, the annual vessel inspection fee is not adjusted during the year in which a change in service occurs. The annual vessel inspection fee for the new vessel category is payable on the vessel's user fee anniversary date immediately following the date of the change in service.

(b) If a change in service occurs and the annual vessel inspection fee has been prepaid, Commandant (G–MP) will recalculate the prepayment amount based on the new vessel category and advise the owner of available prepayment options.

§ 2.10–120 Overseas inspection and examination fees.

(a) In addition to any other fee required by this subpart, an overseas inspection and examination fee of $4,585 must be paid for each vessel inspection and examination conducted outside the United States and its territories. This fee does not apply to vessel inspections and examinations conducted in Canada, Mexico, or the British Virgin Islands.

(b) The overseas inspection and examination fee for each vessel must accompany each request to the cognizant Officer in Charge, Marine Inspection for an overseas inspection or examination.

§ 2.10–125 Fees for examination of foreign tankships.

Each foreign tankship of a country party to the International Convention for the Safety of Life at Sea, 1974 as amended, must pay:

(a) For examination for the issuance of a Letter of Compliance under § 2.01–6(a)(2)(i) of this part, or examination for the annual endorsement to a Letter of Compliance, a fee of $1,100.

(b) For examination for the issuance of a Tank Vessel Examination Letter under § 2.01–6(a)(3) of this part, a fee of $1,100.

§ 2.10–130 Fees for examination of foreign mobile offshore drilling units.

Each foreign mobile offshore drilling unit must pay:

(a) For examination for the issuance of a Letter of Compliance indicating compliance with the design and equipment standards of either the documenting nation or the International Maritime Organization Code for Construction and Equipment of Mobile Offshore Drilling Units, a fee of $1,830.

(b) For examination for the issuance of a Letter of Compliance indicating compliance with the design and equipment standards of 46 CFR part 108, the inspection fee listed in Table 2.10–101 of this subpart for the same type of mobile offshore drilling unit.

§ 2.10–135 Penalties.

(a) A vessel owner or operator who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(b) In addition to the fees established in this subpart, the Coast Guard may recover collection and enforcement costs associated with delinquent payments of, or failure to pay, a fee. Coast Guard inspection and examination services may also be withheld pending payment of outstanding fees owed to the Coast Guard for inspection and examination services provided.

(c) Each District Commander or Officer in Charge Marine Inspection may request the Secretary of the Treasury, or the authorized representative thereof, to withhold or revoke the clearance required by 46 U.S.C. app. 91 of a vessel for which a fee or charge established under this part has not been paid or until a bond is posted for the payment.

Dated: March 2, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 95–6034 Filed 3–10–95; 8:45 am]

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Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon, which was executed on January 6, 1995.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 6, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6412 Filed 3–10–95; 8:45 am]

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federal register

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Part VII

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12
National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91–212]

RIN 2115–AD93

National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations to implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that permit it to review information from the National Driver Register on an applicant prior to issuing or renewing a license, certificate of registry (COR), or merchant mariner's document (MMD). This proposal also addresses OPA 90 provisions that permit the Coast Guard to review the criminal records of applicants prior to issuing a license, COR or MMD. In addition, it proposes regulations that permit criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date. The proposed rulemaking will provide the Coast Guard an opportunity to identify an applicant who has been convicted of certain motor vehicle offenses or convicted of certain serious crimes.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–212), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn.: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Cratty, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267–6740. This telephone records messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–212) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all documents and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a public meeting would be beneficial. If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, OPA 90 Staff, and Ms. Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel (G–LRA).

Background and Purpose

1. General

Under the authority of 46 U.S.C. 7101, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers. It also issues certificates of registry (CORs) to qualified staff officers such as pursers, medical doctors, and professional nurses.

The Coast Guard issues merchant mariner's documents (MMDs), with certain exceptions described in 46 U.S.C. 8701, to vessel personnel for service aboard U.S. flag merchant vessels of more than 100 gross tons which operate on waters other than rivers and lakes. The MMD serves as a certificate of identification and qualification, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to qualified tankermen. Many merchant mariners who hold licenses and CORs also hold MMDs.

All licensing and documentation transactions are processed at Coast Guard Regional Examination Centers (RECs) exercising the authority of the Officer in Charge, Marine Inspection (OCMIs).

Sections 4101 (a) and (b) and section 4102(e) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) amend 46 U.S.C. 7101, 7302, and 7109, respectively, to authorize the Coast Guard to conduct criminal record checks of any individual applying for a license, COR, or MMD; for a raise in grade of a license or COR; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. Individuals with criminal records may be unsuitable candidates for a license, COR, or MMD because they may present a risk to passengers, fellow crew members, or the safe operation of a vessel.

As amended, 46 U.S.C. 7101 and 7302 prohibit the Coast Guard from issuing a license, COR, or MMD to an applicant unless the applicant makes available to the Coast Guard any information contained in the National Driver Register (NDR) related to an offense committed by the applicant that is described in sections 205(a)(3) (A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 note). These offenses are: operation of a motor vehicle under the influence of, or while impaired by, alcohol or a controlled substance; and any traffic violation(s) arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Although an individual's motor vehicle record is not directly related to his or her maritime career, a record of alcohol or drug-related, or other motor vehicle offenses as specified in sections 205(a)(3) (A) and (B) of the NDR Act of 1982, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Section 4105(b) of OPA 90 amends 23 U.S.C. 401 note, to require the Coast Guard to make the information received from the NDR available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying, suspending, revoking, or taking other action on that individual's license, COR, or MMD.

Before Congress enacted OPA 90, an individual who applied for a license, COR, or MMD was not required to provide the Coast Guard with NDR information. However, an applicant for a license or COR was asked on the application form if he or she had been convicted of any offense(s) other than minor traffic violation(s). Information provided by the applicant regarding conviction(s) for other than minor traffic violation(s), including Driving Under the Influence (DUI) or Driving While Intoxicated (DWI), was used to evaluate the applicant's qualifications to hold a license or COR.

2. Criminal Record Review Under Current Regulations

a. Licenses and CORs

The current regulations at 46 CFR 10.205, "Requirements for original licenses and certificates of registry," require the applicant to have his or her fingerprints taken during the application process. The Coast Guard uses the fingerprints to determine if a criminal record exists for the individual. Section 10.205(f)(2) authorizes the OCMI to reject an application if the criminal record check, or other information, indicates that an applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities associated with a license or COR. The OCMI notifies the applicant of the reason(s) for disapproval.

Section 10.205(f)(4) indicates that, in the event a license or COR has been issued before adverse information on the applicant's character or habits of life, or information indicating that the application is false or incomplete, is obtained the OCMI may notify the individual that the license or COR is null and void and direct the holder to return the license or certificate to the OCMI.

Under 46 CFR 10.209, "Requirements for renewal of a license," each renewal applicant must use a standard form furnished by the Coast Guard. The form asks the applicant to identify any criminal convictions or history of drug use. Under § 10.209(b), an applicant may not have his or her license renewed if facts which would render a renewal improper have come to the Coast Guard's attention.

The Coast Guard currently performs a license renewal criminal record check when an individual has identified a conviction or drug use on the application. In addition, the Coast Guard performs a criminal record check on applicants for renewal whom it suspects have criminal records or a history of drug use. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) recognizes these existing Coast Guard procedures.

Related regulations in 46 CFR part 10, "Requirements for raise of grade of a license" (§ 10.207) and "Issuance of duplicate of license or certificate of registry" (§ 10.219), currently do not address criminal record checks.

b. Merchant Mariner's Documents

The regulations contained at 46 CFR part 12, "Certification of Seamen," do not address fingerprinting an applicant for an MMD specifically for a criminal record check; however, under existing practice, the Coast Guard fingerprints an individual applying for his or her original MMD and performs a criminal record check on the applicant. The Coast Guard does not fingerprint and check the criminal record of a person obtaining a duplicate MMD or an additional MMD endorsement.

Under law existing prior to OPA 90, the Coast Guard was not required to consider the character and habits of life of an applicant for an MMD as it was for licenses and CORs. The only specific statutory provision concerning dangerous drug use or criminal convictions authorized the Coast Guard to deny an MMD to an applicant convicted for a dangerous drug offense within 10 years prior to the date of application (46 U.S.C. 7503). The Coast Guard may also deny an MMD to a person who has ever used or has ever been addicted to a dangerous drug unless the applicant provides satisfactory proof that he or she is suitable for employment in the merchant marine.

3. National Driver Register Access

The National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation (DOT) maintains the NDR, which is a nationwide repository of information on drivers. The NDR is part of a voluntary cooperative program that assists State motor vehicle driver licensing agencies and certain Federal agencies in gaining access to data on an individual's motor vehicle driving record. The NDR Act of 1982 prohibits the use of information in the NDR that is more than 3 years old, unless that information relates to a current suspension or revocation of the individual's license to operate a motor vehicle.

At present, access to the NDR must be made through participating States. DOT has proposed legislation to amend section 307 of the NDR Act of 1982 to allow direct NDR access by Federal agencies. If the proposed legislation is enacted, the Coast Guard intends to adopt the direct access methodology.

Discussion of Proposed Rules

In the discussion of the proposed rules, and the proposed rules themselves, the procedures incident to a criminal record check and those incident to obtaining information from the National Driver Register are treated separately. Although there are differences, the basic structure is the same: an applicant provides the Coast Guard with the means of searching a data base and the Coast Guard evaluates the information received to determine whether there is reason to deny a license, COR, or MMD to the applicant. The decision is based on the nature of the incidents reported, the number of incidents, and when the incident occurred. The Coast Guard is considering whether the processing of incidents reported under both systems can be consolidated in the final rule and welcomes comments and suggestions in this regard.

1. Criminal Record Review

Congress has provided for new requirements on all merchant mariners in order to promote a drug and alcohol-free maritime industry. These requirements focus on chemical testing, criminal record reviews, and NDR checks. The Coast Guard proposes to amend 46 CFR parts 10 and 12 to reflect its authority to review the criminal record of an individual applying for a license, COR, or MMD. The proposed rules would continue the existing requirements concerning criminal record checks for the issuance of original licenses or CORs and extend them to original issuance of MMDs.

The Coast Guard also would amend the appropriate sections of 46 CFR part 10 and 12 to allow criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date.

The Coast Guard believes that an applicant who has been convicted of violent criminal offenses or serious property-related offenses may pose a threat to ship personnel, passengers, the marine environment, and safe operation of the ship, and should not be given the duties and responsibilities of a licensed officer or holder of a COR or an MMD. Life on board a ship is unique in that the protections normally afforded the public (i.e., law enforcement) are not as readily available. Evidence that an applicant has criminal convictions must

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be carefully weighed by the OCMI to ensure marine safety.

In order to provide specific guidance on who has a "conviction," the Coast Guard proposes to define "conviction" to include a finding of guilty by judgment or plea by a court of record in the United States. The definition would cover convictions for criminal felonies or misdemeanors or for offenses described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). It would also cover expungements, deferred adjudications, and other forms of plea agreements. An expungement of a conviction would not be considered unless the expungement was based upon a showing that the conviction was in error.

The tables in §§ 10.201(h) and 12.02–4(c) list minimum assessment periods after various criminal convictions before which an application will normally not be approved and the maximum periods that a conviction will normally be considered disqualifying. The lists are not intended to be comprehensive. They include major categories of criminal offenses. If an applicant has been convicted of an offense that does not appear on the list, the OCMI may establish the assessment period depending on the nature of the crime, using the list as a guide. Because licensed officers and individuals employed under CORs have greater responsibilities than MMD holders, additional categories of offenses have been included in Table 10.201(h).

An assessment period commences when an applicant with a conviction is no longer incarcerated or under supervised parole or probation. A period of unsupervised parole or probation would be counted as part of the assessment period. The OCMI will consider successful completion of all conditions of parole or probation as evidence that the applicant is suitable for service in the merchant marine.

In all cases where the application is complete and the applicant is required to complete an assessment period before issuance or renewal of a merchant mariner's credential, the OCMI would notify the applicant in writing stating the reason for denial and explaining the right to appeal and the appeal process as provided for in § 1.03 of this chapter.

There are several purposes in establishing minimum and maximum assessment period guidelines in these tables. The tables give applicants specific notice that certain criminal convictions may delay issuance of merchant mariner's credentials and the approximate length of the delay they can expect. Following a conviction, a period of time must elapse for the individual to demonstrate that he or she does not present a safety risk to fellow crew and passengers while at sea. The minimum periods, as proposed in the tables, are estimates of the time required to permit the OCMI to determine that, despite the criminal conviction, the applicant may now be entrusted with the duties and responsibilities of a merchant mariner. These estimates are based upon the nature of the criminal conviction, with longer periods required for convictions involving violence or drugs. The nature of violent or dangerous drug convictions are such that, for the Coast Guard to adequately safeguard the lives and well-being of crew and passengers, it must be reasonably confident that these types of offenses will not occur at sea.

In addition, a merchant mariner who holds a Coast Guard issued credential is responsible for knowing, and following, a large body of maritime law and regulation, much of it related to safety, health or environmental protection. Before issuing a credential, the Coast Guard must be satisfied that an applicant will obey these laws and regulations without direct and immediate oversight by a law enforcement agency. It would be imprudent, in such circumstances, to issue a credential to an applicant with a criminal record without first waiting beyond his or her court-ordered sentence to see whether the applicant was a trustworthy and responsible member of society absent the constraints of the criminal justice system. Recidivism among those with criminal convictions is a legitimate Coast Guard concern. The assessment periods provide a basis for excluding from the merchant marine those individuals who may have recidivist tendencies and a basis for concluding that these tendencies do not exist.

The guidelines in the tables are also intended to promote national uniformity of results with respect to review of criminal convictions in the issuance of merchant mariner's credentials. The tables are designed to provide guidance for the OCMI when he or she is faced with an applicant who has criminal convictions. This guidance will ensure that all applicants will be treated fairly and uniformly, regardless of where they apply.

The minimum assessment periods listed in the tables represent the shortest amount of time in which the applicant normally may demonstrate that he or she is now responsible enough to be entrusted with the duties of a merchant mariner. If a person applies before the minimum assessment period for his or her conviction has elapsed, then the applicant must provide, as part of the application, compelling evidence of suitability for employment. Such evidence includes, but is not limited to, the following: proof of completion of an alcohol- or drug-abuse treatment or education program; active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous; character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine; steady employment; or successful completion of all conditions of parole or probation. Any application submitted prior to the minimum assessment period and which does not include such additional evidence of suitability for employment in the merchant marine will be considered incomplete and will not be processed.

If a person applies for a license, COR, or MMD during the time between the minimum and maximum assessment periods, the OCMI will consider the conviction along with other factors in determining whether to grant the credential. Normally, a single prior conviction older than the minimum assessment period would not be disqualifying unless the OCMI is aware of offsetting factors. Offsetting factors include multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI may disapprove the application.

The maximum assessment periods in the tables will protect merchant mariners against arbitrary imposition of unreasonably long assessment periods. Following the maximum assessment period, the OCMI may not normally deny granting the license, COR or MMD. However, if an OCMI considered a prior criminal conviction older than the maximum assessment period in disapproving an application, then the OCMI would be required to inform the applicant, in writing, of the reasons for the decision, including the reasons why a conviction older than the maximum was still being considered. The OCMI would also be required to inform the applicant of the appeal procedures that apply.

The minimum assessment period for applicants with multiple convictions, whether at a single trial or separate trials, would be the longest minimum from among those listed in the tables for

the applicant's convictions. However, convictions of multiple offenses, whether at a single trial or separate trials, may be sufficient evidence that the applicant is not suitable for service in the merchant marine and may lead the OCMI to deny the application after the minimum assessment period and, in extraordinary cases, even after the maximum period in the tables has expired.

A mariner who already holds a license, COR, or MMD and who has been convicted of a drug offense(s) and who applies for reissue of that credential with a new expiration date including a renewal, raise of grade, or endorsement may have his or her application withheld. The OCMI will then take appropriate action under the marine investigation regulations for personnel actions which appear in 46 CFR part 5.

The Coast Guard solicits comments on the appropriateness of the criminal offense categories and assessment periods contained in Tables 10.201(h) and 12.02–4(c). The Coast Guard also solicits comments on the factors to be considered in determining suitability for service in the merchant marine contained in 10.201(j) and 12.12.02–4(e).

2 National Driver Register Access

The Oil Pollution Act of 1990 (Pub. L. 101–380) amended 46 U.S.C. 7101 and 7302 to prohibit issuance of merchant mariner's credentials unless applicants make available information from the NDR. The conference report states: "The purpose of this section * * * is to ensure that the Coast Guard can identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs. Abuse of these substances may evince possible unsafe vessel operations, leading to additional accidents and oil spills." (House Conf. Rep. No. 101–653, p. 128). The Coast Guard proposes to amend 46 CFR parts 10 and 12 to require an applicant for a merchant mariner's credential to make available to the Coast Guard, at the time of making an application, the information identified in section 205(a)(3) (A) or (B) of the NDR Act concerning his or her driving record. The applicant would be required to submit a pre-printed written consent form to the Coast Guard along with the application package. The OCMI would obtain checks of the NDR. The OCMI would not issue a license, COR, or MMD until it had received and reviewed the NDR report.

The NDR report contains basic descriptive data about an individual, the current status of an individual's license to operate a motor vehicle, and an indication that a State may hold records regarding criminal or administrative action taken against an individual's license to operate a motor vehicle. The NDR report does not describe the substantive offense that forms the basis for a State's license action. The information required by section 205(a)(3) (A) or (B) of the NDR Act, in addition to covering conviction of motor vehicle offenses involving operation of a motor vehicle under the influence of or impaired by alcohol or a controlled substance, covers conviction of a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways. Each applicant will have an opportunity to review the NDR report and verify or refute any information in the report by obtaining appropriate State records. The OCMI will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

The holder of a merchant mariner's credential is closely involved with the safe operation of a vessel. Performance of many routine duties and all emergency duties affects the safety of the vessel. Unsafe performance of duties could produce catastrophic consequences. To help minimize the risk of unsafe operation, the Coast Guard may exclude from holding seafarer's credentials individuals who have demonstrated a lack of concern regarding the safety of themselves, others, or the marine environment. The amendments to 46 U.S.C. 7101 and 7302 reflect the conclusion that convictions of offenses listed in section 205(a)(3) (A) or (B) of the NDR Act may demonstrate such a lack of concern. Therefore, the OCMI will evaluate each NDR report to determine if there is evidence of a problem affecting the applicant's qualification to hold a merchant mariner credential.

The OCMI would use the following guidelines to evaluate applicants who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) or Table 12.02–04(d) as applicable.

a. Single NDR Listed Conviction

An NDR check disclosing a single conviction could indicate a recurring problem or an isolated incident. A single conviction may reveal the early stage of a developing long-term problem or it may mean that an individual having a well-developed problem was caught only once. It could also indicate a single incident in which poor judgment was exercised. In cases where a long-term problem is developing and corrective measures are not taken, additional time may result in subsequent convictions.

(1) Single NDR listed conviction-less than 1 year old. If the conviction is less than 1 year old, the application may be disapproved for a period of time sufficient to ensure that a subsequent incident does not occur (at least 1 year from the date of the conviction).

(2) Single NDR listed conviction—more than 1 but less than 3 years old. If the conviction is more than 1 year old, but less than 3 years old, the application would be processed unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

(3) Single NDR listed conviction—more than 3 years old. If the conviction is more than 3 years old, further evaluation would not be necessary unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

b. Multiple NDR Listed Convictions

Multiple (two or more) drug or alcohol related NDR listed convictions may indicate a problem with alcohol or with the illegal use of drugs. They may also indicate uncontrolled dependency (alcoholism), drug addiction, or irresponsibility and dangerous disregard for the safety of self and others. The OCMI will not issue a merchant mariner's credential to an applicant with multiple convictions unless the applicant shows that he or she is now suitable for employment in the merchant marine and has no further convictions for a period of time. Acceptable evidence of suitability for employment in the merchant marine include the following, as appropriate to the particular case: completion of an alcohol or drug-abuse treatment or education program; active membership in a rehabilitation organization such as Alcoholics Anonymous; and character references from persons who can attest to the length of the applicant's current period of sobriety and applicant's reliability.

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(1) Multiple NDR listed convictions—less than 3 years old. If an applicant has multiple convictions within the last 3 years, the application may be denied unless it has been at least 1 year from the date of the last conviction or at least 3 years from the date of the second most recent conviction, whichever is longer.

(2) Multiple NDR listed convictions—more than 3 years old. For an applicant with multiple convictions, the most recent being more than 3 years old, further evaluation would not be necessary unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Evaluation is summarized as follows.

1. Criminal Record Review

Coast Guard costs attributable to implementing the provisions authorizing the criminal record review of applicants for licenses, CORs, and MMDs in sections 4101(a) and 4102(e) of OPA 90 will be incurred by the RECs and Coast Guard Headquarters. These costs are associated with reviewing and processing the criminal record review data through the Federal Bureau of Investigation (FBI). The REC will assume the primary responsibility for the final review of the criminal record report received from the FBI.

Because current Coast Guard regulations and practices require all applicants for the original issuance of licenses, CORs, or MMDs to submit to criminal record reviews by the taking of fingerprints, these costs are not newly incurred as a result of this proposed rulemaking, and therefore, are not included in this regulatory assessment. The costs associated with the proposed requirements for criminal record reviews apply only to a raise in grade of a license or COR; an endorsement on a MMD with a new expiration date; or renewal of a license, COR or MMD. The Coast Guard plans to spot-check the criminal records of individuals applying for these merchant mariner credentials. For the purpose of estimating costs, the Coast Guard has assumed that 1 of every 30 of these applicants will be spot-checked.

Approximately 10,881 licenses are expected to be renewed each year. An estimated 363 (10,881/30) spot criminal record checks will be performed on these applicants.

Approximately 18,000 MMDs are expected to be renewed each year. An estimated 600 (18,000/30) spot criminal record checks will be done on these applicants.

Approximately 300 CORs are expected to be renewed each year. An estimated 10 (300/30) spot criminal record checks will be performed on these applicants.

Approximately 3,740 raises of grade for license and COR endorsements are expected to be issued each year. An estimated 125 (3,740/30) spot criminal record checks will be performed on these applicants.

Approximately 4,025 supplemental MMD endorsements are issued each year. An estimated 134 (4,025/30) spot criminal record checks will be done on these applicants.

The total number of spot criminal record checks will amount to approximately 1,232 (See Table I.).

TABLE I

Type of action	No. applicants	No. checked
License Renewal	10,881	363
MMD Renewals	18,000	600
COR Renewals	300	10
Raise of grade (licenses) and higher grade of COR	3,740	125
Supplemental endorsements (MMDs)	4,025	134
Total number of spot criminal record checks		1,232

It will cost the Coast Guard approximately $16 per criminal record check to process the fingerprints through the FBI for an estimated annual cost of $19,700.

Based on a sample survey of the REC's experience with criminal records conducted by the Coast Guard in 1992, 8 percent of the applicants are estimated to have records with the FBI. Of those with records, it is estimated that 9 percent have records significant to the license evaluation. Thus, only .72 percent of the applicants had actionable convictions on their records. Therefore, of the reissue and renewal applicants sampled, it is estimated that 99 will have records with the FBI, and a total of 9 of the 1,232 applicants will have records significant to the license evaluation. The Coast Guard estimates that the costs for the 99 applicants with convictions to furnish the necessary documents to exonerate themselves will be minimal. Costs are expected to total approximately $19 per court record for aggregate annual respondent costs of approximately $1,900.

The Coast Guard estimates that 75 percent, or 924, of the spot-checked applicants for a raise in grade of a license or COR, a renewal of a license or COR, or any MMD with a new expiration date will apply by mail. For those 924 applicants, the estimated costs include the time for the applicant to go to his or her local police department, submit to fingerprinting, and return to his or her residence. The Coast Guard estimates that this would take approximately 1.5 hrs. of the applicant's time. Total respondent costs are estimated to be $22,700.

Twenty-five percent, or 308, of the spot-checked applicants are expected to choose to go to an REC to conduct their renewal transactions. For those 308 applicants, additional costs attributed to the criminal record check will be insignificant.

2. National Driver Register Access

The Coast Guard estimates that it will conduct 57,435 NDR checks annually for all individuals applying for the original issuance, renewal, or endorsement with a new expiration date of merchant mariner's credentials. The Coast Guard's costs for NDR checks involve providing an interface with the NDR computer and clerical resources to process record checks and notifications to applicants with NDR records. These costs are estimated to be $120,000 annually, with the potential for substantial reduction in cost if direct access to the NDR data by the RECs is authorized. The RECs will write letters to those applicants who have a probable identification (hit), and review any associated court records as forwarded by applicants.

The Coast Guard estimates that initial computer hardware and software costs and necessary connection to the NDR will be under $20,000. The Coast Guard estimates the annual cost of a dedicated telephone line from Coast Guard Headquarters to the Commonwealth of Virginia will be $12,000 ($6/hr. x 8 hrs./day x 250 days/yr.). The initial annual Coast Guard REC costs are estimated to be $58,354 (57,435 checks x 0.05 hr./check x $20/hr. for a clerical employee, plus $0.32/stamp x 2,872 hits). Initially, the Coast Guard will dedicate one full-time clerical employee at Coast Guard Headquarters to forward data to the Commonwealth of Virginia for processing. This cost is estimated to be $40,000 ($20/hr. for a clerical employee x 8 hrs./day x 250 days). Therefore, the initial annual Coast Guard cost associated with the National Driver Register portion of the proposed rule is estimated to total approximately $111,400.

Annual respondent costs associated with NDR checks include the time to fill out the NDR consent form which is considered to be insignificant. In 50 percent of the 2,872 hits, or 1,436 cases, applicants will have clean driving records and the OCMI will issue their merchant mariner's credentials without further expense. For the other 50 percent of applicants, or 1,436, costs are expected to be less than $20.00 per court record submitted to the Coast Guard for estimated annual respondent costs of $26,700.

The dollar value of direct and societal benefits flowing from spot-checking applicants' criminal records and from reviewing applicants' NDR records are not quantifiable but may be substantial.

The Coast Guard anticipates that, as a result of this rule, a number of applicants will be identified, based upon their criminal record or adverse driving record, whose conduct indicates that they should not be trusted to safely perform shipboard duties. Those applicants will not be granted merchant mariner credentials.

Direct benefits would include the potential for—

- Fewer marine groundings and other accidents;
- Reduced property loss;
- Fewer releases of oil and hazardous materials into the marine environment: and
- Fewer injuries and reduced loss of life among merchant mariners.

The Coast Guard also anticipates several indirect benefits. Within the community of applicants for merchant mariner's credentials, knowledge of the Coast Guard's enhanced periodic record-checking program may dissuade recidivism among merchant mariners with past criminal, or serious traffic records. The program may also discourage some convicted criminals, dangerous drug users, and serious traffic offenders from seeking new credentials or renewals, and may also encourage some applicants who are convicted criminals or dangerous drug users to truthfully complete questions that address these issues on the application forms. Dangerous drug users in the U.S. merchant marine may be encouraged to seek counseling and treatment before incurring a criminal record or dangerous drug history with the FBI. In addition, merchant mariners and prospective merchant mariners may be encouraged to maintain a satisfactory standard of personal conduct.

Historical data is insufficient to quantify benefits; however, should this program manage to save even one life per year at $2.6 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

1. Criminal Record Review

This proposal contains collection-of-information requirements in the following sections: §§ 10.201, 10.205, 10.209, 10.805, 12.02–4, and 12.02–9. The following particulars apply:

DOT No: 2115.
OMB Control Number: 2115–0514.
Administration: U.S. Coast Guard.
Title: National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents.

Need for Information: OPA 90 gives the Coast Guard discretionary authority to review the criminal record of applicants for licenses, CORs, and MMDs. OPA 90 also gives the Coast Guard discretionary authority to review the criminal record of applicants for reissue of licences, CORs, or MMDs with new expiration dates, including renewals, raises of grade, or endorsements.

Proposed use of information: An applicant who has been convicted of a serious crime may be found unfit to serve as a merchant mariner on a vessel for safety reasons.

Frequency of Response: Whenever a person applies for an original license, COR, or MMD; or whenever a person applies for a raise in grade of a license or COR; an endorsement of an MMD with a new expiration date; or renewal of a license, COR, or MMD, and that person is selected for a criminal record check.

Burden Estimate: The Coast Guard estimates that the cost to the applicants would be approximately $19,700 per year for compliance with the criminal record review requirements of the proposed rule.

Respondents: The Coast Guard will spot-check the individual criminal records of applicants for reissue of licences, CORs, or MMDs with new expiration dates, including renewals, raises of grade, and endorsements. An estimated 36,946 individuals will apply for these merchant mariner's credentials. Every 30th applicant will be screened, which will result in a total of 1,232 criminal record spot-checks performed.

Form(s): FBI Fingerprint Card FD–258 (Revision 12–29–82).

Average Burden Hours per Respondent: Negligible for 308 respondents and 1.5 hrs. for 924 respondents.

2. National Driver Register Access

This proposal contains collection-of-information requirements in the following sections: §§ 10.201, 10.205, 10.207, 10.209, 10.805, 12.02–4, and 12.02–9. The following particulars apply:

DOT No: 2115.
OMB Control Number: 2115–0514.
Administration: U.S. Coast Guard.
Title: National Driver Register and Criminal Record Review in Issuing

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Licenses, Certificates of Registry, or Merchant Mariner's Documents.

Need for Information: OPA 90 requires that the Coast Guard not issue a license, COR, or MMD to an applicant unless that individual makes available to the Coast Guard any information contained in the NDR. Information contained in the NDR may indicate that an individual is not suitable for employment in the merchant marine. This information must be made available to the applicant for review and written comment before the Coast Guard uses the information as a basis for denying, suspending, revoking, or taking other action against an individual's license, COR, or MMD.

Proposed Use of Information: The Coast Guard will use the information in the NDR to assist it in determining whether an applicant is suitable for maritime employment. Although an individual's motor vehicle record is not directly related to his or her maritime career, a record of alcohol or drug-related, or other specified motor vehicle offenses indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Frequency of Response: When an applicant applies for the original issuance or renewal of a license, COR, or MMD or raise in grade or endorsement of a license, COR, or MMD.

Burden Estimate: The Coast Guard estimates that costs to individuals and industry will be negligible. The Coast Guard expects to ask approximately 1,400 individuals to furnish court records to the Coast Guard for an estimated cost of $26,700.

Respondents: The Coast Guard estimates that 57,435 merchant mariners will be affected annually by this rulemaking.

Form(s): NDR Consent and Authorization Form.

Average Burden Hours Per Respondent: Negligible for initial check; 0.5 hrs. for persons with probable identifications.

The Coast Guard has submitted the requirement to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirement should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Paragraph 2.B.2.l of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7101, 7106, 7107, 7109, 7302, 7505, 7701; 49 CFR 1.46. Section 10.107 also issued under 44 U.S.C. 3507.

2. In § 10.103, the definitions of "conviction" and "National Driver Register," are added to read as follows:

§ 10.103 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a license or certificate of registry has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). Conviction of more than one offense at a single trial will be considered to be multiple convictions. If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court finding, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not be considered unless it is proved that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 23 U.S.C. 401 note.

* * * * *

3. In § 10.201, paragraph (b) is revised and paragraphs (h), (i), and (j) are added to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

* * * * *

(b) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug is eligible for a license or certificate of registry unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

* * * * *

(h) *Criminal record review.* The OCMI may review the criminal record of an applicant for the issuance of a license or certificate of registry issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check.

(1) If the applicant is advised that a criminal record check is required by the OCMI, applicants shall provide their fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if a criminal record review leads the OCMI to determine that the applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the reconsideration and appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The guidelines in Table 10.201(h) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the OCMI will establish an appropriate assessment period using the list as a guide. Time incarcerated or on supervised probation or parole will not be considered as part of the assessment period. Convictions for drug offenses more than 10 years prior to the date of application will not be considered.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 10.201(h) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 10.201(h) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a license or certificate of registry before the minimum assessment period shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the applicant must provide evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (j) of this section. The OCMI will consider the applicant's evidence and may issue the license or certificate of registry in less than the listed minimum assessment period if the OCMI is satisfied that the applicant is suitable to hold the license or certificate of registry for which he or she has applied. If an applicant does not provide evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the OCMI.

(5) If a person with a criminal conviction applies for a license or certificate of registry during the time between the minimum and maximum assessment periods shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section, the OCMI will consider the conviction and, unless there are offsetting factors, may grant the applicant the license or certificate of registry for which he or she has applied. Offsetting factors include multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI may disapprove the application.

(6) If a person with a criminal conviction applies for a license or certificate of registry after the maximum assessment period shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the OCMI will grant the applicant the license or certificate of registry for which he or she has applied unless the OCMI has reason to believe the applicant is still unsuitable for service in the merchant marine. If the OCMI disapproves an application based upon a conviction older than the maximum assessment period, the OCMI will notify the applicant in writing of the reason(s) for the disapproval. The OCMI will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons[2]		
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property[2]		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes[2]		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety[2]		

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TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS—Continued

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.
Dangerous Drug Offenses[3,4]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions[5]		

[1] Conviction of attempt, solicitation, aiding and abetting, accessory after the fact, and conspiracy to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable only to original applications for licenses or CORs. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section. Note: Applicants for reissue of a license or COR with a new expiration date including a renewal or a raise of grade, who have been convicted of a dangerous drug offense while holding a license or COR, may have their applications withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing administrative actions against merchant mariner credentials.

[4] The assessment period shall not exceed 10 years from the date of conviction.

[5] Other dangerous drug convictions are to be reviewed by the OCMI on a case by case basis to determine the appropriate assessment periods depending on the nature of the offense,

(i) *National Driver Register.* A license or certificate of registry will not be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The OCMI will not consider NDR information that is more than 3 years old unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the OCMI to determine that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which the application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the OCMI will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

(3) The guidelines in Table 10.201(i) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) as applicable.

TABLE 10.201(i).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL[1]

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension or revocation is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction (whichever is longer), unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section.

(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the OCMI may consider the following factors, as applicable, in assessing the applicant's suitability to hold a license or certificate of registry. This list is intended as a guide for the OCMI. The OCMI may consider other factors which he or she judges appropriate to a particular applicant.

(1) Proof of completion of an alcohol- or drug-abuse treatment or education program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

4. In § 10.205, paragraph (f)(2) is revised and paragraph (k) is added to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(f) * * *

(1) * * *

(2) The OCMI shall review the criminal record check of each applicant for an original license or certificate of registry according to the procedures set forth in 10.201(h).

* * * * *

(k) *National Driver Register.* Each applicant for an original license or certificate of registry shall consent to an NDR check under § 10.201(i).

5. In § 10.207, paragraphs (h) and (i) are added to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(h) *Criminal record review.* Each applicant for a raise of grade may be required to submit to a criminal record check under § 10.201(h).

(i) *National Driver Register.* Each applicant for a raise in grade of a license shall consent to an NDR check under § 10.201(i) if the license is reissued with a new expiration date.

6. In § 10.209, paragraphs (i) and (j) are added to read as follows:

§ 10.209 Requirements for the renewal of licenses and certificates of registry.

* * * * *

(i) Each applicant for a renewal may be required to consent to a criminal record check under § 10.201(h).

(j) Each applicant for renewal of a license or certificate of registry shall consent to an NDR check under § 10.201(i).

PART 12—CERTIFICATION OF SEAMEN

7. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

8. In § 12.01–6, the definitions of "conviction" and "National Driver Register" are added to read as follows:

§ 12.01–6 Definitions of terms used in this part.

Conviction means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court finding, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not be considered unless it is proved that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 23 U.S.C. 401 note.

* * * * *

9. In § 12.02–4, paragraph (a) is revised, paragraph (b) is removed, paragraph (c) is redesignated as paragraph (b), and new paragraphs (c), (d) and (e) are added to read as follows:

§ 12.02–4 Basis for denial of documents.

(a) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for an original merchant mariner's document, except as provided by the provisions of paragraph (c) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug is eligible for a merchant mariner's document unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

* * * * *

(c) *Criminal record review.* The Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for a merchant mariner's document issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check.

(1) If a criminal record check is required by the Officer in Charge, Marine Inspection, applicants shall provide fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if the individual's criminal record leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The guidelines in Table 12.02–4(c) will be used by the Officer in Charge, Marine Inspection in evaluating applicants for merchant mariner's documents who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Officer in Charge, Marine Inspection will establish an appropriate assessment period using the list as a guide. Time incarcerated or on supervised probation or parole will not be considered as part of the assessment period. Convictions for drug offenses more than 10 years prior to the date of application will not be considered.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 12.02–4(c) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 12.02–4(c) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a merchant

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mariner's document before the minimum assessment period shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (e) of this section. The Officer in Charge, Marine Inspection will consider the applicant's evidence submitted with the application and may issue the merchant mariner's document in less than the listed minimum assessment period if the Officer in Charge, Marine Inspection is satisfied that the applicant is suitable to hold the merchant mariner's document for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Officer in Charge, Marine Inspection until the applicant provides the necessary evidence as set forth in paragraph (e) of this section.

(5) If a person with a criminal conviction applies for a merchant mariner's document during the time between the minimum and maximum assessment periods shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, then the Officer in Charge, Marine Inspection shall consider the conviction and, unless there are offsetting factors, shall grant the applicant the merchant mariner's document for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Officer in Charge, Marine Inspection considers the applicant unsuitable for service in the merchant marine at the time of application, the Officer in Charge, Marine Inspection may disapprove the application.

(6) If a person with a criminal conviction applies for a merchant mariner's document after the maximum assessment period shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the Officer in Charge, Marine Inspection will grant the applicant the merchant mariner's document for which he or she has applied unless the Officer in Charge, Marine Inspection considers the applicant still unsuitable for service in the merchant marine. If the Officer in Charge, Marine Inspection disapproves an applicant with a conviction older than the maximum assessment period listed in Table 12.02–4(c), the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for the disapproval including the Officer in Charge, Marine Inspection's reason(s) for considering a conviction older than the maximum assessment period listed in Table 12.02–4(c). The Officer in Charge, Marine Inspection will also inform the applicant, in writing, that the appeal procedures contained in § 1.03 of this chapter apply.

TABLE 12.02–4(c).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE CRIMINAL CONVICTIONS

Crime [1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Other crimes against persons [2]		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highway	1 year	2 years.
Other vehicular crimes [2]		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety [2]		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Dangerous Drug Offenses [3 4]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions [5]		

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the Officer in Charge, Marine Inspection to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section. Note: Applicants for reissue of a merchant mariner's document with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a merchant mariner's document, may have their application withheld until appropriate action has been completed by the Officer in Charge, Marine Inspection under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The assessment period shall not exceed 10 years from the date of conviction.

[5] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(d) *National Driver Register.* A merchant mariner's document will not be issued or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The Officer in Charge, Marine Inspection will not consider NDR information that is more than 3 years old unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which the application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply No examination will be given or merchant mariner's document issued pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the Officer in Charge, Marine Inspection will make the information available to the applicant for review and written comment The applicant may submit reports from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

(3) The guidelines in Table 12.02–4(d) will be used by the Officer in Charge, Marine Inspection when evaluating applicants for merchant mariner's documents who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the Officer in Charge, Marine Inspection under Table 12.02–4(c) as applicable

TABLE 12.02–4(d).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension or revocation is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction (whichever is longer), unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

(e) If an applicant for an original merchant mariner's document has one or more alcohol or dangerous drug related criminal or NDR listed convictions, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the Officer in Charge, Marine Inspection may consider the following factors, as applicable, in assessing the applicant's suitability to hold a merchant mariner's document This list is intended as a guideline The Officer in Charge, Marine Inspection may consider other factors which he or she judges appropriate

(1) Proof of completion of an alcohol- or drug-abuse treatment or education program

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation

10 In § 12 02–9, paragraphs (g) and (h) are added to read as follows

§ 12.02–9 Application for documents.

* * * * *

(g) Each applicant for an original merchant mariner's document may be required to submit to a criminal record check as required by § 12.02–4(c)

(h) Each applicant for an original merchant mariner's document or a merchant mariner's document reissued with a new expiration date shall comply with the NDR requirements in § 12 02–4(d)

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Dated: March 6, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95-6033 Filed 3-10-95; 8:45 am]

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Part VIII

Department of Health and Human Services

Public Health Service

Grants for Centers of Excellence Bilingual and Bicultural Minority Pre-Faculty Fellowship Program; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Grants for Centers of Excellence (COE) Bilingual and Bicultural Minority Pre-Faculty Fellowship Program

AGENCY: Office of Minority Health, HHS.

ACTION: Notice of availability of funds and requests for applications.

This demonstration program is to assess whether formal pre-faculty development programs will increase underrepresented minorities in faculty positions in health professions schools for the purpose of incorporating linguistic and culturally appropriate curriculum models.

AUTHORITY: This program will be conducted under the authority of section 1707 of the Public Health Service Act, as amended in Public Law 101–527.

AVAILABILITY OF FUNDS: A total of $650,000 is available for awards in FY 1995. It is projected that institutional awards of up to $50,000 per fellow will be available to support up to 13 fellows per 12-month budget period. Each institution may request up to two fellows for the 2-year project period; the fellows are to be appointed for 2 years. Grant funds may be used for stipend, tuition, fees, and travel, inclusive of indirect costs.

OBJECTIVE: To increase the number of minority faculty in health professions schools and the number of linguistically and culturally competent health professionals to provide care to targeted minority populations.

BACKGROUND: The ability of health care providers to deliver services in a manner which is both linguistically and culturally appropriate to diverse minority populations is critical to achieving equity of access to health care. Institutions of higher education, especially in the health professions, are pivotal in preparing and training future health care providers in the acquisition of appropriate cultural and linguistic skills to serve diverse minority populations.

Data indicate a shortage of full-time faculty from underrepresented minority groups in health professions schools. About 4 percent of U.S. medical school faculty in 1992 (excluding those at six predominantly minority schools) were from underrepresented minority backgrounds. Of those, 2.0 percent were African-American, 2.2 percent were Hispanic, and 0.1 percent were Native American. The underrepresentation of Asian and Pacific Islander subgroups on faculties is similarly acute. The data for schools of medicare are quite similar to schools of dentistry, pharmacy and other health professions schools.

Coupled with the paucity of underrepresented minorities on the faculty of health professions schools are the barriers faced by underrepresented minorities to receiving tenured appointments or decisionmaking positions in either the clinical or basic science arenas. Lack of opportunity to engage in meaningful research, develop teaching competence, engage in effective community service and secure the required publications for advancement are among those barriers. Others include misunderstandings regarding what is required of them, limited mentor guidance needed to surmount the politics of academia, and lack of protected time resulting in over-involvement with minority student problems and excessive committee assignments as a "minority representative." Most significant is the dearth of formal faculty development programs within the health professions schools designed to optimize achievement of junior minority faculty.

Major universities and colleges indicate that institutional barriers exist to the recruitment, training and retention of junior minority faculty. Moreover, one of the critical opportunities for intervention in this process is after individuals have completed their professional preparation (e.g., Dental School, Medical Specialty Residency, etc.) and before they qualify as candidates for an entry level junior faculty position.

This obstacle can be overcome by maximizing retention potential for academic careers during this interim period through the offering of Faculty Development Fellowships. Such fellowships would be designed to help junior minority faculty improve their competence in the following areas: Research methodology, development of research grant proposals, ability to work with diverse minority populations, teaching capabilities, and writing and publication skills. These Faculty Development Fellowships would provide the preparation necessary for minorities to qualify for faculty appointments and possibly prevent them from leaving their academic careers.

Appreciation and understanding of the language and culture of minority communities are critical to effectively providing health care. Increased numbers of linguistic and culturally competent minority faculty in health professions schools could significantly assist in addressing these issues with respect to minority as well as majority health care providers. One promising means of attracting greater numbers of minorities into academic careers is through Faculty Development Fellowships. Through such fellowships, retention in the academic arena would be enhanced and research into minority health problems and the implications of linguistic and cultural barriers on the health of minority populations would be expanded.

This is an innovative program which will maximize the academic career potential of minority individuals who have completed their health professions preparation but are not yet competitive as candidates for "new" junior faculty positions. This will be accomplished by preparing such individuals for faculty appointments (tenure track or equivalent) in a manner that assures sound academic careers; and by developing them in linguistically and culturally appropriate competencies relevant to targeted minority populations. Ultimately, this program will provide for an increase in the number of minority faculty in health professions schools and the number of linguistically and culturally competent health professionals to provide care to targeted minority populations.

ELIGIBILITY: Only centers of Excellence (COEs) grantees currently funded under section 739 of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, are eligible to apply. The COEs are entities in the health professions schools known to have the capacity to comprehensively address health related language and cultural issues among targeted minority populations both within the academic setting and in the community. Further, the administrative unit, including program staff, and institutional infrastructure is already in place and funded through the COE grant to execute the initiative. Applications will not be accepted from any other organizations.

PROJECT REQUIREMENTS: Each project funded under this grant program is expected to meet the project requirements listed below:

1. Select Fellows: Identify and recruit individuals who meet the following criteria for fellows:

(A) Be a citizen of the United States, a noncitizen national, or a foreign national having in his or her possession a visa (or green card) permitting permanent residence in the United States;

(B) Meet the definition for underrepresented minority;

(C) Have completed a doctoral level degree in a relevant science in a school accredited by a body or bodies approved by the Secretary of Education; and

(D) Plan to complete the grant-supported program and follow an academic career in a health professions school.

2. Prepare Fellows for Faculty Appointments: The health professions school pre-faculty development preparation program must be a year-round formal fellowship program not to exceed a period of 2 years. To prepare fellows for faculty appointments, the fellowship program should include at least the following: Enhancement of discipline specific competencies; preparation in the areas of education and pedagogical skills, academic leadership, research and research methodology, research grant preparation/acquisition, administration, and writing for publication, and community service.

3. Develop Linguistic and Culturally Appropriate Competencies: The fellowship program should seek to enhance the fellow's own cultural competence through delivery of services to minorities that necessitates focus on linguistic and cultural health delivery issues and approaches. Additional activities would involve but would not be limited to the following: Conduct of research in selected priority areas of minority health and into the implications of language and cultural issues on the health of minority populations; initiation of programs designed to increase the numbers and types of health care providers trained to serve limited English-speaking populations; and involvement in the training of health care providers in cultural competency.

4. Provide a Mentor: Identify a senior tenured faculty member who will provide direct supervision of the fellow and formal ongoing mentoring (transfer of knowledge, skills and abilities) relevant to advancement in an academic health profession setting.

5. Engage the Fellows in Research: As part of their preparation, fellows must be engaged in research regarding the recognition of language and cultural barriers to the provision of health care, including services to limited-English-speaking populations and development of language and culture curriculum models for health professions schools.

6. Appoint Fellows to Junior Faculty Positions: The institution must make a commitment to appoint fellows as junior faculty members upon successful completion of the fellowship program and assure salary for at least 2 years beyond the fellowship.

DEFINITIONS: For purposes of this grant program the following definitions apply:

- *Bilingual and Bicultural*—a person who has a broad knowledge of two languages and the cultures in which they are spoken and is able to communicate and deliver the message in the language and cultural context in which they are spoken.
- *Cultural Competency*—a set of academic and interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among, and between groups. This requires a willingness and ability to draw on community-based values, traditions, and customs and to work with knowledgeable persons of and from the community in developing focused interventions, communications, and other supports.
- *Health Professions Schools*—schools of allopathic or osteopathic medicine, dentistry and pharmacy.
- *Limited English-speaking*—individual whose primary language is other than English and who must communicate in that language if the individual is to have an equal opportunity to participate effectively in and benefit from aid, service or benefit provided.
- *Pre-Faculty Development Program*—a formal, systematic training program to develop the knowledge, skills and abilities necessary to be competitive for junior faculty tenured or equivalent positions.
- *Stipend*—a payment made to an individual under a fellowship or training grant in accordance with preestablished levels to provide for the individual's living expenses during the period of training.
- *Underrepresented minority*—with respect to a health profession, racial and ethnic populations that are underrepresented in the health professions relative to the number of individuals who are members of the population involved. This definition encompasses Blacks, Hispanics, and Native Americans including Native Hawaiians and potentially various subpopulations of Asian and Pacific Islander individuals. Applicants must provide evidence that any particular subgroup of Asian and Pacific Islander individuals is underrepresented in a specific discipline.

NATIONAL HEALTH OBJECTIVES FOR THE YEAR 2000: The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program is related to the objectives of improving access to and availability of primary care services for all Americans, especially the underserved populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

SMOKE-FREE WORKPLACE: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

AWARD CRITERIA: Funding decisions will be determined by the Office of Minority Health and will be based on the recommendations/ratings of review panels, program balance, including geographic and race/ethnicity distribution, and health problem area.

REVIEW CRITERIA: The following are criteria for review of applications for this program:

1. The degree to which the proposed project plan meets the project requirements.

2. The degree to which the senior faculty are committed to and involved in the training of the fellows.

3. The extent to which the project systematically evaluates the administration of the program and the degree to which program and educational objectives are met.

4. The administrative, management, and resource capability of the applicant to carry-out the proposed project in a cost-effective manner.

5. The potential for the applicant to continue the program without Federal support after completion of the approved project period.

APPLICATION REQUESTS: Application form PHS 6025–1 will be mailed to currently funded COE grantees. Questions regarding grants policy and business management issues should be directed to: Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000 (10th Floor), 5515 Security Lane, Rockville, MD 20852, Telephone: (301) 594–0758 FAX: (301) 443–8280. Completed applications should be submitted to the Grants Management Office at the above address.

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If additional programmatic information is needed, please contact: Ms. Hazel R. Farrar, Program Analyst, Division of Program Coordination, Office of Minority Health, Rockwall II Building, Suite 1000 (10th Floor), 5515 Security Lane, Rockville, MD 20852, Telephone: (301) 594–0769, Fax: (301) 443–8280.

REVIEW OF APPLICATIONS: Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive or nonconforming will be returned without comment. Applications judged to be complete, conforming, and responsive will be reviewed for technical merit in accordance with PHS policies.

Applications will be evaluated by Federal reviewers. Applicants are advised to pay close attention to program guidelines, and the general and supplemental instructions provided in the application kit.

The deadline date for receipt of applications is (enter 30 days from date of publication). Applications will be considered to be "on time" if they are either:

(1) *Received at the above address on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late applications will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100) and is not subject to the Public Health System Reporting Requirements.

There is no CFDA number for this program since it is viewed as a one-time project.

Dated: February 22, 1995.

Clay E. Simpson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 95–6082 Filed 3–10–95; 8:45 am]

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Part IX

Department of Education

Fund for the Improvement of Education: Partnerships in Character Education Pilot Project; Notice Inviting Applications for New Awards for Fiscal Year 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.215V]

Fund for the Improvement of Education: Partnerships in Character Education Pilot Project; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to support pilot projects for character education as a way to address the broader FIE objectives.

Eligible Applicants: Only State educational agencies, in partnership with one or more local educational agencies, may apply for grants under this program.

Deadline for Transmittal of Applications: April 28, 1995.

Applications Available: March 14, 1995.

Estimated Available Funds: $750,000.

Estimated Range of Awards: $200,000–$250,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: The Secretary does not consider an application that proposes a budget exceeding $250,000 for the first 12-month budget period.

Project Period: Up to 48 months.

Supplementary Information: Under the Character Education program, State educational agencies provide technical and professional assistance to local educational agencies in the development and implementation of curriculum materials, teacher training, and other activities related to character education. Applicants requesting funds under this program must propose projects designed to develop character education programs that incorporate the following elements of character:

(a) Caring.
(b) Civic virtue and citizenship.
(c) Justice and fairness.
(d) Respect.
(e) Responsibility.
(f) Trustworthiness.
(g) Any other elements deemed appropriate by the members of the partnership.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in projects that will also include additional elements of character identified by the local educational agencies in consultation with the schools and communities that will participate in the project. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 75, 77, 80, 81, 82, 85, and 86, and (b) the regulations in 34 CFR Parts 98 and 99.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation Plan (34 CFR 75.210(b)(6)) Ten additional points are added to this criterion for a possible total of 15 points

Note: Projects requesting funding under this program must be designed so that the effectiveness of the programs, projects and activities that will be conducted is readily ascertainable.

To Request an Application: Voice Mail: 202–219–2053; *Facsimile machine:* 202–219–1407; *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW, Washington, DC 20208–5645. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950, or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8003.

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Research and Improvement.

[FR Doc. 95–6135 Filed 3–10–95; 8:45 am]

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Part X

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 328

Over-the-Counter Drug Products Intended for Oral Ingestion That Contain Alcohol; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 328

[Docket No. 93N–0107]

Over-the-Counter Drug Products Intended for Oral Ingestion that Contain Alcohol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing a maximum concentration limit for alcohol (ethyl alcohol) as an inactive ingredient in over-the-counter (OTC) drug products intended for oral ingestion (0.5 percent alcohol for children under 6 years of age, 5 percent alcohol for children 6 to under 12 years of age, and 10 percent alcohol for anyone 12 years of age and over). This final rule also requires that the alcohol content be stated prominently and conspicuously on the principal display (front) panel of product labeling. FDA is issuing this final rule after considering recommendations from its Nonprescription Drugs Advisory Committee (NDAC) and public comments on the agency's notice of proposed rulemaking. This final rule defers action on alcohol limits for Aromatic Cascara Fluidextract, Cascara Sagrada Fluidextract, and orally ingested OTC homeopathic drug products.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 21, 1993 (58 FR 54466), the agency proposed maximum concentration limits for alcohol as an inactive ingredient in OTC drug products intended for oral ingestion. The proposed limits were 0.5 percent alcohol for children under 6 years of age, 5 percent alcohol for children 6 to under 12 years of age, and 10 percent alcohol for anyone 12 years of age and over. In addition, the agency proposed that the alcohol content be stated prominently and conspicuously on the principal display (front) panel of product labeling, and that the labeling term "alcohol-free" mean that the product contains no alcohol at all. These proposals were based on NDAC's recommendations.

In response to the proposal, seven drug manufacturers, four professional organizations, four drug manufacturers associations, and two consumers submitted comments. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

I. The Agency's Conclusions on the Comments

A. General Comments

1. Several comments expressed their support for the alcohol content limitations proposed by the agency and placement of the alcohol content on the front (principal) display panel. The comments stated that prominent and conspicuous labeling will enhance and guide the public in making an informed decision when purchasing products.

2. Two comments urged FDA and industry to find alternatives to alcohol so that eventually alcohol can be eliminated from OTC drug products entirely. One comment, from a manufacturer of nonalcoholic OTC drug products, suggested that the agency codify its policy of encouragement of the lowest amount of alcohol necessary for pharmaceutical purposes. The comment stated that this could be done by amending proposed § 328.10 to include new paragraph (f) as follows:

(f) Any manufacturer of OTC drug products shall use, within reasonable time of it becoming known, any formulary technique or technology commercially available at adoption of this rule or which may later become available and would optimally reduce or eliminate the use of alcohol in its OTC product(s).

The agency appreciates the comments' concerns and strongly encourages the further development of safe alternatives to alcohol. However, the agency believes that it is unnecessary to codify its policy of "encouragement," as suggested by one comment. The agency's statements in the preamble to the proposal and the agency's action in implementing alcohol concentration limits adequately reflect the agency's policy to reduce the amount of alcohol in OTC drug products.

3. One comment requested that FDA adopt a timetable for implementation of the new alcohol content limitations for orally ingested OTC drug products that is consistent with the timetable in the voluntary program proposed by the Nonprescription Drugs Manufacturers Association (NDMA). That program calls for NDMA member companies with affected products to implement the new limitations "as soon as practicable." The goal for reformulating and labeling the 5- and 10-percent alcohol limitations was November 1993. The goal for reformulating and labeling of alcohol-free OTC drug products was December 1994. Both dates were for factory shipment of reformulated products.

The agency stated in its proposed rule (58 FR 54466) that the final rule would become effective 12 months after the date of its publication in the Federal Register. Thus, the effective date for implementing this final rule will go beyond the December 1994 date proposed by NDMA to complete the implementation of its voluntary program and should present no problems timewise to NDMA member companies.

4. One comment contended that the alcohol content regulation should pertain solely to orally ingested products covered by OTC drug monographs. The comment stated that OTC drug monographs represent a menu of ingredients that represent an essentially known set of products from a formulation standpoint, while OTC drug products under new drug applications (NDA's) usually represent novel OTC formulations that may require special considerations regarding product specifications. The comment added that formulatory flexibility is especially needed in the future for prescription-to-OTC switch products under NDA's.

The agency disagrees with the comment. The intent of the regulation is to limit the alcohol content of all OTC drug products intended for oral ingestion, regardless whether marketed under an OTC drug monograph(s) or an NDA (which also includes abbreviated applications). The regulation provides an exemption procedure in § 328.10(e). Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented. This procedure applies equally to products marketed under an OTC drug monograph(s) or an NDA. Therefore, the agency finds no basis to limit the regulation solely to products covered by OTC drug monographs.

5. One comment asserted that the proposed rule should be withdrawn because there are no data to support a 10-percent alcohol limit for orally ingested OTC drug products intended for adults. The comment contended that the 10-percent maximum alcohol concentration for adults was based solely on scientific opinion, but without scientific data to support the opinion. The comment argued that requiring

manufacturers to apply for an exemption to exceed the 10-percent alcohol content limit is unwarranted because the agency has not shown that such products are dangerous.

The agency disagrees with the comment. A number of safety issues related to higher alcohol concentrations were discussed at the NDAC meeting held on December 17, 1992. NDAC discussed development of lactic acidosis (with hypoglycemia occurring in some people) in acute alcohol intoxication, sensitivity and tolerance to alcohol, cutaneous vasodilation, withdrawal syndrome, fetal alcohol syndrome, interaction with drugs, etc. (See 58 FR 54466 at 54467 to 54468.) NDAC considered that alcohol displays zero order pharmacokinetics once a threshold concentration is exceeded. This means that blood alcohol concentrations are not proportional to the amount ingested. Thus, a small increase in the amount ingested may lead to a large increase in the blood alcohol concentration. It therefore is much easier to attain intoxicating blood levels of alcohol, because less alcohol needs to be ingested to do so.

The agency believes that there are sufficient scientific data to support the 10-percent alcohol limit for orally ingested OTC drug products intended for adults and that the petition procedure in § 328.10(e) is appropriate if there is a need to request an exemption.

6. One comment claimed that requiring child-resistant (CR) packaging would be more helpful in preventing accidental overdose in children than the alcohol content limitations proposed by the agency. The comment noted that the Consumer Product Safety Commission (CPSC) is currently considering development of a regulation to require CR packaging for mouthwashes containing greater than five percent alcohol. The comment mentioned that in response to the continuing problem of tampering with OTC drug products formulated as two-piece hard gelatin capsules, FDA had not proposed to simply ban gelatin capsules but rather "balanced the value of the hard capsule dosage form to consumers against its continued vulnerability to malicious tampering" and proposed to strengthen its tamper-resistant packaging regulation (59 FR 2542 at 2543, January 18, 1994).

The agency believes that CR packaging could play a role in preventing toxic effects in infants and young children from accidental ingestion of alcohol-containing OTC drug products. However, CR packaging alone would not prevent adolescents and adults from intentionally ingesting OTC drug products for their alcohol content or prevent young children and adolescents from ingesting undesirable levels of alcohol from normal doses of alcohol-containing OTC drug products. Because prevention of accidental overdose in children is not the primary purpose of this regulation, the agency is finalizing the regulation as proposed.

The agency discussed the issue of CR packaging in the OTC cough-cold combinations tentative final monograph (53 FR 30522 at 30527, August 12, 1988), and stated that the authority to require CR packaging rests with the CPSC under the Poison Prevention Packaging Act of 1970. FDA is aware that the CPSC has published a proposed rule (59 FR 24386, May 11, 1994) to require CR packaging for mouthwash products containing 3 grams (g) or more of alcohol. FDA is not aware of any CPSC consideration of CR packaging for alcohol-containing OTC drug products intended for oral ingestion.

7. One comment questioned why small amounts of alcohol ingested in OTC drug products are considered harmful when one to two ounces (oz) of alcohol per day are recommended for cardiovascular health in adults.

The agency acknowledges that small amounts of alcohol are not harmful for most adults. However, for some people even small amounts of alcohol could be harmful (see section I.A., comments 5 and 6). Those individuals will avoid alcoholic beverages but may not avoid OTC drug products because of unawareness of their alcohol content. The agency concludes that the potential benefit alcohol may have for cardiovascular health in some adults does not justify the unnecessary use of alcohol in OTC drug products, when this use may be harmful to some individuals.

8. One comment contended that eliminating alcohol from products intended for use by children and younger adolescents will not entirely address the problem posed by adolescents who purchase OTC drug products intended for use by adults in order to obtain psychoactive effects from the alcohol.

The agency acknowledges that the final regulation will not entirely eliminate the potential for adults and adolescents intentionally to misuse OTC drug products for their alcohol content. The prevention of intentional misuse, however, is not the primary consideration of this regulation. However, by reducing the amount of alcohol that can be consumed from OTC drug products, the agency believes that this regulation will discourage and reduce intentional misuse.

9. One comment requested that the agency have NDAC review the safety of synthetic alcohols (glycols) as a phase II followup to its initial "alcohol" work.

The agency notes that the comment offered no data or reasons to support its request. The agency is not aware of any current safety problems surrounding the use of glycols as inactive ingredients in OTC drug products that would warrant review at this time.

B. Comments on Labeling of OTC Drug Products Intended for Oral Ingestion that Contain Alcohol

10. Two comments objected to the requirement in proposed § 328.50(b) that the product's alcohol content appear on the principal display panel (PDP). The comments indicated that the PDP is for the purpose of product recognition and was not designed to carry all important information about safe product use, contending that the product information panel (PIP) was intended to provide this information. The comments stated that section 502(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)) allows the alcohol content to appear anywhere on the OTC label. The comments mentioned that it has been industry practice to place the alcohol content in the PIP under the inactive ingredients section. The comments indicated that when consumers question product content, they logically turn to the ingredient listing on the PIP. The comments added that alcohol content information on the PDP would overemphasize and detract from the PIP. One comment argued that including an alcohol content statement would inevitably decrease the "conspicuousness" and prominence of other language currently required on the PDP. The other comment argued that it is important to use the PDP for its specialized marketing purposes (product recognition, e.g., product name, statement of identity, and net contents) and to use the PIP for consistent consumer usage of OTC drug labeling (e.g., ingredients, warnings, and directions) for all the various OTC drug categories. The comment added that a low alcohol content is not of any greater importance than other warnings currently required on OTC drug products intended for oral ingestion. The comment mentioned that consumers with a personal interest in the product's alcohol content will be self-motivated to read the PIP for the disclosed alcohol content. The comments noted that a number of other related important warnings (e.g., the aspartame warning for phenylketonurics on food products, the sodium content

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warnings, and the FD&C Yellow No. 5 warnings in 21 CFR 201.20 for certain drugs) are not required to appear on the PDP, but may appear on the PIP.

One comment also stated that there is no demonstrable evidence of a serious public health hazard resulting from the presence of alcohol in OTC drug products. The comment argued that the use of the PDP to disclose alcohol content would create, by regulation, a negative perception of alcohol, which is unwarranted scientifically. The comment concluded that no data are available to suggest that the current labeling regulations are ineffective in informing consumers who want to know the alcohol content of OTC drug products.

The agency disagrees with the comments. While no specific data are available to demonstrate consumer confusion, the agency believes consumers need to be able to readily determine the alcohol content of OTC drug products at the time of purchase. The agency is aware that consumers do not necessarily read all labeling at the time of purchase. Prominent and conspicuous labeling of the alcohol content on the PDP will help consumers to make an informed decision at the time of purchase. This information is extremely important for consumers who wish to avoid or limit alcohol ingestion, such as a recovering alcoholic or a parent of a young child. The agency acknowledges that the act allows the alcohol content of a product to appear anywhere on the OTC label. However, the agency believes that the new alcohol labeling requirements should prove more effective in bringing this information to consumers' attention. The agency concludes that a few words describing the alcohol content (e.g., "contains 5% alcohol," "5% alcohol") on the PDP would not significantly decrease label readability or alter the prominence of additional information currently required on the PDP. At this time, many manufacturers already voluntarily include related labeling to inform consumers that a product is "alcohol free." To facilitate product comparison and to better provide consumers with information needed to make an informed decision, the agency is requiring a product's alcohol content to appear on the PDP. The agency is not aware of any significant safety problems with other inactive ingredients in OTC drug products that would warrant information about the ingredients on the PDP.

11. One comment expressed support for the agency's proposal that allows use of the term "alcohol free" only on those OTC drug products that contain no alcohol. Two comments objected to the proposal in § 328.50(e) that the term "alcohol free" mean zero percent alcohol. The comments requested that a de minimus level of alcohol be allowed in OTC drug products in order to permit some variability in the sensitivity of the methods of analysis and detection, especially due to the presence of alcohol moieties from natural flavors that are often used in OTC drug products. One comment argued that, due to the practicalities of pharmaceutical formulation, a de minimus level of 0.5 percent alcohol being labeled as "alcohol free" would allow manufacturers to use available alcohol-containing flavors in OTC drug formulations to provide essentially "alcohol-free" palatable formulations to consumers who want to avoid alcohol. The comment indicated that the terms "sugar free" (≤ 0.5 g), "sodium free" (≤ 5 mg), and "fat free" (≤ 0.5 g), may be applied to dietary supplements and foods (21 CFR 101.60(c)(1), 101.61(b)(1), and 101.62(b)(1)). The comment contended that this precedent acknowledges that a total absence of these components from certain foods is unlikely and difficult to achieve from the standpoint of product preparation. The comment concluded that this approach should carry over to an alcohol-free claim for OTC drug products.

The agency disagrees with the comments and believes that the term "alcohol free" should mean no (0 percent) alcohol in a product. The agency acknowledges that the total elimination of certain food components (fat, sugar, sodium) from foods is unlikely and difficult to achieve. Small amounts of these components, when present in foods, are dietarily insignificant. However, the agency believes that these circumstances do not apply to alcohol in OTC drug products.

Restricting use of the term "alcohol free" to products that contain no (0 percent) alcohol within the limits of current technology (Ref. 1) in no way limits manufacturers' ability to produce low alcohol OTC drug products. However, it does provide important and truthful labeling to consumers who may be interested in total avoidance of alcohol for personal, religious, or medical reasons. Consumers who want to purchase a product with no alcohol should be assured that the product does, in fact, contain no alcohol. Individuals taking an alcohol-deterrent medication, such as disulfiram, could suffer untoward reactions from ingesting a drug product labeled as "alcohol free" when it actually contains a small amount of alcohol (even up to 0.5 percent). Alcohol free products can be achieved, because a significant number of OTC drug products have already been reformulated with no alcohol. Therefore, the agency is finalizing § 328.50(e) as proposed.

The agency will use a gas-liquid chromatographic method (Ref. 1) to analyze products for their alcohol content. A copy of this method has been placed in the Dockets Management Branch (address above). The agency invites comments on this test method.

Reference

(1) Santos, J., "Limit of Alcohol Test," draft of unpublished procedure, in OTC Vol. 260002, Docket No. 93N–0107, Dockets Management Branch.

12. One comment requested that the agency phase in the labeling requirements as they apply to homeopathic drug products over a period of 3 years. The comment contended that changing the labels on such a large number of preparations would require tremendous effort and expense. The comment added that this relabeling could not reasonably be achieved within the proposed 12-month period. Another comment complained that the agency is allowing manufacturers only 1 year to reformulate their products when it is impossible to achieve and prove a stable product formula in less than 3 years. The comment added that there may be no studies on the safety of increasing the amounts of alternative preservatives, while alcohol has a long history of safety.

The agency disagrees with the comments and finds no basis to grant a 3-year phase in period for this regulation. The comments offered no documentation to support that 3 years is necessary for product reformulation or relabeling. The agency feels that 1 year from the date of the final rule is sufficient for manufacturers to reformulate and relabel their products. One year has been the standard time provided for reformulation and relabeling throughout most of the OTC drug review. This timeframe has proven satisfactory for the vast majority of reformulations and relabelings that have resulted from the OTC drug review. Relabeling needed for homeopathic drug products to label the alcohol content on the principal display panel can be accomplished by the use of "stick-on" labels, if necessary.

The agency recognizes that manufacturers have already had 1 year since the proposal was published to conduct stability studies on products that will need to be reformulated. They will have 1 more year to complete these studies before this final rule becomes effective. Further, manufacturers may request an extension for either relabeling or reformulating their products provided that they can justify and document their need.

C. Comments on Specific OTC Drug Products Containing Alcohol

13. One comment questioned whether the proposed regulations are intended to apply to homeopathic drug products. The comment noted that the preamble of the proposed rule stated that "these regulations would apply to OTC drug products regulated under the monograph system (21 CFR parts 330 to 358), and those approved under new drug applications" (58 FR 54466 at 54469). Referring to Compliance Policy Guide 7132.15 (homeopathic drugs) (Ref. 1) and the Federal Register announcement excluding OTC homeopathic drug products from the OTC drug review (37 FR 9464 at 9466, May 11, 1972), the comment mentioned that homeopathic drug products are not regulated under OTC drug monographs, nor are they subject to NDAs. The comment requested the agency to clarify this ambiguity.

The discussion in the preamble of the proposed rule about products regulated under the monograph system and NDA's was an illustrative example following a general statement that alcohol limitations and related labeling requirements apply to all OTC drug products intended for oral ingestion. It was the agency's intent that the proposed regulation apply to all drugs sold without a prescription. While homeopathic drugs are neither regulated under the monograph system nor subject to NDA's, they are still regulated as drugs under the act. The safety considerations surrounding alcohol apply equally to all OTC drug products. Accordingly, homeopathic drug products are subject to the final regulation and must meet all of the labeling requirements in § 328.50. However, because the regulation may conflict with alcohol content specifications set forth in the Homeopathic Pharmacopeia of the United States (see section I.C., comment 15), the agency is temporarily exempting orally ingested homeopathic drug products from the alcohol percentage limitations in § 328.10(b), (c), and (d) until this issue is resolved.

Reference

(1) FDA, Compliance Policy Guide 7132.15, May 31, 1988, copy in OTC Vol. 260002, Docket No. 93N–0107, Dockets Management Branch.

14. Two comments stated that the proposed regulation conflicts with the alcohol content specifications set forth in the Homeopathic Pharmacopoeia of the United States. Several comments argued that for solubility, stability, and preservative purposes, there is no substitute for alcohol in homeopathic drug products. Three of the comments added that alcohol is also essential in aiding the absorption of homeopathic medicines. The comments stated that "if dilutions containing preservatives other than alcohol are used by a process of alternate serial dilution and dynaminization to prepare higher potencies, for example using a 3X formula to make a 6X, the preservatives would be potentized as well as the remedy in the homeopathic manner." The comments added that the physiological activity of homeopathically potentized preservatives is unknown and unpredictable, and no data exist to assist the homeopathic community in predicting the therapeutic effect on the user. Two comments mentioned that chemical preservatives have been identified increasingly as a source of undesired side effects, including allergies. One comment stated that the proposed alcohol restrictions would mean giving up all of the pharmaceutical, technical, and medical experience for homeopathic drug products. Another comment claimed that a therapeutic re-evaluation of homeopathic remedies would be necessary. Several comments claimed that alcohol in homeopathic drug products does not pose a risk to adults or children because of the small volume of alcohol present in a standard homeopathic drug dose (standard adult dose is generally 10 drops, 5 drops for children, approximately .25 to .5 mL) and the small package volume of alcohol containing homeopathic drug products (usually ≤ 4 oz). One comment stated that because the proposed alcohol content labeling focuses on percent alcohol content rather than total alcohol content per dose, consumers will avoid homeopathic drug products on the mistaken assumption that a high percent alcohol content reflects a high level of alcohol intake. Several comments asserted that the new regulation would have a significant "negative" economic impact on the homeopathic industry. The comments stated that a full-line homeopathic drug manufacturer makes dosage forms using over 1,000 active ingredients, and to reformulate, test, repackage, and relabel all homeopathic drug products would be very costly and time consuming. Further, having to apply for an exemption for each individual dosage form would be impracticable, time-consuming, and expensive for both manufacturers and FDA. Two comments asserted that subjecting homeopathic drug products to the new alcohol limitations would cause their removal from the market. One comment contended that to proceed with a rulemaking that has the effect of destroying an entire industry without the support of an economic impact analysis would contravene regulatory requirements.

The agency does not have sufficient data or information to determine whether orally ingested homeopathic drug products can be reformulated with 10 percent alcohol or less. Due to the manner in which homeopathic drug products are manufactured, the agency will not make a decision concerning the appropriate alcohol content of these products until it obtains the necessary data and information on how these products are manufactured and why they need such high levels of alcohol for product formulation. Rather than delay publication of this final rule, the agency will temporarily exempt orally ingested homeopathic drug products from the alcohol percentage limitations in § 328.10(b), (c), and (d). The agency will publish its decision concerning the appropriate alcohol content for orally ingested homeopathic drug products in a future issue of the Federal Register.

15. One comment suggested it would be more cost effective for industry and FDA to exempt herbal drugs that contain more than 50 percent herbal products on a weight to volume (w/v) basis, rather than require individual exemptions for herbal drug products that contain more than 10 percent alcohol by necessity.

The agency disagrees with the comment. The purpose of § 328.10 (e) is to exempt OTC drug products for which no alternatives to alcohol exist. The comment submitted no evidence to support why all herbal drug products that contain 50 percent (w/v) herbal ingredients should be automatically exempt.

16. One comment stated that the OTC drug product Aromatic Cascara Fluidextract, which contains 18 to 20 percent alcohol, cannot be formulated at lower alcohol concentrations because of its susceptibility to microbial contamination. The comment added that if the product were reformulated to 10 percent alcohol or less, it would not be within the specifications set forth in the United States Pharmacopeia (U.S.P.).

The comment is correct in stating that if Aromatic Cascara Fluidextract were

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reformulated to 10 percent alcohol or less, it would not be within the specifications set forth in the U.S.P. Aromatic Cascara Fluidextract and Cascara Sagrada Fluidextract both contain between 18 and 20 percent alcohol (Ref. 1). The comment did not provide any data to substantiate that microbial contamination would occur if Aromatic Cascara Fluidextract were to be formulated at lower alcohol concentrations. Thus, the agency does not have sufficient data or information to determine whether Aromatic Cascara Fluidextract or Cascara Sagrada Fluidextract can be formulated with less alcohol.

The agency is currently working with the United States Pharmacopeial Convention (U.S.P.C.) to ascertain if a lower alcohol concentration can be used. Rather than delay publication of this final rule, the agency will temporary exempt Aromatic Cascara Fluidextract and Cascara Sagrada Fluidextract from the requirements in § 328.10(b), (c), and (d). The agency will publish its decision concerning the appropriate alcohol content for Aromatic Cascara Fluidextract and Cascara Sagrada Fluidextract in a future issue of the **Federal Register**.

Reference

(1) The United States Pharmacopeia 23—The National Formulary 18, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 282, 1994.

II. The Agency's Final Conclusions on OTC Drug Products Intended for Oral Ingestion that Contain Alcohol

The agency is issuing a final rule establishing the following limits on the concentrations of alcohol as an inactive ingredient in OTC drug products intended for oral ingestion: (1) 10 percent alcohol for products labeled for use by adults and children 12 years of age and over, (2) 5 percent alcohol for products labeled for use by children 6 to under 12 years of age, and (3) 0.5 percent alcohol for products labeled for use by children under 6 years of age. Further, the agency strongly recommends that OTC drug products for oral ingestion not contain any more than the minimum amount of alcohol necessary for use as a solvent, preservative, flavor (to enhance taste), or any other pharmaceutical purpose.

The agency concludes that the term 'alcohol free" should mean no (0 percent) alcohol in a product. This requirement will assure consumers who want to purchase an OTC drug product with out alcohol that the product, in fact, contains no alcohol. The agency has determined that the alcohol content information should appear prominently and conspicuously on the principal display panel of the OTC drug product. This requirement is consistent with section 502(c) of the act (21 U.S.C. 352(c)). Further, because section 502(e) of the act requires that the quantity, kind, and proportion of alcohol be stated on a drug product's label, the alcohol content will also need to appear on the immediate container label when that container (e.g., a glass bottle) is marketed in another retail package, e.g., an outer box. This dual labeling of alcohol content will be beneficial should a consumer discard the outer package.

In accordance with the provisions found in § 328.10(e), the agency is temporarily exempting Aromatic Cascara Fluidextract, Cascara Sagrada Fluidextract, and orally ingested OTC homeopathic drug products from the requirements in § 328.10(b), (c), and (d). Additional information is needed about the formulations of these specific products. Rather than delay publication of this final rule to resolve the outstanding issues, the agency is temporarily exempting these products from some of the requirements. The agency will publish its decision concerning the appropriate alcohol content for Aromatic Cascara Fluidextract, Cascara Sagrada Fluidextract, and orally ingested homeopathic drug products in a future issue of the **Federal Register**. In the interim, these products must meet the labeling requirements in § 328.50.

III. Analysis of Impacts

An analysis of the cost and benefits of this regulation, conducted under Executive Order 12291, was discussed in the proposed rule (58 FR 54466 at 54470). Several comments concerning the reformulating, testing, repackaging, and relabeling of homeopathic drug products were received in response to the agency's request for specific comment on the economic impact of this rulemaking. The agency is temporarily exempting orally ingested homeopathic drug products from the requirements in § 328.10(b), (c), and (d) of this rulemaking. Therefore, no reformulation or testing will be necessary at this time. Any comments concerning a significant economic impact on reformulating or testing of orally ingested homeopathic drug products will be addressed in a future issue of the **Federal Register**. Homeopathic drug products will be subject to relabeling and repackaging, if necessary, in the same manner as other OTC drug products that contain alcohol and which are affected by this final rule. The burden on all products will be the same--the standard 1 year for relabeling to be done.

Executive Order 12291 has been superseded by Executive Order 12866. FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Within the OTC drug product marketplace, the agency is not aware of a significant number of products that would be affected due to their alcohol content as an inactive ingredient. Products that would be affected consist of a limited number of OTC liquid cough-cold, internal analgesic, laxative, and homeopathic drug products. The effect on orally ingested homeopathic drug products is discussed above, and these products have a partial exemption from the final rule. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 328

Drugs, Labeling, Alcohol.

Therefore, under the Federal Food, Drug, and Cosmetic Act andunder authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations is amended as follows:

1. Part 328 is added to read as follows:

PART 328—OVER-THE-COUNTER DRUG PRODUCTS INTENDED FOR ORAL INGESTION THAT CONTAIN ALCOHOL

Subpart A—General Provisions

Sec.

328.1 Scope.
328.3 Definitions.

Subpart B—Ingredients

328.10 Alcohol.

Subpart C—Labeling

328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

Authority: Secs. 201, 301, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 371).

Subpart A—General Provisions

§ 328.1 Scope.

Reference in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 328.3 Definitions.

As used in this part:

(a) *Alcohol* means the substance known as ethanol, ethyl alcohol, or Alcohol, USP.

(b) *Inactive ingredient* means any component of a product other than an active ingredient as defined in § 210.3(b)(7) of this chapter.

Subpart B—Ingredients

§ 328.10 Alcohol.

(a) Any over-the-counter (OTC) drug product intended for oral ingestion shall not contain alcohol as an inactive ingredient in concentrations that exceed those established in this part, unless a specific exemption, as provided in paragraph (e) or (f) of this section, has been approved.

(b) For any OTC drug product intended for oral ingestion and labeled for use by adults and children 12 years of age and over, the amount of alcohol in the product shall not exceed 10 percent.

(c) For any OTC drug product intended for oral ingestion and labeled for use by children 6 to under 12 years of age, the amount of alcohol in the product shall not exceed 5 percent.

(d) For any OTC drug product intended for oral ingestion and labeled for use by children under 6 years of age, the amount of alcohol in the product shall not exceed 0.5 percent.

(e) The Food and Drug Administration will grant an exemption from paragraphs (b), (c), and (d) of this section where appropriate, upon petition under the provisions of § 10.30 of this chapter. Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented in the petition. Decisions with respect to requests for exemption shall be maintained in a permanent file for public review by the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

(f) The following drugs are temporarily exempt from the provisions of paragraphs (b), (c), and (d) of this section:

(1) Aromatic Cascara Fluidextract.

(2) Cascara Sagrada Fluidextract.

(3) Orally ingested homeopathic drug products.

Subpart C—Labeling

§ 328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

(a) The amount (percentage) of alcohol present in a product shall be stated in terms of percent volume of absolute alcohol at 60 °F (15.56 °C) in accordance with § 201.10(d)(2) of this chapter.

(b) A statement expressing the amount (percentage) of alcohol present in a product shall appear prominently and conspicuously on the "principal display panel," as defined in § 201.60 of this chapter. For products whose principal display panel is on the immediate container label and that are not marketed in another retail package (e.g., an outer box), the statement of the percentage of alcohol present in the product shall appear prominently and conspicuously on the "principal display panel" of the immediate container label.

(c) For products whose principal display panel is on the retail package and the retail package is not the immediate container, the statement of the percentage of alcohol present in the product shall also appear on the immediate container label; it may appear anywhere on that label in accord with section 502(e) of the Federal Food, Drug, and Cosmetic Act.

(d) The statement expressing the amount (percentage) of alcohol present in the product shall be in a size reasonably related to the most prominent printed matter on the panel or label on which it appears, and shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

(e) For a product to state in its labeling that it is "alcohol free," it must contain no alcohol (0 percent).

(f) For any OTC drug product intended for oral ingestion containing over 5 percent alcohol and labeled for use by adults and children 12 years of age and over, the labeling shall contain the following statement in the directions section: "Consult a physician for use in children under 12 years of age."

(g) For any OTC drug product intended for oral ingestion containing over 0.5 percent alcohol and labeled for use by children ages 6 to under 12 years of age, the labeling shall contain the following statement in the directions section: "Consult a physician for use in children under 6 years of age."

(h) When the direction regarding age in paragraph (e) or (f) of this section differs from an age-limiting direction contained in any OTC drug monograph in this chapter, the direction containing the more stringent age limitation shall be used.

Dated: March 1, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–6128 Filed 3–10–95; 8:45 am]

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Part XI

Department of Education

Fund for the Improvement of Education; Notices

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DEPARTMENT OF EDUCATION

[CFDA No. 84.215S]

Fund for the Improvement of Education: Demonstration Programs; (1) Elementary School Counseling Partnerships; (2) Middle School-Workplace-Community Partnerships; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: The purpose of the Fund for the Improvement of Education is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to support demonstration projects as a way to address the broader FIE objectives.

Eligible Applicants: State and local educational agencies, institutions of higher education, other public and private agencies, organizations, and institutions may apply for grants under this program.

Deadline for Transmittal of Applications: April 28, 1995.

Deadline for Intergovernmental Review: June 27, 1995.

Applications Available: March 14, 1995.

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$250,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: The Secretary does not consider an application that proposes a budget exceeding $250,000 for the first 12-month budget period.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priorities

The notice of final priority for this program is published elsewhere in this issue of the **Federal Register,** and is repeated **below. Under 34 CFR** 75.105(c)(3) the Secretary gives an absolute **preference to applications** that meet **one of the following priorities. The Secretary funds under this competition only applications that meet one of the following absolute priorities.**

Absolute Priority 1—Elementary School Counseling Partnerships

Applicants must propose activities to develop, implement, and evaluate strategies for supporting elementary school counseling. Projects must include professional development to improve the skills of pupil services personnel and guidance counselors for working with students from diverse populations, and activities promoting school-linked services integration. Projects must involve collaborative efforts among local education agencies, institutions of higher education, businesses, labor organizations, community groups, social service agencies, or other public or private entities to design and carry out the program.

Absolute Priority 2—Middle School-Workplace-Community Partnerships

Applicants must propose activities designed to make school relevant to the workplace and the community for middle school students. Projects must be built upon partnerships developed among middle schools, employers, and the community. Projects must emphasize the integration of high quality academic and vocational learning, stress excellence and high expectations for success in academic subjects, and instill responsibility, decision making, problem solving, interpersonal skills, and other competencies in students.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation Plan (34 CFR 75.210(b)(6)). Ten additional points are added to this criterion for a possible total of 15 points.

Note: Projects requesting funding under this program must be designed so that the effectiveness of the programs, projects and activities that will be conducted is readily ascertainable.

To Request an Application: Voice Mail: 202–219–2053; *Facsimile machine:* 202–219–1407; *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW., Washington, DC 20208–5645. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215S: Fund for the Improvement of Education)

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Research and Improvement.

[FR Doc. 95–6134 Filed 3–10–95; 8:45 am]

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DEPARTMENT OF EDUCATION

Fund for the Improvement of Education (FIE)

AGENCY: Department of Education.

ACTION: Notice of Final Priorities for Fiscal Year (FY) 1995: Demonstration Programs: (1) Elementary School Counseling Partnerships; (2) Middle School-Workplace-Community Partnerships.

SUMMARY: The Secretary announces the final priorities for the FIE Demonstration Programs for Elementary School Counseling Partnerships and Middle School-Workplace-Community Partnerships.

EFFECTIVE DATE: These priorities take effect April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen O'Brien, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Washington, DC 20208–5645. Telephone 202–219–2141. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the Fund for the Improvement of Education is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The priorities announced in this notice will support demonstration projects as a way to address the broader FIE objectives.

The Secretary recognizes that successful well-articulated programs that provide for continuous improvement of professional educators and improvement of services to students will require educators to work together across traditionally separated roles and organizations. Therefore, projects must be carried out by partnerships consisting of educational organizations and other public and private sector organizations.

Section 10101(b)(1)(A) of the FIE statute authorizes the Secretary to fund activities that will promote systemic education reform at the State and local levels. The Secretary believes that professional development, not only for teachers, but also for pupil services personnel and guidance counselors, is an essential element of effective systemic reform efforts.

In recent years, school-community-business partnerships have become an effective strategy for school improvement. Many communities have developed effective school and workplace experiences for students at the junior high and high school levels. The Secretary believes that school-workplace-community programs can be equally effective for middle school students, and can help younger students begin to think of the opportunities they will have in the future.

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of the following absolute priorities.

Absolute Priority 1—Elementary School Counseling Partnerships

Applicants must propose activities to develop, implement, and evaluate strategies for supporting elementary school counseling. Projects must include professional development to improve the skills of pupil services personnel and guidance counselors for working with students from diverse populations, and activities promoting school-linked services integration. Projects must involve collaborative efforts among local education agencies, institutions of higher education, businesses, labor organizations, community groups, social service agencies, or other public or private entities to design and carry out the program.

Absolute Priority 2—Middle School-Workplace-Community Partnerships

Applicants must propose activities designed to make school relevant to the workplace and the community for middle school students. Projects must be built upon partnerships developed among middle schools, employers, and the community. Projects must emphasize the integration of high quality academic and vocational learning, stress excellence and high expectations for success in academic subjects, instill responsibility, decision making, problem solving, interpersonal skills, and other competencies in students.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the absolute priority in this notice. However, in order to make timely grant awards in FY 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue the absolute priority as final requirements that will apply only to the FY 1995 grant competition.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Note: This action is not an application notice. You may request an application by *Voice mail:* 202–219–2158; *Facsimile machine:* 202–219–1407; *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW, Washington, DC 20208–5644.

Program Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215S: Fund for the Improvement of Education)

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Research and Improvement.

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Part XII

Department of Labor

Office of the Secretary

The American Workplace for Executive Order 12954, Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts; Delegation of Authority; Notice

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DEPARTMENT OF LABOR

[Secretary's Order 2–95]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for the American Workplace for Executive Order 12954, Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts

March 8, 1995.

1. *Purpose.* To delegate the authority and assign the responsibility in the Department of Labor for the implementation and administration of the Secretary of Labor's responsibilities under Executive Order 12954, Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts, which established the policy that contracting agencies in the Executive Branch shall not contract with employers that permanently replace lawfully striking employees.

2. *Authority and Directives Affected.*

a. *Authority.* This Order is issued pursuant to Executive Order 12954, dated March 8, 1995; the Act of March 4, 1913 (29 U.S.C. 551 *et seq.*); and 5 U.S.C. 301 and 302.

b. *Directives Affected.* The authority delegated herein is in addition to that delegated to the Assistant Secretary for the American Workplace in Secretary's Order 2–93, which Order remains in effect.

3. *Background.* Efficient economic performance and productivity are directly related to the existence of cooperative working relationships between employers and employees. When federal contractors permanently replace their striking employees, the Federal Government's efficiency and cost of operations are adversely affected. In order to operate as effectively as possible, by receiving timely goods and quality services from contracting agencies, Executive Order 12954 requires that contracting agencies of the Executive Branch shall not contract with employers that permanently replace lawfully striking employees. Section 6 of the Executive Order assigns the responsibility for the administration and enforcement of the Executive Order to the Secretary of Labor

4. *Delegation of Authority and Assignment of Responsibility.*

a. *The Assistant Secretary for the American Workplace* is hereby delegated authority and assigned responsibility, vested in the Secretary of Labor, for carrying out the policies, programs, and activities under Executive Order 12954.

b. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department of Labor relating to the implementation and enforcement of this Order and the Executive Order.

5. *Redelegation of Authority.* The authority delegated and responsibilities herein assigned may be further redelegated. Any transfer of functions to other components of the Department of Labor shall be made pursuant to an appropriate agreement with the approval of the agency head(s) involved

6. *Effective Date.* This Order is effective immediately.

Robert B. Reich,

Secretary of Labor

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federal register

Monday
March 13, 1995

Part XIII

Federal Retirement Thrift Investment Board

5 CFR Parts 1650 and 1653
Retirement Benefits Court Order Regulations; Final Rule

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1650 and 1653

Retirement Benefits Court Order Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations governing retirement benefits court orders. The regulations contain a number of procedural changes which reflect the Board's experience in processing retirement benefits court orders, as well as changes in Federal tax law. The regulations establish a new Part in the Code of Federal Regulations replacing existing regulations regarding court orders.

EFFECTIVE DATE: April 12, 1995

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis, (202) 942–1658.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code. The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant. 5 U.S.C. 8437(g).

Under 5 U.S.C. 8467(a), payments from the TSP that would otherwise be made to a TSP participant shall be paid "to another person if and to the extent that the terms of a court decree of divorce, annulment or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide." A related provision, 5 U.S.C. 8435(d), states that an election or change of election of TSP benefits shall not be effective to the extent that it would conflict with "a court decree of divorce, annulment or legal separation * * * or any court order or court-approved property settlement agreement incident to such decree * * *." The TSP need only honor court orders or decrees meeting the requirements of 5 U.S.C. 8467(a) and 8435(d) if the Executive Director receives proper notice of the order before disbursement of the participant's account.

These regulations, when effective, will supersede the interim regulations presently found at 5 CFR §§ 1650.27 to 1650.43. Proposed regulations governing alimony and child support orders which are governed by 5 U.S.C. 8437(e)(3) will be promulgated in a separate subpart of Part 1653.

On October 26, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 53874) relating to the Board's processing of court orders and decrees described in 5 U.S.C. 8435(d) and 8467 and referred to as "retirement benefits court orders." The Board did not receive any comments on the proposed regulations.

The Board, however, is making two changes to § 1653.3 of the regulations. First, the Board is deleting the notification provision in paragraph (c). Due to the increasing volume of court orders which are being processed by the Board, providing notification to the parties that the participant's account was frozen upon receipt of a court order has become administratively burdensome. Therefore, the Board has decided that the decision letter regarding the court order provides sufficient notice that the participant's account has been frozen. Second, paragraph (k) is being added to provide that the Board will hold in abeyance the processing of a court order payment pursuant to a qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order.

Section-By-Section Analysis

Section 1653.1 states the purpose of the regulations. The procedures set forth in the regulations will be applied in determing whether the Board must honor orders purporting to constitute retirement benefits court orders described in 5 U.S.C. 8435(d) and 8467. The regulations also establish procedures for calculation and payment of awards pursuant to qualifying retirement benefits court orders.

Section 1653.2(a) sets forth the general rule that only "qualifying" retirement benefits court orders will be honored. If an order is determined not to be qualifying, it will not affect the participant's account. TSP participants involved in divorce proceedings, and their representatives, are encouraged to read the TSP publication "Information About Court Orders" to obtain useful information for drafting and submitting court orders that will be deemed qualifying under the regulations.

Section 1653.2(b) sets forth the requirements for a court order to be "qualifying." Section 1653.2(b)(1) describes the type of legal document that can be a qualifying order. The first sentence is designed to clarify that the language "court decree of divorce, annulment, or legal separation," as used in both 5 U.S.C. 8435(d) and 8467, has been interpreted by the Board to mean "a court decree of divorce, a court decree of annulment, or a court decree of legal separation." In order to have a qualifying court order, a court must be involved. A legal separation agreement that has not been approved by a court, for example, is not a "court decree of legal separation," and therefore cannot constitute a qualifying court order. Also, a property settlement agreement must be court-approved in order to be qualifying. This means that the court's approval must be demonstrated on the face of the document or in an accompanying court order.

The second sentence of § 1653.2(b)(1) is designed to make it clear that a "court order or court-approved property settlement agreement incident to [a decree of divorce, of annulment or of legal separation]" may occur at any stage of the proceeding, not just after the entry of a final decree of divorce, of annulment or of legal separation. For example, courts often issue orders during a divorce proceeding in order to preserve the *status quo* in anticipation of a final decree dividing the property of the parties. The regulations also allow for the possibility that an order serving a function other than preservation of the *status quo* could be deemed "incident to" a decree that has not yet been entered.

If the Board receives an otherwise valid order awarding a former spouse a portion of a TSP account, but prior to payment receives a valid amended order changing the earlier award, the amended order will be honored. However, under no circumstances will the Board accept the return to the TSP of funds that have been properly paid pursuant to an earlier order, even if a subsequent order would dictate such a result. The processing of multiple court orders is addressed in § 1653.3(l).

Section 1653.2(b)(2) addresses the requirement in 5 U.S.C. 8435(d)(2)(A) that a court order must "expressly relate" to a participant's TSP account and the requirement in 5 U.S.C. 8467 that the court order must "expressly provide" for payment to someone other than the participant. For an order to be honored under either provision, the order must unambiguously address the TSP account.

Section 1653.2(b)(2)(i) requires that an order must clearly and specifically deal with a participant's TSP account. It is not sufficient to use generic language that is arguably broad enough to include the TSP. For example, an order that states, "Former Spouse is awarded 50% of all of Participant's Federal retirement benefits" would not be language that expressly relates to the TSP, even though the TSP is a Federal retirement benefit. First, the order must describe it in such a way that there can be no confusion that the parties are referring to the TSP, rather than some other plan or financial assets; parties to divorce actions are encouraged to attempt to obtain such specific language in their orders. However, § 1653.2(b)(2)(ii) makes it clear that, even if the Thrift Savings Plan is identified by name, the order must not contain language that is inconsistent with the division of a participant's interest in a defined contribution plan, such as the TSP, in which the participant has an individual account. References to "benefit formulas," "accrued benefits," or "eventual benefits" may or may not be acceptable in context, because such terms may raise the question whether the order is truly dealing specifically with the TSP account or is simply including the TSP among other retirement benefits to which the participant may be entitled. Since use of such terms may lead the Board to reject an order as not expressly relating to the TSP account, these terms should be avoided in favor of references to the "TSP account" or "TSP account balance."

Section 1653.2(b)(3) further implements the requirement of 5 U.S.C. 8467 that a payment pursuant to a court order must be expressly provided for in the order. If the order requires a payment from the TSP account, it must either award a specific dollar amount or divide the participant's account balance by applying a fraction, a percentage, or a formula that yields a mathematically possible result. For example, a formula where the numerator is larger than the denominator and therefore yields an amount greater than the entire account balance is not acceptable. All of the variables for the formula must also be set forth in the order or must be available through reference to Government employment records. The dollar amounts, percentages, fractions or variables used must be clearly determinable; they cannot be qualified by terms such as "approximately." The order may or may not provide for interest or earnings to be added to the amount of the award, but any award of earnings must also be clearly determinable. The order may also award a survivor annuity under 5 U.S.C. 8435(e).

Under § 1653.2(b)(4), an order will only be deemed qualifying if it calls for payment to the spouse, former spouse, attorney for the spouse or former spouse, dependent children of the participant, other dependents of the participant, or the attorney for the participant's dependent children or other dependents. Payment cannot be made to the participant or to others, such as credit card companies, mortgage lenders, or other creditors of the parties to the divorce. The TSP is a retirement savings plan, and the occasion of a divorce should not be a general opportunity for the participant to obtain access to his or her account or for the parties to use retirement savings to liquidate their general debts. In this context, payment to the attorney for the participant is tantamount to a payment to the participant, since the participant owes a debt to the attorney. Thus, the rules would not permit such a payment. In contrast, it is permissible for the court to award a payment from the TSP account to the attorney representing the spouse/former spouse or dependent children or other dependents for legal fees incurred in connection with the divorce, because direct payments to the spouse/former spouse or dependent children or other dependents are also permissible. The Board will not honor an order asking for payment to be made jointly, such as to the former spouse and his or her children. Rather, the order should separately specify the award to be made to each person.

Section 1653.2(c) specifically states that certain orders are not qualifying. Section 1653.2(c)(1) provides that an order relating only to money that is not vested (under 5 U.S.C. 8432(g)) shall not be deemed a qualifying order unless the money will become vested within 90 days of receipt of the order if the participant were to remain in Federal employment.

Section 1653.2(c)(2) represents a significant departure from current rules for processing court orders. Under current rules the Board has been paying court orders as soon as the amount of the award can be calculated, even where the order calls for a payment at a later date. In cases where a dollar amount is awarded and the order specifies that payment is to be made upon a date in the future, that dollar amount has been paid immediately. On the other hand, where the amount of the award is based on a percentage of the account balance as of a date in the future (such as the participant's separation from Federal Government employment or some other specified date), or is based on a percentage determined by a formula containing variables that cannot be determined until a date in the future, the Board's current procedures have called for the order to be retained by the Board so that payment could be made at the appropriate time in the future.

Under § 1653.2(c)(2)(i), orders requiring payment at a future specified date will not be considered qualifying orders unless two requirements are met. First, it must be currently possible to calculate the amount of the entitlement. Second, the award must provide for interest or earnings to be paid on the amount of the award until the date of payment. If both of these requirements are met, the order will be considered qualifying. However, payment will be made not at the future date specified in the order, but rather will be made currently after following the procedures of § 1653.5. The rationale for this limited exception to the general rule that orders requiring future payment will be rejected is that, where the amount of the award can currently be calculated and the order calls for interest or earnings, a payment of that amount currently is the economic equivalent of a payment of the same amount plus earnings at a future date. However, under the regulations there will be no case in which the Board will hold orders until a future date specified by a court for payment.

Section 1653.2(c)(2)(ii) is designed to clarify that it is not necessary for the exact amount of the award to be determinable upon receipt of the order by the Board. An order may be qualifying if it provides for a current payment to be calculated as of the date of payment. The Board recognizes that the procedures set forth in the regulations will often require a few months between the receipt of the order by the Board and the payment of the account. Orders will not be deemed non-qualifying future orders merely because the amount of the award cannot be calculated until a payment date that will invariably be later than the date of receipt of the order by the Board. For example, an order that incorporates a formula using a variable such as the number of months of the participant's Federal employment as of the date of payment would not be considered a non-qualifying future order, even though the length of the participant's Federal service will have to be determined as of the date of payment, which is likely to be a few months after the Board's receipt of the order.

Section 1653.2(d) defines the term "former spouse" as used in the

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regulations by adopting the definition contained in 5 U.S.C. 8401(12).

Section 1653.3 sets forth procedures for reviewing retirement benefits court orders. Section 1653.3(a) provides that the Board will process court orders in accordance with applicable Federal law, namely FERSA and the Board's regulations. The Board's processing of court orders is not controlled by the procedures of the state divorce courts, nor will the Board take into account any fact or rule of state or local law that renders an order invalid which is otherwise valid on its face.

Section 1653.3(a) also makes it clear that the Board cannot be made a party to the underlying divorce action and thereby be subject to the jurisdiction of the court handling the divorce proceeding. The Board is a Federal agency which, under the doctrine of sovereign immunity, is not subject to suit in state court absent specific statutory authorization. Therefore, legal process to join the Board as a party to a divorce proceeding will not be honored. Parties to a divorce must, without the Board's participation in the proceeding, obtain from the court an appropriate order and then submit that order to the Board for a determination as to whether it is a qualifying order. To the extent there is any dispute about the Board's actions concerning a court order, the matter must be resolved in Federal court under 5 U.S.C. 8477, not in state court.

Section 1653.3(b) provides the address for the TSP recordkeeper to which court orders should be sent for processing. Receipt by the recordkeeper is deemed receipt by the Board.

Section 1653.3(c) provides the general rule that the Board will "freeze" the account of a TSP participant for whom a document has been received that purports to be a qualifying retirement benefits court order. When an account is frozen, the participant may not withdraw the account or obtain a loan from the account. The freeze is intended to ensure that the participant may not defeat the purposes of a court order by removing the funds from the account while the Board is conducting its review of what may turn out to be a valid order. Both 5 U.S.C. 8435(d) and 8467 indicate that the Executive Director may not make payments to the participant after receiving a qualifying court order until the court order has been complied with.

Section 1653.3(d) lists certain types of documents that the Board views as not even purporting to constitute qualifying retirement benefits court orders. Therefore, these documents will be rejected without substantive review and no freeze will be placed on the account. Section 1653.3(d)(1) provides that an order will be rejected if it fails to indicate on its face that it has been issued or approved by a court, unless an accompanying document plainly establishes that the order was approved or issued by a court. An unsigned order will be rejected under this provision.

Section 1653.3(d)(2) provides that an order will be rejected where the account has been closed, which may have occurred either because the participant withdrew his or her account or because the entire account was paid pursuant to an earlier court order. Similarly, because FERSA was enacted on June 6, 1986, court orders entered before that date cannot "expressly relate" to a TSP account, since the court could not have contemplated the existence of a TSP account. Accordingly, under § 1653.3(d)(3), such orders will be rejected without review. Court orders awarding funds in the TSP account only to the participant (§ 1653.3(d)(4)) and court orders failing to make any mention of any retirement benefits (§ 1653.3(d)(5)) will also be rejected without substantive review and without freezing the account.

Sections 1653.3 (e) and (f) require a court order to be either an original or a copy of a complete court order. If a court order is not complete, the parties will be given 30 days to submit a complete document. If it is not received within 30 days, the account will be unfrozen and the order will not be reviewed further. However, if the incomplete order does not include a signature or other indication that it was properly issued or approved by a court, then it will be rejected under § 1653.3(d)(1) without a 30-day period for resubmission.

Sections 1653.3 (g) and (h) require the Board to determine whether court orders accepted for review under this subpart constitute qualifying orders and to provide an explanation of the decision. If the order is found to be qualifying, the decision will state the effect of the order on the TSP account of the participant. In many cases, the effect of a final divorce decree will be a payment from the participant's account to the spouse or former spouse. In the case of a preliminary order, the effect is often maintenance of a freeze on the account until a further court order is received by the Board.

Under current Board procedures, the Board's decisions provide a 30-day appeal period for the parties to request an administrative review of the decision by the Executive Director. Section 1653.3(i) eliminates that appeal period and makes the Board's initial decision the final administrative action. In the Board's experience, the appeal period has been used primarily as a time for seeking from the divorce court a new order to supersede the earlier order, rather than to raise substantive issues relating to the Board's decision.

The Board believes that it is appropriate for the divorce court, rather than the Board, to clarify any questions concerning the meaning of the order. Elimination of the appeal period will not, however, eliminate any opportunity for the parties to return to the divorce court for an amended order, since § 1653.5(a) provides that even after a determination that an order awards a portion of a TSP account, payment cannot be made until at least 30 days after appropriate tax notification has been provided. Similarly, if the Board determines that an order is not qualifying, § 1653.3(j)(4) provides that the account will remain frozen for 45 days from the date of the Board's determination. Thus, the spouse or former spouse is protected against disbursement of a loan or withdrawal to the participant during the 45-day period, and may seek a new order from the divorce court during that time.

Section 1653.3(j) describes when a freeze imposed under § 1653.3(c) will be removed. Section 1653.3(j)(1) reiterates the provision in paragraph (f) that if the Board receives an incomplete order the parties will be notified that a complete document must be received within 30 days. If it is not received within that time, the freeze will be removed.

Section 1653.3(j)(2) provides that, where a qualifying order precludes disbursements from the participant's account, the freeze will remain on the account until the order is either superseded or vacated by a subsequent order of the court. Of course, if the subsequent order itself requires freezing the account, then the account will not be unfrozen. A common situation involves a preliminary order entered to preserve the *status quo* by precluding the participant from obtaining a loan or withdrawal from his or her account while the divorce proceedings are pending. The court then enters a final divorce decree, which dissolves the preliminary order but also includes an award of a portion of the TSP account to the former spouse. Because the final divorce decree will itself require that the account be frozen, the freeze will remain on the account until payment of the former spouse's share.

Section 1653.3(j)(3) provides that, where it is determined that an order makes an award of a portion of a TSP account, the freeze will be removed upon payment.

As discussed in connection with the elimination of the appeal period, § 1653.3(j)(4) provides that, where the Board determines that an order is not qualifying, the account will remain frozen for 45 days after that determination. This enables the parties to seek and submit to the Board a new, qualifying order from the divorce court, without concern that the participant may withdraw or borrow from his or her account during the 45-day period. Alternatively, a party may seek to challenge the Board's determination in Federal court. The freeze may be removed sooner than the expiration of the 45-day period only upon written agreement from both parties to the divorce proceedings.

Section 1653.3(k) provides that the Board will hold in abeyance the processing of a court order payment pursuant to a qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order. The Board has decided that it should not make payments under court orders that are on appeal. However, the Board also will presume that any court order that appears valid on its face has not been appealed and thus remains valid. Absent notice from one of the parties, the Board will not be responsible for following local or state procedural rules which might otherwise prevent enforcement of the order.

The party notifying the Board of the appeal of the court order must provide proper documentation of the appeal, as well as citations to legal authority which address the effect of the filing of such an appeal. In the absence of proper documentation and appropriate legal authority, the Board will proceed with the payment process. If the Board receives proper documentation and citations to legal authority, the Board will notify all of the parties that it has held the processing of the account in abeyance because of the appeal in the state court system. The account will remain frozen for loans and withdrawals. In order for the freeze to be removed or a payment to be made, the Board must be notified by one of the parties of the disposition of the appeal, provided with a statement regarding the effect of the disposition on the provisions of the original order relating to the TSP, and provided with a copy of the resulting document from the court.

Section 1653.3(l) provides the rules for processing multiple court orders. Section 1653.3(l)(1) provides that, where there are conflicting orders arising from the same divorce proceeding and involving the same spouse or former spouse, the order bearing the latest date will supersede any earlier orders, regardless of the dates on which they are received by the Board. The date will be determined by using the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the order was signed by the judge will be used. Since 5 U.S.C. 8467(a) provides that "[a]ny payment under this subsection to a person bars recovery by any other person," the general rule set forth in § 1643.3(l)(1) obviously cannot be applied if payment on the first order received has already been made before the Board receives a later order that would have superseded the first order. Moreover, consistent with the last sentence of § 1653.2(b)(1), no court order will be honored to the extent that doing so would require the Board to accept the return of money already properly paid pursuant to another order.

Section 1653.3(l)(2) provides that where there are conflicting orders involving different spouses or former spouses, the order with the earliest date (determined in the same manner as under § 1653.3(l)(1)) will be given priority (again, unless payment on the first order received has already been made). Any payments from the account will be made first based on the order bearing the earliest date, and proceeding through any additional orders until the account is exhausted. It is presumed that the earliest order established rights for the spouse or former spouse named in that order which cannot be affected by subsequent orders in different cases in which the first spouse is not a party.

Section 1653.4 sets forth rules for calculation of the amount of an entitlement. TSP accounts are valued once a month as of the last day of the month. Under § 1653.4(a), if the date or event specified in the order for calculating the award falls on any day except the last day of the month, the account balance on which the amount of the entitlement is based is determined as of the last day of the previous month. Unless otherwise excluded by the court order, any outstanding loan balance as of the end of the month used for calculating the entitlement will be included in the account balance for this calculation. If the date or event specified in the order falls on the last day of a month, the account balance is determined as of that day.

The actual month-end account balance used to calculate the entitlement must be adjusted by transactions which are processed before the payment is processed but which relate to the period on or before the month-end used for the calculation. For example, assume that in March 1995 the Board receives a qualifying court order awarding the former spouse one-half of the participant's account balance as of the end of February 1995. In May 1995, the Board processes an adjustment record received from the participant's employing agency which removes from the account $100 that was determined by the agency to be an excess contribution erroneously made by the agency in January 1995. If payment pursuant to the court order is made in July 1995, the amount paid would be computed based on the February 1995 month-end account balance, minus the $100 which was removed from the account in May 1995 but which related to the period prior to the February month-end computation date. On the other hand, if the adjustment record was for an erroneous contribution made in April 1995, then the February balance would be used in the calculation of the former spouse's award without reduction for the $100 adjustment.

Section 1653.4(b) provides that, where the award does not cite a specific date or event, the entitlement will be calculated based on the month-end balance on or immediately preceding the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the order was signed by the judge will be used. Once the appropriate date is established, the rules of paragraph (a) are applied as if that date had been specified in the order.

Section 1653.4(c) provides that, if the court awards a specific dollar amount, but indicates that the amount awarded must be paid out of the balance that is in the account on a certain date, the award will be for the lesser of the amount awarded or the appropriate month-end account balance, determined and adjusted under the same rules as in paragraph (a). This approach is based on the notice that the court has no power to award a sum that is greater than the amount in the account on the particular date cited in the order. Also similar to the rules set forth in paragraph (a), if no date is specified in the court order, the award will be assumed to be based on the date the order was entered, filed, or signed, as appropriate.

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Under § 1653.4(d), unless the court order specifies otherwise, no earnings will be credited to the amount awarded. If the court specifies that interest or earnings are to be credited, but does not specify a rate or method of calculation, the Board will use the actual rate of return on the participant's account for the time period involved based on the funds in which the account is invested. The participant's account may be invested in one or more of the following funds: The Government Securities Investment (G) Fund, the Common Stock Index Investment (C) Fund, the Fixed Income Index Investment (F) Fund. Because the earnings may be based in whole or in part on the earnings of the C Fund or the F Fund, and those funds may suffer losses for any given period of time, the earnings credited to the award could be either positive or negative. The earnings calculation will begin with the month after the month-end balance used in calculating the principal amount of the award, and will end with the month preceding payment. If the court specifies a different method for calculating interest to be credited to the award, that method will be used.

Section 1653.4(e) makes it clear that under no circumstances may a participant's Agency Automatic (1%) Contributions be paid pursuant to a court order if those funds are not vested under 5 U.S.C. 8432(g) at the time of payment. While the entitlement may initially be calculated to include such nonvested sums for purposes of advising the parties of the amount awarded, the amount will be recalculated excluding those sums if they have not become vested by the date of payment.

Section 1653.5 sets forth the procedures for making payments pursuant to qualifying retirement benefits court orders. Under § 1653.5(a), if a qualifying order is found to require payment, an appropriate tax notification will be provided to the payee after issuance of the Board's decision. Payment will not be made less than 30 days after issuance of the tax notification because, under the Internal Revenue Code, the payee will often have the right to elect a transfer to an Individual Retirement Arrangement (IRA) or other eligible retirement plan, or to make a tax withholding election. As discussed with respect to the elimination of the period for appeal of the Board's decision, this minimum waiting period of 30 days also provides the participant an opportunity to seek an amended order from the state divorce court or to challenge the Board's determination in Federal court under 5 U.S.C. 8477.

Section 1653.5(b) states that payment must be made directly to the individual(s) specified in the court order. However, as required by the Internal Revenue Code, this paragraph also provides for a spouse or former spouse to elect to have all or a part of the payment transferred directly to an IRA or other eligible retirement plan.

Section 1653.5(c) provides that no payment may be made from an account that exceeds the vested account balance at the time of payment, excluding any outstanding loan at the time of payment. Although outstanding loan balances are included for purposes of computing the amount of an award as of the appropriate computation date as determined in accordance with § 1653.4, payment cannot include any amount that is outstanding as a loan, because the money is not in the account and thus is not available to be paid.

Section 1653.5(d) provides that orders requiring a series of payments will not be deemed qualifying orders. If an order requires a payment greater than the account balance as of the date of the payment, the full amount of the account will be paid pursuant to the order. If the account subsequently receives additional money, that money will not be paid pursuant to the court order. A new court order would be required for payment of the additional sums. In essence, a payment pursuant to a court order extinguishes all entitlement under that court order; further payment can only be made pursuant to a subsequent order.

Section 1653.5(e) provides that joint payments are not permitted. If more than one person is awarded a portion of the account, the amount awarded to each must be specified in the order. Although the checks will be made payable only to the payee(s) named in the order, the Board will permit each payee to specify the address to which the check should be sent, even if that address is different from an address listed in the court order. However, only the payee may designate an address to which the check should be sent, and such designation must be done in writing. The Board will not honor a change of address submitted, for example, by the payee's attorney. A strict rule against accepting address changes from anyone other than the payee is necessary to protect against forbidden alienation of the benefits to which the payee, as a beneficiary of the TSP, has become entitled. Unless the address is changed by the payee, the check will be sent to an address provided in the court order. If an order provides an address that is "in care of" another individual, the check will be issued to the payee but sent to the "in care of" address.

Section 1653.5(f) provides that prior to payment the TSP recordkeeper must have the payee's full name, mailing address, and Social Security number. This information may be provided in the court order or separately by the parties or their representatives. However, as discussed in connection with paragraph (e), only the payee may change the mailing address for the check to an address other than his or her own address. The payee's representative may not do so.

Section 1653.5(g) provides that payment will be made to the payee's estate if the payee dies before payment is made pursuant to a court order. It is not necessary that the court order be submitted to the Board prior to the death of the payee, as long as the order was issued prior to the payee's death and in all other respects constitutes a qualifying order. The court may, in the order, provide for an individual or entity other than the payee's estate to receive payment in the event of the payee's death.

If the participant dies prior to payment of the account, a court order entered prior to the participant's death, will be honored. It does not matter that the order may not have been received by the Board prior to the participant's death. However, if the order is not received by the Board prior to otherwise proper payment of the account to someone other than the payee(s) specified in the court order, then the court order will not be honored. The Board will neither seek nor accept a return of funds properly paid prior to receipt of a court order.

Section 1653.5(h) provides that remarriage or termination of a legal separation does not nullify a court order that has already been submitted to the Board. The Board does not believe it can be presumed that in all cases in which a domestic relations court divides property, including a TSP account, the division should be rendered void merely because the parties choose to remarry. If that is the court's intent, then the parties must obtain an order to that effect and submit it to the Board before payment is made pursuant to the original court order.

Sectdion 1653.5(i) reflects the last sentence of 5 U.S.C. 8467(a), which provides that, "Any payment under this subsection to a person bars recovery by any other person." Once payment pursuant to a court order has been properly made, the Board will not accept return of the money disbursed. Nor will an additional payment be made to another payee.

Section 1653.5(j) provides that payments will be made from the TSP investment funds on a *pro rata* basis. For example, if a participant's $10,000 account balance is invested 50% ($5,000) in the G Fund, 30% ($3,000) in the C Fund and 20% ($2,000) in the F Fund, then an award of $1,000 would be paid $500 from the G Fund, $300 from the C Fund, and $200 from the F Fund. The Board will not honor any provision in a court order that requires the payment to be made other than *pro rata* from the TSP investment funds.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to the processing of and payment pursuant to retirement benefits court orders.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects

5 CFR Part 1650

Employment benefit plans, Government employees, Retirement, Pensions.

5 CFR Part 1653

Employment benefit plans, Government employees, Retirement, Pensions.

Dated: March 6, 1995.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434(a)(2)(E), 8434(b), 8435, 8436, 8467, 8474(b)(5), 8474(c)(1), and sec. 4437, Pub. L. 102–484, 106 Stat. 2724.

2. A new part 1653 is added to read as follows:

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

Sec.

1653.1 Purpose.
1653.2 Qualifying retirement benefits court orders.
1653.3 Processing retirement benefits court orders.
1653.4 Calculating entitlement under a retirement benefits court order.
1653.5 Procedures for payment pursuant to retirement benefits court orders.

Subpart B—[Reserved]

Authority: 5 U.S.C. 8435, 8436(b), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Purpose.

This subpart contains regulations prescribing the Board's procedures for processing retirement benefits court orders.

§ 1653.2 Qualifying retirement benefits court orders.

(a) The TSP will only honor the terms of a retirement benefits court order that is qualifying under paragraph (b) of this section.

(b) A retirement benefits court order must meet each of the following requirements to be considered qualifying:

(1) The court order must be a court decree of divorce, of annulment, or of legal separation, or any court order or court-approved property settlement agreement incident to a decree of divorce, of annulment, or of legal separation. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding. Orders issued prior to a final decree, such as orders for the purpose of preserving the *status quo* pending the final resolution of the proceeding, are referred to as "preliminary" court orders, and will be considered "incident to" a final decree, notwithstanding that a final decree has not yet been, and may not be, issued. Orders issued subsequent to a final decree, such as orders for the purpose of amending such decree, are referred to as "subsequent" court orders, and will also be considered "incident to" such decree. However, any subsequent court order that requires the return of money properly paid pursuant to an earlier court order will not constitute a qualifying order.

(2) The court order must "expressly relate" to the Thrift Savings Plan account of a current TSP participant. This means that:

(i) The order must on its face specifically describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits; and

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the individual participant's "account" or "account balance" rather than a "benefit formula" or the participant's "eventual benefits."

(3) If the court order awards an amount to be paid from the participant's TSP account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or stated fraction of the account;

(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. Any variables in the formula must have values that are readily ascertainable from the face of the order or from Government employment records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(e).

(4) Court orders that make awards from the TSP may only provide for payments:

(i) To spouses or former spouses of the participant;

(ii) As fees for attorneys for spouses or former spouses of the participant;

(iii) To dependent children or other dependents of the participant;

(iv) As fees for attorneys for dependent children or other dependents of the participant;

(c) The following retirement benefits court orders will be considered non-qualifying:

(1) Orders relating to a TSP account that contains only nonvested money, unless the money will become vested within 90 days of the date of receipt of the order if the participant remains in Federal service;

(2) (i) Orders that award an amount to be paid at a future specified date or upon the occurrence of a future specified event, unless:

(A) The amount of the entitlement can be currently calculated; and

(B) The award provides for the payment of interest or earnings from the date of calculation to the specified date or event for payment.

(ii) If an order meets the requirements of paragraphs (c)(2)(i) (A) and (B), a current payment will be made in accordance with the procedures set forth in § 1653.5, rather than a payment at the future date stated in the order.

(d) For purposes of paragraph (c)(2) of this section, orders that require only that the amount of the award be

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calculated on the date of payment, without stating a future date or event for payment, will not be considered as awarding an amount to be paid at a future date or upon the occurrence of a future event. In such cases, the date of payment will be determined in accordance with the procedures set forth in § 1653.5, and the amount of the entitlement will be determined in accordance with § 1653.4 using that date of payment.

(e) *Definition.* For purposes of this Part, the term "former spouse" shall have the same meaning as set forth in 5 U.S.C. 8401(12).

§ 1653.3 Processing retirement benefits court orders.

(a) Board's review of retirement benefits court orders is governed solely by the Federal Employees' Retirement System Act (FERSA), 5 U.S.C. Chapter 84, and by the terms of this part. The Board will honor retirement benefits court orders properly issued by a court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3). However, those courts have no jurisdiction over the Board and the Board cannot be made a party to the underlying domestic relations proceedings.

(b) Retirement benefits court orders should be submitted to the Board's recordkeeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500. Receipt by the recordkeeper will be considered receipt by the Board.

(c) Upon receipt of a document that purports to be a qualifying retirement benefits court order, including preliminary and subsequent court orders, the participant's account will be frozen. After the account is frozen, no withdrawals or loans will be allowed until the account is unfrozen. All other account activity, including contributions, adjustments, and interfund transfers, will be permitted.

(d) The following documents will not be treated as purporting to be qualifying retirement benefits court orders. Therefore accounts of participants to whom such orders relate will not be frozen and these documents will not be reviewed by the Board:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

(3) A court order dated prior to June 6, 1986;

(4) A court order that fails to award all or any part of the TSP account to anyone other than the participant;

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the document will be reviewed initially to determine if it is a complete original or copy of a retirement benefits court order.

(f) If it is determined that the document is not complete, a complete document will be requested. If it is not received within 30 days of the date of such request, the account will be unfrozen and no further action will be taken with respect to the document.

(g) Upon receipt of a complete order that is either an original or a copy of a retirement benefits court order, the Board will review the order and will determine whether it is a qualifying order as described in § 1653.2 and, if it awards an amount to be paid from a participant's TSP account, the amount of the entitlement. The Board will advise all parties in writing of its decision.

(h) The Board's decision will contain the following information:

(1) The Board's determination regarding whether the court order is qualifying;

(2) A statement of the applicable statute or regulations;

(3) If the order is determined to be qualifying, a statement regarding the effect that compliance with the court order will have on the participant's TSP account; and

(4) If the order requires payment, a description of the method by which the entitlement under the court order was calculated and the circumstances under which payment will be made.

(i) The Board's decision will be final. There is no administrative appeal from the decision.

(j) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days from the date of a request described in paragraph (f) of this section, upon expiration of the 30-day period;

(2) If the order is a preliminary order or other order precluding payment from the account, as soon as practicable after receipt of a certified copy or original court order vacating or superseding such order (unless the order vacating or superseding the preliminary order itself warrants placing a freeze on the account);

(3) If the order is valid to award a payment from the TSP account of a participant under this part, upon payment; and

(4) If the Board determines that the order is not a qualifying order under this part, 45 days after issuance of the Board's decision. The 45-day period will be terminated if both parties submit a written request for such a termination to the Board.

(k) (1) the Board will hold in abeyance the processing of a court order payment pursuant to a previously approved qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order.

(i) Proper documentation of the appeal and citations to legal authority which address the effect of the filing of such an appeal must be provided.

(ii) The parties will be notified that the processing of the court order is being held in abeyance and the account will remain frozen for loans and withdrawal.

(iii) In the absence of proper documentation and appropriate legal authority, the Board will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The Board must be notified in writing by one of the parties of the disposition of the appeal in order for the freeze to be removed from the account or for a payment to be made. The notification must include a statement regarding the effect of the disposition on the provisions of the original order relating to the TSP and a copy of the resulting document from the court must be provided.

(l) Multiple court orders pending before the Board will be processed in accordance with the procedures set forth in this part in the following order:

(1) As between conflicting qualifying court orders relating to the same spouse or former spouse, the Board will process only the court order bearing the latest date entered by the clerk of the court. If any order does not have a date entered, then the date the order was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

(2) As between conflicting qualifying court orders relating to two or more former spouses, the Board will process the orders in the order of the dates entered by the clerk of the court, starting with the order bearing the earliest date, and continuing until the account is exhausted. If any order does not have a date entered, then the date the order

was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

§ 1653.4 Calculating entitlement under a retirement benefits court order.

(a) If the court order awards a percentage or fraction of the account as of a specific date or event, the amount of the entitlement will be calculated based upon the balance of the account as of the end of the month on or immediately preceding the date or event, plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of an entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply the percentage or fraction to the account, the amount of the entitlement will be calculated as described in paragraph (a) of this section, using the account balance as of the end of the month on or immediately prior to the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date signed by the judge.

(c) If the court order awards a specific dollar amount, the amount of the entitlement will be the lesser of:

(1) The amount the order awards; or

(2) The amount in the account as of the end of the month on or before the date specified in the order (or, if no date is specified, the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court, or, if the order does not contain a date entered or a date filed, the date signed by the judge) plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(d) Unless the court order specifically provides otherwise, the entitlement calculated under this section will not be credited with interest or earnings. If interest or earnings are awarded, the Board will use the monthly rates of return credited to the account unless the court order specifies a different rate. The TSP monthly rates of return may be either positive or negative. Interest or earnings will be calculated beginning with the month following the month-end valuation date used for calculating the entitlement and ending with the month prior to the month of payment.

(e) All entitlement will be calculated initially under this section including both vested and nonvested amounts in the participant's account. If at the time of payment the non-vested portion of the account has not become vested or has been forfeited, the entitlement will be recalculated using only the participant's vested account balance.

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP account under this part, payment will be made no sooner than 30 days after the Board's decision has been issued and the appropriate tax withholding notification has been provided.

(b) A payment made pursuant to a qualifying court order will be made only to the person(s) specified in the court order. If payment is to be made to the spouse or former spouse of the participant, he or she may request that the TSP transfer all or a portion of his or her payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Such a request must be made by filing the TSP form "Spouse Election to Transfer to IRA or Other Eligible Retirement Plan", which must be received before payment.

(c) In no case may a payment made pursuant to a qualifying court order exceed the participant's vested account balance, excluding any outstanding loan amount as of the end of the month preceding the date of payment. If the entitlement calculated pursuant to this subpart exceeds the participant's vested account balance (excluding any outstanding loan amount), then only the vested amount in the account (excluding the outstanding loan balance) will be paid.

(d) The entire amount of an entitlement created by a qualifying court order must be disbursed at one time. A series of payments will not be made even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all further rights to any payment under that order even if the entire amount of the entitlement could not be paid. Any further award must be contained in a separate court order.

(e) Payment cannot be made jointly to more than one person. If payment is to be made to more than one person, the order must separately indicate the amount to be paid to each.

(f) In order to make a payment pursuant to a retirement benefits court order, the Board's recordkeeper must be provided with the full name, mailing address, and Social Security number of the payee, even if the payment is being mailed to another address.

(g) If the payee dies before a payment is made pursuant to a qualifying retirement benefits court order, payment will be made to the estate of the payee, unless otherwise specified by the court order. If the participant dies before payment is made pursuant to a qualifying retirement benefits order entered before the participant's death, the order will be honored as long as it is submitted to the Board before payment of the account, regardless of whether the order was received by the Board before the participant's death.

(h) If the parties to a divorce or annulment are remarried, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(i) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other person pursuant to that order.

(j) Payments pursuant to qualifying court orders will be paid *pro rata* from the TSP investment funds, based on the balance in each fund on the date as of which the payment is made. The Board will not honor provisions of court orders that require payment to be made from specific investment funds.

Subpart B—[Reserved]

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1, 2 (2 Reserved)	(869-026-00001-8)	$5.00	Jan. 1, 1995
3 (1993 Compilation and Parts 100 and 101)	(869-022-00002-1)	33.00	[1] Jan. 1, 1994
4	(869-026-00003-4)	5.50	Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

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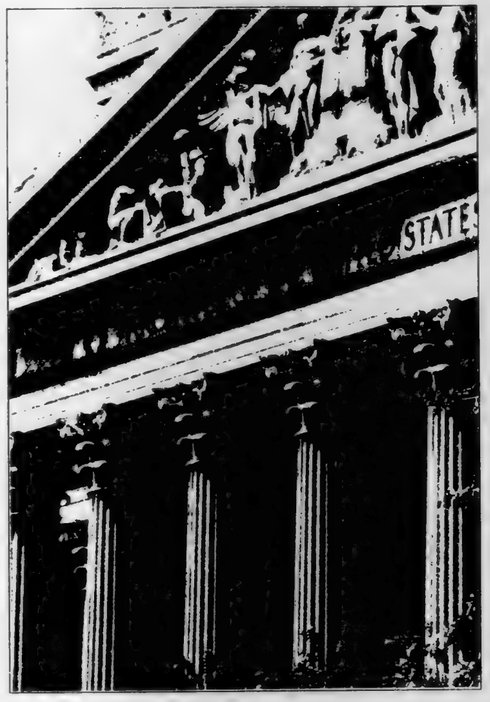

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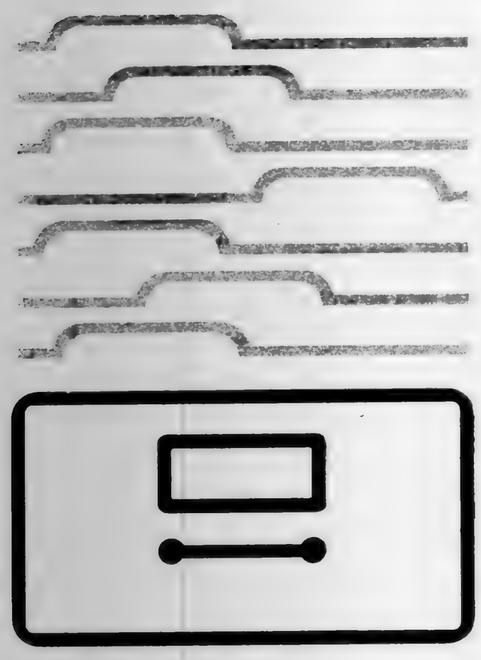

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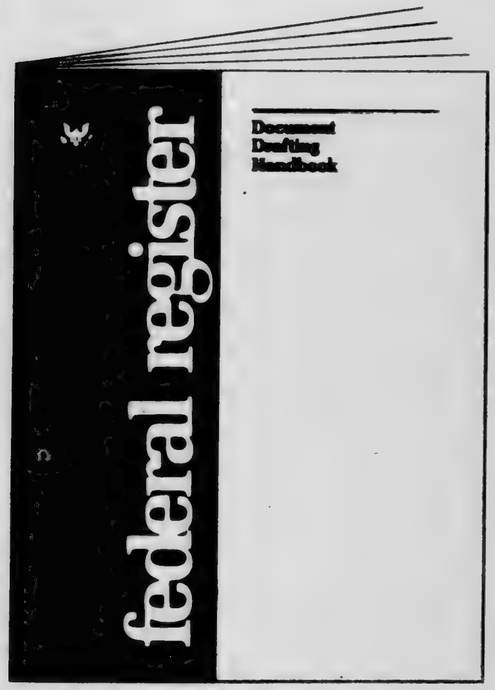

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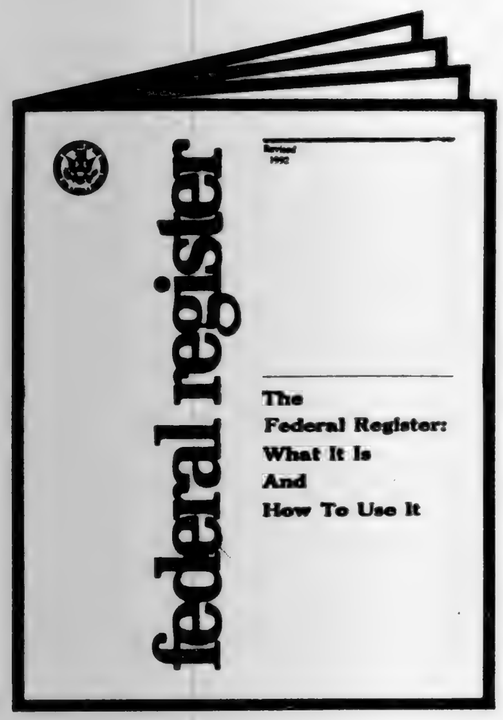

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN 3206–AG36

Suitability, Personnel Security and Related Programs, Investigations, and Suitability Disqualification Actions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final an interim rule that revoked the section of its interim regulations that established the OPM Review Panel (5 CFR Part 731, subpart E), and issued a new subpart E that spells out procedures for appealing adverse suitability determinations to the Merit Systems Protection Board.

EFFECTIVE DATE: October 17, 1994.

FOR FURTHER INFORMATION CONTACT: John J. Lafferty, Deputy Associate Director for Investigations, (202) 376–3800.

SUPPLEMENTARY INFORMATION: On September 16, 1994, OPM published an interim rule announcing its decision to revoke the section of its interim regulations establishing the OPM Review Panel, thereby abolishing the Review Panel, and promulgating new regulations that provide individuals the opportunity to appeal adverse suitability determinations to the Merit Systems Protection Board (59 FR 47527, September 16, 1994). OPM received no comments in response to this notice.

EO 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with EO 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to internal personnel matters within the Federal Government

List of Subjects in 5 CFR Part 731

Administrative practice and procedure, Government employees.

Accordingly, under authority of 5 U.S.C. 3301, the interim rule amending 5 CFR Part 731 published on September 16, 1994 (59 FR 47527), is adopted as final without any changes.

Office of Personnel Management
James B. King,
Director.

[FR Doc. 95–6217 Filed 3–13–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV–92–701FR]

RIN 0581–AA49

Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting with change as a final rule an interim final rule which specified the general rules and regulations under the Mushroom Promotion, Research, and Consumer Information Order (Order). The interim final rule implemented provisions of the Order concerning the nomination and appointment of members to the Mushroom Council; the preparation and submission of financial statements; the payment of assessments, including the application of late payment and interest charges; the procedures for claiming an exemption from assessments; and the filing of reports.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, D.C. 20090–6456, telephone: (202) 720–5976.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Mushroom Promotion, Research, and Consumer Information Order [7 CFR Part 1209], hereinafter referred to as the Order. The Order is authorized by the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, and industry information organized and operated under the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1927 of the Act, a person subject to the Order may file with the Secretary of Agriculture (Secretary) a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition, which will be final if in accordance with the law. The Act provides that the district courts, of the United States in any district in which a person who is a petitioner resides or carries on business, are vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling of the Secretary.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act [5 U.S.C. 601 et seq.] (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The most recent Department estimate of mushroom growers in the United States indicates that there are 355

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growers. There are approximately 125 growers who fall under the definition of producer as defined in the Act and are subject to the Order. In addition, there are approximately 100 handlers, including producers who are also handlers, and no more than 5 importers who are subject to the Order.

Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $5 million.

While a majority of the handlers and importers who are subject to the Order are classified as small entities, a majority of the producers who are subject to the Order are not so classified.

This action provides for the continuance of provisions implemented in an interim final rule. Generally, producers, first handlers, and importers will be most affected by the provisions on nominating members to the Mushroom Council (Council); paying assessments, including the application of late payment and interest charges; claiming an exemption from assessments; and filing reports.

The nomination procedures specified in this action relate to the conduct of regional caucuses and mail balloting. Although there will be economic costs to persons participating in the nomination process relative to opportunity costs, travel costs, and postage costs, these costs will not be significant relative to the benefits to be gained. These procedures provide an opportunity for persons subject to the Order to nominate individuals and to be nominated as individuals to serve on the Council in an orderly and timely manner.

The procedures for payment of assessments specified in this action relate to the collection and remittance of assessments and the application of late payment and interest charges. Although there will be economic costs to persons subject to the Order relative to opportunity costs, assessment collection costs, and assessment remittance costs, these costs will not be significant relative to the benefits to be gained. These procedures provide such persons with an equitable and practicable framework to collect and remit assessments in an orderly and timely manner.

The exemption procedures specified in this action allow persons not subject to the Order to obtain an exemption from paying assessments or, in the case of importers, a reimbursement for assessments collected. Although there will be economic costs to persons applying for such exemption or reimbursement relative to opportunity costs and postage costs, these costs will not be significant relative to the benefits to be gained. These procedures provide such persons with a practicable means of obtaining exemptions or reimbursements in an orderly and timely manner.

The filing of reports by persons subject to the Order is required by the Act. The economic costs to persons filing these reports has been reduced to a minimum and, consequently, these costs will not be significant relative to the potential benefits to be gained. These filings are necessary for the effective and efficient administration of the program.

Accordingly, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this action regarding a nominee background statement form, a first handler's report, an exemption application, and an importer reimbursement application have been approved by the OMB. The first handler's report, the exemption application, and the importer reimbursement application are assigned OMB control number 0581–0093. The nominee background statement form is assigned OMB control number 0505–0001.

Background

On January 8, 1993, the Order became effective. The Order authorizes the development of a nationally coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the fresh market; maintain and expand existing markets and uses for fresh mushrooms; and develop new markets and uses for fresh mushrooms. The Order is administered by the Council whose members were appointed by the Secretary in June 1993.

An interim final rule was published in the February 11, 1993, issue of the **Federal Register**. The rule provided rules and regulations that were needed to implement provisions of the Order concerning the nomination and appointment of members to the Council; the preparation and submission of financial statements; the payment of assessments, including the application of late payment and interest charges; the procedures for claiming an exemption from assessments; and the filing of reports.

The interim final rule provided that interested persons could file written comments through May 12, 1993. No written comments were received.

One change is made to the rule by the Department for the purpose of conforming to industry practice.

This change to § 1209.260 of the rule is made to conform with the industry's practice of using a producer's tax identification number rather than farm identification number for reporting purposes. Therefore, a first handler will be required to provide the tax identification number, rather than the farm identification number, of each producer with whom the first handler has dealt with during the reporting period.

It is found that the rules and regulations, as set forth in the February 11 interim final rule and adopted with change by this final rule, will tend to effectuate the declared policy of the Act.

Pursuant to the provisions of 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues in effect rules and regulations which were previously implemented on an interim basis, except for one change to conform to industry practice; (2) producers, first handlers, and importers are already aware of this action and will not need any additional time to comply with it; and (3) no useful purpose will be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR Part 1209 which was published at 58 FR 8194 on February 11, 1993, is adopted as a final rule with the following change:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for Part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

§ 1209.260 [Amended]

2. Section 1209.260 is amended by removing the word "farm" and adding in its place "tax".

Dated: March 8, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR-Doc. 95–6227 Filed 3–13–95, 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 55, and 73

RIN 3150–AF18

Reduction of Reporting Requirements Imposed on NRC Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reduce reporting requirements currently imposed on water-cooled nuclear power reactor, research and test reactor, and nuclear material licensees. This rule reduces the regulatory burden on NRC licensees; and partially implements a recent NRC initiative to revise or eliminate duplicative or unnecessary reporting requirements. The amendments will: Eliminate the current requirement for licensees to submit summary reports of containment leakage rate tests to the NRC (10 CFR Part 50—Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6103

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1994, the Executive Director for Operations (EDO) sent to the Commission SECY–94–003, "Plan for Implementing Regulatory Review Group Recommendations." The Commission approved these recommendations for reducing regulatory burden on its licensees. This final rule is one of several rulemakings and other regulatory actions currently being developed by the NRC staff to implement the Regulatory Review Group recommendations to eliminate duplicative or unnecessary reporting requirements. The NRC believes that this action will reduce the regulatory burden on NRC licensees without causing adverse effects on the protection of public health and safety.

On November 2, 1994 (59 FR 54843), the NRC published the notice of proposed rulemaking that reduces reporting requirements on licensees under Parts 50, 55, and 73. Specifically, the proposed amendments were intended to: (1) Eliminate the current requirement for licensees to submit summary reports of containment leakage rate tests to the NRC (10 CFR part 50—appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73. The public comment period expired December 19, 1994.

Analysis of Public Comments on the Proposed Rule

The NRC received seven comments: one from Nuclear Energy Institute (NEI), an organization that represents the nuclear power industry, five from the nuclear power industry, and one from Ohio Citizens for Responsible Energy, Inc. (OCRE). The comments from NEI and the nuclear power industry are supportive of the proposed rule to reduce the reporting requirements. OCRE opposes the proposed rule. However, all commenters believe that elimination of these reports will not adversely impact public health and safety. The following section addresses the public comments received and provides NRC's response to them.

Of the six comments received which favor the proposed rule, several of those endorsing the rule pointed out that the proposed changes eliminate unnecessary or redundant requirements and conserve both NRC and licensee resources. Two of the commenters felt that the NRC should assess additional reporting requirements to determine whether they can be eliminated or reduced in frequency. As discussed in the background section of this rulemaking, the NRC has underway several regulatory activities to implement the Regulatory Review Group's recommendations to eliminate duplicative or unnecessary reporting requirements. This rulemaking is limited to the requirements set out in the proposed rulemaking.

Licensees do not Need to Assemble the Summary Report

One commenter from the nuclear power industry states that the requirement to generate but not submit a summary report for the containment leakage tests provides no additional benefit and is an unnecessary burden since the summary report contains data readily available from other sources. The commenter suggests that the requirement to generate the summary report be eliminated.

The NRC disagrees. The NRC believes that the results of containment leakage tests, the licensee analysis verifying the acceptability of the results, as well as any necessary interpretations of the results, is necessary information which might not be documented absent this documentation requirement. Furthermore, the assembly of a summary report will provide access by NRC inspectors and auditors to this information in a more timely fashion.

Public Participation in the NRC Regulatory Process Will Diminish

OCRE opposes the proposed rule because it believes that adoption of the rule will diminish the public's access to information. OCRE states that the public's health and safety is not the only factor to consider when NRC proposes to eliminate some licensee reports. Access to these reports, OCRE states, is vital for effective public participation in the regulatory process.

To that end, OCRE has filed a petition for rulemaking with the NRC (59 FR 30308, June 13, 1994). The purpose of the petition is to establish public right-to-know provisions which would ensure public access to licensee-held information.

In each case where the NRC considers eliminating a reporting requirement, the NRC first considers the public health and safety impact of the proposed elimination. If there is no direct impact on public health and safety, the NRC also considers the reduced administrative burden on the licensee and the extent to which the proposed elimination will deprive the public of important health and safety information. OCRE's comments have raised the generic issue of the incremental and cumulative effect of this and similar

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rulemakings in depriving the public of access to licensee information that was previously available from the NRC. In that regard, OCRE has directly presented this issue to the Commission through its petition for rulemaking referenced above and the NRC finds that this generic issue is better addressed in the context of that petition, rather than in individual rulemakings such as this one. The NRC also finds that the effect of this rulemaking will be to reduce the administrative burden on licensees and that the loss of the information in this particular case will not adversely affect the public interest in access to information regarding adequate protection of the public health and safety.

Having considered all comments received and other input, the NRC has determined that the following final rule should be promulgated.

Written Reports

This final rule would not require additional written reports. On the contrary, under this final rule, reporting will be reduced for all licensees under 10 CFR Parts 50, 55, and 73.

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act of 1954, as amended, relating to willful violations of requirements notice is hereby given that these amendments are being adopted and promulgated pursuant to Sections 161b, 161i, or 161o of the Act.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0011, –0018, and –0002.

Because the rule will relax existing information collection requirements, the annual public burden for this collection of information is expected to be reduced by approximately 20 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011, –0018, –0002), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comment on the draft regulatory analysis, but no comments were received. Therefore, no changes to the draft regulatory analysis have been made. The draft regulatory analysis is adopted as the final regulatory analysis without change. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects the nuclear power reactors, research and test reactors, and some material licensees. The companies and organizations that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act of the size standards established by the NRC (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not involve any provisions which would impose backfits on licensees as defined in § 50.109(a)(1). In addition, information collection and reporting requirements are not subject to the backfit rule.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

2. In 10 CFR 50.74, paragraph (c) is revised to read as follows:

§ 50.74 Notification of change in operator or senior operator status.

* * * * *

(c) Permanent disability or illness as described in § 55.25 of this chapter.

3. In 10 CFR Part 50 Appendix J, Section III, paragraphs A.1.(a), (b), and (d); Section IV. paragraph A., and Section V. paragraphs A. and B., are revised to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

III. Leakage Testing Requirements

* * * * *

A. Type A test-1. Pretest requirements. (a) Containment inspection in accordance with V. A. shall be performed as a prerequisite to the performance of Type A tests. During the period between the initiation of the containment inspection and the performance of the Type A test, no repairs or adjustments shall be made so that the containment can be tested in as close to the "as is" condition as practical. During the period between the completion of one Type A test and the initiation of the containment inspection for the subsequent Type A test, repairs or adjustments shall be made to components whose leakage exceeds that specified in the technical specification as soon as practical after identification. If during a Type A test, including the supplemental test specified in III.A.3.(b), potentially excessive leakage paths are identified which will interfere with satisfactory completion of the test, or which result in the Type A test not meeting the acceptance criteria III.A.4.(b) or III.A.5.(b), the Type A test shall be terminated and the leakage through such paths shall be measured using local leakage testing methods. Repairs and/or adjustments to equipment shall be made and Type A test performed. The corrective action taken and the change in leakage rate determined from the tests and overall integrated leakage determined from local leak and Type A tests shall be included in the summary report required by V.B.

(b) Closure of containment isolation valves for the Type A test shall be accomplished by normal operation and without any preliminary exercising or adjustments (e.g., no tightening of valve after closure by valve motor). Repairs of maloperating or leaking valves shall be made as necessary. Information on any valve closure malfunction or valve leakage that require corrective action before the test, shall be included in the summary report required by V.B.

* * * * *

(d) Those portions of the fluid systems that are part of the reactor coolant pressure boundary and are open directly to the containment atmosphere under post-accident conditions and become an extension of the boundary of the containment shall be opened or vented to the containment atmosphere prior to and during the test. Portions of closed systems inside containment that penetrate containment and rupture as a result of a loss of coolant accident shall be vented to the containment atmosphere. All vented systems shall be drained of water or other fluids to the extent necessary to assure exposure of the system containment isolation valves to containment air test pressure and to assure they will be subjected to the post accident differential pressure. Systems that are required to maintain the plant in a safe condition during the test shall be operable in their normal mode, and need not be vented. Systems that are normally filled with water and operating under post-accident conditions, such as the containment heat removal system, need not be vented. However, the containment isolation valves in the systems defined in III.A.1.(d) shall be tested in accordance with III.C. The measured leakage rate from these tests shall be included in the summary report required by V.B.

* * * * *

IV. Special Testing Requirements

A. Containment modification. Any major modification, replacement of a component which is part of the primary reactor containment boundary, or resealing a seal-welded door, performed after the preoperational leakage rate test shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification. The measured leakage from this test shall be included in the summary report required by V.B. The acceptance criteria of III.A.5.(b), III.B.3., or III.C.3., as appropriate, shall be met. Minor modifications, replacements, or resealing of seal-welded doors, performed directly prior to the conduct of a scheduled Type A test do not require a separate test.

* * * * *

V. Inspection and Reporting of Tests

A. Containment inspection. A general inspection of the accessible interior and exterior surfaces of the containment structures and components shall be performed prior to any Type A test to uncover any evidence of structural deterioration which may affect either the containment structural integrity or leak-tightness. If there is evidence of structural deterioration, Type A tests shall not be performed until corrective action is taken in accordance with repair procedures, non destructive examinations, and tests as specified in the applicable code specified in § 50.55a at the commencement of repair work. Such structural deterioration and corrective actions taken shall be included in the summary report required by V.B.

B. Recordkeeping of test results. 1. The preoperational and periodic tests must be documented in a readily available summary report that will be made available for inspection, upon request, at the nuclear power plant. The summary report shall include a schematic arrangement of the leakage rate measurement system, the instrumentation used, the supplemental test method, and the test program selected as applicable to the preoperational test, and all the subsequent periodic tests. The report shall contain an analysis and interpretation of the leakage rate test data for the Type A test results to the extent necessary to demonstrate the acceptability of the containment's leakage rate in meeting acceptance criteria.

2. For each periodic test, leakage test results from Type A, B, and C tests shall be included in the summary report. The summary report shall contain an analysis and interpretation of the Type A test results and a summary analysis of periodic Type B and Type C tests that were performed since the last type A test. Leakage test results from type A, B, and C tests that failed to meet the acceptance criteria of III.A.5(b), III.B.3, and III.C.3, respectively, shall be included in a separate accompanying summary report that includes an analysis and interpretation of the test data, the least squares fit analysis of the test data, the instrumentation error analysis, and the structural conditions of the containment or components, if any, which contributed to the failure in meeting the acceptance criteria. Results and analyses of the supplemental verification test employed to demonstrate the validity of the leakage rate test measurements shall also be included.

PART 55—OPERATORS' LICENSES

4. The authority citation for 10 CFR Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953 , as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

5. 10 CFR 55.25 is revised to read as follows:

§ 55.25 Incapacitation because of disability or illness.

If, during the term of the license, the licensee develops a permanent physical or mental condition that causes the licensee to fail to meet the requirements of § 55.21 of this part, the facility licensee shall notify the Commission, within 30 days of learning of the diagnosis, in accordance with § 50.74(c). For conditions for which a conditional license (as described in § 55.33(b) of this part) is requested, the facility licensee shall provide medical certification on Form NRC 396 to the Commission (as described in § 55.23 of this part).

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

6. The authority citation for 10 CFR Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 78.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

7. Section 73.71, paragraph (c)(2) is deleted, paragraph (c)(1) is redesignated as paragraph (c), and paragraph (d) is revised to read as follows:

§ 73.71 Reporting of safeguards events.

* * * * *

(d) Each licensee shall submit to the Commission the 30-day written reports

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required under the provisions of this section that are of a quality which will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

* * * * *

8. In 10 CFR Part 73, Appendix G, the title of Section II. is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events

* * * * *

II. Events to be recorded within 24 hours of discovery in the safeguards event log.

* * * * *

Dated at Rockville, Maryland, this 2nd day of March, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–6210 Filed 3–13–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–123–AD; Amendment 39–9172; AD 95–06–02]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Airplanes Equipped With Pratt & Whitney PW4000 and General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires replacement of certain fuse pins on the upper link of the inboard and outboard struts. This AD would also require inspections to detect corrosion or cracks of certain fuse pins, and replacement, if necessary. This amendment is prompted by reports of cracked or corroded fuse pins on the upper link of the inboard and outboard struts, which could result in fracturing of the pins. The actions specified by this AD are intended to prevent failure of the strut and separation of an engine from the airplane due to fracturing of the fuse pins.

DATES: Effective April 13, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on November 10, 1994 (59 FR 56008). That action proposed to require replacement of bottle bore style fuse pins, installed in the forward position of the upper link on the inboard and outboard struts, with either third generation fuse pins or new bulkhead style pins. That action also proposed to require repetitive detailed visual inspections to detect corrosion of bulkhead style fuse pins; magnetic particle inspections to detect cracks in those pins; and replacement of any corroded or cracked bulkhead style fuse pin with a third generation fuse pin or with a new bulkhead style pin. Installation of a third generation fuse pin, if accomplished, would constitute terminating action for the inspection requirements of the proposed AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 869 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 147 airplanes of U.S. registry will be affected by this AD, that it will take approximately 122 work hours per airplane to accomplish the replacement of fuse pins with bulkhead style pins, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact on U.S. operators who replace fuse pins with bulkhead style pins is estimated to be $7,320 per airplane.

It will take approximately 140 work hours per airplane to accomplish the replacement of fuse pins with third generation pins. The average labor rate is $60 per work hour. Based on these figures, the total cost impact on U.S. operators who replace fuse pins with third generation pins is estimated to be $8,400 per airplane.

It will take approximately 1.5 work hours per airplane to accomplish the inspections (in addition to the work hours necessary for fuse pin replacement). The average labor rate is $60 per work hour. Based on these figures, the total cost impact on U.S. operators for the required inspections is estimated to be $90 per airplane per inspection.

The cost of required replacement parts will vary from airplane to airplane, depending upon the current airplane configuration.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The number of required work hours, as indicated above, is presented as if the accomplishment of the inspection and replacement actions were to be conducted as "stand alone" actions. However, in actual practice, these actions, for the most part, would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be minimal.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators.

However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–02 Boeing: Amendment 39–9172. Docket 94–NM–123–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 967 inclusive, and 969 through 922 inclusive; excluding airplanes equipped with Pratt & Whitney PW4000 or General Electric CF6–80C2 series engines; certificated in any category.

Note 1: This AD does not require that the actions be accomplished on the struts of airplanes having straight bore fuse pins (installed on Model 747 series airplanes equipped with Pratt & Whitney PW4000 or General Electric CF6–80C2 series engines) or 15–5 corrosion resistant steel (third generation) fuse pins.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and loss of an engine due to corrosion or cracking of the fuse pins, accomplish the following:

(a) For airplanes having bottle bore style fuse pins in the forward position on the upper link: Replace any bottle bore style fuse pin with a new bulkhead style fuse pin in the forward position, or with 15–5 corrosion resistant steel (third generation) fuse pins in the forward position, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 5,000 landings on the fuse pin, or within 5 years since installation of the pin, whichever occurs first. Or

(2) Within 6 months after the effective date of this AD.

Note 2: Third generation fuse pins are installed in pairs (in the forward and aft positions). Therefore, replacement of an individual upper link fuse pin in the forward position with a third generation pin also would necessitate replacement of the pin in the aft position.

Note 3: The alert service bulletin references Boeing Service Bulletin 747–54–2155, dated September 23, 1993, as an additional source of service information for replacement of the fuse pins with 15–5 corrosion resistant steel (third generation) fuse pins. Installation of these third generation fuse pins is preferred over installation of bulkhead style fuse pins.

(b) For airplanes having bulkhead style fuse pins in the forward position on the upper link: Perform a detailed visual inspection to detect corrosion of the pins, and a magnetic particle inspection to detect cracks, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 8,000 landings on the fuse pin, or within 8 years since installation of the pin, whichever occurs first. Or

(2) Within 12 months after the effective date of this AD.

(c) If no corrosion or crack is found during the inspection required by paragraph (b) of this AD, repeat the inspections thereafter at the intervals specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For the inboard and outboard struts on airplanes other than those identified in paragraph (c)(2) of this AD: Repeat the inspections at intervals not to exceed 1,000 landings.

(2) For the outboard struts on airplanes equipped with Rolls-Royce RB211–524G or –524H series engines: Repeat the inspections at intervals not to exceed 2,000 landings.

Note 4: The outboard struts of airplanes equipped with Rolls-Royce RB211–524G or –524H series engines are equipped with thick wall "4330 steel" bulkhead style fuse pins in the forward position of the upper link. Crack propagation to critical length in these thick wall pins is slower than for pins installed on the struts of airplanes equipped with engines other than the Rolls-Royce RB211–524G or –524H series.

(d) If any corrosion or crack is found during any inspection required by this AD, prior to further flight, replace the corroded or cracked pin with either a new bulkhead style fuse pin in the forward position of the upper link, or with 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994.

(1) If the corroded or cracked fuse pin is replaced with a new bulkhead style fuse pin, prior to the accumulation of 8,000 landings on the new pin, or within 8 years since installation of the new pin, whichever occurs first, perform a detailed visual inspection to detect corrosion of the new pin, and a magnetic particle inspection to detect cracks of the new pin, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994. Repeat these inspections thereafter at the interval specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For the inboard and outboard struts on airplanes other than those identified in paragraph (d)(1)(ii) of this AD: Repeat the inspections at intervals not to exceed 1,000 landings.

(ii) For the outboard struts on airplanes equipped with Rolls-Royce RB211–524G or –524H series engines: Repeat the inspections at intervals not to exceed 2,000 landings.

(2) If the corroded or cracked fuse pin is replaced with a 15–5 corrosion resistant steel

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(third generation) fuse pin, no further action is required by this AD.

(e) Installation of 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link on the inboard or outboard strut constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The replacement, inspections, and installation shall be done in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 13, 1995.

Issued in Renton, Washington, on March 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5781 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–126–AD; Amendment 39–9169; AD 95–05–01]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that requires conducting closed loop tests to determine the setting of the underfrequency trip level on suspect generator control units (GCU), and either the correction of discrepancies or replacement of the GCU. This amendment is prompted by several malfunctions of in-service GCU's due to the effects of setting the underfrequency trip level too high. The actions specified by this AD are intended to correct GCU's that may have the underfrequency level set too high, which could result in the unwanted shut down of an electrical generator; this condition may lead to loss of all generated electrical power on the airplane when other generator faults or failures occur.

DATES: Effective April 13, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM–113, Standardization Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes was published in the **Federal Register** on November 16, 1994 (59 FR 59179). That action proposed to require checking the part and serial number on the data plate of each GCU to identify discrepant units, and conducting closed loop tests on affected GCU's to determine the setting of the underfrequency trip level. That action also proposed to require either adjusting the underfrequency trip level or replacing the discrepant GCU with a serviceable unit, and conducting post assembly testing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,580, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–05–01 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9168. Docket 94–NM–126–AD.

Applicability: All Model British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To correct generator control units (GCU) that may have the under-frequency trip level set too high, which could lead to the unwanted shut down of an electrical generator, accomplish the following:

(a) Within 6 months after the effective date of this AD, check the part and serial number on the data plate of each generator control unit (GCU). If the part number is one of those affected and the serial number is listed in Addendum 1 of GEC-Marconi Service Bulletin HGE 24–23, dated March 11, 1994, prior to further flight, conduct a closed loop test to determine the setting of the underfrequency trip level, in accordance with that service bulletin.

(1) If the level exceeds that specified in GEC-Marconi Service Bulletin HGE 24–23, dated March 11, 1994, prior to further flight, adjust the level in accordance with that service bulletin; or replace the GCU with a serviceable unit, in accordance with Avro Service Bulletin S.B. 24–103, dated March 24, 1994.

(2) Prior to further flight, after adjustment or replacement of the GCU as required by paragraph (a)(1) of this AD, conduct the post assembly testing in accordance with Avro Service Bulletin S.B. 24–103, dated March 24, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The closed loop test and adjustment shall be done in accordance with GEC-Marconi Service Bulletin HGE 24–23, dated March 11, 1994. The replacement and post assembly test shall be done in accordance with Avro Service Bulletin S.B. 24–103, dated March 24, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW. suite 700, Washington, DC.

(e) This amendment becomes effective on April 13, 1995.

Issued in Renton, Washington, on February 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5246 Filed 3–13–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–136–AD; Amendment 39–9169; AD 95–05–02]

Airworthiness Directives; Airbus Model A300 B4–2C, B4–103, and B4–203 Series Airplanes; and Model A300–600 B4–620, B4–622, B4–603, and B4–601 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that requires modification of the fuel tank jettison system. This amendment is prompted by a quality survey which revealed that the electrical bonding of the fuel jettison system has insufficient protection from a lightning strike. The actions specified by this AD are intended to prevent electrical arcing and resultant fire in the event of a lightning strike.

DATES: Effective April 13, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series

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airplanes was published in the **Federal Register** on November 16, 1994 (59 FR 59178). That action proposed to require modification of the fuel tank jettison system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,840, or $1,260 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-05-02 Airbus Industrie: Amendment 39-9169. Docket 94-NM-136-AD.

Applicability: Model A300 B4-2C, B4-103, and B4-203 series airplanes on which Airbus Modification 0013 has been installed; and Model A300-600 B4-620, B4-622, B4-603, and B4-601 series airplanes on which Airbus Modification 4607 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and resultant fire in the event of a lightning strike, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the fuel tank jettison system in accordance with Airbus Alert Service Bulletin A300-28A065, Revision 1, dated February 14, 1994 (for Model A300 series airplanes), or Airbus Alert Service Bulletin A300-28A6033, Revision 1, dated February 14, 1994 (for Model A300-600 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the following Airbus Industrie service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300-28A065, Revision 1, February 14, 1994	1-15	1	February 14, 1994.

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300-28A6033, Revision 1, February 14, 1994	1-3, 5-14	1	February 14, 1994.
	4	Original	April 21, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 13, 1995.

Issued in Renton, Washington, on February 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-5245 Filed 3-13-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 94-NM-147-AD; Amendment 39-9171; AD 95-06-01]

Airworthiness Directives; Boeing Model 747-200 and -300 Series Airplanes Equipped With General Electric CF6-80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-200 and -300 series airplanes, that requires various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. This amendment is prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which has revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective April 13, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 13, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2689; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-200 and -300 series airplanes was published in the **Federal Register** on November 8, 1994 (59 FR 55595). That action proposed to require various inspections and functional tests of the thrust reverser control and indication system on certain Model 747-200 and -300 series airplanes, and the correction of any discrepancy found during the inspections and tests.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 9 Model 747-200 and -300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 33 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,960, or $1,980 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

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implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-06-01 Boeing: Amendment 39-9171. Docket 94-NM-147-AD.

Applicability: Model 747-200 and -300 series airplanes equipped with General Electric CF6-80C2 series engines with Power Management Control (PMC) engine controls, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Service Bulletin 747-78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(b) Within 9 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Service Bulletin 747-78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

(c) If any of the inspections and/or functional tests required by this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747-78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(d) Within 10 days after performing each initial inspection and test required by this AD, submit a report of the inspection and/or test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM-100S, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; fax (206) 227-1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, corrections of discrepancies, and tests shall be done in accordance with Boeing Alert Service Bulletin 747-78A2130, dated May 26, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 13, 1995.

Issued in Renton, Washington, on March 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-5782 Filed 3-13-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-CE-05-AD; Amendment 39-9173; AD 94-18-04 R1]

Airworthiness Directives; Univair Aircraft Corporation Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 94-18-04, which currently requires the following on Univair Aircraft Corporation (Univair) Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes: installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structural components for corrosion, and repairing any corroded wing outer panel structural component. Several reports of corrosion in the outer wing panels of the affected airplanes prompted that AD. This action incorporates a revision to the service information to include procedures that the Federal Aviation Administration (FAA) has determined are necessary for installing future outer wing panel inspection openings. The actions

specified by this AD are intended to prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure.

DATES: Effective March 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94-CE-05-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone (303) 375-8882; facsimile (303) 375-8888. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-05-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger P. Chudy, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216; telephone (303) 286-5684; facsimile (303) 286-5689.

SUPPLEMENTARY INFORMATION: AD 94-18-04, Amendment 39-9017 (59 FR 43727, September 25, 1994), currently requires the following on Univair Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes: installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structural components for corrosion, and repairing any corroded wing outer panel structural component. Accomplishment of these actions is in accordance with Univair Service Bulletin (SB) No. 29, Revision A, dated June 7, 1994.

Since the FAA issued AD 94-18-04, Univair has revised SB No. 29 to the Revision B level. This SB revision changes the dimension of one of the openings to position it symmetrically between two ribs; and clarifies the dimensioning system utilized in placement of the inspection openings. Univair SB No. 29, Revision B, also presents a further discussion of the service difficulties encountered on the referenced subject and clarifies the intent of the preliminary inspection procedure that may be accomplished prior to the installation of the inspection openings.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) the procedures presented in Univair SB No. 29, Revision B, dated January 2, 1995, should be mandatory for future inspection opening installations; and (2) AD action should be taken in order to prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure.

Since an unsafe condition has been identified that is likely to exist or develop in other Univair Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes of the same type design, this AD revises AD 94-18-04, Amendment 39-9017, to require installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structural components for corrosion, and repairing any corroded wing outer panel structural component. The actions are required to be accomplished in accordance with the instructions in Univair SB No. 29, Revision B, dated January 2, 1995. No further action will be required by owners/operators who have successfully accomplished these actions in accordance with either Univair SB No. 29, dated January 27, 1994, or Univair SB No. 29, Revision A, dated June 7, 1994.

Since a situation exists (the possibility of damaging the wing structure because of improper positioning of the inspection openings) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-CE-05-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 94-18-04, Amendment 39-9017 (59 FR 43727, September 25, 1994), and by adding a new airworthiness directive to read as follows:

94-18-04 R1 Univair Aircraft Corporation: Amendment 39-9173; Docket No. 94-CE-05-AD. Revises AD 94-18-04, Amendment 39-9017.

Applicability: Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished (See **Note 2**).

To prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure, accomplish the following:

(a) Install inspection openings in the outer wing panels and inspect the wing outer panel internal structural components for corrosion in accordance with the PROCEDURE section of Univair Service Bulletin (SB) No. 29, Revision B, dated January 2, 1995. Prior to further flight, repair any corroded wing outer panel internal structural component in accordance with the instructions contained in the above-referenced service information.

Note 2: Complying with the original version of Univair SB No. 29, dated January 27, 1994, or Univair SB No. 29, Revision A, dated June 7, 1994, is considered equivalent to the requirements of paragraph (a) of this AD, and is considered "unless already accomplished" for that portion of the AD.

(b) Send the results of the inspection required by paragraph (a) of this AD to the Manager, Denver Aircraft Certification Office (ACO), 5440 Roslyn Street, suite 133, Denver, Colorado 80216. State whether corrosion was found, the location and extent of any corrosion found, and the total hours time-in-service of the component at the time the corrosion was found. (Reporting approved by the Office of Management and Budget under OMB no. 2120-0056.)

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Denver ACO, 5440 Roslyn Street, suite 133, Denver, Colorado 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver ACO.

(e) The inspection and installation required by this AD shall be done in accordance with Univair Service Bulletin No. 29, Revision B, dated January 2, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-9173) revises AD 94-18-04, Amendment 39-9017.

(g) This amendment (39-9173) becomes effective on March 24, 1995.

Issued in Kansas City, Missouri, on March 6, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-6058 Filed 3-13-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 94-ASO-25]

Establishment of Class E Airspace; Hampton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Hampton, GA. A GPS RWY 24 Standard Instrument Approach Procedure (SIAP) has been developed for Clayton County-Tara Field. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

On January 4, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Hampton GA (60 FR 396). This action would provide adequate Class E airspace for IFR operations at Clayton County-Tara Field.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Hampton, GA, to accommodate a GPS RWY 24 SIAP and contain IFR operations at Clayton County-Tara Field. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1, of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet Above the Surface of the Earth.

* * * * *

ASO GA E5 Hampton, GA [New]

Clayton County—Tara Field, GA
(Lat. 33°23'21" N, long. 84°19'57" W)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of Clayton County-Tara Field; excluding that airspace within the Atlanta, GA, Peachtree City, GA, and Griffin, GA Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on March 1, 1995.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95-6277 Filed 3-13-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 91

[Docket No. 28134]

Policy on Use of Interchange Agreements for Noise Compliance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: This document sets forth a statement of Federal Aviation Administration (FAA) policy concerning the use of airplane sharing agreements to accomplish compliance with the Stage 3 noise transition regulations. As a result of its experience during the first interim compliance date, the FAA has become aware of a noise compliance concern involving such agreements. This policy statement is intended to provide operators that participate in airplane sharing agreements with notice and guidance on how the FAA will view such agreements for compliance with the Stage 3 transition regulations.

DATES: This policy is effective on March 14, 1995.

Comments concerning this policy must be received on or before September 11, 1995.

ADDRESSES: Send comments on this notice to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket, AGC-200, Docket No. 28134, 800 Independence Avenue SW., Washington, DC 20591.

Comments may be examined or delivered in person at the above address in room 916G, weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3553, facsimile (202) 267-5594.

SUPPLEMENTARY INFORMATION: Sections 91.865 and 91.867 of 14 CFR each required that as of December 31, 1994, an operator of Stage 2 airplanes either reduce the number of Stage 2 airplanes it operates by 25% from its base level, achieve a fleet mix of airplanes that is 55% Stage 3 airplanes, or in the case of a new entrant, achieve a fleet mix that is 25% Stage 3 airplanes. These same regulations require that, after the next interim compliance date, December 31, 1996, each operator must either reduce the number of Stage 2 airplanes it operates by 50% from its base level or achieve a fleet mix that is 65% Stage 3 airplanes (or, 50% for new entrants). The FAA's experience with the first interim compliance date has raised a serious concern involving airplane interchange agreements and other arrangements that result in an individual airplane being enumerated on the operations specifications of more than one operator. To ensure that the objectives of the 1990 Airport Noise and Capacity Act and the implementing regulations are not compromised during the interim compliance period, to ensure that the benefits are fully realized, and to prevent foreseeable future difficulties in compliance, the FAA is formally stating its policy for the manner in which Stage 3 airplanes are "counted" for compliance purposes.

Recent analysis of operators' compliance reports for 1994, which are required under 14 CFR 91.875, has revealed that some operators appear to have entered into Stage 3 airplane sharing agreements solely or primarily for the purpose of achieving compliance with the first interim compliance deadline of the Stage 3 transition rules, December 31, 1994. These airplane sharing agreements take several forms, including formal interchange agreements between operators and instances of two or more operators leasing the same airplane from a lessor. This results in the same Stage 3 airplane being counted for compliance by two or more operators, depending on the sharing arrangement. The FAA views this result to directly contradict the intent and objectives the Airport Noise and Capacity Act and its implementing regulations.

Under such arrangements, a single Stage 3 airplane could be used to support the presence of an almost limitless number of Stage 2 airplanes. Allowing a proliferation of such sharing arrangements for the purpose of noise rule compliance can be expected to result in the delay of Stage 2 airplane retirement or modification by the participating operators. Such delays not only reduce the anticipated benefits of the Congressionally mandated interim compliance period, but have the more insidious effect of operators further delaying the business and financial decisions and actions necessary to achieve full compliance by 1999. If these paper-only compliance situations

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are allowed to continue, the FAA foresees that the underlying delays and failures to plan and implement real compliance may easily result in an unacceptable level of actual compliance and a large number of waiver applications based on arguments of financial hardship, and airplane and hushkit unavailability as participating operators are forced into complete compliance at the last minute.

Accordingly, the FAA is formally notifying operators of its policy that an individual Stage 3 airplane may be counted only in the fleet of one operator for purposes of compliance with the Stage 3 transition rules, regardless of the number of operators participating in the use of the airplane. This single counting does not affect the actual use of airplanes under interchange agreements; they may simply only be counted in the fleet of one of the participating operators for noise compliance purposes.

Policy Statement

For the purpose of compliance with §§ 91.865 or 91.867, the FAA will not count an individual Stage 3 airplane in the fleet of more than one operator.

This policy statement does not effect any operator's compliance with the December 31, 1994, compliance date. Thus, if an operator used shared airplanes to achieve compliance in 1994, that compliance is considered valid until December 31, 1996.

After the effective date of this policy, however, an operator may not use any type of airplane sharing agreement, regardless of the date of the agreement, to increase the number of Stage 2 airplanes it operates. As an example, a new entrant's fleet consists of three Stage 2 airplanes, and two Stage 3 airplanes that are also on the operations specifications of another operator. For purposes of the December 31, 1994, compliance date, that new entrant will be considered in compliance. However, that new entrant operator may *not* use the presence of the two shared Stage 3 airplanes to support the addition of three more Stage 2 airplanes to its fleet after the date of this policy statement, even though, with the addition, it would "remain" in compliance with § 91.867 by maintaining a fleet that is 25% Stage 3 airplanes. The FAA will not allow the presence of "shared" Stage 3 airplanes act as support for additional Stage 3 airplanes after the effective date of this policy.

The above example presumes that the new entrant attempting to add Stage 2 airplanes is not the operator that is claiming the Stage 3 airplane as its own. If the FAA finds a Stage 3 airplane that is reported in the fleet of more than one operator, the FAA will not count it in the fleet of any of the reporting operators for noise compliance purposes until the airplane is declared by one of the operators as belonging in its fleet alone. The FAA will not mitigate disputes between operators involved in any airplane sharing agreement. The FAA presumes that the operators involved in a shared airplane agreement will reach their own agreement on which operator gets to count the airplane for compliance purposes. While the FAA anticipates that in most cases the reporting operator will be the owner of lessor under an interchange agreement, any agreement between the sharing operators that results in one operator counting the airplanes is acceptable to the FAA.

Most importantly, for purposes of the December 31, 1996, interim compliance deadline, no shared airplanes will be allowed to count in the fleet of more than one operator, regardless of the date of the sharing agreement, and regardless of whether the shared arrangement was found valid for compliance with the 1994 compliance date. Thus, operators that achieved compliance with the 1994 compliance date by means of shared Stage 3 airplanes are under notice that the continuation of the same arrangement or any new arrangement will not support compliance in with the December 31, 1996, requirement.

The FAA is formally publishing this policy at this time to give all affected operators the maximum amount of time to achieve compliance with the December 31, 1996 compliance date without the use of shared Stage 3 airplanes. As stated previously, the FAA has only very recently become aware of these arrangements and their use for compliance as the required reports for 1994 have been filed and analyzed, and it is only recently that the FAA has determined the serious negative consequences of allowing such practices to continue. However, the FAA determined that, in the interest of fairness and the lack of a formal written policy before this date, such agreements that were used to comply with the 1994 compliance date would not be disallowed retroactively. This policy statement is intended to prevent the further use of such agreements for noise compliance manipulation and preclude the proliferation of such agreements as the perceived "benefit" is realized.

Shared Stage 2 Airplanes

The FAA is also aware that there are existing sharing agreements for Stage 2 airplanes that result in Stage 2 airplanes being listed on the operations specifications of more than one operator. To further the goals of the ANCA and its implementing regulations, the FAA will continue to count a Stage 2 airplane as part of the fleet of each of the operators sharing it. This is the method used in the compliance calculations for the 1994 compliance date, and will not affect the actual use of any such shared Stage 2 airplane by the participating operators

Further, if a shared Stage 2 airplane was used to establish base level in the fleet of more than one operator by means of its presence on the operations specifications of the sharing operators during the appropriate period, the establishment of such base level is not affected. If the shared Stage 2 airplane is eliminated from one or all of the fleets of the operators participating in the sharing agreement, that removal may count for compliance purposes for all of the operators that remove it from their operations specifications.

In the event that any operator participating in the sharing of a Stage 2 airplane restricts its operations specifications to preclude the operation of that airplane into the contiguous United States. To achieve compliance, all other participating operators are also precluded from operating that airplane in the contiguous United States.

These policies concerning Stage 2 and Stage 3 airplanes apply to all operators of aircraft affected by the Stage 3 transition regulations, regardless of whether the operators are U.S. or non-U.S., and regardless of the level of formality of the agreement under which the subject airplanes are shared.

Comments concerning the effect of this policy on individual operators and their compliance with the Stage 3 transition regulations should be submitted to the docket established for this policy statement; the FAA will consider all comments received and refine the policy if warranted. Operators that have individual questions concerning the effect of this policy on their operations and compliance may submit written inquiries to the individual listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above

Issued in Washington, DC on March 9, 1995.

Paul R. Dykeman,

Acting Director of Environment and Energy

[FR Doc. 95–6224 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD05–94–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Spa Creek, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final the interim rule published in the **Federal Register** on August 29, 1994, changing the regulations governing the SR 181 bridge over Spa Creek, mile 0.4, in Annapolis, Maryland, by restricting the number of bridge openings during the boating season between the hours of 7:30 p.m. to 7:30 a.m. This is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: This rule is effective on April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: Drafting Information: The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Christopher A. Abel, Project Attorney, Fifth Coast Guard District.

Regulatory History

On August 29, 1994, the Coast Guard published an interim final rule with request for comments entitled Spa Creek, Maryland, in the **Federal Register** (59 FR 44315). The comment period ended October 28, 1994. The Coast Guard received no comments on the interim final rule.

Background and Purpose

The Maryland Department of Transportation requested further regulation of the drawbridge across Spa Creek, mile 0.4, at Annapolis, Maryland, during the evening hours during the boating season. The Coast Guard is restricting the number of openings for the passage of vessels from May 1 to October 31 from 7:30 p.m. to 7:30 a.m., Monday through Friday, except Federal holidays.

The previous regulation published in the **Federal Register** (55 FR 4604) on February 9, 1990, stated that the draw shall open on signal for the passage of vessel traffic from May 1 to October 31 from 7:30 p.m. to 7:30 a.m., Monday through Friday, except Federal holidays. Public Notice 5–709 issued March 7, 1990, incorrectly stated that from May 1 to October 31 from 7:30 p.m. to 7:30 a.m. the draw would open for vessel traffic on the hour and half-hour. The State Highway Administration, Maryland Department of Transportation, has been operating the draw according to the schedule published in this public notice since early 1990.

They wish to continue operating the bridge on the hour and half-hourly schedule from 7:30 p.m. to 7:30 a.m. published in the public notice, as opposed to the "open on signal" schedule published in the Federal regulation. The Coast Guard has not received any complaints from the boating community, and the operating schedule has been posted on the bridge.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

Accordingly, the interim rule amending 33 CFR part 117 which was published at 59 FR 44315 on August 29, 1994, is adopted as a final rule without change.

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–6153 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC20

Grand Teton National Park, WY; Mountain Climbing and Winter Backcountry Trip Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is eliminating registration and check out requirements for climbing and off trail travel above 7,000 ft., and for winter travel in Grand Teton National Park. Existing regulations requiring climbers, off trail hikers, and winter travel users to register and check out upon completion of their activity were intended primarily to provide information necessary to initiate search and rescue responses. Actual experience over the years has shown that the

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intended purpose of these regulations has not been achieved. Nearly all search and rescue responses are generated by reports from sources other than the check out system. Instead of aiding rescuers, these regulations burden park rangers with the task of checking on countless cases of climbers and backpackers who failed to check out. These regulations have been enforced selectively for several years, where local climbers and guides have not been forced to register because of an assumed expertise and knowledge of the local area. The deletion of these regulations will not eliminate visitor protection services provided by park personnel.

EFFECTIVE DATE: The final rule becomes effective April 13, 1995.

ADDRESSES: Comments should be addressed to: Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, WY 83012.

FOR FURTHER INFORMATION CONTACT: Colin W. Campbell, Law Enforcement Specialist, Grand Teton National Park, Telephone: 307–733–2880.

SUPPLEMENTARY INFORMATION:

Background

The existing National Park Service (NPS) special regulations that pertain to mountain climbing, off trail travel, and winter travel trips in Grand Teton National Park are codified at 36 CFR 7.22 (f) and (g). They require all technical climbers, off trail travel, and winter travel users to register or check in prior to undertaking these activities and to check out with a ranger upon completion of the activity. The original intent was primarily to provide park search and rescue personnel with the knowledge that a park user was in essence overdue from a potentially dangerous activity. In reality, almost all perceived overdue parties concerned climbers and backcountry users failing to properly check out. In addition, the vast majority of winter travelers either ignore or do not know of the requirement to register, and strict enforcement of this regulation has not been done for several years. The result has been a combination of non-compliance, failure to check out, failure to contact a ranger in a timely manner and wasted time and energy on the part of the park staff administering the system. After working with these restrictions since promulgation it has been determined that they are not achieving their original purpose of saving lives by alerting search and rescue personnel. In reality, almost all park search and rescue efforts are the result of initial reports by climbing partners, other park backcountry users, friends or relatives.

The NPS believes the deletion of these rules will make the management of mountain climbing and winter backcountry trips more consistent with the practices of both State and Federal agencies whose lands are contiguous with Grand Teton National Park. Overnight backcountry trips will continue to be regulated by general camping regulations at 36 CFR 2.10.

A voluntary registration system will be available to climbers and backcountry travelers who choose to use it. The exchange of information between climbers, off-trail hikers, winter travelers and park rangers will still be available and encouraged without mandating it through regulation. Furthermore, the park staff will be educating park users to leave trip information with family or friends, shifting responsibility for trip planning onto the park user.

A proposed rule was published May 13, 1994 in the **Federal Register** (59 FR 25001). In addition to the **Federal Register**, a press release concerning the proposed change was released in the Jackson, Wyoming area, as well as local climbing shops and guides being notified of the proposed change. No responses were received during the following 30-day public review and comment period. Consequently, the rule promulgated here is the same as the one proposed.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this final rule to the address noted at the beginning of this rulemaking. Grand Teton National Park staff will also be making public notices in local papers and contacting representatives of the local climbing community.

Drafting Information: The primary authors of this proposed rule are Colin W. Campbell, Law Enforcement Specialist and Mark L. Magnuson, Jenny Lake Sub-District Ranger.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), because it deletes an existing requirement and gives more discretion to the park visitor.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to;

(a) Increase public use to the extent of compromising the nature and character of the area causing physical damage to it:

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.22, paragraphs (f) and (g) are removed, and paragraphs (h) and (i) are redesignated paragraphs (f) and (g) respectively.

Dated: January 24, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–6241 Filed 3–13–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL63–3–6803; FRL–5170–5]

Approval and Promulgation of Implementation Plan; State of Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 13, 1994, the United States Environmental Protection Agency (USEPA) published direct final rulemaking approving 1990 base year ozone precursor emissions inventories for the Chicago, Metro-East St. Louis, and Jersey County, Illinois ozone nonattainment areas as a revision to the Illinois State Implementation Plan (SIP). On the same day, a proposed rule was also published which established a 30-day public comment period, noting that, if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final rule and publish an additional final rule to address the public comments. Adverse comments were received during the public comment period. This revised final rule summarizes the public comments and USEPA's responses and finalizes the approval of the 1990 base year ozone precursor emissions inventories for the Illinois ozone nonattainment areas.

EFFECTIVE DATE: This action will be effective April 13, 1995.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 1990 base year emissions inventories discussed in this rule were submitted by the Illinois Environmental Protection Agency (IEPA) on November 12, 1993 in compliance with the requirements of section 182(a)(1) of the Clean Air Act (Act). The emission inventory submittal covers the emissions of Volatile Organic Compounds (VOC), Oxides of Nitrogen (NO_x), and Carbon Monoxide (CO) for the following ozone nonattainment areas: Chicago (Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County); Metro-East St. Louis (Madison, Monroe, and St. Clair Counties); and Jersey County. In addition to emissions from the nonattainment areas, the submittal also covers VOC, NO_x, and CO emissions from major stationary sources located within 25 miles of the ozone nonattainment areas. The focus of this rulemaking is the ozone precursor emissions in the ozone nonattainment areas.

On September 13, 1994 (59 FR 46920), USEPA published a direct final rule approving the emissions inventories as a revision of the Illinois ozone SIP. On the same day, USEPA published a proposed rule (59 FR 46948) noting that if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final and publish another final rule addressing the public comments. Adverse comments were received regarding the direct final rule. This subsequent final rule addresses the adverse comments and announces USEPA's final action regarding Illinois' base year ozone precursor emission inventories.

II. Public Comments

The following discussion summarizes the comments received regarding the emissions inventories and the USEPA responses to those comments. All comments were included in a single set of comments submitted jointly by the American Lung Association of Metropolitan Chicago and the Citizens Commission for Clean Air in the Lake Michigan Basin.

Comment: The commenters note that air quality monitoring and modeling performed by the Lake Michigan Air Directors Consortium (LADCO) indicates that the Chicago area emissions inventory underestimates VOC emissions by as much as 1.5 times and overestimates NO_x emissions. VOC speciation profiles indicate that the inventory is underestimating mobile and/or area source emissions.

The commenters point out that the accuracy of the emissions inventory is critical since it is difficult to solve an ozone attainment problem when the source of the problem is not understood. Errors in the emissions inventory could lead to errors in the calculated emission reduction requirement (both in total and by source category) and the efficacy of the VOC versus NO_x controls, all of which are important issues in the Lake Michigan Basin.

The commenters note that monitoring data contradicting emission inventories is not unique to northeastern Illinois, suggesting that there may be a fundamental flaw in the process recommended by the USEPA for developing emission inventories. The commenters state that the USEPA should act to resolve these problems immediately. Furthermore, the inventories should be adjusted to be consistent with convincing monitoring data like those collected by LADCO.

Response: The USEPA is aware of the monitoring data collected during the Lake Michigan Ozone Study (LMOS) and their implications regarding the emissions inventory. The data imply that VOC emissions in the LMOS domain, and particularly in the Chicago and Milwaukee ozone nonattainment areas, are underestimated or that NO_x emissions are overestimated. It is noted, however, that these monitoring data are not sufficient in quantity and detail to allow detailed, source category-specific corrections to the emissions inventory. The data imply that the States and the USEPA should continue to pursue improved emission inventory techniques.

It is further noted that the LMOS States (Illinois, Indiana, Michigan, and Wisconsin) have pursued improvements in the emissions inventories subsequent to the submittal of the 1990 base year emissions inventories. These emissions inventory improvements have led to significantly improved agreement with the monitoring data collected during the LMOS. The emissions data to be used in the Lake Michigan Ozone Control Program (LMOP) (the modeling analysis conducted to select emission control measures, to assess the merits of VOC versus NO_x controls, and to demonstrate attainment of the ozone standard in the LMOS/LMOP modeling domain) agree favorably with the monitoring data. Some changes in the base year emissions inventories are expected to result from this process. These changes will be assessed by the USEPA when the demonstrations of attainment are submitted. If significant changes in the base year emissions inventories are implied by the modeling input data, the USEPA may consider requesting the States to revise the base year emission inventories approved previously by the USEPA. Alternatively, with concurrence from the State, the USEPA may

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rulemake to revise the approved base year emissions inventories at the same time that the USEPA acts on the demonstration of attainment.

Because the State followed USEPA guidelines in preparing the emission inventories covered in this rulemaking, the USEPA does not believe it is appropriate to disapprove the base year emissions inventories at this time. Such a disapproval would not be adequately supported by the monitoring data collected during the LMOS.

Comment: LADCO monitoring and speciation data indicate that mobile source emissions are underestimated in the Chicago area emissions inventory. A contributing factor may be inaccurate speed data. In comments addressing the conformity findings for the 1993–1997 and 1994–1998 Transportation Improvement Programs and Transportation System Development Plans, a number of organizations identified problems with the Chicago Area Transit Study (CATS) transportation model that could lead to inaccurate speed estimates. The problems identified were:

1. The speeds used to estimate mobile source emissions are not based on actual measurements but instead are a function of applicable speed limits, numbers of traffic lights, type of road, etc. With little or no empirical data to support the speed estimates, they are highly suspect.
2. In order to generate accurate speeds, the model should post-process link speeds.
3. The model should account for intersection delays.

These problems are likely to lead to underestimation of emissions.

Other model deficiencies may have skewed speeds in a manner that resulted in overestimation of emissions or had no effect on emissions. For example, the model should feed trip times back to the mode choice and trip distribution portions of the model to account for persons who choose a different mode or avoid congested areas. The model should also have separate peak and non-peak components that account for drivers taking trips during less congested hours of the day, instead of the fixed time-of-day factors that the model currently uses.

The above problems should be remedied before USEPA gives final approval to the emissions inventory.

Response: It is true that the link speeds given in the transportation model output are not actual measured speeds, but rather "impedances" with the dimensions of speed that are used to make the model's estimated traffic levels balance. Both the IEPA and CATS subjected the CATS network speed (impedance) data, used in the development of the 1990 base year mobile source emission estimates, to considerable scrutiny before they were used in the estimation of emissions. It was determined that the model speed data were representative and could be properly used "as is."

As described in the emissions inventory documentation, the IEPA checked the model link speeds by road type and found them to be reasonable and representative. In particular, model speeds were checked by road type under free and congested conditions. Model speeds were, in general, less under congested conditions than under free flow conditions; and average speeds for different road types differed as expected. Local streets had the lowest average speeds, typically in the 20 to 35 mile per hour range, while rural interstates had the highest average speeds, up to 65 miles per hour. Speeds on very congested streets were below 10 miles per hour, as would be expected during "rush hour" periods. Model speeds for most roads, except interstates and freeways, were in the 25 to 45 mile per hour range. The model speeds for each roadway type agree broadly with speeds observed on roads of that type both in Chicago and elsewhere. It should be noted that the transportation model used by CATS takes intersection delays into account.

With regard to the comments concerning the overestimation of emissions, CATS has recently introduced a modeling method of feeding trip times back into the mode choice and trip distribution parts of the transportation model. In addition, CATS has introduced the use of peak and off-peak modeling components. These new model features have had a negligible effect on the model output.

Comment: Accurate emissions are missing for the following source categories:

1. Publicly Owned Treatment Works (POTWs);
2. Hazardous Waste Landfills;
3. Municipal Landfills;
4. Leaking Underground Storage Tanks (LUSTs);
5. Lawn Care Pesticide Applications;
6. Agricultural Burning;
7. Catastrophic/Accidental Releases;
8. Waste Disposal Incinerators; and
9. Small (10 to 25 tons per year) VOC-emitting Facilities.

Response: Each of the source categories are individually responded to below:

Publicly-Owned Treatment Works

The Publicly-Owned Treatment Works (POTW) category was treated by the IEPA as a point source category and not as an area source category in the Chicago ozone nonattainment area. A total of 62 POTW facilities were addressed in the Chicago nonattainment point source inventory.

The IEPA estimates were primarily based on data obtained from the IEPA's Division of Water Pollution Control, which issues permits to all POTW facilities. The permit files contain facility-specific data including, but not limited to, a facility's monthly average flowrates and the location of the facility. Other information not obtained from the permit files, such as industrial wastewater contribution, were either directly solicited from the facilities themselves or were given a default value consistent with the recommendations of the USEPA based on the guidelines contained in Procedures for the Preparation of Emission Inventories for Precursors of Ozone, Volume I (EPA–450/4–88–021). The emissions inventory documentation submitted by the IEPA contained a detailed discussion of IEPA's emission estimation methodology for this source category.

Hazardous Waste Landfills and Municipal Landfills

The Chicago ozone nonattainment area emissions inventory includes emissions for landfills within the point source emissions inventory rather than as an area source category. The IEPA used information from the IEPA Division of Land Pollution Control to determine the size, type, age, and location of landfills in the Chicago nonattainment area. In cases where some of the information was missing, estimates were based on the best available information. The emissions inventory contains emissions estimates for 229 landfills with a total of 4.59 tons per day of VOC emissions.

Calculation of landfill emissions was based on the 1988 document, *Air Emissions from Municipal Solid Waste Landfills—Background Information for Proposed Standards and Guidelines.* An emission factor of 35.36 tons VOC per year per million tons of refuse was used in the emission estimations. This was based on a recommended emission factor of 13.6 tons VOC per year per million tons of refuse multiplied by 2.6 to account for the fact that the Chicago area receives more than 23 inches of precipitation per year.

Catastrophic/Accidental Releases and Leaking Underground Storage Tanks

Catastrophic/accidental releases were not included in the Chicago nonattainment area inventory due to the lack of USEPA emission inventory guidance for this source category and the lack of available data. In addition, note that the USEPA guidance requires that the emissions be estimated for a typical ozone season weekday. Since such releases are random and the extent of emissions can not be calculated, the IEPA, with concurrence from the USEPA, did not include emissions from this category in the emissions inventory.

There is a similar lack of information regarding VOC emissions from Leaking Underground Storage Tanks (LUSTs). Although information on the location of LUST cleanups is available, quantifying the VOC emissions resulting from the leaks and from the cleanup operations is complicated by the lack of information on the amount of gasoline or other volatile materials released, the amount of material that has reached the water table, and the amount of material that has been trapped in the soil. The USEPA concurs with the omission of these emissions given the lack of data.

Lawn Care Pesticide Applications

The IEPA did not calculate these emissions due to a lack of available USEPA guidance for this source and to a lack of available data. In addition, the IEPA believes that such emissions are already accounted for under the household pesticide subcategory of the commercial/consumer solvents category. The USEPA concurs with the omission of these emissions given the lack of data and guidance.

Agricultural Burning

Agricultural burning was not considered to be significant summertime source of VOC emissions in the Chicago ozone nonattainment area since such burning occurs primarily outside of the summer months. The Chicago nonattainment area does contain VOC emissions resulting from forest fires as well as from burning of landscape waste under the open burning category.

Waste Disposal Incinerators

The Chicago nonattainment area emissions inventory includes VOC emissions from waste disposal incinerators. The summary of these emissions can be found in Table 2–2 of the Chicago area emissions inventory submittal under the category, Municipal Waste: Combustion. This category summarizes the point source inventory for Commercial/Institutional, Governmental, and Industrial Waste Incineration. There are a total of 121 source facilities in this category, emitting a total of 1.62 tons VOM per day.

Small (10 to 25 Tons Per Year) VOC-Emitting Facilities

The Chicago nonattainment area point source emissions inventory includes emissions from small facilities emitting less than 25 tons VOC per year. All permitted emission sources were included in the point source emissions inventory regardless of their size. The emissions inventory includes source facilities with emissions as low as 0.01 tons per day or 0.1 pounds per hour. Although these facilities were not individually documented in the major source summary documentation of the emissions inventory submittal, their emissions were totalled in the appropriate activity-related source categories.

Comment: An area of concern is the lack of rule effectiveness factors for many source categories in the emission inventories. For sources that do have rule effectiveness estimates, there is little information explaining how the estimates were selected.

Response: As noted in the emission inventory documentation, the State assumed a default rule effectiveness of 80 percent for most source categories, as recommended in USEPA guidelines. A rule effectiveness of 100 percent was used for sources that estimated emissions using direct measurement methodologies, such as mass balance. These procedures comply with Illinois' Inventory Preparation Plan, previously approved by the USEPA.

The State, as part of the LMOS, determined facility-specific rule effectiveness levels for major facilities with emission control efficiencies in excess of 95 percent. All non-studied facilities with emission control efficiencies in excess of 95 percent were assumed to have rule effectiveness levels equal to the median rule effectiveness determined in the facility-specific study, approximately 92 percent. The study-parameters and results were included in documentation referenced in the emissions inventory submittal. The USEPA has reviewed this documentation, and has determined it to be acceptable. Therefore, the State has taken an acceptable approach to applying rule effectiveness and has adequately documented this approach and the resulting rule effectiveness estimates.

Comment: The use of questionable population-based emissions factors appears to have contributed to low emission estimates for some area sources. For example, estimates of graphic arts, auto body refinishing, and non-road construction equipment VOC emissions are significantly lower per capita than for other urban areas. Given that additional controls on area sources, are likely to be included in Illinois' attainment plan, accuracy of the area source emissions is especially important.

Response: With regard to the graphic arts category, USEPA guidelines, as used by the IEPA, recommended the use of population-based per capita emission factors to estimate county total graphic arts emissions. However, since the Illinois point source emissions inventory contains emissions from graphic arts facilities, the IEPA followed USEPA guidelines and subtracted point source emissions for this source category from the calculated area source emissions total. This subtraction is performed to avoid double counting of emissions. If one compares the total of point and area source emissions for this source category on a per capita basis with similar emission rates for other major areas, one would find better agreement. The low area source per capita emission rate is an artifact of the thoroughness of Illinois' point source emissions inventory.

Regarding the automobile refinishing area source category, emissions were not estimated using only a population-based emission factor. The Chicago automobile refinishing area source emission estimates were determined by apportioning national automobile refinishing activity data, such as the amount of coating usage, to the Chicago area on the basis of population. This method was chosen, with the approval and support (through the use of a USEPA contract) of the USEPA, to better quantify the emissions from different operations involved in automobile refinishing and for better estimation of emission reductions resulting from required controls. The method employed would lead to per capita emission rates differing from those in urban areas where a strict per capita emission rate were used. The directionality of the differences does not imply that the technique used by the IEPA is in error.

Regarding emissions from non-road construction equipment, it must be noted that IEPA simply used emission estimates provided by USEPA's Office of Mobile Sources. In 1991, the USEPA issued an emissions inventory for each of the ozone and carbon monoxide nonattainment areas. The IEPA used the emissions inventory provided by the USEPA for the Chicago ozone nonattainment area. Given the detail of the data used and the extent of the quality assurance of this emissions inventory, the IEPA believes, and the USEPA agrees, that no better estimate of

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non-road construction equipment emissions is available at this time and that the current emissions estimate is appropriate. It is additionally noted that the emissions inventory submitted by the IEPA incorporated by reference the documentation of the non-road construction equipment emissions estimates supplied by the USEPA.

Comment: The commenters note that the emissions for railroads and airport lack documentation. In addition, the commenters note that, given that a high speed rail and a third airport are both under consideration for the Chicago area, this lack of documentation is especially troublesome.

Response: Discussion of the estimation procedures used for railroad and airport emissions is contained on pages 196 through 221 of the Chicago emissions inventory documentation submitted to the USEPA. The discussion of railroad emissions includes an estimate of statewide railroad fuel usage, which was apportioned to the nonattainment area counties based on the county to State ratios of railroad track mileage. The county fuel usage figures were then multiplied by a per unit fuel usage emission rate factor. This approach is acceptable to the USEPA.

The method used for airport emissions evaluated commercial aircraft activity at O'Hare and Midway Airports on an aircraft engine-specific basis incorporating modal emission rates. The modal emission rate for each engine is a function of the amount of fuel burned for each of the four modes power settings. The four modes are taxi/idle, takeoff, climbout, and approach. Emissions were estimated for approximately 60 different commercial engine types. Emissions from the remaining aircraft categories, military and general aviation, were estimated based on the number of landing and take-off (LTO) cycles of each aircraft type. These LTO cycles were also the basis of the emissions estimates performed for all of the other airports in the Chicago ozone nonattainment area. These estimation procedures were documented in IEPA's emissions inventory submittal and were found to be acceptable by the USEPA.

III. Final Rulemaking Action

The State of Illinois has met the requirements [section 182(a)(1)] of the Act for the submittal of base year ozone precursor emissions inventories. The USEPA approves the State's 1990 base year ozone precursor emission inventories for the Chicago, Metro-East St. Louis, and Jersey County ozone nonattainment areas.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 15, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This section may not be callenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (i) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(i) The base year (1990) ozone emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for the following Illinois ozone nonattainment areas: the Chicago nonattainment area—Cook, DuPage, Kane, Lake, Will and McHenry Counties, Aux Sable and Gooselake Townships in Grundy County, and Oswego Township in Kendall County; the Metro-East St. Louis nonattainment area—Madison, Monroe, and St. Clair Counties; and Jersey County.

[FR Doc. 95–6161 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[IL80–3–6838; FRL–5170–4]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On November 25, 1994, USEPA proposed to approve a State Implementation Plan (SIP) request to redesignate the Jersey County, Illinois marginal ozone nonattainment area to attainment of the public health based ozone air quality standard. The USEPA also proposed approval of the accompanying maintenance plan as a SIP revision. The redesignation request and maintenance plan were submitted by the Illinois Environmental Protection Agency (IEPA) on November 12, 1993.

The State has met the requirements for redesignation contained in the Clean Air Act (Act). The redesignation request is based on ambient monitoring data that show no violations for the ozone National Ambient Air Quality Standard during the three-year period from 1990 through 1992. Public comments were solicited on the redesignation request, maintenance plan and on USEPA's proposed action. No public comments were received.

EFFECTIVE DATE: This final rule becomes effective on April 13, 1995.

ADDRESSES: Copies of the SIP revision relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 (312) 886–6057.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the IEPA submitted a redesignation and maintenance plan for Jersey County as a requested SIP revisions. The IEPA has requested that Jersey County be redesignated to attainment for ozone.

On November 6, 1991 (56 FR 56694), the USEPA formally designated Jersey County as a marginal ozone nonattainment area. This classification and designation was based on a monitored violation of the ozone National Ambient Air Quality Standard in Jersey County in 1988.

Jersey County is a rural county located approximately 25 miles north of St. Louis, Missouri. Based on the 1990 census, the population of Jersey County is 20,539, with the largest urban population being that of Jerseyville, with a population of approximately 8,000.

On November 25, 1994, (59 FR 60577) the USEPA proposed approval of the SIP revision request to redesignate the Jersey County, Illinois ozone nonattainment area to attainment and the accompany maintenance plan. Please refer to the November 25, 1994, **Federal Register** (59 FR 60577) and the July 8, 1994, technical support document for additional information on this final rule.

With respect to the requirement of section 172(c)(3), the USEPA notes that the State of Illinois has developed and submitted the required emissions inventory, which section 182(a)(1) required to be submitted by November 15, 1992. On September 13, 1994, USEPA proposed approval of the emissions inventory for Jersey County (59 FR 46920). Elsewhere in this **Federal Register**, the USEPA has taken final action on Illinois' Emissions Inventory SIP revision request, including that portion for Jersey County.

Public Comments

The public comment period for the November 25, 1994 (59 FR 60577), notice of proposed rulemaking to approve the redesignation request for Jersey County closed on December 27, 1994, and no comments were received.

Final Rulemaking Action

The USEPA is approving the redesignation of Jersey County to attainment for ozone because the State of Illinois has met the requirements of the Act revising the Illinois ozone SIP and is approving the maintenance plan as a revision to the SIP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 23, 1995.

Robert Springer,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (h) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(h) Approval—On November 12, 1993, the Illinois Environmental Protection Agency submitted an ozone redesignation request and maintenance plan for Jersey County ozone nonattainment area and requested that Jersey County be redesignated to attainment for ozone. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(d) of the Act. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Illinois ozone State Implementation Plan for Jersey County.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

2. In § 81.314 the ozone table is amended by revising the entry "Jersey County Area" to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Jersey County Area Jersey County	[2]	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.
[2] April 13, 1995.

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[FR Doc. 95–6160 Filed 3–13–95; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 5

[ET Docket No. 93–266; FCC 95–80]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Second Report and Order, the Commission modifies certain rules regarding its pioneer's preference program. This action is intended to increase the efficiency of the program by making it better comport with competitive bidding authority and the Commission's experience administering it.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, adopted February 28, 1995, and released March 1, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Second Report and Order

1. In the Notice of Proposed Rule Making (Notice) in this proceeding, 58 FR 57578 (October 26, 1993), the Commission sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and its experience administering them, or whether these rules should be repealed. In the Notice, the Commission proposed to eliminate the current policies of issuing public notices specifying pioneer's preference filing deadlines, considering raw experimental license material that relates to preference requests, and making initial determinations on preference requests. The Commission also proposed to limit acceptance of preference requests to services that use new technologies and proposed that preference requests be filed prior to a notice of inquiry (NOI) in a proceeding that addresses a new service or technology, if such a document is issued in advance of a notice of proposed rulemaking (NPRM), rather than the current policy of allowing requests to be filed after an NOI but prior to an NPRM. In the First Report and Order, 59 FR 8413 (February 22, 1994), the Commission determined that it would not apply amendments to its rules to three proceedings in which tentative pioneer's preference decisions had been issued.

2. In the Second Report and Order, the Commission determined that the pioneer's preference program should be retained, but it decided to eliminate its current policies of issuing public notices specifying filing deadlines, considering raw experimental license material that relates to preference requests, and making initial determinations on preference requests. These requirements were originally imposed to ensure a complete record in all pioneer's preference proceedings, but the Commission said that eliminating them would result in a more efficient process with no detriment to the public. The Commission also adopted its proposal to require that preference requests be filed prior to an NOI, if such a document is issued in advance of an NPRM. The Commission stated that deferring the filing deadline to the NPRM stage in cases in which an NOI has been issued may encourage speculative preference requests. Finally, in response to comments to the Notice, the Commission required that any preference grant be conditioned on use of the technology and system for which the preference was awarded.

3. The Commission did not adopt its proposal to limit acceptance of pioneer's preference requests to services that use new technologies. It said that while a pioneer's preference should not be awarded simply for transferring technologies from existing services in one band to similar services in another band, a significant enhancement of an existing service, under some circumstances, could be achieved by combining existing technologies in new and innovative ways. The Commission also noted that the recently-enacted General Agreement on Tariffs and Trade (GATT) legislation provides that preferences be awarded for significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

4. Additionally, the Commission decided that in services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences will be required to pay for their licenses in accord with the payment formula specified in the GATT legislation. The GATT legislation mandates that recipients of preferences in service in which licenses are awarded by competitive bidding and whose requests were accepted for filing after September 1, 1994, pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. The Commission said that it will also use this formula for any future grants of pioneer's preference requests accepted for filing on or before September 1, 1994 and—in accord with the GATT legislation—will determine comparable licenses on a case-by-case basis.

5. Accordingly, *it is ordered* That Parts 1 and 5 of the Commission's Rules are amended as specified below, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 5

Radio.

Federal Communications Commission
William F. Caton,
Acting Secretary.

Amendatory Text

Parts 1 and 5 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Implement 5 U.S.C. 552 and 21 U.S.C. 853a unless otherwise noted.

2. Section 1.402 of this chapter is amended by revising paragraphs (c), (d), (e), and (g), redesignating paragraph (f) as new paragraph (h), and adding new paragraph (f) to read as follows:

§ 1.402 Pioneer's preference.

* * * * *

(c) Pioneer's preference requests relating to a specific new spectrum based service or technology will not be accepted after the Commission's Sunshine Notice is issued announcing initiation, by either a notice of inquiry or notice of proposed rule making that will be considered by the Commission at a public meeting, of a proceeding pertaining to that service or technology. Alternatively, if the Commission initiates a new proceeding pertaining to a specific new spectrum-based service or technology by notation, pioneer's preference requests will not be accepted after such notice is submitted to the Commission for vote.

(d) Pioneer's preference requests complying with the requirements and procedures in paragraphs (a) through (c) of this section will be accepted for filing and listed by file number in a notice of proposed rule making addressing the new service or technology proposed in the request, if such a notice of proposed rule making is adopted. A final determination on a request for pioneer's preference and its scope will normally be made in a report and order adopting new rules for the service or technology proposed in the request, if such rules are adopted. If awarded, the pioneer's preference will provide that the preference applicant's application for a construction permit or license will not be subject to mutually exclusive applications. If granted, the construction permit or license will be subject to the conditions in paragraphs (f) and (g) of this section.

(e) Any interested person may file a statement in support of or in opposition to a request for pioneer's preference listed in a notice of proposed rule making, and a reply to such statements, subject to filing deadlines that shall be published in the notice of proposed rule making. Statements on the merits of pioneer's preference requests must be filed separate from, and not part of, any comments on the rules proposed in the notice of proposed rule making. Statements on pioneer's preference requests will not be accepted prior to issuance of the notice of proposed rule making.

(f) As a condition of its license grant, a pioneer's preference grantee will be required to construct a system that substantially uses the design and technologies upon which its pioneer's preference award is based within a reasonable time, as determined by the Commission, after receiving its license. Failure to comply with this provision will result in revocation of the pioneer grantee's license, and transfer of the license will be prohibited until this requirement is met.

(g) In services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences will be required to pay for their licenses in accord with the payment formula specified in the General Agreement on Tariffs and Trade legislation, Public Law 103–465. This formula requires that pioneers pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Comparable licenses will be determined by the Commission on a case-by-case basis.

* * * * *

3. Section 1.403 is revised to read as follows:

§ 1.403 Notice and availability.

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a "Public Notice" will be issued (by means of a Commission release entitled "Petitions for Rule Making Filed") as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Dockets Reference Center (1919 M Street NW., Room 239, Washington, DC).

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

1. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

2. Section 5.207 is revised to read as follows:

§ 5.207 Experiments performed in conjunction with pioneer's preference applications.

An applicant for a pioneer's preference pursuant to § 1.402 of this chapter may file an experimental license application for a limited geographical area, generally including no more than one Metropolitan Statistical Area. In order to be eligible for a preference at the time of a report and order in a proceeding addressing a new service or technology, the experimental applicant must demonstrate the technical feasibility of its proposal by summarizing its experimental results in its preference application, unless it instead submits an acceptable showing of technical feasibility. If a pioneer's preference applicant wishes the Commission to consider in conjunction with the application experimental material filed subsequent to the application, the applicant must summarize this material and submit the summary to the Commission prior to the Sunshine Notice announcing that a report and order pertaining to the new service or technology will be considered by the Commission at a public meeting, or—if a report and order is considered by notation—prior to submission of the report and order to the Commission for vote. All experimental material must be summarized and its relevance to the pioneer's preference application explained in order for it to be considered by the Commission.

[FR Doc. 95–6081 Filed 3–13–95; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 61

[CC Docket No. 90–132; FCC 95–2]

Competition in the Interstate Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Memorandum Opinion and Order, the Commission responded to petitions for reconsideration filed in response to the Interexchange Order addressing the remaining issues raised on reconsideration. The Interexchange Order examined the state of competition in the interstate interexchange marketplace. At that time, the Commission concluded that most business services were subject to substantial competition, and therefore lifted or streamlined certain regulatory restrictions on AT&T and other Interexchange Carriers (IXCs). In this Memorandum Opinion and Order, the Commission generally affirmed the various regulatory reforms adopted in the Interexchange Order, with certain minor clarifications and modifications.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kevin Werbach at (202) 418–1580, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration adopted January 3, 1995, and release February 17, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M

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Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. On August 1, 1991, the Commission adopted the Interexchange Order (56 FR 55235 (Oct. 25, 1991)), concluding an examination of the state of competition in the interstate interexchange marketplace and adapting its regulatory policies in light of this competition. The Commission in the Interexchange Order found that most business services are subject to substantial competition. Based on this conclusion, the Commission further streamlined its regulation of most of AT&T's business services, while retaining price cap regulation for two services that were found to be less competitive—800 services and analog private line services. The Commission also authorized all interexchange carriers (IXCs) to offer service pursuant to individually-negotiated contract rates that are generally available to similarly situated customers. In addition, the Commission eliminated nondiscrimination reporting requirements for AT&T services subject to further streamlining, and the requirement that AT&T submit annually an independent audit report on its installation and maintenance procedures. Finally, the Commission eliminated the comparably efficient interconnection (CEI) filing requirements and CEI parameters for AT&T's provision of enhanced services that rely exclusively on basic services subject to further streamlining.

2. Eleven parties filed petitions seeking reconsideration of the Interexchange Order. The Commission addressed reconsideration requests relating to the bundling of 800 services and inbound services with other services in prior orders. This Memorandum Opinion and Order on Reconsideration responds to the remaining issues on reconsideration, and reaffirms the Interexchange Order with certain minor modifications.

3. The Commission affirmed its decision to permit IXCs to offer services pursuant to individually-negotiated contracts. The Commission rejected arguments that such "contract carriage" violated the Communications Act of 1934, that contract carriage would lead to predatory behavior by AT&T, that the presumption of lawfulness accorded AT&T's contract-based tariffs was inconsistent with prior Commission statements, that contract-based tariff filings would provide insufficient information about rates, and that additional safeguards should be imposed upon AT&T for its contract-based service offerings.

4. The Commission clarified its decision to apply the "substantial cause" test to tariff revisions that alter material terms and conditions of a long-term contract. In the Interexchange Order, the Commission noted that tariff revisions by dominant carriers altering material terms and conditions of a long-term service tariff are considered reasonable only if the carrier can make a showing of substantial cause for the revisions. The Commission cited earlier decisions as holding that the same test applies to tariff revisions that alter material terms and conditions of a long-term contract. In response to petitions for reconsideration, the Commission first noted that it was unlikely that AT&T would seek to unilaterally modify a contract-based tariff, as such action could damage its relationship with its customers. The Commission then explained that it would consider on a case-by-case basis in light of all relevant circumstances whether a substantial cause showing has been made. The Commission concluded that commercial contract law principles are highly relevant—but not necessarily determinative—to such a decision.

5. The Commission refused to impose additional safeguards to ensure that AT&T's provision of "customized" services, such as Tariff 12 and contract services, does not impede competition in the customer premises equipment (CPE) marketplace. The Commission concluded that no party had demonstrated that customers are unaware of the relevant CPE bundling rules, and that it has not been presented with any evidence that systems integrators have been denied access to customized service arrangements.

6. The Commission modified its decision in the Interexchange Order to eliminate comparably efficient interconnection (CEI) requirements for AT&T's provision of enhanced services that rely exclusively on basic services subject to further streamlined regulation. The Commission concluded that the distinction made in the Interexchange Order between streamlined services that are coupled with nonstreamlined services, and those that are not, was without a valid basis and should be abandoned. Consequently, the Commission lifted CEI requirements for any streamlined service provided by AT&T. AT&T was required to file a CEI plan explaining how it will comply with CEI parameters for nonstreamlined services only, for any enhanced service that AT&T proposes to provide that relies on both streamlined and nonstreamlined services.

7. The Commission denied requests that it prohibit AT&T from including nonstreamlined services in its Tariff 12 offerings, or that the Commission apply its bundling restrictions on 800 and inbound services to other nonstreamlined services. The Commission noted that its rationale for prohibiting AT&T from including 800 and inbound services in future contract-based tariffs or Tariff 12s pending 800 number portability was based on specific findings about AT&T ability to leverage its competitive advantage in the 800 marketplace. There are sufficient distinctions, the Commission concluded, between 800 services and other nonstreamlined services, and between contract-based tariffs and Tariff 12 offerings, to justify the policies adopted in the Interexchange Order.

8. Finally, the Commission addressed concerns related to its treatment of analog private line service. The Commission denied requests to reconsider what it meant by the term "analog private line service." The Commission did, however, order AT&T to remove analog private line services provided to government entities through contractual arrangements from Basket 3. This modification was designed to limit AT&T's ability to subsidize rate decreases in some Basket 3 services with rate increases in other analog private line rate elements. In light of this decision, the Commission recalibrated the price cap index (PCI) and the actual price index (API) for Basket 3 to reflect the removal of all analog private line services provided under contract to government entities from this basket.

Ordering Clauses

1. Accordingly, pursuant to authority contained in sections 1, 4, 201–205, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 405, It Is Ordered that the policies, rules and requirements set forth herein Are Adopted, and Part 61 of the Commission's Rules, 47 CFR Part 61, Is Amended as set forth in below, effective April 13, 1995.

2. It is further ordered That the petitions for reconsideration of AT&T, Ad Hoc, ARINC, Alascom, Broadcast Coalition, Citicorp, CompTel, IDCMA, MCI, Sprint and WilTel are Granted in Part and Denied in Part.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Amendatory Text

Title 47 of the Code of Federal Regulations, Part 61 is amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

2. Section 61.42(b)(3) is revised to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(b) * * *

(3) The business services basket shall contain analog private lines, including analog voice grade private line, unless provided under contract to a government entity, and terrestrial television transmission service.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5786 Filed 3–13–95; 8:45 am]

BILLING CODE 4712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–267]

Organization and Delegation of Powers and Duties Delegations to the Federal Railroad Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule delegates the Secretary of Transportation's authority to the Federal Railroad Administrator to provide financial assistance for high-speed rail corridor planning and technology improvements, to promulgate necessary safety regulations, and to effectuate the redemption of outstanding obligations and liabilities with respect to the Columbus and Greenville Railway. This rule is necessary to reflect the delegation in the Code of Federal Regulations.

EFFECTIVE DATE: This rule becomes effective March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Gareth W. Rosenau, Attorney, Office of Chief Counsel, Federal Railroad Administration, (202) 366–0620, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), (202) 366–9306, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document delegates authority to the Federal Railroad Administrator to implement the "Swift Rail Development Act of 1994," being Title I—High-Speed Rail of Public Law 103–440 (108 Stat. 4615) (the "Act"). The Act provides for high-speed rail assistance for corridor planning and technology improvements and authorizes appropriations for fiscal years 1995 through 1997. The Act provides for the promulgation of such safety regulations as may be necessary for high-speed rail services. The Act also provides for the redemption of outstanding obligations and liabilities with respect to the Columbus and Greenville Railway under sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825 and 831, respectively). Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.49 is amended by adding a new paragraph (jj) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(jj) Exercise the authority vested in the Secretary by the Swift Rail Development Act of 1994, being Title I—High-Speed Rail of Public Law 103–440 (108 Stat. 4615), as it relates to the provision of financial assistance for high-speed rail corridor planning and technology improvements, the promulgation of necessary safety regulations, and the redemption of outstanding obligations and liabilities with respect to the Columbus and Greenville Railway under Sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825 and 831, respectively).

Issued at Washington, DC this 3rd day of March 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–6222 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–87; Notice 2]

RIN 2127–AF03

Federal Motor Vehicle Safety Standards; Metric Conversion

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends selected Federal Motor Vehicle Safety Standards (FMVSS) by converting English measurements specified in those standards to metric measurements. This rulemaking is the first of several that NHTSA will undertake to implement the statutory Federal policy that the metric system is the preferred system of weights and measures for U.S. trade and commerce. The conversions are not intended to change the stringency of the affected FMVSS.

DATES: This final rule is effective March 14, 1996. Optional early compliance with the changes made in this final rule is permitted beginning March 14, 1995.

Petitions for reconsideration of this final rule must be filed by April 13, 1995.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cavey's telephone number is: (202) 366–5271.

SUPPLEMENTARY INFORMATION: Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418), makes it United States policy that the metric system of measurement is the

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preferred system of weights and measures for U.S. trade and commerce. Through Executive Order 12770, Federal agencies were directed to comply with the Act by adopting a conversion schedule for their programs by September 30, 1992. In the April 21, 1992 **Federal Register** (57 FR 14619), NHTSA published for comment its plan to use the metric system in NHTSA programs and included an implementation schedule to convert the Federal Motor Vehicle Safety Standards (FMVSSs). NHTSA projected simple FMVSS conversions would be completed by June 1994, intermediate conversions by December 1996, and the most complex conversions by December 1997. NHTSA described how it would convert English measurements in the FMVSSs to metric measurements.

In response to the plan, NHTSA received five public comments. NHTSA took all comments into consideration in drafting a notice of proposed rulemaking (NPRM) to convert English measurements in selected FMVSS to metric measurements.

Notice of Proposed Rulemaking

NHTSA published on March 15, 1994 (59 FR 11962) a proposal identifying the standards for which NHTSA believed conversions of English measurements to metric measurements would be simple and proposed the appropriate conversions to the metric system. English measurements in the following Federal Motor Vehicle Safety Standards (49 CFR 571 *et seq.*) were proposed to be converted to the metric system: Standard No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect; Standard No. 103, Windshield defrosting and defogging systems; Standard No. 104, Windshield wiping and washing systems; Standard No. 107, Reflecting surfaces; Standard No. 110, Tire selection and rims; Standard No. 112, Headlamp concealment devices; Standard No. 114, Theft protection; Standard No. 115, Vehicle identification number—basic requirements; Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars; Standard No. 124, Accelerator control systems; Standard No. 126, Truck-camper loading; Standard No. 205, Glazing materials; Standard No. 206, Door locks and door retention components; Standard No. 207, Seating systems; Standard No. 212, Windshield mounting; and Standard No. 216, Roof crush resistance.

In the NPRM, NHTSA highlighted three issues for public comment: whether conversions should be exact or equivalent; how consumer information in labels should be converted; and how force measurements should be converted.

Because using values stated in integers would make it easier to make measurements in compliance testing, NHTSA proposed to favor equivalent conversions, not exact conversions. To illustrate the difference between equivalent and exact conversions, an equivalent conversion of two inches would be 50 millimeters, while an exact conversion would be 50.8 millimeters. NHTSA asked the commenters to indicate any instance in which they believed that an equivalent conversion might have a substantive effect on a standard, and requested that the commenters suggest in those instances an exact conversion. With respect to those requirements for which manufacturers have invested in molds and other equipment that produce lettering of very precise sizes, NHTSA proposed exact conversions so that manufacturers would not have to buy new equipment. NHTSA also proposed exact conversions for gross vehicle weight rating (GVWR) measurements, speed measurements in Standard No. 110, Tire selection and rims, and weight load measurements in Standard No. 212, Windshield mounting and retention.

The agency also sought comment on proposed metric conversions of consumer safety information in labels. Certain FMVSSs require labels that state consumer safety information in English measurements. NHTSA was uncertain whether labels with quantitative information stated solely in metric measurements would be understood by American consumers. Therefore, in those instances in which labels or other information are required for consumers' benefit, NHTSA proposed that both the English and metric units be provided. The labels for which dual measurements were proposed were those required by Std. No. 110, Tire selection and rims, Std. No. 120, Tire selection and rims for motor vehicles other than passenger cars, and Std. No. 126, Truck-camper loading. NHTSA also stated its intent to eventually phase out the English measurements on those labels.

Standards Nos. 207, Seating systems and 216, Roof crush resistance establish strength requirements for occupant seats and for the passenger compartment roof, respectively. The force measurements specified in the standards are straightforward enough when stated in English units, since both weight and force are expressed in pounds. However, the metric system expresses mass in kilograms and force in newtons. Consequently, when force pounds are converted to newtons, the force pounds should be multiplied by 4.448. Thus, in converting Stds. Nos. 207 and 216's English system force measurements to the metric system, NHTSA proposed to specify the steps of the conversion in the regulatory text to minimize the chance of a conversion error.

NHTSA also announced that, in the future, it would convert values (expressed in English measurements) in documents incorporated by reference into the FMVSS, to the metric system, on a document-by-document basis.

Public Comments on the NPRM and NHTSA's Responses

In response to the NPRM, NHTSA received comments from 17 commenters. The commenters generally favored the overall philosophy that NHTSA indicated it would follow in converting English measurements in the FMVSSs to metric measurements. Comments on specific English to metric conversions were offered.

1. "Exact" v. "Equivalent" Conversions

In general, the commenters agreed with NHTSA's proposal to use equivalent, not exact, conversions. However, several commenters favored exact conversions. Flxible Corporation preferred exact conversions, explaining that making equivalent conversions in some instances and exact conversions in others could cause confusion. The National Truck Equipment Association (NTEA) stated that exact conversions should be used to eliminate the possibility of a standard's effectiveness being diminished. However, since neither Flxible nor NTEA cited specific instances in which making equivalent conversions instead of exact conversions would cause confusion or would lessen a standard's effectiveness, NHTSA is not adopting their recommendations.

With respect to the conversion of some requirements, commenters favored exact conversions and sometimes provided reasons. Ford and Thomas Built Buses expressed a strong preference for the 10,000 lb. gross vehicle weight rating (GVWR) for vehicles to be converted to 4536 kg. Thomas Built stated that the 36 kg. difference between the exact (4536 kg.) and equivalent (4500 kg.) conversions could determine whether many of their vehicles, particularly school buses, are subject to certain safety standards. Since vehicle GVWR seems to be an instance in which there would be a substantive change if exact conversions were not made in this final rule, NHTSA is (as proposed) converting GVWRs of 10,000 lbs. to 4536 kg. and GVWRs of 6,000 lbs. to 2722 kg.

Nissan stated that in Std. No. 104, Windshield wiping and washing systems, and Std. No. 216, Roof crush resistance, one inch should be converted to the exact value of 25.4 millimeters, not the equivalent value of 25 millimeters proposed in the NPRM. Nissan also stated that in S4. of Std. No. 216, the movement of the test device should be limited to 127 millimeters, not the 125 millimeters proposed in the NPRM. Since Nissan did not explain why the equivalent conversions proposed for Stds. Nos. 104 and 216 would make substantive changes, NHTSA is not adopting Nissan's suggestion to use the exact conversions.

Volkswagen recommended that NHTSA's metric conversions be made in such a manner that they result in the same values as those in the comparable parts of the Canadian Motor Vehicle Safety Standards (CMVSS). As stated in the NPRM, NHTSA will make conversions in accordance with SAE guideline J916 May 1991, and Federal Standard 376B "Preferred Metric Units for General Use by the Federal Government." Where consistent with these two documents, and if the changes do not make substantive changes to the safety standards, NHTSA will make conversions consistent with the CMVSS.

The National Institute for Standards and Technology (NIST) and Ford recommended that, to be consistent with the CMVSS, in Std. No. 110, Tire selection and rims, 60 mph be converted to the equivalent measurement of 100 km/h, not the exact measurement of 97 km/h proposed in the NPRM. However, Chrysler commented that there is a significant difference between 97 km/h and 100 km/h, and that therefore the exact conversion of 97 km/h should be used. Based on Chrysler's comment that there would be a substantive change in Std. No. 110 if an equivalent conversion of 100 km/h were adopted, NHTSA is converting 60 mph to 97 km/h.

2. "Mass" v. "Weight"

Commenters noted that kilograms are measures of "mass," not "weight." Thus, they recommended that all NPRM references to "weight" be changed to "mass." NHTSA acknowledges that commenters on this issue are technically correct. Thus, in instances in which the safety standards use "weight" to mean "mass" in describing compliance testing conditions and procedures, or in other instances in which the standards are primarily directed to engineers or other technically trained persons, NHTSA is revising "weight" in the regulatory text to "mass." As an example, in a test specified in Std. No. 207, NHTSA proposed that the load applied be 20 times the "weight" of the seat. In the final rule, Std. No. 207 is amended to refer to the "mass" of the seat.

However, in instances in which the word "weight" is part of a term defined at 49 CFR part 571.3, such as "curb weight," "gross axle weight rating," "gross vehicle weight rating," or "unloaded vehicle weight," NHTSA is not making the change. In the NPRM, since NHTSA did not propose to amend the terms, adopting the terms "curb mass," "gross axle mass rating," or "gross vehicle mass rating," is outside the scope of this rulemaking. NHTSA will consider amending these terms using "mass" in future rulemakings to metrify the safety standards.

NHTSA is also concerned about the effect of changing from "mass" to "weight." For example, it is not known whether the general public would be confused by use of the phrase "Camper mass is _____ kg" rather than "Camper weight," specified in Std. No. 126. In addition, the States use terms such as gross vehicle "weight" rating as the basis for determining which vehicle registration fees, driver's licensing requirements, and restrictions on use of roads are applicable to particular vehicles. Before making a change from "weight" to "mass," NHTSA wants to obtain public comment and will propose any such changes in future metrication rulemakings.

3. Consumer Information

In general, the commenters favored NHTSA's proposal to use dual English and metric measurements for information intended for consumers. Mr. Lawrence Stempnik noted that the technically correct abbreviations for units of measurement were not provided in Std. No. 126, Truck-camper loading. The California Highway Patrol commented that the units of measurement are intended to provide safety information, not a "metric conversion educational program." NHTSA agrees that there should be no ambiguity in the metric units of measurement on labels that provide safety information to consumers. If unfamiliar terms are spelled out instead of abbreviated, there is less ambiguity and confusion. Thus, NHTSA is not adopting Mr. Stempnik's suggestion for the use of abbreviations, and is instead specifying the units of measurement as "Liters" and "cubic meters," as proposed, rather than the abbreviations "L" and "m^3."

NIST recommended that dual labeling in English and metric units be required for only a limited time, but did not recommend a particular duration for that requirement. In the future, when consumers are familiar with metric measurements and there is no safety need for continuing to provide English measurements on labels, NHTSA expects to phase out the requirement for English measurements.

Mack Trucks and the National Truck Equipment Association had recommendations for metric conversions of certification labels specified in 49 CFR parts 567 and 568. Since the NPRM did not propose changes to parts 567 or 568, these conversions are outside the scope of this rulemaking. However, NHTSA will take these comments into consideration during its review of parts 567 and 568 for conversion to metric measurements.

4. Force Measurements

NHTSA proposed to convert force measurements in Std. No. 207, Seating systems, and Std. No. 216, Roof crush resistance, by specifying the steps of the conversion in the regulatory language. Except for the earlier discussed recommendation to specify "mass" instead of "weight," commenters generally agreed with NHTSA's proposal to specify force measurements in terms of kilograms multiplied by 9.8 to obtain newtons of force. For Stds. Nos. 207 and 216, NIST recommended that the kilograms be multiplied by 10 (rather than 9.8) to facilitate calculations of force. NIST's recommendation will not be adopted because NHTSA is not certain that use of a multiplier of 10 would not substantively change the stringency of tests specified in Stds. Nos. 207 and 216.

Thus, in the final rule, for Std. No. 207, NHTSA amends the force measurement language to provide that the seat shall be subjected to a force in newtons equal to 20 times the mass of the seat, measured in kilograms and multiplied by 9.8. For Std. No. 216, NHTSA amends the force measurement language to provide that the vehicle roof shall be subjected to a force in newtons equal to 1½ times the vehicle mass, measured in kilograms and multiplied by 9.8.

5. Use of Incorporated Documents

In addressing whether values in incorporated documents should be converted, commenters urged NHTSA not to convert English measurements in outdated or superseded SAE Recommended Practices or standards, but to adopt the most recent SAE standards, which often specify metric measurements. NHTSA notes that the comments go beyond the scope of this rulemaking. Nevertheless, when NHTSA decides, on a document by document

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basis, whether to convert incorporated documents to the metric system, it will consider these views.

Effective Date

Chrysler recommended that the metrication changes take effect one year after issuance of the final rule. Chrysler stated that this lead time was necessary so that manufacturers could make the changes, taking into account that label manufacturers "serve all of the vehicle manufacturers." NHTSA concurs that because this final rule will result in many manufacturers having to change labels, a one year lead time is appropriate. Thus, this final rule will take effect one year after it is published in the **Federal Register**. Manufacturers at their option, may comply with the amendments made by this final rule before the effective date.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action was not reviewed under E. O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that it is not "significant." In converting the Federal Motor Vehicle Safety Standards from the English to the metric system, the agency makes conversions that do not substantively change the performance requirements of the FMVSSs. In complying with this final rule, manufacturers providing consumer information (e.g., labeling) may incur one time, additional costs since they would have to change their information to add the metric units. However, the agency believes that the additional costs would be minuscule, since manufacturers already provide consumer information in English units.

NHTSA determines that new labeling requirements in the following three standards would result in minor costs to manufacturers. For Standards Nos. 110 and 120, NHTSA estimates that changing the molds of non-pneumatic tires would initially cost $300,000 per year for the industry, or a few cents per tire. After the initial changes in the molds, further costs would be negligible. For Standard No. 120, NHTSA estimates that requiring the tire information label to have both English and metric units would increase costs by about one cent per motor vehicle, for vehicles other than passenger cars. The total cost to industry is approximately $62,000 for the 6.2 million vehicles sold in 1994. For Standard No. 126, since there are only 10,000 truck campers sold per year, changes to the truck-camper loading label will cost more than a few cents per label, but NHTSA estimates the total cost to industry will be less than $10,000 a year. In sum, NHTSA estimates that the total costs resulting from changes made by this final rule are $372,000.

For these reasons, NHTSA determines the impacts of this action are so minor that a full regulatory evaluation for this final rule is not necessary.

2. Small Entity Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that converting the FMVSS from the English system to the metric system does not make any substantive change to the performance requirements of any of the Federal Motor Vehicle Safety Standards. Manufacturers that qualify as small businesses that do not now label their products in metric units or provide consumer information in metric units will incur some slight costs to include metric units. However, the agency believes such costs would be minimal, given these manufacturers are currently labeling and providing the consumer information in English units.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and determined that, it will not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.102 [Amended]

2. Section 571.102 is amended by revising S1 and S3.1.2 to read as follows:

§ 571.102 Standard No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect.

S1. *Purpose and scope.* This standard specifies the requirements for the transmission shift lever sequence, a starter interlock, and for a braking effect of automatic transmissions, to reduce the likelihood of shifting errors, starter engagement with vehicle in drive position, and to provide supplemental braking at speeds below 40 kilometers per hour.

* * * * *

S3.1.2 *Transmission braking effect.* In vehicles having more than one forward transmission gear ratio, one forward drive position shall provide a greater degree of engine braking than the highest speed transmission ratio at vehicle speeds below 40 kilometers per hour.

* * * * *

§ 571.103 [Amended]

3. Section 571.103 is amended by revising S3; and, in S4.3, revising paragraphs (b)(2)(ii), (e), (g), and (h), to read as follows:

§ 571.103 Standard No. 103, Windshield defrosting and defogging systems.

* * * * *

S3. *Definitions. Road load* means the power output required to move a given motor vehicle at curb weight plus 180 kilograms on level, clean, dry, smooth portland cement concrete pavement (or other surface with equivalent coefficient of surface friction) at a specified speed through still air at 20 degrees Celsius,

and standard barometric pressure (101.3 kilopascals) and includes driveline friction, rolling friction, and air resistance.

* * * * *

S4.3 * * *

(b) * * *

(2) * * *

(ii) The engine speed and load shall not exceed the speed and load at 40 kilometers per hour in the manufacturer's recommended gear with road load;

* * * * *

(e) One or two windows may be open a total of 25 millimeters;

(f) * * *

(g) The wind velocity is at any level from 0 to 3 kilometers per hour.

(h) The test chamber temperature and the wind velocity shall be measured, after the engine has been started, at the forwardmost point of the vehicle or a point 914 millimeters from the base of the windshield, whichever is farther forward, at a level halfway between the top and bottom of the windshield on the vehicle centerline.

* * * * *

§ 571.104 [Amended]

4. § 571.104 is amended by revising, in S3, the paragraph titled "*Glazing surface reference line;*" and revising S4.1.2, to read as follows:

§ 571.104 Standard No. 104, Windshield wiping and washing systems.

* * * * *

S3 * * *

Glazing surface reference line means the line resulting from the intersection of the glazing surface and a horizontal plane 625 millimeters above the seating reference point, as shown in Figure 1 of SAE Recommended Practice J903a, "Passenger Car Windshield Wiper Systems," May 1966.

* * * * *

S4.1.2 *Wiped area.* When tested wet in accordance with SAE Recommended Practice J903a, May 1966, each passenger car windshield wiping system shall wipe the percentage of Areas A, B, and C of the windshield (established in accordance with S4.1.2.1) that (1) is specified in column 2 of the applicable table following subparagraph S4.1.2.1 and (2) is within the area bounded by a perimeter line on the glazing surface 25 millimeters from the edge of the daylight opening.

* * * * *

5. In Section 571.104, S4.1.2.1 is amended by revising the title of Table I; the title of Table II; the title of Table III; and the title of Table IV, to read as follows:

* * * * *

Table I—Passenger Cars of Less Than 1520 Millimeters in Overall Width

* * * * *

Table II—Passenger Cars of 1520 or More But Less Than 1630 Millimeters in Overall Width

* * * * *

Table III—Passenger Cars of 1630 or More But Less Than 1730 Millimeters in Overall Width

* * * * *

Table IV—Passenger Cars of 1730 or More Millimeters in Overall Width

* * * * *

§ 571.110 [Amended]

6. Section 571.110 is amended by revising, in S3, the definitions "*Normal occupant weight,*" "*Production options weight,*" and "*Vehicle capacity weight;*" in S4.4.1, revising paragraph (b); in S6, revising the introductory paragraph, and paragraph (b); and revising S7.1, to read as follows:

571.110 Standard No. 110, Tire selection and rims.

* * * * *

S3. * * *

Normal occupant weight means 68 kilograms times the number of occupants specified in the second column of Table I.

* * * * *

Production options weight means the combined weight of those installed regular production options weighing over 2.3 kilograms in excess of those standard items which they replace, not previously considered in curb weight or accessory weight, including heavy duty brakes, ride levelers, roof rack, heavy duty battery, and special trim.

* * * * *

Vehicle capacity weight means the rated cargo and luggage load plus 68 kilograms times the vehicle's designated seating capacity.

* * * * *

S4.4.1 * * *

(b) In the event of rapid loss of inflation pressure with the vehicle traveling in a straight line at a speed of 97 kilometers per hour, retain the deflated tire until the vehicle can be stopped with a controlled braking application.

* * * * *

S6 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 4 millimeters high, the information specified in paragraphs S6 (a) and (b). The information shall be permanently molded, stamped, or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, or shall appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of material that is resistant to fade, heat, moisture and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information specified in paragraphs S6 (a) and (b) shall appear on both sides of the non-pneumatic tire or tire assembly, except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information specified in paragraphs S6 (a) and (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

(a) * * *

(b) MAXIMUM 80 KM/H (50 M.P.H.).

* * * * *

S7.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the vehicle trunk or an equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S6 in block capitals and numerals not less than 6 millimeters high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 9 millimeters high.

* * * * *

§ 571.112 [Amended]

7. Section 571.112 is amended by revising S4.5 to read as follows:

§ 571.112 Standard No. 112, Headlamp concealment devices.

* * * * *

S4.5 Except for cases of malfunction covered by S4.2, each headlamp concealment device shall, within an ambient temperature range of −30 degrees Celsius to +50 degrees Celsius be capable of being fully opened in not more than 3 seconds after actuation of the mechanism described in S4.3.

* * * * *

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§ 571.114 [Amended]

8. Section 571.114 is amended by revising S2 and revising S4.1, to read as follows:

§ 571.114 Standard No. 114, Theft protection.

* * * * *

S2. *Application.* This standard applies to passenger cars, and to trucks and multipurpose passenger vehicles having a GVWR of 4536 kilograms or less. However, it does not apply to walk-in van-type vehicles.

* * * * *

S4.1 Each truck and multipurpose passenger vehicle having a GVWR of 4536 kilograms or less manufactured on or after September 1, 1983 and each passenger car shall meet the requirements of S4.2, S4.3, S4.4, and S4.5. However, open-body type vehicles that are manufactured for operation without doors and that either have no doors or have doors that are designed to be easily attached to and removed from the vehicle by the vehicle owner are not required to comply with S4.5.

* * * * *

§ 571.115 [Amended]

9. Section 571.115 is amended by revising S4.6 to read as follows:

§ 571.115 Standard No. 115, Vehicle identification number—basic requirements.

* * * * *

S4.6 The VIN for passenger cars, multipurpose passenger vehicles, and trucks of 4536 kilograms or less GVWR shall be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar. Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm.

* * * * *

§ 571.118 [Amended]

10. Section 571.118 is amended by revising S2. to read as follows:

§ 571.118 Standard No. 118, Power-operated window, partition, and roof panel systems.

* * * * *

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 4536 kilograms or less. The standard's requirements for power-operated roof panel systems need not be met for vehicles manufactured before September 1, 1993.

* * * * *

§ 571.120 [Amended]

11. Section 571.120 is amended by revising the first sentence in S5.1.2; revising in S5.2, the introductory paragraph; revising in S5.3, the introductory paragraph; revising S5.3.2; revising in S7, the introductory paragraph and paragraph (b); and revising S8.1, to read as follows:

§ 571.120 Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars.

* * * * *

S5.1.2 Except in the case of a vehicle which has a speed attainable in 3.2 kilometers of 80 kilometers per hour or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567.

* * *

* * * * *

S5.2 *Rim marking.* On and after August 1, 1977, each rim or, at the option of the manufacturer in the case of a singlepiece wheel, wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this paragraph, in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in paragraphs (a) through (c) of this paragraph shall appear on the weather side. In the case of rims of multipiece construction, the information listed in paragraphs (a) through (e) of this paragraph shall appear on the rim base and the information listed in paragraphs (b) and (d) of this paragraph shall also appear on each other part of the rim.

* * * * *

S5.3 *Label information.* Each vehicle manufactured on or after December 1, 1984, shall show the information specified in S5.3.1 and S5.3.2, and in the case of a vehicle equipped with a non-pneumatic spare tire, the information specified in S5.3.3, in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the format set forth following this section. This information shall appear either-

* * * * *

S5.3.2. *Rims.* The size designation and, if applicable, the type designation of Rims (not necessarily those on the vehicle) appropriate for those tires.

Truck Example—Suitable Tire-Rim Choice

GVWR: 7,840 kilograms (17280 pounds)
GAWR: Front—2,850 kilograms (6,280 pounds) with 7.50–20(D) tires, 20 x 6.00 rims at 520 kPa (75 psi) cold single
GAWR: Rear—4990 kilograms (11,000 pounds) with 7.50–20(D) tires, 20 x 6.00 rims, at 450 kPa (65 psi) cold dual
GAWR: 13,280 kilograms (29,279 pounds)
GAWR: Front—4,826 kilograms (10,640 pounds) with 10.00–20(F) tires, 20 x 7.50 rims, at 620 kPa (90 psi) cold single
GAWR: Rear—8,454 kilograms (18,639 pounds) with 10.00–20(F) tires, 20 x 7.50 rims, at 550 kPa (80 psi) cold dual.

* * * * *

S7 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall include, in letters or numerals not less than 4 millimeters high, the information specified in paragraphs S7 (a) and (b). The information shall be permanently molded, stamped, or otherwise permanently marked into or onto the non-pneumatic tire or non-pneumatic tire assembly, or shall appear on a label that is permanently attached to the tire or tire assembly. If a label is used, it shall be subsurface printed, made of material that is resistant to fade, heat, moisture and abrasion, and attached in such a manner that it cannot be removed without destroying or defacing the label on the non-pneumatic tire or tire assembly. The information specified in paragraphs S7 (a) and (b) shall appear on both sides of the non-pneumatic tire or tire assembly, except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, in which case the information specified in paragraphs S7 (a) and (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

* * * * *

(b) MAXIMUM 80 KM/H (50 M.P.H.).

* * * * *

S8.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the spare tire stowage area or equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S7 in block capitals and numerals not less than 6

millimeters high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 9 millimeters high.

* * * * *

§ 571.124 [Amended]

12. Section 571.124 is amended by revising S5 and revising S5.3 to read as follows:

§ 571.124 Standard No. 124, Accelerator control systems.

* * * * *

S5. *Requirements.* The vehicle shall meet the following requirements when the engine is running under any load condition, and at any ambient temperature between −40 degrees Celsius and +52 degrees Celsius after 12 hours of conditioning at any temperature within that range.

* * * * *

S5.3 Except as provided below, maximum time to return to idle position shall be 1 second for vehicles of 4536 kilograms or less GVWR, and 2 seconds for vehicles of more than 4536 kilograms GVWR. Maximum time to return to idle position shall be 3 seconds for any vehicle that is exposed to ambient air at −18 degrees Celsius to −40 degrees Celsius during the test or for any portion of the 12-hour conditioning period.

* * * * *

§ 571.126 [Amended]

13. Section 571.126 is amended by revising in S4, the paragraph titled "*Cargo weight rating*"; revising in S5.1.1, the introductory paragraph and paragraph (d); and revising in S5.1.2, paragraphs (b) and (e), to read as follows:

§ 571.126 Standard No. 126, Truck-camper loading.

* * * * *

S4. * * *

Cargo weight rating means the value specified by the manufacturer as the cargo-carrying capacity, in pounds and kilograms, of a vehicle, exclusive of the weight of occupants in designated seating positions.

* * * * *

S5.1.1 *Labels.* Each slide-in camper shall have permanently affixed to it, in a manner that it cannot be removed without defacing or destroying it, in a plainly visible location on an exterior rear surface other than the roof, steps, or bumper extension, a label containing the following information in the English language lettered in block capitals and numerals not less than 2.4 millimeters high, of a color contrasting with the background, and in the order shown below and in the form illustrated in Figure 1.

* * * * *

(d) The following statement completed as appropriate: "Camper weight is _____ Kgs. (_____ Lbs.) Maximum When it Contains Standard Equipment, _____ Liters (_____ Gal.) of Water, _____ Kgs. (_____ Lbs.) of Bottled Gas, and _____ Cubic Meters (_____ Cubic Ft.) Refrigerator (or Icebox with _____ Kgs. (_____ Lbs.) of Ice, as applicable). Consult Owner's Manual (or Data Sheet as applicable) for Weights of Additional or Optional Equipment."

"Liters and Gals. of water" refer to the volume of water necessary to fill the camper's fresh water tanks to capacity. "Kgs. and Lbs. of Bottled Gas" refer to the mass of the gas necessary to fill the camper's bottled gas tanks to capacity. The statement regarding a "Refrigerator" or "Icebox" refers to the capacity of the refrigerator with which the vehicle is equipped or the mass of the ice with which the icebox may be filled. Any of these items may be omitted from the statement, if the corresponding accessories are not included with the camper, provided that the omission is noted in the camper owner's manual as required in paragraph S5.1.2(a).

* * * * *

S5.1.2 * * *

(b) A list of other additional or optional equipment that the camper is designed to carry, and the maximum mass of each if its mass is more than 9 kilograms when installed.

* * * * *

(e) A picture showing the location of the longitudinal center of gravity of the camper within an accuracy of 50 millimeters under the loaded condition specified in paragraph S5.1.1(d), in the manner illustrated in Figure 2. Until October 1, 1973, the phrase "Mount at Aft End of Truck Cargo Area" may be used in Figure 2 instead of "Point That Contacts Rear End of Truck Bed."

* * * * *

14. Section 571.126 is amended by revising Figure 1 at the end of the introductory paragraph in S5.1.1 to read as follows:

MFD. BY: (CAMPER MANUFACTURER'S NAME)
(MONTH AND YEAR OF MANUFACTURE)
THIS CAMPER CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE
CAMPER WEIGHT IS _____ KG (_____ LBS) MAXIMUM WHEN IT CONTAINS STANDARD EQUIPMENT, _____ LTRS (_____ GAL) OF WATER, _____ KG (_____ LBS) OF BOTTLED GAS, AND _____ CUBIC METERS (_____ CUBIC FT) REFRIGERATOR (OR ICEBOX WITH _____ KG (_____ LBS) OF ICE, AS APPLICABLE). CONSULT OWNER'S MANUAL (OR DATA SHEET AS APPLICABLE) FOR WEIGHTS OF ADDITIONAL OR OPTIONAL EQUIPMENT.
(VEHICLE IDENTIFICATION NUMBER)

Figure 1. Label for Campers

15. In Section 571.126, Figure 2 at S5.1.1, after the introductory paragraph, is revised to read as follows:

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CAMPER MANUFACTURER'S NAME

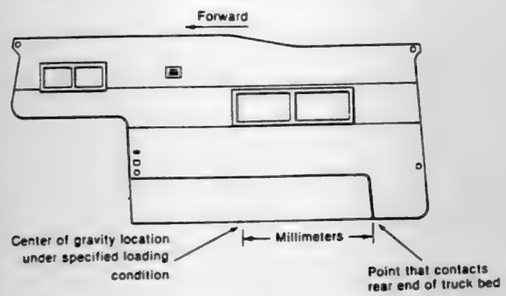

Figure 2.—Camper Center Of Gravity Information

BILLING CODE 4910-59-C

§ 571.205 [Amended]

16. Section 571.205 is amended by revising in S5.1.1.2, paragraph (m); revising S5.1.1.5; revising in S5.1.2.2, paragraph (b); revising in S5.1.2.3, paragraph (b); revising in S5.1.2.9, paragraph (b); and revising in S5.1.2.10, paragraph (b), to read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S5.1.1.2 * * *

(m) For Item 5 safety glazing only: Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

* * * * *

S5.1.1.5 The phrase "readily removable" windows as defined in ANS Z26, for the purposes of this standard, in buses having a GVWR of more than 4536 kilograms, shall include pushout windows and windows mounted in emergency exists that can be manually pushed out of their location in the vehicle without the use of tools, regardless of whether such windows remain hinged at one side to the vehicle.

* * * * *

S5.1.2.2 * * *

(b) Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

* * * * *

S5.1.2.3 * * *

(b) Motorcycle windscreens below the intersection of a horizontal plane 380 millimeters vertically above the lowest seating position.

* * * * *

S5.1.2.9 * * *

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40 degrees Celsius (plus or minus 5 degrees Celsius), for a period of 6 hours at the commencement of Test No. 28, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

* * * * *

S5.1.2.10 * * *

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 4.5 millimeters nor more than 6 millimeters high, the following words, GLASS PLASTIC MATERIAL—SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS.

* * * * *

§ 571.206 [Amended]

17. Section 571.206 is amended by revising S4.1.1.1; revising S4.1.1.2; revising S4.1.2; revising S4.2.1.1; revising S4.2.1.2; revising S4.2.2; revising S4.3; and revising S5.3, to read as follows:

§ 571.206 Standard No. 206, Door locks and door retention components.

* * * * *

S4.1.1.1 *Longitudinal Load.* The door latch and striker assembly, when in the fully latched position, shall not separate when a longitudinal load of 11,120 newtons is applied. When in the secondary latch position, the door latch and striker assembly shall not separate when a longitudinal load of 4,450 newtons is applied.

S4.1.1.2 *Transverse Load.* The door latch and striker assembly, when in the fully latched position, shall not separate when a transverse load of 8,900 newtons is applied. When in the secondary latched position, the door latch and striker assembly shall not separate when a transverse load of 4,450 newtons is applied.

* * * * *

S4.1.2 *Door Hinges.* Each door hinge system shall support the door and shall not separate when a longitudinal load of 11,120 newtons is applied. Similarly, each door hinge system shall not separate when a transverse load of 8,900 newtons is applied.

* * * * *

S4.2.1.1 *Longitudinal Load.* Each latch system, when in the latched position, shall not separate when a longitudinal load of 11,120 newtons is applied.

S4.2.1.2 *Transverse Load.* Each latch system, when in the latched position, shall not separate when a transverse load of 8,900 newtons is applied. When more than one latch system is used on a single door, the load requirement may be divided among the total number of latch systems.

S4.2.2 *Door Hinges.* Each door hinge system shall support the door and shall not separate when a longitudinal load of 11,120 newtons is applied, and when a transverse load of 8,900 newtons is applied.

S4.3 *Sliding Doors.* The track and slide combination or other supporting means for each sliding door shall not separate when a total transverse load of 17,800 newtons is applied, with the door in the closed position.

* * * * *

S5.3 *Sliding Doors.* Compliance with S4.3 shall be demonstrated by applying an outward transverse load of 8,900 newtons to the load bearing members at the opposite edges of the door (17,800 newtons total). The demonstration may be performed either in the vehicle or with the door retention components in a bench test fixture.

§ 571.207 [Amended]

18. Section 571.207 is amended by revising in S4.2, the introductory paragraph, paragraph (a), paragraph (b), and paragraph (d); revising S4.3.2.1; and revising S5.1.2, to read as follows:

§ 571.207 Standard No. 207, Seating systems.

* * * * *

S.4.2 *General performance requirements.* When tested in accordance with S5., each occupant seat, other than a side-facing seat or a passenger seat on a bus, shall withstand the following forces, in newtons.

(a) In any position to which it can be adjusted—20 times the mass of the seat in kilograms multiplied by 9.8 applied in a forward longitudinal direction;

(b) In any position to which it can be adjusted—20 times the mass of the seat in kilograms multiplied by 9.8 applied in a rearward longitudinal direction;

* * * * *

(d) In its rearmost position—a force that produces a 373 newton meters moment about the seating reference point for each designated seating position that the seat provides, applied to the upper cross-member of the seat back or the upper seat back, in a rearward longitudinal direction for forward-facing seats and in a forward longitudinal direction for rearward-facing seats.

* * * * *

S4.3.2.1 *Static force.*

(a) Once engaged, the restraining device for a forward-facing seat shall not release or fail when a forward longitudinal force, in newtons, equal to 20 times the mass of the hinged or folding portion of the seat in kilograms multiplied by 9.8 is applied through the center of gravity of that portion of the seat.

(b) Once engaged, the restraining device for a rearward-facing seat shall not release or fail when a rearward longitudinal force, in newtons, equal to 8 times the mass of the hinged or folding portion of the seat in kilograms multiplied by 9.8 is applied through the center of gravity of that portion of the seat.

* * * * *

S5.1.2 If the seat back and the seat bench are attached to the vehicle by different attachments, attach to each component a fixture capable of transmitting a force to that component. Apply forces, in newtons, equal to 20 times the mass of the seat in kilograms multiplied by 9.8 horizontally through the center of gravity of the seat back, as shown in Figure 2 and apply forces, in newtons, equal to 20 times the mass of the seat in kilograms multiplied by 9.8 horizontally through the center of gravity of the seat bench, as shown in Figure 3.

* * * * *

§ 571.212 [Amended]

19. Section 571.212 is amended by revising S3; revising S5; revising in S6.1, paragraph (b); and revising S6.5, to read as follows:

§ 571.212 Standard No. 212, Windshield mounting.

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks, and buses having a gross vehicle weight rating of 4536 kilograms or less. However, it does not apply to forward control vehicles, walk-in van-type vehicles, or to open-body type vehicles with fold-down or removable windshields.

* * * * *

S5. *Requirements.* When the vehicle travelling longitudinally forward at any speed up to and including 48 kilometers per hour impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S6, the windshield mounting of the vehicle shall retain not less than the minimum portion of the windshield periphery specified in S5.1 and S5.2.

* * * * *

S6.1 * * *

(b) Except as specified in S6.2, a multipurpose passenger vehicle, truck or bus is loaded to its unloaded vehicle weight, plus 136 kilograms or its rated cargo and luggage capacity, whichever is less, secured to the vehicle, plus a 50th-percentile test dummy as specified in part 572 of this chapter at each front outboard designated seating position and at any other position whose protection system is required to be tested by a dummy under the provisions of Standard No. 208. Each dummy is restrained only by means that are installed for protection at its seating position. The load is distributed so that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR. If the weight on any axle when the vehicle is loaded to its unloaded vehicle weight plus dummy weight exceeds the axle's proportional share of the test weight, the remaining weight is placed so that the weight on that axle remains the same. For the purposes of this section, unloaded vehicle weight does not include the weight of work-performing accessories. Vehicles are tested to a maximum unloaded vehicle weight of 2,495 kilograms.

* * * * *

S6.5 The windshield mounting material and all vehicle components in direct contact with the mounting material are at any temperature between −9 degrees Celsius and +43 degrees Celsius.

* * * * *

§ 571.216 [Amended]

20. Section 571.216 is amended by revising S3; revising S4; revising S5; revising in S6.2, paragraph (d); and revising S6.3 to read as follows:

§ 571.216 Standard No. 216, Roof crush resistance—passenger cars.

* * * * *

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 2722 kilograms or less. However, it does not apply to—

(a) School buses;

(b) Vehicles that conform to the rollover test requirements (S5.3) of Standard No. 208 (§ 571.208) by means that require no action by vehicle occupants; or

(c) Convertibles, except for optional compliance with the standard as an alternative to the rollover test requirements in S5.3 of Standard No. 208.

S4. *Requirements.*

(a) *Passenger cars.* A test device as described in S5 shall not move more than 125 millimeters, measured in accordance with S6.4, when it is used to apply a force in newtons equal to 1½ times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8 or 22,240 newtons, whichever is less, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S6. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994, a test device as

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described in S5 shall not move more than 125 millimeters, measured in accordance with S6.4, when it is used to apply a force in newtons equal to 1½ times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S6. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

S5. *Test device.* The test device is a rigid unyielding block with its lower surface formed as a flat rectangle 762 millimeters × 1829 millimeters.

* * * * *

S6.2 * * *

(d) The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the lower surface of the test device and 254 millimeters from the forwardmost point of that centerline.

6.3 (a) *Passenger cars.* Apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching a force in newtons of 1½ times the unloaded vehicle weight of the tested vehicle, measured in kilograms and multiplied by 9.8 or 22,240 newtons, whichever is less. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S6.2(a) through S6.2(d).

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less, manufactured on or after September 1, 1994, apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching a force in newtons of 1½ times the unloaded vehicle weight of the tested vehicle, measured in kilograms and multiplied by 9.8. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S6.2(a) through S6.2(d).

* * * * *

21. Section 571.216, is amended by revising Figure 1 at the end of S6.4 to read as follows:

BILLING CODE 4910-59-P

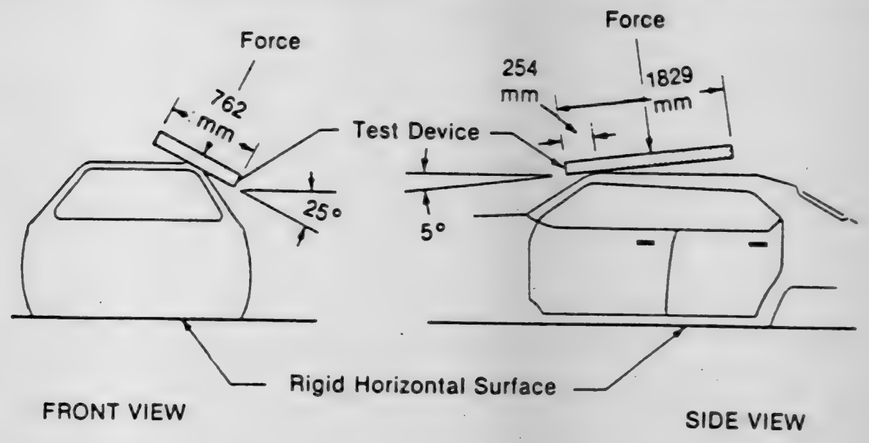

Figure 1.—Test Device Location And Application To The Roof

Issued on: March 8, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–6230 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–59–C

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Proposed Rules

Federal Register
Vol. 60, No. 49
Tuesday, March 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1940

RIN 0575–AB84

Environmental Program

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Agencies propose to revise their Environmental regulation. This action is necessary to clarify the meaning of two existing sections. The intended effect of this action is to reorganize and supplement the existing sections to provide a better understanding of the threshold criteria used to differentiate between Class I and Class II environmental assessments.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Regulations, Analysis, and Control Branch, Rural Economic and Community Development, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250–0700.

FOR FURTHER INFORMATION CONTACT: Donald O. Lander, Senior Environmental Protection Specialist, Environmental Support Branch, Program Support Staff, Rural Housing and Community Development Service, U.S. Department of Agriculture, Room 6309, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250–0700; telephone (202) 720–9619.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action".

Intergovernmental Consultation

This rule affects the following Agency programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

10.434—Nonprofit National Corporations Loan and Grant Program
10.760—Water and Waste Disposal Systems for Rural Communities
10.761—Technical Assistance and Training Grants
10.762—Solid Waste Management Grants
10.763—Emergency Community Water Assistance Grants
10.766—Community Facilities Loans
10.767—Intermediary Relending Programs
10.768—Business and Industrial Loans
10.769—Rural Business Enterprise and Television Demonstration Grants
10.770—Water and Waste Disposal Loans and Grants (Section 306C)
10.771—Rural Technology Development Grants

Executive Order 12372 requires intergovernmental consultation with State and local officials. Of the FmHA programs affected by this rule, the following are subject to the provisions of Executive Order 12372: 10.760, 10.763, 10.766, 10.767, 10.768, 10.769, 10.770, and 10.771.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program. Therefore a regulatory flexibility analysis was not prepared.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of the Agencies that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in Section 2 of the Executive Order.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agencies have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and has been assigned OMB control number 0575–0094 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Background

Section 1940.311 describes certain threshold criteria for projects which may complete an environmental review using the format for a Class I environmental assessment.

In § 1940.311(b)(1)(i) there has been confusion as to what constitutes a "substantial increase" relating to a ~ withdrawal or discharge. This confusion has resulted in the unnecessary completion of Class II environmental assessments for some utility projects.

The regulation will be revised to clarify this section by distinguishing between discharges and withdrawals, and to provide guidance relating to substantial increases.

In § 1940.311(b)(1)(ii) there has been confusion about interpreting the withdrawal rate to achieve a 50,000 gallon per day withdrawal from surface or groundwater for a new withdrawal facility. A common engineering practice is to design the pumping facility to achieve the average daily withdrawal in less than a 24 hour period to provide an adequate safety factor. However, some loan officials calculate the withdrawal based on pumping the source including any backup source on a 24 hour basis. This results in completion of a higher level of environmental review than is required.

The regulation is proposed to be revised to clarify this section by changing the unit of measurement from gallons per day, to an equivalent population served. This will eliminate the confusion, and should not result in a change to the threshold as the present threshold of 50,000 gallons per day for a new withdrawal is based on EPA's definition of Very Small Water Systems, "systems serving up to 500 people." Based on an average daily demand of 100 gallons per day per capita, the average daily withdrawal for very small systems will be 50,000 gallons per day.

To be consistent, the equivalent population will also be used for discharges.

Section 1940.311(b)(1)(v) will also be revised to remove the apparent conflict created by the revision to § 1940.311(b)(1)(ii).

In § 1940.311(b)(2) there has been confusion about the number of beds which may be added to an existing facility. This confusion has resulted in the unnecessary completion of Class II environmental assessments for some essential community facility projects.

The regulation is proposed to be revised to clarify this section by separately specifying the number of beds for new and existing projects.

In § 1940.311(b)(3)(iii) there has been confusion about whether medical waste is considered to be a hazardous waste. This confusion has resulted in the unnecessary completion of Class II environmental assessments for some essential community facility projects.

The regulation is proposed to be revised to clarify this section by adding a new section that will deal specifically with medical wastes.

List of Subjects in 7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, Natural resources, Recreation, Water supply.

Accordingly, the Agencies propose to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows.

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart G—Environmental Program

2. Section 1940.311 is amended by redesignating paragraph (b)(3)(iii) as (b)(3)(iv); revising paragraphs (b)(1)(i), (b)(1)(ii), (b))(1)(v), and (b)(2); and adding a new paragraph (b)(3)(iii) to read as follows:

§ 1940.311 Environmental assessments for Class I actions.

* * * * *

(b) * * *

(1) * * *

(i) For existing Systems, there will not be either:

(A) A substantial increase in the volume of an existing discharge or the loading of pollutants from an existing or expanded sewage treatment facilities, *or*

(B) A substantial increase in an existing withdrawal from surface or ground waters.

(C) The existence of a substantial increase will depend on the particulars of the situation under consideration. Each proposal should be examined for the possibility of a substantial increase in discharge or withdrawal. A substantial increase may or may not be determined by such factors as: evidence of a large increase in pump or pipe size, other evidence of a large increase in hydraulic capacity, or the need for a new or amended discharge or withdrawal permit. Whatever factors are considered, the rationale behind the decision should be documented as part of the Class I assessment.

(ii) For all systems (existing and new), there will not be either:

(A) A new discharge to surface or ground waters, such that the additional design capacity of the facility exceeds the average daily discharge of an equivalent population of 500 persons, *or*

(B) A new withdrawal from surface or ground waters such that the additional design capacity of the facility exceeds the demand needed to serve an equivalent population of 500 persons, and

(C) The potential water quality impacts are analyzed and documented in the manner required for a Class II assessment and attached as an exhibit to the Class I assessment.

(D) A new well solely to provide "backup" capacity, required by a State regulatory agency or standard engineering practice, is not considered a new withdrawal.

* * * * *

(v) For a proposed expansion of a sewage treatment or water supply facility, such expansion would serve an equivalent population that is no more than 20 percent or 500 persons (whichever is the larger) greater than the existing population.

* * * * *

(2) Financial assistance for existing group homes, detention facilities, nursing homes, or hospitals that add no more than 25 beds or increase the number of beds by no more than 25 percent, whichever is greater, or new facilities of not more than 25 beds.

(3) * * *

(iii) Do not produce infectious, medical, biological, or special medical wastes (including radiological waste of medical origin) that would exceed small quantity generator limits as established by the appropriate regulatory agency, and provided the facility's management plan is reviewed to ensure compliance with the regulatory agency requirements. The management plan should include standard operating procedures for notification, permitting, and recordkeeping requirements as well as handling, storage, packaging, and disposal of infectious waste materials. Documentation of the compliance review must be attached as an exhibit to the Class I assessment.

* * * * *

Dated: February 27, 1995.

Michael V. Dunn

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–6228 Filed 3–13–95; 8:45 am]

BILLING CODE 3410–17–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154, 158, 201, 250, and 284

[Docket No. RM95–3–000; Rm95–4–000]

Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs; Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Informal Technical Conference

March 8, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; notice of informal technical conference.

SUMMARY: The Federal Energy Regulatory Commission will hold an informal technical conference pursuant to the Notices of Proposed Rulemaking issued on December 16, 1994, in Docket Nos. RM95–3–000 and RM95–4–000. The conference is a preliminary step in the process of modifying the electronic filing requirements to complement the proposed revisions to the regulations set forth in the December 16, 1994 notices.

DATES: Tuesday and Wednesday, April 4 and 5, 1995: 9:00 a.m.

ADDRESSES: Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

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FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0491.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this rule will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 formats. After 60 days, the rule will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Take notice that on Tuesday, April 4, 1995 and, if necessary, Wednesday, April 5, 1995, an informal technical conference will be convened to begin designing modifications to the electronic filing requirements necessitated by proposed Rulemaking issued on December 16, 1994, in Docket Nos. RM95–3–000 and RM95–4–000,[1] the Commission directed its Staff to convene a technical conference to obtain the participation of the industry and others for this purpose.

The conference is a preliminary step in the process of modifying the Commission's electronic filing requirements to complement the proposed revisions to the regulations set forth in the December 16, 1994 notices.

Objectives to be achieved by modifying the electronic filing requirements include:

- To employ user-friendly form fill, word processing, or spreadsheet applications as much as possible.
- To minimize the burden of the reporting requirements for regulated entites.
- To eliminate unnecessary processing steps by the Commission and the companies.
- To facilitate access to the information by the public.
- To the greatest extent possible, electronic data should be capable of being linked to related data in other filings.
- To ensure that electronically submitted data contains the same information as the paper copy of the filing.
- To ensure that electronic data can be easily correlated with the data in the paper filing.
- To ensure that all spreadsheets contain the underlying formulae and links.

The specific objectives of this conference are:

- To provide a form within which Staff can gain a better understanding of how the industry stores and processes the data required in the Commission's forms and filings.
- To determine the most efficient electronic means for the preparation and submittal of data.
- To determine the most efficient electronic means for the dissemination of data to the public.
- To determine whether additional conferences are desirable; and, if so, the format, agenda, and dates.

In light of these objectives, Commission Staff anticipates considering the following topics at the conference:

- An appropriate filing format for each type of submittal.
- How companies store data (mainframe, PCs, paper only) that the Commission proposes to be filed electronically.
- How companies prepare Form 2, Form 11, discount rate reports, index of customers, and section 4 rate cases (using commercial software, proprietary software, spreadsheets, databases, wordprocessing software). Whether companies use different hardware and software for different parts of the submittal. What spreadsheet, database, and wordprocessing software is used predominantly.
- Those aspects of the Commission's current electronic filing requirements that should not be changed.
- The use of form fill software for submitting each filing.
- Whether the Commission's form fill software for submitting FERC Form No. 1 would be useful for submitting other filings. (The Commission's form fill software for submitting FERC Form No. 1 is available on the Commission Issuance Posting System (CIPS) under option "FERC Form No. 1 Forum." The bulletin board number is (202) 208–1397.)
- What information from electronic filings should be accessible to the public. In what form would such data be most useful (spreadsheet, database, wordprocessing, ASCII).
- Transmission of electronic data to the Commission through telecommunication.
- Any special concerns of state commissions, small businesses, customers, consumer groups, and nonindustry users of electronically filed data.
- Participants should also be prepared to discuss any other relevant matter.

Commission Staff is currently preparing an agenda for the conference. In order that the conference be as productive as possible, Staff invites comments on the goals, issues, and topics of discussion. Such comments should be addressed to Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0491. Comments should be received by March 28, 1995. Commenters are encouraged to submit comments on a 3½ inch diskette in ASCII format.

The conference will begin at 9:00 a.m. on April 4, 1995, in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference room will be designated in a subsequent notice. All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6168 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Published in the **Federal Register** on January 13, 1995 at 60 FR 3111 and 3141, respectively.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 254

Response Plans for Facilities Seaward of the Coast Line

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends, by 62 days, the comment period for a notice of proposed rulemaking (NPR) that the Minerals Management Service published in the **Federal Register** on January 13, 1995. The NPR is concerned with requirements for spill-response plans for oil handling facilities located seaward of the coast line.

DATES: The comment period is extended to May 15, 1995. Comments should be received or postmarked by that date.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior, Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: John Mirabella or Lawrence Ake, Engineering and Standards Branch, telephone (703) 787–1600.

Dated: March 7, 1995.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–6184 Filed 3–13–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–93–031]

Drawbridge Operation Regulation; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice supplements a notice of proposed rulemaking concerning the drawbridge operation regulations for the twin Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. Previous notices of proposed rulemaking which proposed the extension of the morning and afternoon time periods when the bridge need not open did not contain language needed to distinguish the proposed rule's applicability to commercial and noncommercial vessels. This supplemental notice adds the omitted language and clearly states the proposed rule's applicability by vessel type and river flow conditions.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7272).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to particip..te in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comment received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearings. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information: The principal persons involved in drafting this document are John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Thirteenth Coast Guard District, Seattle, WA, and LCDR John Odell, project attorney, Thirteenth Coast Guard District Legal Office, Seattle, WA.

Background and Purpose

This notice proposes drawbridge operation regulations for the twin Interstate 5 drawbridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The proposed rule would extend the morning and afternoon time periods when the draws of the bridges need not open for the passage of vessels while delineating clear exceptions based on the river flow conditions and the type of vessel traffic involved.

Regulatory History

This notice is the second supplemental notice of proposed rulemaking published for this proposed rule. The original notice of proposed rulemaking, published in the **Federal Register** on November 26, 1993 (58 FR 62302), proposed an extension of the morning and afternoon time periods when the draws need not open for the passage of vessels without regard to vessel type or river flow condition. A supplemental notice, published in the **Federal Register** on October 4, 1994 (59 FR 50531), provided for relatively uninterrupted vehicular flow during peak traffic times while being less restrictive to vessel traffic by adding provisions which would apply during periods of high river flow conditions. However, that first supplemental notice of proposed rulemaking omitted language distinguishing the rule's applicability to commercial and noncommercial vessels. This second supplemental notice of proposed rulemaking adds the language to clearly state the proposal's applicability to commercial and noncommercial vessel traffic.

Discussion of Proposed Regulation

The twin Interstate 5 vertical lift bridges across the Columbia River between Portland, Oregon, and Vancouver, Washington, are currently required to open on signal, except that from 6:30 a.m. to 8:00 a.m. and from 3:00 p.m. to 6:00 p.m., Monday through Friday (except Federal holidays), the draws need not open. These closed periods are necessary to accommodate peak morning and afternoon vehicular commute traffic across the bridges. Both bridges also provide alternate mid-level fixed spans which provide greater vertical clearance than do the drawspans in the closed position. The alternate fixed spans are routinely used by tug and barge traffic except at higher water surface elevations. Because the number of vehicles crossing the interstate bridges has increased dramatically, particularly during commute times, any opening in close proximity to these commute times, before or after, results in unacceptable vehicular traffic delays. Therefore, Oregon State Department of Transportation (ORDOT) has requested an extension of the weekday closed periods.

Subsequent to publication of a previous supplemental notice of proposed rulemaking on October 4, 1994 (59 FR 50531), the Coast Guard recognized the need for clarification concerning the rule's applicability to commercial and noncommercial vessels. After reevaluation, the Coast Guard determined that the proposed rule's provisions for high water conditions (when the river gauge indicates 6.0 feet or more) were only required in order to meet the reasonable needs of commercial vessel traffic. The needs of noncommercial vessel traffic will be adequately met during high water conditions despite the extended closed periods.

Therefore, based on this reevaluation, this second notice of proposed rulemaking further amends the proposed rule, making the high water provisions applicable only to commercial vessels. During low water

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conditions (when the river gauge indicates 5.9 feet or less), the proposed extended periods when the bridges need not open for the passage of vessels will apply to both commercial and noncommercial vessels.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted form review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Most waterway traffic can be accommodated by the alternate fixed span channel. For the benefit of commercial vessels, the proposed rule would revert to its previous, less-restrictive form when the vertical clearance under the alternate fixed span was less than 52 feet.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the impacts of this proposal are expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal will not have a significant impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. An environmental checklist and categorical exclusion determination have been completed for this proposed action and have been included in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.869, paragraph (a) is revised to read as follows:

§ 117.869 Columbia River.

(a) The draws of the Interstate 5 highway bridge, mile 106.5, between Portland, OR, and Vancouver, WA, shall open on signal, except that:

(1) When the river gauge at the bridge indicates 6.0 feet, or more, as determined by the drawtender on duty, the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8:00 a.m. and from 3:30 p.m. to 6:00 p.m. Monday through Friday, except Federal holidays, and for all other vessels the draws need not open from 5:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 6:00 p.m. Monday through Friday, except Federal holidays.

(2) When the river gauge at the bridge indicates 5.9 feet, or less, as determined by the drawtender on duty, the draws need not open for the passage of any vessels from 5:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 6:00 p.m. Monday through Friday, except Federal holidays.

* * * * *

Dated: February 28, 1995.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 95–6152 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army

Corp of Engineers

33 CFR Parts 320, 325 and 333

Wetland Delineator Certification Program

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is establishing a program for the training and certification of individuals as wetland delineators. The intent of the Wetland Delineator Certification Program (WDCP) is: (1) To improve the quality and consistency of wetland delineations submitted to the Corps, and (2) to streamline the regulatory process by developing procedures for expediting review and consideration of delineations submitted by certified delineators. We are publishing this proposed rule today to provide the public the opportunity to assist us in the development of the WDCP.

DATES: Written comments must be submitted on or before April 13, 1995.

ADDRESSES: Written comments must be submitted to: The Chief of Engineers, United States Army Corps of Engineers. ATTN: Ms. Karen Kochenbach, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Kochenbach or Mr. Sam Collinson at the Office of the Chief of Engineers at (202) 272–0199.

SUPPLEMENTARY INFORMATION:

Background

The Corps regulates activities involving the discharge of dredged or fill material into waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act (CWA). In accordance with Section 307(e) of the Water Resources Development Act of 1990 (WRDA 90), the Corps is establishing the WDCP. Section 307 (e) of WRDA 90 authorizes the Secretary of the Army to establish a program for the training and certification of individuals as wetland delineators. Pursuant to this authority, the Corps conducted demonstration projects in the Baltimore, Jacksonville, and Seattle districts.

The Wetland Delineator Certification Program (WDCP) was initially announced in the **Federal Register** on December 30, 1992 (57 FR 62312). This notice introduced the WDCP and provided specifics on participation in the three demonstration projects. On

April 16, 1993, we published a second announcement in the **Federal Register** (58 FR 19806) concerning the availability of draft training materials developed for the WDCP. Corps districts nationwide issued public notices concurrently with these notices, and numerous publications chose to include brief articles in their professional journals on the WDCP.

The concept of providing expedited acceptance of wetland delineations by consultants and contractors similar to the goals of the WDCP has previously been informally implemented by a few Corps districts on a limited basis. In those cases, the Corps districts established informal procedures for expeditious review and acceptance of wetland delineations performed by qualified individuals. Like those informal approaches, there will be no requirement for wetland delineators to be certified under the WDCP in order to submit wetland delineations to the Corps; however, the Corps will handle wetland delineations performed by wetland delineators it has certified more expeditiously. Corps districts will retain discretion regarding the acceptance of wetland delineations, including those accomplished by certified delineators. The WDCP will affect the Corps', U.S. Environmental Protection Agency's (EPA), or U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS, formerly the Soil Conservation Service (SCS)) authority to determine jurisdiction for purposes of Section 404 of the CWA, but is intended to provide expedited service to the public, while improving the accuracy and consistency of wetland delineations submitted to the Corps by consultants and contractors. The development of this program is also a component of the Administration's August 24, 1993 Wetlands Plan entitled "Protecting America's Wetlands: A Fair, Flexible, and Effective Approach."

Wetland Delineation Manual

The four Federal agencies responsible for making wetland delineations (i.e., the Corps, EPA, NRCS, and the U.S. Department of Interior Fish and Wildlife Service (FWS) currently utilize the 1987 Corps of Engineers Wetland Delineation Manual (1987 Manual) for identifying and delineating wetlands for purposes of Section 404 of the CWA. As noted in the Administration's Wetlands Plan, the agencies will continue to use the 1987 Manual pending completion of an on-going study of the National Academy of Sciences (NAS) Committee on Wetlands Characterization. The four Federal agencies noted above will review the results of the NAS study, which is scheduled for completion at the end of 1994, and determine if modifications to the 1987 Manual are necessary. Certification under the WDCP will be based on demonstrated abilities for delineating wetlands using the current Federal wetland delineation methodology in use at the time of certification.

Copies of the 1987 Manual are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Attn: Order Department, Springfield, Virginia 22171. Document #ADA 176 734, Phone #(703) 487–4650. Copies of the supplemental guidance issued by the Corps concerning use of the 1987 Manual (i.e., the October 7, 1991, Questions and Answers, and the March 6, 1992, Clarification and Interpretation memorandum) as well as the Administration's Wetlands Plan of August 24, 1993, may be obtained by contacting the Regulatory Branch of your local Corps district, the EPA Wetlands Hotline at (800) 832–7828, or the Regulatory Branch of Corps Headquarters (Office of the Chief of Engineers) at (202) 272–0199.

Current Practices/Past Problems

On the average, the Corps makes a total of 30,000 jurisdictional determinations a year, many of which involve wetlands subject to regulation under Section 404 of the CWA. Jurisdictional determinations are determinations that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or Sections 9 and 10 of the Rivers and Harbors Act of 1899. While the Corps will conduct a wetland delineation if requested to do so, many applicants choose to hire the services of a consulting firm to perform wetland delineations on their behalf. Because of delineation backlogs in many Corps districts, this approach can expedite the wetland delineation review process. However, the Corps routinely receives inaccurate and inconsistent wetland delineations from applicants and/or their representatives which nessitate modification(s) or redelineation(s). When this occurs, the Corps must spend a greater amount of time in making a determination of wetlands jurisdiction. By relying more on private sector delineations the Corps will be able to more efficiently utilize its limited staff for permit evaluations and compliance.

Although many districts have internal procedures currently in use to determine competent wetland delineators, the Corps has not had one uniform process for evaluating the demonstrated competence of wetland delineators during its review of wetland delineations. It has been our experience that wetland delineators who are properly trained and experienced in the current Federal wetland delineation methodology perform wetland delineations that are more accurate and consistent. Consequently, these delineations require the Corps to spend less time reviewing them for accuracy. These time savings are vital because Corps districts spend a considerable amount of resources reviewing and performing wetland delineations, whether delineations are made on-site (based on a site visit) or off-site (based on an office determination utilizing exiting available information, such as National Wetlands Inventory maps and aerial photography).

We are aware that application of any wetland delineation methodology by persons who lack the requisite scientific and technical knowledge, has the potential to result in inaccurate or inconsistent wetland delineations. However, we anticipate that wetland delineations performed by certified delineators will be of higher quality and greater consistency, thereby allowing for an expedited wetland delineation review process.

Other organizations have or will be developing certification programs in wetland science (e.g., the Society of Wetland Scientists), and several States are also considering implementing certification programs related to wetlands. The WDCP is a separate and distinct program for wetland delineators who perform and submit wetland delineations to the Corps, and has no relationship to, nor reciprocity with, other certification programs currently in existence.

Federal Government Certification

The four Federal agencies primarily involved in wetland delineations and Section 404 of the CWA (i.e., Corps, EPA, FWS, and NRCS) have participated in interagency wetland delineation training since 1989. The Corps manages this training, and experienced delineators from the four agencies serve as instructors. The course is continuously revised as necessary to ensure that Federal agency personnel are presented with the current Federal wetland delineation methodologies. Additionally, Corps, EPA, FWS, and NRCS wetland delineators receive on-the-job training and gain valuable field experience during the daily implementation of their wetland programs. The agencies recognize the need to ensure that employees who perform and/or verify wetland delineation possess the necessary training experience. To facilitate the

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goal of consistency in the identification and delineation of wetlands, the Corps continues to work with EPA, NRCS, and FWS to improve its training programs and field staff capabilities, as included in the Administration's Wetlands Plan. The Corps, based on these proposed regulations, will require completion of the interagency wetland delineation training course (i.e., Regulatory IV), in addition to two (2) years experience and an internal evaluation of knowledge and abilities of its field staff responsible for making jurisdictional determinations in wetlands, equivalent to the requirements of certified delineators. Consistent with the intent of the WDCP, Federal agencies which submit wetland delineations to the Corps (e.g., the Federal Highway Administration), may benefit from being certified by the Corps through the WDCP.

Demonstration Program

The purpose of the demonstration program of the WDCP was to determine the appropriate level of wetland delineation capabilities which should be required of individuals in order to receive expedited review and consideration of their wetland delineations by the Corps. In addition, the demonstration program was used to test draft written tests and field practicums, assess individuals' wetland delineation capabilities, and receive feedback on the training package designed for use by certified wetland delineators in the training of others in the current Federal wetland delineation methodologies. Provisional certification was awarded to those WDCP participants successfully completing the two-part test, pending the adoption of final regulations that will result from the evaluation of comments received on the regulation proposed today.

The WDCP demonstration program involved projects in three Corps districts, and began in March, 1993. The WDCP was initially announced December 30, 1992 in the **Federal Register**, in addition to district public notices. The projects took place in the States of: Washington, Maryland, and Florida, administered by the Seattle, Baltimore, and Jacksonville Districts, respectively, although participation was not limited to applicants within the districts' boundaries. Applications for provisional certification are no longer being accepted; districts have completed the testing and evaluation of over 200 WDCP applicants. There were no prerequisites nor fees charged for participation in the demonstration projects. Because we believe that provisionally certified individuals have demonstrated adequate wetland delineation knowledge and ability, it is our intention to consider provisionally certified individuals as certified wetland delineators under the final WDCP, pending adoption of these regulations. The provisional certifications will remain valid until a final rule is adopted for the WDCP.

Written Test

The written tests used by the three demonstration districts were developed from the pool of questions used in the Federal interagency wetland delineation training (Regulatory IV), and are based on the current Federal wetland delineation methodology (i.e., the 1987 Manual), related technical guidance, and other wetland concepts covered in the Regulatory IV training (e.g., soil taxonomy). Each demonstration district prepared a written test from the pool of these multiple choice questions. Over the years, the Corps has added, deleted, and/or modified questions in the pool used in its wetland delineation training to remain consistent with the current Federal wetland delineation methodology. The passing score for the written exam administered during the demonstration projects was 80%. We believe that proper training is essential to the competency of wetland delineators, and the Corps tests are designed to evaluate such training. We invite comments on this testing approach, as well as comments on the tests, from those who have participated in the demonstration program. We intend to standardize the written tests for administration nationwide in the final WDCP.

Field Practicum

A field practicum was also administered by the demonstration districts to those who successfully completed the written test. Like the written test, the field practicum required WDCP applicants to have an understanding of the three parameters used in wetlands delineation (i.e., hydrophytic vegetation, hydric soils, and wetland hydrology), and the procedures utilized to assess these characteristics consistent with the 1987 Manual. During the field practicums, participants were required to document the presence or absence of field indicators for each of the three parameters by using data sheets to record field observations, and by providing written explanations supporting their conclusions. Eighty percent (80%) was also the passing score for the field practicum. We believe that WDCP field practicums must be procedurally and fundamentally the same from Corps district to Corps district, and will standardize the practicum used during the demonstration phase prior to nationwide implementation.

Administration of the field practicum during the demonstration program was influenced to some degree by the weather (e.g., snow in Baltimore in March). We welcome comments on the consideration of limiting these tests to the time period as determined by appropriate by the districts, for example, the local growing season. Comments on the field practicum are requested from those individuals who participated in the demonstration program, and any recommendations for modifications or other procedures that can be consistently administered in all districts will be considered.

Results

Results of the demonstration program are provided in Table 1 below. Overall, more than 3,000 WDCP information/application packages were mailed to prospective applicants by the three demonstration districts in response to public requests. Over 1500 applications were submitted, and all were provided the opportunity to take the written exam. Of the more than 900 that did so, fewer than 400 WDCP applicants passed the written test. All of the individuals who passed the written test took the field practicum, and over 85% passed. Currently there are almost 350 provisionally certified wetland delineators nationwide. Until certification is defined through the adoption of final regulations, and individuals are certified under the final WDCP, the names of provisionally certified individuals will not be released by the Corps.

TABLE 1.—SUMMARY OF WDCP DEMONSTRATION PROGRAM RESULTS

No. of individuals	Baltimore	Jacksonville	Seattle	Totals
Applied for participation	496	501	542	1,639
Took written test	386	347	174	907
Passed written test	184 (48%)	148 (43%)	61 (35%)	393 (43%)

TABLE 1.—SUMMARY OF WDCP DEMONSTRATION PROGRAM RESULTS—Continued

No. of individuals	Baltimore	Jacksonville	Seattle	Totals
Took field practicum	184	148	61	393
Passed field practicum	152 (82%)	148 (100%)	49 (80%)	349 (88%)
Provisionally certified	152	148	49	349 (38%)

Training

A certificate of training in the current Federal wetland delineation methodology, signed by a certified wetland delineator, would be a mandatory prerequisite for all WDCP applicants. Prior to the adoption of final regulations based on today's proposal, individuals may satisfy this future prerequisite by obtaining a certificate verifying completion of wetland delineation training in the current Federal wetland delineation methodology from an instructor utilizing the Corps 1993 WDCP draft training package. The availability of the draft training package developed for the WDCP, was announced in the **Federal Register** on April 16, 1993 (58 FR 19806). Copies were distributed free of charge by the Corps Wetlands Research and Technology Center (WRTC) at the Waterways Experiment Station (WES) in Vicksburg, MS. A limited number of copies may still be available by calling the WRTC at (601) 634–4217. An evaluation of the draft WDCP training package is being conducted by the Corps, and a revised training package will be developed for future use.

A list of potential training sources available to the public through private and academic institutions, is available from the Regulatory Branch of your local Corps district office or the Office of the Chief of Engineers in Washington, D.C. A certificate of completion of the WDCP wetland delineation training would be issued by the training source and required by the Corps for participation in the final WDCP. At this time, training may be provided by individuals who have received the training materials, regardless of whether or not they are provisionally certified by the Corps. However, after the adoption of final regulations for the WDCP, all training intended to meet this prerequisite must be provided by a wetland delineator certified under the final WDCP. It is the responsibility of the individual seeking certification by the Corps under the WDCP to ensure that the training meets the training prerequisite (i.e., that the training is provided by a certified wetland delineator).

The Corps will keep certified delineators and trainers abreast of modifications and updates to the training materials, and will provide lists of training sources offering the WDCP training. After a final WDCP is adopted, all districts will maintain lists of both certified wetland delineators as well as those who provide the requisite training, and will make these lists available to the public, as proposed in these regulations.

The Wetland Delineation Certification Program (WDCP)

The WDCP would require applicants to: (1) satisfy certain prerequisites and (2) pass a two-part test.

Prerequisites

Prerequisites for entrance into the WDCP would consist of: (1) Training in the current Federal wetland delineation methodology, and (2) two (2) years of professional experience in wetlands delineation. We feel training should consist of a combination of classroom and field training specifically in the current Federal wetland delineation methodology. Training must be conducted by an individual certified by the Corp, and should consist of a minimum of 36 hours of instruction, consistent with the training required of Corps, EPA, NRCS (formerly the SCS), and FWS Federal agency staff who delineate wetlands for purposes of Section 404 of the Clean Water Act. Comments are requested on alternative training mechanisms which provide greater flexibility to potential WDCP applicants. For example, comment is solicited in the use of videotape or at-home study for the delivery of the training material. One such alternative would allow individuals to study course materials at home, and then spend one or two days at a training program facility to receive hands-on instruction and to take the course exam. This alternative would help to reduce travel expenses, may lower tuition costs, and would reduce the time that a trainee would have to miss work. The Corps is concerned, however, that non-classroom oriented instructional methods may not provide training of a quality equivalent to classroom instruction. Comments on the impact of quality resulting from the alternative training methods taking into account the requirement for hands-on training, course test, and third party exam, are specifically sought as a part of this proposal. To satisfy the experience requirement, WDCP applicants should have a minimum of 2 years experience delineating wetlands for Federal, State, tribal or local governments, or the private sector. The WDCP applicant would have to supply references of employers, including telephone numbers for verification purposes, of references who can attest as to the WDCP applicant's assertions regarding experience. The Corps reserves the right to check a WDCP applicant's documented prerequisites. We welcome comments on alternative approaches of satisfying the experience requirement, such as documentation that a minimum number of wetland delineations were accepted by the Corps prior to certification. Acceptance into the WDCP (i.e., meeting all prerequisites) does not guarantee certification. Applications for certification must be accompanied by documentation (e.g., training certificate) that an individual meets all prerequisites. We welcome comments on the proposed prerequisites, as well as suggestions for other options.

Tests

Generally, WDCP applicants would submit a WDCP application form (to be developed for the final WDCP) to the appropriate district, where it would be considered in accordance with the final regulations. Qualified WDCP applicants would be notified of the next available test date. Testing will include a standardized written examination for nationwide use, which must be passed before applicants proceed to the field practicum. Based on the response to the demonstration projects, we are proposing to offer the national written test sessions in all Corps districts on the same date each month for the first three months of nationwide implementation of the WDCP and quarterly thereafter. Field practicums will be scheduled based on need (i.e., the number of WDCP applicants which have first passed the written test). The field practicums may vary slightly between divisions (the proposed geographic limits of the validity of certifications made at the district level), based on regional differences such as growing season, wetland type, and some field

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indicators, however, the field practicum procedure will be identical nationwide. Comments on the appropriate procedures and frequency of the field testing, particularly from individuals who participated in the demonstration program, would be helpful. We are proposing to limit the number of opportunities to retake the tests without the benefit of additional training. WDCP applicants who fail either the written or the field test are encouraged to obtain additional training and/or experience prior to retesting.

Certification

Upon successful completion of the prerequisites and testing requirements, the district would award a certification to the applicant by mail. Certified wetland delineators would be required to include a signed statement with all wetland delineations submitted to the Corps, verifying that the information has been developed in accordance with the current Federal wetland delineation methodology, and is subject to legal penalties related to false information as provided for in 18 U.S.C. Section 1001 (18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.) Certified wetland delineators would be contacted by the Corps as to the completeness and accuracy of the wetland delineation submitted within 30 days if submitted in conjunction with a permit application, or 60 days if not (see 325.2(c)). Expedited review associated with wetland delineations submitted by certified wetland delineators does not guarantee shorter permit processing times, which will be the subject of a future rulemaking action related to the Administration's Plan. The issuance of a certification does not create or grant any property interest or right for the certified wetland delineator, nor does it create any rights for an individual relying upon a wetland delineation made by a certified wetland delineator, but is intended to facilitate the determination of jurisdiction by the Corps.

Validity of Certifications

Comments are requested on our intention to consider provisional certifications issued by the demonstration districts valid as final certifications after the WDCP is implemented nationwide. Comments are also requested on the option of considering certifications (provisional as well as final) valid in a broader geographic area than the administering district's regulatory boundaries. While we are proposing that certifications be issued by districts and considered valid within the Corps Division in which the district exists, we invite comments on other options (e.g., nationwide). In addition, we invite comments on the need to further limit the validity of certifications in exceptional situations involving unique geographic areas. For example, it may be determined appropriate for certifications within Divisions which include entities such as Alaska, Hawaii, Puerto Rico, and America Samoa, etc., to limit the validity of certification to a smaller geographic area. Certifications would remain valid for a period of five (5) years; therefore recertification would generally be necessary once every 5 years. Certifications would be subject to suspension or revocation procedures (see Section 333.7) based on repeated poor performance and/or submittal of inaccurate wetland delineations by certified wetland delineators.

Costs

During the early years of the WDCP, costs to the Corps of administering the program will likely exceed the savings in reduced staffing needs associated with verifying wetland delineations. These costs were monitored during the demonstration program to assess the effect on budget and manpower allowances. The costs incurred by the demonstration districts were, as expected, greater than the costs anticipated during nationwide implementation due to the WDCP developmental responsibilities required of these districts.

Although the WDCP require the expenditure of a portion of the regulatory budget for several years, we are not proposing to assess a fee for certification. WDCP applicants will have incurred some costs associated with satisfaction of the training prerequisites of the program. In addition, it will be necessary for certified wetland delineators to keep certifications current with the most recent Federal wetland delineation methodology. Nonetheless, comments are requested on the issue of fees associated with the WDCP, such as where fees should be charged and why, and what should be the basis for such fees. Although we expect Federal costs associated with nationwide implementation of the WDCP to be higher initially, we are confident that Federal labor costs will be reduced over the life of the program.

Benefits

The Corps, permit applicants, and the public will benefit from the improved quality and consistency of wetland delineations the Corps receives from certified wetland delineators. The public will benefit from the expedited review and consideration of wetland delineations by certified wetland delineators by the Corps. We believe that the program will result in better service to the public by both the Corps and private sector wetland delineators. It is anticipated that both the Corps and the public will have greater certainty in consultants' or contractors' wetland delineations as a result of the WDCP. Benefits are expected to increase each year.

Proposed Changes

33 CFR 320.3(p)—Related Laws

We are proposing to add Section 307(e) of the Water Resources Development Act of 1990 authorizing the WDCP to the related laws section.

33 CFR 325.2(c)—Wetland Delineations Submitted by Certified Delineators

We are proposing procedures, requirements, and timeframes to provide for expedited review of wetland delineations submitted by certified delineators as required by Section 307(e) of the Water Resources Development Act of 1990.

33 CFR 333—Wetland Delineator Certification Program

We are adding a new part to implement the WDCP. Section 333.1 Purpose and Section 333.2 General provide a statement of purpose and an overview of the WDCP.

Section 333.3 Definitions provides definitions of common terms used in the WDCP. The proposed terms are "accuracy determination", "wetland delineation", "wetland determination", "jurisdictional determination", "certification", "certified wetland delineator", "expedited review", "suspension", "revocation", "substantial inaccuracies", and "history of substantial inaccuracies". We request comments on these terms and the need to define additional terms.

Section 333.4 Certification Process describes the procedures and requirements necessary to be certified under the WDCP. This section includes a discussion of the mandatory prerequisites and tests we are proposing to require of wetland delineators in order to be certified by the Corps.

Section 333.5 Validity of Certifications provides for the geographic limits of where a certification would be considered valid in order to receive expedited review by the Corps.

Section 333.6 Recertification discusses the requirement for an individual to keep the certification current in order to receive expedited review by the Corps. We believe that certifications should not be valid indefinitely and are proposing a five (5) year limit.

Section 333.7 Suspension or revocation discusses the ability of the Corps to suspend or revoke an individual's certification, if appropriate, after an opportunity has been provided by the Corps for the certified delineator to respond in writing to the District Engineer's reasons for suspending or revoking the certification.

Environmental Documentation

We have made a preliminary determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment. The WDCP is intended to improve the quality and consistency of wetland delineations reviewed by the Corps, and to expedite decisions regarding these delineations, but will have no effect on the outcome of the jurisdictional determination. Furthermore, appropriate environmental documentation is prepared for all permit decisions on a case-by-case basis.

Executive Order 12866

The Department of the Army has made a preliminary determination that these regulations do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12866. The Office of Management and Budget has concurred. In addition, there has been, and will continue to be, substantial interagency coordination on the WDCP to ensure that the interests of other Federal agencies are considered in the finalization of regulations for the WDCP.

The Regulatory Flexibility Act

The Department of the Army, pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, has made a preliminary determination that these proposed regulations will not have a significant impact on a substantial number of small entities. Implementation of the WDCP has the potential to be labor intensive for the Corps, as was the case during the demonstration projects. While costs to the Corps of administering the program during the early years of the WDCP will likely exceed the savings in reduced manpower needs associated with verifying wetland jurisdictional determinations, we are confident that labor costs will be reduced over the life of the program. These costs were monitored during the demonstration program to assess the effect on budget and manpower allowances, and costs varies among the three participating Districts. Although the WDCP will require the expenditure of a portion of the regulatory budget for several years, we do not intend to assess a fee for certification. WDCP applicants will already have incurred expenses to obtain the necessary training as needed to meet the prerequisites of the program. In addition, it will be necessary for certified wetland delineators to keep certifications current with the most recent Federal wetland delineation methodology. We have taken steps, however, to minimize labor requirements on Corps districts in the implementation of the final WDCP. For example, field practicums will be standardized and necessary training provided to the districts, thereby eliminating the time-consuming developmental process experienced by the demonstration districts. Although we expect costs associated with nationwide implementation of the WDCP to be higher initially, we are confident that Federal labor costs will be deduced over the life of the program.

Benefits

The Corps, permit applicants, and the public will benefit from the improved quality and consistency of wetland delineations the Corps receives from certified wetland delineators. The public will benefit from the expedited review and consideration of wetland delineations submitted by certified wetland delineators by the Corps. We believe that the program will result in better service to the public by both the Corps and private sector wetland delineators. It is anticipated that both the Corps and the public will have greater certainty in consultants' or contractors' wetland delineations as a result of the WDCP. Benefits are expected to increase each year.

Note: (1) The terms "district engineer" or "division engineer" should be considered to be interchangeable until decisions are made as to the appropriate level of authority for decisions regarding the WDCP, as set forth in the final regulations.

List of Subjects

33 CFR Part 320

Environmental Protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 333

Waterways, Training programs, Consultants, Reporting and record keeping requirements.

Dated: March 3, 1995.

John H. Zirschky,

Acting Assistant Secretary of the Army (Civil Works), Department of the Army.

For the reasons set out in the preamble, 33 CFR Parts 320 and 325 are proposed to be amended, and Part 333 is added to read as follows:

33 CFR CHAPTER I—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 320—GENERAL REGULATORY POLICIES

1. The authority citation for Part 320 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Section 320.3 is amended by adding a new paragraph (p) at the end that reads as follows:

§ 320.3 Related laws.

* * * * *

(p) *Water Resources Development Act of 1990.* Pursuant to Section 307(e) of the Water Resources Development Act of 1990 (Pub. L. 101–640), the Secretary of the Army has established a program for the training and certification of individuals as wetland delineators for purposes of submitting wetland delineations to the Corps. The Wetland Delineator Certification Program also includes procedures for expediting review and consideration of wetland delineations submitted by wetland delineators it has certified.

PART 325—PROCESSING DEPARTMENT OF THE ARMY PERMITS

3. The authority citation of part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

4. Paragraph (c) is added to read as follows:

§ 325.2 Processing of applications.

* * * * *

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(c) Wetland delineations submitted by certified wetland delineators—(1) *General.* The Corps intends to give expedited review to wetland delineations submitted by certified wetland delineators, as part of a request for wetland jurisdictional determinations.

(2) *Contents of wetland delineations.* Certified wetland delineators will submit wetland delineations to the appropriate Corps regulatory office using the following format.

(i) The wetland delineation submittal will include:

(A)(i) A copy of the wetland delineator's certification.

B(i) Drawings, plans and/or surveys, to scale, showing the acreage and boundaries of the wetland in the project area, and

(C) Completed data sheets in support of the documented wetland boundary.

(ii) In addition, submittals by certified wetland delineators will include the name, address and telephone number of the person designated to receive the results of the Corps' accuracy determination for Corps' acceptance of the wetland delineation.

(3) *Corps approval.* District Engineers will strive to make a determination of completeness and accuracy of wetland delineations submitted by certified wetland delineators within thirty (30) calendar days of receipt if they are accompanied by a permit application, and sixty (60) calender days if they are not.

(i) The district engineer's determination of completeness and accuracy of the wetland delineation submitted by a certified wetland delineator will be made in writing and will consist of:

(A) Request for additional information or corrections needed for the Corps to make a determination of the accuracy of the wetland delineation.

(B) Acceptance of the wetland delineation by the Corps as submitted, or

(C) Acceptance with minor modifications identified and made by the Corps.

(ii) The Corps final acceptance of a certified wetland delineator's submittal will represent the wetland delineation used in making the jurisdictional determination, and will remain valid for a specified period of time consistent with corps guidance as provided in the final acceptance document. Resubmittal of corrected wetland delineations by certified wetland delineators after an earlier submission has been determined to have been incomplete or inaccurate will be subject to the same time frames as the initial submittal.

* * * * *

PART 333—WETLAND DELINEATOR CERTIFICATION PROGRAM

5. Part 333 is added to read as follows:

PART 333—WETLAND DELINEATOR CERTIFICATION PROGRAM

333.1. Purpose.
333.2. General.
333.3. Definitions.
333.4. Certification Process.
333.5. Validity of certifications.
333.6. Recertification.
333.7. Suspension or revocation of certifications.
333.8. Maintenance of lists.

Authority: 33 U.S.C. 1344.

§ 333.1 Purpose.

This section prescribes the policies, procedures, and guidance for administration of the Wetland Delineator Certification Program (WDCP). The purposes of the WDCP are:

(a) To improve the quality and consistency of wetland delineations submitted to the Corps either alone or in conjunction with a permit application seeking to discharge dredge or fill material into waters of the United States, and.

(b) To streamline the regulatory process through the submittal of wetland delineations which can be approved by the Corps in an expedited manner (see 33 CFR 325.2(c) for a discussion of the expedited review and consideration of delineators submitted by certified wetland delineators).

§ 333.2 General.

The WDCP is a training and certification program for wetland delineators who submit wetland delineations to the Crops. The Corps has developed a training package for use by the others (e.g., the private sector, the academic community, States) in the current Federal wetland identification and delineation methodologies. WDCP applicants receive training from sources utilizing certified wetland delineators and the current training materials developed and provided to them for that purpose by the Corps for the WDCP. In addition, the Corps has developed a process to certify that wetland delineators have met certain minimum standards (see § 333.4 below). Furthermore, the Corps has established a process to expedite decisions on wetland delineators submitted by certified delineators (see § 325.2(c)).

§ 333.3 Definitions.

For purposes of this regulation these terms are defined as follows:

(a) The term *accuracy determination* refers to the process whereby the District Engineer determines that a wetland delineation submitted by a certified wetland delineator is consistent with the current Federal wetland delineation methodology. Such delineations may include some flaws which the Corps determines are minor and that can be easily corrected.

(b) The term *wetland delineation* means a final Corps of Engineers delineation, or verification by the Corps of a delineation submitted by an applicant or an applicant's representative, indicating the acreage and boundaries of a subject property that is wetland in accordance with the current Federal wetland delineation methodology. Additionally, the term includes reverification of expired wetland delineations and reverification of wetland delineation where new information has become available that may effect the final wetland delineation.

(c) The term *wetland determination* means a preliminary Corps of Engineers determination as to whether or not wetlands exist on a subject property.

(d) The term *jurisdictional determination* means a final Corps of Engineers determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or a final Corps determination that a waterbody is subject to regulatory jurisdiction under Sections 9 and 10 of the Rivers and Habors Act of 1899. Additionally, the term includes reverification of expired jurisdictional determinations and reverification of jurisdictional determinations where new information has become available that may effect the final determination.

(e) The term *certification* refers to the Corps' official recognition that an individual has successfully demonstrated that he or she is capable of performing wetland delineations consistent with the current Federal wetland delineation methodology in use at the time of certification.

(f) The term *certified wetland delineator* means an individual who has met all prerequisites and testing requirements of the Corps of Engineers wetland delineator certification program. The certified wetland delineator is able to submit wetland delineations to the Corps and receive expedited review and decisions as to the completeness and accuracy of the delineation.

(g) The term *expedited review* means that, to the maximum extent possible, District Engineers will make all determinations as to the completeness and accuracy of wetland delineations submitted by certified wetland delineators within thirty (30) calendar days of receipt in the case of wetland delineation requests not associated with a permit application.

(h) The term *suspension* means the temporary removal of a wetland delineator's Corps certification, pending a decision by the District Engineer on whether a certification should be revoked.

(i) The term *revocation* means the removal of a delineator's certification with an optional ban on recertification for a prescribed revocation period.

(j) The term *substantial inaccuracies* means non-minor inaccuracies that, in the District Engineer's judgment, have materially affected the completeness and accuracy of the delineation and/or have caused substantial delays to the District in its review of the delineation. Substantial inaccuracies may include, but are not limited to: the inaccurate application of one or more of the field indicators for vegetation, soils, or hydrology; the failure to follow appropriate field sampling protocol or techniques; the submission of inaccurate or incomplete data forms; or the reach of erroneous conclusions about the presence and/or extent of wetlands at a site.

(k) The term *history of substantial inaccuracies* means 2 or more substantial inaccuracies in wetland delineations submitted to the Corps by the same certified wetland delineator within the same District, or 3 or more substantial inaccuracies the Corps has documented in different Districts, with at least one of these inaccuracies recorded in the District contemplating a revocation action.

§ 333.4 Certification process.

(a) Prerequisites: The certification process is designed to identify those individuals who possess the requisite knowledge and skills necessary to conduct and appropriately document wetland delineations consistent with the current Federal wetland delineation methodology in use at the time of certification. The certification process, which will be administered by Corps district offices, involves two steps: meeting all prerequisites, and passing all tests.

(1) The prerequisites will consist of written documentation demonstrating that the WDCP applicant has:

(i) At least two (2) years experience in delineating wetlands for any Federal, State, or local governments, or the private sector, and

(ii) Completed wetland delineation training as set forth in the Corps training materials developed for the WDCP.

(2) The training package will be made available only to training sources for instruction by a WDCP certified wetland delineator.

(b) *Testing:* The WDCP involves two (2) types of tests: a national written test, and a regional field proacticum. WDCP applicants meeting all prerequisites will be scheduled for the written test. A minimum score of 80% will be required to successfully complete the written test. WDCP applicants will be permitted to retake the written test a maximum of three (3) times, or the field practicum a maximum of two (2) times, unless the WDCP applicant can provide documentation that the required training has been repeated since the last practicum. During the practicum, WDCP applicants will be asked to collect data and document conclusions. A minimum score of 80% on the field test will be required. WDCP applicants who pass both the written test and field practicum will receive documentation of certification by the applicable Corps district.

(c) *Certification.* In order to receive expedited review and consideration by the Corps, certified wetland delineators will be required to submit a copy of their certification, in addition to other required documentation, to the Corps in conjunction with each request for a verification of a wetland delineation. Wetland delineations conducted in whole or in part by an uncertified individual may receive expedited review and consideration if it is reviewed, adopted, and signed by a Corps-certified wetland delineator. The certified wetland delineator must state that the he or she has personally reviewed and concurred with the wetland delineation and has found the documentation to be satisfactory. By signature and submittal, certified wetland delineators accept responsibility for the completeness and accuracy of the wetland delineation, and are subject to the suspension or revocation procedures described in § 333.7, and legal penalties regarding false information.

§ 333.5 Validity of certifications.

Generally, certifications made pursuant to these regulations will be valid within the Corps division boundaries of the certifying district. However, due to the unique features of wetland characteristics in some districts (e.g., Alaska), Corps divisions may confine the validity of certain certifications to a district or set of districts. Certifications will remain valid for a period of five (5) years, at which time recertification will be necessary.

§ 333.6 Recertification.

(a) Recertification through the WDCP will be required every five (5) years, unless otherwise required by the Corps. WDCP applicants for recertification may be expected to complete the testing requirements (written, field, or both, as determined by the district) which have been adopted for the final WDCP. If the Corps adopts use of a new wetland delineation methodology, or events beyond the Corps' control nullify the original certification of a wetland delineator made by the Corps, recertification may be required at a greater frequency.

(b) Minor changes in the Corps wetland delineation policy and/or procedures will typically not require recertification. The Corps will notify certified individuals of minor modifications by mail. The extent of the modification will dictate the need for recertification (e.g, a new wetland delineation manual may require recertification while use of a new data form may not). Once notified, certified wetland delineators will be expected to incorporate these modifications into all future wetland delineations they submit. Failure to do so maybe grounds for suspension of an individual's certification.

§ 333.7 Suspension or revocation of certifications.

(a) A District Engineer may suspend or revoke a delineator's certification if the District Engineer determines that the wetland delineations submitted by the certified wetland delineator exhibit a history of substantial inaccuracies. Revocation will result in removal of an individual from lists provided to the public, while suspension will not. This will ensure that the list of certified wetland delineators given to the public does not contain certified wetland delineators that repeatedly perform and/or submit inaccurate wetland delineations and thus delay, rather than expedite, the Corps acceptance of wetland delineations.

(b) *Procedures*—(1) *Records.* Districts will maintain accurate records on all substantial inaccuracies identified in wetland delineations submitted by certified wetland delineators. Whenever any District identifies such an inaccuracy, the District will notify the certified wetland delineator and allow the delineator to write a letter explaining the inaccuracy. Such letter will be maintained in the delineator's file. If the District discovers that a certified wetland delineator has

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submitted 2 or more substantially inaccurate delineations to the District, or 1 substantially inaccurate delineation to the District and 2 or more delineations to other Districts, and the Chief of the Regulatory office believes that these inaccuracies warrant revocation, than the Chief of the Regulatory office should prepare, with the advice of counsel, a report for the District Engineer substantiating these inaccuracies along with a recommendation to revoke the delineator's certification.

(2) *Notification.* If the District Engineer agrees that revocation may be warranted. The District Engineer shall send a letter to the delineator explaining:

(i) That the District Engineer is considering whether to revoke the delineator's certification.

(ii) That the delineator's certification is suspended pending the District Engineer's decision.

(iii) The causes for the potential revocation, including the substantial inaccuracies identified, and

(iv) That the delineator has 30 days from receipt of the District Engineer's letter to send a response letter providing mitigating or extenuating circumstances, or stating a defense against the causes for revocation.

(3) *Delineator response.* In the response letter, the delineator should include a complete explanation of any mitigating or extenuating circumstances demonstrating that revocation is unwarranted. The delineator should also provide any defenses to the stated causes for revocation, including any assertion that he or she may choose to make that no substantial inaccuracies occurred.

(4) *Review and decision.* The District Engineer must consider any certified wetland delineator response letter submitted. If a letter raises any genuine issues of fact, the District Engineer, exercising appropriate discretion, may decide to meet with the delineator to discuss these issues. After considering all information gathered by the District and submitted by the delineator, the District Engineer should make the decision, based on a preponderance of the evidence, as to whether or not to revoke the delineator's certification.

(5) *Notification of decision to delineator.* Absent extenuating circumstances, the District Engineer shall decide whether to revoke a certification within 30 days of receiving the delineator's response letter or any meeting with the delineator, whichever is later. A letter stating the District Engineer's decision shall be sent to the delineator by certified mail, return receipt requested.

(6) *Notification to other corps districts.* If the District Engineer's decision is to revoke a certification, the District shall notify all other Corps Districts that the delineator is no longer certified, and the individual's name will be removed from the list of certified wetland delineators given to the public.

(c) *Revocation period.* Revocation periods are measured from the beginning of the suspension. The District Engineer should assign a revocation period commensurate with the seriousness of the causes for revocation, but no longer than 2 years. The District Engineer may reduce the length of the revocation period after it is assigned, if new information or other appropriate reasons develop. Delineators can apply for recertification only after the revocation period has ended.

(d) *Scope of revocation.* (1) A revocation only applies to the certification of the person who signed the delineations identified as inaccurate. Thus, a revocation cannot be imputed to other certified delineator in the same consulting firm as a decertified delineator.

(2) The revocation shall apply nationwide.

(e) *Appeal.* A revocation may be appealed in writing to the Division Engineer setting forth matters in extenuation, mitigation, or disagreement with the revocation. After reviewing both the appeal letter and the administrative record, the Division Engineer will reverse the District Engineer's decision to revoke the delineator's certification only if the determination is found to be arbitrary or capricious. The Division Engineer must notify both the delineator and the District Engineer of the decision. Only after the conclusion of this appeal process may a delineator seek redress in Federal court.

§ 333.8 Maintenance of lists.

The Corps will maintain two (2) lists for the WDCP. The first will be a list of individuals within a Division who have been certified by one of its Districts through the final WDCP. The second will be the list of training sources providing the prerequisite training. All training intended to meet the mandatory prerequisite will be conducted by a certified wetland delineator as an instructor. Both lists will be available to the public.

[FR Doc. 95–5873 Filed 3–13–95; 8:45 am]
BILLING CODE 3710–62–M

DEPARTMENT OF INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC26

Oregon Caves National Monument; Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise the current regulation concerning admission to Oregon Caves National Monument found at 36 CFR 7.49 that prohibits access to children under the age of six years from entering Oregon Caves in Oregon Caves National Monument. This proposed revision to the existing regulation would allow children to enter the Caves, regardless of age. The existing age restriction is not necessary to provide safe and quality interpretive tours in the Caves. The effect of this proposed revision is to establish a more equitable criterion for allowing children access to the caves. If necessary, the park will manage access to the Caves through the Superintendent's Compendium.

DATES: Written comments will be accepted through May 15, 1995.

ADDRESSES: Comments should be addressed to: Superintendent, Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523.

FOR FURTHER INFORMATION CONTACT: Craig W. Ackerman, Superintendent, Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523.

SUPPLEMENTARY INFORMATION:

Background

This proposed revision addresses a specific management problem involving access to the only public tour route in Oregon Caves. The present restriction, 36 CFR 7.49, states that "Children under the age of 6 are not permitted to enter the caves." A search of historical records has failed to find any extensive discussion of or justification for this particular age limit. No other Park Service cave, open for public tours, has a similar regulatory limit for general tours.

Employees who give the cave tours or sell tickets for the tours generally make the determination as to whether a child wanting to enter the caves is under six years of age. Since most parents do not carry documentation of the age of a child, verification of age is usually not possible. Some parents become upset when their children are denied access to the Caves. The age limit restriction has been the most common visitor complaint to both park and concession employees over the last few decades. Denying access to children who can safely travel through the Caves contradicts one of the management objectives of Oregon Caves National Monument's General Management Plan, which is to "provide quality interpretive service that increases the visitors' knowledge, appreciation and enjoyment of the resources at Oregon Caves."

There appears to be little justification for using six years of age in determining who enters the Caves. The width of tread, number and rise of steps, the length of the tour, and the height of railings better determine whether visitors can safely negotiate the cave tour. Renovation of the entire trail system, which is being designed with children in mind, is currently in the planning stage. This proposed revision would greatly reduce visitor conflicts by instituting safety restrictions that are fair and equitable. If necessary, the park will manage access to the Caves through the Superintendent's Compendium.

Options Considered

Other management options considered included leaving the current regulation as it is or instituting a fixed height and/or endurance limit that might soon be out of tune with continuing modification of the present trail system. The current proposed rule revision is in accordance with stated overall management objectives.

Effects of Revision

This rule revision increases the opportunity for visitors with young children to enter Oregon Caves. There will be fewer visitor complaints, fewer visitor/NPS confrontations, and fewer disrupted public tours.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of this revision are Craig W. Ackerman, Superintendent of Oregon Caves National Monument and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This revision does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

Compliance With Other Laws

The Department of Interior has determined that this document is not a major rule under Executive Order 12866 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The National Park Service has determined that this proposed revision will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based upon this determination, this proposed revision is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 13

National Parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 as follows:

PART 7—SPECIAL REGULATING, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.49 is revised to read as follows:

§ 7.49 Oregon Caves National Monument.

(a) *Admission to caves.* No person, or persons, shall be permitted to enter Oregon Caves unless accompanied by an approved National Park Service or concessioner employee who has successfully completed the training prescribed by the National Park Service.

Dated: February 27, 1995.

Approved:

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–6242 Filed 3–13–95; 8:45 am]
BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 53

[AD–FRL–5172–4]

National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Reproposal

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed rule for the national ambient air quality standards (NAAQS) for sulfur oxides (sulfur dioxide) and associated changes to the requirements for Ambient Air Monitoring Reference and Equivalent Methods that were published on November 15, 1994 (59 FR 58958).

DATES: Written comments must be received on or before April 14, 1995.

ADDRESSES: Submit written comments on the proposed action on the NAAQS (40 CFR part 50) (duplicate copies preferred) to Air and Radiation Docket Information Center (6102), Room M–1500, U.S. Environmental Protection Agency, Attn: Docket No. A–84–25, 401 M Street, SW., Washington, DC 20460. Comments on the proposed revisions to the Ambient Air Monitoring Reference and Equivalent Methods (40 CFR part 53) should be separated from those pertaining to the standards and sent to the same address, Attn: Docket No. A–94–42. These dockets, containing supporting information used in developing the proposed rule, are located in the Air and Radiation Docket Information Center of the U.S. Environmental Protection Agency, South Conference Center, Room M–1500, 401 M Street, SW., Washington, DC 20460. The dockets may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

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FOR FURTHER INFORMATION CONTACT: Part 50 Notice—Ms. Susan Lyon Stone, Air Quality Strategies and Standards Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–1146. Part 53 Notice—Mr. Frank McElroy, Atmospheric Research and Exposure Assessment Laboratory (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2622.

SUPPLEMENTARY INFORMATION: In order to allow additional time to review the Proposed Requirements for Implementation Plans and Ambient Air Quality Surveillance for SO_2 National Ambient Air Quality Standards (40 CFR parts 51 and 58) before submitting comment on the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Reproposal (40 CFR parts 50 and 53), the EPA is extending the public comment period on the 40 CFR parts 50 and 53 proposals from March 15, 1995 to April 14, 1995. The document that proposes for public comment the requirements for implementing the alternative measures and changes in the sulfur dioxide ambient air surveillance network will be published in the **Federal Register** on or about March 1, 1995.

The comment period extension is also intended to provide additional opportunity for members of the medical community who are experts in the field of asthma treatment to provide comment on the health significance of the sulfur dioxide-induced effects. The extended comment period will also provide additional time to comment on other parts of the November 15, 1994 notice (59 FR 58958).

List of Subjects

40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 53

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 9, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–6266 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD-FRL–5168–8]

RIN 2060–AD95

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would reduce emissions of hazardous air pollutants (HAP) from existing and new printing operations that are major sources of HAP emissions. A major source is defined in section 112(a) of the Clean Air Act as amended in 1990 (Act) as a source that emits, or has the potential to emit, considering controls, 10 tons per year (tpy) or more of any individual HAP or 25 tpy or more of any combination of HAP. Some of these pollutants are emitted from publication rotogravure and product and packaging rotogravure and wide-web flexographic printing. These operations are covered in the proposed rule. In these printing operations, a variety of HAP are used as solvents and components in inks and other materials applied by printers. The HAP emitted by the facilities covered by this proposed rule include toluene, xylene, ethylbenzene, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat and skin irritation; and blood cell, heart, liver and kidney damage. The proposed rule is estimated to reduce emissions of HAP by 6,700 Mg per year. The emissions reductions achieved by these standards when combined with the emissions reductions achieved by similar standards, will achieve the primary goal of the Clean Air Act, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

The proposed rule implements section 112(d) of the Clean Air Act Amendments of 1990 (1990 Amendments), which requires the Administrator to regulate emissions of HAP listed in section 112(d) of the 1990 Amendments. The intent of this rule is to protect the public health by requiring the maximum degree of reduction in emissions of HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, any nonair quality, health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before May 30, 1995.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than April 13, 1995. If a hearing is held, it will take place on April 28, 1995, beginning at 10 a.m.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket (Mail Code 6102), Attention: Docket No. A–92–42, U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday; telephone number (202) 260–7548, FAX (202) 260–4400. A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts the EPA requesting a public hearing by the required date (see DATES), the hearing will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons interested in speaking at a public hearing should contact Ms. Kim Teal, Coatings and Consumer Products Group, (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5580. Persons interested in attending the hearing should contact Ms. Kim Teal to verify that it will be held.

Additional Information. For information on accessing the U.S. EPA Technology Transfer Network electronic bulletin board and obtaining copies of the Proposed Regulatory Text, Background Information Document or Economic Impact Analysis, please refer to the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed regulation, contact Mr. David Salman at (919) 541–0859, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network. The Technology Transfer Network (TTN) is one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5472 for up to a 14,000 bps modem. If more information on TTN is needed call the HELP line at (919) 541–5384.

Proposed Regulatory Text. The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–92–42, or by written or telephone request from the Air and Radiation Docket. This notice and the proposed regulatory language are also available for downloading TTN under Clean Air Act, Recently Signed Rules.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the docket; the U. S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry—Background Information for Proposed Standards" (EPA–453/R–95–002a). The BID is also available for downloading on the TTN.

Economic Impact Analysis. The Economic Impact Analysis (EIA) for the proposed standards may be obtained from the docket, the U. S. EPA Library, or the NTIS. Please refer to "Economic Impact Analysis for the Printing and Publishing NESHAP" (EPA–452/D–95–001). The EIA is also available for downloading on the TTN.

Preamble Outline. The information presented in this preamble is organized as follows:

I. Background
A. Regulatory Background and Purpose
B. Common Sense Initiative

II. Summary of the Proposed Rule
A. Applicability
B. Proposed Standards for Affected Sources
C. Compliance Dates
D. Compliance Extensions
E. Compliance Testing and Monitoring
F. Reporting and Recordkeeping Requirements.

III. Summary of Environmental, Energy, and Economic Impacts of the Proposed Rule
A. Emission Reductions
B. Secondary Environmental Impacts
C. Energy Impacts
D. Cost Impacts
E. Economic Impacts

IV. Process Descriptions and Control Technologies
A. Process Descriptions
B. Control Techniques

V. Rationale for the Proposed Rule
A. Regulatory Development Process for NESHAP
B. Determining Maximum Achievable Control Technology (MACT) "Floors"
C. Selection of Pollutant and Source Category(ies)
D. Selection of Emission Points Covered by the Proposed Rule
E. Selection of the Basis for the Proposed Rule
F. Selection of the Format of the Proposed Rule
G. Selection of Emission Test Methods and Monitoring Requirements
H. Selection of Recordkeeping and Reporting Requirements
I. Selection of Compliance Deadlines
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VI. Administrative Requirements
A. Public Hearing
B. Docket
C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Paperwork Reduction Act
F. Regulatory Flexibility Act
G. Clean Air Act Section 117
H. Regulatory Review

VII. Statutory Authority

I. Background.

The proposed rule addresses facilities which apply ink and other materials to any substrate, except fabric, using rotogravure or wide-web flexographic methods. These facilities print products such as magazines, newspapers, supplements, packaging and wallpaper on substrates such as paper, plastic, metal foil, and vinyl.

A. Regulatory Background and Purpose.

The Act requires, under section 112, that EPA evaluate and control emissions of HAP. The control of HAP is to be achieved through promulgation of emission standards under sections 112(d) and (f), and of work practice standards under section 112(h) where appropriate, for categories of sources that emit HAP. Pursuant to section 112(c) of the Act, EPA published in the **Federal Register** the initial list of source categories that emit HAP on July 16, 1992 (57 FR 31576). This list includes major and area sources of HAP for which the EPA intends to issue regulations between November 1992 and November 2000.

The Act was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (the Act, section 101(b)(1)). As such, this proposed regulation would protect the public health by reducing emissions of HAP from publication rotogravure and product and packaging rotogravure and wide-web flexographic printing.

The HAP listed in section 112(b)(1) emitted by printing facilities that would be covered by this proposed rule include toluene, xylene, ethylbenzene, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat and skin irritation; and blood cell, heart, liver and kidney damage. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., the presence of pre-existing disease) and lifestyle.

The proposed standards will reduce HAP emissions from publication rotogravure printing facilities by 4,750 Mg/yr (5,220 tpy) from a baseline level of 17,500 Mg/yr (19,200 tpy). The proposed standards will reduce HAP emissions from product and packaging rotogravure and wide web flexographic printing facilities by 1,940 Mg/yr (2,140 tpy) from a baseline level of 4,200 Mg/yr (4,620 tpy).

There are no significant economic impacts associated with the proposed standards. There are no firms or facilities at risk of closure as a result of the proposed standards and there will not be a significant economic impact on a substantial number of small entities.

B. Common Sense Initiative

On October 17, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with the Federal Advisory Committee Act (U.S.C. App. 2, Section 9(c)) requirements. The CSI addresses six industrial sectors. The Printing and Publishing industry is one of these sectors.

The following are the six elements of the CSI program, as stated in the "Advisory Committee Charter."

1. *Regulation.* Review existing regulations for opportunities to get better environmental results at less cost. Improve new rules through increased coordination.

2. *Pollution Prevention.* Actively promote pollution prevention as the standard business practice and a central ethic of environmental protection.

3. *Recordkeeping and Reporting.* Make it easier to provide, use, and

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publicly disseminate relevant pollution and environmental information.

4. *Compliance and Enforcement.* Find innovative ways to assist companies that seek to comply and exceed legal requirements while consistently enforcing the law for those that do not achieve compliance.

5. *Permitting.* Improve permitting so that it works more efficiently, encourages innovation, and creates more opportunities for public participation.

6. *Environmental Technology.* Give industry the incentives and flexibility to develop innovative technologies that meet and exceed environmental standards while cutting costs.

The Agency intends to work with the Printing CSI sector team and consider its consensus recommendations concerning the proposed standards. Even though the data collection and analysis efforts for the proposed standards were completed before the CSI program was announced, many aspects of the CSI are reflected in the proposed standards.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing printing facilities are based on process and emissions data received from over 600 printing facilities. The EPA met with industry and trade groups on numerous occasions to discuss these data. In addition, facilities and State regulatory authorities had the opportunity to comment on draft versions of the proposed regulation and to provide additional information. Two trade organizations provided extensive comments; these comments were considered, and in some cases, today's proposed standards reflect these comments. Of major concern to industry were the opportunity to comply through pollution prevention by using low HAP content materials.

The regulation allows sources flexibility to select from various options for compliance. Sources may reduce HAP usage and emissions through conversions to waterborne, lower HAP solvent-borne or ultraviolet/electron beam cure materials. Alternatively, sources may install or upgrade existing capture and control devices to meet the proposed standard. Finally sources have the option to comply by a combination of lower HAP materials and capture and control. Facilities may select the most cost-effective option based on facility specific considerations.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount of time allowed under the Clean Air Act. This timeframe will provide the greatest opportunity for developing and adopting low HAP content materials, and provide sufficient time for facilities that choose to install or upgrade capture and control equipment.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations, or referencing the applicable sections, depending on which method would be least confusing for a given situation.

Representatives from other interested EPA offices and programs, as well as representatives from State regulatory agencies are included in the regulatory development process as members of the Work Group. The Work Group must review and concur with the regulation before proposal and promulgation. Therefore, the EPA believes that the implications to other EPA offices and programs have been adequately considered during the development of these standards.

II. Summary of the Proposed Rule

Table 1 provides an overview of the proposed rule, including applicability; the standards for each affected source; test methods and procedures; and monitoring, recordkeeping, and reporting requirements.

TABLE 1.—SUMMARY OF SUBPART KK OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR THE PRINTING AND PUBLISHING INDUSTRY

Affected source and requirement	Description
Printing and Publishing Industry:	
Applicability	This rule applies to facilities engaged in rotogravure and wide-web flexographic printing that are major sources as defined in 40 CFR part 63. (63.821).
Estimated Number of Facilities.	Approximately 200 facilities are expected to be affected by the rule. Applicable SIC codes include 2295, 2392, 2647, 2649, 2651, 2671, 2673, 2674, 2711, 2721, 2754, 2759, 3497, and 3996.
Permit Requirements	Major sources are required to obtain operating permits in State where facility is located according to 40 CFR part 70 and applicable State regulations. (63.821(d)).
All Affected Sources:	
Standards	Comply with §§63.4 through 63.6 of the General Provisions of 40 CFR part 63, subpart A, except for §63.6(h). (63.823).
Compliance Dates	Within three years of the effective date for existing sources and upon startup for new sources. (63.826).
Test Methods and Procedures.	See individual affected sources.
Monitoring Requirements	See individual affected sources.
Recordkeeping Requirements	Comply with §63.10(b) and (c) of the General Provisions. (63.829).
Reporting Requirements	Initial notification, notification of performance tests, notification of compliance status, performance test reports, startup, shutdown and malfunction reports, summary reports, and HAP use reports as described in §§63.9–63.10. (63.830).
Publication Rotogravure Facilities:	
Standards	Control of 92 percent of organic HAP or equivalent. (Organic HAP emissions limited to no greater than 8 percent of the mass of volatile matter, including water, used on a plantwide basis.) (63.824(b)).
Performance Test Period and Tests.	1. Test Period. Each and every month. (63.824(b)). 2. Performance Test. Initial performance test for all control devices to demonstrate compliance with overall control efficiency requirement. (63.824(b))

TABLE 1.—SUMMARY OF SUBPART KK OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR THE PRINTING AND PUBLISHING INDUSTRY—Continued

Affected source and requirement	Description
Test Methods and Procedures.	1. Organic HAP content determination. (63.827(b)(1)). 2. Volatile matter content determination. (63.827(c)(1)). 3. Overall control efficiency using liquid-liquid mass balance for solvent recovery systems. (63.824(b)(1)(i). 4. Overall control efficiency determination using capture efficiency test with continuous emission monitors. (63.824(b)(1)(ii) and 63.824(b)(2)(ii)). 5. Overall control efficiency determination using capture efficiency test and incinerator destruction efficiency test. (63.824(b)(2)(i).
Monitoring Requirements	1. Hourly recording of flow rate from press to control device. (63.828(a)(1). 2. Quarterly audit of continuous emission monitors. (63.828(a)(2)(i)). 3. Monitoring of capture system operating parameter. (63.828(a)(5)).
Product and Packaging Rotogravure Presses and Wide-web Flexographic Presses, or Groups of Presses Controlled by a Common Solvent Recovery System:	
Standards	Control of 95 percent of organic HAP, or organic HAP emissions limited to no greater than 0.20 kg HAP per kg of solids applied, for each press, or group of presses controlled by a common solvent recovery system, or organic HAP emissions limited to no greater than 0.04 kg HAP per kg inks and other materials applied, for each press. (63.825(b)).
Performance Test Period and Tests.	1. Test Period. *Uncontrolled Presses.* Each and every month. *Presses controlled with solvent recovery systems.* Each and every month. *Presses controlled with incinerators monitoring operating parameters.* Every three hour period. *Presses controlled with incinerators using continuous emissions monitors.* Each and every month. (63.825(b) and (c)). 2. Performance Test. Initial performance test for all control devices to demonstrate compliance with organic HAP emission rate. (63.825(g) and (h)).
Test Methods and Procedures.	1. Organic HAP content determination. (63.827(b)(2)). 2. Volatile matter and solids content determination. (63.827(c)(2)). 3. Overall control efficiency using liquid-liquid mass balance for solvent recovery systems. (63.825(g). 4. Overall control efficiency determination using capture efficiency test with continuous emission monitors. (63.825(g)(2) and 63.825(h)(2)). 5. Overall control efficiency determination using capture efficiency test and incinerator destruction efficiency test. (63.825(h)).
Monitoring Requirements	1. Hourly recording of flow rate from press to control device. (63.828(a)(1)). 2. Quarterly audit of continuous emission monitors. (63.828(a)(2)(i)). 3. Quarterly calibration of incinerator monitoring thermocouple(s). (63.828(2)(ii)). 4. Operation of continuous emission monitors. (63.828(a)(3)). 5. Measurement of incinerator operating parameters. (63.828(a)(4)). 6. Monitoring of capture system operating parameter. (63.828(a)(5)).

A. Applicability

The proposed rule would apply to each new and existing publication rotogravure or product and packaging rotogravure and wide web flexographic printing facility that is a major source, as defined under section 112(a) of the Act. A major source is one that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tons/yr) or more of any one HAP or 22.7 Mg/yr (25 tons/yr) of any combination of HAP for all activities conducted at the facility. Publication rotogravure and product and packaging rotogravure and wide web flexographic printing operations at any major source that conducts other work would be subject to the proposed standards, regardless of the relative proportion of printing and non-printing work at the facility. Research or laboratory facilities are not subject to the provisions of the standards unless they are collocated with production lines.

The proposed rule uses the definition of research and laboratory facilities from section 112(c)(7) of the Act. This section provides that "research or laboratory facility" means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

Research activities include those activities that are employed to develop a new rotogravure or flexographic ink, coating or other material; a new substrate or end product; and may also include activities devoted to optimizing the manufacture of the product. Once a facility determines that the manufacture of this product is viable, the EPA believes that additional activities are likely to be beyond the research phase.

As noted in §63.821(a)(1), the proposed printing and publishing rule would apply to facilities that are major sources as defined in 40 CFR 63.2. An important consideration in the definition of "major source" is a given plant site's "potential to emit." The "potential to emit" is defined in 40 CFR 63.2 as follows: " 'Potential to emit' means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it

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would have on emissions is Federally enforceable."

A key aspect of the potential to emit definition is that restrictions must be Federally enforceable. Examples of restrictions that would be considered Federally enforceable are listed in a definition in 40 CFR 63.2.

The EPA believes that there are printing and publishing facilities whose actual emissions of HAP are substantially less than "major" amounts (i.e., more than 10 tons per year of any single HAP, or more than 25 tons per year from the sum of all HAP emitted). Many of these facilities, however, would be considered "major sources" that are subject to the proposed rule because there is no Federally enforceable restriction in place that limits their potential to emit HAP. The EPA believes that the this rule should provide a mechanism for such facilities to accept and document such restrictions.

The EPA proposes, in § 63.821(a)(2) through (3) of the proposed rule, that if owners or operators commit to using no more than 9.1 Mg (10 tons) per 12 month period of each HAP and less than 22.7 Mg (25 tons) per 12 month period of any combination of HAP at the entire facility, including materials used for source categories or purposes other than printing and publishing, then the facility can be considered an area source. Each facility for which the owner or operator commits to the criteria stated in § 63.821(a)(2) would be subject only to the recordkeeping provisions in § 63.829(d) and the reporting provisions in § 63.830(d) of this subpart as long as the commitment is met for each 12 month period. If the commitment is not met for any 12 month period then the facility would be in violation of its commitment and would be considered a major source of HAP beginning the first month after the end of the first 12 month period in which either of the HAP use thresholds was exceeded. As a major source of HAP, each such facility would be subject to the provisions of this subpart as noted in § 63.821(a)(1) and would no longer be eligible to use the provisions of § 63.821(a)(2).

The EPA believes that there are sources using more than 10 tons of an individual HAP or more than 25 tons of total HAP per 12 month period that may emit less than "major" amounts (e.g., sources using capture and control equipment that reduces HAP emissions), and for which the owner or operator may be willing to accept case-by-case operating restrictions that would ensure that the potential to emit does not exceed the major source threshold. The EPA is considering adding language to the final rule that would provide a mechanism for such sources. The EPA requests comment on: (1) Whether such language should be added; (2) the type of reporting and process required to establish the case-by-case commitment (in particular, how to establish throughput and content limitations and performance criteria for the capture and control equipment that would ensure area source status); and (3) the types of records that should be maintained to document compliance with the restrictions. In addition, the EPA requests comment on whether the level of recordkeeping and reporting should vary, depending on the level of emissions (as reflected by the throughput and content of the materials used, and performance of the capture and control equipment).

In general, rotogravure and wide web flexographic printing facilities are covered by the SIC codes listed in Table 2. However, facilities classified under other SIC codes may be subject to the proposed standards if the facility meets the definition of a major source and conducts rotogravure or wide web flexographic printing.

TABLE 2.—ROTOGRAVURE AND WIDE WEB FLEXOGRAPHIC PRINTING SIC CODES

SIC Code	Description
2295	Vinyl Coated or Laminated Fabric.
2392	House Furnishings, including Shower Curtains.
2647	Sanitary Paper Products.
2649	Wallcoverings.
2651	Folding Paperboard Boxes.
2671	Coated and Laminated Paper and Plastic Film for Packaging.
2673	Plastic Bags and Liners, Coated and Laminated.
2674	Uncoated Paper Bags and Sacks and Multiwall Shipping Sacks and Bags.
2711	Newspapers.
2721	Periodicals.
2754	Commercial Printing, Gravure.
2759	Commercial Printing, NEC.
3497	Laminated Aluminum Foil, Flexible Packaging.
3996	Hard Surface Floor Coverings.

Based on information obtained through an information collection request and information provided by the Gravure Association of America (GAA), there are an estimated 200 facilities that will be subject to the proposed standards. The combined HAP emissions from these facilities are estimated to be over 21,800 Mg/yr (24,000 tpy).

Affected Sources

The proposed rule would limit organic HAP emissions that result from publication rotogravure and product and packaging rotogravure and wide-web flexographic printing. The standard applies to HAP present in inks, ink extenders, solvents, coatings, varnishes, primers, adhesives, and other materials applied with rotogravure and flexographic plates. Printed items include magazines, advertising inserts, catalogs, flexible packaging, corrugated boxes, paper towels, newspapers, wall coverings, floor coverings, shower curtains, etc.

Sources in the publication rotogravure segment of the printing and publishing industry include but are not limited to ink and solvent storage tanks, ink mixing, printing, press and parts cleaning, proof and production presses and solvent recovery. Sources in the product/package rotogravure and wide-web flexography segments include the printing presses.

Various organic HAP are used in the printing industry. Organic HAP used include toluene, xylene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, methanol, hexane, dibutylphthalate, toluene diisocyanate, ethylene glycol and glycol ethers. These are the HAP expected to be emitted by the industry, however, the proposed standards apply to emissions of all organic HAP listed in section 112(b).

B. Proposed Standards for Affected Sources

In addition to the standards for affected sources as discussed below, the affected sources would be subject to the General Provisions which were promulgated in the **Federal Register** March 16, 1994 (59 FR 12408) under 40 CFR part 63, subpart A. The General Provisions stipulate that all affected sources subject to the proposed rule are also subject to, as appropriate, 40 CFR 63.4, 63.5, and 63.6.

The proposed rule requires each owner or operator who uses a control device or equipment to control HAP emissions to prepare an operation and maintenance plan in accordance with § 63.6. In addition to the information required in § 63.6, the proposed rule requires that the owner or operator of the control device or equipment include the following information: (1) The operation and maintenance criteria for each air pollution control device or equipment, including a standardized checklist to document the operation and maintenance of the equipment; (2) a systematic procedure for identifying malfunctions and for reporting them immediately to supervisory personnel; and (3) procedures to be followed to ensure that equipment or process malfunctions due to poor maintenance or other preventable conditions do not occur.

The General Provisions also state that an owner or operator who uses an air pollution control device or equipment not listed in the proposed rule must submit to the Administrator for approval a description of the device, test data verifying the performance of the device or equipment for HAP and/or VOC emissions, appropriate operating parameters that would be monitored to establish compliance with the proposed standards, and a copy of the inspection and maintenance plan required under § 63.6. The authority to approve an alternate air pollution control device is retained by the Administrator and is not delegated.

Finally, § 63.6(g) allows an owner or operator of an affected source to use alternative means of compliance. This allows the development and use of new technology not known or not demonstrated at the time the rule was promulgated.

The affected sources for the proposed standards are defined as follows: (1) Each publication rotogravure facility (all publication rotogravure presses plus all associated operations including but not limited to ink and solvent storage tanks, ink mixing, printing, press and parts cleaning, proof and production presses and solvent recovery); and (2) each product or packaging rotogravure or wide-web flexographic press or group of presses controlled by a common solvent recovery system. The following paragraphs summarize the proposed standards for each affected source.

1. Publication Rotogravure Presses

The proposed standards for publication rotogravure facilities would apply to all new and existing affected sources. The proposed standards allow the use of control devices provided each facility achieves an overall control efficiency, taking into account capture and control device efficiency of 92 percent, when the organic HAP content of solvent borne inks and other materials used is equivalent to the volatile matter content. When non-HAP VOC or water is present in the inks or other materials applied, each control device must achieve a control efficiency such that the sum of the organic HAP recovered or destroyed, plus the water used, plus the VOC used, minus the organic HAP used makes up a minimum of 92 percent of the sum of the VOC used plus the water used. (Organic HAP emitted is less than 8 percent of the total volatile matter.)

Compliance with the proposed standard would be demonstrated by a monthly mass balance when a solvent recovery system is used. Compliance for control devices other than solvent recovery systems would be shown on a continuous basis based on a specific operating parameter or parameters, such as temperature for incinerators.

2. Package and Product Rotogravure and Wide-web Flexographic Presses

The proposed standards for package and product rotogravure and wide-web flexographic presses would apply to all new and existing affected sources. The proposed standards allow the use of low HAP materials, control devices, or a combination of low HAP materials and control devices. Presses applying any combination of inks, coatings, primers, adhesives, solvents, extenders and other materials such that the monthly mass weighted organic HAP contents of these materials is equal to or less than 0.20 kg per kg of solids applied, or equal to or less than 0.04 kg per kg of materials applied would be in compliance. The proposed standards allow the use of control devices, provided that each control device used for the control of HAP achieves an overall control efficiency, taking into account capture and control device efficiency of 95 percent. Presses would also be allowed to comply with the proposed standards by using control systems provided that the HAP emissions are equal to or less than 0.20 kg per kg of solids applied. In cases where a solvent recovery system is used to control emissions from more than one press, the group of commonly controlled presses can be considered a single affected source for the purpose of complying with the overall control device efficiency standard or the overall organic HAP emission rate standard.

Compliance with the proposed standard would be demonstrated either by a monthly mass balance or through the use of continuous emission monitors when a solvent recovery system is used. Compliance for control devices other than solvent recovery systems would be shown on a continuous basis based on a specific operating parameter or parameters, such as temperature for incinerators. Compliance with the proposed organic HAP content level standards would be shown on a monthly basis for compliant materials. Sources demonstrating compliance by a combination of means would demonstrate control device efficiency as described above and demonstrate mass average organic HAP content on a monthly basis.

C. Compliance Dates

The proposed rule would require all existing sources to comply no later than three years after the effective date of the standards. In addition, the proposed rule adopts the compliance dates specified in § 63.6(b) and § 63.6(c). New sources must comply with the standard upon startup or the effective date of this regulation, whichever is later.

D. Compliance Extensions

Because of the length of time necessary to properly specify, order and install additional capture and control equipment some existing facilities may need to request a compliance extension. Similarly, some existing facilities choosing to adapt to lower HAP ink (and other press material) formulations may have to select and test substitutes for a large number of specific applications. These existing facilities may need to request a compliance extension.

Section 63.6(i) of 40 CFR part 63 provides the requirements for requesting an extension of compliance with a relevant standard established under part 63. Specifically, § 63.6(i)(4) allows the issuance of a permit granting an extension of up to one year to comply with the standard, if such additional period is necessary for the installation of controls. Section 63.6(i)(4)(i)(B) requires requests for compliance extensions to be submitted no later than 12 months before the affected source's compliance date.

E. Compliance Testing and Monitoring

In addition to the specific testing and monitoring requirements specified below for each affected source, the proposed rule adopts the testing requirements specified in § 63.7.

1. Test Methods and Procedures

a. Publication Rotogravure. For facilities using solvent recovery systems, the overall control efficiency would be determined using a mass balance over the period of each calendar month. Owners or operators would be required to measure the amount of all materials used during the month and to determine the organic HAP and volatile matter content of these materials. Owners or operators would also be required to measure the amount of volatile matter recovered by the solvent recovery system during the month and to calculate the overall HAP control efficiency. The organic HAP content would be determined by proposed EPA Method 311, or from manufacturers data when these data are equivalent to those obtained from proposed EPA Method 311. When it is not possible to

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determine the organic HAP content using proposed EPA Method 311, the owner or operator shall submit to the Administrator an alternative technique for determining the organic HAP content. The volatile matter content of the materials used shall be determined by manufacturers formulation data or by Method 24A of 40 CFR part 60, appendix A.

For facilities using incinerators, owners or operators must determine the incinerator destruction efficiency and the capture efficiency. Incinerator destruction efficiency would be determined using EPA Method 1 or 1A, EPA Method 2, 2A, 2C or 2D, EPA Methods 3 and 4, and EPA Method 25 or 25A of 40 CFR part 60, appendix A. Capture efficiency would be confirmed using Procedure T to verify the presence of a permanent total enclosure or determined using the capture efficiency protocol specified in 40 CFR 52.741 (a)(4)(iii).

b. Package and Product Rotogravure and Wide-web Flexography. Owners or operators may comply by means of use of materials meeting the organic HAP threshold requirements or through use of control equipment, or through a combination of low organic HAP materials and control equipment. The proposed standards for organic HAP emissions would require compliance with an organic HAP content threshold based on solids content (kg of organic HAP per kg of solids applied), an organic HAP threshold based on material (kg of organic HAP per kg of materials applied), an overall organic HAP control efficiency (percent), or an organic HAP emission rate (kg of organic HAP emitted per kg of solids applied).

The organic HAP content of inks, coatings, primers, adhesives, solvents and other materials applied on the press would be determined by proposed EPA Method 311, or from manufacturers data when these data are equivalent to those obtained from proposed EPA Method 311. When it is not possible to determine the organic HAP content using proposed EPA Method 311, the owner or operator shall submit to the Administrator an alternative technique for determining the organic HAP content.

The facility may rely on manufacturer's data to determine the organic HAP content when these data are equivalent to those obtained from proposed EPA Method 311. The mass of each ink, coating, primer, adhesive, solvent and other material applied would be determined using company records. If diluent solvents or other ingredients are added to a material prior to application, then the total organic HAP fractions and mass must be adjusted appropriately to account for such additions. These values would be required for each monthly period; however, only changes in formulation would require re-determination of total organic HAP weight fraction. The proposed standards would then require the owner or operator to calculate the average mass of organic HAP in materials applied per mass of solids applied.

If an owner or operator is seeking to comply by using materials with a weighted average HAP content below the organic HAP content threshold requirement or the low solids organic HAP threshold requirement, the owner or operator would need to determine the organic HAP content and solids content. If no changes in formulation as applied occurred, then a re-calculation of the organic HAP level would not be required.

If a control device is used, the proposed standards require the owner or operator to demonstrate compliance with the overall control efficiency requirement of at least 95 percent. Alternately, the owner or operator may determine the overall control efficiency of the equipment and the HAP content and solids content of the materials applied. To comply by this combination of means, the owner or operator would have to demonstrate a HAP emissions limitation of 0.20 kg HAP per kg of solids applied.

For a solvent recovery system, overall control efficiency would be determined using a liquid-liquid mass balance, or by conducting an initial performance test of capture efficiency and using continuous emissions monitors. The liquid-liquid mass balance determination would be made every month. Owners or operators would be required to measure the amount of all materials applied during the month and to determine the volatile matter content of these materials. Owners or operators measuring overall control efficiency using a liquid-liquid mass balance would also be required to measure the amount of volatile matter recovered by the solvent recovery system during the month and to calculate the overall HAP control efficiency.

Owners or operators using solvent recovery systems may also demonstrate compliance by conducting an initial performance test of capture efficiency and operating continuous emissions monitors to determine the total volatile matter content at both the inlet to and the outlet from the carbon adsorber such that the percent efficiency of the carbon adsorber can be calculated for each calendar month. The owner or operator must verify the presence of a permanent total enclosure using Procedure T, or determine the capture efficiency using the protocol specified in 40 CFR 52.741(a)(4)(iii). The overall organic HAP control efficiency must be calculated as the product of the capture efficiency and the carbon adsorber efficiency.

For control devices other than carbon adsorbers, the overall control efficiency would be based on capture efficiency and destruction efficiency. Capture efficiency would be determined based on the procedure specified in 40 CFR 52.741(a)(4)(iii), unless the operation is performed within a permanent total enclosure. An enclosure that meets the requirements of a permanent total enclosure as specified by Procedure T of 40 CFR 52.741 would have a capture efficiency of 100 percent.

The destruction efficiency of a control device other than a carbon adsorber would be determined using EPA Method 1 or 1A, EPA Method 2, 2A, 2C or 2D, EPA Methods 3 and 4, and EPA Method 25 or 25A of 40 CFR part 60, appendix A. The owner or operator would record such process conditions as may be necessary to determine the conditions of the performance test.

To determine the value of an incinerator operating parameter that will demonstrate continuing compliance, the time weighted average of the values recorded during the performance test shall be computed. For a thermal incinerator, the owner or operator shall establish as the operating parameter the minimum combustion temperature. For a catalytic incinerator, the owner or operator shall establish as the operating parameters the minimum gas temperatures both upstream and downstream of the catalyst bed. These minimum temperatures are the operating parameters used to demonstrate continuing compliance.

The affected source is in compliance if the overall HAP control efficiency is at least 95 percent. Alternately, the source can comply on the basis of HAP emission limitation. The facility would be required to determine the organic HAP content and solids content of inks, coatings, primers, adhesives, solvents and other materials applied on the press. The mass of each ink, coating, primer, adhesive, solvent and other material applied would be determined using company records. If diluent solvents or other ingredients are added to a material prior to application, then the total organic HAP content, solids content and mass must be adjusted appropriately to account for such additions.

The organic HAP content would be determined from proposed EPA Method 311 or, when this is not possible the owner or operator shall submit to the Administrator, an alternative technique for determining the organic HAP content. Manufacturer's formulation data may be used provided that the data are equivalent to those obtained using proposed EPA Method 311. The volatile matter and solids content of the materials used shall be determined by manufacturers formulation data or by Method 24 of 40 CFR part 60, appendix A.

These values would be required for each monthly period. The proposed standards would then require the owner or operator to calculate the average mass of organic HAP in materials applied per mass of solids applied. The overall control efficiency as determined above would be used to determine the HAP emission limitation. To comply by this combination of means, the owner or operator would have to demonstrate a HAP emissions limitation of 0.20 kg HAP per kg of solids applied.

2. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a source is in compliance. For owners or operators using thermal or catalytic incinerators, this can be accomplished by measuring site-specific operating parameters, the values of which are established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. This type of monitoring would be required for those emission points for which the standards are expressed as a percent control, or for affected sources using control devices to achieve an organic HAP emission limit. In addition, the owner or operator is expected to install and operate the monitoring equipment properly.

The proposed rule would require temperature to be monitored, using a continuous recorder, for incinerators. For catalytic incinerators, temperature monitors would be placed immediately before and after the catalyst bed. For other incinerators, the temperature monitor would be placed in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs. All monitoring equipment would be installed, calibrated, maintained, and operated according to manufacturer's specifications.

The proposed standards would require each owner or operator to establish a range of values for each of these monitored parameters during the initial performance test. As long as the control device is operated within the established ranges, the proposed emission standards are considered to be met. Consequently, exceedances of these parameters would be considered a violation of the standards since operating the control device outside of the established ranges may reduce the efficiency of the control device.

Owners or operators of publication rotogravure sources operating solvent recovery systems would be required to conduct monthly mass balances as described in the section II.E.1 of the preamble. Owners or operators of other sources operating solvent recovery systems would be required either to conduct monthly mass balances as described in the previous section or to operate continuous emission monitors. The continuous emission monitors would be used to determine the total volatile matter concentration at both the inlet to and the outlet from the carbon adsorber, such that the percent efficiency of the carbon adsorber can be calculated for each calendar month.

Owners or operators of package or product rotogravure or flexographic printing facilities complying by means of use of materials meeting the applicable HAP content threshold standards would demonstrate compliance through recordkeeping as described in section II.E.1 of the preamble.

Under 40 CFR 63.6(g), an owner or operator of an affected source may request the use of alternative methods of emission reduction for complying with design, equipment, work practice, or operational emission standards, or combination thereof, established under this part. Under the proposed rule, an owner or operator of an affected source may also use control devices other than those specifically identified in the proposed rule as a means for achieving compliance with any portion of the rule. If devices other than those identified are used, the proposed standards would require the owner or operator to submit the parameters to be monitored to the Administrator for approval. The authority to approve the use of alternate control devices and the parameters to be monitored is retained by the Administrator and is not delegated.

Section 114(a)(3) of the Act requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitations or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

F. Recordkeeping and Reporting Requirements

The proposed rule proposes to adopt the requirements contained in 40 CFR 63.9 and 40 CFR 63.10. The proposed rule, however, contains additional or clarifying elements and changes certain time periods allowed for submitting or responding to certain reports and requests required in § 63.10. These elements and changes are summarized below for each of the operations for which standards are being proposed.

1. Recordkeeping Requirements

a. Publication Rotogravure. Records must be maintained of the organic HAP and volatile matter content, as received, and the monthly usage of all inks, solvents, varnishes, adhesives and other materials applied on publication rotogravure presses. Where incinerators are used, records must be maintained of the overall control efficiency and all test results, data, and calculations used in determining the overall control efficiency.

Where solvent recovery systems are used, records must be maintained of the overall control efficiency, all test results, data, and calculations used in determining the overall control efficiency, and the monthly material balances used to demonstrate compliance.

b. Packaging and Product Rotogravure and Wide-web Flexography. Records must be maintained of the organic HAP, volatile matter and solids content, as received, and the monthly usage of all inks, solvents, varnishes, primers, adhesives and other materials applied on packaging and product rotogravure presses and wide-web flexographic presses. Each owner or operator would be required to keep records of the equipment monitoring parameter measurements specified in the proposed rule. For an incinerator other than a catalytic incinerator, continuous records must be maintained of the firebox temperature (or temperature in the ductwork immediately downstream of the firebox). For a catalytic incinerator, continuous records must be maintained

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of the gas stream temperature immediately before and after the catalyst bed. For both types of incinerators, records must be maintained of the overall control efficiency and all test results, data, and calculations used in determining the overall control efficiency.

For carbon adsorbers, records must be maintained of the overall control efficiency, all test results, data, and calculations used in determining the overall control efficiency.

2. Reporting Requirements

The proposed rule would require four basic types of reports: (1) Initial notification, (2) notification of compliance status, (3) periodic reports, and (4) other reports. In addition, the proposed rule would require that the results of any performance test required under § 63.7 be reported no later than 60 days after the completion of the test. A permit application as required under 40 CFR part 70 may be used in lieu of the initial notification provided the same information is contained in the permit application as required for the initial notification.

As stated above, the proposed standards adopt the reporting requirements contained in § 63.9(a) through § 63.9(e) and § 63.9(h) through § 63.9(j) and 63.10 (a), (b), (d), and (f). However, the time period allowed for the Administrator to notify the owner or operator in writing of approval or disapproval of the request for an adjustment to a particular time period or postmark deadline submitted under § 63.9(i) has been changed to within 30 calendar days of receiving sufficient information to evaluate the request, rather than 15 calendar days as provided for in § 63.9(i)(3).

Sections 63.9 and 63.10 identify the type of generic information to be included in the initial notification, notification of compliance status, and other reports and, therefore, this information is not repeated in this preamble. The following paragraphs summarize the additional information specific to the printing and publishing rule that should be included in the notification of compliance status and the type of information to be included in the periodic reports.

a. Publication Rotogravure. The notification of compliance status should identify the control devices that were used to demonstrate that the facility was in compliance. Specific reporting requirements are dependent on how an owner or operator chooses to comply with the regulation. If solvent recovery systems are used and liquid-liquid material balances are conducted, semiannual reports would be required that contain information on all months when the material balances were not in compliance with the standards.

If incinerators are used, semiannual reports would be required that contain information on all days when any 3-hour average temperature was below the average temperature established during the most recent performance test during which compliance was demonstrated. The first three hour period will commence when the affected source begins operation or restarts following a shutdown period. Subsequent three hour periods commence every three hours of operation. When an affected source shuts down during a three hour period, the average temperature for the period between the commencement of the three hour period and shut down would be used for the purpose of compliance demonstration.

If incinerators are used, or if solvent recovery systems are used but liquid-liquid material balances are not conducted, semi-annual reports would be required that contain information on all days when for any three hour period, the average value of the site-specific operating parameter used to monitor capture system performance was greater than or less than (as appropriate) the operating parameter value established for the capture system.

If a semiannual report is required for the period covered by the first semiannual report of the reporting year, a semiannual report would be submitted for the following semiannual period even if no exceedances occurred in that period. If no exceedances occur during the entire reporting year, each owner and operator would submit annual statements indicating that each affected facility has been in compliance.

b. Packaging and Product Rotogravure and Wide-web Flexography. The notification of compliance status should identify whether low-HAP materials or control devices were used to demonstrate that the facility was in compliance, and, for control devices and capture systems, what operating parameters were identified for continuous monitoring in order to ensure compliance with the proposed standards. Specific reporting requirements are dependent upon how an owner or operator chooses to comply with the regulation.

Owners and operators complying using low-HAP materials would be required to report each exceedance of the organic HAP content level or the low solids organic HAP content level. These reports would be submitted on a semiannual basis.

If incinerators are used, semiannual reports would be required that contain information on all days when any 3-hour average temperature was below the average temperature established during the most recent performance test during which compliance was demonstrated. The first three hour period will commence when the affected source begins operation or restarts following a shutdown period. Subsequent three hour periods commence every three hours of operation. When an affected source shuts down during a three hour period, the average temperature for the period between the commencement of the three hour period and shut down would be used for the purpose of compliance demonstration.

If solvent recovery systems are used, and the owner or operator chooses to demonstrate compliance by means of a liquid-liquid mass balance, semiannual reports would be required that contain information on all months when the material balances were not in compliance with the standards.

Owners or operators of affected sources complying with the HAP emission limitation using a combination on control devices and low HAP materials would be required to submit semiannual reports containing information on control device exceedances as described above, in addition to reports of exceedances of monthly calculated HAP emission limitations.

If incinerators are used, or if solvent recovery systems are used but liquid-liquid material balances are not conducted, semi-annual reports would be required that contain information on all days when for any three hour period, the average value of the site-specific operating parameter used to monitor capture system performance was greater than or less than (as appropriate) the operating parameter value established for the capture system.

If a semiannual report is required for the period covered by the first semiannual report of the reporting year, a semiannual report would be submitted for the following semiannual period even if no exceedances occurred in that period. If no exceedances occur during the entire reporting year, each owner and operator would submit annual statements indicating that each affected facility has been in compliance.

III. Summary of Environmental, Energy, and Economic Impacts of the Proposed Standards

A. Emission Reductions

1. Existing Facilities

For the existing publication rotogravure printing industry (27 facilities), the nationwide baseline HAP emissions are estimated to be 17,500 Mg/yr (19,200 tpy). Implementation of the proposed regulation would reduce these emissions by 4,750 Mg/yr (5,220 tpy), or 27 percent. For the existing product and packaging rotogravure and wide web flexographic printing industry (approximately 1,200 facilities), the nationwide baseline HAP emissions are estimated to be 4,200 Mg/yr (4,620 tpy). Implementation of the proposed regulation would reduce these emissions by 1,940 Mg/yr (2,140 tpy), or 46 percent.

2. New Facilities

It is expected that any new facilities would be designed to meet the proposed standards because of other federal, state and local environmental and occupational safety regulations. No net emission reduction from new facilities is expected as a result of the proposed regulation.

B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the proposed standards. These impacts are exclusive of the direct organic HAP air emission reductions discussed in the previous section.

Most of the organic HAP are VOC. Capture and control of HAP which is presently emitted will result in a decrease in VOC emissions. It is expected that some product and packaging rotogravure and wide-web flexographic facilities will comply with the proposed standard by substituting non-HAP materials for HAP presently in use. In some cases, the non-HAP materials will be VOC, however, in other cases, non-VOC (e. g. water) materials will be used.

The use of newly installed or upgraded control devices will result in greater electricity consumption. Increases in emissions of sulfur dioxide, nitrogen oxides and carbon dioxide from electric utilities could result. In the product and packaging rotogravure and wide-web flexographic printing segments, some plants will comply by installing or upgrading incinerators. Supplemental fuel, typically natural gas, will be used, particularly for thermal incinerators. Combustion of this fuel will result in additional carbon dioxide emissions and may result in additional emissions of nitrogen oxides.

Facilities converting to waterborne materials as a means or partial means of compliance may have reduced RCRA hazardous waste disposal if the status of the waste ink changes from hazardous to nonhazardous. An increase in wastewater discharge may occur if waste ink and waterborne washup materials are discharged to publicly owned treatment works (POTW). There is no assurance that facilities converting to low-HAP formulations will adopt waterborne, rather than non-HAP VOC based materials. While EPA expects wastewater and solid waste impacts in general to be insignificant, it is aware of a frequent practice in the printing and publishing industry of using shop towels for cleaning. This generates a waste load which may be sent to industrial laundries (and ultimately to POTW) in the case of cloth towels, or to landfills in the case of disposable towels. EPA invites submission of comments and data on how effluent from industrial laundries may be affected by this regulation.

New and upgraded catalytic incinerators will require catalyst. Catalyst life is estimated to be in excess of ten years. Spent catalyst will represent a small amount of solid waste and in some cases the spent catalyst will be regenerated by the manufacturer for reuse. Activated carbon used in solvent recovery systems is returned to the manufacturer at the end of its useful life and converted to other salable products. No solid waste impact is expected from this source.

C. Energy Impacts

The operation of new and upgraded control devices will require additional energy. Capture and control of increased volumes of solvent laden air will require additional fan horsepower. Operation of incinerators, particularly thermal incinerators will require supplemental fuel (typically natural gas). Operation of solvent recovery systems will require steam regeneration of the activated carbon; boilers are typically fired with natural gas or fuel oil.

The total additional electrical energy required to meet the proposed standard is estimated to be 55 million kilowatt-hours (kWh) per year. This includes 32 million kWh for publication rotogravure, 20 million kWh for product and packaging rotogravure and 3.0 million kWh for wide web flexography. Fuel requirements total 1.0 trillion Btu per year. This includes 580 billion Btu for publication rotogravure, 370 billion Btu for product and packaging rotogravure and 58 billion Btu for wide web flexography.

D. Cost Impacts

The total capital and annualized costs (1993 dollars) attributable to compliance with the proposed standards have been estimated for existing sources. It is expected that new facilities would meet the proposed regulations as a result of other federal, state and local environmental and occupational safety regulations.

1. Capital Costs

Capital costs would be incurred in upgrading existing capture and control systems at those facilities presently operating control devices that do not meet the proposed standards. Facilities which do not presently operate control devices would be expected to capitalize a period of downtime necessary to convert to low-HAP materials. Total capital costs are estimated at $133 million. These costs include $92 million at publication rotogravure facilities for improved capture and upgrades to solvent recovery systems to handle increased volumes of pressroom air.

Capital costs at product and packaging rotogravure facilities are estimated at $34 million. These costs include improved capture and upgrades to control devices for facilities presently operating control devices. For facilities not presently operating control devices the costs are based on capitalized downtime.

Capital costs at wide-web flexographic facilities are estimated at $7.2 million. These costs include improved capture and upgrades to control devices for facilities presently operating control devices.

2. Annual Costs

Annual costs of the proposed standards have been estimated at $42 million per year. These costs include capital recovery over a ten year period, operating costs for the newly installed and upgraded capture and control systems, and costs for recordkeeping, reporting and monitoring. These are net costs after taking into account the costs presently being incurred for the baseline control level. The annual costs include $21 million per year for publication rotogravure, $17 million per year for product and packaging rotogravure and $3.6 million per year for wide-web flexography.

E. Economic Impacts

The preliminary economic impact analysis for the selected regulatory alternative shows that the estimated

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price increases for printing products produced by the affected industries is an average of 1.34 percent for those using publication and product/packaging rotogravure presses, and less than 0.01 percent on average for those using wide-web flexographic presses. The estimated decreases in the quantity of printing production is an average of 3.85 percent and 0.53 percent, respectively. No firms or facilities are at risk of closures as a result of the standard.

For more information, consult the background information document.

IV. Process Descriptions and Control Technologies

A. Process Descriptions

1. Rotogravure Printing

Nearly all gravure printing is done by rotogravure. Gravure printing is a printing process in which an image (type and art) is etched or engraved below the surface of a plate or cylinder. On a gravure plate or cylinder, the printing image consists of millions of minute cells. Rotogravure requires very fluid inks which will flow from the cells to the substrate at high press speeds. In addition to inks, other materials including adhesives, primers, coatings and varnishes may be applied with rotogravure cylinders. These materials dry by evaporation as the substrate passes through hot air dryers.

Different colored inks, or other materials are applied in succession as the web passes from station to station. A separate cylinder, ink supply and dryer are required for each station. After the ink is applied at each station, the web is dried before being printed by the next station. Solvent borne or waterborne ink systems can be used but these ink systems are not interchangeable. Both the printing cylinders and the drying systems are specific to the ink system in use. The evaporated components of the ink and other materials may contain HAP to varying extents. Rotogravure can be divided into the publication and product/packaging segments. Because of the expense and complexity of rotogravure cylinder engraving, it is particularly suited to long run printing jobs.

a. Publication Rotogravure. Publication rotogravure printing focuses on magazine, catalog and advertising insert printing. All U. S. publication rotogravure plants presently use toluene/xylene based ink systems, and operate solvent recovery systems based on carbon adsorption with steam regeneration. Recovered solvent is sold back to the ink manufacturers. Press capture systems vary depending on the age of the press. Typically, four stations are required to print each side of the web. Publication rotogravure presses in operation in the U. S. have up to 16 stations. It is generally believed in the industry that publication rotogravure equipment is capable of higher quality printing than competing processes.

The primary solvent in publication rotogravure ink is toluene, a HAP. At some plants xylenes and ethyl benzene, also HAP, and non-HAP aliphatic solvents are present in the solvent blend and are used, emitted, recovered and handled in the same manner as toluene. The plants purchase ink containing solvent and add additional solvent to obtain the desired viscosity.

HAP emissions result from incomplete recovery of captured HAP, and from incomplete capture. Activated carbon solvent recovery systems are suitable for control of toluene and similar aromatic solvents. High control efficiencies can be achieved, however some solvent is unavoidably emitted as a result of thermodynamic limitations (the toluene-carbon/toluene-air equilibrium) and flow irregularities (e.g. channelling through the carbon bed). Some HAP is not captured in the dryer exhaust. This includes HAP which evaporates from the ink fountains into the pressroom, HAP which is evaporated from the web in the dryers but is then swept out of the dryer as the web travels towards the succeeding press station, HAP which remains in the web after the last dryer which evaporates during additional processing (slitting, folding, stitching, etc.) and HAP which leaves the plant trapped in the magazine, catalog or advertising insert.

b. Packaging and Product Rotogravure. The rotogravure printing operation is, in many cases, a relatively small part of the total package or product production process. This section briefly describes the various types of packages and products that include rotogravure printing in their manufacture, and notes what production steps are required in addition to the rotogravure printing step.

Folding Cartons. Folding carton packages are used for a wide variety of products including wet and dry foods, beverages, bakery items, and candy. They are also used for nonfood products such as detergents, hardware, paper goods, cosmetics, medical products, tobacco products, and sporting goods.

The folding carton is made from one of several grades of paperboard. It may be printed, laminated or coated, or may be shipped unprinted to be used with another label or wrapper. Besides printing, operations in the manufacture of folding cartons include creasing, trimming, die-cutting, coating, and gluing. The cartons are shipped flat, to be assembled and filled by the customer.

Flexible Packaging. Flexible packaging materials start out as rolls of paper or foil, or beads of plastic resin, and are "converted" into a package or roll of packaging material. Flexible package manufacturers are sometimes referred to as "converters". Converters produce a wide range of non-rigid packages made of paper, plastic film, foil laminates, and combinations of these substrates.

One portion of the flexible packaging industry provides fully printed packaging materials (designated "preformed specialty bags") to contract packagers. Another portion provides combination or laminated materials (converted wrap) for printing and/or final packing by captive packaging operations.

Labels and Wrappers. Labels and wrappers include roll and sheet labels applied to cans, unprinted cartons, composite cans, bottles and other containers, tags, and self-adhesive label products. Paper is the common substrate, but laminates and foil are also used. The industry makes a distinction between labels and wrappers, which are package components, from a product that becomes the entire package and should be called a flexible package.

Gift Wraps. About 90 percent of all gift wraps are printed. They are produced by greeting card companies and by label and flexible packaging firms. Rotogravure printing is particularly suitable for producing the continuous patterns used on gift wrap.

Wallcoverings. The wallcovering industry is a traditional user of rotogravure. The principal types of wallcoverings are prepasted paper, prepasted paper-backed vinyl, fabric-backed vinyl, and specialty items (e.g., metallics, grass cloth, rice paper). The steps in manufacturing wallcoverings include printing the paper and laminating it to the backing sheet.

Vinyl Printing. These products consist of auto upholstery, furniture upholstery, tablecloths, decorative trim, and shower curtains. Rotogravure dominates this product area because of the complex repeat patterns (e.g., woodgrain), and the requirement, in many cases, for overcoating that is readily applied using a rotogravure cylinder. Printing is performed on unsupported vinyl, supported vinyl (backed with fabric or paper), and paper substrate that is then coated with vinyl.

Decorative Laminates. These products consist of solid, thermoset laminates used in furniture and construction, and other laminates, principally wood grain veneers, widely used in furniture.

Floor Coverings. Rotogravure presses are used to decorate and apply texture and finish to sheet vinyl floor coverings. Rotary screen printing is sometimes used in combination with gravure. Rotogravure is also used to print transfer papers used to decorate vinyl tile.

Tissue Products. Some type of printing process is used to apply color patterns to paper towels, bathroom tissue, and napkins. The older paper mills producing tissue products were typically equipped with rotogravure presses.

Product and packaging rotogravure differs from publication rotogravure with respect to the materials used, the applicable control devices, and the decreased importance of the actual printing process in an overall manufacturing process. Packaging and product rotogravure printing uses a wide variety of different ink systems, including the aromatic HAP based ink systems common to publication rotogravure, solvent based non-HAP ink systems, and waterborne ink systems. Numerous specially mixed colors are applied at various times in this industry segment, in contrast to the publication segment which primarily applies four basic colors. In addition, a wider range of materials are applied with rotogravure cylinders in this segment of the industry. A variety of coatings, adhesives and primers are applied at print stations on rotogravure presses. Because of the variety of materials applied, the approach to HAP and VOC control in packaging and product rotogravure facilities varies. In addition to the activated carbon based solvent recovery systems used by the publication segment, packaging and product gravure facilities also use a variety of thermal and catalytic oxidizers. Many facilities operate without significant HAP use and do not have control devices.

In product and packaging rotogravure facilities, HAP is contained in both the printing inks and in other materials (adhesives, coatings) that are applied as part of a continuous manufacturing process. The predominant type of ink is based on nitrocellulose resin, with some polyamide inks. Solvent systems include aromatic, aliphatic and oxygenated hydrocarbon solvent inks, and water-based inks.

2. Wide-Web Flexography

Flexographic printing is considered to be the application of words, designs and pictures to a substrate by means of a printing technique in which the pattern to be applied is raised above the printing plate and the image carrier is made of rubber or other elastomeric materials. For the purposes of the proposed regulation, flexographic presses capable of printing substrates of 18 inches in width or greater are wide-web flexographic presses. Because of the ease of plate making and press set up, flexographic printing is more suited to short production runs than gravure.

Flexographic inks must be very fluid to print properly. Flexographic inks include both waterborne and solvent based systems. Solvents used must be compatible with the rubber or polymeric plates; thus, aromatic solvents are not used. Some of the components of solvent based flexographic ink include ethyl, n-propyl and i-propyl alcohols; glycol ethers, aliphatic hydrocarbons, and esters.

Wide web flexographic presses are used to print flexible and rigid packaging; newspapers, magazines, and directories; paper towels, tissues etc; and printed vinyl shower curtains and wallpaper. Substrates include polyolefins, polystyrene, polyesters, glassine, tissue, sulfite, kraft and other paper stocks, aluminum foil, paperboard and corrugated cardboard.

Flexographic presses can be divided into three main types depending on the relative relationship of the print stations. *Stack presses* have individual print stations oriented vertically with the unwind and rewind sections on the same side of the print stations. Stack presses are easily accessible for rapid changeovers between press runs. *Common impression presses* have the print stations around the circumference of a single large impression cylinder. The web is constantly supported between print stations, which is an advantage for printing on stretchable materials. *In-line presses* have the print stations in a horizontal row (the geometry is similar to rotogravure presses). Most flexographic printing (including all flexographic newspaper and corrugated carton printing) is done with waterborne inks. Waterborne inks which contain no HAP are available for some applications. Some waterborne inks contain relatively low proportions of HAP, principally ethylene glycol and glycol ethers. Most solvent based flexographic inks contain little or no HAP. Capture and control devices used with solvent based inks are usually designed, permitted and operated for VOC control.

B. Control Techniques

There are two approaches to limitation of HAP in the printing and publishing industry. The first approach is to improve capture and control systems or to add control devices where none are in use. Capture and control can be addressed separately, although in many cases, improved capture is achieved through an increase in the amount of air handled. This can necessitate upgrades to existing control devices. The second approach, focusing on pollution prevention, is to substitute low HAP or HAP-free materials for materials (inks, coatings, varnishes, adhesives, primers, etc.) presently in use.

1. Capture Systems

Capture systems are designed to collect solvent laden air and direct it to a control device. In rotogravure and flexographic printing, solvent is removed from the printed substrate by evaporation in a dryer. The exhaust from the dryer can be ducted to a control device. Additional systems are often used to collect solvents which evaporate from other parts of the printing press, as well as those which escape from the dryer. In addition, pressroom ventilation air can be exhausted to a control device.

Differences in capture efficiency contribute much more to the variation in overall efficiencies than the choice of control device. Reported capture efficiencies ranged from estimates of less than 50 percent to the 100 percent capture which is assumed for systems meeting the requirements of permanent total enclosures. Capture systems can be improved through collection of additional solvent laden air from the press area and through construction of additional hooding and press enclosures. A capture efficiency of 100 percent can be assumed for presses that meet the requirements of a permanent total enclosure.

a. Publication Rotogravure. Within the publication rotogravure industry, all presses have dryer exhaust gases routed to the solvent recovery system. Additional capture systems include dryer hood systems, partial upper deck enclosures, full upper deck enclosures, enclosed presses, permanent total enclosures, room enclosures, rooms operated under negative pressure and floor sweeps. Typically, solvent laden air captured from several presses is combined and treated with a common solvent recovery system. The individual presses may have different capture devices, and different capture efficiencies.

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b. Product and Package Gravure. In the product and package gravure industry, many facilities use low VOC (and low-HAP) inks and coatings. Dryer exhausts from these facilities may be captured and vented to the atmosphere without the use of a control device. Where solvent based inks are in use, more elaborate capture and control systems may be present. Capture systems in use at product and packaging gravure facilities include combinations of dryer exhausts, floor sweeps, collection ducting, hoods, press enclosures, permanent total enclosures, room enclosures, negative pressure pressrooms, partial enclosures and ink pan covers. With the exception of permanent total enclosures, none of these technologies has a precise definition with regard to capture efficiency. In many cases terms are used interchangeably. Where control devices are in use, solvent laden air from several presses may be combined and ducted to a common control device.

c. Wide-web Flexographic Printing. Capture systems in use at flexographic printing facilities include combinations of dryer exhausts, floor sweeps, hoods, and permanent total enclosures. Many facilities, including most sheetfed corrugated box facilities have no capture systems and rely on pressroom exhaust to the atmosphere to dilute the small amount of HAP present in the ink.

2. Control Devices.

a. Carbon adsorbers. Adsorption systems are used to remove organic compounds from gas streams when strict limits on the outlet concentration must be met, or when recovery of the compound is desired. Adsorption is effective on inlet concentrations ranging from a few parts per billion to several thousand parts per million, and flow rates of several hundred to several hundred thousand cubic feet per minute. Carbon adsorbers typically have a removal efficiency of 95 to 99 percent.

Once the carbon reaches saturation, it can be regenerated with steam within the adsorber vessel. This allows for the recovery of the organic compounds for reuse.

b. Incinerators. Two basic types of incinerators, thermal and catalytic, are used by package and product rotogravure and flexographic printers to remove organic contaminants. Each type is discussed below.

(1) *Thermal incinerators.* Thermal incinerators can be generally used on air streams with a wide concentration range of organics. These control devices have minimal dependence on the characteristics of the organic contaminants, so they can be used to control a wide variety of emission streams. Thermal incinerators can achieve removal efficiencies of 98 percent and higher.

The basic operation of thermal incinerators involves raising the inlet air stream to the incineration temperature of the contaminants and maintaining the temperature for a specific residence time. The waste heat content of the incinerator exhaust stream is used to preheat the inlet air stream. An auxiliary fuel is then typically required to raise the air stream temperature to the incineration temperature.

(2) *Catalytic incinerators.* Catalytic incinerators are similar to thermal incinerators except that they use a catalyst (a substance that accelerates the rate of oxidation without undergoing a chemical change itself) to assist in the oxidation of organic compounds to carbon dioxide and water. The removal efficiency of catalytic incinerators can be as high as 98 percent. Catalytic incinerators typically operate at lower temperatures than thermal incinerators to achieve equivalent efficiencies. For this reason, auxiliary fuel requirements and operating costs are lower for catalytic incinerators than thermal incinerators when used to control relatively dilute air streams.

V. Rationale for the Proposed Rule

A. Regulatory Development Process for NESHAP

During development of a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the cost, energy, and other environmental impacts of emission control techniques. The EPA uses this information in the development of possible regulatory approaches.

If the source category contains major sources, then a MACT standard is required. Section 112(d)(3) of the Act defines the minimum stringency requirements of the MACT standard for new and existing sources. This level of control is referred to as the MACT "floor," which needs to be determined as a starting point for developing the regulatory alternatives.

Once the floor has been determined for new and existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor level. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1) of the Act). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class as long as each standard is at least as stringent as the floor. The Act also contains provisions for regulating area sources. However, except for certain recordkeeping requirements contained in the General Provisions, these are not relevant to the proposed standards for printing and publishing sources, which apply only to major sources.

The next step in establishing a MACT standard is the development and analysis of regulatory alternatives. First, information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, and energy and secondary environmental impacts. Several regulatory alternatives (which may be different levels of emission control, different applicability criteria, or both, and one of which is the MACT floor) are then evaluated to determine the most appropriate regulatory alternative to reflect the MACT level.

In addition, although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. Section 112(h) of the Act provides that if it is not feasible to prescribe or enforce an emission standard, then a design, equipment, work practice, or operational standard may be established. For example, in some cases source testing may be impossible or at least not practicable due to technological and economic limitations.

In the EPA's decision-making process, the regulatory alternatives considered for new versus existing sources may be different and each alternative must be technically achievable. In selecting a regulatory alternative to represent MACT, the EPA considers the achievable reduction in HAP emissions (and possibly other pollutants that are co-controlled), the cost of control, and economic, energy, and other nonair quality health and environmental impacts. The overall objective is the achievement of the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT decision typically includes sections addressing applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation, published in the **Federal Register**, provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Following an evaluation of these comments, the EPA reaches a decision and promulgates the final standards.

B. Determining Maximum Achievable Control Technology (MACT) "Floors"

Once the EPA has identified the specific major source categories or subcategories that it intends to regulate under section 112, MACT standards are set at a level at least as stringent as the "floor." Congress has provided directives to guide the EPA in the process of determining the regulatory floor.

Congress specified that the EPA must establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator * * * determines is achievable * * *" (section 112(d)(2) of the Act). In addition, Congress limited the Agency's discretion by defining the minimum baseline (floor) at which standards may be set, as follows:

(1) For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator,"; and

(2) For existing sources, the standards "may be less stringent than standards for new sources * * * but shall not be less stringent, and may be more stringent than: (A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) * * * or (B) the average emission limitation achieved by the best performing 5 sources * * * for categories or subcategories * * * with fewer than 30 sources" (section 112(d)(3) of the Act).

C. Selection of Pollutants and Source Category(ies)

Section 112(b) of the Act lists the HAP to be regulated with standards established under section 112. Section 112(d), as amended, requires the EPA to promulgate emission standards for each category or subcategory of major sources and area sources of the HAP listed in section 112(b). For the purpose of developing these standards, the EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. The NESHAP are to be developed to control HAP emissions from both new and existing sources pursuant to section 112(c) of the Act.

The initial source category list (57 FR 31576, July 16, 1992), required by section 112(c) of the Act, identifies source categories for which NESHAP are to be established. This list includes all major source categories of HAP known to the EPA at this time, and all area source categories for which a finding of adverse effects warranting regulation has been made.

The source category list identifies "Printing/Publishing (Surface Coating)" as a source category because it contains major sources which have the potential to emit at least 10 tons of any one HAP or at least 25 tons of any combination of HAP annually.

The printing and publishing industry encompasses printing by a variety of graphic arts techniques applied to a variety of substrates. Printing operations are included as one or more steps in the overall manufacturing process for a wide variety of end products. Packaging and product printing often makes up only a small part of the value of the end product. For purposes of this rule, the EPA has defined the source category as consisting of all facilities engaged in publication rotogravure and product and packaging rotogravure and wide-web flexographic printing.

D. Selection of Emission Points Covered by the Proposed Rule

The proposed rule would limit organic HAP emissions that result from publication rotogravure and product and packaging rotogravure and wide-web flexographic printing. The standard applies to HAP present in inks, ink extenders, solvents, coatings, varnishes, primers, adhesives, and other materials applied on publication rotogravure and product and packaging and wide-web flexographic presses. Emission points in the publication rotogravure segment of the printing and publishing industry include but are not limited to ink and solvent storage tanks, ink mixing, printing, press and parts cleaning, proof and production presses and solvent recovery. Within the product/package rotogravure and wide-web flexography industry the standard applies to inks and all other materials applied with rotogravure or wide-web flexographic printing presses.

A discussion of the rationale for including or excluding basic processes from this proposed rule is given below.

1. Operations for Which Standards Are Being Proposed

EPA is proposing organic HAP emission standards for rotogravure and wide-web flexographic printing operations. Within the publication rotogravure segment of the industry, all organic HAP emitting operations are covered by the standard. Current industry practices instituted for compliance with applicable regulations pertaining to VOC emissions include accounting for solvent use on a facility-wide or control system wide basis determined by a periodic liquid-liquid mass balance. Organic HAP emissions at points other than production printing presses are relatively minor compared to press emissions. These operations, including ink storage and mixing, parts cleaning and proof presses can be controlled or uncontrolled provided that the overall facility or control system meets the proposed standard. Based on information provided by all U.S. publication rotogravure facilities, there are readily available techniques to achieve substantial organic HAP emissions reduction from the presses. Adequate information is available to establish MACT for these facilities.

Within the product and packaging rotogravure and wide-web flexographic printing segment of the industry, emission of organic HAP from rotogravure and flexographic presses is covered.

Based on the information obtained from the industry in response to information collection requests, in addition to information provided voluntarily and during meetings with industry trade organizations, there are several readily available techniques (including carbon adsorption and thermal and catalytic incineration) to achieve substantial emission reductions in these operations. While inks and other materials containing organic HAP are being used at many facilities, alternative formulations containing no organic HAP, or very low concentrations of organic HAP are available for many specific applications. Adequate information exists for establishing MACT for capture and control devices and for alternate low-HAP formulations.

2. Excluded Operations

a. Inorganic HAP Emissions. Inorganic HAP are present in pigments and film forming components of some inks. These components make up less than 1 percent of the total HAP content of the materials. These components remain on the substrate for the life of the publication, product or package and are not expected to be emitted to the air.

b. Non-press Operations at Product and Packaging Rotogravure and Wide-web Flexographic Printing Facilities. Operations related to press and parts cleaning, proof presses, ink mixing and

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storage, film lamination and flexographic platemaking have the potential to emit organic HAP. Organic HAP emissions from these operations make up only a small fraction of HAP emissions from the presses. Very few data are available regarding the extent of emissions from these sources and applicable control techniques. Adequate information is not available to establish MACT for these potential emission points.

EPA is not proposing regulations at this time pertaining to off-line rotogravure coating because these emission points will be covered in a future standard for "Paper and Other Web Coating".

c. Narrow-web Flexography. Thousands of narrow web flexographic printing facilities exist which primarily print tags and labels. No major sources of this type have been identified based on a search of the Toxic Release Inventory System, and it is unlikely that there are any such facilities. Very few data are available regarding the extent of emissions from these sources and applicable control techniques. Narrow web flexographic printing facilities are typically very small and predominantly use low HAP, low VOC inks. Adequate information is not available to establish MACT for these potential emission points.

E. Selection of the Basis for the Proposed Rule

Section 112 of the Act defines a major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. The Act states that new major sources must achieve the maximum achievable control technology (MACT), which is the level of emission control already achieved in practice by the best controlled similar source. The Act further states that emission standards promulgated for existing sources may be less stringent than standards for new sources; however, standards for existing sources must not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources.

For all operations being covered by the proposed rule, the EPA has determined that, taking into account nonair quality health and environmental impacts, and energy impacts, MACT is equal to the MACT floors for both existing and new sources. In addition, MACT for new sources was found to be equal to MACT for existing sources. The EPA has determined that no further emission reductions can be achieved for new sources through the use of demonstrated technology than the level of reduction represented by MACT for existing sources.

To evaluate the regulatory alternatives, model plants were developed based on market segment (publication rotogravure, package and product rotogravure and wide-web flexography), and size. These characteristics were examined to determine whether any technological justification existed to differentiate the proposed standards by market segment or size. Based on this examination, the EPA has decided that different market segments operate in different ways and that there is justification to differentiate between the two market segments identified on the basis of these characteristics. No compelling reasons were identified as to why a facility of one size could not incorporate the technology used by a facility of another size.

1. Publication Rotogravure.

Data were obtained from all of the 27 U. S. publication rotogravure facilities. All of the control systems employ activated carbon based solvent recovery systems. All facilities calculate overall efficiencies on the basis of liquid-liquid mass balances. All facilities use toluene based ink systems, although some facilities have replaced a portion of the toluene with non-HAP organic solvents. Waterborne ink systems are not technically feasible at this time for the high quality, high speed printing which these facilities produce.

The average emissions limitation achieved by the best performing 5 facilities was 92 percent. This limitation is based on the level of control achieved in each of twelve monthly material balances at the 5 plants with the best annual solvent recovery rates. The solvent recovery data were analyzed on a plantwide basis. Some facilities operated more than one solvent recovery system and it was not possible to reliably isolate the individual systems. Annual average emission limitations were higher, and facilities meeting the standard each and every month will achieve annual emissions limitations of 92 percent or greater.

To achieve 92 percent solvent recovery each month, a facility may need a permanent total enclosure and an efficient solvent recovery system. No more efficient alternative technologies are available. Higher solvent recovery rates may not be achievable on a consistent basis due to month-to-month variations in solvent accounting and due to solvent retention in the printed substrate. Therefore the floor for new sources was determined to be the same as the floor for existing sources and no more stringent regulatory alternatives were found to exist.

2. Package and Product Rotogravure and Wide-web Flexography

Data were obtained from approximately 103 product and package rotogravure printing facilities, and approximately 500 wide-web flexographic facilities. Industry representatives believe that there are approximately 400 product and package rotogravure facilities operating in the U.S. There are approximately 800 wide-web flexographic printing facilities in the United States. Different types of incinerators and solvent recovery systems were operated by 146 of the reporting facilities. The balance of the facilities had no control device. In all cases where control devices were in operation, they were designed and operated to control VOC emissions. It is assumed that the performance of these control devices with respect to VOC and organic HAP is equivalent.

The same types of control devices and capture systems were generally applicable even though the materials applied, products, substrates, and web widths of the controlled presses varied considerably. The overall control efficiency data for the facilities with the greatest emissions limitations were generally provided based on tests conducted to comply with permit conditions. Where permanent total enclosures were in place, capture efficiencies of 100 percent were assumed and tests across control devices were conducted. The emissions limitation achieved by the average of the best controlled 12 percent of the facilities was 95 percent.

To achieve 95 percent control of organic HAP a facility may need to operate a permanent total enclosure and an efficient control device. At present there are no technologies which can consistently achieve a greater overall control efficiency than this. For this reason, the floor for new sources was determined to be equal to the floor for existing sources and no more stringent regulatory alternatives were found to exist.

F. Selection of the Format of the Proposed Rule

Emission standards for control of HAP have been prescribed in accordance with section 112(d) of the Act. Where control devices are in place, emissions standards are proposed on the basis of

overall efficiency, taking into account both capture and control device efficiencies.

To encourage the use of non-HAP materials in the publication rotogravure industry as an alternative to toluene (and ethylbenzene and xylene) based materials, an alternate means of compliance allows credit for 100 percent recovery of that portion of the solvent which is replaced with non-HAP compounds. Thus, a facility achieving 90 percent overall efficiency, using a solvent system which is 70 percent toluene and 30 percent non-HAP solvent would comply on the basis of an equivalent emissions limitation of 93 percent.

Based on the potential HAP content of the materials applied by the best controlled 12 percent of the product and package rotogravure and wide-web flexographic printing facilities, alternate standards were proposed yielding equivalent emissions limitations. Sources applying materials containing 0.20 kg organic HAP or less per kg of solids applied on package and product rotogravure and wide-web flexographic presses will not be required to operate a control device to comply with the standard. Facilities operating systems with overall efficiencies less than 95 percent would be able to comply by limiting the HAP content of the inks, coatings, primers, adhesives, solvents, and other materials applied such that the HAP emissions from the affected source are 0.20 kg per kg of solids applied or less.

Certain press lines are used to apply low solids materials which contain relatively low proportion of organic HAP relative to the mass of material applied. Sources applying materials containing 0.04 kg organic HAP per kg of material applied will not be required to operate a control device to comply with the standard.

G. Selection of Emission Test Methods and Monitoring Requirements

1. Emission Test Methods

In addition to the specific test methods described below for affected sources, the proposed rule adopts the provisions specified in 40 CFR 63.7.

a. Publication Rotogravure. Where a carbon adsorber is used, the EPA is proposing to use a mass balance procedure for determining the overall control efficiency. The proposed rule contains procedures as specified in 40 CFR 60.433 for using a mass balance approach that would calculate the amount of organic HAP and VOC applied and the amount recovered. This information would then be used to calculate the overall control efficiency of the carbon adsorber.

In determining compliance with the alternate standard for sources that have substituted non-HAP VOC for a portion of the HAP in their ink, the EPA is proposing that Method 24A be used for determining the volatile matter content. This is a long-standing method for such determinations. This determination may be conducted by the manufacturer and provided to the owner or operator. The EPA is proposing that the organic HAP content level be determined by proposed EPA Method 311. This method was proposed (see Solicitation of Comments) as part of the NESHAP for Wood Furniture Manufacturing Operations on December 6, 1994 (59 FR 62652). The EPA requests comment on the suitability of Method 311 for determination of HAP used in the printing industry.

b. Package and Product Rotogravure and Wide-web Flexography. If control devices (e.g., incinerators, carbon adsorbers) are used the proposed standards require them to achieve an overall control efficiency of at least 95 percent, or a HAP emission limitation of no more than 0.20 kg HAP per kg solids applied. It is necessary, therefore, to identify the capture efficiency of the capture system, the destruction or recovery efficiency of the control device, and, where feasible, operational parameters that would be monitored to ensure continuous compliance. The proposed standards also include provisions for determining the capture and removal efficiencies. The test methods and procedures being proposed for determining the capture and removal efficiencies are those that are typical for control devices.

The EPA is proposing that capture efficiency be determined by one of two methods depending on whether or not the capture system is a permanent total enclosure or not. A permanent total enclosure would be verified according to the provisions specified in 40 CFR 52.741, appendix B, Procedure T (and, thus would have a capture efficiency of 100 percent). The capture efficiency of all other systems would be determined according to the procedures specified in 40 CFR 52.741(a)(4)(iii).

The EPA is proposing that the removal efficiency of a control device be determined based on three runs, each run lasting one hour. Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, would be used for selection of the sampling sites, and the gas volumetric flow rate would be determined using Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Method 25 or 25A of 40 CFR part 60, appendix A, would then be used to measure either the organic concentration or the total organic HAP concentration before and after the control device. Alternatively, any other test method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used.

Owners or operators complying with the standard on the basis of average HAP content of materials applied on the press would be required to determine the HAP content of each material applied. The EPA is proposing that the organic HAP content level be determined by proposed EPA Method 311. This method was proposed (see *Solicitation of Comments*) as part of the NESHAP for Wood Furniture Manufacturing Operations on December 6, 1994 (59 FR 62652).

2. Monitoring Requirements

In accordance with paragraph (a)(3) of section 114 of the Act, monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitations or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

For affected sources complying with the proposed standards through the use of control devices, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. The EPA has proposed the parameters to be monitored for certain types of control devices now used in the industry. The values of these parameters that correspond to compliance with the proposed standards are set by the owner or operator during the initial compliance test. If future monitoring indicates that control equipment is operating outside of the range of values established during the initial performance test, then the owner or operator is out of compliance with the proposed standards, except as specified for malfunctions in 40 CFR 63.6(e)(3).

Owners or operators using incinerators, and owners or operators using solvent recovery systems and demonstrating compliance with continuous emissions monitoring must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the initial

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compliance test is maintained, and conduct monitoring of this parameter in accordance with the plan submitted with the compliance status report. If future monitoring indicates that capture system is operating outside of the range of values established during the initial performance test, then the owner or operator is out of compliance with the proposed standards, except as specified for malfunctions in 40 CFR 63.6(e)(3).

a. Publication Rotogravure Sources Using Solvent Recovery Systems. Publication rotogravure facilities operating solvent recovery systems would be required to demonstrate continuing compliance by conducting a liquid-liquid mass balance each and every month.

b. Other Sources Complying by Means of a Control Device. Product and packaging rotogravure and wide-web flexographic sources complying by means of a solvent recovery system would be required to demonstrate continuing compliance either through the use of continuous emission monitors or by conducting a liquid-liquid mass balance each and every month.

Sources complying through the use of a thermal incinerator would be required to install, calibrate, operate and maintain a temperature monitoring device equipped with a continuous recorder to monitor the temperature in the combustion chamber downstream of the combustion zone. Sources complying through the use of a catalytic incinerator would be required to install, calibrate, operate and maintain a temperature monitoring device equipped with a continuous recorder to monitor the temperatures at the inlet to the catalyst bed and the outlet from the catalyst bed.

The rationale for selecting the control device parameters for thermal and catalytic incinerators in this proposed rule is long standing, and for more information see the proposal notice for the SOCMI reactor processes NSPS (55 FR 26966 through 26969, June 29, 1990). The EPA is, therefore, simply proposing to adopt the same monitoring parameters as have been required for previous standards.

H. Selection of Recordkeeping and Reporting Requirements

1. Recordkeeping

In addition to the specific recordkeeping requirements described below for each affected source, the proposed rule adopts the provisions specified in § 63.10 (a), (b), (c)(1), (c)(5–8), (c)(10–15), (d)(1–2), (d)(4–5), and (f). These were the only paragraphs from § 63.10 that were considered to be applicable to the proposed rule.

Each owner or operator would be required to maintain records of each applicability determination as described above in section II. A., each continuous monitoring system operated as described above in section V. G., and each liquid-liquid mass balance as described above in section V.

G. These Records Would Be Maintained in Accordance With the Requirements of § 63.10(b)

As called for by the General Provisions, each owner or operator of an affected source would be required to develop a start-up, shut-down, and malfunction plan, and keep it on record to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of the proposed rule.

If an owner or operator of a product or packaging rotogravure or wide-web flexographic source elects to comply on the basis of use of low HAP materials, or on the basis on HAP emission limitation, the EPA is proposing that records of the monthly mass-weighted average organic HAP content for all inks, coatings, primers, adhesives, solvents and other materials applied on the press be kept as well as all of the data and calculations used to calculate these values. This would include the mass and organic HAP content as applied of each material. This level of information is required for an inspector to determine whether the facility was in compliance and whether the proper data and calculations were being used.

If a thermal or catalytic incinerator is used, each owner or operator would be required to keep a record of the control device operating parameters being monitored. Since for some control devices compliance with the proposed standards is dependent on the control device being operated properly, these records are necessary to determine compliance. Specifically, a source would be out of compliance if the recorded parameters were out of range. Thus, the EPA is requiring these records for compliance determinations.

2. Reporting Requirements

In addition to the specific reporting requirements described below for each affected source, the proposed rule adopts the provisions specified in § 63.9(a) through § 63.9(e) and § 63.9(g) through § 63.9(j) and § 63.10 (a), (b), (d), and (f).

The proposed rule would require an owner or operator to submit the following five types of reports:

(1) Initial notification,
(2) notification of performance tests and continuous emission monitor evaluation periods,
(3) notification of compliance status,
(4) periodic reports, and
(5) other reports.

The purpose and contents of each of these reports are described in this section. The wording of the proposed rule requires all reports to be submitted to the "Administrator." The term Administrator refers either to the Administrator of the EPA, an EPA regional office, a state agency, or another authority that has been delegated the authority to implement this rule. In most cases, reports will be sent to state agencies. Addresses are provided in the General Provisions of 40 CFR part 63, subpart A.

Records of reported information and other information necessary to document compliance with the regulation are required to be kept for 5 years. As required under the General Provisions, the two most recent years must be kept on-site; the other three years may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

a. Initial Notification. The proposed standards would require owners or operators who are subject to this subpart to submit an initial notification. As outlined in the General Provisions under § 63.9, this report serves two basic purposes: (1) Notifies the EPA that an existing facility is subject to the proposed standards and (2) notifies the EPA of the construction of a new facility. A respondent must also report any facility modifications as defined in § 63.5. This report will include the mass of HAP used at the facility during the previous twelve months, as well as the mass of HAP expected to be used at the facility during the next twelve months.

This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due no later than 120 days after the effective date of the proposed standards. Under the proposed rule, the initial notification is not required from any source that has submitted a permit application under title V of the Act, provided that the permit application has been submitted by the same due dates as for the initial notification and that the state to which the permit application has been submitted has a permit program in place and has received delegation of authority from the EPA.

b. Notification of Performance Tests and Continuous Emission Monitor Evaluation Periods. As adopted through the General Provisions, § 63.7 and § 63.9(g), owners or operators would be required to notify the Administrator in advance of conducting performance tests of control devices and evaluating continuous emissions monitors.

c. Notification of Compliance Status. As adopted through the General Provisions, owners or operators who are subject to this subpart would be required to submit a notification of compliance status. This report contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests, and average organic HAP contents, as well as the methods that will be used for determining continuing compliance as outlined under § 63.9. Another type of information to be included in the notification of compliance status is the specific range of each monitored parameter for each affected source, the rationale for why this range indicates compliance with the emission standard, and whether each source has operated within its designated operating parameters. The report would be due within 60 days after the final compliance date as specified in the General Provisions.

d. Periodic Reports. The EPA is proposing to adopt a standard basis for submitting periodic reports for each of the operations for which standards are being proposed. Semiannual reports would be required whenever an operation was found to be in non-compliance or whenever a monitored parameter exceeded its value. For example, for a publication rotogravure source, a semiannual report would be triggered for any monthly period covered by the semiannual report in which the overall efficiency of the solvent recovery system failed to meet the standard.

Semiannual reports would also be required whenever a change occurred at a facility that might affect a source's compliance status or that introduces a new element to the operation that was required to be reported in the notification of compliance status. For example, conversion of a press requiring a control device to operate with low-HAP materials would require monthly averaging of materials applied to maintain compliance. This change in compliance status would trigger a semiannual report. For operations that did not experience any exceedances or changes, the EPA is proposing that annual reports be submitted to this effect.

The EPA is proposing to adopt the above schedule of reporting because it provides a fair balance between the need to know certain information in a timely fashion and reduces the burden to industry and provides consistency within this regulation. The following paragraphs discuss in more detail the specific types of information to be included in these various periodic reports. The information being requested is that which the EPA believes is necessary in the enforcement of the proposed rule.

(1) Sources Operating Solvent Recovery Systems. A semiannual report would be required whenever a monthly liquid-liquid mass balance failed to meet the standard. Owners or operators choosing to demonstrate compliance using CEM would be required to submit a semiannual report for any semiannual period in which the calculated average efficiency, including capture efficiency and control device efficiency failed to meet the standard during any three hour period.

(2) Sources Operating Thermal and Catalytic Incinerators. A semiannual report would be required for any semiannual period when a monitored temperature parameter, averaged over a three hour period, falls outside its appropriate range during any three hour period. A semiannual report would be required for any semiannual period when a monitored site-specific capture system parameter, averaged over a three hour period, falls outside its appropriate range during any three hour period.

(3) Package and Product Rotogravure and Flexographic Sources Complying by Means of Low-HAP Materials. A semiannual report would be required for any semiannual period in which the materials applied, when averaged over a monthly period, exceed the standard for organic HAP content based on solids applied or on materials applied during any month.

e. *Other Reports.* The only "other reports" in the proposed rule are those that are required under the General Provisions, subpart A of 40 CFR part 63. Of particular note is the report required in response to periods of startup, shutdown, and malfunction. When the procedures used during such periods are completely consistent with the plan, a report stating such is to be delivered or postmarked by the thirtieth (30th) day following the end of each calendar half. If the procedures are not completely consistent with the plan, an owner or operator is to report the actions taken within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event.

I. Selection of Compliance Deadline

The proposed standards would require the owner or operator of an existing rotogravure or wide-web flexographic printing operation to comply with these standards within three years after they are promulgated in the **Federal Register**. Section 63.7(a)(2) of the General Provisions then allows a source 180 days after the compliance date to demonstrate compliance through an initial performance test. A shorter compliance time was not selected because the proposed timeframe is necessary for those sources that will be required to install new capture and/or control devices to purchase and install the equipment. The proposed timeframe will also provide the greatest opportunity for developing and adopting low HAP content materials. Administrative procedures are established in § 63.6(i) to implement compliance extensions for existing sources that are unable to install controls by the required compliance dates.

Owners or operators of new sources that commence construction after the standards are proposed but before the standards are promulgated will have to comply immediately upon startup, unless the promulgated regulation is more strict than the proposed regulation. In accordance with Section 112(i)(2) of the Act, if the promulgated standards are more stringent than the proposed standards, the compliance date for construction after proposal but before promulgation will be 3 years after the promulgation date, provided the owner or operator complies with the standards as proposed until the compliance date. The owner or operator would then be required to conduct a performance test within 120 days after the compliance date. All other new sources will have to comply with the proposed standards immediately upon startup.

J. Operating Permit Program

Under 40 CFR part 70, all major sources of HAP will be required to obtain an operating permit. Emission limits, monitoring, and reporting and recordkeeping requirements are typically scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the rule for the operating permit program, this new permit program would include in a single document all of the requirements that pertain to a single source. Once a state's permit program has been approved, each printing and publishing facility that is a major source within that state

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must apply for and obtain an operating permit. If the state wherein the printing and publishing facility is located does not have an approved permitting program, the owner or operator of a printing and publishing facility must submit a part 71 permit application if requested under 40 CFR part 71.

K. Pollution Prevention Considerations

The Pollution Prevention Act of 1990 establishes the following management hierarchy as national policy:

1. Pollution should be prevented or reduced at the source whenever feasible;
2. Pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;
3. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and
4. Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

The Pollution Prevention Act considers "source reduction" a fundamental aspect of pollution prevention. Source reduction is any practice that reduces the amount of any hazardous substance entering the waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal. Practices such as recycling, energy recovery, treatment, and disposal are not considered pollution prevention measures under the Pollution Prevention Act.

The proposed rule provides strong incentives for pollution prevention. Within the publication rotogravure segment, substitution of non-HAP materials for organic HAP is encouraged by allowing sources to claim credit for recovery of 100 percent of non-HAP volatile matter (including water) used in the calculation of equivalent overall organic HAP control efficiency.

Within the product and package rotogravure and wide-web flexographic segments, use of non-HAP materials is encouraged by expressing the overall organic HAP limitation in terms of kg of organic HAP emitted per kg of solids applied. Use of low HAP materials decreases the required overall control efficiency. If materials averaging less than 0.20 kg organic HAP per kg solids applied are used, no control device is required. This provision makes the use of waterborne materials without control devices feasible for most applications.

L. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents. In particular, the Administrator solicits comments on (1) The suitability of EPA Method 311 for determination of HAP in ink and other printing materials; (2) the mechanism by which owners or operators may accept case-by-case operating restrictions that would ensure that the potential to emit of their facility does not exceed the major source threshold; and (3) the effect of this regulation on effluent from industrial laundries.

The EPA Method 311 was proposed as part of the NESHAP for Wood Furniture Manufacturing Operations on December 6, 1994 (59 FR 62652). The comment period for the Wood Furniture NESHAP and Method 311 was scheduled to close on February 21, 1995. On February 22, 1995 (60 FR 35), the comment period for the proposed Wood Furniture NESHAP was extended to March 23, 1995 and the comment period for the proposed Method 311 was extended to April 24, 1995. Persons who submit comments on the suitability of Method 311 for determination of HAP in ink and other printing materials in response to the proposed Printing and Publishing Industry NESHAP should consider also submitting comments in response to the proposed Method 311. For information on the address and docket number for submitting comments on the proposed Method 311, see the February 22, 1995 **Federal Register** notice.

The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed standards for printing and publishing should contact the EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket address given in the ADDRESSES section of this preamble, and should refer to Docket No. A–92–42.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket in Washington, D.C. (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Enhancing the Intergovernmental Partnership under Executive Order 12875

In compliance with Executive Order 12875 we have involved state, local, and tribal governments in the development of this rule. State and local air pollution control associations participated in work group meetings and made comments which were incorporated in the proposed rule.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1739.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW., (2136), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 251 hours per respondent for the first year after the date of promulgation of the rule, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent higher for small entities, or

(3) Capital cost of compliance represent a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A "substantial number" of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

In addition to the requirement above, the Agency requires a final RFA if any small business impacts are attributed to a regulatory action for any action initiated after April 1992. In this case, the regulatory action began before April 1992, so the former RFA requirements are pertinent.

Consistent with Small Business Administration (SBA) size standards, a firm is classified as a small entity if it has less than 500 employees for most of the affected industries at the 4-digit SIC code level, 750 for 3 affected industries at that level (2656—sanitary food containers, 2657—folding paperboard boxes, and 3221—glass containers), and 1,000 for 1 affected industry (3411—metal cans); and is unaffiliated with a larger entity.

Using the information above, none of the firms in the publication gravure sector are small. For the packaging and product gravure sector, 29 out of 60 firms, or 48.3 percent are classified as small. For the flexographic sector, virtually all of the affected firms are small.

Data were available to examine all four of the criteria.

For the first criterion, the maximum increase in the total cost of production from compliance with the standard is, on average, 1.4 percent for affected small entities. This is not a significant increase. For the second, annual compliance costs as a percentage of sales were calculated to be 9 percent higher for small entities, and this is not significant. For the third criterion, the increase in costs from compliance as a percentage of assets and as a percentage of equity was negligible (less than 1 percent). For the fourth and final criterion, no small firms are at risk of closure due to the standard.

In conclusion, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information document.

G. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed regulation, including health, economic, technological, or other aspects.

H. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Standard for printing and publishing industry.

Dated: March 1, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–5983 Filed 3–13–95; 8:45 am]

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40 CFR Part 70

[AD-FRL–5172–5]

Clean Air Act Proposed Full/Interim Approval of Title V Operating Permits Program; Clark County Health District, Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by Nevada's Clark County Health District. Alternatively, EPA proposes to grant full approval if specified changes are made. Clark

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County's Operating Permit Program was submitted for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by April 13, 1995.

ADDRESSES: Comments should be addressed to Ed Pike at the Region IX address below. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: US EPA, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744–1248), Mail Code A–5–2, US EPA, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis in this notice focuses on the specific elements of Clark County's title V program that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

The Clark County Health District ("District"), which is delegated authority to implement part 70 under state law (Nevada Revised Statues "NRS" section 445.546), submitted an administratively complete part 70 permitting program on January 20, 1994 with a letter requesting EPA's approval. The submittal contained regulations adopted by the District Board of Health on November 18, 1993. The District Counsel concurrently submitted an opinion that the Health District has sufficient authority to implement the program. The District adopted several rule modifications on May 26, 1994 and submitted these modifications on July 18, 1994.

The submittal contains a description of how the District will implement the program consistent with the Clean Air Act Amendments of 1990 (42 U.S.C. 7401–7671q) and 40 CFR part 70. The submittal also includes sample permits, permit applications, and reporting forms. EPA intends to develop an implementation agreement with the District by the time EPA takes final action on the program.

2. Title V Regulations and Program Implementation

The District adopted section nineteen and revised section zero of the Air Pollution Control Regulations to meet the requirements of part 70. The District also relies on sections two, four, five, six, seven, eight, nine, ten, and eighteen of its Air Pollution Control Regulations ("APCR") to implement the permitting program consistent with part 70 requirements.

a. Applicability (40 CFR 70.2 and 70.3): The District will permit all major sources and all acid rain sources as required by part 70. The District will also permit non-major sources subject to New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants. (APCR section 19.3)

b. Permit Content (40 CFR 70.6): Each part 70 permit must contain emission limitations and standards based on all applicable emission limitations as well as monitoring, recordkeeping, and other compliance terms sufficient to ensure compliance with all applicable requirements. Sources may request provisions for operational flexibility. (APCR sections 19.4 and 19.7)

c. Public Participation and EPA oversight (40 CFR 70.7): The public will be provided notice of and an opportunity to comment on each proposed part 70 source permit, permit renewal, and significant modification. Each part 70 permit, permit renewal, significant modification, and minor permit modification is subject to EPA oversight and veto. (APCR section 19.5)

d. Variances (40 CFR 70.11): Variances may not be granted from either applicable requirements or part 70 requirements. Therefore, the variance provisions of the rule will not affect the enforcement authority required under part 70. (May 26, 1994 amendment to APCR section 7)

e. Permit Modifications (40 CFR 70.7): Sources may apply for expedited permit changes for minor permit modifications. Significant modifications must undergo the full part 70 permit issuance procedures. Significant modifications include all title I modifications and all changes to case-by-case emissions limits such as New Source Review limits. (APCR section 19.5)

3. Permit Fee Demonstration

Clark County will collect permit and emissions-based fees that are projected at $289,000 ($33.16 per ton of pollutant subject to the presumptive minimum) by the end of the ramp-up period in 1995 and $387,000 in 1996. Fees will be adjusted annually by the Consumer Price Index beginning in 1997. The District's fees for the first four years of the program exceed, in the aggregate, the fees presumed sufficient to fund the program (40 CFR 70.9). Therefore, EPA believes that the County will collect sufficient fees to implement the part 70 permitting program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Title III—The District has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements, including section 112 standards. The District also made a commitment to implement all section 112 requirements (July 18, 1994 program update). The EPA regards the program submittal and commitment as a demonstration that the District currently has statutory and regulatory authority to carry out all section 112 requirements

required by part 70 and an acknowledgment by the District that it is obligated to obtain any further regulatory authority needed to issue permits that assure compliance with section 112 applicable requirements.

EPA is interpreting the above legal authority and commitment to mean that the District is able to carry out all section 112 activities. For further discussion, please refer to the Technical Support Document and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of EPA's Office of Air Quality Planning and Standards.

b. Title IV—The District committed in its July 18, 1994 program update to obtain by January 1, 1995 the necessary regulatory authority to administer an acid rain program and to make regulatory revisions as necessary to accommodate federal revisions and additions. The District has drafted, but not officially adopted, the necessary regulations. EPA anticipates that these regulations will be adopted by the time EPA takes final action on this program.

B. Options for Approval/Disapproval and Implications

1. Changes Necessary for Full Approval

EPA is proposing to grant full approval under section 502 of the Act to the program if the changes listed below are made. If the District has not adopted regulations incorporating these provisions and submitted them to EPA as part of its operating permit program by the time EPA takes final rulemaking action, EPA will grant the District's program interim approval at that time. Please refer to the Technical Support Document, which is included in the docket, for additional details.

a. Enforcement Commitments. The District must submit documentation and commitments for implementing its enforcement and compliance tracking program. Part 70 requires that the District submit enforcement policies, including agreements with the EPA, and a description of the District's enforcement program, compliance tracking activities, and inspection strategies. (40 CFR 70.4(b)(4) and (5)) In addition, failure to act on violations of permits or other program requirements, failure to seek adequate penalties and fines and collect all assessed penalties and fines, and failure to inspect and monitor activities subject to regulation are grounds for withdrawing program approval. (40 CFR 70.10(c)(iii)) Therefore, the District must submit the descriptions and/or commitments required under sections 70.4(b)(4) and (5) to qualify for full approval and should ensure that the commitments meet the criteria in section 70.10(c)(iii).

b. Operational Flexibility Gatekeeper. The District's operational flexibility gatekeeper (APCR section 19.4.1.8) is not explicitly as broad as the section 70.4(b)(12) gatekeeper for section 502(b)(10) changes. Part 70 prohibits operational flexibility for "modifications under any provision of title I of the Act." In contrast, the District prohibits these changes for any "New Source Review modifications under any provision of title I of the Act," which does not expressly include modifications under sections 111 and 112. EPA expects that most section 111 or 112 modifications will be subject to the District's New Source Review program; however, in certain cases the section 111 or 112 modification definition will be more inclusive than the District's New Source Review rule. Therefore, revising the rule to explicitly prohibit section 502(b)(10) changes for all title I modifications is a requirement for full approval.

c. Confidential Business Information. The District Counsel's opinion does not document that the District's definition of confidential business information ("CBI"), which is not available to the public, is as narrow as EPA's. Section 19.3.1.3 states that "emissions" may not be considered confidential. EPA's regulation states that "emissions data" may not be considered confidential. (40 CFR 2.301) The District must adopt EPA's narrower definition of confidential information. Alternatively, the District Counsel must issue a statement that the District's program does not contain more restrictions on public access to information than the federal regulations.

d. Insignificant Activities. The District submitted criteria defining which units that are not subject to the part 70 permitting program. For criteria pollutants, the rule exemption threshold is based on potential emissions of either one or two tons per year. EPA believes these criteria pollutant thresholds are acceptable. The rule also exempts units with potential emissions of 200 pounds per year of hazardous air pollutants (HAPs). EPA believes that this threshold is acceptable except for very hazardous substances for which EPA has promulgated or proposed a lower title I modification threshold. To receive full approval, the District's exemption should be no less stringent than these thresholds. In addition, the program must require sources to identify permit exemptions on their applications. (40 CFR 70.5(c)).

e. Applicable Requirements and National Ambient Air Quality Standards (NAAQS). The District must add NAAQS, visibility, and increment requirements for temporary sources to the definition of applicable requirements (40 CFR 70.3). Sources that temporarily operate at multiple locations, such as non-metallic minerals processors or asphalt batch plants, may qualify for temporary source permits. The temporary source permits issued to these sources must require compliance with applicable requirements, as defined in part 70, at each location.

f. Early reductions permit deadline. The District must add a deadline of nine months or less for early reductions permits issued under section 112(i)(5) of the Act (40 CFR 70.4(b)(11)).

2. Interim Approval

The program substantially meets the requirements of part 70 as required under section 70.4. The EPA proposes to grant interim approval to the operating permits program submitted by the District on January 20, 1994 and updated on July 18, 1994 if the changes listed above are not made prior to the final action on the program. This interim approval would be changed to a full approval if the County subsequently makes the changes necessary for full approval. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

3. Sanctions and Federal Program

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program in Clark County.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a

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complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the District's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, the District had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the District upon interim approval expiration.

4. Approval of Preconstruction Program for Section 112(g) Case-by-Case MACT Determinations

Clark County will be required to implement the Maximum Achievable Control Technology requirements of section 112(g) of the Act as a component of the part 70 program. The EPA is proposing to approve the District's preconstruction permitting program, found in section 12 of the District rules, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between the effective date of 112(g) and District adoption of a 112(g) rule. EPA has published an interpretive notice in the **Federal Register** that interprets section 112(g) to allow State and local agencies to delay implementing 112(g) of the Act until EPA promulgates a final 112(g) rule. Alternatively, State and local agencies may implement the requirements of 112(g) prior to EPA promulgation of the 112(g) rule as a matter of State or local law. 60 FR 8333 (February 14, 1995) The notice also states that EPA is considering whether to further delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow State and local agencies time to adopt rules implementing the Federal rule. EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations and may choose to implement section 112(g) sooner as a matter of local law.

For this reason, EPA is proposing to approve the District's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and District adoption of rules specifically designed to implement section 112(g). However, since approval is intended solely to confirm that State and local agencies have a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is proposing that twelve months will be adequate for the District to adopt implementing regulations but solicits comments on whether this timeframe will be adequate.

5. Approval of Program for Straight Delegation of Section 112 Standards Under the Authority of Section 112(l) of the Act

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the District's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full/interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full/interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval/disapproval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by April 13, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401, et seq.

Dated: February 25, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–6267 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 95–18; DA 95–426]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: By this order, the Chief, Office of Engineering and Technology, extends the deadline for filing comments in response to the Notice of Proposed Rule Making in this proceeding on allocation of spectrum at 2 GHz for use by the Mobile-Satellite Service. This Order grants the petition of the American Mobile Satellite Corporation for an extension of the deadline for comments. The petitioner and commenters argue that preparations under way for the 1995 World Radiocommunications Conference and meetings being held among members of the Mobile-Satellite Service, broadcasting, microwave and private radio communities will produce information pertinent to this proceeding, and request the extension in order to integrate this information into their comments. Although Commission policy not to routinely grant petitions for extension of time, we agree that this information will allow us to make better informed decisions, and that the requested extension is in the public interest. We therefore find good cause has been shown for extension of the comment period, and order that the comment deadline in this proceeding is extended form March 9, 1995, to May 5, 1995; and that the reply comment deadline is extended from March 27, 1995, to June 6, 1995.

DATES: Comments are due May 5, 1995. Reply comments are due June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 776–1624.

SUPPLEMENTARY INFORMATION: In the matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service.

[ET Docket No. 95–18 RM–7927]

Order Granting Request to Defer Comment Dates

Adopted: March 3, 1995.
Released: March 8, 1995.

By the Office of Engineering and Technology.

1. On February 22, 1995, the American Mobile Satellite Corporation (AMSC) petitioned the Commission to extend the pleading cycle for comments to the Notice of Proposed Rule Making in the above-captioned proceeding, ET Docket No. 95–18, FCC 95–39, released January 31, 1995 (60 FR 11644, March 2, 1995). AMSC requests an extension for comments from March 9, 1995 to May 5, 1995; and for reply comments form March 27, 1995 to June 6, 1995.

2. AMSC, one of the original petitioners in this proceeding, observes that preparations for the 1995 Worldwide Radiocommunications Conference (WRC–95) are well under way, and that many of the entities likely to comment in this proceeding are part of the Industry Advisory Committee to the WRC–95 Conference Preparation Meeting (CPM), to be held March 22-April 5, 1995, in Geneva. The CPM will consider, *inter alia*, technical studies pertaining to sharing of the 2 GHz band between mobile-satellite and terrestrial users.[1] In supporting comments, COMSAT Corporation (COMSAT) states that meetings are currently ongoing between the mobile-satellite community and the broadcasting and microwave communities to evaluate the possibility of satellite-terrestrial sharing in this band and to consider issues relating to a possible relocation of current broadcast and microwave licensees in the band. COMSAT will use data developed in this process to conduct computer simulations of potential mutual interference between Mobile-Satellite Service (MSS) and terrestrial users.[2] AMSC and COMSAT also point out that the staffs of many entities likely to comment in this proceeding are intensely preparing for WRC–95 and other international meetings, including drafting reply comments to the Commission's Notice of Inquiry in preparation for WRC–95, IC Docket No. 94–31, FCC 95–36, 60 FR 8994, February 16, 1995.[3] AMSC argues that extending the comment and reply comment periods will allow commenters to gather more information and take more time and care in preparing complete and precise comments, which will provide us with more complete information upon which to base our decisions in this proceeding. In addition to COMSAT, TRW Inc. and Motorola Satellite Communications, Inc. filed comments in support of AMSC's petition.[4] The National Association of Broadcasters has stated that it has no objection to extending the comment periods.[5]

3. Celsat, Inc. (Celsat), another petitioner in this proceeding, opposes AMSC's petition for extension of time. Celsat argues that most of the frequencies at issue in this proceeding were allocated for MSS use at the 1992 World Administrative Radio Conference, and it is therefore unnecessary to wait for WRC–95 or its preparatory meetings to make this allocation. Further, adds Celsat, the WRC–95 CPM will primarily involve technical, regulatory and procedural constraints associated with additional MSS allocations in the 1–3 GHz bands, and this allocation is not an issue at that meeting.[6] Celsat also contends that the meetings between the MSS community and broadcasting and microwave licensees are preliminary in nature, and provide no basis for delaying this proceeding.[7] Celsat argues that we have recognized that it is in the public interest to expeditiously implement and license MSS, and we should therefore not delay this proceeding.[8]

4. Although the Commission does not routinely grant extensions of time,[9] we agree with AMSC and supporting commenters that the public interest would be better served if we permit additional time for submitting comments in this proceeding. Not only would an extension provide additional time for gathering and evaluating data on MSS-terrestrial sharing in the proposed allocation, but meetings between the MSS community and the incumbents of the candidate band will be helpful in establishing a sharing and relocation regime acceptable to all affected parties. We find that comments informed by the results of WRC–95 preparations and industry consultation will allow the Commission to make better decisions than would be possible without this information. The two-month delay in this proceeding is justified by the quantity and quality of information we will have as a result. On balance, we find that the public interest would best be served by granting the

[1] See AMSC, Motion for Extension of Time, ET Docket No. 95–18 at 1–2 (February 22, 1995).

[2] See COMSAT, Comments on Motion for Extension of Time, ET Docket No. 95–18 at 1–2 (February 27, 1995).

[3] See AMSC Motion at 2, COMSAT Comments at 2.

[4] Letter from N. Leventhal, Leventhal, Senter & Lerman to W. Caton, Federal Communications Commission, February 27, 1995; Motorola, Comments in Support of Motion for Extension of Time (February 27, 1995).

[5] See National Association of Broadcasters *et al.*, No Opposition to Motion for Extension of Time, ET Docket No. 95–18 (February 28, 1995).

[6] See Celsat, Inc., Opposition to Motion for Extension of Time, ET Docket No. 95–18 at 3–4 (February 27, 1995).

[7] See *Id.* at 4.

[8] See *Id.* at 4–5.

[9] See 47 CFR 1.46(a).

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extension. Accordingly, for good cause shown, *it is ordered* That the date for filing comments in this matter is extended to May 5, 1995, and the date for filing reply comments is extended to June 6, 1995.

5. This action is taken pursuant to authority found in Sections 4 (i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303; and pursuant to Sections 0.31 and 1.46 of the Commission's Rules, 47 CFR 0.31, 1.46. For further information contact Sean White, Office of Engineering and Technology, (202) 776–1624.

Federal Communications Commission.

Bruce A. Franca,

Deputy Chief, Office of Engineering and Technology.

[FR Doc. 95–6215 Filed 3–13–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–13, Notice 01]

RIN 2127–AF29

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for rulemaking; notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA proposes to permit the installation of a new item of motor vehicle glazing, Item 4A—Rigid Plastic for Use in Side Windows Rearward of the "C" Pillar, in hatchbacks and station wagons. This NPRM responds to a petition for rulemaking from General Motors. In issuing this proposal, the agency seeks to provide greater flexibility for manufacturers to develop and use more aerodynamic, lighter weight glazing designs, resulting in lower fuel consumption.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: All comments must refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 am to 4 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gill's telephone number is: (202) 366–6651.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. The standard incorporates, by reference, American National Standards Institute (ANS) Standard Z26.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (Z26). The requirements in ANS Z26.1 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 20 "items" of glazing for which requirements are currently specified in Standard No. 205.

To ensure the safety performance of vehicle glazing, Standard No. 205 includes a total of 31 specific tests. Each item of glazing is subjected to a selected group of these tests. It is the particular combination of tests that dictates the requisite properties of a particular item of glazing, and where in a motor vehicle the glazing may be installed.

Rigid plastic materials, such as those referenced in this rulemaking, are considered to be Items 4 and 5 glazing. Since they are more susceptible to abrasion than glass, these materials are currently not permitted to be installed in those areas requisite for driving visibility. All windows in a passenger car are considered requisite for driving visibility. Therefore, Items 4 and 5 glazing may not be used in those windows. Instead, they may be used for such things as internal partitions and covers for openings in the car roof. More extensive use is permitted in trucks (e.g., pickup trucks and cargo vans) since they do not have designated seating positions rearward of the driver's position. In those vehicles, Items 4 and 5 may be used in windows to the rear of the driver if other means for affording visibility are provided.

GM Petition

By letter dated December 15, 1993, General Motors (GM) petitioned the agency to amend Standard No. 205 to relax the limitations on the installation of Items 4 and 5 rigid plastic glazing so that they can be installed in the side windows of station wagons and hatchbacks to the rear of all designated seating positions. GM subsequently amended its petition, limiting it to Item 4 glazing. (Item 4 glazing is required to transmit at least 70 percent of the light striking it; Item 5 glazing has no such requirement.) GM suggested further that Item 4 glazing be used in only those station wagons and hatchbacks that provide means (e.g., exterior passenger-side mirrors) of affording visibility of the highway to the side and rear of the vehicle. The limitation of the installation to locations rearward of any designated seating position and to vehicles with exterior passenger side rearview mirrors was intended to address agency concerns that led to the denial of an earlier, somewhat similar petition by the American Automobile Manufacturers' Association (AAMA) (April 6, 1993; 58 FR 17787). AAMA's petition is discussed in detail later in this notice.

In support of its petition, GM stated that the potential benefits of permitting plastic glazing in side windows would be reduced mass and greater design flexibility. GM asserted that the weight of plastics used in automotive glazing is about half that of tempered glass of the same thickness. GM further asserted plastics, while retaining good optical quality, can be molded into more complex shapes than glass. GM concluded that the combined effect of the more aerodynamic designs possible with plastic glazing and the reduced weight will lower a vehicle's fuel consumption.

GM acknowledged that Tests 17, Abrasion Resistance (Plastics), and 18, Abrasion Resistance (Safety Glass), of ANS Z26 indicate that plastics are not as abrasion resistant as glass. However, GM suggested that concerns about the abrasion resistance of plastic glazing may not be well founded, asserting that some evidence shows that Tests 17 and 18 "are not necessarily predictive" of how glazing will perform under actual use conditions. In support of its assertion, GM attached a summary of a study performed by a plastics supplier on a 1988 GM Pontiac Fiero GT sail panel. The sail panel extends rearward from a position between the rearmost side window and the rear or back window. The panel was made of abrasion-resistant coated Plexiglas Resin. GM stated that in the study the haze of a six year old sail panel was measured and compared to the haze of a new replacement part. GM concluded that after six years, during which time the Fiero was driven over 41,000 miles, "the haze increased from 0.49% to 0.87%, a difference of only 0.38%."

GM further asserted that permitting rigid plastic in side windows would not affect visibility because it believed that some side windows are not used for visibility. GM analogized station wagon and hatchback side windows rearward of the "C" pillar to light truck windows rearward of the "B" pillar. GM argued that light truck windows rearward of the "B" pillar cannot be considered "requisite for operation of the vehicle" for the following reasons: Other means, typically outside rearview mirrors, are provided for affording visibility to the side and rear of the vehicle; Standard No. 205 does not require glazing be provided in these locations; and since light trucks are often used to carry cargo, rear side windows can be obscured by cargo.

GM argued similarly that station wagon and hatchback side windows rearward of the "C" pillar, adjacent to the vehicle's cargo area, provide no more than auxiliary visibility. Thus, GM argued station wagon side windows rearward of the "C" pillar should no longer be considered requisite for driving visibility if the driver is provided other means, such as outside rearview mirrors, of viewing the highway to the side and rear of the vehicle.

Comparison of GM and AAMA Petitions and Decision to Grant GM Petition

In considering whether to grant GM's petition, the agency reviewed its 1993 decision to deny the AAMA petition mentioned above. In its petition, the AAMA requested that Standard No. 205 be amended to permit the installation of an existing item of plastic glazing in fixed or hinged windows rearward of the "B" pillar. These windows are in areas requisite for driving visibility. Some of these windows were also next to designated seating positions. AAMA contended that coated plastic glazing resists abrasion well enough to be permitted in those locations and suggested hazing and weathering tests that would have had the effect of requiring that the rigid plastic glazing be coated. In denying AAMA's petition, NHTSA stated that permitting use of plastic glazing in areas requisite for driving visibility raised potential safety problems related to fracturing, abrasion resistance, strength, and head contact. Further, the agency noted that the petitioner did not provide any data addressing these safety concerns.

The agency's review of the two petitions revealed several significant differences which are described below.

Danger of head injuries from broken rigid plastic glazing. In denying the AAMA petition, NHTSA expressed concern that permitting rigid plastics behind the "B" pillar, (a location in which rigid plastics had never been permitted in passenger cars before) could result in occupants' heads contacting rigid plastic windows. NHTSA noted that tests indicated that the breaking of rigid plastic windows could leave sharp, pointed shards in the window frame. These shards could be easily contacted by an occupant's head in a crash. NHTSA also expressed concern about occupant injury resulting from large shards of rigid plastic glazing being propelled inward by vehicle impacts with trees, poles, or other vehicles.

In contrast, GM seeks permission to use plastic glazing in locations not adjacent to any outboard designated seating position. In those locations, the plastic glazing is unlikely to be adjacent to occupants. Limiting the use of plastic glazing in this manner would considerably reduce the chances of occupant head injury.

Abrasion resistance and strength tests. In denying the AAMA petition, NHTSA expressed concern that the rigid plastic glazing sought by AAMA would result in the use of glazing with greater susceptibility to reduced visibility and that would be weaker and thus have more dangerous fracture characteristics than the glazing currently permitted in areas requisite for driving visibility. In its petition, AAMA requested that the exterior side of rigid plastics be subjected to abrasion tests less stringent than Standard No. 205's present tests for materials permitted in areas requisite for driving visibility. AAMA also requested that rigid plastics be subjected to strength tests less stringent than Standard No. 205's present tests for materials permitted in those areas.

NHTSA believes that reasons for concern about strength would be significantly diminished if the suggestions in GM's petition were adopted in a final rule. Although the glazing sought by GM would not be subject to strength tests that are more stringent than the strength tests applicable to the AAMA glazing, the GM glazing would, as noted above, be used in different locations than the AAMA glazing. Unlike the AAMA glazing, the GM glazing would not be used adjacent to any seating position. Thus, the GM glazing would be much less likely to pose any risk to occupants in the event that it is broken in a crash.

Notice of Proposed Rulemaking

On March 11, 1994, NHTSA granted GM's petition for rulemaking. Pursuant to the granting of the petition, NHTSA issues this proposal. As explained below, NHTSA proposes to amend Standard No. 205 by permitting a new item of glazing, Item 4A. The most salient characteristic of the glazing would be an abrasion resistant outer coating. Item 4A glazing would be permitted in all areas where Item 4 glazing is permitted. In addition, the agency proposes to permit item 4A glazing to be installed in the side windows, rearward of the "C" pillar and forward of the "D" pillar, of station wagons and hatchbacks, if those windows are not laterally adjacent to an outboard designated seating position. NHTSA proposes these changes to Standard No. 205 to provide greater flexibility to manufacturers in selecting and shaping glazing. Use of the new glazing would permit more aerodynamic and lighter weight designs and, in turn, would enhance fuel economy.

NHTSA proposes to make Item 4A glazing subject to all the tests applicable to Item 4 glazing: tests nos. 2 (Luminous Transmittance); 10 (Dart Test); 13 (Ball Test); 16 (Weathering); 17 Abrasion Resistance (Plastics)(as modified); 19 Chemical Resistance (Nonstressed); 20 Chemical Resistance (Stressed); 21 Dimensional Stability (Warpage); and 24 Flammability.

Since Item 4A glazing is proposed for a location requisite for driving visibility, the agency proposes to supplement Test No. 17 Abrasion Resistance (Plastics). NHTSA tentatively concludes the additional requirements regarding abrasion are necessary because the agency does not concur with GM's suggestion that the rearmost side windows in station wagons and hatchback vehicles are not requisite for driving safety. That the views through station wagon or hatchback side windows on rare occasions may be obscured by cargo does not mean that rearmost side windows on these passenger cars are not "requisite for driving visibility." Since the agency is proposing a more stringent abrasion test, it concluded that it was not necessary to propose the adoption of GM's suggestion that use of the rigid plastic glazing be limited to vehicles that provide means (e.g., exterior passenger-side mirrors) of affording visibility of the highway to the side and rear of the vehicle.

Test 17 specifies that after measuring the initial or pre-abrasion haze of three specimens of plastic glazing, those specimens are subjected to an abrader for 100 cycles. The initial haze is subtracted from the amount of haze measured after abrasion. The incremental haze caused by the abrasion must not exceed 15 percent.

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NHTSA proposes that the interior side of Item 4A glazing be subjected to Test 17, as modified in Standard No. 205 for the interior side of glass-plastic glazing. As modified for that glazing, Test 17 does not regulate incremental haze. For that reason, it does not provide for measuring the initial haze and subtracting that haze from the post-abrasion haze. Instead, modified Test 17 regulates total haze. That haze must not exceed 4 percent.

As to the exterior side of Item 4A glazing, NHTSA proposes that it be subjected to Test 17, as modified for the interior side of glass-plastic glazing, except that the haze on the exterior side must not exceed 4.0 percent after 100 cycles and must not exceed 10.0 percent after 500 cycles. Specimens used for testing the exterior side of the glazing would not be used for testing the interior side.

The agency is proposing to regulate total haze and not just incremental haze because of its concern that the initial haze of the plastic glazing would not be as low as it is for glass. In the case of glass-plastic glazing and the Fiero panel cited by GM as an example of viable plastic glazing, the initial haze is very low. However, other plastic glazings may have sufficiently higher levels of initial haze that the amount of haze after abrasion would be unacceptably high for visibility purposes.

NHTSA bases the proposed haze limitation of 4.0 percent after 100 cycles for Item 4A on the final rule that established Item 14 *Glass-Plastics* glazing, permitted anywhere in a hardtop motor vehicle (See 48 FR 52061, November 16, 1983). Glass-plastic glazing consists of laminated glass to which a layer of soft plastic is bonded on the side facing the interior of the vehicle. In the final rule, NHTSA stated its belief that available test data (based in part on Economic Commission for Europe (ECE) Regulation 43) indicated that a 4 percent haze limitation for the plastic (interior) side of glass-plastic glazing is sufficient to minimize the loss of light transmittance and to provide adequate driving visibility. In the 11 year period since Item 14 glazing was permitted, NHTSA has received no reports that the 4 percent haze limitation level does not provide adequate driving visibility through the windshield. Thus, based on that experience, NHTSA believes that a limitation of 4 percent haze after 100 cycles would be appropriate for both the interior and the exterior sides of Item 4A glazing.

Since the 4 percent haze limitation may not ensure that Item 4A glazing has the hard, abrasion resistant coating used by GM to achieve good performance in its Fiero GT sail panel example, NHTSA believes it is also necessary to test at least the exterior side of fixed glazing for longer term resistance to abrasion. NHTSA therefore proposes to subject the exterior side of item 4A glazing test specimens to an additional 400 cycles of abrasion. Based in part on information from the AAMA, NHTSA proposes 10 percent as the maximum permissible haze after those additional cycles. This level of performance is thought to be indicative of hard coated products. GM submitted data on the performance of the coated glazing in the Fiero, but did not premise its request regarding plastic glazing upon the use of coated plastic glazing. Instead, it simply sought permission to use uncoated Item 4 glazing. The hard coating necessitated by the additional cycles of abrasion would ensure that Item 4A glazing would have the level of abrasion resistance demonstrated by the Fiero GT sail panel. No such assurance exists for Item 4 glazing. The value of hard coatings has been demonstrated in headlamp applications where plastic lenses have been allowed to replace glass lenses. The agency believes that coating technology should be equally suitable for glazing applications. Since windows to the rear of the C pillar do not roll down, coating only the exterior side should be sufficient.

Since NHTSA is proposing to permit a rigid plastic in a passenger car side window for the first time, the agency solicits comments on the sufficiency of the proposed provisions for supplementing Test 17. The agency also welcomes any comments on the advisability of permitting rigid plastics in station wagon side windows rearward of the "C" pillar and forward of the "D" pillar.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. If made final, this proposed rule would not have any "significant" impact on passenger car and motor vehicle glazing manufacturers. Installation of the new item of glazing would not be required. Instead, manufacturers would be provided with more flexibility in motor vehicle glazing because the new item of glazing would be permitted in station wagons and hatchbacks, rearward of the "C" pillar and forward of the "D" pillar. It is believed that use of this new item of glazing would make possible reduced weight and better aerodynamic design of vehicles resulting in the use of less fuel. However, the fuel savings would be slight. For these reasons, NHTSA believes that this proposal would not impose any additional costs and would not yield any significant savings. Thus, the impacts would be minimal and would not warrant preparation of a full regulatory evaluation.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule, if made final, would not require the use of any particular type of glazing, but would provide manufacturers with more flexibility in the choice of glazing for station wagons and hatchbacks. Accordingly, this proposal would not impose any added costs on new motor vehicles.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR § 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the comment closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend, title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. Section 571.205, would be amended by revising S5.1.2; revising the first sentence of paragraph (a) of S5.1.2.10, adding S5.1.2.11, and revising S6.1, to read as follows:

§ 571.205 Standard No. 205, glazing materials.

* * * * *

S5.1.2 In addition to the glazing materials specified in ANS Z26, materials conforming to S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8 and S5.1.2.11 may be used in the locations of motor vehicles specified in those sections.

* * * * *

S5.1.2.10 *Cleaning instructions.* (a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8, or S5.1.2.11 shall affix a label, removable by hand without tools, to each item of glazing materials. * * *

* * * * *

S5.1.2.11 *Test Procedures for Item 4A—Rigid Plastic for Use in Side Windows Rearward of the "C" pillar.* (a) Glazing materials that comply with Tests Nos. 2, 10, 13, 16, 17, as that test is modified in S5.1.2.9(c) (on the interior side only), 17, as that test is modified in paragraph (b) of this section (on the exterior side only), 19, 20, 21, and 24 of ANS Z26.1, may be used in all areas in which item 4 safety glazing may be used. It may also be used in side windows located between the "C" pillars and "D" pillars in any station wagon and hatchback, unless the area between those pillars is laterally adjacent to an outboard designated seating position.

(b)(1) The specimens are subjected to abrasion for 100 cycles and then carefully wiped with dry lens paper (or its equivalent). The light scattered by the abraded track is measured in accordance with Test 17. The arithmetic mean of the percentages of light scattered by the three specimens as a result of abrasion shall not exceed 4.0 percent after being subjected to abrasion for 100 cycles.

(2) The specimen is remounted on the specimen holder so that it rotates substantially in a place and subjected to abrasion for an additional 400 cycles on the same track already abraded for 100 cycles. Specimens are carefully wiped after abrasion with dry lens paper (or its equivalent). The light scattered by the abraded track is then measured as specified in Test 17. The arithmetic mean of the percentages of light scattered by the three specimens as a result of abrasion shall not exceed 10.0 percent after being subjected to abrasion for 500 cycles.

* * * * *

S6.1 Each prime glazing material manufacturer, except as specified below, shall mark the glazing materials it manufactures in accordance with section 6 of ANS Z26. The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, S5.1.2.8, and S5.1.2.11 shall be identified by the marks "AS 11C", "AS 12", "AS 13", "AS 14", "AS 15A", "AS 15B", "AS 16A", "AS 16B", and "AS 4A", respectively. A prime glazing material manufacturer is one which fabricates, laminates, or tempers the glazing material.

Issued on: March 8, 1995.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95–6231 Filed 3–13–95; 8:45 am]

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Notices

Federal Register
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Tuesday, March 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States (ACUS) adopted two recommendations at its Fifty-First Plenary Session. The recommendations concern the application and modification of Exemption 8 of the Freedom of Information Act, and procedures governing debarment and suspension from federal programs.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, 202–254–7020.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 591–596. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)). At its Fifty-First Plenary Session, held January 19, 1995, the Assembly of the Administrative Conference of the United States adopted two recommendations.

Recommendation 95–1, "Application and Modification of Exemption 8 of the Freedom of Information Act," suggests some changes in the scope of coverage of that exemption. Exemption 8 protects from disclosure certain documents relating to examination and supervision of banks by federal agencies. The Recommendation proposes that Exemption 8 be retained for examination reports of open banks, and modified for examination reports for closed banks that have failed. Operating and condition reports should be disclosed insofar as they contain or are based on publicly available information. The Conference also makes several suggestions to bank regulatory agencies on their administration of Exemption 8.

Recommendation 95–2, "Debarment and Suspension from Federal Programs," addresses issues relating to debarments and suspensions from federal procurement and nonprocurement programs. It recommends that debarment from procurement programs have the effect of debarment from nonprocurement programs, and vice versa. It recommends that independent factfinders preside over hearings on disputed material facts. It makes suggestions on improvements in the procedures governing debarments and suspensions, and it recommends that Congress refrain from legislating mandatory debarments.

The full texts of the recommendation are set out in the Appendix below. The recommendations will be transmitted to the affected agencies and to appropriate committees of the United States Congress. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by the affected agencies or by Congress.

Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register**. In past years Conference recommendations and statements of continuing interest were also published in full text in the Code of Federal Regulations (1 CFR Parts 305 and 310). Budget constraints have required a suspension of this practice in 1994. However, a complete listing of past recommendations and statements is published in the Code of Federal Regulations. Copies of all past Conference recommendations and statements, and the research reports on which they are based, may be obtained from the Office of the Chairman of the Administrative Conference. Requests for single copies of such documents will be filled without charge to the extent that supplies on hand permit (see 1 CFR 304.2).

The transcript of the Plenary Session is available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW, Washington, DC.

Dated: March 7, 1995.

Jeffrey S. Lubbers,
Research Director.

Appendix—Recommendations of the Administrative Conference of the United States

The following recommendations were adopted by the Assembly of the Administrative Conference on Thursday, January 19, 1995.

Recommendation 95–1, Application and Modification of Exemption 8 of The Freedom of Information Act

Background

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, generally mandates public access to records in the possession or control of federal agencies, whether the records are generated by the agency or obtained by it from other sources. The Act contains nine exemptions, each of which authorizes but does not require the agency to protect from disclosure certain types of information. Exemption 8 permits agencies responsible for the regulation or supervision of financial institutions to protect from disclosure matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the agency.

Exemption 8 provides an unusual level of protection to banks and bank regulatory agencies.[1] Except for Exemption 9, dealing with geological and geophysical information, no other FOIA exemption is industry- or agency-specific. In light of the change in the regulatory environment of financial institutions since the passage of the FOIA in 1966, the Conference has reviewed whether this broad exemption continues to be justified. The upheaval faced by financial institutions in the last decade and the number of such institutions that have failed makes availability of information relating to the regulation of that segment of the economy of particular interest. A substantial amount of taxpayer money has been spent to alleviate problems relating to financial institutions.

Exemption 8 covers a wide range of documents, primarily operating reports, condition reports, and examination reports of financial institutions. Operating and condition reports are largely public financial statements submitted by the bank to the agency, although they also may include some nonpublic information. Examination reports are the written statements prepared by the agency's examiners evaluating the bank's operations and practices, but they are not audit reports. Examination reports include, among other things, information about an institution's portfolio of loans, the strength of its management, and areas that may need corrective action to improve its safety, soundness, and compliance with law. While bank regulatory agencies encourage examiners to make their reports candid, careful, and complete, the reports often include preliminary analysis and commentary. The examination report (known in some agencies as the "open" portion) is made available to the bank, on the condition that it not be disclosed outside the bank. The agencies retain the supporting information for the report (which in some agencies is known as the "closed" portion). Most agencies also include in the examination report and disclose to the bank what is known as a CAMEL rating: a composite summary in numerical form of key components of the examination—Capital, Asset quality, Management, Earnings, and Liquidity. There are also ratings for each factor in the closed portion.

Justification for Scope of Exemption 8

The Administrative Conference has always endorsed the FOIA concept of disclosure of government records[2] while recognizing the need to balance competing concerns.[3] Thus, it concludes that, while the basic protection of confidential and sensitive data relating to open banks should continue, where documents or information in agencies' possession are already public or relate to an institution no longer operating, the public interest in disclosure outweighs the potential harm from such disclosure.

Exemption 8's protection of operating, condition and examination reports is generally seen as serving three primary purposes: (1) It protects banks—including both the examined bank and those that have relationships with it—from substantial harm that might be caused by disclosure of information and opinion about their condition; (2) It facilitates the free exchange of information between bank personnel and examiners and encourages bank examiners to be candid, and as necessary, immediately responsive, in their assessments of a bank's financial position and operation; and (3) It protects the privacy of bank customers (e.g., depositors and borrowers).

Bank regulators and the institutions they regulate and/or supervise have generally asserted the need to protect both the candor of examination reports and the nonadversarial nature of the relationship between examiners and financial institution officials. In particular, they have expressed concern that disclosure of sensitive adverse information—especially preliminary data, information, and conclusions—could reduce the candor of the examiners' comments and analysis, and inhibit bank officials from offering open access to their records and from being frank and open in their discussions with the examiners. Examination reports, they point out, are intended to draw the attention of bank management to actual and potential problems as quickly as possible.

The exemption is also aimed at protecting the stability of financial institutions by preventing the inappropriate disclosure of information relating to the soundness of the institution, as reflected in examination reports and in operating and condition reports. The expressed concern is to avoid "runs on the bank," as well as other adverse impacts—e.g., short-term liquidity problems, volatility in cost of funds, reduced access to credit or to depositors. Nondisclosure is further justified on grounds that harmful overreactions based on incomplete data are likely to outweigh any public benefits. Financial institutions are also by their nature interrelated, in the sense that an adverse impact on one may have broad and possibly severe adverse implications for others. Moreover, the need for disclosure is diminished insofar as the public already receives, as a result of various banking and securities law requirements, a substantial amount of detailed, comparable information about banks.

Finally, there is a critical interest in protecting the privacy of those doing business with a financial institution. Examiners evaluate samples of loans. Information that might permit identification of the borrowers and other customers, as well as information about their financial situation and soundness, may appear in examination reports. There seems little doubt that information that might identify customers generally should be exempt from disclosure.[4]

Proper Scope of Exemption 8

Because of these considerations, the Conference believes that Exemption 8's provisions should be retained for "matters that are contained in or related to examination * * * reports" pertaining to open banks. The continued protection of examination reports of open institutions seems appropriate under the current regulatory regime.

Congress should, however, limit the exemption's coverage with respect to information in operating and condition reports that is publicly available. Almost all of the information contained in operating and condition reports (i.e., quarterly statements of income and expenses, assets and liabilities) is currently in the public domain. As a result, bank regulatory agencies generally do release such information even though it may literally fit within Exemption 8. There is, therefore, no reason to retain this portion of the exemption insofar as it permits nondisclosure of publicly available data.

The more difficult question is whether the protection of other information covered by Exemption 8 continues to be warranted. Although the Conference concludes that examination reports with respect to open institutions should remain protected, it believes that examination reports (including all CAMEL ratings) of closed institutions that have failed should not be exempt from disclosure. (Closed institutions that did not fail would be treated like open institutions for this purpose.[5])

The deposit insurance program gives the public (and the taxpayers) a particular interest in knowing what caused a bank to fail and whether regulatory oversight was adequate or effective.[6] Release of examination report information is unlikely to cause any harm to the institution itself once it is closed; nor is there any ongoing relationship between the examiner and the bank officials that would be jeopardized by disclosure. The examiners' concern about protecting candor is sharply reduced for banks that are closed.[7] Further, the disclosure of such information pertaining to closed banks would, of course, continue to be subject to other FOIA exemptions.[8]

Nonetheless, to further ensure that disclosure will not cause undue harm, the Conference recommends that certain limitations be placed on disclosure of examination reports of closed banks that have failed. Disclosure concerning a failed bank that could reasonably be expected to impair the solvency of an open bank or efforts to sell the failed institution or its assets should be delayed. Similarly, disclosure should be delayed where it could reasonably be expected to interfere with an ongoing civil or criminal investigation. Information relating to specific loans or other information that would identify customers could be redacted. Moreover, in cases where either the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is involved in responding to the bank's failure, other bank regulatory agencies should consult with them before releasing examination reports.

Separately, the Conference also proposes that Congress consider whether Exemption 8

[1] The use of the term "bank" herein is intended to refer to all financial institutions whose information is subject to Exemption 8. Likewise, the term "bank regulatory agency" refers to any agency responsible for the regulation or supervision of financial institutions.

[2] See ACUS Recommendation 71–2, "Principles and Guidelines for Implementation of the Freedom of Information Act." See also Presidential Memorandum for Heads of Departments and Agencies, The Freedom of Information Act (Oct. 4, 1993) (Policy statement on the use of the FOIA encouraging agencies to disclose agency records in the absence of any clear harm); Attorney General's Memorandum for Heads of Departments and Agencies, The Freedom of Information Act (Oct. 4, 1993).

[3] See ACUS Recommendation 82–1, "Exemption (b)(4) of the Freedom of Information Act," Recommendation 83–4, "The Use of the Freedom of Information Act for Discovery Purposes."

[4] Protection of a customer's privacy interest may require redaction of more than a customer's name; other characteristics of the loan might reveal customer identifications.

[5] The Conference does not seek to define when a closed bank would be deemed to have failed. As discussed below, among the bases for recommending that information about closed failed banks be available under FOIA are the role of government oversight and impacts on taxpayers.

[6] While Congress has mandated reports by the agency's Inspector General for certain bank failures after July 1, 1993 (see Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. § 1831o(k)), disclosure of the underlying data, if requested, may provide a useful validation or check on such reports.

[7] Despite recent history, the vast majority of all financial institutions do not fail. This recommendation, therefore, addresses only the disclosure on request of examination reports of a narrow group of banks where the justification for release of the data is especially compelling.

[8] Among the potentially relevant exemptions are Exemptions 4 (confidential commercial or financial information), 5 (agency predecisional documents), 6 (personal privacy), and 7 (investigative reports).

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should continue to apply to situations where examination or other reports of financial institutions are prepared by agencies having no authority to regulate or otherwise supervise those institutions.[9] Especially where the financial institutions do not accept deposits from the public and there is no applicable deposit insurance, Congress should review whether the policies underlying the Exemption apply.

If Congress believes that additional information relating to financial institutions would improve accountability and oversight or provide for a better-informed marketplace, the Conference recommends that Congress consider using the approach taken in the Community Reinvestment Act, where specific, focused, published reports have been required.[10]

Administration of Exemption 8

There are a number of actions bank regulatory agencies can take under their current authority to improve implementation of Exemption 8. Several bank regulatory agencies have already implemented many of them, and the Conference recommends their consideration by all. As a first step, agencies that regulate or supervise financial institutions should ensure that information that is otherwise publicly available is not treated as exempt under the FOIA. For example, as noted, operating and condition reports contain information that appears largely to be publicly available from other sources. To the extent that this and other information currently withheld under Exemption 8 is otherwise available and can be separated from sensitive data, agencies should release such information. Agencies should also continue to review their data collection forms and information-gathering documents and design them so that confidential information is collected separately and can be easily segregated from information that could be disclosed.

Several bank regulatory agencies now participate in an interagency FOIA group. The Conference lauds this effort, and encourages all bank regulatory agencies to coordinate their application of the exemption and its scope, in order to ensure that similar documents are treated similarly. In doing so, agencies should keep in mind the FOIA's intent to allow the public to know what agencies are doing to the greatest extent possible. Agencies generally should presume, for example, that if one agency releases a particular type of document, such documents should be released by all other agencies if requested. Agencies also should avoid routinely exempting documents that are "related to" examination reports without carefully evaluating whether the information could be disclosed. Even though an examination report itself may be nondisclosable, not all portions of all documents related to it are necessarily also nondisclosable.

Bank regulatory agencies should also consider using the ombudsmen recently mandated by statute[11] to inquire into citizen concerns about handling FOIA requests and to recommend solutions or possible systemic improvements. The Conference has previously stated that use of alternative means of dispute resolution should be explored in resolving FOIA disputes.[12]

Agencies generally have the discretion to release requested information even if it is otherwise exempt under the FOIA. Pending Congressional action on the recommendations to modify Exemption 8, the bank regulatory agencies should implement the recommendations independently and, in any case, they should experiment with the release of examination reports for large failed banks. This would provide information to the public about the banks for which the largest amounts of money (and potentially, public funds) are at stake, and would provide an opportunity for determining whether such release has any significant untoward effects.

Recommendation

I. As applied to open financial institutions and closed financial institutions that have not failed, the provisions of Exemption 8 of the Freedom of Information Act should be retained for "matters that are contained in or related to examination * * * reports." The Conference concludes that bank regulatory agencies should continue to have discretion to withhold such examination reports, because, among other reasons, (a) disclosure of material relating to supervision and regulation of open financial institutions might have an adverse impact on the supervisory and regulatory process and on the banks themselves,[13] (b) such disclosure also might have an adverse economic impact on other banks, due to the unique interrelationship of such institutions, and (c) a substantial amount of related information is already otherwise available.

II. A. In order to ensure that information about banks is not unreasonably withheld, Congress should limit the exception to disclosure in Exemption 8 as follows:

1. As applied to closed institutions that have failed, examination reports and CAMEL ratings should not be exempt from disclosure, except that disclosure should be delayed where it could reasonably be expected to (a) impair the solvency of an open bank or an agency's efforts to sell the closed bank or its assets, or (b) interfere with an ongoing civil or criminal investigation. Records identifying specific loans or customers could be redacted,[14] and prior consultation with other agencies with jurisdiction over such a closed bank should be required.

2. As applied to all financial institutions, operating and condition reports should not be exempt from disclosure insofar as they contain or are based on publicly-available information.

B. Congress should also consider whether Exemption 8 should continue to apply to examination or other reports of financial institutions prepared by agencies having no authority to regulate or otherwise supervise those institutions, especially where the financial institutions do not accept deposits from the public.

III. To the extent that Congress determines that additional information relating to the regulation or examination of financial institutions should be publicly available to enhance accountability and oversight, it should provide for preparation of special public reports and analyses, or for other mechanisms specifically designed to provide the necessary information to the public on a systematic basis.[15]

IV. Agencies with supervisory or regulatory responsibilities relating to financial institutions should continue to review ways to improve their administration of the Freedom of Information Act.

A. Bank regulatory agencies should implement the following practices:

1. Information subject to Exemption 8 should be withheld only insofar as necessary to protect the efficacy of the examination process and the privacy of sensitive data and to avoid adverse economic impacts on other banks. Agencies should not withhold information on the basis that it is "related to" operating, condition or examination reports unless they determine that nondisclosure is properly justified.

2. Information that is already publicly available should not be treated as exempt from disclosure. For example, agencies should continue, in response to FOIA requests, to release operating and condition information submitted by financial institutions that is publicly available.

3. To facilitate the disclosure of releasable information, agencies should, to the extent feasible, design data-collection forms or other information-gathering mechanisms in order to separate disclosable and nondisclosable information.

4. Agencies authorized to rely on Exemption 8 should continue to develop a coordinated approach for releasing

[9] See, e.g., Public Citizen v. Farm Credit Administration, 938 F.2d 290 (D.C. Cir. 1991) (Reports of FCA regarding the National Consumer Co-op Bank covered by Exemption 8).

[10] The Community Reinvestment Act, 12 U.S.C. § 2906, requires reports concerning credit made available by banks in low and moderate income areas. See also the Federal Deposit Insurance Corporation Improvement Act of 1991, which requires reports by the agency's Inspector General for each bank failure after July 1, 1993.

[11] The Office of the Comptroller of the Currency has an ombudsman, whose current responsibilities include involvement in banks' challenges to their CAMEL ratings. Recently enacted Pub. L. No. 103-325 requires each federal banking agency to appoint an ombudsman to deal with complaints from the public about regulatory activities.

[12] Administrative Conference Statement 12, 1 CFR 310.12 (1993). It has also recommended the use of ombudsmen more generally in federal agencies. Administrative Conference Recommendation 90-2, "The Ombudsman in Federal Agencies," 1 CFR 305.90-2 (1993).

[13] The use of the term "bank" herein is intended to refer to all financial institutions whose information is subject to Exemption 8. Likewise, the term "bank regulatory agency" refers to any agency responsible for the regulation or supervision of financial institutions.

[14] This recommendation does not seek to alter the applicability of other FOIA exemptions or of notice requirements such as those set out in Executive Order 12600 (relating to predisclosure notification for confidential commercial information).

[15] For an illustration of such a report, see the Community Reinvestment Act, 12 U.S.C. § 2906 (reporting on supply of credit by banks in low and moderate income areas).

information, so that the public receives uniform treatment for similar data or types of documents.

5. Agencies should consider using their ombudsmen to inquire into citizen concerns about handling of FOIA requests and to recommend solutions or possible systemic improvements.[16]

B. In light of their discretion to release even otherwise exempt information in response to requests under the FOIA, bank regulatory agencies should implement the recommendations set forth in Part II(A). In any case, agencies should, on an experimental basis, immediately make the disclosures recommended therein with respect to large failed financial institutions.

Recommendation 95-2, Debarment and Suspension from Federal Programs

Introduction

The federal government is very big business in its purchases of products and services and in its provision of grants, loans, subsidies, and other types of economic assistance. Many private companies—small, medium, and large—rely to a significant degree on their business with the government for economic survival. In this recommendation, the Administrative Conference of the United States addresses several significant issues that arise when federal agencies act to protect the public fisc by suspending or debarring individuals and companies who allegedly are not responsible enough to continue to do business with the government.

The Administrative Conference of the United States has considered the topic of debarment and suspension from federal programs several times in the last 35 years. The 1961-62 temporary Administrative Conference issued a series of influential recommendations on the procedural structure of debarment and suspension of federal contractors. A 1975 study done for the Conference found that those recommendations remained sound. Since then, there has been substantial activity in the debarment and suspension area, as the Federal Acquisition Regulation (FAR) and other regulatory programs have been promulgated to authorize such actions both in the procurement and nonprocurement arenas, and Congress has authorized debarment and suspensions in a variety of contexts.

The Conference's recent study focused on the regulatory programs involving procurement debarment coordinated by the Federal Acquisition Regulation Council (FAR Council)[1] and promulgated in the FAR,[2] and a comparable (but not identical) effort involving nonprocurement debarment coordinated separately by OMB (known as the "Common Rule").[3] The two debarment and suspension programs have similar structures, but they are not identical, and not completely complementary.

Debarment refers to an action to preclude individuals and entities from receiving future contracts or other benefits such as loans or grants for a designated period of time. A suspension is a similar action on a temporary basis. They are intended to ensure that government "does business," in both its contracts and its nonprocurement assistance programs, only with individuals and entities that are "presently responsible."

The Department of Defense alone debarred or suspended 1,157 persons and businesses in 1994. Across the federal government, almost 6,000 entities were debarred or suspended the same year.

A. Procurement

The regulations set forth in the FAR provide that each agency should promulgate its own regulations consistent with the FAR provisions. The FAR provides that an agency may suspend a contractor on an immediate, temporary basis prior to a hearing, based on "adequate evidence" of a variety of actions relating to a lack of contractor integrity. A proposed debarment, for which there is no minimum evidentiary threshold set out in the FAR, also has the effect of immediately precluding the award of additional federal contracts. Contractors have the opportunity to present information and argument in opposition to a suspension or proposed debarment. In cases where there is a disputed issue of material fact, a contractor is entitled to an informal factfinding hearing where the contractor may appear with counsel, submit documentary evidence, and present and confront witnesses. The regulations do not specify the type of hearing officer. The regulations do contain a list of mitigating factors the debarring official (who is usually also the suspending official) should consider in deciding whether to debar or suspend. Most debarments involve contractors that have been indicted or convicted; relatively few involve disputed issues of material fact that would warrant a hearing.[4]

Contractor suspensions and debarments have government-wide effect; i.e., no executive branch agency may enter into a contract with a debarred or suspended contractor. The General Services Administration administers a list of debarred and suspended contractors.

B. Nonprocurement

The nonprocurement debarment and suspension process is based on Executive Order 12549, issued in 1986. OMB led an effort for uniform regulations (the Common Rule), and at least 36 agencies have issued such a rule. The regulatory framework differs slightly from the procurement debarment system. The procedures are basically similar, with suspended persons entitled to appear in person or submit written argument and information after the suspension is effective, and a further informal hearing available in cases with disputed issues of material fact. Unlike in the procurement context, however, a proposed debarment does not have immediate effect. Nor do the nonprocurement regulations contain a list of factors the debarring official should consider in connection with the decision whether to debar or suspend.

As in the procurement context, nonprocurement debarments and suspensions have executive branch-wide effect and the GSA publishes a list of those debarred or suspended. However, those debarred or suspended under one (e.g., the nonprocurement) system are not now debarred from the other; i.e., there is no reciprocal effect.

* * * * *

Debarments and suspensions under both regulatory programs generally may not exceed 3 years. They may be terminated on a showing that, among other things, there has been a bona fide change in ownership or management, or that the causes on which the debarment was based have been eliminated.

Discussion

Although the nonprocurement and procurement debarment programs appear generally to be functioning fairly well, the Conference does recommend some changes to make the process more efficient and more fair.

A. Reciprocal Effect

As noted, the procurement and nonprocurement systems, while each having government-wide effect, do not have reciprocal effect. Legislation[5] and an executive order[6] have mandated that this problem be resolved, and the Conference underscores the importance of making the appropriate regulatory modifications promptly to ensure that debarment or suspension under one system leads to debarment or suspension under both. The Conference also believes that the existing provisions allowing agency heads to waive the applicability of a government-wide debarment or suspension for their agency should be retained.[7]

B. Debarring Officials and Hearing Officers

Neither regulatory framework specifies criteria for appointing the debarring official. Some agencies have written specifications identifying the type of official who is to perform this function, as well as the official who is to serve as a hearing officer in the relatively few cases where informal hearings on disputed issues of fact are held. However, there is no uniformity among the agencies that have established these criteria. For example, at the Department of Housing and Urban Development, where hearings are relatively frequent, administrative law judges

[16] See Pub. L. No. 103-325, which requires each federal banking agency to appoint an ombudsman. See Administrative Conference Recommendation 90-2, "The Ombudsman in Federal Agencies," 1 CFR 305.90-2 (1993).

[1] The FAR Council includes representatives of the Office of Federal Procurement Policy in OMB, the General Services Administration, NASA, and the Department of Defense.

[2] 48 CFR § 9.400 et seq.

[3] 53 Fed. Reg. 19,204 (1988).

[4] For example, 96 percent of the Air Force's debarments and suspensions are based on indictments and convictions. Neither the Army, Air Force, Defense Logistics Agency, nor the Navy has had fact-based hearings in any debarment or suspension cases in the last 5 years.

[5] The Federal Acquisition Streamlining Act, Pub. L. No. 103-355 (1994).

[6] Executive Order 12689, issued in 1989.

[7] Waiver and exception procedures are currently found in the FAR at 48 CFR 9.406-1(c), 9.407-1(d), and in the Common Rule at X.215.

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(ALJs) or board of contract appeals (BCA) judges serve in effect as debarring officials, while also presiding over the hearings. At the Department of the Air Force, the debarring official is the Assistant General Counsel for Contractor Responsibility, and a military trial judge presides over any factfinding proceedings. The Environmental Protection Agency's debarring official is the director of its Office of Grants and Debarment, but the agency uses hearing officers who do not have the institutional independence of an ALJ, BCA judge, or military judge. Few agencies expressly require either the debarring official or the hearing officer to have any specific level of institutional independence.

The informal nature of the adjudication, as well as the process for a prehearing suspension, have been consistently upheld by the courts as providing due process. Courts have occasionally discussed the need to ensure some measure of independence on the part of adjudicators.[9] Neither the FAR nor the Common Rule explicitly addresses the issue. Given the informal character of debarment and suspension determinations, as well as the "business" protection basis for such decisions, the strict separation of functions and total avoidance of ex parte contacts that would apply in more formal contexts may not be needed. However, it is important that the debarring official be sufficiently independent to protect due process. It is, for example, good practice that the debarring official not be supervised by nor directly supervise the investigators or advocates who are developing the cases. It is also good practice for debarring officials generally to ensure that all information that serves as the basis for decision appears in the administrative record, and that it is made available to the respondent in contested cases.

When there is a hearing to resolve disputed issues of material fact in a suspension or debarment case, a greater degree of independence ought to be required on the part of the hearing officer. The Administrative Conference has recently taken the position that cases involving "imposition of sanctions with substantial economic effect" should be heard by administrative law judges.[9] Debarments and suspensions clearly can have substantial economic effect. Depending on the type of entity and the nature of its business, a debarment from federal contracts or other benefits may bankrupt a company. Therefore, while a full APA formal hearing is not constitutionally required in debarment and suspension cases, even where there are disputed issues of fact, use of a truly independent hearing officer is consistent with notions, and appearances, of fairness. In some statutory debarment programs, Congress has required that post-debarment hearings be presided over by ALJs.[10] ALJs clearly have the requisite independence. Administrative judges from boards of contract appeals and military judges have similar independence. They are experienced in providing hearings that ensure that the respondent has the proper opportunity to present a case. Using only such independent judges for factfinding hearings would also ensure uniformity among agencies; since a debarment has government-wide effect, the nature of a fact-finding hearing should not depend on the particular agency taking the action. The Conference therefore recommends that, where there are disputed issues of material fact in debarment or suspension cases, the agency assign an ALJ, BCA judge, or military judge to preside over the hearing. If an agency wishes to use some other hearing officer, it should ensure that such officer is guaranteed independence comparable to that of an ALJ.[11] Agencies should also provide in their rules whether the judge would issue (a) findings of fact that would be certified to the debarring official; (b) a recommended decision to the debarring official; or (c) an initial decision, subject to any appropriate further appeal within the agency.[12]

C. The FAR and Common Rule

As discussed above, the two sets of procedures, for procurement and for nonprocurement debarment and suspension, are not identical. Some of the variations relate to the differing natures of the programs they address. On other issues, uniformity might serve to eliminate confusion, especially in light of the government-wide effect and (hopefully soon-to-be) reciprocal impact. At a minimum, there are several issues that the Conference recommends be addressed in each set of rules.

Both nonprocurement and procurement debarments and suspensions are discretionary. The procurement regulations include a list of mitigating factors the debarring official should consider in determining whether to debar or suspend.[13] No such list exists in the nonprocurement context, and neither program has a list of aggravating factors. The Conference recommends that a list of mitigating and aggravating factors be included in the regulations for both programs. These lists should be considered by debarring officials both in determining whether to impose a debarment or suspension, and in determining the period of debarment.[14] The Conference takes no position on whether any such list should represent an exclusive list of factors to be considered, but does recommend that each agency make clear its intention with respect to exclusivity. The Conference also notes that both aggravating and mitigating circumstances should focus on issues relating to the respondent's "present responsibility" to avoid any appearance that the debarment is intended as punishment.

As noted, each type of debarment is effective across the executive branch. There will thus be cases where a particular entity does business with multiple agencies. The Conference recommends that a procedure be developed by which agencies can efficiently and routinely coordinate with each other and determine which agency will serve as the lead agency on behalf of the government in taking debarment and/or suspension action. This would avoid multiple actions with inconsistent results. It may also ensure that the agency with the greatest interest will handle the case. The Conference is aware that agencies considering actions relating to the same respondent do confer informally in many cases, but believes that a more uniform, regularized process for agencies to determine a lead agency in particular cases would be preferable.

As also noted, suspensions become effective immediately. The suspended respondent may, after the fact, submit written comment and information to the debarring official opposing the continuation of the suspension. In some cases, the lack of advance notice is necessary to allow an agency to protect the integrity of its contracting or nonprocurement program. In other cases, however, it may be appropriate to provide advance notice to the potential respondent that a suspension or proposed debarment may be forthcoming. In fact, some agencies do send what are in essence "show cause" letters in certain situations. In cases where the interests of the government would not be substantially adversely affected by providing advance notice of a suspension of proposed debarment, the Conference encourages agencies to provide such notice.

Given that debarments and suspensions have a government-wide effect and may soon also apply to both procurement and nonprocurement programs, it is especially important that respondents be given notice at the earliest opportunity of these potential impacts.

Suspensions require a finding of "adequate evidence" as a threshold for their issuance. Proposed debarments, which in the procurement context have a similar preclusive effect, have no such threshold. (An ultimate decision to debar must be based on the preponderance of evidence, however.) Given their immediate effect, a minimum evidentiary threshold for procurement proposals to debar would also be appropriate. The Conference recommends that proposals to debar in the procurement context require "adequate evidence of cause to debar."

The Administrative Conference also recommends that all agencies within the "executive branch" (broadly construed to include "independent" agencies) should implement the "Common Rule" and those portions of the FAR that address suspension and debarment.

[8] In Girard v. Klopfenstein, 930 F.2d 736 (9th Cir. 1991), the court suggested the need for a separation of the prosecutorial and decisionmaking functions in a debarment case, but did not explicitly decide the issue.

[9] See Recommendation 92–7, "The Federal Administrative Judiciary," at ¶ A(1)(c).

[10] See 42 U.S.C. § 1320a-7(exclusion of health care providers from Medicare program participation).

[11] See 5 U.S.C. § 554(d)(2).

[12] Regarding the need to clearly set forth the appeals procedure, see Darby v. Cisneros, 113 S.Ct. 2539 (1993)(in absence of agency regulations governing agency appeal, respondents could proceed directly to court).

[13] The procurement debarment rule indicates that the debarring official "should consider" the mitigating factors in determining whether to debar. The suspension rule provides that the suspending official "may, but is not required to consider" mitigating factors in determining whether to suspend. The Conference recommends that the "should consider" language be used in both debarment and suspension cases.

[14] The Administrative Conference has recommended standards for mitigating statutory money penalty amounts imposed administratively. See Recommendation 79–3, "Agency Assessment and Mitigation of Civil Money Penalties."

D. Statutory Debarments

The procurement and nonprocurement debarment and suspension programs are based in regulation and/or executive order. There are also many statutorily-based debarment schemes, some of which also involve procurement and nonprocurement programs. In many of these statutory programs, Congress has restricted agencies' discretion whether to debar, or to determine the length of a debarment.[15] Congress has increasingly opted to require agencies to debar or suspend in particular situations. Debarment and suspension are not intended to be punitive remedies, but rather are premised on the need to protect the integrity of government programs. The Conference believes that Congress should ordinarily allow agencies to retain the discretion to determine (1) whether debarments or suspensions are appropriate in individual cases, and (2) the appropriate length of such debarments. Moreover, Congress should review existing statutory schemes that mandate debarment and/or particular terms of debarment, and determine whether they should be continued. The primary basis for recommending that agency discretion not be limited with respect to most debarment and suspension determinations is the need to retain flexibility to meet the needs of the government and the public. The Conference believes that agency officials generally would be in a better position than Congress to determine appropriate remedial sanctions in individual cases that serve both to protect the fisc and meet program needs.[16]

The co-existence of the regulatory debarment programs that are the focus of this recommendation with a broad variety of statutory debarment programs creates a number of issues that relate to the interactions between them. The Conference may in the future study these issues, which include conflicts that arise from inconsistent procedural requirements and questions about whether all statutory programs are intended to have government-wide effect.

Recommendation

I. Entities coordinating the Federal Acquisition Regulation (FAR) and the Common Rule for nonprocurement debarment, and individual agencies in their procurement and nonprocurement debarment and suspension regulations, should promptly ensure that the applicable regulations provide that suspensions or debarments from either federal procurement activities or federal nonprocurement activities have the effect of suspension or debarment from both, subject to waiver and exception procedures.[17]

II. Entities coordinating the FAR and the Common Rule, and individual agencies in their regulations, should ensure that:

A. cases involving disputed issues of material fact are referred to administrative law judges, military judges, administrative judges of boards of contract appeals, or other hearing officers who are guaranteed similar levels of independence[18] for hearing and for preparation of (1) findings of fact certified to the debarring official; (2) a recommended decision to the debarring official; or (3) an initial decision, subject to any appropriate appeal within the agency.

B. debarring officials in each agency should:

1. Be senior agency officials;

2. Be guaranteed sufficient independence to provide due process; and

3. In cases where the agency action is disputed, ensure that any information on which a decision to debar or suspend is based appears in the record of the decision.

III. Entities coordinating the FAR and the Common Rule, and individual agencies in their regulations, should provide that each regulatory scheme for suspension and debarment includes:

A. A list of mitigating and aggravating factors that an agency should consider in determining (1) whether to debar or suspend and (2) the term for any debarment;

B. A process for determining a single agency to act as the lead agency on behalf of the government in pursuing and handling a case against a person or entity that has transactions with multiple agencies;

C. (With respect to procurement debarment only) a minimum evidentiary threshold of at least "adequate evidence of a cause to debar" to issue a notice of proposed debarment;

D. A requirement that all respondents be given notice of the potential government-wide impact of a suspension or debarment, as well as the applicability of any such action to both procurement and nonprocurement programs; and

E. Encouragement for the use of "show cause" letters in appropriate cases.

IV. All federal agencies in the executive branch (broadly construed to include "independent" agencies) should implement the "Common rule" and FAR rules on suspension and debarment.

V. Congress should ordinarily refrain from limiting agencies— discretion by mandating suspensions, debarments, or fixed periods of suspension or debarment. Congress should also review existing laws that mandate suspensions, debarments, and fixed periods, to determine whether to amend the provisions to permit agency discretion to make such determinations.

[FR Doc. 95–6183 Filed 3–13–95; 8:45 am]
BILLING CODE 6110–01–P

[15] For example, DHHS is required to —exclude— from participation in the Medicare and Medicaid programs for 5 years any health care provider who is convicted of a crime related to the provision of services under those programs, or of patient abuse. 42 U.S.C. § 1320a-7(a).

[16] This recommendation should not be read to discourage Congress from providing guidelines for agencies to consider in exercising their discretion.

[17] Waiver and exception procedures are currently found in the FAR at 48 CFR 9.406–1(c), 9.407–1(d), and in the Common Rule at X.215.

[18] See 5 U.S.C. § 554(d)(2).

DEPARTMENT OF AGRICULTURE

Forest Service

Inland Native Fish Strategy

ACTION: Proposal to Prepare Interim Direction for Native Inland Fish Habitat Management.

SUMMARY: The notice is hereby given that the Forest Service, in cooperation with the Bureau of Land Management and U.S. Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish. The Forest Service is proposing to amend Regional Guides and Forest Plans to include interim direction in the form of riparian management objectives, standards and guidelines, and monitoring requirements. The interim direction will apply to the geographic area covered by the Eastside Ecosystem Management Strategy Environmental Impact Statement (EIS) and Upper Columbia River Basin EIS, except for anadromous fish habitat (which is now being managed under the interim PACFISH strategy, approved February 24, 1995).

The purpose and need for the proposed action is to preserve management options for inland aquatic resources by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat of resident fishes until the signing of Records of Decision for both EISs. As a companion to the protection provided for anadromous fish by PACFISH, this Environmental Assessment is intended to provide the basis for establishing appropriate interim direction to protect habitat and populations of resident native fishes outside of anadromous fish habitat, including bull trout which has recently been determined to be warranted by the U.S. Fish and Wildlife Service (**Federal Register** Vol. 59, No. 111, June 10, 1994, pp. 30254–30255). Specifically this EA will address National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Kootenai, Lolo, Malheur, Ochoco, Panhandle, Payette, Salmon, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Environmental Assessment.

Written comments should be sent to the agency within 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to USDA Forest Service, Idaho Panhandle

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National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental assessment should be directed to David Wright, Team Leader, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83814. Phone: (208) 765–7307.

SUPPLEMENTARY INFORMATION: The Forest Service, in accordance with 16 USC 1604 and 36 CFR 219 et seq. develops land and resource management plans to provide for multiple use and sustained yield of products and services including outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.

PACFISH is the Anadromous Fish Habitat and Watershed Conservation Strategy being implemented by the Forest Service and Bureau of Land Management. This is an interim strategy to conserve Pacific Salmon, steelhead and sea-run cutthroat trout throughout their range in Oregon, Washington, Idaho and portions of California. The PACFISH decision notice was signed by Forest Service and Bureau of Land Management on February 24, 1995.

There are two ecosystem-based environmental impact statements being prepared for National Forest System and BLM-administered land in the Interior Columbia River Basin. The Eastside Ecosystem Management Strategy EIS applies to the area of Washington and Oregon east of the crest of the Cascade mountain range. The Upper Columbia River Basin EIS will apply to Idaho and portions of Utah, Wyoming, Nevada,and Montana. The two documents will contain long-term strategies designed to replace the interim protection afforded by PACFISH and this Inland Native Fish Strategy.

Concurrently, the Forest Service in the Pacific Northwest is completing an EA that proposes to amend the interim Forest Plan Direction issued on May 20, 1994 by Regional Forester John Lowe. This EA proposes adjustments to the Historic Range of Variability and portions of the wildlife screen. Any changes to the riparian screen portion of the current direction will be considered in the Inland Native Fish Strategy.

At its discretion, the Forest Service may amend forest plans based on the results of monitoring and evaluation (36 CFR 219.10(f), 219.12(k)). Review of research reports and published professional papers (Rieman and McIntyre 1993; Sedell et al. 1990; Grumbine 1990; Williams and Neves 1992; Oregon Trout 1994) indicates that additional long-term programmatic protection may be warranted for native resident fish and their habitat. That long-term direction is being developed through the Columbia River Basin EIS process. This interim protection is being proposed to preserve options for long-term management that might be adopted as a result of those processes.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue without interim direction protection. Other alternatives will examine the effects of varying approaches to interim protection.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Additional information will be utilized from the scoping activities that occurred for the PACFISH, Upper Columbia River Basin EIS and Eastside Ecosystem Management Strategy EIS. During scoping activities for these projects, issues and concerns were identified that relate to inland fisheries and may have bearing on this environmental analysis.

The responsible officials for National Forest System lands will be the Regional Foresters for the:

—Intermountain Region, Federal Building, 324 25th Street, Ogden, Utah 84401;
—Northern Region, P.O. Box 7669, Missoula, Montana 59807; and
—Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

The decision and reasons for the decision will be documented in a Decision Notice. The Environmental Assessment and Decision Notice are expected to be available in June, 1995.

Dated: March 8, 1995.

David J. Wright,

Inland Native Fish Team Leader, Idaho Panhandle National Forests.

[FR Doc. 95–6255 Filed 3–13–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–816]

Certain Softwood Lumber from Canada; Determination to Terminate and Not To Initiate Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination to terminate and not to initiate countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has decided to terminate the first administrative review of the countervailing duty order on certain softwood lumber from Canada initiated on August 24, 1993, and not to initiate the second administrative review.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On July 30, 1993, the Coalition for Fair Lumber Imports (the Coalition), the Government of Canada, and the Government of Quebec requested an administrative review of the countervailing duty order on certain softwood lumber from Canada for the period March 12, 1992 through March 31, 1993. In addition, one hundred and ninety companies requested individual company reviews. On August 24, 1993, the Department published a notice initiating the administrative reviews for that period (58 FR 44653).

On July 28, 1994, the Coalition requested an administrative review of the countervailing duty order on softwood lumber from Canada for the period April 1, 1993 through March 16, 1994. On August 1, 1994, the Government of Canada requested an administrative review for the same period. In addition, one hundred and five companies requested individual company reviews.

On August 16, 1994, the Department revoked the countervailing duty order on softwood lumber from Canada pursuant to a decision of the Binational Panel convened under the United States-Canada Free Trade Agreement (59 FR 42029), and instructed the U.S. Customs Service to (1) stop collecting cash deposits on imports of softwood lumber from Canada, and (2) refund, with interest, all cash deposits made on or after March 17, 1994, the effective date of the Binational Panel's decision.

On December 15, 1994, the United States and Canada agreed to enter into consultations to try to resolve the trade dispute regarding softwood lumber from Canada. The Department also decided, under the authority of the Tariff Act of 1930, as amended, to compromise its

claim for duties on softwood lumber from Canada. This compromise resolved all remaining claims of the United States arising from the countervailing duty order on softwood lumber from Canada.

Since there is no further basis for conducting administrative reviews of the countervailing duty order on softwood lumber from Canada, the Department is terminating the administrative review for the period March 12, 1992 through March 31, 1993, and will not initiate the administrative review for the period April 1, 1993 through March 16, 1994.

Dated: March 7, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–6256 Filed 3–13–95; 8:45 am]

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[A–834–802]

Agreement Suspending the Antidumping Investigation on Uranium From Kazakhstan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium from Kazakhstan.

SUMMARY: The Department of Commerce (the Department) and the Republic of Kazakhstan (Kazakhstan) have signed an Amendment (the Amendment) to the Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan (the Agreement).

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: James Doyle or Maureen Price, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0172 or (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and Kazakhstan signed the Agreement and, on October 30, 1992, the Agreement was published in the **Federal Register** (57 FR 49220, 49222). On November 9, 1994, the Department and Kazakhstan initialled an Amendment to include highly enriched uranium (HEU) within the product coverage of the Agreement. The Department subsequently released the Amendment to interested parties for comment. After careful consideration by the Department of the comments submitted and further consultations between the parties, the Department and Kazakhstan signed a final Amendment on February 7, 1995. The text of the final Amendment follows this notice.

Date: March 6, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

Amendment to the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium from Kazakhstan

The United States Department of Commerce and the Republic of Kazakhstan hereby amend their Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan, signed October 16, 1992, as follows:

Section III, "Product Coverage," is amended to include the following paragraph:

Highly enriched uranium ("HEU") is within the scope of this investigation, and HEU is covered by this Agreement. For the purpose of this Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235, whether in the form of metal, uranium oxide, fuel rods, or powder.

Section IV is amended to include the following paragraph L:

L.1. Exports of HEU pursuant to the Purchase Agreement Between the Government of the United States of America and the Republic of Kazakhstan, completed November 17, 1994 ("Purchase Agreement") will not be counted against the export limits established in accordance with paragraph C of this section. The disposition of the HEU is in the public interest because: (1) the HEU or products from it will be processed or delivered by the United States Department of Energy, its governmental successors, its contractors, assigns, or U.S. private parties acting in a manner not inconsistent with the Purchase Agreement; (2) any utility-owned uranium products delivered pursuant to enrichment contracts affected by the purchase of HEU or HEU products will not be resold in the United States, either as natural uranium or as low enriched uranium ("LEU") produced in excess of the contractually-specified amount; (3) contracts for the purchase of HEU or HEU products from Kazakhstan will be provided to the Department; (4) annual summaries of utilization of HEU and HEU products and associated utility feed will be provided to the Department; and (5) the Department determines that permitting importation of all or any portion of the HEU in question is consistent with the purposes of this Agreement.

2. Exports of HEU must be accompanied by an export certificate endorsed by the Republic of Kazakhstan specifying the amount of the export.

This Amendment constitutes an integral part of the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium from Kazakhstan.

Signed on this 7th day of February, 1995.

For the Republic of Kazakhstan:

Tuleutai S. Suleimenov,

Ambassador to the United States.

For the United States Department of Commerce:

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–6257 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–008. *Applicant:* U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. *Instrument:* Fuel Cell. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* The instrument will be used to convert hydrogen and oxygen into electrical power during studies of the use of a phosphoric acid fuel cell to propel an urban transit bus.

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Application Accepted by Commissioner of Customs: February 2, 1995.

Docket Number: 95–009. *Applicant:* University of Texas at Austin, Center for Space Research, WRW 402, Campus Code C0605, Austin, TX 78712. *Instrument:* Precise Range and Range-rate Equipment Satellite Tracking Ground Station. *Manufacturer:* Dornier GmbH, Germany. *Intended Use:* The instrument will be used to provide ground based tracking support for European Space Agency and Earth-Remote Sensing Satellite. Knowing the precise location of the ERS-2 satellite, the satellite measurements can be accurately reduced to study climate and environmental related phenomenon. *Application Accepted by Commissioner of Customs:* February 9, 1995.

Docket Number: 95–010. *Applicant:* Skidaway Institute of Oceanography, University System of Georgia, 10 Ocean Science Circle, Savannah, GA 31411. *Instrument:* Laser Ablation Accessory, Electrothermal Vaporization System, Desolvating Nebulizer. *Manufacturer:* Fisons, United Kingdom. *Intended Use:* The instruments are accessories to an existing mass spectrometer used to enhance trace metal analysis capabilities when investigating water, sediment, tissue and any type of solid sample. *Application Accepted by Commissioner of Customs:* February 14, 1995.

Docket Number: 95–011. *Applicant:* Columbia University in the City of New York, Biological Sciences, 500 Fairchild Bldg., New York, NY 10027. *Instrument:* High Energy Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for flash photolysis of "caged" compounds including caged calcium, a technique used to examine the effect of local elevations of calcium in muscle cells on transmitter release from neurons which synapse on that muscle cell. These experiments are conducted with the hope of achieving a more complete understanding of how transmitter is released and how this release is controlled. *Application Accepted by Commissioner of Customs:* February 14, 1995.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6262 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Colorado at Boulder, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–118. *Applicant:* University of Colorado at Boulder, Boulder, CO 80309. *Instrument:* Microvolume Stopped-flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Reasons:* The foreign instrument provides: (1) pneumatic syringe drive, (2) computer acquisition of time-resolved emission spectra and (3) analysis of samples as small as 25 µl. *Advice Received From:* The National Institutes of Health, January 9, 1995.

Docket Number: 94–120. *Applicant:* Northern Illinois University, DeKalb, IL 60115. *Instrument:* Microvolume Stopped-Flow Spectrofluorimeter, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Reasons:* The foreign instrument provides: (1) time resolution of 0.01 ms with 0.85 ms dead time and (2) detection of small absorbance changes at high absorbance values. *Advice Received From:* The National Institutes of Health, January 9, 1995.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6263 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

U.S. Bureau of Mines, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–143. *Applicant:* U.S. Bureau of Mines, Denver, CO 80225. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 442, January 4, 1995. *Order Date:* August 25, 1994.

Docket Number: 94–147. *Applicant:* Wayne State University, Detroit, MI 48201. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 60 FR 3394, January 17, 1995. *Order Date:* October 24, 1994.

Docket Number: 94–152. *Applicant:* University of Virginia, Charlottesvilee, VA 22903. *Instrument:* Electron Microscope, Model JEM 2010F. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 60 FR 3394, January 17, 1995. *Order Date:* June 29, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6260 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

University of California, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–104. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Imaging Plate X-ray Detector for Protein Crystallography. *Manufacturer:* Mar Research, Germany. *Intended Use:* See notice at 59 FR 49645, September 29, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) high efficiency detection of molybdenum K_α x-rays at resolution to 0.12nm and (2) exposure time of just 90s allowing use of a single imaging plate under computer control and data readout. National Institutes of Health advises in its memorandum dated January 9, 1995 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6258 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

Medical College of Pennsylvania, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–109. *Applicant:* Medical College of Pennsylvania, Philadelphia, PA 19129. *Instrument:* High Intensity Xenon Flashlamp System, Model HF-10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 59 FR 52288, October 17, 1994. *Reasons:* The foreign instrument provides: (1) stored electrical energy to 340 J, (2) anti-reflection coated quartz optics for focusing and (3) optical/electrical shielding. *Advice Received From:* National Institutes of Health, January 9, 1995.

Docket Number: 94–114. *Applicant:* University of Illinois at Urbana, IL 61801. *Instrument:* Aqua-Tox-Control-Daphnia Monitor. *Manufacturer:* Kerre Umwelt Technik GmbH, Germany. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Reasons:* The foreign instrument provides use of small invertebrate organisms as rapid indicators of toxicity in aqueous sources. *Advice Received From:* National Institutes of Health, January 9, 1995.

Docket Number: 94–115. *Applicant:* University of California, Davis, CA 95616. *Instrument:* High Intensity Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Reasons:* The foreign instrument provides: (1) stored electrical energy to 340 J, (2) anti-reflection coated quartz optics for focusing and (3) optical/electrical shielding. *Advice Received From:* National Institutes of Health, January 9, 1995.

Docket Number: 94–119. *Applicant:* Howard Hughes Medical Institute, Houston, TX 77030. *Instrument:* X-Ray Diffraction Image Processor, Model DIP-2030. *Manufacturer:* Mac Science Co., Ltd., Japan. *Intended Use:* See notice at 59 FR 52958, October 20, 1994. *Reasons:* The foreign instrument provides: (1) sensitivity of 1 x-ray proton per level, (2) dynamic range of 10^6 and (3) measurement with pseudo - Weissenberg geometry. *Advice Received From:* National Institutes of Health, January 9, 1995.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6259 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

University of California, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–139. *Applicant:* University of California, Santa Cruz, CA 95064. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* See notice at 59 FR 66941, December 28, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a double-focussing magnetic sector analyzer, (2) resolution to 7500, (3) laser ablation and glow discharge ion sources and (4) sub-ppb measurements of the transition elements. These capabilities are pertinent to the applicant's intended purpose and we know of no instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6264 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Massachusetts Dartmouth, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and

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Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–100. *Applicant:* University of Massachusetts Dartmouth, N. Dartmouth, MA 02747. *Instrument:* Pneumatic Drive Accessory for stopped-flow kinetics apparatus, Model Opt.12P. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 59 FR 49645, September 29, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated January 9, 1995, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–6265 Filed 3–13–95; 8:45 am]

BILLING CODE 3510–DS–F

COMMISSION ON IMMIGRATION REFORM

Phoenix Roundtables

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of Commission Roundtables.

This notice announces a roundtable to be held by the U.S. Commission on Immigration Reform in Phoenix, AZ on March 22, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. Immigration policy and report its findings to Congress. An interim report, "U.S. Immigration Policy: Restoring Credibility," was issued on September 30, 1994; the final report is due in 1997.

The roundtable participants will include the Commissioners, researchers, government officials, representatives of local organizations, and other experts. The roundtable will examine immigration as a contributor to population change and the resulting effects on services, the economy and natural resources. This subject will be examined from both the local and national perspectives.

DATES: March 22, 1995.

TIMES: 9:00 AM–1:00 PM (Impact on Population Change).

ADDRESSES: Sheration Mesa Hotel, 200 North Centennial Way, Mesa, AZ 85201, 602–898–8300.

FOR FURTHER INFORMATION: Paul Donnelly (202) 673–5348.

Dated: March 7, 1995.

Susan Martin,

Executive Director.

[FR Doc. 95–6151 Filed 3–13–95; 8:45 am]

BILLING CODE 6820–97–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Information collection request

AGENCY: Corporation for National and Community Service.

ACTION: Information Collection Request submitted to the Federal Office of Management and Budget (FOMB) for review.

SUMMARY: This notice provides information about a data collection proposal by AmeriCorps *National Civilian Community Corps (A*NCCC) currently under review by the Office of Management and Budget (OMB). The revised AmeriCorps*NCCC Team Leader Application is a document, based on the previously approved AmeriCorps Leaders application (OMB) Approval No. 3045–0005). It is to be used for the purpose of screening applicants in the recruitment process for AmeriCorps*NCCC Team Leaders. The revisions are as follows:

A. Page One, section I., "Personal Information", was expanded to include a section requesting the applicant's preferred campus location on which to serve.

B. Page One, section III., "National and Community Service Background," was redesigned with the, "Skills and Employment History," title. This section requests Team Leader applicants complete the following "Skills Self-Assessment" and to attach a resume-type document which includes a listing of professional experience and service organizations with whom the applicant has worked.

C. The section IV., "Skills in National Service Priority Areas," was replaced with a "Skills Self-Assessment".

D. The applicant reference form was expanded to include a skills assessment from the reference. The skills assessment form works with the same list as the self-assessment form.

E. The section VII., "Legal" was added to request from applicants information on existence of criminal convictions or adjudications.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. OMB and AmeriCorps*NCCC will consider comments on the proposed collection of information and record keeping requirements on or before April 13, 1995.

ADDRESSES: Fred Peters, Deputy Director, AmeriCorps*NCCC, 1201 New York Avenue, N.W., Washington, D.C. 20525.

SEND COMMENTS TO BOTH: Dan Chenok, Desk Officer for Corporation for National Service, Office of Management and Budget, 3002 New Executive Office 1 Bldg., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Fred Peters (202) 606–5000 ext. 102.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests.

Office of Action Issuing Proposal: AmeriCorps*NCCC.

Title of Forms: AmeriCorps*NCCC Team Leader Application.

Needs and Use: AmeriCorps*NCCC is requesting information to meet requirements of federal law. This information is used for program management, planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondentt's Obligation to Reply: Required to receive benefits.

Frequencey of Collection: On occasion.

Estimated Number of Responses: 500.

Average Burden Hours Per Response: 2 hours (reporting and record keeping).

Estimated Annual Reporting or Disclosure Burden: 1,000 hours.

Regulatory Authority: 1990 National Service Act (as amended).

Dated: March 7, 1995.

Lew R. Heffner,

*Deputy Director, AmeriCorps*NCCC.*

[FR Doc. 95–6165 Filed 3–13–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Department of the Army

U.S. Army Command and General Staff College Advisory Committee

AGENCY: U.S. Army Command and General Staff College, DOD.

ACTION: Meeting Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting.

Name: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date: 5–7 April 1995.

Place: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–6900.

Time: 1700–2200—5 April 1995, 0730–2100—6 April 1995, 0730–1400—7 April 1995.

Proposed Agenda: 1700–2200, 5 April: Review of CGSC educational program. 0730–2100, 6 April: Continuation of review. 0730–1030, 7 April: Continuation of review. 1030–1130, 7 April: Executive Session. 1300–1400, 7 April: Report to Commandant

The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary: Philip J. Brooks, USACGSC Advisory Committee, Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–6900; Phone: (913) 684–2741.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–6180 Filed 3–13–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGL's) to all interested parties. RGL's are used by the Corps Headquarters as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district engineers (DE's). Each future RGL will be published in the Notice Section of the **Federal Register** as a means to insure the widest dissemination of this information while reducing costs to the Federal Government. The Corps no longer maintains a mailing list to furnish copies of the RGL's to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1783.

SUPPLEMENTARY INFORMATION: RGL's were developed by the Corps of Engineers as a system to organize and track written guidance issued to its field agencies. RGL's are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGL's are used only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices. RGL's are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGL's, the guidance provided in RGL's generally remains valid after the expiration date. The Corps incorporates most of the guidance provided by RGL's whenever it revises its permit regulations. There were two RGL's issued by the Corps during 1994, and both were published in the Notice Section of the **Federal Register** upon issuance. We are hereby publishing all current RGL's, beginning with RGL 91–1 and ending with RGL 94–2. We will continue to publish each RGL in the Notice Section of the **Federal Register** upon issuance and in early 1996, we will again publish the complete list of all current RGL's.

Dated: February 6, 1995.

James E. Crews,

Acting Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 91–1)

RGL 91–1 DATE: Dec 31, 1991 EXPIRES: Dec 31, 1996

SUBJECT: Extensions of Time For Individual Permit Authorizations

1. The purpose of this guidance is to provide clarification for district and division offices relating to extensions of time for Department of the Army permits (See 33 CFR 325.6).

2. *General:* A permittee is informed of the time limit for completing an authorized activity by General Condition #1 of the standard permit form (ENG Form 1721). This condition states that a request for an extension of time should be submitted to the authorizing official at least one month prior to the expiration date. This request should be in writing and should explain the basis of the request. The DE may consider an oral request from the permittee provided it is followed up with a written request prior to the expiration date. A request for an extension of time will usually be granted unless the DE determines that the time extension would be contrary to the public interest. The one month submittal requirement is a workload management time limit designed to prevent permittees from filing last minute time extension requests. Obviously, the one month period is not sufficient to make a final decision on all time extension requests that are processed in accordance with 33 CFR 325.2. It should be noted that a permittee may choose to request a time extension sooner than this (e.g., six months prior to the expiration date). While there is no formal time limit of this nature, a request for an extension of time should generally not be considered by the DE more than one year prior to the expiration date. A permit will automatically expire if an extension is not requested and granted prior to the applicable expiration date (See 33 CFR 325.6(d)).

3. *Requests for Time Extensions Prior to Expiration:* For requests of time extensions received prior to the expiration date, the DE should consider the following procedures if a decision on the request cannot be completed prior to the permit expiration date:

(a) The DE may grant an interim time extension while a final decision is being made; or

(b) The DE may, when appropriate, suspend the permit at the same time that an interim time extension is granted, while a final decision is being made.

4. *Requests for Time Extensions After Expiration:* A time extension cannot be granted if a time extension request is received after the applicable time limit. In such cases, a new permit application must be processed, if the permittee wishes to pursue the work. However, the DE may consider expedited processing procedures when: (1) The request is received shortly (generally 30 days) after the expiration date, (2) the DE determines that there have been no substantial changes in the attendant circumstances since the original authorization was issued, and (3) the DE believes that the time extension would likely have been granted. Expedited processing procedures may include, but are not limited to, not requiring that a new application form be submitted or issuing a 15 day public notice.

5. This guidance expires 31 December 1996 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division Directorate of Civil Works

Regulatory Guidance Letter (RGL 92–1)

RGL 92–1 Date: 13 May 1992, Expires: 31 December 1997

Subject: Federal Agencies Roles and Responsibilities.

1. *Purpose:* The purpose of this guidance is to clarify the Army Corps of Engineers leadership and decision-making role as "project manager" for the evaluation of permit applications pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. This guidance is also intended to encourage effective and efficient coordination among prospective permittees, the Corps, and the Federal resource agencies (i.e., Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS)). Implementation of this guidance will help to streamline the permit process by minimizing delays and ensuring more timely decisions, while providing a meaningful opportunity for substantive input from all Federal agencies.

2. *Background:* (a) The Department of the Army Regulatory Program must operate in an

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efficient manner in order to protect the aquatic environment and provide fair, equitable, and timely decisions to the regulated public. Clear leadership and a predictable decision-making framework will enhance the public acceptance of the program and allow the program to meet the important objective of effectively protecting the Nation's valuable aquatic resources.

(b) On August 9, 1991, the President announced a comprehensive plan for improving the protection of the Nation's wetlands. The plan seeks to balance two important objectives—the protection, restoration, and creation of wetlands and the need for sustained economic growth and development. The plan, which is designed to slow and eventually stop the net loss of wetlands, includes measures that will improve and streamline the current wetlands regulatory system. This Regulatory Guidance Letter is issued in accordance with the President's plan for protecting wetlands.

(c) The intent of this guidance is to express clearly that the Corps is the decision-maker and project manager for the Department of Army's Regulatory Program. The Corps will consider, to the maximum extent possible, all timely, project-related comments from other Federal agencies when making regulatory decisions. Furthermore, the Corps and relevant Federal agencies will maintain and improve as necessary their working relationships.

(d) The Federal resource agencies have reviewed and concurred with this guidance and have agreed to act in accordance with these provisions. While this guidance does not restrict or impair the exercise of legal authorities vested in the Federal resource agencies or States under the CWA or other statutes and regulations (e.g., EPA's authority under section 404(c), section 404(f), and CWA geographic jurisdiction and FWS/NMFS authorities under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA)), agency comments on Department of the Army permit applications must be consistent with the provisions contained in this regulatory guidance letter.

3. *The Corps Project Management/Decision Making Role:* (a) The Corps is solely responsible for making final permit decisions pursuant to section 10 and section 404(a), including final determinations of compliance with the Corps permit regulations, the Section 404(b)(1) Guidelines, and Section 7(a)(2) of the ESA. As such, the Corps will act as the project manager for the evaluation of all permit applications. The Corps will advise potential applicants of its role as the project manager and decision-maker. This guidance does not restrict EPA's authority to make determinations of compliance with the Guidelines in carrying out its responsibilities under Sections 309 and 404(c) of the Clean Water Act.

(b) As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps will obtain and utilize this information in a manner that moves, as rapidly as practical, the regulatory process towards a final permit decision. The Corps will not evaluate applications as a project opponent or advocate—but instead will maintain an objective evaluation, fully considering all relevant factors.

(c) The Corps will fully consider other Federal agencies' project-related comments when determining compliance with the National Environmental Policy Act (NEPA), the Section 404(b)(1) Guidelines, the ESA, the National Historic Preservation Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the agencies' views when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit.

4. *The Federal Resource Agencies' Role:* (a) It is recognized that the Federal resource agencies have an important role in the Department of the Army Regulatory Program under the CWA, NEPA, ESA, Magnuson Fisheries Conservation and Management Act, and other relevant statutes.

(b) When providing comments, Federal resource agencies will submit to the Corps only substantive, project-related information on the impacts of activities being evaluated by the Corps and appropriate and practicable measures to mitigate adverse impacts. The comments will be submitted within the time frames established in interagency agreements and regulations. Federal resource agencies will limit their comments to their respective areas of expertise and authority to avoid duplication with the Corps and other agencies and to provide the Corps with a sound basis for making permit decisions. The Federal resource agencies should not submit comments that attempt to interpret the Corps regulations or for the purposes of section 404(a) make determinations concerning compliance with the Section 404(b)(1) Guidelines. Pursuant to its authority under Section 404(b)(1) of the CWA, the EPA may provide comments to the Corps identifying its views regarding compliance with the Guidelines. While the Corps will fully consider and utilize agency comments, the final decision regarding the permit application, including a determination of compliance with the Guidelines, rests solely with the Corps.

5. *Pre-Application Consultation:* (a) To provide potential applicants with the maximum degree of relevant information at an early phase of project planning, the Corps will increase its efforts to encourage pre-application consultations in accordance with regulations at 33 CFR 325.1(b). Furthermore, while encouraging pre-application consultation, the Corps will emphasize the need for early consultation concerning mitigation requirements, if impacts to aquatic resources may occur. The Corps is responsible for initiating, coordinating, and conducting pre-application consultations and other discussions and meetings with applicants regarding Department of the Army permits. This may not apply in instances where the consultation is associated with the review of a separate permit or license required from another Federal agency (e.g., the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission) or in situations where resource agencies perform work for others outside the context of a specific Department of the Army permit application (e.g., the Conservation Reserve Program and technical assistance to applicants of Federal grants).

(b) For those pre-application consultations involving activities that may result in impacts to aquatic resources, the Corps will provide EPA, FWS, NMFS (as appropriate), and other appropriate Federal and State agencies, a reasonable opportunity to participate in the pre-application process. The invited agencies will participate to the maximum extent possible in the pre-application consultation, since this is generally the best time to consider alternatives for avoiding or reducing adverse impacts. To the extent practical, the Corps and the Federal resource agencies will develop local procedures (e.g., teleconferencing) to promote reasonable and effective pre-application consultations within the logistical constraints of all affected parties.

6. *Applications for Individual Permits:* (a) The Corps is responsible for determining the need for, and the coordination of, interagency meetings, requests for information, and other interactions between permit applicants and the Federal Government. In this regard, Federal resource agencies will contact the Corps to discuss and coordinate any additional need for information from the applicant. The Corps will cooperate with the Federal resource agencies to ensure, to the extent practical, that information necessary for the agencies to carry out their responsibilities is obtained. If it is determined by the Corps that an applicant meeting is necessary for the exchange of information with a Federal resource agency and the Corps chooses not to participate in such a meeting, the Federal resource agency will apprise the Corps, generally in writing, of that agency's discussions with the applicant. Notwithstanding such meetings, the Corps is solely responsible for permit requirements, including mitigation and other conditions—the Federal resource agencies must not represent their views as regulatory requirements. In circumstances where the Corps meets with the applicant and develops information that will affect the permit decision, the Corps will apprise the Federal resource agencies of such information.

(b) Consistent with 33 CFR 325, the Corps will ensure that public notices contain sufficient information to facilitate the timely submittal of project-specific comments from the Federal resource agencies. The resource agencies comments will provide specific information and/or data related to the proposed project site. The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of potential cumulative and secondary impacts.

(c) The Corps must consider cumulative impacts in reaching permit decisions. In addition to the Corps own expertise and experience, the Corps will fully consider comments from the Federal resource agencies, which can provide valuable information on cumulative impacts. Interested Federal agencies are encouraged to provide periodically to the Corps generic comments and assessments of impacts (outside the context of a specific permit application) on issues within the agencies' area of expertise.

7. *General Permits:*

(a) The Corps is responsible for proposing potential general permits, assessing impacts of and comments on proposed general permits, and deciding whether to issue general permits. The Corps will consider proposals for general permits from other sources, including the Federal resource agencies, although the final decision regarding the need to propose a general permit rests with the Corps. Other interested Federal agencies should provide comments to the Corps on proposed general permits. These Federal agency comments will be submitted consistent with established agreements and regulations and will focus on the Federal agencies' area(s) of expertise. The Corps will fully consider such agencies' comments in deciding whether to issue general permits, including programmatic general permits.

(b) The Corps is responsible for initiating and conducting meetings that may be necessary in developing and evaluating potential general permits. Any discussions with a State or local Government regarding proposed programmatic general permits will be coordinated through and conducted by the Corps. Prior to issuing a programmatic general permit, the Corps will ensure that the State or local program, by itself or with appropriate conditions, will protect the aquatic environment, including wetlands, to the level required by the section 404 program.

8. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Commander:

Arthur E. Williams,

Major General, USA, Director of Civil Works.

Regulatory Guidance Letter (92–2)

RGL 92–2 Date: 26 June 92 Expires: 31 December 95 CECW–OR

Subject: Water Dependency and Cranberry Production

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on water dependency and cranberry production. This guidance was developed jointly by the Army Corps of Engineers and the U.S. Environmental Protection Agency.

2. This guidance will expire 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field

SUBJECT: Water Dependency and Cranberry Production

1. The purpose of this memorandum is to clarify the applicability of the Section 404(b)(1) Guidelines water dependency provisions (40 CFR 230.10(a)) to the cultivation of cranberries, in light of Army Corps of Engineers (Corps) regulations at 33 CFR 323.4(a)(1)(iii)(C)(1) (ii) and (iii), and Environmental Protection Agency (EPA) regulations at 40 CFR 232.3(d)(3)(i) (B) and (C). These sections of the Corps and EPA regulations state, among other things, that cranberries are a wetland crop, and that some discharges associated with cranberry production are considered exempt from regulation under the provisions of Section 404(f) of the Clean Water Act. The characterization of cranberries as a wetland crop has led to inconsistency in determining if cranberry production is a water dependent activity as defined in the Section 404(b)(1) Guidelines (Guidelines).

2. The intent of Corps regulations at 33 CFR 320.4(b) and of the Guidelines is to avoid the unnecessary destruction or alteration of waters of the U.S., including wetlands, and to compensate for the unavoidable loss of such waters. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (see 40 CFR 230.10(a)). Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

3. For proposed discharges into wetlands and other "special aquatic sites," the Guidelines alternatives analysis requirement further considers whether the activity associated with the proposed discharge is "water dependent". The Guidelines define water dependency in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. Special aquatic sites (as defined in 40 CFR 230.40–230.45) are: (1) sanctuaries and refuges; (2) wetlands; (3) mud flats; (4) vegetated shallows; (5) coral reefs; and (6) riffle and pool complexes. If an activity is determined not to be water dependent, the Guidelines establish the following two presumptions (40 CFR 230.10(a)(3)) that the applicant is required to rebut before satisfying the alternatives analysis requirements:

a. that practicable alternatives that do not involve special aquatic sites are presumed to be available; and,

b. that all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem.

It is the responsibility of the applicant to clearly rebut these presumptions in order to demonstrate compliance with the Guidelines alternatives test.

4. If an activity is determined to be water dependent, the rebuttable presumptions stated in paragraph 3 of this memorandum do not apply. However, the proposed discharge, whether or not it is associated with a water dependent activity, must represent the least environmentally damaging practicable alternative in order to comply with the alternatives analysis requirement of the Guidelines as described in paragraph 2 of this memorandum.

5. As previously indicated, Corps and EPA regulations consider cranberries as a wetland crop species. This characterization of cranberries as a wetland crop species is based primarily on the listing of cranberries as an obligate hydrophyte in the National List of Plant Species That Occur in Wetlands (U.S. Fish and Wildlife Service Biological Report 88 (26.1–26.13)) and the fact that cranberries must be grown in wetlands or areas altered to create a wetland environment. Therefore, the Corps and EPA consider the construction of cranberry beds, including associated dikes and water control structures associated with dikes (i.e., headgates, weirs, drop inlet structures), to be a water dependent activity. Consequently, discharges directly associated with cranberry bed construction are not subject to the presumptions applicable to non-water dependent activities discussed in paragraph 3 of this memorandum. However, consistent with the requirements of Section 230.10(a), the proposed discharge must represent the least environmentally damaging practicable alternative, after considering aquatic and non-aquatic alternatives as appropriate. To be considered practicable, an alternative must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. For commercial cranberry cultivation, practicable alternatives may include upland sites with proper characteristics for creating the necessary conditions to grow cranberries. Factors that must be considered in making a determination of whether or not upland alternatives are practicable include soil pH, topography, soil permeability, depth to bedrock, depth to seasonal high water table, adjacent land uses, water supply, and, for expansion of existing cranberry operations, proximity to existing cranberry farms. EPA Regions and Corps Districts are encouraged to work together with local cranberry growers to refine these factors to reflect their regional conditions.

6. In contrast, the following activities often associated with the cultivation and harvesting of cranberries are not considered water dependent: construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries, and construction of secondary support facilities for shipping, storage, packaging, parking, etc. Therefore, the rebuttable practicable alternatives presumptions discussed in paragraph 3 of this memorandum apply to the discharges associated with these non-water dependent activities. However, since determinations of practicability under the Guidelines includes consideration of cost, technical, and logistics factors, determining the availability of practicable alternatives to discharges associated with these non-water dependent activities must involve consideration of the need of an alternative to be proximate to the cranberry bed in order to achieve the basic project purpose of cranberry cultivation.

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Once it has been determined that the location of the cranberry bed, including associated dikes, and water control structures, represents the least environmentally damaging practicable alternative, practicable alternatives for maintenance roads, ditches, reservoirs and pump houses will generally be limited to the bed itself and the area in the vicinity of the actual bed. For example, the bed dikes may be the only practicable alternative for location of maintenance roads. When practicable alternatives cannot be identified within such geographic constraints, the applicant must minimize the impacts of the roads, reservoirs, etc., to the maximum extent practicable.

7. During review of applications for discharges associated with cranberry cultivation, it is important to reiterate that proposed discharges must also comply with the other requirements of the Guidelines (i.e., 40 CFR 230.10 (b), (c) and (d)). In addition, evaluations of all discharges, whether or not the proposed discharge is associated with a water dependent activity, must comply with the provisions of the National Environmental Policy Act, including an investigation of alternatives to the proposed discharge. Further, applications for discharges associated with cranberry cultivation will continue to be evaluated in accordance with current Corps and EPA policy and practice concerning mitigation, cumulative impact analysis, and public interest review factors.

8. This guidance expires 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (92–3)

RGL 92–3 DATE: 19 Aug 92 EXPIRES: 31 Dec 97

SUBJECT: Extension of Regulatory Guidance Letter (RGL) 86–10

RGL 86–10, subject: "Special Area Management Plans (SAMP's)" is extended until 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

RGL 86–10
Special Area Management Plans (SAMP's)
Issued 10/2/86 Expired 12/31/88

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as "a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone." This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMP's are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

a. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products: 1) appropriate local/State approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and 2) a local/State restriction and/or an Environmental Protection Agency (EPA) 404(c) restriction (preferably both) for undesirable activities. An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do not assume that an environmental impact statement is automatically required to develop a SAMP.

6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMP's. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4. above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

For the Chief of Engineers:

Peter J. Offringa,

Brigadier General, USA, Deputy Director of Civil Works.

Regulatory Guidance Letter (RGL–92–4)

RGL 92–4 DATE: 14 Sep 1992 EXPIRES: 21 Jan 1997

SUBJECT: Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits

1. The purpose of this Regulatory Guidance Letter (RGL) is to provide additional guidance and clarification for divisions and districts involved in developing acceptable conditions under the Section 401 Water Quality Certifications and Coastal Zone Management Act (CZM) concurrences for the Nationwide Permit (NWP) Program. This RGL represents a clarification of 330.4(c) (2) and (3) and 330.4(d) (2) and (3), concerning when NWP Section 401 and CZM conditions should not be accepted and thus treated as a denial without prejudice. The principles contained in this RGL also apply to 401 certification and CZM concurrence conditions associated with individual permits and regional general permits.

2. Corps divisions and districts should work closely and cooperatively with the States to develop reasonable 401 and CZM conditions. All involved parties should participate in achieving the purpose of the NWP program, which is to provide the public with an expeditious permitting process while, at the same time, safeguarding the environment by only authorizing activities which result in no more than minimal individual and cumulative adverse effects. When a State certifying agency or CZM agency proposes conditions, the division engineer is responsible for determining whether 401 Water Quality Certification or CZM concurrence conditions are acceptable and comply with the provisions of 33 CFR 325.4. In most cases it is expected that the conditions will be acceptable and the division engineer shall recognize these conditions as regional conditions of the NWP's.

3. *Unacceptable Conditions:* There will be cases when certain conditions will clearly be unacceptable and those conditioned 401 certifications or CZM concurrences shall be considered administratively denied. Consequently, authorization for an activity which meets the terms and conditions of such NWP(s) is denied without prejudice.

a. Illegal conditions are clearly unacceptable. Illegal conditions would result in violation of a law or regulation, or would require an illegal action. For example, a condition which would require an applicant to obtain a 401 certification or CZM concurrence, where the State has previously denied certification or concurrence, prior to submitting a predischarge notification (PDN) to the Corps in accordance with PDN procedures, would violate the Corps regulation at 33 CFR 330.4(c)(6). Another example would be a case where an applicant would be required, through a condition, to apply for an individual Department of the Army permit. Another example is a requirement by the State agency to utilize the 1989 Federal Wetland Delineation Manual to establish jurisdiction.

b. As a general rule, a condition that would require the Corps or another Federal agency to take an action which we would not otherwise take and do not choose to take, would be clearly unacceptable. For example, where the certification or concurrence is conditioned to require a PDN, where the proposed activity did not previously require a PDN, the Corps should not accept that condition, since implicitly the Corps would have to accept and utilize the PDN. Another example would be a situation where the U.S. Fish and Wildlife Service is required, through a condition, to provide any type of formal review or approval.

c. Section 401 or CZM conditions which provide for limits (quantities, dimensions, etc.) different from those imposed by the NWP do not change the NWP limits.

1. Higher limits are clearly not acceptable. For example, increasing NWP 18 for minor discharges from 10 to 50 cubic yards would not be acceptable. Such conditions would confuse the regulated public and could contribute to violations.

2. Lower limits are acceptable but have the effect of denial without prejudice of those activities that are higher than the Section 401 or CZM condition limit but within the NWP limit. Thus, if an applicant obtains an individual 401 water quality certification and/or CZM concurrence for work within the limits of an NWP where the State had denied certification and/or CZM concurrence, then the activity could be authorized by the NWP.

d. A condition which would delete, modify, or reduce NWP conditions would be clearly unacceptable.

4. *Discretionary Enforcement:* The initiation of enforcement actions by the Corps, whether directed at unauthorized activities or to ensure compliance with permit conditions, is discretionary. The district engineer will consider the following situations when determining whether to enforce 401 and/or CZM conditions.

a. Unenforceable Conditions—Some conditions that a State may propose will not be reasonably enforceable by the Corps (e.g., a condition requiring compliance with the specific terms of another State permit). Provided such conditions do not violate paragraph 3 above, the conditions will be accepted by the Corps as regionally conditions. However, limited Corps resources should not be utilized in an attempt to enforce compliance with 401 or CZM conditions which the district engineer believes to be essentially unenforceable, or of low enforcement priority for limited Corps resources.

b. Enforceable Conditions—Some other conditions proposed by a State may be considered enforceable, (e.g., a condition requiring the applicant to obtain another State permit), but of law priority for Federal enforcement, since the Federal Government would not have required those conditions but for the State's requirement. Furthermore, the Corps will generally not enforce such State-imposed conditions except in very unusual cases, due to our limited personnel and financial resources.

5. *NWP Verification and PDN Responses:* In response to NWP verification requests and PDN's, district engineers should utilize the same paragraphs presented below. This language should be used where conditional 401 certification or CZM concurrence has been issued. This specifically addresses situations when the conditions included with the certification or concurrence are such that the district engineer determines they are unenforceable or the district engineer cannot clearly determine compliance with the 401/CZM conditions (see 4.a.).

"Based on our review of your proposal to [describe proposal], we have determined that the activity qualifies for the nationwide permit authorization [insert NWP No(s.)], subject to the terms and conditions of the permit.

[Insert paragraph on any Corps required activity-specific conditions].

Enclosed you will find a copy of the Section 401 Water Quality Certification and/or Coastal Zone Management special conditions, which are conditions of your authorization under Nationwide Permit [insert NWP No(s.)]. If you have questions concerning compliance with the conditions of the 401 certification or Coastal Zone Management concurrence, you should contact the [insert appropriate State agency].

If you do not or cannot comply with these State Section 401 certification conditions and/or CZM conditions, then in order to be authorized by this Nationwide Permit, you must furnish this office with an individual 401 certification or Coastal Zone Management concurrence from [insert appropriate State agency], or a copy of the application to the State for such certification or concurrence, [insert "60 days" for Section 401 water quality certification, unless another reasonable period of time has been determined pursuant to 33 CFR 330.4(c)(6), or insert "six months" for CZM concurrence] after you submit it to the State agency."

6. This guidance expires 21 January 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 92–5)

RGL 92–5 Date: 29 October 1992, Expires: 31 December 1997

Subject: Alternatives Analysis Under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Encl

EPA/Corps Joint Memorandum for the Field

Subject: Alternatives Analysis under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. The 1990 Clean Air Act (CAA) amendments require most electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The congressional endorsement of the industry's ability to select the most effective compliance method (e.g., sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act Section 404 permits for certain proposed activities.

2. The analysis and regulation under Section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with requirements under the Section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the Section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the Section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and of the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities retain flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the Section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act

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standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight time-frames under which the industry must meet these new air quality standards.

Robert H. Wayland,

Director, Office of Wetlands, Oceans and Watersheds.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 93–1)

RGL 93–1 Issued: April 20, 1993, Expires: December 31, 1998

CECW–OR

Subject: Provisional Permits

1. *Purpose:* The purpose of this guidance is to establish a process that clarifies for applicants when the U.S. Army Corps of Engineers has completed its evaluation and at what point the applicant should contact the State concerning the status of the Section 401 Water Quality Certification and/or Coastal Zone Management (CZM) consistency concurrence. This process also allows for more accurate measurement of the total length of time spent by the Corps in evaluating permit applications (i.e., from receipt of a complete application until the Corps reaches a permit decision). For verification of authorization of activities under regional general permits, the Corps will use the appropriate nationwide permit procedures at 33 CFR 330.6.

2. *Background:* a. A Department of the Army permit involving a discharge of dredged or fill material cannot be issued until a State Section 401 Water Quality Certification has been issued or waived. Also, a Department of the Army permit cannot be issued for an activity within a State with a federally-approved Coastal Management Program when that activity that would occur within, or outside, a State's coastal zone will affect land or water uses or natural resources of the State's coastal zone, until the State concurs with the applicant's consistency determination, or concurrence is presumed. In many cases, the Corps completes its review before the State Section 401 Water Quality Certification or CZM concurrence requirements have been satisfied. In such cases, applicants and the public are often confused regarding who to deal with regarding resolution of any State issues.

b. The "provisional permit" procedures described below will facilitate a formal communication between the Corps and the applicant to clearly indicate that the applicant should be in contact with the appropriate State agencies to satisfy the State 401 Water Quality Certification or CZM concurrence requirements. In addition, the procedures will allow for a more accurate measurement of the Corps permit evaluation time.

3. *Provisional Permit Procedures:* The provisional permit procedures are optional and may only be used in those cases where: (i) The District Engineer (DE) has made a provisional individual permit decision that an individual permit should be issued, and, (ii) the only action(s) preventing the issuance of that permit is that the State has not issued a required Section 401 Water Quality Certification (or waiver has not occurred) or the State has not concurred in the applicant's CZM consistency determination (or there is not a presumed concurrence). In such cases, the DE may, using these optional procedures, send a provisional permit to the applicant.

a. First, the DE will prepare and sign the provisional permit decision document. Then the provisional permit will be sent to the applicant by transmittal letter. (The sample transmittal letter at enclosure 1 contains the minimum information that must be provided.)

b. Next, the applicant would obtain the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). Then the applicant would sign the provisional permit and return it to the DE along with the appropriate fee and the Section 401 Water Quality Certification (or proof of waiver) and/or the CZM consistency concurrence (or proof of presumed concurrence).

c. Finally, the Corps would attach any Section 401 Water Quality Certification and/or CZM consistency concurrence to the provisional permit, then sign the provisional permit (which then becomes the issued final permit), and forward the permit to the applicant.

d. This is the same basic process as the normal standard permit transmittal process except that the applicant is sent an unsigned permit (i.e., a provisional permit) prior to obtaining the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). (See enclosure 2.) A permit can not be issued (i.e., signed by the Corps) until the Section 401 and CZM requirements are satisfied.

4. *Provisional Permit:* A provisional permit is a standard permit document with a cover sheet. The cover sheet must clearly indicate the following: that a provisional permit is enclosed, that the applicant must obtain the Section 401 Water Quality Certification or CZM concurrence from the State, that these documents must be sent to the Corps along with the provisional permit signed by the applicant, and that the Corps will issue the permit upon receipt of these materials. The issued permit is the provisional permit signed by the applicant and the Corps. The provisional permit must contain a statement indicating that the applicant is required to comply with the Section 401 Water Quality Certification, including any conditions, and/or the CZM consistency concurrence, including any conditions. At enclosure 3 is a sample cover sheet for the provisional permit.

5. *Provisional Permit Decision:* The DE may reach a final decision that a permit should be issued provided that the State issues a Section 401 Water Quality Certification and/or a CZM concurrence. In order to reach such a decision the DE must complete the normal standard permit evaluation process, prepare and sign a decision document, and prepare a standard permit, including any conditions or mitigation (i.e., a provisional permit). The decision document must include a statement that the DE has determined that the permit will be issued if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or presumed concurrence. The standard permit will not contain a condition that requires or provides for the applicant to obtain a Section 401 Water Quality Certification and/or CZM concurrence. Once the decision document is signed, the applicant has the right to a DA permit if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or if concurrence is presumed. Once the decision document is signed, the permittee's right to proceed can only be changed by using the modification, suspension and revocation procedures of 33 CFR 325.7, unless the State denies the Section 401 Water Quality Certification or nonconcurs with the applicant's CZM consistency determination.

6. *Enforcement:* In some cases, applicants might proceed with the project upon receipt of the provisional permit. The provisional permit is not a valid permit. In such cases, the Corps has a discretionary enforcement action to consider and should proceed as the DE determines to be appropriate. This occurs on occasion during the standard permit transmittal process. Since the Corps is not changing the normal process of sending unsigned permits to the applicant for signature, there should not be an increase in the occurrence of such unauthorized activities.

7. *Modification:* a. In most cases the Section 401 Water Quality Certification, including conditions, and/or CZM consistency concurrence, including conditions, will be consistent with the provisional permit. In such cases, the DE will simply sign the final permit and enclose the 401 water quality certification and/or CZM consistency concurrence with the final permit (i.e., the signed provisional permit).

b. In a few cases such State approval may necessitate modifications to the Corps preliminary permit decision. Such modifications will be processed in accordance with 33 CFR 325.7.

(1) When the modifications are minor and the DE agrees to such modifications, then a supplement to the provisional decision document may be prepared, as appropriate, and the permit issued with such modifications. (This should usually be done by enclosing the State 401 Water Quality Certification and/or CZM consistency concurrence to the permit, but in a few cases may require a revision to the permit document itself.)

(2) When the modification results in substantial change or measurable increase in adverse impacts or the Corps does not initially agree with the change, then the modification will be processed and counted as a separate permit action for reporting purposes. This may require a new public notice or additional coordination with appropriate Federal and/or state agencies. The provisional decision document will be supplemented or may be completely rewritten, as necessary.

8. *Denial:* If the State denies the Section 401 Water Quality Certification and/or the State nonconcurs with the applicant's CZM consistency determination, then the Corps permit is denied without prejudice.

9. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

3 Encls

Sample Provisional Permit Transmittal Letter

Dear _____: We have completed our review of your permit application identified as [File No., appl. name, etc.] for the following proposed work:

_____

_____

_____

near/in/at _____

Enclosed is a "PROVISIONAL PERMIT." The provisional permit is NOT VALID and does not authorize you to do your work. The provisional permit describes the work that will be authorized, and the General and Special Conditions [if any] which will be placed on your final Department of the Army (DA) permit, if the State of _____ Water Quality Certification and/or Coastal Zone Management (CZM) consistency requirements are satisfied as described below. No work is to be performed in the waterway or adjacent wetlands until you have received a validated copy of the DA permit.

By Federal law no DA permit can be issued until a State Section 401 Water Quality Certification has been issued or has been waived and/or the State has concurred with a permit applicant's CZM consistency determination or concurrence has been presumed. As of this date the [State 401 certification agency] has not issued a Section 401 Water Quality Certification for your proposed work. If the [State 401 certification agency] fails or refuses to act by [date 401 certification must be issued] the Section 401 Water Quality Certification requirement will be automatically waived. Also, as of this date the [State CZM agency] has not concurred with your CZM consistency determination. If the State does not act by [six months from receipt by the State of the applicant's CZM consistency determination] then concurrence with your CZM consistency determination will automatically be presumed.

Conditions of the State Section 401 Water Quality Certification and/or the State CZM concurrence will become conditions to the final DA permit. Should the State's action on the required certification or concurrence preclude validation of the provisional permit in its current form, a modification to the provisional permit will be evaluated and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuing a new public notice.

Enclosure 1

Final Permit Actions

Normal Permit Process

1. Corps completes permit decision, and state 401/CZM issued/waived
2. Corps sends unsigned permit to applicant
3. Applicant signs permit and returns with fee
4. Corps signs permit

Draft Permit Process

1. Corps completes permit decision, but state 401/CZM not complete
2. Corps sends draft permit to applicant
3. State 401/CZM issued waived
4. Applicant signs permit and returns with fee and 401/CZM action
5. Corps reviews 401/CZM action and signs permit

1. The signed draft permit with the attached 401/CZM action is to be treated as the applicant's request for a permit subject to any 401/CZM certification/concurrence including any conditions.

2. If the 401/CZM action results in a modification to the draft permit, then step 4 would be treated as a request for such modification and if we agree with the modification, then the permit would be issued with the modification and the decision document supplemented, as appropriate. If the Corps does not initially agree with the modification, or it involves a substantial change or measurable increase in adverse impacts, then the modification would be processed as a separate permit action for reporting purposes.

Enclosure 2

Once the State has issued the required Section 401 Water Quality Certification and/or concurred with your CZM consistency determination or the dates above have passed without the State acting, and you agree to the terms and conditions of the provisional permit, you should sign and date both copies and return them to us [along with your $100.00/$10.00 permit fee]. Your DA permit will not be valid until we have returned a copy to you bearing both your signature and the signature of the appropriate Corps official.

If the State denies the required Section 401 Water Quality Certification and/or nonconcurs with your CZM consistency determination, then the DA permit is denied without prejudice. If you should subsequently obtain a Section 401 Water Quality Certification and/or a CZM consistency determination concurrence, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your State Section 401 Water Quality Certification, please contact [State 401 certification contact]

If you have any questions concerning the CZM consistency determination, please contact [State CZM contact]

If you have any other questions concerning your application for a DA permit, please contact [Corps contact] at [Corps contact telephone number].

Provisional Permit—Not Valid—Do Not Begin Work

This PROVISIONAL PERMIT is NOT VALID until:

(1) You obtain: _____ a Section 401 Water Quality Certification from State Agency). _____ a Coastal Zone Consistency determination concurrence from (State Agency).

(2) You sign and return the enclosed provisional permit with the State Section 401 Water Quality Certification and/or CZM concurrence and the appropriate permit fee as indicated below:

_____ $10.00 _____ $100.00 No fee required.

(3) The Corps signs the permit and returns it to you. Your permit is denied without prejudice, if the State denies your Section 401 Water Quality Certification and/or nonconcurs with your Coastal Zone Management consistency determination

Do Not Begin Work

Regulatory Guidance Letter, (RGL 93–2)

RGL 93–2 Date: 23 August 1993, Expires: 31 December 1998

Subject: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking.

1. Enclosed are two guidance documents signed by the Office of the Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency. The first document provides guidance on the flexibility that the U.S. Army Corps of Engineers should be utilizing when making determinations of compliance with the Section 404(b)(1) Guidelines, particularly with regard to the alternatives analysis. The second document provides guidance on the use of mitigation banks as a means of providing compensatory mitigation for Corps regulatory decisions.

2. Both enclosed guidance documents should be implemented immediately. These guidance documents constitute an important aspect of the President's plan for protecting the Nation's wetlands, "Protecting America's Wetlands: A Fair, Flexible and Effective Approach" (published on 24 August 1993).

3. This guidance expires 31 December 1998 unless sooner revised or rescinded

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

2 Encls

Memorandum to the Field

Subject: Appropriate Level of Analysis Required for Evaluating Compliance With the Section 404(b)(1) Guidelines Alternatives Requirements

1. *Purpose:* The purpose of this memorandum is to clarify the appropriate level of analysis required for evaluating compliance with the Clean Water Act Section 404(b)(1) Guidelines' (Guidelines) requirements for consideration of alternatives. 40 CFR 230.10(a). Specifically, this memorandum describes the flexibility afforded by the Guidelines to make

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regulatory decisions based on the relative severity of the environmental impact of proposed discharges of dredged or fill material into waters of the United States.

2. Background: The Guidelines are the substantive environmental standards by which all Section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency at 40 CFR Part 230 on December 24, 1980. The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually of cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 CFR 230.10(a). Based on this provision, the applicant is required in every case (irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent) to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. A permit cannot be issued, therefore, in circumstances where a less environmentally damaging practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

3. Discussion: The Guidelines are, as noted above, binding regulations. It is important to recognize, however, that this regulatory status does not limit the inherent flexibility provided in the Guidelines for implementing these provisions. The preamble to the Guidelines is very clear in this regard:

Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are "regulatory", the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met.

Guidelines Preamble, "Regulation versus Guidelines", 45 **Federal Register** 85336 (December 24, 1980).

Notwithstanding this flexibility, the record must contain sufficient information to demonstrate that the proposed discharge complies with the requirements of Section 230.10(a) of the Guidelines. The amount of information needed to make such a determination and the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project.

a. Analysis Associated With Minor Impacts

The Guidelines do not contemplate that the same intensity of analysis will be required for all types of projects but instead envision a correlation between the scope of the evaluation and the potential extent of adverse impacts on the aquatic environment. The introduction to Section 230.10(a) recognizes that the level of analysis required may vary with the nature and complexity of each individual case:

Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

40 CFR 230.10

Similarly, Section 230.6 ("Adaptability") makes clear that the Guidelines: allow evaluation and documentation for a variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. *It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases.*

40 CFR 230.6(9) (emphasis added)

Section 230.6 also emphasizes that when making determinations of compliance with the Guidelines, users: must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. *The level of documentation should reflect the significance and complexity of the discharge activity.*

40 CFR 230.6(b) (emphasis added)

Consequently, the Guidelines clearly afford flexibility to adjust the stringency of the alternatives review for projects that would have only minor impacts. Minor impacts are associated with activities that generally would have little potential to degrade the aquatic environment and include one, and frequently more, of the following characteristics: Are located in aquatic resources of limited natural function; are small in size and cause little direct impact; have little potential for secondary or cumulative impacts; or cause only temporary impacts. It is important to recognize, however, that in some circumstances even small or temporary fills result in substantial impacts, and that in such cases a more detailed evaluation is necessary. The Corps Districts and EPA Regions will, through the standard permit evaluation process, coordinate with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and other appropriate state and Federal agencies in evaluating the likelihood that adverse impacts would result from a particular proposal. It is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for purposes of the alternatives analysis required by Section 230.10(a).

In reviewing projects that have the potential for only minor impacts on the aquatic environment, Corps and EPA field offices are directed to consider, in coordination with state and Federal resource agencies, the following factors:

(i) Such projects by their nature should not cause or contribute to significant degradation individually or cumulatively. Therefore, it generally should not be necessary to conduct or require detailed analyses to determine compliance with Section 230.10(c).

(ii) Although sufficient information must be developed to determine whether the proposed activity is in fact the least damaging practicable alternative, the Guidelines do not require an elaborate search for practicable alternatives if it is reasonably anticipated that there are only minor differences between the environmental impacts of the proposed activity and potentially practicable alternatives. This decision will be made after consideration of resource agency comments on the proposed project. It often makes sense to examine first whether potential alternatives would result in no identifiable or discernible difference in impact on the aquatic ecosystem. Those alternatives that do not may be eliminated from the analysis since Section 230.10(a) of the Guidelines only prohibits discharges when a practicable alternative exists which would have less adverse impact on the aquatic ecosystem. Because evaluating practicability is generally the more difficult aspect of the alternatives analysis, this approach should save time and effort for both the applicant and the regulatory agencies.[1] By initially focusing the alternatives analysis on the question of impacts on the aquatic ecosystem, it may be possible to limit (or in some instances eliminate altogether) the number of alternatives that have to be evaluated for practicability.

(iii) When it is determined that there is no identifiable or discernible difference in adverse impact on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is considered as satisfying the requirements of 40 CFR 230.(a).

(iv) Even where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have "other significant adverse environmental consequences." 40 CFR 230.10(a). As explained in the preamble, this allows for consideration of "evidence of damages to other ecosystems in deciding whether there is a 'better' alternative." Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

(v) In cases of negligible or trivial impacts (e.g., small discharges to construct individual driveways), it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it may not be necessary to conduct an offsite alternatives analysis but instead require only any practicable onsite minimization.

This guidance concerns application of the Section 404(b)(1) Guidelines to projects with minor impacts. Projects which may cause more than minor impacts on the aquatic environment, either individually or cumulatively, should be subjected to a proportionately more detailed level of analysis to determine compliance or noncompliance with the Guidelines. Projects which cause substantial impacts, in particular, must be thoroughly evaluated through the standard permit evaluation process to determine compliance with all provisions of the Guidelines.

b. Relationship Between the Scope of Analysis and the Scope/Cost of the Proposed Project

The Guidelines provide the Corps and EPA with discretion for determining the necessary level of analysis to support a conclusion as to whether or not an alternative is practicable. Practicable alternatives are those alternatives that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 40 CFR 230.10(a)(2). The preamble to the Guidelines provides clarification on how cost is to be considered in the determination of practicability:

Our intent is to consider those alternatives which are *reasonable in terms of the overall scope/cost of the proposed project.* The term economic [for which the term "cost" was substituted in the final rule] might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines.

Guidelines Preamble, "Alternatives", 45 FR 85339 (December 24, 1980) (emphasis added).

Therefore, the level of analysis required for determining which alternatives are practicable will vary depending on the type of project proposed. The determination of what constitutes an unreasonable expense should generally consider whether the project cost is substantially greater than the costs normally associated with the particular type of project. Generally, as the scope/cost of the project increases, the level of analysis should also increase. To the extent the Corps obtains information on the costs associated with the project, such information may be considered when making a determination of what constitutes an unreasonable expense.

The preamble to the Guidelines also states that "[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not 'practicable.'" Guidelines Preamble, "Economic Factors", 45 FR 85343 (December 24, 1980). Therefore, to the extent that individual homeowners and small businesses may typically be associated with small projects with minor impacts, the nature of the applicant may also be a relevant consideration in determining what constitutes a practicable alternative. It is important to emphasize, however, that it is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather, characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.

4. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 40 CFR 230.12(a)(3)(iv).

5. A reasonable, common sense approach in applying the requirements of the Guidelines' alternatives analysis is fully consistent with sound environmental protection. The Guidelines clearly contemplate that reasonable discretion should be applied based on the nature of the aquatic resources and potential impacts of a proposed activity in determining compliance with the alternatives test. Such an approach encourages effective decisionmaking and fosters a better understanding and enhanced confidence in the Section 404 program.

6. This guidance is consistent with the February 6, 1990 "Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines."

Signed 8–23–93

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Signed 8–23–93

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Memorandum to the Field

Subject: Establishment and Use of Wetland Mitigation Banks in the Clean Water Act Section 404 Regulatory Program

1. This memorandum provides general guidelines for the establishment and use of wetland mitigation banks in the Clean Water Act Section 404 regulatory program. This memorandum serves as interim guidance pending completion of Phase I by the Corps of Engineers' Institute for Water Resources study on wetland mitigation banking,[2] at which time this guidance will be reviewed and any appropriate revisions will be incorporated into final guidelines.

2. For purposes of this guidance, wetland mitigation banking refers to the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic habitats expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands permitted under the Section 404 regulatory program. Wetland mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

(a) Compensatory mitigation can be implemented and functioning in advance of project impacts, thereby reducing temporal losses of wetland functions and uncertainty over whether the mitigation will be successful in offsetting wetland losses

(b) It may be more ecologically advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels.

(c) Development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation.

(d) Wetland mitigation banking proposals may reduce regulatory uncertainty and provide more cost-effective compensatory mitigation opportunities.

3. The Section 404(b)(1) Guidelines (Guidelines), as clarified by the "Memorandum of Agreement Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines" (Mitigation MOA) signed February 6, 1990, by the Environmental Protection Agency and the Department of the Army, establish a mitigation sequence that is used in the evaluation of individual permit applications. Under this sequence, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to the aquatic ecosystem. Remaining unavoidable impacts must then be offset through compensatory mitigation to the extent appropriate and practicable. Requirements for compensatory mitigation may be satisfied through the use of wetland mitigation banks, so long as their use is consistent with standard practices for evaluating compensatory mitigation proposals outlined in the Mitigation MOA. It is important to emphasize that, given the mitigation sequence requirements described above, permit applicants should not anticipate that the establishment of, or participation in, a wetland mitigation bank will ultimately lead to a determination of compliance with the Section 404(b)(1) Guidelines without adequate demonstration that impacts associated with the proposed discharge have been avoided and minimized to the extent practicable.

4. The agencies' preference for on-site, in-kind compensatory mitigation does not preclude the use of wetland mitigation banks where it has been determined by the Corps, or other appropriate permitting agency, in coordination with the Federal resource agencies through the standard permit evaluation process, that the use of a particular mitigation bank as compensation for proposed wetland impacts would be appropriate for offsetting impacts to the

[1] In certain instances, however, it may be easier to examine practicability first. Some projects may be so site-specific (e.g., erosion control, bridge replacement) that no off site alternative could be practicable. In such cases the alternatives analysis may appropriately be limited to onsite options only.

[2] The Corps of Engineers Institute for Water Resources, under the authority of Section 307(d) of the Water Resources Development Act of 1990, is undertaking a comprehensive two-year review and evaluation of wetland mitigation banking to assist in the development of a national policy on this issue. The interim summary report documenting the results of the first phase of the study is scheduled for completion in the fall of 1993.

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aquatic ecosystem. In making such a determination, careful consideration must be given to wetland functions, landscape position, and affected species populations at both the impact and mitigation bank sites. In addition, compensation for wetland impacts should occur, where appropriate and practicable, within the same watershed as the impact site. Where a mitigation bank is being developed in conjunction with a wetland resource planning initiative (e.g., Special Area Management Plan, State Wetland Conservation Plan) to satisfy particular wetland restoration objectives, the permitting agency will determine, in coordination with the Federal resource agencies, whether use of the bank should be considered an appropriate form of compensatory mitigation for impacts occurring within the same watershed.

5. Wetland mitigation banks should generally be in place and functional before credits may be used to offset permitted wetland losses. However, it may be appropriate to allow incremental distribution of credits corresponding to the appropriate stage of successful establishment of wetland functions. Moreover, variable mitigation ratios (credit acreage to impacted wetland acreage) may be used in such circumstances to reflect the wetland functions attained at a bank site at a particular point in time. For example, higher ratios would be required when a bank is not yet fully functional at the time credits are to be withdrawn.

6. Establishment of each mitigation bank should be accompanied by the development of a formal written agreement (e.g., memorandum of agreement) among the Corps, EPA, other relevant resource agencies, and those parties who will own, develop, operate or otherwise participate in the bank. The purpose of the agreement is to establish clear guidelines for establishment and use of the mitigation bank. A wetlands mitigation bank may also be established through issuance of a Section 404 permit where establishing the proposed bank involves a discharge of dredged or fill material into waters of the United States. The banking agreement or, where applicable, special conditions of the permit establishing the bank should address the following considerations, where appropriate:

(a) location of the mitigation bank;

(b) goals and objectives for the mitigation bank project;

(c) identification of bank sponsors and participants;

(d) development and maintenance plan;

(e) evaluation methodology acceptable to all signatories to establish bank credits and assess bank success in meeting the project goals and objectives;

(f) specific accounting procedures for tracking crediting and debiting;

(g) geographic area of applicability;

(h) monitoring requirements and responsibilities;

(i) remedial action responsibilities including funding; and

(j) provisions for protecting the mitigation bank in perpetuity.

Agency participation in a wetlands mitigation banking agreement may not, in any way, restrict or limit the authorities and responsibilities of the agencies.

7. An appropriate methodology, acceptable to all signatories, should be identified and used to evaluate the success of wetland restoration and creation efforts within the mitigation bank and to identify the appropriate stage of development for issuing mitigation credits. A full range of wetland functions should be assessed. Functional evaluations of the mitigation bank should generally be conducted by a multi-disciplinary team representing involved resource and regulatory agencies and other appropriate parties. The same methodology should be used to determine the functions and values of both credits and debits. As an alternative, credits and debits can be based on acres of various types of wetlands (e.g., National Wetland Inventory classes). Final determinations regarding debits and credits will be made by the Corps, or other appropriate permitting agency, in consultation with Federal resource agencies.

8. Permit applicants may draw upon the available credits of a third party mitigation bank (i.e., a bank developed and operated by an entity other than the permit applicant). The Section 404 permit, however, must state explicitly that the permittee remains responsible for ensuring that the mitigation requirements are satisfied.

9. To ensure legal enforceability of the mitigation conditions, use of mitigation conditions, use of mitigation bank credits must be conditioned in the Section 404 permit by referencing the banking agreement or Section 404 permit establishing the bank; however, such a provision should not limit the responsibility of the Section 404 permittee for satisfying all legal requirements of the permit.

signed 8–23–93

Robert H. Wayland, III,

Director, Offiee of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

signed 8–23–93

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Regulatory Guidance Letter (RGL 93–3)

RGL 93–3 Issued: September 13, 1993
Expires: not applicable.
Subject: Rescission of Regulatory Guidance Letters (RGL) 90–5, 90–7, and 90–8

1. On 25 August 1993 the final "Excavation Rule" was published in the **Federal Register** (58 FR 45008) and becomes effective on 24 September 1993. This regulation modifies the definition of "Discharge of Dredged Material" to address landclearing activities (see 33 CFR 232.2(d)); modifies the definitions of "Fill Material" and "Discharge of Fill Material" to address the placement of pilings (see 33 CFR 323.2 (e) and (f) and 323.3(c)); and modifies the definition of "waters of the United States" to address prior converted cropland (see 33 CFR 328.(a)(8)).

2. Therefore, RGL 90–5, Subject: "Landclearing Activities Subject to Section 404 Jurisdiction"; RGL 90–7, Subject: "Clarification of the Phrase 'Normal Circumstances' as it pertains to Cropped Wetlands"; and RGL 90–8, Subject: "Applicability of Section 404 to Pilings"; are hereby rescinded effective 24 September 1993. Furthermore, although RGL 90–5, Subject: "Landclearing Activities Subject to Section 404 Jurisdiction" expired on 31 December 1992 it should continue to be applied until 24 September 1993.

3. In addition, RGL's 90–5, 90–7, and 90–8 as of 24 September 1993 will no longer be used for guidance since the guidance contained in those RGL's has been superseded by the regulation.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter, RGL 94–1

Date: 23 May 1994, Expires: 31 December 1999
Subject: Expiration of Geographic Jurisdictional Determinations.

1. Regulatory Guidance Letter (RGL) 90–6, Subject: "Expiration Dates for Wetlands Jurisdictional Delineations" is extended until 31 December 1999, subject to the following revisions.

2. This guidance should be applied to all jurisdictional determinations for all waters of the United States made pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972.

3. To be consistent with paragraph IV.A. of the 6 January 1994, interagency Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act, all U.S. Army Corps of Engineers geographic jurisdictional determinations shall be in writing and normally remain valid for a period of five years. The Corps letter (see paragraph 4.(d) of RGL 90–6) should include a statement that the jurisdictional determination is valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date.

4. For wetland jurisdictional delineations the "effective date of this RGL" referred to in paragraphs 4 and 5 of RGL 90–6 was and remains 14 August 1990. For jurisdictional determinations, other than wetlands jurisdictional delineations, the "effective date of this RGL" referred to in paragraphs 4 and 5 of RGL 90–6 will be the date of this RGL.

5. Previous Corps written jurisdictional determinations, including wetland jurisdictional delineations, with a validity period of three years remain valid for the stated period of three years. The district engineer is not required to issue new letters to extend such period from three years to a total of five years. However, if requested to do so, the district engineer will normally extend the three year period to a total of five years unless new information warrants a new jurisdictional determination.

6. Districts are not required to issue a public notice on this guidance but may do so at their discretion.

7. This guidance expires on 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter, RGL 94–2

Date: 17 August 1994, Expires: 31 Dec 1999
CECW–OR
Subject: Superfund Projects

1. Regulatory Guidance Letter (RGL) 85–07, subject: "Superfund Projects" is hereby reissued (copy enclosed).

2. This RGL was previously extended by RGL 89–2. Although the extension expired, RGL 85–07 has continued to be U.S. Army Corps of Engineers policy.

3. This guidance expires 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Encl

RGL 85–7, Dated 5 July 1985, Expires 31 Dec 1987
Subject: Superfund Projects

1. Recently, the Chief Counsel, Mr. Lester Edelman, responded to a letter from Mr. William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response, Environmental Protection Agency (EPA) which dealt with the need for Department of Army authorizations for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions. This letter summarizes Mr. Edelman's opinion and provides operating guidance for field interaction with the EPA.

2. EPA's basic position is that Congress did not intend for CERCLA response actions to be subject to other environmental laws. Rather, as a matter of sound practice, CERCLA response actions generally should meet the standards established by those laws. Consequently, it is the EPA's position that neither it nor the states, in pursuing response actions at the location of the release or threatened release under the authority of CERCLA, are required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act for those actions.

3. Mr. Edelman stated in part that he has some reservations about the position that the EPA has taken. Nevertheless, he recognizes that the EPA has the primary authority for the interpretation and application of CERCLA, and therefore would defer to the EPA's reading of its own statutory authorities, at least for the time being.

4. In light of this legal opinion, FOAs should not require applications for the EPA or state response actions at the location of the release or threatened release pursued under the authority of CERCLA. Any permit applications in process should be terminated.

5. Both the EPA and OCE believe that the FOAs' expertise in assessing the public interest factors for dredging and filling operations can contribute to the overall quality of the CEROLA response action. The Director of Civil Works will be establishing a group from his staff to work with the EPA staff to develop a framework for integrating the Corps Sections 10, Section 404 and, if appropriate, Section 103 concerns into the EPA's substantive Superfund reviews.

6. Until specific guidance is provided from OCE, FOAs should provide technical support to the EPA regions and/or the states on matters within their field of expertise.

For the Chief of Engineers:

C.E. Edgar III

[FR Doc. 95–6253 Filed 3–13–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of hearing.

SUMMARY: The National Advisory Council on Indian Education invites the public to attend a one-day hearing conducted by the Council. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: Sunday, March 19, 1995 from 9:00 p.m. to 3:00 p.m.

ADDRESSES: The hearing will be held at the Quality Hotel Capitol Hill in the Sky Suite, 415 New Jersey Avenue N.W., Washington, DC 20001, (202) 638–1616, Fax (202) 638–0707.

FOR FURTHER INFORMATION CONTACT: John W. Cheek, Acting Director, National Advisory Council on Indian Education, 330 C Street, S.W., Room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The National Advisory Council on Indian Education is scheduling a one-day hearing on Sunday, March 19, 1995, prior to the National American Indian and Alaska Native Education Summit being planned for March 20–22, 1995. The hearing will allow participants the opportunity to present written and/or oral testimony on any of the topic areas being addressed by the national summit or any other area of concern related to Indian education. The five key issues areas to be addressed during the summit include: Tribal Sovereignty/Trust Responsibility; Education Policy Development; the Impact of Goals 2000. A Tribal Perspective; Native Language and Culture; and the Federal Budget. Any submitted testimony and address one of the previously mentioned topic areas and follow this format: Statement of the problem; statement of desired remedy or solution; argument on behalf of desired remedy; and identification of who needs to do what and who oversees its follow through. Other testimony from topic areas not specifically addressed by the summit are also welcome. Findings from the hearing will be incorporated into the overall summit agenda. Participants wishing to present written and/or oral testimony are requested to submit any documentation to the staff of the National Advisory Council on Indian Education prior to the hearing if possible and no later than 5:00 p.m. on the day of the hearing. Testimony may also be faxed to the NACIE office at (202) 205–9446 any time prior to the hearing date. Oral testimony will be scheduled according to topic areas and announced the morning of the hearing or from the NACIE office the week prior to the summit.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street S.W., Room 4072, Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday.

Dated: March 8, 1995.

John W. Cheek,

Acting Director, National Advisory Council on Indian Education.

[FR Doc. 95–6278 Filed 3–13–95; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the inaugural meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

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DATES AND TIMES: March 30, 1995, 10:15 a.m. to 4:30 p.m.; March 31, 1995, 9 a.m. to 1 p.m.

ADDRESSES: The Montpelier Room of the Washington Court Hotel, 525 New Jersey Ave., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; FAX: (202) 219–1466.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Board is open to the public. The agenda for March 30 includes a discussion of the restructuring of the Office of Educational Research and Improvement and an overview of agency activities pertaining to its Research Priorities Plan and advance preparations for competitions for regional educational laboratories and research and development centers. On March 31 members will have briefings on the Federal Advisory Committee Act; standards of ethical conduct; and the background of the Board's authorizing legislation.

A final agenda will be available from the Board's office on March 23, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, D.C. 20208–7564.

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–6273 Filed 3–13–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATE AND TIME: Tuesday, March 21, 1995, 6:30 p.m. - 8:00 p.m.

ADDRESS: Monticello High School, 164 South 2nd West, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Environmental Management Site-Specific Advisory Board, Monticello Site, will be discussing issues related to the disposal of uranium mill tailings.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303)-248–7727.

Issued at Washington, DC on March 8, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–6244 Filed 3–13–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–63, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATES AND TIMES: Tuesday, March 28, 1995: 1:30 pm - 5:30 pm.

ADDRESSES: Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Pantex Plant Citizens' Advisory Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm Welcome—Agenda Review—Introductions Nominations and Membership Working Group
1:35 pm Agreement in Principle
2:30 pm DOE Budget
3:15 pm Break
3:30 pm Working Group Reports Policy and Personnel: status of hiring SSAB evaluation goals and criteria
3:50 pm Nominations and Membership
4:00 pm Training and Program Working Group—plans for next meetings
4:10 pm Budget and Finance Working Group—selection of chair, budget report
4:20 pm Community Outreach Subcommittee—status of work
4:30 pm Updates: Occurrence Report from DOE etc.
5:00 pm Co-Chairs' Reports
5:20 pm Next Meetings: Tuesday, April 25, 1:30—5:30; Tuesday, May 23, 1:30—5:30; Tuesday, June 27, 1:30—5:30

5:30 pm Adjourn

Public comment will be taken periodically throughout the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This Notice is being published less than fifteen days before the date of the meeting due to programmatic issues that had to be resolved before publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806)371–400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806)537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on March 8, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–6245 Filed 3–13–95; 8:45 am]

BILLING CODE 6450–1–P

Office of Civilian Radioactive Waste Management

Safe Transportation and Emergency Response Training; Technical Assistance and Funding

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice extending comment period.

SUMMARY: On Tuesday, January 3, 1995, the Department of Energy published a Notice of Inquiry (60 FR 99) that described implementation options and invited comment for a program of technical assistance and funding to States and Tribes for public safety officials of appropriate local jurisdictions with regard to the transport of spent nuclear fuel or high-level radioactive waste. The program would cover safe, routine transport procedures and emergency response capabilities as directed in the Nuclear Waste Policy Act of 1982, as amended. (42 U.S.C. 10101 *et seq.*). The comment period for this Notice of Inquiry was scheduled to close on April 3, 1995.

Today's notice announces a 45-day extension of the comment period on implementation options addressed in the Notice of Inquiry. The Department is taking this action in response to requests for an extension of the comment period received from the Council of State Governments—Midwestern Office, Council of State Governments—Eastern Regional Conference, Southern States Energy Board, and the Western Interstate Energy Board.

DATES: Written comments should be mailed to the Department and must be received on or before May 18, 1995.

ADDRESSES: Written comments (3 copies) should be directed to: U.S. Department of Energy, c/o Lois Smith, TRW Environmental Safety Systems, 2650 Park Tower Drive, Suite 800, Vienna, Virginia 22180, ATTN: Section 180(c) Comments. Persons submitting comments should include their names and addresses. Receipt of comments in response to this Notice will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed.

FOR FURTHER INFORMATION CONTACT: For further information on the transportation of spent fuel and high-level radioactive waste under the Nuclear Waste Policy Act, please contact: Mr. Allen Benson, Operational Activities Team Leader, Office of Civilian Radioactive Waste Management (RW–45), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: (202) 586–2280. For general information on this Notice, please contact: Ms. Ellen Ott, Office of General Counsel, (GC–52), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: (202) 586–6975.

Information packets are available for interested persons who want background information about Office of Civilian Radioactive Waste Management (OCRWM) transportation prior to providing comments. To receive an information packet, please call: 1–800–225–NWPA (or call 488–5513 in Washington, D.C.) or write to the OCRWM Information Center, Post Office Box 44375, Washington, D.C. 20026.

Copies of comments received will be available for examination and may be photocopied at the Department's public reading room at 1000 Independence Avenue SW, room 1E–190, Washington, D.C.

Daniel A. Dreyfus,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 95–6249 Filed 3–13–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Forms CE–63A/B, "Annual Solar Thermal Collector Manufacturers Survey" and "Annual Photovoltaic Module/Cell Manufacturers Survey"

AGENCY: Energy Information Administration, Department of Energy

ACTION: Notice of the proposed extension of the Forms CE–63A/B, "Annual Solar Thermal Collector Manufacturers Survey" and "Annual Photovoltaic Module/Cell Manufacturers Survey," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980), conducts a presurvey consultation program to provide the general public and other Federal agencies the opportunity to comment on continuing or proposed new data collection forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, data collection forms are clearly understood, and that the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension of

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the Forms CE–63A/B, "Annual Solar Thermal Collector Manufacturers Survey" and "Annual Photovoltaic Module/Cell Manufacturers Survey."

DATES: Written comments must be submitted by April 13, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact person listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Peter Holihan, EI–522, Energy Information Administration, U.S. Department of Energy, Washington, D.C. 20585. Phone: (202) 254–5432.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Peter Holihan at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a comprehensive, and integrated energy data and information program for the collection, evaluation, assembly, analysis, and dissemination of data and information relating to energy resource reserves, production, demand, technology and relevant economic and statistical information relating to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

Form CE–63A collects data on solar thermal collector shipments, solar thermal systems, and solar-related manufacturing, marketing, and geographic information from companies in the United States that are engaged in manufacturing or importing solar thermal collectors. Solar thermal shipments are in terms of square feet.

Form CE–63B collects data on photovoltaic cell and module shipments, photovoltaic systems, and photovoltaic-related manufacturing and marketing information from companies in the United States that are engaged in manufacturing or importing photovoltaic cells and modules. Photovoltaic cell and module shipments are in terms of electrical capacity expressed in peak kilowatts.

II. Current Actions

At this time, the EIA is proposing a three-year extension of Forms CE–63A/B. The EIA is planning to meet with solar industry companies and associations, DOE personnel, and other interested parties to discuss Forms CE–63A/B. If changes are made to Forms CE–63A and/or CE–63B as a result of this notice, the meeting, or other activities, the changes will be highlighted in the **Federal Register** notice announcing the submission of the forms to the Office of Management and Budget later this year.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension of the Forms CE–63A/B. The following general guidelines are provided to assist in the preparation of responses. When commenting, please indicate to which form your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 3 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the "Annual Solar Thermal Collector Manufacturers Survey" and "Annual Photovoltaic Module/Cell Manufacturers Survey."

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the forms; they also will become a matter of public record.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. § 3506(a) and (c)(1)).

Issued in Washington, DC, March 7, 1995.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 95–6246 Filed 3–13–95, 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–529–000 et al.]

Kentucky Utilities Company et al.; Electric Rate and Corporate Regulation Filings

March 7, 1995.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Co.

[Docket No. ER95–529–000]

Take notice that on February 21, 1995, Kentucky Utilities Company tendered for filing an amendment to its February 1, 1995 filing in the above-referenced docket.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Co.

[Docket No. ER95–550–000]

Take notice that on February 17, 1995, Ohio Edison Company tendered for filing an amendment to its February 3, 1995 filing in the above-referenced docket.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Co.

[Docket No. ER95–649–000]

Take notice that on February 27, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and InterCoast Power Marketing Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of February 1, 1995.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corp.

[Docket No. ER95–650–000]

Take notice that on February 27, 1995, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Supplement No. 2 to Transmission Service Agreement No. 2 between WPSC and Manitowoc Public Utilities. The Agreement provides for transmission service under the T–1 Transmission Tariff, FERC Original Volume No. 4.

WPSC asks that the agreement become effective June 1, 1995.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. The United Illuminating Co.

[Docket No. ER95–651–000]

Take notice that on February 27, 1995, The United Illuminating Company (UI), 157 Church Street, New Haven, Connecticut, submitted for filing a rate schedule confirming daily sales of system power by UI to Fitchburg Gas and Electric Company between November 16, 1991 and February 13, 1994. UI has sought waiver of the sixty-day notice requirement under 18 CFR 35.3 to permit an effective date of November 16, 1991. UI also requests that the rate schedule terminate on February 17, 1994.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Co.

[Docket No. ER95–653–000]

Take notice that on February 27, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS-FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

LG&E Power Marketing, Inc

A copy of this filing has been served on the above listed entity and the Arizona Corporation Commission.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Co.

[Docket No. ER95–654–000]

Take notice that on February 27, 1995, Idaho Power Company (IPC), tendered for filing wholesale or transmission agreements between Idaho Power Company and Bonneville Power Administration, Sierra Pacific Power Company, Utah Associated Municipal Power Systems and Washington City, Utah regarding monthly contract demand values or monthly capacity and energy values.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the revisions to become effective as of January 1, 1995.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER95–655–000]

Take notice that on February 27, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and CNG Power Services Corporation (CNG) dated February 22, 1995 providing for certain transmission services to CNG.

Copies of this filing were served upon CNG and the New York State Public Service Commission.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co.

[Docket No. ER95–656–000]

Take notice that on February 28, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Catex Vitol Electric Inc. (Catex Vitol), dated February 15, 1995. This Service Agreement specifies that Catex Vitol has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Catex Vitol to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 15, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Co.

[Docket No. ER95–657–000]

Take notice that on February 28, 1995 Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Part 35 *et seq.* of the Commission's regulations, the Electric Service Agreement dated February 27, 1995 (the Agreement) between Sierra and Truckee Donner Public Utility District (the District).

Sierra states that the Agreement provides for a continuation of the existing firm electric service by Sierra to the District, but at rates that reflect a revenue reduction for such service. The Agreement provides for commencement of service thereunder as of March 1, 1995 or such later date as the Commission permits the filing to be effective. Sierra requests waiver of the 60-day notice requirement of section 205 of the Federal Power Act to provide for a March 1, 1995 effective date. While Sierra states its belief that no other waivers of the Act or the Commission's rules or regulations are necessary to make effective the Agreement pursuant to its terms, Sierra requests any such waiver necessary or desirable for that purpose.

Sierra asserts that the filing has been served on the District and on the regulatory commissions of Nevada and California.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Co.

[Docket No. ER95–658–000]

Take notice that on February 28, 1995 Montaup Electric Company tendered for filing an annual report titled Conservation and Load Management Informational Report Proposed Surcharge—February 28, 1995—supporting surcharges for the period March 1, 1995 through February 28, 1996. This annual report filing is required under a conservation and load management (C&LM) clause applied to service to Montaup's affiliated M-rate customers as amended by Montaup in a filing approved by the Commission on May 4, 1993 in Docket No. ER93–79–000. The informational report shows the surcharges that will be required to true up collections for the twelve months ended December 31, 1994 with actual C&LM costs during that period.

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Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Co.

[Docket No. ER95–659–000]

Take notice that on February 28, 1995, Tucson Electric Power Company (Tucson), tendered for filing (i) Service Schedule D, Power Exchange Agreement, between Tucson and M–S–R Public Power Agency (MSR) and (ii) Service Schedule E, Reserve Sharing, between Tucson and MSR. Service Schedule D and Service Schedule E were entered into pursuant to an Interconnection Agreement, dated as of September 20, 1982, Docket No. ER82–828–000. Service Schedule D provides for an exchange of capacity and energy between Tucson and MSR in which MSR will deliver its capacity and energy entitlement in San Juan Unit 4 to TEP at San Juan in exchange for a like amount of capacity and energy deliverable by Tucson at certain delivery points on Tucson's system. Service Schedule E provides for a reserve sharing arrangement involving MSR's San Juan capacity rights and Tucson's San Juan capacity rights which will enable the parties to reduce their respective reserve requirements. Tucson requests an effective date of May 1, 1995.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: March 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6178 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP94–682–000 and CP94–682–001]

Southern Natural Gas Company; Availability of the Environmental Assessment for the Proposed Cleveland Branch Line Project

March 8, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) on the natural gas pipeline facilities proposed by Southern Natural Gas Company (Southern) in the above dockets.

The EA was prepared to satisfy the requirements of the Natural Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Southern's proposed Cleveland Branch Line Project, which includes the following facilities:

- About 20.2 miles of 12-inch-diameter pipeline in Catoosa and Whitfield Counties, Georgia, and Hamilton and Bradley Counties, Tennessee. This pipeline, referred to as the "Cleveland Branch Line", would extend from milepost 101.44 on Southern's existing 12-inch Chattanooga Branch Line in Catoosa County, Georgia, to a proposed interconnection owned by East Tennessee Natural Gas Company in Bradley County, Tennessee;
- One new meter station in Bradley County. The meter station would consist of two 6-inch meter runs, pressure regulators, flow control values, about 125 feet of miscellaneous buried piping, and an 8-foot by 10-foot instrumentation building; and
- One 1,452-horsepower turbine compressor unit and other facilities at Southern's existing McConnells Compressor Station in Tuscaloosa County, Alabama.

Southern indicates that proposed facilities would deliver a total firm and interruptible transportation service to nine municipal gas districts and two distribution companies in eastern Tennessee. These customers would receive about 11,350 thousand cubic feet per day of firm transportation from Southern.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, (202) 208–1371.

Copies of this EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Alisa Lykens, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 208–0766.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP94–682–000 and CP94–682–001. Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than April 10, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should be sent to Ms. Alisa Lykens, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3). why this time limitation should be waived. Environmental issues have been reviewed as good cause for late intervention. You do not need intervener status to have your comments considered.

Additional information about this project is available from Ms. Alisa Lykens, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, at (202) 208–0766.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6179 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–661–030]

Algonquin Gas Transmission Co., Notice of Changes in FERC Gas Tariff

March 8, 1995.

Take notice that on March 3, 1995, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, effective January 23, 1995, the following revised tariff sheets:

Fourth Revised Volume No. 1

Sub Ninth Revised Sheet No. 21
Sub Ninth Revised Sheet No. 22
Sub Sixth Revised Sheet No. 33

Original Volume No. 2

Sub Third Revised Sheet No. 401

Algonquin states that the purpose of this filing is to replace tariff sheets that were accepted by the Commission effective January 1, 1995, with tariff sheets that have an effective date of January 23, 1995.

On December 1, 1994, Algonquin filed the above-referenced tariff sheets to implement revised firm transportation rates under Rate Schedules AFT–2 and X–38. In that filing Algonquin requested that the Commission accept the tariff sheets effective January 1, 1995, to coincide with the commencement of service on the upstream facilities of Columbia Gas Transmission Corporation. In a February 3, 1995 letter order, the Commission accepted the tariff sheets with a January 1, 1995 effective date, as requested by Algonquin. Due to a delay in construction, however, service by Columbia did not commence until January 23, 1995. Accordingly, Algonquin is providing to the Commission substitute tariff sheets that reflect the January 23, 1995 effective date. Except for the change in effective date, the substitute tariff sheets are identical to the sheets accepted by the Commission on February 3, 1995.

Algonquin states that copies of its filing were mailed to all affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests should be filed on or before March 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6170 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–200–000]

ANR Pipeline Co.; Notice of Request for Limited Waiver of FERC Gas Tariff

March 8, 1995

Take notice that on March 3, 1995, ANR Pipeline Company (ANR) filed, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.207, a request for limited waiver, to the extent necessary, of its tariff provisions regarding the time for the filing of restatements of its Gas Supply Realignment (GSR) and Pricing Differential (PD) Reservation Surcharges. ANR explains that its tariff requires it to update its Eligible MDQ as of April 1, 1995.

In order to avoid using estimated Eligible MDQs or different Eligible MDQs for different transition cost surcharges, however, ANR is requesting that it be permitted to restate its GSR and PD Reservation Surcharges effective June 1, 1995, the same date that its next quarterly Above-Market Dakota Costs Reservation Surcharge will become effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 95–6169 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–568–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

March 8, 1995.

Take notice that on February 27, 1995, Consolidated Edison Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 17, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6171 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

K N Interstate Gas Transmission Co.; Notice of Filing

March 8, 1995.

On March 1, 1995, K N Interstate Gas Transmission Co. (KN), filed pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. § 717c, Section 154.63, of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 154.63, and the Commission's order issued December 22, 1994, in Docket Nos. CP94–397–000 and CP94–430–000, for authorization to terminate its non-jurisdictional gathering and processing services in the Bowdoin gathering system to K N Gas Gathering, Inc. KN requests approval as of April 1, 1995.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by March 17, 1995 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6172 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95–137–002]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 8, 1995.

Take notice that on March 6, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing is being made in compliance with the February 23, 1995, Commission Order in the captioned Docket. That Order directed Northern; (1) to re-establish the direct bill amounts by shipper resulting from the buyout of the Pan Alberta Gas (U.S.) Exchange Agreement by removing the costs of the January 1996 payment which is yet to be made, and (2) to provide specific additional supporting information. Therefore Northern has filed the additional supporting information and a Second Substitute Third Revised Sheet No. 68 and will commence billing effective March 1, 1995.

Northern states that copies of this filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 15, 1995. All protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6173 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

South Georgia Natural Gas Co.; Notice of Filing

[Docket No. MG88–16–004]

March 8, 1995.

Take notice that on March 3, 1995, South Georgia Natural Gas Company (South Georgia) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] South Georgia states that it is revising its standards to incorporate the changes required by the Commission's February 1, 1995 Order on Standards of Conduct.[3]

South Georgia states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6174 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B Order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tennecq Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); appeal docketed sub nom. *Conoco, Inc.* v. *FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

[3] 70 FERC ¶ 61,129 (1995).

[Docket No. MG88–15–005]

Southern Natural Gas Co.; Notice of Filing

March 8, 1995.

Take notice that on March 3, 1995, Southern Natural Gas Company (Southern) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Southern states that it is revising its standards to incorporate the changes required by the Commission's February 1, 1995 Order on Standards of Conduct.[3]

Southern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30.908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, order on rehearing, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); appeal docketed sub nom. *Conoco, Inc.* v. *FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

[3] 70 FERC ¶ 61,129 (1995).

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6175 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

Tennessee Gas Pipeline Co.; Notice of Filing

[Docket No. RP95–112–003]

March 8, 1995.

Take notice that on March 3, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to be effective February 1, 1995:

First Revised Sub 30th Revised Sheet No. 5

Tennessee states that the purpose of this filing is to comply with the Commission's February 23, 1995 Order in Docket No. RP95–112 requiring Tennessee to make the Rate Schedule T–180 rate effective February 1, 1995.

Tennessee states that copies of the filing have been mailed to all affected parties.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed before March 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6176 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

Williston Basin Interstate Pipeline Co.; Notice of Technical Conference

[Docket Nos. RP90–137–015, RP90–137–018, and RP90–137–019]

March 8, 1995.

Pursuant to the Commission's letter order, issued on February 15, 1995, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Tuesday, March 21, 1995 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6177 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 94–81–LNG]

Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Order Amending Authorization to Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order amending the long-standing authorization granted to Phillips Alaska Natural Gas Corporation (PANGC) and Marathon Oil Company (Marathon) to export liquefied natural gas (LNG) to Japan. Specifically, the order approves a modified LNG pricing formula, in accordance with an amendment to PANGC's and Marathon's June 17, 1988, LNG purchase agreement.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 2, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–6247 Filed 3–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 95–12–NG]

Petro-Canada Hydrocarbons Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Petro-Canada Hydrocarbons Inc. authorization to import up to 150 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after March 3, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 1, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–6248 Filed 3–13–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[HERL–RTP; FRL–5–5172–1]

Workshop on Endocrine Disruptors

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is sponsoring a workshop to develop research needs to address the hypothesis that chemicals present in the environment may have adverse hormonally-mediated effects on humans and wildlife. The goals of this workshop are twofold: (1) to provide a forum for communication of information on endocrine disruptors among a diverse assembly of organizations and scientific specialities; and (2) to develop a national strategy that delineates short term and long term projects necessary for understanding the magnitude and nature of the issues related to endocrine disruptors. Specific activities will be focused on research needs related to potential effects on reproductive, immunologic, and neurologic function as well as on carcinogenic effects. How such research will be of use in the risk assessment process will be an important consideration in the deliberations.

DATES: The workshop will be held April 10–13, 1995, at the Radisson Plaza Hotel, Raleigh, North Carolina. The workshop is open to the public, although seating will be limited and advanced registration is required. Interested parties should contact Ms. Theresa Harris, U.S. Environmental Protection Agency, HERL, MD–70, Research Triangle Park, NC 27711; telephone 919–541–1133.

Dated: March 7, 1995

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–6268 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–5171–7]

National Advisory Council for Environmental Policy and Technology; Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a two-day series of meetings involving four of the Standing Committees of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. These meetings are being held to continue discussions of recommendations from these NACEPT Committees on actions EPA can take to implement Community-Based Environmental Protection.

The four NACEPT Committees that will be meeting are:

- The Ecosystems Sustainable Economies Committee—which is examining issues associated with harmonizing economic activity and ecosystem management, and is focusing on the economic, social, and political factors needed to achieve sustainable economies.
- The Ecosystems Information and Assessments Committee—which is examining the role and use of data and information in ecosystem management strategies, including data needs, data accessibility, and opportunities for partnerships and data sharing with public and private organizations.
- The Ecosystems Implementation Tools Committee—which is evaluating the opportunities to re-orient existing statutory and regulatory authorities to integrate place-driven environmental management into the Agency's decision-making processes.
- The NACEPT Executive Committee—which serves as a steering Committee for all NACEPT activities and is coordinating the efforts of the three NACEPT Ecosystems Committees.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail and will be transmitted to Committee members for consideration

DATES: The public meetings will be held on Wednesday, April 12, and Thursday, April 13, 1995. The NACEPT Executive Committee will meet in plenary session from 8:30 a.m. to 12:00 p.m. on Wednesday, April 12, and again on Thursday, April 13 from 3:00 p.m. to 5:00 p.m. The Ecosystems Sustainable Economies Committee, the Ecosystems Information and Assessments Committee, and the Ecosystems Implementation Tools Committee will meet concurrently from 1:00 p.m. to 5:00 p.m. on Wednesday, April 12, and again from 8:30 a.m. to 3:00 p.m. on Thursday, April 13. On both days, the meetings will be held at the Dupont Plaza Hotel; 1500 New Hampshire Avenue, N.W., Washington, D.C.

ADDRESSES: Written comments should be sent to: Abby J. Pirnie, Director, Office of Cooperative Environmental Management, U.S. EPA (1601), 401 M. Street S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Abby J. Pirnie, Designated Federal Official, Direct line (202) 260–8079, Secretary's line (202) 260–7567.

Dated: March 8, 1995.

Abby J. Pirnie,

Designated Federal Official.

[FR Doc. 95–6271 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5171–9]

State of New York: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the New York State Municipal Solid Waste Permit Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of New York applied for a determination of adequacy under section 4005 of RCRA. The components of authority and capability were contained in New York State's application and its revisions. EPA reviewed New York State's application, and certain revisions thereto, and on July 28, 1994, proposed a determination that New York State's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received regarding the tentative determination of adequacy, EPA is today issuing a final determination that New York State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the New York State shall be effective on March 14, 1995.

FOR FURTHER INFORMATION CONTACT: David Savetsky, U.S. EPA Region II, Mail Stop 2AWM, Room 1006, 26 Federal Plaza, New York, New York, 10278, telephone (212) 637–4098

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in Section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b)(1) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On September 24, 1993, the State of New York submitted an application for adequacy determination for New York State's municipal solid waste landfill permit program. On March 14, 1994, May 10, 1994, and June 28, 1994, New York made revisions to its original submission. On July 28, 1994, after reviewing New York State application and the revised submissions, EPA published a tentative determination of adequacy for all portions of New York State's program. Further background on the tentative determination of adequacy appears at 59 FR 38463, July 28, 1993.

Along with the tentative determination, EPA announced the availability of the application for public comment. New York State's application for program adequacy determination and its revisions were available for public review and comment at the New York State Department of Environmental Conservation, in Albany New York and at the EPA Region II Library in New York City. The public comment period commenced on July 28, 1994 and ended on September 13, 1994.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region scheduled two public hearings on this tentative determination. A public hearing was held in Albany New York and in New York City. A summary of the comments received, and EPA's responses thereto is contained in the public comment section of this notice.

On October 9, 1993, New York, acting through the New York State Department of Environmental Conservation, adopted comprehensive, revised regulations governing solid waste disposal. These regulations are patterned after the 40 CFR Part 258 criteria, and are intended to bring New York into full conformity with the Federal criteria. The New York State Department of Environmental Conservation has sufficient authority and responsibility for implementing and enforcing solid waste management regulations, including a permit program, inspection authority and enforcement activities.

New York does not have the statutory authority to enforce the MSWLF permit program on Indian Lands. MSWLFs located on Indian Lands are subjected to the Federal Criteria.

In addition, in its application, New York states that adequate technical, support and legal personnel will be assigned to implement its permit program.

B. Public Comment

A summary of the public comments received on the tentative determination of adequacy and EPA's responses thereto follows below. The major comments suggested the Fresh Kills landfill in Staten Island, New York is illegally operating without a permit and is continuing to operate under consent orders since 1980. The commentors believed that this demonstrates the inability of New York to effectively enforce landfill criteria. A facility not meeting Federal Criteria must be upgraded in a reasonable time to meet such criteria before or after approval of the state program. Upgrading can take place concurrent with or after state program approval. The use of enforcement tools such as consent orders as a method by which a facility is brought into compliance is not a basis for disapproving a state program. In fact, preliminary findings of an EPA study of the Fresh Kills facility compliance status indicates relatively minor violations currently exist and the facility exceeds some Federal requirements such as groundwater monitoring. In fact, we see no loss of enforcement authority by approving the State program. The State regulatory program will enhance compliance with Federal Criteria which remain in effect in any case.

EPA believes that the State has the statutory and regulatory authority to implement and enforce such a program. Many of the numerous citings of past and or continuing site-specific violations do not recognize that the State Part 360 regulations underwent a significant revision which became effective on October 9, 1993, to conform to the Federal Part 258 Criteria.

Landfill closures in New York State have been primarily a result of the State enforcement of policies and procedures for compliance with laws and regulations governing closures of active solid waste landfills. In 1984, the Commissioner of the New York State Department of Environmental Conservation formally initiated a landfill closure strategy to obtain closure of unlined landfills in the State of New York. Pursuant to the 1984 Landfill Closure Enforcement Directive and subsequent amendments of 1988, a methodical program was pursued by the NYSDEC whereby solid waste disposal facility planning and landfill closures were to be coordinated. This strategy contemplated a process of consolidation of solid waste disposal into a few regional landfills, pending planning, design and permitting of new, properly designed disposal facilities. The State's approach to solid waste compliance by New York City was in accordance with this strategy, while at the same time recognizing the need to allow for efficient and economic transition to sound solid waste management practices by the City.

There were several additional comments. These are addressed in the responsiveness summary which is made part of the public record

C. Decision

After reviewing the public comments I conclude that New York State's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of New York is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program

As EPA explained in the preamble to the final MSWLF criteria, EPA expects

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that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on March 14, 1995. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**.

All of the requirements and obligations in New York State program are already in effect as a matter of law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities.

It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: February 21, 1995

Jeanne M. Fox,

Regional Administrator

[FR Doc. 95–6269 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 9, 1995.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

Please note: The Commission has requested emergency OMB review of this item by March 17, 1995, under the provisions of 5 CFR 1320.18.

OMB Number: None
Title: Survey Governing Effects of the "Must Carry" Requirements
Action: New collection
Respondents: Businesses or other for-profit
Frequency of Response: One time collection
Estimated Annual Burden: 2,000 responses; .25 hours average burden per response; 500 hours total annual burden
Needs and Uses: In cooperation with the U.S. Department of Justice, the Federal Communications Commission seeks information from cable television operators in connection with pending litigation involving cable television "must carry" requirements (*Turner Broadcasting System* v. *FCC*, Civil Action No. 92–2247 and consolidated cases D.D.C.)). The survey asks cable operators to indicate the number of broadcast stations carried on their systems under "must carry" requirements or "retransmission consent" so that the courts are fully informed of the "must carry" requirements' impact.

Federal Communications Commission.

William F. Caton,

Acting Secretary

Survey Concerning Effects of the "Must-Carry" Requirements

March . 1995

In *Turner Broadcasting Co., Inc.* v. *FCC*, 114 S. Ct 2445 (1994), the United States Supreme Court considered the constitutionality of the "Must-Carry" requirements, the provisions of the Cable Television Consumer Protection and Competition Act of 1992 which require cable operators to carry local television broadcast stations on their cable systems. 47 U.S.C. §§ 534, 535. The Court did not rule on the constitutionality of Must-Carry, but returned the case to the lower court for additional inquiry into a number of issues. These include the impact of the Must-Carry requirements on cable system operators. The Court described the extent to which Must-Carry requires cable operators to make changes in their programming selections as one of several questions "critical" to determining whether the Must-Carry requirements are constitutional.

Accordingly, the FCC, in cooperation with the United States Department of Justice, which is defending the constitutionality of the Must-Carry requirements in the *Turner Broadcasting* case, seeks your assistance in responding to the enclosed survey questionnaire, so that the Department can more fully inform the courts of Must-Carry's impact.

Notice to Individuals Required by the Privacy Act of 1974 and the Paperwork Reduction Act

The request for information in this survey is authorized by the Communications Act of 1934, as amended. The Commission will use the information as described above. The Department of Justice will also use the information. All information provided in response to this survey will be available for public inspection. A response is requested, but your response to the survey is voluntary.

Public reporting burden for this information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding the burden estimate or any other aspect of this request for information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–_____), Washington, D.C. 20503.

This notice is required by the Privacy Act of 1974, P.L. 93–579, Dec. 31, 1975, 5 U.S.C. § 522a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96–511, Dec. 11, 1980, 42 U.S.C. § 3507.

Please complete and return the enclosed survey form by mail or fax by April 7, 1995. Thank you for your cooperation.

For further information, please contact:

Adam Issenberg (202) 616–8476, Eric Angel (202) 514–4775, United States Dept. of Justice
Grey Pash (202) 418–1740, Federal Communications Commission, Office of General Counsel

Survey Concerning Effects of the "Must-Carry" Requirements

Please complete this form and return it by mail in the enclosed envelope or by fax to one of the numbers listed below no later than April 7, 1995.

Physical System Identification No.:
Operator:

_____
_____
_____

1. How many usable activated channels are there on your cable system? ("Usable activated channels" are the channels engineered at the headend which are generally available to residential subscribers, including channels designated for public, educational or governmental use, regardless of whether those channels are currently in use, and excluding channels that could not, for technical or safety reasons, be used for distribution of broadcast signals.) 1
2. How many local broadcast television stations now carried on your system are carried in fulfillment of the must-carry requirements? (This information is required by the FCC's rules to be kept in your public inspection file.) 2
3. Of these signals you carry because of the must-carry requirements, how many (a) noncommercial educational and (b) commercial broadcast television stations were *added* to your system *after* the date the must-carry rules became effective? (The effective date of the rules was Dec. 4, 1992 for noncommercial educational television stations and June 2, 1993 for commercial television stations.).
   Non-commercial educational stations *added* ..... 3.a.
   Commercial stations *added* ..... 3.b.
4. How many local broadcast television stations are carried on your system pursuant to retransmission consent? 4
5. Of the usable activated channels on your system (see explanation in No. 1 above), how many are not currently used to provide video signals to subscribers? 5

Return to: Federal Communications Commission, 1919 M St., N.W., Mail Stop 1400A, Washington, D.C. 20554, Attention Must-Carry Survey, or Fax to: (202) 418–2819, (202) 418–2822.

[FR Doc. 95–6291 Filed 3–13–95; 8:45 am]

BILLING CODE 6712–01–M

Petition For Reconsideration of Action In Rulemaking Proceeding

March 7, 1995

A petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed on or before March 29, 1995.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: In the Matter of Authority to Issue Subpoenas (FCC 94–319).

FILED BY: Mark J. Golden, Vice President of The Personal Communications Industry Association on January 26, 1995.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 95–6162 Filed 3–13–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

John Ashley Dukes; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John Ashley Dukes, Jesup, Georgia, to acquire an additional .03 percent, for a total of 10.02 percent, of the voting shares of Wayne Bancorp, Inc., Jesup, Georgia, and thereby indirectly acquire Wayne National Bank, Jesup, Georgia.

Board of Governors of the Federal Reserve System, March 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6200 Filed 3–13–95; 8:45 am]

BILLING CODE 6210–01–F

Farmington Bancorp; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95–4351) published on page 10082 of the issue for Thursday, February 23, 1995.

Under the Federal Reserve Bank of of San Francisco heading, the entry for Farmington Bancorp, is revised to read as follows:

1. Farmington Bancorp, Seattle, Washington, and Farmington Finance Corporation, Hong Kong; to become bank holding companies by acquiring 100 percent of the voting shares of Farmington State Bank, Farmington, Washington.

Comments on this application must be received by March 17, 1995.

Board of Governors of the Federal Reserve System, March 8, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95–6201 Filed 3–14–95; 8:45 am]

BILLING CODE 6210–01–F

GreatBanc, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

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Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. GreatBanc, Inc., Aurora, Illinois; to acquire 54.5 percent of the voting shares of GreatBank, Algonquin, Illinois, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Armstrong Bancshares, Inc., Vian, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Vian State bank, Vian, Oklahoma.

2. Western Oklahoma Financial Services, Inc., Elk City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Elk City, Oklahoma.

Board of Governors of the Federal Reserve System, March 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6202 Filed 3–13–95; 8:45 am]

BILLING CODE 6210–01–F

HSBC Holdings plc and HSBC Holdings BV; Application to Engage in Nonbanking Activities

HSBC Holdings plc, London, England, and HSBC Holdings BV, Amsterdam, The Netherlands (Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage *de novo* through their wholly owned subsidiary, James Capel Incorporated, New York, New York (Company), in the following nonbanking activities:

(1) Providing investment and financial advice, pursuant to § 225.25(b)(4) of Regulation Y;

(2) Providing securities brokerage service on a discount and full-service basis, pursuant to § 225.25(b)(15) of Regulation Y;

(3) Acting as agent in the private placement of all types of securities, and providing related advisory services; and

(4) Purchasing and selling all types of securities on the order of customers as a "riskless principal."

Applicant seeks approval to conduct the proposed activities throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. § 1843(c)(8). In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the criteria set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are: (1) whether banks generally have in fact provided the proposed services; (2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and (3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 Federal Register 806 (1984).

Applicant states that the Board previously has determined by regulation that some of the proposed activities, when conducted within limitations established by the Board, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(4) (providing investment and financial advice); 12 CFR 225.25(b)(15) (providing securities brokerage service on a discount and full-service basis).

Applicant also states that the Board has determined by order that the remaining proposed activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking. *See J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 26 (1990) and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (private placement and riskless principal activities).

Applicant maintains that Company would conduct the foregoing, previously approved activities in conformity with the conditions and limitations established by the Board in prior cases.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and efficiency. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, on or before March 28, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6203 Filed 3–13–95; 8:45 am]

BILLING CODE 6210–01–F

Sequatchie Valley Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Sequatchie Valley Bancshares, Inc., Chattanooga, Tennessee; to engage *de novo* through its subsidiary Tennessee Business and Industrial Development Corporation, Chattanooga, Tennessee, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

Board of Governors of the Federal Reserve System, March 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6204 Filed 3–13–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

White House Conference on Aging Advisory Committee on Disability; Notice of Establishment

Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Department of Health and Human Services announces the establishment by the Secretary of the White House Conference on Aging Advisory Committee on Disabilities.

The Committee shall advise and make recommendations with respect to disability issues to the Secretary and the Assistant Secretary for Aging to assist in planning and conducting the Conference and in reviewing the resolutions produced by the Conference delegates.

The Committee shall terminate on September 30, 1995.

Dated: March 8, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–6190 Filed 3–13–95; 8:45 am]

BILLING CODE 4130–02–M

White House Conference on Aging Business Advisory Committee; Notice of Establishment

Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Department of Health and Human Services announces the establishment by the Secretary of the White House Conference on Aging Business Advisory Committee.

The Committee shall advise and make recommendations with respect to business issues to the Secretary and the Assistant Secretary for Aging to assist in planning and conducting the Conference and in reviewing the resolutions produced by the Conference delegates.

The Committee shall terminate on September 30, 1995.

Dated: March 8, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–6191 Filed 3–13–95; 8:45 am]

BILLING CODE 4130–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

[Program Announcement No. ACF–93588.951–A]

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Safe and Drug Free Schools Program; The Community Schools Youth Services and Supervision Grant Program, and

The Family and Community Endeavor Schools Grant Program; Availability of Fiscal Year (FY) 1995 Funds and Request for Applications; Correction

AGENCIES: Administration for Children and Families (ACF), Department of Health and Human Services (HHS), and the Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Correction Notice to amend the announcement of the availability of funds and request for applications under the Family and Community Endeavor School Grant Program.

SUMMARY: This Notice will correct several items in Program Announcement No. ACF–93588.951, prepared by the Family and Youth Services Bureau of the ACYF and the Safe and Drug Free Schools Program of the Office of Elementary and Secondary Education and published in the March 6, 1995 **Federal Register** Notice (60 FR 12332).

Part II of the announcement describes the three priority areas under which application may be made. In the Table of Contents and in the body of the announcement, Part II, subparts D, E, F, and G were mistakenly identified as "Priority Areas". Only subparts A, B, and C of Part II are priority areas under which applications may be submitted. Subparts D through G provide supplemental information and are *not* priority areas.

DATES: The closing date for receipt of applications under this announcement

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is May 5, 1995. Please note that this is a departure from the traditional approach of using postmarks instead of receipt date to determine eligibility of applications for review.

ADDRESSES: Application receipt: Department of Health and Human Services, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. Attn: ACF–93588.951–A.

FOR FURTHER INFORMATION ON THE COMMUNITY SCHOOLS PROGRAM CONTACT: Department of Health and Human Services, AC/ACYF, Family and Youth Services Bureau, P.O. Box 1182, Washington, D.C. 20013. Telephone (202) 205–8076. Information is also available on the ACF Electronic Bulletin Board. To access, set modem to No Parity, 8 Data Bits, 1 Stop Bit and dial 1–800–627–8886. Under "Program Office Subsystems, Family and Youth Services Bureau," relevant files are found under COMMSCH.

FOR FURTHER INFORMATION ON THE FACES PROGRAM CONTACT: Department of Education, OESE, Safe and Drug Free Schools Program, 600 Independence Avenue, S.W., Washington, D.C. 20202. Telephone (202) 260–3954.

Catalog of Federal Domestic Assistance Number 84.285A for the FACES Program and Number 93.588 for the Community School Program.)

Dated: March 7, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 95–6252 Filed 3–13–95; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for National/Regional Minority Organization Human Immunodeficiency Virus (HIV)/Sexually Transmitted Diseases (STD) Prevention, Immunization, and Tuberculosis (TB) Projects-Program Announcement 305b: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreements for National/Regional Minority Organization HIV/STD Prevention, Immunization, and TB Projects-Program Announcement 305b.

Time and Date: 8:30 a.m.-4:30 p.m., April 18, 1995.

Place: Corporate Square, Building 11, Room 2320, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Closed.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 305b. The applications being reviewed include information of a confidential nature, including personal information concerning individuals associated with the applications.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Contact Person for More Information: John R. Lehnherr, Chief, Resource Analysis Office (E07), National Center for Prevention Services, CDC, Corporate Square, Corporate Square Boulevard, Atlanta, Georgia 30329, telephone 404/639–8023.

Dated: March 7, 1995.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–6236 Filed 3–13–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Comparing Treatments: Safety, Effectiveness, and Cost-Effectiveness; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding a meeting to explore methodological and regulatory issues in the design and review of studies intended to show differences or similarities among active drug and biological therapies. As the pharmaceutical marketplace evolves, there are new pressures on the developers of drug/biological products to demonstrate comparative effects. This meeting will examine the needs for this type of information, how the pharmaceutical industry is responding to new demands for comparative information, case-study experience ruling out biases in study design, the use of observational studies, methodological concerns in effectiveness trials, and promotional considerations. The study will examine issues concerning evaluation of safety, effectiveness, and cost-effectiveness.

DATES: The meeting will be held on Thursday, March 23, 1995, 8 a.m. to 5:30 p.m., and on Friday, March 24, 1995, 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Copies of the transcript of the meeting will be available from the contact person listed below. There is no registration fee for this meeting. Interested persons are encouraged to register early because space is limited.

FOR FURTHER INFORMATION CONTACT: Regarding information concerning the meeting and registration forms: Louis A. Morris, Center for Drug Evaluation and Research (HFD–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6812, FAX 301–594–6759.

Dated: March 8, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–6199 Filed 3–13–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Rural Regional Trauma and Emergency Medical Services System Demonstration Grant Project in South Central Florida

AGENCY: Health Resources and Services Administration, Public Health Service, Department of Health and Human Services.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for a Rural Regional Trauma and Emergency Medical Services (EMS) Demonstration Grant Project in South Central Florida. The application due date for the South Central Florida project is extended to May 15, 1995. All other aspects of the February 15, 1995 Federal Register Notice remain the same.

Dated: March 9, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–6198 Filed 3–13–95; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Commitee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Minority Biomedical Research Support and Undergraduate Program Expertise.

Date: March 28.

Time: 1 p.m.—adjournment.

Place: Holiday Inn, 348 N. Dupont Highway, Dover, DE 19901.

Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19K, Bethesda, MD 20892–6200.

Purpose: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].

Dated: March 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–6186 Filed 3–13–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Chronic Fatigue Syndrome Interagency Coordinating Committee; Public Meeting

Notice is hereby given of the public meeting of the Chronic Fatigue Syndrome (CFS) Interagency Coordinating Committee, Department of Health and Human Services, on April 12, 1995 at the Hubert H. Humphrey Building, Room 729G, 200 Independence Avenue, SW, Washington, DC.

The meeting will be open to the public from noon to 3 p.m., on April 12, to discuss the current CFS activities and future plans of the various member agencies. It will be chaired by the Assistant Secretary for Health. During the meeting there will be an opportunity for interested persons to present information and views on issues related to CFS. Attendance by the public will be limited only by space available.

If you plan to attend the meeting, please provide your name, organization, address, telephone and FAX numbers to Dr. John La Montagne, Co-Chair, Chronic Fatigue Syndrome Interagency Coordinating Committee, Division of Microbiology and Infectious Diseases, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Solar Building, Room 3A18 MSC 7630, Bethesda, MD 20892–7630. Telephone: 301–496–1884, FAX: 301–480–4528. If you also plan to make a presentation, please notify Dr. La Montagne. The time available will be allocated among the individuals who request an opportunity for a presentation (limited to five minutes). Formal written statements (five copies) may be presented to the Chair on the day of the meeting for inclusion in the minutes.

Dated: March 2, 1995.

Anthony S. Fauci,

Director, NIAID, NIH.

[FR Doc. 95–6188 Filed 3–13–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: April 14, 1995.

Time: 9 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. A. Keith Murray, Scientific Review Admin., 5333 Westbard Ave., Room 325, Bethesda, MD 20892, (301) 594–7145.

Purpose/Agenda

To review individual grant applications

Name of SEP: Microbiological and Immunological Sciences.

Date: March 23, 1995.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 406B, Telephone Conference.

Contact Person: Dr. Gil Meier, Scientific Review Administrator, 5333 Westbard Ave., Room 406B, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 27, 1995.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 406B, Telephone Conference.

Contact Person: Dr. Gil Meier, Scientific Review Administrator, 5333 Westbard Ave., Room 406B, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 28, 1995.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 406B, Telephone Conference.

Contact Person: Dr. Gil Meier, Scientific Review Administrator, 5333 Westbard Ave., Room 406B, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 29, 1995.

Time: 1 p.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gil Meier, Scientific Review Administrator, 5333 Westbard Ave., Room 406B, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 30, 1995.

Time: 1:30 p.m.

Place: NIH, Westwood Building, Room 406B, Telephone Conference.

Contact Person: Dr. Gil Meier, Scientific Review Administrator, 5333 Westbard Ave., Room 406B, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 31, 1995.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 406B, Telephone Conference.

Contact Person: Dr. Gil Meier, Scientific Review Administrator, 5333 Westbard Ave., Room 406B, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Multidisciplinary Sciences.

Date: April 3, 1995.

Time: 9 a.m.

Place: NIH, Westwood Bulding, Room 437, Telephone Conference.

Contact Person: Dr. Paul Parakkal, Scientific Review Admin., 5333 Westbard Ave., Room 437, Bethesda, MD 20892, (301) 594–7258.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893. National Institutes of Health, HHS)

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Dated: March 8, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95-6187 Filed 3-13-95; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-070-5101-CO12]

Notice of Intent To Prepare an Environmental Assessment (EA) and Notice To Scoping Meetings, and, if Determined To Be Necessary, Prepare an Environmental Impact Statement (EIS) on a Proposed Replacement Raw Water Pipeline in Mesa County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Assessment (EA), and Notice to Scoping Meetings, and, if determined to be necessary, prepare an Environmental Impact Statement (EIS) on a Proposed Replacement Raw Water Pipeline in Western Colorado.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Grand Junction Resource Area Office, Grand Junction District, will be directing the preparation of a NEPA document. The NEPA document will be initiated as an EA, with the understanding that it may be upgraded to an EIS. The document will be prepared by a third party contractor, and will address impacts of the Plateau Creek Pipeline Replacement project proposed by the Ute Water Conservancy District (Ute Water). The project is a raw water conveyance system proposed on private and public lands in Mesa County, Colorado to replace a deteriorated and under sized pipeline currently approved under BLM ROW grant C 081282.

DATES: Written comments will be accepted until 4:00 p.m., MST, on April 13, 1995. A public scoping meeting will be held at 7:00 p.m. on March 29, 1995, at the Two Rivers Convention Center, 159 Main Street, Grand Junction, Colorado.

ADDRESSES: Comments should be sent to the Grand Junction Area Manager, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506, ATTN: Plateau Creek Pipeline Replacement Project.

FOR FURTHER INFORMATION CONTACT: Dave Stevens, (303) 244-3009.

SUPPLEMENTARY INFORMATION: The existing Plateau Creek Pipeline is an essential part of the Ute Water system which provides water to more than 55,000 Grand Valley residents. The Ute Water service area includes most of the Grand Valley area surrounding the City of Grand Junction, Colorado, and extends from east of the Town of Palisade to within 5 miles of the Colorado-Utah stateline. Ute Water is a political subdivision of the State of Colorado formed under the Water Conservancy Act of 1937, and is considered to be a quasi-municipal entity.

The existing prestressed concrete pipe was installed in the early 1960s. A pipeline consisting of 42-inch and 36-inch diameter pipe carries raw water for approximately 4.5 miles from the Lower Molina Power Plant tail race to two storage reservoirs. From the reservoirs, water is conveyed via a 24-inch-diameter pipeline approximately 14 miles along Plateau Creek Canyon and adjacent to Interstate Highway 70 to Ute Water's treatment plant located on Rapid Creek, near the Town of Palisade. As of 1994, the pipeline was no longer able to provide an adequate flow rate to meet the peak day customer demands. The pipeline is presently subject to frequent breaks due to deteriorated pipe condition, and is unreliable due to its location within geologic hazards and stream erosion areas. In order for Ute Water to meet its commitment of providing a reliable, cost effective, high quality water source, replacement of the pipeline is necessary. The pipeline size and capacity will be determined from independent water demand projections based on population estimates to be generated and documented as part of this effort.

Ute Water has preliminary scoping to: (1) identify interested stakeholders and agencies, (2) define key issues, and (3) identify initial alternatives. On the basis of the preliminary scoping, 16 alternatives were developed. These include seven alternatives along the Plateau Creek corridor, three different alternatives involving use of water from nearby utilities, a Colorado River pump station alternative, two alternatives for supplying water from the Kannah Creek watershed, two alternatives for supplying water from the Whitewater Creek watershed, and a No Action alternative. Groundwater alternatives and conservation actions will be addressed in the EA. Four of the initially considered alternatives, selected on the basis of screening criteria described in Section 404(b) of the Clean Water Act, are proposed for evaluation in the EA. These are:

Alternative A—Replacement of the pipeline on an alignment parallel to Plateau Creek such that impacts to all resources are minimized.

Alternative B—Replacement of the pipeline parallel to Plateau Creek entirely within the existing state highway 65 and 330 rights-of-way.

Alternative C—Replacement of the pipeline in either alignment A or B with a smaller pipeline. This alternative includes provisions for construction of a booster station at the mouth of Plateau Canyon to be built at a future date to meet long-term demands.

Alternative D—A "no federal action" alternative.

Major issues identified during the preliminary scoping include: (1) wetlands and riparian areas, (2) threatened and endangered species, (3) wildlife habitat, (4) need for demand projections, and (5) water depletion issues. Preliminary review by the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and Army Corps of Engineers (ACOE) indicates that the anticipated impacts may be entirely mitigable, and may be limited to temporary disturbance. However, there is a potential that significant impacts may be identified during the EA process and it may be necessary to convert this documentation effort into an EIS. Therefore, it is also the intent of this NOI to provide for public notice and review necessary for an EIS pursuant to NEPA.

The tentative project schedule is:

Begin Public Comment Period—March 1995
Complete Final EA—January 1996
EA Finding—March 1996
Complete Final Design—January 1997
Begin Construction—March 1997

The BLM's scoping process will include: (1) Identification of additional issues to be addressed; (2) Identification of additional viable alternatives, and (3) Notification of interested groups, individuals and agencies so that additional information concerning these issues can be obtained.

The scoping process will be initiated by publication of this NOI in the **Federal Register** and issuance of a news release announcing the start of the process; letters of invitation to participate in the scoping process, and distribution of a scoping document describing the proposed action, alternatives and significant issues being considered is available upon request.

Mark T. Morse,
District Manager.
[FR Doc. 95-6280 Filed 3-13-95; 8:45 am]
BILLING CODE 4310-JB-M

Minerals Management Service

One-Year Provisional Approval Period of Arco's Safety System Training Program (SIM STATION for Interactive Video Training and Simulation)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces a 1-year provisional approval of Arco's Production Safety System Training Program (SIM STATION for Interactive Video Training and Simulation). The Minerals Management Service (MMS) is announcing the approval of this program to inform the public about evolving training technology. The program offers a unique learning system that uses computerized enactments of real-life situations to enhance learning.

FOR FURTHER INFORMATION CONTACT: Joseph R. Levine, Chief, Information and Training Branch; Mail Stop 4810; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817; telephone (703) 787-1033; FAX (703) 787-1575.

SUPPLEMENTARY INFORMATION: On January 24, 1991 (56 FR 2679), MMS amended the rules to revise the minimum training requirements for personnel engaged in drilling and production operations in the Outer Continental Shelf (OCS) and established new minimum training requirements for personnel engaged in well-completion, well-workover, and well-servicing operations in the OCS. These requirements were effective on February 25, 1991. After February 24, 1993, MMS required training organizations to submit training programs in accordance with the requirements in 30 CFR part 250, subpart O.

The reason for this notice is to announce the 1-year provisional approval of Arco's Production Safety System Training Program (SIM STATION for Interactive Video Training and Simulation). Unlike traditional classroom based training programs, Arco based its program on interactive computer and laser disc based technology. This program allows the unassisted training of individual workers. The system provides for instruction, simulation, and testing.

Arco will administer the MMS certification test through a Training Administrator (TA). The TA is a company designated person who will provide a student with all the material for Production Safety System Training. During a training course the TA will be available to answer any questions the students have about the course material.

During this 1-year provisional approval period, MMS will conduct onsite evaluations and unannounced audits of the training program at Arco's shorebase facilities located in Ingleside, Texas, and Venice, Louisiana.

The MMS will conduct these onsite evaluations and unannounced audits to evaluate the operation of the training program to observe the student's ability to interact with the system.

The MMS granted a 1-year provisional approval of the training program under the departure provisions of 30 CFR 250.210(h) which states that, "Departures. The MMS may approve departures from these requirements when it is determined that such departure will not result in a reduction of the qualifications of personnel and that the departure is necessary due to unavoidable circumstances that make compliance with the requirements infeasible or impractical." Final approval will be contingent upon MMS' assessment of the effectiveness of this type of training in fulfilling the requirements of subpart O.

Dated: March 7, 1995.
Thomas Gernhofer,
Associate Director for Offshore Minerals Management.
[FR Doc. 95-6185 Filed 3-13-95; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) that the Maine Acadian Culture Preservation Commission will meet on Friday, April 7, 1995. The meeting will convene at 7:00 p.m. in the All-purpose Room in the Physical Education Building on the campus of the University of Maine at Fort Kent, Aroostook County, Maine. The Physical Education Building (Gym) is located off Pleasant Street, near U.S. Route 1 in Fort Kent.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101-543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary reports of the meetings held November 17, 1994, and February 16, 1995.
2. Review and approval of the commission's annual report for fiscal year 1994.
3. Reports of Maine Acadian Culture Preservation Commission working groups.
4. Report of the National Park Service planning team.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609-0177; telephone (207) 288-5472.

Dated: March 6, 1995.
Chrysandra L. Walter,
Acting Regional Director.
[FR Doc. 95-6192 Filed 3-13-95; 8:45 am]
BILLING CODE 4310-70-P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 4, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by March 29, 1995.

Carol D. Shull,
Chief of Registration, National Register.

ARKANSAS

Clay County

Scatterville Cemetery, Co. Rd. 404, 1.5 mi. W of AR 90, Rector vicinity, 95000364

Johnson County

Pioneer House, Poplar St. (AR 64), S of AR 123 and W of Johnson Co. Hospital, Clarksville, 95000363

Washington County

Wilson Park Historic District, Roughly bounded by College Ave., Maple St., Wilson Ave, and Louise St., Fayetteville, 95000365

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CALIFORNIA

Los Angeles County

Montebello Woman's Club, 201 S. Park Ave., Montebello, 95000266

Orange County

Masonic Temple, 501 N. Harbor Blvd., Fullerton, 95000355

San Luis Obispo County

Eight Mile House, Off CA 101 on Stagecoach Rd., Santa Margarita, 95000358

San Luis Obispo Carnegie Library (California Carnegie Libraries MPS), 696 Monterey St., San Luis Obispo, 95000357

Santa Barbara County

Val Verde, 2549 Sycamore Canyon Rd., Santa Barbara, 95000359

Sonoma County

Petaluma Historic Commercial District, Along Petaluma Blvd., between B and Prospect Sts., Petaluma, 95000354

Tuolumne County

Watts & Tannahill Company Store, 18761 Main St. (CA 120), Groveland, 95000265

COLORADO

Denver County

Cole Neighborhood Historic District, 3200–3300 Vine and Race Sts., Denver, 95000264

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Garfinckel's Department Store, 1401 F St., NW., Washington, 95000353

Hotel Washington, 515 15th St., NW Washington, 95000352

FLORIDA

Lee County

Boca Grande Community Center (Lee County MPS), E of Park Ave., between First and Second Sts., Boca Grande, 95000306

IOWA

Hancock County

Pilot Knob State Park: Portals (CCC Properties in Iowa State Parks MPS), Off IA 9 SE of Forest City, Pilot Knob State Park, Forest City vicinity, 95000362

KENTUCKY

Bourbon County

Tucker, John, House, 405 McNees Rd., Paris vicinity, 95000302

Boyle County

Rice—Worthington House, 3 mi. S of Faulconer Rd., on S. Buster Pike, Danville vicinity, 95000301

McCracken County

Tilghman, Augusta, High School, 401 Walter Jetton Blvd., Paducah, 95000300

LOUISIANA

Lafourche Parish

Bank of Lockport, 111 Barataria St., Lockport, 95000299

Merchants and Planters Bank, 110 Main St., Lockport, 95000297

St. Martin Parish

Dautreuil House, 517 E. Bridge St., St. Martinville, 95000356

Union Parish

Alabama Methodist Church, LA Alt. 2, Bernice vicinity, 95000298

MICHIGAN

Marquette County

Negaunee State Bank Building, 331 Iron St., Negaunee, 95000295

NEVADA

Humboldt County

Adorno Station, 9535 US 95 N, Winnemucca vicinity, 95000329

Humboldt River Bridge, N. Bridge St., over the Humboldt R., Winnemucca, 95000322

Winnemucca State Bank and Trust Company Building, 136 Bridge St., Winnemucca, 95000324

Washoe County

Veterans Memorial School, 1200 Locust St., Reno, 95000326

NEW JERSEY

Cumberland County

Sara Store, 17903 NW. 41st Ave., Ridgefield vicinity, 95000304

Essex County

Seated Lincoln (Public Sculpture in Newark MPS), Jct. of Springfield and Market Sts., Essex County Courthouse Plaza, Newark, 95000303

NEW YORK

Steuben County

World War Memorial Library, 149 Pine St., Corning, 95000361

OHIO

Hamilton County

Warder, John Aston, House (Boundary Decrease), 71 Shady Ln., North Bend vicinity, 95000351

TENNESSEE

Bedford County

Maple Dean Farm (Historic Family Farms in Middle Tennessee MPS), 400 New Herman Rd., Shelbyville vicinity, 95000269

Bledsoe County

Bledsoe County Courthouse (Historic County Courthouses of Tennessee MPS), Town Sq., Pikesville, 95000346

Dickson County

Neblett Place Farm (Historic Family Farms in Middle Tennessee MPS), 1160 St. Paul Rd., Charlotte vicinity, 95000267

Franklin County

Franklin County Courthouse (Historic County Courthouses of Tennessee MPS), Public Sq., Winchester, 95000345

Hamilton County

Central Block Building, 630—638 Market St., Chattanooga, 95000293

Lauderdale County

Lauderdale County Courthouse (Historic County Courthouses of Tennessee MPS), Town Sq., Ripley, 95000343

Madison County

Madison County Courthouse (Historic County Courthouses of Tennessee MPS), Public Sq., Jackson, 95000342

Monroe County

Monroe County Courthouse (Historic County Courthouses of Tennessee MPS), Town Sq., Madisonville, 95000341

Montgomery County

McCauley Hill Farm (Historic Family Farms in Middle Tennessee MPS), 1535 Harville Rd., Clarksville vicinity, 95000268

Obion County

Obion County Courthouse (Historic County Courthouses of Tennessee MPS), Jct. of Third and Washington Sts., Union City, 95000340

Perry County

Perry County Courthouse (Historic County Courthouses of Tennessee MPS), Town Sq., Linden, 95000339

Pickett County

Pickett County Courthouse (Historic County Courthouses of Tennessee MPS), Town Sq., Byrdstown, 95000338

Rutherford County

Allen Chapel A.M.E. Church, 224 S. Maney Ave., Murfreesboro, 95000291

Shelby County

Wells School, 4140 Collierville—Arlington Rd., Eads vicinity, 95000292

VERMONT

Essex County

Hibbard, Judge David, Homestead, Woodland Rd., Concord, 95000294

Washington County

Woodbury Town Hall, VT 14, Woodbury, 95000296

WASHINGTON

Pierce County

Dadisman, David, House, 1814 A St., Key Peninsula N. Home, 95000305

[FR Doc. 95–6155 Filed 3–13–95; 8:45 am]

BILLING CODE 4310–70–M

Wrangell-St. Alias National Park and Reserve; Proposed Plan of Operations to Conduct Mining Operations

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of Title 36 Code of Federal Regulation part 9 subpart A, James Moody has filed a proposed plan of operations to conduct mining operations on lands embracing the Bonanza Creek No. 1 through No. 6, placer claims within the Wrangell-St. Elias National Park and Preserve.

ADDRESSES: This plan of operations is available for inspection during normal business hours at the following locations:

Wrangell-St. Elias National Park and Preserve, Mile 105.5 Old Richardson Highway, Glennallen, Alaska 99588

Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Room 107, Anchorage, Alaska 99503–2892

FOR FURTHER INFORMATION CONTACT: Jonathan B. Jarvis, Superintendent, Wrangell-St. Elias National Park and Preserve, Post Office Box 29, Glennallen, Alaska 99588, (907) 822–5234.

Robert D. Barbee,

Alaska Regional Director.

[FR Doc. 95–6237 Filed 3–13–95; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *Rocky Ford Storage, Inc., et al.*, Civil Action No. *94–N–1709*, were lodged on February 15th and 24th, 1995 respectively with the United States District Court for the District of Colorado. The proposed consent decrees resolve claims in the complaint filed against Michael L. Skorka and Rocky Ford Storage, Inc. involving alleged violations of the National Emissions Standard for Hazardous Air Pollutants regarding the removal of asbestos at the Rocky Ford Sugar Factory located in Rocky Ford, Colorado from 1989 through 1991. The consent decrees provide for payment of civil penalties to the United States for the violations alleged in the complaint. After a demonstration of a inability to pay a higher penalty by both Mr. Skorka and Rocky Ford Storage, Inc., Mr. Skorka will pay a civil penalty in the amount of $5,000 and Rocky Ford Storage, Inc. will pay a civil penalty in the amount of $22,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Rocky Ford Storage, Inc., et al.*, Doj Ref. #90–5–2–1–1833.

The proposed consent decrees may be examined at the Office of the United States Attorney, 12th Floor, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suit 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of *$5.50* (25 cents per page reproduction costs), for the Skorka consent decree or *$3.00* (25 cents per page reproduction costs) for the Rocky Ford Storage, Inc. consent decree, payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6193 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1933—Laser Power Corporation

Notice is hereby given that, on December 2, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Laser Power Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Laser Power Corporation, San Diego CA, and Proxima Corporation, San Diego, CA.

The nature and objectives of this joint venture is to conduct cooperative research and development on the "High Resolution Multimedia Laser Projection Display" (HRMLPD) (ATP #94–01–0133) program awarded by the Department of Commerce's NIST Advanced Technology Program.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6194 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Poweropen Association, Inc.

Notice is hereby given that, on December 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: Aspect Communications, Inc., San Jose, CA; Bolt Bernack and Newman, Inc., Cambridge, MA; CelsiusTech Systems AB, Jarfalla, SWEDEN; and Gradient Technologies, Inc., Marlboro, MA.

No other changes have been made in either the membership or planned activity of the project. Membership remains open and PowerOpen intends to file additional written notification disclosing all changes in membership.

On April 21, 1993, PowerOpen filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 22, 1993 (58 FR 33954). The last notification was filed with the Department of September 30, 1994. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6197 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperation Research and Production Act of 1993—the Durability Validation of Composite NGV Fuel Cylinders Program

Notice is hereby given, that on September 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notification

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simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership of the Durability Validation of Composite NGV Fuel Cylinders Program, and correcting an error in the last notice published. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Southern California Gas Company, Los Angeles, CA, has become a party to the group research project. Further, in the title of the August 31, 1994 notice published at 59 FR 45013, the word "Valuation" should read "Validation".

No other changes have been made in either the membership or planned activity of the group research project. Membership in the project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On July 12, 1994, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994, 59 FR 45013.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6196 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Processes for the Production of Steel From Iron Carbide and Related Technologies

Notice is hereby given that, on January 5, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the parties to a cooperative research and production venture relating to processes for the production of steel from iron carbide and related technologies has filed a notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: U.S. Steel Group, a unit of USX Corporation, Pittsburgh, PA; Nucor Corporation, Charlotte, NC; and Praxair, Inc., Danbury, CT. None of the parties are controlled by any other person. The nature and objectives of the venture are to jointly conduct a feasibility study of a specific process for producing low-carbon alloys (steel) from iron carbide (the "Process"). If the feasibility study is successful, the venture will design, construct and operate a plant to demonstrate the feasibility of the Process (the "Demonstration Plant").

The venture will involve the testing of steel produced at the plant; the collection, exchange and analysis of research and production data and information obtained from operating the plant and concerning the Process, the iron carbide processed and steel produced at the plant; improvements and modifications to the Process; and development of related processes for the production of steel from iron carbide. The venture will also prosecute patent applications (domestic and foreign) covering the Process, improvements and related processes, and will hold title to such patents. The venture will license its patents and unpatented technology to third persons.

The parties have executed a Letter of Intent, dated as of October 5, 1994, which contemplates that they will enter into a written definitive agreement concerning the venture. No written definitive agreement has yet been executed.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6195 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 21, 1994, and published in the **Federal Register** on November 29, 1994, (59 FR 61002), Isotec, Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Comments were filed by two registered manufacturers. The comments were considered, however, DEA determined that the application should be approved. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Deputy Assistant Administrator, Office of Diversin Control, Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is approved and registration is granted.

Dated: March 8, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–6218 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated January 17, 1995, and published in the **Federal Register** on January 25, 1995, (60 FR 4925), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 8, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–6219 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–52]

Mallinckrodt Chemical, Inc.; St. Louis, Missouri; Notice of Administrative Hearing, Summary of Comments and Objections; Notice of Hearing

This Notice of Administrative Hearing, Summary of Comments and Objections, regarding the application of Mallinckrodt Chemical, Inc. (Mallinckrodt) for registration as a bulk manufacturer of methylphenidate, a Schedule II controlled substance, is published pursuant to 21 CFR 1301.43(a). Notice was published in the **Federal Register** on March 28, 1994,[1] and May 13, 1994,[2] respectively, naming the applicant and stating that the applicant has applied to be registered as a bulk manufacturer of methylphenidate.

On June 14, 1994, MD Pharmaceutical Inc. (MD Pharmaceutical) filed an objection and requested a hearing on the application, in accordance with 21 CFR 1301.43(a). Notice is hereby given that a hearing with respect to the Mallinckrodt's application to be registered as a bulk manufacturer of methylphenidate will be conducted pursuant to the provisions of 5 U.S.C. 552 et seq. and 21 CFR 1301.43 et seq. and 1316.41 et seq.

[1] 59 FR 14426.
[2] 59 FR 25126.

Hearing Date: The hearing is scheduled for May 2 through 5 1994, commencing at 9:30 a.m. on May 2, 1995, at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Hearing Room, Room E–2103, Arlington, Virginia.

Notice of Appearance: Any person entitled to participate in this hearing pursuant to 21 CFR 1301.43(a), and interested in doing so, may participate by filing a notice of intention to participate in accordance with 21 CFR 1301.54, in duplicate, with the Hearing Clerk, Office of the Administrative Law Judge, Drug Enforcement Administration, Washington, D.C. 20537, within 30 days of the date of publication of this notice in the **Federal Register**. Each notice of appearance must be in the form prescribed in 21 CFR 1316.48. The entities whose comment and/or objections are referenced below need not file a notice of intention to participate.

For Further Information Contact: Ms. Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Washington, D.C. 20537; Telephone (202) 307–8188.

Summary of Comments and Objections

Drug Enforcement Adminstration Comments

The Government does not know of any reason to deny Mallinckrodt's application.

MD Pharmaceutical's Comments and Objections

MD Pharmaceutical intends to show that the registration of Mallinckrodt to manufacture methylphenidate in its generic form is not consistent with the public interest as that term is used in 21 U.S.C. 823(a). MD Pharmaceutical seeks to establish that Mallinckrodt does not satisfy the public interest standard by showing that: (1) Mallinckrodt does not meet the Controlled Substances Act requirements for registration as a bulk manufacturer of methylphenidate; and (2) the Food and Drug Administration has cited Mallinckrodt frequently in the twelve months preceding MD Pharmaceutical's hearing request for serious violations directly related to the manufacture and distribution of adulterated drug products.

Mallinckrodt's Comments

Mallinckrodt intends to establish that it meets the requirements of 21 USC 823(a) and, therefore, qualifies for registration as a manufacturer of methylphenidate. Mallinckrodt seeks to demonstrate that it satisfies the requirements of § 823(a) by showing that: (1) Mallinckrodt is registered as a bulk manufacturer of numerous Schedule II controlled substances; (2) Mallinckrodt has been a bulk manufacturer of narcotics for more than ninety-five years; (3) Mallinckrodt has a long history of successful controls against diversion and is prepared to apply that experience to its Mallinckrodt production; (4) Mallinckrodt has proven its commitment to insuring that there is an adequate and uninterrupted supply of bulk narcotics; (5) Mallinckrodt has a proven track record of promoting technical advances in the field of bulk narcotics manufacture; and (6) Mallinckrodt has used its special status as a registered manufacturer of narcotics to promote public health and safety.

Dated: March 8, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 95–6159 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 17, 1995, and published in the **Federal Register** on January 25, 1995, (60 FR 4926), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 8, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–6220 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–09–M

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Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 2, 1995, Roche Diagnostic System, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of Tetrahydrocannabinols (7370) a basic class of controlled substance in Schedule I.

The Tetrahydrocannabinols will be utilized exclusively for non-human consumption in drug of abuse detection kits.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 8, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 95–6221 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1714–95]

Announcement of Membership of Citizens' Advisory Panel and First Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service) in accordance with the Federal Advisory Committee Act [5 U.S.C. App. 2] and 41 CFR 101–6.1001–101–6.1035, has established a Citizens' Advisory Panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces CAP membership, a forthcoming meeting, and the agenda for the meeting.

DATES AND TIMES: April 12–13, 1995 at 9:00 A.M.

ADDRESSES: Immigration and Naturalization Service, Chester Arthur Building, 425 I Street, NW., 6th Floor Conference Room, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Kathy Morland, CAP Facilitator, Immigration and Naturalization Service, Room 6042, Chester Arthur Building, 425 I Street, NW., Washington, DC 20536, Telephone (202) 616–7766.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102–331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a Citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994 at 59 FR 6658)

In accordance with the Federal Advisory Committee Act, the Charter for the Citizens' Advisory Panel (CAP) was filed with Congress, and the Attorney General has approved the following members to serve on the Panel.

CAP Members

Private Citizen Members

Miguel A. Conchas, President and C.E.O., Laredo Chamber of Commerce, Laredo, TX; Edwin J. Delattre, Dean of the School of Education, Boston University, Boston, MA; Carol Rogoff Hallstrom, Regional Director, The National Conference, San Diego, CA; Bill Ong Hing, Associate Professor, Stanford Law School, Stanford, CA; Jose G. Moreno, Executive Director, Diocesan Migrant and Refugee Services, El Paso, TX; Elsie L. Scott, Deputy Commissioner of Training, New York City Police Academy, New York, NY;

Anna Ochoa Thorne, Immigration Attorney, Phoenix, AZ; and

Edward J. Tully, Director of Research, FBI National Executive Institute Associates, Fredericksburg, VA.

(A ninth private citizen member will be announced shortly).

Government Members

Doris Meissner, Commissioner, Immigration and Naturalization Service (Chairperson);

Yvonne Campos, Assistant to the Attorney General, Office of the Attorney General, Department of Justice;

Kenneth Leutbecker, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Department of Justice;

Michael S. Williams, Director, Central Region, Immigration and Naturalization Service;

John Chase, Director, Office of Internal Audit, Immigration and Naturalization Service (non-voting); and

Armando Ortiz Rocha, Consul General, Consulate of the Government of Mexico (non-voting).

Summary of Agenda

As this is the first meeting of the CAP, the principal purposes of the meeting will be to introduce the members to each other and to discuss future activities of the CAP. There will also be an overview of the Service as well as a general discussion of the current complaint review process. The CAP will be chaired by Doris Meissner, Commissioner of the Immigration and Naturalization Service.

Public Participation

The CAP meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the CAP Facilitator at least two days before the meeting. Any member of the public may file a written statement with the CAP Facilitator before the meeting. Minutes of the meeting will be available on request.

Dated: March 8, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–6213 Filed 3–13–95; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–023)]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of its intent to negotiate with KVH Industries, Inc., of Middletown, Rhode Island, an exclusive, royalty-bearing revocable license to practice the invention described in U.S. Patent Application Serial Number 07/999/794, filed November 30, 1992, entitled "Satellite-Tracking Millimeter Wave Reflector Antenna System for Mobile Satellite Tracking," which will issue on March 14, 1995, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The proposed license agreement will contain appropriate terms, limitations, and conditions to be negotiated in accordance with the regulations governing the licensing of government-owned inventions as described in 37 CFR part 404. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the date of this Notice, the NASA Director of Patent Licensing receives written objections to the grant of an exclusive license, together with any supporting documentation. The NASA Director of Patent Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether or not to grant the exclusive license.

DATES: Comments to the notice must be received by May 15, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: March 6, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–6233 Filed 3–13–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Organization of Agreement State Managers' Meeting

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff plans to hold a public meeting for managers of the Organization of Agreement States. Agreement States are States which have assumed regulatory authority over certain radioactive materials. The purpose of the meeting is to discuss Agreement State Program issues with Agreement State managers and other interested parties. Topics for discussion will include, among others: Status of NRC Agreement States Program Improvements; Open Discussion of Agreement State Issues; Integrated Materials Performance Evaluation Program; Event Reporting and Data Gathering; NRC Materials Licensing Business Process Redesign Project; and Licensee Wrongdoing Awareness Workshop.

DATES: The meeting will be held on April 5–6, 1995 from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at NRC's Two White Flint North Auditorium, located at 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Rosetta Virgilio, Office of State Programs, Mail Stop OWFN–3–D–23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301/415–2307.

CONDUCT OF THE MEETING: The meeting will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the meeting will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street N.W. (Lower Level), Washington, D.C. 20555 on or about June 5, 1995.

The following procedures apply to public attendance at the meeting:

1. Questions or statements will be entertained on a first-come, first-served basis.

2. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 6th day of March, 1995.

For the U.S. Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 95–6208 Filed 3–13–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 184 to Facility Operating License No. DPR–61 issued to the Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance to be implemented within 30 days of issuance.

The amendment revises Technical Specification (TS) 3/4.4.10, "Structural Integrity," surveillance requirement 4.4.10. In particular, the change will add a footnote to the TS for an extension for one cycle of the ultrasonic volumetric inspection for the areas of higher stress concentration for RCPs 1 and 2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 8, 1994 (59 FR 5787). No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality

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of the human environment (60 FR 11124).

For further details with respect to the action see (1) the application for amendment dated December 22, 1993, (2) Amendment No. 184 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, Maryland, this 6th day of March 1995.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6209 Filed 3–13–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–413]

Duke Power Company, et al. (Catawba Nuclear Station, Unit No. 1); Exemption

I

The Duke Power Company, et al. (DPC or the licensee) is the holder of Facility Operating License No. NPF–35, which authorizes operation of the Catawba Nuclear Station, Unit No. 1 (the facility), at a steady-state reactor power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in York County, South Carolina. The license provides, among other things, that the Catawba Nuclear Station is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shut down for a 10-year inservice inspection of the primary containment.

III

By letters dated October 18, 1994, and February 7, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 16 months (from the 1995 refueling outage, which began on February 11, 1995, to the end-of-cycle 9 (EOC–9) refueling outage, currently scheduled for June 1996) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current inservice inspection interval.

The licensee's request concluded that the proposed change, a one-time extension of the interval between the second and third ILRTs at Catawba Unit 1, is justified for the following reasons:

The previous testing history at Catawba Unit 1 provides substantial justification for the proposed test interval extension. In each of the two previous periodic ILRTs at Catawba Unit 1, the as-found leakage was less than or equal to 22.5% of the allowable leakage, thereby demonstrating that Catawba Unit 1 is a low-leakage containment. There are no mechanisms which would adversely affect the structural integrity of the containment, or that would be a factor in extending the test interval by 20 months. However, as a preventative maintenance measure, a containment civil inspection, currently required by Appendix J prior to a Type A test, will be performed during EOC–8 to verify that no structural degradation exists. Any additional risk created by the longer interval between ILRTs is considered to be negligible, primarily because Type B and C testing will continue unchanged.

Additionally, the licensee stated that its exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(1) and (a)(2)(ii), for the following reasons:

In order to justify the granting of an exemption to the requirements of 10 CFR Part 50, paragraph 50.12(a)(1) requires that the licensee show that the proposed exemption will not pose an undue risk to the public. That this proposed change will not pose an undue risk is demonstrated by the analysis presented in draft NUREG–1493, which concludes that an increase in the test interval to once every 20 years would "lead to an imperceptible increase in risk." The analyses in draft NUREG–1493 are considered to be specifically applicable to Catawba because: (1) The requested exemption would result in a one-time increase in the test interval to 5 years, not 20; (2) the population density around Catawba is less than that used in the study (329 people per square mile, vs. 340 used in the study; (3) no ILRT at Catawba has jailed; (4) the core inventory used in the study was represented by a 3412 Mwt PWR [pressurized water reactor]. Catawba is a 3411 Mwt PWR. Other factors which lead to the conclusion that the proposed change will not pose an undue risk include the fact that local leak rate testing, which identifies 97% of leakage in excess of prescribed limits, will remain in place at its current test frequency; the detailed, proceduralize containment civil inspection which is normally performed in conjunction with an ILRT will be performed in place of the scheduled ILRT, to identify potential structural deteriorations; and the historical leak-tightness of the containment structure, as evidenced by two successive ILRTs in which the as-found leakage did not exceed 22.5% of the allowable leakage rate.

A comparison was made between the risk analysis presented in draft NUREG–1493 and a probabilistic risk assessment performed for Catawba Nuclear Station. While the quantitative results of the NUREG are not directly applicable to plants not used in the study, similar conclusions can be made concerning Catawba. NUREG–1493 indicates that reactor accident risks are dominated by accident sequences that result in failure or bypass of the containment. This conclusion is also valid for Catawba. Considering only the Catawba accident sequences that do not result in containment failure, containment leakage contributes approximately 0.08 to 0.09 percent to off-site risk (whole-body person-rem, thyroid nodules, and latent fatalities). NUREG–1493 indicated that containment leakage contributed from 0.02 to 0.10 percent to latent cancer risk. The comparison between the analysis of NUREG–1493 and the Catawba PRA concludes that increases in containment leakage at Catawba are expected to produce increases in accident risk similar to the results in NUREG–1493.

Special circumstances, as defined in 10 CFR [50].12(a)(2)(ii), are present in that the requirement to perform the third ILRT during the ISI outage is not necessary to achieve the underlying purpose of the rule. The purposes of the rule, as stated in Section I of Appendix J, are to ensure that: (a) Leakage through the primary reactor containment and systems and components penetrating containment shall not exceed allowable values, and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made. One of the significant factors in assuring that the proposed exemption will not pose an undue risk to the public, as noted above, is the local leak rate testing (LLRT) which is performed. That the LLRT program at Catawba provides an effective mechanism for maintaining containment integrity is perhaps best demonstrated by the fact that the most recent ILRT at Catawba Unit 1 was performed at the front end of the refueling outage; before any repairs or adjustments were made to valves or penetrations. Nevertheless, the as-found leakage did not exceed 22.5% of the allowable leakage rate. The fact that no leakage paths were identified by an ILRT, and that the ILRT met the acceptance criteria with significant margin confirms the results of the Type B and C testing.

The frequency and scope of the Type B and C LLRT program are not being changed by this exemption request. The LLRT program will continue to effectively detect containment leakage resulting from the degradation of active containment isolation components, as well as containment penetrations. Administrative limits have been established for each Type B or C component at a fraction of the allowable leak rate, such that any leakage detected in excess of the administrative limit will indicate a potential valve or penetration degradation. In instances in which a component's leakage exceeds its administrative limit, proceduralized controls in the test program require that a work order be written to repair the component.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 16 months. The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, for the reasons discussed below, that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak tight containment. All Type A tests have passed with significant margin and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licenses has stated that it will continue to perform the general containment civil inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures This study agrees with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. the Catawba Unit 1 experience has also been consistent with this.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493).

Based on generic and plant-specific data, the NRC staff finds the licensee's proposed one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix Type A test to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the human environment (60 CFR 11125).

This exemption is effective upon issuance and shall expire at the completion of the 1996 refueling outage.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects — I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6205 Filed 3–13–95; 8:45 am]

BILLING CODE 7590–01–M

Forrest L. Roudebush, Kansas City, Missouri; Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC

I

Mr. Forrest L. Roudebush has been, from its inception, the owner and president of Piping Specialists Incorporated (PSI or Licensee), also known as PSI Inspection, which was the holder of Byproduct Material License No. 24–24826–01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on March 6, 1987. The license authorized the use of byproduct material (iridium-192 and cobalt-60) for industrial radiography in devices approved by the NRC or an Agreement State. The facility where licensed materials were authorized for storage was located at 1010 East 10th Street, Kansas City, Missouri. The use of licensed materials was authorized at temporary job sites anywhere in the United States that the NRC maintains jurisdiction for regulating the use of licensed materials. On October 17, 1991, the NRC staff issued an Order Suspending License (Effective Immediately) to PSI. On April 22, 1992, the NRC staff issued to PSI an Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License. The revocation of the license was upheld by a decision of the NRC Atomic Safety and Licensing Board (ASLB), Piping Specialists, Inc. and Forrest L. Roudebush, LBP 92–25, 36 NRC 156 (1992), which the Commission declined to review, CLI–92–16, 36 NRC 351 (1992).

II

NRC Region III initiated an inspection of the Licensee on September 4, 1991, and on September 24, 1991, the NRC Office of Investigations (OI) commenced an investigation based on information received on August 29, 1991, that the PSI radiation safety program was not being conducted in compliance with NRC rules, regulations, and license

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conditions. The inspection and investigation focused on the Licensee's compliance with NRC regulations, including possible willful violations involving: (1) False statements to NRC inspectors and investigators; (2) use of unauthorized and/or unqualified radiographer's assistants while conducting radiography; (3) preparation of false, inaccurate, and incomplete records; (4) failure to provide or use personnel dosimetry devices while conducting radiography; and (5) failure to survey and post radiation area boundaries to provide notice of radiation hazards to the public while performing radiography.

The OI investigation was completed on February 21, 1992, and identified the following deliberate violations of NRC requirements attributable to Mr. Roudebush:

A. In violation of 10 CFR 30.9, the PSI Radiation Safety Officer (RSO), with the prior knowledge of Mr. Roudebush, deliberately provided incomplete and inaccurate information to NRC inspectors during inspections conducted on March 21 and September 17–18, 1991. Specifically, the RSO presented to the inspectors the Licensee's utilization log, records of pocket dosimeter readings, and records of surveys of radiographic exposure devices performed at the time of the storage of the device at the end of the work day. Those records were neither complete nor accurate because: (1) The records did not document the Licensee's uses of the radiographic exposure devices which occurred during periods when the Licensee's personnel dosimetry service was interrupted due to the nonpayment of service fees; and (2) the information in the records had not been recorded daily as required, but instead, had been fabricated en masse shortly before the inspections. Further, the RSO and Mr. Roudebush knew that the records were inaccurate and that the records had been fabricated by the RSO immediately before the inspections.

B. In violation of 10 CFR 30.9, during an interview with OI on October 16, 1991, Mr. Roudebush, under oath, after defining a radiographer's assistant as one who "* * * handles and operates the enclosure, handle [sic] and operates the device, handles and operates the survey meter, takes charge of that dosimeter", denied to an OI investigator that he had performed work as a radiographer's assistant. This statement was deliberately false because during the NRC inspection conducted on September 17–18, 1991, Mr. Roudebush acknowledged that he had attached the control cable and guide tube to a radiographic exposure device and had exposed and retracted the source during radiographic operations. Mr. Roudebush was not qualified as a radiographer or assistant radiographer.

The investigation found other deliberate violations of NRC requirements, as well as a number of violations that in the aggregate represented a breakdown in the management of the PSI radiation safety program. Those violations are discussed in the October 17, 1991 Order Suspending License (Effective Immediately), EA 91–136; and the April 22, 1992 Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License, EA 92–054. Those orders discuss why the staff does not have reasonable assurance that the licensee or Mr. Roudebush would comply with NRC requirements in the future.

The ASLB conducted a hearing from April 28 to May 1, 1992 on the October 17, 1991 Order Suspending License (Effective Immediately) and the April 22, 1992 Order Modifying Order Suspending License (Effective Immediately) and Order Revoking License.

The ASLB, in its Final Initial Decision (Revoking License), LBP–92–25, 36 NRC 156 (1992), stated:

> We conclude that there have been extensive failures on the part of PSI and Mr. Roudebush to comply with NRC regulations. The Board finds that the Licensee has failed to act as a reasonable manager of licensed activities; failed to detect and correct violations caused by an employee; willfully attempted to conceal violations from NRC Staff, and given untruthful information to the Staff during its inspections and investigations. Moreover, we find that Mr. Roudebush was untruthful in some aspects of his testimony both during a formal investigation and this Licensing Board. *Id.*, at 186.

Pursuant to a plea agreement, on August 18, 1994, Mr. Roudebush pled guilty in the U.S. District Court for the Western District of Missouri to one criminal count of violating Title 42, United States Code, Sections 2273 and 2201 (b) and (i) (§§ 161b, 161i, and 223 of the Atomic Energy Act). Specifically, the agreement describes the nature of the offense as the failure to provide dosimetry devices to employees. As a result, on December 12, 1994, an amended judgment was filed whereby Mr. Roudebush was sentenced to two years probation. The terms of the probation, in part, provide that Mr. Roudebush shall not apply for or obtain a license for radiography during the probation period.

III

Based on the above, the NRC concludes that Forrest L. Roudebush, the owner and president of PSI, engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 30.9, 30.10, and 34.33. Mr. Roudebush deliberately provided information to NRC inspectors and investigators that he knew to be incomplete or inaccurate in some material respect to the NRC, and Mr. Roudebush was deliberately untruthful during portions of his testimony to the ASLB, in violation of 10 CFR 30.9 and 30.10. Further, Mr. Roudebush deliberately failed to provide dosimetry devices to his employees, in violation of 10 CFR 34.33 and 30.10. The NRC must be able to rely on its licensees, including their officers and employees, to comply with NRC requirements, including the requirement to provide information and to maintain records that are complete and accurate in all respects material to the NRC. The deliberate actions of Forrest L. Roudebush in causing the Licensee to violate 10 CFR 30.9, 30.10, and 34.33, and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied on to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Forrest L. Roudebush will conduct licensed activities in compliance with the Commission's requirements or that the health and safety of the public will be protected if Forrest L. Roudebush were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that, for a period of five years from October 17, 1991, the date that the PSI license was suspended by Immediately Effective Order, Forrest L. Roudebush be prohibited from any involvement in NRC-licensed activities for either: (1) An NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition, for a period of five years commencing after completion of the five year period of prohibition, Mr. Roudebush must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Roudebush's compliance with the Commission's requirements and his understanding of his commitment to compliance. If Mr. Roudebush is currently involved with another licensee in NRC-licensed activities, Mr. Roudebush must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered* that:

1. Forrest L. Roudebush is prohibited until October 17, 1996 from engaging in any NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years, beginning October 17, 1996, after the five-year period of prohibition has expired, Forrest L. Roudebush shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Forrest L. Roudebush shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

3. If Forrest L. Roudebush is currently involved with any NRC licensee or Agreement State licensee engaging in NRC-licensed activities, then Forrest L. Roudebush must, as of the effective date of this Order, cease such activities and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Roudebush of good cause.

V

In accordance with 10 CFR 2.202, Forrest L. Roudebush must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Roudebush or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4531 if the answer or hearing request is by a person other than Mr. Roudebush. If a person other then Mr. Roudebush requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Roudebush or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether, on the basis of the matters described in: (1) this Order; (2) EA 91–136; (3) EA 92–054; and (4) LBP–92–25, 36 NRC 156 (1992), this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland this 3rd day of March 1995.

From the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 95–6206 Filed 3–13–95; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Waste Isolation Strategy, Thermal Management Strategy, The Engineered Barrier System

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its spring meeting on April 19–20, 1995, in Las Vegas, Nevada. The meeting will be held at the Holiday Inn Crowne Plaza, 4255 S. Paradise Road, Las Vegas, Nevada 89109; Tel. (702) 369–4400; Fax (702) 369–3770. The meeting is open to the public and will begin at 8:30 a.m. both days. Presentations during the meeting will address three main topics: The Department of Energy's (DOE) emerging waste isolation strategy; the DOE's thermal management strategy, including thermal testing planned or being conducted for the Yucca Mountain project; and engineered barrier system research, development, design, and analysis. Additional presentations also will provide updates on the DOE's perspectives concerning current legislative issues (fiscal year 1996 budget and initiatives to amend or replace the Nuclear Waste Policy Act).

Topics that will be covered on Wednesday, April 19, include the current status of the DOE's waste management program and its evolving waste isolation strategy, the linkage between the waste isolation strategy and site suitability, the fiscal year 1996 DOE budget, and thermal management strategy. An afternoon panel discussion will explore the integration of these topics. Prior to recessing for the day, those attending the meeting will be invited to direct questions or comments to the Board and the discussion panel members.

On Thursday, April 20, the meeting will focus on the engineered barrier system and include repository subsurface operations concepts, multipurpose container (MPC) interface with a potential repository, waste package design, engineered barrier system performance assessment, corrosion research, in-repository criticality, potential use of backfill, and in-repository shielding. Following a time for public questions and comments, a panel discussion will address the compatibility of waste package and engineered barrier designs with the DOE's concept of repository operations and thermal management strategies. A final period for public comment will end the meeting's activities.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain,

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Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning June 2, 1995. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; Tel: 703–235–4473; Fax 703–235–4495.

Dated: March 9, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–6234 Filed 3–13–95; 8:45 am]

BILLING CODE 8820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35451; File No. SR–Amex–95–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments Updating Various Exchange Rules

March 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend several of its rules to reflect current practices and to update various rules that have become obsolete. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Over-the-Counter Execution of Equity Securities Transactions

Rule 5.

(d)

[viii any acquisition of a security by a member organization as principal in anticipation of making an immediate special offering or exchange distribution on the Exchange under Rule 560 or Rule 570;]

[ix] *viii*

[x] *ix*

[xi] *x*

Precedence Accorded to Orders Entrusted to Specialists

Rule 155.

Commentary .01 [When a broker inquiries of a specialist as to the price at which a block of stock may be sold, the specialist may not specify the amount that would be purchased by the book and the amount he would take as dealer.]

If [the] *a* block is to be sold at a "clean up" price the specialist should execute at the "clean-up" price all of the executable buy orders on his book. The report of the block transaction on the tape is to be accompanied by a reprint of the last prior transaction in the regular-way market in the security.

However, if the block is sold at different price limits and the specialist buys part of the block for his own account he should to the extent practicable, buy round lots for his own account at each price limit at which buy orders on the book are executed, and in doing so, he should divide the stock purchased for his own account into round lots of approximately equal size among the price limits at which he participates.

The same principles apply in the case of a purchase of a block of stock.

Cancellations Must Be Written

Rule 181. A cancellation of an order given to a specialist on the Floor of the Exchange personally by a Regular member or member representative shall not be deemed effective unless in writing [and signed].

Specialist Registration Fee

Rule 183. Each regular specialist registered with the Exchange shall pay to the Exchange *each year* a registration fee [of $400.000 per year] *as imposed by the Exchange,* [which fee shall be] payable [in equal quarterly installments in each year] *as directed by the Exchange* during [which] *the year* such specialist remains so registered.

Specialist Clerks

Rule 184. (a) A specialist or specialist unit may regularly employ, subject to such rules and regulations as the Board of Governors may adopt, one or more clerks, to aid such specialist or specialist unit on the floor of the Exchange, provided each such clerk receives the approval of the Exchange. A *yearly* fee [of $180.00 per year,] *as imposed by the Exchange and* payable *as directed by the Exchange* [in equal quarterly installments,] shall be charged the specialist or specialist unit for each clerk. No rebate shall be given with respect to the [quarterly] fee in the event that a specialist or specialist unit discontinues the services of such a clerk during any [quarterly] period.

Normal Buy-Ins

Rule 783.

(d) The Buy-in Desk will deliver a copy of the Floor report to the booth of the member or member organization which initiated the order. The executing broker will have the responsibility of notifying promptly as to the details of the execution, the member or member organization listed on the order as being in default. [The member executing the order shall be entitled to receive a Floor brokerage commission.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a rule change that would conform its rule to a comparable New York Stock Exchange ("NYSE") rule, which recently has been amended. The Exchange proposes to amend Commentary .01 to Rule 155 (Precedence Accorded to Orders Entrusted to Specialists) to delete the prohibition that a specialist may not disclose the amount of stock that the specialist and the book would be buying or selling in cleaning up the block. This proposed rule change is similar to the NYSE amendment to its Rule 104.10(7), which has been approved by the Commission.[1]

The Exchange is also updating other rules to eliminate obsolete references and reflect accurately current Exchange practices. The references in Rule

[1] See Exchange Act Release No. 34231 (June 17, 1994), 59 FR 32722 (approving File No. SR–NYSE–90–10).

5(d)(viii) (Over-the-Counter Execution of Equity Securities Transactions) to Rules 560 and 570 are being deleted because Rules 560 and 570 have been rescinded. The Exchange is also deleting the signature requirement in Rule 181 (Cancellations Must Be Written) to reflect the current practice. The signature requirement, going back to the N.Y. Curb Exchange circa 1939, has not been deemed necessary on the Trading Floor in the era of the printed ticket.

The Exchange is also amending Rules 183 (Specialist Registration Fee) and 184 (Specialist Clerks) to eliminate out-of-date charges and timing of payments. The Exchange proposes to use general language in the rules to alleviate the need for repeated amendments to the Exchange Rules each time these fees are changed. The Exchange will make the necessary rule filings with the Commission before any fee changes become effective. The Exchange is also amendment Rule 783(d) (Normal Buy-Ins) to delete the reference to a member's entitlement to a Floor brokerage commission because the commissions are negotiated.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–95–10 and should be submitted by April 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6164 Filed 3–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35452; File No. SR–DTC–95–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying Exclusion of Money Market Instrument Programs From DTC's Charge Back and Return of Funds Procedures for Erroneous or Improper Payments of Dividends and Interest and Redemption Proceeds

March 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 31, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change clarifies that DTC's procedures for charging back from participants' accounts erroneous or improper payments of dividends and interest and redemption proceeds, as well as DTC's procedures for the subsequent return of such funds to payors,[2] do not apply to such payments made for instruments in DTC's Money Market Instrument ("MMI") programs.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify that DTC's procedures for charging back from participants' accounts erroneous or improper payments of dividends and interest and redemption proceeds, as well as DTC's procedures for the subsequent return of funds to payors, do not apply to payments made for instruments in DTC's MMI programs. DTC's charge back and return of funds procedures do not apply to those instruments that are included in DTC's

[2] For a complete description of these procedures, refer to Securities Exchange Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR–DTC–86–03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change implementing procedures for charging back erroneous dividend and interest payments from participants' accounts), 23686 (October 7, 1986), 51 FR 37104 [SR–DTC–86–04] (order approving proposed rule change implementing charge back procedures), and 26070 (September 9, 1988) 53 FR 36142 [SR–DTC–88–17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back procedures apply to DTC's same-day funds settlement system as well as its next-day funds settlement system).

[3] For a complete description of DTC's MMI programs, refer to Securities Exchange Act Release No. 33958 (April 22, 1994), 59 FR 22878 [SR–DTC–93–12] (notice of order temporarily approving a proposed rule change expanding the Money Market Instrument Settlement Program).

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MMI programs because MMIs are processed differently as discussed more fully below.

DTC sweeps maturing MMIs from the accounts of "presenting participants" and initiates book-entry deliveries versus payment to paying agents' accounts on maturity date for inclusion in that day's same-day settlement system net settlement. Paying agents can refuse to accept maturity presentments of an issuer's MMIs so long as the paying agents notify DTC of their intention by 3:00 p.m. Eastern Standard Time on the day the MMI matures. If a paying agent refuses to accept maturity presentments, DTC will communicate this to all DTC participants and will reverse the maturity presentments by recrediting the participants' accounts with the maturing MMI, thus offsetting settlement credits in those accounts. DTC also will unwind any other maturity presentments, valued issuance, periodic income payments (e.g., interest or dividend), principal presentments, and reorganization presentments that it may have processed earlier that day in the same and other MMIs of a "defaulting issuer."

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the proposal will improve the timeliness of dividend and redemption payments to DTC participants and will improve the processing and recordkeeping in the Dividends and Reorganization Departments of DTC and its participants. The proposed rule change also will improve the procedures for safeguarding funds in DTC's custody or control of for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregone rule change has become effective pursuant to Section 19(b)(3)(A)(i)[4] of the Act and Rule 19b-4(e)(1)[5] promulgated thereunder because it constitutes a state policy, practice, or interpretation with respect to the meaning, administration, or enforcement of DTC's existing procedures for the payment of dividends, interest, and redemption proceeds. At any time within sixty days of the filing of this proposed rule change, the Commission summarily may abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interests, for the protection of investors, or otherwise in furtherance of the proposed of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection at DTC. All submissions should refer to File No. SR-DTC-95-03 and should be submitted by April 13, 1995.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-6214 Filed 3-13-95; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[5] 17 CFR 240.19b-4(e)(1) (1994).

[6] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35450; File Nos. SR-NYSE-94-39; SR-Phlx-94-29; SR-PSE-94-34; SR-BSE-94-15; SR-CHX-94-28; SR-NASD-94-57; SR-CBOE-94-55]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., Pacific Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., National Association of Securities Dealers, Inc., and Chicago Board Options Exchange; Supplemental Order Regarding Recently Adopted Rules for Short Position Reporting

March 7, 1995.

I. Background

The New York Stock Exchange, Inc. ("NYSE"), on October 27, 1994, the Philadelphia Stock Exchange, Inc., ("Phlx"), on October 20, 1994, the Pacific Stock Exchange, Inc. ("PSE"), on November 23, 1994, the Boston Stock Exchange, Inc. ("BSE"), on November 28, 1994, the Chicago Stock Exchange, Inc. ("CHX"), on December 12, 1994, the National Association of Securities Dealers, Inc. ("NASD"), on December 2, 1994[1] and the Chicago Board Options Exchange ("CBOE"), on January 3, 1995, (collectively, "self-regulatory organizations" or "SROs") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] proposed rule changes to facilitate uniform short position reporting requirements.[4]

The proposed rule change filed by the CBOE was published for comment in Securities Exchange Act Release No. 35227 (January 13, 1995), 60 FR 4208 (January 20, 1995). In addition, all of the other proposed rule changes were published for comment in Securities Exchange Act Release No. 35147 (December 23, 1994), 60 FR 518 (January 4, 1995). No comments were received on the proposal from either notice publication.

The Commission issued an order on January 27, 1995, approving the proposed rule changes referenced above.[5]

[1] In addition, the NASD filed Amendment No. 1 on January 11, 1995, to clarify who must report to the NASD, what the entities must report, and the mechanics of how to transmit such report. Because the Amendment did not substantively change the proposal, the Commission did not publish it for comment. See letter from Joan C. Conley, Secretary, NASD, to Mark Barracca, Attorney, SEC, dated January 11, 1995.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b-4 (1991).

[4] "Short" positions to be reported are those resulting from "short" sales as defined in SEC Rule 3b-3, but excludes positions resulting from sales specified in clauses (1), (6), (7), (8), (9) and (10) of paragraph (e) of SEC Rule 10a-1. Also to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

II. Discussion

As explained in the Approval Order, the purpose of the rule changes is to ensure that all broker-dealers registered in the United States report open short positions to an SRO. The proposed rule changes emanated from an initiative by the SROs, as Intermarket Surveillance Group ("ISG") members, to ensure uniform short position reporting in U.S. traded securities.

Substantively, the new reporting requirements will continue to include stocks and warrants, including odd-lots, in each such security traded on a United States securities exchange or association. Further, the reports will continue to include both customer and proprietary positions.

At the time the Approval Order was published, the Commission understood that broker-dealers with multiple proprietary accounts netted such accounts for purposes of reporting their short positions. In the interim, however, it has come to light that industry practice varies and that the preferred method is not to net multiple accounts. Specifically, the NYSE indicated in a letter submitted to the Commission on March 1, 1995, that "firms will use the gross method of reporting short interest positions rather than netting." The remaining ISG participants that adopted the rules at hand have confirmed that industry practice should not be disrupted for purposes of reporting firm short interest positions. The NYSE requested that the Approval Order be modified to reflect industry practice at the time of the rule filing.[6]

The Commission notes that the method of calculation was not a determinative factor in the decision to approve the short interest reporting rules. Rather, the Commission's goal was to assure uniformity in the calculation of short positions to provide comparable information to the marketplace. In this regard, the Commission has not identified advantages of one method over the other and agrees that, consistent with industry practice, short interest positions for both like and non-like accounts may be reported gross for purposes of the new reporting requirements.

The Approval Order included an example to illustrate the method, net reporting, which the Commission understood to be the industry standard.[7] The modification requested by the NYSE would be reflected in this example by providing that the firm would not net its proprietary accounts.[8]

The Commission finds that the clarification does not alter the statutory basis relied upon in the Approval Order. The Commission continues to believe, therefore, that the short interest position reporting rules and methodology for such calculation as outlined herein is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) and 15A.[9] In particular, the Commission believes the proposal is consistent with the Sections 6(b)(5) and 15A(b)(6) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the proposal should enhance the ability of the SROs, both collectively and individually, to monitor short interest reporting, and to reinforce their regulatory and surveillance capabilities in this area.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the Approval Order is hereby revised as described above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-6163 Filed 3-13-95; 8:45 am]

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[5] Securities Exchange Act Release No. 35287 (January 27, 1995), 60 FR 6743 (February 3, 1995) ("Approval Order").

[6] See letter from Salvatore Pallante, Senior Vice President, Member Firm Regulation, NYSE, to Holly Smith, Associate Director, Division of Market Regulation, Commission, dated March 1, 1995.

[7] See Approval Order, footnote 7.

[8] The example in the Approval Order concerns a broker-dealer with three accounts—account 1 has short interest of 100 shares, account 2 has short interest of 225 shares and account 3 is long 150 shares. As indicated in the Approval Order, if the three accounts are for different customers then the broker-dealer shall report a gross short interest of 325 (not netted to 175). In contrast to the Approval Order, however, if account 1 is a firm customer account, and accounts 2 and 3 are firm proprietary accounts, the broker-dealer would still report total short interest of 325 (not netted to 75), as the broker-dealer would not net the firm's proprietary positions but would report a total gross short position (customer 100 and firm 225).

[9] 15 U.S.C. 78f(b) and 78o-3 (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Program Evaluation SBA 7(a) Loan Program.

Form No.: N/A.

Frequency: On Occasion.

Description of Respondents: 7(a) loan applicants.

Annual Responses: 1,700.

Annual Burden: 312.

Dated: March 2, 1995.

Calvin Jenkins,

Assistant Administrator for Administration.

[FR Doc. 95-6251 Filed 3-13-95; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2760; Amendment #3]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective February 27, 1995, to include Kings County in the State of California as a disaster area due to damages resulting from winter storms causing flooding, landslides, mud and

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debris flows beginning on January 3, 1995, and continuing.

All counties contiguous to Kings County have previously been declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 13, 1995, and for economic injury the deadline is October 10, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 8, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–6250 Filed 3–13–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/71–0363

Notice of Issuance of a Small Business Investment Company License

On November 7, 1994, a notice was published in the **Federal Register** (59 FR 55522) stating that an application had been filed by Pioneer Ventures Limited Partnership II, Boston, Massachusetts with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on November 22, 1994 to submit their comments to SBA. No comments were received. Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0363 on February 6, 1995, to Pioneer Ventures Limited Partnership II to operate as a small business investment company.

The Licensee will have initial private capital of $2.6 million and has commitments for additional capital which are expected to reflect total capital of $15.0 million when fully invested. The Licensee will be owned by institutional investors. Limited partners with a larger than 10% partnership interest include the Massachusetts Bay Transportation Authority Retirement Fund, Middlesex County Contributory Retirement System, The Pioneer Group, Inc., Worcester County Contributory Retirement System, and Cambridge Retirement System.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–6225 Filed 3–13–95; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Negotiation of Chilean Accession to the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of negotiations regarding Chile's entry into the North American Free Trade Agreement (NAFTA), notice of goods and services that may be covered by such negotiations, and of public hearings and request for public comment concerning such negotiations.

SUMMARY: This publication gives notice that the United States, along with the Governments of Canada and Mexico, expects to undertake negotiations with the Republic of Chile regarding its accession to (*i.e.*, inclusion in) the NAFTA. This publication also (1) identifies the range of Chilean articles (products) for which U.S. tariffs and non-tariff measures may be reduced or eliminated as a result of the negotiations; (2) provides notice of a request by the United States Trade Representative (the USTR) to the International Trade Commission (Commission) for advice concerning the economic effects of Chilean accession; and (3) gives notice that the Trade Policy Staff Committee (TPSC) invites public comments on, and will conduct public hearings concerning, the negotiations.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments or public hearings, contact Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the USTR, (202) 395–9557. All other questions should be directed to Jane Earley, Director for Chilean Affairs, (202) 395–5190, or James Southwick, Assistant General Counsel, (202) 395–7203.

SUPPLEMENTARY INFORMATION:

1. Background

The NAFTA entered into force between the United States, Canada, and Mexico on January 1, 1994. On December 11, 1994, President Clinton, and the heads of state of Canada, Chile, and Mexico agreed to begin the process by which Chile will accede to the NAFTA. The four governments plan to hold a ministerial meeting in May, 1995, concerning Chile's accession, and substantive negotiations may begin shortly thereafter.

2. Articles That May Be Considered in Trade Negotiations

All articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of Chile will be considered for duty reduction or elimination and for the elimination or reduction of non-tariff barriers.

3. Advice From the U.S. International Trade Commission

On March 7, 1995, under authority delegated by the President, the USTR requested the Commission, pursuant to section 332(g) of the Tariff Act of 1930 (codified at 19 U.S.C. 1332(g)), to provide advice to the President, with respect to each article listed in the HTSUS, as to the probable economic effect of (1) providing duty-free treatment for imports of products of Chile on industries in the United States producing like or directly competitive articles and on consumers; and (2) eliminating U.S. non-tariff measures that are inconsistent with the NAFTA. In addition, the USTR requested advice on the probable economic effect on U.S. exports to Chile of (3) the removal of Chilean import duties; and (4) the removal of Chilean nontariff measures that are inconsistent with the NAFTA. Finally, the USTR requested the Commission to provide a report on (5) the nature and extent of services transactions between the United States and Chile, the key U.S. services industries that export services to Chile, the principal barriers impeding the participation of U.S. service providers in the Chilean market, and the effect of such barriers on U.S. services providers.

The USTR requested the Commission to provide its advice as soon as possible, but no later than six months after the date of the letter.

4. Public Comments and Testimony

In conformity with TPSC regulations (15 CFR part 2003), the Chairman of the TPSC invites written comments and/or oral testimony of interested persons in a public hearing on the desirability and economic effects of Chilean accession to the NAFTA.

Comments are particularly invited on:

(a) Economic costs and benefits to U.S. producers and consumers of removal of all tariff barriers to trade between Chile and the United States and between and among Chile and the current NAFTA parties and, in the case of articles for which immediate elimination of tariffs is not appropriate, the appropriate staging schedule for such elimination.

(b) Existing nontariff barriers to trade in goods between Chile and the United States and between and among Chile and the current NAFTA parties and the economic costs and benefits to U.S. producers and consumers of removing those barriers.

(c) Existing barriers to trade in services between Chile and the United States and between and among Chile and the current NAFTA parties, and economic costs and benefits to U.S. services firms and consumers of removing such barriers.

(d) Existing restrictions on investment flows between Chile and the United States and between and among Chile and the current NAFTA parties, and the costs and benefits to U.S. investors and consumers of eliminating such restrictions.

(e) Any other measures, policies, or practices of the Government of Chile falling within the scope of the NAFTA that should be addressed in the negotiations.

In addition, comments are invited on the possible environmental effects of Chile's accession to the NAFTA, as well as the possible effects on basic workers' rights, working conditions, and living standards.

5. Requests to Participate in Public Hearings

A hearing will be held on Tuesday, April 25, 1995 in the Truman Room, White House Conference Center, 726 Jackson Place, Washington, DC. Hearings will continue on succeeding days if necessary.

Parties wishing to testify orally at the hearings must provide written notification of their intention by noon, Friday, April 14, 1995 to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 Seventeenth Street, N.W., Washington, D.C. 20506. The notification should include (1) the name, address, and telephone number of the person presenting the testimony; and (2) a brief summary of the presentation, including the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed.

Parties presenting oral testimony must also submit to the above address by noon, Friday, April 14, 1995 a written brief, in 20 copies. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide 30 typed copies of their oral statement at the time of the hearings.

Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary of the confidential information.

6. Written Comments

Those persons not wishing to participate in the hearing may submit written comments, in 20 typed copies, no later than noon, Friday, April 28, 1995 to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 Seventeenth Street, N.W., Washington, D.C. 20506. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary of the confidential information.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 Seventeenth Street, N.W., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m. Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–6154 Filed 3–13–95; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 1995, there were six applications and one amendment approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Austin, Austin, Texas.

Application Number: 95–03–C–00–AUS.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,199,000.

Charge Effective Date: July 1, 1995.

Estimated Charge Expiration Date: September 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: On-demand air taxi/commercial operators that (1) do not enplane or deplane at Robert Mueller Municipal Airport's (AUS) main terminal building or (2) enplane fewer than 500 passengers per year at AUS.

Determination: Approved. Based on information submitted in the City of Austin's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at AUS.

Brief Description of Project Approved for Collection and Use:

East perimeter road pavement rehabilitation,
Terminal apron lighting upgrade,
Airfield pavement rehabilitation,
Airfield security fence replacement/rehabilitation,
Runway 13R/31L surface roughness remediation.

Decision Date: February 8, 1995.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Indian Wells Valley Airport District, Inyokern, California.

Application Number: 95–02–C–00–IYK.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net Use PFC Revenue: $248,500.

Estimated Charge Effective Date: September 1, 1995.

Estimated Charge Expiration Date: September 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: Unscheduled air taxi/commercial operators not providing scheduled service to Inyokern Airport (IYK).

Determination: Approved. Based on information submitted in the Indian Wells Valley Airport District's application, the FAA has determined the proposed class accounts for less than 1 percent of IYK's total annual enplanements.

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Brief Description of Project Approved for Use: Terminal renovations.
Brief Description of Projects Approved for Collection and Use:
Construct parking lot and airport road extention,
Purchase hydraulic passenger lift.
Brief Description of Project Approved for Collection: Overlay taxiways.
Decision Date: February 11, 1995.
For Further Information Contact: John P. Milligan, Western Pacific Region Airports Division, (310) 297–1029.

Public Agency: City of Riverton, Riverton, Wyoming.
Application Number: 95–01–I–00–RIW.
Application Type: Impose PFC.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $515,955.
Charge Effective Date: May 1, 1995.
Estimated Charge Expiration Date: March 1, 2007.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved to Impose: New terminal development and equipment acquisition.
Decision Date: February 14, 1995.
For Further Information Contact: Don O'Brien, Denver Airports District Office, (303) 286–5549.

Public Agency: Little Rock Regional Airport, Little Rock, Arkansas.
Application Number: 95–01–I–00–LIT.
Application Type: Impose PFC.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $32,765,055.
Charge Effective Date: May 1, 1995.
Estimated Charge Expiration Date: June 1, 2003.
Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information submitted in the Little Rock Regional Airport's application, the FAA has determined that the proposed class accounts for less than 1 percent of Little Rock Regional Airport-Adams Field's total annual enplanements.
Brief Description of Project Approved for Collection: Extend runway 4L/22R.
Brief Description of Project Approved, in Part, for Collection: Prepare site for approach lighting system with sequenced flashers (ALSF–II) and for Category III instrument landing system (ILS) on runway 22R.
Determination: The project meets the nominal requirements for AIP eligibility as an incidental cost related to the extension of runway 4L/22R; however, those costs specifically associated with the upgraded preparation for the ALSF–II and CAT III ILS are not eligible in accordance with paragraph 513 of the AIP Handbook.
Decision Date: February 23, 1995.
For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Milwaukee County Airport Division, Milwaukee, Wisconsin.
Application Number: 95–01–C–00–MKE.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $28,785,277.
Charge Effective Date: May 1, 1995.
Estimated Charge Expiration Date: April 1, 1999.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.
Determination: Approved. Based on information submitted in the Milwaukee County Airport Division's application, the FAA has determined that the proposed class accounts for less than 1 percent of General Mitchell International Airport's (MKE) total annual enplanements.
Brief Description of Projects Approved for Collection and Use at MKE:
Acquire scattered homes within runway protection zone and 70 LDN,
Noise monitoring/flight track system,
Cargo apron expansion—phase I,
Replacement equipment,
Acquire undeveloped land zoned for residential use,
Terminal apron rehabilitation,
Surface movement guidance control system (design),
Perimeter fencing replacement,
Rehabilitate west fixed base operator apron.
Brief Description of Project Approved to Impose a PFC at MKE and use PFC Revenue at Lawrence J. Timmerman Airport: Install pavement sensors.
Brief Description of Projects Approved for Collection Only at MKE:
Storm water and deicing system—design and construction—phase III,
Sales assistance in runway C–1 area,
Realign runway 7L–25R.
Decision Date: February 24, 1995.
For Further Information Contact: Franklin Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: City of Philadelphia, Department of Commerce, Division of Aviation (DOA), Philadelphia, Pennsylvania.
Application Number: 95–03–C–00–PHL.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved PFC Revenue: $65,500,000.
Charge Effective Date: July 1, 1995.
Estimated Charge Expiration Date: September 1, 1997.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information submitted in the DOA's application, the FAA has determined that the proposed class accounts for less than 1 percent of Philadelphia International Airport's total annual enplanements.
Brief Description of Projects Approved for Collection and Use:
Terminals B, C, D, and E general renovations,
Terminals A and E expansion and upgrade.
Brief Description of Projects Approved for Use:
Airfield expansion—land acquisition,
Terminals B and C improvements,
Terminals D and E improvements.
Decision Date: February 27, 1995.
For Further Information Contact: L.W. Walsh, Harrisburg Airports District Office, (717) 975–3413.

AMENDMENT TO PFC APPROVALS

Amendment No: City, State	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–EAT, East Wenatchee, WA	02/15/95	$622,488	$280,500	10/01/95	10/01/00

Issued in Washington, DC on March 7, 1995.
Kendall L. Ball,
Passenger Facility Charge Branch.
[FR Doc. 95–6275 Filed 3–13–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 1995, there were seven applications and two amendments approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Application Approved

Public Agency: Rock Springs-Sweetwater County Airport Board, Rock Springs, Wyoming.
Application Number: 95–01–C–00–RKS.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $332,500.
Charge Effective Date: April 1, 1995.
Estimated Charge Expiration Date: May 1, 2002.
Classes of Air Carriers Not Required to Collect PFC's: (1) Air taxi/commercial operators filing FAA Form 1800–31 and (2) foreign air carriers.
Determination: Approved. Based on information submitted in the Rock Springs-Sweetwater County Airport Board's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Rock Springs-Sweetwater County Airport.
Brief Description of Project Approved for Collection and Use: Replace terminal building roof and acquire lift device.
Decision Date: January 3, 1995.
FOR FURTHER INFORMATION CONTACT: Don O'Brien, Denver Airports District Office, (303) 286–5549.

Public Agency: City of Killeen, Texas.
Application Number: 95–02–C–00–ILE.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $321,200.
Charge Effective Date: April 1, 1995.
Estimated Charge Expiration Date: May 1, 1997.
Class of Air Carriers Not Required to Collect PFC's: Part 135 air charter operators.
Determination: Approved. Based on information submitted in the City of Killeen's application, the FAA has determined the proposed class accounts for less than 1 percent of Killeen Municipal Airport's total annual enplanements.
Brief Description of Projects Approved for Collection and Use:
Airport drainage,
Security fencing (safety fencing),
Runway extension study,
Terminal building master plan,
Signage and graphics,
Fog seal and paint runway (slurry seal),
Reconstruct air carrier concrete ramp,
Reconstruct taxiway A and associated ramp,
Fog seal taxiway B (slurry seal),
Canopy and landscaping,
Distance remaining signs,
Taxiway G repair,
Upgrade lighting, fog seal and paint terminal ramp (slurry seal).
Brief Description of Projects Approved for Collection and Use: Access road to fuel area.
Determination: Disapproved. The FAA has determined that this project is not Airport Improvement Program (AIP) eligible in accordance with Appendix 3, FAA Order 5100.38A, which specifically excludes fuel farms from AIP eligibility.
Construct parking lot.
Determination: Disapproved. The FAA has determined that this project is not AIP eligible in accordance with 49 U.S.C. 47110, as amended by Public Law No. 103–305 (August 23, 1994), and section 158.15(b)(6), which specifically exclude employee automobile parking facilities from eligibility.
Decision Date: January 6, 1995.
FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Spokane Airport Board, Spokane, Washington.
Application Number: 95–02–C–00–GEG.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $8,200,000.
Charge Effective Date: April 1, 1998.
Estimated Charge Expiration Date: May 1, 2000.
Classes of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
SIA access road improvements,
Aircraft deicing facility,
Decision Date: January 20, 1995.
FOR FURTHER INFORMATION CONTACT: Paul Johnson, Seattle Airports District Office, (206) 227–2650.

Public Agency: Lehigh-Northampton Airport Authority, Allentown, Pennsylvania.
Application Number: 94–03–U–00–ABE.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $4,350,000.
Charge Effective Date: November 1, 1992.
Estimated Charge Expiration Date: July 1, 1996.
Class of Air Carriers Not Required To Collect PFC's: The Lehigh-Northampton Airport Authority has previously been approved to exclude air taxi/commercial operators filing FAA Form 1800–31 in the FAA's August 28, 1992, Record of Decision.
Determination: No change from previously approved application.
Brief Description of Project Approved for Use: Design and construct satellite terminal expansion.
Decision Date: January 20, 1995.
For Further Information Contact: L.W. Walsh, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: Jackson Hole Airport Board (Board), Jackson, Wyoming.
Application Number: 94–02–C–00–JAC.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00
Total Approved PFC Revenue: $1,000,000.
Charge Effective Date: April 1, 1995
Estimated Charge Expiration Date: December 1, 1997.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Safety equipment,
Terminal baggage improvements.
Brief Description of Project Disapproved: Terminal building expansion.
Determination: Disapproved. This project was originally included in the Board's first PFC application. However, on September 26, 1994, the Board amended their first application and deleted this project. The Board justified deleting this project in the amendment, stating that it could not begin implementation within the regulatory timeframe due to the need to complete a master plan update and address local community concerns. Given the nature

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of the community concerns cited by the Board in its amendment, the FAA has no assurance that the project will be implemented until the community involvement and all other concerns associated with the ongoing master plan update are addressed. Therefore, the FAA is disapproving this project at this time.

Brief Description of Project Withdrawn: Runway safety project.

Determination: This project was withdrawn by the Jackson Hole Airport Board by letter dated October 25, 1994.

Decision Date: January 25, 1995.

For Further Information Contact: Philip Braden, Denver Airports District Office, (303) 286–5530.

Public Agency: Charlottesville-Albermarle Airport Authority, Charlottesville, Virginia.

Application Number: 94–05–I–00–CHO.

Application Type: Impose PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,524,300.

Charge Effective Date: April 1, 1995.

Estimated Charge Expiration Date: April 1, 1999.

Classes of Air Carriers Not Required To Collect PFC's: (1) Air taxi/commercial operators filing FAA Form 1800–31 and (2) foreign air carriers.

Determination: Approved. Based on information submitted in the Charlottesville-Albermarle Airport Authority's application, the FAA has determined that each proposed class accounts for less than 1 percent of the Charlottesville-Albermarle Airport's total annual enplanements.

Brief Description of Projects Approved for Collection Only:

Acquire snow blower and broom,
Snow loader/plow,
Overlay runway 3–21,
Runway deicing vehicle,
Aircraft rescue and firefighting vehicle,
Extend runway 3, safety area.

Decision Date: January 26, 1995.

For Further Information Contact: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: Sarasota Manatee Airport Authority, Sarasota, Florida.

Application Number: 95–02–U–00–SRQ.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $38,715,000.

Charge Effective Date: September 1, 1992.

Estimated Charge Expiration Date: September 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: The Sarasota Manatee Airport Authority has previously been approved to exclude air taxi/commercial operators filing FAA Form 1800–31.

Determination: No change from previously approved application.

Brief Description of Projects Approved for Use:

Federal Aviation Regulations Part 150 program funding,
Environmental assessment,
Runway protection zone land acquisition,
Rehabilitate taxiway "A",
Rehabilitate taxiway "F" (formerly taxiway "I").

Decision Date: January 31, 1995.

For Further Information Contact: Pegy Jones, Orlando Airports District Office, (407) 648–6582.

AMENDMENTS TO PFC APPROVALS

Amendment No.: City, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Estimated charge exp. date	Amended estimated charge exp. date
92–01–C–01–TWF, Twin Falls, ID	01/09/95	$310,500	$270,000	05/01/98	05/01/98
93–02–U–01–TUL, Tulsa, OK	12/06/94	$14,818,000	$8,450,000	08/01/94	03/01/96

Issued in Washington, D.C. on March 7, 1995.

Kendall L. Ball,

Passenger Facility Charge Branch.

[FR Doc. 95–6276 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Charlottesville and Albemarle County, VA

AGENCY: Federal Highway Administration, DOT.

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on October 3, 1984, to prepare an environmental impact statement for a proposal to provide a four-lane divided facility from the intersection of existing McIntire Road and Preston Avenue to an intersection with Rio Road. The proposed highway project involved in part the upgrading of an existing two-lane facility to a four-lane divided roadway. The remaining part of the proposed highway project called for a four-lane facility on new location.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Turner, Transportation Planner, Federal Highway Administration, 1504 Santa Rosa Road, Suite 205, Richmond, Virginia 23229, Telephone (804) 281–5111.

SUPPLEMENTARY INFORMATION: When the Notice of Intent was published, there was reason to believe that one or more of the alternatives might significantly affect the environment. However, after conducting exhaustive environmental studies of all the alternatives under consideration, documenting this information in a draft Environmental Impact Statement, circulating the draft EIS for comment, and holding the location public hearing, a reduced alternative without any significant environmental impacts was selected to meet the proposed project's purpose and need.

Therefore, in accordance with Federal regulations, the selected alternative is considered a Class III Action, and the assessment of the environmental impacts will be finalized and documented with an Environmental Assessment.

J. Bruce Turner,

Transportation Planner, Richmond, Virginia.

[FR Doc. 95–6182 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3340

Applicants: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410; Norfolk Southern Railway Company, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303.

The Consolidated Rail Corporation (Conrail) and Norfolk Southern Railway Company jointly seek approval of the proposed discontinuance and removal of "Hager" Interlocking, milepost 74.8, at Hagerstown, Maryland, Conrail's Harrisburg Division. The proposed changes consist of the discontinuance and removal of the power-operated derail and two interlocking signals, associated with track reconfiguration and installation of a traffic control system on the No. 1 Running Track between milepost 74.8 and "Town" Interlocking, milepost 73.7.

The reasons given for the proposed changes is to retire facilities no longer required for present operation while upgrading the signal system and improving train operations in the area.

BS–AP—No. 3341

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the automatic block signal system on the single main track, between Singleton, milepost 130.0 and Iola, milepost 147.0, Texas, and between Corsicana, milepost 242.0 and Bardwell, milepost 259.0, Texas, on the Southern Corridor, Ft. Worth Division, Houston Subdivision; consisting of the removal of 16 automatic signals, removal of 3 absolute signals, and installation of 19 automatic signals.

The reason given for the proposed changes is to respace signals associated with the installation of coded track circuits.

BS–AP—No. 3342

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the automatic block signal system, on the main track, between Auburn, milepost 21.3 and Puyallup, milepost 30.6, Washington, on the Northern Corridor, Pacific Division, Seattle Subdivision; consisting of the discontinuance and removal of 11 electric locks from 11 hand-operated switches.

The reasons given for the proposed changes is that the ABS territory does not require the application of electric locks at these locations, also these locks were installed at a time when foreign railroads used these locks for entering the main line and this condition no longer exists.

BS–AP—No. 3343

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, at Tupelo, Mississippi, between milepost 584.5 and milepost 588.0, on the Southern Corridor, Memphis Division, Birmingham Subdivision; consisting of the removal of controlled signals 138L, 138RA, and 138RB, removal of automatic signals 5859 and 5846, and installation of two intermediate automatic signals back to back near milepost 585.7.

The reason given for the proposed changes is the upgrading of the crossing signals to motion detecting control and the existing crossing control cutouts are no longer required.

BS–AP—No. 3344

Applicant: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

The Consolidated Rail Corporation seeks approval of the proposed modification and reduction of the eastward limits of "MO" Interlocking, milepost 250.5, at Cresson, Pennsylvania, Pittsburgh Line, Harrisburg Division; consisting of the conversion of "Old No. 1" power-operated switch on the "0" track to hand operation, and the discontinuance and removal of interlocking signals 12W, 12E and 6L.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3345

Applicant: CSX Transportation, Incorporated, Mr. D. G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal system, on the two main tracks, between Leewood, milepost F372.38 and Aulon, milepost F374.50, Tennessee, Nashville Division, Memphis Subdivision; consisting of the discontinuance and removal of automatic signals 372.9 and 374.4.

The reason given for the proposed changes is to improve operations and increase efficiency.

BS–AP—No. 3346

Applicant: Soo Line Railroad Company, Mr. J. C. Thomas, Manager S&C Maintenance, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the Conley frog locks on the movable bridge at LaCrosse, Wisconsin, Heartland Division, Tomah Subdivision.

The reason given for the proposed changes is to reduce maintenance costs associated with maintaining the frog locks, which are not required to be in compliance with applicable rule Part 236.312.

BS–AP—No. 3347

Applicant: Soo Line Railroad Company, Mr. J. C. Thomas, Manager S&C Maintenance, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the Conley frog locks on the movable bridge at Hastings, Minnesota, Heartland Division, River Subdivision.

The reason given for the proposed changes is to reduce maintenance costs associated with maintaining the frog locks, which are not required to be in compliance with applicable rule Part 236.312.

BS–AP—No. 3348

Applicant: Soo Line Railroad Company, Mr. J. C. Thomas, Manager S&C Maintenance, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the Conley frog locks on the movable bridge at Sabula, Iowa, Gateway Division, Davenport Subdivision.

The reason given for the proposed changes is to reduce maintenance costs associated with maintaining the frog locks, which are not required to be in compliance with applicable rule Part 236.312.

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BS–AP—No. 3349

Applicant: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

The Consolidated Rail Corporation seeks approval of the proposed modification of the automatic block signal system, on the two main tracks, between Scioto Interlocking, milepost 132.1 and Bannon Interlocking, milepost 137.6, near Columbus, Ohio, Western Branch, Indianapolis Division; consisting of the discontinuance and removal of automatic signals 1321, 1332, 1351, 1352, 1361, and 1362, and the relocation of automatic signals 1341 and 1342, 350 feet north of milepost 135.

The reason given for the proposed changes is to retire facilities no longer required for present operation and improve braking distance.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 8, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–6223 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. EA92–041; Notice 4]

General Motors Pickup Truck Defect Investigation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of closing of investigation.

SUMMARY: The purpose of this Notice is to announce that Engineering Analysis (EA) 92–041 has been closed in accordance with the settlement agreement between the United States Department of Transportation and General Motors Corporation, dated March 7, 1995 (Attachment A). Secretary of Transportation Federico Peña announced the parties' initial agreement to settle the matter and explained the basis for this Departmental decision in a statement issued December 2, 1994, which is available as an attachment to the March 9, 1995 memorandum to the public file for EA92–041 announcing the closing of that investigation. For procedural reasons, the October 17, 1994 initial decision that the C/K pickup trucks subject to EA92–041 contain a defect related to motor vehicle safety is vacated.

FOR FURTHER INFORMATION CONTACT: Ellen Berlin, Director, Office of Public and Consumer Affairs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–9550.

Authority: 49 U.S.C. 30118; delegations of authority at 49 CFR 1.50(a) and 501.8(g).

Issued on: March 9, 1995.

William A. Boehly,

Associate Administrator for Safety Assurance.

Attachment A—Settlement Agreement Between the United States Department of Transportation and General Motors Corporation

March 7, 1995.

Settlement Agreement

Whereas, the National Highway Traffic Safety Administration (NHTSA), an agency of the United States Department of Transportation (DOT), conducted an investigation (EA92–041) into an alleged defect related to motor vehicle safety of model year 1970–1991 full-sized General Motors Corporation (GM) pickup trucks and cab-chassis equipped with fuel tanks mounted outboard of the frame rails (C/K pickup trucks); and

Whereas, on October 17, 1994, Secretary of Transportation Federico Peña announced his initial decision that the C/K pickup trucks contain a defect related to motor vehicle safety; and

Whereas, no final decision had been made by the Secretary of Transportation as to whether the C/K pickup trucks contain a defect related to motor vehicle safety; and

Whereas, DOT and GM each determined that the settlement of the above-referenced investigation, as memorialized in a letter agreement dated December 2, 1994, is in the public interest and best furthers their mutual interest in motor vehicle safety; and

Whereas, DOT and GM agree that this settlement will avoid time-consuming, costly litigation of a complex matter that raises difficult factual and legal issues; and instead offers an opportunity for meaningful cooperation between government and industry to significantly enhance the safety of the driving public;

Now therefore, the Department of Transportation and General Motors Corporation hereby agree to the following settlement of this matter:

I. Terms and Conditions

A. Enhance Federal Motor Vehicle Safety Standard (FMVSS) No. 301

1. GM and DOT will support enhancement of the current standard regarding fuel system integrity, FMVSS 301, through a public rulemaking process.

a. GM will support the development by DOT, on an expedited basis, of a revised standard that best simulates the real-world crash conditions that result in post-crash fires.

b. GM agrees that the current FMVSS 301 standard should be enhanced to meet today's high pressure fuel system designs and in today's traffic environment to provide higher levels of occupant protection from post-crash fires.

c. It is envisioned that the revised standard would employ a more representative impacting device than the current standard, would involve higher test speeds (approximately 40 m.p.h.) than the current standard, and would include separate tests of the integrity of fuel system components in addition to full vehicle tests at different impact locations.

2. GM agrees that its support will take the following form:

a. GM will, to the extent legally permissible, take an active part in the rulemaking process.

b. GM will undertake and/or finance research, including research described in the other provisions of this agreement, which will further the development of an enhanced standard.

c. GM will submit to NHTSA's rulemaking docket all research undertaken or financed in accordance with the other provisions of this agreement that support the development of an enhanced standard.

3. GM and DOT will work together to improve other Federal motor vehicle safety standards.

4. None of the provisions in this section A. shall operate to give GM

rights it does not otherwise have under the Administrative Procedure Act or under any other provision of law, nor deny or abridge such rights to any other person.

B. Fire Safety Research

1. GM will finance motor vehicle fire safety research, or otherwise contract to conduct such research. GM agrees to expend at least $5,000,000 within the two-year period following the effective date of this agreement for this activity. GM will expend at least an additional $5,000,000 during the subsequent three years for this activity unless both NHTSA and GM agree that this activity should no longer be funded. Research to be conducted shall include, among other possible projects: (i) Detailed accident analysis and development of new vehicle crash and component level testing procedures; (ii) testing of materials that would reduce the risk of fire; and (iii) development of techniques for preventing, containing and extinguishing vehicle fires. The research projects shall be undertaken in accordance with paragraph B.2., below.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal identifying the facilities to be used and the research projects to be undertaken during the initial two-year period of activity. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the research projects. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects and to consider any proposed modifications to those projects.

3. Six months prior to the end of the initial two-year period of activity, GM will submit to NHTSA a description of the projects proposed to be funded during the subsequent three-year period. The parties shall then follow the procedures set forth in paragraph B. 2, above, in reaching agreement as to the projects for the subsequent period and in monitoring such projects.

4. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of fire safety research projects conducted under this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. DOT will provide, in its discretion and consistent with applicable law, available resources to support this project. Such resources may include, but are not limited to, project reviews, research on post-crash fire prevention, research related to the FMVSS No. 301 rulemaking, public information, and other similar activities.

C. Public Education

1. GM agrees to expend at least $11,855,000 within the five-year period following the effective date of this agreement in the areas of public education, as generally described herein. GM will expend approximately one-fifth of this amount each year over the five-year period. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Funds shall be spent in the following areas: (i) Support for enactment, upgrading and/or retention of state legislation for the enhancement of driver and vehicle safety including, for example, administrative license revocation laws and blood alcohol content laws (e.g., .08 BAC laws, zero tolerance laws for youth), and for the primary enforcement of seat belt laws; (ii) public information and education materials (including public service announcements) on driver and vehicle safety (e.g., anti-drinking and driving messages, encouragement of seat belt usage), particularly in support of legislative and/or enforcement campaigns and/or to publicize new or existing laws, and development and distribution of special safety awareness materials for targeted hard-to-reach populations; and (iii) support of the Network of Employers for Traffic Safety (NETS) program and the Techniques for Effective Alcohol Management (TEAM) program.

3. All public information and education materials prepared by, or under contract to, GM shall be submitted to NHTSA for its comments and recommendations prior to their issuance. GM will provide NHTSA with a copy of all such finalized materials.

4. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal for the projects and activities to be undertaken by GM during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken or financed. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of such projects or activities and to consider any proposed modifications to them.

5. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph C.4 above in reaching agreement as to the projects and activities for the subsequent period and in monitoring such projects and activities.

6. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of the projects or activities conducted pursuant to this section.

7. GM's commitment to expend these funds is dependent upon DOT's direct or indirect support, through expenditures, grants to states and/or other third parties, or otherwise, for public education programs and activities at approximately equivalent levels. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment of expenditures to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

D. Crash Test Dummy Research and Development

1. GM agrees to expend at least $6,500,000 within the five-year period following the effective date of this agreement in the area of research into and development of crash test dummies. GM will expend approximately one-fifth of this amount each year of the five-year period. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal describing the projects and activities to be undertaken by GM during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives

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will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects or activities and to consider any proposed modifications to those projects.

3. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph D.2 above in reaching agreement as to the projects and activities for the subsequent period and in monitoring such projects and activities.

4. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of crash dummy research and development projects conducted pursuant to this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. GM's commitment to expend these funds is dependent upon DOT supporting crash dummy research at approximately equivalent levels. Such support may include, but is not limited to grants and contracts, as well as direct and indirect expenditures, for biomechanical testing, analytical modeling, dummy component development, and accident data analyses. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

E. Burn & Trauma Research

1. GM agrees to expend at least $5,000,000 within the five-year period following the effective date of this agreement to further research relating to the causes and treatment of burns and trauma. GM shall accomplish this task by means of donations and/or grants to one or more institutions with experience in burn and/or trauma research. Institutions selected as recipients of these funds shall use the funds for specific research projects designed to advance medical science's understanding and treatment of burn or trauma injuries, particularly those arising out of motor vehicle accidents. GM will donate approximately $1,000,000 each year over the five-year period to agreed-upon projects. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Within 60 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal identifying the institutions to be selected and the projects to be undertaken during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the institutions to be selected and the projects to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects and to consider any proposed modifications to those projects.

3. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph E.2 above in reaching agreement as to the projects for the subsequent period and in monitoring such projects.

4. The terms of any donation or grant shall require appropriate recordkeeping and reporting obligations, including progress reports, by the recipient institutions sufficient to assure NHTSA and GM that the funds are being prudently spent for their intended purposes, and that the objectives of the research program are being realized.

5. GM shall notify NHTSA of each donation or grant made by it and shall provide NHTSA with an annual summary of its donations under this provision of the agreement.

6. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its grantees shall be entitled to receive or retain any proprietary interest in such research.

F. Computer Modeling

1. GM agrees to expend $2,000,000 within the first year following the effective date of this agreement in the area of computer-based design modeling of accident-related injuries arising from fire, trauma, and exposure to toxic substances. GM agrees to expend an additional $3,000,000 for these purposes over the subsequent three-year period. The parties expect that this activity will assist in the development of more effective crash test dummies.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal describing the projects and activities to be undertaken by GM during the initial one-year period of activity for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects or activities and to consider any proposed modifications to those projects or activities.

3. Three months prior to the end of the initial one-year period of activity, GM will submit to NHTSA a description of the projects and activities proposed to be funded during the subsequent three-year period. The parties shall then follow the procedures set forth in paragraph F.2, above, in reaching agreement as to the projects or activities for the subsequent period and in monitoring such projects or activities.

4. GM will provide NHTSA with such progress reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of such computer-based design modeling projects conducted under this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. GM's commitment to expend the $3,000,000 for the latter three-year period is dependent on DOT, in good faith, supporting these or similar activities during the latter three-year period. DOT support may take the form of, but is not limited to, grants and contracts, as well as direct and indirect expenditures, for computer modeling for side impact and frontal impact dummies. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

G. Impairment Research

1. GM agrees to expend at least $5,000,000 within the five-year period following the effective date of this agreement for research into the areas of driver impairment, including but not limited to (i) the effects of aging, (ii) the effects of alcohol, and (iii) the effects of the use of prescription and other lawful drugs. GM will expend approximately one-fifth of this amount each year of the five-year period. GM, with NHTSA's concurrence, may alter the rate of spending if doing so would further the goals of this section.

2. Within 30 days of the effective date of this agreement, GM and NHTSA representatives will meet, at which time GM will provide NHTSA with a proposal describing the projects and activities to be undertaken by GM during the first year for purposes of satisfying the requirements of this section. The NHTSA representatives will promptly review GM's proposal and provide recommendations and comments on it. The NHTSA and GM representatives will continue to meet and confer as is necessary to reach agreement on the projects or activities to be undertaken. Thereafter, the NHTSA and GM representatives will meet periodically to review the status and progress of the projects or activities and to consider any proposed modifications to those projects or activities.

3. Sixty days prior to the end of the first year period of activity, and thereafter on an annual basis or on such other basis as GM and NHTSA mutually shall determine, GM shall submit to NHTSA a description of the projects and activities to be undertaken during the following year or other agreed-upon time period. The parties shall then follow the procedures set forth in paragraph G.2 above in reaching agreement as to the projects or activities for the subsequent period and in monitoring such projects or activities.

4. GM will provide NHTSA with such reports as may reasonably be required by NHTSA to inform NHTSA of the status, progress, and results of driver impairment research projects conducted under this agreement.

5. All research undertaken pursuant to this provision shall be submitted to NHTSA and shall be made publicly available. Neither GM nor any of its contractors or grantees shall be entitled to receive or retain any proprietary interest in such research.

6. GM's commitment to expend these funds is dependent upon DOT supporting driver impairment research at approximately equivalent levels. Such support may include, but is not limited to, grants and contracts, as well as direct and indirect expenditures, for research, and other activities which further the development of facilities, tools or other means to support such research. If DOT does not provide such support, GM and DOT will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels.

H. Child Safety Seats

1. GM agrees to donate to one or more qualified organizations at least $4,000,000 for the purchase and distribution of child safety seats during the first year following the effective date of this settlement agreement. GM shall donate such funds in the approximate amount of $1,000,000 during each quarter of that year. GM also agrees to donate at least $4,000,000 within the subsequent four years to one or more qualified organizations for the purchase and distribution of additional child safety seats.

2. DOT shall identify, on an ongoing basis so as to facilitate timely GM donations, qualified organizations which DOT in its sole discretion deems appropriate to receive donations from GM for the purchase and distribution of child safety seats. GM, in its sole discretion, shall select from the list of qualified organizations provided by DOT, the organization(s) to which it will donate funds, and shall decide the exact amount of funds that each such organization will receive.

3. In order to be identified by DOT as a qualified organization, an organization shall certify to DOT in writing that it shall: (i) Work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs; (ii) have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues; (iii) distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States; (iv) comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs); (v) distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds; (vi) educate recipients of the seats as to methods of proper installation and use; (vii) not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats; (viii) add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities; (ix) allow the activities conducted pursuant to this provision to be audited by such third party as selected by DOT; (x) acknowledge and agree that such commitments and promises shall be enforceable; and (xi) acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

4. GM's commitment to donate the second $4,000,000 of funds during the subsequent four-year period is dependent upon DOT's expenditure of funds for the development and support of child safety seat loaner and give-away programs during that period. If DOT makes such expenditures, GM shall donate funds in accordance with this section at equivalent levels as DOT until such time as GM's total $8,000,000 commitment is fulfilled. If DOT does not make such expenditures, DOT and GM will use their best efforts to discuss, in good faith, whether and how to redirect GM's commitment to other alternative programs furthering motor vehicle safety to which DOT is committing funds at equivalent levels. Costs and expenses attributable to DOT's efforts in identifying qualified organizations shall not count as part of DOT's expenditure of funds for purposes of this section.

I. Dismissal of Lawsuit

Within five days after the execution of this final settlement agreement, GM will dismiss *General Motors Corporation* v. *Peña*, C.A. No. 94–75668 E.D. Mich. (filed Nov. 17, 1994) by filing a notice of dismissal in the form attached as Exhibit A.

J. Pending Investigation

1. Within five days after the execution of this final settlement agreement, DOT

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will close its investigation into whether the GM C/K pickup trucks contain a defect related to motor vehicle safety (EA 92–041). DOT will not, in connection with that investigation, seek to have GM, either voluntarily or involuntarily, recall or take other field action with respect to the C/K pickup trucks.

2. The initial decision of October 17, 1994, was not a final decision or final finding of a defect and was subject to further review by DOT. DOT will not reach a final decision in this matter as to whether the GM C/K pickup trucks contain a defect related to motor vehicle safety. For procedural reasons, the initial decision will be vacated within five days after the execution of this final settlement agreement. Within five days after the execution of this agreement, DOT will publish in the **Federal Register** and place in the public file for EA92–041 a closing memo indicating DOT's reasons for entering into this agreement and containing notice of vacation of DOT's initial decision in the matter.

II. Reporting and Recordkeeping

A. GM will certify its compliance with the terms and conditions of this settlement agreement (including without limitation the requirement that all expenditures shall be "new" as defined in section III.E below), shall maintain such records as are necessary to demonstrate its compliance, and shall make such records available as may be reasonably required by DOT.

B. In addition to the requirements contained in the above provisions, GM will provide annual reports to NHTSA within 30 days following the end of each one- year period after the effective date of this agreement, until the terms of the agreement are satisfied, describing how GM is meeting its commitments and obligations under this agreement. Each annual report shall contain information relating to the nature and levels of expenditures for all projects undertaken pursuant to this settlement agreement, including the methodology for computing the value of GM's contributions.

C. Upon request, DOT will make available to GM information to confirm that DOT has provided support to certain projects as specified in Part I of this settlement agreement.

III. General Provisions

A. This agreement contains the entire agreement between the parties regarding the subject matter. There are no promises, agreements, conditions, undertakings, warranties or representations oral or written, express or implied, between them relating to this subject matter, other than as herein set forth. This agreement is intended by the parties to be an integration of all prior or contemporaneous promises, agreements, conditions, negotiations and undertakings between them.

B. This agreement may not be modified or amended except by an agreement in writing, signed by the parties.

C. This settlement agreement, and any amendments or modifications thereto, shall conform to and be carried out in accordance with all applicable laws and regulations. GM and DOT shall work in good faith to ensure that any amendments or modifications reflect consistency with these principles. If any portion of this agreement or any amendment or modification is not consistent with applicable laws and regulations, that portion shall be severable and the parties shall work in good faith to restructure that portion of the agreement consistent with the parties' original intent. The remainder of this agreement and any amendment or modification shall continue to be binding on the parties.

D. The headings in the agreement are for convenience only, and shall not limit or otherwise affect or describe the scope or intent of any of the terms hereof or of any particular section thereof. Any references to "NHTSA" in this agreement shall mean the National Highway Traffic Safety Administration or its successor(s).

E. GM's financial obligations hereunder shall represent, in all instances, new expenditures not heretofore provided for in any approved GM budget or otherwise planned (prior to the execution of the parties' December 2, 1994 letter agreement) to be undertaken by GM during the period of this settlement agreement. Annually repeated expenditures, e.g., annual contributions to charities or lobbying organizations, made or committed to by GM prior to the execution of the parties' December 2, 1994, letter agreement, shall not count as new expenditures except those portions, if any, of such expenditures that are over and above such annually repeated expenditure amounts.

F. Research reports submitted to NHTSA by or on behalf of GM and made publicly available pursuant to this agreement may, consistent with applicable law, identify GM as a source or sponsor of the report by stating that the report was financed, produced, or prepared, as applicable, "by GM pursuant to an agreement between GM and the U.S. Department of Transportation." Public education materials produced or distributed by a third party (e.g., lobbying organization, AD Council, state or local government agency) pursuant to this agreement shall, absent legal prohibition to the contrary, contain a source identification which identifies such third party as the source of the materials in question. Public education materials produced and distributed directly by GM pursuant to this agreement may contain a source identification, assuming no other appropriate third party source exists, which states discretely, "Brought to you, produced, or sponsored by the U.S. Department of Transportation and General Motors Corporation pursuant to an agreement between the parties."

G. For the projects and activities encompassed by this agreement, GM's expenditures may be made, where appropriate, in the form of a combination of money, facilities, human resources, salaries, and other things directly related to the performance of such projects and activities and valued according to generally accepted accounting principles. However, GM's expenditures may not include general and administrative expenses attributable to GM corporate activities not directly related to the projects and activities conducted under this agreement; nor may GM's expenditures include indirect costs, such as depreciation of facilities and equipment, amortization of intangible rights, and insurance of all types, not directly related to the projects and activities conducted under this agreement. Furthermore, costs and expenses attributed to the development of GM's proposals pursuant to paragraphs B.2, B.3, C.4, C.5, D.2, D.3, E.2, E.3, F.2, F.3, G.2, and G.3 of Part I of this settlement agreement shall not be used by GM to fulfill its financial commitments.

H. This settlement agreement reflects the parties' desire to fully and completely settle the current investigation by DOT into an alleged defect of 1970–91 full-sized GM pickup trucks. Nonetheless, DOT reserves the right at any time, based on new information, to open a new defect investigation with respect to whether the GM C/K pickup trucks contain defect(s) related to motor vehicle safety. Nothing in this agreement shall nullify any obligation the Secretary may have under law to consider new evidence that was not part of the administrative record in this case. If a subsequent defect investigation involving the same alleged safety defect in the C/K trucks is opened, any unfulfilled commitments by GM under this agreement shall become null and void and GM shall not be deemed to have waived, by reason of the execution of this agreement, any defense to or argument against any action by NHTSA, DOT or the Secretary.

I. The provisions regarding the redirection of funds, which appear in paragraphs C.7, D.6, F.6, G.6, and H.4 of Part I of this agreement, are intended by GM and DOT to require both parties to act in good faith to consider alternative programs of mutual interest in motor vehicle safety to which the funds may be redirected and to reflect a strong presumption that the funds in question will be redirected to such alternative programs.

J. In attempting to reach agreement on the projects or activities to be undertaken or financed by GM pursuant to sections C, D, F, and G of Part I of this agreement, the parties shall meet and confer in the utmost good faith and NHTSA shall not unreasonably withhold its agreement to a GM proposal that falls within the applicable description of activities and otherwise reasonably furthers the goals of the section in question.

K. All questions with respect to the construction of this agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the United States.

L. GM and DOT agree that this settlement agreement shall constitute a binding and enforceable contractual agreement upon GM and DOT and any successor corporations or agencies. In the event of a breach of this agreement, either party may institute a civil action in the United States District Court for the District of Columbia to enforce the terms of this agreement or to seek other appropriate relief.

M. By entering into this settlement agreement, neither GM nor DOT concedes the validity of each other's claims or defenses, and nothing in this settlement agreement shall constitute an admission by either party concerning its claims or defenses.

N. This settlement agreement is entered into solely for the purposes of settling the matters described herein and shall not confer any rights or benefits upon persons who are not parties to this agreement.

IV. Effective Date

The effective date of this agreement shall be March 7, 1995.

Agreed to by:

Dated: March 6, 1995.

John F. Smith,

Chief Executive Officer and President, General Motors Corporation.

Dated: March 7, 1995.

Federico Peña,

Secretary, Department of Transportation.

BILLING CODE 4910-58-P

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

GENERAL MOTORS CORPORATION, Plaintiff,	)	
v.	)	Civ. Action No. 94 CV 74668
FEDERICO PEÑA, Secretary of Transportation, UNITED STATES DEPARTMENT OF TRANSPORTATION and NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, Defendants.	)	

NOTICE OF DISMISSAL

Plaintiff, by its undersigned counsel, hereby dismisses this action pursuant to Fed. R. Civ. P. 41(a)(1).

Respectfully submitted,

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Counsel for Plaintiff
GENERAL MOTORS CORPORATION

Dated:

[FR Doc. 95-6138 Filed 3-10-95; 8:45 am]
BILLING CODE 4910-58-p

[Docket No. 95-15; Notice 1]

Receipt of Petition for Decision That Nonconforming 1985 Suzuki GS850 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1985 Suzuki GS850 motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1985 Suzuki GS850 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is on April 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United Sates unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer No, R-90-007) has petitioned NHTSA to decide whether 1985 Suzuki GS850 motorcycles are eligible for importation into the United States. The petitioner contends that this vehicle is eligible for importation under 49 U.S.C. 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1985 Suzuki GS850 has safety features that comply with Standards Nos. 106 *Brake Hoses*, 116 *Brake Fluids*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

The petitioner further contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* (a) Installation of headlamps with DOT markings; (b) installation of stoplamp and taillamp lenses with DOT markings; (c) installation of turn signal lamps and lenses with DOT markings; (d) installation of amber front and red rear reflectors with DOT markings; (e) installation of a white license plate lamp and lens with DOT markings; (f) rewiring of the ignition switch so that the headlamp and taillamp are illuminated when the ignition is turned on.

Standard No. 111 *Rearview Mirrors:* Installation of rearview mirrors with DOT markings.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate and VIN reference label on the vehicle.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* (a) Installation of an illuminated speedometer, calibrated in miles per hour; (b) installation of approve symbols on controls for supplemental engine stop, turn signal, headlamp, and horn.

Standard No. 205 *Glazing Materials:* Installation of a windscreen with DOT markings.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 8, 1995.

Harry Thompson,
Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95-6147 Filed 3-13-95; 8:45 am]
BILLING CODE 4910-59-M

[Docket No. 95-14; Notice 1]

Receipt of Petition for Decision That Nonconforming 1973 Lancia Fulvia 1.3 S 2-Door Coupes Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1973 Lancia Fulvia 1.3 S 2-Door Coupe passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1973 Lancia Fulvia 1.3 S 2-Door Coupe that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States

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because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is on April 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.—certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer No. R–90–007) has petitioned NHTSA to decide whether 1973 Lancia Fulvia 1.3 S 2-Door Coupes are eligible for importation into the United States. The petitioner contends that this vehicle is eligible for importation under 49 U.S.C. § 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1973 Lancia Fulvia 1.3 S 2-Door Coupe has safety features that comply with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windhsield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brakes Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner further contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of approved symbols on the controls for the lights, hazard warning flasher, windshield washer, and windshield wipers.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* (a) Installation of sealed beam headlamps and front sidemarkers with a DOT marking; (b) installation of taillamp lenses and rear sidemarkers with a DOT marking.

Standards No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 116 *Brake Fluids:* Installation of a label with required information near the brake fluid cap.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning system and light.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Additionally, the petitioner claims that the bumpers on the 1973 Lancia Fulvia 1.3 S 2-Door Coupe must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 8, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–6148 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–10; Notice 2]

Receipt of Petition for Decision That Nonconforming 1973 Dodge Colt 2-Door Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1973 Dodge Colt 2-Door Coupe passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1973 Dodge Colt 2-Door Coupe that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is on April 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1973 Dodge Colt 2-Door Coupe passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1973 Dodge Colt 2-Door Coupe that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Mitsubishi Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1973 Dodge Colt 2-Door Coupe to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1973 Dodge Colt 2-Door Coupe, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1973 Dodge Colt 2-Door Coupe is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirror*, 113 *Hood Latch Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "Brake" on the brake failure indicator lamp lens; (b) placement of the required symbols on the controls for lights, hazard warning flasher, windshield washer, and windshield wipers.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses and rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 116 *Brake Fluid:* Placement of a label containing required information on or near the brake fluid cap.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning light and buzzer.

Standard No. 214 *Side Impact Protection:* Installation of a seat belt warning light and buzzer.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1973 Dodge Colt 2-Door Coupe must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 8, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–6149 Filed 3–13–95; 8:45 am]

BILLING CODE 4190–59–M

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[Docket No. 74–40; Notice 8]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of text and data for 1995 insurance cost information booklet.

SUMMARY: This notice provides the 1995 text and data that new car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information may assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION: Pursuant to section 201 (e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941 (e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 582, Insurance Cost Information Regulation, to require dealers of new automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider Part 582 insofar as it requires new automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers (59 FR 13630). On March 22, 1994, NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend Part 582 in a number of respects (59 FR 13634). NHTSA is currently considering the comments received in response to that NPRM, and the publication of today's Notice, which is statutorily mandated, should not be construed as implying any agency decision on the pending NPRM.

Pursuant to 49 CFR 582.4, new automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in § 582.5. Early each year, NHTSA publishes updated annual data in the Notices section of the **Federal Register**. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge within 30 days from the date of publication of the data in the **Federal Register**.

NHTSA has mailed a sample copy of the 1995 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by April 13, 1995. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Mr. Orron Kee of NHTSA's Office of Market Incentives ((202) 366–0846) to receive a copy of the booklet and to be added to the mailing list.

The required text and data are as follows:

Comparison of Differences in Insurance Costs for Passenger Motor Vehicles on the Basis of Damage Susceptibility

February 1995.

The National Highway Traffic Safety Administration (NHTSA) has provided the information in this booklet in compliance with Federal law as an aid to consumers considering the purchase of a new vehicle. The booklet compares differences in insurance costs for different makes and models of passenger cars on the basis of damage susceptibility. However, it does not indicate a vehicle's relative safety.

The following table contains the best available information regarding the effect of damage susceptibility on insurance premiums. It was taken from data compiled by the Highway Loss Data Institute (HLDI) in its December 1994 Insurance Collision Report, and reflects the collision loss experience of passenger vehicles sold in the United States in terms of the average loss payment per insured vehicle year for model years 1992–1994. NHTSA has not verified the data in this table.

The table presents vehicles' collision loss experience in relative terms, with 100 representing the average for all passenger vehicles. Thus, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average while a rating of 96 reflects a collision loss experience that is 4 percent lower (better) than average. The table does not include information about new models, models that have been substantially redesigned, and models without enough claim experience.

Although many insurance companies use the HLDI information to adjust the "base rate" for the collision portion of their insurance premiums, the amount of any such adjustment is usually small. It is unlikely that your total premium will vary more than ten percent depending upon the collision loss experience of a particular vehicle. If you do not purchase collision coverage or your insurance company does not use the HLDI information, your premium will not vary at all in relation to these rankings.

In addition, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, you should contact insurance company agents directly to determine the actual premium that you will be charged for insuring a particular vehicle.

Please Note: In setting insurance premiums, insurance companies mainly rely on factors that are not directly related to the vehicle itself (except for its value). Rather, they mainly consider driver characteristics (such as age, gender, marital status, and driving record), the geographic area in which the vehicle is driven, how many miles are traveled, and how the vehicle is used. Therefore, to obtain complete information about insurance premiums, you should contact insurance companies directly.

Insurance companies do not generally adjust their premiums on the basis of data reflecting the crashworthiness of different vehicles. However, some companies adjust their premiums for personal injury protection and medical payments coverage if the insured vehicle has features that are likely to improve its crashworthiness, such as air bags and automatic seat belts.

Test data relating to vehicle crashworthiness are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal crash protection in new vehicles. Information on vehicles that NHTSA has tested in the NCAP program can be obtained by calling the agency's toll-free Auto Safety Hotline at (800) 424–9393.

COLLISION INSURANCE LOSSES, MODEL YEAR 1992–94 PASSENGER MOTOR VEHICLES*

Make	Model	Relative loss payment
Small Cars—Two-Door Models		
Average for small two-door models		123
Subaru	Justy	91
Suzuki	Swift	104
Saturn	SC	106
Toyota	Tercel	110
Dodge	Shadow	115
Mitsubishi	Precis	115
Plymouth	Laser	115
Mazda	323	116
Geo	Metro	116
Plymouth	Sundance	117
Mitsubishi	Eclipse	121
Plymouth	Laser 4WD	123
Mitsubishi	Eclipse 4WD	125
Eagle	Talon	125
Hyundai	Excel	128
Ford	Escort	135
Toyota	Paseo	138
Nissan	Sentra	142
Eagle	Talon 4WD	145
Nissan	240SX Conv.	150
Hyundai	Scoupe	154
Mitsubishi	Mirage	169
Volkswagen	Corrado	247
Four-Door Models		
Average for small four-door models		110
Mercury	Tracer	93
Subaru	Impreza 4WD	95
Ford	Escort	100
Dodge	Shadow	102
Plymouth	Sundance	108
Geo	Metro	109
Suzuki	Swift	114
Geo	Prizm	116
Toyota	Tercel	117
Subaru	Impreza	119
Nissan	Sentra	119
Toyota	Corolla	121
Volkswagen	Golf III	122
Volkswagen	Jetta III	123
Mazda	Protege	127
Hyundai	Excel	131
Hyundai	Elantra	147
Station Wagons/Passenger Vans		
Average for small station wagons/passenger vans		79
Subaru	Loyale 4WD	74
Subaru	Impreza 4WD	79
Subaru	Impreza	83
Ford	Escort	85
Mercury	Tracer	86
Toyota	Corolla	101
Sports Models		
Average for small sports models		144
Mazda	MX–5 Miata Conv	91
Mercedes	SL Class Conv	101
Mercury	Capri Conv	113
Honda	Civic Del Sol. Conv	116
Chevrolet	Corvette Conv	134
Dodge	Stealth	138
Porsche	911 Targa/Coupe	140
Chevrolet	Corvette	147
Mitsubishi	3000 GT	152

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COLLISION INSURANCE LOSSES, MODEL YEAR 1992–94 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
Toyota	MR2	157
Alpha Romeo	Spider Conv	171
Saab	900 Convertible	181
Porsche	968 Coupe	203
Nissan	300ZX	218
Nissan	300ZX Conv	244
Dodge	Stealth 4WD	256
Mazda	RX–7 Coupe	282
Mitsubishi	3000 GT 4WD	286
Porsche	911 Convertible	324
Midsize Cars—Two-Door Models		
Average for midsize two-door models		109
Oldsmobile	Cutlass Supreme	68
Oldsmobile	Achieva	70
Oldsmobile	Cutlass Supreme Conv	71
Buick	Regal	81
Chevrolet	Lumina	83
Pontiac	Grand Am	92
Pontiac	Grand Prix	92
Chevrolet	Cavalier	97
Pontiac	Sunbird Convertible	99
Pontiac	Sunbird	99
Honda	Accord	100
Chevrolet	Cavalier Convertible	101
Mercury	Topaz	101
Ford	Tempo	104
Toyota	Camry	105
Chrysler	LeBaron Convertible	107
Honda	Civic	112
Chevrolet	Beretta	116
Honda	Civic Coupe	130
Mazda	MX–6	140
Acura	Integra	145
Toyota	Celica	149
Honda	Prelude	156
Ford	Probe	159
Four-Door Models		
Average for midsize 4-door models		91
Buick	Skylark	56
Chevrolet	Lumina	62
Oldsmobile	Cutlass Supreme	62
Oldsmobile	Achieva	67
Buick	Regal	67
Buick	Century	68
Oldsmobile	Cutlass Ciera	77
Chrysler	LeBaron	77
Pontiac	Grand Prix	80
Dodge	Spirit	80
Pontiac	Grand Am	81
Ford	Taurus	81
Plymouth	Acclaim	82
Mercury	Sable	83
Saturn	SL	83
Ford	Tempo	87
Chevrolet	Cavalier	87
Chevrolet	Corsica	92
Pontiac	Sunbird	93
Honda	Accord	93
Nissan	Altima	99
Mitsubishi	Diamante	101
Subaru	Legacy	103
Toyota	Camry	104
Subaru	Legacy 4WD	104
Honda	Civic	107
Mitsubishi	Galant	113
Infiniti	G20	114

COLLISION INSURANCE LOSSES, MODEL YEAR 1992–94 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
Volvo	850	117
Mercury	Topaz	119
Hyundai	Sonata	121
Nissan	Maxima	123
Mazda	626	125
Acura	Integra	127
Lexus	ES 300	127
Saab	900	139
Audi	90	143
Volkswagen	Passat	146
Station-Wagons/Passenger Vans		
Average for midsize station wagons/passenger vans		80
Buick	Century	55
Honda	Accord	61
Mitsubishi	Diamante	64
Oldsmobile	Cutlass Ciera	64
Subaru	Legacy	70
Saturn	SW	71
Chevrolet	Cavalier	75
Ford	Taurus	76
Mercury	Sable	77
Subaru	Legacy 4WD	99
Volvo	850	100
Volkswagen	Passat	106
Toyota	Camry	111
Sports Models		
Average for midsize sports models		141
Ford	Mustang Convertible	130
Ford	Mustang	135
Pontiac	Firebird	154
Chevrolet	Camaro	163
Subaru	SVX 4WD	175
Nissan	300ZX 2+2	208
Toyota	Supra	372
Acura	NSX	554
Luxury Models		
Average for midsize luxury models		149
Lincoln	Continental	93
BMW	300i Series Conv.	109
Volvo	940/960 SW	112
Cadillac	Eldorado	116
Mercedes	C Class 4-door	122
Volvo	940/960 4-door	123
Audi	100 4-door	128
Infiniti	J30	153
Saab	9000	168
BMW	500iT Series SW	169
BMW	500i Series 4-door	170
Audi	100/S4 Quattro	173
Lexus	SC 300/400	178
Lexus	GS 300	185
BMW	300i Series 2-door	196
BMW	300i Series 4-door	214
Jaguar	XJ 2-door	253
Jaguar	XJ Convertible	258
Large Cars—Two-Door Models		
Average for large two-door models		87
Mercury	Cougar	73
Ford	Thunderbird	87

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COLLISION INSURANCE LOSSES, MODEL YEAR 1992–94 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
Four-Door Models		
Average for large four-door models		85
Ford	Crown Victoria	74
Chevrolet	Caprice	79
Buick	LeSabre	80
Chrysler	Concorde	81
Mercury	Grand Marquis	83
Eagle	Vision	85
Oldsmobile	Eighty-Eight	86
Oldsmobile	Ninety-Eight	86
Dodge	Intrepid	87
Pontiac	Bonneville	88
Chrysler	New Yorker (LH Body)	92
Buick	Roadmaster	92
Buick	Park Avenue	96
Acura	Vigor	127
Station Wagons/Passenger Vans		
Average for large station wagons/passenger vans		59
Chevrolet	Astro Van	53
Oldsmobile	Silhouette	54
Dodge	Caravan 4WD	56
GMC	Safari Van	63
Plymouth	Voyager 4WD	63
Nissan	Quest Wagon	63
Dodge	Caravan	63
Mercury	Villager Wagon	63
Pontiac	Trans Sport	65
Chevrolet	Astro Van 4WD	65
Plymouth	Voyager	65
Chrysler	Town & Country	65
Chevrolet	Lumina APV	66
Chrysler	Town &Country 4WD	75
Ford	Aerostar Van	77
Toyota	Previa Van	83
Buick	Estate Wagon	84
Volkswagen	Eurovan	88
Chevrolet	Caprice	91
Ford	Aerostar Van 4WD	92
Toyota	Previa Van 4WD	98
Mazda	MPV Van	120
Mazda	MPV Van 4WD	122
Luxury Models		
Average for Large Luxury Models		122
Cadillac	DeVille 4-door	79
Lincoln	Town Car	93
Chrysler	LHS	98
Cadillac	Seville	110
Lincoln	Mark VIII	112
Cadillac	Brougham	127
Acura	Legend 4-door	139
Lexus	LS 400	151
Infiniti	Q45	160
Mercedes	SL Class LWB 4-door	161
Mercedes	E Class 4-door	171
Mazda	929	173
Acura	Legend 2-door	189
BMW	700iL	194
BMW	740i	202
Jaguar	XJ 4-door	217
Pickups—Small Pickups		
Average for small pickups		86
Mazda	Reg/ext. cab	63
Dodge	Dakota 4WD	76

COLLISION INSURANCE LOSSES, MODEL YEAR 1992–94 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
Ford	Ranger	77
Dodge	Dakota	78
Chevrolet	T10 4WD	79
Chevrolet	S10	83
Nissan	Regular/ext. cab	86
GMC	T15 4WD	88
Mitsubishi	Regular/ext. Cab	91
GMC	S15	93
Nissan	Reg/ext. cab 4WD	93
Mitsubishi	Standard Bed 4WD	95
Ford	Ranger 4WD	97
Isuzu	Regular/ext. cab	98
Mazda	Regular/ext. cab 4WD	105
Isuzu	Reg/ext. cab 4WD	107
Toyota	Reg/ext. Cab 4WD	108
Toyota	Regular/ext. Cab	110
Standard Pickups		
Average for standard pickups		55
Ford	F–150 4WD	58
GMC	1500	61
Chevrolet	1500	61
GMC	2500	62
Ford	F–250	62
GMC	1500 4WD	62
Ford	F–350	62
Chevrolet	1500 4WD	63
Chevrolet	2500 4WD	66
Ford	F–150	66
GMC	2500 4WD	66
Chevrolet	2500	67
GMC	3500 4WD	73
Ford	F–350 4WD	73
Ford	F–250 4WD	75
Chevrolet	3500	77
Dodge	Ram 2500	77
Chevrolet	3500 4WD	77
Dodge	Ram 1500	78
Dodge	Ram 1500 4WD	81
Dodge	Ram 2500 4WD	84
GMC	3500	86
Utility Vehicles—Small Utility Vehicles		
Average for small utility vehicles		95
Jeep	Wrangler	77
Suzuki	Sidekick 4-door 4WD	83
Suzuki	Samurai 4WD	84
Suzuki	Sidekick 4-door	85
Suzuki	Sidekick 2-door 4WD	98
Suzuki	Sidekick 2-door	105
Isuzu	Amigo 4WD	116
Geo	Tracker	117
Geo	Tracker 4WD	127
Isuzu	Amigo	132
Intermediate Utility Vehicles		
Average for intermediate utility vehicles		87
Ford	Explorer 4-door	57
Jeep	Grand Cherokee 4-door	65
Jeep	Cherokee 4-door	72
Chevrolet	K1500 Blazer	73
Jeep	Cherokee 2-door	73
Ford	Explorer 4-door 4WD	74
Ford	Explorer 2-door	74
Mazda	Navajo 2-door	74
GMC	Yukon 4WD	75
Ford	Bronco	78
GMC	S15 Jimmy 4-door	80

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COLLISION INSURANCE LOSSES, MODEL YEAR 1992–94 PASSENGER MOTOR VEHICLES*—Continued

Make	Model	Relative loss payment
Jeep	Grand Cherokee 4-dr 4WD	84
Chevrolet	S10 Blazer 4-door	85
Jeep	Cherokee 4-door 4WD	86
Mazda	Navajo 2-door 4WD	88
Ford	Explorer 2-door 4WD	90
GMC	T15 Jimmy 4-door 4WD	91
GMC	S15 Jimmy 2-door	93
Chevrolet	T10 Blazer 4-door 4WD	94
Jeep	Cherokee 2-door 4WD	95
Chevrolet	S–10 Blazer 2-door	98
Isuzu	Rodeo 4-door	100
Oldsmobile	Bravada 4-door 4WD	105
Isuzu	Trooper 4-door 4WD	110
Chevrolet	T10 Blazer 2-door 4WD	112
Isuzu	Rodeo 4-door 4WD	114
Toyota	4Runner Wagon 4-door	119
Nissan	Pathfinder 4-door 4WD	120
Mitsubishi	Montero 4-door 4WD	122
Nissan	Pathfinder 4-door	125
GMC	T15 Jimmy 2-door 4WD	131
Honda	Passport 4-door 4WD	133
Toyota	4Runner Wagon 4-dr 4WD	140
Toyota	Land Cruiser	141
Land Rover	Range Rover LWB	252
Land Rover	Range Rover	269
Large Utility Vehicles		
Average for large utility vehicles		67
Chevrolet	Suburban 2500	54
Chevrolet	Suburban 1500	60
GMC	Suburban 1500	62
GMC	Suburban 2500	64
Chevrolet	Suburban 1500 4WD	67
Chevrolet	Suburban 2500 4WD	69
GMC	Suburban 1500 4WD	80
GMC	Suburban 2500 4WD	98
Large Vans		
Average for large vans		64
Dodge	B150	38
Dodge	B250	42
Chevrolet	Sportvan 30	50
GMC	Vandura 2500	53
Chevrolet	Astro Cargo Van	55
Ford	E–250 Econoline	60
Ford	E–150 Club Wagon	60
Chevrolet	Chevy Van 20	60
Ford	E–150 Econoline	61
Dodge	B250 Cargo Van	68
Chevrolet	Chevy Van 30	70
Dodge	B150 Cargo Van	71
Dodge	B350 Cargo Van	73
Ford	E–350 Club Wagon	84
Ford	E–350 Econoline	86
Ford	Aerostar Cargo Van	90
Dodge	B350	91
Dodge	Caravan Cargo Van	116

If you would like more details about the information in this table, or wish to obtain the complete Insurance Collision Report, please contact HLDI directly, at: Highway Loss Data Institute, 1005 North Glebe Road, Arlington, VA 22201, Tel: (703) 247–1600.

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on March 9, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–6229 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 7, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0429.

Form Number: IRS Form 4506.

Type of Review: Extension.

Title: Request for Copy or Transcript of Tax Form.

Description: 26 U.S.C. 7513 allows for taxpayers to request a copy of a return. Form 4506 is used by a taxpayer to request a copy of a Federal tax form. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer.

Respondents: Business or other for-profit, Individuals or households, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 914,540.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—7 min.
Preparing the form—25 min.
Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 960,267 hours.

OMB Number: 1545–0441.

Form Number: IRS Forms 6559 and 6559–A.

Type of Review: Extension

Title:

1. Transmitter Report and Summary of Magnetic Media (6559), and
2. Continuation Sheet for Form 6559.

Description: Forms 6559 and 6559–A are used by filers of Form W–2 wage and tax data to transmit filing on magnetic media. The Social Security Administration (SSA) and the Internal Revenue Service (IRS) need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

Respondents: Business or other for-profit, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 100,000

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping Burden: 30,000 hours.

OMB Number: 1545–0720.

Form Number: IRS Forms 8038, 8038–G, and 8038–GC.

Type of Review: Revision.

Title:

1. Information Return for Tax-Exempt Private Activity Bond Issues (8038);
2. Information Return for Tax-Exempt Governmental Obligations (8038–G); and
3. Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales (8038–GC).

Description: Forms 8039, 8038–G and 8038–GC collect the information that IRS is required to collect by Code section 149(e). IRS uses the information to assure that tax-exempt bonds are issued consistent with the rules of Internal Revenue Code (IRC) sections 141–149.

Respondents: State, Local or Tribal Government, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 14,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8038	Form 8038–G	Form 8038–GC
Recordkeeping	6 hours, 2 minutes	2 hours, 17 minutes	1 hour, 46 minutes.
Preparing the form	7 hours, 37 minutes	2 hours, 22 minutes	2 hours, 50 minutes.
Copying, assembling, and sending the form to the IRS.	16 minutes	0 minutes	16 minutes.

Frequency of Response: Quarterly, Annually, Other.

Estimated Total Reporting/ Recordkeeping Burden: 836,140 hours.

OMB Number: 1545–0959.

Regulation ID Number: LR–213–76 Final Regulations.

Type of Review: Extension.

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

Description: Section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Respondents: Individuals or households.

Estimated Number of Respondent: 2,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,000 hours.

OMB Number: 1545–1057.

Form Number: IRS Form 8800.

Type of Review: Revision.

Title: Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

Description: Form 8800 is used by partnerships, REMICs, and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 20,000.

Estimated Burden Hours Per Respondent: 13 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 4,210 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building,Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–6232 Filed 3–13–95; 8:45 am]

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Office of Thrift Supervision

[No. 94–260]

Privacy Act of 1974 as Amended; Systems of Records

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of Privacy Act Systems of Records.

SUMMARY: The Office of Thrift Supervision (OTS) is publishing this notice to notify all interested parties of its complete systems of records in accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act).

EFFECTIVE DATE: Comments must be received no later than April 13, 1995.

The systems will be effective May 15, 1995, unless the OTS receives comments on the systems which would result in a contrary determination.

ADDRESSES: Send comments to: Director, Information Services Division, Records and Management Information, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, 20552, Attention Docket No. 94–260. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the date that they are due in order to be considered by the OTS. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Mary Ann Reinhart, Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Telephone No. (202) 906–5896.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board (FHLBB), the OTS's predecessor in interest, for purposes of the Privacy Act, was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183, enacted August 9, 1989. The Privacy Act regulations formerly appearing at 12 CFR part 505a were substantially superseded because the OTS, as a component part of the Treasury Department, is covered by the Privacy Act regulations appearing at 31 CFR part 1, subpart C. At 54 FR 49411, Nov. 30, 1989, chapter V was revised. At 55 FR 43434, October 29, 1990, the OTS adopted the systems of records of the FHLBB. 12 CFR part 503 was published as an interim measure to ensure that all necessary and appropriate information was available to the public concerning OTS's Privacy Act provisions. A complete list of the systems of records is attached.

Dated: March 6, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

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Treasury/OTS .001

SYSTEM NAME:

Confidential Individual Information System.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

See Appendix A for appropriate local address of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records contain certain information concerning individuals who have filed notices of intention to acquire control of a savings association; controlling persons of companies that have applications to acquire control of a savings association; organizers of savings associations who have sought Federal Savings and Loan Insurance Corporation or Savings Association Insurance Fund insurance of accounts or federal charters; individuals who have been the subject of administrative enforcement actions or other civil actions by any agency with authority to supervise or regulate federally insured depository institutions; those who have been named in criminal referrals by such agencies or by federally insured depository institutions or who have been referred to professional societies, licensing authorities or ethics committees for disciplinary purposes; individuals identified as the subjects of criminal investigations by the Department of Justice or state law enforcement authorities in connection with the operation of Federally insured depository institutions; individuals denied employment as senior executive officers with or member of a board of directors of a savings association or savings and loan holding company pursuant to 12 U.S.C. section 1831i; and persons engaging in significant business transactions with savings associations. This system also contains the identity of the custodian of any documents describing the specific event causing entry into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records identify the individual involved, and his or her relationship to the savings association, service corporation or savings and loan holding company; identify and describe the event causing entry of information into the system (e.g., a change in control filing, enforcement action, or criminal referral) and any regulatory, judicial, or supervisory action taken as a result; and the location and nature of any additional records concerning the specific event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464.

PURPOSE(S):

This system is the primary OTS database to record information on individuals subject to criminal referrals, enforcement actions, liability suits, or investigations on unusual transactions; and on application activity to acquire control, obtain a charter, elect an officer of a thrift, and several other application types. It also keeps track of the names of criminal referrals and individual defendants in directors' and officers' liability lawsuits brought by Federal banking agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Informaiton in these records may be used to:

(1) Provide the Department of Justice with periodic reports on the number, place, and individual identify of outstanding potential criminal violations of the law that have been referred to the Department;

(2) provide information or records to any other appropriate domestic or foreign governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license;

(3) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(4) provide information to receivers or conservators of savings associations or formerly insured savings associations;

(5) when considered appropriate, provide information to a bar assocaiton, the American Institute of Certified Public Accountants, or other professional organizations performing similar functions, for possible disciplinary action; and

(6) provide information to any person with whom the OTS contracts to reproduce, by typing, photocopying or other means, any record within this system for use by the OTS and its staff in connection with their official duties or to any person who is utilized by the OTS to perform clerical or stenographic functions relating to the official business of the OTS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the individual and/or by the individual's relationship to the thrift or thrift holding company involved.

SAFEGUARDS:

Paper records are maintained in locked file cabinets with access limited to those persons who have need for information from the system in the performance of their duties. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for fifteen years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

National Administrator, Corporate Activities Division. See "System Location" for address.

NOTIFICATION PROCEDURE:

This system is exempt from notification and record-access requirements and requirements that an individual be permitted to contest its contents under 5 U.S.C. 552a (j)(2) and (k)(2) as relating to investigatory material compiled for law enforcement purposes.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

This system is exempted under 5 U.S.C. 552a (j)(2) and (k)(2) from the requirements that the sources of records used in the system be published, because it contains investigatory material compiled for law enforcement purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/OTS .002

SYSTEM NAME:

Correspondence/Correspondence Tracing.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

White House and Executive Office of the President officials, Members of Congress, Treasury Department officials, the general public, and businesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence addressed to the Director of OTS; letters from members of Congress transmitting letters from constituents or making inquiries; OTS responses; OTS memoranda and notes used to prepare responses; and information concerning internal office assignments, processing and response to the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To maintain written records of correspondence addressed to the Director of OTS and Congressional correspondence; to track the progress of the response; to document the completion of the response to the incoming correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosures may be made to a Congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Information may be disclosed to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media and in paper files.

RETRIEVABILITY:

Records are maintained by name of individual; assignment control number.

SAFEGUARDS: Access to paper records is limited to authorized personnel with a direct need to know. Some paper records are maintained in locked file cabinets in a secured office with access limited to those personnel whose official duties require access. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Computerized records and paper records are retained for two (2) years after the Director's or member of Congress' term, then transferred directly to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Congressional Affairs. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) identify the category and type of records sought; and

(3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Incoming correspondence and Office of Thrift Supervision responses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .003

SYSTEM NAME:

Consumer Complaint System.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC., 20552.

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See Appendix A for appropriate local address of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit inquiries of complaints concerning federally insured depository institutions, service corporations, and subsidiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consumer's name, savings association's docket number, case number as designated by a Consumer Complaint Case number. Within these categories of records, the following information may be obtained: Consumer's address, source of inquiry or complaint, nature of the inquiry or complaint, nature of the inquiry or complaint designated by instrument and complaint code, information on the investigation and resolution of inquiries and complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):

OTS uses this system to track individual complaints and to provide additional information about each institution's compliance with regulatory requirements.

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be disclosed to officials of regulated savings associations in connection with investigation and resolution of complaints and inquiries;

(2) relevant information may be made available to appropriate law enforcement agencies or authorities in connection with investigation and/or prosecution of alleged civil, criminal and administrative violations;

(3) disclosures may be made to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) disclosures may be made to other Federal and nonfederal governmental supervisory or regulatory authorities when the subject matter is within such other agency's jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on magnetic media.

RETRIEVABILITY:

By name of the individual, complaint case number, savings association name, docket number, district complaint code, instrument code, source code or by some combination thereof.

SAFEGUARDS:

Paper records are maintained in locked file cabinets with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of system passwords, to those whose official duties require access.

RETENTION AND DISPOSAL:

Active files are maintained until the case is closed. Closed files are retained for six (6) years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Consumer Programs, See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Inquirer or complainant (or his or her representative which may include a member of Congress or an attorney); savings association officials and employees; compliance/safety and soundness examiner(s); and other supervisory records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .004

SYSTEM NAME:

Criminal Referral Database.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

See Appendix A for appropriate local address of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suspected of having committed crime(s) and individuals indicated or convicted of crime(s) against or involving savings associations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal Referrals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464; 44 U.S.C. 3101.

PURPOSE(S):

This system lists all matters referred to the Department of Justice for possible criminal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on magnetic media.

RETRIEVABILITY:

Records are filed by name of individual, savings institution or referral control number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of Enforcement. See "System Location" for address.

NOTIFICATION PROCEDURE:

This system is exempt from notification and record-access requirements and requirements that an individual be permitted to contest its contents under 5 U.S.C. 552a(j)(2) and (k)(2) as relating to investigatory material complied for law enforcement purposes.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Criminal referral forms compiled for law enforcement purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Treasury/OTS .005

SYSTEM NAME:

Employee Counseling Service.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

See appendix A for appropriate local address of OTS Regional Officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who seek counseling services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Counseling records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

To provide a history and record of the employee counseling session(s) and to assist the counselor in identifying and resolving employee problem(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system will have minimal effect on individual privacy because access is limited to the employee counseling service program counselor. Under special and emergency circumstances records may be released to medical personnel, research personnel, and as result of a court order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files.

RETRIEVABILITY:

Records are retrieved by a number assigned to employee.

SAFEGUARDS:

Records are maintained in locked file cabinet. Access is limited to the employee counselor.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) identify the category and type of records sought; and

(3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Employees and Counselors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .006

SYSTEM NAME:

Employee Locator File.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

See Appendix A for appropriate local address of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present employees of the OTS and persons whose employment has been terminated within the last six months.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Employee's name, present address, telephone number, and the name, address, and telephone number of another person to notify in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

This system provides current information on employee's address and emergency contact person.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure of information may be made to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Medical personnel in case of an emergency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on magnetic media.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know information in a record for a particular job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained until the termination of the employee's employment with OTS. After termination, records are retained for six months then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

The individual whose record is being maintained.

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EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .007

SYSTEM NAME:

Employee Parking.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All OTS employees (and their corresponding car-pool members) who apply for agency-controlled parking.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is contained in parking applications and computerized reports and consists of (for each rider): Name, home address, office phone number, and place of employment (for non-OTS riders). For OTS employees only: Work hours, supervisor's name, office code, social security number and years of service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

To control and maintain parking applications and spaces.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

No disclosures are made outside of OTS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on magnetic media.

RETRIEVABILITY:

Records are filed by parking pass number, name of OTS employee and social security number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Administration. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Applications submitted by OTS employees and non-OTS riders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .008

SYSTEM NAME:

Employee Training Database.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee records are maintained by name, course taken, social security number, position, division, and manager name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

To maintain necessary information on training taken by employees through outside sources and vendors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are not disclosed outside of OTS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media.

RETRIEVABILITY:

Records are filed by individual name, social security number and course taken.

SAFEGUARDS:

Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Training Manager, Human Resources Division. See "System Location" for address.

NOTIFICATION PROCEDURES:

Individuals wishing to be notified if they are named in this system or gain access to records to maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Personnel records and training request forms completed by employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .009

SYSTEM NAME:

Health Files.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

Categories of individuals covered by the system:

Participating employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

To maintain records regarding medical care provided to employees of OTS by the health care unit which is now closed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

No disclosures are made outside of OTS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files.

RETRIEVABILITY:

Records are maintained by name of individual.

SAFEGUARDS:

Records re maintained at the Federal Records Center. Only authorized personnel have access to location.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources. See "System Location" for address.

NOTIFICATION PROCEDURES:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Health unit staff and subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .010

SYSTEM NAME:

Inquiry/Request Control System.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who make inquiries, requests for records or information concerning activities of the OTS, regulated financial institutions and related individuals and organizations; e.g., holding companies, service corporations, directors of thrifts, advisors or representatives of the thrift industry and also requests for records under the Freedom of Information Act and the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Selected items of information extracted from incoming inquiry, and records concerning internal office case assignments, processing and resolution of the inquiry/request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To internally control work flow and assignments; to track progress of the inquiry/request; and to provide statistical information for budgetary, resource allocation, and statutory reporting purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of information may be made to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and magnetic media.

RETRIEVABILITY:

Records are maintained by individual name, case control number, subject of inquiry, savings and loan association and/or financial institution, docket number, receipt date, inquiry code, disposition code, or any combination thereof.

SAFEGUARDS:

Paper records are maintained in secured offices with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for one (1) year and then destroyed. Freedom of Information Act and Privacy Act records are retained and disposed of in accordance with appropriate National Archives and Records Administration General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Services Division. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Incoming inquiry or request (by mail, fax, or telephone), internal case assignment notations, case control, and close-out forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .011

SYSTEM NAME:

Positions/Budget.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20052.

See Appendix A for appropriate local address of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees of the Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee records are kept by office and agency as follows: Name,

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title, entered on duty date, service computation date, occupation series, social security number, grade, current salary, location of employee, date of last promotion, and eligibility for promotion. Records are kept for each office (and, where appropriate, for the agency) on number of vacancies, authorized position ceilings, and number of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

The system allows the OTS Budget Division the ability to track positions by office to assure the assigned Full-Time Equivalent ceilings are not exceeded and remain within the limits set by the Director of the OTS. The system also provides information to each office which can be used in developing their calendar year compensation budgets.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and magnetic media.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARD:

Paper records are maintained in file folders in secured areas. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are being retained and disposed of in accordance with appropriate National Archives and Records Administration General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director Budget Division, See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .012

SYSTEM NAME:

Payroll/Personnel System & Payroll Records.

SYSTEM LOCATIONS:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street NW., Washington, DC 20552.

See Appendix A for appropriate local address of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Office of Thrift Supervision (OTS) employees and all former employees of the OTS, within the past three years.

CATEGORIES OF RECORDS IN THE SYSTEM

Information pertaining to:

(1) employee status, grade, salary, pay plan, hours worked, hours of leave taken and earned, hourly rate, gross pay, taxes, deductions, net pay, location, and payroll history;

(2) employee's residence, office, social security number, and address;

(3) Personnel actions (SF–50), State employees' withholding exemption certificates, Federal employees' withholding allowance certificates (W4), Bond Allotment File (SF–1192), Federal Employee's Group Life Insurance (SF–2810 & 2811), Savings Allotment-Financial Institutions, Address File (OTS Form 108), Union Dues Allotment, time and attendance reports, individual retirement records (SF–2806), Combined Federal Campaign allotment, direct deposit, health benefits, and thrift investment elections to either the Federal Thrift Savings Plan (TSP–1) or OTS' Financial Institutions Savings Plan (FITP–107 and K 1–2).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

Provides all the key personnel and payroll data for each employee which is required for a variety of payroll and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that records maintained in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of implementing the statute, or rule or regulation or order issued pursuant thereto;

(2) records from this system may be disclosed as a routine use to other Federal agencies including the Office of Personnel Management if necessary for or regarding the payment of salaries and expenses incident to employment at the Office of Thrift Supervision or other Federal employment, or the vesting, computation, and payment of retirement or disability benefits;

(3) records from this system may be necessary to support the assessment, computation, and collection of Federal, state, and local taxes, in accordance with established procedures;

(4) disclosure of information may be made to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media, microfiche, and in paper files.

RETRIEVABILITY:

Records are filed by individual name, social security number and by office.

SAFEGUARDS:

Paper and microfiche records are maintained in secured offices and access is limited to personnel whose official duties require such access and

who have a need to know the information in a record for particular job-related purpose. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the records;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Personnel and payroll records of current and former employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/OTS .013

SYSTEM NAME:

Personnel Security and Suitability Program.

SYSTEM LOCATION:

Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former government employees and applicants applying for employment with the Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background investigations, limited background investigations, minimal background investigations, national agency check investigations, periodic re-investigations, and FBI and other agency name checks, investigative information relating to personnel investigations conducted by the Department of the Treasury, the Office of Personnel Management, and other Federal agencies and departments on preplacement and postplacement basis to make suitability for employment determinations and for granting security clearances. Card records, automated data systems, or logs comprised of notices of personnel security and suitability investigations reflecting identification data on incumbents and former employees, and record type of E.O. 10450 investigations and degree and date of security clearance, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, sections 2 and 3, Executive Order 12356, part 4, Executive Order 10577, 5 USC 3301, and 5 CFR parts 731, 732 and 736.

PURPOSE(S):

The purpose of the records in the Personnel Security and Suitability System is to enable the OTS to determine and document each employee's suitability or security risk for selection, employment and continued employment according to appropriate Federal regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed to departmental and agency officials or other Federal agencies as relevant to or necessary for making suitability or employability retention or security clearance determinations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, logs and index cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are stored in locked metal containers and in locked rooms. They are limited to officials who have a need to know in the performance of their official duties. Officials are required to sign an access form.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division. See "System Location" for address.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from current and former employees, coworkers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—Addresses of Office of Thrift Supervision Regional Offices:

Northeast Region

10 Exchange Place Centre, 18th Floor, Jersey City, New Jersey 07302

Southeast Region

1475 Peachtree Street, NE., Atlanta, Georgia 30309

Central Region

111 East Wacker Drive, Suite 800, Chicago, Illinois 60601

Midwest Region

122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039

West Region

One Montgomery Street, Suite 400, San Francisco, California 94104

[FR Doc. 95–6166 Filed 3–13–95; 8:45 am]

BILLING CODE 6720–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 49
Tuesday, March 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Friday, March 17, 1995, to conduct a public hearing, and to consider testimony, on the Corporation's proposals to amend the assessment rate schedule for members of the Bank Insurance Fund while retaining the existing assessment rate schedule applicable to members of the Savings Association Insurance Fund.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 10, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–6433 Filed 3–10–95; 8:45 am]

BILLING CODE 6714–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., March 21, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32518, *The Phillips Company—Petition For Declaratory Order.*

Finance Docket No. 32479, *Caddo Antoine and Little Missouri Railroad Company—Feeder Line Acquisition—Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR.*

Ex Parte No. 511, *Petition for Rulemaking—Protection of Surveying Benchmarks in Railroad Abandonments.*

Finance Docket No. 31922 (Sub-No. 1), *Wisconsin Central Ltd.—Purchase Exemption—Soo Line Railroad Company Line Between Superior and Ladysmith, WI (Arbitration Review).*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6374 Filed 3–10–95; 3:17 pm]

BILLING CODE 7035–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, March 21, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6420A Railroad Accident Report: Collision and Derailment of Amtrak Train 87 With An Intermodal Trailer Carried on CSXT Train 176 at Selma, North Carolina, May 16, 1994

6503A Briefs of Aviation Accidents: Two Briefs Previously Sent to the Board for Approval—Talladega, Alabama and Hohenwald, Tennessee

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 10, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–6324 Filed 3–10–95; 10:01 am]

BILLING CODE 7533–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 2:00 p.m., Friday, March 17, 1995.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/ Secretary 202/376–2441.

Agenda

I. Call to Order
II. Approval of Minutes:
December 16, 1994
III. Audit Committee Report:
February 22, 1995, Meeting
a. Receive FY 1994 Audit Report from Outside Auditors
b. Selection of Outside Auditors
c. Proposed Revisions to the Corporate Investment Policy
IV. Budget Committee Report:
February 23, 1995, Meeting
a. Proposed FY 1995 Budget Revisions
V. Treasurer's Report
VI. Executive Director's Quarterly Management Report
VII. Adjourn

Veronica D. Dean

Assistant Secretary/Paralegal.

[FR Doc. 95–6325 Filed 3–10–95; 10:01 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 13, 20, 27, and April 3, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 13

Tuesday, March 14

11:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Wednesday, March 15

2:00 p.m.
Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
(Contact: Jesse Funches, 301–415–7322)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 20—Tentative

Wednesday, March 22

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: John Hickey, 301–415–7192)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
Briefing on Status of Reactor Regulatory Reform Initiatives (Public Meeting)
(Contact: Gene Imbro, 301–415–2969)

Wednesday, March 29

10:00 a.m.
Briefing by National Academy of Sciences on Status of Independent Review of Medical Use Program (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)
2:00 p.m.
Briefing on Lessons Learned from Enhanced Participatory Rulemakings (Public Meeting)
(Contact: Chip Cameron, 301–415–1642)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 31

10:00 a.m.
Briefing by IG and Staff Concerning Audit of HLW Licensing Support System (LSS) (Public Meeting)
(Contact: Moe Levin, 301–415–7458)

Week of April 3—Tentative

Wednesday, April 5

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting)
(Contact: Edward Butcher, 301–415–3183)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3–0 on March 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management and Personnel Matters" (CLOSED—Ex. 2 and 6) be held on March 8, and on less than one week's notice to the public.

By a vote of 3–0 on March 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Sequoyah Fuels Corporation—Intervenor's Petition for Review of the Presiding Officer's Order LBP–93–25" (Public Meeting) be held on March 9, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292:

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: March 9, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–6390 Filed 3–10–95; 3:17 pm]

BILLING CODE 7590–01–M

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Corrections

Federal Register
Vol. 60, No. 49
Tuesday, March 14, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY-92-004]

RIN 0581-AA60

Voluntary Shell Egg Grading

Correction

In rule document 95-5543 beginning on page 12401 in the issue of Tuesday, March 7, 1995, make the following correction:

On page 12403, the table is corrected to read as follows:

§56.231 [Corrected]

	Nest-run grade, description [1]	U.S. nest-run — percent AA quality [2]
Minimum percentage of quality required (lot average) [3]	AA quality [4]	20
	A quality or better [5]	55
Maximum percentage tolerance permitted (15 percent lot average) [3]	B quality for shell shape, pronounced ridges or thin spots, interior quality (including blood & meat spots) or cage marks [6] and blood stains	10
	Checks	6
	Loss	3
	Adhering dirt or foreign material ½ inch or larger in diameter	5

[1] Stains (other than rusty or blackish appearing cage marks or blood stains), and adhering dirt and foreign material on the shell less than ½ inch in diameter shall not be considered as quality factors in determining the grade designation.
[2] The actual total percentage must be stated in the grade name.
[3] Substitution of eggs of higher qualities for lower specified qualities is permitted.
[4] No case may contain less than 10 percent AA quality.
[5] No case may contain less than 75 percent A quality and AA quality eggs in any combination.
[6] Cage marks which are rusty or blackish in appearance shall be considered as quality factors. Marks which are slightly gray in appearance are not considered as quality factors.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 950206040-5040-01; I.D. 111494A]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Foreign Fishing; Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish

Correction

In rule document 95-3485 beginning on page 8479, in the issue of Tuesday, February 14, 1995, make the following corrections:

1. On page 8481, in the first column, in the first paragraph, after the word "below" insert a period.

2. On the same page, in the 2nd column, in the 21st line from the top, after the word "specifications" insert "(Table 1)".

3. On page 8482, in the third column, in the table, under the heading entitled "Roe season[4]", in the eighth line, "552 (6)" should read "552".

4. On page 8484, in the third column, in the first paragraph, in the first line from the bottom, after the word "mortality" insert a period.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Changes to U.S. Court of Appeals for the Armed Forces Rles

Correction

In notice document 95-1879 beginning on page 4893 in the issue of Wednesday, January 25, 1995, make the following correction:

On page 4895, in the first column, under **DATES**, in the last line, "February 24, 1995." should read "March 27, 1995.".

BILLING CODE 1505-01-D

federal register

Tuesday
March 14, 1995

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, et al.

Powered Industrial Truck Operator Training; Proposed Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. S–008]

Powered Industrial Truck Operator Training

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise the general industry safety standard for training powered industrial truck operators and to add equivalent training requirements for the maritime industries. The existing standard in part 1910 requires that only trained operators who are authorized to do so can operate powered industrial trucks and that methods of training be devised. The proposed training requirements would mandate the development of a training program that would base the amount, type, degree, and sufficiency of training on the knowledge of the trainee and the ability of the vehicle operator to acquire, retain, and use the knowledge and the skills and abilities that are necessary to safely operate the truck. A periodic evaluation of each operator's performance would be required. Refresher or remedial training also would be required, based primarily on unsafe operation, an accident or near miss, or deficiencies found in a periodic evaluation of the operator.

DATES: Written comments and requests for a hearing on this proposed rule must be postmarked by July 12, 1995.

ADDRESSES: Comments, information, and hearing requests should be sent in quadruplicate to: Docket Office, Docket No. S–008; Room N2624; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Avenue NW; Washington, DC 20210 (202–219–7894).

FOR FURTHER INFORMATION CONTACT: Mr. Richard P. Liblong, Office of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3641; 200 Constitution Avenue NW; Washington, DC 20210 (202–219–8148).

SUPPLEMENTARY INFORMATION:

I. Background

a. The General Industry Standard

On May 29, 1971 (36 FR 10466), OSHA adopted some of the existing Federal standards and national consensus standards as OSHA standards under the procedures described in section 6(a) of the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 655, et.al.). Section 6(a) permitted OSHA to adopt, without rulemaking, within 2 years of the effective date of the Act, any established Federal standard or national consensus standard.

One of the consensus standards that was adopted under the 6(a) procedure was the American National Standards Institute (ANSI) B56.1–1969 Safety Standard for Powered Industrial Trucks. Among the provisions adopted from that standard was the operator training requirement codified at 29 CFR 1910.178(l), which states:

> Only trained and authorized operators shall be permitted to operate a powered industrial truck. Methods of training shall be devised to train operators in the safe operation of powered industrial trucks.

In that consensus standard, a powered industrial truck is defined as a mobile, power-driven vehicle used to carry, push, pull, lift, stack, or tier material. One truck may be known by several different names. Included are vehicles that are commonly referred to as high lift trucks, counterbalanced trucks, cantilever trucks, rider trucks, forklift trucks; high lift trucks, high lift platform trucks; low lift trucks, low lift platform trucks; motorized hand trucks, pallet trucks; narrow aisle rider trucks, straddle trucks; reach rider trucks; single side loader rider trucks; high lift order picker rider trucks; motorized hand/rider trucks; or counterbalanced front/side loader lift trucks. Excluded from the scope of the OSHA standard are vehicles used for earth moving or over-the-road haulage.

b. The Maritime Safety Standards

In 1958, Congress amended the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) (44 Stat. 1424; 33 U.S.C. 901 et seq.) to provide maritime employees with a safe work environment. The amendments (Pub. L. 85–742, 72 Stat. 835) required employers covered by the LHWCA to "furnish, maintain and use" equipment and to establish safe working conditions in accordance with regulations promulgated by the Secretary of Labor. Two years later, the Labor Standards Bureau (LSB) issued the first set of safety and health regulations for longshoring activities as 29 CFR part 9 (25 FR 1565, February 20, 1960). These regulations only covered longshoring activities taking place aboard vessels.

Passage of the OSH Act (84 Stat. 1590; 29 U.S.C. 650 et seq.) authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the LHWCA, as occupational safety and health standards under the OSH Act. Accordingly, the Secretary adopted the existing shipyard employment and longshoring regulations and recodified these rules as 29 CFR parts 1915 and 1918 (39 FR 22074, June 19, 1974). Since the OSH Act comprehensively covered all private employment, the longshoring standards also applied to shoreside cargo-handling operations. (See 29 CFR 1910.16.) The requirements for the use of mechanically powered vehicles used aboard vessels were codified at § 1918.73. These provisions did not include a requirement for the training of vehicle operators.

In addition, in accordance with established policy codified at 29 CFR 1910.5(c)(2), OSHA has applied its general industry regulations to shoreside activities not covered by its older longshoring rules. Citations also have been issued under section 5(a)(1) (the General Duty Clause) of the OSH Act (84 Stat. 1593; 29 U.S.C. 654), since some serious hazards are not addressed by the requirements of part 1910, 1915, or 1918.

On July 5, 1983 (48 FR 30886), OSHA published its final standard for Marine Terminals. These rules were intended to address the shoreside segment of marine cargo handling. Section 1917.27 Personnel required that:

(a) *Qualifications of machinery operators.*

(1) Only those employees determined by the employer to be competent by reason of training or experience, and who understand the signs, notices and operating instructions and are familiar with the signal code in use shall be permitted to operate a crane, winch or other power operated cargo handling apparatus, or any power operated vehicle, or give signals to the operator of any hoisting apparatus.

Exception: Employees being trained and supervised by a designated person may operate such machinery and give signals to operators during training.

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or other ailments which may suddenly incapacitate him shall be permitted to operate a crane, winch or other power-operated cargo handling apparatus or a power-operated vehicle.

The Marine Terminal Standards also had requirements for powered industrial trucks at § 1917.43 Powered industrial trucks. However, these requirements were for the operation, maintenance and outfitting of those vehicles and did not expand upon the training requirements found at § 1917.27.

On June 2, 1994, OSHA published in the **Federal Register** (59 FR 28594) a Notice of Proposed Rulemaking (NPRM) for the revision of the longshoring and marine terminals standards.

That NPRM did not propose to amend significantly the aforementioned training requirements of § 1917.27 or to incorporate a training requirement for longshoring (on-board vessel) operations.

c. Updated Consensus Standard

Since promulgation of the OSHA standards, the consensus standard (ANSI B56.1) has undergone four complete revisions (dated 1975, 1983, 1988 and 1993). The current consensus standard (Ex. 3–1) states:

> 4.18 Operator qualifications.
>
> Only trained and authorized persons shall be permitted to operate a powered industrial truck. Operators of powered industrial trucks shall be qualified as to visual, auditory, physical, and mental ability to operate the equipment safely according to 4.19 and all other applicable parts of Section 4.
>
> 4.19 Operator training.
>
> 4.19.1 Personnel who have not been trained to operate powered industrial trucks may operate a truck for the purposes of training only, and only under the direct supervision of the trainer. This training should be conducted in an area away from other trucks, obstacles, and pedestrians.
>
> 4.19.2 The operator training program should include the user's policies for the site where the trainee will operate the truck, the operating conditions for that location, and the specific truck the trainee will operate. The training program shall be presented to all new operators regardless of previous experience.
>
> 4.19.3 The training program shall inform the trainee that:
>
> (a) The primary responsibility of the operator is to use the powered industrial truck safely following the instructions given in the training program.
>
> (b) Unsafe or improper operation of a powered industrial truck can result in: death or serious injury to the operator or others; damage to the powered industrial truck or other property.
>
> 4.19.4 The training program shall emphasize safe and proper operation to avoid injury to the operator and others and prevent property damage, and shall cover the following areas:
>
> (a) Fundamentals of the powered industrial truck(s) the trainee will operate, including:
>
> (1) characteristics of the powered industrial truck(s), including variations between trucks in the workplace;
>
> (2) similarities to and differences from automobiles:
>
> (3) significance of nameplate data, including rated capacity, warnings, and instructions affixed to the truck;
>
> (4) operating instructions and warnings in the operating manual for the truck, and instructions for inspection and maintenance to be performed by the operator;
>
> (5) type of motive power and its characteristics;
>
> (6) method of steering;
>
> (7) braking method and characteristics, with and without load;
>
> (8) visibility, with and without load, forward and reverse;
>
> (9) load handling capacity, weight and load center.
>
> (10) stability characteristics with and without load, with and without attachments;
>
> (11) controls-location, function, method of operation, identification of symbols;
>
> (12) load handling capabilities; forks, attachments;
>
> (13) fueling and battery charging;
>
> (14) guards and protective devices for the specific type of truck;
>
> (15) other characteristics of the specific industrial truck.
>
> (b) Operating environment and its effect on truck operation, including:
>
> (1) floor or ground conditions including temporary conditions;
>
> (2) ramps and inclines, with and without load;
>
> (3) trailers, railcars, and dockboards (including the use of wheel chocks, jacks, and other securing devices;
>
> (4) fueling and battery charging facilities;
>
> (5) the use of "classified" trucks in areas classified as hazardous due to risk of fire or explosion, as defined in ANSI/NFPA 505;
>
> (6) narrow aisles, doorways, overhead wires and piping, and other areas of limited clearance;
>
> (7) areas where the truck may be operated near other powered industrial trucks, other vehicles, or pedestrians;
>
> (8) use and capacity of elevators;
>
> (9) operation near edge of dock or edge of improved surface;
>
> (10) other special operating conditions and hazards which may be encountered.
>
> (c) Operation of the powered industrial truck, including:
>
> (1) proper preshift inspection and approved method for removing from service a truck which is in need of repair;
>
> (2) load handling techniques, lifting, lowering, picking up, placing, tilting;
>
> (3) traveling, with and without loads; turning corners;
>
> (4) parking and shutdown procedures;
>
> (5) other special operating conditions for the specific application.
>
> (d) Operating safety rules and practices, including:
>
> (1) provisions of this Standard in Sections 5.1 to 5.4 address operating safety rules and practices;
>
> (2) provisions of this Standard in Section 5.5 address care of the truck;
>
> (3) other rules, regulations, or practices specified by the employer at the location where the powered industrial truck will be used.
>
> (e) Operational training practice, including;
>
> (1) if feasible, practice in the operation of powered industrial trucks shall be conducted in an area separate from other workplace activities and personnel;
>
> (2) training practice shall be conducted under the supervision of the trainer;
>
> (3) training practice shall include the actual operation or simulated performance of all operating tasks such as load handling, maneuvering, traveling, stopping, starting, and other activities under the conditions which will be encountered in the use of the truck.
>
> 4.19.5 Testing, Retraining, and Enforcement.
>
> (a) During training, performance and oral and/or written tests shall be given by the employer to measure the skill and knowledge of the operator in meeting the requirements of the Standard. Employers shall establish a pass/fail requirement for such tests. Employers may delegate such testing to others but shall remain responsible for the testing. Appropriate records shall be kept.
>
> (b) Operators shall be retrained when new equipment is introduced, existing equipment is modified, operating conditions change, or an operator's performance is unsatisfactory.
>
> (c) The user shall be responsible for enforcing the safe use of the powered industrial truck according to the provisions of this Standard.
>
> **Note:** Information on operator training is available from such sources as powered industrial truck manufacturers, government agencies dealing with employee safety, trade organizations of users of powered industrial trucks, public and private organizations, and safety consultants.

(For an explanation of why OSHA decided to propose a somewhat different standard, see section entitled Summary and Explanation of the Proposed Standard, below.)

Since 1971, the consensus committee has adopted other volumes for additional types of vehicles that fall within the broad definition of a powered industrial truck. Specifically, requirements have been adopted for guided industrial vehicles, rough terrain forklift trucks, industrial crane trucks, personnel and burden carriers, operator controlled industrial tow tractors, and manually propelled high lift industrial trucks. This rulemaking would adopt training requirements for all types of powered industrial trucks regardless of their usage and the industry in which they are operating.

d. Petitions and Requests

On March 15, 1988, the Industrial Truck Association (ITA) petitioned OSHA to revise its standard requiring the training of powered industrial truck operators (Ex. 3–2). The petition contained suggested language for a proposed requirement along with a model operator training program by which compliance with the recommended requirement could be met. OSHA responded to the petition on April 8, 1988, stating that work on the

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revision of the OSHA powered industrial truck operator training requirement would begin as soon as other priority projects were completed.

In addition to the petition, other interested persons have frequently asked questions about training operators of powered industrial trucks, such as:

- What constitutes the necessary and sufficient training of forklift operators?
- How can one ensure that all forklift operators have been trained?
- What testing, if any, should be conducted as part of the training?
- Should the prior experience of a newly hired employee be considered as fulfilling part or all of the training requirement or totally fulfilling the employer's obligation to train that employee?

Some interested persons have suggested that OSHA develop a standardized training course or at least review and comment on or endorse various training courses, programs, agenda, or outlines. Others have suggested that OSHA license or certify all powered industrial truck operators to attest to their ability to properly operate powered industrial trucks. These concerns also were considered in the development of the proposed rulemaking. OSHA is proposing to amend the current powered industrial truck operator training requirements for general industry and to adopt the same requirement for the maritime industries.

e. Reasons for the Proposal

As discussed in the benefits discussed below and in the Regulatory Impact Analysis, powered industrial truck accidents cause approximately 85 fatalities and 34,900 serious injuries each year. It is estimated that approximately 20 to 25 percent are at least in part caused by inadequate training.

As just discussed, the ITA and others have requested that OSHA improve its training requirement for powered industrial truck operators. ANSI has substantially upgraded its recommended training requirements. OSHA preliminarily concludes that upgrading the training requirements for powered industrial truck operators will substantially reduce a significant risk of death and injury from untrained operators driving powered industrial trucks.

II. The Powered Industrial Truck

The term powered industrial truck is defined in the American Society of Mechanical Engineers, ASME B56.1 (formerly the ANSI B56.1 standard) as a "mobile, power propelled truck used to carry, push, pull, lift, stack, or tier material."

There are presently approximately 822,830 powered industrial trucks in use in American industry. This number was generated using the available information on truck shipments of powered industrial trucks and the percentage of market that ITA members control. This information was provided OSHA by the Industrial Truck Association.

The Industrial Truck Association stated in conversations with OSHA representatives that it considers the average useful life of a powered industrial truck to be 8 years. The 8-year life cycle has been used throughout the preparation of this proposed rule and in the formulation of the Preliminary Regulatory Impact Analysis. The vehicle manufacturers also estimate that there are, on average, 1.5 operators for each industrial truck. A search of the available literature indicates that this number has not been disputed. OSHA believes that this number is a fair assessment of the number of powered industrial operators since many employers (particularly small employers) have one operator per truck and the vehicle is used only during one shift per day whereas other vehicles are used by multiple operators during multiple shifts.

Powered industrial trucks are classified by the manufacturers according to their individual characters.

There are seven classes of powered industrial trucks:

Class 1—Electric Motor, Sit-down Rider, Counter-Balanced Trucks (Solid and Pneumatic Tires).

Class 2—Electric Motor Narrow Aisle Trucks (Solid Tire).

Class 3—Electric Motor Hand Trucks or Hand/Rider Trucks (Solid Tires).

Class 4—Internal Combustion Engine Trucks (Solid Tires).

Class 5—Internal Combustion Engine Trucks (Pneumatic Tires).

Class 6—Electric and Internal Combustion Engine Tractors (Solid and Pneumatic Tires).

Class 7—Rough Terrain Fork Lift Trucks (Pneumatic Tires).

Each of these different types of powered industrial trucks has its own unique characteristics, and inherent hazards. To maximize the effectiveness of the training, it must be somewhat unique for each type vehicle. For example, an operator of a high lift rider truck must have an understanding of the basics of the vehicle's stability (including those factors which affect that stability), the need to not overload the vehicle, and the need to operate the vehicle according to established rules (such as not using the vehicle to elevate employees who are standing on its forks). On the other hand, order picker trucks elevate the operator along with a platform that is used to hold material destined for storage or retrieval from storage in high stacking racks or bins. The platforms on these trucks are not completely enclosed by railings, toe boards, or other similar fall protection devices to prevent an operator from falling off an elevated platform. To be protected, the operator must wear a body harness or belt with a lanyard affixed to the mast of the vehicle or the overhead guard. Therefore, training for employees who use order picker trucks must emphasize that the use of the body belt or harness and lanyard is essential whenever the operator is aloft.

Powered industrial trucks may be powered by gasoline, propane, diesel or liquified petroleum gas engines or by electric motors. Each of the basic powerplants (except propane) and their associated components (such as mufflers on internal combustion engines and switches and wiring on electric trucks) may be upgraded and the entire truck may be approved by a nationally recognized testing laboratory for operation in certain classified hazardous areas. These classified hazardous areas are those parts of a plant, factory or other workplace where there exists or may exist concentrations of flammable gases or vapors, combustible dust, or easily ignitible flyings or fibers so that the risk of fire or explosion is increased. The current OSHA general industry standard for powered industrial trucks contains basic descriptions of the types of approved powered industrial trucks and the various classes, divisions, and groups of classified hazardous areas and some of the materials whose presence would cause classification of those areas. However, the number of substances whose presence causes the hazards of fire and/or explosion have increased greatly since promulgation of the OSHA standards. (For additional information on the properties and classifications of materials, see the National Fire Protection Association (NFPA) 505–1992 Fire Safety Standard for Powered Industrial Trucks Including Type Designation, Areas of Use, Maintenance, and Operation.) (Ex. 3–3).

In addition to the general requirements for truck operation, such as vehicle stability and load carrying capability, training must be provided for unusual situations, such as training operators to handle asymmetrical loads when their work includes this activity. The only way that unusual loads may be moved safely with some powered

industrial trucks is for the operator to understand and apply the principles of moments and stability of the vehicle. (These principles are explained in more detail in the part of this preamble entitled "Powered Industrial Truck Hazards.") With many powered industrial trucks, the capacity is given as some weight at some load center [usually 24" (61 cm)]. If the operator does not understand that the load center is the distance from the vertical face of the forks to the center of gravity of the load and that loads are usually symmetrical, then the operator may pick up a load incorrectly. If the operator understands that the capacity of the vehicle decreases as the load center increases, then some asymmetrical or off-center loads may be safely picked up and moved using a high lift truck. Other type trucks, such as low lift platform trucks, can handle asymmetrical or off-center loads with minimum danger to an employee because the load is not raised far above the ground. However, because these type trucks are unable to raise loads far above the ground, they are of little or no use when working in a workplace that has high stacking racks or bins where powered industrial trucks must be able to deposit and retrieve loads from considerable distances above the ground or floor.

Powered industrial trucks also are used to move large items or many smaller items about the workplace without the restrictions that generally exist with other mechanical material handling equipment. Other material handling equipment, like overhead cranes or conveyors, are restricted to moving material along a particular, predetermined pathway. A powered industrial truck, on the other hand, may operate along any aisleway or passageway provided it is wide enough to accommodate the vehicle and can support the vehicle and its load. Once one of these trucks has left an area, there is no remaining obstruction to the flow of employee or vehicular traffic, as would normally occur when fixed equipment is used.

Powered industrial trucks may be operated in and among employees with little or no inconvenience to the employees. Although it may be convenient to operate a powered industrial truck around employees, this can be dangerous, particularly when the employees may be hidden from view (for example, when they are working behind stored material.)

These trucks may operate on almost any type surface, from smooth and level floors to rocky, uneven ground, provided they were manufactured to operate on that type floor or ground and the surface does not have an excessive slope. Different type trucks are designed and manufactured to operate in various work environments. Not only may powered industrial trucks be used for moving material about the workplace, high lift trucks are used to raise loads up to 30 or 40 feet above the floor and deposit the material on a rack, mezzanine or other elevated location and then retrieve and lower the material. Many trucks were designed specifically to operate in restricted areas such as narrow aisles and passageways.

Because powered industrial trucks are intended to accomplish specific tasks in a particular manner, their use is restricted. For example, a powered industrial truck that was designed to operate in a restricted space (such as in a narrow aisle or passageway) must be manufactured with a narrow track (the distance between the two wheels on the same axle or at the same end of the vehicle). In many cases, the maximum width of a truck must be significantly less than the minimum width of the area in which it is operated since the vehicle will normally have to make turns so that loads may be deposited in and retrieved from racks or bins which are adjacent to the aisle or passageway. Narrow aisle trucks cannot be safely operated on a floor or the ground that is not smooth.

Another design criterion, the maximum lateral dimension of the vehicle, usually dictates where the various components of the vehicle, such as the engine or motor, the transmission and the seat for the operator, will be placed. The placement of these components may be higher or lower than their most desirable locations. The placement of the various components at a higher point of the vehicle than is desirable, which is the usual case, raises the center of gravity of the entire vehicle, thereby making the vehicle less stable. The greater the distance that the center of gravity of the vehicle and its load is above the ground, the less stable the vehicle (if all other factors remain constant). A more stable design of a powered industrial truck would require a wider track. This would allow installing the engine, transmission, and other components at a lower level of the truck, thereby lowering the center of gravity of the vehicle.

Because the powered industrial truck is a motor vehicle, its operation is similar to the automobile and some of its hazards are the same as those experienced during operation of the automobile. Like the automobile, the internal combustion engine powered industrial truck will move when the gas pedal depressed, and stop when the brake is applied. Some internal combustion engine and electric powered industrial trucks have both the accelerator and brake functions combined in one pedal or other controller providing restriction to movement of the vehicle when no pressure is applied to the pedal (or when the controller is in the neutral position). As pressure is applied to the pedal or other controller, the brake is gradually released, until at a given point of controller travel, the brake is completely disengaged. At this point, the vehicle can coast without restriction from the brake. Finally, as the pedal or other controller is actuated further, the motor or engine is engaged and the vehicle moves under the power supplied by the engine or motor. The vehicle then moves progressively faster as the pedal or controller is further actuated. Clearly good training is needed when design characteristics may reduce stability, limit vision or cause non-uniform methods of control.

Powered industrial trucks also may come equipped with, or can be modified to accept, attachments that allow movement of odd shaped materials or permit the truck to carry out tasks that may not have been envisioned when the truck was designed and manufactured. Many of these attachments may be added to or installed on the vehicle by the dealer or by the employer. For example, there are powered industrial truck attachments for grasping barrels or drums of material. Some of these attachments will not only grasp a barrel or drum but allow the vehicle operator to rotate the barrel or drum to empty the vessel or lay it on its side. Another attachment that looks like a long spike may be positioned within rolled material, such as carpeting. This attachment allows the movement of material without causing damage to the material being handled. All of these attachments may adversely effect the ability of a powered industrial truck to perform its primary function or may cause the vehicle to be used safely only under limited operating conditions, such as under reduced speed or load-carrying capacity. OSHA recognizes that certain attachments may limit the safe use of the vehicle. To ensure that modifications or additions do not adversely affect the safe use of the vehicle, OSHA requires at § 1910.178(b)(4) that:

(4) Modifications and additions which affect capacity and safe operation shall not be performed by the customer or user without the manufacturer's prior written approval. Capacity, operation, and maintenance instruction plates, tags, or decals shall be changed accordingly.

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When the use of specialized attachments restricts the use of the powered industrial truck or when the truck is used to lift people, it is essential that operator training must include instruction on the safe use of the vehicle so that the operator knows and understands the restrictions or limitations that are imposed upon the operation of the vehicle by the utilization of those attachments.

Another type of attachment that alters the basic use of the vehicle and presents unique hazards is an overhead hoist attachment. It is made up of a rail (like an I-beam) that is attached to the truck and supports an overhead hoist. It is very easy for an operator to pick up a load with an overhead hoist attachment while the load is close to the vehicle and, without realizing it, exceed the moment of the vehicle by moving the load further from the body of the vehicle. In order to operate this type attachment successfully, the operator must have specific training in the use of this attachment, including training in calculating the maximum load at different points in front of the vehicle and instruction in the causes of longitudinal vehicle tipover and its prevention.

In an attempt to improve the load carrying capability of the vehicle, some people add extra counterweights to powered industrial trucks. Although this will increase the ability of the vehicle to resist longitudinal tipover when the vehicle is overloaded, additional weight imposes extra stresses on the vehicle and its components. The added stresses also can cause changes in the driving characteristics of the vehicle and premature failure of the truck and its components, sometimes with catastrophic effects. Training is needed so that operators avoid creating those hazards.

III. Powered Industrial Truck Hazards

Powered industrial trucks are used in all industries. Their principle utility lies in the fact that either a large number of objects confined in a large box, crate or other container or large objects may be moved about the workplace with relative ease. Since powered industrial truck movement is controlled by the operator and is not restricted by the frame of the machine or other impediments, virtually unrestricted movement of the vehicle about the workplace is possible.

The hazards that are commonly associated with powered industrial trucks may not exist or be as pronounced for every type, make or model vehicle. For example, the hazard of tipping over the vehicle due to unstable operation does not exist (except in the most extraordinary circumstance) with the low lift platform truck, the motorized hand truck or the motorized hand/rider truck because each of these trucks does not allow the raising of the load to a point that will cause the vehicle to become unstable. On the other hand, the counterbalanced rider truck and the order-picker truck allow the load to be raised very high, causing the vehicle to become less stable as the load is raised.

Each type truck has different hazards associated with its operation. For example, the chance of a falling load accident occurring when the truck is a sitdown, counterbalanced rider truck is much greater than when the vehicle is a motorized hand truck because the height that the load can be raised on the sitdown rider truck is much greater than the hand truck.

Correspondingly, the method or means to prevent the accident or to protect the employee from injury may be different with different type trucks. When a rider truck is involved in a tipover accident, the operator has the opportunity to remain in the operator's position on the vehicle during the tipover, thereby minimizing the potential for injury. In most cases, the operator of a rider truck is injured in a tipover accident when he or she attempts to jump clear of the vehicle when it begins to tip over. Because the natural tendency of the operator is to jump downward, he or she lands on the floor or ground and is then crushed by the overhead guard of the vehicle. Consequently, the operator should be trained to stay with the vehicle during a lateral tipover. On the other hand, when an order picker tips over with the platform in a raised position, generally the operator should attempt to jump clear of the vehicle, and should be trained accordingly.

Because the powered industrial truck is a motor vehicle, its operation is similar to the automobile and some of its hazards are the same as those experienced during operation of the automobile. Both the automobile and the powered industrial truck are subject to some of the same hazards such as contacting both fixed and movable objects (including employees) and tipping over.

Additionally, there are hazards associated with operating the vehicle at an excessive rate of speed and the hazard of skidding on a wet or otherwise slippery ground or floor. Driving a powered industrial truck at an excessive rate of speed may result in the loss of control of the vehicle, causing the vehicle to skid, tipover, or fall off a loading dock or other elevated walking or working surface. Failure to maintain control of the vehicle also may cause the vehicle to strike an employee or some stored material, causing the material to topple and possibly injure another employee. In these cases, training which reinforces driver training is necessary so that the operator will react properly to minimize the hazard to him or herself and to other employees.

Although there are many similarities between the automobile and the powered industrial truck, there are also many differences. Here greater training is required so that operators are aware of the differences. Some of the characteristics of a powered industrial truck that have a pronounced effect upon its operation and safety that are outside their auto driving experience are its ability to change its dynamic stability, to raise, lower and tilt loads, and to steer with the rear wheels while powered by the front wheels. The capability to move loads upwards, downwards, forwards and backwards causes a shift of the center of gravity of the vehicle and can adversely affect the overall stability. When a load is raised or moved away from the vehicle, the vehicle's longitudinal stability is decreased. When the load is lowered or moved closer to the vehicle, its longitudinal stability is increased.

To mitigate the hazards of stability caused by the movement of the material being handled, OSHA has seven provisions that address proper operation of a powered industrial truck. These provisions are § 1910.178 (n)(15), (o)(1), (o)(2), (o)(3), (o)(4), (o)(5), and (o)(6). These provisions specify:

(15) While negotiating turns, speed shall be reduced to a safe level by means of turning the hand steering wheel in a smooth, sweeping motion. Except when maneuvering at a very low speed, the hand steering wheel shall be turned at a moderate, even rate.

(O) *Loading.* (1) Only stable or safely arranged loads shall be handled. Caution shall be exercised when handling off-center loads which cannot be centered.

(2) Only loads within the rated capacity of the truck shall be handled.

(3) The long or high (including multiple-tiered) loads which may affect capacity shall be adjusted.

(4) Trucks equipped with attachments shall be operated as partially loaded trucks when not handling a load.

(5) A load engaging means shall be placed under the load as far as possible; the mast shall be carefully tilted backward to stabilize the load.

(6) Extreme care shall be used when tilting the load forward or backward, particularly when high tiering. Tilting forward with load engaging means elevated shall be prohibited except to pick up a load. An elevated load shall not be tilted forward except when the load is in a deposit position over a rack or stack. When stacking or tiering, only enough backward tilt to stabilize the load shall be used.

Knowledge of, and adherence to these principles, as well as the other requirements of the OSHA standard, are essential for safe load handling and vehicle operation. Training is needed in these requirements.

Each powered industrial truck has a different "feel" that makes its operation slightly different from the operation of other trucks. The workplaces where these trucks are being used also present particular hazards. For these reasons, a uniform or consistent set of hazards for all industrial trucks and their operation cannot be delineated. The hazards addressed in this section relating to the use of powered industrial trucks have been generalized rather than being make or model specific. For this reason, development of a single "generic" training program which fits all powered industrial trucks and their operation is impractical. In developing an effective training program, there are three major areas of concern regarding the hazards of the operation of powered industrial trucks. The three major groups of hazards of powered industrial trucks and their operation are hazards associated with the particular make and model truck, hazards of the workplace, and general hazards that apply to the operation of all or most powered industrial trucks.

There are other hazards caused by improper operation of a powered industrial truck. Among these hazards are: Falling loads caused by overloading or improperly loading powered industrial trucks (including carrying unbalanced or unstable loads); the vehicle falling from platforms, curbs, trailers or other surfaces on which the vehicle is operating; driving the vehicle while the operator has obstructed view in the direction of travel or the operator not paying full attention to the operation of the powered industrial truck; and the vehicle being operated at an excessive rate of speed. OSHA has identified several accidents that have occurred when an employee other than the operator is "given a ride" on a powered industrial truck. Most trucks were designed and are intended to allow only the operator to ride on the vehicle. The carrying of other persons may result in an accident when that other person either falls from the vehicle or contacts some obstruction when the vehicle is driven in proximity to that obstruction. Finally, powered industrial truck accidents have occurred because the vehicle was not maintained (most commonly, employees being overcome by excessive carbon monoxide exposure) or when the powered industrial truck was not being maintained properly.

Each of these hazards may be more or less consequential based upon the method of operation of the powered industrial truck, the loads being carried, and the workplace where the vehicle is being operated. Truck operators must be trained to recognize unsafe conditions and how to react to them when they occur.

Several features of a powered industrial truck contribute either directly or indirectly to the existence or severity of the hazards of the vehicle. Some of the factors, that would either create or enhance the hazards of the particular truck, are the placement of the critical components of the vehicle, the age of the vehicle, and the manner in which the vehicle is operated and maintained.

There are other hazards related to the use of powered industrial trucks that are caused or enhanced by the characteristics of the workplace. Those hazards include the following: operating powered industrial trucks on rough, uneven or unlevel surfaces; operating powered industrial trucks with unusual loads; operations in hazardous (classified) areas; operation in areas where there are narrow aisles; where there is pedestrian traffic; or where employees are working in or adjacent to the path of travel of the powered industrial truck.

The operation of a powered industrial truck presents hazards not only to the operator, but also endangers other employees working with or around the vehicle. As explained in the section entitled "Accident, injury and other data", below, employees other than operators have been injured or killed in accidents involving powered industrial trucks. Proper training can reduce accidents resulting from the above causes.

IV. Accident, Injury and Other Data

This section of the preamble contains a discussion of the reports, studies and other sources of data and information that were analyzed to determine the magnitude and extent of the problems that powered industrial truck operator training can mitigate.

A. The Bureau of Labor Statistics (BLS) maintains a database entitled, Census of Fatal Occupational Injuries (CFOI). The CFOI is a compilation of information on fatal work injuries that occurred in the 50 States and the District of Columbia. The CFOI uses death certificates, workers compensation reports and other Federal and State records to gather pertinent information. Work relationships are verified by using at least two source documents.

The program collects information on the workers and the circumstances surrounding each fatality. The data are compiled on an annual basis.

In April, 1994, BLS published a booklet entitled, Fatal Workplace Injuries in 1992: A Collection of Data and Analysis (Ex. 3–4). In this booklet, there was an article written by Gary A. Helmer entitled, Fatalities Involving Forklifts and Other Powered Industrial Carriers, 1991–1992. This report contains information contained in the CFOI on 170 fatal powered industrial truck accidents. Table 1 lists the classifications of those powered industrial truck accidents.

TABLE 1.—CLASSIFICATION OF FORKLIFT FATALITIES, CFOI, 1991–1992

How accident occurred	No.	Percent
Forklift overturned	41	24
Forklift struck something, or ran off dock	13	8
Worker pinned between objects	19	11
Worker struck by material	29	17
Worker struck by forklift	24	14
Worker fell from forklift	24	14
Worker died during forklift repair	10	6
Other accident	10	6
Total	170	100

Source: Bureau of Labor Statistics, *Fatal Workplace Injuries in 1992, A Collection of Data and Analysis*, Report 870, April 1994.

B. Measuring the Effectiveness of an Industrial Lift Truck Safety Training Program.

In 1984, H. Harvey Cohen and Roger C. Jensen, working under contract with the National Institute for Occupational Safety and Health (NIOSH), published an article in the Journal of Safety Research (Fall 1984, Vol. 15, No. 3, pps. 125–135) entitled, Measuring the Effectiveness of an Industrial Lift Truck Safety Training Program (Ex. 3–5). The article contained an analysis of two studies that were undertaken to measure objectively the effects of safety training of powered industrial truck operators.

This article detailed the results of an experiment that was conducted to evaluate the value of training powered industrial truck operators using a behavioral (work) sampling procedure to obtain objective data about work practices that correlate with injury risk. There were two separate studies conducted in this experiment, one at each of two similar warehouses. The

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studies that comprised the experiment were conducted to assess the value of training and the influence of post training actions on the safety performance of workers.

There were 14 criteria used in measuring the performance of the trainees. Each of the criterion was selected because it was (a) measurable, (b) frequently observable, (c) capable of being reliably observed, (d) related to accident occurrence, and (e) amenable to corrective action through training. The fourteen criteria observed were: Warns other operators, yields to trucks, warns co-workers, yields to co-workers, sounds horn at blind intersection, slows down at blind intersection, looks at blind intersection, looks in direction of travel, maintains moderate speed, avoids quick starts/changes of direction, keeps all body parts within truck, maintains forks in proper position, maintains balanced load, and drives properly in reverse. Each observation of the operation of the powered industrial trucks resulted in all criteria being evaluated (either correctly performed, incorrectly performed, or not observed). An error rate for each criterion was calculated by dividing the number of incorrect behaviors observed by the total behaviors observed.

Each of the groups of employees were subdivided into smaller groups. These groups were then given training at different times during the study and, in some cases, additional feedback following the training.

The first study was conducted in four phases. The pretraining phase was conducted with none of the operators having received special training. During the second phase, the control group remained untrained, the treatment group received training, and the treatment-plus-feedback group received training and also received performance feedback. In the third phase, the control group received training so that all three groups had received training but only the training-plus-feedback group received performance feedback. The retention phase started three months after the end of the third phase of the study and the performance of all operators was evaluated without regard to their previous categorization.

The error rates of the various groups during the different phases of the study are given in Table 2.

TABLE 2.—SUMMARY OF MEAN ERROR RATES [1]

[Warehouse 1]

Group	Pre-training	Post-training 1	Post-training 2	Retention
Control	.34	.32	.23	
Training	.33	.27	.26	
Training + Feedback	.35	.27	.25	
All operators	.34	.27	.25	.19

[1] The mean error rate is defined in the study as the number of incorrect behaviors observed divided by the total behaviors observed.

NOTE: The mean error rate for all operators began at .34, that is, in 34 percent of the observed criteria, the tasks observed and evaluated were performed improperly.

Source: Measuring the Effectiveness of Industrial Lift Truck Safety Training Program, Journal of Safety Research, Vol. 15, No. 3, Fall 1984, pp. 125–135.

Following the initial training (post-training 1), all three groups showed a decrease in their mean error rates with the training-plus-feedback group showing the largest decrease (from .35 to .27, a 23 percent decrease) followed by the training-only (from .33 to .27, an 18 percent decrease) and the control group (from .34 to .32, a 6 percent decrease). The reduction in the error rate of the control group from the pre-training to the post-training 1 phase of the study was attributed to a peer modeling influence, i.e., the control group operators were copying the behavior of their previously trained counterparts. Toward the end of the post-training 1 phase, the error rates of the three groups converged, suggesting that the effects of the training program had begun to wear off. Observers also noted that some behaviors were being compromised when employees of different knowledge levels were required to interact, particularly in conflict avoidance situations such as signaling and yielding at blind intersections.

During the post-training 2 phase of the study, all groups improved in performance, particularly the original control group. This group's performance improved by 28 percent (from a mean error rate of .32 to .23). Additional evidence of the effect of peer modeling may be deduced from the fact that the performance of the other two groups (the training and the training and feedback groups) continued to improve although there was no additional instruction given to those groups.

The retention phase of the study was conducted three months following the completion of the post-training 2 phase of the study. It was intended to determine the longer term effects of the training. The results of this phase of the study indicate an additional improvement in the performance of the operators with the mean error rate decreasing from .25 to .19, a 24 percent improvement in their performance. The total performance gain achieved during this study was a 44 percent improvement from the pre-training (baseline) phase through the retention phase (from a mean error rate of .34 to a final error rate of .19). The data indicate that there were significantly fewer errors at each successive phase of the study.

The second study was conducted in order to verify and extend the findings of the first study. Consequently, a modified experimental design was used to eliminate the mitigating influence of the untrained control group. In the second study, all operators were trained at the same time and all received performance feedback. Comparisons were made only before and after training. The study was divided into three phases: Pre-training, post-training and retention. The retention phase of the study was again conducted three months after the conclusion of the prior phase. The mean error rates during the three phases of the study are given in Table 3.

TABLE 3.—SUMMARY OF MEAN ERROR RATES STUDY 2

Pre-training	Post-training	Retention
.23	.09	.07

Source: Measuring the Effectiveness of Industrial Lift Truck Safety Training Program, Journal of Safety Research, Vol. 15, No. 3, Fall 1984, pp. 125–135.

Following the training of the vehicle operators, there was a 61 percent

improvement in performance scores (from an error rate of .23 to .09). Observation in the retention phase of this study showed an additional reduction of 22 percent in mean error rates (from .09 to .07 mean error rate). This corresponds closely to the 24 percent gain experienced in Study 1. The overall improvement in mean error rates between the pre-training error rate (.23) to that achieved during the retention phase (.07) was a reduction of 70 percent.

C. In 1987, Nancy Stout-Wiegand of the National Institute for Occupational Safety and Health (NIOSH) published an article in the Journal of Safety Research (Winter 1987, Vol 18, No. 4, pp. 179–190) entitled, Characteristics of Work-Related Injuries Involving Forklift Trucks (Ex. 3–6). This article analyzed powered industrial truck injuries reported in two occupational injury databases—the National Electronic Injury Surveillance System (NEISS) and the Bureau of Labor Statistics' Supplementary Data System (SDS).

The NEISS database is composed of records from a national sample of 200 hospital emergency rooms and burn centers handling all types of injuries. The NEISS database was originally established by the Consumer Product Safety Commission, therefore, the original intent was to gather data about accidents involving commercial products rather than industrial injuries. The hospital emergency rooms were not necessarily those located in industrial areas that would predominantly treat industrial injuries and illnesses. The data from this sample are weighted to represent the nation in numbers and characteristics of traumatic injuries treated in emergency rooms and burn centers. A subset of this database—the work related injuries—is maintained by NIOSH. Since the NEISS database records only injuries treated in emergency rooms and burn centers, traumatic work injuries treated by private practitioners or by industry or private clinics are not included in the NEISS database. Moreover, chronic injuries, such as injuries due to overexertion, are not as likely to be treated in emergency room as are acute traumatic injuries, and, therefore are probably underrepresented in the NEISS database. Other probable sources of error in the calculation of accident rates include misclassification of the sources of injury or the agent of injury. For example, if an employee fell while elevated on the forks of a powered industrial truck, the accident could be misclassified as a fall from elevation rather than a fall from a forklift. Similarly, if an employee were struck in the head by part of a load which fell from a powered industrial truck, the accident could be classified as employee struck by falling object. In either case, the accident would have involved a powered industrial truck, but in neither case would the accident have been classified as one in which a powered industrial truck was involved.

The Supplementary Data System (SDS) database is composed of workers' compensation claims for injuries involving lost workdays. There were 30 states that provided information to the SDS system. The SDS system reports the occupations of injured workers and states where the claim was filed. SDS includes only compensable injuries. The definition of a compensable injury varies from state to state, with some injuries being compensable, for example, if they result in one day or more away from work. In other states, the time away from work may be up to 7 days before the injury becomes compensable.

The SDS and NEISS data do not necessarily represent the same injuries because injuries treated in emergency rooms do not always result in lost workdays. At the same time, compensable injuries included in SDS may not have been treated in emergency rooms and thus would not be represented in NEISS. However, both of these databases represent the more serious injuries involving powered industrial trucks, that is, those requiring treatment in emergency rooms and those which result in compensable injuries.

In 1983, the SDS system identified 13,417 workers' compensation claims for lost-workday injuries involving powered industrial trucks that occurred in 30 states. Assuming that these 30 states represent an average of the whole population, then the number of accidents which occurred nationally would be five-thirds of the 13,417 accidents, or approximately 22,400 compensation claims for lost-workday injuries involving powered industrial trucks filed nationally. This number is comparable to the estimated 24,000 forklift-related injuries that were treated in U.S. emergency rooms in 1983 as reported by NIOSH from information gathered by the NEISS system. In 1985, the NEISS system figures were used to determine that about 34,000 powered industrial truck related accidents were treated in emergency rooms. This is an increase of about 39% over a three-year period of time.

This report also contained a tabulation of the occupations of the injured workers. The breakdown of the occupations of those employees and the corresponding percentage of the accidents is listed in Table 4.

TABLE 4.—PERCENTAGE DISTRIBUTION OF POWERED INDUSTRIAL TRUCK INJURIES BY OCCUPATION OF INJURED EMPLOYEE

Occupation	Percent
Professional, technical and kindred workers	0.3
Managers and administrators (except farm)	2.0
Sales workers	0.8
Clerical and kindred workers	5.0
Craftsmen and kindred workers	(15.5)
Mechanics	6.5
Foremen	3.0
Other craftsmen and kindred workers	6.0
Operatives (except transportation)	(17.5)
Assemblers	1.4
Packers/wrappers	1.1
Welders	0.9
Miscellaneous/unspecified operatives	9.2
Other operatives	4.9
Transportation equipment operatives	(20.8)
Powered industrial truck operators	12.3
Truck drivers	5.5
Motormen	1.7
Deliverymen	1.2
Other transportation equipment operators	0.1
Laborers (except farm)	(37.3)
Warehousemen	10.4
Freight and material handlers	7.3
Stock handlers	4.4
Construction laborers	2.2
Miscellaneous/unspecified laborers	5.0
Other laborers	1.6
Farmers (managers and laborers)	1.5
Service workers	1.8
Occupations unspecified	1.1

Source: *Characteristics of Work-Related Injuries Involving Forklift Trucks*, Journal of Safety Research, Vol. 18 No. 4, Winter 1987, pp. 179–190.

D. Industrial Forklift Truck Fatalities—A Summary.

The Office of Data Analysis (ODA) of OSHA's Directorate of Policy conducted an examination of 53 investigative case files involving powered industrial truck fatalities that occurred between 1980 and 1986 (Ex. 3–7). The results of their analysis is summarized below.

TABLE 5.—OFFICE OF DATA ANALYSIS TYPE ACCIDENTS—53 POWERED INDUSTRIAL TRUCK FATALITIES

Type accident	No.	Percent
Crushed by tipping vehicle	22	42
Crushed between vehicle and a surface	13	25

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TABLE 5.—OFFICE OF DATA ANALYSIS TYPE ACCIDENTS—53 POWERED INDUSTRIAL TRUCK FATALITIES—Continued

Type accident	No.	Percent
Crushed between two vehicles	5	11
Struck or run over by vehicle	5	10
Struck by falling material	4	8
Fall from platform on forks	2	4
Accidental activation of controls	1	2

Source: *Industrial Forklift Truck Fatalities—A Summary*, Report from Office of Data Analysis, Directorate of Policy, OSHA, dated June 1990.

The single largest cause of the accidents was vehicle tipovers. These tipovers were attributed to the following: (1) The vehicle being out of control (speeding, elevated loads, mechanical problems, etc.; 7 instances—13 percent); (2) the vehicle being run off/over the edge of the surface (4 instances—8 percent); (3) attempting to make too sharp a turn (excessive speed, unbalanced load, etc.; 4 instances—8 percent); (4) employee jumped from overturning vehicle being pulled by another vehicle (2 instances—4 percent); vehicle skidded or slipped on slippery surface (2 instances—4 percent); (5) wheels on one side of vehicle ran over raised surface or object (2 instances—4 percent); and (6) vehicle tipped over when struck by another vehicle (1 instance—2 percent).

The second highest number of fatalities reported in the ODA study was caused by an employee being crushed between a vehicle and a surface. The accidents were attributed to: (1) The operator getting off the vehicle while it was running (7 instances—13 percent); (2) worker on platform being crushed between platform and overhead surface (2 instances—4 percent); (3) employees leg being caught when vehicle sideswiped metal surface (1 instance—2 percent); (4) employee attempting to prevent vehicle tipover by holding up overhead guard (1 instance—2 percent); (5) employee changing tire and vehicle fell from jack (1 instance—2 percent) and (6) empty 55 gallon drum used for support vehicle during maintenance collapsed (1 instance—2 percent).

The six accidents that were attributed to employees being crushed between two vehicles were caused by contact between two moving powered industrial trucks (4 cases) and between a powered industrial truck and a stationary vehicle in the other two instances.

Of the five accidents which were identified as an employee being struck or run over by vehicle, four were accidents where employees other than the vehicle operator were struck by the vehicle. The remaining one was an operator trying unsuccessfully to board a free rolling vehicle.

E. The OSHA Fatality/Catastrophe Reports. OSHA records a summary of the results of investigations of all accidents resulting in fatalities, catastrophes, amputations and hospitalizations of two or more days, and those accidents that have received significant publicity or property damage. These summaries are recorded on an OSHA Form 170 and include an abstract describing the activities taking place at the time of the accident and the causes of the accident. These reports are stored in a computerized database system.

OSHA queried the computer for all reports that contained the keyword "industrial truck". There were 4268 total reports in the system that resulted in 3038 fatalities, 3244 serious injuries, and 1413 non-serious injuries (many of the accidents resulted in multiple fatalities and/or injuries). The use of the keyword "industrial truck" produced a printout of 208 accidents (Ex. 3–8). These 208 accidents resulted in 147 fatalities, 115 serious injuries and 34 non-serious injuries.

By adding the number of fatalities, serious injuries and non-serious injuries and dividing by the number of accidents, it was determined that 1.4 injuries of some nature occurred per accident. OSHA also determined the percent of each of the three classes of accidents that involved powered industrial trucks. Those percentages are 4.8 percent of the fatalities, 3.5 percent of the serious injuries and 2.4 percent of the non-serious injuries were attributable to an accident that involved a powered industrial truck.

OSHA looked at the OSHA 170s to determine the causes of the accidents that were attributable to the use of powered industrial trucks in general industry. Table 6 presents a compilation of the causes of those accidents.

TABLE 6.—CAUSES OF ACCIDENTS[1]—OSHA INVESTIGATION SUMMARIES (OSHA 170s)

Cause	No. of reports
No training[2]	19
Improper equipment	10
Overturn	53
Unstable load	45
Overload, improper use	15

TABLE 6.—CAUSES OF ACCIDENTS[1]—OSHA INVESTIGATION SUMMARIES (OSHA 170s)—Continued

Cause	No. of reports
Obstructed view	10
Carrying excess passenger	8
Operator inattention	59
Falling from platform or curb	9
Falling from trailer	5
Elevated employee	26
Operator struck by load	37
Other employee struck by load	8
Accident during maintenance	14
Vehicle left in gear	5
Speeding	5
Not powered industrial truck accident	9

[1] The causes of the accidents were determined by the narrative in the accident report. In most cases, the narrative emphasized the cause of the accident, however, in a few cases, reasonable and appropriate assumptions were made. In some cases, multiple accident causes were described in the narrative portion of the report, or were assumed to have caused the accident. (See Ex. 3–8.)

[2] Of the 19 instances when the report contained the indication that a lack of training was one of the causal factors of the accident, there were 6 serious violations issued, 2 other (nonserious) violations and 11 instances where no citation was issued.

Source: Office of Electrical, Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

Using the OSHA Form 170 data, OSHA also compiled a listing of the industries in which accidents occurred. Table 7 presents a tabulation of the SIC codes, the description of the industry, and the number of times that accidents were identified as having occurred in those industries. For a complete listing of the individual industries, see Ex. 3–9.

TABLE 7.—INDUSTRIES WHERE ACCIDENTS OCCURRED—OSHA INVESTIGATIVE SUMMARY (OSHA FORM 170) REPORTS

SICP division	Description	Times cited
B	Mining	4
C	Construction	25
D	Manufacturing	95
E	Transportation, communication and utilities.	22
F	Wholesale trades	25
G	Retail trades	18
I	Services	7
J	Public administration	4

NOTE: The breakdown of accidents does not include agricultural accidents since establishments of 10 or less employees in this industry are exempt from OSHA jurisdiction.

Source: Office of Electrical, Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

F. The OSHA Emergency Communications System Reports.

OSHA has another internal system for collecting information about serious accidents. This is a telephone system which requires that serious and/or significant accidents be telephoned into the National Office.

The telephone call system is part of the OSHA emergency communications system. Regional Administrators are required to file a first report of fatalities, catastrophes and other important events (such as those that receive significant publicity) to the National Office. The information contained in these reports is disseminated to the responsible officials in OSHA and to the directorates of the Agency. These reports are broken down within the various offices and distributed to the appropriate personnel. There are approximately 1200 reports received by the National Office yearly. See Ex. 3–10.

None of the reports are screened before the OSHA National Office receives them to eliminate those from a certain industry, occupation or because of other factors. Although these reports may not be considered statistically significant by themselves in attempting to determine the number of accidents that have occurred, the lack of prior screening indicates that they represent a reasonable sampling of the most serious type accidents and that the causes of the accidents closely parallel the distribution of the causes of all accidents.

OSHA has examined the First Report of Serious Injury reports and identified 247 that involved powered industrial trucks. These accidents occurred between 1980 and the present. OSHA looked at the number of accidents reported through its telephonic system and determined the percentage of those accidents that involved powered industrial trucks. Table 8 contains a listing of the number of First Reports of Serious Accident reports which were received from 1980 to present, the number of those accidents which involved powered industrial trucks, and the corresponding percentage.

TABLE 8.—YEARLY SUMMARY OF FIRST REPORT OF SERIOUS ACCIDENTS

Year	Total reports	Pit accidents	Percent
1980	200	2	1
1981	125	2	1.6
1982	113	0	0
1983	115	3	2.6
1984	181	1	.6
1985	456	15	3.3
1986	1,147	44	3.8
1987	1,236	38	3.1
1988	1,330	47	3.5
1989	1,150	44	3.8
1990	1,105	41	3.7
1991	[1]215	10	4.7
Totals[2]	6,424	247	3.6

[1] These are the number of total reports received between the first of the year until March 31.

[2] The total number of reports, the number of accidents involving powered industrial trucks and the percentage were calculated using the figures from 1985–1990. The number of accidents reported during the years 1980–1984 and those reported during 1991 were too few to be representative.

Source: Office of Electrical, Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

Each of these reports were examined to determine the causes of the accidents. In some instances, multiple causes were identified. Table 9 lists the causes of the accidents and the number of accidents which were attributable to that cause.

TABLE 9.—CAUSES OF ACCIDENTS (POWERED INDUSTRIAL TRUCKS) FIRST REPORTS OF SERIOUS ACCIDENT

Cause of the accident	No. Accidents
Tipover	58
Struck by powered industrial truck	43
Struck by falling load	33
Elevated employee on truck	28
Ran off loading dock or other surface	16
Improper maintenance procedures	14
Lost control of truck	10
Truck struck material	10

TABLE 9.—CAUSES OF ACCIDENTS (POWERED INDUSTRIAL TRUCKS) FIRST REPORTS OF SERIOUS ACCIDENT—Continued

Cause of the accident	No. Accidents
Employees overcome by carbon monoxide or propane fuel	10
Faulty powered industrial truck	7
Unloading unchocked trailer	7
Employee fell from vehicle	7
Improper use of vehicle	6
Electrocutions	2

Source: Office of Electrical, Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

G. The OSHA General Duty Clause Citation Analysis.

The Office of Mechanical Engineering Safety Standards of OSHA, conducted an analysis of the citations which were issued between 1979 and 1984 for violations of the general duty clause (section 5(a)(1)) of the Occupational Safety and Health Act. During that period, there were a total of 3637 inspections in which at least one 5(a)(1) citation was issued. See Ex. 3–11.

Sixty-five general duty clause citations involved powered industrial truck operations. Each was examined to determine the nature of the violation. Table 10 lists the violation that was alleged to have occurred.

TABLE 10.—SUMMARY OF GENERAL DUTY CLAUSE (5(A)(1)) CITATIONS

Violation	No. instances
Employee elevated on forks	44
Improper operation of vehicle	13
Improper maintenance on vehicle	5
No vehicle operator training	2

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TABLE 10.—SUMMARY OF GENERAL DUTY CLAUSE (5(A)(1)) CITATIONS—Continued

Violation	No. instances
Order picker without fall protection	1

Source: Office of Electrical, Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

V. Basis for Agency Action

OSHA believes that, as the above discussion indicates, that there is a sufficient body of data and information on which to base a revision of the existing standard for powered industrial truck operator training and the promulgation of the same requirement for powered industrial truck operator training in the construction, maritime and agriculture industries. These requirements would reduce the number of fatalities and injuries resulting from accidents involving powered industrial trucks operated by untrained or insufficiently trained employees.

According to OSHA's data and information, powered industrial truck accidents account for approximately 4.8 percent of the fatalities, 3.5 percent of the serious injuries and 2.4 percent of the non-serious injuries that occur in general industry each year. These accidents resulted in an average of 107 fatalities, 33,800 serious injuries, and 61,800 non-serious injuries per year from 1981 through 1990.

In analyzing its accident data, OSHA has derived two separate estimates of the number of fatalities and serious injuries that occur to employees due to powered industrial truck accidents. Because the two set of numbers are in the same range, the Agency has presented both. It should be noted that the number of fatalities is virtually identical using either method of derivation. However, slightly different definitions are used for estimating injuries. The other set of estimates are presented in the Preliminary Regulatory Impact Analysis, below.

There are approximately 68,400 accidents involving powered industrial trucks in general industry per year. This figure was arrived at by totaling the fatalities, serious, and non-serious injuries and dividing this result by 1.4 (the number of injuries per accident determined from the OSHA Fatality/Catastrophe Reports). According to the Industrial Truck Association (ITA), there are currently approximately 855,900 powered industrial trucks in the United States, therefore approximately 8 percent of the powered industrial trucks will be involved in an accident this year (this assumes a truck is involved in only one accident this year). Since the ITA has stated that the useful life of a powered industrial truck is 8 years, that means that at some point during its useful life, almost two-thirds of the powered industrial trucks will be involved in some type accident (again, assuming there is only one accident per truck).

OSHA also looked at the type accidents that were described in the section of this preamble entitled "Accident, injury and other data." The three reports that contained that information were the "Industrial Forklift Truck Fatalities—A Summary" (ODA Study); "The OSHA Fatality/Catastrophe Reports" (Fat/Cat Study); and the "OSHA Emergency Communications System Reports, First Reports." The number of different types of accidents are given in Table 12, below. Since the Industrial Forklift Truck Fatalities report was the only one that used a single causation methodology for categorizing the accidents, this is the only study for which percentages of the accidents were calculated. These percentages appear in parentheses following the numbers.

TABLE 11.—CAUSES OF POWERED INDUSTRIAL TRUCK ACCIDENTS

Cause	Study		
	ODA study	Fat/cats	First reports
Tipovers	22 (42%)	53	58
Struck by vehicle	24 (46%)	.....	43
Struck by falling material	4 (8%)	90	[1]43
Elevated employees	2 (4%)	26	28
Control activation	1 (2%)	[2]6	.....
Improper equipment or usage	.....	10	[3]13
Vehicle overloaded	.....	15	.....
Obstructed view	.....	10	.....
Maintenance acc	.....	14	14
Speeding	.....	5	.....
Fell from platform	.....	.....	[4]23
Lost control	.....	.....	10
Overcome by CO	.....	.....	10

TABLE 11.—CAUSES OF POWERED INDUSTRIAL TRUCK ACCIDENTS—Continued

Cause	Study		
	ODA study	Fat/cats	First reports
Employee fell from vehicle	.....	.....	7
Electrocution	.....	.....	2

[1] This number represents the accidents due to material that was in the powered industrial truck (a portion of the load) falling on an employee-33 cases, and stacked material falling on an employee when struck by a powered industrial truck-10 cases.

[2] This number represents the accidents due to the operator leaving the vehicle in gear, dismounting the vehicle and being struck when the vehicle moved.

[3] This number represents the number of accidents when either the vehicle was used improperly (6 instances) or the vehicle was defective (7 instances).

[4] This number represents the number of accidents when the operator drove the vehicle off an elevated dock (16 instances) or fell against the face of the dock when an unchocked trailer rolled away from the dock when being loaded or unloaded.

Sources: "The Forklift Truck Fatalities—A Summary Report" (ODA Study); "The OSHA Fatality/Catastrophe Reports" (Fat/Cats); and "The OSHA Emergency Communications System Reports (First Reports)".

In 9 percent of the accident investigations in which an OSHA 170 was prepared (19 of 208), lack of training was identified as a causal factor. In more than half of these accident investigations (11 of 19), lack of training was not cited by OSHA compliance officers. However, OSHA's standard specifies that only trained and authorized operators are allowed to operate powered industrial trucks. Absence of a citation when lack of training was identified as a causal factor in the accident can only be attributed to the fact that many compliance officers believe that the powered industrial truck training requirement (29 CFR 1910.178(l)) is vague and unenforceable in its present form.

In addition, most of the accidents where lack of training was not mentioned, clearly could have been avoided through better training. When OSHA completes this rulemaking, in light of the large number of industrial truck accidents, based on priorities and resources, it will consider whether to revise the entire powered industrial truck standard. Persons also may wish to comment on whether OSHA should revise the entire standard in the future.

VI. The Need for Training

Training is generally defined as making a person proficient through the use of specialized instruction and practice. Training is the means by which an employer ensures that employees have the knowledge, skills, and abilities that are necessary for the employees to do their jobs correctly.

Once an employee acquires the basic knowledge, skills, and abilities, refresher or remedial training may be used to reinforce or improve those attributes, to provide new material, to provide material that was previously discussed in a new manner, or to simply maintain an awareness of the material that had previously been taught. Refresher or remedial training is normally conducted on a predetermined periodic basis, that is, on a monthly, semi-annual, or annual basis.

Training may be as simple and informal as a supervisor pointing out either an error in the manner in which an employee is doing a job (making an on-the-spot correction) or showing an employee how to do a particular task (demonstrating the proper method to do the job). On the other end of the spectrum is the detailed, structured instruction that uses the classical methods of training (lectures, conferences, formal demonstrations, practical exercises, examinations, etc.). Formal training is usually used to impart a greater amount of, more complicated, or more detailed information to a trainee.

For the most part, employees do not start out with the innate knowledge, skills, and abilities to perform many of the complicated or difficult practices and procedures that occur commonly in the workplace. For example, many states require potential car drivers to pass either driver training and/or driver education programs to qualify for a drivers license. Even with this training, young drivers are involved in a disproportionate number of accidents. It is only after the drivers have more experience that the number of accidents decreases. Although many employees who are selected or assigned to drive powered industrial trucks are licensed to drive automobiles, there are enough dissimilarities between these two types of vehicles and their operation to require additional knowledge, skills, and abilities to operate a powered industrial trucks safely. Operational characteristics of powered industrial trucks, such as using vehicles equipped with rear-wheel steering and front-wheel drive and the hoisting—moving—lowering of loads, require operator training and practice to master the different driving skills that must be used when an employee operates powered industrial trucks.

Many of these accidents either can be prevented, or the seriousness of the injury to the employee can be mitigated by training employees. Effective training and supervision also can prevent the occurrence of unsafe acts such as speeding, failing to look in the direction of travel, and failing to slow down or stop and sound the vehicle's horn at blind intersections and other areas where pedestrian traffic may not be observable. Another example in which training can prevent or lessen the severity of an accident of this kind is directly related to the stability of powered industrial trucks when traveling with an elevated load. Effective operator training should include the admonition that the vehicle can only be moved when the load is at its lowest point. Even if this admonition is ignored and the vehicle tips over, the injury to the operator is usually minimal if the he or she stays with the vehicle. As previously discussed, the usual injury in a powered industrial truck tipover occurs when the operator attempts to jump off the vehicle when it is tipping over. Since the normal tendency is for a person to jump downward, the operator lands on the floor or ground in the path of the overhead guard and the usual injury is a crushing injury of the head, neck or back when the overhead guard contacts the employee. Training an employee to stay with the vehicle will reduce the severity of some of these injuries.

In 1990, the Office of Technology Assessment of the U.S. Congress published a book at the request of the Senate Labor and Human Resources Committee, the House Education and Labor Committee, and the Senate Finance Committee. This book is entitled, Worker Training: Competing in the New International Economy, OTA–ITE–457 (Washington, DC: U.S. Government Printing Office, September 1990; Ex. 3–12) Although this book addresses the need for training so that American industry can remain competitive in the world marketplace, there were many salient facts presented, both about the state of training in the workplace and the need for additional training.

To be effective, training must impart appropriate skills, must not include irrelevant information and must accommodate varying employee backgrounds and learning styles. Training is most effective when it is quickly reinforced on the job. Poor timing of training, lack of reinforcement at work, and other factors prevent effective transfer of knowledge to the job.

The book also pointed out that small business access to new employees with good skills is limited. Employees hired by companies reflect the labor pool available and is dependent upon the size of the company. Small companies must draw their employees from the locally available talent pool whereas larger companies can attract prospective employees from a much larger geographical area. In order to make up for the limitations of the limited talent pool, small employers usually must provide additional training and education to achieve comparable employee performance.

The OTA book pointed out that inadequate training costs firms and employers not only in health and safety risks, but also downtime, defective parts and equipment, wasted material, late deliveries, inferior quality products and poor customer service. To maximize its effectiveness, training must be focused on workplace problems because simply providing more generalized, non-directed training will not promote industrial competitiveness. If the work is not organized to tap employee skills, the training investment will be wasted.

Finally, the book emphasized that employers historically have not trained their workers for several reasons. First, high labor turnover has mistakenly led employers to believe that skilled workers will leave so their companies will not recoup their training investment. Second, many employers believe that an increase in productivity will not offset the cost of training employees. As the book points out, that is not the case.

The studies conducted by Cohen and Jensen, discussed under *Accident, injury and other data* earlier in this preamble, found a reduction in operator error rate of up to 70 percent. Although a 70 percent error rate reduction can not be directly equated to a corresponding reduction in the number of accidents that this or any other group of operators will experience, improper or unsafe operation of a powered industrial truck is the major cause of the accidents and their resultant fatalities and injuries. Therefore, a reduction in the unsafe operation of a powered industrial truck will reduce the number of accidents, and the resultant fatalities and injuries.

Many standards promulgated by OSHA explicitly require the employer to train employees in the safety and health aspects of their jobs. These requirements reflect OSHA's belief that training is an essential part of an effective employer's program for protecting workers from accidents and illnesses. (See Ex. 3–13

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for a complete list of the OSHA standards that require training.)

Although not all powered industrial truck accident reports spell out the lack of training as a causal factor of the accidents, each accident can, in part, be attributed to either being caused or worsened by the actions or inactions of the operator. For example, when a powered industrial truck tips over, the accident is caused by one or more of several factors, including speeding, traveling with the load in an elevated position, or improperly negotiating a turn. Training can minimize the times that these events occur.

Proper training of an employee must take into account the fact that different operating conditions (including the type and size of the load, the type and condition of the surface on which the vehicle is being operated, and other factors) can adversely affect vehicle operation. Operator training must emphasize two points regarding any potential accident scenario. These two factors are: (1) The employee should not engage in activities that may cause an accident, and (2) the employee should minimize the potential for injury (either to himself or herself or to other employees) by taking appropriate actions.

OSHA is not proposing a program of licensing or certification of powered industrial truck operators either by itself or as an adjunct to operator training. OSHA does not have the resources to conduct such a program since there are close to 1.5 million employees who operate powered industrial trucks.

VII. Summary and Explanation of the Proposed Rule

OSHA is proposing to revise the training requirement for powered industrial truck operators, 29 CFR 1910.178(l), contained in the general industry standards, and to add equivalent training requirements for the maritime industries. This proposal is intended to enhance the safe operation of powered industrial trucks in the workplace.

On February 27, 1995, OSHA submitted to the Advisory Committee on Construction Safety and Health (AC) a draft of this document. The ACCOSH recommended to OSHA that the Agency not proceed with rulemaking for that industry until the Advisory Committee had sufficient time to completely study the document and provide further recommendations. Consequently, this rulemaking is limited to general industry and the maritime industries. The Agency intends to propose to adopt for the construction industry similar requirements for training the operators of powered industrial trucks after receiving and taking into account the recommendations of the ACCOSH.

In developing this proposal, OSHA looked at the training requirements of the existing national consensus standard for powered industrial trucks, ANSI B56.1–1993, as well as training requirements from other standards (both industry and government). The non-training related requirements of those standards are beyond the scope of this proposal.

OSHA has not included suggestive language contained at paragraph 4.19.2 of the consensus standard because other enforceable language in the proposed standard covers the issue. This paragraph states, "The operator training program should include the user's policies for the site where the trainee will operate the truck, the operating conditions for that location, and the specific truck the trainee will operate. The training program shall be presented to all new operators regardless of previous experience."

The Agency has not adopted the language contained in 4.19.3(a) of the consensus standard because the responsibility for providing a safe workplace (including the use of a powered industrial truck) is vested with the employer under the OSH Act. This paragraph specifies, "The primary responsibility of the operator is to use the powered industrial truck safely following the instructions given in the training program."

The consensus standard, at 4.19.4(e) and 4.19.5 specifies the type of training and the testing that should be conducted, whereas the OSHA standard leaves the methods of training up to the employer. As explained elsewhere in this preamble, the employer is responsible for selecting the methods that are employed to train the operators. In some circumstances, the employee may be able to gain valuable information from reading the operators manual for the vehicle. In other circumstances, the employee may not be able to read and comprehend the contents of the manual and may have to be shown how to operate the truck safely.

Many of the other OSHA standards and the consensus standards specify that some means be used to verify that training was conducted. Examples of such verification include: (1) Requiring documentation of the training, (2) the production and retention of lesson plans, (3) attendance rosters, and (4) the issuance of training certificates. When refresher or remedial training is specified, these other rules usually require that a set amount of training be conducted at a regular interval (for example, a certain number of hours of refresher training be conducted annually). OSHA is including evaluation by a designated person and certification that the employee has taken the training and can competently operate the truck. Course materials also must be kept. OSHA believes that this is the appropriate method of verification. As operators vary greatly in the experience and backgrounds and they will be required to operate different types of vehicles, different types and amounts of training are necessary and OSHA does not believe it can specify a rigid curriculum.

This proposed revision of the training requirement found in § 1910.178(l) for operators of powered industrial trucks and the imposition of the same requirement for operators of powered industrial trucks in other industries (construction and maritime) specifies that the employer develop a complete training program. This program consists of an evaluation of each potential truck operator and the training of the potential operator in those subject matters relating to the operation of the truck, the work environment in which the truck will be operated and the requirements of the OSHA standard. This training program also must include a periodic evaluation of the performance of the operator and refresher or remedial training as necessary. To maximize the effectiveness of the training, OSHA is proposing to allow the employer to avoid having to conduct training that is duplicative of other training the employee has previously received. Finally, the training provisions would require that the employer certify that the training and evaluations have been conducted.

At paragraph (1)(i), OSHA specifies that each potential operator of a powered industrial truck must be capable of performing the duties that are required of the job after training and appropriate accommodation. This would include being able to climb onto and off of a truck, to sit on the vehicle for extended periods of time, and to turn his or her body to be able to look in the direction of travel when driving in reverse. Elements of this evaluation may include the employee having the physical and mental abilities to perform the job. Information obtained during the initial employee evaluation can be used to, among other things, determine how best to train the employee. For example, if the employee cannot read and comprehend the operator's manuals for the type trucks that the employee will operate, then this information would have to taught by means other than having the employee try to read the truck manuals. The initial evaluation can be useful for the avoidance of duplicative training.

Paragraph (1)(ii) provides that the employer shall assure that the employee has received required training, that the employee has been evaluated and that the potential operator can perform the job competently. The evaluation must be carried out after the training by a designated person so that the employer can assure that the potential operator can perform the duties required of an operator in a competent manner. The conduct of this evaluation during the training is known as a practical exercise or a performance test. OSHA believes that only through evaluation by a knowledgeable person after training can an employer know that the employee has been adequately trained and can safely perform the job.

The designated person may be the employer if qualified. A small business person who has employees may send the employees to an outside training organization. Alternately, the employer may take or have training so that the employer is qualified as a designated person.

At paragraph (2), OSHA is proposing to require that the employer implement a training program for all powered industrial truck operators. This program would ensure that only trained drivers who have successfully completed the training program would be allowed to operate these vehicles. An exception to the rule would allow trainees to operate powered industrial trucks provided the operation is under the direct supervision of a designated person and the operation is conducted where is minimum danger to the trainee or other employees.

OSHA is proposing at paragraph (2)(ii) that the training consist of a combination of classroom instruction and practical training. The Agency believes that only by the use of a combination of training methods will the employee be adequately trained. Although classroom training is invaluable for the teaching of the principles of vehicle operation, it is the hands-on training and the evaluation of the operation of the vehicle that finally proves the adequacy of the training and the ability of the employee to use that training to successfully operate a powered industrial truck.

At paragraph (2)(iii), OSHA is proposing to require that all training be conducted by a designated person. OSHA defines a designated person as one who has the requisite knowledge, training and experience to train powered industrial truck operators. As discussed elsewhere in this preamble, the employer may have the necessary prerequisites to qualify as a designated person or he or she may assign the training responsibility to another person (either a knowledgeable employee or an trainer from outside the company).

To ensure that the training contains the appropriate information for the operator, OSHA has provided a list of subjects at paragraph (3). Under this rule, it is the responsibility of the employer to select the particular items that are pertinent to the type trucks that the employee will be allowed to operate and the work environment in which the vehicle will be operated. For example, if the employee will be allowed to operate an order picker, it is essential that he or she understand the location and function of the controls, the location and operation of the powerplant, steering and maneuvering, visibility, inspection and maintenance and other general operating functions of the vehicle. Additionally, it is essential that the employee know and understand that he or she must be restrained from falling when the platform of the truck is in an elevated position and that the truck must never be driven when the platform is elevated. Under this proposed requirement, it is the responsibility of the employer to select those elements of the training that are necessary for the type vehicle to be used and the workplace in which that vehicle will be operated. The employer may leave out elements if the employer can demonstrate that they are not relevant to safe operation in the employer's workplace.

An additional component of the training program is a continuing evaluation of the operator. At paragraph (4), OSHA specifies that this evaluation be conducted on a periodic basis so that the employee retains and uses the knowledge, skills and abilities that are necessary for the safe operation of the vehicle. This evaluation need not be conducted continuously, however, the employer should conduct these evaluations at intervals that will ensure that the operators have not forgotten or chosen to disregard their training. This evaluation does not have to be formalized but must consist of a designated person observing the operation to ensure that the use of the powered industrial truck is being conducted safely. OSHA requires that this evaluation be carried out at least annually.

OSHA is requiring at paragraph (5) that the employer certify that the required training and evaluations have been conducted. To minimize the paperwork burden on the employer, OSHA is specifying that the certification consist of the name of the employee, the date of the training or evaluation and the signature of the person conducting the training or evaluation.

Under this paragraph, OSHA also specifies that all the current training materials used in the conduct of training or the name and address of the outside trainer, if one is used, be maintained.

At paragraph (6), OSHA is proposing to allow the employer to forgo that portion of the training that an employee has previously received. The intent of these provisions is to allow the employer to not have to train an employee in those phases of the operation of a powered industrial truck if the employee knows the necessary information and has been evaluated and has proven to be competent to perform those duties.

As previously discussed, there are three major areas of consideration that must be emphasized when conducting a powered industrial truck training program. These three areas are: (1) The characteristics, operation and limitations of the vehicles that the trainee will be authorized to operate, (2) the hazards due to the characteristics of the workplace in which these vehicles will operate, and (3) the general safety rules that apply to these vehicles and their operation.

This proposed rule has been drafted in performance language to allow reasonable flexibility to the employer for developing the training program and conducting the training. OSHA recognizes the inherent differences in the capabilities and limitations of employees, both to assimilate the training and then to utilize the knowledge that has been gained. Therefore, the proposed regulation does not limit the employer by specifying the manner in which the training must be conducted. Similarly, the specific content of the training course has not been stated because there are different topics which must be taught due to variances in the operation of the many makes and models of vehicles and because there are different hazards in each workplace. However, OSHA has proposed the various subject matters that should be covered unless the employer determines they are not relevant to the employer's vehicle and workplace. Although some areas of concern may not be pertinent to any one workplace and vehicle, other areas are pertinent to all vehicles and workplaces.

OSHA believes that a training program needs to be conducted before the employee begins to operate a vehicle. To this end, OSHA has required initial training of employees so that they

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will acquire the knowledge and skills are necessary for the safe operation of the powered industrial truck before being allowed to operate the vehicle without close supervision.

OSHA has left the particulars of the type of training (lecture, conference, demonstration, practical exercise, test or examination, etc.) to the employer. The length of the training and other variables must be based on the employee's experience and other qualifications and the nature of the work environment. The training must be based upon the type of vehicles the employee will be allowed to operate, the conditions that exist in the workplace, the general safety rules from this OSHA standard, the ability of the trainer to teach, and the ability of the trainee to learn. The ability of the employee to assimilate the information presented in the training must be used as the primary criterion for the length, type and other details of the training. Since each employee is different in his or her ability to comprehend, assimilate and use the information received in the training, OSHA believes that one standardized training course will not suffice for all employees.

The employer may choose the training provider. This could include contracting with an outside professional training company to come into the company and train the powered industrial truck operators or the employer developing and conducting the training program. In either case, the employer can choose the method or methods by which the employees will be trained and when the training is conducted.

The standard requires not only appropriate training but evaluation of the operators competency by a designated person with the knowledge to make that evaluation. This is the method that will most accurately prove that the operator has been trained and that the training has been, and continues to be, effective. Through observation of the operation of the vehicle, these questions can be answered.

When a new employee claims prior experience in operating a powered industrial truck, the employer must ensure that the employee knows how to operate the vehicle safely. This can be ascertained by questioning the employee on various aspects of the operation of the truck and by requiring the operator to demonstrate his or her ability to operate the vehicle safely through the conduct of a practical exercise.

In making a determination of an employee's claim of sufficient prior experience, the employer must consider the type of equipment that this employee professes to have operated, how long ago this experience was gained, and the type work environment in which the employee worked. Written documentation of the earlier training is also necessary to determine that proper training has been given. In addition, the competency of the employee must be evaluated. Based on the resolution of these issues, the employer can determine whether the experience is recent and thorough enough, the documentation complete, and the competency sufficient to forgo some or much of the initial training. Some training on the specific factors of the new employees workplace is always going to be necessary. Again, the major criterion of evaluation of the employee is: Does the person know how to do the job and does the vehicle operator use those knowledge, skills and abilities to do the job safely?

OSHA also is proposing to add two non-mandatory appendices. These appendices are intended to provide guidance to employers in establishing a training program (Appendix A) and in understanding to basic principles of stability (Appendix B). In neither case is the information contained in these appendices intended to provide a exhaustive explanation of the techniques of conducting training or of understanding the principles of stability, but each appendix is intended to introduce the basic concepts so that the employer can utilize the material to provide basic training.

VIII. Statutory Considerations

A. Introduction

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory *occupational safety and health standards* applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "[e]ach employer shall comply with *occupational safety and health standards* promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. 652(8)) provides that "the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

OSHA considers a standard to be "reasonably necessary or appropriate" within the meaning of section 3(8) if it meets the following criteria:

(1) The standard will substantially reduce a significant risk of material harm;

(2) Compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed;

(3) Compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and

(4) The standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk.

Additionally, safety standards must better effectuate the Act's protective purpose than any applicable national consensus standard, must be compatible with prior agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. OSHA believes that application of these criteria results in standards that provide a high degree of worker protection without undue burden on employers.

OSHA has long interpreted section 3(8) of the OSH Act to require that, before it promulgates "a health or safety standard, it must find that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices [See *Industrial Union Dep't, AFL-CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (plurality) (Benzene)." When, as frequently happens in safety rulemaking, OSHA promulgates standards that differ from existing national consensus standards, it must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. 655(b)(8)]." Thus, national consensus standards provide the minimum level of effectiveness for standards which OSHA may adopt (29 U.S.C. 655(a)).

As a result, OSHA is precluded from regulating insignificant safety risks or from issuing safety standards that do not lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dep't* v. *Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)] ('Congress does not appear to have intended to protect

employees by putting their employers out of business.') [*American Textile Mfrs. Inst. Inc.*, 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends "disaster for some marginal firms," but it is economically infeasible if it "threaten[s] massive dislocation to, or imperil[s] the existence of," the industry)].

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in *ATMI* that economic infeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27,360 (June 23, 1978). Proposed 200 µg/m3 PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 µg/m3 level was not feasible for weaving and that 750 µg/m3 was all that could reasonably be required). See also 54 FR 29,245–246 (July 11, 1989); *American Iron & Steel Institute*, 939 F.2d at 1003. OSHA raised the engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.) Although the cotton dust and lead rulemakings involved health standards, the economic feasibility ceiling established therein applies equally to safety standards. Indeed, because feasibility is a necessary element of a "reasonably necessary or appropriate" standard, this ceiling boundary is the same for health and safety rulemaking since it comes from section 3(8), which governs all permanent OSHA standards.

All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end (*ATMI*, at 514 n. 32; *Building and Constr. Trades Dep't AFL-CIO* v. *Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)). OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance allowing as much as ten years for compliance phase-in. (See *United Steelworkers of Am.* v. *Marshall*, 647 F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Operations Manual provides that, based on an employer's economic situation, OSHA may extend the period within which a violation must be corrected after issuance of a citation (CPL. 2.45B, Chapter III, paragraph E6d(3)(a), Dec. 31, 1990).

To reach the necessary findings and conclusions that a safety standard substantially reduces a significant risk of harm, is both technologically and economically feasible, and is cost effective, OSHA must conduct rulemaking in accord with the requirements of section 6 of the OSH Act. The regulatory proceeding allows it to determine the qualitative and, if possible, the quantitative nature of the risk with and without regulation, the technological feasibility of compliance, the availability of capital to the industry and the extent to which that capital is required for other purposes, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See *ATMI* at 2501–2503; *American Iron & Steel Institute* generally.)

Finally, general principles of administrative law require the Agency to justify significant departures from prior practice. (See *International Union, UAW* v. *Pendergrass*, 878 F.2d 389, 400 (D.C. 1989)). In the twenty years since enactment of the OSH Act, OSHA has promulgated numerous safety standards—standards that provide benchmarks for judging risks, benefits, and feasibility of compliance in subsequent rulemakings. (OSHA's Hazardous Waste Operations and Emergency Response Standard, for example, required use of existing technology and well accepted safety practices to eliminate at least 32 deaths and 18,700 lost workday injuries at a cost of about $153 million per year (54 FR 9311–9312; March 6, 1989). The Excavation standard also drew on existing technology and recognized safety practices to save 74 lives and over 800 lost workday injuries annually at a cost of about $306 million. (54 FR 45,954; Oct. 31, 1989). OSHA's Grain Handling Facilities standard relied primarily on simple housekeeping measures to save 18 lives and 394 injuries annually, at a total net cost of $5.9 to $33.4 million (52 FR 49,622; Dec. 31, 1991).)

B. The proposed amendment to the standard for the training of powered industrial truck operators and the promulgation of like requirements for the construction and maritime industries complies with the statutory criteria described above.

As explained in Section I, *Background*, Section II, *The Powered Industrial Truck*, Section III, *Powered Industrial Truck Hazards*, Section IV, *Accident, Injury and Other Data*, and Section V, *Basis for Agency Action*, earlier in this preamble, and in Section IX, *Summary of the Regulatory Impact and Regulatory Flexibility Analysis and Environmental Impact Assessment*, later in this preamble, OSHA has determined that the operation of powered industrial trucks by untrained or inadequately trained operators pose significant risks to employees. There have been on average 85 fatalities, 34,900 serious injuries and 61,800 non-serious injuries annually since 1981 due to unsafe powered industrial truck operation. OSHA estimates that compliance with the revised training requirement for powered industrial truck operator will reduce the risk of hazards to those operators and other employees by 25 percent (preventing 17 to 22 fatalities, 10,898 to 14,118 serious injuries and 15,450 non-serious injuries annually). This constitutes a substantial reduction of significant risk of material harm.

The Agency believes that compliance is technologically feasible because there exists a current rule for the training of powered industrial truck operators and the revised regulation specifies in more detail what is to be taught to those operators, and requires the employer to institute effective supervisory measures to ensure continued safe operation of those vehicles. In many companies, the training of vehicle operators and the subsequent supervisory measures required by the standard have already been implemented.

Additionally, OSHA believes that compliance is economically feasible, because, as documented by the Regulatory Impact Analysis, all regulated sectors can readily absorb or pass on compliance costs.

The standard's costs, benefits, and compliance requirements are reasonable, amounting to approximately 34.9 million in the first year and 19.4 million per year thereafter, preventing 17 to 22 fatalities, 10,898 to 14,118 serious injuries and 15,450 non-serious injuries per year. As explained above, using another definition, OSHA estimates that it will eliminate between 11,968 and 15,504 lost workday injuries in addition to the fatalities prevented. These percentages are consistent with those of other OSHA safety standards.

C. The requirement for the training of powered industrial truck operators is necessary to address the significant risks of material harm posed by the operation of those vehicles.

OSHA believes that Section I, *Background*, Section II, *The Powered Industrial Truck*, Section III, *Powered*

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Industrial Truck Hazards, Section IV, *Accident, Injury and Other Data*, and Section V, *Basis for Agency Action*, earlier in this preamble have clearly and comprehensively set out the Agency's bases for concluding that the operation of powered industrial trucks by untrained or inadequately trained employees pose significant risks and that the training of those operators is reasonably necessary to protect affected employees from those risks. In particular, as detailed in Section IX, *Preliminary Regulatory Impact and Regulatory Flexibility Analysis and Environmental Impact Assessment*, later in this preamble, OSHA estimates that the improper operation of powered industrial trucks causes 85 fatalities, 34,902 serious injuries, and 61,800 non-serious injuries annually, and that revision of and compliance with the requirements of the OSHA standard for the training of powered industrial truck operators will reduce the risk of fatality and injury by 25 percent (preventing 17 to 22 fatalities, 10,898 to 14,118 serious injuries and 15,450 non-serious injuries).

OSHA emphasizes that its risk assessment is based on employee exposure to the hazards of the operation of powered industrial trucks, hazards that exists in a large range of industries. Although Section IX, *Preliminary Regulatory Impact and Regulatory Flexibility Analysis and Environmental Impact Assessment*, later in this preamble, presents OSHA's estimate of the costs and benefits of the revision of the training requirement in terms of the Standard Industrial Classification (SIC) codes for the industries regulated, OSHA does not believe that the risk associated with these hazards vary according to what SIC code a vehicle may be operated in. Thus, some of the industry categories within the scope of the final rule that will have compliance costs have had few or no documented powered industrial truck accidents or injuries or fatalities during the period covered by the PRIA. In this case, OSHA has considered developing a scope of the rule to cover those situations it has determined to be hazardous. As explained more fully below, OSHA has determined that the lack of prior documented injuries and deaths in some SIC Codes does not indicate that the employees in those industries are not exposed to significant risks from the unsafe operation of powered industrial trucks. As the summary of the PRIA explains in detail, OSHA has determined that it is appropriate to include those industries within the scope of the standard because employees in those industries are exposed to the same kinds of hazards as employees in industries for which there are reported injuries and fatalities.

Even in industry sectors in which no injuries or fatalities have been reported, the Agency believes there is sufficient information for OSHA to determine that employees who work in areas in which powered industrial trucks are operated or operate those vehicles face significant risks, based on analysis of the elements of the hazards identified and of the similarity of hazard elements between industry sectors. Therefore, the Agency has determined that all employees who operate those vehicles or work in areas in which those vehicles are operated face a significant risk of material harm and that compliance with the powered industrial truck standard is reasonably necessary to protect affected employees from those risks, regardless of the number of accidents and injuries reported for the SIC code to which the employer has been assigned.

Also, because of the difficulties the Agency has experienced in compiling a database for powered industrial truck accidents, injuries or fatalities may have occurred in industries, including those for which no incidents have been documented, without being recorded. In addition, the SIC code-based organization of incident data may mask actual or potential hazards of the operation of powered industrial trucks because, while a business is classified for SIC purposes according to its principal activity, the workplace may also contain warehousing areas where materials are stored as a "secondary" purpose, that have necessitated the use of powered industrial trucks with their resultant injuries or fatalities. For example, a new car dealer would be classified under the new car dealer SIC, even though the dealer may store a large number of auto accessories, such as tires and batteries. In many instances, large quantities of items like batteries are palletized for ease of handling. When these pallets of material are delivered to the dealer, the items are either removed from the pallet and handling manually, or the pallet and the material are moved with some type of powered industrial truck, such as a pallet jack. Although the workplace is a new car dealer, a powered industrial truck is in use and an accident would have nothing to do with selling new cars. Therefore, OSHA believes, based on the limitations of the accident data and the circumstantial nature of many vehicle accidents, that it is appropriate to require that employers protect affected employees from the hazards of vehicle operations in all workplaces where powered industrial trucks are used, rather than to characterize workplaces according to the injury or fatality experience of the SIC codes in which they have been classified.

The Agency also notes that many accidents that occur as a result of powered industrial truck operations are not classified as an accident involving a truck. For example, if a powered industrial truck is used to lift an employee who is standing on the forks of the vehicle and the employee falls from those forks while aloft, the accident could be classified as a fall from height or a fall from an elevated platform. In both instances, the fact that the employee was unsafely taken aloft on the forks of a powered industrial truck and fell from those forks is not transferred to the accident report because the accident was attributed to other causes.

Finally, it is well established in the OSH Act enforcement context that the lack of injuries or deaths to a particular employer's employees does not establish that the employees are not exposed to a hazard. In a frequently quoted passage, the Fifth Circuit long ago observed that "the goal of the Act is to prevent the first accident, not to serve as a source of consolation for the first victim or his survivors" *(Mineral Industries & Heavy Construction Group v. OSHRC*, 639 F.2d 1289, 1294 (5th Cir. 1981)). This principle applies to regulatory actions as well. Once the agency determines that exposure to a particular condition constitutes a significant risk, it need not repeat that analysis for every situation or type of workplace in which the condition is found.

In addition, those segments with fewer trucks and, consequently fewer accidents, will have lower costs for training and evaluation. However, the risk to each individual operator for each year of operation is approximately the same as in industries with more trucks and operators. This approach was upheld in *International Union, UAW, v. OSHA*, —F. 2d—, (D.C. Circ., October 21, 1994)

For all of the foregoing reasons, OSHA has determined that it is inappropriate to exclude any of the SICs merely because they have not recently had documented powered industrial truck injuries or fatalities, insofar as those SICs contain workplaces where those vehicles are operated.

D. Conclusion

OSHA has determined that the powered industrial truck standard, like other safety standards, is subject to the constraints of section 3(8) of the OSH Act, that the standard is "reasonably necessary or appropriate to provide safe or healthful employment and places of employment." But the standard is not subject to the section 6(b)(5) requirement that it limit significant risk "to the extent feasible."

The Agency believes that the use of powered industrial trucks in the workplace by untrained or poorly trained employees poses significant risks and that the need to require that only properly trained employees operate those vehicles is reasonably necessary to protect affected employees from those risks. OSHA also has determined that compliance with the standard for the training of those operators is technologically feasible because many companies offer the type training that the standard would require. In addition, OSHA believes that compliance is economically feasible, because, as documented by the Preliminary Regulatory Impact Analysis (Ex. 2), all regulated sectors can readily absorb or pass on initial compliance costs and economic benefits will ultimately exceed compliance costs. In particular, the Agency believes that compliance with the powered industrial truck training requirement will result in substantial cost savings and productivity gains at facilities that utilize powered industrial trucks that might otherwise be disrupted by accidents and injuries.

As detailed in the Summary of the Preliminary Regulatory Impact Analysis, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards. For example, the Hazardous Waste Operations and Emergency Response standard (29 CFR 1910.120) requires the use of existing technology and well accepted safety practices to eliminate at least 32 deaths and 18,700 lost workday injuries at a cost of about $153 million per year (54 FR 9311–9312; March 6, 1989). The Excavations standard (29 CFR 1926, Subpart P) also drew on existing technology and recognized safety practices to save 74 lives and over 800 lost workday injuries annually at a cost of about $306 million (54 FR 45,954; Oct. 31, 1989). Additionally, the Grain Handling Facilities standard (29 CFR 1910.272) relied primarily on simple housekeeping measures to save 18 lives and 394 injuries annually, at a total net cost of between $5.9 million and $33.4 million (52 FR 49,622; Dec. 31, 1987). Also, compliance with the planning, work practice, and training provisions of the Process Safety Management standard (29 CFR 1910.119) will reduce the risk of catastrophic fire and explosion (330 fatalities and 1917 injuries and illnesses annually) by 80 percent, at an annualized cost of $888.7 million in the first five years and at an annualized cost of $470.8 million in the following five years.

IX. Summary of the Preliminary Economic, Feasibility and Regulatory Flexibility Analyses and Environmental Impact Assessment

A. Introduction

Executive Order 12866 and the Regulatory Flexibility Act require Federal Agencies to analyze the costs, benefits and other consequences and impacts of proposed standards and final rules. Consistent with these requirements, OSHA has prepared a preliminary economic analysis for the proposed revisions to and adoption of the powered industrial truck operator training provisions which are proposed in this document.

This analysis includes a description of the industries that would be affected by the regulation, an assessment of the benefits attributable to adoption of the proposal, a determination of the technological feasibility of the proposed revisions, estimation of the costs of compliance, a determination of the economic feasibility of compliance with the proposed provisions, and an analysis of the economic and other impacts of this rulemaking. The Advisory Committee on Construction Safety and Health is currently reviewing the proposed rule for applicability to the construction industry and based on the Advisory Committee's recommendations, OSHA may extend the coverage of the proposed rule to this sector in the future.

Affected Industries

Using powered industrial truck sales data provided by the Industrial Truck Association (ITA), OSHA estimates that there are 822,831 industrial trucks in use in industries covered by the proposed standard. Industries with the largest number of powered industrial trucks include wholesale trade-non-durable goods (SIC 51) with an estimated 109,232 powered industrial trucks, and food and kindred products (SIC 20) with an estimated 71,275 such trucks.

The proposed OSHA revisions will cover workers who operate powered industrial trucks. This includes operators using these vehicles in the general industry and maritime sectors. The population-at-risk in powered industrial truck accidents consists primarily of the operators of these trucks. Operators of powered industrial trucks include workers employed as designated truck operators as well as those who might operate powered industrial truck as part of another job. These alternate users of powered industrial trucks include shipping and receiving clerks, order pickers, maintenance personnel, and general temporary workers. Non-driving workers such as warehousemen, materials handlers, laborers and pedestrians who work on or are present in the vicinity of powered industrial trucks are also injured or killed in powered industrial truck accidents. Estimates of the number of non-driving employees are not included in the population-at-risk numbers presented in this economic analysis. However, non-driving employees are included in the number of preventable fatal and non-fatal injuries estimated to be associated with compliance with the proposed rule.

OSHA estimates that approximately 1.2 million workers are employed as industrial truck operators in industries regulated by OSHA. Industries with the largest number of operators include wholesale trade (SIC 51) with 163,848 operators, and food and kindred products (SIC 20) with 106,913 operators.

Technological Feasibility

OSHA could not identify any requirement in the proposed standard that raises technological feasibility problems for establishments that use industrial trucks. On the contrary, there is substantial evidence that establishments can achieve compliance with all requirements using existing methods and equipment. In addition, the standard introduces no technological requirements of any type. Therefore, OSHA has preliminarily concluded that technological feasibility is not an issue for the proposed standard.

Costs of Compliance

The proposed OSHA industrial truck operator training standard would expand the initial training required by the existing standard to include information on the operating instructions and warnings appropriate to the type of truck used, the specific hazards in the workplace where the truck will be operated, and instructions pertaining to the requirements of the OSHA standard. Additionally, the proposed standard requires employers to monitor the performance of industrial truck operators through an annual evaluation and to provide remedial training when this evaluation suggests that such training is needed.

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OSHA estimates that the first year cost of compliance with the proposed standard will be $34.9 million and that the annual cost of compliance thereafter will be $19.4 million. Table 12 outlines the annual costs by each sector affected by the proposed standard. Industry sectors with the highest estimated annualized compliance costs are manufacturing, with $9.8 million, and wholesale and retail trade with $5.6 million. Existing industry practice was taken into consideration when calculating costs, i.e., where employers have already voluntarily implemented practices that would be required by the proposed standard, no cost is attributed to the standard. OSHA welcomes comments on the preliminary costs and assumptions presented in this Preliminary Economic Analysis.

TABLE 12.—ESTIMATED ANNUALIZED COMPLIANCE COSTS FOR THE PROPOSED INDUSTRIAL TRUCK OPERATOR TRAINING STANDARD

Sector	Initial evaluation	Initial training	Monitoring	Remedial training	Total
Agriculture	$2,457	$28,637	$39,404	$2,251	$72,749
Mining[a]	1,109	12,923	17,778	1,016	32,825
Manufacturing	332,222	3,872,651	5,327,726	304,441	9,837,040
Transportation and Utilities	91,344	1,064,777	1,464,847	83,706	2,704,674
Wholesale and Retail Trade	189,193	2,205,396	3,034,033	173,373	5,601,996
Finance, Insurance, & Real Estate	2,607	30,389	41,807	2,389	77,192
Services	37,477	436,859	601,001	34,343	1,109,679
Total	656,408	7,651,632	10,526,595	601,519	19,436,154

[a] Oil and gas extraction.

Note: Costs are annualized over 10 years at a 7 percent interest rate (annualization factor 0.1424).
Source: US Department of Labor, OSHA, Office of Regulatory Analysis, based on ERG [1, Section 3].

Benefits

An estimated 85 fatalities and 34,902 injuries result annually from industrial truck-related accidents. As presented in Table 13, OSHA estimates that full compliance with the proposed standard will prevent between 17 and 22 of these fatalities per year and between 10,898 and 14,118 lost workday injuries. These preventable fatalities and injuries are in addition to lives saved and injuries prevented by OSHA's existing standard.

The proposed standard will also reduce property damage and training-related litigation. OSHA's preliminary analysis of the impacts of improved training show reductions in property damage valued at an estimated $8 million to $42 million annually. In addition, OSHA estimates that approximately $770,018 will be saved annually in damages and settlements in court cases that would have been awarded as a result of injuries caused by deficiencies in industrial truck operator training.

TABLE 13.—NUMBER OF FATALITIES AND INJURIES PREVENTED BY COMPLIANCE WITH THE PROPOSED POWERED INDUSTRIAL TRUCK TRAINING STANDARD

Industry group	Total number of industrial truck fatalities	Preventable fatalities under proposed standard		Total number of industrial truck injuries	Preventable injuries under proposed standard	
		Low	High		Low	High
Forestry, Fishing and Agricultural Services	0	0	0	219	58	88
Mining—oil and gas extraction	1	0.2	0.3	84	26	34
Manufacturing	30	5.9	7.7	14,895	4,651	6,025
Transportation, communication, and utilities	20	3.9	5.1	4,265	1,332	1,725
Wholesale and retail trade	25	4.9	6.4	12,012	3,751	4,859
Finance, insurance, and real estate	0	0	0	212	66	85
Services	9	1.8	2.3	3,215	1,004	1,300
All industries	65	17	22	34,902	10,898	14,118

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on ERG Report (1, Section 4).

Economic Impacts and Regulatory Flexibility Analysis

OSHA assessed the potential economic impacts of compliance with the proposed standard and has preliminarily determined that the standard is economically feasible for all industry groups. Detailed information at the three-digit SIC level is presented in OSHA's Preliminary Economic Analysis. When an industry enjoys an inelastic demand for its products, an increase in operating costs can ordinarily be passed on to consumers. In this case, the maximum expected price increase is calculated by dividing the average estimated compliance cost in each industry by the average revenue for that industry. OSHA estimates that the average price increase would be negligible, about 0.0002 percent. Table 14 shows that the average price increase at the two-digit SIC level would be extremely small. (For impacts at the three-digit SIC level, see economic analysis, Table V–1). These estimates indicate that even if all costs were passed on to consumers through price increases, the proposed standard would have a negligible impact on prices overall.

Given the minuscule price increases necessary to cover the cost of the proposed training requirements, employers should be able to pass along compliance costs to customers. However, even if all costs were absorbed by the affected firms, the average reduction in profits would be only 0.007 percent. As presented in Table 14, the largest potential decrease in profits—0.038 percent—would occur in SIC 51, Nondurable Goods. Because most firms will not find it necessary to absorb all of the costs from profits and should be able to pass most if not all of the standard's costs on to consumers, average profits are not expected to decline to the extent calculated here. OSHA, therefore, does not expect the revised standard to have a significant economic impact on affected firms or industries.

TABLE 14.—ECONOMIC IMPACT OF THE PROPOSED POWERED INDUSTRIAL TRUCKS OPERATOR TRAINING STANDARD

SIC/Industry sector	Value of industry shipments, receipts or sales ($ millions)	Annualized compliance costs	Compliance costs as a percent of sales	Pre-tax income ($ millions)	Compliance costs as a percent of pre-tax income
07 Agricultural services	NA	$72,749			
13 Mining—oil and gas extraction	$48,178	32,825	Negligible		
20 Food and kindred products	387,601	1,774,023	0.0005	36,213	0.005
21 Tobacco products	32,032	43,951	0.0001	[1]	[1]
22 Textile mill products	65,706	384,461	0.0006	5,102	0.008
23 Apparel and other textile products	65,345	109,656	0.0002	3,548	0.003
24 Lumber and wood products	70,569	415,093	0.0006	2,881	0.014
25 Furniture and fixtures	40,027	194,006	0.0005	1,942	0.010
26 Paper and allied products	128,824	760,042	0.0006	7,307	0.010
27 Printing, publishing, and allied industries	156,685	435,959	0.0003	13,171	0.003
28 Chemicals and allied products	292,326	931,407	0.0003	24,169	0.004
29 Petroleum refining and related industries	158,076	92,786	0.0001	11,193	0.001
30 Rubber and miscellaneous plastics products	100,668	522,973	0.0005	5,366	0.010
31 Leather and leather products	9,142	47,059	0.0005	[2]	[2]
32 Stone, clay, glass, and concrete products	59,611	396,003	0.0007	2,664	0.015
33 Primary metal industries	132,837	567,368	0.0004	3,133	0.018
34 Fabricated metal products	157,077	717,423	0.0005	7,660	0.009
35 Industrial and commercial machinery and computer equip	243,479	900,774	0.0004		
36 Electric and electronic equipment	197,880	492,784	0.0002	15,378	0.003
37 Transportation equipment	364,032	691,674	0.0002	1,916	0.036
38 Instruments and related equipment	127,160	141,176	0.0001	8,326	0.002
39 Miscellaneous manufacturing industries	37,131	218,423	0.0006	2,418	0.009
40 Railroad transportation	44,422	69,042	0.0002		
41 Local, suburban, and interurban passenger transit	8,094	51,782	0.0006		
42 Trucking and warehousing	110,103	1,800,849	0.0016		
44 Water transportation	18,336	105,655	0.0006		
45 Transportation by air	82,055	188,820	0.0002		
46 Pipelines, except natural gas	2,098	4,707	0.0002		
47 Transportation services	54,432	156,391	0.0003		
48 Communications	232,257	60,673	Negligible		
49 Electric, gas and sanitary services	292,280	266,754	0.0001		
50 Durable goods	981,208	1,335,982	0.0001	4,880	0.027
51 Nondurable goods	943,174	2,201,118	0.0002	5,831	0.038
52 Building materials and garden supplies	115,855	426,997	0.0004		
53 General merchandise stores	266,991	683,253	0.0003		
54 Food stores	392,400	690,815	0.0002		
55 Automatic dealers and service stations	587,890	67,212	Negligible		
56 Apparel and accessory stores	106,128	39,537	Negligible		
57 Furniture and home furnishings stores	113,673	136,581	0.0001		
58 Eating and drinking places	211,036	28,035	Negligible		
59 Miscellaneous retails	249,463	265,974	0.0001		
60 Banking	48,477	15,103	Negligible		
61 Credit agencies other than banks	69,148	6,293	Negligible		
62 Security and commodity brokers and services	41,226	5,034	Negligible		
63 Insurance carriers	521,036	27,269	Negligible		
64 Insurance agents, brokers, and services	31,623	2,937	Negligible		
65 Real estate	96,942	13,425	Negligible		
67 Holding and other investment offices	47,301	7,132	Negligible		
70 Hotels and other lodging places	64,630	13,486	Negligible		
72 Personal services	59,052	13,486	Negligible		
78 Motion pictures	43,838	17,164	Negligible		
79 Amusement and recreation services	51,107	25,746	Negligible		
80 Health services	285,040	72,743	Negligible		
81 Legal services	96,179	4,495	Negligible		
82 Educational services	4,617	64,569	0.0014		
83 Social services	68,312	22,068	Negligible		
84 Museums, art galleries, botanical and zoological gardens	3,551	1,226	Negligible		
86 Membership organizations	39,118	7,765	Negligible		
87 Engineering, accounting, research and management svcs	224,238	52,309	Negligible		
89 Miscellaneous services, n.e.c.	23,871	15,938	0.0001		

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TABLE 14.—ECONOMIC IMPACT OF THE PROPOSED POWERED INDUSTRIAL TRUCKS OPERATOR TRAINING STANDARD—Continued

SIC/Industry sector	Value of industry shipments, receipts or sales ($ millions)	Annualized compliance costs	Compliance costs as a percent of sales	Pre-tax income ($ millions)	Compliance costs as a percent of pre-tax income
Totals	.....	19,436,154	0.0002	.....	0.007

[1] =included under SIC 20.
[2] =included under SIC 23.
Negligible denotes less than 0.00001 percent.
Source: US Department of Labor, OSHA, Office of Regulatory Analysis, based on ERG Report (1, Chapter 6).

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), OSHA has also analyzed the economic impact of the proposed standard on small establishments (19 or fewer employees), looking particularly for evidence that the rule would have a significant impact on a substantial number of small entities. Small businesses will incur lower compliance costs than larger businesses because the compliance costs depend directly on the number of industrial truck operators in a given facility. OSHA has preliminarily concluded that it would not have a significant impact upon a substantial number of small entities. Assuming a 15 percent turnover rate, compliance costs for a typical small business in public warehousing and storage (SIC 422) will be $1,188 in the first year and $280 annually thereafter. OSHA estimates that the average price impact for small establishments will not exceed 0.12 percent. Similarly, OSHA estimates that, if the average establishment could not pass any of these costs to its customers through this very small price increase (a highly unlikely scenario), the costs would impact average profits by less than 1.2 percent. These impacts are judged to be relatively minor; therefore, the proposed standard is economically feasible for small establishments.

XI. Environmental Assessment

The proposed rules have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA procedures (29 CFR part 11). The provision of the standard focuses on the reduction and avoidance of incidents involving powered industrial trucks. Consequently, no major negative impact is foreseen on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment. Therefore, this revision is categorized as an excluded action according to subpart B, § 11.10 of the DOL NEPA regulations.

X. International Trade

This revision of the OSHA standards on powered industrial trucks and the promulgation of the same standard for other industries is not likely to have a significant effect on international trade because of the small magnitude of any price increase that would be required for passing forward compliance costs. As shown above, the maximum price increases generated from the proposed rule would be less that 1.0 percent for the majority of affected establishments. Further, none of the compliance requirements affect the demand for foreign-made safety equipment. It can be concluded, therefore, that there will be no measurable impacts on foreign trade.

XII. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption in issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. When such standards are applicable to products distributed or used in interstate commerce they may not unduly burden commerce and must be justified by compelling local conditions.

The Federal proposed standard on powered industrial truck operator training addresses hazards that are not unique to any one state or region of the country. Nonetheless, states with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own state standards to deal with any special problems which might be encountered in a particular state. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for state plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this proposed rule addresses a clear national problem related to occupational safety and health in general industry. Those states which have elected to participate under section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as their standard. State comments are invited on this proposal and will be fully considered prior to promulgation of a final rule.

XIII. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by July 12, 1995, and submitted in quadruplicate to the Docket Office; Docket No. S–008, Room N2624; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW., Washington, DC 20210.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be postmarked by July 12, 1995;
3. The objections must specify with particularity grounds upon which the objection is based;
4. Each objection must be separately numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make those objections and their recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

XIV. State Plan Standards

The 25 States with their own OSHA approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Island, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

List of Subjects

29 CFR Part 1910

Motor vehicle safety, Occupational safety and health, Transportation.

29 CFR Part 1915

Motor vehicle safety, Occupational safety and health, Transportation, Vessels.

29 CFR Part 1917

Marine terminals, Motor vehicle safety, Occupational safety and health, Vessels.

29 CFR Part 1918

Longshoring, Motor vehicle safety, Occupational safety and health, Vessels.

XV. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to section 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, it is proposed to amend 29 CFR parts 1910, 1915, 1917, 1918 and 1926 as set forth below.

Signed at Washington, DC, this 24th day of February, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart N of part 1910 would be revised to read as follows:

Authority: Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Section 1910.177 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Sections 1910.176, 1910.178, 1910.179, 1910.183, 1910.184, 1910.189, and 1910.190 also issued under 29 CFR part 1911.

2. Section 1910.178 would be amended by revising paragraph (l) and by adding appendices A and B at the end of the section to read as follows:

§ 1910.178 Powered industrial trucks.

* * * * *

(l) *Operator training.*

(1) *Operator qualifications.* (i) The employer shall ensure that each potential operator of a powered industrial truck is capable of performing the duties that are required of the job.

(ii) In determining operator qualifications, the employer shall ensure that each potential operator has received the training required by this paragraph (l), that each potential operator has been evaluated by a designated person while performing the required duties, and that each potential operator performs those operations competently.

(2) *Training program implementation.*

(i) The employer shall implement a training program and ensure that only trained drivers who have successfully completed the training program are allowed to operate powered industrial trucks. Exception: Trainees under the direct supervision of a designated person shall be allowed to operate a powered industrial truck provided the operation of the vehicle is conducted in an area where other employees are not near and the operation of the truck is under controlled conditions.

(ii) Training shall consist of a combination of classroom instruction (Lecture, discussion, video tapes, and/or conference) and practical training (demonstrations and practical exercises by the trainee).

(iii) All training and evaluation shall be conducted by a designated person who has the requisite knowledge, training and experience to train powered industrial truck operators and judge their competency.

(3) *Training program content.* Powered industrial truck operator trainees shall be trained in the following topics unless the employer can demonstrate that some of the topics are not needed for safe operation.

(i) Truck related topics.

(A) All operating instructions, warnings and precautions for the types of trucks the operator will be authorized to operate;

(B) Similarities to and differences from the automobile;

(C) Controls and instrumentation: location, what they do and how they work;

(D) Power plant operation and maintenance;

(E) Steering and maneuvering;

(F) Visibility (including restrictions due to loading);

(G) Fork and attachment adaption, operation and limitations of their utilization;

(H) Vehicle capacity;

(I) Vehicle stability;

(J) Vehicle inspection and maintenance;

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(K) Refueling or charging, recharging batteries;

(L) Operating limitations; and

(M) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(ii) Workplace related topics.

(A) Surface conditions where the vehicle will be operated;

(B) Composition of probable loads and load stability;

(C) Load manipulation, stacking, unstacking;

(D) Pedestrian traffic;

(E) Narrow aisles and other restricted places of operation;

(F) Operating in hazardous classified locations;

(G) Operating the truck on ramps and other sloped surfaces that could affect the stability of the vehicle;

(H) Other unique or potentially hazardous environmental conditions that exist or may exist in the workplace; and

(I) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(iii) The requirements of this section.

(4) *Evaluation and refresher or remedial training.*

(i) Sufficient evaluation and remedial training shall be conducted so that the employee retains and uses the knowledge, skills and ability needed to operate the powered industrial truck safely.

(ii) An evaluation of the performance of each powered industrial truck operator shall be conducted at least annually by a designated person.

(iii) Refresher or remedial training shall be provided when there is reason to believe that there has been unsafe operation, when an accident or a near-miss occurs or when an evaluation indicates that the operator is not capable of performing the assigned duties.

(5) *Certification.*

(i) The employer shall certify that each operator has received the training, has been evaluated as required by this paragraph, and has demonstrated competency in the performance of the operator's duties. The certification shall include the name of the trainee, the date of training, and the signature of the person performing the training and evaluation.

(ii) The employer shall retain the current training materials and course outline or the name and address of the person who conducted the training if it was conducted by an outside trainer.

(6) *Avoidance of Duplicative Training.*

(i) Each current truck operator who has received training in any of the elements specified in paragraph (l)(3) of this section for the types of trucks the employee is authorized to operate and the type workplace that the trucks are being operated in need not be retrained in those elements if the employer certifies in accordance with paragraph (l)(5)(i) of this section that the operator has been evaluated to be competent to perform those duties.

(ii) Each new truck operator who has received training in any of the elements specified in paragraph (l)(3) of this section for the types of trucks the employee will be authorized to operate and the type of workplace in which the trucks will be operated need not be retrained in those elements before initial assignment in the workplace if the employer has written documentation of the training and if the employee is evaluated pursuant to paragraph (l)(4) of this section to be competent.

Note to paragraph (l): Appendices A and B at the end of this section provide non-mandatory guidance to assist employers in implementing this paragraph (l).

* * * * *

Appendixes to 31910.178

Appendix A—Training of Powered Industrial Truck Operators

(Non-mandatory appendix to paragraph (l) of this section)

A–1. Operator Selection

A–1.1. Prospective operators of powered industrial trucks should be identified based upon their ability to be trained and accommodated to perform job functions that are essential to the operation of a powered industrial truck. Determination of the capabilities of a prospective operator to fulfill the demands of the job should be based upon the tasks that the job demands.

A–1.2. The employer should identify all the aspects of the job that the employee must meet/perform when doing his or her job. These aspects could include the level at which the employee must see and hear, the physical demands of the job, and the environmental extremes of the job.

A–1.3. One factor to be considered is the ability of the candidate to see and hear within reasonably acceptable limits. Included in the vision requirements are the ability to see at distance and peripherally. In certain instances, there also is a requirement for the candidate to discern different colors, primarily red, yellow and green.

A–1.4. The environmental extremes that might be demanded of a potential powered industrial truck operator include that ability of the person to work in areas of excessive cold or heat.

A–1.5. After an employee has been trained and appropriate accommodations have been made, the employer needs to determine whether the employee can safely perform the job.

A–2. The Method(s) of Training

A–2.1. Among the many methods of training are the lecture, conference, demonstration, test (written and/or oral) and the practical exercise. In most instances, a combination of these methods have been successfully used to train employees in the knowledge, skills and abilities that are essential to perform the job function that the employee is being trained to perform. To enhance the training and to make the training more understandable to the employee, employers and other trainers have used movies, slides, video tapes and other visual presentations. Making the presentation more understandable has several advantages including:

(1) The employees being trained remain more attentive during the presentation if graphical presentation are used, thereby increasing the effectiveness of the training;

(2) The use of visual presentations allows the trainer to ensure that the necessary information is covered during the training;

(3) The use of graphics makes better utilization of the training time by decreasing the need for the instructor to carry on long discussions about the instructional material; and

(4) The use of graphics during instruction provides greater retention by the trainees.

A–3. Training Program Content

A–3.1. Because each type (make and model) powered industrial truck has different operating characteristics, limitations and other unique features, an optimum employee training program for powered industrial truck operators must be based upon the type vehicles that the employee will be trained and authorized to operate. The training must also emphasize the features of the workplace which will affect the manner in which the vehicle must be operated. Finally, the training must include the general safety rules applicable to the operation of all powered industrial trucks.

A–3.2. Selection of the methods of training the operators has been left to the reasonable determination of the employer. Whereas some employees can assimilate instructional material while seated in a classroom, other employees may learn best by observing the conduct of operations (demonstration) and/or by having to personally conduct the operations (practical exercise). In some instances, an employee can receive valuable instruction through the use of electronic mediums, such as the use of video tapes and movies. In most instances, a combination of the different training methods may provide the mechanism for providing the best training in the least amount of time. OSHA has specified at paragraph (l)(2)(ii) of this section that the training must consist of a combination classroom instruction and practical exercise. The use of both these modes of instruction is the only way of assuring that the trainee has received and comprehended the instruction and can utilize the information to safely operate a powered industrial truck.

A–4. Initial Training

A–4.1. The following is an outline of a generalized forklift operator training program:

(1) Characteristics of the powered industrial truck(s) the employee will be allowed to operate:

(a) Similarities to and differences from the automobile;

(b) Controls and instrumentation: location, what they do and how they work;

(c) Power plant operation and maintenance;

(d) Steering and maneuvering;

(e) Visibility;

(f) Fork and/or attachment adaption, operation and limitations of their utilization;

(g) Vehicle capacity;

(h) Vehicle stability;

(i) Vehicle inspection and maintenance;

(j) Refueling or charging, recharging batteries.

(k) Operating limitations.

(l) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(2) The operating environment:

(a) Floor surfaces and/or ground conditions where the vehicle will be operated;

(b) Composition of probable loads and load stability;

(c) Load manipulation, stacking, unstacking;

(d) Pedestrian traffic;

(e) Narrow aisle and restricted place operation;

(f) Operating in classified hazardous locations;

(g) Operating the truck on ramps and other sloped surfaces which would affect the stability of the vehicle;

(h) Other unique or potentially hazardous environmental conditions which exist or may exist in the workplace.

(i) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(3) The requirements of this OSHA Standard.

A–5. Trainee Evaluation

A–5.1. The provisions of these proposed requirements specify that an employee evaluation be conducted both as part of the training and after completion of the training. The initial evaluation is useful for many reasons, including:

(1) the employer can determine what methods of instruction will produce a proficient truck operator with the minimum of time and effort;

(2) the employer can gain insight into the previous training that the trainee has received; and

(3) a determination can be made as to whether the trainee will be able to successfully operate a powered industrial truck. This initial evaluation can be completed by having the employee fill out a questionnaire, by an oral interview, or by a combination of these mechanisms. In many cases, answers received by the employee can be substantiated by contact with other employees or previous employers.

A–6. Refresher or Remedial Training

A–6.1. (The type information listed at paragraph A–6.2 of this appendix would be used when the training is more than an on-the-spot correction being made by a supervisor or when there have been multiple instances of on-the-spot corrections having to be made.) When an on-the-spot correction is used, the person making the correction should point out the incorrect manner of operation of the truck or other unsafe act being conducted, tell the employee how to do the operation correctly, and then ensure that the employee does the operation correctly.

A–6.2. The following items may be used when a more general, structured retraining program is utilized to train employees and eliminate unsafe operation of the vehicle:

(1) Common unsafe situations encountered in the workplace;

(2) Unsafe methods of operating observed or known to be used;

(3) The need for constant attentiveness to the vehicle, the workplace conditions and the manner in which the vehicle is operated.

A–6.3. Details about the above subject areas need to be expanded upon so that the operator receives all the information which is necessary for the safe operation of the vehicle. Insight into some of the specifics of the above subject areas may be obtained from the vehicle manufacturers' literature, the national consensus standards [e.g. the ANSI B56 series of standards (current revisions)] and this OSHA Standard.

Appendix B—Stability of Powered Industrial Trucks

(Non-mandatory appendix to paragraph (l) of this section)

B–1. Definitions

To understand the principle of stability, understanding definitions of the following is necessary:

Center of gravity is that point of an object at which all of the weight of an object can be considered to be concentrated.

Counterweight is the weight that is a part of the basic structure of a truck that is used to offset the weight of a load and to maximize the resistance of the vehicle to tipping over.

Fulcrum is the axis of rotation of the truck when it tips over.

Grade is the slope of any surface that is usually measured as the number of feet of rise or fall over a hundred foot horizontal distance (this measurement is designated as a percent).

Lateral stability is the resistance of a truck to tipping over sideways.

Line of action is an imaginary vertical line through the center of gravity of an object.

Load center is the horizontal distance from the edge of the load (or the vertical face of the forks or other attachment) to the line of action through the center of gravity of the load.

Longitudinal stability is the resistance of a truck to overturning forward or rearward.

Moment is the product of the weight of the object times the distance from a fixed point. In the case of a powered industrial truck, the distance is measured from the point that the truck will tip over to the line of action of the object. The distance is always measured perpendicular to the line of action.

Track is the distance between wheels on the same axle of a vehicle.

Wheelbase is the distance between the centerline of the front and rear wheels of a vehicle.

B–2. General

B–2.1. Stability determination for a powered industrial truck is not complicated once a few basic principles are understood. There are many factors that influence vehicle stability. Vehicle wheelbase, track, height and weight distribution of the load, and the location

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of the counterweights of the vehicle (if the vehicle is so equipped), all contribute to the stability of the vehicle.

B–2.2. The "stability triangle", used in most discussions of stability, is not mysterious but is used to demonstrate truck stability in rather simple fashion.

B–3. Basic Principles

B–3.1. The determination of whether an object is stable is dependent on the moment of an object at one end of a system being greater than, equal to or smaller than the moment of an object at the other end of that system. This is the same principle on which a see saw or teeter-totter works, that is, if the product of the load and distance from the fulcrum (moment) is equal to the moment at the other end of the device, the device is balanced and it will not move. However, if there is a greater moment at one end of the device, the device will try to move downward at the end with the greater moment.

B–3.2. Longitudinal stability of a counterbalanced powered industrial truck is dependent on the moment of the vehicle and the moment of the load. In other words, if the mathematic product of the load moment (the distance is from the front wheels, the point about which the vehicle would tip forward) the system is balanced and will not tip forward. However, if the load-moment is greater than the vehicle-moment, the greater load-moment will force the truck to tip forward.

B–4. The Stability Triangle

B–4.1. Almost all counterbalanced powered industrial trucks have a three point suspension system, that is, the vehicle is supported at three points. This is true even if it has four wheels. The steer axle of most trucks is attached to the truck by means of a pivot pin in the center of the axle. This three point support forms a triangle called the stability triangle when the points are connected with imaginary lines. Figure 1 depicts the stability triangle.

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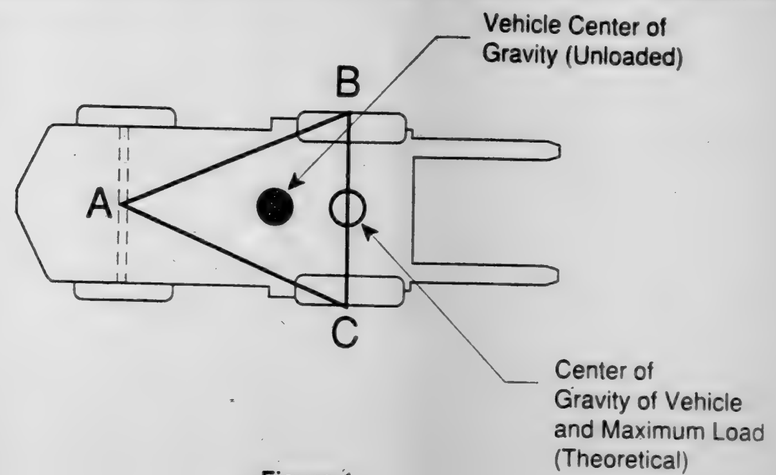

Figure 1.

NOTES:

1. When the vehicle is loaded, the combined center of gravity shifts toward line B-C. Theoretically the max load will result in the CG at the line B-C. In actual practice, the combined CG should never be at line B-C.

2. The addition of additional counterweight will cause the truck CG to shift toward point A and result in a truck that is less stable laterally.

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B–4.2. When the line of action of the vehicle or load-vehicle falls within the stability triangle, the vehicle is stable and will not tip over. However, when the line of action of the vehicle or the vehicle/load combination falls outside the stability triangle, the vehicle is unstable and may tip over. (See Figure 2.)

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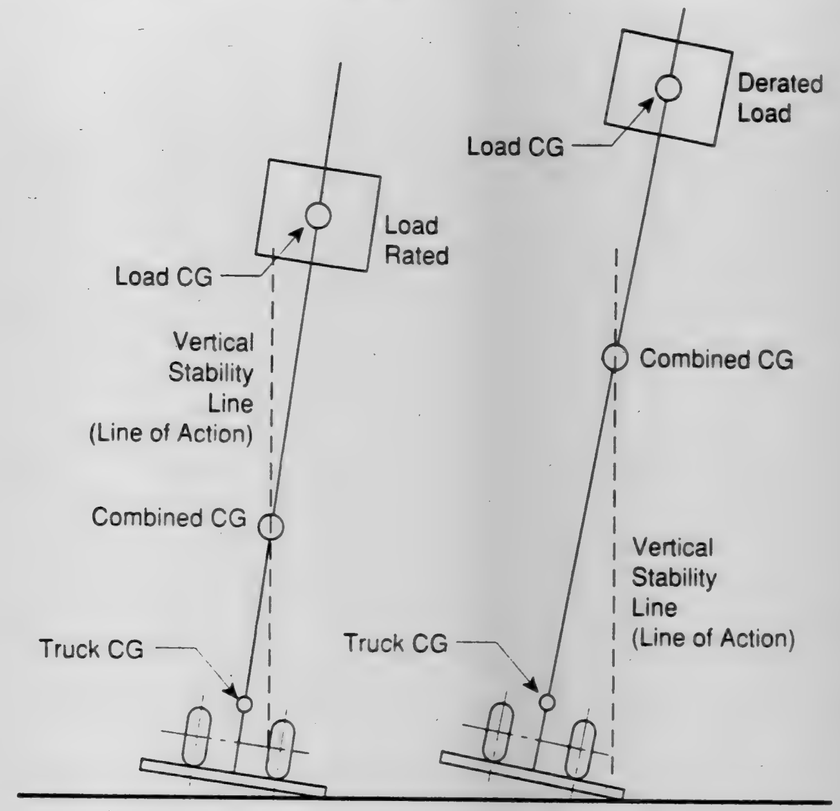

Figure 2.

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B–5. Longitudinal Stability

B–5.1. The axis of rotation when a truck tips forward is the point of contact of the front wheels of the vehicle with the pavement. When a powered industrial truck tips forward, it is this line that the truck will rotate about. When a truck is stable the vehicle-moment must exceed the load-moment. As long as the vehicle-moment is equal to or exceeds the load-moment, the vehicle will not tip over. On the other hand, if the load-moment slightly exceeds the vehicle-moment, the truck will begin the tip forward, thereby causing loss of steering control. If the load-moment greatly exceeds the vehicle-moment, the truck will tip forward.

B–5.2. In order to determine the maximum safe load moment, the truck manufacturer normally rates the truck at a maximum load at a given distance from the front face of the forks. The specified distance from the front face of the forks to the line of action of the load is commonly called a load center. Because larger trucks normally handle loads that are physically larger, these vehicles have greater load centers. A truck with a capacity of 30,000 pounds or less capacity is normally rated at a given load weight at a 24 inch load center. For trucks of greater than 30,000 pound capacity, the load center is normally rated at 36 or 48 inch load center distance. In order to safely operate the vehicle, the operator should always check the data plate and determine the maximum allowable weight at the rated load center.

B–5.3. Although the true load moment distance is measured from the front wheels, this distance is greater than the distance from the front face of the forks. Calculation of the maximum allowable load moment using the load center distance always provides a lower load moment than the truck was designed to handle. When handling unusual loads, such as those that are larger than 48 inches long (the center of gravity is greater than 24 inches), with an offset center of gravity, etc., then calculation of a maximum allowable load moment should be undertaken and this value used to determine whether a load can be handled. For example, if an operator is operating a 3,000 pound capacity truck (with a 24 inch load center), the maximum allowable load moment is 72,000 inch-pounds (3,000 times 24). If a probable load is 60 inches long (30 inch load center), then the maximum weight that this load can weigh is 2,400 pounds (72,000 divided by 30).

B–6. Lateral Stability

B–6.1. The lateral stability of a vehicle is determined by the position of the line of action (a vertical line that passes through the combined center of gravity of the vehicle and the load) relative to the stability triangle. When the vehicle is not loaded, the location of the center of gravity of the truck is the only factor to be considered in determining the stability of the truck. As long as the line of action of the combined center of gravity of the vehicle and the load falls within the stability triangle, the truck is stable and will not tip over. However, if the line of action falls outside the stability triangle, the truck is not stable and may tip over.

B–6.2. Factors that affect the lateral stability of a vehicle include the placement of the load on the truck, the height of the load above the surface on which the vehicle is operating, and the degree of lean of the vehicle.

B–7. Dynamic Stability

B–7.1. Up to this point, we have covered stability of a powered industrial truck without consideration of the dynamic forces that result when the vehicle and load are put into motion. The transfer of weight and the resultant shift in the center of gravity due to the dynamic forces created when the machine is moving, braking, cornering, lifting, tilting, and lowering loads, etc., are important stability considerations.

B–7.2. When determining whether a load can be safely handled, the operator should exercise extra caution when handling loads that cause the vehicle to approach its maximum design characteristics. For example, if an operator must handle a maximum load, the load should be carried at the lowest position possible, the truck should be accelerated slowly and evenly, and the forks should be tilted forward cautiously. However, no precise rules can be formulated to cover all of these eventualities.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

3. The authority citation for part 1915 would be revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1915.120 and 1915.152 also issued under 29 CFR part 1911.

4. A new § 1915.120 with appendices A and B would be added to subpart G to read as follows:

§ 1915.120 Powered industrial trucks.

(a) *Operator training.* (1) Operator qualifications. (i) The employer shall ensure that each potential operator of a powered industrial truck is capable of performing the duties that are required of the job.

(ii) In determining operator qualifications, the employer shall ensure that each potential operator has received the training required by this paragraph, that each potential operator has been evaluated by a designated person while performing the required duties, and that each potential operator performs those operations competently.

(2) *Training program implementation.*

(i) The employer shall implement a training program and ensure that only trained drivers who have successfully completed the training program are allowed to operate powered industrial trucks. Exception: Trainees under the direct supervision of a designated person shall be allowed to operate a powered industrial truck provided the operation of the vehicle is conducted in an area where other employees are not near and the operation of the truck is under controlled conditions.

(ii) Training shall consist of a combination of classroom instruction (Lecture, discussion, video tapes, and/or conference) and practical training (demonstrations and practical exercises by the trainee).

(iii) All training and evaluation shall be conducted by a designated person who has the requisite knowledge, training and experience to train powered industrial truck operators and judge their competency.

(3) *Training program content.* Powered industrial truck operator trainees shall be trained in the following topics unless the employer can demonstrate that some of the topics are not needed for safe operation.

(i) Truck related topics.

(A) All operating instructions, warnings and precautions for the types of trucks the operator will be authorized to operate;

(B) Similarities to and differences from the automobile;

(C) Controls and instrumentation: location, what they do and how they work;

(D) Power plant operation and maintenance;

(E) Steering and maneuvering;

(F) Visibility (including restrictions due to loading);

(G) Fork and attachment adaption, operation and limitations of their utilization;

(H) Vehicle capacity;

(I) Vehicle stability;

(J) Vehicle inspection and maintenance;

(K) Refueling or charging, recharging batteries;

(L) Operating limitations; and

(M) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(ii) Workplace related topics.

(A) Surface conditions where the vehicle will be operated;

(B) Composition of probable loads and load stability;

(C) Load manipulation, stacking, unstacking;

(D) Pedestrian traffic;

(E) Narrow aisles and other restricted places of operation;

(F) Operating in hazardous classified locations;

(G) Operating the truck on ramps and other sloped surfaces that could affect the stability of the vehicle;

(H) Other unique or potentially hazardous environmental conditions that exist or may exist in the workplace; and

(I) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(iii) The requirements of this section.

(4) *Evaluation and refresher or remedial training.*

(i) Sufficient evaluation and remedial training shall be conducted so that the employee retains and uses the knowledge, skills and ability needed to operate the powered industrial truck safely.

(ii) An evaluation of the performance of each powered industrial truck operator shall be conducted at least annually by a designated person.

(iii) Refresher or remedial training shall be provided when there is reason to believe that there has been unsafe operation, when an accident or a near-miss occurs or when an evaluation indicates that the operator is not capable of performing the assigned duties.

(5) *Certification.*

(i) The employer shall certify that each operator has received the training, has been evaluated as required by this paragraph, and has demonstrated competency in the performance of the operator's duties. The certification shall include the name of the trainee, the date of training, and the signature of the person performing the training and evaluation.

(ii) The employer shall retain the current training materials and course outline or the name and address of the person who conducted the training if it was conducted by an outside trainer.

(6) *Avoidance of duplicative training.*

(i) Each current truck operator who has received training in any of the elements specified in paragraph (a)(3) of this section for the types of trucks the employee is authorized to operate and the type workplace that the trucks are being operated in need not be retrained in those elements if the employer certifies in accordance with paragraph (a)(5)(i) of this section that the operator has been evaluated to be competent to perform those duties.

(ii) Each new truck operator who has received training in any of the elements specified in paragraph (a)(3) of this section for the types of trucks the employee will be authorized to operate and the type of workplace in which the trucks will be operated need not be retrained in those elements before initial assignment in the workplace if the employer has written documentation of the training and if the employee is evaluated pursuant to paragraph (a)(4) of this section to be competent.

(b) [Reserved]

Appendixes to § 1915.120

Appendix A—Training of Powered Industrial Truck Operators

(Non-mandatory appendix to paragraph (a) of this section)

A–1. Operator Selection

A–1.1. Prospective operators of powered industrial trucks should be identified based upon their ability to be trained and accommodated to perform job functions that are essential to the operation of a powered industrial truck. Determination of the capabilities of a prospective operator to fulfill the demands of the job should be based upon the tasks that the job demands.

A–1.2. The employer should identify all the aspects of the job that the employee must meet/perform when doing his or her job. These aspects could include the level at which the employee must see and hear, the physical demands of the job, and the environmental extremes of the job.

A–1.3. One factor to be considered is the ability of the candidate to see and hear within reasonably acceptable limits. Included in the vision requirements are the ability to see at distance and peripherally. In certain instances, there also is a requirement for the candidate to discern different colors, primarily red, yellow and green.

A–1.4. The environmental extremes that might be demanded of a potential powered industrial truck operator include that ability of the person to work in areas of excessive cold or heat.

A–1.5. After an employee has been trained and appropriate accommodations have been made, the employer needs to determine whether the employee can safely perform the job.

A–2. The Method(s) of Training

A–2.1. Among the many methods of training are the lecture, conference, demonstration, test (written and/or oral) and the practical exercise. In most instances, a combination of these methods have been successfully used to train employees in the knowledge, skills and abilities that are essential to perform the job function that the employee is being trained to perform. To enhance the training and to make the training more understandable to the employee, employers and other trainers have used movies, slides, video tapes and other visual presentations. Making the presentation more understandable has several advantages including:

(1) The employees being trained remain more attentive during the presentation if graphical presentation are used, thereby increasing the effectiveness of the training;

(2) The use of visual presentations allows the trainer to ensure that the necessary information is covered during the training;

(3) The use of graphics makes better utilization of the training time by decreasing the need for the instructor to carry on long discussions about the instructional material; and

(4) The use of graphics during instruction provides greater retention by the trainees.

A–3. Training Program Content

A–3.1. Because each type (make and model) powered industrial truck has different operating characteristics, limitations and other unique features, an optimum employee training program for powered industrial truck operators must be based upon the type vehicles that the employee will be trained and authorized to operate. The training must also emphasize the features of the workplace which will affect the manner in which the vehicle must be operated. Finally, the training must include the general safety rules applicable to the operation of all powered industrial trucks.

A–3.2. Selection of the methods of training the operators has been left to the reasonable determination of the employer. Whereas some employees can assimilate instructional material while seated in a classroom, other employees may learn best by observing the conduct of operations (demonstration) and/or by

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A–4. Initial Training

A–4.1. The following is an outline of a generalized forklift operator training program:

(1) Characteristics of the powered industrial truck(s) the employee will be allowed to operate:

(a) Similarities to and differences from the automobile;

(b) Controls and instrumentation: location, what they do and how they work;

(c) Power plant operation and maintenance;

(d) Steering and maneuvering;

(e) Visibility;

(f) Fork and/or attachment adaption, operation and limitations of their utilization;

(g) Vehicle capacity;

(h) Vehicle stability;

(i) Vehicle inspection and maintenance;

(j) Refueling or charging, recharging batteries;

(k) Operating limitations;

(l) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(2) The operating environment:

(a) Floor surfaces and/or ground conditions where the vehicle will be operated;

(b) Composition of probable loads and load stability;

(c) Load manipulation/stacking, unstacking;

(d) Pedestrian traffic;

(e) Narrow aisle and restricted place operation;

(f) Operating in classified hazardous locations;

(g) Operating the truck on ramps and other sloped surfaces which would affect the stability of the vehicle;

(h) Other unique or potentially hazardous environmental conditions which exist or may exist in the workplace;

(i) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(3) The requirements of this OSHA Standard.

A–5. Trainee Evaluation

A–5.1. The provisions of these proposed requirements specify that an employee evaluation be conducted both as part of the training and after completion of the training. The initial evaluation is useful for many reasons, including:

(1) the employer can determine what methods of instruction will produce a proficient truck operator with the minimum of time and effort;

(2) the employer can gain insight into the previous training that the trainee has received; and

(3) a determination can be made as to whether the trainee will be able to successfully operate a powered industrial truck. This initial evaluation can be completed by having the employee fill out a questionnaire, by an oral interview, or by a combination of these mechanisms. In many cases, answers received by the employee can be substantiated by contact with other employees or previous employers.

A–6. Refresher or Remedial Training

A–6.1. (The type information listed at paragraph A–6.2 of this appendix would be used when the training is more than an on-the-spot correction being made by a supervisor or when there have been multiple instances of on-the-spot corrections having to be made.) When an on-the-spot correction is used, the person making the correction should point out the incorrect manner of operation of the truck or other unsafe act being conducted, tell the employee how to do the operation correctly, and then ensure that the employee does the operation correctly.

A–6.2. The following items may be used when a more general, structured retraining program is utilized to train employees and eliminate unsafe operation of the vehicle:

(1) Common unsafe situations encountered in the workplace;

(2) Unsafe methods of operating observed or known to be used;

(3) The need for constant attentiveness to the vehicle, the workplace conditions and the manner in which the vehicle is operated.

A–6.3. Details about the above subject areas need to be expanded upon so that the operator receives all the information which is necessary for the safe operation of the vehicle. Insight into some of the specifics of the above subject areas may be obtained from the vehicle manufacturers' literature, the national consensus standards [e.g. the ANSI B56 series of standards (current revisions)] and this OSHA Standard.

Appendix B—Stability of Powered Industrial Trucks

(Non-mandatory appendix to paragraph (a) of this section)

B–1. Definitions

To understand the principle of stability, understanding definitions of the following is necessary:

Center of Gravity is that point of an object at which all of the weight of an object can be considered to be concentrated.

Counterweight is the weight that is a part of the basic structure of a truck that is used to offset the weight of a load and to maximize the resistance of the vehicle to tipping over.

Fulcrum is the axis of rotation of the truck when it tips over.

Grade is the slope of any surface that is usually measured as the number of feet or rise of fall over a hundred foot horizontal distance (this measurement is designated as a percent).

Lateral stability is the resistance of a truck to tipping over sideways.

Line of action is a imaginary vertical line through the center of gravity of an object.

Load center is the horizontal distance from the edge of the load (or the vertical face of the forks or other attachment) to the line of action through the center of gravity of the load.

Longitudinal stability is the resistance of a truck to overturning forward or rearward.

Moment is the product of the weight of the object times the distance from a fixed point. In the case of a powered industrial truck, the distance is measured from the point that the truck will tip over to the line of action of the object. The distance is always measured perpendicular to the line of action.

Track is the distance between wheels on the same axle of a vehicle.

Wheelbase is the distance between the centerline of the front and rear wheels of a vehicle.

B–2. General

B–2.1. Stability determination for a powered industrial truck is not complicated once a few basic principles are understood. There are many factors that influence vehicle stability. Vehicle wheelbase, track, height and weight distribution of the load, and the location

of the counterweights of the vehicle (if the vehicle is so equipped), all contribute to the stability of the vehicle.

B–2.2. The "stability triangle", used in most discussions of stability, is not mysterious but is used to demonstrate truck stability in rather simple fashion.

B–3. Basic Principles

B–3.1. The determination of whether an object is stable is dependent on the moment of an object at one end of a system being greater than, equal to or smaller than the moment of an object at the other end of that system. This is the same principle on which a see saw or teeter-totter works, that is, if the product of the load and distance from the fulcrum (moment) is equal to the moment at the other end of the device, the device is balanced and it will not move. However, if there is a greater moment at one end of the device, the device will try to move downward at the end with the greater moment.

B–3.2. Longitudinal stability of a counterbalanced powered industrial truck is dependent on the moment of the vehicle and the moment of the load. In other words, if the mathematic product of the load moment (the distance is from the front wheels, the point about which the vehicle would tip forward) the system is balanced and will not tip forward. However, if the load-moment is greater than the vehicle-moment, the greater load-moment will force the truck to tip forward.

B–4. The Stability Triangle

B–4.1. Almost all counterbalanced powered industrial trucks have a three point suspension system, that is, the vehicle is supported at three points. This is true even if it has four wheels. The steer axle of most trucks is attached to the truck by means of a pivot pin in the center of the axle. This three point support forms a triangle called the stability triangle when the points are connected with imaginary lines. Figure 1 depicts the stability triangle.

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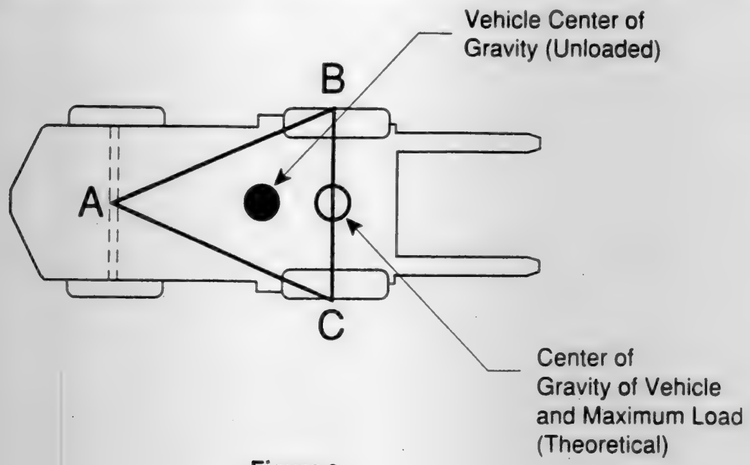

Figure 1.

NOTES:

1. When the vehicle is loaded, the combined center of gravity shifts toward line B-C. Theoretically the max load will result in the CG at the line B-C. In actual practice, the combined CG should never be at line B-C.

2. The addition of additional counterweight will cause the truck CG to shift toward point A and result in a truck that is less stable laterally.

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B–4 2. When the line of action of the vehicle or load-vehicle falls within the stability triangle, the vehicle is stable and will not tip over. However, when the line of action of the vehicle or the vehicle/load combination falls outside the stability triangle, the vehicle is unstable and may tip over. (See Figure 2.)

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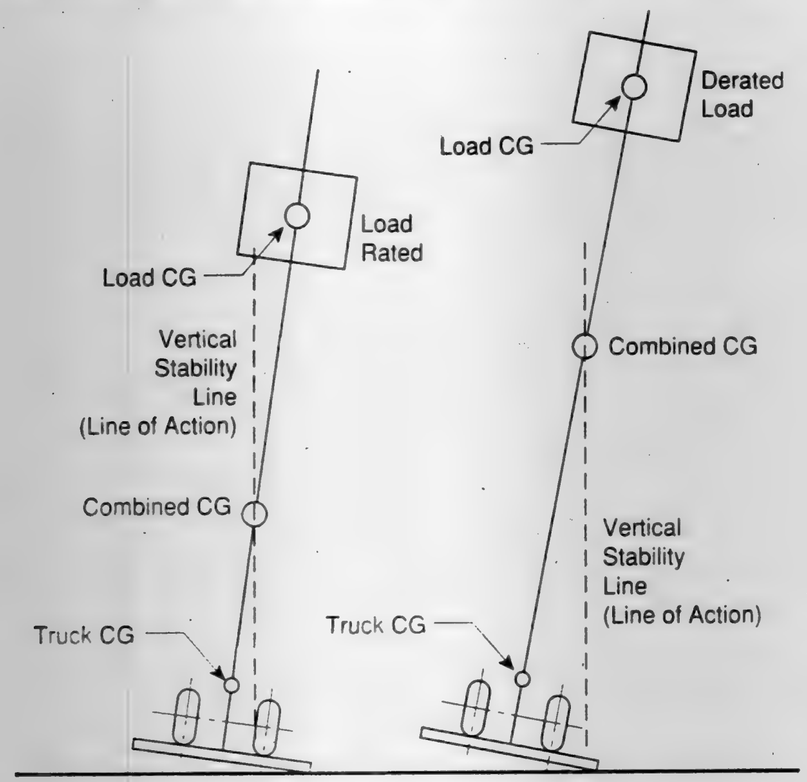

Figure 2.

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B–5. Longitudinal Stability

B–5.1. The axis of rotation when a truck tips forward is the point of contact of the front wheels of the vehicle with the pavement. When a powered industrial truck tips forward, it is this line that the truck will rotate about. When a truck is stable the vehicle-moment must exceed the load-moment. As long as the vehicle-moment is equal to or exceeds the load-moment, the vehicle will not tip over. On the other hand, if the load-moment slightly exceeds the vehicle-moment, the truck will begin the tip forward, thereby causing loss of steering control. If the load-moment greatly exceeds the vehicle-moment, the truck will tip forward.

B–5.2. In order to determine the maximum safe load moment, the truck manufacturer normally rates the truck at a maximum load at a given distance from the front face of the forks. The specified distance from the front face of the forks to the line of action of the load is commonly called a load center. Because larger trucks normally handle loads that are physically larger, these vehicles have greater load centers. A truck with a capacity of 30,000 pounds or less capacity is normally rated at a given load weight at a 24 inch load center. For trucks of greater than 30,000 pound capacity, the load center is normally rated at 36 or 48 inch load center distance. In order to safely operate the vehicle, the operator should always check the data plate and determine the maximum allowable weight at the rated load center.

B–5.3. Although the true load moment distance is measured from the front wheels, this distance is greater than the distance from the front face of the forks. Calculation of the maximum allowable load moment using the load center distance always provides a lower load moment than the truck was designed to handle. When handling unusual loads, such as those that are larger than 48 inches long (the center of gravity is greater than 24 inches), with an offset center of gravity, etc., then calculation of a maximum allowable load moment should be undertaken and this value used to determine whether a load can be handled. For example, if an operator is operating a 3000 pound capacity truck (with a 24 inch load center), the maximum allowable load moment is 72,000 inch-pounds (3,000 times 24). If a probable load is 60 inches long (30 inch load center), then the maximum weight that this load can weigh is 2,400 pounds (72,000 divided by 30).

B–6. Lateral Stability

B–6.1. The lateral stability of a vehicle is determined by the position of the line of action (a vertical line that passes through the combined center of gravity of the vehicle and the load) relative to the stability triangle. When the vehicle is not loaded, the location of the center of gravity of the truck is the only factor to be considered in determining the stability of the truck. As long as the line of action of the combined center of gravity of the vehicle and the load falls within the stability triangle, the truck is stable and will not tip over. However, if the line of action falls outside the stability triangle, the truck is not stable and may tip over.

B–6.2. Factors that affect the lateral stability of a vehicle include the placement of the load on the truck, the height of the load above the surface on which the vehicle is operating, and the degree of lean of the vehicle.

B–7. Dynamic Stability

B–7.1. Up to this point, we have covered stability of a powered industrial truck without consideration of the dynamic forces that result when the vehicle and load are put into motion. The transfer of weight and the resultant shift in the center of gravity due to the dynamic forces created when the machine is moving, braking, cornering, lifting, tilting, and lowering loads, etc., are important stability considerations.

B–7.2. When determining whether a load can be safely handled, the operator should exercise extra caution when handling loads that cause the vehicle to approach its maximum design characteristics. For example, if an operator must handle a maximum load, the load should be carried at the lowest position possible, the truck should be accelerated slowly and evenly, and the forks should be tilted forward cautiously. However, no precise rules can be formulated to cover all of these eventualities.

PART 1917—MARINE TERMINALS

5. The authority citation for part 1917 would be revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Section 1917.43 also issued under 29 CFR part 1911.

6. Section 1917.43 would be amended by adding a new paragraph (i) and by adding appendices A and B at the end of the section to read as follows:

§ 1917.43 Powered industrial trucks.

* * * * *

(i) *Operator training.*

(1) *Operator qualifications.* (i) The employer shall ensure that each potential operator of a powered industrial truck is capable of performing the duties that are required of the job.

(ii) In determining operator qualifications, the employer shall ensure that each potential operator has received the training required by this paragraph, that each potential operator has been evaluated by a designated person while performing the required duties, and that each potential operator performs those operations competently.

(2) *Training program implementation.*

(i) The employer shall implement a training program and ensure that only trained drivers who have successfully completed the training program are allowed to operate powered industrial trucks. Exception: Trainees under the direct supervision of a designated person shall be allowed to operate a powered industrial truck provided the operation of the vehicle is conducted in an area where other employees are not near and the operation of the truck is under controlled conditions.

(ii) Training shall consist of a combination of classroom instruction (Lecture, discussion, video tapes, and/or conference) and practical training (demonstrations and practical exercises by the trainee).

(iii) All training and evaluation shall be conducted by a designated person who has the requisite knowledge, training and experience to train powered industrial truck operators and judge their competency.

(3) *Training program content.* Powered industrial truck operator trainees shall be trained in the following topics unless the employer can demonstrate that some of the topics are not needed for safe operation.

(i) Truck related topics.

(A) All operating instructions, warnings and precautions for the types of trucks the operator will be authorized to operate;

(B) Similarities to and differences from the automobile;

(C) Controls and instrumentation: location, what they do and how they work;

(D) Power plant operation and maintenance;

(E) Steering and maneuvering;

(F) Visibility (including restrictions due to loading);

(G) Fork and attachment adaption, operation and limitations of their utilization;

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(H) Vehicle capacity;
(I) Vehicle stability;
(J) Vehicle inspection and maintenance;
(K) Refueling or charging, recharging batteries;
(L) Operating limitations; and
(M) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(ii) Workplace related topics.
(A) Surface conditions where the vehicle will be operated;
(B) Composition of probable loads and load stability;
(C) Load manipulation, stacking, unstacking;
(D) Pedestrian traffic;
(E) Narrow aisles and other restricted places of operation;
(F) Operating in hazardous classified locations;
(G) Operating the truck on ramps and other sloped surfaces that could affect the stability of the vehicle;
(H) Other unique or potentially hazardous environmental conditions that exist or may exist in the workplace; and
(I) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(iii) The requirements of this section.

(4) *Evaluation and refresher or remedial training.* (i) Sufficient evaluation and remedial training shall be conducted so that the employee retains and uses the knowledge, skills and ability needed to operate the powered industrial truck safely.

(ii) An evaluation of the performance of each powered industrial truck operator shall be conducted at least annually by a designated person.

(iii) Refresher or remedial training shall be provided when there is reason to believe that there has been unsafe operation, when an accident or a near-miss occurs or when an evaluation indicates that the operator is not capable of performing the assigned duties.

(5) *Certification.*

(i) The employer shall certify that each operator has received the training, has been evaluated as required by this paragraph, and has demonstrated competency in the performance of the operator's duties. The certification shall include the name of the trainee, the date of training, and the signature of the person performing the training and evaluation.

(ii) The employer shall retain the current training materials and course outline or the name and address of the person who conducted the training if it was conducted by an outside trainer.

(6) *Avoidance of duplicative training.*

(i) Each current truck operator who has received training in any of the elements specified in paragraph (i)(3) of this section for the types of trucks the employee is authorized to operate and the type workplace that the trucks are being operated in need not be retrained in those elements if the employer certifies in accordance with paragraph (i)(5)(i) of this section that the operator has been evaluated to be competent to perform those duties.

(ii) Each new truck operator who has received training in any of the elements specified in paragraph (i)(3) of this section for the types of trucks the employee will be authorized to operate and the type of workplace in which the trucks will be operated need not be retrained in those elements before initial assignment in the workplace if the employer has written documentation of the training and if the employee is evaluated pursuant to paragraph (i)(4) of this section to be competent.

Note to paragraph (i): Appendices A and B provide non-mandatory guidance to assist employers in implementing this paragraph (i).

Appendices to § 1917.43

Appendix A—Training of Powered Industrial Truck Operators

(Non-mandatory appendix to paragraph (i) of this section)

A–1. Operator Selection

A–1.1. Prospective operators of powered industrial trucks should be identified based upon their ability to be trained and accommodated to perform job functions that are essential to the operation of a powered industrial truck. Determination of the capabilities of a prospective operator to fulfill the demands of the job should be based upon the tasks that the job demands.

A–1.2. The employer should identify all the aspects of the job that the employee must meet/perform when doing his or her job. These aspects could include the level at which the employee must see and hear, the physical demands of the job, and the environmental extremes of the job.

A–1.3. One factor to be considered is the ability of the candidate to see and hear within reasonably acceptable limits. Included in the vision requirements are the ability to see at distance and peripherally. In certain instances, there also is a requirement for the candidate to discern different colors, primarily red, yellow and green.

A–1.4. The environmental extremes that might be demanded of a potential powered industrial truck operator include that ability of the person to work in areas of excessive cold or heat.

A–1.5. After an employee has been trained and appropriate accommodations have been made, the employer needs to determine whether the employee can safely perform the job.

A–2. The Method(s) of Training

A–2.1. Among the many methods of training are the lecture, conference, demonstration, test (written and/or oral) and the practical exercise. In most instances, a combination of these methods have been successfully used to train employees in the knowledge, skills and abilities that are essential to perform the job function that the employee is being trained to perform. To enhance the training and to make the training more understandable to the employee, employers and other trainers have used movies, slides, video tapes and other visual presentations. Making the presentation more understandable has several advantages including:

(1) The employees being trained remain more attentive during the presentation if graphical presentation are used, thereby increasing the effectiveness of the training;

(2) The use of visual presentations allows the trainer to ensure that the necessary information is covered during the training;

(3) The use of graphics makes better utilization of the training time by decreasing the need for the instructor to carry on long discussions about the instructional material; and

(4) The use of graphics during instruction provides greater retention by the trainees.

A–3. Training Program Content

A–3.1. Because each type (make and model) powered industrial truck has different operating characteristics, limitations and other unique features, an optimum employee training program for powered industrial truck operators must be based upon the type vehicles that the employee will be trained and authorized to operate. The training must also emphasize the features of the workplace which will affect the manner in which the vehicle must be operated. Finally, the training must include the general safety rules applicable to the operation of all powered industrial trucks.

A–3.2. Selection of the methods of training the operators has been left to the reasonable determination of the employer. Whereas some employees can assimilate instructional material while seated in a classroom, other employees may learn best by observing the conduct of operations (demonstration) and/or by having to personally conduct the operations (practical exercise). In some instances, an employee can receive valuable instruction through the use of electronic mediums, such as the use of video tapes and movies. In most instances, a combination of the different training methods may provide the mechanism for providing the best training in the least amount of time. OSHA has specified at paragraph (i)(2)(ii) of this section that the training must consist of a combination classroom instruction and practical exercise. The use of both these modes of instruction is the only way of assuring that the trainee has received and comprehended the instruction and can utilize the information to safely operate a powered industrial truck.

A–4. Initial Training

A–4.1. The following is an outline of a generalized forklift operator training program:

(1) Characteristics of the powered industrial truck(s) the employee will be allowed to operate:
(a) Similarities to and differences from the automobile;
(b) Controls and instrumentation: location, what they do and how they work;
(c) Power plant operation and maintenance;
(d) Steering and maneuvering;
(e) Visibility;
(f) Fork and/or attachment adaption, operation and limitations of their utilization;
(g) Vehicle capacity;
(h) Vehicle stability;
(i) Vehicle inspection and maintenance;
(j) Refueling or charging, recharging batteries.
(k) Operating limitations.
(l) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(2) The operating environment:
(a) Floor surfaces and/or ground conditions where the vehicle will be operated;
(b) Composition of probable loads and load stability;
(c) Load manipulation, stacking, unstacking;
(d) Pedestrian traffic;
(e) Narrow aisle and restricted place operation;
(f) Operating in classified hazardous locations;
(g) Operating the truck on ramps and other sloped surfaces which would affect the stability of the vehicle;
(h) Other unique or potentially hazardous environmental conditions which exist or may exist in the workplace.
(i) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(3) The requirements of this OSHA Standard.

A–5. Trainee Evaluation

A–5.1. The provisions of these proposed requirements specify that an employee evaluation be conducted both as part of the training and after completion of the training. The initial evaluation is useful for many reasons, including:

(1) the employer can determine what methods of instruction will produce a proficient truck operator with the minimum of time and effort;

(2) the employer can gain insight into the previous training that the trainee has received; and

(3) a determination can be made as to whether the trainee will be able to successfully operate a powered industrial truck. This initial evaluation can be completed by having the employee fill out a questionnaire, by an oral interview, or by a combination of these mechanisms. In many cases, answers received by the employee can be substantiated by contact with other employees or previous employers.

A–6. Refresher or Remedial Training

A–6.1. (The type information listed in paragraph A–6.2 of this appendix would be used when the training is more than an on-the-spot correction being made by a supervisor or when there have been multiple instances of on-the-spot corrections having to be made.) When an on-the-spot correction is used, the person making the correction should point out the incorrect manner of operation of the truck or other unsafe act being conducted, tell the employee how to do the operation correctly, and then ensure that the employee does the operation correctly.

A–6.2. The following items may be used when a more general, structured retraining program is utilized to train employees and eliminate unsafe operation of the vehicle:

(1) Common unsafe situations encountered in the workplace;

(2) Unsafe methods of operating observed or known to be used;

(3) The need for constant attentiveness to the vehicle, the workplace conditions and the manner in which the vehicle is operated.

A–6.3. Details about the above subject areas need to be expanded upon so that the operator receives all the information which is necessary for the safe operation of the vehicle. Insight into some of the specifics of the above subject areas may be obtained from the vehicle manufacturers' literature, the national consensus standards [e.g. the ANSI B56 series of standards (current revisions)] and this OSHA Standard.

Appendix B—Stability of Powered Industrial Trucks

(Non-mandatory appendix to paragraph (i) of this section)

B–1. Definitions

To understand the principle of stability, understanding definitions of the following is necessary:

Center of Gravity is that point of an object at which all of the weight of an object can be considered to be concentrated.

Counterweight is the weight that is a part of the basic structure of a truck that is used to offset the weight of a load and to maximize the resistance of the vehicle to tipping over.

Fulcrum is the axis of rotation of the truck when it tips over.

Grade is the slope of any surface that is usually measured as the number of feet of rise of fall over a hundred foot horizontal distance (this measurement is designated as a percent).

Lateral stability is the resistance of a truck to tipping over sideways.

Line of action is a imaginary vertical line through the center of gravity of an object.

Load center is the horizontal distance from the edge of the load (or the vertical face of the forks or other attachment) to the line of action through the center of gravity of the load.

Longitudinal stability is the resistance of a truck to overturning forward or rearward.

Moment is the product of the weight of the object times the distance from a fixed point. In the case of a powered industrial truck, the distance is measured from the point that the truck will tip over to the line of action of the object. The distance is always measured perpendicular to the line of action.

Track is the distance between wheels on the same axle of a vehicle.

Wheelbase is the distance between the centerline of the front and rear wheels of a vehicle.

B–2. General

B–2.1. Stability determination for a powered industrial truck is not complicated once a few basic principles are understood. There are many factors

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that influence vehicle stability. Vehicle wheelbase, track, height and weight distribution of the load, and the location of the counterweights of the vehicle (if the vehicle is so equipped), all contribute to the stability of the vehicle.

B–2.2. The "stability triangle", used in most discussions of stability, is not mysterious but is used to demonstrate truck stability in rather simple fashion.

B–3. Basic Principles

B–3.1. The determination of whether an object is stable is dependent on the moment of an object at one end of a system being greater than, equal to or smaller than the moment of an object at the other end of that system. This is the same principle on which a see saw or teeter-totter works, that is, if the product of the load and distance from the fulcrum (moment) is equal to the moment at the other end of the device, the device is balanced and it will not move. However, if there is a greater moment at one end of the device, the device will try to move downward at the end with the greater moment.

B–3.2. Longitudinal stability of a counterbalanced powered industrial truck is dependent on the moment of the vehicle and the moment of the load. In other words, if the mathematic product of the load moment (the distance is from the front wheels, the point about which the vehicle would tip forward) the system is balanced and will not tip forward. However, if the load-moment is greater than the vehicle-moment, the greater load-moment will force the truck to tip forward.

B–4. The Stability Triangle

B–4.1. Almost all counterbalanced powered industrial trucks have a three point suspension system, that is, the vehicle is supported at three points. This is true even if it has four wheels. The steer axle of most trucks is attached to the truck by means of a pivot pin in the center of the axle. This three point support forms a triangle called the stability triangle when the points are connected with imaginary lines. Figure 1 depicts the stability triangle.

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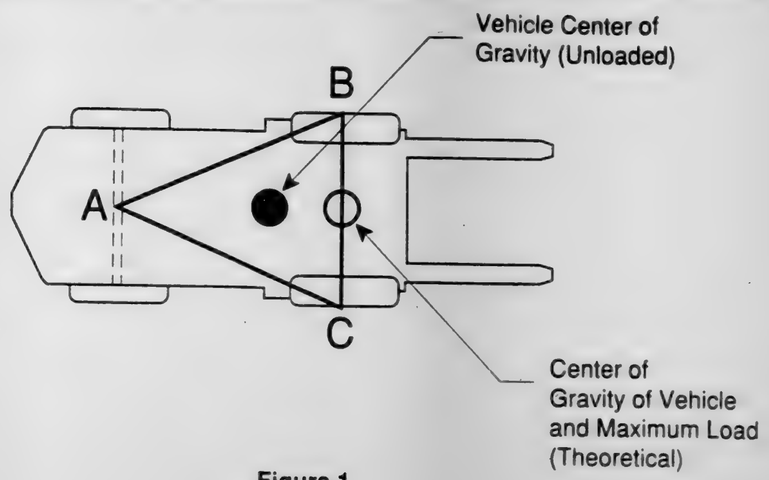

Figure 1.

NOTES:

1. When the vehicle is loaded, the combined center of gravity shifts toward line B-C. Theoretically the max load will result in the CG at the line B-C. In actual practice, the combined CG should never be at line B-C.

2. The addition of additional counterweight will cause the truck CG to shift toward point A and result in a truck that is less stable laterally.

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B–4.2. When the line of action of the vehicle or load-vehicle falls within the stability triangle, the vehicle is stable and will not tip over. However, when the line of action of the vehicle or the vehicle/load combination falls outside the stability triangle, the vehicle is unstable and may tip over. (See Figure 2.)

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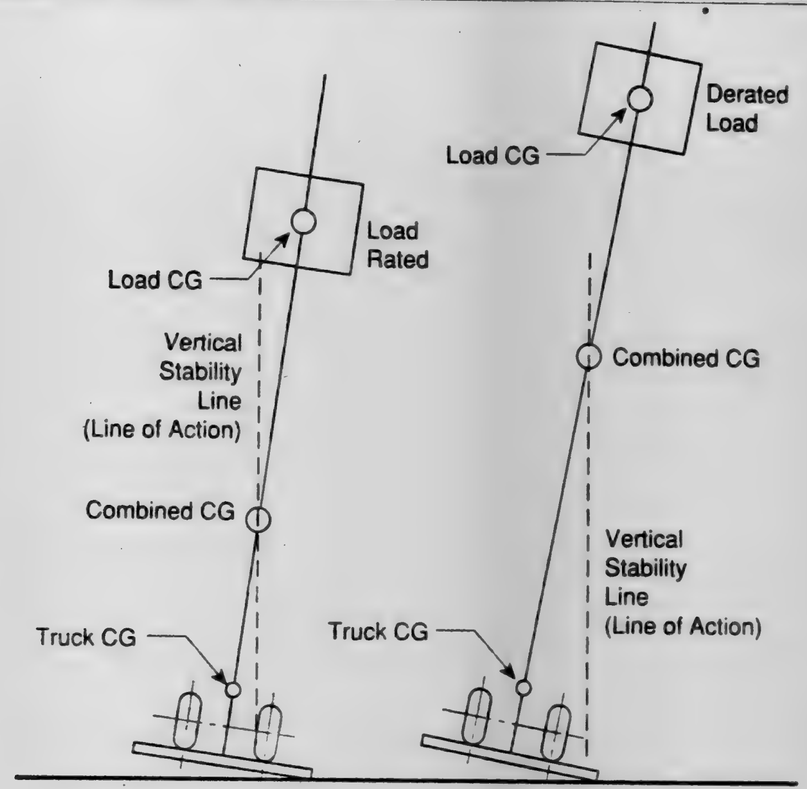

Figure 2.

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B–5. Longitudinal Stability

B–5.1. The axis of rotation when a truck tips forward is the point of contact of the front wheels of the vehicle with the pavement. When a powered industrial truck tips forward, it is this line that the truck will rotate about. When a truck is stable the vehicle-moment must exceed the load-moment. As long as the vehicle-moment is equal to or exceeds the load-moment, the vehicle will not tip over. On the other hand, if the load-moment slightly exceeds the vehicle-moment, the truck will begin the tip forward, thereby causing loss of steering control. If the load-moment greatly exceeds the vehicle-moment, the truck will tip forward.

B–5.2. In order to determine the maximum safe load moment, the truck manufacturer normally rates the truck at a maximum load at a given distance from the front face of the forks. The specified distance from the front face of the forks to the line of action of the load is commonly called a load center. Because larger trucks normally handle loads that are physically larger, these vehicles have greater load centers. A truck with a capacity of 30,000 pounds or less capacity is normally rated at a given load weight at a 24 inch load center. For trucks of greater than 30,000 pound capacity, the load center is normally rated at 36 or 48 inch load center distance. In order to safely operate the vehicle, the operator should always check the data plate and determine the maximum allowable weight at the rated load center.

B–5.3. Although the true load moment distance is measured from the front wheels, this distance is greater than the distance from the front face of the forks. Calculation of the maximum allowable load moment using the load center distance always provides a lower load moment than the truck was designed to handle. When handling unusual loads, such as those that are larger than 48 inches long (the center of gravity is greater than 24 inches), with an offset center of gravity, etc., then calculation of a maximum allowable load moment should be undertaken and this value used to determine whether a load can be handled. For example, if an operator is operating a 3,000 pound capacity truck (with a 24 inch load center), the maximum allowable load moment is 72,000 inch-pounds (3,000 times 24). If a probable load is 60 inches long (30 inch load center), then the maximum weight that this load can weigh is 2,400 pounds (72,000 divided by 30).

B–6. Lateral Stability

B–6.1. The lateral stability of a vehicle is determined by the position of the line of action (a vertical line that passes through the combined center of gravity of the vehicle and the load) relative to the stability triangle. When the vehicle is not loaded, the location of the center of gravity of the truck is the only factor to be considered in determining the stability of the truck. As long as the line of action of the combined center of gravity of the vehicle and the load falls within the stability triangle, the truck is stable and will not tip over. However, if the line of action falls outside the stability triangle, the truck is not stable and may tip over.

B–6.2. Factors that affect the lateral stability of a vehicle include the placement of the load on the truck, the height of the load above the surface on which the vehicle is operating, and the degree of lean of the vehicle.

B–7. Dynamic Stability

B–7.1. Up to this point, we have covered stability of a powered industrial truck without consideration of the dynamic forces that result when the vehicle and load are put into motion. The transfer of weight and the resultant shift in the center of gravity due to the dynamic forces created when the machine is moving, braking, cornering, lifting, tilting, and lowering loads, etc., are important stability considerations.

B–7.2. When determining whether a load can be safely handled, the operator should exercise extra caution when handling loads that cause the vehicle to approach its maximum design characteristics. For example, if an operator must handle a maximum load, the load should be carried at the lowest position possible, the truck should be accelerated slowly and evenly, and the forks should be tilted forward cautiously. However, no precise rules can be formulated to cover all of these eventualities.

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

7. The authority citation for part 1918 would be revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable. Section 1918.77 also issued under 29 CFR part 1911.

8. A new § 1918.77 with appendices A and B would be added to subpart G to read as follows:

§ 1918.77 Powered Industrial Trucks.

(a) *Operator training.*

(1) *Operator qualifications.* (i) The employer shall ensure that each potential operator of a powered industrial truck is capable of performing the duties that are required of the job.

(ii) In determining operator qualifications, the employer shall ensure that each potential operator has received the training required by this paragraph, that each potential operator has been evaluated by a designated person while performing the required duties, and that each potential operator performs those operations competently.

(2) *Training program implementation.*

(i) The employer shall implement a training program and ensure that only trained drivers who have successfully completed the training program are allowed to operate powered industrial trucks. Exception: Trainees under the direct supervision of a designated person shall be allowed to operate a powered industrial truck provided the operation of the vehicle is conducted in an area where other employees are not near and the operation of the truck is under controlled conditions.

(ii) Training shall consist of a combination of classroom instruction (Lecture, discussion, video tapes, and/or conference) and practical training (demonstrations and practical exercises by the trainee).

(iii) All training and evaluation shall be conducted by a designated person who has the requisite knowledge, training and experience to train powered industrial truck operators and judge their competency.

(3) *Training program content.* Powered industrial truck operator trainees shall be trained in the following topics unless the employer can demonstrate that some of the topics are not needed for safe operation.

(i) Truck related topics.

(A) All operating instructions, warnings and precautions for the types of trucks the operator will be authorized to operate;

(B) Similarities to and differences from the automobile;

(C) Controls and instrumentation: location, what they do and how they work;

(D) Power plant operation and maintenance;

(E) Steering and maneuvering;

(F) Visibility (including restrictions due to loading);

(G) Fork and attachment adaption, operation and limitations of their utilization;

(H) Vehicle capacity;

(I) Vehicle stability;

(J) Vehicle inspection and maintenance;

(K) Refueling or charging, recharging batteries;

(L) Operating limitations; and

(M) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(ii) Workplace related topics.

(A) Surface conditions where the vehicle will be operated;

(B) Composition of probable loads and load stability;

(C) Load manipulation, stacking, unstacking;

(D) Pedestrian traffic;

(E) Narrow aisles and other restricted places of operation;

(F) Operating in hazardous classified locations;

(G) Operating the truck on ramps and other sloped surfaces that could affect the stability of the vehicle;

(H) Other unique or potentially hazardous environmental conditions that exist or may exist in the workplace; and

(I) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(iii) The requirements of this section.

(4) *Evaluation and refresher or remedial training.*

(i) Sufficient evaluation and remedial training shall be conducted so that the employee retains and uses the knowledge, skills and ability needed to operate the powered industrial truck safely.

(ii) An evaluation of the performance of each powered industrial truck operator shall be conducted at least annually by a designated person.

(iii) Refresher or remedial training shall be provided when there is reason to believe that there has been unsafe operation, when an accident or a near-miss occurs or when an evaluation indicates that the operator is not capable of performing the assigned duties.

(5) *Certification.*

(i) The employer shall certify that each operator has received the training, has been evaluated as required by this paragraph, and has demonstrated competency in the performance of the operator's duties. The certification shall include the name of the trainee, the date of training, and the signature of the person performing the training and evaluation.

(ii) The employer shall retain the current training materials and course outline or the name and address of the person who conducted the training if it was conducted by an outside trainer.

(6) *Avoidance of Duplicative Training.*

(i) Each current truck operator who has received training in any of the elements specified in paragraph (a)(3) of this section for the types of trucks the employee is authorized to operate and the type workplace that the trucks are being operated in need not be retrained in those elements if the employer certifies in accordance with paragraph (a)(5)(i) of this section that the operator has been evaluated to be competent to perform those duties.

(ii) Each new truck operator who has received training in any of the elements specified in paragraph (a)(3) of this section for the types of trucks the employee will be authorized to operate and the type of workplace in which the trucks will be operated need not be retrained in those elements before initial assignment in the workplace if the employer has written documentation of the training and if the employee is evaluated pursuant to paragraph (a)(4) of this section to be competent.

(b) [Reserved]

Appendixes to § 1918.77

Appendix A—Training of Powered Industrial Truck Operators

(Non-mandatory appendix to paragraph (a) of this section)

A–1. Operator Selection

A–1.1. Prospective operators of powered industrial trucks should be identified based upon their ability to be trained and accommodated to perform job functions that are essential to the operation of a powered industrial truck. Determination of the capabilities of a prospective operator to fulfill the demands of the job should be based upon the tasks that the job demands.

A–1.2. The employer should identify all the aspects of the job that the employee must meet/perform when doing his or her job. These aspects could include the level at which the employee must see and hear, the physical demands of the job, and the environmental extremes of the job.

A–1.3. One factor to be considered is the ability of the candidate to see and hear within reasonably acceptable limits. Included in the vision requirements are the ability to see at distance and peripherally. In certain instances, there also is a requirement for the candidate to discern different colors, primarily red, yellow and green.

A–1.4. The environmental extremes that might be demanded of a potential powered industrial truck operator include that ability of the person to work in areas of excessive cold or heat.

A–1.5. After an employee has been trained and appropriate accommodations have been made, the employer needs to determine whether the employee can safely perform the job.

A–2. The Method(s) of Training

A–2.1. Among the many methods of training are the lecture, conference, demonstration, test (written and/or oral) and the practical exercise. In most instances, a combination of these methods have been successfully used to train employees in the knowledge, skills and abilities that are essential to perform the job function that the employee is being trained to perform. To enhance the training and to make the training more understandable to the employee, employers and other trainers have used movies, slides, video tapes and other visual presentations. Making the presentation more understandable has several advantages including:

(1) The employees being trained remain more attentive during the presentation if graphical presentation are used, thereby increasing the effectiveness of the training;

(2) The use of visual presentations allows the trainer to ensure that the necessary information is covered during the training;

(3) The use of graphics makes better utilization of the training time by decreasing the need for the instructor to carry on long discussions about the instructional material; and

(4) The use of graphics during instruction provides greater retention by the trainees.

A–3. Training Program Content

A–3.1. Because each type (make and model) powered industrial truck has different operating characteristics, limitations and other unique features, an optimum employee training program for powered industrial truck operators must be based upon the type vehicles that the employee will be trained and authorized to operate. The training must also emphasize the features of the workplace which will affect the manner in which the vehicle must be operated. Finally, the training must include the general safety rules applicable to the operation of all powered industrial trucks.

A–3.2. Selection of the methods of training the operators has been left to the reasonable determination of the employer. Whereas some employees can assimilate instructional material while seated in a classroom, other employees may learn best by observing the conduct of operations (demonstration) and/or by having to personally conduct the operations (practical exercise). In some instances, an employee can receive valuable instruction through the use of

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electronic mediums, such as the use of video tapes and movies. In most instances, a combination of the different training methods may provide the mechanism for providing the best training in the least amount of time. OSHA has specified at paragraph (a)(2)(ii) of this section that the training must consist of a combination classroom instruction and practical exercise. The use of both these modes of instruction is the only way of assuring that the trainee has received and comprehended the instruction and can utilize the information to safely operate a powered industrial truck.

A–4. Initial Training

A–4.1. The following is an outline of a generalized forklift operator training program:

(1) Characteristics of the powered industrial truck(s) the employee will be allowed to operate:

(a) Similarities to and differences from the automobile;

(b) Controls and instrumentation: location, what they do and how they work;

(c) Power plant operation and maintenance;

(d) Steering and maneuvering;

(e) Visibility;

(f) Fork and/or attachment adaption, operation and limitations of their utilization;

(g) Vehicle capacity;

(h) Vehicle stability;

(i) Vehicle inspection and maintenance;

(j) Refueling or charging, recharging batteries.

(k) Operating limitations.

(l) Any other operating instruction, warning or precaution listed in the operator's manual for the type vehicle which the employee is being trained to operate.

(2) The operating environment:

(a) Floor surfaces and/or ground conditions where the vehicle will be operated;

(b) Composition of probable loads and load stability;

(c) Load manipulation, stacking, unstacking;

(d) Pedestrian traffic;

(e) Narrow aisle and restricted place operation;

(f) Operating in classified hazardous locations;

(g) Operating the truck on ramps and other sloped surfaces which would affect the stability of the vehicle;

(h) Other unique or potentially hazardous environmental conditions which exist or may exist in the workplace.

(i) Operating the vehicle in closed environments and other areas where insufficient ventilation could cause a buildup of carbon monoxide or diesel exhaust.

(3) The requirements of this OSHA Standard.

A–5. Trainee Evaluation

A–5.1. The provisions of these proposed requirements specify that an employee evaluation be conducted both as part of the training and after completion of the training. The initial evaluation is useful for many reasons, including:

(1) the employer can determine what methods of instruction will produce a proficient truck operator with the minimum of time and effort;

(2) the employer can gain insight into the previous training that the trainee has received; and

(3) a determination can be made as to whether the trainee will be able to successfully operate a powered industrial truck. This initial evaluation can be completed by having the employee fill out a questionnaire, by an oral interview, or by a combination of these mechanisms. In many cases, answers received by the employee can be substantiated by contact with other employees or previous employers.

A–6. Refresher or Remedial Training

A–6.1. (The type information listed at paragraph A–6.2 of this appendix would be used when the training is more than an on-the-spot correction being made by a supervisor or when there have been multiple instances of on-the-spot corrections having to be made.) When an on-the-spot correction is used, the person making the correction should point out the incorrect manner of operation of the truck or other unsafe act being conducted, tell the employee how to do the operation correctly, and then ensure that the employee does the operation correctly.

A–6.2. The following items may be used when a more general, structured retraining program is utilized to train employees and eliminate unsafe operation of the vehicle:

(1) Common unsafe situations encountered in the workplace;

(2) Unsafe methods of operating observed or known to be used;

(3) The need for constant attentiveness to the vehicle, the workplace conditions and the manner in which the vehicle is operated.

A–6.3. Details about the above subject areas need to be expanded upon so that the operator receives all the information which is necessary for the safe operation of the vehicle. Insight into some of the specifics of the above subject areas may be obtained from the vehicle manufacturers' literature, the national consensus standards [e.g. the ANSI B56 series of standards (current revisions)] and this OSHA Standard.

Appendix B—Stability of Powered Industrial Trucks

(Non-mandatory appendix to paragraph (a) of this section)

B–1. Definitions

To understand the principle of stability, understanding definitions of the following is necessary:

Center of Gravity is that point of an object at which all of the weight of an object can be considered to be concentrated.

Counterweight is the weight that is a part of the basic structure of a truck that is used to offset the weight of a load and to maximize the resistance of the vehicle to tipping over.

Fulcrum is the axis of rotation of the truck when it tips over.

Grade is the slope of any surface that is usually measured as the number of feet of rise of fall over a hundred foot horizontal distance (this measurement is designated as a percent).

Lateral stability is the resistance of a truck to tipping over sideways.

Line of action is a imaginary vertical line through the center of gravity of an object.

Load center is the horizontal distance from the edge of the load (or the vertical face of the forks or other attachment) to the line of action through the center of gravity of the load.

Longitudinal stability is the resistance of a truck to overturning forward or rearward.

Moment is the product of the weight of the object times the distance from a fixed point. In the case of a powered industrial truck, the distance is measured from the point that the truck will tip over to the line of action of the object. The distance is always measured perpendicular to the line of action.

Track is the distance between wheels on the same axle of a vehicle.

Wheelbase is the distance between the centerline of the front and rear wheels of a vehicle.

B–2. General

B–2.1. Stability determination for a powered industrial truck is not complicated once a few basic principles are understood. There are many factors that influence vehicle stability. Vehicle wheelbase, track, height and weight distribution of the load, and the location of the counterweights of the vehicle (if the vehicle is so equipped), all contribute to the stability of the vehicle.

B–2.2. The "stability triangle", used in most discussions of stability, is not

mysterious but is used to demonstrate truck stability in rather simple fashion.

B–3. Basic Principles

B–3.1. The determination of whether an object is stable is dependent on the moment of an object at one end of a system being greater than, equal to or smaller than the moment of an object at the other end of that system. This is the same principle on which a seesaw or teeter-totter works, that is, if the product of the load and distance from the fulcrum (moment) is equal to the moment at the other end of the device, the device is balanced and it will not move. However, if there is a greater moment at one end of the device, the device will try to move downward at the end with the greater moment.

B–3.2. Longitudinal stability of a counterbalanced powered industrial truck is dependent on the moment of the vehicle and the moment of the load. In other words, if the mathematic product of the load moment (the distance is from the front wheels, the point about which the vehicle would tip forward) the system is balanced and will not tip forward. However, if the load-moment is greater than the vehicle-moment, the greater load-moment will force the truck to tip forward.

B–4. The Stability Triangle

B–4.1. Almost all counterbalanced powered industrial trucks have a three-point suspension system, that is, the vehicle is supported at three points. This is true even if it has four wheels. The steer axle of most trucks is attached to the truck by means of a pivot pin in the center of the axle. This three-point support forms a triangle called the stability triangle when the points are connected with imaginary lines. Figure 1 depicts the stability triangle.

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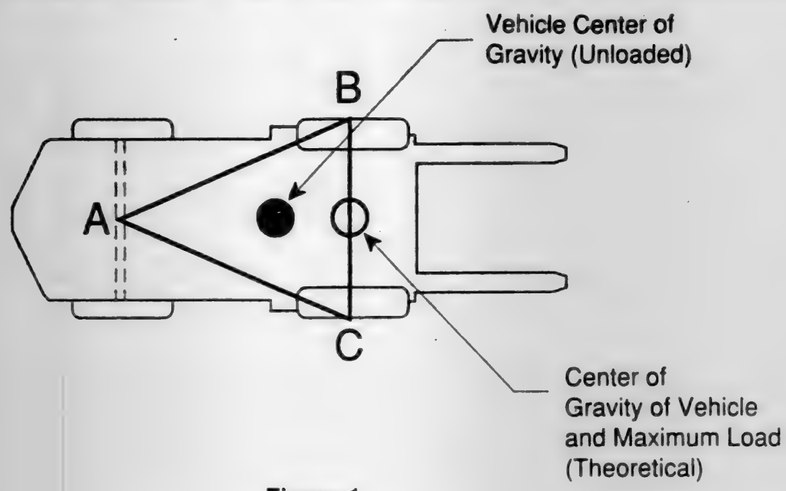

Figure 1.

NOTES:

1. When the vehicle is loaded, the combined center of gravity shifts toward line B-C. Theoretically the max load will result in the CG at the line B-C. In actual practice, the combined CG should never be at line B-C.

2. The addition of additional counterweight will cause the truck CG to shift toward point A and result in a truck that is less stable laterally.

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B–4.2. When the line of action of the vehicle or load-vehicle falls within the stability triangle, the vehicle is stable and will not tip over. However when the line of action of the vehicle or the vehicle/load combination falls outside the stability triangle, the vehicle is unstable and may tip over. (See Figure 2.)

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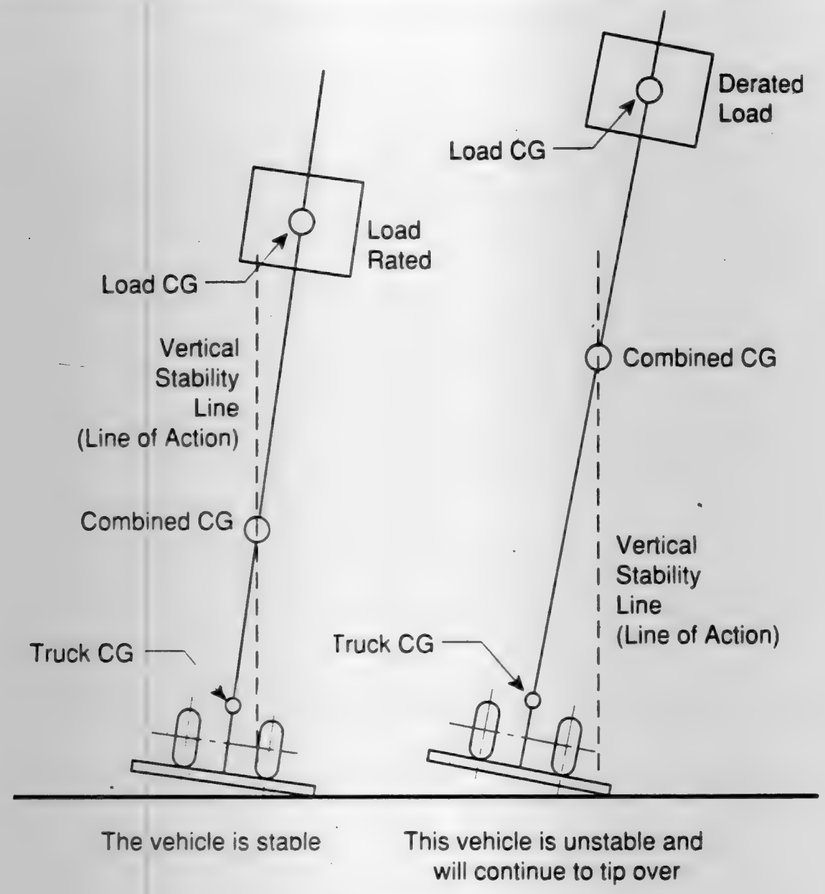

Figure 2.

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B–5. Longitudinal Stability

B–5.1. The axis of rotation when a truck tips forward is the point of contact of the front wheels of the vehicle with the pavement. When a powered industrial truck tips forward, it is this line that the truck will rotate about. When a truck is stable the vehicle-moment must exceed the load-moment. As long as the vehicle-moment is equal to or exceeds the load-moment, the vehicle will not tip over. On the other hand, if the load-moment slightly exceeds the vehicle-moment, the truck will begin the tip forward, thereby causing loss of steering control. If the load-moment greatly exceeds the vehicle-moment, the truck will tip forward.

B–5.2. In order to determine the maximum safe load moment, the truck manufacturer normally rates the truck at a maximum load at a given distance from the front face of the forks. The specified distance from the front face of the forks to the line of action of the load is commonly called a load center. Because larger trucks normally handle loads that are physically larger, these vehicles have greater load centers. A truck with a capacity of 30,000 pounds or less capacity is normally rated at a given load weight at a 24 inch load center. For trucks of greater than 30,000 pound capacity, the load center is normally rated at 36 or 48 inch load center distance. In order to safely operate the vehicle, the operator should always check the data plate and determine the maximum allowable weight at the rated load center.

B–5.3. Although the true load moment distance is measured from the front wheels, this distance is greater than the distance from the front face of the forks. Calculation of the maximum allowable load moment using the load center distance always provides a lower load moment than the truck was designed to handle. When handling unusual loads, such as those that are larger than 48 inches long (the center of gravity is greater than 24 inches), with an offset center of gravity, etc., then calculation of a maximum allowable load moment should be undertaken and this value used to determine whether a load can be handled. For example, if an operator is operating a 3000 pound capacity truck (with a 24 inch load center), the maximum allowable load moment is 72,000 inch-pounds (3,000 times 24). If a probable load is 60 inches long (30 inch load center), then the maximum weight that this load can weigh is 2,400 pounds (72,000 divided by 30).

B–6. Lateral Stability

B–6.1. The lateral stability of a vehicle is determined by the position of the line of action (a vertical line that passes through the combined center of gravity of the vehicle and the load) relative to the stability triangle. When the vehicle is not loaded, the location of the center of gravity of the truck is the only factor to be considered in determining the stability of the truck. As long as the line of action of the combined center of gravity of the vehicle and the load falls within the stability triangle, the truck is stable and will not tip over. However, if the line of action falls outside the stability triangle, the truck is not stable and may tip over.

B–6.2. Factors that affect the lateral stability of a vehicle include the placement of the load on the truck, the height of the load above the surface on which the vehicle is operating, and the degree of lean of the vehicle.

B–7. Dynamic Stability

B–7.1. Up to this point, we have covered stability of a powered industrial truck without consideration of the dynamic forces that result when the vehicle and load are put into motion. The transfer of wight and the resultant shift in the center of gravity due to the dynamic forces created when the machine is moving, braking, cornering, lifting, tilting, and lowering loads, etc., are important stability considerations.

B–7.2. When determining whether a load can be safely handled, the operator should exercise extra caution when handling loads that cause the vehicle to approach its maximum design characteristics. For example, if an operator must handle a maximum load, the load should be carried at the lowest position possible, the truck should be accelerated slowly and evenly, and the forks should be tilted forward cautiously. However, no precise rules can be formulated to cover all of these eventualities.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 25, 201, and 202

Approval of Lending Institutions and Mortgagees; Investing Lenders in the Title I Property Improvement and Manufactured Home Insurance Programs; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 25, 201, and 202

[Docket No. R–95–1769; FR–3847–F–01]

RIN 2502–AG43

Approval of Lending Institutions and Mortgagees; Investing Lenders in the Title I Property Improvement and Manufactured Home Insurance Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that govern the approval of lending institutions to participate in the property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act. The rule creates a new category of approved lending institutions, to be known as "investing lenders," and provides minimum requirements and criteria for their approval and operation. In addition, this rule makes conforming changes to several HUD regulations.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Karen Garner-Wing, Director, Lender Approval and Recertification Division, Room 9146, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone 202–708–3976, ext. 2024. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number, 202–708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Introduction

Under Title I, section 2 of the National Housing Act (12 U.S.C. 1703), the Department insures approved lending institutions against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations governing the approval of lending institutions to participate in the Title I property improvement and manufactured home loan insurance programs are found in 24 CFR part 202.

This final rule amends part 202 to create a new category of approved lending institutions, to be known as "investing lenders." This change will provide opportunities for a wider range of financial institutions, including charitable and nonprofit associations and pension funds, to invest in Title I loans, without the obligation of maintaining the staff and facilities needed for loan origination and servicing.

By making greater levels of capital available, both the property improvement and manufactured home loan programs will benefit. Increased capital investment in Title I loans will help expand the availability of the property improvement loan program to all areas of the nation, and will increase its use in carrying out community revitalization and the rehabilitation of housing for low- and moderate-income families. In addition, making more funds available for Title I loans will help make the manufactured home loan program a more competitive financing vehicle to enable first-time buyers to achieve homeownership.

The rule adds a new § 202.2(f), which defines an "investing lender" as a financial institution, including a charitable or nonprofit organization or pension fund, which is approved by the Secretary to purchase, hold, and sell loans that have been originated and insured under the Title I program. An investing lender may not originate Title I loans in its own name, and it may not service such loans except with the prior approval of the Secretary.

In addition to the general approval requirements applicable to all Title I lenders, the rule adds a new § 202.7 that establishes the following additional requirements for approval as an investing lender:

1. An investing lender must have lawful authority to purchase, hold, and sell Title I property improvement and manufactured home loans in its own name. Since a Title I loan correspondent is not authorized to report loans for insurance, an investing lender may purchase loans only from a lender holding a valid Title I contract of insurance, and not from a loan correspondent.

2. An investing lender must have, or have made arrangements for, funds sufficient to support a projected investment of at least $1,000,000 in property improvement and manufactured home loans. For example, the investing lender may have a warehouse line of credit or other funding program that would meet this requirement.

3. In lieu of the staffing and facilities requirements in § 202.3(b), an investing lender must have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans.

4. An investing lender must be responsible for the servicing of the Title I loans that it holds, through contractual or other arrangements with another lender holding a valid Title I contract of insurance, but it may not directly service such loans except with the prior approval of the Secretary.

Conforming and Clarifying Amendments

The Department is also amending other sections of parts 25, 201, and 202 to conform them to the changes outlined above and to clarify the text of the regulations. The rule includes the following amendments:

1. The last sentence of § 25.2 is amended to clearly list those violations of the Title I lender approval requirements in part 202 that are subject to redelegation by the Mortgagee Review Board.

2. In § 25.3, the definition of "lender" is amended to more closely conform to the definition of this term in parts 201 and 202. In addition, a definition of "loan correspondent" is added, and the definition of "mortgagee" is revised to include Title I lenders and loan correspondents, as provided for in section 202(c)(7) of the National Housing Act (12 U.S.C. 1708(c)(7)).

3. Section 25.9(cc) is amended to correct an obsolete reference to the section in part 202 that lists the grounds for an administrative action against a Title I lender or loan correspondent.

4. In §§ 201.2(o) and 202.2(a), the definition of "lender" is amended to specify that a Title I lender may be approved for the purpose of holding Title I loans.

5. Section 202.3(c) is amended to clarify that a corporate officer or other person authorized to bind the lender shall be responsible for reporting all originations, purchases, and sales of Title I loans to the Secretary for the purpose of obtaining or transferring insurance coverage.

6. In § 202.7, which has been redesignated § 202.8, paragraph (c)(3) is amended to correct an obsolete reference to the Title I lender approval requirements.

7. In § 202.8 (redesignated § 202.9), the introductory text to paragraph (a) is amended to clarify that, for purposes of that section, the term "lender" also includes loan correspondents. In addition, paragraph (b)(8) is amended to change an obsolete reference to the Under Secretary and to correct a typographical error.

Justification for Final Rulemaking

The requirements for approval as an investing lender in §§ 202.2(f) and 202.7 are based upon § 202.16, which contains the approval requirements for an investing mortgagee in HUD's mortgage insurance programs. Section 202.16 had its genesis in an interim rule published in the **Federal Register** on July 30, 1980 (45 FR 50561). One of the provisions added by the interim rule was § 203.6 to create a new class of investing mortgagees. Although the Department solicited public comments, it received no comments with regard to § 203.6.

In 1991, the Department published a proposed rule that would revise the mortgagee approval regulations and move them from part 203 to part 202 (see 56 FR 29100, June 25, 1991). In this proposed rule, the section on investing mortgagees would be redesignated as § 202.16 and would incorporate the existing requirements for investing mortgagees found in § 203.6, except that trusts would no longer be eligible to be approved as mortgagees. None of the public comments received on the June 25, 1991 proposed rule addressed the provisions of § 202.16, and the proposed rule was published in the **Federal Register** essentially without change in a final rule on December 9, 1992 (57 FR 58326).

As previously stated, creation of a new category of investing lender will provide opportunities for a wider range of financial institutions, including charitable and nonprofit associations and pension funds, to invest in Title I loans and make greater levels of capital available to these programs. Considering the past experience with the investing mortgagee provision, the Department believes that publishing a proposed rule and requesting public comments on these regulatory changes would be unnecessary. Therefore, the Department finds good cause to omit prior public procedure, and promulgates these changes as a final rule.

Findings and Other Matters

Environmental Impact

Under HUD's regulations implementing the National Environmental Policy Act at 24 CFR 50.20(k), this rule is exempt from the requirements of an environmental finding. The rule relates solely to internal administrative procedures that do not involve a development decision or affect the physical condition of project areas or building sites, but only relate to criteria and requirements for the approval of lending institutions to participate in HUD loan insurance programs.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule would not have a significant economic impact on a substantial number of small entities. The majority of institutions that would participate in the Title I program as investing lenders are large financial institutions and pension funds.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule relate solely to the approval of lending institutions, and will not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. The rule relates solely to the approval of lending institutions. No significant changes in existing HUD policies or programs will result from promulgation of this rule.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published November 14, 1994 (59 FR 57632) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 25, 201, and 202 are amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

2. Section 25.2 is amended by revising the last sentence to read as follows:

§ 25.2 Establishment of Board.

* * * With respect to actions taken against Title I lenders and loan correspondents, the Mortgagee Review Board may redelegate its authority to take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.3(j), 202.4(a), 202.5 (a) and (c), and 202.6 (a) and (e).

3. Section 25.3 is amended by revising the definitions of "Lender" and "Mortgagee", and by adding a definition of "Loan correspondent" in alphabetical order, to read as follows:

§ 25.3 Definitions.

* * * * *

Lender. A financial institution that holds a valid Title I contract of insurance and is approved by the Secretary under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans insured under 24 CFR part 201. In matters involving the imposition of civil money penalties, the term "lender" also includes a financial institution that holds a Title I contract of insurance that has been terminated, but that remains responsible for

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servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

* * * * *

Loan correspondent. A financial institution approved by the Secretary to originate direct loans under Title I, section 2 of the National Housing Act, 12 U.S.C. 1703, for sale or transfer to a sponsoring lending institution that holds a valid Title I contract of insurance and that is not under suspension.

Mortgagee. For purposes of this regulation, the term "mortgagee" includes:

(1) The original lender under the mortgage, as that term is defined at sections 201(a) and 207(a)(1) of the National Housing Act, 12 U.S.C. 1707(a) and 1713(a)(1);

(2) A lender or loan correspondent as defined in this section; or

(3) A branch office or subsidiary of the mortgagee, lender, or loan correspondent. The term "mortgagee" also includes successors and assigns of the mortgagee, lender, or loan correspondent, as are approved by the Commissioner.

* * * * *

4. Section 25.9 is amended by revising paragraph (cc) to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(cc) Violation by a Title I lender or loan correspondent of any of the applicable provisions of this section or of 24 CFR 202.9(b).

* * * * *

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

5. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

6. Section 201.2 is amended by revising paragraph (o) to read as follows:

§ 201.2 Definitions.

* * * * *

(o) *Lender* means a financial institution that:

(1) Holds a valid Title I contract of insurance and is approved by the Secretary under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans insured under this part; or

(2) Is under suspension or holds a Title I contract of insurance that has been terminated, but that remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans. For purposes of loan origination under subparts A, B, and C of this part, the term "lender" also includes a "loan correspondent" as defined in paragraph (q) of this section.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

7. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

8. Section 202.2 is amended by revising paragraph (a) and by adding a new paragraph (f) to read as follows:

§ 202.2 Definitions.

* * * * *

(a) *Lender* means a financial institution that:

(1) Holds a valid Title I contract of insurance and is approved by the Secretary under this part to originate, purchase, hold, service, and/or sell loans insured under 24 CFR part 201; or

(2) Is under suspension or holds a Title I contract of insurance that has been terminated, but that remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

* * * * *

(f) *Investing lender* means a financial institution, including a charitable or nonprofit organization or pension fund, that is approved under this part to purchase, hold, and sell loans that have been originated and insured under 24 CFR part 201. An investing lender may not originate Title I loans in its own name, and it may not service such loans except with the prior approval of the Secretary.

9. Section 202.3 is amended by revising paragraph (c) to read as follows:

§ 202.3 General approval requirements.

* * * * *

(c) It shall ensure that a corporate officer or other person authorized to bind the lender shall be responsible for reporting all originations, purchases, and sales of Title I loans to the Secretary for the purpose of obtaining or transferring insurance coverage.

* * * * *

10. Part 202 is amended by redesignating §§ 202.7 and 202.8 as §§ 202.8 and 202.9, respectively, and by adding a new § 202.7 to read as follows:

§ 202.7 Requirements for investing lenders.

In addition to the general approval requirements in § 202.3, a financial institution shall meet the following requirements to qualify as an investing lender:

(a) An investing lender shall have lawful authority to purchase, hold, and sell Title I property improvement and manufactured home loans in its own name.

(b) An investing lender shall have, or have made arrangements for, funds sufficient to support a projected investment of at least $1,000,000 in property improvement and manufactured home loans.

(c) In lieu of the staffing and facilities requirements in § 202.3(b), an investing lender shall have officers or employees who are capable of managing its activities in purchasing, holding, and selling Title I loans.

(d) An investing lender shall be responsible for the servicing of the Title I loans that it holds, through contractual or other arrangements with another lender holding a valid Title I contract of insurance, but it may not directly service such loans except with the prior approval of the Secretary.

11. Newly designated § 202.8 is amended by revising paragraph (c)(3) to read as follows:

§ 202.8 Termination of insurance contract.

* * * * *

(c) * * *

(3) A lender's right to apply for and be granted a new Title I contract of insurance, provided that the requirements for approval under this subpart are met.

12. Newly designated § 202.9 is amended by revising the paragraph (a) introductory text and paragraph (b)(8) to read as follows:

§ 202.9 Administrative actions.

(a) *General.* Administrative actions that may be taken against Title I lenders are set forth in 24 CFR 25.5 and paragraph (a) of this section. Civil money penalties may also be imposed against Title I lenders in accordance with 24 CFR 25.13 and 24 CFR part 30. For purposes of this section, the term "lender" shall also include loan correspondents as defined in § 202.2(b) of this subpart.

* * * * *

(b) * * *

(8) Such other reason as the Mortgagee Review Board, Secretary, Deputy Secretary, or Hearing Officer, as appropriate, determines to be justified. Such reasons include, but are not limited to, failure to exercise prudent credit judgment; failure to observe proper business practices; failure to observe proper loan origination or servicing procedures; or failure to comply with HUD requirements or other requirements of law or regulation.

* * * * *

Dated: February 8, 1995

Nicolas P. Retsinas,

Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 95-6158 Filed 3-13-95; 8:45 am

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

Housing for Older Persons; Defining Significant Facilities and Services; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

[Docket No. R–95–1706; FR–3502–P–06]

RIN: 2529–AA66

Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments

AGENCY: Office of the Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." This proposed rule would amend HUD's regulations governing "housing for older persons", to provide the definitions required by section 919.

DATES: Comments due date: May 15, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–0836. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0113, or 1–800–877–8399 (Federal Information Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

A. The Significant Facilities and Services Requirement

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601–19) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Specifically, section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfies certain criteria. The purpose of the prohibition against discrimination on the basis of familial status and the "housing for older persons" exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons (see 134 Cong. Rec. S 19722 (Aug. 1, 1988) statement of Senator Karnes).

The Department has implemented the housing for older persons exemption at 24 CFR part 100, subpart E. Congress mandated that, in determining whether housing qualifies as housing for persons 55 years of age or older, the Secretary develop regulations which require at least the following factors:

(1) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(2) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(3) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Section 919 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), requires the Secretary of HUD to issue a rule further defining what are "significant facilities and services especially designed to meet the physical or social needs of older persons" required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term "housing for older persons."

B. The July 7, 1994 Proposed Rule

On July 7, 1994 (59 FR 34902) the Department published for public comment a proposed rule intended to implement section 919 of the Housing and Community Development Act of 1992. Customarily proposed rules provide for a 60-day public comment period. However, in order to ensure broad public input into the rulemaking process, the Department granted a 90-day comment period. As the October 5, 1994 public comment deadline approached it became clear to the Department that there was significant public interest in the proposed rule. On September 26, 1994 (59 FR 49035), the Department extended the comment period to November 30, 1994.

The Department also scheduled public meetings to hear from those affected by the proposed rule. Five such meetings were held across the country: Fontana, California on August 15, 1994; Tampa, Florida on August 25, 1994; Phoenix, Arizona on September 29, 1994; Washington, DC on October 6, 1994 and; Spokane, Washington on November 17, 1994. Transcribed records of these meetings were prepared and made part of the public comment docket.

The July 7, 1994 proposed rule was of great interest to many seniors. By close of business on November 30, 1994, 15,219 comments had been received. Based on the written comments received on the proposed rule, and the comments received at the five public meetings, the Department decided to make significant changes to the July 7, 1994 proposed rule.

On December 12, 1994 (59 FR 64104), the Department published a notice in the **Federal Register** announcing it would not proceed to final rulemaking on the July 7, 1994 proposed rule. Instead, as a result of the significant changes to the July 7, 1994 rule, the Department is issuing this new proposed rule, which addresses the issues raised by the commenters and solicits additional public comment.

II. Overview of Proposed Rule

Like the July 7, 1994 rule, this proposed rule would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Specifically, this proposed rule would revise the 55-or-over housing currently set forth in § 100.304(b)(1). A new § 100.305 would be added and would address the standards housing providers must meet in order to qualify as 55-or-over housing. A new § 100.306 would be added and would address the requirement for "significant facilities and services specifically designed to meet the physical or social needs of older persons."[1] A new § 100.307 would be added and would set forth the standards for housing providers choosing to self-certify their compliance with the Act's requirements. In addition to adding these three sections, the substance of existing § 100.304(b)(2) would be amended and located in new § 100.310. Existing subsection § 100.304(e) would be deleted and existing subsections §§ 100.304(c)(1) and 100.304(d) would be amended and provide the substance of new § 100.315. Existing subsection § 100.304(c)(2) would be amended and redesignated as new § 100.316.

The Department recognizes that the majority of seniors are healthy and lead active and independent lives. In developing this proposed regulation, the Department has rejected the assumption that all residents of senior housing are frail or disabled. This proposed rule does not require that a facility or service be accessible to the disabled in order to be classified as "significant" or "specifically designed to meet the physical or social needs of older persons." Neither does this proposed regulation require that a housing provider furnish congregate dining areas, nursing services, or expensive and unwanted facilities to qualify for the housing for older persons exemption.

In developing this proposed regulation, the Department desires to provide as much certainty as possible regarding the determination that housing qualifies as housing for older persons. It has sought to structure the regulations to allow both housing providers and protected classes alike to ascertain with confidence whether a community qualifies under the Act.

Proposed § 100.306 sets forth a diverse "menu" of facilities and services which a community may choose to provide. The facilities and services are listed under twelve broad categories (e.g. Social Needs, Leisure Needs, Educational Needs). In order to qualify as 55-or-over housing, the community must provide at least two facilities or services from five of the categories, for a total of at least ten facilities or services. Both facilities and services must be provided.

[1] The language of section 919 contains the word "especially": "* * * rules defining what are 'significant facilities and services *especially* designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older person' in such section." (emphasis added) This proposed rule uses the word "specifically" rather than the word "especially" to comply with congressional intent and reflect the actual language of section 807(b)(2) of the Fair Housing Act.

Once a community has met the requirements of proposed § 100.306, a new § 100.307 would permit the community to self-certify that it qualifies under the Act. Absent evidence to the contrary, the Department will assume that those communities which have chosen to self-certify are in compliance with the Act's requirements.

However, the Department does not wish to provide certainty in complying with the requirements of the Act at the expense of flexibility. The Department has concluded that a flexible standard is necessary in order to reflect regional variations in services and facilities that distinguish housing for older persons from other similar housing, as well as variations determined by the geography of the site or by the differences in the nature or cost of the housing in question. The Department believes that the "menu" set forth in proposed § 100.306 is sufficiently broad to accommodate regional differences in the need for facilities and services.

In addition, the Department recognizes that housing for older persons is not limited to the affluent. Therefore, § 100.306's menu includes many facilities and services which are not costly and may be provided by volunteers. Furthermore, the proposed rule allows facilities and services to be provided away from the housing premises, so long as there is sufficient transportation to ensure that the off-premise facility or service is truly accessible to the community residents.

As is the case with other exemptions to civil rights statutes and other exemptions under the Act, the burden of demonstrating that the "older persons" exemption applies rests on the party asserting the exemption. Part of that party's burden in establishing qualification for the exemption requires affirmatively demonstrating through credible and objective evidence that the requirements for the exemption exist as of the date of an alleged violation of the Act. The Department believes that the Act imposes a strict burden upon a person claiming the exemption to provide credible and objective evidence showing that the facilities and services offered by the housing provider were designed, constructed or adapted to meet the particularized needs of older persons. In order to be considered as sufficient to qualify a housing facility for the exemption, the evidence must show that the housing in question is clearly distinguished from the bulk of other housing (except for other older persons housing) in a particular area, by the existence of those facilities and services which set the housing facility apart as housing intended for and operated as housing for older persons. Without such evidence, the familial status prohibitions of the Act will apply However, absent evidence to the contrary, the Department will assume that communities which have chosen to self-certify under proposed § 100.307 are in compliance with the Act's requirements.

III. Proposed Amendments

New § 100.305—Criteria

New § 100.305 proposes to establish the criteria by which a community will be determined to qualify under the "housing for older persons" exemption to the Act's requirements.

New § 100.306—Significant Facilities and Services Specifically Designed for Older Persons

New § 100.306 proposes to set forth the standards by which to ascertain whether a facility or service is "significant" or is "specifically designed to meet the physical or social needs of older persons." New § 100.306 sets forth a "menu" of facilities and services a housing provider may choose to furnish. A housing provider which provides ten items from the menu (two items from five of the menu categories), is deemed to be in compliance with the Act's requirements.

New § 100.307—Self Certification

New § 100.307 sets forth the requirements for those communities which choose to self-certify their compliance with the Act. Absent evidence to the contrary, the Department will assume that a community that has elected to self-certify qualifies as 55-or-over housing

New § 100.310—Impracticability

Existing § 100.304(b)(2), which would be redesignated as new § 100.310, would be revised by adding the following language as the introductory text to the current provisions contained in paragraph (b)(2):

> The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively proves through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.310 if * * *

New § 100.315—80 percent occupancy

Existing § 100.304(e) would be deleted and existing §§ 100.304(c)(1) and 100.304(d) would be combined as

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new § 100.315. The following language would be added to the new § 100.315:

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively proves through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of this § 100.315 if * * *

Additionally, there is also new language further describing how a housing provider may meet the 55-or-over exemption if it does not have 80 percent of its units occupied by at least one person who is 55 and older.

New § 100.316—Intent to Provide Housing for Older Persons

Existing § 100.304(c)(2), which would be redesignated as new § 100.316, would be revised by adding the following language as the introductory text to new § 100.316:

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively proves through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.316 if * * *

With respect to the use of age verification procedures, while the Department does not require the use of any particular type of age verification, nor does it require the use of age verification procedures at all, if such procedures are utilized, they must be reliable and consistently utilized.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule would implement section 919 of the Housing and Community Development Act of 1992, which requires the Secretary of HUD to further define the term "significant facilities and services specifically designed to meet the physical or social needs of older persons." The Department anticipates that the proposed rule will have an impact on some small housing providers. However, the number of small housing providers affected is not considered to be so great as to constitute a significant economic impact on a substantial number of small entities.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family-formation, maintenance, and general well-being, and, thus is not subject to review under the Order.

E. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The Fair Housing Act, and section 919 of the Housing and Community Development Act of 1992 direct HUD to provide further guidance on the meaning of significant facilities and services so that States, local governments, and housing providers will have a better understanding of what housing is exempt from the Fair Housing Act's prohibition against discrimination on the basis of familial status.

F. Regulatory Agenda

This proposed rule was listed as sequence 1860 in the Department's Semiannual Regulatory Agenda, published on November 14, 1994 (59 FR 57632, 57637) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100, subpart E, would be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3600–3620.

Subpart E—Housing for Older Persons

2. In subpart E, § 100.304 would be revised, and new §§ 100.305, 100.306, 100.307, 100.310, 100.315 and 100.316 would be added, to read as follows:

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that, at the time of an alleged violation of the Act, the housing satisfies the requirements of:

(1) Sections 100.304, 100.305, 100.306, 100.315 and 100.316; or

(2) Sections 100.310, 100.315 and 100.316.

(b) With reference to complaints filed pursuant to the Act, this means that the person or entity claiming the exemption must affirmatively prove by a preponderance of evidence as of the date of the alleged violation of the Act that the housing meets the requirements of paragraph (a) of this section.

(c) For purposes of this part, "*older persons*" means persons 55 years of age or older.

(d) For purposes of this part, "*housing provider*" means:

(1) The owner or manager of a housing facility; or

(2) The owner or manager of the common and public use areas of a housing facility, where the dwelling units are individually owned.

(3) The term "housing provider" may include any person or entity which operates a housing facility, including but not limited to homeowner's associations or resident associations.

(e) For purposes of this part, "occupied by" means one or more persons over the age of 55 actually occupying a unit at the time of an alleged violation of the Act and for at least 60 days in the preceding 365 day period.

(f) With reference to self-certifications of compliance with the provisions of this part, the housing provider claiming the exemption for 55 and older housing may demonstrate publicly, by the posting of one of the notices described in § 100.307, compliance with the provisions of this part.

§ 100.305 Criteria.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, pursuant to this part.

(b) The housing shall have significant facilities and services specifically designed to meet the physical or social needs of older persons as described in § 100.306.

(c) At least 80 percent of the units in the housing shall be occupied by at least one person who is at least 55 years of age or older as described in § 100.315.

(d) The housing provider shall publish and adhere to policies and procedures which demonstrate an intent by the housing provider to provide housing for older persons as described in § 100.316. The publication of policies and procedures describing an intent to provide housing as "adult housing" shall not suffice for this purpose.

§ 100.306 Significant facilities and services specifically designed for older persons.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *provided that* the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that facilities and services specifically designed to meet the needs of older persons are "significant". Significant facilities and services which are specifically designed for older persons are those which actually or predictably benefit the health, safety, social, educational or leisure needs of older persons.

(b) The facilities and services provided by a housing provider are significant and specifically designed to meet the housing needs of older persons when the housing provider meets the criteria found in paragraphs (c), (d), and (e) of this section and complies with the criteria found in paragraph (f) of this section.

(c) A housing provider provides significant facilities and services if it makes available, directly or indirectly, at least 2 facilities or services of the facilities described in paragraph (d) of this section, in paragraph (d)(10) of this section (category 10) or in paragraph (d)(11) of this section (category 11).

(d) Facilities and services which may be considered for purposes of qualifying for the 55 and older housing exemption are the following:

(1) Category #1 (Social Needs)

Social and Recreational Services provided on a regular, organized basis

—softball, golf, shuffleboard tournaments, or similar team activity
—bridge club, card games, chess, checkers
—exercise classes—low-impact, stretching, tai-chi, swim-therapy
—bingo
—fellowship meetings
—musical theater group
—dances, square dancing, polka, ballroom dancing
—monthly or weekly potluck dinners, breakfasts, luncheons, coffees
—coordinated holiday parties for residents
—Lions club, clubs or classes for sewing, needlepoint, art, gardening, music, books, golf, bowling, photography, travel, etc.
—cooking classes
—crafts classes: ceramics, macrame, woodworking, jewelry, quilting, painting
—field trips—bowling, sightseeing, concerts, plays, hiking, shopping outlets
—fashion shows
—on-site movies or other theatrical events
—liaison/coordination with activities at community-wide senior centers and activities
—emergency meal service for residents who are ill or in need
—organized travel opportunities

(2) Category #2 (Educational Needs)

Continuing education activities

—at least monthly presentations on subjects such as health care, nutrition, stress management, medicare, insurance, social security, tax preparation, vacation planning, gardening, crime prevention
—consumer protection education
—regularly offered CPR classes
—regularly offered language study classes
—regularly offered videotapes on health care
—courses available at local educational institutions

(3) Category #3 (Educational Needs)

Information and counseling services

—providing new residents with package of information about local services of interest to seniors
—bulletin board for exchange of information or services
—printed resident directory provided to each resident
—bus schedules
—free cable TV programs information to residents internal or external support groups for residents
—seminars on the aging process, estate planning, dealing with death or other issues affecting older persons
—on-site legal services
—informational sessions on fire safety mental health issues, political and environmental issues
—seminars on governmental benefits programs

(4) Category #4 (Physical Needs)

Homemaker services

—employees assist with housework or yardwork
—organized committee of residents to perform light household tasks or yard work for those who cannot do them themselves
—referrals to housecleaning services
—bill-paying services
—pet care/pet therapy services
—minor home repair service
—tool loan service

(5) Category #5 (Safety Needs)

Outside maintenance/health and safety services

—on-staff medical personnel with first aid/CPR training
—on-staff repair, maintenance and painting services
—meals on wheels
—lawn care and grass cutting, shrubbery and tree trimming
—snow shoveling and plowing
—referrals to doctors or other health care professionals
—regular system to contact residents who are house-bound to make sure they are o.k.
—referrals for transportation
—referrals to income tax preparer
—referrals to repair and maintenance services
—security guards/patrols, organizing neighborhood or block watch
—organizing committee of residents to do household repairs and yard work for those who cannot do them themselves
—exterior lighting—alarm systems monitoring
—vacation house watch
—limited access to property by controlled access gate or similar system

(6) Category #6 (Health Needs)

Emergency and preventative health care programs

—meetings about nutrition, back care, breast cancer/self-examination/mammogram, prostate cancer screening, vision care, or other health care topics (see continuing education)
—monthly blood pressure checks
—annual flu vaccine shots available
—periodic vision or hearing tests
—staff or volunteers pick up food from social services for mobility impaired seniors
—organizing committees of residents to do errands for people who become ill and/or to stay with sick persons while their spouses do errands

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—emergency telephone network, staff or volunteers monitor people who have serious medical problems
—doctor/medical facilities located within two miles of facility
—health care equipment pool for resident use

(7) Category #7 (Social/Health Needs)

Congregate dining

—available congregate dining for at least one meal each day
—sit-down service
—special menus for dietary needs
—activities conducted in conjunction with congregate dining

(8) Category #8 (Transportation)

Transportation to facilitate access to social services

—transportation provided to doctors' offices, shopping, religious services, outside social or recreational activities
—public bus stop or train station within walking distance
—organized system to provide transportation for residents who cannot drive
—sign-up board for shared transportation needs
—shared ride services to social events, functions, medical care, shopping

(9) Category #9 (Social Needs)

Services to encourage and assist residents to use available facilities and services

—volunteer or staff activity planner
—lifeguards, swimming or water aerobics instructors
—dance or exercise instructors
—crafts instructors
—newsletters, newspapers or flyers informing residents of activities, trips, clubs, etc.
—monthly calendar of events
—resident council or committees to encourage participation in activities

(10) Category #10 (Leisure Needs)

Social and Recreational Facilities

—clubhouse, communal kitchen, or communal dining area
—library with large print books or subscriptions to publications targeted to older persons
—swimming pool, sauna or whirlpool
—recreation or game room, arts and crafts room, community room or meeting room
—television room for communal use
—exercise equipment
—ping pong, pool tables, shuffleboard courts, horseshoe pits or bocce ball (with functional equipment)
—golf course
—stage, piano and dance floor
—picnic area, picnic tables, barbecue grills
—woodworking shop
—restaurant for resident use
—bank
—lawyer's office
—travel agency
—convenience store
—barber shop
—dry cleaners
—hair salon
—lapidary
—kiln
—fishing pond

(11) Category #11 (Health/Safety Needs)

Accessible physical environment

—accessible clubhouse
—at least one accessible bathroom facility in public and common use areas
—ramps (curbs or drainage ditches are cut to allow wheelchair/walker access)
—ramped sidewalks in public and common use areas; stairs at a minimum
—benches in public and common use areas
—assigned and designated parking spaces, including handicapped parking
—accessible swimming pool (i.e., ramped entrance to pool area)
—accessible management office
—accessible dining area or activity area
—vans, buses available with wheelchair lifts or easy access for persons with mobility difficulties
—lift to assist in swimming pool use

(12) Category #12 (Social, Leisure, Health, Safety or Educational Needs)

Other

—Any facility or service which is not listed above but which is designed to meet the health, safety, social or leisure needs of persons who are 55 and older and which is actually available to and used by residents of the property.

(e) A housing provider provides significant facilities and services if the facilities and services are provided on the premises by paid staff, resident volunteers, or by agencies, entities or persons other than the housing provider. A housing provider provides significant facilities and services if the facilities or services are provided off the premises by paid staff, resident volunteers, or by agencies, entities or persons other than the housing provider on the premises of the housing or off the premises, *provided that* if facilities or services are made available off the premises, the housing provider, through paid staff, resident volunteers, or by agencies, entities or persons other than the housing provider, shall make available transportation services or coordination of information and transportation resources which ensure that residents are aware of and have ready access to such facilities or services.

(f) In determining whether a housing provider provides significant facilities and services, the Department will evaluate each facility or service that meets the requirements of § 100.305 by the following criteria to determine whether the facilities in the aggregate and the services in the aggregate are "significant":

(1) The extent to which a facility or service can accommodate the older population of the housing facility. The capacity of each facility or service specifically designed to meet the physical or social needs of older persons depends upon but is not limited to such factors as:

(i) The size of the facility in relationship to the scope of the service offered;

(ii) The length of time during which the facility or service is made available or the service is offered;

(iii) The frequency with which the facility or service is made available or the service is offered; and

(iv) Whether the facility or service is offered only at one location or there are a number of locations at which the facility is made available or at which the service is offered.

(2) The extent to which the facility or service will be of benefit to older persons, given the climate and physical setting of the housing facility.

(3) The extent to which the facility or service is actually usable by and regularly available to residents on a day-to-day basis.

§ 100.307 Self-Certification.

(a) A housing provider may indicate, by display of a notice complying with this part, its intent to provide housing for older persons in substantially the same form as that attached as Appendix 1 to this part.

(b) Such a notice shall be provided by the Department, and shall include, at a minimum, a certification of compliance with § 100.315 and an indication of the housing provider's intent to provide, and its certification that it does in fact provide, facilities and services which comply with § 100.306.

(c) Such a notice shall be signed by one or more housing providers, with authority to sign.

(d) Such a notice shall be signed under penalty of perjury of the laws of the United States.

(e) Such a notice shall be posted in every public or common area where housing transactions are conducted.

(f) A copy of a current self-certification shall be considered by the Department to be sufficient evidence of compliance with the Act to allow the publication of advertisements, notices or the making of other statements as evidencing the operation of the property in question as housing for older persons and as excluding families with children as described in section 807(b)(2) of the Act, but not as conclusive evidence of eligibility for the housing for older persons exemption.

§ 100.310 Impracticability.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.310 if it is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons.

(b) In order to satisfy the requirements of § 100.310 the housing provider must affirmatively demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of § 100.310:

(1) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

(2) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(3) The geographical or other physical limitations inherent in the property which makes the provisions of facilities or services impracticable.

(4) The income range of the residents of the housing facility.

(5) The demand for housing for older persons in the relevant geographic area.

(6) The vacancy rate of the housing facility.

(7) The certification of 90 percent of the residents of the housing facility that a particular category of facility or service is not necessary or desired. Such certification shall be maintained as part of the official records of the housing facility, be made available for public inspection, and updated by certifications from new residents of the housing facility.

(8) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of § 100.310.

§ 100.315 80 percent occupancy.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity demonstrates through credible and objective evidence that housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.315 if at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with § 100.315 until 25 percent of the units in the facility are occupied.

(b) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(4) There are insufficient units occupied by at least one person 55 years of age or over to meet the 80 percent requirement, but the housing provider, at the time the exemption is asserted:

(i) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 and older; and

(ii) Meets the requirements of:

(A) Sections 100.305, 100.306, 100.307, and 100.316; or

(B) Sections 100.310, 100.315, and 100.316.

(iii) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units which must be occupied by at least one person who is 55 or older.

§ 100.316 Intent to provide housing for older persons.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity proves that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.316 if the owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the housing provider to provide housing for persons 55 years of age or older.

(b) The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of § 100.316:

(1) The manner in which the housing facility is described to prospective residents.

(2) The nature of any advertising designed to attract prospective residents.

(3) Age verification procedures.

(4) Lease provisions.

(5) Written rules and regulations.

(6) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(7) The public posting of the self-certification described in this part.

3. Appendix 1 is added to part 100 to read as follows:

Appendix 1 to Part 100—Housing For Older Persons—Self-Certification

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U.S. Department of Housing and Urban Development

Housing for Older Persons — Self-Certification

The Undersigned hereby certifies that

intends to meet the criteria set forth in the Federal Fair Housing Act in order to qualify as housing for older persons.

This housing facility provides the following facilities and/or services:

Category #1 (Social Needs)
Social and Recreational Services provided on a regular, organized basis

- ❒ softball, golf, shuffleboard tournaments, or similar team activities
- ❒ bridge club, card games, chess, checkers
- ❒ exercise classes - low-impact, stretching, t'ai-chi, swim-therapy
- ❒ bingo
- ❒ fellowship meetings
- ❒ musical theater group
- ❒ dances, square dancing, polka, ballroom dancing
- ❒ monthly or weely potluck dinners, breakfasts, luncheons, coffees
- ❒ coordinated holiday parties for residents
- ❒ Lions club, clubs or classes for sewing, needlepoint, art, gardening, music, books, golf, bowling, photography, travel, etc.
- ❒ cooking classes
- ❒ crafts classes: ceramics, macrame, woodworking, jewelry, quilting, painting
- ❒ field trips - bowling, sightseeing, concerts, plays, hiking, shopping outlets
- ❒ fashion shows
- ❒ on-site movies or other theatrical events
- ❒ liaison/coordination with activities at community-wide senior centers and activities
- ❒ emergency meal service for residents who are ill or in need
- ❒ organized travel opportunities

Category #2 (Educational Needs)
Continuing education activities

- ❒ at least monthly presentations on subjects such as health care, nutrition, stress management, medicare, insurance, social security, tax preparation, vacation planning, gardening, crime prevention
- ❒ consumer protection education
- ❒ regularly offered CPR classes
- ❒ regularly offered language study classes
- ❒ regularly offered videotapes on health care
- ❒ courses available at local educational institutions

Category #3 (Educational Needs)
Information and counseling services

- ❒ providing new residents with package of information about local services of interest to seniors
- ❒ bulletin board for exchange of information or services
- ❒ printed resident directory provided to each resident
- ❒ bus schedules
- ❒ free cable TV programs information to residents
- ❒ internal or external support groups for residents
- ❒ seminars on the aging process, estate planning, dealing with death or other issues affecting older persons
- ❒ on-site legal services
- ❒ informational sessions on fire safety, mental health issues, political and environmental issues
- ❒ seminars on governmental benefits programs

Category #4 (Physical Needs)
Homemaker services

- ❒ employees assist with housework or yardwork
- ❒ organized committee of residents to perform light household tasks or yard work for those who cannot do them themselves
- ❒ referrals to housecleaning services
- ❒ bill-paying services
- ❒ pet care/pet therapy services
- ❒ minor home repair service
- ❒ tool loan service

Category #5 (Safety Needs)
Outside maintenance/health and safety services

- ❒ on-staff medical personnel with first aid/CPR training
- ❒ on-staff repair, maintenance and painting services
- ❒ meals on wheels
- ❒ lawn care and grass cutting, shrubbery and tree trimming
- ❒ snow shoveling and plowing
- ❒ referrals to doctors or other health care professionals
- ❒ regular system to contact residents who are house-bound to make sure they are o.k.
- ❒ referrals for transportation
- ❒ referrals to income tax preparer
- ❒ referrals to repair and maintenance services
- ❒ security guards/patrols, organizing neighborhood or block watch
- ❒ organizing committee of residents to do household repairs and yard work for those who cannot do them themselves
- ❒ extenor lighting - alarm systems monitoring
- ❒ vacation house watch
- ❒ limited access to property by controlled access gate or similar system

Category #6 (Health Needs)
Emergency and preventative health care programs

- ❒ meetings about nutrition, back care, breast cancer/self-examination/mammogram, prostate cancer screening, vision care, or other health care topics (see continuing education)
- ❒ monthly blood pressure checks
- ❒ annual flu vaccine shots available
- ❒ periodic vision or hearing tests
- ❒ staff or volunteers pick up food from social services for mobility impaired seniors
- ❒ organizing committees of residents to do errands for people who become ill and/or to stay with sick persons while their spouses do errands
- ❒ emergency telephone network, staff or volunteers monitor people who have serious medical problems
- ❒ doctor/medical facilities located within two miles of facility
- ❒ health care equipment pool for resident use

This housing facility has determined to provide and does in fact provide at least 10 of the following services and facilities by offering at least 2 facilities or services in at least 5 of the following categories, including specifically at least two facilities from category 10 or category 11 (and requires that at least 80% of its units be occupied by at least one person who is 55 years of age or older). As housing for older persons, we claim an exemption from the provisions of the Fair Housing Act regarding discrimination based on familial status -- that is, the presence of persons under the age of 18

Category #7 (Social/Health Needs)
Congregate dining

- ❒ available congregate dining for at least one meal each day
- ❒ sit-down service
- ❒ special menus for dietary needs
- ❒ activities conducted in conjunction with congregate dining

Category #8 (Transportation)
Transportation to facilitate access to social services

- ❒ transportation provided to doctors' offices, shopping, religious services, outside social or recreational activities
- ❒ public bus stop or train station within walking distance
- ❒ organized system to provide transportation for residents who cannot drive
- ❒ sign-up board for shared transportation needs
- ❒ shared ride services to social events, functions, medical care, shopping

Category #9 (Social Needs)
Services to encourage and assist residents to use available facilities and services

- ❒ volunteer or staff activity planner
- ❒ lifeguards, swimming or water aerobics instructors
- ❒ dance or exercise instructors
- ❒ crafts instructors
- ❒ newsletters, newspapers or flyers informing residents of activities, trips, clubs, etc.
- ❒ monthly calendar of events
- ❒ resident council or committees to encourage participation in activities

Category #10 (Leisure Needs)
Social and Recreational Facilities

- ❒ clubhouse, communal kitchen, or communal dining area
- ❒ library with large print books or subscriptions to publications targeted to older persons
- ❒ swimming pool, sauna or whirlpool
- ❒ recreation or game room, arts and crafts room, community room or meeting room
- ❒ television room for communal use
- ❒ exercise equipment
- ❒ ping pong, pool tables, shuffleboard courts, horseshoe pits or bocce ball (with functional equipment)
- ❒ golf course
- ❒ stage, piano and dance floor
- ❒ picnic area, picnic tables, barbecue grills
- ❒ woodworking shop
- ❒ restaurant for resident use
- ❒ bank
- ❒ lawyer's office
- ❒ travel agency
- ❒ convenience store
- ❒ barber shop
- ❒ dry cleaners
- ❒ hair salon
- ❒ lapidary
- ❒ kiln
- ❒ fishing pond

Category #11 (Health/Safety Needs)
Accessible physical environment

- ❒ accessible clubhouse
- ❒ at least one accessible bathroom facility in public and common use areas
- ❒ ramps (curbs or drainage ditches are cut to allow wheelchair/walker access)
- ❒ ramped sidewalks in public and common use areas, stairs at a minimum
- ❒ benches in public and common use areas
- ❒ assigned and designated parking spaces, including handicapped parking
- ❒ accessible swimming pool (i.e., ramped entrance to pool area)
- ❒ accessible management office
- ❒ accessible dining area or activity area
- ❒ vans, buses available with wheelchair lifts or easy access for persons with mobility difficulties
- ❒ Lift to assist in swimming pool use

Category #12 (Social, Leisure, Health, Safety or Educational Needs)
Other

- ❒ Any facility or service which is not listed above but which is designed to meet the health, safety, social or leisure needs of persons who are 55 and older and which is actually available to and used by residents of the property (Describe)

SIGNED UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES OF AMERICA

_____
signature

Authorized representative of

_____

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Dated: February 8, 1995.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 95–5968 Filed 3–9–95; 2:57 pm]

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Tuesday
March 14, 1995

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Family Investment Centers After-School Program: Notice of Demonstration; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-95-3886; FR-3671-N-01]

Public Housing Family Investment Centers After-School Program: Notice of Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of demonstration program.

SUMMARY: This Notice announces the Department's intention to contribute up to $3.5 million from the Family Investment Center (FIC) program to assist in developing and expanding effective after-school programs that provide safe environments that help children to develop their full potential while permitting their parents to receive education or training or go to work. These programs will be located at housing authorities in Los Angeles, CA; Oakland, CA; Philadelphia, PA; and Kansas City, MO. The purpose of this effort is to demonstrate ways to promote, through supervised activities and joint community and private sector collaboration, the long-term welfare of children ages 7 to 13 living in public housing communities. This demonstration will create safe havens where children can develop skills, knowledge, and competencies, while simultaneously exposing the children to different lifestyle choices that will assist in their positive development. These intervention programs will pull together public and private resources to link adults who work with children to build self-confidence, provide homework counseling, tutoring, mentoring, and support as an alternative to gang-related activities that exist in and around public housing communities. This demonstration will also improve accessibility and supportive service coordination efforts among public housing authorities, local schools systems, the colleges and universities system, and the public and private sectors. This notice provides guidelines for the use of these funds and invites comments on the proposed demonstration

DATES: Comment due date: April 13, 1995. Applications will be due May 30, 1995, unless as a result of significant changes made in the application requirements upon consideration of public comments, the Department publishes a separate notice changing that deadline.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Beverly Hardy, Housing Management Specialist, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4112, Washington, DC 20410; telephone number (202) 708–4214 (TDD users may call the Federal Information Relay Service at (202) 708–9300 or 1–800–877–8339). (Other than the "800" number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0189.

Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FICs). As indicated in the FIC NOFA published on February 15, 1995 (60 FR 8900), the Department intends to use $3.5 million of the funds available for the FIC program in FY 1995 for purposes of demonstrating ways for families living in public and Indian housing in a neighborhood undergoing a concentrated effort of local revitalization to gain access to 4–H After-School programs for children to develop the self-confidence needed to reach their full potential and achieve success.

The demonstration will enable housing authorities to create after-school programs for children who may otherwise have no supervised place to go during non-school hours. These funds will be used to: (1) Cover administrative costs and other eligible activities; (2) mobilize public and private resources to expand and improve delivery of supportive services; (3) improve the capacity of management to assess the supportive services and training needs; and (4) provide for supportive services and related training that cannot otherwise be funded. The Department expects that this funding will demonstrate the importance of comprehensive support services in contributing to the local neighborhood revitalization.

The FIC, as described in Section 22 of the Housing Act of 1937 and the FIC NOFA published on February 15, is to "provide families living in public and Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence." Appropriately, the FIC After-School Program provides safe havens for children that will help their parents to take better advantage of education, job opportunities and social services to achieve self-sufficiency and independence, as well as directly helping the children to develop similar skills, knowledge, and competencies, while simultaneously exposing them to different lifestyle choices that will assist in their positive development. This demonstration will be a part of a comprehensive strategy to bring together resources among housing authorities, local school systems, the colleges and universities system, and the public/private sector.

In accordance with the requirements of section 470(a) of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), this notice describes the proposed demonstration and invites public comment. Any changes made in this demonstration as a result of the Department's consideration of public comments, and any extension of time for the commitment of funds necessary because of these changes, also will be published in the **Federal Register**. The Department will not commit funds for the proposed demonstration until after the latest of: (1) The date the Department has considered any comments received in response to this notice; (2) May 15, 1995, which is 60 days after today's publication date; and (3) the date the Department has received and approved proposals that meet the requirements imposed in this notice and any subsequent notice announcing changes in the demonstration. Applications will be due May 30, 1995, unless as a result of significant changes made in the application requirements upon consideration of public comments, the Department publishes a separate notice changing that deadline

Background of Demonstration

The 4–H After-School program is a partnership between the public and private sector to bring organized, after-school activities to children ages 7–13 who live in public housing communities with strong private sector support. The funds will be used to expand the Los Angeles model and replicate the program in Oakland, CA; Philadelphia, PA; and Kansas City, MO. The Los Angeles model is a strong partnership among the private sector; HUD; Extension Service, United States Department of Agriculture (USDA); University of California Cooperative Extension Service; and the National 4–H Council. The program is coordinated by the UNOCAL Petroleum Corporation and the Los Angeles 4–H Council, is backed by the Los Angeles City Council, and draws on the resources of VISTA, the University of California, the Housing Authority of the City of Los Angeles, the Los Angeles Unified School District, and HUD.

Inner cities are experiencing a serious crisis with youth gangs. The demonstration will involve joint investment by the public and private sectors to provide counseling, tutoring, mentoring, and other supportive services designed to reduce gang-related activities. HUD expects that this funding will demonstrate the success of public/private partnerships and commitments in public housing communities that address specific, long-term counseling needs, thereby resulting in reduced gang-related activities and enhanced lifestyle choices. This demonstration serves "at-risk" children living in public housing communities, 2–5 times per week on a year-round basis. The program is intended to create a nurturing environment that offers a positive alternative to unstructured, unsupervised free time in neighborhoods where gang-related activities are prevalent.

The system of services and outreach planned by the community will not only increase the intensity and variety of youth activities and supportive services available to neighborhood residents, it will also establish a delivery system involving residents who will work with neighbors to ensure progression towards resolving gang-related activities. Residents will work with trained coordinators to manage the program. Together with service providers, the public and private sector will form "Community Vision Teams" at the community level to bring together the multiple supportive service programs and financial supporters.

As a result of this demonstration, HUD expects that the children participating will be more likely to avoid the lure of the gangs and instead choose to stay in school with a goal of employment and economic independence. HUD also expects that the parents of participating children will be encouraged to pursue training, education, and employment opportunities leading to self-sufficiency, because their children will be in secure environments while the parents are away from home.

Because of the working partnership taking place at the local level in Los Angeles, there is an ideal demonstration environment for service delivery integrated across existing Federal and private sector program lines. Too often the requirements of Federal programs have dictated institutional structures at the local level that stand in the way of comprehensive delivery of housing and services to those who need these services to achieve self-sufficiency. This coordination creates a rare opportunity for the Department to test the capacity of its existing programs to serve in the context of a truly integrated and comprehensive transformation effort.

HUD has chosen four public housing agencies that already have partnerships in place to develop a comprehensive strategy to provide safe environments for children ages 7–13 living in public housing communities. This will happen through cooperative arrangements among housing authorities, local school systems, the colleges and universities system, the active involvement of supportive service agencies, and strong private sector support. The strategy must provide activities that link adults who work with children to build self-confidence, provide homework counseling, tutoring, mentoring, and supportive services during non-school hours.

The key factors that make Oakland, CA; Philadelphia, PA; and Kansas City, MO, unique have been the strong interest of the housing authorities of those cities, USDA, the University Cooperative Extension Service, the National 4–H Council, and the private sector to form Community Vision Teams that bring together educational and other public and private resources for the benefit of public housing children who otherwise have no safe place to go during non-school hours.

Funding

For purposes of this demonstration, the Department will make up to $3.5 million available to the Los Angeles, Oakland, Philadelphia, and Kansas City Housing Authorities for use in establishing and expanding FIC 4–H After-School programs in the public housing neighborhoods. The funding will be used in accordance with the statutory requirements of the FIC program, and as established in this notice and any subsequent notice issued after the comment period has closed, to contribute to an integrated network of supportive services for public housing and other neighborhood residents.

Most of the funding provided under this demonstration will be used for administration and service coordination by the Community Vision Team and for core support services. The 4–H After-School activities and supportive services will help children to overcome personal difficulties that inhibit their readiness to learn and be successful in school. Core support services and Community Vision Team activities supported by FIC funding provided under this demonstration will be targeted to ensure that a proportionate number of public housing families are served.

In addition to the FIC funding proposed under this demonstration, public and private organizations will support the demonstration project. This network will deliver necessary services to public housing children as part of the larger community, through the community-wide system developed by the housing authorities, the University Extension provider, and the private sector. The Department believes that the institutional integration—of which this demonstration will be one part—will enhance the quality, continuity, and impact of support provided to public housing children and their families. The private sector entity must have committed funding and in-kind donations to the project. The Department expects that this demonstration will leverage more public and private funding as the effort progresses, with private funding ultimately being responsible for contributing total financial support.

Eligible Activities

Funds may be used for the following activities:

(1) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(a) The supportive services are appropriate to improve the access of eligible residents to educational opportunities; and

(b) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(2) The employment of service coordinators.

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Eligible Costs

Activities that may be funded and carried out by an HA include, but are not limited to, the following:

(1) *Administrative costs.* Costs that are reasonable and include maintenance, utility costs (telephone, fax, light, gas), postage, printing, copier, building leasing/rent costs, Service Coordinator/Case Manager, accounting staff, initial equipment purchase (i.e., desks, chairs, computer equipment, tools, etc.).

(2) *Other program costs.* Costs that include advertisement, reimbursement for participant travel costs, travel stipends, vehicle lease (to transport participants to program-related activities), insurance liability costs (personal property/property off HA site) and technical assistance (T/A contractor fees, etc.).

Applicable Requirements

The PHA will be required to meet the applicable programmatic and application requirements set out in the NOFA for Public and Indian Housing Family Investment Centers (published at 60 FR 8900, February 15, 1995) and any subsequent notice that is published after the comment period for this notice has closed. When applicable, recipients of funding under this demonstration also are subject to the certifications, findings, determinations, and requirements listed in the "Other Matters" section of the FIC NOFA.

In order to receive the funding proposed in this notice, each housing authority must submit an original and one copy of a proposal describing its program in detail. Proposals must be prepared in accordance with instructions in the FIC Application Kit (available by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**, above) and must include:

(1) A brief summary of the proposed program (not to exceed 150 words), including a brief description of the key program components;

(2) A copy of the signed agreement(s) between the PHA, 4–H Extension Service, United States Department of Agriculture (USDA), the private sector entity, and the community vision team members for each demonstration site;

(3) A description of how the eligible participants will be recruited, with an accompanying implementation schedule;

(4) A description of supervised activities and joint community and private sector youth intervention projects;

(5) A description of resident (including parents) involvement in the program's planning and implementation;

(6) A description (based on projected needs) of the type of supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this program;

(7) A description of efforts to use or obtain other available resources to fund or provide supportive services that enhance educational opportunities;

(8) A description of efforts to improve accessibility and provide supportive services coordination efforts among public housing authorities, local schools systems, the college and university system, and the public and private sectors;

(9) A description of how the program will be evaluated, describing the baseline indicators against which success will be measured and replicated;

(10) A description of plans for continuing operation of the program and the provision of services to residents after completion of the demonstration phase;

(11) A narrative on the location and accessibility of the 4–H After-School facility; and

(12) A narrative, budget, timetable, and list of milestones for the 5-year period. Milestones shall include number of families to be served, types of services, and dollar amounts to be allocated over the 5-year period.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: March 3 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6156 Filed 3–13–95; 8:45 am]

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federal register

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Part VI

Department of Housing and Urban Development

24 CFR Part 201

Title I Property Improvement and Manufactured Home Loans; Electronic Payment of Title I Insurance Charges; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R–95–1765; FR–3823–F–01]

RIN 2502–AG41

Title I Property Improvement and Manufactured Home Loans; Electronic Payment of Title I Insurance Charges

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act. This rule permits the Secretary to require that Title I insurance charge payments be made through the Automated Clearing House (ACH) program. The purpose of this rule is to improve the efficiency of the Federal Housing Administration (FHA) Title I insurance program and reduce costs to HUD lenders.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: James A. White, Acting Director, Title I Accounting and Servicing Division, Room 3100, Department of Housing and Urban Development, 470 L'Enfant Plaza, East, Washington, DC 20024; telephone (202) 755–7545, extension 105; or (202) 708–4594 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

In 1985 the Department of Housing and Urban Development (HUD) implemented the Automated Clearing House (ACH) program, with voluntary participation by mortgagees, for the payment of up-front mortgage insurance premiums for single-family mortgages that are obligations of the Mutual Mortgage Insurance Fund.

On June 9, 1992, HUD published a proposed rule in the **Federal Register** (57 FR 24424) that would amend the Title II regulations to permit the FHA Commissioner to require that all such premium payments be made through ACH. Five comments were received in response to that proposed rule. Two comments were from automated clearing house associations, and expressed general approval of HUD's proposal. Two comments were from national trade associations; both of these were favorable to the proposal, although one expressed a number of technical operational concerns. The fifth comment, from a small lender, expressed a similar concern to one raised by one of the trade associations, namely the financial impact on small lenders.

On March 8, 1993, HUD published a final rule in the **Federal Register** (58 FR 12901) that was unchanged from the proposed rule. However, because of the concerns communicated in the comments, HUD allowed a one-year grace period for institutions making 300 or fewer new FHA single family loans per year. Also in 1993, HUD implemented the ACH program on a voluntary basis for the payment of Title I insurance charges.

The ACH system is designed to process the collection of Title I insurance charges from lenders, using remote terminals instead of sending checks and HUD–646 forms by mail. The lender's terminal operator dials a number that ties the terminal or personal computer into the collection agent's telenet system. The collection agent originates an ACH file of debit transactions based on the data keyed by the lender.

Each day at 6 p.m. eastern time, the collection agent originates an ACH file of debit transactions based on the data keyed by the lender. When the debit transactions have been processed, the ACH will transmit the Title I insurance charge data to HUD's Title I Insurance System. Through this ACH process, the debit amount is drawn electronically from the designated lender's bank account the next day, or can be "warehoused" and drawn on the lender's bank account on a future date. The corresponding credit entry will update HUD's account.

Without ACH, HUD personnel must correct all incorrect data submitted by lenders, and the HUD system must prepare, key, and then reprocess the corrected transaction. The ACH transfer system eliminates most errors. Built-in edits will verify data and produce an error message for lenders entering their payment data via terminal/personal computer, and an error fax confirmation for lenders entering their payment data via mainframe to mainframe. The ACH transfer system uses the lender contract number as part of the logon procedure. Any error in the lender contract number results in the ACH transfer system rejecting the logon attempt. In addition, the ACH transfer system will verify that the payment amount equals the billing amount less the exceptions.

Penalty charges and interest charges will be processed in the same manner as in the past and billed on the next statement. Penalty charges are levied if payment is received later than 25 days after the billing date. Interest charges are assessed when payment is received on or after the 55th day after the billing date. For the ACH program, penalty charge and interest charge amounts are automatically calculated by the system.

ACH provides lenders with numerous tangible benefits that should reduce their servicing costs. The advantages of ACH are:

(1) Control of payment timing—The use of ACH debits and credits can increase control of payment initiation and funds availability;

(2) Banking costs are reduced—ACH transfers cost less than paper checks and wire transfers;

(3) Accounting reconciliation is reduced—Payments are computerized and cash application is more automated than with manual systems;

(4) On-line edits can reduce data errors created by manual recording;

(5) The chance of lost/late mail is eliminated;

(6) ACH payments are fully traceable;

(7) The premium payments are drawn down electronically from the lender's designated bank account.

Because ACH provides lenders as well as HUD with numerous tangible benefits that reduce servicing costs, HUD intends to use ACH as the sole method for collecting Title I insurance charges. HUD believes that this rule does not have a significant economic impact on the smaller lending community for two reasons. First, lenders need only have access to a personal computer to participate in the ACH program, and personal computing is pervasive within the industry. Second, implementation of this process will be phased in and coordinated with lenders on an individual basis. This rule implements a program that will enhance operations and be cost beneficial for all Title I lenders.

Under this final rule, insurance charges will be collected by the ACH program for all property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act (12 U.S.C. 1703). Instructions implementing this rule will be transmitted to all Title I lenders at least 30 days before payment of Title I insurance charges by ACH will be required. The instructions will provide for a grace period of up to one year for compliance by small lenders with portfolios of fewer than 200 loans.

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking (24 CFR part 10). However, part 10 provides for exceptions from that general rule if HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. Due to HUD's experience in promulgating the amendment to the Title II regulations for payment of insurance premiums through ACH, and the voluntary participation in the ACH program by some Title I lenders, HUD finds that prior public procedure is unnecessary.

III. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality, and 24 CFR 50.20(k) of the HUD regulations, this rule is categorically excluded from the requirements of the National Environmental Policy Act. The rule relates solely to internal administrative procedures, the content of which do not involve a development decision or affect the physical condition of project areas or building sites, but only relate to the performance of accounting, auditing, and fiscal functions.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a program that will enhance operations and be cost beneficial for all Title I lenders. In addition, the plan to phase in the program with lenders on an individual basis assures against undue burdens on small organizations.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders, and do not impinge upon the relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Catalog of Federal Domestic Assistance

Program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 201 is amended as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as set forth below:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

2. A new paragraph (b)(4) is added to § 201.31 to read as follows:

§ 201.31 Insurance charge.

* * * * *

(b) * * *

(4) The Secretary may require that loan insurance charges be remitted electronically. Instructions implementing this requirement shall be communicated to all affected lenders.

* * * * *

Dated: February 8, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–6157 Filed 3–13–95; 8:45 am]

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Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part VII

Establishment of an Advisory Committee to Negotiate Regulations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part VII

Establishment of an Advisory Committee to Negotiate Regulations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee to be known as the Office of Surface Mining Reclamation and Enforcement Negotiated Rulemaking Committee on Coal Refuse Disposal. This notice is published in accordance with the Federal Advisory Committee Act (FACA), and the Negotiated Rulemaking Act of 1990. The notice is attached as an appendix.

The Office of Surface Mining Reclamation and Enforcement (OSM) seeks comments on the establishment of the advisory committee chartered to negotiate a rule on Coal Refuse Disposal, and nominations for its membership. Issues to be considered by the advisory committee include general permits, baseline hydrologic studies and hydrologic requirements at refuse sites, the application of valid existing rights to coal refuse sites, the collection of Abandoned Mine Land fees from companies processing coal refuse for reuse, and other environmental protection standards. OSM anticipates that the negotiation process will help resolve at least some of these outstanding issues.

DATES: Interested parties may file comments and/or nominations for Committee Membership on or before April 13, 1995.

ADDRESSES: *Written Comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, Washington, DC: or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240. Comments may also be sent electronically through the Internet to: OSMRULES@OSMRE.GOV.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., room 52, Washington, DC 20240, (202) 208–4609. For the hearing impaired, contact TTD (202) 208–2737.

SUPPLEMENTARY INFORMATION:

I. Negotiated Rulemaking
II. Subject and Scope of Rule for Negotiated Rulemaking
III. How Does Negotiated Rulemaking Work?
IV. What is the Purpose of the Committee?
V. How are Committee Members Selected?
VI. Who Has Been Contacted to Participate in this Process?
VII. Will All of These Groups Participate in the Regulatory Negotiation Process?
VIII. How Can You Participate in the Process?

I. Negotiated Rulemaking

The purpose of a negotiated rulemaking committee (or "reg neg" as it is frequently called) is to develop a consensus on a proposed rule. Before establishing such a committee, § 583(a) of the Negotiated Rulemaking Act directs the head of an agency to consider whether—

- There is a need for the rule
- There are a limited number of identifiable interests that will be affected by the rule
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent those interests and are willing to negotiate in good faith to reach a consensus on a proposed rule
- There is a reasonable likelihood that a committee will reach consensus on the proposed rule within a fixed period of time
- The negotiated rulemaking will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and
- The agency, to the maximum extent possible consistent with the legal obligations, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

"Consensus" in tern means the unanimous concurrence among the interests represented on the negotiated rulemaking committee unless the committee explicitly adopts some other definition. Thus, under the Negotiated Rulemaking Act, each interest on the committee has a veto: nothing can be adopted by the committee over the dissent of an interest. That has served to provide important protection for the parties and to help the parties focus on developing an entire regulation. This definition also means that the agency itself participates in the negotiations in a manner similar to that of any other party.

Negotiated rulemaking has been used quite successfully to address highly controversial subjects in a practical manner. For that reason, OSM thought it would be an appropriate process to use for the coal refuse rule.

II. Subject and Scope of Rule for Negotiated Rulemaking

Numerous coal refuse piles exist throughout the coal fields in the eastern United States. These piles are a major source of aesthetic and environmental degradation. A significant number of these piles, however, still contain large, potentially marketable quantities of coal. Modern technology enables the recovery of the coal in these piles, and in some cases the direct utilization of the material, for example in refuse burning power plants, electric power generation and co-generation facilities.

Under current law and policies, permitting and performance standards are the same for refuse pile operations as for any other mining operations. Section 2503 of the Energy Policy Act of 1992 requires the publication of new regulations on permitting and performance standards that distinguish between (1) operations that reprocess abandoned coal refuse on-site and (2) those that completely remove abandoned coal refuse from a site for the direct use of such coal refuse or for the reprocessing of such coal refuse at another location. These standards must recognize the distinct differences between these operations and other surface coal mining operations.

The committee will try to reach consensus on the major issues that could not be resolved in the draft rulemaking, specifically:

- Environmental protection standards
- Permits
- The application of valid existing rights to coal refuse sites
- Abandoned mine land fees

If the committee is able to reach consensus on these issues, the committee will propose a rule on coal refuse.

In addition, the committee may also address other appropriate remining issues that may arise from the discussion of coal refuse.

III. How Does Negotiated Rulemaking Work?

Negotiated Rulemaking typically occurs in two stages:

1. *The Convening Stage.* During this stage, an outside neutral party assists the agency in selecting participants to ensure balanced representation and helps the agency identify which specific issues should be negotiated. He or she educates the participants about the negotiation process and attempts to get the parties to commit to the product that will be produced. Convening typically takes one or two months.

2. *The Negotiation Stage.* This stage typically takes six to eight months. Again, a neutral outside party is often used to facilitate group meetings, which are generally held once a month. The goal of this stage is to produce regulatory language and, if possible, preamble text.

IV. What is the Purpose of the Committee?

The purpose of the Committee is to provide a forum to discuss the regulatory and reclamation issues of concern to the public, primacy States which regulate surface coal mining, environmental groups, coal mine region residents, industry, the Congress, and other State and Federal agencies.

V. How Are Committee Members Selected?

The Secretary of the Interior will appoint 20–25 members to the Committee to represent a cross-section of those who are interested in and directly affected by this proposed rulemaking. OSM has sought the advice of an outside neutral professional convener in an effort to carefully monitor membership to ensure that there is a balance among those interests affected by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). Members will represent the following segments of the population in appropriate mix and balance for the task at hand.

Categories of Members

- Environmental groups
- Representatives from the coal refuse removal and reprocessing industry
- Primary states with responsibility for regulating surface coal mining operations
- General coal mining industry
- Citizens/residents of areas with significant deposits of coal refuse

VI. Who Has Been Contacted to Participate in this Process?

The following parties were identified as potentially affected interests and were contacted during the convening stage of the process.

Environmental Groups

Citizen's Coal Council
Kentucky Resources Council, Inc.
National Wildlife Federation
Western Pennsylvania Land Conservancy
West Virginia Highlands Conservancy
Armstrong Conservation District

Industry

Inter-Power/AHICon Partners
Western Kentucky Coal Association
Kentucky Coal Association
Pennsylvania Coal Association
WV Mining & Reclamation Assoc.
Gilberton Power Company
Inter-Power Development Corporation
National Coal Association
American Mining Congress
Consol, Inc.

States

Interstate Mining Compact Commission
West Virginia Department of Environmental Protection
Pennsylvania Department of Reclamation
Illinois Division of Land Reclamation
Abandoned Mine Lands Reclamation Council
Kentucky Department for Surface Mining

Federal

Office of Surface Mining
Environmental Protection Agency

VII. Will All of These Groups Participate in the Regulatory Negotiation Process?

No. First, the Secretary of the Interior will select committee members based on whether the entity will be substantially affected by this rule. Second, some of the groups, for various reasons, may decide not to participate in this specific regulatory negotiation.

VIII. How Can You Participate in the Process?

If you believe that your interests may not have been adequately represented by any of the parties listed above you may apply for, or nominate another entity for membership on the committee to represent your interests. Each application for nomination must include:

1. The name of the applicant or nominee and a description of the interests the entity will represent.

2. Evidence that the applicant or nominee is authorized to represent parties related to the interests the entity proposes to represent.

3. A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration.

4. The reasons that the entities specified above do not adequately represent the interests of the entity submitting the application or nomination.

The OSM will advise the Secretary whether that entity should be added to the group. The decision will be based on whether the entity would be substantially affected by the rule and whether that entity is already adequately represented in the negotiating group.

IX. What Happens After the Committee Members are Selected?

Once membership in the Committee has been selected, an organizational meeting will be held to develop the specific issues and groundrules for how the negotiation will be conducted. The location and dates of future meetings will be published in the **Federal Register**. Meetings will be open to the public unless specifically noted as being closed in the **Federal Register**, as authorized by FACA.

X. Conclusion

OSM requests public comment on whether: (1) It should establish a Federal Advisory Commission, (2) it has properly identified the interests that are significantly affected by the key issues listed above, (3) the suggested committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

Dated: March 2, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Appendix

This notice is published in accordance with Section 9(a) (2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988). Following consultation with the General Services Administration and the Office of the Management and Budget, notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee to be known as the Office of Surface Mining Reclamation and Enforcement Negotiated Rulemaking Committee on Coal Refuse Disposal.

The purpose of the Committee is to provide a forum to discuss a variety of regulatory and reclamation issues of concern to the public, primacy States which regulate surface coal mining, environmental groups, coal mine region residents, industry, the Congress, and other State and Federal agencies.

The Secretary of the Interior will appoint 20–25 members to the Committee to represent a cross-section of those who are interested in and directly affected by regulatory and reclamation activities. OSM has sought the advice of an outside neutral professional convener in an effort to carefully monitor membership to ensure that there is a balance among those interests affected by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). Members will represent the following segments of the population in appropriate mix and balance for the task at hand.

Categories of Members:

- Environmental groups;

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* Representatives from the coal refuse removal and reprocessing industry;
* Primacy States with responsibility for regulating surface coal mining operations;
* General coal mining industry; and
* Citizens/residents of areas with significant deposits of coal refuse.

Certification

I hereby certify that the administrative establishment of the Office of Surface Mining Reclamation and Enforcement Negotiated Rulemaking Committee on Coal Refuse Disposal is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et. seq.).

Dated: August 18, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–6226 Filed 3–13–95; 8:45 am]

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Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Increased Flight Data Recorder Parameters; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 28109, Notice No. 95–4]

Increased Flight Data Recorder Parameters

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of public meeting and request for comments.

SUMMARY: The FAA is soliciting comments from the public, aircraft manufacturers and operators, and manufacturers of flight data recorders (FDR's) on the recent recommendations issued by the National Transportation Safety Board (NTSB) on increased FDR parameters. The FAA seeks comment on any aspect of the NTSB recommendations, including the potential safety benefits and financial costs for each of the NTSB recommendations. Comments received on the recommendations will assist the Federal Aviation Administration (FAA) in preparing potential regulatory action and in analyzing specific exceptions or alternatives that should be considered.

DATES: Comments must be received on or before March 31, 1995.

A public meeting to discuss the NTSB recommendations will be held on April 20, 1995, starting at 9 a.m.

ADDRESSES: Comments on the NTSB recommendations discussed in this document should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Attention: Rules Docket (AGC–200), 800 Independence Ave., SW., Washington, DC 20591. Comments must be marked: Docket No. 28109. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

The public meeting will be held at the FAA National Headquarters, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Jeanne Trapani, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

Questions concerning the subject matter of the meeting should be directed to Frank Rock, Technical Analysis Branch (AIR–120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9567.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than April 15, 1995. Such requests should be submitted to Jeanne Trapani at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented. Requests received after the date specified above will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda for the public meeting.

The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible. The amount of time allocated to each speaker may be less than the amount of time requested.

Background

On February 22, 1995, the NTSB issued three recommendations to the FAA as a result of its investigation of accidents and incidents that, in the opinion of the NTSB, have demonstrated that more information about flight control parameters should be recorded by FDR's. A copy of the NTSB Safety Recommendation letter of February 22, 1995, has been placed in the FAA docket. Contrasting accident/incident data involving airplanes with 5- and 128-parameter FDR's, the NTSB indicated that investigations were greatly aided by the availability of enhanced recorded information. The NTSB recommended that the FAA require operators to retrofit certain airplanes currently in operation with enhanced FDR's and require certain enhanced FDR's on newly-manufactured airplanes. The NTSB also issued recommendations to operators and manufacturers of aircraft operated under parts 121, 125, and 135. However, these recommendations will not be addressed at the public meeting. See attachment A of NTSB Safety Recommendation letter dated February 22, 1995.

The NTSB stated that among the additional flight control parameters that are needed are parameters that pertain to the flight control inputs and control surface positions. Acknowledging that the cost of increasing the recorded parameters on FDR's would necessitate a significant monetary investment, the NTSB stated that public safety outweighs the costs.

With this notice, the FAA is soliciting comments on the following NTSB recommendations:

Require that each Boeing 737 airplane operated under 14 CFR parts 121 or 125 be equipped, by December 31, 1995, with a flight data recorder system that records, as a minimum, the parameters required by current regulations applicable to that airplane plus the following parameters (recorded at the sampling rates specified in "Proposed Minimum FDR Parameter Requirements for Airplanes in Service" [see Table 1 below]): lateral acceleration; flight control inputs for pitch, roll, and yaw; and primary flight control surface positions for pitch, roll, and yaw.

Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockheed L–1011 airplanes, and all transport category airplanes operated under 14 CFR parts 121, 125, or 135 whose type certificate applies to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in "Proposed Minimum FDR Parameter Requirements for Airplanes in Service" plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999.

Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR parts 121, 125, or 135 (10 seats or larger), for which an original airworthiness certificate is received after December 31, 1996, record the parameters listed in "Proposed FDR Enhancements for Newly Manufactured Airplanes" [see Table 2 below] on a flight data recorder having at least 25-hour recording capacity.

The FAA requests that commenters be specific and provide as much factual detail in comments as possible. Cost information is also particularly requested.

Because of the time frame recommended by the NTSB and the date of the public meeting, the FAA requests that commenters be timely in their response. All comments received will be available, both before and after the closing date for comments, in the Rules Docket.

The FAA anticipates that comments provided in response to this notice will assist the agency in responding to the NTSB recommendations.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The opportunity to speak will be available to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room.

(2) There will be morning, lunch, and afternoon breaks.

(3) The meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

(4) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(5) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(6) Sign and oral interpretation may be made available at the meeting, as well as an assistive listening device, if requested at least 10 calendar days before the meeting.

(7) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.

(8) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

(9) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to the FDR's may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(10) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(11) The meeting is designed to solicit public views and more complete information. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

(12) Speakers are encouraged, before the meeting, to review the comments received in the docket, providing them an opportunity to express their view at the meeting on the comments in the docket, as well as present any additional comments.

Table 1.—Proposed Minimum FDR Parameter Requirements for Airplanes in Service (from Attachment A, NTSB Safety Recommendation, February 22, 1995)

Proposed Minimum Parameters:
1. Altitude
2. Airspeed
3. Vertical acceleration
4. Heading
5. Time of each radio transmission to air traffic control
6. Pitch attitude
7. Roll attitude
8. Longitudinal acceleration
9. Pitch trim position*
10. Yaw trim position**
11. Roll trim position**
12. Control column and pitch control surface position**
13. control wheel and lateral control surface position**
14. Rudder pedal and yaw control surface position**
15. Thrust of each engine
16. Position of each thrust reverser (or equivalent for propeller airplane)*
17. Trailing edge flap or cockpit flap control position*
18. Leading edge flap or cockpit flap control position*
19. Ground spoiler position/speed brake selection**
20. angle of attack (when information source is available)**
21. Lateral acceleration**
22. Autopilot engagement status**
23. Automatic Flight Control System (AFCS) modes and engagement status**
24. Outside or total air temperature**

(*) Indicates a new or changed parameter relative to the current 11-parameter requirement. (**) Indicates a new or changed parameter relative to the current 17-parameter requirement.

Table 2.—Proposed FDR Enhancements for Newly Manufactured Airplanes (from Attachment B of the NTSB Safety Recommendation, February 22, 1995).

Acceleration Parameters:
- Vertical
- Lateral
- Longitudinal

Airplane Performance/Position Parameters:
- Altitude
- Airspeed
- Air/ground sensor (primary airplane systems reference, nose or main gear)
- Brake pressure and pedal position
- Drift angle (when an information source is installed)
- Ground speed (when an information source is installed)
- Wind speed and direction (when an information source is installed)
- Outside air temperature or total air temperature
- Radio altitude (when an information source is installed)
- Latitude and longitude (when an information source is installed)

Airplane Attitude Parameters:
- Angle of attack left and right (when an information source is installed)
- Pitch
- Roll
- Magnetic heading
- True heading (when an information source is installed, sampled 1 per 4 seconds)
- Yaw or sideslip angle (when an information source is installed)

Flight Controls Position and Input Parameters:
- All control surface positions—primary controls (pitch, roll, and yaw)
- All cockpit flight control input positions and forces (control wheel, control column, rudder pedal) (sidestick controllers on fly-by-wire systems)
- All trim surface positions—primary controls (pitch, roll, and yaw)
- All cockpit trim control input positions—primary controls (pitch, roll, and yaw)
- Thrust/power—primary flightcrew reference (may require multiple parameters for all phases of flight)
- Throttle/power lever position
- Thrust reverser status (i.e., stow, transit, deployed, reverse pitch)
- Thrust command (when an information source is installed)
- Thrust target (when an information source is installed)
- Engine bleed valve position (when an information source is installed)

Airplane Configuration Parameters:
- Flap position (trailing and leading edge)
- Spoiler position (ground and speed brake)
- Spoiler/speed brake cockpit selection/status (armed—ground spoiler)
- Flap cockpit control selection
- Landing gear position
- Landing gear cockpit control selection
- De-icing or anti-icing system selection (when an information source is installed, sampled 1 per 4 seconds)

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Table 2.—Proposed FDR Enhancements for Newly Manufactured Airplanes (from Attachment B of the NTSB Safety Recommendation, February 22, 1995).—Continued

Fuel quantity in CG trim tank (when an information source is installed)
Computed center of gravity (when an information source is installed)
AC electrical bus status
DC electrical bus status
APU bleed valve position
Hydraulic pressure (all systems)
Navigation Aids:
Localizer deviation
Glideslope deviation
DME 1 and 2 distances
Nav 1 and 2 selected frequency
GPS position data (when an information source is installed)
Marker beacon passage
Autopilot Parameters:
Engagement status (all systems)
AFCS modes and engagement status
Timing:
Radio transmitter keying
UTC (when an information source is installed)

Table 2.—Proposed FDR Enhancements for Newly Manufactured Airplanes (from Attachment B of the NTSB Safety Recommendation, February 22, 1995).—Continued

Recorder elapsed time (frame counter, 0 to 4095)
CVR/DFDR synchronization reference (when an information source is installed)
Event marker
Warning Parameters:
GPWS
Hydraulic pressure low (each system)
Master warning
Loss of cabin pressure
TCAS—TA, RA, and sensitivity (as selected by crew)
Icing (when an information source is installed)
Engine warnings each engine—
Vibration (when an information source is installed)
Over temp. (when an information source is installed)
Oil pressure low (when an information source is installed)
Over speed (when an information source is installed)
Windshear (when an information source is installed)
Computer failure
Stick shacker/pusher (when an information source is installed)
Manual/Automatic Selected Parameters:
Selected barometric setting
Selected speed
Selected vertical speed
Selected heading
Selected flight path
Selected decision height
EFIS display format
Head-up display (when an information source is installed)
Para-visual display (when an information source is installed)
Multi-function/engine/alerts display format

Issued in Washington, DC on March 8, 1995.

Anthony J. Broderick,

Associate Administrator for Regulation and Certification.

[FR Doc. 95–6274 Filed 3–13–95; 8:45 am]

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federal register

Tuesday
March 14, 1995

Part IX

Department of Commerce

Economic Development Administration

Grants and Cooperative Agreements; Availability, Etc.: Economic Development Assistance Programs; Notice

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DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 950302065–5065–01]

Economic Development Assistance Programs—Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces its policies and application procedures for funds available in fiscal year 1995, as described in Public Law 103–317, Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations, to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically-distressed areas and regions of the Nation and to address economic dislocations resulting from sudden, severe job losses. The purpose of this announcement is to communicate to potential applicants for EDA funds the policies and procedures that will be used to administer the Agency's programs during fiscal year 1995.

DATES: This announcement is effective for applications considered for fiscal year 1995. Applications are accepted on a continuous basis and will be processed as funds are available. Normally, two months are required for a final decision after the receipt of a completed application that meets all EDA requirements.

ADDRESSES: Interested parties should contact the EDA office in their area (see Section XII).

FOR FURTHER INFORMATION CONTACT: See information at the end of each program section and Section XII for the EDA regional office and Economic Development Representative for the area.

SUPPLEMENTARY INFORMATION:

I. General Policies

EDA encourages certain types of project applications such as those proposals having the greatest potential to benefit areas experiencing or threatened with substantial economic distress. EDA is particularly interested in projects located in authorized and designated enterprise zones. Distress may exist in a variety of forms, including high levels of unemployment, low income levels, large concentrations of low income families, significant decline in per capita employment, substantial loss of population because of the lack of employment opportunities, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, and reduced tax bases.

Potential applicants are responsible for demonstrating to EDA, through the provision of statistics and other appropriate information, the nature and level of the distress their efforts are intended to alleviate. In the absence of evidence of high levels of distress, EDA funding is unlikely. In considering proposals to benefit severely distressed areas, EDA will give consideration to those that address the needs of both rural and urban communities, particularly aid that is directed toward the economic diversification of such areas.

During FY 1995, EDA will place a special emphasis on assisting projects that focus on: (1) Exports; (2) entrepreneurship; (3) telecommunications; and (4) technology initiatives including innovation, staying competitive in high value markets (well paying quality jobs), transfer, and commercialization, to alleviate conditions of substantial and persistent unemployment and underemployment in economically-distressed areas and regions, through the provision of grants for Public Works and Development Facilities, Technical Assistance, Economic Development Planning, Research and Evaluation, and Economic Adjustment Assistance.

EDA recognizes that small communities experience impediments to economic development other than the traditional inadequacies of existing water, sewer and roadway systems; therefore, in fiscal year 1995, EDA will give consideration to projects that will assist an area to overcome a special development or infrastructure problem that is preventing employment growth and economic development from taking place. Such projects may involve, but are not limited to, activities designed to enhance the expansion of the service sector of the economy when that sector is deemed more growth oriented than the traditional industrial sector, or innovative projects designed for the development of publicly-owned telecommunications infrastructure when it can be demonstrated that such a project is needed to foster productivity or enhance economic growth within an EDA-eligible area. Such proposals must be appropriately scaled and provide substantial and direct benefit to the local economy or otherwise enhance the economic prosperity of the area. EDA will consider providing assistance to demonstration type projects that are especially creative from an economic development standpoint and that leverage a substantial amount of nonfederal resources.

Eligible applicants that can demonstrate substantial local support for proposed projects have a better chance to receive EDA assistance. Proposals that do not provide evidence of strong support from the governmental entities in which the proposed project is located are less likely to receive EDA assistance. Support can be demonstrated by the commitment of funds necessary to finance all or part of the nonfederal share.

EDA expects those responsible for developing and managing projects to maximize the impact of the public funds by implementing projects as thoroughly and expeditiously as possible. In the case of projects involving construction, EDA expects construction to be initiated and completed in a timely manner. Applicants are expected to anticipate predictable delays such as those caused by normal weather conditions, permits and approvals, legal complications, community disputes, land acquisition, etc., and account for them in developing project schedules. Projects which by their nature are likely to encounter significant delays are less likely to be considered for funding. Projects that experience unreasonable delays following EDA approval may be terminated and the funds deobligated. These policies are consistent with EDA's objective of supporting activities that can begin to benefit local economies as soon as possible, thereby meeting the pressing development needs identified by project applicants.

Generally, EDA funding will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. EDA nonrelocation requirements (13 CFR 309.3) apply to all grants involving construction, rehabilitation or repair of real estate under Titles I, IV, IX, and Section 301(f) of the Public Works and Economic Development Act of 1965 (Pub. L. 89–136, 42 U.S.C. 3121–3246h), as amended and grants under Title IX for any purpose (including Revolving Loan Funds).

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DoC are made.

Applicants may be subject to a pre-award accounting system survey by the Department of Commerce's Office of Inspector General, and fund recipients may be subject to audits or other inspections by the same office.

Applicants eligible for additional grant assistance because of membership in an economic development district must be active participants in the district's economic development planning process.

EDA will evaluate applications for conformance with published statutory, regulatory, and policy requirements. Applications proposed for funding under these programs are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

EDA will not approve projects that involve actual or potential conflict-of-interest situations. If EDA identifies or suspects a possible conflict-of-interest situation, or an appearance of such, application processing and/or the grant award may be suspended and the burden will be on the applicant/grantee to take appropriate steps to eliminate the perception or actual conflict of interest before the application processing or award is resumed.

Recipients must agree that no funds made available by EDA will be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing awards made by the Government, such as preparation of the application. However, attorneys' and consultants' fees incurred for meeting award requirements, such as conducting a title search or preparing plans and specifications, may be eligible project costs and may be paid out of funds made available by EDA, if such costs are otherwise eligible.

The total dollar amount of the indirect costs proposed in an application under any EDA programs must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable to purchase American-made equipment and products with funding provided under these programs in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Sections 607 (a) and (b).

The implementing regulations of the National Environmental Policy Act (NEPA) require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b).

Depending on the project location, environmental information concerning specific projects can be obtained from the Regional Environmental Officer (REO) in the appropriate EDA regional office listed in Section XII or from Dr. Frank Monteferrante, Environmental Branch, Compliance Review Division, EDA, U.S. Department of Commerce, Washington, DC 20230, (202) 482–4208.

Applicants should be aware that a false statement on the application is grounds for denial of the application or termination of the grant award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and 42 U.S.C. 3220.

All nonprofit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Application Procedures

Applications are accepted on a continuous basis. Processing time for applications will depend upon the completeness of the information and supporting documents provided in the application at the time of submission. Applications that require additional information from applicants or other sources will not be processed further pending correction of deficiencies, and the official application receipt dates will be adjusted accordingly. Normally, two months are required for a final decision after the receipt of a completed application that meets all EDA requirements. Please see the specific program sections of this Notice for appropriate preapplication and application procedures. Proponents should contact the appropriate EDR (see Section XII) to obtain the necessary application forms.

An invitation to submit an application does not assure EDA funding. Factors that will be considered in selecting proposals include if and to what extent the project meets the evaluation criteria and "General Policies" described above.

Project applications invited but not funded or denied in any fiscal year remain eligible for funding consideration in the next fiscal year. Applications invited and received prior to the date of this Notice will be processed and evaluated in accordance with the project evaluation and selection criteria published for FY 1994 and current legal requirements. Those applications invited on or after the date of this Notice must be consistent with

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this Notice. Applicants whose projects were invited but not submitted to EDA in FY 1994 should contact the appropriate EDA regional office regarding the forms to be used for FY 1995.

Selection Procedures

Generally, preapplications are reviewed by the Economic Development Representative, the Project Review Committee and then the Regional Director. Based on the evaluation criteria, general policies and availability of funds, final funding decisions on all applications under Titles I and IX and Title III, Local Technical Assistance and Planning, are made by the Regional Directors subject to such conditions as the Assistant Secretary for Economic Development may prescribe. All other funding decisions are made by the Assistant Secretary for Economic Development.

Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of EDA.

Applicants should be aware that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of EDA to cover pre-award costs.

The following material describes other requirements, policies and procedures associated with each of EDA's programs.

II. Program: Public Works and Development Facilities Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP)) 13 CFR Part 305

Authority

Funds available under the Public Works and Development Facilities Program are used to finance projects that contribute to the economic development of distressed areas. This program is authorized by Titles I and IV of the Public Works and Economic Development Act of 1965, as amended (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3).

Eligibility

Eligible applicants under this program include any state, or political subdivision thereof, Indian tribe, the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, or private or public nonprofit organization or association representing any redevelopment area or part thereof, provided such project is located within an eligible EDA area that is represented by the nonprofit organization or association.

Eligible areas, other than those designated under the Public Works Impact Program, must have a current EDA-approved Overall Economic Development Program (OEDP). Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization. Further information on eligibility is available from EDA's regional offices. Nonprofit applicants are urged to seek the cooperation and support of units of local government and, when deemed appropriate by EDA, to have the local government serve as co-applicant for EDA assistance. This ensures the financial stability and continuity of the project, in the event that the nonprofit entity finds itself in a position of not having the financial resources to properly and efficiently administer, operate, and maintain the EDA-assisted facility consistent with the provisions of 13 CFR 314–Property Management Standards.

Program Objective

The purpose of the Public Works Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies, and improving local living conditions and the economic development of the area. The alleviation of unemployment and underemployment among residents of the project area is a primary focus of this program.

Funding Availability

Funds in the amount of $195 million are available for this program. Grants awarded under this program generally range between $100,000 and $1.5 million.

Funding Instrument

EDA may provide direct grants not to exceed 50 percent of the estimated cost of the project. However, under certain circumstances supplementary grants to augment the direct grant may be provided up to a maximum of 80 percent of the eligible project costs. Supplementary grant assistance to finance over 50 percent of the project costs will be approved by EDA only for proposals in areas of high distress. Decisions on such supplementary grant assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate, and the relative needs of the area (see 13 CFR 305.5). But in no event will the Federal participation exceed 80 percent of the aggregate cost of any such project, except as authorized by section 101(c) of PWEDA of 1965, as amended, which permits EDA to waive the nonfederal share under certain conditions. Applicants are required to provide the local share from acceptable sources including, but not limited to cash, local government general obligation or revenue bonds, Community Development Block Grant (CDBG) entitlement funds or balance of state awards, Farmers Home Administration loans, and other public and private financing, including donations.

The local share need not be in hand at the time of application, however, the applicant must assure EDA that the funds will be available to provide the nonfederal share of the project. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant.

Project Duration

Projects are expected to be completed in a timely manner consistent with the nature of the project. Normally, the maximum period for any financial assistance that is provided shall be not more than five (5) years from date of award.

Evaluation Criteria

For both regular public works projects and Public Works Impact Program (PWIP) projects, priority consideration will be given to those which are the most competitive based upon the project evaluation criteria set forth below, that best meet the needs of eligible areas, and that are located in areas of substantial economic distress. Evaluation criteria will not be assigned weights. Projects will be evaluated on the basis of the elements listed below to meet the goals described above.

A. Public Works Projects

Factors that will be taken into account in considering projects eligible under section 101(a)(1)(A)—(C) of PWEDA, 42 U.S.C. 3131(a)(1)(A)—(C), include if and to what extent the project:

1. Improves opportunities for the successful establishment or expansion of industrial or commercial facilities in the area where such project will be located.

2. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which it is, or will be, located, and has broad community support.

3. Assists in creating or retaining private sector jobs in the near term and assists in the creation of additional long-term employment opportunities, provided the jobs are not transferred from any other area of the United States, and will result in a low cost-per-job in relation to total EDA cost.

4. Benefits the long-term unemployed and members of low-income families who are residents of the area to be served by the project.

5. Fulfills a pressing need of the area, or part thereof, in which it will be located.

6. Is supported by significant private sector investment.

7. Has evidence of adequate local share of funds.

8. Supports developments taking place in designated empowerment zones/enterprise communities.

9. Demonstrates that necessary permits, land acquisitions, or options on land and rights-of-way have been or will be obtained and that all other legal requirements of the application process have been satisfied.

10. Maximizes the amount of local, state or other Federal funding that is available.

11. Gives evidence of the ability to begin and complete construction in a timely manner in accordance with a schedule to be agreed upon by EDA and the applicant and included in the grant award. EDA discourages the start of construction prior to grant award and cautions that financial hardship may be experienced by applicants whose projects are not approved. EDA will require all applicants that request approval to proceed with construction prior to grant award to acknowledge that they are proceeding at their own risk and without recourse to EDA if the grant is not awarded or EDA requirements are not met. EDA also requires that compliance with environmental regulations be completed before construction begins. EDA's regional office must have time to complete its "Finding of No Significant Impact," and clearances must be obtained from appropriate state and Federal agencies. Furthermore, EDA may view the start of construction prior to grant award as an indication that the grant funds are not essential for the successful implementation of the project.

12. If located in an Economic Development Center (i.e., Growth Center) that has a stable economy with little distress, includes an employment plan that explains how new employment opportunities for residents of nearby highly distressed redevelopment areas will be provided.

B. Public Works Impact Program

Factors that will be considered in the evaluation of projects under the Public Works Impact Program (PWIP) authorized by section 101(a)(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), include if and to what extent the project:

1. Directly assists in creating immediate useful work (i.e., construction jobs) for the unemployed and underemployed residents in the project area;

2. Improves the economic or community environment in areas of severe economic distress;

3. Includes a specific plan (i.e., PWIP Employment Strategy) for hiring the unemployed and underemployed persons from the project area to work on the construction of the project; EDA will evaluate all plans to ensure that they contain a logical explanation of how the employment objectives will be met;

4. Assists in providing long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

5. Primarily benefits low-income families by providing essential community services, or satisfying a pressing public need;

6. In addition to the requirement for regular public works projects, as contained in paragraph A 11., can begin construction quickly (normally within 120 days after acceptance of the grant by the applicant);

7. Has significant labor intensity, where labor intensity is the proportion of labor costs to the total project costs.

C. Industrial Park Projects

Projects that will primarily serve an industrial park or site may be evaluated on such additional factors as:

1. A detailed analysis of existing industrial park capacity and utilization; occupancy rates for existing developed industrial parks currently available within a 25-mile radius of the project site. For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25-mile radius. Contact the economic development representative (EDR) for the area or the appropriate EDA regional office for guidance.

2. Commitments in writing from identified tenants to expand existing operations or to locate in the industrial park or site. Commitments should include a description of the industry, the number of jobs created or saved, an implementation schedule, and the relationship of the commitment to the requested grant assistance.

3. The existence of a documented marketing strategy and demonstrated financial ability to market space in the industrial park or site. Strong emphasis will be placed upon this evaluation criterion.

Construction Project Implementation

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner and in accordance with the schedule agreed upon in the grant documentation.

Under most circumstances, EDA will not provide additional funds to finance cost overruns that occur during project implementation.

Proposal Submission Procedures

To establish the merits of project proposals, interested parties should first contact the economic development representative (EDR) for the area (see listing in Section XII). The economic development representative for the area will provide a preapplication form (ED–101P, OMB Control No. 0610–0011) and arrange for conferences to discuss the proposal. EDA will evaluate proposals before inviting the submission of an application. As previously mentioned, an invitation to submit an application does not assure EDA funding. Proposals will be evaluated based upon:

1. Conformance with the evaluation criteria mentioned above;

2. Merits of the proposal in addressing the economic development needs of the eligible area; and

3. The availability of program funds.

Processing time for project proposals depends upon the completeness of information and supporting documents provided in the preapplication form at the time of submission. Project

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proposals that require additional information from applicants or other sources will not be processed further until deficiencies are corrected.

Application Procedures

Following a review of project proposals, EDA will invite entities whose projects are selected for consideration to submit applications within 30 days after receipt of an invitation letter. The application will include a form ED–101A, as approved by the Office of Management and Budget Control No. 0610–0011. The demand for public works assistance is expected to exceed available funding. The processing of applications that cannot be recommended for approval within 60 days of receipt in a regional office because of unresolved issues will be suspended. Such applications may be reconsidered at a future date, but must compete with other applications for the funds available at that time.

Further Information

For further information contact the appropriate EDA regional office or economic development representative for your area (see Section XII of this Notice).

III. Program: Local Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development-Technical Assistance) 13 CFR Part 307, Subpart A

Authority

Funds under the Local Technical Assistance Program are awarded to eligible applicants to provide assistance intended to assure the successful initiation and implementation of area, state, and regional development efforts designed to alleviate economic distress. This program is authorized under Section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for Local Technical Assistance grants or cooperative agreements include public or private nonprofit national, state, area, district, or local organizations; public and private colleges and universities; Indian tribes, local governments, and state agencies. In certain circumstances, applications may be considered from other applicants such as private individuals, partnerships, firms, and corporations.

Program Objective

The Local Technical Assistance Program is designed to help alleviate or prevent conditions of excessive unemployment or underemployment and problems of economically distressed populations in rural and urban areas.

Funding Availability

Funds in the amount of $1.5 million are available for the Local Technical Assistance Program. It is expected that these funds will be made available for projects serving specific local or substate areas and also for projects whose impacts will affect multistate areas within EDA regional office boundaries. Individual award amounts have averaged $25,000 in recent years.

Funding Instrument

EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share, preferably in cash. The Assistant Secretary may waive all or part of the 25 percent share of technical assistance grants, if he/she determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance or for other good cause.

Project Duration

Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

Evaluation Criteria

Evaluation criteria will not be assigned weights. Projects will be evaluated on the basis of the elements listed below in order to meet the goals described above. Evaluation criteria include whether the local Technical Assistance proposal:

1. Produces strong evidence that the proposed project will lead to the near-term (between one and five years) generation or retention of private sector jobs.

2. Does not depend upon further EDA or other Federal funding assistance to achieve results.

3. Strengthens the capability of state and local organizations and institutions, including nonprofit development groups, to undertake and promote effective economic development programs targeted to people and areas of distress.

4. Stimulates significant private and nonfederal public investment for economic development purposes, including funds from commercial lenders, public and private pension funds and other nontraditional sources.

5. Benefits severely distressed areas, both rural and urban counties and communities.

6. Diversifies distressed rural and urban economies by means of empowerment zones, enterprise communities and other strategies.

7. Demonstrates innovative approaches to stimulating economic development in depressed areas. EDA is particularly interested in receiving innovative proposals in the following areas:

a. Export development used as an economic development strategy;

b. Assistance to business in uses of technology; and

c. Sustainable development.

8. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the project is located and has been recommended by the OEDP Committee (if appropriate to the nature of the project).

9. Presents an appropriate and clear project design.

10. Is proposed by organization or individual(s) with the capacity, qualifications and staff necessary to undertake the intended activities.

11. Presents a reasonable, itemized budget for the proposed activities.

12. Involves a significant (preferably cash) contribution in excess of minimum required from applicant or other nonfederal sources.

Pre-Application Procedures

Parties seeking support for Local Technical Assistance projects should contact the economic development representative (EDR) for the area to discuss their proposal. (See EDR listing in Section XII of this announcement.)

EDA will evaluate all proposals as they are received and invite applications for those which best satisfy the evaluation criteria. An invitation does not, however, assure EDA funding.

Potential applicants should submit one original and two copies of a brief and concise proposal, not to exceed 20 pages. Vita and capability information may be appended.

Proposal Submission Procedures

Potential applicants must submit to the appropriate EDR proposals that include:

1. A cover page giving a short descriptive project title, the name and address of the applicant organization, the name and telephone number of the project director, the project duration, total project cost, the amount of EDA funds requested, and the program (Local Technical Assistance) from which EDA funds are being requested;

2. A brief section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;

3. A more detailed description of the project and its methodology;

4. A work plan showing different phases of the project and their timing;

5. A detailed budget, not to exceed one page, showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page;

6. Resumes for the project director and principal staff; and

7. A corporate or institutional capability statement, where appropriate.

Parties seeking support for projects where impacts will cross EDA regional boundaries should submit proposals to the Director, Technical Assistance and Research Division, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, DC 20230. Individuals or organizations located outside the Washington, DC, metropolitan area should submit a copy of the letter transmitting their proposal to Washington, and to the EDR for the area in which they are located.

Application Procedures

The appropriate EDA regional office will invite entities whose proposals for Local Technical Assistance projects are selected for further consideration to submit application packages. The application will include a Standard Form-424 (OMB Control No. 0348–0043).

Eligibility for Specific Solicitations

EDA may, during the course of the year, identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the Director, Technical Assistance and Research Division, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, DC 20230.

Further Information

For further information about Local Technical Assistance projects contact the appropriate EDR. (See EDR listing in Section XII of this announcement.) For further information about submitting projects whose impact will cross EDA regional office boundaries, contact the National Technical Assistance Coordinator, telephone (202) 482–2127.

IV. Program: National Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development-Technical Assistance) 13 CFR Part 307, Subpart A

Authority

Funds under the National Technical Assistance Program are awarded to eligible applicants who will offer assistance to local, regional and state organizations, and/or conduct demonstrations of and disseminate information about innovative development techniques designed to alleviate economic distress. This program is authorized under Section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for National Technical Assistance grants or cooperative agreements include public or private nonprofit national, state, area, district, or local organizations; public and private colleges and universities; Indian tribes, local governments, and state agencies. In certain circumstances, applications may be considered from other eligible applicants such as private individuals, partnerships, firms, and corporations.

Program Objective

The National Technical Assistance Program is designed to help alleviate or prevent conditions of excessive unemployment or underemployment and to address problems of economically distressed populations.

Funding Availability

Funds in the amount of $1.85 million are available for the National Technical Assistance Program. Individual award amounts may vary and generally will not exceed $200,000.

Funding Instrument

EDA will provide grants not to exceed 75 percent of proposed project costs. Applicants are expected to provide the remaining share. In cases where EDA issues a Solicitation of Applications, an applicant's share may not be required. The Assistant Secretary may waive all or part of the 25 percent nonfederal share of technical assistance grants, if he/she determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance or for other good cause.

Project Duration

Assistance will be for the period of time required to complete the scope of the work. Generally, this will not exceed fifteen months.

Evaluation Criteria

Evaluation criteria will not be assigned weights. Projects will be evaluated on the basis of the elements listed below in order to meet the goals described above. EDA will consider proposals for National Technical Assistance that include whether the proposal:

1. Effectively supports, through providing information and other means, the capability of state and local organizations and institutions, including nonprofit development groups, to undertake and promote effective economic development programs targeted to people and areas in distress.

2. Demonstrates innovative approaches to stimulating economic development in one or more of the following:

a. Assistance to business in implementing technology initiatives including innovations, transfer, and commercialization including high value manufacturing through collaboration;

b. Export assistance;

c. Entrepreneurship assistance;

d. Sustainable development and growth management;

e. Empowerment zones/enterprise communities;

f. Defense conversion and industrial restructuring;

g. Assistance to colleges and universities, including community colleges in implementing technology and/or developing curricula for economic development; and

h. Other relevant economic development issues.

3. Presents an appropriate and clear project design.

4. Is proposed by organizations with the capacity, qualifications, and staff necessary to undertake the intended activities.

5. Presents a reasonable, itemized budget for the proposed activities.

Pre-Application Procedure

Potential applicants should submit one original and two copies of a brief and concise proposal, not to exceed 20 pages. Vita and capability information may be appended.

Proposals should include:

1. A cover page giving a short descriptive project title, the name and address of the performing organization, the name and telephone number of the project director, the project duration, the project costs, the amount of EDA funds requested, and the program (National Technical Assistance) from which EDA funds are being requested;

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2. A brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;

3. A more detailed description of the project and its methodology;

4. A work plan showing different phases of the project and their timing;

5. A detailed budget, not to exceed one page, showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page;

6. Resumes for the project director and principal staff; and

7. A corporate or institutional capability statement, where appropriate.

Proposals should be submitted to the Director, Technical Assistance and Research Division, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, DC 20230.

Application Procedures

The Technical Assistance and Research Division will invite entities whose proposals for National Technical Assistance projects are selected for further consideration to submit application packages. Such invitation, however, does not assure EDA funding. The application will include a Standard Form-424 (OMB Control No. 0348–0043).

Eligibility for Specific Solicitations

EDA may, during the course of the year, identify additional specific economic development technical assistance activities. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the Director, Technical Assistance and Research Division, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, DC 20230.

Further Information

For further information about National Technical Assistance projects contact the Technical Assistance and Research Division, telephone (202) 482–2127.

V. Program: University Center Technical Assistance Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development-Technical Assistance) 13 CFR Part 307, Subpart A

Authority

Funds for the basic University Center projects are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The efforts of university centers should focus on helping public bodies, nonprofit organizations and businesses plan and implement activities designed to generate jobs and income. In addition, funds may be used for projects which promote the goals of the University Center program in other ways that demonstrate innovative economic development. Support for these types of projects is authorized under Section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for University Center grants are public and private colleges and universities, associations representing such institutions, and other organizations with expertise in University Center program issues.

Program Description

This program helps educational institutions establish and maintain outreach programs which permit them to be active and on-going participants in economic development. The objective of the program is to use the resources of the educational institutions to provide technical assistance to alleviate or prevent conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or substate areas. The technical assistance provided under this program must be directed to clients outside the institution of higher education.

Funding Availability

The FY 1995 budget for this program is $7.57 million. While the expected funding range for each award is $75,000 to $150,000, circumstances may warrant funding projects at higher or lower levels. In FY 1994, EDA provided funding to 66 colleges and universities under this program. Since most of them are expected to seek continuation funding, it is unlikely that any new University Centers will be funded in FY 1995.

Matching Requirements

A minimum match, equal to 25 percent of the total project cost, is required.

Type of Funding Instrument

This program uses grants as its funding instrument.

Award Period

The project period for grants awarded under this program generally will not exceed twelve months.

Indirect Costs

EDA encourages applicants to waive indirect costs for this program. No more than 20 percent of the Federal grant and the minimum nonfederal share may be allocated for indirect costs.

Application Procedures

The appropriate EDA regional office will invite entities whose proposals for University Center Technical Assistance projects are selected for further consideration to submit application packages. The application will include a Standard Form 424 (OMB Control No. 0348–0043).

Project Funding Priorities

Innovative proposals with a variety of economic development foci are welcome. However, applicants should note that EDA will not award University Center Technical Assistance program funds to provide general business assistance (e.g., preparing business plans) in areas served by Small Business Development Centers (SBDCs), Minority Business Development Centers (MBDCs), or Trade Adjustment Assistance Centers (TAACs). Most successful proposals funded in the recent past have emphasized providing technical assistance to public sector and nonprofit organizations related to economic development planning and projects, or helping private sector firms use technology to solve manufacturing or processing problems.

Evaluation Criteria

For existing University Centers, EDA will primarily consider past performance in determining whether to continue the award and the amount of funding to be offered. In evaluating a proposal for new University Center funding, EDA will consider the elements listed below. Evaluation criteria are not assigned weights, as all factors are equally important and contribute to the overall goals described above.

1. Addresses the economic development needs of the service area;

2. Complements the activities of other organizations in the proposed service area that are engaged in economic development;

3. Has the commitment of the highest management levels of the sponsoring institution;

4. Provides evidence of adequate nonfederal financial support, either from the sponsoring institution or other sources;

5. Outlines activities consistent with the expertise of the proposed University Center staff and the academic programs and other available resources within the sponsoring institution;

6. Complements and supports the local, regional or state economic development strategies in the service area;

7. Presents a reasonable budget, including both the Federal and nonfederal shares;

8. Documents past experience of the sponsoring institution in operating technical assistance programs; and

9. Adds to the geographic distribution of University Centers across the country.

All proposals must include a work program organized under the following categories: (1) providing technical assistance; (2) conducting applied research; and (3) disseminating results of the University Center activities. For this program, technical assistance is defined as an activity carried out by the University Center in response to a direct request from a client outside the sponsoring educational institution. Applied research is defined as an economic development activity undertaken by the University Center at its own initiative.

All proposals must include quantitative and qualitative evaluation criteria for each activity listed under the three categories of the work program. These criteria, when accepted by EDA, will be the primary guide used in evaluating the performance of the University Center.

All proposals must include a program budget that, at a minimum, indicates the Federal and nonfederal funds allocated to each of the three work program categories. At least 70 percent of the direct costs of the project budget must be allocated to the first category of the work program, providing technical assistance to clients outside the sponsoring institutions.

Selection Procedures

The EDA regional offices review the proposals and make recommendations for funding of new grants to the Assistant Secretary for Economic Development, who makes the final decisions based on the relative merits of the applications.

Proposal Submission Procedures for Continuation Grants

Each existing University Center will be notified by the appropriate regional office of its eligibility for continuation funding. At that time, University Centers eligible for continuation funding will be notified of the amount of the required nonfederal share and provided with additional program guidance.

Proposal Submission Procedures for New Basic Grants

Institutions seeking funding for a University Center should submit a proposal describing the activities to be carried out with the grant funds, to the appropriate EDA regional office, or to the EDR for the area. (See EDA regional office and EDR listing in Section XII of the announcement.)

Further Information

For further information about the University Center Technical Assistance program contact the appropriate regional office or EDR (Section XII) or the University Center Coordinator, Technical Assistance and Research Division, Economic Development Administration, Room H7315, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–2127.

VI. Program: Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations) 13 CFR Part 307, Subpart D

Authority

Funds under this program are awarded to defray administrative expenses in support of the economic development planning efforts of economic development districts (Districts), redevelopment areas (Areas) and Indian tribes. This program is authorized under Section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(b).

Eligibility

Eligible applicants are economic development districts, redevelopment areas, organizations representing redevelopment areas (or parts of such areas), Indian tribes, organizations representing multiple Indian tribes, the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Program Objective

The primary objective of planning assistance for administrative expenses under section 301(b) is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities supported by these program funds must be part of a continuous process involving significant leadership by public officials and private citizens.

Funding Availability

Funds in the amount of $21.484 million are available in two categories: Districts/Areas (Category A)—$18.583 million; and Indian tribes (Category B)—$2.901 million. Individual awards may vary but generally will not exceed $57,000.

Funding Instrument

Grant assistance can be provided for up to 75 percent of project costs for Category A grants with the applicant required to provide the remaining share from local (non-federal) sources. Category B grant assistance may be provided for up to 100 percent of project costs.

Project Duration

Assistance will normally be for a period of twelve months.

Evaluation Criteria

Evaluation criteria will not be assigned weights. EDA will consider the elements listed below in order to evaluate funding requests.

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;

2. Past performance of any currently funded grantee (including information provided in scheduled progress reports);

3. The economic distress of the area served by the applicant;

4. Management and staff capacity and qualifications in economic program/policy development and operations;

5. The local leaders' involvement in the applicant's economic development activities; and

6. Priority consideration will be given to currently funded grantees.

Proposal Submission Procedures

Application procedures may be obtained from EDA's regional offices for the following:

a. Currently funded planning grantees; and

b. Proposals from applicants not currently funded under Categories A or B, that would fit into either of those categories.

Eligible applicants under both Categories A and B should submit proposals which include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal

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Chairman) or another legally authorized official of the applicant stating the organization's desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

3. A work program outlining the specific development activities that will be carried out under the grant and explaining how they relate to the problems identified in the area OEDP, annual report, or other documents.

New applicants should submit one copy of the proposal to the appropriate economic development representative, and an original and one copy to the appropriate EDA regional office. Addresses of the EDA regional offices and listing of the economic development representatives are found in Section XII of this Notice.

Formal Application Procedures

EDA regional offices will contact currently funded grantees to inform them of the procedures for submitting applications for continuation funding.

Following review of the proposals submitted, EDA will invite those selected for funding consideration to submit formal applications. Funding levels will be determined by the economic distress and need of the area served by the applicants, past performance of previously funded grantees, and availability of program funds. The application will include an SF–424 (approved by the Office of Management and Budget Control No. 0348–0043), proposed budget, scope of work and staffing plan.

Further Information

For further information contact the appropriate economic development representative, EDA regional office (see Section XII of this Notice), or the Director, Planning Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3027.

VII. Program: Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning) 13 CFR Part 307, Subpart D

Authority

Funds under the State and Urban Planning Program are awarded to defray administrative expenses in support of economic development planning efforts of eligible applicants. This program is authorized under Section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151a.

Eligibility

Eligible applicants under this program are the governors of states, the chief executive officers of cities and counties, and substate planning and development organizations (including redevelopment areas and economic development districts).

Program Objective

The primary objective of planning assistance under section 302(a) is to strengthen significant economic development planning capability and initiatives of eligible applicants to ensure a more productive use of available resources in reducing the effects of economic problems, particularly in those areas experiencing severe economic distress.

Assistance must be part of a continuous process involving significant local leadership from public officials and private citizens and should include efforts to reduce unemployment and increase incomes. These efforts should be systematic and coordinated, when applicable, with other planning organizations in the area, and should strengthen the planning capabilities of applicants.

Activities eligible for support include economic analysis, definition of development goals, determination of project opportunities, development of economic development policies, processes and procedures, and formulation and implementation of an economic development program.

Planning program funds will not be used to provide support to activities that more appropriately meet the criteria for funding under the EDA Technical Assistance programs.

EDA is interested in proposals for planning activities designed to address problems of economically-distressed segments of the population. Funding priority will be given to proposals promoting exports; entrepreneurship; and technology initiatives including innovation, transfer, commercialization, high value manufacturing through collaboration, or that reduce barriers to the development of new businesses. In the case of proposals from states, EDA is particularly interested in innovative approaches to planning and implementing economic development initiatives such as tourism development, manufacturing technology, and sustainable growth, as well as efforts that lend themselves to replication in other areas.

Funding Availability

Funds in the amount of $4.87 million are available for providing grant assistance under this program. Individual grants under this program generally will range between $50,000 to $200,000.

Funding Instrument

Grant assistance may be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share, preferably in cash. Applications for grants exceeding $200,000 may be given low funding priority. EDA may consider proposals for smaller grants to support the aforementioned appropriate activities.

Project Duration

Assistance will be for the period of time required to complete the work. This period is normally 12 to 18 months. If Congress makes funds available for this program in subsequent years, grantees may submit applications for appropriate projects for up to a total of three awards.

Evaluation Criteria

Evaluation criteria will not be assigned weights. Projects will be evaluated on the basis of the elements listed below to meet the goals described above. The content of the development plan and overall quality of the proposal and the economic distress of the area will be the principal factors considered in evaluating proposals from eligible entities. In assessing the distress factor, priority consideration will be given to proposals from states and urban areas experiencing substantial economic distress. In the case of urban areas, high priority will be given to those with unemployment rates two or more percentage points higher than the U.S. average and per capita income levels 80 percent or less of the U.S. average. For states, high priority will be given to those that meet both of the above criteria, as well as those that meet one of the above criteria and have distress equal to or greater than the national level for the other criterion. The most recent per capita income and 24-month average unemployment data available will be used to measure economic distress.

Proposals from states or urban areas which do not exhibit significant distress on the basis of unemployment or income data will not be considered unless other acceptable evidence of substantial distress is provided by the applicant.

Proposals from states and urban areas which are both below the U.S. national unemployment rate and above the national per capita income are unlikely to be funded.

Proposals will be evaluated on the basis of the elements listed below.

1. Appropriateness of the work program to the section 302(a) program objectives;

2. The economic distress of the area served by the applicant;

3. Extent to which the proposed planning activities are expected to impact upon the service area's economic development needs, and the extent to which the proposal addresses the problems of the unemployed and underemployed of the area, including minorities, workers displaced by plant closings, etc.;

4. The proximity of the performing office to the chief executive (i.e., likelihood that the activities will have a significant influence on the policy and decision making process);

5. Past performance of currently or formerly funded grantees, when applicable;

6. The amount of local participation provided as matching dollars to the Federal funds; and

7. Other characteristics, such as involvement of the private sector businesses and professional groups in the proposed activities, and particularly for states, the innovativeness of the proposed approach and replicability of the model process or results.

Proposal Submission Procedures

Potential applicants should submit proposals that include:

1. A letter, signed by the chief executive of the applicant organization, indicating a desire to receive funds to carry out the planning activities outlined in the proposal; where the funded planning program will be placed in the organization, including the name and title of the person to be responsible for program implementation; the amount and for what period funding is being requested; and the anticipated funding arrangement if the planning activity is to continue beyond the period of EDA support.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

3. Information indicating the applicant's commitment to the proposed work program as demonstrated by amount of local funding and the degree of interest displayed by the chief executive.

4. A time chart showing all major work program elements, projected element start and completion dates, and the related financial expenditures programmed for each work element.

5. A work program of no more than 10 pages which outlines the specific planning activities that will be carried out under the grant and specifies which activities will be handled by in-house staff, consultants, etc. The work program should also explain the analysis and basis of the need for the proposed activities, expected impacts and their timing, target population(s), and involvement of the private sector in the proposed activities.

Current grantees seeking additional funding under this announcement should comply with the instructions of this notice. Current grantees must also include a 3–5 page progress report for the current grant when they submit the proposal and at the time they forward the formal application.

One copy of the proposal should be sent to the appropriate economic development representative, and an original and one copy to the appropriate EDA regional office. The EDA regional office and the name, address and telephone number of the economic development representative for the applicant's area can be found in Section XII of this Notice.

Formal Application Procedures

EDA will evaluate proposals using the selection criteria cited above. Once the merits of the proposal are established, EDA will initiate discussions with the prospective applicant to clarify and improve elements of the proposal, if necessary, and will invite those whose proposals are selected for funding consideration to submit formal applications, which will include an SF–424 (OMB Control No. 0348–0043), scope of work, proposed budget, staffing plan and other requested information. It should be noted that an invitation to submit a proposal does not assure EDA funding. Applications will be processed as they are received. Applications received after FY 1995 funds are exhausted may be retained by EDA for consideration for funding the following fiscal year, assuming funds are available.

Further Information

For further information contact the appropriate economic development representative, EDA regional office (see Section XII of this Notice), or the Director, Planning Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3027.

VIII. Program: Research and Evaluation Projects

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program) 13 CFR Part 307 Subpart C

Authority

Funds under the Research and Evaluation Program are used to support studies that will increase knowledge about the causes of economic distress and approaches to alleviating such problems. This program is authorized under Section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

Eligible Applicants

Eligible applicants for research and evaluation grants or cooperative agreements include private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations with expertise relevant to economic development research.

Program Objective

The objectives of section 301(c) grants and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.

3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress and (b) promote economic development.

Funding Availability

Funds in the amount of $500,000 are available for this program. Funds will be used for projects selected through the application procedures described below and through EDA-initiated solicitations. Individual awards may vary but generally will not exceed $100,000.

Funding Instrument

EDA will provide grants and cooperative agreements covering up to 100 percent of project costs.

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Project Duration

Assistance under this program will normally be for a period not exceeding 15 months.

Evaluation Criteria

To meet the goals described above, EDA will use the following unweighted criteria to evaluate research and evaluation proposals:

1. Suitability of the subject.
2. Potential usefulness of the research to state and local economic development officials and specialists.
3. General quality and clarity of the proposal.
4. Soundness and completeness of the research methodology.
5. Qualifications of principal investigator(s) and, where appropriate, performing organization(s).
6. Previous performance of principal investigator or performing organization on EDA-funded projects, if applicable.
7. Cost and value of proposed product in relation to cost.

EDA is interested in receiving proposals dealing with:

1. Employment and unemployment;
2. Income and poverty;
3. Rural and nonmetropolitan economic development;
4. Urban economic development;
5. Regional and local growth and competitiveness;
6. Industrial location, industrial networks, and industrial clustering;
7. Sustainable development and growth management;
8. Minority businesses and employment;
9. Export development;
10. Development finance; and
11. Productivity and technology.

Requests should be for specific, well-defined, one-time research projects. EDA research grants are not intended for support of continuing programs (permanent research programs, publication and information programs, periodic forecasts, etc.), or for non-research activities. EDA normally prefers research of broad geographic scope, that covers the whole country or a large multistate region, as opposed to research covering (in declining order of preference) a small region, a state, a multicounty area, or a single city or county. Preference will be given to practical cause-and-effect research and descriptive analyses, and funding for such will receive higher priority than theoretical studies, modeling (other than for hypothesis testing), etc. Economic development planning and technical assistance will not be funded under the Research and Evaluation Program; the Planning and Technical Assistance Programs are for those purposes.

Proposal Submission Procedures

Potential applicants should submit one original and two (2) copies of a brief and concise proposal, not to exceed 20 pages, and vita and capability information. Proposals should avoid long background discussions and literature surveys, but should be reasonably detailed, particularly in explaining value to EDA, methodology, and data sources.

Each proposal should include:

1. A cover page stating that funding is sought under EDA's Research and Evaluation program, giving a short descriptive project title, the name and address of the performing organization, the names and telephone numbers of the project director and principal investigators, the project duration, the amount of EDA funds requested, and total project cost;
2. A brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;
3. A more detailed description of the project and its methodology;
4. A work plan showing different phases of the project and their timing;
5. A detailed budget, not to exceed two pages, showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns, where applicable, and with the EDA-funded costs adding to the total shown on the cover page;
6. Resumes for the project director and principal investigators; and
7. A corporate or institutional capability statement, where appropriate.

The cover letter accompanying the proposal should inform EDA of whether any other organization(s) or Federal agency(ies) is or will be considering the proposal. Any non-EDA contributions to the project, whether by the performing organization or third parties, should be identified.

The deadline for receipt of proposals will be three months after the date of this announcement.

Proposals should be submitted to the Director, Technical Assistance and Research Division, Economic Development Administration, Room 7315, U.S. Department of Commerce, Washington, DC 20230.

Formal Application Procedures

EDA will evaluate the proposals as they are received using the selection criteria described above. Organizations and individuals whose proposals are selected for further consideration will be invited to submit an application. The formal application will include an SF–424 (OMB Control No. 0348–0043).

Eligibility for Specific Solicitations

In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluations, for funding consideration.

Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above This information will be used to determine eligibility to compete for projects under specific SOAs.

Further Information

For further information, contact the Director, Technical Assistance and Research Division, at the above address; telephone, (202) 482–4085

IX. Program: Economic Adjustment Assistance (Title IX)

(Catalog of Federal Domestic Assistance No. 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED)) 13 CFR Part 308

Authority

Funds under the Economic Adjustment Program are used to assist areas experiencing changes in their economic situation which are causing, or threaten to cause, serious structural damage to the underlying economic base. Such changes may occur suddenly or over time, and result from industrial or corporate restructuring in response to technological advancements or changes in the marketplace, new Federal laws or requirements, reductions in defense expenditures, depletion of natural resources and natural disasters. Strategy grants provide the resources for organizing and conducting a strategic planning process and Implementation grants support one or more activities identified in an adjustment strategy approved, though not necessarily funded by EDA. Such activities include but are not limited to: the creation or expansion of strategically targeted business development and financing programs, infrastructure improvements, organizational development, and market or industry research and analysis. This program is authorized under Title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3241–3245.

Program Objective

The purpose of the Economic Adjustment Program is to enable communities in affected areas to meet the challenge of economic change, constructively and effectively, through strategies for inducing capital investment in production of the types of goods and/or services for which the community may have or be able to develop a comparative economic advantage, and which will lead to saving and/or creating permanent jobs. In providing funding to support the adjustment process, EDA's objectives are to: (1) Provide impacted communities with the skills and knowledge needed to organize and carry out a strategic planning process focusing on increasing the productivity and competitiveness of a community's assets, for example, existing industries and business acumen, natural resources, and labor force skills; (2) expand the capacity of public officials and development organizations to work more effectively with their business community to identify and address unmet needs of strategically targeted firms for management assistance, access to information to help with marketing and modernization and finding sources of financing, and in organizing collaborative alliances among firms for such activities as product and market research, and new product development; (3) assist communities overcome critical impediments to implementing their adjustment strategy, such as a lack of available financing for the targeted businesses or weaknesses in their economic infrastructure for which no other sources of funding, including EDA's Title I Program, are available; (4) enable communities to coordinate and strategically target Federal resources available to support economic recovery from Federal actions adversely affecting a major industrial sector and/or the economy of a discrete geographic region, and from natural disasters; and (5) encourage the development of innovative public/private approaches to economic restructuring and revitalization.

Funding Availability

Funds in the amount of $45 million are available for the Economic Adjustment Program in FY 1995. Grants awarded under this program generally range between $25,000 and $5 million.

Funding Instrument

Title IX funds are awarded through grants generally not to exceed 75 percent of the project cost. Acceptable sources of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; and other public and private donations. The Assistant Secretary may waive all or part of the 25 percent nonfederal share of economic adjustment assistance grants, if he determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring economic adjustment assistance or for other good cause. The full amount of the local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified source(s), and the funds must be readily available. The local share must not be encumbered in any way that would preclude its use as required by the grant agreement. The local share for grants to establish or recapitalize a revolving loan fund (RLF) must be in cash, and while the local share for grants for other activities may be cash or in-kind, priority consideration will be given to proposals with a cash local share.

Eligible Applicants

Eligible applicants within areas meeting the EDA eligibility criteria described below include a redevelopment area or economic development district established under Title IV; an Indian tribe; a state; a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act of 1981, 42 U.S.C. 9802 (i.e., Community Development Corporations receiving financial assistance under the authority of the Community Services Block Grant Act, as amended, 42 U.S.C. 9910(d)); a nonprofit organization determined by EDA to be the representative of a redevelopment area for purposes of the particular project; the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Eligible Areas

The area(s) to be assisted by the applicant generally must be eligible on the basis of the criteria, described below, for establishing that it is experiencing either Long-Term Economic Deterioration or a Sudden and Severe Economic Dislocation.

A. Long-Term Economic Deterioration (LTED)

To receive priority consideration for funding as an LTED area, the area must be experiencing at least one of three economic problems: very high unemployment; low per capita income; or chronic distress (i.e., failure to keep pace with national economic growth trends over the last five years). Priority will be given to those areas with two or more of these indicators. Eligibility is generally determined statistically. Further information is available from EDA's regional offices or the economic development representative for your area (see Section XII of this Notice).

B. Sudden and Severe Economic Dislocation (SSED)

To receive priority consideration for funding as an SSED area, the area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population or 8,000 direct jobs.

In addition, fifty (50) percent of the job loss threshold must result from the action of a single employer, or eighty (80) percent of the job loss threshold must occur in a single standard industry classification (i.e., two digit SIC code).

In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other exceptional circumstances, the criteria may be partially or fully waived at the discretion of the Assistant Secretary.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

Project Duration

Projects are expected to be completed in a timely manner consistent with the nature of the project. However, the

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maximum period for which assistance will be provided shall not be more than five years from date of award.

Evaluation Criteria

All proposals, regardless of the basis for the area's eligibility, will be screened for conformance to statutory and regulatory requirements, the relative severity of the area's economic problem, the quality of the strategy developed (or scope of work for the strategy to be developed) to address the problem, the merits of the activity(ies) for which funding is requested, and ability of the prospective applicant to carry out the proposed activity(ies) successfully.

Particular program requirements and factors are not weighted in EDA's evaluation of proposals as all factors are equally important. Projects will be evaluated on the basis of the elements listed below in order to meet the goals described above.

A. For Strategy Grants

1. The applicant organization has the necessary authority, mandate and capacity to lead and manage the planning process and implementation of the resulting strategy.

2. The planning process provides for the representation of public and private sector entities with a contribution to make to the development of the strategy and/or on which accomplishment of the strategic objectives will depend. These entities include public program and service providers, trade and business associations, educational and research institutions, community development corporations, etc.

3. The proposed scope of work focuses on the specific economic problems to be addressed and provides for undertaking the appropriate research and analysis needed to formulate a realistic, market-based, adjustment strategy.

B. For Implementation Grants

1. Any activity or project proposed for funding must generally be clearly identifiable as an integral and priority element within an adjustment strategy for the eligible area(s) prepared or updated within the preceeding two years. The strategy should address and/or provide evidence of the following:

a. An appropriately designed and conducted planning process;

b. A thorough understanding of the economic problems being addressed;

c. A sound analysis of the industry sectors and the firms within them that comprise the area's economic base, and of the particular strengths and weaknesses of the area that contribute to, or detract from, its current and potential economic competitiveness.

d. Strategic objectives that flow from the economic analysis and conclusions and focus on stimulating investment in new and/or expanding economic activities that offer the best prospects for revitalization and growth;

e. Appropriate and necessary resources in the area and elsewhere have been/will be mobilized and coordinated to support implementation of the strategy; and

f. The performance measures which the applicant will use to assess progress toward accomplishing its strategic objectives.

2. All individual activities or projects proposed for funding must be consistent with one or more of the Economic Adjustment Program objectives stated above. Particular consideration will be given to proposals involving innovative approaches to building and implementing public/private and multifirm partnerships for such purposes as new product development and marketing, and dissemination and application of new production technologies and management practices.

3. Proposals for capitalizing or recapitalizing a RLF must in addition describe and/or provide evidence of:

a. The need for a new or expanded public financing tool to complement other business assistance programs and services available to firms and/or would-be entrepreneurs in industry sectors and/or locations targeted by the adjustment strategy;

b. The types of financing activities anticipated; and

c. The prospective RLF's organizational capacity to work effectively with the business community and other financing providers, to function as an integral part of the overall economic adjustment effort and to manage the lending function.

Proposal Submission Procedures

Interested parties should contact the economic development representative for the area or the appropriate EDA regional office (see Section XII of this Notice) for a proposal package.

Application Procedures

Following a review of project proposals, EDA will invite those proponents of projects selected for funding consideration to submit applications. It should be noted that an invitation to apply does not assure funding. The application will include an ED–540, as approved by the Office of Management and Budget Control No. 0610–0058. Applicants for RLF funding are generally required to submit a RLF Plan in addition to the adjustment strategy for the area. Guidelines on RLF's are available from the regional offices.

Further Information

For further information, contact the appropriate economic development representative, EDA regional office (see Section XII of this Notice), or the Director, Economic Adjustment Division, Economic Development Administration, Room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–2659.

X. Program: Defense Conversion Assistance

(Catalog of Federal Domestic Assistance No: 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED)) 13 CFR Part 308

Authority

Funds under the Defense Conversion program are used to enable areas where economies are adversely impacted by reductions in defense spending, to facilitate the orderly redeployment of their defense created assets to activities which help restructure and/or strengthen their economic base. Areas experiencing closure of a military facility, a defense related Department of Energy facility and/or reductions in defense procurements may be eligible for assistance. This program is authorized under section 4103(b) of Division D of Public Law 101–510 for FY 1991, and section 4305 of Division D of Public Law 102–484 for FY 1993, 10 U.S.C. 2391 note; and by the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3131, 3151(a), 3151(b), and 3171(a)(3).

Program Objective

The program is designed to provide defense impacted communities with the resources to develop and/or carry out programs and projects, singly or in combination, that support implementation of a defense conversion strategy or base re-use plan. Commonly funded types of programs and projects include, but are not limited to: planning and strategy development (only as may be necessary to complement and expand work funded by the Office of Economic Adjustment, Department of Defense); research and analysis, such as marketing and feasibility studies; design and delivery of conversion or development assistance and services for affected businesses, typically smaller defense contractors in order to, for example, fill gaps in available technical services, developing collaborative alliances for new product and market development, and establishing or expanding financing programs for targeted businesses; and infrastructure improvements needed to facilitate the re-use of former military facilities.

Assistance may be provided directly to affected communities, and also through other entities, such as states or regional development organizations, when to do so would result in more effective and efficient delivery of a particular service or program.

Funding Availability

Funds in the amount of $120 million are available for the Defense Conversion program in FY 1995. Grants awarded under this program generally range between $25,000 and $5 million.

Note: The Selection Criteria and Application Procedures set forth in this announcement supersede those previously announced in the **Federal Register** of May 6, 1993 (58 FR 27188), and apply to the unobligated balance of the $80 million authorized under section 4305 of Division D of Public Law 102–484 and of the $50 million authorized under section 4103(b) of Division D of Public Law 101–510.

Funding Instrument

Assistance is in the form of grants, which will normally be awarded under the authority of EDA's Title IX Economic Adjustment program. However, grants for assistance under the Defense Conversion program may also be made to applicants eligible for assistance under the Title I Public Works and the Title III Technical Assistance, Research and Planning programs.

Title IX grants may be awarded for up to 75 percent of the total project cost. Acceptable sources of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; and other public and private donations. The Assistant Secretary may waive all or part of the 25 percent nonfederal share of economic adjustment assistance grants, if he determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring economic adjustment assistance or for other good cause. The full amount of the local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified source(s), and the funds must be readily available. The local share must not be encumbered in any way that would preclude its use as required by the grant agreement. The local share for a revolving loan fund project must be in cash, and while the local share for other types of defense conversion activities may be cash or in-kind, priority consideration will be given to proposals with a cash local share.

For information regarding local share requirements for the Title I Public Works and the Title III Technical Assistance, Research and Planning programs, Sections II, IV and VI of this Announcement should be consulted.

In accordance with Public Law 103–317, financial assistance may be provided for projects to be located on military installations closed or scheduled for closure or realignment to eligible grantees under PWEDA without it being required that the grantee have title or ability to obtain a lease for the property, for the useful life of the project when, in the opinion of the Secretary of Commerce such financial assistance is necessary for the economic development of the area; and the Secretary of Commerce may, as he or she deems appropriate, consult with the Secretary of Defense regarding title to the land on military installations closed or scheduled for closure or realignment.

Eligible Applicants

Eligible applicants within areas meeting the eligibility criteria described below include a redevelopment area or economic development district established under Title IV of this Act, 42 U.S.C. 3161; an Indian tribe; a state; a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act of 1981, 42 U.S.C. 9802 (i.e., Community Development Corporations receiving financial assistance under the authority of the Community Services Block Grant Act, as amended, 42 U.S.C. 9910(d)); a nonprofit organization determined by EDA to be the representative of a redevelopment area; and the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

For assistance under the Title I Public Works program, and Title III Technical Assistance, Research and Planning programs, Sections II, IV and VI of this Announcement should be consulted.

Applicants must meet either the Department of Defense criteria or the Economic Adjustment program criteria described in A and B below:

A. Department of Defense Criteria

(1) In the case of a proposed or actual establishment, realignment, or closure of a military installation, where the Secretary of Defense determines that such action is likely to have a direct and significantly adverse consequence on the affected community.

(2) In the case of a publicly announced planned reduction in DOD spending, the cancellation or termination of a DOD contract, or the failure to proceed with a previously approved major defense acquisition program, assistance may be provided only if the reduction, cancellation, termination, or failure will have a direct and significant adverse impact on a community and will result in the loss of the lesser of:

(a) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area (MSA) or similar area (as defined by the Director of the Office of Management and Budget);

(b) 1,000 or more employee positions, in the case of a labor market area outside of an MSA; or

(c) one percent of the total number of civilian jobs in that area.

B. EDA Criteria

The dislocation must satisfy one of the following criteria (in exceptional circumstances, the criteria may be partially waived by the Assistant Secretary for Economic Development):

(1) For areas not in MSAs:

(a) If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

(b) If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

(2) For areas within MSAs:

(a) If the unemployment rate of the MSA exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

(b) If the unemployment rate of the MSA is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population, or 8,000 direct jobs.

Under the Defense program, an area will normally be eligible for up to two years before the announced date for a base closure or contract reduction and for two years after. However, if completion of an area's adjustment strategy is delayed for good reason, the

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area's eligibility may be extended for up to one year from the date the strategy is accepted by EDA.

Project Duration

Projects are expected to be completed in a timely manner consistent with the nature of the project. However, the maximum period for which assistance will be provided shall not be more than five years from date of award for Title I and Title IX projects. For projects under Title III Technical Assistance, Research and Planning programs, assistance will be for the period of time required to complete the scope of work, which typically will not exceed twelve months.

Evaluation Criteria

Evaluation criteria will not be assigned weights as all factors are equally important. Projects will be evaluated on the basis of the elements listed below in order to meet the goals described above. Key factors in EDA's evaluation of proposed defense conversion projects include:

1. The relative severity of the impact of the defense cutbacks on the economic and employment base of the area(s).

2. The quality of the area economic adjustment/defense conversion strategy or base reuse plan which is a prerequisite for funding consideration. The plan should address and/or provide evidence of the following:

a. An appropriately designed and conducted planning process;

b. The scale and characteristics of the impact of the defense cutbacks on workers, industry sectors and businesses;

c. Strategic objectives that address the defense related problems and opportunities, are appropriate to the area's particular economic attributes and circumstances, and are based on sound research and analysis;

d. All appropriate and available Federal, State and local resources, programs, services, etc., have been identified and will be mobilized and coordinated to support implementation of the strategy; and

e. The performance measures which the applicant will use to assess progress toward accomplishing its strategic objectives.

Note: EDA may, in some instances, consider funding a project prior to completion of the strategy/plan, provided that (a) an appropriate community planning process is underway, (b) sufficient analysis has been done to show that the proposed project is economically viable and potentially consistent with the evolving strategy and (c) the proposed project has the support of the community.

3. The degree to which the proposed program/project contributes to:

a. Productive redeployment of defense created assets (facilities, workforce skills, industrial technologies and production capacity);

b. Overcoming critical impediments to a community's ability to progress with implementing its strategy or base reuse plan; and

c. Facilitating/stimulating private sector investment in the production of the types of goods and services that will strengthen the economic base of the area over the long term, and lead to the generation of new employment opportunities and revenue.

4. The capacity of the prospective applicant to administer the proposed project and ensure achievement of the stated objectives.

Proposal Submission Procedures

When a major defense cutback is announced, EDA's economic development representative for the state in which it is to occur will normally contact officials of the affected community. Otherwise, the interested parties should contact either the economic development representative for the area or the appropriate EDA regional office (see Section XII of this Notice). The economic development representative will track the community's strategy/base reuse planning process and provide information regarding activities/projects that could be considered for EDA assistance. At such time as the planning process is sufficiently advanced for prospective implementation programs and projects to have been identified, the economic development representative will advise the community on the preparation of a short funding proposal.

Application Procedures

EDA will evaluate proposals using the evaluation criteria cited above. Once the merits of the proposal are established, EDA will work if necessary with the prospective applicant to clarify elements of the proposal and such EDA administrative policies and requirements as may apply to the particular type of program or project for which assistance is being requested. For example, applicants for assistance to capitalize a revolving loan fund (RLF) are generally required to submit a RLF Plan.

When a proposal is selected for funding consideration, EDA will invite the proponent to submit a formal application under the authority of the specified funding program, i.e., Title I, III or IX. The appropriate formal application package will be provided. It should be noted that an invitation to apply does not assure funding.

Further Information

For further information, contact the appropriate economic development representative, EDA regional office (see Section XII of this Notice), or the Director, Economic Adjustment Division, Economic Development Administration, Room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–2659.

XI. Program: Trade Adjustment Assistance

(Catalog of Federal Domestic Assistance: 11.313 Economic Development—Trade Adjustment Assistance) 13 CFR Part 315

Authority

Funds under the Trade Adjustment Assistance Program are awarded to a network of Trade Adjustment Assistance Centers (TAACs), located around the Nation, which provide technical assistance to certified firms adversely affected by increased imports. This program is authorized under Title II, Chapter 3 of the Trade Act of 1974, 19 U.S.C. 2341–2355.

Funding Availability

Funds in the amount of $10.0 million are available for trade adjustment assistance. Nearly all of these funds will be provided to the nationwide network of TAACs through cooperative agreements. Individual awards generally range between $650,000 and $1.025 million. No new centers will be funded in FY 1995.

Funds are also awarded under this program to organizations representing trade-injured industries. Limited funds are available for industry technical assistance for continuation of an existing program. No new industry assistance projects are expected to be funded in FY 1995.

Program Objective

The Trade Adjustment Assistance Program is designed to provide technical assistance to certified firms and industries hurt by the impact of increased imports. The TAACs help firms submit certification petitions to the Trade Adjustment Assistance Division (TAAD) of EDA. If the firm is certified, TAACs provide technical assistance to the firm in developing a strategy to adjust to the import injury. A firm should work closely with the appropriate TAAC in petitioning for certification. Certified firms should also work closely with the appropriate TAAC in diagnosing their problems and developing an adjustment proposal, and in applying for technical assistance if their adjustment proposal is accepted by EDA.

An industry association or other organization interested in receiving an industry assistance cooperative agreement must meet with a TAAD representative to discuss the industry's problems, opportunities, and assistance needs.

Criteria for Evaluating Industry Assistance Proposals

Industry associations and other organizations seeking trade adjustment industry assistance must demonstrate that the industry is injured by foreign trade and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness. Evaluation criteria will not be assigned weights as all factors are equally important. Projects will be evaluated on the basis of the elements listed below in order to meet the goals described above.

The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority. It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

Application Procedures

Industry associations or other organizations seeking industry assistance must submit an application identified as Standard Form 424 (OMB Control No. 0348–0043), if encouraged to do so as a result of the meeting with a TAAD representative.

Acceptable industry assistance applications will be processed as funds are available; normally one to three months is required for final decision on application.

Formula and Matching Requirements

Generally, a minimum of 50 percent share is required for industry assistance cooperative agreements.

Length and Time Phasing of Assistance

Industry assistance cooperative agreements are generally for a 12-month period, but may be longer for tasks requiring more time to complete.

Further Information

For further information, contact the Director, Trade Adjustment Assistance Division, Economic Development Administration, Room 7023, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3373.

XII. EDA Regional Offices and Economic Development Representatives

The EDA regional and field offices, states covered, and the economic development representatives (EDRs) are listed below.

EDRs	States covered
Atlanta Regional Office **401 West Peachtree Street, N.W., Suite 1820** **Atlanta, Georgia 30308–3510** **Telephone: (404) 730–3002**	
Burnette, F. Wayne, Aronov Building, Room 705, 474 South Court Street, Montgomery, AL 36104, Telephone: (205) 223–7008.	Alabama.
Smith, Lola B., Federal Building, Room 423, 80 North Hughey Avenue, Orlando, FL 32801, Telephone: (407) 648–6572.	Florida.
Day, William J., Jr., 401 West Peachtree Street, N.W., Suite 1820, Atlanta, GA 30308–3510, Telephone: (404) 730–3000.	Georgia.
Hunter, Bobby D., 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, Telephone: (606) 224–7426	Kentucky.
Ainsworth, Bob, 221 Federal Building, 100 West Capital Street, Jackson, MS 39269, Telephone: (601) 965–4342	Mississippi.
Jones, Dale L., P.O. Box 2522, Raleigh, NC 27601, Telephone: (919) 856–4570	North Carolina.
Dixon, Patricia M., Strom Thurmond Federal Building, 1835 Assembly Street, Room 307, Columbia, SC 29201, Telephone: (803) 765–5676.	South Carolina.
Parks, Mitchell S., 261 Cumberland Bend Drive, Nashville, TN 37228, Telephone: (615) 736–5911	Tennessee.
Austin Regional Office **Thornberry Building, Suite 121** **903 San Jacinto Boulevard** **Austin, Texas 78701–2450** **Telephone: (512) 482–5461**	
Spearman, Sam, Room 2509, Federal Building, 700 West Capitol, Little Rock, AR 72201, Telephone: (501) 324–5637.	Arkansas.
Davidson, Pamela, 412 North Fourth Street, Room 104, Baton Rouge, LA 70802–5523, Telephone: (504) 389–0227.	Louisiana.
Swearingen, James, P.O. Box 2662, Santa Fe, NM 87504, Telephone: (505) 988–6557	New Mexico.
Waters, Alvin X. Jr., 5500 North Western, Suite 148, Oklahoma City, OK 73118–4011, Telephone: (405) 231–4198	Oklahoma.
Ramirez, Roy, Suite 121, Thornberry Building, 903 San Jacinto Boulevard, Austin, TX 78701–2450, Telephone: (512) 482–5118.	Texas (south).
Jacob, Lawrence, Suite 121, Thornberry Building, 903 San Jacinto Boulevard, Austin, TX 78701–2450, Telephone: (512) 482–5119.	Texas (north).
California Field Office **Oakland Federal Building** **1301 Clay Street, Suite 675N** **Oakland, California 94612–5217** **Telephone: (510) 637–2988**	
Sosson, Deena R., 1345 J Street, Suite B, Sacramento, CA 95814, Telephone: (916) 551–1541	California (northern).
Lewis, William J., 1345 J Street, Suite A, Sacramento, CA 95814, Telephone: (916) 551–2160	California (central).

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EDRs	States covered
Oaks, Charles W., 297 Marengo Avenue, Room 100, Pasadena, CA 91102–6020, Telephone: (818) 583–6967	California (southern).
Chicago Regional Office 111 North Canal Street, Suite 855 Chicago, IL 60606–7204 Telephone: (312) 353–7706	
Casals, Alfred L., 509 West Capitol, Suite 204, Springfield, IL 62704, Telephone: (217) 492–4224	Illinois.
Henderson, Richard L., Federal Building Courthouse, Room 402, 46 East Ohio Street, Indianapolis, IN 46204, Telephone: (317) 226–6104.	Indiana.
Collison, James L., 100 North Warren Avenue, Room 1018, Saginaw, MI 48606–0867, Telephone: (517) 758–4097.	Michigan.
Arnold, John B. III, 104 Federal Building, 515 West First Street, Duluth, MN 55802, Telephone: (218) 720–5326	Minnesota.
Hickey, Robert F., Federal Building, Room 607, 200 North High Street, Columbus, Ohio 43214, Telephone: (614) 469–7314.	Ohio.
Price, Jack D., 1320 W. Clairemont Ave., Suite 114, Eau Claire, WI 54701, Telephone: (715) 834–4079	Wisconsin.
Denver Regional Office 1244 Speer Boulevard, Room 670 Denver, Colorado 80204 Telephone: (303) 844–4714	
Zender, John, 1244 Speer Boulevard, Room 632, Denver, CO 80204, Telephone: (303) 844–4902	Colorado, Kansas.
Cecil, Robert, Federal Building, Room 593A, 210 Walnut Street, Des Moines, IA 50309, Telephone: (515) 284–4746.	Iowa.
Paul Hildebrandt, Federal Building, Room B–02, 608 East Cherry, Columbia, MO 65201, Telephone: (314) 442–8084.	Missouri.
Rogers, John C., Federal Building, Room 196, Drawer 10074, Helena, MT 59626, Telephone: (406) 449–5074	Montana.
Albertson, Warren A., Federal Building, Room 219, Pierre, SD 57501, Telephone: (605) 224–8280	Nebraska, South Dakota.
Grant, Cornelius P., P.O. Box 1911, Bismarck, ND 58501, Telephone: (701) 250–4321	North Dakota.
Ockey, Jack, Federal Building, Room 2414, 125 South State Street, Salt Lake City, UT 84138, Telephone: (801) 524–5119.	Utah, Wyoming.
Philadelphia Regional Office Curtis Center Independence Square West Suite 140 South Philadelphia, PA 19106 Telephone: (215) 597–4603	
Hammarlund, C.N. Jr., Federal Office Building, Room 453, 450 Main Street, Hartford, CT 06103, Telephone: (203) 240–3256.	Connecticut, Rhode Island.
Flynn, Patricia A., 2568–A Riva Road, Suite 200, Annapolis, MD 21401–7450, Telephone: (410) 962–2513	Delaware, Maryland, District of Columbia.
Blitz, Sandford, Federal Building, Room 410D, 40 Western Avenue, Augusta, ME 04330, Telephone: (207) 622–8271.	Maine.
Fitzhenry, William A., Boston Federal Office Building, 10 Causeway Street, Room 420 (Box 2), Boston, MA 02222–1036, Telephone: (617) 565–7235.	Massachusetts.
Potter, Rita V., 143 North Main Street, Suite 209, Concord, NH 03301, Telephone: (603) 225–1624	New Hampshire, Vermont.
Rossignol, Clifford J., 44 South Clinton Avenue, Room 703, Trenton, NJ 08609, Telephone: (609) 989–2192	New Jersey.
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William W. Ginsberg,

Assistant Secretary for Economic Development.

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federal register

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Part X

The President

Proclamation 6775—National Park Week

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Title 3—

The President

Proclamation 6775 of March 10, 1995

National Park Week, 1995

By the President of the United States of America

A Proclamation

Each National Park is a classroom without walls, a living laboratory for learning about natural environments, important historical events, and valuable cultural resources that make up our national heritage. To preserve this heritage, the National Park Service works with students and teachers to create exciting learning environments in which to activate a child's interest.

Within each park lies a compelling story—a powerful reminder of our Nation's origins and destiny. Geology, political science, marine ecology, the Civil War, language, art, music, maritime history, geography, wildlife, the American Revolution, technology—all come to life in our National Park System. Today, the men and women of the National Park Service are reaching out to the next generation of caretakers, instilling in our children a respect for the land, an understanding of our common American heritage, and an appreciation of parks as places of inspiration.

Through innovative educational programs, the National Park Service is actively building a new constituency of park supporters who will carry with them the most valued lessons of our country. "Junior Ranger" programs throughout the United States help children understand the wonders of the national parks and the importance of preserving them for years to come. "Parks As Classrooms" links parks with local schools and communities, reaching out to new audiences with hands-on activities. Residential camping programs open up new worlds of exploration and self-discovery for today's young people, in both inner cities and rural areas. Seminars for teachers assist in encouraging and improving the connections of young people to park areas.

National Park Week, 1995, is a time to celebrate the rich educational tradition of our parks. I encourage all Americans to join me in observing National Park Week as the beginning of a lifetime of learning, appreciating, and acting on behalf of our national treasures. I call on all Americans to learn more about our National Park System and to observe this week with appropriate ceremonies and programs.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 22 through May 28, 1995, as "National Park Week."

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IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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Title 3—

The President

Proclamation 6776 of March 13, 1995

National Public Health Week, 1995

By the President of the United States of America

A Proclamation

A clean bill of health is one of life's most precious gifts. But for many Americans, and for millions around the world, good health can seem almost a luxury. The AIDS epidemic, the prevalence of poor nutrition, unplanned pregnancies, and environmental degradation—these are just some of the pressing crises facing hardworking public health officials everywhere. While our society's medical technology has advanced to a level unimaginable to the generations before, the crucial job of ensuring basic public health for all remains just beyond our reach.

Now, more than ever, public health programs and services are needed so that we can ensure the best possible health for everyone. Providing safe living and working environments, developing methods to immunize populations against infectious disease, maintaining good nutritional standards, and having good prenatal care for everyone are vital endeavors—and such primary and preventive measures can mean the difference between life and death.

Every day, thousands of individuals across our country are working to build healthy communities, meet the needs of our diverse population, plan appropriate responses to natural disasters, educate individuals about workplace hazards, and encourage responsible behavior in all that we do. Their leadership is helping America to address one of humanity's most essential concerns, and their service is building a safer, healthier future for all of our people.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of April 3 through April 9, 1995, as "National Public Health Week." I call upon all Federal, State, and local public health agencies to join with appropriate private organizations and educational institutions in celebrating this occasion with activities to promote healthy lifestyles and to heighten awareness of the many benefits good health brings.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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Rules and Regulations

Federal Register
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Wednesday, March 15, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV94–906–4FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Container and Container Pack Requirements and Rules and Regulations for Special Purpose Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule which revised container requirements and added a new container to those authorized for use by handlers of Texas citrus. This final rule continues a relaxation of pack requirements by requiring containers to have at least one-third Texas citrus by volume, rather than 50 percent citrus by count. This rule allows for more efficient use of containers and provides handlers with more flexibility in packing mixed packs.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–2431; or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906 [7 CFR Part 906] regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in South Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

Section 906.40(d) of the order authorizes the Secretary to fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of Texas oranges or grapefruit. Consistent with this authority, § 906.340 of the order's rules and regulations specifies the containers that may be used by Texas citrus handlers. These containers include cardboard cartons; mesh, poly, and vexar bags; and a number of master or bulk containers. Additionally, experimental containers may be approved by the Texas Valley Citrus Committee (committee), the agency responsible for local administration of the order. The handling of each lot of fruit in such test containers is subject to prior committee approval and is under the supervision of the committee.

The committee met on August 18, 1994, and unanimously recommended that the container requirements be revised. The recommended changes were to (1) revise the inside dimension specifications of two authorized master containers; (2) eliminate certain restrictions on the packing of mesh or poly bags; and (3) add a new fiberboard display bin to the list of approved containers. These changes were included in an interim final rule which became effective December 9, 1994 [59 FR 63691].

Two of the containers authorized for use prior to issuance of the interim final rule were (1) closed fiberboard cartons with inside dimensions of 20 inches in length by 13¼ inches in width by 9¾ to 10¼ inches in depth, and (2) fiberboard cribs with dimensions of 46 inches in length by 38 inches width by 24 inches high. These containers were authorized, respectively, in subparagraphs (iii) and (viii) of § 906.340(a)(1). They were used as master containers for shipping bags of fruit or for shipping fruit in bulk.

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In recent seasons, handlers have used experimental containers with different dimensions than those authorized under § 906.340(a). The use of these containers has been successful, and, thus, the committee recommended that the dimensions specified for these two containers be revised to provide for more flexibility in packing Texas citrus. Specifically, subparagraph (iii) of § 906.340(a)(1) was revised to specify inside dimensions for closed fiberboard containers of 20 inches in length by 13¼ inches in width by 9¾ to 13 inches in depth. The revised dimensions for the fiberboard crib authorized by § 906.340(a)(1)(viii) are 46 to 47½ inches in length by 37 to 38 inches in width by 24 inches in depth. These revisions enable handlers to use a wider variety of containers without having to receive prior committee approval or to use such containers under the committee's supervision.

Section 906.340 authorizes a number of mesh, poly, and vexar bags that may be used in packing Texas citrus, and, prior to issuance of the interim final rule specified the master containers that can be used to ship these bags of fruit. For example, mesh type bags having a capacity of 10 pounds of fruit could only be packed in closed fiberboard cartons with inside dimensions of 20 inches by 13¼ inches by 9¾ to 10¾ inches. The committee recommended that such restrictions be eliminated to permit the industry to pack any authorized bag in any approved master container. This revision provides handlers with additional flexibility in packing oranges and grapefruit without having to follow the procedures governing the use of experimental containers. This rule maintains the revision to subparagraphs (iii), (iv), (vii), (viii), (ix), and (x) of § 906.340(a)(1). The committee's recommendation that the master containers utilized experimentally during the past few seasons become permanent was implemented in the interim final rule.

The committee's recommendation for a new fiberboard display bin was added to the list of approved containers and continues in effect. The new fiberboard display bin is being successfully used by the Florida citrus industry. The high-graphic bulk bin works as an in-store advertisement, increasing traffic and volume movement in the produce department. Because the bin is vented, the fruit holds up better during shipping. The bin can be shipped on pallets or "slip" boards. By adding these containers which were previously approved for experimental use to the permanent list of containers, there is no longer a requirement that each lot of fruit shipped in such containers receive prior approval from the committee.

The interim final rule added subparagraph (xi) to § 906.340(a)(1) to authorize the use of this container. Subparagraphs (ix), (x) and (xi) of § 906.340(a)(1) are redesignated, respectively, as subparagraphs (x), (xi) and (xii).

Section 906.42 authorizes the Secretary to modify, suspend, or terminate regulations based upon recommendations and information submitted by the committee, or other available information pursuant to §§ 906.34, 906.40, 906.45, or any combination thereof, in order to facilitate the handling of fruit.

Consistent with § 906.42, § 906.120 of the order's rules and regulations provides that oranges and/or grapefruit mixed with other types of fruit may be handled exempt from container and pack regulations, subject to certain conditions. One of those conditions prior to issuance of the interim final rule, was that the oranges and/or grapefruit constitute at least 50 percent by count of the contents of any container. The rule continues to allow handlers to pack ⅓ Texas citrus by volume rather than 50 percent by count as authorized in § 906.120(c)(4)(ii). This change provided handlers with the flexibility to pack a variety of products (e.g., pecans, jalapeno jelly, Washington apples, avocadoes, etc.) in the mixed packs. The committee recognized the need to specify that mixed packs contain at least ⅓ Texas citrus by volume. The committee believes that the change will allow the Texas citrus industry to improve producer returns.

The Department's opinion is that specifying "Texas" is redundant. As a result the Department did not include the term in the revision of § 906.120(c)(4)(ii).

The interim final rule concerning this action was published in the December 9, 1994, **Federal Register** [59 FR 63691], with a 30-day comment period ending January 9, 1995.

One comment was received from Ms. Darlene Barter, manager of the committee. Ms. Barter suggested that the revision to § 906.120(c)(4)(ii) in the interim final rule should specify "Texas citrus." The Department's position is that the industry will be better served by stating "grown in the production area" rather than stating "Texas citrus". This will encourage handlers to ship oranges and grapefruit grown in the Lower Rio Grande Valley. While citrus is well defined in the order, the Department agrees that there is a need for additional clarity in the order's handling regulations. The best way to improve the clarity of the handling regulations is by stating "grown in the production area". While Ms. Barter's request is not accepted, a change in the regulation for clarity will be incorporated.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0581–0068 for Texas oranges and grapefruit.

There is no reporting burden on handlers of oranges and grapefruit who have been using experimental containers because no application is required.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—[AMENDED]

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.120 Fruit exempt from regulations.

2. Section 906.120(c)(4) is revised to read as follows:

* * * * *

(c) * * *

(4) Oranges and grapefruit grown in the production area may be handled exempt from container and pack regulations issued pursuant to § 906.40(d), under the following conditions:

(i) Such oranges and/or grapefruit grown in the production area are mixed with other types of fruit;

(ii) Such oranges and/or grapefruit grown in the production area constitute at least one-third by volume of the contents of any container, and any such container is not larger than a $^{7}/_{10}$ bushel carton.

(iii) Such grapefruit grown in the production area grade at least U.S. No. 1, and such oranges grown in the production area grade at least U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot grading at least U.S. No.1).

* * * * *

Dated: March 9, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–6368 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–02–W

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 92–158–2]

Animal Welfare; Licensing and Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations to require dealers, exhibitors, and operators of auction sales who apply for license renewal to certify that, to the best of their knowledge and belief, they are in compliance with the regulations before a renewal is issued. We are also amending the regulations to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations, unless a variance has been granted that would allow the use of a computerized recordkeeping system that has been determined by the Administrator to meet the requirements of the regulations. These changes will help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records, thus promoting compliance with the Animal Welfare Act.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Debra E. Beasley, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Regulatory Enforcement and Animal Care, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR part 2 (referred to below as the regulations) pertain to the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act).

On December 28, 1993, we published in the **Federal Register** (58 FR 68559–68561, Docket No. 92–158–1) a proposal to amend the regulations to require that an applicant for license renewal certify that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to be in compliance upon issuance of a renewed license. In that same document, we also proposed to amend the regulations to require dealers and exhibitors to use Veterinary Services (VS) Form 18–5, "Record of Dogs and Cats on Hand," and VS Form 18–6, "Record of Disposition of Dogs and Cats," to make, keep, and maintain the information required by § 2.75(a)(1) of the regulations. We also proposed to add Animal and Plant Health Inspection Service (APHIS) form numbers in front of the VS form numbers that appear in several places in the regulations.

We solicited comments concerning our proposal for a 60-day comment period ending February 28, 1994. We received 11 comments by that date. The comments were submitted by a scientific society, animal breeders and distributors, humane and animal rights organizations, and private citizens. We carefully considered all of the comments we received. They are discussed below by topic.

Recordkeeping

Comment: The use of VS Forms 18–5 and 18–6 should remain optional since many facilities have accurate and efficient computerized recordkeeping systems. The forms that APHIS proposes to require are cumbersome, repetitive, and outdated and they do not provide spaces for all the information that is required by the regulations.

Response: We understand that many dealers and exhibitors, especially the larger operations, may be using computerized systems to make, keep, and maintain the records required by § 2.75(a)(1) of the regulations. Because it would be difficult for some dealers and exhibitors to switch over to a paper system, we have added a provision to the regulations that will enable a dealer or exhibitor to apply for a variance from the requirement to use VS Forms 18–5 and 18–6. If APHIS determines that a dealer or exhibitor is maintaining a computerized recordkeeping system that is adequate to keep the required information, a variance will be granted. An appeal procedure is also included for dealers or exhibitors who have had their request for a variance denied. The variance is an option only for those dealers and exhibitors who are using a computerized recordkeeping system; a variance will not be granted for alternative paper records. With regard to the complaint that the forms are outdated, APHIS is currently developing updated forms that reflect the requirements of the regulations. The updated forms will be distributed as supplies of the existing forms are depleted.

License Renewal

Comment: The proposed certification will be effective only if it supports APHIS in denying the license renewal applications of facilities not in compliance with the regulations and standards. Otherwise, the certification will not encourage compliance any more than the statement that applicants are currently required to sign.

Response: The regulations in § 2.5 state that a license will be renewed if, before the expiration of the license, the licensee files an application for license renewal, submits an annual report as required by § 2.7, and pays the required fees. There are no provisions in the regulations for denying a license renewal application as long as the licensee has complied with those requirements. However, as provided in § 2.1(f) of the regulations, a person who fails to comply with any provision of the Act or any provision of the regulations and standards shall be liable to having his or her license suspended or revoked.

Comment: If a facility was in the process of correcting a deficiency, it would be unable to certify that it is in compliance with the regulations and standards until the deficiency was completely corrected, which could take up to 30 days or even longer. Similarly, it would be difficult for a licensee with more than one facility to be certain that all his or her facilities were, at any given time, in compliance with the regulations and standards. The delays that could result from having to be certain that all the regulations and standards had been satisfied could cause a facility to miss its deadline for license renewal.

Response: If a licensee who had been cited for a deficiency was actively working to correct that deficiency, APHIS would be aware—or could be informed—that the licensee was addressing the problem and was making a good-faith effort to comply with the regulations. Such a situation would be no reason for a licensee to delay filing a license renewal application. With regard to the example of a licensee with more than one facility, it is the responsibility of a licensee, either personally or through his or her

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employees, to ensure that each facility is maintained and operated in compliance with the regulations. If a licensee is aware of a deficiency in one of his or her facilities, it is incumbent upon the licensee to address the deficiency in order to remain in compliance with the regulations. Having responsibility for more than one facility is not an excuse for knowingly operating in violation of the regulations and standards.

Comment: Prior to 1979, APHIS allowed license applicants to submit an affidavit stating that their premises, facilities, and equipment were in compliance with the regulations and standards, in lieu of an APHIS inspection. However, in 1979, APHIS amended the regulations to remove the applicant affidavit method of ascertaining compliance because of misrepresentation and misuse of the method by some applicants. In light of that experience, there does not appear to be any advantage to requiring license applicants to agree to comply with the regulations and standards. Therefore, if APHIS finalizes its proposed certification requirement in § 2.2, the text of § 2.2 must contain a reference to the inspection provisions of § 2.3.

Response: The proposed certification requirement was not presented as an alternative means of ascertaining compliance or as a substitute for inspections. The certification requirement will have no effect on the provisions of § 2.3, which requires applicants for an initial license or license renewal to make their animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection so that an APHIS inspector may ascertain the applicant's compliance with the standards and regulations.

Comment: It is unclear how APHIS intends licensees to certify that they are in compliance. A simple statement would be ineffective, and any documented statement would entail the use of lengthy forms, which impose a significant additional paperwork burden on licensees. Either way, new regulations are no substitute for APHIS performing rigorous inspections.

Response: As described in the proposed rule, an applicant for license renewal would certify that he or she is, to the best of the applicant's knowledge and belief, in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards by signing the application form, which will contain a statement to that effect. The certification will not necessitate the use of lengthy forms or the imposition of significant additional paperwork burdens. As mentioned above, APHIS does not intend for the certification to take the place of inspections.

Comment: The proposed certification requirement should help encourage compliance. However, to promote even greater compliance, the certification should actually take the form of an affidavit, signed by the applicant, stating that the applicant has read the Act, its amendments, and the applicable regulations and standards in their totality and understands their contents fully. Further, the applicant should verify that he or she is in compliance with, and will continue to comply with, the Act and its implementing regulations and standards. The applicant should have to have paid any outstanding fines levied by the USDA for violations of the Act. Additionally, the application should include a warning stating that, under 18 U.S.C. 1001, anyone making a false, fictitious, or fraudulent statement on the application could be subject to a fine of $10,000 and 5 years in prison.

Response: We believe that an affidavit would accomplish no more than the signed statement currently required. Similarly, because APHIS already supplies each applicant a copy of the applicable regulations and standards, we do not believe that supplying a copy of the Act and its amendments would add to an applicant's knowledge of his or her responsibilities, which are spelled out in the regulations and standards. Because a person who fails to comply with the Act or the regulations and standards is liable to having his or her license suspended or revoked, it is in each licensee's best interests to know what is required of him or her. We cannot, however, reasonably require a person to swear that he or she has read the Act, its amendments, and the applicable regulations and standards in their totality and understands their contents fully. With regard to denying renewals to persons with unpaid fines, we stated above that the regulations make no provision for the denial of a license renewal as long as the licensee filed an application for license renewal on time, submitted an annual report as required by § 2.7, and has paid the required fees. Other avenues are utilized by APHIS to collect unpaid fines. Finally, the commenter mentioned the penalties provided under 18 U.S.C. 1001. Those penalties can be applied in matters within the jurisdiction of APHIS, and we will post a warning to that effect on the license renewal application form that we are developing.

Addition of APHIS Form Numbers

Three commenters mentioned our proposal to add APHIS form numbers in front of the VS form numbers that appear in several places in the regulations. Each of those commenters supported the proposed change.

Comments Outside the Scope of This Rulemaking

One commenter strongly supported the mandatory use of VS forms, but added that a photograph of each individual dog or cat should be required as part of the record. Similarly, another commenter suggested that additional information be required, such as a second piece of identification, a notarized verification of exempt status and a signed statement, when applicable, verifying that a random-source animal was held for the mandated period. However, the proposed rule did not propose any changes to the type of information that dealers and exhibitors must keep as part of the required animal identification records. Rather, we proposed that specific forms be used to record and maintain the information already required by the regulations in § 2.75(a)(1). Because of this, such comments are outside the scope of the proposed rule and no changes have been made in this final rule as a result of those comments. Any such changes would have to be proposed as part of a separate proposed rule.

Other commenters submitted comments concerning individual identification of animals, the definitions of Class A and B dealers, requiring the use of other forms, individually notifying licensees of proposed rules and other regulatory actions, and the development of new forms. Again, such comments are outside the scope of the proposed rule and, therefore, no changes have been made in this final rule as a result of those comments. Any such changes would have to be proposed as part of a separate proposed rule.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Miscellaneous

As mentioned above, APHIS is currently developing an updated version of VS Form 18–5, "Record of Dogs and Cats on Hand." The updated form includes new spaces for the recording of information pertaining to the acquisition of the dogs or cats covered by the form. To reflect the inclusion of the new spaces, VS Form 18–5 has been renamed "Record of Acquisition and Dogs and Cats on Hand." The two places in the regulations where the title of VS Form 18–5 is mentioned—in §§ 2.35(d)(1) and 2.75(a)(2)—have been amended in this document to reflect the title change.

We have slightly adjusted the language of § 2.2(b) for the purpose of greater clarity.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Animal Welfare regulations to require applicants for license renewal to certify that they are in compliance with the regulations before a renewal is issued. We are also amending the regulations to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations. These changes will help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records. We do not expect there to be an economic impact on any entities, large or small, that will be affected by these changes in the regulations.

Because all licensees are currently required to operate in compliance with the regulations, the requirement for license renewal applicants to certify that they are in compliance with the regulations will have no effect in terms of increased operational costs or burdens. Similarly, requiring dealers and exhibitors to use VS Form 18–5 and VS Form 18–6 to make, keep, and maintain the required animal identification records will involve no new costs or burdens. Dealers and exhibitors are already required to keep the records, so they will not have to gather or record any new information in order to complete the forms. The forms are provided by APHIS to dealers and exhibitors free of charge, and we will not require any existing records to be converted over to the new forms. Additionally, a dealer or exhibitor who wished to do so could obtain a variance from the requirement to use the forms if the computerized recordkeeping system has been determined by the Administrator to meet the requirements of the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, 9 CFR part 2 is amended as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 2.2 is revised to read as follows:

§ 2.2 Acknowledgment of regulations and standards.

(a) *Application for initial license.* APHIS will supply a copy of the applicable regulations and standards to the applicant with each request for a license application. The applicant shall acknowledge receipt of the regulations and standards and agree to comply with them by signing the application form before a license will be issued.

(b) *Application for license renewal.* APHIS will supply a copy of the applicable regulations and standards to the applicant for license renewal with each request for a license renewal. Before a license will be renewed, the applicant for license renewal shall acknowledge receipt of the regulations and standards and shall certify by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards.

§ 2.5 [Amended]

3. In § 2.5, paragraph (b), the first sentence is amended by adding the words "APHIS Form 7003/" immediately before the words "VS Form 18–3".

§ 2.35 [Amended]

4. In § 2.35, paragraph (d)(1) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1"; by adding the words "Acquisition and" before the words "Dogs and Cats on Hand"; and by adding the words "APHIS Form 7005/" immediately before the words "VS Form 18–5".

5. In § 2.35, paragraph (d)(2) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1" and by adding the words "APHIS Form 7006/" immediately before the words "VS Form 18–6".

§ 2.38 [Amended]

6. In § 2.38, paragraph (h)(3) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1".

7. In § 2.38, paragraph (i)(3), the beginning of the second sentence is amended by removing the words "Veterinary Services" and adding the words "APHIS Form 7009/VS" in their place.

8. Section 2.75 is amended as follows:

a. Paragraph (a)(2) is revised to read as set forth below.

b. In paragraph (a)(3), the words "APHIS Form 7001/" are added immediately before the words "VS Form 18–1", and the words "paragraph (a)(1) of this section and" are removed.

c. In paragraph (b)(2), the words "APHIS Form 7019/" are added immediately before the words "VS Form 18–19", and the words "APHIS Form 7020/" are added immediately before the words "VS Form 18–20".

§ 2.75 Records: Dealers and exhibitors.

(a) * * *

(2) Each dealer and exhibitor shall use Record of Acquisition and Dogs and Cats on Hand (APHIS Form 7005/VS Form 18–5) and Record of Disposition of Dogs and Cats (APHIS Form 7006/VS Form 18–6) to make, keep, and maintain the information required by paragraph

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(a)(1) of this section: *Provided*, that if a dealer or exhibitor who uses a computerized recordkeeping system believes that APHIS Form 7005/VS Form 18–5 and APHIS Form 7006/VS Form 18–6 are unsuitable for him or her to make, keep, and maintain the information required by paragraph (a)(1) of this section, the dealer or exhibitor may request a variance from the requirement to use APHIS Form 7005/VS Form 18–5 and APHIS Form 7006/VS Form 18–6.

(i) The request for a variance must consist of a written statement describing why APHIS Form 7005/VS Form 18–5 and APHIS Form 7006/VS Form 18–6 are unsuitable for the dealer or exhibitor to make, keep, and maintain the information required by paragraph (a)(1) of this section, and a description of the computerized recordkeeping system the person would use in lieu of APHIS Form 7005/VS Form 18–5 and APHIS Form 7006/VS Form 18–6 to make, keep, and maintain the information required by paragraph (a)(1) of this section. APHIS will advise the person as to the disposition of his or her request for a variance from the requirement to use APHIS Form 7005/VS Form 18–5 and APHIS Form 7006/VS Form 18–6.

(ii) A dealer or exhibitor whose request for a variance has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the request for a variance should not be denied. The denial of the variance shall remain in effect until the final legal decision has been rendered.

* * * * *

§ 2.78 [Amended]

9. In § 2.78, paragraph (d) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18–1".

§ 2.102 [Amended]

10. In § 2.102, paragraph (a)(3), the beginning of the second sentence is amended by removing the words "Veterinary Services" and adding the words "APHIS Form 7009/VS" in their place.

Done in Washington, DC, this 9th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6369 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 91 and 92

[Docket No. 94–076–1]

Cattle Imported In-Bond for Feeding and Return to Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal exportation and importation regulations by removing provisions that allow the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter. We are taking this action because the U.S. Customs Service, to comply with provisions of the North American Free Trade Agreement, has discontinued its collection of duties and bonds on cattle imported into the United States from Mexico. Without a bond, we are unable to meaningfully penalize importers who fail to return those cattle to Mexico. We believe, therefore, that the current in-bond program must be terminated to prevent the dissemination into the United States of animal diseases by in-bond cattle that remain in the United States in violation of the regulations.

DATES: Interim rule effective March 30, 1995. Consideration will be given only to comments received on or before May 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to APHIS, PPD, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–076–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, APHIS, Veterinary Services, Import/Export Animals Staff, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 92 (§§ 92.400 through 92.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

Before the effective date of this rule, § 92.427(e) of the regulations provided for the temporary importation of cattle from Mexico into the United States under United States Customs bond for feeding and return to Mexico for slaughter. Cattle imported under this in-bond program were exempt from some requirements that applied to the importation of other cattle from Mexico, but were subject to additional restrictions during the time they were in the United States that did not apply to other cattle imported from Mexico.

Specifically, in-bond cattle from Mexico could be imported without meeting the requirements of § 92.427(c)(1) regarding herd tests for tuberculosis and without meeting the requirements of § 92.427(d)(1) regarding herd tests for brucellosis if the cattle were: (1) Moved directly by land from the port of entry to an approved quarantined feedlot; (2) removed from the quarantined feedlot only to be moved directly to a Mexican port of entry for return to Mexico for slaughter; and (3) moved only in trucks or railway cars that had been sealed with a seal applied by a U.S. Department of Agriculture inspector.

Additionally, in-bond cattle from Mexico could be imported without the official record of negative brucellosis test required by § 92.424(b) and without meeting the requirements of § 92.427(d) regarding brucellosis if the cattle were under 24 months of age and were accompanied by a certificate stating that the cattle had been vaccinated for brucellosis.

The movement, quarantine, and vaccination requirements discussed above were designed to prevent the transmission of animal diseases from in-bond Mexican cattle to other animals in the United States. However, if the importer of the in-bond Mexican cattle did not adhere to those requirements, there was a serious risk that those cattle, which had not been tested for tuberculosis or brucellosis prior to entering the United States, would spread disease to domestic livestock. As a means of ensuring that the in-bond Mexican cattle were maintained in accordance with the regulations while in the United States and were actually returned to Mexico upon completion of their feeding period in the United States, the regulations required that the importer of the Mexican cattle post a bond with the U.S. Customs Service at the port of entry. The bond required by the Customs Service could be as high as three times the duty value of the cattle, so it was clearly in an importer's best interests to meet all the requirements of the regulations.

However, on January 1, 1994, the U.S. Customs Service discontinued its collection of duties and bonds on imported Mexican cattle in order to comply with provisions of the North American Free Trade Agreement. As a consequence, importers no longer had to post a bond when importing cattle from Mexico into the United States for feeding and return to Mexico, although the Customs Service continued to track such cattle entering and leaving the United States. The penalty for failing to return in-bond Mexican cattle to Mexico upon completion of their feeding period has been reduced to $400.

Since the Customs Service discontinued its collection of bonds, the Animal and Plant Health Inspection Service (APHIS) has monitored the in-bond program to determine whether the program could remain viable despite the lack of a posted bond. Recently, some importers of cattle under the in-bond program have indicated to APHIS that they would be willing to accept the $400 fine—a relatively insignificant amount when compared to the bond that would have been forfeited before the Customs Service discontinued collecting the bond—if the importers could move their cattle to slaughter or other destinations in the United States without returning the cattle to Mexico for slaughter, as required under the in-bond program's regulations. Evidently, those importers believe that even with the $400 fine, it would be more profitable to sell their cattle in the United States than in Mexico. In fact, we are now aware of at least one case in which an importer did remove his in-bond Mexican cattle from a quarantined feedlot and send the cattle to slaughter in the United States. APHIS has the option of pursuing civil and criminal action against an importer in such cases, but we believe that there remains the strong possibility that importers will choose to accept the risk of criminal and civil action against them sometime in the future in order to move their in-bond Mexican cattle to slaughter or other destinations in the United States.

As stated above, in-bond Mexican cattle were exempted from meeting certain testing requirements for tuberculosis and brucellosis; clearly, cattle that have not met those testing requirements present a greater than average risk of spreading disease to domestic livestock. The quarantine and movement restrictions of the in-bond program were specifically designed to mitigate that increased disease risk, so it follows that cattle moved in violation of those quarantine and movement restrictions would present a greater than average disease risk. It has become evident that the posting of a bond is necessary to ensure compliance with the provisions of the in-bond program, but APHIS has no statutory authority to institute a bond system similar to that which had been administered by the U.S. Customs Service at U.S. ports of entry on the Mexican border prior to January 1, 1994. Therefore, we believe that it is necessary for us to terminate the in-bond program described in § 92.427(e) in order to prevent the introduction into, and dissemination within, the United States of disease.

Therefore, we are removing § 92.427(e), "Cattle imported in bond for feeding and return to Mexico," in its entirety. The termination of the in-bond program also entails the removal of five references to the in-bond program that are found elsewhere in part 92 and in the animal export regulations in 9 CFR part 91. Specifically, we are amending:

- Section 91.3(a) by removing a provision that exempts in-bond Mexican cattle from the requirement that all animals intended for exportation to Mexico be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate;
- Section 91.5 by removing a provision that exempts in-bond Mexican cattle from certain pre-export health testing requirements;
- Section 92.424(b) by removing a provision that exempts in-bond Mexican cattle from the requirement for an official record of brucellosis testing;
- Section 92.426(a) by removing a provision requiring in-bond Mexican cattle to be inspected at the port of entry and found free from communicable disease and fever tick infestation; and
- Section 92.427(c)(2) by removing a provision that exempts in-bond Mexican cattle from the M-branding requirement.

Miscellaneous

As noted above, we are removing § 92.427(e) in its entirety, including footnote 10, which cites regulations of the U.S. Customs Service concerning movement in bond. Therefore, to keep the footnotes in the subpart numbered consecutively, we are amending §§ 92.430, 92.431, 92.433, 92.434, and 92.435 by redesignating footnotes 11 through 22 as footnotes 10 through 21.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that conditions exist that warrant publication of this interim rule without prior opportunity for public comment. The recent steep devaluation of the Mexican peso has created a strong economic incentive for importers of in-bond cattle from Mexico to send such cattle to slaughter in the United States, rather than in Mexico as required by the regulations. Because Customs has discontinued collecting bonds, prompt action is necessary to prevent the dissemination into the United States of animal diseases by in-bond Mexican cattle that remain in the United States in violation of the regulations. We are making this rule effective 15 days after its publication in the **Federal Register** to provide importers in the United States and exporters in Mexico adequate notice of this action in order to prevent undue stress on cattle already in transit from Mexico and undue hardship on the owners, importers, and exporters of cattle from Mexico.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective 15 days after its publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the animal exportation and importation regulations by removing provisions regarding the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter.

Several feedlots in the United States could be economically affected by this proposed change in the regulations, but we anticipate that the impact will be minimal. In fiscal year 1993, approximately 61,000 Mexican cattle were imported into the United States for feeding and return to Mexico for

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slaughter under U.S. Customs bond. They included 24,811 cattle imported into Arizona, 3,878 into California, 69 into New Mexico, and 32,059 into Texas. APHIS estimates that as many as 18 different feedlots in Arizona, California, New Mexico, and Texas were used for the feeding of in-bond Mexican cattle during the height of in-bond activity. Currently, there are about 10 feedlots that have facilities for the feeding of in-bond Mexican cattle, but only about 5 of those feedlots have been used recently to feed in-bond Mexican cattle.

The termination of the in-bond program is expected to have a negligible impact on feedlots in the United States. Most are large businesses (defined as having more than $1.0 million in annual gross receipts, according to Small Business Administration size criteria) and usually use only a small portion of the feedlot for in-bond Mexican cattle. The majority of the area in the feedlots is generally used to feed either other imported Mexican cattle or domestic cattle. With the termination of the in-bond program, we anticipate that any affected feedlots will use their entire areas to feed other imported Mexican cattle or domestic cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 91 and 92 are amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 is revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

2. In § 91.3, paragraph (a), the second sentence is amended by removing the words ", except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico,".

§ 91.5 [Amended]

3. In § 91.5, the introductory text is amended by removing the words ", except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico,".

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

4. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.424 [Amended]

5. In § 92.424, paragraph (b), the second sentence is amended by removing the words "pursuant to § 92.427(e)(2), or".

§ 92.426 [Amended]

6. In § 92.426, paragraph (a), the first sentence is amended by removing the words "or in bond for temporary entry in accordance with § 92.427(e) of this part".

§ 92.427 [Amended]

7. In § 92.427, paragraph (c)(2), the first sentence is amended by removing the words "or in bond for temporary entry in accordance with § 92.427(e) of this part".

8. In § 92.427, paragraph (e), including footnote 10, is removed.

§§ 92.430 through 92.435 [Amended]

9. In §§ 92.430 through 92.434, footnotes 11 through 21 and their references in the text are redesignated as footnotes 10 through 20, respectively.

Done in Washington, DC, this 9th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6371 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 94–085–1]

Importation of Sheep and Goats From Canada and Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations for importing sheep and goats from Canada and Mexico to require that, with the exception of sheep and goats imported through land border ports for immediate slaughter, and wethers imported through land border ports, all sheep and goats imported into the United States from Canada and Mexico be accompanied by an import permit. This change is necessary to prevent the importation of sheep and goats that may be affected with scrapie.

DATES: Interim rule effective March 10, 1995. Consideration will be given only to comments received on or before May 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–085–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 94–085–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, or Dr. Roger Perkins, Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1228. Telephone: (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as "the regulations") govern the importation into the United States of live animals, including sheep and goats, to prevent those infected with scrapie from transmitting the disease to livestock in the United States.

Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. Scrapie occurs more often in certain flocks and herds and certain bloodlines, indicating that these animals may be genetically predisposed to become infected with or develop the disease. Scrapie may also be transmitted by breeding and other physical contact between animals.

The disease develops slowly, with an incubation period lasting up to 5 years. The signs which then become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animals' wool, and itching. Affected animals become debilitated and die. There is no diagnostic test for confirming the presence of the disease in a live animal. Therefore, presence of the disease cannot be detected until an animal becomes clinically ill. There is no known treatment for the disease. The impact of the disease in the United States could increase if spread of the disease is not controlled, or if incidence of the disease increases. The regulations are intended to prevent the importation of animals that could transmit scrapie.

Import Permits

One way we have of ensuring that sheep and goats intended for importation into the United States are healthy is by reviewing background information concerning the animals that is supplied when an importer applies for a permit to import the animals. The requirements for obtaining a permit to import sheep and goats and other ruminants are contained in § 92.404.

Before the effective date of this interim rule, the regulations required that importers obtain an import permit for all sheep and goats intended for importation into the United States from any part of the world, except for certain sheep and goats imported from Canada or Mexico through land border ports, and certain sheep and goats moved from the British Virgin Islands to the U.S. Virgin Islands for immediate slaughter. These exceptions were contained in §§ 92.417(a), 92.424(a), and 92.422(a), respectively.

With two exceptions, this interim rule requires all sheep and goats imported into the United States from Canada or Mexico to be accompanied by an import permit. This is because sheep and goats, with the exceptions explained below, that are imported from Canada or Mexico through a land border port could be infected with and transmit scrapie to livestock in the United States. The exceptions are sheep and goats imported for immediate slaughter and wethers.

Sheep and goats, as well as other ruminants imported from Canada and Mexico for immediate slaughter must, under our regulations, be consigned from the port of entry to a recognized slaughtering establishment and be slaughtered there within 2 weeks of importation (see § 92.400, the definition of immediate slaughter, and §§ 92.420 and 92.429). Wethers are castrated male sheep or goats. They are incapable of breeding and are imported for feeding and subsequent slaughter. According to industry practice, wethers are kept in confinement during feeding. Under these circumstances, neither wethers nor sheep and goats imported for immediate slaughter from Canada or Mexico pose any significant threat of transmitting scrapie to livestock in the United States.

By requiring a permit for other sheep and goats intended for importation from Canada or Mexico through a land border port, we will have an opportunity to review background information on the animals and determine whether the animal may be infected with scrapie, which cannot be detected by visual inspection at the border.

We are not exempting from our permit requirements sheep and goats imported for immediate slaughter from countries other than Canada or Mexico. Neither are we exempting from our permit requirements wethers imported from countries other than Canada or Mexico. The exemption from our permit requirements for wethers and for sheep and goats for immediate slaughter are only for those sheep and goats that are imported from Canada and Mexico through a land border port, where inspectors can check the animals for disease and ectoparasites before the animals cross the border into the United States.

In connection with the amendments discussed above, we are adding a definition for wether to the definitions in § 92.400, as follows: "A castrated male sheep or goat."

Effective Date

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. We have been made aware that sheep and goats impregnated with embryos from animals in countries affected with scrapie will be presented for importation into the United States from Canada in the next few days or weeks. We will be unable to identify these animals because our regulations currently allow them to be imported into the United States without an import permit.

We are not aware of any similar animals to be presented for importation from Mexico. However, a similar situation could occur at any time with regard to sheep and goats from Mexico because certain sheep and goats imported into the United States from Mexico through land border ports are not required to have an import permit. If such a situation did occur, we would probably have little or no notice, and without a permit requirement we could not identify animals from Mexico which could transmit scrapie to livestock in the United States.

The only other sheep and goats which can be imported into the United States without a permit are certain ruminants moving from the British Virgin Islands to the U.S. Virgin Islands for immediate slaughter. Because these animals are moving to slaughter, they do not pose any disease threat.

Immediate action is therefore necessary to prevent the importation of sheep and goats that may transmit scrapie to U.S. livestock. Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule requires an import permit for certain sheep and goats imported into the United States from Canada and Mexico through a land border port.

Between December of 1993 and December of 1994, 30,614 sheep and goats were imported from Canada

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through a land border port; none were imported from Mexico through a land border port. Over 97 percent of these sheep and goats were wethers or were imported for immediate slaughter. Wethers and sheep and goats imported through land border ports for immediate slaughter continue to be exempt from the requirement for an import permit. Based on these numbers, we expect that only 3 percent of sheep and goats imported from Canada or Mexico through land border ports will be required to be accompanied by an import permit under this rule. There is no fee for the import permit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0040.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.400 is amended by adding a definition for *Wether*, in alphabetical order, to read as follows:

§ 92.400 Definitions.

* * * * *

Wether. A castrated male sheep or goat.

* * * * *

3. Section 92.417 is amended as follows:

a. In paragraph (a), the introductory text is amended by adding, immediately before the colon at the end of the text, the word: "is".

b. Paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(3)(i) and (a)(3)(ii), respectively; and new paragraphs (a)(1), (a)(2), and (a)(3) are added to read as follows:

§ 92.417 Import permit and declaration for ruminants.

(a) * * *

(1) A wether;

(2) A sheep or goat imported for immediate slaughter; or

(3) A ruminant other than a sheep or goat and that ruminant:

* * * * *

4. Section 92.424 is amended as follows:

a. In paragraph (a), the introductory text is amended by adding, immediately before the colon at the end of the text, the word "is".

b. Paragraphs (a)(1), (a)(2), and (a)(3) are redesignated as paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii), respectively; and new paragraphs (a)(1), (a)(2), and (a)(3) are added to read as follows:

§ 92.424 Import permits and applications for inspection of ruminants.

(a) * * *

(1) A wether;

(2) A sheep or goat imported for immediate slaughter; or

(3) A ruminant other than a sheep or goat and that ruminant:

* * * * *

Done in Washington, DC, this 10th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6372 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–4]

Alteration of Class D Airspace; Williams Air Force Base (AFB), AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the Class D airspace area to Williams Gateway, AZ. This alteration is necessary due to the closure of Williams AFB, AZ, and the renaming of the airport to Williams Gateway Airport, AZ. This action reflects the name change and title description of the Class D airspace area to Williams Gateway, AZ.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of the Class D airspace area at Williams AFB, AZ, to the Class D airspace area at Williams Gateway, AZ. This alteration is necessary due to the closure of the Williams AFB, AZ, and the renaming of the airport to Williams Gateway Airport, AZ. This action reflects the name change and title description of the Class D airspace area to Williams Gateway, AZ. This action is editorial in nature. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public is not particularly interested. Class D airspace areas designations are published in paragraph 5000 of FAA Order 7500.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore–(1) is not a "significant regulation action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1970); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP AZ D Williams Gateway, AZ [Revised]

Williams Gateway Airport, AZ
(Lat. 33°18'28" N, long. 111°39'19" W)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 5-mile radius of the Williams Gateway Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issues in Los Angeles, California, on March 3, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–6380 Filed 3–14–95; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Assessment for Holding Company Systems; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains a correction to the final rules which were published Wednesday, December 28, 1994 (59 FR 66674). The rules implemented the risk assessment authority set forth in Section 4f(c) of the Commodity Exchange Act and imposed reporting and recordkeeping requirements for certain registered futures commission merchants ("FCMs").

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington D.C. 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Commission published notice of the adoption of Rules 1.14 and 1.15 to implement the risk assessment authority set forth in Section 4f(c) of the Commodity Exchange Act. The rules generally require FCMs that are subject to the rules to maintain and file with the Commission certain information concerning their financial activities and the activities of their material affiliates.

Rule 1.15(a)(1) required that each FCM subject to the rule file copies of its organizational chart and financial, operational and risk management policies, procedures and systems "with the regional office with which it files periodic financial reports and with its designated self-regulatory organization * * *" Rule 1.15(a)(2), however, required that an FCM's consolidated and consolidating financial statements be filed only with "the regional office with which [the FCM] files periodic financial reports * * *" The inclusion of a filing requirement with the FCM's designated self-regulatory organization ("DSRO") in Rule 1.15(a)(1) was inadvertent and is at odds with the Commission's intent as discussed in the preamble to the **Federal Register** release accompanying the risk assessment rules. In discussing the degree of confidentiality to be afforded information filed by FCMs with the Commission under the risk assessment rules, and in particular the issue of whether risk assessment information should be made available to self-regulatory organizations, the Commission stated that "[t]he Commission recognizes the sensitivity of certain information required to be reported under these rules [and] * * * plans to make the information reported to it available only on an as-needed basis, as determined in its sole discretion."[1] Because the inclusion of a requirement that FCMs file certain information with their DSROs was not intended, the Commission is publishing this notice deleting from Rule 1.15(a)(1) and (a)(4) the references to a filing requirement with FCMs' DSROs.

Need for Correction

As published, the final rules contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 17 CFR Part 1

Commodity futures consumer protection, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, the publication on December 28, 1994 of the final rules (59 FR 66674) which were the subject of FR Doc. 94–31828, is corrected as follows:

PART 1—[CORRECTED]

On pages 66690 and 66691 paragraphs (a)(1) introductory text and (a)(4) of § 1.15 are corrected to read as follows:

§ 1.15 Risk assessment reporting requirements for futures commission merchants.

(a) *Reporting requirements with respect to information required to be maintained by § 1.14.* (1) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports by no later than April 30, 1995, provided that in the case of a futures commission merchant whose registration becomes effective after December 31, 1994, such futures commission merchant shall file the following within 60 calendar days after the effective date of such registration, or by April 30, 1995, whichever comes later:

* * * * *

[1] 59 FR 66674, 66687 (December 28, 1994).

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(4) The reports required to be filed pursuant to paragraphs (a)(1) and (a)(2) of this section shall be considered filed when received by the regional office of the Commission with whom the futures commission files financial reports pursuant to § 1.10.

* * * * *

Issued in Washington, D.C. on March 8, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6212 Filed 3–14–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 40

[AG Order No. 1955–95]

Standards for Inmate Grievance Procedures

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule modifies the standards for state prison inmate grievance procedures to allow for certification of a procedure which, if not in substantial compliance with minimum standards promulgated by the Attorney General, nevertheless is found by the Attorney General to be otherwise fair and effective. This interim rule also adjusts the time limits for processing grievances to help ensure final disposition within the period of time allowed for judicial continuance. These amendments are necessary to implement new statutory authority.

DATES: This interim rule is effective March 15, 1995; comments must be submitted on or before May 15, 1995.

ADDRESSES: Please submit comments to Office of General Counsel, Bureau of Prisons, HOLC room 709, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: John Megathlin, Administrator, National Inmate Appeals, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, telephone (202) 514–6165.

SUPPLEMENTARY INFORMATION:

Background

In an effort to reduce unnecessary prisoner litigation, Congress enacted the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997). Section 7 of the Act, 42 U.S.C. 1997e, adopted a qualified exhaustion requirement for civil rights actions filed by state prisoners in federal district court under 42 U.S.C. 1983. That section allowed the court, if appropriate and in the interests of justice, to continue proceedings for a period of 90 days in order to compel prisoners to exhaust local administrative prison grievance procedures. Exhaustion could not be required unless the Attorney General had certified or the court had determined that such administrative grievance procedure was in substantial compliance with the minimum standards promulgated by the Attorney General pursuant to 42 U.S.C. 1997e(b).

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) amended 42 U.S.C. 1997e. As amended, 42 U.S.C. 1997e now allows the court to continue proceedings for up to 180 days. In addition, exhaustion may be required if the Attorney General certifies or the court determines that the administrative grievance procedure in question, even if it is not in compliance with the minimum standards promulgated by the Attorney General, is "otherwise fair and effective."

This interim rule accordingly revises § 40.11 in 28 CFR part 40 in order to address the evaluation of an applicant's submission under the "otherwise fair and effective" standard as well as under the existing standards. Sections 40.14, 40.15, 40.16, 40.18 (a) and (b), 40.19(a), and 40.22 are amended to include reference to determination that a grievance procedure is otherwise fair and effective.

In addition, § 40.7(e) is amended to specify that in all instances grievances must be processed from initiation to final disposition within 180 days, including any extensions. Formerly, paragraph (e) had required final disposition within 90 days, excluding any extension of time agreed to in writing by the grievant. This amendment is intended to provide applicants the flexibility to set time limits for the final disposition of grievances within the extended period of time allowed under newly revised 42 U.S.C. 1997e(a)(1). As revised, paragraph (e) no longer requires written consent from the grievant for an extension of time on a response. However, notification to the grievant of an extension of time for a response at any stage of the process remains necessary in order to require exhaustion of that stage.

Regulatory Process Matters

The Department of Justice's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based on the "good cause" exception of 5 U.S.C. 553(d)(3). This rule is necessary to conform existing regulations to recent statutory amendments. Immediate implementation will allow the Attorney General to use without undue delay the statutory "otherwise fair and effective" standard in consideration of current applications by States or local jurisdictions for certification, and consequently reduce regulatory burdens on these government entities.

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this rule was not reviewed by the Office of Management and Budget. This rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612. The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 40

Administrative practice and procedure, Civil rights, Inmate grievance procedures, Prisoners.

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301, 28 U.S.C. 509, and 42 U.S.C. 1997e, part 40 of Chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

1. The authority citation for part 40 continues to read as follows:

Authority: 42 U.S.C. 1997e.

2. In § 40.7, paragraph (e) is revised to read as follows:

§ 40.7 Operation and decision.

* * * * *

(e) *Fixed time limits.* Responses shall be made within fixed time limits at each level of decision. Time limits may vary between institutions, but expeditious processing of grievances at each level of decision is essential to prevent grievance from becoming moot. Unless the grievant has been notified of an extension of time for a response, expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process. In all instances grievances must be processed from initiation to final disposition within 180 days, inclusive of any extensions.

* * * * *

3. Section 40.11 is revised to read as follows:

§ 40.11 Submissions by applicant.

(a) *Written statement.* An application for certification of a grievance procedure under the Act shall be submitted to the Office of the Attorney General, U.S. Department of Justice, Main Justice Building, Washington, DC 20530, and shall include a written statement describing the grievance procedure, a brief description of the institution or institutions covered by the procedure, and accompanying plans for or evidence of implementation in each institution.

(b) *Evidence of compliance with established standards.* An applicant seeking certification of a grievance procedure as being in substantial compliance with the standards promulgated herein should submit evidence of compliance with those standards, including the following information:

(1) *Instructional materials.* A copy of the instructional materials for inmates and employees regarding use of the grievance procedure together with a description of the manner in which such materials are distributed, a description of the oral explanation of the grievance procedure, including the circumstances under which it is delivered, and a description of the training, if any, provided to employees and inmates in the skills necessary to operate the grievance procedure.

(2) *Form.* A copy of the form used by inmates to initiate a grievance and to obtain review of the disposition of a grievance.

(3) *Information regarding past compliance.* For a grievance procedure that has operated for more than one year at the time of the application, the applicant shall submit information regarding the number and types of grievances filed over the preceding year, the disposition of the grievances with sample responses from each level of decision, the remedies granted, evidence of compliance with time limits at each level of decision, and a description of the role of inmates and employees in the formulation, implementation, and operation of the grievance procedure.

(4) *Plan for collecting information.* For a grievance procedure that has operated for less than one year at the time of the application, the applicant shall submit a plan for collecting the information described in paragraph (b)(3) of this section.

(5) *Assurance of confidentiality.* A description of the steps taken to ensure the confidentiality of records of individual use of or participation in the grievance procedure.

(6) *Evaluation.* A description of the plans for periodic evaluation of the grievance procedure, including identification of the group, individuals or individual who will conduct the evaluation and identification of the person or entity not under the control of supervision of the institution who will review the evaluation, together with two copies of the most recent evaluation, if one has been performed.

(c) *Fair and effective procedures.* The Attorney General shall also certify a grievance procedure under the Act, even if the procedure is not in substantial compliance with the standards promulgated herein, if the Attorney General determines that the procedure is otherwise fair and effective for the consideration and disposition of grievances filed by inmates. If a grievance procedure is not in substantial compliance with all standards herein, the applicant shall identify the aspects in which the procedure is in substantial compliance and those in which it is not, describe the other relevant features of the procedure, and explain why the procedure is otherwise fair and effective.

4. Section 40.14 is revised to read as follows:

§ 40.14 Conditional certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence less than one year is at the time of application in substantial compliance with the standards promulgated herein or is otherwise fair and effective, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.15, whichever period is shorter.

5. Section 40.15 is revised to read as follows:

§ 40.15 Full certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence longer than one year at the time of application is in substantial compliance with the standards promulgated herein or is otherwise fair and effective, the Attorney General shall grant full certification. Such certification shall remain in effect unless and until the Attorney General finds reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the minimum standards or is no longer fair and effective, and so notifies the applicant in writing.

6. Section 40.16 is revised to read as follows:

§ 40.16 Denial of certification.

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein or is no longer fair and effective, the Attorney General shall deny certification and inform the applicant in writing of the area or areas in which the grievance procedure or the application is deemed inadequate.

7. In § 40.18, paragraphs (a) and (b) are revised to read as follows:

§ 40.18 Suspension of certification.

(a) *Reasonable belief of non-compliance.* If the Attorney General has reasonable grounds to believe that a previously certified grievance procedure may no longer be in substantial compliance with the minimum standards or may no longer be fair and effective, the Attorney General shall suspend certification. The suspension shall continue until such time as the deficiency is corrected, in which case certification shall be reinstated, or until the Attorney General determines that substantial compliance no longer exists or that the procedure is no longer fair and effective, in which case, except as provided in paragraph (b) of this section, the Attorney General shall withdraw certification pursuant to § 40.19 of this part.

(b) *Defect may be readily remedied; good faith effort.* If the Attorney General determines that a grievance procedure is no longer in substantial compliance with the minimum standards or is no longer fair and effective, but has reason to believe that the defect may be readily corrected and that good faith efforts are underway to correct it, the Attorney General may suspend certification until the grievance procedure returns to compliance with the minimum standards or is otherwise fair and effective.

* * * * *

8. In § 40.19, paragraph (a) is revised to read as follows:

§ 40.19 Withdrawal of certification.

(a) *Finding of non-compliance.* If the Attorney General finds that a grievance procedure is no longer in substantial compliance with the minimum standards or is no longer otherwise fair and effective, the Attorney General shall withdraw certification, unless the Attorney General concludes that suspension of certification under § 40.18(b) of this part is appropriate.

* * * * *

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9. Section 40.22 is revised to read as follows:

§ 40.22 Significance of certification.

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards or is otherwise fair and effective. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

Dated: March 3, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–6287 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in April 1995, and to multiemployer plans with valuation dates in April 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the April 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 set forth the interest rates and actors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during April 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during April 1995.

For annuity benefits, the interests rates will be 7.10% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.75% for the period during which benefits are in pay status, 5.00% during the seven-year period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status The above annuity interest assumptions represent a decrease (from those in effect for March 1995) of .20 percent for the first 20 years following the valuation date are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for March 1995) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during April 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during April 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, pubic health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 18 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
18	4–1–95	5–1–95	5.75	5.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t =	i_2	for t =	i_3	for t =
.	.	.	.	.	.	.
April 1995	.0710	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 18 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years,

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interest rate i_f shall apply for the following n_f years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_f shall apply for the following n_f years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
18	4–1–95	5–1–95	5.75	5.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{t}{}_{t}p_{x}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, * * *$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of it are:					
	i	for t =	it	for t =	it	for t =
.	.	.	.	.	.	.
April 1995	.0710	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of March 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–6359 Filed 3–14–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form an amendment to 31 CFR Part 356, published as a final rule on January 5, 1993 (58 FR 412). This amendment clarifies the definition of the term "bid" and changes the required format for competitive bids for Treasury notes and bonds from two decimals to three decimals.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Michael W. Sunner, Deputy Assistant Commissioner, Office of Financing, Bureau of the Public Debt (202) 219–3350, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320.

SUPPLEMENTARY INFORMATION: 31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The final rule contained herein amends §§ 356.2 and 356.12 of the uniform offering circular.

In § 356.2, the definition of the term "bid" has been modified. The Department has become aware that securities dealers may enter into transactions whereby they effectively "guarantee" the amount and price of securities their customers will receive following a Treasury auction.[1] The price guaranteed may be simply an agreed-upon price, or it may be a price fixed in terms of an agreed-upon standard, *e.g.*, the weighted average auction price. The dealer may obtain securities to fulfill such a guarantee either through an auction bid or through the when-issued market, or both.

The Department views the guarantee described above to be the equivalent of a when-issued trade between the dealer and its customer. Therefore, the Department has determined that, for purposes of Treasury's auction rules, any bid of the dealer to obtain securities to fulfill such a guarantee is a bid for the dealer's own account and not a bid for a customer, as the term customer is defined in the offering circular. This means that the recipient of the guarantee may not be listed as a customer in connection with any bid to fulfill the guarantee. Rather, the depository institution or dealer that has made the guarantee is considered the bidder and must include such amount as part of its own bid. The guaranteeing entity may reflect the guaranteed amount being included in its bid as a short position in calculating its net long position. If the recipient of the guarantee for a specific security also bids for that same security in its own name either directly or through a submitter, it must treat the amount of any guarantee as a long position in calculating its net long position.

[1] The guarantee described herein is not intended to refer to a securities dealer submitting or forwarding a noncompetitive bid for a customer.

The definition of the term "bid" in § 356.2 has been expanded to clarify that an offer to purchase a stated par amount of a security by a depository institution or dealer to fulfill a guarantee as described above is a bid for the depository institution's or dealer's own account and not a bid for a customer.

In § 356.12, the requirement to express a competitive bid with two decimals has been changed with regard to Treasury notes and bonds. Prior to the publication of this rule, a competitive bid for a note or bond had to show the yield bid, expressed with two decimals. Effective with the publication of this rule, such bids must show the yield bid, expressed with three decimals. The requirement for a competitive bid for a Treasury bill to show the discount rate bid, expressed with two decimals, remains unchanged. Further, the restriction against using fractions still applies to bids for all securities.

The change from two decimal places to three decimal places for notes and bonds is being made to encourage greater participation in Treasury auctions.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

Dated: March 9, 1995.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR Chapter II, Subchapter B, Part 356, is hereby amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for Part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*

2. Section 356.2 is amended by revising the definition of "bid" to read as follows:

§ 356.2 Definitions.

* * * * *

Bid means an offer to purchase a stated par amount of securities, either competitively or noncompetitively, in an auction. An offer to purchase a stated par amount of securities submitted by a depository institution or dealer to fulfill a guarantee to sell a specified amount of securities at an agreed-upon price or a price fixed in terms of an agreed-upon standard is a bid of the depository institution or dealer and not a bid of a customer.

* * * * *

3. Section 356.12 is amended by revising paragraph (c)(1) to read as follows:

§ 356.12 Noncompetitive and competitive bidding.

* * * * *

(c) * * *

(1) *Bid format.*

(i) *Treasury bills.* A competitive bid must show the discount rate bid, expressed with two decimals. Fractions may not be used.

(ii) *Treasury notes and bonds.* A competitive bid must show the yield bid, expressed with three decimals. Fractions may not be used.

* * * * *

[FR Doc. 95–6394 Filed 3–14–95; 8:45 am]

BILLING CODE 4810–39–P

SELECTIVE SERVICE SYSTEM

32 CFR Part 1636

Selective Service Regulations; Registrant Processing Procedures

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act are amended to assure greater fairness and efficiency in administration in the processing of registrants.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 1515 Wilson Blvd., Arlington, VA 22209–2425. Phone (703) 235–2050.

Analysis of Comments

The proposed amendment to Selective Service Regulations was published in the **Federal Register** on December 28, 1994 (59 FR 66839) for public comment. No comment was received.

The proposed regulation will become the final rule.

Executive Order 12866

In promulgating this regulation, I have adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Certificate

Whereas, on December 28, 1994, the Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 59 FR 66839; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public (summarized above) have been received and considered; and I certify that I have requested the view of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. section 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations

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constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, as stated below.

List of Subjects in 32 CFR Part 1636

Armed Forces—draft.

Dated: March 7, 1995.

Gil Coronado,

Director of Selective Service.

For the reasons set out in the preamble, 32 CFR Part 1636 is amended as follows:

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

1. The authority citation for part 1636 continues to read as follows:

Authority: Military Selective Service Act (50 App. U.S.C. 451 et seq.); E.O. 11623.

2. In § 1636.8, paragraph (b) is revised to read as follows:

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

* * * * *

(b) The registrant's stated convictions should be a matter of conscience.

* * * * *

[FR Doc. 95–6288 Filed 3–14–95; 8:45 am]

BILLING CODE 8015–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

[3095–AA22]

Micrographic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Wednesday, September 22, 1993 (58 FR 49195). The regulations related to micrographic records management including standards for microfilming records in 36 CFR 1230.12(d)(1)(i).

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 301–713–6730.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections established Federal agency micrographic program responsibilities, revised micrographic standards, modified coverage of temporary records, and clarified inspection provisions. The regulations affected Federal agencies.

Need for Corrections

The final regulation intended to revise the title of the Part from "Micrographics" to "Micrographic Records Management" to better reflect the subject matter; due to a technical drafting error, the change in title was not made although the final rule displayed the revised title. In § 1230.12(d)(1)(i), a typographical error was made in the ANSI/AIIM standard referenced of aperture card formats.

List of Subjects in 36 CFR Part 1230

Archives and records, Incorporation by reference, Micrographics.

PART 1230—MICROGRAPHICS

Accordingly, 36 CFR 1230 is corrected by making the following correcting amendments:

1. The authority citation for part 1230 continues to read:

Authority: 44 U.S.C. 2907, 3302, and 3312.

2. The title of Part 1230 is revised to read:

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

§ 1230.12 [Corrected]

3. In § 1230.12(d)(1)(i), in the fourth sentence, the phrase "ANSI/AIIM MS19–1987" is revised to read "ANSI/AIIM MS32–1987".

Dated: March 9, 1995.

Mary Ann Hadyka,

Federal Register Liaison.

[FR Doc. 95–6360 Filed 3–14–95; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–10–1–5937a; FRL–5172–2]

Approval and Promulgation of Implementation Plan: Louisiana 1990 Base Year Ozone Emissions Inventories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today fully approves the 1990 base year ozone emission inventories submitted by Louisiana for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for ozone. The inventories were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area (NAA) ozone State Implementation Plan (SIP) for the Baton Rouge and Calcasieu Parish areas of Louisiana.

DATES: This action will become effective on May 15, 1995, unless adverse or critical comments are received by April 14, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7237.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA require ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce volatile organic compounds (VOC) emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress projection inventory, and the modeling inventory

are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the CAAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the EPA intends to review SIP revisions submitted under title I, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502: April 16, 1992, and 57 FR 18070: April 28, 1992). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble (57 FR 18070, Appendix B, April 28, 1992) for a more detailed discussion of the interpretations of title I advanced in today's action and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the 1990 CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of VOC, nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(1) of the CAAA (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C), if a submittal does not meet the completeness criteria, "the State shall be treated as not having made the submission." Under sections 179(a)(1) and 110(c)(1), a finding by the EPA that a submittal is incomplete is one of the actions that initiates the sanctions and Federal Implementation Plan processes (see David Mobley memorandum, November 12, 1992).[1]

Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[2] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. The EPA created a "de minimis" exception to the public hearing requirement for minor changes. The EPA defines "de minimis" for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing do not change. States will aggregate all such "de minimis" changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through a formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[3] Section 110(a)(2) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The State of Louisiana submitted the 1990 base year inventories for Baton Rouge (BTR) and Calcasieu Parish (CAL) on November 16, 1992, as a SIP revision by cover letter from the Governor. The inventories were reviewed by the EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The inventories were complete except for public hearings. The EPA determined that for inventories that were lacking only public hearings a finding of completeness would be made, contingent upon the State fulfilling the public hearing requirement.[4] The submittal was found to be complete contingent upon the State fulfilling the public hearing requirment, and a letter dated January 15, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The State of Louisiana subsequently held public hearings on October 22, 1993, to entertain public comment on the 1990 base year emission inventories. The State provided evidence to EPA Region 6 that the public hearings were held and that the State responded to comments.

EPA Region 6, EPA's Office of Air Quality Planning and Standards (OAQPS) Emissions Inventory Branch (EIB), EPA's Office of Mobile Sources (OMS), and Midwest Research Institute, contractor to EIB, reviewed the inventories. Comments were sent to Louisiana, and the State responded with a resubmittal. The resubmittal underwent a second review. The Level III review comments were sent to Louisiana on December 21, 1993.

The State addressed the final Level III comments and submitted responses to Region 6 on January 28, 1994. The State submitted the final revised inventory to Region 6 on September 27, 1994. In addition, the State of Louisiana held additional public hearings on the final revised inventory on October 28, 1994, to accept public comments. The State provided evidence to EPA Region 6 that the public hearings were held and that the State responded to comments.

Region 6 compared the Louisiana responses with the deficiencies noted in the final Level III review and concluded that Louisiana had adequately addressed the remaining deficiencies so that Region 6 was satisfied that Louisiana had completed the Level III criteria for the BTR and CAL ozone nonattainment areas.

2. Emission Inventory Review

Section 110(k) of the Act sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section

[1] Memorandum from J. David Mobley, Chief, Emission Inventory Branch, to Air Branch Chiefs, Region I–X, "Guidance on States' Failure to Submit Ozone and CO SIP Inventories," November 12, 1992.

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992.

[4] Memorandum from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, Regions I–X, "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," October 28, 1992.

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182(a)(1) (see 57 FR 13565–13566, April 16, 1992). The EPA is proposing to grant approval of the Louisiana ozone base year emissions inventories based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventory is acceptable or is disapproved.

Today's action describes the review procedures associated with determining the acceptability of a 1990 base year emission inventory, and discusses the levels of acceptance that can result from the findings of the review process.

A. The Following Discussion Reviews the State Base Year SIP Inventory Approval Requirements

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State, and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process outlined below consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable, it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided, and the Quality Assurance (QA) program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.
8. The method (e.g., Highway Performance Monitoring System or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.
9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.
10. Nonroad mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document: "Quality Review Guidelines for 1990 Base Year Emission Inventories", U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G.T. Helms to the Regions, "1990 O_3/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992,[5] and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.[6]

B. The following Is a Summary of the Level III Review of the Louisiana 1990 Base Year Submittal

1. The IPP and QA plan were submitted and approved. The QA plan was implemented and documented in the submission.
2. The documentation was adequate for the reviewer to determine the estimation procedures and data sources used to develop the inventory for all emission types.
3. The point source inventory was found to be complete.
4. The point source emissions were estimated according to EPA guidance.
5. The area source inventory was found to be complete.
6. The area source emissions were estimated according to EPA guidance.
7. The biogenic emissions were developed from a consultant's site-specific study of the BTR area and the emissions were calculated using the EPA PC–BEIS model for the CAL area.
8. The method used to develop VMT estimates was adequately described and documented.
9. The MOBILE model was used correctly.
10. The nonroad mobile emission estimates were correctly prepared according to current EPA guidance or acceptable alternatives.

Documentation of the Region 6 evaluation, including details of the review procedure, is contained in a memorandum (Attachment A) in the Technical Support Document (TSD). A general summary of the inventories is contained in Attachment B of the TSD.

Final Action

Louisiana has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

VOC

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Point source emissions	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
BTR	115.20	26.25	55.50	23.46	120.91	341.32
CAL	57.90	7.20	14.64	13.30	16.47	109.51

[5] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992.

[6] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993.

NOX

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Point source emissions	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
BTR	234.68	0.78	71.70	38.40	NA	345.56
CAL	119.20	0.25	20.31	40.86	NA	180.62

CO

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Point source emissions	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
BTR	282.91	2.30	434.50	193.02	NA	912.73
CAL	42.10	0.50	117.35	75.03	NA	234.98

Based on Region 6's review of the inventories, Louisiana has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas. These inventories are complete and approvable according to the criteria set out in the November 12, 1992, memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD and G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, Air Quality Management Division.

In today's final action, the EPA is fully approving the SIP 1990 base year ozone emission inventories submitted by Louisiana to the EPA on September 27, 1994, for the Baton Rouge and Calcasieu Parish nonattainment areas as meeting the requirements of section 182(a)(1) of the Act.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this FR publication, the EPA is proposing to approve the SIP revision should adverse comments be received. Thus, this action will be effective on May 15, 1995 unless, by April 14, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice which will withdraw the final action. All public comments will then be addressed in a subsequent final rule on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective May 15, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, in relation to relevant statutory and regulatory requirements.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 15, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not by challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 3, 1995.

Jane N. Saginaw,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.993 is added to read as follows:

§ 52.993 Emissions inventories.

(a) The Governor of the State of Louisiana submitted the 1990 base year emission inventories for the Baton Rouge (BTR) and Calcasieu Parish (CAL) ozone nonattainment areas on November 16, 1992 as a revision to the State Implementation Plan (SIP). The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for each of these areas.

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(b) The inventories are for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventories cover point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The BTR nonattainment area is classified as Serious and includes Ascension, East Baton Rouge, Iberville, Livingston, Point Coupee, and West Baton Rouge Parishes; the CAL nonattainment area is classified as Marginal and includes Calcasieu Parish.

[FR Doc. 95–6299 Filed 3–14–95; 8:45 am]

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40 CFR Part 61

[FRL–5169–9]

Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting delegation of authority to the State of Utah to implement and enforce five National Emission Standards for Hazardous Air Pollutants (NESHAP) for radionuclides. The Governor of Utah requested delegation from EPA Region VIII in a letter dated June 4, 1993. EPA has reviewed the application and has reached a decision that the State of Utah has satisfied all of the requirements necessary to qualify for approval of delegation. The effect of this action allows the State of Utah to implement and enforce specific radionuclide NESHAP.

DATES: This action is effective May 15, 1995 unless adverse comments are received by April 14, 1995. If the effective date is delayed due to comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be submitted to Patricia D. Hull, Director, Air, Radiation & Toxics Division, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and concurrently to Russell A. Roberts, Director, Division of Air Quality, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114–4820. A docket containing the State of Utah's submittals are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: T. Scott Whitmore at (303) 293–1758.

SUPPLEMENTARY INFORMATION:

Background

Due to the unique nature of radionuclide materials, delegation of authority to states to implement and enforce a NESHAP program for radionuclides has not been automatic. EPA's regional offices have traditionally assumed the lead responsibility for administering the radionuclides NESHAP. Because of the EPA Administrator's commitment to enable state and local governments, as partners, to implement and enforce the requirements of the Clean Air Act as amended in 1990 (CAA), EPA wishes to extend delegated authority for the radionuclides program to the states.

The State of Utah received financial assistance from EPA to develop the radiation expertise and experience in implementing and enforcing an effective radionuclides NESHAP program. Under a radionuclides NESHAP grant workplan, the Department of Environmental Quality, State of Utah, has developed an approvable program which includes the following regulatory elements: emission limits, test methods, reporting and monitoring requirements, enforcement authority, surveillance and public notification procedures. Accordingly, the Governor of Utah submitted a letter, dated June 4, 1993, requesting delegation of authority to implement and enforce the radionuclides NESHAP, 40 CFR part 61, subparts B, Q, R, T, and W.

As required by 40 CFR 63.91(a)(2), the EPA is seeking public comments for 30 days. The comments shall be submitted concurrently to the State of Utah and to EPA. The State of Utah can then submit a response to the comments to EPA.

EPA is approving the State of Utah's request for delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to this rule, this **Federal Register** document will serve as the final notice of the approval to delegate the implementation and enforcement of this program. The effective date will be 60 days from the date of this publication and no further activity will be contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the accompanying proposed rule which appears in the Proposed Rule Section of this **Federal Register**. However, EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Final Action

EPA has reviewed the pertinent statutes and regulations of the State of Utah and the grant workplan accomplishments and has determined that the State of Utah meets all of the statutory and regulatory requirements established by Section 112 of the Clean Air Act as amended in 1990 for the implementation and enforcement of the radionuclides NESHAP. Therefore pursuant to section 112(l) of the Clean Air Act as amended in 1990, 42 U.S.C. 7412(l), and 40 CFR 63.91, EPA hereby delegates its authority for the implementation and enforcement of the following National Emission Standards for Radionuclides for all sources located, or to be located in the State of Utah:

(1) National Emission Standards for Radon Emissions from Underground Uranium Mines (40 CFR part 61, subpart B),

(2) National Emission Standards for Radon Emissions from Department of Energy Facilities (40 CFR part 61, subpart Q),

(3) National Emission Standards for Radon Emissions from Phosphogypsum Stacks (40 CFR part 61, subpart R),

(4) National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings (40 CFR part 61, subpart T). Note that subpart T was amended on July 15, 1994 (59 FR 36283) and now only applies to unlicensed disposal sites that are under the control of the Department of Energy.

(5) National Emission Standards for Radon emissions from Operating Mill Tailings (40 CFR part 61, subpart W).

Not all authorities for the NESHAP can be delegated to the state. The EPA Administrator retains authority to implement those sections of the NESHAP that require approval of equivalency determinations and alternative test methods, decision-making to ensure national consistency, and EPA rulemaking to implement including but not limited to the following provisions of 40 CFR part 61:

(1) 40 CFR 61.04(b), which pertains to permitting the submission of reports to the state only, instead of EPA and the state,

(2) 40 CFR 61.12(d)(1), which pertains to permitting an alternative means of emission limitation,

(3) 40 CFR 61.13(h)(1)(ii), which pertains to approval of the use of an alternative method of emission tests.

As the radionuclides NESHAP are updated, Utah should revise its rules and regulations accordingly and in a timely manner.

EPA retains concurrent enforcement authority. If at any time there is a conflict between the state and federal regulations, the federal regulations must be applied if they are more stringent than the state regulations.

Note that the only NESHAP for radionuclides for which Utah did not request delegation and for which Utah may presently have sources is 40 CFR part 61, subpart I, National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by subpart H. Subpart I was stayed by EPA. The stay expired on November 15, 1992 and subpart I reporting began on March 31, 1994.

Effective May 15, 1995 all notices, reports, and other correspondence required under subparts B, Q, R, T, and W should be sent to the State of Utah rather than to EPA Region VIII, Denver, Colorado.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Intergovernmental relations, Radiation protection.

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

For reasons set forth in the preamble, 40 CFR part 61 is amended as follows:

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7412.

Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraph (c) to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS [1]

Subpart	CO	MT [2]	ND [2]	SD [2]	UT [2]	WY
A—General Provisions	(*)	(*)	(*)	(*)	(*)	
B—Radon Emissions from Underground Uranium Mines					(*)	
C—Beryllium	(*)	(*)	(*)		(*)	
D—Beryllium Rocket Motor Firing	(*)	(*)	(*)		(*)	
E—Mercury	(*)	(*)	(*)		(*)	
F—Vinyl Chloride	(*)	(*)	(*)		(*)	
H—Emissions of Radionuclides other than Radon from Department of Energy Facilities						
I—Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by Subpart H						
J—Equipment Leaks (Fugitive Emission Sources) of Benzene	(*)	(*)	(*)		(*)	
K—Radionuclide Emissions from Elemental Phosphorus Plants						
L—Benzene Emissions from Coke By-Product Recovery Plants		(*)	(*)		(*)	
M—Asbestos	(*)	(*)	(*)	(*)	(*)	[3](*)
N—Inorganic Arsenic Emissions from Glass Manufacturing Plants		(*)	(*)		(*)	
O—Inorganic Arsenic Emissions from Primary Copper Smelters		(*)	(*)		(*)	
P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities		(*)	(*)		(*)	
Q—Radon Emissions from Department of Energy Facilities					(*)	
R—Radon Emission from Phosphogypsum Stacks					(*)	
T—Radon Emissions from the Disposal of Uranium Mill Tailings					(*)	
V—Equipment Leaks (Fugitive Emission Sources)		(*)	(*)		(*)	
W—Radon Emissions from Operating Mill Tailings					(*)	
Y—Benzene Emissions from Benzene Storage Vessels		(*)	(*)		(*)	
BB—Benzene Emission from Benzene Transfer Operations		(*)	(*)		(*)	
FF—Benzene Waste Operations		(*)			(*)	

(*) Indicates approval of delegation of subpart to state.

[1] Authorities which may not be delegated include 40 CFR 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174(a)(2), 61.174(a)(3), 61.242–1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

[2] Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP) with the exception of the radionuclide NESHAP Subparts B, Q, R, T, W which were approved through Section 112(l) of the Clean Air Act.

[3] Delegation only for asbestos demolition, renovation, spraying, manufacturing, and fabricating operations, insulating materials, waste disposal for demolition, renovation, spraying, manufacturing and fabricating operations, inactive waste disposal sites for manufacturing and fabricating operations, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

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[FR Doc. 95–5976 Filed 3–14–95; 8:45 am]
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40 CFR Part 180

[PP 4F4373/R2113; FRL–4940–9]

RIN 2070–AB78

Pesticide Tolerance for Avermectin B_1 and its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity head lettuce. Merck Research Laboratories requested this regulation to establish maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective March 15, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4373/R2113], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: LaRocca.George@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 29, 1991 (56 FR 24189), which announced that Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, had submitted a pesticide petition (PP 1F3973) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for residues of the pesticide abamectin (same as avermectin B_1) and its delta-8, 9-isomer in or on the raw agricultural commodities (RAC) lettuce at 0.05 part per million (ppm) and almonds and walnuts at 0.005 ppm.

In a letter dated June 9, 1994, Merck Research Laboratories requested a separation of PP 1F3973 into two distinct petitions. Almonds and walnuts were to be processed under PP 1F3973, and head lettuce was assigned a new petition number, PP 4F4373. No comments were received on the notice of filing (56 FR 24189, May 29, 1991).

The data submitted in support of this tolerance and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of May 31, 1989 (54 FR 23209) for cottonseed and August 2, 1989 (54 FR 31836) for citrus.

The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extreme seriousness of pup death observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL)(0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL 0f 0.12 mg/kg/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight (bwt)/day.

A chronic dietary exposure/risk assessment has been performed for abamectin using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues. The ARC from established tolerances and the current action is estimated at 0.000022 mg/kg bwt/day and utilizes 5.4 percent of the RfD for the U.S. population. The ARC for children, aged 1 to 6 years old, and nonnursing infants (subgroups most highly exposed) utilizes 13 and 18 percent of the RfD, respectively.

Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end-point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for high-end exposures for women ages 13 and above. The MOE for the high-end exposure is 200. Generally speaking, MOEs greater than 100 for data derived from animal studies are acceptable to the Agency.

The metabolism of the chemical in plants and livestock for this use is adequately understood. Any secondary residues occurring in meat, meat byproducts, or milk will be covered by existing tolerances for those commodities. There is no reasonable expectation of finite residues in poultry and swine commodities; therefore, no tolerances are necessary at this time. Adequate analytical methodology (HPLC-Fluorescence Methods) is available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Reponse and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-304-5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on lettuce. There are currently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections.
Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by revising paragraph (b), to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) Tolerances are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer [a mixture of avermectin containing greater than 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and less than 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodities:

Commodity	Parts per million
Celery	0.05
Lettuce, head	0.05
Strawberry	0.02
Tomatoes, fresh	0.01

[FR Doc. 95–6416 Filed 3–14–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7124

[NM–930–1430–01; NMNM 88049]

Public Land Order No. 7067, Correction; Withdrawal of National Forest System Land for Guadalupe Canyon Zoological Botanical Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 7067.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order 7067, 59 FR 35859, July 14, 1994, is hereby corrected as follows:

The third column, line 3, which reads "sec. 24, NE¼NW¼ and S½SE¼;" is hereby corrected to read "sec. 24, NE¼SE¼ and S½SE¼;".

Dated: March 2, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–6279 Filed 3–14–95; 8:45 am]
BILLING CODE 4310–FB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314, ET Docket No. 92–100, FCC 95–92]

Personal Communications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: On March 3, 1995, the Commission released a Memorandum Opinion and Order revising certain sections of its Rules governing the Personal Communications Services (PCS). The action in the instant Order responds to petitions for reconsideration filed by Morgan Stanley Partnerships on September 6 and October 7, 1994 in the Commission's broadband and

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narrowband PCS proceedings. The Order refines and clarifies the Commission's Rules concerning the ownership attribution of licenses in view of the Commission's decisions to use a multiplier when assessing indirect ownership interests. The rule amendments are intended to encourage investment in PCS, particularly by institutional investors, and promote the rapid deployment of such new services in the public interest.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jackie Chorney, Wireless Telecommunications Bureau, (202) 418–0600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in GEN Docket No. 90–314, ET Docket No. 92–100m, FCC 95–92, adopted March 2, 1995, and released March 3, 1995. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Order

1. The Commission's PCS proceedings are designed to promote four primary goals: competitive delivery, a diverse array of services, rapid deployment, and wide-area coverage. The Commission notes that the ability of PCS entrants to attract capital is essential to achieving these goals. In essence, Morgan Stanley Partnerships argues in its petitions for reconsideration that the Commission's PCS attribution rules do not promote this ability sufficiently. The Commission states that while promoting PCS investment is an important public interest component of its PCS policies, its attribution rules are designed principally to operate in conjunction with ownership limits to maintain a competitive PCS industry. The Commission expresses that the real question, therefore, is whether treating institutional investors differently under its PCS attribution rules will improve investment incentives without undercutting those rules' primary goal of serving as anticompetitive safeguards. The Commission answers that question affirmatively.

2. The Commission states that it has long recognized a distinction between institutional investors and other investors, and that this results, in part, because the term "institutional investors" identifies a category of investors that may be defined with some precision. The Commission agrees with Morgan Stanley Partnerships that institutional investors' market activities generally do not raise the type of "control" issues that led the Commission to adopt "bright line" PCS attribution rules. Indeed, the Commission observes that it recently amended its rules in this regard to further clarify the definition of institutional investor under the PCS rules and to promote such investors' opportunities to serve as an important source of funding for designated entity PCS companies. The Commission finds that modifying the narrowband and broadband PCS attribution rules in light of the request of Morgan Stanley Partnerships is consistent with the Commission's traditional policy and recent action regarding institutional investors. Moreover, the Commission believes that these modifications will serve as an important means for encouraging increased passive investment in PCS. Accordingly, the Commission states that it is amending its PCS rules to: (1) exempt from attribution insulated limited partnership interests held by institutional investors, subject to those investors certifying to the Commission that they are not materially involved directly or indirectly in the management or operation of the carrier activities of the partnership; and (2) increase from five to ten percent the level at which institutional investors' PCS license ownership interests will be attributed. Consistent with this change, the Commission is clarifying that for purposes of the reporting requirements of section 24.813 of its rules, institutional investors are not considered attributable investors in an applicant unless they hold an ownership interest of 10 percent or more in the applicant. The Commission is amending section 24.813(a)(2) to require applicants to report ownership interests held by institutional investors only if such ownership interests are 10 percent or more.

3. The Commission declines, however, to adopt the single majority shareholder exception requested by Morgan Stanley. The Commission believes that such an exception is unnecessary to address the issues raised by Morgan Stanley regarding the application of the multiplier to indirect institutional investments and to enable PCS applicants to attract capital from institutional investors given the above-described modifications to its attribution rules.

4. In addition, the Commission concludes that institutional investors who held limited partnership interests prior to the adoption date of this order shall be granted one year from that date to amend their limited partnership agreements to comply with the insulation rules. During this transition period, affected licensees shall certify to the Commission that the limited partners are not materially involved, directly or indirectly, in the management or operation of a PCS licensee.

5. The Commission notes that it decided previously not to apply the multiplier rule to nationwide narrowband PCS licenses granted under its pioneer preference rules prior to August 16, 1994, or to nationwide narrowband PCS licenses auctioned before August 16, 1994 (the date on which it adopted the narrowband PCS multiplier rule). The Commission continues to believe that it would not be equitable to apply the multiplier rule to those licensees. In keeping with that rationale, however, the Commission clarifies that this exemption will expire with respect to a particular interest in a license if in the future that exempt interest is transferred or assigned to another entity.

Ordering Clauses

6. It is Further Ordered That the petitions for reconsideration filed by Morgan Stanley on September 6 and October 7, 1994, in our broadband and narrowband PCS proceedings, respectively, Are Granted to the extent discussed above.

7. Accordingly, It is Ordered that Part 24 of the Commission's Rules Is Amended as specified below, And Will Become Effective immediately upon publication in the **Federal Register.**

8. This action is taken pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 24

Communication common carriers, Radio, Reporting and recordkeeping requirements.

47 CFR Part is amended as follows:

PART 24—PERSONNEL COMMUNICATIONS SERVICE

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.101 is revised to read as follows:

§ 24.101 Multiple ownership restrictions.

(a) Narrowband PCS licensees shall not have an ownership interest in more than three of the 26 channels listed in § 24.129 in any geographic area. For purposes of this restriction, a narrowband PCS licensee is:

(1) Any institutional investor, as defined in § 24.720(h), with an ownership interest of ten or more percent in a narrowband PCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a narrowband PCS license.

(b) In cases where a party had indirect ownership, through an interest in an interving entity (or entities) that has ownership in the narrowband license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the narrowband PCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example: Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the narrowband PCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section:

(1) A limited partnership interest held by an institutional investor (as defined § 24.720(h)) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the PCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

(i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(ii) Barring the limited partners from serving as independent contractors;

(iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(iv) Empowering the general partner to veto admissions of new general partners;

(v) Restricting the circumstances in which the limited partners can remove the general partner;

(vi) Prohibiting the limited partners from providing services to the partnership relating to the PCS holdings of the licensee; and

(vii) Stating that the limited partners may not become involved in the management or operation of the licensee. See 47 CFR 73.3555 Note 2(g)(2); Memorandum of Opinion and Order in MM Docket 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the Memorandum of Opinion and Order in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986).

(2) Institutional investors who held limited partnership interests prior to March 2, 1995 shall be granted one year from that date to amend their limited partnership agreements to comply with the insulation rules and so certify to the Commission. During this transition period, the licensee in which an institutional investor holds an interest shall also certify to the Commission that the institutional investor limited partner(s) are not materially involved, directly or indirectly, in the management or operation of the licensee.

3. In § 24.204, paragraph (d)(2)(viii) is redesignated as paragraph (d)(2)(viii)(A) and new paragraph (d)(20(viii)(B) is added to read as follows:

§ 24.204 Cellular eligibility.

* * * * *

(d) * * *

(2) * * *

(viii) * * *

(B) Notwithstanding paragraph (d)(2)(viii)(A) of this section, the following interests shall not constitute attributable ownership interests for purposes of § 24.229(c):

(*i*) A limited partnership interest held by an institutional investor (as defined Section 24.720(h)) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the PCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

(*i*) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(*ii*) Barring the limited partners from serving as independent contractors;

(*iii*) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(*iv*) Empowering the general partner to veto admissions of new general partners;

(*v*) Restricting the circumstances in which the limited partners can remove the general partner;

(*vi*) Prohibiting the limited partners from providing services to the partnership relating to the PCS holdings of the licensee; and

(*vii*) Stating that the limited partners may not become involved in the management or operation of the licensee. See 47 CFR 73.3555 Note 2(g)(2); Memorandum of Opinion and Order in MM Docket 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the Memorandum of Opinion and Order in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986).

(*2*) Institutional investors who held limited partnership interests prior to March 2, 1995 shall be granted one year from that date to amend their limited partnership agreements to comply with the insulation rules and so certify to the Commission. During this transition period, the licensee in which an institutional investor holds an interest shall also certify to the Commission that the institutional investor limited partner(s) are not materially involved, directly or indirectly, in the management or operation of the licensee.

* * * * *

4. Section 24.229 is amended by revising paragraph (c) to read as follows:

§ 24.229 Frequencies.

* * * * *

(c) PCS licenses shall not have an ownership interest in frequency blocks that total more than 40 MHz and serve the same geographic area. For purposes of this section, PCS licensees are:

(1) Any institutional investor, as defined in Section 24.720(h), with an ownership interest of 10 or more percent in a broadband PCS license; and

(2) Any other entities having an ownership interest of 5 or more percent or other attributable ownership interest, as defined in Section 24.204(d), in a PCS license.

* * * * *

5. Section 24.813 is amended by revising paragraph (a)(2) to read as follows:

§ 24.813 General application requirements.

(a) * * *

(2) A list of any party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in

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the applicant, or any entity in which a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in Section 24.720(h)) in the applicant. (e.g., If company A owns 5% of Company B (the applicant) and 5% of Company C then Companies A and C must be listed on Company B's application.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–6488 Filed 3–14–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–257, RM–8299]

Radio Broadcasting Services; Kingsville and Ingleside, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver of automatic stay.

SUMMARY: This document grants a motion for waiver of automatic stay filed by Kingsville Radio Company on the effect of the substitution of Channel 224C2 for Channel 224A at Kingsville, TX and the modification of its license for Station KNGV(FM) accordingly. *See Report and Order* 57 FR 3952 (February 3, 1992). This action is granted by the Commission without prejudice to any further action the Commission may take regarding the application for review in MM Docket No. 88–257.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 776–1660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, *Memorandum Opinion and Order*, MM Docket No. 88–257, adopted March 3, 1995 and released March 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–6335 Filed 3–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–72; RM–8479]

Radio Broadcasting Services; Odessa and Los Ybanez, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ruben Velasquez, substitutes Channel 300C1 for Channel 299C2 at Odessa, Texas, and modifies the construction permit of Station KADM(FM) to specify operation on the higher powered channel. To accommodate the upgrade at Odessa, the Commission also substitutes Channel 253C2 for Channel 300C2 at Los Ybanez, Texas, and modifies the license of Station KYMI(FM) to specify the alternate Class C2 channel. *See* 59 FR 35893, July 14, 1994, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–72, adopted March 1, 1995, and released March 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Both channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 300C1 can be allotted to Odessa without the imposition of a site restriction. The coordinates for Channel 300C1 at Odessa, Texas, are North Latitude 31–51–30 and West Longitude 102–22–30. Channel 253C2 can be allotted to Los Ybanez at the transmitter site specified in Station KYMI(FM)'s license. The coordinates for Channel 253C2 at Los Ybanez are North Latitude 32–43–22 and West Longitude 102–01–50. Mexican concurrence in each of the allotments has been received because Odessa and Los Ybanez are located within 320 kilometers (199 miles) of the U.S-Mexican border.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 299C2 and adding Channel 300C1 at Odessa and by removing Channel 300C2 and adding Channel 253C2 at Los Ybanez.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–6338 Filed 3–14–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 950203034–5034–01; I.D. 092794B]

RIN 0648–AG23

Stone Crab Fishery of the Gulf of Mexico; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). This rule establishes a temporary moratorium, ending not later than June 30, 1998, on the Federal registration of stone crab vessels. In addition, NMFS changes the regulations that implement the FMP to correct and clarify them, conform them to current agency standards, and enhance enforcement.

EFFECTIVE DATE: April 14, 1995. The incorporation by reference of certain sections of the Florida Administrative Code is approved by the Director of the Office of the Federal Register as of April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by regulations at 50 CFR part 654 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Detailed descriptions, backgrounds, and rationales for the management measures in Amendment 5 and the additional measures proposed by NMFS were included in the preamble to the proposed rule (59 FR 55405, November 7, 1994) and are not repeated here. The U.S. Coast Guard commented that they had reviewed Amendment 5 and the proposed rule and had identified no enforcement or safety concerns. No other comments on the amendment or the proposed rule were received. Accordingly, the proposed rule is adopted as final with three minor changes. The geographic scope of the regulations is clarified by providing in the definition of "management area" appropriate latitude and longitude boundaries in lieu of "off the west coast of Florida and off the south side of the Florida Keys." An explanation of the nature and duration of the moratorium on the Federal registration of stone crab vessels is added at § 654.3(d). A new section (§ 654.26) is added to specify the management measures that may be established or modified under the framework procedure in Amendment 5.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 5 is necessary for the conservation and management of the stone crab fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The reasons were summarized in the preamble to the proposed rule (59 FR 55405, November 7, 1994). As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing, Incorporation by reference.

Dated: March 8, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 654 is revised to read as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

Sec.
654.1 Purpose and scope.
654.2 Definitions.
654.3 Relation to other laws.
654.4 Permits and fees. [Reserved]
654.5 Recordkeeping and reporting. [Reserved]
654.6 Vessel and gear identification.
654.7 Prohibitions.
654.8 Facilitation of enforcement.
654.9 Penalties.

Subpart B—Management Measures

654.20 Seasons.
654.21 Harvest limitations.
654.22 Gear restrictions.
654.23 Southwest Florida seasonal trawl closure.
654.24 Shrimp/stone crab separation zones.
654.25 Prevention of gear conflicts.
654.26 Adjustment of management measures.
654.27 Specifically authorized activities.

Appendix A to Part 654—Figures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 654.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of stone crab and restricts the trawl fishery in the management area.

(c) "EEZ" refers to the EEZ in the management area, unless the context clearly indicates otherwise.

§ 654.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Management area means the EEZ off the coast of Florida from a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. long.) to a line extending directly east from the Dade/Monroe County, FL boundary (25°20.4′ N. lat.).

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813–570–5301; or a designee.

Stone crab means *Menippe mercenaria, M. adina* or the hybrid, *M. adina* X *M. mercenaria*, or a part thereof.

§ 654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), (c), and (d) of this section.

(b) The regulations in this part are intended to be compatible with, and do not supersede, similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida's waters.

(d) Under Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, there is a temporary moratorium on the issuance by the Regional Director of Federal numbers and color codes to mark vessels and gear in the stone crab fishery in the management area. The moratorium will end not later than June 30, 1998. During the moratorium, fishermen must obtain numbers and color codes from Florida. (See § 654.6(a).)

§ 654.4 Permits and fees. [Reserved]

§ 654.5 Recordkeeping and reporting. [Reserved]

§ 654.6 Vessel and gear identification.

(a) An owner or operator of a vessel that is used to harvest stone crabs by traps in the management area must comply with the vessel and gear identification requirements applicable to the harvesting of stone crabs by traps in Florida's waters in effect as of April 14, 1995, in Rule 2N–8.001 and Rule 46–13.002(2) (e) and (f), Florida Administrative Code. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; or the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(b) A stone crab trap or buoy in the EEZ that is not in compliance with the gear identification requirements

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specified in paragraph (a) of this section is illegal. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6(a).

(b) Possess a stone crab in the management area during the period specified in § 654.20(a).

(c) Possess a stone crab trap in the management area during the period specified in § 654.20(c).

(d) Remove from a stone crab in or from the management area, or possess in the management area, a claw that is less than the minimum size limit specified in § 654.21(a).

(e) Fail to return immediately to the water unharmed an egg-bearing stone crab, or strip eggs from or otherwise molest an egg-bearing stone crab; as specified in § 654.21(b).

(f) Hold a stone crab in or from the management area aboard a vessel other than as specified in § 654.21(c).

(g) Use or possess in the management area a stone crab trap that does not have a biodegradable panel, as specified in § 654.22(a).

(h) Pull or tend a stone crab trap in the management area other than during daylight hours, as specified in § 654.22(b).

(i) Willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area, as specified in § 654.22(c).

(j) Trawl in a closed area or during a closed season, as specified in §§ 654.23 or 654.24, or as may be implemented under § 654.25(b).

(k) Place a stone crab trap in a closed area or during a closed season, as specified in § 654.24, or as may be implemented under § 654.25(b).

(l) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 654.25(a).

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of stone crab.

(n) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 654.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 654.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 654.20 Seasons.

(a) *Closed season.* No person may possess a stone crab in the management area from 12:01 a.m., local time, May 16, through 12 p.m. midnight, local time, October 14, each year. Holding a stone crab in a trap in the water during a soak period or during a removal period (see paragraph (b) of this section), or during any extension thereto, is not deemed possession, provided that, if the trap is removed from the water during such period, such crab is returned immediately to the water with its claws unharvested.

(b) *Placement of traps.* (1) *Prior to the fishing season.* The period of October 5 through October 14 is established as a trap soak period. A stone crab trap may be placed in the management area not earlier than 1 hour before sunrise on October 5.

(2) *After the fishing season.* The period of May 16 through May 20 is established as a trap removal period. A stone crab trap must be removed from the management area not later than 1 hour after sunset on May 20, unless an extension to the removal period is granted under paragraph (b)(2)(i) of this section and the extension authorization is carried aboard the fishing vessel as specified in paragraph (b)(2)(ii) of this section.

(i) An extension of the removal period may be granted by Florida in accordance with Rule 46–13.002(2)(b), Florida Administrative Code, in effect as of April 14, 1995. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the office of the Regional Director, or the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

(ii) The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(c) *Possession of stone crab traps.* A stone crab trap may not be possessed in the management area from the end of the trap removal period, or an extension thereto, to the beginning of the trap soak period, as specified in paragraph (b) of this section. A stone crab trap, float, or rope in the management area during this period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties.

§ 654.21 Harvest limitations.

(a) *Claw size.* No person may remove from a stone crab in or from the management area, or possess in the management area, a claw with a propodus measuring less than 2.75 inches (7.0 cm), measured in a straight line from the elbow to the tip of the lower immovable finger. The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended. (See Appendix A, Figure 1, of this part.)

(b) *Egg-bearing stone crabs.* An egg-bearing stone crab in or from the management area must be returned immediately to the water unharmed—without removal of a claw. An egg-bearing stone crab may not be stripped of its eggs or otherwise molested.

(c) *Holding stone crabs.* A live stone crab in or from the management area may be held aboard a vessel until such time as a legal-sized claw is removed, provided it is held in a container that is shaded from direct sunlight and it is wet with sea water as necessary to keep it in a damp condition. Containers holding stone crabs must be stacked in a manner that does not compress the crabs. A stone crab body from which a legal-sized claw has been removed must be returned to the sea before the vessel reaches shore or a port or dock.

§ 654.22 Gear restrictions.

(a) *Biodegradable panels.* A stone crab trap used or possessed in the management area must have a panel constructed of wood or cotton and located on a side of the trap at least two slats above the bottom, or on the top of the trap, which, when removed, will leave an opening in the trap measuring at least 2.5 inches by 5 inches (6.35 cm by 12.7 cm).

(b) *Daylight hours.* A stone crab trap in the management area may be pulled or tended during daylight hours only—

that is, from 1 hour before sunrise to 1 hour after sunset.

(c) *Gear belonging to others.* No fisherman may willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area without the prior written consent of that fisherman.

§ 654.23 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the management area shoreward of a line connecting the following points (see Appendix A, Figure 2, of this part):

Point	North Latitude	West Longitude
B[1]	26°16′	81°58.5′
C	26°00′	82°04′
D	25°09′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

§ 654.24 Shrimp/stone crab separation zones.

Five zones are established in the management area and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3, of this part. Although Zone II is entirely within Florida's waters, it is included in this section and Appendix A, Figure 3, of this part for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, of this part are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
A	28°59′30″	82°45′36″	14416.5	31409.4	45259.1	62895.3
B	28°59′30″	83°00′10″	14396.0	31386.3	45376.8	63000.0
C	28°26′01″	82°59′47″	14301.5	31205.9	45103.2	63000.0
D	28°26′01″	82°56′54″	14307.0	31212.2	45080.0	62981.3
E	28°41′39″	82°55′25″	14353.7	31300.2	45193.9	62970.0
F	28°41′39″	82°56′09″	14352.4	31298.6	45199.4	62975.0
G	28°48′56″	82°56′19″	14372.6	31337.2	45260.0	62975.0
H	28°53′51″	82°51′19″	14393.9	31371.8	45260.0	62938.7
I	28°54′43″	82°44′52″	(1)	(1)	(1)	(1)
J	28°51′09″	82°44′00″	(2)	(2)	(2)	(2)
K	28°50′59″	82°54′16″	14381.6	31351.8	45260.0	62960.0
L	28°41′39″	82°53′56″	14356.2	31303.0	45181.7	62960.0
M	28°41′39″	82°38′46″	(3)	(3)	(3)	(3)
N	28°41′39″	82°53′12″	14357.4	31304.4	45176.0	62955.0
O	28°30′51″	82°55′11″	14323.7	31242.4	45104.9	62970.0
P	28°40′00″	82°53′08″	14352.9	31295.7	45161.8	62955.0
Q	28°40′00″	82°47′58″	14361.3	31305.4	45120.0	62920.0
R	28°35′14″	82°47′47″	14348.6	31280.6	45080.0	62920.0
S	28°30′51″	82°52′55″	14327.7	31247.0	45086.6	62955.0
T	28°27′46″	82°55′09″	14315.2	31225.8	45080.0	62970.0
U	28°30′51″	82°52′09″	14329.1	31248.6	45080.0	62949.9

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

(f) A stone crab trap, float, or rope in the management area during a period not authorized by this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.25 Prevention of gear conflicts.

(a) No person may knowingly place in the management area any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and limitations of the Fishery

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Management Plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 654.26 Adjustment of management measures.

In accordance with the procedures and limitations of the fishery management plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may establish or modify the following management measures: Limitations on the number of traps that may be fished by each vessel; construction characteristics of traps; gear and vessel identification requirements; gear that may be used or prohibited in a directed fishery; bycatch levels in non-directed fisheries; seasons; soak/removal periods and requirements for traps; use, possession and handling of stone crabs aboard vessels; and minimum legal sizes.

§ 654.27 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

Appendix A to Part 654—Figures

Figure 1—Stone Crab Claw
Figure 2—Southwest Florida Seasonal Trawl Closure
Figure 3—Shrimp/Stone Crab Separation Zones

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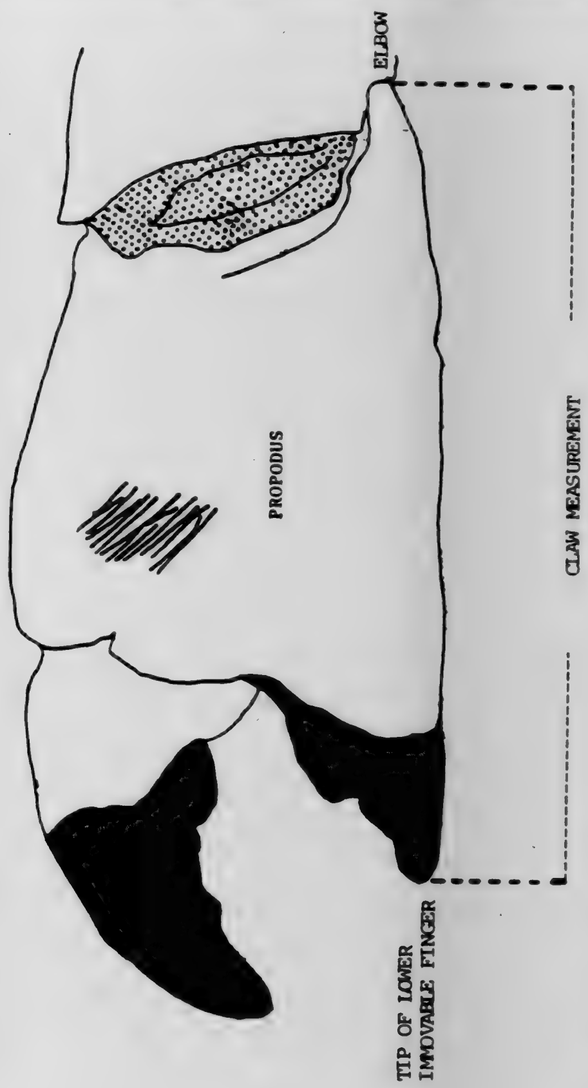

FIGURE 1. STONE CRAB CLAW

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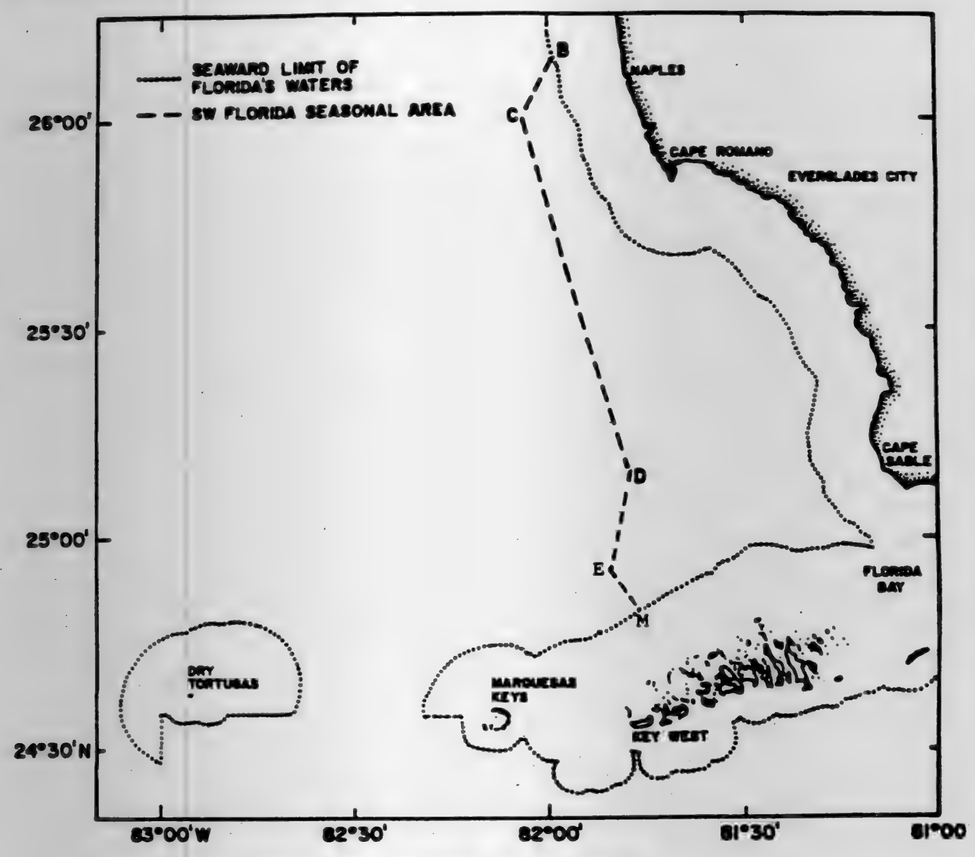

FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

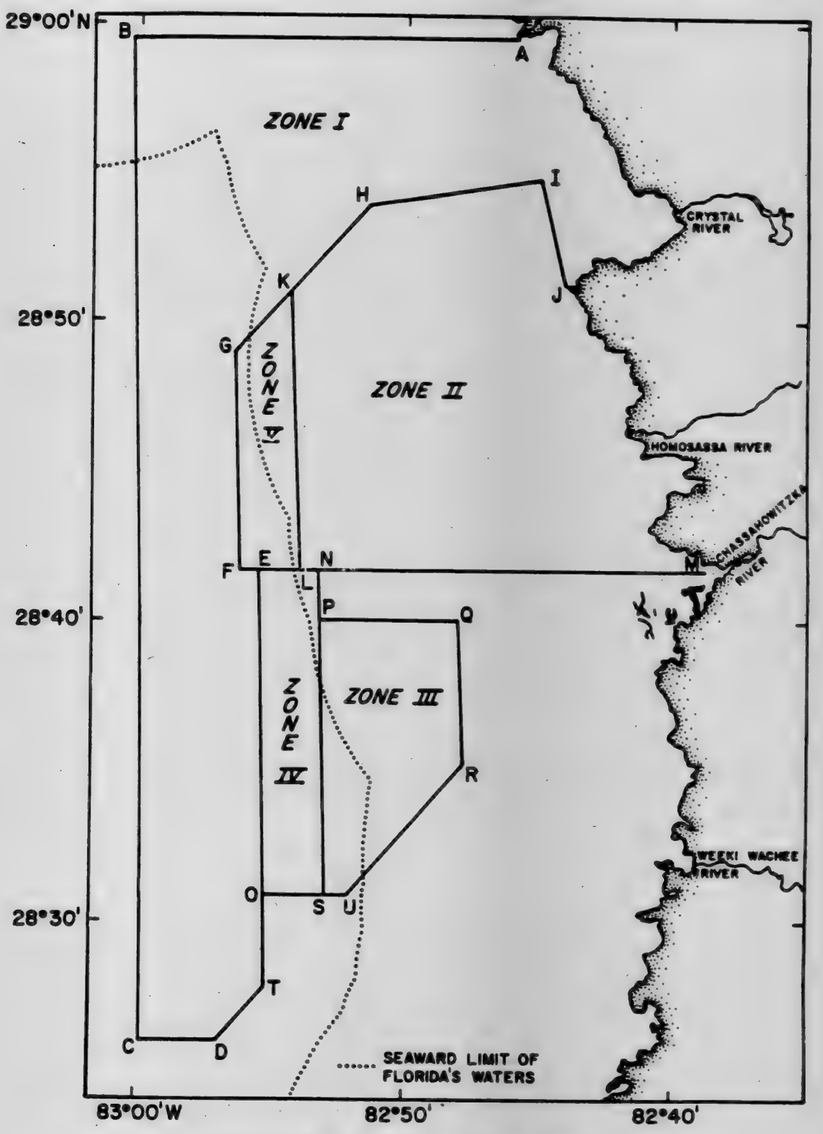

FIGURE 3. SHRIMP/STONE CRAB SEPARATION ZONES

[FR Doc. 95–6334 Filed 3–14–95; 8:45 am]
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Proposed Rules

Federal Register
Vol. 60, No. 50
Wednesday, March 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–94–301]

Table Grapes (European or Vinifera Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Table Grapes (European or Vinifera Type). The proposal would lower the present minimum bunch size as well as provide a separate tolerance for off-size bunches for the U.S. No. 1 Institutional grade only. It would also include a technical update which would correct the variety name "Superior Seedless" to "Sugraone."

DATES: Comments must be postmarked or courier dated on or before May 15, 1995.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, D.C. 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Table Grapes (European or Vinifera Type) will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Table Grapes (European or Vinifera Type) was revised in April 1991. This revision established a new grade, U.S. No. 1 Institutional. This grade—used in sales to restaurant and other food service concerns—provides for grape lots which have very small bunch sizes. In recent years, new marketing and packaging techniques have developed very small, individual consumer size servings of grapes. Under previous grade requirements these "single serving" type grape bunches were too small to meet any U.S. grade. Therefore, the Department developed, at the request of the table grape industry, a separate grade reflecting today's modern marketing and packaging methods for the growing food service market while preserving the integrity of the "regular" fresh pack grades for grapes sold to consumers in supermarkets and other retail outlets. Thus, grades for two different types of pack could be contained in one standard allowing the grades to share common characteristics while at the same time maintaining grades for two distinct types (packs) of table grapes.

This proposed revision concerns only the institutional pack and not the "regular" fresh pack grades. Growers and shippers of the institutional pack type table grape represented by the California Grape and Tree Fruit League (CGTFL) have requested a revision to the institutional grade only, to address a new market which is emerging that would utilize extremely small clusters and/or bunches of grapes. According to the CGTFL, these buyers typically want a smaller grouping of grapes than is allowed under the current two ounce minimum bunch size requirement in the institutional grade. As an example, certain restaurant chains presently garnish some of their plates with institutional pack grapes, but must cut the existing small bunches to even smaller clusters of grapes (as little as two berries to a cluster) to fit their particular needs. Changing the minimum bunch requirement on the U.S. No. 1 Institutional grade would allow the industry to develop contract specifications and otherwise use the U.S. grade to satisfy that growing segment of the restaurant and food service industry market that utilizes grapes as a garnish.

Therefore, this proposal would change § 51.885 U.S. No. 1 Institutional to resemble § 51.884 (the format for U.S. No. 1 table) except for the elimination of stragglíness requirements and trimming away of defective berries for bunches. The initial grade requirements will read as follows: "'U.S. No. 1 Institutional' grapes must have no less than 95 percent of the containers in the lot legibly marked 'Institutional Pack.' Further requirements for this grade include grapes which consist of clusters and/or bunches of well developed grapes of one variety, except when designated as assorted varieties, which are at least fairly well colored, uniform in appearance when so specified in connection with the grade, and which meet the following requirements:"

As mentioned above, the requirements will be the same as for U.S. No. 1 table except paragraph (b)(1) "Not Straggly" and (g)(4) "Trimming away of defective berries" will be omitted. Also, paragraphs (h)(2) and (h)(2)(i) will include size requirements for clusters and/or berries:

"(2) For clusters/bunches:

(i) In this grade grapes shall consist of at least a two berry cluster ranging to clusters and/or bunches of grapes not greater than five ounces in weight. See § 51.913."

The present § 51.913, Metric Conversion Table, will be redesignated § 51.914 and a new § 51.913 would be added to define a cluster. Since grape bunches are normally thought of as a series of grapes attached to small lateral stems which are in turn attached to a common main stem, the term bunch does not seem entirely appropriate when referring to two berries which share a common point of attachment. Therefore, for the purpose of the U.S. No. 1 Institutional grade only, § 51.913 shall define a cluster as "two or more berries sharing a common point of attachment."

In addition, Table Ia, Tolerances at Shipping Point for U.S. No. 1 Institutional Only, and Table IIa, Tolerances En Route or at Destination for U.S. No. 1 Institutional Only, would be added. The CGTFL requested that a separate tolerance of four percent be provided for offsize clusters or bunches to maintain the integrity of the grade in relation to size requirements. Presently, Tables I and II combine both the offsize and remaining grade requirements in one tolerance (eight percent for tolerances at shipping point, Table I, and 12 percent for tolerances en route or at destination, Table II). The corresponding new tables, Table Ia and IIa for U.S. No. 1 Institutional grade only, will maintain an eight and twelve percent tolerance, respectively, for remaining grade requirements but would include a separate tolerance of four percent for offsize clusters or bunches.

This proposed rule would also make a technical change which is unrelated to the U.S. No. 1 Institutional grade. Presently, §§ 51.882(i)(1)(ii) and 51.884(i)(1)(i) make reference to "Superior Seedless" as a varietal name. It has been brought to the attention of the Department by representatives of Sunworld International, Inc., California, that "Superior Seedless" is in fact, a registered trademark name and not the varietal name. "Sugraone" according to Sunworld, is the correct varietal name.

Research into this matter by the Department has shown that both the International Union for the Protection of New Varieties of Plants (UPOV) and the Office International de la Vigne et du Vin (OIV), the United States being a signatory of each, as well as the United Nations Economic Commission for Europe (ECE) have determined that "Sugraone" is the actual varietal designation while "Superior Seedless" represents a registered trademark.

Therefore, to maintain proper conformity with these designations, the words "Superior Seedless" will be removed in these sections and will be replaced with "Sugraone."

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

§ 51.882 [Amended]

2. Section 51.882(i)(1)(ii) is amended by removing the words "Superior Seedless" and adding in its place "Sugraone."

§ 51.884 [Amended]

3. Section 51.884(i)(1)(i) is amended by removing the words "Superior Seedless" and adding in its place "Sugraone."

4. Section 51.885 is revised to read as follows:

§ 51.885 U.S. No. 1 Institutional.

"U.S. No. 1 Institutional" grapes must have no less than 95 percent of the containers in the lot legibly marked "Institutional Pack." Further requirements for this grade include grapes which consist of clusters and/or bunches of well developed grapes of one variety, except when designated as assorted varieties, which are at least fairly well colored, uniform in appearance when so specified in connection with the grade, and which meet the following requirements:

(a) Basic requirements for berries:
(1) Mature;
(2) Firm;
(3) Firmly attached to capstem;
(4) Not weak;
(5) Not materially shriveled at capstem;
(6) Not shattered;
(7) Not split or crushed;
(8) Not wet.

(b) Basic requirements for stems: Not weak, or dry and brittle.

(c) Berries free from:
(1) Decay;
(2) Waterberry;
(3) Sunburn.

(d) Stems free from:
(1) Mold;
(2) Decay.

(e) Berries not damaged by: Any other cause.

(f) Bunches not damaged by:
(1) Shot berries;
(2) Dried berries;
(3) Other defective berries;
(4) Any other cause.

(g) Stems not damaged by:
(1) Freezing;
(2) Any other cause.

(h) Size:

(1) For berries: Exclusive of shot berries and dried berries, 75 percent, by count, of the berries on each bunch shall have the minimum diameters indicated for varieties as follows:

(i) Thompson Seedless, Perlette, Delight, Beauty Seedless, Sugraone, Flame Seedless and other seedless varieties nine-sixteenths of an inch.

(ii) Other varieties ten-sixteenths of an inch.

(2) For clusters/bunches:

(i) In this grade grapes shall consist of at least a two berry cluster ranging to clusters and/or bunches of grapes not greater than five ounces in weight. See Section 51.913.

(ii) For tolerances see § 51.886.

5. Section 51.886 is amended by revising paragraph (b) and adding a new paragraph (c) and Tables Ia and IIa to read as follows:

§ 51.886 Tolerances.

(a) * * *

(b) In order to allow for variations incident to proper grading and handling in each of the foregoing grades except U.S. No. 1 Institutional, tolerances, by weight, other than for maturity, are provided as set forth in Tables I and II of this section.

* * * * *

(c) In order to allow for variations incident to proper grading and handling in the U.S. No. 1 Institutional grade only, tolerances, by weight, other than for maturity, are provided as set forth in Tables Ia and IIa of this section.

TABLE Ia.—TOLERANCES AT SHIPPING POINT FOR U.S. NO. 1 INSTITUTIONAL GRADE ONLY[1]

[Percent]

Factor	U.S. No. 1 institutional
(A) For clusters/bunches failing to meet color requirements	10
(B) For clusters/bunches failing to meet requirements for minimum diameter of berries	10
(C) For offsize clusters/bunches	4
(D) For clusters/bunches and berries failing to meet the remaining requirements for the grade	8
Including in (D):	
(a) For Serious damage and, including in (a)	2
(i) For Decay	1/2 of 1

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TABLE IIa.—TOLERANCES EN ROUTE OR AT DESTINATION FOR U.S. NO. 1 INSTITUTIONAL ONLY

Factor	U.S. No. 1 institutional
(A) For clusters/bunches failing to meet color requirements	10
(B) For clusters/bunches failing to meet requirements for minimum diameter of berries	10
(C) For offsize clusters/bunches	4
(D) For clusters/bunches and berries failing to meet the remaining requirements for the grade	12
Including in (D):	
(a) For permanent defects	8
(b) For serious damage and, including in (b)	4
(i) For serious damage by permanent defects	2
(ii) For decay	1

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

§ 51.913 [Redesignated as § 51.914]

6. In Part 51, Subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type), § 51.913 is redesignated as § 51.914 and a new § 51.913 is added to read as follows:

§ 51.913 Clusters.

"Clusters" as used in these standards in reference to the U.S. No. 1 Institutional grade only shall be defined as two or more berries sharing a common point of attachment.

Dated: March 9, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–6367 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1940

RIN 0575–AB56

Environmental Program

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Agencies propose to revise their Environmental regulation. This action is necessary to streamline the environmental review process. The intended effect of this action is to provide guidance on sending individual copies of notices to affected property owners when utility systems are involved.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Regulations Analysis and Control Branch, Rural Economic and Community Development, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250–0700.

FOR FURTHER INFORMATION CONTACT: Donald O. Lander, Senior Environmental Protection Specialist, Environmental Support Branch, Program Support Staff, Rural Housing and Community Development Service, U.S. Department of Agriculture, Room 6309, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250–0700; telephone (202) 720–9619.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action".

Intergovernmental Consultation

This rule affects the following Agency programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

10.760—Water and Waste Disposal Systems for Rural Communities
10.762—Solid Waste Management Grants
10.763—Emergency Community Water Assistance Grants
10.766—Community Facilities Loans
10.770—Water and Waste Disposal Loans and Grants (Section 306C)

Executive Order 12372 requires intergovernmental consultation with State and local officials. Of the FmHA programs affected by this rule, the following are subject to the provisions of Executive Order 12372: 10.760, 10.763, 10.766, and 10.770.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program. Therefore a regulatory flexibility analysis was not prepared.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of the Agencies that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in Section 2 of the Executive Order.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agencies have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0094 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection or recordkeeping requirement from those imposed by OMB.

Background

Section 1940.331 describes the public notice requirements for actions undergoing an environmental review by the Agencies.

In § 1940.331(b)(4) there has been confusion about identifying the names and mailing addresses of individual property owners who may be affected by a project when large areas of important land resources may be affected. This confusion has caused delays and added expense in the preparation and review of Class I and Class II environmental assessments for those projects.

The regulation is proposed to be revised to allow the State Environmental Coordinator to select the methods for notifying affected property owners, and to provide examples of some other methods that may be considered.

List of Subjects in 7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National Wild and Scenic Rivers System, Natural resources, Recreation, Water supply.

Accordingly, the Agencies propose to amend chapter XVIII, title 7, Code of Federal Regulations as follows.

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart G—Environmental Program

2. Section 1940.331 is amended by revising paragraph (b)(4) to read as follows:

1940.331 Public involvement.

* * * * *

(b) * * *

(4) The public notice procedures for actions that will affect floodplains, wetlands, important farmland, prime rangelands, or prime forest lands are contained in exhibit C of this subpart. These procedures apply to actions that require either an EIS, Class II assessment or Class I assessment. However, whenever an action normally classified as a categorical exclusion requires a Class I assessment because of a potential impact to one of these important land resources, no public notice procedures apply in the course of completing the Class I assessment. When applicable to an action, as specified in exhibit C of this subpart, these public notice procedures can apply at two distinct stages. The first stage, a preliminary notice, is followed by a 30 day public review period, and applies to actions that may impact any of the five important land resources. The second stage, a final notice, is followed by a fifteen-day public review period, and applies only to actions that will impact floodplains or wetlands. For Class II actions, this final notice procedure must be combined with any applicable finding of no significant environmental impact, which is described in paragraph (b)(3) of this section. Individual copies of the preliminary and final notices will be sent to the same parties that are required to be sent a notice of a finding of no significant impact, as specified in paragraph (b)(3) of this section, with the following exceptions:

(i) Whenever property owners affected by proposed mitigation measures, such as proposed hook-up restrictions on portions of water or sewer lines that will traverse floodplains, are advised of these proposed mitigation measures in a preliminary notice, these property owners need not be sent copies of the final notice as long as the mitigation measures in the final notice are unchanged from the preliminary notice and no property owners raised objections or concerns over the proposed mitigation measures.

(ii) With respect to utility systems, notification of affected property owners will normally be achieved by distributing an individual copy of the public notice. However, when the SEC determines that this method would result in an excessive burden on the applicant, notification may be achieved by another method or a combination of methods tailored to the specific needs of the particular case. For example, in lieu of being individually identified, affected property owners may be notified by a mass mailing to all of the taxpayers in each of the taxing areas through which the system will pass. On the other hand, if the system traverses coterminous taxing areas, with the smaller area not completely describing the service area of the utility system, affected property owners might be notified by a mass mailing to the small taxing area plus identifying the remaining affected property owners to receive an individual copy. The objective is to notify all property owners affected by the action and offer them an opportunity to comment on the action. If affected property owners are not individually notified, the SEC shall document as part of the environmental review file, why individual notification is not being used and what other methods will be used to achieve the stated objective.

* * * * *

Dated: February 27, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–6366 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–07–U

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–014–1]

Horses From the United Arab Emirates; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of horses to remove the United Arab Emirates from the list of countries in which African horse sickness exists. We believe that the United Arab Emirates is free of African horse sickness, and that restrictions on the importation of horses from the United Arab Emirates to prevent the spread of African horse sickness into the United States are no longer necessary. This action would relieve unnecessary restrictions on the importation of horses from the United Arab Emirates.

DATES: Consideration will be given only to comments received on or before March 30, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–014–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 95–014–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, Import/Export Products, 4700 River Road Unit 40, Riverdale, MD 20737–1228.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) state the provisions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS, a fatal equine viral disease, is not known to exist in the United States. Section 92.308(a)(2) of the regulations lists countries that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS, and sets forth specific requirements for horses which are imported from those countries. APHIS requires horses intended for importation from any of the countries listed, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days.

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The United Arab Emirates (UAE) has applied to the United States Department of Agriculture to be recognized as free from AHS. The UAE's last diagnosed case of AHS was over 29 years ago. The UAE has been testing horses for AHS. Additionally, they have an active surveillance program to monitor for AHS.

APHIS has reviewed the documentation submitted by the Government of the UAE in support of its request. APHIS officials also performed on-site inspections of the UAE's surveillance program and veterinary infrastructure. APHIS officials reviewed the qualifications of the UAE's veterinarians, microbiologists, and histopathologists. APHIS officials inspected the virology, parasitology, and bacteriology lab facilities at the Central Veterinary Research Laboratory in Dubai. Additionally, APHIS officials evaluated the UAE's import-export practices, including airports, border crossings, and quarantine facilities. The airports and border crossings are tightly controlled with adequate fencing and other physical barriers to control entry into the UAE. The APHIS officials conducting the on-site evaluation concluded that the veterinary infrastructure, laboratory facilities, and import-export practices are effective and contribute to the AHS-free status of the UAE.

Based on the information discussed above, we believe that the UAE qualifies for removal from the list of countries, in § 92.308(a)(2) of the regulations, which APHIS considers affected with AHS. This proposed action would relieve restrictions which require horses imported from the UAE to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This proposed action would allow horses from the UAE to be shipped to and quarantined at ports designated in § 92.303, and would reduce the quarantine period to an average of 3 days to meet the quarantine and testing requirements specified in § 92.308.

Comment Period

The Administrator of the Animal and Plant Health Inspection Service has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. U.S importers have requested that this rulemaking be completed in time to allow them to import horses from the UAE for this year's Kentucky Derby, to be held May 6, 1995. The comment period would allow the agency to promulgate and implement a final rule on an expedited basis. Prompt implementation of a final rule would facilitate the importation of horses by removing unnecessary quarantine restrictions. Removing the UAE from the list of AHS countries would significantly reduce the quarantine period for horses imported from the UAE. Additionally, this proposal would allow more flexibility in the ports used for the importation of horses from the UAE, making the importation of horses from the UAE logistically easier.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The primary impact of this proposal will be on U.S. importers of horses from the UAE. The horses imported from the UAE tend to be higher-valued, purebred horses. These horses are worth 10 to 20 times more than the average price per horse from the rest of the world. Few, if any, of these importers can be considered a small entity. These importers will no longer be required to quarantine horses from the UAE for 60 days at the New York Animal Import Center in Newburgh, NY. The proposed rule would allow horses from the UAE to be shipped to and quarantined at ports designated in § 92.303, and would reduce the quarantine and testing period to an average of three days to meet quarantine requirements specified in § 92.308.

While no horses are reported in the "Foreign Agricultural Trade of the United States" as being imported directly from the UAE, we believe that each year an average of 10 to 20 horses are imported indirectly from the UAE through Europe. Removing the requirement for a 60-day quarantine at the New York Animal Import Center in Newburgh, NY, for horses from the UAE will make the importation of these horses less expensive and logistically easier. We anticipate that the number of horses imported from the UAE may slightly increase. We estimate approximately 50 to 100 horses may be imported per year, though some of these horses will only be temporarily imported to the United States for particular events, and then transported back to the UAE. With the very small number of horses imported from the UAE, we anticipate the overall economic impact on businesses and individuals would be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) would be amended by removing "the United Arab Emirates,".

Done in Washington, DC, this 9th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6373 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–2]

Proposed Amendment to Class E Airspace; Luke Air Force Base (AFB), AZ and Class D Airspace; Glendale, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Luke AFB, AZ, and Class D airspace at Glendale, AZ due to the relocation of the Luke AFB TACAN. The effect of this proposal is to provide adequate Class E and Class D airspace for instrument flight rules (IFR) operations at Luke AFB, AZ, and Glendale, AZ.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–2, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made. "Comments to Airspace Docket No. 95–AWP–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 1500 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace area at Luke AFB, AZ, and Class D airspace area at Glendale, AZ. The relocation of the Luke AFB TACAN has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E and Class D airspace for aircraft executing instrument approach procedures at Luke AFB, AZ, and Glendale, AZ. Class E and Class D airspace designations are published in paragraphs 6002 and 5000 of FAA Order 7400.9B, dated July 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E and Class D airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

* * * * *

AWP AZ E2 Phoenix, Luke Air Force Base, AZ [Revised]

Phoenix Luke Air Force Base, AZ
(Lat. 33°32'06" N, long. 112°22'59" W)
Luke Air Force Base TACAN
(Lat. 33°32'16" N, long. 112°22'49" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.4-mile radius of the Luke AFB and within 2 miles each side of the Luke TACAN 220° radial, extending from the 4.4-mile radius to 5.2 miles southwest of the Luke TACAN, excluding that portion within the Glendale, AZ Class D airspace area. This Class E airspace area is effective during the

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specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000 Class D Airspace

* * * * * *

AWP AZ D Glendale, AZ [Revised]

Glendale Municipal Airport, AZ
(Lat. 33°31'38" N, long. 112°17'42" W)

That airspace extending upward from the surface to including 3,100 feet MSL within a 3-mile radius of the Glendale Municipal Airport excluding that portion west of a line beginning at lat. 33°29'00" N, long. 112°19'26" W; to lat. 33°29'29" N, long. 112°19'29" W; to lat. 33°33'24" N, long. 112°18'04" W; to lat. 33°34'32" N, long. 112°16'43" W. This class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Los Angeles, California, on March 3, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95-6381 Filed 3-14-95; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consist of revisions to Title 26, Chapter 4, Subchapters 3 through 12 of the Administrative Rules of Montana (ARM). The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency

This document sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.s.t. April 14, 1995. If requested, a public hearing on the proposed amendment will be held on April 10, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 30, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Gary Amestoy, Administrator, Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, (406) 444-2074.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Proposed Amendment

By letters dated February 1, 1995, and February 28, 1995, Montana submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record Nos. MT-12-01 and MT-12-05, State Program Amendment Tracking System (SPATS) No. MT-003-FOR). Montana's proposed amendment consist of changes to the Montana program as required by 30 CFR 926.16; in response to program deficiency letters from OSM dated April 29, 1985, May 11, 1989, and March 29, 1990; and on its own initiative. The Montana proposed amendment consists of changes to Title 26, Chapter 4, Subchapters 3 through 12 of the State's ARM. The proposed revisions and rule changes are located at: ARM 26.4.301, definitions; ARM 26.4.304, legal, financial, compliance related information; ARM 26.4.304, baseline information for environmental resources; Arm 26.4.308, operation plans; ARM 26.314, plans for protection of the hydrologic balance; ARM 26.4.321, transportation facilities plans; ARM 26.4.304, review of applications; ARM 26.4.405, findings and notices of decision; ARM 26.4.405A, improvidently issued permits general requirements; ARM 26.4.405B, improvidently issued permits: revocation; ARM 26.4.407, conditions of permits; ARM 26.4.410, permit renewal; ARM 26.4.501A, final grading requirements; ARM 26.4.505, burial and treatment of waste materials; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.524, signs and markers; ARM 26.4.601, general requirements for road and railroad loop construction; ARM 26.4.602, location of roads and railroad loops; ARM 26.4.603, embankments; ARM 26.4.605, Hydrologic impacts of roads and railroad loops; ARM 26.4.623, blasting schedules; ARM 26.4.633, water quality performance standards; ARM 26.4.634, reclamation of drainages; ARM 26.4.638, sediment control measures; ARM 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.642, permanent and temporary impoundments; ARM 26.4.645, ground water monitoring; ARM 26.4.646, surface water monitoring; ARM 26.4.702, redistribution and stockpiling of soil; ARM 26.4.711, establishment of vegetation; ARM 26.4.711, eradication of rills and gullies; ARM 26.4.724, use of revegetation comparison standards; ARM 26.4.726, vegetation production, cover, diversity, density, and utility requirements; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.825, alternate reclamation: Alternate revegetation; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.930, placement and disposal of coal processing waste: special application requirements; ARM

26.4.923, disposal of coal processing waste; ARM 26.4.1001, permit requirements; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1002, information and monthly reports; ARM 26.4.1005, drill holes; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.107, grading, soil salvage, storage, and redistribution; ARM 26.4.1009, diversions; ARM 26.4.1011, hydrologic balance; ARM 26.4.1014, test pits: application requirements, review procedures, bonding and additional performance standards; ARM 26.4.1116, bonding: criteria and schedule for release of bond; ARM 26.4.1116A, reassertion of jurisdiction; ARM 26.4.1141, designation of lands unsuitable; ARM 26.4.1206, notices, orders of abatement and cessation orders: issuance and service; and ARM 26.4.1212, point system for civil penalties and waivers.

Specifically, Montana proposes to:

—Revise ARM 26.4.301 to add the definitions of "Owned or controlled" and "Waste disposal structure;" to modify the definition of "Test pit;" and to recodify the numbering of definitions affected by this action.
—Revise ARM 26.4.303 to require new information on ownership and control, and status of violations in the permit application requirements.
—Revise ARM 26.4.304 to clarify baseline informational needs regarding groundwater and surface water resources in the permit application.
—Revise ARM 26.4.308 to require cross sections, design drawings, and other specifications for other support facilities.
—Revise ARM 26.4.314 to provide a list of considerations when summarizing the probable hydrologic consequences of the proposed mining operation.
—Revise ARM 26.4.321 to demonstrate that transportation facilities are in compliance with performance standards.
—Revise ARM 26.4.404 to identify under what situations the department would conditionally issued a permit.
—Revise ARM 26.4.405 to require the applicant to provide any new information regarding ownership/control and violations prior to making a decision to approve the permit application.
—Provide new rule requirements at ARM 26.4.405A to allow the department to consider, if it has reason to believe, that a permit has been improvidently issued.
—Provide new rule requirements at ARM 26.4.405B concerning revocation of an improvidently issued permit.
—Revise ARM 26.4.407 to require certain information from the permittee when a cessation order has been issued.
—Revise ARM 26.4.410 to clarify when a permit need not be renewed.
—Revise ARM 26.4.501A to require that grading and backfilling may not be more than four rather than two spoil ridges behind the pit being worked.
—Revise 26.4.505 concerning waste disposal structure location, design criteria, and inspection requirements.
—Revise 26.4.519A to delete the requirement that all highwalls and depressions must be eliminated when mining in thick overburden.
—Revise ARM 26.4.524 to require identification of the mine safety and health administration number and contractor identification (if applicable) on mine area access signs.
—Revise ARM 26.4.601 to require a report that roads have been constructed or reconstructed in accordance with the approved plan.
—Revise ARM 26.4.602 to identify when stream fords can be used.
—Revise ARM 26.4.603 to remove the ability for a registered land surveyor to design and certify embankments and require all embankments to have a minimum seismic safety factor of 1.2.
—Revise ARM 26.4.605 to require that all roads used to haul coal or spoil or be retained in the post mining land use, must meet certain design criteria for water-control structures.
—Revise ARM 26.4.623 to allow the department to impose more restrictive conditions when explosives are to be detonated.
—Revise ARM 26.4.633, to correct an incorporated cite regarding revegetation performance requirements as related to sediment control through BTCA practices.
—Revise ARM 26.4.634 to clarify drainage systems/drainage channel reclamation requirements and when detailed reclamation plans prior to reclaiming a drainage channel is required.
—Revise ARM 26.4.638 to correct an incorporated citation on revegetation performance standards in relation to sedimentation control measures.
—Revise ARM 26.4.639 to allow for a single spillway in the construction of sedimentation ponds, provide design criteria/size relationship when a spillway is not needed, require that a sediment pond constructed per 30 CFR 77.216(a) must meet certain spillway discharge standards, and delete certain requirement before a sedimentation pond can be removed.
—Revise ARM 26.4.642 to clarify when inspection reports are needed for dams and embankments.
—Revise ARM 26.4.645 and .646 to require that sampling and water quality analysis be conducted in accordance with "Circular WOB-7, Montana Numeric Water Quality Standards."
—Revise ARM 26.4.702 to require the determination of the physicochemical nature of surficial spoil material in soil prior to redistribution and to scarify soil to a minimum 12-inch depth when replaced.
—Revise ARM 26.4.711 to require consultation and approval by certain State agencies concerning cover, planting, and stocking of vegetation on certain land uses.
—Revise ARM 26.4.721 to require treatment of rills and gullies under certain conditions.
—Revise ARM 26.4.724 to delete special success of revegetation considerations on operations of less than 100 acres.
—Revise ARM 26.4.726 to require "live" vegetative cover.
—Revise ARM 26.4.821 to allow technical standards derived from historical data for comparison when releasing bond for alternate revegetation areas.
—Revise ARM 26.4.825 to specify what performance standard criteria is to be used on special use pasture.
—Revise ARM 26.4.924 to clarify the applicability for use of waste disposal structures plus design criteria that must be met.
—Revise ARM 26.4.927 to require that durable rock fills meet a minimum safety factor of 1.5, rather than this minimum factor at the end of construction.
—Revise ARM 26.4.930 to provide design information and impoundment operation, demonstration of compliance with performance standards, results and analysis of geotechnical investigations, stability analysis, and description assumptions/calculations of design options and considerations in selection of specific design parameters for coal processing waste impoundments.
—Revise ARM 26.4.932 to clarify the inspection requirements for coal processing waste disposal areas.
—Revise ARM 26.4.1001 to clarify that a prospecting permit will be required when areas designated as unsuitable for mining are involved; that ethnological values, pits and disposal areas for extracted materials, and roads/access routes must be identified; that the yearly prospecting permit is subject to renewal,

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suspension, and revocation; and that a copy of the permit must be available for review by the department upon request.

—Provide new rule requirements at ARM 26.4.1001 for filing of a notice of intent to prospect.

—Revise ARM 26.4.1002 to clarify informational requirements and report requirements concerning prospecting activities.

—Revise ARM 26.4.1005 to specify requirements for treatment of drill holes upon completion of exploration when circulation is not lost and detail description requirements for wells and drill holes that are to be retained after exploration.

—Revise ARM 26.4.1006 to include consideration and performance requirements for other transportation facilities involved in prospecting.

—Revise ARM 26.4.1007 to require that excavations or embankments created during prospecting must be reclaimed to the approximate original contour.

—Revise ARM 26.4.1009 to require that diversions needed in prospecting, meet applicable performance standards at ARM 26.4.635 and .636.

—Revise ARM 26.4.10011 to require that the prevailing hydrologic balance in prospecting be minimized in accordance with ARM 26.4.631 through .634 and .638 through .651.

—Revise ARM 26.4.1014 to demonstrate that a test pit is necessary and include such information as the name of the firm doing the testing, types of tests, amount of mineral needed, that sufficient reserves are available for future markets, and why other means of prospecting are not adequate to determine feasibility.

—Revise ARM 26.4.1116 to incorporate revegetation performance standards that need to be met for bond release.

—Provide new rule at ARM 26.4.1116A to allow the department reassertion of jurisdiction.

—Revise ARM 26.4.1141 to correct the definition of "national" to "natural" hazard lands.

—Revise ARM 26.4.1206 to require the department to notify owners and controllers that a cessation order or noncompliance notice has been issued the mining operation.

—Revise ARM 26.4.1212 to clarify when a violation must be counted in the "history of recent violations" review during the assessment of penalties.

II. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. March 30, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(1)), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 8, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–6302 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to permit application requirements and normal husbandry practices and Utah's "Vegetation Information Guidelines." The amendment is intended to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. April 14, 1995. If requested, a public hearing on the proposed amendment will be held on April 10, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 30, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Utah Coal Regulatory Program, Division of Oil, Gas, and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated February 6, 1995, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–1025). Utah submitted the proposed amendment at its own initiative. Utah proposes to revise its Coal Mining Rules at Utah Administrative (Utah Admin. R.) 645–301–321.100 and .200, 645–301–322.332, and 645–301–342.352, concerning permit application requirements, and Utah Admin. R. 645–301–357.300 through 365, concerning normal husbandry practices. Utah also proposes to revise its "Vegetation Information Guidelines," concerning a Bibliography of referenced publications for the proposed normal husbandry practices.

Specifically, Utah proposes to revise Utah Admin. R. 645–301–321.100 and .200, 645–301–322.332, and 645–301–342.352 by adding the terms "surface coal mining and reclamation activities" and/or "underground coal mining and reclamation activities;" Utah Admin. R. 645–301–357.300 by deleting existing general information concerning Utah's authority to approve selective husbandry practices; and Utah Admin. R. 645–301–357.301 through .365 by adding, as proposed normal husbandry practices, (1) Limited reseeding or replanting of trees or shrubs, (2) chemical, mechanical , and biological weed control and associated revegetation, (3) control of pests including big game, small mammals, and insects, (4) reseeding and/or replanting as a result of third-party interference or natural disasters, excluding climatic variation and including vandalism which is not caused by any lack of planning, design, or implementation of the mining and reclamation plan, wildfires, earth quakes, and mass movement originating outside the disturbed area, (5) limited irrigation, and (6) limited repair of highly erodible areas and rills and gullies. Utah also proposes to revise its "Vegetation Information Guidelines" by adding Appendix C, a bibliography of referenced publications supporting the proposed normal husbandry practices.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 30, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish

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to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–6301 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense proposes to exempt a system of records identified as DGC 16, entitled Political Appointment Vetting Files.

The DoD General Counsel performs suitability screening of individuals seeking, or who have been recommended for, non-career positions within the DoD.

EFFECTIVE DATE: Comments must be received no later than May 15, 1995, to be considered by the agency.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The DoD General Counsel performs suitability screening of individuals seeking, or who have been recommended for, non-career positions within the DoD. Confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. During the screening process, investigatory material is compiled for the purpose of determining the suitability of candidates for Schedule 'C' positions, taking character, security and other personal suitability factors into account. This exemption is limited to disclosures that would reveal the identity of a confidential source.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 311.7, paragraph (c)(1) is added as follows:

§ 311.7 Procedures for exemptions.

* * * * *

c. *Specific exemptions.* * * *

(1) *System identifier and name*--DGC 16, Political Appointment Vetting Files.

Exemption. Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source.

* * * * *

Dated: March 7, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6422 Filed 03–14–95; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–10–1–5937b; FRL–5172–3]

Approval and Promulgation of Implementation Plan: Louisiana 1990 Base Year Ozone Emissions Inventories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the 1990 base year ozone emission inventories submitted by Louisiana for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for ozone. The inventories were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area (NAA) ozone State Implementation Plan (SIP) for the Baton Rouge and Calcasieu Parish areas of Louisiana.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 14, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Guy Donaldson, Acting Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert R. Sherrow, Jr., Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7237.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of the **Federal Register**.

Dated: March 3, 1995.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 95–6300 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 60

[AD-FRL–5172–6]

RIN 2060–AC62

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators; Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public hearing to allow interested parties the opportunity to offer oral testimony on recently proposed air emission standards and guidelines for medical waste incinerators (MWI's).

DATES: *Public Hearing.* The public hearing will be held on March 28, 1995, beginning at 9:00 a.m. Eastern Standard Time. If necessary, the hearing will continue on March 29, 1995 to allow all parties the opportunity to speak.

Request to Speak at Hearing. Persons wishing to present oral testimony at the public hearing must call Ms. Julia Latta at (919) 541–5578 on or before March 22, 1995.

ADDRESSES: The public hearing will be held at the Best Western Olde Colony Inn, 625 First Street, Alexandria, Virginia, telephone (703) 548–6300. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Julia Latta, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland at (919) 541–5265 or Mr. Fred Porter at (919) 541–5251, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On February 27, 1995 standards of performance limiting air pollution emissions from new MWI's and emission guidelines initiating State action to reduce air pollution from existing MWI's were proposed in the **Federal Register** (60 FR 10654). In the February 27 document, the EPA stated that a public hearing would be held in the Washington, D.C. area in mid- to

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late-March 1995. The purpose of the public hearing is to allow interested parties an opportunity to offer oral testimony on the proposed standards and guidelines for MWI's. The purpose of this notice is to provide specific information regarding the date, time, and location of the public hearing. The hearing is open to the public. Seating will be on a first-come, first-served basis. Speakers are asked to limit their testimony to 15 minutes.

Dated: March 6, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–6389 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5169–8]

Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant delegation of authority to the State of Utah to implement and enforce five National Emission Standards for Hazardous Air Pollutants (NESHAP) for radionuclides. The Governor of Utah requested delegation from EPA Region VIII in a letter dated June 4, 1993. In the final rules section of this **Federal Register**, EPA is approving the State of Utah's request for delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. EPA's rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 14, 1995.

ADDRESSES: Written comments should be submitted to Patricia D. Hull, Director, Air, Radiation & Toxics Division, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and concurrently to Russell A. Roberts, Director, Division of Air Quality, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114–4820. Copies of State of Utah's submittal are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: T. Scott Whitmore at (303) 293–1758.

SUPPLEMENTARY INFORMATION: See the information provided in the final action which is located in the final rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Intergovernmental relations, Radiation protection.

Authority: 42 U.S.C. 7412.

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 95–5977 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8F3658/P605; FRL–4936–5]

RIN 2070–AC18

Pesticide Tolerances for Triasulfuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish permanent tolerances for residues of the herbicide triasulfuron, [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea], in or on barley and wheat grain at 0.02 part per million (ppm); barley and wheat straw at 2.0 ppm; barley and wheat forage at 5.0 ppm; meat, fat, and meat byproducts (excluding kidney) of cattle, goats, hogs, horses, and sheep at 0.1 ppm; kidney of cattle, goats, horses, and sheep at 0.2 ppm; and milk at 0.02 ppm. Ciba-Geigy has fulfilled certain testing requirements, and EPA proposes to change to permanent tolerances the current time-limited tolerances.

DATES: Comments, identified by the document control number [PP 8F3658/P605], must be received on or before April 14, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 13, 1992 (57 FR 8844), EPA issued a final rule which established tolerances for residues of the herbicide triasulfuron, [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea], in or on barley and wheat grain at 0.02 ppm; barley or wheat forage at 5.0 ppm; barley and wheat straw at 20 ppm; meat, fat, and meat byproducts (excluding kidney) of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and milk at 0.02 ppm, with an expiration date of March 13, 1995. In the **Federal Register** of August 31, 1994 (59 FR 44931), the Agency issued a notice extending these tolerances until March 13, 1996. These tolerances with an expiration date were required by EPA to allow the petitioner, Ciba-Geigy Corp., to submit additional data required for environmental fate and groundwater, and to allow the Agency to complete the regulatory assessment of EPA's scientific findings. The petitioner has submitted all the required data. The Agency has completed the regulatory assessment of the data and determined that adequate work has been done to fulfill these requirements. EPA is preparing to amend 40 CFR 180.459 to establish permanent tolerances on the wheat, barley, and animal commodities.

Based on the information cited above and in the document establishing the time-limited tolerances for triasulfuron (57 FR 8844, March 13, 1992 and 59 FR 44931, August 31, 1994), EPA has determined that when used in accordance with good agricultural practice, this ingredient is useful and that the tolerances will protect the public health. Therefore, EPA is proposing to establish permanent tolerances as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8F3658/P605]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.459, to read as follows:

§ 180.459 Triasulfuron; tolerances for residues.

Tolerances are established for residues of the herbicide triasulfuron, [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea] in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, forage	5.0
Barley, grain	0.02
Barley, straw	2.0
Cattle, fat	0.1
Cattle, kidney	0.2
Cattle, mbyp (except kidney)	0.1
Cattle, meat	0.1
Goats, fat	0.1
Goats, kidney	0.2
Goats, mbyp (except kidney)	0.1
Goats, meat	0.1
Hogs, fat	0.1
Hogs, kidney	0.2
Hogs, mbyp (except kidney)	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, kidney	0.2
Horses, mbyp (except kidney)	0.1
Horses, meat	0.1
Milk	0.02
Sheep, fat8	0.1
Sheep, kidney	0.2
Sheep, mbyp (except kidney)	0.1
Sheep, meat	0.1
Wheat, forage	5.0
Wheat, grain	0.02
Wheat, straw	2.0

[FR Doc. 95–6417 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4359/P604; FRL–4936–3]

RIN 2070–AC18

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodities lentils, lentil forage, and lentil hay. The proposed regulation to establish maximum permissible levels for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number, [PP 4E4359/P604], must be received on or before April 14, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 4E4359 to EPA on behalf of the Agricultural Experiment Stations of Idaho and Washington. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.205 by establishing tolerances for residues of paraquat (1,1'-dimethyl-4,4'-

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bipyridinium-ion) derived from application of either the bis (methyl sulfate) or the dichloride salt (both calculated as the cation), in or on the raw agricultural commodities lentils at 0.3 part per million (ppm), lentil forage at 0.1 ppm, and lentil hay at 0.4 ppm.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year feeding study in dogs fed diets containing 0, 15, 30, and 50 ppm (equivalent to 0, 0.45, 0.93, and 1.51 milligrams/kilogram (mg/kg) of body weight (bwt) day with a no-observed-effect level (NOEL) of 15 ppm (0.45 mg/kg/day) based on increased severity and extent of chronic pneumonitis in both sexes, especially males, at the 30-ppm dose level.

2. A 23-month chronic feeding/carcinogenicity study in mice fed diets containing 12.5, 37.5, and 100/125 ppm paraquat ion (the highest dose tested (HDT) was increased from 100 to 125 ppm at week 36) with a systemic NOEL of 12.5 ppm (equivalent to 1.87 mg/kg/day) based on renal tubular degeneration in male mice, and weight loss and decreased food intake in female mice. There were no carcinogenic effects observed under the conditions of the study.

3. A 2-year chronic feeding/carcinogenicity study in Fischer rats fed diets containing 0, 1.25, 3.75, and 7.5 mg/kg/day with equivocal (uncertain) evidence of carcinogenicity (squamous cell carcinomas) in the head region (ear, nasal cavity, oral cavity, and skin) of male rats of the highest dose level group, and an approximate systemic NOEL of 1.25 mg/kg/day based on incidence of opacities, cataracts, and nonneoplastic lung lesions (alveolar macrophages and epithelialization and slight peribronchiolar lymphoid hyperplasia). The squamous cell carcinomas were not associated with oral exposure, but were the result of topical exposure (through powdered diet).

4. A 2-year chronic feeding/carcinogenicity study in Wistar rats fed diets containing 6, 30, 100, and 300 ppm (paraquat dichloride) with a systemic NOEL of 100 ppm (equivalent to 5 mg/kg/day) based on increased mortality in males and females; decreased erythrocytes, hemoglobin, and serum protein in males and females; decreased hematocrit, glucose and corpuscular cholinesterase activity in males; decreased leukocytes, albumin-to-globulin ratio, and alkaline phosphatase; increased polymorphonucleocytes in males; increased potassium and glucose in females; decreased absolute and/or relative weights of heart (males and females), liver and brain (females); and increased absolute weights of kidneys (males and females) at the highest dose tested (HDT) (equivalent to 15 mg/kg/day). There was no evidence of carcinogenicity observed under the conditions of the study.

5. A developmental toxicity study in rats given gavage dosages of 1, 5, and 10 mg paraquat ion/kg of body weight from day 6 through day 15 of pregnancy with NOEL's for fetotoxic effects and maternal toxicity of 1.0 mg/kg/day. The lowest effect level (LEL) was established at 5 mg/kg/day based on weight reduction and slight retardation in ossification (fetotoxicty) and piloerection, weight loss, and hunched appearance (maternal toxicity).

6. A developmental toxicity study in mice given gavage dosages of 1, 5, and 10 mg/kg/day with no developmental toxicity observed under the conditions of the study at any dosage level tested.

7. A three-generation reproduction study with rats fed diets containing 25, 75, and 150 ppm with a systemic NOEL of 25 ppm (equivalent to 1.25 mg/kg/day) based on an increased incidence of alveolar histiocytosis in the lungs of male and female parents. There were no reproductive effects observed under the conditions of the study.

8. Paraquat was negative in 10 mutagenicity studies (mostly gene mutation and chromosome aberration studies and one DNA damage/repair assay); weakly positive in four studies (two gene mutation, one chromosome aberration, and one DNA damage/repair assay); and positive in four studies (all DNA damage/repair assays).

The Agency (Peer Review Committee) initially classified paraquat as a category "C" carcinogen based on the significant increase of squamous cell carcinomas in the head region of the high-dose males in the Fisher rat chronic feeding/carcinogenicity study. Review of the study by an independent laboratory concluded that those tumor sites should not be combined; without the combination, there were no statistically significant tumor increases for any particular tumor type. Discussion and review by the Agency (Peer Review Committee) concluded that these tumor sites normally should not be combined when the exposure to the chemical is by the oral route and that these tumors are likely the result of topical exposure to paraquat contained in the powdered diet (paraquat is a topical irritant), not the result of exposure through the gastrointestinal tract. The Agency considered two additional studies (rat and mouse carcinogenicity studies) and further evaluated the tumors in the male rats. Based on all the information, the Agency concluded that there is no evidence of carcinogenicity in male Wistar rats at 12 mg/kg/day (HDT) and female Wistar rats at 15 mg/kg/day. The Agency concluded that there was at best equivocal evidence of carcinogenicity in male Fisher rats at 7.5 mg/kg/day and that this equivocal evidence was associated with irritation due to topical exposure, and not with oral exposure. Paraquat was, therefore, placed in Category E (not a human carcinogen). Because paraquat is a restricted-use pesticide and precautionary measures are required to protect applicators from the acute toxicity of the chemical, the potential for carcinogenic effects by excessive (irritating) topical exposure is not a concern for applicators.

The reference dose (RfD) is established at 0.0045 mg/kg body weight/day based on a NOEL of 0.45 mg/kg/day from the 1-year dog study and an uncertainity factor of 100. The theoretical maximum residue contribution (TMRC) from existing uses of paraquat utilizes 42% of the RfD for the general U.S. population, or 95.7% of the RfD for children, aged 1 to 6 years old (the population subgroup most highly exposed). The proposed tolerance for lentils would utilize 0.008% of the RfD for the U.S. population, or 0.007% of the RfD for children, aged 1 to 6 years.

The nature of the residue is adequately understood for the purpose of these tolerances. An adequate analytical method is available for enforcement purposes. The analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Vol. II (PAM II). Any secondary residues in milk, eggs, or meat of livestock and poultry will fall within existing tolerances for these commodities.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E4359/P604]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct, 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.205, paragraph (a) is amended in the table therein by adding and alphabetically inserting the raw agricultural commodities lentils, lentil forage, and lentil hay, to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Lentils	0.3
Lentil, forage	0.1
Lentil, hay	0.4
* * * * *	

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[FR Doc. 95–6418 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/P602; FRL–4936–1]

RIN 2070–AC18

Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexen-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish time limited tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also referred to in this document as sethoxydim) and its metabolites in or on various raw agricultural commodities. The Interregional Research Project No. 4 (IR-4) requested the proposed regulation to establish maximum permissible levels for residues of the herbicide. These time-limited tolerances would expire on December 31, 1996.

DATES: Comments, identified by the document control number [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/P602], must be received on or before April 14, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162 to EPA on behalf of the named Agricultural Experiment Stations.

These petitions request that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.412 by establishing time-limited tolerances for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on certain raw agricultural commodities as follows:

1. *PP 0E3909.* Petition submitted on behalf of the Experimental Stations of Massachusetts, Washington, and

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Wisconsin proposing a tolerance for cranberry at 2.0 parts per million (ppm).

2. *PP 2E4052.* Petition submitted on behalf of the Experimental Stations of South Dakota and Washington proposing tolerances for peppermint and spearmint at 30 ppm.

3. *PP 2E4065.* Petition submitted on behalf of the Experimental Station of Florida proposing a tolerance for endive at 2.0 ppm. The petitioner proposed that use of sethoxydim on endive be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

4. *PP 2E4092.* Petition submitted on behalf of the Experimental Stations of California, Florida, Maryland, Michigan, New Jersey, North Carolina, and Tennessee proposing a tolerance for carrot at 1.0 ppm.

5. *PP 3E4162.* Petition submitted on behalf of the Experimental Stations of Arkansas, Arizona, Michigan, North Carolina, Oklahoma, and Washington proposing a tolerance for asparagus at 4.0 ppm.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. Several acute toxicology studies place technical sethoxydim in acute toxicity category IV for primary eye and dermal irritation and acute toxicity category III for acute oral, dermal, and inhalation. The dermal sensitization - guinea pig study was waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18 percent a.i.).

2. A 1-year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 milligrams (mg)/kilogram (kg)/day (males/females) with a no-observed-effect-level (NOEL) of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

3. A 2-year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360-ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice.

4. A 2-year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOEL greater than or equal to 18 mg/kg/day (highest dose tested). There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and an MTD was not achieved.

5. A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, and 1,080 ppm (equivalent to 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve an MTD or define a lowest effect level (LEL). Slight decreases in body weight in rats at the 1,080-ppm dose level, although not biologically significant, support a free-standing no-observed-adverse-effect-level (NOAEL) of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

6. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 mg/kg/day with a maternal NOAEL of 180 mg/kg/day and a maternal LEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day, and a developmental LEL of 650 mg/kg/day (21 to 22 percent decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

7. A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOEL of 320 mg/kg/day and a maternal LOEL of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOEL greater than 400 mg/kg/day (highest dose tested).

8. A two-generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

Although the dose levels were insufficient to elicit a toxic response, the Agency considers this study usable for regulatory purposes and has established a free-standing NOEL of 3,000 ppm (approximately 150 mg/kg/day).

9. Mutagenicity studies including: Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity; a Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells in vivo; and recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100 percent.

10. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

The reference dose (RFD) is calculated at 0.09 mg/kg of body weight/day, based on a NOEL of 8.86 mg/kg/day from the 1-year feeding study in dogs and an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) from existing tolerances for the overall U.S. population is estimated at 0.031961 mg/kg of body weight/day, or 36% of the RfD. The proposed tolerances for asparagus, carrot, cranberry, endive, peppermint, and spearmint will increase the TMRC by 0.000701 mg/kg of body weight/day and will utilize less than 1 percent of the RfD for the overall U.S. population. EPA estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data.

These tolerances are proposed as time-limited tolerances since an acceptable carcinogenicity study is needed in one rodent species. A repeat chronic feeding/carcinogenicity study in rats is underway and is due to be submitted to EPA in November of 1995. The Agency will reassess sethoxydim tolerances based on the outcome of the rat chronic feeding/carcinogenicity study and, if appropriate, will establish permanent tolerances for asparagus, carrot, cranberry, endive, peppermint and spearmint. In the interim, the Agency concludes that there is little risk from establishment of the proposed tolerances since available studies in rats and mice indicate no carcinogenic effects, there are adequate data to establish a RfD, existing tolerances and the proposed tolerances do not exceed the RfD, and the proposed tolerances utilize less than 1 percent of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods are available for enforcement purposes. Enforcement methods for sethoxydim are listed in the Pesticide Analytical Manual, Vol. II (PAM II). Enforcement methods have also been submitted to the Food and Drug Administration for publication in PAM II. Because of the long lead time for publication of the analytical methods in PAM II, the analytical methods are being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

There is no reasonable expectation that secondary residues will occur in milk, eggs or meat of livestock and poultry from the proposed uses of sethoxydim on asparagus, cranberries, endive, and mint; there are no livestock feed items associated with these commodities. Any secondary residues occurring in meat, fat, meat byproducts and milk of cattle, goats, hogs, horses and sheep from the proposed use on carrots will be covered by existing tolerances. There are no residues expected to occur in poultry meat, meat byproducts, fat or eggs since carrots are not considered a poultry feed item.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/P602]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412, by revising the section heading and the introductory text of paragraphs (a) and (b) to correct the spelling of the chemical name and by adding new paragraphs (c) and (d), to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide 2-[1(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide 2-[1-(ethoxyimino) butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

* * * * *

(c) Time-limited tolerances to expire December 31, 1996, are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	4.0
Carrot	1.0
Cranberry	2.0
Peppermint	30.0
Spearmint	30.0

(d) Time-limited tolerances to expire December 31, 1996, are established with regional registration, as defined in § 180.1(n), for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Endive	2.0

[FR Doc. 95–6419 Filed 3–14–95; 8:45 am]

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40 CFR Part 300

[FRL–5171–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Dakhue Sanitary Landfill Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Dakhue Sanitary Landfill Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA because it has been determined that all Fund-financed response actions under CERCLA have been implemented and EPA, in consultation with the State of Minnesota, has determined that no further cleanup actions are necessary. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL must be postmarked no later than April 14, 1995.

ADDRESSES: Comments may be mailed to Gladys Beard (HSRM–6J) Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. Information on the Site is available at the local information repository located at: Cannon Falls Public Library, 306 West Mill St., Cannon Falls, MN 55009. Requests for comprehensive copies of documents should be directed formally to the appropriate Region V's Docket Officer. The address for the Region V's Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (HSRM–6J) Associate Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253; or Cheryl Allen (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–6196.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Dakhue Sanitary Landfill Site from the National Priorities List (NPL), Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on the deletion. The EPA identifies sites which appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) Fund-financed remedial actions. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate.

In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures, that is if the State has concurred with the intent to delete. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. Documents in support of U.S. EPA's decision to issue this notice are included in the information repository and the deletion docket.

Upon completion of the public comment period, the U.S. EPA will evaluate comments received during the comment period prior to reaching a final decision to delete the Site and the Regional Office will prepare a Responsiveness Summary which addresses comments received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this Responsiveness Summary, if one is prepared. If U.S. EPA determines the decision to delete the Site from the NPL is appropriate after the public has had an opportunity to comment, then the final Notice of Deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Dakhue Sanitary Landfill is located in Section 24 and 25 Township 113 North, Range 18 West, in Hampton Township, Dakota County, Minnesota. The Site encompasses approximately 80 acres, of which 26 acres have been actively landfilled. The landfill began operations in 1971 receiving mixed municipal and industrial solid waste. A solid waste landfill permit was issued to the owner of the Site on October 1, 1971. Dakhue Landfill operated until May 31, 1988, at which time waste disposal activities ceased. Since opening, the landfill has been utilized for the disposal of mixed municipal and commercial waste and small amounts of industrial waste. The landfill was initially opened on a part-time basis until 1973 when the landfill extended its operation to six days per week. It is estimated that 1,500,000 cubic yards of waste were disposed of at this-site.

In a letter dated July 22, 1988, representatives of the landfill owner stated that Dakhue Landfill, Inc. was financially unable to undertake closure and postclosure activities required at the landfill. On October 11, 1988, Dakhue Landfill, Inc. filed for Chapter 11 bankruptcy.

The Site was proposed for the NPL on October 26, 1989 and finalized on August 30, 1990 with a score of 42.

The U.S. EPA funded the MPCA to conduct of Remedial Investigation (RI) and Feasibility Study (FS) activities. RI work involves determining the nature and extent of contamination and FS work involves developing and evaluating remedial alternatives.

During the course of those activities, U.S. EPA and MPCA decided to divide the remedy for the Site into two units or discrete actions, referred to as "operable units" (OUs). They are as follows:

OU One: Source control of contaminates from the landfill.

OU Two: Contaminated groundwater migration management.

A focused FS was completed in March, 1991 for the first OU and a Record of Decision (ROD) was issued on June 28, 1991 outlining work necessary to address the source of the contamination, the landfill itself.

An RI was completed for the second OU in August, 1992 and a FS was completed in December, 1992. A ROD was issued on June 30, 1992 outlining work necessary to address the migration of contaminated groundwater.

The objective of the remedial action initiated for the Dakhue Sanitary Landfill was to meet the overall goal of protecting human health and the environment. This objective will be achieved through the construction of the landfill cover and maintaining a groundwater monitoring system so that the potential risks associated with the Site are reduced. This will be accomplished through reducing the infiltration of water into the landfill waste mass; reducing the build-up of combustible gases; and reducing the generation and discharge of landfill leachate and continued monitoring of the Site will ensure the future effectiveness of the remedy.

On June 28, 1991, a Record of Decision (ROD) which documented remedial actions for OU one (source control) was signed. The first operable unit addresses the source of the contamination by containing the wastes and contaminated soil on-site. The function of this operable unit is to provide a final cover for the Dakhue Sanitary Landfill which will prevent or minimize groundwater contamination and risks associated with the exposure to the contaminated materials. The major components of the selected remedy for this operable unit include:

Capping with a final cover system consisting of a gas control layer, a barrier layer of low permeable material, a drainage layer, topsoil cover and vegetation.

The remedy for the second operable unit includes the following components: The institutional Controls contained in Dakota County Ordinance No. 114 and Minnesota Rules 4725.2000 and 4725.4300 which restrict well development. A long-term groundwater monitoring program to: (1) Ensure that contaminated groundwater is not migrating off-site (2) assess trends in water quality in the Sand and Gravel aquifer; (3) verify that the deep aquifer is not affected; and (4) to provide adequate protection to aquatic life in Judicial Ditch No. 1 from adverse effects resulting from possible discharge of contaminated groundwater.

Construction of the landfill cover provided for in OU one was completed during the 1992 construction season. Groundwater monitoring as provided in OU two was initiated and several rounds of sampling have been completed to date.

EPA, with concurrence of the State of Minnesota, has determined that all appropriate Fund-financed responses under CERCLA at the Dakhue Sanitary Landfill Site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment. Therefore, U.S. EPA proposes to delete this Site from the NPL.

Dated: March 1, 1995.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

[FR Doc. 95–6270 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 206

RIN 3067–AC35

National Flood Insurance Program; Group Flood Insurance Policy for Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a Group Flood Insurance Policy (GFIP) and the criteria for its implementation by the National Flood Insurance Program (NFIP) when Federal disaster assistance is provided under the Individual and Family Grant Program after the President makes a disaster declaration.

EFFECTIVE DATE: We invite your comments which will be accepted until May 1, 1995.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, (202) 646–3422, (facsimile) (202) 646–3445; or Laurence W. Zensinger in FEMA's Response and Recovery Directorate, (202) 646–3642, (facsimile) (202) 646–2730.

SUPPLEMENTARY INFORMATION: Section 411, Individual and Family Grant (IFG) Programs the Stafford Act (42 U.S.C. § 5178) authorizes the President to make grants to States for the purpose of making grants to individuals or families adversely affected by a major disaster. This disaster assistance is provided to eligible individuals or families who are unable to meet disaster-related necessary expenses or serious needs through insurance or other means of assistance. The maximum grant amount provided under the State-administered IFG program is $12,600 in Fiscal Year 1995, and is adjusted annually as the Consumer Price Index for All Urban Consumers changes.

In past presidentially declared major disasters, IFG recipients were required to purchase and maintain "adequate flood insurance" if they had flood damage and were in a special flood hazard area of a community in which the sale of flood insurance was available under the NFIP. According to the regulations published to carry out the purposes of § 411(a), "adequate flood insurance" is defined as a flood insurance policy that provides coverage at least for the grant award, for which the maximum in Fiscal Year 1995 is $12,600. A homeowner is able to apply that amount to building or contents damage, or to both kinds of damage, whereas a renter can apply up to $12,600 solely for damage to contents.

Our experience has shown that many IFG recipients historically have not used the part of the grant award that was provided to them to purchase the required flood insurance for that intended purpose. These individuals

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frequently have been unable to obtain adequate assistance from other means and have endured hardship as a result of the disaster. Often they have such low incomes that they cannot afford to repay a loan, even if the interest rate is as low as four percent and the repayment schedule is spread over a number of years. Therefore, FEMA developed an NFIP Group Flood Insurance Policy (GFIP) for IFG homeowners or renters who experience flood damage, in an effort to assist these individuals to protect themselves from future flood losses and to comply with the purchase and maintenance requirements of the IFG program. By using the GFIP concept, FEMA can achieve significant administrative savings and can offer a premium rate for the 3-year GFIP that is approximately $50 more than the 1-year premium for a conventional Standard Flood Insurance Policy for a property with the insurance-rating characteristics that most of the properties that are anticipated to be covered under the GFIP have.

On September 23, 1994, while FEMA was in the process of preparing regulations to implement the GFIP, the President signed Public Law 103–325, the Riegle Community Development and Regulatory Improvement Act of 1994. Title V of Pub. L. 103–325 reformed major portions of the National Flood Insurance Act of 1968, and is cited as the National Flood Insurance Reform Act of 1994 (NFIRA). Section 582 of Pub. L. 103–325 states:

"No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment * * * to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property."

We interpret this section as a requirement in flood disasters for each grantee who receives Federal disaster assistance for flood damage to property located in a special flood hazard area and who is required to purchase flood insurance (or had insurance purchased for them) to maintain at least a minimum amount of flood insurance on the property forever, or until they move to another address. If flood insurance is not maintained, then no Stafford Act assistance may be provided for IFG under sec. 411(a) for real or personal property in any subsequent flood disasters. This maintenance provision also applies to individuals who bought, or otherwise had transferred to them, any real estate for which the flood insurance maintenance requirement was previously levied.

To enable States to provide affordable policies to IFG recipients, FEMA proposes to limit IFG assistance to individuals and families with $200 or more of real or personal property damage or loss. Assisting individuals with damage of less than $200 is not cost-effective.

For individuals who qualify for IFG assistance, FEMA proposes that a fixed premium amount, initially in the amount of $200, will be added to the IFG awards (subject to the current grant maximum) to cover the cost of the grantee's flood insurance coverage for the first 3 years. If the grantee has disaster needs that meet or exceed the maximum grant amount, this fixed premium amount shall be withheld from the grant and provided to the NFIP to pay the premium, thus ensuring the grantee is provided with a policy. The policy coverage will be equivalent to the maximum IFG grant amount each fiscal year. This amount is $12,600 in Fiscal Year 1995 as mentioned earlier.

The State IFG program staff would provide the NFIP with records of the individuals to be insured. The records, which the State would provide NFIP on a weekly basis, would be accompanied by payments to cover the premium amounts for each grantee/policyholder for the 3-year policy term. The NFIP would then issue a Certificate of Flood Insurance to each insured. During the 3-year term of the coverage, the amount(s) of coverage listed in the Certificate of Flood Insurance would be adjusted annually on October 1 to reflect changes in the Consumer Price Index for All Urban Consumers.

Approximately 60 days before the end of the 3-year term of the GFIP, the NFIP would notify the IFG grantee/policyholder of the procedures to follow for applying for a new flood insurance policy and of the amount of coverage that the IFG grantee/policyholder must obtain in order to comply with the flood insurance maintenance requirements established under the NFIRA. For purposes of complying with the maintenance requirement, a "minimal amount of flood insurance" means an amount equal to the IFG program's maximum grant amount in effect at the time the new policy is obtained. Further, at the time of each subsequent renewal, the notification concerning the amount of coverage that must be maintained would be revised to reflect the IFG program's maximum grant amount then in effect.

NFIP's Standard Flood Insurance Policy (which would be made available to grantees upon request) specifies a number of restrictions and limitations. While most exclusions pertain only to certain items in the building, some of the exclusions mean that there is no coverage at all for the building or the contents in the building. The coverage exclusions would be specified in the Addendum that would accompany the Certificate of Flood Insurance, which the NFIP would send to each IFG grantee/policyholder. If a Certificate of Flood Insurance is issued for a grantee whose property is ineligible for GFIP coverage, the NFIP, upon discovery of such ineligibility, would notify the grantee that the Certificate is rescinded and then refund the full premium costs to the President's Fund. The State's 25% share would then be forwarded to the State. The State would then return the $200 only to those grantees who received maximum grant awards and had their premium costs deducted from those awards.

NFIRA requires a 30-day waiting period, with two specific exceptions, before flood insurance coverage becomes effective under the Standard Flood Insurance Policy. Neither exception applies to the GFIP. Therefore, to comply with the NFIRA, GFIP coverage would become effective on the 30th day following the date that the records and premium payment are received by the NFIP from the State.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

FEMA requests that commenters address their concerns about any additional paperwork or recordkeeping reporting burden this proposed rule may place upon them. Comments on paperwork or recordkeeping issues including burden estimates (i.e., the time it would take a State to research and compile the information and send premium payments to the NFIP) may be addressed to the points of contact identified in the "For Further Information Contact" section of this proposed rule, and to Donald Arbuckle, Office of Management and Budget, Office of Information and Regulatory Affairs, 3255 New Executive Office Building, Washington, DC 20503.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Parts 61 and 206

Flood insurance; Disaster assistance.

Accordingly, 44 CFR Parts 61 and 206 are proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.17 is added to read as follows:

§ 61.17 Group Flood Insurance Policy

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under § 411 of the Stafford Act (42 U.S.C. 5178) of an Individual and Family Grant program award for flood damage as a result of a Presidential disaster declaration. The premium for the GFIP, initially, is a flat fee of $200 per policyholder. The amount of coverage would be equivalent to the maximum grant amount established under § 411. Coverage under the GFIP would become effective on the 30th day following the date the NFIP receives the records and premium payments from the State.

(b) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in Appendix A(1) of this part), except that:

(1) The GFIP provides coverage for losses caused by land subsidence, sewer backup, or seepage of water without regard to the requirement in paragraph B.3. of Article 3 that the structure be insured to 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

(2) *Article 7—Deductibles* does not apply to the GFIP. The deductible is $200 (applicable separately to any building loss and any contents loss) for insured flood damage losses sustained by the insured property in the course of any subsequent flooding event during the policy term. No deductible shall apply to Article 3 B.3.

(3) Article 9 E., Cancellation of Policy By You, does not apply to the GFIP.

(4) Article 9 G., Policy Renewal, does not apply to the GFIP.

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

3. The authority citation for Part 206 is amended to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Subpart E—Individual and Family Grant Programs

4. Section 206.131(d)(1)(iii)(C)(*2*) is revised to read as follows:

§ 206.131 Individual and Family Grant Programs.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) * * *

(*2*) The National Flood Insurance Program (NFIP) regulations, at 44 CFR 61.17, establish the Group Flood Insurance Policy (GFIP), which is a policy that covers eligible individuals named by a State as recipients under section 411 of the Stafford Act of an IFG program award for flood damage as a result of a Presidential disaster declaration.

(i) IFG assistance will be provided to individuals or families with residential or personal property damage or losses of $200 or more. Individuals with damage of $199 or less will not be eligible for IFG assistance.

(ii) The premium for the GFIP is a necessary expense within the meaning of this section. The State shall withhold this portion of the IFG award and provide it to the NFIP on behalf of individuals and families who are eligible for coverage. The coverage shall be equivalent to the maximum grant amount established under § 411(f) of the Stafford Act.

(iii) The State IFG program staff would provide the NFIP with records of individuals who received an IFG award and are, therefore, to be insured. Grantees would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Records of IFG grantees to be insured shall be accompanied by payments to cover the premium amounts for each grantee for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each grantee.

(iv) Once the grantee/policyholder receives the Certificate of Flood Insurance, the grantee should review the list of the types of buildings that are ineligible for coverage. If the damaged building and its contents are ineligible, the grantee must notify the NFIP in writing. The NFIP will then reimburse the State IFG program for the premium, so the IFG program can issue a check for the premium amount to the grantee when a premium amount was withheld from a maximum grant award. (If the grantee wishes to refer to or review a Standard Flood Insurance Policy, it will be made available by the NFIP upon request.)

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance").

Dated: February 24, 1995.

Elaine A. McReynolds,.

Administrator, Federal Insurance Administration.

Richard W. Krimm,

Associate Director, Response and Recovery.

[FR Doc. 95–6361 Filed 3–14–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–84, RM–8478]

Radio Broadcasting Services; Driscoll, Gregory and Robstown, Texas

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on the deletion of vacant Channel 283A at Gregory, Texas. The deletion of Channel 283A at Gregory is necessary in order to accommodate the proposed substitution of Channel 283C3 for Channel 286A at Robstown, Texas, the reallotment of Channel 283C3 from Robstown to Driscoll, Texas, and the modification of Station KMIQ(FM)'s

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license to specify Driscoll as Station KMIQ(FM)'s community of license. *See* 59 FR 38950, August 1, 1994.

DATES: Comments must be filed on or before May 1, 1995, and reply comments on or before May 16, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Shainis & Peltzman, Suite 200, 2000 L Street, Washington, D.C. 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rule Making*, MM Docket No. 94–84, adopted March 1, 1995, and released March 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–6339 Filed 3–14–95; 8:45 am]

BILLING CODE 6712–01–F

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 800, 830, and 831

Reporting of Public Aircraft Accidents

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rule and request for comments.

SUMMARY: The NTSB is proposing various revisions to its rules to implement P.L. No. 103–411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

DATES: Comments are invited by April 14, 1995.

ADDRESSES: An original and 2 copies of any comments must be submitted to: Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594, Attention: Public Aircraft Rules.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: On October 25, 1994, President Clinton signed H.R. 2440, the Independent Safety Board Act Amendments of 1994. Codified as Public Law No. 103–411 (the Act), it is effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. The core of the legislation is amendments to the Federal Aviation Act of 1958 to expand the Federal Aviation Administration's (FAA) safety regulation to previously exempt "public" aircraft, and the FAA is in the process of developing implementing rules and guidance. The Act, however, also changed the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board).

Presently, jurisdiction of the Safety Board to investigate aircraft accidents depends on whether the aircraft involved are "civil" or "public." An aircraft is either one or the other. These two terms are defined in the Federal Aviation Act of 1958, as amended, 49 U.S.C. 40102(a) (17) and (37). Until now, the Safety Board's statutory investigation authority extended only to civil aircraft, although accidents and incidents involving certain public aircraft are required to be reported to the NTSB within 10 days. *See* 49 CFR 830.20.[1]

[1] The Board has also investigated some public aircraft accidents under memoranda of understanding with various Federal agencies and State and local governments.

Section 3(c) of the Act expands the Safety Board's statutory role in investigating aircraft accidents to include all "public" aircraft other than those operated by the Armed Forces or by a United States intelligence agency. Thus, with these two exceptions, aircraft operated by Federal, State and local governments will, as of April 23, 1995, be subject to Board jurisdiction for the purposes of accident investigation in the U.S., in addition to any reporting requirements. We propose in this proceeding to make changes to our regulations, as necessary to reflect the Act.

The key question the Safety Board must answer is: when does an accident "involve" an aircraft "operated by" the Armed Forces or "intelligence agencies" so as to qualify for the exception to our public aircraft jurisdiction? As to what organizations would be included in the term "Armed Forces," we consider the National Guard, and the Coast Guard, for example, to be within the definition, and propose to continue that practice. We construe the term "intelligence agency" strictly, and propose only to apply it to those Federal agencies that are so named or categorized (for example, in their enabling statutes).

In defining the term "operated by," there is no issue of interpretation when the military is flying military-owned aircraft (assuming only one aircraft is involved in any accident/incident). Such an accident would be outside our jurisdiction. But, if the aircraft is not actually owned and operated by the military, we have in the past used a "single-flight" test for Federal use of otherwise private aircraft to determine whether the aircraft is civil or public and, thus, determine our jurisdiction. That is, if the Navy contracted for a civilian aircraft to transport troops, during the aircraft's use for that purpose it might have been deemed a public aircraft and outside our mandatory jurisdiction—even though by inter-agency agreement we might have investigated an accident. After April 23, this matter is to be analyzed differently. Irrespective of the aircraft status as civil or public, we propose to interpret the statute as requiring that any such accident will be investigated by NTSB unless the aircraft was actually operated by Armed Forces personnel.

The new definition of public aircraft is complex, and has generated considerable discussion and interpretation concerning the scope and application of the civil/public aircraft division for the purposes of FAA safety regulation. The distinction between civil and public aircraft (as opposed to the distinction between military and

public aircraft), however, is no longer critical to our investigation authority—under the Act we now investigate all accidents in the U.S. other than those involving aircraft operated by the Armed Forces or intelligence agencies. Although we recognize that the civil/public distinction remains relevant to us for statistical and reporting purposes and in the case of jurisdiction over accidents abroad, as International Civil Aviation Authority agreements only apply to civil aircraft, we see little purpose at this point in adding ourselves to this debate.

Finally, those responsible for aircraft now subject to our broadened investigation authority should also be aware that the Board may investigate occurences beyond those that involve serious injury or loss of an aircraft. For example, any flight control system failure or inflight fire is a reportable incident. Title 49 of the Code of Federal Regulations, part 800, identifies all the instances we investigate and sets forth rules (at part 830) for notifying us of what are termed "accidents or incidents."[2]

Accordingly, 49 CFR parts 800, 830, and 831 are proposed to be amended as set forth below. We invite comments on our interpretations and proposed rule changes, as well as suggestions for other possible rule changes needed or useful to accommodate our expanded jurisdiction.[3]

List of Subjects in 49 CFR Part 800

Authority delegations—Government agencies, Organization and functions—Government agencies.

49 CFR Part 830

Aviation safety, Reporting and recordkeeping requirements.

49 CFR Part 831

Aviation safety, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

[2] In light of our expanded investigatory role for public aircraft, the reporting requirement heretofore included in § 830.20 is superseded by the § 830.5 and § 830.15 rules. Thus, one of our proposals is to eliminate part 830 subpart E, § 830.20.

[3] Readers may notice that various provisions subject to the proposals in this notice require other changes to reflect current organization at the Safety Board (*e.g.*, § 800.2) or recent legislative change (*e.g.*, § 800.3 to reflect provisions of P.L. No. 102–345, the FAA Civil Penalty Administrative Assessment Act of 1992). Other rulemakings will shortly be conducted to update provisions, as necessary. This proceeding proposes only the changes needed to implement P.L. No. 103–411.

PART 800—ORGANIZATION AND FUNCTIONS OF THE BOARD AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 800 is proposed to be revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*); Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*).

2. Section 800.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 800.3 Functions.

(a) The primary function of the Safety Board is to promote safety in transportation. The Safety Board is responsible for the investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of: all accidents involving civil aircraft and certain public aircraft; highway accidents including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train; pipeline accidents in which there is a fatality or substantial property damage; and major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions. The Safety Board makes transportation safety recommendations to Federal, State, and local agencies and private organizations to reduce the likelihood of recurrence of transportation accidents. It initiates and conducts safety studies and special investigations on matters pertaining to safety in transportation, assesses techniques and methods of accident investigation, evaluates the effectiveness of transportation safety consciousness and efficacy in preventing accidents of other Government agencies, and evaluates the adequacy of safeguards and procedures concerning the transportation of hazardous materials.

* * * * *

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

4. The authority citation for part 830 is proposed to be revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

4a. Section 830.1 is proposed to be amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Initial notification and later reporting of aircraft incidents and accidents and certain other occurrences in the operation of aircraft, wherever they occur, when they involve civil aircraft of the United States; when they involve certain public aircraft, as specified in this Part, wherever they occur; and when they involve foreign civil aircraft where the events occur in the United States, its territories, or its possessions.

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil and certain public aircraft accidents, as specified in this Part, in the United States and its territories or possessions.

* * * * *

5. Section 830.2 is proposed to be amended by revising the definition of "public aircraft" to read as follows:

§ 830.2 Definitions.

* * * * *

Public aircraft means an aircraft used only for the United States Government, or an aircraft owned and operated (except for commercial purposes) or exclusively leased for at least 90 continuous days by a government other than the United States Government, including a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of that government. "Public aircraft" does not include a government-owned aircraft transporting property for commercial purposes and does not include a government-owned aircraft transporting passengers other than: Transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. Notwithstanding any limitation relating to use of the aircraft for commercial purposes, an aircraft shall be considered to be a public aircraft without regard to whether it is operated by a unit of

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government on behalf of another unit of government pursuant to a cost reimbursement agreement, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

* * * * *

6. Section 830.5 is proposed to be amended by revising the introductory text to read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (Board) field office [1] when:

* * * * *

7. Section 830.15 is proposed to be amended by revising paragraph (a) to read as follows:

§ 830.15 Reports and statements to be filed.

(a) Reports. The operator of a civil, public (as specified in § 830.5), or foreign aircraft shall file a report on Board Form 6120.½ (OMB No. 3147–0001) [2] within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which immediate notification is required by § 830.5(a) shall be filed only as requested by an authorized representative of the Board.

* * * * *

Subpart E [Removed]

8. Subpart E of part 830 is proposed to be removed.

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

9. The authority citation for part 831 is proposed to be revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

10. Section 831.2 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 831.2 Responsibility of Board.

(a) Aviation. (1) The Board is responsible for the organization, conduct and control of all accident investigations within the United States, its territories and possessions, where the accident involves civil aircraft and certain public aircraft (as specified in § 830.5 of this chapter), including an accident investigation involving civil or public aircraft on the one hand and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents that occur outside the United States, and which involve civil aircraft and certain public aircraft, when the accident is not in the territory of another state (*i.e.*, in international waters).

* * * * *

11. Section 831.9 is proposed to be amended to revise paragraph (b) to read as follows:

§ 831.9 Authority of Board Representatives.

* * * * *

(b) *Aviation.* Any employee of the Board, upon presenting appropriate credentials, is authorized to examine and test to the extent necessary any civil or public aircraft, aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

* * * * *

Issued in Washington, D.C. on this 8th day of March, 1995.

Jim Hall,

Chairman.

[FR Doc. 95–6216 Filed 3–14–95; 8:45 am]

BILLING CODE 7533–01–P

[1] The Board field offices are listed under U.S. Government in the telephone directories of the following cities: Anchorage, AK, Atlanta, GA, West Chicago, IL, Denver, CO, Arlington, TX, Gardena (Los Angeles), CA, Miami, FL, Parsippany, NJ (metropolitan New York, NY), Seattle, WA, and Washington, DC.

[2] Forms are available from the Board field offices (see footnote 1), from Board headquarters in Washington, DC, and from the Federal Aviation Administration Flight Standards District Offices.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List the Preble's Meadow Jumping Mouse as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. The Service finds that there is substantial information to indicate that listing the species may be warranted.

DATES: The finding announced in this document was approved on February 27, 1994. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by May 15, 1995.

ADDRESSES: Information, questions, or comments concerning this petition finding may be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 730 Simms Street, Room 290, Golden, Colorado 80401. The petition, finding, supporting data, and comments are available for public inspection by appointment during normal business hours at the above office.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson (see **ADDRESSES**) (303/231–5280).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and a notice regarding the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the involved species if one has not already been initiated by the Service. The Service initiated a status review for Preble's meadow jumping mouse (*Zapus hudsonius preblei*) when it categorized the species as a category 2 candidate species in the 1985 Animal Notice of Review (50 FR 37958). This notice meets the requirement for the 90-day finding made earlier on the petition as discussed below.

A petition dated August 9, 1994, was received by the Service from the Biodiversity Legal Foundation on August 16, 1994. The petition requests the Service to list Preble's meadow jumping mouse as endangered or threatened throughout its range and to designate critical habitat within a reasonable amount of time following the listing.

The petitioner submitted information that Preble's meadow jumping mouse populations in Colorado and Wyoming are imperiled by ongoing and increasing urban, industrial, agricultural, ranching, and recreational development; wetland and riparian habitat destruction and/or conversion; and inadequacy or lack of governmental protection for the subspecies and its habitats.

The Preble's meadow jumping mouse is a small rodent in the family Zapodidae. The coloration and the skull characteristics of the Preble's meadow jumping mouse were described by Krutzsch (1954).

Krutzsch (1954), Quimby (1951), and Armstrong (1972) concur that this species dwells mostly in low undergrowth consisting of grasses, forbs, or both; in open wet meadows and riparian corridors near forests (coniferous and deciduous hardwoods); or where tall shrubs and low trees provide adequate cover. It prefers lowlands with medium to high moisture over dry uplands. However, current research at Rocky Flats (M. Bakeman and F. Harrington, pers. comm. 1994) indicates that the dryer upland habitats are preferred to construct their winter hibernaculums whereas moist lowlands are utilized during the spring and summer months when the Preble's meadow jumping mouse is most active and reproducing.

Local mammalogists believe that the Preble's meadow jumping mouse has never been common, but the apparent extirpation of this species from previously occupied habitats in Wyoming and Colorado and the difficulties finding it in apparently adequate habitats may be indicative of a precipitous decline in populations of the Preble's meadow jumping mouse (D. Armstrong, University of Colorado, pers. comm. 1992) throughout its range. Current information indicates that Preble's meadow jumping mouse is restricted to only two known populations in Colorado and apparently none in Wyoming. It is unclear if two other populations in Colorado still exist. Known populations in Colorado are located at the Department of Energy's Rock Flats Plant in northern Jefferson County and adjacent City of Boulder Open Space land in southern Boulder County. A specimen tentatively identified as a Preble's meadow jumping mouse was captured in 1994 at the Air Force Academy in El Paso County (C. Pague, Colorado Natural Heritage Program, pers. comm. 1994).

Listing Factors

The following are the five listing criteria as set forth in section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of Preble's meadow jumping mouse.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The main cause for Preble's meadow jumping mouse's decline is directly or indirectly linked to habitat alteration. The habitat alteration includes widespread destruction and/or modification of wet meadows and riparian corridors and indirect hydrological impacts by anthropogenic structures, including—biking/hiking trails; riprap and other bank stabilization structures and activities; road and bridge construction; urban, industrial, commercial, agricultural, and ranching development; and sand and gravel mining operations. Gravel mining operations continue to expand as housing and road construction activities increase, and these mines are located within wetlands, wet meadows, and riparian habitats.

The Front Range region in Colorado has changed from a predominantly prairie habitat intermixed with wet meadows and intermittent streams and gulches to a more agricultural and urban setting with its associated housing, recreational, commercial, and industrial development. These developments have brought about profound changes in the hydrology of the streams along the Front Range. With urbanization has come the expansion of park areas and forestation. With park and open space development has come the expansion of hiking and biking trails along and crossing riparian habitats that have caused further fragmentation of this mouse's habitats.

Grazing has been identified by some researchers as one of the leading causes for its decline (F. Harrington, pers. comm. 1994), but there is little scientific information to adequately show a relationship between moderate grazing and population declines of this mouse. Reservoir impoundments could also impact this mouse by inundating individuals and/or its habitats.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Preble's meadow jumping mouse has no known commercial or recreational value. Scientific and educational collecting was not widespread over the past century. Overutilization apparently did not contribute to population declines of this mouse population.

C. *Disease or predation.* Knowledgeable mammalogists (D. Armstrong, pers. comm. 1994; F. Harrington, pers. comm. 1994) do not believe that an epizootic disease caused the demise of the subspecies. Competition from nonnative rodents (i.e., the Norway rat, *Rattus norvegicus;* and house mouse, *Mus Musculus*) and predation by domestic pets (dogs and cats) might also be reasons for this mouse's disappearance. Both of these nonnative rodents have been recently trapped during small mammal surveys from relatively undisturbed riparian habitats.

D. *The inadequacy of existing regulatory mechanisms.* Since 1990, the Colorado Division of Wildlife (Division) has classified Preble's meadow jumping mouse as a "nongame" subspecies and a "species of special concern". This designation protects the species by denying permits for the take of the species (J. Sheppard, Colorado Division of Wildlife, pers. comm. 1994). In 1992, the Wyoming Game and Fish Department (Department) classified the species *Zapus hudsonius* as a nongame species under the Wyoming Game and Fish Commission Chapter LII. This designation protects the species from take and requires a special permit for the purposes of scientific collection. However, this designation does not protect the species from incidental taking or from actions that may harm the species in order to protect public health. Furthermore, protection by both States is limited to the mouse, itself, and measures to protect the habitat are not included.

E. *Other natural or manmade factors affecting its continued existence.* The introduction of nonnative grasses associated with the recent urbanization of Colorado's Front Range may also have contributed to the demise of Preble's jumping mouse by the replacement of indigenous grasses which this species is dependent upon. These introduced grasses have less nutritional food value (F. Harrington, pers. comm. 1994).

The use of pesticides and herbicides have increased with the urbanization and agricultural development of the Front Range. These chemicals could be contaminating this mouse's food sources and could cause direct poisoning of the species, itself.

Finding

The Service has reviewed the petition and accompanying documentation on the status of Preble's jumping mouse and information concerning potential threats to the species. On the basis of the best scientific and commercial information available, the Service

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concludes that substantial information exists to indicate that the requested action may be warranted. The Service believes that habitat destruction and modification are the main cause for the species decline.

The petitioner requested that the critical habitat also be designated. If the 12-month finding determines that the petitioned action to list Preble's jumping mouse is warranted, then the Act requires that designation of critical habitat be addressed in a subsequent proposed rule.

The Service's 90-day finding contains more detailed information regarding the above decisions. A copy can be obtained from the Service's Colorado Field Office (see **ADDRESSES** above).

References Cited

Armstrong, D.M. 1972. Distribution of mammals in Colorado. University of Kansas, Museum of Natural History Monograph 3:1–415.

Krutzsch, P.H. 1954. North American jumping mice (genus Zapus). Univ. Kansas Publ., Mus. Natural History 7:349–472.

Quimby, D.C. 1951. The life history and ecology of the jumping mouse, *Zapus hudsonius*. Ecological Monographs 21:61–95.

Whitaker, J.O. 1972. Zapus hudsonius. Mammalian Species 11:1–7.

Author

The primary author of this document is José Bernardo Garza (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: February 27, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–6332 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 60, No. 50

Wednesday, March 15, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Committee on Regulation

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Governmental Processes and the Committee on Regulation of the Administrative Conference of the United States.

Agency: Committee on Governmental Processes.

Dates: Thursday, March 23, 1995, at 2:00 p.m.

Location: Office of the Chairman, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC (Library, 5th Floor).

For Further Information: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Agency: Committee on Regulation.

Date: Wednesday, March 22, 1995, at 10:00 a.m.

Location: Office of Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC, 4th Floor Conference Room.

For Further Information: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Supplementary Information: The Committee on Governmental Processes will meet to continue discussion of when federal government lawyers and other government employees may participate in public service activities. There are possible restrictions in conflict of interest statutes, and both government-wide and agency specific regulations governing employee participation in outside activities, ethics laws, and the use of government property.

The Committee on Regulation will meet to continue discussion of a draft report by Professor Douglas C. Michael of the University of Kentucky College of Law on self-enforcement, or self-implementation, as a regulatory alternative to direct enforcement. This draft report follows an earlier study by Professor Michael, which led to Recommendation 94–1, The Use of Audited Self-Regulation as a Regulatory Technique, adopted by the Administrative Conference in June 1994. The Committee on Regulation will also discuss a new draft report, by Professor Ann C. Hodges of the T.C. Williams School of Law, University of Richmond, concerning Dispute Resolution under the Americans with Disabilities Act.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should call the Office of the Chairman of the Administrative Conference at least one day before the meeting. The committee chair, if he deems it appropriate, may permit members of the public to present oral statements at a committee meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available upon request.

Dated: March 10, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–6461 Filed 3–14–95; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Southwest Region, California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2553.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR Parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Angeles National Forest

Angeles Forest Supervisor decisions:
Los Angeles Times, Los Angeles, California
Arroyo-Seco District Ranger decisions:
Pasadena Star News, Pasadena, California
Newspaper providing additional notice of Arroyo-Seco decisions:
Daily News, Los Angeles, California
Mount Baldy District Ranger decisions:
Inland Valley Daily Bulletin, Ontario, California
Newspaper providing additional notice of Mount Baldy decisions:
San Gabriel Valley Tribune, West Covina, California
Saugus District Ranger decisions:
Daily News, Los Angeles, California
Tujunga District Ranger decisions:
Daily News, Los Angeles, California
Valyermo District Ranger decisions:

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Antelope Valley Press, Palmdale, California

Cleveland National Forest

Cleveland Forest Supervisor decisions:
San Diego Union, San Diego, California
Descanso District Ranger decisions:
San Diego Union, San Diego, California
Palomar District Ranger decisions:
San Diego Union, San Diego, California
Newspaper providing additional notice of Palomar decisions:
Riverside Press-Enterprise, Riverside, California
Trabuco District Ranger decisions:
Orange County Register, Santa Ana, California
Riverside Press-Enterprise, Riverside, California

Eldorado National Forest

Eldorado Forest Supervisor decisions:
Mountain Democrat, Placerville, California
Amador District Ranger decisions:
Mountain Democrat, Placerville, California
Georgetown District Ranger decisions:
Mountain Democrat, Placerville, California
Pacific District Ranger decisions:
Mountain Democrat, Placerville, California
Placerville District Ranger decisions:
Mountain Democrat, Placerville, California

Inyo National Forest

Inyo Forest Supervisor decisions:
Inyo Register, Bishop, California
Mammoth District Ranger decisions:
Inyo Register, Bishop, California
Mono Lake District Ranger decisions:
Inyo Register, Bishop, California
Mount Whitney District Ranger decisions:
Inyo Register, Bishop, California
White Mountain District Ranger decisions:
Inyo Register, Bishop, California

Klamath National Forest

Klamath Forest Supervisor decisions:
Siskiyou Daily News, Yreka, California
Happy Camp District Ranger decisions:
Siskiyou Daily News, Yreka, California
Goosenest District Ranger decisions:
Siskiyou Daily News, Yreka, California
Oak Knoll District Ranger decisions:
Siskiyou Daily News, Yreka, California
Salmon River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Scott River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Ukonom District Ranger decisions:
Siskiyou Daily News, Yreka, California

Lake Tahoe Basin

Lake Tahoe Basin Forest Supervisor decisions:
Tahoe Daily Tribune, So. Lake Tahoe, Ed Dorado County, California

Lassen National Forest

Lassen Forest Supervisor decisions:
Lassen County Times, Susanville, Lassen County, California
Almanor District Ranger decisions:
Chester Progressive, Plumas County, California
Eagle Lake District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Hat Creek District Range decisions:
Intermountain News, Burney, Shasta County, California
Newspaper providing additional notice of Hat Creek decisions:
Mountain Echo, Fall River Mills, Shasta County, California

Los Padres National Forest

Los Padres Forest Supervisor decisions:
Santa Barbara News Press, Santa Barbara, California
Ojai District Ranger decisions:
Star Free Press, Ventura, California
Monterey District Ranger decisions:
Salinas Californian, Monterey, California
Mount Pinos District Ranger decisions:
The Bakersfield Californian, Kern, California
Santa Barbara District Ranger decisions:
Santa Barbara News Press, Santa Barbara, California
Santa Lucia District Ranger decisions:
Telegram Tribune, San Luis Obispo, California

Mendocino National Forest

Mendocino Forest Supervisor decisions:
Chico Enterprise-Record, Chico, California
Corning District Ranger decisions:
Chico Enterprise-Record, Chico, California
Covelo District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Stonyford District Ranger decisions:
Chico Enterprise-Record, Chico, California
Upper Lake District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Chico Tree Improvement Center Director decisions:
Chico Enterprise-Record, Chico, California

Modoc National Forest

Modoc Forest Supervisor decisions:
Modoc County Record, Alturas, Modoc County, California
Big Valley District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Devil's Garden District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Doublehead District Ranger decisions
Modoc County Record, Alturas, Modoc County, California
Newspaper providing additional notice of Doublehead decisions:
Herald News, Klamath Falls, Oregon
Warner Mountain District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California

Plumas National Forest

Plumas Forest Supervisor decisions:
Feather River Bulletin, Quincy, California
Beckwourth District Ranger decisions:
Portola Reporter, Portola, California
Greenville District Ranger decisions:
Indian Valley Record, Greenville, California
La Porte District Ranger decisions:
Oroville Mercury Register, Oroville, California
Milford District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Oroville District Ranger decisions:
Oroville Mercury Register, Oroville, California
Quincy District Ranger decisions:
Feather River Bulletin, Quincy, California

San Bernardino National Forest

San Bernardino Forest Supervisor decisions:
San Bernardino Sun, San Bernardino, California
Arrowhead District Ranger decisions:
Mountain News, Blue Jay, California
Big Bear District Ranger decisions:
Big Bear Life and Grizzly, Big Bear, California
Cajon District Ranger decisions:
San Bernardino Sun, San Bernardino, California
San Gorgonio District Ranger decisions:
Yucaipa News Mirror, Yucaipa, California
San Jacinto District Ranger decisions:
Idyllwild Town Crier, Idyllwild, California

Sequoia National Forest

Sequoia Forest Supervisor decisions:
Porterville Recorder, Porterville, California
Cannell Meadow District Ranger decisions:
Porterville Recorder, Porterville, California
Greenhorn District Ranger decisions:
Porterville Recorder, Porterville, California
Hot Springs District Ranger decisions:
Porterville Recorder. Porterville, California
Hume Lake District Ranger decisions:
Porterville Recorder, Porterville, California
Tule River Ranger District decisions:
Porterville Recorder, Porterville, California

Shasta-Trinity National Forest

Shasta-Trinity National Forest decisions:
Record Searchlight, Redding, Shasta County, California
Big Bar District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Hayfork District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
McCloud District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Mount Shasta District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Shasta Lake District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Weaverville District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Yolla Bolla District Ranger decisions:
Record Searchlight, Redding, Shasta County, California

Sierra National Forest

Sierra Forest Supervisor decisions:
Fresno Bee, Fresno, California
Kings River District Ranger decisions:
Fresno Bee, Fresno, California
Pineridge District Ranger decisions:
Fresno Bee, Fresno, California
Mariposa District Ranger decisions:
Fresno Bee, Fresno, California
Minarets District Ranger decisions:
Fresno Bee, Fresno, California

Six Rivers National Forest

Six Rivers Forest Supervisor decisions:
Times Standard, Eureka, California
Gasquet District Ranger decisions:
Del Norte Triplicate, Crescent City, California
Lower Trinity District Ranger decisions:
The Kourier, Willow Creek, California
Mad River District Ranger decisions:
Times Standard, Eureka, California
Orleans District Ranger decisions:
The Kourier, Willow Creek, California

Stanislaus National Forest

Stanislaus Forest Supervisor decisions:
The Union Democrat, Sonora, California
Calaveras District Ranger decisions:
The Union Democrat, Sonora, California
Groveland District Ranger decisions:
The Union Democrat, Sonora, California
Mi-Wok District Ranger decisions:
The Union Democrat, Sonora, California
Summit District Ranger decisions:
The Union Democrat, Sonora, California

Tahoe National Forest

Tahoe Forest Supervisor decisions:
Grass Valley Union, Grass Valley, California
Downieville District Ranger decisions:
Mountain Messenger, Downieville, California
Foresthill District Ranger decisions:
Auburn Journal, Auburn, California
Nevada City District Ranger decisions:
Grass Valley Union, Grass Valley, California
Sierraville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspapers providing additional notice of Sierraville decisions:
Sierra Booster, Loyalton, California
Portola Recorder, Portola, California
Truckee District Ranger decisions:
Sierra Sun, Truckee, Nevada County, California
Newspaper providing additional notice of Truckee decisions:
Tahoe World, Tahoe City, Placer County, California

Dated: March 8, 1995.

James A. Lawrence,

Deputy Regional Forester.

[FR Doc. 95–6317 Filed 3–14–95; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF COMMERCE

[Docket A(32b1)–1–95

Foreign-Trade Zones Board; Foreign-Trade Zone 84—Houston, Texas; Tuboscope Vetco International, Inc., (Steel Tubular Products), Harris County, Texas; Request for Modification of Restriction

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, pursuant to § 400.32(b)(1) of the Board's regulations for modification of the export-only restriction in FTZ Board Order 609 authorizing Subzone 84I at the Tuboscope Vetco International, Inc. (Tuboscope) plant in Harris County, Texas. It was formally filed on February 8, 1995.

The FTZ Board approved subzone status for the Tuboscope steel tubular products inspection and coating facility in Harris County, Texas, in 1992 (Subzone 84I; Board Order 609; 57 FR 57729; 12/7/92). The approval was subject to a restriction that allowed the use of zone procedures for export activity only.

Tuboscope is now requesting that the export-only restriction be modified so that Customs duties can be deferred while the company conducts activity for the domestic market under zone procedures. The modified restriction would require the company to elect privileged foreign status on all merchandise admitted to the subzone. While the change would not result in significant new Customs savings, it would allow the company to operate the plant under a single inventory control system that meets Customs requirements. The request indicated that the use of zone procedures as proposed would help the facility maintain its international competitiveness.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 1, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 6, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–6388 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February

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anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT:
Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTATY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 29, 1996.

	Period to be reviewed
Antidumping duty proceedings	
India:	
Forged Stainless Steel Flanges:	
A–533–809	
Akai Impex Ltd.	02/09/94–01/31/95
Japan:	
Mechanical Transfer Presses:	
A–588–810	
Aida Engineering, Ltd., Hitachi Zosen Corporation, Ishikawajima-Harima Heavy Industries Co., Ltd., Komatsu, Ltd., Kurimoto, Ltd	02/01/94–01/31/95
The People's Republic of China:	
Axes/Adzes; Bars/Wedges; Hammers/Sledges; and Picks/Mattocks:	
A–570–803	
Fujian Machinery & Equipment Import & Export Corporation (FMEC), Henan Machinery Import & Export Co., Shandong Machinery Import & Export Corporation (SMC), Tianjin Machinery Import & Export Co	02/01/94–01/31/95
All other exporters of axes/adzes, bars/wedges, hammers/sledges, or picks/mattocks from the People's Republic of China are conditionally covered by this review	
The People's Republic of China:	
Natural Paint Brushes:	
A–570–501	
Yixing Sanai Brush Making Co. Ltd., Eastar B.F. (Thailand) Company Ltd., Hebei Animal By-Products I/E Corp., China National Metals & Minerals I/E Corp., Zhenjiang Trading Corp., Inner Mongolia Autonomous Region Light Industrial Products I/E Corp., China National Native Produce and Animal By-Products I/E Corp	02/01/94–01/31/95
All other exporters of paint brushes from the People's Republic of China are conditionally covered by this review	
Countervailing duty proceedings	
Peru:	
Cotton Yarn, C–333–002	01/01/94–12/31/94

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: March 8, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–6395 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–05–M

[A–549–810]

Notice of Preliminary Negative Determination of Critical Circumstances: Disposable Pocket Lighters From Thailand

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT:
David R. Boyland, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4198.

Preliminary Negative Determination of Critical Circumstances: The Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value in this investigation on October 24, 1994 (59 FR 53414). On February 1, 1995, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise. On February 10, 1995, we received data from Thai Merry Co., Ltd. ("Thai Merry"), the respondent in this investigation, on U.S. shipment to the United States.

In accordance with 19 CFR 353.16(b)(2)(ii), when a critical circumstances allegation is filed later than 20 days before the scheduled date of the preliminary determination, we must issue our preliminary determination no later than 30 days after the allegation is filed.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

History of Dumping: To support the claim that the first prong of the statutory requirement is met, petitioner cited the European Community's November 19, 1991, imposition of antidumping duties on gas-fueled, non-refillable pocket flint lighters from the People's Republic of China, Japan, Korea, and Thailand (Council Regulation (EEC) No. 3433/91). Therefore, because petitioner established a history of dumping of the subject merchandise, we are not required to consider whether the importer knew or should have known that the exporter was selling the subject merchandise at less than fair value.

Massive Imports: Because we have preliminarily determined that the first statutory criterion is met for finding critical circumstances, we must consider whether imports of the merchandise have been massive over a relatively short period in accordance with 19 CFR 353.16(f) and (g).

19 CFR 353.16(f) and 353.16(g) directs the Department to look at the following factors to determine whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition (*see, Preliminary Affirmative Determination of Critical Circumstances: Certain Cased Pencils From the People's Republic of China,* (59 FR 44128 (August 26, 1994)). Under 19 CFR 353.16(f)(2), unless imports of the subject merchandise have increased by at least 15 percent, we will not consider the imports to have been "massive."

Because a determination of critical circumstances should be based on company-specific shipment information (*see, Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium,* 58 FR 37083 (July 9, 1993)), we requested that Thai Merry provide shipment information for the period from December 1, 1993 through April 30, 1994 ("pre-petition" period) and May 1, 1994 through September 30, 1994 ("post-petition" period). Pursuant to section 353.16(g) of the Department's antidumping regulations, in making critical circumstances determination, the Department normally considers the period beginning on the first day of the month of the initiation and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of the knowledge of the dumping investigation to increase exports to the United States without being subject to antidumping duties (*see, Final Determination of Sales at Less Than Fair Value of Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* (53 FR 12552, April 15, 1988)). For purposes of this final determination we are using as our comparison period five months prior to and five months subsequent to the initiation of this investigation.

Based on Thai Merry's shipment data, imports increased by an amount greater than 15 percent between the pre- and post-petition periods.

Seasonality: We found no evidence of seasonality, pursuant to section 353.16(1)(ii) of the Department's regulations.

Share of Domestic Consumption: Based on the information supplied in the critical circumstances allegation, Thai Merry's market share of domestic consumption (*i.e.,* total imports from Thailand as a percentage of total domestic consumption) between the pre- and post-petition periods did not change by an amount greater than three percentage points. (*See,* the February 27, 1995 memorandum to Susan H. Kuhbach, Director of Countervailing Investigations from David R. Boyland, Case Analyst for a full discussion of this issue.)

Other Factors: Respondent argues that the increase in shipment was in response to a Consumer Product Safety Commission ("CPSC") regulation which came into effect on July 12, 1994, and was not an attempt to circumvent a potential antidumping duty order.

Respondent also argues that section 353.16(f)(2) and past precedent allow the Department to consider the impact of the CPSC regulation on imports in determining whether they were massive. Respondent cites a DOC position comment in Antidumping Duties: Final Rule which states that the 15 percent test is "not intended to limit the Department's discretion or responsibility to consider in each case the factors relevant to a decision regarding whether imports are 'massive'" (*see,* Final Rule, 54 FR 12742, 12751 (March 28, 1989)).

With respect to the increase in shipment between the pre- and post-petition periods, and the circumstances that surround it, May 1994 is the month within the post-petition period which has been examined most closely by the Department. Based on an examination of past imports from Thailand, the highest volume of imports prior to the post-petition period occurred in August 1993. May 1994's volume of shipments was the only month during the post-petition period in which the level of shipments went outside the range established in August 1993. Hence, the surge in shipments that occurred in May represented a unique "spike" in the trend of shipments.

Also, the information provided to the Department shows that this dramatic increase in shipments was not sustained. If respondent was attempting to take advantage of the knowledge of an antidumping investigation to export prior to suspension of liquidation, we would expect the increase in shipment to be sustained up until the preliminary determination. This did not occur.

Finally, a significant percentage of the May 1994 shipments consisted of standard lighters which were to be banned pursuant to the July 1994 CPSC regulation. (Note: the CPSC gave notice of the impending ban on July 12, 1993. Thus, respondent was aware of the CPSC ban one year prior to its effective date. Additionally, orders shipped in May 1994 would arrive in the United States in June 1994; *i.e.,* prior to the CPSC ban.) Based on this information, it is reasonable to assume that the CPSC regulation drove the sharp increase in imports between the pre- and post-petition periods, as opposed to the possible suspension of liquidation.

Conclusion: Based on (1) an evaluation of apparent domestic consumption during the pre- and post-petition period, as calculated by petitioner, (2) Thai Merry's share of domestic consumption during the pre- and post-petition periods, (3) the shipment data provided by respondent as compared to previous periods, and (4) consideration of the circumstances surrounding the large increase in shipment in May 1994, we preliminarily determine that critical circumstances do not exist. (A more detailed analysis of the critical circumstances allegation is contained in the February 27, 1995 memorandum to Susan H. Kuhbach, Director, Office of Countervailing Investigations from David R. Boyland, Case Analyst.)

ITC Notification: In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment: Since this determination is being made subsequent to the due dates for public comment as published in our notice of preliminary determination of sales at less than fair value, we will accept written comments

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limited to this preliminary determination on critical circumstances if they are submitted to the Assistant Secretary for Import Administration no later than March 6, 1995

This determination is published pursuant to section 733(f) of the Act.

Dated: March 3, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6402 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–301–801 and A–331–801]

Amended Final Determinations of Sales at Less Than Fair Value: Fresh Cut Roses From Colombia and Ecuador

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: James Maeder or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3330 or (202) 482–3965, respectively.

Amendments to the Final Determinations

We are amending the final determinations of sales at less than fair value of fresh cut roses from Colombia and Ecuador to reflect the correction of ministerial errors made in the margin calculations in these determinations. Because corrections of ministerial errors for one company in the Colombian investigation results in its exclusion from any potential antidumping order, we are issuing this notice prior to the final determination of the U.S. International Trade Commission. These amendments to the final determinations are being published in accordance with 19 CFR 353.28(c).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions in effect on December 31, 1994.

Case History and Amendments of the Final Determinations

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on February 6, 1995, the Department of Commerce (the Department) published its final determinations that fresh cut roses from Colombia and Ecuador were being sold at less than fair value (60 FR 6980, 7019). Subsequent to the final determinations, we received timely ministerial error allegations from certain respondents in the Colombian and Ecuadorian investigations pursuant to 19 CFR 353.28. Section 751(f) of the Act defines a "ministerial error" to be an error "in addition, subtraction or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." Below is a discussion of the alleged errors that we determined to be ministerial errors as defined by section 751(f) of the Act. These, and the alleged errors that the Department determined not to be ministerial in nature, are detailed further in the Decision Memoranda from Gary Taverman to Barbara R. Stafford, dated March 3, 1995, which is on file in the Import Administration Central Records Unit, Room B–099 of the Main Commerce Building.

Colombia

On February 7 and 8, respondents Rosex Group, Prisma Group, Agricola Bojaca, Grupo Sabana, Flores Mocari, Caicedo Group, Grupo Intercontinental, and Grupo Papagayo, alleged that the Department made ministerial errors in its final determination and requested that the Department correct these errors. Petitioner provided comments on these allegations on February 14, 1995.

Rosex Group

Issue 1: Rosex Group states that the Department made a ministerial error in the calculation of its per unit credit expense. Rosex Group stated that it changed its reported interest rate in its December 5, 1994, sales listing from a dollar-denominated rate to a peso-denominated interest rate. Because Rosex Group calculated its U.S. imputed credit using a peso-denominated rate, it contends that the Department should have adjusted this rate instead of a dollar-denominated rate. Petitioner maintains that the Department's computer instructions to change the peso-based interest rate to a dollar-based rate appear to be correct.

We agree with respondent that this error constitutes a ministerial error as defined by section 751(f) of the Act. It was the Department's intention to use a U.S. interest rate of 7.575 percent in Rosex Group's imputed credit calculation. Therefore, we have corrected this ministerial error.

Prisma

Issue 1: Prisma argues that the computer program used to calculate its margin contained an error which incorrectly computed the per-unit commission for all U.S. sales observations. Stating that the Department intended to calculate a U.S. commission for ten specific U.S. sales observations, Prisma asserts that the program mistakenly caused every U.S. sales commission to be recalculated. In addition, Prisma claims that there is also a typographical error in the calculation of commissions for one sales observation.

We agree with Prisma that these are ministerial errors, and have revised the computer program accordingly.

Issue 2: With respect to inventory carrying costs, Prisma notes that it included the period normally covered by inventory carrying cost in its imputed credit calculation. As such, Prisma argues that the Department double-counted this expense by calculating a separate inventory carrying cost. Petitioner maintains that the Department imputed inventory carrying cost for seven days as best information available (BIA) for those respondents that failed to provide the data, and argues that because Prisma did not submit the data in the requested form, it cannot now argue double-counting to circumvent the application of BIA.

We agree with Prisma. We used BIA for inventory carrying cost for those respondents who had related parties in the United States and did not report inventory carrying costs on their exporter's sales price (ESP) sales. However, because Prisma does not have a related party in the United States, we incorrectly calculated inventory carrying costs. Therefore, we have adjusted for this ministerial error.

Issue 3: Prisma contends that the Department's inflation adjustment computation incorrectly assumed that all companies within the Prisma Group did not include the 1992 inflation adjustment in their submitted amortization expense. However, respondent notes that the cost verification report demonstrates that Prisma did include the 1992 inflation adjustment for farm Del Campo in its submitted amortization expenses.

We agree. The cost verification report at page 9 indicates that one of the seven Prisma Group farms (Del Campo) did include in its submitted cost information its inflation adjusted pre-production material amortization costs for years prior to the period of investigation (POI). The other six farms that make up the Prisma Group did not make adjustments for inflation. Because we did not intend to make an adjustment for Del Campo that had already been made, we have recalculated the inflation adjustment.

Bojaca

Issue 1: Bojaca contends that it was incorrect for the Department to use BIA to impute amounts for brokerage and duties whenever the values for those expenses were reported as zero for U.S. ESP customers. Bojaca asserts that it was only for customer 4 that there were zero values for brokerage or duties, and maintains that because it could not segregate these amounts, it reported the combined amounts under air freight.

Petitioner argues that Bojaca failed to cite to any questionnaire response or verification exhibit which informed the Department that brokerage and duty expenses were consolidated with air freight. Petitioner asserts that Bojaca did not explain why a reasonable allocation methodology could not segregate these amounts, and adds that it is not clear that brokerage and duty expenses were always included in air freight. Therefore, petitioner asserts that the Department's choice of BIA to fill Bojaca's reported zero values does not constitute a ministerial error.

We agree with respondent in part. We verified that Bojaca had included its duty and brokerage expenses in its air freight expenses for customer 4. Therefore, we incorrectly applied BIA to customer 4. However, we found that there are zero values for other ESP customers. Therefore, we have continued to use BIA for the other ESP customers that have a zero value reported in these fields.

Issue 2: Bojaca argues that the Department incorrectly calculated constructed value (CV) packing expense by using total packing expenses for roses, irrespective of destination, rather than total U.S. packing expense.

We agree. We intended to use total U.S. packing expenses rather than total packing expenses in our CV calculation. We have recalculated CV packing expense to correct this error.

Issue 3: Bojaca argues that the Department erroneously allocated the entire group-wide interest expense to roses, when it should have allocated only the proportion of the group-wide interest expense associated with rose activities. Bojaca argues that the interest expense associated with the dairy farm and mini-roses should not have been included in the calculation.

We agree. We intended to exclude from our cost calculations the portion of interest expense related to the dairy farm. We purposely did not allocate any interest expense to the mini-roses because: (1) Respondent indicated that an insignificant portion (less than one percent) of the total cultivated area of one of the three farms within the Bojaca Group produced mini-roses; and, (2) because the cost of production for mini-roses, the basis used to allocate interest expense to Bojaca's different products, was not provided by the company. We intended to compute interest expense by excluding only the portion of interest expense that relates to the dairy farm. We have made this adjustment, but only as it related to the dairy farm.

Mocari

Issue 1: Mocari argues that the Department mistakenly deducted air freight expenses which it did not incur on its purchase price (PP) sales transactions. Mocari points out that these sales were made on an FOB Bogota basis, and requests that the Department deduct the air freight expenses from only the ESP sales transactions. The petitioner argues that Mocari had ample opportunity throughout the investigation to correct any error in reporting air freight. In addition, the petitioner maintains that Mocari has not provided a basis which demonstrates that its proposed correction would be limited only to removing erroneous expenses.

We agree with respondent. We verified that Mocari did not pay air freight for PP sales. Therefore, we have corrected the error by deducting amounts for air freight from ESP sales only.

Issue 2: Mocari claims that the Department mistakenly included it in the list of companies that had no U.S. borrowings during the POI and should not have used BIA to calculate imputed credit expenses and inventory carrying cost. Mocari maintains that the Department should have used its actual borrowing rate instead of the publicly ranged interest rate to calculate imputed credit expenses and inventory carrying costs.

We agree with respondent. We intended to use Mocari's actual interest rate in our imputed credit expenses and inventory carrying costs calculations. Mocari's financial statements show that it paid interest on short-term borrowings during the POI. Accordingly, we have revised Mocari's imputed credit calculation and inventory carrying cost to use its short-term dollar-denominated interest rate.

Issue 3: Mocari claims that the Department should not have subtracted the total number of stems returned from the sales quantity indicated on the CV tables because the amount reported was already net of returns. Therefore, Mocari requests that the Department recalculate its cost of manufacture (COM) using the sales quantity indicated on line 8 of the CV tables. In addition, Mocari requests that the Department not subtract additional stems from the amount reported on line 8 of the CV tables because such action represents an improper double-counting of returns.

The petitioner states that Mocari should have reported an amount which was inclusive of returns in line 8 of the CV tables instead of an amount which was net of returns. The petitioner argues that Mocari should have notified the Department earlier that the amount reported on line 8 of the CV table was net of returns. Therefore, petitioner maintains that clerical error comments are not the forum in which to determine new factual claims.

We agree with respondent. Sales verification exhibit 19 shows that the amount Mocari reported on line 8 of the CV tables is net of returns. Accordingly, we have recalculated the COM, interest, and general and administrative expenses for Mocari using the quantity amount on line 8 of the CV tables. Further, because this figure is net of returns, we did not deduct an additional amount for returns from this figure; this action would have represented double-counting.

Grupo Intercontinental

Issue 1: Grupo Intercontinental (Intercontinental) alleges that in its CV calculation, the Department erred in its calculation of a home market packing cost as BIA. Intercontinental argues that the Department should have used its U.S. packing cost, as required by section 353.50(a)(3) of the Department's regulations. Intercontinental further states that instead of using the verified U.S. packing expense in its CV calculation, the Department used a home market BIA amount that should have been applied only to home market sales of export quality roses for which no packing costs were reported. Therefore, Intercontinental requests that the Department apply the U.S. packing expense in its CV calculation.

We agree that the Department erred in using the BIA home market packing expense for CV. While we properly applied the per stem packing cost for purposes of the cost test, we intended to use the verified U.S. packing amount for calculating CV. Therefore, we revised our calculation to correct this clerical error.

Issue 2: Intercontinental states that the Department intended to correct Colombian Flower Council (CFC) fees for certain customers in certain months

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and that, in making the programming changes necessary to accomplish this task, the Department mistakenly changed the CFC fees for all customers in all months. We agree, and have corrected this error.

Caicedo Group

Issue 1: Caicedo states that the Department's inflation adjustment was intended to be a reasonable estimate of the effects of inflation on depreciation and amortization expenses denominated in historical pesos. Caicedo argues, however, that the Department erred in applying its inflation adjustment to the company's total reported cost of cultivation, including current cultivation costs, and that this is the equivalent of punitive "BIA." Caicedo further argues that its record provides information regarding the company's 1993 depreciation and amortization of pre-production expenses.

We agree that the Department mistakenly adjusted Caicedo's current cultivation costs for inflation. Accordingly, we have recalculated the inflation adjustment by applying the determined inflation rate to non-current, pre-production amortization and depreciation costs only.

Issue 2: Caicedo argues that the Department should adjust the cull revenue to recognize the insurance compensation proceeds the company received for hailstorm damage. Caicedo states that the insurance proceeds, which were originally reported as an offset to overhead, were subsequently reclassified by Caicedo and included in the balance for cull revenue. Caicedo concludes that the Department made a ministerial error by excluding the reduction in rose production costs resulting from the insurance proceeds.

We agree. We have reduced Caicedo's total costs by the insurance proceeds received.

Issue 3: Caicedo contends that the Department made two ministerial errors in its allocation of interest expenses. First, Caicedo argues that the Department erred in allocating interest expense over total export quality rose stems sold during the POI. Because the particular companies involved produce and sell other types of flowers, Caicedo maintains that the Department should have allocated interest expense over total flower stems. Second, Caicedo claims that the Department failed to allocate any of the combined interest expense to Great American Bouquet S.A. (GAB), a division of Inverfloral LTDA (Inverfloral) that does not grow flowers, but, rather, incorporates numerous flower types, including roses, into bouquets. Caicedo concludes that the Department's failure to allocate the combined interest expenses to GAB was inadvertent, and that the Department intended to allocate the combined interest expenses of the four grower/exporters over their combined stems sold for all flower types.

We agree. We intended to allocate the combined interest expense of the four grower/exporters to the rose operations of those companies, including Inverfloral's GAB division. Therefore, we recalculated Caicedo's interest expense by first allocating the total combined interest expenses of the four companies between Inverfloral/GAB (non-grower) and the other three companies (which all grow flowers) based on the ratio of Inverfloral/GAB's productive and long-term assets to the total productive and long-term assets of all four companies. Because companies generally borrow capital in order to finance the purchase of such assets, we consider this approach to be the most reasonable indicator of the borrowing needs of the rose production versus bouquet assembly sides of Caicedo's operations. For each of the four grower/exporters, we included in productive assets the year-end 1993 financial statement balances for inventory, crop investments, crops in development, and long-term assets, including fixed assets.

In order to allocate the remaining interest expense between rose and other flower growing operations at the three production companies, we used the ratio of rose cultivation area to total cultivation area, for the three companies that grow flowers. This methodology is consistent with that used for several of the other Colombian rose growing companies.

Ecuador

On February 8, 1995, Arbusta-Agritab (Arbusta) and Guanguilqui Agro Industrial S.A. (Guaisa) made timely allegations that the Department made ministerial errors in its final determination. On February 16, 1995, petitioner provided its comments on the alleged errors.

Arbusta

Issue 1: Arbusta states that the Department incorrectly multiplied DHL delivery charges by quantity before subtracting this expense from U.S. price.

We agree. Because we did not intend to multiply the per stem DHL expense by quantity, we have corrected this error.

Issue 2: Arbusta argues that the Department incorrectly disallowed the company's capitalization of costs incurred during the vegetative period.

We agree. Because we inadvertently overlooked the inclusion of the capitalization and amortization of prior period vegetative period costs, we have adjusted the CV to allow for the current period capitalization of vegetative period costs.

Issue 3: Arbusta alleges that the Department mistakenly added actual historical depreciation expenses to CV instead of only the revaluation of those expenses. Arbusta contends that this addition double counts the amount of historical depreciation.

We agree. We inadvertently added historical depreciation to CV. Therefore, because we unintentionally double-counted this expense, we have corrected the error.

Issue 4: Arbusta states that in its CV calculation the Department used an incorrect packing expense. Petitioner also notes that the packing cost used in the CV calculation for Arbusta conflicts with the Department's analysis memorandum.

We agree with both petitioner and respondent, and determine this to be a ministerial error. Accordingly, we have corrected the packing expenses used in CV.

Guaisa

Guaisa contends that the Department reallocated certain expenses to roses based on an incorrect rose area percentage for Guaisa farm.

We agree with Guaisa in part. We found a typographical error in our calculation of the correct roses cultivated area. However, the rose area calculated by Guaisa that it requested the Department use in its recalculation is incorrect. Accordingly, we have corrected the typographical error we found in our original calculation and rejected the figure calculated by Guaisa.

Scope of Investigation

The products covered by these investigations are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas, whether imported as individual blooms (stems) or in bouquets or bunches. Loose rose foliage (greens), loose rose petals and detached buds are excluded from these investigations. Roses are classifiable under subheadings 0603.10.6010 and 0603.10.6090 of the Harmonized Tariff Schedule of the United States (*HTSUS*). The *HTSUS* subheadings are provided for convenience and customs purposes. The written description of the scope of these investigations is dispositive.

Suspension of Liquidation

In accordance with 19 U.S.C. 1673b, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of fresh cut roses from Colombia and Ecuador, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds United States price as shown in the table below. The following is a list of all the final margins, including the amended final margins, in these investigations.

Manufacturer/Producer/Exporter	Margin percent
Colombia	
Flores Mocari S.A. (and its related farms Cultivos Miramonte and Devor Colombia)	2.85
Rosex (and its related farms Rosex Ltda. La Esquina and Paraiso Farms), Induflora Ltda., and Rosas Sausalito Ltda.)	2.44
Grupo Prisma (and its related farms Flores del Campo Ltda., Flores Prisma S.A., Flores Acuarela S.A., Flores el Pincel S.A., Rosas del Colombia Ltda., Agropecuaria Cuernavaca Ltda.)	0.00
Grupo Bojaca (and its related farms Agricola Bojaca Ltda., Universal Flowers, and Plantas y Flores Tropicales Ltda. (Tropiflora))	20.66
Caicedo Group (and its related farms Agrobosque, Productos el Rosal S.A., Productos el Zorro S.A., Exportaciones Bochia S.A. - Flora Ltda., Flores del Cauca, Aranjuez S.A., Andalucia S.A., Inverfloral S.A., and Great America Bouquet)	15.07
Grupo Intercontinental (and its related farms Flora Intercontinental and Flores Aguablanca)	3.92
All Others	5.53
Ecuador	
Arbusta-Agritab (and its related farms Agrisabe, Agritab, and Flaris)	4.01
Guanguilqui Agro Industrial S.A. (and its related farm Indipasisa)	14.29
All Others	5.41

These amended final determinations are published in accordance with section 751(f) of the Act and 19 CFR 353.28(c).

Dated: March 3, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6403 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–811]

Final Negative Countervailing Duty Determination: Disposable Pocket Lighters From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4105.

Final Determination. The Department of Commerce ("the Department") determines that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Thailand of disposable pocket lighters.

Case History

Since the publication of the preliminary determination in the **Federal Register**, 59 FR 40525 (August 9, 1994), the following events have occurred.

On September 13, 1994, at petitioner's request, we extended the final determination in this investigation to coincide with the final determination in the companion antidumping investigation (59 FR 46961).

On November 3, 1994, respondents requested that the Department postpone the final antidumping and countervailing duty determinations. Therefore, on November 16, 1994, the Department published in the **Federal Register** a notice postponing the final antidumping and countervailing duty determinations until no later than March 8, 1995 (59 FR 59211).

We conducted verification of the responses submitted on behalf of the Government of Thailand (GOT) and Thai Merry Co., Ltd. (Thai Merry) from October 17–18, and on October 28, 1994, respectively. We received case briefs on February 23, 1995, from petitioner and respondent, and received a rebuttal brief from respondent on March 1, 1995.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.220.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which were withdrawn on January 3, 1995 (60 FR 80), are provided solely for further explanation of the Department's CVD practice. The subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act.

Injury Test

Although Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff

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Act of 1930, as amended ("the Act"), the merchandise being investigated is non-dutiable under the Generalized System of Preferences and Thailand is a contracting party to the General Agreement on Tariffs and Trade. Thailand, therefore, is entitled to an injury test on imports of the subject merchandise pursuant to section 303(a)(2) of the Act. On June 20, 1994, the ITC preliminarily determined that imports of the subject merchandise from Thailand materially injure, or threaten material injury to, a U.S. industry.

Period of Investigation

For purposes of this final determination, the period for which we are measuring bounties or grants (the period of investigation ("POI")) is calendar year 1993.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification and comments made by interested parties, we determine the following:

A. Programs Determined to be Countervailable

1. Section 31 of the Investment Promotion Act

The Investment Promotion Act of 1977 ("IPA") provides incentives for investment to promote the development of the Thai economy. The IPA authorizes an array of tax exemptions and exclusions. The IPA is administered by the Board of Investment (BOI) through promotion certificates. These certificates list the various sections of the IPA under which a company is eligible to receive benefits.

Under section 31, companies may obtain a three-to-eight year exemption from payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period. The 1977 IPA Act has been amended several times and, in 1991, the GOT passed the Investment Promotion Act No. 2 of 1991. This 1991 Act was the law in effect during the POI. Section 16 of this law states that eligible activities for this exemption include " * * * activities which involve production for export."

We verified that Thai Merry applied for and received section 31 income tax exemptions during the POI. The approval certificate received by Thai Merry for participation in this program states that "the company has received a promoted status in the business for production of gas lighters for export."

Because Thai Merry received these benefits for exported lighters, we determine that this program confers an export bounty or grant. To calculate the benefit for the POI, we divided the tax savings by the total value of export sales, pursuant to 355.47(c)(1)(ii) of the *Proposed Regulations (Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989)). On this basis, we calculated a net bounty or grant of 0.23 percent *ad valorem*.

Because this is the only countervailable program and the rate is *de minimis*, pursuant to 19 CFR 355.7 (1994), we determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of disposable pocket lighters in Thailand.

B. Programs Determined to be Not Used

We established at verification that the following programs were not used during the POI.

A. *Industrial Estates/Export Processing Zones*
B. *Preferential Short-term Loans Under the Export Packing Credit Program*
C. *Tax and Duty Exemptions Under the Investment Promotion Act (sections 28, 33, 34, 36(1), 36(2), 36(3) and 36(4)*
D. *Tax Certificates for Exporters*
E. *Rediscount of Industrial Bills*
F. *International Trade Promotion Fund*

Interested Party Comments

Comment 1: Petitioner asserts that the Department should countervail government subsidies provided to two plants which provide assembly services under subcontract to Thai Merry. These assembly plants are not owned by Thai Merry, although the materials processed in these facilities are the property of Thai Merry. These assembly plants were discussed in the course of the antidumping (AD) verification, not in the CVD verification. Petitioner believes that because one of these plants assembles safety-lock lighters, which are only sold in the United States, the facility may be benefitting from being located in an export processing zone. Petitioner asserts that unless respondent can provide proof that these facilities are not located in an export processing zone, the Department should presume that these plants receive subsidies and that Thai Merry benefits from such subsidies, and should apply a countervailing duty rate to Thai Merry based on BIA.

Respondent contends that petitioner's brief should be rejected due to the inclusion of arguments based on information not on the record of the CVD investigation. (The fact that Thai Merry subcontracted some assembly operations to unrelated firms was only raised in the AD investigation.)

Respondent emphasizes that the Department verified that Thai Merry is not located in an export processing zone and that the company did not benefit from this program during the POI. Additionally, respondent asserts that since the Department chose not to verify the location of the subcontractor's assembly plants in connection with the CVD verification, it would be unfair to assign a margin to Thai Merry based on BIA.

DOC Position: We consider petitioner's allegation untimely and, therefore, have not considered its allegation in this investigation. Pursuant to § 353.31(c)(i) of the *Proposed Regulations*, "the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of section 355.2, later than: (i) In an investigation, 40 days prior to the scheduled date of the Secretary's preliminary determination." Petitioner first alleged that subsidies could have been provided to Thai Merry's unrelated assembly plants in its case briefs, 13 days prior to the final determination.

We further note that section 355.39 of the *Proposed Regulations* does not apply in this case. Section 355.39 provides that if "the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review." In the context of the companion AD investigation, the Department verified that Thai Merry subcontracts certain of its assembly operations. The Department then verified the location and function of these plants, and the fact that Thai Merry did not own these assembly plants. However, in the context of this proceeding, we did not discover "a practice which appears to provide a subsidy." Therefore, the Department would not have been obligated to conduct an examination of the situation, even had there been "sufficient time" to do so.

We agree with respondents that it is inappropriate to apply BIA to Thai Merry based on an unsupported allegation that subsidies may have been granted to the assembly plants owned by its unrelated subcontractor(s). Petitioner has not made a sufficiently detailed allegation either that the assembly plants received countervailable benefits, or how such countervailable benefits might be accruing to Thai Merry through either of these plants.

Petitioner has acknowledged that these assembly plants are not owned by Thai Merry. Petitioner has provided no argument as to why the Department should countervail alleged subsidies provided to an unrelated subcontractor of a company under investigation. Therefore, we conclude that Thai Merry did not benefit from this program.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that no bounties or grants are being provided to manufacturers, producers or exporters of disposable pocket lighters in Thailand, the investigation will be terminated upon publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination with respect to this countervailing duty proceeding.

Return of Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: March 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6400 Filed 3–14–95; 8:45 am]

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National Oceanic and Atmospheric Administration

[Docket No. 95–0222054–5054–01; I.D. 021495A]

RIN 0648–ZA15

Financial Assistance for Chesapeake Bay Stock Assessments to Encourage Research Projects for Improvement in the Stock Conditions of the Chesapeake Bay Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: A total of $540,000 in Fiscal Year (FY) 1995 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist interested state fishery agencies, academic institutions, and other nonprofit organizations relating to cooperative research units, in carrying out research projects to provide information for Chesapeake Bay Stock Assessments through cooperative agreements. About $180,000 of the base amount is available to initiate new projects in FY 1995, as described in this announcement. NMFS issues this notice describing the conditions under which eligible applications will be accepted and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program will be accepted until May 1, 1995, 6 p.m. eastern standard time. Applications received after that time will not be considered for funding. No applications will be accepted by facsimile machine submission.

Successful applicants generally will be selected approximately 90 days from the date of publication in the **Federal Register** of this notice. The earliest date for awards will be approximately 180 days after the date of publication in the **Federal Register** of this notice.

ADDRESSES: Send applications to: M. Elizabeth Gillelan, Division Chief, NOAA Chesapeake Bay Office, NMFS, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Gillelan, 410/267–5660.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753 (a), authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with nonprofit organizations relating to cooperative research units. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1995 makes funds available to the Secretary.

B. *Catalog of Federal assistance.* The research to be funded is in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Stock Assessment Committee (CBSAC).

C. *Program description.* The CBSAC was established in 1985 to plan and review Bay-wide resource assessments, coordinate relevant actions of state and Federal agencies, report on fisheries status and trends, and determine, fund and review research projects. The program implements a Bay-wide plan for the assessment of commercially, recreationally, and selected ecologically important species in the Chesapeake Bay. In 1988, CBSAC developed a Bay-wide Stock Assessment Plan, in response to provisions in the Chesapeake Bay Agreement of 1987. The plan identified that key obstacles to assessing Bay stocks were the lack of consistent, Bay-wide, fishery-dependent and fishery-independent data. Research projects funded since 1988 have focused on developing and improving fishery-independent surveys and catch statistics for key Bay species, such as striped bass, oysters, blue crabs, and alosids. Stock assessment research is essential, given the recent declines in harvest and apparent stock condition for many of the important species of the Chesapeake Bay.

II. Areas of Special Emphasis

A. Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Eligible women and minority owned and operated non-profit organizations are encouraged to apply.

Consideration for funding will be given to applications that address the following stock assessment research and management priorities for the Chesapeake Bay. These are listed in priority order:

1. Design and development of a Bay-wide recreational survey for blue crabs. This study should provide not only estimates of blue crab harvest by category (eg., hard, soft, peeler) and associated effort, but also biological

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sample data on size or age distribution of the recreational harvest. This could be designed as a stand-alone survey, or as a supplement to the NMFS Marine Recreational Fisheries Statistics Survey (MRFSS).

A major impediment to understanding the status of the fishery resources in the Chesapeake Bay is the lack of knowledge of the total removals, by fishing, of important fish and shellfish species. While estimates of commercial catches from both Maryland and Virginia are available based on state reporting requirements, estimates of recreational blue crab harvest are not available for most years. A main concern to be addressed in the design of this survey is the difficulty in obtaining estimates of recreational blue crab catches since much of the harvest is landed at private, rather than public, docks and ramps.

The recreational survey design should be consistent with the model of the NMFS MRFSS, with its two principal design components. First, a telephone survey instrument used to enumerate total period and seasonal directed fishing effort by mode. Secondly, an access intercept survey component to estimate period/seasonal mean catch-rate by mode and category, and the collection of biological characterization data.

Proposals for this priority must address the following aspects of the survey design.

a. *Identification of the access-intercept sampling frame*, including:

(1) List of all access sites.

(2) Detailed model for scheduling the temporal and geographic distribution of field interviews within the sampling frame, and the routing scheme among access sites.

(3) Description of information to be obtained from interviews, specifically the interview survey questionnaire.

(4) Description of the nature and manner of collection of biological samples which will minimally include size, sex, and category by mode.

b. *Identification of the telephone survey sampling frame*, including:

(1) Specifications of who is included in the sampling frame and how this was determined.

(2) Complete description of the temporal distribution of telephone calls and associated sample size requirements.

(3) Specification of the interview survey questionnaire.

c. *Completion of a pilot study*, which will successfully demonstrate the effectiveness of the above two survey components for the estimation and characterization of blue crab recreational harvest. The pilot study should minimally address the following:

(1) Comparisons of catch rates among the various fishing modes, methods, and times, etc. which will serve as the basis for determining the proportional sampling needed to provide unbiased estimates.

(2) Identification and resolution of any deficiencies in the sampling frame.

(3) Final estimates of the pilot study period recreational harvest by category, mode (with associated effort) and measures of percent standard error about the point estimates.

Copies of a report of a workshop which discussed concerns specific to the design of a recreational blue crab survey may be obtained from the NOAA Chesapeake Bay Office.

2. Design and conduct a study to determine the discard mortality and discard size frequencies in the commercial and recreational fisheries in Chesapeake Bay. This study should provide information on the reason for discard (e.g., minimum size regulation, lack of market, etc.), the length distribution of discards, and discard mortality rates, primarily for summer flounder and bluefish, as well as other important Bay species. This is to be a onetime study, not a design effort for future implementation.

Discard information is limited and current assessments are forced to use analogous information from other species and limited areas. Data from this study would be a valuable improvement in coastwide assessments.

3. Design of a cost-effective American shad mark-and-recapture (tagging) study which would provide abundance and mortality estimates for Chesapeake Bay stocks. There is currently a Bay-wide moratorium on the harvest of American shad, yet coastal intercept fisheries continue to harvest this species. This study should be designed to identify which fisheries harvest Bay stocks, and provide estimates of the abundance and mortality rates for those stocks.

B. Applications addressing the priorities should build upon, or take into account, any related past or current work.

III. How to Apply

A. *Eligible Applicants.* Applications for cooperative agreements under the Chesapeake Bay Studies Program may be submitted, in accordance with the procedures set forth in this notice, by any state game and fish department, college or university, or other nonprofit organizations relating to cooperative research units. Other Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

DOC/NOAA/NMFS employees, including full-time, part-time, and intermittent personnel (or their spouses or blood relatives who are members of their immediate households) are not eligible to submit an application under this solicitation or aid in the preparation of an application, except to provide information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring proposals.

Eligible applicants outside the Chesapeake Bay region may submit proposals, as long as their objectives support the technical and management priorities of the Chesapeake Bay, as defined in section II.A. above. All solicited proposals received by the closing date will be considered by NMFS.

B. *Duration and terms of funding.* Under this solicitation, NMFS will fund Chesapeake Bay Stock Assessment Research Projects for 1 year cooperative agreements. The cooperative agreement has been determined as the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;

2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay stock assessments;

3. Monitoring the progress of each funded project;

4. Holding periodic workshops with investigators; and

5. Working with recipients in preparation of annual reports summarizing current accomplishments of the Chesapeake Bay Stock Assessment Committee. Project dates should be scheduled to begin no later than 1 October 1995. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. *Cost Sharing.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost sharing is not required under the Chesapeake Bay Stock Assessment Research Program. However, cost sharing is encouraged to enhance the

value of a project, and in case of a tie in considering proposals for funding, cost sharing may affect the final decision. The appropriateness of all cost sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to share costs, and if that application is selected for funding, the applicant will be bound by the percentage of cost sharing reflected in the award documents.

The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. To support the budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions.

The total cost of a project begins on the effective date of a cooperative agreement between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

D. *Format.* 1. Applications for project funding must be complete. Applicants must identify the specific research priority or priorities to which they are responding. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application.

2. Applications must be submitted in the following format:

a. *Cover sheet*: An applicant must use OMB Standard Form 424 (revised 4–92) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division or the NOAA Chesapeake Bay Office (see ADDRESSES).

b. *Project summary*: Each proposal must contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

c. *Project description*: Each project must be completely and accurately described. Each project description may be up to 15 pages in length. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of problem(s)*: Describe the specific problem to be addressed and the area of emphasis to which the project responds (see section II above).

(2) *Project objectives*: This is one of the most important parts of the Project Proposal. Use the following guidelines for stating the objective of the project.

(a) Keep it simple and easily understandable.

(b) Be as specific and quantitative as possible.

(c) Specify the "what and when;" avoid the "how and why."

(d) Keep it attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(3) *Need for Government financial assistance*: Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(4) *Benefits or results expected*: Identify and document the results or benefits to be derived from the proposed activities.

(5) *Project statement of work*: The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s). If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant.

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c.(5)(d)) that are to be attained in each month covered by the Statement of Work.

(6) *Participation by persons or groups other than the applicant*: Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the initial proposal.

(7) *Federal, state and local government activities*: List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship

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between the project and those plans or activities.

(8) *Project management*: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) *Monitoring of project performance*: Identify who will participate in monitoring the project.

(10) *Project impacts*: Describe the impact of the project in terms of anticipated increased production, sales, product quality and safety, improved management, or any other values that will be produced by this project. Describe how these products or services will be made available to the fisheries and management communities.

(11) *Evaluation of project*: The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) *Total project costs*: Total project cost is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF–424A) is available from the offices listed (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

d. *Supporting documentation*: Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Evaluation Criteria and Selection Procedures

A. *Initial evaluation of applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement, including eligibility and relevance to the Chesapeake Bay Stock Assessment Research Program.

B. *Consultation with experts in the field of stock assessment research.* For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Technical evaluators will submit independent reviews to NMFS. Reviewers will be asked to comment on the following evaluation criteria:

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (30 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (35 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (15 points).

4. Justification and allocation of the budget in terms of the work to be performed (20 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regionally recognized experts in the scientific and management aspects of stock assessment research who will conduct reviews as follows:

1. Evaluate technical reviews.

2. Provide independent review based on the same criteria as the technical review.

3. Discuss all review comments as a panel.

4. Provide individual panelist scores and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

D. *Funding decision.* 1. Applications will be ranked by NMFS into two groups: (a) Recommended, and (b) not recommended. As previously stated (section III A.1.), collaborative proposals and applications which propose a cost share are strongly encouraged, and therefore will be given added weight in the selection process. Numeric ranking will be the major consideration for deciding which of the "recommended" proposals will be selected for funding.

2. After projects have been ranked for funding, the Chief of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator for Fisheries, NOAA, will determine the projects to be recommended for funding based upon the technical evaluations, panel review, and the evaluation factors; ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices; and, determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff.

V. Administrative Requirements

A. *Obligations of the applicant.* 1. *Deliverables*—In addition to quarterly status and budget reports, and at the time of submission of the final report of results of funded projects, recipients must submit a four-to-five page summary of project work and results that will be compiled in a report of Chesapeake Bay Stock Assessment Research Program results. Projects that produce non-experimental data must have copies of these data transferred to the NOAA/NMFS Chesapeake Bay Office in both compiled, hard copy format, and as a verified, electronic data file. Full, clearly stated documentation of the contents of such data files must be submitted with these data.

2. *Periodic workshops*—Investigators will be expected to attend one or two workshops with other Stock Assessment Research Program researchers to encourage interdisciplinary dialogue and forge synthesis of results.

3. *Primary applicant certifications*—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Nonprocurement debarment and suspension*—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

b. *Drug-free workplace*—Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed above applies;

c. *Anti-lobbying*—Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. *Anti-lobbying disclosure*—Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. *Lower tier certifications*—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

B. *Other requirements.* 1. *Federal policies and procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Indirect cost rates*—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the current indirect cost rate negotiated and approved by a cognizant Federal agency. NOAA's acceptance of negotiated rates is subject to total indirect costs not to exceed 100% of total direct costs. This language is pursuant to the NOAA Grants and Cooperative Agreements Policy Manual, Chapter 3(B)(2).

3. *Past performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

4. *Financial management certifications/preaward accounting survey*—Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC prior to execution of the award.

5. *Delinquent Federal debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to DOC are made.

6. *Name checks*—Potential recipients may be required to submit an "Identification-Application for Funding Assistance" (Form CD–346), which is used to ascertain background information on key individuals associated with the potential recipient. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Applicants will also be subject to credit check reviews.

7. *False statements*—A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. *Preaward activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

9. *Purchase of American-made equipment and products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, sections 607(a) and (b).

10. *Other*—If an application is selected for funding, DOC has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This notice contains collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, and 0605–0001.

Dated: March 7, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–6312 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–22–F

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[I.D. 030796C]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Council's (Council) Ad Hoc Rock Shrimp Advisory Panel (Panel) will meet on March 30, 1995, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000.

The Panel will discuss options for Amendment 1 to the Shrimp Fishery Management Plan that will protect bottom habitat while allowing the rock shrimp industry to operate. The Panel also will discuss options for permits and mandatory reporting requirements in the fishery, as well as the information provided by industry on harvest areas and landings of rock shrimp in the South Atlantic region.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office at the above address by March 23, 1995.

Dated: March 9, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6315 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030795D]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold separate meetings. The Council will hold its 83rd regular public meeting to discuss the Draft Queen Conch Fishery Management Plan, among other topics.

The Council will convene on March 29, 1995, from 9:00 a.m. until 5:00 p.m. and on March 30, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on March 28, from 10:00 a.m. until 12:00 noon, to discuss administrative matters regarding Council operation and in closed session to discuss personnel matters at the Council office, from 2:00 p.m. until 5:00 p.m.

Except as noted, both meetings will be held at the Conference Room of the Travelodge Hotel, in Isla Verda, PR.

Except for the closed session above, all other meetings are open to the public, and will be conducted in English. However, simultaneous translation (Spanish-English) will be available during the Council meeting (March 29 and 30). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, at the above address and telephone number, at least 5 days prior to the meeting date.

Dated: March 9, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6313 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030795E]

Caribbean Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) of the Caribbean Fishery Management Council (Council) will hold separate meetings to discuss the Draft Queen Conch Fishery Management Plan.

The SSC will meet on March 21, 1995, at the Travelodge Hotel, San Juan, Puerto Rico. The AP will meet on March 27, at the same location. Both meetings will begin at 10:00 a.m. and adjourn at 4:00 p.m.

The meetings are open to the public, and will be conducted in the English language. However, simultaneous translation (English/Spanish) will be available at the AP meeting.

Fishers and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, at the above address and telephone number, at least 5 days prior to the meeting date.

Dated: March 9, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6314 Filed 3–14–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting Cancellation of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission which was to have convened on Friday, March 17, 1995, at 10:00 a.m. and adjourned at 5:00 p.m., at the Holiday Inn-Marine World, 1000 Fairgrounds Drive, Vallejo, California 94589, has been canceled.

The original notice for the March 17, 1995, meeting was announced in the **Federal Register** on February 24, 1995, FR Doc. 95–4528, 60 FR–10350, No. 37.

Persons desiring additional information should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TTD 213–894–0508).

Dated at Washington, DC, March 10, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–6476 Filed 3–14–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene on 9:30 a.m. to 12:00 p.m. on Friday, April 7, 1995, at the Offices of Walther, Key, Maupin, et al, 3500 Lakeside Drive, 2nd Floor, Reno, Nevada 89509. The purpose of the meeting is to review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 3, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–6290 Filed 3–14–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Advanced Weapons will meet on 3–7 April 1995 at Kirtland AFB, NM from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to fulfill the yearly SAB Science and Technology Review in the area of Advanced Weapons.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force **Federal Register** Liaison Officer.

[FR Doc. 95–6281 Filed 3–14–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: Switzerland to the United Kingdom for the purpose of reprocessing 112 irradiated fuel assemblies containing approximately 20,000 kilograms of uranium and containing 165 kilograms of the isotope uranium-235 (enriched to approximately 0.83%) and 185 kilograms of plutonium from the Muhleberg nuclear power station. This subsequent arrangement is designated as RTD/EU(SD)–81.

The United States has received assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Issued in Washington, D.C. on March 8, 1995.

Edward T. Fei,

Acting Director, International and Regional Security Division, ffice of Arms Control and Nonproliferation.

[FR Doc. 95–6385 Filed 3–14–95; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: Switzerland to France for the purpose of reprocessing 14 irradiated fuel assemblies containing approximately 2,500 kilograms of uranium and containing 21 kilograms of the isotope uranium-235 (enriched to approximately 0.84%) and 23 kilograms of plutonium from the Muhleberg nuclear power station. This subsequent arrangement is designated as RTD/EU(SD)–82.

The United States has received assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress,

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beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Issued in Washington, D.C. on March 10, 1995.

Edward T. Fei,

Acting Director, International and Regional Security Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–6383 Filed 3–14–95; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the transfer of 315 kilograms of fissile plutonium from the reprocessing site in France to either the Siemens facility in Hanau, the Federal Republic of Germany, the Compagnie Generale des Matieres Nucleaires (COGEMA) in France or the British Nuclear Fuels, plc in the United Kingdom. The plutonium will be used for fabrication of mixed plutonium-uranium oxide fuel for use in power reactors within the European Community.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Issued in Washington, D.C., on March 8, 1995.

Edward T. Fei,

Acting Director, Division of International and Regional Security, Office of Arms Control and Nonproliferation.

[FR Doc. 95–6384 Filed 3–14–95; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory.

DATES: Tuesday, March 21, 1995 from 8:00 a.m. Mountain Standard Time (MST) until 6:00 pm MST and Wednesday, March 22, 1995 from 8:00 a.m. MST until 5:00 p.m. MST. There will be a public comment availability session Tuesday, March 21, 1995 from 5:00 to 6:00 p.m. MST.

ADDRESSES: Shilo Inn, 780 Lindsay Blvd, Idaho Falls, ID 83402, (208)523–0088.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Board will be developing a recommendation on the Idaho National Engineering Laboratory Future Land Use Plan, studying budget prioritization activities for the DOE-ID FY 1997 budget, and continue its study of risk management. The Board also intends to adopt revised operating procedures.

Tentative Agenda

March 21, 1995

7:30 a.m. *Sign-in and Registration*
8:00 a.m. *Miscellaneous Business:*
- Agenda Review/Revision/ Acceptance

Old Business
- DDFO Report
- Chair Report

Member Reports
Standing Committee Reports
- Public Communications
- Member Selection

9:15 a.m. Break
9:30 a.m. Amendments to procedures—review, discussion, vote
11:00 a.m. *BWID Risk Management Film*
12:15 p.m. Lunch
1:15 p.m. *INEL Future Land Use:* committee presents proposed response to assumptions and conclusions of plan—discussion
3:15 p.m. Break
3:30 p.m. *INEL Future Land Use*—Consensus Building
5:00 p.m. Public Comment Availability
6:00 p.m. Adjourn

Wednesday, March 22, 1995

7:30 a.m. *Sign-In and Registration*
8:00 a.m. *Miscellaneous Business*
- Day Two Agenda review, revision, acceptance
- Old Business from Day 1

8:30 a.m. *Prioritization/Budget*—discuss and review committee work
10:30 a.m. Break
10:45 a.m. *Prioritization/Budget*
12:00 noon Lunch
1:15 p.m. *Board Work:* Spent Nuclear Fuel Committee Follow-up
3:15 p.m. Break
3:30 p.m. *Action plan*—Develop agenda for May meeting—priority setting DSTP Committee Follow-Up
5:00 p.m. Adjourn

A final agenda will be available at the meeting.

Public Comment Availability

The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, March 21, 1995 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on March 9, 1995.

Rachel M. Samuel,

Acting Deputy, Advisory Committee Management Officer.

[FR Doc. 95–6382 Filed 3–14–95; 8:45 am]

BILLING CODE 6455–01–P

Federal Energy Regulatory Commission

[Docket No. ER93–879–000, et al.]

Cincinnati Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Cincinnati Gas & Electric Company

[Docket No. ER93–879–000]

Take notice that the Cincinnati Gas & Electric Company (CG&E) on March 2, 1995 tendered for filing revised Service Schedules A through D to an Interchange Agreement with the Wabash Valley Power Authority.

The Interchange Agreement proposes interchange service schedules for emergency service, interchange power, short-term power, limited term power and transmission service. The Agreement is proposed to be made effective immediately. Copies of the revised Service Schedules were served upon the Public Utilities Commission of Ohio and the Wabash Valley Power Authority.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Cincinnati Gas & Electric Company

[Docket No. ER94–1579–000]

Take notice that the Cincinnati Gas & Electric Company (CG&E) on March 2, 1995, tendered for filing revised Service Schedules A through E to an Interchange Agreement with the City of Hamilton, Ohio.

The Interchange Agreement proposes interchange service schedules for emergency service, interchange power, short-term power, limited term power and transmission service. The service schedules have been modified to achieve consistency with Commission policy. The Agreement is proposed to be made effective March 1, 1994. Copies of the revised Service Schedules were served upon the Public Utilities Commission of Ohio and the City of Hamilton.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power

[Docket No. ER95–397–000]

Take notice that on March 2, 1995 The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment to its Agreement for the sale of capacity and associated energy to Modesto Irrigation District (MID). WWP states the purpose of the amendment is to clarify the pricing of capacity and energy sold to MID.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER95–449–000]

Take notice that on February 23, 1995, Montaup Electric Company tendered for filing a Notice of Withdrawal of its filing of January 17, 1995 in the above-referenced docket.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER95–660–000]

Take notice that on February 28, 1995, Southwestern Electric Power Company (SWEPCO) tendered for filing the Final return on common equity (Final ROE) to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in 1994 to Northeast Texas Electric Cooperative, inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, the Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, inc. and TEX-LA Electric Cooperative of Texas, Inc., and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York

[Docket No. ER95–661–000]

Take notice that on February 28, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Enron Power Marketing, Inc. (Enron) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. For energy and capacity sold by Enron the rates will be market based.

Con Edison states that a copy of this filing has been served by overnight delivery upon Enron.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER95–662–000]

Take notice that on February 28, 1995, Idaho Power Company (IPC) tendered for filing revisions to Idaho Power Company FERC Rate Schedule No. 77, Transmission Service Agreement between Idaho Power and Bonneville Power Administration (BPA). The revision of several exhibits was necessary to reflect the addition of certain transmission facilities necessary for providing service to BPA. Idaho Power requests an effective date of May 1, 1995 for said revisions.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER95–663–000]

Take notice that on March 1, 1995, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power

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Company, Mississippi Power Company, and Savannah Electric and Power company (the "Southern Companies") tendered for filing amendments to various unit power sale and/or transmission service agreements between Southern Companies and various neighboring electric utilities. The purpose of the amendments is to ensure the required adoption of SFAS No. 109 will have no effect on billings under the agreements.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Gulf Power Company

[Docket No. ER95–665–000]

Take notice that on March 1, 1995, Gulf Power Company filed a letter agreement dated January 6, 1995 revising the contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Gulf Power Company. The letter agreement extends the term of the existing Contract until the effective date of new arrangements or the filing of a notice of termination, whichever occurs first.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER95–666–000]

Take notice that Southern California Edison Company on March 1, 1995, tendered for filing a Notice of Cancellation of FERC Rate Schedule Nos. 247.27, 248.27 and 249.27.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Company

Docket No. ER95–667–000

Take notice that on March 1, 1995, Tampa Electric Company (Tampa Electric) tendered for filing an agreement to provide non-firm transmission service for Enron Power Marketing, Inc. (Enron).

Tampa Electric proposes that the agreement be made effective on the earlier of the date it is accepted for filing or April 30, 1995, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Enron and the Florida Public Service Commission.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Unitil Power Corporation

[Docket No. ER95–668–000]

Take notice that on March 1, 1995, Unitil Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 2.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Exeter & Hampton Electric Company

[Docket No. ER95–669–000]

Take notice that on March 1, 1995, Exeter & Hampton Electric Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 1.

Comment date: March 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragaphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 95–6311 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11322–000 California]

Tuolumne Utilities District; Availability of Draft Environmental Assessment

March 9, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the Columbia Water Supply Hydroelectric Project, located near the town of Sonora, in Tuolumne County, California, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protection and enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 925 North Capitol Street, N.E., Washington, D.C. 20426. For further information, contact Michael Strzelecki, Environmental Coordinator, at (202) 219–2827.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6305 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–793–001, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

March 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP94–793–001]

Take notice that on February 23, 1995, as amended on February 27, 1995, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–793–001 an amendment to the request filed by Southern on September 22, 1994, in Docket No. CP94–793–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point for service to International Paper under Southern's blanket certificate issued in Docket No. CP82–406–000. Southern hereby requests authorization to construct the delivery point facilities authorized under Southern's Part 157 Blanket Certificate in the above-referenced proceeding to serve Alabama Gas Corporation (Alagasco) instead of International Paper, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that the construction of the facilities proposed in Docket No. CP94–793–000 was automatically authorized under Southern's Blanket Certificate pursuant to Section 157.206 of the Commission's Regulations on November 15, 1994. In the Amendment to the Request, Southern states that it proposes to construct and operate the measurement and other facilities at the delivery point to deliver gas to Alagasco instead of directly to International Paper at International Paper's Riverdale plant in Dallas County, Alabama. Southern states that the location and siting of the facilities, the configuration of the facilities, the estimated cost of the facilities and the projected load to be served all remains the same as filed in the Request. Further, Southern states that the only change to the Request is that Southern will serve Alagasco at the delivery point by providing Alagasco with transportation service under its Rate Schedule IT as set forth in its FERC Gas Tariff.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. NorAm Gas Transmission Company

[Docket No. CP95–225–000]

Take notice that on February 24, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–225–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities in Oklahoma under NorAm's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NorAm proposes to abandon in place and transfer by sale to Arkla (Arkla), a division of NorAm Energy Corp, at an estimated net book value of $80,732.78, Lines ADM–8 and ADM–9 which are located in Pontotoc County, Oklahoma. Line ADM–8 is 13,700 feet in length of 2-inch pipe extending from Section 4, Township 4N, Range 5E to Section 16, Township 4N, Range 5E and serves 12 Arkla customers. NGT proposes to abandon the entire line in place from station 0+00 to 137+00. Line ADM–9 is 6,402 feet in length of 2-inch pipe extending from Section 4, Township 4N, Range 5E to Section 11, Township 4N, Range 5E and serves 13 Arkla customers. NGT proposes to abandon the entire line in place from station 0+00 to 64+02. After the transfer by sale, Arkla will operate these two lines and incorporate them into its distribution system thus continuing service to its 25 existing rural domestic customers. No customers or service will be abandoned as a result of the facilities transfer.

Lines ADM–8 and ADM–9 were originally constructed in 1930 as gas supply lines and through a merger NGT acquired them from Southwest Natural Gas Company, they were later certificated in Docket No. CP62–216. Production has since depleted on these two lines.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP95–233–000]

Take notice that on March 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP95–233–000 an application pursuant to Section 7(c) of the Natural Gas Act, requesting authorization to construct and operate approximately 13.4 miles of replacement mainline in Sheridan and Johnson Counties, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williston Basin states that it proposes to replace approximately 13.4 miles of the 8-inch Billy Creek-Sheridan transmission line beginning in Johnson County, Wyoming and terminating in Sheridan County, Wyoming. It is averred that the Billy Creek-Sheridan line was installed in 1930 and that severe corrosion and leaks have been found throughout the line. Williston Basin further states that this proposal represents the final replacement portion of the Billy Creek-Sheridan line. Williston Basin states that environmental and safety considerations has prompted it to relocate approximately 40 percent of the replacement line outside of its existing right-of-way. It is stated that the proposed replacement line will enable Williston Basin to maintain a safe and reliable gas transmission pipeline to the cities of Buffalo and Sheridan, Wyoming.

It is estimated that the cost of the proposed replacement facilities for this project will be approximately $1,133,950, which Williston Basin proposes to finance through internally generated funds and/or interim short term bank loans.

Comment date: March 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP95–240–000]

Take notice that on March 2, 1995, Columbia Gas Transmission Corporation (CGT), PO Box 1273, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 26031, filed in an abbreviated application pursuant to Section 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing CGT to construct and operate approximately 12.1 miles of 24-inch pipeline, replacing approximately 11 miles of deteriorating bare, coupled 20-inch pipeline in two segments. The proposal will permit the replacement of certain deteriorating facilities as well as the provision of additional firm transportation services to WV Power and Westvaco under CGT's Part 284 Blanket Certificate.

Specifically, CGT is requesting authorization in this application for the following:

1a. The construction and operation of approximately 7.0 miles of 24-inch pipeline replacing approximately 6.4 miles of 20-inch pipeline designated-as CGT's Line KA and a 0.1 mile extension of 8-inch Line KA–26 in Wyoming County, West Virginia.

b. The transfer of approximately 0.7 mile of the 20-inch Line KA being replaced in Segment 1a above to low pressure transmission service.

c. Abandonment of the remaining approximately 5.7 miles of 20-inch Line KA being replaced as described in Segment 1a above.

2a. The construction and operation of approximately 5.1 miles of 24-inch pipeline to replace approximately 4.6 miles of 20-inch pipeline designated as Line KA, and a 0.1 mile extension of 3-inch Line KA–14, both in Wyoming and Raleigh Counties, West Virginia, and

b. Abandonment of the 4.6 miles of 20-inch pipeline being replaced as described in Segment 2a., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The construction cost is estimated by CGT to be $12,541,000. WV Power and Westvaco have agreed to pay a portion ($300,294) of the incremental costs associated with increasing the pipe size to 24-inch.

Comment date: March 28, 1995, in accordance with Standard Paragraph F at the end of this notice.

5. Florida Gas Transmission Company

[Docket No. CP95–241–000]

Take notice that on March 3, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston,

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Texas 77002, filed in Docket No. CP95–241–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon and remove a meter station and any related appurtenant facilities, located in San Patricio County, Texas. FGT makes such request, under its blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that it is proposing to abandon facilities which once served as a point of measurement for natural gas which bypassed the Warren processing plant. It is stated that the Warren plant has not been used for some time and is not expected to be used in the future. The estimated cost of removal is $15,800 with an estimated salvage value of $15,825.

It is averred that the proposed activity is not prohibited by FGT's existing tariff and that it has sufficient capacity to continue all services without detriment or disadvantage to FGT's firm customers.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP95–242–000]

Take notice that on March 3, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–242–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to establish an additional delivery point in order to properly meter expanded volumes of up to 6,000 Dekatherms per day for Central Gas Company (Central Gas), a subsidiary of Alabama-Tennessee Natural Gas Company. Tennessee states that it would install a 3-inch meter and associated piping adjacent to an existing delivery meter (Meter No. 2–0431) located at M.P. 554–1+1.10 on the 500–1 Line and M.P. 554–3+1.10 on the 500–3 Line in Lauderdale County, Alabama.[1]

[1] *See* 34 FPC 452 (1965).

Tennessee explains that the additional meter is necessary to handle gas measurement on peak days. Tennessee further states that while the increased deliveries of gas to Central Gas would be through release capacity, IT, or authorized overruns, the total quantities to be delivered for Central Gas' account after establishment of the new delivery meter would not exceed the total quantities authorized prior to this request. Tennessee states that it would be reimbursed for the cost of the project, estimated to be $27,446.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6310 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–237–000]

Greeley Gas Company; Application for Service Area Determination

March 9, 1995.

Take notice that on March 2, 1995, Greeley Gas Company (Greeley), a Division of Atmos Energy Corporation, Three Lincoln Centre, 5430 LBJ Freeway, Dallas, Texas 75265, filed in Docket No. CP95–237–000, an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination for its Lamar System in the states of Colorado and Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Greeley states that its Lamar System serves consumers in approximately six towns in southwest Kansas and 16 towns in southeast Colorado, as well as certain irrigation customers and right-of-way grantors. Greeley submits that grant of this application would assist Greeley to maximize gas cost benefits and enhance supply options for its Lamar System customers.

Greeley asserts its Lamar System meets the Commission's criteria for granting a service area determination. Greeley states the following: All of its sales are regulated by either the Colorado or the Kansas public service commission; there are no sales for resale on the Lamar System, only retail sales and transportation for other customers; the Lamar System is essentially one integrated local distribution system with certain gathering areas; the system is limited to a specific geographical area in rural Kansas and Colorado, and connects to only one interstate pipeline, Colorado Interstate Gas Company; and there are no other distribution companies in the area.

Greeley requests that the Commission treat its Lamar System as a local distribution company for purposes of Section 311 of the Natural Gas Policy Act. Greeley further requests a waiver of all reporting and accounting requirements and rules and regulations which are ordinarily applicable to natural gas companies.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a service area determination is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Greeley to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6303 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–83–007]

K N Interstate Gas Transmission Company; Revised Compliance Filing

March 9, 1995.

Take notice that on March 7, 1995, K N Interstate Gas Transmission Co. (KNI) tendered for filing a revised tariff sheet in compliance with the Commission's February 10, 1995 Letter Order in the referenced proceeding. KNI states that its February 27, 1995 tariff compliance filing inadvertently did not contain the correct IT rate on Sheet No. 4 of First Revised Volume No. 1–C of its FERC Gas Tariff. KNI further states that Sub. First Revised Sheet No. 4, submitted with its filing, makes the appropriate correction.

KNI states that copies of the filing were served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6306 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–16–003]

National Fuel Gas Supply Corporation; Compliance Filing

March 9, 1995.

Take notice that on March 6, 1995, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Substitute Fifth Revised Sheet No. 6.

National states that this tariff sheet is filed in response to the Commission's order issued on October 21, 1994, in the above-captioned proceeding. Specifically, National states that the October 21 Letter Order rejected Second Substitute Fifth Revised Sheet No. 6 filed in this proceeding as premature because the tariff sheet included the P–2 and IR–2 Rate Schedules which had not yet been approved by the Commission. National states that this left a tariff sheet in effect as of October 1, 1994, that did not include the P–2 and IR–2 Rate Schedules. National states that since the Commission approved the P–2 and IR–2 Rate Schedules in a February 13, 1995, Order in Docket No. RP94–80–000, et al., effective August 24, 1994, it is filing to supersede the sheet effective as of October 1, 1994, which did not include the P–2 and IR–2 rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6308 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF86–556–004]

Sunnyside Cogeneration Associates; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

March 9, 1995.

On February 28, 1995, Sunnyside Cogeneration Associates (applicant), c/o B&W Sunnyside L.P., 20 South Van Buren Avenue, Barberton, OH 44203, and c/o NRG Sunnyside Inc., 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, submitted for filing an application for recertification of a facility as a small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the bituminous coal refuse-fueled small power production facility is located at Carbon County, Utah, and consists of a circulating fluidized bed boiler and an extraction/condensing steam turbine generating unit. the facility commenced commercial operation on March 19, 1993.

In Docket No. QF86–556–000, the applicant was granted certification for a 45 MW topping-cycle cogeneration facility [39 FERC ¶ 62,091 (1987)]. In

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Docket No. QF86–556–001, the facility was recertified to reflect a change in the steam host [49 FERC ¶ 62,288 (1989)]. In Docket No. QF86–566–002, the facility was recertified to reflect changes in the facility's design and an increase in the net electric power production capacity to 51.1 MW [53 FERC ¶ 62,029 (1990)]. In Docket No. QF86–566–003, the applicant was granted recertification for a small power production facility with a maximum net electric power production capacity of 52 MW. The instant recertification is submitted to reflect a change in the ownership structure.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register**, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6309 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–201–000]

Williams Natural Gas Company; Filing

March 9, 1995.

Take notice that on March 1, 1995, Williams Natural Gas Company (WNG) filed Schedule A, Pages 2 and 3 from its December 1, 1994 filing, in Docket No. TM95–2–45–001, which shows no under or over recovery for October through December 1993 for its Storage and West Panhandle gathering area. Therefore, no tariff filing is being made at this time. WNG will make a filing to be effective June 1, 1995 to eliminate the under or over recovery component that has been in the percentages for all other areas for twelve months.

WNG states that it failed on December 1, 1994, in Docket No. TM95–2–43–001 to reflect revised fuel and loss reimbursement percentages effective January 1, 1995. In the filing, WNG did not include under recoveries for the three-month period October through December, 1993 under the assumption that under recoveries for this period, which were included in WNG's prior filing in Docket Nos. RP95–172 and RP94–205, would be permitted to be included in that prior filing. In this regard, WNG also proposed that such under recovery component, which represents the October through December 1993 period, be permitted to remain in effect for a full twelve months. Such twelve-month period ends on March 31, 1995 for Storage and the West Panhandle gathering area, and on May 31, 1995 for all other areas. Accordingly, WNG proposed to file revised tariff sheets effective April 1, 1995 and June 1, 1995 to eliminate the under or over recovery component applicable to October through December 1993.

WNG states that copies of this filing are being served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all the WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6307 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA90–68–003]

Williams Natural Gas Company; Filing

March 9, 1995.

Take notice that Williams Natural Gas Company (WNG) on November 23, 1995, tendered for filing a report of refunds made to jurisdictional customers.

WNG states that Commission order issued October 14, 1994 required WNG to refund the principal amount of $1,088,254 at issue in this proceeding, with interest from the time customers first paid these carrying charges to the date of the refund. On November 14, 1994, WNG refunded $1,503,020, which included interest from July 1, 1990 through November 14, 1994, to the customers who paid such carrying charges.

WNG states that a copy of its filing was served on all jurisdictional customers receiving a refund, all participants listed on the service lists maintained by the Commission in the docket referenced above, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6304 Filed 3–14–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5172–6]

Draft Example Enhanced Monitoring Protocols

AGENCY: Environmental Protection Agency, Office of Enforcement and Compliance Assurance and Office of Air and Radiation.

ACTION: Notice of availability.

SUMMARY: The Offices of Compliance and Air Quality Planning and Standards are announcing the availability of thirteen draft example enhanced monitoring protocols for public review and comment through the Technology Transfer Network electronic bulletin board system (919–541–5742 or Internet: TELNET ttnbbs.rtpnc.epa.gov).

FOR FURTHER INFORMATION CONTACT: Peter R. Westlin, Office of Air Quality and Standards, Environmental Protection Agency, Mail Drop 19, Research Triangle Park, North Carolina 27711, (919–541–1058).

SUPPLEMENTARY INFORMATION: The EPA is publishing today through the Technology Transfer Network (TTN), Emission Measurement Technical Information Center (EMTIC) electronic bulletin board, Enhanced Monitoring Menu, thirteen draft example enhanced monitoring protocols (EMPs) for public review and comment. These example protocols have been prepared in response to needs expressed by state and local permitting authorities and industry source owners and operators in implementing the forthcoming 40 CFR Part 64, the Enhanced Monitoring Rule, proposed in the **Federal Register**, October 22, 1993 (58 FR 54648). Comments on the draft EMPs are requested by April 10, 1995, and may be sent to Peter Westlin either in hard copy at the address above or via the TTN electronic mail.

The draft example EMPs include specific process, pollutant, and control device applicability statements, executive summaries, monitoring protocol design, and measurement and calculation procedures to produce data in units consistent with applicable emission limits. The EPA intends the final EMPs to serve as examples upon which source owners or operators can design site-specific protocols to include in operating permit applications. Note that publication of example EMPs does not imply automatic approval of any site-specific EMP described in a permit application submitted to the relevant permitting authority; however, for a permit application for an emission unit with operating characteristics consistent with those described in a published example EMP and including a proposed site-specific EMP analogous to the example EMP, the EPA intends that the EMP can be presumed acceptable. Presumptive acceptability would not preclude the need to verify that the performance of the EMP is consistent with applicable requirements which will be described in detail in the final Part 64 rule scheduled for promulgation in April 1995. Additional information on the presumptive acceptability of example EMPs and the permit application review process is provided in the December 28, 1994, **Federal Register** notice (59 FR 66844) which reopened the comment period on the proposed enhanced monitoring rule for a limited number of issues. Note that the comment period ended on February 3, 1995.

The first thirteen example EMPs represent the first of about 300 that the Agency anticipates producing over the next five years to assist in the implementation of the Enhanced Monitoring Rule. The Agency is seeking comments on these draft EMPs regarding their applicability, technical merit, and appropriate level of flexibility. Commenters with additional supporting data for these or other example EMPs are encouraged to submit those data. Comments on the draft EMPs are requested by April 14, 1995, and may be sent to Peter Westlin either in hard copy at the address above or via the TTN electronic mail. The Agency will review the comments, consider changes resulting from the promulgation of the rule, revise the EMPs as appropriate, and issue final versions of the EMPs in the following few months through the EMTIC electronic bulletin board, and will announce their availability through a notice in the **Federal Register**.

The thirteen example EMPs are as follows:

Predictive NO_x Emission Monitoring System for Natural Gas Fired Electric Utility Boilers: NO_x emissions in ng/J calculated from boiler parameter measurements.

Fuel Sampling and Sulfur Analysis for Oil-Fired Electric Utility Boilers: SO_2 emissions in ng/J and kg/hr based on fuel sulfur content, heat content, and flow rate measurements.

Predictive Effluent Flow Rate Monitoring System for Fossil Fuel-Fired Electric Utility Boilers: Total gas exhaust volume flow rate based on fuel and boiler operating parameter measurements, m^3/hr.

Record Keeping and Calculation Procedures for Coating and Inking Processes that Use Compliance Coatings: Total VOC emissions calculated from coating organic content and use rate measurements.

Continuous NO_x Emission Monitoring System for Stationary Gas Turbines: Application of a CEMS for NO_x concentration measurements for gas turbines that do not use water or steam injection rate for NO_x control.

Operation and Maintenance Protocol for Processes Using Venturi Scrubber Control for Particulate Matter: Application of control device operating parameter measurements and specific corrective actions applied in combination and in lieu of direct particulate emission monitoring.

Operation and Maintenance Protocol for Processes Using Positive Pressure Fabric Filters for Particulate Matter Control: Application of visible emissions monitoring and specific corrective actions applied in combination and in lieu of direct particulate emission monitoring.

Manual Monitoring of Fuel Gas Sulfur Content for Process Heaters at Petroleum Refineries: Twice daily measurement of fuel H_2S content for fuels with sulfur content less than 20 percent of compliance limit.

Demonstrated Compliance Parameter Limit Monitoring for Permanent Total Enclosure and Thermal Incinerator Used for a Magnetic Tape Coating Line: Monitoring of incinerator combustion temperature, enclosure flow rate differential pressure, and process operating times as indicators of compliance operation.

Demonstrated Compliance Parameter Limit Monitoring for Vented Curing Oven and Thermal Incinerator Used for a Metal Coil Coating Line: Monitoring of incinerator combustion temperature, curing oven flow rate differential pressure, and process operating times as indicators of compliance operation.

Continuous NO_x Emission Monitoring System and Conversion Factor for Nitric Acid Plants: Application of a CEMS and site-specific conversion factor to calculate mg/MG of NO_x emissions per acid production rate.

Continuous SO_2 and NO_x Emission Monitoring System for Coal-Fired Industrial Boilers: Application of a CEMS and F-factors to calculate ng/J emission rates.

Generic Continuous Emissions Monitoring System Protocol: A generally applicable protocol for applying CEMS for SO_x, NO_x, and diluent measurements to calculate emissions in units of the applicable standard.

Dated: March 3, 1995.

Steven A. Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 95–6406 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00367A; FRL–4942–1]

Dermal Absorption Studies of Pesticides; Availability of Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the guideline for Dermal absorption Studies of Pesticides. This guideline is part of Subdivision F of the Pesticide Assessment Guidelines, which provide guidance for registrants in the conduct of tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency has made arrangements for the Dermal Absorption of Pesticides guideline to be made

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available through the U.S. Department of Commerce, National Technical Information Service (NTIS).

ADDRESSES: Copies of the guideline for Dermal Absorption of Pesticides may be obtained through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650. Orders may be placed by telephone to the NTIS Order Desk and charged against a deposit account or American Express, VISA, or Mastercard, or sent by mail with check, money order, or deposit account number. For rush orders, telephone 1–800–336–4700. From Virginia, Canada, Mexico, or International, call (703) 487–4650. The publication number is PB 95–148615.

FOR FURTHER INFORMATION CONTACT: Robert P. Zendzian, Health Effects Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. (703) 305–5495).

SUPPLEMENTARY INFORMATION: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticides must be tested for a variety of health effects. Specific data requirements are codified in 40 CFR part 158. Guidelines for the conduct of such studies have been developed by the Office of Pesticide Programs and are made available through the National Technical Information service (NTIS). The Pesticide Assessment guidelines, Subdivision F, describe protocols for performing toxicology and related tests to support registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act.

Subdivision F was proposed for public comment in 1978 and published in October 1982. At that time the Agency published criteria for performing a dermal absorption study on a pesticide and reserved a line item, section 85–3, for a guideline on Dermal Absorption Studies of Pesticides. The Agency had available a protocol for dermal absorption studies but did not consider it ready for publication. Following 9 years of experience with studies on the dermal absorption of pesticides, a proposed guideline for Dermal Absorption Studies of Pesticides was made available for public comment by publication in the **Federal Register** of March 13, 1991 and a revised proposed guideline in the **Federal Register** of October 21, 1993. The revised proposed guideline was presented to the FIFRA Scientific Advisory Panel on December 15, 1993 at a public meeting. This final guideline for Dermal Absorption studies of Pesticides incorporates comments of the public and the FIFRA Scientific Advisory Panel. It is specifically designed to assist in the risk assessment of pesticide exposure by the dermal route, following the determination of a significant toxic effect in toxicology studies performed by the oral or inhalation route.

Dated: February 27, 1995.

Stephanie R. Irene,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 95–6409 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5173–1]

Environmental Statistics Subcommittee of the National Advisory Council for Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Statistics Subcommittee (of the Environmental Information and Assessment Committee) of the National Advisory Council for Environmental Policy and Technology (NACEPT) will hold a one and one-half day meeting of the full Subcommittee.

The Environmental Statistics Subcommittee was formed to provide key recommendations and strategic advice on the statistical products and activities necessary to enhance the Agency's knowledge about environmental statistics and trends, and to explore information gaps from the perspective of the users/producers of these data products. The meeting is being held to discuss and offer critical advice on an information policy initiative, 305b reports, and the role, functions, and information needs of a Federal statistical agency.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on April 3, 1995 from 9:00 a.m. to 5:00 p.m. and April 4, 1995 from 9:00 a.m. to 1:00 p.m. The meetings will be held at the Hall of States, 444 North Capitol Street, NW., Rooms 383–385, Washington, DC 20011. The hall telephone number is (202) 624–5490. This meeting is open to the public. Due to the limited space, seating at the meeting will be on a first-come basis.

ADDRESSES: Written comments should be sent to: James Morant, Chief, National Environmental Statistics Branch, Environmental Statistics and Information Division, U.S. Environmental Protection Agency, Mail Code 2163, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTRACT: James Morant, Designated Federal Official, Direct Line (202) 260–2266, General Line (202) 260–2680, Fax (202) 260–4968.

Dated: March 3, 1995.

James Morant,

Designated Federal Official.

[FR Doc. 95–6408 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–M

[PF–619; FRL–4930–8]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt by EPA of an initial filing of two feed additive petitions (FAPs), and it announces one amendment to a previously published pesticide petition (PP).

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number	Address
George LaRocca (PM 13)	Rm. 204, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA.
Bob Taylor (PM 25)	Rm. 241, CM #2, 703-305-6027.	Do.

SUPPLEMENTARY INFORMATION: EPA has received a food/feed additive petitions and one amendment to a previously published pesticide petition as follows:

Initial Filings

1. *FAP 4H5701.* Monsanto Co., 800 N. Lindberg Blvd., St. Louis, MO 63167, has submitted the feed additive petition to EPA that proposes amendment to 40 CFR 186.3500 to establish a regulation permitting residues of the herbicide glyphosate (*N*-(phosphonomethyl) glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the feed commodity soybean, aspirated grain fractions, at 30 parts per million (ppm). (PM 25)

2. *FAP 5H5719.* AgrEvo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808 (formerly Hoechst-Roussel Agri-Vet Co.), has submitted a feed additive petition to EPA that proposes amendment to 40 CFR part 185 to establish a regulation permitting residues of the pesticide deltamethrin (1R,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and its metabolites, trans-deltamethrin: (1R,3S)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and alpha-R-deltamethrin: (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (R)-alpha-cyano-3-phenoxybenzyl ester calculated as parent, in or on the food commodity cottonsed oil at 0.20 ppm (PM-13)

Amended Filing

3. *PP 2F4055.* In a notice issued in the **Federal Register** of March 11, 1992 (48 FR 8659), it was announced that Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide deltamethrin (1R,3R)-3(2,2-dibromovinyl)dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and its metabolites, *trans*-deltamethrin: (1R,3S)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and alpha-R-deltamethrin: (1R,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (R)-alpha-cyano-3-phenoxybenzyl ester calculated as parent, in or on cottonseed at 0.02 ppm. Since the filing, the section F has been changed to reflect an increase in tolerance for cottonseed to 0.04 ppm. (PM 13)

Authority: 7 U.S.C. 136a.

Dated: March 1, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–6420 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00404; FRL–4939–6]

Voluntary Reduced-Risk Pesticides Initiative Update; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on the Agency's proposal to slightly expand its Voluntary Reduced-Risk Pesticides Initiative. Under this proposal, the Agency would request additional information to be submitted as part of the reduced-risk rationale provided for new chemical registrations. In addition, the Agency would consider certain applications for new uses of already-registered pesticides for inclusion in the voluntary program. This policy is described in a draft Pesticide Regulation (PR) Notice entitled, "Voluntary Reduced-Risk Pesticides Initiative Update" which is available upon request. Interested parties may request a copy of the Agency's proposed policy as set forth in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number (OPP–00404), must be received on or before May 1, 1995.

ADDRESSES: The draft PR Notice is available from Leonard Cole, By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–7618. Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed text and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–7618.

SUPPLEMENTARY INFORMATION: This Federal Register notice announces the availability of the draft PR Notice and solicits comment. If, after reviewing any comments, EPA determines that changes are warranted, the Agency will revise the draft PR Notice prior to release.

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List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 1, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–6411 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30327A; FRL–4938–9]

Asahi Chemical Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Atonik Plant Growth Stimulator, Sodium-p-Nitrophenolate Technical, Sodium-o-Nitrophenolate Technical, Sodium-5-Nitroguaiacolate Technical, and Atonik Manufacturing Use Product, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 11, 1991 (56 FR 64621), which announced that Asahi Chemical Manufacturing Co., Ltd., c/o M-D Group Incorporation (U.S. Agent), 6708 S. Atlanta Place, Tulsa, OK 74136, (now located at Nara Prefecture Japan), had submitted applications to register the pesticide products Sodium-p-Nitrophenolate Technical, Sodium-o-Nitrophenolate Technical, and Sodium-5-Nitroguaiacolate Technical (EPA File Symbols 64922–G, 64922–U, and 64922–E), containing the active ingredients sodium-p-nitrophenolate, sodium-o-nitrophenolate, and sodium-5-nitroguaiacolate at 82, 98, and 98 percent respectively, The product, Atonik (File Symbol 64922–R), also included in this notice, contains the three active ingredients listed above at 0.3, 0.2, and 0.1 percent respectively, active ingredients not included in any previously registered products.

EPA subsequently received an application from Asahi Chemical Co., to register the pesticide product Atonik Manufacturing Use Product (File Symbol 64922–L), containing the active ingredients sodium-p-nitrophenolate, sodium-o-nitrophenolate, sodium-5-nitroguaiacolate at 0.334, 0.223, and 0.111 percent. However, since the notice of receipt of application was not published in **Federal Register** as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only.

On January 20, 1995, EPA approved five new products as follows:

1. Atonik Plant Growth Stimulator (EPA Registration Number 64922–1) for use to increase nutrient intake in cotton, rice, and soybeans.

2. Sodium-p-Nitrophenolate Technical (EPA Registration Number 64922–3) for formulation of plant regulators and use on cotton, rice, and soybeans.

3. Sodium-o-Nitrophenolate Technical (EPA Registration Number 64922–4) for formulation of plant regulators and use on cotton, rice, and soybeans.

4. Sodium-5-Nitroguaiacolate Technical (EPA Registration Number 64922-2) for formulation of plant regulators and use on cotton, rice, and soybeans.

5. Atonik Manufacturing Use Product (EPA Registration Number 64922–5) for for formulation of plant regulators and use on cotton, rice, and soybeans.

The Agency has considered all required data on risks associated with the proposed use of sodium-p-nitrophenolate, sodium-o-nitrophenolate, and sodium-5-nitroguaiacolate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of sodium-p-nitrophenolate, sodium-o-nitrophenolate, and sodium-5-nitroguaiacolate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on sodium-p-nitrophenolate, sodium-o-nitrophenolate, and sodium-5-nitroguaiacolate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 27, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–6413 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30233A; FRL–4940–4]

Bear Country Products; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Bear Skunker, containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6600; e-mail: forrest.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 30, 1983 (48 FR 54116) which announced that Bear Country Products, 144 Commercial St., Sunnyvale, CA 94086, had submitted an appplication to register the pesticide product Bear Skunker (File Symbol 48099–R), containing the active ingredients diethyl sulfide (CAS No. 352–93–2) and 1-butanethiol (CAS No. 109–79–5) not included in any previously registered product.

The application was approved on February 15, 1995, as Bear Skunker to deter human/bear contact (EPA Registration Number 48099–1). This is the first bear deterrent registered by the Agency and the first product containing the two active ingredients diethyl sulfide and 1-butanethiol.

The Agency has considered all required data on risks associated with the proposed use of diethyl sulfide and 1-butanethiol, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of diethyl sulfide and 1-butanethiol when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on Bear Skunker [Registration: First bear deterrent and its two new active ingredients, diethyl sulfide and 1-butanethiol].

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 2, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–6414 Filed 3–14–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30375A; FRL–4938–8]

Church and Dwight Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Church and Dwight Co., Inc, to register the pesticide products Armicarb Potassium Bicarbonate, F.C.C. and Armicarb Sodium Bicarbonate, F.C.C., containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 2, 1994 (59 FR 54903), which announced that Church and Dwight Co., Inc, 469 North Harrison St., Princeton, NJ 08543-5297, had submitted applications to register the pesticide products Armicarb Potassium Bicarbonate, F.C.C. and Armicarb Sodium Bicarbonate, F.C.C., (EPA File Symbols 10772–E and 10772–G), containing the active ingredients potassium bicarbonate and sodium bicarbonate both at 99.9 percent respectively, active ingredients not included in any previously registered products.

The applications were approved on December 20, 1994, as Armicarb Potassium Bicarbonate, F.C.C. and Armicarb Sodium Bicarbonate, F.C.C., (EPA Registration Numbers 10772–2 and 10772–3), for formulating use into fungicides for plant disease control on flowers, ornamentals, turf, fruits, vegetables, and field crops.

The Agency has considered all required data on risks associated with the proposed use of potassium bicarbonate and sodium bicarbonate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of potassium bicarbonate and sodium bicarbonate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on potassium bicarbonate and sodium bicarbonate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of

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Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 27, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-6412 Filed 3-14-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30383; FRL-4940-2]

D-I-1-4, Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product 1,4Sight, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-5540).

SUPPLEMENTARY INFORMATION: EPA received an appplication from D-I-1-4, Inc., 15401 Cartwright Road, Boise, ID 83703, to register the pesticide product 1,4Sight (File Symbol 67727-R), containing the active ingredient 1,4-dimethylnaphthalene at 94.7 percent, an active ingredient not included in any previously registered product. However, since the notice of receipt of application was not published in the **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice.

The application was approved on February 2, 1995, as 1,4Sight for use as an aerosol to control the sprouting of potatoes during the storage phase (EPA Registration Number 67727-1).

The Agency has considered all required data on risks associated with the proposed use of 1,4-dimethylnaphthalene, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of 1,4-dimethylnaphthalene when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on 1,4-dimethylnaphthalene.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 2, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-6410 Filed 3-14-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180960; FRL-4935-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 10 States listed below. There were four crisis exemptions initiated by various States. Quarantine exemptions have been granted to the United States Department of Agriculture/Animal and Plant Health Inspection Service. These exemptions, issued during the months of October, November, and December 1994, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied four specific and one Public Health exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of cypermethrin on mustard greens to control various insects; October 20, 1994, to October 19, 1995. (Libby Pemberton)

2. California Environmental Protection Agency for the use of methyl bromide on watermelon to control nematodes, weeds, and soil diseases; November 18, 1994, to April 30, 1995. (Libby Pemberton)

3. California Environmental Protection Agency for the use of naled on swiss chard to control aphids; November 23, 1994, to November 22, 1995. (Margarita Collantes)

4. California Environmental Protection Agency for the use of metalaxyl on mustard greens to control white rust; October 10, 1994, to August 21, 1995. California had initiated a crisis exemption for this use. (Susan Stanton)

5. California Environmental Protection Agency for the use of prometryn on parsley to control weeds; December 21, 1994, to December 21, 1995. (Andrea Beard)

6. California Environmental Protection Agency for the use of clethodim on dry bulb onions to control annual bluegrass; December 14, 1994, to December 13, 1995. (Margarita Collantes)

7. Florida Department of Agriculture and Consumer Services for the use of avermectin on strawberries to control spider mites; October 10, 1994, to June 30, 1995. (Larry Fried)

8. Florida Department of Agriculture and Consumer Services for the use of avermectin on head lettuce to control leafminers; November 14, 1994, to November 13, 1995. (Larry Fried)

9. Florida Department of Agriculture and Consumer Services for the use of avermectin on potatoes to control leafminers; December 22, 1994, to June 1, 1995. (Libby Pemberton)

10. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on tomatoes to control whiteflies; December 14, 1994, to December 14, 1995. A notice of receipt published in the **Federal Register** of November 16, 1994 (59 FR 59223). The situation was determined to be urgent and nonroutine, and significant economic losses were expected without this use. (Andrea Beard)

11. Florida Department of Agriculture and Consumer Services for the use of fenpropathrin on tomatoes to control whiteflies; December 14, 1994, to December 14, 1995. (Andrea Beard)

12. Georgia Department of Agriculture for the use of sethoxydim on canola to control Italian ryegrass; October 10, 1994, to April 15, 1995. (Susan Stanton)

13. Hawaii Department of Agriculture for the use of hydramethylnon on pineapples to control big-headed and Argentine ants; December 22, 1994, to December 21, 1995. (Libby Pemberton)

14. Idaho Department of Agriculture for the use of imazalil on sweet corn seed to control dieback syndrome; October 7, 1994, to October 1, 1995. (Susan Stanton)

15. New Jersey Department of Agriculture for the use of Pro-Gro (carboxin/thiram) on onion seed to control onion smut; October 19, 1994, to June 1, 1995. (Susan Stanton)

16. Puerto Rico Commonwealth, Department of Agriculture, for the use of avermectin on tomatoes to control leafminers; October 3, 1994, to October 2, 1995. (Larry Fried)

17. Texas Department of Agriculture for the use of avermectin on peppers to control broad mites; November 23, 1994, to November 22, 1995. (Larry Fried)

18. Washington Department of Agriculture for the use of zinc phosphide on dormant timothy and timothy/alfalfa mixtures to control meadow voles; October 4, 1994, to April 15, 1995. (Susan Stanton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on October 17, 1994, for the use of metolachlor on spinach to control weeds. This program has ended. (Susan Stanton)

2. Georgia Department of Agriculture on October 20, 1994, for the use of metalaxyl on collards, mustard greens, and turnip greens to control downy mildew. This program is expected to last until June 30, 1995. (Susan Stanton)

3. Hawaii Department of Agriculture on November 10, 1994, for the use of imidacloprid on tomatoes to control whiteflies. This program is expected to last until November 10, 1995. (Andrea Beard)

4. Pennsylvania Department of Agriculture on October 5, 1994, for the use of chlorothalonil on mushrooms to control *verticillium* diseases. This crisis exemption was revoked on October 7, 1994, due to dietary risk issues and lack of progress toward registration of this use. (Susan Stanton)

EPA has denied specific and public health exemption requests from the:

1. Connecticut Department of Agriculture for the use of oxyfluorfen on strawberries to control weeds. This specific exemption was denied because the Agency was not able to conclude that strawberry growers will experience significant economic losses if oxyfluorfen is not available. (Larry Fried)

2. Georgia Department of Agriculture for the use of chlorothalonil on collards, mustard greens, and turnip greens to control fungal diseases. This specific exemption was denied because of unacceptable dietary risk, lack of adequate progress toward registration, and the State's failure to satsify data requirements imposed last year as a condition for consideration of future section 18 requests for this use. (Susan Stanton)

3. New Hampshire Department of Agriculture for the use of oxyfluorfen on strawberries to control weeds. This specific exemption was denied because the Agency was not able to conclude that strawberry growers will experience significant economic losses if oxyfluorfen is not available. (Larry Fried)

4. Pennsylvania Department of Agriculture for the use of chlorothalonil on mushrooms to control *verticillium* fungicola. This specific exemption was denied because the estimated lifetime dietary cancer risk from the registered uses of chlorothalonil and the use on mushrooms exceeds the level generally considered acceptable by EPA. The current estimates of cancer risk from this use preclude any further progress toward registration. (Susan Stanton)

5. Texas Department of Agriculture for the use of sodium fluoroacetate on certain mammalian vectors to control gray fox rabies. A notice of receipt of this public health exemption was published in the **Federal Register** of August 24, 1994 (59 FR 43580), an extension of comment period later published September 8, 1994 (59 FR 46428). The Agency concluded that the proposed vector control program cannot be expected with any degree of certainty to be effective in halting the spread of the epizootic. For this reason, the Agency denied the request for a public health exemption. This conclusion is based on the following: the geographical area encompassed by the epizootic appears to be too large to ensure that the landowner executed vector control efforts could be managed and coordinated efficiently; the type of bait proposed for use could not, on the basis of available relevant data, be expected to selectively target gray foxes and the primary host organisms or the purported ancillary vector species efficiently or effectively; and the proposed spacing of individual baits and the baiting density suggest that the expected taking of most baits by nontarget species would create significant gaps in the proposed barrier treatment that is intended to reduce gray fox populations and confine the epizootic. (Libby Pemberton)

EPA has granted a quarantine exemption to the United States Department of Agriculture/Animal and Plant Health Inspection Service for the use of diazinon soil treatments and malathion in quarantined areas within the State of Florida to eradicate exotic subtropical members of the fruit fly family Tephritidae. November 30, 1994, to November 29, 1997. (Susan Stanton).

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

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Dated: March 6, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-6415 Filed 3-14-95; 8:45 am]

BILLING CODE 6560-50-F

[PP 4G4409 and 5G4448/T660; FRL-4939-9]

Northrup King Co. and Ciba-Geigy Corp.; Initial Filings of Exemptions from the Requirement of Tolerances; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Technical amendment.

SUMMARY: EPA is issuing a technical amendment to clarify a notice on establishing temporary exemptions from the requirement of tolerances for the delta endotoxin protein produced in field corn by a CryIA(b) gene from *Bacillus thuringiensis* subsp. *kurstaki* HD-1 and inserted in the plant expression vector pZ01502 and for the plant pesticide *Bacillus-thuringiensis* subsp. *kurstaki* CryIA(b) insect control protein as produced in corn plants and the genetic material necessary for its production. EPA has not yet granted the temporary tolerance exemptions; instead, EPA is announcing that it has received the petitions and is considering whether or not to grant them.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station, 5th Fl. 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8712; e-mail: Mendelsohn.Mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 15, 1995 (60 FR 8658), EPA issued a notice of temporary tolerance exemptions for PP 4C4409 filed by Northrup King Co. and PP 5G4448 filed by Ciba-Geigy Corp. EPA is issuing this technical amemdment to that notice to state that the petitions have not yet been granted, but are being considered. PP 4G4409 filed by Northrup King Co., 7500 Olson Memorial Hwy., Golden Valley, MN 55427, has requested the establishment of an exemption from the requirement of a tolerance for the delta endotoxin protein produced in field corn by a CryIA(b) gene from *Bacillus thuringiensis* subsp. *kurstaki* HD-1 and inserted in the plant expression vector pZ01502. PP 5G4448 filed by Ciba-Geigy Corp., P.O. Box 12257, Research Triangle Park, NC 27709-2257, has requested the establishment of an exemption from the requirement of a tolerance for the plant pesticide *Bacillus thuringiensis* subsp. *kurstaki* CryIA(b) insect control protein as produced in corn plants and the genetic material necessary for its production.

EPA reiterates that these filings have been received, but they are not yet granted. If the temporary tolerances are granted, notice to this effect will be published in the **Federal Register**.

This document contains technical amendments only and does not require notice and comment, 5 U.S.C. 553.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 2, 1995.

Janet L. Andersen,

Acting Director of Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95-5800 Filed 3-7-95; 3:17 pm]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 8, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission.

OMB Control No.: 3060-0458.

Expiration Date: 02/28/98.

Title: Regulation of International Accounting Rates (CC Docket No. 90-337).

Estimated Annual Burden: 240 total annual hours; 2 hours per response.

Description: CC Docket No. 90-337 implemented rules making it easier for U.S. carriers engaged in international telecommunications to negotiate lower accounting rates. Simple reductions in rates are made pursuant to a notification approach; other changes are subject to the International Settlements Policy (ISP) waiver approach. Such carriers are required to file copies of operating agreements. See 47 CFR Sections 43.51, 64.1001, and 63.01. The information is used for monitoring and enforcement purposes.

OMB Control No.: 3060-0253.

Expiration Date: 02/28/98.

Title: Connection of Telephone Equipment to the Telephone Network, Part 68, Sections 68.106, 68.108, 68.110.

Estimated Annual Burden: 57,540 total annual hours; .057 hours per response.

Description: Section 68.106 requires customers connecting terminal equipment or protective circuitry to the telephone network to provide, upon request, certain information to the telephone company. Section 68.108 requires telephone companies to notify customers of possible discontinuance of service when customer's equipment is malfunctioning and to inform them of their right to file a complaint. Section 68.110 requires telephone companies to provide technical information concerning inter-face parameters not specified in Part 68 and to notify customers of changes in telephone company facilities, equipment, operations or procedures where such changes can be reasonably expected to render any customer's terminal equipment incompatible with the telephone company's communication facilities. The collections are designed to prevent harm to the telephone network when customer-provided equipment is connected to telephone company lines and assures that customers will not overload the telephone lines with excessive equipment which would degrade service to the customers and others.

OMB Control No.: 3060-0450.

Expiration Date: 02/28/98.

Title: Detariffing the Installation and Maintenance of Inside Wiring Services, Reports on State Regulatory Activities (CC Docket No. 79-105).

Description: 47 CFR Section 43.41 requires that each local exchange carrier (LEC) with annual operating revenues of $100 million or more file, within thirty days of its publication or release, a copy of any state or local statute, rule order, or other document that regulates, or proposes to regulate, the price or prices the LEC charges for inside wiring services. The rules applies only to the LEC serving the greatest number of access lines within the portions of the state that are, or would be, subject to the state regulation. The information filed is used by the Commission to monitor the activities of state agencies that desire to impose price regulation for inside wiring services provided by telephone companies. The information is used to help ensure that such actions do not impede federal policies.

OMB Control No.: 3060-0439.

Expiration Date: 02/28/98.

Title: Regulations Concerning Indecent Communications by Telephone.

Estimated Annual Burden: 10,200 total annual hours; .166 hours per response.

Description: Section 223 of the Communications Act of 1934, as amended, 47 U.S.C. Section 223, as amended imposes fines and penalties on those who knowingly use the telephone to make obscene or indecent communications for commercial purposes. 47 CFR Section 64.201 implements the statute. Section 64.201 contains several requirements which are imposed on carriers, adult message service providers and those who solicit their services to ensure that minors are denied access to material deemed indecent.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-6391 Filed 3-14-95; 8:45 am]

BILLING CODE 6712-01-F

[Correction To Report No. 2060]

Petition for Reconsideration of Actions in Rulemaking Proceedings

March 10, 1995.

Report No. 2060, released March 6, 1995 erroneously listed the Docket Number as 91-113. The Docket Number is corrected as listed below.

Subject: Transport Rate Structure and Pricing. (CC Docket No. 91-213)

Number of Petition Field: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-6336 Filed 3-14-95; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 2062]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

March 10, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and coping in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 875-3800. Opposition to these petitions must be filed March 30, 1995. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(2)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System. (PR Docket No. 93-305)

Number of Petitions Filed: 3

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-6337 Filed 3-14-95; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011481-001.

Title: Hanjin/AMA Agreement.

Parties: Hanjin Shipping Co., Ltd., Cho Yang Shipping Co., Ltd., DSR-Senator Lines.

Synopsis: The proposed amendment modifies Article 5.10 of the Agreement by deleting the language that restricted the parties to maintain membership in the Conference.

By Order of the Federal Maritime Commission.

Dated: March 9, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95-6295 Filed 3-14-95; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Maracargo Inc., 2503B NW 72nd Ave., Miami, Fl 33122
Officers: V. Enrique Camejo, President, Pedro Enrique Garcia Arcaya, Vice President

American Custom Inc., 700 Rockaway Turnpike, Lawrence, NY 11559,
Officer: Key Y. Chung, President

Rio Bravo Freight Forwarders, Inc., 1919 S. Shiloh, Ste. 234, Garland, TX 75042
Officers: Everett Claborn, President; Mildred L. Coker, Vice President

A M Logistics Services, 4311 Pan American Boulevard, Laredo, TX 78043
Alberto H. Magnon, III, Sole Proprietor

Tradestar Shipping Corp., 147-182nd Street, Jamaica, NY 11413
Officer: Richard Weinstock, President

Time Definite Services, Inc., 2745 South Armstrong Court, Des Plaines, IL 60018
Officer: Michael Suarez, President

By the Federal Maritime Commission.

Dated: March 9, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95-6296 Filed 3-14-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment; extension of comment period.

SUMMARY: On January 5, 1995, the Board requested comment on proposed revisions to the Annual Report of Foreign Banking Organizations (FR Y-7) including the Nonbank Financial Information Summary (NFIS), the Structure Report on U.S. Banking and Nonbanking Activities (FR Y-7A), and the Foreign Banking Organization Confidential Report of Operations (FR 2068). On January 27, the Board

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announced that the comment period would be extended by 30 days until March 9. The Deputy Secretary of the Board, acting under delegated authority, has again extended the comment period to give the public additional time to comment. The comment period for the FR Y-7, other than the NFIS, and for the FR 2068 has been extended until March 31, 1995. The comment period for the NFIS and the FR Y-7A has been extended until May 31, 1995.

DATES: Comments must be received by March 31, 1995 (FR Y-7; FR 2068), or by May 31, 1995 (FR Y-7A; NFIS).

ADDRESSES: Comments may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (OMB 83-I), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board has received a request to extend the comment period on the proposed revisions to the Annual Report of Foreign Banking Organizations (FR Y-7) including the Nonbank Financial Information Summary (NFIS), the Structure Report on U.S. Banking and Nonbanking Activities (FR Y-7A), and the Foreign Banking Organization Confidential Report of Operations (FR 2068). In view of the significance of the procedural changes that are proposed in the reports, the Board is extending the comment period to March 31, 1995, for the FR Y-7, other than the NFIS, and the FR 2068, and to May 31, 1995, for the NFIS and the FR Y-7A.

Board of Governors of the Federal Reserve System, March 9, 1995

William W. Wiles,

Secretary of the Board.

[FR. Doc. 95-6375 Filed 3-14-95; 8:45am]

BILLING CODE 6210-01-F

Ralph Neal Barber; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Ralph Neal Barber, Duluth, Georgia; to retain 18.26 percent of the voting shares of First Security Corporation, Norcross, Georgia, and thereby indirectly acquire First Security National Bank, Norcross, Georgia.

Board of Governors of the Federal Reserve System, March 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6346 Filed 3-14-95; 8:45 am]

BILLING CODE 6210-01-F

Dauphin Deposit Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Dauphin Deposit Corporation, Harrisburg, Pennsylvania; to engage *de novo* in providing financial advice to state and local governments and foreign governments, pursuant to § 225.25(b)(4)(v) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to engage *de novo* through its *de novo* subsidiary Wells Fargo Equity Capital Inc., San Francisco, California, in making and servicing commercial loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6348 Filed 3-14-95; 8:45 am]

BILLING CODE 6210-01-F

Mellon Bank Corporation, Pittsburgh, Pennsylvania, and Chemical Banking Corporation, New York, New York; Notice to engage in certain Nonbanking Activities

Mellon Bank Corporation, Pittsburgh, Pennsylvania (Mellon), and Chemical Banking Corporation, New York, New York (Chemical), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to each acquire a 50 percent interest in a Delaware partnership, Chemical Mellon Shareholder Services, Ridgefield Park, New Jersey (Partnership). Mellon and Chemical would transfer substantially all the assets of their respective shareholder services businesses to Partnership, and Partnership would provide the following services to issuers of equity securities: shareholder account maintenance; dividend disbursement; mailings to equity security holders; annual meeting services; transfer and issuance, as agent, of equity security certificates; investor relations; reorganization services; stock option processing, recordkeeping and account maintenance; restricted securities processing and recordkeeping; stock watch services and proxy solicitation; and dividend reinvestment and stock purchase plan administration. In addition, Partnership would provide "private label" bondholder account maintenance for certain existing customers of Mellon. Chemical and Mellon maintain that the Board previously has determined that the proposed activities are closely related to banking. *See* 12 CFR 225.25 (b)(3). These activities will be conducted nationwide.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Partnership "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Chemical and Mellon believe that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Chemical and Mellon maintain that the proposal will enhance competition and enable Chemical and Mellon to offer their customers greater convenience and accessibility. Chemical and Mellon also maintain that their proposal would not diminish competition in light of the qualitative characteristics of the industry.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 31, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors, the Federal Reserve Bank of Cleveland, or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6347 Filed 3-14-95; 8:45 am]

BILLING CODE 6210-01-F

Norton Capital Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Norton Capital Corporation, Morris, Illinois; to merge with Sheridan Bancorp, Inc., Sheridan, Illinois, and thereby indirectly acquire Sheridan State Bank, Sheridan, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Mercantile Bank of Lebanon, Lebanon, Missouri, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Norwest Bank Grand Forks, N.A., Grand Forks, North Dakota, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6349 Filed 3-14-95; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Application to Engage in Nonbanking Activities

Norwest Corporation, Minneapolis, Minnesota, (Applicant), has filed notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage in the activity of providing for a fee employment information, including salary, length of employment and name of employer.

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through its wholly-owned subsidiary, Norwest Mortgage Corporation, Des Moines, Iowa (Norwest Mortgage). Norwest Mortgage would provide this information to affiliated and unaffiliated depository institutions, and to other creditors for use in connection with an extension of credit including a lease transaction that is the functional equivalent of an extension of credit. These activites will be conducted nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant believes that the proposed activities meet the *National Courier* standard because: (1) employment and salary history information is information that is routinely obtained by a bank in connection with an extension of credit; (2) the information to be provided is primarily financial in nature because the relevant information is the amount of salary or wages earned by an individual over a period of time; and (3) the proposed activities are operationally and functionally similar to operating a credit bureau pursuant to § 225.25(b)(24) of Regulation Y.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Board of Governors of the Federal Reserve System, March 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6350 Filed 3–14–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 941 0131]

Schnuyck Markets, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition— in connection with Schnuck Markets' proposed acquisition of supermarkets currently owned by National Holdings, Inc.—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Missouri-based corporation to divest 24 stores in the St. Louis area to Commission-approved purchasers, and would require the respondent, for ten years, to obtain Commission approval before acquiring an interest in a supermarket, or another entity that operates a supermarket, in the relevant area.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or review will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of Schnuck Markets, Inc.'s ("Schnucks") proposed acquisition of certain assets of National Holdings, Inc. and certain affiliates ("National"), and it now appearing that Schnucks, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondent, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Schnuck Markets, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 11420 Lackland Road, St. Louis, MO 63146–6928.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to-Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file verified written reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. *Respondent* or *Schnuck Markets, Inc.* means Schnuck Markets, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Schnuck Markets, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. *Assets to be divested* means the supermarket assets described in Paragraph II.A. of this Order.

C. *Commission* means the Federal Trade Commission.

D. *Supermarket* means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

E. The term *St. Louis MSA* means the metropolitan statistical area consisting of the following areas: in Missouri, the counties of Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and the city of St. Louis; in Illinois, the counties of Clinton, Jersey, Madison, Monroe, and St. Clair.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months from the date this Order becomes final:

1. The following supermarkets located in the city of St. Louis, Missouri:

a. National Store no. 15 located at 2700 S. Grand Avenue, St. Louis, MO 63118;

b. National store no. 30 located at 5433 Southwest Avenue, St. Louis, MO 63139;

c. National store no. 50 located at 8945 Riverview Drive, St. Louis, MO 63137; and

d. National store no. 60 located at 1605 S. Jefferson, St. Louis, MO 63104.

2. The following supermarkets located in St. Louis County, Missouri:

a. National store no. 26 located at 8823 Ladue Road, Ladue, MO 63124;

b. National store no. 45 located at 6 S. Old Orchard, Webster, MO 63119;

c. National store no. 46 located at 10431 St. Charles, St. Ann, MO 63074;

d. National store no. 47 located at 13041 New Halls Ferry, Florissant, MO 63033;

e. National store no. 62 located at 421 N. Kirkwood Road, Kirkwood, MO 63122;

f. National store no. 63 located at 7434 Olive Street Road, University City, MO 63130;

g. National store no. 77 located at 4432 Lemay Ferry Road, Mehlville, MO 63129;

h. National store no. 85 located at 14855 Clayton Road, Chesterfield, MO 63011;

i. Schnucks store no. 103 located at 9719 Crestwood Road, Crestwood, MO 63126;

j. Schnucks store no. 124 located at 3661 Reavis Barracks, St. Louis, MO 63125;

k. Schnucks store no. 130 located at 10223 Lewis & Clark, Bellefontaine, MO 63136; and

l. Schnucks store no. 195 located at 6965 Parker Road, St. Louis, MO 63033.

3. The following supermarkets located in St. Charles County, Missouri:

a. National store no. 22 located at 850 Jungerman, St. Peters, MO 63376; and

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b. Schnucks store no. 126 located at 1355 South 5th Street, St. Charles, MO 63301.

4. The following supermarkets located in Jefferson County, Missouri:

a. National store no. 65 located at 1200 Sugar Creek Square, Fenton, MO 63026; and

b. National store no. 70 located at 215 Arnold Cross Road, Arnold, MO 63010.

5. The following supermarkets located in Madison County, Illinois:

a. National store no. 35 located at 1716 Vandalia Road, Collinsville, IL 62234; and

b. Schnucks store no. 175 located at 1435 Vaughn Road, Wood River, IL 62095.

6. The following supermarkets located in St. Clair County, Illinois:

a. National store no. 64 located at 1290 Camp Jackson Road, Cahokia, IL 62206; and

b. National store no. 80 located at 4 Market Place, Fairview Heights, IL 62208.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to Schnucks or National trade names, trade dress, trade marks, service marks, and such other intangible assets that respondent also utilizes in its business at locations other than those listed above.

B. Respondent shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition alleged in the Commission's complaint.

C. Pending divestiture of the assets to be divested, respondent shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II and III of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondent shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III

It is further ordered that:

A. If respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within twelve months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to be appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II of this Order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in the St. Louis MSA.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of such proposed acquisition in the St. Louis MSA.

Provided, however, that these prohibitions shall not apply to the construction of new facilities by respondent or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondent's offer to purchase or lease.

V

It is further ordered that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondent shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) acquiring any supermarket owned or operated by respondent, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1995 in the St. Louis MSA to operate a supermarket at that site; provided however, that nothing in this Paragraph shall prevent respondent from entering into or enforcing any agreement requiring its approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the operation of a supermarket shall not be a basis for withholding such approval.

B. Respondent shall not remove any equipment from a supermarket owned or operated by respondent in the St. Louis MSA prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondent in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II or III of this Order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and from in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in respondent that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, respondent shall permit and duly authorized representative of the Commission:

A. Upon five days' written notice to respondent, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

B. Upon five days' written notice to respondent and without restraint or interference from it, to interview respondent or officers, directors, or employees of respondent in the presence of counsel.

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between Schnuck Markets, Inc. ("Schnucks"), a corporation organized under the laws of the State of Missouri, with its principal offices located at 11420 Lackland Road, St. Louis, MO 63146–6928, and the Federal Trade Commission ("Commission"), an independent agency of the United States

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Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively "the Parties").

Premises

Whereas, Schnucks, pursuant to an agreement dated November 23, 1994, agreed to purchase certain assets of National Holdings, Inc. and certain affiliates (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, when those Assets will be in the hands of Schnucks, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Schnucks entering into this Agreement shall in no way be construed as an admission by Schnucks that the Acquisition is illegal; and

Whereas, Schnucks understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Schnucks agrees to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Schnucks will be free to close the Acquisition after 11:59 p.m., March 8, 1995.

3. Schnucks agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a–3.b it will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or

b. On the day the divestiture set out in the Consent Order has been completed.

4. From the time Schnucks acquires the Assets until the divestiture set out in the Consent Order has been completed, Schnucks shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall it sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Schnucks to divest itself of the Assets or to seek any other injunctive or equitable relief, Schnucks shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Schnucks also waives all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Schnucks to its principal offices, Schnucks will permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Schnucks, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Schnucks relating to compliance with this Agreement; and

b. Upon five (5) days' notice to Schnucks and without restraint or interference from them, to interview officers or employees of Schnucks, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from Schnuck Markets, Inc. ("Schnucks") an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Schnucks' acquisition of a number of supermarkets owned by National Holdings, Inc. and certain affiliates ("National").

The agreement has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's draft complaint charges that on or about November 23, 1994, Schnucks agreed to acquire supermarkets owned by National in Missouri and Illinois. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

According to the draft complaint, Schnucks and National are direct competitors for the retail sale of food and grocery items in supermarkets, or narrower product markets contained therein, in the St. Louis MSA, or narrower geographic markets contained therein. The St. Louis MSA consists of the Missouri counties of Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren; the City of St. Louis; and the Illinois counties of Clinton, Jersey, Madison, Monroe, and St. Clair.

According to the draft complaint, these markets are highly concentrated and entry is difficult or unlikely. Schnucks' acquisition of National may reduce competition in these markets by eliminating the direct competition between Schnucks and National, by increasing the likelihood that Schnucks will become a dominant firm, and by increasing the likelihood of collusive behavior among the remaining competitors.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order, Schnucks must divest 24 supermarkets within twelve months, to a purchaser approved by the Commission. If Schnucks fails to satisfy the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The 24 supermarkets to be divested are:

1. The following supermarkets located in the city of St. Louis, Missouri:

a. National store No. 15 located at 2700 S. Grand Avenue, St. Louis, MO 63118;
b. National store No. 30 located at 5433 Southwest Avenue, St. Louis, MO 63139;
c. National store No. 50 located at 8945 Riverview Drive, St. Louis, MO 63137; and
d. National store No. 60 located at 1605 S. Jefferson, St. Louis, MO 63104.

2. The following supermarkets located in St. Louis County, Missouri:

a. National store No. 26 located at 8823 Ladue Road, Ladue MO 63124;
b. National store No. 45 located at 6 S. Old Orchard, Webster, MO 63119;
c. National store No. 46 located at 10431 St. Charles, St. Ann, MO 63074;
d. National store No. 47 located at 13041 New Halls Ferry, Florissant, MO 63033;
e. National store No. 62 located at 421 N. Kirkwood Road, Kirkwood, MO 63122;
f. National store No. 63 located at 7434 Olive Street Road, University City, MO 63130;
g. National store No. 77 located at 4432 Lemay Ferry Road, Mehlville, MO 63129;
h. National store No. 85 located at 14855 Clayton Road, Chesterfield, MO 63011;
i. Schnucks store No. 103 located at 9719 Crestwood Road, Crestwood, MO 63126;
j. Schnucks store No. 124 located at 3661 Reavis Barracks, St. Louis, MO 63125;
k. Schnucks store No. 130 located at 10223 Lewis & Clark, Bellefontaine, MO 63136; and
l. Schnucks store No. 195 located at 6965 Parker Road, St. Louis, MO 63033.

3. The following supermarkets located in St. Charles County, Missouri:

a. National store No. 22 located at 850 Jungerman, St. Peters, MO 63376; and
b. Schnucks store No. 126 located at 1355 South 5th Street, St. Charles, MO 63301.

4. The following supermarkets located in Jefferson County, Missouri:

a. National store No. 65 located at 1200 Sugar Creek Square, Fenton, MO 63026; and
b. National store No. 70 located at 215 Arnold Cross Road, Arnold MO 63010.

5. The following supermarkets located in Madison County, Illinois:

a. National store No. 35 located at 1716 Vandalia Road, Collinsville, IL 62234; and
b. Schnucks store No. 175 located at 1435 Vaughn Road, Wood River, IL 62095.

6. The following supermarkets located in St. Clair County, Illinois:

a. National store No. 64 located at 1290 Camp Jackson Road, Cahokia, IL 62206; and
b. National store No. 80 located at 4 Market Place, Fairview Heights, IL 62208

For a period of ten years from the date the order becomes final, the order also prohibits Schnucks from acquiring, without prior Commission approval, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, the St. Louis MSA. This does not prevent Schnucks from constructing new supermarket facilities on its own; nor does it prevent Schnucks from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, if Schnucks sells or leases a supermarket to another person, Schnucks may not enter into or enforce any agreement that would restrict the ability of that person to operate a supermarket. In addition, subject to certain exceptions, Schnucks may not remove any equipment from a supermarket it owns or operates prior to a sale, sublease, assignment, or change in occupancy.

The respondent is required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becames final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed consent order, nor is it intended to modify the terms of the agreement and proposed consent order in any way.

Donald S. Clark,
Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga

Re: *Schnuck Markets, Inc.*, File No. 941–0131; *Schwegmann Giant Super Markets, Inc.*, File No. 941–0130

The two complaints allege geographic markets comprising "the St. Louis MSA, and narrower markets contained therein" and "metro New Orleans, Louisiana area, which consists of the parishes of Orleans, Jefferson, and St. Bernard, and narrower markets contained therein." Although I question the board geographic markets alleged, the investigational record contains sufficient information to support a finding of reason to believe with respect to small, discrete geographic markets located within the broad regions alleged in the complaint, and the stores to be divested were selected with a view to remedying competitive concerns in the small, discrete markets.

In addition, the complaints allege as the product market "the retail sale of food and grocery products in supermarkets, and narrow markets contained therein." A serious argument can be made that the market should include sales of food and groceries in certain stores other than traditional supermarkets. Since the investigational record suggests that the concentration is high even if additional sales are included in the market, the issue need not be resolved at this time. Accordingly, I concur in the decision to accept the consent agreements for publication.

[FR Doc. 95–6342 Filed 3–14–95; 8:45 am]
BILLING CODE 6750–01–M

[File No. 941 0130]

Schwegmann Giant Super Markets, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

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ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Schwegmann's proposed acquisition of supermarkets currently owned by National Holdings, Inc.—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Louisiana-based corporation to divest seven stores in the New Orleans area to Commission-approved purchasers, and would require the respondent, for ten years, to obtain Commission approval before acquiring an interest in a supermarket, or another entity that operates a supermarket, in the relevant area.

DATES: Comments should be received on or before May 15, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of Schwegmann Giant Super Markets, Inc.'s ("Schwegmann") proposed acquisition of certain assets of National Holdings, Inc. and certain affiliates ("National"), and it now appearing that Schwegmann, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondent, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Schwegmann Giant Super Markets, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 5300 Old Gentilly Road, New Orleans, Louisiana 70126.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement, to the attention of the officer signing this agreement, shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file verified written reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. *Respondent* or *Schwegmann* means John F. Schwegmann and Schwegmann Giant Super Markets, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Schwegmann Giant Super Markets, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. *Assets to be divested* means the supermarket assets described in Paragraph II.A. of this Order.

C. *Commission* means the Federal Trade Commission.

D. *Supermarket* means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

E. *New Orleans metro area* means the area consisting of Jefferson, Orleans, and St. Bernard parishes in Louisiana.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months from the date this Order becomes final:

1. That Stanley supermarket located at 315 E. Judge Perez Drive (store No. 79), Chalmette, LA;
2. Canal Villere supermarket located at 4726 Paris Avenue (store No. 24), New Orleans, LA;
3. Canal Villere supermarket located at 2125 Caton Street (store No. 25), New Orleans, LA;
4. That Stanley supermarket located at 4223 Chef Menteur Highway (store No. 8), New Orleans, LA;
5. That Stanley supermarket located at 9319 Jefferson Highway (store No. 33), River Ridge, LA;
6. Canal Villere supermarket located at 5245 Veterans Memorial Boulevard (store No. 93), Metairie, LA; and
7. Canal Villere supermarket located at 135 Robert E. Lee Boulevard (store No. 83), New Orleans, LA.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to any Schwegmann or National trade names, trade dress, trade marks, service marks, computer software, vehicles and other assets except fixtures also used or to be used by respondent at locations other than those listed above in connection with the Schwegmann or National business operations.

B. Respondent shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition alleged in the Commission's complaint.

C. Pending divestiture of the assets to be divested, respondent shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II and III of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondent shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III

It is further ordered that:

A. If respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within twelve months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission, for any failure by the respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court: provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such

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consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or his services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II of this Order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in the New Orleans metro area.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of such proposed acquisition in the New Orleans metro area.

Provided, however, that these prohibitions shall not apply to the construction of new facilities by respondent or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondent's offer to purchase or lease.

V

It is further ordered that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondent shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) acquiring any supermarket owned or operated by respondent, any leasehold interest in any supermarket, or any interest in that portion of any retail location used as a supermarket on or after January 1, 1995 in the New Orleans metro area to operate a supermarket at that site; provided however, that nothing in this Paragraph shall prevent respondent from entering into or enforcing any agreement requiring its approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the operation of a supermarket shall not be a basis for withholding such approval.

B. Respondent shall not remove any equipment for a supermarket owned or operated by respondent in the New Orleans metro area prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondent in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II or III of this Order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in respondent that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, respondent shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondent, access, during office hours and in the presence of counsel for respondent, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

B. Upon five days' written notice to respondent and without restraint or interference from it, to interview respondent or officers, directors, or employees of respondent in the presence of counsel for respondent relating to any matters contained in this Order.

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between Schwegmann Giant Super Markets, Inc. ("Schwegmann"), a corporation organized under the laws of the State of Louisiana, with its principal offices located at 5300 Old Gentilly Road, New Orleans, Louisiana 70126, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively "the Parties").

Premises

Whereas, Schwegmann, pursuant to an agreement dated November 23, 1994, agreed to purchase certain assets of National Holdings, Inc. and certain affiliates (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of §§ 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, when those assets will be in the hands of Schwegmann, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Schwegmann entering into this Agreement shall in no way be construed as an admission by Schwegmann that the Acquisition is illegal; and

Whereas, Schwegmann understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Schwegmann agrees to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15. U.S.C. § 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Schwegmann will be free to close the Acquisition after 11:59 p.m., March 8, 1995.

3. Schwegmann agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a—3.b it will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or

b. On the day the divestitute set out in the Consent Order has been completed.

4. From the time Schwegmann acquires the Assets until the earliest of the dates listed in subparagraphs 3.a—3.b, Schwegmann shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall it sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Schwegmann to divest itself of the Assets or to seek any other injunctive or equitable relief, Schwegmann shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Schwegmann also waives all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Schwegmann to its principal offices, Schwegmann shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Schwegmann, in the presence of counsel for Schwegmann, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Schwegmann relating to compliance with this Agreement; and

Without restraint or interference from them, to interview officers or employees of Schwegmann, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from Schwegmann Giant Super Markets, Inc. ("Schwegmann") an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Schwegmann's acquisition of a number of supermarkets owned by National Holdings, Inc. and certain affiliates ("National").

The agreement has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's draft complaint charges that on or about November 23, 1994, Schwegmann agreed to acquire National's supermarkets located in Louisiana, Mississippi, and Alabama. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

According to the draft complaint, Schwegmann and National are direct competitors for the retail sale of food

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and grocery items in supermarkets, or narrower product markets contained therein, in the "New Orleans metro area," which consists of the parishes of Orleans, Jefferson, and St. Bernard, or narrower geographic markets contained therein. According to the draft complaints, the relevant markets are highly concentrated and entry is difficult or unlikely. Schwegmann's acquisition of National may reduce competition in these markets by eliminating the direct competition between Schwegmann and National, by increasing the likelihood that Schwegmann will become a dominant firm, and by increasing the likelihood of collusive behavior among the remaining competitors.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order, Schwegmann must divest seven supermarkets within twelve months, to a purchaser approved by the Commission. If Schwegmann fails to satisfy the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The seven supermarkets to be divested are:

1. That Stanley supermarket located at 315 E. Judge Perez Drive (store No. 79), Chalmette, LA;
2. Canal Villere supermarket located at 4726 Paris Avenue (store No. 24), New Orleans, LA;
3. Canal Villere supermarket located at 2125 Caton Street (store No. 25), New Orleans, LA;
4. That Stanley supermarket located at 4223 Chef Menteur Highway (store No. 8), New Orleans, LA;
5. That Stanley supermarket located at 9319 Jefferson Highway (store No. 33), River Ridge, LA;
6. Canal Villere supermarket located at 5245 Veterans Memorial Boulevard (store No. 93), Metairie, LA;
7. Canal Villere supermarket located at 135 Robert E. Lee Boulevard (store No. 83), New Orleans, LA.

For a period of ten years from the date the order becomes final, the order also prohibits Schwegmann from acquiring, without prior Commission approval, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, the New Orleans metro area. This does not prevent Schwegmann from constructing new supermarket facilities on its own; nor does it prevent Schwegmann from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, if Schwegmann sells or leases a supermarket to another person, Schwegmann may not enter into or enforce any agreement that would restrict the ability of that person to operate a supermarket. In addition, subject to certain exceptions, Schwegmann may not remove any equipment from a supermarket it owns or operates prior to a sale, sublease, assignment, or change in occupancy.

The respondent is required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed consent order, nor is it intended to modify the terms of the agreement and proposed consent order in any way.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga

Re: *Schnuck Markets, Inc.*, File No. 941–0131; *Schwegmann Giant Super Markets, Inc.*, File No. 941–0130

The two complaints allege geographic markets comprising "the St. Louis MSA, and narrower markets contained therein" and "metro New Orleans, Louisiana area, which consists of the parishes of Orleans, Jefferson, and St. Bernard, and narrower markets contained therein." Although I question the broad geographic markets alleged, the investigational record contains sufficient information to support a finding of reason to believe with respect to small, discrete geographic markets located within the broad regions alleged in the complaint, and the stores to be divested were selected with a view to remedying competitive concerns in the small, discrete markets.

In addition, the complaints allege as the product market "the retail sale of food and grocery products in supermarkets, and narrower markets contained therein." A serious argument can be made that the market should include sales of food and groceries in certain stores other than traditional supermarkets. Since the investigational record suggests that the concentration is high even if additional sales are included in the market, the issue need not be resolved at this time. Accordingly, I concur in the decision to accept the consent agreements for publication.

[FR Doc. 95–6343 Filed 3–14–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Construction of FDA Regional Office and Laboratory; Environmental Impact Statement; Jamaica, Queens County, New York

AGENCY: General Services Administration (GSA).

ACTION: Notice of Intent to hold a public scoping meeting and prepare and file an Environmental Impact Statement (EIS).

SUMMARY: The GSA is issuing this notice to advise the public that an EIS will be prepared for the construction of the FDA Regional Office and Laboratory in Jamaica, Queens County, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Sneed, Asset Manager, U.S. General Services Administration, Public Buildings Service, 26 Federal Plaza, Room 1609, New York City, NY 10278, (212) 264–3581.

SUPPLEMENTARY INFORMATION: The GSA will serve as lead agency and project sponsor in the preparation and filing of an EIS for the construction of the FDA Regional Office and Laboratory in Jamaica, Queens County, New York. The proposed action would involve the construction and operation of the facility on an assemblage of two properties located at the intersection 158th Street and Liberty Avenue. Combined, these two properties are 4.25 acres (1.73 hectares) in size. The existing FDA regional facilities are located in Federal Building #2 of the Federal Complex in Sunset Park, Brooklyn, New York. Due to the deteriorated condition of, and space constraints in, the present facility, FDA has requested relocation to a modern expanded facility to accommodate the additional staffing required to provide increased oversight and product monitoring. This action is intended to provide 175,000 occupiable square feet (16,250 square meters) of office, storage, and special space.

The EIS will evaluate the FDA regional facility alternatives, including the No-Action Alternative. It will also evaluate impacts on the affected environment, including, but not limited to, socioeconomics, hazardous materials, traffic/transportation, land use, cultural resources, and noise.

PUBLIC SCOPING MEETING: To ensure that all issues relating to the proposed project are identified and all potentially significant issues are addressed and satisfied in the EIS, public comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held on Monday, March 20, 1995 from 2 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. in the auditorium of the Joseph Addabbo Federal Building, 1 Jamaica Center Plaza, Jamaica, New York.

Written comments may be mailed to the informational contact person no later than April 7, 1995.

Issued in New York City, New York on March 7, 1995.

Karen R. Adler,

Regional Administrator, General Services Administration, Region 2.

[FR Doc. 95–6289 Filed 3–14–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, ATSDR.

Times and dates: 8:30 a.m.–5:00 p.m., April 20, 1995. 8:30 a.m.–12:40 p.m., April 21, 1995.

Place: The Centers for Disease Control and Prevention, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: The entire meeting will be open to the public.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The Agenda will include an update on Superfund reauthorization and will also focus on other issues of concern to ATSDR, including ATSDR's programs for physician and community education, development of the medical assistance program, progress report by the Board of Scientific Counselors, ATSDR, work group on health studies, and an overview of the ATSDR Great Lakes Human Health Effects Research Program.

Written comments are welcome and should be received by the contract person listed below prior to the opening of the meeting.

Contact person for more information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: March 8, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–6318 Filed 3–14–95; 8:45 am]

BILLING CODE 4163–70–M

National Institutes of Health Genome Research Review Committee; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, March 14, 1995, Embassy Suites Hotel, Chevy Chase Pavilion, Washington, D.C. which was published in the Federal Register on March 3, 1995 (60 FR 11975).

The meeting was cancelled due to complications of other commitments of several members of the committee and will be rescheduled at a later date.

Dated: March 9, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6326 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of the Vascular Disease Academic Award.

Date: April 9–10, 1995.

Time: 7 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: S. Charles Selden, Ph.D., 5333 Westbard Avenue, Room 552, Bethesda, Maryland 20892, (301) 594–7476.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: March 9, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6398 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Mechanisms of Post Bone Marrow Transplantation Lung Injury.

Date: April 5–6, 1995.

Time: 7:30 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Lynn M. Amende, 5333 Westbard Avenue, Room 5A10, Bethesda, Maryland 20892, (301) 594–7480.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: March 9, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6397 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

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National Heart, Lung, and Blood Institute; Amendment Notice of Meeting

Notice is hereby given of a change in the meeting of the NHLBI SEP on Dietary Protein and Blood Pressure, April 20, 1995, which was published in the **Federal Register** on February 21 (60 FR 9692).

This Special Emphasis Panel was to have convened at 9:00 a.m. on April 20, at the Rockledge Building, Conference Room 8115, 8th Floor, National Institutes of Health, but has been changed to 9:00 a.m. on April 20, 1995, at the Natcher Building, Building 45, Conference Room B, National Institutes of Health.

The entire meeting will be open to the public to provide concept review of the proposed contract or grant solicitations.

Dated: March 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–6327 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, April 6–7, 1995, Radisson Plaza Lord Hotel, 20 West Baltimore Street, Baltimore, Maryland 21201.

The meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on April 6 and 9:00 a.m. to adjournment on April 7. Attendance by the public will be limited to space available. Board topic will include: (1) A report on fiscal issues concerning the National Center for Medical Rehabilitiation Research (Center) and the Institute; (2) reports on program activities of the Center; (3) a discussion of general priority areas of research for the Center; (4) reports by the National Science Foundation and the Department of Veterans Affairs; and (5) a discussion of support for medical rehabilitiation research by government agencies.

Ms. Mary Plummer, Committee Management Specialist, NICHD, 6100 Building, Room 5E03, National Institutes of Health, Bethesda, Maryland 20892. Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

Dated: March 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–6329 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates: April 11–13, 1995.

Time: 8 am to 5 pm each day.

Place: Hyatt Regency, Bethesda, MD.

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, NIDCD, NIH, ESP Suite 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders).

Dated: March 9, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6396 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communications Disorders; Notice of Meeting of the Board of Scientific Counselors, NIDCD

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD, on April 13, 1995. The meeting will be conducted as a telephone conference call originating from Building 31C, Room 3C05, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 2 to 4 pm to present reports and discuss issues related to business of the Board. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary of the Board of Scientific Counselors, NIDCD, 5 Research Ct., Room 2B–28, Rockville, Maryland 20850.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: March 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–6328 Filed 3–14–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–05; 1790–00]

Intent To Prepare an Environmental Assessment and/or Environmental Impact Statement for the La Paz County Regional Landfill Expansion Project, Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent To Prepare an Environmental Assessment and/or Environmental Impact Statement for the La Paz County Regional Landfill Expansion Project.

SUMMARY: The Yuma District's Havasu Resource Area Office is preparing an Environmental Assessment and/or Environmental Impact Statement for the expansion of the La Paz County Regional Landfill, and the construction of a railroad drill track (spur) and haul road. The landfill is located near the intersection of Arizona State Highways 72 and 95, approximately 15 miles southeast of Parker, Arizona. La Paz County has submitted an application for 6.3 miles of right-of-way across public lands pursuant to the Federal Land Policy Management Act of 1976, and a request for the sale of 480 acres of public land pursuant to the Recreation and Public Purposes Act of 1926, as amended. The Bureau of Land Management has responsibility for the environmental review of the right-of-way and land sale application pursuant to the National Environmental Policy Act (NEPA). Preparation of appropriate NEPA documentation will follow Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA, pertinent guidance contained in the Department of Interior Manual on Environmental Quality (DM 516), and the BLM NEPA Handbook (H–1790–1).

La Paz County proposes the expansion of an existing 160-acre landfill, with an additional 480 acres, and the construction of 6.3 miles of drill track and/or haul road to service the facility. Construction of the drill track will require a Clean Water Act (CWA) Section 404 Nationwide Permit for the crossing of Bouse Wash. Implementation of the proposed project will provide regional, long-term waste disposal capacity.

The Environmental Assessment and/or Environmental Impact Statement will be developed by a third party contractor who has been approved by the Bureau of Land Management. The contractor will use an interdisciplinary team to develop the document. The Bureau of Land Management will retain overall responsibility for preparation and review of the document.

Complete records of all phases of the environmental documentation process will be available for public review at the Bureau of Land Management, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona.

The public is invited to participate in the NEPA process beginning with scoping and the identification of issues in April 1995.

DATES: Public Scoping Meetings to identify issues will be held as follows: Wednesday, April 5, 1995 (1–3 pm), Quartzsite Town Hall Complex, Public Library Meeting Room, 465 North Plymouth Avenue, 465 North Plymouth Avenue, Quartzsite, Arizona; telephone (602) 927–6593; and Wednesday, April 5, 1995 (6–8 pm), La Paz County Board of Supervisor's Meeting Room, 1112 Joshua Avenue, Parker, Arizona; telephone (602) 669–6138.

The comment period for this Notice of Intent ends April 14, 1995.

COMMENTS/FURTHER INFORMATION: Send comments and/or requests for further information to: Bureau of Land Management, Havasu Resource Area, Attention: Joe Liebhauser, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403. Telephone: (602) 855–9017

Dated: March 7, 1995.

Don Applegate,

Nonrenewable Resource Advisor/Acting District Manager.

[FR Doc. 95–6331 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–32–P

[CA–010–03–1220–01; 5–00160–GP5–010–001]

Temporary Vehicle Use Restriction Order for Caliente Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restriction in the Kelso Creek and Isabella Management Areas within Kern County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action restricts vehicle use on BLM-administered public land in the Isabella Management Area due top trash dumping and erosion problems and restricts vehicle use on BLM-administered public lands in the Kelso Creek Management Area due to severe vandalism of range developments. Both areas will be addressed on a permanent basis in a Resource Management Plan. Vehicle use on roadways is restricted to "Administrative Access Only" and shall be limited to persons specifically designated by the Area Manager to drive on said roadways. The public lands over which these roads travel and located in portions of NW¼ Section 12, Township 27 South, Range 32 East; SE¼ Section 29 and SW¼ Section 28, Township 26 South, Range 35 East; N½ Section 4 and N½ Section 9, Township 27 South, Range 35 East, all Mount Diablo Base and Meridian, in the County of Kern, State of California. This restriction will apply from the date of publication in the Federal Register and remain in effect until an amendment thereof or until publication of a Resource Management Plan which adequately addresses public access on these lands.

SUPPLEMENTARY INFORMATION: This emergency road closure is intended to control vehicle use on public lands for protection of range developments, to prevent further trash dumping, and to abate erosion on sensitive hillsides. Authority for this restriction order is contained in CFR Title 43, Chapter II, 8364.1(a).

DATES: This order will be effective on March 15, 1995.

FOR FURTHER INFORMATION CONTACT: James Abbott, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, California 93308; (805) 391–6000.

Dated: March 6, 1995.

James Wesley Abbot,

Caliente Resource Area Manager.

[FR Doc. 95–6235 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

Hamilton Grange National Memorial, New York County, New York; Final General Management Plan and Environmental Impact Statement

In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the National Park Service, U.S. Department of the Interior announces that a Final Environmental Impact Statement (FEIS) has been prepared on the four alternatives for future management and use of Hamilton Grange National Memorial.

This notice announces the availability of the FEIS for public review. Following a 30-day no-action period, a Record of Decision will be written documenting the range of alternatives considered and evaluated, the preferred alternative selected, and the rationale for its selection.

For further inquiries about the FEIS, and requests for additional copies should be directed to the Superintendent, Manhattan Sites, 26 Wall Street, New York, New York 10005 or by calling (212) 825–6992.

Dated: March 9, 1995.

Sandy Corbett,

Acting Regional Director.

[FR Doc. 95–6323 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–70–P

National Center for Preservation Technology and Training: Grant Program Announcement

AGENCY: National Park Service, Department of the Interior.

ACTION: Grant program announcement and publication of selection criteria.

The National Center for Preservation Technology and Training, an office of the National Park Service, is accepting proposals for its 1995 Preservation Technology and Training Grants. Only proposals postmarked no later than April 1, 1995 will be considered.

The Center's grant program supports preservation technology and training projects in the fields of archeology, architecture, historic landscapes, materials conservation, and history or interpretation. Approximately $900,000.00 will be awarded: each grant

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is limited to $40,000.00 and proposals for smaller amounts are encouraged. Grantee's total direct and indirect administrative costs shall not exceed 25 percent of their total grant award.

Proposals from government agencies and non-profit institutions are eligible. Principal criteria for selection include:

1. Proposed projects shall be innovative in their disciplines and shall not duplicate current or recent developments in preservation research or training.
2. Proposed projects shall have broad application in preservation practice.
3. Proposed projects shall address identifiable national needs.
4. Proposed projects shall be cost-efficient and practical.
5. Proposed work shall be completed approximately one year from award.

Grants will be selected in a two-tier process. The first tier will be comments by expert readers; the second tier will be a selection panel comprised of Federal employees.

Funds for the 1995 grants program will be obligated no later than September 30, 1995.

Dated: March 6, 1995.

E. Blaine Cliver,

Chief, Preservation Assistance Division.

[FR Doc. 95–6393 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–70–P

National Preservation Technology and Training Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on May 2–4, 1995, in Washington, DC.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet each day, May 2–4, in the Board Room of the American Institute of Architects (AIA) at 1735 New York Avenue, NW., in Washington, DC. Matters to be discussed will include: A summary of the FY 1995 grant applications received and discussion of the grant review procedures; reports on the Center's working groups meetings held in the spring 1995; report of activities since the November 1994 Board meeting; review of the Center's budget and discussion of a five-year plan for the organization.

The Board will meet on Tuesday, May 2nd, from 8:30 am until 12 noon and from 1:15 until 5 pm. On Wednesday, May 3rd, the meeting will start at 9 am and end at 12 noon and on Thursday, May 4th, it will be held from 9 am until 2 pm (the Board will be served a working lunch in order to complete miscellaneous business). Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Designated Federal Official, Preservation Technology and Training Board, National Park Service, Preservation Assistance Division, P.O. Box 37127, Washington, DC 20013–7127, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: March 7, 1995.

E. Blaine Cliver,

Chief, Preservation Assistance, National Park Service.

[FR Doc. 95–6392 Filed 3–14–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–367]

Notice of Commission Determination not to Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of: Certain Facsimile Machines and Components Thereof

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 3) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: On August 1, 1994, Ricoh Co., Ltd. and Ricoh Corp. filed a complaint with the Commission alleging violation of section 337 in the importation, sale for importation, and the sale within the United States after importation of certain facsimile machines and components thereof that allegedly infringed claims 1, 5, 7, 8, 9 or 10 of U.S. Letters Patent 4,249,216, or claims 1, 2, 4, 8, or 10 of U.S. Letters Patent 4,494,149, owned by complainants.

The Commission instituted an investigation of the complaint, and published a notice of investigation in the **Federal Register** on September 8, 1994, 59 FR 46447 (1994). The notice named Samsung Electronics Co., Ltd. of Seoul, Korea, and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey as respondents.

On December 22, 1994, complainants and respondents filed a joint motion to terminate the investigatfon based on a settlement agreement. On February 10, 1995, the ALJ granted the joint motion and issued an ID (Order No. 3) terminating the investigation on the basis of the settlement agreement. No petitions for review, or agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: March 7, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6376 Filed 3–14–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fieldbus Foundation

Notice is hereby given that, on December 8, 1994, supplemented by filings of December 20, 1994 and December 22, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fieldbus Foundation ("Fieldbus") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. Specifically, the December 8, 1994 notification advises that effective September 23, 1994, InterOperable System Project Foundation ("ISPF") merged with WorldFip North America, Inc.; ISPF was the surviving entity, changed its name to Fieldbus Foundation ("Fieldbus") and identified the following new members: Allen-Bradley Company, Inc., Highland Heights, OH; Allen-Bradley Japan Co., Ltd, Tokyo, Japan; Bailey Controls Co., Wickliffe, OH; E.I. duPont De Nemours & Co., Inc., Wilmington, DE; Honeywell, Inc., Phoenix, AZ; K.K. CODIX, Tokyo, Japan; Nagano Keiki Seisakusho, Ltd., Tokyo, Japan; Niigata Masoneilan Co., Ltd., Chiba, Japan; Proctor & Gamble Company, Cincinnati, OH; Square D Company, Knightdale, NC; Tokyo Keiso Co., Ltd., Tokyo, Japan; Uticor Technology, Inc., Bettendorf, IA; and Yamatake-Honeywell Co., Ltd. Tokyo, Japan. The December 20, 1994, notification discloses that DKK Corporation, Tokyo, Japan; Glaxo, Inc., Research Triangle Park, NC; and Presys Instrumentos E Sistemas Ltda, San Paulo, Brazil, have become new members. Lastly, the December 22, 1994, notification discloses that Pacific Avionics Corp., Redmond, WA has become a new member. These notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

No other changes have been made in either membership or planned activity of the group research project. Membership in this group research project remains open, and Fieldbus intends to file additional written notifications disclosing all changes in membership.

On May 7, 1993, Fieldbus filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 23, 1993 (58 Fed. Reg. 49529).

The last notification was filed with the Department on July 5, 1994. This notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6285 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on November 22, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Herzog Automation Corp., Cleveland, Ohio has become an Associate Member of PCA; and Passamaquoddy Technology and Cemtech LP have resigned as Associate Members of PCA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on August 9, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 18, 1994, 59 FR 52556.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6284 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Poweropen Association, Inc.

Notice is hereby given that, on September 30, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: AVD Systems, Moscow, RUSSIA; Bell & Howell, Lincolnwood, IL; Digital Equipment Corporation, Rocky Hill, CT; Dun & Bradstreet Software Service, Inc., Framingham, MA; EMC Corporation, Hopkinton, MA; Federal Express Corporation, Memphis, TN; Finsiel—Consulenza ed Applicazioni Informatiche, Napoli, ITALY; Hewlett-Packard, Cupertino, CA; Industrial Technology Research Institute, Taiwan, ROC; Infotech Automatisering, AH Nymegen, NETHERLANDS; Institute for Information Industry, Taipei, Taiwan, ROC; Kendall Square Research, Waltham, MA; Northern Telecom MBA, Ottawa, Ontario, CANADA; OC Systems, Inc., FAirfax, VA; Ohio! Uniforum, Cleveland, OH; Open Networks Engineering, Inc., Ann Arbor, MI; PowerHouse Systems, Inc., Menlo Park, CA; Scott & Scott Systems, Inc., Seattle, WA; SKY Computers, Chemlsford, MA; Tidalwave Microtech, Fremont, CA; TriGem Computers, Inc., Amsam City, Kyunggi, KOREA; Warthman Associates, Palo Alto, CA. Zuken-Redac LTD, Tewkesbury, Gloucestershire, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PowerOpen intends to file written notifications disclosing all changes in membership.

On April 21, 1993, PowerOpen filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 22, 1993 (58 Fed Reg. 33954).

The last notification was filed with the Department on July 1, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

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Act on November 14, 1994 (59 Fed. Reg. 56533).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–6286 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pine Oil Joint Venture

Notice is hereby given that, on December 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993 15 U.S.C. 4301 *et seq.* ("the Act"), SCM Glidco Organics has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following members have withdrawn their membership with SCM Glidco Orgnaics: Sistesis quimica S.A. de C.V. and Johnson Chemical Co., Inc.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this joint venture remains open, and SCM Glidco Organics intends to file additional written notification disclosing all changes in membership.

On January 5, 1987, American Cyanamid Company filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1987, 52 F. R. 37190. The last notification was filed with the Department on August 13, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 1993, 58 F.R. 51103.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6282 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on December 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of the Corporation: Institut National de Recherche en Informatique et en Automatique, Le Chesnay, FRANCE; and KL Group, Inc., Toronto, CANADA.

No other changes have been made in either membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1993 (58 FR 59737). The last notification was filed with the Department on June 14, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 1994 (59 FR 55490).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6283 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–52]

Robert A. Leslie, M.D.; Denial of Application

On May 13, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Leslie, M.D., of Los Angeles, California, proposing to deny his application for registration as a practitioner. The Order to Show Cause alleged that the Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, acting pro se, requested a hearing on the issues raised by the Order to Show Cause, and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Los Angeles, California, on December 8 and 9, 1993. On July 27, 1994, in her opinion and recommended ruling, findings of fact, conclusions of law and decision, the administrative law judge recommended that Respondent's application for DEA registration be denied. In a footnote of her recommended decision, the administrative law judge referenced specific documents that were submitted by Respondent after the administrative hearing. The administrative law judge recommended that the Deputy Administrator not consider these submissions, since most of the documents pertained to matters previously litigated and conclusively decided in a previous criminal action, and therefore, consideration of them was barred by the doctrine of res judicata. No exceptions were filed by either party.

On August 16, 1994, Respondent filed a Petition for Reconsideration of the administrative law judge's decision recommending denial of his application for DEA registration. On August 17, 1994, the administrative law judge denied this petition as lacking in merit.

On August 30, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator has carefully considered the entire record in this matter and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator concurs with Judge Bittner's recommendation not to consider specific post hearing submissions of the Respondent. Accordingly, these submissions were not considered in rendering this decision.

The administrative law judge found that Respondent graduated from medical school in 1955, became licensed as a physician in 1958, and practiced medicine in Los Angeles during the period at issue in this case. On April 1, 1986, a complaint was filed in the Municipal Court of Long Beach, California, charging Respondent with seventeen misdemeanor counts, sixteen of which related to the unlawful handling of controlled substances. Following a jury trial, on October 9, 1986, Respondent was found guilty on eight counts of unlawfully prescribing, administering, furnishing or dispensing controlled substances between July 1985 and January 1986. Respondent's convictions were affirmed on appeal by the Appellate Department of the Superior Court, State of California, in a Memorandum Judgement issued on May 18, 1988.

Based on his criminal convictions, on August 17, 1988, the California Board of

Medical Quality Assurance (BMQA) filed an accusation against Respondent seeking to suspend his medical license. Following an administrative hearing, on July 24, 1989, the state administrative law judge recommended that Respondent's medical license be revoked, but that the revocation be stayed for five years, that Respondent be placed on probation subject to certain conditions, and that he be suspended from the practice of medicine for 90 days. After the BMQA adopted the decision of the state administrative law judge, Respondent sued BMQA, but was unsuccessful both in the lower court and on appeal. The court subsequently fined Respondent $10,000, and found that his appeal was frivolous.

On June 21, 1989, DEA issued an Order to Show Cause, seeking to revoke Respondent's prior DEA Certificate of Registration, AL0033186. Respondent requested a hearing, but later submitted a written statement of his position in lieu of participating in a hearing. Based on Respondent's statement and the Government's investigative file, effective August 17, 1990, the then-Acting Administrator revoked Respondent's DEA registration, based upon the finding that his continued registration would be inconsistent with the public interest. *See Robert A. Leslie, M.D.*, 55 FR 29278 (1990). Respondent subsequently filed a new application for DEA registration on February 6, 1992, which is the subject of this proceeding.

Respondent testified at the administrative hearing to matters surrounding his criminal conviction. Respondent argued that his prescribing to undercover operatives was justified based upon their physical conditions and complaints of pain, and that he was entrapped; during the criminal trial, the operatives perjured themselves regarding events that took place during their visits with Respondent; his direct appeal of his criminal convictions was denied, and his subsequent filing of ten petitions for habeas corpus in state and federal courts were unsuccessful; and, he sued his attorney for malpractice based upon the latter's failure to provide adequate legal representation.

Respondent also contended that the 1990 final order of the then-Acting Administrator relied on false statements supplied by BMQA that were not part of the original court record. Respondent testified that he filed a petition for reconsideration of that final order, however, since the **Federal Register** notice of the final order was not timely sent to him, the period for filing a motion for reconsideration elapsed before he became aware of the revocation. The administrative law judge found this argument without merit based on the provisions of 21 U.S.C. 877, regarding judicial review, and the fact that there is no provision in the Code of Federal Regulations for filing requests for reconsideration.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny any application for registration, if he determines that the continued registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. *See Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989). In considering whether grounds exist to deny Respondent's application for DEA registration, the administrative law judge found all of the above factors relevant.

The administrative law judge found that Respondent's testimony, documentary evidence and pleadings in this proceeding contended that his criminal conviction was invalid. The administrative law judge concluded however, that the conviction is res judicata, and that Respondent should not be allowed to relitigate the matter.

The administrative law judge found that during the administrative hearing, although Respondent was free to offer new evidence that he would never again engage in the type of conduct that resulted in his conviction, he failed to do so. The administrative law judge also found that while Respondent offered evidence and expended time arguing the invalidity of his criminal convictions, he offered no evidence of remorse for his prior conduct, that he has taken rehabilitative steps, or that he recognizes the severity of his actions. The administrative law judge concluded that Respondent is either unwilling or unable to discharge the responsibilities inherent in a DEA registration, and therefore, recommended that his application for DEA registration be denied.

The Deputy Administrator having considered the entire record adopts the administrative law judge's findings of fact, conclusions of law, and recommended ruling in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration, executed by Robert A. Leslie, M.D., be, and it hereby is, denied. This order is effective March 15, 1995.

Dated: March 8, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–6297 Filed 3–14–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–24; Exemption Application No. D–09787, et al.]

Grant of Individual Exemptions; Boston Cement Masons Union Local No. 534 Deferred Income Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

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the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Boston Cement Masons Union Local No. 534 Deferred Income Plan (the Deferred Income Plan), Boston Cement Masons Union Local No. 534 Pension Plan (the Pension Plan), Boston Cement Masons Union Local No. 534 Health and Welfare Plan (the Welfare Plan) and Boston Cement Masons Union Local No. 534 Apprenticeship Plan (the Apprenticeship Plan; Collectively, the Plans) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–24; Application Nos. D–9787, D–9788, L–9789 and L–9790, respectively]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed leasing of office space in a building (the Building) owned by the Deferred Income Plan to the Boston Cement Masons Union Local No. 534, a party in interest with respect to the Deferred Income Plan.

In addition, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed leasing of office space in the Building by the Deferred Income Plan to the Pension Plan, the Welfare Plan and the Apprenticeship Plan.

This exemption is conditioned upon the following requirements: (1) The terms of all such leasing arrangements are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party; (2) an independent, qualified fiduciary, who has approved of the leasing arrangements, agrees to monitor all leases on behalf of the Deferred Income Plan as well as the terms and conditions of the exemption at all times; (3) the rental charged by the Deferred Income Plan under each lease is based upon the fair market rental value of the premises as determined by an independent, qualified appraiser; (4) the Building is revalued annually by the independent, qualified appraiser; (5) if appropriate, the independent, qualified fiduciary adjusts the rentals charged for the office space based upon the annual appraisals of the Building; and (6) the trustees determine that the leasing arrangements are in the best interests of the Pension Plan, the Welfare Plan and the Apprenticeship Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1995 at 60 FR 3659.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan (the Plan) Located in Detroit, Michigan

[Prohibited Transaction Exemption No. 95–25; Application No. D–9734]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code [1] shall not apply to:

(1) The transfer of shares of Class E common stock (the Class E stock) of General Motors Corporation (GM) to the Plan through the in-kind contribution of such shares by GM, a party in interest with respect to such Plan;

(2) The holding of the Class E stock by the Plan;

(3) The sale for cash of shares of Class E stock by the Plan to GM or its affiliates or to certain defined contribution plans sponsored by GM or its affiliates;

(4) The exchange of shares of Class E stock for publicly-traded securities between the Plan and GM or its affiliates under the same terms and conditions as are made available to all shareholders of Class E stock; and

(5) The acquisition, holding, and exercise by the Plan of a put option granted by GM which permits the Plan to sell the Class E stock or a successor security for which the Class E stock has been exchanged to GM.

This exemption is conditioned upon the satisfaction of the following requirements:

(a) GM contributes to the Plan at least 177 million shares of Class E stock but no more than 186 million shares plus $4 billion in cash, with at least $2 billion contributed in conjunction with or prior to the contribution of the Class E stock, and the remaining $2 billion contributed no later than September 30, 1995;

(b) If less than 177 million shares of Class E stock are contributed, GM will contribute additional cash in an amount equal to the difference between 177 million and the number of shares of Class E stock contributed times the per-share value of such stock at the time of contribution, or a weighted average price if such stock is not contributed on a single date;

(c) United States Trust (UST), an independent qualified fiduciary, or a successor independent fiduciary acceptable to the Pension Benefit Guaranty Corporation (PBGC) represents the Plan's interests with respect to the acquisition of Class E stock and also will serve as trustee of the Plan with sole discretion respecting the management and disposition of the Class E stock after the acquisition. UST must determine, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Class E stock, is in the interest of the Plan;

(d) UST negotiates and approves the terms of any of the transactions between the Plan and GM or its affiliates or certain defined contribution plans sponsored by GM or its affiliates;

(e) UST manages the holding and disposition of the Class E stock and takes whatever action it deems necessary to protect the rights of the Plan;

(f) The terms of any of the transactions between the Plan and parties in interest are no less favorable to such Plan than terms negotiated at arm's length under similar circumstances with unrelated third parties;

(g) A credit balance reserve is maintained in the Plan consisting of the cash credit balance or cash generated from stock that has been sold in an amount equal to at least 25 percent

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(25%) of the contributed value [2] of the Class E stock which remains unsold in the Plan, for so long as such stock or any securities received in exchange exceeds the percentage limitations described in sections 407(a) and 407(f) of the Act (the ERISA Limits);

(h) An independent qualified appraiser determines the fair market value of the Class E stock contributed to the Plan as of the date of such contribution, and determines the fair market value of the Class E stock at various other times as required under the agreement between GM and the PBGC (the Agreement);

(i) With respect to any sale or exchange of Class E stock by the Plan to GM or its affiliates or to any defined contribution plans sponsored by GM or its affiliates, no commission will be charged to or paid by the Plan;

(j) Any sale or exchange of Class E stock between the Plan and GM or its affiliates will be for no less than "adequate consideration" within the meaning set forth in section 3(18) of the Act, and any sale of Class E stock by the Plan to a defined contribution plan sponsored by GM or its affiliates will be at the prevailing price for such stock on the New York Stock Exchange (NYSE); and

(k) The Plan incurs no fees, costs, or other charges or expenses as a result of its participation in transaction (1), above and, with regard to other transactions described herein, will not incur fees and other costs payable by the issuer under the Registration Rights Agreement (RRA).

EFFECTIVE DATE: This exemption will be effective on March 13, 1995.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by December 29, 1994.

The Department received 157 letters from interested persons commenting on the exemption. In addition, a number of interested persons telephoned the Department. These individuals were assisted with their questions by members of the staff of the Office of Exemption Determinations of the Department. With respect to all the written comments submitted by interested persons, the Department forwarded copies to the applicant and requested that the applicant address the concerns raised by the commentators in writing. A description of the comments and the applicant's responses are summarized below.

Several of the written comments received by the Department supported adoption of the exemption. In this regard, after review of GM's application for exemption and the terms of the Agreement between GM and PBGC, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW), the certified collective bargaining representative for approximately 215,000 employees of GM who are participants in the Plan and approximately 255,000 retired former employees of GM who are participants in the Plan, expressed support for the application and stated its belief that the transactions which are the subject of this exemption are in the best interest of the Plan's participants and beneficiaries.

Some commentators neither supported nor opposed the exemption but either expressed a lack of understanding of the exemption or raised other concerns that are beyond the scope of this exemption proceeding. Other commentators opposed the exemption and raised questions and concerns regarding the transactions described therein. The concerns expressed by these commentators generally related to: (a) The impact on pension or health benefits; (b) the holding by the Plan of more than 5% of its assets in any company; (c) the preference for a cash contribution over that of stock; (d) the potential loss of value of the Class E stock; (e) the restrictions on the Plan's ability to sell the Class E stock under the terms of the RRA; (f) the fact that the Class E stock is not a qualifying employer security; (g) the control by the Plan of more than 10% of the voting shares of a company; (h) the presence of a financial flexibility exception in the Agreement given GM's recent financial history; (i) the effect of an EDS sale on GM's future contributions to the Plan; (j) the tax advantages to GM of the contribution of Class E stock; and (k) the lack of a mandatory requirement in the exemption to convert the Class E stock into cash.

The following summarizes the response to these concerns submitted to the Department by GM. With respect to (a) above, GM states that the exemption does not change or affect in any way the pension benefits payable under the Plan or health benefits for active or retired employees. As a result, the exemption will not affect a participant's eligibility to receive a pension benefit, the amount of a pension benefit check, or the terms of any health care plan.

With respect to (b), GM states that UST, the independent fiduciary, has represented that the Plan's receipt of the Class E stock will not violate the general diversification rule of the Act, which requires that a plan's assets be sufficiently diversified in order to minimize the risk of large losses.

With respect to (c), GM responded that while in the abstract the contribution of cash may be superior to that of stock, the issue posed by the exemption application was not whether the Plan could choose to acquire Class E Stock where an equivalent value of cash is available. In this regard, as the Plan is significantly underfunded, GM believes it is offering a way to substantially improve the Plan's funding with a combined contribution of Class E stock and cash.

With respect to (d), GM maintains that the Agreement, deferring credit for the contribution of Class E stock and the $4 billion in cash, provides considerable security because in all likelihood the Plan will receive further cash contributions from GM in excess of minimum funding rules of the Act in the years between 1995 and 2003. In addition, GM states that the Agreement contains other protective features that adequately address the potential for future losses in value, if any, in the Class E stock. Finally, because the dividends on Class E stock are based on the earnings of Electronic Data Systems Corporation (EDS), GM believes the contribution provides more diversification than a security whose dividends are based on the performance of GM.

With respect to (e), GM states that UST, the independent fiduciary, is required by law to act solely in the interest of the Plan and its participants and beneficiaries. In this regard, UST is satisfied that, given the size of the block and the likely means of disposition, that the RRA affords ample opportunity for UST to sell or otherwise dispose of the Plan's Class E stock while maximizing the value of such stock to the Plan.

With respect to (f), GM states that although the Class E stock is not a qualifying employer security because the Plan will acquire and hold in excess of the limits imposed by the Act, there are sufficient safeguards to protect the interest of the Plan and the participants and beneficiaries. In addition, GM points out the Class E stock is widely traded on the NYSE, and an independent fiduciary, UST, has negotiated a RRA that will allow it, as trustee for the Class E stock, to dispose

[2] Contributed value means the value of the Class E stock when contributed to the Plan, as determined by Duff & Phelps Capital Markets Co. (formerly Duff & Phelps Financial Consulting Co.).

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of the stock efficiently while maximizing its value to the Plan.

With respect to (g), GM states that the Class E stock is widely traded on the NYSE and generates dividends based on the earnings of EDS rather than on the performance of GM. Further, an independent fiduciary, UST, has negotiated a RRA that will allow UST, as trustee for the Class E stock, to dispose of the stock efficiently while maximizing its value to the Plan, and UST is satisfied that it can do so given the size of the block of Class E stock.

With respect to (h), GM states that the commentator erroneously alleges that GM's North American Operations (the NAO) has met the "bad year" definition under the Agreement in each of the past five (5) years and asserts that this pattern will continue in the future, allowing GM to access more of the credit balance than "what would appear to the common layperson." In fact, the NAO did not meet the "bad year" definition in 1994. Moreover, GM notes that, although the proposed exemption is complex, the Department's notice and comment process is fair and comprehensive and the financial flexibility provisions of the Agreement in principle were disclosed in the Notice on the same basis and in the same fashion as all other parts of the exemption transaction.

With respect to (i), GM states that the commentator erroneously concludes that if GM sells EDS, GM's obligation to contribute to the Plan will be nullified. In this regard, GM represents that the Agreement provides that the credit balance rules generally apply to stock for which the Plan's Class E stock has been exchanged. Further, GM asserts that if the credit balance is unavailable, GM will still make at least the minimum contributions required by the Act.

With respect to (j), GM states that the contribution of Class E stock to the Plan does not defer or eliminate any income taxes that otherwise would be payable on GM's disposition of Class E stock. With respect to (k), GM states that the commentator erroneously assumes that GM will have control of the Plan's portfolio after the Class E stock is contributed. In this regard, GM represents that it will have no control over the management of such stock. UST, the independent trustee, will have complete discretion over the management and disposition of the Class E stock, and, in its sole discretion, will determine how and when the Class E stock will be liquidated.

In addition to the comments described above, the Department also received comments from the applicant, GM. The comments from GM requested certain modifications and clarifications to the exemption as proposed and to the Summary of Facts and Representations (SFR). GM's comments fall into three categories: (1) clarification regarding the relationship of the exemption to the Agreement between the PBGC and GM regarding the contribution of cash and Class E stock; (2) issues relating to the conditions of the exemption; and (3) certain technical corrections to the SFR.

With respect to the first category of the comment, GM informed the Department that, since May 1994, GM and the PBGC have been negotiating the terms of a definitive Agreement. In its application for exemption, GM described the tentative terms of this Agreement, as reflected in an agreement in principle (the AIP) executed on May 9, 1994, between the PBGC and GM. The Department summarized certain terms of the AIP in the SFR. The proposed exemption provided that any final exemption would be conditioned upon adherence to the material facts and representations described in the SFR. GM notes that the terms of the AIP have now been superseded by the executed Agreement. Thus, GM believes that there is a substantial risk that any change in or non-adherence to a material provision will vitiate the exemption and, thereby, preclude the Plan from continuing to hold contributed Class E stock above the limits set forth in sections 407(a) and 407(f)(1) of the Act. This situation in turn would place the independent fiduciary, UST, in the position of potentially having to engage in a forced liquidation of a sufficient quantity of Class E stock to bring the Plan within the limits of such sections of the Act. As a result, GM requests clarification as to whether any change in or non-adherence to either the terms of the AIP, as described in the SFR, or the Agreement would render the exemption unavailable.

GM states that the Agreement is a contract between GM and the PBGC. It is lengthy and complicated, reflecting the nature, size, and complexity of its subject. Assets likely to be valued in excess of $10 billion will be at issue, and the terms of the Agreement will require numerous complex calculations to be performed. The Agreement will continue in force until at least October 1, 2003, and, as with any such complex document, it is possible that good faith differences may arise between GM and the PBGC over the meaning and application of its terms.

GM notes in its comment that it believes that the Plan is fully protected by the reporting and enforcement provisions set forth in the Agreement, and the interests of the Plan and its participants and beneficiaries are better served by application of such procedures than by enforcement through the exemption. These reporting and enforcement provisions are carefully crafted to facilitate the timely and effective resolution of disputes, while permitting the Plan to continue the orderly disposition of Class E stock. The Agreement provides for annual reporting by GM to the PBGC, and contains a dispute resolution mechanism through which the PBGC can enforce the terms and conditions of such Agreement. GM represents that it will comply in all material respects with the reporting provisions in the Agreement (including as they may be changed from time to time by mutual agreement of GM and the PBGC). In addition, the Agreement provides, among other things, for access to the courts, and under certain circumstances, for the posting of collateral by GM if a disputed amount exceeds a certain threshold. Accordingly, GM suggests that the exemption, if granted, contain the following language, "Several aspects of the Agreement are of special importance to the Department and were included as requirements (a), (b), and (g) of the proposed exemption * * *. Accordingly, if GM violates a term or condition of the Agreement, *other than the specific requirements noted above* (emphasis added), the violation will be addressed by PBGC under the Agreement and not by withdrawal or other invalidation of the exemption itself."

In this regard, the Department requested the views of the PBGC concerning whether a breach of the Agreement by GM in the future should void the exemption. The PBGC confirmed that the Agreement contains adequate enforcement mechanisms in the event of a breach. GM is required under the Agreement to provide information to the PBGC that will enable the PBGC to monitor and confirm that the restrictions have been properly applied. Also, the PBGC will monitor and enforce those terms of the Agreement adopted by the Department as conditions of the exemption, as summarized in sections (a), (b), and (g) therein. As a result, the PBGC stated that it does not believe that voiding the exemption is a necessary or appropriate enforcement mechanism to ensure compliance with the Agreement, and that it would not recommend that the exemption be voided for violation of a term of the Agreement after GM has contributed the stock and cash required by the Agreement and by sections (a) and (b) of the proposed exemption. In addition, the PBGC is of the opinion that voiding the exemption after the stock is contributed could harm the Plan if the independent fiduciary were forced to sell stock held by the Plan to bring the Plan's employer securities within the ERISA Limits.

UAW in its comment letter also concurred with the views expressed by GM on the question of whether the exemption should be voided in the event of an alleged breach of the Agreement. UAW believes that the enforcement mechanisms described in the Agreement are adequate and appropriate and that termination of the exemption in the event of a breach of that Agreement would only be harmful to participants and beneficiaries, in that termination of the exemption would by necessity force a massive and precipitous sale of the Class E stock. In the opinion of the UAW, selling the Class E stock under such conditions is not likely to result in the realization of optimum proceeds and would therefore diminish the assets in the Plan.

However, the UAW noted that the language suggested by GM to address this issue, as quoted above, would create the impression that these requirements of the exemption are precisely co-extensive with the analogous sections of the Agreement. The UAW further noted that the language in (a), (b), and (g), as set forth in the Notice, summarized but did not recite word for word such sections from the Agreement. Accordingly, the UAW suggested that the word, "included" in the first sentence of GM's language quoted above be replaced with the word, "summarized," and the underlined portion of the second sentence of GM's language quoted above be changed to read, "without violating one of the express conditions of the exemption."

The Department concurs with GM, the PBGC, and the UAW that the rights embodied in the reporting and dispute resolution provisions of the Agreement provide protection to the Plan, and that enforcement by the PBGC through the procedures negotiated in the Agreement will serve the interest of the Plan and its participants and beneficiaries. Further, the Department believes that any "fire sale" of Class E stock which may result from the unavailability of the exemption through a change in or non-adherence to the terms of the AIP described in the SFR or the Agreement would not be in the interest of the Plan. However, the Department has determined that compliance with certain provisions of the Agreement, as summarized in paragraphs (a), (b), and (g) of the proposed exemption, are important and necessary to the continued availability of the exemption. Accordingly, it is the view of the Department that, if GM violates a term or condition of the Agreement, without violating one of the express conditions of the exemption, the violation will be addressed by the PBGC in accordance with the enforcement terms of such Agreement and will not result in the unavailability of the exemption. The Department is of the further view that the exemption will be available despite the fact that the terms of the final Agreement differed in some respects from the terms of the AIP which was summarized in the SFR.

With respect to the second category of the comment, GM requests modifications to the language of certain conditions of the exemption, as set forth in the Notice. In this regard, condition (c) on page 56541 and repeated in item 18(c) on page 56549 of the Notice as published in the **Federal Register**, states: "United States Trust (UST), an independent qualified fiduciary, or a successor independent fiduciary acceptable to the Pension Benefit Guaranty Corporation (PBGC) represents the Plan's interests *for all purposes with respect to the Class E stock and determines* (emphasis added), prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Class E stock, is in the interest of the Plan." GM believes this to be an overly broad description of the independent fiduciary's responsibilities. GM suggests striking the underlined phrase above and substituting in lieu thereof, "with respect to the acquisition of Class E stock and also will serve as trustee of the Plan with sole discretion respecting the management and disposition of the Class E stock after the acquisition. UST must determine * * *." The Department concurs with this comment and has modified the final exemption accordingly.

Condition (k) on page 56541 and repeated in item 18(k) on page 56549 of the Notice, as published in the **Federal Register**, states: "The Plan incurs no fees, costs, or other charges or expenses as a result of its participation in *any of the transactions* (emphasis added)." GM is concerned that this condition would preclude the payment by the Plan to UST or any other independent fiduciary of fees for asset management services as independent fiduciary. In this regard, the applicant notes that the application indicated that GM would bear the costs of UST's fees in connection with the Plan's acquisition of the Class E stock but that fees for UST's trustee services will be payable by the Plan. It is intended that all fees associated with the management and disposition of Class E stock, other than certain underwriting and other fees and costs described in section 9 of the RRA, will be borne by the Plan. GM suggests striking the underlined phrase above and substituting the phrase, "transaction (1), above and, with regard to other transactions addressed herein, will not incur fees and other costs payable by the issuer under the Registration Rights Agreement." The Department concurs with this comment and has revised the language of condition (k).

With respect to the third category of the comment, GM believes that certain revisions to the SFR would more accurately describe the transactions. As mentioned above, the AIP was summarized in the SFR. Subsequently, the AIP was superseded by the terms of the Agreement. Consequently, GM wishes to point out the following four (4) provisions of the AIP which were summarized in the SFR but which have now been modified by the Agreement.

The second sentence of item 6 of the SFR on page 56543, states that GM's stock contribution will consist of, "* * * all of the remaining, 222 million unissued shares of Class E stock less approximately 45 million shares reserved for conversion of GM's Series C Preference Stock, or approximately 177 million shares." In accordance with the terms of the Agreement, GM suggests that the phrase, "and the number of shares of GM Class E stock that, as of the last contribution of such stock, are reserved or committed (as Treasury shares or otherwise) for employee benefit plans, stock bonus plans, or employee stock programs," should have been inserted after the words, "Preference Stock," in the above-quoted language.

Item 12 of the SFR, on page 56545 (center column, third full paragraph), refers to GM's "* * * access annually to an amount of up to $1.5 billion of the stock credit balance generated by the stock which has been sold." GM suggests that in accordance with the Agreement the phrase, "an average of approximately," should have been inserted in the above-quoted language between the words, "to" and "$1.5," because $1.5 assumes GM's access to the stock credit balance at approximately the mid-point of a plan year and reflects interest over the first portion of the plan year at the Plan's funding standard account rate.

Item 12 of the SFR states on page 56545 (center column, sixth sentence of the second full paragraph) that, the restriction relating to the 25% credit

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balance reserve "* * * will expire on October 1, 2003, if the Class E stock has been exchanged for non-employer securities." GM notes that the Agreement provides that, the restriction will expire when the contributed Class E stock or any shares received in exchange therefor no longer exceed the ERISA Limits. If the contributed Class E shares are exchanged for non-employer securities, the restriction will expire on the later of October 1, 2003 or the date on which the Class E stock has been exchanged for non-employer securities.

Item 12 of the SFR states on page 56546 (center column, top carryover paragraph, last sentence) that, "GM's independent auditor will provide a statement to the PBGC once GM utilizes the financial flexibility provisions described above." GM suggests that in accordance with the Agreement, striking the quoted sentence and substituting in lieu thereof, "[f]or any plan year through the 2002 plan year for which GM utilizes the financial flexibility provisions of the Agreement, GM will include in its submission to the PBGC a statement from its independent auditor confirming the accuracy of the schedule showing GM's cash. In addition, upon request by the PBGC, GM also will furnish for such plan years a report from its independent auditor describing agreed upon procedures it has performed in order to assist the PBGC in evaluating the restructuring charges included in GM's financial statements, if and to the extent those charges were used to determine GM's adjusted net income." The Department concurs and notes that the above four (4) clarifications to the SFR are consistent with the terms of the Agreement.

Also, as part of the third category of the comments, GM has suggested the following modifications to the language of the SFR.

In item 5 of the SFR on page 56543 (center column), the first and second sentences in the first full paragraph stated: "[g]enerally, in order to correct the unfunded liability of its main U.S. plans, GM has revised the mortality assumptions in such plans to more closely reflect recent actual experience. Further, effective for 1993, GM has lowered the asset earnings rate assumption for its main U.S. plans." GM points out that the mortality and asset earnings rate assumptions were not adopted in order to correct the unfunded liability of GM's main US plans but rather to accurately reflect recent experience. Accordingly, GM believes that the two sentences quoted above should have read, "[d]uring 1992, GM revised the mortality assumptions for its main U.S. plans to reflect recent experience and, effective 1993, lowered the asset earnings rate assumption for those plans, to reflect GM's reevaluation of the expected long-term rate of return on Plan assets." The Department concurs with this comment.

In item 5 of the SFR on page 56543 (center column) in the first full paragraph, the fourth sentence stated that GM "* * * will continue to contribute additional amounts above those required in 1994 and future years." Although GM anticipates making such contributions, GM suggests that substituting in the phrase quoted above, the words, "intends to," in lieu of the word, "will," and the words, "1994–1996," in lieu of the phrase, "1994 and future years," would have been more accurate. The Department concurs with this comment.

In the third sentence of item 8 of the SFR on page 56543 (right column) GM suggests the underlined word, "or," in the phrase, "assets remaining after payments to creditors or (emphasis added) to preferred or preference stockholders," should have been the word, "and." The Department concurs.

In the first sentence of the first paragraph of item 10 of the SFR on page 56544 (left column), GM suggests that the phrase, "based upon," should have been substituted for "linked to" in the sentence, "[d]ividends on Class E stock are linked to the earnings performance of EDS." The Department concurs.

In item 12 of the SFR on page 56545 (center column, first sentence, first full paragraph), GM suggests that the phrase, "* * * GM has agreed to defer for two (2) years the use of the credit balance * * *," should have read, "GM will defer until 1997 use of the credit balance arising from the contribution (except for interest on the cash portion thereof and as otherwise noted below). * * *" GM states that because the cash portion of the contribution need not be completed until September 30, 1995, the deferral period could be as short as one (1) year. The Department concurs.

In item 12 of the SFR, in the last clause of the first full sentence in the center column of page 56545, GM suggests that the underlined portion of the phrase, "* * * to phase in full access by GM to *the credit balance in the Plan's funding standard account,*" (emphasis added) should have read, "such credit balance." The Department concurs.

In item 16 of the SFR in the first sentence of the first full paragraph in the right column of page 56548, GM suggests, and UST agrees, that in the phrase, "[b]ecause the marketability and dividends of Class E stock are based on the earnings and financial performance of EDS, UST has reviewed the business of EDS, as well as that of GM," the words, "under the current policy of the GM board," should have been inserted before the word, "dividends." The Department concurs.

In footnote 15 on page 56544 (left column), the fourth sentence stated, "[a]t the discretion of the Board, as appropriate, the number in the denominator from time to time decreases as shares of Class E stock are purchased and increases as shares are needed in order to meet certain requirements of GM's employee benefit plans." GM suggests that while the above-quoted statement is correct, in the interest of accuracy and completeness, the following quoted sentence should have been added to the footnote: "[t]he denominator is subject to adjustment from time to time (but never to a number greater than one) by GM's Board, the discretion of which is limited in accordance with criteria specified in GM's Certificate of Incorporation intended to preserve fairness as between the interests of both the holders of Class E stock and the holders of $1⅔ per value common stock." Accordingly, the Department does not object to the inclusion of GM's additional clarifying language.

The following GM comments relate to the RRA and the Transfer Rights Agreement (TRA), as described in the SFR.

GM has commented upon the need of UST to be able to amend the RRA due to circumstances that may arise in the future. In GM's view, the exemption, if granted, should permit UST to execute amendments to the RRA that UST believes are in the interest of the Plan and its participants and beneficiaries, without forcing GM or the Plan to request another exemption. The Department concurs.

Footnote 20 on page 56546, states that the term, "transfer" includes an "offer." GM suggests that, to more closely reflect the RRA and TRA, the word, "offer," should have been omitted from the definition of the term, "transfer." The Department concurs.

In the second full paragraph in the right column of page 56546, GM suggests that, to more closely reflect the RRA, it would have been more complete to insert the words "in the aggregate," in the first sentence of the paragraph such that the first sentence would have read as follows: "It is represented that there will be no limit, except for market considerations on the amount of Class E stock that can be sold *in the aggregate* (emphasis added) pursuant to a 'demand' transfer by the Plan." Further, the word, "[s]imilarly," should have been substituted in lieu of the phrase, "[i]n addition," at the beginning of the third sentence of the paragraph, such that the third sentence should have read as follows, "*[s]imilarly* (emphasis added), in a negotiated transaction, the Plan may not transfer more than 2 percent (2%) of the outstanding Class E stock to any person or related group. * * *" The Department concurs.

In the carryover paragraph at the top of the right column on page 56546, GM suggests that, to more closely reflect the RRA, the last sentence should have read, "[u]nder the RRA, as long as the Plan owns 2 percent (2%) or more of the outstanding Class E stock, the Plan may transfer such stock only under certain terms and conditions summarized in the paragraphs below." The Department concurs.

In the second full paragraph in the right column on page 56546, GM suggests that, to more closely reflect the RRA, in the second sentence the adjective, "reasonable," should have been inserted before the phrase, "best efforts," in the sentence, "However, in any public offering the lead underwriters must agree to use their best efforts to assure that no more than 2 percent (2%) of the outstanding Class E stock is transferred to any person or related group." The Department concurs.

In the last paragraph in the right column on page 56546, GM suggests that, to more closely reflect the RRA, the underlined phrases below should have been inserted so that the third sentence should have read as follows, "[i]f, *at any time that the Plan owns at least 25 million shares of Class E stock* (emphasis added), as a result of such postponements or such market holdbacks, the Plan is not able to effect a 'demand' transfer for a period of thirteen (13) months, *and during such period the Plan has not otherwise transferred 25 million or more shares of Class E stock or had the opportunity to include at least 25 million shares of Class E stock in a piggyback registration* (emphasis added), GM must terminate the postponement within sixty (60) days of the Plan's notification to GM of such fact and take all reasonable actions necessary to effect such transfer." The Department concurs.

In the first full paragraph in the left column on page 56547, in the definition of Strategic Partner, GM suggests that to more closely reflect the RRA, the second sentence of the paragraph should have read, "[a] Strategic Partner is an investor or group of investors acting in concert and designated as such by the Board of GM (or any successor issuer) that acquires 10 percent (10%) or more of the outstanding Class E stock (or securities convertible or exchangeable therefor) in a transaction or series of related transactions intended to achieve a strategic objective." The Department concurs.

In the second full paragraph in the left column on page 56547, GM suggests that, to more closely reflect the RRA, the second sentence should have read, "[i]n a 'piggyback' registration, if GM, in its reasonable judgment, expects that at least 25 percent (25%) of the total number of shares of Class E stock to be included in the offering are shares owned by the Plan, the Plan may select a co-manager reasonably acceptable to GM." The Department concurs.

In its comment, GM states that the Plan and a Strategic Partner will participate on an equal, not on a *pro rata* basis in piggyback registrations. Accordingly, GM suggests that, to more closely reflect the RRA, the phrase, "an equal basis," should have been substituted for the phrase, "a *pro rata* basis," in the last sentence of the carryover paragraph in the center column on the top of page 56547. The Department concurs.

In the first full paragraph of the center column on page 56547, GM suggests that, to more closely reflect the RRA, in the first sentence the phrase, "below 7.5 percent (7.5%) should have read "7.5 percent (7.5%) or less." Further, the fourth and fifth sentences in the same paragraph should have read, "In general, if a stockholders rights plan is in effect when the third-party tender offer commences but, in connection with such offer, the stockholders rights plan is revoked or invalidated (or the rights issued thereunder are revoked or redeemed) either by GM's Board of Directors or by a final and non-appealable court order, the Plan may tender its shares of Class E stock into such offer. If there is no stockholders rights plan in effect (other than as described above), generally the Plan may tender its shares of Class E stock into a tender offer so long as either the GM Board or at least one-half of the independent directors on the Board have not recommended to stockholders that such tender offer be rejected or there are fewer than the two independent directors on the Board." The Department concurs.

In the second full paragraph in the center column on page 56547, GM suggests that, to more closely reflect the RRA, the first sentence should have read, "[i]n the event the Plan is prohibited as described above from tendering into a third-party offer and GM does not otherwise consent to the Plan tendering, in general, if the tender results in a bidder in the tender offer owning more than 50 percent (50%) of the total combined voting power of all outstanding securities of GM or other issuer, the Plan will have the option to put to GM or other issuer up to the same number of shares that would have been purchased if tendered in the tender offer for a purchase price in cash equal to the price per share offered in the tender." The Department concurs.

In item 14 of the SFR, GM suggests that, to more closely reflect the TRA, the first sentence in the second full paragraph in the right column of page 56547 should have read, "[t]he Transfer Agreement is intended to preserve GM's ability to consummate at a later date a tax-free reorganization, including a split-off in which the Class E stock is converted into or exchanged for shares of capital stock of EDS in a transaction that results in GM no longer controlling EDS ('Split-Off'). In this regard, unless and until a Split-Off is consummated, the Plan will not be permitted to transfer Class E stock if such transfer will result in more than 5 percent (5%) of the total value of Class E stock then outstanding being owned by any foreign person, as defined in the Code." The Department concurs.

In the second full paragraph in the right column of page 56547, the third sentence stated, "[u]nder certain circumstances after the Split-Off, the Plan may not transfer any Class E stock if, as a result, the Plan would own less than 50 percent (50%) of the Class E stock that it owned immediately after it received notice from GM of the Split-Off." GM suggests that, to more closely reflect the TRA, the words, "after the Split-Off" should not have been included in that sentence and the words, "a proposed" should have been inserted in lieu of the word, "the," before the word, "Split-Off" the last time it appears.

GM suggests that, to more closely reflect the TRA, the following quoted sentence should have been included as the next to the last sentence in the second full paragraph in the right column of page 56547 of the Notice, "[f]rom the date of the initial contribution until the first anniversary of the Split-Off, if any, the Plan may not transfer Class E stock to any person or group, if, as a result, such person or group would own 5 percent (5%) or more of the Class E stock then outstanding." In addition, GM in its comment provides further clarification regarding the relationship of the above-quoted sentence to the last sentence of the second full paragraph in the right column of page 56547 of the Notice.

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That sentence reads, "[f]rom the date of the initial contribution until the second anniversary of the Split-Off, unless EDS announces a merger with one or more corporations, the Plan may not transfer Class E stock to any person or related group, if, as a result, such person or group would own 5 percent (5%) or more of the Class E stock then outstanding." GM states that the two sentences quoted above, when read together, mean that during the period that begins on the initial contribution date and ends on the first anniversary of the Split-Off date, the Plan may not transfer Class E stock to a person who is (or, as a result of the transfer would be) a "5 percent person." However, during the period that begins on the day after the first anniversary of the Split-Off date and ends on the second anniversary of the Split-Off date (or later, in the case of a merger event occurring before the second anniversary of the Split-Off date), the Plan may transfer Class E stock to a person who would, as a result of the transfer, constitute a "5 percent person," if that person agrees to be bound by the TRA. The Department concurs.

In addition, to the comments from GM described above, GM informed the Department of an event which transpired after the Notice was published in the **Federal Register**. In this regard, in item 12 on page 56545 of the SFR, GM indicated that it anticipated contributing $750 million to the Plan before the end of 1994 which, at its option, along with previous cash contributions, could be considered part of the $4 billion dollar contribution which is the subject of this exemption. In this regard, GM, in a letter dated December 22, 1994, advised the Department that this $750 million contribution in cash was made on December 12, 1994.

GM also clarified certain representations regarding the approximately 17 million shares of Class E stock held by the Plan prior to the contribution. On page 56546 of the Notice, in the third full paragraph of the center column, it is stated that the RRA and the TRA "* * * will apply to all Class E stock held by the Plan whether acquired pursuant to the proposed contribution in-kind or otherwise held by the Plan at the time the exemption is granted. In this regard, the 17 million shares of Class E stock held by the Plan prior to the contribution will be surrendered to GM so that restrictions may be placed on such shares." Subsequent to the publication of the Notice, it came to the attention of GM that approximately 300,000 shares of the 17 million shares were acquired on the open market by several independent investment managers in the course of implementing their respective portfolio management strategies. These shares are registered and tradable without restriction. Because these shares are registered, not subject to any trading restrictions, and under management of independent managers, GM believes that it would be inappropriate to transfer management of these shares to UST pursuant to the exemption. Rather, GM believes that these shares should remain under the control of their respective managers to be held and disposed of in their discretion, as they pursue their respective portfolio management strategies. As a result, these shares will not be subject to the RRA and the TRA and will continue under the control of their respective managers, to be held or disposed of in their discretion, rather than UST's.

A number of individual commentators requested a hearing with respect to the exemption. Most of these commentators appear to have requested a hearing because of their belief that the transaction would reduce their retirement benefits. In addition, several commentators requested a hearing but did not state a reason for such request. In response to these requests for hearing, GM states that, given the number of participants and beneficiaries receiving the Notice of Proposed Exemption, the number of requests for a hearing is *de minimis*. Moreover, none of the requests for a hearing presented a compelling reason why such hearing should be held.

The Department has considered the concerns expressed by the individuals who had requested a hearing and the applicant's written response addressing such concerns. After consideration of the materials provided, the Department does not believe that any issues have been raised which would require the convening of a hearing. Further, after giving full consideration to the record, including the comments by commentators and the responses of the applicant, the Department has determined to grant the exemption, as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on Monday, November 14, 1994, 59 FR 56541.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–6345 Filed 3–14–95; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Cost Beneficial Licensing Actions (CBLA) and Technical Specifications Improvement Program (TSIP) Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a public workshop on April 13, 1995, to discuss the Commission's Cost Beneficial Licensing Actions (CBLA) program, and its Administrative Letter addressing the program. The Administrative Letter was issued to inform licensees of the CBLA program. The CBLA program directs increased management attention to license amendments designated as cost beneficial licensing actions and provides for a more expeditious review. Participation in the CBLA program is voluntary. However, the purpose of the workshop is also to encourage licensees to develop CBLA programs if they have not already done so, and receive public comments on these activities.

Current activities within the Technical Specification Improvement Program (TSIP) will also be discussed. The Technical Specification Improvement Program was developed to establish criteria for relocating certain technical specifications from the facility license to licensee-controlled documents such as the final safety analysis report. In July 1994 the NRC proposed to amend the Technical Specification regulations pertaining to nuclear power reactors in order to codify criteria for determining the content of technical specifications. Licensees may propose converting their current technical specifications either in parts, or at once (the preferred method) to the improved Standard Technical Specifications (STS). Participation in the TSIP is voluntary. The principal focus of this workshop will be on both CBLA programs, and conversion to STS at commercial power reactors. While the NRC presentations will be broad in nature, NRC staff representatives will be present to address specific questions with regard to the CBLA process or STS conversions.

DATES: March 24, 1995—Advance notification of intent to attend the workshop, desire to comment or make a statement during the workshop, or both is requested by the NRC. Participants are encouraged to submit written comments, summaries, or both to the staff by this date.

April 13, 1995—The Workshop will be held at the NRC Auditorium from 7:30 am to 4:30 pm.

May 26, 1995—All written comments on matters covered by the workshop received by this date will be considered by the staff. Written comments received after May 26, 1995, will be considered to the extent practical. Written comments on the CBLA program and the TSIP will be accepted before, during, and after the workshop. Advance comments, which could serve to enhance the effectiveness of the workshop, are particularly solicited.

ADDRESSES: The workshop will be held in the NRC Auditorium. The NRC Auditorium is located on an underground level between the One White Flint North Building and the Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland 20852. The NRC buildings are located across from the entrance to the White Flint Metro Station.

Notification of intent to attend, and desire to make a statement should be sent to Elizabeth L. Doolittle, Mail Stop 0–12–D–22, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. These notifications can also be transmitted via facsimile or telephone. The facsimile number is (301) 415–2279 and the telephone number is (301) 415–1247. The facsimile cover sheet should contain the address information listed above. Letter or facsimile notifications should contain, and people giving notification via telephone should be prepared to provide, the following pre-registration information: full name of participants/attendees, name of organization or business, mailing address, daytime telephone, facsimile number, a statement concerning whether the person or organization wishes to provide comments or a statement during the workshop, a statement concerning whether the person or organization intends to provide written comments before or after the workshop, and any specific questions or comments that the participant or organization would like to be considered and/or addressed at the workshop.

Copies of documents cited in the Supplementary Information section are available for inspection and/or for reproduction for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20037.

Written comments may be sent to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-delivered comments to Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852 will be received between 7:30 am and 4:15 pm on Federal Workdays.

Copies of comments received and relevant reference documents may be examined at the NRC Public Document Room at 2120 L Street NW (Lower Level), Washington, DC, between the hours of 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Doolittle, Office of Nuclear Reactor Regulation, Mail Stop OWFN 12–D–22, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1247.

SUPPLEMENTARY INFORMATION:

I. Background
II. Tentative Agenda
III. Workshop Content and Structure

I. Background

Executive Order 12866, "Regulatory Planning and Review," issued by President Clinton on September 30, 1993, required all agencies to perform a periodic review of existing regulations to eliminate unnecessary and unproductive requirements. Although the NRC already had several initiatives underway that were focused on improving the regulatory process by identifying and eliminating requirements that provided marginal safety benefits, in May 1994 the Commission established the policies, practices and framework for institutionalizing its "Continuing Program for Regulatory Improvement." The Continuing Program for Regulatory Improvement described in SECY–94–090 consists of three NRC initiatives:

1. The Marginal to Safety Program,
2. The Regulatory Review Group Implementation Plan, and
3. The Cost Beneficial Licensing Actions Program.

The NRC initiated its Marginal to Safety Program (MSP) in the 1980s with the purpose of identifying requirements that were considered to be marginal to safety and impose a substantial regulatory burden on licensees, and therefore should be relaxed or eliminated. Over time the program was redirected to focus on petitions for rulemaking and regulatory guidance identified by industry, since industry was considered to be in the best position to identify inefficient regulations that impose heavy economic burden.

Currently the NRC is proposing to modify its regulations in 10 CFR 2.802 to provide guidance on the scope and level of detail needed on petitions for rulemaking to reduce regulatory burden.

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The NRC prepared its Regulatory Review Group (RRG) Implementation Plan in 1993 with the purpose of identifying topic areas within NRC's regulations and guidance where prescriptive requirements might be substituted with performance-based requirements and guidance. The RRG identified areas with significant potential for relief of burden with little or no adverse safety impact, as did NRC as part of the MIS program.

More than 60 recommendations for changes to the NRC's regulations and guidance were made, and the NRC continues to make significant progress toward completing these changes.

The NRC began its Cost Beneficial Licensing Actions (CBLA) program on a pilot basis in mid-1993, and beginning in calendar year 1994, the CBLA option was made available to all licensees with the purpose of encouraging licensees to request plant specific license amendments that reduce or eliminate license requirements that have an incrementally small effect on safety but a high economic burden. In the past, licensee submittals of marginal safety significance but high cost savings were given the lowest priority for NRC staff review, which may have discouraged licensees from submitting this type of request.

On February 23, 1995, the NRC issued Administrative Letter 95–02, "Cost Beneficial Licensing Actions" to inform addressees of the CBLA program. The letter explains that the CBLA program will direct increased management attention to license amendments designated as cost beneficial licensing actions and will provide for a more expeditious review of certain amendment requests. Participation in the CBLA program is voluntary. Placing additional emphasis on processing CBLAs was meant to directly improve safety by allowing licensees to shift resources from activities that improve safety by only an incrementally small amount to those that more significantly enhance safety.

CBLAs are not new. Many licensee requests seek to modify or delete requirements that have a small effect on safety and are costly to implement. However, before June 1993, the NRR priority ranking system assigned the lowest priority (priority 4) to most licensing submittals addressing items that benefited safety an incrementally small amount without consideration of the cost of implementation or restriction of operational flexibility. As discussed in Administrative Letter 95–02, the priority ranking of CBLAs will be further increased within the current priority 3 ranking, so that a CBLA could be expected to be reviewed before other priority 3 licensing actions.

To assist in developing the CBLA policy and tracking CBLAs, members of the NRC staff have been dedicated to serve in a CBLA group for a limited time. The CBLA group, led by Eugene V. Imbro, gives general CBLA policy guidance to NRC and licensee staffs, tracks and trends CBLA submittal and approval data, and works with the staff and industry to identify CBLAs with generic implications. The CBLA group has determined, based on licensee estimates, that CBLAs approved in 1994 will result in an estimated industry lifetime saving in excess of $257.2 million. Although the NRC licensing project manager remains the primary point of contact for all licensing actions including CBLAs, licensees should contact Mr. Imbro on (303) 415–2969 if they have questions about the staff's implementation of the CBLA program.

One goal of the Technical Specification Improvement Program is similar to the goal of the CBLA program, and that is to substantially reduce regulatory burden. And, like the CBLA program, participation in the Technical Specification Improvement Program is voluntary.

In July 1994, the NRC proposed to amend technical specification regulations pertaining to nuclear power reactors through a rule change to 10 CFR 50.36, Technical Specifications. The purpose of the rule was to codify the July 1993, final policy statement criteria for determining the content of technical specifications. These criteria were developed in recognition that the broad use of technical specifications to impose requirements has diverted both NRC and licensee attention from the more important requirements in the technical specification documents. Broad use of technical specifications has resulted in an adverse but unquantifiable impact on safety. Under this rule change licensees may voluntarily use the criteria as a basis to propose relocation of existing technical specifications that do not meet any of the criteria, from the facility license to licensee-controlled documents, such as the final safety analysis report. Voluntary licensee conversion of current technical specifications in this manner is expected to produce an improvement in the safety of nuclear power plants through a reduction in unnecessary plant transients and more efficient use of NRC and industry resources. While the NRC will allow licensees to take advantage of the opportunity to convert their current technical specifications in parts, the NRC strongly encourages and gives priority to licensees considering complete conversion of their current technical specifications to the improved Standard Technical Specifications. The conversion to the improved Standard Technical Specifications can save licensees' financial and staff resources by relocating 30 to 40% of existing technical specifications to licensee-controlled documents and by incorporating the benefits of numerous Generic Letters, at once. While the benefits of converting to the new technical specifications are hard to quantify, licensee owners' groups project annual saving of between $150,000 and $1.13 million per unit. Licensees for about 40 units are currently pursuing conversion to the improved Standard Technical Specifications.

II. Tentative Agenda

April 13, 1995

7:30 a.m. Registration
8:30 a.m. Introduction
8:45 a.m. CBLA Administrative Letter Overview
9:45 a.m. BREAK
10:00 a.m. Participant Presentations/ Panel Discussion in Response to Participant Comments
11:45 a.m. Lunch
1:00 p.m. Technical Specification Improvement Program
2:30 p.m. BREAK
2:45 p.m. Participant Presentations/ Panel Discussion in Response to Participant Comments
4:15 p.m. Summary and Conclusions (NRC)
4:30 p.m. Adjourn

III. Workshop Content and Structure

The workshop is structured to include both NRC staff and licensees' presentations during the morning and afternoon. An opportunity for other questions and comments following the presentations is planned.

Participants will be allowed to express their views during specific comment periods. Participants who wish to make statements will be scheduled in the order in which they notified the staff of their desire to make a statement, and as time permits. Comments will be taken from parties in the order in which they notified the staff of their intent to comment. The order of comments will be:

(1) Parties who notified the staff by April 10, 1995;

(2) Parties registering to comment before 8:30 am the day of the workshop; and

(3) Parties who have not given prior notice.

Participants wishing to make comments will be limited to 5 minutes. These time limits may be adjusted depending on the number of presentations and comment. The workshop will be transcribed, and the transcript will be available at the NRC Public Document Room.

To foster meaningful discussions during this session and to aid participants in preparing their presentations and comments, participants should consider the following set of questions:

- What impact will the CBLA Administrative Letter have on those organizations that the NRC regulates?
- Should the NRC develop a CBLA database that could be made available to the public?
- What are the reasons that the CBLA program has not been used more widely by licensees?
- What are the savings that can result from conversion to the improved Standard Technical Specifications?

Dated In Rockville, Maryland, this 9th day of March , 1995.

For the Nuclear Regulatory Commission.

Eugene V. Imbro,

Director, RRG/CBLA Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6341 Filed 3–14–95; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 16, 1995, through March 3, 1995. The last biweekly notice was published on March 1, 1995

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 14, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

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Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: January 31, 1995

Description of amendments request: The proposed amendments would revise the Technical Specifications (TSs) for Calvert Cliffs, Unit Nos. 1 and 2, to increase the amount of Trisodium Phosphate Dodecahydrate (TSP) located in the containment sump baskets required to be verified by TS surveillance. The requested change is the result of an reanalysis of the amount of TSP necessary to maintain the appropriate pH in the containment sump water subsequent to a Loss of Coolant Accident. Specifically, the request would change the TS value of TS 4.5.2.e.3 from the existing amount of 100 ft^3 to 289 ft^3. TS 4.5.2.e.4 would also be changed by moving the amounts of TSP and refueling water storage tank water to be used in the required tests to the TS Bases Section 3/4.5.2 and 3/4.5.3. These Bases sections would also be changed by modifying the test methods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability orconsequences of an accident previously evaluated.

Trisodium Phosphate Dodecahydrate (TSP) is stored in the containment lower level to raise the pH of the sump and spray water following a Loss of Coolant Accident (LOCA). As the pH of the water increases, more radioactive iodine is kept in solution and the possibility of airborne radioactivity leakage is decreased. An additional advantage of a higher pH is the beneficial reduction in chloride stress corrosion cracking of metal components in the containment following an accident.

This chemical is an accident mitigator, not an accident initiator in that it is not used until after an accident has occurred. At the time it goes into solution, the accident has occurred, containment spray has been activated and water has collected in the containment sump. Therefore, increasing the Technical Specification minimum amount verified to be in each containment will not involve a significant increase in the probability of an accident previously evaluated.

Updated Final Safety Analysis Report, Chapter 14.24, "Maximum Hypothetical Accident", uses an assumption of a pre-RAS minimum containment spray pH of 5.0 for the iodine removal calculation and a post-RAS sump pH of 7.0 for iodine retention. Raising the pH to 7.0 does not increase the consequences of an accident previously evaluated.

The proposed change to Technical Specification 4.5.2.e.4 would remove the amounts of chemical and water used in the test to the Bases. This relocation will not alter the test method or acceptance criteria, but will allow adjustments to the ratio of TSP and borated water under the controls of 10 CFR 50.59 to reflect changes in plant conditions. In the Bases, the amount of TSP used in the test is changed to reflect the ratio of TSP to water that would be found in the containment following a LOCA. The specified concentration of boron in the test reflects the highest concentration that could be found in the containment following a LOCA. The test temperature is changed to 120°F which is well below the temperature expected to be found in the containment sump following a LOCA. The decanting of the solution does not change the intent of the test method since the dissolving period will still be conducted without agitation.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The addition of more TSP does not represent a significant change in the configuration or operation of the plant. Trisodium Phosphate Dodecahydrate is currently present in the containment lower level. There are no physical changes which result from the increase in volume. The proposed change to Technical Specification 4.5.2.e.4 would move the amounts of chemical and water used in the test to the Bases. This relocation will not alter the test method or acceptance criteria, but will allow adjustments to the ratio of TSP and borated water under the controls of 10 CFR 50.59 to reflect changes in plant conditions. In the Bases, the amount of TSP used in the test is changed to reflect the ratio of TSP to water that would be found in the containment following a LOCA. The specified concentration of boron in the test reflects the highest concentration that could be found in the containment following a LOCA. The test temperature is changed to 120°F which is well below the temperature expected to be found in the containment sump following a LOCA. The decanting of the solution does not change the intent of the test method since the dissolving period will still be conducted without agitation.

Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

Trisodium Phosphate Dodecahydrate is stored in the containment lower level to raise the pH of the sump and spray water following a LOCA. As the pH of the water increases, more radioactive iodine is kept in solution and the possibility of airborne radioactivity leakage is decreased. Additionally, a higher pH has a beneficial effect on chloride stress corrosion cracking of metal components in the containment.

Technical Specification 4.5.2.e.3 requires verification that a minimum volume of TSP is contained in the storage baskets in each containment. This change proposes to increase that volume. The increased volume will ensure the containment sump, when filled with water, will have an acceptable pH following a LOCA.

The proposed change to Technical Specification 4.5.2.e.4 would move the amounts of chemical and water used in the test to the Bases. This relocation will not alter the test method or acceptance criteria, but will allow adjustments to the ratio of TSP and borated water under the controls of 10 CFR 50.59 to reflect changes in plant conditions. In the Bases, the amount of TSP used in the test is changed to reflect the ratio of TSP to water that would be found in the containment following a LOCA. The specified concentration of boron in the test reflects the highest concentration that could be found in the containment following a LOCA. The test temperature is changed to 120°F which is well below the temperature expected to be found in the containment sump following a LOCA. The decanting of the solution does not change the intent of the test method since the dissolving period will still be conducted without agitation.

Therefore, this change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: February 9, 1995

Description of amendment request: The proposed amendment would increase the Reactor High Water Level Trip Level Setting for the Group 1 isolation. The change will allow an increase to the main steam isolation valve (MSIV) high water level isolation setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.91, Boston Edison submits the following analysis addressing the no significant hazards consideration. The proposed changes do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the station in accordance with the proposed Trip Level Setting will not significantly increase the probability or consequences of an accident previously evaluated. The MSIV high water level isolation signal is provided to protect against rapid depressurization due to a pressure regulator malfunction during plant startup. The high water level isolation signal is not functional when the mode switch is in the RUN position. A high water level in the reactor vessel indicates that fuel is covered. Increasing the Trip Level Setting will have minimal effect on moisture carryover in the event of a pressure regulator failure at low reactor power. MSIV closure (Group 1) is initiated by low reactor pressure (810 psig) approximately 30 seconds into the event. The resulting reactor water level swell is not sufficient to reach the bottom elevation of the main steam lines.

The proposed Technical Specification allowable value for the Reactor Low Level Trip Level Setting and the Reactor Low Low Water Level Trip Level setting does not involve significant increase in the probability or consequence of an accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not affect the Group 1 isolation safety function. The change does not involve any plant hardware changes that could introduce any new failure modes or effects; thus, the change can not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

The proposed change does not affect the Group 1 isolation safety function. The proposed change is consistent with the FSAR [Final Safety Analysis Report] and Technical Specification basis associated with reactor vessel inventory control and main steam line flooding.

The proposed change to the instrument calibration range does not affect the margin of safety for systems or components affected by the change. Operating Pilgrim in accordance with the proposed Trip Level Setting does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 6, 1995

Description of amendment request: The change proposes to relocate the cycle specific core operating limits of Figure 3.1-1, Shutdown Margin Versus Boron Concentration, from Technical Specification (TS) 3.1.1.2, Shutdown Margin's - Modes 3, 4, and 5, to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change of relocating TS Figure 3.1-1, Shutdown Margin Versus Boron Concentration to the COLR has no influence

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or impact to the probability or consequences of an accident. The revised TS will continue to implement the shutdown margin limits through reference to the Shutdown Margin Curve in the COLR. In addition, the COLR is subject to the existing controls of TS 6.9.1.6. Given that this change is an administrative relocation of the Shutdown Margin Curve to another TS controlled document, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The TS will continue to require operation within the required core operating limits. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Relocation of the Shutdown Margin Curve to the TS controlled COLR has no effect on the core operating limits currently in force in TS 3.1.1.2. Future revisions to the Shutdown Margin Curve are governed by TS 6.9.1.6 which stipulates the specific TS that reference the COLR limits and the methodologies utilized in developing those limits. Given that the change is an administrative relocation of the Shutdown Margin Curve to another TS controlled document, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 12, 1995

Description of amendment request: The proposed amendments would revise and clarify portions of Technical Specification (TS) Section 6.0, "Administrative Controls," for the McGuire, Catawba, and Oconee nuclear stations. The licensee submitted a combined amendment request covering the three Duke Power nuclear stations. The proposed changes are described below.

1. Remove the specific assignment of responsibilities for the review, distribution, and approval activities contained in the Technical Review and Control Section of each station's TS. The proposed specifications state that these activities will be performed by a knowledgeable individual/organization. Approval of the affected documents is to be at the appropriate manager/superintendent level as specified in Duke administrative controls.

2. Move the requirement for the review of proposed changes in the stations' TS and Operating Licenses by the Duke Nuclear Safety Review Board (NSRB) to Duke administrative procedures (Selected Licensee Commitments documents) and change the wording of the requirements covering NSRB meeting frequency. The Oconee TS covering the NSRB are being rewritten to be consistent with McGuire and Catawba.

3. Add Technical Review and Control Program implementation and Plant Operations Review Committee (PORC) implementation to the list of required procedures and programs for each nuclear station.

4. Change or clarify certain TS administrative requirements covering technical review and control activities or records retention requirements.

5. For Oconee only, under "Station Operating Procedures," revise the TS requirements covering the review and approval of station procedures and temporary procedure changes such that these are now consistent with the corresponding requirements for McGuire and Catawba.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(It should be noted that the licensee submitted a combined analysis that covers McGuire, Catawba, and Oconee nuclear stations.)

Standard ι1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The provisions of these proposed amendments concern administrative changes in the stations' Technical Specifications involving the Technical Review and Control, Procedures and Programs/Station Operating Procedures, and Records Retention/Station Operating Records portions of the Administrative Controls Section. The requested changes primarily affect review and control activities, but also include other administrative changes affecting the approval of station procedures (Oconee only), records retention, and definition of the term ODCM [offsite dose calculation manual] (McGuire and [Catawba]). The provisions of the proposed amendment primarily involve the relocation of existing Technical Specifications review, distribution, or approval requirements to internal Duke administrative controls. However, implementation of the proposed amendment does involve changes to several review/distribution activities. Theses review/distribution activities are primarily for: 1) Proposed changes to the stations' Technical Specifications, 2) Proposed tests and experiments which affect nuclear safety and are not addressed in the stations' FSAR [Final Safety Analysis Report] or Technical Specifications, 3) Environmental radiological procedures, 4) Reportable events documentation and reports of violations of Technical Specifications, 5) Reports of special reviews and investigations, and 6) Reports of unplanned onsite releases of radiological material to the environs. Planned implementation of the proposed Technical Specifications amendments utilizing Selected Licensee Commitments will result in the above items being reviewed/received by a different organizational unit in the future. The organizational unit is to be either the recently initiated Plant Operations Review Committee (PORC) or the General Manager, Environmental Services. Personnel serving on the PORC, and the General Manager, Environmental Services will be qualified based upon education and experience to review the operational and technical considerations involved with the applicable items listed above. No required reviews are being eliminated by the requested amendments, only the organizational units responsible for performing the reviews will be changed. Future reviews of theses items under the auspices of the PORC or the General Manager, Environmental Services will maintain a quality level equivalent to that being currently achieved by Duke's Qualified Reviewer Program, the Station Managers, or the

Duke Nuclear Safety Review Board as applicable. Consequently, merely changing the organizational units performing future reviews, or making the additional administrative changes described above, results in no increase in the probability or consequences of an accident previously evaluated because the review function will continue to be conducted in an equivalent manner.

The implementing SLC will also permit proposed amendments to the stations' Technical Specifications and Operating Licenses to be approved for the Station Manager by a designee. However, this individual will occupy a position equivalent to, or higher, in the Duke organization as the Station manager.

Additionally, the proposed changes do not directly impact the design or operation of any plant systems or components any more so than the review and approval processes currently being conducted in accordance with existing approved Technical Specifications.

Standard ι2. The proposed amendments will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and primarily cover the review, distribution, and/or approval function performed for items identified in existing Technical Specifications. The quality level of the future reviews will not decrease and the ability of Duke to identify the possibility for the concurrence of new or different kinds of accidents prior to implementation will be maintained. Of specific interest in the consideration of Standard ι2 is the review of proposed tests and experiments which affect station nuclear safety and are not addressed in the FSAR or Technical Specifications. The Technical Specifications required reviews of these tests and experiments are not being proposed for removal by these requested amendments. Only the organizational unit conducting the review of proposed tests and experiments is being changed by the requested amendments. The PORC, instead of the Station Manager, is being assigned the responsibility for conducting the reviews of proposed tests and experiments in the future. It is believed that the combined expertise of the PORC membership will enhance Duke's ability to identify potential situations which could possibly involve a new, or different, kind of accident.

Standard ι3. The proposed amendments will not involve a significant reduction in any margin of safety.

The changes contained in the requested amendments are administrative in nature and do not impact the design capabilities or operation of any plant structures, systems, or components. There will be no reduction in margin of safety as a result of implementing these requested amendments. Impact upon margin of safety is a consideration primarily included in the 10 CFR 50.59 evaluation process conducted for station procedures, procedure changes, and nuclear station modifications. The 10 CFR 50.59 evaluation process in conducted under the auspices of the Duke Qualified Reviewer Program and is not affected by these requested amendments. The impact on margin of safety for future Technical Specifications and Operating License changes will be reviewed by the PORC, but these reviews will be equivalent in quality to the reviews presently conducted by the Qualified Reviewers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 13, 1995

Description of amendment request: The proposed amendments would increase the surveillance test intervals and allowed outage times for Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) equipment based upon analyses by Westinghouse for the Westinghouse Owners Group and approved by the NRC. The proposed changes to the RTS and ESFAS instrumentation are based upon WCAP-10271, its supplements, and the NRC's safety evaluation reports.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Operation of McGuire in accordance with the proposed license amendment[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

The determination that the results of the proposed changes are within all acceptable criteria was established in the SERs prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2, and WCAP-10271 Supplement 2, Revision 1 issued by letters dated February 21, 1985, February 22, 1989, and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total RTS yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS and also results in a small increase in core damage frequency (CDF) due to ESFAS unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RTS instrumentation. This reduction is primarily attributable to testing in bypass and less frequent surveillance.

The reduction in core melt frequency from inadvertent reactor trips is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The values determined by the WOG and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analysis for the NRC staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable.

Changes to surveillance test frequencies for the RTS [reactor trip system] interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the permissive annunciator window. The surveillance as currently required only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability are verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. The change in surveillance requirement to at least once every refueling does not therefore represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the RTS.The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RTS but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

Criterion 2 - The proposed license amendment[s] [do] not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RTS provides plant protection. No change is being made which alters the functioning of the RTS (other than in a test mode). Rather, the likelihood or probability of the RTS functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

The proposed changes do not involve hardware changes except those necessary to implement testing in bypass. Some existing instrumentation is designed to be tested in bypass and current Technical Specifications allow testing in bypass. Testing in bypass is also recognized by IEEE standards. Therefore testing in bypass has been previously approved and implementation of the proposed changes for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore, since the other proposed changes do not alter the functioning of the RTS, the possibility of a new or different kind of accident from any previously evaluated has not been created

Criterion 3 - The proposed license amendment[s] [do] not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety

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system setpoints, or limiting conditions for operation are determined. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

1) Less frequent testing will result in fewer inadvertent reactor trips and actuation of Engineered Safety Features Actuation System components.

2) Higher quality repairs leading to improved equipment reliability due to longer allowable repair times.

3) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

The foregoing analysis demonstrates that the proposed amendment[s] to McGuire's Technical Specifications [do] not involve a significant increase in the probability or consequences of a previously evaluated accident, [do] not create the possibility of a new or different kind of accident, and [do] not involve a significant reduction in a margin of safety.

Based upon the preceding analysis, Duke Power Company concludes that the proposed amendment[s] [do] not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: January 12, 1995

Description of amendment request: The proposed amendments would revise and clarify portions of Technical Specification (TS) Section 6.0, "Administrative Controls," for the McGuire, Catawba, and Oconee nuclear stations. The licensee submitted a combined amendment request covering the three Duke Power nuclear stations. The proposed changes are described below.

1. Remove the specific assignment of responsibilities for the review, distribution, and approval activities contained in the Technical Review and Control Section of each station's TS. The proposed specifications state that these activities will be performed by a knowledgeable individual/organization. Approval of the affected documents is to be at the appropriate manager/superintendent level as specified in Duke administrative controls.

2. Move the requirement for the review of proposed changes in the stations' TS and Operating Licenses by the Duke Nuclear Safety Review Board (NSRB) to Duke administrative procedures (Selected Licensee Commitments documents) and change the wording of the requirements covering NSRB meeting frequency. The Oconee TS covering the NSRB are being rewritten to be consistent with McGuire and Catawba.

3. Add Technical Review and Control Program implementation and Plant Operations Review Committee (PORC) implementation to the list of required procedures and programs for each nuclear station.

4. Change or clarify certain TS administrative requirements covering technical review and control activities or records retention requirements.

5. For Oconee only, under "Station Operating Procedures," revise the TS requirements covering the review and approval of station procedures and temporary procedure changes such that these are now consistent with the corresponding requirements for McGuire and Catawba.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(It should be noted that the licensee submitted a combined analysis that covers McGuire, Catawba, and Oconee nuclear stations.)

Standard 1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The provisions of these proposed amendments concern administrative changes in the stations' Technical Specifications involving the Technical Review and Control, Procedures and Programs/Station Operating Procedures, and Records Retention/Station Operating Records portions of the Administrative Controls Section. The requested changes primarily affect review and control activities, but also include other administrative changes affecting the approval of station procedures (Oconee only), records retention, and definition of the term ODCM [offsite dose calculation manual] (McGuire and [Catawba]). The provisions of the proposed amendment primarily involve the relocation of existing Technical Specifications review, distribution, or approval requirements to internal Duke administrative controls. However, implementation of the proposed amendment does involve changes to several review/distribution activities. These review/distribution activities are primarily for: 1) Proposed changes to the stations' Technical Specifications, 2) Proposed tests and experiments which affect nuclear safety and are not addressed in the stations' FSAR [Final Safety Analysis Report] or Technical Specifications, 3) Environmental radiological procedures, 4) Reportable events documentation and reports of violations of Technical Specifications, 5) Reports of special reviews and investigations, and 6) Reports of unplanned onsite releases of radiological material to the environs. Planned implementation of the proposed Technical Specifications amendments utilizing Selected Licensee Commitments will result in the above items being reviewed/received by a different organizational unit in the future. The organizational unit is to be either the recently initiated Plant Operations Review Committee (PORC) or the General Manager, Environmental Services. Personnel serving on the PORC, and the General Manager, Environmental Services will be qualified based upon education and experience to review the operational and technical considerations involved with the applicable items listed above. No required reviews are being eliminated by the requested amendments, only the organizational units responsible for performing the reviews will be changed. Future reviews of these items under the auspices of the PORC or the General Manager, Environmental Services will maintain a quality level equivalent to that being currently achieved by Duke's Qualified Reviewer Program, the Station Managers, or the Duke Nuclear Safety Review Board as applicable. Consequently, merely changing the organizational units performing future reviews, or making the additional administrative changes described above, results in no increase in the probability or consequences of an accident previously evaluated because the review function will continue to be conducted in an equivalent manner.

The implementing SLC will also permit proposed amendments to the stations' Technical Specifications and Operating Licenses to be approved for the Station Manager by a designee. However, this individual will occupy a position equivalent to, or higher, in the Duke organization as the Station Manager.

Additionally, the proposed changes do not directly impact the design or operation of any plant systems or components any more so than the review and approval processes currently being conducted in accordance with existing approved Technical Specifications.

Standard 2. The proposed amendments will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and primarily cover the review, distribution, and/or approval function performed for items identified in existing Technical Specifications. The quality level of the future reviews will not decrease and the ability of Duke to identify the possibility for the occurrence of new or different kinds of accidents prior to implementation will be maintained. Of specific interest in the consideration of Standard 2 is the review of proposed tests and experiments which affect station nuclear safety and are not addressed in the FSAR or Technical Specifications. The Technical Specifications required reviews of these tests and experiments are not being proposed for removal by these requested amendments. Only the organizational unit conducting the review of proposed tests and experiments is being changed by the requested amendments. The PORC, instead of the Station Manager, is being assigned the responsibility for conducting the reviews of proposed tests and experiments in the future. It is believed that the combined expertise of the PORC membership will enhance Duke's ability to identify potential situations which could possibly involve a new, or different, kind of accident.

Standard 3. The proposed amendments will not involve a significant reduction in any margin of safety.

The changes contained in the requested amendments are administrative in nature and do not impact the design capabilities or operation of any plant structures, systems, or components. There will be no reduction in margin of safety as a result of implementing these requested amendments. Impact upon margin of safety is a consideration primarily included in the 10 CFR 50.59 evaluation process conducted for station procedures, procedure changes, and nuclear station modifications. The 10 CFR 50.59 evaluation process is conducted under the auspices of the Duke Qualified Reviewer Program and is not affected by these requested amendments. The impact on margin of safety for future Technical Specifications and Operating License changes will be reviewed by the PORC, but these reviews will be equivalent in quality to the reviews presently conducted by the Qualified Reviewers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 27, 1995

Description of amendment request: The requested change would modify Section 5.3.1, Fuel Assemblies, of the Waterford 3 technical specifications. The requested change increases the maximum enrichment for the spent fuel pool and containment temporary storage rack from 4.1 to 4.9 weight percent U-235 when fuel assemblies contain fixed poisons. Waterford 3 plans to use higher enriched fuel in the next fuel cycle (Cycle 8) to meet the energy plans and maintain a reload batch size similar to that used in Cycles 6 and 7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will increase the fuel enrichment limit in order to meetthe cycle energy requirements while maintaining fuel batch sizes consistent with previous cycle designs. The calculated k-effective, including uncertainties, demonstrate substantial margin to criticality in the storage racks for both normal and accident conditions. No changes to the facility are required. No new modes of operating the fuel storage or transfer systems are required, except a restriction to limit the use of the new fuel vault to fuel with a maximum enrichment of 4.1 weight percent U-235. This restriction will be implemented by administrative controls. Since the plant equipment and operation are essentially the same, there is no significant increase in the probability of a criticality accident. Since a criticality event is demonstrated to be unfeasible, there are no increased adverse consequences for such a postulated event.

As previously discussed, the proposed change will not result in a physical change to the facility nor will it result in a significant change to the operation of the facility; therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change has been analyzed to establish a k-effective, including uncertainties, at or below the NRC criticality acceptance criteria of k-effective below 0.95 including uncertainties at the 95/95 probability/confidence level; therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 16, 1995

Description of amendment request: The proposed amendment would revise the TMI-1 Technical Specifications (TS) to incorporate certain improvements from the Revised Standard Technical Specifications (TS) for Babcock & Wilcox nuclear power plants (NUREG-1430). The amendment would also change the bases incorporating the results of analyses to support allowance for drift of the pressurizer code safety valve setpoint. One of the proposed STS improvements involves a change to Chapter 6, Administrative Controls, affecting both TMI-1 and TMI-2 TSs. A separate notice of consideration of issuance of amendment to facility operating license is being issued for the proposed TMI-2 TSs Change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed amendments involve a) an administrative change to both the TMI-1 and TMI-2 Technical Specifications which is consistent with the B&W Standard Technical Specifications (STS), NUREG-1430, and b) changes to the TMI-1 Technical Specifications which are consistent with the STS. This change does not involve any change to system or equipment configuration. The proposed amendment revises certain surveillance requirements, extends certain surveillance intervals as evaluated above, or involves changes that are purely administrative. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Assurance of system and equipment availability is maintained. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes only involve changes to surveillance requirements that are consistent with STS and with the ASME Code. No new failure modes are created and thus the changes are bounded by accidents previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not

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involve a significant reduction in a margin of safety. Each of these changes is compatible with the STS and has been evaluated to preserve the level of safety assured by the current TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 20, 1995

Description of amendment request: The proposed amendment would revise the fire hazards analysis for the River Bend Station (RBS) by allowing a deviation from 10 CFR 50, Appendix R, Section III.G.3 with respect to the requirement for a fixed fire suppression system in fire area C-17. This area houses the control building heating, ventilation and air conditioning (HVAC) systems and the loss due to a fire could cause the loss of main control room habitability. C-17 does not have a fixed fire suppression system but depends upon the use of the existing remote shutdown system as described in the updated safety analysis report (USAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The request does not involve a significant increase in the probability or consequences of accident previously evaluated.

The event of concern is a fire in fire area C-17. The low fire loading and sparse concentration of exposed combustible material in fire area C-17 would limit fire spread. However, for this scenario all equipment in fire area C-17 will be assumed lost. Fire area C-17 contains the air handling units for the main control room envelope. The loss of both air handling units would cause the control building chillers to stop running due to a logic tie requiring air flow through the air handling equipment for the chilled water system to operate during normal operation. The loss of the HVAC system in the control building would cause the main control room and the equipment rooms to begin heating up if exposed to design summer conditions. Operator actions can be accomplished to minimize the heat up rates for the rooms prior to the areas reaching equipment temperature limits. This would allow the operators to begin the shutdown process from the main control room. If the main control room continued to heat up, the operators could accomplish the shutdown using the remote shutdown system. HVAC for the remote shutdown panel is located in fire area C-4 and would not be damaged by a fire in fire area C-17. Operation of the control building HVAC system from the remote shutdown panel bypasses the logic between the chilled water system and the air handling system. This would allow restart of the HVAC system for all areas except the main control room. The scenario would conclude in a manner similar to that described in RBS USAR Appendix 15A, Event 52, "Reactor Shutdown From Outside Main Control Room."

In summary, the probability of a fire occurring in fire area C-17 is not increased. However, if a fire were to occur in fire area C-17 which caused the loss of main control room HVAC, the remote shutdown system would provide an acceptable method of shutdown. The low fire loading and sparse concentration of exposed combustible material in fire area C-17 would limit fire spread. Therefore, this request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The event of concern is a fire in fire area C-17. Fire area C-17 does not have a fixed suppression system as required by 10 CFR 50, Appendix R, Section III.G.3. Fire suppression systems are generally used to limit fire spread, once the heat of the fire opens thermally sensitive sprinklers. The low fire loading and sparse concentration of exposed combustible material in fire area C-17 would limit fire spread. However, for the purpose of event analysis, all equipment in fire area C-17 is assumed lost. Thus a fire in fire area C-17 is bounded by the same analysis with or

without a fixed suppression system in terms of equipment availability.

The proposed method of shutdown for a fire in fire area C-17 will be changed in that the remote shutdown system will be credited. Use of the remote shutdown system is bounded by RBS USAR Appendix 15A, Event 52, "Reactor Shutdown From Outside Main Control Room." The HVAC for the remote shutdown panel is located in fire area C-4 and would be undamaged by a fire in fire area C-17. Operation of the control building HVAC system from the remote shutdown panel bypasses the logic between the chilled water system and the air handling system. This would allow restart of the HVAC system for all areas except the main control room.

In summary, if a fire were to occur in fire area C-17 which caused the loss of main control room HVAC, the remote shutdown system would provide an acceptable method of shutdown. Since, for the purpose of event analysis, all equipment in fire area C-17 is assumed lost, a fire in fire area C-17 is bounded by the same analysis with or without a fixed suppression system in terms of equipment availability. Therefore, this request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

3) The request does not involve a significant reduction in a margin of safety.

In this case, the margin of safety is implicit rather than being explicitly expressed as a numerical value. An implicit margin of safety involves conditions for NRC acceptance. Since the RBS Technical Specification Bases do not specifically address a margin of safety for fire protection, the SAR, the NRC's Safety Evaluation Report (SER), and appropriate other licensing basis documents were reviewed to determine if the proposed change would result in a reduction in a margin of safety. As stated, in part, in Attachment 4 to NPF-47:

EOI shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report for the facility through Amendment 22 and as approved in the SER dated May 1984 and Supplement 3 dated August 1985 subject to provisions 2 and 3....

As discussed in the Reason for Request, SSER 3 dated August 1985 states, in part:

On the basis of its evaluation the staff finds that the applicant's fire protection program with approved deviations is in conformance with the guidelines of BTP CMEB 9.5-1, sections III.G, III.J, and III.O of Appendix R to 10CFR50, and GDC 3, and is, therefore, acceptable.

Thus, the margin of safety in this case can be defined as conformance with the specified fire protection guidelines. 10 CFR 50, Appendix R, Section III.G.3, requires, in part, that alternative shutdown capability be provided for areas where adequate separation of redundant safe shutdown components cannot be provided. In addition, fire detection and a fixed fire suppression system must be installed in the area, room, or zone under consideration. Since fire area C-17 does not have a fixed suppression system, use of the remote shutdown system for a fire in this fire area would deviate from the requirements of 10 CFR 50, Appendix R, Section III.G.3. However, as discussed previously, the low fire loading and sparse amount of exposed combustibles compensate for the lack of a fixed fire suppression system. There is no adverse impact on the ability to achieve and maintain safe shutdown. Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 28, 1994

Description of amendment request: The proposed amendment would add a footnote to Technical Specifcaiton 3.5.C. The footnote would state that the operability of the feedwater coolant injection (FWCI) system be independent of its seismic capability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Any postulated failure in the non-seismic portion of the FWCI subsystem may result in a loss of feedwater flow transient. However comparing the probability of occurrence of a seismic event, any increase in the probability of occurrence of a loss of feedwater event would be small. The proposed change would have no impact on the probability of occurrence of any other accident, including LOCAs [loss of coolant accidents].

The FWCI subsystem will continue to be maintained as QA Category 1 (except for the seismic attribute). Therefore, it will remain available for accident mitigation for most scenarios. Nevertheless, LOCA analyses have been reevaluated to demonstrate that FWCI is not necessary to show compliance with 10CFR50.46. Potentially limiting LOCA scenarios have been analyzed without the FWCI subsystem using an approved LOCA methodology. An active single failure was postulated in addition to not taking credit for the FWCI subsystem. Based on the results of these analyses, the current design basis large and small break LOCAs remain bounding. Moreover, FWCI is not credited in mitigating any of the non-LOCA transients/accidents.

Safe shutdown following a seismic event can be achieved using the LPCI [low pressure coolant injection] and ESW [emergency service water] systems, and the SRVs [safety relief valves], which are all seismically qualified. Therefore, the FWCI system is not required to mitigate a seismic event.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Seismic reclassification of portions of FWCI does not create the possibility of a new kind of an accident. The portion of the piping up to the second isolation valve (from the RPV [reactor pressure vessel]), is seismically qualified and will remain classified as seismic. This ensures that a postulated failure in the non-seismic portion of piping or components does not degrade containment integrity or result in a blowdown of the RPV. Consequential and environmental effects of a FW [feedwater] piping failure have been analyzed in the HELB [high energy line break] program and have been found to be acceptable.

3. Involve a significant reduction in the margin of safety.

All accidents, including LOCAs, can be mitigated without using FWCI. FWCI is also not necessary for safe shutdown following a seismic event. The intended function of the FWCI subsystem is to reduce the likelihood of core uncovery during the lifetime of the plant. The CS [core spray] and LPCI subsystems provide redundant and diverse means of injecting water to the RPV. The FWCI subsystem provides an additional diverse means to inject water. Since FWCI will be maintained QA Category 1 (except for the seismic attribute), it will continue to provide the additional diversity to the injection systems. Considering the intended function of the subsystem and the credit taken in the accident analysis, reclassifying FWCI to be non-seismic does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: January 9, 1995, as supplemented February 7, 1995

Description of amendment requests: The proposed amendments would revise Prairie Island Nuclear Generating Plant Technical Specification (TS) 4.12, "Steam Generator Tube Surveillance," to incorporate revised acceptance criteria for steam generator tubes with degradation in the tubesheet roll expansion region. These criteria for steam generator tube acceptance were developed by Westinghouse Electric Corporation and are known as F* (≥F-Star") and L* (≥L-Star"). These criteria would be utilized to avoid unnecessary plugging and sleeving of steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

F Steam Generator Tube Repair Criteria*

The supporting technical and safety evaluations of the subject criterion demonstrate that the presence of the tubesheet will enhance the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. The results of hardrolling of the tube into the tubesheet is an interference fit between the tube and the tubesheet. Tube rupture cannot occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. The radial preload developed by the rolling process will secure a postulated separated tube end within the tubesheet during all plant conditions. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA [loss-of-coolant accident] loadings.

The F* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. As noted above, tube rupture and pullout is not expected for tubes using the F* criterion. Any leakage out of the tube from

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within the tubesheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube rupture analysis included in the Prairie Island Plant USAR [Updated Safety Analysis Report]. For plants with partial depth roll expansion like Prairie Island, a postulated tube separation within the tube near the top of the roll expansion (with subsequent limited tube axial displacement) would not be expected to result in coolant release rates equal to those assumed in the USAR for a steam generator tube rupture event due to the limited gap between the tube and tubesheet. The proposed plugging criterion does not adversely impact any other previously evaluated design basis accident.

Leakage testing of roll expanded tubes indicates that for roll lengths approximately equal to the F* distance, any postulated faulted condition primary to secondary leakage from F* tubes would be insignificant.

L Steam Generator Tube Repair Criteria*

The presence of the tubesheet enhances steam generator tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. The result of the hardroll of the tube into the tubesheet is an interference fit between the tube and the tubesheet. Tube rupture cannot occur because the contact between the tube and tubesheet does not permit sufficient movement of tube materials. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA loadings.

The type of degradation for which the L* criteria has been developed (cracking with an axial or near axial orientation) has been found not to significantly reduce the axial strength of a tube. An evaluation including analysis and testing has been done to determine the strength reduction for the axial loads with simulated axial and near axial cracks. This evaluation provided the basis for the acceptance criteria for tube degradation subject to the L* criteria.

The length of roll expansion above L* is sufficient to preclude significant leakage from tube degradation located below the L* distance. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. As noted above, tube rupture and pullout is not expected for tubes using the alternate plugging criteria.

Any leakage out of the tube from within the tubesheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube rupture analysis included in the Prairie Island Updated Safety Analysis Report. The proposed alternate plugging criteria do not adversely impact any other previously evaluated design basis accident.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

*F**

Implementation of the proposed F* criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity will be maintained. Tube bundle leaktightness will be maintained such that any postulated accident leakage from F* tubes will be negligible with regards to offsite doses.

*L**

Implementation of the proposed alternate tubesheet tube plugging criteria does not introduce changes to the plant design basis. Use of the criteria does not provide a mechanism to result in an accident outside of the region of the tubesheet expansion. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

*F**

The use of the F* criterion has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Reg Guide 1.121 [≥Bases for Plugging Degraded PWR Steam Generator Tubes≥] (intended for indications in the free span of tubes) and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the F* criterion is any degradation indication in the tubesheet region, more than the F* distance below the bottom of the transition between the roll expansion and the unexpanded tube. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The F* distance has been verified by testing to be greater than the length of roll expansion required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. Resistance to tube pullout is based upon the primary to secondary pressure differential as it acts on the surface area of the tube, which includes the tube wall cross-section, in addition to the inner diameter based area of the tube. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the USAR accident analysis.

Implementation of the tubesheet plugging criterion will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS (reactor coolant system) flow margin; thus, implementation of the F* criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the USAR or the Technical Specification Bases.

*L**

The use of the alternate tubesheet plugging criteria has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Reg. Guide 1.121 for indications in the free span of tubes and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the L* criteria is any degradation indication with axial or nearly axial cracking in the tubesheet region, more than the L* distance below the bottom of the transition between the roll expansion and the unexpended tube. For tubes with axial or nearly axial cracks the strength of the tube relative to an axial load would not be reduced below the strength required to resist potential axial loads. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The L* distance has been verified by testing to be greater than the length of roll expansion required to preclude significant leakage during normal and postulated accident conditions. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the USAR accident analyses.

Implementation of the proposed tubesheet plugging criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS flow margin, thus implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Updated Safety Analysis Report or the bases of the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. This notice supersedes the staff's previous notice which was published in the Federal Register February 1, 1995 (60 FR 6307).

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia Carpenter, Acting

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: February 23, 1995

Description of amendment requests: The proposed amendments would revise the wording in the Prairie Island technical specifications to allow implementation of exemptions to the schedule requirements of 10 CFR Part 50, Appendix J. A related exemption request would grant temporary relief from the requirements of 10 CFR Part 50, Appendix J, Section III.D.1.(a) which requires Prairie Island Unit 2 to perform a Type A test in the May 1995 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is an administrative change which allows implementation of approved exemptions to the regulations and by itself does not change any retest schedules.

Therefore, the probability or consequences of an accident previously evaluated are not affected by the proposed amendment.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment is an administrative change which allows implementation of approved exemptions to the regulations and by itself does not change any retest schedules.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created by the proposed amendment.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety

The proposed amendment is an administrative change which allows implementation of approved exemptions to the regulations and by itself does not change any retest schedules.

Therefore, a significant reduction in the margin of safety would not be involved with the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia Carpenter, Acting

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 10, 1995

Description of amendment request: The proposed amendment to the technical specifications (TSs) would relocate the requirements for the incore instrumentation (ICI) system from the TS to the Updated Safety Analysis Report (USAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Incore Instrumentation (ICI) System is used to measure core power distribution for the purpose of Limiting Conditions for Operation (LCO) monitoring of Technical Specification (TS) limits on linear heat rate, unrodded planer radial peaking factor, unrodded integrated radial peaking factor, and azimuthal power tilt. The ICI System has no safety purpose itself; it measures parameters which have safety significance. No change to the monitored parameters is proposed. The proposed changes will relocate requirements on the number and distribution of incore detectors used by the ICI System when measuring these parameters from the TS to the Updated Safety Analysis Report (USAR). Changes to the requirements can be made without NRC approval when the changes meet the criteria of 10 CFR 50.59. Changes to the ICI System requirements that do not meet the criteria of 10 CFR 50.59 must be approved by the NRC by license amendment.

Relocation of the requirements on the ICI System from the TS to the USAR does not increase the probability or consequences of any accident previously analyzed because the ICI System is neither a precursor nor a mitigator for any analyzed accident. The ICI System is used to ensure that operation within the LCOs for linear heat rate, unrodded planer radial peaking factor, unrodded integrated radial peaking factor, and azimuthal power tilt is maintained. However, its operation serves no mitigation function associated with any USAR Section 14 accident analysis. The parameters measured by the ICI System are important parameters in many accident analyses; however, this proposed change does not remove or revise the limits on these parameters.

Additionally, it is proposed to revise TS 2.10.4(1)(b) to clarify its requirements. Currently TS 2.10.4(1) part (b) applies while operating under the provisions of part (a) if the plant computer incore detector alarms become inoperable. This is incorrect in that part (a) applies when the linear heat rate is being monitored by the ICI System and the linear heat rate is exceeding its limits as indicated by valid detector alarms. Part (b) of this specification should apply only if the linear heat rate is being monitored by the ICI System, is within its limits, and the plant computer incore detector alarms are inoperable.

Administrative changes are also proposed which correct grammar and renumber/relocate portions of the TS and bases to other TS, to correspond to the proposed change to relocate ICI System requirements.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The ICI System will continue to be used to monitor TS limits on core power distribution. There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change.

The proposed change to TS 2.10.4(1)(b) only clarifies its requirements. The proposed change is more restrictive in that TS 2.10.4(1)(b), as currently written, could be interpreted to allow continued operation for up to seven days with the linear heat rate exceeding its limits. The proposed change clarifies this specification to ensure that TS 2.10.4(1)(a) is applied if the linear heat rate is exceeded while being monitored by the ICI System. TS 2.10.4(1)(a) requires that the linear heat rate be restored within one hour or a plant shutdown initiated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The ICI System is used to measure core power distribution parameters which are a direct measure of the margin of safety. The limits on these parameters are not changed. Therefore, the proposed change (i.e., relocation of the ICI System operability requirements to the USAR and/or plant procedures) does not involve a significant reduction in a margin of safety.

The proposed change to TS 2.10.4(1)(b) helps ensure that the margin of safety is maintained by clarifying when the TS is applicable. This clarification ensures that the more restrictive actions of TS 2.10.4(1)(a) are taken if the linear heat rate is exceeded while being monitored by the ICI System. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

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The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, NW., Washington, DC 20009-5728

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: December 30, 1994 (Reference LAR 94-12)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, to revise TS 2.2, 3/4.3.1, 3/4.3.2, 3/4.3.3, 3/4.4.4, 3/4.4.9, 3/4.5.2, 3/4.8.1, 3/4.8.2, 3/4.9.2, 3/4.9.9, and 3/4.10.3. The specific TS changes proposed are as follows:

(1) The TS issued in License Amendments (LAs) 84/83 would be changed to (a) revise the value of the overpower Delta-temperature (OPDT) constant K6 in TS 2.2.1, Table 2.2-1, Note 3; (b) revise the reactor coolant system (RCS) loop Delta-T function; and (c) make editorial corrections for clarification and consistency to TS 2.2.1 (and TS 2.2.1 Bases), TS 3/4.3.1, and TS 3/4.3.2.

In revising the RCS loop Delta-T function, the licensee would (a) incorporate the 0.99 multiplying factor listed in TS 2.2.1, Table 2.2-1, Note 5, and TS 3/4.3.2, Table 3.3-4, Note 2, into constants B1 through B4; (b) change "Steam Generator (SG) Water Level Low-Low" in TS 3/4.3.2, Table 3.3-3 and Table 4.3-2, Functional Unit 6.c, "Auxiliary Feedwater" (AFW), by deleting the Mode 3 applicability of the RCS loop Delta-T function and by adding a footnote to the Mode 3 applicability of the SG water level low-low function requiring that the trip time delay (TTD) associated with the SG water level low-low channel be less than or equal to 464.1 seconds; (c) change TS 3/4.3.1, Table 3.3-1, Action 27, and TS 3/4.3.2, Table 3.3-3, Action 29, by allowing up to four RCS loop Delta-T channels to be inoperable with the TTD threshold power level for zero seconds time adjusted to 0-percent rated thermal power (RTP) and by allowing the affected SG water level low-low channels to be placed in the tripped condition, with one inoperable RCS loop Delta-T channel; and (d) change the Table 3.3-1 and Table 3.3-3 "Channels to Trip" and "Minimum Channels Operable" columns to not applicable (N.A.).

(2) The TS issued in LAs 70/69 would be changed to (a) delete references to the plant vent noble gas activity monitors (RM-14A and RM-14B) and footnote references to applicability of the containment ventilation exhaust radiation monitors (RM-44A and RM-44B) in TS Tables 3.3-3, 3.3-4, 3.3-5, 3.3-6, 4.3-2, and 4.3-3 and TS 4.9.9; and (b) revise the "Trip Setpoint and Allowable Values" column in TS Table 3.3-4, Functional Unit 3.c.4), to reference the offsite dose calculation procedure (ODCP).

(3) Cycle-specific information in TS 4.3.2.1, TS 3.3.3.6, TS 4.4.4.1, TS 4.5.2, TS 3.8.1.1, TS 3.8.2.1, and TS 3.8.2.2 that is no longer necessary would be deleted.

(4) The word "analog" would be deleted from TS 4.4.9.3.1, TS 4.9.2, and TS 4.10.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the OPDT constant K6 is conservative and will not cause any design or analysis acceptance criteria to be exceeded. There is no effect on the structural and functional integrity of any plant system. The OPDT function is part of the accident mitigation response and is not itself an initiator for any transient. This change does not affect the integrity of the fission product barriers for mitigation of radiological dose consequences as a result of an accident.

The proposed change to incorporate the 0.99 multiplier into the TTD constants is an administrative change and has no effect on plant operation. The proposed change to delete Mode 3 applicability of the RCS Loop Delta-T function does not affect any design or analysis results. Allowing up to 4 RCS Loop Delta-T channels to be inoperable with the TTD threshold power level for zero seconds time delay adjusted to 0% RTP is conservative with respect to ESFs [engineered safety features] and reactor trip actuation time. Allowing the SG [steam generator] water level low-low channels affected by the inoperable RCS Loop Delta-T channels to be placed in the tripped condition is also conservative with respect to reactor trip and AFW pumps start. The change to the Channels to Trip and Minimum Channels Operable columns is a clarifying change to reflect the proposed changes to the action statements and identifies that the RCS Loop Delta-T does not provide a reactor trip function. Therefore, the proposed changes to the RCS Loop Delta-T function do not affect any of the accident analysis results.

The proposed changes to revise Table 3.3-4, Functional Unit 3.c.4), and to delete cycle-specific TS, TS references to RM-14A and RM-14B, and the word "analog" from the analog channel operation test are administrative and have no effect on plant operation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the OPDT constant K6 does not affect the assumed accident initiation sequences. No new operating configuration is being imposed by the change to K6 that would create a new failure scenario. No new failure modes are being created for any plant equipment.

The proposed changes to the RCS Loop Delta-T function do not involve any physical modification to any plant system or change the methodology by which any safety-related system performs its function.

1The proposed changes to revise Table 3.3-4, Functional Unit 3.c.4), and to delete cycle-specific TS, TS references to RM-14A and RM-14B, and the word "analog" from the analog channel operation test are administrative, would not result in any physical alteration to any plant system, and would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed change to the OPDT constant K6 will not affect any accident analysis assumptions, initial conditions, or results.

The proposed changes to the RCS Loop Delta-T function do not affect any accident analysis assumptions, initial conditions, or results.

The proposed changes to revise Table 3.3-4, Functional Unit 3.c.4), and to delete cycle-specific TS, TS references to RM-14A and RM-14B, and the word "analog" from the analog channel operation test are administrative and clarify the TS. These proposed changes have no effect on current operating methodologies or actions that govern plant performance.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 26, 1994

Description of amendment request: The proposed TS changes extend surveillance test intervals and allowable out-of-service times for the testing and/or repair of instrumentation that actuate the Reactor Protection System, Primary Containment Isolation, Core and Containment Cooling systems, Control Rod Blocks, Radiation Monitoring systems, and Alternate Rod Insertion/Recirculation Pump Trip.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes increase the STIs and AOTs for actuation instrumentation based on analyses described and justified in Licensing Topical Reports (References 2 through 8) (see licensee's September 26, 1994 application for reference information) which have been evaluated in associated Safety Evaluation Reports. These changes were incorporated into PBAPS Technical Specifications consistent with NUREG-1433. TS requirements that govern Operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed change will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, or inspected. The changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. As justified in References 1 through 8, the proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analyses. These changes establish or modify time limits allowed for operation with inoperable instrument channels based on the analyses in References 1 through 8 and will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function. Therefore, these changes will not increase the consequences of an accident previously evaluated.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes will not involve any physical changes to SSC, or the manner in which these SSC are operated, maintained, modified, tested, or inspected. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes increase the STIs and AOTs for actuation instrumentation based on analyses described and justified in Licensing Topical Reports (References 2 through 8) which have been evaluated in associated Safety Evaluation Reports. These changes were incorporated into PBAPS Technical Specifications consistent with NUREG-1433. These changes can be classified into one of the following three categories:

a. Changes to the minimum STIs and AOTs for the testing and/or repair of instrumentation based on the results of generic analyses in References 1 through 8;

b. Changes to conditions, required actions, and completion times needed to make PBAPS TS requirements consistent with the assumptions used in the analyses in References 1 through 8; and,

c. Changes that reformat, renumber, and/or reword existing requirements to incorporate the changes above.

All of the proposed changes will be incorporated into the PBAPS custom Technical Specifications using the same approach and specific requirements used in Reference 12.

There is no significant reduction in the margin of safety resulting from changes to the STIs and AOTs for the testing and/or repair of instrumentation based on the results of the analyses in References 1 through 8. These analyses determined that there is no significant change in the availability and/or reliability of instrumentation as a result of this change in STIs and AOTs. PECO Energy performed reviews that confirmed these analyses are applicable to PBAPS and that there would be no effect on the identification of excessive instrument setpoint drift as a result of increasing from monthly to quarterly the minimum interval between instrument functional tests. The proposed required actions ensure that actions to mitigate loss of single failure tolerance is initiated within 24 hours (12 hours for RPS) in accordance with the results of the analyses in References 1 through 8 and action to mitigate a loss of instrument function is initiated within 1 hour.

The proposed changes which replace the shutdown actions associated with inoperable instrumentation with actions to declare the supported system inoperable does not involve a reduction in a margin of safety. The proposed changes ensure that appropriate compensatory measures are taken commensurate with approved TS Actions for the affected systems and the safety analyses. In addition, the proposed changes provide the benefit of avoiding an unnecessary shutdown transient when appropriate measures are available to compensate for the inoperable instrumentation.

There is no significant reduction in the margin of safety resulting from changes that reformat, renumber, and/or reword existing requirements to incorporate the changes above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 17, 1994

Description of amendment request: The proposed changes to the Technical Specifications (TS) are being requested to support modifications 5384 and 5386 which upgrade the Main Stack and Vent Stack Radiation Monitoring Systems.

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Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither the Main Stack nor the Vent Stack Radiation Monitoring Systems serve as an initiator or contributor to any accidents previously evaluated. The systems provide indication and detection of radioactivity and effluent release in the main and vent stacks. The new systems perform the same function as the old, and have equal or better performance characteristics. Installation and operation of the new radiation monitoring systems do not degrade any active or passive equipment that responds to an accident.

The proposed increase in the surveillance test interval of the subject radiation monitoring systems from 12 to 18 months is consistent with vendor recommendations, and is based on operating experience with instrumentation of a similar design.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident.

Both modifications replace obsolete radiation monitoring equipment and have the same failure modes as the existing equipment. The upgraded systems are considered enhancements to the existing systems and are considered neither a contributor nor initiator of any accidents previously evaluated.

Based on the above, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Neither the accuracy nor the responsiveness of the existing radiation monitoring equipment will be degraded as a result of the installation of modifications 5384 and 5386. Revisions to the calibration and surveillance frequencies are based on vendor information and experience with instrumentation of similar design. The changes associated with setpoints and the lower limit of detection are in the conservative direction. The upgraded main stack system continues to provide a non-safety related trip signal to Group III isolation valves during purging of the containment through the SBGTS [standby gas treatment system]. The revisions to parameter descriptions and instrument designation are considered administrative.

Therefore, based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: February 3, 1994, supplemented September 19, 1994, and November 23, 1994

Description of amendment request: The proposed amendment revises the Technical Specifications to reflect a reduction in the Reactor Coolant System flow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

No component modification, system realignment, or change in operations will occur which could affect the probability of any accident or transient. The proposed reduction in RCS loop and total flow rates will not change the probability of a challenge to any Engineered Safeguard Feature or other device. The consequences of previously analyzed accidents have been found to remain within acceptable licensing basis limits when the reduced flow rates are assumed. The system transient response is not affected by the initial RCS flow assumption, unless the initial assumption is so low as to impair the steady-state core cooling capability or steam generator heat transfer capability. This is clearly not the case with a 1% reduction in RCS flow. The proposed change to the wording of the parameter title on Table 3.2-1 is editorial for clarity. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident.

No component modification, system realignment, or change in operating procedure will occur which could create the possibility of a new event not previously considered. The proposed reduction in RCS loop and total flow rates will not initiate any new events. Therefore, the proposed changes would not create the possibility of a different or new kind of accident.

3. Involve a significant reduction in a margin of safety.

The proposed decrease in RCS loop and total flow rates has been analyzed and found to have an insignificant effect on the applicable transient analyses found in the FSAR. The proposed change to the wording of the parameter title on Table 3.2-1 is editorial for clarity. Therefore, the proposed changes would not involve a significant reduction in any margin of safety.

Therefore, based on the information presented above, PSE&G has concluded there is no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 30, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.1.2.a and associated Bases for 3/4.6.1.2 to state that Type A tests for overall integrated containment leakage rate shall be conducted in accordance with the requirements specified in Appendix J of 10 CFR 50, as modified by NRC-approved exemptions. Additionally, TS 4.6.1.2.b would be revised to eliminate the reference to the schedule contained in TS 4.6.1.2.a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are significantly affected by the proposed changes.

The proposed change would revise Technical Specification (TS) Surveillance Requirement (SR) 4.6.1.2.a to allow overall integrated containment leakage rate (Type A) testing to be scheduled in accordance with 10 CFR 50 Appendix J, as modified by approved exemptions, and would make associated administrative changes to TS SR 4.6.1.2.b and to TS Bases 3/4.6.1.2. As stated above, none of these proposed changes involve accident initiators, conditions, or assumptions.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes.

The results of the previous Type A testing demonstrate a high degree of containment integrity. The Type B and C testing performed since the last Type A test provides confidence that the high degree of containment integrity will be maintained during the interval to the next Type A test. Therefore, the proposed changes do not alter the source term, containment isolation, or allowable releases, and will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new or different accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not affect the design or operation of any plant system, structure, or component. The proposed changes do not affect any accident initiators and are not initiators themselves. The proposed changes do not alter any accident scenarios.

3. Not involve a significant reduction in a margin of safety. The initial conditions and methodologies used in the accident analyses remain unchanged. As described above, the proposed changes do not significantly reduce or adversely affect the confidence that the present high degree of containment integrity will be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 30, 1995

Description of amendment request: The proposed amendment would provide new Reactor Coolant Pressure Boundary (RCPB) pressure-temperature limit curves that are applicable up to 21 effective full power years (EFPY).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison had reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of Davis-Besse Nuclear Power Station, Unit 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because: (1) revision of the pressure-temperature curves and the extended applicability of the pressurizer level/RCS pressure limit curves for periods when relief valve DH4849 is inoperable will continue to provide the same level of protection of the RCPB as was previously evaluated, and (2) the revision to License Condition 2.C(3)(d) is administrative to reflect the validity of the present analyses to 21 EFPY and (3) the revision to the Technical Specification Bases

to reflect the extension to 21 EFPY is administrative and does not affect any previously analyzed accidents.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because: (1) revision of the pressure-temperature curves and the extended applicability of the pressurizer level/RCS pressure limit curves for periods when relief valve DH4849 is inoperable will continue to provide the same level of protection of the RCPB as was previously evaluated, and (2) the revision to License Condition 2.C(3)(d) is administrative to reflect the validity of the present analyses to 21 EFPY and (3) the revision to the Technical Specification Bases to reflect the extension to 21 EFPY is administrative and does not affect any previously analyzed accidents.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because: (1) revision of the pressure-temperature curves and the extended applicability of the pressurizer level/RCS pressure limit curves will continue to provide protection against reactor vessel failure due to brittle fracture concerns under all postulated circumstances, and (2) the revision to License Condition 2.C(3)(d) is administrative to reflect the validity of the present analyses to 21 EFPY and (3) the revision to the Technical Specification Bases to reflect the extension to 21 EFPY is an administrative change and does not affect any activities or equipment in plant operation.

3. Not involve a significant reduction in a margin of safety because: (1) revision of the pressure-temperature curves and the extended applicability of the pressurizer level/RCS pressure limit curves maintains the present margin of safety from reactor vessel brittle fracture as required by 10 CFR 50, Appendix G, and (2) the revision to License Condition 2.C(3)(d) and the Bases revision are administrative and do not affect any analyses which provide the basis for the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: February 14, 1995

Description of amendment request: The proposed change revises Technical Specification 4.4.D to reference the testing requirements of 10 CFR Part 50, Appendix J, and to state that the Nuclear Regulatory Commission-approved exemptions to the applicable regulatory requirements are permitted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has performed an evaluation of ... the proposed administrative Technical Specification change, in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this ... amendment request follows.

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change ... revises Technical Specification 4.4.D to reference the testing frequency requirements of 10 CFR 50 Appendix J and to state that NRC approved exemptions to the applicable regulatory

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requirements are permitted. The current Technical Specification requires retests in accordance with Section III.D.1(a) of Appendix J. The proposed administrative change simply includes the statement "as modified by NRC approved exemptions." No new requirements are added, nor are any existing requirements deleted. Any specific changes to the requirements of Section III.D.1(a) will require a submittal from Virginia Electric and Power Company under 10 CFR 50.12 and subsequent review and approval by the NRC prior to implementation. The proposed change is stated generically to avoid the need for further Technical Specification changes if different exemptions are approved in the future.

The proposed change, in itself, does not affect reactor operations or accident analyses and has no radiological consequences. The change provides clarification so that future Technical Specifications changes will not be necessary to correspond to applicable NRC approved exemptions from the requirements of Appendix J.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed Technical Specification amendment provides clarification to a specification that paraphrases a codified requirement.

Since the proposed change would not change the design, configuration or method of operation of the plant, it would not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed Technical Specification change is administrative and clarifies the relationship between the requirements of TS 4.4.D, Appendix J, and any approved exemptions to Appendix J. It does not, in itself, change a safety limit or [a] Limiting Condition for Operation. The NRC will directly approve any proposed change or exemption to III.D.1(a) of Appendix J prior to implementation.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 14, 1995

Brief description of amendment request: The amendment request proposes changes to Technical Specification 3.8.2, "AC Sources-Shutdown;" 3.8.5, "DC Sources-Shutdown;" and 3.8.8, "Inverters-Shutdown." The proposed changes would revise the operability requirements for the Division 3 diesel generator and the Division 3 and 4 batteries, battery chargers, and inverters to apply only when the high pressure core spray system is required to be operable.Date of publication of individual notice in **Federal Register:** February 17, 1995 (60 FR 9412).

Expiration date of individual notice: March 20, 1995

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 8, 1994

Brief description of amendment request: The amendment request proposes changes to Technical Specification Section 3/4.9.1 to establish administrative controls to address a possible boron dilution event directly from the reactor makeup water system.

Date of publication of individual notice in **Federal Register:** March 1, 1995 (60 FR 11151).

Expiration date of individual notice: March 31, 1995

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of application for amendment: November 30, 1994, as supplemented by letter dated January 27, 1995

Brief description of amendment: The amendment changed the pressurizer code safety valve lift setting from 2500 psia to 2475 psia. The lift setting is being changed to permit Unit 2 to operate with up to 1500 plugged tubes in each steam generator.

Date of issuance: March 1, 1995

Effective date: March 1, 1995

Amendment No.: 78

Facility Operating License No. NPF-74: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 496) The additional information contained in the January 27, 1995, supplemental letter was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

Date of application for amendment: September 6, 1994

Brief description of amendment: The proposed amendment relocates the alarms for the drywell to suppression chamber vacuum breaker to a different annunicator panel.

Date of issuance: February 16, 1995 Effective date: To be implemented prior to startup from refueling outage 10.

Amendment No.: 158

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1994 (59 FR 53839) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 5, 1994, as supplemented by letters dated April 26, 1994, September 30, 1994, and January 12, 1995.

Brief description of amendments: The amendments change the Braidwood Technical Specifications to remove the requirement to verify, every 18 months, that the control room ventilation can be manually isolated.

Date of issuance: February 28, 1995

Effective date: February 28, 1995

Amendment Nos.: 60 and 60

Facility Operating License Nos. NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 25, 1995 (60 FR 4930). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 31, 1993, as supplemented July 19, 1994.

Brief description of amendments: The amendments revise the technical specifications by increasing the allowed outage time for an inoperable chiller only in MODES 1 through 4, adding an optional ACTION statement in MODES 5 and 6, and adding a surveillance requirement for the control room ventilation system.

Date of issuance: March 2, 1995

Effective date: March 2, 1995

Amendment Nos.: 70, 70, 61 and 61

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 25, 1995 (60 FR 4932). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, IllinoisDate of application for amendments: July 29, 1992, as supplemented January 14, 1993, and February 16, 1993

Brief description of amendments: Dresden and Quad Cities Technical Specification Upgrade Program. Date of issuance: February 16, 1995Effective date: Immediately, to be implemented by December 31, 1995.

Amendment Nos.: 131, 125, 152, and 148

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34071) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: For Dresden, The Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; For Quad Cities, The Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: July 29, 1992, as supplemented January 14, 1993, February 16, 1993 and January 27, 1995

Brief description of amendments: The July 29, 1992, application, is one of twelve applications which have been submitted by Commonwealth Edison Company (ComEd) in an effort to upgrade the existing custom Technical Specifications (TS) to the Boiling Water Reactor (BWR) Standard Technical Specifications (STS). Dresden has recently rescheduled the Unit 2 refueling outage from March 4, 1995, until June 1995. Currently, the surveillance frequency for certain Inservice Testing (IST) requirements expires on February 21, 1995. The current TSs do not make provisions for a grace period for surveillance frequencies of the IST program. In accordance with BWR STS guidance, the TSs regarding IST proposed in the July 29, 1992, application, allow the flexibility to perform these tests appropriately during refueling outages (where applicable) by providing a 25 percent extension to IST surveillance intervals. The January 27, 1995, supplement requested the staff to review and approve just that portion of the July 29, 1992, application dealing with the implementation of the IST program in Section 3.0/4.0 of the proposed TS.

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Date of issuance: February 22, 1995Effective date: February 22, 1995
Amendment Nos.: 132 and 126
Facility Operating License Nos. DPR-19 and DPR-25: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34071) The January 27, 1995, letter did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation datedFebruary 22, 1995.No significant hazards consideration comments received: No
Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company, Docket Nos. 50-213 and 50-245, Haddam Neck Plant and Millstone Nuclear Power Station, Unit 1, Middlesex County and New London County, Connecticut

Date of application for amendments: October 31, 1994, as supplemented February 14, 1995.
Brief description of amendments: The amendments renew the existing license conditions for both plants to implement and maintain Integrated Implementation Schedule Program Plans (the Program Plans). The Program Plans provide a methodology to be followed for scheduling plant modifications and engineering evaluations.
Date of issuance: February 23, 1995
Effective date: February 23, 1995
Amendment Nos.: 183 for Haddam Neck, 80 for Millstone 1
Facility Operating License Nos. DPR-61 and DPR-21. Amendments revise the Licenses.
Date of initial notice in **Federal Register:** December 7, 1994 (59 FR 63117)The February 14, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 1995.No significant hazards consideration comments received: No.
Local Public Document Room locations: Russell Library, 123 Broad Street, Middletown, CT 06457, for the Haddam Neck Plant, and the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360, for Millstone Unit 1.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 5, 1994, as supplemented February 10, 20, and 22, 1995.
Brief description of amendment: The amendment revises primary coolant system (PCS) pressure-temperature limits, power-operated relief valve setting limits, and primary coolant pump starting limits to accommodate reactor vessel fluence for an additional 4 effective full power years. The amendment also revises the emergency core cooling system technical specifications to render two high-pressure safety injection pumps incapable of injecting into the PCS when the PCS is below 300°F rather than rendering both inoperable below 260°F. In addition, it revises the pressurizer heatup to achieve consistency between design assumptions and technical specifications limits.
Date of issuance: March 2, 1995
Effective date: March 2, 1995
Amendment No.: 163
Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 501) The February 10, 20, and 22, 1995, submittals provided clarifyinginformation which was within the scope of the initial application and did not affect the staff's initial proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 10, 1994, as supplemented March 21 and September 15, 1994, and January 5, 1995
Brief description of amendments: The amendments revised Technical Specification Table 2.2-1 and TS 4.2.5 to allow a change in the method for measuring reactor coolant system (RCS) flow rate from the calorimetric heat balance method to a method based on a one-time calibration of the RCS cold leg elbow differential pressure taps.
Date of issuance: February 17, 1995
Effective date: To be implemented within 30 days from the date of issuance
Amendment Nos.: 128 and 122
Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 26, 1994 (59 FR 3743) for Unit 1; and March 1, 1994 (59 FR 9785) for Unit 2
The March 21 and September 15, 1994, and January 5, 1995, letters provided additional information that did not change the initial scope of the January 10, 1994, application and the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1995. No significant hazards consideration comments received: No
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: August 30, 1994
Brief description of amendment: The amendment revised the Technical Specifications to address the installation of two battery chargers on each 125 vdc power train in lieu of the "swing" battery charger that is currently used.
Date of issuance: February 17, 1995
Effective date: February 17, 1995
Amendment No.: 176
Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 17, 1995 (60 FR 3439) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: June 22, 1994.
Brief description of amendment: The amendment extends the allowable outage time for one inoperable train of emergency feedwater from 36 hours to 72 hours, clarifies the specifications and their associated bases, and relocates information within the specifications.
Date of issuance: March 1, 1995
Effective date: 30 days following the date of issuance.

Amendment No.: 177
Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 17, 1994, (59 FR 42339) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 19, 1995
Brief description of amendment: The amendment changed the Appendix A technical specifications (TSs) by adding TS 3.0.5 and its associated Bases. This new specification will allow equipment removed from service or declared inoperable to comply with ACTIONS to be returned to service under administrative controls soley to perform testing required to demonstrate its OPERABILITY or the OPERABILITY of other equipment.
Date of issuance: March 1, 1995
Effective date: March 1, 1995
Amendment No.: 101
Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 27, 1995 (60 FR 5441) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 11, 1994, as supplemented by letter dated December 2, 1994.
Brief description of amendment: The amendment revised the Technical Specifications for the Waterford Steam Electric Station, Unit 3, by modifying the specifications having cycle-specific parameter limits by replacing the values of those limits with a reference to a core operating limits report for the values of those limits. These changes are in ccordance with the requirements of Generic Letter 88-16.
Date of issuance: March 1, 1995
Effective date: March 1, 1995
Amendment No.: 102
Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65812) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 19, 1994, as supplemented by letter dated October 14, 1994.
Brief description of amendment: The amendment changed the Appendix A technical specification (TSs) by removing the Limiting Condition For Operation (LCO) 3/4.3.4, the associated surveillance requirements, and Bases information from the TSs. This information and requirements will be incorporated into the Waterford 3 Updated Final Safety Analysis Report (UFSAR) and maintained under the provisions of 10 CFR 50.59.
Date of issuance: March 2, 1995
Effective date: March 2, 1995
Amendment No.: 103
Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45023) The additional information contained in the supplemental letter dated October 14, 1994, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1995.No significant hazards consideration comments received: No.
Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company,Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 21, 1993
Brief description of amendment: The amendment revised the requirement for control rod testing to increase the "notch testing" surveillance interval for partially withdrawn control rods from once per 7 days to once per 31 days. The change is consistent with the format and content of the Improved Standard Technical Specifications (NUREG-1434, Revision 0).
Date of issuance: February 16, 1995
Effective date: February 16, 1995
Amendment No: 115
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28055) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1995. No significant hazards consideration comments received: No
Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company,Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 14, 1993
Brief description of amendment: The amendment revised technical specification requirements for the hydrogen ignition system (HIS). The amendment also removed several tables related to the HIS in accordance with guidance contained in Generic Letter 91-08, "Removal of Component Lists From Technical Specifications."
Date of issuance: February 16, 1995
Effective date: February 16, 1995
Amendment No: 116
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46232) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1995. No significant hazards consideration comments received: No

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Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company,Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 11, 1993

Brief description of amendment: The amendment deleted the requirements of Limiting Condition for Operation (LCO) 3.3.3.9 and Surveillance Requirement 4.3.3.9 related to loose-part detection instrumentation. The deleted requirements will be relocated to documents that are controlled by the licensee under the provisions of 10 CFR 50.59. The change is consistent with the format and content of the Improved Standard Technical Specifications (NUREG-1434, Revision 0).

Date of issuance: February 16, 1995
Effective date: February 16, 1995
Amendment No: 117
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46232) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company,Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 11, 1993

Brief description of amendment: The amendment deleted certain accident monitoring instruments from Technical Specification Table 3.3.7.5-1 "Accident Monitoring Instrumentation" and deleted the corresponding Surveillance Requirements from Table 4.3.7.5-1, "Accident Monitoring Instrumentation Surveillance Requirements." The deleted requirements will be relocated to documents that are controlled by the licensee under the provisions of 10 CFR 50.59. The change is consistent with the format and content of the Improved Standard Technical Specifications (NUREG-1434, Revision 0).

Date of issuance: February 16, 1995
Effective date: February 16, 1995
Amendment No: 118
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46234) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street,- Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 22, 1993, as supplemented by letters dated February 10, and 14, 1995.

Brief description of amendment: The amendment modified the testing frequencies for the drywell bypass test and the airlock test, relocated certain drywell airlock tests from the technical specifications to administrative procedures, and incorporates various improvements from the Improved Standard Technical Specifications (NUREG-1434, Revision 0).

Date of issuance: February 16, 1995
Effective date: February 16, 1995
Amendment No: 119
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 17, 1993, as supplemented on December 23, 1994

Brief description of amendment: The amendment changes the action statement for inoperable degraded grid and loss of voltage relays and their associated auxiliary relays and timers.

Date of issuance: January 31, 1995
Effective date: January 31, 1995
Amendment No.: 193
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59750). The December 23, 1994, letter provided additional information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 31, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105. The above Notice was to be published in the **Federal Register** of February 15, 1995. The notice that was inadvertently published at 60 FR 8762 relates to a licensing action which has not been completed.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 7, 1994, as supplemented by letters dated December 20, 1994, and January 23, 1995.

Brief description of amendments: The amendments changed the number of standby diesel generators (SDGs) (emergency power source) required to be operable during Mode 6 with greater than or equal to 23 feet of water above the reactor vessel flange, from two to one. The amendment also allows limited substitution of an alternate onsite emergency power source for one of the two required SDGs, in Mode 5, and in Mode 6 with less than 23 feet of water. In addition, certain system specifications that are affected by the changes for the emergency power source were also changed.

Date of issuance: February 14, 1995
Effective date: February 14, 1995, to be implemented within 31 days of issuance.
Amendment Nos.: Unit 1 - Amendment No. 34; Unit 2 - Amendment No. 20
Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 5739, dated January 30, 1995). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 1, 1995, but stated that, if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated February 14, 1995.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 15, 1994, as supplemented on December 21, 1994, and January 20, 1995. The licensee's submittals of December 21, 1994, and January 20, 1995, provided clarification and did not change the original no significant hazards consideration.

Brief description of amendment: The proposed amendment would revise the Technical Specifications by increasing the allowable main steam isolation valve (MSIV) leakage and deleting the requirements applicable to the MSIV leakage control system.

Date of issuance: February 22, 1995

Effective date: February 22, 1995 and to be implemented within 90 days.

Amendment No.: 207

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 14, 1994 (59 FR 47169) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: August 12, 1994, as supplemented on October 14, 1994 and February 6, 1995.

Brief description of amendment: The amendment modifies Clinton Power Station Technical Specification 3.6.5.1, "Drywell," to permit a one-time only change to forego performance of the drywell bypass leakage rate test during the fifth refueling outage scheduled to begin in March 1995.

Date of issuance: March 1, 1995
Effective date: March 1, 1995
Amendment No.: 96
Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994 (59 FR 49427). The October 14, 1994, and February 6, 1995, submittals consisted of revisions and clarifications which did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the original notice.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: November 18, 1994

Brief description of amendments: The amendments revise Technical Specification 4.0.5 to delete the wording "except where specific written relief has been granted by the Commission pursuant to 10 CFR 50, Section 50.55a(g)(6)(i)." This change allows the licensee to implement certain 10 CFR 50.55a relief requests while the relief requests are being reviewed by the NRC at the beginning of an updated interval.

Date of issuance: February 23, 1995
Effective date: February 23, 1995
Amendment Nos.: 190/176
Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65817) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 18, 1994

Brief description of amendment: The amendment modifies the operability requirements for the fuel building exhaust filter system. The amendment will result in modifications to the applicability, surveillance requirement, and bases sections of Technical Specification 3/4.9.12, "Fuel Building Exhaust Filter System."

Date of issuance: February 22, 1995
Effective date: As of the date of issuance to be implemented within30 days.
Amendment No.: 105
Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32234) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: July 9, 1992

Brief description of amendments: The amendments extend the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2 to recover or recapture the construction period of the reactors. Specifically, the amendments extend the expiration date of the Unit 1 license from April 23, 2008, to September 22, 2021, and the expiration date of the Unit 2 license from December 9, 2010, to April 26, 2025.

Date of issuance: March 1, 1995
Effective date: March 1, 1995
Amendment Nos.: 97 and 96
Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the license.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32575)

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The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1995.No significant hazards consideration comments received: Yes. Comments from the San Luis Obispo Mothers for Peace (MFP) and their contentions were admitted into this proceeding. These contentions concern the adequacy of the licensee's maintenance and surveillance program and interim corrective actions in lieu of Thermo-Lag. The Atomic Safety and Licensing Board, in its initial decision dated November 4, 1994 (LBP-94-35), authorized the staff to extend the DCPP operating license expiration dates. Because a hearing was held prior to license issuance, the staff does not need to make a final no significant hazards consideration determination.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: July 27, 1994, as supplemented October 27, 1994 and February 3, 1995

Brief description of amendment: The amendment raises the authorized Power Level from 3293 MWt to a new limit of 3441 MWt.

Date of issuance: February 22, 1995

Effective date: As of date of issuance and is to be implemented prior to startup in Cycle 9, currently scheduled to occur in May 1995.

Amendment No.: 143

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications and license.

Date of initial notice in **Federal Register:** September 14, 1994 (59 FR 47171) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 23, 1994

Brief description of amendments: The amendment revises Technical Specification 4.0.5, which provides the requirements for inservice inspection and testing of ASME Code components, to conform to Standard Technical Specifications (NUREG-1433).

Date of issuance: February 28, 1995

Effective date: February 28, 1995

Amendment Nos.: 144 and 113

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39595) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 28, 1994, and supplemented by letter dated December 29, 1994

Brief description of amendments: These amendments change the Technical Specifications (TS) for the two units by adding reference t20 (Unit 1) and reference t18 (Unit 2) to Section 6.9.3.2 as "PL-NF-90-001, Supplement 1, 'Application of Reactor Analysis Methods for BWR Design and Analysis: Loss of Feedwater Heating Changes and Use of RETRAN MOD 5.1,' September 1994." These additions reflect changes to the methodology that the licensee is using to perform its nuclear fuel reload analysis for the two units.

Date of issuance: February 28, 1995

Effective date: February 28, 1995

Amendment Nos.: 145 and 114

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65819) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 31, 1994

Brief description of amendments: These amendments address Section 5, "Remove Temperature Requirement for Operational Condition 5 (TSCR 94-44-0), by revising TS Table 1.2 and TS Bases 3/4.9.11 to remove the average reactor coolant temperature requirement in Operational Condition (OPCON) 5, Refueling.

Date of issuance: January 27, 1995

Effective date: January 27, 1995Amendment Nos. 88 and 50

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55884) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: November 16, 1994

Brief description of amendment: The amendment revises Technical Specifications Section 3.10.8 and the associated Bases, to reduce the maximum allowable control rod drop time from 2.4 to 1.8 seconds.

Date of issuance: February 21, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 160

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 20, 1995 (60 FR 4203) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Saxton Nuclear Experimental Corporation, Docket No. 50-146, Saxton Nuclear Reactor Facility

Date of application for amendment: August 8, 1994, as supplemented on October 28, 1994, and January 12, 1995.

Brief description of amendment: The amendment adds characterization as an authorized activity at Saxton and improves the wording of the technical specifications.

Date of issuance: February 22, 1995

Effective date: February 22, 1995

Amendment No.: 12Amended Facility License No. DPR-4: Amendment changed the Technical Specifications

Date of initial notice in **Federal Register:** November 9, 1994. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 30, 1993, as supplemented by letters dated June 3, 1994, August 25, 1994, and January 3, 19, and 30, 1995.

Brief description of amendments: These amendments revise TS 3.9.4, "Containment Building Penetrations," and the associated bases to allow both doors of the containment personnel airlock to be open at the same time during refueling operations provided certain conditions are met.

Date of issuance: February 28, 1995

Effective date: February 28, 1995

Amendment Nos.: 117 and 106

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994 (59 FR 49434). The additional information contained in the January 3, 19, and 30, 1995, letters were clarifying in nature, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: December 19, 1994

Brief description of amendments: The amendments to Technical Specifications include: (1) a revision in Table 3.7-3 to the main steam safety valve (MSSV) setpoint tolerance from plus or minus 1 percent to plus or minus 3 percent, (2) modification of the bases to 3/4.7.1.1 to increase the relieving capacity of the MSSVs to at least 12,984,660 pounds per hour which corresponds to approximately 112 percent of total secondary steam flow at 100 percent rated thermal power, (3) modifications to Table 3.7-1 to reduce the allowable power range neutron flux high setpoints for multiple inoperable steam generator safety valves, and (4) an editorial correction to Bases 3/4.7.1.2 to indicate required auxiliary feedwater flow at "1133 psia" rather than "1133 psig."

Date of issuance March 1, 1995

Effective date: March 1, 1995

Amendment Nos.: 112 and 103

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 505) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1995No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1995No significant hazards consideration comments received: No

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 29, 1993

Brief description of amendment: The proposed changes increase the amount of boron required in the standby liquid control system.

Date of issuance: February 28, 1995

Effective date: February 28, 1995

Amendment Nos.: 217, 233 and 191

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29635) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 30, 1993 (TS 336)

Brief description of amendment: The proposed changes revise and clarify the spent fuel pool water level, temperature, sampling, and analysis surveillance requirements.

Date of issuance: March 2, 1995

Effective date: March 2, 1995

Amendment Nos.: 218, 334 and 192

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67862) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: March 31, 1994

Brief description of amendment: For Browns Ferry Units 1 and 3, the proposed changes provide for operation in the extended load line limit region and revised rod block monitor operability requirements. For all three Browns Ferry units, the changes delete a obsolete value for rated loop recirculation flow rate, relocate cycle-specific equations to the Core Operating Limits report, and provide other miscellaneous changes.

Date of issuance: February 24, 1995

Effective date: February 24, 1995

Amendment Nos.: 216, 232, 190

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994 (59 FR 49437) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1995.No significant hazards consideration comments received: None

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Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 7, 1994

Brief description of amendment: Eliminates redundancy in system leakage test requirements by revising TS 3/4.5.2 and its associated basis for the Emergency Core Cooling System and TS 3/4.6.2 and its associated basis for the Containment Spray System.

Date of issuance: February 27, 1995

Effective date: February 27, 1995 and to be implemented within 90 days.

Amendment No. 195

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55893) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 18, 1994 (published in Federal Register as November 11, 1994)

Brief description of amendments: The proposed amendments would provide for cycle-specific allowances to account for increases in the Heat Flux Hot Channel Factor between monthly surveillances.

Date of issuance: March 1, 1995

Effective date: March 1, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 34; Unit 2 - Amendment No. 20

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 7, 1994 (59 FR 63127) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: October 31, 1994

Brief description of amendment: The amendment modifies the Techical Specifications (TS) to (1) add two action statements that would provide allowed outage times for either one or both of the scram discharge volume (SDV) vent or drain valves less stringent than the current requirements of TS 3.0.3., and (2) change the surveillance requirements for the SDV vent and drain valves to conduct the testing during shutdown conditions rather than at power as currently required.

Date of issuance: February 27, 1995

Effective date: February 27, 1995

Amendment No.: 134

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65828) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee NuclearPower Plant, Kewaunee County, Wisconsin

Date of application for amendment: February 23, 1994

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 6.8.c by removing the requirement to conduct a biennial review of plant procedures in accordance with American National Standards Institute (ANSI) N18.7-1976, Section 5.2.15. Alternate programs that are described in the KNPP Operational Quality Assurance Program Description (OQAPD) will be used to ensure that procedures are reviewed and maintained current.

Date of issuance: February 23, 1995

Effective date: February 23, 1995 and to be implemented within 30 days.

Amendment No.: 115

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14903) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1995.No significant hazards consideration comments received: None.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for

example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 14, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear

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Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Pennsylvania Power and Light Company, Docket No. 50-388, SusquehannaSteam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: February 7, 1995

Brief description of amendment: The amendment changed the Technical Specifications to allow continued operation with one neutron flux monitor system channel (≥B" channel) inoperable and should the remaining channel become inoperable to allow continued plant operation for 7 days to restore one of the two inoperable channels.

Date of issuance: March 1, 1995

Effective date: March 1, 1995

Amendment No.: 115

Facility Operating License No. NPF-22: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. On February 8, 1995, the staff issued a Notice of Enforcement Discretion, which was immediately effective and remained in effect until this amendment was issued.

The Commission's related evaluation of the amendments, finding of emergency circumstances, consultation with the Commonwealth of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated March 1, 1995.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge 2300 N Street NW., Washington, D.C. 20037

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 8th day of March 1995.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 95-6207 Filed 3-14-95; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50-346]

Toledo Edison Company, et al.; Notice of Withdrawal of Applications for Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensees) to withdraw its March 13, 1992, September 11, 1992, and February 17, 1993, applications for proposed amendments to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendments would have revised the facility technical specifications by changing the venting requirements for the Reactor Coolant System, deleting figures in Section 5.1, "Design Features—Site," and revising the Safety Features Actuation System and Steam and Feedwater Rupture Control System Instrumentation Setpoints.

The Commission had previously issued Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 23, 1992 (57 FR 10050), for the March 13, 1992, application; January 6, 1993 (58 FR 600) for the September 11, 1992, application, and June 23, 1993 (58 FR 34096), for the February 23, 1993, application. However, by letter dated February 10, 1995, the licensee withdrew the proposed changes.

For further details with respect to this action, see the applications for amendment dated March 13, 1992, September 11, 1992, and February 17, 1993, and the licensee's letter dated February 10, 1995, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 9th day of March, 1995.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6340 Filed 3–14–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

AGENCY: Notice that the March 22, 1995 meeting of the Industry Policy Advisory Committee will be held from 9:30 a.m. to 2:30 p.m. The meeting will be closed to the public from 9:30 to 1:00 p.m. The meeting will be open to the public from 1:00 p.m. to 2:30 p.m.

SUMMARY: The Industry Policy Advisory Committee will hold a meeting on March 22, 1995 from 9:30 a.m. to 2:30 p.m. The meeting will be closed to the public from 9:30 to 1:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:00 p.m. to 2:30 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for March 22, 1995, unless otherwise notified.

ADDRESSES The meeting will be held at the Madison Hotel, located at 15th and M streets, NW., Washington, DC., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representatives.

[FR Doc. 95–6316 Filed 3–14–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

Notice of Facility Visit

March 10, 1995.

Members of the Commission and its advisory staff will visit the offices of WEFA in Bala Cynwyd, Pennsylvania on Thursday, March 16, 1995. WEFA officials will explain the process of preparation of the economic model of direct response advertising it developed for the Direct Marketing Association. A report of the visit will be on file in the Docket Room of the Commission.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–6344 Filed 3–14–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Extensions:

Form SE—File No. 270–289
Form ID—File No. 270–291
Form ET—File No. 270–290
Form TH—File No. 270–377

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has requested extension of Forms SE, ID, ET, and TH. These forms are used by persons filing information with the Commission electronically on the EDGAR system.

Form SE is used by electronic filers to submit exhibits in paper format. An estimated 2,000 filings on Form SE are made annually at an estimated .10 burden hours per response.

Form ID is used to apply for EDGAR access codes. An estimated 7,000 filings on Form ID are made annually at an estimated .15 burden hours per response.

Form ET is used to transmit electronic format documents. An estimated 120 filings on Form ET are made annually at an estimated .25 burden hours per response.

Form TH is used to provide notification of a filer's reliance on a temporary hardship exemption. An estimated 200 filings on Form ET are made annually at an estimated .33 burden hours per response.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, and SEC Clearance Office, Office of Management and Budget, Paperwork Reduction Project (3235–0327, 3235–0328, 3235–0329, and 3235–0425), Room 3208, New Executive Office Building, Washington, D.C. 20543.

Dated: March 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6355 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35462; File No. SR–BSE–95–1]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to the Value Charges on Intermarket Trading System Trades

March 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to make permanent the portion of its fee schedule pertaining to value charges on non-specialist Intermarket Trading System ("ITS") trades and the waiver of ITS user fees. By a filing, which the Commission noticed on November 24, 1992, the Exchange amended its fee schedule to provide for a $.003 per share user fee on *net* outbound specialist trades, value charges of $.002 per share for BSE executions up to and including 2,000 shares, and a range of value charges per $1,000 contract values for all BSE executions over 2,000 shares.[1]

Moreover, the Exchange amended its fee schedule to provide for value charges, and waive user fees, on all non-specialist ITS trades for a one-year period.[2]

By a filing, which the Commission noticed on November 10, 1993, the Exchange extended the value charges on non-specialist ITS trades and the waiver of the non-specialist ITS user fees for a six-month period.[3] The Exchange now proposes to amend permanently its fee schedule to impose value charges, and waive user fees, on all non-specialist ITS trades as follows:

Value Charges

First $10 million per month—$.16 per $1,000 contract value
Next $40 million per month—$.13 per $1,000 contract value
Next $50 million per month—$.10 per $1,000 contract value
Next $100 million per month—$.08 per $1,000 contract value
Next $300 million per month—$.05 per $1,000 contract value
$500.1 + million per month—$.01 per $1,000 contract value
Maximum charge per side (non-cross) $100.00
Maximum charge per side (cross) $75.00
I.T.S. User Fee—No charge for non-specialist firms

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend permanently the Exchange's fee schedule regarding certain ITS fees. At the request of the Commisson, the Exchange had temporarily amended a portion of its proposed rule filing SR–BSE–92–9

[1] See Securities Exchange Act Release No. 31515 (Nov. 24, 1992), 57 FR 56937 (notice of immediate effectiveness of File No. SR–BSE–92–9).

[2] The portion of the proposed rule change that was amended for a one-year period was intended to replace the ITS user fee of $.003 per share on "outbound trades only."

[3] See Securities Exchange Act Release No. 33184 (Nov. 10, 1993), 58 FR 60709 (notice of immediate effectiveness of File No. SR–BSE–93–22).

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regarding certain ITS transactions. The Exchange temporarily amended these fees in 1992 for a one-year period and extended these fees in 1993 for a six-month period, pending the outcome of the Market 2000 Study.[4] The affected fees are comprised of the value charges instituted on all nonspecialist outbond ITS trades, which replaces the ITS User Fee of $.003 per share on all outbound trades incurred by non-specialist firms.

2. Statutory Basis

The statutory basis for this proposal is Section 6(b)(4) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the fee change.[5]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–95–1 and should be submitted by April 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6353 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[4] The six-month extension expired in May 1994. BSE did not seek another extension until this filing.

[5] At the time of the original filing in 1992, the Exchange solicited comments from the Fee Committee of the Board of Governors, comprised of representatives of dealer-specialist, retail, and institutional firms, the Executive Committee, which serves as the Board of Governors of the Clearing Corporation, and the Board of Governors of the Exchange. *See* Securities Exchange Act Release No. 31515 (Nov. 24, 1992), 57 FR 56937 (notice of immediate effectiveness of File No. SR–BSE–92–9).

[Release No. 34–35463; International Series Release No. 790; File No. SR–CBOE–95–12]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Margin Levels for Currency Warrants Based on the Value of the U.S. Dollar in Relation to the Mexican Peso

March 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the original proposal with the Commission on January 27, 1995. Notice of the proposed rule change appeared in the **Federal Register** on February 8, 1995.[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes margin levels for warrants traded on the Exchange that are based upon the value of the U.S. dollar in relation to the Mexican peso ("Mexican Peso Warrants"). The text of Amendment No. 1 to the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for Amendment No. 1 to the proposed rule change and discussed any comments it received on the amendment. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the Exchange's proposal to list and trade Mexican Peso Warrants, the CBOE represented that "Exchange will require that customer positions in Mexican Peso Warrants be subject to the margin requirements applicable to foreign currency options."[4] The Exchange is now amending that proposal to specify objective margin levels that will be applicable to Mexican Peso Warrants trading on the Exchange.

The Exchange represents that it has calculated frequency distributions reflecting U.S. dollar/Mexican peso returns for all one, seven, and 21 day periods for the period from January 2, 1992, through January 25, 1995 ("three year period"), and for the period from January 3, 1994, through January 25, 1995 ("one year period"). The Exchange further represents that these distributions demonstrate that 97.5% of all seven day returns for the three year period would have been covered by 4.5% of the underlying peso value and that 95% of all seven day returns for the one year period would have been covered by approximately 10% of the underlying peso value. Based upon these results, the Exchange is proposing to set the margin "add-on" percentage for Mexican Peso Warrants at 12% for both initial and maintenance margin, with a minimum add-on for out-of-the-money warrants of 8%. If, as a result of the Exchange's routine monitoring of margin adequacy, the CBOE determines that a different percentage would be appropriate, the Exchange will file a proposal with the Commission pursuant to section 19(b) of the Act to modify the margin add-on percentages applicable to Mexican Peso Warrants.

The Exchange believes that Amendment No. 1 to the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) oft he Act,[5] in particular, in that the proposal will promote just and equitable principles of trade and will contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that Amendment No. 1 to the proposed rule change will impose any inappropriate burden on competition.

(c) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on Amendment No. 1 to the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, as amended, or

(b) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–12 and should be submitted by April 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6351 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* Securities Exchange Act Release No. 35324 (February 2, 1995), 60 FR 7599 (February 8, 1995).

[4] *Id.*

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35464; International Series Release No. 791; File No. SR–Phlx–95–03]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options Transaction Size

March 9, 1995.

On January 17, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the minimum transaction size for customized foreign currency options ("Customized FCOs") from 300 to 200 contracts. Notice of the proposed rule change appeared in the **Federal Register** on January 30, 1995.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

On November 1, 1994, the Commission approved the Exchange's proposal to trade Customized FCOs.[4] Presently, Phlx Rule 1069(a)(6) imposes a 300 contract minimum for opening Customized FCO transactions. The Exchange represents that a number of midsized corporations and institutions have told the Exchange that the current minimum contract value is too large for their purposes. The Exchange, therefore, proposed to reduce the minimum opening transaction size for Customized FCO transactions to 200 contracts.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[6] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change is designed to make the Customized FCO market accessible to smaller corporate FCO users while maintaining the focus of this market towards institutional investors. As a result, the Commission believes that the proposal may serve to add liquidity to this market which would benefit all users of Customized FCO's.

Moreover, even with lowering the minimum opening transaction size to 200 contracts, the average value of an opening Customized FCO transaction will be approximately $10 million.[7] The Commission believes that this level is sufficient to ensure that Customized FCO market continues to be used almost exclusively by institutional investors. The Commission also notes that this dollar value is equivalent to the minimum opening transaction size that the Commission required in approving proposals by the American Stock Exchange,[8] the Chicago Board Options Exchange,[9] and the Pacific Stock Exchange[10] for trading flexible exchange options ("FLEX Options"). As a result, the Commission believes that this proposal does not raise any regulatory concerns that were not adequately addressed by the Exchange when the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 35261 (January 23, 1995), 60 FR 5745 (January 30, 1995).

[4] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) ("Exchange Act Release No. 34925").

[5] The Exchange represents that the average value of a 300 contract Customized FCO transaction, at prevailing exchange rates, is approximately $15 million. Reducing the minimum opening transaction size to 200 contracts would still result in an average minimum transaction value of approximately $10 million.

[6] 15 U.S.C. 78(b)(5) (1988).

[7] *See supra* note 5.

[8] *See* Securities Exchange Act Release No. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993).

[9] *See* Securities Exchange Act Release Nos. 32694 (July 29, 1993), 58 FR 41814 (August 5, 1993), and 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993).

[10] *See* Securities Exchange Act Release No. 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994).

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Commission approved the trading of Customized FCOs.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–95–03) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6352 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20948; No. 812–9074]

Aetna Insurance Company of America, et al.

March 9, 1995.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Aetna Insurance Company of America ("Aetna"); Variable Annuity Account I of Aetna ("Account I"), Variable Annuity Account II of Aetna ("Account II"), and any other Separate Accounts established in the future by Aetna ("Future Accounts," and together with Accounts I and II, "Separate Accounts") to support certain group and individual deferred variable annuity contracts ("Contracts") or other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Other Contracts") and that may be issued in the future by Aetna;[1] Aetna Life Insurance and Annuity Company ("ALIAC"), the principal underwriter of the Contracts; and Any Member Broker-Dealer of the National Association of Securities Dealers, Inc. ("NASD") That May In The Future Serve As Principal Underwriter For The Contracts ("Future Underwriters").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seeking an order permitting the deduction of a mortality and expense risk change from the assets of the Separate Accounts in connection with the issuance and sale of the Contracts or Other Contracts.

FILING DATE: The application was filed on June 24, 1994, and amended on December 23, 1994 and February 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 3, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Aetna Insurance Company of America, 151 Farmington Avenue, Hartford, Connecticut 06156.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Aetna, a stock life insurance company, is a wholly-owned subsidiary of Aetna Life Insurance and Annuity Company ("ALIAC"), which is, in turn, a wholly-owned subsidiary of Aetna Life and Casualty Company. Aetna is in the process of qualifying to do business and obtaining licenses to sell insurance in all jurisdictions except New York.

2. The Separate Accounts are or will be established by Aetna for the purpose of funding variable annuity contracts. The Separate Accounts are or will be registered under the 1940 Act as unit investment trusts. Assets of the Separate Accounts will be allocated among the shares of one or more registered open-end investment companies ("Funds"), some of which may be managed by ALIAC or its affiliates.

3. ALIAC is the principal underwriter of the Contracts and may act as investment adviser to some of the Funds. ALIAC is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940. ALIAC is a member of NASD.

4. Non-tax qualified Contracts are funded through Account I and Contracts purchased and used in connection with retirement plans under Sections 401(a) or 403(b) of the Internal Revenue Code, as amended ("Code") are funded through Account II. Individual Contracts qualifying for favorable federal income tax treatment under Section 408 of the Code and Contracts purchased by deferred compensation plans under Section 457 of the Code may be funded through either Account I or Account II.

5. The Contracts may provide for, among other things single or installment premium payments, or a combination of the two, and deferred or immediate annuity payments on a fixed or variable basis beginning on a date elected by the Contract owners and in no event later than certain contractually established dates ("Retirement Date"). Additionally, Contract owners may allocate premium payments to: (a) One or more of the Funds available under a Contract; (b) in some Contracts to a fixed Interest Option, which is part of Aetna's general account; and (c) in some Contracts to a Credited Interest Option, with or without a market value adjustment upon redemption prior to the end of a guaranteed term, and assets attributable to such an option may be held in Aetna's general account or in a non-insulated, none-utilized separate account of Aetna.[2]

6. The Contracts provide for the payment of a standard death benefit equal to the greater of (i) the cash value of the Contract account, or (ii) the sum of purchase payments less any withdrawals, or (iii) the contract holder's account value at the most recent seventh year anniversary of the Contract adjusted for purchase payments, withdrawals and amounts applied to an annuity option. The Contracts also provide for the payment of an enhanced death benefit equal to the greater of (i) the cash value of the Contract account, or (ii) during the first year of the Contract, the amount of premiums paid (adjusted for any withdrawals and any amount paid to an annuity option), or (iii) during subsequent years of the Contract, an amount determined by increasing premiums paid in prior years by a contractually-determined factor (adjusted for any withdrawals or any amounts paid for an annuity option), or (iv) cash value on the most recent seventh year anniversary of the Contract, adjusted for purchase payments, withdrawals and amounts applied to an annuity option.[3]

7. Various fees and charges are deducted under the Contracts. Aetna may impose a maximum annual maintenance charge of $35 under the Contracts for administrative services provided to Contract holders. Aetna currently deducts a $30 annual maintenance charge from Cash Value on the Contract date, on each Contract Anniversary prior to the Retirement Date, and upon termination of the Contract. In addition, Aetna reserves the right to deduct a daily administrative expense charge of up to 0.25%, on an annual basis, of the net asset value of the Separate Accounts, to cover its administrative expenses during the accumulation period and the annuity period. Of the 0.25% maximum administrative expense charge, Aetna currently deducts 0.15% annually of the average daily net assets of the Separate Accounts during the accumulation period. An administrative charge currently is not imposed during the annuity period.

8. No charge currently is made for transfers of cash values among the Funds or from a Fund to a Fixed or Credited Interest Option during the accumulation period. Aetna reserves the right to establish a minimum amount for transfers and to impose a transfer charge of up to $10 for each transfer request after the first twelve requests in each Contract year to reimburse Aetna for its transfer administrative costs during the accumulation period. No transfer fees are charged during the annuity period.

9. No profit is anticipated from the maintenance charge, transfer fee and administrative expense charges, which will not be greater than Aetna's average expected cost of the services to be provided, defined in accordance with Rule 26a–1 under the 1940 Act.

10. No charge currently is deducted for premium taxes. Aetna reserves the right, however, to deduct such taxes from cash value under the Contracts at the time such taxes are payable. Aetna reserves the right to offer Other Contracts that permit the deduction of premium taxes from cash values or purchase payments. No charges currently are made for federal, state or local taxes, other than premium taxes, that Aetna incurs or that may be attributable to a Separate Account or the Contracts. Aetna reserves the right to deduct such taxes in the future for any such tax or economic burden from any sales load payable to Aetna with respect to the Contracts. Aetna will not deduct any such taxes from the assets of the Separate Accounts unless it has been specifically authorized to do so by the Commission. Applicants intend to rely on Rule 26a–2(d) under the 1940 Act to permit the deduction of taxes from the assets of a Separate Account.

11. No sales charge is deducted from premium payments. Aetna reserves the right to deduct a contingent deferred sales charge ("CDSC") of up to 9% of the amount withdrawn, on partial or full Contract surrenders and withdrawals of Account Value, and upon election of certain annuity payment options, to compensate Aetna for its distribution expenses. The CDSC is applied to purchase payments and not to any increases in Account Value. The maximum CDSC currently is 7%, decreasing by up to 1% per year after payment of a purchase payment until it reaches zero after seven years. The aggregate CDSC is guaranteed never to exceed 8.5% of aggregate premium payments. The CDSC may be waived under certain specified circumstances. Amounts attributable to purchase payments are considered withdrawn before amounts attributable to income, and the oldest purchase payments are considered withdrawn first when determining the amount of CDSC that should be applied.

12. Aetna anticipates that the CDSC will not generate revenues that will be sufficient to pay all its distribution costs. Excess distribution costs, thus, would be paid out of Aetna's general assets, which may include profits derived from the mortality and expense risk charge assessed under the Contracts. Applicants will rely on Rule 6c–8 under the 1940 Act to deduct the CDSC.

13. A daily charge will be deducted from the net assets of the Separate Accounts to compensate Aetna for assuming certain mortality and expense risks. Aetna currently charges 0.35% for the expense risk, 0.75% for standard mortality risks, and 0.15% for the enhanced death benefit, or a current total charge of 1.25%. Aetna reserves the right to charge up to .90% on an annual basis for standard mortality risks, in which event the charge for mortality and expense risks would be at a maximum annual rate of 1.40% of net assets.

14. The mortality risk arises from Aetna's contractual obligation to make annuity payments (in accordance with the annuity tables and other provisions in the Contracts) regardless of how long any individual annuitant or all annuitants may live. The mortality risk is that an annuitant will live longer than predicted by Aetna's actuarial projections, thereby resulting in higher than expected annuity payments. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the annuitant will receive under the Contracts. Aetna also assumes a mortality risk in that Aetna may be obligated to pay either a standard death benefit or an enhanced death benefit in excess of a contract holder's account value.

15. The expense risk assumed by Aetna is the risk that charges for administration expenses, which are guaranteed not to increase for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts or Other Contracts.

16. Aetna currently anticipates that, under ordinary circumstances, the mortality and expense risk charge will be more than sufficient to cover its costs. Accordingly, any excess will be profit to Aetna and may be available to pay distribution costs for the Contracts that are not covered by funds derived from the CDSC.

Applicants' Legal Analysis

1. Applicants request exemptions under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Accounts in connection with funding the Contracts and Other Contracts. Applicants further request that such exemptive relief be extended

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[11] *See* Exchange Act Release No. 34925, *supra* note 4.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] Applicants have undertaken to amend their application during the Notice Period to include the representation that Future Contracts will be substantially similar "in all material respects" to the Contract.

[2] Applicants are not requesting Commission review of whether the Fixed Interest Option or any other Credited Interest Option under the Contracts are securities required to be registered under the 1933 Act. Applicants will not consider any order issued as a result of this application to be an expression of any view by the Commission on this issue.

[3] The death benefit calculations in (iii) under the standard death benefit and in (ii), (iii) and (iv) under the enhanced death benefit apply until the Certificate Holder or annuitant reaches the death benefit maximum age shown in the Contract. Thereafter, the death benefit is only adjusted for purchase payments, withdrawals and amounts applied to annuity options. Currently, there is no limitation on the maximum death benefit payable under the standard death benefit or the enhanced death benefit; however, Aetna reserves the right in the future to impose a limitation on the maximum allowable death benefit under (iii) under the standard and under (ii), (iii) and (iv) under the enhanced death benefit.

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to ALIAC as principal underwriter for the Aetna Contracts and to Future Underwriters, a class consisting of broker-dealers who may, in the future, act as principal underwriters of the Contracts. Applicants submit that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants state that the terms of the relief requested with respect to any Other Contracts funded by the Separate Accounts or distributed by any Future Underwriter are consistent with the standards set forth in Section 6(c) of the 1940 Act. Without the requested relief, exemptive relief would have to be requested for each new separate account established to fund the Other Contracts or for each Future Underwriter. Such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. The requested relief would eliminate the need for the filing of redundant exemptive applications, thereby reducing administrative expenses, maximizing efficient use of resources and, thus, promoting competitiveness in the variable annuity market. Both the delay and the expense of repeatedly seeking exemptive relief would, Applicants assert, impair Aetna's ability to effectively take advantage of business opportunities as they arise. If Aetna were repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by Aetna's increased overhead. Applicants submit, therefore, that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants submit that Aetna is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge under the Contracts with the standard death benefit is a reasonable and proper insurance charge to compensate Aetna for assuming certain risks under the Contracts, including the risk that: (a) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the cash value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges. Thus, Applicants assert that this charge is consistent with the protection of investors.

6. Aetna represents that the annual charge of 1.25% of net assets for mortality and expense risks (.90% and .35%, respectively) assumed by it in connection with the standard death benefit is within the range of industry practice for comparable annuity contracts. This representation is based upon Aetna's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Applicants represent that Aetna will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.[4]

7. Applicants further represent that the additional mortality risk charge of 0.15% for the enhanced death benefit is reasonable in relation to the risks assumed under the Contracts. Based on an actuarial analysis of the cost of providing an enhanced death benefit, it was determined that the additional mortality risk charge of up to 0.15% was a reasonable charge for providing the enhanced death benefit in relation to the risks assumed by Aetna under the Contracts. Aetna will maintain at its principal offices,[5] available to the Commission, upon request, a memorandum setting forth in detail the methodology used in determining that the additional risk charge of up to 0.15% for the enhanced death benefit is reasonable in relation to the risks assumed by Aetna under the Contracts.

8. Similarly, prior to making available any Other Contracts through the Separate Accounts, Applicants represent that the mortality and expense risk charges under such Other Contracts will be within the range of industry practice for comparable contracts. Aetna undertakes to maintain at its principal offices, available to the Commission upon request, memoranda setting forth in detail the products analyzed in the course of, and the methodology and results of, of its comparative surveys and analyses in reaching these determinations.

9. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC deducted under the Contracts. Aetna has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Contract holders. The basis for that conclusion is set forth in a memorandum which will be maintained by Aetna at its administrative offices and will be available to the Commission.

10. Applicants represent that Other Contracts will be offered only if Aetna concludes that the proposed distribution financing arrangement will benefit such Other Contracts and the Separate Accounts established in connection with their issuance and the Contract owners. The basis for such conclusion will be set forth in a memorandum which will be maintained by Aetna at its administrative offices and will be made available to the Commission, upon request.[6]

11. Accordingly, Applicants assert that the deduction for the assumption of mortality and expense risks is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

12. Aetna also represents that the Separate Accounts will only invest in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the company, formulate and approve any such plan in accordance with Rule 12b–1.

[4] Applicants have undertaken to amend their application during the Notice Period to include this representation.

[5] Applicants have undertaken to amend their application during the Notice Period to include this representation.

[6] Applicants have undertaken to amend their application during the Notice Period to include these representations.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested to permit the daily deduction from the assets of the Separate Accounts of the charge for assumption of mortality and expense risks, including an enhanced death benefit, at a maximum annual rate of 1.40% of net assets, are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6354 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20946; 812–9318]

The First Trust Special Situations Trust, et al.; Notice of Application

March 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The First Trust Special Situations Trust, Target Equity Trust, Value Ten Series 1 and subsequent series, and Nike Securities L.P. ("Nike").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

FILING DATE: The application was filed on November 3, 1994, and was amended on March 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 3, 1995 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Nike Securities L.P., 1001 Warrenville Road, Suite 3000, Lisle, Illinois 60532.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The First Trust Special Situations Trust (the "Trust"), a unit investment trust registered under the Act, consists of a number of series ("Series"), each of which will be similar but separate and designated by a different series number. Target Equity Trust, Value Ten Series 1 is of one of the Series of the Trust. Nike is the sponsor for each Series (the "Sponsor"). Applicants request that the relief sought herein apply to any future Series that has the characteristics described below and in the application.

2. Each Series will have a portfolio which contains equity securities ("Equity Securities") which are (i) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares equal in value to at least 25,000 United States dollars) on an exchange (an "Exchange") which is either (a) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or (b) a foreign securities exchange that meets the qualifications set out in the proposed amendment to rule 12d3–1(d)(6) under the Act, as proposed by the Commission,[1] and that releases daily closing prices, and (ii) included in a published index (an "Index").

3. The investment objective of each Series is to seek a greater total return than the stocks comprising an entire related Index (*e.g.*, the Dow Jones Industrial Average ("DJIA"), the Hang Seng Index, or the Financial Times Industrial Ordinary Share Index). Certain of the Series will acquire approximately equal values of a designated number of stocks in the DJIA having the highest dividend yields as of a specified date and will hold those stocks for a designated period. Other Series will create their portfolios in a similar manner using securities that are included in other Indices. The Sponsor of the Series intends that, as each Series terminates, a new Series ("New Series") based on the appropriate Index will be offered for the next period.

4. Each Series has or will have a contemplated date (a "Rollover Date") on which holders of units in that Series (the "Rollover Series") may at their option redeem their units in the Rollover Series and receive in return units of a New Series which is created on or about the Rollover Date.

5. There is normally some overlap from year to year in the stocks having the highest dividend yields in an Index and, therefore, between the portfolios of each Rollover Series and the corresponding New Series. For example, of the ten securities selected for inclusion in Value Ten Series 5 on September 7, 1994, eight were still among the top ten dividend yielding stocks in the DJIA as of the date of the amended application.

6. In connection with its termination, each Rollover Series sells all of its portfolio securities on an Exchange as quickly as practicable, but over a period of time so as to minimize any adverse impact on the market price. Similarly, a New Series acquires its portfolio securities in purchase transactions on an Exchange. This procedure creates brokerage commissions on portfolio securities of the same issue that are borne by the holders of units of both the Rollover Series and the New Series. Applicants, therefore, request an exemptive order to permit any Rollover Series to sell portfolio securities to a New Series and a New Series to purchase those securities.

7. In order to minimize overreaching, the Sponsor will certify to the trustee of the Rollover Series and the New Series, within five days of each sale from a Rollover Series to a New Series, (a) that the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Exchange for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the

[1] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1).

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correct price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of units of the New Series, and distributions to holders of the Rollover Series with regard to redemption of their units or termination of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the trustee's corrected price, the Sponsor and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Investment companies under common control may be considered affiliates of one another. Each Series will have an identical or common Sponsor, Nike. Since the Sponsor of each Series may be considered to control each Series, it is likely that each Series would be considered an affiliate of the others.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from, or sell securities, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Series will be consistent with the policy of each Series, as only securities that otherwise would be brought and sold on the open market pursuant to the policy of each Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees and is therefore contrary to the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Equity Securities by a Rollover Series to a New Series will be affected at the closing price of the securities sold on the applicable Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Series.

3. The trustee of each Rollover Series and New Series will (a) review the procedures discussed in the application relating to the sale of securities from a Rollover Series to a New Series and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a–7(f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6357 Filed 3–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20949; 812–9442]

ML Venture Partners II, L.P. et al.; Notice of Application

March 9, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLCP II"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), and Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ").

RELEVANT ACT SECTIONS: Order requested under section 57(c) from section 57(a)(2).

SUMMARY OF APPLICATION: Applicants request an order relating to the sale of shares of common stock of Corporate Express, Inc. by MLVP II in an underwriting in which Merrill Lynch and/or DLJ are members of the underwriting syndicate.

FILING DATE: The application was filed on January 20, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 3, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MLCP II and Merrill Lynch, North Tower, World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, (202) 942–0570, or Robert A. Robertson, Branch Chief, (202) 942–0560 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. MLVP II has five general partners, consisting of four individuals (the "MLVP II Individual General Partners") and one managing general partner, MLVP II Co. L.P. (the "MLVP II Managing General Partner"). The MLVP II Individual General Partners include three MLVP II Independent General Partners (defined to be individuals who are not "interested persons" of MLVP II) and one general partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner. The MLVP II Managing General Partner, is a limited partnership controlled by its general partner, Merrill Lynch Venture Capital Inc. (the "Management Company"). The Management Company, an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), performs, or arranges for the performance of, the management and administrative services necessary for the operation of MLVP II. On May 23, 1991, MLVP II, the MLVP II Managing General Partner, and the Management Company retained DLJ Capital Management Corporation (the "Sub-Manager"), an indirect wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., to provide management services in connection with the venture capital investments of MLVP II pursuant to a Sub-Management Agreement (the "Sub-Management Agreement"). Under the Sub-Management Agreement, the Sub-Manager is primarily responsible for the venture capital investments of MLVP II. The agreement provides that the Sub-Manager shall, subject to the overall supervision of the MLVP II Individual General Partner, "make all decisions regarding Venture Capital Investments and, among other things, find evaluate, structure, monitor and liquidate such investments."

2. Merrill Lynch, a Delaware corporation, is the principal subsidiary of ML & Co. ML & Co., a Delaware corporation, is a diversified financial services holding company which, through its subsidiaries, provides investment and financing, insurance, real estate, and related services.

3. DLJ, a Delaware corporation, is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., a holding company which through its subsidiaries engages in investment banking, merchant banking, public finance, trading, distribution, and research. Donaldson, Lufkin & Jenrette, Inc. is a subsidiary of The Equitable Companies Incorporated.

4. Corporate Express is a distributor of office supplies and products that it sells directly to large corporate customers. Corporate Express has expanded its operations significantly over the past three years and currently has annualized revenues in excess of $600 million.

5. MLVP II made an initial investment in Corporate Express in May, 1992. At that time, MLVP II acquired 442,136 shares of common stock and 760,800 shares of Series A Convertible Preferred Stock for $1,392,838 ($0.22 per common share and $1.70 per Series A Preferred Share). MLVP II acquired these shares from the Management Company pursuant to the terms and conditions contained in an SEC exemptive order dated May 11, 1992 (the "Blanket Exemptive Order") permitting co-investments between MLVP II and certain entities managed by DLJ Capital Corporation. In April, 1993, MLVP II acquired 153,450 shares of Series B Convertible Preferred Stock for $537,075 ($3.50 per share) in a follow-on investment in Corporate Express. MLVP II's follow-on investment in Corporate Express was made in accordance with the terms and conditions of the Blanket Exemptive Order.

6. On September 23, 1994, 7,500,000 shares of common stock of Corporate Express were offered to the public in an underwritten offering in which DLJ acted as a managing underwriter and Merrill Lynch acted as an underwriter. In connection with that offering, MLVP II exchanged its 914,250 Class A and B Preferred Shares for 914,250 shares of common stock of Corporate Express. At the same time, Corporate Express effected a one-for-two reverse split of its common stock. As a result of that split, MLVP II exchanged its 1,356,386 shares of common stock of Corporate Express for 678,193 shares of common stock. Since the initial public offering, the common stock of Corporate Express has traded in the NASDAQ National Market System ("NASDAQ"). In addition to the purchasers in the public offering and in subsequent secondary market transfers, the stockholders of Corporate Express include certain affiliates of DLJ, members of management and other employees of Corporate Express, and other institutional investors.

7. As of December 31, 1994, MLVP II owned 696,234 shares, or approximately 2.7%, of the outstanding common stock of Corporate Express. At such date, affiliates of DLJ (excluding MLVP II) owned 2,168,471 shares, or approximately 8.4%.

8. Although MLVP II has made no determination as to the time at which it would like to sell its investment in Corporate Express, MLVP II is now considering alternative methods of disposing of such investment.

Applicants' Legal Analysis

1. Applicants request an order under section 57(c) exempting from section 57(a)(2) sales of shares of common stock of Corporate Express by MLVP II in underwritings in which Merrill Lynch and/or DLJ are members of the underwriting syndicate.[1]

2. Section 57(a)(2) prohibits certain affiliates of a business development company from purchasing any security or other property on a principal basis from the business development company or from any company controlled by the business development company, except securities of which the seller is the issuer. Section 57(b) provides, in part, that the affiliates affected by section 57(a) include any "person directly or indirectly either controlling, controlled by or under common control with" the business development company. Section 57(c) provides that a person may file an application with the SEC for an order exempting a proposed transaction from one or more provisions of section 57(a)(1) through (3), and that the SEC shall issue an order if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the SEC under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its report to shareholders or partners; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants believe that the Management Company is controlled by ML & Co. and that ML & Co. might be deemed to exercise and controlling influence over MLVP II and Merrill Lynch. Likewise, applicants believe that the Sub-Manager is controlled by Donaldson, Lufkin & Jenrette, Inc. and that Donaldson, Lufkin & Jenrette, Inc. might be deemed to exercise a controlling influence over MLVP II and DLJ. As a result of these affiliations, sales of securities on a principal basis by MLVP II to Merrill Lynch and/or DLJ are prohibited by section 57(a) and cannot be effected unless an order is issued under section 57(c).

[1] Applicants do not believe that the proposed transactions would constitute joint transactions under section 57(a)(4) and rule 17d–1 and therefore have not requested that the order include relief under that section and rule. Applicants recognize that the Commission expresses no opinion on this issue.

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4. Applicants believe that the statutory standards set forth above will be satisfied with respect to the relief requested. In this connection, applicants believe that the structure of the proposed transaction has been designed to insure that the terms of the transaction will be fair and reasonable, will not involve overreaching on the part of any person concerned, and will eliminate the possibility of abuses of the potential conflict of interest. The terms of the proposed transaction provide that MLVP II will only sell shares in an underwritten offering in which Merrill Lynch and/or DLJ are members of the underwriting syndicate if certain conditions are met. The Sub-Manager for MLVP II must initially evaluate the proposed transaction and determine to recommend the sale of the investments.

5. The abuses that section 57(a)(2) is designed to deter are limited with respect to the proposed transactions. The shares of Corporate Express are traded on NASDAQ and the price to be paid for shares in an underwritten offering will approximate the trading price of such shares on NASDAQ less an underwriting discount. The underwriting terms with respect to MLVP II's sale of shares must be on the same terms applicable to any selling shareholder participating in the offering, including terms applicable to affiliates of ML & Co. and/or DLJ. The underwriting terms and arrangements, including the underwriting discount, will be reviewed and passed upon by the Individual General Partners, and separately by the Independent General Partners.

6. Liquidity in portfolio investments is becoming increasingly important as MLVP II approaches the ninth year of its ten year term. The ability to sell shares in an underwritten offering in which Merrill Lynch and/or DLJ are acting as underwriters may provide liquidity not otherwise available to MLVP II. Due to its affiliation with Corporate Express through Merrill Lynch, sales by MLVP II in the public market of shares of Corporate Express are subject to the volume limitations contained in rule 144 under the Securities Act of 1933. In addition, because DLJ acted as managing underwriter for Corporate Express in its initial public offering, it is likely that DLJ will be the managing underwriter or otherwise a member of the underwriting syndicate in future offerings of such company's securities. Thus, in the absence of the requested relief, MLVP II will be at a substantial disadvantage because it will be unable to liquidate its holdings at a time when other institutional investors in Corporate Express are selling shares in an underwritten offering for which Merrill Lynch and/or DLJ are members of the underwriting syndicate.

7. MLVP II believes that the relief requested is consistent with its purpose, its stated policies and the disclosure made to its prospective investors. Applicants also believe that the proposed transactions are in the best interests of MLVP II to the extent that such transactions permit MLVP II to liquidate portfolio securities on favorable terms and in a more expedited manner than would otherwise be available.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. If MLVP II is offered the opportunity to sell shares of common stock of Corporate Express in an underwritten offering in which Merrill Lynch and/or DLJ is a member of the underwriting syndicate, the Sub-Manager will review the terms of the proposed offering. The Sub-Manager will provide a written report to the independent General Partners which will set forth the Sub-Manager's recommendation as to whether MLVP II should sell shares in such underwritten offering based on the Sub-Manager's analysis of all factors it deems relevant, including the terms of the proposed underwritten offering.

2. MLVP II will be given the opportunity to sell shares in such underwritten offering on at least a proportionate basis with affiliates of DLJ and ML & Co. (if any), and on the same terms applicable to any selling shareholders participating in the offering, including terms applicable to affiliates of DLJ and ML & Co. (if any) selling shares in such offering. In this regard, the underwriting discount with respect to such offering will be no larger than the customary underwriting discount charged by underwriters for equity securities in similar transactions.

3. MLVP II will only participate in such underwritten offering if the shares to be sold continue to be traded on NASDAQ or are listed on a national securities exchange, as of the date of the offering and if the offering price is determined by reference to, and approximates, the price of the shares on NASDAQ, or a national securities exchange, at the time the offering price is determined.

4. The underwriting terms and arrangements with respect to the proposed transaction must be determined by the Individual General Partners, and a majority of the Independent General Partners, to be fair and reasonable.

5. If the Sub-Manager, on the basis of its evaluation described above, recommends that MLVP II sell shares in such underwritten offering, the Individual General Partners shall then determine whether, in their view, it is in the best interests of MLVP II to sell shares in such underwritten offering. MLVP II shall only sell shares in such underwritten offering if the Individual General Partners, including a majority of the Independent General Partners, determine that:

(i) the terms of the proposed transaction, including the consideration to be paid to MLVP II, are reasonable and fair and do not involve overreaching of MLVP II or its partners on the part of any person concerned;

(ii) the proposed transaction is consistent with the policies of MLVP II as indicated in its filings under the Securities Act of 1933 and the Securities Exchange Act of 1934, and its reports to its partners; and

(iii) participation by MLVP II in the proposed transaction is in the best interests of the partners of MLVP II.

6. MLVP II will maintain the records required by section 57(f)(3) of the Act as if each of the transactions permitted under these conditions were approved by the Independent General Partners under section 57(f) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6356 Filed 3–14–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Public Meeting and Request for Information on the Centralization and Computerization of DOT Dockets

AGENCIES: The Office of the Secretary (OST), the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the Maritime Administration (MARAD), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the United States Coast Guard (USCG), DOT.

ACTION: Notice of public meeting.

SUMMARY: DOT is consolidating its nine separate docket facilities into a single, central office, and initiating a transition from a paper-based system to use of an optical "imaging" technology for more efficient storage, management, and retrieval of docketed information. This change also will address increasing space limitations, provide better security, and provide a platform for eventual electronic filing and on-line public access to the docket. The ultimate objective is to make records accessible from outside Washington, not just at DOT headquarters. This notice announces the date, time, location, and procedures for a public meeting to discuss this initiative.

DATES: The public meeting is scheduled 1:30 PM to 4:00 PM (local time) for: March 29, 1995; Washington, D.C.

ADDRESSES: The public meeting will be held at: U.S. Department of Transportation, Room 2230, 400 7th Street SW, Washington, D.C. 20590. Individuals interested in attending the meeting should contact Rasheed Tahir at 202–366–9307, no later than March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Office of General Counsel, Department of Transportation, (202) 366–4723, 400 7th Street SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation has directed that the Office of the Secretary (OST) and the DOT operating administrations consolidate their separate paper-based docket facilities into a single, central office and convert to an electronic image-based system. This change will enable the Department to provide better service and access to the public and to government users. Currently, OST and each operating administration has its own separate docket facility and performs many duplicative docketing functions. Substantial building space is inefficiently allocated for public access to the dockets. On a given day, several facilities may be empty and one jammed, with public users waiting in the hall outside. Increases in the number and complexity of rulemakings and adjudicatory proceedings have generated a growing mountain of paper, which, in turn, has created pressing space and storage problems. The dependence on paper also perpetuates inefficiencies in information processing and dissemination. Voluminous dockets, in particular, make it difficult for users to search for and organize relevant information. Multiple copies of docketed materials must be produced and circulated to responsible offices in the Department. These efforts consume a substantial amount of time and resources. The consolidation will eliminate duplication, improve records management, enhance docket security, and provide easier public access by creating a single point of entry. The affected offices and agencies are working together to develop the consolidated docket facility and to standardize docket procedures to the extent possible.

As part of the consolidation effort, DOT has initiated a phased transition from a paper-based docket system to storage of docket records in an electronic format. This change responds to five different needs: to (1) Store increasing amounts of docketed information; (2) provide users with better, quicker, and easier access to that information: (3) provide more efficient ways to transmit information to and from the dockets; (4) provide users with the ability to perform electronic searches of information in the dockets to increase the efficiency and quality of this review; and (5) provide better security for docketed materials, which now may get lost or misplaced.

To meet the legal requirements that DOT maintain a record of all materials submitted to the dockets and produce certified true copies of docketed information, the new system will store docketed information as images on optical disks. Images are like photographs; when stored on read-only optical disks, they are permanent and unalterable, assuring 100 percent accuracy of the records. The optical disk system will allow more efficient storage and management of docketed information, because a single disk can store hundreds of documents that are easily available through the index. The index will provide users with the capability for rapid retrieval and more sophisticated cross-referencing and searching of docketed information.

The system will have controlled access and security features to maintain its integrity and to protect against viruses and tampering. It will have "open architecture" to enable future expansion and incorporation of technological improvements. When finally implemented, it will consist of about 5.5 million imaged records, taking into account the average annual amount of material received and the orderly retirement of records. The agencies plan to backscan dockets that are currently open and a limited amount of necessary historical or precedential material to optical disks that can be indexed for research purposes. Suggestions on what information would be useful to include in the system are welcome, bearing in mind that all existing paper dockets cannot be scanned. The remainder of the paper dockets will be sent to the Federal Records Center consistent with standard operating procedures.

The Department's Docket Management Facility initially will accept only "hard" copy filings. However, to facilitate review and processing now, the formal paper filing can be accompanied by floppy disks for the action offices. The Department is considering providing Optical Character Recognition (OCR) capability in the docket system as soon as it is feasible. The Department's priority, however, is to optimize the document flow into, within, and from the Department through electronic transmission. When the new system and its staff have the capability to handle the change, electronic filing will be encouraged. Electronically-filed documents will not need OCR translation. The Department is considering adding future capabilities to the system where possible, including: (1) Use of government-approved electronic signature; (2) electronic transfer of documents to the **Federal Register** and to the Federal Records Center; (3) multi-media capability to enable access by visually and hearing impaired individuals; and (4) automatic billing of public users (through credit cards/bills) for filing fees and copying services. The timing of the transition to electronic transmission, OCR and the availability of the future capabilities will depend upon the readiness of the new system to handle them and upon budgetary constraints.

The Department plans a phased transition to the new, centralized facility. The Office of the Secretary's (OST) docket office has already been relocated. During the transfer of OST's docket to the imaging system and the internal connection of Department staff to the dockets on-line, hard copies will be maintained in the docket office until the new system works smoothly. Computer work stations in the new docket office will be available to access the information that is electronically stored. These will have an easy-to-use interface and docket staff will be available to help users. The docket offices of the other DOT agencies will be sequentially consolidated into the new facility. As part of this process, the docket facility will eventually be "networked" to Department offices.

Ultimately, the public will have on-line access to the docket from outside of DOT's docket office. The system will support both Macintosh and IBM compatible equipment and provide an easy-to-use interface with pull-down menus. The architecture of the network will enable real-time response for accessing images, but acceptable speed (comparable to turning the pages of a

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document) will require the use of at least a 486DX2–66 machine or Macintosh equivalent.

Not only should this effort result in a much more efficient use of space, personnel, equipment, and expertise, but it should save the public and the government time and money in analyzing information submitted to the docket.

Notice of Public Meeting

The Department believes that users will benefit from an opportunity to hear a more detailed description of the new docket management system and to ask questions about it. Therefore, we are holding a public meeting beginning at 1:30 PM and ending no later than 4:00 PM (local time) on March 29, 1995, in Washington, DC. We hope that as people start using the system, they will point out problems and bring us new ideas on how to make the system more responsive to their needs.

Seating will be restricted by available room size and will be made available on a first-come-first-served basis. If time and the number of attendees permit, we may be able to conduct one or more short tours of the new docket facility. If the interest expressed in the tour exceeds the capacity of our docket facility, we will schedule additional tours. Persons interested in attending should contact Rasheed Tahir at 202–366–9307.

Since this meeting is intended to inform the public about and to solicit public views and questions on the new docket management system, we will conduct it in an informal manner.

Issued in Washington, D. C. on March 13, 1995.

Stephen H. Kaplan,

General Counsel.

[FR Doc. 95–6512 Filed 3–14–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–9521]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 4, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Indpendence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 9, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27956
Petitioner: Air Line Pilots Association
Sections of the FAR Affected: 14 CFR appendices I and J, part 121
Corrective Action: To withdraw the notice of this petition published in the **Federal Register** on February 17, 1995. Due to an inadvertent administrative error, on January 31, 1995, the FAA responded to already denied petitions and published this response for comments.

Dispositions of Petitions

Docket No.: 24052
Petitioner: The Blue Angels
Sections of the FAR Affected: 14 CFR 91.117(a) and (b), 91.119(c), and 91.303(c) and (d)
Description of Relief Sought/ Disposition: To extend Exemption No. 4504, as amended, which permits the Blue Angels pilots to conduct airshow rehearsals involving low-level, high-speed, and aerobatic flight subject to certain conditions and limitations. *GRANT, February 23, 1995, Exemption No. 4504D*

Docket No.: 25390
Petitioner: Airbus Industrie
Sections of the FAR Affected: 14 CFR 145.35
Description of Relief Sought/ Disposition: To permit the production units and associated partners of Airbus to be collectively certificated under Airbus as a U.S. foreign repair station to support the operation of U.S.-registered A300, A310, A320, A321, A330, and A340 aircraft. *GRANT, February 15, 1995, Exemption No. 6029*

Docket No.: 26976
Petitioner: United States Coast Guard
Sections of the FAR Affected: 14 CFR 91.119(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 5614, which permits the Coast Guard to operate over other than congested areas at an altitude of less than 500 feet and, in the case of operations over open water or sparsely populated areas, at a distance closer than 500 feet to any person, vessel, vehicle, or structure for the purpose of rescuing and aiding persons and protecting and saving property. *GRANT, February 23, 1995, Exemption No. 5614A*

Docket No.: 27086
Petitioner: Bombardier, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A, part 61
Description of Relief Sought/ Disposition: To extend Exemption No. 5617, which permits Bombardier to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR. *GRANT, February 16, 1995, Exemption No. 5617A*

Docket No.: 27951
Petitioner: Corning Incorporated
Sections of the FAR Affected: 14 CFR 25.562(b) and (c)
Description of Relief Sought/ Disposition: To allow Corning Incorporated exemption from performing the emergency landing dynamic tests required by §§ 25.562(b) and (c), for seating on Corning's Dornier 328–100 aircraft.

DENIAL, February 16, 1995, Exemption No. 6028
Docket No.: 28077
Petitioner: Evan Joseph Farrow (through his mother, Mrs. Pamela Farrow)
Sections of the FAR Affected: 14 CFR 121.311(b)
Description of Relief Sought/ Disposition: To permit Evan to be held on his caregiver's lap, rather than being secured in an approved child restraint device or in an individual seat with a seatbelt, while aboard an aircraft even though he has reached his second birthday. *GRANT, February 14, 1995, Exemption No. 6027*

Docket No.: 28099
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 25.791(a) and 121.317(a)
Description of Relief Sought/ Disposition: To allow Delta to operate MD–90 aircraft with the "No Smoking" signs hardwired in the ON position. *GRANT, March 1, 1995, Exemption No. 6034*

[FR Doc. 95–6401 Filed 3–14–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–17; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1985 Dobson Horse Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1985 Dobson horse trailers are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1985 Dobson horse trailer that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATE: The closing date for comments on the petition is April 14, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable or being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data of such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested an opportunity to comment on the petition. At the cost of the period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) has petitioned NHTSA to decide whether 1985 Dobson horse trailers are eligible for importation into the United States. The petitioner contends that this vehicle is eligible for importation under 49 U.S.C. 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1985 Dobson horse trailer complies with Standard No. 119 New Pneumatic Tires for Vehicles other than Passenger Cars. Additionally, the petitioner claims that the vehicle complies with Standard No. 121 Air Brake Systems in that it "has drum style brakes at each wheel set, of a size and capacity sufficient to meet the standard."

The petitioner further contends that the vehicle is capable of being readily altered to the meet the following standards, in the manner indicated:

Standard No. 106 Brake Hoses: Replacement of all existing brake hose linings from the front connection to the pressure modulators and from the pressure modulators to the wheel brake assemblies with hose lining that bear DOT markings and have crimped end fittings.

Standard No. 108 Lamps, Reflective Devices, and Associated Equipment: (a) installation of two yellow illuminated markers on each side of the vehicle and on its from end; (b) installation of one yellow reflector on each side of the vehicle; (c) installation of one red illuminated marker on each side of the vehicle and five red illuminated markers on its rear end; (d) installation of one red reflector marker on each side of the vehicle and two red reflector markers on its rear end; (e) installation of one strip of 50mm (Grade DOT–C2) white/red retroreflective sheeting on each side of the vehicle and on its rear end; (f) installation of two strips of 50mm (Grade DOT–C2) white retroreflective sheeting on the vehicle's rear end; (g) installation of one white license plate lamp on the vehicle's rear and; (h) installation of two red taillamp/ stoplamp/turn indicators on the vehicle's rear end.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate.

Standard No. 120 Tire Selection and Rims for Motor Vehicles other than Passenger Cars: Installation of a tire information placard.

Interested person are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

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Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 9, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–6362 Filed 3–14–95; 8:45 am]

BILLING CODE 4915–59–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice and request for public comment regarding proposed amendments to sentencing guidelines, policy statements, and commentary.

SUMMARY: The Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. A synopsis of issues to be addressed is set forth below. The Commission may report amendments to the Congress on or before May 1, 1995. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary relating to the issues below.

DATES: Public comment should be received by the Commission no later than April 10, 1995, to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1995.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise periodically guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o), (p).

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rule-making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested as to whether any of the proposed amendments should be made retroactive under this policy statement.

With the exception of proposed amendment and issue for comment 4, the issues below are derived specifically from the Commission's Special Report to Congress: Cocaine and Federal Sentencing Policy, submitted to Congress on February 28, 1995. In addition to requesting comment on these issues, the Commission invites suggestions for specific amendment language. Publication of an issue for comment reflects only the Commission's determination that the issue is worthy of public comment by interested groups and individuals. Publication should not be regarded as an indication that the Commission or any individual Commissioner has formed a view on the merits of the issue.

Authority. 28 U.S.C. 994 (a), (o), (p), (x).

Richard P. Conaboy,

Chairman.

1. Issue for Comment

On February 28, 1995, the Commission issued a special report to Congress on cocaine and federal sentencing policy. The report recommended that changes be made to the current cocaine sentencing guidelines, including changes to the 100-to-1 quantity ratio between powder cocaine and crack cocaine used in determining sentences. The report indicated that the Commission will investigate the feasibility of creating new guideline enhancements and amending current enhancements to address more fully and fairly the harms associated with cocaine offenses generally and, specifically, the added harms associated with crack cocaine offenses. Based on these new enhancements, the Commission intends to make appropriate adjustments in the guideline quantity ratio.

The Commission requests comment regarding implementation of the recommendations in the report. Specifically, the Commission requests comment on the appropriateness of adding specific offense characteristics to § 2D1.1 to enhance sentences for violence and other harms associated with some crack and powder cocaine offenses as well as some other drug offenses. In addition, the Commission seeks comment on the usefulness of adding or amending commentary and policy statements regarding possible departures to take account of the increased harms associated with some cocaine offenses. For example, how should the social harm associated with "crack houses" or other establishments where drugs are sold and consumed be taken into account? The Commission previously has requested commentary on what quantity ratio should be substituted for the current 100-to-1 ratio.

In addition, the Commission seeks comment on the timing and scope of guideline amendments for cocaine offenses. For example, if the Commission proceeds with guideline amendments for cocaine offenses in this amendment cycle, should the amendments apply to drug offenses generally or only to cocaine offenses? If new enhancements (e.g., for use of a firearm and victim injury) are made generally applicable to drug offenses, are other changes in the drug guidelines necessary (e.g., in the relative emphasis on drug quantity)? Should any of these changes be made retroactive to cases previously sentenced, and if so, how might this process best be accomplished?

A number of amendment proposals and issues for comment relating to drug sentencing policy were set forth in the **Federal Register** of January 9, 1995. See 60 FR 2430. Additional issues for comment raised by the Special Report on Cocaine Sentencing are set forth below.

2. Issue for Comment

In light of the Commission's report to Congress on cocaine and federal sentencing policy and its recommendations regarding sentences for those convicted of simple possession of crack cocaine, the Commission requests comment on whether and how it should amend § 2D2.1 for offenses involving the simple possession of crack cocaine.

3. Issue for Comment

The Commission invites comment as to whether the enhancements for drug offenses involving underage or pregnant individuals, which are now included in § 2D1.2, should instead be made specific offense characteristics under § 2D1.1.

Inclusion in § 2D1.1 would make these enhancements applicable to all drug defendants whose relevant conduct involved juveniles or pregnant individuals, regardless of whether the defendant was convicted of the particular statutes now indexed to § 2D1.2 (21 U.S.C. 859, 860, and 861). The circuits appear to be split regarding whether conviction under one of these statutes is a prerequisite for application of the § 2D1.2 enhancements. (Compare United States v. Oppedahl, 998 F.2d 584 (8th Cir. 1993), with United States v. Locklear, 24 F.3d 641 (4th Cir. 1994), cert. denied, 115 S. Ct. 278, 457 (1994).)

4. Synopsis of Proposed Amendment

This amendment inserts additional background commentary explaining the Commission's rationale and authority for § 4B1.1 (Career Offender). The amendment responds to a decision by the United States Court of Appeals for the District of Columbia Circuit in United States v. Price, 990 F.2d 1367 (D.C. Cir. 1993). In Price, the court invalidated application of the career offender guideline to a defendant convicted of a drug conspiracy because 28 U.S.C. 994(h), which the Commission cites as the mandating authority for the career offender guideline, does not expressly refer to inchoate offenses. The court indicated that it did not foreclose Commission authority to include conspiracy offenses under the career offender guideline by drawing upon its broader guideline promulgation authority in 28 U.S.C. 994(a). See also United States v. Mendoza-Figueroa, 28 F.3d 766 (8th Cir. 1994), vacated (Sept. 2, 1994); United States v. Bellazerius, 24 F.3d 698 (5th Cir.) cert. denied, 115 S. Ct. 375 (1994). Other circuits have rejected the Price analysis and upheld the Commission's definition of "controlled substance offense." The Ninth Circuit considered the legislative history to section 994(h) and determined that the Senate Report clearly indicated that section 994(h) was not the sole enabling statute for the career offender guidelines. United States v. Heim, 15 F.3d 830 (9th Cir.) cert. denied, 115 S. Ct. 445 (1994). See also United States v. Hightower, 25 F.3d 182 (3d Cir.), cert. denied, 115 S. Ct. 370 (1994). United States v. Damerville, 27 F.3d 254 (7th Cir), cert. denied, 115 S. Ct. 55 (1994).

Proposed Amendment

Application Note 1 of the Commentary to § 4B1.2 is repromulgated without change.

The Commentary to § 4B1.1 captioned "Background" is amended to read as follows:

Background

28 U.S.C. 994(h) mandates that the Commission assure that certain "career" offenders receive a sentence of imprisonment "at or near the maximum term authorized." Section 4B1.1 implements this directive, with the definition of a career offender tracking in large part the criteria set forth in 28 U.S.C. 994(h). However, in accord with its general guideline promulgation authority under 28 U.S.C. 994(a)-(f) and its amendment authority under 28 U.S.C. 994(o) and (p), the Commission has modified this definition in several respects to focus more precisely on the class of recidivist offenders for whom a lengthy term of imprisonment is appropriate and avoid "unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct * * * ." 28 U.S.C. 991(b)(1)(B). The Commission's refinement of this definition over time is consistent with Congress's choice of a directive to the Commission rather than a mandatory minimum sentencing statute ("The [Senate Judiciary] Committee believes that such a directive to the Commission will be more effective; the guidelines development process can assure consistent and rational implementation for the Committee's view that substantial prison terms should be imposed on repeat violent offenders and repeat drug traffickers." S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983)).

The legislative history of this provision suggests that the phrase "maximum term authorized" should be construed as the maximum term authorized by statute. See S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 26,511–12 (1982) (text of "Career Criminals" amendment by Senator Kennedy), id. at 26,515 (brief summary of amendment), id. at 26,517–18 (statement of Senator Kennedy).".

Additional Issue for Comment

The Commission invites comment on whether, as an alternative to, or in addition to, the proposed amendment to § 4B1.1, Chapter I, Part A of the Guidelines Manual should be amended to state that in its promulgation of specific guidelines, the Commission intends in all cases to rely on its general authority under 28 U.S.C. 994(a) as well as any other more specific grant of statutory authority.

[FR Doc. 95–6330 Filed 3–14–95; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: VA MATIC Change, VA Form 29–0165

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 14, 1995.

Dated: March 8, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. VA MATIC Change, VA Form 29–0165
2. The form is used by the insured to request VA to change the account number and/or financial institution from which a VA MATIC deduction was previously authorized.
3. Individuals or households
4. 1,250 hours
5. 15 minutes

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6. On occasion
7. 5,000 respondents.

[FR Doc. 95–6365 Filed 3–14–95; 8:45 am]
BILLING CODE 8320–01–M

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Social Security Administration (SSA) benefit recipient records with VA pension and parents' dependency and indemnity compensation records.

The goal of this match is to compare income status as reported to VA with benefit records maintained by SSA.

The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with Social Security Administration benefit records maintained by SSA. The match with SSA will provide VA with data from the SSA Master Beneficiary Record. VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's receipt of SSA benefits is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

RECORDS TO BE MATCHED: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1991 compilation, Volume II, pages 967–971 as amended. The SSA records consist of information from the SSA Master Beneficiary Record 09–60–0090 published at 58 FR 35302, June 30, 1993.

In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match is estimated to start April 1, 1995, but will start no sooner than 40 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 273–7258.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: March 2, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–6364 Filed 3–14–95; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60. No. 50
Wednesday, March 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 20, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 10, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6474 Filed 3–13–95; 10:23 am]
BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Time and Place of Meeting

The National Credit Union Administration Board determined that its business requires the previously announced open meeting (Federal Register, Vol. 60, page 13514, Monday, March 13, 1995) scheduled for 10:00 a.m., Monday, March 13, 1995 at the Doubletree Hotel, Salon III of the Ballroom, 201 Marquette NW, Albuquerque, New Mexico is changed as follows:

TIME AND DATE: 6:00 p.m., M.S.T., Monday, March 13, 1995.

PLACE: Hyatt Regency Albuquerque Hotel, Pavilion Room, 330 Tijeras NW, Albuquerque, New Mexico 87102, (505) 842–1234.

The previously announced matters to be considered are:

1. Final Interpretive Ruling and Policy Statement (IRPS) 95–1, Supervisory Review Committee.
2. Establishment of the Position of Ombudsman.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–6547 Filed 3–13–95; 3:29 pm]
BILLING CODE 7535–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting

TIME AND DATE: Tuesday, March 28, 1:00 p.m. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of 12/06/94 Minutes (Open Portion)
3. Meeting schedule through September 1995

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.).

1. Insurance Project in Kyrgyzstan
2. Insurance Project in the Philippines
3. Insurance Project in the Philippines
4. Finance Project in Argentina
5. Finance Project in Jamaica
6. Insurance Project in Argentina
7. Finance Project in South America
8. Pending Major Projects
9. Approval of the 12/06/94 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Jane Chalmers at (202) 336–8421.

Dated: March 13, 1995.

Jane H. Chalmers,

Deputy General Counsel.

[FR Doc. 95–6577 Filed 3–13–95; 3:55 pm]
BILLING CODE 3210–01–M

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Corrections

Federal Register
Vol. 60, No. 50
Wednesday, March 15, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Child Nutrition Programs; Income Eligibility Guidelines

Correction

In notice document 95–5633 beginning on page 12732, in the issue of Wednesday, March 8, 1995, make the following correction:

On page 12733, in the second column, in the table entitled "Income Eligibility Guidelines", under the heading entitled "Alaska", in the fifth column, in the fourth line, "2,910" should read "2,920".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William W. Malone, M.D.; Revocation of Registration

Correction

In notice document 95–5455 appearing on page 12572 in the issue of Tuesday, March 7, 1995, make the following correction:

On page 15272, in the first column, in the eighth line "AM546789" should read "AM5467849".

BILLING CODE 1505–01–D

federal register

Wednesday
March 15, 1995

Part II

Department of Health and Human Services

Health Resources and Services Administration

Health Education Assistance Loan Program: List of Defaulted Borrowers; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Education Assistance Loan Program: List of Defaulted Borrowers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of Health Education Assistance Loan (HEAL) borrowers who are in default, as required by section 709(c)(1) of the PHS Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992.

FOR FURTHER INFORMATION CONTACT: Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857 (written requests only). All media inquiries should be directed to the HRSA Office of Communications at (301) 443–3376. Borrower-specific account information, beyond that included in the notice, will not be released to any person other than the borrower, without the written consent of the borrower.

SUPPLEMENTARY INFORMATION: Section 709(c)(1) of the Act (42 U.S.C. 292h(c)(1)) requires the Agency to compile and publish in the **Federal Register** a list of HEAL borrowers who are in default. All borrowers who have defaulted on HEAL loans and for whom claims have been paid by the Department of Health and Human Services (DHHS), from the beginning of the program through March 31, 1994, are subject to inclusion in this notice.

Defaulted loans for which claims have been paid are serviced by DHHS or the Department of Justice (DOJ). HEAL borrowers in a satisfactory status with DHHS or DOJ in the following categories have been excluded from this listing: (1) Those who have paid their loans in full subsequent to their default; (2) those who received HEAL loan cancellation due to death or permanent and total disability; (3) those whose loans have been repurchased from DHHS or DOJ by a HEAL school, lender, or holder; (4) those who have been approved by DHHS for deferment or forbearance; (5) those in bankruptcy who have confirmed plans which provide for the HEAL loan(s) (and have provided written evidence to DHHS or DOJ of such); and (6) those who have made six scheduled payments or the equivalent from July 1, 1994 through December 31, 1994. Borrowers who fall into any of the above categories are viewed by DHHS and DOJ, at the present time, as having made satisfactory arrangements to resolve the default, and have therefore been excluded from this publication.

The list that follows presents: the defaulter's name, latest known City and State of residence, the total amount of the HEAL debt, the school last attended for which a HEAL loan was received, practice discipline, and estimated school separation date. This information is listed by State of residence for practice discipline.

Section 709(c)(2) of the Act directs that the information included in this notice be made available to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which listed borrowers may be associated, and other relevant organizations. In accordance with this section of the Act, DHHS will provide to these entities, upon written request, the information included in the **Federal Register** notice along with Social Security Account Numbers and last known street addresses of the borrowers listed. Written requests should be submitted to the Director, Division of Student Assistance, at the address indicated above.

List of Defaulters

Alabama

Allopathic Medicine

Cox, Jerral W., Birmingham, AL, $3,360.79, Univ of Alabama Birmingham, Birmingham, AL, Allopathic Medicine, June 1991
Kiser, Curtis, Mt Meigs, AL, $130,360.44, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, June 1985
Martin, Timothy L., Sheffield, AL, $73,696.92, East Tennessee State University, Johnson City, TN, Allopathic Medicine, May 1984
Murphy, Stephen, Birmingham, AL, $11,535.34, Univ of Alabama Birmingham, Birmingham, AL, Allopathic Medicine, June 1991
Rodgers, Joseph K., Mobile, AL, $60,087.08, Univ of South Alabama, Mobile, AL, Allopathic Medicine, June 1989
Tull II, David A., Tuskegee, AL, $18,541.26, Univ of South Alabama, Mobile, AL, Allopathic Medicine, June 1989
Villaverde, John T., Huntsville, AL, $9,208.23, Univ of Miami, Miami, FL, Allopathic Medicine, June 1982

Chiropractic

Bond, William W., Tuscaloosa, AL, $106,283.27, Life College, Marietta, GA, Chiropractic, June 1983
Bush, Kerry L., Mobile, AL, $105,479.31, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Clay, Mark D., Birmingham, AL, $13,359.62, Life College, Marietta, GA, Chiropractic, December 1982
Gardner, Lester, Vernon, AL, $33,492.27, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1987
Hembree, David W., Foley, AL, $41,004.20, Life College, Marietta, GA, Chiropractic, December 1989
Hembree, Gloria, Fairhope, AL, $32,843.11, Life College, Marietta, GA, Chiropractic, March 1990
Johnson, Albert, Cullman, AL, $130,980.56, Life College, Marietta, GA, Chiropractic, September 1987
McKenzie, Janell, Vincent, AL, $101,639.09, Life College, Marietta, GA, Chiropractic, March 1986
Quinley, Timothy E., Foley, AL, $21,395.05, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988
Randolph, Jon J., Guin, AL, $31,079.96, Life College, Marietta, GA, Chiropractic, January 1985
Randolph, Kenneth J., Guin, AL, $31,990.92, Life College, Marietta, GA, Chiropractic, September 1984
Rizzuto, Richard W., Birmingham, AL, $18,266.02, Life College, Marietta, GA, Chiropractic, March 1991
Swigert, Mark E., Foley, AL, $36,297.62, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985

Dentistry

Alexander, Jesse, Auburn, AL, $61,612.73, Georgetown University, Washington, DC, Dentistry, May 1988
Brooks, Sheldon J., Birmingham, AL, $46,035.06, Loma Linda University, Loma Linda, CA, Dentistry, June 1983
Chandler, Charles H., Anniston, AL, $83,975.35, Univ of Alabama Birmingham, Birmingham, AL, Dentistry, June 1986
Elliott III, Eugene L., Birmingham, AL, $19,658.57, Univ of Alabama Birmingham, Birmingham, AL, Dentistry, June 1989
Milledge, Darryl D K, Montgomery, AL, $22,081.99, Univ of Alabama Birmingham, Birmingham, AL, Dentistry, June 1990
Richardson, Dewayhe, Jasper, AL, $6,117.00, Howard University, Washington, DC, Dentistry, May 1990

West, Marvin, Montgomery, AL, $8,600.69, Meharry Medical College, Nashville, TN, Dentistry, May 1982
Williamson, Maria E., Huntsville, AL, $22,941.75, Loyola University Chicago, Chicago, IL, Dentistry, May 1985

Osteopathy

Kiser, Galen, Haleyville, AL, $149,163.22, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1986

Pharmacy

Bean, Rhonda, Birmingham, AL, $4,987.67, Xavier University of Louisiana, New Orleans, LA, Pharmacy, May 1988
Reid, Billy F., Huntsville, AL, $25,853.41, Mercer University, Atlanta, GA, Pharmacy, June 1981

Podiatry

Beverly, Carmen, Auburn, AL, $10,803.80, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1980

Veterinary Medicine

Butler, Brian, Opelika, AL, $5,132.82, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1990
Gardner, Kurt J., Huntsville, AL, $48,035.72, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1983
Guy, Pamela D., Tuskegee, AL, $73,951.75, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1984
Malone, Glen G., Montgomery, AL, $15,391.48, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1979

Alaska

Allopathic Medicine

Richards, Cynthia J., Juno, AK, $13,663.91, Univ of South Dakota, Sioux Falls, SD, Allopathic Medicine, May 1989

Chiropractic

Koob, Michael D., Kenai, AK, $8,859.61, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1986
Lamagdeleine, Michael K., Anchorage, AK, $72,739.44, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1987

Clinical Psychology

Valenzuela, Debbie L., Anchorage, AK, $67,083.26, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987

Dentistry

Lien, Douglas D., Anchorage, AK, $173,021.69, New York University, New York, NY, Dentistry, June 1985

Osteopathy

Bigelow, Loy, Anchorage, AK, $191,083.46, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1986
King, Ruth A., Kenai, AK, $185,005.35, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1987

Arizona

Allopathic Medicine

Cata, Elena, Mesa, AZ, $11,772.64, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Harris, Brian W., Scottsdale, AZ, $57,335.99, Wayne State University, Detroit, MI, Allopathic Medicine, June 1987
Koenen, Howard, Tucson, AZ, $28,670.50, Univ of California San Diego, La Jolla, CA, Allopathic Medicine, June 1988
Martin, Leona M., Yuma, AZ, $154,973.09, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Palmer, Glen L., Tucson, AZ, $16,815.74, Univ of Kansas Medical Center, Kansas City, KS, Allopathic Medicine, May 1990
Pruitt, Christopher, Phoenix, AZ, $28,911.97, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1991
Silberstein, Brigitta, Fountain Hills, AZ, $83,868.94, New York Medical College, Valhalla, NY, Allopathic Medicine, June 1985

Chiropractic

Allen Jr, Ben R., Mesa, AZ, $73,902.24, Life College, Marietta, GA, Chiropractic, September 1983
Arkfield, Ted, Phoenix, AZ, $22,822.56, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1988
Baker, Debora K., Glendale, AZ, $8,720.83, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1983
Berger, Karl, Mesa, AZ, $61,414.78, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1987
Brantner, Ray J., Phoenix, AZ, $40,896.73, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Buchwald, Bonnie, Tucson, AZ, $32,857.16, Life College, Marietta, GA, Chiropractic, September 1985
Budd, Carlinda L., Tucson, AZ, $84,194.78, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Corser, Lester J., Phoenix, AZ, $6,363.04, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1982
Crider, Walter D., Scottsdale, AZ, $86,238.38, Western States Chiropractic College, Portland, OR, Chiropractic, August 1988
Crooks, Joan, Sedona, AZ, $63,537.56, Western States Chiropractic College, Portland, OR, Chiropractic, June 1985
Davis, Jacqueline S., Apache Junction, AZ, $5,174.82, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986
Dazell-Reed, Linda, Tucson, AZ, $23,643.98, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1987
De Rosa, Arthur, Scottsdale, AZ, $23,365.43, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1988
Depamphilis, Greg, Tempe, AZ, $43,603.63, Life College, Marietta, GA, Chiropractic, September 1986
Faber, Dana A., Chino Valley, AZ, $37,068.69, Parker College of Chiropractic, Dallas, TX, Chiropractic, August 1987
Faber, Robert H., Chino Valley, AZ, $54,897.01, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1987
Failor, Richard I., Mesa, AZ, $10,383.79, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Hendricks, Richard L., Mesa, AZ, $42,273.67, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1983
Hodson, Philip A., Phoenix, AZ, $39,102.13, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Hornyak, John, Tucson, AZ, $29,583.80, Life College, Marietta, GA, Chiropractic, September 1988
Jones, Richard, Camp Verde, AZ, $71,140.85, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Kelley, Gary L., Tucson, AZ, $52,360.99, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986
Kolb, Maryann, Tempe, AZ, $89,867.16, Life College, Marietta, GA, Chiropractic, September 1986
Lay, William G., Tucson, AZ, $96,928.34, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1985
Legate, Andre, Winslow, AZ, $13,564.50, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1989

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Manos, Greg C., Tucson, AZ, $75,872.98, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1987
Mason-Downing, Marlene, Glendale, AZ, $44,824.68, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Oberstein, Bruce M., Mesa, AZ, $40,883.80, Life College, Marietta, GA, Chiropractic, December 1982
Reeves, Gary, Glendale, AZ, $4,544.27, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1983
Rich, Kenneth C., Mesa, AZ, $104,584.96, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Saunders, Edward M., Phoenix, AZ, $74,580.66, Life College, Marietta, GA, Chiropractic, September 1986
Shellman, Joan J., Mesa, AZ, $136,498.40, Life College, Marietta, GA, Chiropractic, September 1984
Shobe Jr, Ted E., Gilbert, AZ, $30,301.14, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1983
Smith, Sandra M., Phoenix, AZ, $26,982.63, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Tagg, Lyndon R., Mesa, AZ, $114,357.99, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1985
White, Howard D., Phoenix, AZ, $54,942.09, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, April 1989
Wickstrom, Todd S., Phoenix, AZ, $46,648.48, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988
Zalak-Goldwater, Edward G., Mesa, AZ, $85,591.58, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, February 1987

Dentistry

Chase, Mark, Phoenix, AZ, $60,282.90, Univ of The Pacific, San Francisco, CA, Dentistry, June 1984
Dobrota, Jerry G., Village of Oak Creek, AZ, $94,464.51, Loma Linda University, Loma Linda, CA, Dentistry, June 1985
Keith, Rosalyn D., Tempe, AZ, $32,193.03, Georgetown University, Washington, DC, Dentistry, May 1987
Leavey, Brett, Mesa, AZ, $75,872.17, Marquette University, Milwaukee, WI, Dentistry, May 1988
Park, Youngmi, Sierra Vista, AZ, $53,046.95, Marquette University, Milwaukee, WI, Dentistry, May 1989
Ransdell, Kerry L., Tempe, AZ, $91,506.28, Washington University, St Louis, MO, Dentistry, May 1985
Rima, Russell A., Phoenix, AZ, $192,348.51, Loma Linda University, Loma Linda, CA, Dentistry, June 1984
Rogers, Steven J., Scottsdale, AZ, $150,463.83, Loma Linda University, Loma Linda, CA, Dentistry, March 1982
Sinnard, Mark S., Prescott, AZ, $3,959.17, Univ of Nebraska Medical Center, Omaha, NE, Dentistry, May 1989
Smith, Catherine J., Phoenix, AZ, $108,754.15, Washington University, St Louis, MO, Dentistry, May 1989
Wainwright, Clayton, Peoria, AZ, $34,785.30, Univ of The Pacific, San Francisco, CA, Dentistry, June 1986

Optometry

Stoutsenberger, Jeffrey, Mesa, AZ, $1,937.23, Southern College of Optometry, Memphis, TN, Optometry, May 1990

Osteopathy

Dewilde, Steven, Tucson, AZ, $22,732.82, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1986
Gladwell, Irene, Phoenix, AZ, $94,513.88, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, May 1983
Smith, Susan M., Scottsdale, AZ, $72,915.91, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1985

Podiatry

Balch, David D., Tucson, AZ, $122,375.59, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1981
Henry, William E., Gilbert, AZ, $50,774.16, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Nagy, Ronald A., Mesa, AZ, $6,108.13, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1983
Scinta, Mark C., Phoenix, AZ, $25,785.28, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1983

Arkansas

Allopathic Medicine

Campbell, Reginald R., Little Rock, AR, $14,258.34, Univ of Arkansas Medical Center, Little Rock, AR, Allopathic Medicine, May 1984
Hewgley, Joseph C., Rogers, AR, $9,490.88, Univ of Arkansas Medical Center, Little Rock, AR, Allopathic Medicine, May 1991
Jewell, Eldin C., Little Rock, AR, $93,098.00, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Stannard, Janet H., Roland, AR, $57.30, Univ of Arkansas Medical Center, Little Rock, AR, Allopathic Medicine, May 1985

Chiropractic

Adcox, David W., Newport, AR, $17,871.42, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1989
Barnett, Terry L., Jonesboro, AR, $104,323.13, Life College, Marietta, GA, Chiropractic, March 1986
Basco, Dennis G., Corning, AR, $98,005.77, Life College, Marietta, GA, Chiropractic, December 1988
Brown, Helen, Biggers, AR, $71,787.58, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986
Clark, Mary I., Kingston, AR, $20,128.26, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1984
Ennis, James R., Clinton, AR, $95,919.70, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Johnson, Robert L., Eureka Springs, AR, $13,412.34, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1983
Kirklin, Kenton K., Trumann, AR, $136,069.29, Life College, Marietta, GA, Chiropractic, June 1986
Mathews, Daniel G., Little Rock, AR, $17,143.45, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1982
Meskill, Richard, Fort Smith, AR, $19,688.75, Life College, Marietta, GA, Chiropractic, September 1983
Reynolds III, Augustus M., Little Rock, AR, $26,507.88, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1989
Somerville, Laurie A., Blytheville, AR, $7,308.96, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1988
Swilley, Mark, Osceola, AR, $40,604.83, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1989
Wyly, Travis L., Little Rock, AR, $26,687.20, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982

Dentistry

Calvin, Rosetta, Pine Bluff, AR, $57,378.92, Univ of Louisville, Louisville, KY, Dentistry, May 1987
Goodman, William D., Magnolia, AR, $13,357.36, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1986

Kouri, Gary B., Fort Smith, AR, $114,228.04, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1987
Layman, Kevin W., Alma, AR, $103,786.59, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1985
Mathis, Keith A., Little Rock, AR, $17,706.44, Univ of Texas, Houston, TX, Dentistry, June 1988
Sherrill, Edward E., Little Rock, AR, $26,302.72, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1988

Optometry

Freeman, Gregory G., Little Rock, AR, $56,493.15, Southern Calif College of Optometry, Fullerton, CA, Optometry, May 1986
Gunn, Nanette Q., Little Rock, AR, $210,323.75, Southern College of Optometry, Memphis, TN, Optometry, June 1986

Osteopathy

Burnette, David B., Mountain View, AR, $101,869.47, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, May 1985

Pharmacy

Caldwell, Eric J., Lewisville, AR, $16,280.18, Texas Southern University, Houston, TX, Pharmacy, May 1990

California

Allopathic Medicine

Adams, Alfred E., Inglewood, CA, $30,471.84, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1981
Alexander, Marsha, Rio Vista, CA, $37,447.49, East Tennessee State University, Johnson City, TN, Allopathic Medicine, May 1984
Anderson, Angela, Los Angeles, CA, $36,439.48, Creighton University, Omaha, NE, Allopathic Medicine, December 1985
Anderson, Laura M., Los Angeles, CA, $48,216.23, Tulane University, New Orleans, LA, Allopathic Medicine, January 1986
Anderson, Paul, La Jolla, CA, $4,719.28, George Washington University, Washington, DC, Allopathic Medicine, May 1988
Arias, Caleb, Riverbank, CA, $3,503.34, Univ of California San Diego, La Jolla, CA, Allopathic Medicine, June 1989
Avelar, Susana, San Francisco, CA, $104,160.78, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1990
Ayodele, Emmanuel A., Compton, CA, $14,845.07, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1982
Balyeat, Lisa E., South Pasadena, CA, $7,103.57, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, June 1988
Becker, Donna R., Glendale, CA, $30,829.44, Harvard Medical School, Boston, MA, Allopathic Medicine, June 1984
Belzberg, Gary, Long Beach, CA, $35,005.60, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1984
Bernardez, Jorge, Gardena, CA, $9,657.20, Univ of California Los Angeles, Los Angeles, CA, Allopathic Medicine, June 1987
Bledsoe, Ralph C., Carson, CA, $20,712.19, Brown University, Providence, RI, Allopathic Medicine, May 1988
Blum, Brian B., San Francisco, CA, $10,049.85, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1987
Cafaro, Virginia, San Francisco, CA, $51,118.93, Virginia Commonwealth University, Richmond, VA, Allopathic Medicine, May 1986
Carrillo, Javier N., Oxnard, CA, $6,363.91, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, June 1985
Carter, Eugene J., Panorama City, CA, $24,510.86, Univ of California Irvine, Irvine, CA, Allopathic Medicine, May 1988
Channel, Ollie V., Inglewood, CA, $25,616.38, Univ of California Los Angeles, Los Angeles, CA, Allopathic Medicine, January 1987
Checco, James, Redwood City, CA, $31,408.63, Cornell University Medical College, New York, NY, Allopathic Medicine, May 1985
Chretien, Paul P., Sacramento, CA, $2,154.19, Univ of Massachusetts Worcester, Worcester, MA, Allopathic Medicine, June 1983
Collins, Rodney, Salinas, CA, $10,009.37, Howard University, Washington, DC, Allopathic Medicine, May 1983
Cooke, Lawrence, Laguna Niguel, CA, $86,180.80, Columbia University, New York, NY, Allopathic Medicine, May 1987
Cosio, Jose A., Los Angeles, CA, $193,912.81, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1985
Coyle, Douglas O., Temple City, CA, $12,926.86, Univ of California San Francisco, San Francisco, CA, Allopathic Medicine, June 1983
Curry, Charles M., Fresno, CA, $13,850.09, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Dela-Johnson, Roy, Los Angeles, CA, $13,892.87, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1988
Diaz-Gomez, Mario A., Riverside, CA, $51,521.17, Creighton University, Omaha, NE, Allopathic Medicine, May 1984
Dickens, Charles L., Los Angeles, CA, $107,990.49, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989
Douglas, Clifford C., Redlands, CA, $37,750.79, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1989
Drennan, Michael D., Cardiff by the Sea, CA, $4,694.17, Univ of California San Diego, La Jolla, CA, Allopathic Medicine, June 1985
Duarte, David A., Long Beach, CA, $79,354.97, Harvard Medical School, Boston, MA, Allopathic Medicine, June 1985
Duncan, Monique M., Los Angeles, CA, $8,618.16, Case Western Reserve University, Cleveland, OH, Allopathic Medicine, August 1985
Essey, Robert J., Los Angeles, CA, $74,437.96, Temple University, Philadelphia, PA, Allopathic Medicine, May 1984
Fletcher, Leonard, Santa Ana, CA, $69,140.78, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1986
Foote, Ronald H., Hanford, CA, $25,781.71, Howard University, Washington, DC, Allopathic Medicine, May 1985
Garcia, Gregory, Ventura, CA, $27,221.09, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Garner, Tim G., Los Angeles, CA, $13,452.01, Howard University, Washington, DC, Allopathic Medicine, May 1985
Goldfarb, Georgia, Venice, CA, $55,518.30, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1982
Haider, Wais I., Corona, CA, $29,045.56, Univ of Colorado Health Science Center, Denver, CO, Allopathic Medicine, May 1989
Hamilton, Clarence, Alta Loma, CA, $129,582.40, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Harding, Robert E., Palo Alto, CA, $5,716.52, Rush University, Chicago, IL, Allopathic Medicine, June 1987
Harris, Arthur, Woodland Hills, CA, $36,548.98, Wayne State University, Detroit, MI, Allopathic Medicine, June 1980
Harris, Henry D., Los Angeles, CA, $54,562.46, Meharry Medical College,

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Nashville, TN, Allopathic Medicine, May 1980
Hayden, Royce D., San Diego, CA, $8,549.64, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Henry, Camille, San Diego, CA, $83,462.67, Georgetown University, Washington, DC, Allopathic Medicine, May 1984
Hibbert, Harold H., Stanford, CA, $8,035.96, Stanford University, Stanford, CA, Allopathic Medicine, June 1987
Hill, Melvin N., Woodland Hills, CA, $66,557.99, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1986
Hines, Berta, Los Angeles, CA, $88,512.93, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1982
Irvine, David, Loma Linda, CA, $39,146.14, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1990
Johnsen, James H., Cupertino, CA, $163,917.78, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1987
Julian, Virginia, Belvedere Tiburon, CA, $118,644.28, Univ of California San Diego, La Jolla, CA, Allopathic Medicine, June 1983
Kamel, Luca, Beverly Hills, CA, $72,942.86, Univ of Miami, Miami, FL, Allopathic Medicine, May 1988
Kelly, Edward L., Blue Jay, CA, $5,388.58, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1984
Kelly, Ronald K., Dixon, CA, $17,953.11, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1983
Kunihira, Dale Y., San Bernardino, CA, $44,240.58, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1985
Lamotte, Angela, Culver City, CA, $94,764.51, Univ of California Los Angeles, Los Angeles, CA, Allopathic Medicine, June 1989
Lawton, Michael, Yorba Linda, CA, $60,926.09, Univ of Iowa, Iowa City, IA, Allopathic Medicine, May 1983
Li, Patrick P., San Gabriel, CA, $132,365.47, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1987
Lofton, Julie, Yorba Linda, CA, $86,897.81, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1986
Lopez, Stephen H., Los Angeles, CA, $4,218.70, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1983
Lui, Suk Ching J., Union City, CA, $37,374.35, St Louis University, St Louis, MO, Allopathic Medicine, May 1990
Matalon, Ofer, Santa Rosa, CA, $54,246.34, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1986
May, James W., Beverly Hills, CA, $4,008.56, Indiana University Indianapolis, Bloomington, IN, Allopathic Medicine, August 1984
Mays, Archie, Long Beach, CA, $114,073.89, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
McCormack, Faith J., Modesto, CA, $129,652.07, George Washington University, Washington, DC, Allopathic Medicine, May 1989
McManus, Michael, Stockton, CA, $12,343.26, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1983
Meyer, James P., Long Beach, CA, $95,653.53, Georgetown University, Washington, DC, Allopathic Medicine, May 1987
Miller, Bradley, Beverly Hills, CA, $42,671.11, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, June 1988
Moini, Kian, Emeryville, CA, $4,213.96, Baylor College of Medicine, Houston, TX, Allopathic Medicine, May 1988
Mora, Francisco J., Canoga Park, CA, $65,422.68, Tufts University, Boston, MA, Allopathic Medicine, June 1983
Moreno, Daniel, Los Angeles, CA, $35,356.87, Tufts University, Boston, MA, Allopathic Medicine, May 1988
Morkin, Patrick P., South Pasadena, CA, $24,644.26, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1989
Mouton, Marsha, Oakland, CA, $38,393.97, Univ of Texas, Houston, TX, Allopathic Medicine, June 1986
Murphy, Monica J., Los Angeles, CA, $14,540.66, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1985
Nwobi, Veronica, Santa Monica, CA, $15,077.95, Suny Buffalo, Buffalo, NY, Allopathic Medicine, June 1984
Olson, Robert, Sierra Madre, CA, $210,609.30, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, June 1984
Patterson, Joseph M., Alhambra, CA, $7,695.54, Univ of South Alabama, Mobile, AL, Allopathic Medicine, June 1987
Patton, Marvin C., Oakland, CA, $35,400.42, Harvard Medical School, Boston, MA, Allopathic Medicine, June 1990
Payne, David, Playa del Rey, CA, $10,098.83, Wayne State University, Detroit, MI, Allopathic Medicine, June 1985
Pena, Mary M., Sacramento, CA, $33,144.97, Univ of California San Diego, La Jolla, CA, Allopathic Medicine, June 1986
Perrault, Mark D., Culver City, CA, $30,403.04, Michigan State University, East Lansing, MI, Allopathic Medicine, March 1984
Perry, Keith O., Los Angeles, CA, $90,358.44, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1983
Peterson-Lipscomb, Anna J., Irvine, CA, $37,473.84, Wright State University, Dayton, OH, Allopathic Medicine, August 1984
Phillips, Jeffrey L., Vallejo, CA, $7,377.89, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1985
Pote III, William H.W., Loma Linda, CA, $119,441.44, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1986
Powers, Arnold A., Los Angeles, CA, $9,278.39, Brown University, Providence, RI, Allopathic Medicine, June 1985
Razavi, Mahmood K., Los Angeles, CA, $32,488.14, Univ of Washington, Seattle, WA, Allopathic Medicine, June 1988
Riley, Calvin C., Irvine, CA, $71,986.23, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1985
Robinson, Paul, Long Beach, CA, $14,827.24, Univ of California Davis, Davis, CA, Allopathic Medicine, June 1990
Rose, Sharon R., Northridge, CA, $11,616.92, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1987
Salinas, Rafael E., Monrovia, CA, $168,558.24, Univ of California Irvine, Irvine, CA, Allopathic Medicine, December 1986
Schlater, Theodore L., Long Beach, CA, $13,160.39, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1988
Scott, Barbara T., Northridge, CA, $65,056.78, Texas Tech University Health Sci Center, Lubbock, TX, Allopathic Medicine, June 1989
Scott, Cheryl L., Los Angeles, CA, $10,247.54, Boston University Medical Center, Boston, MA, Allopathic Medicine, June 1984
Shahin, Samir, Los Angeles, CA, $34,894.66, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, June 1983
Shaw, Michael G., Inglewood, CA, $38,837.49, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Siqueiros, Rafael O., Santa Cruz, CA, $22,806.39, Univ of California San Diego, La Jolla, CA, Allopathic Medicine, June 1988
Smith, Diana D., Santa Barbara, CA, $14,741.62, Univ of California San Francisco, San Francisco, CA, Allopathic Medicine, June 1983
Smith, Robert E., San Juan Capistrano, CA, $70,768.12, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1982
Stafford, Novarro, Culver City, CA, $22,099.78, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Strachan, Alexander, San Francisco, CA, $1,726.96, Columbia University, New York, NY, Allopathic Medicine, May 1985
Swartz, Elena F., Riverside, CA, $74,986.45, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, June 1990
Szubin, Richard A., San Diego, CA, $137,414.17, Case Western Reserve University, Cleveland, OH, Allopathic Medicine, May 1987
Tarver, Donald, San Francisco, CA, $23,176.54, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1987
Washington, Patricia, Los Angeles, CA, $75,643.99, Georgetown University, Washington, DC, Allopathic Medicine, May 1984
Watts-Hurtado, Monica V., Newhall, CA, $5,835.10, Univ of California Los Angeles, Los Angeles, CA, Allopathic Medicine, June 1989
Webber, Barry, Burbank, CA, $70,831.24, Georgetown University, Washington, DC, Allopathic Medicine, May 1982
Weil, Mitchell A., San Clemente, CA, $15,043.51, Univ of California Los Angeles, Los Angeles, CA, Allopathic Medicine, June 1980
Williams, Gary T., Perris, CA, $121,120.00, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Williams, Joanne, Sherman Oaks, CA, $7,421.18, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1982
Williams, William E., Ontario, CA, $20,506.07, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, June 1981
Wilson, Larry J., Palo Alto, CA, $127,449.83, Univ of Pittsburgh, Pittsburgh, PA, Allopathic Medicine, June 1985
Wilson, Michael G., San Pedro, CA, $10,764.95, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, June 1985
Winkler, Christopher C., Oakland, CA, $70,838.25, St Louis University, St Louis, MO, Allopathic Medicine, May 1987
Wolfrey, Wayne T., Los Angeles, CA, $2,560.66, Univ of Nebraska Medical Center, Omaha, NE, Allopathic Medicine, May 1988
Worstell, Craig, Sunnyvale, CA, $93,489.70, Loma Linda University, Loma Linda, CA, Allopathic Medicine, May 1987
Zink, Mark T., San Bernardino, CA, $20,545.34, Univ of Miami, Miami, FL, Allopathic Medicine, May 1987

Chiropractic

Abboud, William H., Moreno Valley, CA, $1,447.93, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987
Alegria, Albert J., South Pasadena, CA, $85,534.77, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, January 1987
Allen, Lawrence, Temecula, CA, $105,465.16, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, January 1987
Alvarado, Mario, Gilroy, CA, $51,263.21, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Anaim, Jamal, La Mirada, CA, $15,960.35, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1992
Anderson, Douglas W., Santa Ana, CA, $129,597.35, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Anderson, Michael M., Los Angeles, CA, $60,770.83, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Archuleta, Philip, San Marcos, CA, $98,606.98, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1988
Arishin, Michael, Los Gatos, CA, $35,899.74, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1985
Badorek, Jack D., Costa Mesa, CA, $1,479.48, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, September 1983
Bai, Chung, Glendale, CA, $5,582.43, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, May 1988
Bain, Lee R., West Covina, CA, $113,951.87, Life College, Marietta, GA, Chiropractic, December 1987
Baldry, James S., North Hollywood, CA, $6,215.96, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1985
Baldwin, Richard C., San Francisco, CA, $29,570.04, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Barrack, Steven, Carlsbad, CA, $45,398.20, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Barrett, Elizabeth L., Temple City, CA, $109,143.56, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Beam, David, Colton, CA, $92,240.02, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, June 1985
Beaver, Richard D., Downieville, CA, $95,021.99, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1986
Becchett, Sondra, Belmont, CA, $55,971.92, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1987
Benedict, Susan, Malibu, CA, $81,420.04, National College of Chiropractic, Lombard, IL, Chiropractic, June 1989
Benkula, Jan, San Lorenzo, CA, $20,104.61, Life Chiropractic College—West, San Lorenzo, CA, Chiropractic, March 1987
Berg, Troy L., Artesia, CA, $38,417.78, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Berry-lowy, Christie L., Glendora, CA, $32,726.13, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1988
Bixby, Charles K., Petaluma, CA, $40,966.37, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1989
Boron, Steven, Guerneville, CA, $38,071.92, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1991
Brodsky, Barbara B., San Francisco, CA, $6,727.44, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1984
Brooke, Daniel J., Antioch, CA, $18,202.83, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1990
Brooks, Steve F., Salinas, CA, $28,930.62, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986
Brown, Vincent L., Castro Valley, CA, $33,808.84, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1989
Brunstein, Angela, Fullerton, CA, $60,951.33, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1990
Bunzeluk, Nancy J., Marina, CA, $40,228.51, Life College, Marietta, GA, Chiropractic, December 1983
Burch, Gregory D., Norco, CA, $42,462.81, Western States Chiropractic College, Portland, OR, Chiropractic, June 1984
Burdman, Darin L., Long Beach, CA, $7,229.17, Los Angeles College of

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Chiropractic, Whittier, CA, Chiropractic, December 1985
Burkhardt, Pamela K., San Fransisco, CA, $52,029.32, NorthWestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1989
Burkley, Anton Z., Oakland, CA, $78,144.52, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1988
Burt, Thomas T., Walnut Creek, CA, $58,837.76, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1984
Butterfield, Cathy L., San Jose, CA, $30,312.86, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1987
Butterfield, James B., San Jose, CA, $13,631.52, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1991
Buvarp, Oystein, Aptos, CA, $7,648.59, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1992
Byington, Brad A., South Lake Tahoe, CA, $77,888.65, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, April 1989
Caballero, Jorge R., Los Angeles, CA, $80,103.07, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1987
Cappa, Claude L., San Mateo, CA, $39,452.12, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Cardwell-Lejeune, Jodi J., Sacramento, CA, $6,282.40, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1987
Carr, Wayne S., Healdsburg, CA, $77,998.74, Western States Chiropractic College, Portland, OR, Chiropractic, August 1988
Casey, Daniel P., Huntington Beach, CA, $56,512.80, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, September 1985
Castillo, Joella M., San Francisco, CA, $70,229.05, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1986
Castro, Hector M., Santa Ana, CA, $49,601.88, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1986
Cates, Stephen, Laguna Hills, CA, $28,531.43, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1983
Cheney, Julian L., Reseda, CA, $2,328.41, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1983
Christensen, Casey, Whittier, CA, $82,868.28, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Clifford, Fred W., Palm Desert, CA, $75,974.13, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1985
Conger, Ronald E., North Hollywood, CA, $13,937.63, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1988
Cook, Karen, Los Gatos, CA, $99,180.74, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1985
Cook-Holmes, Peggy P., Manteca, CA, $94,900.32, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1984
Cooksley, Michelle, Laguna Beach, CA, $1,345.79, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, July 1984
Cory, Jon G., Irvine, CA, $44,905.98, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Cory, Robert G., Irvine, CA, $63,514.53, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Cresswell, Diana, Whittier, CA, $41,993.42, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1990
Crocevera, Carolyn A., Pacific Grove, CA, $13,073.74, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Curran, Douglas, Fresno, CA, $59,675.67, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Curtin, Michael M., Fairfax, CA, $12,495.43, National College of Chiropractic, Lombard, IL, Chiropractic, August 1988
Curtis, Diane, Costa Mesa, CA, $9,694.68, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1982
Danison, Robert L., South Lake Tahoe, CA, $38,126.80, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Davidson, James A., Boyes Hot Springs, CA, $34,900.81, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1986
Delallo, Joseph D., South Lake Tahoe, CA, $54,588.36, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Desantis, Lynn M., Ramona, CA, $5,505.78, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1989
Desantis, Nicholas, El Cajon, CA, $74,556.16, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1987
Dewees, Randel K., San Jose, CA, $69,454.76, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1989
Diedrich, Curtis E., Fremont, CA, $18,254.39, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1984
Dieter, Lawrence A., Los Osos, CA, $91,891.67, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1989
Difiore, William, Fountain Valley, CA, $29,587.48, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, August 1986
Diquattro, Scott, Cathedral City, CA, $66,255.36, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1984
Dodenhoff, Bradley, Bakersfield, CA, $15,225.26, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1984
Dorman, Patrick, San Diego, CA, $20,333.19, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985
Dunbar, Charles, Poway, CA, $118,527.97, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1988
Dvorsky, Jay, Los Angeles, CA, $122,775.88, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Dwelly, Bruce E., Fair Oaks, CA, $17,022.97, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1988
Earth-Child, Erin I., Berkeley, CA, $10,278.59, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1986
Eckel, David, Lancaster, CA, $76,495.98, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Eli, Desiree, Aptos, CA, $28,693.03, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1989
Ellis, Carl, Escondido, CA, $101,838.48, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1989
Elsea, Steven S., Stockton, CA, $6,403.30, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Ely, Stephen, Fresno, CA, $33,985.11, Western States Chiropractic College, Portland, OR, Chiropractic, March 1985
Ervin, Laurie M., Soquel, CA, $16,830.51, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1986
Etcheverry, John C., Pinole, CA, $11,290.37, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1988

Evans, Gary, Stockton, CA, $79,179.93, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Famalaro, John J., El Toro, CA, $80,941.98, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Fawcett III, Joe J., Fresno, CA, $57,323.73, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Fickel, Theodore, Montecito, CA, $59,578.28, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1982
Fifield, Fred, Modesto, CA, $62,015.15, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1986
Fishkin, William, San Francisco, CA, $10,269.78, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1987
Fitzpatrick, Patrick J., Hesperia, CA, $66,026.74, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987
Flores, Otto, Santa Ana, CA, $48,090.96, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, August 1988
Flynn, Timothy G., Palo Alto, CA, $1,439.36, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1989
Forsting, Ruth A., San Francisco, CA, $5,941.18, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Fridrick, Timothy P., Sepulveda, CA, $39,503.11, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, April 1988
Frye, Dan A., Oceanside, CA, $3,406.04, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1990
Galba-Machuca, Debra M., Visalia, CA, $36,873.12, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1986
Gallager, Tamara T., Chino, CA, $29,704.46, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1984
Gallagher, David B., Los Angeles, CA, $6,463.63, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Garza, Rudy, Cathedral City, CA, $52,331.91, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Gates, Thom A., Los Angeles, CA, $11,819.11, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1987
Gidowski, Frank, Rosemead, CA, $52,363.52, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1988
Gilberti, Benedict, La Costa, CA, $12,015.86, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Given, Vaughn, Mission Viejo, CA, $30,445.61, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, October 1985
Glickman, Alex, Petaluma, CA, $24,655.40, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, July 1985
Glum, Gary, El Segundo, CA, $103,440.00, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Golden, Mary C., Fremont, CA, $11,530.67, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, October 1986
Good-Mays, Kathryn M., Reseda, CA, $63,381.14, Parker College of Chiropractic, Dallas, TX, Chiropractic, May 1988
Green, Sheldon S., Goleta, CA, $46,812.51, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1985
Gregory, Todd A., Santa Maria, CA, $21,752.74, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1989
Gross, Dale M., Reseda, CA, $5,673.54, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Gutierrez, John J., Stockton, CA, $38,083.40, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Habbart, Joseph L., Mountain View, CA, $30,209.89, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1986
Hahn, Peter, Northridge, CA, $13,412.56, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1989
Haines, Donna J., Mckinleyville, CA, $42,717.86, National College of Chiropractic, Lombard, IL, Chiropractic, August 1988
Halle, Thomas C., Los Angeles, CA, $50,640.15, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1986
Hamby, Bobby J., Walnut, CA, $11,365.63, Life College, Marietta, GA, Chiropractic, March 1986
Hamilton, Aaron J., Fountain Valley, CA, $16,473.08, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1982
Harness, William E., San Diego, CA, $19,263.24, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Harper, Nicholas N., Long Beach, CA, $42,809.31, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Hatfield, Brian, Santa Monica, CA, $29,087.12, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1988
Hawley, John, Santa Barbara, CA, $50,693.31, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1986
Hayes, Douglas, Santa Monica, CA, $118,854.12, Life College, Marietta, GA, Chiropractic, September 1984
Hempsey, William, Sherman Oaks, CA, $19,625.65, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1983
Henry, Scott, La Mesa, CA, $26,472.83, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Hermosillo, Francisco J., Tarzana, CA, $92,003.54, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, April 1987
Hernandez, Orestes M., Los Angeles, CA, $39,161.76, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1988
Hetherington, Jane, San Rafael, CA, $53,852.05, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1987
Hicks, Randall, Castro Valley, CA, $100,799.22, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1987
Hileman, Kent, Hollister, CA, $22,547.14, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Hines, John, Buena Park, CA, $4,966.16, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1983
Hinkey, Stephen, Culver City, CA, $19,829.23, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Hockersmith, Kevin W., Sanger, CA, $99,612.46, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Hoffman, Stuart, Santa Monica, CA, $6,524.47, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1986
Holmes, Bobby B., Manteca, CA, $131,368.40, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985
Holsinger, Matthew W., San Mateo, CA, $62,112.08, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1990
Holst, Stephen S., Carmel, CA, $57,749.78, Life Chiropractic College-

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West, San Lorenzo, CA, Chiropractic, March 1986
Holt, Kenneth, Canyon Lake, CA, $50,934.40, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, December 1988
Hopkins, Mitch, Brea, CA, $59,980.43, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Hopstock, Richard, La Puente, CA, $54,302.07, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985
Hoskin, Jerry, Watsonville, CA, $49,470.80, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1986
Hosler, John J., Hollister, CA, $27,409.59, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1984
Howard, Marty B., Hayward, CA, $15,777.23, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1986
Huff, Arthur R., Pasadena, CA, $88,185.50, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, April 1988
Huff, Guy L., Torrance, CA, $90,955.97, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1986
Hunt, Celia, Citrus Heights, CA, $21,462.56, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1989
Imboden, Shannon L., Los Angeles, CA, $12,386.36, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1987
Inskeep, Norman D., San Jose, CA, $103,481.62, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1986
Jasper, Chuck, San Rafael, CA, $6,067.82, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1984
Jeffcoat, Lori M., Alameda, CA, $13,339.98, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1990
Jette, Steven A., Petaluma, CA, $8,715.66, Western States Chiropractic College, Portland, OR, Chiropractic, December 1983
Johnson, Eric, Victorville, CA, $86,833.48, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1990
Johnson, Kevin A., Costa Mesa, CA, $38,933.66, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1990
Johnson, Randall R., Los Angeles, CA, $80,046.73, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1986
Johnson, Shelia, Los Angeles, CA, $93,110.08, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1986
Kahan, Robert M., Mission Viejo, CA, $20,760.16, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Kahanek, Carol A., Santa Cruz, CA, $38,899.12, Western States Chiropractic College, Portland, OR, Chiropractic, December 1983
Kaye, Lafe M., Newbury Park, CA, $35,825.53, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987
Kelly, Mark S., Chino, CA, $21,355.78, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1986
Klee, Mark A., Lancaster, CA, $15,327.97, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, July 1987
Kosak, Jerome E., Fairfield, CA, $24,435.97, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1982
Kotsch, Simone P., Huntington Beach, CA, $38,050.42, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985
Kowalski, Brian A., Newport Beach, CA, $8,131.83, Life College, Marietta, GA, Chiropractic, October 1982
Kraetzer, Nicholas, San Pedro, CA, $4,473.92, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1987
Kullrich, Regan T., Oakhurst, CA, $12,394.97, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, May 1986
Lamb, Robert, Sebastopol, CA, $28,678.41, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1989
Lampman, Chuck D., Sylmar, CA, $105,598.36, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Landemare, Henry M., Moss Beach, CA, $91,251.18, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1985
Lanzarotta, Suzette, Grass Valley, CA, $5,745.54, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1982
Laughter, James, San Diego, CA, $41,963.88, Western States Chiropractic College, Portland, OR, Chiropractic, March 1985
Lesko, Andrew, La Habra Heights, CA, $38,172.68, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1987
Levay, Mariann, Sacramento, CA, $64,653.56, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, June 1987
Levernier, Laura A., Costa Mesa, CA, $43,191.41, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1986
Levesque, Gary, Huntington Beach, CA, $8,421.15, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1982
Lewis, Edward, Auburn, CA, $96,506.97, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1989
Lima, Thomas, Oakland, CA, $1,814.37, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, October 1985
Lin, Ho Shiong, San Lorenzo, CA, $21,806.75, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1987
Locke, Peggy J., Santa Barbara, CA, $88,366.54, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1989
Lodwig, Michael, Walnut Creek, CA, $15,819.65, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, October 1989
Lopez, Luis L., Canyon Lake, CA, $79,677.62, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1985
Louis, Kathryn S., Santa Monica, CA, $12,984.22, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Lowe, Dane E., Poway, CA, $4,090.78, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1983
Lunceford, Glenn, Norco, CA, $13,310.48, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1986
Lyons, Dorothy A., Coulterville, CA, $27,241.79, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1989
Maclaren, Stacy L., Ventura, CA, $20,079.05, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, October 1985
Mahan, Michael, El Cajon, CA, $16,668.32, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, April 1988
Mahar, Deborah L., Santa Ana, CA, $14,699.17, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1984
Mairet, Alain A., Menlo Park, CA, $51,833.99, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1987
Mallary, Peter, Santa Cruz, CA, $39,427.19, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1988
Mannino-Siegel, Holly L., Whittier, CA, $20,213.68, Los Angeles College of Chiropractic, April 1986

Mark, Jeffrey, San Francisco, CA, $83,834.42, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1987
Marquez, Evelyn W., South Pasadena, CA, $57,937.92, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, July 1986
Martello, Daniel M., San Francisco, CA, $2,209.78, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1986
Martin, Diana, Los Gatos, CA, $21,286.06, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1986
Matsumae, Dean, Huntington Beach, CA, $14,402.78, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1989
Maynard, Jennifer E., Glendora, CA, $56,259.54, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1988
McGee, Billie J., Simi Valley, CA, $29,043.12, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1984
McGinn, Thomas, San Jose, CA, $124,236.17, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1987
McKinlay, George A., Orange, CA, $23,266.37, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1988
McLaughlin, Robert, Sacramento, CA, $39,905.80, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1989
McLean, Lila E., San Lorenzo, CA, $49,153.66, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1987
Melville, Carl, Crestline, CA, $89,807.54, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1989
Meriott, Robert B., San Juan Capistrano, CA, $13,818.59, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1983
Miller, Brad T., Santa Ana, CA, $16,491.61, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1990
Miller, David, Concord, CA, $25,525.00, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1989
Miller, Marilyn E., San Francisco, CA, $6,091.62, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1986
Mitchell, Gregory W., Los Angeles, CA, $103,353.04, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, May 1988
Molina, Robert, West Covina, CA, $48,100.20, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1987
Monahan, Michael L., Carlsbad, CA, $43,364.32, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Montgomery, Rita M., Los Angeles, CA, $57,724.69, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Moore, Dennis J., Long Beach, CA, $108,626.04, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Moore, Wesley B., San Jose, CA, $37,707.76, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1984
Moroney, Sharon, Santa Clara, CA, $16,660.48, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986
Moroney, William, San Mateo, CA, $21,750.44, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1986
Mullins, Marilyn E., Placentia, CA, $48,602.31, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Murphy, Debbie C., Ojai, CA, $35,502.40, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1986
Nahai, John, Concord, CA, $113,476.45, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Navai, Mehdi N., Alhambra, CA, $58,876.59, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1988
Nedelcove, Deborah E., La Quinta, CA, $20,200.35, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1987
Nelson, Robert, Palm Desert, CA, $64,863.74, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1988
O'Connor, Thomas J., Corte Madera, CA, $7,500.84, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1984
Oberstein, Lawrence, Santa Rosa, CA, $27,306.83, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1984
Oranen, David J., Sacramento, CA, $52,790.80, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1984
Overman, Kathleen N., Canoga Park, CA, $22,818.60, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1984
Owens, Robert B., San Fransciso, CA, $9,141.46, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1983
Pacheco, Mark A., Stockton, CA, $38,441.45, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1985
Pallas, James J., Temecula, CA, $64,714.41, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Palumo, Frank N., North Hills, CA, $20,261.32, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1988
Pankey, John, Alameda, CA, $28,206.23, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1988
Panza, Ernest, Chula Vista, CA, $14,906.92, Life College, Marietta, GA, Chiropractic, March 1991
Parker, Brian T., Simi Valley, CA, $24,751.49, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1988
Parnell, Aaron L., San Mateo, CA, $36,543.46, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, October 1986
Pascal, David S., Santa Cruz, CA, $3,566.52, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, January 1986
Pellerin, Stephen P., Ahwahnee, CA, $61,528.62, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, April 1986
Penney, Karen, San Bernardino, CA, $14,446.48, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1993
Perez, Jesus V., Pomona, CA, $75,117.87, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, July 1984
Peters, Deborah, Palo Alto, CA, $33,515.65, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1990
Pfeiffer, Arlene, Huntington Beach, CA, $7,107.92, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1983
Pham, Greg N., Fountain Valley, CA, $57,420.15, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, December 1989
Pilkington, Charles, San Bernardino, CA, $19,225.29, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985
Pinkerman, James, Temecula, CA, $107,376.29, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987
Podry, Robert J., La Canada, CA, $59,357.00, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, August 1986

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Pollock, Thomas G., Santa Barbara, CA, $75,668.99, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1987
Portillo, Carlos, San Jose, CA, $15,107.79, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1986
Portugal, Gilbert M., El Toro, CA, $2,192.43, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Postulka, Perry D., La Mesa, CA, $20,974.60, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Pride, Marcus O., Carson, CA, $82,973.73, Southern Calif. Clg. of Chiropractic, Pico Rivera, CA, Chiropractic, August 1987
Radetic, Pete, Pleasant Hill, CA, $38,211.22, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1986
Rahn, Roger S., Agoura, CA, $78,491.03, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Rains, Emory S., Balboa, CA, $29,499.71, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1983
Ramsey, Debora A., Saugus, CA, $31,124.97, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1985
Ratliff, Cynthia, Santa Cruz, CA, $49,076.95, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1987
Rayas-Felix, Magdalena, Los Angeles, CA, $16,845.25, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Reason, Richard, Goleta, CA, $120,199.63, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, April 1987
Redd, Timothy J., San Dimas, CA, $122,091.69, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, April 1987
Reed, Robert W., San Bernardino, CA, $50,726.47, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, December 1986
Reilly, Ann M., Richmond, CA, $24,092.06, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1986
Reynolds, Bob, Bakersfield, CA, $44,649.43, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Richardson, Justin W., Canoga Park, CA, $10,379.04, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Richins, Craig H., Fresno, CA, $69,537.63, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Rios, Emanuel J., San Gabriel, CA, $45,323.33, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, August 1988
Rockmael, Allan, San Francisco, CA, $84,289.21, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1988
Rodriguez, Consuelo A., San Gabriel, CA, $34,195.24, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, September 1984
Rodriguez, Humberto J., La Mirada, CA, $66,279.62, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1987
Rogers, Guy A., Bakersfield, CA, $61,955.31, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, April 1990
Roloff, Robin, Lakewood, CA, $12,820.84, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1988
Rolon, Zandra, Santa Cruz, CA, $18,887.16, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1989
Romer, Cheryl C., Fresno, CA, $57,171.30, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Romo, Glen A., Walnut, CA, $5,816.38, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1988
Rosenfeld, Jeffre B., Santa Monica, CA, $40,151.56, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1986
Rothenberg-Aisenberg, Mary Ellen B., Chula Vista, CA, $107,111.88, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1985
Rude, Kirby K., Pasadena, CA, $36,104.38, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, December 1987
Ruiz, Henry S., Los Angeles, CA, $114,613.71, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, August 1986
Sakalis, Gregory G., Glendale, CA, $362.40, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, August 1987
Sargent, John F., Los Angeles, CA, $70,616.79, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, August 1986
Schear, Darrell, Laguna Hills, CA, $132,229.72, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1984
Schluter, Kathleen K., Ukiah, CA, $24,906.36, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Schluter, Lyle C., Sonoma, CA, $34,705.62, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1983
Schow, Kenneth M., Glendale, CA, $32,084.08, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1982
Scott, John, Modesto, CA, $123,349.96, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1985
Sellers, Lon E., San Diego, CA, $24,739.35, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1983
Shanesfelter, Charles, Saratoga, CA, $23,251.19, Southern Calif CLG of Chiropractic, Pico Rivera, CA, Chiropractic, December 1989
Shapiro, Michael S., Valencia, CA, $51,149.97, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1985
Sharkey, Vincent J., San Francisco, CA, $4,737.17, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1986
Shouka, Mohammed, Yorba Linda, CA, $22,218.59, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1988
Sibley, Jane E., Tustin, CA, $63,545.24, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Simovich, Paul, Huntington Beach, CA, $26,054.25, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Smith Jr, Carl A., Garden Grove, CA, $118,950.11, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987
Smith, Steven K., Venice, CA, $54,960.32, Western States Chiropractic College, Portland, OR, Chiropractic, June 1988
Snavely, Danny H., Laguna Niguel, CA, $71,492.53, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986
Souza, Robert R., Costa Mesa, CA, $109,847.09, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Spatrisano, Bonnie, Los Banos, CA, $81,622.18, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1985
Spencer, Johnnie J., Baker, CA, $83,735.55, Life College, Marietta, GA, Chiropractic, December 1985
Stevens, Don M., Sacramento, CA, $138,840.25, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985
Stevens, Michael N., Los Gatos, CA, $44,650.24, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1985

Stevens, Milton W., Pittsburg, CA, $118,833.98, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1985
Stevens, Tamara S., Hayward, CA, $99,699.44, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1987
Stewart, Jeannie, Costa Mesa, CA, $16,077.80, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Stiga, John P., Santa Cruz, CA, $8,062.12, Life College, Marietta, GA, Chiropractic, March 1982
Stone, Steven, Piedmont, CA, $12,522.59, Life Chiropractic College-west, San Lorenzo, CA, Chiropractic, December 1990
Studer, Jonathan B., San Jose, CA, $41,001.05, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1986
Sturgeon, Margaret M., Oakland, CA, $33,727.88, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Styler, Richard, Fair Oaks, CA, $9,948.57, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1989
Sullivan, Joseph, Burbank, CA, $57,148.42, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Super, Douglas D J, Hayward, CA, $58,323.18, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1990
Sutton, Brian, Denuba, CA, $53,319.27, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, April 1986
Tamimi, Musa A., Panorama City, CA, $12,153.20, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1987
Taylor, Brett, Mission Viejo, CA, $48,654.87, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, September 1986
Taylor, John E., Placentia, CA, $9,857.99, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1982
Taylor, Julie A., Glendale, CA, $28,694.67, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1984
Terry, William H., Fallbrook, CA, $61,472.73, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Teter, Steven S., San Leandro, CA, $3,276.49, Western States Chiropractic College, Portland, OR, Chiropractic, March 1983
Theobald, Richard C., San Diego, CA, $35,618.60, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1988
Thompson, Donald D., Novato, CA, $7,811.91, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1989
Thompson, James D., Fair Oaks, CA, $112,683.06, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1987
Thornton, James G., Nevada City, CA, $3,792.89, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, January 1983
Turner, Nancy N., Costa Mesa, CA, $16,116.67, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1985
Vail, Warren, Encinitas, CA, $10,551.69, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1989
Van Gorder, Kurt F., Temecula, CA, $55,817.80, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1989
Vardanian, Michael A., Fullerton, CA, $47,094.43, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1985
Vareles, Richard, Sherman Oaks, CA, $53,917.31, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985
Vega, Javier J., Montclair, CA, $11,714.02, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1987
Vessels, Steven, Loma Linda, CA, $51,382.77, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1983
Viloria, Jenifer A., Los Angeles, CA, $75,132.17, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, August 1987
Vlaskovich Jr, William, Santa Clara, CA, $96,662.24, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1987
Walls-Fenwick, Jan D., San Bernardino, CA, $84,133.46, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, April 1988
Walsh, Richard J., Los Angeles, CA, $22,308.80, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1986
Wanke, Glenn P., Fullerton, CA, $92,975.05, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1987
Ward, Michael L., Mountain View, CA, $41,031.58, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, October 1984
Wedmeyer, Ron A., Bakersfield, CA, $8,648.75, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, April 1990
Weiss, Gwenn M., Cupertino, CA, $26,660.74, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1986
Westing, Denise, Alameda, CA, $29,320.09, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1987
White, Judith U., Newport Beach, CA, $18,740.49, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, January 1985
Whittlesey, James B., Novato, CA, $24,516.74, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1986
Willard, Teresa D., Long Beach, CA, $8,205.72, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1988
Williams, Duane D., Livermore, CA, $46,332.67, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Williams, Joseph, San Diego, CA, $15,802.40, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1984
Wymore, Patrick J., Van Nuys, CA, $70,380.64, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, September 1986
Yarchover, Richard, Sylmar, CA, $19,230.07, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1987
Yniguez, Alma B., San Francisco, CA, $83,078.54, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, May 1989
Yniguez, Ramon, Sunnyvale, CA, $18,849.52, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1985
Zachary, John K., Los Angeles, CA, $37,152.10, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, August 1988
Zewde, Worku, Marina Del Rey, CA, $38,981.14, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, April 1989
Zoodsma, Kenneth, Del Mar, CA, $38,013.48, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986
Zydervelt, Hannah H W, Pacific Grove, CA, $37,319.51, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984

Clinical Psychology

Armstrong, Phyllis, Los Angeles, CA, $21,288.72, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, May 1990
Behman, Patricia, Studio City, CA, $46,587.40, California Sch of Prof

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Psych, Alhambra, CA, Clinical Psychology, September 1986.
Block, Robbyn K., Encino, CA, $76,935.34, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1988.
Blomeley, Robert R., Foothill Farms, CA, $8,628.14, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1983.
Boulware, Susan S., Sausalito, CA, $58,430.73, California Sch of Prof Psych, Alameda, CA, Clinical Psychology, July 1986.
Cadavid-Hannon, Ester, Culver City, CA, $41,425.36, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1988.
Cappelletty, Gordon G., Fresno, CA, $7,513.31, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, August 1986.
Carleton, Raymond, San Diego, CA, $6,283.83, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1990.
Chalgujian, Hilda, Palm Desert, CA, $63,970.43, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, June 1989.
Chun, John H., San Diego, CA, $44,811.60, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1989.
Clark, Minola, San Diego, CA, $92,623.19, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1991.
Corwin, Mary, Modesta, CA, $21,787.75, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, August 1986.
Cox, Charles, Palm Springs, CA, $25,026.92, Yeshiva University, New York, NY, Clinical Psychology, June 1988.
Davis, Clarie L., Calipatria, CA, $22,172.78, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1985.
Esenten, Teri A., Palos Verdes, CA, $52,495.98, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1986.
Gaston, Patricia S., Dana Point, CA, $138,085.68, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1986.
Gonzalez, Maria, Clovis, CA, $2,537.34, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, June 1990.
Gonzalez, Rocio R., Los Angeles, CA, $45,163.78, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987.
Gullotta, Geraldine P., Escondido, CA, $49,944.96, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1983.
Harris, Carole I., San Diego, CA, $20,884.14, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1985.
Herrington, Robert L., San Diego, CA, $21,450.56, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1992.
Howell, Nicole, Thousand Oaks, CA, $108,002.25, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987.
Inesi, Gino E., San Francisco, CA, $12,375.78, Pacific Graduate School of Psychology, Palo Alto, CA, Clinical Psychology, April 1990.
Jackson, Cynthia, Laguna Beach, CA, $63,980.68, Fuller Theological Seminary, Pasadena, CA, Clinical Psychology, June 1989.
Jacobs, Delores A., San Diego, CA, $66,000.13, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1989.
Jacobson, Todd, San Diego, CA, $106,465.41, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1989.
King, Gloria, San Leandro, CA, $14,966.37, California Sch of Prof Psych, Alameda, CA, Clinical Psychology, June 1990.
Lafitte, William, Newport Beach, CA, $54,822.84, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1987.
Lataille, Edward, San Diego, CA, $113,499.98, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1987.
Lender, Joyce A., Anaheim, CA, $132,750.69, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987.
Lin, Sherri, West Hollywood, CA, $17,367.21, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, May 1990.
Loranger, Paul G., Sunset Beach, CA, $51,717.73, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, May 1990.
Lyons, Lawrence, Del Mar, CA, $19,545.63, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, July 1983.
Mackabee, La Mildred, Los Angeles, CA, $52,461.72, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, May 1989.
McCaul, Brad J., Red Bluff, CA, $54,558.78, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1984.
McCarter, Michele A., San Diego, CA, $76,864.18, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1987.
McDiarmid, Jim, Merced, CA, $5,148.76, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, August 1986.
McGregor, Floyd, Inglewood, CA, $38,619.36, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987.
McMahon, Kathleen, El Monte, CA, $25,048.44, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, May 1990.
Moya, Eva, Los Angeles, CA, $29,351.20, Univ of Denver, Denver, CO, Clinical Psychology, August 1983.
Musquiz, Elizabeth E., Murrieta, CA, $6,137.45, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, June 1987.
Pete, Patricia, San Diego, CA, $46,037.48, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, June 1988.
Perez, Mary Ellen, Burbank, CA, $25,547.14, Fuller Theological Seminary, Pasadena, CA, Clinical Psychology, June 1988.
Phillips, Constance, Oakland, CA, $16,942.90, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, May 1989.
Phillips, John, Oakhurst, CA, $58,742.17, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, August 1986.
Pust, Keith W., Lake Elsinore, CA, $35,899.87, Biola University, La Mirada, CA, Clinical Psychology, May 1986.
Quigley, Michael, San Mateo, CA, $28,792.95, Pacific Graduate School of Psychology, Palo Alto, CA, Clinical Psychology, June 1992.
Richardson, Katherine, Los Angeles, CA, $70,163.04, Biola University, La Mirada, CA, Clinical Psychology, June 1988
Rivas, Mary L., Artesia, CA, $9,737.70, Finch University of Health Sciences, North Chicago, IL, Clinical Psychology, June 1989
Shields, Judith, San Diego, CA, $82,694.39, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1989
Smukler, Evie L., Sherman Oaks, CA, $18,818.46, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987
Spenser, Angela C., Oceanside, CA, $107,447.10, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1988
Stanford, Jeannie, Santa Monica, CA, $12,009.06, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987
Steder, Sandra, San Francisco, CA, $33,541.19, California Sch of Prof Psych, Alameda, CA, Clinical Psychology, July 1988

Stevenson, Teresa M., Los Angeles, CA, $14,976.51, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987
Veliquette, John J., Laguna Niguel, CA, $141,541.72, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1987
Venners, Angela, Signal Hill, CA, $6,590.63, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1988
Wolter, Carl, Pasadena, CA, $43,534.91, Fuller Theological Seminary, Pasadena, CA, Clinical Psychology, June 1985
Wood, Carol, Santa Monica, CA, $82,501.86, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, December 1987
Yurkovich, Mark, Hollywood, CA, $34,853.10, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, August 1986

Dentistry

Benavidez, Charles, Elk Grove, CA, $123,928.79, Univ of Southern California, Los Angeles, CA, Dentistry, May 1991
Berry, Scott T., West Lake Village, CA, $127,737.32, Washington University, St Louis, MO, Dentistry, May 1984
Borden, Mark G., Modesto, CA, $151,645.81, Loyola University Chicago, Chicago, IL, Dentistry, May 1982
Broschinsky, Clifford, Walnut Creek, CA, $59,254.52, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1989
Calloway, Vollie A., Stockton, CA, $149,214.86, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Chun, Denise, San Mateo, CA, $33,525.54, Univ of The Pacific, San Francisco, CA, Dentistry, June 1991
Clifford, Lawrence K., Santa Rosa, CA, $36,576.84, Loma Linda University, Loma Linda, CA, Dentistry, September 1980
Comer, Michael J., Elk Grove, CA, $34,903.81, Washington University, St Louis, MO, Dentistry, May 1989
Cutts, David P., Temecula, CA, $44,583.15, Loma Linda University, Loma Linda, CA, Dentistry, June 1983
Dangerfield, Alan N., Santa Clara, CA, $132,484.16, Georgetown University, Washington, DC, Dentistry, May 1983
Daniels, William W., Roseville, CA, $12,444.04, Tufts University, Boston, MA, Dentistry, June 1982
Delappe, Elizabeth, San Jose, CA, $21,313.16, Univ of Pennsylvania, Philadelphia, PA, Dentistry, January 1985
Done, Byron, Anaheim, CA, $126,319.95, Univ of Southern California, Los Angeles, CA, Dentistry, May 1987
Edwards, Gregory C., Los Angeles, CA, $27,256.32, Howard University, Washington, DC, Dentistry, May 1983
Eslao, Caesar, Lomita, CA, $63,873.62, Univ of Southern California, Los Angeles, CA, Dentistry, May 1990
Formaker, James, West Hollywood, CA, $35,702.22, Univ of Southern California, Los Angeles, CA, Dentistry, May 1986
Foroutanzad, John, Los Angeles, CA, $227,211.75, Univ of The Pacific, San Francisco, CA, Dentistry, June 1984
Frybarger, Francis, Lemon Grove, CA, $16,642.64, Washington University, St Louis, MO, Dentistry, May 1991
Garcia, Gilberto, Long Beach, CA, $115,048.02, Univ of The Pacific, San Francisco, CA, Dentistry, June 1989
Georgeson, Ronald M., Kerman, CA, $21,618.90, Loma Linda University, Loma Linda, CA, Dentistry, August 1984
Ghamary, Ghafoor G., San Diego, CA, $5,556.44, Georgetown University, Washington, DC, Dentistry, May 1984
Goldman, Morton H., San Diego, CA, $13,011.13, West Virginia University, Morgantown, WV, Dentistry, July 1985
Gomes, Marshall E., Canyon Lake, CA, $131,626.75, Loma Linda University, Loma Linda, CA, Dentistry, June 1985
Gonzales, Edward J., Los Angeles, CA, $181,161.54, Boston University Medical Center, Boston, MA, Dentistry, May 1988
Gray, Scott, Hemet, CA, $52,686.64, Univ of The Pacific, San Francisco, CA, Dentistry, June 1988
Greene, David A., Loma Linda, CA, $201,950.89, Loma Linda University, Loma Linda, CA, Dentistry, June 1983
Gyaami, Opanin, Grand Terrace, CA, $225,231.56, Loma Linda University, Loma Linda, CA, Dentistry, June 1983
Hall, David, Capitola, CA, $58,330.81, Univ of California San Francisco, San Francisco, CA, Dentistry, June 1982
Harrison, Rodney B., Montclair, CA, $116,942.48, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Hempel, Jeffrey D., Acton, CA, $28,677.01, Loma Linda University, Loma Linda, CA, Dentistry, June 1980
Henken, Edmond H., San Clemente, CA, $56,826.96, Loma Linda University, Loma Linda, CA, Dentistry, June 1984
Hill, David, San Jose, CA, $36,254.79, Tufts University, Boston, MA, Dentistry, June 1986
Hnyla, Celestine A., San Diego, CA, $147,042.18, Case Western Reserve University, Cleveland, OH, Dentistry, May 1987
Hoehn, James D., Newbury Park, CA, $84,687.68, Loma Linda University, Loma Linda, CA, Dentistry, June 1985
Honnlee, Michael, Rowland Heights, CA, $3,554.29, Loyola University Chicago, Chicago, IL, Dentistry, December 1990
Hurley, Ronnie L., Carlsbad, CA, $130,686.00, Washington University, St Louis, MO, Dentistry, May 1985
Husbands, Michael, Chino Hills, CA, $163,482.98, Loma Linda University, Loma Linda, CA, Dentistry, September 1983
Johnson, Frederic, Los Angeles, CA, $40,703.62, Temple University, Philadelphia, PA, Dentistry, May 1992
Jones, Roger A., Santa Cruz, CA, $107,178.83, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Kelly, Andrew, Los Angeles, CA, $44,395.24, Howard University, Washington, DC, Dentistry, May 1983
Kent, Donald, San Francisco, CA, $146,716.15, Univ of Southern California, Los Angeles, CA, Dentistry, May 1985
Kerstetter, Gary A., Vista, CA, $105,593.88, Loma Linda University, Loma Linda, CA, Dentistry, September 1983
Kim, Kwang-Jim, Glendale, CA, $60,481.42, Univ of Southern California, Los Angeles, CA, Dentistry, May 1984
Kim, Sung O., Los Angeles, CA, $72,198.40, Univ of Southern California, Los Angeles, CA, Dentistry, May 1985
Klim, David D., Redlands, CA, $95,539.21, Loma Linda University, Loma Linda, CA, Dentistry, June 1984
Kurts, Tedd R., Mountain View, CA, $34,961.73, Loma Linda University, Loma Linda, CA, Dentistry, June 1986
Landis, Charles, Chico, CA, $4,359.21, Loma Linda University, Loma Linda, CA, Dentistry, June 1983
Lemelle-Love, Shelia A., Poway, CA, $88,230.71, Univ of Southern California, Los Angeles, CA, Dentistry, May 1987
Lim, Jhang H., Los Angeles, CA, $101,689.04, Univ of Southern California, Los Angeles, CA, Dentistry, May 1984
Luckey, John M., San Diego, CA, $88,633.08, Loma Linda University, Loma Linda, CA, Dentistry, June 1981
Mann, Walter, Murrieta, CA, $5,368.29, Univ of The Pacific, San Francisco, CA, Dentistry, June 1982
Marshall, Dauna, Los Angeles, CA, $74,131.34, Howard University, Washington, DC, Dentistry, May 1985
Marth, Tedie, San Marino, CA, $12,155.38, Univ of Southern California, Los Angeles, CA, Dentistry, June 1982

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McFee, Donald, Fontana, CA, $29,188.00, Univ of Alabama Birmingham, Birmingham, AL, Dentistry, June 1990
McLaughlin, Harry L., San Diego, CA, $12,422.16, Univ of Southern California, Los Angeles, CA, Dentistry, June 1984
Medina, Jacqueline J., Los Angeles, CA, $16,320.07, Univ of California San Francisco, San Francisco, CA, Dentistry, June 1981
Memmott, Dana B., Signal Hill, CA, $11,308.99, Univ of Southern California, Los Angeles, CA, Dentistry, May 1984
Miller, Guy M., Wrightwood, CA, $194,037.15, Loma Linda University, Loma Linda, CA, Dentistry, December 1982
Miller, William, Los Angeles, CA, $36,162.74, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1984
Miner, Michael W., Irvine, CA, $150,459.67, Tufts University, Boston, MA, Dentistry, June 1986
Moore, Derek D., Santa Ana, CA, $11,471.41, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1986
Nguyen, Kien-Trinh T., San Jose, CA, $9,795.90, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1987
Nichols, Marcus, Culver City, CA, $42,215.07, Case Western Reserve University, Cleveland, OH, Dentistry, May 1984
Nowry, Remond, Valley Village, CA, $96,421.15, Univ of Southern California, Los Angeles, CA, Dentistry, May 1991
Pattendien, Sharon J., San Francisco, CA, $137,101.24, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1987
Penn, Dennis, Carlsbad, CA, $6,148.61, Tufts University, Boston, MA, Dentistry, June 1980
Peterson, Kirk J., Long Beach, CA, $66,882.10, Tufts University, Boston, MA, Dentistry, May 1987
Pierce, John, San Diego, CA, $2,525.07, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1982
Portales, Ramon, San Pedro, CA, $8,038.15, Ohio State University, Columbus, OH, Dentistry, June 1985
Price, Steve V., Los Angeles, CA, $3,558.06, Univ of California Los Angeles, Los Angeles, CA, Dentistry, June 1984
Pryor III, Cornelius M., Los Angeles, CA, $10,727.05, Howard University, Washington, DC, Dentistry, May 1982
Rahmati, Behnam, Laguna Hills, CA, $123,041.59, Univ of Southern California, Los Angeles, CA, Dentistry, May 1987
Ramirez, Ralph, El Monte, CA, $14,017.88, Univ of Southern California, Los Angeles, CA, Dentistry, May 1985
Richards, Richard, Alameda, CA, $7,043.93, Univ of Southern California, Los Angeles, CA, Dentistry, May 1983
Riveroy, Isaac, Walnut, CA, $117,282.24, Boston University Medical Center, Boston, MA, Dentistry, May 1989
Roberts, Martha E., San Rafael, CA, $32,332.04, Univ of California San Francisco, San Francisco, CA, Dentistry, June 1982
Rucker, David D., San Mateo, CA, $240,754.38, Univ of The Pacific, San Francisco, CA, Dentistry, June 1985
Ruffner, Timothy E., Ventura, CA, $155,878.56, Loma Linda University, Loma Linda, CA, Dentistry, June 1985
Saliano, David D., North Hollywood, CA, $143,327.11, Univ of Southern California, Los Angeles, CA, Dentistry, May 1984
Sanchez-Spitzer, Alice, Los Angeles, CA, $54,626.78, Univ of California Los Angeles, Los Angeles, CA, Dentistry, June 1982
Santucci, Gerald, Walnut Creek, CA, $28,303.06, Univ of Southern California, Los Angeles, CA, Dentistry, May 1983
Schneider, Harry, Palm Desert, CA, $250,248.83, Loma Linda University, Loma Linda, CA, Dentistry, March 1985
Sevilla, Dana, Hayward, CA, $8,572.69, Univ of California San Francisco, San Francisco, CA, Dentistry, June 1988
Sevrean, Joseph J., Pomona, CA, $2,794.31, Creighton University, Omaha, NE, Dentistry, May 1989
Shaw, Michael P., Fremont, CA, $111,810.71, Marquette University, Milwaukee, WI, Dentistry, May 1983
Sheppard, Gordon L., Ceres, CA, $67,094.01, Univ of Southern California, Los Angeles, CA, Dentistry, May 1988
Shervin, Amir H., Los Angeles, CA, $54,233.75, Univ of Southern California, Los Angeles, CA, Dentistry, May 1985
Shin, Hui-Yong, Los Angeles, CA, $58,739.09, Univ of Southern California, Los Angeles, CA, Dentistry, May 1989
Shinsato, Wade A., Sun Valley, CA, $66,847.27, Univ of Pennsylvania, Philadelphia, PA, Dentistry, June 1987
Silva, Bradley K., Dana Point, CA, $74,272.64, New York University, New York, NY, Dentistry, June 1984
Snipes, Steven, San Marcos, CA, $9,111.74, Univ of Southern California, Los Angeles, CA, Dentistry, June 1981
Spencer, Durwood, Bakersfield, CA, $57,940.28, Univ of The Pacific, San Francisco, CA, Dentistry, June 1989
Stewart, John R., Orange, CA, $3,247.36, Univ of The Pacific, San Francisco, CA, Dentistry, June 1985
Sullivan, John K., Tulare, CA, $128,377.72, Univ of The Pacific, San Francisco, CA, Dentistry, September 1984
Swen, John J., Orangevale, CA, $40,108.20, Loma Linda University, Loma Linda, CA, Dentistry, June 1986
Taylor, Tamra, San Clemente, CA, $38,583.46, Loma Linda University, Loma Linda, CA, Dentistry, June 1984
Tracy, James M., San Jose, CA, $46,458.62, Georgetown University, Washington, DC, Dentistry, May 1979
Turner, Portia D., Inglewood, CA, $5,432.54, Howard University, Washington, DC, Dentistry, May 1986
Valenton, Francisco D., Sacramento, CA, $17,723.01, Univ of California San Francisco, San Francisco, CA, Dentistry, June 1984
Vazagov, Zachial, Arcadia, CA, $178,596.77, Tufts University, Boston, MA, Dentistry, May 1988
Vergara, Steven D., Loma Linda, CA, $83,568.10, Loma Linda University, Loma Linda, CA, Dentistry, June 1984
Wainwright, Mark, Oakland, CA, $18,042.93, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, June 1989
Warner, Arthur, Fremont, CA, $49,210.60, Case Western Reserve University, Cleveland, OH, Dentistry, May 1984
Weems, John, Visalia, CA, $78,939.85, Emory University, Atlanta, GA, Dentistry, May 1986
Wheadon, Scott, San Jose, CA, $54,194.47, Univ of Southern California, Los Angeles, CA, Dentistry, May 1986
Wright, Ronald L., Los Angeles, CA, $2,567.86, Meharry Medical College, Nashville, TN, Dentistry, May 1990
Yauman, Charles C., Mountain View, CA, $11,101.31, Univ of California Los Angeles, Los Angeles, CA, Dentistry, June 1983
Zachary, Floyd E., Live Oak, CA, $29,692.02, Loma Linda University, Loma Linda, CA, Dentistry, June 1981
Zangeneh Dane, Zahra, Encino, CA, $72,534.13, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1989

Health Administration

Fleming, Joseph J., Hayward, CA, $43,037.98, Trinity University, San Antonio, TX, Health Administration, June 1987
Martin, David D.C., San Diego, CA, $27,617.33, Washington University, St Louis, MO, Health Administration, May 1985

Optometry

Crandon, David, Los Alamitos, CA, $55,338.92, Southern Calif College of Optometry, Fullerton, CA, Optometry, May 1988
Davidek, Rosali, Alta Loma, CA, $127,426.37, Southern Calif College of Optometry, Fullerton, CA, Optometry, May 1988
Falletti-Borell, Giovanni, San Diego, CA, $76,230.65, Inter American Univ of PR, San Juan, PR, Optometry, June 1984
Litten, Laura L., Orange, CA, $99,280.87, Southern Calif College of Optometry, Fullerton, CA, Optometry, May 1989
Mast, Barry, Camarillo, CA, $34,347.18, Southern College of Optometry, Memphis, TN, Optometry, June 1984
Mayfield, Sheryl A., Redwood City, CA, $25,777.94, Southern Calif College of Optometry, Fullerton, CA, Optometry, June 1983
McWhinnie Jr., Clarence E., Los Angeles, CA, $9,103.34, Southern Calif College of Optometry, Fullerton, CA, Optometry, June 1983
Powell, Reed M., Hesperia, CA, $11,727.39, Illinois College of Optometry, Chicago, IL, Optometry, June 1980
Schamel, Lisa E., Los Angeles, CA, $14,651.42, Illinois College of Optometry, Chicago, IL, Optometry, May 1987
Steinberg, Craig, Van Nuys, CA, $5,868.43, Univ of Missouri St Louis, St Louis, MO, Optometry, May 1984.
Utnehmer, Patrick P., Temecula, CA, $9,290.06, Southern Calif College of Optometry, Fullerton, CA, Optometry, June 1984.

Osteopathy

Carter, Merv D., Moreno Valley, CA, $59,948.58, Michigan State University, East Lansing, MI, Osteopathy, June 1987.
Cline, Sherri L., Glendale, CA, $5,933.04, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, May 1988.
Conger, Michelle, Pasadena, CA, $168,624.42, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1986.
Crosby, Daniel W., Upland, CA, $5,939.26, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1986.
Hoang Xaun, Tuan A., Apo—San Francisco, CA, $12,624.15, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1991.
Lane, Richard R., Monrovia, CA, $44,858.43, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1989.
Marshall, William E., Newbury Park, CA, $148,618.99, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1987.
Maynard, Charles D., El Cajon, CA, $13,207.69, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1983.
Mendelson, Sol, Alta Loma, CA, $31,081.37, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1982.
Mitchell, Ralph, Alta Loma, CA, $74,089.12, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1991.
Patel, Harikrushna S., Inglewood, CA, $38,746.27, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1989.
Rudolph, Paul, Chino, CA, $229,993.26, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1984.
Smythe, Gerald, Cypress, CA, $1,184.09, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, May 1991.
Urbach, Mark J., Culver City, CA, $123,098.93, Michigan State University, East Lansing, MI, Osteopathy, June 1985.

Pharmacy

Abe, Gregory, Tujunga, CA, $24,116.19, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1988.
Coan, Bernard, Sunnyvale, CA, $6,515.14, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1988.
Daneshrad-Farnoosh, Angela, North Hollywood, CA, $5,509.16, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1989.
Degroot, Ruth, San Francisco, CA, $8,973.52, Univ of The Pacific, Stockton, CA, Pharmacy, April 1991.
Duarma, Geetha, Los Angeles, CA, $20,729.72, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1990.
Frick, Deborah, Santa Ana, CA, $23,368.96, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1989.
Gonzales, Carol C., Glendale, CA, $4,583.45, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1986.
Hedlund, Bonnie L., Fullerton, CA, $107,363.87, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1986.
Olivier, Ralph, Canyon Country, CA, $19,167.33, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1987.
Omoregie, Samuel I., Los Angeles, CA, $45,617.94, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1988.
Osayamen, Matthew, San Diego, CA, $57,934.64, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1987.
Ramos, Juliana J., San Pedro, CA, $40,018.53, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, May 1983.
Taylor, Roger R., Foster City, CA, $46,060.25, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1985.
Tran, Ba, Milpitas, CA, $5,439.97, Temple University, Philadelphia, PA, Pharmacy, June 1987.
Williams, Patricia, Los Angeles, CA, $9,136.72, Drake University, Des Moines, IA, Pharmacy, December 1979.
Zalez, Carol M., Encino, CA, $15,290.30, Univ of The Pacific, Stockton, CA, Pharmacy, April 1987.

Podiatry

Allen, Karen, San Francisco, CA, $122,029.02, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1985.
Burleigh, Sharon, Oakland, CA, $61,408.19, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1985
Cammall, David B., San Diego, CA, $28,307.04, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1986
Case, Jeffrey A., Santa Ana, CA, $117,728.41, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1985
Chaffin, Dwight, Modesto, CA, $205,099.97, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1982
Dakis, Stephen S., La Jolla, CA, $23,228.61, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1987
Featherstone, John, San Bruno, CA, $36,320.34, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1993
Fednard, Anne Marie A., Oakland, CA, $73,440.62, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
Gandy, Paul P., San Bernardino, CA, $65,867.72, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982
Gray, David M., San Francisco, CA, $29,130.73, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1986
Harman, Jeffery M., Beverly Hills, CA, $7,486.94, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1983

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Hartman, Gregory D., Burbank, CA, $43,530.03, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1982
Hitchcock, Philip R., Highland, CA, $101,888.34, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1981
Landrum, Keith, Palos Verdes, CA, $52,618.22, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1981
Lee, Chul G., Upland, CA, $54,089.38, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1989
Lentell, Brian M., Fresno, CA, $38,754.11, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1984
Lillie, Richard W., Mission Viejo, CA, $83,643.35, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1981
Loggins, L, Oakland, CA, $210,397.48, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
London, Eliyahu, Crestline, CA, $211,734.09, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
Medina, Edwin R., Berkeley, CA, $91,217.72, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1987
Pineda, Joseph J., Santa Barbara, CA, $190,998.76, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1984
Pisarski, Marshall M W, San Francisco, CA, $37,435.27, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1985
Pope, David, Downey, CA, $145,930.30, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1985
Sass, Michael D., Upland, CA, $123,211.40, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1988
Scoffield, Mark H., Fresno, CA, $68,494.77, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982
Scott, Thomas, Oakland, CA, $48,663.02, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1987
Seymour, Stephen J., Thousand Oaks, CA, $53,244.63, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1980
Shaber, Sydney S., San Francisco, CA, $38,418.83, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1979
Spaulding, Karla K., San Francisco, CA, $20,261.79, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1989
Sullivan-Sabo, Denise D., Sacramento, CA, $59,374.28, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1984
Waller, Marilyn J., Castro Valley, CA, $130,896.29, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1990
Warford, Mark, Roseville, CA, $94,766.66, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1987
Wells, Kenneth, Chula Vista, CA, $189,769.11, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
Zolfaghri, Behrooz, Danville, CA, $46,518.31, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1986
Zorilla, Orlando, San Gabriel, CA, $167,735.57, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986

Public Health

Adler, Eric M., La Jolla, CA, $9,797.25, Yale University, New Haven, CT, Public Health, May 1987
Bernard, Cheryle, Martinez, CA, $121,687.49, Tulane University, New Orleans, LA, Public Health, May 1986
Howell, Reynold R., San Francisco, CA, $58,540.71, Loma Linda University, Loma Linda, CA, Public Health, December 1981
Lemkin, Peter R., Solana Beach, CA, $6,159.37, Yale University, New Haven, CT, Public Health, May 1984
Nebedum, Archibald, Los Angeles, CA, $10,665.37, Univ of California Los Angeles, Los Angeles, CA, Public Health, June 1985
Velez, Janet, Moreno Valley, CA, $1,147.22, Yale University, New Haven, CT, Public Health, May 1988
Williams, Pamela A., Carson, CA, $4,646.86, Loma Linda University, Loma Linda, CA, Public Health, June 1983

Veterinary Medicine

Anderson-Coleman, Joy R., Los Angeles, CA, $7,740.34, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1990
Coleman, Keith B., Los Angeles, CA, $4,110.66, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1989
Hurdle II, Clarence, Sacramento, CA, $65,596.45, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1986
Pattio, Nolton, Monrovia, CA, $21,618.72, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, May 1983

Colorado

Allopathic Medicine

Bennett, Yvonne E., Littleton, CO, $24,015.20, Univ of Colorado Health Science Center, Denver, CO, Allopathic Medicine, May 1986
Busse, David D., Wheat Ridge, CO, $150,711.89, George Washington University, Washington, DC, Allopathic Medicine, May 1987
Ferguson, Rebecca R., Snowmass, CO, $36,263.80, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1986
Flaherty, Matthew, Denver, CO, $17,442.87, Univ of Colorado Health Science Center, Denver, CO, Allopathic Medicine, May 1990
McEwen, Christopher C., Winter Park, CO, $6,445.73, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1984
Roberts, Charles C., Aurora, CO, $76,587.79, Univ of Colorado Health Science Center, Denver, CO, Allopathic Medicine, May 1985
Wells, Victor V., Denver, CO, $31,992.84, Creighton University, Omaha, NE, Allopathic Medicine, May 1984

Chiropractic

Baker, Geoffrey B., Lakewood, CO, $2,460.12, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1989
Bammer, Phillip L., Broomfield, CO, $48,364.92, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1983
Burbridge, David H., Thornton, CO, $41,684.38, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1988
Clarke, Debbie F., Louisville, CO, $6,949.31, Life College, Marietta, GA, Chiropractic, June 1984
Cline, Doyle, Broomfield, CO, $27,304.24, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985
Colby, Susan E., Colorado Springs, CO, $39,571.95, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986
Crow, Joe, Cheraw, CO, $14,612.08, Parker College of Chiropractic, Dallas, TX, Chiropractic, January 1990
Cunningham, Marvin D., Colorado Springs, CO, $20,067.11, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1986
Day, Donald D., Thornton, CO, $55,260.64, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1983
Dunevitz, Benjamin S., Denver, CO, $78,306.24, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, January 1986
Foster, Valeria, Greeley, CO, $5,558.07, Life College, Marietta, GA, Chiropractic, March 1983
Garcia, Sylvester, Platteville, CO, $56,341.78, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1988
Hendler, Michael J., Lakewood, CO, $77,828.22, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Jordan, James, Castle Rock, CO, $100,898.10, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Krebill, Michael, Colorado Springs, CO, $85,989.49, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988
Langolf, Daniel L., Lakewood, CO, $46,259.40, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
Martin, Kathleen L., Englewood, CO, $18,380.47, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1989
McClain, Van A., Golden, CO, $11,150.55, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1987
McClure, Lance L., Littleton, CO, $46,745.58, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Michals, Robert, Aurora, CO, $40,532.58, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Morgan, Pamela, Denver, CO, $881.94, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1983
Ohrdorf, Ronald T., Colorado Springs, CO, $111,425.96, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988
Orr, William, Canon City, CO, $94,237.15, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1988
Rowland, Brian, Denver, CO, $1,632.00, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1989
Schmidt, Jeffrey J., Woody Creek, CO, $34,595.66, Western States Chiropractic College, Portland, OR, Chiropractic, December 1988
Sensenig, Barry W., Boulder, CO, $5,290.94, Western States Chiropractic College, Portland, OR, Chiropractic, June 1983
Skinner, Keith, Denver, CO, $37,799.18, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1990
Stjernholn, Darwin, Denver, CO, $74,361.82, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1988
Stokka, Wayne M., Littleton, CO, $15,490.46, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1989
Strapko, Steven W., Lakewood, CO, $56,181.02, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1988
Taylor, Kenneth, Colorado Springs, CO, $46,149.64, Life College, Marietta, GA, Chiropractic, September 1984
Trainer, Anita J., Denver, CO, $46,002.06, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1987
Wheeler, Edward, Arvada, CO, $25,231.80, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985
Williams, Danny C., Parker, CO, $4,770.65, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1990
Williams, Patsy, Greeley, CO, $5,471.42, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1989
Withem, Stewart, Grand Junction, CO, $64,829.08, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1986
Young, Larry N., Pueblo, CO, $29,430.25, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985

Clinical Psychology

Evans, Roberta, Denver, CO, $16,904.66, California Sch. of Prof. Psych., San Diego, San Diego, CA, Clinical Psychology, June 1983
Szczypka, Denis, Denver, CO, $3,837.97, Wright State University, Dayton, OH, Clinical Psychology, August 1986

Dentistry

Burkart, John D., Aurora, CO, $39,491.34, Marquette University, Milwaukee, WI, Dentistry, May 1983
Hansen, Daryl G., Denver, CO, $15,026.94, Univ of Colorado Health Science Center, Denver, CO, Dentistry, August 1989
Haviland, Philip F., Denver, CO, $19,006.64, Oral Roberts University, Tulsa, OK, Dentistry, May 1987
Lack, Ray, Arvada, CO, $57,353.28, Univ of Colorado Health Science Center, Denver, CO, Dentistry, May 1986
Tabor, Carl, Denver, CO, $70,284.90, Tufts University, Boston, MA, Dentistry, June 1983
Thompson, Jerrold A., Lakewood, CO, $13,206.10, Univ of Colorado Health Science Center, Denver, CO, Dentistry, May 1983
Webb, David M., Colorado Springs, CO, $18,807.19, Creighton University, Omaha, NE, Dentistry, May 1987

Optometry

Carrico, Gerri P., Denver, CO, $37,507.84, Southern Calif College of Optometry, Fullerton, CA, Optometry, May 1988
Cooley, Stephen L., Fort Collins, CO, $19,313.97, Pacific University, Forest Grove, OR, Optometry, May 1984
Russell, Karen M., Parker, CO, $111,330.29, Illinois College of Optometry, Chicago, IL, Optometry, December 1985

Pharmacy

Espinosa, Sylvia, Colorado Springs, CO, $9,936.23, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1989

Podiatry

Heser, Robert J., Denver, CO, $42,524.82, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Nicklas, Lisa A., Pueblo, CO, $18,136.29, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1987
Otteman, Timothy, Lakewood, CO, $81,572.34, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1983

Connecticut

Allopathic Medicine

Cartwright, Nadine, Huntington, CT, $86,876.70, Brown University, Providence, RI, Allopathic Medicine, June 1985
Franco, Wayne, Wethersfield, CT, $87,632.56, Georgetown University, Washington, DC, Allopathic Medicine, May 1980
Hayden, Gina M., Westport, CT, $30,979.26, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1987
Hume, Forest, Woodbury, CT, $9,714.43, Univ of Kentucky, Lexington, KY, Allopathic Medicine, May 1990
Jackson, Garland C., Hamden, CT, $230,246.71, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1984
Jensen, Peter, Norwalk, CT, $3,048.84, Dartmouth Medical School, Hanover, NH, Allopathic Medicine, June 1992
Lowe, Paul R., Huntington, CT, $46,771.84, Boston University Medical Center, Boston, MA, Allopathic Medicine, May 1986

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Meckler, Laurie, New Haven, CT, $40,877.32, Cornell University Medical College, New York, NY, Allopathic Medicine, May 1988
Pavlis, Maria C., Greenwich, CT, $54,893.07, Univ of Miami, Miami, FL, Allopathic Medicine, May 1991
Yang, Chun, Branford, CT, $3,153.27, Brown University, Providence, RI, Allopathic Medicine, May 1991

Chiropractic

Anderson, Mark, Monroe, CT, $64,335.74, Life College, Marietta, GA, Chiropractic, June 1986
Barone, Alice, Trumbull, CT, $15,421.34, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1989
Dancer, Gena A., Greenwich, CT, $72,393.61, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1986
Helenek, Anthony, Essex, CT, $25,891.96, Life College, Marietta, GA, Chiropractic, September 1985
Heppe, Cherie, Hartford, CT, $4,674.00, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1993
Hudson, Donald, Hartford, CT, $78,328.25, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988
Trebing, William P., Greenwich, CT, $6,313.78, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984

Clinical Psychology

Rivera, Nelson, Hartford, CT, $105,277.31, California Sch of Prof Psych, Alhambra, CA, Clinical Psychology, July 1987
Wakeman, Edward A., Guilford, CT, $16,523.18, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, June 1986

Dentistry

Johnson, John M., Waterford, CT, $5,638.67, Georgetown University, Washington, DC, Dentistry, May 1985
Mason, Kyle K., Guilford, CT, $4,835.94, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, December 1986
Resendiz, Mario, Danbury, CT, $21,723.26, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1986
Robinson, Robyn C., New Haven, CT, $8,614.59, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, May 1988
Seib, Kenneth C., Branford, CT, $22,759.48, Univ of Florida, Gainesville, FL, Dentistry, December 1987

Pharmacy

Poplis, Richard A., Waterbury, CT, $12,596.07, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1985

Podiatry

Church, Steven, Meriden, CT, $52,210.67, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984
Irrera, Stephen A., West Haven, CT, $17,419.57, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1979

Public Health

Carter, Deborah L., New Britain, CT, $2,832.49, Yale University, New Haven, CT, Public Health, May 1990
Winfield, Allison S., New Haven, CT, $3,309.99, Yale University, New Haven, CT, Public Health, May 1990

Veterinary Medicine

Smith, Robin, Quaker Hill, CT, $51,642.85, Ohio State University, Columbus, OH, Veterinary Medicine, June 1987

Delaware

Allopathic Medicine

Trader, Stephanie L., Wilmington, DE, $128,028.36, Univ of Pittsburgh, Pittsburgh, PA, Allopathic Medicine, June 1990

Chiropractic

De La Cuesta, Imant, Wilmington, DE, $35,367.82, Life Chiropractic College-west, San Lorenzo, CA, Chiropractic, September 1990

Pharmacy

Pressley, Laura, Newark, DE, $34,430.04, Temple University, Philadelphia, PA, Pharmacy, May 1988

District of Columbia

Allopathic Medicine

Anyasodo, Patrick P U, Washington, DC, $137,297.48, Georgetown University, Washington, DC, Allopathic Medicine, May 1985
Baker, Daryl, Washington, DC, $1,586.54, Howard University, Washington, DC, Allopathic Medicine, May 1991
Bartee, Dyrel P., Washington, DC, $26,037.67, Howard University, Washington, DC, Allopathic Medicine, May 1988
Burt, Hugh A., Washington, DC, $63,335.86, Georgetown University, Washington, DC, Allopathic Medicine, May 1990
Clark, Charles H., Washington, DC, $14,593.47, Howard University, Washington, DC, Allopathic Medicine, May 1982
Clark, Jeannine A., Washington, DC, $15,660.16, Georgetown University, Washington, DC, Allopathic Medicine, May 1981
Clark, John J., Washington, DC, $39,571.69, George Washington University, Washington, DC, Allopathic Medicine, May 1981
Cuffy, Lewis, Washington, DC, $54,746.88, Georgetown University, Washington, DC, Allopathic Medicine, May 1990
Greaves, Jeanette J., Washington, DC, $54,784.29, Georgetown University, Washington, DC, Allopathic Medicine, May 1985
Johnson, Gavia E., Washington, DC, $7,628.19, Howard University, Washington, DC, Allopathic Medicine, May 1991
McAllister, Amazair, Washington, DC, $3,817.55, Howard University, Washington, DC, Allopathic Medicine, May 1983
Owino, Stephen S., Washington, DC, $2,244.18, Howard University, Washington, DC, Allopathic Medicine, May 1987
Pressley, Deborah L., Washington, DC, $9,045.79, Univ of Colorado Health Science Center, Denver, CO, Allopathic Medicine, August 1979
Spencer, Silvano A., Washington, DC, $7,210.75, Howard University, Washington, DC, Allopathic Medicine, May 1986
Taylor, David, Washington, DC, $1,804.14, Howard University, Washington, DC, Allopathic Medicine, May 1991
Wiggins, Denise D., Washington, DC, $80,810.75, Georgetown University, Washington, DC, Allopathic Medicine, May 1985

Chiropractic

Darawshi, Jaber M., Washington, DC, $6,345.16, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985

Dentistry

Adedara, Isaac O., Washington, DC, $65,897.72, Howard University, Washington, DC, Dentistry, May 1990
Cheek Jr, Albert A., Washington, DC, $22,023.11, Howard University, Washington, DC, Dentistry, May 1988
Cruz, James J., Washington, DC, $17,534.82, Georgetown University, Washington, DC, Dentistry, May 1988
Elfter, George N., Washington, DC, $23,997.15, Columbia University, New York, NY, Dentistry, May 1989
Gross, Shepherd, Washington, DC, $108,581.56, Howard University, Washington, DC, Dentistry, May 1986

Hailstock, Marshelle, Washington, DC, $9,252.98, Howard University, Washington, DC, Dentistry, May 1985
Harris, Conrad W., Washington, DC, $78,560.55, Howard University, Washington, DC, Dentistry, May 1985
Jacobson, Douglas N., Washington, DC, $25,043.27, Washington University, St Louis, MO, Dentistry, May 1987
Jones, Sherman, Washington, DC, $88,638.27, Howard University, Washington, DC, Dentistry, May 1989
Kelly Jr, Johnie, Washington, DC, $19,894.00, Georgetown University, Washington, DC, Dentistry, May 1988
King, James H., Washington, DC, $26,142.95, Howard University, Washington, DC, Dentistry, May 1990
Labate, Cathleen A., Washington, DC, $22,407.57, Ohio State University, Columbus, OH, Dentistry, June 1986
Mack, Stephanie, Washington, DC, $13,909.17, Howard University, Washington, DC, Dentistry, May 1991
Markham, Robert R., Washington, DC, $15,720.45, Howard University, Washington, DC, Dentistry, May 1988
Perry-Dodson, Elizabeth, Washington, DC, $14,743.55, Howard University, Washington, DC, Dentistry, December 1987
Pettaway, Reginald, Washington, DC, $36,447.16, Howard University, Washington, DC, Dentistry, May 1989
Ruffin, Wayne A., Washington, DC, $36,907.50, Howard University, Washington, DC, Dentistry, May 1987
Sims, Michael A., Washington, DC, $27,757.67, Georgetown University, Washington, DC, Dentistry, May 1983
Smith, Daniel, Washington, DC, $11,597.92, Howard University, Washington, DC, Dentistry, May 1984
Smith, Ellison B., Washington, DC, $26,696.55, Howard University, Washington, DC, Dentistry, May 1990
Smith, Vasco A., Washington, DC, $139,562.47, Meharry Medical College, Nashville, TN, Dentistry, May 1984
Tucker, Lawrence, Washington, DC, $16,576.71, Georgetown University, Washington, DC, Dentistry, May 1989
Whitaker, Aaron T., Washington, DC, $42,109.72, Howard University, Washington, DC, Dentistry, May 1984
Wilson, Tanya R., Washington, DC, $6,181.45, Ohio State University, Columbus, OH, Dentistry, June 1987

Optometry

Howard, Veryl E., Washington, DC, $17,491.94, Pennsylvania College of Optometry, Philadelphia, PA, Optometry, May 1988

Osteopathy

Carter-Miller, Loretta L., Washington, DC, $2,610.55, Michigan State University, East Lansing, MI, Osteopathy, June 1987
Hopkins, Garland W., Washington, DC, $67,368.50, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1985

Pharmacy

Carter, Kevin, Washington, DC, $19,610.24, Howard University, Washington, DC, Pharmacy, May 1987
Martin Jr, Samuel, Washington, DC, $63,465.22, Howard University, Washington, DC, Pharmacy, May 1986
Ross, Tanya, Washington, DC, $33,531.87, Temple University, Philadelphia, PA, Pharmacy, June 1986

Podiatry

Chatmon, Deirdre, Washington, DC, $44,168.82, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Rucker, Gail M., Washington, DC, $146,417.44, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985
Travis, Andrew F., Washington, DC, $152,894.37, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1987

Veterinary Medicine

Reid-Quinn, Cheri A., Washington, DC, $44,504.08, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1983

Florida

Allopathic Medicine

Alexander, Zandrina, Brandon, FL, $18,979.64, Univ of Connecticut Health Center, Farmington, CT, Allopathic Medicine, May 1983
Burks, Teman, Tampa, FL, $184,136.54, Georgetown University, Washington, DC, Allopathic Medicine, May 1984
Cadrecha, Cheryl, Gainesville, FL, $13,785.23, Univ of Florida, Gainesville, FL, Allopathic Medicine, June 1990
Carazo, Andres, Miami, FL, $58,066.59, Tulane University, New Orleans, LA, Allopathic Medicine, June 1987
Collins, Matthew C., Altamonte Springs, FL, $16,639.18, Mayo Medical School, Rochester, MN, Allopathic Medicine, May 1987
Cooper, Charles R., Jacksonville, FL, $17,507.64, Univ of Miami, Miami, FL, Allopathic Medicine, June 1983
Darrisaw, Brian R., Daytona Beach, FL, $5,882.70, Cornell University Medical College, New York, NY, Allopathic Medicine, May 1987
Dreier, Yolanda J., Tampa, FL, $8,464.30, Indiana University Indianapolis, Bloomington, IN, Allopathic Medicine, May 1986
Ellis, Stanley B., Orlando, FL, $57,045.66, Loma Linda University, Loma Linda, CA, Allopathic Medicine, May 1987
Ellison, Dennard W., Jacksonville, FL, $12,677.76, Univ of Florida, Gainesville, FL, Allopathic Medicine, May 1986
Gelbard, Steven D., Fort Lauderdale, FL, $177,534.06, Tufts University, Boston, MA, Allopathic Medicine, June 1983
Koesterman, Charley F., Miami, FL, $60,094.84, Univ of North Dakota, Grand Forks, ND, Allopathic Medicine, May 1987
Kunen, Frederick J., Miami, FL, $52,236.45, Univ of Miami, Miami, FL, Allopathic Medicine, June 1982
Lloyd, Antoinette L., Orange Park, FL, $12,781.00, Yale University, New Haven, CT, Allopathic Medicine, May 1985
Mowrey, James V., Pensacola, FL, $17,567.60, Univ of Miami, Miami, FL, Allopathic Medicine, June 1986
Parks, Gregory G., St Petersburg, FL, $4,905.23, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1989
Pinkston, Garvey R., Silver Springs, FL, $67,524.82, Univ of Miami, Miami, FL, Allopathic Medicine, June 1981
Pittman, Kenneth R., Fort Lauderdale, FL, $11,706.77, Mercer University, Macon, GA, Allopathic Medicine, June 1986
Reddick, David J., Royal Palm Beach, FL, $38,557.49, Boston University Medical Center, Boston, MA, Allopathic Medicine, May 1985
Rhodes, Thomas, Beverly Hills, FL, $12,976.91, Univ of South Florida, Tampa, FL, Allopathic Medicine, June 1989
Rose, Stefan, Miami, FL, $60,461.83, Univ of Miami, Miami, FL, Allopathic Medicine, May 1985
Sanchez, Wilfredo, Miami, FL, $9,876.94, Rush University, Chicago, IL, Allopathic Medicine, June 1987
Scott, Clarence, Sanford, FL, $214,240.57, Georgetown University, Washington, DC, Allopathic Medicine, May 1986
Smith, Barbara B., Coral Springs, FL, $22,095.95, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1982
Smith, George, Tampa, FL, $178,643.81, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1984
Smith, Willielyra, Miami, FL, $7,693.65, Wright State University, Dayton, OH, Allopathic Medicine, June 1989
Wade, Larren, Boca Raton, FL, $20,550.57, Univ of Miami, Miami, FL, Allopathic Medicine, May 1990

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Chiropractic

Anderson, Barry, Tampa, FL, $1,907.90, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1982

Bailey, Darrell E., Lynn Haven, FL, $20,097.83, Life College, Marietta, GA, Chiropractic, March 1989

Baker III, James W., Jacksonville, FL, $60,198.00, Life College, Marietta, GA, Chiropractic, December 1986

Barner, Russell, Tampa, FL, $141,142.76, Life College, Marietta, GA, Chiropractic, December 1986

Bartnett, Edmond E., North Miami Beach, FL, $63,097.87, Life College, Marietta, GA, Chiropractic, March 1985

Bennett, David, Ormond Beach, FL, $9,283.00, Life College, Marietta, GA, Chiropractic, September 1985

Bennett, Regina V., Clearwater, FL, $135,472.06, Life College, Marietta, GA, Chiropractic, March 1986

Berry, Virgil, Starke, FL, $97,315.69, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986

Blackman, Gregory D., Port St Lucie, FL, $14,507.85, Life College, Marietta, GA, Chiropractic, June 1982

Boley, Glenn E., Coral Springs, FL, $45,336.23, National College of Chiropractic, Lombard, IL, Chiropractic, April 1988

Born, Kenice A., Clearwater, FL, $58,990.31, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986

Boshes, Perri D., Boca Raton, FL, $17,784.77, Life College, Marietta, GA, Chiropractic, December 1984

Boyer, Glenn, Hollywood, FL, $8,461.32, Life College, Marietta, GA, Chiropractic, December 1984

Brimm, Willard, Tampa, FL, $54,633.70, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985

Brousseau, Wayne, Casselberry, FL, $15,724.32, Life College, Marietta, GA, Chiropractic, June 1983

Brown, Michael L., Fort Pierce, FL, $64,106.15, Life College, Marietta, GA, Chiropractic, September 1989

Buskirk, Dayna E., Gainesville, FL, $48,384.10, Life College, Marietta, GA, Chiropractic, March 1987

Calrissian, Lando, Milton, FL, $15,992.32, Life College, Marietta, GA, Chiropractic, March 1990

Campanale, Paul R., Jacksonville, FL, $25,744.65, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984

Campo, John I., Tampa, FL, $97,552.31, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986

Carageorge, Dawn C., Tampa, FL, $33,663.98, Life College, Marietta, GA, Chiropractic, June 1989

Carpenter, Richard, Tampa, FL, $81,001.41, Life College, Marietta, GA, Chiropractic, March 1986

Carrancejie, Monica, Tampa, FL, $76,529.78, Life College, Marietta, GA, Chiropractic, December 1986

Caudill, Curtis, St. Petersburg, FL, $14,279.76, Life College, Marietta, GA, Chiropractic, September 1983

Cohen, Scott, Hollywood, FL, $31,984.16, Life College, Marietta, GA, Chiropractic, December 1990

Constantinoff, Karen, Cape Coral, FL, $6,641.63, Life College, Marietta, GA, Chiropractic, June 1983

Dejesus, Jose A., Miami, FL, $17,498.26, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, January 1984

Dejesus-Kock, Iris M., Miami, FL, $10,580.81, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1983

Densmore, Robert D., Tampa, FL, $24,570.45, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1984

Diesen, James D., Orange Park, FL, $62,100.84, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1988

Dinofer, Jeffrey, Miami, FL, $44,998.67, Life College, Marietta, GA, Chiropractic, March 1989

Douglas, Bonnie J., Largo, FL, $49,264.97, Life College, Marietta, GA, Chiropractic, September 1984

Draluck, Dean, Margate, FL, $17,906.76, Life College, Marietta, GA, Chiropractic, September 1989

Dungan, Kim V., Sunrise, FL, $57,656.57, Life College, Marietta, GA, Chiropractic, June 1984

Erickson, Brock T., Delray Beach, FL, $8,079.35, Life College, Marietta, GA, Chiropractic, September 1990

Etienne, Ivan, Miami, FL, $14,515.69, National College of Chiropractic, Lombard, IL, Chiropractic, May 1983

Fabricant, Michael M., Davie, FL, $59,596.34, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1984

Falowski, Frances, Fort Lauderdale, FL, $145,583.72, Life College, Marietta, GA, Chiropractic, September 1985

Fine, Mitchell L., Laurel Hill, FL, $14,939.02, Life College, Marietta, GA, Chiropractic, December 1983

Fountain, Rodney E., Fort Myers, FL, $116,071.13, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984

Garone, Joseph J., Miramar, FL, $45,980.89, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1984

Garver, Gordon B., St Augustine, FL, $29,258.35, Life College, Marietta, GA, Chiropractic, June 1982

Giallanzo, Tom, Dania, FL, $111,750.07, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1985

Glasgow, James, Stuart, FL, $24,960.39, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1984

Glogower, Audie, West Palm Beach, FL, $60,907.51, New York Chiropractic College, Seneca Falls, NY, Chiropractic, August 1986

Goforth, James, Jackson, FL, $39,853.74, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986

Gordon, Gay L., Sebastian, FL, $14,815.33, Life College, Marietta, GA, Chiropractic, December 1983

Guy, Geoffrey C., Englewood, FL, $17,731.59, Life College, Marietta, GA, Chiropractic, June 1983

Hall, Patricia, Homestead, FL, $23,413.33, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1984

Halley, James E., Port Richey, FL, $46,723.93, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1987

Hardwick, James F., Altamonte Springs, FL, $106,957.67, Life College, Marietta, GA, Chiropractic, December 1986

Haut, Ruth A., Kissimmee, FL, $60,562.87, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984

Holzer, Richard R., Hollywood, FL, $49,211.88, Life College, Marietta, GA, Chiropractic, December 1984

Hundley, Kenneth L., Panama City, FL, $141,318.26, Life College, Marietta, GA, Chiropractic, September 1985

Jennings, Peggy P., Gainesville, FL, $39,931.35, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984

Kern, Mark S., Fort Myers, FL, $25,027.40, Life College, Marietta, GA, Chiropractic, June 1983

Kincy, Gary, Key West, FL, $34,947.24, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1989

Klejnot, Timothy A., Palm Harbor, FL, $80,624.39, Life College, Marietta, GA, Chiropractic, June 1989

Kolarik, Thomas T., Temple Terrace, FL, $65,723.88, Life College, Marietta, GA, Chiropractic, September 1984

Kornacki, Kerry E., Jacksonville, FL, $34,284.38, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986

Krista, Geraldine M., Orange City, FL, $114,446.82, Life College, Marietta, GA, Chiropractic, September 1985

Lada, Richard, Citrus Springs, FL, $43,681.06, Life College, Marietta, GA, Chiropractic, March 1990

Langheier, David D., Clearwater, FL, $32,350.98, Life College, Marietta, GA, Chiropractic, September 1983

Levin, Nancy, Palm Beach Gardens, FL, $48,531.59, Life College, Marietta, GA, Chiropractic, September 1984

Levine, Jeffrey D., Orlando, FL, $42,254.46, Life College, Marietta, GA, Chiropractic, September 1985

Liebman, Jay M., Hallandale, FL, $128,451.86, Life College, Marietta, GA, Chiropractic, March 1985

Machara, Katherine, Deltona, FL, $120,619.14, Life College, Marietta, GA, Chiropractic, December 1986

Mane, Walter, Miami, FL, $103,936.80, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1985

Marcus, Alex, Orlando, FL, $1?,157.47, Life College, Marietta, GA, Chiropractic, June 1984

Marsh, Garth, Treasure Island, FL, $11,104.21, Life College, Marietta, GA, Chiropractic, June 1991

McElhinney, Thomas E., St Augustine, FL, $75,973.19, Life College, Marietta, GA, Chiropractic, March 1989

McLerren, Todd, Jacksonville, FL, $35,513.89, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1989

Meunier, Edward J., Fort Lauderdale, FL, $142,718.85, Life College, Marietta, GA, Chiropractic, August 1985

Morris Jr, David O., Tampa, FL, $106,686.63, Life College, Marietta, GA, Chiropractic, December 1988

Moses, Robert, Jacksonville, FL, $57,790.81, Life College, Marietta, GA, Chiropractic, December 1984

Pena, Fred, Winter Park, FL, $23,482.51, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1988

Price, Douglas A., Tampa, FL, $67,494.01, Life College, Marietta, GA, Chiropractic, June 1983

Robinson, Bruce, Cocoa Beach, FL, $89,188.45, Life College, Marietta, GA, Chiropractic, June 1986

Robitaille, Richard R., Apopka, FL, $93,389.19, Life College, Marietta, GA, Chiropractic, December 1984

Rodriguez, Frank, Longwood, FL, $87,417.70, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985

Rodriguez, Marlene, Miami, FL, $25,503.87, Life College, Marietta, GA, Chiropractic, March 1988

Rodriguez, Pedro P., Miami, FL, $10,506.33, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1983

Rosemont, Joann L., Jensen Beach, FL, $6,996.07, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984

Ross, Lawrence, Fort Pierce, FL, $57,171.69, Life College, Marietta, GA, Chiropractic, December 1984

Rossrucker, Kenneth S., Altamonte Springs, FL, $52,444.75, Life College, Marietta, GA, Chiropractic, December 1982

Santa Cruz, Matthew E., Tampa, FL, $40,632.55, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983

Schlapper, Gary, Deland, FL, $65,369.07, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1984

Schnell, Donald, Sarasota, FL, $12,089.68, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1992

Shapiro, Abe, Pompano Beach, FL, $7,259.95, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, September 1990

Siverling, Gerald G., Brandon, FL, $40,127.84, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983

Smith, Mark A., Cape Coral, FL, $18,896.78, National College of Chiropractic, Lombard, IL, Chiropractic, April 1985

Smith, Richard, Pembroke Pines, FL, $38,409.97, Life College, Marietta, GA, Chiropractic, September 1989

South, Steve C., Fort Myers Beach, FL, $24,616.48, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1984

Stallings, Spichael L., Panama City, FL, $43,432.21, Life College, Marietta, GA, Chiropractic, December 1983

Tepperberg, Phillip S., Tavernier, FL, $40,109.61, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1983

Thiel, Margaret A., St Petersburg, FL, $60,807.76, Life College, Marietta, GA, Chiropractic, September 1988

Thomas, Bruce L., St Petersburg, FL, $96,317.24, Life College, Marietta, GA, Chiropractic, March 1989

Thompson, Rubin, Miami, FL, $6,947.91, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1982.

Thornton, Loren, Fruitland Park, FL, $121,833.60, Life College, Marietta, GA, Chiropractic, March 1986.

Vitow, Barry, Boca Raton, FL, $70,235.88, Life College, Marietta, GA, Chiropractic, June 1984.

Walburn, Keith J., Tampa, FL, $42,531.06, Life College, Marietta, GA, Chiropractic, December 1983.

Walker, Duane, Jacksonville, FL, $64,592.90, Life College, Marietta, GA, Chiropractic, September 1986.

Walters, Clark C., Dunedin, FL, $51,381.77, Life College, Marietta, GA, Chiropractic, June 1985.

Whipkey, Douglas G., Jensen Beach, FL, $39,386.63, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989.

Wieland, David M., St Petersburg, FL, $53,036.90, National College of Chiropractic, Lombard, IL, Chiropractic, August 1983.

Wilkins Jr, Ellison W., Palm Beach, FL, $38,324.29, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1984.

Wynne, Conrad, Deltona, FL, $21,782.36, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1990.

Yenzer Jr, James, New Smyrna Beach, FL, $150,535.66, Life College, Marietta, GA, Chiropractic, December 1985.

Zulovitz, Mark J., Vero Beach, FL, $69,201.82, Life College, Marietta, GA, Chiropractic, December 1986.

Clinical Psychology

Aufderheide, Dean H., Fort Walton, FL, $16,549.14, Fuller Theological Seminary, Pasadena, CA, Clinical Psychology, June 1988.

Don-pedro, Eric G., Orlando, FL, $42,362.31, American Sch of Professional Psychology, Chicago, IL, Clinical Psychology, November 1984.

Gomez, Gabriella, North Miami Beach, FL, $11,745.90, Nova Southeastern University, Ft Lauderdale, FL, Clinical Psychology, May 1988.

Hall, Pamela A., Fort Lauderdale, FL, $92,744.78, Florida Institute of Technology, Melbourne, FL, Clinical Psychology, June 1987.

Klein, Jean, North Miami Beach, FL, $27,422.28, Nova Southeastern University, Ft Lauderdale, FL, Clinical Psychology, December 1985.

Lamboi, Sangoi, Tampa, FL, $41,300.39, Univ of Florida, Gainesville, FL, Clinical Psychology, December 1987.

Mims, Debbie, Melbourne, FL, $44,930.14, Florida Institute of Technology, Melbourne, FL, Clinical Psychology, June 1988.

Noel, Sheldon S., Miami Beach, FL, $37,002.60, American Sch of Professional Psychology, Chicago, IL, Clinical Psychology, November 1985.

Dentistry

Blehl, Thomas, Orlando, FL, $15,949.39, Boston University Medical Center, Boston, MA, Dentistry, June 1981.

Bruyning, Edwin F., Miami, FL, $100,847.74, Tufts University, Boston, MA, Dentistry, June 1989.

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Christopoulos, Steve, St Petersburg, FL, $10,154.89, Boston University Medical Center, Boston, MA, Dentistry, June 1986.
Coello, Carlos A., Boca Raton, FL, $154,055.13, Washington University, St Louis, MO, Dentistry, May 1989.
Concepcion, Jorge L., Miami, FL, $74,965.37, Boston University Medical Center, Boston, MA, Dentistry, May 1989.
Dacosta, Michael P., Miami, FL, $13,475.59, Univ of The Pacific, San Francisco, CA, Dentistry, June 1983.
Gerlecz, Steven, Lynn Haven, FL, $35,347.73, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1985.
Hammonds, Michael, Port Charlotte, FL, $140,561.63, Univ of Louisville, Louisville, KY, Dentistry, August 1984.
Ho, Tram B., St Petersburg, FL, $8,841.04, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1993.
Johnson, Eric, Vero Beach, FL, $24,483.15, Univ of Detroit Mercy, Detroit, MI, Dentistry, May 1989.
Koshman, Brent D., Key West, FL, $58,839.37, Univ of The Pacific, San Francisco, CA, Dentistry, August 1982.
Luis, Jacqueline, Miami, FL, $4,082.98, Univ of Florida, Gainesville, FL, Dentistry, May 1990
Mandracchia, Philip A., Hollywood, FL, $18,269.85, New York University, New York, NY, Dentistry, June 1982
McClure, Brian C., Jupiter, FL, $8,268.97, Univ of Florida, Gainesville, FL, Dentistry, May 1989
Moore, Kimberly, Orlando, FL, $49,675.06, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1985
Mora, Alfred, Port St. Lucie, FL, $149,019.04, Marquette University, Milwaukee, WI, Dentistry, May 1987
Olah, Dian M., St. Petersburg, FL, $50,680.17, Univ of Florida, Gainesville, FL, Dentistry, May 1985
Oppenheimer, John H., St. Petersburg, FL, $163,366.54, Marquette University, Milwaukee, WI, Dentistry, May 1989
Perlman, Bruce C., West Palm Beach, FL, $28,442.05, Emory University, Atlanta, GA, Dentistry, June 1982
Redmon, Maria I., Pensacola, FL, $42,386.01, Marquette University, Milwaukee, WI, Dentistry, May 1988
Rojas, Eduardo, Orlando, FL, $111,211.71, Marquette University, Milwaukee, WI, Dentistry, May 1990
Setien, Anna M., Miami, FL, $32,203.28, Washington University, St. Louis, MO, Dentistry, May 1992
Thomas, Robert, Mary Esther, FL, $158,463.90, Meharry Medical College, Nashville, TN, Dentistry, May 1982
Urban, Curt K., Barefoot Bay, FL, $99,079.93, Marquette University, Milwaukee, WI, Dentistry, May 1983
Ward, Rodney R., Apopka, FL, $12,232.07, Loma Linda University, Loma Linda, CA, Dentistry, September 1983
Wiggins, Kenneth, Hialeah, FL, $4,322.51, Meharry Medical College, Nashville, TN, Dentistry, May 1993
Wilson, Edward R., Clearwater, FL, $112,686.61, Indiana University Indianapolis, Bloomington, IN, Dentistry, July 1986

Optometry

Cummings, Michael A., Tampa, FL, $23,990.29, New England College of Optometry, Boston, MA, Optometry, March 1985
Gardner, Edmond, Cooper City, FL, $164,570.52, Illinois College of Optometry, Chicago, IL, Optometry, May 1983
Kostantinov, Peter, Clearwater, FL, $7,469.80, New England College of Optometry, Boston, MA, Optometry, May 1992
Neal, Terry L., Melbourne, FL, $2,944.41, Southern College of Optometry, Memphis, TN, Optometry, June 1984
Williams, Gary, Jacksonville, FL, $67,637.53, Southern College of Optometry, Memphis, TN, Optometry, May 1989

Osteopathy

Agre, Norman, Fort Lauderdale, FL, $101,089.89, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1985
Austin, Jerry, Dania, FL, $74,850.17, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1989
Baker, Betty J., Miami, FL, $224,850.16, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1988
Beers, Richard H., Winter Park, FL, $11,963.64, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1985
Crutcher, Timothy T., Sarasota, FL, $47,256.71, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1987
Hannum III, Robert J., Tampa, FL, $9,337.84, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1987
Heisler, Hope J., Cape Coral, FL, $18,291.85, Oklahoma State University, Tulsa, OK, Osteopathy, May 1989
Lyons, Glynnis J., Tampa, FL, $6,983.17, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, June 1981
Majauskas, Retrantas, West Palm Beach, FL, $225,442.61, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1985
Morris, Dareld, Fort Myers, FL, $107,787.39, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1991
Perrotti, Anthony, Penbroke Pines, FL, $139,805.86, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1987
Stephenson, Brenda, Hallandale, FL, $158,789.95, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1986
Tooker, Bruce, Panama City, FL, $122,159.47, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1987
Webb, Paul, Dania, FL, $168,025.98, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1986
Williams, Edward, Sunrise, FL, $256,451.10, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1985

Pharmacy

Butler, Eddie J., Terra Cela, FL, $69,597.81, Mercer University, Atlanta, GA, Pharmacy, June 1981
Copeland-Collier, Kathryn K., St Petersburg, FL, $19,529.79, Univ of Florida, Gainesville, FL, Pharmacy, March 1980
Grice, Arnitta J., Havana, FL, $2,859.73, Texas Southern University, Houston, TX, Pharmacy, May 1989
Spogen, Frederick C., Cocoa Beach, FL, $8,328.92, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1982

Podiatry

Amanambu, Eugene, Hialeah, FL, $98,430.92, Barry University—Podiatric Med, Miami Shores, FL, Podiatry, May 1990
Benitez-Negron, Enrique, Miami, FL, $134,779.25, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1989
Bolanio, Maritza, Miami, FL, $100,387.66, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1989
Costanzo, Anthony, St Petersburg, FL, $124,027.46, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Delgado, Jorge, Miami, FL, $36,474.82, Barry University—Podiatric Med, Miami Shores, FL, Podiatry, December 1990
Fine, David D., Oakland Park, FL, $88,320.65, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Gennett, Gregory, Naples, FL, $57,422.35, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1987
Imani, Ibn, Miami, FL, $98,650.10, Barry University—Podiatric Med, Miami Shores, FL, Podiatry, May 1991
Peiss, Stuart, Tequesta, FL, $24,909.23, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Reed, Bruce, Tampa, FL, $130,223.03, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1987
Samuels, Petrona P., Fort Lauderdale, FL, $156,695.69, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Smith, Larry L., Tallahassee, FL, $39,439.77, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Wright, Victor, Valrico, FL, $14,725.63, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1983

Public Health

Butler, David, Land O Lakes, FL, $7,287.98, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Public Health, December 1991
Montgomery, John M., Orange Park, FL, $8,160.18, Yale University, New Haven, CT, Public Health, May 1984
Papillon, Frank H., North Miami, FL, $9,282.58, Univ of Illinois At Chicago, Chicago, IL, Public Health, August 1986

Veterinary Medicine

Howard, Susan, Gainesville, FL, $79,155.40, Univ of Florida, Gainesville, FL, Veterinary Medicine, May 1988

Georgia

Allopathic Medicine

Barnes, William T., Macon, GA, $18,201.69, Mercer University, Macon, GA, Allopathic Medicine, June 1990
Beasley, Mary, Atlanta, GA, $87,421.01, Emory University, Atlanta, GA, Allopathic Medicine, May 1987
Bennett, John G., Marietta, GA, $35,592.64, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1980
Bowen-Hay, Winston B., Norcross, GA, $99,987.80, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1991
Brown, Darren W., Doraville, GA, $3,979.43, Wright State University, Dayton, OH, Allopathic Medicine, June 1986
Burrowes, Celio, Atlanta, GA, $83,969.84, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1982
Cain, Alicia A., Jonesboro, GA, $1,131.41, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1980
Carroll, Otto, Atlanta, GA, $164,278.44, Oral Roberts University, Tulsa, OK, Allopathic Medicine, May 1986
Chappell, Daniel, Fort Oglethorpe, GA, $79,780.70, Univ of Miami, Miami, FL, Allopathic Medicine, May 1984
Cockrell, Gail Y., Lithonia, GA, $2,818.73, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1983
Grant, Patricia, Decatur, GA, $17,116.95, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1992
Harper, Jennifer, Atlanta, GA, $220,348.55, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, June 1985
Horne, Hilton M., Quitman, GA, $41,594.16, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1979
Isaacs, Rolin W., Atlanta, GA, $58,301.40, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, June 1985
Majeed, Ishaq I., Atlanta, GA, $87,790.34, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1987
Maynard, Lawrence, Atlanta, GA, $3,131.97, Univ of Massachusetts Worcester, Worcester, MA, Allopathic Medicine, June 1986
Mcghee, James E., Stone Mountain, GA, $4,019.93, Emory University, Atlanta, GA, Allopathic Medicine, May 1988
Meyer, Richard, Marietta, GA, $53,944.30, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1985
Millon, Jeffrey, Lithonia, GA, $40,927.85, Meharry Medical College, Nashville, TN, Allopathic Medicine, August 1985
Nelson, Robert, Gray, GA, $4,599.29, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1979
Patterson, Lea T., Atlanta, GA, $8,975.57, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1990
Rachel, Everett D., Stone Mountain, GA, $4,997.84, Univ of Alabama Birmingham, Birmingham, AL, Allopathic Medicine, June 1989
Salimonu, Olidele K., Decatur, GA, $53,427.85, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1987
Samarasinghe, Ajit, Atlanta, GA, $5,236.68, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1990
Smith, Charles, St Marys, GA, $40,507.75, Tufts University, Boston, MA, Allopathic Medicine, May 1988
Staples Horne, Michelle J., Decatur, GA, $7,076.10, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1990
Stull, Tina, Stone Mountain, GA, $8,575.81, Emory University, Atlanta, GA, Allopathic Medicine, May 1988
Watson Jr, Henry, Atlanta, GA, $26,906.09, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1980
Woody, Edith K., Atlanta, GA, $26,178.08, Ohio State University, Columbus, OH, Allopathic Medicine, December 1982
Yarde, William L., Jonesboro, GA, $110,299.19, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1985

Chiropractic

Ackermann, Anne E., Marietta, GA, $52,432.65, Life College, Marietta, GA, Chiropractic, September 1984
Ackermann, Brian J., Marietta, GA, $51,164.74, Life College, Marietta, GA, Chiropractic, September 1984
Agee, Mark, Marietta, GA, $53,453.96, Life College, Marietta, GA, Chiropractic, December 1984
Ali, Abdirazak A., College Park, GA, $23,433.71, Life College, Marietta, GA, Chiropractic, June 1990
Ash, Carla L., Marietta, GA, $86,481.47, Life College, Marietta, GA, Chiropractic, September 1986
Bakels, James E., Marietta, GA, $22,268.49, Life College, Marietta, GA, Chiropractic, September 1990
Barner, Robert, Marietta, GA, $52,577.49, Life College, Marietta, GA, Chiropractic, December 1983
Bell, Clayton, Riverdale, GA, $123,028.36, Life College, Marietta, GA, Chiropractic, September 1987
Berman, David H., Marietta, GA, $123,052.47, Life College, Marietta, GA, Chiropractic, March 1987
Bernius, Gregory L., Peachtree City, GA, $68,828.41, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1988
Billstrom, Richard, Marietta, GA, $88,395.30, Life College, Marietta, GA, Chiropractic, December 1986
Bishop Jr., William B., Cartersville, GA, $22,807.28, Life College, Marietta, GA, Chiropractic, June 1988
Blake, Lisa M., Decatur, GA, $82,369.91, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
Bleyaert, Lamont L., Woodstock, GA, $55,550.76, Life College, Marietta, GA, Chiropractic, September 1985

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Bohr, Corinne E., Alpharetta, GA, $63,426.80, Life College, Marietta, GA, Chiropractic, June 1986
Breazeale, Michael, Mariotta, GA, $120,675.42, Life College, Marietta, GA, Chiropractic, March 1987
Brooks, William, Decatur, GA, $62,942.69, Life College, Marietta, GA, Chiropractic, March 1984
Brown, George A., Smyrna, GA, $8,504.68, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1990
Brown, Wilbur E., Dunwoody, GA, $11,705.31, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Burleson, David A., Marietta, GA, $22,930.00, Life College, Marietta, GA, Chiropractic, September 1984
Burnett, Diane G., Atlanta, GA, $10,807.37, Life College, Marietta, GA, Chiropractic, December 1986
Byrd, Ricardau R., Atlanta, GA, $27,852.19, Life College, Marietta, GA, Chiropractic, September 1982
Caporaso, Nicholas, Lawrenceville, GA, $30,301.38, Life College, Marietta, GA, Chiropractic, June 1988
Carpenter, Jacob O., Decatur, GA, $17,467.79, Life College, Marietta, GA, Chiropractic, September 1985
Cassan, Steven S., Canton, GA, $29,388.54, Life College, Marietta, GA, Chiropractic, March 1985
Catalfo, Tim, Roswell, GA, $78,574.44, Life College, Marietta, GA, Chiropractic, September 1988
Cavaliere, Frances F., Marietta, GA, $80,763.65, Life College, Marietta, GA, Chiropractic, September 1984
Chochla, Thomas N., Marietta, GA, $74,734.10, Life College, Marietta, GA, Chiropractic, September 1988
Cicala, Carmine J., Marietta, GA, $82,903.90, Life College, Marietta, GA, Chiropractic, March 1987
Cirou, Barbara L., Athens, GA, $8,647.06, Life College, Marietta, GA, Chiropractic, March 1982
Clark, Richard, Folkston, GA, $95,929.42, Life College, Marietta, GA, Chiropractic, March 1985
Clay, Cassius C., Atlanta, GA, $29,308.66, Life College, Marietta, GA, Chiropractic, June 1983
Collins Jr., Cecil E., Canton, GA, $60,016.38, Life College, Marietta, GA, Chiropractic, June 1985
Conard, Arden M., Marietta, GA, $20,509.28, Life College, Marietta, GA, Chiropractic, June 1984
Cook, Robert, Tennille, GA, $68,134.49, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Cooper, Robert N., Marietta, GA, $8,168.66, Life College, Marietta, GA, Chiropractic, December 1990
Cosmelli, Patricia, Marietta, GA, $3,975.80, Life College, Marietta, GA, Chiropractic, December 1986
Cox, Harold D., Marietta, GA, $131,801.29, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1987
Crawford, Franklin R., Marietta, GA, $58,193.86, Life College, Marietta, GA, Chiropractic, December 1984
Crimes, Patricia T., Duluth, GA, $71,673.34, Life College, Marietta, GA, Chiropractic, December 1986
Crosswhite, Larry K., Oakwood, GA, $123,588.33, Life College, Marietta, GA, Chiropractic, September 1986
Culver, Toni Y., Atlanta, GA, $58,363.47, Life College, Marietta, GA, Chiropractic, June 1985
Day, Philip P., Savannah, GA, $68,183.27, Life College, Marietta, GA, Chiropractic, December 1986
Deopp, William N., Marietta, GA, $46,453.37, Life College, Marietta, GA, Chiropractic, June 1985
Downes, John, Kennesaw, GA, $110,800.07, Life College, Marietta, GA, Chiropractic, September 1986
Duker, John, Conyers, GA, $115,424.31, Life College, Marietta, GA, Chiropractic, March 1987
Earley, Kenneth S., Lawrenceville, GA, $62,727.19, Life College, Marietta, GA, Chiropractic, December 1987
Elkins, Richard, Marietta, GA, $31,284.51, Life College, Marietta, GA, Chiropractic, June 1989
Farley, James J., Marietta, GA, $50,333.80, Life College, Marietta, GA, Chiropractic, September 1986
Farmer, Henry C., Cedartown, GA, $38,202.64, Life College, Marietta, GA, Chiropractic, March 1985
Ficco, David S., Duluth, GA, $70,723.83, Life College, Marietta, GA, Chiropractic, December 1986
Fisher, Michael, Marietta, GA, $30,007.17, Life College, Marietta, GA, Chiropractic, March 1989
Fordiani, Thomas R., Marietta, GA, $143,069.48, Life College, Marietta, GA, Chiropractic, September 1986
Francis, Michael J., Jonesboro, GA, $50,955.58, Life College, Marietta, GA, Chiropractic, June 1986
Galzarano, Carole, Marietta, GA, $68,862.92, Life College, Marietta, GA, Chiropractic, June 1987
Gay, Warner, Marietta, GA, $31,512.73, Life College, Marietta, GA, Chiropractic, March 1983
Gill, Joseph, Fayetteville, GA, $130,252.66, Life College, Marietta, GA, Chiropractic, March 1987
Gotkin, Stuart S., Marietta, GA, $57,556.55, Life College, Marietta, GA, Chiropractic, December 1985
Green, Stephen, Kennesaw, GA, $70,668.31, Life College, Marietta, GA, Chiropractic, December 1985
Greene, Silas R., Macon, GA, $32,484.23, Life College, Marietta, GA, Chiropractic, June 1984
Gross, Thomas, Cartersville, GA, $65,548.58, Life College, Marietta, GA, Chiropractic, December 1983
Hall, John L., Cartersville, GA, $122,359.54, Life College, Marietta, GA, Chiropractic, June 1987
Hejeij, Wassim H., Morrow, GA, $11,159.69, Life College, Marietta, GA, Chiropractic, December 1991
Holewinski, Kenneth, Marietta, GA, $34,945.40, Life College, Marietta, GA, Chiropractic, September 1984
Horsley, Ronald G., Kennewaw, GA, $37,049.52, Life College, Marietta, GA, Chiropractic, June 1985
Hoyt, John A., Atlanta, GA, $7,551.32, Life College, Marietta, GA, Chiropractic, March 1988
Hush, George G., Smyrna, GA, $47,967.55, Life College, Marietta, GA, Chiropractic, December 1986
Iraci, Cynthia L., Waleska, GA, $101,241.61, Life College, Marietta, GA, Chiropractic, June 1986
Jackson, Jerry, Marietta, GA, $46,898.80, Life College, Marietta, GA, Chiropractic, December 1988
Judd, Ronald K., Jasper, GA, $49,301.73, Life College, Marietta, GA, Chiropractic, March 1984
Justice, James, Lawrenceville, GA, $139,398.22, Life College, Marietta, GA, Chiropractic, June 1985
Kay, Alicia E., Atlanta, GA, $42,821.23, Life College, Marietta, GA, Chiropractic, June 1984
King, David, Smyrna, GA, $32,963.99, Life College, Marietta, GA, Chiropractic, September 1985
Klubenspies, John, Lilburn, GA, $84,756.79, Life College, Marietta, GA, Chiropractic, September 1986
Kowalske, Philip P., Marietta, GA, $123,017.60, Life College, Marietta, GA, Chiropractic, December 1986
Kozel, Noreen V., Powder Springs, GA, $4,927.18, Life College, Marietta, GA, Chiropractic, June 1990
Kyle, George, Lawrenceville, GA, $53,570.41, Life College, Marietta, GA, Chiropractic, March 1983
Lambert-Kemlage, Sharon A., Marietta, GA, $98,288.54, Life College, Marietta, GA, Chiropractic, March 1986
Lee, Carole, Acworth, GA, $24,527.34, Life College, Marietta, GA, Chiropractic, December 1983
Lister, Rufus G., Marietta, GA, $44,094.15, Life College, Marietta, GA, Chiropractic, June 1988
Lowman, John R., Marietta, GA, $66,264.05, Life College, Marietta, GA, Chiropractic, June 1986
Lubnewski, Peter P., Smyrna, GA, $99,032.18, Life College, Marietta, GA, Chiropractic, September 1983

Mahar, Dale, Marietta, GA, $41,201.85, Life College, Marietta, GA, Chiropractic, March 1984
Marcum, Craig, Morrow, GA, $4,918.53, Life College, Marietta, GA, Chiropractic, June 1991
Marsh, Jeffrey C., Marietta, GA, $99,684.55, Life College, Marietta, GA, Chiropractic, June 1989
Martin Jr, John W., Canton, GA, $78,107.88, Life College, Marietta, GA, Chiropractic, September 1986
Martin, Craig S., Dublin, GA, $57,081.04, Life College, Marietta, GA, Chiropractic, June 1989
Mason, George G M, Decatur, GA, $16,411.08, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1989
Massengale, Gregory L., Marietta, GA, $94,865.89, Life College, Marietta, GA, Chiropractic, March 1986
Mayles, Sandra, Dalton, GA, $68,591.79, Life College, Marietta, GA, Chiropractic, December 1983
McCormick, Robert J., Marietta, GA, $31,757.80, Life College, Marietta, GA, Chiropractic, June 1986
McMahon, Joseph A., Marietta, GA, $8,462.79, Life College, Marietta, GA, Chiropractic, April 1991
McQuaig, John, Stone Mountain, GA, $3,016.75, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1983
Mercks, James L., Marietta, GA, $133,318.65, Life College, Marietta, GA, Chiropractic, March 1986
Merrit, Marvin, Lawrenceville, GA, $22,153.87, Life College, Marietta, GA, Chiropractic, March 1985
Moeckel, Timothy, Atlanta, GA, $57,225.88, Life College, Marietta, GA, Chiropractic, September 1985
Monical, William, Marietta, GA, $49,252.25, Life College, Marietta, GA, Chiropractic, September 1988
Morgan, Charles C., Marietta, GA, $92,653.35, Life College, Marietta, GA, Chiropractic, June 1986
Moritz, Gregory M., Powder Springs, GA, $83,140.08, Life College, Marietta, GA, Chiropractic, December 1984
Mosley, James, Columbus, GA, $44,527.07, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1985
Mueller, William J., Dunwoody, GA, $59,443.34, Life College, Marietta, GA, Chiropractic, September 1983
Nadel, Glenn R., Marietta, GA, $18,050.99, Life College, Marietta, GA, Chiropractic, April 1989
Nappi, Neil A., Marietta, GA, $47,489.94, Life College, Marietta, GA, Chiropractic, June 1984
Nicholson Jr, James E., Marietta, GA, $106,426.57, Life College, Marietta, GA, Chiropractic, April 1985
Noble, Craig J., Kennesaw, GA, $120,782.80, Life College, Marietta, GA, Chiropractic, September 1986
Ogbuchi, Sampson N., Doraville, GA, $7,621.88, Life College, Marietta, GA, Chiropractic, March 1991
Owens, James R., Atlanta, GA, $12,377.54, Life College, Marietta, GA, Chiropractic, March 1992
Palffy, Victor T., Atlanta, GA, $139,572.98, Life College, Marietta, GA, Chiropractic, March 1986
Palmer, Albert A A, Marietta, GA, $15,710.16, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Palmer, Becky A., Marietta, GA, $71,097.66, Life College, Marietta, GA, Chiropractic, March 1986
Patterson, Jerry E., Smyrna, GA, $24,010.68, Life College, Marietta, GA, Chiropractic, September 1984
Patterson, Mark A., Marietta, GA, $99,652.08, Life College, Marietta, GA, Chiropractic, December 1987
Paul, Roger W., Stone Mountain, GA, $115,762.89, Life College, Marietta, GA, Chiropractic, September 1985
Pavkov, Gary G., Kennesaw, GA, $48,401.75, Life College, Marietta, GA, Chiropractic, March 1987
Penn Jr, Paul P., Atlanta, GA, $60,331.14, Life College, Marietta, GA, Chiropractic, June 1984
Perrier, Debra D., Cedartown, GA, $21,428.03, Life College, Marietta, GA, Chiropractic, June 1985
Polishuk, Andre A., Smyrna, GA, $113,795.46, Life College, Marietta, GA, Chiropractic, January 1984
Pristash, Michael R., Marietta, GA, $93,260.29, Life College, Marietta, GA, Chiropractic, September 1984
Rawlins, Joel J., Smyrna, GA, $116,025.23, Life College, Marietta, GA, Chiropractic, September 1986
Reymann, William M., Marietta, GA, $7,164.80, Life College, Marietta, GA, Chiropractic, March 1986
Rivera, Antonio, Atlanta, GA, $21,651.43, Life College, Marietta, GA, Chiropractic, June 1983
Robideau, Robert R., Roswell, GA, $56,937.22, Life College, Marietta, GA, Chiropractic, September 1985
Rowland, Jimmy H., Warner Robins, GA, $64,614.07, Life College, Marietta, GA, Chiropractic, December 1986
Rutkowski, Morris E., Marietta, GA, $90,654.73, Life College, Marietta, GA, Chiropractic, December 1985
Sarabadan, Davood, Atlanta, GA, $52,941.33, Life College, Marietta, GA, Chiropractic, September 1986
Scala, Timothy T., Marietta, GA, $30,937.21, Life College, Marietta, GA, Chiropractic, September 1984
Scampole, James, Kemsaw, GA, $59,875.02, Life College, Marietta, GA, Chiropractic, September 1985
Schreffler, Keith, Marietta, GA, $21,547.52, Life College, Marietta, GA, Chiropractic, June 1991
Seabolt, Alan A., Marietta, GA, $117,537.17, Life College, Marietta, GA, Chiropractic, October 1986
Seigle, Marcus, Atlanta, GA, $26,013.41, Life College, Marietta, GA, Chiropractic, December 1986
Severson, Charles, Marietta, GA, $37,317.94, Life College, Marietta, GA, Chiropractic, December 1982
Sheick, Steven A., Smyrna, GA, $106,497.54, Life College, Marietta, GA, Chiropractic, September 1986
Siegle, Raymond J., Atlanta, GA, $3,082.21, Life College, Marietta, GA, Chiropractic, June 1991
Sieradzki, Rex A., Atlanta, GA, $64,931.45, Life College, Marietta, GA, Chiropractic, September 1986
Siminski, Larry T., Atlanta, GA, $109,738.59, Life College, Marietta, GA, Chiropractic, June 1988
Small, Tammie, Smyrna, GA, $68,373.48, Life College, Marietta, GA, Chiropractic, September 1989
Snyder, Richard K., Acworth, GA, $31,942.31, Life College, Marietta, GA, Chiropractic, December 1983
Spears, George, Marietta, GA, $82,729.26, Life College, Marietta, GA, Chiropractic, December 1985
Spears, Roseann N., Kennesaw, GA, $130,880.58, Life College, Marietta, GA, Chiropractic, September 1986
Spiva, Walter E., Blairsville, GA, $125,008.76, Life College, Marietta, GA, Chiropractic, September 1986
Spivey, Douglas D., Doraville, GA, $58,753.35, Life College, Marietta, GA, Chiropractic, December 1986
Thomas, Gordon A., Atlanta, GA, $66,429.63, Life College, Marietta, GA, Chiropractic, September 1985
Traff, Randall, Marietta, GA, $4,349.56, Life College, Marietta, GA, Chiropractic, March 1991
Troutman Jr, William D., Atlanta, GA, $51,880.23, Life College, Marietta, GA, Chiropractic, October 1983
Troutman, William W., Atlanta, GA, $28,837.12, Life College, Marietta, GA, Chiropractic, January 1983
Tucker, Ron, Atlanta, GA, $23,157.86, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1987
Tutt, Gwendolyn M., Roswell, GA, $66,216.68, Life College, Marietta, GA, Chiropractic, June 1983
Vescuso, John A., Marietta, GA, $101,985.23, Life College, Marietta, GA, Chiropractic, September 1986
Vlahos, James G., Norcross, GA, $102,374.81, Life College, Marietta, GA, Chiropractic, September 1985

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Walker, James E., Marietta, GA, $153,831.59, Life College, Marietta, GA, Chiropractic, September 1985
Wallace, Mark R., Mableton, GA, $51,389.78, Life College, Marietta, GA, Chiropractic, December 1986
Warrick, Wayne D., Kennesaw, GA, $59,436.56, Life College, Marietta, GA, Chiropractic, March 1987
Weatherly, William, Atlanta, GA, $46,040.69, Life College, Marietta, GA, Chiropractic, June 1983
Wellman, Fred, Smyrna, GA, $16,874.21, Life College, Marietta, GA, Chiropractic, December 1983
Williams, D'oyen A., Stone Mountain, GA, $111,719.83, Life College, Marietta, GA, Chiropractic, December 1984
Yarian, Eldon L., Dunwoody, GA, $13,833.03, Life College, Marietta, GA, Chiropractic, March 1984
Zakrzewski, David, Marietta, GA, $29,972.56, Life College, Marietta, GA, Chiropractic, August 1988
Zonder, Stuart S., Acworth, GA, $79,282.57, Life College, Marietta, GA, Chiropractic, December 1985

Clinical Psychology

Daniels, Gregory C., Atlanta, GA, $59,879.93, Georgia State University, Atlanta, GA, Clinical Psychology, June 1987
Kroupa, Carol, Roswell, GA, $54,362.41, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, June 1989

Dentistry

Allred, Robert, Lithonia, GA, $188,777.17, Emory University, Atlanta, GA, Dentistry, May 1987
Bowers-Phillips, Donna M., Savannah, GA, $51,913.87, Howard University, Washington, DC, Dentistry, May 1984
Brown, Geoffrey C., Atlanta, GA, $9,414.98, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Carter, James E., Alpharetta, GA, $10,135.39, Medical College of Georgia, Augusta, GA, Dentistry, June 1987
Comer, Barry B., Decatur, GA, $105,941.01, Emory University, Atlanta, GA, Dentistry, May 1984
Comer, Julia R., Decatur, GA, $134,713.74, Emory University, Atlanta, GA, Dentistry, May 1986
Fortson Jr, Henry D., Thomasville, GA, $192,821.78, Meharry Medical College, Nashville, TN, Dentistry, May 1984
Gold, Robert S., Atlanta, GA, $171,294.03, Boston University Medical Center, Boston, MA, Dentistry, May 1988
Hall, John E., Atlanta, GA, $77,596.16, Meharry Medical College, Nashville, TN, Dentistry, May 1982
Hammock, Mark M., Decatur, GA, $40,807.66, Howard University, Washington, DC, Dentistry, May 1989
Holiday, Harry, Statesboro, GA, $91,149.20, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Jackson, Lester, Savannah, GA, $56,263.93, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Kuhlmay, Klaus, Atlanta, GA, $12,120.37, Emory University, Atlanta, GA, Dentistry, May 1987
Lester, Jack, Lithonia, GA, $124,269.89, Meharry Medical College, Nashville, TN, Dentistry, May 1986
Mcdonald, Kenneth, Atlanta, GA, $10,619.02, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1991
Mosley, Nicholas A., Redan, GA, $119,738.19, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Scott, Renee R., Atlanta, GA, $130,280.50, Meharry Medical College, Nashville, TN, Dentistry, May 1986

Osteopathy

Celestin, Alexander J., Savannah, GA, $123,083.66, New York College of Osteopathic Medicine, Old Westbury, NY, Osteopathy, June 1987

Pharmacy

Adu-Agyei, Yaw, Atlanta, GA, $10,631.90, Mercer University, Atlanta, GA, Pharmacy, June 1985
Afrane, Barima B., Decatur, GA, $9,421.55, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1986
Clancy-Knierien, Kimberely A., Marietta, GA, $1,422.83, Mercer University, Atlanta, GA, Pharmacy, June 1987
Edeh, Onyemaechi A., Atlanta, GA, $56,209.89, Mercer University, Atlanta, GA, Pharmacy, June 1983
Felton, Norman N., Decatur, GA, $32,667.74, Mercer University, Atlanta, GA, Pharmacy, June 1983
Hailesalassie, Hapte H., College Park, GA, $41,698.36, Mercer University, Atlanta, GA, Pharmacy, June 1987
Hall, Carolyn, Doraville, GA, $16,056.93, Mercer University, Atlanta, GA, Pharmacy, June 1989
Hanson, Aubrey M., Decatur, GA, $42,432.87, Mercer University, Atlanta, GA, Pharmacy, June 1982
Jackson, Lenell R., College Park, GA, $24,995.07, Mercer University, Atlanta, GA, Pharmacy, August 1987
Lawrence, Doris, Austell, GA, $24,977.44, Mercer University, Atlanta, GA, Pharmacy, May 1985
Lowe, Stephanie, Decatur, GA, $28,077.46, Mercer University, Atlanta, GA, Pharmacy, June 1989
Okosun, Edobor M., College Park, GA, $64,189.81, Mercer University, Atlanta, GA, Pharmacy, August 1984
Osakue, Stephen O., Atlanta, GA, $38,045.26, Mercer University, Atlanta, GA, Pharmacy, June 1986
Sciple, Charles, Atlanta, GA, $68,891.16, Mercer University, Atlanta, GA, Pharmacy, June 1987
Washington, Gwendlyn A., Decatur, GA, $33,714.42, Mercer University, Atlanta, GA, Pharmacy, June 1988
Wiggins III, William, Marietta, GA, $19,193.33, Mercer University, Atlanta, GA, Pharmacy, June 1982
Wingate, Ronald, Atlanta, GA, $5,701.65, Mercer University, Atlanta, GA, Pharmacy, May 1989

Podiatry

Kalali, Saeed, Marietta, GA, $3,808.48, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1990
Kustich, Susan, Augusta, GA, $98,332.42, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Orji, John E., Atlanta, GA, $64,990.96, Univ of Osteo Medical & Health Science, Des moines, IA, Podiatry, June 1991
Storm, Mark, Cumming, GA, $65,177.94, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1990

Public Health

Cox, Robert M., Atlanta, GA, $109,926.96, Loma Linda University, Loma Linda, CA, Public Health, September 1981

Veterinary Medicine

Brown, Mazola H., Atlanta, GA, $35,208.37, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1983
Friedlander, Michael A., Roswell, GA, $25,861.26, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1990
Mcfield, Gizele, Bethlehem, GA, $83,843.02, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1982
Slaughter, Edwin L., Atlanta, GA, $22,353.15, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1982
Waller, Walton, Marietta, GA, $13,658.28, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1990

Hawaii

Allopathic Medicine

Battaglia, Joseph, Kihei, HI, $18,854.59, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1987

Baum, Kenneth J., Honolulu, HI, $79,639.34, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1985
Gluck, Daniel S., Haleiwa, HI, $208,007.99, Tufts University, Boston, MA, Allopathic Medicine, May 1982
Zasi, Alan, Lihue, HI, $75,948.52, Washington University, St Louis, MO, Allopathic Medicine, May 1987.

Chiropractic

Bennett, Hugh, Honolulu, HI, $5,503.39, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Corn, Byron K., Waianae, HI, $36,102.00, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Ferguson, Gary, Honolulu, HI, $58,064.78, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1988
Johanning, Jeanine J M, Kihei, HI, $43,787.31, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Rider, Ward E., Kailua, HI, $8,744.54, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Wallace, Owen, Honolulu, HI, $13,188.59, Life College, Marietta, GA, Chiropractic, September 1984

Dentistry

Knickelbine, Mark T., Honolulu, HI, $31,662.78, Marquette University, Milwaukee, WI, Dentistry, May 1982
Riter, Cecil, Honolulu, HI, $18,529.10, Loma Linda University, Loma Linda, CA, Dentistry, June 1985

Optometry

Stine, Gordon J., Lihue, HI, $34,432.64, Pacific University, Forest Grove, OR, Optometry, May 1990

Osteopathy

Denney, Teresa, Honolulu, HI, $132,945.82, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1983
Reppy, Robert R., Kailua, HI, $181,816.82, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1986

Idaho

Chiropractic

Buckles, Bobby R., Boise, ID, $57,549.52, Western States Chiropractic College, Portland, OR, Chiropractic, June 1987
Gott, George, Boise, ID, $73,018.54, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Herem, Larry A., Burley, ID, $72,796.95, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Holmes, Clarence J., Rathdrum, ID, $19,566.50, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1984
Young, Kerry V., Idaho Falls, ID, $55,562.32, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1987

Clinical Psychology

Furgason, Margaret A., St Maries, ID, $52,756.92, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1984

Optometry

Murray, Richard, Boise, ID, $52,383.51, Pacific University, Forest Grove, OR, Optometry, May 1987

Illinois

Allopathic Medicine

Armetta, Karen A., Naperville, IL, $24,804.90, Rush University, Chicago, IL, Allopathic Medicine, October 1985
Bacon, Cutia W., Chicago, IL, $5,534.90, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1991
Beckett, James E., Des Plaines, IL, $59,779.25, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1981
Burns, Peter, Chicago, IL, $4,135.92, Rush University, Chicago, IL, Allopathic Medicine, June 1990
Cherry, Nanci S., Chicago, IL, $96,694.82, Michigan State University, Ea..t Lansing, MI, Allopathic Medicine, December 1987
Cooper, April D., Hazel Crest, IL, $69,837.77, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Dehn, Roger, Crystal Lake, IL, $10,664.30, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Falater, Laura L., Chicago, IL, $68,722.79, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1987
Fields, Jessie J., Chicago, IL, $24,456.27, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1982
Forde, Daron D., Westmont, IL, $90,773.34, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1988
Friedman, Rochelle, Chicago, IL, $53,316.53, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1987
Garibay, Carlos, Homewood, IL, $34,923.76, Rush University, Chicago, IL, Allopathic Medicine, June 1982
Gebo, Paul D., Arlington Heights, IL, $16,688.36, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1987
Glenn, Byron, Carbondale, IL, $120,189.55, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, August 1987
Griffin-Berry, Carol L., Chicago, IL, $6,375.28, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Hashemi, Kamran, Chicago, IL, $153,696.64, Northwestern University, Chicago, IL, Allopathic Medicine, June 1987
Hernandez, Jose J., Chicago, IL, $43,132.46, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1984
Keyes, Kemmes, Chicago, IL, $44,403.16, Wright State University, Dayton, OH, Allopathic Medicine, June 1983
Kizaire, Danielle C., Chicago, IL, $13,863.25, Loyola University Chicago, Maywood, IL, Allopathic Medicine, June 1984
Kushner, Brad D., Waukegan, IL, $124,692.19, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, October 1987
Lessin, Barry D., Chicago, IL, $63,421.38, Univ of Wisconsin Madison, Madison, WI, Allopathic Medicine, May 1983
Little, Carlton, Chicago, IL, $84,914.56, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1989
Martin, Noelle, Chicago, IL, $68,335.48, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1991
Mitchell, Kevin A., Chicago, IL, $26,576.98, Southern Illinois Univ, Springfield, IL, Allopathic Medicine, May 1987
OH, Kyu, Chicago, IL, $32,233.61, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1991
Pate, Michael D., Des Plaines, IL, $38,759.66, Indiana University Indianapolis, Bloomington, IN, Allopathic Medicine, May 1985
Patterson-Jones, Sharon B., Chicago, IL, $43,764.29, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1983
Phillips, Richard O., Chicago, IL, $148,824.91, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1988
Popoola, Freddie M., Chicago, IL, $171,027.76, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, December 1983

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Pursell, Susan, Chicago, IL, $14,588.76, Boston University Medical Center, Boston, MA, Allopathic Medicine, May 1990
Reese, Elaine Thurmond, Dixmoor, IL, $35,019.14, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1984
Salomom, Alix, Chicago, IL, $62,645.77, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988
Singleton, Edward L., Olympia Fields, IL, $2,264.74, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1981
Somerville, Phillip P., Palatine, IL, $20,379.31, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1986
Thompson, Anthony W., Chicago, IL, $58,180.24, Rush University, Chicago, IL, Allopathic Medicine, January 1986
Troxler, Harold B., Chicago, IL, $136,060.47, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
West, Clifton B., Chicago, IL, $231,200.88, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Whittington, Darryll, Vernon Hills, IL, $5,926.96, Univ of Arkansas Medical Center, Little Rock, AR, Allopathic Medicine, May 1990
Williams, Johnnie, Chicago, IL, $27,809.57, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1985
Williams, Karol, Chicago, IL, $119,991.50, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1981
Wilson, Evelyn, Chicago, IL, $72,211.26, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, June 1985
Woodridge, Charles, Maywood, IL, $137,577.27, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1984.
Wuertz, Christopher, Western Springs, IL, $12,191.57, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1984.

Chiropractic

Cienkus, Regina M., Berwyn, IL, $15,050.53, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986.
Cully Jr, Milton A., Cary, IL, $49,171.13, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1987.
Darnell, Kevin R., Mt Vernon, IL, $35,264.68, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986.
Davis, Keith A., Chicago, IL, $58,997.27, National College of Chiropractic, Lombard, IL, Chiropractic, April 1987.
Dehn, Donald C., Rockford, IL, $29,157.63, National College of Chiropractic, Lombard, IL, Chiropractic, May 1983.
Denetry, Donald J., Forest Park, IL, $19,012.62, National College of Chiropractic, Lombard, IL, Chiropractic, April 1982.
Eicke, Christine, Chicago, IL, $22,236.86, National College of Chiropractic, Lombard, IL, Chiropractic, April 1988.
Floriez, Anita D., Moline, IL, $14,993.36, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985.
Gauthier III, George W., Wheaton, IL, $19,441.20, National College of Chiropractic, Lombard, IL, Chiropractic, August 1989.
Hansen, Michael, Park Forest, IL, $43,127.57, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1985.
Johnson, John F., Rock Island, IL, $8,772.38, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1989.
Jordan, James R., Calumet City, IL, $56,567.74, National College of Chiropractic, Lombard, IL, Chiropractic, August 1983.
Kaminsky, Arthur, Arlington Heights, IL, $62,704.62, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1990.
King-Duarte, Doreen I., Carol Stream, IL, $15,834.88, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986.
Mash, Harold J., Chicago, IL, $138,698.43, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1987.
Mccarthy, Thomas, Moline, IL, $16,512.27, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988.
Moffett, Douglas A., Homewood, IL, $11,377.18, National College of Chiropractic, Lombard, IL, Chiropractic, December 1987.
Moreno, Florencio, Aurora, IL, $18,064.03, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1989.
Mullinax, Jeffrey S., Schaumburg, IL, $9,425.87, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1982.
Naddaf, Jamileh K., Newton, IL, $109,165.23, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988.
Oslay, Russell C., Ashton, IL, $14,489.01, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1987.
Patterson, Farris, Maywood, IL, $26,381.39, National College of Chiropractic, Lombard, IL, Chiropractic, April 1984.
Penze, Robert, Arlington Heights, IL, $24,643.45, National College of Chiropractic, Lombard, IL, Chiropractic, April 1988.
Pettit, David C., Moline, IL, $66,689.39, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1989.
Reynolds, Betty, Jacksonville, IL, $3,254.24, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1992.
Rieck-Rosecrans, Cathy, Wheaton, IL, $27,289.56, National College of Chiropractic, Lombard, IL, Chiropractic, August 1985.
Sandburg, Donald D., Barrington, IL, $86,325.92, National College of Chiropractic, Lombard, IL, Chiropractic, April 1987.
Sayre, Bruce, Chicago, IL, $16,745.90, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985.
Sierra, Caroline, East Moline, IL, $46,590.96, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986.
Skonie, Roger, Aurora, IL, $15,401.68, National College of Chiropractic, Lombard, IL, Chiropractic, April 1991.
Slavin, Mark B., Schaumburg, IL, $15,199.04, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986.
Smith, Gary D., Gurnee, IL, $94,813.13, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1985
Smith, Myra B., Niles, IL, $68,442.32, National College of Chiropractic, Lombard, IL, Chiropractic, August 1985
Smith-Burton, Cythia C W, Chicago, IL, $74,971.83, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985
Soares, Luiz, Chicago, IL, $106,370.75, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1988
Stratton, Mark W., Du Quoin, IL, $56,029.98, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1985
Stuart Jr, William E., Chicago, IL, $45,746.53, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
Sutanto, Sugeng, Downers Grove, IL, $70,880.17, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988

Thurston, Gregory G., Algonquin, IL, $87,815.96, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1984
Valvo, Nila L., Glen Ellyn, IL, $4,546.58, National College of Chiropractic, Lombard, IL, Chiropractic, December 1982
Vernon, Earl, Waukegan, IL, $6,868.39, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1991
Wheeler, Cynthia L., Belleville, IL, $65,231.86, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988
Willey, Karyn L., Woodridge, IL, $2,060.25, National College of Chiropractic, Lombard, IL, Chiropractic, December 1985
Yoos, Deborah D., Grayville, IL, $35,140.94, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986

Clinical Psychology

Angevine, Jeffrey L., Chicago, IL, $3,599.05, Illinois Institute of Technology, Chicago, IL, Clinical Psychology, May 1987
Bass, Michael E., Chicago, IL, $34,178.37, American Sch of Professional Psychology, Chicago, IL, Clinical Psychology, June 1993
Ozols, Valdis V., Lisle, IL, $34,347.97, Univ of Tennessee, Knoxville, TN, Clinical Psychology, June 1989

Dentistry

Alexander, Jada, Chicago, IL, $74,011.52, Meharry Medical College, Nashville, TN, Dentistry, May 1984
Azarpira, Mohammad H., Chicago, IL, $125,418.25, Loyola University Chicago, Chicago, IL, Dentistry, May 1987
Baldare, David R., Chicago, IL, $67,181.30, Loyola University Chicago, Chicago, IL, Dentistry, May 1988
Bellucci, Joan, Vernon Hills, IL, $102,847.60, Marquette University, Milwaukee, WI, Dentistry, May 1989
Berman, Daniel, Chicago, IL, $73,049.29, Temple University, Philadelphia, PA, Dentistry, June 1987
Broussard, Mark, Palatine, IL, $12,903.09, Louisiana St Univ Med Ctr, New Orleans, LA, Dentistry, May 1986
Buggs, Keith K., Rockford, IL, $4,899.08, Meharry Medical College, Nashville, TN, Dentistry, May 1986
Burnett, Doralia A., Richton Park, IL, $124,350.37, Marquette University, Milwaukee, WI, Dentistry, May 1990
Bybee, William D., East Moline, IL, $12,092.76, Univ of Texas, Houston, TX, Dentistry, May 1988
Covek, Robert J., Grayslake, IL, $3,800.73, Loyola University Chicago, Chicago, IL, Dentistry, May 1986
Cox, Kerwin C., Chicago, IL, $118,979.53, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, April 1989
Dwyer, Grace, Chicago, IL, $11,373.98, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1987
Eubanks-Green, Paula J., Chicago, IL, $23,245.13, Loyola University Chicago, Chicago, IL, Dentistry, May 1982
Exum, Clyde J R, Chicago, IL, $2,957.36, Howard University, Washington, DC, Dentistry, May 1983
Foote, Frederick, Chicago, IL, $219,059.33, Meharry Medical College, Nashville, TN, Dentistry, July 1983
Gladden, Benjamin, Rockford, IL, $18,318.26, Univ of Illinois Medical Center, Chicago, IL, Dentistry, August 1988
Gover, Bryan K., Skokie, IL, $112,622.59, Marquette University, Milwaukee, WI, Dentistry, May 1989
Hansen, Kathy M., Hanover Park, IL, $3,644.05, Loyola University Chicago, Chicago, IL, Dentistry, May 1984
Harris, Carl M., Chicago, IL, $45,847.67, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1980
Herron, Devere, Chicago, IL, $76,824.09, Howard University, Washington, DC, Dentistry, May 1985
Howlett, Brian K., Chicago, IL, $4,184.06, Howard University, Washington, DC, Dentistry, May 1992
Jennings, Lenora, Chicago, IL, $2,705.25, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1985
Jimerson, Ruthie M., Burnham, IL, $192,868.55, Meharry Medical College, Nashville, TN, Dentistry, May 1987
Johnson, Quincy L., Maywood, IL, $66,616.32, Univ of Illinois Medical Center, Chicago, IL, Dentistry, May 1989
Jones, Perkins S., Springfield, IL, $89,346.00, Howard University, Washington, DC, Dentistry, May 1983
Kashani, Mortaza, Hillside, IL, $37,617.75, Marquette University, Milwaukee, WI, Dentistry, May 1991
Kinell, Carl S., Blue Island, IL, $117,022.57, Marquette University, Milwaukee, WI, Dentistry, May 1986
Kraut, Donald A., Chicago, IL, $27,129.04, Northwestern University, Chicago, IL, Dentistry, June 1985
Pina, Linda, Cicero, IL, $1,151.38, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1985
Pumilia, Cathryn A., Rockford, IL, $130,785.64, Marquette University, Milwaukee, WI, Dentistry, May 1990
Pumilia, Pacita M., Rockford, IL, $103,548.25, Marquette University, Milwaukee, WI, Dentistry, May 1989
Sagall, Alfred D., Highland Park, IL, $192,341.44, Marquette University, Milwaukee, WI, Dentistry, May 1986
Salmon, Kevin, Palos Heights, IL, $21,134.96, Loyola University Chicago, Chicago, IL, Dentistry, May 1991
Tucker, Darold, Chicago, IL, $78,415.95, Howard University, Washington, DC, Dentistry, May 1983
Vitello, Thomas B., Chicago, IL, $59,614.10, Loyola University Chicago, Chicago, IL, Dentistry, May 1984
Walton, David D., Chicago, IL, $10,221.69, Univ of Illinois Medical Center, Chicago, IL, Dentistry, August 1985
Ware, Rita, Calumet City, IL, $34,127.56, Southern Illinois Univ Edwardsville, Edwardsville, IL, Dentistry, June 1989
Wells, Christopher C., Chicago, IL, $5,482.89, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1983
White, Bernadine R., Godfrey, IL, $5,162.94, Southern Illinois Univ Edwardsville, Edwardsville, IL, Dentistry, June 1989
Whitfield, Glen A., Edgemont, IL, $41,295.40, Georgetown University, Washington, DC, Dentistry, May 1988
Yuen, Ka W., Chicago, IL, $6,637.68, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1990
Zackey, Tyson, Chicago, IL, $8,949.97, Northwestern Univ, Chicago, IL, Dentistry, May 1987

Optometry

Bourboukas, Nick, Chicago, IL, $6,121.68, Illinois College of Optometry, Chicago, IL, Optometry, May 1987
Keeler-Dwyer, Cynthia L., Chicago, IL, $46,066.34, Illinois College of Optometry, Chicago, IL, Optometry, May 1990
Lielzuika, Kaija, Chicago, IL, $34,914.05, Illinois College of Optometry, Chicago, IL, Optometry, May 1989
Nath, Kailash, Clarendon Hills, IL, $78,565.57, New England College of Optometry, Boston, MA, Optometry, May 1987

Osteopathy

Bruton, Joseph, Oak Park, IL, $83,192.83, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1990
Chaudhuri, Suyro, Bloomington, IL, $41,849.10, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1988

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Johnson, Randall, Lake Forest, IL, $16,720.45, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1989
Superson-Malachinski, Wynne, Bolingbrook, IL, $16,041.39, Midwestern University, Downers Grove, IL, Osteopathy, June 1980

Pharmacy

Grimmette, Ronald D., Chicago, IL, $8,558.63, Xavier University of Louisiana, New Orleans, LA, Pharmacy, May 1989
Ohaeri, Christiana, South Holland, IL, $3,607.87, Drake University, Des Moines, IA, Pharmacy, May 1989
Powell, Alexander, Chicago, IL, $53,913.67, Univ of Illinois Medical Center, Chicago, IL, Pharmacy, June 1985
Wright, Jonathan W., Chicago, IL, $10,864.00, Drake University, Des Moines, IA, Pharmacy, December 1985

Podiatry

Amudoaghan, Walnette C., Chicago, IL, $161,021.25, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Beaver, Bart, Chicago, IL, $75,659.87, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1990
Beck III, Welby S., Chicago, IL, $172,955.95, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1986
Brown, Stephen H., Chicago, IL, $80,602.69, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Collins, Henry L., Chicago, IL, $99,405.62, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1987
Crawford, James, Chicago, IL, $164,076.03, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982
Dixon, David A., Chicago, IL, $115,687.34, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1989
Flanagan, John, Chicago, IL, $88,961.93, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1987
Foster, Terri L., Matteson, IL, $156,277.61, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1987
Green, Gregory N., Chicago, IL, $29,319.34, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1983
Hall, Michael G., Westchester, IL, $77,914.40, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1986
Handy, Myra, Evanston, IL, $131,449.04, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1986
Harcus, James M., Chicago, IL, $37,480.49, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1981
Hochman, Daryl D., Chicago, IL, $2,703.68, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1986
Hrywnak, Severko, Chicago, IL, $29,940.05, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982
Jacobson, Ronald, Spring Grove, IL, $33,438.16, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1983
Jenkins, Jondelle B., Chicago, IL, $121,782.03, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1983
Lemoine, Hannelore, Chicago, IL, $61,069.48, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1980
Mikos, Ronald A., Skokie, IL, $14,364.77, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982
Miller, Ellis A., Winthrop Harbor, IL, $6,013.03, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Murphy, Stephen J., Chicago, IL, $129,398.89, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982
Nau, Edgard, Chicago, IL, $111,754.67, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1986
O'Leary, James J., La Grange, IL, $15,339.49, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Porada, Stanley L., Tinley Park, IL, $65,468.77, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1989
Shaw, Michael, Rogers Park, IL, $58,637.89, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Stevenson, Robert, Chicago, IL, $61,024.92, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, May 1991
Tucker, Carol, Chicago, IL, $144,939.53, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Whitfield, Carolyn, Homewood, IL, $108,307.10, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1986

Public Health

Biosah, Ada, Chicago, IL, $24,485.22, Univ of Texas, Houston, TX, Public Health, May 1990
Lewin, Karen S., Chicago, IL, $13,268.23, Yale University, New Haven, CT, Public Health, May 1983

Veterinary Medicine

Kahn, Mark D., Richton Park, IL, $7,150.55, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1987
Storslee, Barbara, Orland Park, IL, $10,610.18, Iowa State University, Ames, IA, Veterinary Medicine, May 1989

Indiana

Allopathic Medicine

Bell, Charles, Munster, IN, $20,627.73, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1982
Cezar, Mahdi, Indianapolis, IN, $18,150.53, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1990
Donathan, Robert, Brazil, IN, $8,388.41, Creighton University, Omaha, NE, Allopathic Medicine, May 1990
Lewis, George M., Indianapolis, IN, $70,595.07, Univ of Massachusetts Worcester, Worcester, MA, Allopathic Medicine, June 1982
Rodman, Karen D., Indianapolis, IN, $13,967.55, Univ of Pittsburgh, Pittsburgh, PA, Allopathic Medicine, June 1986
Williams, David L., Indianapolis, IN, $164,702.31, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984

Chiropractic

Maxfield-Brown, Bobbi, Evansville, IN, $91,130.76, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986
Meeks, Dana E., Newburgh, IN, $35,286.32, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1983
Reed, Nelson, Fort Wayne, IN, $71,197.54, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1987
Refkin, Joseph J P, Indianapolis, IN, $16,490.27, National College of Chiropractic, Lombard, IL, Chiropractic, August 1987
Vandenburgh, Peggy S., Indianapolis, IN, $73,504.13, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1985
Wykoff, Richard A., Lawrenceburg, IN, $123,632.88, Life College, Marietta, GA, Chiropractic, June 1985

Dentistry

Arch, Joseph A., Indianapolis, IN, $6,153.80, Indiana University Indianapolis, Bloomington, IN, Dentistry, May 1985

Arnett, Shannon L., Kendallville, IN, $18,207.70, Indiana University Indianapolis, Bloomington, IN, Dentistry, May 1989
Baker, Michael, Indianapolis, IN, $11,997.33, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1991
Kirk, James E., Portage, IN, $35,037.17, Loyola University Chicago, Chicago, IL, Dentistry, May 1985
Price, David G., Valparaiso, IN, $102,803.59, Loyola University Chicago, Chicago, IL, Dentistry, May 1990
Stojkovich, Lou, St John, IN, $74,886.71, Marquette University, Milwaukee, WI, Dentistry, May 1990

Osteopathy

French, Talmas T., Cedar Lake, IN, $216,483.22, Midwestern University, Downers Grove, IL, Osteopathy, June 1986

Podiatry

Beatty, Deborah, Indianapolis, IN, $25,082.49, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1993
Fair, Benny, Fort Wayne, IN, $120,738.64, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1990
Marlatt, Stephanie, Michigan City, IN, $81,311.15, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1987
Rogers, Laurence C., Rochester, IN, $29,927.21, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1980
Smith, Jonathan, Decatur, IN, $24,297.00, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Williams, David L., Indianapolis, IN, $30,395.43, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Wojnaroski, Joseph P., Lake Station, IN, $11,135.57, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982

Iowa

Allopathic Medicine

Pierson, Ronald R., Coralville, IA, $33,600.02, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, May 1986
Schaus, Scott S., Ames, IA, $21,762.50, Northeastern Ohio Universities, Rootstown, OH, Allopathic Medicine, May 1988

Chiropractic

Bockstedt-Middleton, Louise M., Davenport, IA, $22,077.83, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Crawford, James, Dubuque, IA, $49,614.09, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1987
Giroush, Gamal G., Davenport, IA, $37,677.73, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1987
Heer, Joel M., Dubuque, IA, $11,597.12, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1983
Heese, Kit L., West Des Moines, IA, $20,517.02, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986
Heyl, Susan J., Bettendorf, IA, $12,324.79, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1989
Hicks, Timothy G., Orange City, IA, $27,639.33, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1989
Hobbins, Jennifer J., Davenport, IA, $1,833.41, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1987
Holford, Joe E., Council Bluffs, IA, $80,012.57, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986
LeBlanc, Michael M., Davenport, IA, $30,998.04, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
McDonald, James, Davenport, IA, $2,211.41, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1982
Meike, Alan, Davenport, IA, $694.24, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1993
Moore, Douglas B., Davenport, IA, $30,201.37, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1987
Paper, Nicole N., Davenport, IA, $17,908.15, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1988
Schaeffer, Wally, Coralville, IA, $21,977.82, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Schaeuble, Gary S., Cedar Rapids, IA, $15,941.23, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Sigh, Edward R., Davenport, IA, $57,032.72, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1984
Szekely, Kevin, State Center, Australia, $40,797.95, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Volk, Anthony, Davenport, IA, $19,932.76, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985
Walters, Brian D., Davenport, IA, $69,021.87, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1986
Woiwood, David V., Carlisle, IA, $71,869.71, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985

Dentistry

Dye, Ralph M., Des Moines, IA, $109,125.92, Loma Linda University, Loma Linda, CA, Dentistry, June 1986
Kempema, Pamela, Prairie City, IA, $9,012.79, Univ of Michigan, Ann Arbor, MI, Dentistry, May 1988

Osteopathy

Jacobson, Steve, West Des Moines, IA, $131,634.91, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, May 1991
Spector, Mark, Des Moines, IA, $144,323.02, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1988
Van Patten, Merri, Sioux City, IA, $41,813.06, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1990

Pharmacy

Benson, Thersa L., Des Moines, IA, $10,504.28, Drake University, Des Moines, IA, Pharmacy, May 1990
Moss, Edward G., Des Moines, IA, $74,854.95, Drake University, Des Moines, IA, Pharmacy, May 1989

Podiatry

Davis, Anthony D., Des Moines, IA, $127,896.83, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1989
Del Prado, Rick, Waterloo, IA, $111,532.64, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1990
Gardner, Sandra M., Des Moines, IA, $166,452.97, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1987
Pryharski, Laureen A., Jefferson, IA, $166,258.68, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1989

Veterinary Medicine

Wilson, Arach J., Ames, IA, $8,995.29, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1979

Kansas

Allopathic Medicine

Atlas, William, Overland Park, KS, $58,707.00, Univ of Texas Hlth Sci

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Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1989
Ayika, Paul B., Lawrence, KS, $18,489.02, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1989
Hudgins, Mark, Lenexa, KS, $28,440.31, Univ of Kansas Medical Center, Kansas City, KS, Allopathic Medicine, May 1990
Richmond, Joseph J., Kansas City, KS, $63,628.76, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1983
Schaper, David, Cherryvale, KS, $37,616.91, Univ of Kansas Medical Center, Kansas City, KS, Allopathic Medicine, May 1990
Williams, Teri L., Shawnee Mission, KS, $7,709.89, Univ of Kansas Medical Center, Kansas City, KS, Allopathic Medicine, May 1990

Chiropractic

Amon, Julie A., Netawaka, KS, $18,611.54, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1984
Bond, James R., Derby, KS, $114,652.04, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Breese, Audrey, Lenexa, KS, $91,681.56, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Buck, Larry A., Wichita, KS, $94,342.15, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986
Capilli, Michael, Kansas City, KS, $25,993.81, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Cody, Ronald J., Valley Center, KS, $123,616.42, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1986
Coffland, Robert, Iola, KS, $56,530.23, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Corley, Gary E., Eskridge, KS, $52,035.73, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1988
Gay, Mark, Clearwater, KS, $60,686.97, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1990
Gieschen, John, Overland Park, KS, $17,216.58, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1983
Hoss, Angela, Sharon Springs, KS, $22,216.23, Parker College of Chiropractic, Dallas, TX, Chiropractic, December 1986
Hoyt, Ruth R., Overland Park, KS, $40,000.70, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1983
Jay, Doyle W., Lebo, KS, $86,779.59, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
Mathiesen, Douglas A., Shawnee Mission, KS, $135,732.35, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985
Neely, Timothy W., Topeka, KS, $37,021.70, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1990
O'leary, Molly M., Prairie Village, KS, $84,783.99, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1987
Rahman-Setayesh, Ali, Topeka, KS, $68,263.31, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1989
Schellenger, Yvonne Y., Newton, KS, $84,688.10, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1984
Schinstock, Julia A., Hoisington, KS, $67,248.62, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986
Strozier, Mark, Shawnee Mission, KS, $91,086.50, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Wagner, John P., Newton, KS, $41,128.20, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1985
Weatherhed, Karl D., Concordia, KS, $41,852.60, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1985
Wharran, David, Liberal, KS, $11,074.55, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1983
Wheeler, Randy, Haysville, KS, $100,942.03, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986
Wheeler, Samuel, Maize, KS, $112,872.52, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Wilson, Eileen, Prarrie Village, KS, $56,091.29, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986
Wilson, Jeff A., Topeka, KS, $42,184.01, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1990
Woody, Larry L., Olathe, KS, $14,220.69, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1983
Ziemba, Mitchell B., Lenexa, KS, $62,178.40, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1988

Dentistry

Fobbs, Michel M., Atchison, KS, $6,331.00, Howard University, Washington, DC, Dentistry, May 1984
Morris, Lynda, Overland Park, KS, $75,573.60, Washington University, St Louis, MO, Dentistry, September 1989
Rieck, Paul G., Olathe, KS, $11,330.53, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1983

Osteopathy

Fields, Allen, Overland Park, KS, $13,386.41, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1992

Kentucky

Allopathic Medicine

Ardul-Majid, Razia S., Covington, KY, $3,424.87, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1990
Bedford, Phillip, Covington, KY, $41,701.78, Univ of Louisville, Louisville, KY, Allopathic Medicine, October 1984
Brown, Henry H., Louisville, KY, $6,852.62, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1987
Burns, Mark V., Louisville, KY, $2,283.70, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1988
Collins, Jennifer, Catlettsburg, KY, $20,484.88, Univ of Miami, Miami, FL, Allopathic Medicine, May 1986
Frierson, Leonard, Louisville, KY, $28,603.66, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1989
Hagan, Elizabeth A., Louisville, KY, $15,902.45, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1989
Kerr, Bryant B., Louisville, KY, $6,113.85, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1986
Peasley, Ken, Columbia, KY, $62,918.41, Ponce School of Medicine, Ponce, PR, Allopathic Medicine, June 1984

Chiropractic

Aromola, Joseph J., Hebron, KY, $31,493.44, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
Humphrey, Cheryl K., York, KY, $7,141.13, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Jewett, Charles, Versailles, KY, $54,289.37, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1989

Phillips, Brian, Louisville, KY, $105,109.20, Life College, Marietta, GA, Chiropractic, December 1987

Dentistry

Bentley, Bobetta, Neon, KY, $4,555.92, Univ of Louisville, Louisville, KY, Dentistry, May 1988
Emnett, William P., Lexington, KY, $26,686.13, Univ of Kentucky, Lexington, KY, Dentistry, May 1980
Faison, Willie R., Louisville, KY, $205,044.01, Meharry Medical College, Nashville, TN, Dentistry, December 1985
Ford, Patricia J., Louisville, KY, $257.35, Univ of Louisville, Louisville, KY, Dentistry, May 1985
Green, Judith G., Louisville, KY, $129,926.29, Univ of Louisville, Louisville, KY, Dentistry, May 1987
Holman, Stanley, Louisville, KY, $27,403.08, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Labordeaux, Herbert W., Louisville, KY, $2,421.94, Univ of Louisville, Louisville, KY, Dentistry, May 1990
Preston, Michael R., Hagerhill, KY, $88,160.37, Univ of Kentucky, Lexington, KY, Dentistry, May 1987
Turnbow, Thomas P., Hickman, KY, $53,317.33, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1989

Health Administration

Gazall, Victor J., Louisville, KY, $41,748.60, St Louis University, St Louis, MO, Health Administration, May 1986

Optometry

Watkins, Thomas W., Campbellsville, KY, $53,409.97, Southern College of Optometry, Memphis, TN, Optometry, May 1990

Osteopathy

Fiorella-Holder, Michelle, Louisville, KY, $212,329.21, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1987

Podiatry

Hedden, Dianne, Owensboro, KY, $32,111.18, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1990

Louisiana

Allopathic Medicine

Burt, Eric S., Monroe, LA, $5,177.56, Louisiana St Univ Med Ctr Shreveport, Shreveport, LA, Allopathic Medicine, May 1989
Coleman, James, Shreveport, LA, $19,438.66, Univ of California Davis, Davis, CA, Allopathic Medicine, June 1980
Dixon, Armand, New Orleans, LA, $44,863.77, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1993
Fedoroff, Ivan I., New Orleans, LA, $2,197.77, Louisiana St Univ Med Ctr New Orleans, New Orleans, LA, Allopathic Medicine, May 1985
Geary, David M., Lafayette, LA, $93,886.29, Creighton University, Omaha, NE, Allopathic Medicine, May 1985
Ishmael, Francis J., Baton Rouge, LA, $3,461.13, Louisiana St Univ Med Ctr New Orleans, New Orleans, LA, Allopathic Medicine, May 1986
Mahner, John P., Dequincy, LA, $17,186.10, Louisiana St Univ Med Ctr New Orleans, New Orleans, LA, Allopathic Medicine, May 1992
Molden, Gregory L., New Orleans, LA, $109,304.96, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1984
Orsulak, Joseph, Bossier City, LA, $8,040.42, Louisiana St Univ Med Ctr Shreveport, Shreveport, LA, Allopathic Medicine, May 1988
Redmann, Greg A., Metairie, LA, $6,635.41, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1987
Saloy, Melanie, New Orleans, LA, $126,417.05, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Seyfarth Jr, Huey A., Baton Rouge, LA, $19,994.57, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, June 1986
Spears, Clifton, Alexandria, LA, $89,782.61, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Watford, Eric E., Gonzales, LA, $113,032.65, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Weist, Gregory J., Baton Rouge, LA, $15,200.89, Louisiana St Univ Med Ctr New Orleans, New Orleans, LA, Allopathic Medicine, May 1985

Chiropractic

Carter, Ronald M., St Rose, LA, $38,119.13, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1985
Duff, Robert, New Orleans, LA, $88,583.37, Parker College of Chiropractic, Dallas, TX, Chiropractic, January 1990
Guillory, Laura, Chalmette, LA, $48,870.11, Life College, Marietta, GA, Chiropractic, June 1984
Kritko, Anthony, Metairie, LA, $15,147.75, Life College, Marietta, GA, Chiropractic, September 1983
Lafleur, Allen R., Kenner, LA, $119,343.69, Life College, Marietta, GA, Chiropractic, December 1983
Miller, Kevin, Baton Rouge, LA, $78,483.76, Western States Chiropractic College, Portland, OR, Chiropractic, December 1988
Moran, Kevin A., Metairie, LA, $17,259.35, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Salczenko, Jeffrey G., Bossier City, LA, $51,971.41, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1987
Schwaiger, Mark, Gretna, LA, $7,508.33, Life College, Marietta, GA, Chiropractic, April 1983

Dentistry

Baranco, Patricia, Baton Rouge, LA, $244,269.86, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Byrd, Daryl, New Orleans, LA, $132,832.68, Meharry Medical College, Nashville, TN, Dentistry, May 1986
Hill, William, New Orleans, LA, $17,353.62, Louisiana St Univ Med Ctr, New Orleans, LA, Dentistry, May 1989
Langford, Cynthia M., Rosepine, LA, $224,403.61, Marquette University, Milwaukee, WI, Dentistry, May 1988
Reed, David, Algeria, LA, $136,506.11, Meharry Medical College, Nashville, TN, Dentistry, May 1985

Osteopathy

Floyd, James P., Shreveport, LA, $124,504.16, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1989
Newton, Steven R., Baton Rouge, LA, $14,059.48, Univ of Med & Dent of New Jersey, Newark, NJ, Osteopathy, May 1983

Pharmacy

Aruna, Augustine S., New Orleans, LA, $1,506.62, Creighton University, Omaha, NE, Pharmacy, December 1988
Smith, Darryl, New Orleans, LA, $6,306.09, Xavier University of Louisiana, New Orleans, LA, Pharmacy, May 1983

Podiatry

Bourque, Lawles J., Lafayette, LA, $7,671.10, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1992
Goodrow, Andrew J., New Orleans, LA, $167,936.88, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
Jordan, Joyce M., New Orleans, LA, $192,098.59, Ohio College of Podiatric

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Medicine, Cleveland, OH, Podiatry, May 1983
Morreale, Angelo, Natchitoches, LA, $55,934.46, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984

Public Health

Branton, Marilyn S., Pearl River, LA, $47,431.14, Tulane University, New Orleans, LA, Public Health, May 1986
Gex, Michelle, New Orleans, LA, $6,289.63, Tulane University, New Orleans, LA, Public Health, May 1984
Metoyer, Elisha J., New Orleans, LA, $3,017.76, Tulane University, New Orleans, LA, Public Health, May 1989
Roohani, Maurine, New Orleans, LA, $37,912.64, Tulane University, New Orleans, LA, Public Health, May 1988

Maine

Allopathic Medicine

Benjamin, James, Presque Isle, ME, $35,000.00, Howard University, Washington, DC, Allopathic Medicine, May 1983
McChesney, Guy H., Bangor, ME, $4,689.21, Yale University, New Haven, CT, Allopathic Medicine, May 1989

Chiropractic

Alexander-Kirton, Stephen, Calais, ME, $52,659.08, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1983
Lovell, Stephen, Bangor, ME, $22,269.35, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Williamson, Tim, Portland, ME, $93,778.18, Life College, Marietta, GA, Chiropractic, June 1987
Winkler, Stephen D., Bangor, ME, $57,206.78, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986

Dentistry

Dentremont, Franklin, Bangor, ME, $12,860.49, Tufts University, Boston, MA, Dentistry, June 1980
Pick, Charles E., Waterville, ME, $11,082.76, Case Western Reserve University, Cleveland, OH, Dentistry, May 1985

Veterinary Medicine

Raiten-Kasoff, Joan K., Bangor, ME, $27,851.36, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, May 1986

Maryland

Allopathic Medicine

Barber, Steven, Silver Spring, MD, $40,010.48, Howard University, Washington, DC, Allopathic Medicine, May 1988
Briley, Michele D., Suitland, MD, $13,008.64, Howard University, Washington, DC, Allopathic Medicine, May 1985
Buahin, Kwame, Baltimore, MD, $17,560.87, Columbia University, New York, NY, Allopathic Medicine, May 1989
Cooper Jr, John D., Rockville, MD, $2,012.72, Suny Buffalo, Buffalo, NY, Allopathic Medicine, June 1988
Crarey, Patrick E., Upper Marlboro, MD, $63,920.87, Georgetown University, Washington, DC, Allopathic Medicine, May 1983
Daniels Iii, Fernando, Upper Marlboro, MD, $29,873.24, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Eudaric, Philippe M., Baltimore, MD, $34,465.15, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1988
Franklin, Janet L., Rockville, MD, $10,299.08, Georgetown University, Washington, DC, Allopathic Medicine, May 1984
Hill, Leo D., Cheverly, MD, $16,239.20, Temple University, Philadelphia, PA, Allopathic Medicine, June 1989
Hogan, John W., Fort Washington, MD, $539.74, Howard University, Washington, DC, Allopathic Medicine, May 1982
Kennedy, Grace, Baltimore, MD, $65,501.43, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1985
Lent, Michael, Hyattsville, MD, $10,772.06, Univ of California San Francisco, San Francisco, CA, Allopathic Medicine, June 1982
Lynch, Ray A., Columbia, MD, $25,415.94, Howard University, Washington, DC, Allopathic Medicine, May 1989
Marshall, John T., Hillcrest Heights, MD, $84,864.65, Marshall University, Huntington, WV, Allopathic Medicine, June 1986
McKinney Jr, Thornton, Bladensburg, MD, $68,044.16, Georgetown University, Washington, DC, Allopathic Medicine, May 1990
Miles, Robert L., Elk Ridge, MD, $159,709.49, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Mines, Sakilba C., Silver Spring, MD, $46,438.59, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1983
Mosely, Victoria, Baltimore, MD, $135,335.97, Tufts University, Boston, MA, Allopathic Medicine, May 1984
Park, Won S., Baltimore, MD, $12,999.29, Univ of Maryland Baltimore, Baltimore, MD, Allopathic Medicine, May 1990
Patrick, George V., Columbia, MD, $26,909.53, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1990
Ramos, Lydia I., Gaithersburg, MD, $31,728.32, Georgetown University, Washington, DC, Allopathic Medicine, May 1986
Sears, Terri A., Greenbelt, MD, $15,422.68, Howard University, Washington, DC, Allopathic Medicine, May 1984
Shelby, Gloria D., Capitol Heights, MD, $18,147.61, Howard University, Washington, DC, Allopathic Medicine, May 1984
Tedford, William, Silver Spring, MD, $14,034.51, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1988
Turner, Sherri A., Silver Spring, MD, $30,777.75, Tufts University, Boston, MA, Allopathic Medicine, May 1980
Wagner, Robert J., Baltimore, MD, $59,523.08, Albany Medical College, Albany, NY, Allopathic Medicine, May 1989
West, Denise G., Baltimore, MD, $20,839.58, Univ of Maryland Baltimore, Baltimore, MD, Allopathic Medicine, May 1987
Wheeler, Jacquelyn L., Baltimore, MD, $185,533.20, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Whittingham, Wayne L., Riverdale, MD, $9,920.21, Howard University, Washington, DC, Allopathic Medicine, May 1988
Wilder, Deborah, Silver Spring, MD, $98,315.48, Georgetown University, Washington, DC, Allopathic Medicine, May 1989
Williams, Lorraine, Silver Spring, MD, $5,232.08, Howard University, Washington, DC, Allopathic Medicine, May 1989
Young, Howard, Baltimore, MD, $96,210.16, Albany Medical College, Albany, NY, Allopathic Medicine, May 1989

Chiropractic

Faurote, Pamella R., Wheaton, MD, $12,609.74, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Gordon, Robert K., Snow Hill, MD, $86,381.68, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Hughes, Charles, Baltimore, MD, $143,298.00, Life College, Marietta, GA, Chiropractic, March 1987
McCracken, Rosalind A., Chevy Chase, MD, $17,879.05, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1988

Smith, Rusty A., City Unknown, MD, $3,829.88, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1988

Dentistry

Brantley, Carl C., Mt Rainier, MD, $12,916.11, Howard University, Washington, DC, Dentistry, May 1989
Brown, Irene E., Silver Spring, MD, $130,911.64, Meharry Medical College, Nashville, TN, Dentistry, May 1987
Coleman, Michele, Lanham, MD, $11,169.01, Howard University, Washington, DC, Dentistry, May 1985
Cummins, David D., Gaithersburg, MD, $42,310.53, Howard University, Washington, DC, Dentistry, May 1985
Delacruz, Maureen, Bethesda, MD, $103,123.11, Georgetown University, Washington, DC, Dentistry, May 1984
Garcia, Anthony, Baltimore, MD, $17,655.25, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, June 1989
Gordon, Vernon, Columbia, MD, $46,306.94, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, May 1985
Harris, Michael, Upper Marlboro, MD, $54,101.35, Howard University, Washington, DC, Dentistry, June 1988
Johnson, Leardrew L., Takoma Park, MD, $11,630.74, Howard University, Washington, DC, Dentistry, May 1988
Jones, Winifred M., Baltimore, MD, $175,370.00, Meharry Medical College, Nashville, TN, Dentistry, May 1987
Leach, Kevin, Landover, MD, $33,058.12, Marquette University, Milwaukee, WI, Dentistry, May 1990
Lindsey, Glenda G., Brooklandville, MD, $51,228.98, Howard University, Washington, DC, Dentistry, May 1986
McKee, Commelita, Silver Spring, MD, $18,901.90, Howard University, Washington, DC, Dentistry, May 1990
Palou, Ana M., Silver Spring, MD, $49,090.67, Georgetown University, Washington, DC, Dentistry, May 1989
Press, Zachary D., Randallstown, MD, $66,469.27, Univ of Maryland Baltimore, Columbia, SC, Dentistry, May 1985
Richardson, Joseph J., Silver Spring, MD, $180,389.24, Howard University, Washington, DC, Dentistry, May 1987
Saffold, Michael D., Hyattsville, MD, $12,859.83, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, May 1987
Smith, Dezrie, Clinton, MD, $19,201.91, Georgetown University, Washington, DC, Dentistry, May 1989
Thomas, Lindwall, Silver Spring, MD, $13,385.34, Howard University, Washington, DC, Dentistry, May 1991
Van Story-Lewis, Patricia E., Adelphi, MD, $31,706.47, Howard University, Washington, DC, Dentistry, May 1981
Williams, Laura A., Temple Hills, MD, $40,272.46, Howard University, Washington, DC, Dentistry, May 1987
Wilson, Debra D., Baltimore, MD, $57,109.98, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, May 1984

Osteopathy

Poljan, Mary K., Frostburg, MD, $9,372.14, Michigan State University, East Lansing, MI, Osteopathy, June 1989

Pharmacy

Clark, Timothy J., Baltimore, MD, $10,015.37, Ohio State University, Columbus, OH, Pharmacy, June 1987
Conerly, Rex A., Greenbelt, MD, $29,648.83, Howard University, Washington, DC, Pharmacy, May 1986
Onyekwere, Lawrence, Randallstown, MD, $4,905.37, Creighton University, Omaha, NE, Pharmacy, August 1983

Podiatry

Boyce, Jesse M., Bowie, MD, $143,504.40, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1987
Doyle, Anthony A., Silver Spring, MD, $47,904.41, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1989
Gatling, Joycelyn J., Largo, MD, $117,605.95, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982
Hudyman, Andrew, Baltimore, MD, $9,948.59, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1990
Jacobs, Steven, Baltimore, MD, $12,010.59, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1987
Miles Jr, Robert, Wheaton, MD, $124,969.46, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Rosenberg, Robert, Gaithersburg, MD, $141,266.92, Barry University—Podiatric Med, Miami Shores, FL, Podiatry, May 1989
Sachs, Jody, Derwood, MD, $149,292.76, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1987
Young, Pamela, Bowie, MD, $76,879.20, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1988

Public Health

Henderson, Melford J., Rockville, MD, $4,487.78, Yale University, New Haven, CT, Public Health, May 1984
Mathews, Elizabeth A., Baltimore, MD, $14,535.47, Johns Hopkins University, Baltimore, MD, Public Health, January 1991
Pieh, Michael, Rockville, MD, $16,074.54, Tulane University, New Orleans, LA, Public Health, May 1988

Veterinary Medicine

Barksdale, Daryl L., Frederick, MD, $4,903.57, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1987
Kidd, Nettie J., Silver Spring, MD, $8,210.97, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1988
Slaughter, John, Baltimore, MD, $89,529.29, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1985

Massachusetts

Allopathic Medicine

Bergus, Boris, Dighton, MA, $2,845.91, Harvard Medical School, Boston, MA, Allopathic Medicine, June 1988
Charles, Jean B., Bedford, MA, $64,929.81, Boston University Medical Center, Boston, MA, Allopathic Medicine, May 1985
Cyrus, Pamela A., Arlington, MA, $19,319.81, Marshall University, Huntington, WV, Allopathic Medicine, May 1988
Daley, William L., Boston, MA, $77,026.05, Boston University Medical Center, Boston, MA, Allopathic Medicine, June 1983
Davis, Rudy, Boston, MA, $46,204.47, Boston University Medical Center, Boston, MA, Allopathic Medicine, May 1990
Gelwan, Eliot M., Brookline, MA, $9,495.79, Yale University, New Haven, CT, Allopathic Medicine, May 1983
Healey, Christine, Winthrop, MA, $30,742.36, Univ of Rochester, Rochester, NY, Allopathic Medicine, May 1987
Holt, Todd N., Provincetown, MA, $65,399.20, Univ of Arkansas Medical Center, Little Rock, AR, Allopathic Medicine, May 1986
Joyce, Benjamin, Cataumet, MA, $16,273.27, Tufts University, Boston, MA, Allopathic Medicine, May 1985
Ling, Judith, Springfield, MA, $32,265.78, Stanford University, Stanford, CA, Allopathic Medicine, June 1981
Mendes, Antonio C., Dorchester, MA, $13,361.75, Univ of Massachusetts Worcester, Worcester, MA, Allopathic Medicine, May 1990
Murphy, Michael P., Brookline, MA, $11,902.61, Suny Stony Brook, Stony Brook, NY, Allopathic Medicine, June 1989

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O'Connor, Brian, Boston, MA, $41,576.15, Georgetown University, Washington, DC, Allopathic Medicine, May 1985
Obi Tabot, Eliot T., Framingham, MA, $8,188.96, Univ of Missouri Columbia, Columbia, MO, Allopathic Medicine, May 1989
Rivers, Samuel, Randolph, MA, $14,096.35, Brown University, Providence, RI, Allopathic Medicine, June 1984
Rucks, Andrew A., Springfield, MA, $175,915.66, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Saintlouis, Josephus, West Roxbury, MA, $97,155.19, Univ of Minnesota, Minneapolis, MN, Allopathic Medicine, June 1987
Simpson, Ashley, Allston, MA, $27,570.60, Tufts University, Boston, MA, Allopathic Medicine, May 1989
Swinford, Rita, Boston, MA, $15,613.85, SUNY Stony Brook, Stony Brook, NY, Allopathic Medicine, June 1990
Thompson, John, East Bridgewater, MA, $23,523.84, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1989
Tucker, Lori B., Nahant, MA, $20,605.93, Tufts University, Boston, MA, Allopathic Medicine, June 1983
Urkevic, Jan, Brookline, MA, $63,761.18, Georgetown University, Washington, DC, Allopathic Medicine, May 1988
Weaver, Rebecca, Boston, MA, $168,973.42, Tufts University, Boston, MA, Allopathic Medicine, May 1987
Whitt, Beverly S., Brockton, MA, $118,513.19, Univ of California Irvine, Irvine, CA, Allopathic Medicine, June 1988

Chiropractic

Angelo, Kathie L., Hull, MA, $59,797.42, Life College, Marietta, GA, Chiropractic, December 1984
Boyden, David, South Deerfield, MA, $2,564.00, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1992
Brault, Peter, Westminster, MA, $31,420.40, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1983
Bruce, Ronald, Peabody, MA, $10,014.40, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1987
Cotter, Paul, Newton, MA, $33,418.61, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1988
Dehamer-Howard, Heleen H., South Hamilton, MA, $65,437.32, Life College, Marietta, GA, Chiropractic, June 1983
Doherty, Edward (chip) E., Westwood, MA, $17,049.75, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Doonan, Greg, Peabody, MA, $22,359.21, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Falkinburg, Rory, Williamsburg, MA, $49,566.42, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1989
Garcia, Frank J., Boston, MA, $1,694.10, Life College, Marietta, GA, Chiropractic, October 1986
Hughes, Allen D., Worchester, MA, $92,550.78, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1989
Leconte, Isabelle I., Cambridge, MA, $36,645.55, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, August 1986
Miller, Harry, Sandwich, MA, $10,247.66, Life College, Marietta, GA, Chiropractic, September 1990
Morman, Diane, Jamaica Plain, MA, $48,727.12, Life College, Marietta, GA, Chiropractic, March 1983
Powell, Michael, Somerset, MA, $73,413.85, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
Rines, Susan B., Westwood, MA, $3,922.48, Life College, Marietta, GA, Chiropractic, December 1990

Clinical Psychology

Webster, Thomas, North Hampton, MA, $75,912.21, New School For Social Research, New York, NY, Clinical Psychology, May 1989

Dentistry

Bissanti, Michael A., Braintree, MA, $36,505.58, Boston University Medical Center, Boston, MA, Dentistry, June 1983
Brown, David, Belchertown, MA, $113,324.01, Univ of Southern California, Los Angeles, CA, Dentistry, May 1990
Butler, Hubert, Boston, MA, $103,208.24, Temple University, Philadelphia, PA, Dentistry, June 1987
Cale, Scott, Watertown, MA, $114,096.45, Tufts University, Boston, MA, Dentistry, June 1990
Calhoun, Mary, West Bridgewater, MA, $32,736.40, Case Western Reserve University, Cleveland, OH, Dentistry, December 1985
Capua, Joseph, Dorchester, MA, $87,558.88, Boston University Medical Center, Boston, MA, Dentistry, May 1990
Christopoulos, George, Saugus, MA, $123,902.65, Boston University Medical Center, Boston, MA, Dentistry, May 1987
Cohen, Ronald, Rockland, MA, $177,541.19, Tufts University, Boston, MA, Dentistry, February 1987
Culbertson, William, Wollaston, MA, $25,273.64, Boston University Medical Center, Boston, MA, Dentistry, May 1982
Dooley, Paul J., Hyde Park, MA, $25,031.70, Boston University Medical Center, Boston, MA, Dentistry, May 1990
Down, Majorie E., Wrentham, MA, $4,109.16, Boston University Medical Center, Boston, MA, Dentistry, June 1984
Gabriel, Tony D., Watertown, MA, $62,101.17, Marquette University, Milwaukee, WI, Dentistry, May 1984
Gallery, Melissa, Nahant, MA, $129,070.22, Tufts University, Boston, MA, Dentistry, May 1987
Gearin, Timothy, Chicope, MA, $114,945.44, Tufts University, Boston, MA, Dentistry, February 1988
George, Gail G., Quincy, MA, $120,233.28, Boston University Medical Center, Boston, MA, Dentistry, May 1987
Hardy, Mary, Lowell, MA, $145,046.31, Tufts University, Boston, MA, Dentistry, June 1990
Jones, Margaret K., Pembroke, MA, $173,621.56, Boston University Medical Center, Boston, MA, Dentistry, May 1986
Lawrence, Herbert, Roxbury, MA, $20,216.90, Boston University Medical Center, Boston, MA, Dentistry, May 1985
Lebourdais, Stephen, Pittsfield, MA, $395.71, Univ of Pennsylvania, Philadelphia, PA, Dentistry, May 1981
Lynch, William, Milford, MA, $43,184.98, Boston University Medical Center, Boston, MA, Dentistry, May 1990
Martinez, Hannah A., Medford, MA, $38,741.67, Tufts University, Boston, MA, Dentistry, June 1989
Matkoski, Jane L., Dorchester, MA, $103,226.49, Boston University Medical Center, Boston, MA, Dentistry, May 1988
Nosack, John E., Watertown, MA, $163,310.12, Tufts University, Boston, MA, Dentistry, June 1986
Savas, Christy W., Worchester, MA, $1,566.15, Georgetown University, Washington, DC, Dentistry, May 1982
Sedovsky, Jeffrey, Framingham, MA, $172,430.12, Boston University Medical Center, Boston, MA, Dentistry, May 1989
Smith, Rickey, Mattapan, MA, $152,901.35, Marquette University, Milwaukee, WI, Dentistry, May 1988

Snow, Brian B., Harwich, MA, $40,095.96, Georgetown University, Washington, DC, Dentistry, May 1985
Solimini Jr, Anthony G., Boston, MA, $40,101.59, Boston University Medical Center, Boston, MA, Dentistry, June 1988
Thompson, Florian, Boston, MA, $199,852.28, Boston University Medical Center, Boston, MA, Dentistry, May 1988
Weake, Jeffrey R., North Weymouth, MA, $214,973.31, Tufts University, Boston, MA, Dentistry, June 1985
Woodrick, William R., Waltham, MA, $39,354.25, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, June 1989

Optometry

Garcia, Miguel A., Danvers, MA, $27,908.76, New England College of Optometry, Boston, MA, Optometry, May 1988
Soque, James, Falmouth, MA, $4,244.00, New England College of Optometry, Boston, MA, Optometry, May 1991

Osteopathy

Berry, Linda, Seekonk, MA, $179,026.77, Univ of New England, Biddeford, ME, Osteopathy, June 1986
Leaver, Janet M., Stoughton, MA, $209,267.49, Univ of New England, Biddeford, ME, Osteopathy, December 1986
Parks, Norman G., Brookline, MA, $17,169.16, Michigan State University, East Lansing, MI, Osteopathy, June 1987

Pharmacy

Amah, Ezem, Boston, MA, $7,410.56, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1988
Culba, Frantisek, Quincy, MA, $4,646.27, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1992
Gibbs, David P., Boston, MA, $27,134.93, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1984
Johnson, Benjamin B., North Hampton, MA, $11,378.43, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1987
Karbalaei, Esfandiar, Cambridge, MA, $7,751.32, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1992
Tkejiani, Azubeze A C, Mattapan, MA, $58,185.48, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1988
Watt, Sharyn, Brockton, MA, $58,988.79, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1986

Podiatry

Coby, Michael, Amherst, MA, $21,131.98, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1987
Tachibana, James, Stockbridge, MA, $104,791.48, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1982

Public Health

Burnside, Susan, Marblehead, MA, $13,891.83, Boston University Medical Center, Boston, MA, Public Health, May 1985
Caraballo-Wesley, Elizabeth, Mattapan, MA, $13,914.83, Boston University Medical Center, Boston, MA, Public Health, May 1985
Cronin, Denis, Medford, MA, $21,136.94, Columbia University Health Sciences, New York, NY, Public Health, May 1986
Dorsinville, Mona M., Boston, MA, $22,574.60, Harvard University, Boston, MA, Public Health, June 1987
Dumser, James B., Malden, MA, $26,370.74, Harvard University, Boston, MA, Public Health, June 1987
Kattan, Yehuda Y., Springfield, MA, $17,599.99, Tulane University, New Orleans, LA, Public Health, December 1985
Mercier-Pierre, Hermide, Brockton, MA, $18,440.62, Boston University Medical Center, Boston, MA, Public Health, May 1987
Michaud, Unique, Needham, MA, $8,711.25, Harvard University, Boston, MA, Public Health, June 1987
Mikols, Ann M., Boston, MA, $31,892.78, Boston University Medical Center, Boston, MA, Public Health, May 1985
Munroe, Alelia, Boston, MA, $15,231.73, Boston University Medical Center, Boston, MA, Public Health, January 1983

Veterinary Medicine

Canavan, Robert T., Wayland, MA, $54,167.02, Tufts University, Boston, MA, Veterinary Medicine, May 1989
Ernst, Harry B., Falmouth, MA, $106,645.40, Tufts University, Boston, MA, Veterinary Medicine, May 1987
Hepburn, Bradley J., Somerville, MA, $28,317.98, Tufts University, Boston, MA, Veterinary Medicine, May 1985
Thompson, Ashiaa, Canton, MA, $60,011.24, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1984
Weber, Merle H., Andover, MA, $84,847.96, Tufts University, Boston, MA, Veterinary Medicine, May 1987

Michigan

Allopathic Medicine

Anderson, Denise, Detroit, MI, $120,337.40, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988
Arrington, Dexter E., Detroit, MI, $1,547.88, Washington University, St Louis, MO, Allopathic Medicine, May 1990
Berry, Aphonso, Troy, MI, $5,067.88, Howard University, Washington, DC, Allopathic Medicine, May 1988
Burton, Ann Y., Detroit, MI, $144,433.06, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1986
Coalman, Perry G., Kalamazoo, MI, $25,453.97, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1984
Criss, David, Southfield, MI, $7,794.19, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1990
Crittenden Jr, William, Detroit, MI, $86,214.91, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Daniel, Felton J., Farmington, MI, $24,462.39, Medical College of Georgia, Augusta, GA, Allopathic Medicine, June 1983
Eichler, John A., Ypsilanti, MI, $106,052.29, Univ of Pittsburgh, Pittsburgh, PA, Allopathic Medicine, June 1987
Eiland, Gazandra J., East Lansing, MI, $4,720.38, Univ of Michigan, Ann Arbor, MI, Allopathic Medicine, May 1991
Ennis, Michael C., Lansing, MI, $25,126.76, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1989
George, Eric R., Grand Rapids, MI, $7,106.28, Marshall University, Huntington, WV, Allopathic Medicine, May 1989
Hatter, Marcus, Lansing, MI, $84,352.00, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1989
Johnson, Anthony, Detroit, MI, $31,658.04, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989
Lucas, Joann, Detroit, MI, $135,929.11, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Marang, Boitshoko P., Detroit, MI, $103,787.13, Southern Illinois Univ Springfield, IL, Allopathic Medicine, November 1984
McAllister, William, Detroit, MI, $32,927.98, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1982

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Mial, Richard, Ann Arbor, MI, $3,727.52, Creighton University, Omaha, NE, Allopathic Medicine, May 1985
Moore, Charzetta, West Bloomfield, MI, $129,991.72, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Motley, Rebecca K., Detroit, MI, $104,269.76, Univ of Michigan, Ann Arbor, MI, Allopathic Medicine, May 1988
Neitzel, Shelly, Ann Arbor, MI, $12,759.30, Univ of Michigan, Ann Arbor, MI, Allopathic Medicine, May 1988
Pavlou, Bill, West Bloomfield, MI, $119,004.90, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1982
Polak, Timothy, Ann Arbor, MI, $12,853.27, Wayne State University, Detroit, MI, Allopathic Medicine, June 1991
Polk, Norris, Detroit, MI, $1,682.88, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1982
Rizzo, Michael J., Southfield, MI, $26,106.24, St. Louis University, St. Louis, MO, Allopathic Medicine, May 1985
Segesta, Michael, East Detroit, MI, $23,547.46, Mayo Medical School, Rochester, MN, Allopathic Medicine, May 1988
Sigismund, Gordon, Farmington Hills, MI, $95,868.81, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988
Sparrow Jr, Cleveland C., Birmingham, MI, $76,352.92, Georgetown University, Washington, DC, Allopathic Medicine, May 1988
Tanwi, Lyndon, Southfield, MI, $61,190.34, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, June 1986
Walker, Yvette R., Harper Woods, MI, $34,557.26, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1990
Ware, Cynthia R., Detroit, MI, $20,593.70, Wright State University, Dayton, OH, Allopathic Medicine, June 1990
West, Woodrow W., Southfield, MI, $8,591.50, Univ of Michigan, Ann Arbor, MI, Allopathic Medicine, May 1984

Chiropractic

Aamodt, Wayne G., Grand Rapids, MI, $6,780.74, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1982
Adray, Allie, Dearborn, MI, $117,294.25, Life College, Marietta, GA, Chiropractic, March 1987
Allen, David F., Madison Heights, MI, $45,152.03, National College of Chiropractic, Lombard, IL, Chiropractic, December 1985
Beller, Bryan, Wyandotte, MI, $118,057.79, Life College, Marietta, GA, Chiropractic, March 1987
Calzetta, Gregory A., St. Clair Shores, MI, $49,304.46, Life College, Marietta, GA, Chiropractic, October 1985
Chapman, Michelle, Auburn Hills, MI, $34,046.57, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1987
Clark, Daniel S., Rochester Hills, MI, $34,236.42, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Clark, Gary C., Inkster, MI, $13,722.20, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1989
Cordes, John, West Bloomfield, MI, $48,169.55, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1985
Dunn, Karen K, Dearborn, MI, $30,326.81, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Flateau, Jacqueline, Taylor, MI, $27,431.82, Life College, Marietta, GA, Chiropractic, June 1989
Forte-Thottakath, Sandra L, Detroit, MI, $17,698.14, National College of Chiropractic, Lombard, IL, Chiropractic, August 1985
Graham Jr, Robert L, Byron Center, MI, $12,784.31, Life College, Marietta, GA, Chiropractic, December 1985
Gress, Raymond, Sparta, MI, $9,275.23, Life College, Marietta, GA, Chiropractic, September 1983
Hassinger, Royann, Ortonville, MI, $35,353.23, National College of Chiropractic, Lombard, IL, Chiropractic, December 1985
Humphrey, Terry J, Lansing, MI, $15,834.59, Life College, Marietta, GA, Chiropractic, September 1983
Hunsberger, Mark, Lake Orion, MI, $13,741.48, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1982
Jackson, William, Lakeville, MI, $27,691.13, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1983
Kay, John, Westland, MI, $73,790.02, Life College, Marietta, GA, Chiropractic, June 1986
Knol, Jennifer JS, Holland, MI, $46,844.71, Life College, Marietta, GA, Chiropractic, June 1986
Koffeman, John N, Ann Arbor, MI, $38,951.24, National College of Chiropractic, Lombard, IL, Chiropractic, December 1983
Laing, Jean D, Detroit, MI, $39,941.89, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Lavengood, Daniel J, Wyoming, MI, $124,518.18, Life College, Marietta, GA, Chiropractic, March 1987
Lavengood, Todd D, Marshall, MI, $50,588.00, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1986
McShan, Ophelia O, Kalamazoo, MI, $55,955.83, Life College, Marietta, GA, Chiropractic, December 1984
Migdalewicz, Alan, Ferndale, MI, $29,484.74, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1987
Monterosso, Karen, Allen Park, MI, $18,766.75, Life College, Marietta, GA, Chiropractic, March 1983
Nelson, Roger, Waterford, MI, $31,775.60, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1986
O'Dell, Craig, Lake, MI, $149,037.89, Life College, Marietta, GA, Chiropractic, June 1984
Pierce, Douglas E, Grand Rapids, MI, $10,699.84, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1986
Richardson, Neil N, Cedar Springs, MI, $39,021.83, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1987
Rosemond, Luther, Detroit, MI, $89,841.36, Life College, Marietta, GA, Chiropractic, December 1985
Roshy, Gary, Ludington, MI, $133,887.58, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Sanborn, Brian, Mt Pleasant, MI, $132,714.79, Life College, Marietta, GA, Chiropractic, March 1987
Scafidi, Scott J, Pontiac, MI, $23,653.89, Life College, Marietta, GA, Chiropractic, March 1986
Schwarz, Bernard B, Center Line, MI, $19,051.95, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1983
Smith, Dale, Battle Creek, MI, $88,322.81, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1987
Truax, Christopher J, Algonac, MI, $2,796.87, National College of Chiropractic, Lombard, IL, Chiropractic, August 1984
Vergote, Steven S, Warren, MI, $32,715.46, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1985
Vernon, David W, Clarkston, MI, $7,287.15, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1982
Vettraino, Mark, Orion, MI, $82,083.21, Life College, Marietta, GA, Chiropractic, June 1984
Williams, Ronald G, Grand Rapids, MI, $48,065.89, National College of Chiropractic, Lombard, IL, Chiropractic, December 1987
Wilson, Soni, Detroit, MI, $54,458.43, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988
Wolgat, Gregory J., Southfield, MI, $13,927.87, Life College, Marietta, GA, Chiropractic, December 1983

Clinical Psychology

Wright, Richard R., Detroit, MI, $105,850.24, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, June 1987

Dentistry

Anderson, Mary L., Birmingham, MI, $177,252.76, Univ of Detroit Mercy, Detroit, MI, Dentistry, April 1982
Baumstark, James M., Livonia, MI, $147,998.08, Marquette University, Milwaukee, WI, Dentistry, May 1988
Branham, Jerome R., Pontiac, MI, $33,379.39, Meharry Medical College, Nashville, TN, Dentistry, May 1981
Burnett, Kevin M., Detroit, MI, $57,843.82, Univ of Detroit Mercy, Detroit, MI, Dentistry, May 1983
Chapman, William, Westland, MI, $150,602.48, Univ of Detroit Mercy, Detroit, MI, Dentistry, December 1986
Dawidowski, Douglas M., Rochester, MI, $57,449.94, Univ of Detroit Mercy, Detroit, MI, Dentistry, April 1981
George, Achukutty T., Detroit, MI, $14,631.84, Univ of Michigan, Ann Arbor, MI, Dentistry, May 1990
Hamlin, Calvin, Detroit, MI, $49,296.91, Howard University, Washington, DC, Dentistry, May 1987
Holyway, Craig T., Southfield, MI, $92,841.85, Washington University, St Louis, MO, Dentistry, May 1991
Hysni, Eddie K., Orchard Lake, MI, $23,364.11, Univ of Detroit Mercy, Detroit, MI, Dentistry, May 1987
Khouri, Louie, Ferndale, MI, $7,705.97, Univ of Michigan, Ann Arbor, MI, Dentistry, August 1989
Munson, Kevin D., Huntington Woods, MI, $11,604.02, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, May 1988
Murphy, Kevin K., Fraser, MI, $43,673.38, Univ of Detroit Mercy, Detroit, MI, Dentistry, April 1981
Rashid, Paul, East Lansing, MI, $120,311.44, Boston University Medical Center, Boston, MA, Dentistry, May 1989
Rodgers-McDougall, Shawn E., Ann Arbor, MI, $35,893.84, Univ of Detroit Mercy, Detroit, MI, Dentistry, May 1989
Russell, Bobby D., Stevensville, MI, $60,317.42, Loyola University Chicago, Chicago, IL, Dentistry, May 1988
Schaefer, Mary L., Flint, MI, $39,372.48, Meharry Medical College, Nashville, TN, Dentistry, May 1981
Senior, Duane A., Detroit, MI, $166,391.33, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Snyder, Steven H., Southfield, MI, $46,515.75, Univ of Detroit Mercy, Detroit, MI, Dentistry, April 1981
Taylor, Harold L., Detroit, MI, $179,802.38, Meharry Medical College, Nashville, TN, Dentistry, May 1984

Optometry

Wells, Marcy A., Detroit, MI, $19,152.33, Illinois College of Optometry, Chicago, IL, Optometry, May 1989

Osteopathy

Barnett, Ruth D., Southfield, MI, $78,575.65, Michigan State University, East Lansing, MI, Osteopathy, June 1985
Barr, John T., Bay City, MI, $18,984.11, Univ of Health Sciences, Kansas City, MO, Osteopathy, March 1991
Benjamin, Roxanne R., Rose City, MI, $58,677.88, Michigan State University, East Lansing, MI, Osteopathy, June 1985
Bilyeu, Stuart, Ann Arbor, MI, $16,735.02, Michigan State University, East Lansing, MI, Osteopathy, June 1988
Breedlove, David L., Detroit, MI, $9,843.87, Michigan State University, East Lansing, MI, Osteopathy, June 1983
Brent, Gloria G J, East Lansing, MI, $41,188.63, Michigan State University, East Lansing, MI, Osteopathy, June 1986
Cohn, Mitchell A., Birmingham, MI, $183,722.78, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1986
Frei, Julia, Marquette, MI, $8,593.93, Michigan State University, East Lansing, MI, Osteopathy, June 1989
Green, Linda, Detroit, MI, $30,284.87, Michigan State University, East Lansing, MI, Osteopathy, June 1985
Kreuzer, Craig, Grand Rapids, MI, $15,954.01, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1991
Posey, Willie L., Detroit, MI, $176,628.71, Midwestern University, Downers Grove, IL, Osteopathy, June 1988
Racicot, Terry A., Troy, MI, $11,079.61, Oklahoma State University, Tulsa, OK, Osteopathy, May 1989
Ross, Guy, Ferndale, MI, $16,613.81, Michigan State University, East Lansing, MI, Osteopathy, June 1990
Snyder, Richard R., West Bloomfield, MI, $80,794.94, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1985
Swan, Charles, Pontiac, MI, $7,107.12, Michigan State University, East Lansing, MI, Osteopathy, June 1988
Torosian, Michael P., Novi, MI, $126,378.86, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1990
Toth, Robert L., Detroit, MI, $27,404.12, Michigan State University, East Lansing, MI, Osteopathy, June 1981

Pharmacy

Lemmons, Yvonne Y., Detroit, MI, $32,856.10, Mercer University, Atlanta, GA, Pharmacy, June 1983

Podiatry

Ball Jr, Thomas, Detroit, MI, $31,217.90, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1980
Baptist, Mazel, Detroit, MI, $11,652.22, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Berk, Richard I., Ann Arbor, MI, $135,455.45, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1981
Cesar, Gary L., Lansing, MI, $129,846.33, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Hofner, Mark L., Dearborn, MI, $158,126.77, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1988
Horne-Atkins, Jerilyn, Southfield, MI, $35,634.19, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1980
Jackson, Thomas C., Detroit, MI, $24,563.69, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Johnson, Ervin, Grosse Pointe Farms, MI, $193,156.33, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, May 1990
Moore, Jackie, Detroit, MI, $41,895.23, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1990
Thomas, Valerie, Detroit, MI, $77,145.46, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1989
Wilson, Ronald, Detroit, MI, $98,846.07, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985

Public Health

Paveza, Gregory L., Ypsilanti, MI, $154,416.62, Univ of Illinois at Chicago, Chicago, IL, Public Health, June 1985

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Veterinary Medicine

Stewart, Kevin R., Utica, MI, $48,040.62, Michigan State University, East Lansing, MI, Veterinary Medicine, June 1987

Minnesota

Allopathic Medicine

Azzarello, James, Minneapolis, MN, $91,916.64, Albany Medical College, Albany, NY, Allopathic Medicine, May 1987
Baker, Jeffrey, Minneapolis, MN, $18,313.91, Univ of Minnesota, Minneapolis, MN, Allopathic Medicine, June 1986
Faragounis, Vasilios, Rochester, MN, $24,805.49, Boston University Medical Center, Boston, MA, Allopathic Medicine, May 1988
Hoskins-Akale, Denise, Cottage Grove, MN, $225,269.64, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, February 1985
Johnson, Richard, Minneapolis, MN, $32,010.22, Univ of Louisville, Louisville, KY, Allopathic Medicine, May 1987
Osei-Tutu, Ernest O., Minneapolis, MN, $16,346.62, Thomas Jefferson University, Philadelphia, PA, Allopathic Medicine, June 1987

Chiropractic

Bauwens, David M., St Paul, MN, $49,679.39, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1986
Blish, Jon J., Mound, MN, $19,531.19, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1988
Bruns, Faylene, Lakeville, MN, $41,813.42, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1986
Carson, Timothy T., Minneapolis, MN, $4,860.13, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1987
Chmelik, Gregory J., Rushford, MN, $5,135.29, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1990
Clancey, Michael, Fairmont, MN, $60,603.99, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Denker, Beth A., Blaine, MN, $66,433.71, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1989
Driessen, Todd, Faribault, MN, $36,891.23, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1984
Dudley, Diann M., Chanhassen, MN, $9,937.81, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1989
Fagan, Barbara, Bloomington, MN, $73,049.57, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1991
Fairchild, Alima C., Minneapolis, MN, $39,865.93, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1986
Hendrickson, Raymond D., Clear Lake, MN, $4,838.75, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1984
Hoklin, Barbara U., Excelsior, MN, $40,831.38, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1987
Hoklin, John, Excelsior, MN, $30,061.60, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1987
Juetten, Herbert, Pierz, MN, $102,211.07, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Kronbeck, Gary M., Little Falls, MN, $7,844.86, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1989
Lawson, Mary E., Grand Marais, MN, $16,342.27, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1985
Lowe, James J., St Paul, MN, $39,229.16, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1990
Lyso, Mark, Chaska, MN, $26,822.78, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1983
McRoy, David, St Paul, MN, $21,479.21, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1988
Miller, Mark, Minnetonka, MN, $52,840.46, Parker College of Chiropractic, Dallas, TX, Chiropractic, December 1987
Mittet, David, Delworth, MN, $40,060.53, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1988
Pena, Francisco, St Cloud, MN, $4,456.32, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1990
Post, Margaret, Minneapolis, MN, $5,894.89, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1984
Quast, Sean, White Bear Lake, MN, $31,077.17, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1988
Rothman, Jerry, Eagan, MN, $26,662.52, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1990
Smith, Edward, Edina, MN, $13,544.11, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1992
Sogaard, James E., Maple Lake, MN, $22,422.30, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1983
Steffi, David L., Worthington, MN, $12,582.71, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1989
Triden, Thomas A., Maple Grove, MN, $37,372.29, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1986
Wahl, David, Montgomery, MN, $71,894.02, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1988
Weigel, Mark, Minneapolis, MN, $20,772.86, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1989
Wibbels, Keith, Eagan, MN, $7,627.52, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1984

Dentistry

Doan, Tung T., Minneapolis, MN, $28,036.43, Univ of Alabama Birmingham, Birmingham, AL, Dentistry, June 1987
Saran, Richard, Bloomington, MN, $68,908.56, Loyola University Chicago, Chicago, IL, Dentistry, May 1987
Wilbur, Raymond, Northfield, MN, $133,833.17, Marquette University, Milwaukee, WI, Dentistry, May 1987

Podiatry

Wahman, Stephen B., St Paul, MN, $7,226.05, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982

Mississippi

Allopathic Medicine

Chenier, Lawrence L., Vicksburg, MS, $15,313.45, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1980
Coleman, Larry L., Pinola, MS, $71,460.61, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Harper, Tracy, Gulfport, MS, $27,008.75, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1992
Herron, Woodie, Aberdeen, MS, $37,345.11, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1983
Miller, James J., Moss Point, MS, $12,855.25, Howard University, Washington, DC, Allopathic Medicine, May 1987
Smith, Deborah Anne, Jackson, MS, $9,599.85, Univ of Mississippi Medical Center, Jackson, MS, Allopathic Medicine, May 1983
Taylor, Brenda G., Vicksburg, MS, $24,721.95, Univ of Mississippi Medical Center, Jackson, MS, Allopathic Medicine, May 1984

Chiropractic

Armstrong, Robert J., Jackson, MS, $109,962.88, Life College, Marietta, GA, Chiropractic, September 1986
Durdin, James M., Tupelo, MS, $143,940.54, Life College, Marietta, GA, Chiropractic, June 1986
Fontenette, Vernie F., Gulfport, MS, $53,294.20, Life College, Marietta, GA, Chiropractic, March 1988
Foxworth, Raymond A., Jackson, MS, $76,167.64, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1985
Gratta, James J., Hattiesburg, MS, $11,005.97, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988
Matthews, Paul E., Natchez, MS, $64,367.62, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1983
McNair, Lawrence L., Gulfport, MS, $80,882.06, Life College, Marietta, GA, Chiropractic, June 1986
Stone, John L., Bay Springs, MS, $36,409.45, Life College, Marietta, GA, Chiropractic, March 1984
Taylor, Gregory P., Corinth, MS, $74,646.36, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1988
Veal, Paul E., Sledge, MS, $13,167.86, Life College, Marietta, GA, Chiropractic, June 1986
Winborn, David D., Moss Point, MS, $30,203.82, National College of Chiropractic, Lombard, IL, Chiropractic, May 1985

Dentistry

Burks, Osborne D., Lorman, MS, $36,580.79, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Chatham, Charles B., Jackson, MS, $33,867.19, Univ of Mississippi Medical Center, Jackson, MS, Dentistry, May 1985
Coleman, James T., Pearl, MS, $27,067.98, Univ of Mississippi Medical Center, Jackson, MS, Dentistry, May 1984
Long, Robert E., Clarksdale, MS, $3,221.65, Meharry Medical College, Nashville, TN, Dentistry, August 1979
Magro, Steven V., Madison, MS, $45,117.45, Univ of Mississippi Medical Center, Jackson, MS, Dentistry, May 1987
Ocampo, Buddy, Soso, MS, $40,282.05, Univ of Mississippi Medical Center, Jackson, MS, Dentistry, June 1985

Osteopathy

Mitchell, Jerry, Pascagoula, MS, $38,432.27, Univ of North Texas Health Science Ctr., Fort Worth, TX, Osteopathy, May 1986

Pharmacy

Ratliff II, James H., Hattiesburg, MS, $3,752.65, Xavier University of Louisiana, New Orleans, LA, Pharmacy, May 1983

Podiatry

Mingo, Robert, Lexington, MS, $11,238.84, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986

Veterinary Medicine

Roney, Stephen, Lexington, MS, $25,500.10, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1989

Missouri

Allopathic Medicine

Barnes, Mark R., Kansas City, MO, $21,809.09, Univ of Missouri Kansas City, Kansas City, MO, Allopathic Medicine, December 1986
Bond, Kelvin, Florissant, MO, $18,474.89, Washington University, St Louis, MO, Allopathic Medicine, May 1989
Chapman, Astra, Kansas City, MO, $16,597.23, Univ of Missouri Kansas City, Kansas City, MO, Allopathic Medicine, May 1986
Chavis, Dion, Columbia, MO, $5,482.49, Univ of Missouri Columbia, Columbia, MO, Allopathic Medicine, May 1988
Jones, Larry, Kansas City, MO, $3,313.99, Howard University, Washington, DC, Allopathic Medicine, May 1987
King Jr., Edgar E., Hayti, MO, $104,120.28, Univ of Missouri Columbia, Columbia, MO, Allopathic Medicine, November 1986
Martin, Kurt, St. Louis, MO, $1,564.79, Southern Illinois Univ, Springfield, IL, Allopathic Medicine, May 1991
McCullough, Eddie, Kansas City, MO, $35,509.99, Univ of Missouri Kansas City, Kansas City, MO, Allopathic Medicine, May 1991
Reed, Arlington, Louisburg, MO, $185,013.78, Georgetown University, Washington, DC, Allopathic Medicine, May 1984
Sanders, Thomas, Kansas City, MO, $97,805.71, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989

Chiropractic

Barr, Timothy G., St Joseph, MO, $91,164.86, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1989
Bartholomew, Brian K., St. Peters, MO, $2,926.76, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1990
Bateman, Michael, Imperial, MO, $25,132.97, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1990
Belhouari, Jelloul, Kansas City, MO, $35,854.39, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1991
Bement, Stephen A., Webster Groves, MO, $37,224.11, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1987
Berger, Keith, Chesterfield, MO, $17,710.77, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1983
Bezzic, Aleta M., Kansas City, MO, $69,652.65, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Borst, Mitchell, Ballwin, MO, $11,725.15, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1988
Bottorff, Douglas, Kansas City, MO, $111,479.71, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Boyer, Arthur G., Festus, MO, $44,726.29, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1983
Bright, Gale, Kansas City, MO, $64,356.53, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1989
Brown, Harry, Kansas City, MO, $49,188.33, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985
Caplan, Richard A., Kansas City, MO, $21,545.51, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Carr, Elizabeth A., Kansas City, MO, $74,905.63, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1990
Cheatwood, Richard, Affton, MO, $27,965.17, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1987
Colley, Rodney E., Kansas City, MO, $59,828.69, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Dailey, Charles, St Joseph, MO, $77,417.88, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985

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Dareing, Mark, Houston, MO, $23,904.64, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, April 1982
Davis, Floyd Jerome, Kansas City, MO, $51,869.26, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1987
Deiter, Cary T., Gladstone, MO, $85,201.69, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1984
Elliott, Joseph E., Macon, MO, $75,248.22, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1984
Erwin, Herbert F., St Louis, MO, $85,944.77, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Fulkerson, Marc A., Liberty, MO, $75,635.61, Life College, Marietta, GA, Chiropractic, December 1986
Giarranto, David, Jefferson City, MO, $64,399.05, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986
Gibson, Stephen S., Cape Girardeau, MO, $27,163.61, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1984
Gulla, Kevin M., Lees Summit, MO, $10,806.35, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Hartley, Michael A., Kansas City, MO, $76,970.31, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1983
Herbst, Stephen H., Winona, MO, $74,438.97, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Hollimon, Tracy, Fair Grove, MO, $25,411.61, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1989
Hotz, Michael K., Kansas City, MO, $121,116.76, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985
Johnston, John D., Grandview, MO, $81,457.27, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988
Jordan, Jeffrey E., Kearney, MO, $44,579.34, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1990
Kessinger, Andrew J., Seymour, MO, $55,559.97, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, July 1986
Krasowsky, George G., Columbia, MO, $15,783.93, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Marvin, Allen, Kansas City, MO, $36,494.63, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1989
McCoy, Michael T., St Louis, MO, $17,972.53, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1984
Miller, Mimi, St Louis, MO, $46,982.00, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1989
Peters, Ronald S., Chesterfield, MO, $1,323.16, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1990
Peterson, Michael S., Kansas City, MO, $5,988.32, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Pinkham, Scott B., Lake St Louis, MO, $114,738.88, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1987
Porter, Robert A., Des Peres, MO, $37,812.04, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Price, Arthur, Kansas City, MO, $132,720.79, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1985
Rice, Sterling S., Kansas City, MO, $87,388.83, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Robertson, Dana D., Columbia, MO, $3,489.19, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, January 1983
Samvat, Mohammad R., St Louis, MO, $5,409.63, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1991
Sheraden, Timothy H., Ballwin, MO, $16,974.71, Life College, Marietta, GA, Chiropractic, June 1985
Simmons, Thomas T., Kansas City, MO, $71,215.17, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Sirois Jr, Bernard, St Peters, MO, $16,584.54, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1988
Smith, Charles A., Kansas City, MO, $56,853.80, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Smith, Rhonda, Kansas City, MO, $94,745.04, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Steuber, Virgil V., Springfield, MO, $76,575.84, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986
Swope, Karl A., Rolla, MO, $102,325.74, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1985
Talley, Michael S., Belton, MO, $36,643.50, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1983
Taylor, David G., Blue Springs, MO, $18,786.18, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1987
Taylor, Linda L., Kansas City, MO, $75,476.95, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986
Thompson, Gary L., St Louis, MO, $28,127.39, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1983
Tibbetts, Mila A., Independence, MO, $42,752.09, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1989
Towers, Timothy, St Louis, MO, $12,880.13, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1985
Vannucci, Milo, Kansas City, MO, $56,276.77, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1983
Warner, Nathan G., Houston, MO, $40,443.03, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1990
Washington, Joseph D., St Louis, MO, $35,442.62, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1988
Weed, Jimmy, St Louis, MO, $7,147.34, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, January 1984
Wene, Gregory L., Joplin, MO, $53,786.93, Life College, Marietta, GA, Chiropractic, June 1983
White, Michael M., Kansas City, MO, $22,399.64, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, April 1982
Wills, Lawrence J., Kansas City, MO, $116,452.05, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Wright, Lynnea L., Kansas City, MO, $50,666.87, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986
Zorad, Christine, Independence, MO, $51,129.32, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986

Dentistry

Baker, Charles F., St Louis, MO, $17,699.62, Washington University, St Louis, MO, Dentistry, May 1982
Brockington, Phillip M., Kansas City, MO, $61,410.66, Howard University, Washington, DC, Dentistry, May 1985
Cannon, Fred C., Columbia, MO, $112,740.29, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1988

Clark, Evelyn B., Kansas City, MO, $78,540.47, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1988
Crawford, Oran L., Kansas City, MO, $62,032.54, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1985
Eimers, Jerry, Maryville, MO, $43,294.01, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1983
Engel, Gene G., Kansas City, MO, $53,415.50, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1984
French, Robert, St Louis, MO, $7,670.11, Washington University, St Louis, MO, Dentistry, May 1989
Fuller, Marilyn M., St Louis, MO, $26,221.04, Howard University, Washington, DC, Dentistry, May 1985
Fulton, Alma, Ballwin, MO, $83,823.68, Washington University, St Louis, MO, Dentistry, May 1989
Furlong, Dennis, Kansas City, MO, $62,357.49, Univ of Illinois Medical Center, Chicago, IL, Dentistry, June 1987
Nelson, Howard D., Kansas City, MO, $80,394.21, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1986
Nickell, Scott, Fenton, MO, $154,360.90, Washington University, St Louis, MO, Dentistry, May 1989
Peterson, Alan A., St Louis, MO, $103,323.92, Washington University, St Louis, MO, Dentistry, May 1984
Scialfa, August, St Louis, MO, $737.51, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1982
Sladek, Martin J., Farmington, MO, $198,084.38, Washington University, St Louis, MO, Dentistry, May 1987
Somlar, Steven, Florissant, MO, $48,616.36, Loyola University Chicago, Chicago, IL, Dentistry, April 1990
Vorbeck, Teresa, Florissant, MO, $134,588.83, Washington University, St Louis, MO, Dentistry, May 1988
Zinke, Alan G., Nixa, MO, $34,231.23, Marquette University, Milwaukee, WI, Dentistry, May 1985

Health Administration

Cipriano, Anthony A., St Louis, MO, $40,066.94, St Louis University, St Louis, MO, Health Administration, May 1985

Optometry

Allen, Faye F., St Louis, MO, $113,342.25, Univ of Missouri St Louis, St Louis, MO, Optometry, May 1986
Harris, Alexander, Florissant, MO, $61,920.81, Univ of Missouri St Louis, St Louis, MO, Optometry, May 1986
Joyner, Walter F., Jefferson City, MO, $35,751.46, Southern Calif College of Optometry, Fullerton, CA, Optometry, June 1981

Osteopathy

Bell, Barbara, Joplin, MO, $79,297.80, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1983
Catron, Mark, Carthage, MO, $133,858.45, Univ of Health Sciences, Kansas City, MO, Osteopathy, June 1984
Early, Gary M., Kirksville, MO, $13,675.23, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1980
Glynn, Paul, Miller, MO, $9,647.06, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1983
McCrary-Smith, Gina M., St Louis, MO, $149,949.31, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1985
Seedorff, Linda, Lawson, MO, $72,389.83, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1988
Seitz, Joyce, Kansas City, MO, $30,507.20, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1990
Sengstacken, Mark A., Marshall, MO, $246,268.78, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1987
Turner, Garry L., Independence, MO, $97,393.32, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1985
Whinery, Ramona, Kansas City, MO, $191,399.94, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1986

Pharmacy

Dudley, Raynold R., Columbia, MO, $29,000.16, Creighton University, Omaha, NE, Pharmacy, August 1984
Griffin, Terrill T., St Louis, MO, $15,922.33, Drake University, Des Moines, IA, Pharmacy, December 1987
Oris, Gregory R., Sedalia, MO, $10,600.00, St Louis College of Pharmacy, St Louis, MO, Pharmacy, May 1987
Ratliff, Wayne, University City, MO, $12,981.57, St Louis College of Pharmacy, St Louis, MO, Pharmacy, May 1988

Podiatry

Dailey, John M., Rolla, MO, $145,290.61, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983
Jackson, Howard, St Louis, MO, $174,421.20, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983
Moore, Robert M., St Louis, MO, $53,084.15, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1982

Public Health

Greenwood, Michael M., Kirksville, MO, $5,576.84, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Public Health, August 1988

Montana

Chiropractic

Kaiser, Robert, Thompson Falls, MT, $56,261.13, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, April 1984
Landes, David A., Deer Lodge, MT, $68,843.69, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1987
Lavender, Anthony G., Joliet, MT, $99,010.78, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Marschall, Skye K., Big Fork, MT, $92,932.55, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1983
Owczarek, Keith V., Missoula, MT, $44,185.68, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1985

Podiatry

Daniels, Jerry G., Butte, MT, $167,854.14, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
Huppert, Gregory, Billings, MT, $15,857.02, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1986

Veterinary Medicine

Dierking, Douglas C., Alberton, MT, $26,310.52, Univ of Minnesota, Minneapolis, MN, Veterinary Medicine, June 1984

Nebraska

Allopathic Medicine

Jackson, Robyn A., Omaha, NE, $4,876.63, Creighton University, Omaha, NE, Allopathic Medicine, May 1990

Chiropractic

Hinds, Thomas, South Sioux City, NE, $61,180.61, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986
McCabe, Laura, Lincoln, NE, $84,777.26, Life College, Marietta, GA, Chiropractic, January 1988
O'Mara, William I., Arthur, NE, $19,118.65, Texas Chiropractic

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College Foundation, Pasadena, TX, Chiropractic, April 1984
Theobald, Patrick, Nebraska City, NE, $32,980.66, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1987

Dentistry

Carson, Brad W., Papillion, NE, $18,318.95, Creighton University, Omaha, NE, Dentistry, May 1989
Rensch, Michael A., Omaha, NE, $22,584.22, Creighton University, Omaha, NE, Dentistry, May 1987
Schobert, Scott A., Omaha, NE, $112,278.75, Marquette University, Milwaukee, WI, Dentistry, May 1989

Optometry

Weeks, Brad A., Omaha, NE, $62,932.19, Univ of Missouri St Louis, St Louis, MO, Optometry, May 1987

Podiatry

Dyer, William D., Lincoln, NE, $111,238.01, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1985
Meinhold, Steven, Omaha, NE, $44,373.08, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Thornton, Martha F., Lincoln, NE, $125,843.37, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1987

Nevada

Allopathic Medicine

Bradley, Bruce, Las Vegas, NV, $20,101.62, Wright State University, Dayton, OH, Allopathic Medicine, June 1987
Degernes, Daniel J., Sparks, NV, $17,504.27, Univ of Nevada Reno, Reno, NV, Allopathic Medicine, June 1989
Rucker, Elleston C., Las Vegas, NV, $21,894.39, Vanderbilt University, Nashville, TN, Allopathic Medicine, May 1982

Chiropractic

Akin, Kathy L., Las Vegas, NV, $24,712.53, National College of Chiropractic, Lombard, IL, Chiropractic, August 1986
Foster, Misha, Reno, NV, $73,375.14, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1989
Hawkins, Budweiser, Las Vegas, NV, $87,199.75, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, May 1987
Henderson, Donald L., Mesquite, NV, $27,975.74, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986
Hults, Ivagene P., Las Vegas, NV, $68,191.32, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1986
Lamb, Michael W., Henderson, NV, $7,740.95, Palmer College of Chiropractic, Davenport, IA, Chiropractic, February 1991
Murphy, Richard T., Henderson, NV, $55,696.99, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1987
Nugent, Richard E., Las Vegas, NV, $113,562.06, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1985

Clinical Psychology

Weir, Dianna, Las Vegas, NV, $70,826.45, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, June 1987

Dentistry

Frier, James W., Stateline, NV, $21,024.84, Georgetown University, Washington, DC, Dentistry, May 1983
Goodrich, Allyn P., Ely, NV, $7,395.31, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1984
Osley, Robert C., Las Vegas, NV, $4,095.93, Univ of Colorado Health Science Center, Denver, CO, Dentistry, August 1990

Osteopathy

Oksenholt, Lorrie M., Sparks, NV, $28,621.08, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1983

Podiatry

Borgia, Anthony, Boulder City, NV, $9,079.22, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1985
Shields, Thomas, Las Vegas, NV, $125,574.16, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Thurston, Glen D., Carson City, NV, $5,350.14, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1991

New Hampshire

Allopathic Medicine

Percival, Marjorie C., Concord, NH, $4,013.84, Dartmouth Medical School, Hanover, NH, Allopathic Medicine, June 1986

Chiropractic

Pratt, Edward P., Bristol, NH, $52,739.14, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986

Dentistry

Barrows, Joni, Newmarket, NH, $219,116.49, Marquette University, Milwaukee, WI, Dentistry, May 1987

Pharmacy

Brunelle, Louise L., Manchester, NH, $26,687.48, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, May 1982

New Jersey

Allopathic Medicine

Blum, Karl, Roseland, NJ, $12,250.50, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1990
Bocage, Jean P., Piscataway, NJ, $11,238.48, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1984
Brown, James E., East Orange, NJ, $35,202.16, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1989
Chusid, Eugene, Fair Lawn, NJ, $117,620.03, Albany Medical College, Albany, NY, Allopathic Medicine, May 1987
Davis, Kuyann, Manalapan, NJ, $21,931.63, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Devastey, Gerard, East Orange, NJ, $9,830.58, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1987
Frazier, Judith A., Montclair, NJ, $7,242.32, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1989
Glenn, John, South Plainfield, NJ, $105,283.55, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1986
Goodman, Ira, Summit, NJ, $2,744.56, Rush University, Chicago, IL, Allopathic Medicine, June 1983
Halls, Lydia, Jersey City, NJ, $9,617.36, Wake Forest University, Winston-Salem, NC, Allopathic Medicine, May 1985
Harris, Hazel, Irvington, NJ, $4,960.53, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, June 1981
Hasselman, Martin, Sewell, NJ, $12,367.88, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1984
Laflore, John E., Randolph, NJ, $87,492.29, Rush University, Chicago, IL, Allopathic Medicine, June 1981
Lerner, David, Highland Park, NJ, $193,965.90, George Washington University, Washington, DC, Allopathic Medicine, May 1988
Lucombe, Linda P., Plainsboro, NJ, $2,532.94, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1991
Schimandle, Jeff J., Kendall Park, NJ, $3,727.73, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1984
Smalls, Linda Y., East Orange, NJ, $10,716.55, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, June 1983

Chiropractic

Allen, Richard L., Morristown, NJ, $96,394.74, Life College, Marietta, GA, Chiropractic, March 1986
Bernstein, David T., Colonia, NJ, $14,034.04, Life College, Marietta, GA, Chiropractic, September 1985
Bolinger, Mark A., Westmont, NJ, $83,079.24, National College of Chiropractic, Lombard, IL, Chiropractic, April 1986
Bornstein, Mark L., Edison, NJ, $97,510.82, Life College, Marietta, GA, Chiropractic, September 1983
Conley, John, Middletown, NJ, $28,535.11, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Cornely, Michael P., Merchantville, NJ, $63,037.16, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1987
Edmunds, John D., Manahawkin, NJ, $127,277.03, Life College, Marietta, GA, Chiropractic, March 1986
Escamilla, Kerry, Bergenfield, NJ, $18,047.80, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986
Feathers, Kathryn D., Maplewood, NJ, $32,224.37, Southern Calif Clg of Chiropractic, Pico Rivera, CA, Chiropractic, December 1989
Gearity, Katherine A., North Bergen, NJ, $59,718.80, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Gloshinski, Laura L., High Bridge, NJ, $51,048.74, Life College, Marietta, GA, Chiropractic, March 1986
Harrigan, David, Absecon, NJ, $27,973.77, Life College, Marietta, GA, Chiropractic, March 1987
Hassiotti, Leone L., East Orange, NJ, $59,073.10, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1986
Hermida, Mario D., Bergenfield, NJ, $28,576.54, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1990
Hoffman, Wayne A., East Rutherford, NJ, $28,080.96, Life College, Marietta, GA, Chiropractic, March 1988
Howe, John B., Pompton Lakes, NJ, $20,169.45, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Iacobino, Matthew J., Highland Lake, NJ, $97,047.88, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1985
Ittner, William, Seaside Park, NJ, $42,819.21, Life College, Marietta, GA, Chiropractic, June 1986
Jacob, Elizabeth, Newton, NJ, $26,077.90, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1988
Jones, Scott, Mt Laurel, NJ, $30,848.46, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1988
Kane, Richard R., Somerset, NJ, $121,900.91, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1985
Luongo, Mary Ann, Bayonne, NJ, $13,913.82, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1984
Lynch, Mark, Forked River, NJ, $39,069.75, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Manzoni, Janet M., Morganville, NJ, $37,065.10, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1986
Maskell, Gary G., Whiting, NJ, $103,172.99, Life College, Marietta, GA, Chiropractic, December 1986
Morrow, Lu A., Marlton, NJ, $42,489.87, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
O'Brien, Robert, Maple Shade, NJ, $16,469.15, Life College, Marietta, GA, Chiropractic, June 1991
Romanski, Michael M., Wall, NJ, $27,412.62, Life College, Marietta, GA, Chiropractic, March 1989
Ruane, Joseph J., West Long Branch, NJ, $30,498.17, Life College, Marietta, GA, Chiropractic, December 1982
Rushing, Gary, Red Bank, NJ, $69,458.45, Life College, Marietta, GA, Chiropractic, June 1986
Russell, Robert, Blackwood, NJ, $6,561.32, Life College, Marietta, GA, Chiropractic, March 1989
Ruta, Eugenio, Livingston, NJ, $29,206.40, Life College, Marietta, GA, Chiropractic, June 1988
Siegel, Roy F., Somerville, NJ, $72,274.32, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Signore, Joseph, Forked River, NJ, $96,618.04, Life College, Marietta, GA, Chiropractic, April 1989
Stafford, Orie V., Hackensack, NJ, $63,335.76, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1984
Tumas, John J., Brick, NJ, $42,305.04, Life College, Marietta, GA, Chiropractic, December 1985
Tumas, Mary D., Brielle, NJ, $69,489.97, Life College, Marietta, GA, Chiropractic, June 1986
Verbaro, Dennis, Chester, NJ, $85,108.07, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Viggiano, Christopher, Long Valley, NJ, $67,561.31, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1988
Weimmer, Federick F., Lakehurst, NJ, $23,391.30, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Werrell, Sandra M., Mt Laurel, NJ, $33,316.53, National College of Chiropractic, Lombard, IL, Chiropractic, August 1985
Woods, Dolores, Orange, NJ, $14,473.05, Life College, Marietta, GA, Chiropractic, June 1991
Zimmel, Douglas, Colts Neck, NJ, $81,230.84, Life College, Marietta, GA, Chiropractic, June 1986
Zulovitz-Cunninghan, Lori, Towaco, NJ, $78,831.88, Life College, Marietta, GA, Chiropractic, December 1986

Clinical Psychology

Helm, Susan D., Westfield, NJ, $7,873.66, New School for Social Research, New York, NY, Clinical Psychology, December 1986
Jones, Patricia T., Teaneck, NJ, $20,925.05, Yeshiva University, New York, NY, Clinical Psychology, June 1988

Dentistry

Adams, Rick, Glen Rock, NJ, $29,864.40, New York University, New York, NY, Dentistry, June 1989
Caruso, Edmund, Branchville, NJ, $41,193.08, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, May 1986
Castillo, Steven, Union City, NJ, $148,652.79, New York University, New York, NY, Dentistry, June 1987
Correa, Louisa F., Paramus, NJ, $5,899.74, Georgetown University, Washington, DC, Dentistry, May 1990
Creecy, Ronald R., Moorestown, NJ, $16,203.86, Howard University, Washington, DC, Dentistry, May 1983
Dull, John N., Bloomfield, NJ, $18,990.12, Georgetown University, Washington, DC, Dentistry, May 1984
Ernst, David, East Brunswick, NJ, $16,085.59, New York University, New York, NY, Dentistry, June 1983
Johnson, Kevin D., Hackensack, NJ, $40,576.01, Howard University, Washington, DC, Dentistry, May 1989
Kulikowski, Karen, Bayonne, NJ, $4,424.15, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, May 1992

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Mayers-Ellison, June L., Laurel, NJ, $47,861.97, Meharry Medical College, Nashville, TN, Dentistry, May 1980
McDonough, Lawrence L., Rumson, NJ, $101,468.06, New York University, New York, NY, Dentistry, June 1986
McTernan, Roy J., Clifton, NJ, $63,618.11, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1985
Mirrone, John, Sewell, NJ, $105,006.57, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1988
Monaco, Joan, Nutley, NJ, $35,635.40, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, May 1991
Newman, Michael, Sayreville, NJ, $16,165.78, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1983
Newsome, Dorita, Orange, NJ, $34,448.18, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, June 1983
Oakes, Craig, Budd Lake, NJ, $48,639.86, Tufts University, Boston, MA, Dentistry, May 1990
Ramirez, Nydia, New Milford, NJ, $124,370.33, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1987
Rojowski, Ravenna, Teaneck, NJ, $66,521.56, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1984
Sarno, Mark M., Brick, NJ, $39,243.19, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1985
Scarpa Jr, Peter P., Stanhope, NJ, $7,342.45, Georgetown University, Washington, DC, Dentistry, May 1988
Seides, Richard R., Montclair, NJ, $25,101.25, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, June 1985
Sherzai, Roshana, Lodi, NJ, $2,857.61, Georgetown University, Washington, DC, Dentistry, May 1989
Stern, Jeffrey L., Marlton, NJ, $157,806.23, Boston University Medical Center, Boston, MA, Dentistry, June 1986
Stradford, Terry, Old Bridge, NJ, $55,878.01, Howard University, Washington, DC, Dentistry, May 1987
Stuart, William J., New Milford, NJ, $36,158.58, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, May 1986
Turpen, Marina, Margate City, NJ, $55,906.94, Tufts University, Boston, MA, Dentistry, May 1988
Ugwuneri, Zephaniah N., Somerset, NJ, $5,943.31, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1990
Velu, Gita, Jersey City, NJ, $73,581.48, Univ of Pennsylvania, Philadelphia, PA, Dentistry, May 1992
Wassef, Michael, Tinton Falls, NJ, $3,321.31, Georgetown University, Washington, DC, Dentistry, May 1990
Wilson, Orin M., Orange, NJ, $13,773.90, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, June 1984
Zouak, Larbi, Tenafly, NJ, $90,753.98, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1987

Optometry

Moosavi, Syed M., Toms River, NJ, $16,912.74, Northeastern State University, Tahlequah, OK, Optometry, August 1988

Osteopathy

Claire, James F., Voorhees, NJ, $183,428.69, Univ of Med & Dent of New Jersey, Newark, NJ, Osteopathy, May 1986
Crecca, Joseph F., Tuckertown, NJ, $121,943.71, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1984
Goldstein, Bruce, Voorhees, NJ, $25,973.14, Univ of Med & Dent of New Jersey, Newark, NJ, Osteopathy, July 1987
Goldstein, David W., Cherry Hill, NJ, $149,557.36, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1989
Kelly, Robert B., Old Bridge, NJ, $56,501.44, Univ of Med & Dent of New Jersey, Newark, NJ, Osteopathy, May 1986
Neff, Ronald J., Turnersville, NJ, $143,215.25, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1985
Rogers, James J., Cherry Hill, NJ, $9,805.63, Univ of Med & Dent of New Jersey, Newark, NJ, Osteopathy, May 1988

Pharmacy

Ahmed, Azza F., Bloomfield, NJ, $13,246.28, Long Island University, Brookville, NY, Pharmacy, October 1988
Aly, Nevein, Bloomfield, NJ, $12,107.39, Long Island University, Brookville, NY, Pharmacy, February 1987
Bennett, Elizabeth C., Teaneck, NJ, $15,036.22, Mercer University, Atlanta, GA, Pharmacy, June 1986
Eruchie, Anthonia O., East Orange, NJ, $24,891.00, Long Island University, Brookville, NY, Pharmacy, June 1986
Jacob, Robert S., Bayonne, NJ, $14,852.51, Long Island University, Brookville, NY, Pharmacy, February 1985
Milligan, Patricia, Forked River, NJ, $12,148.59, Drake University, Des Moines, IA, Pharmacy, December 1982
Onyekaba, Ebere E., Newark, NJ, $23,703.34, Long Island University, Brookville, NY, Pharmacy, June 1986

Podiatry

Benson, David M., Edison, NJ, $63,175.49, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1988
Chapel, Charles, Bricktown, NJ, $90,553.94, Pennsylvania College of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1984
Forman, Steven, Clementon, NJ, $157,032.73, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Geary, Robert J., Bayonne, NJ, $95,929.50, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984
Hegarty, James E., Cliffside Park, NJ, $94,769.06, Dr William Scholl College of Podiatric Medicine, Chicago, IL, Podiatry, May 1980
Khaladj, Morteza, Iselin, NJ, $148,555.02, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
McAllister, Joseph F., Hoboken, NJ, $173,319.37, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1988
Oliver, John A., Linden, NJ, $157,144.41, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1988
Tortoriello, Michael J., Montclair, NJ, $26,135.16, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1983
Turner, Demi M., Newark, NJ, $145,948.26, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985
Urbanek, Michelle, Flemington, NJ, $54,970.23, Pennsylvania College of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1984

Veterinary Medicine

Hassey, Marianne, Clifton, NJ, $24,022.34, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, May 1989
Meadows, Quentin O., Pleasantville, NJ, $36,341.65, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1985
Porter, Gina M., Orange, NJ, $60,470.65, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1985
Smith, Marsha, Rumson, NJ, $27,107.00, Tufts University, Boston, MA, Veterinary Medicine, May 1987

New Mexico

Allopathic Medicine

Sanchez, Ishmael B., La Luz, NM, $39,359.30, University of New Mexico, Albuquerque, NM, Allopathic Medicine, May 1984

Chiropractic

Blow, James R., Silver City, NM $19,423.61, Parker College of Chiropractic, Dallas, TX, Chiropractic, March 1986
Elkins, Kelly, Dona Ana, NM, $20,139.03, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1986
McNeil, Diane J., Las Cruces, NM, $4,892.30, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1989
Mitchell, Donald R., Alamogordo, NM, $98,906.15, Life College, Marietta, GA, Chiropractic, September 1986
Neira, Alejandro, Albuquerque, NM, $52,845.17, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Nelson, Christopher G., Albuquerque, NM, $120,773.10, Life College, Marietta, GA, Chiropractic, March 1987
Sacristan, Juan, Santa Fe, NM, $18,425.28, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, June 1985
Schoos, Robert J., Belen, NM, $24,658.02, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Sturgeon, Jeffrey, Albuquerque, NM, $36,499.98, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1990

Dentistry

Kunz, Frederick W., Ruidoso, NM, $9,225.75, Louisiana St Univ Med Ctr, New Orleans, LA, Dentistry, May 1985
Moye, David M., Socorro, NM, $6,739.50, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1991
Neumann, Barry A., Albuquerque, NM, $15,989.51, Marquette University, Milwaukee, WI, Dentistry, December 1982

Health Administration

Jones, Terence T., Albuquerque, NM, $52,954.81, Univ of Southern California, Los Angeles, CA, Health Administration, May 1986

Optometry

Wogksch, David C., Santa Fe, NM, $19,053.56, Pennsylvania College of Optometry, Philadelphia, PA, Optometry, May 1980

Osteopathy

Connelly, Chris F., Albuquerque, NM, $2,750.41, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1981
Rico, David, Socorro, NM, $93,553.74, Oklahoma State University, Tulsa, OK, Osteopathy, May 1986

Podiatry

Hughes, Marilyn G., Albuquerque, NM, $74,977.40, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982
Roth, Jeffrey, Alamogordo, NM, $192,791.17, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1987

New York

Allopathic Medicine

Abbott, Brian, Nyack, NY, $103,842.30, New York Medical College, Valhalla, NY, Allopathic Medicine, June 1989
Allen, Mark D., New York, NY, $135,222.88, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Austin, Scott M., Freeport, NY, $11,642.78, Creighton University, Omaha, NE, Allopathic Medicine, May 1990
Brooks, Delroy C., Brooklyn, NY, $88,950.17, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984
Burrowes, Wayne R., Brooklyn, NY, $7,825.03, SUNY Health Science Center Brooklyn, Syracuse, NY, Allopathic Medicine, May 1988
Cama, Cristoforo, Flushing, NY, $82,594.57, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1991
Cohen, Steven, Belle Harbor, NY, $119,492.00, New York Medical College, Valhalla, NY, Allopathic Medicine, June 1990
Condiotti, Jay, Bronx, NY, $2,611.43, SUNY Health Science Center Brooklyn, Brooklyn, NY, Allopathic Medicine, May 1991
Czegledy, Ferenc, Long Island City, NY, $55,341.34, Brown University, Providence, RI, Allopathic Medicine, May 1988
D'Amico, James M., Hicksville, NY, $106,763.56, Washington University, St Louis, MO, Allopathic Medicine, May 1988
Dean, Gregory E., New York, NY, $59,101.05, Columbia University, New York, NY, Allopathic Medicine, May 1988
Diaz, Fred F., Bronx, NY, $41,374.26, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1982
Edelman, Martha, Manhasset, NY, $74,615.83, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1988
Edgar, John, New York, NY, $41,257.64, Texas Tech University Health Sci Center, Lubbock, TX, Allopathic Medicine, May 1990
Elzey, Leonard D., Mt Vernon, NY, $145,262.28, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Finney, Deirdre, New York, NY, $147,576.16, East Tennessee State University, Johnson City, TN, Allopathic Medicine, May 1985
Flores, Cathryn, Bronx, NY, $20,507.88, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1987
Fogarty, Janine, Rochester, NY, $6,196.78, SUNY Health Science Center Brooklyn, Syracuse, NY, Allopathic Medicine, May 1989
Fucigna, Robert, New York, NY, $9,445.37, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1991
Gallagher, James, Hicksville, NY, $1,067.21, SUNY Health Science Center Brooklyn, Syracuse, NY, Allopathic Medicine, May 1992
Gamble, Oliver W., Bronx, NY, $26,043.12, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1987
Gordon, Marcus, New York, NY, $11,971.09, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1985
Halbert, Cyril F., Bronx, NY, $87,032.06, Georgetown University, Washington, DC, Allopathic Medicine, May 1984
Hunt, Leonard A., St Albans, NY, $56,951.75, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Jacoby, Avi, Rego Park, NY, $163,885.06, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1984
Johnson, Christopher L., New York, NY, $5,603.33, Harvard Medical School, Boston, MA, Allopathic Medicine, June 1989
Kellman, Raphael, New York, NY, $21,269.86, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1987
Kindler, Hedy L., New York, NY, $3,578.15, Suny Buffalo, Buffalo, NY, Allopathic Medicine, June 1989
Lentol, Lawrence A., Elmont, NY, $174,468.17, Ponce School of Medicine, Ponce, PR, Allopathic Medicine, June 1986
Levy-Jones, Maureen, Rockaway, NY, $61,865.05, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1985

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Long, Kimlyn, Manhasset, NY, $662.27, Howard University, Washington, DC, Allopathic Medicine, May 1990
Lopez, Raymond, Nanuet, NY, $56,177.05, Ponce School of Medicine, Ponce, PR, Allopathic Medicine, May 1982
Martinez, Jose, Brooklyn, NY, $162,790.85, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1986
McDaniel, Ronnie L., New York, NY, $87,978.80, Univ of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1987
McGilvery, James W., New York, NY, $43,637.03, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1987
Mcnulty, John, Middletown, NY, $81,195.56, Albany Medical College, Albany, NY, Allopathic Medicine, May 1991
Monk, Melcher, New York, NY, $5,846.47, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Nicholson, Charolette M., Bronx, NY, $29,600.03, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, August 1986
Normann, Peter, New Windsor, NY, $21,481.30, Univ of Vermont, Burlington, VT, Allopathic Medicine, June 1989
Orellana, Jose J., Bronx, NY, $3,865.95, Suny Health Science Center Brooklyn, Syracuse, NY, Allopathic Medicine, May 1986
Petit, Felix R., Jamaica, NY, $4,546.12, Suny Buffalo, Buffalo, NY, Allopathic Medicine, June 1990
Pikoris, Bernadette, Brooklyn, NY, $45,506.38, New York Medical College, Valhalla, NY, Allopathic Medicine, June 1990
Powell, Craig, Delmar, NY, $81,091.31, Wright State University, Dayton, OH, Allopathic Medicine, November 1985
Prescod, Glenn, Jamaica, NY, $41,178.49, Dartmouth Medical School, Hanover, NH, Allopathic Medicine, June 1988
Ramos, Carmen, East Meadow, NY, $19,304.46, Ponce School of Medicine, Ponce, PR, Allopathic Medicine, May 1991
Ramos-Ayala, Joel, Flushing, NY, $141,138.04, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1987
Rashduni, David H., Clifton, NY, $4,657.70, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, June 1984
Rector, Joel M., New York, NY, $7,794.97, Cuny Mount Sinai School of Medicine, New York, NY, Allopathic Medicine, April 1989
Reynolds, Barbara, Bronx, NY, $29,302.73, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1988
Reynolds, Howard P., New York, NY, $9,633.54, Cornell University Medical College, New York, NY, Allopathic Medicine, May 1987
Rivera, Pedro P., New York, NY, $80,016.33, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1988
Robinson, Edward E., Bronx, NY, $71,838.08, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1983
Sablon, Dimitri, Brooklyn, NY, $5,961.09, Suny Health Science Center Brooklyn, Syracuse, NY, Allopathic Medicine, May 1990
Sanders, Shirley C., Apo—New York, NY, $28,754.15, Mayo Medical School, Rochester, MN, Allopathic Medicine, May 1985
Santiago, Jose J A, New York, NY, $95,682.83, Temple University, Philadelphia, PA, Allopathic Medicine, June 1986
Saunders, Maurice, Port Washington, NY, $120,004.73, Albany Medical College, Albany, NY, Allopathic Medicine, May 1986
Scaccia, Marcella, Brooklyn, NY, $4,601.41, New York Medical College, Valhalla, NY, Allopathic Medicine, June 1989
Scarfo, Dan J., New York, NY, $23,461.30, Suny Health Science Center Brooklyn, Brooklyn, NY, Allopathic Medicine, June 1987
Shaw, Gary, New York, NY, $21,023.77, Cornell University Medical College, New York, NY, Allopathic Medicine, May 1985
Shell, Valerie A., Pomona, NY, $51,875.04, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1984
Soto, Lucy, Throggs Neck, NY, $114,494.90, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1986
Sparman, Alfred, Brooklyn, NY, $110,493.06, New York Medical College, Valhalla, NY, Allopathic Medicine, June 1990
Stone, Brian A., Bronx, NY, $62,587.05, Univ of Alabama Birmingham, Birmingham, AL, Allopathic Medicine, June 1985
Sweeny, Mark A., Buffalo, NY, $3,001.36, Suny Buffalo, Buffalo, NY, Allopathic Medicine, July 1987
Thornton, Kenneth, Brooklyn, NY, $9,305.14, Howard University, Washington, DC, Allopathic Medicine, May 1990
Valentine, David, Mt Vernon, NY, $58,697.18, Univ of Pittsburgh, Pittsburgh, PA, Allopathic Medicine, June 1986
Villeta, Javier J., South Richmond Hill, NY, $91,674.43, Ponce School of Medicine, Ponce, PR, Allopathic Medicine, June 1984
Vivot-Welber, Norma C., New York, NY, $108,173.88, Wayne State University, Detroit, MI, Allopathic Medicine, June 1987
Walker, Claude A., Wyandanch, NY, $2,133.11, Suny Health Science Center Brooklyn, Brooklyn, NY, Allopathic Medicine, June 1989
Walters, Joseph, Bronx, NY, $47,887.07, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1981
Weinberger, Andre, Brooklyn, NY, $141,682.49, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1983
Whyte, Brian W., Flushing, NY, $7,915.35, Temple University, Philadelphia, PA, Allopathic Medicine, June 1987
Williams III, Rolland R., North Tonawanda, NY, $253,944.09, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Wimbley, Timothy T., New York, NY, $38,034.33, Wright State University, Dayton, OH, Allopathic Medicine, June 1985

Chiropractic

Alston, Patricia, New York, NY, $67,485.89, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
Amato, Vincent, Brooklyn, NY, $35,555.33, National College of Chiropractic, Lombard, IL, Chiropractic, August 1988
Ambrosio, Joseph A., Great Neck, NY, $6,492.91, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984
Bee, Christopher R., Holbrook, NY, $32,385.53, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Bitet, Scott, Jamaica, NY, $22,124.95, Life College, Marietta, GA, Chiropractic, June 1986
Brea, Anthony, Little Neck, NY, $30,841.95, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1982
Bucher, Gilles, Bayville, NY, $40,137.77, New York Chiropractic College, Seneca Falls, NY, Chiropractic, August 1988
Capovilla, Craig, Highland Falls, NY, $5,229.77, Life College, Marietta, GA, Chiropractic, September 1985
Cascone, Michelle M., Huntington, NY, $24,918.16, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984

Casella, Angela, Bronx, NY, $16,497.82, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1989
Chavez, Patricia, New York, NY, $15,406.77, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, December 1983
Emerson, Edwin, Selden, NY, $96,568.40, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
Farewell, Howard, Garnerville, NY, $12,560.15, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984
Farkas, Carl, Brooklyn, NY, $28,724.69, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1991
Ferguson, Christopher D., Brooklyn, NY, $9,647.62, Life College, Marietta, GA, Chiropractic, March 1987
Fiore, Dominick, Waterloo, NY, $90,058.16, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1986
Flood, Lori A., Buffalo, NY, $17,330.10, National College of Chiropractic, Lombard, IL, Chiropractic, December 1986
Frankel, Tali R., Far Rockaway, NY, $11,364.45, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Ghigna, Mary L., Bayshore, NY, $53,394.87, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984
Gray, A L., Woodmere, NY, $9,194.65, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1990
Greenwald, Lewis A., Staten Island, NY, $6,897.42, Life College, Marietta, GA, Chiropractic, June 1990
Gurwitz, Alan, Rochester, NY, $62,857.70, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1990
Hogan, Dennis, Thiells, NY, $12,279.27, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1989
Horn, Carl, Syosset, NY, $25,854.30, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1989
Hughes, Jill, Rocky Point, NY, $10,400.92, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988
Humbert, Marti, Massapequa, NY, $54,988.02, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
Jackson, Jo Ann, Brooklyn, NY, $13,156.67, Life College, Marietta, GA, Chiropractic, December 1983
Joergens, Donald, Staten Island, NY, $14,826.55, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1989
Johnson, Timothy H., Buffalo, NY, $18,287.07, Life College, Marietta, GA, Chiropractic, September 1983
Johnston, Mary, Baldwin, NY, $75,642.63, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
Keller, William D., Tivoli, NY, $91,485.11, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1988
Kern, Arnold E., Livingston Manor, NY, $13,488.12, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984
Kiss, Kathleen M., Shirley, NY, $71,733.57, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Kle, James P., Glen Head, NY, $56,910.10, Life College, Marietta, GA, Chiropractic, December 1984
Konigsberg, Paul, Cross River, NY, $9,370.81, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1983
Koultukis, Chris, New York, NY, $3,088.08, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1985
Lentini, Salvatore, Brooklyn, NY, $7,065.09, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1984
Leung, Leo S., Flushing, NY, $41,513.46, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1990
Lisjak, Craig F., Eden, NY, $24,092.71, Life College, Marietta, GA, Chiropractic, December 1989
Luca, Robert P., Brooklyn, NY, $72,644.77, Life College, Marietta, GA, Chiropractic, December 1986
Margas, Lillian E., Hicksville, NY, $35,493.30, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1990
McCabe, Peter T., Carmel, NY, $32,660.54, Life College, Marietta, GA, Chiropractic, September 1984
McCormack, Wayne, Liberty, NY, $40,335.10, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1985
McGowan, Grace, Blauvelt, NY, $2,596.85, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1987
Medori, John, Garden City, NY, $28,499.61, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1986
Moretti, Jeffrey, Poughkeepsie, NY, $94,016.00, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1989
Musso, Deborah G., New York, NY, $2,038.22, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Nestler, Kenneth, New Paltz, NY, $31,440.88, Life College, Marietta, GA, Chiropractic, June 1987
Obadia, Eric, Greenlawn, NY, $50,775.18, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1986
Patterson, Arthur, Staten Island, NY, $11,826.68, Life College, Marietta, GA, Chiropractic, March 1983
Pehush, Marie, Pelham, NY, $43,736.71, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1985
Penke, Christopher P., Tonawanda, NY, $35,629.99, National College of Chiropractic, Lombard, IL, Chiropractic, December 1982
Pepe-Kerr, Celeste C., Port Washington, NY, $58,189.20, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1983
Perez, Dayse, New York, NY, $96,189.59, Life College, Marietta, GA, Chiropractic, March 1988
Petrillo, James A., Rochester, NY, $45,771.89, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1984
Pukancik, Susan S., Vestal, NY, $6,603.93, Life College, Marietta, GA, Chiropractic, July 1984
Renz, Howard W., Brooklyn, NY, $20,757.69, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1983
Renzulli, Diane, Massapequa Park, NY, $2,253.35, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1985
Rheault, Robert M., Moravia, NY, $72,598.21, Western States Chiropractic College, Portland, OR, Chiropractic, December 1987
Roesler-Sirlin, Christine, Plainview, NY, $71,679.22, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1988
Rosner, Jeffrey S., East Patchoque, NY, $584.84, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1984
Ross, Kimberly A., Woodstock, NY, $86,053.41, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1987
Ryan Burdett, Denis D., Riverdale, NY, $117,334.25, Life College, Marietta, GA, Chiropractic, March 1986
Sandler, Ellen B., Glen Cove, NY, $54,621.52, Life College, Marietta, GA, Chiropractic, March 1985
Schack, Richard N., Jamaica, NY, $100,417.20, New York Chiropractic

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College, Seneca Falls, NY, Chiropractic, December 1987
Schecher, Valerie, East Meadow, NY, $72,687.88, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1990
Seymour, Gary S., Walden, NY, $27,102.51, Life College, Marietta, GA, Chiropractic, June 1983
Shaw, Donald H., East Hampton, NY, $76,766.96, Western States Chiropractic College, Portland, OR, Chiropractic, December 1985
Silverstein, Michael, New York, NY, $28,159.46, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1986
Slator, Mary, Sheds, NY, $21,378.78, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Smith, Donna, Portville, NY, $26,083.35, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988
Smith, Gertrude M., New York, NY, $79,243.44, Life College, Marietta, GA, Chiropractic, December 1984
Snipe, Teresa G., Jamaica, NY, $46,913.04, Life College, Marietta, GA, Chiropractic, March 1984
Spanakos, Michael, Greenvale, NY, $1,341.15, Life College, Marietta, GA, Chiropractic, March 1985
Staurides, Angela E., Flushing, NY, $27,988.54, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1986
Stein, Richard E., Highland, NY, $25,733.49, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1989
Streit, Allan, Bronx, NY, $12,324.07, National College of Chiropractic, Lombard, IL, Chiropractic, April 1984
Sundin, Doreen A., East Islip, NY, $35,993.50, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Valvo, Carl L., Yonkers, NY, $99,252.65, National College of Chiropractic, Lombard, IL, Chiropractic, August 1985
Viladesau, Raymond L., Massapequa, NY, $13,899.42, Life College, Marietta, GA, Chiropractic, October 1982
Weber, Richard L., Staten Island, NY, $18,148.42, Life College, Marietta, GA, Chiropractic, March 1988
Wheatley, William J., Highland Mills, NY, $46,450.01, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1988
Wilson, Anthony, Westbury, NY, $13,839.27, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1991
Zilker, Wayne, New Rochelle, NY, $56,617.72, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1987

Clinical Psychology

Bernard, Theresa, Ossining, NY, $75,051.10, Univ of Denver, Denver, CO, Clinical Psychology, August 1987
Creelman, Monica L., Brooklyn, NY, $4,228.31, Adelphi University, Garden City, NY, Clinical Psychology, May 1991
Kaplan, Perry, Mamaroneck, NY, $18,651.09, Teachers College Columbia University, New York, NY, Clinical Psychology, May 1989
Knight, Patricia A., Sayville, NY, $41,322.12, Adelphi University, Garden City, NY, Clinical Psychology, May 1989
Romeo, Allen, New York, NY, $39,195.57, California Sch. of Prof. Psych., Alameda, CA, Clinical Psychology, June 1989
Talarico, Richard, New York, NY, $85,731.65, California Sch. of Prof. Psych., Alhambra, CA, Clinical Psychology, September 1985

Dentistry

Agata, Richard C., Brooklyn, NY, $111,332.80, Temple University, Philadelphia, PA, Dentistry, May 1984
Alli-Graham, William R., New York, NY, $1,870.52, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1984
Bentley, David J., Wellsville, NY, $17,355.15, Virginia Commonwealth University, Richmond, VA, Dentistry, August 1988
Betelman, Genady, Brooklyn, NY, $105,062.16, Washington University, St. Louis, MO, Dentistry, May 1990
Boldt, Harrison, Brooklyn, NY, $182,501.32, New York University, New York, NY, Dentistry, June 1987
Butler, Marilyn, Suffern, NY, $106,397.31, New York University, New York, NY, Dentistry, June 1986
Caldwell, Robert J., Jamaica, NY, $10,676.13, Howard University, Washington, DC, Dentistry, May 1986
Carja, Sylvia, Flushing, NY, $7,278.04, New York University, New York, NY, Dentistry, June 1992
Chen, Ronnie, New York, NY, $2,971.03, New York University, New York, NY, Dentistry, June 1986
Chibambo Smith, Gadi M., Haverstraw, NY, $58,778.75, Howard University, Washington, DC, Dentistry, May 1987
Curtis, Charles R., Flushing, NY, $102,415.92, Georgetown University, Washington, DC, Dentistry, May 1985
Derosa, Alan A., New Paltz, NY, $190,566.80, Emory University, Atlanta, GA, Dentistry, May 1985
Dibenedetto, Mauro, Massapequa, NY, $110,795.79, Tufts University, Boston, MA, Dentistry, May 1991
Farkas, Edward, Brooklyn, NY, $63,329.48, New York University, New York, NY, Dentistry, June 1985
Foster, Grady, Cambria Heights, NY, $32,768.55, Howard University, Washington, DC, Dentistry, May 1983
Glassman, Martin J., Briarcliff Manor, NY, $12,000.49, Univ of Pennsylvania, Philadelphia, PA, Dentistry, May 1983
Glicksberg, Jerome, Brooklyn, NY, $1,583.93, Univ of Detroit Mercy, Detroit, MI, Dentistry, May 1987
Han, Sok, Woodside, NY, $93,016.83, Univ of Southern California, Los Angeles, CA, Dentistry, May 1986
Jacobson, Robert, Ossining, NY, $133,541.82, Marquette University, Milwaukee, WI, Dentistry, May 1990
Joseph, Leslie, Queens, NY, $119,330.90, New York University, New York, NY, Dentistry, June 1987
Kadoch, David D., Milbasin, NY, $39,345.68, New York University, New York, NY, Dentistry, June 1987
Kline, Kurt, Olattsburgh, NY, $138,949.19, Boston University Medical Center, Boston, MA, Dentistry, May 1990
Kronengold, Jack, Forest Hills, NY, $151,634.75, New York University, New York, NY, Dentistry, June 1987
Kupetz, Scott, Hopewell Junction, NY, $122,997.21, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1988
Onguner, Yasemin, Brooklyn, NY, $34,170.68, New York University, New York, NY, Dentistry, May 1992
Perez, Hector, Bronx, NY, $63,561.98, New York University, New York, NY, Dentistry, October 1991
Perez, Nelson, Brooklyn, NY, $13,562.10, New York University, New York, NY, Dentistry, June 1986
Picker, Tad T., Bronx, NY, $90,373.98, New York University, New York, NY, Dentistry, June 1986
Pollack, Douglas F., New York, NY, $7,916.90, New York University, New York, NY, Dentistry, June 1982
Popa, Dragos D B, New York, NY, $137,485.24, New York University, New York, NY, Dentistry, June 1985
Resnansky, Alexander, Melville, NY, $13,476.14, SUNY Stony Brook, Stony Brook, NY, Dentistry, June 1991
Schroder, Anthony M., Middletown, NY, $31,639.57, New York University, New York, NY, Dentistry, June 1984
Schwartz, Eric, Long Beach, NY, $122,493.36, Boston University Medical Center, Boston, MA, Dentistry, June 1989
Sherman, Lynn P., Beach Haven, NY, $153,325.51, Univ of The Pacific, San Francisco, CA, Dentistry, September 1983
Stone, Grace G., Roosevelt, NY, $189,072.17, Meharry Medical

College, Nashville, TN, Dentistry, May 1985
Stukes, Susan D., New Rochelle, NY, $2,194.64, Howard University, Washington, DC, Dentistry, May 1985
Thompson, Fannye F., Brooklyn, NY, $27,740.48, Univ of Med & Dent of New Jersey, Newark, NJ, Dentistry, May 1983
Wiggins, Christopher, New York, NY, $66,362.94, New York University, New York, NY, Dentistry, June 1989
Williams, Miriam, Bronx, NY, $35,921.34, Howard University, Washington, DC, Dentistry, May 1982
Wood, Kevin C., Amherst, NY, $49,277.84, Howard University, Washington, DC, Dentistry, May 1983
Woods, Daemon S., Watertown, NY, $35,706.71, Fairleigh Dickinson University, Teaneck, NJ, Dentistry, May 1990
Yeates, Terrance C., Brooklyn, NY, $45,575.52, Howard University, Washington, DC, Dentistry, May 1985

Health Administration

Jansson, Susanne E., Westhampton Beach, NY, $25,949.09, Washington University, St Louis, MO, Health Administration, May 1986

Optometry

Pasarell, Alan, Washingtonville, NY, $8,250.46, SUNY State College of Optometry, New York, NY, Optometry, July 1982
Placide, Frantz, Rochester, NY, $4,969.98, SUNY State College of Optometry, New York, NY, Optometry, June 1991
Richland, Warren A., Brooklyn, NY, $9,176.05, New England College of Optometry, Boston, MA, Optometry, June 1985
Rolinski, Douglas, Elmhurst, NY, $9,330.81, SUNY State College of Optometry, New York, NY, Optometry, June 1984
Tran, Nguyen C., New York, NY, $26,031.45, SUNY State College of Optometry, New York, NY, Optometry, June 1986

Osteopathy

Adler, Richard, New York, NY, $41,708.12, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1984
Anthony, Melvin E., New York, NY, $34,526.94, Oklahoma State University, Tulsa, OK, Osteopathy, May 1990
Baltazar, Rodney, Jamaica, NY, $128,071.54, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, May 1991
Bennett-Bennett, Bonnie A., Point Lookout, NY, $207,267.63, College of Osteo Med of the Pacific, Pomona, CA, Osteopathy, June 1986
Driscoll, William, Mineola, NY, $76,758.25, New York College of Osteopathic Medicine, Old Westbury, NY, Osteopathy, June 1990
Durojaye, Ojebode, Bronx, NY, $26,580.21, New York College of Osteopathic Medicine, Old Westbury, NY, Osteopathy, June 1993
Gordon, Barbara, Spring Valley, NY, $135,068.81, New York College of Osteopathic Medicine, Old Westbury, NY, Osteopathy, June 1989
Gotlin, Douglas, Brooklyn, NY, $114,036.72, Nova Southeastern University, North Miami Beach, FL, Osteopathy, June 1990
Horner, Deborah, Bronx, NY, $43,643.63, New York College of Osteopathic Medicine, Old Westbury, NY, Osteopathy, June 1991
Kelly, James, Port Jefferson, NY, $107,795.19, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1984
Kendrick, Deborah A., Brooklyn, NY, $628.01, New York College of Osteopathic Medicine, Old Westbury, NY, Osteopathy, June 1988
Mihalkis, Georgia, Bronx, NY, $97,918.40, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1985
Steinke, Charles T., Belle Harbor, NY, $200,885.56, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1986
Walfield, Brad, Kings Park, NY, $101,446.21, Univ of Med & Dent of New Jersey, Newark, NJ, Osteopathy, August 1988

Pharmacy

Glover, Cheryl M., Brooklyn, NY, $44,310.62, Long Island University, Brookville, NY, Pharmacy, June 1987
Haynes, Robert, Brooklyn, NY, $17,044.98, Long Island University, Brookville, NY, Pharmacy, June 1987
Ibeh, Fidelas A., Brooklyn, NY, $14,378.42, Long Island University, Brookville, NY, Pharmacy, January 1989
Jusu, Thomas T., Brooklyn, NY, $12,296.77, Mercer University, Atlanta, GA, Pharmacy, June 1987
Katz-Bierenbaum, Gail B., New York, NY, $4,194.08, Long Island University, Brookville, NY, Pharmacy, June 1990
Licciardello, Alfred A., Brooklyn, NY, $8,716.01, Long Island University, Brookville, NY, Pharmacy, June 1986
Ngoka, Regina N., Brooklyn, NY, $3,498.63, Long Island University, Brookville, NY, Pharmacy, June 1984
Romero, Gerardo, Brooklyn, NY, $9,354.17, Long Island University, Brookville, NY, Pharmacy, October 1986
Terp, Marie A., New York, NY, $17,469.25, Long Island University, Brookville, NY, Pharmacy, June 1987

Podiatry

Aiello, Lisa A., Lake Carmel, NY, $62,513.47, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Barry, Patrick, Flushing, NY, $3,787.31, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1983
Becker, Russell P., Queens Village, NY, $33,661.05, Barry University-Podiatric Med, Miami Shores, FL, Podiatry, May 1989
Bernstein, Jeffrey S., New York, NY, $47,693.23, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Berquist, Andrew O., Taberg, NY, $116,589.43, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1986
Birnstill, Albert, Wappingers Falls, NY, $77,012.14, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, May 1992
Brown, Kenneth L., Brooklyn, NY, $60,169.46, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1987
Davidson, Jon J., Plainview, NY, $185,363.10, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Di Napoli, James J., Lynbrook, NY, $46,436.91, Dr. William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Downes, Robert R., Commack, NY, $169,330.60, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Earle, John, Jamaica, NY, $32,285.70, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1992
Fanizzi, Thomas, Bayshore, NY, $137,594.97, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Fink, Robert C, New York, NY, $64,043.88, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982
Grant, Albert V., New York, NY, $108,068.13, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Griffin, Carlotta, Rochester, NY, $123,600.66, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1988
Hertz, Zeev, Brooklyn, NY, $73,968.12, New York College of Podiatric

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Medicine, New York, NY, Podiatry, June 1990
Herzlich, Douglas B., Bronx, NY, $91,825.30, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984
Kane, Shalva, Forest Hills, NY, $42,919.08, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1991
Kantro, Scott R., Forest Hills, NY, $48,833.89, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1979
Katz, Alan, Pomona, NY, $63,738.13, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Kelly-Soluri, Laura, Farmingdale, NY, $65,861.57, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Kirk, Marshall, Lake Carmel, NY, $80,979.38, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Kleinman, Abraham, Far Rockaway, NY, $20,550.12, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1990
Layton, Stephen, Wantagh, NY, $33,726.52, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Ledino, John, Syracuse, NY, $42,603.89, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983
Lieman-Mathews, Theodora S., Staten Island, NY, $126,273.57, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985
Llewellyn, Allan, Brooklyn, NY, $35,565.87, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984
Lloyd, Jay, New York, NY, $24,739.87, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Mackey, Oliver G., Flushing, NY, $165,460.83, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1988
Melendez, Angelina, Bronx, NY, $161,533.68, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Mitchell, Kenneth, New York, NY, $30,437.27, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1982
Moy, John, New York, NY, $90,739.89, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Nash, John J., Albany, NY, $3,376.49, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985
Nelson, Mark, Yonkers, NY, $155,697.55, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985
Paul, Fitzpatrick, New York, NY, $86,967.29, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985
Perkins, Terence M., Bronx, NY, $106,280.16, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Pinnace, Jeanette, Bronx, NY, $140,207.97, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Rogers, Natalie, Bronx, NY, $24,409.70, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1989
Sheahan, Michael D., Staten Island, NY, $43,041.43, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1982
Shelto, Donna, Jamaica, NY, $96,987.21, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1990
Soleye, Babatunde, Hartsdale, NY, $8,175.32, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1980
Teusink, Scott H., Staten Island, NY, $180,205.10, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1988
Zawada, Stanley J., Bayside, NY, $113,862.91, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984

Public Health

Altheim, Joy, Nesconset, NY, $10,366.62, Boston University Medical Center, Boston, MA, Public Health, January 1991
Amu-Nnadi, Sam, Jamaica, NY, $27,070.34, Univ of Pittsburgh, Pittsburgh, PA, Public Health, August 1987
Paskilas, Alexander, New Rochelle, NY, $37,970.89, Yale University, New Haven, CT, Public Health, May 1987

Veterinary Medicine

Lane, Mark J., Monroe, NY, $7,854.93, Univ of Florida, Gainesville, FL, Veterinary Medicine, May 1987
Weiskopf, Joan, Port Chester, NY, $35,726.78, Tufts University, Boston, MA, Veterinary Medicine, May 1989

North Carolina

Allopathic Medicine

Battle, Gordon J., Greensboro, NC, $6,226.50, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1990
Bourne, Jeanette L., Winterville, NC, $2,389.38, Univ of Massachusetts Worcester, Worcester, MA, Allopathic Medicine, June 1987
Bunch III, John D., Matthews, NC, $9,635.60, Medical University of South Carolina, Charleston, SC, Allopathic Medicine, May 1982
Cutler, Kenneth A., Durham, NC, $24,933.78, Eastern Virginia Medical School, Norfolk, VA, Allopathic Medicine, June 1984
Douthit, Jeffrey K., Winston Salem, NC, $23,676.08, Wake Forest University, Winston-Salem, NC, Allopathic Medicine, May 1987
Hunter, Lorenzo, Greenville, NC, $194,528.84, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Perry, Wade W., Durham, NC, $19,340.64, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1985
Stovall, Vicki M., Winston Salem, NC, $62,648.85, Wake Forest University, Winston-Salem, NC, Allopathic Medicine, May 1987
Williams, Valjeanne, Durham, NC, $12,992.59, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1986

Chiropractic

Austin Jr, Donald E., Sanford, NC, $10,447.15, Life College, Marietta, GA, Chiropractic, December 1986
Collins, William W., Hendersonville, NC, $33,646.95, Life College, Marietta, GA, Chiropractic, December 1982
Coronado, Rudolph, Pembroke, NC, $53,159.71, Parker College of Chiropractic, Dallas, TX, Chiropractic, January 1989
Cox, Janet L., Tyron, NC, $86,044.23, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988
Davies, Bruce, Dunn, NC, $85,782.06, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1989
Dawson, Glenda J., Shelby, NC, $119,375.32, Life College, Marietta, GA, Chiropractic, September 1986
Hall, Scott W., Winston Salem, NC, $109,441.36, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986
Kerr, Thomas, Charlotte, NC, $38,456.64, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1984
Mercer, Lloyd D., Black Mountain, NC, $85,744.90, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1989
Nickels, Steven M., Charlotte, NC, $128,882.12, Life College, Marietta, GA, Chiropractic, March 1986
Reischman, Grace A., Matthews, NC, $18,296.78, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, January 1986
Reischman, Timothy T., Matthews, NC, $8,798.21, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1985
Williams, Betty Dale F., Roxboro, NC, $98,528.54, Life College, Marietta, GA, Chiropractic, September 1985
Williams, James, Andrews, NC, $110,790.59, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1985

Dentistry

Cates, Sanford M., Randleman, NC, $69,924.97, Creighton University, Omaha, NE, Dentistry, May 1984

Optometry

Oxendine, Tony, Red Springs, NC, $14,934.41, Pennsylvania College of Optometry, Philadelphia, PA, Optometry, May 1988
Stephens Jr, Ronald, Denver, NC, $32,984.41, Southern College of Optometry, Memphis, TN, Optometry, June 1988

Pharmacy

Thornton, Douglas E., Lucama, NC, $10,960.94, St Louis College of Pharmacy, St Louis, MO, Pharmacy, May 1987
Williams, Kenneth M., Durham, NC, $7,069.68, Long Island University, Brookville, NY, Pharmacy, June 1990

Podiatry

Bolovc, David, Greensboro, NC, $125,114.19, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1988
Neumunz, Gregory, Hampstead, NC, $38,359.66, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1987
Quirke, Clement, Charlotte, NC, $36,977.09, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1985

Public Health

Eloi, Emmanuel E., Charlotte, NC, $11,353.94, Boston University Medical Center, Boston, MA, Public Health, May 1986

Veterinary Medicine

Hayes, Alphonse, Greensboro, NC, $19,239.16, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1989
Herring, Mollie E., Pittsboro, NC, $24,702.05, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, December 1983

North Dakota

Chiropractic

Trauger, Gary G., Watford City, ND, $61,418.38, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984

Ohio

Allopathic Medicine

Anyaji, George, Toledo, OH, $144,659.63, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1987
Bartnett, Bruce B., Twinsburg, OH, $49,189.76, Case Western Reserve University, Cleveland, OH, Allopathic Medicine, August 1985
Berry, Rush, Westervillle, OH, $21,533.07, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1990
Blackshere-Richardson, Eloise C., Cincinnati, OH, $13,795.40, Wright State University, Dayton, OH, Allopathic Medicine, November 1985
Blissenbach, David A., Gahanna, OH, $8,290.35, Wright State University, Dayton, OH, Allopathic Medicine, June 1982
Clark-Cook, Susan, Fairborn, OH, $4,245.14, Wright State University, Dayton, OH, Allopathic Medicine, August 1990
Ellis, Brenda J., Dayton, OH, $109,891.90, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Evans, Catherine L., Columbus, OH, $42,738.81, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1989
Flood, Wanda, Massillon, OH, $35,921.75, Howard University, Washington, DC, Allopathic Medicine, May 1986
Griffin, Marcus, Cincinnati, OH, $79,675.17, Wright State University, Dayton, OH, Allopathic Medicine, June 1990
Harley, Carolyn, Columbus, OH, $79,864.04, Wright State University, Dayton, OH, Allopathic Medicine, June 1987
Heintzelman, Kurt, Columbus, OH, $81,096.94, Ohio State University, Columbus, OH, Allopathic Medicine, June 1988
Heuring, Richard R., Columbus, OH, $16,420.24, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1987
Ho-a-Lim, Fredrick, Cleveland, OH, $51,486.94, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1983
Howard, Anthony, Cuyahoga Falls, OH, $181,836.15, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Jackson, Steven S., Columbus, OH, $12,926.90, Ohio State University, Columbus, OH, Allopathic Medicine, June 1984
Katsaros, Demetrios, Cleveland, OH, $70,579.13, Finch University of Health Sciences, North Chicago, IL, Allopathic Medicine, June 1990
Mays, Dewey O., Dayton, OH, $16,602.28, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1981
McAnallen, Curtis, Gahanna, OH, $26,453.81, Marshall University, Huntington, WV, Allopathic Medicine, May 1990
McKnight, Timothy J., Akron, OH, $6,256.54, Tufts University, Boston, MA, Allopathic Medicine, June 1989
McSurdy, Bruce J., North Ridgeville, OH, $72,432.99, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1990
Mundy-Washington, Deidria V., Dayton, OH, $10,598.00, Wright State University, Dayton, OH, Allopathic Medicine, June 1988
Needham, Brett B., Cincinnati, OH, $31,070.89, Ohio State University, Columbus, OH, Allopathic Medicine, June 1984
Nemore Jr, George, Dayton, OH, $28,511.58, Wright State University, Dayton, OH, Allopathic Medicine, September 1985
Parks, Derrick D., Dayton, OH, $6,004.63, Wright State University, Dayton, OH, Allopathic Medicine, September 1985
Passalacqua, Paul, Maumee, OH, $12,660.78, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1986
Pate-Glover, Valerie J., Cleveland, OH, $80,176.28, Wright State University, Dayton, OH, Allopathic Medicine, June 1984
Perry, Victor, Toledo, OH, $181,579.49, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1986
Peterson, Frank R., Cleveland Heights, OH, $71,638.08, Wright State University, Dayton, OH, Allopathic Medicine, June 1988
Putzi, Judith L., Cincinnati, OH, $107,048.11, Wright State University, Dayton, OH, Allopathic Medicine, June 1984
Rozier, Frederick, Columbus, OH, $47,530.41, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, August 1982
Shook, Scott, Columbus, OH, $64,976.44, Wright State University Dayton, OH, Allopathic Medicine, June 1988
Shuman, Ralph W., Toledo, OH, $47,255.85, Medical College of Ohio,

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Toledo, OH, Allopathic Medicine, June 1984
Silas, Charles G., Dayton, OH, $137,686.86, Wright State University, Dayton, OH, Allopathic Medicine, June 1987
Tonwe, Tutse D., Cleveland, OH, $227,047.31, Wright State University, Dayton, OH, Allopathic Medicine, May 1985
Torres, Jose A., Cleveland, OH, $125,471.38, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1986
Uhlinger, Donald, Cincinnati, OH, $5,336.65, Wright State University, Dayton, OH, Allopathic Medicine, June 1992
Venable, Walter, Beavercreek, OH, $33,751.58, Wright State University, Dayton, OH, Allopathic Medicine, June 1983
White, Linda Lee Samso, Marion, OH, $51,102.76, East Tennessee State University, Johnson City, TN, Allopathic Medicine, May 1984
Yates, James E., Jackson, OH, $106,556.87, Wright State University, Dayton, OH, Allopathic Medicine, June 1986

Chiropractic

Adams, Stephen C., Portsmouth, OH, $84,742.67, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1989
Akinpelu, Enoch A., Mason, OH, $12,425.96, Life College, Marietta, GA, Chiropractic, September 1984
Beltakis, David, Cleveland, OH, $24,963.85, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1991
Bowers, Thomas, Toledo, OH, $76,728.50, National College of Chiropractic, Lombard, IL, Chiropractic, December 1986
Burke-Evanoff, Anne, Westerville, OH, $22,111.54, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1985
Burke-Evanoff, James M., Westerville, OH, $4,283.95, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, December 1984
Campana, Thomas M., Cleveland, OH, $57,611.40, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1985
Drotar, Christopher J., Toledo, OH, $75,436.18, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Fenstermaker-Easley, Sarah, West Union, OH, $12,876.43, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1983
Howard Jr, Daniel L., Milford, OH, $31,385.76, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1990
Hunter, Donald E., Fairborn, OH, $46,171.31, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Kinney, Lue B., Dayton, OH, $66,938.73, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Lorts, Deanna I., Cincinnati, OH, $58,709.59, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986
McClain, Donald W., Cleveland, OH, $30,585.33, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1988
Monbarren, John W., Lakewood, OH, $19,724.56, Life College, Marietta, GA, Chiropractic, June 1990
Nagode, Dale, Middleburg, OH, $3,179.14, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1985
Oetzel, Stephen L., Wilmington, OH, $38,132.03, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
Parigros, John, Sylvania, OH, $61,952.09, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Scanlon, Mark, Cincinnati, OH, $4,981.51, Palmer College of Chiropractic, Davenport, IA, Chiropractic, February 1991
Schone, Jerry O., Reynoldsburg, OH, $3,817.86, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Schumacher, Douglass E., Dayton, OH, $79,081.21, Life College, Marietta, GA, Chiropractic, December 1986
Schwan, Douglas A., Toledo, OH, $2,208.06, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1982
Shihadeh, Ahmad, Columbus, OH, $8,011.54, Life College, Marietta, GA, Chiropractic, March 1991

Clinical Psychology

Daugherty, Paula G., Trotwood, OH, $1,004.46, Wright State University, Dayton, OH, Clinical Psychology, August 1989
Howard, Kimberly S., Springfield, OH, $16,172.90, Wright State University, Dayton, OH, Clinical Psychology, August 1989
Turner, Hugh, Elyria, OH, $20,197.53, Florida Institute of Technology, Melbourne, FL, Clinical Psychology, August 1984

Dentistry

Ajandeh, Abba, Cleveland, OH, $103,561.68, Case Western Reserve University, Cleveland, OH, Dentistry, May 1990
Allen, Sherman, Cleveland, OH, $66,051.78, Howard University, Washington, DC, Dentistry, May 1988
Ball, John, Cleveland, OH, $8,588.35, Case Western Reserve University, Cleveland, OH, Dentistry, May 1985
Bohonek, Stanislav, Cleveland, OH, $69,918.52, Case Western Reserve University, Cleveland, OH, Dentistry, May 1987
Brightman, Brenda, Cleveland, OH, $70,010.24, Case Western Reserve University, Cleveland, OH, Dentistry, May 1988
Butler, Tracey A., Cincinnati, OH, $10,131.50, Univ of Louisville, Louisville, KY, Dentistry, May 1991
Costaras, Bill, Westlake, OH, $24,012.89, Case Western Reserve University, Cleveland, OH, Dentistry, May 1987
Denham, Audrey, Columbus, OH, $12,127.09, Ohio State University, Columbus, OH, Dentistry, June 1984
Easley, Wayland, Shaker Heights, OH, $86,791.48, Case Western Reserve University, Cleveland, OH, Dentistry, May 1990
Falkenhain, Scott, Westerville, OH, $3,891.99, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, May 1989
Fellner, Thomas G., Galion, OH, $2,852.05, Case Western Reserve University, Cleveland, OH, Dentistry, May 1989
Gross, Bonnie B., Columbus, OH, $34,330.35, Case Western Reserve University, Cleveland, OH, Dentistry, May 1986
Holiday, Tanya, Columbus, OH, $126,535.15, Meharry Medical College, Nashville, TN, Dentistry, May 1988
Jeffreys, Carl E., Cincinnati, OH, $95,871.35, Washington University, St Louis, MO, Dentistry, May 1989
Jones, Pedro R., Cleveland, OH, $184,282.74, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Jordan, Martin E., Cleveland, OH, $5,541.42, Howard University, Washington, DC, Dentistry, May 1990
Kollat, Dana G., Columbus, OH, $40,226.13, Ohio State University, Columbus, OH, Dentistry, June 1989
Lancour, Michelle M., Gahanna, OH, $2,389.85, Ohio State University, Columbus, OH, Dentistry, June 1991
Lesinski, Mary C., Cleveland, OH, $13,462.71, Case Western Reserve University, Cleveland, OH, Dentistry, May 1985
Mack Jr, William, Brookfield, OH, $177,635.02, Case Western Reserve University, Cleveland, OH, Dentistry, May 1987

Marburger, Garth, Lake Milton, OH, $6,651.59, Ohio State University, Columbus, OH, Dentistry, June 1989
Massengale Jr, Lendell, Cincinnati, OH, $76,156.12, Meharry Medical College, Nashville, TN, Dentistry, May 1982
Mattson, Kenneth, Bluffton, OH, $125,399.65, Loma Linda University, Loma Linda, CA, Dentistry, June 1983
Mays, Ealy E., Dayton, OH, $95,348.15, Meharry Medical College, Nashville, TN, Dentistry, May 1987
McCune, Thomas S., Cleveland, OH, $115,394.28, Case Western Reserve University, Cleveland, OH, Dentistry, May 1988
Meade, Madeline, Parma, OH, $20,104.76, Case Western Reserve University, Cleveland, OH, Dentistry, May 1988
Obester, David A., Columbus, OH, $128,950.46, Ohio State University, Columbus, OH, Dentistry, June 1986
Riemenschneider, Kurt, Worthington, OH, $28,543.30, Case Western Reserve University, Cleveland, OH, Dentistry, May 1990
Slack, Craig, Columbus, OH, $19,309.23, Ohio State University, Columbus, OH, Dentistry, June 1987
Stanfar, Anthony, North Royalton, OH, $7,038.86, Case Western Reserve University, Cleveland, OH, Dentistry, May 1988
Stiggers, Donald, Shaker Heights, OH, $4,474.03, Case Western Reserve University, Cleveland, OH, Dentistry, May 1990
Taylor, Michael S., Columbus, OH, $48,639.99, Tufts University, Boston, MA, Dentistry, June 1989
Villaire, Matthew J., Cleveland Heights, OH, $175,452.54, Case Western Reserve University, Cleveland, OH, Dentistry, May 1986
Zaun, Timothy M., Lakewood, OH, $57,182.63, Case Western Reserve University, Cleveland, OH, Dentistry, December 1986

Health Administration

Chowdhry, Raja R., Cincinnati, OH, $88,566.11, Xavier University, Cincinnati, OH, Health Administration, August 1983
Daniels, Quincy C., Cincinnati, OH, $9,571.15, Xavier University, Cincinnati, OH, Health Administration, December 1988
Dickerson, Gayle, Cincinnati, OH, $16,146.15, Xavier University, Cincinnati, OH, Health Administration, May 1986
Jackson, Cynthia E., Cincinnati, OH, $5,852.87, Xavier University, Cincinnati, OH, Health Administration, December 1987

Optometry

Delisio, Mario, Willoughby, OH, $3,509.25, New England College of Optometry, Boston, MA, Optometry, June 1987

Osteopathy

Basedow, William, St Marys, OH, $134,800.98, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1985
Brody, Francee A., Youngstown, OH, $121,380.50, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1987
Carter, Larry E., Youngstown, OH, $16,827.61, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, May 1993
Fifer, Shirley S., Mariemont, OH, $175,873.34, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1985
Greene, Larry J., Portsmouth, OH, $22,100.20, Oklahoma State University, Tulsa, OK, Osteopathy, May 1993
Smilek, Martin, Cuyahoga Falls, OH, $28,086.29, Ohio University, Athens, OH, Osteopathy, June 1991

Pharmacy

Cognetti, Richard A., Elida, OH, $8,557.67, Ohio Northern University, Ada, OH, Pharmacy, May 1989
Gary, Mark, Cincinnati, OH, $12,065.96, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1987
Howard, Willard W., Dayton, OH, $30,277.72, Howard University, Washington, DC, Pharmacy, May 1985
Okunbor, Friday, Cleveland, OH, $10,593.19, Creighton University, Omaha, NE, Pharmacy, August 1987

Podiatry

Anda, Peter M., Twinsburg, OH, $25,331.60, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1989
Chestang, Leo A., Cleveland, OH, $155,823.24, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Coffey, Patrick, Troy, OH, $101,974.16, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982
Day, Clara Ruth E., Shaker Heights, OH, $125,471.76, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1988
Erkard Jr, James T., Kent, OH, $33,493.97, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982
Friday, Steve M., Youngstown, OH, $6,090.20, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1987
Glover, Geraldine, Cleveland, OH, $116,623.46, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Gorisse, Guy R., Richmond Heights, OH, $168,037.31, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Grad, Bennet, Cincinnati, OH, $34,313.36, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983
Harris, Lawrence J., Shaker Heights, OH, $125,127.30, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Minton, Wayne E., Cleveland, OH, $194,688.64, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1988
Otto, David E., Willoughby, OH, $210,486.25, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Perry, Valerie J., Cleveland Heights, OH, $12,413.84, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1991
Rodgers, Larry A., Cleveland, OH, $190,397.51, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Salem, Atiyeh A., Cleveland, OH, $72,287.57, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1981
Serrano, Nydia, Lorain, OH, $122,412.16, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1988
Shonkwiler, Walter S., Columbus, OH, $10,612.11, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983
Siggers, Ralph A., Berea, OH, $175,085.37, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1987
Taylor, Elton, Cleveland, OH, $71,208.65, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1990
Villier, Carlton, Cincinnati, OH, $212,021.37, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Vinegar, Barbara, Cleveland, OH, $67,710.15, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1991
Winters, Mark I., University Heights, OH, $95,570.58, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985

Public Health

Jones, Donald A., Cleveland Heights, OH, $24,825.59, Loma Linda University, Loma Linda, CA, Public Health, June 1983

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Veterinary Medicine

Emans, Susan M., Columbus, OH, $3,718.62, Ohio State University, Columbus, OH, Veterinary Medicine, June 1987

Oklahoma

Allopathic Medicine

Berney, Joseph P., Oklahoma City, OK, $31,131.42, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1983

Boschee, Pamela, Tulsa, OK, $7,712.46, Univ of North Dakota, Grand Forks, ND, Allopathic Medicine, May 1988

Bowlan, Timothy, Edmond, OK, $18,725.98, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, July 1984

Brown, Douglas, Claremore, OK, $23,655.68, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, June 1985

Fincher, Mark L., Duncan, OK, $21,239.38, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, June 1983

Chiropractic

Atwell, Sandra L., Shawnee, OK, $123,653.87, Life College, Marietta, GA, Chiropractic, March 1986

Billingmeier, Arthur A., Bethany, OK, $135,937.34, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, April 1986

Bundrick, Doyle, Edmond, OK, $22,871.47, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989

Cooper Jr, Robert C., Tulsa, OK, $77,141.81, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1986

Cothran, Lonnie A., Poteau, OK, $66,687.90, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1987

Guinn, Michael, Ponca City, OK, $96,918.32, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986

Harms, Eugene G., Skiatook, OK, $49,835.38, Life College, Marietta, GA, Chiropractic, October 1982

Henderson, Raymond, Edmond, OK, $73,410.04, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, August 1986

Jones, James, Wynnewood, OK, $5,242.15, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, August 1991

Lockhart, Barry, Tulsa, OK, $68,279.68, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1988

Maker, James A., Oklahoma City, OK, $18,208.59, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1984

Owens, Gregory, Claremore, OK, $62,270.74, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1986

Shuey, Stephen C., Claremore, OK, $1,203.61, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986

Wynn, Leo H., Henryetta, OK, $60,416.98, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1984

Dentistry

Howell, Richard R., Oklahoma City, OK, $10,568.92, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, December 1983

Johnson, Todd, Choctaw, OK, $27,006.18, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1986

McGee, Arnie A., Gore, OK, $39,175.15, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1986

McKeel, Wade, Tulsa, OK, $8,379.78, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1988

Shoeleh, Hossein M., Washington, OK, $38,496.21, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1991

Shoeleh, Vicki P., Washington, OK, $97,870.89, Oral Roberts University, Tulsa, OK, Dentistry, June 1989

Smith, Curtis, Midwest City, OK, $9,411.34, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1987

Streight, John A., Ponca City, OK, $68,153.12, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1985

Optometry

Mahoney, Robert, Tulsa, OK, $159,010.68, Illinois College of Optometry, Chicago, IL, Optometry, May 1987

Thompson-Venable, Kristie L., Edmond, OK, $38,104.11, Northeastern State University, Tahlequah, OK, Optometry, May 1986

Osteopathy

Almack, Richard C., Tulsa, OK, $32,582.70, Oklahoma State University, Tulsa, OK, Osteopathy, May 1986

Auxter, Thomas M., Kelleyville, OK, $206,257.22, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1986

Laughlin, Sidney C., Shawnee, OK, $67,469.64, Oklahoma State University, Tulsa, OK, Osteopathy, June 1981

Mackey, Cynthia K., Oklahoma City, OK, $220,564.53, Oklahoma State University, Tulsa, OK, Osteopathy, June 1984

Manning, Ralph E., Tulsa, OK, $24,743.51, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1991

Miller, Susan M., Tulsa, OK, $50,985.40, Oklahoma State University, Tulsa, OK, Osteopathy, May 1985

Ott, Margie, Tulsa, OK, $21,527.74, Oklahoma State University, Tulsa, OK, Osteopathy, May 1990

Woods, Billy J., Oklahoma City, OK, $116,061.51, Oklahoma State University, Tulsa, OK, Osteopathy, February 1983

Zahasky Jr, James J., Oklahoma City, OK, $44,517.82, Oklahoma State University, Tulsa, OK, Osteopathy, May 1986

Public Health

Dibie, Cyril N., Oklahoma City, OK, $1,441.38, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Public Health, December 1989

Ihekona, Augustine E., Oklahoma City, OK, $21,084.61, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Public Health, May 1985

Nnokam, Kennedy I., Oklahoma City, OK, $16,371.68, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Public Health, May 1988

Oregon

Allopathic Medicine

Alcox, Gordon, Portland, OR, $52,920.07, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, June 1987

Durham, Maureen M., Milwaukie, OR, $54,461.95, Univ of Connecticut Health Center, Farmington, CT, Allopathic Medicine, May 1982

Stirgus, Kent L., Portland, OR, $36,857.01, Univ of Colorado Health Science Center, Denver, CO, Allopathic Medicine, May 1988

Zeme, Mark I., Ashland, OR, $6,195.41, Univ of Michigan, Ann Arbor, MI, Allopathic Medicine, May 1987

Chiropractic

Boyd, Patrick J., Eugene, OR, $108,271.25, Life College, Marietta, GA, Chiropractic, March 1986

Brown, Lorin J., Aloha, OR, $88,320.82, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987

Burns, Charles C., Gresham, OR, $50,097.29, Western States Chiropractic College, Portland, OR, Chiropractic, June 1986

Butcher, William C., Forest Grove, OR, $10,395.37, Western States Chiropractic College, Portland, OR, Chiropractic, June 1992

Campbell, Dennis L., Salem, OR, $55,837.97, Western States Chiropractic College, Portland, OR, Chiropractic, June 1986

Cather, Robert D., Portland, OR, $44,050.48, Western States Chiropractic College, Portland, OR, Chiropractic, June 1984

Clark, Dorothy, Aumsville, OR $29,046.64, Western States Chiropractic College, Portland, OR, Chiropractic, June 1989

Coburn, Sarah H., Portland, OR, $39,857.32, Western States Chiropractic College, Portland, OR, Chiropractic, August 1985

Cooper, Steven M., Gresham, OR, $36,239.66, Western States Chiropractic College, Portland, OR, Chiropractic, December 1992

Crandell, Robyn G., Portland, OR, $22,826.60, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, June 1991

Drabik, Stephen, Ashland, OR, $24,011.42, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1988

Edson, Lysanji A., Portland, OR, $10,889.26, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1989

Falk, Harold S., Eugene, OR, $94,987.53, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1986

Hempstead, Kenneth, Portland, OR, $72,326.60, Western States Chiropractic College, Portland, OR, Chiropractic, June 1987

Hicks, Brent M., Portland, OR, $16,426.31, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986

Hundagen, Joyce M., Portland, OR, $32,866.64, Western States Chiropractic College, Portland, OR, Chiropractic, June 1987

Huntley, Norbert E., Portland, OR, $90,686.08, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1987

Jones, Christine, Beaverton, OR, $51,461.73, Western States Chiropractic College, Portland, OR, Chiropractic, September 1988

King, Douglas R., Corbett, OR, $37,057.09, Western States Chiropractic College, Portland, OR, Chiropractic, June 1989

Martin, Thomas W., Portland, OR, $35,450.31, Western States Chiropractic College, Portland, OR, Chiropractic, December 1983

Matthews, Thalia P., Portland, OR, $22,164.81, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1986

Muhr, Frank F., Eugene, OR, $3,517.59, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1988

Murphy, Shelia, Portland, OR, $52,947.32, Western States Chiropractic College, Portland, OR, Chiropractic, December 1987

Palmblad, Michael K., Hermiston, OR, $59,036.64, Western States Chiropractic College, Portland, OR, Chiropractic, December 1984

Platt, Caroline, Portland, OR, $30,547.57, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1988

Reehl, Michelle, Grants Pass, OR, $7,599.11, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1982

Rolland, Steven B., Corvallis, OR, $129,040.75, Western States Chiropractic College, Portland, OR, Chiropractic, June 1986

Scofield, Leslie A., Eugene, OR, $3,471.88, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986

Sprauer, Vincent C., Milwaukie, OR, $6,377.63, Western States Chiropractic College, Portland, OR, Chiropractic, June 1986

Stoltz, William D., Grants Pass, OR, $48,561.95, Western States Chiropractic College, Portland, OR, Chiropractic, December 1984

Tarnasky, Gideon M., Salem, OR, $19,757.34, Western States Chiropractic College, Portland, OR, Chiropractic, December 1982

Templeton, Joel A., Portland, OR, $58,660.34, Western States Chiropractic College, Portland, OR, Chiropractic, June 1985

Warner, Brent B., Portland, OR, $60,205.23, Western States Chiropractic College, Portland, OR, Chiropractic, June 1985

West, Weldon, Portland, OR, $74,306.76, Western States Chiropractic College, Portland, OR, Chiropractic, June 1986

Wheeler, Trev, Ontario, OR, $103,642.69, Western States Chiropractic College, Portland, OR, Chiropractic, December 1988

Dentistry

Cooney, Carey, Beaverton, OR, $42,033.04, Oregon Health Science University, Portland, OR, Dentistry, June 1990

Tilson, Charles E., Lake Oswego, OR, $37,675.07, Washington University, St Louis, MO, Dentistry, May 1985

Podiatry

Alderson, James J., Boring, OR, $215,994.25, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986

Bailey, Brian K., North Bend, OR, $153,857.15, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1987

Belknap, John, Sandy, OR, $109,655.34, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1988

Caproitti, Dale D., West Linn, OR, $157,963.76, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1982

Rizzi, Raymond, Portland, OR, $87,256.26, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1991

Zook, Gerald P., Eugene, OR, $29,242.48, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1983

Pennsylvania

Allopathic Medicine

Allison, Toni, Philadelphia, PA, $13,395.28, Temple University, Philadelphia, PA, Allopathic Medicine, June 1982

Auerbach-Heller, Barbara W., Philadelphia, PA, $91,391.42, Univ of Pennsylvania, Philadelphia, PA, Allopathic Medicine, May 1983

Baumgarten, Miriam, Bala Cynwyd, PA, $11,550.96, Suny Stony Brook, Stony Brook, NY, Allopathic Medicine, June 1991

Bearden, Frank L., Pittsburgh, PA, $37,157.71, Rush University, Chicago, IL, Allopathic Medicine, December 1980

Benson, Glen N., Chester, PA, $23,753.32, Penn State University, Hershey, PA, Allopathic Medicine, May 1985

Davenport, Lorenzo, Philadelphia, PA, $75,942.05, Temple University, Philadelphia, PA, Allopathic Medicine, May 1985

Difrancesco, Eileen, Dunmore, PA, $90,728.35, Temple University, Philadelphia, PA, Allopathic Medicine, May 1989

Fisher, George E., Philadelphia, PA, $146,793.55, Thomas Jefferson University, Philadelphia, PA, Allopathic Medicine, June 1987

Garcia, Richard, Philadelphia, PA, $2,221.78, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1992

Gilroy, Anne F., Ardmore, PA, $128,201.95, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1985

Guidotti, Janice L., Philadelphia, PA, $49,698.17, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1986

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Harris, John, Philadelphia, PA, $14,407.49, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1988
Hawkins, William N., Philadelphia, PA, $81,344.55, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989
Hicks, Eric, Philadelphia, PA, $16,196.32, Univ of Pennsylvania, Philadelphia, PA, Allopathic Medicine, May 1987
Hill, James, Philadelphia, PA, $127,739.61, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988
Howard, Leslie A., Philadelphia, PA, $60,583.01, Temple University, Philadelphia, PA, Allopathic Medicine, June 1988
Johnson, Howard D., Bridgeville, PA, $9,198.85, Penn State University, Hershey, PA, Allopathic Medicine, May 1990
Jones, Ronald M., Philadelphia, PA, $21,468.35, SUNY Buffalo, Buffalo, NY, Allopathic Medicine, June 1988
Kozikowski, Joseph, Media, PA, $9,473.19, Johns Hopkins University, Baltimore, MD, Allopathic Medicine, May 1990
Lansky, Philip S., Philadelphia, PA, $43,955.58, Univ of Pennsylvania, Philadelphia, PA, Allopathic Medicine, May 1982
Lott, Jacquecola, Philadelphia, PA, $178,267.42, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986
Mamby, Audley, Philadelphia, PA, $158,381.67, Univ of Wisconsin Madison, Madison, WI, Allopathic Medicine, May 1986
McCormick, Timothy P., Pittsburgh, PA, $168,191.72, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1985
Mills, Randell, Cochranville, PA, $64,142.15, Harvard Medical School, Boston, MA, Allopathic Medicine, June 1986
Mobley, Derrick, Philadelphia, PA, $100,800.35, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, May 1986
Mumie, Lawrence, Hazelton, PA, $23,837.94, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1982
Peterson, Kirby K., Philadelphia, PA, $52,941.29, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1989
Poleon, Mercedes L., Philadelphia, PA, $95,450.35, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1986
Shepherd, Stuart J., Philadelphia, PA, $19,393.82, Stanford University, Stanford, CA, Allopathic Medicine, June 1989
Smith, Horatio L., Pittsburgh, PA, $9,591.91, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, May 1990
Smith, Paulette M., Philadelphia, PA, $77,196.86, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1989
Turnberg, Martha A., Stroudsburg, PA, $15,083.26, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1982
Ward, Stephanie A., Philadelphia, PA, $5,901.39, Penn State University, Hershey, PA, Allopathic Medicine, May 1980

Chiropractic

Balan, William J., Bensalem, PA, $82,590.79, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983
Bompiani, Cataldo, Dallastown, PA, $941.48, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Dinardo, Anthony A., Philadelphia, PA, $26,108.44, National College of Chiropractic, Lombard, IL, Chiropractic, April 1984
Failla, Robert R., Hazelton, PA, $22,547.58, New York Chiropractic College, Seneca Falls, NY, Chiropractic, December 1983
Goleburn, Joel, Pittsburgh, PA, $12,974.15, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1983
Hanes, Robert B., King of Prussia, PA, $10,117.91, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Horne, Patricia A., Philadelphia, PA, $68,429.54, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Labarre, Scott D., Bethleham, PA, $10,244.91, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1986
MacDonald, Frank, Allentown, PA, $84,348.66, Life College, Marietta, GA, Chiropractic, December 1988
Mazero, Robert, Duncannon, PA, $98,347.96, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1984
Miller, John, Pittsburgh, PA, $32,281.70, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Mistretta, John P., Hermitage, PA, $45,718.67, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1988
Noll, Michael D., Chambersburg, PA, $50,915.94, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988
Norpel Jr, Joseph W., North Wales, PA, $71,471.01, Life College, Marietta, GA, Chiropractic, December 1985
Ragan, Howard W., Drexel Hill, PA, $6,638.60, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Roebuck, James N., North Wales, PA, $62,369.63, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1985
Ross, Roger R., Wallingford, PA, $46,822.37, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1985
Saunders, James P., Wallingford, PA, $69,387.16, National College of Chiropractic, Lombard, IL, Chiropractic, May 1983
Savelli, Christine A., Bethleham, PA, $40,687.25, Life College, Marietta, GA, Chiropractic, December 1988
Solomon, Joy S., Pittsburgh, PA, $18,726.56, Life College, Marietta, GA, Chiropractic, March 1992
Stasko, Edward G., Pittsburgh, PA, $30,200.29, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984
Storer, John J., Camp Hill, PA, $45,714.28, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1986
Trodden, Scott, New Castle, PA, $25,195.31, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1991
Wachter, John P., Pittsburgh, PA, $64,762.43, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984
Waite, William C., Mcmurry, PA, $27,052.95, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Wakefield, William C., Pittsburgh, PA, $3,103.59, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Waldman, Andrew D., Pittsburgh, PA, $28,255.10, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1988
Warrick, Dennis, Ligonier, PA, $72,108.19, Life College, Marietta, GA, Chiropractic, September 1985
Wiegand, Paul J., Danville, PA, $29,507.74, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984

Clinical Psychology

Brando, Nora, Feasterville, PA, $80,417.61, Hahnemann University, Philadelphia, PA, Clinical Psychology, June 1990
Morris, Russell D., Philadelphia, PA, $35,511.18, Adelphi University, Garden City, NY, Clinical Psychology, May 1988
Mouzon, Laquetta O., Philadelphia, PA, $15,520.19, Hahnemann University, Philadelphia, PA, Clinical Psychology, June 1988
Penny, Patricia, Perkasie, PA, $39,468.16, Yeshiva University, New York, NY, Clinical Psychology, June 1989

Dentistry

Alston-Davis, Diedra D., Pine Forge, PA, $81,553.60, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Barnhart, Jerome, Pittsburgh, PA, $65,661.96, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, June 1988
Baron, Lawrence, Philadelphia, PA, $71,426.41, Temple University, Philadelphia, PA, Dentistry, April 1990
Bartolazo, Arvin K., Philadelphia, PA, $118,267.17, Temple University, Philadelphia, PA, Dentistry, January 1989
Berger, David L., Wampum, PA, $37,979.79, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, June 1988
Bigdeli, Javad, Penn Valley, PA, $20,366.13, Columbia University, New York, NY, Dentistry, May 1984
Browning, Lois E., Peach Bottom, PA, $38,779.86, Temple University, Philadelphia, PA, Dentistry, June 1985
Burne Jr, James P., Scranton, PA, $7,219.88, Georgetown University, Washington, DC, Dentistry, May 1989
Chacker, Laurence G., Philadelphia, PA, $32,516.82, Univ of Pennsylvania, Philadelphia, PA, Dentistry, May 1985
Cieslik, Charles R., Millersburg, PA, $17,002.22, Temple University, Philadelphia, PA, Dentistry, June 1981
Gallucci, Don A., Scranton, PA, $52,141.03, Tufts University, Boston, MA, Dentistry, June 1986
Gordon, Wanda, Philadelphia, PA, $41,190.10, Univ of Pennsylvania, Philadelphia, PA, Dentistry, May 1986
Harrison, Carl, Pittsburgh, PA, $21,552.78, Howard University, Washington, DC, Dentistry, May 1988
Henry, Randy S., Indiana, PA, $131,662.79, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, June 1987
Hoppes, Elaine M., Philadelphia, PA, $66,676.09, Temple University, Philadelphia, PA, Dentistry, December 1986
Jackson, Pamela, Philadelphia, PA, $8,740.69, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1984
Jeffries, Christian T., Elizabethtown, PA, $89,718.60, Case Western Reserve University, Cleveland, OH, Dentistry, May 1986
Koch, Robert E., Mars, PA, $91,810.83, Temple University, Philadelphia, PA, Dentistry, June 1988
Loughead, Thomas, Pittsburgh, PA, $88,800.51, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, July 1989
McGettigan, Brian, Philadelphia, PA, $29,004.43, Temple University, Philadelphia, PA, Dentistry, June 1988
Meehan, Maureen T., Slatington, PA, $82,115.28, Temple University, Philadelphia, PA, Dentistry, June 1989
Miller, Alan A., Monroeville, PA, $6,577.68, Temple University, Philadelphia, PA, Dentistry, May 1982
Mitchell, Albert B., Philadelphia, PA, $59,143.75, Howard University, Washington, DC, Dentistry, May 1987
Mosley, Joan, Philadelphia, PA, $60,836.71, Howard University, Washington, DC, Dentistry, May 1988
Nuhfer-Dempsey, Dina L., Erie, PA, $33,038.19, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, July 1986
Pacey, David, Enhaut, PA, $63,576.47, Univ of Pennsylvania, Philadelphia, PA, Dentistry, June 1989
Patterson, Gregory A., Keisterville, PA, $17,259.55, Temple University, Philadelphia, PA, Dentistry, June 1987
Patterson, Grgory A., Kesterville, PA, $8,142.18, Temple University, Philadelphia, PA, Dentistry, June 1987
Pluto, Eugene, Greensburg, PA, $61,981.09, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, August 1985
Powell, Carlton F., Cheltenham, PA, $39,827.66, Meharry Medical College, Nashville, TN, Dentistry, May 1988
Province, Susan L., Somerset, PA, $8,787.42, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, June 1986
Schott, Alan J., Philadelphia, PA, $45,860.80, Temple University, Philadelphia, PA, Dentistry, December 1987
Semelsberger, Richard J., Philadelphia, PA, $19,584.86, Temple University, Philadelphia, PA, Dentistry, June 1983
Shaw, Linda J., Gladwyne, PA, $11,520.31, Temple University, Philadelphia, PA, Dentistry, May 1987
Tanski-Yudichak, Connie, Wilkes Barre, PA, $100,675.25, Temple University, Philadelphia, PA, Dentistry, June 1989
Terasavage, William, Pittsburgh, PA, $11,885.43, Univ of Pittsburgh, Pittsburgh, PA, Dentistry, August 1986
Toncini, Mark G., Freeport, PA, $41,391.97, Temple University, Philadelphia, PA, Dentistry, December 1981
Wasilko, Thomas J., Elizabeth, PA, $12,443.65, Georgetown University, Washington, DC, Dentistry, May 1982
Yudichak, John, Larkoville, PA, $119,111.73, Temple University, Philadelphia, PA, Dentistry, December 1987

Optometry

Barron, Timothy S., Erie, PA, $14,686.12, Pennsylvania College of Optometry, Philadelphia, PA, Optometry, May 1981

Osteopathy

Beitchman, Perry E., Philadelphia, PA, $26,398.91, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1988
Brenneis, Gerard, Sharon, PA, $27,347.69, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1987
Dubiel, Henry J., Feasterville, PA, $28,419.75, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1981
Hadley, Pamela, Philadelphia, PA, $25,108.41, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1985
Johnson, Lucinda, Philadelphia, PA, $13,769.62, Philadelphia Col of Osteopathic Medicine, Philadelphia, PA, Osteopathy, June 1990
Justofin, Chris D., West Hazleton, PA, $129,664.45, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1989

Pharmacy

Abanzukwe, Joy, Philadelphia, PA, $18,248.48, Philadelphia College Pharmacy & Science, Philadelphia, PA, Pharmacy, September 1987
Angel, Marilyn W., Greensburg, PA, $22,292.43, Univ of Pittsburgh, Pittsburgh, PA, Pharmacy, May 1987
Daniels, Ronald W, Philadelphia, PA, $10,902.97, Temple University, Philadelphia, PA, Pharmacy, June 1985
Dommermuth, Timothy, Erie, PA, $1,290.11, Philadelphia College Pharmacy & Science, Philadelphia, PA, Pharmacy, May 1981
Eichinger, Rosemarie R., Ridley Park, PA, $7,348.40, Philadelphia College Pharmacy & Science, Philadelphia, PA, Pharmacy, May 1984
Godwin, Lisa, Philadelphia, PA, $10,106.00, Philadelphia College Pharmacy & Science, Philadelphia, PA, Pharmacy, May 1987
Golock, Donna, Pittsburgh, PA, $9,019.13, Duquesne University, Pittsburgh, PA, Pharmacy, May 1986
Mras, Michael M., Northumberland, PA, $9,381.35, Idaho State University, Pocatello, ID, Pharmacy, May 1988

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Nock, Thomas R., Philadelphia, PA, $83,916.70, Temple University, Philadelphia, PA, Pharmacy, June 1986
Rivers, Constance L., Philadelphia, PA, $4,144.39, Temple University, Philadelphia, PA, Pharmacy, May 1988
Shuda, Michael R., Bala Cynwyd, PA, $13,973.44, Temple University, Philadelphia, PA, Pharmacy, May 1988
Stanley, Carolyn, Philadelphia, PA, $63,514.02, Temple University, Philadelphia, PA, Pharmacy, June 1986
Vogel, Joseph, Enon Valley, PA, $44,832.11, Duquesne University, Pittsburgh, PA, Pharmacy, May 1987

Podiatry

Acello, Robert L., Philadelphia, PA, $54,827.02, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Anderson, Gwendolyn, Philadelphia, PA, $21,850.28, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1987
Bailey, Cynthia, Philadelphia, PA, $135,025.53, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1989
Cooperman, Bruce, Philadelphia, PA, $131,466.82, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1989
Danczak, Michael, Pottstown, PA, $33,323.29, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Daniels, Patricia A., Philadelphia, PA, $107,230.22, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1986
Frazier, Kathalyn G., Pittsburgh, PA, $168,042.93, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1986
Fusco, John, Bellefonte, PA, $55,624.62, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1987
Ghaly, Wagih, Philadelphia, PA, $40,093.65, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, May 1990
Goldberg, Sheldon, Philadelphia, PA, $68,951.49, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1981
Johnson, Lucille E., Dingmans Ferry, PA, $19,836.19, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1992
Lauer, Richard L., York, PA, $290,322.60, California College of Podiatric Medicine, San Francisco, CA, Podiatry, June 1986
Lindley, Frank A., Philadelphia, PA, $16,348.72, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1987
Ly, Hung Van H., Philadelphia, PA, $63,693.23, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1985
Rosolowicz, Catherine, Pottstown, PA, $8,513.39, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Rusnak, JeanMarie, Newtown, PA, $50,965.11, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1986
Slome, Mark A., Philadelphia, PA, $7,351.39, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1986
Ward, William F., Norristown, PA, $6,706.60, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1989
Weitzen, Julie, Norristown, PA, $71.30, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1987
Wildes, Ellen K., Dallas, PA, $80,759.61, California College of Podiatric Medicine, San Francisco, CA, Podiatry, August 1985

Public Health

Ditommaso, Richard, Pittsburgh, PA, $4,840.71, Univ of Pittsburgh, Pittsburgh, PA, Public Health, April 1986
Jeanbaptiste, Henriot, Pittsburgh, PA, $4,628.71, Johns Hopkins University, Baltimore, MD, Public Health, June 1986
Lamothe, Lissa, Philadelphia, PA, $17,422.69, Tulane University, New Orleans, LA, Public Health, August 1989
Lee, Margaret, Pittsburgh, PA, $6,706.17, Yale University, New Haven, CT, Public Health, May 1990

Veterinary Medicine

Giles, Beverly, Philadelphia, PA, $8,958.69, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, May 1988
Graffi, William R., Philadelphia, PA, $40,680.83, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, May 1987
Henderson, Bernard, Philadelphia, PA, $6,301.92, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1990

Puerto Rico

Allopathic Medicine

Caro, Joseph, Utuado, PR, $60,388.91, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, September 1984
Gutman, Jose E., Ponce, PR, $36,389.61, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1988
Mercado, Brenda, Carolina, PR, $67,373.15, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, December 1988
Solivan Reyes, Samuel, Bayamon, PR, $78,268.93, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, December 1983
Vargas-Bird, Irma M., Bayamon, PR, $72,611.39, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, May 1988
Zabala, Armando, Rio Piedras, PR, $77,169.01, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1985

Chiropractic

Nellen, Beatrice B., Ciudad Guatamal, PR, $87,910.43, Life College, Marietta, GA, Chiropractic, March 1985

Dentistry

Abreu-sirald, Carlos, Isabela, PR, $135,264.65, Boston University Medical Center, Boston, MA, Dentistry, May 1989
Claudio Vazquez, Jose, Caquao, PR, $12,123.81, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1980
Colon-honda, Rafael E., Caguas, PR, $32,938.64, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1983
Estrada-Escalona, Valerie R., San Juan, PR, $21,472.31, New York University, New York, NY, Dentistry, June 1993
Martinez, Gustavo, Guaynabo, PR, $6,346.43, Georgetown University, Washington, DC, Dentistry, May 1990
Martinez, Juan, Santa Isabel, PR, $27,152.01, Univ of Puerto Rico, San Juan, PR, Dentistry, June 1989
Medina-Pellicer, Norberto N., Rio Piedras, PR, $28,342.06, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1982
Mullen, Francis D., Guaynabo, PR, $132,549.07, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1982
Rogers, Larry B., Rincon, PR, $22,093.61, Univ of Mississippi Medical Center, Jackson, MS, Dentistry, May 1984
Rosario, Graciela, Cayey, PR, $10,007.74, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1982
Sanchez, Francisco F. R., Los Lomas, PR, $9,674.24, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1981
Vega-Godoy, Arlos A., Hato Rey, PR, $15,105.77, Univ of Puerto Rico, San Juan, PR, Dentistry, May 1980

Optometry

De Jesus, Jose M., San Juan, PR, $19,464.25, Inter American Univ of PR, San Juan, PR, Optometry, May 1987
Latorre, Victor L., Guayama, PR, $30,519.68, Inter American Univ of PR, San Juan, PR, Optometry, May 1987
Lopez-Aleman, Miguel, Truillo Alto, PR, $77,952.29, Inter American Univ of PR, San Juan, PR, Optometry, May 1989
Morale- Oscar, Valle Verde Bay, PR, $126,916.96, Inter American Univ of PR, San Juan, PR, Optometry, May 1987
Moreno Fernando O., Catano, PR, $36,912.81, Inter American Univ of PR, San Juan, PR, Optometry, June 1985
Rivera, Axel E., Rio Piedras, PR, $62,618.07, Inter American Univ of PR, San Juan, PR, Optometry, May 1989
Rivera, Luis F., Rio Piedras, PR, $36,411.97, Inter American Univ of PR, San Juan, PR, Optometry, May 1988
Rivera, Olga, Guayama, PR, $47,575.19, Inter American Univ of PR, San Juan, PR, Optometry, June 1990
Rodriguez, Maria J., Mayaguez, PR, $33,946.60, Inter American Univ of PR, San Juan, PR, Optometry, May 1989
Soto-Medina, Barry D., Guaynabo, PR, $98,711.45, Inter American Univ of PR, San Juan, PR, Optometry, May 1985
Vanbrackle, Ismael L., Santurce, PR, $28,435.01, Inter American Univ of PR, San Juan, PR, Optometry, June 1985

Pharmacy

Oliver, Sonia, Coto Laurel, PR, $4,275.41, Long Island University, Brookville, NY, Pharmacy, June 1990

Podiatry

Rosado, Hector, Vista Alegre, PR, $36,498.54, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1990

Public Health

Flores, Luis A., Coguaes, PR, $31,327.67, Univ of Pittsburgh, Pittsburgh, PA, Public Health, August 1983
Landron-Colberg, Eva, Rio Piedras, PR, $13,733.12, Univ of Puerto Rico, San Juan, PR, Public Health, May 1980

Veterinary Medicine

Carbo, Sandra, Canovanas, PR, $24,086.85, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1986
Iriarte, Celestino M., Canovanas, PR, $83,563.79, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1982

Rhode Island

Allopathic Medicine

Jones, Wendell, Providence, RI, $39,752.78, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1986

Health Administration

Tiemo, Vincent D., Providence, RI, $9,702.11, Xavier University, Cincinnati, OH, Health Administration, May 1988

Optometry

Estrada, Rolando, Providence, RI, $13,346.19, New England College of Optometry, Boston, MA, Optometry, May 1989

Pharmacy

Handren, Michelle S., Bristol, RI, $5,810.86, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1988

Veterinary Medicine

Ballou, Sarah, Providence, RI, $24,930.77, Univ of Pennsylvania, Philadelphia, PA, Veterinary Medicine, May 1983

South Carolina

Allopathic Medicine

Burt, Joseph M., Myrtle Beach, SC, $36,476.30, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1983
Caldwell, Judith, Summerville, SC, $82,009.97, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Nobles, Patrick, Spartanburg, SC, $11,528.89, East Tennessee State University, Johnson City, TN, Allopathic Medicine, May 1983

Chiropractic

Badia, Raymond, Spartanburg, SC, $90,146.45, Life College, Marietta, GA, Chiropractic, June 1984
Barwick-Barnica, Janet M., Longs, SC, $3,124.62, Life College, Marietta, GA, Chiropractic, March 1991
Cuddington, Timothy J., Orangeburg, SC, $26,993.66, Life College, Marietta, GA, Chiropractic, December 1985
Garrett, Alex C., Mauldin, SC, $61,507.62, Life College, Marietta, GA, Chiropractic, March 1987
Heinen, Joseph E., Columbia, SC, $67,564.88, Life College, Marietta, GA, Chiropractic, June 1984
Shay, Robert J., Prosperity, SC, $135,052.58, Life College, Marietta, GA, Chiropractic, September 1986
Simon, Larry, Myrtle Beach, SC, $93,366.71, Life College, Marietta, GA, Chiropractic, December 1986
Taber, Stuart, Columbia, SC, $77,351.11, Life College, Marietta, GA, Chiropractic, December 1984
Woodward, Merre, Beaufort, SC, $22,158.08, Life College, Marietta, GA, Chiropractic, March 1991

Dentistry

Bailey, Angela, Florence, SC, $25,283.16, Univ of Louisville, Louisville, KY, Dentistry, May 1987
Dixson, David R., Columbia, SC, $212,781.51, Meharry Medical College, Nashville, TN, Dentistry, May 1986
Funderburk Jr, William A., Myrtle Beach, SC, $56,937.31, Medical University of South Carolina, Charleston, SC, Dentistry, May 1985
Mahon-Samuels, Brenda Y., Columbia, SC, $29,505.71, Howard University, Washington, DC, Dentistry, May 1982
Odom, James E., Sharon, SC, $39,627.64, Medical University of South Carolina, Charleston, SC, Dentistry, May 1981
Pelzer Jr, Lucious, Elloree, SC, $52,768.03, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Thomas, Robert L., Spartanburg, SC, $34,169.47, Medical University of South Carolina, Charleston, SC, Dentistry, May 1990

Osteopathy

Brown, Kevin T., Fairfax, SC, $185,332.75, Univ of Health Sciences, Kansas City, MO, Osteopathy, May 1984

Podiatry

Bracey, Gale, Columbia, SC, $156,963.98, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984
Foster, Martha E., Greenville, SC, $229,424.33, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1987
Katalinich, Gery B., Myrtle Beach, SC, $118,056.87, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1985
Salley, Hezekiah, Smoaks, SC, $127,683.35, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983

Veterinary Medicine

Higgins, Leonard, Charleston, SC, $14,146.56, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1986

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South Dakota

Chiropractic

Adams, Nancy, Sioux Falls, SD, $29,046.61, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1987

Gorsuch, Garry, Rapid City, SD, - $32,041.16, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1990

Health Administration

Lund, Peggy P., Sioux Falls, SD, $13,462.64, St Louis University, St Louis, MO, Health Administration, May 1985

Tennessee

Allopathic Medicine

Bogus, Britt, Knoxville, TN, $103,521.16, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988

Braswell, James, Nashville, TN, $151,230.68, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988

Chatman, David D., Antioch, TN, $51,175.14, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1983

Chevalier, Jovita A., Memphis, TN, $23,677.02, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1992

Collins, James E., Nashville, TN, $127,956.34, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987

Conner, Shavetta D., Antioch, TN, $1,044.01, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989

Davidson, Clifford M., Knoxville, TN, $47,409.29, Univ of Alabama Birmingham, Birmingham, AL, Allopathic Medicine, June 1986

Davis, Clarence, Nashville, TN, $30,034.74, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989

Davis, Helen H M, Nashville, TN, $134,858.65, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Duncan, Michael, Nashville, TN, $107,634.58, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988

Dungee, Steven A., Nashville, TN, $4,251.59, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1990

Gaither, Thomas T., Nashville, TN, $172,073.92, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Johnson, James, Nashville, TN, $153,109.93, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Johnson-Jenkins, Yvonne M., Nashville, TN, $130,945.66, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Jubert, Angela, Nashville, TN, $30,829.50, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1990

Latimer, Harvey L., Nashville, TN, $146,854.76, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Morales, Orlando, Smyrna, TN, $126,650.88, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987

Nicks, Robbin M., Hermitage, TN, $167,202.49, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Pettigrew, Francis, Chattanooga, TN, $6,442.81, Univ of Tennessee Memphis, Memphis, TN, Allopathic Medicine, June 1987

Pratt, Ninette R., Bolivar, TN, $132,777.00, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Saunders, Robert D., Kingsport, TN, $9,160.08, East Tennessee State University, Johnson City, TN, Allopathic Medicine, May 1989

See, Tahnya D., Antioch, TN, $51,995.68, Case Western Reserve University, Cleveland, OH, Allopathic Medicine, June 1982

Shannon, Joan H., Nashville, TN, $1,952.88, Tufts University, Boston, MA, Allopathic Medicine, May 1983

Smith, Larry W., Antioch, TN, $97,192.99, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Sparrow, Alj F., Nashville, TN, $110,184.70, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987

Stewart, Barry A., Knoxville, TN, $9,627.05, Univ of Tennessee Memphis, Memphis, TN, Allopathic Medicine, June 1987

Walker, Brian E., Nashville, TN, $3,051.55, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1990

Williams, Pamela C., Antioch, TN, $89,303.31, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1981

Wimbish, Ronald P., Nashville, TN, $169,163.06, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987

Woodard, Deborah A., McKenzie, TN, $233,709.80, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1986

Chiropractic

Carter, Karen L., Nashville, TN $34,364.40, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1985

Consiglio, Joseph S., Fairfield, TN, $48,001.22, Life College, Marietta, GA, Chiropractic, June 1990

Crislip, David F., Johnson City, TN, $102,849.67, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986

Haley, Jane E., Fayetteville, TN, $15,647.38, Life College, Marietta, GA, Chiropractic, March 1988

Hill, Cecil, Knoxville, TN, $3,773.72, Life College, Marietta, GA, Chiropractic, March 1991

Johnson, Steven R., Eva, TN, $41,984.43, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985

Lowe, Joseph L., Cleveland, TN, $44,392.90, Life College, Marietta, GA, Chiropractic, June 1983

Moore, Charles, Adamsville, TN, $64,925.44, Parker College of Chiropractic, Dallas, TX, Chiropractic, December 1987

Nelson, Michael W., Sparta, TN, $61,247.22, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985

Patterson, Larry D., Oak Ridge, TN, $12,265.61, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1985

Reid, Henry, Dayton, TN, $55,470.64, Life College, Marietta, GA, Chiropractic, June 1988

Shafer Jr, Joseph E., Goodlettsville, TN, $15,407.15, Life College, Marietta, GA, Chiropractic, September 1985

Williams Jr, Samuel L., Cleveland, TN, $108,113.04, Life College, Marietta, GA, Chiropractic, September 1984

Yates, Jay M., Nashville, TN, $95,337.29, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, September 1986

Clinical Psychology

Keck, Julie N., Nashville, TN, $88,277.68, California Sch of Prof Psych San Diego, San Diego, CA, Clinical Psychology, May 1989

King, Wanda W., Bolivar, TN, $46,688.39, Wright State University, Dayton, OH, Clinical Psychology, August 1986

Dentistry

Black, Jacquese O., Antioch, TN, $70,180.61, Meharry Medical College, Nashville, TN, Dentistry, May 1991

Branch, Joerald D., Memphis, TN, $2,972.42, Meharry Medical College, Nashville, TN, Dentistry, May 1989

Coggins, Cheryl, Antioch, TN, $103,348.53, Meharry Medical College, Nashville, TN, Dentistry, May 1987

Cowan, Walter O., Antioch, TN, $203,127.75, Meharry Medical College, Nashville, TN, Dentistry, May 1986

Davis, Edward E., Memphis, TN, $6,344.60, Meharry Medical College, Nashville, TN, Dentistry, May 1983

Dickinson-Branch, Phyllis A., Bartlett, TN, $68,889.89, Meharry Medical College, Nashville, TN, Dentistry, May 1986

Felder, Harry, Hendersonville, TN, $188,762.29, Meharry Medical College, Nashville, TN, Dentistry, May 1985

Flint, Bryan A., Jonesborough, TN, $19,485.01, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1984

Franklin, Gilbert L., Memphis, TN, $40,154.14, Meharry Medical College, Nashville, TN, Dentistry, May 1980

Gilliam III, Ira H., Nashville, TN, $52,606.80, Meharry Medical College, Nashville, TN, Dentistry, May 1983

Gipson, Samuel D., Memphis, TN, $34,852.48, Meharry Medical College, Nashville, TN, Dentistry, May 1980

Jones, Vincent, Knoxville, TN, $88,048.27, Meharry Medical College, Nashville, TN, Dentistry, May 1982

Lemorrocco, Belinda, Memphis, TN, $8,217.41, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1987

Little, Deider Tanner, Nashville, TN, $204,410.26, Meharry Medical College, Nashville, TN, Dentistry, May 1984

Long, Larry L., Murfreesboro, TN, $16,889.30, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1988

Mulhollen, Kelli, Memphis, TN, $27,991.50, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1991

Parks, Anita, Nashville, TN, $8,996.77, Meharry Medical College, Nashville, TN, Dentistry, December 1991

Ray, Timothy H., Cleveland, TN, $9,515.20, West Virginia University, Morgantown, WV, Dentistry, August 1985

Rudder, David P., Knoxville, TN, $44,868.88, Univ of Tennessee Memphis, Memphis, TN, Dentistry, June 1985

Westbrook, Fred, Nashville, TN, $52,749.88, Meharry Medical College, Nashville, TN, Dentistry, May 1986

Winfrey, Willie, Nashville, TN, $70,982.69, Meharry Medical College, Nashville, TN, Dentistry, May 1980

Optometry

Venanzio, David, Memphis, TN, $65,053.15, Southern College of Optometry, Memphis, TN, Optometry, May 1991

Pharmacy

Hamby, Michael L., Murfreesboro, TN, $3,417.54, Univ of Tennessee Memphis, Memphis, TN, Pharmacy, June 1988

Podiatry

Baggett, Larry D., Memphis, TN, $108,505.90, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1983

Huff, Gregory E., Nashville, TN, $26,071.40, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1990

Veterinary Medicine

Edward, James, Millington, TN, $6,389.96, Mississippi State University, Mississippi State, MS, Veterinary Medicine, May 1988

Texas

Allopathic Medicine

Adams, Gerald F., Houston, TX, $4,976.70, Univ of Texas, Houston, TX, Allopathic Medicine, June 1989

Allen, David B., Texarkana, TX, $22,816.06, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1984

Baker, Donnie W., League City, TX, $102,066.41, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1988

Barrera, Adrian, Laredo, TX, $11,495.31, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, May 1991

Behringer, George M., Houston, TX, $8,235.77, Univ of Texas, Houston, TX, Allopathic Medicine, May 1991

Berry, James E., Galveston, TX, $19,093.08, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1986

Brauer, Bodo, Beaumont, TX, $18,188.45, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1986

Brown, Lisa L., Houston, TX, $7,136.17, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1991

Brown, William, Houston, TX, $6,723.88, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1987

Bryant, Edith, Houston, TX, $12,895.06, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, May 1991

Byrd, Bruce, Amarillo, TX, $4,502.73, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1988

Choi, Yun S., College Station, TX, $9,458.43, Louisiana St Univ Med Ctr New Orleans, New Orleans, LA, Allopathic Medicine, May 1990

Compass, Sairwaa T., Austin, TX, $9,625.89, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1989

Davis, Kenneth A., Austin, TX, $44,597.00, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1990

Douglas Jr, Hermon H., De Soto, TX, $97,783.67, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1982

Edwards, Mary M., Arlington, TX, $35,533.11, Univ of Pittsburgh, Pittsburgh, PA, Allopathic Medicine, June 1986

Ellis, Cynthia, Austin, TX, $119,702.07, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985

Emerson, Timothy J., San Angelo, TX, $65,488.39, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1984

Foster, Roderic W., Dallas, TX, $9,571.99, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1983

Fuller, Michael A., Galveston, TX, $84,512.05, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1984

Green Jr, Kenneth W., Hurst, TX, $54,449.08, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1986

Gutierrez, Oscar V., Laredo, TX, $12,542.20, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1987

Guzman, Johnny E., Burleson, TX, $69,035.72, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, February 1986

Harding, Phyllis D., Wichita Falls, TX, $66,182.77, Univ of Cincinnati, Cincinnati, OH, Allopathic Medicine, June 1984

Heindel, Terry J., Houston, TX, $3,050.49, Univ of Mississippi Medical Center, Jackson, MS, Allopathic Medicine, June 1991

Hicks, Gilbert, Austin, TX, $37,260.32, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1988

King, Lewis, Dallas, TX, $16,913.90, Univ of Arkansas Medical Center,

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Little Rock, AR, Allopathic Medicine, May 1990
Lewis, Michael, Houston, TX, $69,857.41, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1989
Liegel, Joyce, Houston, TX, $30,104.39, Univ of Texas, Houston, TX, Allopathic Medicine, June 1985
Luu, Kham N., Houston, TX, $6,167.94, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1989
Mannino, Troy, Katy, TX, $9,596.74, Univ of Texas, Houston, TX, Allopathic Medicine, May 1988
Marek, Michael, Cedar Park, TX, $58,155.72, Univ of Texas, Houston, TX, Allopathic Medicine, May 1988
Mayorgo, Gilbert, Houston, TX, $128,658.70, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, June 1987
Metcalf, Edmund, Medina, TX, $25,998.19, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1991
Moseley, Clarence D., Houston, TX, $26,702.85, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1987
Novetsky, Jerry J., Plano, TX, $34,710.44, Wayne State University, Detroit, MI, Allopathic Medicine, June 1985
Ortiz, Tomas, Houston, TX, $38,919.48, Universidad Central Del Caribe, Bayamon, PR, Allopathic Medicine, December 1987
Parkin, Dianne, Houston, TX, $14,304.64, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Allopathic Medicine, May 1993
Penick, Larry, Houston, TX, $2,401.03, Loyola University Chicago, Maywood, IL, Allopathic Medicine, June 1983
Petty, Jay, Longview, TX, $10,628.32, Univ of Arkansas Medical Center, Little Rock, AR, Allopathic Medicine, May 1988
Pickett, Jan J., Farmers Branch, TX, $6,177.41, Univ of Texas Southwestern Medical Cntr, Dallas, TX, Allopathic Medicine, June 1986
Porras, Jose, El Paso, TX, $169,647.49, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1984
Reddix-Norman, Irance E., Missouri City, TX, $28,655.42, Howard University, Washington, DC, Allopathic Medicine, May 1986
Rollins, John, Amarillo, TX, $13,289.97, Texas Tech University Health Sci Center, Lubbock, TX, Allopathic Medicine, May 1982
Rosales, Anna M., Hondo, TX, $58,382.63, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1988
Schulz, Eric, The Woodlands, TX, $4,822.54, Univ of Texas, Houston, TX, Allopathic Medicine, June 1988
Starnes, Willis L., Irving, TX, $22,995.36, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, June 1982
Tessmer, John, Brownwood, TX, $68,208.35, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1983
Tihfon, Pierre M., Houston, TX, $23,569.06, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, May 1987
Tran, Truc V., Houston, TX, $1,893.43, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1989
Uri, John J., Bellaire, TX, $10,532.87, Univ of Pennsylvania, Philadelphia, PA, Allopathic Medicine, May 1987
Victorianne, Albert A., Houston, TX, $43,501.44, Tulane University, New Orleans, LA, Allopathic Medicine, June 1983
Wilson, Alan K., Houston, TX, $2,036.06, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, May 1989
Wolf, Philip L., San Antonio, TX, $21,937.83, Univ of Texas Medical Branch Galveston, Galveston, TX, Allopathic Medicine, June 1985
Woodhouse, Juanita, De Soto, TX, $15,146.32, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Allopathic Medicine, June 1990
Wright, Billy, Tyler, TX, $25,554.02, Univ of South Dakota, Sioux Falls, SD, Allopathic Medicine, July 1980
Zavala, Alfonso G., Houston, TX, $191,704.14, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987

Chiropractic

Adams, Stephen, Friendswood, TX, $71,726.56, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1989
Allison, Dwaine M., Fort Worth, TX, $2,566.83, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985
Alshouse, Luanne, Terrell, TX, $51,828.65, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986
Amma-Lesrine, Vashti, Crosby, TX, $31,050.94, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, August 1988
Augustus, Michael, La Marque, TX, $50,185.73, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, March 1986
Bailey, John L., Channelview, TX, $68,567.44, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1989
Barnett, Brian D., Webster, TX, $91,469.86, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1987
Benton, Craig R., Lampasas, TX, $43,830.51, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985
Beyer, Floyd E., Port Arthur, TX, $72,515.68, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1989
Blount, Steve A., De Soto, TX, $8,319.16, Palmer College of Chiropractic, Davenport, IA, Chiropractic, February 1991
Bonner, Michael, Houston, TX, $58,738.33, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1991
Borst, Brenda J., Arlington, TX, $6,757.31, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1986
Brand, Rodney, Fort Worth, TX, $23,173.36, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983
Brittain, Jeffrey D., Houston, TX, $78,801.96, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1987
Broadwell, Teri A., Irving, TX, $103,319.39, Parker College of Chiropractic, Dallas, TX, Chiropractic, May 1989
Brown, Darla, Highlands, TX, $45,653.19, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1990
Broze, Rory, Austin, TX, $64,027.09, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984
Bryant, Clifford, Greenville, TX, $59,873.60, Life College, Marietta, GA, Chiropractic, March 1987
Calhoun, Lynn, Austin, TX, $19,824.55, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1984
Calixto, Flavio, Irving, TX, $95,752.59, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1988
Cannon, Dennis, Lewisville, TX, $42,369.29, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986
Carlin, Susan, San Antonio, TX, $113,918.33, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986
Cathcart, Richard, Pasadena, TX, $31,250.31, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985

Centola, Robert, Richardson, TX, $45,982.44, New York Chiropractic College, Seneca Falls, NY, Chiropractic, April 1989
Cleere, Carrol E., Red Oak, TX, $67,990.67, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Daniell, Larry L., Houston, TX, $108,014.81, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1984
Davis, George G., Dallas, TX, $20,234.66, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983
Dean, J C, Dickinson, TX, $60,555.57, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1986
Delay, Patricia A., Houston, TX, $17,061.24, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1989
Dickey, Jerry, Richardson, TX, $80,426.55, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1988
Dodd, Daniel J., Missouri City, TX, $17,974.88, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Dodson, Mason, Tyler, TX, $106,003.70, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1989
Durham, Ricky R., Houston, TX, $123,548.00, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, August 1986
Duvall, Dalace, Houston, TX, $31,250.94, Parker College of Chiropractic, Dallas, TX, Chiropractic, January 1992
Dyess, Stephen J., Deer Park, TX, $113,487.29, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1987
Eastman, Donald W., Mesquite, TX, $61,422.48, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Eaves, Donald G., Houston, TX, $99,705.97, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1987
Ellis, Robert, Terrell, TX, $52,296.34, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986
Fagan, Darrell, Seabrook, TX, $60,614.09, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1987
Ferguson, James D., Cedar Park, TX, $94,787.78, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1984
Font, David, Lubbock, TX, $70,199.10, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1989
Fridman, Olga O., Houston, TX, $16,272.94, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
German, John V., Houston, TX, $44,903.14, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1985
Glenn, Michael, Duncanville, TX, $119,246.15, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Goebel, Michale L., Houston, TX, $62,272.05, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Gutierrez, Celso, Houston, TX, $10,085.36, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, August 1993
Haney, Sylvia, Orange, TX, $37,339.35, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1985
Harding, James, Dripping Springs, TX, $20,101.22, Western States Chiropractic College, Portland, OR, Chiropractic, March 1989
Harris, Scott, Dallas, TX, $40,500.74, Parker College of Chiropractic, Dallas, TX, Chiropractic, May 1989
Harvey, Robert L., Bridgeport, TX, $80,339.95, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1988
Hendricks, Craig C., Dallas, TX, $30,212.13, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Herrington, Tommy L., Pasadena, TX, $36,825.14, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Hetzel, Williams A., Itasca, TX, $136,353.57, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1986
Hill, Michael J., Pasadena, TX, $23,429.87, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1984
Kennedy, Michael, Conroe, TX, $104,157.65, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1987
Kirk Sr, Jack H., Dickinson, TX, $42,718.89, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984
Lall, Len L., Rockwall, TX, $52,201.46, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984
Landsiedel, Randy J., Irving, TX, $100,264.70, Western States Chiropractic College, Portland, OR, Chiropractic, May 1988
Mackin, Cheryl L., Austin, TX, $54,558.54, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1988
Manning-Pinotti, Katherine W., Houston, TX, $112,597.46, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1986
Maples II, John L., Fort Worth, TX, $88,934.87, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1986
Maples, Thomas J., Mesquite, TX, $36,430.55, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1985
Martin, David, Floydada, TX, $95,947.43, Life College, Marietta, GA, Chiropractic, December 1986
McAdams, Glen R., Conroe, TX, $30,042.10, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1990
McCuan, Kathy A, Austin, TX, $910.62, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1983
McLain, Burton B., Hempstead, TX, $27,678.14, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1985
McLain, Marilyn, Hempstead, TX, $33,929.20, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1985
Metcalf, Roy L., Fort Worth, TX, $115,684.62, Life College, Marietta, GA, Chiropractic, December 1987
Montanari, Arthur M., La Porte, TX, $102,563.70, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Morgan, Glenn R., Arlington, TX, $66,529.18, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1989
Morgan, Shirley, Houston, TX, $3,911.16, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1988
Moses, Michael J., Kingwood, TX, $50,019.26, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985
Munson, Herbert, Houston, TX, $45,034.37, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1986
Nguyen, Ho H., Houston, TX, $35,615.38, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1990
Oliver, Monte, Lindale, TX, $41,005.47, Parker College of Chiropractic, Dallas, TX, Chiropractic, August 1987
Owen, Gary, Lubbock, TX, $39,563.63, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986

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Parry, William A., Houston, TX, $17,127.67, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, June 1984
Pinotti, Jeffrey, Houston, TX, $82,916.58, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, August 1986
Plaster, Michael, Fort Worth, TX, $37,633.63, Parker College of Chiropractic, Dallas, TX, Chiropractic, December 1987
Pouralis, Behzad M., Pasadena, TX, $47,936.40, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1989
Primeaux, Chrstopher, Texarkana, TX, $86,701.28, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1988
Quadlander, Michael E., Houston, TX, $63,143.44, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Real, Vernon D., Pasadena, TX, $107,159.72, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1988
Reaume, David G., Odessa, TX, $92,068.07, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1986
Reece, Deward F., Corpus Christi, TX, $22,608.30, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Reynolds, Charlotte M., Houston, TX, $94,241.50, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1986
Rhine, Cecil T., Cleveland, TX, $75,791.74, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Riley, Rock, Canton, TX, $29,422.45, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Roberson, Harvey L., Houston, TX, $35,761.82, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1989
Robinson, Glenn R., Garland, TX, $77,916.94, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1988
Rodriquez, Jesus A., El Paso, TX, $120,512.32, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1986
Romeieh-romay, Barbara C., Bedford, TX, $87,289.28, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1985
Rosenbaum, Allan J., Lubbock, TX, $82,774.37, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985
Rublee, William, Nacogdoches, TX, $50,118.15, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984
Sanchez, Gerald G., Houston, TX, $45,001.88, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1988
Schade, Cynthia J., Austin, TX, $40,434.25, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1985
Schalk, Ronald R., San Antonio, TX, $20,676.09, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Sedlacek, Jay, Irving, TX, $21,767.48, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1993
Shaver, Dennis D., Kerrville, TX, $27,560.72, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1985
Shukri, Shafiq, Wichita Falls, TX, $13,366.25, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1986
Skidmore, Clyde E., Stafford, TX, $57,630.53, Life College, Marietta, GA, Chiropractic, December 1983
Smith, Cecil P., Garland, TX, $21,434.91, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1986
Smith, Timothy, San Antonio, TX, $99,566.13, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1986
Snell, Day Lee, Houston, TX, $32,670.44, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1984
Sprecher, Kyle O., Webster, TX, $73,985.74, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1986
Stalker, James, Round Rock, TX, $18,534.02, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, May 1983
Sykes, Steven G., Killeen, TX, $37,529.90, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, June 1987
Taparauskas, Anne M., Houston, TX, $47,546.30, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1986
Taylor, Danny, Irving, TX, $35,797.18, Parker College of Chiropractic, Dallas, TX, Chiropractic, December 1987
Thompson, Roy E., Austin, TX, $34,460.59, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983
Todd-Ferguson, Linda K., Cedar Park, TX, $52,911.02, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985
Tretheway-Koenig, Joan L., Pearland, TX, $16,435.47, Western States Chiropractic College, Portland, OR, Chiropractic, June 1990
Truong, Thao, Houston, TX, $11,929.67, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1988
Tucker, James, Arlington, TX, $10,232.91, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1983
Twigg, Jonathan, Alpine, TX, $102,776.21, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1988
Unruh, Steve L., Baytown, TX, $86,852.91, Life College, Marietta, GA, Chiropractic, December 1987
Van Nice, Dennis, Midland, TX, $53,606.86, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, January 1987
Van Parys, Leslie R., Waco, TX, $9,428.84, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1987
Walter, Jonathan J., Austin, TX, $19,100.97, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, September 1988
Wardle, Jenice, Port Arthur, TX, $95,385.96, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1987
Wellington, James G., Pasadena, TX, $30,943.02, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Wheeler, Wesley D., Houston, TX, $67,383.48, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, December 1988
Whigham, Gwendolyn E., Houston, TX, $34,540.89, Parker College of Chiropractic, Dallas, TX, Chiropractic, April 1987
Whitaker, Gary W., San Antonio, TX, $21,536.47, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1982
Williams, Dewayne, Brownsville, TX, $88,232.15, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, December 1988
Wirt-Sealy, Rita J., Groveton, TX, $12,431.33, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1985
Woywood, Roger, Dallas, TX, $39,194.08, Parker College of Chiropractic, Dallas, TX, Chiropractic, September 1989

Dentistry

Anderson, Madeline J., Austin, TX, $2,012.14, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1989
Baird, John, Richardson, TX, $28,284.30, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1992
Bartley, Emily, Houston, TX, $29,165.88, Meharry Medical College, Nashville, TN, Dentistry, May 1991
Beckett, Timothy W., Dallas, TX, $67,093.66, Meharry Medical College, Nashville, TN, Dentistry, May 1981
Beers, Wayne D., San Antonio, TX, $21,596.07, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1989
Bonin, Mark, Spring, TX, $10,989.21, Univ of Texas, Houston, TX, Dentistry, May 1987
Broadus, Reginald H., Fort Worth, TX, $60,247.40, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Burke, Andrea A., Houston, TX, $121,870.47, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Canady, Keith, Lewisville, TX, $42,861.68, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1990
Chung, Kwang, Lewisville, TX, $4,050.39, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1992
Collier, George R., San Antonio, TX, $50,629.25, Georgetown University, Washington, DC, Dentistry, May 1983
Cortez, Eddie, San Antonio, TX, $105,041.14, Marquette University, Milwaukee, WI, Dentistry, May 1988
Courtney, Barbara, Dallas, TX, $22,588.30, Boston University Medical Center, Boston, MA, Dentistry, May 1991
Currington, Tony, Houston, TX, $63,534.03, Washington University, St Louis, MO, Dentistry, May 1991
Daniels II, John T., San Antonio, TX, $63,079.03, Howard University, Washington, DC, Dentistry, May 1983
Douglas, Agnes A., De Soto, TX, $52,719.20, Meharry Medical College, Nashville, TN, Dentistry, May 1985
Dudley, Donald, Arp, TX, $25,161.10, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1988
Garcia, Leticia, Beaumont, TX, $23,165.72, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, June 1983
Glosson, Romus, Houston, TX, $6,320.64, Univ of Texas, Houston, TX, Dentistry, May 1989
Green Jr, Henry, San Antonio, TX, $153,414.86, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1984
Hatten II, John H., OdFessa, TX, $27,055.69, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, June 1983
Hickman, Carl, Houston, TX, $9,197.62, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1982
Hicks, Philip, Houston, TX, $44,360.40, Univ of Texas, Houston, TX, Dentistry, June 1985
Hooda, Farid K., Arlington, TX, $8,662.04, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1991
Hurd, Michael, Houston, TX, $5,310.36, Univ of Texas, Houston, TX, Dentistry, May 1991
Jacome Jr, Robert R A, Plano, TX, $193,150.68, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1988
Johnson, Cleverick D., Houston, TX, $2,959.65, Univ of Texas, Houston, TX, Dentistry, June 1986
Kariem, James J., Amarillo, TX, $160,881.40, Meharry Medical College, Nashville, TN, Dentistry, May 1984
Maedgen, Alan, Dallas, TX, $12,843.70, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1987
Mason, Samuel S., Houston, TX, $143,627.42, Meharry Medical College, Nashville, TN, Dentistry, May 1984
Morgan, John D., Beeville, TX, $928.97, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1985
Mosely Jr, Lee, Houston, TX, $41,511.61, Meharry Medical College, Nashville, TN, Dentistry, May 1984
Obrien, Francis, Euless, TX, $4,522.54, Univ of Texas, Houston, TX, Dentistry, June 1984
Perry, Maurice A., Houston, TX, $41,266.42, Meharry Medical College, Nashville, TN, Dentistry, May 1987
Ramos Jr, Rodolfo G., San Antonio, TX, $3,208.46, Univ of Texas, Houston, TX, Dentistry, May 1990
Ramos, Gisella Y., Austin, TX, $3,656.83, Univ of Louisville, Louisville, KY, Dentistry, May 1993
Rapanotti, Mario C., San Antonio, TX, $14,097.13, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, June 1983
Rodriguez, Annette, San Antonio, TX, $17,570.45, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1993
Steele, David D., Texarkana, TX, $21,217.19, Univ of Texas, Houston, TX, Dentistry, June 1986
Summers, Eddie, League City, TX, $9,475.13, Univ of Texas, Houston, TX, Dentistry, June 1987
Tootoonchi, Mohammod, Houston, TX, $2,925.62, Univ of Texas, Houston, TX, Dentistry, May 1990
Trammel, Henry, Tyler, TX, $34,294.24, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1989
Trice, Robert, Grand Prairie, TX, $39,287.33, Baylor College of Dentistry, Dallas, TX, Dentistry, May 1989
Underhill, Luke, Corpus Christi, TX, $52,661.71, Univ of Missouri Kansas City, Kansas City, MO, Dentistry, April 1985
Venable, James R., Fort Worth, TX, $7,858.24, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1990
Wade, Eric, Tyler, TX, $28,348.13, Univ of Texas Hlth Sci Cntr San Antonio, San Antonio, TX, Dentistry, May 1984
West, Paul, Fort Worth, TX, $21,326.14, Baylor College of Dentistry, Dallas, TX, Dentistry, June 1991
Wood, Cecil C., Duncanville, TX, $120,218.01, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Dentistry, June 1983
Wright-Coleman, Debra D., Bedford, TX, $19,329.29, Meharry Medical College, Nashville, TN, Dentistry, May 1983

Health Administration

Miranda Jr, Leandro, San Antonio, TX, $24,426.39, Trinity University, San Antonio, TX, Health Administration, December 1989
Simeone, William J., Houston, TX, $15,104.20, St. Louis University, St. Louis, MO, Health Administration, May 1985
White, Kevin G., Dallas, TX, $7,918.46, St. Louis University, St. Louis, MO, Health Administration, May 1989

Optometry

Hall, Anita, Arlington, TX, $26,552.73, Southern College of Optometry, Memphis, TN, Optometry, May 1989
Harrison-Greenfield, Nancy A., Katy, TX, $71,804.43, New England College of Optometry, Boston, MA, Optometry, March 1985
McGregor, Scott D., Carrollton, TX, $103,406.67, Southern College of Optometry, Memphis, TN, Optometry, June 1986

Osteopathy

Abdal-Alim, Khalid, Houston, TX, $28,678.68, Univ of Osteo Medical & Health Science, Des Moines, IA, Osteopathy, June 1991
Alvarado, Leticia D., San Antonio, TX, $1,644.31, Michigan State University, East Lansing, MI, Osteopathy, June 1984
Brooks, Marc E., Austin, TX, $35,061.53, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, June 1991
Burks, Chester L., Dallas, TX, $42,682.24, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, May 1983

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Gross, George G., Arlington, TX, $20,357.34, Kirksville Col of Osteopathic Medicine, Kirksville, MO, Osteopathy, June 1980
Lee, John H., Port Author, TX, $10,920.70, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, May 1986
Mayberry, Bobby J., Fort Worth, TX, $2,963.87, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, June 1990
Morrill, Thomas R., Mesquite, TX, $61,792.19, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, May 1986
Overton, Lora, Fort Worth, TX, $15,283.15, Oklahoma State University, Tulsa, OK, Osteopathy, May 1988
Poplawsky, James, Boerne, TX, $8,189.59, Univ of North Texas Health Science Ctr, Fort Worth, TX, Osteopathy, May 1985

Pharmacy

Boboye, Cyril C., Arlington, TX, $12,823.51, Creighton University, Omaha, NE, Pharmacy, August 1985
Breedlove, Arthur L., Irving, TX, $1,593.05, Texas Southern University, Houston, TX, Pharmacy, December 1987
Jenewari, Elsie N., Houston, TX, $7,877.31, Creighton University, Omaha, NE, Pharmacy, August 1983
Powe, Roderick L., Dallas, TX, $24,637.35, Creighton University, Omaha, NE, Pharmacy, August 1985

Podiatry

Baxendale, Robert, Dallas, TX, $31,340.88, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1982
Baxter, Bobby C., Houston, TX, $130,612.10, Dr. William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984
Bethea, Carroll Ruth, Irving, TX, $61,981.55, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Dang, Dung D., Channelview, TX, $89,361.00, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1989
Edwards, Fanny F., Houston, TX, $24,235.70, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984
Ellington, James D., Southlake, TX, $27,368.64, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1993
Ezzeh, Mary, Duncanville, TX, $144,649.14, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1989
Gipson, Helen D., Dallas, TX, $64,656.24, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1985
Grocoff, Ronald D., Plano, TX, $40,087.01, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1980
Knutson, Timothy, San Antonio, TX, $82,446.69, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1981
Moss, Stephen, Houston, TX, $92,859.03, Dr. William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1989
Negash, Omer O., Houston, TX, $17,404.31, Barry University-Podiatric Med, Miami Shores, FL, Podiatry, May 1989
Ramirez, Jesus, El Paso, TX, $70,894.77, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983
Rose, Myrtle F., Dallas, TX, $126,464.87, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1987
Stillwagoner, Lee W., Sulfur Springs, TX, $28,231.04, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1989
Tanenbaum, Jeffrey C., Houston, TX, $43,179.46, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1980
Taylor, Emma, Houston, TX, $147,003.96, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1990
Updyke, John G., Austin, TX, $117,010.67, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1981

Public Health

Gilbert, Grant D., Houston, TX, $37,258.58, Univ of Illinois At Chicago, Chicago, IL, Public Health, September 1982
Perry, Terry T., Houston, TX, $5,816.20, Tulane University, New Orleans, LA, Public Health, May 1984

Veterinary Medicine

Brinkley, Marty R., Kaufman, TX, $1,719.33, Oklahoma State University, Stillwater, OK, Veterinary Medicine, May 1990

Utah

Allopathic Medicine

Manchester, Kevin K., West Valley City, UT, $21,331.50, Univ of Nevada Reno, Reno, NV, Allopathic Medicine, May 1989

Chiropractic

Bowman, Jeffrey J., Salt Lake City, UT, $12,123.56, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1983
Brown, James A., West Jordan, UT, $58,745.08, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
De Mille, Alan M., Cedar City, UT, $118,340.02, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1987
Howard, Douglas D., Salt Lake City, UT, $27,048.89, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986
Madsen, Richard, Salt Lake City, UT, $33,054.87, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1985
Mangum, Donald L., Panguitch, UT, $75,604.57, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988
Martin, Craig J., Salt Lake City, UT, $29,315.37, Life Chiropractic College-west, San Lorenzo, CA, Chiropractic, December 1987
Patton, Daniel R., Salt Lake City, UT, $83,850.01, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1987
Robinette, Terry A., Sandy, UT, $61,943.00, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Taylor, Todd R., Bountiful, UT, $2,208.36, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1987

Dentistry

Gifford, Craig P., Salt Lake City, UT, $158,573.27, Case Western Reserve University, Cleveland, OH, Dentistry, May 1987
Troili, Dean C., Salt Lake City, UT, $184,494.00, Marquette University, Milwaukee, WI, Dentistry, May 1986
Tucker, Bret J., Salt Lake City, UT, $65,509.14, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1988
Wigg, Kenneth Y., Price, UT, $2,032.49, Creighton University, Omaha, NE, Dentistry, May 1991

Optometry

Haggard, Joe R., Springville, UT, $6,036.79, Illinois College of Optometry, Chicago, IL, Optometry, May 1987
Mitchell, Mike K., Salt Lake City, UT, $42,751.31, Southern Calif College of Optometry, Fullerton, CA, Optometry, May 1986

Podiatry

Haase, George G., Ogden, UT, $57,141.19, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1984

Rindlisbacher, Mark C., Payson, UT, $151,673.85, Dr William Scholl Col of Podiatric Med, Chicago, IL, Podiatry, May 1988
Tindall, Michael A., Magna, UT, $77,972.29, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1988

Vermont

Chiropractic

Ramirez, Laura A., Burlington, VT, $14,353.92, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1990
Swett, Robert, Manchester, VT, $31,047.63, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988

Dentistry

Wiebking, Henry A., Richmond, VT, $95,660.96, Univ of Maryland Baltimore, Baltimore, MD, Dentistry, January 1985

Veterinary Medicine

Ponte, Paula J., Bennington, VT, $192,999.43, Tufts University, Boston, MA, Veterinary Medicine, May 1987

Virgin Islands

Chiropractic

Slotnick, Robin, Kingshill, VI, $68,175.18, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1989

Virginia

Allopathic Medicine

Asamoah, Nana, Herndon, VA, $11,640.47, George Washington University, Washington, DC, Allopathic Medicine, May 1990
Boschulte, Jualenda, Alexandria, VA, $59,290.15, Georgetown University, Washington, DC, Allopathic Medicine, May 1989
Dempster, Alexandra, Aldie, VA, $26,399.13, Univ of Miami, Miami, FL, Allopathic Medicine, May 1987
Gomez, Mario, Richmond, VA, $29,951.05, Eastern Virginia Medical School, Norfolk, VA, Allopathic Medicine, June 1983
Gong, Pearl, Charlottesville, VA, $9,411.16, Albert Einstein Med Col of Yeshiva Univ, Bronx, NY, Allopathic Medicine, June 1983
Harrington, Baxter C., Midlothian, VA, $47,769.83, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1985
Kirk Jr, Vernon H., Portsmouth, VA, $46,283.40, Univ of Utah, Salt Lake City, UT, Allopathic Medicine, June 1986
Scott, Rosemary C., Saluda, VA, $135,573.51, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1987
Thomas, Giovana R., Alexandria, VA, $9,688.29, Univ of Rochester, Rochester, NY, Allopathic Medicine, May 1988
Tolliver, John, Fairfax, VA, $5,536.02, Univ of Med & Dent of New Jersey, Newark, NJ, Allopathic Medicine, May 1984
Wright, Richard O., Virginia Beach, VA, $69,150.99, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1984

Chiropractic

Clayton, Richard E., Richmond, VA, $75,192.00, Life College, Marietta, GA, Chiropractic, March 1985
Davis, Thomas A., Waynesboro, VA, $85,971.28, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Dotti, John T., Newport News, VA, $90,996.91, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, May 1983
Ganther, Timothy, Virginia Beach, VA, $67,187.38, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Headley, Patricia, Roseland, VA, $49,574.63, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Jackson, Zona G., Freeman, VA, $23,937.66, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1988
Kessler, Edward, Virginia Beach, VA, $46,052.75, Life College, Marietta, GA, Chiropractic, December 1983
Khalsa, Gururakha, Arlington, VA, $39,429.05, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Kilmer, David, Thaxton, VA, $43,314.89, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1985
Panza, Tony, Williamsburg, VA, $15,614.15, Life College, Marietta, GA, Chiropractic, March 1990
Seaman, John J., Hayes, VA, $19,778.55, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, September 1985
Streicher, Bruce, Shipman, VA, $73,882.35, Life College, Marietta, GA, Chiropractic, March 1985
Vosburgh, Stephen E., Sterling, VA, $107,022.87, Life College, Marietta, GA, Chiropractic, January 1985
Ziegler, Louis, Alexandria, VA, $44,076.77, Life College, Marietta, GA, Chiropractic, December 1989

Dentistry

Amouhashem, Parvin, Springfield, VA, $8,600.84, Georgetown University, Washington, DC, Dentistry, May 1990
Bukowski, Todd M., Arlington, VA, $26,978.62, Suny Buffalo, Buffalo, NY, Dentistry, June 1989
Bunn, Steven T., Alexandria, VA, $108,123.97, Georgetown University, Washington, DC, Dentistry, May 1983
Freeman Jr, Lenwood, Ladysmith, VA, $11,181.32, Howard University, Washington, DC, Dentistry, May 1988
Gibboney, Dana, Virginia Beach, VA, $56,713.17, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1992
Holley, Elizabeth, Chesapeake, VA, $33,406.36, Meharry Medical College, Nashville, TN, Dentistry, May 1991
Jennings, Kevin K., Chesapeake, VA, $163,955.50, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Jones, Gale F., Richmond, VA, $60,375.64, Howard University, Washington, DC, Dentistry, May 1987
Labrie, Gerald F., Springfield, VA, $20,438.71, Georgetown University, Washington, DC, Dentistry, May 1983
Miller, Jay P., Arlington, VA, $9,153.73, Georgetown University, Washington, DC, Dentistry, May 1990
Nicholas, Robert, Richmond, VA, $24,568.57, Virginia Commonwealth University, Richmond, VA, Dentistry, May 1987
Pearson, Haywood, Richmond, VA, $140,789.11, Meharry Medical College, Nashville, TN, Dentistry, May 1983
Peoples, Douglas B., Petersburg, VA, $21,475.95, Georgetown University, Washington, DC, Dentistry, May 1983
Preston, Richard G., Richmond, VA, $8,079.82, Georgetown University, Washington, DC, Dentistry, May 1985
Ruffin, Wyatt M., Virginia Beach, VA, $198,885.17, Meharry Medical College, Nashville, TN, Dentistry, December 1983
Scott, Annette, Alexandria, VA, $80,864.70, Howard University, Washington, DC, Dentistry, May 1986
Shaffner, Robert, Christiansburg, VA, $205,986.71, Marquette University, Milwaukee, WI, Dentistry, May 1988
Solliday, Michael P., Arlington, VA, $19,295.09, Georgetown University, Washington, DC, Dentistry, May 1987
Willis, Orion W., Portsmouth, VA, $31,868.56, Howard University, Washington, DC, Dentistry, May 1983
Wilson, Sulyn, Vienna, VA, $6,627.94, Georgetown University, Washington, DC, Dentistry, May 1990

Optometry

Pfab, Mary C., Petersburg, VA, $67,336.10, Southern College of

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Optometry, Memphis, TN, Optometry, June 1985

Osteopathy

Hobowsky, Martin, Norfolk, VA, $122,775.00, Oklahoma State University, Tulsa, OK, Osteopathy, May 1986

Pharmacy

Habib, Suraia, Alexandria, VA, $2,941.54, Massachusetts College of Pharmacy, Boston, MA, Pharmacy, June 1989

Wright, James, Clifton, VA, $56,286.18, Howard University, Washington, DC, Pharmacy, May 1986

Podiatry

Anderson III, Jesse N., Norfolk, VA, $104,301.36, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1984

Dew, John, Norfolk, VA, $76,590.75, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, June 1990

McMillion, Jerry, Richmond, VA, $42,750.58, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, May 1992

Public Health

Talley, Mark D., Richmond, VA, $2,028.36, Univ of North Carolina Chapel Hill, Chapel Hill, NC, Public Health, May 1986

Veterinary Medicine

Griffith, Deborah, Virginia Beach, VA, $21,731.41, Tuskegee University, Tuskegee, AL, Veterinary Medicine, May 1983

Taylor, Christopher, Port Republic, VA, $19,073.29, Michigan State University, East Lansing, MI, Veterinary Medicine, June 1987

Washington

Allopathic Medicine

Haririe, Jim J., Kent, WA, $50,221.24, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1983

Lindsey-Wright, Karen, Seattle, WA, $111,005.95, Meharry Medical College, Nashville, TN, Allopathic Medicine, May 1989

Sahm, Roger, Spokane, WA, $98,927.37, Vanderbilt University, Nashville, TN, Allopathic Medicine, May 1988

Smith Naporn, Atania, Gig Harbor, WA, $75,496.82, Medical College of Pennsylvania, Philadelphia, PA, Allopathic Medicine, June 1985

White, Jeffrey, Chattaroy, WA, $62,881.50, Oral Roberts University, Tulsa, OK, Allopathic Medicine, May 1985

White, Leroy C., Tacoma, WA, $27,734.63, Temple University, Philadelphia, PA, Allopathic Medicine, June 1981.

Chiropractic

Chinn, Greg, Kirkland, WA, $85,371.47, Life College, Marietta, GA, Chiropractic, December 1989

Collins, Norman E., Renton, WA, $68,117.32, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1988

Corley, David L., Tacoma, WA, $43,083.52, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1984

Corley, Lee, Everett, WA, $83,598.13, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, June 1989

Craig, Bradley, Vancouver, WA, $99,273.62, Western States Chiropractic College, Portland, OR, Chiropractic, June 1988

Diel, Gary R., Gig Harbor, WA, $100,167.57, Life College, Marietta, GA, Chiropractic, September 1984

Diel-Singleton, Betty Knox B., Tacoma, WA, $51,305.65, Life College, Marietta, GA, Chiropractic, June 1984

Dreyer, Frank J., Spokane, WA, $15,617.22, Palmer College of Chiropractic, Davenport, IA, Chiropractic, September 1984

Eartheart-Grim, Peter A., Mukelteo, WA, $51,076.16, Western States Chiropractic College, Portland, OR, Chiropractic, December 1983

Erkel, Thomas R., Bellevue, WA, $28,394.74, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985

Grubstein, Alan, Tacoma, WA, $98,691.93, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1987

Hamilton, Charles A., Seattle, WA, $19,369.37, Life College, Marietta, GA, Chiropractic, March 1989

Hartley, William, Seattle, WA, $36,848.24, Western States Chiropractic College, Portland, OR, Chiropractic, December 1990

Katz, Gary S., Edmonds, WA, $24,237.31, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1983

Kronlund, Douglas G., Puyallup, WA, $31,405.41, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, March 1990

McCord, Allan R., Renton, WA, $13,914.18, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1983

McKilligan, Terrance, Woodland, WA, $14,188.44, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985

Nicholes, David L., Woodinville, WA, $18,072.71, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1989

Olson, Lee E., Redmond, WA, $8,284.29, Western States Chiropractic College, Portland, OR, Chiropractic, March 1984

Phelps, Carl C., Issaquah, WA, $28,272.78, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1985

Pittman, Joanne E., Lake Stevens, WA, $72,951.40, Life College, Marietta, GA, Chiropractic, March 1986

Scheen, Susan, Vashon, WA, $4,439.37, Western States Chiropractic College, Portland, OR, Chiropractic, June 1986

Schwartz, Gerald, Silverdale, WA, $70,356.33, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, August 1986

Scovel, Michael, Everett, WA, $104,483.70, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, December 1988

Stanton, Lawrence, Seattle, WA, $8,346.16, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1985

Taylor, Larry D., Wapato, WA, $37,970.59, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, October 1986

Terides, Michael, Bellingham, WA, $80,769.76, Palmer College of Chiropractic West, San Jose, CA, Chiropractic, March 1991

Tyrell, Michael, Spokane, WA, $134,235.03, Life College, Marietta, GA, Chiropractic, June 1986

Walters, Jerome P., Olympia, WA, $35,510.97, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1983

Clinical Psychology

Kinney, Lorrin L., Vancouver, WA, $31,637.13, California Sch of Prof Psych Fresno, Fresno, CA, Clinical Psychology, August 1987

Mattila, William, Bremerton, WA, $49,150.43, Fuller Theological Seminary, Pasadena, CA, Clinical Psychology, June 1989

Dentistry

Clark, Russell, Everett, WA, $136,038.02, Univ of The Pacific, San Francisco, CA, Dentistry, June 1990

Robinson, Harold L., Tumwater, WA, $37,145.18, Temple University, Philadelphia, PA, Dentistry, January 1988

Optometry

Splinter, Kenneth W., Aberdeen, WA, $22,671.81, Pacific University, Forest Grove, OR, Optometry, May 1984

Osteopathy

Williams, Robert, Seattle, WA, $178,894.30, Univ of New England, Biddeford, ME, Osteopathy, June 1987

Pharmacy

Day, Harold E., Bremerton, WA, $2,066.22, Long Island University, Brookville, NY, Pharmacy, January 1987

Podiatry

Burgess, Jonathan, Vancouver, WA, $78,662.23, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1990

Morrison, John T., Port Orchard, WA, $35,347.95, Ohio College of Podiatric Medicine, Cleveland, OH, Podiatry, May 1983

West Virginia

Allopathic Medicine

Arreola, Rodolfo, Morgantown, WV, $32,250.27, Brown University, Providence, RI, Allopathic Medicine, May 1990

James, Tyshaun, Charlestown, WV, $27,695.30, Marshall University, Huntington, WV, Allopathic Medicine, May 1989

Chiropractic

Calandros, George, Huntington, WV, $1,153.89, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1991

Henshaw, Clifford D., Charlestown, WV, $60,654.19, Life College, Marietta, GA, Chiropractic, March 1988

Dentistry

Chattin, Donald H., Parkersburg, WV, $1,284.04, West Virginia University, Morgantown, WV, Dentistry, May 1980

Freeman, Kenneth K., Charlestown, WV, $32,805.08, Case Western Reserve University, Cleveland, OH, Dentistry, May 1986

Osteopathy

Booth, Christopher R., Alderson, WV, $21,843.02, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, May 1992

Gant, Allan L., Richwood, WV, $14,923.36, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, June 1981

Kirkland, Charles K., Elkins, WV, $56,680.87, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, May 1984

Spanos, George K., Huntington, WV, $9,594.93, West Virginia School of Osteopathic Med, Lewisburg, WV, Osteopathy, May 1982

Wisconsin

Allopathic Medicine

Boyd, Olage O., Milwaukee, WI, $184,296.18, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1984

Erickson, Gregg, Elroy, WI, $29,626.59, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1980

Harris, Ernest H., Madison, WI, $33,490.25, Univ of Illinois Medical Center, Chicago, IL, Allopathic Medicine, June 1983

Lane, Michael, Shorewood, WI, $13,973.76, Creighton University, Omaha, NE, Allopathic Medicine, May 1989

Leisman, Scott, Madison, WI, $9,071.75, Univ of Wisconsin Madison, Madison, WI, Allopathic Medicine, June 1982

Mansur, Sharif S., Menomoee Falls, WI, $13,438.41, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1989

Miller, Julie, Milwaukee, WI, $49,311.57, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, August 1987

Onyeneke, Chuka D., Kenosha, WI, $137,608.96, Medical College of Ohio, Toledo, OH, Allopathic Medicine, June 1989

Plater, Daniel H., Madison, WI, $92,691.50, Univ of Southern California, Los Angeles, CA, Allopathic Medicine, June 1988

Pounds, Lawrence M., Hartford, WI, $183,953.00, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1988

Robbins, Lamont C., Milwaukee, WI, $50,226.95, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1980

Salazar, Marielena, Oshkosh, WI, $124,662.00, Tufts University, Boston, MA, Allopathic Medicine, May 1988

Smalley, Katherine, Holmen, WI, $24,832.80, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1991

Tesch, Patrick R., Milwaukee, WI, $32,126.32, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, September 1986

Williamson, Frederick, Milwaukee, WI, $137,419.17, Medical College of Wisconsin, Milwaukee, WI, Allopathic Medicine, May 1990

Chiropractic

Berres, George W., Colfax, WI, $68,528.61, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985

Hansen, Timothy J., Pewaukeee, WI, $18,782.37, Parker College of Chiropractic, Dallas, TX, Chiropractic, December 1986

Hultine, Lynn R., Wauwatosa, WI, $50,649.00, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1990

Kalienbach, Robert, Marshfield, WI, $90,188.06, Parker College of Chiropractic, Dallas, TX, Chiropractic, May 1989

Kleinjan, Mary B., Racine, WI, $58,108.28, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, August 1990

Mayfield, Gordon, Lodi, WI, $12,369.89, Northwestern College of Chiropractic, Bloomington, MN, Chiropractic, April 1984

Radandt, Mark, Kenosha, WI, $86,909.54, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1984

Slusher, Stephen L., Jamesville, WI, $58,956.81, Cleveland Chiropractic College, Los Angeles, CA, Chiropractic, June 1987

Stick, Alex A., West Bend, WI, $7,574.08, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1985

Ulbrich, George A., Neenah, WI, $12,790.83, Western States Chiropractic College, Portland, OR, Chiropractic, March 1983

Vance, Julie E., Racine, WI, $33,463.07, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988

Waschbisch, Sue A., Oconto Falls, WI, $12,412.56, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1992

Werner, Mary, Seymour, WI, $60,319.96, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1983

Dentistry

Bartelt, Craig, Fond Du Lac, WI, $18,659.96, Marquette University, Milwaukee, WI, Dentistry, May 1984

Bock, Jerome, Milwaukee, WI, $144,572.35, Marquette University, Milwaukee, WI, Dentistry, May 1988

Dove, Edward E., Milwaukee, WI, $17,247.58, Marquette University, Milwaukee, WI, Dentistry, May 1989

Jones, Harold A., Milwaukee, WI, $115,572.54, Marquette University, Milwaukee, WI, Dentistry, May 1989

Karr, Robert A., Milwaukee, WI, $169,785.25, Marquette University, Milwaukee, WI, Dentistry, May 1985

Law, Daniel, Milwaukee, WI, $88,774.00, Marquette University, Milwaukee, WI, Dentistry, May 1986

Mallien, Maria M., Milwaukee, WI, $145,302.81, Marquette University, Milwaukee, WI, Dentistry, December 1985

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Morrison, Michael B., West Allis, WI, $161,978.00, Marquette University, Milwaukee, WI, Dentistry, May 1988
Pendleton, Darryl D., Glendale, WI, $6,833.67, Southern Illinois Univ Edwardsville, Edwardsville, IL, Dentistry, December 1986
Reed, John F., Madison, WI, $155,067.14, Marquette University, Milwaukee, WI, Dentistry, May 1986
Sadien, Habib, Milwaukee, WI, $29,109.03, Loyola University Chicago, Chicago, IL, Dentistry, May 1993
Sanderson, Scott F., Stoughton, WI, $151,960.37, Marquette University, Milwaukee, WI, Dentistry, May 1989
Tanski, Thomas A., Grafton, WI, $14,827.53, Marquette University, Milwaukee, WI, Dentistry, May 1982
Volkert, Lawrence, Racine, WI, $85,839.57, Marquette University, Milwaukee, WI, Dentistry, May 1986

Podiatry

Perpich, Thomas T J, Milwaukee, WI, $105,740.73, Univ of Osteo Medical & Health Science, Des Moines, IA, Podiatry, June 1987

Public Health

Rodriquez, Victor, Milwaukee, WI, $3,911.16, Tulane University, New Orleans, LA, Public Health, May 1989

Veterinary Medicine

Nance, Dara, Madison, WI, $34,806.22, Univ of Wisconsin Madison, Madison, WI, Veterinary Medicine, May 1992
Patterson, William H., Oregon, WI, $3,943.28, Michigan State University, East Lansing, MI, Veterinary Medicine, June 1984

Wyoming

Allopathic Medicine

Nelson, Vivian I., Cheyenne, WY, $13,755.81, Univ of North Dakota, Grand Forks, ND, Allopathic Medicine, May 1993

Chiropractic

Kilgore, Charles, Torrington, WY, $75,465.44, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, September 1985

Foreign Countries

Allopathic Medicine

Dotson, Tanya J., Copenhagen, Denmark, $30,172.35, Morehouse School of Medicine, Atlanta, GA, Allopathic Medicine, June 1986
Hawkins, Irene, Florence, Italy, $4,905.56, Cornell University Medical College, New York, NY, Allopathic Medicine, May 1985
Kavadellas, Anastasi, City Unknown, Greece, $12,515.28, Univ of Miami, Miami, FL, Allopathic Medicine, May 1986
Maynez, Miguel A., Nervante, Mexico, $58,946.12, Hahnemann University, Philadelphia, PA, Allopathic Medicine, June 1982
Nelson, Richard, Riyadh, Saudi Arabia, $12,105.37, Loma Linda University, Loma Linda, CA, Allopathic Medicine, June 1991
Palmer-West, Lori J., Toronto, Canada, $70,023.55, Tulane University, New Orleans, LA, Allopathic Medicine, June 1983
Ponder III, Alvin, City Unknown, West Indies, $49,676.06, Howard University, Washington, DC, Allopathic Medicine, May 1987
Roybal-Hazen, Maria E., City Unknown, Mexico, $28,799.21, Michigan State University, East Lansing, MI, Allopathic Medicine, June 1989
Weekes Jr, Noel N., Pecs, Hungary, $101,285.57, George Washington University, Washington, DC, Allopathic Medicine, May 1989

Chiropractic

Abriel, Mark B., Sydney, Australia, $28,906.34, Life College, Marietta, GA, Chiropractic, June 1984
Akins, Jeff, London, England, $67,082.70, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1989
Brunstein, Florian, Rome, Italy, $54,440.56, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, April 1989
Campbell, Fredrik, City Unknown, Sweden, $9,620.68, Western States Chiropractic College, Portland, OR, Chiropractic, June 1992
Clubb, David A., Queensland, Australia, $118,252.62, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, December 1986
Deboer, Gregory, Vordingborg, Denmark, $30,106.51, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1986
Dippie, John M., City Unknown, Australia, $41,041.90, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1990
Esser, Clinton, Winnipeg Manitoba, Canada, $18,797.61, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, December 1989
Etminan-Rad, Monica A., Tehran, Iran, $14,510.29, Palmer College of Chiropractic, Davenport, IA, Chiropractic, March 1985
Maddalone, Dawn M., Barbados, West Indies, $37,037.11, Palmer College of Chiropractic, Davenport, IA, Chiropractic, June 1987
McRoberts, Lynn, Ontario, Canada, $39,316.96, Los Angeles College of Chiropractic, Whittier, CA, Chiropractic, December 1991
Morris, Clifford, Apeldoorn, Netherlands, $46,014.34, National College of Chiropractic, Lombard, IL, Chiropractic, December 1988
Nixon, Jeffrey L., Aylmar Quebec, Canada, $80,274.26, Cleveland Chiropractic College, Kansas City, MO, Chiropractic, May 1987
Omeara, Daniel, Manila, Philippines, $61,129.50, Life Chiropractic College-West, San Lorenzo, CA, Chiropractic, April 1989
Pierre, Claude P., Tromsoe, Norway, $43,057.92, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1989
Pressnall, Lana, Alberta, Canada, $7,245.01, Western States Chiropractic College, Portland, OR, Chiropractic, December 1991
Ridings, Vicki V T, city unknown, England, $20,829.88, Texas Chiropractic College Foundation, Pasadena, TX, Chiropractic, April 1984
Schumacher-Cameron, Tara L., Alberta, Canada, $32,812.47, Palmer College of Chiropractic, Davenport, IA, Chiropractic, December 1988
Thomas, Jack R., Gleenwood Alberta, Canada, $18,100.02, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, August 1986
Torkelson, Scott S., city unknown, Denmark, $33,419.82, Palmer College of Chiropractic, Davenport, IA, Chiropractic, October 1986
Wren, Russell, Jonkoting, Sweden, $69,729.80, Logan College of Chiropractic, Chesterfield, MO, Chiropractic, April 1990

Clinical Psychology

Perris-Myttas, Marina, Barnet Herts, United Kingdom, $6,640.87, Univ of Denver, Denver, CO, Clinical Psychology, August 1988

Dentistry

Akande-Robinson, Deborah A., city unknown, West Indies, $137,779.25, Meharry Medical College, Nashville, TN, Dentistry, July 1982
McWeeney, Vincent, Nassau, Bahamas, $187,887.59, Marquette University, Milwaukee, WI, Dentistry, May 1988
Nielsen, David, Yaound, Cameroun, $131,468.23, Loma Linda University, Loma Linda, CA, Dentistry, June 1989
Shakman, Robert E., Jamaica, West Indies, $138,401.55, Tufts University, Boston, MA, Dentistry, June 1985
Taylor-Hearn, Kathleen, City Unknown Canada, $8,984.53, Univ of Pennsylvania, Philadelphia, PA, Dentistry, May 1985

Optometry

Arenaza, Gilbert, city unknown, Netherlands Antilles, $16,471.47, New England College of Optometry, Boston, MA, Optometry, May 1991
Medlock, Melissa M., Abu-Alanda, Jordon, $18,563.01, Illinois College of Optometry, Chicago, IL, Optometry, May 1989

Pharmacy

Hoffman, Beverley A., Capetown, South Africa, $20,732.99, Univ of Southern California, Los Angeles, CA, Pharmacy, May 1984

Podiatry

Enrico, Julie M., City Unknown, Canada, $94,856.64, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1983
Jacobs, Benjamin J., Domingo, Dominican Republic, $9,401.45, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1991
Lunetto, James V., Karlsruhe, Germany, $40,632.39, New York College of Podiatric Medicine, New York, NY, Podiatry, June 1984
Mirchoff, William F., Victoria BC, Canada, $15,631.65, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1982
Turner, Patrick, Penticton BC, Canada, $78,173.97, Pennsylvania Col of Podiatric Medicine, Philadelphia, PA, Podiatry, June 1984
Wade, Paul W., city unknown, Australia, $25,316.97, California College of Podiatric Medicine, San Francisco, CA, Podiatry, May 1983

Public Health

Okosun, Ikekekhuamhenn, Bauchi, Nigeria, $19,912.87, Univ of Oklahoma Health Sciences Center, Oklahoma City, OK, Public Health, June 1987

Veterinary Medicine

Crossman-McLauchlan, Dorothy, Bulimba Qld, Australia, $45,428.64, Tufts University, Boston, MA, Veterinary Medicine, May 1985
Kennedy, Meredith E., Arusha, Tanzania, $807.16, Michigan State University, East Lansing, MI, Veterinary Medicine, June 1990

Dated: March 6, 1995

Ciro V. Sumaya,

Administrator

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Wednesday
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Part III

Department of Labor
Employment and Training Administration

Department of Education
Office of Vocational and Adult Education

Job Training Partnership Act: School-To-Work Opportunities; Indian Program; Application Procedures; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Job Training Partnership Act: School-To-Work Opportunities; Indian Program; Application Procedures

AGENCIES: Employment and Training Administration, Labor. Office of Vocational and Adult Education, Education.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: This Notice contains all of the necessary information and forms needed to apply for grant funding. This notice announces a competition for Indian Program Grants to enable local partnerships to begin development or implementation of School-to-Work Opportunities initiatives that serve Indian youth and involve schools funded by the Bureau of Indian Affairs (BIA). The School-to-Work Opportunities initiatives funded under this competition will offer Indian youth access to School-to-Work Opportunities programs that will prepare them for first jobs in high-skill, high-wage careers and further postsecondary education and training.

DATES: Applications for grant awards will be accepted commencing March 15, 1995. The closing date for receipt of applications is May 15, 1995, at 2 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 95–002, 200 Constitution Avenue NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Cesario, Division of Acquisition and Assistance, Telephone: (202) 219–7300 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Section A. Purpose

This competition will award grants to local partnerships for School-to-Work Opportunities initiatives that serve Indian youth and involve Bureau-funded schools. Approximately $500,000 is available for awards under this notice. The Departments expect to award approximately 8 development grants of about $30,000 and up to 5 implementation grants ranging in amount between $50,000 and $100,000 under this notice. Grants under this competition will be financed under Title IV of the Job Training Partnership Act and will be used to implement activities that are consistent with Title II, Subtitle C of the School-to-Work Opportunities Act of 1994.

Local Partnerships may apply for either a development grant, an implementation grant or both. The competitions have been structured to allow those partnerships which have been engaged in planning and development activities to apply for an implementation grant without jeopardizing their opportunities for receiving a development grant. However, local partnerships which intend to apply for consideration under both the development and implementation grant competitions must submit separate applications for each competition. The amount of any award will be based on a number of factors, including the scope, quality, and comprehensiveness of the proposed initiative and the size of the population to be served.

The Departments intend to conduct subsequent competitions for Indian Program Grants, on an annual basis, under the recently enacted School-to-Work Opportunities Act of 1994. A local partnership may receive only one (1) development or implementation grant under this notice, with grant renewals for up to five years to be awarded depending upon fund availability and maintaining satisfactory progress.

Section B. Application Process

1. Eligible Applicants

An entity that meets the definition of "eligible partnership," as defined in section B.7 of this notice, proposes to serve Indian youth, and involves Bureau-funded schools is eligible to apply for an Indian Program Grant for either development or implementation of School-to-Work Opportunities initiatives.

2. Submission of Application

Applicants must submit an original and four (4) copies of the application. The application shall consist of four distinct parts: budget and certifications, abstract, program narrative and appendices. To ensure a comprehensive and expedient review, the Departments strongly suggest that applicants submit an application formatted as seen below:

Table of Contents

I. Budget and Certifications

Part I shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and SF 424A, "Budget" (Appendix A). All copies of the 424 Form must have original signatures of the designated fiscal agent and must indicate in item 11 whether the application is to be considered for development or implementation funding. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on Budget Form 424A. Assurances and Certifications (Appendix B) shall also be included in this part.

II. Abstract

Part II shall consist of a one page abstract summarizing the essential components and key features of the partnership's plan.

III. Program Narrative

Part III shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the Statement of Work in Section C. The Departments strongly advise applicants to describe their plan in light of each of the Selection Criteria in Section E of this notice. No cost data or reference to price shall be included in this part of the application. The Departments strongly request that applicants limit the program narrative section to no more than 40 double-spaced pages, on one side only.

IV. Appendices

All applicable appendices including letters of support, resumes and organizational charts should be included in this section. The safeguard assurance, as required under Part III, Section D, "Safeguards", of this notice, should be included in all applications as Appendix A. The Departments recommend that all appendix entries be cross-referenced back to applicable sections in the program narrative.

3. Late Applications

Any application received after the exact time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—

(a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or

(b) Was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays.

The term "post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

4. Hand-Delivered Applications

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 2:00 P.M., Eastern Time, on the closing date. Telegraphed and/or Faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

5. Period of Performance

The period of performance will be twelve (12) months from the date of award by the Department of Labor. Since all awards must be made by June 30, 1995 under this competition, the Departments recommend that all applicants use July 1, 1995–June 30, 1996 as both budgetary and project award periods.

6. Option to Extend

These Indian Program Grants may be extended for up to four additional years at the discretion of the Federal Government, based upon the availability of funds and the demonstrated progress of the grantee in implementing a School-to-Work Opportunities initiative.

Consistent with the School-to-Work Opportunities Act, the Departments expect that over time, the amount of federal funds, if any, that are added to this grant, awarded under this notice, will decrease. Funds awarded under this notice are considered "venture capital" for the establishment of School-to-Work Opportunities systems serving Indian youth. Likewise, local partnerships will eventually assume responsibility for maintaining School-to-Work Opportunities systems with other Federal, State and local resources.

7. Definitions

As used in this notice—

"All aspects of an industry" means all aspects of the industry or industry sector a student is preparing to enter, including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety issues, and environmental issues, related to that industry or industry sector;

"Bureau-funded school" as defined in Section 1139 (3) of the "Education Amendments of 1978" means:

(a) A Bureau school—a Bureau of Indian Affairs-operated elementary or secondary day or boarding school or a BIA-operated dormitory for students attending a school other than a Bureau school.

(b) A contract school—an elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the BIA under Section 102, 103 (a), or 208 of the Indian Self-Determination and Education Assistance Act.

(c) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

"Career guidance and counseling" means programs—

(a) That pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decisionmaking, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities;

(b) That assist individuals in making and implementing informed educational and occupational choices; and

(c) That aid students to develop career options with attention to surmounting gender, race, ethnic, disability, language, or socioeconomic impediments to career options and encouraging careers in nontraditional employment.

"Career major" means a coherent sequence of courses or field of study that prepares a student for a first job and that—

(a) Integrates academic and occupational learning, integrates school-based and work-based learning, and establishes linkages between secondary schools and postsecondary educational institutions;

(b) Prepares the student for employment in a broad occupational cluster or industry sector;

(c) Typically includes at least two years of secondary education and at least one or two years of postsecondary education;

(d) Provides the students, to the extent practicable, with strong experience in and understanding of all aspects of the industry the students are planning to enter;

(e) Results in the award of—

(1) a high school diploma or its equivalent, such as:

(A) a general equivalency diploma; or

(B) an alternative diploma or certificate for students with disabilities for whom such alternative diploma or certificate is appropriate;

(2) a certificate or diploma recognizing successful completion of one or two years of postsecondary education (if appropriate), and

(3) a skill certificate; and

(f) May lead to further education and training, such as entry into a registered apprenticeship program, or may lead to admission to a two- or four-year college or university.

"Elementary school" means a day or residential school that provides elementary education, as determined under State law.

"Employer" includes both public and private employers, as well as tribal businesses and school-based enterprises where appropriate;

"Eligible partnership" means an entity responsible for School-to-Work Opportunities programs funded under this competition and that—

(a) Consists of tribal organizations responsible for economic development, employment, job training, and education (such as tribal business councils, local chapters of tribal business councils, tribal departments of education), employers (including tribal businesses or school-based enterprises where applicable), representatives of Bureau-funded schools and local postsecondary educational institutions (including representatives of area vocational education schools and tribal colleges where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, students and parents; and

(b) May include other entities, such as—

(1) Employer organizations;

(2) Community-based organizations;

(3) National trade associations working at the local level;

(4) Industrial extension centers;

(5) Rehabilitation agencies and organizations;

(6) Registered apprenticeship agencies;

(7) Local vocational education entities;

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(8) Proprietary institutions of higher education (as defined in section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) that meet the eligibility and certification requirements under Title IV of such Act (20 U.S.C. 1070 et seq.);

(9) Local government agencies;

(10) Parent organizations;

(11) Teacher organizations;

(12) Vocational student organizations;

(13) Private industry councils established under section 402 of the Job Training Partnership Act (29 U.S.C. 1512);

"Postsecondary education institution" means an institution of higher education (as such term is defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088)) which meets the eligibility and certification requirements under Title IV of that Act (20 U.S.C. 1070 et seq.);

"Registered apprenticeship agency" means the Bureau of Apprenticeship and Training in the Department of Labor or a State apprenticeship agency recognized and approved by the Bureau of Apprenticeship and Training as the appropriate body for State registration or approval of local apprenticeship programs and agreements for Federal purposes;

"Registered apprenticeship program" means a program registered by a registered apprenticeship agency;

"School dropout" means a youth who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma;

"School site mentor" means a professional employed at a school who is designated as the advocate for a particular student, and who works in consultation with classroom teachers, counselors, related services personnel, and the employer of the student to design and monitor the progress of the School-to-Work Opportunities program of the student.

"Secondary school" means—

(a) A nonprofit day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12; and

(b) A Job Corps center under part B of Title IV of the Job Training Partnership Act (29 U.S.C. 1691 et seq.);

"Skill certificate" means a portable, industry-recognized credential issued by a School-to-Work Opportunities program under an approved plan, that certifies that a student has mastered skills at levels that are at least as challenging as skill standards endorsed by the National Skill Standards Act of 1994, except that until such skill standards are developed, the term "skill certificate" means a credential issued under a process described in the approved School-to-Work plan;

"Workplace mentor" means an employee or other individual, approved by the employer at a workplace, who possesses the skills and knowledge to be mastered by a student, and who instructs the student, critiques the performance of the student, challenges the student to perform well, and works in consultation with classroom teachers and the employer of the student.

Section C. Statement of Work

Part I. Background

The United States is the only industrialized nation that lacks a comprehensive and coherent system to help its youth acquire the knowledge, skills, abilities, and information about the labor market necessary to make an effective transition from school to career-oriented work. Three-fourths of America's high school students do not attain four-year college degrees. Many of them do not possess the basic academic and occupational skills necessary for entry into high-skill, high-wage careers in the changing workplace or to pursue further education.

The School-to-Work Opportunities Act of 1994 created a national framework for high-quality, statement school-to-work transition systems that enable young Americans to identify and navigate paths to productive and progressively more rewarding roles in the workplace. The funds used for the School-to-Work Indian Program grant competition were requested and appropriated prior to enactment of the School-to-Work Act. However, the Secretaries of Education and Labor have modeled the School-to-Work Opportunities Indian Grant Program on the Act.

Partnerships serving Indian youth face particular challenges in implementing School-to-Work Opportunities initiatives:

1. High unemployment and relatively few high-skill, high-wage employment opportunities often characterize the areas to be served, making it more difficult to secure employer participation, work-based learning opportunities, and career-track jobs for Indian youth who complete a School-to-Work Opportunities program. Therefore, creative strategies must be developed to make full use of the capacity of local institutions to include a variety of alternative work-based learning environments and to support intensive efforts to enhance diverse employer involvement.

2. Dropout rates of schools in Indian communities are often high, and intervention to improve student performance needs to begin in the elementary or middle school years. School-to-Work Opportunities initiatives can offer alternative learning environments, creative approaches to academic and technical subjects and relevant and engaging school-based and work-based activities that can encourage Indian youth to remain in school until completion.

3. Economic and geographic factors may create uneven educational and employment opportunities among Indian youth, thus requiring that careful consideration be given to enhancing both the access and availability of opportunities. In particular, the extremely rural nature of many tribal communities requires innovative efforts in providing high-skill high-wage employment including but not limited to opportunities with tribal businesses, school-based enterprises, and entrepreneurial training.

Under this competition, federal funds will be used as "venture capital" to establish School-to-Work Opportunities systems serving Indian youth. Local partnerships applying for development grants should be ready to use funds to involve Bureau-funded schools in establishing cooperative linkages and planning innovative methods of providing School-to-Work services for Indian youth. Local partnerships applying for implementation grants should be ready to implement School-to-Work initiatives involving Bureau-funded schools by building on and enriching existing promising programs such as tech-prep education, career academies, youth apprenticeship, school-based enterprises, job training and previous related efforts funded by the BIA. However, the purpose of funding under the School-to-Work Opportunities initiative is not simply to augment existing programs, but rather to build systems that provide opportunities for all students to achieve the benefits and outcomes of the School-to-Work Opportunities initiative. Building comprehensive systems will likely involve a combination of enhancing existing programs, establishing linkages among them, and developing an effective framework that connects both existing and new programs in a meaningful way. Through involvement in the School-to-Work Indian Program Grants, tribal organizations are expected to build over time the kind of School-to-Work Opportunities Systems that best meet their needs.

Part II. Program Description

a. Objectives

The School-to-Work Opportunities initiative provides for a substantial degree of State and local flexibility and experimentation, but all State systems, individual local initiatives and Indian Program initiatives will share several common features and basic program components as required by the School-to-Work Opportunities Act of 1994. A School-to-Work Opportunities initiative under this competition must include the following common features and basic program components:

1. The basis of the School-to-Work Opportunities system is—

(a) The integration of school-based learning and work-based learning;

(b) The integration of academic and occupational learning; and

(c) The establishment of effective linkages between secondary and postsecondary education.

2. School-to-Work Opportunities programs will—

(a) Provide participating students with the opportunity to complete career majors;

(b) Incorporate the program components described below (school-based learning, work-based learning, and connecting activities);

(c) Provide participating students, to the extent practicable, with strong experience in and understanding of all aspects of the industry the students are preparing to enter; and

(d) Provide all students with equal access to the full range of such program components (including both school-based and work-based learning components) and related activities, such as recruitment, enrollment, and placement activities, except that nothing in this notice shall be construed to provide any individual with an entitlement to services.

3. School-to-Work Opportunities initiatives must incorporate three basic program components:

(a) School-Based Learning, that includes—

- Career awareness and career exploration and counseling (beginning at the earliest possible age, but not later than the 7th grade) in order to help students who may be interested to identify, and select or reconsider, their interests, goals, and career majors, including those options that may not be traditional for their gender, race, or ethnicity;
- Initial selection by interested students of a career major not later than the beginning of the 11th grade;
- A program of study designed to meet the same academic content standards established for all students, including, where applicable, standards established under the Goals 2000: Educate America Act, and to meet the requirements necessary to prepare a student for postsecondary education and the requirements necessary to earn a skill certificate;
- A program of instruction and curriculum that integrates academic and vocational learning (including applied methodologies and team-teaching strategies), and incorporates instruction, to the extent practicable, in all aspects of an industry, appropriately tied to the career of a participant;
- Regularly scheduled evaluations involving ongoing consultation and problem solving with students and school dropouts to identify their academic strengths and weaknesses, academic progress, workplace knowledge, goals, and the need for additional learning opportunities to master core academic and vocational skills; and
- Procedures to facilitate the entry of students participating in a School-to-Work Opportunities initiative into additional training or postsecondary education programs, as well as to facilitate the transfer of the students between education and training programs.

(b) Work-based learning, that includes—

(1) Mandatory activities—

- Work experience;
- A planned program of job training and work experiences (including training related to pre-employment and employment skills to be mastered at progressively higher levels) that are coordinated with learning in the school-based learning component described above and are relevant to the career majors of students and lead to the award of skill certificates;
- Workplace mentoring;
- Instruction in general workplace competencies, including instruction and activities related to developing positive work attitudes, and employability and participative skills; and
- Broad instruction, to the extent practicable, in all aspects of the industry.

(2) Permissible activities—Such component may include such activities as paid work experience, job shadowing, school-sponsored enterprises, or on-the-job training.

(c) Connecting Activities, that include—

- Matching students with the work-based learning opportunities of employers;
- Providing, with respect to each student, a school site mentor to act as a liaison among the student and the employer, school, teacher, school administrator, and parent of the student, and, if appropriate, other community partners;
- Providing technical assistance and services to employers, including small- and medium-sized businesses, and other parties in—

(A) Designing school-based learning components as described above, work-based learning components as described above, and counseling and case management services; and

(B) Training teachers, workplace mentors, school site mentors, and counselors;

- Providing assistance to schools and employers to integrate school-based and work-based learning and integrate academic and occupational learning into the program;
- Encouraging the active participation of employers, in cooperation with local education officials, in the implementation of local activities described in this Part as school-based learning, work-based learning, or connecting activities;

(A) Providing assistance to participants who have completed the program in finding an appropriate job, continuing their education, or entering into an additional training program; or

(B) Linking the participants with other community services that may be necessary to assure a successful transition from school to work;

- Collecting and analyzing information regarding post-program outcomes of participants in the School-to-Work Opportunities initiative, to the extent practicable and appropriate for Indian programs, on the basis of socioeconomic status, gender, and disability, and on the basis of whether the participants are students with limited-English proficiency, school dropouts, disadvantaged students, or academically talented students; and
- Linking youth development activities under the School-to-Work Opportunities initiative with employer and industry strategies for upgrading the skills of their workers.

b. Examples of Allowable Activities

Funds awarded under this competition to a partnership serving Indian youth and involving Bureau-funded schools may be used only for activities undertaken to develop or implement the local partnership's plan that will provide opportunities for Indian youth to participate successfully in a School-to-Work Opportunities initiative.

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Development Grants: Eligible partnerships that have not fully developed a plan for the implementation of a School-to-Work Opportunities system may apply for development grants. These funds may support a wide range of planning and development activities. These grants are designed for situations in which an eligible partnership may not be ready to move forward with implementation of a School-to-Work Opportunities initiative, but intends to compete for implementation grants in future rounds of competition. Eligible partnerships seeking development grants must describe the planning and development activities for the School-to-Work Opportunities initiative that the partnership proposes to undertake during the 12-month grant period. The plan should include activities funded from this grant as well as from other sources. Examples of development activities that may be conducted with funds awarded under an Indian Program Grant are—

1. Initiating a planning process aimed at building a School-to-Work Opportunities initiative;
2. Identifying or establishing an appropriate structure to administer a School-to-Work Opportunities initiative;
3. Further expanding eligible partnerships as defined in this notice to participate in the design, development and administration of the School-to-Work Opportunities initiative;
4. Building consensus among local stakeholders and supporting planning and development activities to provide guidance in creating the School-to-Work Opportunities plan;
5. Initiating pilot projects to test key components of program design such as designing and testing common intake systems for students participating in School-to-Work Opportunities initiatives, and determining methods to integrate program data bases;
6. Analyzing current statutory, regulatory and administrative impediments to the creation of a School-to-Work Opportunities initiative;
7. Assessing staff training and development needs for participation in a School-to-Work Opportunities initiative;
8. Preparing the strategic plan required for submission of a proposal for an implementation grant. The plan should describe the progress expected to be achieved in the planning and development process by the end of the 12-month grant period. This should include expected "next steps."

Implementation grants: Eligible partnerships that have developed and are ready to implement a plan for a School-to-Work Opportunities initiative may apply for implementation grants. These funds may be used to support a wide range of activities providing School-to-Work Opportunities for Indian youth. Examples of implementation activities that may be conducted with funds awarded under an Indian Program Grant are:

1. Recruiting and providing assistance to employers, including small- and medium-sized businesses, tribal businesses and school-based enterprises, to provide the work-based learning components in the School-to-Work Opportunities initiative;
2. Establishing consortia of employers, including tribal businesses and school-based enterprises, to support the School-to-Work Opportunities initiative and provide access to jobs related to the career majors of students;
3. Supporting or establishing intermediaries (selected from among the members of the local partnership) to perform the connecting activities described above in Part II. a., "Objectives," and to provide assistance to Indian youth in obtaining jobs and further education and training;
4. Designing or adapting innovative school curricula that can be used to integrate academic, vocational, and occupational learning, school-based and work-based learning, and secondary and postsecondary education for all students in the area served;
5. Providing training to work-based and school-based staff on new curricula, student assessments, student guidance, and feedback to the school regarding student performance in connection with the School-to-Work Opportunities Initiative;
6. Establishing, in schools participating in a School-to-Work Opportunities initiative, a graduation assistance program to assist at-risk students, low-achieving students, and students with disabilities, in graduating from high school, enrolling in postsecondary education or training, and finding or advancing in jobs;
7. Providing career exploration and awareness services, counseling and mentoring services, college awareness and preparation services, and other services (beginning at the earliest possible age, but not later than the 7th grade) to prepare students for the transition from school to work;
8. Providing supplementary and support services, including child care and transportation, when such services are necessary for participation in a local School-to-Work Opportunities initiative;
9. Conducting or obtaining an in-depth analysis of the local labor market and the generic and specific skill needs of employers to identify high-demand, high-wage careers to target;
10. Integrating school-based and work-based learning into existing job training programs for school dropouts;
11. Establishing or expanding school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors;
12. Assisting participating employers, including small- and medium-sized businesses, tribal businesses and school-based enterprises, to identify and train workplace mentors and to develop work-based learning components;
13. Promoting the formation of partnerships between Bureau-funded schools and other elementary and secondary schools (including middle schools) and local businesses as an investment in future workplace productivity and competitiveness;
14. Designing local strategies to provide adequate planning time and staff development activities for teachers, school counselors, related services personnel, and school site mentors, including opportunities outside the classroom that are at the worksite;
15. Enhancing linkages between after-school, weekend, and summer jobs, career exploration, and school-based learning;
16. Obtaining the assistance of organizations and institutions that have a history of success in working with school dropouts and at-risk and disadvantaged youths in recruiting such Indian youth who are at-risk or school dropouts to participate in a local School-to-Work Opportunities initiative;
17. Conducting outreach to all students in a language and manner that most appropriately and effectively meets their needs and responds to the needs of their community;
18. Experimenting with providing work-based learning opportunities both inside and outside the Indian community;
19. Developing, in conjunction with Title I of the Elementary and Secondary Schools Act or other funds, improvements in the Bureau-funded and other elementary and middle schools that serve the Indian community in order to reduce the long-term dropout rate of Indian youth;
20. Developing and implementing techniques that will increase the college enrollment of Indian youth in the targeted area;
21. Utilizing complementary initiatives within the targeted area such as comprehensive sports and recreation programs, after-school programs, and community development activities;
22. Encouraging Indian youth to design and initiate innovative work-based learning activities operated within a school setting; and
23. Developing and implementing school-based and work-based learning and connecting activities that are related to the tribal organization's economic development plan.

Part III. Application Contents

All eligible applicants for development or implementation grants must submit an application which provides evidence of key descriptive components. Since applicants have been recommended to submit applications which describe their plan in light of the Selection Criteria defined in Section E, the Departments suggest that applicants provide evidence of the following as part of the applicable Selection Criteria addressed in the Program Narrative section of application. Applications must include the following:

a. A description of the composition of the eligible partnership as previously defined in Section B.7 of this announcement. Partnerships applying for either development or implementation grants must identify and provide evidence of the involvement of the members of the local partnership required to make the application eligible for consideration in the Indian Program. Partnerships applying for implementation grants must clearly outline the respective roles of each member of the partnership and how the partnership is organized to successfully implement the planned local School-to-Work Opportunities initiative. Given the particular needs in Indian communities, special efforts should be made to coordinate community services to successfully identify and address the special needs of the Indian youth.

b. A description of the targeted area to be covered, and its relationship to the surrounding labor market. Included in the description should be information on specific employer needs (including those of tribal businesses or school-based enterprises where applicable); industry and occupational growth projections; high-demand, high-wage careers to be targeted and the relationship of these factors to the tribal organization's economic plan (where applicable). The description should include information for the entire labor market area in which the Indian community is located.

c. A description of the short- and long-term goals and performance outcomes that the partnership has established an how the partnership will measure its progress in meeting these goals for developing or implementing a system. In addition to goals related directly to School-to-Work Opportunities outcomes, such goals for Indian Program initiatives might include decreased dropout rates, decreased truancy rates, and increased college entry and entered employment rates. In addition to describing its own goals and outcomes, each local partnership awarded a grant under this notice must commit to assisting the Federal Government in carrying out a national evaluation that will track and assess the progress and effectiveness of the School-to-Work Opportunities initiative.

d. A description of the current and planned coordination between the local partnership's School-to-Work Opportunities initiative in the Indian community and the tribal organization's economic development, workforce development and education reform plans. Areas to be addressed include: the development of skill standards and processes for awarding skill certificates; the establishment of a system-wide evaluation process; the identification of emerging occupations appropriate for career majors; the development of new curricula; strategies for recruiting employers and providing paid work-based learning experiences; and providing professional staff development. Should the tribal organization and the Bureau-funded school not have a plan for developing skill standards and awarding skill certificates, the application should describe the local partnership's proposed activities concerning the investigation and adaptation of existing industry-recognized standards or existing processes for awarding industry-recognized certificates to incorporate the criteria established in the Goals 2000: Educate America Act. States and neighboring partnerships located near the area may serve as a source of information regarding skill standards and skill certificates recognized in the local labor market and in other parts of the State.

e. A timeline outlining the specific tasks to be undertaken related to development or to implementation of a School-to-Work Opportunities plan, with expected completion dates and stated outcomes to be achieved.

f. A designation of a fiscal agent to receive and be accountable for funds awarded under this notice.

Section D. Safeguards

The Departments apply the following safeguards to School-to-Work Opportunities programs funded under this competition:

1. No student in a School-to-Work Opportunities program shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits.)
2. No School-to-Work Opportunities program shall impair exiting contracts for services or collective bargaining agreements, and no program under this competition that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.
3. No student participating in School-to-Work Opportunities program shall be employed or fill a job—

a. When any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent job with the participating employer; or

b. When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with a student.

4. Students shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of Federal, State, and local law.
5. Nothing in this notice shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of religion, gender, age, or disability.
6. Funds awarded under this competition shall not be expended for wages of students or workplace mentors participating in School-to-Work Opportunities programs.
7. The grantee shall implement and maintain such other safeguards as the Departments may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or to otherwise further the purposes of this program.

An applicant must provide an assurance, in the application appendices, that the foregoing safeguards will be implemented and maintained throughout all program activities.

Section E. Selection Criteria

Under the School-to-Work Opportunities Indian Program Grants competition announced in this notice, a careful evaluation of applications will be made by a panel constructed of (a) peer reviewers and (b) specialists within the Departments of Labor and Education. Each panelist will evaluate the applications against the criteria

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listed below, with emphasis on the scope and quality of the proposed plan and with careful consideration of the effectiveness, rather than the presence, of each program component. The panel results are advisory in nature and not binding on the Grants Officer. Final funding decisions will be made based on the results of the panel review process and such other factors as: geographic balance, diversity of programmatic approaches, replicability, sustainability, and innovation. The Government will use the following selection criteria in evaluating applications for *development grants:*

Selection Criteria

Selection Criterion 1: Vision of a local School to Work Opportunities initiative incorporating the elements described in Part II of this notice.

Points: 30.

Considerations: In applying this criterion, reviewers will consider:

* How well does the vision of an integrated delivery system for School-to-Work Opportunities incorporate the common features and basic program components described in Part II of this notice?

* How clearly are the problems and/or inefficiencies of current programs and approaches understood and articulated?

* How clearly does the partnership articulate how it envisions integrating promising existing programs into a comprehensive School-to-Work Opportunities system?

* How well does this vision incorporate realistic strategies to ensure that "all students" have opportunities to participate in School-to-Work initiatives?

* How well does the vision address the needs of the labor market within which the targeted area is located, including the tribal economic plan?

* How well does the vision convey the partnership's connection between the proposed School-to-Work Opportunities system and overall education reform?

Selection Criterion 2: Approach to collaboration, planning and development.

Points: 30.

Considerations: In applying this criterion, reviewers will consider:

* Whether the eligible partnership includes all of the required representatives as defined in section E.7 of this notice?

* Whether other appropriate officials and organizations necessary to achieve the objectives of the application are also represented?

* To what extent will employers and representatives of workers participate in the development of the plan?

* Are the roles and responsibilities of each partner well articulated and substantive?

* Is the plan likely to lead to a broad consensus about the design of the School-to-Work Opportunities system?

* Is the proposal clear on who will have the day to day responsibilities for the grant and how major decisions will be made?

Selection Criterion 3: Feasibility and soundness of the development plan.

Points: 25.

Considerations: In applying this criterion, reviewers will consider:

* Are the planned activities likely to prepare the eligible partnership to implement a School-to-Work Opportunities initiative?

* To what extent has progress already been made?

* Are staff development and training needs fully considered?

* Does the development process fully take advantage of technology?

* Whether the approach to identifying and overcoming anticipated barriers to the development of the partnership's School-to-Work plan is feasible?

* Whether the management plan and related timeline of activities included in the application are appropriate to the goals and outcomes to be achieved?

* Are key personnel to be used on the project qualified to undertake proposed activities?

Selection Criterion 4: Commitment to the planning and development effort.

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

* To what extent are Federal or other local resources being utilized to finance planning and development activities towards the development of a comprehensive School-to-Work system?

* To what extent has the partnership provided in-kind support and resources towards the development of the system?

* Whether resources available are adequate to support the activities proposed?

The Government will use the following selection criteria in evaluating applications for implementation grants.

Selection Criteria

Selection Criterion 1: Scope and Quality of the School-to-Work Opportunities Initiative.

Points: 25.

Considerations: In applying this criterion, reviewers will consider:

* Is there an innovative and effective strategy for implementing a School-to-Work Opportunities initiative serving Indian youth and involving Bureau-funded schools that integrates school-based learning and work-based learning, integrates academic and occupational learning, and establishes effective linkages between secondary and postsecondary education?

* Does the application demonstrate an effective strategy for targeting high-demand, high-wage jobs and relate that strategy to the partnership's goals?

* What steps will the local partnership take to generate paid high-qualify, work-based learning experiences?

* How effectively are the common features and basic program components described in Part II., a., of the Statement of Work included in the local School-to-Work Opportunities initiative?

* Have promising existing programs been considered for adaptation?

* Have new directions and approaches been planned to ensure that these programs include the common features and basic program components?

* As the proposed School-to-Work Opportunities initiative becomes established within the targeted area, is there an effective long-range plan for integrating other existing school-to-work programs with the initiative?

* Is the proposed local initiative effectively tied to a plan for educational reform?

Selection Criterion 2: Scope and Effectiveness of Indian Program Local Partnerships.

Points: 25.

Considerations: In applying this criterion, reviewers will consider:

* Does the application demonstrate the strong commitment and support of tribal organizations (such as tribal business councils or local chapters of tribal business councils, tribal departments of education), employers (both within and surrounding the targeted area where applicable and including tribal businesses and school-based enterprises), representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools and tribal colleges, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, parents and students and provide for their sustained and specific involvement?

* Given the scope of the proposed School-to-Work Opportunities initiative, does the local partnership include other members appropriate to effective implementation, particularly community-based organizations and others experienced in dealing with the distinctive needs of Indian youth?

* Are the rolls and responsibilities of the members of the local partnership clearly described, appropriate and likely to produce the desired changes in the way students are prepared for the future?

* Does the local partnership's plan include an effective and convincing strategy for obtaining the active and continued involvement of employers and other interested parties such as locally elected officials, secondary and postsecondary educational institutions (or related agencies), business associations, industrial extension centers, employees, labor organizations or nonmanagerial employees, teachers, related services personnel, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational educational agencies, vocational student organizations, State or regional cooperative education associations, and human service agencies in the implementation of local program(s)?

Selection Criterion 3: Student Participation.

Points: 20.

Considerations: In applying this criterion, reviewers will consider:

* Applying the definitions contained in Section B (7) of this notice as appropriate for programs serving Indian youth, does the plan propose realistic strategies to ensure that "all students" have opportunities to participate in School-to-Work Opportunities initiatives?

* Does the strategy recognize barriers to their participations and propose effective ways of overcoming them so that these students are prepared for high-skill, high-wage jobs, including—for young women—nontraditional employment?

* Does the plan provide for the direct delivery of services to significant numbers of Indian youth or propose an effective model for service provision to Indian youth in remote areas?

* Is there an effective strategy for assessing the academic and human service needs of students and dropouts and making improvements or adjustments as necessary to ensure their successful participation in and completion of School-to-Work Opportunities programs?

• What, if any, provisions are made for the participation of elementary and middle school Indian youth in school-to-work activities, such as career exploration and awareness?

Selection Criterion 4: Comprehensiveness.

Points: 15.

Consideration: In applying this criterion, reviewers will consider:

• To what extent has the local partnership considered the current and future occupational needs of the labor market areas within which the targeted area is located, including the tribal organization's economic plan?

• Does the membership representing employers in the local partnership reflect such current and future occupational needs?

• How is the strategy for implementing the School-to-Work Opportunities initiative likely to produce systemic change, rather than stand-alone program implementation?

• What evidence is provided that such systemic change will have substantial impact on the preparation of Indian youth for a first job in a high-skill, high-wage career and postsecondary education and training?

• Where appropriate, is there existing or planned collaboration among other school districts, States, employers, labor organizations, and community groups that will lead to an increasingly comprehensive local School-to-Work Opportunities system?

• Are related human services programs available within the community included in the partnership's plan for coordination?

• Are strategies in place to coordinate related Federal funding available to the Indian community?

• Does the local partnership's plan exhibit strong potential for maintaining School-to-Work Opportunities initiatives after Federal funding ceases?

Selection Criterion 5: Management plan.

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

• What evidence exists to demonstrate the effectiveness of the local partnership and/or its key members in the delivery of comprehensive vocational programs with successful job placement rates through cooperative activities among local educational agencies, Local businesses, labor organizations, and others?

• Does the entity submitting the application on the part of the local partnership have the capacity to manage the implementation of the local School-to-Work Opportunities initiative?

• Does the management plan anticipate barriers to implementation and include a system for addressing them as they arise?

• Does the applicant limit administrative costs in order to maximize the amounts spent on delivery of services to students enrolled in its School-to-Work Opportunities programs?

• Does the plan include methods for sustaining and expanding the partnership as the initiative expands in scope and size?

• Is there an effective strategy for identifying and utilizing other resources, including private sector resources, to maintain and expand School-to-Work Opportunities initiatives?

• Does the management plan reflect continuous improvement methodologies by building in specific, outcome-based, evaluative checkpoints and the mechanisms necessary to carry out improvements, redesigns, or mid-course corrections along the way?

• Are key personnel under the plan qualified to perform the required activities, including maintaining the essential partnership?

Section F. Reporting Requirements/ Deliverables

The local partnership will be required to provide the following:

1. Quarterly and Final Reports

• Quarterly financial reports as required by the grant award documents;

• Quarterly narrative reports on progress made and problems encountered in implementing the proposed plan and that indicate, where relevant, the corrective action(s) proposed to address implementation problems; and

• Annual reports at year-end on the activities and accomplishments of the local partnership's School-to-Work Opportunities initiative.

2. Deliverables

• At a minimum, preparing an assessment of accomplishments and results at each program year-end suitable for dissemination to other Indian communities and partnerships.

• Acting as a host to outside visitors from other Indian communities or local partnerships interested in developing and implementing School-to-Work Opportunities initiatives in settings with similar characteristics.

Signed at Washington, DC, this 9th day of March 1995.

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Souza Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

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Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐☐ TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given a opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency for State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing awards, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution	$		
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

BILLING CODE 4510-30-C

Instructions for Part II—Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid for project personnel.
2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.
3. *Travel:* Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.
5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.
6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. *Total, Direct Costs:* Add lines 1 through 7.
9. *Indirect Costs:* Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. *Training/Stipend Cost:* (If allowable)
11. *Total Federal Funds Requested:* Show total of lines 8 through 10.

Section B—Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

Note: Please include a detailed cost analysis of each line item.

Appendix B—Assurances and Certifications

The Department of Labor will not award a grant or agreement where the awardee has failed to accept the Assurances and Certifications contained in this section. By signing the face sheet of this grant or agreement, the awardee is providing the certifications set forth below:

Assurances—Non-Construction Programs
Debarment and Suspension Certification
Certification Regarding Lobbying
Drug Free Workplace Certification
Certification of Non-Delinquency
Non-discrimination and Equal Employment Requirements Under JTPA

1. Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

(1) Has the legal authority to apply for Federal Assistance, and the institutional managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

(2) Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

(4) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

(5) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

(6) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88.352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee.3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(7) Will comply, or has already complied, with the requirements of Titles II and III of the Uniformly Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91.646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

(8) Will comply with the provisions of the Hatch Act (U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

(9) Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a 7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act (40.327–333), regarding labor standards for federally assisted construction subagreements.

(10) Will comply, if applicable, with Flood Insurance Purchase Requirements of Section 102(A) of the Flood Disaster Protection Act of 1973 (P.L. 93.234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(11) Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91.190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93.523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93.205).

(12) Will comply with the Wide and Scenic Rivers Act of 1988 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wide and scenic rivers system.

(13) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a.1 et seq.).

(14) Will comply with P.L. 93.348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

(15) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L.) 89.544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(16) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C.

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4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

(17) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

(18) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions'

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and;

(d) Have not a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation of this proposal.

3. Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

By accepting this grant/agreement, the signee hereby certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in Connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal Action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

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A & C CONTINUE:(6)

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: Page____ Page ____

Approved by OMB 0348-0046

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DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(see reverse for public burden disclosure)

1. Type of Federal Action: ____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ____ a. bid/offer/application b. initial award c. post-award	3. Report Type: _____ a. initial filing b. material change For Material Change Only: year ____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier _____, If known: Congressional District, If known:	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime. Congressional District, If known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, If applicable: _____
8. Federal Action Number, If known:	9. Award Amount, If known: $
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI): (Attach Continuation Sheet(s) SF-LLL-A, if necessary)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): (Attach Continuation Sheet(s) SF-LLL-A, if necessary)
11. Amount of Payment (check all that apply): ____ actual _____ planned $_____ 12. Form of Payment (check all that apply): ____ a. cash ____ b. in-kind; specify: nature _____ value _____	13. Type of Payment (check all that apply) ___ a. retainer ___ b. one-time fee ___ c. commission ___ d. contingent fee ___ e. deferred ___ f. other, specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ____ YES ____ NO

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature _____ Print Name: _____ Title: _____ Telephone Number: _____ Date: _____

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A & C CONTINUE:(8)

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. **Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.***

4. DRUG FREE WORKPLACE:

Awardee certifies that it will provide a drug free workplace by implementing the provisions at 29 CFR 98.630. In accordance with these provisions please provide in the space below, a list of places where performance of work done in connection with this specific grant/agreement will take place. This information must be included with this signed document.

_____

_____

_____

_____

_____

_____

_____

_____

_____

5. CERTIFICATION OF NON-DELINQUENCY:

(PLEASE CHECK THE APPROPRIATE STATEMENT):

_____ *Not Delinquent on any Federal Debt*

_____ *Delinquent on any Federal Debt*

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Nondiscrimination and Equal Opportunity Requirements of JTPA—29 CFR Part 34—Assurances

(1) As a condition to the award of financial assistance under JTPA from the Department of Labor, the grant applicant assures, with respect to operation of the JTPA-funded program or activity and all agreements or arrangements to carry out the JTPA-funded program or activity, that it will comply fully with the nondiscrimination and equal opportunity provisions of the Job Training Partnership Act of 1982, as amended (JTPA), including the Nontraditional Employment for Women Act of 1991 (where applicable); Title IV of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended, and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.

(2) The grant applicant certifies that it has developed and will maintain a "Method of Administration" pursuant to 29 CFR 34.33. This system must be in place by August 14, 1993.

(3) The grant applicant is attaching information pursuant to 29 CFR 34.24(a)(3)(ii) where applicable, including the name of any Federal agency other than the Department of Labor's Directorate of Civil Rights that conducted a civil rights compliance review or complaint investigation during the two preceding years in which the grant applicant was found to be in noncompliance; and shall identify the parties to, the forum of and case numbers pertaining to, any administrative enforcement actions or lawsuits filed against it during the two years prior to its application which allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship or participation in JTPA.

Note: _____ No findings of noncompliance in the last two years. _____ See attached information.

Appendix C—Goals 2000: Educate America Act—Legislative Summary

Overview

• The Goals 2000 Act provides resources to states and communities to develop and implement comprehensive education reforms aimed at helping students reach challenging academic and occupational skill standards.

Legislative Review

• On March 23, the House of Representatives approved the final Goals 2000 bill by a bipartisan vote of 306–121. On March 26, the Senate approved Goals 2000 by a bipartisan vote of 63–22.

• The President signed the bill into law March 31, 1994. (Public Law 103–227)

Timetable and Funding

• In 1994, $105 million was appropriated for Goals 2000. First-year funds became available to the states on July 1, 1994. Congress has appropriated $403 million in 1995.

• Funding will be formula-based. For first-year funding, states have been asked to submit an application that will describe how a broad-based citizen panel will develop an action plan to improve their schools. The application will also describe how subgrants will be made for local education improvement and better teacher preservice and professional development programs.

• During the first year, states will use at least 60 percent of their allotted funds to award subgrants to local school districts for the development or implementation of local and individual school improvement efforts, and for better teacher education programs and professional development activities.

• In succeeding years, at least 90 percent of each state's funds will be used to make subgrants for the implementation of the state, local and individual school improvement plans and to support teacher education and professional development.

• During the first year, local districts will use at least 75 percent of the funds they receive to support individual school improvement initiatives. After the first year, districts will pass through at least 85 percent of the funds to schools.

Components of the Goals 2000: Educate America Act

Title I: Setting High Expectations for Our Nation: the National Education Goals

• Formalizes in law the original six National Education Goals. These goals concern: readiness for school; increased school graduation rates; student academic achievement and citizenship; mathematics and science performance; adult literacy; and safe, disciplined, and drug-free schools. The Act adds two new goals that encourage parental participation and better professional development for teachers and principals.

Title II: Public Accountability for Progress Toward the Goals and Development of Challenging Voluntary, Academic Standards

• Establishes in law the bipartisan National Education Goals Panel, which will: report on the nation's progress toward meeting the goals; build public support for taking actions to meet the goals; and review the voluntarily-submitted national standards and the criteria for certification of these standards developed by the National Education Standards and Improvement Council.

• Creates the National Education Standards and Improvement Council, made of a bipartisan, broad base of citizens and educators, to examine and certify voluntary national and state standards submitted on a voluntary basis by states and by organizations working on particular academic subjects.

• Authorizes grants to support the development of voluntary assessment systems aligned to state standards, and for the development of *model* opportunity-to-learn standards.

Title III: Supporting Community and State Efforts to Improve Education

• The central purpose of the Goals 2000 Act is to support, accelerate, and sustain state and local improvement efforts aimed at helping students reach challenging academic and occupational standards.

• Section 318 of the Act specifically prohibits federal mandates, direction and control of education.

Broad-Based Citizen Involvement in State Improvement Efforts

• The Governor and the Chief State School Officer will each appoint half the members of a broad-based panel. This panel will be comprised of teachers, principals, administrators, parents, representatives of business, labor, and higher education, and members of the public, as well as the chair of the state board of education and the chairs of the appropriate authorizing committees of the state legislature.

• States that already have a broad-based panel in place that has made substantial progress in developing a reform plan may request that the Secretary of Education recognize the existing panel.

Comprehensive Improvement Plan Geared to High Standards of Achievement

• The State Planning Panel is responsible for developing a comprehensive reform plan.

• States with reform plan already in place that meet the Act's requirements will not have to develop new plans for Goals 2000. The U.S. Secretary of Education may approve plans, or portions of plans, already adopted by the state.

• In order to receive Goals 2000 funds after the first year, a state has to have an approved plan or have made substantial progress in developing it.

• A peer review process will be used to review the state plans and offer guidance to the State Planning Panel. The U.S. Department of Education also will offer other technical assistance and support by drawing on the expertise of successful educators and leaders from around the nation.

In general, the plans are to address:

• Strategies for the development or adoption of content standards, student performance standards, student assessments, and plans for improving teacher training.

• Strategies to involve parents and the community in helping all students meet challenging state standards and to promote grass-roots, bottom-up involvement in reform.

• Strategies for ensuring that all local educational agencies and schools in the state are involved in developing and implementing needed improvements.

• Strategies for improved management and governance, and for promoting accountability for results, flexibility, site-based management, and other principles of high-performance management.

• Strategies for providing all students an opportunity to learn at high academic levels.

• Strategies for assisting local education agencies and schools to meet the needs of school-age students who have dropped out of school.

• Strategies for bringing technology into the classroom to increase learning.

Funds are also available to states to support the development of a state technology plan, to be integrated with the overall reform plan.

Broad-Based Involvement in Local Education Improvement Efforts

• Each local school district that applies for Goals 2000 funds will be asked to develop a broad consensus regarding a local improvement plan.

• Local districts will encourage and assist school in developing and implementing reforms that best meet the particular needs of the schools. The local plan would include strategies for ensuring that students meet higher academic standards.

Waivers and Flexibility

• State educational agencies may apply to the U.S. Secretary of Education for waivers of certain requirements of Department of Education programs that impede the implementation of the state or local plans. States may also submit waiver requests on behalf of local school districts and schools.

• The Secretary may select up to six states for participation in an education flexibility demonstration program, which allows the Secretary to delegate his waiver authority to State education agencies.

• The Act specifies certain statutory and regulatory programmatic requirements that may not be waived, including parental involvement and civil rights laws.

Title IV. Support for Increased Parental Involvement

• This title creates parental information and resource centers to increase parents knowledge and confidence in child-rearing activities and to strengthen partnerships between parents and professionals in meeting the educational needs of children. Parent resource centers will be funded by the U.S. Department of Education beginning in fiscal year 1995.

Title V. National Skill Standards Board

• This title creates a National Skill Standards Board to stimulate the development and adoption of a voluntary national system of occupational skill standards and certification. This Board will serve as a cornerstone of the national strategy to enhance workforce skills. The Board will be responsible for identifying broad clusters of major occupations in the U.S. and facilitating the establishment of voluntary partnership to develop skill standards for each cluster. The Board will endorse those skill standards submitted by the partnerships that meet certain statutorily prescribed criteria.

Relationship of Goals 2000 to Other Federal Education Programs

• State participation in all apsects of the Goals 2000 Act is voluntary, and is not a precondition for participation in other Federal programs.

• The Goals 2000 Act is a step toward making the Federal government a better partner and a supportive partner in local and state comprehensive improvement efforts aimed at helping all children reach higher standards. The proliferation of many sets of rules and regulations for different federal education programs has often interfered with local school, community or state efforts to improve schools. The Goals 2000 Act is designed to be flexible and supportive of community-based improvements in education.

• Other new and existing education and training programs will fit within the Goals 2000 framework of challenging academic and occupations standards, comprehensive reform, and flexibility at the state and local levels. The aim is to give schools; communities and states the option of coordinating, promoting, and building greater coherence among Federal programs and between Federal programs and state and local education reforms.

• For example, the School-to-Work Opportunities Act will support state and local efforts to build a school-to-work transition system that will help youth acquire the knowledge, skills, abilities, and labor-market information they need to make a smooth transition from school to career-oriented work and to further education and training. Students in these programs could be expected to meet the same academic standards established in states under Goals 2000 and will earn portable, industry-recognized skill certificates that are benchmarked to high-quality standards.

• Similarly, the reauthorization of the Elementary and Secondary Education Act (ESEA) allows states that have developed their own standards and assessments under Goals 2000 to use them for students participating in ESEA programs, thereby providing one set of standards and assessments for states and schools to use for their own reform needs and, at the same time, to meet Federal requirements.

For more information, contact 1–800–USA–Learn.

Appendix D—Questions and Answers About School-to-Work Indian Program Grants

What is the purpose of the SGA?

The Solicitation for Grant Award (SGA) announces a competition or Indian Program Grants to enable eligible partnerships to begin development or implementation of School-to-Work Opportunities initiatives serving Indian youth and involving schools funded by the Bureau of Indian Affairs.

Are public comments being sought?

No. The SGA was developed in concert with key organizations including the Bureau of Indians Affairs, the National Advisory Council on Indian Education, and Indian programs within the Departments of Education and Labor. This work group provided input into the development of the SGA. In accordance with DOL procurement policy and the desire to get funds to the field as soon as possible, the SGA was published in the final format.

Why School-to-Work Opportunities?

The United States is the only industrialized Nation that lacks a comprehensive and coherent system to help its youth acquire the knowledge, skills, abilities, and information about the labor market necessary to make an effective transition from school to career-oriented work. The School-to-Work Opportunities Act of 1994 created a national framework for high-quality, school-to-work transition systems that enable young Americans to identify and navigate paths to productive and progressively more rewarding roles in the workplace. School-to-Work Opportunities initiatives funded under this competition will offer Indian youth access to School-too-Work Opportunity programs that will prepare them for first jobs in high-skill, high-wage careers and further post-secondary education and training.

When are applications due?

Applications are due 60 days after the publication of the SGA.

When will awards be made?

All awards must be made by June 30, 1995.

How should I format my application?

The Departments recommend that applications be formatted as suggested in Section B.2 of the SGA. Applications should include: an abstract, budget, program narrative and appendices. Applicants are strongly urged to submit applications that comprehensively address the selection criteria as described in Section E of the SGA.

Who will review my application?

Under this application, a technical review panel consisting of peer reviewers and specialists with the Departments of Labor and Education will review applications for both development and implementation grants.

What will the review of my application be based on?

a. Inclusion of required elements.

All applications must include:

1. Evidence that the applicant meets the definition of an eligible applicant.

2. An assurance that the grantee will abide by the safeguards as stated in the legislation.

3. Evidence of the key descriptive components as required in Part III, *Application Contents*, of the SGA.

b. Quality and comprehensiveness of the program narrative.

Panelists will evaluate all applications against the criteria listed in Section E of the SGA for the development and implementation grant competitions. Emphasis will be placed on the scope and quality of the proposed plan and with careful consideration of the effectiveness, rather than the presence, of each program component. Final funding decisions will be made based on the results of the panel review process and such other factors as: geographic balance, diversity of programmatic approaches, replicability, sustainability, and innovation.

Who may apply for these grants?

A partnership which proposes to serve Indian youth and involves Bureau of Indian Affairs funded schools is qualified under this competition to apply for either a development or implementation grant. To be eligible to apply, a partnership must include:

1. Tribal organizations responsible for economic development, employment and job training, and education (such as tribal business councils, local chapters of tribal business councils, tribal departments of education and tribal school boards).

2. Employers (including tribal businesses or school-based enterprises where applicable).

3. Representatives of Bureau-funded schools and local postsecondary educational institutions (including representatives of area vocational education schools and tribal colleges where applicable).

4. Local educators (such as teachers, counselors or administrators).

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5. Representatives of labor organizations or nonmanagerial employee representatives.

6. Students and parents, and may include other appropriate entities. Examples of these entities are contained in section B.7 of the SGA.

What funding is available?

This SGA offers $500,000 in FY94 funds under JTPA Title IV for activities that are consistent with Title II, Subtitle C of the School-to-Work Opportunities Act of 1994. Future year appropriations are authorized under the School-to-Work Opportunities Act. The statute that ½ of 1% of all future appropriations shall be set aside for STWO Indian Program Grants. Based on current budget levels, $1.25 million in FY95 funds will be available for the next competition.

How many grants are anticipated?

The Departments anticipate awarding:

- Approximately 8 development grants of $30,000 each; and
- Up to 5 implementation grants ranging in amount between $50,000 and $100,000.

The final amount of each award will be based on a number of factors, including the scope, quality, and comprehensiveness of the proposed initiative and the size of the population to be served.

How long is the project period?

The award period for this competition will be 12 months. However, grants may be continued for five years based on satisfactory progress and the availability of federal funds.

Can I apply for both a development and implementation grant?

Eligible partnerships may apply for either a development grant, an implementation grant or both. The rationale is to allow those partnerships which have been engaged in planning and development activities to apply for an implementation grant without jeopardizing their opportunities for receiving a development grant. However, partnerships that intend to apply for consideration under both the development and implementation grant competitions must submit separate applications for each competition. A local partnership may receive only one (1) grant under this competition, either a development grant or an implementation grant.

What are the reporting requirements?

Reporting requirements include quarterly financial and narrative reports and an annual report on project accomplishments.

What other grant programs have been implemented under the STWO Act?

The U.S. Departments of Labor and Education are jointly conducting separate competitions for grants to *States* that are prepared to implement statewide School-to-Work Opportunities systems, to *local partnerships* that are prepared to implement local School-to-Work Opportunities initiatives, and to *local partnerships that serve high poverty areas of Urban and Rural constituencies* and that are also prepared to develop and implement local School-to-Work Opportunities initiatives. Planning and development grants have been awarded to all States and Puerto Rico. Development grants will be awarded to the seven U.S. Territories by June 1995.

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federal register

Wednesday
March 15, 1995

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 32 and 52
Federal Acquisition Regulation, Contract Financing; Proposed Rule and Notice

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 94–764]

RIN 9000–AG36

Federal Acquisition Regulation; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) pertaining to contract financing as a result of changes to 10 U.S.C. 2307 and 41 U.S.C. 255 by Sections 2001 and 2051 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Comment Due Date:* Comments should be submitted on or before May 15, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on April 3, 1995, at 1 p.m.

Oral/Written Statements: Views to be presented at the public meeting should be sent, in writing, to the FAR Secretariat, at the address given below, not later than March 29, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405, Telephone: (202) 501–4755.

The public meeting will be held at: General Services Administration Auditorium, 18th & F Streets NW., First Floor, Washington, DC 20405.

Please cite FAR case 94–764 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Contract Financing/Payment Team Leader, at (703) 697–6710 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–764.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Computer Network (FACNET).

This notice announces FAR revisions under FAR case 94–764, Contract Financing. Sections 2001 and 2051 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), substantially changed the statutory authorities for Government financing of contracts. Subsections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and subsections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items. In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

Subsections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These sections amended 10 U.S.C. 2307 and 41 U.S.C. 255 by adding a new paragraph, Conditions for Payments for Commercial Items, to each. These paragraphs authorize the Government to provide contract financing with certain limitations:

- The financing must be in the best interest of the Government;
- The financing cannot exceed 15 percent until some performance of work under the contract;
- The terms and conditions must be appropriate or customary in the commercial marketplace.

The above statutory provisions also remove from financing of commercial purchases certain restrictions applicable to financing of non-commercial purchases by other provisions of 10 U.S.C. 2307 and 41 U.S.C. 255.

Subsections 2001(b) and 2051(b) amend the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, the DOD, NASA, and GSA propose to amend the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The statutory changes create a fundamental distinction between financing of purchases of commercial and non-commercial items. As a result, the subparts of Part 32, Contract Financing, fall into three logical categories:

- Subparts applicable to both commercial and non-commercial financing;
- Subparts applicable to only commercial financing; and
- Subparts applicable to only non-commercial financing.

The specific subparts in each category are identified at 32.002 (Applicability of Subparts).

Subpart Discussion

Subpart 32.0 now contains the general policy and guidance which is applicable to Government contract financing of both commercial and non-commercial items.

Subpart 32.1 (Non-commercial Purchase Financing) now contains the general policy and guidance applicable to non-commercial purchases. The content of this subpart reflects existing policy and guidance that previously appeared in other locations in Part 32. These policies have been moved to Subpart 32.1 to give them general applicability to all forms of financing of non-commercial items.

Subpart 32.2 (Commercial Purchase Financing) contains the policy and guidance applicable to contract financing of commercial purchases. This subpart is wholly new. Current contract financing policy discourages the use of Government contract financing for commercial items (see current FAR 32.502–1(c)), and if financing is provided, it is commonly Progress Payments Based on Cost. The new statute places Government financing of commercial purchases on a different statutory basis than that for non-commercial purchases. As a result, the new subpart provides policy concerning market research about financing, security for the taxpayer's money, and determining the best interest of the United States. The new subpart provides several alternative procedures for establishing contract financing terms for commercial items. The new subpart also provides standard terms for use of contracting officers in establishing

financing in contracts. To assist in considering installment payment financing issues, public comments are sought as to whether or not installment payment financing at 32.206(f) and 52.232–AB should be incorporated into the FAR.

The proposed installment payment clause is intended to permit contracting officers to incorporate financing into contracts for commercial items without any administrative effort beyond incorporation of the clause. It is intended to be an alternative that may be used when the contracting officer determines that the administrative cost of contract financing for a commercial item would otherwise prohibit its use.

The table below shows how the Installment Payments for Commercial Items clause arithmetic would work for a contract which is awarded in January with various deliveries starting in April and ending in September (bolded numbers indicate delivery payments after liquidation of installment payments).

INSTALLMENT PAYMENTS FOR COMMERCIAL ITEMS (EXAMPLE)

[Amounts shown in thousands of dollars ($)]

	Qty	$/Unit	$Total	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
Item 0001	20	20	400	70	70	70	70	120	.....	.....	.....	.....	400
Do	20	20	400	.....	70	70	70	70	120	.....	.....	.....	400
Do	20	20	400	.....	.....	70	70	70	70	120	.....	.....	400
Do	20	20	400	.....	.....	.....	70	70	70	70	120	.....	400
Do	20	20	400	.....	.....	.....	.....	70	70	70	70	120	400
Item 0002	2	15	30	7	7	7	9	.....	.....	.....	.....	.....	30
Do	2	15	30	.....	7	7	7	9	.....	.....	.....	.....	30
Do	2	15	30	.....	.....	7	7	7	9	.....	.....	.....	30
Do	2	15	30	.....	.....	.....	7	7	7	9	.....	.....	30
Do	2	15	30	.....	.....	.....	.....	7	7	7	9	.....	30
Iteam 0003	10	40	400	56	56	56	56	56	120	.....	.....	.....	400
Do	10	40	400	.....	56	56	56	56	56	120	.....	.....	400
Do	10	40	400	.....	.....	56	56	56	56	56	120	.....	400
Do	10	40	400	.....	.....	.....	56	56	56	56	56	120	400
Finance payment	.....	.....	.....	133	266	399	525	525	392	259	126	0	2,625
Delivery payment	.....	.....	.....	0	0	0	9	129	249	249	249	240	1,125
Total payment	.....	.....	3,750	133	266	399	534	654	641	508	375	240	3,750

Subpart 32.5 (Progress Payments Based on Costs) has been slightly modified to reflect the separation of commercial from non-commercial items and to reflect the general policy in 32.1 for availability of financing for non-commercial purchases.

Subpart 32.10 (Performance-Based Payments) contains the policy and guidance applicable to contract financing through performance-based payments. This is a wholly new subpart. Under the current FAR, contract financing for non-commercial items is primarily through progress payments based on cost and through other specialized contract financing mechanisms for specific types of procurements (for example percentage-of-completion progress payments for shipbuilding or construction). This new subpart provides the policy and procedures for establishing and administering performance-based payments. Performance-based payments under this subpart are applicable only to non-commercial purchases.

FAR 52.232 is amended to add the additional clauses and solicitation provisions required to implement the new statutory authorities. Under the current FAR, the contracting officer can insert a complete, fully contained progress payment clause in a contract and proceed with the procurement with minimal administrative cost. For performance-based financing and commercial financing (except for installment payments), contracting officers will have to determine the form of contract financing and write individualized contract terms establishing the computation of amounts and certain other contract financing terms.

Public Meeting

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. The public is encouraged to furnish its views; the FAR Council anticipates that public comments will be very helpful in formulating final rules.

The public meeting on this rule (FAR case 94–764) will be held on April 3, 1995, at 1 p.m., to enable the public to present its views on this rule. This meeting will coincide with the meeting on Commercial Items (FAR case 94–790) which is now also scheduled for April 3, 1995. Persons or organizations wishing to make presentations will be allowed 10 minutes each, provided they notify the FAR Secretariat at (202) 501–4755 and submit written statements of the presentation by March 29, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

B. Regulatory Flexibility Act

This proposed rule is expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed implementation of subsection 2001(f) and subsection 2051(e) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) will substantially increase the availability of Government contract financing for purchases of commercial items, thereby benefiting many small entities making commercial sales in markets where customer financing is a market practice; and because the implementation of subsection 2001(b) and subsection 2051(b) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) permits contract financing of purchases of non-commercial items upon the basis of performance, without requiring contractor cost accounting systems for the contract financing, thereby benefiting many small entities who Do not use such systems. An Initial Regulatory Flexibility Analysis has been

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performed. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–764), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Contract Financing is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request are invited in a **Federal Register** notice which appears elsewhere in this issue.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: March 8, 1995.

Capt. Barry L. Cohen,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 32 and 52 be amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 32.000 is amended in paragraph (e) by removing the word "and"; in paragraph (f) by removing the period and inserting a semicolon in its place; and by adding paragraphs (g) and (h) to read as follows:

32.000 Scope of part.

* * * * *

(g) Financing of purchases of commercial items; and

(h) Performance-based payments.

3. Section 32.001 is amended by revising the section heading and adding, in alphabetical order, the definitions *Customary contract financing* and *Unusual contract financing* to read as follows:

32.001 Definitions.

Customary contract financing means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals of the financing arrangement by higher management. It is expected that contracting officers will have the necessary training and resources to routinely arrange and/or administer (including paying) any financing terms the agency deems customary for that agency.

Unusual contract financing means any financing not deemed customary contract financing by the agency. Normally, unusual contract financing is that financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals of the financing arrangement by higher management. Arranging and/or administering (including paying) unusual contract financing may require more and/or different training or resources than the agency routinely makes available for such operations, or may have greater or different risks than the financing arrangements deemed customary by the agency.

4. Sections 32.002 through 32.005 are added to read as follows:

32.002 Applicability of subparts.

(a) The following subparts of this part are applicable to all purchases subject to part 32:

(1) Subpart 32.0, General.

(2) Subpart 32.3, Loan Guarantees for Defense Production.

(3) Subpart 32.6, Contract Debts.

(4) Subpart 32.7, Contract Funding.

(5) Subpart 32.8, Assignment of Claims.

(6) Subpart 32.9, Prompt Payment.

(b) Subpart 32.2, Commercial Purchase Financing, is applicable only to purchases of commercial items under authority of 48 CFR part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than 48 CFR Part 12:

(1) Subpart 32.1, Non-Commercial Purchase Financing.

(2) Subpart 32.4, Advance Payments.

(3) Subpart 32.5, Progress Payments for Supplies or Services.

(4) Subpart 32.10, Performance-Based Payments.

32.003 Simplified acquisition procedures financing.

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of 48 CFR Part 13.

32.004 Contract performance in foreign countries.

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure that the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

32.005 Consideration for contract financing.

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The worth of the contract financing to the contractor is expected to be reflected in one or both of (1) a bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or (2) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in Subpart 32.4 (Advance Payments), the contract shall not provide for any other type of specific charges, such as interest, on contract financing.

5. Subpart 32.1 heading and section 32.100 are revised to read as follows:

Subpart 32.1—Non-Commercial Purchase Financing

32.100 Scope of subpart.

This subpart provides policies and procedures applicable generally to contract financing and payment for any purchases other than purchases of commercial items in accordance with 48 CFR Part 12.

32.101 [Amended]

6. Section 32.101 is amended by removing the period at the end of the section and inserting in its place ", as amended."

7. Section 32.102 is amended in the last sentence of paragraph (a) by removing the word "subadvances" and inserting in its place "advances"; in paragraph (b)(2) by removing the word "or"; in paragraph (b)(3) by removing the period and inserting in its place "; or"; and adding paragraphs (b)(4) and (f) to read as follows:

32.102 Description of contract financing methods.

* * * * *

(b) * * *

(4) Performance-based payments.

* * * * *

(f) Performance-based payments are contract financing payments made on the basis of—

(1) Performance measured by objective, quantifiable methods;

(2) Accomplishment of defined events; or

(3) Other quantifiable measures of results.

32.103 Progress payments under construction contracts.

8. Section 32.103 is amended by revising the section heading to read as set forth above; and by removing the word "the" in the second sentence.

9. Section 32.104 is amended by adding paragraphs (c) through (f) to read as follows:

32.104 Providing contract financing.

* * * * *

(c) Subject to specific agency regulations, contract financing may be provided when the contracting officer determines it is in the best interest of the Government. Unless authorized by agency regulation, contract financing shall not be provided for awards expected to be less than the simplified acquisition procedure threshold, and unless the provision of financing is restricted to small businesses, shall not be provided for awards expected to be less than $1 million.

(d) Whenever practical, contracting officers should use performance-based payments (see subpart 32.10).

(e) For competitive awards, the contracting officer shall include the intended contract financing terms in the solicitation, in accordance with this part and any agency regulations. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals which contain alternative financing terms shall not be accepted (but see subparts 14.2 and 15.6 concerning alternative proposals and amendments of solicitations).

(f) When only one source is solicited, the contracting officer shall include the intended contract financing terms in the solicitation in accordance with this part and any agency regulations. In negotiations of the resulting contract, if the contract financing is to be through performance-based payments in accordance with subpart 32.10, the contracting officer shall ensure that the combination of price and financing is fair and reasonable, all factors, including financing cost to the Treasury, considered.

10. Section 32.106 is amended in the introductory text by inserting after "Government's" the word "best"; and by revising paragraphs (b) and (d) to read as follows:

32.106 Order of preference.

* * * * *

(b) Customary contract financing (see 32.113).

* * * * *

(d) Unusual contract financing (see 32.114).

* * * * *

32.110 [Reserved]

11. Section 32.110 is removed and reserved.

32.111 Contract clauses for non-commercial purchases.

12. The section heading for 32.111 is revised to read as set forth above.

13. Sections 32.113 and 32.114 are added to read as follows:

(Note to Readers: The proposed text of 32.112 is contained in FAR case 94–762, which was published for public comment at 60 FR 6602, February 2, 1995. Comments concerning the proposed text for 32.112 should be submitted separately and reference that FAR case 94–762.)

32.113 Customary contract financing.

The following contract financing arrangements are customary contract financing when provided in accordance with this part 32 and agency regulations:

(a) Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion;

(b) Financing of construction or architect-engineer services purchased under the authority of 48 CFR part 36, in accordance with this part;

(c) For small businesses, financing of contracts for supplies or services with a contract price equal to or greater than the simplified acquisition procedure threshold through customary performance-based payments in accordance with subpart 32.10, or customary progress payments in accordance with subpart 32.5 (but not both);

(d) Financing of contracts for supplies or services with a contract price of $1 million or more, through customary performance-based payments in accordance with subpart 32.10, or customary progress payments in accordance with subpart 32.5 (but not both);

(e) Financing of contracts for supplies or services through Advance Payments in accordance with subpart 32.4;

(f) Financing of contracts for supplies or services through Guaranteed Loans in accordance with subpart 32.3; or

(g) Financing of contracts for supplies or services through any appropriate combination of Advance Payments, Guaranteed Loans, and either customary performance-based payments or customary progress payments (but not both) in accordance with their respective subparts.

32.114 Unusual contract financing.

Any contract financing arrangement that deviates from the policy, procedures, terms, or conditions of this part is unusual contract financing. Unusual contract financing shall be authorized only after approval by the head of the agency or as provided for in agency regulations.

14. Subpart 32.2, consisting of sections 32.200 through 32.207, is added to read as follows:

Subpart 32.2—Commercial Purchase Financing

Sec.

32.200 Scope of subpart.
32.201 Statutory authority.
32.202 General.
32.202–1 Policy.
32.202–2 Types of payments for commercial purchases.
32.202–3 Conducting market research about financing terms.
32.202–4 Security for Government financing.
32.203 Procedures for determining contract financing terms.
32.204 Procedures for contracting officer-specified commercial contract financing.
32.205 Procedures for offeror-proposed commercial contract financing.
32.206 Construction of contract clauses.
32.207 Administration and payment of commercial financing payments.

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32.200 Scope of subpart.

This subpart provides policies and procedures for commercial financing arrangements under commercial purchases pursuant to 48 CFR part 12. This subpart does not apply to any purchase made under other authority.

32.201 Statutory authority.

10 U.S.C. 2307(f) and 41 U.S.C. 255(f) provide that payment for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

32.202 General.

32.202–1 Policy.

(a) *Use of financing in contracts.* It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for Government purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer shall include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

(b) *Authorization.* Commercial interim payments and commercial advance payments may be made under the following circumstances—

(1) The contract item financed is a commercial supply item;

(2) The contracting officer determines that it is customary in the commercial marketplace to make financing payments for the item;

(3) Authorizing this form of contract financing is in the best interest of the Government (see 32.202–1(e));

(4) Adequate security is obtained (see 32.202–4);

(5) Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price; and

(6) The contract is awarded on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offerors normal method of customer financing.

(c) *Difference from non-commercial financing.* Government financing of commercial purchases under this subpart 32.2 is expected to be different from that used for non-commercial purchases under subpart 32.1 and its related subparts. While the contracting officer may adapt techniques and procedures from the non-commercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or 48 CFR part 32 is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.

(e) *Best interest of the Government.* (1) The statute does not allow contract financing by the Government where it is not in the best interest of the United States. The contracting officer in deciding for individual procurements whether to use contract financing and, if so, the methods and techniques therefor, shall consider the interests of the United States in accordance with agency regulations. The interests of the United States may include—

(i) The cost to the Government of providing the financing (*e.g.*, Treasury borrowing costs);

(ii) The transaction costs to the Government of establishing and negotiating the financing terms, and administrative costs of administering the financing terms;

(iii) Execution of Executive branch and agency policy;

(iv) Compliance with fiscal and budgetary requirements;

(v) Promotion of competition through new market entrants;

(vi) Acquisition of advanced, state-of-the-art technology; and

(vii) Integration of the industrial bases for defense, commercial, and Governmental markets.

(2) In considering policy to determine whether financing is in the best interest of the Government, the best interests of the Government are usually served by an appropriate trade-off of the transaction costs of the procurement, against the optimizing of the price and financing of the individual purchase. Agencies may find that certain types of procurements, certain types of items, or certain dollar levels of procurements do not justify the transaction costs of financing or do not justify high-cost procedures for determining financing. The specifics of these factors will vary from agency to agency, and, possibly, from office to office or time to time.

32.202–2 Types of payments for commercial purchases.

These definitions reflect distinctions made in the statutory commercial financing authority and the implementation of the Prompt Payment Act.

Commercial advance payment means a payment made before any performance of work under the contract. The aggregate of these payments shall not exceed 15 percent of the contract price. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). These payments are not subject to subpart 32.4.

Commercial interim payment means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). The difference between a commercial advance and commercial interim payment for Government contract purposes is whether some performance of the work under the contract has been accomplished.

Delivery payment means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

32.202–3 Conducting market research about financing terms.

(a) If contract financing is expected to be in the best interest of the Government (see 32.202–1(e) of this subpart), contract financing shall be a subject included in the market research conducted in accordance with 48 CFR part 10 (Market Research). Contracting officers shall determine for commercial purchases in the appropriate market—

(1) The extent to which other buyers provide contract financing for purchases in that market;

(2) The overall level of financing normally provided;

(3) The amount or percentages of any payments equivalent to commercial advance payments (32.202–2);

(4) The basis for any payments equivalent to commercial interim payments (32.202–2), as well as the frequency, and amounts or percentages; and

(5) Any special or unusual payment terms applicable to the equivalent of delivery payments (32.202–2).

(b) When adequate and current information is already available, contract financing market research does not have to be repeated. Similarly, procuring activities making repetitive purchases in specific markets may provide contracting officers with contract financing terms for use in purchases in those markets.

(c) *Customary standard market terms* means those contract financing terms and conditions that are the usual, regular terms offered by a substantial number of sellers to equivalent buyers of the item in that market at that time. Customary standard market terms are not required to be identical for all sellers, but are expected to be similar. Terms may reasonably vary in percentages, or timing, or other terms and still be considered customary standard market terms, so long as they do not significantly differ in the overall impact upon the Government, including the impact upon the integrity of competitive procurements. If the extent of variation in the terms offered by diverse sellers is such that some potential offerors would be significantly advantaged or disadvantaged by a synthesis of the various terms, the contracting officer may find there are no customary standard market terms. The extent of analysis applied in making these determinations should be commensurate with the expected size of the contract and amount of contract financing.

32.202–4 Security for Government financing.

(a) *Policy.* 10 U.S.C. 2307(f) and 41 U.S.C. 255(f) require the Government to obtain adequate security for Government financing. The contracting officer shall determine what security the Government will accept, which shall be specified in the solicitation. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. The value of the security must be at least equal to the unliquidated amount of contract financing payments to be made to the contractor. If acceptable to the contracting officer, the resulting contract shall specify the security (see 32.206(b)(1)(iv) and also paragraph (f), Security for Government Financing of the clause at 52.232–AA, Standard Terms for Government Financing of Purchases of Commercial Items, or paragraph (f) of the clause at 52.232–AB, Installment Payments for Commercial Items). The amount of security provided by the contractor may be adjusted from time to time during the period of performance, so long as it is always equal to or greater than the amount of unliquidated financing that is paid to the contractor. Paragraphs (b), (c), and (d) of this section list some (but not all) forms of security that the contracting officer may find acceptable. There is no order of preference in this listing, and a form not listed is of equal acceptability if the contracting officer finds it adequate.

(b) *Paramount lien.* (1) The statutes cited in 32.201 provide that if the Government's security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) When the Government's security is in the form of a lien, the contract shall specify what the lien is upon, *e.g.*, the work in process, the contractor's plant, the contractor's inventory. Contracting officers may be flexible in the choice of assets, so long as it is adequate. The contract must also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* (1) Contracting officers may consider the guidance at 28.203–2, 28.203–3, and 28.204 in determining which types of assets may be acceptable as security. For the purpose of applying the guidance in part 28 to this section, the term *surety* and/or *individual surety* should be interpreted to mean *offeror* and/or *contractor*.

(2) Subject to agency regulations, the contracting officer may also consider the net worth of the offeror in relation to the maximum amount of Government funds at risk. If the contracting officer finds that the unencumbered net worth of the offeror will be significantly in excess of the total unliquidated Government financing (on all Government contracts using this form of security), and the offeror agrees to provide additional security should that net worth become encumbered or materially reduced, the contracting officer may determine the Government has adequate security.

(d) *Other forms of security.* Other acceptable forms of security include—

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety acceptable in accordance with 48 CFR part 28 (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

32.203 Procedures for determining contract financing terms.

(a) *Selection procedure.* When the criteria in 32.202–1(b) are met:

(1) If market research discloses that contract financing is not customary in the commercial market, the contracting officer shall not provide for financing in the solicitation and contract;

(2) If market research discloses customary standard market terms for commercial financing in a market, the contracting officer shall use the contracting officer-specified financing procedure at 32.204 and specify the customary standard market terms in the solicitation and contract; or

(3) If market research discloses that contract financing is customary in the commercial market but there are no customary standard market terms, the contracting officer shall, in accordance with agency regulations, use the contracting officer-specified procedure at 32.204, the offeror-proposed procedure at 32.205, or other agency specified procedure or technique. If agency regulations do not provide otherwise, the contracting officer shall use the contracting officer-specified procedure at 32.204 for purchases expected to be less than $5 million and may use the offeror-proposed procedure at 32.205 for purchases expected to be $5 million or more.

(b) *Summary of contracting officer-specified financing procedure.* Under the contracting officer-specified procedure at 32.204, the Government specifies the contract financing terms in the solicitation. The contracting officer does not evaluate or adjust prices for financing terms. Contracting officer-specified contract financing terms are designed to allow reasonable contract financing of purchases with minimum transaction costs. Under this procedure, the contract financing for any particular procurement is based upon the financing terms commonly used in the particular market, or the terms the Government finds appropriate to the purchase.

(c) *Summary of offeror-proposed financing procedure.* Under the offeror-proposed procedure at 32.205, offerors are invited to propose contract financing

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terms. The contracting officer then evaluates all of the financing terms and prices to determine the evaluated price. The evaluated price is based upon the net cost to the Government of the proposed price and financing terms.

(d) *Front-end loading of financing terms.* In establishing contract financing terms, the contracting officer must be aware of certain risks. While contract financing payments may be made at the beginning and during the early period of a contract, very high amounts of financing early in the contract may unduly increase the risk to the Government. Contracting officers cannot consider various aspects of financing separately; the security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government. Under the contracting-officer specified procedure, large, early, contract financing payments are not prohibited if they are the customary standard market terms and an appropriate quality of security is obtained. Under the offeror-proposed procedure, large, early, contract financing payments are not prohibited if such payments are usual or common in the offeror's sales equivalent to the size and type of the instant Government purchase and an appropriate quality of security is obtained.

(e) *Optional nature of contract financing terms.* (1) A contracting officer determination that contract financing is customary in a commercial market, while establishing the Government's authority to offer or agree to contract financing, does not preclude an offeror from bidding or proposing on the basis of no contract financing. Similarly, the presence of a contract financing clause in a contract does not preclude contractor forbearance in its exercise (see 32.207(f)).

(2) For solicitations under contracting officer-specified procedures, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer (see 32.204(b)) nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror whose offer declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract.

(3) For solicitations under offeror-proposed procedures, a proposal containing no contract financing provisions or stating that contract financing is not proposed, shall, in lieu of the computation in 32.205(c), be evaluated as having no additional cost to the United States for providing contract financing.

32.204 Procedures for contracting-officer-specified commercial contract financing.

(a) *Financing terms.* Under this procedure, the solicitation specifies the financing terms that will be used in any resulting contract.

(b) *Determination of contract financing terms.* The contracting officer shall determine the contract financing terms based upon the results of market research and prepare a written rationale for the terms. If the contracting officer determines there is variation between sellers within the customary standard market terms (see 32.202–3(c)), the contract financing terms specified by the contracting officer shall be within those variations. The financing terms shall be incorporated in the solicitation. Contract financing shall not be a factor in evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.606 concerning amendments of solicitations). Contract financing shall not be a basis for adjusting offerors' proposed prices because the effect of contract financing is reflected in each offeror's proposed prices.

32.205 Procedures for offeror-proposed commercial contract financing.

(a) Under this procedure, each offeror may propose financing terms. The contracting officer must then determine which offer is in the best interest of the United States.

(b) *Solicitations.* The contracting officer shall include in the solicitation the Invitation to Propose Contract Financing Terms at 52.232–AC. The contracting officer shall also—

(1) Specify the effective delivery payment (invoice) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see (c)(4) of this section).

(c) *Evaluation of proposals.* (1) When contract financing terms vary between offerors, the contracting officer must adjust each proposed price for evaluation purposes to reflect the cost to the United States of providing the proposed financing in order to determine the total cost to the United States of that particular combination of price and financing.

(2) Contract financing results in the Government making financing payments earlier than it otherwise would as delivery payments. The cost to the Government of providing contract financing is the Government's imputed cost of those earlier-than-otherwise-required payments. In order to determine the cost to the Government for providing financing, the contracting officer must compute that imputed cost of financing and add it to the proposed price to determine the evaluated price for each offeror.

(3) The imputed cost of a single financing payment is the amount of the payment multiplied by the annual interest rate, multiplied by the number of years between the date of payment of the financing payment and the date the amount would have been paid as a delivery payment. The imputed cost of financing is the sum of the imputed costs of each of the financing payments.

(4) The time value of offeror-proposed contract financing arrangements shall be calculated using as the interest rate the Nominal Discount Rate specified in Appendix C of OMB Circular A–94, Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts, appropriate to the period of contract financing. This Appendix is updated yearly and is available from the Office of Economic Policy in the Office of Management and Budget (OMB).

32.206 Construction of contract clauses.

(a) Unless otherwise authorized by agency regulations, the contract shall contain the paragraph entitled Payment of the clause at 52.212–4. If the contract will provide for contract financing, the contracting officer shall construct a solicitation provision and contract clause for any resulting contract. This solicitation provision shall be constructed in accordance with 32.204 or 32.205. If the procedure at 32.205 is used, the solicitation provision Invitation to Propose Financing Terms at 52.232–AC shall be included. The contract clause shall be constructed in accordance with the requirements of this subpart and any agency regulations.

(b) Each contract financing clause shall have the following structure:

(1) One or more paragraphs describing the—

(i) Computation of the financing payment amounts;

(ii) Specific conditions of contractor entitlement to those financing payments;

(iii) Liquidation of those financing payments by delivery payments;

(iv) Specifics of the security under the contract, any terms or conditions specifically applicable thereto; and

(v) Frequency, form, and any additional content of the contractor's request for financing payment (in addition to the requirements of the clause Standard Terms for Government Financing of Purchases of Commercial Items at 52.232–AA), which paragraph shall limit the frequency of requests to no more than one per month, unless otherwise authorized by agency regulation.

(2) Unless agency regulations authorize alterations, the unaltered text of the clause at 52.232–AA, Standard Terms for Government Financing of Purchases of Commercial Items.

(c) *Computation of amounts, and contractor entitlement provisions.* Contracts shall provide that delivery payments shall be made only for completed goods and services accepted by the Government in accordance with the terms of the contract. Contracts may provide for commercial advance and commercial interim payments based upon a wide variety of bases, including (but not limited to) achievement or occurrence of specified events, the passage of time, or specified times prior to the delivery date(s). The basis for payment must be objectively determinable. It is expected that the basis for payment for customary standard market terms is one that is documented by the records and controls maintained by a prudent business person in the normal course of business in that market. Therefore, in establishing the basis for contract financing payments under the contracting-officer specified procedure, the contracting officer normally should be guided by the customary standard market terms. Under the offeror-proposed procedure, the offeror is responsible for proposing terms it can implement.

(d) *Instructions for multiple appropriations.* If contract financing is to be computed for the contract as a whole, and if there is more than one appropriation account (or subaccount) funding payments under the contract, the contracting officer shall include in the contract instructions for distribution of financing payments to the respective funds accounts.

(e) *Prompt payment for commercial purchase payments.* The provisions of subpart 32.9, Prompt Payment, apply to contract financing and invoice payments for commercial purchases in the same manner they apply to contract financing and invoice payments for non-commercial purchases. The contracting officer, in constructing financing and payment terms for commercial purchases, is responsible for including in the contract all the information necessary to implement prompt payment. In particular, contracting officers must be careful to clearly differentiate in the contract between contract financing and invoice payments and between items having different prompt payment times.

(f) *Installment payment financing for commercial items.* Contracting officers may insert the clause at 52.232–AB, Installment Payments for Commercial Items, in contracts and solicitations in lieu of constructing a specific clause in accordance with paragraphs (b) through (e) of this section when the contracting officer determines that this clause is appropriate and in the best interest of the Government.

(1) *Description.* Installment payment financing is payment by the Government to a contractor of a fixed number of equal interim financing payments prior to delivery and acceptance of a contract item. The installment payment arrangement is designed to reduce administrative costs. However, if a contract will have a large number of deliveries, the administrative costs may increase to the point where installment payments are not in the best interest of the Government.

(2) *Authorized types of installment financing payments and rates.* Installment financing payments may be made using the clause at 52.232–AB, Installment Payments for Commercial Items, either at the 70 percent financing rate cited in the clause or at any other lower rate in accordance with agency procedures.

(3) *Calculating the amount of installment financing payments.* The contracting officer shall identify in the contract schedule those items for which installment financing payments are authorized. Monthly installment financing payment amounts are to be calculated by the contractor pursuant to the instructions in the contract clause only for items authorized to receive installment financing payments.

(4) *Liquidating installment payment financing payments.* If installment financing payments have been made for an item, the amount paid to the contractor upon acceptance of the item by the Government shall be reduced by the amount of installment financing payments made for the item in order to liquidate all installment financing payments previously made for the item. The contractors request for final payment for each item is required to show this calculation.

32.207 Administration and payment of commercial financing payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of contract financing requests.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official:

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all contract financing requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the account(s) (see 32.206(d)) to be charged for the payment.

(c) *Reviews.* Because the basis for payments can vary widely, the contracting officer is responsible for determining what reviews, either pre- or post- payment, are required for protection of the Government's interests. The contracting officer, in approving financing payments, may rely upon contractor certifications and internal management, accounting, and data practices or systems, provided the contracting officer has determined that those practices or systems are reliable and that appropriate reviews are conducted to verify their continued reliability.

(d) *Financial surveillance.* The contracting officer is responsible for monitoring the contractor's overall financial condition. The contract financing provisions, entitled Suspension and Reduction of Financing Payments, and Reports and Government Access, of the clauses at 52.232–AA and 52.232–AB, specifically give the Government rights to information in this area.

(e) *Management of security.* After contract award, the contracting officer responsible for approving requests for financing payments shall be responsible for determining that the security continues to be adequate.

(f) *Limits on Government access.* (1) Unless the contractor requests contract financing under a contract financing clause, the associated Government rights granted by the Records, reports and access provisions of the contract financing clauses (e.g., access to records) are inoperative.

(2) The Government rights granted by the Records, reports, and access provisions of contract financing clauses are for the purpose of ensuring the accuracy and safety of the Government's financing payments and shall not be used for any other purpose.

15. Section 32.501–1 is amended by revising paragraph (d) to read as follows:

32.501–1 Customary progress payment rates.

* * * * *

(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99–145), as amended, and, for civilian agencies, in accordance with 41

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U.S.C. 255, as amended, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or other customary progress payments for the undefinitized actions.

32.501–4 [Removed]

16. Section 32.501–4 is removed.

17. Section 32.502–1 is amended in paragraph (a) introductory text by removing the phrase "paragraphs (b) and (c) below," and inserting in its place "paragraph (b) of this section,"; by revising paragraph (b) introductory text and (b)(1); by removing paragraph (c); by redesignating paragraph (d) as paragraph (c); and in newly designated paragraph (c)(1) by removing the phrase "through (c) above," and inserting in its place "and (b) of this section,". The revised text reads as follows:

32.502–1 Use of customary progress payments.

* * * * *

(b) To reduce undue administrative effort and expense, unless otherwise provided in agency regulations, the contracting officer shall not provide for progress payments on contracts of less than $1 million unless—

(1) The contractor is a small business concern and the contract will be equal to or greater than the simplified acquisition procedure threshold; or

* * * * *

18. Subpart 32.10, consisting of sections 32.1000 through 32.1011, is added to read as follows:

Subpart 32.10—Performance-Based Payments

Sec.

32.1000 Scope of subpart.
32.1001 Policy.
32.1002 Bases for performance-based payments.
32.1003 Criteria for use.
32.1004 Procedure.
32.1005 Solicitation provisions and contract clause.
32.1006 Agency approvals.
32.1007 Administration of performance-based payments.
32.1008 Suspension or reduction of performance-based payments.
32.1009 Title.
32.1010 Risk of loss.
32.1011 Performance-based payments for events.

32.1000 Scope of subpart.

This subpart provides policy and procedures, and prescribes contract clauses for performance-based payments under non-commercial purchases pursuant to subpart 32.1. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid procedures.

32.1001 Policy.

(a) Performance-based payments are contract financing payments and, when authorized by the contract, are to be used to pay a contractor on bases which do not involve acceptance by the Government.

(b) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), where performance-based payments are used, they shall be the exclusive method of contract financing in the contract in accordance with subpart 32.1.

(c) Contractors shall maintain an appropriate investment in their contract at all times.

(d) For Government accounting purposes, performance-based payments should be treated like progress payments based on costs under subpart 32.5.

(e) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment. However, these payments shall be made in accordance with the agency's policy for contract financing payments.

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases:

(a) Performance measured by objective, quantifiable methods,

(b) Accomplishment of defined events, or

(c) Other quantifiable measures of results.

32.1003 Criteria for use.

Performance-based payments shall be used only if the following conditions are met:

(a) The contract meets any criteria established by agency regulations in accordance with subpart 32.1,

(b) The contract is a definitized fixed-price type contract, and

(c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with subpart 32.4, or Guaranteed Loans in accordance with subpart 32.3 may be used.

32.1004 Procedure.

Performance-based financing payments may be made either on a whole contract basis or on a deliverable item basis, unless otherwise prescribed by agency regulations.

(a) *Establishing performance bases.* Each event or performance criteria that will trigger payment of a performance-based finance payment amount shall be an integral and necessary part of contract performance and shall be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criteria. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criteria shall be readily verifiable. A contractor shall not be paid for an event or performance criteria until previously scheduled events or prior performance criteria have been successfully performed. If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criteria shall be part of the performance necessary for that deliverable item and shall be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* The contracting officer responsible for establishing the price of a contract also shall establish a complete, fully defined schedule of performance-based payments when establishing the price of the contract. If a contract action significantly affects the price, or event or performance criteria, the contracting officer responsible for pricing the contract modification shall adjust the performance-based payment schedule appropriately. The payment amounts should be adequate to ensure that the contractor maintains an appropriate investment in work in process inventory and total performance-based finance payments shall not exceed 75 percent of the contract price, if on a whole contract basis, or 75 percent of the delivery item price if on a delivery item basis. Performance-based finance payment amounts may be established on the basis of—

(1) The estimated projected cost of performance of the entire contract, or of specific line items, as of the date of each event;

(2) The estimated projected cost of performance of the entire contract, or of specific line items, as of the date of attainment of each performance criteria;

(3) The estimated projected cost of performance of particular events; or

(4) Any other rational basis determined by the contracting officer or agency procedures.

(c) *Instructions for multiple appropriations.* If the whole contract approach is used and there is more than one appropriation account (or sub account) funding payments under the contract, the contracting officer shall include in the contract instructions for distribution of financing payments to the respective funds accounts.

(d) *Liquidating performance-based finance payments.* Performance-based finance amounts shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment.

(1) If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage. In order to ensure proper liquidation, performance-based financing payments made after any payment for a deliverable item shall be adjusted to reflect the amount of previous delivery payments. (For example, if $3 million of performance-based financing payments have been made under a $10 million contract, the liquidation percentage would be 30 percent.)

(e) *Late payment penalties.* Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of the Prompt Payment Act in accordance with subpart 32.9. However, these payments shall be made in accordance with the agency's policy for contract financing payments.

32.1005 Solicitation provisions and contract clause.

(a) If performance-based contract financing will be provided, the contracting officer shall insert the clause at 52.232–BD, Performance-Based Payments, with the description of the basis for payment and liquidation as required in 32.1004 in the solicitation and resulting contract.

(b) The contracting officer shall insert the provision at 52.232–BB, Notice of Performance-Based Payments, in requests for proposals that include a Performance-Based Payments clause.

(c) Unless otherwise directed by agency regulations in accordance with 32.104(c), if it is expected that the award will be for less than $1 million, the contracting officer shall insert the provision at 52.232–BC, Notice of Availability of Performance-Based Payments Exclusively for Small Business Concerns, in solicitations that include the Performance-Based Payment clause.

32.1006 Agency approvals.

The contracting officer shall obtain such approvals as are required by agency regulations.

32.1007 Administration of performance-based payments.

(a) *Administration.* The extent of supervision of performance-based payments shall vary inversely with the contractor's experience, performance record, reliability, quality of management, financial strength, and the adequacy of the records, accounts and controls established by the contractor for the administration of the clause. Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect the Government's interests.

(b) *Approval of requests.* If the contracting officer has satisfied himself that the contractor's internal records and controls and management arrangements are accurate and reliable for all aspects of administration of performance-based payments, the contracting officer may rely upon those in approving any particular request for payment. In such event, the contracting officer shall determine the degree of risk to the Government's interests, and shall arrange an appropriate schedule of post-payment reviews and verifications. Where the contracting officer is not satisfied, the contracting officer shall require such reviews and verifications before approval for payment, as the contracting officer finds appropriate for the protection of the Government's interests.

32.1008 Suspension or reduction of performance-based payments.

(a) *General.* The Performance-Based Payments clause provides the Government the right to reduce or suspend performance-based payments or to increase the liquidation, under specified conditions. These conditions and actions are discussed in paragraphs (b) through (d) of this section.

(1) The contracting officer shall take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after—

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(2) The contracting officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(3) In all cases, the contracting officer shall (i) act fairly and reasonably, (ii) base decisions on substantial evidence, and (iii) document the contract file. Findings made under paragraph (e) of the Performance-Based Payments clause at 52.232–BD shall be in writing.

(b) *Contractor noncompliance.* (1) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain efficient and reliable records, accounts, and controls adequate for proper administration of the clause. If these are deemed inadequate, performance-based payments shall be suspended (or payments for events for which the records, accounts, or controls are unacceptable shall be suspended) until the necessary changes have been made.

(2) If the contractor fails to comply with the contract without fault or negligence, the contracting officer will not take action permitted by paragraph (e)(1) of the Performance-Based Payment clause at 52.232–BD, other than to correct overpayments and collect amounts due from the contractor (see also 32.1007(c)).

(c) *Unsatisfactory financial condition.* (1) If the contracting officer finds that contract performance (including full liquidation of performance-based payments) is endangered by the contractor's financial condition, or by a failure to make progress, the contracting officer shall require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to the Government.

(2) If the contracting officer concludes that further performance-based payments would increase the probable loss to the Government, the contracting officer shall suspend performance-based payments and all other payments until the unliquidated balance of performance-based payments is eliminated.

(d) *Delinquency in payment of costs of performance.* If the contracting officer determines the contractor is delinquent in paying the costs of contract performance in the ordinary course of

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business, the contracting officer shall evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, shall apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the contracting officer shall not deny performance-based payments if the contractor agrees to—

(1) Cure the payment delinquencies;

(2) Avoid further delinquencies; and

(3) Make additional arrangements adequate for completing the contract without loss to the Government.

32.1009 Title.

(a) Since the Performance-Based Payment clause at 52.232–BD gives the Government title to all of the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title to this property is not compromised by other encumbrances. Ordinarily, the contracting officer, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payment clause at 52.232–BD, the contracting officer shall require additional protective provisions.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.1010 Risk of loss.

(a) Under the Performance-Based Payments clause at 52.232–BD, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in 32.1005 related to performance-based payments, default, and terminations, do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk and the property is part of or needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payment clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

32.1011 Performance-based payments for events.

The following policy and procedures apply to the use of performance-based payments based upon specific events (milestones):

(a) The performance-based payment shall be based on a program event, identified to a specific contract line item or subline item, and liquidated by deduction of the performance-based payments from the price of the item in the contract.

(b) Each event for which a performance-based payment is established shall have a description of what constitutes successful performance.

(c) Because performance-based payments are liquidated by deduction from a specific delivery, each event for which a performance-based payment is established shall be part of the performance of a specific deliverable item under the contract.

(d) It is not required that the performance-based payment amount be based on the cost of performing an event; however, there must be a rational basis for the payment amount established.

(e) The contracting officer awarding the contract is responsible for establishing a complete, fully defined schedule of performance-based payments prior to award of the contract.

(f) The performance-based payments shall be set forth in the contract, be reasonably priced, and be based on meaningful program events.

(g) The contracting officer shall not approve a performance-based payment until the contractor has successfully performed the specified event, notwithstanding the contractor's failure to perform is without fault or negligence on the contractor's part. However, if a contracting officer determines that the failure to perform was Government-caused (and it can be established that the contractor would have successfully performed the event otherwise), the effect upon the contractor of the delay in performance payment for the event may be considered if contract adjustment results.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

19. Sections 52.232–AA through 52.232–BD are added to read as follows:

§ 52.232–AA Standard Terms for Government Financing of Purchases of Commercial Items.

In accordance with 32.206(b)(2), insert the following clause:

Standard Terms for Government Financing of Purchases of Commercial Items (Date)

If contract financing will be provided under this contract, the terms and conditions of this clause shall apply, in addition to any other provisions of this contract. If the contract financing terms of this contract resulted from an Invitation to Propose Financing Terms (FAR 52.232–AC), no financing payment shall be made in any greater amount or at any earlier date than specified in the listing contained in the contractor's proposal as accepted by the contracting officer.

(a) *Reduction or suspension of payments.* The Contracting Officer may reduce or suspend financing payments, liquidate financing payments by deduction from any payment for accepted supplies or services under this or any other contract, or take a combination of these actions, after finding upon substantial evidence any of the following conditions—

(1) The Contractor failed to comply with any contract term or condition;

(2) Performance of this contract is endangered by the Contractor's unsatisfactory financial condition; or

(3) The Contractor fails to provide the Government, upon request, a satisfactory assurance of future performance.

(b) *Records, reports, and access.* The Contractor shall maintain records and controls adequate for administration of this clause. For the sole purpose of administering this clause, the Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer, and shall give the Government reasonable opportunity to examine and verify the Contractor's records and controls required for administration of this clause, and to examine and verify the Contractor's performance of this contract.

(c) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated performance payments. The Government shall be liable for no payment except as provided by the Termination for Cause term of the clause at 52.212–4.

(d) *Reservation of rights.* (1) No payment under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Contractor certification and acknowledgment of criminal and civil penalties.* As required in the paragraph concerning the content of the Contractor's request for financing payment, the Contractor shall make the following certification in each request for financing payment:

I certify to the best of my knowledge and belief that—

(1) This request for financing payment is true and correct;

(2) All payments requested are properly due in accordance with the contract, and that except as disclosed to the Contracting Officer by written communication dated _____, the deliverable items for which payments are requested will be delivered or performed in accordance with the contract;

(3) There has been no impairment or diminution of the Government's security under this contract (except as reported in writing on _____);

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and,

(5) After the making of this requested Financing Payment, the amount of all such payments will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(6) I understand that inaccurate information provided to the Government may subject me and/or others to civil and/or criminal penalties for false claims or false statements pursuant to 31 U.S.C. 3729 and 18 U.S.C. 1001.

(f) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of the adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may find the Contractor to have failed to comply with a requirement of the contract as provided in paragraph (a). Reduction or suspension of payments.

(g) *Content of Contractor's request for financing payment term.* The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for Financing Payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (e), Contractor certification and acknowledgment of criminal and civil penalties.

(End of clause)

§ 52.232–AB Installment Payments for Commercial Items.

As prescribed in 32.206(e), insert the following clause:

Installment Payments for Commercial Items (Date)

Installment financing payments shall be made to the Contractor when requested, as work progresses, but not more frequently than monthly, in amounts approved by the Contracting Officer under the following conditions:

(a) *Computation of amounts.* Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.

(1) *Number of installment payments for each contract line item.* Each separately priced unit of each contract line item is authorized a fixed number of monthly installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is nine (9) months after award of the contract, all separately priced units of that contract line item are authorized eight (8) installment payments.

(2) *Amount of each installment payment.* The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.

(3) *Date of each installment payment.* Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are equal to the number of installment payments authorized for that unit. For example, if eight (8) installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be eight (8) months before the scheduled delivery date for that unit. The last installment payment is due one (1) month before scheduled delivery of a unit.

(4) *Limitation on Payment.* Prior to the payment for acceptance of a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.

(b) *Contractor request for installment payment.* The Contractor may submit Requests for Payment of Installment Payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installments in any month for which payment is being requested shall be included in a single request, appropriately itemized and totaled.

(c) *Adequate progress and approval for payment.* An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided below, approved requests shall be paid within thirty (30) days of submittal of a proper request for payment Payment is not required, and the prompt payment period shall not begin, until the Contracting Officer approves the request, if the Contracting Officer—

(1) Requires substantiation of adequate progress;

(2) Inquires into the status of performance;

(3) Inquires into any of the conditions listed in paragraph (e), Reduction or suspension of payments, of this clause; or

(4) Inquires into the Contractor certification.

(d) *Liquidation of installment payments.* (1) Installment payments shall be liquidated by deducting from the invoice payment made upon acceptance of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated installment payment balance(s) for the related deliverable item(s), after adjustment of delivery payments and balances for any retroactive price adjustments.

(3) The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.

(e) *Reduction or suspension of installment payments.* The Contracting Officer may reduce or suspend Installment Payments, liquidate Installment Payments by deduction from any payment for accepted supplies or services under this or any other contract, or take a combination of these actions, after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any contract term or condition;

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(2) Performance of this contract is endangered by the Contractor's unsatisfactory financial condition; or

(3) The Contractor fails to provide the Government, upon request, a satisfactory assurance of future performance.

(f) *Security for installment payment financing.* In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this contract. Upon receipt of the adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may find the Contractor to have failed to comply with a material requirement of the contract as provided in paragraph (e), Reduction or suspension of installment payments, of this clause.

(g) *Records, reports, and access.* The Contractor shall maintain records and controls adequate for administration of this clause. For the sole purpose of administering this clause, the Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer, and shall give the Government reasonable opportunity to examine and verify the Contractor's records and controls required for administration of this clause, and to examine and verify the Contractor's performance of this contract.

(h) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated performance payments. The Government shall be liable for no payment except as provided by the Termination for Cause term of the clause at 52.212–4.

(i) *Reservation of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Content of Contractor's request for installment payment.* The Contractor's request for installment payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for Installment Payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) An itemized and totaled statement of the items, related deliverable items, and installment payment(s) being requested for each separately priced unit of each contract line item; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (k).

(k) *Contractor certification.* As required in paragraph (j)(5) of this clause, the Contractor shall make the following certification in each Request for Installment Payment:

I certify to the best of my knowledge and belief that—

(1) This request for installment payment is true and correct;

(2) All installment payments requested are properly due in accordance with the contract, and that except as disclosed to the Contracting Officer by written communication dated _____, the deliverable items for which Installment Payments are requested will be delivered or performed in accordance with the contract;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's security;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and,

(5) After the making of this requested Installment Payment, the amount of all payments for each deliverable item for which installment Payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(6) I understand that inaccurate information provided to the Government may subject me and/or others to civil and/or criminal penalties for false claims or false statements pursuant to 31 U.S.C. 3729 and 18 U.S.C. 1001.

(End of clause)

52.232–AC Invitation to Propose Financing Terms.

The contracting officer shall include this provision as specified in 32.205(b) and 32.206.

Invitation to Propose Financing Terms (Date)

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments to the contractor during performance of this contract. The financing terms proposed by the offeror shall be a factor in the evaluation of the contractor's proposal. The financing terms of the successful offeror and the clause, Standard Terms for Government Financing of Purchases of Commercial Items, at 52.232–AA, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause Standard Terms for Government Financing of Purchases of Commercial Items at 52.232–AA, the terms of the clause Standard Terms for Government Financing of Purchases of Commercial Items at 52.232–AA shall govern.

(c) Because of statutory limitations (10 U.S.C. 2307(f) and 41 U.S.C. 255(f)), the offeror's proposed financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the Payment term,

(2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract,

(3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace, and

(4) The terms and conditions of the contract financing must be in the best interest of the United States.

(d) The offeror's proposal of financing terms shall include the following:

(1) The proposed contractual language describing the contract financing (see FAR 32.202–3 for appropriate definitions of types of payments),

(2) A listing of the earliest time and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment. Any resulting contract shall provide that no contract financing payment shall be made at any earlier time or in any greater amount than shown in the offeror's listing.

(e) The offeror's proposed prices and financing terms shall be evaluated to determine the cost to the United States of the proposal. This evaluation shall be done using the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

52.232–BB Notice of Performance-Based Payments.

As prescribed in 32.1005(b), insert the following provision:

Notice of Performance-Based Payments (Date)

The need for customary performance-based payments conforming to the regulations in Subpart 32.10 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Performance-Based Payments clause included in this solicitation, and the description of the basis for payment and liquidation, will be included in any resulting contract. Even though the clause is included in the contract, the clause shall be inoperative during any time the Contractor's records, accounts, or controls are determined by the Government to be inadequate for administration of this clause.

(End of provision)

52.232–BC Notice of Availability of Performance-Based Payments Exclusively for Small Business Concerns.

As provided in 32.1005(c), insert the following provision:

Notice of Availability of Performance-Based Payments Exclusively for Small Business Concerns (Date)

The Performance-Based Payments clause will be available only to small business concerns. Any bid conditioned upon inclusion of a performance-based payment clause in the resulting contract will be rejected as nonresponsive if the bidder is not a small business concern.

(End of provision)

52.232–BD Performance-Based Payments.

As prescribed in 32.1005(a), insert the following clause:

Performance-Based Payments (Date)

In accordance with the provisions of this clause, and the contract's description of the basis for payment, the Contractor shall be paid contract financing payments based upon performance under the following conditions:

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit Requests for Payment of Performance-Based Payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all basis for payment in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests.* (1) The Contractor shall not be entitled to payment of a Request for Performance-Based Payment prior to successful accomplishment of the event or performance criteria for which payment is requested. The Contracting Officer shall determine whether the event or performance criteria for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the event or performance criteria which has been or is represented as being payable.

(2) A payment under this Performance-Based Payment clause is a contract financing payment under the Prompt Payment clause of this contract, and approved requests shall be paid in accordance with the prompt payment period and provisions specified for Contract Financing Payments by that clause provided, however, if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criteria, or into any of the conditions listed in paragraph (e), Reduction or Suspension of Payments, of this clause, or into the contractor certification, payment is not required, and the prompt payment period shall not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a Request for Performance-Based Payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments.* (1) Performance-based finance amounts paid prior to payment for delivery and acceptance of an item shall be liquidated by deducting a percentage or the designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage. If a liquidation percentage is used, the liquidation percentage for each line item shall be the percent of the total contract price that was previously paid under performance-based finance payments. In order to ensure proper liquidation, performance-based financing payments made after any payment for a deliverable item shall be adjusted to reflect the amount of previous delivery payments.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments.* The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress, or (ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f)(1) *Title.* Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) *Property,* as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause, and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, (*e.g.*, the termination or special tooling clauses), shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(g) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the

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Contracting Officer for the administration of this clause and to determine that an event or other criteria prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default.* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's Request for Performance-Based Payment shall contain the following:

(1) The name and address of the Contractor,

(2) The date of the request for Performance-Based Payment,

(3) The contract number and/or other identifier of the contract or order under which the request is made,

(4) Such information and documentation as is required by the contract's description of the basis for payment, and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m).

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each Request for Performance-Based Payment:

I certify to the best of my knowledge and belief—

(1) That this Request for Performance-Based Payment is true and correct; that this Request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract, and the instructions of the Contracting Officer;

(2) That (except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) That there are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's title;

(4) That there has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated ____ and

(5) That after the making of this requested Performance-Based Payment, the amount of all payments for each deliverable item for which Performance-Based Payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

[FR Doc. 95–6294 Filed 3–14–95; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 94–764]

OMB Clearance Request for Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Contract Financing.

DATES: Comments may be submitted on or before May 15, 1995.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Sections 2001 and 2051 of the Federal Acquisition Streamlining Act of 1994 substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations:

- The financing must be in the best interest of the Government,
- The financing cannot exceed 15 percent until some performance of work under the contract,
- The terms and conditions must be appropriate or customary in the commercial marketplace.

The above statutory provisions also remove from financing of commercial purchases certain restrictions applicable to financing of non-commercial purchases by other provisions of 10 U.S.C. 2307 and 41 U.S.C. 255.

Sections 2001(b) and 2051(b) also amend the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA propose to amend the Federal Acquisition Regulation by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232. The statutory changes create a fundamental distinction between financing of purchases of commercial and non-commercial items. As a result, the subparts of Part 32, Contract Financing, fall into three logical categories:

- Subparts applicable to both commercial and non-commercial financing,
- Subparts applicable to only commercial financing, and
- Subparts applicable to only non-commercial financing.

The proposed rule will enable the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per request for commercial financing and .*5* hours per request for performance-based financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden for Commercial Financing is estimated as follows: Respondents, *1,000*; responses per respondent, *5*; total annual responses, *5,000*; preparation hours per response, *1*; and total response burden hours, *5,000*.

The annual reporting burden for Performance-Based Financing is estimated as follows: Respondents, *6,000*; responses per respondent, *32*; total annual responses, *192,000*; preparation hours per response, *.5*; and total response burden hours, *96,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Contract Financing, FAR case 94–764, in all correspondence.

Dated: March 9, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–6293 Filed 3–14–95; 8:45 am]

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Wednesday
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Part V

Department of Transportation

Federal Transit Administration

49 CFR Part 661
Buy America Requirements: Public Interest Waiver for Micro-Purchases; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. 94–A]

RIN 2132–AA42

Buy America Requirements

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of waiver from Buy America requirements for "micro-purchases" by FTA grantees.

SUMMARY: FTA issues an immediate public interest waiver from Buy America requirements for "micro-purchases"—those purchases with capital and operating assistance where the cost is $2,500 or less.

DATES: Effective date: March 15, 1995. Comment date: Comments must be received by May 15, 1995.

ADDRESSES: Comments should be addressed to: Federal Transit Administration, Office of Chief Counsel, Docket No. 94–A, Room 9316, 400 Seventh Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, Office of Chief Counsel, (202) 366–4063.

SUPPLEMENTARY INFORMATION: The Buy American Act of 1933, 41 U.S.C. 10 a–d, established a preference for domestically produced goods in direct federal procurements. The first Buy America legislation applicable to the expenditure of federal funds by recipients under FTA and Federal Highway Administration (FHWA) grant programs was enacted in 1978: section 401 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689) established a domestic preference for "articles, materials, supplies mined, produced, or manufactured" in the United States and costing more than $500,000.

In January 1983, Congress repealed section 401 and substituted section 165 of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97–424, 96 Stat. 2097. This action, among other things, eliminated the $500,000 threshold. Congress prohibited the expenditure of FTA or FHWA funds on steel, cement, and "manufactured products," but as discussed below, included four exceptions permitting the statute to be waived. In 1984, Congress removed cement from section 165, and in 1991 added iron (see section 337 of the Surface Transportation Assistance and Uniform Relocation Act of 1987 (Pub. L. 100–17, 101 Stat. 32) and section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–204, 105 Stat. 1914)).

Now codified at 49 U.S.C. 5323(j), the Buy America requirement that applies to purchases made with Federal transit and highway funds provides as follows:

(j) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) Applying paragraph (1) would be inconsistent with the public interest;

(B) The steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) When procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

(i) The cost of components and subcomponents produced in the United States is more that 60 percent of the cost of all components of the rolling stock; and

(ii) Final assembly of the rolling stock has occurred in the United States; or

(D) Including domestic material will increase the cost of the overall project by more than 25 percent.

FTA has issued regulations implementing this provision at 49 CFR Part 661. These regulations specify that "for a manufactured product to be considered produced in the United States: (1) All of the manufacturing processes for the product must take place in the United States; and (2) all items or material used in the product must be of United States origin." 49 CFR 661.5(d). This definition is different from the regulation implementing the 1933 Buy American Act which requires that manufactured products contain only a 51 percent domestic content.

In this global economy, it is nearly impossible to find manufactured products that are entirely domestic. Consequently, FTA receives Buy America waiver requests for thousands of items, the great majority for reasons of nonavailability under section (j)(2)(B), with a few based on price differential under section (j)(2)(D). (In Appendix A to 49 CFR 661.7, FTA adopted the waivers granted under the Buy American Act of 1933 (41 U.S.C. 10 a–d) and included public interest waivers under section (j)(2)(A) for microcomputer equipment, certain Chrysler vehicles assembled in Canada, and spare parts when purchased as part of a rolling stock procurement.) As a general rule, most grantees have many more procurements for small items than for large items. Thus, most waivers granted by FTA are based on the nonavailability of items such as office supplies (e.g., pens, paperclips) and maintenance items (e.g., screws, bearings, small vehicle replacement parts, consumables). Many involve purchases of less than $20, with unit prices under one dollar and often less than one cent. These types of things are generally purchased with Federal and local operating assistance funds.

The volume of these waiver requests has resulted in significant delays in grantees' procurement processes. They consume an inordinate amount of grantee staff time, since documentation for each waiver request must be developed and submitted to FTA, where it is reviewed and acted on. Large grantees handle thousands of individual procurements each year. Several grantees state that in order to comply with the FTA Buy America requirements, procurement staffs have been increased.

One mid-sized grantee has written that it processes more than 1,000 purchase orders each month. Such procurements, if subjected to Buy America scrutiny, could theoretically result in the generation of more than 12,000 internal documents annually and an estimated 1,500 requests for waivers. To fully comply with the requirement (for procurements of less than $10,000), this grantee estimated that its purchasing department staff would have to be increased by 2–3 persons, increasing staff costs in excess of $100,000; two fax machines with phone lines would have to be procured, with a one-time cost in excess of $2,000 and annual telephone costs in excess of $1,200; and its computerized stock order system would have to be revised to recognize and track each order to make sure it meets the requirement, at a cost in excess of $10,000. Modifying its purchase procedures to meet the requirement would require reducing the number of purchase orders by ordering larger quantities. However, the grantee explained, good business practice dictates that inventories be kept at the lowest level possible for several reasons, including loss prevention control, minimizing cash in inventory, maintaining purchasing flexibility to take advantage of product changes and improvements, space restrictions for storage, and shelf life. The grantee also noted that buying all items in large quantities also can work against good faith attempts to include disadvantaged business participation in the bidding process.

Grantees have cited other reasons for their assertion that compliance with FTA's current Buy America rule is unduly difficult and burdensome:

• *Small Purchase Procedures.* Grantees do not routinely accumulate the documentation necessary to justify a waiver of the Buy America requirements when procuring goods in accordance with their small purchase procedures, as allowed by 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (known as the "common grant rule"). These small purchase procedures were meant to reduce paperwork and facilitate grantees' effective and efficient procurement of goods. Because documentation needed to request a waiver is usually not required or compatible with such procedures, the requirement to request a waiver is often overlooked. Strict compliance with the FTA rule would necessitate creation of documentation not normally needed for business reasons, preclude the use of oral quotes where normally appropriate, and make the use of purchase orders difficult. Moreover, since the rule precludes granting a waiver until after receipt of bids, grantees are forced to repeat written waiver requests for the same item, even when it is evident that a domestic product will not be offered.

• *State or Local Purchasing Procedures.* Since many small to mid-size transit properties and most states are required to use a local or state purchasing department for purchasing supplies, they have little control over the procedures used. To comply with the FTA Buy America requirements, they must create duplicative local procurement procedures, thereby incurring delays and increasing the cost of their procurements. Ironically, one State has reported that it cannot take advantage of the State Highway Department purchasing office since the State Highway Department complies with the FHWA rule, 23 CFR 635.410, which is inconsistent with the FTA rule.

• *Vendor Problems.* Compliance with the FTA Buy America requirements has also been a problem for vendors who supply the small items grantees need for their routine operations. In many instances, such vendors are distributors and suppliers rather than manufacturers; accordingly, they cannot reasonably be expected to know whether the items being procured are produced in the United States or not. However, under the FTA rule, all vendors must execute a certification of either compliance or noncompliance; for this purpose, some grantees have included a compliance certification on all purchase orders. If a vendor declines to sign the certification, the grantee will not do business with that vendor. This approach protects the grantee, but puts a vendor at risk. Many vendors refuse to certify compliance with the Buy America rule when they do not know the content of the products they are supplying. Some even refuse to deal with the FTA grantee, thus reducing competition. In any case, if the vendor does not certify compliance, the grantee is obliged to consider the product non-domestic and to seek a waiver from FTA for its purchase.

• *Confusion with 1933 Buy American Act.* Grantees also report that some vendors certify compliance with the Buy America requirement believing it to be the same as the 1933 Buy American Act, which requires manufactured products to be 51 percent domestic in content. This is contrary to the FTA regulation, which requires a 100 percent domestic content. Indeed, there are instances where grantees themselves do not know that the FTA regulation requires 100 percent domestic content for a manufactured product to be domestic. Until or unless there is a complaint, the grantee will not look behind the certification to verify that the person who signed it understood the requirement. Thus, one is not always certain that a Buy America certification is correct or that the bids are being judged by the same standard.

Today's action is consistent with and responsive to President Clinton's initiative to reinvent government, known as the National Performance Review, and three recent actions designed to simplify government procedures, especially as to small purchases. The first is Executive Order 12931 of October 13, 1994, Federal Procurement Reform, which requires that Federal agencies review their procurement requirements with a view to streamlining them. The second is the Federal Acquisition Streamlining Act of 1994 (FASA), enacted October 13, 1994, which has as two of its major streamlining features the creation of a Simplified Acquisition Threshold of $100,000 to replace the existing $25,000 small purchase threshold and the exemption of "micro-purchases" (purchases valued at $2,500 or less) from the provisions of the 1933 Buy American Act. On December 15, 1994, the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration issued an interim rule implementing FASA (59 FR 64786, December 15, 1994). The third is a proposal by the Office of Management and Budget (OMB) to apply the $100,000 Simplified Acquisition Threshold for direct Federal purchases to purchases by Federal recipients of financial assistance under the common grant rule at 49 CFR Part 18.36 (59 FR 53705, October 5, 1994). FTA also notes that the Federal Highway Administration (FHWA), in administering the same statute as FTA, already provides a general waiver if the cost of foreign materials does not exceed $2,500.

Public Interest Waiver

In light of these considerations, FTA believes that application of its Buy America rule to micro-purchases is not consistent with the public interest; accordingly, FTA hereby issues a general public interest waiver under 49 U.S.C. § 5323(j)(2)(A) and 49 CFR 661.7(b) to exempt from its Buy America requirements all purchases made with FTA financial assistance, including capital, planning, and operating assistance, where the cost of the purchase is $2,500 or less. This exemption covers many of the very small purchases made by FTA grantees, including office and janitorial supplies and furnishings, maintenance supplies and equipment, and other small items. The goal of this public interest waiver is to eliminate some of the procurement delays, "red tape," and paperwork from FTA grantees' procurement processes. To further serve these purposes, FTA, elsewhere in today's **Federal Register**, proposes a waiver for small purchases as defined in the common grant rule, 49 CFR 18.36(d), and for purchases with operating assistance.

Request for Comments

FTA welcomes comment on this grant of a general public interest waiver.

List of Subjects in 49 CFR Part 661

Buy America.

For the reasons set out above, FTA amends 49 CFR Part 661 as follows:

PART 661—BUY AMERICA REQUIREMENTS—SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982, AS AMENDED

1. The authority citation for part 661 is revised to read as follows:

Authority: Sec. 165, Pub. L. 97–424, as amended by Sec. 337, Pub. L. 100–17 (49 U.S.C. 5323(j)); 49 CFR 1.51.

2. Appendix A to § 661.7 is amended by adding a new paragraph (e) as follows:

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Appendix A to § 661.7—General Waivers

* * * * *

(e) Under the provisions of § 661.7(b) of this part, all purchases where the cost is $2,500 or less are exempt from the requirements of this part.

Issued on: March 10, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–6387 Filed 3–14–95; 8:45 am]

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federal register

Wednesday
March 15, 1995

Part VI

Department of Transportation

Federal Transit Administration

49 CFR Part 661

Buy America Requirements; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. 94–A]

RIN 2132–AA42

Buy America Requirements

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed waiver from Buy America requirements for small purchases and for purchases with operating assistance.

SUMMARY: FTA proposes to issue a public interest waiver from the Buy America requirements for "small purchases" (as defined in the "common grant rule") by FTA grantees and made with capital and planning assistance and for all purchases by FTA grantees made with operating assistance.

DATES: Comments must be received by May 15, 1995.

ADDRESSES: Comments should be addressed to: Federal Transit Administration, Office of Chief Counsel, Docket No. 94–A, Room 9316, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, Office of Chief Counsel, (202) 366–4063.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, FTA provides notice of its issuance of a public interest waiver for micro-purchases (i.e., those purchases where the cost is $2,500 or less) by FTA grantees. In this notice, to further serve the same purposes, FTA proposes to issue a public interest waiver from the Buy America requirements for "small purchases" (as defined in the "common grant rule") by FTA grantees made with capital and planning assistance and for all purchases by FTA grantees made with operating assistance.

The Buy American Act of 1933, 41 U.S.C. 10a–d, established a preference for domestically produced goods in direct federal procurements. The first Buy America legislation applicable to the expenditure of federal funds by recipients under FTA and Federal Highway Administration (FHWA) grant programs was enacted in 1978: section 401 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689) established a domestic preference for "articles, materials, supplies mined, produced, or manufactured" in the United States and costing more than $500,000.

In January 1983, Congress repealed section 401 and substituted section 165 of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97–424, 96 Stat. 2097. This action, among other things, eliminated the $500,000 threshold. Congress prohibited the expenditure of FTA or FHWA funds on steel, cement, and "manufactured products," but as discussed below, included four exceptions permitting the statute to be waived. In 1984, Congress removed cement from section 165, and in 1991 added iron (see section 337 of the Surface Transportation Assistance and Uniform Relocation Act of 1987 (Pub. L. 100–17, 101 Stat. 32) and section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–204, 105 Stat. 1914)).

Now codified at 49 U.S.C. 5323(j), the Buy America requirement that applies to purchases made with Federal transit and highway funds provides as follows:

> (j) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.
>
> (2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—
>
> (A) Applying paragraph (1) would be inconsistent with the public interest;
>
> (B) The steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;
>
> (C) When procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—
>
> (i) The cost of components and subcomponents produced in the United States is more that 60 percent of the cost of all components of the rolling stock; and
>
> (ii) Final assembly of the rolling stock has occurred in the United States; or
>
> (D) Including domestic material will increase the cost of the overall project by more than 25 percent.

FTA has issued regulations implementing this provision at 49 CFR Part 661. These regulations specify that "for a manufactured product to be considered produced in the United States: (1) All of the manufacturing processes for the product must take place in the United States; and (2) all items or material used in the product must be of United States origin." 49 CFR 661.5(d). This definition is different from the regulation implementing the 1933 Buy American Act which requires that manufactured products contain only a 51 percent domestic content.

In this global economy, it is nearly impossible to find manufactured products that are entirely domestic. Consequently, FTA receives Buy America waiver requests for thousands of items, the great majority for reasons of nonavailability under section (j)(2)(B), with a few based on price differential under section (j)(2)(D). (In Appendix A to 49 CFR 661.7, FTA adopted the waivers granted under the Buy American Act of 1933 (41 U.S.C. 10a–d) and included public interest waivers under section (j)(2)(A) for microcomputer equipment, certain Chrysler vehicles assembled in Canada, and spare parts when purchased as part of a rolling stock procurement.) As a general rule, most grantees have many more procurements for small items than for large items. Thus, most waivers granted by FTA are based on the nonavailability of items such as office supplies (e.g., pens, paperclips) and maintenance items (e.g., screws, bearings, small vehicle replacement parts, consumables). Many involve purchases of less than $20, with unit prices under one dollar and often less than one cent. These types of things are generally purchased with Federal and local operating assistance funds.

The volume of these waiver requests has resulted in significant delays in grantees' procurement processes. They consume an inordinate amount of grantee staff time, since documentation for each waiver request must be developed and submitted to FTA, where it is reviewed and acted on. Large grantees handle thousands of individual procurements each year. Several grantees state that in order to comply with the FTA Buy America requirements, procurement staffs have been increased.

One mid-sized grantee has written that it processes more than 1,000 purchase orders each month. Such procurements, if subjected to Buy America scrutiny, could theoretically result in the generation of more than 12,000 internal documents annually and an estimated 1,500 requests for waivers. To fully comply with the requirement (for procurements of less than $10,000), this grantee estimated that its purchasing department staff would have to be increased by 2–3 persons, increasing staff costs in excess of $100,000; two fax machines with phone lines would have to be procured, with a one-time cost in excess of $2,000 and annual telephone costs in excess of $1,200; and its computerized stock order system would have to be revised to recognize and track each order to make sure it meets the requirement, at a cost in excess of $10,000. Modifying its purchase procedures to meet the requirement would require reducing the number of purchase orders by ordering larger quantities. However, the grantee explained, good business practice dictates that inventories be kept at the lowest level possible for several reasons, including loss prevention control, minimizing cash in inventory, maintaining purchasing flexibility to take advantage of product changes and improvements, space restrictions for storage, and shelf life. The grantee also noted that buying all items in large quantities also can work against good faith attempts to include disadvantaged business participation in the bidding process.

Grantees have cited other reasons for their assertion that compliance with FTA's current Buy America rule is unduly difficult and burdensome:

- *Small Purchase Procedures.* Grantees do not routinely accumulate the documentation necessary to justify a waiver of the Buy America requirements when procuring goods in accordance with their small purchase procedures, as allowed by 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (known as the "common grant rule"). These small purchase procedures were meant to reduce paperwork and facilitate grantees' effective and efficient procurement of goods. Because documentation needed to request a waiver is usually not required or compatible with such procedures, the requirement to request a waiver is often overlooked. Strict compliance with the FTA rule would necessitate creation of documentation not normally needed for business reasons, preclude the use of oral quotes where normally appropriate, and make the use of purchase orders difficult. Moreover, since the rule precludes granting a waiver until after receipt of bids, grantees are forced to repeat written waiver requests for the same item, even when it is evident that a domestic product will not be offered.
- *State or Local Purchasing Procedures.* Since many small to mid-size transit properties and most states are required to use a local or state purchasing department for purchasing supplies, they have little control over the procedures used. To comply with the FTA Buy America requirements, they must create duplicative local procurement procedures, thereby incurring delays and increasing the cost of their procurements. Ironically, one State has reported that it cannot take advantage of the State Highway Department purchasing office since the State Highway Department complies with the FHWA rule, 23 CFR 635.410, which is inconsistent with the FTA rule.
- *Vendor Problems.* Compliance with the FTA Buy America requirements has also been a problem for vendors who supply the small items grantees need for their routine operations. In many instances, such vendors are distributors and suppliers rather than manufacturers; accordingly, they cannot reasonably be expected to know whether the items being procured are produced in the United States or not. However, under the FTA rule, all vendors must execute a certification of either compliance or noncompliance; for this purpose, some grantees have included a compliance certification on all purchase orders. If a vendor declines to sign the certification, the grantee will not do business with that vendor. This approach protects the grantee, but puts a vendor at risk. Many vendors refuse to certify compliance with the Buy America rule when they do not know the content of the products they are supplying. Some even refuse to deal with the FTA grantee, thus reducing competition. In any case, if the vendor does not certify compliance, the grantee is obliged to consider the product non-domestic and to seek a waiver from FTA for its purchase.
- *Confusion with 1933 Buy American Act.* Grantees also report that some vendors certify compliance with the Buy America requirement believing it to be the same as the 1933 Buy American Act, which requires manufactured products to be 51 percent domestic in content. This is contrary to the FTA regulation, which requires a 100 percent domestic content. Indeed, there are instances where grantees themselves do not know that the FTA regulation requires 100 percent domestic content for a manufactured product to be domestic. Until or unless there is a complaint, the grantee will not look behind the certification to verify that the person who signed it understood the requirement. Thus, one is not always certain that a Buy America certification is correct or that the bids are being judged by the same standard.

Today's action is consistent with and responsive to President Clinton's initiative to reinvent government, known as the National Performance Review, and three recent actions designed to simplify government procedures, especially as to small purchases. The first is Executive Order 12931 of October 13, 1994, Federal Procurement Reform, which requires that Federal agencies review their procurement requirements with a view to streamlining them. The second is the Federal Acquisition Streamlining Act of 1994 (FASA), enacted October 13, 1994, which has as two of its major streamlining features the creation of a Simplified Acquisition Threshold of $100,000 to replace the existing $25,000 small purchase threshold and the exemption of "micro-purchases" (purchases valued at $2,500 or less) from the provisions of the 1933 Buy American Act. On December 15, 1994, the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration issued an interim rule implementing FASA (59 FR 64786, December 15, 1994). The third is a proposal by the Office of Management and Budget (OMB) to apply the $100,000 Simplified Acquisition Threshold for direct Federal purchases to purchases by Federal recipients of financial assistance under the common grant rule at 49 CFR Part 18.36 (59 FR 53705, October 5, 1994). FTA also notes that the Federal Highway Administration (FHWA), in administering the same statute as FTA, already provides a general waiver if the cost of foreign materials does not exceed $2,500.

Public Interest Waiver

In light of these considerations, FTA believes that application of its Buy America rule to small purchases is not consistent with the public interest; accordingly, FTA proposes to issue a general public interest waiver under 49 U.S.C. § 5323(j)(2)(A) and 49 CFR § 661.7(b) to exempt from its Buy America requirements all "small purchases" (as defined in the common grant rule, 49 CFR 18.36(d)) made by its grantees with FTA financial assistance, including capital, planning, and operating assistance and all purchases by FTA grantees with operating assistance. This exemption would cover many small purchases made by FTA grantees. The goal of this public interest waiver is to eliminate some of the procurement delays, "red tape," and paperwork from FTA grantees' procurement processes.

Request for Comments

FTA requests comment on this proposal to grant a general public interest waiver. After consideration of all comments, FTA will publish notice in the **Federal Register** of its action.

Issued on: March 10, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–6386 Filed 3–14–95; 8:45 am]

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Part VII

Environmental Protection Agency

Paper Products Recovered Materials Advisory; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–5172–9]

Paper Products Recovered Materials Advisory Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency today is providing notice of the availability of a draft Paper Products Recovered Materials Advisory Notice and "Draft Paper Products RMAN—Supporting Analyses." This action will promote paper recycling by using government procurement to expand markets for recovered paper. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for government procurement of these items. In 1988, EPA designated the category of paper and paper products and recommended minimum recovered materials content levels for items within this category that are commonly purchased by government agencies. Today, EPA is issuing draft revisions to the 1988 recommendations. EPA also addresses issues raised by paper manufacturers, merchants, and purchasers as they have been implementing the 1988 recommendations.

DATES: EPA will accept public comments on the recommendations contained in the draft Paper Products Recovered Materials Advisory Notice until May 15, 1995. Both written and electronic comments must be submitted on or before this date.

ADDRESSES: Commenters must send an original and two copies of comments, referencing docket F–95–PPRN–FFFFF, to the RCRA Information Center (5305), U.S. EPA, 401 M Street SW., Washington, DC 20460.

Commenters wishing to submit Confidential Business Information (CBI) should submit an original and two copies of the CBI, referencing docket F–95–PPRN–FFFFF, under separate cover to the Document Control Officer (5305), U.S. EPA, 401 M Street SW., Washington, DC 20460.

Comments may also be submitted electronically by sending electronic mail (e-mail) through the Internet System to: RCRA-Docket@epamail.epa.gov. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The comments should be identified by docket number F–95–PPRN–FFFFF. Further information on submitting comments electronically is provided below in the section entitled "Electronic Filing of Comments."

Public comments and relevant documents are available for viewing in the RCRA Information Center (RIC), located in room M2616, at the EPA address listed above. The RIC is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. Materials may be copied for $0.15 per page.

FOR FURTHER INFORMATION CONTACT: "Draft Paper Products RMAN—Supporting Analyses" is the primary supporting document for the draft Paper Products Recovered Materials Advisory Notice (RMAN). Both the **Federal Register** notice and the supporting document will be available in electronic format on the Internet System through the EPA Public Access Server at gopher.epa.gov. For a paper copy of the **Federal Register** notice or "Draft Paper Products RMAN—Supporting Analyses," please contact the RCRA Hotline at 800–424–9346, or, in the Washington, DC metropolitan area, (703) 412–9810. Paper copies also are available in the RCRA Docket at the address listed in the previous section.

For technical information regarding the recommendations in today's notice, contact Dana Arnold of the Recycling Section in EPA's Office of Solid Waste at (703) 308–7279.

ELECTRONIC FILING OF COMMENTS: As part of an interagency "streamlining" initiative, EPA is experimenting with electronic submission of public comments through the Internet, in addition to accepting comments in traditional written form. This notice is one of the actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works, and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities.

Electronic comment through the Internet raises some novel issues. Persons who comment on this document should be aware that this experimental electronic commenting is administered on a completely public system. Therefore, any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views these comments.

Similarly, since all electronic comments are available to all users, commenters should not submit electronically any information which they believe to be Confidential Business Information (CBI). Such information should be submitted only in writing as described above under **ADDRESSES.**

The official record for this action will be kept in paper form. Accordingly, EPA will convert all documents received electronically into printed paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA docket (see **ADDRESSES** above). (Comments submitted on paper will not be transferred to electronic format. These comments may be viewed only in the RCRA docket as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments can be accurately converted to printed paper form. If EPA becomes aware of any problems with the receipt of the electronic file or with its transfer to paper, the Agency will attempt to contact the commenter to request that the comment be resubmitted in electronic or written form.

Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In these instances, EPA requests that commenters clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments during the open comment period.

As with written comments, EPA will not attempt to verify the identities of electronic commenters or to review the accuracy of electronic comments. EPA will take such commenters and comments at face value. Electronic and written comments will be placed in the official record without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed paper form.

If it chooses to respond officially to electronic comments on this notice, EPA will do so either in a notice in the **Federal Register** or in a response to comments document placed in the official record for this docket. EPA will not respond to commenters electronically, other than to seek clarification of electronic comments that may be garbled in transmission or conversion to printed paper form. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

ACCESSING INTERNET:

1. Through Gopher: Go to: gopher.epa.gov

From the main menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Procurement/Paper".

2. Through FTP: Go to: ftp.epa.gov

Login: anonymous
Password: Your Internet Address
Files are located in directories/pub/gopher. All OSW files are in directories beginning with "OSW".

3. Through MOSAIC: Go to: http://www.epa.gov

Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)." Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Procurement/Paper".

4. Through dial-up access:

Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Procurement/Paper".

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Introduction
  A. Objectives
  B. The Procurement Guidelines Development Process
  C. Approach to Recovered Materials Content Recommendations
  1. One-part vs. Two-part Content Levels
  2. Broad vs. Narrow Definition of "Postconsumer Materials"
  3. Establishment of Minimum Recovered Materials Content Levels and Ranges
  4. EPA's Methodology for Recommending Postconsumer and Recovered Fiber Content Levels
III. Other Issues Addressed in the Draft Paper Products RMAN
  A. Measurement of Recovered Fiber Content
  B. Clarifications and Revisions to Definitions
  C. Revisions to Item Listings
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  E. Use of EPA's Recommendations
III. Request for Comments

I. Authority

The draft Paper Products Recovered Materials Advisory Notice is published under authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention" (58 FR 54911, October 22, 1993).

II. Introduction

Today, the U.S. Environmental Protection Agency (EPA or the Agency) is publishing a draft Recovered Materials Advisory Notice (RMAN), which contains recommendations for procuring agencies to use when purchasing paper and paper products in accordance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA).

Detailed information supporting EPA's draft recommendations are found in "Draft Paper Products RMAN—Supporting Analyses." This document is available electronically and in paper form. See the section above entitled **FOR FURTHER INFORMATION CONTACT** for instructions for obtaining the supporting analyses document in either format.

A. Objectives

In developing the draft recommendations for paper and paper products, EPA considered two objectives. As required by RCRA section 6002, EPA's first objective is to recommend content levels that will maximize the use of postconsumer recovered materials in paper and paper products. EPA's second objective is to promote paper recycling by increasing both the usage of postconsumer recovered materials in paper manufacturing and the availability of competitively-priced paper and paper products containing postconsumer and other recovered materials.

EPA recognizes that while its recommendations are meant primarily for the use of government procuring agencies, EPA's guidance is widely used by private sector purchasers, who represent 95% or more of paper demand. EPA has found that when its recommendations for postconsumer recovered materials content are too high, paper and paper products containing these high percentages are often unavailable to government agencies and private sector purchasers or are not consistently available throughout the U.S. Also, while some paper and paper products containing these high percentages of recovered materials are available, they often are not price-competitive with other paper and paper products offered to government agencies and private sector purchasers. As a result, overall use of postconsumer recovered materials may not be maximized simply by EPA's recommending high postconsumer content levels.

Since designating paper and paper products as procurement items in 1988, EPA has found that increasing demand from both public and private sector purchasers has resulted in greater recycling of postconsumer recovered materials than simply increasing demand from the public sector. Therefore, in establishing today's draft content recommendations, EPA sought to increase the availability to both government and private purchasers of reasonably-priced paper and paper products containing postconsumer recovered materials. EPA strongly believes that this approach will maximize the recycling and use of postconsumer recovered materials.

Therefore, to meet its twin objectives, EPA is adopting a different approach than was used in 1988 to recommend content levels for paper and paper products. As explained in more detail below, EPA is recommending two-part content levels, consisting of a postconsumer fiber component and a recovered fiber component. EPA believes that the two-part recommendations will assure that there is a demand for all recovered materials, including postconsumer recovered materials, as well as those generated during paper converting and printing operations.

Further, EPA is recommending content ranges for each component, whenever appropriate, to encourage increased purchasing of paper and paper products containing postconsumer and recovered fiber throughout the U.S. EPA believes that ranges are appropriate for three reasons. First, Executive Order 12873 directs EPA to recommend ranges. Second, while many agencies will continue to purchase paper products centrally (or from the General Services Administration or the Government Printing Office), local purchases will increase as a result of recent government procurement reform, which increases the small purchase threshold and allows greater local purchasing using credit cards. Currently, the postconsumer and total recovered fiber content of many paper products varies, as does product

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availability, across the U.S. Procuring agencies can use the ranges as an information source in establishing standards for local purchases.

Third, although EPA's recommendations are intended for government purchasing agencies and their contractors, the Agency is aware that private sector purchasers refer to EPA's recommendations when purchasing paper products. EPA wants to encourage the continued broad use of its recommendations to foster greater demand for products containing postconsumer and recovered fiber, which, in turn, will lead to increased usage of these materials. However, EPA believes that private sector purchasers may be able to find paper and paper products available only at the lower end of the ranges, because the large quantities of paper that these purchasers need will be manufactured mainly by mills that use only lower levels of postconsumer and recovered fiber.

There currently are insufficient quantities of paper and paper products containing high percentages of postconsumer and recovered fiber to meet the demand of both public and private sector purchasers. By recommending ranges, EPA is acknowledging that some purchasers will be able to buy products that contain high percentages of postconsumer and recovered fiber, while others will find that products are available that contain lower percentages of these materials. Others, while not being able to buy price-competitive products that contain postconsumer and recovered fiber even at the low end of the ranges, will continue to seek such products, increasing overall demand for recycled paper products. EPA anticipates that this increased demand for and purchase of paper and paper products containing postconsumer and recovered fiber, even at the low end of the recommended ranges, will spur pulp and paper mills to make additional capital investments in the equipment and systems needed to use greater percentages of these fibers and to produce them at a competitive price.

Therefore, EPA encourages both public and private sector purchasers to establish their minimum content standards at the highest levels practicable; if a product is not available at a competitive price and at a content level at the high end of the range, purchasers should set their standards at the highest levels available to them that meet their price and performance objectives, using the recommended range as a guide. In this way, EPA's recommended ranges will encourage both public and private sector purchasers to purchase paper products containing the highest levels of postconsumer and recovered fiber practicable.

Finally, by establishing ranges, EPA is taking into account the diversity that exists within the paper industry. The recommendations recognize that, in many grades of paper, larger quantities of paper and paper products are produced at mills that primarily use wood-based fiber than at mills that primarily use recovered and postconsumer fiber. While it is not currently economically feasible for these mills to substitute high percentages of postconsumer fiber for the wood-based fiber, it is technically and economically possible for them to use lower percentages of postconsumer and recovered fiber. EPA believes that ranges will provide an incentive for all paper mills to maximize their usage of postconsumer and recovered fiber. This will lead to greater availability of competitively-priced paper and paper products for both public and private purchasers. In the long run, this approach will lead to greater demand for postconsumer and recovered fiber.

B. The Procurement Guidelines Development Process

EPA's procurement guidelines are required by section 6002 of RCRA and Executive Order 12873. In an April 20, 1994 **Federal Register** notice, EPA explained that under Executive Order 12873, the Agency is required to issue a regulation, known as a Comprehensive Procurement Guideline (CPG), which will designate items that procuring agencies should purchase containing recovered materials. Executive Order 12873 also directed EPA to issue guidance documents, known as Recovered Materials Advisory Notices, which will contain EPA's recommendations for purchasing the designated items. In the April 20, 1994 **Federal Register**, EPA published the first draft RMAN, which established eight product categories corresponding to the categories used in the CPG. One of these categories, Part A, was reserved for recommendations for paper and paper products. See the April 20, 1994 **Federal Register** (59 FR 18852) and "Draft Paper Products RMAN—Supporting Analyses" for more detail about the requirements of RCRA section 6002 and the guidelines development process.

In today's notice, EPA is announcing that the draft recommendations for paper and paper products are available for public review and comment. EPA's draft recommendations are found in the Appendix at the end of this **Federal Register** notice. They are arranged in the RMAN format established by the April 20, 1994 **Federal Register** notice. As noted above, detailed information supporting the draft recommendations are found in "Draft Paper Products RMAN—Supporting Analyses."

C. Approach to Recovered Materials Content Recommendations

1. One-Part vs. Two-Part Content Levels

As defined in RCRA section 6002(h), the term "recovered materials" refers to materials generated after the end of the papermaking process. Recovered materials can be generated by many sources, including paper mills, intermediate paper users such as printers and converters, merchants, retailers, and the intended end user. Recovered materials are sometimes divided into "preconsumer materials," which refers to materials that have not passed through their intended end usage, and "postconsumer materials," which refers to materials that have passed through their intended end usage. Minimum content standards can be expressed as a percentage of postconsumer materials content, a percentage of recovered materials (or total recovered materials) content, or percentages of both. For example, today, a common content standard for printing and writing paper is 50% total recovered materials, including 10% postconsumer materials.

In 1988, EPA recommended postconsumer content levels for newsprint, tissue products, paperboard, and packaging; and "waste paper" content levels for most printing and writing papers. As defined in the 1988 paper procurement guideline, "waste paper" includes postconsumer materials and certain materials generated after the end of the papermaking process (see 53 FR 23551, June 22, 1988).

In response to a 1990 EPA request for comment (55 FR 40384, October 3, 1990) and an EPA-sponsored 1993 public forum, a group of commenters suggested that the Agency recommend two-part content levels consisting of a "total recovered materials" component in addition to a postconsumer recovered materials component. Within this group, some commenters favor a postconsumer materials component that is defined consistently with the postconsumer definition contained in RCRA section 6002(h). Others favor a broader component consisting of postconsumer materials plus certain preconsumer materials that require deinking or cleaning, similar to postconsumer materials, prior to use.

These commenters argue that two-part content levels can achieve two goals: (1) Assure markets for all recovered materials, regardless of source and (2) increase demand for postconsumer materials. Because there is a limited amount of preconsumer recovered materials, commenters argue that pulp and paper mills will need to use greater percentages of postconsumer materials in order to meet total recovered materials requirements in their products. According to one commenter's estimate, the paper industry recovered and used 87% of available preconsumer materials (i.e., materials generated by sources other than the intended end user of a finished product) in 1990.[1] According to the American Forest & Paper Association (AF&PA), an industry association, almost all preconsumer materials are recovered and used when exports are taken into account.

A second group of commenters favored a single, strictly postconsumer standard. These commenters argue that most preconsumer material is already recovered, and that the focus for government procurement should be on postconsumer paper because it is the single largest component of municipal solid waste. They also believe that only a strictly postconsumer standard will stimulate markets for materials collected by municipal recycling programs.

A third group of commenters argue in favor of a single, total recovered materials standard encompassing both preconsumer and postconsumer materials. They believe that because most preconsumer material is already recovered, virtually all additional recovered paper will necessarily come from postconsumer sources.

EPA believes that the two-part approach is preferable to the postconsumer-only and total recovered materials-only approaches because the two-part approach will result in greater usage of postconsumer materials. A single, postconsumer level fails to acknowledge the continuing contribution to solid waste management and the investments made by mills that have been using all recovered materials, regardless of source, that require deinking, cleaning, or processing prior to use. Additionally, EPA believes that, because most preconsumer materials are now being used, total recovered materials content levels will lead to higher use of postconsumer materials as mills seek sufficient materials to meet the total recovered materials content levels.

EPA also believes that a broad, single, total recovered materials content level will not fulfill the statutory requirement that government agencies procure paper products containing the "highest percentage of postconsumer recovered materials practicable."

2. Broad vs. Narrow Definition of "Postconsumer Materials"

Several groups recommended that EPA broaden the postconsumer definition to include certain preconsumer materials that, like postconsumer materials, require deinking or contaminant removal prior to use. These groups state that there is no reason, from a papermaking perspective, to separate these materials. They further state that it is difficult to distinguish postconsumer and preconsumer materials and that tracking of postconsumer materials is not feasible and extremely costly to implement.

It is not the intent of RCRA that pulp and paper mills track every piece of recovered paper or that mills using recovered materials incur unnecessary costs. Under RCRA section 6002, procuring agencies are required to (1) obtain certifications that the product offered to them meets the minimum content level specified in their specifications or solicitation documents and (2) purchase paper products containing the highest levels of postconsumer materials practicable. Procuring agencies are not required to obtain certifications regarding the exact amount of postconsumer or recovered fiber used. For example, if an agency solicits copier paper containing 20% postconsumer fiber, bidders must certify that the product offered contains this minimum percentage. The product may occasionally contain higher levels of postconsumer fiber, but the bidders and the mills supplying them are not required to conduct a detailed analysis in order to determine the exact percentage of postconsumer fiber in the product in excess of the 20% minimum.

Some degree of tracking is needed, however, to identify the postconsumer materials content of paper and paper products offered to government agencies in order (1) to satisfy the RCRA certification requirement and (2) to meet the RCRA requirement that paper and paper products contain the highest levels of postconsumer materials practicable. Although it is difficult, in some instances, to determine whether a material is pre- or postconsumer, manufacturers of deinked market pulp and paper products containing postconsumer materials are making market claims about the postconsumer content of their products. Therefore, EPA believes that the level of information in the market is adequate, and no additional tracking is necessary for mills to certify that their products meet EPA's draft recommendations.

EPA notes that, while several groups also urged the adoption of a broader postconsumer definition for use in Executive Order 12873, the Executive Order contains a postconsumer definition analogous to the statutory definition. EPA believes that its recommendations should be consistent with Executive Order 12873.

As discussed in detail in the supporting analyses document, there have been significant increases in deinking and processing capacity and various technology improvements that make it possible to manufacture virtually all non-food [2] grades of paper and paperboard using some percentage of postconsumer fiber. Thus, EPA believes that it is not necessary to expand the definition of postconsumer materials used in the 1988 procurement guideline. For these reasons, EPA is using the statutory definition of "postconsumer" in today's draft RMAN.

EPA also notes that the type of postconsumer "material" of concern is fiber. For most products, the fiber is derived from wood, but it also can be derived from textiles or agricultural products. The availability of such fiber is limited and has been used primarily by manufacturers of cotton fiber printing and writing papers, which represented less than 1% of printing and writing papers capacity in 1993. Recognizing this, EPA will refer to "postconsumer fiber," rather than to "postconsumer material." EPA believes that the statutory definition is broad enough to encompass postconsumer fiber derived from textiles and other non-wood sources.

Thus, the two-part content levels recommended in today's draft RMAN will consist of a "recovered fiber" component and a "postconsumer fiber" component. These terms are discussed in section III.B below.

[1] See the "Final Report on Recycled Paper Definitions, Standards, Measurement, Labeling Guidelines, and Buy-Recycled Initiative," Addendum E, Recycling Advisory Council, February 6, 1992. EPA placed a copy of the report in the docket for the Paper Products RMAN. The report also is available from the National Recycling Coalition.

[2] Manufacturers of food-grade paper and paperboard must be able to certify that their products meet Food and Drug Administration requirements that the items contain no hazardous and deleterious substances that can migrate into the food. While it is technically possible to produce a food-grade product with recovered and/or postconsumer fiber, the material must be carefully selected. Limited availability of suitable material precludes wide-spread use of recovered or postconsumer fiber in food-grade paper products.

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As part of this approach, EPA will no longer use the term "waste paper" for printing and writing papers. EPA prefers the term "recovered fiber" because the name reflects the fact that this material has value. As discussed in section II.B of this preamble, EPA is adapting the 1988 definition of "waste paper" to define "recovered fiber."

3. Establishment of Minimum Recovered Materials Content Levels and Ranges

a. Content recommendations vs. minimum content standards. RCRA section 6002 requires procuring agencies to purchase paper and paper products containing the "highest percentages of postconsumer recovered materials practicable." EPA stated in the 1988 paper procurement guideline that the use of minimum content levels would satisfy this requirement (see 53 FR 23553, June 22, 1988).

Under RCRA section 6002(i), it is the procuring agencies' responsibility to establish minimum recovered materials content standards, while EPA provides recommendations regarding the levels of recovered materials in the designated items. To make it clear that EPA does not establish the specific minimum content standards used by other agencies, EPA will no longer refer to its recommendations as recovered materials content "standards," as was done in the 1988 paper procurement guideline. Instead, EPA will refer to its recommendations as recovered materials content "levels," consistent with RCRA section 6002(e) and Executive Order 12873.

b. Recommended content ranges. Executive Order 12873 directs EPA to present "the range of recovered materials content levels within which the designated recycled items are currently available." In meeting this provision, EPA will recommend ranges that (1) reflect the best information available to the Agency about the use of postconsumer and other recovered fiber in the manufacture of a designated item and (2) encourage manufacturers to use the maximum amount of postconsumer and recovered fiber without compromising competition or product performance and availability. EPA recommends that procuring agencies use these ranges, in conjunction with their own research into the content of items available to them, to establish their minimum content standards. In some instances, EPA will recommend one level, rather than a range, because the item is universally available at that recommended level. In such cases, EPA recommends that procuring agencies use that level in establishing their minimum content standards.

4. EPA's Methodology for Recommending Postconsumer and Recovered Fiber Content Levels

EPA identified and evaluated pertinent data sources and information regarding the percentages of postconsumer and recovered fiber contained in paper and paper products. Sources included EPA research, responses to the 1990 **Federal Register** request for comment and the 1993 public forum, procuring agency and industry data, manufacturers' information, and other published data. Based on this information and the content levels established in Executive Order 12873, EPA established recommended levels or ranges of levels for paper and paper products.

As previously discussed, whenever feasible, EPA will recommend ranges for both recovered fiber and postconsumer fiber content. The high end of each range will be set at the maximum content currently used in paper and paper products that are available in sufficient quantities, and with adequate competition, to meet procuring agency needs. For many items, this level will be 100% for the recovered fiber component of the two-part content recommendations. The high end of each range will direct procuring agencies toward those levels that will meet the statutory requirement to purchase paper and paper products containing the highest levels of postconsumer fiber practicable. Thus, EPA strongly encourages procuring agencies to specify and seek paper and paper products containing both postconsumer and recovered fiber at levels at or near the high end of the recommended ranges if price and performance meet the procuring agencies' objectives.

The low end of each range will be set at levels that can be met by the simple majority of mills currently producing paper and paper products containing postconsumer and recovered fiber. These levels could also be met by other mills if they decide to purchase or produce pulp made from postconsumer and recovered fiber. For most items, these levels will be higher than the lowest percentage currently in products, in order to provide an incentive for paper mills that now primarily use wood-based fiber or lower levels of postconsumer or recovered fiber to increase their use of postconsumer and recovered fiber in the manufacture of their products. For example, if the majority of mills currently use 20% postconsumer fiber in a writing paper, but a few mills use 10% postconsumer fiber, EPA would recommend 20% as the low end of the range.

In all five major paper and paperboard grades, there are groups of mills that use high levels of postconsumer and recovered fiber and groups of mills that primarily use wood-based fiber, sometimes in conjunction with low percentages of postconsumer and/or recovered fiber. EPA accounted for this diversity in establishing the recommended ranges. As a result, for some items, there is a broad range for postconsumer or recovered fiber content. The high end of these ranges generally reflects the percentages of postconsumer and recovered fiber used by mills that rely on this type of fiber, while the low end of the ranges reflects the percentages of postconsumer and recovered fiber used by mills that rely primarily on wood-based fiber. For many items, the low end of the recovered fiber range is the same percentage as the low end of the postconsumer fiber range. In these instances, all of the recovered fiber used by these mills is postconsumer fiber. This means that the item can contain either all postconsumer fiber (e.g., X% recovered fiber, all of which is postconsumer) or blends of recovered and postconsumer fiber (e.g., 100% recovered fiber, including Y% postconsumer fiber) and still fall within EPA's recommended range.

It is EPA's intention to provide procuring agencies with the best and most current information available to assist them in fulfilling their statutory obligations under RCRA section 6002. To do this, EPA will monitor changes in manufacturing capacity and product content and the progress made by procuring agencies in purchasing paper and paper products with the highest percentages of postconsumer and recovered fiber practicable. EPA will periodically adjust the recommended content ranges to reflect these changes. As larger quantities of paper become available that contain higher levels of postconsumer and recovered fiber, EPA will consider increasing the content levels in its recommendations.

III. Other Issues Addressed in the Draft Paper Products RMAN

A. Measurement of Recovered Fiber Content

As procuring agencies implemented the 1988 designation of paper and paper products, EPA received inquiries about measurement of recovered fiber content. Today, EPA is addressing the two principal inquiries: (1) Whether postconsumer and recovered fiber content should be measured as a percentage of fiber weight or total sheet weight and (2) whether mill broke generated by a papermaking process that uses postconsumer or recovered fiber can be included in content calculations. In the draft RMAN, EPA recommends that postconsumer and recovered fiber content be measured as a percentage of the weight of the fiber in paper or a paper product. In addition, EPA wishes to clarify that mill broke generated by a papermaking process that uses postconsumer or recovered fiber can be included in content calculations, to the extent that the feedstock contains materials which would qualify as postconsumer or recovered fiber. These issues are discussed in detail in chapter VI.A of "Draft Paper Products RMAN—Supporting Analyses."

B. Clarifications and Revisions to Definitions

Today, EPA also addresses definitional issues raised by procuring agencies, mills and other interested parties since the 1988 paper procurement guideline was issued. Specifically, EPA has been asked (1) whether the definition of "postconsumer" includes printers' over-runs, converters' scrap, and/or over-issue publications, (2) which definition of "recovered materials" applies to the content standards established in Executive Order 12873, and (3) whether a paper product converted from off-specification paper or obsolete inventory contains "recovered material."

EPA discusses these questions in detail in chapter VI.B of "Draft Paper Products RMAN—Supporting Analyses." EPA's responses to the inquiries are as follows. (1) The definition of "postconsumer" materials in RCRA section 6002(h) does not include printers' over-runs, converters' scrap, and/or over-issue publications. (2) Procuring agencies should use the definition of "recovered fiber" in today's draft RMAN when purchasing printing and writing papers in accordance with the content levels established in Executive Order 12873. (3) Because off-specification paper and obsolete inventory that contain no recovered fiber do not meet the statutory definition of "recovered materials," products made from these materials cannot be sold as recycled products. Materials must be repulped, not just recovered, in order to count toward recovered fiber content.

In addition, several commenters suggested that EPA expand the definition of "mill broke" and narrow the definition of "waste paper." In today's draft RMAN, EPA has expanded the mill broke definition to include certain materials that are generated after the completion of the papermaking process, including materials generated in finishing operations. These materials are commonly re-pulped, sold to others for pulping, or otherwise used in or converted to paper products. In addition, in developing the definition of "recovered fiber" from the 1988 "waste paper" definition, EPA has made three significant changes. First, the definition found in section A–7 of the draft RMAN clarifies that materials must be repulped, not just recovered, in order to count toward recovered fiber content. Second, consistent with the revised definition of "mill broke," the definition of "recovered fiber" excludes materials such as obsolete inventory or off-specification product generated at mills after the end of the papermaking process. Third, EPA is clarifying that forest residues do not count toward "recovered fiber" content. See chapter VI.B of "Draft Paper Products RMAN—Supporting Analyses" for a detailed discussion of the draft definitions of "mill broke" and "recovered fiber."

C. Revisions to Item Listings

The 1988 paper procurement guideline contained 24 recommended minimum content levels. Today's draft RMAN contains 54 recommended minimum content levels. In addition to revised content recommendations, EPA made the following changes:

- The printing and writing paper recommendations are no longer limited to "high grade bleached" papers.
- The draft RMAN uses new terminology for uncoated printing and writing papers to better reflect the terminology currently used by paper merchants and mills.
- The draft RMAN incorporates the content levels for uncoated printing and writing papers established by Executive Order 12873.
- The draft RMAN includes separate recommendations for wove and kraft envelopes, rather than lumping them into one envelope listing.
- The draft RMAN includes recommendations for supercalendered paper, safety paper, coated printing papers, and bristols.
- The "doilies" listing under the tissue products subcategory has been replaced with a "tray liners" listing in a new Miscellaneous Paper Products subcategory.
- The "Unbleached packaging" and "Recycled paperboard" subcategories have been reorganized into a Paperboard and Packaging subcategory that contains recommendations for corrugated containers, solid fiber boxes, folding cartons, industrial paperboard, miscellaneous paperboard products, carrierboard, and brown papers.

These changes are discussed in detail in "Draft Paper Products RMAN—Supporting Analyses."

D. Recyclability

The underlying purpose of RCRA section 6002 is to use the stimulus of governmental purchasing to foster markets for recovered materials. Therefore, EPA encourages materials recovery to conserve valuable natural resources and to provide alternatives to landfilling and incineration. In order to achieve both of these objectives, EPA believes that procuring agencies should consider the impact of their purchases on their recyclable materials collection programs.

Depending on their fiber or other characteristics, some used paper products containing recovered materials may have a wider variety of potential markets and, therefore, may be easier to recycle than others. Certain characteristics can lower the value of collected used paper or limit its reuse as a feedstock for new products. Other characteristics might require adjustments in an agency's recyclables collection program.

For example, "white office paper" is a highly valued recovered material. Depending on its market, a "white office paper" collection program might exclude other office papers that are colored, coated, or contain groundwood. Thus, if a procuring agency decided to purchase a colored paper or a paper containing groundwood for use in office printers and copiers, the agency should expect that these materials would affect the office paper collection program if they are mixed with the white paper. The agency could find that the used paper is recyclable, but that (1) its value is reduced because it is now "mixed paper" rather than "white office paper," or (2) a separate sort is required in order to maintain the value of the white office paper. Alternatively, the agency could find that the mixed paper must be disposed of because there is no market for it in the geographic area in which the agency is located.

Yet other characteristics might make a paper product more recyclable or generate less material because the product is source reduced. For example manufacturers may be using less packaging or reusable packaging, resulting in less waste.

EPA believes that procuring agencies should consider these impacts prior to purchasing paper products containing recovered materials. Therefore, in section A–6 of today's draft RMAN, EPA

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is recommending that procuring agencies consider the effect of their procurement actions on their used paper collection programs by assessing the impact of their decisions on their overall contribution to the solid waste stream.

E Use of EPA's Recommendations

EPA encourages state and local agencies and private sector purchasers to use the recommendations in today's draft RMAN when purchasing paper and paper products. EPA recommends that purchasers establish their minimum content standards at the highest percentages available to them that achieve their price and performance objectives, even if these standards are above EPA's recommended ranges.

EPA has found that some state agencies have been using the Agency's 1988 content recommendations as a starting point in establishing product labeling requirements. While EPA's recommendations were not intended for use as labeling standards, they can be used as an information source for agencies establishing recycled product labeling programs.

EPA cautions persons using EPA's recommendations, whether to establish purchasing specifications or labeling standards, to use them only for the *specific items* for which they were intended. It is not appropriate to analogize from one item in a paper grade (e.g., printing and writing paper, tissue products, paperboard) to another item that could also fall within that grade, without first researching the use of postconsumer and recovered fiber in the other item. The two items could have different performance requirements necessitating different levels of postconsumer or recovered fiber. In addition, one item could be made primarily by mills that use high percentages of postconsumer or recovered fiber, while the other item could be made primarily by mills that use low or no percentages of this fiber.

IV. Request for Comments

EPA requests comment on the content levels, definitions, and specifications recommendations found in today's draft RMAN. In addition, EPA requests comment or information on the following issues, which are discussed in detail in "Draft Paper Products RMAN—Supporting Analyses:"

Recommendations for Tissue Products

- Do government agencies or their contractors purchase specialty tissue products?
- Is postconsumer or other recovered fiber used in the manufacture of specialty tissue products and, if so, in what percentages?
- Can manufacturers of consumer paper napkins and consumer facial tissues that primarily use wood-based fiber produce these items using a minimum of 30% and 20% postconsumer fiber, respectively? If not, what levels of postconsumer fiber can be used in these items?
- Can manufacturers of consumer paper napkins and consumer facial tissues use a range of recovered fiber from 30–100% and 20–100%, respectively?
- Are tray liners available containing percentages of recovered fiber, including postconsumer fiber, other than 100% recovered fiber, including 75% postconsumer fiber?
- Can postconsumer fiber be used in tray liners and meet Food and Drug Administration (FDA) restrictions on migration of contaminants into food?

Recommendations for Paperboard and Packaging Products

- Is recovered fiber other than postconsumer fiber used in the manufacture of corrugated containers?
- Are corrugated containers rated at 300 psi or greater available containing more than 30% postconsumer fiber?
- Will the recent increased demand for OCC affect the ability of manufacturers to meet the recommended content levels for corrugated containers?
- Will the imminent availability of additional capacity to make linerboard containing 100% recovered fiber allow manufacturers to exceed the high end of the ranges of recommended content levels for corrugated containers?
- Are there differences in the postconsumer fiber content currently used in coated and uncoated folding cartons?
- Should recommendations for coated and uncoated folding cartons be listed separately because of the differences in their ability to incorporate postconsumer fiber content?
- Will the recent increased demand for OCC affect the availability of folding cartons containing higher percentages of postconsumer fiber?
- Should EPA recommend different content levels for the various industrial paperboard products, based on the specific application(s) for those products?
- Should EPA recommend different postconsumer ranges for coated and uncoated miscellaneous paperboard products, and should there should be different content recommendations based on the specific application(s) of the products?
- Are percentages of postconsumer fiber greater than 15% used in padded mailers? What percentages of recovered fiber other than postconsumer fiber are used in padded mailers?
- Are there different performance characteristics of the two different types of carrierboard (solid unbleached sulfate and recycled paperboard) that would require listing them separately in the final RMAN?
- Is postconsumer or other recovered fiber used in solid bleached sulfate paperboard products, in general, and in food grade items in particular?
- Do procuring agencies purchase solid bleached sulfate paperboard products, either directly or indirectly? If yes, to what extent?
- Should EPA recommend content levels for solid bleached sulfate paperboard products?

Recommendations for Printing and Writing Papers

- Do state agency requirements for the paper used to print state checks differ from federal or commercial check specifications and if so, how? What is the availability of safety paper containing recovered and postconsumer fiber that meets state agency requirements?
- What is the performance and availability of greeting card stock containing higher percentages of postconsumer fiber?

Dated: March 8, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Appendix—Draft Paper Products Recovered Materials Advisory Notice Contents

Part A—Paper and Paper Products
Section A–1—Printing and Writing Papers
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Part A—Paper and Paper Products

Section A–1—Printing and Writing Papers

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for printing and writing papers on the content levels shown in Tables A–1a, A–1b, and A–1c. Percentages are based on the fiber weight of the product

TABLE A–1a.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR UNCOATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
Reprographic Paper (e.g., mimeo and duplicator paper, high-speed copier paper, and bond paper*)	20	20
Offset Paper (e.g., offset printing paper*, book paper*, bond paper*)	20	20
Tablet Paper (e.g., office paper such as note pads, stationery* and other writing* papers)	20	20
Forms Bond (e.g., forms, computer printout paper, ledger*)	20	20
Envelope Paper:		
Wove	20	20
Kraft:		
White and colored (including manila)	10–20	10–20
Unbleached	10	10
Cotton Fiber Paper (e.g., cotton fiber papers, ledger*, stationery* and matching envelopes, and other writing* papers)	50	20
Text & Cover Paper (e.g., cover stock, book paper*, stationery* and matching envelopes, and other writing* paper)	50	20
Supercalendered	10	10
Check Safety Paper	10	10

*These items can be made from a variety of printing and writing papers, depending on the performance characteristics of the item. Some of the papers are a commodity-type and some are specialty papers. EPA recommends that procuring agencies determine the performance characteristics required of the paper prior to establishing minimum content standards. For example, bond, ledger, or stationery made from cotton fiber paper or a text and cover paper have different characteristics than similar items made from commodity papers.

TABLE A–1b.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR COATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
Coated Printing Paper	10	10
Carbonless	20	20

TABLE A–1c.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR BRISTOLS

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
File Folders (manila and colored)	20	20
Dyed Filing Products	20–50	20
Cards (index, postal, and other, including index sheets)	50	20
Pressboard Report Covers and Binders	50	20
Tags and Tickets	20–50	20

Section A–2—Newsprint

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for newsprint on the content levels shown in Table A–2. Percentages are based on the fiber weight of the product.

TABLE A–2.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR NEWSPRINT

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
Newsprint	40–100	40–85

Section A–3—Tissue Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for tissue products on the content levels shown in Table A–3. Percentages are based on the fiber weight of the product.

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TABLE A–3.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR TISSUE PRODUCTS

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
Bathroom tissue:		
Commercial/industrial	100	25–60
Consumer	20–100	20–60
Paper towels:		
Commercial/industrial	100	40–60
Consumer	20–100	20–60
Paper napkins:		
Commercial/industrial	100	30–60
Facial tissue:		
Commercial/industrial	100	30
Industrial wipers	40–100	40

Section A–4—Paperboard and Packaging Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for paperboard and packaging products on the content levels shown in Table A–4. Percentages are based on the fiber weight of the product.

TABLE A–4.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR PAPERBOARD AND PACKAGING PRODUCTS

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
Corrugated containers:*		
(<300 psi)	40–50	40–50
(300 psi)	30	30
Solid Fiber Boxes	40	40
Folding cartons**	100	40–80
Industrial paperboard (e.g., tubes, cores, drums, and cans)	100	45–100
Miscellaneous (e.g., pad backs, covered binders, book covers, mailing tubes, protective packaging)	90–100	75–100
Padded mailers	5–15	5–15
Carrierboard	25–100	15
Brown papers (e.g., wrapping paper and bags)	5–40	5–20

*The recovered fiber and postconsumer fiber content is calculated from the content of each component relative to the weight each contributes to the total weight of the box. See Appendix I for an example.

**The recommended content ranges are not applicable to all types of paperboard used in folding cartons. Cartons made from solid bleached sulfate or solid unbleached sulfate contain no or small percentages of postconsumer fiber, depending on the paperboard source.

Section A–5—Miscellaneous Paper Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for the listed paper products on the content levels shown in Table A–5. Percentages are based on the fiber weight of the product.

TABLE A–5.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR MISCELLANEOUS PAPER PRODUCTS

Item	Recovered fiber (percent)	Postconsumer fiber (percent)
Tray liners	100	75

Section A–6—Other Recommendations for Paper and Paper Products

Measurement: EPA recommends that procuring agencies express their minimum content standards as a percentage of the fiber weight of the paper or paper product. EPA further recommends that procuring agencies specify that mill broke cannot be counted toward postconsumer or recovered fiber content, except that procuring agencies should permit mills to count mill broke generated in a papermaking process using postconsumer and/or recovered fiber as feedstock toward "postconsumer fiber" or "recovered fiber" content, to the extent that the feedstock contained these materials. In other words, if a mill uses less than 100% postconsumer or recovered fiber, only a proportional amount of broke can be counted towards postconsumer or recovered fiber content.

Specifications: EPA recommends that procuring agencies review specifications provisions pertaining to performance and aesthetics and revise provisions that can impede use of postconsumer and recovered fiber, unless such provisions are related to reasonable performance standards. Agencies should determine whether performance provisions are unnecessarily stringent for a particular end use. Agencies also should revise aesthetics provisions—such as brightness, dirt count, or shade matching—if appropriate, consistent with the agencies' performance requirements, in order to allow for a higher use of postconsumer and recovered fiber.

EPA recommends that procuring agencies document determinations that paper products containing postconsumer and recovered fiber will not meet the agencies' reasonable performance standards. Any determination should be based on technical performance information related to a specific item, not a grade of paper or type of product.

EPA recommends that procuring agencies watch for changes in the use of postconsumer and recovered fiber in paper and paper products. When a paper or a paper product containing postconsumer and recovered fiber is produced in types and grades not previously available, at a competitive price, procuring agencies should either revise specifications to allow the use of such type or grade, or develop new specifications for such type or grade, consistent with the agencies' performance requirements.

Recyclability: EPA recommends that procuring agencies consider the effect of a procurement of a paper product containing recovered and postconsumer fiber on their paper collection programs by assessing the impact of their decision on their overall contribution to the solid waste stream.

Section A–7—Definitions

For purposes of the recommendations contained in this Part, terms shall have the following meanings:

"Postconsumer fiber" means:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste.

Postconsumer fiber does not include fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Recovered fiber" "Recovered fiber" means the following materials:

(1) Postconsumer fiber such as:

(A) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste.

(2) Fiber derived from printing and converting operations, excluding any paper generated in a paper mill prior to the completion of the paper manufacturing process. "Recovered fiber" includes repulped fiber from dry paper scrap generated after the paper machine reel has been rewound and/or cut into smaller rolls or rough sheets, including but not limited to:

(A) Envelope cuttings, finishing trim, bindery trimmings, and other paper and paperboard resulting from printing, cutting, forming, and other converting operations; and bag, box, and carton manufacturing wastes; and

(B) Repulped finished paper and paperboard from obsolete inventories of paper merchants, wholesalers, dealers, printers, converters, or consumers.

"Mill broke" means any paper or paperboard scrap generated in a mill prior to completion of the papermaking process and/or specific materials generated during finishing operations that occur after the end of the papermaking process. It includes the following materials, whether generated prior to or after the completion of the papermaking process: paper machine trim, offgrade or off-specification rolls (also referred to as rejected, unused stock), culls, stub rolls, side rolls, end rolls, and obsolete inventories of paper and paperboard. Although mill broke is occasionally sold from one mill to another, such a sale does not alter its classification or exclusion from the definition of "recovered fiber."

Appendix A–1.—Example Calculation of Postconsumer Fiber Content of a Corrugated Container

C-flute has a take-up factor of approximately 1.44, which means that for each one foot of combined corrugated board there is 1.44 feet of fluted medium. This factor is used to calculate the weight of paperboard in a given area of combined corrugated board, from which the basis weight of the board is derived. Each linerboard contributes 35% of the basis weight (42/121.4). The medium contributes 30% of the total basis weight (37.4/121.4).

	Board basis weight (lbs/MSF)
Linerboard #1	42×1.00=42.0
Medium	26×1.44=37.4
Linerboard #2	42×1.00=42.0
Combined Board Weight	121.4 lbs/MSF

If the linerboard used has 20% postconsumer fiber and the medium has 80% postconsumer fiber, the resulting total postconsumer fiber content of the containerboard is as follows:

Linerboard: .35×.20=.07×2=.14 (or 14%)

Medium: .30×.80=.24 (or 24%)

Total postconsumer fiber: .14+.24=.38 (or 38%)

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Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Harvest Information Program; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD08

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) herein proposes to amend the Migratory Bird Harvest Information Program (hereinafter Program) regulations. The Service plans to add Michigan, Oklahoma, and Oregon (beginning with the 1995–96 hunting season) to the list of participating States, and to implement some additional modifications to the Program. This regulatory action will continue to require all licensed hunters who hunt migratory game birds in participating States to identify themselves as migratory bird hunters to the State licensing authority, and to supply their name, address, and date of birth to the State. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds in participating States. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys.

DATES: The written comment period for the proposed rule will end on April 1, 1995.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028. Comments received will be available for public inspection during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Environmental Science Center), Laurel, Maryland 20708–4028.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (301) 497–5980, FAX (301) 497–5981.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Program to include the States of Michigan, Oklahoma, and Oregon beginning in the 1995–96 hunting season, and to make minor modifications to the Program.

Background

The purpose of this cooperative Program is to obtain annually a nationwide sample frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys. State wildlife agencies will provide the sample frame by annually collecting the name, address, and date of birth of each licensed migratory bird hunter in the State. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter provide a brief summary of his or her migratory bird hunting activity for the previous year. States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published in the June 24, 1991, **Federal Register** (56 FR 28812). A final rule that established the Program and initiated a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published in the March 19, 1993, **Federal Register** (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota.

A State/Federal technical group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Changes incorporated into the Program as a result of the technical group's evaluation were specified in a final rule, published in the October 21, 1994, **Federal Register** (59 FR 53334), that initiated the implementation phase of the Program.

Currently, all licensed hunters who hunt migratory game birds in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on or attached to the annual State hunting license or on a State-specific supplementary permit. The State may charge hunters a small handling fee to compensate agents and to cover the State's administrative costs associated with conducting this Program.

The State/Federal technical group continues to evaluate the Program to determine the adequacy and timeliness of the sample frame and the time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. Emphasis is currently on the time requirement for the sample frame and on alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters).

The Service's current survey design calls for hunting-record forms to be distributed to hunters selected for the survey before they forget the details of their hunts. Because of this design requirement, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service. Currently, participating States must send the required information to the Service within 5 business days of issuance of the hunting license or permit (10 business days if the information is provided in electronic form). Several States have expressed concern that they can not meet this time requirement. The Service conducted an experiment during the 1994–95 hunting season to determine whether extending the time requirement would adversely affect the accuracy of survey results. The results and implications of that experiment will be discussed at the next meeting of the State/Federal technical group, prior to publication of a final rule in 1995.

The Service previously stated that additional States will continue to be added until all States participate in 1998. The suggested schedule was included in a final rule published in the October 21, 1994, **Federal Register** (59 FR 53334). Seven States requested changes to the suggested schedule; in response to those requests, four States were moved back in the agenda (Louisiana, Minnesota, Pennsylvania, and Texas) while three States were advanced (Idaho, Michigan, and Ohio).

Several States have subsequently indicated that they may not be able to implement the Program by the year that the current schedule requires them to enter the Program. The States and the Service are presently developing mutually acceptable measures for ensuring that the Program will achieve full implementation on schedule.

Proposed Modifications to the Program

In addition to implementation of the Program in Michigan, Oklahoma, and Oregon, the Service is proposing several other modifications to the Program. One such modification would increase the time allowed for providing names and addresses to the Service. Results of the Service's experiment (described above) will provide the basis for determining the extent to which the time requirement should be changed.

Another modification being proposed is to require harvest estimates for hunters who are exempted from a permit requirement and those that are also exempted from State licensing requirements. This would include several categories of hunters such as junior hunters, senior hunters, landowners, and other special categories. These exemptions vary on a State-by-State basis. The requirement would likewise vary by State and be incorporated into individual cooperative agreements with the Service.

Excluding those hunters who are not required to obtain an annual State hunting license from the Program also excludes their harvest from the estimates. The importance of their harvest depends on how many hunters are excluded and on the number of birds they bag. Excluding these hunters may result in serious bias. Minimum survey standards are being developed for exempted categories. States may require exempted hunters to obtain permits (e.g., Maryland required exempted hunters to obtain permits upon entry to the Program in 1994).

NEPA Consideration

The establishment of this Harvest Information Program and options have been considered in the "Environmental Assessment: Migratory Bird Harvest Information Program." Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act and the Paperwork Reduction Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act 5 USC 601 *et seq.* This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

The States may require a small handling fee to compensate their hunting-license vendors and to cover their administrative costs. Many of the State hunting-license vendors are small entities, but this rule should not economically impact those vendors. Only migratory game bird hunters, individuals, would be required to provide this information, so this rule should not adversely affect small entities.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information is required from licensed hunters to obtain the benefit of hunting migratory game birds.

The public reporting burden for this collection of information is estimated to average 0.015 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, ms 224—ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

Executive Order 12612 - Federalism

The regulations do not have significant Federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: (1) some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses; (2) comparable information is not available from all States because States have different licensing laws regulating who must buy a hunting license and different survey procedures; (3) currently, many State license lists are not available in time to permit distribution of hunter records early in the hunting season; and (4) budget constraints often prevent States from conducting harvest surveys during certain years or could cause some States to eliminate them completely.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State Governments, or intrude on State policy or administration. Therefore, these regulations do not have significant Federalism effects and do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. In fact, the Service would cooperate with States in providing special surveys to meet mutual management needs, and increased cooperation between Federal and State agencies would reduce duplication of survey efforts.

Executive Order 12360 - Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These rules, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. These rules would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Authorship

The primary author of this rule is Paul I. Padding, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR part 20 is proposed to be amended as set forth below

PART 20 - MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: The Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

2. Section 20.20 is revised to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) *Information collection requirements.* The collections of information contained in § 20.20 have been approved by the Office of

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Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0015. The information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 0.015 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, MS-224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

(b) *General provisions.* Each person hunting migratory game birds in California, Maryland, Michigan, Missouri, Oklahoma, Oregon, and South Dakota shall have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and shall have on his or her person evidence, provided by that State, of compliance with this requirement.

(c) *Tribal exemptions.* Nothing in paragraph (b) of this section shall apply to hunters on Federal Indian Reservations or to tribal members hunting on ceded lands.

(d) *State exemptions.* Nothing in paragraph (b) of this section shall apply to those hunters who are exempted from State-licensing requirements in the State in which they are hunting.

(e) *Implementation schedule.* The Service is continuing to implement this Program over the next 3-year period from 1996–1998, which will incorporate approximately a half million additional migratory bird hunters each year. It it proposed that the States participate on or before the following schedule:

1996—Alabama, Georgia, Idaho, Illinois, Louisiana, Maine, Minnesota, Mississippi, North Carolina, Pennsylvania, Tennessee, Texas, and Vermont.

1997—Arizona, Arkansas, Colorado, Florida, Kentucky, Ohio, South Carolina, Virginia, and Wisconsin.

1998—Alaska, Connecticut, Delaware, Indiana, Iowa, Kansas, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Utah, Washington, West Virginia, and Wyoming.

Dated: February 27, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–6292 Filed 3–14–95; 8:45 am]

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Part IX

The President

Executive Order 12956—Israel-United States Binational Industrial Research and Development Foundation

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Presidential Documents

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The President

Executive Order 12956 of March 13, 1995

Israel-United States Binational Industrial Research and Development Foundation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and having found that the Israel-United States Binational Industrial Research and Development Foundation is a public international organization in which the United States participates within the meaning of the International Organizations Immunities Act, I hereby designate the Israel-United States Binational Industrial Research and Development Foundation as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization may have acquired or may acquire by international agreements or by congressional action.

William J. Clinton

THE WHITE HOUSE,
March 13, 1995.

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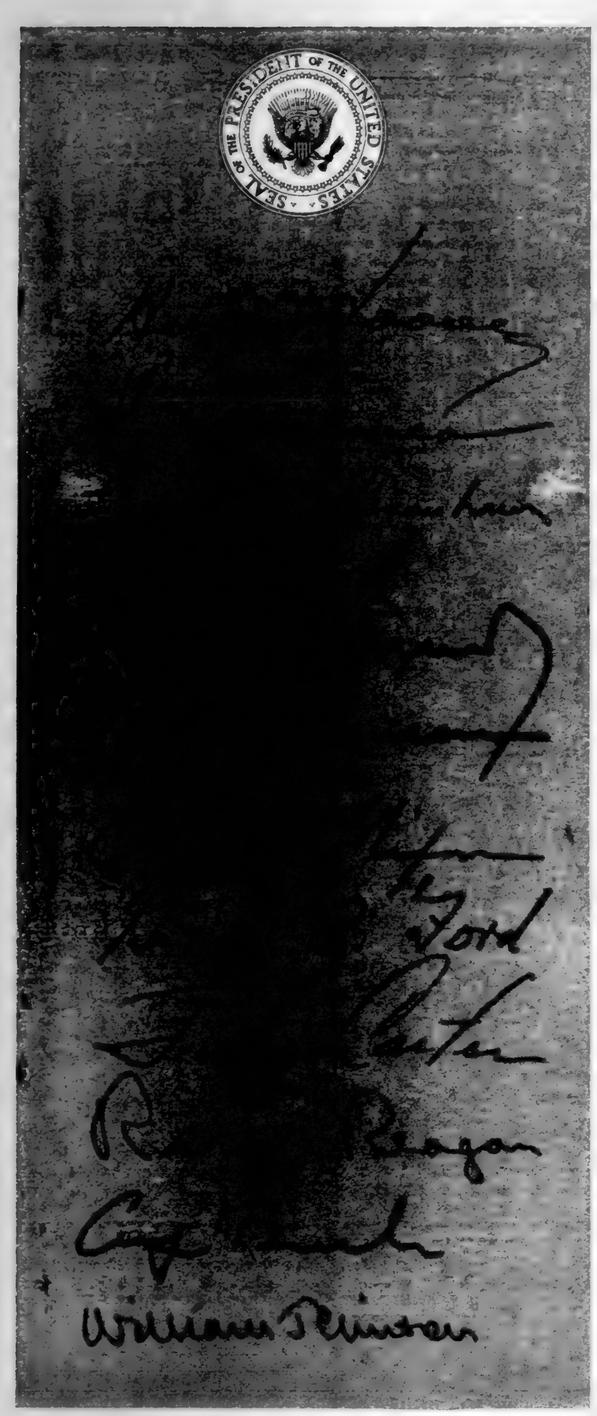

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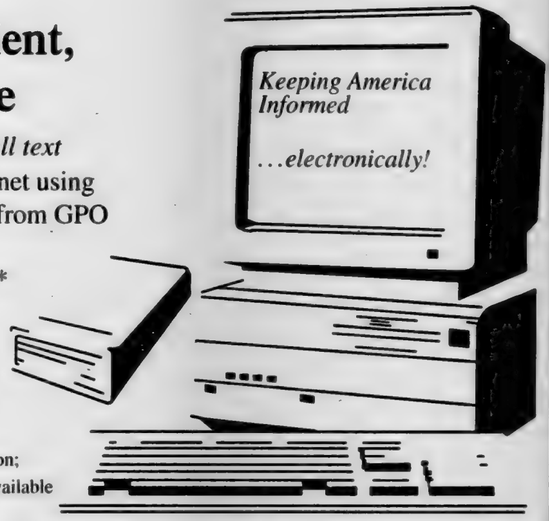

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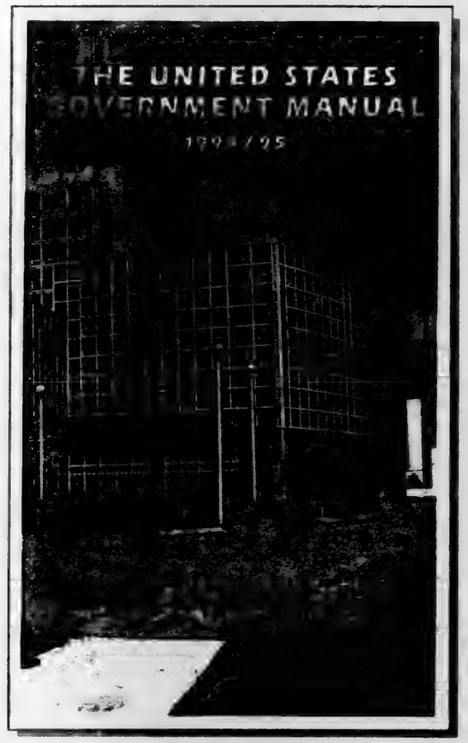

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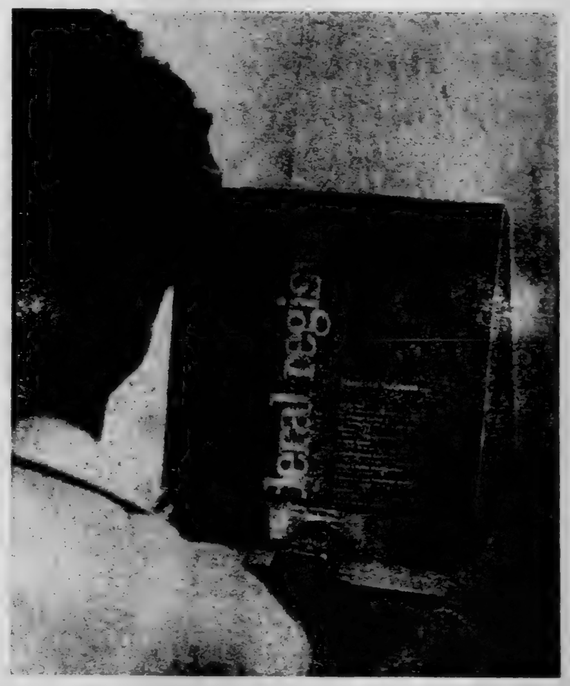

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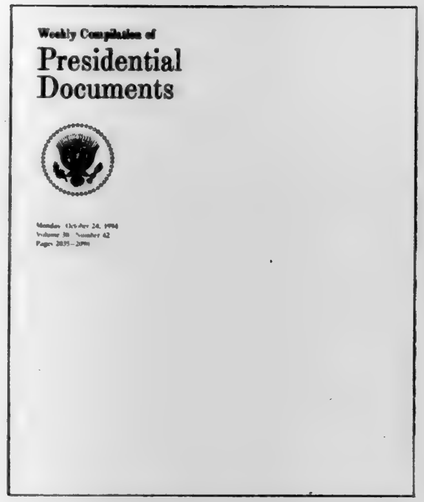

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Rules and Regulations

Federal Register
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Thursday, March 16, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AG10

Termination of Survivor Annuity Entitlement Based on Remarriage Before Age 55

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning survivor annuity entitlement under the Civil Service Retirement System and Federal Employees Retirement System. The regulations facilitate qualification for a current spouse survivor annuity in certain cases involving a former spouse's remarriage to a retiree. The regulations also limit the scope of the current regulations prohibiting reinstatement of a former spouse survivor annuity after an annulment. The regulations are necessary to implement the basic purpose of the statute.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On August 15, 1994, we published (at 59 FR 41716) proposed regulations to facilitate qualification for a current spouse survivor annuity in certain cases involving a former spouse's remarriage to a retiree and to limit the scope of the current regulations prohibiting reinstatement of a former spouse survivor annuity after an annulment. We received one comment that relates to the former spouse annulment issue. We address the comment in our discussion of that issue.

Under sections 8341(h)(3)(B) and 8445(c)(2) of title 5, United States Code, a former spouse's survivor annuity entitlement terminates if the former spouse remarries before age 55. In a recent case, a retiree's former spouse was eligible for a survivor annuity, but she remarried the retiree before she reached age 55. They remarried to make sure the former spouse would get a survivor annuity. The retiree died 1 month after the remarriage without notifying OPM and the survivor reduction in the retiree's annuity continued until his death. The retiree, assuming the remarriage would assure his wife's future, died without having filed a written election to provide a survivor annuity for her. (*See* 5 U.S.C. 8339(j)(5)(B) and 8419(b)(2)(C).) In our adjudication of this case, we decided to construe the statute so that the widow's pre-age 55 remarriage to the retiree under these circumstances does not disqualify her. To interpret the law to prevent her from receiving a survivor annuity would produce an unconscionable result that Congress never intended. Accordingly, we decided to issue regulations to adopt a more reasonable approach to this situation. Under these regulations, when a retiree remarries a former spouse who would be entitled, if not for the remarriage, to a former spouse survivor annuity based on the retiree's service, and the retiree takes no action to terminate the annuity reduction, we will deem the retiree to have elected to continue the reduction to provide a current spouse annuity under section 8339(j)(5)(B)(iii) or section 8419(b)(2)(C) of title 5, United States Code. We will deem the election to have occurred whether the former spouse's entitlement was based on the retiree's election or on a court order. Of course, an election will not be deemed if the retiree, in writing, asks OPM to stop the reduction either before or after the remarriage.

The new regulations also clarify the scope of the current regulations concerning reinstatement of a former spouse survivor annuity entitlement after an annulment. Our current regulations provide that a former spouse's entitlement will not be reinstated even if it ended due to a remarriage that is later determined to be invalid and is annulled. The comment that we received on the proposed regulations expressed the belief that, when a void marriage is annulled *ab initio*, we should act as though the marriage never occurred.

The rationale for our approach is based on the State courts' treatment of remarriage for alimony purposes. Generally, the courts will not allow alimony to be reinstated when the remarriage is annulled because the payer of the alimony is allowed to rely on the act of remarriage (regardless of validity) to plan for the future without the alimony obligation. *See* 55 FR 9094, March 12, 1990 (addressing similar comments in connection with the original issuance of the current regulation). The only purpose of our proposed rule was to clarify that the current regulation does not apply to a very small class of cases for which the alimony analogy is inapposite.

Our alimony analogy does not fit cases in which the former spouse's entitlement is not related to any reduction in the retiree's annuity. Section 4(b)(1)(B) and 4(b)(4) of the Civil Service Retirement Spouse Equity Act of 1984, as amended, provide survivor annuity benefits to former spouses who meet certain criteria, without requiring a reduction in a retiree's benefit. We proposed and are now amending section 831.644(d) of Title 5, Code of Federal Regulations, to allow reinstatement of entitlements based on section 4(b)(1)(B) and 4(b)(4) of the Civil Service Retirement Spouse Equity Act of 1984, as amended, if the remarriage before age 55 is later found to be invalid from its inception. The alimony analogy continues to fit—and therefore we will not reinstate the former spouse's entitlement following an annulment—in any situation in which a reduction in the employee annuity is required to provide the former spouse survivor annuity.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes,

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Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending subpart F of 5 CFR part 831 and subpart F of 5 CFR part 842, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 834(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

Subpart F—Survivor Annuities

2. In section 831.644, paragraph (d) is revised to read as follows:

§ 831.644 Remarriage.

* * * * *

(d) (1) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon termination of the remarriage by death or divorce.

(2) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon annulment of the remarriage unless—

(i) The decree of annulment states that the marriage is without legal effect retroactively from the marriage's inception; and

(ii) The former spouse's entitlement is based on section 4(b)(1)(B) or section (4)(b)(4) of Pub. L. 98–615.

(3) If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to continue the reduction to provide a current spouse annuity unless the retiree requests (or has requested) in writing that OPM terminate the reduction.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart F—Survivor Elections

4. In section 842.612, paragraph (h) is added to read as follows:

§ 842.612 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a current spouse annuity.

* * * * *

(h) If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to continue the reduction to provide a current spouse annuity unless the retiree requests (or has requested) in writing that OPM terminate the reduction.

[FR Doc. 95–6508 Filed 3–15–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 94–036–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, Maryland 20737–1228; (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On October 25, 1994, we published in the **Federal Register** (59 FR 53606–53612, Docket No. 94–036–1) a proposal to amend the regulations by allowing additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses that indicated that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We solicited comments concerning our proposal for 30 days ending November 25, 1994. We received nine comments by that date. They were from industry representatives and growers, State departments of agriculture, an academic institution, a foreign department of agriculture, and a foreign ambassador. One comment supported the proposal as written. One commenter was concerned about being able to move fruits and vegetables from Puerto Rico into other parts of the United States. The remainder of the commenters opposed the rule for specific fruits or vegetables. We carefully considered all of the comments we received. They are discussed below by topic.

Carambola From Taiwan

We proposed to amend § 319.56–2x to allow the importation of carambola from Taiwan. We specified that carambola would undergo cold treatment for the Oriental fruit fly (*Bactrocera dorsalis*) in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. In accordance with § 319.56–6 of the regulations, carambola would be subject to inspection, disinfection, or both at the port of first arrival. As discussed in the proposal, the pest risk assessment conducted by the Animal and Plant Health Inspection Service (APHIS) determined that any injurious plant pests that might be carried by carambola would be readily detectable by an inspector.

Several commenters expressed concerns about the economic analysis in the Initial Regulatory Flexibility Analysis. These comments are addressed in the Final Regulatory Flexibility Analysis.

One commenter was concerned about U.S. producers' ability to export carambola to the Taiwanese market. Our proposal and decision to allow importation of carambola from Taiwan, as well as other fruits and vegetables, are based solely on whether these importations can be made without significant risk of pest introduction. We have no authority to limit importations based on the presence or absence of reciprocal arrangements. Therefore, we have made no change based on this comment.

Two commenters expressed concern that Taiwanese producers use pesticides which are illegal in the United States. The Food and Drug Administration takes samples of imported commodities to determine whether illegal pesticides are present, and seizes shipments that do not meet its standards. Therefore, we have made no change based on this comment.

One commenter stated that there was no mention of the certification procedures to ensure fruits are treated properly and not infested with the Oriental fruit fly, *Bactrocera dorsalis*. We ensure the fruits are treated properly by verifying the results of treatment in accordance with the PPQ Treatment Manual. Cold treatments, as required for carambola from Taiwan, may be conducted either in the country of origin or in the United States, under an inspector's supervision. Treatments may also be conducted on board vessels en route to the United States. In this case, a sealed temperature recording device is read by an inspector upon the fruit's arrival in the United States, and the fruit is released from treatment only if the temperature record indicates the required cold treatment has been successfully completed.

Several commenters stated concerns about the fruit piercing moth (*Othreis* spp.) and fruit borer (*Eucosma notanthes*), which attack carambola. They questioned whether cold or other treatments would kill these pests and raised concerns about the effectiveness of the Taiwanese practice of covering the fruit with pesticide impregnated bags to manage these pests. One commenter felt that there was no way to ensure that all fruit imported into the United States had been bagged in the field. Another commenter felt that there was no guarantee that shipments of carambola from Taiwan would be free of larvae or eggs of the *Eucosma* or that the young larvae in the fruit would have caused sufficient damage for an inspector to detect. Commenters expressed concerns that these pests, if introduced into the United States, could feed on related fruits and become a significant problem for carambola and other crops in Florida.

The fruit borer, *Eucosma notanthes*, is recognized as a pest of carambola. However, routine cultural practices for carambola production in Taiwan, such as the bagging of fruit, provide deterrents against the carambola becoming infested with these pests. In addition, the following pest management activities are carried out to reduce the risk posed by this insect: Pesticides are applied weekly, from the end of the bloom season until the fruit measures 5 cm in length. Infestation in young fruit results in premature fruit drop. The dropped fruit is collected and destroyed, reducing pest pressure and risk. Fruits are then bagged to prevent adult moths from laying eggs on the growing fruit. APHIS representatives will schedule periodic visits to carambola production areas in Taiwan to monitor these procedures. If an adult moth circumvents the bagging and lays eggs on more mature fruits, the action of the larvae boring into the fruit extrudes frass from the hole as well as exudate from the fruit. These obvious symptoms enhance our confidence in our being able to visually detect any fruit that may be infested.

Bagging fruits to prevent insects from laying their eggs on or in the fruit, and subsequent larval forms boring into the fruit, has proven successful with similar pests and imports of sand pears from Japan and the Republic of Korea. The bagging will also exclude other moths, including *Othreis* spp.

We consider the measures taken in the exporting country, coupled with the safeguards required by the regulations, including inspection and cold treatment, to be adequate to prevent the introduction of injurious plant pests into the United States by carambola from Taiwan. Therefore, we are not making any changes based on these comments.

Onion Bulbs From Indonesia

We proposed to amend § 319.56–2t to allow the importation of onion bulbs, *Allium cepa*, from Indonesia. One commenter stated that onion bulbs from Indonesia should not be allowed entry with the tops due to the risk of introduction of the listed leafminer and noctuids. We are making no change based on this comment, because, as indicated in the proposal, only bulbs of the onion will be allowed. Bulbs with tops will be refused entry.

Jicama From Tonga

We proposed to amend § 319.56–2t to allow the importation of Jicama, *Pachyrhizus tuberous*, from Tonga. One commenter felt that jicama from Tonga should not be admitted until the nematodes mentioned in the pest risk assessment are identified and their impact evaluated. We are making no change based on this comment. The pest risk assessment reported on two root-knot nematodes on this host. As the name implies, attacks by species within this genus result in a root-knot forming on the host material. In general, these are predictable visible symptoms that

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inspectors are trained to look for, and APHIS inspects jicama for these nematodes. If these nematodes are detected at the time of importation, the jicama will be rejected.

Currant and Gooseberry, From Argentina and Australia

We proposed to amend § 319.56–2t to allow the importation of currant and gooseberry, *Ribes* spp., from Argentina and Australia. One commenter felt that *Ribes* spp. fruits could harbor the mites that vector the reversion disease, even though the fruit would not carry the pathogen for the disease. The commenter recommended that surface treatment should be required to allow entry for these fruits. We are making no change based on this comment. The reversion disease is not known to occur in Argentina or Australia. Therefore, we believe there is no risk of mites serving as vectors.

White Asparagus From Austria

We proposed to amend § 319.56–2t to allow the importation of white asparagus, *Asparagus officinalis*, from Austria. As specified in the proposal, the only plant part eligible for importation is the shoot, with no visible green on the shoot. One commenter suggested that white asparagus from Austria should be harvested before shoot emergence and washed to eliminate soil. We are making no changes based on this comment. If the asparagus is harvested after shoot emergence, it will not be white, and, therefore, will not be enterable. We will reject all shipments that are not white. In accordance with 7 CFR 330.300, soil contamination is a reason for rejecting shipments of all agricultural products from nearly all countries. Therefore, the asparagus shoots must be completely white and free of soil when presented for inspection and entry.

Sage From Belize

We proposed to amend § 319.56–2t to allow the importation of sage, *Salvia*, from Belize. In accordance with § 319.56–6 of the regulations, sage would be subject to inspection, disinfection, or both at the port of first arrival. As discussed in the proposal, the pest risk assessment conducted by APHIS determined that sage from Belize is not attacked by fruit flies or other injurious plant pests. In addition, any other injurious plant pests that might be carried by sage from Belize would be readily detectable by an inspector.

One commenter was concerned about the rust pathogens in Central America. The commenter questioned the status of rust pathogens in Belize. We have no evidence that any of these rust pathogens occur in Belize. In addition, our experience with *Salvia* imports from countries where these rust pathogens occur has not demonstrated that imported *Salvia* serves as a pathway.

Blueberry From Argentina

We proposed to amend § 319.56–2t to allow the importation of blueberry, *Vaccinium* spp., from Argentina. We specified that blueberries will undergo cold treatment for the Mediterranean fruit fly (*Ceratitis capitata*) in accordance with the PPQ Treatment Manual.

One commenter suggested that fumigation schedules for *Vaccinium* spp. fruit from Argentina should target *Anastrepha* spp., which has been intercepted on *Vaccinium* spp. in Mexico. We are making no changes based on this comment. Although it is true that a fruit fly of an *Anastrepha* sp. was found in blueberry fruit, the fruit was carried by an airline passenger and is the only record we have of an interception of this species in blueberry fruit. This information was weighed against the larger body of information of repeated commercial importation without any evidence of *Anastrepha* infestation. We believe the interception represented an aberration or incidental report from a possible over-ripe or damaged fruit.

Kiwi From the Republic of Korea

We proposed to amend § 319.56–2t to allow the importation of kiwi, *Actinidia deliciosa*, from the Republic of Korea. One commenter was concerned by the lack of reciprocal commitment from the Republic of Korea to treat California kiwifruit exported to the Republic of Korea fairly in the context of phytosanitary and food issues.

Our proposal and decision to allow importation of kiwi from the Republic of Korea, as well as other fruits and vegetables, are based solely on whether these importations can be made without significant risk of pest introduction. We have no authority to limit importations based on the presence or absence of reciprocal arrangements.

Inspection Upon Arrival

One commenter questioned the ability of inspectors to adequately inspect the increasing number of commodities that arrive in the United States. Inspection at the port of first arrival is only one aspect of our approach to plant pest exclusion, and is never the sole means of plant pest exclusion for any commodity. Before a fruit or vegetable is approved for importation into the United States, a plant pest risk assessment is conducted for the commodity. If a plant pest risk is found to be associated with a commodity proposed for importation, APHIS then determines what, if any, measures can be taken to reduce the risk to a level that would allow the commodity to be safely imported into the United States. For example, in certain cases our regulations impose restrictions such as specific growing and shipping requirements or inspection in the country of origin, or treatment. As a final precaution, all fruits and vegetables are subject to inspection at the port of first arrival. Inspectors are aware of potential pest risks associated with a particular commodity and conduct their inspections accordingly. We consider the measures taken in the exporting countries, coupled with the safeguards required by the regulations, including inspection, to be adequate to prevent the introduction of injurious plant pests into the United States.

General

One commenter stated that pest risk assessments consist only of a cursory look at the interception histories of commodities which are currently prohibited and do not adequately investigate pest problems associated with the commodities in their countries of origin. We do investigate pest problems associated with commodities in their countries of origin during our pest risk assessments. Our current method of performing pest risk assessments is to do an exhaustive search of literature and review our historical plant pest database and interception information. When available, we also use information from other sources, and occasionally conduct on-site investigations in proposed export areas. The pest risk assessments are largely dependent upon literature on plant pest problems in countries of origin. This literature is primarily investigative findings published by scientific communities. Our experience has shown that if a pest causes damage to an economic crop, the scientific community investigates the pest's biology and extent of pest damage in prescribing remedial actions.

One commenter felt that commodities that can be planted or otherwise propagated, such as onion and shallot bulbs, cornsalad, and jicama, should be evaluated by stricter criteria. We are making no change based on this comment. We have long recognized that some products imported for consumption are capable of being propagated and that individuals, occasionally out of curiosity, may plant them. While we do not believe that the extent of the practice makes it a significant pest risk, we have, in the past, explored three ways of preventing the practice: (1) Prohibit the importation of all commodities that could potentially be propagated; (2) treat all commodities capable of propagation with sprout inhibitor; or (3) devitalize the products prior to export. We believe that the first option, prohibition, should be applied only to products that present pest risks that cannot be mitigated in other ways. We have experimented with the second option, using sprout inhibitors, but they do not offer sufficient quarantine security for high-risk products and are not registered for most products. The third option, devitalization, in most cases renders a product unacceptable for the fresh fruit and vegetable market.

Countries are becoming more and more sophisticated in their production and phytosanitary practices, so the quality of fruits and vegetables in general is increasing. Products are graded and inspected during packing and prior to export, and the products are inspected again upon arrival in the United States. All of this reduces the likelihood of a pest entering the United States. If, once a commodity has been imported into the United States, a person chooses to try to propagate that commodity, the person would likely choose the healthiest-looking material, thus further reducing the probability that a plant pest would be spread. The limited degree of risk that remains must be accepted if free trade is to be maintained.

Puerto Rico

One commenter felt that the proposal should not be approved since it would provide foreign countries importation rights and benefits which are currently being denied to other States and Territories. The commenter requested that we review and, if necessary, revise many of our regulations covering Puerto Rico to increase the number and kinds of fruits and vegetables moving into other parts of the United States from Puerto Rico. We will consider specific requests from Puerto Rico to allow the movement of specific fruits and vegetables to other parts of the United States. Once a request is received, we will perform a pest risk assessment to determine if there is significant risk of introducing injurious plant pests into other parts of the United States. After determining that the fruits or vegetables could be moved under certain conditions without significant pest risk, we would publish a proposed rule in the **Federal Register** to allow the movement of those fruits or vegetables into other parts of the United States.

Miscellaneous

We have made minor, editorial changes by removing the references to "South Korea" and by replacing them with "the Republic of Korea," the official name for that country.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the change noted above.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This final rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This rule revises the status of certain commodities from certain countries and localities, allowing their importation into the United States for the first time.

These revisions are based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this rule, under certain conditions, may be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Apples

This rule allows apples to be imported into the United States from Spain under certain conditions. Spain's production of apples in 1993 was approximately 821,000 metric tons (mt). Spain's export level over the past 5 years has averaged 20,000 mt. In the unlikely event that Spain's apple exports were fully diverted to the United States, they would represent about 0.4 percent of U.S. production, an amount that would not significantly affect the U.S. market. Moreover, there would not be any off-season advantages, since Spain's main production season, June through September, inclusive, is the same as for U.S. apple producers.

In addition, the United States is a net exporter of apples. Total U.S. utilized production of apples in 1993 was 4,760,682 mt (fresh equivalent). (Utilized production of apples refers to the amount of apples sold plus the quantities of apples used on farms where grown and quantities of apples held in storage, thus those apples actually used in some way.) Imports of fresh apples in 1992 totaled 120,412 mt, or 2.5 percent of domestic utilized production that year, whereas exports totaled 507,614 mt, or 10.7 percent. Given this trade flow, the U.S. market for apples is not expected to exhibit the excess demand in the near future that could encourage increased foreign supply. The main commercial varieties grown in Spain (Golden Delicious, 50 percent; Granny Smith, 30 percent) are common varieties in the United States, and their export, therefore, would not satisfy any special market demand.

Asparagus (White)

This rule allows white asparagus to be imported into the United States from

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Austria under certain conditions. Total U.S. asparagus production in 1993 was 2,204,000 hundredweight (cwt), or 99,973 mt. Austria's current production of asparagus is around 400 mt, 95 percent of which is white asparagus.

APHIS expects that annual exports to the United States may reach between 1 and 2 tons. This quantity represents less than 0.002 percent of U.S. production, and therefore will not affect prices received by U.S. growers.

Blueberries

This rule allows blueberries to be imported into the United States from Argentina under certain conditions. Total U.S. blueberry production in 1993 was 170,397,000 pounds, or 77,292 mt. About 40 percent was produced for the fresh fruit market, and about 60 percent was processed. APHIS estimates Argentina's current production of blueberries to be 40 mt per year, and we expect that figure to expand to 200 mt by 1997–98. At present, all blueberry exports from Argentina (80 percent of production) are sent to Europe. If approved for entry into the United States, we expect that 19.2 mt or 60 percent of blueberry exports from Argentina will be directed to U.S. ports. This quantity represents less than 0.03 percent of U.S. production, and therefore will not noticeably affect prices received by U.S. growers.

Carambola

This rule allows carambola to be imported into the United States from Taiwan under certain conditions. Ninety percent of domestic production of carambola takes place in southern Florida, where 60 to 90 growers cultivate a total of about 400 acres. Most of the producers are considered small entities, according to the Small Business Administration definition of annual gross receipts of $500,000 or less. U.S. production of carambola in 1994 reached between 5 and 6 million pounds, a quantity expected to gradually increase as consumer familiarity with carambola grows. At present, carambola is unknown to most U.S. consumers, and the industry faces the challenges of creating broader market appeal for this fruit.

Besides Florida, a relatively small amount of carambola is produced in Hawaii (58,400 pounds in 1992). A regulatory change last year now allows carambola grown in Hawaii to be marketed on the mainland. The initial volume to be shipped this year is estimated at 1,500 to 3,000 pounds.

Taiwan is reportedly the world's largest producer of carambola. In 1992, 35,738 mt (78.8 million pounds) were produced, about 12 times that of the United States. However, less than 10 mt (0.03 percent) of Taiwan's production is exported annually, mainly to Hong Kong and Canada. As an initial trial shipment, about 1 mt is expected to be exported to the United States per year.

California is a large and growing domestic market for carambola and the likely destination of carambola from Taiwan. It receives from 40 to 50 percent of Florida's carambola crop. California requires that carambola from Florida be cold treated, and APHIS requires cold treatment for shipments from Hawaii to the mainland. Imports from Taiwan will also require cold treatment.

Average prices received by U.S. carambola producers between 1989 and 1993 ranged from about $0.67 to $1.55 per pound. Farm prices in Taiwan vary from $0.60 to $4.00 per kg ($0.27 to $1.81 per pound), depending on the quality, size of production, and season. While prices are generally lower in Taiwan, high quality carambolas suitable for export sell well in Taiwan's domestic market. Relatively high farm prices and the fruit's well-established domestic market largely explain Taiwan's limited exports.

Carambola is sensitive to chilling, which can cause the skin to turn brown and become pitted. Since all carambola entering California will require cold treatment, effects of the treatment on the appearance and marketability of the fruit will be similar, whether the carambola comes from Florida, Hawaii, or Taiwan.

We received four comments disagreeing with the results of our Initial Regulatory Flexibility Analysis for carambola from Taiwan. They were from three domestic growers associations and an academic institution. The commenters were concerned with unfair competition and the impact on domestic producers. None of the commenters provided additional data, however, to dispute our figures. We carefully considered all of the comments. The comments and responses are summarized below.

One commenter stated that the classification of U.S. carambola producers as "small entities" does not change the fact that U.S. citizens are making their livelihood from producing carambola. Examination of the possible impact on U.S. carambola producers as "small entities" is required by the Regulatory Flexibility Act. No other significance is attached to the "small entities" classification.

One commenter felt that the United States is currently in a trade deficit with Taiwan, and allowing carambolas to be imported will only increase this deficit. APHIS bases its decisions to allow importation of fruits and vegetables on whether these importations can be made without significant risk of pest introduction. We have no authority to limit importations based on the size of a trade deficit.

Two commenters raised concerns that since the carambola is still a relatively unknown product in the United States, the marketing efforts for carambola by U.S. carambola producers would provide free benefits to Taiwan, and, Taiwan would gain as a result. While carambola imported from Taiwan may well benefit from U.S. efforts, U.S. producers may also benefit from Taiwanese marketing efforts.

All four commenters were concerned about the impact on U.S. carambola producers and disagreed with our evaluation that allowing the importation of carambola from Taiwan would have a positive impact on the U.S. economy. Since the extent of the impact is not known, one commenter questioned, "Why experiment on an unknown outcome with the livelihood of American Citizens and small businesses?" The commenter also stated, "The carambola as a commercial crop in the U.S. is still an emerging industry with many unknowns. It would only seem wise to concentrate all of our resources on establishing the domestic side of this industry before allowing additional unknown elements to be added to the equation." Three commenters questioned our conclusion that a loss of income by U.S. producers would be positive for the U.S. economy.

The level of expected near-term imports is very small compared to U.S. carambola production (less than 0.1 percent). In fact, all of Taiwan's current carambola exports equals less than one percent of current U.S. production. If carambola retail prices in the United States declines with imports from Taiwan, then U.S. consumers will gain and U.S. producers will lose. The impact for the economy will be positive if the gains exceed the losses.

Assuming the market for carambola expands, and fruit from Taiwan is routinely imported, domestic producers' income will be less than it would be otherwise, due to a price decline and/or lower volumes than would be sold were there not imports. The critical question is what this reduction in income will be. There is no evidence to suggest that it will be significant.

From a broader perspective, sales and income lost by domestic producers should be balanced against benefits to U.S. consumers in terms of greater availability and/or lower prices. Again, lack of information on how much carambola prices can be expected to decline as a result of imports, and the responsiveness of producers and consumers to a decline, precludes estimation of consumers' gains and domestic producers' losses. Nevertheless, APHIS believes that the net benefit to the U.S. economy will be positive.

Currants and Gooseberries

This rule allows currants and gooseberries to be imported into the United States from Argentina under certain conditions. Argentina's area of *Ribes* spp. production totals only four hectares, one of which is being used for experiments on the suitability of various species. The Economic Research Service, U.S. Department of Agriculture, estimates the annual crop at 30 mt, of which 40 percent, or 12 mt, could be exported to the United States.

Although published data on U.S. *Ribes* spp. production is not available, trade statistics show the United States to be a net importer. In 1992, 64 mt of currants and gooseberries were exported, and 264 mt of currants were imported. The quantity of *Ribes* spp. expected to be imported from Argentina is only 6 percent of 1992 net imports for the United States. APHIS does not expect this relatively small change in the quantity imported to significantly affect the market for U.S. producers.

Eggplant

This rule allows eggplant to be imported into the United States from the Republic of Korea under certain conditions. U.S. commercial production of eggplant in 1993 was 776,000 cwt (35,199 mt). The Republic of Korea's annual production of eggplant in 1993 totaled 22,751 mt, of which 30.3 mt were exported to Japan and Guam. If all of the Republic of Korea's eggplant exports were sent to the United States, it will represent less than 0.09 percent of U.S. commercial production.

Even in the very unrealistic scenario that the Republic of Korea's eggplant exports are fully diverted to the United States, the quantities will not be large enough to affect the U.S. market.

Kiwi

This rule allows kiwi to be imported into the United States from the Republic of Korea under certain conditions. Utilized U.S. production of kiwi in 1992 totaled 47,700 mt. Imports of kiwi into the United States for 1992 were estimated at 20,236 mt, or more than 40 percent of domestic production. The Republic of Korea's annual production of kiwi in 1993 totaled 8,538 mt, of which none was exported. Assuming 5 percent of the Republic of Korea's production (426.9 mt) were exported to the United States, this amount will represent only about 0.6 percent of U.S. supply (produced domestically and imported) in 1991.

Even in the very unrealistic scenario that the Republic of Korea exports 5 percent of its kiwi production to the United States, the quantities will not be large enough to affect the U.S. market.

Lettuce

This rule allows lettuce to be imported into the United States from Israel and the Republic of Korea under certain conditions. Total U.S. production of head, leaf, and romaine lettuce in 1993 was 82,790,000 cwt (3,755,330 mt). In Israel, insect-free lettuce produced in greenhouses for the 1993/94 season reached about 4,480,000 pounds. Exports planned for 1994/95 are estimated at 1,600,000 pounds. If all of these exports were destined for the United States, they would comprise less than 0.02 percent of U.S. production and, therefore, will not noticeably affect the U.S. market.

The Republic of Korea's annual production of leaf lettuce in 1993 totaled 149,611 mt, of which 23.9 mt were exported to Japan, Guam, Hong Kong, and Saipan. If all of the Republic of Korea's lettuce exports were sent to the United States, it would represent only about 0.0006 percent of U.S. production.

Even in the very unrealistic scenario that the Republic of Korea's lettuce exports are fully diverted to the United States, the quantities will not be large enough to affect the U.S. market.

The aggregate economic impact of this rule is expected to be positive. U.S. consumers will benefit from a greater availability of fruits and vegetables. U.S. importers will also benefit from a greater availability of fruits and vegetables to import.

The alternative to this rule was to make no changes in the fruits and vegetables regulations. After consideration, we rejected this alternative since there was no pest risk reason to maintain the prohibitions on the affected produce.

In the course of rulemaking, if we had come across evidence indicating that importation of any of the concerned fruits or vegetables would pose a significant risk of plant pest introduction, we would have considered either developing alternative requirements regarding that importation or continuing to prohibit the importation of that fruit or vegetable. However, our initial pest risk assessments and our review of public comments on the proposal indicated that importation of any of the concerned fruits and vegetables would pose no significant risk of plant pest introduction.

This rule contains no paperwork or recordkeeping requirements.

Executive Order 12778

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding fruits and vegetables imported under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this rule will not present a significant risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) National Environmental Policy Act Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons

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wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992 and includes all revisions through March 1995, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2r [Amended]

4. In § 319.56–2r, paragraph (a)(1) is amended by adding, in alphabetical order, "Spain,".

5. In § 319.56–2r, paragraph (g)(1) is amended by adding "Spain," immediately before "Sweden".

6. In § 319.56–2t, the table is amended by revising "South Korea" to read "Republic of Korea" and by adding in alphabetical order, the following:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina			
	Currant	*Ribes* spp	Fruit.
	Gooseberry	*Ribes* spp	Fruit.
Australia	Currant	*Ribes* spp	Fruit.
	Gooseberry	*Ribes* spp	Fruit.
Austria	Asparagus, white	*Asparagus officinalis*	Shoot.[3]
Belize			
	Sage	*Salivia officinalis*	Leaf and stem.
El Salvador	Cilantro	*Coriandrum sativum*	Above ground parts.
	Dill	*Anethum graveolens*	Above ground parts.
Honduras			
	Cilantro	*Coriandrum sativum*	Above ground parts.
Indonesia			
	Onion	*Allium cepa*	Bulb.
	Shallot	*Allium ascalonicum*	Bulb.
Nicaragua	Cilantro	*Coriandrum sativum*	Above ground parts.
Peru			
	Cornsalad	*Valerianella spp*	Whole plant.
	Lambsquarters	*Chenopodium album*	Above ground parts.

Country/locality	Common name	Botanical name	Plant part(s)
Republic of Korea			
	Eggplant	*Solanum melongena*	Fruit.
	Kiwi	*Actinidia deliciosa*	Fruit.
	Lettuce	*Lactuca sativa*	Leaf.
Tonga			
	Jicama	*Pachyrhizus tuberosus*	Root.

[3] No green may be visible on the shoot.

7. In § 319.56–2x, paragraph (a), the table is amended by adding, in alphabetical order, the following:

§ 319.56–2x Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Blueberry	*Vaccinium* spp	Fruit.
El Salvador	Garden bean	*Phaseolus vulgaris*	Pod or shelled.
Israel			
	Lettuce	*Lactuca sativa*	Leaf.
Taiwan	Carambola	*Averrhoa carambola*	Fruit.

* * * * * *

Done in Washington, DC, this 9th day of March 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6370 Filed 3–15–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act "Appliance Labeling Rule"

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") announces non-substantive amendments to its Appliance Labeling Rule ("Rule"). Specifically, the Commission is amending the Rule's water flow rates disclosure requirements for showerheads and faucets to specify that the metric disclosures "liters per minute" and "liters per cycle" be abbreviated as "L/min" and "L/cycle" rather than "Lpm" and "Lpc."

EFFECTIVE DATE: May 16, 1995.

FOR FURTHER INFORMATION CONTACT: Terrence J. Boyle, Attorney, (202) 326–3016, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975 ("EPCA") directed the Commission to issue rules requiring various categories of home appliances and other products to be labeled with information about their energy consumption and efficiency.[1] Pursuant to EPCA, the Commission on November 19, 1979, issued the Appliance Labeling Rule requiring label disclosures of energy operating costs and/or efficiency for seven categories of products.[2]

The Energy Policy Act of 1992 ("EPA 92") amended EPCA to add showerheads, faucets, water closets and urinals as covered products. As amended, EPCA establishes for showerheads and faucets a national maximum water flow rate standard of 2.5 gallons per minute at 80 pounds per square inch ("psi") water pressure and, for those products, adopted the testing methods of the American Society of Mechanical Engineers ("ASME") Standard A112.18.1M as "the proper protocols for measuring the water usage."[3] EPA 92 also directed the Commission to issue rules requiring these plumbing products to be permanently marked with their water flow rates and to bear disclosures "consistent with the marking and

[1] 42 U.S.C. 6291, 6294.

[2] 44 FR 66466.

[3] 42 U.S.C. 6293(b) (7)(A) and (8)(A).

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labeling requirements" of specified national standards that have been published for such products by ASME.[4]

On October 25, 1993, the Commission amended the Rule to add four categories of plumbing fixtures and fittings.[5] The amended Rule requires water closets, urinals and showerheads, as well as faucets and the flow restricting devices (aerators) that are placed in faucets, to be clearly and conspicuously labeled, and water closets, urinals and showerheads to be permanently and legibly marked, with disclosures of their water flow rates.[6] The amended Rule also requires, in all point-of-sale promotional materials for such plumbing products and in all catalogs offering such products for sale, disclosure of the products' water flow rates.[7]

The amended EPCA provides that if ASME revises the marking and labeling requirements contained in its Standard A112.18.1M for showerheads and faucets, and if the American National Standards Institute ("ANSI") approves the revisions, the Commission shall amend the Rule to be consistent with the revisions, unless the revisions are inconsistent with the purposes of EPA 92 or with the requirement that plumbing fittings be permanently marked with legible disclosures of their water flow rates.[8]

On July 8, 1994, ASME adopted, and on September 15, 1994, ANSI approved and published, revisions to the ASME National Standard A112.18.1M that governs showerheads and faucets. One of these revisions pertains to the Commission's Rule because it changes the abbreviations used by the ASME Standard in its marking and labeling requirements for plumbing fittings.[9] The first revision to the ASME Standard changed the abbreviations for "liters per minute" and "liters per cycle" from "Lpm" and "Lpc" to "L/min" and "L/cycle" respectively. The change was made to avoid confusion with the "m" that is internationally recognized as the proper abbreviation for meter.[10]

The Commission is amending the Rule to adopt the ASME abbreviations of "liters per minute" and "liters per cycle" for required disclosure of the water flow rates of faucets (and aerators) and showerheads.[11] Because this rule amendment is technical in nature and is not intended to modify the substantive legal requirements and restrictions imposed by the Rule, the Commission finds that a comment period is not necessary or warranted for purposes of the Administrative Procedures Act. *See* 5 U.S.C. 553(b).

ASME and ANSI also tentatively made a second revision to ASME Standard A112.18.1M that would pertain to the marking and labeling requirements of the Commission's Rule. This second revision changed the Standard's protocols for measuring the water flow rates of faucets, requiring measurements at 60 psi instead of the 80 psi specified in the national standard. The Commission's Rule requires flow rate disclosures to be based on measurements at 80 psi as specified in the national standard established by EPA 92. ASME made this change in water pressures in its September 15, 1994, revision of the existing ASME Standard for faucets and showerheads. But, on December 19, 1994, the ASME committee for these products voted to rescind the change and return to using 80 psi. ASME and ANSI will soon act on the proposed rescission. Under section 324(a)(2)(D)(ii) of EPCA, any change in the water pressures used to test faucets would first have to be approved by the Department of Energy ("DOE") by rule before the Commission can incorporate the change into the Appliance Labeling Rule.[12] Therefore, even if ASME and ANSI ultimately decide to retain the change to 60 psi, prior action by DOE is needed before the Commission can act on the change.

List of Subjects in 16 CFR Part 305

Advertising, Water conservation, Household appliances, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

Text of Amendments

Accordingly, 16 CFR part 305 is amended as follows:

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.8 is amended by revising paragraph (a)(4)(v) to read as follows:

§ 305.8 Submission of data.

(a) * * *

(a) * * *

(v) The product's water use, expressed in gallons and liters per flush (gpf and Lpf) or gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) as determined in accordance with § 305.5.

* * * * *

3. Section 305.11 is amended by revising subparagraph (f) to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(f) *Plumbing Products*—

(1) * * *

(i) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

* * * * *

(v) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: "A112.18.1M" and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle).

* * * * *

4. Section 305.13 is amended by revising subparagraph (a)(4) to read as follows:

§ 305.13 Promotional material displayed or distributed at point of sale.

(a) * * *

(4) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point-of-sale concerning a covered product that is a showerhead, faucet, water closet, or urinal shall clearly and conspicuously include in such printed material the product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.11(f).

* * * * *

5. Section 305.14 is amended by revising subparagraph (d) to read as follows:

§ 305.14 Catalogs.

* * * * *

(d) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a showerhead, faucet, water closet, or urinal in a catalog, from which it may be purchased, shall include in such catalog, on each page that lists the covered product, the product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.11(f).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–6484 Filed 3–15–95; 8:45 am]

BILLING CODE 6750–01–M

[4] Pub. L. 102–486, 106 Stat. 2778, 2817–2832 (1992).

[5] 58 FR 54955.

[6] 16 CFR part 305.11(e) (1) and (2).

[7] 16 CFR part 305.13(a)(2) and .14(d).

[8] 42 U.S.C. 6294(a)(2)(D)(ii).

[9] A second revision changed the Standard's protocols for measuring faucet water flow rates. See discussion *infra*.

[10] The "liters per cycle" change was just for symmetry. For English system disclosures, though, the revised ASME Standard continues to use just the letter "m" to stand for minute. The use of "m" there was not seen as confusing because, since gallons are not metric units of measurement, readers would not likely think of meters.

[11] For technical reasons the Commission has specified an effective date of May 16, 1995, for this amendment. The Rule in recent months has been amended on several occasions both to add new product categories and to revise the disclosure requirements for several existing categories. To ensure an orderly publication of all these amendments in the Code of Federal Regulations, the Commission is setting the effective date for this amendment to follow immediately that of the Commission's previous amendment to the Rule, which added lamps as covered products. The Commission, however, will permit manufacturers to begin immediately using the abbreviations "L/min" and "L/cycle" in place of "Lpm" and "Lpc," deeming the use of the revised abbreviations prior to the effective date of the amendment to be compliance with the Rule.

[12] 42 U.S.C. 6294(a)(2)(D)(ii).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 95–21]

RIN 1515–AB47

Test Programs

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding a new provision that allows for test programs and procedures in general and, specifically, for purposes of implementing those Customs Modernization provisions of the North American Free Trade Agreement Implementation Act that provide for the National Customs Automation Program. The regulation allows the Commissioner of Customs to conduct limited test programs/procedures, which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise. Test programs may impose upon eligible, voluntary participants requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: John Durant, Director, Commercial Rulings Division, (202) 482–6990.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (section 414).

Section 631 of the Act provides Customs with direct statutory authority for full electronic processing of all Customs-related transactions. For each planned NCAP program component, Customs is required to prepare a separate implementation plan in consultation with the trade community, establish eligibility criteria for voluntary participation in the program, test the component, and transmit to Congress the implementation plan, testing results, and an evaluation report. The testing of any planned NCAP components would be conducted under carefully delineated circumstances—with objective measures of success or failure, a predetermined time frame, and a defined class of participants. Notice of any NCAP program component testing would be published in both the Customs Bulletin and the **Federal Register** and participants solicited.

In addition to testing planned NCAP components, Customs also proposed conducting limited test programs/procedures in other areas of Customs-related transactions wherein Customs and the trade community could benefit from the valuable information that such testing could provide. Thus, Customs proposed a general test authority in order both to meet its obligations under the NCAP legislation and to provide itself with the ability to obtain information necessary to predict the effects of various policy options.

The regulation proposed would allow the Commissioner of Customs to conduct limited test programs and procedures and allow certain eligible members of the public to participate on a voluntary basis. Also, because test programs could require exemptions from regulations in various parts of the Customs Regulations, *e.g.*, parts 113 (Customs bonds), 141 (entry of merchandise), 142 (entry process), 171 (fines, penalties, and forfeitures), 174 (protests), and 191 (drawback), participants would be subject to requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. Accordingly, pursuant to the Secretary's authority under section 624 of the Tariff Act of 1930 (19 U.S.C. 1624) to make such rules and regulations as may be necessary to carry out the provisions of the Tariff Act of 1930 and pursuant to the requirement set forth in section 413 of the Tariff Act of 1930 (19 U.S.C. 1413) that the Secretary test planned NCAP program components, on August 16, 1994, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 41992) that proposed to amend part 101 of the Customs Regulations (19 CFR part 101) by adding a new § 101.9 that would allow the Commissioner of Customs to conduct limited test programs and procedures in general and for purposes of implementing NCAP program components. Seven comments, most favorable to the proposed regulation, were received. These comments raised four areas of concern. The comments received and Customs responses to them are set forth below.

Discussion of Comments

Comments were received from corporate sureties (1), customs brokers

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(4), and transportation associations (2). The comments raised four areas of concern. The concerns relate to: (1) Generally, whether there will be equal opportunity to participate in tests and whether statutory requirements would be subject to suspension; (2) the manner and amount of notice that would be provided; (3) the length of time in which tests would be conducted; and, (4) the nature of voluntary participation. We address each of these concerns *seriatim*.

In General

Comment: A commenter states that language should be added to § 101.9(a) "to protect Customs businesses" to the effect that no test shall be made that will give economical advantages to one class of importer, exporter, carrier, customs broker, freight forwarder, or courier over another, or one geographic area over another.

Customs Response: While Customs understands the commenter's concern, it believes that adding the suggested language to the regulation would unduly inhibit Customs ability to modernize, i.e., to streamline and automate the commercial operations of the Customs Service, the reason the Customs Modernization provisions were promulgated in the first place. The purpose of a test is to experiment to see if something works. Hopefully, if the test is successful, those who have chosen to participate will benefit. Customs, however, does not wish to be unfair to non-participants. Accordingly, the proposed regulation provides for notice in the **Federal Register** to the public when a test will be run. These notices of proposed tests will allow all interested parties to choose to participate and to comment on any problem they perceive will result from the test proposed, including a perceived problem of economical advantages being offered to one party over another. Customs, generally, will attempt to address such concerns before a test is run. If there are instances when Customs may need to conduct tests that are company-/industry-specific, so that economies of scale and other program parameters can be realized, the proposed regulation seeks to limit the advantage that the test may provide by requiring that the test be limited in time and scope.

While not adding the language suggested by the commenter, Customs has determined, after review of this comment and others, to modify the proposal to broaden the notice requirements. As now drafted, the final regulation no longer provides that public notice is not required for non-NCAP tests affecting carriers and passengers. Further, the "whenever practicable" language in the non-NCAP paragraph describing the publication requirement is removed. Instead, the regulation provides that whenever a particular test allows for deviation from any regulatory requirement, notice shall be published in the **Federal Register** not less than 30 days prior to implementing such test. Customs believes that this allows all Customs businesses to comment on all tests and provides adequate time for comments.

Comment: Two commenters are concerned with whether tests will be conducted other than on a parallel basis which would violate a *statutory* requirement. One of these commenters argues that language should be added to § 101.9(a) to the extent that no test should be implemented that is contrary to U.S. law, because federal agencies should not be allowed to set up a "test" as a simple way of circumventing the laws passed by Congress.

Customs Response: Customs believes that it is clearly understood that any test programs will be consistent with statutes and, therefore, it is unnecessary to add language to the regulation to so indicate.

Notice

Comment: The proposed regulatory text may not provide sureties with proper and timely notice of variations of its risk. The commenter, a corporate surety, states that notice provided "whenever practicable" or "within a reasonable period of time" may run contrary to the stated objectives of the Notice because it would "affect the collection of revenue" by varying the surety's risk under its bond. The obligation of a compensated surety is predicated upon certain known risks or underwriting components and to the extent a surety's risk is varied without its prior consent, sureties could be discharged from any obligation under their bonds. Accordingly, the commenter suggests that proper and timely notice of all test programs and results should be provided to sureties to enable them to decide whether to agree to be bound under a particular varied risk arising under a NCAP test program.

Another commenter believing that the § 101.9(b)(2) requirement for publication of complete test results "within a reasonable time" is not specific enough recommends that the regulation should provide that, "unless extended by **Federal Register** Notice, within 60 days following the completion of the test, complete test results shall be published." Further, the commenter urges that the published results also include a list of the participants in the test.

Customs Response: Test programs will not be run that affect the collection of the revenue. All duties, taxes, and fees owed to the U.S. by law continue to be owed by the responsible parties throughout any test program.

Regarding the issue of proper and timely notice to sureties, Customs has modified the proposal in this final rule to provide that whenever a particular test allows for deviation from any regulation requirement, notice shall be published not less than 30 days prior to implementing such test. When there is publication in the **Federal Register**, such publication serves as constructive notice and is notice to all. Customs believes that the 30-day time frame affords interested sureties adequate time to discuss any of their bond conditions within the context of participating in a test program, and to separately respond to those test notices about which they may have questions concerning their underwritten risk. In accordance with the above, Customs has determined that it will not provide separate notices to sureties.

Regarding the suggestion to amend the proposed regulation to provide that publication of complete test results be accomplished within 60 days unless extended by **Federal Register** notice, Customs does not agree. While in general Customs will make every effort to publish discrete test results as soon as possible, setting forth a specific time frame in the regulation—applicable to all tests results—will not give the Customs Service the flexibility it needs to properly evaluate certain NCAP program components to assess their contribution toward achieving specified program goals. Some tests may not be one-time tests, and others may build on other test results.

Concerning publishing a list of the participants in an NCAP test, while Customs has no hesitation in providing this information, Customs does not want to routinely publish such lists. Accordingly, Customs will provide a list of participants upon written request and believes that this element of test notices need not be set forth in the regulation.

Comment: A commenter states that, although notification of tests will be published in the **Federal Register** and the Customs Bulletin, Customs should ensure that the trade community is involved and informed about all of the test programs and procedures for the various components. Accordingly, the commenter suggests that test information be sent via electronic mail to the main contacts for various trade community representatives or that a primary contact, knowledgeable of all test programs and procedures be appointed as the single contact for the trade community. Also, the commenter does not feel that the proposed regulation should further the cause for producing additional 'paper-based' forms.

Customs Response: Section 631 of the Act specifically requires the Secretary to consult with the trade community, to include importers, brokers, shippers, and other affected parties when developing NCAP program components. To this end, in addition to the regulatory notification requirements adopted, Customs will be placing test information on the Customs electronic bulletin board. As for furthering the need for paper-based forms, it is hoped that the need for this medium of information will be changed based on tests proposed to take advantage of new or changing technologies.

Comment: A commenter states that proposed § 101.9(a)(2) should be amended to require advance notification to passengers and carriers because tests affecting passengers will necessarily affect the carriers they use. Thus, carriers should be notified of proposed tests well in advance.

Customs Response: As stated earlier in the document, Customs is modifying the proposal in this final rule to provide notice whenever a particular test allows for deviation from any regulation requirement.

Comment: One commenter states that it is not at all clear from either the **BACKGROUND** section or the proposed regulatory text section of the Notice whether the procedures which will be tested will be in addition to those already required under the regulations, *i.e.*, will they constitute a parallel test, or whether the current regulatory procedures would not be followed. If the latter is the case, proposed § 101.9 should provide that Customs Headquarters will issue a letter to each participant advising them of the fact that, during the period of the test, they will not have to abide by certain identified regulation(s) or specify any other requirements.

Customs Response: The proposal to amend § 101.9 to provide that Customs will issue a letter to participants only advising them that they will not have to abide by certain identified regulation(s) or specify any other requirements is rejected. This approach is not in keeping with program requirements to consult with the trade community. Instead, each **Federal Register** notice published announcing a specific test will identify which, if any, regulatory requirements may be suspended for purposes of the test. Customs believes such publication will afford all interested parties an opportunity to comment on planned tests. Accordingly, no change to the regulation is made based on this comment.

Time/Duration

Comment: A commenter believes that implementation of the proposed rule, as written, would mean that Customs would have *carte blanche* authority to do whatever it wanted with respect to "testing", "procedures" or any derivation of these two words. It could conduct such "tests" or invoke such "procedures" for whatever period of time it decided—one month, one year, five years. Customs could select whomever it chose to participate without being subject to anyone's challenge. The sole interpreter would be Customs and neither importers nor brokers would have any timely recourse. For these reasons, it strongly opposes issuance of the rule as proposed; there is too big a chance for misuse.

Customs Response: The purpose of publishing test proposals in the **Federal Register** is to avoid such problems. The Customs Modernization provisions are intended, in part, to provide safeguards, uniformity, and due process rights for importers. Customs believes that the publication requirement imposed by the proposed regulation adequately meets the unlimited-time-fears expressed by the commenter and affords all interested parties the opportunity to comment on any aspect of proposed tests, including the proposed length of a test. Accordingly, no change to the regulation is made based on this comment.

Comment: A commenter states that the 30-day time period for giving notice prior to implementing a test, provided at §§ 101.9 (a)(2) and (b)(1), should be increased to 60 days to allow adequate time for the trade community to comment on proposed tests and to give Customs time to review the comments before the test is put into effect. To this end the commenter states that Customs has, in the past, instituted "programs", *e.g.*, revising the CF 7512, which resulted in the public spending hundreds of thousands of dollars to acquire the new form only to have Customs withdraw the form because of problems with the form. The commenter suggests that an extended comment period will save more money than it costs over the long run. Further, since almost all tests will involve computer programming time, the trade will need the additional time to reprogram their computers for the test.

Customs Response: As already stated, Customs will be publishing notice of proposed tests on the Customs electronic bulletin board and otherwise inform the trade community of pending developments. As no rational basis has been given to double the length of time for comments—from 30-days to 60-days—and the present electronic environment adequately affords Customs time to review comments before a test is implemented, no change to the regulation is made based on this comment.

Comment: A commenter suggests that the "time" for a test should be defined—given a definite time restriction—and published with the initial notification of a test, as, in the past, Customs has had some "tests" go on for years, *e.g.*, monthly periodic Customs entries on automobile parts and imports of oil and gas. Further, if the test is successful, the Customs Regulations and practices should be changed so that the new procedure(s) can be enjoyed by all. And if it is necessary to extend a test period, 30 days prior to the test end date, notice should be published.

Also concerned with the length of time for a test, another commenter suggests that in all cases, the regulation should specify that the notice must contain either the specific dates for the test (beginning and ending) or the length of the test. If Customs finds it cannot adhere to the period specified, a notice should be published specifying the reasons for the variance and the new dates. This procedure, it is felt, will avoid what has been the past practice of continuing tests *ad infinitum*.

Customs Response: These comments concerning unlimited time periods for tests do not square with the provisions of the proposed regulation, which expressly state that tests will be "limited in scope, time, and application to such relief as may be necessary to facilitate the conduct of a specified program or procedure." 19 CFR 101.9 (a)(1) and (b). At the risk of sounding repetitive, we again state that the publication requirement will allow all interested parties to comment on proposed tests and to express their particular concerns. This publication requirement does not constitute a hollow gesture on Customs part, as, for NCAP tests, Customs must subsequently prepare a user satisfaction survey of parties participating in the program and transmit a report of this survey to Congress. As the proposed regulations adequately address these comments, no change to the regulation is made based on this comment.

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Voluntary Participation

Comment: Two commenters express concern regarding the "voluntary" nature of participation in tests. One commenter states that voluntary participation in a test should mean that volunteers should be allowed to withdraw from a test upon a change in the conditions of the test. The other commenter suggests that, to recognize the importance of Customs test programs and filers' voluntary participation in these programs, a new paragraph (c) be added to § 101.9 to read as follows:

(c) *Voluntary participation.* For tests affecting the entry of merchandise, and for which participation by an entry filer requires or includes a change in the manner, amount, or format of data submitted to Customs by that filer, such participation shall be entirely voluntary. An otherwise qualified filer's entry privileges, including but not limited to electronic entry privileges, may not be reduced, suspended, limited, or withdrawn by Customs solely because that filer declines to participate in one or more such tests.

The commenter states that the voluntary status of filer participation in new Customs programs would be explicitly limited to those involving merchandise, and to those which are in fact test programs. There would be no impediment to Customs mandatory implementation of uniform procedures at points *past* the test stage.

The commenter states the impetus for this amendment to the proposed regulations is a recent Customs/FDA electronic interface pilot program in Seattle. Although in the first few months of the program filer participation was entirely voluntary, such that brokerage firms could elect when to participate, for the last year and a half participation has been mandatory for Seattle-area brokers who wish to file their entries electronically. If a Seattle broker does not wish to participate in the pilot program, that broker must file non-ABI entries for cargo subject to FDA oversight. In effect, the commenter claims that such a broker is penalized by Customs for declining to participate in that particular test program. In general, the commenter is also very concerned about the potential impact of some types of Customs test programs upon certain sections of the trade community, especially those test programs which alter the manner, amount, or format of data transmitted by an entry filer to Customs, as such programs require the filer to incur at least some additional costs, in order to participate in each test program.

Customs Response: Section 631 of the Act expressly provides that "[p]articipation in the [NCAP] Program is voluntary." 19 U.S.C. 1411(b). Accordingly, a broker's, importer's, etc., initial decision to become automated is entirely voluntary. However, as stated in the **BACKGROUND** portion of the **Federal Register** notice of proposed rulemaking, section 631 of the Act also provides Customs with direct statutory authority for full electronic processing of all Customs-related transactions. Thus, for Customs to implement the NCAP and comply with the other mandates of section 631—(1) development of separate implementation plans for each NCAP component, in consultation with the trade community, (2) establishment of eligibility criteria for voluntary participation, (3) testing of the components, and (4) transmittal to Congress of the implementation plan, testing results, and an evaluation report—a certain continuity of test participants must be observed. Accordingly, while Customs will make every effort to make as many aspects of tests as completely voluntary as possible, Customs believes that while the decision by a broker or other participant to participate in an automated Customs program is voluntary in the first instance, continued participation in a particular test may be required. In any event, a participant may always choose to not participate with a particular automated component if the parameters of the testing are not to their liking. If any doubts as to participation in a particular test program or procedure exist after the parameters of the test are published in the **Federal Register**, the hesitant participant should take advantage of the comment period to seek clarification. Accordingly, because of the extensive statutory requirements that Customs must meet to conduct NCAP tests, Customs does not believe that further regulatory language is needed at this time.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the regulation will not have a significant impact on a substantial number of small entities. Accordingly, the regulation is not subject to the regulatory analysis or other requirements of U.S.C. 603 and 604. Further, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Sureties, Tests.

Amendments to the Regulations

For the reasons stated above, part 101 of the Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

Section 101.9 also issued under 19 U.S.C. 1411–1414.

2. In part 101, a new § 101.9 is added to read as follows:

§ 101.9 Test programs or procedures; alternate requirements.

(a) *General testing.* For purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise, the Commissioner of Customs may impose requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. The imposition of any such different requirements shall be subject to the following conditions:

(1) *Defined purpose.* The test is limited in scope, time, and application to such relief as may be necessary to facilitate the conduct of a specified program or procedure;

(2) *Prior publication requirement.* Whenever a particular test allows for deviation from any regulatory requirements, notice shall be published in the **Federal Register** not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice shall invite public comments concerning the methodology of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants.

(b) *NCAP testing.* For purposes of conducting an approved test program or procedure designed to evaluate planned components of the National Customs Automation Program (NCAP), as described in section 411(a)(2) of the Tariff Act of 1930 (19 U.S.C. 411), the Commissioner of Customs may impose requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. In addition to the requirement of paragraph (a)(1) of this section, the imposition of any such different requirements shall be subject to the following conditions:

(1) *Prior publication requirement.* For tests affecting the NCAP, notice shall be published in the **Federal Register** not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice shall invite public comments concerning any aspect of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants; and,

(2) *Post publication requirement.* Within a reasonable time period following the completion of the test, a complete description of the results shall be published in both the **Federal Register** and the Customs Bulletin.

Approved: February 21, 1995.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–6525 Filed 3–15–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AC22

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Benefits and Special Eligibility for Certain Severely Impaired Recipients Who Work; Appeal Rights Following Mass Change Resulting in Reduction, Suspension, or Termination of State Supplementary Payments; and Deemed Application Date Based on Misinformation; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final rules published in the **Federal Register** on Friday, August 12, 1994 (59 FR 41400), Monday, August 22, 1994 (59 FR 43035), and Wednesday, August 31, 1994 (59 FR 44918). We are correcting incorrect paragraph redesignations and related amendatory instructions, as well as making one technical correction to a paragraph in one regulatory section.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: In the final rules that appeared on page 41400 in the **Federal Register** issued of Friday, August 12, 1994, we had incorrect paragraph redesignations in amendatory item 15. We indicated that in § 416.1402 we were redesignating paragraphs (i) through (n) as paragraphs (h) through (m). However, paragraph (n) had not yet been published. Thus, paragraphs (i) through (m) should have been redesignated as paragraphs (h) through (l). The new paragraph (n) was to be contained in other final rules, "Deemed Application Date Based on Misinformation," which were to be published before these rules but were not published until August 31, 1994 (59 FR 44918). We discovered this before "Deemed Application Date Based on Misinformation" was published, however, and changed the designation of that new paragraph in the later rules to paragraph (m) to reflect the proper redesignation which should have been made in the rules published on August 12, 1994.

In the interim, on August 22, 1994, we published other final rules, "Appeal Rights Following Mass Change Resulting in Reduction, Suspension, or Termination of State Supplementary Payments" (59 FR 43035), which contained a new paragraph designated paragraph (n) in § 416.1402 which would have been correct if the regulations had been published in the anticipated sequence. The amendatory item 3 in these final rules contained other incorrect paragraph designations and instructions for punctuating § 416.1402. Further, similar incorrect instructions for revising § 416.1402 were contained under part 416 in amendatory item 6 in the final rules published on August 31, 1994. Also, paragraph (m) as published in these rules was incorrectly punctuated and did not have the word "and" following it. Therefore, we are correcting all three amendatory items and paragraph (m) itself to reflect the correct paragraph designations, punctuation, and ending word "and." With these corrections, all the paragraphs and amendatory instructions will be correct. Make the corrections as follows:

1. In the **Federal Register** issue of August 12, 1994, in the second column on page 41405, amendatory item 15 should read as follows:

15. Section 416.1402 is amended by revising paragraphs (a) and (b), removing paragraph (h), and redesignating paragraphs (i) through (m) as paragraphs (h) through (l), respectively to read as follows:

2. In the **Federal Register** issue of August 22, 1994, in the first column on page 43039, amendatory item 3 should read as follows:

3. Section 416.1402 is amended by removing the word "and" following the semicolon at the end of paragraph (k), replacing the period at the end of paragraph (l) with a semicolon and adding the word "and" after the semicolon, and adding a new paragraph (n) to read as follows:

3. In the **Federal Register** issue of August 31, 1994, in the third column on page 44927, amendatory item 6 under part 416 should read as follows:

6. Section 416.1402 is amended by removing the word "and" following the semicolon at the end of paragraph (l) and adding a new paragraph (m) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

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(m) A claim for benefits under § 416.351 based on alleged misinformation; and

* * * * *

Dated: March 7, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–6502 Filed 3–15–95; 8:45 am]

BILLING CODE 4150–29–M

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for a new animal drug application (NADA) from Zoecon Industries, Inc., to Sandoz Agro, Inc.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Due to a merger with Zoecon Industries, Inc., 12200 Denton Dr., Dallas, TX 75234, and Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018, the firms have requested that FDA publish a notice of a change of sponsor name and address for their new animal drug application NADA 98–895, Starbar GX–118 (N-(mercaptomethyl) phthalimide S-(O,O dimethylphosphorodithioate) emulsifiable liquid). Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address. The drug labeler code "011536" for Zoecon Industries, Inc., is being retained for the new sponsor.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and record keeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Zoecon Industries, Inc.," and alphabetically adding a new entry for "Sandoz Agro, Inc.," and in the table in paragraph (c)(2) in the entry for "011536" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018	011536

(2) * * *

Drug labeler code	Firm name and address
011536	Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018

Dated: March 8, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–6528 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. The NADA provides for the use of lincomycin hydrochloride soluble powder to make medicated swine and broiler chicken drinking water. The supplement provides for use of a packet containing the equivalent of 32 grams (g) of lincomycin in addition to the currently approved packet containing the equivalent of 16 g of lincomycin.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2701.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplement to NADA 111–636 for Lincomix (lincomycin hydrochloride) soluble powder. The supplemental NADA provides for the use of an 80-g packet containing the equivalent of 32 g of lincomycin in addition to the approved 40-g packet containing the equivalent of 16 g of lincomycin. Both packets are used to make a swine drinking water containing 250 milligrams (mg) of lincomycin per gallon used for the treatment of swine dysentery and broiler chicken drinking water containing 64 mg of lincomycin per gallon for the control of necrotic enteritis.

This supplemental NADA is approved as of February 9, 1995, and the regulations in § 520.1263c(a) (21 CFR 520.126c(a)) are amended to reflect the approval.

This is a manufacturing supplement to an approved NADA. The approval does not require a summary of safety, effectiveness data, or information. Therefore, a freedom of information summary as provided in part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals does not qualify for marketing exclusivity because the supplemental application does not contain new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1263c is amended by revising paragraph (a) to read as follows:

§ 520.1263c Lincomycin hydrochloride soluble powder.

(a) *Specifications.* Each 40-gram packet (1.41 ounce) contains lincomycin hydrochloride equivalent to 16 grams of lincomycin. Each 80-gram packet (2.82 ounces) contains lincomycin hydrochloride equivalent to 32 grams of lincomycin.

* * * * *

Dated: March 8, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–6531 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin Sulfate Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Sanofi Animal Health, Inc. The ANADA provides for the use of a generic neomycin sulfate soluble powder administered orally in drinking water or in milk for the treatment and control of colibacillosis in cattle (excluding veal calves), swine, sheep, and goats.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210, filed ANADA 200–050, which provides for the oral use of neomycin sulfate soluble powder in drinking water or milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial scours) caused by *Escherichia coli* susceptible to neomycin sulfate.

Approval of ANADA 200–050 is as a generic copy of The Upjohn's approved NADA 11–315 for Neomix® 325 soluble powder. The ANADA is approved as of February 15, 1995, and the regulations are amended by revising § 520.1484(b) (21 CFR 520.1484(b)) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1484 is amended by revising paragraph (b) to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

* * * * *

(b) *Sponsors.* See Nos. 000009, 000069, 050604, and 059130 in § 510.600(c) of this chapter.

* * * * *

Dated: March 8, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–6530 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the use of oxytetracycline injection in cattle and swine for the treatment of diseases caused by oxytetracycline susceptible organisms.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, has filed ANADA 200–123 which provides for use of oxytetracycline injection as follows: (1) Intramuscular or intravenous use in beef and nonlactating dairy cattle for the treatment of pneumonia and shipping fever associated with *Pasteurella* spp. and *Hemophilus* spp.; infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*; foot rot and diphtheria caused by *Fusobacterium necrophorum*; bacterial enteritis (scours) caused by *Escherichia coli*; wooden tongue caused by *Actinobacillus lignieresi*; leptospirosis caused by *Leptospira pomona*; and wound infections and acute metritis caused by strains of staphylococci and streptococci organisms sensitive to oxytetracycline; (2) intramuscular use in swine for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*; pneumonia caused by *P. multocida*; and leptospirosis caused by *L. pomona*; and (3) intramuscular use in sows for control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*.

Phoenix Scientific's ANADA 200–123 for oxytetracycline injection (Maxim 200) is approved as a generic copy of Pfizer's NADA 113–232 for oxytetracycline injection (Liquamycin®

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LA–200). The ANADA is approved as of February 10, 1995, and the regulations are amended in 21 CFR 522.1660(b) and (c)(2)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1660 is amended in paragraph (b) by removing the phrase "000010 and 000069" and adding in its place "000010, 000069, and 059130", and in paragraph (c)(2)(iii) by revising the last sentence to read as follows:

§ 522.1660 Oxytetracycline injection.

* * * * *

(c) * * *

(2) * * *

(iii) * * * Discontinue treatment at least 42 days prior to slaughter when provided by 000010 and 28 days prior to slaughter when provided by 000069 or 059130.

Dated: March 8, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–6527 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–050]

Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; correction.

SUMMARY: In the July 25, 1994, **Federal Register** OSHA published a revised standard for Shipyard Employment, subpart B of 29 CFR part 1915, extending the previous requirements for work in explosive and other dangerous atmospheres on ships to cover all work involving confined or enclosed spaces or other dangerous atmospheres throughout shipyard employment (59 FR 37816). With the present document, OSHA is making corrections to the rule which include: clarifying the order of testing before employees may enter a confined or enclosed space or other dangerous atmosphere; clarifying when flammable atmospheres must be maintained above the upper explosive limit during installation of ventilation or rescue; and clarifying the limited locations and conditions where hot work may be performed without first being certified by a Marine Chemist. Several typographical errors are also being corrected.

EFFECTIVE DATE: The final rule published on July 25, 1994, became effective on October 24, 1994. These corrections are effective March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210 (202–219–8148).

SUPPLEMENTARY INFORMATION:

I. Correction to § 1915.12—Precautions Before Entering Confined and Enclosed Spaces and Other Dangerous Atmospheres

OSHA is correcting the section heading to § 1915.12 to make clearer the requirement that atmospheric testing must be done in the order set forth in the standard (i.e., oxygen content, then flammability, and then toxicity).

In the preamble to the final rule OSHA explained how the section was being reformatted to address the order of atmospheric testing to be conducted when determining hazards within confined and enclosed spaces and other dangerous atmospheres prior to entry (59 FR 37830). The Agency stated explicitly in the preamble to paragraphs (a), (b), and (c) of § 1915.12 that atmospheres must be tested for oxygen content first, flammability second, and toxicity third (59 FR 37831). However, the section heading did not include the sequence of testing, and the specific introductory statement requiring atmospheric testing to be conducted in the proper sequence was inadvertently omitted from the regulatory text. The insertion of the sequence of testing into the section heading and the addition of the introductory text to § 1915.12 brings the section into conformance with the rulemaking record, the preamble explanation, and OSHA's intent.

II. Correction to § 1915.12(b)—Flammable Atmospheres

In the previous standard covering entry into spaces containing flammable atmospheres, § 1915.12(d), employees were allowed to perform work of brief duration in atmospheres containing concentrations of flammable contaminants as long as the concentrations remained above the upper explosive limit (UEL) and the requirements of § 1915.152(a) and (b), *Respiratory protection*, were followed. That allowance was continued in the proposed revision to subpart B, § 1915.12(d), *Work of brief duration* (53 FR 48108). In the final standard, which permits such entry only to set up ventilation or for rescue, OSHA carried over the condition that the flammable contaminant(s) be maintained above the UEL (59 FR 37858). Unfortunately, the wording of this condition could be construed to require that levels of atmospheric contaminants in a space actually be increased to a level above the UEL prior to ventilation start-up or rescue so that they may be maintained above the UEL. OSHA did not intend the rule to require this. When the atmosphere is below the UEL (but above the lower explosive limit) the addition of flammable contaminants to a space prior to rescue or ventilation set-up to exceed the UEL could increase both the atmospheric hazards to employees and the time needed for rescue. Only atmospheres that are already at or above the UEL are to be maintained at those levels. To prevent confusion regarding when an employer must maintain the level of contaminants above the UEL, OSHA is correcting § 1915.12(b)(3)(iii).

III. Correction to § 1915.14—Hot Work

In paragraph (a)(1)(iv) of § 1915.14, OSHA has provided an exception to the general rule that certain atmospheres in spaces must be tested and certified by a Marine Chemist before hot work may be done. The exception provides that some atmospheres where hot work is to be performed may, instead, be tested by a Competent Person. OSHA is correcting the exception to specify the spaces to which the exception applies and adding a note for further clarification.

It was OSHA's intent to extend the requirements of existing subpart B to all shipyard employment, making changes only where necessary to clarify the language and correct requirements that were inappropriate. In bringing forward the requirements on hot work, however, OSHA incorrectly omitted the reference to the scope of the existing exception which included dry cargo, miscellaneous and passenger vessels. The exception did not apply to tank vessels because of the seriousness of the hazards associated with the flammability or combustibility of tanker vessel cargo. However, OSHA intended the dry cargo, miscellaneous and passenger vessels exception to apply to all landside spaces as well, because their configuration and the conditions found within these spaces are similar to those on the dry cargo, miscellaneous and passenger vessels. Therefore, OSHA is correcting the paragraph to make it clear that the exception does not apply to hot work performed on tank vessels. This is consistent with the previous standard and OSHA's intent.

OSHA has also added a note to make it clear that hot work which does not need to be certified by a Marine Chemist (i.e., work in spaces adjacent to spaces that contain liquids with a flash point above 150° F (65.6° C)) still needs to be inspected and tested by a competent person prior to beginning the hot work.

IV. Correction to § 1915.15(e)

In § 1915.15(e), OSHA requires testing to maintain a competent person's findings. In order to make it clear that a visual inspection is part of the testing, OSHA is correcting paragraph (e). This is consistent with the testing requirements throughout the standard, the rulemaking record, the preamble explanation, and OSHA's intent.

V. Typographical Corrections

Two provisions in subpart B of part 1915 contained minor typographical errors. They are § 1915.12 (d)(3)(ii) and (e)(1)(iii).

PART 1915—[CORRECTED]

1. The authority citation for part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4,6,8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable; 29 CFR Part 1911.

2. The text of 29 CFR part 1915, beginning at § 1915.12, 59 FR 37858 is corrected as follows:

	Page, column	Correction
§ 1915.12		
Section heading	59 FR 37858, 1st ..	The section heading is corrected to read as follows: "Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres."
Introductory text	59 FR 37858, 1st ..	Add the following new introductory text after the section heading: "The employer shall ensure that atmospheric testing is performed in the following sequence: oxygen content, flammability, toxicity."
Paragraph (b)(3)(iii)	59 FR 37858, 3rd ..	This paragraph is corrected to read as follows: "(iii) Atmospheres at or above the upper explosive limit are maintained; and"
Paragraph (d)(3)(ii)	59 FR 37859, 1st ..	The word "a" that appears at the end of the first line is corrected to read "an".
Note to paragraph (e)(1)(iii)	59 FR 37859, 2nd (sixth paragraph second line).	The word "preforms" that appears at the beginning of the second line is corrected to read "performs".
§ 1915.14		
Paragraph (a)(1)(iv)	59 FR 37860, 2nd .	This paragraph is corrected to read as follows: "Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in § 1915.12, but are adjacent to spaces containing flammable gases or liquids, as long as the gases or liquids have a flash point below 150° F (65.6° C) and the distance between such spaces and the work is 25 feet (7.5m) or greater." Note: For flammable liquids with flash points above 150° F (65.6° C), see paragraph (b) of this section.
§ 1915.15		
Paragraph (e)	59 FR 37861, 1st ..	Correct the paragraph to read as follows: "(e) Tests to maintain a competent person's findings. After a competent person has conducted a visual inspection and tests required in §§ 1915.12, 1915.13, and 1915.14 of this part and determined a space to be safe for an employee to enter, he or she shall continue to test and visually inspect spaces as often as necessary to ensure that the required atmospheric conditions within the tested space are maintained."

VI. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for the Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

List of Subjects in 29 CFR Part 1915

Confined spaces, Emergency medical services, Hazardous substances, Marine

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safety, Occupational Safety and Health, Signs and symbols, Vessels, Welding.

The actions in this document are taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR Part 1911.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–6526 Filed 3–15–95; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–93–035]

RIN 2115–AA98

Anchorage Ground; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the anchorage grounds for the St. Johns River, Jacksonville, FL to disestablish anchorage grounds with poor bottom holding capabilities and to disestablish the portions of anchorage grounds which currently extend into the federal channel. This change will also clearly define the anchorage grounds currently in use in the St. Johns River and will delete outdated information contained in the regulation.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William Daughdrill, Tel: (904) 232–2648.

SUPPLEMENTARY INFORMATION: On July 15, 1993 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (58 FR 38102). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Lieutenant A.J. Varamo, project officer for the Caption of the Port Jacksonville, Florida, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received for this regulation during the comment period. Captain of the Port Jacksonville is removing the word 'General' from 33 CFR Part 110.183(b) (2), (3), and (4). There is no regulatory definition for the word, and it is unnecessary.

This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Section 2.B.2.e.(34)(f) that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are available in the docket for inspection or copying.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed anchorage grounds described in these regulations have been used for the past three years by the local pilots, vessel operators and other maritime interests. This change will assure that current practices are in accordance with the regulation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.183 is revised to read as follows:

§ 110.183 St. Johns River, Florida.

(a) *The anchorage grounds*—(1) *Anchorage A.* (Upper Anchorage) The Anchorage is established within the following coordinates, the area enclosed by a line starting at the south shore westerly of the entrance to Miller Creek at

30°18′43.8″ N, 081°38′15.0″ W; thence to
30°18′52.8″ N, 081°38′15.0″ W; thence to
30°18′47.6″ N, 081°37′47.6″ W; thence to
30°18′55.0″ N, 081°37′29.0″ W; thence to
30°19′06.0″ N, 081°37′27.0″ W; thence to
30°19′06.0″ N, 081°37′02.0″ W; thence to
30°19′01.2″ N, 081°37′02.0″ W; thence returning to the point of beginning.

(2) *Anchorage* B. (Lower Anchorage) The Anchorage is established within the following coordinates, the area enclosed by a line starting at a point on the eastern shore of the river at 'Floral Bluff' at

30°21′00.0″ N, 081°36′41.0″ W; thence to
30°20′00.0″ N, 081°37′03.0″ W; thence to
30°21′00.0″ N, 081°37′06.0″ W; thence to
30°21′50.0″ N, 081°36′56.0″ W; thence to
30°21′54.0″ N, 081°36′48.0″ W; thence returning to the point of beginning.

(b) *The regulations.* (1) Except in cases of emergency or for temporary anchorage as authorized in the following subsections, vessels must have authorization from the Captain of the Port to anchor in the St. Johns River, as depicted on NOAA chart 11491, between the entrance buoy (STJ) and the Main Street Bridge (latitude 30°19′20″ N, longitude 81°39′32″ W).

(2) Anchoring within Anchorage A is restricted to vessels less than 250 feet in length.

(3) Anchoring within Anchorage B is restricted to vessels with a draft of 24 feet or less regardless of length.

(4) Anchorages A and B are temporary anchorages. Vessels meeting the applicable restrictions of subsection (b)(2) or (b)(3) of this section may anchor for up to 24 hours without a permit from the Captain of the Port. Vessels not meeting the applicable restrictions of subsection (b)(2) or (b)(3) must obtain authorization from the Captain of the Port before anchoring in Anchorages A or B.

Dated: January 10, 1995.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 95–6435 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD8–94–027]

RIN 2115–AE47

Drawbridge Operation Regulations; Mermentau River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on State Route 82, across the Mermentau River, mile 7.1, at Grand Chenier, Cameron Parish, Louisiana, by permitting the draw to open on signal from 6 a.m. to 6 p.m. and open on four hours notice from 6 p.m. to 6 a.m. Presently, the draw is required to open on signal from 5 a.m. to 9 p.m. and from 9 p.m. to 5 a.m. the bridge opens on 4 hours notice. This action will provide relief to the bridge owner, thereby creating a savings to the taxpayer, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on April 17, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Commander (ob), Eighth Coast Guard District, 501 Magazine Street, Room 1313, New Orleans, Louisiana 70130–3396, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Regulatory History

On October 4, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Mermentau River, LA, in the **Federal Register** (59 FR 50529). The Coast Guard received three letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

LDOTD requested the 4 hour reduction in the number of hours the bridge owner is required to have an attendant on duty, due to the small number of vessels which use the Mermentau River bridge. Data provided by LDOTD show that from January 1, through December 31, 1993, the number of vessels broke down to 8.0 vessels per 24 hour period. The four hour reduction will allow the bridge owner relief from having a person available at the bridge site during that period, thereby, creating a savings to the taxpayer while still serving the reasonable needs of navigational interests.

Discussion of Comments and Changes

Three letters of comment were received in response to the proposal. The Federal Emergency Management Agency, the National Marine Fisheries Service and the Louisiana Department of Wildlife & Fisheries offered no objection to the rule change. Therefore, the Final Rule remains unchanged from the Proposed Rule.

Assessment

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under Section 6a(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040: February 26, 1979).

Small Entities

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is the number of vessels which pass the bridge, (8.0 per 24 hour period). The three comments received offered no objection to the proposed rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.480 is revised to read as follows:

§ 117.480 Mermentau River.

The draw of the S82 bridge, mile 7.1 at Grand Chenier, shall open on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given. During the advance notice period, the draw will open on less than 4 hours notice for an emergency and will open on demand should a temporary surge in waterway traffic occur.

Dated: February 1, 1995.

C.B. Newlin,

Acting Captain, U.S. Coast Guard, Chief of Staff.

[FR Doc. 95–6434 Filed 3–15–95; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH44

Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning compensation for disability or death resulting from VA hospitalization, medical or surgical treatment, or examination. Previously, the regulations required that VA be at fault or that an accident occur to establish entitlement to compensation for adverse results of medical or surgical treatment. This rule deletes the fault-or-accident requirement and instead provides that compensation is not payable for the necessary consequences of proper treatment to which the veteran consented. This amendment is necessary to conform the regulations to a recent United States Supreme Court decision.

DATES: This interim final rule is effective November 25, 1991, the date of the Court of Veterans Appeals decision that invalidated former 38 CFR 3.358(c)(3). Comments must be received on or before May 15, 1995.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900–AH44." All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1151 provides for the payment of disability or dependency and indemnity compensation for additional disability or death resulting from an injury or aggravation of an injury suffered as the result of VA hospitalization, medical or surgical treatment, examination, or pursuit of a course of vocational rehabilitation under 38 U.S.C. ch. 31. VA had long interpreted the statute to require a showing of fault on the part of VA or the occurrence of an accident to establish entitlement to § 1151 compensation for adverse consequences of VA medical treatment. *See* 38 CFR 3.358(c)(3) (1994). The Supreme Court, however, recently affirmed a lower court ruling that invalidated VA's fault-or-accident interpretation.

In deciding *Brown* v. *Gardner*, U.S. Sup. Ct. No. 93–1128 (Dec. 12, 1994), the Court held that the fault-or-accident requirement in 38 CFR 3.358(c)(3) was inconsistent with the plain language of the statute and that no fault requirement was implicit in the statute.

Although the Supreme Court found that the statutory language simply requires a causal connection between an injury or aggravation of an injury and VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation, it also indicated that not every additional disability resulting from an injury or aggravation so connected was compensable under § 1151. The Court noted that it did not intend to exclude application of the doctrine *volenti non fit injuria* (which is sometimes loosely translated as "assumption of the risk" but more precisely refers to the doctrine of consent). Moreover, the Court provided an example of disabilities that, although causally connected to VA treatment, are not compensable under § 1151. In this regard, the Court stated, "[i]t would be unreasonable, for example, to believe that Congress intended to compensate veterans for the necessary consequences of treatment to which they consented (*i.e.*, compensating a veteran who consents to the amputation of a gangrenous limb for the loss of the limb)."

Under the authority granted in 38 U.S.C. 505, the Secretary of Veterans Affairs requested an opinion from the U.S. Attorney General on precisely what the Supreme Court meant by its statement regarding application of the doctrine *volenti non fit injuria*. The response, from the Department of Justice's Office of Legal Counsel, was that the Court construed § 1151 to exclude from coverage only those injuries that are the certain, or perhaps the very nearly certain, result of proper medical treatment.

In this document VA is revising 38 CFR 3.358(c)(3) to reflect the Supreme Court's holding that 38 U.S.C. 1151 permits compensation for all but the necessary consequences of properly administered VA medical or surgical treatment or examination to which a veteran consented. "Necessary consequences" is the term the Supreme Court used in its example of what Congress could not reasonably have intended to cover with § 1151. We define "necessary consequences" as those consequences certain or intended to result from treatment or examination. We consider this interpretation of the statute to be consistent with the Supreme Court's opinion.

Consistent with our interpretation of the Supreme Court's opinion, this rule also provides that whether results were either certain or intended is to be determined in relation to the examination or treatment actually administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered. For example, consider a case in which a veteran is about to undergo exploratory surgery and, depending on the findings, would undergo one of two possible additional procedures, each of which has distinct consequences that are certain or intended to result. Under these circumstances it is not known before the exploratory surgery which additional procedure will actually be performed. However, if the veteran consents both to the exploratory surgery and whichever procedure ultimately is determined to be required, the certainty of consequences is to be determined in relation to the consented-to procedure or procedures actually performed.

Also, as reflected in the text of the rule, we have concluded that when the Supreme Court stated that compensation should not be payable for the necessary consequences of treatment to which the veteran "consented," the Court meant both express and implied consent. This is consistent with the common meaning of the term "consent" and the Court did not indicate that any other meaning should be applied.

This interim final rule, unlike the regulatory provision it replaces, expressly includes the consequences of VA examinations. The statute covers injuries or aggravation of injuries resulting from examination, as well as from medical or surgical treatment. Thus, the rule's inclusion of examination consequences is necessary to reflect completely the provisions of the statute.

We also are deleting other references in the section to the invalidated fault requirement. We are eliminating paragraph (c)(4), which requires that VA be at fault to establish entitlement for claims based on being transported while in hospitalized status. Such claims will now be adjudicated under the standard applicable to hospitalization, treatment, or examination. We are also making corresponding changes to paragraph (c)(7) to remove the fault requirement for claims based on nursing home care.

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Office of Management and Budget has reviewed this regulatory action under Executive Order 12866.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 23, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, paragraph (c)(4) is removed, and paragraphs (c)(5), (c)(6), and (c)(7) are redesignated as paragraphs (c)(4), (c)(5), and (c)(6), respectively.

3. In § 3.358, paragraph (c)(3) is revised, and redesignated paragraph (c)(6) is amended by revising the third sentence, to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

* * * * *

(c) * * *

(3) Compensation is not payable for the necessary consequences of medical or surgical treatment or examination properly administered with the express or implied consent of the veteran, or, in appropriate cases, the veteran's representative. "Necessary consequences" are those which are certain to result from, or were intended to result from, the examination or medical or surgical treatment administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered.

* * * * *

(6) * * * If additional disability results from medical or surgical treatment or examination through negligence or other wrongful acts or omissions on the part of such a nursing home, its employees, or its agents, entitlement does not exist under this section unless there was an act or omission on the part of the Department of Veterans Affairs independently giving rise to such entitlement and such acts on the part of both proximately caused the additional disability.

(Authority: 38 U.S.C. 1151)

[FR Doc. 95–6510 Filed 3–15–95; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BPD–724–F]

RIN 0938–AF26

Medicare Program; Medicare Coverage of Screening Mammography; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendment.

SUMMARY: This document corrects a technical error that appeared in the final regulations published in the **Federal Register** on September 30, 1994 (59 FR 49826). Those regulations, in part, established conditions for coverage of diagnostic mammography that are similar to those we had established for screening mammography. This correcting amendment restates the applicability of diagnostic mammography to men as well as to women.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: William Larson, (410) 966–4639.

SUPPLEMENTARY INFORMATION: This document corrects a technical error that appeared in the final regulations published in **Federal Register** Document [94–24335] on September 30, 1994 (59 FR 49826). Those regulations, in part, established conditions for coverage of diagnostic mammography that are similar to those we had established for screening mammography.

The regulation set forth at 42 CFR 410.34 ("Mammography services: Conditions for and limitations on coverage") contains an omission, which may prove to be misleading. In the definition of "diagnostic mammography" in paragraph (a)(1) of § 410.34, we inadvertently failed to include a symptomatic man in the coverage of services under the diagnostic mammography benefit. This correcting amendment restates the applicability of diagnostic mammography to men as well as to women. Therefore, we are correcting § 410.34(a)(1) to clarify that a symptomatic man or woman can receive coverage of services under the diagnostic mammography benefit.

We wish to note that section 1861(jj) of the Social Security Act states explicitly that "screening" mammography is covered only for women. Section 410.34(a)(2), relating to the definition of screening mammography, is correct as it reads, based on current law.

List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

Accordingly, 42 CFR part 410 is corrected by making the following correcting amendment:

PART 410—[AMENDED]

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.34, the introductory text of paragraph (a) is republished, and paragraph (a)(1) is revised to read as follows:

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§ 410.34 Mammography services: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a symptomatic man or woman for the purpose of detecting breast disease and includes a physician's interpretation of the results of the procedure.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: March 7, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–6501 Filed 3–15–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 93–154; FCC 95–69]

Aural Broadcast Station Auxiliary Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules to permit certain unapproved transmitters to be retained and used for backup operations in the band 944–952 MHz at aural broadcast stations' auxiliary facilities. The rule will permit broadcast licensees to temporarily use their outmoded equipment, which has been displaced from full time operation by approved equipment, for backup operations at auxiliary facilities.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 418–2190.

SUPPLEMENTARY INFORMATION: Adopted: February 24, 1995; Released: March 7, 1995 By the Commission:

Introduction

1. We herein amend Sections 74.550 of our rules to permit certain unapproved transmitters in the band 944–952 MHz which have been displaced by approved equipment for primary use to be retained for backup purposes at Aural Broadcast Auxiliary Stations.

Background

2. In 1985, the Commission adopted a *Report and Order* in MM Docket No. 85–36, 50 FR 48596, January 26, 1985, which required all new transmitters for aural studio transmitter-link/intercity relay (STL/ICR) operation in the 944–952 MHz frequency band to be approved prior to marketing. Continued use of existing non-approved equipment was allowed for a period ending on July 1, 1990, which was later extended to July 1, 1993, 55 FR 3062, January 30, 1990.

3. In June of 1993, the Notice of Proposed Rule Making in MM Docket No. 93–154, 58 FR 33923, June 22, 1993, ("NPRM") in the above-entitled matter was issued in response to informal suggestions from various parties that the Commission should permit the retention and use of existing unapproved aural broadcast auxiliary transmitters for backup purposes. This proposal would permit broadcasters to retain and use their existing unapproved primary equipment as backup equipment after it was displaced from primary service by approved equipment under the requirements of our rules. The proposal was intended to avoid burdening licensees with additional expenditures to replace infrequently used backup transmitters with approved equipment, and to permit the installation of backup facilities in situations which have not previously been practicable. Backup auxiliary service facilities are used by many broadcast station licensees to avoid undue disruption in programming should the regular auxiliary transmitter fail or require servicing. Thus, the Commission concluded that limited short-term backup use of unapproved equipment could be permitted. The Commission, therefore, proposed to allow all transmitters removed from primary service to be retained for backup purposes, provided no interference is caused and that such transmitters are not used for more than 720 cumulative hours per year without explicit Commission authority.[1] In addition, the *NPRM* stated that the Commission would allow licensees to retain unapproved equipment for backup purposes until final action is taken in this proceeding, and thereafter if the proposed rule is adopted.

Comments

4. Comments supporting adoption of the proposed amendments of Section 74.550 were received from the National Association of Broadcasters ("NAB") and National Public Radio ("NPR"). No opposing comments were received.

5. NAB states that many stations have purchased new equipment to comply with the current requirements of Section 74.550 of the Commission's rules. NAB notes that given the current financial conditions prevailing in the broadcast industry, most licensees cannot justify purchasing additional equipment for backup facilities. However, while their old equipment does not meet the new more stringent standards, NAB and NPR suggest the old equipment is fully functional and is more than adequate for backup purposes.

Discussion

6. We have reviewed the comments and conclude for the reasons advanced in the NPRM that adoption of the proposal would serve the public interest. We further agree with NPR that there should not be any significant adverse consequences from continued use of unapproved STL/ICR equipment under the conditions proposed in the NPRM. These backup transmitters can maintain the broadcast station's ability to provide continued service in the event of primary equipment failure without undue risk of harmful interference. However, we caution licensees that the unapproved equipment has wider channel bandwidth, and thus, may be prone to cause interference, especially in congested spectrum-use areas. Licensees must not use the unapproved equipment on a regular or primary basis and stations using such equipment should be prepared to demonstrate that it normally uses approved equipment. A licensee is not permitted to obtain unapproved equipment from other licensees or other sources for backup use. Our action here is intended only to permit the retention and continued use, in a backup role of equipment that a licensee already possesses.

Procedural Matters

7. *Regulatory Flexibility Act.* We certify that the regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because there will to be a significant negative economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Pub. L. No. 96–354.94 Stat.1164.5 U.S.C. Section 601 et seq (1981).

8. Therefore, it is ordered that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that effective April 17, 1995. Part 74 of the Commission's Rules and Regulations is amended as set forth below. It is further ordered that this proceeding is terminated.

9. Further information may be obtained from Bernard Gorden, Mass Media Bureau, Engineering Policy Branch, (202) 418–2190.

[1] Within the allowed 720 cumulative hours of operation, there are no limits on the amount of permitted consecutive hours or number of separate uses of unapproved equipment.

List of Subjects in 40 CFR Part 74

Auxiliary facilities, Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 74 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 74.550 is revised to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment. Equipment which has not been type approved under the equipment authorization program and which was in service prior to July 1, 1993, may be retained solely for temporary uses necessary to restore or maintain regular service provided by approved equipment, because the main or primary unit has failed or requires servicing. Such temporary uses may not interfere with or impede the establishment of other aural broadcast auxiliary links and may not occur during more than 720 cumulative hours per year. Should interference occur, the licensee must take all steps necessary to eliminate it, up to and including cessation of operation of the auxiliary transmitter. All unapproved equipment retained for temporary use must have been in the possession of the licensee prior to July 1, 1993, and may not be obtained from other sources. Requirements for obtaining a grant of equipment authorization are contained in subpart J of part 2 of the Rules. Equipment designed exclusively for fixed operation shall be authorized under notification procedures (see § 2.904(d) of this chapter).

Note: Consistent with the note to § 74.502(a), grandfathered equipment in the 942–944 MHz band and STL/ICR users of these frequencies in Puerto Rico are also required to come into compliance by July 1, 1993. The backup provisions described above apply to these stations also.

[FR Doc. 95–6489 Filed 3–15–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No.1; Amdt. I–268]

Organization and Delegation of Powers and Duties; Delegation to All Administrators

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule contains a delegation of authority to all Administrators of the Department of Transportation's (DOT) operating administrations to enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of state or local government, any educational institution, and any other entity in execution of the Technology Reinvestment Project authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 and related legislation. This rule is necessary to reflect the delegation in the Code of Federal Regulations.

This rule also makes a minor amendment to the regulation that details the structure and responsibilities of the Office of the Secretary by adding a new office, the Office of Aviation International Economics, within the Office of the Assistant Secretary for Aviation and International Affairs.

EFFECTIVE DATE: This rule becomes effective March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Terence W. Carlson, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law at (202) 366–9161, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation and Related Agencies Appropriations Act, 1995, Pub. L. No. 103–331, section 329A, 108 Stat. 2471, 2493 (September 30, 1994), grants the Secretary of Transportation specific authority to enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of state or local government, any educational institution, and any other entity in execution of the Technology Reinvestment Project (TRP) authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, Pub. L. No. 102–484, 106 Stat. 2658 (October 23, 1992), and related legislation. TRP is a statutory interagency project lead by the Department of Defense (DOD) through its Advanced Research Projects Agency, which uses DOD funds to support the cost-shared application of defense-related technologies to the commercial sector. Therefore, it is necessary to amend the relevant part of the CFR to delegate this authority to the Administrators of the DOT operating administrations.

49 CFR part 1 describes the organization of DOT and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law. Section 1.45 delegates certain authorities of the Secretary to all Administrators of the DOT operating administrations. This rulemaking amends § 1.45(a) to add a new subparagraph (18), which delegates to the Administrators the authority to enter into grants, cooperative agreements, and other transactions with any entity in execution of the Technology Reinvestment Project authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 and related legislation. This rulemaking also amends § 1.22, which details the structure and responsibilities of the Office of the Secretary. It makes a minor revision to § 1.22(c) to add a fourth office within the Office of the Assistant Secretary for Aviation and International Affairs, the Office of Aviation International Economics.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, and under the authority of 49 U.S.C. 332, part 1 of title 49 Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

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Authority: 49 U.S.C. 322, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.22(c) is revised to read as follows:

§ 1.22 Structure.

* * * * *

(c) *Office of the Assistant Secretary for Aviation and International Affairs.* This Office is composed of the Offices of Aviation International Economics; International Transportation and Trade; International Aviation; and Aviation Analysis.

* * * * *

3. Section 1.45 is amended by adding paragraph (a)(18) to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(18) Exercise the authority vested in the Secretary by Section 329A of the Department of Transportation and Related Agencies Appropriations Act, 1995, Pub. L. No. 103–331, § 329A, 108 Stat. 2471, 2493 (September 30, 1994), to enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of state or local government, any educational institution, and any other entity in execution of the Technology Reinvestment Project authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, Pub. L. No. 102–484, 106 Stat. 2658 (October 23, 1992), and related legislation.

Issued at Washington, DC, this 16th day of February 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–6522 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 564

RIN 2127–AF07

[Docket No. 85–15; Notice 15]

Replaceable Light Source Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: This notice responds to petitions for reconsideration of the final rule, published on January 12, 1993, that requires the manufacturers of replaceable light sources for headlamps to file dimensional and other information with NHTSA in a public docket pursuant to 49 CFR part 564, *Replaceable Light Source Information*. Part 564, which currently allows light source manufacturers to file information in the part 564 Docket, is amended to allow vehicle and headlamp manufacturers also to file information in the docket. This notice also amends part 564 to allow changes to be made in light source information previously submitted. Under the amendment, NHTSA will accept a submission for change if the submitter includes a statement that substitution of a modified bulb to replace an unmodified one will not create a noncompliance of that headlamp with Standard No. 108, and submits reasons in support of the statement. In order to evaluate the reasons, NHTSA may publish a **Federal Register** notice seeking comment. The acceptance of a modified light source will have no effect upon the permissibility to continue the manufacture and use of the original light source.

DATES: The amendments are effective April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: On January 12, 1993, NHTSA published a final rule adopting 49 CFR part 564 *Replaceable Light Source Information*, as a repository for information on new types of replaceable light sources for headlamps (58 FR 3856). Later, the part 564 Docket was designated Docket 93–11 (58 FR 15132).

Paragraph 564.5(a) provides that "each manufacturer of a replaceable light source used as original equipment on a motor vehicle" (other than the existing HB Types of Standard No. 108) shall furnish certain information on new light source types to Docket 93–11. In addition, the preamble made clear (at 3857) that "[a]fter information has been accepted for filing, no changes in it will be permitted" (paragraph 564.5(c)).

Petitions for reconsideration of part 564 were filed by the American Automobile Manufacturers Association (AAMA) and Ford Motor Company (Ford). Petitioners objected to the restrictions in paragraph 564.5 that do not allow headlamp and vehicle manufacturers to make submissions to Docket 93–11, or changes in information previously submitted.

Specifically, AAMA, supported by Ford, argued that the restriction of the ability to file information regarding new light sources to manufacturers of the sources would be inappropriate in some instances, and that users of light sources (manufacturers of headlamps and vehicles) should also have the right to submit information on new ones. NHTSA, in establishing the restriction, believed that the light source manufacturer would be the entity best able to file information on its product. However, the replaceable light sources presently permitted were added pursuant to petitions submitted by vehicle manufacturers. Types HB1 and HB5 originated in petitions submitted by Ford, Type HB2 in a petition by Volkswagen, and Types HB3 and 4 in a petition from General Motors. An amendment that would allow manufacturers of motor vehicles to submit light source information would afford greater flexibility and appear to have no negative safety consequences. For the same reasons, NHTSA believes that manufacturers of replaceable bulb headlamps used as original equipment should also be permitted the opportunity to submit information to Docket No 93–11. Accordingly, the agency grants petitions for reconsideration of this issue and is amending part 564 appropriately.

AAMA and Ford also argued for the right to petition for revision of specifications for existing light sources in Docket No. 93–11. Currently, such revision is impermissible.

A manufacturer wishing to implement lighting improvements must instead incorporate the improvements in a new light source that is not interchangeable with any existing light source. AAMA stated that reasonable flexibility could be introduced into part 564, while addressing the issue of potential effects on the performance of lights on vehicles in service, by providing for public review and comment on any proposed revisions to part 564 light sources. It suggested that NHTSA establish a procedure similar to the rulemaking process involved in making specification changes in Standard No. 108 to HB Type light sources. This would allow users such as headlamp and vehicle manufacturers an opportunity to evaluate the effects on their products of any proposed revisions to light sources. In the absence of such a process, according to AAMA, the docket could become laden with light source types that may never be manufactured because of errors in initial specifications or because the light source designs have been replaced by a photometrically equivalent but improved version of the light source, such as one with longer life. Without permission to make changes in specifications, the improved light sources would have to be non-interchangeable with any other light source type in Docket No. 93–11.

Owners of vehicles whose headlamps have the original light source would therefore not be able to avail themselves of the improvement. Ford supported AAMA on this issue.

NHTSA has carefully considered these views. The agency's intent in establishing a docket for the receipt of information was to remove specifications for replaceable light sources from the direct control of Standard No. 108, that is to say, to relieve all specifications from regulation except for the interchangeability feature. The necessity to petition for rulemaking to amend Standard No. 108 and the time that is required to implement a change through the mechanism of a comment notice and final rule is costly and time-consuming for both industry and government. AAMA's request is for a substitute comment and decision process, which, in NHTSA's view, would largely negate the regulatory simplicity it envisioned when it established part 564.

Nevertheless, the agency realizes that manufacturers should not be discouraged and foreclosed from making changes or incremental improvements or changes in previously submitted designs that may enhance the performance of the light source. Under part 564, changes are presently permissible in replaceable light sources as long as they do not affect the specifications that have been filed or that are reflected in their respective Figures in Standard No. 108. For example, longer-life versions of Type HB1 are now available without the necessity of amending the specifications for Type HB1 light sources to accomplish this. Although there were no comments on the categories of specifications proposed for part 564 submissions during the rulemaking period, NHTSA would also like to point out that the part 564 categories themselves may be changed or deleted through the rulemaking process.

However, there may be changes that industry desires which would affect the specifications on file, and which a manufacturer desires to implement without affecting interchangeability. As the petitioners correctly state, this type of submission presently cannot be accepted under paragraph 564.5(c). NHTSA has decided to grant the petitions for reconsideration of this point, and to allow such submissions. After careful consideration of the matter, the agency finds that it has only one concern directly related to safety: will the modifications requested result in a light source that will create a noncompliance with Standard No. 108 when it is substituted for the original light source used in a complying headlamp. If the answer is yes, the request for change will not be accepted until the petitioner modifies the design so that it is not interchangeable with any existing one for which information has been filed in Docket No. 93–11.

To ensure that a petitioner has considered the safety implications of its request, NHTSA will require that each request for changes be accompanied by the petitioner's statement that use of a modified light source will not create a noncompliance with Standard No. 108 when used to replace the unmodified light source that was used in a headlamp originally certified to comply with Standard No. 108, and reasons to substantiate the statement. In evaluating the conformance statement and supporting reasons, NHTSA may request further information from the manufacturer or from the public. If the information available indicates that the requested change is unlikely to create a noncompliance, the request will be granted and placed in Docket No. 93–11 where it may be employed as a light source acceptable either as original equipment or as replacement for the unmodified light source theretofore used as original equipment. Because some manufacturers may wish to continue the production and use of the unmodified light source, for cost or other reasons, NHTSA will not remove the original submission from Docket No. 93–11, and the unmodified light source may continue to be manufactured as original and replacement equipment.

Finally, heretofore paragraph 564.5(d) has committed NHTSA to making light source information in Docket No. 93–11 available for public inspection not later than the date on which a vehicle equipped with a new light source is offered for sale. NHTSA is amending this provision (now paragraph 564.5(e)) to add the alternative "or as soon as practicable after receipt" which could occur before the date that the vehicle is offered for sale.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This notice was not reviewed under Executive Order 12866. It has been determined that the rulemaking is not significant under Department of Transportation regulatory policies and procedures. Implementation of this rule will remove a burden on manufacturers who heretofore have not been permitted to file information in part 564, and it will permit requests for changes in information previously filed. The impact of this rule are so minimal that preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act. NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. It is not anticipated that the rule will have a significant effect upon the environment simply because additional persons may now make submissions to Docket No. 93–11, or that requests for changes may be made in previous submissions.

Regulatory Flexibility Act. The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Based on the discussion above, I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, headlamps, and light sources, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected by these minor amendments as the cost of light sources is relatively small and will not be substantially affected.

Executive Order 12612 (Federalism). This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act. The reporting and recordkeeping requirement associated with this rule has been approved by the Office of Management and Budget in accordance with 44 U.S.C. chapter 35. The OMB control number is 2127–0563.

Civil Justice Reform (Executive Order 12778). This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Under 49 U.S.C. 30161, a procedure is set forth for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 564

Motor vehicle safety, Motor vehicles.

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PART 564—REPLACEABLE LIGHT SOURCE INFORMATION

In consideration of the foregoing, 49 CFR part 564 is amended as follows:

1. The authority citation for part 564 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Part 564 is amended by revising paragraphs 564.1, 564.2, 564.3, and 564.5 to read as follows:

§ 564.1 Scope.

This part requires the submission of dimensional, electrical specification, and marking/designation information, as specified in Appendix A of this part, for original equipment replaceable light sources used in motor vehicle headlighting systems.

§ 564.2 Purpose.

The purposes of this part are:

(a) to make available to replacement light source manufacturers the manufacturing specifications of original equipment replaceable light sources, thereby ensuring that replacement light sources are interchangeable with original equipment light sources and provide equivalent performance; and

(b) to ensure that newly developed replaceable light sources are designated as distinct and different from, and are noninterchangeable with, previously existing light sources.

§ 564.3 Applicability.

This part applies to replaceable light sources used as original equipment in motor vehicle headlighting systems.

* * * * *

§ 564.5 Information filing; agency processing of filings.

(a) Each manufacturer of a motor vehicle, original equipment headlamp, or original equipment headlamp replaceable light source, which intends to manufacture a replaceable light source as original equipment or to incorporate a replaceable light source in its headlamps or motor vehicles, other than a replaceable light source meeting the requirements of subparagraphs (a) through (e) of paragraph S7.7 of section 571.108 of this part, shall furnish the information specified in Appendix A of this part to: Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Attn: *Replaceable Light Source Information* Docket No. 93–11 (unless the agency has already filed such information in Docket No. 93–11).

(b) The manufacturer shall submit the information specified in Appendix A of this part not later than 60 days before it intends to begin the manufacture of the replaceable light source to which the information applies, or to incorporate the light source into a headlamp or motor vehicle of its manufacture. Each submission shall consist of one original set of information and 10 legible reproduced copies, all on 8½ by 11-inch paper.

(c) The Associate Administrator promptly reviews each submission and informs the manufacturer not later than 30 days after its receipt whether the submission has been accepted. Upon acceptance, the Associate Administrator files the information in Docket No. 93–11. The Associate Administrator does not accept any submission that does not contain all the information specified in Appendix A of this part, or whose accompanying information indicates that any new light source which is the subject of a submission is interchangeable with any replaceable light source specified in paragraph S7.7 of section 571.108 of this part, or for which the agency has previously filed information in Docket No. 93–11.

(d) A manufacturer may request modification of a light source for which information has previously been filed in Docket No. 93–11, and the submission shall be processed in the manner provided by paragraph 564.5(c). A request for modification shall contain the following:

(1) All the information specified in Appendix A of this part that is relevant to the modification requested,

(2) The reason for the requested modification,

(3) A statement that use of the light source as modified will not create a noncompliance with any requirement of Motor Vehicle Safety Standard No. 108 (49 CFR 571.108) when used to replace an unmodified light source in a headlamp certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards, together with reasons in support of the statement; and

(4) Information demonstrating that the modification would not adversely affect interchangeability with the original light source.

After review of the request for modification, the Associate Administrator may seek further information either from the manufacturer or through a notice published in the **Federal Register** requesting comment on whether a modified light source incorporating the changes requested will create a noncompliance with Motor Vehicle Safety Standard No. 108 when substituted for an unmodified light source. If the Associate Administrator seeks comment public comment on a submission, (s)he shall publish a further notice stating whether (s)he has accepted or rejected the submission. If a submission is accepted, the Associate Administrator files the information in Docket No. 93–11. If a submission is rejected, a manufacturer may submit information with respect to it, as provided in paragraph 564.5(a), for consideration as a new light source after such changes as will ensure that it is not interchangeable with the light source for which modification was originally requested.

(e) Information submitted under this section is made available by NHTSA for public inspection as soon as practicable after its receipt, but not later than the date on which a vehicle equipped with a new or revised replaceable light source is offered for sale.

Issued on: March 9, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–6378 Filed 3–15–95; 8:45 am]

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49 CFR Part 583

[Docket No. 92–64; Notice 06]

RIN 2127–AF60

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final Rule; Partial Response to Petitions for Reconsideration.

SUMMARY: The American Automobile Labeling Act requires passenger cars and other light vehicles to be labeled with information about their domestic and foreign parts content. This document provides a partial response to several petitions for reconsideration of the agency's July 1994 final rule implementing that statute. NHTSA is extending by one year a temporary compliance alternative for how manufacturers and suppliers may make content calculations.

DATES: This regulation is effective April 17, 1995. Petitions for reconsideration must be received not later than April 17, 1995.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Safety Administration, Room 5313, 400 Seventh Street SW, Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION: On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a final rule implementing the American Automobile Labeling Act. That statute requires passenger cars and other light vehicles to be labeled with information about their domestic and foreign parts content.

NHTSA received petitions for reconsideration from the American Automobile Manufacturers Association, General Motors, the Association of International Automobile Manufacturers, Volkswagen, the American International Automobile Dealers Association, and the Kentucky Cabinet for Economic Development. The petitioners raised a number of issues about provisions which they regard as overly burdensome and likely to have the effect of requiring manufacturers to report inaccurate percentages of domestic content. Some of the petitioners' requests raised very complex issues concerning the latitude the agency has under the law to grant the requested relief.

NHTSA is now in the process of completing its response to the petitions. It recognizes, however, that manufacturers and suppliers have an immediate need for guidance regarding the procedures for making content determinations for the 1996 model year. Indeed, manufacturers are already in the process of collecting content data from suppliers for the 1996 model year.

NHTSA has therefore decided to extend by one year a temporary alternative approach for data collection and calculations. This approach permits manufacturers and suppliers to use procedures that are expected to yield similar results. This alternative was originally available, under the July 1994 final rule, for model year 1995 and model year 1996 carlines which were first offered for sale to ultimate purchasers before June 1, 1995. The alternative is hereby extended to all model year 1996 carlines and model year 1997 carlines which are first offered for sale to ultimate purchasers before June 1, 1996. The one-year extension of the alternative will ensure that consumers receive the best information possible about the foreign and U.S./Canada origin of vehicles they are considering purchasing during this period, while minimizing burdens on auto manufacturers. For a more complete discussion of this alternative, see 59 FR 37324–25, July 21, 1994.

This final rule is being issued in partial response to the petitions for reconsideration. The agency expects to complete its full response to the petitions shortly.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866. The July 1994 final rule was determined to be "significant" under the Department's regulatory policies and procedures, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade. However, this final rule is not considered significant since it merely extends a temporary compliance option permitted under that final rule.

NHTSA discussed the costs associated with the July 1994 rule in a Final Regulatory Evaluation which was placed in the docket for that rulemaking. Today's amendments reduce manufacturer and supplier costs during the time of the extension by simplifying the process for making content determinations.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor. More specifically, the amendment provides small cost savings during the time of the extension by simplifying the process for making content determinations.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this final rule.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of the rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

2. Section 583.5 is amended by revising paragraph (i) to read as follows:

§ 583.5 Label requirements.

* * * * *

(i) Manufacturers need not provide any of the information provided in this part for model year 1994 vehicles. For model year 1995 and model year 1996 carlines, and for model year 1997 carlines which are first offered for sale to ultimate purchasers before June 1, 1996, manufacturers and suppliers may, instead of following the calculation procedures set forth in this part, use procedures that they expect, in good faith, to yield similar results.

Issued on March 13, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–6518 Filed 3–15–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950306067–5067–01; I.D. 021795D]

RIN 0648–AH96

Summer Flounder Fishery; Court-Ordered Regulation Change

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces a change in the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This action is taken to comply with a Consent Order issued by the U.S. District Court for the Eastern District of Virginia directing NMFS to revise specified regulatory language.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing the Summer Flounder Fishery Management Plan are found at 50 CFR part 625. In a Consent Order dated December 19, 1994, the United States District Court for the Eastern District of Virginia, ordered NMFS to delete the lanaguage in § 625.4(a)(3) that requires Federal permit holders, when faced with differing state and Federal regulations, to abide by the most restrictive requirement. The new language allows only state requirements that are consistent with Federal management measures to remain in effect.

Classification

This final rule has been determined to be not significant for the purpose of E.O. 12866.

This final rule is exempt from the procedures of the Regulatory Flexibility Act because it is not required to be issued with prior notice and opportunity for public comment.

Because the language of this rule is required by a judicial order, providing prior notice and opportunity for public comment would serve no useful purpose and is therefore unnecessary. Accordingly the Assistant Administrator for Fisheries, NOAA finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, providing a 30-day delay in effective date would be inconsistent with the intent of the judicial order and could act to delay relieving restrictions on the fishery.

List of Subjects in 50 CFR part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.4 is amended by revising paragraph (a)(3) to read as follows:

§ 625.4 Vessel permits.

(a) * * *

(3) *Condition.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. State requirements consistent with Federal management measures shall remain in effect. Owners and operators of vessels fishing under the terms of a moratorium permit issued pursuant to paragraph (b) of this section must also agree, as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available.

* * * * *

[FR Doc. 95–6450 Filed 3–15–95; 8:45 am]

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Proposed Rules

Federal Register

Vol. 60, No. 51

Thursday, March 16, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–211–AD]

Airworthiness Directives; Learjet Model 24, 25, 31, 35, 36, and 55 Series Airplanes, and Learjet Model 28 and 29 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Learjet Model 24, 25, 31, 35, 36, and 55 series airplanes, and Learjet Model 28 and 29 airplanes, that currently requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit flight above an altitude of 41,000 feet. The actions specified by that AD are intended to prevent cracking and subsequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane. This action would require replacement of certain outflow/safety valves, which, when accomplished, constitutes terminating action for the previously required AFM limitation.

DATES: Comments must be received by May 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Allied Signal, Inc., Controls & Accessories, 11100 N. Oracle Road, Tucson, Arizona 85737–9588; telephone (602) 469–1000. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–211–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 9, 1994, the FAA issued AD 94–26–01, amendment 39–9097 (59 FR 64844, December 16, 1994), applicable to certain Learjet Model 24, 25, 31, 35, 36, and 55 series airplanes, and Learjet Model 28 and 29 airplanes, to require a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit flight above an altitude of 41,000 feet. That action was prompted originally by a report of failure of a safety valve in the pressurization system on a Learjet Model 31A airplane. Failure of the valve resulted in depressurization of the cabin. Investigation revealed that the poppets of certain outflow/safety valves were cracked. These discrepant valves, including the safety valve installed on the incident airplane, had been manufactured since January 1, 1989. Certain valves manufactured since that date have been found to be susceptible to cracking due to an improper molding process. Cracking in the poppets of the outflow/safety valves in the pressurization system can result in an open valve with an effective flow area of 4.4 square inches; additionally, the valve may close and remain closed. The requirements of that AD are intended to prevent such cracking and subsequent failure of the valves, which could result in rapid decompression of the airplane.

When AD 94–26–01 was issued, it contained a provision for optional replacement of certain outflow/safety valves. Accomplishment of the replacement constitutes terminating action for the AFM revision; after the replacement has been accomplished, the previously required AFM limitation may be removed. In the preamble to AD 94–26–01, the FAA indicated that it intended to revise that AD to require the replacement of those outflow/safety valves. This action proposes such a requirement.

The FAA previously reviewed and approved Allied Signal Aerospace Alert Service Bulletins 130406–21–A4011, Revision 2, dated September 28, 1994 (for part number 130406–1); and 102850–21–A4021, Revision 2, dated October 6, 1994 (for part number 102850–5). These alert service bulletins describe procedures for replacement of certain outflow/safety valves in the

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pressurization system with serviceable valves. Further, the alert service bulletins recommend that the maximum altitude for operation of airplanes that may be equipped with these outflow/safety valves be limited to 41,000 feet as an interim measure until the affected valves are replaced.

Since the issuance of AD 94–26–01, Allied Signal Aerospace has issued Revision 3 of one of the alert service bulletins described above, Alert Service Bulletin 130406–21–A4011, dated January 5, 1995 (for part number 130406–1). The FAA has reviewed and approved the revised alert service bulletin, which adds certain valve serial numbers to the effectivity list of the alert service bulletin. The FAA has determined that these additional valve serial numbers also are subject to the unsafe condition specified in this AD, and has referenced Revision 3 of the alert service bulletin as the appropriate source of service information for replacement of outflow/safety valves having part number 130406–1.

The FAA also has reviewed and approved the following Learjet service bulletins, which reference the Allied Signal Aerospace alert service bulletins described previously as the appropriate sources of service information:

1. SB 24/25–21–4, dated January 3, 1995 (for Model 24 and 25 series airplanes);
2. SB 28/29–21–8, dated January 3, 1995 (for Model 28 and 29 airplanes);
3. SB 31–21–6, dated January 3, 1995 (for Model 31 series airplanes);
4. SB 35/36–21–19, dated January 3, 1995 (for Model 35 and 36 series airplanes); and
5. SB 55–21–10, dated January 3, 1995 (for Model 55 series airplanes).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–26–01 to continue to require a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit flight above an altitude of 41,000 feet. This AD also would require replacement of certain outflow/safety valves. Accomplishment of the replacement constitutes terminating action for the AFM revision; after the replacement has been accomplished, the previously required AFM limitation may be removed. The replacement would be required to be accomplished in accordance with the applicable alert service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 350 Model 24, 25, 31, 35, 36, and 55 series airplanes and Model 28 and 29 airplanes of the affected design in the worldwide fleet. The FAA estimates that 280 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision required currently by AD 94–26–01 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact associated with the current AFM revision requirement of AD 94–26–01 on U.S. operators is estimated to be $16,800, or $60 per airplane.

Removal and replacement of parts that would be required by this proposed AD would require approximately 12 work hours to accomplish, at an average labor rate of $60 per work hour. However, Allied Signal advises that it will reimburse operators for the costs of such removal and replacement. Therefore, based on this information, U.S. operators would incur no cost impact for the proposed removal and replacement requirements.

Based on the figures discussed above, the (combined) total cost impact of this AD on U.S. operators would be approximately $16,800, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9097 (59 FR 64844, December 16, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Learjet: Docket 94–NM–211–AD. Supersedes AD 94–26–01, Amendment 39–9097.

Applicability: Model 24, 25, 31, 35, 36, and 55 series airplanes, and Model 28 and 29 airplanes; equipped with Allied Signal outflow/safety valves, number 130406–1 or 102850–5; as identified in Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995; or 102850–21–A4021, Revision 2, dated October 6, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane due to cracking and subsequent failure of certain outflow/safety valves, accomplish the following:

(a) Within 30 days after January 3, 1995 (the effective date of AD 94–26–01, amendment 39–9097), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Operation of the airplane at any altitude above 41,000 feet is prohibited."

(b) Within 18 months after the effective date of this AD, replace the outflow/safety valves, part numbers 130406–1 and 102850–5, as identified in Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995, or 102850–21–A4021, Revision 2, dated October 6, 1994, as applicable; with serviceable parts in accordance with the procedures described in the applicable alert service bulletin. Accomplishment of this replacement constitutes terminating action for the requirement of paragraph (a) of this AD; after the replacement has been accomplished, the previously required AFM limitation may be removed.

(c) As of January 3, 1995 (the effective date of AD 94–26–01, amendment 39–9097), no person shall install an outflow/safety valve, part number 130406–1 or 102850–5, as identified in Allied Signal Aerospace Alert Service Bulletin 130406–21–A4011, Revision 3, dated January 5, 1995, or 102850–21–A4021, Revision 2, dated October 6, 1994, as applicable; on any airplane unless that valve is considered to be serviceable in accordance with the specifications contained in the Accomplishment Instructions of the applicable alert service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 1995.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6322 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–15–AD]

Airworthiness Directives; Boeing Model B–17E, F, and G Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model B–17E, F, and G airplanes. This proposal would require inspections to detect cracking and corrosion of the wing spar chords, bolts and bolt holes of the spar chords, and wing terminals; and correction of any discrepancy found during these inspections. This proposal is prompted by reports of cracking and corrosion of the wing spar. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing of the airplane due to the problems associated with corrosion and cracking of the wing spar.

DATES: Comments must be received by April 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Philip Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, during routine inspections of several Boeing Model B–17 series airplanes, extensive corrosion and numerous cracks were found on the tubular spar chords of the inner wing. These tubular spar chords mate with the circular inner wing attach fitting inserts that are held together by close tolerance bolts. (There are four such joints on each wing of the airplane.) Investigation revealed that moisture trapped in the inner wing spars caused some of the bolts in the joint assemblies to seize and corrode. The FAA has determined that the wing spar assembly is susceptible to moisture accumulation, which may result in internal corrosion and subsequent cracking in this area. Since this area is subject to maximum bending and stress loads, cracking in this area is particularly critical.

This condition, if not corrected and detected in a timely manner, could result in reduced structural integrity of the wing of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a dye penetrant inspection to

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detect cracking and corrosion of the aluminum wing spar chords; an eddy current inspection to detect cracking and corrosion of the bolts and bolt holes of the spar chords; and correction of any discrepancies found. The FAA has determined that the spar-to-wing terminal joint must be separated, including removing the wing of the airplane from the fuselage, to adequately detect cracking and corrosion of the bolts, inner wing fittings, and tubular spar chords. This action would also require visual and eddy current inspections to detect cracking and corrosion of the wing terminals and spar chords; and repair of any cracking or corrosion found.

There are approximately 12 airplanes of the affected design in the worldwide fleet. The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1,500 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $900,000, or $90,000 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–15–AD.

Applicability: All Model B–17E, F, and G airplanes, certificated in any category.

Note 1: For airplanes on which the terminal fitting-to-spar chord joint was separated prior to the effective date of this AD, and inspection(s) of and/or repair(s) to the wing terminals-to-spar chords were accomplished prior to the effective date of this AD: Applications for an alternative method of compliance to the requirements of paragraphs (a) and (b) of this AD should be submitted to the FAA, in accordance with the provisions of paragraph (d) of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a dye penetrant inspection to detect cracking of each inboard end of the eight aluminum wing spar chords, in accordance with MIL–STD–6866. If any cracking is detected that is beyond the limits specified in the acceptance/rejection criteria contained in sensitivity level Group IV, MIL–I–25135, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: The part number (P/N) for the upper wing spar chords is 3–14231–0, and the P/N for the lower wing spar chords is 3–14231–1.

(2) Perform a high frequency eddy current inspection to detect cracking of the bolt holes of the spar chords, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The inboard-most bolt on each of the eight wing terminal fitting-to-wing spar chord tube joints must be removed to perform this inspection.

Note 3: The following are the P/N's for the terminal fitting-to-spar chord joint assemblies:

Assemblies	Assembly part No.
Left Upper Front Spar Joint Assembly	75–4781–0
Right Upper Front Spar Joint Assembly	75–4781–1
Left Lower Front Spar Joint Assembly	65–4782–512
Right Lower Front Spar Joint Assembly	65–4782–513
Left Upper Rear Spar Joint Assembly	75–4783–0
Right Upper Rear Spar Joint Assembly	75–4783–1
Left Lower Rear Spar Joint Assembly	75–4784–0
Right Lower Rear Spar Joint Assembly	75–4784–1

Note 4: The following are the P/N's for the bolts for the spar chords:

Bolts for	Bolt part No.
Upper and Lower Front Spar Chords.	NAS56A36
Upper Rear Spar Chord	NAS56A34
Lower Rear Spar Chord	NAS56A40–5

(3) Perform a visual inspection to detect corrosion of the bolts and replace any corroded bolt with a new bolt having a P/N in the NAS 6606 series in accordance with Army Technical Order Number 01–20EF–2. Prior to further flight, accomplish the requirements of paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this AD in accordance with Army Technical Order Number 01–20EF–2.

Note 4: The following are the P/N's for the replacement bolts for the spar chords:

Replacement bolts for	Replacement bolt part No.
Upper and Lower Front Spar	NAS 6606–51
Upper Rear Spar	NAS 6606–47
Lower Rear Spar	NAS 6606–56

(i) Install a washer having P/N MS 20002C6 under the head of the bolt, a self-locking nut having P/N NAS 1804–6, and a washer having P/N MS 200026 under the nut, for each replacement bolt.

(ii) Torque any replacement bolt to 95–105 inch-pounds.

(iii) Oversize replacement bolts by 1/16 inch, as necessary.

(b) Within 18 months after the effective date of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform visual and high frequency eddy current inspections, that include separating all eight wing terminal-to-spar chord joints, to detect cracking and corrosion of the wing terminals and spar chords, in accordance with a method approved by the Manager, Seattle ACO. Or

(2) Perform an equivalent inspection(s) to that required by paragraph (b)(1) of this AD, that may not include separating the terminal fitting from the spar chord to detect cracking and corrosion of all eight wing terminal-to-spar chord joints, in accordance with a method approved by the Manager, Seattle ACO. To be considered acceptable, the equivalent inspection(s) must include, at a minimum, the criteria specified in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD.

(i) The inspection must include removal of all 64 bolts that join the eight wing terminals to the eight spar chords; and

(ii) The inspection must adequately detect cracking of the spar chord, and corrosion between the terminal fitting and the spar chord; and

(iii) The inspection must include a visual inspection to detect corrosion of the attachment bolts; and a high frequency eddy current, and boroscope inspection at 10 power magnification, of the bolt holes common to the spar chord-to-wing terminal interface.

(c) If any cracking and/or corrosion is detected during any of the inspections required by paragraphs (a) and (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 9, 1995.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6321 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–13–AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes that utilize a direct current (DC) generator. The proposed action would require relocating the left-hand (LH) and right-hand (RH) essential bus current limiters (225 amp) to the battery bus (main bus tie). A safety recommendation received by the Federal Aviation Administration (FAA) that details potential electrical failure problems on Fairchild SA226 and SA227 series airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the LH or RH essential bus when engine failure results in a blown generator current limiter, which could result in loss of airplane electrical power.

DATES: Comments must be received on or before June 2, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. George R. Hash, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5134; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a safety recommendation that details potential electrical failure problems on Fairchild SA226 and SA227 series airplanes. Flight simulation revealed that electrical power loss could occur on the affected airplanes because of failure of the LH essential bus. Switching delays between the left and right side electrical systems result in left generator motor action, which could then cause the left side current limiter to open. This would result in failure of the left essential bus, which will result in loss of alternating current (AC) power to the primary attitude indicator and the lighting for the standby attitude indicator.

Failure of either engine will result in the loss of the essential bus for that side if the motoring action of the generator causes the current limiter to open. This condition, if not detected and corrected, could result in loss of airplane electrical power including loss of attitude and landing gear power.

Fairchild has issued Service Bulletin (SB) 226–24–034, SB 227–24–015, and SB CC7–24–002, all Issued: September 29, 1994. These service bulletins reference a modification that relocates the RH and LH essential bus current limiters (225 amp) to the battery bus (main bus tie). Fairchild Aircraft Engineering Kit Drawing 27K82376, "Current Limiter Rebussing Kit," contains the specific procedures for incorporating this modification on the affected airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the situation described above from occurring.

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Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design that utilize a direct current (DC) generator, the proposed AD would require relocating the LH and RH essential bus current limiters (225 amp) to the battery bus (main bus tie). Accomplishment of the proposed modification would be in accordance with Fairchild Aircraft Engineering Kit Drawing 27K82376, "Current Limiter Rebussing Kit," as referenced in Fairchild SB 226–24–034, SB 227–24–015, and SB CC7–24–002, all Issued: September 29, 1994.

The FAA estimates that 622 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $98 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $210,236 ($338 per airplane). This figure is based on the assumption that no affected airplane owner/operator has incorporated the proposed modification. Fairchild Aircraft has informed the FAA that parts have not been distributed to any owner/operator of the affected airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Fairchild Aircraft: Docket No. 95–CE–13–AD.

Applicability: The following model and serial number airplanes that utilize a direct current (DC) generator, certificated in any category.

Models	Serial Nos.
SA226–T, SA226–AT, SA226–TC, and SA226–T(B).	All.
SA227–AC, SA227–AT, SA227–BC, and SA227–TT.	1 through 733.
SA227–CC and SA227–DC.	784, and 790 through 883.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 2,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the left hand (LH) and right hand (RH) essential bus when engine failure results in a blown generator current limiter, which could result in loss of airplane electrical power, accomplish the following:

(a) Relocate the LH and RH essential bus current limiters (225 amp) to the battery bus (main bus tie) in accordance with Fairchild Aircraft Engineering Kit Drawing 27K82376, "Current Limiter Rebussing Kit," as referenced in the following service bulletins (SB):

SB	Date	Models affected
226–24–034	September 29, 1994	All affected SA226 models.
227–24–05	September 29, 1994	SA227–AD, SA227-AT, SA227–BC, and SA227-TT.
CC7–24–002	September 29, 1994	SA227–CC and SA227–DC.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 10, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6471 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–17–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require replacement of a certain pressure switch with a certain new pressure switch in the fuel system for the engines. This proposal is prompted by a report indicating that the current design of a certain pressure switch in the fuel system for the engines does not meet current fire resistant properties, which could result in the failure of the pressure switch during a fire in the engine compartment. The actions specified by the proposed AD are intended to prevent failure of the existing pressure switch in the fuel system for the engines, which, during an engine fire, could result in fuel leakage that could add fuel to the fire.

DATES: Comments must be received by April 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that, during a design review of the fuel system, the manufacturer determined that the current design of the pressure switch having part number (P/N) 1153P0073 in the fuel system of the left and right engine does not meet the fire resistant properties, as required by section 25.1183 (a) of the Federal Aviation Regulations (14 CFR 25.1183), "Flammable fluid-carrying components."

If a fire in the engine compartment occurred, the existing pressure switch in the fuel system for the left and right engine could fail. If the pressure switch fails, fuel leakage could occur during an engine fire, which could add fuel to the fire.

Jetstream has issued Service Bulletin J41–73–007, dated November 22, 1994, which describes procedures for replacement of the pressure switch having P/N 1153P0073 with a new pressure switch having P/N 1153P0094 in the fuel system for the left and right engines. The new pressure switch has been redesigned to meet the fire resistance requirements of section 25.1183(a) of the Federal Aviation Regulations [14 CFR 25.1183 (a)]. The pressure switch provides a warning to the flight crew if fuel filter blockage begins to occur. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of a certain pressure switch with a certain new pressure switch in the fuel system of the left and right engine. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long standing requirement.

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take

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approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,700, or $180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 95–NM–17–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41046 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the existing pressure switch in the fuel system of the left and right engine, which, during an engine fire, could result in fuel leakage that could add fuel to the fire, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace pressure switch having part number (P/N) 1153P0073 with a new pressure switch having P/N 1153P0094 in the fuel system of the left and right engine, in accordance with Jetstream Service Bulletin J41–73–007, dated November 22, 1994.

(b) As of the effective date of this AD, no person shall install a pressure switch, P/N 1153P0073, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 10, 1995.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6469 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ASO–5]

Proposed Establishment of Class D and E Airspace, Amendment to Class D and E Airspace and Removal of Class E Airspace; Marietta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace for Cobb County-McCollum Field, amend the Class D and E airspace for Dobbins ARB (NAS Atlanta), and remove the Class E surface area extension for Dobbins ARB (NAS Atlanta) at Marietta, GA. This proposed action would also establish Class E airspace for Cobb County-McCollum Field when the control tower is closed. Cobb County-McCollum Field currently is included in the Dobbins ARB (NAS Atlanta) Class D airspace area. A non-federal tower has been commissioned at Cobb County-McCollum Field which has a LOC RWY 27 Standard Instrument Procedure (SIAP) and a VOR/DME or GPS RWY 9 SIAP. Class D and E airspace to the surface is required to accommodate these SIAPs and contain instrument flight rule (IFR) operations at Cobb County-McCollum Field. As a result of this proposed action the Dobbins ARB (NAS Atlanta) Class D and E airspace to the surface would be reduced and the Class E surface area extension would be removed concurrent with the establishment of the Class D and E airspace area for Cobb County-McCollum Field. This amendment would also make a technical correction to the name and location of Atlanta Dobbins AFB, GA. The correct name and location is Dobbins ARB (NAS Atlanta), Marietta, GA.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–5 Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace for Cobb County-McCollum Field, amend the Class D and E airspace for Dobbins AFB (NAS Atlanta), and remove the Class E surface area extension for Dobbins ARB (NAS Atlanta) at Marietta, GA. This proposed action would also establish Class E airspace for Cobb County-McCollum Field when the control tower is closed. Cobb County-McCollum Field currently is included in the Dobbins ARB (NAS Atlanta) Class D airspace area. A non-federal tower has been commissioned at Cobb County-McCollum Field. Class D and E airspace to the surface is required to accommodate current SIAPs and contain IFR operations at Cobb County-McCollum Field. As a result of this proposed action the Dobbins ARB (NAS Atlanta) Class D and E airspace to the surface would be reduced and the Class E surface areas extension would be removed concurrent with the establishment of the Class D airspace area for Cobb County-McCollum Field. This amendment would also make a technical correction to the name and location of Atlanta Dobbins AFB, GA. The correct name and location is Dobbins ARB (NAS Atlanta), Marietta, GA. Class D airspace designations, Class E airspace areas designated as a surface area for an airport, and Class E airspace area designated as an extension to a Class D surface areas are published in Paragraphs 5000, 6002, and 6004 respectively of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Marietta, GA [New]

Cobb County-McCollum Field, GA
(Lat. 34°00'47" N, long. 84°35'55" W)
Dobbins ARB (NAS Atlanta)
(Lat. 33°54'55" N, long. 84°30'59" W)

That airspace extending upward from the surface to and including 3500 feet MSL within a 4-mile radius of Cobb County-McCollum Field, excluding that airspace southeast of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins ARB (NAS Atlanta). This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA D Marietta, GA [Revised]

Dobbins ARB (NAS Atlanta), GA
(Lat. 33°54'55" N, long. 84°30'59" W)
Cobb County-McCollum Field
(Lat. 34°00'47" N, long. 84°35'55" W)
Fulton County Airport-Brown Field
(Lat. 33°46'45" N, long. 84°31'17" W)

That airspace extending upward from the surface to and including 3600 feet MSL within a 5.5-mile radius of Dobbins ARB (NAS Atlanta), excluding airspace northwest of a line connecting the 2 points of intersection with a 4-mile radius centered on Cobb County-McCollum Field, and also excluding that airspace south of a line connecting the 2 points of intersection with a 4-mile radius centered on Fulton County Airport-Brown Field. This Class D airspace

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area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

* * * * *

ASO GA E2 Marietta, GA [New]

Cobb County-McCollum Field, GA
(Lat. 34°00'47" N, long. 84°35'55" W)
Dobbins ARB (NAS Atlanta)
(Lat. 35°54'55" N, long. 84°30'59" W)

Within a 4-mile radius of Cobb County-McCollum Field, excluding that airspace southeast of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins ARB (NAS Atlanta). This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Marietta, GA [Revised]

Dobbins ARB (NAS Atlanta), GA
(Lat. 33°54'55" N, long. 84°30'59" W)
Cobb County-McCollum Field
(Lat. 34°00'47" N, long. 84°35'55" W)
Fulton County Airport-Brown Field
(Lat. 33°46'45" N, long. 84°31'17" W)

Within a 5.5-mile radius of Dobbins ARB (NAS Atlanta), excluding that airspace northwest of a line connecting the 2 points of intersection with a 4-mile radius centered on Cobb County-McCollum Field, and also excluding that airspace south of a line connecting the 2 points of intersection with a 4-mile radius centered on Fulton County Airport-Brown Field. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ASO GA E4 Atlanta Dobbins AFB, GA [Removed]

* * * * *

Issued in College Park, Georgia, on March 6, 1995.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–6514 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANM–8]

Proposed Amendment to Class D Airspace; Ogden, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Ogden, Utah, Class D airspace, based on the results of an airspace review. This proposal would amend the ceiling altitude and the geographic size of the Ogden, Utah, Class D airspace area. The amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before April 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–8, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–8, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Ogden, Utah. This proposal would amend the ceiling altitude and the geographic size of the Ogden, Utah, Class D airspace area. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM UT D Ogden-Hinckley Airport, UT [Revised]

Ogden-Hickley Airport, UT
(Lat. 41°11'46" N, long. 112°00'44" W)
Ogden, Hill AFB, UT
(Lat. 41°07'25" N, long. 111°58'23" W)

That airspace extending upward from the surface up to, but not including, 7,800 feet MSL within a 4.3-mile radius of the Ogden-Hinkley Airport, excluding the portion south of a line beginning east of the airport at the intersection of the 4.3-mile radius of the Ogden-Hinckley Airport and the 4.3-mile radius of the Hill AFB, extending west to the intersection of the 4.3-mile radius of the Ogden-Hinckley and the 4.3-mile radius of the Hill AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on March 6, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region

[FR Doc. 95–6513 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

Restricting or Prohibiting Attracting Sharks by Chum or Other Means in the Monterey Bay National Marine Sanctuary; Public Hearing

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Oceanic and Atmospheric's Sanctuaries and Reserves Division (SRD) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to restrict or prohibit the attracting of sharks by the use of chum or other means in the MBNMS. An advance notice of proposed rulemaking published February 28, 1995 (60 FR 10812) discussed the reasons SRD is considering restricting or prohibiting this activity in the MBNMS. A 30-day comment period closes on March 30, 1995. A public hearing has been scheduled to assist in maximizing public comment on this issue. Individuals wishing to make a statement will be required to sign up at the door and will be limited to three minutes.

DATES: The hearing will be held on Wednesday, March 22, 1995, starting at 7:00 p.m.

ADDRESSES: The hearing will be held at the Cabrillo College, 500 Building, Room 507, 6500 Soquel Drive, Aptos, California, 95003.

FOR FURTHER INFORMATION CONTACT: Aaron King at (408) 647–4257 or Elizabeth Moore at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: March 13, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–6642 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–08–M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN: 3220–AB11

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations under the Railroad Unemployment Insurance Act (RUIA) to permit a "physician assistant-certified" to execute a statement of sickness in support of payments of sickness benefits under the RUIA. The proposed rule would also eliminate certain obsolete language.

DATES: Comments must be submitted on or before April 17, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701, TDD (FTS (312) 386–4701).

SUPPLEMENTARY INFORMATION: Section 335.2(a)(2) provides that in order to be entitled to sickness benefits under the RUIA, a claimant must provide a "statement of sickness". Section 335.3(a) of the Board's regulations lists the individuals from whom the Board will accept a statement of sickness. That list does not currently include physician assistants. In many parts of the country, physician assistants are more accessible (and their services less expensive) than licensed medical doctors (MD's). Under present regulations, the Board will not accept a statement of sickness or supplemental statement of sickness from a physician assistant unless there is some followup verification that the physician assistant completed the statement under the supervision of an MD. This is administratively costly and in many cases unnecessarily delays payment of sickness benefits. Thus, the Board proposes to add "physician assistant-certified" to its list of individuals from whom it will accept a statement of sickness.

The Board also proposes to amend section 335.4(d)(5) of its regulations by deleting the first sentence of paragraph (d)(5), which relates to the filing of a statement of sickness by a female employee whose claim for sickness benefits is based upon pregnancy, miscarriage or childbirth. The special form required by paragraph (d)(5) is no longer used, since, for purposes of filing for sickness benefits, a distinction is no longer made between pregnancy, miscarriage or childbirth and other illnesses.

The Board has determined that this is not a major rule for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. The

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information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220–0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.3(a) is amended by removing "or" at the end of paragraph (a)(6) of this section, by replacing the period at the end of paragraph (a)(7) of this section with "; or", and by adding a new paragraph (a)(8) to read as follows:

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* * * *

* * * * *

(8) A physician assistant-certified (PAC)

* * * * *

§ 335.4 [Amended]

3. Section 335.4(d)(5) is amended by removing the first sentence of section 335.4(d)(5).

Dated: March 7, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–6491 Filed 3–15–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–023]

RIN 2115–AA97

Safety Zone: USS AMERICA, Fleet Week '95, Port of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on May 24, 1995, and May 31, 1995, for the arrival and departure of the USS AMERICA for Fleet Week '95. This moving safety zone would be established 500 yards fore and aft, and 200 yards on each side of the USS AMERICA as it transits the Port of New York and New Jersey between Ambrose Channel Lighted Whistle Buoy "A" and its berth.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance, due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–023) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

The Intrepid Museum Foundation is sponsoring Fleet Week '95. The USS AMERICA has been designated as the Fleet Week Flagship and will be entering the Port of New York and New Jersey on May 24, 1995, to participate in the various activities associated with this celebration. USS AMERICA intends to depart the Port of New York and New Jersey following the completion of Fleet Week on May 31, 1995. This regulation would be effective during the arrival and departure of the USS AMERICA on May 24, 1995, from 9:15 a.m. until 3 p.m., and on May 31, 1995, from 7:30 a.m. until 1 p.m. unless extended or terminated sooner by the Coast Guard Captain of the Port, New York. The regulation would establish a moving safety zone within 500 yards fore and aft and 200 yards to each side of the USS AMERICA, as it transits the Port of New York and New Jersey between Ambrose Channel Lighted Whistle Buoy "A", at or near 40°28.8′ N. latitude, 73°53.7′ W. longitude, and its berth. The exact berthing location is unknown at this time. It will be announced in the final rule and will broadcast via Marine Information Broadcast with the announcement of the effective date and time of the safety zone. No vessels will be permitted to enter or move within this moving safety zone unless authorized by the Captain of the Port, New York.

This regulation is needed to protect the maritime public from possible hazards to navigation associated with a large naval vessel transiting the Port of New York and New Jersey with limited maneuverability in restricted waters, and requiring a clear traffic lane in order to safely navigate to and from its berth.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from the review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This moving safety zone would prevent vessels from transiting portions of the Port of New York and New Jersey on May 24, 1995, from 9:15 a.m. until 3 p.m., and on May 31, 1995, from 7:30 a.m. until 1 p.m., unless extended or terminated sooner by the Coast Guard Captain of the Port, New York. Although there is a regular flow of traffic through this area, there is not likely to be a significant impact on recreational or commercial traffic for several reasons. Due to the moving nature of the safety zone, no single location would be affected for a prolonged period of time. This safety zone prevents vessels from approaching within 500 yards fore and aft and 200 yards on either side of the aircraft carrier USS AMERICA. These distances are less than the typical safe passage distances normally required for large vessels and aircraft carriers. Additionally, recreational traffic can transit on either side of the safety zone on most major waterbodies and waterways within the Port. Alternate routes are also available to commercial and recreational vessels traffic that can safely transit the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel. Similar safety zones have been established for arrivals and departures of large naval vessels with minimal or no disruption to vessel traffic or other interests in the port. In addition extensive, advance advisories will be made to the maritime community so that they can adjust their plans accordingly. For all the above reasons, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–023 is added to read as follows:

§ 165.T01–023 USS AMERICA, Fleet Week '95, Port of New York and New Jersey.

(a) *Location.* This moving safety zone includes all waters within 500 yards fore and aft and 200 yards to each side of the USS AMERICA, as it transits the Port of New York and New Jersey between Ambrose Channel Lighted Whistle Buoy "A", at or near 40°28.8′ N latitude, 73°53.7′ W longitude, and its berth.

(b) *Effective period.* This section is effective on May 24, 1995, from 9:15 a.m. until 3 p.m., and on May 31, 1995, from 7:30 a.m. until 1 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 9, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–6430 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–004]

RIN 2115–AA97

Safety Zone: Annual South Street Seaport Memorial Day Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual South Street Seaport Memorial Day Fireworks display located in the East River, New York. The safety zone would be in effect annually on the Sunday before Memorial Day from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is

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deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–004) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years, South Street Seaport, Inc. has submitted an Application for Approval of Marine Event for a Memorial Day fireworks program in the waters of the East River. This regulation would establish a safety zone in the waters of the East River on the Sunday before Memorial Day from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the East River to all vessel traffic annually on the Sunday before Memorial Day between 8 p.m. and 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that other wise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifius under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.175, is added to read as follows:

§ 165.175 Safety Zone; Annual South Street Seaport Memorial Day Fireworks Display, East River, New York.

(a) *Location.* The safety zone includes all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is in effect annually on the Sunday before Memorial Day from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 6, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–6429 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–013]

RIN 2115–AA97

Safety Zone: Annual North Hempstead Memorial Day Fireworks Display, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual North Hempstead Memorial Day fireworks display located in Hempstead Harbor, New York. The safety zone would be in effect annually on the Friday before Memorial Day from 8 p.m. until 10 p.m., with a rain date on the following Saturday during the same times, unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone could close all waters of Hempstead Harbor within a 300 yard radius from the center of the fireworks platform located approximately 300 yards north of Bar Beach, North Hempstead, New York.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the face that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–013) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid their rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years, the Town of North Hempstead has submitted an Application of Approval of Marine Event for a fireworks program in the waters of Hempstead Harbor. This regulation would establish an annual safety zone in the waters of Hempstead Harbor on the Friday before Memorial Day from 8 p.m. until 10 p.m., with a rain date on the following Saturday during the same times, unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting within a 300 yard radius of the fireworks platform located approximately 300 yards north of Bar Beach, North Hempstead, New York. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of Hempstead Harbor to all vessel traffic annually on the Friday before Memorial Day from 8 p.m. until 10 p.m., with a rain date on the following Saturday at the same times, unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that the amount of traffic in this area is minimal; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

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Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B; it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.178, is added to read as follows:

§ 165.178 Safety Zone; Annual North Hempstead Memorial Day Fireworks Display, Hempstead Harbor, New York.

(a) *Location.* All waters of Hempstead Harbor within a 300 yard radius from the center of a fireworks platform located approximately 300 yards north of Bar Beach, North Hempstead, New York.

(b) *Effective period.* This section is in effect annually on the Friday before Memorial Day from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port New York. If the fireworks is cancelled because of bad weather, this section is in effect on the following Saturday at the same time unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 5, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–6431 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–014]

RIN 2115–AA97

Safety Zone: Parade of Ships, Fleet Week '95, Port of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on May 24, 1995, for the Fleet Week '95 Parade of Ships. This moving safety zone would be established 500 yards fore and aft, and 200 yards on each side of the designated column of vessels in this parade as it transits from the Verrazano Narrows Bridge to the waters west of the 79th Street Boat Basin, Manhattan, in the Hudson River. As the vessels make their turns and proceed southbound in the Hudson River the moving safety zone will continue to encompass all waters within a 200 yard radius of each vessel until it is safely berthed. The regulation would be in effect from 8:45 a.m. until 3 p.m. on Wednesday, May 24, 1995, unless extended or terminated sooner by the Coast Guard Captain of the Port, New York.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 1004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8:45 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance, due to the fact that Governors Island is military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–014) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing, however, persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast District, Legal Office.

Background and Purpose

On March 1, 1995 the Intrepid Museum Foundation submitted a request to hold a parade of U.S. Coast Guard and U.S. and foreign naval ships through the Port of New York and New Jersey on May 24, 1995. The regulation would be effective from 8:45 a.m. until 3 p.m. on May 24, 1995, unless extended or terminated sooner by the Coast Guard Captain of the Port, New York. This regulation would establish a moving safety zone within all waters 500 yards forward of the lead parade vessel, 500 yards aft of the last parade vessel, and 200 yards to each side of the designated column as it transits north from the Verrazano Narrows Bridge to the waters west of the 79th Street Boat Basin, Manhattan, in the Hudson River. The vessels would then proceed to their berths. The regulation would also provide for a moving safety zone in all waters within a 200 yard radius around each vessel from the time the vessel breaks off from the parade until it is safely moored. No vessel will be permitted to enter or move within these safety zones unless authorized by the Captain of the Port, New York.

This regulation is needed to protect the maritime public from possible hazards to navigation associated with a parade of naval vessels transiting the waters of New York Harbor in close proximity. These vessels have limited maneuverability and require a clear traffic lane in order to safely navigate.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This moving safety zone would prevent vessels from transiting portions of the Port of New York and New Jersey from 8:45 a.m. until 3 p.m. on Wednesday, May 24, 1995, unless extended or terminated sooner by the Coast Guard Captain of the Port, New York. Although there is a regular flow of traffic through this area, there is not likely to be a significant impact on recreational or commercial traffic for several reasons. Due to the moving nature of the safety zone, no single location would be affected for a prolonged period of time which in turn should not significantly delay commercial traffic. Additionally, recreational traffic can transit the river on either side of the safety zone. Alternate routes are also available to commercial and recreational vessels traffic that can safely transit the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel. Similar safety zones have been established for the last few Fleet Week parades of ships with minimal or no disruption to vessel traffic or other interests in the port. In addition extensive, advance advisories will be made to the maritime community so that they can adjust their plans accordingly. For all the above reasons, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalisms implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–014 is added to read as follows:

§ 165.T01–041 Parade of Ships, Fleet Week '95, Port of New York and New Jersey.

(a) *Location* This moving safety zone includes all waters within 500 yards forward of the lead parade vessel, 500 yards aft of the last parade vessel, and 200 yards on each side of the designated column as it transits north from the Verrazano Narrows Bridge to the waters west of the 79th Street Boat Basin, Manhattan, in the Hudson River. The moving safety zone continues to include 200 yards around each vessel as it breaks from the parade formation and transits southbound in the Hudson River until safety berthed.

(b) *Effective period* This section is effective from 8:45 a.m. until 3 p.m. on May 24, 1995, unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.*

(1) The general regulations contained in 33 C.F.R. 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions on of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 9, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–6432 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

[Docket No. 85–15; Notice 16]

RIN 2127–AF62

Replaceable Light Source Information Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Federal motor vehicle standard on lighting to facilitate the transfer by NHTSA of all dimensional and specification information on HB Type replaceable light sources for headlamps to Docket No. 93–11. This docket has been

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established as the information docket specified in part 564 for replaceable light source information. This regulatory action is intended to simplify Standard No. 108 while ensuring consistent regulatory treatment of all headlamp replaceable light sources. The notice also proposes conforming amendments to part 564.

DATES: The due date for comments is May 15, 1995. The amendments would be effective 30 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: For many years, Motor Vehicle Safety Standard No. 108 allowed headlamps only of sealed beam construction and ones whose design dimensions were rigidly specified in the standard. In 1983, Standard No. 108 was amended to permit headlamps of non-sealed construction, equipped with a replaceable light source. With this amendment, the dimensions of the headlamp were no longer subject to Federal specification. Instead, to ensure repeatability of performance and ease of replaceability in the aftermarket, NHTSA adopted standardized dimensional restrictions for the light source itself. Each light source was given a distinctive HB Type designation. Today, Standard No. 108 incorporates five different types of replaceable light sources known as Types HB1 through HB5.

Each one of these light sources has been added to Standard No. 108 through rulemaking procedures that conform to the Administrative Procedure Act, that is to say, after an opportunity has been provided for notice and comment. This process is time consuming and has not afforded flexibility to NHTSA in accommodating manufacturers who wish to introduce new light sources in a more timely and predictable manner. In the late 1980's, NHTSA decided that the regulatory process might be made less cumbersome by establishing a docket in which manufacturers of new replaceable light sources could submit appropriate dimensional and other information which would require nothing more than acceptance by NHTSA before the new light sources could be used in headlamps (subject to the requirements, of course, that headlamps incorporating the new light sources meet the performance requirements of Standard No. 108, and that the light sources conform to the information listed for them).

Pursuant to this decision and with appropriate notices published in the **Federal Register**, on January 12, 1993, NHTSA established part 564 *Replaceable Light Source Information* (58 FR 3856). At that time, rulemaking was in progress to add a Type HB6 to Standard No. 108. However, with the advent of part 564, NHTSA decided to terminate rulemaking to adopt a Type HB6 on March 10, 1993, and to file the relevant information under part 564 (58 FR 13243). On March 19, 1993, the information docket was designated Docket No. 93–11 (58 FR 15132). Concurrently with this notice, NHTSA is responding to petitions for reconsideration of the January 12, 1993, final rule and amending part 564 to broaden the category of manufacturers who are permitted to submit light source information, as well as establishing a procedure to implement changes to information previously filed. The text that is proposed below for paragraphs 564.5(a) and (c) is based upon these amendments.

With the advent of part 564, there exist two places for dimensional and specification information on replaceableheadlamp bulbs, paragraph S7.7 of Standard No. 108 and Docket No. 93–11. Because headlamps with any type of replaceable light sources, HB or other, must meet the same (or equivalent in the case of photometrics) performance requirements, there appears to be no safety disbenefit in removing the Figures in Standard No. 108 that specify dimensions for Type HB light sources and placing that information in Docket No. 93–11. Such an action would also entail minor amendments of a housekeeping nature to dovetail HB Type light sources and those that are permitted pursuant to part 564.

This notice proposes to remove from Standard No. 108 those Figures and text that specify dimensional, performance, and electrical specifications for HB Types 1 through 5. Upon issuance of a final rule, NHTSA would place this information in Docket No. 93–11. The notice would also redefine "replaceable light source" to mean an assembly of a capsule, base, and terminals that is designed to conform to the dimensions, specifications, and marking furnished with respect to it pursuant to Appendix A of part 564. The section on replaceable light sources, S7.7, would be revised by removing paragraphs (a) through (e) which refer to the Figures that would be deleted, and paragraph (f) which relates to marking; this would be incorporated into paragraph (h), which would be redesignated paragraph (a). Present paragraph (g) would be transferred to the introductory text of S7.7, and paragraphs (h) through (k) would be redesignated (a) through (d) with minor changes in text. A conforming amendment would be made to S9.

In addition, a conforming amendment would be made to part 564 to remove the present exclusion of replaceable light sources specified in S7.7 of Standard No. 108.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

The effective date of the final rule would be April 17, 1995. Because the final rule establishes no additional burden on any party and is primarily of an administrative nature, it is hereby tentatively found for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance would be in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. The Office of Management and Budget has determined that it will not review this rulemaking action under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is an administrative one, to remove regulatory material from Standard No. 108 which the agency will file in a regulatory docket on the subject. Since the rule does not have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act. NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The design and composition of headlamps or light sources would not change from those presently in production.

Regulatory Flexibility Act. The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, headlamps, and light sources, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected because the price of new vehicles, headlamps, and light sources would not be impacted.

Executive Order 12612 (Federalism). This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice (Executive Order 12778). A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 of Title 49 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects

49 CFR Part 564

Motor vehicle safety, Motor vehicles.

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR parts 564 and 571 would be amended as follows:

PART 564—REPLACEABLE LIGHT SOURCE INFORMATION

1. The authority citation for part 564 would remain as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Part 564 would be amended by revising paragraphs 564.5(a) and (c) to read as follows:

§ 564.5 Information filing requirements; agency processing of filings.

(a) Each manufacturer of a motor vehicle, original equipment headlamp, or original equipment headlamp replaceable light source, which intends to manufacture a replaceable light source as original equipment or to incorporate a replaceable light source in its headlamps or motor vehicles, shall furnish the information specified in Appendix A of this part to: Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, D.C. 20590. Attn: *Replaceable Light Source Information* Docket No. 93–11, (unless the agency has already filed such information in Docket No. 93–11).

* * * * *

(c) The Associate Administrator promptly reviews each submission and informs the manufacturer not later than 30 days after its receipt whether the submission has been accepted. The Associate Administrator does not accept any submission that does not contain all the information specified in Appendix A of this part, or whose accompanying information indicates that any new light source which is the subject of a submission is interchangeable with any replaceable light source for which the agency has previously filed information in Docket No. 93–11.

* * * * *

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

3. The authority citation for Part 571 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30177, 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

4. Section 571.108 would be amended by:

a. revising the definition of "Replaceable Light Source" in section S4 to read as set forth below;

b. revising paragraph S7.7 to read as set forth below;

c. revising the last sentence of S9 as set forth below; and

d. removing and reserving Figures 3–1 through 3–11, 19, 19–1 through 19–5, 20, 20–1 through 20–5, 23–1 through 23–7, and 24–1 through 24–9.

e. revising Figures 8 and 25 as set forth below.

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S4 *Definitions*

* * * * *

Replaceable light source means an assembly of a capsule, base and terminals designed to conform to the dimensions, specifications and markings furnished with respect to it pursuant to Appendix A of part 564 *Replaceable Light Source Information* of this chapter.

* * * * *

S7.7 *Replaceable Light Sources.* Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements:

(a) If other than an HB Type, the light source shall be marked with the bulb marking designation specified for it in compliance with section VIII of

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Appendix A of part 564 of this chapter. The base of each HB Type shall be marked with its HB Type designation. Each replaceable light source shall also be marked with the symbol DOT and with a name or trademark in accordance with paragraph S7.2.

(b) The measurement of maximum power and luminous flux that is submitted in compliance with section VII of Appendix A of part 564 of this chapter shall be made in accordance with this paragraph. The filament shall be seasoned before measurement of either. Measurement shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage, 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980), shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 shall be made with the base covered. (The white cover is used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low).

(c) The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, shall be installed in a pressure chamber as shown in Figure 25 so as to provide an airtight seal. The diameter of the aperture in Figure 25 on a replaceable light source (other than an HB Type) shall be that figure furnished for such light source in compliance with Section IV.B of Appendix A of part 564 of this chapter. An airtight seal exists when no air bubbles appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

(d) After the force deflection test conducted in accordance with S9, the permanent deflection of the glass envelope shall not exceed 0.13 mm in the direction of the applied force.

* * * * *

S9 *Deflection test for replaceable light sources.* * * * Distance 'A' for a replaceable light source other than an HB Type shall be the dimension provided in accordance with Appendix A of part 564 of this chapter, section I.A.1 if the light source has a lower beam filament, or as specified in section I.B.1 if the light source has only an upper beam filament.

* * * * *

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FIGURE 8 - BULB DEFLECTION TEST

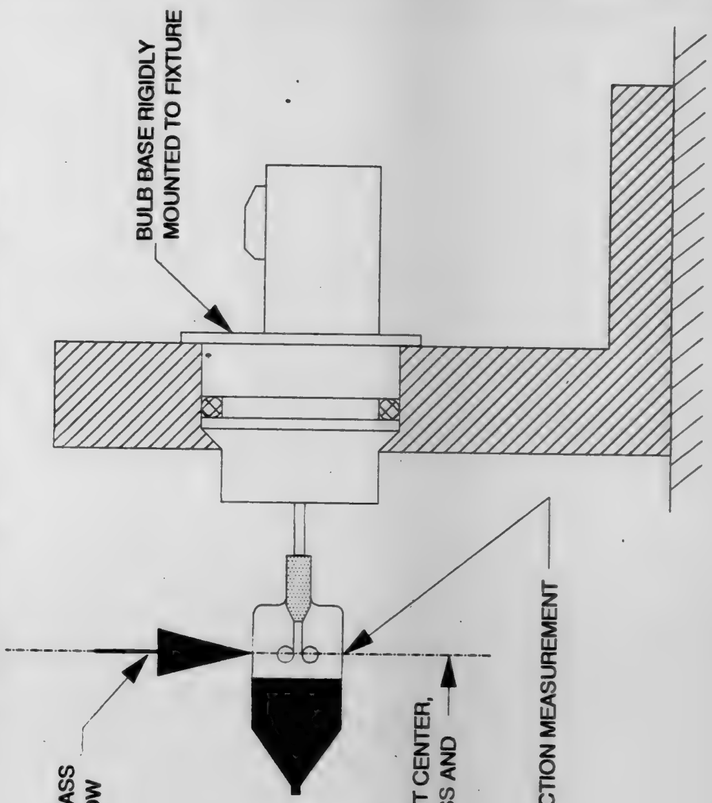

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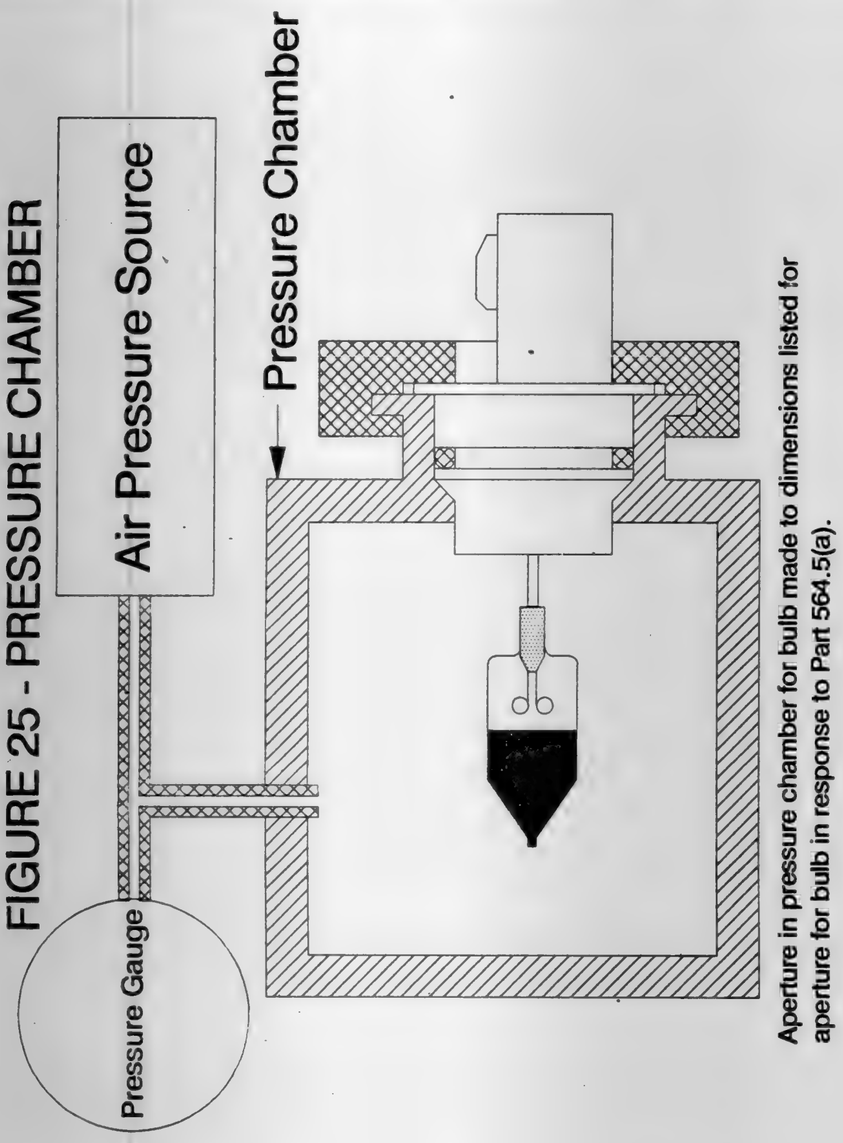

FIGURE 25 - PRESS

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Issued on March 9, 1995.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95-6379 Filed 3-16-95; 8:45 am]

BILLING CODE 4910-65-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Four Plants From Vernal Pools and Mesic Areas in Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice that a public hearing will be held on the proposed endangered status for *Lasthenia conjugens* (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop). In addition, the Service has reopened the comment period. All parties are invited to submit comments on this proposal.

DATES: The public hearing will be held from 6:00 p.m. to 8:00 p.m. on Thursday, April 6, 1995, in Napa, California. The public comment period now closes April 28, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will held at the Napa Valley Marriott Hotel, 3425 Solano Avenue, Napa, California. Written comments and materials concerning this proposal may be submitted at the hearing or may be sent directly to Field Supervisor, Sacramento Field Office, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Warne (see **ADDRESSES** section) or at 916/979-2120.

SUPPLEMENTARY INFORMATION:

Background

Lasthenia conjugens (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop) grow in vernal pools and mesic grasslands and are found variously in Lake, Napa, Solano, and Sonoma Counties. The three remaining populations of Lake County stonecrop occur on private lands in Lake County. The seven remaining populations of Contra Costa goldfields occur in Napa and Solano Counties. The five remaining populations of few-flowered navarretia occur in Napa and Lake Counties. The seven remaining populations of many-flowered navarretia occur in Lake and Sonoma counties.

These four vernal pool plants proposed for listing are imperiled by one or more of the following: commercial, residential, and agricultural development, hydrological changes in vernal pool and swale habitats, trampling by livestock, road widening, inadequate regulatory protection mechanisms, random stochastic events, off- highway vehicle use, feral pigs, and horseback riding. As a result of the immediate threats against these plant populations, the Service is proposing to list these four species as endangered to afford them protection of the Act.

On December 19, 1994, the Service published a proposed rule on proposed endangered status for *Lasthenia conjugens*, *Navarretia leucocephala* ssp. *pauciflora*, *Navarretia leucocephala* ssp. *plieantha*, and *Parvisedum leiocarpum* (59 FR 65311). Section 4(b)(5)(E) of the Act requires that a public hearing be held if one is requested within 45 days of the publication of the proposed rule in the **Federal Register**. Public hearing requests were received within the allotted time period from Michael Delbar, Executive Director, Lake County Farm Bureau, Lakeport, California and from Daniel Macon, Director Industry Affairs, California Cattlemen's Association, Sacramento, California. As a result, the Service has scheduled a public hearing on April 6, 1995, at Napa Valley Marriott Hotel, 3425 Solano Avenue, Napa, California.

Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

The comment period on the proposal was to close on February 17, 1995. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until April 28, 1995, to the Service office in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 9, 1995.

William F. Shake,

Acting Regional Director, Region 1 U.S. Fish and Wildlife Service.

[FR Doc. 95-6470 Filed 3-15-95; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 941084-4284; I.D. 080894C]

50 CFR Part 227

Endangered and Threatened Species; Proposed Threatened Status for Southern Oregon and Northern California Steelhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to list natural steelhead (*Oncorhynchus mykiss*) populations (progeny of naturally-spawning fish) occurring between Cape Blanco, OR, and the Klamath River Basin, in Oregon and California (inclusive; hereinafter referred to as the Klamath Mountains Province) as threatened under the Endangered Species Act of 1973 (ESA). NMFS has determined that Klamath Mountains Province steelhead populations constitute a "species" as interpreted under the ESA. Should the proposed listing be made final, protective regulations under the ESA would be put into effect and a recovery program would be implemented.

DATES: Comments must be received by May 15, 1995. Requests for a public hearing must be received by May 1, 1995.

ADDRESSES: Comments on this proposed rule, requests for public hearings, and requests for supporting documents should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, Suite 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503-230-5430; R. Craig Wingert, 310-980-4021; or Marta Nammack, 301/713-2322.

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SUPPLEMENTARY INFORMATION:

Petition Background

On May 5, 1992, NMFS received a petition from the Oregon Natural Resources Council, the Siskiyou Regional Education Project, Federation of Fly Fishers, Kalmiopsis Audubon Society, Siskiyou Audubon Society, Klamath/Siskiyou Coalition, Headwaters, The Wilderness Society, North Coast Environmental Center, The Sierra Club - Oregon Chapter, and the National Wildlife Federation, to list indigenous, naturally-spawning Illinois River winter steelhead (*Oncorhynchus mykiss*) and to designate critical habitat under the ESA. After publishing a document that a listing may be warranted (57 FR 33939, July 31, 1992), and soliciting information about the status of this population, the NMFS Northwest Fisheries Science Center Biological Review Team (BRT) completed a status review (Busby et al. 1993) that was summarized in a May 20, 1993, publication (58 FR 29390). The BRT concluded that the Illinois River winter steelhead did not represent a "species" under the ESA (see 56 FR 58612, November 20, 1991), and therefore, a proposal to list Illinois River winter steelhead under the ESA was not warranted. However, NMFS recognized that this population was part of a larger Evolutionarily Significant Unit ((ESU); see Consideration as a "Species" Under the ESA, below), whose extent had not yet been determined, but whose status may warrant listing because of declining trends in steelhead abundance in several southern Oregon streams. An expanded status review was initiated (58 FR 29390, May 20, 1993) to identify ESU(s) within California, Oregon, and Washington, and to determine whether any identified ESU(s) warrant listing under the ESA. NMFS received an additional petition to list Deer Creek summer steelhead, and found that listing of this population may be warranted (58 FR 68108, December 23, 1993). In response to a petition from the Oregon Natural Resources Council and 15 co-petitioners, February 16, 1994, NMFS later announced that the status review of steelhead was further expanded to include Idaho populations (59 FR 27527, May 27, 1994).

Biological Background

The BRT has completed biological evaluations associated with the determination of the geographic boundaries of the ESU that includes the Illinois River winter steelhead and whether the ESU warrants listing as endangered or threatened under the ESA. The BRT has prepared an administrative report detailing the conclusions of their status review (Northwest Fisheries Science Center BRT 1994). A summary of this report follows. A more complete discussion of the subject, including additional references, will be available upon request in the near future (see **ADDRESSES**).

The name steelhead refers to the anadromous form of the rainbow trout. Recently, the scientific name for the biological species that includes both steelhead and rainbow trout was changed from *Salmo gairdneri* to *Oncorhynchus mykiss*. This change reflects a belief that all trouts from western North America share a common lineage with Pacific salmon. The present endemic distribution of steelhead extends from the Kamchatka Peninsula, Asia, east and south, along the Pacific coast of North America, to Malibu Creek in southern California.

Steelhead exhibit a wide variety of life history strategies. In general, steelhead migrate to the sea after spending 2 years in fresh water and then spend 2 years in the ocean prior to returning to fresh water to spawn. Variations of this pattern are common. Some spawners survive and return to the ocean for 1 or more years between spawning migrations. Some steelhead return to fresh water after only a few months at sea and are termed "half-pounders," having attained the approximate size that inspired this term. Half-pounders generally spend the winter in fresh water and then return to sea for several months before returning to fresh water to spawn.

Steelhead exhibit several spawning migration strategies. "Summer-run steelhead" enter fresh water between May and October, and begin their spawning migration in a sexually immature state. After several months in fresh water, summer steelhead mature and spawn. "Winter-run steelhead" enter fresh water between November and April with well-developed gonads. In drainages with populations of both summer- and winter-run steelhead, there may or may not be temporal or spatial separation of spawning.

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of steelhead must be a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate . . . which interbreeds when mature." NMFS published a policy (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of "species" to Pacific salmonid species, including steelhead. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an ESU of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to develop in different population units. The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in "Pacific Salmon (*Oncorhynchus* spp.) and the Definition of Species under the Endangered Species Act," which is available upon request (see **ADDRESSES**).

Reproductive Isolation

For this criterion, NMFS considered available information on the geographic extent and reproductive strategies (e.g., run timing) of the ESU containing the Illinois River winter steelhead. In general, steelhead are believed to have strong tendencies to home to their natal streams, but there are few studies directly relevant to the area under consideration. There is evidence that some adult steelhead move between the Klamath, Rogue, and Smith Rivers. However, it is not clear whether this wandering results in spawning within non-natal streams.

Available genetic information indicates that there is a genetic discontinuity (or at least a transition) between steelhead from coastal streams in southern and northern Oregon. Although the discontinuity/transition appears to be in the vicinity of Cape Blanco, the resolution of genetic sampling does not allow for precise definition of this boundary.

Several genetic samples from northern California steelhead were considered during this status review. Samples from the Klamath River and the Trinity River (a tributary to the Klamath River) do not differ substantially from steelhead populations to the north. However, there are large genetic differences between samples from the Klamath River Basin and those taken from rivers to the south. The differences between steelhead from these two areas are stronger than those between southern and northern Oregon steelhead populations.

Within the area bounded by Cape Blanco and the Klamath River Basin, there is evidence of genetic heterogeneity, suggesting a reasonable degree of reproductive isolation between individual populations. However, the genetic structuring has no clear geographic pattern that would allow identification of major subgroups within this area.

In addition to summer- and winter-run steelhead, there are populations sometimes referred to as fall-run steelhead in the Klamath River Basin. Disagreement exists as to whether these fall-run steelhead should be considered summer-run, winter-run, or a separate entity. During this status review, NMFS considered fall-run steelhead from the Klamath River Basin to be part of the summer run.

Because most summer-run steelhead populations in the Klamath Mountains Province are substantially depressed and difficult to sample, genetic studies during the expanded status review focused on winter-run steelhead. However, other genetic studies that considered both winter and summer steelhead from other areas have failed to find consistent genetic differences between run-types within individual regions (Allendorf 1975; Utter and Allendorf 1977; Chilcote et al. 1980; Schreck et al. 1986; Reisenbichler and Phelps 1989; Reisenbichler et al. 1992). Therefore, NMFS concludes that all runs of steelhead within the Klamath Mountains Province should be considered part of the same ESU.

Patterns of ocean migration of salmon and steelhead may reflect reproductive isolation of spawning populations. Chinook salmon populations from south of Cape Blanco are generally considered south-migrating (e.g., to ocean areas off southern Oregon and California), whereas stocks from north of Cape Blanco are considered north-migrating. Other studies suggest that coho salmon and steelhead from south of Cape Blanco may not be highly migratory, remaining instead in the highly productive oceanic waters off southern Oregon and northern California (Pearcy et al. 1990; Pearcy 1992).

NMFS is not aware of any direct evidence about the relationship between the anadromous and nonanadromous life history forms of *O. mykiss* within the Klamath Mountains Province. Although it has been reported that these two life history forms within a geographic area may be more genetically similar to each other than either is to the same form from outside the area, other studies have found evidence for reproductive isolation between anadromous and nonanadromous *O. mykiss*. NMFS' policy contained in "Pacific Salmon and the Definition of Species under the ESA" states that anadromous and nonanadromous forms should be considered separately if they are reproductively isolated. Reproductive isolation, as previously noted, is a question of degree. NMFS has determined that, until specific information regarding these two life history forms within the Klamath Mountains Province becomes available, nonanadromous fish will not be considered part of the ESU. This determination may be reconsidered if information demonstrating that the two forms share a common gene pool becomes available.

Ecological/Genetic Diversity

Several types of physical and biological information were considered during evaluation of the contribution of Klamath Mountains Province steelhead to ecological/genetic diversity, including: (1) Physical environment, (2) zoogeography, and (3) life history characteristics. The Klamath Mountains Geological Province extends from the vicinity of Cape Blanco in the north to the Klamath River Basin (inclusive) in the south. Ecologically, the province includes areas that are warmer and drier than coastal regions to the north and south; interior valleys receive less precipitation than any other Pacific Northwest location west of the Cascade Mountain Range. The nearshore ocean environment in this region is strongly affected by seasonal upwelling, which extends southward from Cape Blanco, with some local variations as far south as 33°N. lat.

Zoogeographic studies of freshwater fishes have consistently identified differences in fish assemblages between the Rogue River Basin and streams to the north. Also, similarities have been noted between freshwater fish communities in the Klamath and Rogue River basins. For marine fishes, Cape Mendocino in California has been identified as an important southern limit of many northern species.

The occurrence of the half-pounder life history form of steelhead appears to be restricted to southern Oregon and northern California, identified in the Rogue, Klamath, Eel, and Mad rivers. It is likely that expression of this life history strategy is due to a combination of distinctive genetic and environmental factors.

ESU Determination

Several lines of evidence suggest that Cape Blanco is the northern boundary and the Klamath River Basin forms the southern boundary of the ESU that contains the Illinois River winter steelhead. Genetic and ocean distribution data suggest that there is substantial reproductive isolation between steelhead populations from north and south of Cape Blanco. Cape Blanco is also an approximate northern boundary for the Klamath Mountains Province, an area of intense upwelling in the ocean, the range of the half-pounder life history, and the Klamath-Rogue freshwater zoogeographic zone. Although Cape Mendocino in California is a natural landmark associated with changes in ocean currents, and also represents the approximate southern limit of the half-pounder life history, the Klamath River Basin forms the southern boundary of the Klamath Mountains Province and the Klamath-Rogue freshwater fish zoogeographic zone. Furthermore, genetic data show a sharp discontinuity between steelhead populations from the Klamath River Basin and those farther south. Based on available information, the BRT concluded that the geographic range of the ESU containing the Illinois River winter steelhead extends from the vicinity of Cape Blanco in southern Oregon to the Klamath River Basin (inclusive) in northern California (see Figure 1).

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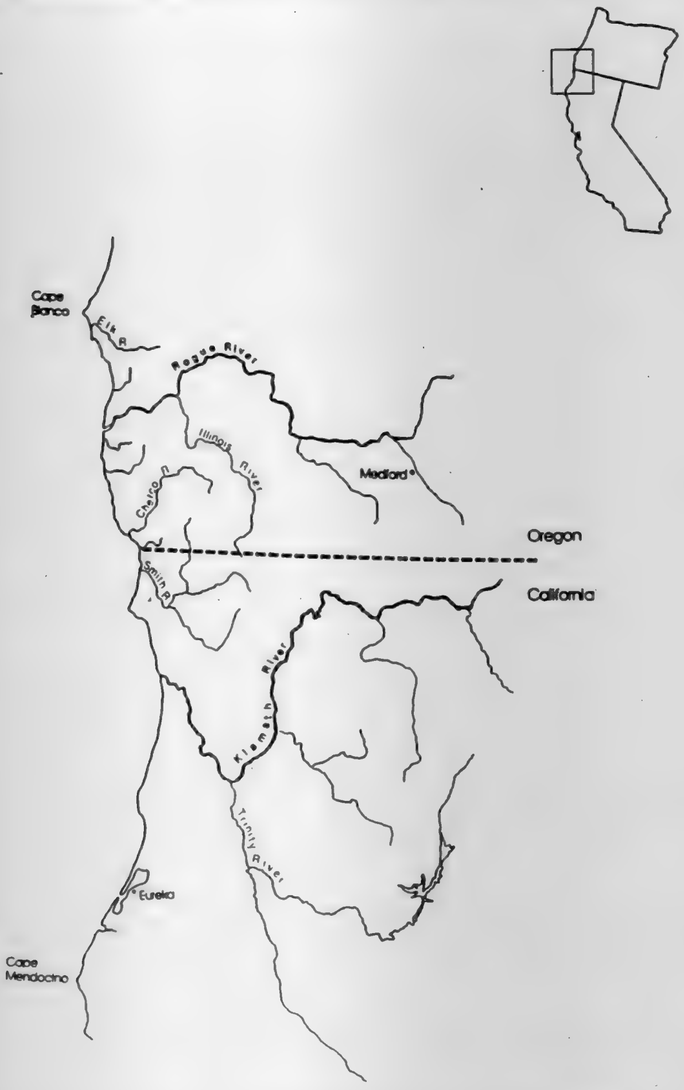

Figure 1. Geographic Range of the Klamath Mountain Province Steelhead ESU.

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Although diversity in run-timing is an important life history characteristic of steelhead within this ESU, and this diversity may be in part genetically based, there is little direct information about the degree of reproductive isolation between identified runs within the Klamath Mountains Province. Furthermore, previous genetic studies have failed to find consistent genetic differences between run-types within individual regions, and suggest that summer- and winter-run steelhead are not independent, monophyletic groups over broad geographic regions. Based on available evidence, the BRT concluded that all steelhead runs (those termed summer-, fall-, and winter-run) within the identified geographic boundaries should be considered together as one ESU, and therefore a species, as defined under the ESA.

Status of the Klamath Mountains Province ESU

NMFS uses a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution, (2) current abundance in relation to historical abundance and current carrying capacity of the habitat, (3) trends in abundance, (4) natural and human-influenced factors that cause variability in survival and abundance, (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs), and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During consideration of the ESU status, the BRT evaluated both qualitative and quantitative information. Recent qualitative analyses of the status of steelhead stocks within the Klamath Mountains Province have been conducted by agencies and conservation groups (Nehlsen et al. 1991; Nickelson et al. 1992; U.S. Forest Service 1993a,b; McEwan and Jackson 1994). Most winter steelhead stocks in the region are considered to be depressed and/or declining. Of the exceptions (those from the Rogue, Winchuck, Smith, and subbasins of the Klamath and Trinity Rivers), most are heavily influenced by hatchery production. Only the Smith River appears to have healthy and largely natural production of winter-run steelhead in this region. The best assessment of any summer steelhead stock in this region is depressed, and most were considered to be at moderate to high risk of extinction.

Quantitative evaluations included comparisons of current and historic abundance of steelhead. Because historical abundance information for the Klamath Mountains Province ESU is largely anecdotal, coastwide abundance trends provide a larger perspective for this review. Rough estimates of total coastwide steelhead abundance made in 1972 and 1987 suggested significant declines (Sheppard 1972, Light 1987). However, by all accounts, there has been significant replacement of natural production with hatchery fish. Over a large region (British Columbia, Washington, and Oregon), steelhead stocks (both natural and hatchery) have exhibited recent decreases in survival that may be due, in part, to climate and ocean production.

Historical abundance information for the Klamath Mountains Province ESU is largely anecdotal. Within this area, time-series data are available for most populations only since 1970. The BRT compiled and analyzed available information to provide summary statistics of spawning abundance. Not all summary statistics were available for all populations.

NMFS policy, as stated in "Pacific Salmon and the Definition of "Species" under the ESA," focuses on viability of natural populations, and notes that an ESU is not healthy unless a viable population exists in the natural habitat. The BRT attempted to distinguish between naturally produced fish and hatchery produced fish. Total abundance (including hatchery populations) varies widely among populations within the proposed ESU, with several populations having run sizes of 10,000 or more fish. The heavily hatchery-influenced summer-run steelhead population from the Klamath River may total 100,000 or more fish. At the other extreme, a number of populations have less than 1,000 spawners per year.

Estimates of percent annual change in run size indicate that most of the steelhead populations in the Klamath Mountains Province are in significant decline, even with hatchery production included. The BRT considered that this assessment may be influenced by the recent coastwide decreases in steelhead survival (due to climate and ocean conditions). However, excluding recent years from the trend analysis did not substantially change overall conclusions for the stocks considered here.

Natural steelhead production was roughly indexed using natural return ratios. This index is an estimate of the ratio of naturally produced spawners in one generation to total spawners (both hatchery and naturally produced) in the previous generation. Natural production of all winter-, summer-, and fall-run steelhead within the Klamath Mountains Province appears to be below replacement for all populations for which the BRT had sufficient quantitative information. Considering the qualitative assessments, there is little reason to believe that other populations are in better condition (with the exception of the Smith River winter-run steelhead). Based on angler catch data, Illinois River winter steelhead (the natural population in southern Oregon with the least hatchery influence) have declined at an average rate of about 10 percent annually for the last 20 years. With this analysis, the BRT was unable to demonstrate that any steelhead populations in the Klamath Mountains Province are naturally self-sustaining.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Logging, mining, agricultural activities (e.g., livestock grazing), and water withdrawals have likely contributed to the decline of steelhead populations within the Klamath Mountains Province ESU. Removal of trees within the riparian zone of streams in the Klamath Mountains Province has resulted in increased summer water temperatures and has eliminated the potential for trees to fall into streams. Large woody material in streams can provide cover, shade, and create pools; these habitat features are required by juvenile steelhead. Logging activities, and the associated road networks, can result in soil erosion and sedimentation of streams. Livestock grazing can eliminate streamside vegetation and

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prevent riparian species from growing to maturity, resulting in shallow, warm streams that are not suitable for juvenile and adult steelhead. Water withdrawals reduce stream flow, sometimes during critical periods, and can contribute to high water temperature problems.

In the Klamath and Rogue River Basins, dams without fish passage facilities have decreased the amount of habitat available for steelhead, and may have contributed to the decrease in Klamath Mountains Province steelhead populations. There are also fish passage concerns regarding dams with inadequate fish passage facilities.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Klamath Mountains Province steelhead are not currently targeted for commercial harvest, and scientific and educational programs have had little or no impact on Klamath Mountains Province steelhead populations. However, steelhead are popular gamefish throughout the Pacific Northwest and, in some locations, recreational fishing may contribute to the general decline of steelhead populations. Also, poaching may pose an additional threat to some depressed populations of adult steelhead. Summer-run steelhead are particularly susceptible to poaching activity because of holding/resting behavior in deep pools.

C. Disease or Predation

Disease is not believed to be a major factor contributing to the decline of steelhead populations in the Klamath Mountains Province. Declines in some summer steelhead populations are reportedly due, in part, to predation by marine mammals (Nehlsen et al. 1991).

D. Inadequacy of Existing Regulatory Mechanisms

Early mechanisms regulating local mining and timber harvest activities in the Klamath Mountains Province clearly were inadequate. Early mining practices were particularly destructive in portions of the Rogue and Trinity River (a tributary of the Klamath River) watersheds. Although most of these particularly destructive mining and timber harvest activities no longer occur, land management activities still contribute to adverse habitat modifications.

The continued decline of Klamath Mountains Province steelhead suggests that management plans and practices followed by the U.S. Forest Service (USFS), Bureau of Land Management (BLM), Oregon Department of Fish and Wildlife, and California Department of Fish and Game have not provided adequate protection for this species. A Federal interagency cooperative program, the Record of Decision for Amendments to USFS and BLM Planning Documents Within the Range of the Spotted Owl (the Forest Plan, April 1994), has recently been implemented to provide a coordinated land management direction for the lands administered by USFS and BLM within the range of the northern spotted owl, which includes the Klamath Mountains Province. While the extent of protection provided by the Forest Plan is not yet known, its region-wide management direction will amend existing management plans, including Forest Plans, Regional Guides, Timber Sale Plans, and Resource Management Plans for lands within the range of the northern spotted owl. As part of the Forest Plan, implementation of the Aquatic Conservation Strategy (ACS) may help reverse the trend of aquatic ecosystem degradation and contribute toward fish habitat recovery. Coordination between the Federal land management agencies and NMFS, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service should ensure that the ACS objectives are achieved.

Steelhead are popular gamefish throughout the Pacific Northwest and, in some locations, recreational fishing may contribute to the general decline of Klamath Mountains Province steelhead populations. Existing harvest regulations may not be adequate to protect a substantial portion of the Klamath Mountains Province's juvenile and adult steelhead populations from overutilization by recreational anglers.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Drought conditions may contribute to reduced Klamath Mountains Province steelhead production. In general, drought conditions have existed in southern Oregon since 1977.

Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, have occurred in recent years and resulted in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. Based on fish distribution, El Niño conditions may affect individual salmonid populations differently. For example, during El Niño conditions, chinook salmon stocks that rear in ocean areas south of Vancouver Island generally survive at a lower rate than chinook salmon stocks that inhabit northerly ocean areas (Johnson 1988). As there is some evidence that steelhead originating from south of Cape Blanco rarely migrate north of Cape Blanco, Klamath Mountains Province steelhead populations may be particularly susceptible to the adverse affects of El Niño conditions.

Artificial propagation has, in some cases, impacted Klamath Mountains Province steelhead populations. Potential problems associated with hatchery programs include genetic impacts on indigenous wild populations, difficulty in determination of wild run status due to incomplete marking of hatchery releases, and replacement (rather than supplementation) of wild stocks through continued annual introductions of steelhead.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on its assessment of the best scientific and commercial information available, NMFS determines that all Klamath Mountains Province steelhead populations (i.e., summer-, fall-, and winter-run) constitute an ESU and, therefore, a "species" under the ESA. Estimates of percent annual change in run size indicate that most of the steelhead populations in the Klamath Mountains Province are in significant decline. Although trends in abundance of most steelhead populations within the ESU have been downward, absolute abundance of steelhead in several streams within the proposed ESU remains fairly high; thus the BRT concluded that the ESU as a whole cannot be considered to be endangered at this time. However, available information indicates that Klamath Mountains Province steelhead populations are not self-sustaining. If present trends continue, there is a significant probability that the ESU will become endangered. Therefore, NMFS proposes to list all Klamath Mountains Province natural steelhead (progeny of naturally-spawning fish) as threatened. Prior to development of a final rule, NMFS will continue to consider the status of steelhead populations within the Klamath Mountains Province and determine which, if any, hatchery populations are essential for recovery of listed steelhead.

Proposed Protective Regulations and Measures

In addition to the proposed listing, NMFS proposes to adopt protective measures, pursuant to section 4(d) of the ESA, to prohibit, with respect to Klamath Mountains Province natural steelhead, taking, interstate commerce, import and export, and the other prohibitions pursuant to section 9 of the ESA applicable to endangered species, with the exceptions provided by section 10 of the ESA.

NMFS recognizes that protective regulations and recovery programs for Klamath Mountains Province steelhead will need to be developed in the context of conserving aquatic ecosystem health, and intends that Federal lands and Federal activities bear as much of the burden as possible for conserving listed populations. However, steelhead habitat within this ESU occurs and can be affected by activities on state, tribal and private land. Non-Federal landowners are encouraged to assess the impacts of their actions on potentially threatened steelhead and to participate in the formulation of watershed partnerships that promote conservation in accordance with ecosystem principles. NMFS will seek the advice and assistance of Federal and non-Federal jurisdictions, including tribal and county governments, private organizations and affected individuals in recovery plan development and implementation.

NMFS will identify, to the extent known at the time of a final rule, specific activities that will not be considered likely to result in adverse impacts to listed Klamath Mountains Province steelhead. NMFS is soliciting recommendations as to what activities should be so identified, as well as terms and conditions for specific types of land or water use activities that would avoid adverse impacts to listed steelhead. The activities, as modified by the recommended terms and conditions, should promote the conservation of Klamath Mountains Province steelhead.

Conservation measures provided to species listed as threatened or endangered under the ESA included prohibitions on taking, recovery actions, and Federal agency consultation requirements. Recognition through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions resulting in destruction or adverse modification of proposed critical habitat. "Conference" is defined at 50 CFR 402.02 to mean "a process which involves informal discussions between a Federal agency and the Service . . . regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects." For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with NMFS. Non-Federal entities requesting the incidental take of listed species must develop a conservation plan associated with their proposed action. Prior to issuance of an incidental take permit, NMFS must review the conservation plan and determine that the proposed action will not appreciably reduce the likelihood of the survival and recovery of the species in the wild (see 50 CFR 222.22).

Examples of Federal actions that may be affected by this proposal include, but are not limited to, various Federal land management agency activities (e.g., actions associated with timber harvest, mining, and grazing), U.S. Army Corps of Engineers (COE) Clean Water Act section 404 permitting activities, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, commercial fishery management under a regional fishery management council, and hatchery operations authorized, carried out, or funded by a Federal agency.

Measures that could be implemented to help protect and conserve the species include, but are not limited to:

1. All water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights should be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

2. All irrigation diversions affecting downstream migrating Klamath Mountains Province steelhead could be screened. A thorough review of the impact of irrigation diversions on steelhead could be conducted.

3. Artificial propagation could be conducted in a manner minimizing impacts upon native populations of steelhead.

4. Efforts could be made to ensure that adult passage facilities at dams effectively pass migrating salmon upstream.

5. Evaluation of existing recreational harvest regulations could identify any changes necessary in light of the Klamath Mountains Province steelhead status.

Some or all of these measures, as well as other measures not enumerated here, may be required to be undertaken through the section 7 consultation or section 10 permitting processes. NMFS will also consider these and additional measures in developing a recovery plan pursuant to section 4(f).

NMFS encourages non-Federal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the formulation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if all watershed stakeholders (i.e., state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists) participate and share the goal of restoring steelhead to the watersheds. To assist with such efforts, NMFS, the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency, with technical assistance from the Natural Resources Conservation Service, have contracted a study to provide technical guidance and training to agency staff. This guidance is intended to produce a technical foundation and informational support base for fostering development of conservation plans pursuant to section 10 of the ESA and cooperative agreements with the states of Washington, Oregon, and California, pursuant to section 6 of the ESA. Furthermore, NMFS intends to enlist non-Federal jurisdictions, including tribal and county governments, private organizations and affected individuals, in recovery plan development and implementation.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. While NMFS has completed its analysis of the biological status of Klamath Mountains Province steelhead, it has not completed the analysis necessary for designating critical habitat. Therefore, to avoid

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delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties (see **DATES** and **ADDRESSES**) regarding the stock composition and abundance of all steelhead stocks within the Klamath Mountains Province. NMFS is also requesting information identifying specific areas that qualify as critical habitat for Klamath Mountains Province steelhead and the economic costs and benefits of additional requirements of management measures likely to result from designating critical habitat. Information about the relationship between existing hatchery populations and natural populations within the ESU, and the relationship between anadromous and nonanadromous populations of *O. mykiss* within the ESU, is also of great interest.

NMFS is also requesting suggestions for specific regulations under section 4(d) of the ESA that could apply to Klamath Mountains Province steelhead. Suggested regulations should address activities, plans, or guidelines that, despite their potential to result in the incidental take of listed fish, will ultimately promote the conservation of this ESU.

NMFS will review all public comments and any additional information regarding the status of the proposed ESU, and, as required under the ESA, intends to complete a final rule within one year of this proposed rule. The availability of new information may cause NMFS to re-assess the status of this ESU. The final decision on this proposal will take into consideration the comments and any additional information received by NMFS, and may differ from this proposed rule.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of National Environmental Policy Act (48 FR 4413, February 6, 1984).

This proposed rule is exempt from review under E.O. 12866.

References

Allendorf, F.W. 1975. Genetic Variability in a Species Possessing Extensive Gene Duplication: Genetic Interpretation of Duplicate Loci and Examination of Genetic Variation in Populations of Rainbow Trout. Ph.D. Dissertation, Univ. Washington, Seattle, 98 p.

Busby, P.J., O.W. Johnson, T.C. Wainwright, F.W. Waknitz, and R.S. Waples. 1993. Status Review for Oregon's Illinois River Winter Steelhead. NOAA Technical Memorandum. NMFS–NWFSC–10.

Chilcote, M. N., B. A. Crawford, and S. A. Leider. 1980. A Genetic Comparison of Sympatric Populations of Summer and Winter Steelheads. Trans. Am. Fish. Soc. 109:203–208.

Johnson, S.L. 1988. The Effects of the 1983 El Niño on Oregon's Coho (*Oncorhynchus kisutch*), and Chinook (*Oncorhynchus tshawytscha*) Salmon. Fisheries Research. 6:105–123.

Light, J.T. 1987. Coastwide Abundance of North American Steelhead Trout. (Document Submitted to the Annual Meeting of the INPFC, 1987.) Fisheries Research Institute Report FRI–UW–8710. Univ. Washington, Seattle, WA. 18 p.

McEwan, D., and Jackson, T. A. 1994. Steelhead Management Plan for California. California Department Fish and Game. (Available Environmental and Technical Services Division, NMFS, 911 N.E. 11th Ave., Room 620, Portland, OR 97232.)

Nehlsen, W., J.E. Williams, and J.A. Lichatowich. 1991. Pacific Salmon at the Crossroads: Stocks at Risk from California, Oregon, Idaho, and Washington. Fisheries 16(2):4–21.

Nickelson, T.E., J.W. Nicholas, A.M. McGie, R.B. Lindsay, D.L. Bottom, R.J. Kaiser, and S.E. Jacobs. 1992. Status of Anadromous Salmonids in Oregon Coastal Basins. Unpubl. manuscr., 83 p., Research and Development Section, Oregon Department of Fish and Wildlife (ODFW), Corvallis, and Ocean Salmon Management, ODFW, Newport, OR.

Northwest Fisheries Science Center Biological Review Team (BRT). 1994. May 2 Administrative Report: Conclusions of the Northwest Science Center's Status Review of Southern Oregon/Northern California Steelhead. 13 p.

Pearcy, W.G. 1992. Ocean Ecology of North Pacific Salmonids. University of Washington Press, Seattle, WA. 179 p.

Pearcy, W.G., R.D. Brodeur, and J.P. Fisher. 1990. Distribution and Biology of Juvenile Cutthroat Trout *Oncorhynchus clarki clarki* and Steelhead *O. mykiss* in Coastal Waters of Oregon and Washington. Fish. Bull., U.S. 88(4):697–711.

Reisenbichler, R.R., J.D. McIntyre, M.F. Solazzi, and S.W. Landino. 1992. Genetic Variation in Steelhead of Oregon and Northern California. Trans. Am. Fish. Soc. 121:158–169.

Reisenbichler, R.R., and S.R. Phelps. 1989. Genetic Variation in Steelhead (*Salmo gairdneri*) from the North Coast of Washington. Can. J. Fish. Aquat. Sci. 46:66–73.

Schreck, C.B., H.W. Li, R.C. Hjort, and C.S. Sharpe. 1986. Stock Identification of Columbia River Chinook Salmon and Steelhead Trout. Final Report to Bonneville Power Administration, Contract DE–A179–83BP13499, Project 83–451, 184 p. (Available Bonneville Power Administration, P.O. Box 351, Portland, OR 97208.)

Sheppard, D. 1972. The Present Status of the Steelhead Trout Stocks Along the Pacific Coast. In D.H. Rosenberg (editor), A Review of the Oceanography and Renewable Resources of the Northern Gulf of Alaska, p. 519–556. IMS Report R72–23, Sea Grant Report 73–3. Institute of Marine Science, University of Alaska, Fairbanks, AK.

United States Forest Service, U.S. Department of Agriculture (USFS). 1993a. Letter to ESA Administrative Record for coastal steelhead from Hugh Black. Letter Dated July 19, 1993, 2 p. and Enclosures. (Available Environmental and Technical Services Division, NMFS, 911 NE. 11th Ave., Room 620, Portland, OR 97232.)

United States Forest Service, U.S. Department of Agriculture (USFS). 1993b. Letter to ESA Administrative Record for Coastal Steelhead from Hugh Black. Letter Dated August 4, 1993, 2 p. and Enclosures. (Available Environmental and Technical Services Division, NMFS, 911 NE. 11th Ave., Room 620, Portland, OR 97232.)

Utter, F.M., and F.W. Allendorf. 1977. Determination of the Breeding Structure of Steelhead Populations through Gene Frequency Analysis. *In* T.J. Hassler and R.R. VanKirk (editors), Proceedings of the Genetic Implications of Steelhead Management Symposium, May 20–21, 1977, Arcata, CA, p. 44–54. Special Report 77–1. Calif. Coop. Fish. Res. Unit.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, a new paragraph (g) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(g) Klamath Mountains Province steelhead (*Oncorhynchus mykiss*).

[FR Doc. 95–6459 Filed 3–10–95; 4:47 pm]

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50 CFR Part 649

[Docket No. 950224059–5059–01; I.D. 011195C]

RIN 0648–AH36

American Lobster Fishery; Framework Adjustment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 2 to the American Lobster Fishery Management Plan (FMP). This framework adjustment would change the eligibility requirements for lobster limited access permits to address potentially unequal standards for lobster fishers who reside in different states.

DATES: Comments on the proposed rule must be received on or before March 30, 1995.

ADDRESSES: Comments on the proposed rule, Framework Adjustment 2, or supporting documents should be sent to Jon Rittgers, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Lobster Framework 2."

Copies of Amendment 5 to the FMP, including the regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Currently, eligibility for a Federal lobster limited access permit can be established with a vessel's or a person's state permit history (59 FR 31938, June 21, 1994). Because the various states have not had uniform permitting systems, potentially unequal eligibility criteria were inadvertently created for lobster fishers who reside in different states.

To qualify for a limited access American lobster permit, which may be issued only to a vessel, the vessel or vessel owner must have been issued a Federal American lobster permit, or a federally endorsed state lobster permit, and must have landed American lobster prior to March 25, 1991. Because this rule would change the qualification criteria for obtaining a limited access American lobster permit for 1995, it would also change the dates by which vessel owners are required to obtain permits. In states with Federal endorsement programs, such as Maine, fishers who did not own a lobster vessel could use their state permit to qualify for a Federal limited access permit; however, in other states lacking a Federal lobster permit endorsement program, such as Rhode Island, fishers who did not own a lobster vessel and thus had no state permit could not qualify for a Federal limited access permit. For example, a person serving as a crew member in Maine could potentially qualify for a Federal limited access permit, whereas a person employed in the same job on a lobster boat licensed by Rhode Island could not be eligible. Such a result could violate the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, which prohibits, among other things, discrimination between residents of different states.

This proposed action would eliminate the potentially unequal eligibility criteria for lobster fishers residing or fishing in different states. In order to obtain a Federal limited access lobster permit, all permit applicants who base their eligibility on a federally endorsed state license would be required to demonstrate that they owned a boat and used it to land lobsters during the qualification period. These applicants would be required to show proof of ownership of a fishing vessel and of having landed lobsters from that vessel prior to March 25, 1991.

Sections of the current regulations dealing with transferability of permit eligibility are written from the perspective of Federal permits issued to vessels. As a result, the regulations are not directly applicable to the transfer of eligibility based on federally endorsed state lobster permits that are issued to individuals. To be consistent with the transferability of eligibility associated with federally permitted vessels, this rule proposes regulatory language at § 649.4(b)(1)(i)(B)(*2*) and (b)(3)(ii) to clarify that eligibility based on a federally endorsed state lobster permit can be transferred with the sale of a vessel after March 25, 1991, if the intent to transfer such rights is verified by credible written evidence.

This adjustment is proposed through the framework process (§ 649.43) and is within the scope of analyses contained in Amendment 5 and the FSEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustment 2 (see **ADDRESSES**).

The New England Fishery Management Council (Council) followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by developing and analyzing the actions at two Council meetings, on September 21–22 and October 28–29, 1994. However, because this action was initiated at the first of these meetings without adequate notice to the public, the Council recommended that NMFS publish the measures contained in Framework Adjustment 2 as a proposed rule to ensure that the public is afforded sufficient prior notice and an opportunity for comment.

In accordance with the regulations, public comments on the framework adjustment were solicited by the Council during its September 21–22 and October 28–29, 1994, meetings. No comments were received on the proposed adjustment.

This rule also proposes several minor modifications to §§ 649.4(p) and (q) to ease the public's administrative burden and to conform the requirement to the Council's recommendation.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce has certified to the Chief

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Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated in final, would not affect a substantial number of small entities. The proposed rule will affect only those fishers who base their application for a Federal limited access lobster permit on a federally endorsed state permit and who purchased a boat since the March 25, 1991, control date. The analysis concludes that no more than 13.6 percent of the total number of fishers meet both criteria. It is not possible to know how many, if any, of these fishers will actually apply for a permit. As a result, a Regulatory Flexibility Analysis was not prepared.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is proposed to be amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.4, the first sentence of paragraph (a)(1), the first sentence of paragraph (b) introductory text, and paragraphs (b)(1)(i), (b)(2)(i), (b)(3), (p), and (q) are revised; and paragraph (b)(2)(iii) is added to read as follows:

§ 649.4 Vessel permits.

(a) * * *

(1) Through April 30, 1995, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry onboard a valid permit required by or issued under this part. * * *

(b) * * * From May 1, 1995, through December 31, 1999, any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry onboard a valid Federal limited access American lobster permit. * * *

(1) * * *

(i) To be eligible for a limited access permit for 1995, a vessel or the permit applicant must meet one of the following criteria:

(A) The vessel was issued a Federal American lobster permit and landed American lobster while in possession of the lobster permit prior to March 25, 1991; or

(B) *Either: (1)* The permit applicant was issued a federally endorsed state American lobster permit, and landed American lobster prior to March 25, 1991, and owned a vessel that landed American lobster while in possession of the lobster permit prior to March 25, 1991; or

(2) The vessel was owned by a person who landed lobster prior to March 25, 1991, while in possession of a valid federally endorsed state American lobster permit, and the vessel was transferred to the current vessel owner in accordance with the exception to the presumption specified in paragraph (b)(3)(ii) of this section; or

(C) The permit applicant owned a vessel that was under written agreement for construction or for re-rigging for directed American lobster fishing as of March 25, 1991, and the vessel was issued a Federal American lobster permit, or the vessel applicant was issued a federally endorsed state American lobster permit, prior to March 25, 1992, and the vessel landed lobster while in possession of that permit; or

(D) The vessel is replacing a vessel that meets any of the criteria set forth in paragraphs (b)(1)(i)(A), (B), (C), or (D) of this section.

* * * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit after 1995, a vessel or permit applicant must have been issued either a limited access lobster permit or a confirmation of permit history for the preceding year, or a vessel must be assuming a valid limited access American lobster permit or permit history confirmation from the preceding year. If more than one applicant claims eligibility to apply for a limited access American lobster permit based on one fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

* * * * *

(iii) A limited access American lobster permit for 1996 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1996.

(3) *Change in ownership.* (i) The fishing and permit history of a vessel that qualifies under paragraphs (b)(1)(i)(A) and (C) of this section is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(ii) The fishing and permit history of a vessel owner and a vessel that qualifies under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with such owner for any transfers of the vessel before and including March 25, 1991; and for any transfers of ownership of the vessel after March 25, 1991, the fishing and permit history necessary to qualify for a limited access lobster permit under paragraphs (b)(1)(i)(B) and (C) of this section is presumed to remain with the last owner of the vessel as of or prior to March 25, 1991, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring the fishing and permit history of a vessel necessary to qualify for a limited access lobster permit under paragraph (b)(1)(i)(B) of this section to the transferee/buyer.

* * * * *

(p) *Limited access American lobster permit renewal.* To apply for a limited access American lobster permit in 1995, a completed application must be received by the Regional Director by December 31, 1995. Failure to renew a limited access American lobster permit or confirmation of permit history in any year bars the renewal of such in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit or confirmation of permit history is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit or confirmation of permit history may be re-issued or renewed based on that vessel's history, or to any vessel relying on that vessel's history.

[FR Doc. 95–6451 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 51

Thursday, March 16, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bear Creek Watershed, Jackson County, Oregon

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Bear Creek Watershed, Jackson County, Oregon.

FOR FURTHER INFORMATION CONTACT: Bob Graham, State Conservationist, Natural Resources Conservation Service, 101 SW Main St., Suite 1300, Portland, Oregon 97204–3221, telephone (503) 414–3201.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional or national impacts on the environment. As a result of these findings, Bob Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for improved agricultural water management on irrigated lands to rectify water quality problems including fishery habitat, and for improved watershed protection. Alternatives under consideration to reach these objectives include conservation land treatment and improved water delivery systems for agricultural water management and fisheries enhancement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held as 8:00 am, Thursday, March 30, 1995, at the Red Lion Inn, 200 North Riverside, Medford, Oregon, to determine scope of the evaluation of the proposed action. Further information may be obtained from Bob Graham, State Conservationist, at the above address or telephone (503) 414–3201.

(This activity is listed in the Catalogue of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention-and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: March 6, 1995.

Bob Graham,

State Conservationist.

[FR Doc. 95–6500 Filed 3–15–95; 8:45 am]

BILLING CODE 3210–16–M

Forms Under Review by Office of Management and Budget

March 10, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- National Agricultural Statistics Service

Fruits, Nuts, and Specialty Crops

Business or other for-profit; Farms; 50,183 responses; 14,764 hours

Larry Gambrell (202) 720–5778

Extension

- Forest Service

Landownership Adjustments (35 CFR 254, Subpart A—Land Exchanges)

Individuals or households; Business or other for-profit; Not-for-profit institutions; 298 responses; 596 hours

Mike Williams (202) 205–1347

- Forest Service

Application for Permit; Non-Federal Commercial Use of roads

Restricted by Order FS–7700–40

Business or other for-profit; 2,000 responses; 500 hours

David A. Badger (202) 205–1424

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 95–6506 Filed 3–15–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–810]

Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination: Disposable Pocket Lighters From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Susan Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–4198 and 482–1442, respectively.

Final Determination

We determine that disposable pocket lighters from Thailand are being, or are

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likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the "Act"), as amended. The estimated margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the October 24, 1994 preliminary determination (59 FR 53414 (October 24, 1994)), the following events have occurred:

Between October 24 and October 28, 1994, we conducted verification of the questionnaire responses. On October 31, 1994, petitioner requested a public hearing. Respondent requested that the Department postpone its final determination in this investigation on November 2, 1994. On November 16, 1994, the Department published its notice of postponement of the final determination (59 FR 59211).

On February 1, 1995, petitioner filed a critical circumstances allegation. The Department issued a preliminary negative critical circumstances determination on March 3, 1994.

On February 13 and February 21, 1995, petitioner and respondent filed case and rebuttal briefs, respectively. On February 28, 1995, the Department held a public hearing.

Scope of the Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Period of Investigation

The period of investigation ("POI") is December 1, 1993 through May 31, 1994.

Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of disposable lighters from Thailand. In our determination on March 3, 1995, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology.

On March 6, 1995, both petitioner and respondent submitted comments with regard to the Department's preliminary negative critical circumstances determination. In addition to submitting general comments, petitioner also provided Port Import and Export Reporting Services ("P.I.E.R.S.") data (see, Exhibit C of petitioner's March 6, 1995 submission) in order to show that Thai Merry's shipments have dropped off dramatically since the Department's preliminary affirmative determination of sales at less than fair value ("LTFV"). According to petitioner, the decline in imports of subject merchandise from Thailand subsequent to the post-petition period indicates that critical circumstances exist.

With respect to the additional information supplied by petitioner, we note that the Department's analysis of critical circumstances compared data covering December 1, 1993 through April 30, 1994 (the "pre-petition period") with data covering May 1, 1994 through September 30, 1994 (the "post-petition period"). As noted in the preliminary negative critical circumstances determination, the Department considered the post-petition period to be the first day of the month of initiation through the period immediately prior to the preliminary determination of sales at LTFV. While the data submitted by petitioner show that shipments have declined subsequent to the Department's preliminary LTFV determination, our analysis, and the critical circumstances allegation itself, is based on respondent's actions prior to the preliminary LTFV determination. Accordingly, while we have examined the additional information provided by petitioner, it does not alter our original analysis (see, February 27, 1995 Memorandum to Susan H. Kuhbach, Director, Office of Countervailing Investigations from David R. Boyland, Case Analyst, Office of Countervailing Investigations). In the absence of information that would alter our original analysis, we determine that critical circumstances do not exist.

Class or Kind of Merchandise

The Department considers standard and child-resistant lighters to be one class or kind of merchandise (see, Interested Party Comments, Comment 1).

Product Comparisons

We have continued to treat standard lighters sold in the home market as similar to child-resistant lighters, and identical to standard lighters sold in the United States (see, Interested Party Comments, Comment 2). For the U.S. sales compared to home market sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Level of Trade

For the preliminary determination, respondent argued that, since Thai Merry sells to large national distributors in the United States, the home market sales used for comparison purposes should be limited to those sales made to the single national distributor in the home market. The Department, in its preliminary determination, stated that the information submitted by the respondent did not justify distinguishing between the national distributor in the home market and other distributors.

Although the Department gave respondent the opportunity to provide additional information to substantiate its claim that there is a distinct national distributor level of trade in the home market, respondent declined to do so. Moreover, at verification, we learned that respondent's division of customers into either the retail level of trade or the distributor level of trade was based solely on the volume of lighters purchased by home market customers.

The Department analyzes levels of trade based on the differences in functions performed by the seller or differences in the category of customer. In this case, however, respondent based its level of trade claim solely on differences in quantities purchased. Therefore, we have not performed a level of trade analysis.

We note, however, that there are substantial differences in quantities ordered by U.S. and home market customers. Moreover, within the home market, sales are made in a wide range of quantities and with larger quantities being sold at lower prices. In accordance with 19 CFR 353.55, we have identified the largest home market transactions and have compared those with sales to the United States.

Fair Value Comparisons

To determine whether Thai Merry's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We made revisions to Thai Merry's reported data, where appropriate, based on verification findings.

United States Price

Because Thai Merry's U.S. sales of disposable pocket lighters were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, in accordance with section 772(b) of the Act, we based USP on the purchase price ("PP") sales methodology. We calculated Thai Merry's PP sales based on packed, CIF prices to unrelated customers in the United States.

We made deductions to the U.S. price, where appropriate, for foreign inland freight, foreign brokerage/handling expenses, marine insurance, and ocean freight. In calculating the imputed U.S. credit expense, we used the borrowing rate in the United States on short-term dollar-denominated loans (see, Interested Party Comments, Comment 11). For a further discussion of the Department's treatment of U.S. credit expense, please see Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Investigations from Susan H. Kuhbach, Director, Office of Countervailing Investigations, (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

In accordance with Section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed but not collected on inputs. We also made an adjustment to U.S. price for VAT taxes paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade ("CIT") decision in *Federal-Mogul, et al* versus *United States*, 834 F. Sup. 1993. See, Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179 (April 6, 1994), for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that the home market was viable.

We calculated FMV based on delivered prices, inclusive of packing, to customers in the home market. From the delivered price, we deducted home market packing and added U.S. packing costs.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale-adjustments for differences in movement charges between shipments to the United States and shipments in the home market. We also made circumstance-of-sale-adjustments for differences in advertising expenses, and direct selling expenses, including payments made by Thai Merry to a third party. With respect to the home market credit expense, we have attributed this expense to only those home market sales identified as "credit sales." Additionally, we note that respondent provided a value-based allocation for advertising expense in its home market sales listing. We have substituted respondent's value-based allocation with a per unit advertising expense for the final determination.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation used in making our final determination.

Interested Party Comments

Comment 1: Respondent argues that since standard lighters can no longer be imported into the United States because of a Consumer Product Safety Commission ("CPSC") regulation which came into effect after the POI, standard lighters and child-resistant lighters should be considered two separate classes or kinds of merchandise. In support of its arguments, respondent has outlined differences between standard and child-resistant lighters relevant to the *Diversified Products* criteria (see, *Diversified Product Corporation* versus *United States*, 582 F. Supp. 887 CIT 1983). These differences are summarized as follows: (1) The differences in physical characteristics are minor. However, the fact that child-resistant lighters can be legally imported, while standard lighters cannot, makes these differences significant, according to respondent; (2) with respect to ultimate use, respondent notes that the types of lighters are in fact different since the child-resistant lighter is intended to be used only by persons mature enough to understand the danger associated with the lighter; (3) as regards, expectation of the ultimate purchaser, respondent argues that, while both types of lighters can produce flames with which to light something, the child-resistant lighter is expected to be safer; (4) with respect to channels of trade, respondent notes that once the inventories of standard lighters imported prior to July 12, 1994 have been sold, the channels of trade of the two types of lighters will be distinct because only one will exist legally (child-resistant) while the other will not (standard); (5) as regards advertising and display, respondent argues that child-resistant lighters are marketed as not only disposable lighters, but child-proof products which marketing officials promote as such. Additionally, according to respondent, the CPSC regulation requires that the two types of lighters be displayed differently and that once inventories of standard lighters are sold, they will not be displayed or advertised anywhere; (6) with respect to cost, respondent notes that the cost of producing the child-resistant lighters is legally significant because the additional cost allows the lighters to be exported to the United States. Also, with respect to cost, respondent argues that the price of standard and child-resistant lighters are sharply different.

Petitioner argues that both standard and child-resistant lighters will be sold in competition with one another until the large stockpiled supply of standard lighters imported prior to the CPSC ban is exhausted. Petitioner argues that both lighters are functionally equivalent, their physical characteristics are almost identical, the ultimate use and expectation of the consumer is the same, and that child-resistant and standard lighters are sold through the same channels of distribution, with the same advertising and display. Additionally, petitioner points out that the difference in price between the standard and child-resistant lighter is distorted because standard lighters are being dumped, as admitted in respondent's case brief. Finally, petitioner states that the cost differences between the two types of lighters is insufficient to support a class or kind distinction.

DOC Position: Regarding the class or kind issue, the Department has determined that there is only one class or kind of merchandise.

As regards physical characteristics, all parties agree, and the record supports, that there is no distinct difference between standard and child-resistant lighters. With respect to cost, the

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Department has already determined that it can match child-resistant lighters sold in the United States to standard lighters sold in the home market with a difference in merchandise adjustment ("difmer") (*i.e.*, the difference in variable costs between the child-resistant lighter and the standard lighter does not exceed 20 percent of the total cost of manufacturing of the child-resistant lighter). Therefore, we find that the difference in cost is not significant enough to support a class or kind distinction. With respect to ultimate use, and expectations of the ultimate purchaser, we note that, while child-resistant lighters have a safety feature and the standard lighter does not, the primary function of standard and child-resistant lighters is the same. Additionally, the expectations of the consumer with regard to the utility of child-resistant lighters and standard lighters are the same. Also, regardless of the CPSC ban, standard and child-resistant lighters are sold through the same channels of trade. Finally, while we note that the advertising and display of standard and child-resistant lighters may be marginally different because of the child-safety feature, the differences in advertising and display are minor and do not outweigh the fact that no differences are evident in the other *Diversified Products* criteria, as noted above.

Respondent also argues that the import restriction distinction between the two types of lighters is a "clear dividing line," as that term is used by the Department in Final Affirmative Less Than Fair Value Determination: Sulfur Dyes, Including Vat Sulfur Dyes, from the U.K. ("Sulfur Dyes From the U.K.") 58 FR 3253 (January 8, 1993)). In Sulfur Dyes From the U.K., the Department stated that "when examining differences in physical characteristics in the context of class or kind analysis, the Department looks for 'clear dividing lines' between product groups, not merely the presence or absence of physical differences." (58 FR at 3254). According to respondent, because standard lighters may no longer be imported, the *Diversified Products* factors vis-a-vis child-resistant lighters are all diametrically different.

Except for the import restriction associated with standard lighters, respondent has provided no compelling reason to divide these products into separate classes or kinds of merchandise. While indicating that a "clear dividing line" is necessary to make a class or kind distinction, the Department went on to state in Sulfur Dyes from the U.K. that multiple classes or kinds did not exist because the Department did not find "clearly defined differences in any of the *Diversified Products* criteria." In the instant case, the differences presented by respondent to support its *Diversified Products* analysis, as discussed above, are not compelling. Therefore, we continue to find standard and child-resistant lighters to be one class or kind of merchandise.

With respect to using an average-to-average methodology, we note that, except in the most extraordinary circumstances, the Department's long-standing practice is to compare individual U.S. transactions with a weighted average FMV (see, 19 CFR 353.44(a)).

As to respondent's point that an average-to-average methodology will be required under the new antidumping law, we note that this final determination is being made pursuant to the previous law, which does not require an average-to-average comparison. Finally, with respect to applying a zero margin to child-resistant lighters, we note that the Department applies a dumping margin on the basis of a class or kind of merchandise, not on a product-specific basis (see, section 731 of the Tariff Act of 1930, as amended).

Comment 2: Petitioner objects to the Department's preliminary determination that child-resistant lighters can be compared to home market sales of standard lighters. Petitioner argues that, based on the differences in the cost of manufacture and commercial value, standard and child-resistant lighters should not be considered "similar." According to petitioner, information that it submitted shows that the two types of lighters are not "approximately equal in commercial value." Thus, petitioner argues that the requirements of 19 U.S.C. 1677(16)(B)(iii) have not been met. Instead, the Department improperly relied solely on the physical characteristics of the merchandise in making its preliminary determination. Furthermore, petitioner argues that the commercial value aspect of 19 U.S.C. 1677(16)(b)(iii) is designed for cases such as the instant one in which the differences in overall cost and commercial value result from the mandatory child-safety requirements. Such differences are attributable to capital expenditures for research and development. Petitioner argues that the Department should at least factor in the high cost of developing the safety mechanism when making its such or similar analysis.

Respondent argues that there is no support for using cost in determining whether the two lighters can be considered similar, except to the extent that the Department will generally not compare products where the difmer exceeds 20 percent of the cost of manufacturing of the U.S. product. Moreover, respondent argues that the Department's preliminary determination was consistent with past cases and the CIT's ruling in *United Engineering and Forging* versus *United States*, 779 F. Sup. 1375, 1381 (1991)).

DOC Position: We agree with respondent. The Department places little weight on the commercial value criterion in determining what constitutes such or similar merchandise (see, Final Results of Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom , 56 FR 5975 (February 14, 1991)), and Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore, 58 FR 43334 (August 16, 1993)). Instead, the Department focuses on the similarity of the physical characteristics, as evidenced in the Department's such or similar determination in this investigation. The Department's position in this regard has been upheld by the CIT in *United Engineering*.

In this case, child-resistant and standard lighters closely resemble each other in terms of their physical characteristics. Moreover, while the commercial value of the two products (as reflected in their prices) differed, the difference was not large (in absolute terms) and decreased over time. Therefore, we have continued to find that child-resistant lighters are similar to standard lighters.

Except for our general practice of limiting difmers to those which do not exceed 20 percent of the cost of manufacturing the good sold in the United States, we do not consider cost in determining what constitutes similar merchandise. We note that the alleged research and development costs referred to by petitioner would not be included in the difmer, which includes only variable manufacturing costs.

Comment 3: Petitioner argues that Thai Merry gives quantity discounts, which eliminates the need for a level of trade adjustment. Petitioner also argues that Thai Merry has been unable to determine which home market customers are retailers and which home market customers are distributors, and instead has simply relied on volume sold to distinguish between these levels. Additionally, petitioner notes that Thai Merry has been unable to substantiate its claim that the distributor level of trade should be sub-divided into distinct levels of trade. Thus, according to petitioner, all of Thai Merry's home market sales should be found to be made at the same level of trade.

Respondent argues that petitioner is incorrect in stating that Thai Merry was unable to identify which customers were retailers or distributors. Respondent argues that the threshold it provided for dividing its customers into the two groups was conservative, *i.e.*, this threshold eliminates home market customers from the Department's LTFV comparison that are clearly not distributors. Additionally, some of those home market customers identified as distributors were in all likelihood retailers. Respondent argues that use of a threshold was necessary given the difficulty in identifying the exact level of trade of every home market customer. Finally, respondent argues that the Department is required to make comparisons at the same level of trade (see, 19 CFR 353.58) and there is a significant dividing line between the quantities purchased by the retail customers in the home market and the quantities purchased by the large national distributors in the United States. Therefore, the Department should rely on sales to home market distributors, as defined by respondent, in making its comparisons to U.S. sales.

DOC Position: While this issue has been framed in the context of level of trade, the Department finds that the appropriate approach is to identify home market sales that are in quantities comparable to U.S. sales. We note that there is no home market customer who orders in quantities approaching the average quantities ordered by U.S. customers. Nevertheless, we examined the data and found that average transaction prices varied with quantity. Therefore, we have selected for comparison purposes large quantity home market transactions (see, March 8, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Investigations from David Boyland, Case Analyst, Office of Countervailing Investigations).

Comment 4: Petitioner argues that the Department's verification report indicates that the U.S. price changed between the purchase order date and the invoice date. As such, petitioner argues that the invoice date should be considered the date of sale.

Respondent argues that the Department's verification report is misleading because, while the invoice date is Thai Merry's first record of the sale price, previously submitted information shows that the price and quantity are recorded at the time of the purchase order. Additionally, respondent argues that the "revisions" referred to in the verification report were prospective changes in price, as opposed to price changes to orders already made.

DOC Position: The verification report states that "during our examination of U.S. sales completeness...the standard and child-safety lighter per-unit prices were applied consistently throughout the POI with several upward price revisions occurring in the latter half of the POI." "Revisions," in the context of the verification report, referred to assumed increases in the negotiated price, as opposed to a change in price between the purchase order date and the invoice date.

The verification report also states that the first "written" record generated by Thai Merry of the negotiated price is the invoice. While respondent has cited to a Purchasing and Payment Records spreadsheet maintained by U.S. customers, this information does not by itself prove when the purchase price was first recorded. The spreadsheet includes Thai Merry's invoice number and hence was generated sometime after Thai Merry's invoice information, including unit price, was available to the U.S. customer. Therefore, it is not correct to say, as respondent claims, that this information proves the price was recorded at the time of the purchase order.

Given the fact that respondent's price negotiations with its U.S. customers were unrecorded, it was not possible to "verify" that the purchase order date was the date on which both price and quantity were fixed. The information provided by respondent indicates that it is reasonable to assume that the price was established prior to the purchase order and that the purchase order established the quantity. However, as the Department noted in Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review, 59 FR 12240, 12241 (March 16, 1994)), the date of sale is evidenced by the "first document which systematically records agreement as to price and quantities * * * [m]oreover the invoice date represents an accurate, reasonable, consistent methodology to determine the date of sale." In this case, the appropriate date of sale is the invoice date because it is the first written record generated by Thai Merry of both price and quantity. Additionally, this date was subject to verification during our examination of the U.S. sales listing.

Comment 5: With respect to certain sales at the end of the POI, respondent argues that a fire at one of Thai Merry's facilities made it impossible to fill the entire May 15, 1994 purchase order. According to a May 26, 1994 letter from the U.S. customer to Thai Merry, the customer notified Thai Merry of a certain volume of lighters that would be accepted for shipment. Respondent argues that the amount of child-resistant lighters ultimately shipped pursuant to both the May 15, 1994 purchase orders and the June 15, 1994 purchase orders matched the volume accepted by the U.S. customer in the May 26, 1994 letter to Thai Merry. Accordingly, since these shipments were accepted during the POI (*i.e.*, May 26, 1994), the sales reflected in the June 15, 1994 purchase orders should be considered POI sales. In response to the Department's verification report, which indicates that the unfilled portion of the May 15, 1994 purchase order was not accounted for in the subsequent June 15, 1994 purchase orders, respondent argues that this is due to the fact that standard lighters ordered on May 15, 1994, could not be re-ordered because of the pending CPSC ban.

Petitioner argues that respondent's explanation should be rejected because (1) the terms of the purchase could be changed up to the invoice date, (2) there is no clearly established connection between the June 15 and May 15 purchase orders, and (3) the May 26, 1994 letter discusses a forthcoming purchase order which was not found to exist.

DOC Position: As noted in Comment 5, the Department is considering the invoice date to be the date of sale. Accordingly, only those sales invoiced during the POI will be considered POI sales for purposes of the final determination.

Comment 6: Petitioner argues that sales by Thai Merry Hong Kong ("TMHK") to the United States should be included in the Department's LTFV comparison. Petitioner notes that the factors the Department considers when determining if the sales of two parties should be collapsed include: (1) whether the companies are closely intertwined; (2) whether transactions take place between the companies; (3) whether the companies have similar types of production equipment, such that it would be unnecessary to retool either plant's facilities before implementing a decision to restructure either company's manufacturing facilities; and (4) whether the companies involved are capable, through their sales and production operations, of manipulating prices or affecting production decisions (see, Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy, 53 FR 27187 (July 19, 1988)). Petitioner argues that the

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longstanding business relationship and the continued use of the Thai Merry name indicate that the relationship between the two companies did not end subsequent to Thai Merry's gradual sale of its ownership interest in TMHK. Petitioner argues that the relatedness issue is only one prong in the test used by the Department in determining whether to collapse sales. When the preceding factors are combined with the fact that the two companies are capable of price manipulation, it is clear that TMHK's sales to the United States should be included in the calculation of FMV. Petitioner argues that this potential to manipulate prices is the primary factor in determining whether TMHK's sales should be included in FMV and that the facts in this case show that there was price manipulation.

Respondent argues that section 771(13) of the Tariff Act of 1930, 19 U.S.C. 1677(13), governs the determination of "related parties." Under this section of the statute, the Department has established a test under which parties will not be considered related unless ownership is greater than five percent. Respondent argues that since Thai Merry has no ownership interest in TMHK, as shown at verification, the two parties are not related. Respondent also argues that the evidence provided by petitioner for collapsing the two parties is unconvincing because: (1) The similarity in names between Thai Merry and TMHK is merely cosmetic, and in fact TMHK has changed its name, (2) buyers and sellers typically have frequent business transactions, and (3) the price TMHK charged Thai Merry's U.S. customer is not unusual because unrelated parties often sell similar products for similar prices.

DOC Position: We note that the Department only collapses sales under section 773(13) of the statute if the parties are related. Since Thai Merry has no ownership interest in TMHK, the Department has not considered TMHK's sales to the United States for purposes of calculating the margin.

Comment 7: Petitioner argues that because of the nature of payments by Thai Merry to Thai Merry America ("TMA") (*i.e.*, a specific amount based on each U.S. sale), and because of the type of assistance being provided by TMA (*i.e.*, production consulting, research and development), the payments to TMA should be treated as a direct selling expense. Petitioner argues that the payments to TMA were, in part, for research and development for the child safety lighter. Thus, the payments to TMA were tied to the sale of a specific product line. According to petitioner, the other assistance provided by TMA, for example, production management, can also be tied directly to the sale of child-resistant and standard lighters because, in the absence of this assistance and the costs associated with them, these products would not have been manufactured. Finally, petitioner argues that it is precisely because these payments are directly tied to U.S. sales that a circumstance-of-sale adjustment is necessary.

Respondent argues that the TMA payments, as characterized by petitioner, indicate that these payments were related to production, as opposed to sales. While these payments resemble commissions, they are actually G&A expenses that do not qualify for a circumstance of sale adjustment.

DOC Position: Before determining how to treat this payment, we examined the payment arrangement between Thai Merry and TMA. Under this arrangement Thai Merry's ultimate payment to TMA is based on total U.S. sales. The services provided by TMA consist of production consulting, research and development, and market research. Because the payments to TMA are not connected with sales activity in the United States, we do not view them as commissions. However, since the payments to TMA are based on each U.S. sale, and calculated as a percentage of each U.S. sale, we consider these payments to be a direct U.S. selling expense. As a consequence, for purposes of the final determination, we have added these payments to FMV.

Comment 8: Respondent argues that the incentive bonuses paid to home market salesmen were not commissions. According to respondent, this is because these payments are not tied to the number or value of sales. Respondent argues that this is evidenced by the fact that Chamber (the home market selling arm of Thai Merry) does not keep records of sales per salesperson. Additionally, respondent notes that there is no correlation between the amount of incentive bonus paid and the value of sales during the previous month; *i.e.*, if the bonus was in fact a commission based on the value of sales, one would expect that when the value of sales dropped the subsequent amount of incentive bonuses paid would also drop. This was not the case.

DOC Position: Based on our review of the information, we see no correlation between home market sales and the "incentive bonuses" paid to Chamber's salesmen. The absence of an observable correlation or relationship between sales and incentive bonuses supports respondent's claim that these payments are not commissions. Therefore, for the final determination, we have determined that these payments are not commissions.

Comment 9: Petitioner argues that for the final determination the Department should apply the credit expense to only those home market sales identified as "credit sales."

DOC Position: We agree and have made this correction.

Comment 10: Petitioner argues that the home market freight expense should have been allocated on a weight or per-unit basis, instead of using a value-based factor. Given customary freight rate structures, it is unreasonable, according to petitioner, to allocate freight expenses based on the value of subject merchandise. Finally, given respondent's refusal to cooperate in providing a non-value-based freight amount, as well the Department's preference for not including depreciation as part of the freight expense, the Department should use the per-unit freight cost incurred by Thai Merry on direct sales shipped in the home market, as best information available ("BIA").

Respondent argues that it was not possible to provide a weight-based or per-unit cost for home market inland freight because home market deliveries include subject and non-subject merchandise. Hence, there is no common denominator with which to perform an allocation of cost. Additionally, a weight-based calculation is not possible because records are not kept with respect to total weight shipped. Respondent also argues that there have been cases in which the Department has accepted a value-based allocation (see, Antifriction Bearing (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, 58 FR 39729 (July 26, 1993)).

DOC Position: We agree with respondent. The Department verified elements of respondent's value-based freight allocation. This allocation incorporated expenses, including depreciation, which were directly related to Chamber's transportation costs. The allocation involved the appropriate costs and therefore appeared to be reasonable. As such, we have continued to use a value-based factor for the final determination.

Comment 11: Petitioner argues that, in this case, the use of a U.S. interest rate to calculate the U.S. credit expense does not represent "commercial reality." According to petitioner, since Thai Merry has no loans in U.S. dollars and, therefore, finances all of its operations in Thai baht, the actual credit expense to Thai Merry is a home market borrowing expense. Petitioner argues that, if the Department must use a U.S. interest rate, it should at least impute a credit expense based on a Thai interest rate for the "time on the water" period between shipment date and payment date.

Respondent argues that, with respect to the U.S. credit expense calculated at the preliminary determination, the Department correctly interpreted *LMI–LA Metalli Industriale, S.p.A.* v. *United States*, 912 F. 2d. 455, 460 (Fed. Cir. 1990)) ("*LMI*"). Respondent argues that *LMI* was not a fact-specific decision in which the respondent company's dollar loans justified the use of a U.S. dollar interest rate. Rather, according to respondent, the Court focused on the availability of a lower borrowing rate. Respondent argues that the Department reasonably found the borrowing rate to be based on the currency of sale at the preliminary determination and should continue to use a dollar interest rate for the final determination.

DOC Position: While Thai Merry had liabilities denominated solely in baht, some of its assets (*e.g.*, receivables pursuant to U.S. sales) were denominated in dollars. As such, the cost to Thai Merry is the cost it would incur in discounting a dollar receivable which would be based on a dollar interest rate.

Because we believe that our original decision was correct and is supported by *LMI*, we have continued to use a U.S. dollar interest rate to calculate the U.S. credit expense.

Comment 12: Respondent argues that the methodology employed by the Department at the preliminary determination, while consistent with the decision in *Federal-Mogul, et. al.* v. *United States*, ("*Federal Mogul*") 834 F. Supp. 1391 (CIT)), is inconsistent with the expectation of tax neutrality under GATT and ignores the methodology sanctioned by a higher court, the U.S. Court of Appeals for the Federal Circuit (see, *Zenith Corp.* v. *United States*, ("*Zenith*") 988 F.2d 1573, 1583 n.4 (Fed. Cir. 1993) which stated that it was appropriate for the Department to adjust U.S. price by the amount of VAT actually paid on home market sales. Because the adjustments pursuant to *Federal Mogul* exaggerate existing margins, the use of this methodology is in violation of GATT. Respondent cites Article VI(1) and Article VI(4) of the GATT and Article 2(6) of the Agreement on Implementation of Article VI of the GATT, as unambiguously requiring that differences in the level of indirect taxes shall not create/inflate dumping margins. Petitioner argues that respondent's reliance on footnote 4 of *Zenith* is incorrect because the Court of International Trade found that "footnote 4 (*of Zenith*) is clearly at odds with Zenith and the language of the statute and is *dicta*." Petitioner states that in *Avesta Sheffield, Inc. et. al.* v. *United States*, Slip Op. 93–217 (CIT Nov. 18, 1993) the court also found footnote 4 of *Zenith* to be *dicta*. Additionally, with respect to respondent's argument that the Department's VAT methodology is in conflict with Article VI(4) of GATT, petitioner argues that under a proper interpretation of this article, in which a multiplier effect only occurs in the presence of a dumping margin, the Department's methodology fully comports with GATT.

DOC Position: We agree with petitioner. The VAT methodology used at the preliminary determination has been used by the Department for all recent antidumping determinations and is in accordance with both the statute and the GATT. Accordingly, for the final determination we have continued to use the VAT methodology used for the preliminary determination (see, Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179, (April 6, 1994)).

Comment 13: Petitioner states that it is not clear whether the Department verified that all of Thai Merry's advertising expenses were related to lighter sales. Additionally, it is also not clear, according to petitioner, whether Thai Merry's general ledger distinguishes between advertising for lighters and advertising for scouring pads. Petitioner notes that only advertising expenses associated with the sale of disposable lighters should be used to adjust the FMV.

Respondent argues that the Department examined Thai Merry's advertising expense adjustment and found no indication that the company incurs advertising expense for anything other than the sale of lighters. Accordingly, the Department should utilize the verified figure for home market advertising expenses in the final determination.

DOC Position: We agree with respondent. During our verification of Thai Merry's advertising expenses, we noted no information indicating that Thai Merry paid for any advertising other than advertising for lighters. Accordingly, we have used the advertising expense, as verified, for the final determination.

Comment 15: Petitioner argues that sales of imprinted and non-imprinted Aladdin lighters, as well as wrapped lighters, should be used in the calculation of FMV without a difmer adjustment because the physical differences between these lighters and standard lighters are minor. According to petitioner, respondent's argument that wrapped and imprinted lighters should not be used in the FMV calculation because there are no U.S. sales of such lighters is dubious since respondent has already argued that standard and child-resistant lighters are one such or similar category.

Respondent argues that it is a basic tenet of the antidumping law that U.S. sales should be matched to identical sales in the home market or, if an identical product is unavailable, the most similar home market product should be compared to the U.S. sale. At verification, respondent was able to identify home market sales of imprinted and non-imprinted Aladdin lighters, as well as wrapped lighters. Since imprinted and wrapped lighters are neither identical nor most similar to U.S. sales, they should be excluded from the Department's LTFV comparison.

DOC Position: We agree with respondent. Petitioner seems to argue that imprinted and wrapped lighters sold in the home market should be matched to non-imprinted, non-wrapped lighters sold in the U.S. This is in spite of the fact that merchandise which is identical to the merchandise sold in the U.S. is being sold in the home market. While imprinted and wrapped lighters are within the same such or similar category, they are not identical or most similar to the merchandise sold in the United States. Therefore, we have excluded imprinted and wrapped lighters from the calculation of FMV for the final determination.

Comment 16: Petitioner argues that the Department should find critical circumstances to exist. According to petitioner, when May 1994 shipments are excluded (*i.e.*, the period which the Department referred to as a unique "spike"), Thai Merry's post-petition shipments increased by an amount that can still be considered massive under 19 CFR 353.16(f)(2). Petitioner argues that critical circumstance should be found to exist since the Department focused on the effect of the CPSC ban, and that removing this period for comparison purposes still yields a post-petition period increase which is "massive." Additionally, because it received notification of the Department's preliminary negative critical

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circumstances determination after close of business ("COB") on March 3, 1995 and the deadline for submitting comments to the determination was March 6, 1995, petitioner indicates that it was not allotted "sufficient time" to comment on the Department's analysis.

Respondent states that, while the Department could have based its negative preliminary critical circumstances determination on factors other than the CPSC ban and its effect on shipments, the Department correctly found that critical circumstances do not exist.

DOC Position: We first note that the Department's preliminary negative critical circumstance determination was not based solely on the effect of the CPSC ban on Thai Merry's shipments during the post-petition period. In making the negative preliminary critical circumstances determination, the Department stated that its decision was "[b]ased on (1) an evaluation of apparent domestic consumption during the pre- and post-petition period, as calculated by petitioner, (2) Thai Merry's share of domestic consumption during the pre- and post-petition periods, (3) the shipment data provided by respondent as compared to previous periods, and (4) consideration of the circumstances surrounding the large increase in shipment in May 1994 * * *" (see, page 7 of unpublished version of the Department's March 3, 1995 preliminary negative critical circumstances **Federal Register** notice). Because no additional information has been provided by petitioner that conflicts with our preliminary determination, we continue to find that critical circumstances do not exist.

With regard to petitioner's claim that it did not have sufficient time to analyze the Department's preliminary negative critical circumstances determination, we note that petitioner did not request additional information under administrative protective order ("APO") (*i.e.*, the Department's February 27, 1995 analysis memo) with which to make its analysis until late in the afternoon of March 6, 1995 (*i.e.*, the deadline date). Additionally, we note that on March 6, 1995, the Department offered petitioner an extension for filing comments on the preliminary negative critical circumstances determination if requested. Petitioner specifically declined to make an extension request (see, March 7, 1995 memo to case file from David R. Boyland, Case Analyst, Office of Countervailing Investigations).

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of disposable lighters, that are entered, or withdrawn from warehouse, for consumption on or after October 24, 1994, the date of publication of our affirmative determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the FMV of the merchandise of this investigation exceeds the USP, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Thai Merry	25.04
All Others	25.04

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6523 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 030795B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P418A).

SUMMARY: Notice is hereby given that Mason Weinrich of the Cetacean Research Unit, P.O. Box 159, Gloucester, MA 01930, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), right whales (*Eubalaena glacialis*), and sei whales (*Balaenoptera borealis*) for the purpose of scientific research.

DATES: Written comments must be received on or before April 17, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The applicant seeks authorization to take annually by harassment a maximum of 400 individual humpback whales, 250 individual fin whales, 50 individual sei whales, and 50 individual right whales in the Western North Atlantic. Proposed taking will be by close approach (within 100 yards) for photo-identification to continue long-term studies of distribution, demography, behavior, and ecology of the cetaceans inhabiting the Northeastern coastal waters of the United States.

Dated: March 10, 1995.

Art Jeffers,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6460 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030795A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P773#54).

SUMMARY: Notice is hereby given that Bradford E. Brown, Ph.D., of the National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, has applied in due form for a permit to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written comments must be received on or before April 17, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to take by harassment a maximum of 2,000 Atlantic bottlenose dolphins per year for the purpose of locating a maximum of 500 (over a 5-year period) dolphins suitable for take by capture for examination, sampling, marking, and release. The objectives of this study are to develop health assessment indices of dolphin populations and individuals in the southeast, and ultimately to assess the impact of human activities on specific populations.

Dated: March 10, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6453 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030695F]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P532B).

SUMMARY: Notice is hereby given that Texas A&M University, Department of Marine Biology, Galveston, TX 77553–1675 (Principal Investigators: Dr. Randall W. Davis, Texas A&M, Dr. Michael A. Castellini, University of Alaska, and Dr. Terrie M. Williams, University of California-Santa Cruz) has applied in due form for a permit to take Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written comments must be received on or before April 17, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The applicants request authority to take up to 120 Steller sea lions (*Eumetopias jubatus*) annually for 5 years. Of these 40, each of the pups, females, and juveniles will be flipper tagged and dye marked, physiologically handled, blood, blubber and muscle biopsy sampled, and metabolic rate measured. Twenty each of the females and juveniles will carry a radio transmitter and miniature time-depth-stomach temperature recorder, be injected with Evans blue dye to determine plasma volume, have their lung volume measured using the helium dilution method, have an upper premolar no. 2 extracted for aging, and one - two whiskers clipped for stable isotope analysis. Each year up to 1,000 animals may be inadvertently harassed and up to six animals may accidentally die during the course of the research.

Dated: March 10, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6452 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Semiconductor Technology Council will hold its initial

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meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster precompetitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c)(3) and (4), Title 5, U.S.C. There will be an open session from 3:45 to 4:15 p.m.

DATES: March 28, 1995.

ADDRESSES: 1300 Wilson Blvd., Suite 1450, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Lance Glasser, Director, ARPA/ESTO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2213.

Dated: March 10, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6425 Filed 3–15–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: April 21, 1995, 9 a.m. to 4:30 p.m. and April 22, 1995, 9:30 a.m. to 12 noon.

ADDRESSES: April 21: The Pentagon, room 3E869, Arlington, VA (an escort is required for attendees without DoD building passes); April 22: Crystal City Embassy Suites Hotel, Adams Morgan Room, 1402 South Eads, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Wicher, Public Affairs Officer, DoD Education Activity, 4040 N. Fairfax Drive, Arlington, Virginia 22203–1635; Telephone number: 703–696–4236, extension 121.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Departments, 12 members are appointed jointly by the Secretaries of Defense and Education. Members include representatives of educational institutions and agencies, professional employee organizations and unions, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes responses to the recommendations made by the Council during its October 1994 meeting; reports about other topics raised by teams of ACDE members who visited DoDDS schools in Italy, Spain, and Turkey; the DoD Education Activity (DoDEA) draft strategic plan, to include the National Education Goals, academic achievement encouragement, multicultural/multiracial diversity and awareness, education of children with disabilities, and increased parental involvement; drawdown planning; the DoDEA draft technology plan; school staffing; transportation security and discipline on school buses; and a report on the extent to which Ritalin is administered to DoD dependents overseas.

Dated: March 10, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6424 Filed 3–15–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting; Notice of Conference

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services.

The Committee meets semiannually.

DATES: April 27–30, 1995 (Summarized agenda follows).

ADDRESSES: The Sheraton Premier at Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22182; (703) 448–1234.

AGENDA: Subcommittee and General Business sessions will be conducted daily and are open to the public. The agenda will include the following:

Thursday, April, 27, 1995, 7:00 a.m.–10:00 p.m.

Conference Registration (Conference Participants)
Subcommittee Breakfast (DACOWITS members)
New Member Orientation (1995 DACOWITS Appointees)
Update and Focus Meeting (1993 & 1994 DACOWITS Members)
Issue Review (DACOWITS members)
Opening Ceremony/Opening General Business Session (All conference participants)
Quality of Life Task Force Review (DACOWITS members and Military Representatives)
Installation Visit Training (DACOWITS members)
Orientation, Update & Focus Follow-up (DACOWITS members)
Get-Acquainted Reception (DACOWITS members, Military Representatives, Liaison Officers, Advisors & Staff)

Friday, April 28, 1995, 7:00 a.m. to 10:00 p.m.

Uniform Discussion (DACOWITS member and selected individuals)
Working Breakfast (Members, Military Representatives, Liaison Officers, Advisors & Staff)
Subcommittee Sessions (All conference participants)
Field Trip/Installation Visit (DACOWITS members & Senior Military Representatives Only)
Official Reception/OSD Official Dinner (DACOWITS members, and invited guests)

Saturday, April 29, 1995, 7:00 a.m.–7:00 p.m.

Subcommittee Sessions (All conference participants)
OSD Official Luncheon (DACOWITS members and invited guests)
Recommendations Review (DACOWITS members, Military Representatives, Liaison Officers, Advisors & Staff)
Executive Committee Mark-up
Pentagon Tour/Media Training (current DACOWITS members)

Sunday, April 30, 1995, 8:00 a.m.–12:30 p.m.

Issue Review (DACOWITS members, Military Representatives, Liaison Officers, Advisors & Staff)
Closing General Business Session; Voting; Installation Visit Report (All conference participants)

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN or CPT Alissa B. Deuel, Plans and Communications Officer, DACOWITS and Military Women Matters, OUSD (Personnel and Readiness) 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the official OSD Luncheon; Field Trip; and the OSD Reception and Dinner.

(2) The Opening Session/business session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 10.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral Presentations by members of the public will be permitted only on Sunday, April 30, 1995 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by April 10 and make available 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS members for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: March 10, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6423 Filed 3–15–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Privacy Act of 1974; Add a System of Records

AGENCY: Department of Defense.

ACTION: Add a system of records.

SUMMARY: The Department of Defense is adding one system of records notice to its inventory of Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition is effective April 17, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Room 5C315, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 21, 1995, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (ORB) pursuant to paragraph 4c of Appendix I to ORB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: March 7, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DGC 16

SYSTEM NAME:

Political Appointment Vetting Files.

SYSTEM LOCATION:

Office of Legal Counsel, Department of Defense General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are possible appointments to political positions in DoD, consisting of non-career Senior Executive Service (SES) (Schedule 'C').

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of referral letters, White House clearance letters, information about individual's professional licenses (if applicable), IRS results of inquiries, notation of National Agency Check (NAC) results (favorable or otherwise), internal memoranda concerning a candidate, Financial Disclosure Statements (Standard Form 278), results of inquiries about the individual, Personal Data Questionnaires and General Counsel Interview sheets, published works including books, newspaper, magazine articles and treatises by the applicant, newspaper and magazine articles written about the applicant, and other correspondence relating to the selection and appointment of political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C 133 and E.O. 9397.

PURPOSE(S):

To evaluate suitability of individuals seeking or who have been recommended for non-career positions within DoD. Files are used by authorized personnel within the Office of the Secretary of Defense to resolve issues involving a potential candidate's suitability for appointment, e.g. conflicts of interest, financial mismanagement, moral turpitude, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

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To Federal, state, local, or foreign law enforcement authorities if the record indicates, on its face or in conjunction with other records, a violation of law; to the Department of Justice in pending or potential litigation to which the record is pertinent; to the General Services Administration and National Archives and Records Administration for records management purposes; to U. S. Government and foreign counterintelligence activities as authorized by federal law or executive order.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices *do not* apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence and forms in file folders.

RETRIEVABILITY:

Information accessed by last name of individual and Social Security Number.

SAFEGUARDS:

Building employs security guards. Data is kept in locked safes and is accessible to authorized personnel only.

RETENTION AND DISPOSAL:

Destroy at the end of the Presidential administration during which the individual is hired. For nonselectees, records of individuals who are not hired are destroyed one year after the file is closed, but not later than the end of the Presidential administration during which the individual is considered.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Legal Counsel, Department of Defense General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves in contained in this system should address written inquiries to Office of Legal Counsel, Department of Defense General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600

Requests for information should contain individual's full name, any former names used, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), 1400 Defense Pentagon, Room 2C757, Washington, DC 20301–1400.

The request must include the individual's full name, any former names used, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Submitted by individuals themselves and compiled from interviews with those individuals seeking non-career positions. Additional sources may include The White House, Office of Personnel Management, Internal Revenue Service, Defense Investigative Service, and international, state, and local jurisdiction law enforcement components for clearance documents, and other correspondence and public record sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from certain provisions of 5 U.S.C. 552a(k)(5).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 95–6421 Filed 3–15–95; 8:45 am]

BILLING CODE 5000–04–F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 22, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 10:30 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 9:00 a.m. at the same location and will include a discussion of the Delaware Estuary management plan and DRBC commitments for consideration.

The subjects of the hearing will be as follows:

Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Concord Mobile Home Park D–92–68.* A sewage treatment plant (STP) project that entails construction of a 63,500 gallons per day (gpd) capacity secondary level extended aeration plant to serve a proposed 254-lot mobile home park in Concord Township, Delaware County, Pennsylvania. The STP will discharge to Green Creek, a tributary of West Branch Chester Creek, at a point just north of Concord Road. This hearing continues that of February 22, 1995.

2. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 6).* An application for inclusion of the Keystone Energy Service Company L.P. Facility (approved by Docket D–90–48 on September 25, 1991) as an additional Designated Unit to Table A (Revised) of the Merrill Creek Reservoir Project, to enable releases from the reservoir to make up for consumptive water use during drought periods. The Keystone Cogeneration Facility is expected to average approximately 2.7 million gallons per day (mgd) in consumptive use and is located west of Route 130, adjacent to the Delaware River in Logan Township, Gloucester County, New Jersey; Merrill Creek Reservoir is located in Harmony Township, Warren County, New Jersey.

3. *Hercules Incorporated D–84–28 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 10 million gallons (mg)/30 days of water to the applicant's Hercules Research Center from 14 existing wells. Commission approval on August 15, 1984 was limited to 10 years. The applicant requests that the total withdrawal from all wells be decreased from 14 mg/30 days to 10 mg/30 days. The project is located in New Castle County, Delaware.

4. *Borough of Elmer D–85–24 CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 10 mg/30 days of water to the applicant's distribution system from Well Nos. 6 and 8. Commission approval on September 27 1989 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 10 mg/30 days. The project is located in Elmer Borough, Salem County, New Jersey.

5. *Town of Liberty D–89–58 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 4.0 mg/30 days of water to the applicant's Ferndale Water District from Well Nos. 1, 2 and 3. Commission approval on February 28, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.0 mg/30 days. The project is located in the Town of Liberty, Sullivan County, New York.

6. *Township of Greenwich D–94–51 CP.* An application for approval of a ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's distribution system from new Well No. 4A, and to retain the existing withdrawal limit from all wells of 46.8 mg/30 days. The project is located in Greenwich Township, Gloucester County, New Jersey.

7. *Harcros Pigments, Inc. D–94–75.* A project to upgrade the applicant's existing 1.29 mgd industrial wastewater treatment plant (IWTP) by the installation of a mechanical draft cooling tower, which is designed to enable the IWTP effluent to meet revised temperature limits. Consumptive water loss will increase slightly to a maximum of 7,200 gpd due to the effluent cooling process. The IWTP will continue to serve only the applicant's pigment manufacturing operations and discharge to the Bushkill Creek at the City of Easton, approximately 2.5 miles upstream of its confluence with the Delaware River in Northampton County, Pennsylvania. No increased water withdrawal is proposed.

8. *Integrated Health Services at Penn, Inc. D–95–4.* A project to modify the applicant's existing 12,500 gpd sewage treatment plant (STP) by improving the treatment processes and facilities, including the tertiary filtration system; ultraviolet disinfection is also proposed. The STP serves the applicant's nursing home and is located in Lake Township, Wayne County, Pennsylvania just northeast of Lake Ariel and south of Route 191. With no increase in permitted flow, the discharge will continue to an unnamed tributary of Ariel Creek which flows to Lake Wallenpaupack.

9. *Holman Enterprises-RMP Facility D–95–5.* A ground water remediation project which entails withdrawal and treatment of approximately 74,000 gpd of contaminated ground water for discharge to South Branch Pennsauken Creek in Pennsauken Township, Camden County, New Jersey. The project treatment facility will be located at the applicant's engine rebuilding plant site just east of Haddonfield Road and south of Route 73 in Pennsauken Township, Camden County, New Jersey.

10. *Valley Forge Sewer Authority D–95–6 CP.* A project to expand the applicant's existing 8.0 mgd secondary sewage treatment plant (STP) to 8.99 mgd by rerating the existing facilities after minor modifications. The STP service area will continue to include East Pikeland, Schuylkill, and Charleston Townships; the Borough of Malvern; and portions of Easttown, Tredyffrin, East Whiteland, and Willistown Townships, all in Chester County, Pennsylvania. The STP will continue to discharge treated effluent to the Schuylkill River in Schuylkill Township, Chester County, Pennsylvania.

Documents related to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: March 7, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–6447 Filed 3–15–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Extension of Public Comment Period for the Environmental Management Programmatic Environmental Impact Statement

AGENCY: U.S. Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On October 22, 1990, the Department of Energy issued a Notice of Intent to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (PEIS). (55 FR 42633). In the Notice of Intent and in an Implementation Plan issued in January 1994, the Department identified the proposed action as follows: "to formulate and implement an integrated environmental restoration and waste management program in a safe and environmentally sound manner and in compliance with applicable laws, regulations and standards." A notice was issued on January 24, 1995, inviting the public to provide written comments on a proposed modification to the scope and name of the PEIS. (60 FR 4607). In the notice, the Department proposed to modify the proposed action to eliminate the analysis of environmental restoration alternatives. As modified, the PEIS would consider how to manage certain types of radioactive and hazardous waste, and analyze alternative sites at which the wastes could be managed in the future. The PEIS would focus its programmatic evaluations on waste management facilities, and would henceforth be known as the "Waste Management Programmatic Environmental Impact Statement."

INVITATION TO COMMENT: In response to a request from the public, the Department is extending for 30 days, until April 10, 1995, the written comment period for the proposed modification to the Programmatic Environmental Impact Statement. A summary of the comments received in response to this notice will be contained in an appendix to the draft Waste Management Programmatic Environmental Impact Statement.

ADDRESSES AND FURTHER INFORMATION: Written comments and requests for further information on the Programmatic Environmental Impact Statement should be directed to: James A. Turi, Office of Waste Management (EM–33), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0002, (301) 903–7147. For information on the Department's National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

Issued in Washington, D.C., this 10th day of March 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 95–6520 Filed 3–15–95; 8:45 am]

BILLING CODE 6450–01–P

Pittsburgh Energy Technology Center; Notice of Unsolicited Financial Assistance Award

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Acceptance of an unsolicited proposal application of a grant award with the foundation at NJIT and the New Jersey Institute of Technology.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center, announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a Grant through the Pittsburgh Energy Technology Center (PETC) to The Foundation at NJIT and The New Jersey Institute of Technology

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for "Experimental Investigation of Vibration-Induced Bulk Solids Transport and Segregation".

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236–0940, Attn.: Robyn L. Knapek, Telephone: (412) 892–6201.

SUPPLEMENTARY INFORMATION:

Grant No. DE–FG22–95PC95203

Title of Research Effort—"Experimental Investigation of Vibration-Induced Bulk Solids Transport Segregation"

Awardee—The Foundation at NJIT and The New Jersey Institute of Technology

Term of Assistance Effort—Twelve (12) Months

Cost of Assistance Effort—The total estimated value is $67,557,00. There will be cost-sharing involved in this transaction; financial assistance of 53.5% ($34,451.00) will be provided by the U.S. Department of Energy.

Objective

In accordance with 10 CFR 600.14, The Foundation at NJIT and The New Jersey Institute of Technology has been selected as the grant recipient as the result of the evaluation of an unsolicited proposal.

The objective of this project is to analyze the effects of a number of parameters on the behavior of particles in vibration beds, with particular attention paid to induced flows and their influence on the motion of an embedded large particle. With the help of flow visualization technique and computer simulation proposed, it is anticipated that various flow behavior would be revealed, and this may shed light on the possible mechanisms for particle segregation.

The benefits include a study of the effects (quantitative as well as qualitative) on convective transport and segregation due to various parameters (wall conditions, surface particle properties, size ratio, etc.).

This proposed project, resulting from the submission of an unsolicited proposal, represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation. The DOE has determined that a competitive solicitation would be inappropriate. This award will not be made for at least 14 days to allow for public comment.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 95–6521 Filed 3–15–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Pacific Gas Transmission Co.; Notice of Amendment

[Docket No. CP93–618–004]

March 10, 1995.

Take notice that on March 3, 1995, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California, 94105–1570, filed an application in Docket No. CP93–618–004. In this case, PGT is seeking an amendment to a Certificate of Public Convenience and Necessity issued in Docket Nos. CP93–618, *et al.* under Section 7(c) of the Natural Gas Act, and Part 157, Subpart A of the commission's Regulations. The Certificate that PGT seeks to amend was issued by the Commission's Order of January 12, 1995, in the above dockets. PGT wants to partially increase the size of the Medford Extension, one of the two pipeline extensions approved by the January 12, 1995, Order. PGT's proposal is more fully set forth in the amendment which is on file with the Commission and open to public inspection.

PGT now seeks to construct and operate about 22 miles of 16-inch pipeline on the Medford Extension, from the interconnection with PGT's mainline to Klamath Falls, Oregon, rather that 12-inch pipeline for that segment. The remainder of the 86.5 miles of the Medford Extension, which continues on to Medford, Oregon, would be a 12-inch pipeline, as previously approved. The increased diameter pipe would allow for additional capacity on the Medford Extension so PGT can provide up to 90,000 MMBtu per day of additional firm transportation service to Diamond Energy, Inc. (Diamond Energy). Diamond Energy, a subsidiary of Mitsubishi Corp., and the City of Klamath Falls have plans to jointly build a gas-fired electric generation station which would be operational in 1998.

PGT states that it seeks to take advantage of the short-term opportunity to install the larger pipe when the Medford Extension is initially constructed this summer. PGT says that this will avoid unnecessary future environmental disruptions and higher project costs associated with the future construction of pipeline looping or compressor facilities in three years time. PGT says that the additional cost of the larger pipe is estimated to be $2.3 million, including AFUDC. The increased costs of the 16-inch pipe would be held out of the rate base of the Medford Extension until after service to Diamond Energy begins.

PGT proposes to recover the incremental cost-of-service of the increased pipe size through surcharges to its existing FTS-1 Rate Schedule. Diamond Energy would pay the FTS-1 rate for mainline service and a surcharge for service on the Medford Extension.

PGT says that the surcharge that Diamond Energy would pay is a negotiated rate based on the avoided costs of Diamond Energy; Diamond Energy would not have to build its own pipeline to PGT. The negotiated reservation surcharge is $0.090388 for the first 45,000 MMBtu per day of service and $0.035477 for the second 45,000 MMBtu per day of service.

PGT says that incremental revenues from the rates paid by Diamond Energy will reduce costs of WP Natural Gas, a division of The Washington Water Power Company (Wash. Water), the only other customer on the Medford Extension. In the January 12, 1995, Order the Commission approved a special deferred cost recovery account/rate mechanism for Wash. Water. PGT says that Wash. Water's obligations under the deferred cost recovery mechanism will be reduced and shortened in time from 30 years to 18 years. PGT says it will include this revenue crediting information in its annual reports/filings containing the adjusted Wash. Water rate and related information on any deferred balance.

PGT proposes to recover the cost of Medford Extension based upon a straight-line depreciation schedule which is equal to the length of the transportation agreements for each extension. For service to Wash. Water over the Medford Extension the term of the contracts is 30 years, (there are two contracts between PGT and Wash. Water). For service to Diamond Energy over the Medford Extension the term of the contract is 27 years. Diamond Energy would begin service in November, 1998, three years after Wash. Water begins service.

PGT states that copies of its amendment have been sent to all interested state regulatory agencies and all parties on the official service list in Docket No. CP93–618, *et al.* PGT asks for expeditious approval of its proposal by June 1, 1995, so that the Medford Extension can be in-service by November, 1995. Otherwise, it will withdraw its request to install the 22 miles of 16-inch pipe and only build the approved 12-inch pipeline extension.

Any person desiring to be heard or to protest said amendment should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. However, any person who has already filed an intervention(s) in Docket No. CP93–618, *et al.*, need not file again.

Lois D. Cashell

Secretary.

[FR Doc. 95–6455 Filed 3–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1480–000, et al.]

Louisville Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas & Electric Company

[Docket No. ER94–1480–000]

Take notice that on February 15, 1995, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Electric Clearinghouse Inc.

[Docket No. ER94–968–004]

Take notice that on March 6, 1995, Electric Clearinghouse Inc. (ECI) tendered for filing a revised summary of ECI's activity for the quarter ending December 31, 1994.

3. Long Island Lighting Company

[Docket No. ER94–1599–000]

Take notice that on March 3, 1995, Long Island Lighting Company (LILCO), tendered for filing an amendment to its filing in this docket.

Copies of this filing have been served by LILCO on Northeast Utilities Service Company and the New York State Public Service Commission.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-American Resources, Inc.

[Docket No. ER95–78–000]

Take notice that on February 27, 1995, Mid-American Resources, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER95–361–000]

Take notice that on February 24, 1995, Southern California Edison Company (Edison) submitted supplemental information regarding its filing in the above captioned docket.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Westcoast Power Marketing Inc.

[Docket No. ER95–378–000]

Take notice that on February 21, 1995, Westcoast Power Marketing Inc. tendered for filing supplemental information to its January 3, 1995 filing in the-above-referenced docket.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. The Empire District Electric Company

[Docket No. ER95–446–000]

Take notice that The Empire District Electric Company (EDE), on March 2, 1995, tendered for filing proposed changes in its Transmission Peaking Service Contract between EDE and the Kansas Electric Power Cooperative, Inc. (KEPCo).

This filing is to amend Docket No. ER95–446–000.

Copies of the filing were served upon the Arkansas Public Service Commission, Kansas Corporation Commission, the Missouri Public Service Commission, Oklahoma Corporation Commission, and KEPCo.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. NorAm Energy Services, Inc.

[Docket No. ER95–512–000]

Take notice that on February 27, 1995, NorAm Energy Services, Inc. tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER95–554–000]

Take notice that on March 3, 1995, New England Power Company tendered for filing supplemental information to its February 6, 1995 filing in the above-referenced docket.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Oklahoma Gas and Electric Company

[Docket No. ER95–644–000]

Take notice that on February 24, 1995, Oklahoma Gas and Purchase Company (OG&E) tendered for filing a Supplemental Power Purchase Agreement with the Oklahoma Municipal Power Authority (OMPA).

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket No. ER95–645–000]

Take notice that on February 24, 1995, New England Power Company (NEP) tendered for filing an amendment to its FERC Rate Schedule No. 439. NEP states that the effect of the amendment does not increase or decrease the rates to be charged.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER95–646–000]

Take notice that on February 24, 1995, PacifiCorp tendered for filing a Power Sales Agreement (Agreement) dated September 20, 1994 between PacifiCorp and City of Anaheim, California (Anaheim).

PacifiCorp requests an effective date of May 1, 1995 be assigned to the Agreement.

Copies of this filing were supplied to Anaheim, the Public Utilities Commission of the State of California, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. San Diego Gas & Electric Company

[Docket No. ER95–647–000]

Take notice that on February 24, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interchange Agreement (Agreement) between SDG&E and LG&E Power Marketing Inc., (LPM).

SDG&E requests that the Commission allow the Agreement to become effective

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on the 1st day of May, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and LPM.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER95–648–000]

Take notice that on February 24, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and CNG Power Services Corporation (CNG), dated February 15, 1995. This Service Agreement specifies that CNG has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and CNG to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 15, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Southern California Edison Company

[Docket No. ER95–664–000]

Take notice that on March 1, 1995, Southern California Edison Company (Edison) tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA) with the City of Anaheim (Anaheim), FERC Rate Schedule No. 246, and associated Firm Transmission Service Agreement:

Supplemental Agreement Between Southern California Edison Company And City of Anaheim for the Integration of PacifiCorp Power Sales Agreement

Edison-Anaheim PacifiCorp Firm Transmission Service Agreement Between Southern California Edison Company and City of Anaheim

The Supplemental Agreement and FTS Agreement set forth the terms and conditions by which Edison will integrate and provide transmission service for Anaheim's PacifiCorp resource.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–670–000]

Take notice that on March 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with New England Power Company (NEP) to provide for the sale of energy and capacity. For energy sold the ceiling rate is 100 percent of the incremental energy cst plus up to 10 percent of the SIC (which such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by overnight delivery upon NEP.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER95–671–000]

Take notice that Northeast Utilities Service Company (NUSCO) on March 1, 1995, tendered for filing a Service Agreement with Citizens Lehman Power Sales (Citizens) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Citizens.

NUSCO requests that the Service Agreement become effective on March 15, 1995.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Northwestern Wisconsin Electric Company

[Docket No. ER95–672–000]

Take notice that Northwestern Wisconsin Electric Company on March 1, 1995, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would increase revenues from jurisdictional sales by $954.80 based on the 12 month period ending April 30, 1995. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 1995.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Company Services, Inc.

[Docket No. ER95–673–000]

Take notice that on March 1, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a Service Agreement dated as of February 11, 1995 between Gulf Stream Energy and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER95–674–000]

Take notice that on March 1, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a Service Agreement dated as of February 10, 1995 between Electric Clearinghouse, Inc. and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Company

[Docket No. ER95–675–000]

Take notice that on March 1, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing as initial rate schedules two contributions-in-aid-of-construction agreements (the Agreements) dated January 10, 1995, (1) between PP&L and Jersey Central Power Light Company, (Jersey Central) and (2) between PP&L and the Pennsylvania Electric Company (Penelec).

The purpose of the Jersey Central agreement is to enable PP&L to recover costs it incurred with respect to relay and control changes at PP&L's Martins Creed 230 kV Switchyard to accommodate the tapping of the PP&L's Martins Creed-Gilbert 230 kV Line to supply Jersey Central's new Morris Part Substation 230–34.5 kV transformer. The purpose of the Penelec agreement is to enable PP&L to recover costs associated with PP&L's installation of a Remote Terminal Unit at PP&L's Lackawanna Substation on behalf of Penelec to support its upgrade of antiquated telemetering equipment.

PP&L states that copies of the filing were served on Jersey Central and Penelec.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER95–676–000]

Take notice that on March 1, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Rate Schedule Supplement which unilaterally amends five interconnection agreements between Virginia Power and its interconnected neighboring utilities, and Service Schedules B and C in Virginia Power's Power Sales Tariff.

The Rate Schedule Supplement sets forth the method of recovery of emission allowance costs in coordination power sales. An effective date of May 1, 1995 is requested.

A copy of the filing was served upon affected companies as well as upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. The Washington Water Power Company

[Docket No. ER95–677–000]

Take notice that on March 1, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, an Agreement for sale of capacity and associated energy to The City of Riverside, California (Riverside) each year from May through October for ten (10) years.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket No. ER95–678–000]

Take notice that on March 1, 1995, New England Power Company (NEP) submitted for filing an Amended Contract with its affiliate, Massachusetts Electric Company (MECO). The Amended Contract is executed pursuant to Schedule III-C of NEP's FERC Electric Tariff, Original Volume No. 1. According to NEP, it provides for the sale from NEP to MECO of electricity on an interruptible basis for resale by MECO to one of its retail customers.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. The Detroit Edison Company Consumers Power Company

[Docket No. ER95–681–000]

Take notice that on March 2, 1995, Consumers Power Company (Consumers), acting on behalf of itself and as agent for The Detroit Edison Company (Detroit Edison), tendered for filing various rate schedule changes to Consumers Power Company Rate Schedule FPC No. 41 and The Detroit Edison Company Rate Schedule FPC No. 22.

Copies of the filing were served upon the Michigan Public Service Commission, Consumers and Detroit Edison.

Comment date: March 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6487 Filed 3–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11346–001 Iowa]

FORIA Hydro Corp.; Notice of Availability of Final Environmental Assessment

March 10, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 525 FR. 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Fort Dodge Mill Dam Hydroelectric Project, located on the Des Moines River, Webster County, Iowa, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary

[FR Doc. 95–6457 Filed 3–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–191–000]

Natural Gas Pipeline Company of America; Notice of Intent to Prepare an Environmental Assessment for the Proposed OK–TEX AMARILLO PROJECT and Request for Comments on Environmental Issues

March 10, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the OK–TEX

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Amarillo Project.[1] This EA will be used by the Commission in its decision-making process to determine if an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Natural Gas Pipeline Company of America (Natural) requests Commission authorization to:

- Abandon by transfer 102.7 miles of its Amarillo No. 1 pipeline comprising:
  - —About 99.93 miles of 24-inch-diameter pipeline in Beaver County, Oklahoma, and Ochiltree, Hansford and Hutchinson Counties, Texas; and
  - —About 2.74 miles of 30-inch-diameter pipeline in Hutchinson County, Texas.
- Construct and operate approximately 18.0 miles of 30-inch-diameter loop in Hutchinson County, Texas.

The Amarillo No. 1 pipeline is part of the Amarillo mainline system that extends north from gas producing areas in north central Texas through New Mexico, Oklahoma, Texas, Kansas, Nebraska, and Iowa, and terminates near Chicago, Illinois. In 1982, Natural began a long-range program (the Amarillo Upgrade Program) to replace its original 24-inch-diameter Amarillo No. 1 pipeline. The purpose of the Amarillo Upgrade Program is to increase reliability of Natural's services and reduce operating costs by eliminating or replacing parts of the Amarillo mainline system that are obsolete.[2] No existing customer services would be affected by the proposed project.

Natural proposes to transfer all abandoned pipeline to MidCon Gas Products Corporation which would operate it as a low-pressure gathering pipeline. As a low-pressure pipeline, the Amarillo No. 1 pipeline would collect gas at the wellhead and transport it south for processing at a plant near Natural's Compressor Station 112 in Moore County, Texas. The processed gas would then be delivered to Natural's Amarillo mainline system for transportation north. Natural contends that, although the Amarillo No. 1 pipeline is obsolete for use as part of a high-pressure interstate pipeline system, the pipeline would be suitable for use as a low-pressure gathering line. Since the transfer would result in continued use of the pipeline, the pipeline would not be removed.

Natural proposes to construct and operate approximately 18.0 miles of pipeline to partially replace the abandoned pipeline and maintain service to its customers.

The general location of the project facilities is shown in appendix 1. A detailed location map of the proposed loop is shown in appendix 2.[3]

Land Requirements for Construction

No land would be affected by abandonment of the Amarillo No. 1 pipeline since the pipeline would be abandoned in place for use as a low-pressure pipeline.

Natural proposes to construct the proposed loop within a nominal 75-foot-wide right-of-way that would be offset 50 feet from the existing pipeline. Extra temporary work space would also be required for topsoil segregation; for staging areas at road, wetland and stream crossing; equipment mobilization; and contractor and pipe storage yards. Construction would affect a minimum of 163.4 acres of range and agricultural land based on a 75-foot-wide construction right-of-way. In addition, Natural anticipates using one 4-acre storage yard.

Following construction, Natural proposes to maintain the loop within a 75-foot-wide permanent right-of-way centered on the pipeline. All temporary construction right-of-way and extra work spaces would be restored and allowed to revert to their former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of A Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Public safety.
- Land use.
- Cultural resources.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified the following issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed loop would cross Camp Creek.
- The proposed loop would cross three wetlands.
- Natural's proposed 50-foot-offset from the old pipeline and Natural's proposed 75-foot-wide permanent right-of-way.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference docket No. CP95–191–000;
- Send a *copy* of your letter to: Mr. Mark Jensen, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before April 17, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Jensen at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Mark Jensen, EA Project Manager, at (202) 208—0828.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6456 Filed 3–15–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Natural Gas Pipeline Company of America's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] Natural has previously received Commission authorization to abandon and/or replace segments of the Amarillo No. 1 pipeline and compression facilities in Docket Nos. CP83–194–000, CP84–16–000, CP84–466–000, CP84–518–000, CP92–303–000, CP92–611–000, and CP93–672–000. Abandonment and replacement of the remaining facilities are currently under Commission review in Docket Nos. CP93–672–001 and CP94–577–001.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. RM95–6–000]

Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Notice of Extension of Time

March 10, 1995.

On March 3, 1995, the Interstate Natural Gas Association of America, the America Gas Association, the Associated Gas Distributors, the Independent Petroleum Association of America, and the Natural Gas Supply Association (Indicated Petitioners) filed a motion for an extension of time within which to file comments and responses to questions raised in the Commission's Request for Comments issued February 8, 1995 (60 FR 8356, February 14, 1995), in the above-docketed proceeding. In its motion, Indicated Petitioners states that due to the complex nature of the subject matter and the numerous questions raised by the Request for Comments and the Staff Paper dealing with market-based rates, additional time is needed to analyze, prepare, and file comments. The motion also states that a modest extension is in the public interest and will not unnecessarily delay the proceeding.

Upon consideration, notice is hereby given that an extension of time within which to file comments in this proceeding is granted to and including April 25, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6486 Filed 3–15–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5173–2]

Office of Environmental Justice and the Office of Civil Rights Solicitation Notice for Fiscal Year (FY) 1995; Environmental Justice Community/University Partnership Grants Program

Purpose of Notice

The purpose of this notice is to solicit applications from eligible candidates under the Environmental Justice Community/University Partnership Grants Program of the Environmental Protection Agency.

Grants Program Overview

The grants program was established to help community groups to efficiently address local environmental justice issues through active partnerships with institutions of higher education, such as Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), Tribal Colleges (TC) and institutions of higher education serving Asian-American (AA) and other minority or low-income communities. Executive Orders 12876 (HBCUs) and Executive Order 12900 (Educational Excellence for Hispanic Americans) are designed to futher opportunities for HBCU participation in Federal programs and for Hispanic American participation in Federal education programs. This grants program will further the Agency's commitment, as expressed in its March 14,1994 reaffirmation of EPA's 1984 Indian Policy, to develop a stronger partnership with Tribal governments in protecting the environment.

Under this program, EPA will emphasize meaningful, fully interactive two-way cooperation between communities and HBCUs, HSIs, TCs, and institutions of higher education serving Asian-Americans and other minority or low-income communities, to address environmental justice issues (e.g., waste sites that are polluting water bodies, or pesticide contamination of farm workers), and to identify pollution sources, train residents on their rights and responsibilities, and help to resolve environmental problems. Partnerships must be established with formal agreements (ie. Memorandum of Understanding) between a University or College and at least one socio-economically disadvantaged community which is adversely impacted by an environmental hazard. Participation by these institutions and communities in government programs is advanced by expanding community outreach, and providing training, and education. These initiatives become the catalyst for increasing environmental awareness and involvement in resolving environmental problems such as exposure to environmental pollutants in minority and low-income populations.

The main objective of the program is to link members of a community, who are directly affected by adverse environmental conditions with an academic institution's staff. This effort is designed to ensure that both:

- are aware of basic environmental regulations, laws, concepts, issues, and resources;
- understand their role in identifying and defining problems, and monitoring contaminants related to environmental exposures;
- are included in the dialogue that results in shaping future policies, guidances, and approaches to problem solving; and
- are encouraged to be active partners in developing responses and setting priorities for intervention and legal recourse.

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Through these partnerships, communities will be encouraged to become involved in accessing information from environmental databases, in cleaning-up and restoring communities that have environmental insults, and in surveying and monitoring environmental quality.

Number of Grants Proposed: A minimum of four grants will be awarded for the fiscal year 1995.

Grant Award Amount: $300,000 to each award recipient contingent upon the availability of funds. Work funded by this program is expected to begin upon award of the grant. All grants under this notice are expected to be awarded by September 1995.

Grant Term: The term of the grant is one year. However, the EPA reserves the right to offer the grantee a renewal not to exceed one additional year, provided that conditions within the Agency remain the same and funds are available.

Eligibility

Participation is limited to institutions of higher education, including Historically Black Colleges or Universities (HBCUs), Hispanic Serving Institutions (HSIs), institutions of higher education serving Asian-American (AA's) and other minority or low-income communities, and Tribal Colleges (TCs) which have formal partnerships (i.e., a signed agreement or Memorandum of Understanding) with any affected community group which is eligible under applicable statutory authorities (for example, community-based / grassroots organizations, churches, schools or other non-profit community organizations) and Tribal governments.

The Environmental Justice Community/University Partnership Grants Program may be either a single institution or consortium. If a consortium is proposed, the lead institution must be identified and be one of the eligible applicants. This lead institution is recognized as the grantee and as such is responsible for all activities under the agreement.

Statutory Authority(ies): the granting authority is multi-media and the grant proposal must address two or more of the statutory requirements.

Clean Water Act, Section 104(b)(3)
Solid Waste Disposal Act, Section 8001(a)
Clean Air Act, Section 103(b)(3)
Marine Protection, Research and Sanctuaries Act, Section 203
Toxic Substances Control Act, Section 10(a)
Safe Drinking Water Act, Section 1442(b)(3)

Application Instructions—Applications will serve as the sole basis for evaluation and recommendation for funding. This notice contains all information and forms necessary to submit an application.

Application deadline: Applications must be received or postmarked no later than midnight, May 17, 1995.

Applications must be mailed to: United States Environmental Protection Agency, Grants Administration Division, Mail Code 3903F, Environmental Justice Community/University, Partnership Grants, 401 M Street S.W., Washington, D.C. 20460.

All Applications must be sent to the headquarters address.

Background

In its 1992 report, *Environmental Equity: Reducing Risk for All Communities*, EPA found that people of color and low-income communities experience higher than average exposure to toxic pollutants than the general population. The Office of Environmental Justice (OEJ) was established in 1992 to help these communities identify and assess pollution sources, implement environmental awareness and training programs for affected residents and work with local stakeholders (community-based organizations, academia, industry, local governments) to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit projects, select suitable projects from among those proposed, supervise such projects, evaluate the results of projects, and disseminate information on the effectiveness of the projects, and feasibility of the practices, methods, techniques and processes in environmental justice areas.

General

The following questions and answers are designed to respond to frequent concerns of applicants.

A. What Is the Purpose of the Environmental Justice Community/University Partnership Grants Program?

The purpose of this grants program is to provide financial assistance to institutions of higher education, including HBCU's, HSI's, AA's and TC's, to establish or enhance environmental justice outreach programs with community groups. The University/Colleges shall support affected environmental justice community groups (community-based/grassroots organizations, churches, schools, or other non-profit community organizations) and tribal governments who engage in or plan to carry out projects that address environmental justice issues. The Universities/Colleges that focus on the design, methods, and techniques to evaluate and solve environmental justice issues of concern to affected communities will be given priority.

B. What Specific Requirements Exist for the Environmental Justice Community/University Partnership Grants Program?

The Environmental Justice Community/University Partnership Grants Program shall include, but not be limited to:

1. Design and demonstration of field methods, practices, and techniques, including assessment and analysis of environmental justice conditions and problems which may have a wide applicability and/or addresses a high priority environmental justice issue (e.g., socioeconomic impact studies, natural resource clean-up efforts);

2. Research projects to understand, assess or address, regional and local trends in environmental justice issues or problems (e.g., monitoring of socioeconomic changes in a community as a result of an environmental abuse);

3. Demonstration or dissemination of environmental justice information, including development of educational tools and materials (e.g. establish an Environmental Justice Clearinghouse of successful environmental justice projects and activities or teach about risk reduction, pollution prevention, or ecosystem protection as potential strategies for addressing environmental justice problems or issues);

4. Determine the necessary improvements in communication and coordination among local, state and tribal environmental programs and facilitate communication, information exchange, and community partnerships among all stakeholders to enhance critical thinking, problem solving, and decision making;

5. Provide technical expert consultation for accessing, analyzing, and interpreting public environmental data (e.g., TRI, GIS, etc.);

6. Provide for a minimal "hard science" analysis capability (e.g. analyze water and soil samples to test for basic pollutants, provide radon testing kits); In addition, the following items must be addressed;

7. Projects should involve new and innovative approaches and/or significant new combinations of resources, both of which should be identified in the partnership agreements;

8. An applicant is required to include in the application a signed agreement which describes the role of the prospective partner(s) in the project and its implementation, and which includes a commitment or intent to commit resources from the prospective partner(s) contingent only upon receipt of funds. Where appropriate the University may identify community residents as part of the partnership team and the residents may be compensated for this effort; and

9. Applications should include partnerships between universities, colleges, or tribal colleges which are providers of training and programs for these communities. One of the goals of the partnerships should be a developing shift of focus within these organizations from maintenance to that of self-sufficiency;

C. What does Environmental Justice Involve Under the Environmental Justice Community/University Partnership Grant?

Environmental justice involves the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. It seeks to ensure that the communities, private industry, local governments, states, tribes, federal government, grassroots organizations, and individuals act responsibly and environmental protection to all communities. Environmental justice efforts may include, but are not necessarily limited to enhancing the gathering, observing, measuring, classifying, experimenting and other data gathering techniques that assist individuals in discussing, inferring, predicting, and interpreting information about environmental justice issues and concerns. Environmental justice projects or activities should enhance critical thinking, problem solving, and effective decision-making skills.

D. Who May Submit An Application?

Any institution of higher education, including Historically Black College or University (HBCU), Hispanic Serving Institutions (HSI), Tribal Colleges (TC), and institutions of higher education serving Asian-American (AA) and other minority or low-income communities, may submit an application upon publication of this solicitation. University consortiums are eligible to apply.

Given the limited funding available for this grant program, priority will be given to applicants with a demonstrated capacity to develop partnerships with socioeconomically disadvantaged communities.

E. May An Individual Apply?

No. Only institutions of higher education may apply. The professional qualifications or community-based experience of those individuals participating in the proposed project will be an important factor in the selection process.

Funding Priorities

F. What Types of Proposed Environmental Justice Community/University Partnerships Will Have the Best Chance of Being Funded?

The Environmental Justice Community/University Partnerships must meet the objectives and criteria spelled out in section B.

G. Are Matching Funds Required?

Yes. Federal funds for the Environmental Justice Community/University Partnerships shall not exceed 95% of the total cost of the project. EPA encourages non-Federal matching shares of greater than 5%. The non-Federal share of costs may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. All grants are subject to audit, so the value of in- kind contributions *must be carefully documented*.

The matching (non-Federal) share is a percentage of the entire cost of the project. For example, if the total project cost is approximately $315,000 then the Federal portion can be no more than $300,000, which is 95% of the total project cost. For this example, the grant recipient would be required to provide $15,000 for the project. The amount of non-Federal funds, including in-kind contributions, must be briefly itemized in Block 15 of the application form (SF 424) included at the end of this notice. Among other things, *EPA funds cannot be used* as matching funds for other Federal grant match requirements, for construction, or buying furniture.

Application Procedure

An "Application for Federal Assistance" form (Standard Form 424 or SF 424), a "Budget Information: Non-Construction Programs" form (SF 424a), and a Work Plan (described below) must be submitted. These documents contain all the information EPA needs to evaluate the merits of your proposed grant proposal.

Each instrument approved under the environmental justice delegation must be consistent with the Federal Grant and Cooperative Agreements Act of 1977, Public Law 95–224, as amended, 31 U.S.C. Section 6301; Title 40 of the Code of Federal Regulations, Parts 30,31,33,40,45 and 47, as appropriate; and existing media-specific regulations pertinent to the statement of work.

H. How Must the Application Be Submitted and Specifically What Must the Standard Form (SF) 424, Standard Form (SF) 424, and Work Plan Include?

The applicant must submit one original, signed by a person authorized to receive funds for the applicant, and two copies of the application (double-sided copies encouraged). Applications must be reproducible (for example; stapled once in the upper left hand corner, on white paper, and with page numbers).

As described above, an application contains an SF 424 and a work plan. The following describes what an SF 424 and a work plan are and what they must contain.

1. APPLICATION FOR FEDERAL ASSISTANCE (SF 424). An SF 424 is an official form required for all Federal grants. A completed SF 424 must be submitted as part of your preapplication. This form, along with instructions are included at the end of this notice.

2. BUDGET INFORMATION: NON-CONSTRUCTION PROGRAMS (SF 424A). An SF- 424A is an official form required for all Federal grants. A completed SF 424A must be submitted as part of your application. This form, along with instructions are included at the end of this notice.

3. QUALITY ASSURANCE PLAN. It is not necessary to prepare such a plan in response to this solicitation.

4. NECESSARY SIGNED FORMS. Procurement Systems Certification, Certification Regarding Debarment, Suspension and Other Responsibility Matters, Certification Regarding Lobbying. These forms are provided in the grant package.

5. WORK PLAN. A work plan describes the applicant's proposed project. Work plans must be no more than 15 pages total. One page is one side of a single spaced typed page. The pages must be letter size (8 ½ x 11), with normal type size (19 or 12 cpi) and at least 1" margins. The only appendices and letters of support that EPA will accept are a budget, resumes of key personnel, and commitment letters, and an agreement signed between one or

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more community organizations and the applicant university.

Work plans must be submitted in the format described below. The percentages next to the items are the weights EPA will use to evaluate the applicant's work plan. Please note that certain sections are given greater weight than others.

(a.) A concise introduction of no more than 3 pages that states the nature of the college or university, how the college or university has been successful in the past, proposed uses, objectives, methods, plans, target audiences, and expected results of the proposed project. (10%)

(b.) Clear and concise description of the project which describes the following:

(1.) A section describing the field methods, practices, and techniques, including assessment and analysis, which the partnership expects to implement. (10%)

(2.) A section discussing how the partnerships will assess or address national, regional and local environmental justice issues. (10%)

(3.) A section describing how the partnerships will disseminate environmental justice information, including educational tools and materials. (10%)

(4.) A section describing how the partnerships will improve communications and coordination among local, state, tribal and federal environmental programs and how the partnership will enhance critical thinking, problem solving and decision making among all stakeholders. Specify effective and realistic methods for involving members of the targeted population. (10%)

(5.) A section describing who or how the partnership will obtain expert consultation to access, analyze and interpret public environmental data. (10%)

(6.) A section describing the "hard science" analysis capability of the University, college or organization. (10%)

(c.) A conclusion discussing how the applicant will evaluate the success of the partnership, in terms of the anticipated strengths and challenges in developing and administering the partnership. (10%)

(d.) An appendix with a budget describing how funds will be used in terms of personnel, fringe benefits, travel, equipment, supplies, contract costs, and other. Funds can not be used for construction. The budget must list proposed milestones with deadlines and estimated cost and completion dates. All costs must be consistent with the Office of Management and Budget (OMB) cost principles, such as A–87 and A–122. (10)%

(e.) An appendix with one or two page resumes of up to five key personnel. (5%)

(f.) An appendix with one page letters of commitment from community-based organizations with a significant role in the developing and administration of the partnership. Letters of endorsement will not be considered. (5%)

I. When and Where Must Application Be Submitted?

An original plus two copies of the application must be mailed to EPA postmarked no later than Monday, May 17, 1995. Applications must be submitted to: United States Environmental Protection Agency, Grants Administration Division, Mail Code 3903F, Environmental Justice Community/University, Partnership Grants, 401 M Street SW., Washington, D.C. 20460.

Review and Selection Process

J. How Will Applications be Reviewed?

EPA's Office of Environmental Justice will form a selections committee comprised of EPA Headquarters and Regional environmental justice personnel to evaluate proposals and make selections. Applications will be screened to ensure they meet all eligible activities described in Sections A through I. Reviewers will specifically evaluate the degree to which the applications meet EPA's objectives and criteria as discussed in section H.5(a–f). Applications will be disqualified if they are incomplete or do not meet EPA's basic criteria.

K. How Will the Final Selections Be Made?

After the applications are reviewed and ranked as described in section J, EPA officials will compare the best applications and make final selections. Factors EPA will take into account include: geographic and socioeconomic balance, diversity, cost and if the partnerships benefits can be sustained after the grant is completed.

L. How Will Applicants Be Notified?

After all applications are received, EPA will mail acknowledgements to each applicant. Once applications have been recommended for funding, EPA will notify those applicants selected and request any additional information necessary to complete the award process. The EPA Office of Environmental Justice will notify those applicants whose grant applications were not selected for funding.

Post-Award

M. When Should the Proposed Partnership Begin Functioning?

Partnerships cannot operate or begin development on this specific project before funds are awarded. Start dates are currently targeted for September 1, 1995. It is EPA's intent to fund each center for one year. Future funding will be dependent upon appropriations.

N. How Much Time Does Grant Recipient Have To Complete the Work Proposed?

Activities must be completed within the time frame specified in the grant award, usually one year from award date.

O. Who Will Develop and Manage the Partnerships?

EPA requires that partnerships be developed and managed by the applicant or by persons satisfactory to the applicant and EPA. All applications must identify any person other than the applicant for approval by EPA.

P. What Reports Must Grant Recipients Complete?

Recipients of grants will be expected to report on quarterly progress, as well as final project completion. All recipients must submit final reports for EPA approval prior to the expiration of the project period. Specific report requirements will be detailed in the award agreement. EPA plans to collect, evaluate, and disseminate grantees' final reports to serve as model programs. Since networking is crucial to the success of the program, grantees may be asked to transmit an extra copy to a central collect on point.

Q. What Is the Expected Time Frame for the Review and Awarding of the Grants?

March 17, 1995—Request for Applications Notice (RFA) is published in the **Federal Register**.

March 17, 1995–May 16, 1995—Eligible grant recipients develop their proposals.

May 17, 1995—Proposals must be postmarked for or received by EPA Office of Environmental Justice by this date.

May 17, 1995–July 15, 1995—EPA officials review and select grants.

July 15, 1995–September 1, 1995—EPA grants division processes grants and makes awards. Applicants will be contacted by the grants office if their proposal were selected for funding. Additional information may be required from the selectees, as described in Section N above.

September 1, 1995—EPA anticipates the beginning of the Partnership development on or around this date.

Fiscal Year 1996 and Future Year Grants

To Receive Information on the Fiscal Year 1996 Environmental Justice Community/University Partnership Grants Program and Future Year Grants, You must mail your request along with your name, organization, address and phone number to: Office of Environmental Justice (3103), U.S. Environmental Protection Agency, Environmental Justice Community/ University Partnership Grants 1996, 401 M Street S.W., Washington, DC 20460, FAX: (202) 260–0852.

Available Translations

A Spanish translation of this announcement is available upon request. Please call the Office of Environmental Justice at 1–800–962–6215 for a copy.

Hay traducciones disponibles en espanol. Si usted esta interesado en obtener una traduccion de este anunclo en espanol, por favor llame a la Officina de Justicia Ambiental conocida como "Office of Environmental Justice", linea de emergencia (1–800–962–6215).

Dated: March 10, 1995.

Clarice E. Gaylord,

Director, Office of Environmental Justice.

[FR Doc. 95–6505 Filed 3–15–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of review: Revision of a currently approved collection.

Title: Country Exposure Report.

Form number: FFIEC 009, 009a.

OMB number: 3064–0017.

Expiration date of OMB clearance: April 30, 1995.

Respondents: Insured state nonmember banks with country exposures over $30 million that are large relative to capital (as determined by the FDIC).

Frequency of response: Quarterly.

Number of respondents: 38.

Number of responses per respondent: 4.

Total annual responses: 152.

Average number of hours per response: 26.

Total annual burden hours: 3,952.

OMB reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0017, Washington, DC 20503.

FDIC contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before March 31, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Country Exposure Report provides information on the amounts and composition of international assets held by U.S. banks. The reporting requirement is pursuant to section 907(a) of the International Lending Supervision Act, which requires state nonmember banks to submit their reports to the FDIC. Individual bank data are used for supervisory and statistical purposes. Aggregate data are published for use by the general public, banks, government agencies, and international organizations. The revisions proposed in this request to OMB would simplify the form and reduce the reporting burden.

Dated: March 10, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–6436 Filed 3–15–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Federal Service Labor-Management Relations Statute; Collective Bargaining; Comment Solicitation for Policy Statement

AGENCY: Federal Labor Relations Authority.

ACTION: Notice relating to the issuance of a policy statement.

SUMMARY: This notice solicits written comments on questions to assist the Authority in determining whether to issue a ruling on a major policy issue regarding the scope of collective bargaining under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1988) (the "Statute") and, if the Authority issues such ruling, what it should be.

DATES: Written comments received in the Authority's Case Control Office by the close of business on April 17, 1995, will be considered. Extensions of time will not be granted.

ADDRESSES: Send written comments to the Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Alicia N. Columna, Director, Case Control Office, 607 14th Street, NW., Washington, DC, 20424. Telephone: (202) 482–6540.

SUPPLEMENTARY INFORMATION: Joseph Swerdzewski, FLRA General Counsel, has requested the Authority to issue a general ruling, under § 2429.4 of the Authority's regulations, on an issue regarding the relationship between subsections (a) and (b) of section 7106 of the Statute. Interested persons are invited to express their views in writing as to whether the Authority should issue the general ruling and, if it does, what the ruling should be.

Notice

To Heads of Agencies, Presidents of Labor Organizations and Other Interested Persons:

The General Counsel of the FLRA has requested under § 2429.4 of the Authority's regulations (5 CFR 2429.4) that the Authority issue a general ruling on the following question, as stated by the General Counsel:

Are matters and proposals which are within the bargaining subjects set forth in section 7106(b)(1) of the Statute negotiable at the election of agency management at the level of exclusive recognition even though those matters and proposals also may be within the subjects set forth in section 7106(a) of the Statute?

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The General Counsel states that the request does not require the Authority to determine: (1) Whether there is a duty to bargain over matters set forth in section 7106(b)(1); or (2) the legal impact of Executive Order 12871 on such duty. The General Counsel states further that the "existence of the mandate of Executive Order 12871 to negotiate over subsection (b)(1) matters" and the decision of the United States Court of Appeals for District of Columbia Circuit in *Association of Civilian Technicians, Montana Air Chapter No. 29* v. *FLRA*, 22 F.3d 1150 (DC Cir. 1994), have "rendered the relationship between subsections (a) and (b) a major policy issue * * *."

The issues before the Authority are whether a general ruling on the issue raised in the General Counsel's request is warranted and, if it is, what the ruling should be. Under § 2429.4 of the Authority's regulations, the Authority solicits views on these matters in writing. Written comments received in the Authority's Case Control Office by close of business on Friday, April 14, 1995, will be considered.

To assist the Authority in determining whether a general ruling on the issue raised by the General Counsel is warranted and, if so, what the ruling should be, the Authority invites comments regarding the following questions. In answering the questions, examples of proposals and matters that illustrate the views presented may be helpful.

1. Are matters and proposals which are within the bargaining subjects set forth in section 7106(b)(1) of the Statute negotiable at the election of agency management at the level of exclusive recognition even though those matters and proposals also may be within the subjects set forth in section 7106(a) of the Statute?

2. What is the proper meaning to be accorded the phrase in section 7106(a) stating that it is "[s]ubject to subsection (b)," as it relates to subsection (b)(1)?

3. What is the proper meaning to be accorded the phrase in section 7106(b) stating that "Nothing in this section shall preclude any agency and any labor organization from negotiating—"? For example, does it operate with respect to section 7106(b)(1) as a "clarification" or a "limitation," a distinction raised by the court in *American Federation of Government Employees, Local 2782* v. *FLRA*, 702 F.2d 1183, 1186–87 (DC Cir. 1983) (*dicta*)?

4. What matters or proposals, if any, within the subjects set forth in section 7106(b)(1) are not also within (i.e., do not also affect) one or more subjects set forth in section 7106(a)?

5. Does the relationship between section 7106(a) and (b)(1) depend on the particular section 7106(a) subject which is affected?

6. Does the relationship between section 7106(a) and (b)(1) depend on whether parties are bargaining over proposals for an agreement or whether an agency head is exercising authority under section 7114(c) of the Statute to review an agreement already reached?

Dated: March 13, 1995.

Federal Labor Relations Authority.

Phyllis N. Segal,

Chair.

Pamela Talkin,

Member.

Tony Armendariz,

Member.

[FR Doc. 95–6511 Filed 3–15–95; 8:45 am]

BILLING CODE 6267–01–P

FEDERAL RESERVE SYSTEM

First Security Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 10, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Security Bancorp, Searcy, Arkansas; to acquire 100 percent of the voting shares of Farmers Investment Corporation, Little Rock, Arkansas, and thereby indirectly acquire Farmers Bank & Trust Company, Clarksville, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Community Bancorp, Inc., Glasgow, Montana; to acquire 100 percent of the voting shares of Wolf Point Acquisition Bank, Wolf Point, Montana, a *de novo* bank.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Westamerica Bancorporation, San Rafael, California; to merge with North Bay Bancorp, Novato, California, and thereby indirectly acquire Novato National Bank, Novato, California.

Board of Governors of the Federal Reserve System, March 10, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6475 Filed 3–15–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0040]

Chemie Research and Manufacturing Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Chemie Research and Manufacturing Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a glycerin extract of dried grapefruit seeds and pulp as an antimicrobial agent in the processing of fresh or frozen poultry, fish, or shellfish.

DATES: Written comments on the petitioner's environmental assessment by April 17, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3102.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2A4336) has been filed by Chemie Research and Manufacturing Co., Inc., 160 Concord Dr., P.O. Box 181279, Casselberry, FL 32718–1279. The petition proposes that the food additive regulations be amended to provide for the safe use of a glycerin extract of dried grapefruit seeds and pulp as an antimicrobial agent in the processing of fresh or frozen poultry, fish, or shellfish.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before April 17, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on display any amendments to, or comments on, the petitioners's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 6, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–6428 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0136]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specifications monographs from the third edition and its four supplements. New monographs and additions, revisions, and corrections to current monographs are being prepared for certain substances used as food ingredients, by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This material will be published in the fourth edition of the Food Chemicals Codex, which is scheduled for release in March 1996. When the committee completes its review of the comments, the agency will announce the availability of copies of the new and revised monographs in a future issue of the **Federal Register**.

DATES: Written comments by April 17, 1995. The committee advises that comments received after this date cannot be considered for the fourth edition but will be considered for later supplements.

ADDRESSES: Submit written comments and supporting data and documentation to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418. Submit written request for copies of the proposed new monographs and/or revisions to current monographs to NAS (address above) or the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: FDA provides contracts to NAS/IOM to support the preparation of the Food Chemicals Codex, which is a compendium of specifications for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**.

FDA has previously announced that the committee was considering new monographs and monograph revisions for inclusion in the fourth edition of the Food Chemicals Codex, which is now being prepared. In addition, notice and opportunity for public comment have been given on policies adopted by the committee for the fourth edition on lead and heavy metals specifications (58 FR 38129, July 15, 1993), and on arsenic specifications (59 FR 11789, March 14, 1994).

The committee will continue to provide the opportunity for public comment on intended changes in monographs by means of **Federal Register** notices before their inclusion in the fourth edition. If notice of changes is not provided, the monographs will be carried into the fourth edition unchanged from the third edition or subsequent supplements, except for minor editorial changes. Therefore, interested parties are invited to review all monographs in the third edition of the Food Chemicals Codex and its four supplements in preparation for their inclusion in the fourth edition. Interested parties should submit all suggestions with supporting documentation to the National Academy of Sciences at the above address.

FDA now gives notice that the committee is soliciting comments and information on certain proposed new monographs and revisions to certain additional current monographs. These new monographs and revisions will be published in the fourth edition of the Food Chemicals Codex. The proposed new monographs and revisions to current monographs may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Copies of the new monographs and proposed revisions to current monographs may be obtained from NAS or the Dockets Management Branch. Requests for copies should be identified with the docket number found in brackets in the heading of this document, and it should specify the monographs desired.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new monographs or monograph revisions into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and changes that have received final approval of the committee, such opportunity for public comment will be announced in a future issue of the **Federal Register**.

The committee invites comments and suggestions on specifications by all interested parties on the proposed new monographs and revisions of current monographs, that follow:

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I. Proposed New Monographs

Calcium acid pyrophosphate
Carbon dioxide
Dammar gum
Dried yeast
Ferrous lactate
Furcelleran
Gelatin
Glycerol ester of gum rosin
Glycerol ester of partially hydrogenated gum rosin
Magnesium gluconate
Maltitol syrup
Partially hydrolyzed proteins
Sodium potassium tripolyphosphate
Whey

II. Current Monographs to Which the Committee Proposes to Make Revisions

Acacia gum (description, heavy metals, lead)
N-Acetyl-*L*-methionine (specific rotation)
Acid hydrolysates of proteins ([formerly Acid hydrolyzed proteins] description, requirements, assay, tests)
Agar (lead)
L-Alanine (specific rotation)
Alginic acid (heavy metals, lead)
Ammonium alginate (heavy metals, lead)
Annatto extracts (identification, heavy metals, residual solvent, packaging and storage)
L-Arginine (specific rotation, loss on drying)
L-Arginine monohydrochloride (assay, specific rotation)
Ascorbic acid (functional use in foods, identification, tests)
L-Asparagine (loss on drying)
Benzoyl peroxide (heavy metals)
Butadiene-styrene 50/50 rubber (description, heavy metals, lithium, residual hexane)
Butadiene-styrene 75/25 rubber (description, heavy metals)
Calcium alginate (ash, heavy metals, lead)
Calcium glycerophosphate (heavy metals)
Calcium lactobionate (numerous changes)
Calcium pantothenate (heavy metals, tests)
Calcium silicate (heavy metals, lead)
Calcium peroxide (heavy metals)
Calcium pantothenate, racemic (heavy metals)
Calcium phosphate, dibasic (formula weight, functional use in foods, assay, fluoride, heavy metals, lead)
Calcium phosphate, monobasic (formula weight, fluoride, heavy metals, lead, labeling)
Calcium phosphate, tribasic (synonym, functional use in foods, fluoride, heavy metals, lead)
Canola oil (linolenic acid)
Carmine (description, assay)
β-Carotene (description, identification, loss on drying, melting range, solution in chloroform)
Cholic acid (assay, heavy metals, specific rotation)
Choline chloride (heavy metals, lead)
Choline bitartrate (heavy metals, lead)
Copper gluconate (identification)
Corn oil (Unhydrogenated) (identification)
L-Cysteine Monohydrochloride (specific rotation)
L-Cystine (loss on drying)
Desoxycholic acid (assay, heavy metals)
Dexpanthenol (identification)
Dextrose (chloride)
Dimethylpolysiloxane (identification)
Enzyme preparations (numerous changes)
FD & C Blue No. 1 (description, identification, mercury, subsidiary colors)
FD & C Blue No. 2 (description, identification, subsidiary and isomeric colors)
FD & C Green No. 3 (description, identification, subsidiary colors)
FD & C Red No. 3 (description, mercury, uncombined intermediates and products of side reactions)
FD & C Red No. 40 (mercury)
FD & C Yellow No. 5 (description, ether extracts, subsidiary colors, uncombined intermediates and products of side reactions)
FD & C Yellow No. 6 (description, subsidiary colors, total color, uncombined intermediates and products of side reactions)
Ferric phosphate (lead)
Ferric pyrophosphate (lead)
Ferrous gluconate (identification, assay, lead)
Ferrous fumarate (lead)
Gellan gum (ash, heavy metals)
L-Glutamic acid (residue on ignition, loss on drying, specific rotation)
L-Glutamic acid hydrochloride (assay)
L-Glutamine (identification, assay, loss on drying)
Glycerin (identification; assay; acrolein, glucose, and ammonium compounds)
Glycerol ester of wood rosin (heavy metals, lead)
Glycerol ester of polymerized rosin (heavy metals, lead)
Glycerol ester of partially dimerized rosin (heavy metals, lead)
Glycerol ester of tall oil rosin (heavy metals lead)
Glycerol ester of partially hydrogenated wood rosin (heavy metals, lead)
Glyceryl-lacto esters of fatty acids (name change)
Glycine (assay, loss on drying)
Grape skin extract (assay, arsenic, sulfur dioxide, packaging and storage)
Guar gum (acid-insoluble matter, galactomannans, lead, loss on drying, protein)
Gum Ghatti (heavy metals, lead)
High-fructose corn syrup (assay, lead, total solids, labeling)
L-Histidine (specific rotation)
L-Histidine monohydrochloride (assay, loss on drying)
Hydroxylated lecithin (heavy metals)
Invert sugar (total solids)
L-Isoleucine (specific rotation)
Karaya gum (heavy metals, insoluble matter, lead, loss on drying)
Kelp (heavy metals)
Lanolin, anhydrous (heavy metals)
Lecithin (heavy metals)
L-Leucine (loss on drying)
Limestone, ground (heavy metals, mercury)
Locust (carob) bean gum (lead)
L-Lysine monohydrochloride (specific rotation, assay)
Magnesium stearate (assay, heavy metals)
Magnesium silicate (description, heavy metals)
Manganese gluconate (numerous changes)
Manganese sulfate (heavy metals)
Manganese glycerophosphate (identification, assay, heavy metals)
Manganese hypophosphite (heavy metals)
Mannitol (identification, assay, heavy metals, melting range, specific rotation)
Masticatory substances, natural (heavy metals)
DL-Methionine (assay, loss on drying)
L-Methionine (assay, heavy metals specific rotation)
Methyl ester of rosin, partially hydrogenated (heavy metals)
Methyl formate (delete monograph from the Food Chemicals Codex)
Mineral oil, white (sulfur compounds)
Monoglyceride citrate (description)
Monopotassium *L*-Glutamate (loss on drying)
Niacinamide (identification, heavy metals)
Paraffin, synthetic (heavy metals)
Pectins (umerous changes)
Pentaerythritol ester of partially hydrogenated wood rosin (heavy metals)
Pentaerythritol ester of wood rosin (heavy metals)
Petroleum wax (synonym, description, identification, functional use in foods, heavy metals, lead, ultraviolet absorbance, packaging and storage)
Petroleum wax, synthetic (synonym, description, heavy metals, lead, ultraviolet absorbance)
DL-Phenylalanine (loss on drying)
L-Phenylalanine (loss on drying, specific rotation)
Polyisobutylene (heavy metals)
Polypropylene glycol (residue on ignition)
Potassium alginate (ash, heavy metals, lead, loss on drying)
Potassium chloride (description, assay)
Potassium gluconate (identification, loss on drying)
Potassium glycerophosphate (identification)
L-Proline (description, specific rotation)
Propylene glycol (identification, acidity, heavy metals)
Pyridoxine hydrochloride (assay, heavy metals)
Riboflavin 5'-phosphate sodium (assay, free riboflavin, riboflavin diphosphate)
Riboflavin (description, specific rotation)
L-Serine (specific rotation)
Sodium acid pyrophosphate (assay, heavy metals, lead)
Sodium alginate (ash, heavy metals, lead, loss on drying)
Sodium aluminosilicate (lead)
Sodium aluminum phosphate, acidic (assay, heavy metals, lead)
Sodium chloride (heavy metals)
Sodium erythorbate (heavy metals, lead)
Sodium gluconate (identification, assay)
Sodium magnesium aluminosilicate (lead)
Sodium phosphate, tribasic (description)
Sodium polyphosphates, glassy (description)
Sorbitan monostearate (identification, assay)
Sorbitol (identification, chloride, heavy metals, lead, sulfate)
Sorbitol solution (identification, chloride, heavy metals, lead, reducing sugars, sulfate)
Soybean oil (unhydrogenated) (identification)
Spice oleoresins (heavy metals; oleoresin paprika: additional requirements)
Sucrose (calculation formula for invert sugar)
Sunflower oil (unhydrogenated) (identification)
Talc (description, identification, extractable fluoride)
Tannic acid (definition, heavy metals, loss on drying)
Terpene resin, natural (heavy metals)
Terpene resin, synthetic (heavy metals)
Thiamine mononitrate (assay)
Thiamine hydrochloride (assay)
L-Threonine (specific rotation)
DL-α-Tocopherol (lead, heavy metals)
d-α-Tocopherol concentrate (description, heavy metals, lead)
Tocopherols concentrate, mixed (description, heavy metals, lead)
DL-α-Tocopheryl acetate (lead, heavy metals)
d-α-Tocopheryl acetate (heavy metals, lead)
d-α-Tocopheryl acetate concentrate (description, heavy metals, lead)
d-α-Tocopheryl acid succinate (heavy metals, lead)
Tragacanth (heavy metals, lead)
L-Tryptophan (description, specific rotation)
L-Tyrosine (specific rotation)
L-Valine (specific rotation)
Vitamin B_{12} (identification, assay)
Vitamin D_2 (identification)
Vitamin D_3 (identification)
Xanthan gum (ash, heavy metals)
Xylitol (lead)
Yeast extract ([formerly Autolyzed yeast extract] description, requirements, assay, other tests)
Zinc gluconate (numerous changes)

Interested persons may, on or before April 17, 1995, submit to NAS (address above) written comments regarding the monographs listed in this notice. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments are to be submitted. Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and should include a statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 3, 1995.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–6529 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0063]

Dey Laboratories, et al.; Withdrawal of Approval of 14 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 14 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Harris, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70–805	Metaproterenol Sulfate Inhalation Solution, U.S.P., 5%	Dey Laboratories, 2751 Napa Valley Corporate Dr., Napa, CA 94558.
80–086	Sulfadiazine Tablets, 167 milligrams (mg) Sulfamerazine Tablets, 167 mg Sulfamethazine Tablets, 167 mg.	Purepac Pharmaceutical, Co., 200 Elmora Ave., Elizabeth, NJ 07207.
80–120	Isoniazid Tablets, 100 mg	Towne, Paulsen & Co., Inc., 14527 South San Pedro St., Gardena, CA 90248.
80–132	Isoniazid Tablets, U.S.P.	Purepac Pharmaceutical, Co.
80–276	Testosterone Propionate Injection	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003–4099.
80–308	Methyltestosterone Buccal Tablets, 10 mg	Purepac Pharmaceutical, Co.
80–309	Methyltestosterone Tablets, 10 mg	Do.
80–310	Methyltestosterone Tablets, 25 mg	Do.
80–459	Hyrocortisone Emulsion Cream, 1%	Elder Pharmaceuticals, Inc., ICN Plaza, 3300 Highland Ave., Costa Mesa, CA 92626.
80–475	Methyltestosterone Tablets	Purepac Pharmaceuticals, Inc.
80–489	Hydrocortisone Ointment, 0.5%	Altana Inc., 60 Baylis Rd., Melville, NY 11747.
80–581	Pyridoxine Hydrochloride Injection U.S.P., 100 mg/milliliter (mL)	Elkins-Sinn, Inc.
80–797	Chlorpheniramine Maleate Injection, 10 mg/mL and 100 mg/mL	Do.
80–928	Propantheline Bromide Tablets, 15 mg	Geneva Pharmaceuticals, Inc., 2555 West Midway Blvd., Broomfield, CO 80038–0446.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 17, 1995.

Dated: March 2, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–6426 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which

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interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Antiviral Drugs Advisory Committee

Date, time, and place. April 3 and 4, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 3, 1995, 8 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12:30 p.m., unless public participation does not last that long; closed committee deliberations, 12:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 5:30 p.m.; closed committee deliberations, April 4, 1995, 8 a.m. to 4 p.m.; Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify a contact person before March 24, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear presentations and discuss scientific issues relevant to liposomal antifungal agents.

Closed committee deliberations. On April 3 and 4, 1995, the committee will discuss trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 9, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–6427 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–01–F

Office of the Secretary

Correction of Notice of Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Correction.

SUMMARY: A Notice beginning on page 10588 in the issue of February 27, 1995, entitled "Findings of Scientific Misconduct" is hereby reprinted in its entirety because of an omission in the original printing:

Vivian N. Tanner, Cleveland Clinic Foundation: The Division of Research Investigations of the Office of Research Integrity (ORI) conducted an investigation into possible scientific misconduct on the part of Vivian N. Tanner while she was a clinic coordinator for the Collaborative Ocular Melanoma Study (COMS) at the Cleveland Clinic Foundation (CCF). ORI concluded that Ms. Tanner committed scientific misconduct by falsifying and fabricating clinical trial data on research data forms related to a multicenter study on the treatment of choroidal melanoma, a rare form of eye cancer. Due to these falsifications and fabrications, inaccurate clinical data were entered into the clinical trial database. These acts were committed over a period of several years, were material, and, therefore, were potentially detrimental to the study. The CCF COMS project has received U.S. Public Health Service support from 1985 to the present through subcontract funds from a National Eye Institute cooperative agreement award to the COMS Coordinating Center, The Wilmer Ophthalmological Institute, The Johns Hopkins Medical Institutions, Baltimore, Maryland. Ms. Tanner has been debarred from eligibility for and involvement in grants as well as other assistance awards and contracts from the Federal Government for a period of three years. Because the COMS is an ongoing study, no publications were affected by the falsified or fabricated data, and no clinical treatment has been based on the results of the study.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens, Ph.D.,

Director, Office of Research Integrity.

[FR Doc. 95–6446 Filed 3–15–95; 8:45 am]

BILLING CODE 4160–17–P

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: March 27, 1995.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 320, Telephone Conference.

Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 5333 Westbard Ave., Room 320, Bethesda, MD 20892, (301) 594–7317.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 3, 1995.

Time: 10:00 a.m.

Place: NIH, Westwood Building, Room 407B, Telephone Conference.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 5333 Westbard Ave., Room 407B, Bethesda, MD 20892, (301) 594–7310.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 3, 1995.

Time: 3:00 p.m.

Place: NIH, Westwood Building, Room 407B, Telephone Conference.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 5333 Westbard Ave., Room 407B, Bethesda, MD 20892, (301) 594–7310.

Name of SEP: Behavioral and Neurosciences.

Date: April 3, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Tefesa Levitin, Scientific Review Admin., 5333 Westbard Ave., Room 303, Bethesda, MD 20894, (301) 594–7141.

Name of SEP: Chemistry and Related Sciences.

Date: April 4, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 435, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 5333 Westbard Ave., Room 435, Bethesda, MD 20892, (301) 594–7120.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 4, 1995.

Time: 3:00 p.m.

Place: NIH, Westwood Building, Room 407B, Telephone Conference.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 5333 Westbard Ave., Room 407B, Bethesda, MD 20892, (301) 594–7310.

Name of SEP: Chemistry and Related Sciences.

Date: April 6, 1995.

Time: 1:30 p.m.

Place: NIH, Westwood Building, Room 339B, Telephone Conference.

Contact Person: Dr. Jerry Critz, Scientific Review Administrator, 5333 Westbard Ave., Room 339B, Bethesda, MD 20892, (301) 594–7322.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 7, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 403C, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Admin., 5333 Westbard Ave., Room 403C, Bethesda, MD 20892, (301) 594–7175.

Name of SEP: Chemistry and Related Sciences.

Date: April 12, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 435, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 5333 Westbard Ave., Room 435, Bethesda, MD 20892, (301) 594–7120.

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Name of SEP: Clinical Sciences.
Date: May 2, 1995.
Time: 2:30 p.m.
Place: NIH, Westwood Building, Room 439, Telephone Conference.
Contact Person: Dr. Gordon Johnson, Scientific Review Admin., 5333 Westbard Ave., Room 439, Bethesda, MD 20892, (301) 594–7216.

The meetings will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.939–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 9, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6399 Filed 3–15–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: March 21, 1995.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 319C, Telephone Conference.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 5333 Westbard Ave., Room 319A, Bethesda, MD 20892, (301) 594–7206.

Name of SEP: Behavioral and Neurosciences.
Date: April 3, 1995.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 319C, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard Ave., Room 319C, Bethesda, MD 20892, (301) 594–7358.

Name of SEP: Behavioral and Neurosciences.
Date: April 20, 1995.
Time: 8:00 a.m.
Place: Bethesda Marriott, Bethesda, MD.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Clinical Sciences.
Date: April 6, 1995.
Time: 11:00 a.m.
Place: NIH, Westwood Building, Room 220, Telephone Conference.
Contact Person: Dr. Daniel McDonald, Scientific Review Administrator, 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Clinical Sciences.
Date: April 6, 1995.
Time: 12:00 noon.
Place: NIH, Westwood Building, Room 220, Telephone Conference.
Contact Person: Dr. Daniel McDonald, Scientific Review Administrator, 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Clinical Sciences.
Date: April 6, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 220, Telephone Conference.
Contact Person: Dr. Daniel McDonald, Scientific Review Administrator, 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6564 Filed 3–15–95; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Alternative Medicine Program Advisory Council and its Subcommittees

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meetings of the Alternative Medicine Program Advisory Council (AMPAC) and its Subcommittees on March 20, 21 and 22, 1995 at the National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, Maryland.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., the full Council will meet on March 20 in closed session in Conference Room 7, from 8:30 am to 9:30 am to discuss conflict of interest procedures, issues, and questions relating to the operation of the AMPAC and its Subcommittees. These discussions could disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Meeting of the Subcommittees will be open to the public on March 20 at the times and locations listed below for the discussion of planning and priority of activities. Attendance by the public will be limited to space available.

Subcommittee Name: Research Subcommittee.
Place: Conference Room 6.
Time: 9:30 a.m. to 12:45 p.m.

Subcommittee Name: Information Services Subcommittee.
Place: Conference Room 6.
Time: 1:45 p.m. to 5 p.m.

Subcommittee Name: Professional Liaison Subcommittee.
Place: Conference Room 7.
Time: 1:45 p.m. to 5 p.m.

The full Council will meet in open session on March 21 from 8:30 am to 5:15 pm and on March 22 from 8:30 am to 12:30 pm in Conference Room 10. There will be a report from the Acting Director, Office of Alternative Medicine, from the chairs of the Research and Information Services Subcommittees, and the Longrange Planning Workgroup of the Strategic Planning Subcommittee, and from representatives of the two funded Centers for Alternative Medicine Research. Comments may be made by the public from 3:15 pm to 4:30 pm on March 21 and from 10:45 am to 11:15 am on March 22. Attendance by the public will be limited to space available.

Ms. Beth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 6120 Executive Boulevard, Suite 450, Rockville, MD 20892–9904, phone (301) 402–2467, fax (301) 402–4741, will furnish the meeting agenda, roster of Council members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than March 16, 1995.

This notice is being published less than fifteen days prior to the meeting due to difficulties encountered in finalized the agenda and the need to proceed with the meeting as scheduled to address important issues in a timely manner.

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6563 Filed 3–15–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3740; FR–3644–N–02]

Announcement of Funding Awards, Community Development Block Grant (CDBG) Program for Indian Tribes and Alaskan Native Villages; Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Indian tribes and Alaskan native villages applicants under the CDBG Program for Indian Tribes and Alaskan Native Villages. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Office of Native Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 8204 (L'Enfant Plaza), 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755–0032. The TDD number for hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The CDBG Program for Indian Tribes and Alaskan Native Villages is authorized by Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S. C. 3535(d)); 24 CFR part 953. The purpose of the competition was to assist in the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities. The awards announced in this Notice were selected for funding in a competition announced in the **Federal Register** on April 21, 1994 (59 FR 19056). Recipients were chosen in a competition under selection criteria contained in that Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names and addresses of the tribes which received funding, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: March 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A

FY 1994 Indian Funding Results by Native American Programs Office

Program Name: Community Development Block Grant Program (CDBG).
Statute: Housing Community Act of 1974 as amended.

Tribe (name and address)	Amount approved
Eastern/Wooodlands Office	
Sokoagon Chippewa, Route 1 Box 625, Crandon, WI 54520	$300,000
Sault Ste. Marie, 206 Grenough St., Sault Ste. Marie, MI 49783	300,000
Red Lake, POB 550, Red Lake, MN 56671	160,000
Poarch Creek, HC 69 Box 85B, Atmore, AL 36502	298,821
Lac Courte Oreilles, Route 2 Box 2700, Hayward, WI 54843	203,700
Forest County, POB 340, Crandon WI 54520	300,000
Pleasant Point, POB 343, Perry, ME 04667	300,000
Seneca Nation, POB 1490, Irving, NY 14081	295,550
Indian Township, POB 301, Princeton, ME 004668	196,465
Choctaw, POB 6010 Choctaw Branch, Philadelpha, MS 39350	300,000
Eastern Cherokee, POB 455, Cherokee, NC 287190	300,000
Total	2,954,536
Southern Plains Office	
Iowa Tribe KS&NE, Route 1, Box 58–A, White Cloud, KS 66094	300,000
Creek Nation, Route 1, Box 58–A, Okmulgee, OK 74447	500,000
Citizen Band Potawatomi, 1901 S. Gordon Cooper Drive, Shawnee, OK 74801	400,000
Chitimacha Tribe, P.O. Box 331, Charenton, LA 70523	300,000
Wyandotte Tribe, P.O. Box 250, Wyandotte, OK 74370	274,954
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	400,000
Choctaw Nation, P.O. Drawer 1210, Durant, OK 74702	500,000
Osage Nation, 627 Grandview, Pawhuska, OK 74056	500,000
Kaw Tribe, P.O. Box 50, Kaw City, OK 74641	300,000
Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465	500,000
Seneca Cayuga Tribe, P.O. Box 1283, Miami, OK 74355	300,000
Sac & Fox OK, Route 2, Box 246, Stroud, OK 74079	400,000
Chickasaw Nation, P.O. Box 1548, Ada, OK 74820	500,000
Ponca Tribe, Box 2, White Eagle Ponca City, OK 74601	300,000
Coushatta Tribe LA, P.O. Box 818, Elton, LA 70532	300,000
Cheyenne-Arapaho Tribe, P.O. Box 38, Concho, OK 73022	266,560
Seminole Nation, P.O. Box 1498, Wewoka, OK 74884	300,000
Pawnee Tribe, P.O. Box 470, Pawnee, OK 74058	300,000
Absentee-Shawnee Tribe, 2025 Gordon Cooper Dr., Shawnee, OK 74801	300,000
Total	6,941,514
Northern Plains Office	
Assiniboine & Sioux, P.O. Box 1027, Poplar, MT 59255	223,090
Fort Belknap Indian Comm, HC 3 Box 2, New Town, ND 58763	800,000
Northern Arapahoe Tribe, P.O. Box 396, Fort Washakie, WY 82514	547,600
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57057	341,250
Salish & Kootenia Tribe, P.O. Box 278, Pablo, MT 59855	800,000
Shoshone Tribe, P.O. Box 538, Fort Washakie, WY 82514	800,000
Sisseton-Wapeton Sioux, P.O. Box 509, Agency Village, SD 57262	500,000
Southern Ute Tribe, P.O. Box 737, Ignacio, CO 81137	800,000
Standing Rock Sioux, P.O. Box D, Fort Yates, ND 58538	760,002
Turtle Mountain Band, P.O. Box 900, Belcourt, ND 58316	680,000
Total	6,251,942
Southwest Office	
Howonquet Indian Council of the Smith River Rancheria, P.O. Box 239, Smith River, CA 95567	450,000
Trinidad Rancheria, P.O. Box 630, Trinidad, CA 95570–0630	449,712
Shingle Springs Rancheria, P.O. Box 1340, Shingle Springs, CA 95682	449,110
Pit River Indian Tribe, P.O. Drawer 1570, Burney, CA 96013	450,000
Pinoleville Rancheria, 367 N. State Street #204, Ukiah, CA 95482	333,796
Picayune Rancheria, P.O. Box 269, Coarsegold, CA 93614	440,000

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Tribe (name and address)	Amount approved
Hoopa Valley Indian Reservation, P.O. Box 1348, Hoopa, CA 95546	518,086
Guidiville Rancheria, P.O. Box 339, Talmage, CA 95481	450,000
Greenville Rancheria, 634 Saint Marks, Suite C, Redding, CA 96003–1815	450,000
Colusa Rancheria, P.O. Box 8, Colusa, CA 95932	379,000
Zuni Pueblo Indian Reservation, P.O. Box 339, Zuni, NM 87327	997,634
Big Pine Indian Reservation P.O. Box 700, Big Pine, CA 93513	450,000
Tonto Apache Tribe, Tonto Apache Reservation #30, Payson, AZ 85541	450,000
Tohono O'odham Indian Tribe, P.O. Box 837, Sells, AZ 85634	1,884,940
Taos Pueblo, P.O. Box 1846, Taos, NM 87571	714,477
Santa Ynez Indian Reservation, P.O. Box 517, Santa Ynez, CA 93460	12,900
Santa Ana Pueblo, 02 Dove Rd., Bernalillo, NM 87004	370,228
Kaibab-Paiute Tribe, H.C. 65, Box #2, Fredonia, AZ 86022	277,626
Hualapai Indian Tribe, P.O. Box 179, Peach Springs, AZ 86434	450,000
Havasupai Indian Tribe, P.O. Box 10, Supai, AZ 86435	810,000
Gila River Indian Community, P.O. Box 97, Sacaton, AZ 85247	86,250
Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363	1,019,541
Cuyapaipe Band of Mission Indians, 2271 Alpine Blvd., Alpine, CA 91901	354,850
Cabazon Indian Reservation, 84–245 Indio Springs Drive, Indio, CA 92201	405,000
Maopa Band of Paiutes, P.O. Box 340, Moapa, NV 89025–0340	450,000
The Navajo Nation Council, P.O. Box 9000, Window Rock, AZ 86515	1,034,839
San Carlos Apache Tribe, P.O. Box "O", San Carlos, AZ 85550	743,695
Manzanita Band of Mission, P.O. Box 1302, Boulevard, CA 91905	416,335
Mescalero Indian Reservation, P.O. Box 176, Mescalero, NM 88340	546,617
White Mountain Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941	1,096,527
Bishop Paiute Indian Reservation, P.O. Box 548 Bishop, CA 93515 93515	450,000
Total	17,761,391
Northwest Office	
Skokomish Tribe, Rt. 5, Box 432, Shelton, WA 98584	270,000
Nisqually Tribe, 4820 She-Nah-Num Dr. S.E., Olympia, WA 98503	270,000
Klamath Tribe, POB 436, Chiloquin, OR 97624	270,000
Burns Paiute Tribe, PO HC–71, Burns, OR 97720	267,721
Nooksack Tribe, POB 157, Deming, WA 98244	270,000
Shoalwater Tribe, POB 130, Tokeland, WA 98590	270,000
Sauk-Suiattle, 5318 Chief Brown Lane, Darrington, WA 98241	96,726
Shoshone Bannock, POB 306, Fort Hall, ID 83203	269,999
Total	1,984,446
Alaska Office	
Klawock Coop Association, P.O. Box 112, Klawock, AK 99925	486,472
Chalkyitsik Village, P.O. Box 56, Chalkyitsik, AK 99788	371,090
Savoonga Village, P.O. Box 129, Savoonga, AK 99769	500,000
Egegik Village Council, Box 29, Egegik, AK 99579	300,000
Seldovia Village, P.O. Drawer F, Seldovia, AK 99663	134,911
Tanana Chiefs Conf. Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701	500,000
Tuluksak Native Council, P.O. Box 156, Tuluksak, AK 99678	337,647
Tlingit Haida Tribe Rehabilitation, 320 W. Willoughby Ave., Suite 300, Juneau, AK 99801	500,000
Koyukuk Village, P.O. Box 109, Koyukuk, AK 99754	206,929
Chevak Village, P.O. Box 5514, Chevak, AK 99563	500,000
Total	3,837,049
Grand Total	39,730,878

[FR Doc. 95–6507 Filed 3–15–95; 8:45 am]
BILLING CODE 4210–33–P

Office of the Secretary

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D–95–1083; FR–3804–D–01]

Delegation and Redelegation of Authority

AGENCY: Office of the Secretary; Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), HUD.

ACTION: Notice of delegation and redelegation of authority regarding the civil rights related program requirements (CRRPR's) of HUD programs.

SUMMARY: In the delegation portion of this notice, the Secretary of Housing and Urban Development is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity the power and authority to make decisions regarding the civil rights related requirements of HUD programs. In the redelegation section of this notice, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates this authority to the Director, Program Operations and Compliance Center, for each field office.

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Director, Office of Program Standards and Evaluation, telephone (0) 708–088, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 0410. [This is not a toll-free number.] A telecommunications device for hearing impaired persons (TDD) is available at 1–800–543–894.

SUPPLEMENTARY INFORMATION: Due to the importance the Department places upon civil rights enforcement, the Department is making structural changes to help ensure that recipients under HUD programs comply with all civil rights related program requirements (also referred to as "CRRPRs"). This restructuring fits in with the overall HUD field reorganization intended to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy. The changes which shall be implemented pertain to how the Department, and the Office of Fair Housing and Equal Opportunity (FHEO), ensure that each party receiving federal financial assistance or other benefit, as a result of participation in a HUD program, complies with all civil rights related program requirements (CRRPRs) of the particular program. In order to receive benefits, it is essential that participants in HUD programs comply with the relevant CRRPRs.

It is easy to identify the civil rights related program requirements for a particular program, but more difficult to provide a general definition to encompass all CRRPRs. Depending upon the particular program, there are different sources which identify the CRRPRs. For example, civil rights related program requirements may be written into the statute or regulations governing the specific program at issue.

CRRPRs may also be found within such sources as general civil rights statutes, HUD Notices of Funding Availability (NOFAs), and Mortgage Letters. The subjects covered under CRRPRs include but are not limited to such topics as affirmative fair housing marketing, site and neighborhood standards, assurances or certifications of compliance with civil rights statutes, and monitoring recipient performance for compliance with civil rights requirements.

In the past, the Office of Fair Housing and Equal Opportunity, including the FHEO field staff, played a largely advisory role in regard to the impact of CRRPRs. In reviewing a HUD program application, the FHEO field staff would simply advise the HUD program staff in the field whether an applicant was in compliance with the CRRPRs. In the event of disagreement between the FHEO staff and program staff regarding the applicant's compliance with CRRPRs, the Regional Administrator or Area Manager for the particular office would make the final decision to resolve the issue.

Because the field reorganization has eliminated the positions of Regional Administrator and Area Manager, there is no one in the field offices to resolve such disagreements. Consequently, there is concern that compliance with CRRPRs will not be adequately considered. However, the Secretary has concluded that it is most important that HUD program funds and other benefits are given to applicants who comply with civil rights related program requirements of HUD programs. This can be accomplished by giving additional specific authority to the Assistant Secretary for Fair Housing and Equal Opportunity, at Headquarters, and to each Director, Program Operations and Compliance Center, in the field, in determining the status of applicants for or recipients of federal financial assistance or other benefits with respect to civil rights related program requirements. Clearly, the function of the Office of FHEO is to ensure compliance with civil rights requirements. This responsibility is accomplished not only by having the Office of FHEO administer and enforce civil rights statutes such as the Fair Housing Act, but also by having the Office of FHEO participate in decision making regarding compliance with the civil rights component of each HUD program.

This change in no way relieves HUD program staff of their obligation to be attentive to civil rights concerns in the administration of HUD programs, as reflected in section D of this delegation. It is designed solely to assure that serious FHEO issues are thoroughly considered before programmatic decisions are made.

This change also does not affect the rating process for competitive grant applications. The rating process often includes items of FHEO concern, such as commitments under section 3 of the Housing and Urban Development Act of 1968, or past experience in administering housing with inclusive racial and ethnic patterns. FHEO staff usually rate those criteria and provide the ratings to field program staff. Nothing in this delegation would allow FHEO to challenge the award of competitive assistance based on the program office's assessment of non-FHEO factors.

Accordingly, the Secretary delegates, and the Assistant Secretary for FHEO redelegates, authority as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Fair Housing and Equal Opportunity, the power and authority to determine whether an applicant for, or participant in, a HUD program is complying with the civil rights related program requirements (CRRPRs). CRRPRs are requirements of HUD programs relating to civil rights contained in laws and regulations pertaining to the particular program, general civil rights statutes, Notices of Funding Availability (NOFA's), Mortgagee Letters or by other agreement between the Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary who has been delegated authority over the particular program.

Section B. Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity retains the authority delegated from the Secretary of Housing and Urban Development, pursuant to Section A., above, and redelegates it to each Director, Program Operations and Compliance Center, for the field office over which he or she has responsibility.

Section C. No Authority To Redelegate

The authority granted pursuant to Section B., above, may not be further redelegated pursuant to this delegation and redelegation.

Section D. Authority Excepted From Redelegation

In the event that the Director, Program Operations and Compliance Center, and the Field office program official who has been redelegated authority to make funding decisions are not able to agree on the status of an applicant or participant with respect to a CRRPR, the matter shall be forwarded to Headquarters and the decision shall be made jointly by the Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary who has been delegated authority over the particular program. In the event the two Assistant Secretaries are unable to agree, the matter shall be resolved by the Secretary.

Authority: Sec. 7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: March 8, 1995.

Roberta Achtenberg,
Assistant Secretary for Fair Housing and Equal Opportunity.

Henry G. Cisneros,
Secretary of Housing and Urban Development.

[FR Doc. 95–6464 Filed 3–15–95; 8:45 am]
BILLING CODE 4210–28–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–95–1084; FR–3900–D–01]

Supersedure and Redelegation of Authority To Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of supersedure and redelegation of authority.

SUMMARY: In this notice, the assistant Secretary for Community Planning and Development (CPD) supersedes prior redelegations of authority pertaining to the Section 312 Loan Program, including the most recent redelegation at 52 FR 10952; dated April 6, 1987. In this new redelegation of authority under the Section 312 Loan Program, the Assistant Secretary for CPD provides an additional official with signature authority, lists officials under new titles to reflect a recent Departmental reorganization, and clarifies which documents are covered by the redelegation.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: William D. Hanson, Office of Affordable Housing Program, Room 7168, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 401–3271. [This is not a toll-free number.].

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban

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Development has delegated most functions regarding the Section 312 Rehabilitation Loan Program under Section 312 of the Housing Act of 1964 (42 USC 1452(b)) to the Assistant Secretary for CPD. The Assistant Secretary for CPD has previously issued notices redelegating functions under the Section 312 Loan Program, and is by this notice issuing a new updated redelegation.

The Secretary of HUD has also delegated certain functions pertaining to property management and disposition under the Section 312 Rehabilitation Loan Program to the Assistant Secretary for Housing — Federal Housing Commissioner. the most recent delegation to the Assistant Secretary for Housing — Federal Housing Commissioner was published in the **Federal Register** on January 16, 1992, at 49 CFR 1942. That delegation remains in effect today, and is not affected by this present redelegation from the Assistant Secretary for CPD.

Although the section 312 Rehabilitation Loan Program was terminated by Section 289 of the Cranston-Gonzalez Affordable housing Act of 1989 (42 USC 12839), the Section 312 loan collection functions continue under 12 USC 1701(g)-5c (authorizing Section 312 collections to be deposited into the Department's revolving fund for liquidating programs). In order to expedite property foreclosures and judgments against the Section 312 borrowers in default and to take other actions associated with the servicing of Section 312 loans, the Assistant Secretary for CPD has determined that it is necessary to issue an updated redelegation pertaining to Section 312 loans. In this new redelegation, the Assistant Secretary for CPD redelegates authority to additional individuals and provides clarification as to the legal instruments covered by the redelegation. In addition, in this document, the Assistant Secretary for CPD supersedes the prior redelegations pertaining to the Section 312 Loan Program at 52 FR 10952 (dated April 6, 1987), 51 FR 5412 (dated February 13, 1986), 50 FR 13667 (dated April 5, 1985) and 47 FR 33, 324 (dated August 2, 1982).

Accordingly, the Assistant Secretary for CPD redelegates authority as follows:

A. Authority Redelegated

The Deputy Assistant Secretary for Grant Programs, Office of Community Planning and Development; the Director, Office of Affordable Housing Programs; the Deputy Director, Office of Affordable Housing Programs; and the Affordable Housing Loan Specialist appointed as Government Technical Representative to the Section 312 Loan Servicing Contract, Office of Affordable Housing Programs, are hereby individually redelegated the authority to execute in the name of the Secretary written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages, deeds of trust and other security instruments; and any other legal instrument or document related to certain Section 312 loan-related property management and disposition functions that have not been delegated to the Assistant Secretary for Housing.

B. Authority Superseded

This redelegation supersedes previous redelegations of authority from the Assistant Secretary for CPD to execute legal instruments under the section 312 program, published at 47 FR 33324, August 2, 1982, 50 FR 13667, April 5, 1985; 51 FR 5412, February 13, 1986; and 52 FR 10952, April 6, 1987.

Authority: Sec. 312 of the Housing Act of 1964, 42 U.S.C. 1452b; 12 U.S.C. 1701g-5c; and section C, Delegation of Authority, 48 FR 49384, October 25, 1983; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Section 3535(d).

Dated: March 10, 1995

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–6462 Filed 3–15–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–57973]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value as determined by an appraisal:

Mount Diablo Meridian, Nevada

T. 35 N., R. 56 E.,
Sec. 30, lots 5, 13.
Comprising 17.34 acres, more or less.

The above described land is being offered as a direct sale to Walter W. Bear and Allie T. Bear. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Resource Area, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal by the Elko Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The proposal has been reviewed and approved by the Elko County Planning Commission.

The land is prospectively valuable for oil and gas. Therefore, the mineral estate, excluding oil and gas, will be conveyed simultaneously with the sale of the surface estate. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice of Realty Action in the **Federal Register** the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, whichever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. Oil and gas.

And would be subject to:

Those rights for powerline purposes granted to Sierra Pacific Power Co., its successors or assigns, by right-of-way N–37156, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, NV 89803. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely field objections, this realty action will become a final determination of the Department of the Interior.

Dated: March 8, 1995.

Rodney Harris,

District Manager.

[FR Doc. 95–6448 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–HC–M

[UT–069–05–5700–11; UTU–70117]

Realty Action Recreation and Public Purposes (R&PP) Act Classification for Conveyance (Patent) of Public Lands in San Juan County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU–70117, Recreation and Public Purposes (R&PP) Act Classification for Conveyance (Patent) of Public Lands in San Juan County, Utah.

SUMMARY: Notice is given that the following public lands in San Juan County, Utah have been examined and found suitable for classification for conveyance (patent) to San Juan County under the provisions of the Recreation and Public Purposes Act, as amended and supplemented (43 U.S.C. 869 *et seq.*). San Juan County proposes to use the lands for a regional sanitary landfill site.

Salt Lake Meridian, Utah

T. 39 S., R. 22 E.
Section 3; W2SWSW, SESWSW, S2NESWSW, S2SWSESW;
Section 4, S2SE;
Section 9, NE;
Section 10, W2NW, W2NENW, NWSENW.

The above described land aggregates 390.00 acres more or less.

A plan amendment has been completed and is being reviewed by the public. This amendment, if approved, would allow these lands to be available for disposal under the Recreation and Public Purposes Act for a regional sanitary landfill site.

The Patent, When Issued, Will Be Subject to the Following Terms, Conditions and Reservations

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat, 391; 43 U.S.C. 945).

3. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. The conveyance of the land will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to:

a. Those rights for powerline purposes granted to PacifiCorp dba UP & L, its successors or assignees by Right-of-Way Numbers UTU–24973, UTU–57106, and UTU–64139.

b. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

5. The San Juan County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the land described above, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

6. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

7. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

8. The above described land has been conveyed for utilization as a regional sanitary landfill. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittee, Adams Livestock Company, that their grazing lease is directly effected by this action. Specifically, the subject lands are presently used for livestock grazing, involving the White Mesa Allotment—#06840. The Adams Livestock Company (Grazing Record # 436615—cattle) holds the grazing privileges for the 390.00 acre parcel. The estimated permitted grazing capacity of these lands is 19 AUMs, however, there would be no reduction in the permittee's grazing preference as a result of this action. The land (acreage) will have to be excluded from the allotment effective upon issuance of the patent. There are no authorized range improvements on the subject lands.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Moab District Manager, Bureau of Land Management, 82 East Dogwood Drive, Suite M, Moab, Utah 84532.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a regional sanitary landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will

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maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a regional sanitary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action may be obtained from Brent Northrup, Acting Area Manager, San Juan Resource Area, 435 North Main Street, P.O. Box 7, Monticello, Utah 84535, (801) 587–2141 or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, Suite M, Moab, Utah 84532, (801) 259–2115.

Dated: March 6, 1995.

Katherine Kitchell,

District Manager.

[FR Doc. 95–6449 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–DQ–P

[MT–930–1430–01; MTM 82124]

Conveyance of Public Lands, Beaverhead, Madison, and Yellowstone Counties; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order informs the public and interested state and local governmental officials of the conveyance of 814.39 acres of public lands out of Federal ownership.

The land acquired in the exchange provides recreation access to the Madison River. The public is well served through completion of this land exchange.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of land made pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following described lands were transferred from Federal to private ownership:

Gabel Construction Inc.

Principal Meridian, Montana

T. N., R. 27 E.,
Sec. 35, lots 21 and 22.

Elmer F. Link

Principal Meridian, Montana

T. 2 N., R. 27 E.,
Sec. 36, lot 5. 2.

Otto R. Miller, Jr. and Charlene J. Miller

Principal Meridian, Montana

T. 7 S., R. 9 W.,
Sec. 11, S½NE¼NW¼SE, SE¼NW¼SE¼, W½NW¼SE¼, NE¼SE¼, S½SE¼, SE¼SW¼;
Sec. 13, NW¼SW¼;
Sec. 14, lots 1, 2, 3, and 5.

Beaverhead Madison Broadcasting Inc.

Principal Meridian, Montana

T. 7 S., R. 9 W.,
Sec. 11, N½NE¼NW¼SE¼.

Turner Enterprises, Inc.

Principal Meridian, Montana

T. 2 S., R. 1 E.,
Sec. 26, NW¼NE¼.

Valley Garden Ranch, Inc.

Principal Meridian, Montana

T. 5 S., R. 1 W.,
Sec. 18, lots 1 and 2;
Sec. 20, N½NW¼.

Rice Ranches, A Montana Corporation

Principal Meridian, Montana

T. 2 S., R. 1 E.,
Sec. 31, lots 1 and 2, and E½NW¼.
T. 2 S., R. 2 E.,
Sec. 33, lot 2.

Moorse Creek Grazing Association

Principal Meridian, Montana

T. 6 S., R. 2 W.,
Sec. 2, SW¼NE¼.

The areas described aggregate 814.39 acres in Beaverhead, Madison, and Yellowstone Counties.

2. In the exchange, the following described land has been reconveyed to the United States:

Principal Meridian, Montana

T. 3 S., R. 1 E.,
Sec. 10, lots 2 and 4, excluding therefrom the area contained within the state highway right-of-way lines, more particularly described in Bargain and Sale Deed recorded in Book 162, Page 148, Records of Madison County, Montana.

The area described contains 33.88 acres in Madison County.

Dated: March 6, 1995.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 95–6496 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–DN–P

[OR–120–6332–00; GP5–086]

Notice of Review Period on Draft Interim Management Plan for Cape Blanco Lighthouse Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has prepared a Draft Interim Management Plan for Cape Blanco Lighthouse site. The lighthouse site is located approximately 5 miles northwest of Port Orford, OR. The interim management plan will provide direction and management strategies during the five year permit period.

DATES: Comments should be submitted by April 17, 1995.

ADDRESSES: Comments should be sent to Myrtlewood Area Manager, BLM, 1300 Airport Lane, North Bend, OR 97459.

FOR FURTHER INFORMATION CONTACT: Raymond Orazem, BLM, Myrtlewood Resource Area, 503–756–0100.

SUPPLEMENTARY INFORMATION: On April 4, 1994, the U.S. Coast Guard issued the BLM an interagency permit which authorizes BLM to access the headland and lighthouse interior for public access, interpretation and tours. This project is a cooperative effort between the U.S. Coast Guard, Bureau of Land Management, Oregon Parks and Recreation Department, Oregon State Historic Preservation Office, Advisory Council on Historic Preservation, the Confederated Tribes of Siletz Indians of Oregon and the Coquille Indian Tribe.

Dated: March 7, 1995.

Neal Middlebrook,

Area Manager, Myrtlewood Resource Area.

[FR Doc. 95–6494 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–33–P

Supplementary Rules for Certain Public Lands Managed by the Bureau of Land Management Within the Yuba Reservoir Recreation Management Area (RMA), Richfield District, Utah

SUMMARY: These supplementary rules are necessary for the management of actions, activities, and public use on certain public lands which may have or are having adverse impacts on persons using public lands, on property, and on resources located on public lands

located in, or acquired for inclusion within, the Yuba Reservoir RMA.

The affected lands are located in the following areas:

Salt Lake Base Meridian

T.16 S., R.1 W.,
Sec. 19—All public lands south of the Old Botham Road;
Sec. 30—All public lands;
Sec. 31—All public lands.
T.16 S., R.2 W.,
Sec. 13—W½ SW¼;
Sec. 14—SW¼ NE¼, SE¼, E½ SW¼;
Sec. 23—E½ NW¼, E½, E½ SW¼;
Sec. 24—W½, W½ NW¼, W½ SE¼;
Sec. 25—All
Sec. 26—NE¼, E½ SE¼, S½ SW¼, NW¼ NW¼, S½ NW¼;
Sec. 35—E½ NE¼, NE¼ SE¼.
T.17 S., R.1 W.,
Sec. 4—All public lands west of S.R. 28;
Sec. 5—All public lands;
Sec. 6—All public lands;
Sec. 7—All public lands;
Sec. 8—All public lands;
Sec. 9—All public lands west of S.R. 28.
T. 17 S., R.2 W.,
Sec. 1—SE¼ NE¼, SE¼;
Sec. 12—E½.

FOR FURTHER INFORMATION CONTACT: Lynn Fergus, Bureau of Land Management, House Range Resource Area Office, P.O. Box 778 Fillmore, Utah 84631. Telephone: 801–743–6811.

SUPPLEMENTARY INFORMATION: The Utah State Director of the Bureau of Land Management is establishing these supplementary rules which are necessary for the protection of persons, property and public lands and resources within the Yuba Reservoir RMA, lands acquired for inclusion in the Yuba Reservoir RMA, and all lands that may be incorporated into Yuba Reservoir RMA, in the Richfield District, as provided for in 43 CFR 8365.1–6. Violations of these rules are punishable by a fine not to exceed $100,000.00 or imprisonment not to exceed 12 months, or both, as provided for under the Federal Land Policy and Management Act (Pub. L. 94–579) as amended by 18 U.S.C. 3571(b)(5). These rules are in addition to and supplement the rules found in 43 CFR 8300.

Supplementary Rules, Yuba Reservoir Recreation Management Area

Section 1.0 Administrative provisions

1.1 Permits

(a) An authorized officer may issue a permit to authorize an otherwise prohibited or restricted activity. Such permits may contain reasonable restrictions necessary to preserve and protect public lands and their resources, and to minimize interference with and inconvenience to other visitors.

(b) Violation of the terms and conditions of a permit is prohibited.

Section 2.0 Vehicle Operations and Traffic Safety

2.1 Unsafe Operation

The following are prohibited:

(a) Failing to maintain that degree of control of a vehicle necessary to avoid danger to persons, property or wildlife.

(b) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid, or break free of the road surface.

(c) Operating a vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, pedestrians, traffic, weather, road and light conditions and road character.

2.2 Obstructing Traffic

The following are prohibited:

(a) Stopping, parking, or leaving any vehicle, whether attended or unattended, upon the paved, graded, or maintained surface of a road, so as to leave less than ten (10) feet of the width of the same traffic lane for the free or unobstructed movement of other vehicles is prohibited, except in the event of accident or other conditions beyond the embedded control of the operator, or as otherwise directed by an authorized person.

(b) Causing or permitting a vehicle under one's control to obstruct traffic by driving so slowly as to interfere with the normal flow of traffic, or in any other manner, is prohibited.

2.3 Traffic Control Device

Failure to comply with the directions of a traffic control device is prohibited unless directed otherwise by an authorized person.

Section 3.0 Public Use and Recreation

3.1 Weapons

(a) The following are prohibited within Yuba Reservoir RMA:

(1) Possession of a loaded weapon, except as authorized under subsection (b), following.

(2) Intentional discharge of any weapon, except as authorized under subsection (b), following.

(b) The possession of loaded weapons, and their use, is allowed when the possessor is at the time involved in hunting within the Yuba Reservoir RMA in accordance with state law.

3.2 Glass Containers

The possession of glass containers, except within vehicles, is prohibited.

3.3 Preservation of Natural and Cultural Resources

(a) The following are prohibited:

(1) Possessing, destroying, taking, injuring, defacing, removing, harassing, or disturbing from its natural state; living or dead wildlife, or the parts or products thereof, such as antlers or nests, except when incident to hunting conducted in accordance with state law.

(2) Introducing wildlife, fish, or plants, including their reproductive bodies, into Yuba Reservoir RMA, except when authorized by the District Manager for administrative activities, or pursuant to the terms and conditions of a permit.

(3) Collecting live wood or other living plant material for use in a campfire or for any other purpose.

(4) Possessing, destroying, defacing, digging, or removing rocks or cave formations or parts thereof, or fossilized or non-fossilized paleontological specimens.

(5) Digging for, removing, destroying, damaging, disturbing, or possessing artifacts, rock art, or other cultural resources.

(6) Applying chalk to, making a rubbing of, making a casting of, painting upon, or making a latex or other mold of, any rock art.

3.4 Pets

(a) The following are prohibited:

(1) Allowing a pet to make noise that is unreasonable considering location, time of day or night, and impact on public land users.

(2) Failing to remove waste deposited by a pet at beaches and developed sites including, campgrounds, picnic areas, parking areas, and visitor centers.

(3) Allowing a pet, other than a seeing-eye dog, hearing-ear dog, or other animal specifically trained to assist a disabled person, to enter buildings operated by the Bureau of Land Management or the Utah Division of Parks and Recreation.

(4) Leaving a pet unattended and tied to an object.

(b) Pets or feral animals that are running-at-large and observed in the act of killing, injuring, or molesting humans, livestock, or wildlife may be destroyed by an authorized person, if necessary, for public safety or the protection of livestock or wildlife.

(c) Pets running-at-large may be impounded, and may be turned over to Juab County Animal Control or to another appropriate organization which will accept, care for, and dispose of such pets. The owner of such pets may be charged reasonable fees for kennel or boarding costs, feed, veterinary care, and transportation.

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(d) This section does not apply to dogs used by authorized Federal, State, and local law enforcement officers in the performance of their official duties.

3.5 Alcoholic Beverages

(a) The use and possession of alcoholic beverages within the Yuba Reservoir RMA allowed in accordance with the provisions of this section:

(1) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age.

(ii) The possession of an alcoholic beverage by a person under 21 years of age.

(b) The District Manager may close all or a portion of public buildings, or structures, parking lots, picnic areas, overlooks, walkways, historic areas, or archeological sites within Yuba Reservoir RMA to the consumption of alcoholic beverages when it is determined that:

(1) The consumption of alcohol would be inappropriate considering other uses of the location and the purpose for which it is maintained or established.

(2) Incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that diligent attempts to enforce applicable regulations do not alleviate the problem.

(3) Such closures maybe either by publication of the closure in the **Federal Register**, by the posting of appropriate signs, or both.

3.6 Disorderly Conduct

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or violent behavior.

(b) Uses language, an utterance or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

3.7 Property

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for more than 24 hours in a day use area, or 72 hours in other areas, unless the owner of the property by permit or registration is specifically authorized a longer period of time.

(3) Failing to turn in found property to an authorized person as soon as practical.

(b) Impoundment of property:

(1) Property left unattended in excess of the time limits in subsection (a)(2). above, may be impounded by an authorized person.

(2) Unattended property that interferes with visitor safety, orderly management of the Yuba Reservoir RMA, or presents a threat to public land resources may be impounded by an authorized person at any time.

(3) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded relevant to this section.

(c) Disposition of property:

Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days, and shall be disposed of in accordance with applicable regulations.

3.8 Camping

(a) By the posting of appropriate signs at the entrance to any campground or use area, the District Manager may establish special conditions or rules for use of any use area. Violation or such conditions or rules is prohibited.

(b) The following are prohibited:

(1) Failing to obtain a permit when required.

(2) Violation of the terms and conditions of any permit.

3.9 Tampering and Vandalism

The following are prohibited:

(a) Tampering or attempting to tamper with property or real property, or moving, manipulating, or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(b) Destroying, injuring, defacing, or damaging property or real property.

3.10 Closures

(a) The existing OHV closures of the Yuba Reservoir RMA will remain in effect and become permanent. Only that area west of old U.S. Highway 91 will remain open to use of existing roads and trails, and only between the hours of 6am and 10pm.

3.11 Public Assemblies or Meetings

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the Yuba Reservoir RMA, provided a permit therefor has been issued by the manager of the Yuba Reservoir RMA and a mass gathering permit, if over 25 participants, has been obtained from the Juab County Sheriff.

3.12 Spray Paint

The following are prohibited:

(a) The use of spray paint or paint-ball guns within Yuba Reservoir RMA, except for:

(1) The official business of any federal, state, county, or local governmental entity, or

(2) The necessary performance of work related to the maintenance or construction of any authorized improvements or facilities on public lands.

(b) The possession of spray paint within the Yuba Reservoir RMA, except when such containers of spray paint are:

(1) Located in the trunk of a motor vehicle, or

(2) If a motor vehicle is not equipped with a trunk, in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers.

3.13 Fees

With the publication of these rules, a daily use fee of $5.00 per vehicle is established. An additional fee is not required for towed vehicles or trailers.

(a) Self serve pay stations will be established for the periods when the entrances are not manned.

(b) Use of the area without a use permit will subject the user to an additional $10 field collection fee.

(c) Falsifying or otherwise intentionally misusing a permit is prohibited.

March 7, 1995.

Jerry Goodman,

District Manager.

[FR Doc. 95-6445 Filed 3-15-95; 8:45 am]

BILLING CODE 4310-DQ-P

[CO-942-95-1420-00]

Colorado: Filing of Plats of Survey

March 8, 1995.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m. on March 8, 1995.

The plat representing the dependent resurvey of a portion of the west boundary, the subdivisional lines, the subdivision of section 19 and the metes-and-bounds survey in section 19, T. 7 N., R. 94 W., Sixth Principal Meridian, Colorado, Group No. 1084, was accepted January 20, 1995.

The plat representing the dependent resurvey of portions of the west boundary, the subdivisional lines, and the metes-and-bounds survey of private land claims of T. 8 S., R. 99 W., Sixth Principal Meridian, Colorado, Group

No. 1012, was accepted December 16, 1994.

The supplemental plat, creating new lots 5 and 6 from original lot 3 in section 3, T. 6 S., R. 87 W. Sixth Principal Meridian, Colorado, was accepted February 1, 1995.

The supplemental plat, creating new lots 17 and 18 from original lot 5 in section 10, and new lots 17 and 18 from original lot 1 in section 16, T. 13 S., R. 92 W. Sixth Principal Meridian, Colorado, was accepted February 1, 1995.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat in two sheets represents the dependent resurvey of Homestead Entry Survey No. 343 and the metes-and-bounds survey of Tract 37, T. 10 N., R. 84 W., Sixth Principal Meridian, Colorado, Group No. 932, was accepted January 11, 1995.

The plat representing the dependent resurvey of portions of the Second Standard Parallel North (S. bdy., T. 9 N., R. 75 W.), the subdivisional lines, the subdivision of certain sections and tracts 37 and 38 and the subdivision of a portion of section 11 and the metes-and-bounds surveys in section 11 of T. 8 N., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 939, was accepted December 29, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the Colorado and Oklahoma state boundary from the Mile Corner 25 to Mile Corner 28, a portion of the 6th Auxiliary Correction Line South (N. Bdy.), and the west boundary, a portion of the subdivisional lines and a portion of certain tracts of fractional T. 35 S., R. 45 W., Sixth Principal Meridian, Colorado, Group No. 1044 and 1067, was accepted January 30, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines of T. 34 S., R. 45 W., Sixth Principal Meridian, Colorado, Group No. 1067, was accepted January 30, 1994.

The plat representing the dependent resurvey of a portion of the 6th Auxiliary Correction Line South (S. Bdy.), a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines and portions of certain tracts of T. 34 S., R. 46 W., Sixth Principal Meridian, Colorado, Group No. 1067, was accepted January 30, 1994.

The remonumentation of the south 1/16 section corner of sections 33 and 34 of T. 48 N., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 750, was accepted September 14, 1994.

The remonumentation of certain private land claim corners of T. 18 S., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 750, was accepted September 14, 1994.

These surveys were executed to meet certain administrative needs of the Colorado Department of Transportation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 95-6490 Filed 3-15-95; 8:45 am]

BILLING CODE 4310-JB-P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-703757

Applicant: Tarzan Zerbini Circus, Webb City, MO.

The applicant requests the renewal of a permit to re-export and re-import to and from Canada, 9 female Asian elephants (*Elephas maximus*) taken from the wild prior to 1971, two female Bengal tigers (*Panthera tigris*) born Dec. 7, 1966, and 9 male and 10 female captive-bred Bengal tigers (*Panthera tigris*) for the purpose of enhancement of the survival of the species through conservation education.

PRT-799726.

Applicant: Duke University Primate Center, Durham, NC.

The applicant requests a permit to import tissue samples from captive white-fronted lemurs (*Lemur fulvus albifrons*) at Parc Ivoloina, Madagascar for scientific research.

PRT-799733.

Applicant: Richard Limbach, Morse Bluff, NE.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Thornkoof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-799778

Applicant: Gladys Porter Zoo, Brownsville, TX.

The applicant requests a permit to export four captive-hatched Philippine crocodiles (*Crocodylus mindorensis*) to Silliman University, Dumaguete City, Philippines, for the purpose of enhancement of propagation and survival of the species through captive breeding.

PRT-676379/675990

Applicant: National Marine Fisheries Service, Southeast Region, St. Petersburg, FL.

The applicant requests a permit to import 180 live Kemp's ridley sea turtle hatchlings (*Lepidochelys kempii*) each year for the next two years for the purposes of enhancement of the survival of the species through internal wire-tagging and turtle excluder device development studies. These turtles will be held for up to 2 years then released in the Gulf of Mexico.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: March 10, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95-6441 Filed 3-15-95; 8:45 am]

BILLING CODE 4310-55-P

Receipt of Application(s) for Permit

The following applicant has applied for a permit amendment to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

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PRT–799099

Applicant: Dale W. Stahlecker, Santa Fe, New Mexico.

The applicant requests a permit to include take activities for the Southwestern willow flycatcher (*Empidonax traillii extimus*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–6465 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lot 35, Block H, Epping Forest Cover, Long Canyon, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Larry W. James (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–798674. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Epping Forest Cove, Long Canyon, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received on or before April 17, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours at the Ecological Services Field Office (8:00 to 4:30), at the above address in Austin, Texas. Written data or comments concerning the application should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to permit number PRT–798674 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Larry W. James plans to construct a single-family residence on Lot 35 of Long Canyon Subdivision, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impact less than four additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federal listed species present was not economically feasible.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–6466 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lots 9 and 10, Block C, Section 6, Talbot Lane, Rob Roy on the Creek, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Peter Van Cuylenburg (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–798667. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Talbot Lane, Rob Roy on the Creek, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received on or before April 17, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston, Ecological Services Field Office 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal

business hours at the Ecological Services Field Office (8:00 to 4:30), at the above address in Austin, Texas. Written data or comments concerning the application should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to permit number PRT–798667 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Peter Van Cuylenburg plans to construct a single-family residence on Lots 9 and 10, Block C, Section 6, Rob Roy on the Creek Subdivision, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impact less than four additional acres of golden-cheeked warbler per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–6468 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on Lot 37, Block G, Chambly Cove, Long Canyon, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Charles E. Dixon (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–798532. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Chambly Cove, Long Canyon, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publican of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received on or before April 17, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours at the Ecological Services Field Office (8:00 to 4:30), at the above address in Austin, Texas. Written Data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to permit Number PRT–798532 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Charles E. Dixon plans to construct a single-family residence on Lot 37 of Long Canyon Subdivision, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impact less than one additional acre of golden-cheeked warbler habitat per residence. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

James A. Young

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–6467 Filed 3–15–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32602]

The Indiana & Ohio Central Railroad Company, Inc.—Lease and Operation—West Central Ohio Port Authority

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345 the lease and operation by Indiana & Ohio Central Railroad Company, Inc., of the West Central Ohio Port Authority's (WESTCO PA) approximately 72.1 miles of rail line, formerly known as the Bellefontaine Cluster, in Clark, Champaign and Logan Counties, OH, subject to standard employee protective conditions. The Bellefontaine Cluster consists of: (1) The Bellefontaine Secondary Track, from milepost 98.8 near Bellefontaine, in Logan County, OH, to milepost 129.4, at a point of connection with the Catawba Secondary Track in Springfield, Clark County, OH; (2) the Catawba Secondary Track, from milepost 129.4, in Springfield, to milepost 130.6, at a point of connection with Consolidated Rail Corporation in Springfield; (3) the Catawba Secondary Track, from milepost 0.0 in Springfield, to milepost 17.2, at the end of the track in Mechanicsburg, Champaign County, OH; (4) the Urbana Industrial Track, from milepost 45.2 to milepost 50.03, in Urbana, Champaign County, OH; (5) the Urbana Secondary Track, from milepost 48.1, in Urbana, to milepost 54.2 in

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Bowlusville, Clark County, OH; (6) the Maitland Secondary Track, from milepost 124.5, in Glen Echo, Clark County, OH, to milepost 132.6, near Springfield; (7) a portion of the former main line of the Erie Railroad, from milepost 351.5, near Glen Echo, to milepost 353.1 in Urbana; and (8) a portion of the Old St. Mary's Branch, from milepost 53.3 to milepost 52.73, in Bellefontaine.

DATES: This exemption is effective on April 15, 1995. Petitions to stay must be filed by March 31, 1995. Petitions to reopen must be filed by April 10, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32602 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave., N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 2, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6499 Filed 3–15–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph A. Zadrozny, M.D.; Revocation of Registration

On November 7, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph A. Zadronsky, M.D., of Waltham, Massachusetts. The Order to Show Cause proposed to revoke Dr. Zadrozny's DEA Certificate of Registration, AZ1230426, under 21 U.S.C. 824(a)(3) and 824(a)(5), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Zadrozny on November 14, 1994. More than thirty days have passed since the Order to Show Cause was received by Dr. Zadrozny. The Drug Enforcement Administration has received no response from Dr. Zadrozny or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Zadrozny has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Deputy Administrator enters his final order in this matter without a hearing and based on the investigative file.

The Deputy Administrator finds that between July and October 1988, Dr. Zadrozny submitted claims for medical services under the Medicaid program of the Massachusetts Department of Public Welfare, and received a total of $10,907 in payments. In addition, Dr. Zadrozny billed for services not performed in the treatment of patients involved in automobile accidents. These claims were later determined to be fraudulent since there was no evidence that Dr. Zadrozny actually performed these medical services.

On November 25, 1991, in the Suffolk County Superior Court, Commonwealth of Massachusetts, Dr. Zadrozny was charged with 43 felony counts related to the filing of false Medicaid claims and larceny. Following a jury trial, on August 28, 1992, Dr. Zadrozny was found guilty of one felony count of Medicaid fraud and a second count of larceny. Dr. Zadrozny was sentenced to two years imprisonment, with 18 months suspended, and placed on two years probation.

As a result of his program related convictions, effective March 4, 1993, the Department of Health and Human Services mandatorily excluded Dr. Zadrozny from participation in the Medicare program for a period of five years pursuant to 42 U.S.C. 1320a–7(a). Pursuant to 21 U.S.C. 824(a)(5), such exclusion constitutes a basis for the revocation of Dr. Zadrozny's DEA Certificate of Registration.

On November 18, 1992, the Massachusetts Board of Registration in Medicine (Board) issued a Statement of Allegations proposing to discipline Dr. Zadrozny based upon his criminal convictions; his excessive and fraudulent billing for services not performed under the Medicaid program; and his failure to maintain adequate medical records. On June 8, 1994, the Board revoked Dr. Zadrozny's license to practice medicine, and as a result, his Massachusetts controlled substance registration was automatically terminated.

The Deputy Administrator finds that as of June 8, 1994, Dr. Zadrozny was no longer authorized to handle controlled substances in the Commonwealth of Massachusetts. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

The Deputy Administrator finds that grounds exist to revoke Dr. Zadrozny's DEA registration under 21 U.S.C. 824(a)(3) and (a)(5). No evidence of explanation or mitigating circumstances was offered by Dr. Zadrozny. Therefore, it is clear that Dr. Zadrozny's DEA Certificate of Registration must be revoked.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AZ1230426, previously issued to Joseph A. Zadrozny, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 17, 1995.

Dated: March 10, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–6509 Filed 3–15–95; 8:45 am]

BILLING CODE 4410–09–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on March 8, 1995, a proposed Second Modified Consent Decree in *United States of America* v. *City of New Bedford, Massachusetts*, Civil Action No. 87–2497–T, was lodged with the United States District Court for the District of Massachusetts. The United States' complaint sought relief under the Clean Water Act, 33 U.S.C. 1251, *et seq.* The Second Modified Consent Decree revises the existing Modified Consent Decree entered by the Court in 1990. The Second Modified Consent Decree provides for an extension in the deadline for completion of construction of secondary treatment facilities from May 1, 1995 to August 22, 1996, and requires the payment of $51,000 in stipulated penalties to the United States. It also provides for a revised sludge disposition approach by the City, under which the City is required to enter into primary long term and backup contracts for disposition of its sludge residuals and to maintain the design and permits for a backup residuals landfill which it is to construct in the event of difficulties with contractual disposition.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of New Bedford, Massachusetts*, D.J. Ref. 90–5–1–1–2823.

The proposed consent decree may be examined at the office of the United States Attorney, 1003 J.W. McCormack P.O. & Courthouse, Boston, Massachusetts 02109, and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G. St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $16.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 95–6498 Filed 3–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Missouri Electric Works, Inc. et al.*, Civil Action No. 1:95CV0004 LMB, was lodged on March 9, 1995 with the United States District Court for the Easter District of Missouri, Southeastern Division. Pursuant to the Consent Decree, Defendants Missouri Electric Works, Inc. and David B. Giles, Personal Representative for the Estate of Richard H. Giles, Decedent, will pay to the United States $190,000 and one-half of the net proceeds over $75,000 resulting from the sale of the inventory of Missouri Electric Works Inc. These payments will be used by the United States for unreimbursed response costs relating to the Missouri Electric Works, Inc. Superfund Site in Cape Girardeau, Missouri. The Consent Decree includes a covenant not to sue by the United States under Section 106 and 107 of the CERCLA, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Missouri Electric Works, Inc., et al.*, DOJ Ref. #90–11–2–614B. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Missouri, Southeastern Division, 325 Broadway, Second Floor, Cape Girardeau, Missouri; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $13.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6497 Filed 3–15–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: April 3–4, 1995; 8:30 a.m., til 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rm 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals for the Classical Analysis Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6543 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Systemic Reform (#1765).

Dates and Times: April 3–4, 1995 from 8:30 a.m. to 5:00 p.m.

Place: Marriott Hotel, 1221 22nd Street, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Anderson, Senior Project Director, Experimental Program to Stimulate Competitive Research, Office of Systemic Reform, Room 875, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate Experimental Systemic Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

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Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6542 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and Time: April 03, 1995, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact person: Dr. Jim Lightbourne, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1665.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Cross-Program Projects Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6541 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information, Robotics and Intelligent System (1200).

Date and Time: April 3–4, 1995, 8:30 a.m. to 5:00 p.m.

Place: Holiday Inn-Arlington Hotel, 4610 N. Fairfax Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6540 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (#1130).

Date and Time: April 4–5, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 310 & 310.2, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Erick Chiang, Manager, Polar Operations, OD/OPP, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone: (703) 306–1032.

Purpose of Meeting: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the OPP, Polar Operations Section.

Reason for Closing: This meeting is closed to the public because the Committee is reviewing proposal and contract actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussion were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6539 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Federal Networking Council Advisory Committee

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Federal Networking Council Advisory Committee (#1177).

Date and Time: April 4, 1995, 9:00 a.m. to 5:00 p.m. and April 5, 1995; 9:00 am. to 1:00 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Mr. Scott Behnke, Coordinator, Federal Networking Council, DynCorpATS, 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203–1614, Telephone: (703) 522–6410, Fax: (703) 522–7161. Internet: sbehnke@csto.snap.org.

Purpose of Meeting: The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN) Program.

Agenda: FNC/IITF Relationship, Federal Internet Umbrella Security Plan, International Networking, Education.

Luncheon: There is no fee to attend this meeting. However, attendees who register in advance may order refreshments and/or a box lunch for which there will be a charge. To obtain registration form, contact Mr. Behnke by telephone, fax, or electronic mail at the numbers above. Forms are requested by March 29, 1995.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6538 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: April 5–6, 1995, 8:30 a.m. to 5:00 p.m.

Place: Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1962.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the New Technologies Program

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6537 Filed 3–15–95; 8:45 a.m.]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry & Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Advisory Panel for Biochemistry & Molecular Structure and Function (#1134).

Date and Time: Thursday and Friday April 6–7, 1995, 8:30 a.m. to 5:00 p.m.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Closed.

Contact Person: Dr. Robert L. Uffen, Program Director and Brenda Flam, Program Manager for Metabolic Biochemistry, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1443.

Purpose of meeting: To provide advice and recommendations concerning research proposals submitted to the Metabolic Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[Fr Doc. 95–6536 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (#1130).

Date and time: April 6, 1995 8:30 a.m.–5:30 p.m./April 7, 1995 8:30 a.m.–3:00 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Open.

Contact person: Dr. Dennis Peacock or Dr. Jane Dionne, National Science Foundation, Room 775, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: (703) 306–1033.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: Serves to provide expert advice to the U.S. Antarctic Programs and the Arctic Program, including advice on science programs, polar operations support, budgetary planning and polar coordination and information.

Agenda: The OPP Advisory Committee will meet to discuss the following agenda topics—Arctic logistics, organization, Polar Duke update, polar education programs, User Committee update and the Committee on Visitors report.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6535 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Systemic Reform (#1765).

Date and time: April 6–7, 1995 from 8:30 a.m. to 5:00 p.m.

Place: Marriott Hotel, 1221 22nd Street, Washington, DC.

Type of meeting: Closed.

Contact person: Dr. Richard J. Anderson, Senior Project Director, Experimental Program to Stimulate Research, Office of Systemic Reform, Room 875, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1683.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate Systemic Improvement proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: March 13, 1995.

[FR Doc. 95–6534 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Physiology and Behavior (Ecological & Evolutionary Physiology).

Date and time: April 5–7, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 320, 4201 Wilson Blvd., Arlington, VA

Type of meeting: Part-Open.

Contact person: Dr. David Vleck, Program Director, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 7, 1995; 10:00 a.m. to 11:00 a.m.—for a discussion, Integrative Biology and Neuroscience on research trends and opportunities assessment procedures in Ecological and Evolutionary Physiology.

Closed Session: April 5th and 6th, 8:30 a.m.–5:00 p.m.; April 7th, 8:30 a.m. to 10:00 a.m.; 11:00 a.m. to 5:00 p.m. To review and evaluate Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6533 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

Division of Environmental Biology; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

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Foundation (NSF) announces the following meetings:

Name: Advisory Panel for Ecological Studies (#1751).

Date and time: April 5, 1995, 3 pm–5 pm; April 6, & April 7, 1995, 8:30 am–5 pm each day.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact person: Dr. Clifford Dahm, Program Director, Ecological Studies Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Ecosystem Studies proposals as part of the selection process for awards.

Name: Advisory Panel for Ecological Studies (#1751).

Date and time: April 5, 1995, 3 pm–5 pm; April 6 and April 7, 1995, 8:30 am–5 pm each day.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact person: Dr. Scott L. Collins, Program Director, Ecological Studies Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology (#1753).

Date and time: April 19–21, 1995, 8 am–5 pm each day.

Place: Room 375(1) and 375(3), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact person: Dr. James E. Rodman, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Minutes: May be obtained from the contact person above.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Name: Advisory Panel For Systematic and Population Biology (#1753).

Date and time: April 12–14, 1995, 8 am–5:30 pm each day.

Place: Rooms 330 & 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact person: Dr. Mark Courtney, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1481.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology (#1753).

Date and time: April 20, 1995, 8 am–5 pm.

Place: 375(1), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact person: Dr. James Rodman, Program Director, Systematic and Population Biology Cluster, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1481.

Minutes: May be obtained from the contact person listed above.

Agenda: To review and evaluate Partnerships for Enhancing Expertise in Taxonomy (PEET) proposals as part of the selection process for awards.

Type of meeting: Closed.

Purpose of meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6544 Filed 3–15–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York (Indian Point Nuclear Generating Unit No. 2); Exemption

I

Consolidated Edison Company of New York, Inc. (Con Edison or the licensee) is the holder of Facility Operating License No. DPR–26, which authorizes operation of Indian Point Nuclear Generating Unit No. 2 (the facility or IP2), at a steady-state reactor power level not in excess of 3071.4 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Westchester County, New York. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection of the primary containment.

III

By letters dated September 19, 1994, January 13, 1995, and February 3, 1995, Con Edison requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 24 months (from the 1995 refueling outage, currently scheduled to begin in February 1995, to the 1997 refueling outage) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. They point out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at IP2 during the five Type A tests conducted from 1976 to date, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Additionally, the Indian Point 2 Containment Penetration and Weld Channel Pressurization System provides a means for continuously pressurizing the positive pressure zones incorporated into the containment penetrations, the channels over the welds in the steel inner liner and certain containment isolation valves. This system provides continuous monitoring of these potential containment leakage paths, thus providing further assistance during power operation that a leak path does not exist and further obviates the need for Type A testing at this time. Therefore, application of the regulation in this particular circumstance would not serve, nor is it necessary to achieve, the underlying purpose of the rule.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 24 months. The Commission has determined, for the reasons discussed below, that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation of the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leaktight containment. All Type A tests have passed with significant margin and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licensee has stated to the NRC Project Manager that they will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The NRC staff also notes that the unique IP2 Containment Penetration and Weld Channel Pressurization System provides a means for continuously monitored potential containment leakage paths.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. this is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The IP2 experience has also been consistent with these results.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at IP2 would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J, Type A test, provided that the general containment inspection is performed, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 12787).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 8th day of March 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6483 Filed 3–15–95; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Withholding Certificate for Railroad Retirement Monthly Annuity Payments
(2) *Form(s) submitted:* RRB W–4P
(3) *OMB Number:* 3220–0149
(4) *Expiration date of current OMB clearance:* April 30, 1995
(5) *Type of request:* Revision of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 31,000
(8) *Total annual responses:* 31,000
(9) *Total annual reporting hours:* 1
(10) *Collection description:* Under Public Law 98–76 railroad retirement beneficiaries' Tier 2, dual vested and supplemental benefits are subject to income tax under private pension rules. Under Public Law 99–514, the non-social security equivalent benefit portion of Tier 1 is also taxable under private pension rules. The collection obtains the information needed by the Railroad Retirement Board to implement the income tax withholding provisions.

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ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–6492 Filed 3–15–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35471; File No. SR–NASD–95–9]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Trading of Exchange-Listed Securities in the Over-the-Counter Market

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to make three significant changes to rules governing NASD members' over-the-counter ("OTC") trading in exchange-listed securities. First, the NASD proposes to require NASD members registered as Consolidated Quotations Service ("CQS") market makers to display certain customer limit orders in their quotes. Second, the NASD proposes to prohibit NASD members who are not Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES") market makers from effecting a transaction in any ITS/CAES-eligible security that "trades-through" (*i.e.*, a purchase below the lowest bid or a sell above the highest offer) the best bid or offer displayed by any ITS/CAES market maker or any ITS Participant Exchange in that stock. Third, the NASD proposes to require all NASD members executing customer orders in ITS-eligible securities to afford such orders some opportunity for price improvement.

The full text of the proposed rule change is set forth below. (New language is italicized.)

Schedule D

PART VI

CONSOLIDATED QUOTATIONS SERVICE

(CQS)

Sec. 2. Obligations of CQS Market Makers

(a) No Change

(b) No Change

(c) A CQS market maker shall be required to process customer limit orders in securities eligible for inclusion on the ITS/CAES linkage in the following manner:

(i) if the limit order is for 500 shares or less, the CQS market maker either must execute the limit order immediately or display it in its quotation with a minimum size of 500 shares (unless the specified minimum for that security is less than 500 shares); or

(ii) if the limit order is for greater than 500 shares, the order's price must be reflected in the market maker's quotation, provided however, that if the size displayed with that updated quotation price is less than the limit order's size, the balance of the limit order must be executed at a price at least as favorable as the displayed price.

* * * * *

Schedule G

* * * * *

Sec. 1. Definitions

* * * * *

(g) The terms "Participant Market," "ITS System," "ITS/CAES Market Maker," and "ITS Security" shall have the same meanings as set forth in section (a) of The Rules of Practice and Procedure for Intermarket Trading System/Computer Assisted Execution System Automated Interface.

* * * * *

Sec. 4. Trading Practices

* * * * *

(j) No member shall effect a trade in a security eligible for inclusion in the ITS/CAES Linkage, whether as principal or agent, at a price that is lower than the best bid or higher than the best offer currently displayed by an ITS/CAES Market maker or another Participant market (hereinafter referred to as a "trade-through") between 9:30 a.m. and 4:00 p.m. Eastern Standard Time (or such shorter period of time coinciding with the time that the primary market for a particular ITS/CAES security is open) unless one of the following conditions exists: (1) the size of the bid or offer that is traded through is for 100 shares; (2) the transaction that constitutes the trade-through is not a "regular way" contract; (3) the bid or offer that is traded-through is being displayed from a Participant Market whose members are relieved of their obligations under paragraph (c)(2) of Securities Exchange Act Rule 11Ac1–1 with respect to such bid of offer; or (4) the bid or offer that is traded-through has caused a locked or crossed market in the affected ITS Security. The foregoing requirements shall not apply to trade-throughs effected by ITS/CAES Market Makers and governed by Sections (h)(1)(A)–(E) of the ITS/CAES Rules

(k) Between 9:30 a.m. and 4:00 p.m. Eastern Standard Time (or such shorter period of time coinciding with the time that the primary market for a particular ITS-eligible security is open), no member shall accept customer orders in securities eligible for inclusion in the ITS System for execution in the over-the-counter market, either as agent or principal, unless the member affords such orders some opportunity for price improvement over the best bid (in the case of a retail sell order) or best offer (in the case of a retail buy order) prevailing among the Participant Markets in the ITS System. A member can satisfy this requirement either by a manual procedure or an algorithm built into its internal order processing system. The specific parameters for granting price improvement at a member firm will be determined by competitive forces and the business judgment of the firm's management.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposal is intended to respond to specific recommendations contained in the SEC's *Market 2000 Report* for improving the efficiency and effectiveness of the OTC dealer markets in exchange-listed securities, including ITS/CAES eligible securities.[2] The instant proposal would effect the following changes in selected NASD rules governing members' OTC trading in exchange-listed securities.

1. Display of Customer Limit Orders

Part VI of Schedule D to the NASD By-Laws establishes various regulations applicable to member firms that utilize the CQS to support their OTC market making in exchange-listed securities. Under the proposal, new Section 2(c) would specify the circumstances in which a CQS market maker in an ITS/CAES eligible security would be required to reflect customer limit orders in the firm's displayed CQS quotation. First, for customer limit orders of 500 shares or less, a CQS market maker would be required either to provide an immediate execution at the limit price or update its CQS quotation to reflect the customer's by/sell interest at the limit price. The size associated with that quotation must be 500 shares unless the NASD has designated a lower minimum size for CQS quotations in that particular security.[3] (This would be true even if, for example, the pending limit order were only for 200 shares.) Second, if a customer's limit order exceeds 500 shares, the market maker must update its CQS quotation to reflect the superior price of the customer limit order. If the market maker elects not to reflect the entire size of the pending limit order in the firm's updated quotation, the balance of the limit order must be executed at a price at least as favorable as the displayed price. In sum, this modification would result in the exposure of customer limit orders in ITS/CAES eligible securities to other CQS market makers as well as exchange specialists who would have the ability to interact with such orders through the ITS/CAES Linkage[4] or CAES.[5]

2. Trade-Through Prohibition

The proposal also contains two substantive changes to NASD trading practice regulations applicable to members effecting OTC trades in ITS/CAES securities. The first addresses the possibility of a member firm effecting an OTC trade in a ITS/CAES eligible security at a price inferior to a displayed market for that security in the ITS system. Currently, NASD regulations in this area only cover members that have registered as ITS/CAES market makers pursuant to the NASD Rules of Practice and Procedure for the Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES Rules"). The proposed prohibition would apply to all member firms that effect trades in ITS/CAES eligible securities without being registered as ITS/CAES market makers in those securities, e.g., block positioning firms and order-entry firms. It would also apply to the remote circumstance where a registered ITS/CAES market maker effects a trade-through in an ITS/CAES eligible security in which the firm does not maintain a market making position.

The NASD expects that instances of trade-throughs by its members should diminish with the recent implementation of an NASD requirement that all CQS market makers in ITS/CAES eligible securities become registered as ITS/CAES market makers pursuant to the ITS/CAES Rules.[6] Nevertheless, it is still possible for an NASD member who is not a registered ITS/CAES market maker to effect a trade in an ITS/CAES eligible security at a price that constitutes a trade-through under the ITS/CAES Rules.[7] Accordingly, the proposed rule would prohibit such conduct, unless the circumstances satisfied one of the four exceptions contained in the proposal: (1) the size of the market traded-through was 100 shares; (2) the transaction itself is not for regular-way settlement (e.g., a "cash" transaction settling the same day); (3) the bid/offer traded-through emanated from a market whose members are relieved of their obligations under the SEC's Firm Quote Rule;[8] or (4) the bid/offer traded through had caused a locked/crossed market condition in the affected security. (These four exceptions also exist under the ITS/CAES Rules applicable to ITS/CAES market makers.) In addition, the proposed trade-through rule would apply only between 9:30 a.m. and 4:00 p.m. Eastern Standard Time ("E.S.T."), or such short period of time coinciding with time that the primary market for a particular ITS/CAES security is open.

Essentially, the proposed trade-through prohibition impacts only those NASD members that conduct business in Rule 19c–3 securities without being registered as ITS/CAES market makers in those issues. As such, these firms cannot avail themselves of the procedural mechanisms prescribed by the ITS/CAES rules for resolving inter-market complaints of trade-throughs by providing stock to another ITS participant. For this reason, the NASD will regard a violation of the proposed prohibition as a course of conduct warranting referral to the NASD's Market Surveillance Committee for possible disciplinary action. The NASD will not, however, compel the offending member to provide satisfaction to any ITS participant that was traded-through, even if the latter promptly complains and requests satisfaction. This result is appropriate because the NASD does not wish to compel members who periodically trade ITS/CAES eligible securities (whether as agent or principal) to assume the obligations of an ITS/CAES market makers as a condition of continuing to trade such securities. On the other hand, the trade-through prohibition is designed to ensure that non-ITS/CAES market makers will not ignore the superior bids or offers in Rule 19c–3 securities that may be displayed by ITS/CAES market makers or exchange participants in the ITS System.

3. Price Improvement

The second substantive change involving Section 4 of Schedule G relates to price improvement respecting retail orders executed OTC in securities eligible for inclusion in the ITS System.[9] This initiative also responds to a recommendation contained in the SEC's *Market 2000 Report*. Basically, new Section 4(k) in Schedule G would require that members executing market orders from retail customers in ITS-eligible securities (either as principal or agent) afford such orders some opportunity for price improvement, *i.e.*,

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[1] The NASD originally submitted the proposed rule change on February 21, 1995. As a result of discussions on March 6, 1995, between the Commission staff and the NASD certain minor amendments to the filing were agreed upon. This notice reflects those amendments.

[2] Operation of ITS/CAES is governed by a national market system plan known as the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act")" (hereinafter referred to as the "ITS Plan"). Under the ITS Plan, NASD members participating as ITS/CAES market makers must confine their market making to "Rule 19c–3 securities." This grouping consists of securities that were (1) not traded on a national securities exchange prior to April 26, 1979 or (2) traded on such an exchange on April 26, 1979, but thereafter ceased to be traded on an exchange for some period of time.

[3] At the present time, the NASD has not designated any CQS security as subject to a minimum quotation size of 200 shares.

[4] As discussed *infra* at note 6 and accompanying text, all CQS market makers in ITS/CAES-eligible securities must now be registered as ITS/CAES Market Makers.

[5] CAES is an automated system regulated by the NASD and operated by The Nasdaq Stock Market, Inc. that allows NASD members to direct agency orders (and principal orders with this rule change) in exchange-listed securities to CAES for automated execution in the third market. CAES market makers are CQS market makers who have registered as CAES market makers.

[6] See Securities Exchange Act Release No. 34280 (June 29, 1994); 59 FR 34880 (July 7, 1994). This requirement took effect on October 31, 1994.

[7] In order to comply with the trade-through prohibition, a member firm would need to access a CQS display on its Nasdaq Workstation device or subscribe to a vendor service offering equivalent display capabilities. From a surveillance perspective, the NASD would develop an exception report capable of identifying trade-throughs that constituted violations of the proposed rule.

[8] See Securities Exchange Act Rule 11Ac1–1.

[9] Accordingly, this price improvement requirement would cover all non Rule 19c–3 securities as well as all Rule 19c–3 securities.

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an execution at a price superior to the best bid or offer currently reflected in the ITS System. It is the NASD's understanding that most firms trading exchange-listed securities in the OTC market already provide some form of price improvement opportunity, depending on factors such as order size and the trading characteristics of the particular security, and that there is no uniform way to achieve price improvement. This is to be expected as affording customers price improvement opportunities is driven by competitive considerations to attract and retain order flow from order entry firms. Thus, in light of the varied means by which firms offer price improvement and the competitive nature of price improvement, the NASD has concluded that it would be too limiting and restrictive for the NASD to mandate and articulate specific parameters for granting price improvement to individual orders in ITS-eligible securities. Rather, the NASD believes that it is sufficient to adopt a more generalized provision specifying that members must afford some opportunity for price improvement in executing customer orders in exchange-listed securities. Accordingly, under the proposal, price improvement, at a minimum, would have to involve either exposing customer orders to an algorithm incorporated into the firms' in-house execution system or manually reviewing incoming orders prior to their execution. The NASD believes that this flexible approach to mandating price improvement is appropriate and that firms should be encouraged to experiment with the specific parameters for granting price improvement. In addition, the proposed price improvement requirement would apply only between 9:30 a.m. and 4:00 p.m. E.S.T., or such shorter period of time coinciding with the time that the primary market for a particular ITS-eligible security is open.

The NASD believes that this proposed rule change is consistent with the requirements of Sections 11A(a)(1) and 15A(b)(6) of the Act. Section 11A(a)(1) specifies the Congressional findings and objectives for a national market system. These include the fostering of economically efficient execution of securities transactions; the promotion of fair competition among brokers and dealers, and between exchange markets and over-the-counter securities markets; and facilitating the best execution of customers' orders. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating and facilitating securities transactions; remove impediments to and perfect the mechanisms of the national market system; and in general to protect investors and the public interest. The NASD submits that its proposal will advance these objectives by facilitating the prompt execution of customer limit orders in ITS/CAES eligible securities in circumstances where the limit price is superior to the best bid/offer reflected in the ITS System; by curbing instances of trade-throughs in such securities by broker-dealers that are NASD members, but are not registered as ITS/CAES market makers in the affected securities; and by mandating all firms that accept and execute customer orders in securities eligible for inclusion in the ITS System provide some opportunity for price improvement in the execution of such orders. Collectively, these changes will enhance the protections afforded investors trading exchange-listed securities in the OTC market and promote the integrity, fairness and price discovery process of the OTC market for exchange-listed securities. These rule changes also will facilitate the execution of investors' orders in exchange-listed securities in the OTC market at the best available price; regardless of whether that price emanates from an exchange participant in ITS or an ITS/CAES market maker. Moreover, the new trade-through prohibition will diminish the confusion that occasionally results when the Consolidated Tape reflects a trade-through by an NASD member firm which is not registered as an ITS/CAES market maker.

Furthermore, because the NASD believes these proposals are responsive to specific recommendations made in the SEC's *Market 2000 Report* and because the NASD has addressed or responded to all of the other recommendations in the Report concerning trading in the third market, the NASD believes the SEC should take prompt action to expand the ITS/CAES Linkage to include non-Rule 19c–3 securities. Requiring NASD members to adhere to these new rules without expanding the ITS/CAES linkage would be particularly burdensome and unfair given that NASD members will be obligated to comply with these new rules and automated access to the primary markets for non-19c–3 securities through ITS will facilitate compliance with these rules by NASD members. If the ITS/CAES linkage were expanded to include all ITS-eligible securities, the NASD would correspondingly propose to expand the scope of the proposed trade-through rule and the limit order display rule to apply to all ITS-eligible securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6504 Filed 3–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35467; File No. SR–MSRB–95–1]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to an Extension of the CDI Pilot System from April 6, 1995 Through December 31, 1995

March 10, 1995.

On March 7, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–95–1), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested people. The Board has requested accelerated approval of the proposed rule change in order to permit the Pilot system to continue to operate without interruption.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to request an extension, from April 6, 1995, through December 31, 1995, of its Continuing Disclosure Information ("CDI") Pilot system of the Municipal Securities Information Library (MSIL) system.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 6, 1992, the SEC approved the CDI Pilot system for an 18-month period.[2] The CDI Pilot system began operating on January 23, 1993, and functions as part of the Board's MSIL system. The CDI Pilot system accepts and disseminates voluntary submissions of official disclosure notices relating to outstanding issues of municipal securities, *i.e.*, continuing disclosure information. During its first phase of operation, the system accepted disclosure notices only from trustees. On May 17, 1993, the Pilot system also began accepting notices from issuers.[3] On September 1, 1993, the Commission approved an 18-month extension of the Pilot system, which extension will expire on April 6, 1995.[4]

On November 10, 1994, the Commission approved amendments to its Rule 15c2–12 which prohibit a dealer from underwriting a new issue of municipal securities unless the issuer commits, among other things, to provide material events notices to the Board's CDI Pilot system or to all Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs") and to the applicable state information depository.[5] In addition, the Rule prohibits a dealer from recommending the purchase or sale of a municipal security unless the dealer has in place procedures that provide reasonable assurance that it will receive prompt notice of material events.[6] The Board is considering certain changes to the CDI Pilot system consistent with the new Commission requirements, including reconsideration of certain issuer and trustee enrollment procedures and page limits on submissions.

The Board believes that an extension of the operation of the CDI Pilot system will give it sufficient time to determine the system changes needed, in consultation with the Commission as well as potential users of the system, including NRMSIRs. We anticipate filing system changes well before the December 31, 1995, extension date. At that time, the Board also plans to ask the Commission for permanent approval of the revised CDI system.

(b) The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board will continue to operate the output of the CDI Pilot system to ensure that the information is available to any party who wishes to subscribe to the service. As with all MSIL system services, this service is available, on equal terms, to any party requesting the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after

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[10] 17 CFR 200.30–3(a)(12).

[1] The MUNICIPAL SECURITIES INFORMATION LIBRARY system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

[2] Securities Exchange Act Release No. 30556 (April 6, 1992), 57 FR 12534. A complete description of the CDI system is contained in File No. SR–MSRB–90–4, Amendment No. 1.

[3] On May 17, 1993, the Board reported to the Commission on the initial phase of operation of the CDI system regarding technical, policy and cost issues and proposed enhancements to the system.

[4] Securities Exchange Act Release No. 32825 (September 1, 1993), 58 FR 47306.

[5] Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590. This provision of the Rule will become effective on July 3, 1995.

[6] The effective date of this provision of the Rule is January 1, 1996.

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publication of the notice of filing in the **Federal Register**. The Board believes that such accelerated approval would permit the Pilot system to continue to operate without interruption. The Board further believes that the CDI Pilot system will increase the integrity and efficiency of the municipal securities market by helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–1 and should be submitted by April 6, 1995.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**, in that accelerated approval is appropriate to provide for uninterrupted operation of the CDI system.

It Is Therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved for an additional 8-month period ending on December 31, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6444 Filed 3–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20950; File No. 811–5647]

Voltaire Capital, Inc.; Application for Deregistration

March 10, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Voltaire Capital, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on January 4, 1995, and amended on March 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 4, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o SCOR U.S. Corporation, 110 William Street, 18th Floor, New York, New York 10038.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company that was organized as a Maryland corporation. On August 30, 1988, applicant registered under the Act as an investment company. On November 28, 1988, applicant filed a registration statement on From N–1A under the Securities Act of 1933. The registration statement was never declared effective, and applicant never made any public offer or sale of its securities.

2. At all times, applicant had only one shareholder. From 1988 to 1990, applicant's stock was owned by UAP Reassurrances, which is a wholly-owned subsidiary of UAP Group, a publicly traded French corporation. In 1990, SCOR, S.A., a French corporation whose securities are publicly traded in France, succeeded to the ownership of applicant's stock following a combination with UAP Reassurances. During applicant's existence, applicant's sole shareholder contributed capital to and withdrew capital from applicant from time to time.

3. On February 1, 1995, applicant made a final distribution of $35,129.63 to its sole shareholder. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. On February 3, 1995, applicant's Articles of Dissolution were filed with and approved by the State of Maryland. Applicant is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6503 Filed 3–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26249]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

March 10, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 3, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Kingsport Power Company, et al. (70–8581)

Kingsport Power Company ("Kingsport"), 422 Broad Street, Kingsport, Tennessee 37660, and Wheeling Power Company, Inc. ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, electric utility subsidiary companies of American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

Kingsport and Wheeling propose to issue from time-to-time through December 31, 1996, up to $19 million and $28 million at any one time outstanding, respectively, unsecured promissory notes ("Notes") to one or more commercial banks, other financial institutions or institutional investors in accordance with a term-loan agreement. The Notes will mature in not less than nine months nor more than ten years and will have a fixed or floating rate of interest, or a combination of both. The actual rate of interest of each Note shall be subject to negotiations between the borrower and the lender, but any fixed rate of interest will not exceed 250 basis points over the yield, at issuance, of U.S. Treasury obligations with comparable maturity dates, and a floating rate will not exceed 200 basis points over the prime rate as announced from time to time by a major bank. No fees or compensating balances will be paid to or maintained with a lender. However, if a bank or financial institution arranges financing with a third party, the institution may charge a placement fee not in excess of 7/8 percent of the principal amount of the borrowing.

Kingsport and Wheeling will use the proceeds from the sale of the Notes to refund long-term debt and, to the extent internally generated funds are insufficient, to fund their respective construction programs or to repay short-term unsecured debt incurred to refund long-term debt or to fund its construction program. Kingsport has two maturing term loans: (1) a $2 million term loan due November 1, 1995, bearing interest at 9.72 per annum; and (2) a $10 million term loan due January 22, 1996, bearing interest at 10.78% per annum. At February 1, 1995, Kingsport had $3.35 million short-term debt outstanding. Kingsport estimates that its construction costs will be $9 million during 1995. Wheeling has two maturing term loans: (1) an $11 million term loan due November 1, 1995, bearing interest at 9.72% per annum; and (2) a $10 million term loan due January 22, 1996, bearing interest at 10.78% per annum. At February 1, 1995, Wheeling had $7.825 million of short term debt outstanding. Wheeling estimates that its construction costs will be $5.5 million during 1995 and $4.6 million during 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6443 Filed 3–15–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2179]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, April 8, 1995 at 10:30 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 12:00 noon and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in September 1994 and the announcement of gifts and loans of furnishings as well as financial contributions for calendar year 1994.

Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the fine Arts Office by Wednesday, April 5, 1995, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: March 3, 1995.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 95–6493 Filed 3–15–95; 8:45 am]

BILLING CODE 4710–38–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Fort Lauderdale Executive Airport; Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised noise exposure maps submitted by the City of Fort Lauderdale for the Fort Lauderdale Executive Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of FAA's determination on the revised noise exposure maps is March 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for the Fort Lauderdale Executive Airport are in compliance with applicable requirements of Part 150, effective March 7, 1995.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation

[7] 15 U.S.C. 78s(b)(2).

[8] 17 U.S.C. 200.30–3(a)(12)

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Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approved which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by the City of Fort Lauderdale. The specific maps under consideration are "Existing Conditions (1994) Noise Exposure Map" and "Five-Year Forecast (1999) Noise Exposure Map" in the submission. The FAA has determined that these maps for the Fort Lauderdale Executive Airport are in compliance with applicable requirements. This determination is effective on March 7, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to find the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the revised noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397

Airport Manager's Office, Fort Lauderdale Executive Airport, 1401 West Commercial Blvd., Suite 200, Fort Lauderdale, Florida 33309

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, March 7, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–6515 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting; correction.

SUMMARY: The notice corrects the start time described in a notice of meeting published on March 6, 1995 (60 FR 12280).

DATES: The meeting will be held on March 24, 1995, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. Reginald C. Matthews, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: On March 6, 1995, the Federal Aviation Administration published a notice announcing an Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues. Under **SUPPLEMENTARY INFORMATION,** that document erroneously indicated 1 p.m. as the start time for the meeting. The correct start time for the meeting is 9 a.m.

Issued in Washington, DC., on March 10, 1995.

Reginald C. Matthews,

Assistant Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc. 95–6516 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lebanon Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy J. Edwards, Airport Manager for Lebanon Municipal Airport at the following address: Lebanon Municipal Airport, 5 Airport Road, West Lebanon, New Hampshire, 03784.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lebanon under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 6, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Lebanon was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than June 5, 1995.

The following is a brief overview of the use application.

Level of the proposed PFC: $3.00

Proposed change effective date: July 15, 1995

Proposed charge expiration date: July 15, 1995

Estimated total net PFC revenue: $449,297

Brief description of projects:

Impose and use projects:

- Reconstruct Runway 7–25
- Improve Runway 7–25 Safety Areas
- Design and Extend Taxiway A
- Purchase Snow Removal Equipment
- Environmental Assessment/Runway 18–36 (Phase I)
- Environmental Assessment/Runway 18–36 (Phase II)
- Design Runway 18–36 Reconstruction
- Purchase Aircraft Rescue and Fire Fighting Vehicle
- Purchase Snow Removal Equipment

Impose Only Projects:

- Reconstruction of Runway 18–36
- Expand General Aviation Expansion (South Ramp)
- Reconstruct Taxiway A

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non Excluded.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lebanon Airport, 5 Airpark Road, West Lebanon, New Hampshire 03784.

Issues in Burlington, Massachusetts on March 8, 1995.

Bradley A. Davis,

Assistant Manager, Airports Division New England Region.

[FR Doc. 95–6517 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Edmonds, Snohomish County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the Proposed Edmonds Multi-Modal Transportation Center project in the city of Edmonds, Snohomish County Washington.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Division Administrator, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9413; Paul L. Green, Director/CEO, Washington State Ferries, 801 Alaska Way, Seattle, Washington 98104–1487, Telephone 206–464–7800; Paul Mar, Director of Community Services, City of Edmonds, 250 5th Avenue, Edmonds, Washington 98020, Telephone (206) 771–0220.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation, the Federal Transit Administration, the U.S. Army Corps of Engineers, Community Transit, and the city of Edmonds will prepare an EIS for a proposed Edmonds Multi-Modal Transportation Center project in the city of Edmonds, Snohomish County, Washington. The proposed action will integrate Edmonds' ferry, rail, and bus transportation needs in a new complex. More specifically, the multi-modal facility will provide: a ferry terminal that meets the operational requirements to accommodate forecasted ferry ridership demands; a train station that meets the inter-city passenger service and commuter rail loading requirements; a transit center that meets the local bus system and regional transit system loading requirements; and a linkage system between these station/terminals that meets the operational and safety requirements of each mode.

This project is intended to address the conflicts between ferry, rail, auto, and pedestrian traffic in the confined area of downtown Edmonds. During ferry loading and unloading operations, all other non-ferry traffic is disrupted. The lack of grade separation between the rail line and ferry access often creates slowdowns in ferry operation. These conflicts interrupt the efficient movement of people and goods in and through the downtown area, create an unsafe facility for users of all modes, complicate access to local businesses and, in general, stymie the economic development of the City's downtown. Relocating the terminal to another location away from the immediate downtown area is seen as a solution to these conflicts. Access to the ferry terminal is via SR 104 through the downtown area, bisecting the commercial district and the regional waterfront park. Relocating the ferry terminal and SR 104 will thus separate ferry and non-ferry traffic and eliminate current conflicts. In addition, the existing ferry terminal is inadequate to handle today's ferry demands. The facility needs to be upgraded to include two landing slips and a separate loading/unloading facility for walk-on passengers. Currently, walk-on passengers loan and unload through the car deck, raising concern regarding safety and Americans with Disabilities Act (ADA) compliance. Finally, the existing train station does not meet ADA standards and needs major structural upgrading. To promote non-auto modes, the train station would be located close to the relocated ferry terminal.

Two preliminary build alternatives and the no action alternative have been identified for analysis in the EIS. The two build alternatives would establish the proposed multi-modal center by relocating the existing Washington State Ferry terminal from Main Street to one of two sites: (1) Point Edwards Site located approximately ¾ mile south of Main Street, and (2) a Mid Waterfront Site located roughly half way between the Point Edwards site and Main Street. In both build alternatives, SR 104 would be realigned north of Pine Street to past through the existing Unocal owned site and provide direct access to the proposed multi-modal center.

Major issues related to environmental resources have been identified for these preliminary build alternatives in the following areas: vegetation, wildlife, and fisheries; wetlands; hazardous waste; park lands and recreational facilities; water quality; floodplains; land use; air qualify; multimodal transportation; and visual quality.

The no action alternative would maintain the ferry terminal at the existing Main Street location without any additional improvements to link ferry, rail, and bus transportation services.

To begin a formal scoping period, letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, affected Native-American groups, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting has been tentatively scheduled for April, 1995 to solicit public input. An open house and public hearing will be held to receive comments on the draft EIS after it is approved for circulation. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place of the scoping meeting, open house and

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hearing, and of the availability of the draft EIS.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS, or requests to be added to the mailing list, should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 8, 1995.

José M. Miranda,

Environmental Program Manager, Olympia Washington.

[FR Doc. 95-6495 Filed 3-15-95; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 95-18; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Yamaha FJ1200 (4CR) Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Yamaha FJ1200 (4CR) motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 Yamaha FJ1200 (4CR) that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 17, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90-009) has petitioned NHTSA to decide whether 1991 Yamaha FJ1200 (4CR) motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Yamaha FJ1200 (4CR) motorcycle that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Yamaha FJ1200 (4CR) motorcycle to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Yamaha FJ1200 (4CR) motorcycle, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1991 Yamaha FJ1200 (4CR) is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 115 *Vehicle Identification Number*, 116 *Motor Vehicle Brake Fluids*, 122 *Motorcycle Brake Systems* and 205 *Glazing Materials*.

The petitioner further contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* (a) Installation of a U.S. model headlamp; (b) installation of a U.S. model flasher relay/lamp assembly; (c) installation of a U.S. model taillamp assembly.

Standard No. 119 *New Pneumatic tires for Vehicles other than Passenger Cars:* Replacement of the original tires with ones that bear the DOT marking and a tire identification number.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Replacement of the speedometer/odometer with one calibrated in miles per hour.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 10, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95-6482 Filed 3-15-95; 8:45 am]

BILLING CODE 4910-59-M

Annual List of Nonconforming Vehicles Decided To Be Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to annual list of nonconforming vehicles decided to be eligible for importation.

SUMMARY: This document corrects a notice published on February 13, 1995 (60 FR 8268) listing all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that NHTSA has decided, as of January 27, 1995, to be eligible for importation into the United States under 49 U.S.C. 30141(a)(1) (formerly section 108(c)(3)(C)(i) of the National Traffic and Motor Vehicle Safety Act of 1966). The following vehicles that had been decided eligible for importation prior to January 17, 1995 were inadvertently omitted from the list of vehicles manufactured for other than the Canadian market set forth in Annex A to the notice:

VSP	Make	Mode type	Model ID	Model year
91	BMW	750iL		1990
92	Volkswagen	Golf		1993
93	Audi	100		1989
94	Mercedes-Benz	300CE	124.061	1993
95	Volvo	940GL		1993
96	BMW	325i		1991
97	Porsche	944		1990
98	MG	BGT		1972
99	BMW	840Ci		1993
101	Toyota	Land Cruiser		1989
102	Toyota	Land Cruiser		1991

Authority: 49 U.S.C. 30141(b)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 10, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95-6480 Filed 3-15-95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 94-99; Notice 2]

Decision That Nonconforming 1988 Honda CB1000F Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1988 Honda CB1000F motorcycles are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1988 Honda CB1000F motorcycle passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1988 Honda CB1000F motorcycle), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (Registered importer R-90-006) petitioned NHTSA to decide whether 1988 Honda CB1000F motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on December 28, 1994 (59 FR 67003) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 106 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1988 Honda CB1000F motorcycle not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1988 Honda CB1000F motorcycle

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originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (s)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 10, 1995.

Harry Thompson,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95-6481 Filed 3-15-95; 8:45 am]

BILLING CODE 4910-59-M

[NHTSA Docket No. 94-021; Notice 2]

Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705).

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; Telephone: (202) 366-5593.

SUPPLEMENTAL INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice (58 FR 48705) to amend the Model Specifications. The notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC; added a test for the presence of acetone; and expanded the definition of alcohol to include other low molecular weight alcohols including methyl or isopropyl. On April 20, 1994, the most recent amendment to the Conforming Products List (CPL) was published (59 FR 18839), identifying those instruments found to conform with the Model Specifications.

Since the last publication of the CPL, five (5) instruments have been evaluated and found to meet the model specifications, as amended on September 17, 1993, for mobile and non-mobile use. They are: CMI, Inc.'s "Intoxilyzer 5000 (CAL DOJ)" and "Intoxilyzer 400" (which is identical to Lion Laboratories of Cardiff, Wales, UK "Alcometer 400" that will also be listed); Intoximeters, Inc.'s "Portable Intox EC-IR;" National Draeger's "Breathalyzer 7410-II"; Sound-Off, Inc.'s "AlcoData" (which is identical to the "Alcohol Detection System-A.D.S. 500" sold by Gall's Inc. of Lexington, KY that will also be listed). CMI, Inc.'s Intoxilyzer Model 200D has also been added to the CPL. NHTSA has determined that testing is not required for this instrument. The changes from the Model 200 to the Model 200D were determined not to affect precision and accuracy of the device. Similarly, the agency has determined that differences between CMI's Intoxilyzer 5000 (CAL DOJ) and the Intoxilyzer 5000, 5000 (with Cal vapor recirc.), 5000 (w/ 3/8 ID hose option), as well as the 5000 (CAL DOJ) do not affect precision or accuracy. Accordingly, NHTSA has determined that additional testing is not required for these instruments. These devices have been added to the CPL. Finally, the agency has determined that the "BAC DataMaster-Transportable" made by National Patent Analytical Systems, Inc. of Mansfield, OH is no longer manufactured, and the manufacturer reports that no devices are in use. Therefore, the "BAC DataMaster-Transportable" has been removed from the CPL.

In accordance with the foregoing, the CPL is therefore amended, as set forth below.

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasures System, Inc., Port Huron, MI:		
Alert J3AD*	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer*	X	
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200	X	X
200D	X	X
400	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS-A*	X	X
4011AS-AQ*	X	X
4011 AW*	X	X
4011A27-10100*	X	X
4011A27-10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/3/8" ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000 (CAL DOJ)	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
5000VA	X	X
PAC 1200*	X	X
S-D2	X	X
Decator Electronics, Decator, IL:		
Alco-Tector model 500*		X
Gall's Inc., Lexington, KY:		
Alcohol Detection System-A.D.S. 500	X	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*		X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000*	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor IV	X	X
RBT III	X	X
RBT III-A	X	X
RBT IV	X	X
Intox EC-IR	X	X
Portable Intox EC-IR	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA-2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Life-Loc, Inc., Wheat Ridge, CO:		
PBA 3000B	X	X
PBA 3000-P*	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
400	X	X
AE-D1*	X	X
SD-2*	X	X
EBA*	X	X
Auto-Alcolmeter*		X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*		X
2000*		X
National Draeger, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X
7110*	X	X
7410	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410-II	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, CO:		
5000 Plus4*	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model:		
900*	X	X

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CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, MI:		
AlcoData	X	X
Stephenson Corp.:		
Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*	X	X
BAC Verifier Datamaster*	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.1)

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 95–6519 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Office of Hazardous Materials Safety

Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW, Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11409–N	Pure Solve, Inc., Irving, TX	49 CFR 173.28(b)(2)	To authorize the transportation of combustible liquids, n.o.s. Class 3, in DOT–1A2 drums that are exempted from retesting criteria. (Mode 1).
11411–N	National Propane Gas Association, Arlington, VA.	49 CFR 173.315(j)	To authorize the transportation in commerce of more than 5 percent of propane to be transported in non-DOT specification consumer tanks. (Mode 1.)
11413–N	Dow Chemical, NA, Midland, MI	49 CFR 173.314 Note 23	To authorize the transportation in commerce of methyl chloride, Division 2.1, in DOT 105A500W tank cars built after August 31, 1981 equipped with modified excess flow check valves. (Mode 2.)
11414–N	FIBA Compressed Gas Equipment, Westboro, MA.	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of perfluoromethylvinyl ether, Division 2.1, in DOT–3AAX 1800 tubes or higher in manifolded condition. (Modes 1, 3.)
11415–N	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 172.101(c)(13), 173.224(b).	To authorize the transportation of small quantities of 2,2-Azodi (isobutyronitrile) (AIBN) without temperature control when described as, and otherwise in conformance with the requirements applicable to, a "Self-reactive solid type C" in specially designed packaging, (Modes 1, 2, 4, 5.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11416–N	U.S. Enrichment Corp., Bethesda, MD.	49 CFR 172.302(c), 173.420	To authorize the transportation in commerce of 1S and 2S sample containers manufactured without ASME code stamp for use in transporting uranium hexafluoride, Class 7. (Modes 1, 4, 5.)
11417–N	Essex Cryogenics of Missouri, Inc., St. Louis, MO.	49 CFR 178.57–8C	To authorize the manufacture, mark and sale of non-DOT specification cylinders built to DOT–4L Specification except for the total heat transfer requirement as part of a unit structurally mounted to an ambulance previously reserved for high pressure gaseous oxygen containers. (Mode 1.)
11421–N	EOG Environmental, Inc., Milwaukee, WI.	49 CFR 177.848(d)	To authorize the transportation in commerce of labpacks containing spontaneously combustible materials, Division 4.2, with lab packs containing acids and corrosive liquids, Class 8. (Mode 1.)
11422–N	EOG Environmental, Inc., Milwaukee, WI.	49 CFR 177.848, 177.848(d)	To authorize the transportation in commerce of labpacks containing PIH, Zone A, Division 6.1 with other hazard classes in the same transport vehicle. (Mode 1.)
11423–N	EOG Environmental, Inc., Milwaukee, WI.	49 CFR 177.848(d)	To authorize the transportation in commerce of Poisonous Gases, Zone A, with material of other hazard classes in the same transport vehicle. (Mode 1.)
11424–N	Midwest Corporate Air, Inc., Bellefontaine, OH.	49 CFR 107, Subpart B, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1).	To authorize the transportation of Division 1.1,1.2,1.3 and 1.4 explosives which are forbidden or exceed quantities authorized. (Mode 4.)
11425–N	Hoechst Celanese, Charlotte, NC.	49 CFR 177.834(i)(3)	To authorize diemthyl terephthalate, Class 9, filled cargo tanks to be loaded or unloaded without the physical presence of an unloader. (Mode 1.)
11426–N	Laidlaw Environmental Services Inc., LaPorte, TX.	49 CFR 177.848(d)	To authorize the transport, loading and storage of Division 4.2 hazardous wastes in non-bulk and bulk packages on the same transport vehicle with Class 8 liquid hazardous materials. (Mode 1.)
11427–N	Georgia Gulf Corp., Plaquemine, LA.	49 CFR 179.201–1, 179.201–7	To authorize the transportation of safety vent rupture discs rated higher than 60 psig burst pressure on DOT 111A60W1 tank cars in sodium hydroxide solution service. (Mode 2.)
11428–N	Albemarle Corp., Baton Rouge, LA.	49 CFR 172.101, Footnote B14	To authorize the transportation in commerce of methyl bromide, Division 3, Poison, Gas, PIH, Zone C in uninsulated DOT Specification 51 ISO tanks. (Mode 2.)
11430	Sachs Automotive of America, Troy, MI.		To authorize the manufacture, mark and sale of shock absorbers containing either compressed nitrogen gas or compressed air, regardless of internal pressure to be transported without shipping papers and labels. (Modes 1, 2, 3, 4, 5.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 10, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–6479 Filed 3–15–95; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety

Notice of Applications for Modifications of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate procession.

DATES: Comments must be received on or before (15 days after publication).

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

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FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
8956–M	AeroTech, Inc., Las Vegas, NV [1].	8956
9723–M	Advanced Environmental Tech. Corp., Flanders, NJ [2].	9723
10997–M	HR Textron Inc., Pacoima, CA [3].	10997
11215–M	Orbital Sciences Corp., Dulles, VA [4].	11215
11267–M	The Univ. of New Mexico, Albuquerque, NM [5].	11267
11379–M	TRW Vehicle Safety Systems, Incorporated, Washington, MI [6].	11379

[1] To modify exemption to provide for the transportation in commerce of black powder pellets in UN4G boxes.

[2] To modify exemption to authorize the transportation of cyanides and cyanide mixtures in UN1A2 or UN1B2 metal drums, UN1D plywood drums or UN1G fiber drum or UN1H2 plastic drums.

[3] To modify exemption to authorize the manufacture, mark and sale of non-DOT specification reusable cylinders having a 50 cubic inch maximum water capacity constructed of titanium alloy and built to requirements of DOT-Specification 3HT for use in transporting nitrogen or mixture classed as Division 2.2.

[4] To modify exemption to provide for design changes to pegasus XL three stage winged solid fuel rocket in captive carry launch (CCL) configuration secured beneath a McDonnell Douglas L–1011 (L–1011) aircraft.

[5] To modify the exemption to provide for the transportation of a Space Nuclear Power system (Topaz II), without external insulation to be shipped in a specially designed transport container and provide for a Division 1.D material.

[6] To reissue and modify an exemption originally issued on an emergency basis to authorize the shipment of vehicle safety systems (modules) containing a non-DOT specification high pressure cylinder charged with a hydrogen/air mixture, classed as a Division 2.1. material.

Application No	Applicant	Parties to exemption
4453–P	Conex, Inc; Derby, IN	4453
5022–P	U.S. Department of Energy, Washington, DC.	5022
5704–P	Diablo Transportation, Inc., Byron, CA.	5704
6691–P	Coastal Welding Supply, Inc., Liberty, TX.	6691
7887–P	Kodson Enterprises of Ventura, CA; Fort Worth, TX.	7887
8009–P	Gas Trans, Austin, TX.	8009
8451–P	Diablo Transportation, Inc., Byron, CA.	8451
8453–P	Bishop Brothers Hauling, Inc., Jasper, AL.	8453
9723–P	Cyn Environmental Services, South Boston, MA.	9723
9723–P	Diablo Transportation, Inc., Byron, CA.	9723
9769–P	Diablo Transportation, Inc., Byron, CA.	9769
10001–P	Badger Welding Supplies, Inc., Madison, WI.	10001
10184–P	Liquid Carbonic Industries Corp., Oak Brook, IL.	10184
10239–P	Cabot Corporation, Tuscola, IL.	10239
10441–P	SET Environmental, Inc., Wheeling, IL.	10441
10441–P	Laidlaw Environmental Services, Inc., Columbia, SC.	10441
10898–P	Hydradyne, Inc., Elk Grove, IL.	10898
10898–P	Flodyne, Inc., Elk Grove, IL.	10898
10898–P	KMF Manufacturing, Elk Grove Village, IL.	10898
10933–P	SET Environmental, Inc., Wheeling, IL.	10933
10933–P	Diablo Transportation, Inc., Byron, CA.	10933
10987–P	BOC Gases, Murray Hill, NJ.	10987
11043–P	J.B. Hunt Special Commodities, Inc., Lowell, AR.	11043
11043–P	S&W Waste, Inc., South Kearny, NJ.	11043
11043–P	SET Environmental, Inc., Wheeling, IL.	11043
11156–P	Ladshaw Explosives, Inc., New Braunfels, TX.	11156
11156–P	Brandywine Explosives & Supply, Inc., Paris, KY.	11156
11156–P	Strawn Explosives, Inc., Euless, TX.	11156
11156–p	Rock Work, Inc., Blue Bell, PA.	11156
11254–P	Directional Wireline Services, Inc., Lake Charles, LA.	11254

DEPARTMENT OF THE TREASURY

U.S. Customs Service

Public Meetings in Norfolk and Los Angeles on AES Implementation Phase I

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of public meetings.

The U.S. Customs Service, Automated Export System Development Team announces the following public meetings:

DATES: Norfolk, VA., Friday, March 24, 1995, commencing at 9:00 a.m. and Los Angeles, CA, Friday, March 31, 1995, commencing at 9:00 a.m. and 1:00 p.m.

ADDRESSES: Norfolk, VA; Norfolk International Terminal, Warehouse #4, Building C—Training Room, Terminal Boulevard, Norfolk, VA 23518

Los Angeles, CA; Port of Los Angeles Building, Board Room—2nd Floor, 425 South Palos Verdes Street, San Pedro, CA 90733

FOR FURTHER INFORMATION CONTACT: Norfolk Meeting: Mr. Paul Somers, (804) 441–6731; Pre-registration Fax: (804) 441–6630

Los Angeles Meeting: Ms. Mary Curcio, (310) 514–6962; Pre-registration Fax: (310) 514–6090

SUPPLEMENTARY INFORMATION: U.S. Customs Commissioner George J. Weise has announced that Phase 1 of the Automated Export System (AES) will be implemented at the ports of Baltimore; Norfolk; Houston; Charleston, South Carolina and Long Beach, California. Implementation is scheduled for July 1995.

AES is a joint venture between Customs and the Bureau of Census. The system is designed to electronically gather export-related information from both exporters and carriers prior to actual exportation.

A major goal of AES is to improve the accuracy of export trade statistics, which are used as a primary economic indicator. Eventually, AES will replace numerous paper and electronic mechanisms for filing Shipper's Export Declarations (SED's). AES will also enhance collection of the Harbor Maintenance Fee on exports, which is expected to return $60 to $80 million to the U.S. Treasury annually.

Customs, Treasury's lead agency for international trade issues, started AES development in May 1994. The AES team has been working closely with a Trade Resource Group comprised of members from export-related industries.

In this document, Customs is announcing the following public meetings on AES:

1. Norfolk, Virginia—March 24, 1995, commencing at 9:00 a.m., Norfolk International Terminal, Warehouse #4, Building C—Training Room, Terminal Boulevard, Norfolk, VA 23518, Point of Contact: Mr. Paul Somers (804) 441–6731, Pre-registration fax number: (804) 441–6630.

2. Los Angeles, California—March 31, 1995, commencing at 9:00 a.m. and 1:00 p.m., Port of Los Angeles Building, Board Room–2nd Floor, 425 South Palos Verdes Street, San Pedro, California 90733, Point of Contact: Ms. Mary Curcio (310) 514–6962, Pre-registration fax number: (310) 514–6090.

Additional public meetings on AES Implementation Phase I are planned for the following locations; Houston, Texas, April 19, 1995, and Charleston, South Carolina, April 4 or 5, 1995. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been finalized.

Dated: March 10, 1995.

Sharon A. Mazur,

Director, AES Development Team.

[FR Doc. 95–6458 Filed 3–15–95; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue Availability of Report of 1994 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1994, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

For further information contact: Karen Carolan, CC:AP:AS:4, 901 D Street, SW., Room 224, Washington, DC 20024, Telephone (202) 401–4128 (Not a toll free telephone number).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–6437 Filed 3–15–95; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Carteret Federal Savings Bank; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Carteret Federal Savings Bank, Madison, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 10, 1995.

Dated: March 13, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–6532 Filed 3–15–95; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Professional Development of African Radio Station Owners and Managers

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop two-way exchange projects for radio station owners and managers in selected African countries. The Office proposes development of two separate projects focused on radio station management: (a) One project for francophone African participants; and (b) one project for anglophone African participants. Applicants may submit proposals to develop one or both projects. The projects should enhance participants' skills in managing their broadcasting operations and assist them to develop effective business management strategies. Each project should provide U.S.-based activities for approximately 9–12 African radio station owners and managers. Each project also should provide in-country workshops or consultancies to assist participating broadcasters implement appropriate business management practices. The projects should begin in fall 1995. Applicants are encouraged to consult with the U.S. Information Service (USIS) posts in participating countries in the development of the project proposals.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–95–50.

DATES: *Deadline for proposals:* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, May 12, 1995. Faxed documents will not be accepted, nor will documents postmarked on May 12, 1995, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Africa/Near East/South Asia Division of

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the Office of Citizen Exchanges, U.S. Information Agency, 301 4th Street, SW., Room 220, Washington, DC 20547, tel. 202–619–5319, fax 202–619–4350, Internet address STAYLOR@USIA.GOV, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Stephen Taylor on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions provided in the Solicitation Package and send fully completed applications. Send the original and 14 copies to: U.S. Information Agency, Ref.: E/P–95–50, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

Background

Several African governments have adopted policies which, in some cases, have promoted development of new, independent radio stations, and in other cases have sparked interest in commercializing state-run radio services. The democratic transition in Mali brought greater press freedoms, and today some nineteen independent radio stations are on the air. Tanzania and Niger recently began issuing broadcasting licenses. In Niger, two private radio stations are on the air and more than a dozen prospective broadcasters have received licenses. While these station owners and managers are enthusiastic and devoted, most have little or no management experience and many of their staff are untrained. High operating costs are a constant threat to their survival. In countries such as Zimbabwe, Zambia and Malawi, governments are looking to commercialize their state-run radios to boost revenues and reduce reliance on state funding. Radio managers in these and other countries could benefit from a project offering strategies to enhance the viability and overall management of their stations.

Program Overview

The Office of Citizen Exchanges (E/P) proposes development of two projects for African participants to promote development of business management skills applicable to radio broadcasting. One project will be designed for participants in selected anglophone African countries. The second project will target selected francophone countries. Each two-way exchange should include activities for 9–12 participants in the United States and opportunities for American specialists to share their expertise during in-country activities in Africa. While the projects should introduce participants to a variety of radio broadcasting management practices, the programs should concentrate on activities and site visits appropriate to the technology and infrastructure available in Africa. The projects should be designed to accommodate participants new to broadcasting management, and sufficiently flexible to assist independent stations as well as state-run services considering commercializing or enhancing overall management. Participants should study station management practices, business planning strategies and marketing concepts. They also should receive an overview of professional journalism standards which managers must oversee and identify strategies to promote staff development.

These two-way exchange projects also should create new relationships, opening channels of communication between U.S. and African broadcasters. These ties ideally should assist continued improvement of station management practices and enhance the viability of independent radio broadcasting in Africa. The projects should begin in fall 1995.

Project Objectives

Each two-way exchange project should be designed to:

—Introduce participants to fundamental business management skills applicable to station management, including financial planning, cash management and staff development;
—Analyze income resources for radio stations, including advertisements, and examine strategies for surviving the initial stages of launching a new broadcasting service;
—Examine marketing strategies aimed at attracting advertisers and, where appropriate, study the interrelationship among programming content, objective news reporting and maintaining advertisers as clients;
—Develop strategies for implementing improved station management practices;
—Examine media-government relations and demonstrate how the independent reporting of political and economic developments helps shape government policy and public opinion;
—Provide an overview of journalistic ethics and the standards of professional journalism; and
—Establish linkages between African station owners and managers, and their U.S. counterparts, providing a resource for continued professional development.

Participants

The participants will be owners and managers of radio stations in selected African countries. The anglophone project should be designed for participants from Malawi, Tanzania, Zambia and Zimbabwe. All participants will have strong English language skills. The francophone project should be designed for participants from Mali, Niger, Senegal and Burkina Faso. For this project, two U.S. State Department interpreters and one escort officer will be available for U.S.-based activities. For the program phases in Africa, the grantee institution will select the American presenters in consultation with USIA. Presenters conducting activities in francophone Africa should be French-fluent. The U.S. Phase of each project should be designed for 9–12 participants. USIS personnel in the participating countries will select the participants, although recommendations from the grantee institution are welcome.

USIS offices will facilitate the issuance of visas for the African participants and can help with the distribution of program-related materials in participating countries.

Programmatic Considerations

USIA will give careful consideration to proposals which demonstrate:

(1) In-depth, substantive knowledge of the strategies and practices involved in managing a broadcasting operation as a successful business enterprise;

(2) First-hand connections with a variety of American radio operations, as well as public and private sector organizations responsible for promoting journalistic professionalism and successful business management;

(3) The capacity to organize and manage international exchange programs, including the handling of pre-departure arrangements, orientation activities, monitoring and problem-solving involved in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and African professionals. Proposals which are overly ambitious and those which are very general in nature will not be competitive. The Office of Citizen Exchanges does not award grants to support projects whose focus is limited to technical matters, or to support scholarly research projects, development of publications for dissemination in the United States, individual student exchanges, film festivals or exhibits. The Office of Citizen Exchanges does not provide scholarships or support for long-term (one semester or more) academic studies. Competitions sponsored by other Bureau offices also are announced in the **Federal Register** and may have different application requirements as well as different objectives.

Program Suggestions

Each project should include at least one phase for African participants in the United States and at least one phase for American specialists in Africa. Programming elements might include in-country workshops or seminars led by American experts, specialized on-site consultancies developed for radio station owners in Africa, a study tour in the United States for selected African participants, and U.S.-based professional attachments for African broadcasters. A planning visit overseas by the American organizer also could be considered if crucial to successful development and implementation of the program.

The project should include formats which maximize interaction between the participants and the program presenters. Participants should observe the full range of business management and financial planning activities on the part of radio station owners and managers. They might also observe the interaction of station owners with public and private sector organizations involved in formulating, implementing and evaluating policies that affect U.S. broadcasting, such as professional associations, advertising agencies, trade unions, government agencies, and community groups. Participants also might visit university-based radio stations to observe training programs and study the role of such stations in the broadcasting industry. The program design should provide adequate time for participants to meet individually with American professionals who have similar interests and specializations. While not required, the presenters' familiarity with radio broadcasting in the participating countries is desirable .

Program Responsibilities

The grantee institution's responsibilities include: Selecting presenters, themes and topics for discussion; organizing a coherent progression of activities; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the visiting African participants and the U.S. presenters who travel to Africa; and overseeing the project on a daily basis to achieve maximum program effectiveness. The grantee institution is responsible for coordinating plans and project implementation with E/P, USIS officers in the participating countries and collaborating African institutions.

At the start of each phase, the grantee institution will conduct an orientation session and, at the conclusion, conduct participant evaluations. The institution will submit a report at the conclusion of each program phase, including a final program report summarizing the entire project and resulting organizational links. The institution must also submit a final financial report. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward a set of preliminary materials which might include an introduction to the U.S. system of government, American notions of free speech and freedom of the press, the practices of U.S. broadcasters and other background information about the project. E/P will ask the participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the participants' backgrounds, interests and concerns.

Other Program Considerations

Consultation with USIS officers in the participating countries in the development of the project proposal is encouraged. Letters of commitment from participating U.S. and African institutions and individuals would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities, libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms might be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

The grantee institution should maximize cost-sharing in all elements of the project and seek to stimulate U.S. private sector support, including from foundations and corporations.

All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Funding

Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep administrative costs at a minimum. USIA will consider funding up to approximately $145,000 for the francophone project, and up to approximately $135,000 for the anglophone project, but grants awarded to eligible organizations with less that four years of experience in conducting international exchange programs will be limited to $60,000. Grant applicants may submit a proposal to manage both the francophone and anglophone projects, or may submit a proposal to develop only one of these programs. If submitting a proposal for both projects, the applicant should be careful to avoid duplication of costs.

Applicants must submit a comprehensive line item budget for the entire program based on the specific guidance in the Solicitation Package. Applicants must provide a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide optional, separate sub-budgets for each program phase or activity in order to facilitate USIA decisions on funding. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs.

2. Per diem: For foreign participants during activities in the United States, organizations have the option of using a flat rate of $140/day or the published

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Federal Travel Regulations (FTR) per diem rates for individual American cities.

Note: U.S. institutional staff must use the published FTR per diem rates, not the fault rate. For activities overseas, standard Federal Travel Regulations per diem rates must be used.

3. Escort-interpreters: Interpretation for U.S.-based programs (if required) is provided by the State Department's Language Services Division. Typically, delegations ranging from 8–12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not available for U.S.-based internship activities.

4. Book and cultural allowances: Participants are entitled to a one-time book allowance of $50 plus a cultural allowance of $150 per person during programs taking place in the United States. U.S. staff do not receive these benefits. Escort interpreters are reimbursed for actual cultural expenses up to $150.00.

5. Consultants: Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally should not exceed $250/day. Subcontracting organizations may also be used, in which case the written contract(s) should be included in the proposal.

6. Materials development: Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

7. Room rentals, which generally should not exceed $250/day.

8. One working meal per project, for which per capita costs may not exceed $5–$8 for a lunch or $14–$20 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of African Affairs and USIA posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Institutional Reputation and Ability:* Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. *Project Personnel:* The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

3. *Program Planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

4. *Thematic Expertise:* Proposals should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

5. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. *Cross-Cultural Sensitivity and Area Expertise:* Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Overhead and direct administrative costs to USIA should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 7, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: March 8, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–6254 Filed 3–15–95; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning GATS Basic Telecommunications Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments concerning commitments to be sought in negotiations on basic telecommunications services at the World Trade Organization.

SUMMARY: The Office of the U.S. Trade Representative (USTR) is soliciting public comment on the requests to be made to U.S. negotiating partners in the Negotiating Group on Basic Telecommunications of the General Agreement on Trade in Services (GATS). The GATS is one of the Uruguay Round agreements administered by the World Trade Organization. Interested persons are invited to submit their comments on market-opening commitments that should be sought in the basic telecommunications sector by April 15, 1995.

FOR FURTHER INFORMATION CONTACT: William Corbett, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative, at (202) 395–4510 or Laura B. Sherman, Office of the General Counsel, Office of the United States Trade Representative, at (202) 395–3150.

SUPPLEMENTARY INFORMATION: The Negotiating Group on Basic Telecommunications (NGBT) was created in April 1994 by the Marrakesh Ministerial Decision. The Decision states that "negotiations shall be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services within the framework of the General Agreement on Trade in Services" (GATS). The NGBT is responsible for holding sectoral negotiations on basic telecommunications services; it has a deadline for completing talks by April 30, 1996.

The United States is in the process of preparing requests for market-opening commitments from other countries participating in the NGBT, a list of which is attached. These requests must be submitted by the end of April 1995.

The United States objective in the negotiations is to obtain levels of openness in the telecom markets of other participants equivalent to the level in the United States. Interested persons are invited to submit their comments on market-opening commitments that the United States should request from participating countries. Such commitments may include wire or wireless communications, regulatory schemes, interconnection issues, foreign ownership restrictions, and competition safeguards, among other things.

Comments should be filed no later than April 15, 1995. Comments must be in English and provided in twenty copies to Mr. William Corbett, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative, 600 17th Street, Washington, D.C. 20506.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

Countries Involved in the NGBT

Argentina, Australia, Canada, Chile, Cuba, Cyprus, Dominican Republic, France, Germany, Denmark, United Kingdom, Italy, Ireland, Sweden, Austria, Finland, Spain, Greece, Portugal, Netherlands, Luxembourg, Belgium, Egypt, Hong Kong, Hungary, India, Japan, Mauritius, Korea, Mexico, Morocco, New Zealand, Norway, Slovak Republic, Switzerland, Tunisia, Turkey, United States, Brazil, Brunei, China, Chinese Taipei, Colombia, Costa Rica, Czech Republic, Ecuador, El Salvador, Guatemala, Honduras, Iceland, Indonesia, Israel, Jamaica, Madagascar, Malaysia, Mauritius, Nicaragua, Pakistan, Panama, Philippines, Poland, Romania, Russian Federation, Singapore, Slovenia, South Africa, Thailand, Trinidad & Tobago, Uruguay, Venezuela.

[FR Doc. 95–6473 Filed 3–15–95; 8:45 am]

BILLING CODE 3190–01–M

Defense Policy Advisory Committee for Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The March 29, 1995 meeting of the Defense Policy Advisory Committee for Trade will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to any trade agreements, the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for March 29, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Pentagon, Arlington, Virginia, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–6472 Filed 3–15–95; 8:45 am]

BILLING CODE 3190–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 51
Thursday, March 16, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 10:00 a.m., March 24, 1995.

PLACE: Massachusetts State House, Room A–1, Beacon Street, Boston, MA 02133.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Testimony on identification and location of assassination records by: Philip H. Melanson, Priscilla Johnson McMillan, Carl Oglesby, Dick Russell, and Richard Trask.
2. Board discussion on finalizing the proposed interpretive regulations published for public comment by the Assassination Records Review Board in the Federal Register on February 8, 1995 (60 FR 7506, Feb. 8, 1995).
3. Update by representative of the National Archives and Records Administration (NARA) on the President John F. Kennedy Assassination Records Collection at NARA.
4. Staff reports on upcoming Board activities.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,
Executive Director.

[FR Doc. 95–6668 Filed 3–14–95; 2:35 pm]

BILLING CODE 6820–TD–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

ACTION: Notice of Meeting

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, March 23, 1995.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at Rhode Island Historical Society, Aldrich House, 110 Benevolent Street, Providence, RI for the following reasons:

1. Presentation from City of Providence.
2. Report by Woonsocket Ad-hoc Committee.
3. Commission Business.
4. Other.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895. Tel.: (401) 762–0250

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

Nancy Brittian,
Acting Executive Director.

[FR Doc. 95–6683 Filed 3–14–95; 2:37 pm]

BILLING CODE 4310–70–P

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 21, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, March 23, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–35: Susan Alter on behalf of Susan Alter for Congress Committee
Advisory Opinion 1994–36: Susan M. Frank for Science Applications International Corporation (SAIC)
Regulations:
MCFL revised draft final rules; Qualified Nonprofit Corporations (11 CFR 114.10)
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 95–6695 Filed 3–14–95; 3:30 pm]

BILLING CODE 6715–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–06]

TIME AND DATE: March 30, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. To consider the adoption of a Strategic Plan for the U.S. International Trade Commission—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: March 14, 1995.

Donna R. Koehnke,
Secretary.

[FR Doc. 95–6618 Filed 3–14–95; 2:34 pm]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:

March 23, 1995, 9:30 a.m. Closed Session
March 23, 1995, 3:30 p.m. Open Session
March 24, 1995, 9:00 a.m. Closed Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, March 23, 1995

Closed Session (9:30 a.m.–11:30 a.m.)

—Minutes, February Meeting
—NSF Budget

Thursday, March 23, 1995

Open Session (3:30 p.m.–5:00 p.m.)

—Presentation: Return on Investment in Basic Research
—Minutes, February Meeting
—Closed Session Agenda Items for May Meeting
—Chairman's Report
—Director's Report
—NSB Committee Structure
—Reports from Committees

Friday, March 24, 1995

Closed Session (9:00 a.m.–11:00 a.m.)

—Vannevar Bush Award
—Alan T. Waterman Award
—NSF Budget
—Other Business/Adjourn

Marta Cehelsky,
Executive Officer.

[FR Doc. 95–6672 Filed 3–14–95; 2:36 pm]

BILLING CODE 7555–01–M

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federal register

Thursday
March 16, 1995

Part II

Environmental Protection Agency

40 CFR Parts 281 and 282
Hazardous Waste: Final Approval of State Underground Storage Tank Programs in South Dakota; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5167–6]

South Dakota; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on State of South Dakota's application for final approval.

SUMMARY: The State of South Dakota has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the South Dakota application and has reached a final determination that South Dakota's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to South Dakota to operate its program in lieu of the federal program.

EFFECTIVE DATE: Final approval for South Dakota shall be effective at 1:00 pm Eastern Time on May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie Zawacki, Underground Storage Tank Program Section, U.S. EPA, Region 8, 8HWM–WM, 999 18th Street, Denver, Colorado 80202, phone: (303) 293–1665.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a) (8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

On July 9, 1992, South Dakota submitted an application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. The State of South Dakota established authority to implement an underground storage tank program through South Dakota Codified Law 34A–2–98 and 34A–2–99 and the Administrative Rules of South Dakota that became effective November 30, 1987.

On July 22, 1994, EPA published a tentative decision announcing its intent to grant South Dakota final approval. Further background on the tentative decision to grant approval appears at 59 FR 37455, July 22, 1994. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA received no request for a public hearing, therefore, a hearing was not held.

B. Public Comment

The EPA received one comment on the tentative determination of final approval for South Dakota's UST program. The commenter asserted that the South Dakota leak detection requirements for suction piping appeared to be less stringent than the federal requirements. The State requires that suction piping use a monthly monitoring release detection method or be tightness tested at least every three years. The State does not require release detection, if suction piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released. EPA believes that the State implements a program which meets the federal objective for release detection for suction piping.

C. Decision

After reviewing the public comments on the State application and program since the tentative decision, I conclude that South Dakota's application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, South Dakota is granted final approval to operate its underground storage tank program in lieu of the Federal program. This final determination to approve the South Dakota UST program does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State of South Dakota: Cheyenne River, Crow Creek, Flandreau, Lake Traverse (Sisseton-Wahpeton), Lower Brule, Pine Ridge, Rosebud, Standing Rock, and Yankton. South Dakota now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except for facilities located within "Indian Country," where EPA will retain regulatory authority. South Dakota also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 95–6405 Filed 3–15–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 282

[FRL–5167–5]

Underground Storage Tank Program: Approved State Program for South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of South Dakota's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective May 15, 1995, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the codification of South Dakota's underground storage tank program must be received by the close of business April 17, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of May 15, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to Jo Taylor, 8HWM–WM, Hazardous Waste Management Division, Underground Storage Tank Program, U.S. EPA Region 8, 999–18th Street, Suite 500, Denver, Colorado, 80202–2466. Comments received by EPA may be inspected in the EPA Library, Suite 144, at the above address from 12:00 p.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jo Taylor, 8HWM–WM, Underground Storage Tank Program, U.S. EPA Region 8, 999–18th Street, Suite 500, Denver, Colorado, 80202–2466. Phone: (303) 293–1511.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA is publishing, simultaneously a **Federal Register** document announcing its decision to grant approval to South Dakota elsewhere in this issue of the **Federal Register**. Approval will be effective on May 15, 1995.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the South Dakota underground storage tank program. This codification reflects the state program in effect at the time EPA grants South Dakota approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the South Dakota program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved South Dakota program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in South Dakota, the status of federally approved requirements of the South Dakota program will be readily discernible. Only those provisions of the South Dakota underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of South Dakota's underground storage tank program, EPA has added § 282.91 to title 40 of the CFR. Section 282.91 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.91 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved South Dakota enforcement authorities will not be incorporated by reference. Section 282.91 lists those approved South Dakota authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.91 of the codification simply lists for reference and clarity the South Dakota statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made, published elsewhere in this issue of the **Federal Register**, to approve the South Dakota underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is proposed to be amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d and 6991e.

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Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.91 to read as follows:

§ 282.91 South Dakota State-Administered Program.

(a) The State of South Dakota is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq*. The State's program, as administered by the South Dakota Department of Environment and Natural Resources, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the South Dakota program on March 16, 1995 and it was effective on May 15, 1995.

(b) South Dakota has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, South Dakota must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If South Dakota obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) South Dakota has final approval for the following elements submitted to EPA in South Dakota's program application for final approval and approved by EPA on [insert date of publication]. Copies may be obtained from the Underground Storage Tank Program, South Dakota Department of Environment and Natural Resources, 523 East Capitol, Pierre, South Dakota 57501.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

(A) South Dakota Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) South Dakota Regulatory Requirements Applicable to the Underground Storage Tank Program, 1995.

(ii) The following statutes are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: South Dakota Codified Law, Water Pollution Control, Chapter 34A–2, Sections 46 and 48, Sections 72 through 75, Chapters 34A–10 and 34A–12.

(iii) The following statutory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) South Dakota statutes Annotated, Chapter 34A–2, Section 100, insofar as it applies to above ground stationary storage tanks, Section 102, insofar as it applies to installation of above ground stationary storage tanks, Section 101, insofar as it applies to corrective action for above ground stationary storage tanks.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of South Dakota on June 17, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

(ii) Letter from the Attorney General of South Dakota to EPA, June 17, 1992, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the complete application in October 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

(4) *Program Description.* The program description and any other material submitted as part of the original application in June 1992, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the South Dakota Department of Environment and Natural Resources, signed by the EPA Regional Administrator on February 23, 1995, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

3. Appendix A to part 282 is amended by adding in alphabetical order "South Dakota" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

South Dakota

(a) The statutory provisions include South Dakota Statutes Annotated, Chapter 34A–2, Sections 98 and 99, Underground Storage Tanks:

Section 98 Underground storage tanks—Definitions.
Section 99 Underground storage tanks—Adoption of Rules—Violation.

(b) The regulatory provisions include State of South Dakota Administrative Rules, Chapter 74:03:28, Underground Storage Tanks, Department of Environment and Natural Resources, June 24, 1992:

Section 74:03:28:01 Definitions.
Section 74:03:28:02 Performance standards for new UST systems—General requirements.
Section 74:03:28:03 Upgrading of existing UST systems—General requirements and deadlines.
Section 74:03:28:04 Notification requirements for UST systems.
Section 74:03:28:05 Spill and overfill control.
Section 74:03:28:06 Operation and maintenance of cathodic protection.
Section 74:03:28:07 Compatibility.
Section 74:03:28:08 Repairs allowed—general requirements.
Section 74:03:28:09 Maintenance and availability of records.
Section 74:03:28:10 Release detection for all UST systems—general requirements and deadlines.
Section 74:03:28:11 Release detection requirements for petroleum UST systems.
Section 74:03:28:12 Release detection requirements for pressure piping.
Section 74:03:28:13 Recordkeeping.
Section 74:03:28:14 Release notification plan.
Section 74:03:28:15 Reported of suspected releases.
Section 74:03:28:16 Release investigation and confirmation.
Section 74:03:28:17 Off-site impacts and source investigation.
Section 74:03:28:18 General requirements for corrective action for releases from UST systems.
Section 74:03:28:19 Initial abatement requirements and procedures for releases from UST systems.
Section 74:03:28:20 Free product removal.
Section 74:03:28:21 Additional site investigation for releases from UST systems.
Section 74:03:28:22 Soil and groundwater cleanup for releases from UST systems.
Section 74:03:28:23 Reporting of releases from UST systems.

Section 74:03:28:28 Reporting of hazardous substance releases from UST systems.
Section 74:03:28:29 Temporary removal from use.
Section 74:03:28:30 Temporary closure.
Section 74:03:28:31 Permanent closure.
Section 74:03:28:32 Postclosure requirements.
Section 74:03:29:01 Applicability.
Section 74:03:29:23 Definitions.
Section 74:03:29:24 Financial responsibility rules.

[FR Doc. 95–6404 Filed 3–15–95; 8:45 am]
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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation; Special Contracting Methods; Task and Delivery Order Contracts; Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 7, 17, 37, 49, and 52

[FAR Case 94–710]

Federal Acquisition Regulation; Special Contracting Methods

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act), Sections 1022 and 1072 on multiyear contracting; Section 1074 on the Economy Act; Sections 1503, 1504, 1552, and 1553 on the delegation of procurement functions and determinations and decisions; and Section 6002 on contracting functions performed by Federal personnel. This regulatory action is subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before May 15, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405, Telephone: (202) 501–4755.

Please cite FAR case 94–710 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ed McAndrew, Special Contracting Team Leader, at (202) 501–1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 94–710.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

FAR Case 94–710

This notice announces FAR revisions developed under FAR case 94–710 which was based on provisions in the Act which provided for multiple awards under certain circumstances; permitted civilian agencies to enter into multiyear contracts under certain circumstances; and for agencies to use the Economy Act authority to acquire supplies and services from another agency. Other provisions of the statute were minor in nature and were not as important as the aforementioned provisions.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–710) because of the clarifying and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption, above) on or before April 17, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because promulgation of this policy is expected to improve access to the procurement process for small and disadvantaged businesses, and to broaden the scope of competitive acquisitions for which small businesses may be eligible. There is a potential negative impact resulting from consolidation of contract requirements under a multiyear contract; however, it is expected that this negative impact could be mitigated by an increase in the opportunities for small businesses to receive subcontracts. The rule will place no limit on small businesses' ability to participate. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 94–710), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 7, 17, 37, 49 and 52

Government procurement.

Dated: March 9, 1995.

Barry Cohen,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 1, 7, 17, 37, 49 and 52 be amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1, 7, 17, 37, 49 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 1.601 is revised to read as follows:

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions in accordance with agency procedures to heads of such contracting activities. Contracts may be entered into and signed on behalf of the government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

(b) The heads of two or more agencies may by agreement—

(1) Delegate acquisition functions and assign acquisition responsibilities from one agency to another of those agencies or to an officer or civilian employee of those agencies; or

(2) Create joint or combined officers to exercise acquisition functions and responsibilities.

PART 7—ACQUISITION PLANNING

3. Section 7.103 is amended by adding paragraph (m) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(m) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at 48 CFR (FAR) 37.204. Covered personnel who may be paid for evaluation or analysis are:

(1) An employee means an officer or an individual who is appointed in the civil service by one of the following acting in an official capacity; (i) the President; (ii) a Member of Congress; (iii) a member of the uniformed services; (iv) an individual who is an employee; (v) the head of a government controlled corporation; or (vi) an adjutant general appointed by the Secretary concerned under the national guard (32 U.S.C. 709(c)).

(2) A member of the Armed Forces of the United States.

(3) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

PART 17—SPECIAL CONTRACTING METHODS

4. Subpart 17.1 is revised to read as follows:

Subpart 17.1—Multiyear Contracting

Sec.

17.101 Authority.
17.102 Applicability.
17.103 Definitions.
17.104 General.
17.105 Policy.
17.105–1 Uses.
17.105–2 Objectives.
17.106 Procedures.
17.106–1 General.
17.106–2 Solicitations.
17.106–3 Special procedures applicable to DoD, NASA and the Coast Guard.
17.107 Options.
17.108 Congressional notification.
17.109 Contract clauses.

17.101 Authority.

This subpart implements Section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c) and 10 U.S.C. 2306b and provides policy and procedures for the use of multiyear contracting.

17.102 Applicability.

For DoD, NASA, and the Coast Guard, the authorities cited in 17.101 do not apply to contracts for the purchase of supplies to which 40 U.S.C. 759 applies (information resource management supply contracts).

17.103 Definitions.

Annual funding means appropriations of which Congress limits obligational availability to a single fiscal year.

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer (a) notifies the contractor of nonavailability of funds for contract performance for any subsequent program year, or (b) fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Cancellation ceiling means the maximum amount that the contractor can receive in the event that cancellation occurs.

Cancellation charge means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term cancelled.

Multiple year contract, as used in this subpart, means a contract having a term of more than one year regardless of the type of funding that applies.

Multiyear contract means a contract for the purchase of supplies or services for more than one, but not more than five, program years. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made.

Multiyear funding means appropriated funds covering more than 1 fiscal year.

No-year funding means funding available for new obligations without regard to fiscal year and until the appropriation is either exhausted or otherwise cancelled.

Nonrecurring costs means those production costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

Recurring costs, as used in this subpart, means production costs that vary with the quantity being produced such as labor and materials.

Termination for convenience means the procedure which may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or a partial quantity (whereas cancellation must be for all subsequent fiscal years' quantities).

17.104 General.

(a) Multiyear contracting is a type of multiple year contract that employs special contracting methods to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.

(b) Multiyear contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation provisions are used in multiyear contracts will depend on the unique circumstances of each contracting action. Accordingly, for multiyear contracts, the agency head may authorize modification of the requirements of this subpart and the clauses at 48 CFR (FAR) 52.217–2, Cancellation Under Multiyear Contracts.

17.105 Policy.

17.105–1 Uses.

(a) The contracting officer may enter into a multiyear contract if—

(1) Funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with any necessary cancellation of the contract; and

(2) The head of the contracting agency determines that—

(i) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and

(ii) A multiyear contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs, and

(3) If for DoD, NASA or the Coast Guard—

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(i) The use of such a contract will result in substantial savings of the total estimated costs of carrying out the program through annual contracts;

(ii) With regard to paragraph (a)(2)(i) of this section, the minimum need to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

(iii) There is a stable design for the supplies to be acquired and the technical risks associated with such supplies are not excessive; and

(iv) That the estimates of both the cost of the contract and the estimated cost avoidance through the use of a multiyear contract are realistic.

(b) Multiyear contracting may be used when no-year, annual, multiple year or multiyear funding is available.

(c) The multiyear contracting method may be used for the acquisition of supplies or services.

(d) If funds are not appropriated to support the succeeding years' requirements, the agency must cancel the contract.

17.105–2 Objectives.

Use of multiyear contracting is encouraged to take advantage of one or more of the following:

(a) Lower costs.

(b) Enhancement of standardization.

(c) Reduction of administrative burden in the placement and administration of contracts.

(d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make ready expenses, and phaseout costs.

(e) Stabilization of contractor work forces.

(f) Avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new contractor each year.

(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(h) Provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

17.106 Procedures.

17.106–1 General.

(a) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multiyear procedure is compatible with sealed bidding, including two-step sealed bidding, and contract negotiation.

(b) *Type of contract.* Given the longer performance period associated with multiyear acquisition, consideration in pricing fixed-priced contracts should be given to the use of economic price adjustment terms, profit objectives comparable with contractor risk, financing arrangements and cash flow requirements.

(c) *Cancellation procedures.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for items included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 48 CFR (FAR) 15.804–6) are estimated at ten percent of the total multiyear price, and the percentages for each of the program-year requirements for 5-years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting three percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multiyear requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly training and transportation of a specialized work force to and from the job site, and unrealized labor learning. Do not include any costs of labor or materials, or other expenses (except as indicated in this paragraph), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer shall obtain in-house engineering cost estimates identifying detailed recurring and nonrecurring costs, the effect of labor learning.

(3) The contracting officer shall establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(d) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(e) *Funding/payment of cancellation charges.* If cancellation occurs, the contractor is entitled to payment (see the clause at 48 CFR (FAR) 52.217–2, Cancellation Under Multiyear Contracts).

(f) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multiyear contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(g) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including items subject to cancellation, the Government's obligation shall not exceed the amount specified in the schedule as available for contract performance, plus the cancellation ceiling.

17.106–2 Solicitations.

Solicitations for multiyear contracts shall reflect all the factors to be considered for evaluation, specifically including the following—

(a) The requirements, by item of supply or service, for the—

(1) First program year; and

(2) Multiyear contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year's requirement to the lowest evaluated submission on the multiyear requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government may evaluate offers and make award solely on the basis of price, or estimated cost and fee, offered on that year's requirements.

(d) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.106–1 (c) and (d)).

(e) A statement that award will not be made on less than the first program year requirements.

(f) Unless Government administrative costs incident to annual contracting and administration can be reasonably established, they shall not be used as a factor for evaluation. If so utilized, their monetary value shall be set forth in the solicitation.

(g) The cancellation ceiling shall not be an evaluation factor.

17.106–3 Special procedures applicable to DoD, NASA and the Coast Guard.

(a) *Participation by subcontractors, suppliers and vendors.* In order to broaden the defense industrial base, to the maximum extent practicable—

(1) Multiyear contracting shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors and suppliers; and

(2) Upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(b) *Protection of existing authority.* To the extent practicable, multiyear contracting shall not be carried out in a manner to preclude or curtail the existing ability of the department or agency to—

(1) Provide for competition in the production of supplies to be delivered under such a contract; or

(2) Provide for termination of a prime contract the performance of which is deficient with respect to cost, quality or schedule.

(c) *Cancellation or termination for insufficient funding.* In the event funds are not made available for the continuation of a multiyear contract awarded using the procedures in this section, the contract shall be cancelled or terminated and payment made from—

(1) Appropriations originally made available for the performance of the contract concerned;

(2) Appropriations currently available for procurement of the type of supplies concerned and not otherwise obligated; or

(3) Funds appropriated for these payments.

17.107 Options.

Benefits may accrue by including options in a multiyear contract. In that event, contracting officers must follow the requirements of subpart 17.2. Options should not include—

(a) Charges for plant and equipment already amortized, nor

(b) Other nonrecurring charges which were included in the basic contract.

17.108 Congressional notification.

(a) Except for DoD, NASA and the Coast Guard, a multiyear contract which includes a cancellation ceiling in excess of $10 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Congress. The contract may not be awarded until the thirty-first day after the date of notification.

(b) For DoD, NASA, and the Coast Guard, a multiyear contract which includes a cancellation ceiling in excess of $100 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives. The contract may not be awarded until the thirty-first day after the date of notification.

17.109 Contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR (FAR) 52.217–2, Cancellation Under Multiyear Contracts, in solicitations and contracts when a multiyear contract is contemplated.

(b) *Economic price adjustment clauses.* Economic price adjustment clauses are adaptable to multiyear contracting needs. When the period of production is likely to warrant a labor and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see 48 CFR (FAR) 16.203). When contracting for services, the contracting officer—

(1) Shall add the clause at 48 CFR (FAR) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), when the contract includes the clause at 48 CFR (FAR) 52.222–41, Service Contract Act of 1965;

(2) May modify the clause at 48 CFR (FAR) 52.222–43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by 48 CFR (FAR) 16.203 when potential fluctuations require coverage, and are not included in cost contingencies provided for by the clause at 48 CFR (FAR) 52.222–43.

5. Subpart 17.5 is revised to read as follows:

Subpart 17.5—Interagency Acquisitions Under the Economy Act

Sec.

17.500 Scope of subpart.
17.501 Definition.
17.502 General.
17.503 Determination requirements.
17.504 Ordering procedures.
17.505 Payment.

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency. Procedures for such intra-agency transactions should be addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include acquisitions from required sources of supplies prescribed in 48 CFR Part 8, which have separate statutory authority.

17.501 Definition.

Interagency acquisition means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency).

17.502 General.

(a) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of Government funds appropriated for the acquisition.

(b) Acquisitions under the Economy Act are not exempt from the requirements of 48 CFR (FAR) part 7, subpart 7.3, Contractor Versus Government Performance.

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(c) The Economy Act may not be used to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under the Federal Property and Administrative Services Act).

17.503 Determination requirements.

(a) An agency may place orders with another agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency that—

(1) It is in the Government's best interest to do so, and

(2) That the ordered supplies or services cannot be provided by contract as conveniently or cheaply by the requesting agency from a commercial enterprise.

(b) If the Economy Act order requires contracting action by the servicing agency, the determination shall include a finding that one or more of the following circumstances is applicable—

(1) The acquisition is appropriately made under an existing contract of the servicing agency to meet the requirements of the servicing agency for the same or similar goods or services;

(2) The servicing agency has capabilities or expertise to enter into a contract for such goods or services which is not available within the requesting agency; or

(3) The servicing agency is specifically authorized by law or regulation to purchase such goods or services on behalf of other agencies.

(c) Determinations shall be approved either by the contracting officer of the requesting agency with authority to contract for the goods or services to be ordered, or by another official designated by agency regulation to do so, except that if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the determination may not be delegated below the senior procurement executive of the requesting agency.

17.504 Ordering procedures.

(a) Before placing an Economy Act order for supplies or services from another Government agency, the requesting agency shall make the determination required in 17.503. The servicing agency may require a copy of the determination to be furnished with the order.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.505); and

(5) Acquisition authority as may be appropriate (see 17.504(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures apply:

(1) If a justification and approval or a determination and findings (D&F) (other than the requesting agency's determination required in 17.502) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval and the D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing special contract terms or other requirements that must comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action, and (ii) complying fully with the competition requirements of 48 CFR part 6 (see 6.002).

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 48 CFR (FAR) 35.017; see also 48 CFR (FAR) 6.302 for procedures to follow where using less than full and open competition). The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.505 Payment.

(a) Under the Economy Act—

(1) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services; or

(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(b) If advance payment is made, adjustment on the basis of actual costs shall be made as agreed by the agencies.

(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(d) If the Economy Act order requires contracting action by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

PART 37—SERVICE CONTRACTING

6. Subpart 37.2 is revised to read as follows:

Subpart 37.2—Advisory and Assistance Services

Sec.
37.200 Scope of subpart.
37.201 Definition.
37.202 Exclusions.
37.203 Policy.
37.204 Guidelines for determining availability of personnel.
37.205 Contracting officer responsibilities.

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.201 Definition.

Advisory and assistance services means the following services when provided by nongovernmental sources—

(a) Management and professional support services;

(b) Studies, analyses and evaluations; and

(c) Engineering and technical services.

37.202 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Routine automated data processing and telecommunications services unless such services are an integral part of a contract for the procurement of advisory and assistance services.

(b) Architectural and engineering services as defined in section 901 of the Brooks Architect-Engineers Act (40 U.S.C. 541).

(c) Research on basic mathematics or medical, biological, physical, social, psychological, or other phenomena.

37.203 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations; or

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decisionmaking, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.* Except for Federally-Funded Research and Development Centers as provided by Section 23 of the Office of Federal Procurement Policy (OFPP) Act, (41 U.S.C. 419) as amended, contractors may be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition only if—

(1) Neither agency personnel, nor personnel from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available, and;

(2) A written determination is made in accordance with 37.204.

37.204 Guidelines for determining availability of personnel.

(a) As required by 37.203 for each evaluation or analysis of proposals, the head of an agency shall determine if sufficient personnel with the requisite training and capabilities are available within the agency to perform evaluation or analysis of proposals submitted for acquisitions.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, has been unable to identify such personnel, the head of the requesting agency may make the determination required by 37.203.

37.205 Contracting officer responsibilities.

The contracting officer shall ensure that the determination required in accordance with the guidelines at 37.104 is accomplished prior to issuing a solicitation.

PART 49—TERMINATION OF CONTRACTS

49.603–1 through 49.603–4 [Amended]

7. Sections 49.603–1(b)(7)(i), 49.603–2(b)(8)(i), 49.603–3(b)(7)(i), and 49.603–4(b)(4)(i)) are amended by removing the phrase ", and regulations made implementing 10 U.S.C. 2382, as amended, and any other" and inserting "any" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.217–1 [Reserved]

8. Section 52.217–1 is removed and reserved.

9. Section 52.217–2 is amended by revising the section heading, the introductory text, the clause heading, paragraphs (a), (d), (f)(1) and (4), (g)(1) and (3), (h), and (i), and by removing *Alternate I* to read as follows:

52.217–2 Cancellation Under Multiyear Contracts.

As prescribed in 17.109, insert the following clause.

CANCELLATION UNDER MULTIYEAR CONTRACTS (XXX 1995)

(a) *Cancellation*, as used in this clause, means that the Government is cancelling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

* * * * *

(d) The cancellation charge will cover only (1) costs (i) incurred by the prime Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

* * * * *

(f) * * *

(i) Reasonable nonrecurring costs (see FAR subpart 15.8) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

* * * * *

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) * * *

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the cancelled work;

* * * * *

(3) Anticipated profit or unearned fee on the cancelled work; or

* * * * *

(h) This contract may include an "Option" clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature, that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs, and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the "Option" clause of this contract shall be included in the quantity cancelled

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for the purpose of computing allowable cancellation charges.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 16 and 52

[FAR Case 94–711]

Federal Acquisition Regulation; Task and Delivery Order Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend Federal Acquisition Regulations (FAR) to implement the statutory requirements of the Federal Acquisition Streamlining Act with regard to task and delivery order contracts. This regulatory action is subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Comment Due Date:* Comments should be submitted on or before May 15, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on April 13, 1995, at 1:00 p.m.

Oral/Written Statements: Views to be presented at the public meeting should be sent, in writing, to the FAR Secretariat, at the address given below, not later than April 10, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405, Telephone: (202) 501–4755.

The public meeting will be held at: General Services Administration Auditorium, 18th & F Streets, NW, First Floor, Washington, DC 20405.

Please cite FAR case 94–711 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ed McAndrew, Special Contracting Team Leader, at (202) 501–1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–711.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes can be expected in the acquisition process as a result of the Act's implementation.

FAR Case 94–711

This notice announces FAR revisions developed under FAR case 94–711 which implement the requirements of sections 1004 and 1054, of the Act. Both of these sections contain statutory requirements for the award of task and delivery order contracts, the issuance of orders under such contracts and the award of such contracts for advisory and assistance services.

Public Meeting. The FAR Council is interested in an exchange of ideas and opinions on this rule. For that reason, the FAR Council is conducting a series of public meetings. A public meeting will be held on April 13, 1995, to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR. The public is encouraged to furnish its views; the Council anticipates that public comments will be very helpful in formulating final rules.

Persons or organizations wishing to make presentations will be allowed 10 minutes each, provided they notify the FAR Secretariat at (202) 501–4755 and submit written statements of the presentation by April 10, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with this **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule may result in more opportunities for small businesses to compete for awards as a result of the multiple award preference. There is a potential negative impact resulting from consolidation of contract requirements under a task or delivery order contract; however, it is expected that this negative impact could be mitigated by an increase in the opportunities for small businesses to receive subcontracts. Small businesses could also form joint ventures to bid on larger contract requirements. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 94–711), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 16 and 52

Government procurement.

Dated: March 9, 1995.

Barry Cohen,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 6, 16 and 52 be amended as set forth below:

PART 6—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Parts 6, 16 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 6.001 is amended by adding paragraph (f) to read as follows:

6.001 Applicability.

* * * * *

(f) Orders placed against task order and delivery order contracts entered into pursuant to 48 CFR (FAR) part 16, subpart 16.5.

PART 16—TYPES OF CONTRACTS

3. Section 16.500 is added to read as follows:

16.500 Scope of subpart.

This subpart prescribes policies and procedures for making awards of indefinite delivery contracts and establishes a preference scheme for

making multiple awards of delivery order contracts and task order contracts. This subpart does not limit the use of other than full and open competitive procedures authorized by 48 CFR (FAR) part 6. The preference scheme established by this subpart and the limitations on the use of contracts for advisory and assistance services do not apply to contracts subject to the procedures of 48 CFR (FAR) parts 36, 38, 39 and 41.

16.501 [Redesignated and amended]

4. Section 16.501 is redesignated as 16.501–1 and is amended by removing paragraph (c).

5. Section 16.501–2 is added to read as follows:

16.501–2 Definitions.

As used in this subpart—

Advisory and assistance services has the same meaning as set forth in 48 CFR (FAR) 37.201.

Delivery order contract means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

Task order contract means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

6. Section 16.503 is amended in the introductory text of paragraph (a) by removing the word "specific", and by revising paragraphs (a)(2) and (b) and adding (a)(3) and (d) to read as follows:

16.503 Requirements contracts.

(a) * * *

(2) In addition to other required provisions and clauses, a solicitation for a requirements contract shall—

(i) Specify the period of the contract including the number of options and the period for which the contract may be extended under each option, if any;

(ii) Specify the maximum quantity or dollar value of services or supplies to be acquired under the contract;

(iii) Include a statement of work, specifications or other description that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services to be acquired under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer; and

(iv) State the procedures that will be used in issuing orders.

(3) The contract may specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.

(b) *Application.* A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period. Funds are obligated by each delivery order, not by the contract itself.

* * * * *

(d) *Limitations on use of requirements contracts for advisory and assistance services in excess of three years and $10,000,000.* (1) Except as provided in 16.503(d)(2), no solicitation may be issued for a requirements contract for advisory and assistance services in excess of three years and $10,000,000 (including all options) which does not provide for multiple awards, unless the head of the agency or designee determines in writing that the services required are so unique or highly specialized that it is not practicable to award more than one contract.

(2) The limitation at 16.503(d)(1) is not applicable to the acquisition of supplies or services that includes the acquisition of advisory and assistance services if the head of an agency or designee determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

7. Section 16.504 is amended in the introductory text of paragraph (a) by removing the word "specific", and by adding paragraphs (a)(4) and (c) to read as follows:

16.504 Indefinite-quantity contracts.

(a) * * *

(4) In addition to other required provisions and clauses, a solicitation for an indefinite-quantity contract shall—

(i) Specify the period of the contract including the number of options and the period for which the contract may be extended under each option, if any;

(ii) Specify the total minimum and maximum quantity or dollar value of services or supplies to be acquired under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services to be acquired under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that will be used in issuing orders;

(v) If multiple awards may be made, include the provision at 48 CFR (FAR) 52.216–27, Election to Award Single or Multiple Task Order Contracts or Delivery Order Contracts, to notify offerors that more than one contract may be awarded; and

(vi) If an award of a task order contract for advisory and assistance services in excess of three years and $10,000,000 (including all options) is anticipated, include the provision at 48 CFR (FAR) 52.216–28, Notice of Intent to Make Multiple Awards Under a Task Order Contract for Advisory and Assistance Services That Exceeds Three Years and $10,000,000, unless a determination to make a single award is made under 16.504(c)(2)(i)(A).

* * * * *

(c) *Multiple award preference*—(1) *General preference.* Except for indefinite quantity contracts for advisory and assistance services as provided in 16.504(c)(2), the contracting officer shall, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. In making a determination as to whether multiple awards are appropriate, the contracting officer shall exercise sound business judgment as part of acquisition planning. Multiple awards should not be made when—

(i) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(ii) Based on the contracting officer's knowledge of the market and consideration of the cost to the Government of administration of multiple contracts, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(iii) The nature of the work to be performed under each order is integrally related;

(iv) Making multiple awards would be inconsistent with other provisions of law;

(v) The total estimated value of the contract is less than the simplified acquisition threshold; or

(vi) The contracting officer determines that multiple awards would not be in the best interests of the Government.

(2) *Contracts for advisory and assistance services.* (i) Except as provided in 16.504(c)(2)(ii), if an indefinite quantity contract for advisory and assistance services will not exceed three years and $10,000,000, including all options, a contracting officer need

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not give preference to making multiple awards. If an indefinite quantity contract for advisory and assistance services is to exceed three years and $10,000,000, including all options, multiple awards shall be made unless—

(A) The head of the agency or designee determines in writing, prior to the issuance of the solicitation, that the services required under the task order contract are so unique or highly specialized that it is not practicable to award more than one contract;

(B) The head of the agency or designee determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of 16.504(c)(2)(i) are not applicable to the acquisition of supplies or services that includes the acquisition of advisory and assistance services if the head of an agency or designee determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

8. Sections 16.505 and 16.506 are redesignated as 16.506 and 16.505, respectively, and the newly-redesignated 16.505 is revised and the newly-redesignated 16.506 is amended by revising the heading and adding paragraphs (f) and (g) to read as follows:

16.505 Ordering.

(a) *General.* (1) When placing orders under this subpart, a separate notice under 48 CFR (FAR) 5.201 is not required.

(2) The ordering officer shall ensure that individual orders clearly describe all services to be performed or supplies to be delivered. The ordering officer shall also ensure that orders are within the scope, period, or maximum value of the contract.

(3) The contracting officer shall include in the contract Schedule the names of the activity or activities authorized to issue orders.

(4) If appropriate, authorization for placing oral orders may be included in the contract Schedule; provided, that procedures have been established for obligating funds and that oral orders are confirmed in writing.

(5) Orders may be placed by written telecommunication or other electronic means, if provided for in the contract.

(6) Orders placed under indefinite-delivery contracts shall contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) Item number and description, quantity, and unit price.

(iv) Delivery or performance date.

(v) Place of delivery or performance (including consignee).

(vi) Packaging, packing, and shipping instructions, if any.

(vii) Accounting and appropriation data.

(viii) Any other pertinent information.

(7) No protest under 48 CFR (FAR) part 33 is authorized in connection with the issuance or proposed issuance of an order under a task order contract or delivery order contract except for a protest on the grounds that the order increases the scope, period or maximum value of the contract.

(b) *Orders under multiple award task or delivery order contracts.* (1) Except as provided for in 16.505(b)(2), for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of $2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion and may consider factors such as past performance, quality of deliverables, cost control, price, cost, or other factors that the contracting officer, in the exercise of sound business judgment, believes are relevant to the placement of orders. Such procedures need not comply with the competition requirements of 48 CFR (FAR) part 6. The contracting officer need not request written proposals or conduct discussions with multiple contractors before issuing orders unless the contracting officer determines such actions to be necessary.

(2) Awardees need not be given a fair opportunity to be considered for a particular order in excess of $2,500 if the contracting officer determines that—

(i) The agency need for such services or supplies is of such urgency that providing such opportunity would result in unacceptable delays;

(ii) Only one such contractor is capable of providing such services or supplies required at the level of quality required because the services or supplies ordered are unique or highly specialized;

(iii) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) Soliciting offers from one or more awardees under a multiple award task order contract or delivery order contract shall satisfy the "competing independently" requirements of 48 CFR (FAR) 15.804–3(b)(3).

(4) The head of the agency shall designate a task order contract and delivery order contract ombudsman who shall be responsible for reviewing complaints from contractors on task order contracts and delivery order contracts. The ombudsman shall review complaints from the contractors and ensure that all contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman shall be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task order contracts for advisory and assistance services.* (1) Except as provided for in 16.505(c)(2), the ordering period of a task order contract for advisory and assistance services, including all options or modifications, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such a contract. Notwithstanding the five year limitation or the requirements of 48 CFR (FAR) part 6, a task order contract for advisory and assistance services may be extended on a sole-source basis only once for a period not to exceed six months if—

(i) The head of the agency or designee determines that the award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services pending the award of the follow-on contract.

(2) The limitation on ordering period contained in 16.505(c)(1) is not applicable to the acquisition of supplies or services that includes the acquisition of advisory and assistance services if the head of an agency or designee determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.506 Solicitation provisions and contract clauses.

* * * * *

(f) The contracting officer shall insert the provision at 48 CFR (FAR) 52.216–27, Election to Award Single or Multiple Task Order Contracts or Delivery Order Contracts, in solicitations for task or delivery order contracts that may result in multiple contract awards. This provision shall not be used for advisory and assistance services contracts.

(g) In accordance with 16.504(a)(4)(vi), the contracting officer shall insert the provision at 48 CFR (FAR) 52.216–28, Notice of Intent to Make Multiple Awards Under a Task Order Contract for Advisory and Assistance Services That Exceeds Three Years and $10,000,000, in solicitations for task order contracts for advisory and assistance services that exceed three years and $10,000,000 (including all options) provided that no determination is made under 16.504(c)(2)(i)(A).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 52.216–18 is amended in the introductory text by removing "16.505(a)" and inserting "16.506(a)" in its place, and revising the clause date and paragraphs (b) and (c) to read as follows:

52.216–18 Ordering.

* * * * *

ORDERING (XXX 1995)

* * * * *

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by written telecommunications, or by other electronic means only if authorized in the Schedule.

(End of clause)

10. Section 52.216–19 is amended by revising the section heading, introductory text and clause heading and date to read as follows:

52.216–19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated:

ORDER LIMITATIONS (XXX 1995)

* * * * *

52.216–20 [Amended]

11. Section 52.216–20 is amended in the introductory text by removing "16.505(c)" and inserting "16.506(c)" in its place, revising the clause date to read "(XXX 1995)", and in the first sentence of paragraph (c) by removing the word "Delivery-".

52.216–21 [Amended]

12. Section 52.216–21 is amended in the introductory text by removing "16.505(d)" and inserting "16.506(d)" in its place; in the clause heading by removing the date "(APR 1984)" and inserting "(XXX 1995);" in the second sentence of paragraph (b) by removing the word "Delivery-"; and in the introductory texts of Alternates III and IV by removing the phrase "or labor surplus area" and revising the Alternate dates to read "(XXX 1995)".

52.216–22 [Amended]

13. Section 52.216–22 is amended in the introductory text by removing "16.505(e)" and inserting "16.506(e)" in its place; in the clause heading by removing the date "(APR 1984)" and inserting "(XXX 1995)" in its place; and in the first sentence of paragraph (c) by removing the word "Delivery-".

14. Section 52.216–27 is added to read as follows:

52.216–27 Election to Award Single or Multiple Task Order Contracts or Delivery Order Contracts.

As prescribed in 16.506(f), insert the following provision:

ELECTION TO AWARD SINGLE OR MULTIPLE TASK ORDER CONTRACTS OR DELIVERY ORDER CONTRACTS (XXX 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple task order contracts or delivery order contracts for the same or similar services or supplies to two or more sources under this solicitation.

(End of provision)

15. Section 52.216–28 is added to read as follows:

52.216–28 Notice of Intent to Make Multiple Awards Under a Task Order Contract for Advisory and Assistance Services That Exceeds Three Years and $10,000,000.

As prescribed in 16.506(g), insert the following provision:

NOTICE OF INTENT TO MAKE MULTIPLE AWARDS UNDER A TASK ORDER CONTRACT FOR ADVISORY AND ASSISTANCE SERVICES THAT EXCEEDS THREE YEARS AND $10,000,000 (XXX 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

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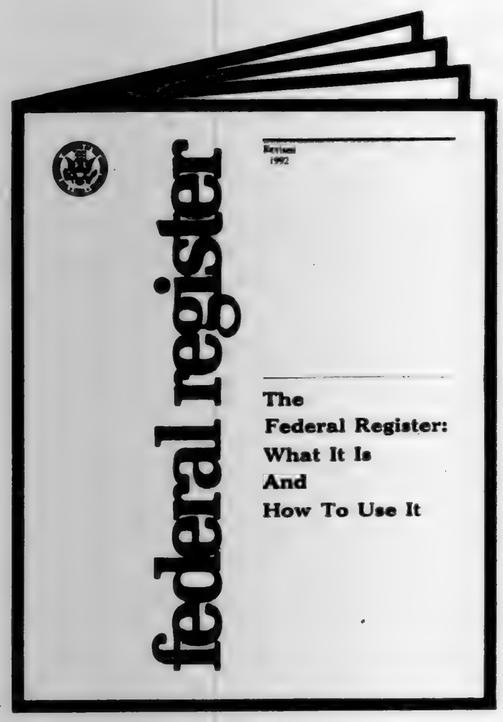

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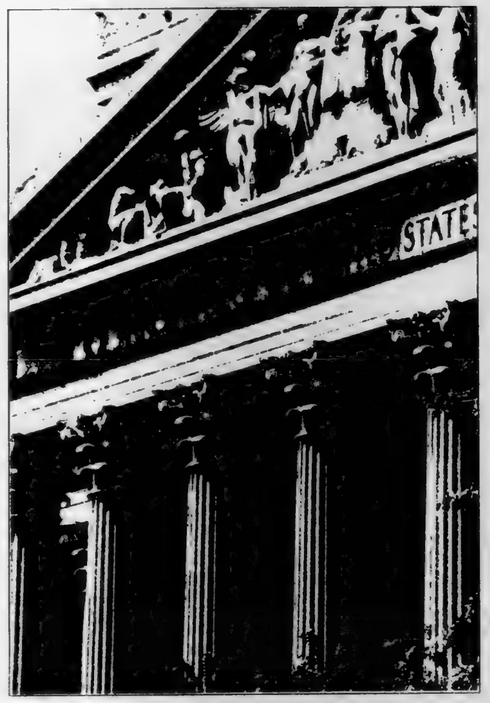

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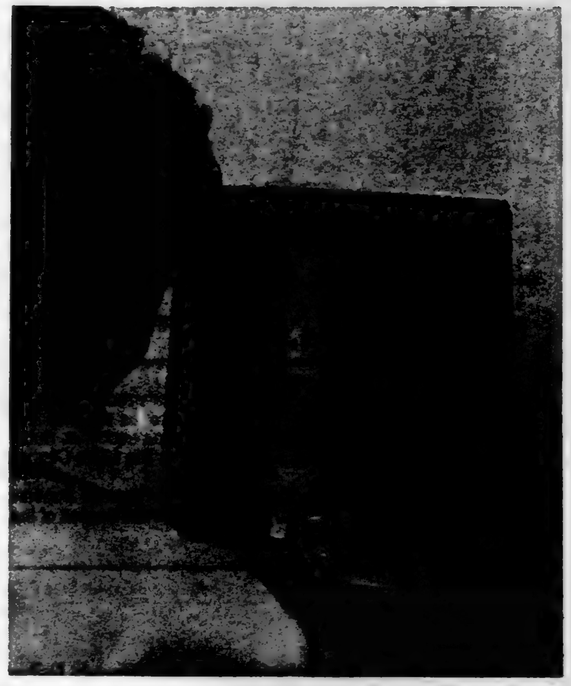

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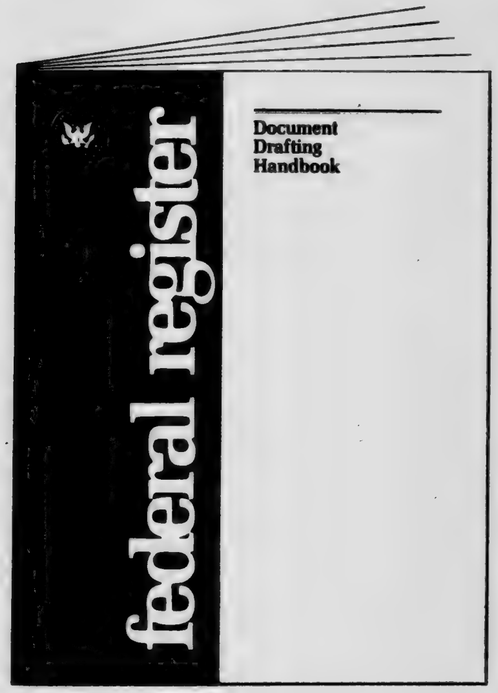

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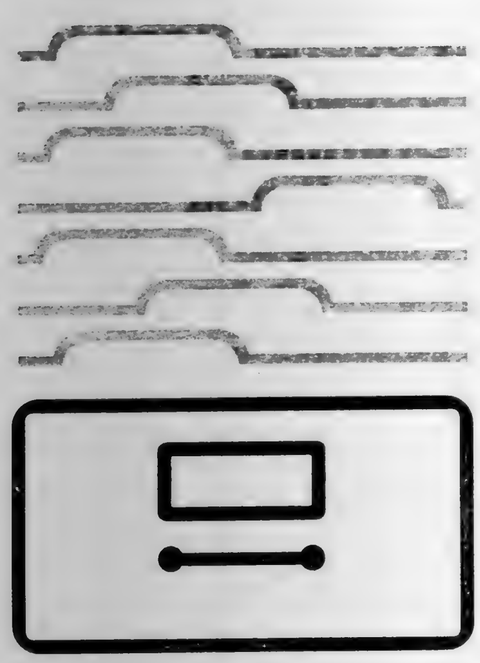

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Friday, March 17, 1995

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The President

Proclamation 6777 of March 14, 1995

National Day of Prayer, 1995

By the President of the United States of America

A Proclamation

Our Nation was built on the steadfast foundation of the prayers of our ancestors. In times of blessing and crisis, stability and change, thanksgiving and repentance, appeals for Divine direction have helped the citizens of the United States to remain faithful to our long-standing commitment to life, liberty, and justice for all.

This reliance on spiritual assistance has especially characterized times of national transition and uncertainty. As our country was ravaged by the Civil War, Abraham Lincoln remarked, "I have been driven many times upon my knees by the overwhelming conviction that I had nowhere else to go." And with him, millions of slaves cried out to the Almighty for an end to their suffering.

Abolitionist Frederick Douglass said this about the spiritual songs sung on the plantations: "Every tone was a testimony against slavery, and a prayer to God for deliverance from chains." Since that time, we have witnessed tremendous improvements in relations between people of all races and backgrounds. Indeed, long ago, through the work of prayer and common effort, and with the inspiration of the Creator, we began to turn the tide in this Nation from divisiveness and recrimination toward reconciliation and healing.

Let us not forget those painful lessons of our past, but continue to seek the guidance of God in all the affairs of our Nation. We must not become complacent, but rather press onward for the protection of the vulnerable and the downtrodden. In the words of President Lincoln, "it behooves us then to humble ourselves before the offended Power, to confess our national sins and pray for clemency and forgiveness" for any injustice we perceive in our midst. May we, the people of this country, set a steady course, dedicated to respect for one another and for individual freedom.

The Congress, by Public Law 100–307, has called on our citizens to reaffirm annually our dependence on Almighty God by recognizing a "National Day of Prayer."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 4, 1995, as a National Day of Prayer. I call upon every citizen of this great Nation to gather together on that day to pray, each in his or her own manner, for God's continued guidance and blessing.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–6795
Filed 3–15–95; 2:02 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 60, No. 52
Friday, March 17, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204, 211, 235, 251, 252, 274a, 299, 316 and 334

[INS No. 1703–95]

RIN 1115–AD81

Delay of Effective Date for Establishment of Form I–551, Alien Registration Receipt Card, as the Exclusive Form of Registration for Lawful Permanent Resident Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; delay of effective dates.

SUMMARY: The Immigration and Naturalization Service ("the Service") is delaying the effective date of a final rule previously published in the **Federal Register** on September 20, 1993, at 58 FR 48775–48780, which provided, *inter alia*, for the termination of the validity of the Form I–151, Alien Registration Receipt Card.

EFFECTIVE DATE: Effective March 17, 1995, the effective date for the regulation published on September 20, 1993, amending 8 CFR Parts 204, 211, 235, 251, 252, 274a, 299, 316, and 334, is delayed until March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1993, the Service published a final rule in the **Federal Register** at 58 FR 48775–48780, establishing the Form I–551, Alien Registration Receipt Card, as the exclusive form of registration for lawful permanent residence, and terminating the validity of the old Form I–151, Alien Registration Receipt Card. In addition, the final rule provided procedures by which a lawful permanent resident alien in possession of a Form I–151 or a prior alien registration document, such as the Form AR–3 or AR–103, could replace these documents with the current Form I–551. The effective date of the amendments to 8 CFR part 264 concerning application procedures became effective on October 20, 1993. The final rule also provided that the effective date for the removal of references to the Form I–151 from 8 CFR parts 204, 211, 223, 235, 251, 252, 274a, 299, 316, and 334 would be September 20, 1994, on which date the validity of the Form I–151 would officially terminate. On September 14, 1994, the Service published a final rule in the **Federal Register** at 59 FR 47063, which extended the validity of the I–151 by delaying the effective date of the amendments to 8 CFR parts 204, 211, 223, 235, 251, 252, 274a, 299, 316, and 334, until March 20, 1995. This rule further extends the validity of the I–151 by delaying the effective date of the amendments to 8 CFR parts 204, 211, 235, 251, 252, 274a, 299, 316, and 334, until March 20, 1996. Delaying the effective date of the amendment to 8 CFR 223 is not necessary since, pursuant to a final rule published on January 11, 1994, at 59 FR 1455–1466, that part no longer contains a reference to Form I–151.

This delay in the effective date is necessary in order to minimize the possibility that lawful permanent resident aliens who apply for either a replacement Form I–551 card or for naturalization prior to March 20, 1995, as a result of the I–151 replacement program, will not have had their applications adjudicated before their old registration cards expire. The I–151 replacement program will terminate on March 20, 1995. Any application for a replacement I–551 card or for naturalization filed by the bearer of a Form I–151 or prior alien registration document after that date will not be considered as having been filed pursuant to the I–151 replacement program. Applicants who wait until after March 20, 1995, to replace their cards or to apply for naturalization assume a much greater risk of being inconvenienced in the event that their applications are not adjudicated prior to the expiration of the Form I–151 on March 20, 1996. Accordingly, lawful permanent resident aliens in possession of a Form I–151 or prior alien registration document issued before 1979 who have not already applied to replace that card with a Form I–551 or for naturalization are urged to apply without delay. For the convenience of the public, these application forms may be ordered by telephone, toll-free, by calling: 1–800–755–0777.

The implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reason for the immediate implementation of this final rule is as follows: A notice and comment period for a proposed rule is impracticable and contrary to the public interest. Absent an extension of the validity of the Form I–151, several aliens who have applied for replacement I–551 cards or for naturalization pursuant to the I–151 replacement program would no longer have valid evidence of their status after March 20, 1995. Accordingly, this regulation affords a benefit rather than a burden or penalty of any kind on affected persons.

Dated: March 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–6711 Filed 3–16–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 113

[Docket No. 92–201–2]

Viruses, Serums, Toxins, and Analogous Products; General Requirements for Inactivated Bacterial Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to include a general standard requirement for inactivated bacterial products that is consistent with the general standard requirements

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for live bacterial products, killed virus vaccines, and live virus vaccines. We are also including criteria and test concerning the identity of master seed. Finally, the amendment provides a choice of the most appropriate test methods, including identity tests, for the broad range of inactivated bacterial products available today. The final rule is necessary to update the current standards and provide uniform, relevant criteria for inactivated bacterial products.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Pacer, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, MD 20737–1228, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations in 9 CFR part 113, standard requirements are prescribed for the licensing of veterinary biological products. A standard requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product.

On March 1, 1994, we published in the **Federal Register** (59 FR 9681–9682, Docket No. 92–201–1) a proposal to amend the regulations by revising § 113.100 to include the relevant criteria for evaluation of the purity, safety, and identity of inactivated bacterial products. In addition, we proposed to define the master seed concept as it applies to inactivated bacterial products. This action was intended to provide specific criteria for these inactivated bacterial products. We also proposed to move certain definitions from § 113.100 to part 101.

We solicited comments on our proposal for a 60-day period ending May 2, 1994. We received one comment by that date. This comment was from a licensed manufacturer of veterinary biological products. The commenter's only concern was about the manufacture of inactivated bacterial products for fish.

The commenter sought clarification of our requirement for safety tests as proposed in § 113.100(b). This requirement states that each bacterial product shall be evaluated in mice and/or guinea pigs with the exception that, if the product is specific for poultry, then the safety test will be performed in poultry. The commenter suggested that an exception similar to that for poultry should be considered for products specifically intended for fish. We agree with the rationale of the commenter because it would be more appropriate to evaluate the safety of a biological product intended for fish in an aquatic species than in a mammalian species. In response to the commenter, we have amended the proposal by adding a new paragraph (b)(3) in § 113.100 concerning fish and including other aquatic species or reptiles which states: "The product is recommended for fish, other aquatic species or reptiles. In such instances, the product shall be safety tested in fish or other aquatic species or reptiles as required by specific Standard Requirement or Outline of Production for the product." We have also made a slight change to the definitions to clarify the fact that the defined products are inactivated bacterial products.

Therefore, with the exception of the above changes, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

There are currently no general requirements for inactivated bacterial products in the regulations. However, approximately 30 percent of the 114 currently licensed veterinary biologics companies manufacture inactivated bacterial products. Many of these companies are considered small entities and will benefit from the adoption of this rule. The benefits of the rule include increased efficiency and reduced time and expense in accomplishing the steps toward licensure of an inactivated bacterial product. These benefits will be realized because of ready access to clear requirements, uniformity and consistency in product development, and the alleviation of unnecessary steps in production of these type of products. These companies should not experience any additional costs above those which they currently incur to license an inactivated bacterial product as a result of adoption of this rule.

Under these circumstances, the Administrator for the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 ad 113 are amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.3, is amended by adding, at the end of the section, the following definitions to read as follows:

§ 101.3 Biological products and related terms.

* * * * *

(m) *Bacterin.* An inactivated bacterial product consisting of an antigenic suspension of organisms or particulate parts of organisms, representing a whole culture or a concentrate thereof, with or without the unevaluated growth products, which has been inactivated as demonstrated by acceptable tests written into the filed Outline of Production for the product.

(n) *Toxoid.* An inactivated bacterial product which consists of a sterile, antigenic toxin or toxic growth product, which has resulted from the growth of bacterial organisms in a culture medium from which the bacterial cells have been removed, which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, and which is nontoxic as demonstrated by acceptable tests written into the filed Outline of Production.

(o) *Bacterin-toxoid.* An inactivated bacterial product which is either:

(1) A suspension of organisms, representing a whole culture or a concentrate thereof, with the toxic growth products from the culture which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, the inactivation of organisms and toxins being demonstrated by acceptable tests written into the filed Outline of Production: *Provided,* That it shall contain cellular antigens and shall stimulate the development of antitoxin; or

(2) A combination product in which one or more toxoids or bacterin-toxoids is combined with one or more bacterins or one or more bacterin-toxoids.

(p) *Bacterial extract.* An inactivated bacterial product which consists of the sterile, nontoxic, antigenic derivatives extracted from bacterial organisms or from culture medium in which bacterial organisms have grown.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 217, 2.51, and 371.2(d).

4. In § 113.100, the heading, introductory paragraph, and paragraphs (a) through (d) are revised to read as follows:

§ 113.100 General requirements for inactivated bacterial products.

Unless otherwise prescribed in an applicable Standard Requirement or in the filed Outline of Production, an inactivated bacterial product shall meet the applicable requirements in this section.

(a) *Purity tests.* (1) Final container samples of completed product from each serial and each subserial shall be tested for viable bacteria and fungi as provided in § 113.26.

(2) Each lot of Master Seed Bacteria shall be tested for the presence of extraneous viable bacteria and fungi in accordance with the test provided in § 113.27(d).

(b) *Safety tests.* Bulk or final container samples of completed product from each serial shall be tested for safety in young adult mice in accordance with the test provided in § 113.33(b) unless:

(1) The product contains material which is inherently lethal for mice.

In such instances, the guinea pig safety test provided in § 113.38 shall be conducted in place of the mouse safety test.

(2) The product is recommended for poultry. In such instances, the product shall be safety tested in poultry as defined in the specific Standard Requirement or Outline of Production for the product.

(3) The product is recommended for fish, other aquatic species, or reptiles. In such instances, the product shall be safety tested in fish, other aquatic species, or reptiles as required by specific Standard Requirement or Outline of Production for the product.

(c) *Identity test.* Methods of identification of Master Seed Bacteria to the genus and species level by laboratory tests shall be sufficient to distinguish the bacteria from other similar bacteria according to criteria described in the most recent edition of "Bergey's Manual of Systematic Bacteriology" or the American Society for Microbiology "Manual of Clinical Microbiology". If Master Seed Bacteria are referred to by serotype, serovar, subtype, pilus type, strain or other taxonomic subdivision below the species level, adequate testing must be used to identify the bacteria to that level. Tests which may be used to identify Master Seed Bacteria include, but are not limited to:

(1) Cultural characteristics,

(2) Staining reaction,

(3) Biochemical reactivity,

(4) Fluorescent antibody tests,

(5) Serologic tests,

(6) Toxin typing,

(7) Somatic or flagellar antigen characterization, and

(8) Restriction endonuclease analysis.

(d) *Ingredient requirements.* Ingredients used for the growth and preparation of Master Seed Bacteria and of final product shall meet the requirements provided in § 113.50. Ingredients of animal origin shall meet the applicable requirements provided in § 113.53.

* * * * *

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6648 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 93–057–2]

Viruses, Serums, Toxins, and Analogous Products; Sampling of Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the number of representative samples of product that a firm is required to submit to the Animal and Plant Health Inspection Service for testing at the National Veterinary Services Laboratories, Ames, Iowa. The amendment is applicable to diagnostic test kits and Master Seeds and Cells, and will codify provisions which are not currently in the regulations.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Pacer, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road, Unit 148, Riverdale, MD 20737–1228, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 113 contain standard requirements for evaluating veterinary biological products that are licensed by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, under the Virus-Serum-Toxin Act of 1913, as amended by the Food Security Act of 1985. Licenses are required to show that biological products are pure, safe, potent, and efficacious.

Purity and identify tests are performed by the licensee and the National Veterinary Services Laboratories (NVSL) on master seed(s) and master cell stock(s) used in the production of veterinary biological products. The licensee is also required to perform tests on the completed veterinary biological product for purity, safety, and potency as prescribed in a filed outline of production or applicable standard requirements for the product in accordance with § 113.5. The licensee's test results may be confirmed by NVSL personnel using representative biological product samples that the manufacturer is required to submit to APHIS in accordance with § 113.3.

Section 113.3 currently provides licensees and permittees with criteria for selection and submission of veterinary biological products, such as

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vaccines, bacterins, antiserums, and toxoids to NVSL. Section 113.3, however, does not state the number of samples of diagnostic test kits and master seeds and cells required by NVSL for product evaluation. These amendments specify that a minimum of 1 sample of a diagnostic test kit, 10 samples of bacterial master seeds, 13 samples of viral master seeds, and 36 milliliters of master cell stocks will be required for evaluation at NVSL.

Finally, minor editorial changes are made in § 113.309 to reflect organizational changes within APHIS.

On March 24, 1994, we published in the **Federal Register** (59 FR 13896–13897, Docket No. 93–057–1) the proposal to amend § 113.3.

We solicited comments for a 60-day period ending May 23, 1994. Two comments were received by that date. Both comments were from licensed manufacturers of veterinary biological products. The commenters were in favor of the proposed rule, but suggested certain changes.

The first commenter felt that the 1 milliliter (ml) sample volume for master seeds and cells was too restrictive and suggested that a volume of "1 ml or larger" be specified along with a minimum total volume. Proposed paragraph (c) of § 113.3 specified that "a minimum individual volume of 1 ml shall be submitted." The proposed wording thus did not restrict the total volume to only 1 ml. In response to the commenter, we have amended § 113.3(c)(3) as follows:

Thirty-six samples of at least 1 ml each or six samples of at least 1 ml each, one sample of at least 20 ml, and one sample of at least 10 ml of Master Cell Stocks. In the case of Master Cell Stocks which are persistently infected with a virus, an additional four samples of at least 1 ml each are required. If these persistently infected cell stocks are intended for use in more than one species, an additional two samples of at least 1 ml are required for each additional species.

The second commenter requested clarification regarding diagnostic test kits when the final product packages contains more than one microtiter test plate. Several diagnostic test kits are designed to use 96-well microtiter test plates or 12- or 16-well microtiter test strips. The proposed rule (§ 113.3(b)(7)) specified the submission of "two samples of diagnostic test kits" as a general rule and "a minimum of one diagnostic kit" in the preamble of the rule. As the commenter pointed out, multiple test plates or test strips may be packaged together with other test reagents in a single product. In the case of a product with multiple microtiter test plates or test strips, APHIS would not need to test all of the test plates or test strips for proper evaluation of the product. In response to the commenter, we have amended § 113.3(b)(7) and § 113.3(e)(1) to require the submission of a specified number of test plates or test strips along with all other test reagents as prescribed in a filed Outline of Production when a diagostic test kit contains multiple microtiter test plates or test strips.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

There are currently no criteria in the regulations which specify the number of samples needed by NVSL to evaluate diagnostic test kits and Master Seeds and Cells. Almost all of the 114 licensed veterinary biologics companies currently submit samples of Master Seeds and Cells to NVSL for testing. In addition, at least 25 of these companies produce veterinary diagnostic test kits and submit samples of them to NVSL for testing. Many of these companies would be considered small entities. This rule will benefit these entities by clarifying the current requirements.

This rule will reduce the licensees' time and expense in submitting samples to the NVSL by specifying the number of samples required, by increasing the uniformity of sample submissions, and by allowing for more efficient handling of samples by licensees and APHIS personnel. In addition, this amendment could increase revenues for manufacturers of veterinary diagnostic test kits by allowing them to return unrequested samples to inventory for sale.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform: This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 is amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 113.3, paragraphs (b)(7), (b)(8) and (b)(9) are revised, paragraph (b)(10) is removed, paragraph (c) is revised, and new paragraphs (d) and (e) are added to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(7) *Diagnostic test kits:* Two samples of diagnostic test kits. The licensee or permittee will hold one of these selected samples at the storage temperature recommended on the label while awaiting a request by the animal and Plant Health Inspection Service to submit the additional sample. If submission is not requested by the Animal and Plant Health Inspection Service, the additional sample may be returned to the serial inventory after the serial is released. In the case of diagnostic test kits in which final packaging consists of multiple microtiter test plates or strips, the licensee or permittee may submit a specified number of test plates or strips along with all other test reagents as prescribed in a filed Outline of Production and retain a similar amount as a second sample for submission upon request. When the initial sample is not representative of final packaging by the licensee of permittee, e.g., does not consist of all the microtiter test plates or strips, the second sample is not eligible to be returned to serial inventory after the serial is released.

(8) *Autogenous biologics:* Ten samples shall be selected from each serial of autogenous biologic that exceeds 50 containers. No samples, other than those required by paragraph (e) of this section, are required for a serial of autogenous biologic with 50 or fewer containers.

(9) *Miscellaneous:* The number of samples from products not in the categories provided for in paragraphs (b)(1) through (b)(8) of this section shall be prescribed in the filed Outline of Production for the product.

(c) Prelicensing and Outline of Production changes: Samples needed to support a license application or a change in the Outline of Production for a licensed product shall be submitted only upon request from the animal and Plant Health Inspection Service. Except for miscellaneous products specified in paragraph (b)(9) of this section, the number of such samples shall be at least one and one-half times the number prescribed for such product in paragraph (b) of this section. Samples of Master Seeds and Master Cell Stocks with a minimum individual volume of 1 ml shall be submitted as follows:

(1) Ten samples of Bacterial Master Seeds.

(2) Thirteen samples of viral Master Seeds or nonviral Master Seeds requiring cell culture propagation. For Master Seeds isolated or passed in a cell line different from the species of intended use, an additional 2 samples are required for each additional species. For Master Seeds grown in cell culture and intended for use in more than one species, an additional 2 samples are required for each additional species.

(3) Thirty-six samples of at least 1 ml each or six samples of at least 1 ml each, one sample of at least 20 ml, and one sample of at least 10 ml of Master Cell Stocks. In the case of Master Cell Stocks which are persistently infected with a virus, an additional four samples of at least 1 ml each are required. If these persistently infected cell stocks are intended for use in more than one species, an additional two samples of at least 1 ml are required for each additional species.

(4) Four samples of the Master Cell Stock + n (highest passage) cells.

(d) Sterile diluent: A sample of Sterile Diluent shall accompany each sample of product, other than Marek's Disease Vaccine, if such diluent is required to rehydrate or dilute the product before use. The volume of diluent shall be an appropriate amount to rehydrate or dilute the product. Samples of Sterile Diluent prepared for use with Marek's Disease Vaccine shall be submitted upon request from the Animal and Plant Health Inspection Service.

(e) Reserve samples shall be selected from each serial and subserial of biological product. Such samples shall be selected at random from final containers of completed product by an employee of the Department, of the licensee, or of the permittee, as designated by the administrator. Each sample shall:

(1) Consist of 5 single-dose packages, 2 multiple-dose packages, or 2 diagnostic test kits, except that, in the case of diagnostic test kits in which final packaging consists of multiple microtiter test plates or strips, a sample may consist of a specified number of test plates or strips along with all other test reagents as prescribed in a filed Outline of Production;

(2) Be adequate in quantity for appropriate examination and testing;

(3) Be truly representative and in final containers;

(4) Be held in a special compartment set aside by the licensee or permittee for holding these samples under refrigeration at the storage temperature recommended on the labels for 6 months after the expiration date stated on the labels. The samples that are stored in this manner shall be delivered to the Animal and Plant Health Inspection Service upon request.

(Approved by the Office of Management and Budget under control number 0579–0013)

§ 113.309 [Amended]

3. In § 113.309, paragraph (c)(4), the words "Veterinary Services" are removed and the words "Animal and Plant Health Inspection Service" are added in their place.

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6649 Filed 3–16–95; 8:45 am]

Billing Code 3410–34–M

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9 CFR Part 113

[Docket No. 92–132–2]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Standard Requirements concerning Dog Safety Testing; Canine Distemper Vaccine, Killed Virus; Canine Hepatitis Vaccine, Killed Virus; Canine Adenovirus Type 2 Vaccine, Killed Virus; Mink Enteritis Vaccine, Killed Virus; Canine Hepatitis Vaccine, Live Virus; Canine Adenovirus Type 2 Vaccine, Live Virus; and Canine Distemper Vaccine, Live Virus. The amendments are necessary because new test methods and procedures have been developed that can replace current test requirements and increase the validity of test results. The effect of the amendments is to provide new test methods and procedures and to relax some of the restrictions currently in effect. Also, the Standard Requirement for Canine Distemper Vaccine (Ferret Virulent) is removed because this vaccine is no longer manufactured.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, MD 20737–1228, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 "Standard Requirements", (referred to below as the regulations) consist of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) for the evaluation of veterinary biological products based upon their purity, safety, potency, and efficacy. The Agency periodically reviews the regulations and amends test methods and procedures as required to ensure that they are consistent with current scientific knowledge. On July 23, 1993, we published in the **Federal Register** (*see* 58 FR 39467–39473, Docket No. 92–132–1) a proposed rule to update the regulations based upon current scientific knowledge.

We solicited comments concerning our proposal for a 60-day comment period ending September 21, 1993. We received four comments by that date. One commenter fully supported the proposal as written. Three commenters suggested changes to certain sections related to the Standard Requirements. These comments are discussed below.

Two commenters suggested changes to § 113.204. Both commenters indicated that the portion of the regulations dealing with the time(s) of feces collection for virus detection required clarification, and suggested that feces collection at some point from day 4 to 8 would be appropriate.

APHIS believes that the above comments have merit. APHIS agrees that feces collection early or late in the collection period, or more than once, is unnecessary. Therefore, APHIS has revised the regulations in § 113.204(b)(2) to specify that feces are

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to be collected once from day 4 through day 8.

One of the two commenters stated that the term "virus isolation" should be defined and that methods other than that specified, "virus isolation and/or fluorescent antibody examination," should be allowed for the detection of virus in feces. APHIS agrees that not only "virus isolation" but the whole phrase "virus isolation and/or fluorescent antibody examination" needs clarification. Therefore, we have revised the regulations in § 113.204(b)(2) to specify that cell culture with fluorescent antibody examination is the acceptable method of virus detection. APHIS does not agree, however, with the suggestion that other methods of virus detection should be specified in the regulations presently. We believe that cell culture with fluorescent antibody examination is the most sensitive and specific method of virus detection. Should APHIS become aware of another method that is superior to that indicated, it would consider rulemaking to specify that method in the regulations.

One of the two commenters also stated that unvaccinated control mink in immunogenicity studies should not be considered susceptible to challenge if the animals exhibit clinical signs but do not shed virus. The second commenter stated that the determination of virus shedding in animals used for immunogenicity studies should not be required if four or five of the five unvaccinated control mink exhibit clinical signs. APHIS does not agree with either commenter. We believe that the absence of appropriate clinical signs in vaccinated mink challenged with virulent mink enteritis virus together with clinical signs in unvaccinated control mink after challenge is sufficient evidence of the effectiveness of the challenge. We also believe that an effective vaccine against mink enteritis should prevent virus shedding. No change in the regulations is made in response to these comments.

As a final comment on § 113.204, one commenter criticized what the commenter thought was a Standard Assay Method (SAM) developed by the National Veterinary Services Laboratories for challenging mink with mink enteritis virus. No such SAM has been prepared. What has been prepared is more appropriately termed a "bench protocol." Since the protocol was not addressed in the proposed rulemaking, no change to the regulations is made based on this comment.

Comments on the three other Standard Requirements included in the proposed rule (§§ 113.40, 113.201, and 113.306) were received from another commenter. Two of the comments related to the route of canine distemper virus challenge and the requirements for satisfactory vaccine performance in a repeat immunogenicity study. The commenters requested that § 113.306 concerning live virus vaccines be changed to specify an intranasal rather than the traditional intracerebral route of challenge. No amendments to the route of challenge or repeat immunogenicity requirements were proposed in § 113.306. An intracerebral challenge has been used successfully for many years with the live virus vaccine. It was the proposed amendments to § 113.201 that changed the route of challenge from intranasal to intracerebral for killed virus vaccines to be consistent with that specified for live virus vaccines in § 113.306. Since the commenters focussed only on § 113.306 and that section is not being amended as to route of challenge, no change to the regulations is made in response to these commenters.

The same commenter also claimed that the proposal would result in the overuse of Master Seed and suggested that material obtained after five passages of Master Seed be used instead. APHIS disagrees with this comment. In requiring that Master Seed be used, the proposed change is consistent with other regulations in part 113. We believe that testing the Master Seed is necessary for a satisfactory determination of its use. No change to the regulations is made in response to this commenter.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule revises the current Standard Requirements for certain vaccines. Sections 113.201 and 113.202 are amended to revise the potency test performed on each serial of product so that fewer dogs will be used and serology will be used instead of virus challenge. Both of these changes will decrease the costs of production to the manufacturer. In § 113.204, the potency test in mink is changed to require that virus shedding be examined. This change should result in only a minimal increase in cost (less than $100 per test) to the manufacturer. Other changes to the Standard Requirements generally update the Standard Requirements to reflect current scientific knowledge. We do not expect any increase in cost, except as noted above, to the 200 biologics manufacturers affected by this rule. In most cases, we expect the changes will actually decrease the costs for the manufacturers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the category of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 is amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.40 is revised to read as follows:

§ 113.40 Dog safety tests.

The safety tests provided in this section shall be conducted when prescribed in a Standard Requirement or in the filed Outline of Production for a biological product recommended for use in dogs. Serials which are not found to be satisfactory when tested pursuant to the procedures in this section may not be released for shipment.

(a) The dog safety test provided in this paragraph shall be used when the Master Seed Virus is tested for safety.

(1) The test animals shall be determined to be susceptible to the virus under test by a method acceptable to the Animal and Plant Health Inspection Service.

(2) Each of at least 10 susceptible dogs shall be administered a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose of the vaccine, by the method recommended on the label, and the dog shall be observed each day for 14 days.

(3) If unfavorable reactions attributable to the virus occur in any of the dogs during the observation period, the Master Seed Virus is unsatisfactory. If unfavorable reactions occur which are not attributable to the Master Seed Virus, the test shall be declared inconclusive and may be repeated: *Provided:* That, if the test is not repeated, the Master Seed Virus shall be considered unsatisfactory.

(b) The dog safety test provided in this paragraph shall be used when a serial of vaccine is tested for safety before release.

(1) Each of two healthy dogs shall be administered 10 dog doses by the method recommended on the label and the dogs shall be observed each day for 14 days.

(2) If unfavorable reactions attributable to the biological product occur during the observation period, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the biological product, the test shall be declared inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the serial shall be considered unsatisfactory.

3. Section 113.201 is revised to read as follows:

§ 113.201 Canine Distemper Vaccine, Killed Virus.

Canine Distemper Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.200.

(b) The immunogenicity of vaccine prepared from the Master Seed Virus in accordance with the Outline of Production shall be established. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(1) Twenty-five canine distemper susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine distemper to determine susceptibility. A constant virus-varying serum neutralization test in cell culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(i) The 20 dogs used as vaccinates shall be injected with one dose of vaccine by the method recommended on the label. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) At least 14 days after the last inoculation, the vaccinates and controls shall each be challenged intracerebrally with canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 21 days.

(iii) If at least four of the five controls do not die and the survivor, if any, does not show clinical signs of canine distemper, the test is inconclusive and may be repeated.

(iv) If at least 19 of the 20 vaccinated do not survive without showing clinical signs of canine distemper during the observation period, the Master Seed Virus is unsatisfactory.

(c) *Test requirements for release.* Each serial shall meet the applicable general requirements prescribed in § 113.200 and the special requirements for safety and potency provided in this section.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the serial is unsatisfactory.

(2) *Potency test—serum neutralization test.* Bulk or final container samples of completed product shall be tested for potency using five susceptible dogs (four vaccinates and one control) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine distemper virus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the four vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) *Serology.* At the end of the post vaccination observation period, a second blood sample shall be obtained from each of the five dogs and the serums shall be individually tested for neutralizing antibody against canine distemper virus in the same manner used to determine susceptibility.

(iv) *Interpretation of the serum neutralization test.* If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least three of the four vaccinates in a valid test have not developed titers based upon a final serum dilution of at least 1:50 and the remaining vaccinate has not developed a titer of at least 1:25, the serial is unsatisfactory except as provided in paragraphs (c)(2) (v) and (vi) of this section.

(v) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the control may be challenged intracerebrally with a virulent canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and each animal observed each day for an additional 21 days.

(vi) *Interpretation of the virus challenge test.* For a serial to be satisfactory, all vaccinates must remain free from clinical signs of canine distemper while the control must die of canine distemper. If the control does not die of canine distemper, the test is inconclusive and may be repeated except, that if any of the vaccinates show signs or dies of canine distemper, the serial is unsatisfactory.

4. Section 113.202 is revised to read as follows:

§ 113.202 Canine Hepatitis and Canine Adenovirus Type 2 Vaccine, Killed Virus.

Canine Hepatitis and Canine Adenovirus Type 2 Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the

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first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.200.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity by one or both of the following methods. Vaccine used for these tests shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(1) *Immunogenicity for canine hepatitis.* Twenty-five canine hepatitis susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) The 20 dogs to be used as vaccinates shall be injected with one dose of vaccine and the remaining five dogs held as controls. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) Not less than 14 days after the last inoculation, each vaccinate and control shall be challenged intravenously with virulent infectious canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days.

(iii) If at least four of the five controls do not show severe clinical signs of infectious canine hepatitis, the test is inconclusive and may be repeated.

(iv) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of infectious canine hepatitis during the observation period, the Master Seed Virus is unsatisfactory.

(2) *Immunogenicity for canine adenovirus type 2.* Thirty canine adenovirus type 2 susceptible dogs shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) The 20 dogs to be used as vaccinates shall be injected with one dose of vaccine and the remaining 10 dogs held as controls. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) Not less than 14 days after the last inoculation, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(iii) If at least 6 of 10 controls do not show clinical signs of canine adenovirus type 2 infection other than fever, the test is inconclusive and may be repeated.

(iv) If a significant difference in clinical signs in a valid test cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed Virus is unsatisfactory.

(c) *Test requirements for release.* Each serial shall meet the applicable general requirements prescribed in § 113.200, the special requirements for safety provided in this section, and the applicable potency tests provided in this section.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) and/or (c)(3) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if not repeated, the serial is unsatisfactory.

(2) *Potency test for canine hepatitis—serum neutralization test.* Bulk or final container samples of completed product shall be tested for potency using at least five susceptible dogs (four vaccinates and one control) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine adenovirus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) *Serology.* At the end of the postvaccination observation period, a second blood sample shall be obtained from each of the dogs and the serums shall be individually tested for neutralizing antibody against canine adenovirus in the same manner used to determine susceptibility.

(iv) *Interpretation of the serum neutralization test.* If the control(s) has not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least 75 percent of the vaccinates in a valid test have not developed titers based upon final serum dilution of at least 1:10 and the remaining vaccinate(s) has not developed a titer of at least 1:2, the serial is unsatisfactory except as provided in paragraphs (c)(2) (v) and (vi) of this section.

(v) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the control(s) may be challenged intravenously with a virulent canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and each animal observed each day for an additional 14 days.

(vi) *Interpretation of the virus challenge test.* For a serial to be satisfactory, all vaccinates must remain free of clinical signs of canine hepatitis while the control(s) must show severe clinical signs of canine hepatitis. If the control(s) does not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show signs or die of canine hepatitis, the serial is unsatisfactory.

(3) *Potency test for canine adenovirus type 2.* Bulk or final container samples of completed product shall be tested for potency using eight susceptible dogs (five vaccinates and three controls) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine adenovirus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the five vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) Not less than 14 days after the last inoculation, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine

approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(iv) If at least two of three controls do not show clinical signs of canine adenovirus type 2 other than fever, the test is inconclusive and may be repeated.

(v) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service and prescribed in the Outline of Production, the serial is unsatisfactory.

5. Section 113.204 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 113.204 Mink Enteritis Vaccine, Killed Virus.

* * * * *

(b) * * *

(2) *Challenge.* At least 2 weeks after the last inoculation, the five vaccinates and the five controls shall be challenged with virulent mink enteritis virus and observed each day for 12 days. Fecal material shall be collected on one day between days 4–8 (inclusive) postchallenge from each test animal that remains free of enteric signs and tested for the presence of mink enteritis virus by cell culture with fluorescent antibody examination.

(3) *Interpretation.* A serial is satisfactory if at least 80 percent of the vaccinates remain free of enteric signs and do not shed virus in the feces, while at least 80 percent of the controls develop clinical signs of mink enteritis or shed virus in the feces. If at least 80 percent of the vaccinates remain free of enteric signs and do not shed virus in the feces, while less than 80 percent of the controls develop clinical signs of mink enteritis or shed virus in the feces, the test is considered inconclusive and may be repeated: *Provided,* That, if at least 80 percent of the vaccinates do not remain well and free of detectable virus in the feces, the serial is unsatisfactory.

6. Section 113.305 is revised to read as follows:

§ 113.305 Canine Hepatitis and Canine Adenovirus Type 2 Vaccine.

Canine Hepatitis Vaccine and Canine Adenovirus Type 2 Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used in preparing the production seed virus for vaccine production. All serials shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300 except that the dog safety test prescribed in § 113.40(a) shall be conducted by the intravenous route.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity by one or both of the following methods:

(1) *Immunogenicity for canine hepatitis.* Twenty-five canine hepatitis susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs to be used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining five dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(ii) Not less than 14 days postinjection, the vaccinates and the controls shall each be challenged intravenously with virulent infectious canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days.

(A) If at least four of the five controls do not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated.

(B) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of infectious canine hepatitis during the observation period, the Master Seed Virus is unsatisfactory.

(iii) The Master Seed Virus shall be retested for immunogenicity for canine hepatitis in 3 years unless use of the lot previously tested is discontinued. Ten susceptible dogs (8 vaccinates and 2 controls) shall be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(A) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(1)(i) of this section.

(B) At least 14 days postvaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine adenovirus in the same manner used to determine susceptibility.

(C) If the two controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(D) if at least six of the eight vaccinates in a valid test do not develop titers of at least 1:10 based upon final serum dilution, the Master Seed Virus is unsatisfactory except as provided in paragraph (b)(1)(iii)(E) of this section.

(E) If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the controls may be challenged as provided in paragraph (b)(1)(ii) of this section. A Master Seed is satisfactory if all vaccinates remain free of clinical signs of canine hepatitis, while both controls develop severe clinical signs of canine heptatis. If both controls do not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show such signs, the Master Seed Virus is unsatisfactory.

(2) *Immunogenicity for canine adenovirus Type 2.* Thirty canine adenovirus type 2 susceptible dogs shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs to be used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining 10 dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(ii) Not less than 14 days postinjection, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

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(A) If at least 6 of 10 controls do not show clinical signs of canine adenovirus type 2 infection other than fever, the test is inconclusive and may be repeated.

(B) if a significant difference in clinical signs in a valid test cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed Virus is unsatisfactory.

(iii) the Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Either 10 vaccinates and 6 controls or 5 vaccinates and 3 controls shall be used in the retest.

(A) If less than 4 of 6 or 2 of 3 of the controls show clinical signs of canine adenovirus type 2 other than fever, the test is inconclusive and may be repeated.

(B) a significant difference in clinical signs shall be demonstrated between vaccinates and controls in a valid test as prescribed in paragraph (b)(2)(ii)(B) of this section.

(iv) an Outline of Production change shall be made before authorization for use of a new lot of Master Seed Virus shall be granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Each serial and subserial shall meet the requirements prescribed in § 113.300 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(1)(i) and/or (b)(2)(i) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test(s) prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test(s) but not less than $10^{2.5}$ $TCID_{50}$ dose. If both immunogenicity tests in paragraph (b) of this section are conducted and a different amount of virus is used in each test, the virus titer requirements shall be based on the higher of the two amounts.

7. Section 113.306 is revised to read as follows:

§ 113.306 Canine Distemper Vaccine.

Canine Distemper Vaccine shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for preparing the production seed virus for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) *Master Seed Virus.* The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300 and the requirements prescribed in this section.

(1) To detect ferret virulent canine distemper virus, each of five canine distemper susceptible ferrets shall be injected with a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose and observed each day for 21 days. If undesirable reactions are observed during the observation period, the lot of Master Seed is unsatisfactory.

(2) Master Seed Virus propagated in tissues or cells of avian origin shall be tested for pathogens by the chicken embryo test prescribed in § 113.37. If found unsatisfactory, the Master Seed Virus shall not be used.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity. The selected virus dose from the lot of Master Seed Virus shall be established as follows:

(1) Twenty-five canine distemper susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine distemper virus.

(2) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining five dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(3) At least 14 days post-injection, the vaccinates and the controls shall each be challenged intracerebrally with virulent canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 21 days.

(i) If at least four of the five controls do not die and the survivor, if any does not show clinical signs of canine distemper the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of canine distemper during the observation period, the Master Seed Virus is unsatisfactory.

(4) The Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Ten susceptible dogs (8 vaccinates and 2 controls) shall be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(i) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(2) of this section.

(ii) At least 14 days postvaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine distemper virus in the same manner used to determine susceptibility.

(iii) If the two controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If at least 6 of the 8 vaccinates in a valid test do not develop titers of at least 1:50 based upon final serum dilution, the Master Seed Virus is unsatisfactory, except as provided in paragraph (b)(4)(v) of this section.

(v) If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the controls may be challenged as provided in paragraph (b)(3) of this section. A Master Seed is satisfactory if all vaccinates remain free of clinical signs of canine distemper, while the two controls die with clinical signs of canine distemper. If the two controls do not die with clinical signs of canine distemper, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show such signs, the Master Seed Virus is unsatisfactory.

(5) An Outline of Production change shall be made before authorization for use of a new lot of Master Seed Virus shall be granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Except for § 113.300(a)(3)(ii), each serial and subserial shall meet the requirements prescribed in § 113.300 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) The test for pathogens prescribed in § 113.37 shall be conducted on each serial or one subserial of avian origin vaccine.

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test but not less than $10^{2.5}$ $TCID_{50}$ per dose.

§ 113.307 [Removed]

8. Section 113.307 is removed.

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6647 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ACE–02]

Amendment to Class E Airspace; Harvard, NE

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Harvard, NE to accommodate a planned Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) at the Harvard State Airport. This action will provide for additional controlled airspace necessary for the planned VOR/DME SIAP. It will also change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530c, Federal Aviation Administration, 6021 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Harvard, NE (59 FR 3032). The proposed action would provide additional controlled airspace to accommodate a VOR/DME SIAP to Runway 35 at the Harvard State Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA order 7400.9B, dated July 8, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Harvard, NE, by providing additional controlled airspace for aircraft executing the VOR/DME runway 35 SIAP to the Harvard State Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulator Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Harvard, NE [Revised]

Harvard State Airport, NE
(Lat. 40°39'15" N, long. 98°04'31" W)

That airspace extending upward from 700 feet above the surface within 6.4-mile radius of the Harvard State Airport and within 2 miles each side of the 180° bearing of the Harvard State Airport extending from the 6.4-mile radius to 10 miles south of the airport.

* * * * *

Issued in Kansas City, MO on February 21, 1995.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–6685 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28135; Amdt. No. 1654]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

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For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 10, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 Loc, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs' and § 97.35 COPTER SIAPs, identified as follows:

** * *Effective May 25, 1995*

Manistique, MI, Schoolcraft County, VOR or GPS RWY 28, Orig Manistique, MI Schoolcraft County, VOR RWY 28, Amdt 8, Cancelled Anahuac, TX, Chambers County, NDB OR GPS RWY 30, Amdt 2, Cancelled Anahuac, TX, Chambers County, NDB RWY 12, Orig.

** * *Effective April 27, 1995*

West Palm Beach, FL, North Palm Beach Country General Aviation, VOR RWY 8R, Orig
Harlan, IA, Harlan Muni, NDB OR GPS RWY 33, Amdt 4
Wichita, KS, Wichita Mid-Continent, ILS RWY 19R, Amdt 4
Smithfield, NC, Johnston County, LOC/DME RWY 3, Orig
Wimington, OH, Airborne Airpark, VOR/DME or GPS RWY 22, Amdt 4
Wimington, OH, Airborne Airpark, VOR RWY 22, Amdt 4
Wimington, OH, Airborne Airpark, VOR or GPS RWY 4, Amdt 5
Wimington, OH, Airborne Airpark, NDB RWY 22, Amdt 7
Wimington, OH, Airborne Airpark, NDB RWY 4, Amdt 2
Wimington, OH, Airborne Airpark, ILS RWY 22, Amdt 3
Wimington, OH, Airborne Airpark, ILS RWY 4, Amndt 2

** * *Effective upon publication*

Philadelphia, PA, Northeast Philadelphia, ILS RWY 24, Amdt 11
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 7
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS RWY 22, Amdt 4
Chesapeake, VA, Chesapeake Muni, LOC RWY 5, Amdt 2
Chesapeake, VA, Chesapeake Muni, NDB OR GPS RWY 5, Amdt 1

[FR Doc. 95–6686 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28136 ; Amdt. No. 1655]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airports, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMS, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 10, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the

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Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective March 17, 1995

FDC date	State	City	Airport	FDC No.	SIAP
02/22/95	FL	Fort Myers	Page Field	FDC 5/0832	ILS RWY 5 AMDT 6A...
02/22/95	FL	Fort Myers	Page Field	FDC 5/0833	NDB RWY 5 AMDT 5...
02/22/95	MO	Kansas City	Kansas City Intl	FDC 5/0842	ILS RWY 19L, ORIG...
02/22/95	WI	Superior	Richard I. Bong	FDC 5/0843	NDB RWY 31 AMDT 4...
02/23/95	PA	Pittsburgh	Pittsburgh International	FDC 5/0853	ILS RWY 28R AMDT 6...
02/24/95	AK	Nome	Nome	FDC 5/0869	NDB/DME OR GPS–1, RWY 2, ORIG B...
03/01/95	GA	Atlanta	Peachtree City-Falcon Field	FDC 5/0970	VOR/DME RNAV OR GPS RWY TWY 31, ORIG...
03/02/95	KY	Covington	Cincinnati/Northern Kentucky Intl	FDC 5/1007	ILS RWY 36L, AMDT 36...
03/02/95	NC	Greenville	Pitt-Greenville	FDC 5/1058	ILS RWY 19 AMDT 2...
03/02/95	ND	Mohall	Mohall Muni	FDC 5/1002	VOR/DME OR GPS RWY 31 AMDT 2...
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1073	VOR RWY 24 AMDT 23...
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1074	NDB OR GPS RWY 24 AMDT 4...
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1075	ILS RWY 24 AMDT 6...
03/08/95	NC	North Wilkesboro	Wilkes County	FDC 5/1071	NDB OR GPS RWY 1 AMDT 1A...
03/08/95	NC	North Wilkesboro	Wilkes County	FDC 5/1072	LOC RWY 1 AMDT 1...
03/08/95	NC	Statesville	Statesville Muni	FDC 5/1077	VOR/DME RWY 10 AMDT 6A...
03/08/95	NC	Statesville	Statesville Muni	FDC 5/1079	NDB RWY 20 AMDT 8A...
03/08/95	NC	Washington	Warren Field	FDC 5/1078	VOR/DME RWY 5, AMDT 2...

[FR Doc. 95–6687 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 35473; File Nos. S7–29–93; S7–6–94]

RIN 3235–AG00; 3235–AF84

Payment for Order Flow, Confirmation of Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; change of effective date.

SUMMARY: The Commission is postponing the effective date of Rule 11Ac1–3 and certain amendments to Rule 10b–10 under the Securities Exchange Act of 1934 from April 3, 1995 to October 2, 1995 in order to facilitate the orderly implementation of the enhanced disclosure requirements relating to payment for order flow and non-SIPC membership by broker-dealers.

EFFECTIVE DATES: The effective date of the final rule published on November 2, 1994 (59 FR 55006) is postponed until October 2, 1995. The effective date of § 240.10b–10(a) (9), which was published on November 17, 1995 (59 FR 59612) and which applies to non-SIPC broker-dealers other than government securities broker-dealers, is postponed until October 2, 1995. The effective date of the other amendments to § 240.10b–10 that was published on November 17, 1995, remains April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Carlene Kim, Senior Counsel, at 202/942–4180, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W. Mail Stop 5–1, Washington, D.C. 20549. For questions relating to compliance with new Rule 11Ac1–3 and amendments to Rule 10b–10 concerning payment for order flow, please contact Gail Marshall, Attorney, at 202/942–7129, Office of Market Supervision, Division of Market Regulation. For questions relating to compliance with the amendment to Rule 10b–10 relating to disclosure of a broker-dealer's non-SIPC status, please contact C. Dirk Peterson, Senior Counsel, at 202/942–0073, Office of Chief Counsel, Division of Market Regulation.

SUPPLEMENTARY INFORMATION:

A. Payment for Order Flow

On October 27, 1994, the Commission adopted Rule 11Ac1–3 [17 CFR 240.11Ac1–3] and amendments to Rule 10b–10 [17 CFR 240.10b–10] under the Securities Exchange Act of 1934.[1] Rule 11Ac1–3 requires broker-dealers to disclose, in annual account statements and new account forms, their policies regarding the receipt of payment for order flow and to provide a detailed description of the nature of the compensation received. Rule 11Ac1–3 also requires broker-dealers to provide information about order routing policies for orders subject to payment for order flow, including an explanation of the extent to which orders can be executed at prices superior to the best bid and offer. Rule 10b–10, as amended, requires broker-dealers to state on confirmations whether they receive payment for order flow, and that the source and nature of the compensation will be provided upon written request. The effective date is April 3, 1995.

[1] Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006.

On October 27, 1994, the Commission also proposed for comment amendments to Rules 11Ac1–3 and 10b–10.[2] The proposed amendments would require broker-dealers to disclose on confirmations the range of payment for order flow received on a per share basis and to provide a statement that, upon written customer request, additional transaction-specific information will be provided. In new customer and annual account statements, broker-dealers would be required to disclose the range of payment for order flow received on a per share basis, as well as the aggregate amount or estimated value of payment for order flow received on an annual basis. The proposals also would require parallel disclosure for orders subject to internalization/affiliate order routing. Finally, the proposals would require broker-dealers to describe their order-routing policies for all orders, including those that are subject of internalization/affiliate order routing, and describe the extent to which such orders may enjoy price improvement opportunities.

The Division of Market Regulation ("Division") is analyzing the issues raised by the 22 comment letters that were received. A majority of the commenters responding to the proposing release requested that the effective date of any further changes be delayed. Several broker-dealers stated that it would be extremely burdensome for them to make the systems changes required by any additional amendments, given the time and resources demanded by requirements of the newly-adopted changes and the transition to three day settlement. The Division is receiving an increasing number of inquiries from broker-dealers regarding implementation of the adopted rules. Many broker-dealers indicate that systems changes must be made soon in order to be ready for the April 3 effective date. The Division believes that similar systems changes will be necessary to implement any additional requirements based upon the proposed amendments. [3] It would enhance efficiency and reduce costs if broker-dealers could make systems changes at one time rather than potentially be required to make changes twice to implement payment for order flow requirements. The Commission believes, however, that it is not feasible to have any additional changes take effect on April 3.

Accordingly, the Commission believes that an effective date of October 2, 1995 for Rule 11Ac1–3 and amendments to Rule 10b–10 relating to payment for order flow disclosures, adopted on October 27, 1994 and any additional amendments would promote an orderly adjustment to the enhanced disclosure regime.[4] For the reasons discussed above, the Commission for good cause finds that notice and solicitation of comment regarding the effective date is impracticable, unnecessary, and contrary to the public interest.

B. SIPC Status Disclosure

In addition, on November 10, 1994, the Commission adopted amendments to Rule 10b–10 which, among other things, require a broker or dealer that is not a member of the Securities Investor Protection Corporation ("SIPC") to affirmatively disclose its non-SIPC status on customer confirmations.[5] This requirement is consistent with the Commission's authority under the Government Securities Act Amendments of 1993 to require government securities broker-dealers, which are excluded from SIPC membership, to disclose that they are not SIPC members rather than require them to become members.[6] Congress believed that disclosure was the appropriate approach to remedy the gap in SIPC coverage.

When the Commission adopted this amendment, it stated that confirmation disclosure is necessary "to ensure that customers are not led to believe that their accounts are subject to protection beyond what actually is the case * * *."[7] The Commission recognized that in some situations, however, the costs would exceed the benefits of disclosure, and thus, adopted an exclusion from the disclosure requirement for transactions in investment company shares where the investor sends purchase money directly to a non-affiliated transfer agent, custodian, or other designated agent of the issuing investment company.

In a letter dated February 16, 1995, the Investment Company Institute ("ICI") expressed concern about the operational consequences, as well as the policy and investor protection implications of non-SIPC status disclosure, and requested that the Commission consider further amending Rule 10b–10. In addition, the ICI requested that the Commission consider extending the effective date of the amendment to Rule 10b–10 requiring disclosure of non-SIPC status. In the ICI's view, it will be particularly burdensome for mutual fund groups to obtain information about the SIPC status of their underwriters. By letter dated December 19, 1994, the College Retirement Equities Fund raised similar concerns with respect to broker-dealers whose business consists exclusively of the sale of variable annuities.

The Commission, therefore, is postponing the effective date from April 3, 1995 to October 2, 1995 of the Rule 10b–10 amendment pertaining to non-SIPC disclosure by broker-dealers that are excluded from SIPC membership pursuant to Section 3(a)(2)(A)(ii) of the Securities Investor Protection Act of 1970. [8]

Dated: March 10, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6576 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Release No. 34903 (October 27, 1994), 59 FR 55014.

[3] In the intervening period, the Commission may also consider further regulatory initiatives regarding payment for order flow in light of the comments received on the proposed amendments, and in light of the pending inquiries into the Nasdaq market by the Commission and the U.S. Department of Justice.

[4] The staff of the Division will not recommend that the Commission take enforcement action under Rule 10b–10, if broker-dealers comply with the requirements of amended Rule 10b–10 as of April 3, 1995. With respect to new customer and annual account statements, broker-dealers may, of course, also elect to comply with the requirements of Rule 11Ac1–3 prior to October 2, 1995.

[5] See Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612. All broker-dealers registered as government securities brokers and dealers under Section 15C of the Exchange Act, 15 U.S.C. 78o–5, are excluded from SIPC membership. While most brokers and dealers registered with the Commission under Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b) are required to be SIPC members, some of these persons are excluded from SIPC membership, as well. 15 U.S.C. 78lll(12). Among those excluded from SIPC membership under the Securities Investor Protection Act of 1970 are broker-dealers whose business consists exclusively of (a) the distribution of shares of registered investment open-end companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to registered investment companies or insurance company separate accounts. 15 U.S.C. 78ccc(a)(2)(A)(ii).

[6] In a report to Congress, the GAO recommended that government securities brokers and dealers be required to become members of SIPC, or in the absence of membership, disclose that they are not SIPC members. See S. Rep. No. 422, 103rd Cong., 1st Sess. 16 (1993). Congress subsequently amended Section 15C of the Exchange Act to prohibit government securities brokers and dealers from effecting a transaction in any security in contravention of Commission rules requiring the timely disclosure that a customer's account is not protected by SIPC. See 15 U.S.C. 78o–5(a)(4).

[7] Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612.

[8] 15 U.S.C. 78ccc(a)(2)(A)(ii).

The effective date of this provision remains April 3, 1995, however, for all other brokers and dealers.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Wyoming regulatory program (hereinafter referred to as the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA). Wyoming is revising its regulations at Appendix B—Wildlife Monitoring, both in response to required amendment sat 30 CFR 950.16(aa), and on its own initiative. The amendment is intended to revise the Wyoming program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

III. Proposed Amendment

By letter dated November 8, 1994, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. WY–28–01). Wyoming submitted the proposed amendment in response to the required program Amendment at 30 CFR 950.16(aa) an also included a State initiated change. The provisions of its program that Wyoming proposed to revise are: Appendix B—Wildlife Monitoring, Section C and E. On its own initiative, at Section C, the State proposed to modify the requirements for raptor nest status and production success surveys. At Section E and in response to a required amendment placed on Wyoming's program at 30 CFR 950.16(aa) in the October 7, 1993, OSM rulemaking (58 FR 52232), Wyoming proposed to remove language that would exclude the need to promptly report all observations of migrating and wintering bald eagles or migrating peregrine falcons.

OSM announced receipt of the proposed amendment in the December 6, 1994, **Federal Register** (59 FR 62645), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY–28–09). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 5, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 an 732.17, finds that the proposed program amendment submitted by Wyoming on November 8, 1994, is no less effective than the Federal program requirements and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Appendix B, Section C Raptor Production, Nest Status and Production Success

As a result of discussions with the U.S. Fish and Wildlife Service (USFWS), the Wyoming Game and Fish Division (WGFD), and mining industry biologists, the Wyoming Land Quality Division (LQD) proposes to modify requirements for raptor nest status and production success surveys. Survey requirements presently include: An annual search within the permit area and within a 1 mile perimeter to locate known and new or previously unrecorded nests; an initial survey in March for golden eagle and great horned owl nests; and mid-May through mid-June survey to locate other new raptor nests and to check the status of known nest. The current program further requires that all nest checks are to be conducted from a distance; that productivity checks shall be conducted on active nests; and that the status and productivity of all nests are to be reported annually.

The changes being proposed by LQD are as follows: Modify the requirement that the golden eagle and great horned owl nest survey be conducted within ½ mile of existing mining activities and those mining activities proposed for the coming year on or before mid-February instead of March; require the following three, thorough surveys covering the entire permit area and within 1 mile: During March to locate golden eagle and great horned owl nests, an April survey to locate nests of most other species, and a survey in mid-May through mid-June to locate new raptor nests and to check the status of all known nests. Also added, is a requirement to conduct follow up visits for previously identified nests timed to facilitate documentation of occupied territories, nest building, incubation and fledgling success according to the biology of the species present and variation in breeding chronology among study areas.

The above modifications and additions add more specificity to Wyoming's survey requirements and provide for more desirable survey dates for gathering data on nests. Earlier identification of nests (i.e., before eggs are laid) will allow early mitigation action and therefore less chance for conflicts with the mining operations. The changes mutually agreed to by the groups involved are not inconsistent with the Federal program requirements. The Director is therefore approving the proposed changes.

2. Appendix B, Section E. Federally Listed Threatened and Endangered Species

Wyoming proposes to modify the introductory paragraph of Section E, specifying the requirements for reporting observations of threatened and endangered species, by (1) removing the language that would exclude the need to report observations of migrating and wintering bald eagles or migrating peregrine falcons, and (2) adding language to clarify that reporting observations of Federally listed threatened and endangered species must be to the regulatory authority as required by the LQD regulation at Chapter IV, Section 2.(r)(i)(E), unless otherwise specified by the USFWS in the approved threatened and endangered species plan. Item number (1) above in response to a program amendment placed on the Wyoming program as a result of the October 7, 1993, OSM rulemaking (58 FR 52232), codified at 30 CFR 950.16(aa). The removal of the language to exclude reporting of migrating and wintering bald eagles or migrating peregrine falcons satisfies the required amendment at 30 CFR 950.16(aa). The Director is therefore removing the required amendment from 30 CFR 950.16. Item number (2) above merely provides reference to the specific rule that requires reporting to the regulatory authority unless otherwise specified by the USFWS (the Federal agency responsible for the administration of

threatened and endangered species). The proposed change would make the reporting requirement in the Appendix consistent with the corresponding performance standard at Chapter IV, Section 2.(r)(i)(E), of Wyoming's regulations. In addition, the proposed change is consistent with the corresponding Federal reporting requirement at 30 CFR 816.97(b) and 817.97(b). Based on the above discussion, the Director is approving both modifications to Section E.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Wyoming program.

The U.S. Bureau of Mines responded on November 30, 1994, that it had no comment (administrative record No. WY–28–10).

The U.S. Corps. of Engineers responded on December 1, 1994, saying that they found the changes to be satisfactory to their agency (administrative record No. WY–28–11).

The Mine Safety and Health Administration (MSHA) responded on December 16, 1994, that the amendments do not conflict with MSHA's regulations and do not appear to affect the health and safety of the Nation's miners (administrative record No. WY–28–12).

The Bureau of Land Management responded on December 28, 1994, that the monitoring requirements appeared to prescribe a comprehensive and appropriate wildlife monitoring effort, but suggested that a cross check with the minimum data standards prepared for the Regional Coal Teams be made to make sure the State regulations are consistent with those standards. The Wyoming program requires extensive premining data gathering whose level of detail must be determined in consultation with the Wyoming Game and Fish Department and other Federal agencies having responsibility for management or conservation of such environmental activities (Wyoming rule at Chapter II, Section 2., (a), (vi), (G)). A statement of how the applicant will utilize monitoring methods as specified in Appendix B is required in the permit application (Wyoming rule at Chapter II, Section 2, (b), (vi), (b). Wyoming also has performance standards for Fish and Wildlife reclamation that must be met (Wyoming rule at Chapter IV, Section 2.,(r)) and elsewhere through out Chapter VI). The above requirements for permit application information, monitoring during the mining operation, and carrying out reclamation assure that appropriate consideration and consultation by the agencies responsible is obtained on a site specific basis. In addition, the previously approved Wyoming regulations are no less effective than the corresponding requirements in the Federal regulations. The minimum data standards prepared for the Regional Coal Teams$_{2}$, while certainly providing helpful guidelines, are not required as part of Wyoming's surface coal mining program. Based on the above discussion, the Director is not requiring Wyoming to modify its program in response to the BLM's comments (administrative record No. WY–28–14).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Wyoming proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's comments on the proposed amendment (administrative record No. WY–28–05). EPA responded to OSM's request on December 21, 1994, (administrative record No. WY–28–13) that they did not believe there would be any impacts to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record Nos. WY–28–04 and WY–28–03). Neither SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves Wyoming's proposed amendment as submitted on November 8, 1994, that modifies Appendix B, Section C, concerning requirements for survey of raptor nest status and production success; and Appendix B, Section E, concerning the reporting of threatened and endangered species when observed. The Director approves the changes as proposed by Wyoming with the provision that they be fully promulgated in identical form as submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on

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proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 950—WYOMING

1. The authority citation for Part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.15 is amended by adding paragraph (v) to read as follows:

§ 950.15 Approval of amendments to the Wyoming regulatory program.

* * * * *

(v) The following program changes, as submitted to OSM on November 8, 1994, are approved effective March 17, 1995: Appendix B, Section C concerning dates for conducting raptor surveys; and Appendix B, Section E concerning the reporting of observed migrating and wintering bald eagle or migrating peregrine falcons and observations of other Federally listed threatened and endangered species.

§ 950.16 [Amended]

3. Section 950.16 is amended by removing and reserving paragraph (aa).

[FR Doc. 95–6589 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 20

Implementation of WORLDPOST Priority Letter

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: WORLDPOST Priority Letter (WPL) is a new international mail service designed for correspondence and documents. WPL items receive priority handling in the United States and in destination countries. Initially, the service will be available to 14 destination countries, from specified post offices in seven metropolitan areas. To use WPL, a customer must use either of the two flat-rate envelopes designed for this service and provided by the Postal Service. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations take effect March 16, 1995. Comments must be received on or before April 17, 1995.

ADDRESSES: Written comments should be mailed or delivered to International Product Management, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 5300, Washington, DC 20260–2410. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Mitchell, (202) 268–6095.

SUPPLEMENTARY INFORMATION: Under the Universal Postal Convention, international mail items bearing the "exprès" logo receive priority handling in destination countries. A number of postal administrations take advantage of that provision by offering their customers an international mail service that is based on, but superior to, normal airmail service. In contrast, the only single-piece international service the Postal Service offers that is superior to airmail is Express Mail International Service (EMS), which is significantly more expensive than airmail. In order to provide its customers with a wider range of international services, the Postal Service is implementing, on a pilot basis, WORLDPOST Priority Letter (WPL).

WPL is an expedited airmail service providing fast, reliable, and economical delivery of all items mailable as letters. Although a WPL item will travel in the normal airmail stream between the United States and the destination country, the item will receive priority handling in the United States and, typically, in the destination country. In the United States, after the item is deposited, the Postal Service will transport it in a dedicated stream to the appropriate gateway for dispatch. Upon arrival in the destination country, the item will also receive priority handling.

Initially, WPL is available to the following 14 countries: Australia, Belgium, Canada, France, Germany, Great Britain, Hong Kong, Japan, New Zealand, Norway, Singapore, Sweden, Taiwan, and The Netherlands. Based on the Postal Service's evaluation of WPL performance during the pilot test, the service may be extended to additional destination countries.

Initially, WPL is available only from specified ZIP Codes in the following seven metropolitan areas: Atlanta, Boston, Dallas/Fort Worth, Los Angeles, Miami, New York, and Washington, DC. The Postal Service chose these initial acceptance sites because of their ability to provide reliable transportation of items deposited there to the WPL gateways, as well as their potential to generate significant WPL volume. Based on the Postal Service's evaluation of WPL performance during the pilot test, the service may be extended to additional acceptance sites.

To use WPL, a customer will be required to place the material being mailed in either the small (5 inches by 8⅞ inches) or large (9 inches by 11½ inches) WPL envelope provided by the Postal Service. These envelopes bear the appropriate internationally recognized logo for this service. In addition, their colorful design will facilitate recognition of the items by U.S. and foreign postal employees, which will help to ensure that the items receive priority handling.

Rates are based on size (either small or large) and destination as follows:

Destination	Envelope size	
	Small	Large
Western Europe	$3.75	$6.95
Pacific Rim	4.95	8.95
Canada	3.75	6.95

Accordingly, the Postal Service hereby adopts WPL, on an interim basis, at the rates set forth in the schedule above. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by adding new part 226 to read as follows:

2 CONDITIONS FOR MAILING

* * * * *

226 WORLDPOST Priority Letter (Interim Regulations/Standards)

226.1 General

226.11 Definition

WORLDPOST Priority Letter (WPL) is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters. WPL items receive priority handling in the United States and in destination countries. Service is available only to destination countries identified in 226.2, from post offices identified in 226.3. WPL items must be mailed in special envelopes provided for this purpose by the Postal Service.

226.12 Permissible Items

All items admitted in letters (see 221.1) are accepted in WPL as long as the contents fit securely into the WPL envelopes provided by the Postal Service. WPL items may contain dutiable merchandise unless the country of destination prohibits dutiable merchandise in letters (see 224.51). However, WPL items that contain dutiable merchandise might experience delay in delivery caused by customs handling.

226.13 Addressing

See 122. All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country.

226.2 Availability

WORLDPOST Priority Letter service is available only to the following countries:

Western Europe	Pacific Rim	Canada
Belgium	Australia	Canada
France	Hong Kong	
Germany	Japan	
Great Britain *	New Zealand	
Norway	Singapore	
Sweden	Taiwan	
The Netherlands.		

* Includes all points in England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, and the Isle of Man.

226.3 Mailing Locations

226.31 Acceptance Offices and Pickup Service Locations

WPL service is available only through the designated post offices listed in 226.32.

WPL items must not be accepted or deposited in areas not listed in 226.32.

226.32 Service Areas

Service is available only from the metropolitan areas as defined by the ZIP Code ranges shown below. Within these service areas, prepaid items may be given to carriers, deposited in Express Mail collection boxes, or mailed at post offices, stations, and branches. Pickup service is available.

Metropolitan area	ZIP code service area
Atlanta, GA	300–303, 305, 306, 311
Boston, MA	018–024
Dallas/Ft. Worth, TX.	750–754, 760–762, 764
Los Angeles, CA.	900–918, 926–928
Miami, FL	330–334, 349
New York, NY	068, 069, 100–108, 110–118
Washington, DC.	200, 201, 203, 205, 20813–20815, 20817, 20850–20852, 20854, 20855, 20898, 20901, 20902, 20904, 20906, 20907, 20910–20912, 222, 223

226.4 Postage

226.41 Rates

Rates are based on size (either small or large) and destination as follows:

Destination	Envelope size	
	Small	Large
Western Europe	$3.75	$6.95
Pacific Rim	4.95	8.95
Canada	3.75	6.95

226.42 Pickup Service

On-call and scheduled pickup service are available for WORLDPOST Priority Letters for a charge of $4.95 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee is charged if domestic or international Express Mail, domestic Priority Mail, or domestic or international parcel post is picked up at the same time. (See DMM D010 for standards for pickup service.)

226.43 Postage Payment Methods

Postage for WORLDPOST Priority Letters may be paid by adhesive stamps, postage meter and meter stamps, or, if presented at a post office, postage validation imprinter (PVI) labels.

226.5 Packaging

Items must be placed in special WORLDPOST Priority Letter envelopes provided by the Postal Service. All items that cannot be adequately protected by these envelopes should not be mailed using this service. Envelopes must be sealed.

226.6 Size and Weight Limits

226.61 General

Two sizes of envelopes are available from the Postal Service for mailing WPL items. Postage rates are based on the size of the envelope used, not the weight of the item. (See 226.41 for rates.)

226.62 Size Limits

Sizes of the required Postal Service-provided envelopes are:

a. Small size—5 inches by 8–7/8 inches.

b. Large size—9 inches by 11–1/2 inches.

226.63 Weight Limits

The Postal Service-provided envelopes are not intended to accommodate items weighing more than several ounces. However, the maximum weight for letter-class (LC) items is 4 pounds.

226.7 Customs Forms Required

If WORLDPOST Priority Letters contain dutiable merchandise, the sender must prepare a customs declaration and affix it to the letter. See 123 for instructions. Certain nonpostal export forms may be required as described in Chapter 5.

226.8 Special Services

Mailers may obtain certificates of mailing (see 310). No other special services such as registry, insurance, restricted delivery, return receipt, or recorded delivery are available.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–6776 Filed 3–16–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5173–6]

Massachusetts; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

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ACTION: Notice of final determination on the Commonwealth of Massachusetts' application for final approval.

SUMMARY: The Commonwealth of Massachusetts has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. 9004. The Environmental Protection Agency (EPA) has reviewed Massachusetts's application and has reached a final determination that Massachusetts's UST Program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to Massachusetts to operate its program in lieu of the Federal UST program.

EFFECTIVE DATE: Final approval for the Commonwealth of Massachusetts' UST Program shall be effective at 1:00 p.m. on April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Myra Schwartz, Office of Underground Storage Tanks, HPU–CAN7, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, (617) 573–5743.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in a state in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program, and (2) provide for adequate enforcement. Section 9004 (a) and (b) of RCRA, 42 U.S.C. 6991c (a) and (b).

On October 5, 1992, as required by 40 CFR 281.50(c), EPA acknowledged receiving from Massachusetts a complete official application requesting final approval to administer its UST program. On May 17, 1994, EPA published a tentative decision announcing its intent to grant Massachusetts final approval of its program. See 59 FR 25588 (1994). Further background on EPA's tentative decision to grant approval is included in that decision.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA received written and oral comments on the application, and a public hearing was held on June 30, 1994.

Three commentators raised concerns regarding the applicability of environmental justice to the Massachusetts UST program implementation. EPA notes that Massachusetts' receipt of Federal financial assistance subjects Massachusetts to the obligations of Title VI of the Civil Rights Act of 1964. EPA is committed to working with Massachusetts to support and ensure compliance with all Title VI requirements. Furthermore, the narrative portion of Massachusetts' application expresses its voluntary support of environmental justice principles in the management of the UST program. Although this is not a criterion for program approval, EPA acknowledges Massachusetts' support of environmental justice principles.

B. Decision

I conclude that Massachusetts' application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Massachusetts is granted final approval to operate its UST program in lieu of the Federal program. Massachusetts now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the Federal UST program, except with regard to Indian lands, where EPA will continue to have regulatory authority. Massachusetts also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e. EPA will continue to work together with the Massachusetts Department of Environmental Protection (DEP) in its ongoing commitment and efforts to address environmental justice concerns in low-income urban and minority neighborhoods in Massachusetts.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain federal regulations in favor of Massachusetts' Program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within Massachusetts. It does not impose any new burdens on small entities. This rule, therefore, does not require flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials.

Authority: Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–6675 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 281

[FRL–5173–5]

Texas; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Texas' application for final approval.

SUMMARY: The State of Texas has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Texas' application and has reached a final determination that Texas' UST program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to Texas to operate its program.

EFFECTIVE DATE: Final approval for Texas shall be effective at 1:00 p.m. Central Standard Time on April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Womack, Texas Program Officer, Underground Storage Tank Program, US EPA, Region 6, Mailcode: 6H–A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214)665–6586.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve State UST programs to operate in the State in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(a)).

B. Texas

On April 28, 1994, Texas submitted an official application for final approval. On January 24, 1995, EPA published a tentative decision announcing its intent to grant Texas final approval. Further background on the tentative decision to grant approval appears at 60 FR 4586, January 24, 1995.

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also provided notice that a public hearing would be provided only if significant public interest was shown. No requests to present testimony at the public hearing were submitted and no written comments on the application were submitted.

D. Decision

I conclude that the State of Texas' application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Texas is granted final approval to operate its UST program in lieu of the Federal program. Texas now has the responsibility for managing UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Texas also has primary enforcement authority, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for owners and operators of USTs in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative Practice and Procedure, Hazardous Materials, State Program Approval, Underground Storage Tanks.

Authority: This Notice is issued under the authority of section 2002(a), 7004(b), and 90044 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: March 7, 1995.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 95–6674 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–125, FCC 95–42]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Eighth Order on Reconsideration to revise certain cable regulations affecting small systems and certified local franchising authorities. Certified local franchising authorities, independent small systems, and small systems owned by small multiple system operators ("small MSOs") will be permitted to enter into alternative rate regulation agreements that comply with the Communications Act of 1934, as amended.

EFFECTIVE DATE: April 14, 1995, except for 47 CFR section 76.934(f)(2) which will become effective upon OMB approval. The Commission will issue written confirmation of OMB approval at a later date.

FOR FURTHER INFORMATION CONTACT: Susan Cosentino, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Eighth Order on Reconsideration in MM Docket No. 92–266 and MM Docket No. 93–215, FCC 95–42, adopted February 3, 1995 and released February 6, 1995.

The complete text of this Eighth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Eighth Order on Reconsideration

The 1992 Cable Act requires the Commission to reduce regulatory burdens and the cost of compliance for small systems. Small systems are defined in the statute as systems serving 1,000 or fewer subscribers. Pursuant to that mandate, the Commission has created different regulatory approaches that are available to small systems.

The Cable Telecommunications Association ("CATA") and other groups generally believe that our efforts have not produced the intended result of reducing administrative burdens and costs for smaller systems. Preliminarily, industry associations and individual operators assert that small systems face higher costs than other cable operators. In our Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking ("Fifth Reconsideration Order"), MM Docket No. 92–266 and MM Docket No. 93–215, FCC 94–234, 59 FR 51869 (October 13, 1994), we sought comment on definitions of small businesses that could be used to define eligibility for any special rate or administrative treatment. In response, a number of commenters point out that smaller systems do not qualify for the volume discounts offered by equipment and program suppliers to larger systems. In addition, commenters observe that a smaller system serving a large rural area faces increased construction costs due to the increased amount of cable that must be installed to reach the entire area and increased operating costs given the greater amount of facilities that must be maintained. Moreover, commenters note that the total costs for which a small system is responsible must be recovered from a small subscriber base. Although our current rules take into account the number of subscribers a system has, the commenters are unanimous that the rules do not do so adequately. CATA further asserts that complexities in our rules, and the cost of enforcing them, have discouraged local franchising authorities in smaller communities from seeking certification. While CATA highlights the fact that, even in these circumstances, the mere potential of rate regulation hinders small systems in their attempts to obtain financing and capital, thus increasing their cost of doing business, we are equally concerned that there are local franchising authorities which desire to regulate basic rates but which lack the resources to do so in accordance with our existing rules.

Based on these factors, these groups have urged the Commission to adopt different and less stringent rules for small cable companies. In comments and in a letter to Chairman Reed E. Hundt, CATA proposes an alternative rate regulation scheme that differs significantly from the present method of rate regulation which CATA, and other commenters, claim is too complicated and burdensome. CATA's proposal is as

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follows: The Commission should permit local franchising authorities and small systems to create their own alternative rate regulation plan, not based on the Commission's benchmark/cost-of-service rules, but still adhering to the regulatory factors of the 1992 Cable Act. CATA states that alternative regulation should be available to all small systems of 1,000 or fewer subscribers regardless of whether they are currently subject to regulation and without regard to system ownership or affiliation with an MSO of any size. CATA envisions that the parties could agree to regulate rates for the basic service and cable programming service ("CPS") tiers, as well as going forward, inflation, and external cost issues. Rate increases also could be agreed to in advance. If a small system and a local franchising authority entered into an alternative regulation plan affecting the CPS tier, subscribers could still file a rate complaint with the Commission. Under CATA's proposal, both the small system and the local franchising authority would have to consent to the alternative regulatory framework. If the parties could not agree on an alternative approach, the local franchising authority would regulate rates, if at all, using Commission rules.

Based on comments received in response to the Fifth Reconsideration Order, and in light of other pending petitions for reconsideration, we reconsider on our own motion the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 94–38, 59 FR 18064 (April 15, 1994) as it relates to rate regulation of small systems. We believe that, subject to modifications discussed below, the alternative rate regulation framework proposed by CATA is consistent with the spirit and the letter of the Communications Act of 1934, as amended ("Communications Act"). Accordingly, we will establish an alternative form of rate regulation for independent small systems and small systems owned by small MSO's based upon CATA's suggestions. We limit availability of this alternative process to independent small systems and small systems owned by small MSOs because we believe that larger systems have the financial and administrative resources necessary to comply with our benchmark and cost-of-service rate regulations. A small MSO is an MSO serving 250,000 or fewer total subscribers that owns only systems with less than 10,000 subscribers each and has an average system size of 1,000 or fewer subscribers. However, in the future, we may modify our eligibility standards in response to action we take in our proceeding on system size definitions.

Congress acknowledged the special circumstances faced by small systems by specifically directing the Commission to reduce the administrative burdens and cost of compliance for them. We believe that this goal can best be achieved by giving certified local franchising authorities and eligible systems discretion to agree to an alternative form of rate regulation that will involve a traditional bargaining process guided by the specific criteria set forth in the Communications Act as being relevant to the establishment of rates for basic services and cable programming services. This framework will free both the cable operator and the local franchising authority from the burdens and costs of analyzing and applying our benchmark and cost-of-service rules.

While minimizing regulatory burdens, the alternative rate regulation agreements that the parties may create also will further the goal of ensuring reasonable rates by requiring local franchising authorities to take into account specific factors, identified by Congress, when imposing rate regulations for both the basic service tier and cable programming service tiers. With respect to basic service, those criteria are:

[1] The rates for cable systems, if any, that are subject to effective competition;

[2] The direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B) [Communications Act § 623 (b)(7)(B), 47 U.S.C. 543(b)(7)(B)], and changes in such costs;

[3] Only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

[4] The revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

[5] The reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

[6] Any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

[7] A reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1) [Communications Act § 623 (b)(1), 47 U.S.C. 543(b)(1)].

Among other factors, the criteria to be used in establishing the rates to be charged for cable programming services are:

[1] The rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

[2] The rates for cable systems, if any, that are subject to effective competition;

[3] The history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

[4] The rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

[5] Capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

[6] The revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

We believe the rules we adopt here properly take into account these statutory factors. As a preliminary matter, we note that alternative rate regulation agreements will present an option for local franchising authorities and small systems. Both parties remain free to insist on analysis under our existing rules, which we have already determined take into account the statutory factors. In addition, we believe that small systems and local franchising authorities in markets where small systems provide service are likely to be familiar with the facts and circumstances underlying the factors for their particular markets. Moreover, the statutory factors must be taken into account in negotiating alternative rate regulation agreements.

Given its knowledge of local conditions and its experience with the cable operator, the local franchising authority often will be in the best position to assess the relative importance of these criteria and to gather the relevant facts accordingly. Moreover, since a small system is likely to be located in an area with a relatively small population, we expect that the local franchising authority will be particularly responsive to the needs and desires of cable subscribers. This circumstance should give the local franchising authority substantial encouragement and leverage to guard against any attempt by the cable operator to view the alternative framework as an avenue to achieve unreasonable rates. Indeed, unless and until an alternative rate agreement is reached, the local franchising authority will always be able to rely upon the general benchmark/cost-of-service rules, further ensuring the reasonableness of the rates permitted under an alternative rate regulation agreement. Thus, we conclude that rates subject to alternative rate regulation agreements by small systems will be reasonable.

Further, we believe that alternative rate regulation agreements will assist the Commission in ensuring that rates for cable programming services are not unreasonable. As part of the alternative process, certified local franchising authorities are required to take into account relevant statutory factors to ensure that rates for CPS tiers are not unreasonable before entering into the negotiated agreement. The Commission, however, shall retain jurisdiction over cable programming service rates.

As discussed below, the local franchising authority must be certified in accordance with our standard procedures. Before entering into an alternative rate regulation agreement, the local franchising authority must take into account the relevant criteria discussed above and must provide for public notice and comment. Finally, all alternative rate regulation agreements will be subject to Commission review, as mandated by the Communications Act. For data collection purposes, and to assist the Commission in evaluating complaints, eligible cable operators must file with the Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date.

As with any local franchising authority seeking to enforce rate regulations, a local franchising authority that elects to regulate pursuant to an alternative rate agreement must file the certification required by Section 623(a)(3) of the Communications Act and our rules. The certification process shall be governed by our existing rules applicable to local franchising authorities who wish to regulate cable operators according to the benchmark and cost-of-service rules. No alternative rate regulation agreement will be effective until the effective date of the certification. However, this does not preclude a local franchising authority that has yet to be certified from entering into an alternative rate agreement that is conditioned upon the effectiveness of the local franchising authority's certification. Alternatively, the parties may wait until after the franchising authority is certified to begin their negotiations. A local franchising authority that already is certified by the Commission may enter into an alternative rate agreement with the cable operator at any time. We note that the cable operator will be subject to the standard benchmark/cost-of-service rules upon the expiration of an alternative rate agreement. Thus, the local franchising authority shall accept as reasonable the basic service rate in effect at the time the agreement expires and may apply benchmark/cost-of-service rules on a going-forward basis to determine the reasonableness of proposed changes to basic service rates stemming from external costs, inflation, and the addition, deletion, or substitution of channels.

The alternative approach may be pursued only by agreement of both the cable operator and the local franchising authority. To ensure maximum freedom from regulatory constraints, we will not establish any requirements to control the negotiation process. We note, however, that the scope of alternative agreements is limited exclusively to the regulation of rates charged for basic service and CPS tiers and the equipment used to receive these tiers. Thus, certified local franchising authorities may not enforce state/local negative option billing laws that conflict with federal negative option billing rules. See 47 CFR 76.981. See also Memorandum Opinion & Order, LOI–93–14, DA 95–60 (Cab. Serv. Bur. Jan. 20, 1995); Memorandum Opinion & Order, LOI–93–2, DA 95–61 (Cab. Serv. Bur. Jan. 20, 1995); Consolidated Memorandum Opinion & Order, LOI–93–1, et al., DA 95–106 (Cab. Serv. Bur. Jan. 25, 1995). There are numerous provisions of federal law which may not be waived, even by agreement of the local franchising authority and the small system, unless waivers are provided for in the Commission's rules. These provisions include, but are not limited to, geographically uniform rates structures, tier buy-through prohibitions, technical standards, must-carry obligations, and retransmission consent. See 47 CFR 76.984, 76.921, 76.605, 76.56, 76.64. Moreover, the intention of the alternative framework is not only to ease the cost of compliance with our rules but to ensure that eligible small systems are not required to reduce rates more than required by those rules. Therefore, an alternative rate agreement shall be unenforceable if it requires the cable operator to charge rates lower than would be permitted under the benchmark or cost-of-service rules.

Section 623(a)(3)(C) of the Communications Act requires a local franchising authority to "provide a reasonable opportunity for consideration of the views of interested parties" in the course of rate regulation proceedings. Although this provision is applicable to rate proceedings regardless of whether the alternative procedure is followed, we expect this provision to be particularly significant in the context of alternative rate regulation agreements. Active involvement by interested parties at an early stage of the proceedings, i.e., prior to final adoption of an agreement, should reduce the occurrence of complaints after the alternative agreement is implemented. Thus, the local franchising authority shall provide a reasonable opportunity for comment by interested parties, including subscribers, and, based upon its consideration of such comments, modify the agreement to the extent it deems appropriate before submitting the proposal to the cable operator. The local franchising authority need solicit public comment only once and thus is not precluded from entering into an alternative agreement that differs from a proposal that is presented for public comment.

Once a cable operator is subject to rate regulations, the Communications Act and our rules provide various mechanisms for resolving disputes regarding rates and the enforcement of regulations by local franchising authorities. Subscribers and other interested parties may appeal to the Commission a rate decision made by a certified local franchising authority concerning the basic service tier. Our rules also provide for Commission resolution of complaints regarding rates for CPS tiers. The Commission also may review disputes between cable operators and certified local franchising authorities relating to the administration of regulations governing basic service tier rates.

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An appeal of a local franchising authority decision approving an alternative rate regulation agreement as it applies to basic service tier rates may be filed with the Commission under our regular procedures. Since we have determined that the agreed upon rate is by definition a reasonable rate, the issue before the Commission will be whether the small system is charging the agreed upon rate and whether the agreement was entered into consistent with our requirements. We also believe it would be useful for potential complainants regarding CPS rates to attempt to resolve their complaints with the local franchising authority when CPS rates are subject to an alternative rate regulation agreement. Given the local franchising authority's role as a party to the agreement, we believe that many CPS rate disputes can be resolved at that level. Thus, we will require as a prerequisite to a CPS complaint to the Commission involving an alternative rate regulation agreement that the complainant provide evidence that he or she was denied the requested relief from the local franchising authority. As with basic service rates, in an FCC complaint the Commission will determine whether the rates are consistent with the agreement and our requirements.

The Commission will resolve all CPS rate complaints pending at the time an alternative rate regulation agreement becomes effective under rules in effect at the time the rates were charged. Parties to an alternative rate regulation agreement must abide by the Commission's decision regarding appropriate remedies for unreasonable rates charged prior to the effective date of an alternative rate regulation agreement. However, the parties remain at liberty to determine reasonable CPS rates to be charged upon the effective date of an alternative rate regulation agreement. We do not believe this will hinder the negotiation process or implementation of an alternative rate regulation agreement because both local franchising authorities and cable operators are served with copies of FCC Form 329 complaints filed with the Commission by a subscriber and will know the status of any complaints at the time negotiations commence. In addition, since entering into an alternative agreement is voluntary, the terms of the agreement shall be binding as between the cable operator and the local franchising authority such that neither party shall be permitted to seek from the Commission relief that is inconsistent with the agreement. Thus, a local franchising authority may not challenge a rate permitted under the terms of the agreement and a cable operator may not seek to increase its rates above what the agreement permits.

We have previously interpreted Section 623(j) of the Communications Act to preclude grandfathering rate agreements entered into after July 1, 1990, in part because we concluded that grandfathering such agreements would conflict with the 1992 Cable Act's intent to abrogate rate agreements entered into after July 1, 1990. The rules we adopt today, permitting certified local franchising authorities to enter into agreements with qualifying cable operators with respect to rates, will be applied in the context of our existing cable rate regulation rules. These rules will provide a framework consistent with the statute, under which any such agreements will be negotiated. In addition, our rules will require local franchising authorities to take into account specific factors identified by Congress when determining rates for both basic and CPS tiers. In light of this requirement, we find such alternative rate agreements, developed in accordance with the statutory factors Congress identified for establishing rules to ensure that basic rates were reasonable and that CPS rates were not unreasonable, consistent with the Communications Act. As such, these agreements do not pose the kinds of conflicts with the 1992 Cable Act that we previously identified when we interpreted Section 623(j) as obviating rate agreements entered into after July 1, 1990.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the Eighth Order on Reconsideration is as follows:

Need and Purpose of this Action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered to reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis. There are no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by SBA in the First Report and Order, MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993).

Significant Alternatives Considered and Rejected. In the course of this proceeding, petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission has attempted to accommodate the concerns expressed by these parties. In this Order, the Commission is providing relief to small systems and certified local franchising authorities by permitting them to enter into alternative rate regulation agreements that do not require completion of any forms.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to Section 4(i), 4(j), 303(r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this Eighth Order on Reconsideration, are adopted and Sections 76.934 and 76.950 of the Commission's rules, 47 CFR Section 76.934 and are amended as set forth in below.

It is further order That, the requirements and regulations established in this decision shall become effective April 14, 1995, with the exception of new reporting requirements which will become effective on that date or as soon thereafter as they may be approved by the Office of Management and Budget.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.934 is amended by adding paragraph (f) to read as follows:

§ 76.934 Small systems and small operators.

* * * * *

(f) *Alternative rate regulation agreements.*

(1) Local franchising authorities, certified pursuant to § 76.910, independent small systems, and small systems owned by small multiple system operators as defined by §§ 76.901 and 76.922(b)(5)(A) may enter into alternative rate regulation agreements affecting the basic service tier and the cable programming service tier.

(2) Small systems must file with the Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date.

(3) Alternative rate regulation agreements affecting the basic service tier shall take into account the following:

(i) The rates for cable systems that are subject to effective competition;

(ii) The direct costs of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to §§ 76.56 and 76.64, and changes in such costs;

(iii) Only such portion of the joint and common costs of obtaining, transmitting, and otherwise providing such signals as is determined to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) The revenues received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) The reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) Any amount required to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) A reasonable profit. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(4) Alternative rate regulation agreements affecting the cable programming service tier shall take into account, among other factors, the following:

(i) The rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(ii) The rates for cable systems, if any, that are subject to effective competition;

(iii) The history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(iv) The rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(v) Capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(vi) The revenues received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(5) Certified local franchising authorities shall provide a reasonable opportunity for consideration of the views of interested parties prior to finally entering into an alternative rate regulation agreement.

(6) A basis service rate decision by a certified local franchising authority made pursuant to an alternative rate regulation agreement may be appealed by an interested party to the Commission pursuant to § 76.944 as if the decision were made according to §§ 76.922 and 76.923.

[FR Doc. 95–6555 Filed 3–16–95; 8:45 am]
BILLING CODE 5712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[Federal Acquisition Circular 90–23 Correction]

Federal Acquisition Regulation; Technical Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to Federal Acquisition Circular 90–23 published on December 28, 1994, at 59 FR 67010. Miscellaneous typographical, editorial, and technical errors appeared in the following areas: FAR Case 91–13—Acquisition of Utility Services, FAR Case 93–27—Cost Accounting Standards Applicability and Thresholds, and in FAR Case 90–62—Construction Contracting.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

41.501 [Corrected]

1. In the **Federal Register** issue of December 28, 1994, under FAR Case 91–13, on page 67022, under 41.501, in the third column, in paragraph (d)(3), in the second line from the bottom of the paragraph following the word "paragraphs", "(f)" and "(i)" should read "(d)(6)" and "(d)(4)", respectively.

FAR Case 93–27 [Corrected]

2. In the same issue under FAR Case 93–27, on page 67042, in the second column, under **EFFECTIVE DATE**, in the first line at the top, "February 27, 1994" should read "February 27, 1995".

52.236–27 [Corrected]

3. In the same issue under FAR Case 90–62, on page 67050, in the second column, under paragraph (a), second line from the top, "Investigations" should read "Investigation".

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Dated: March 10, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy, General Services Administration.

[FR Doc. 95–6623 Filed 3–16–95; 8:45 am]

BILLING CODE 6820–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1805

Revision to NASA Supplement Coverage on Advance Notification of Significant Procurement Actions

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is adding a requirement regarding the notification to the NASA Administrator of significant procurement actions. These actions include contractor selections for competitive procurements valued at $25 million or more and noncompetitive contract awards valued at $100 million or more. The purpose of this notification process is to ensure that the Administrator has knowledge of these actions in case of congressional or public inquiries.

EFFECTIVE DATE: March 17, 1995.

ADDRESSES: Office of Procurement, Contract Management Division (Code HK), NASA Headquarters, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, (202) 358–0440.

SUPPLEMENTARY INFORMATION:

Background

Advance notification to the NASA Administrator of large and potentially sensitive contract actions is necessary to ensure that the Administrator has knowledge of these actions in case of Congressional or public inquiries either before or immediately after public announcement of the actions. Notification must be provided to NASA Headquarters (Code HS), by facsimile transmission, at least five (5) work days prior to the intended public announcements of contractor selection and contract award actions. This allows sufficient time for the information to be provided to the Administrator within the Administrator's normal work flow system. Field installations are not to proceed with any announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not impose any information collection subject to 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Part 1805

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR part 1805 is amended as follows:

1. The authority citation for 48 CFR part 1805 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303–70 [Added]

2. Sections 1805–303.70 and 1805–303.71 are redesignated as sections 1805.303–71 and 1805–303.72, and a new section 1805.303–70 is added to read as follows:

1805.303–70 Notification of significant procurement actions.

(a) NASA Headquarters (Code HS) shall be notified of the following procurement actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned announcement of contractor selection and planned contract award for competitive procurements of $25 million or more.

(2) Planned contract award of noncompetitive awards and new work modifications of $100 million or more.

(3) Planned award of other procurement actions at any dollar value thought to be of significant interest to Headquarters.

(b) Field installation procurement officers shall send the information listed in paragraphs (b) (1) through (10) of this section to NASA Headquarters (Code HS) via facsimile transmission (202–358–4065). Immediately prior to transmission, Code HS shall be notified by telephone (202–358–2080) of the impending transmission so that a person may immediately receive the transmission. Code HS will hand-carry the notification to the Office of the Administrator (Code A) and provide a copy to the Associated Administrator for Procurement (Code H) to limit access to the information to those persons authorized to receive such information as described in 48 CFR (FAR) 1803.104–5(c). In accordance with 48 CFR (FAR) 3.104–5(c), all pages that include source selection information shall be marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." The information to be sent is as follows:

(1) Title and a brief nontechnical description of the work, including identification of the program or project.

(2) Type of action (whether the action will result in a new contract or is for additional work under an existing contract).

(3) Type of contract (e.g., Firm-Fixed-Price or Cost type, including whether the cost contract is completion or level-of-effort).

(4) The total contract value for the instant action including all priced options (for selection notifications, this would be the successful offeror's best and final offer (BAFO) amount and, for award notifications, the negotiated value of the contract). Also include the Government's most probable cost.

(5) The name, address, and business size status of the prime contractor and each major (over $1M) subcontractor.

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options.

(7) Work performance location.

(8) Unusual circumstances (briefly describe any facts or events that bear upon this procurement and make it unusual).

(9) Contacts (names and telephone numbers of a prime and alternate center points of contact).

(10) Provide the following information on a separate piece of paper attached to the data for paragraphs (b) (1) through (9) of this section: *For competitive selections only,* furnish the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection, noting that any detailed questions or requests for more specific information should be referred to the source selection official.

(c) Field installations are not to proceed with any announcements until Code HS has advised that the

Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, field installations should proceed with established notification to offerors and press release procedures (See 1805.303–71 and 1805.303–72).

1805.303–71 [Amended]

3. In the redesignated section 1805.303–71, paragraph (a)(1)(iv) is amended by deleting the phrase "and section 1805.303–70".

[FR Doc. 95–6440 Filed 3–16–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–113; Amendment 192–71A, 195–49A]

RIN 2137–AB44

Operation and Maintenance Procedures for Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule: Response to Petition for Reconsideration.

SUMMARY: On February 11, 1994, RSPA issued a final rule amending existing operation and maintenance (O&M) procedures for gas pipeline facilities. The American Gas Association (Petitioner or A.G.A.) filed a Petition for Reconsideration (petition) concerning five provisions of the final rule. After careful consideration of the petition, RSPA concludes the petition should be denied in part, and granted in part. RSPA is granting those aspects of the petition that relate to: (1) procedures required to be included in an operator's O&M manual, and (2) the extent of the requirement to address malfunctions and other deviations during abnormal operations.

EFFECTIVE DATE: This final rule takes effect April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366–4571, concerning the contents of this final rule, or the Dockets Unit, (202) 366–4453, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA promulgated the final rule on Operations and Maintenance Procedures for Pipelines (59 FR 6579; February 11, 1994) pursuant to 49 U.S.C. 60101 *et seq.* The purpose of the rule is to ensure that gas pipeline operators maintain thorough gas pipeline operation and maintenance (O&M) procedures. Gas pipeline operators are now required to include detailed procedures on normal and abnormal operation, maintenance and emergency-response activities in their O&M manual. Gas pipeline operators are also responsible for annually reviewing and updating their O&M manual. Furthermore, both gas and hazardous liquid pipeline operators are required to prepare procedures to be followed to safeguard personnel from the hazards associated with the unsafe accumulation of vapor or gas in excavated trenches. As RSPA explained in the final rule, these actions will reduce the likelihood of pipeline failures, and provide a better basis for personnel training.

Summary of Petition and Comments on Petition

In its petition, A.G.A. raised five issues relating to various aspects of the final rule, and requested that RSPA modify or clarify the final rule accordingly. The following sections summarize the issues raised in the petition, and provide RSPA's response to each request.

I. Extent of a Gas Pipeline Operator's Annual Review of its O&M Manual

Petitioner asserts that the requirement that an operator review its activities periodically to determine the effectiveness of its operation and maintenance procedures (49 CFR 192.605(b)(8)) coupled with the limited amount of time estimated to be required to complete an annual update of an operator's procedures supports a change in 49 CFR 192.605(a). Specifically, petitioner urges that the annual review required by section 192.605(a) be limited to changes needed to address any new regulatory changes. Petitioner overstates the burden that an annual review would place on operators if the review is not limited to updates because of regulatory changes. Although the annual review is not limited to regulatory changes, § 192.605(a) does not require an annual line-by-line review of every procedure contained in an operator's manual. Neither does it require an annual comprehensive review of an operator's activities to determine whether changes to the operation and maintenance manual are needed.

The annual review under § 192.605(a) requires that an operator annually review its manual, and that deficiencies identified during periodic reviews of activities (under § 192.605(b)(8)) are addressed. While serious deficiencies, possibly identified following an accident, may require immediate correction of operating procedures, other deficiencies may await an annual update. Updating of operation and maintenance procedures on a regular, established basis makes good business sense and enhances the safe operation of the pipeline. Retaining outdated procedures could confuse an operator's personnel as to the appropriate course of action.

Petitioner stated that 4.4 hours is insufficient time for one of its member operators to complete this review. We agree. The 4.4 hours noted in the preamble was based on 54,300 operators. The majority (52,000) of these operators are the master meter operators, whose plans are expected to be very simple and will have a minimal effect. In the justification to support the Paperwork Reduction Act, RSPA calculated that the initial burden was 104.3 hours per operator (based on 2,300 operators), excluding master meter operators. This 104.3 hours includes 52.2 hours that were already required by earlier O&M regulations. The additional 52.1 burden hours represent a one-time effort to develop additional O&M procedures that will affect these 2,300 operators only in the first year following the publication of this regulation. After the first year, the burden hours of all O&M regulations will return to the annual 52.2 hours per year per operator. The paper work justification is filed in the Docket.

Accordingly, Petitioner's request to limit the annual review required by § 192.605(a) is denied.

II. Procedures Required To Be Included in an Operator's O&M Manual

In its petition, A.G.A. asserts that section 192.605(b) of the final rule should be clarified to reflect that an operator must only include procedures in its manual that are applicable to its particular pipeline system (49 CFR 192.605(b)). Petitioner believes that as written, the regulation requires a gas pipeline operator to include O&M procedures responsive to all of the procedural requirements listed under sections 192.605(b)(1)–(10), regardless of whether particular regulations are applicable to an operator's pipeline system.

In the final rule, § 192.605(b) requires that the O&M manual required by § 192.605(a) must include certain specific procedures to provide safety during maintenance and operations. Sections 192.605(b)(1)–(10) list ten

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specific procedural elements which are to be included in the operator's manual. However, not all of these subsections are applicable to operations and maintenance activities at every gas pipeline facility. RSPA never intended that a gas pipeline operator have every procedure set forth in those subsections. In response to comments, RSPA stated in the preamble to the final rule (59 FR 6580) that:

> RSPA requires operators to prepare O&M procedures only for those pipeline facilities within their system. For example, it would not be necessary to prepare compressor startup procedures if the company has no compressors. The procedures should be clear, straightforward and applicable to the company's system.

Petitioner suggests that the words "if applicable" be added after the word "following" to the text of § 192.605(b) to clarify that procedures be prepared for operational situations only to the extent that an operator will face such a situation.

RSPA agrees that the regulation, as written, may seem to unnecessarily require an operator to produce procedures relating to the operation of a gas pipeline system that have no practical value to anyone. Therefore, RSPA is amending the final rule by adding the term "if applicable" in the text of § 192.605(b) after the word "following."

III. Procedures Regarding Protection of Personnel in Excavated Trenches From Unsafe Accumulations of Vapor or Gas

Petitioner also requested that the requirement that operators include procedures in their operations manuals relating to worker exposure to gas or hazardous vapors in excavated trenches (49 CFR 192.605(b)(9) and 49 CFR 195.402(c)(14)) be broadened to require operators to include procedures to address worker safety in general.

Sections 192.605(b)(9) and 195.402(c)(14) of the final rule require that gas and hazardous liquid operators include procedures in their respective O&M plans to address the following:

> Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and a rescue harness and line.

RSPA does not agree with Petitioner's argument that a requirement specifically addressing worker safety in excavated trenches will give the "impression that this is the only worker safety provision that need be addressed in a proper O&M plan." While it may be the only provision in this rulemaking directly addressing worker safety, many of RSPA's rules indirectly impact worker safety.

Petitioner also argues that "RSPA has not demonstrated that current Office of Pipeline Safety (OPS) regulations do not adequately prevent worker exposure to hazardous vapors or gas." RSPA has broad rulemaking authority for pipeline safety. Under this authority, RSPA may issue regulations to address specific worker safety issues as they relate to the safe and environmentally sound transportation of gas by pipeline. It is not necessary that RSPA "demonstrate" that current regulations are inadequate before issuing specific safety regulations.

Petitioner urges RSPA to revise the worker safety provision, stating that worker safety issues should not be addressed specifically, but instead that the issue be addressed generically. This suggestion goes beyond the scope of the NPRM and is not adopted.

RSPA disagrees with Petitioner's claim that compliance with this provision would entail enormous costs. RSPA prepared a Regulatory Evaluation which concluded that the final rule would have a positive cost/benefit ratio. Costs of complying with the final rule are small because most operators need only make emergency rescue equipment available when needed at the trench excavation. RSPA did not receive any comments to the preliminary regulatory evaluation that accompanied the NPRM and A.G.A. has not provided detailed information about increased costs. Furthermore, since most operators regularly train employees in industrial safety, and currently include operator safety as an integral part of their O&M plan, RSPA believes the costs of revising the O&M plan to include worker safety would not be increased significantly.

Accordingly, Petitioner's request to change sections 192.605(b)(9) and 195.402(c)(14) is denied.

IV. Extent of Requirement to Address Malfunctions and Other Deviations During Abnormal Operations

In its petition, A.G.A. also requested that RSPA should remove the requirement in 49 CFR 192.605(c)(1)(v) requiring that an operator address abnormal operations in its O&M manual. The rule states as follows:

(c) *Abnormal operation.* For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

* * * * *

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property.

Petitioner asserts that this language is confusing and could be interpreted to require operators to have written procedures in their O&M manual describing how to respond to unforeseeable malfunctions, deviations from normal operation, or personnel error. Petitioner requests that RSPA clarify the regulation to indicate that an operator need only include written procedures for "foreseeable" malfunctions when design limits have been exceeded.

The operator is required to prepare procedures when operating design limits have been exceeded, such as limits of pressure, flow, and temperature that indicate an abnormal condition which should be investigated and corrected to avoid approaching the strength limits of the system and the potential for failure. Pipeline systems vary, and an operator must be able to provide procedures to apply to the particular requirements of its system. The operator must plan for potential foreseeable causes of abnormal pipeline operations.

The identical rule for hazardous liquids, 49 CFR 195.402(d)(1)(v) has been in effect since 1979 (44 FR 41197, July 16, 1979). Regulated hazardous liquid pipeline operators have not been confused by the regulation, apparently assuming correctly that the rule only applies to foreseeable events. However, to avoid confusion, RSPA is amending the final rule to add the word "foreseeable" in section 192.605(c)(1)(v).

V. Extent of Requirement That Operators of Natural Gas Distribution Systems Prepare Procedures for Addressing Abnormal Operations

Petitioner asserts that the final rule should exempt natural gas distribution systems from the requirement to have procedures for addressing abnormal operations on its transmission lines as described in 49 CFR 192.605(c) of the final rule. A.G.A. contends that many small diameter and short distance pipelines "have little similarity" to interstate transmission systems, but are regulated as transmission lines only because they operate at above 20 percent of the pipe's specified minimum yield strength (SMYS). Petitioner stated that compliance with the regulation would require separate abnormal operations plans for each separate section of pipe.

RSPA agrees with Petitioner that natural gas transmission lines operated by distribution operators in connection with their distribution systems should be exempt from the requirement to have procedures that address abnormal operations. This was the intent of the final rule. The preamble to the final rule stated that "[d]istribution system operators are not required to prepare a manual for abnormal conditions because they normally operate distribution pipelines at lower pressures than transmission pipelines * * * due to the dangers involved in operating in populated areas, most unusual operating conditions would be considered by the distribution system operator to be an emergency until the condition is resolved or corrected." (59 FR 6582; February 11, 1994.) Accordingly, RSPA is amending the final rule to clarify that an operator of a high-pressure or low-pressure distribution system, as defined in 49 CFR 192.3, is exempt from the requirement to prepare a manual for abnormal operations.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it merely clarifies the content of a final rule and does not materially affect the substance of the final rule.

Federalism Assessment

This rule will not have substantial direct effects on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule only makes minor editorial changes to a previously issued rule. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987) RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

There are very few small entities that operate pipelines affected by this rulemaking. To the extent than any small entity is affected, the affect is minimal because it does not impose additional requirements. Based on this fact, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605; September 19, 1980) that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 192 is amended to read as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.605, the introductory text of paragraph (b) is revised to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

* * * * *

3. In § 192.605, paragraph (c)(1)(v) is revised, and a new paragraph (c)(5) is added to read as follows:

§ 192.605 Procedural manual for operations, maintenance and emergencies.

* * * * *

(c) * * *

(1) * * *

(v) Any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property.

* * * * *

(5) The requirements of this paragraph (c) do not apply to natural gas distribution operators that are operating transmission lines in connection with their distribution system.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95–6363 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 280 and 285

[Docket No. 950124026–5026–01; I.D. 100893B]

RIN 0648–AF74

Bluefin Tuna Fisheries; Bluefin Tuna Statistical Document

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations governing the bluefin tuna fisheries to: Require an appropriately completed, approved Bluefin Tuna Statistical Document (BSD) as a condition for import, export, or re-export of bluefin tuna into or from the United States; require a Federal permit for all dealers that import or export Pacific bluefin tuna; require preparation and submission of a biweekly report on imports and exports of Pacific bluefin tuna by permitted dealers; revise specifications determining size classes of Atlantic bluefin tuna; and make minor amendments to clarify the regulations. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), to improve management and monitoring of the U.S. bluefin tuna fisheries, to facilitate enforcement, and to enhance collection of data in order to improve assessment of the environmental and economic impacts of the fisheries.

EFFECTIVE DATE: April 17, 1995.

ADDRESSES: Copies of the Final Environmental Assessment/ Regulatory Impact Review, are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Richard H. Schaefer and to the Office of Management and Budget (OMB), Paperwork Reduction Project (0648–0040; 0648–0148; 0648–0202; 0648–0239), Attention: NOAA Desk Officer, Washington, DC 20503.

Copies of the ICCAT BSD and revised Fisheries Certificate of Origin (FCO) are also available from the Director, F/CM.

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FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The Pacific tuna fisheries are managed under regulations at 50 CFR part 280 implementing the recommendations of the Inter-American Tropical Tuna Commission. The AA has determined that provisions of this final rule applicable to Pacific bluefin tuna are necessary to implement the recommendations of ICCAT due to similarity of appearance to Atlantic bluefin tuna.

Purpose of Current Action

Background information about the need for the ICCAT Bluefin Statistical Tuna Document program was provided in the notice of proposed rulemaking (59 FR 30896, June 16, 1994) and is not repeated here.

Management Measures

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries:

1. Bluefin Tuna Statistical Document

This final rule requires an original completed, approved BSD as a condition for the import, export, or re-export of all bluefin tuna shipments into or from the United States. The BSD is required for all bluefin tuna products that are exported from or imported into the United States and identified by Harmonized Tariff Schedule (HTS) numbers for fresh or chilled bluefin tuna, excluding fillets and other fish meat—0302.39.00.20; frozen bluefin tuna, excluding fillets—0303.49.00.20; and any other product form not identified by bluefin-specific HTS numbers. In order to be considered appropriately completed, the approved BSD accompanying each shipment must provide all of the required information indicated at 50 CFR 285.202 and be certified by the exporter, importer, and government official, as appropriate.

2. Pacific Bluefin Dealer Permits

Dealers importing Pacific bluefin tuna, or purchasing or receiving for export Pacific bluefin tuna first landed in the United States, are required to possess a valid bluefin tuna dealer permit and comply with all applicable recordkeeping and reporting requirements.

3. Pacific Bluefin Reporting Requirements

Pacific bluefin tuna dealers are required to submit biweekly reports to the Regional Director on imports and exports of bluefin tuna. The report must be postmarked and mailed within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were imported or exported. The biweekly reporting periods are defined as the first day through the 14th day of each month and the 15th day through the last day of the month. Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import, any tag number (if so tagged), and weight in kilograms (specify if round or dressed).

4. Atlantic Tuna Curved Length Measure

The regulatory text is amended to specify Atlantic bluefin tuna size classes relative to curved length measure. The curved length measure is a more feasible measurement method to apply to a bluefin tuna on a vessel or at the dock. Specification of size classes according to the curved measurement method will enable fishermen, dealers, and NMFS enforcement agents to consistently assign individual fish to one of the regulatory size classes for the purposes of compliance with daily bag and boat limits and the prohibition on sale of small fish.

5. Atlantic Tuna Technical Amendments

Technical amendments to the regulations at 50 CFR part 285 are made to delete references to metal tags to account for non-metallic tail tags now issued to dealers, and to clarify a prohibition on the reuse of tail tags issued to permitted dealers for the purpose of identifying individual Atlantic bluefin tuna. These changes will not affect the conduct of the tuna fisheries except to facilitate enforcement. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

Comments and Responses

1. Bluefin Tuna Statistical Document

Comment: Fisheries officials from other ICCAT member nations, including Spain, Canada, and Japan, commented that combining the ICCAT BSD with the U.S. FCO (NOAA Form 370) could lead to confusion and potential problems in implementing the ICCAT bluefin tuna statistical program. This could have deleterious effects on multilateral management of bluefin tuna. These officials noted that ICCAT has invested a considerable amount of effort over several years in designing a form and an information-collection system that would be acceptable to all ICCAT members. By using a form containing information-collection requirements extraneous to the ICCAT bluefin statistical program, the United States could impede expeditious transport of a highly perishable product.

Additionally, U.S. bluefin dealers objected to the proposed combined form on the grounds that importing countries (e.g., Japan) would not accept it as the agreed ICCAT document, and dealers would have to complete both the U.S. form and the ICCAT form, resulting in unnecessary duplication of effort. Due to Japanese import requirements implemented on June 1, 1994, U.S. dealers have been using the ICCAT-style form supplied to them by Japanese importers. Many dealers commented that introduction of a new form would lead to confusion on the part of customs brokers in Japan and could possibly result in delayed or rejected shipments.

Response: NMFS concurs in general with the comments and is issuing a separate BSD according to the ICCAT format. While use of a separate BSD will avoid confusion in implementing the ICCAT program, it does not exempt U.S. dealers from complying with FCO requirements. However, due to FCO exemptions for fresh fish, there would be few situations (e.g., frozen bluefin) where foreign exporters and U.S. importers would need to complete both documents. Trade statistics indicate that only 1,400 lb (635 kg) of frozen bluefin were imported into the United States in 1993. Thus, the majority of bluefin imports would be exempt from FCO requirements and the overall reporting burden would not be significantly changed by issuing separate BSD and FCO forms.

2. Pacific Bluefin Tagging Requirements

Comment: Dealers of Pacific bluefin tuna commented that, relative to Atlantic bluefin, export shipments of Pacific bluefin generally comprise smaller fish, in greater numbers. Tagging of individual Pacific bluefin is, therefore, cost-prohibitive and poses an extreme economic burden on West Coast fish dealers.

Response: NMFS agrees that the labor costs involved in tagging large numbers of small Pacific bluefin tuna affect competitive pricing and would reduce, or even preclude, the profitability of exports. NMFS, therefore, has withdrawn the proposed requirement to tag all Pacific bluefin tuna. However, dealers may continue to tag Pacific bluefin provided the tag numbers are recorded on the BSD and are reported to NMFS on the biweekly report. Voluntary tagging of Pacific bluefin tuna will relieve dealers of the responsibility to have documents validated by government officials or, if authorized, by non-government officials.

3. Pacific Bluefin Validation Requirements

Comment: Pacific bluefin tuna dealers have commented that NMFS can independently verify information on the BSD by cross-referencing state landings tickets and biweekly reports, thus eliminating delays in packing fish caused by waiting for government validation. Given the need for expeditious handling to export bluefin for the fresh market in Japan, dealers perceive the validation requirement as an excessive burden providing no additional benefit to the information retrieval system.

Response: NMFS agrees that biweekly reports, taken together with the completed BSDs and required supporting documentation, provide the information needed to report as specified in the ICCAT recommendation. However, the United States is bound to comply with validation requirements as specified by ICCAT. Pending future clarification by ICCAT's Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures, validation requirements by exporting countries may be subject to change. Currently, the ICCAT resolution on validation requires that imports of untagged bluefin tuna from the United States be validated. NMFS recommends that Pacific bluefin dealers tag individual fish when feasible to gain exemption from validation requirements. With this final rule, NMFS establishes procedures for non-government validation of BSDs in the event validation is necessary. Validation by authorized non-government parties will reduce the compliance burden.

4. Pacific Bluefin Reporting Requirements

Comment: The biweekly report was first developed for Atlantic bluefin tuna, and it needs to be modified if it is to reflect Pacific bluefin tuna shipping practices. Specifically, the sections to record tag numbers and individual weights should be deleted.

Response: Rather than issue a combined form for both Atlantic and Pacific bluefin tuna reports, NMFS has decided to issue a separate form modified for the specific biweekly reporting requirements of Pacific bluefin shipments.

5. Use of Metric Equivalents

Comment: The U.S. fishing industry records weights in pounds and the biweekly reports and BSDs should reflect this.

Response: Weights specified in kilograms will facilitate international trade in bluefin tuna. Specification of weights in kilograms on completed BSDs will reduce problems in reviewing and verifying information at customs offices abroad.

6. Import Requirements

Comment: According to the ICCAT recommendation, all bluefin tuna, regardless of product form, must be accompanied by a completed BSD to be eligible for lawful entry.

Response: In the final rule NMFS has amended the requirements for documentation to include bluefin tuna in any product form, not just fresh or frozen as identified by bluefin-specific HTS codes.

Comment: According to the general interpretation of the ICCAT recommendation, improperly documented bluefin would not be refused, but suspended and subject to administrative sanctions if documentation could not be produced. The proposed rule would only allow entry under bond without documentation.

Response: Due to the perishable nature of the product, the interpretation of the ICCAT recommendation is such that entry of bluefin tuna without documentation would be suspended, pending receipt of a properly completed document, or the entry would be allowed subject to administrative sanctions. Since the U.S. Customs Service now uses an automated broker interface for electronic filing of entry documents, refusal of improperly documented bluefin is impractical. Therefore, allowance for entry under bond has been eliminated and import of undocumented bluefin would, in most cases, be subject to civil penalties under NMFS and U.S. Customs Service regulations rather than seizure.

Changes From the Proposed Rule

After consideration of public comment, NMFS is issuing a separate form for use as an ICCAT BSD and will not combine the BSD with the FCO (NOAA Form 370). For copies of the ICCAT BSD and revised FCO, contact NMFS (see **ADDRESSES**). Though NMFS will not issue a combined form, U.S. tuna dealers must be aware that for import and export of tuna products, in some situations, both forms are required.

Under the Marine Mammal Protection Act and its implementing regulations, only dolphin-safe tuna may be purchased, sold, transported, or shipped in the United States after June 1, 1994 (16 U.S.C. 1417). In certain cases, imports of tuna and tuna products, except fresh tuna, form must be accompanied by an appropriately completed FCO (NOAA Form 370). The majority of bluefin tuna imports to the United States are in fresh form, for which an FCO is not required. However, an appropriately completed BSD is required for all bluefin tuna, fresh or frozen, that enters or exits the United States. Therefore, dealers should note that bluefin tuna imported in forms other than fresh product, are subject to the requirements of both the BSD and FCO.

Other changes from the proposed rule involve the tagging and validation requirements for Pacific bluefin tuna exported from the United States. After considering public comment on packaging and shipping practices for Pacific bluefin, NMFS has eliminated the proposed requirement that Pacific bluefin tuna be tagged prior to export. However, the ICCAT resolution on validation currently requires that imports of untagged Atlantic or Pacific bluefin tuna from the United States to other ICCAT-member countries be validated by government officials. NMFS recommends that Pacific bluefin tuna dealers tag individual fish when feasible, to gain exemption from validation requirements. In the event validation is necessary, NMFS has established procedures for non-government validation of BSDs to reduce the compliance burden.

NMFS has changed the requirements for dealer permits to include both dealers importing and exporting Pacific bluefin tuna. This is necessary to ensure accurate reporting of import statistics and collection of BSDs accompanying Pacific bluefin tuna that are imported into the United States for domestic

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consumption. It is expected that most, if not all, dealers importing Pacific bluefin tuna will also export on occasion, and thus require a permit in any case.

NMFS has also changed the retention period for copies of BSDs and biweekly dealer reports on Pacific bluefin tuna exports from 6 months to 2 years. This was done to make the recordkeeping requirements consistent with those already in effect for Atlantic bluefin tuna reports.

NMFS has changed the requirements for lawful entry of Atlantic and Pacific bluefin tuna imports to include all product forms and to eliminate requirements for entry under bond. This is necessary to comply with general interpretations of the ICCAT recommendation and subsequent resolutions concerning the BSD.

NMFS has revised the format of certain amendments to the regulatory text in that dealer permitting, reporting and recordkeeping requirements applicable to Pacific bluefin tuna are placed at 50 CFR part 280, rather than at 50 CFR part 285. This organizational change was made to reduce fragmentation of the regulatory text applicable to Pacific tuna fisheries.

In addition to the above changes, the following adjustments to the regulations, though not part of the proposed rule, are implemented by this rule to assist in quota monitoring, to increase the effectiveness of enforcement, and to ensure the accuracy of bluefin statistical documents:

In § 285.26, size classes are defined relative only to the curved length measurement method. Public support for this change was expressed following a request for comments issued during rulemaking for the 1994 Atlantic bluefin tuna season (59 FR 2813, January 19, 1994). Landings data also support this change, since 88 percent of Atlantic bluefin tuna purchased by dealers from 1991 through 1993 were reported with curved length measures. NMFS enforcement officials concur that specification of size classes by the curved method is more consistent with the way length measurements are taken in the field and reduces confusion between legal and illegal size fish relative to the daily bag limits and the prohibition on sale of Atlantic bluefin below the large medium size class. Accordingly, this rule establishes curved measure as the sole criterion for determination of size classes of Atlantic bluefin tuna.

In § 285.29(a), language is added to instruct permitted dealers purchasing or receiving Atlantic bluefin tuna to verify, by visual inspection of the vessel permit, that the required permit information is correctly recorded on the dealer landing card. This is necessary to ensure that records of bluefin tuna landings are assigned to the correct vessel permit number.

Another technical change is that specific language is added at § 280.52, § 280.53(f), § 285.30(e), and § 285.31(a)(38) to prohibit the reuse of bluefin tuna identification tags. While instructions to dealers have indicated proper use of tags, the regulatory text was not clear regarding reuse. Clarifying the regulatory text will assist quota monitoring and ensure the accuracy of export documentation as recorded on the BSD.

Finally, all references to metal tail tags in the regulatory text have been deleted, since NMFs now issues non-metallic tail tags to dealers for the purpose of identifying individual bluefin tuna available for sale.

Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the recordkeeping and reporting requirements impose minimal costs. Accordingly, an Initial Regulatory Flexibility Analysis was not prepared. The changes from the proposed rule reduce the compliance burden on bluefin tuna dealers by eliminating mandatory tagging of Pacific bluefin and by allowing dealer associations, if authorized, to validate BSDs.

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies and renews requirements that were approved by OMB under control numbers 0648–0040, 0648–0148, 0648–0202 and 0648–0239. The public reporting burden for completing an application for a Federal permit for dealers that export or re-export Pacific bluefin tuna is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection of information on dealer reports is estimated at 0.25 hours (15 minutes) per response for the biweekly dealer reports and affixing tags, and 0.33 hours (20 minutes) per response for all bluefin tuna dealers for completing a BSD. The public reporting burden for maintaining a daily log of fishing activities for Pacific bluefin tuna is estimated at 0.10 hours (6 minutes) per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 280

Fisheries, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 280 and 285 are amended as follows:

PART 280—PACIFIC TUNA FISHERIES

1. The authority citation for part 280 is revised to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

2. A heading for subpart A is added to read as follows:

Subpart A—General

3. Sections 280.1 and 280.2 are transferred to subpart A.

4. Section 280.1 is revised to read as follows:

§ 280.1 Purpose and scope.

The regulations in this part implement the IATTC recommendations for the conservation of yellowfin tuna and the ICCAT recommendations for the conservation of bluefin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

5. In § 280.2, the definition for "Authorized officer" is amended by redesignating paragraphs (a) through (d) as paragraphs (1) through (4), respectively, and the definition for "Mingled species" is amended by redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively; the definition for "Commission" is removed; and the definitions of "Atlantic bluefin tuna", "Bluefin tuna", "IATTC", "ICCAT", "Pacific bluefin tuna", "Regional Director", and "Tag" are added in alphabetical order to read as follows:

§ 280.2 Definitions.

* * * * *

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean.

* * * * *

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

* * * * *

IATTC means the Inter-American Tropical Tuna Commission established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

ICCAT means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas.

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

Regional Director means

(1) For the purposes of Atlantic bluefin dealers, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and

(2) For the purposes of Pacific bluefin dealers, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Tag means the flexible, self-locking ribbon issued by the NMFS for the identification of bluefin tuna under § 280.52 or § 285.30 of this chapter.

* * * * *

6. A heading for subpart B is added to read as follows:

Subpart B—Yellowfin Tuna (Thunnus albacares)

7. Sections 280.3 and 280.4 are redesignated as §§ 280.10 and 280.11, respectively, and are transferred to subpart B.

8. Newly redesignated § 280.10 is revised to read as follows:

§ 280.10 Recordkeeping and written reports.

(a) The master or other person in charge of a fishing vessel or a person authorized in writing to serve as the agent for either person must keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish aboard, by species. The record and bridge log maintained at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified are accurately entered in the log.

(b) Any authorized officer has the power to inspect, without warrant or other process, at any reasonable time, the records and logs of any fishing vessel that are required by paragraph (a) of this section.

9. In newly redesignated paragraph 280.11(a), the word "Commission" is replaced with the word "IATTC".

10. A new Subpart C is added to read as follows:

Subpart C—Pacific Bluefin Tuna (Thunnus thynnus orientalis)

280.50 Dealer permits.
280.51 Dealer recordkeeping and reporting.
280.52 Tags.
280.53 Documentation requirements.
280.54 Prohibitions.

Subpart C—Pacific Bluefin Tuna (Thunnus thynnus orientalis)

§ 280.50 Dealer permits.

(a) *General.* A dealer importing Pacific bluefin tuna or purchasing, or receiving, for export Pacific bluefin tuna first landed in the United States, must have a valid permit issued under this section.

(b) *Application.* A dealer must apply for a permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the dealer and be submitted to the Regional Director at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner or owners' names, applicant's name (if different from owner or owners) and mailing address and telephone number, and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to the Regional Director in writing. The permit is void if any change in information is not reported within 15 days.

§ 280.51 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 280.50:

(a) Must submit to the Regional Director a biweekly report on bluefin imports and exports on forms supplied by NMFS.

(1) The report required by this paragraph (a) must be postmarked and mailed at the dealer's expense within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods are defined

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as the first day to the 14th day of each month and the 15th day to the last day of the month.

(2) Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); weight in kilograms (specify if round or dressed); and any other information required by the Regional Director. At the top of each form, the company's name, license number, and the name of the person filling out the report must be specified. In addition, the beginning and ending dates of the 2-week reporting period must be specified by the dealer and noted at the top of the form.

(b) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna.

(c) Must retain at his/her principal place of business a copy of each biweekly report for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 280.52 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tags to each person receiving a dealer's permit under § 280.50.

(b) *Transfer of tags.* Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* At the discretion of dealers permitted under § 280.50, a tag issued under paragraph (a) of this section may be affixed to each Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by § 280.51(a) and any documents accompanying the shipment of Pacific bluefin tuna for domestic commercial use or export.

(d) *Removal of tags.* A NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container.

(e) *Reuse of tags.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

§ 280.53 Documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in 50 CFR part 285, subpart F of this chapter.

§ 280.54 Prohibitions.

It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Import Pacific bluefin tuna or purchase or receive for export Pacific bluefin tuna first landed in the United States without a valid dealer permit issued under § 280.50;

(b) Remove any NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter, before removal is allowed under § 280.52, or fail to write the tag number on the shipping package or container as specified in § 280.52;

(c) Falsify or fail to make, keep, maintain, or submit any reports or other record required by this subpart;

(d) Refuse to allow an authorized officer or employee of NMFS designated by the Regional Director to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Pacific bluefin tuna required of this subpart;

(e) Make any false statement, oral or written, to an authorized officer or employee of NMFS designated by the Regional Director to make inspections concerning the catching, harvesting, landing, purchase, sale, or transfer of any Pacific bluefin tuna;

(f) Reuse any NMFS-issued tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter or reuse any tag number previously written on a shipping package or container as prescribed by § 280.52.

PART 285—ATLANTIC TUNA FISHERIES

11. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

12. In § 285.2, the definition of "Metal tag" is removed; the definitions of "Bluefin tuna", "Intermediate country", "Pacific bluefin tuna", and "Tag" are added in alphabetical order; the definition of "Atlantic bluefin tuna" is revised; in the definition of "owner", paragraphs (a) through (c) are redesignated paragraphs (1) through (3), respectively; and in the definition of "Regional Director", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), respectively, and are revised to read as follows:

§ 285.2 Definitions.

* * * * *

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean. Size classes for Atlantic bluefin tuna are defined in § 285.26.

* * * * *

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

* * * * *

Intermediate country means a country from which bluefin tuna or bluefin tuna products that were previously imported by that nation are exported to the United States. Shipments of bluefin tuna or bluefin tuna products through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

* * * * *

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

* * * * *

Regional Director means

(1) For the purposes of Atlantic bluefin dealers, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and for the purposes of Pacific bluefin dealers, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213; and

(2) For purposes of yellowfin tuna, bigeye tuna, skipjack tuna, and albacore, the Regional Director, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

* * * * *

Tag means the flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna under § 285.30.

* * * * *

13. In § 285.23, paragraph (d) is revised to read as follows:

§ 285.23 Incidental catch.

* * * * *

(d) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel issued a permit for the Angling category and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one large medium or giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant Atlantic bluefin tuna, and must make the tuna available for inspection and attachment of a tail tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes.

* * * * *

14. Section 285.26 is revised to read as follows:

§ 285.26 Size classes.

Total curved fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the snout to the fork of the tail. For any Atlantic bluefin tuna found with the head removed, it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total curved fork length equals pectoral fin curved fork length multiplied by a factor of 1.35. The pectoral fin curved fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the dorsal insertion of the pectoral fin of the beheaded fish to the fork of the tail (see Figure 1). Atlantic bluefin tuna are deemed to fall into a size class according to the following table; approximate round weights are given for illustrative purposes only.

Size category	Total curved fork length	Pectoral fin curved fork length	Approx. round weight
Young School	Less than 27 inches	Less than 20 inches	Less than 14 lb.
	Less than 69 cm	Less than 51 cm	less than 6.4 kg.
School	27 to <47 inches	20 to <35 inches	14 to <66 lb.
	69 to <119 cm	51 to <89 cm	6.4 to <30 kg.
Large School	47 to <59 inches	35 to <44 inches	66 to <135 lb.
	119 to <150 cm	89 to <112 cm	30 to <61 kg.
Small Medium	59 to <73 inches	44 to <54 inches	135 to <235 lb.
	150 to <185 cm	112 to <137 cm	61 to <107 kg.
Large Medium	73 to <81 inches	54 to <60 inches	235 to <310 lb.
	185 to <206 cm	137 to <152 cm	107 to <141 kg.
Giant	81 inches or greater	60 inches or greater	310 lb or greater.
	206 cm or greater	152 cm or greater	141 kg or greater.

15. In § 285.29, paragraphs (a) and (b)(1) are revised to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the U.S. postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508–281–9340) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. At the offloading of the fish, each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number and expiration date, tail tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin curved fork length, gear used, and area where the fish was caught. The dealer purchasing or receiving the Atlantic bluefin tuna must inspect the vessel permit and verify that the required permit information is correctly recorded on the dealer landing card.

(b) * * *

(1) Said report must be postmarked and mailed, at the dealer's expense, within 10 days after the end of each 2-week reporting period in which Atlantic bluefin tuna were purchased, received, or imported. The biweekly reporting periods are defined as the first day through the 14th day of each month and the 15th day through the last day of the month. Each report must specify accurately and completely for each tuna purchased or received: Date of landing or import, vessel Atlantic Bluefin Tuna permit number (if applicable), tail tag number, weight in pounds or kilograms (specify if round or dressed), nature of the sale (dockside or consignment), price per pound or kilogram (round or dressed weight), and destination of the fish (domestic or export). In addition, dealers may indicate the quality rating of their bluefin tuna: (A, B, or C) for four attributes (freshness, fat, color, and shape).

* * * * *

16. Section 285.30 is revised to read as follows:

§ 285.30 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tail tags to each person receiving a dealer's permit under § 285.28.

(b) Transfer of tags. Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* (1) A dealer or agent must affix a tail tag to each Atlantic bluefin tuna purchased or received, immediately upon its offloading from a vessel. The tail tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing said Atlantic bluefin tuna and make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a tail tag to it. A list of local NMFS enforcement offices can be obtained by contacting regional offices in Gloucester, MA (508–281–9261) and St. Petersburg, FL (813–570–5344). The Regional Director may designate a person other than a NMFS agent to

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inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A tag affixed to any Atlantic bluefin tuna under paragraph (c)(1) of this section or under § 285.202(a)(6)(v) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

(e) *Reuse of tags.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Atlantic bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

17. In § 285.31, the word "tranfer" in paragraph (a)(14) is revised to read "transfer"; the periods at the end of paragraphs (a)(10), (a)(29), and (a)(32) are replaced with semicolons; and paragraphs (a)(18), (a)(19), (a)(31), (a)(36) and (a)(37) are revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(18) Fail to inspect any vessel's permit or fail to affix immediately to any large medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered tail tag when the tuna has been received for a commercial purpose or purchased by that dealer from any person or vessel having caught such tuna;

(19) Remove any tag affixed to an Atlantic bluefin tuna under § 285.30(c)(1) or under § 285.202(a)(6)(v), before removal is allowed under § 285.30(d), or fail to write the tag number on the shipping package or container as prescribed by that section;

* * * * *

(31) Fish for, catch, retain, possess or land Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.22, 285.23, and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

* * * * *

(36) Reuse any tail tag previously affixed to an Atlantic bluefin tuna under § 285.30 or reuse any tail tag number previously written on a shipping package or container as prescribed by that section; or

(37) Fish for, catch, retain, possess or land any Atlantic bluefin tuna less than 185 cm (73 inches) total curved fork length from a vessel other than one issued an Angling Category permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(e).

18. A new subpart F is added to part 285 to read as follows:

Subpart F—Bluefin Tuna Statistical Documentation

285.200 Species subject to documentation requirements.
285.201 Documentation requirements.
285.202 Contents of documentation.
285.203 Validation requirements.
285.204 Ports of entry.
285.205 Prohibitions.

Subpart F—Bluefin Tuna Statistical Documentation

§ 285.200 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all bluefin tuna or bluefin tuna products regardless of ocean area of catch are subject to the documentation requirements of this subpart.

(a) Documentation is required for bluefin tuna identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen bluefin tuna, excluding fillets, No. 0303.49.00.20.

(b) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (i.e., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

§ 285.201 Documentation requirements.

(a) *Bluefin imports.* (1) Imports of all bluefin tuna products into the United States must be accompanied at the time of entry by an original completed approved Bluefin Tuna Statistical Document with the information and exporter's certification specified in § 285.202(a)(1) through (7). Such information must be validated as specified in § 285.202(a)(8) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed), unless the Assistant Administrator has waived validation requirements for the country pursuant to § 285.203.

(2) Bluefin tuna imported into the United States from a country requiring a tag on all such tuna available for sale must be accompanied by the appropriate tag issued by that country, and said tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or export, the tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) Dealers selling bluefin tuna that was previously imported into the United States for domestic commercial use must provide on the original Bluefin Tuna Statistical Document that accompanied the import shipment the correct information and importer's certification specified in § 285.202(a)(9). The original of the completed Bluefin Tuna Statistical Document must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was imported into the United States.

(b) *Bluefin exports.* (1) Dealers exporting bluefin tuna that was harvested by U.S. vessels and first landed in the United States must complete an original numbered Bluefin Tuna Statistical Document issued to that dealer by the Regional Director. Such an individually numbered document is not transferable or reusable and may be used only once by the dealer to which it was issued to report on a specific export shipment. Dealers must provide on the Bluefin Tuna Statistical Document the correct information and exporter certification specified in § 285.202(a)(1) through (7). As required under § 285.203, the Bluefin Tuna Statistical Document must be validated as specified in § 285.202(a)(8) by an official of the U.S. Government or, if authorized by NMFS, an official of an accredited institution. A list of such officials may be obtained by contacting the Office of Fisheries Conservation and Management, NMFS, Silver Spring, MD (301–713–2347), or the nearest NMFS Enforcement Office. A list of local NMFS enforcement offices can be obtained by contacting regional offices in Gloucester, MA (508–281–9261), St. Petersburg, FL (813–570–5344) and Long Beach, CA (310–980–4050). Dealers requesting government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) Dealers re-exporting bluefin tuna that was previously imported into the United States must provide on the original Bluefin Tuna Statistical Document that accompanied the import shipment the correct information and intermediate importer's certification specified in § 285.202(a)(9).

(3) Dealers must submit the original of the completed Bluefin Tuna Statistical Document to accompany the shipment of bluefin tuna to its export or re-export destination. A copy of the Bluefin Tuna Statistical Document completed as specified under paragraph (b)(1) or (2) of this section must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* Dealers must retain at their principal place of business a copy of each Bluefin Tuna Statistical Document required to be submitted to the Regional Director pursuant to this section for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 285.202 Contents of documentation.

(a) A Bluefin Tuna Statistical Document, to be deemed complete, must:

(1) Have a document number assigned as prescribed by the country issuing the document;

(2) State the name of the country issuing the document, which is the country whose flag vessel harvested the bluefin tuna, regardless of where the tuna is first landed;

(3) State the name of the vessel that caught the fish and the vessel's registration number, if applicable;

(4) State the name of the owner of the trap that caught the fish, if applicable;

(5) State the point of export, which is the city, state or province, and country from which the bluefin tuna is first exported;

(6) State the following specified information about the shipment:

(i) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet or other);

(ii) The method of fishing used to harvest the fish (purse seine, trap, rod and reel, etc.);

(iii) The ocean area from which the fish was harvested (western Atlantic, eastern Atlantic, Mediterranean, or Pacific);

(iv) The weight of each fish (in kilograms for the same product form previously specified);

(v) The identifying tag number, if landed by vessels from countries with tagging programs;

(7) State the name and license number of, and be signed and dated in the exporter's certification block by, the exporter;

(8) If applicable, state the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the Bluefin Tuna Statistical Document; and

(9) As applicable, state the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) An approved Bluefin Tuna Statistical Document may be obtained from the Regional Director to accompany exports of bluefin tuna from the United States. Bluefin tuna dealers in countries that do not provide an approved Bluefin Tuna Statistical Document to exporters may obtain an approved Bluefin Tuna Statistical Document from the Regional Director to accompany exports to the United States.

(c) Dealers from a country exporting bluefin tuna to the United States may use the approved Bluefin Tuna Statistical Document obtainable from the Regional Director or documents developed by the dealer's country, if that country submits a copy, through the ICCAT Executive Secretariat, to the Assistant Administrator, and the Assistant Administrator concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, the Assistant Administrator shall provide a list of countries for which Bluefin Tuna Statistical Documents are approved, together with examples of such documents to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of bluefin tuna or bluefin tuna products offered for importation from said country(ies) may be accompanied by either that country's approved Bluefin Tuna Statistical Document or by the Bluefin Tuna Statistical Document provided to the foreign country exporter by the Regional Director.

§ 285.203 Validation requirements.

(a) *Imports.* The approved Bluefin Tuna Statistical Document accompanying any import of bluefin tuna, whether or not the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless the Assistant Administrator waives the government validation requirement for that country following a recommendation to do so by the Executive Secretary of ICCAT. The Assistant Administrator shall furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Said list shall indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate Bluefin Statistical Documents for that country.

(b) *Exports.* The approved Bluefin Tuna Statistical Document accompanying any export of bluefin tuna from the United States must be validated by a U.S. government official, except under circumstances of waiver, if any, specified on the form and accompanying instructions, or in a letter to permitted dealers from the Regional Director. Such circumstances of waiver of government validation shall be consistent with ICCAT recommendations concerning validation of Bluefin Tuna Statistical Documents. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual tags affixed pursuant to § 280.52 or § 285.30 of this chapter, or;

(2) Validation by non-government officials authorized to do so by the Regional Director under paragraph (c) of this section.

(c) *Authorization for non-government validation.* Institutions, or associations seeking authorization to validate Bluefin Tuna Statistical Documents accompanying exports from the United States, must apply in writing to the Regional Director. A letter of application must indicate the procedures to be used for verification of information to be validated, must list the names, addresses, and telephone/fax numbers of individuals to perform validation, and must provide an example of the stamp or seal to be applied to the Bluefin Tuna Statistical Document. Upon finding the institution or association capable of verifying the information required on the Bluefin Tuna Statistical Document, the Regional Director will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate Bluefin Tuna Statistical Documents accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for the Assistant Administrator to notify the ICCAT

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Secretariat of non-government institutions and associations authorized to validate Bluefin Tuna Statistical Documents.

§ 285.204 Ports of entry.

The Assistant Administrator shall monitor the importation of bluefin tuna into the United States. If the Assistant Administrator determines that the diversity of handling practices at certain ports at which bluefin tuna is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna may be imported into the United States. The Assistant Administrator shall announce in the **Federal Register** the names of ports so designated and the effective dates of entry restrictions.

§ 285.205 Prohibitions.

It is unlawful for any person to do any of the following:

(a) Import or attempt to import any bluefin tuna into the United States without an accompanying original form of an approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification and government validation.

(b) Import any bluefin tuna into the United States from a country that requires all such tuna to be tagged, without said tag accompanying the bluefin tuna.

(c) Remove a tag from any bluefin tuna imported into the United States accompanied by a tag, prior to its being cut into portions for a destination in the United States or for export.

(d) Fail to write legibly and indelibly the tag number and the issuing country on the outside of any package containing a part or parts of a bluefin tuna that was imported into the United States accompanied by said tag.

(e) Export or re-export from the United States any bluefin tuna without an accompanying original approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification and, if applicable, validated by a designated official of the United States government or an official of an institution authorized by the Regional Director pursuant to § 285.203(c) to validate such documents.

(f) Fail to provide in a timely manner any originals or copies of Bluefin Tuna Statistical Documents required to be submitted to the Regional Director pursuant to § 285.201.

(g) Write false information on or modify any information previously written on any Bluefin Tuna Statistical Document required by this subpart or to validate such document if not authorized to do so by the Regional Director.

(h) Fail to maintain copies of completed Bluefin Tuna Statistical Documents as required under § 285.201.

(i) Import any bluefin tuna in a manner inconsistent with any ports of entry designated by the Assistant Administrator pursuant to § 285.204.

(j) Reuse, or transfer to another dealer, any numbered Bluefin Tuna Statistical Document issued to a dealer under this subpart.

[FR Doc. 95–6454 Filed 3–16–95; 8:45 am]

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50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 031095E]

Groundfish of the Gulf of Alaska; Pacific Cod in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the offshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 13, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the offshore component in the Central Regulatory Area was established by the final groundfish specifications (60 FR 8470, February 14, 1995), as 4,565 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the offshore component in the Central Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 3,565 mt, with consideration that 1,000 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6549 Filed 3–13–95; 4:33 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 031095F]

Groundfish of the Bering Sea and Aleutian Islands Area; Offshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the "A" season allowance of pollock for the offshore component in the Aleutian Islands subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 13, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the AI was established by the final 1995 initial groundfish specifications (60 FR 8479, February 14, 1995) as 31,272 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 29,272 mt after determining that 2,000 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6548 Filed 3–13–95; 4:33 pm]

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Proposed Rules

Federal Register
Vol. 60, No. 52
Friday, March 17, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 112

[Docket No. 93–167–1]

Viruses, Serums, and Toxins and Analogous Products; Master Labels

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the packaging and labeling of veterinary biologicals to require the use of a master label. The use of a master label system would: reduce the number of copies of labels that are required to be submitted for review and approval, and allow labels with certain minor revisions to be used sooner than would be possible without the use of a master label. A definition of "master label" would be added to the regulations. The proposed amendments are necessary in order to improve label approval procedures by establishing a master label system. The effect of the proposed amendment would be to streamline the procedure for requesting and receiving approval to use new or revised labels for veterinary biologicals.

DATES: Consideration will be given only to comments received on or before May 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–167–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 93–167–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202) 690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, MD 20737–1228, telephone number (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations pertaining to the packaging and labeling of veterinary biologicals are in 9 CFR part 112. The regulations require that all labels for veterinary biologicals be submitted and reviewed for compliance with the regulations and approved in writing prior to use. APHIS has issued licenses under the Virus-Serum-Toxin Act (21 U.S.C. 151–159) for some 2000 veterinary biological products. Each licensed biological product is required to have approved packaging and labeling applicable to a variety of container sizes, trade names, producers, subsidiaries, and distributors.

Current regulations require each product label to be reviewed and approved individually prior to use. Several nearly identical labels for one product are often required to be reviewed and approved by APHIS. A minor revision in the labeling of a product can result in the additional review and approval of all revised labels for that product.

Due to the large number of label submissions and the requirement for label review prior to the marketing of a biological product, an inordinate amount of program time and resources may be expended in the review and approval of label submissions. Many label submissions constitute only minor revisions.

An analysis of the time and resources currently required to review, file, and store label submissions involving minor revisions, and the accompanying delay experienced by some manufacturers in receiving approval and written notification suggest that the process by which labels are approved may be simplified. We propose to institute the use of a master label system that would reduce redundant review and approval of submissions involving only minor revisions of approved labels. Under the proposed master label system, only the container and carton label for the smallest size final container that is approved by APHIS and any insert for the product would be required to be submitted for review, approval, and filing as master labels. Certain specified revisions could be made on labels under the Master Label system without prior written approval, provided that such revisions are submitted to APHIS for review, approval, and filing within 60 days of use of the revised label.

We are proposing to amend the definition in § 101.4 by adding a new paragraph (h) as follows:

(h) *Master label.* The finished carton, container, or enclosure label for the smallest size final container that is authorized for a biological product, that serves as the master template label applicable to all other size containers or cartons of the same product that is marketed by a licensee, subsidiary, division, or distributor.

We are also proposing to revise several paragraphs of the regulations in § 112.5 pertaining to the review and approval of labels to add specific provisions related to the use of master labels (*see* introductory paragraph, paragraphs (d)(1)(ii), (d)(1)(iv), (d)(3)(ii)(*a*), (d)(4), and (g)).

Certain revised labels could be used on products with approved master labels prior to review and approval by APHIS as provided under proposed paragraph (c) of § 112.5.

Two copies of master label sketches would be submitted for each enclosure and the labels for the smallest approved size of carton and container. A master label sketch would be held on file for one year, or as long as a license application was active.

For finished master labels, three copies of each enclosure and of each label for the smallest size carton and final container would be submitted. Labels for larger size containers or cartons of the same product would not be submitted, provided that the larger size container or carton is approved in the Outline of Production and the larger size container or carton is identified on the label mounting sheet. When the master label enclosure is used with more than one product, an extra copy of the enclosure for each additional product would have to be submitted. Finally, the information that must be submitted on the lower left hand corner of each page of the label submission would include the reason for the submission, a reference to the master label, its replacement, and the dose sizes for which the master label is to be used.

We are proposing to add a provision in § 112.5(c) to allow for specified minor label changes without prior approval by APHIS for products with approved master labels. Minor label changes that would be allowed include changes in physical dimensions of the label or the color of the label print that do not affect legibility; the addition, deletion, or change of a trademark or registered symbol, label control number or bar code, or logo; and the correction of typographical errors. Such minor changes would, of course, not be appropriate if they cause the label to be false or misleading. In addition, there would be a requirement that a new master label bearing such minor changes be submitted to APHIS for review and written approval within 60 days of label use.

We are also proposing to revise § 112.5(d)(2)(iii)(*a*) to add a provision for the labeling of individual reagent containers included with diagnostic test kits. Such labeling of individual reagent containers would be mounted together on a single sheet of paper, when possible. Carton labels and enclosures would be mounted on separate individual sheets.

Finally, we are proposing to add a provision in § 112.5(g) that provides for inspection of labels and master labels by authorized inspectors.

We would also correct the references in § 112.7, paragraph (c)(2), by changing "§ 113.129" to read "§ 113.209" and in paragraph (d)(6) by changing "§ 113.147" to read "§ 113.312". In addition, in § 112.5(d), paragraph (2)(iii)(*b*) would be redesignated paragraph (2)(iii)(B), paragraph (3)(i)(*a*) would be redesignated paragraph (3)(i)(A), paragraph (3)(i)(*b*) would be redesignated paragraph (3)(i)(B), and paragraph (3)(ii)(*b*) would be redesignated paragraph (3)(ii)(B).

This proposed amendment was developed through the cooperative efforts of the manufacturers of veterinary biologicals, the Animal Health Institute, and APHIS. The overall effect of this regulation would be to simplify the process whereby labels are approved by reducing the number of copies of labels needed to be submitted for review.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The proposed rule would amend the regulations for the review and approval of biological product labels by providing for a master label system. The current regulations in part 112 require the submission and approval of all labels for each biological product to be marketed. The approval of a prototype master label for each product would reduce the need for licensees producing veterinary biologicals to submit for approval additional copies of labels for each product.

The approval of a master label would apply to labels for larger containers sizes of the same product, provided that the labels are identical to the master label, except for physical dimensions, and provided that additional container sizes are authorized in a filed Outline of Production.

This proposed rule would also allow certain approved labels with specified minor revisions to be used without prior written approval with the provision that new master labels be submitted to APHIS for review and approval within 60 days use of the revised label.

The proposed rule has its major effect in reducing the number of copies of labels that need to be submitted and reviewed. Most products are marketed in two or three different size containers. Currently, each label for each container must be submitted for approval. Under the proposed master label concept, only labels for the smallest size container would need to be submitted, thus reducing by two to three fold the number of labels that would need to be submitted by manufacturers and processed by APHIS.

The proposed rule would not have any adverse economic impact, since the submission of product labels for approval is already required under § 112.5 of the regulations, which currently specifies that all labels shall be reviewed and approved prior to use. The proposed amendments would simplify the process of label approvals and would reduce the time and expense necessary to get a product to market in the case of certain minor revisions of labels.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials (see 7 CFR part 3015, subpart V).

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 112

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 and 112 would be amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.4 would be amended by adding a new paragraph (h) to read as follows:

§ 101.4 Labeling terminology.

* * * * *

(h) *Master label.* The finished carton, container, or enclosure label for the smallest size final container that is authorized for a biological product, that serves as the Master template label applicable to all other size containers or cartons of the same product that is marketed by a licensee, subsidiary, division, or distributor.

PART 112—PACKAGING AND LABELING

3. The authority citation for part 112 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 112.5 would be amended as follows:

a. The introductory paragraph would be revised to read as set forth below.

b. Paragraph (c) would be revised to read as set forth below.

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c. Paragraphs (d)(1)(i) and (d)(1)(ii) would be revised to read as set forth below.

d. Paragraphs (d)(1)(iii) and (d)(1)(iv) would be added to read as set forth below.

e. Paragraph (d)(2)(iii)(*a*) would be revised to read as set forth below.

f. Paragraph (d)(3)(ii)(*a*) would be revised to read as set forth below.

g. Paragraph (d)(4) would be revised to read as set forth below.

h. Paragraph (g) would be added to read as set forth below.

i. In § 112.5, paragraph (d)(2)(iii)(*b*) would be redesignated paragraph (d)(2)(iii)(B), paragraph (d)(3)(i)(*a*) would be redesignated paragraph (d)(3)(i)(A), paragraph (d)(3)(i)(*b*) would be redesignated paragraph (d)(3)(i)(B), and paragraph (d)(3)(ii)(*b*) would be redesignated paragraph (d)(3)(ii)(B).

§ 112.5 Review and approval of labeling.

Labels used with biological products prepared at licensed establishments or imported for general distribution and sale must be submitted to the Animal and Plant Health Inspection Service for review for compliance with the regulations and approval in writing prior to use, except under the master label system as provided in paragraph (c) of this section.

* * * * *

(c)(1) Labels must be submitted to the Animal and Plant Health Inspection Service for review and written approval. Only labels which are approved as provided in § 112.5 (d) may be used. When changes are made in approved labels, the new labels shall be subject to review and approval before use: *Provided,* That certain minor changes may be made in labels for products with approved master labels, and the revised labels, may be used prior to review by APHIS, with the provision that a new master label bearing these changes is submitted to APHIS for review and written approval within 60 days of label use, and that such minor changes do not render the product mislabeled or the label false and misleading in any particular.

(2) Minor label changes that may be made under the provision for products with approved master labels are:

(i) Changes in the physical dimensions of the label provided that such change does not affect the legibility of the label;

(ii) Change in the color of label print, provided that such change does not affect the legibility of the label;

(iii) The addition or deletion of a Trade Mark (TM) or Registered (R) symbol;

(iv) The correction of typographical errors;

(v) Adding or changing label control numbers or bar codes; and

(vi) Revising or updating logos.

* * * * *

(d) (1)* * *

(i) For label sketches, submit two copies of each sketch of a final container label, carton label, and enclosure. Sketches must be legible, and must include all information specified in § 112.2. One copy of each sketch will be returned with applicable comments, and one copy will be held on file by APHIS for no more than one year after processing, until replaced by a finished label: *Provided,* That sketches submitted in support of an application for a license or permit shall be held as long as the application is considered active.

(ii) For master label sketches, submit for each product two copies of each sketch of an enclosure, label for the smallest size final container, and carton label: *Provided,* That labels for larger size containers and/or cartons that are identical, except for physical dimensions, need not be submitted. One copy of each master label sketch will be returned with applicable comments, and one copy will be held on file by APHIS for one year after processing, until replaced by a finished master label that is submitted according to § 112.5(d)(1)(iii): *Provided,* That master label sketches submitted in support of an application for license or permit shall be held as long as the application is considered active.

(iii) For finished labels, submit three copies of each finished final container label, carton label, and enclosure: *Provided,* That when an enclosure is to be used with more than one product, one extra copy shall be submitted for each additional product. Two copies of each finished label will be retained by APHIS. One copy will be stamped and returned to the licensee. Labels to which exceptions are taken shall be marked as sketches and handled under § 112.5(d)(1)(i).

(iv) For finished master labels, submit for each product three copies each of the enclosure and the labels for the smallest size final container and carton. Labels for larger sizes of containers or cartons of the same product that are identical, except for physical dimensions, need not be submitted. Such labels become eligible for use, concurrent with the approval of the appropriate finished master label: *Provided,* That the marketing of larger sizes of final containers is approved in the filed Outline of Production, and the appropriate larger sizes of containers or cartons are identified on the label mounting sheet. When a master label enclosure is to be used with more than one product, one extra copy of each additional product shall be submitted. Two copies of each finished master label will be retained by APHIS. One copy will be stamped and returned to the licensee. Master labels to which exceptions are taken will be marked as sketches and handled under § 112.5(d)(1)(ii).

* * * * *

(2) * * *

(iii)(A) When two final containers are packaged together in a combination package, the labels for each shall be mounted on the same sheet of paper and shall be treated as one label. For diagnostic test kits, the labels for use on the individual reagent containers to be included in the kit shall be mounted together on a single sheet of paper, if possible; if necessary, a second sheet of paper may be used. The carton label and enclosure shall be mounted on separate individual sheets.

* * * * *

(3) * * *

(ii)(A) Designation of the specimen as a label or master label: sketch, final container label, carton label, or enclosure.

(B) If two final container labels or multiple parts are on one sheet, each shall be named, and the label or part being revised shall be designated.

(iii) Size of package (dose, ml., cc., or units) for which the labels or enclosures are to be used.

(4) To appear on the bottom of each page: The reason for and information relevant to the submission shall be stated in the lower left hand corner as:

(i) Master label dose sizes approved for code _____.

(ii) Replacement for label, master label, and/or sketch No. _____.

(iii) Reference to label or master label No. _____.

(iv) Addition to label No. _____.

(v) License Application Pending _____.

(vi) Foreign Language copy of label No._____.

* * * * *

(g) At the time of an inspection, or when requested by APHIS, licensees or permittees shall make all labels and master labels, including labels approved for use but exempted from filing under the master label system, available for review by authorized inspectors. Such labels shall be identical to the approved label or master label except for physical dimensions, reference to recoverable volume or doses and/or certain minor differences permitted in accordance with § 112.5(c).

5. In § 112.7, paragraphs (c)(2) and (d)(6) would be revised as follows:

§ 112.7 Special additional requirements.

* * * * *

(c) * * *

(2) Subsequent revaccination as determined from the results of duration of immunity studies conducted as prescribed in § 113.209, paragraphs (b) or (c), or both.

* * * * *

(d) * * *

(6) Subsequent revaccination as determined from the results of duration of immunity studies conducted as prescribed in § 113.312, paragraphs (b) or (c), or both.

* * * * *

Done in Washington, DC, this 13 day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6650 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–02–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require repetitive checks to detect backlash in the elevator mechanical control system, and various follow-on actions. The proposed AD would also provide for an optional terminating action for the repetitive check requirements. This proposal is prompted by a report indicating that corrosion was found on the pivot bolts and bushings of the backlash remover lever mechanism on the elevator booster control unit (BCU) of a Model F28 Mark 0100 series airplane. The actions specified by the proposed AD are intended to prevent such corrosion, which could result in backlash in the elevator controls and reduced elevator control authority in the manual mode.

DATES: Comments must be received by May 12, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–02–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–02–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0100 series airplanes equipped with a certain Menasco Aerospace Elevator Booster Control Unit (BCU). The RLD advises that corrosion was found on the pivot bolts and bushings of the backlash remover lever mechanism on the elevator BCU of Model F28 Mark 0100 series airplanes. This mechanism prevents backlash in the elevator control forces when the elevator BCU is not hydraulically powered, providing the pilot with full manual control of the elevator system. Investigation revealed that corrosion on the pivot bolts and bushings causes the backlash remover mechanism to stick, which results in deteriorated elevator control when the BCU is in manual mode. This condition, if not corrected, could result in backlash in the elevator controls and reduced elevator control authority in the manual mode.

Fokker has issued Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994, which describes procedures for:

1. Performing repetitive operational checks to detect backlash in the elevator mechanical control system;

2. Performing an inspection to determine whether certain elevator BCU bolts rotate and slide freely, and to detect corrosion on the bolts of the backlash remover lever mechanism, if any backlash is detected; and

3. Replacing the elevator BCU or bolts with a serviceable part, if any anomaly is detected.

The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–051/3 (A), dated April 29, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Additionally, Fokker has issued Service Bulletin SBF100–27–061, dated March 2, 1994, which provides instructions for accomplishing an optional modification of the affected elevator BCU, which would eliminate the need for the repetitive operational checks. This modification involves replacing two bolts in the elevator BCU with new bolts.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section

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21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive operational checks to detect backlash in the elevator mechanical control system. The proposed AD would also require performing an inspection to determine whether certain elevator BCU bolts rotate and slide freely, and to detect corrosion on the bolts of the backlash remover lever mechanism, if any backlash is detected; and replacing the elevator BCU or bolts with a serviceable part, if any anomaly is detected. Additionally, the proposed AD would provide for an optional modification of certain elevator BCU's; or replacement of a certain elevator BCU with a unit having a certain serial number, which would constitute terminating action for the repetitive operational check requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously. The proposed AD would also require performing appropriate trouble-shooting procedures, if no anomalies are detected in accordance with the Airplane Maintenance Manual.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 112 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,720, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–02–AD.

Applicability: Model F28 Mark 0100 series airplanes; equipped with Menasco Aerospace Elevator Booster Control Unit (BCU) having part number (P/N) 23400–3 or P/N 23400–5 with serial numbers MC–001 through MC–288 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent backlash in the elevator controls and reduced elevator control authority in the manual mode, accomplish the following:

(a) Within 500 flight cycles or 60 days after the effective date of this AD, whichever occurs first, perform an operational check to detect backlash in the elevator mechanical control system, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994. Repeat the check thereafter at intervals not to exceed 500 flight cycles or 60 days, whichever occurs first.

(b) If any backlash is detected during any operational check required by paragraph (a) of this AD, prior to further flight, perform an inspection to determine whether the elevator BCU bolts, having part numbers NAS6204C22D and P/N NAS6204C13D, rotate and slide freely, and to detect corrosion on the bolts of the backlash remover lever mechanism; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994.

(1) If no anomalies are detected, prior to further flight, perform appropriate trouble-shooting procedures in accordance with the Airplane Maintenance Manual.

(2) If any anomaly is detected, prior to further flight, replace the elevator BCU or bolts, as applicable, with serviceable parts, in accordance with the service bulletin.

(c) Modification of the affected elevator BCU having P/N 23400–3 or –5, in accordance with Fokker Service Bulletin SBF100–27–061, dated March 2, 1994; or replacement of any affected elevator BCU having P/N 23400–3 or –5 with a unit having a serial number other than MC–001 through MC–288 inclusive, in accordance with the Airplane Maintenance Manual; constitutes terminating action for the repetitive check requirements of this AD.

(d) As of the effective date of this AD, no person shall install Menasco Aerospace Elevator Booster Control Unit (BCU) having part number (P/N) 23400–3 or P/N 23400–5 with serial numbers MC–001 through MC–288 inclusive on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 13, 1995.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6632 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWA–5]

Proposed Modification of the Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, Pope AFB, NC, and Providence Theodore Francis Green State, RI, Class C Airspace Areas and Proposed Establishment of the Pensacola Regional, FL, and Providence Theodore Francis Green State, RI, Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class C airspace areas at Pensacola Regional, FL, Lexington, Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This proposed action would modify the Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, and Pope AFB, NC, airspace designations to reflect continuous operation and availability of services, therein. The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas would be amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this action proposes to establish Class E airspace at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports when the associated radar approach control facility is not in operation.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 95–AWA–5, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped, postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWA–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Pensacola Regional, FL, Lexington, Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This proposed action would modify the Lexington, Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, and Pope AFB, NC, airspace designation to reflect continuous operation and availability of services, therein. The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas would be amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational ATCT serviced by a radar approach control facility. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this notice proposes to establish Class E airspace at

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Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports when the associated radar approach control facility is not in operation. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore - (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASO FL C Pensacola Regional Airport, FL (Revised)

Pensacola Regional Airport, FL
(lat. 30°28'24" N., long. 87°11'15" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pensacola Regional Airport, and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Pensacola Regional Airport, excluding that airspace within the 5-mile circle of the Pensacola NAS, FL, Class C airspace area. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO KY C Lexington, Blue Grass Airport, KY (Revised)

Lexington, Blue Grass Airport, KY
(lat. 38°02'13" N., long. 84°36'20" W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Blue Grass Airport; and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the airport.

* * * * *

ASO NC C Fayetteville Regional/Grannis Field, NC, (Revised)

Fayetteville Regional/Grannis Field, NC
(lat. 34°59'30" N., long. 78°52'48" W.)
Gray's Creek Airport
(lat. 34°53'04" N., long. 78°50'08" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Fayetteville Regional/Grannis Field excluding that airspace below 1,400 feet MSL within a 1.5-mile radius of Gray's Creek Airport; and that airspace within a 10-mile radius of the airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active.

* * * * *

ASO NC C Pope AFB, NC (Revised)

Pope AFB, NC
(lat. 35°10'16" N., long. 79°00'52" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB, excluding that airspace below 1,400 feet MSL contained in the Simmons Army Air Field, NC, Class D airspace area, and excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active; and that airspace within a 10-mile radius of Pope AFB extending upward from 2,000 feet MSL to and including 4,200 feet MSL, beginning at the northern boundaries of R–5311A, B and C clockwise to the 020° bearing from the airport; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport beginning at the 020° bearing from the airport clockwise to the northern boundaries of R–5311A, B and C, excluding that airspace contained in R–5311A, B and C when they are active and excluding that airspace contained in the Fayetteville Regional/Grannis Field Airport, NC, Class C airspace area.

* * * * *

ANE RI C Providence, Theodore Francis Green State Airport, RI (Revised)

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43'30" N., long. 71°25'40" W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Theodore Francis Green State Airport and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 195° bearing from the airport, and that airspace extending upward from 1,700 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 195° bearing from the airport clockwise to the 015° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002–Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO FL E2 Pensacola Regional Airport, FL (New)

Pensacola Regional Airport, FL
(lat. 30°28'24" N., long. 87°11'15" W.)

Within a 5-mile radius of the Pensacola Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE RI E2 Providence, Theodore Francis Green State Airport, RI (New)

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43'30" N., long. 71°25'40" W.)

Within a 5-mile radius of the Theodore Francis Green State Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on March 13, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–6689 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas permanent regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional revisions pertain to statutory revisions concerning the definitions of "unanticipated event or condition" and "lands eligible for remining." The amendment is intended to revise the Arkansas program to be consistent with SMCRA.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.s.t. April 3, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581–7927.

Arkansas Department of Pollution Control and Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone: (501) 562–6533.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas's program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated August 26, 1994, Arkansas submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. AR–522). Arkansas submitted the proposed amendment at its own initiative with the intent of making its coal mining statutes consistent with SMCRA. Arkansas proposed to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 at (1) section 5, jurisdiction and powers for rules and regulations (2) section 13, surface coal mining permits, and (3) section 15, environmental protection performance standards.

OSM published a notice in the September 29, 1994, **Federal Register** (59 FR 49616) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. AR–526). The public comment period ended October 31, 1994.

During its review of the amendment, OSM identified concerns relating to Arkansas Code Annotated (ACA) sections 13(k), regarding remining permit violations, and 15(d)(1), regarding revegetation performance standards on lands eligible for remining. OSM notified Arkansas of the concerns by letter dated November 22, 1994 (administrative record No. AR–539). Arkansas responded in a letter dated March 1, 1995, by submitting a revised amendment package (administrative record No. AR–540).

In the revised amendment, Arkansas proposes to add the definition "unanticipated event or condition" at section 4(18) to mean "an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit" and to add the definition "lands eligible for remining" at section 4(19) to mean "those lands that would otherwise be eligible for expenditures under Section 6" of the ACA regarding lands eligible under the State abandoned mine reclamations program.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

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3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 9, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–6590 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

[OH–231; Amendment Number 68R]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. This revised amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning contemporaneous reclamation.

Specifically, the amendment proposes to revise Ohio's definition of "auger mining" and to further revise Ohio's proposed time and distance schedules for backfilling and grading in conjunction with various mining methods.

This document sets forth the times and locations that the Ohio programs and the proposed amendments to those programs will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m. [e.s.t.], on April 3, 1995. If requested, a public hearing on the proposed amendments will be held at 1 p.m. [e.s.t.], on March 27, 1995. Requests to present oral testimony at the hearing must be received on or before 4 p.m. [e.s.t.], on March 24, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below. Copies of the Ohio programs, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio programs. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio programs, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 68 (PA 68) by letter dated May 17, 1994 (Administrative Record No. OH–2018). In this amendment, Ohio proposed to revise three rules in the Ohio Administrative Code (OAC) to make the Ohio program as effective as the corresponding Federal regulations concerning contemporaneous reclamation. As part of and in support of proposed PA 68, Ohio also submitted a draft Policy/Procedure Directive (PPD) which provided additional clarification and guidance on the proposed Ohio rule requirements for contemporaneous reclamation.

OSM announced receipt of PA 68 in the May 26, 1994, **Federal Register** (59 FR 27253), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 27, 1994.

OSM and Ohio staff met on August 22, 1994, to discuss OSM's questions and concerns about PA 68 (Administrative Record No. OH–2093). In response to OSM's August 22, 1994, questions and comments, Ohio provided Revised Program Amendment Number 68 (PA 68R) by letter dated March 1, 1995 (Administrative Record No. OH–2094).

In PA 68R, Ohio is proposing a number of editorial changes to improve the clarity and readability of the rule changes and the PPD previously proposed by Ohio in PA 68. These additional changes do not affect the content of the previously proposed revisions and are not individually discussed in this proposed rule document.

The substantive changes proposed by Ohio in PA 68R are described briefly below:

(1) *OAC section 1501:13–1–02 paragraph (K):* Ohio is revising the definition of "auger mining" to mean drilling holes or cutting into an exposed coal seam at a highwall and transporting the coal to the surface along an auger bit, by conveyor, or by other means.

(2) *OAC section 1501:13–4–05 paragraph (A)(2)(a)(i):* Ohio is further revising this new paragraph to require that permit applications identify the mining method as area mining, contour mining, another named mining method, or a combination of methods to be identified by name.

(3) *OAC section 1501:13–4–05 paragraph (A)(2)(a)(ii):* Ohio is further revising this new paragraph to clarify that the description of the mining operation in the permit application shall include the location where the mining will begin.

III. Public Comment Procedures

Written Comments

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio programs.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. [e.s.t.], on March 24, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–6592 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

[OH–233; Amendment Number 69R]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. This revised amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning filing of financial interest statements, acceptance of gifts and gratuities, and appeal procedures for

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remedial actions regarding prohibited financial interests.

This document sets forth the times and locations that the Ohio program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m. [E.S.T.], on April 3, 1995. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. [E.S.T.], on March 27, 1995. Requests to present oral testimony at the hearing must be received by 4 p.m. [E.S.T.], on March 24, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. General background information on the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning Ohio's program and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 69 (PA 69) by letter dated September 22, 1994 (Administrative Record No. OH–2059). In this amendment, Ohio proposed to revise two rules at Ohio Administrative Code (OAC) sections 1501:13–1–03 and 13–7–05 to make the Ohio program as effective as the corresponding Federal regulations concerning financial interest statements, appeal procedures for remedial actions regarding prohibited financial interests, and yield data for pasture or grazing land.

OSM announced receipt of PA 69 in the October 21, 1994, **Federal Register** (59 FR 53122), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 21, 1994.

OSM and Ohio staff met on February 6, 1995, to discuss OSM's questions and concerns about PA 69 (Administrative Record No. OH–2098). In response to OSM's February 6, 1995, questions and comments, Ohio provided Revised Program Amendment Number 69 (PA 69R) by letter dated March 8, 1995 (Administrative Record No. OH–2099). In PA 69R, Ohio is proposing further revisions to one rule at OAC section 1501:13–1–03 as described below:

(1) *Ohio Reclamation Board of Review Hearing Officers Included Under Definition of "Employee":* Ohio is further revising paragraph (D)(2) to include hearing officers of the Ohio Reclamation Board of Review under the definition of "employee." Ohio is also revising paragraphs (F)(1), (G)(1), (H), and (L)(3) to delete previously proposed separate references to these hearing officers because Ohio is now proposing that those hearing officers be included under the definition of "employee" in this rule.

(2) *Use of Financial Interest Statement Form by Members of the Ohio Reclamation Board of Review:* Ohio is revising paragraph (I)(1) to require members of the Ohio Reclamation Board of Review to report all required information concerning employment and financial interests on Form OSM–23.

(3) *Acceptance of Gifts and Gratuities by Members of the Ohio Reclamation Board of Review:* Ohio is revising paragraph (J)(1) to prohibit the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review from coal companies which are conducting or seeking to conduct regulated activities or which have an interest that may be substantially affected by the performance of the Board members' official duty.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. [est], on March 24, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernment relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–6591 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA28

[DOD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Transplants

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish coverage for heart-lung, single or double lung, and combined liver-kidney transplantation for those patients who meet specific patient selection criteria; establish preauthorization requirements for heart, liver, heart-lung, single or double lung, combined liver-kidney transplantation, high dose chemotherapy and stem cell transplantation, and air ambulance (in conjunction with lung or heart-lung transplantation preauthorizations); extend coverage of cardiac rehabilitation to those patients who have had heart valve surgery, heart or heart-lung transplantation, authorize an exception to the ambulance benefit to allow organ transplantation candidates to be transported to a certified CHAMPUS organ transplant center instead of the closest appropriate facility, and authorize pulmonary rehabilitation for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Director, OCHAMPUS, or a designee, recognize certain transplant centers that meet specific criteria as an authorized CHAMPUS institutional provider, and clarify the CHAMPUS position on consortium programs for organ transplantation to allow individual hospitals which are members of a consortium to use the combined (pooled) experience and survival data of the consortium team to meet CHAMPUS requirements for authorization as a certified CHAMPUS organ transplant center.

DATES: Comments must be received on or before May 16, 1995.

ADDRESSES: All comments concerning this proposed rule should be addressed to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, OCHAMPUS, Program Development Branch, telephone (303) 361–1227.

SUPPLEMENTARY INFORMATION: OCHAMPUS has been actively following the development of organ transplantation for the past 10 years to define an established method of treatment for patients who have exhausted more conservative medical and surgical treatments. Following is an overview of the events which have led to the decision to allow CHAMPUS coverage for heart-lung, single or double lung, and combined liver-kidney transplantation:

• In November 1990, OCHAMPUS requested the Agency for Health Care Policy and Research (AHCPR) to conduct a technology assessment on the safety and efficacy of heart-lung and single or double lung transplantation. In response to our request, AHCPR informed OCHAMPUS that an assessment was already in progress as a result of a request by the Health Care Financing Administration (HCFA).

Because of an increase in demand for heart-lung and single or double lung transplantation by the CHAMPUS beneficiary population, OCHAMPUS urged AHCPR to provide preliminary interim guidelines for heart-lung and single or double lung transplantation which could be used until finalization of their formal technology assessment. In response to this request, AHCPR asked the National Heart Lung and Blood Institute (NHLBI) to assist in the development of interim guidelines. On February 28, 1991, NHLBI completed the AHCPR request for preliminary

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interim guidelines on heart-lung and single or double lung transplantation.

• In September 1992, CHAMPUS requested the AHCPR to conduct a technology assessment regarding the safety and efficacy of combined liver-kidney transplantation. The AHCPR technology assessment was completed on November 12, 1992. The findings of the AHCPR assessment indicated that combined liver-kidney transplantation is an effective intervention in improving survival in patients with end-stage renal and hepatic disease.

• By August 1993, AHCPR finalized the formal technology assessment on both heart-lung and single or double lung transplantation for HCFA and forwarded a copy to OCHAMPUS. The AHCPR assessments indicated that heart-lung and single or double lung transplantations were safe and effective treatment for patients meeting specific clinical criteria when performed by institutions having demonstrated certain levels of experience and success. The patient selection and institutional criteria recommended by the AHCPR technology assessments were very similar to the interim guidelines developed by NHLBI in February 1991.

Due to the Presidential moratorium on publication of regulations, OCHAMPUS decided to proceed without rulemaking and to implement the recommendations of the interim guidelines for heart-lung and single or double lung transplantations from NHLBI and the final recommendations from AHCPR for combined liver-kidney transplantation to meet the increasing needs of the CAMPUS beneficiary population for coverage of these procedures. OCHAMPUS established effective dates of coverage based on NHLBI and AHCPR reports. OCHAMPUS adopted the following beginning dates of coverage for:

• Combined liver-kidney transplantation on November 12, 1992.

• Heart-lung and single or double lung transplantations on February 28, 1991. However, CHAMPUS would consider retroactive coverage for any heart-lung; single or double lung transplantation performed at a facility which met the interim criteria established by NHLBI for both patient selection and facility certification criteria.

OCHAMPUS is publishing this proposed rule to formally notify the public of the specific CHAMPUS requirements for coverage of benefits for heart-long, single or double lung and combined liver-kidney transplantations to include related services and supplies such as air ambulance in certain circumstances when determined to be medically necessary.

This proposed rule also authorizes cardiac rehabilitation following heart valve surgery, heart and heart-lung transplantation, and pulmonary rehabilitation for beneficiaries who conditions are considered appropriate according to guidelines that will be implemented by the Director, OCHAMPUS, or a designee.

In addition, this proposed rule outlines the specific requirements for providers who wish to be certified as a CHAMPUS approved organ transplant center including requirements for consortia programs. CHAMPUS recognizes that many facilities performing organ transplantations (particularly pediatric hospitals) are not able to meet CHAMPUS standards for certification as an authorized transplant center. However, CHAMPUS will allow facilities not able to meet the standards to qualify as a CHAMPUS authorized transplant center when they belong to a consortium program whose combined experience and survival data meet the CHAMPUS criteria for qualifying as a certified CHAMPUS organ transplant center.

The specified definitions and procedures outlined in the rule for facilities to use in calculating survival rates for transplantation use a simpler format but are indential to those published by HCFA (52 FR 10947, April 6, 1987).

At this time, OCHAMPUS, wishing to protect beneficiaries from incurring out-of-pocket expenses as a result of noncovered care related to organ transplantation and to ensure the prudent expenditure of public funds, is proposing to require transplantation preauthorization for high dose chemotherapy and stem cell transplantation, all initial and retransplanted organs, except kidney and cornea, and preauthorization for air ambulance for heart-lung and single or double lung transplantation. The preauthorization requirement will protect both the beneficiary and the provider.

Regulatory Procedures

OMB has determined that this is not a significant rule as defined by Executive Order 12866.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

This proposed rule will not involve any significant burden on OCHAMPUS beneficiaries or providers. Based on national statistics for heart-lung, single or double lung and combined liver-kidney transplantation, it is estimated that .005% or less of the 6 million CHAMPUS user population, will require a heart-lung, single or double lung, or a combined liver-kidney transplantation. The proposed rule will broaden the scope of CHAMPUS benefits while protecting the beneficiaries and providers from incurring additional costs.

This rule represents an expansion of benefits under the CHAMPUS program, resulting in facility certification of transplant centers and narrative summaries for evaluation and assessment for preauthorization of transplantations. These transplant centers are accustomed to the proposed reporting requirements and would not review this as an administrative intrusion. Based on the above rationale, it is felt that proposed reporting requirements would not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is proposed to be amended by revising paragraphs (d)(3)(v)(B), (d)(3)(v)(D), and (e)(5) and by adding paragraphs (d)(3)(v)(E), (e)(18)(i)(F), (e)(18)(i)(G), and (e)(20) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(v) * * *

(B) Ambulance service cannot be used instead of taxi service and is not payable when the patient's condition would have permitted use of regular private transportation; nor is it payable when transport or transfer of a patient is primarily for the purpose of having the patient nearer to home, family, friends, or personal physician. Except as described in paragraph (d)(3)(v)(A) and (d)(3)(v)(E) of this section transport must be to the closest appropriate facility by the least costly means.

* * * * *

(D) Except as described in paragraph (d)(3)(v)(E) of this section ambulance service by other than land vehicles (such as a boat or airplane) may be considered only when the pickup point is inaccessible by a land vehicle, or when great distance or other obstacles are involved in transporting the patient to the nearest hospital with appropriate facilities and the patient's medical condition warrants speedy admission or is such that transfer by other means is contraindicated.

(E) (*i*) Advanced life support air ambulance and certified advanced life support attendant are covered services for heart-lung; single or double lung transplantation candidates and may be preauthorized in conjunction with the preauthorization for the transplantation. Air ambulance transport for organ transplantation candidates other than heart-lung; single or double lung transplantation may be covered if determined to be medically necessary.

(*ii*) Advanced life support air ambulance and certified advanced life support attendant shall be reimbursed subject to standard reimbursement methodologies.

* * * * *

(e) * * *

(5) *Organ transplanation*—(i) *General.* (A) CHAMPUS may cost-share medically necessary services and supplies related to organ transplants for:

(*1*) Evaluation of a potential candidate's suitability for organ transplant, whether or not the patient is ultimately accepted as a candidate for transplant.

(*2*) Pre- and post-transplant inpatient hospital and outpatient services.

(*3*) Pre- and post-operative services of the transplant team.

(*4*) Blood and blood products.

(*5*) FDA approved immunosuppression drugs to include off-label uses when determined to be medically necessary and generally accepted practice within the general medical community, (i.e., non-investigational).

(*6*) Complications of the transplant procedure, including inpatient care, management of infection and rejection episodes.

(*7*) Periodic evaluation and assessment of the successfully transplanted patient.

(*8*) The donor acquisition team, including the costs of transportation to the location of the donor organ and transportation of the team and the donated organ to the location of the transplant center.

(*9*) The maintenance of the viability of the donor organ after all existing legal requirements for excision of the donor organ have been met.

(B) CHAMPUS benefits are payable for recipient costs when the recipient of the transplant is a beneficiary, whether or not the donor is a beneficiary.

(C) Donor costs are payable when:

(*1*) Both the donor and recipient are CHAMPUS beneficiaries.

(*2*) The donor is a CHAMPUS beneficiary but the recipient is not.

(*3*) The donor is the sponsor and the recipient is a beneficiary. (In such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(*4*) The donor is neither a CHAMPUS beneficiary nor a sponsor, if the recipient is a CHAMPUS beneficiary. (Again, in such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(D) If the donor is not a beneficiary, CHAMPUS benefits for donor costs are limited to those directly related to the transplant procedure itself and do not include any medical care costs related to other treatment of the donor, including complications.

(E) CHAMPUS benefits will not be allowed for:

(*1*) Expenses waived by the transplant center.

(*2*) Services and supplies not provided in accordance with applicable program criteria.

(*3*) Administration of an experimental or investigational immunosuppressant drug that is not FDA approved.

(*4*) Pre- or post-transplant nonmedical expenses.

(*5*) Transportation of an organ donor.

(ii) *Preauthorization requirements.* The Director, OCHAMPUS, or a designee, is the preauthorizing authority for stem cell transplantation and all initial and retransplanted solid organs, except kidney and corneal. Preauthorization approval for stem cell, solid organ transplantations, and transportation by air ambulance (for lung or heart-lung transplantation patients) shall remain in effect as long as the beneficiary continues to meet the specific transplant criteria set forth herein, or until the approved transplant occurs.

(iii) *Kidney transplantation.* (A) With specific reference to acquisition costs for kidneys, each hospital that performs kidney transplantations is required for Medicare purposes to develop for each year separate standard acquisition costs for kidneys obtained from live donors and kidneys obtained from cadavers. The standard acquisition costs for cadaver kidneys is compiled by dividing the total cost of cadaver kidneys acquired by the number of transplantations using cadaver kidneys. The standard acquisition cost for kidneys from live donors is compiled similarly using the total acquisition cost of kidneys from live donors and the number of transplantations using kidneys from live donors. All recipients of cadaver kidneys are charged the same standard cadaver kidney acquisition cost and all recipients of kidneys from live donors are charged the same standard live donor acquisition cost. The appropriate hospital standard kidney acquisition costs (live donor or cadaver) required for Medicare in every instance must be used as the acquisition cost for purposes of providing CHAMPUS benefits.

(B) In most instances for costs related to kidney transplantation, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplantation to include all reasonable preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (Refer to § 199.3(e)(3)(vi), "Eligibility.")

(iv) *Liver transplantation.*—(A) *Patient selection criteria.* On July 1, 1983, CHAMPUS benefits are payable for liver transplantation for beneficiaries who:

(*1*) Are suffering from an irreversible liver process; and,

(*2*) Have exhausted more conservative medical and surgical treatments; and,

(*3*) Are approaching the terminal phase of their illness (e.g., death is imminent, irreversible damage to the central nervous system is inevitable, or the quality of life has deteriorated to unacceptable levels), and

(*4*) Are considered appropriate for liver transplantation according to guidelines adopted by the Director, OCHAMPUS.

(B) *Contraindications.* CHAMPUS shall not provide coverage for liver transplantation when any of the following contraindications exist;

(*1*) Significant systemic or multisystemic disease (other than hepatic failure) which limits the possibility of full recovery and may compromise the function of the newly transplanted organ.

(*2*) Active alcohol or other substance abuse.

(*3*) Malignancies metastasized to or extending beyond the margins of the liver; or

(*4*) Life threatening or uncontrollable abdominal or systemic sepsis.

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(v) *Combined liver-kidney transplantation*—(A) *Patient selection criteria.* On November 12, 1992, CHAMPUS benefits are payable for combined liver-kidney transplantation for beneficiaries who:

(*1*) Are suffering from concomitant, irreversible hepatic and renal failure; and

(*2*) Have exhausted more conservative medical and surgical treatments for hepatic and renal failure; and

(*3*) Have plans for long-term adherence to a disciplined medical regimen that are feasible and realistic; and

(*4*) Are considered appropriate for combined liver-kidney transplantation according to guidelines adopted by the Director, OCHAMPUS.

(B) *Contraindications.* CHAMPUS shall not provide coverage for combined liver-kidney transplantation when any of the following contraindications exist:

(*1*) Significant systemic or multisystemic disease (other than hepatorenal failure) which limits the possibility of full recovery and may compromise the function of the newly transplanted organs.

(*2*) Active alcohol or other substance abuse.

(*3*) Malignancies metastasized to or extending beyond the margins of the liver and/or kidney.

(*4*) Life threatening or uncontrollable abdominal or systemic sepsis.

(vi) *Heart transplantation: Patient selection criteria.* On November 7, 1986, CHAMPUS benefits are payable for heart transplantation for beneficiaries who:

(A) Have an end-stage cardiac disease which has not responded to or no longer responds to other appropriate medical and surgical therapies which might be expected to yield both short- and long-term (3 to 5 year) survival comparable to that of heart transplantation; and

(B) Have a very poor prognosis as a result of poor cardiac functional status (e.g., less than a 25 percent likelihood of survival for six months); and

(C) Have plans for long-term adherence to a disciplined medical regimen that are feasible and realistic.

(D) Are considered appropriate for heart transplantation according to guidelines adopted by the director, OCHAMPUS.

(vii) *Heart-lung and lung transplantation: Patient selection criteria.* On February 28, 1991, CHAMPUS benefits are payable for heart-lung and lung transplantation for beneficiaries who:

(A) Have irreversible, progressively disabling, end-stage pulmonary or cardiopulmonary disease (for example, less than a 50 percent likelihood of survival for 8 months). Prognosis otherwise must be good for both survival and rehabilitation.

(B) Have tried or considered all other medical and surgical therapies that might have been expected to yield both short- and long-term survival comparable to that of transplantation.

(C) Have a realistic understanding of the range of clinical outcomes that may be encountered.

(D) Have plans for long-term adherence to a disciplined medical regimen that are feasible and realistic.

(E) Are considered appropriate for heart-lung or lung transplantation according to guidelines adopted by the Director, OCHAMPUS.

(viii) *High dose chemotherapy and stem cell transplantation.* CHAMPUS benefits are payable for beneficiaries whose conditions are considered appropriate for high dose chemotherapy and stem cell transplantation according to guidelines adopted by the Director, OCHAMPUS, or a designee.

* * * * *

(18) * * *

(i) * * *

(F) Heart valve surgery.

(G) Heart or Heart-lung Transplantation.

* * * * *

(20) *Pulmonary rehabilitation.* CHAMPUS benefits are payable for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Director, OCHAMPUS, or a designee.

* * * * *

3. Section 199.6 is proposed to be amended by revising paragraph (b)(4)(ii), by removing paragraph (b)(4)(iii); and redesignating paragraphs (b)(4)(iv) through (b)(4)(xiv) as (b)(4)(iii) through (b)(4)(xiii) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(ii) *Organ transplant centers*—(A) *Certification requirements.* To obtain CHAMPUS approval as an organ transplant center, the center must have:

(*1*) An active solid organ transplant program.

(*2*) Participation in a donor organ procurement program and network.

(*3*) An interdisciplinary team to determine the suitability of candidates for transplantation on an equitable basis.

(*4*) An anesthesia team that is available at all times.

(*5*) A nursing service team trained in the hemodynamic support of the patient and in managing immunosuppressed patients.

(*6*) Pathology and immunology resources that are available for studying and reporting the pathological responses to transplantation.

(*7*) Evidence that the center safeguards the rights and privacy of patients.

(*8*) Continual compliance with State transplantation laws and regulations, if any.

(*9*) Legal counsel familiar with transplantation laws and regulations.

(B) *Administrative requirement.* A CHAMPUS authorized organ transplant center must provide a written statement to the certifying authority agreeing to the following administrative requirements:

(*1*) Bill for all services and supplies related to the organ transplantation performed by its staff and bill for services rendered by the donor hospital after all existing legal requirements for excision of the donor organ are met.

(*2*) Bill all donor services in the name of the CHAMPUS patient.

(C) *Reporting requirements.* The transplant center must report to the certifying authority any decrease in actuarial survival rates below the actuarial survival rate established by CHAMPUS for initial facility certification.

(D) *Liver transplant centers.* CHAMPUS shall provide coverage for liver transplantation procedures performed only by experienced transplant surgeons at centers complying with the provisions in paragraph (b)(4)(ii)(A) of this section. The transplant center must:

(*1*) Have board eligible or board certified physicians and other experts in the fields of hepatology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, and anesthesiology to complement a qualified transplant team.

(*2*) Have a transplant surgeon that is specifically trained for liver grafting who can assemble and train a team to function successfully whenever a donor liver is available.

(*3*) Have at least a 70 percent one year actuarial survival rate for 10 cases as calculated using the Kaplan-Meier product limit method. At least a 70 percent one year actuarial survival rate for all subsequent liver transplants must be maintained for continued CHAMPUS approval.

(E) *Heart transplant centers.* CHAMPUS shall provide coverage for heart transplantation procedures performed only by experienced

transplant procedures performed only by experienced transplant surgeons at centers complying with provisions in paragraph (b)(4)(ii)(A) of this section. The transplant center must:

(*1*) Have experts in the fields of cardiology, cardiovascular surgery, anesthesiology, immunology, infectious disease, nursing, social services, and organ procurement to complement the transplant team.

(*2*) Have an active cardiovascular medical and surgical program as evidenced by a minimum of 500 cardiac catheterization and coronary arteriograms and 250 open heart procedures per year.

(*3*) Have an established heart transplant program with documented evidence of 12 or more heart transplants in each of the three consecutive preceding 12-month periods prior to the date of application (a total of 36 or more heart transplant procedures).

(*4*) Demonstrate actuarial survival rates of 73 percent for one year and 65 percent for two years for patients who have had heart transplants since January 1, 1982 at that facility. The Kaplan-Meier product limit method shall be used to calculate actuarial survival.

(*5*) CHAMPUS approval will lapse if either the number of heart transplants falls below 8 in 12 months or if the one-year actuarial survival rate falls below 60 percent for a consecutive 24-month period.

(F) *Lung transplant.* This policy applies only to those centers seeking CHAMPUS certification for lung transplantation only. Centers seeking CHAMPUS certification as heart-lung transplant centers must meet additional requirements outlined in paragraph (b)(4)(ii)(H) of this section.

(*1*) CHAMPUS shall provide coverage for lung transplant procedures performed only be experienced transplant surgeons at centers complying with the provisions outlined in paragraph (b)(4)(ii)(A) of this section, and meeting the following criteria:

(*2*) The center must have:

(*i*) Experts in the fields of cardiology, cardiovascular surgery, pulmonary disease, anesthesiology, immunology, infectious disease, nursing, social services, and organ procurement to complement the transplant team.

(*ii*) Performed lung (single and/or double) transplantation in at least 10 patients within the 12 months prior to application and in at least an additional 10 patients prior thereto.

(*iii*) Demonstrated Kaplan-Meier actuarial survival rates of no less than 65 percent at one-year post-transplant for patients who have undergone a lung transplantation at the center since January 1, 1987.

(G) *Heart-Lung and lung transplant.* CHAMPUS shall provide coverage for heart-lung transplantation procedures performed only by experienced transplant surgeons at centers complying with the provisions outlined in paragraph (b)(4)(ii)(A) of this section, and meeting the following criteria:

(*1*) The institutional and team experience shall be based upon all lung and heart-lung transplantations performed since January 1, 1987, both for transplant experience and actuarial survival rates.

(*2*) To be accepted for lung transplantation (single and/or double), an institution and team must have:

(*i*) Performed lung and/or heart-lung transplantation in at least 10 patients within the 12 months prior to application and in at least an additional 10 patients prior thereto, and

(*ii*) Achieved a documented Kaplan-Meier actuarial survival rate of no less than 65 percent at one-year.

(*iii*) Fulfilled existing facility certification criteria for heart transplantation (either Medicare or CHAMPUS); or fulfilled the CHAMPUS facility certification criteria for facilities applying only for lung transplantation as outlined in paragraph (b)(4)(ii)(G) of this section.

(*3*) To be accepted for heart-lung transplantation, an institution and team must fulfill the CHAMPUS facility certification criteria for lung transplantation and the existing facility certification criteria (either Medicare of CHAMPUS) for heart transplantation.

(*H*) *Calculation of survival rates for transplantation.* Each facility seeking CHAMPUS certification as a transplant center must calculate survival rates using the Kaplan-Meier (product-limit) technique utilizing the definitions and rules below. Each applicant facility must identify its Kaplan-Meier actuarial survival percentage at one year. Heart transplant facilities must also identify its Kaplan-Meier actuarial survival percentage at two year point. Each applicant facility must also submit calculations to support the reported actuarial survival percentage.

(*1*) Each applicant facility will report all transplantation experience from its inception at the facility, unless this section otherwise prescribes a starting date for the reporting of specific transplantation experience.

(*2*) CHAMPUS recognizes the team experience gained in retransplantation. Therefore, retransplantation experience must be reported and calculated in the same manner as first transplantation experience.

(*3*) All experience and survival rates must be reported as of a point in time that is no more than 90 days prior to the submission of the application for CHAMPUS certification. That date is referred to as the fiducial date.

(*4*) Calculations assume survival only to (and censoring on) the date of last ascertained survival.

(*5*) Patients who are not thought to be dead are considered "lost to follow-up" if they were:

(*i*) Operated more than 120 days before the fiducial date, but have no ascertained survival within 60 days of the fiducial date; or

(*ii*) Operated from 61 to 120 days before the fiducial date, but ascertained survival is less than 60 days from date of transplantation; or

(*iii*) Operated within 60 days of the fiducial date, but not ascertained to have survived as of the fiducial date.

(*6*) Survival must be calculated with the assumption that each patient in the "lost to follow-up" category died on or one day after the date of last ascertained survival.

(*7*) Clearly defined and well justified secondary or alternate treatment of "lost to follow-up" may also be submitted, but primary attention will be given to the results using definitions and procedures specified above.

(*8*) Facilities seeking certification for lung and/or heart-lung transplantation must report all lung and heart-lung transplantation experience beginning January 1, 1987. When facility experience is reported and the actuarial survival is calculated, lung and heart-lung transplantation experience must be combined to arrive at a single one year survival percentage.

(I) *Combined liver-kidney transplants.* If the facility is authorized as a CHAMPUS (or Medicare) approved liver transplant center as outlined in paragraphs (b)(4)(ii)(B) and (b)(4)(ii)(E) of this section, the facility may be considered to be a CHAMPUS approved center to perform combined liver-kidney transplantations.

(J) *Organ transplant consortia.* CHAMPUS shall approve individual organ transplant centers which meet the above provisions in paragraph (b)(4)(ii)(B) of this section, and would otherwise qualify as a CHAMPUS-authorized transplant center by:

(*1*) Using the combined experience and actuarial survival data of a consortium of which a single transplant team rotates among member hospitals for purposes of meeting the certification requirements outlined in paragraphs (b)(4)(ii)(E), (b)(4)(ii)(F), (b)(4)(ii)(G), (b)(4)(ii)(H), and (b)(4)(ii)(I) of this

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section, for liver, heart, lung, heart-lung and combined liver-kidney when,

(*i*) The hospitals are under common control or have a formal affiliation arrangement with each other under the auspices of an organization such as a university or a legally-constituted medical research institute;

(*ii*) The hospitals share resources by using the same personnel or services in their transplant programs. The individual physician members of the transplant team practice in all of the hospitals;

(*iii*) The same organ procurement organization, immunology, and tissue typing services are used by all the hospitals; and

(*iv*) The hospital submits its individual and combined experience and survival data to the CHAMPUS authorizing authority, and

(*v*) If one of the hospitals is a pediatric transplant program, in addition to the requirements previously listed the following apply;

(*A*) Although pediatric surgeons and pathologists are not required to practice in the adult hospital and vice versa, it can be documented that they otherwise function as members of the transplant team.

(*B*) The facility must have other solid organ transplant program(s) that meet CHAMPUS criteria for certification based on actuarial survival rates and experience.

(*C*) The surgeon responsible for the transplant is commonly involved in the type of surgery (i.e., related to hepatology, cardiology and pulmonary medicine) with children of the age and size in whom the transplant is being performed, and

(*D*) If the program involves heart transplant, the facility must have an active pediatric cardiovascular medical and surgical program with a minimum of 150 cardiac catheterizations performed per year on patients in the pediatric range. A surgical case load of 200 operations per year should be performed in combined adult and pediatric programs: Of these, at least 100 operation per year (three of four should use extracorporeal circulation) should be on pediatric patients. In programs serving only a pediatric population, at least 100 cardiac surgical procedures (three of four should use extracorporeal circulation) should be performed per year.

* * * * *

4. Section 199.7 is proposed to be amended by revising paragraph (f)(1)(ii) to read as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(f) * * *

(1) * * *

(ii) *Time limit on preauthorization.* Approved preauthorizations are valid for specific periods of time, appropriate for the circumstances presented and specified at the time the preauthorization is approved. In general, preauthorizations are valid for 30 days. If the preauthorized service or supplies are not obtained or commenced within the specified time limit, a new preauthorization is required before benefits may be extended. Special rules apply for organ, stem cell transplantation, and air ambulance (in conjunction with lung or heart-lung transplantation preauthorizations) (refer to § 199.4(e)(5)(ii)).

* * * * *

5. Section 199.15 is proposed to be amended by revising paragraph (b)(4)(ii)(C) to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) An approved preauthorization shall state the number of days, appropriate for the type of care involved, for which it is valid. In general, preauthorizations will be valid for 30 days. If the services or supplies are not obtained within the number of days specified, a new preauthorization request is required. Special rules apply for organ, stem cell transplantation, and air ambulance (in conjunction with lung or heart-lung transplantation preauthorizations (refer to § 199.4(e)(5)(ii)).

* * * * *

Dated: March 13, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6561 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AD21

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby proposes to extend for an additional 42 months through December 15, 1998, the effectiveness of the final regulations that authorize and govern the incidental, unintentional take of small numbers of polar bear and walrus during year-round oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska.

DATES: Comments on this proposed rule must be received by May 16, 1995.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the same address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, or sent by FAX to 907/786–3816. Comments and materials received in response to this proposed action will be available for public inspection at this address during the normal working hours identified above.

FOR FURTHER INFORMATION CONTACT: Dave McGillivary, Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, 907/786–3800, or Jeff Horwath, in the Service's Division of Fish and Wildlife Management Assistance, Arlington, Virginia, at 703/358–1718.

SUPPLEMENTARY INFORMATION: Under provisions of section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA), the taking of small numbers of marine mammals may be allowed incidental to specified activities other than commercial fishing if the Director of the Service finds, based on the best available scientific evidence available, that the cumulative total of such taking over a 5-year period will have a negligible effect on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth: Permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and on behalf of 14 other energy related entities (hereafter collectively referred to as "Industry") petitioned the Service

to promulgate regulations pursuant to section 101(a)(5) of the MMPA. A proposed rule was published by the Service on December 30, 1992 (57 FR 62283), with a 75-day comment period that expired on March 15, 1993.

The proposed rule announced that the Service has prepared a draft Environmental Assessment in conjunction with the rulemaking action; and that when a final decision was made on the Industry applications for incidental take authority, the Service would decide whether this was a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). Subsequent to the close of the proposed rule's comment period, the Service concluded in a Finding of No Significant Impact (FONSI) that this was not a major Federal action under the NEPA and preparation of an Environmental Impact Statement was not required.

Subsequently, on November 16, 1993, the Service published in the **Federal Register** final regulations effective December 16, 1993, to authorize and govern the incidental, unintentional take of small numbers of polar bears and walrus during Industry operations (exploration, development, and production) year-round in the Beaufort Sea and adjacent coast of Alaska. The Service concluded in that final rule, based on the best scientific evidence available, that the cumulative total of such taking by Industry over a 5-year period would have a negligible effect on these species and would not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives.

However, although the MMPA authorizes regulations to be issued for periods of up to five years, the Service's final regulations are initially effective only for an 18-month period through June 16, 1995, as a result of additional provisions in the final regulations. The provisions stipulate that extension of the final regulations for an additional 42 months for the full 5-year term authorized by the MMPA (through December 15, 1998) is contingent upon the following: (1) Within a period of 18 months from the effective date of this rulemaking, the Service must develop and begin implementing a Polar Bear Habitat Conservation Strategy (Strategy), pursuant to the management planning process in Section 115 of the MMPA, and in furtherance of the goals of Article II of the 1973 international Agreement on the Conservation of Polar Bears (1973 Agreement); (2) the identification and designation of special considerations or closures of any polar bear habitat components to be further protected; (3) public notice and comment on those considerations or closures; (4) affirmative findings of the Secretary of the Interior; and (5) public notice and comment on the Secretary's intention to extend the term of the incidental take regulations for a period not to exceed a total of 5 years.

The final rule explained the additional requirement to develop a Strategy as follows:

> In addition to its responsibilities under the [MMPA], the Department of the Interior has further responsibilities under the 1973 multilateral Polar Bear Agreement. Specifically, Article II of this Agreement requires that:
>
> Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns * * *
>
> In comport with, and to meet more fully the intent of the Agreement, under this final rulemaking, within 18 months of its effective date, the Service has been directed by the Secretary of the Interior to develop and begin implementing a strategy for the identification and protection of important polar bear habitats. Development of such strategy will be done as part of the Service's management plan process pursuant to Section 115 of the (MMPA), and in cooperation with signatories to the Polar Bear Agreement, the Department of State, the State of Alaska, Alaskan Natives, Industry, conservation organizations, and academia.

As required by the final Beaufort Sea incidental take regulations, the Service has developed a draft Strategy, published public notice of its availability in the **Federal Register** (60 FR 10868), and is seeking review and comment on it. It was developed with the involvement and input of Alaska Natives, Industry, the National Biological Service, State of Alaska, conservation organizations, academia, and others, and it includes Native traditional knowledge on polar bear behavior and habitat use.

The draft Strategy identifies and designates important polar bear feeding and denning areas and proposes measures for enhanced consideration of these areas from oil and gas exploration, development, and production. It also proposes additional measures for polar bear habitat protection in furtherance of the goals of the 1973 multilateral Polar Bear Agreement. These measures consist of a proposed Native Village Communication Plan, creation and support of a Polar Bear Advisory Council, and development of International Conservation Initiatives. The draft Strategy also identifies research needs related to habitat use and relative importance of habitat types, and effects of contaminants and industrial activities on polar bears.

For the reasons set out in this notice and in the final Beaufort Sea rule published on November 16, 1993, the Service hereby proposes to extend the effectiveness of the regulations in 50 CFR part 18, subpart J (Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska) for the full 5-year term authorized by the MMPA. Thus the regulations currently in effect from December 16, 1993, through June 16, 1995, would not expire but rather would be extended through December 15, 1998. This proposal to extend the final Beaufort Sea regulations is made on the basis that the Service's draft Strategy, if adopted, is in keeping with the stipulations in those final regulations. If the provisions of the draft Strategy are adopted, and its implementation is initiated, the Service will have met the requirements of the Beaufort Sea regulations; a final rule would be issued subsequent to the close of the comment period associated with the draft Strategy, and this proposed rule's public comment period.

Required Determinations

During the rulemaking process to develop Beaufort Sea regulations, the Service prepared an Environmental Assessment with FONSI on Industry's proposed actions. The rule was also reviewed under Executive Order 12866. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it was also determined the rule would not have a significant economic effect on a substantial number of small entities. Furthermore, the final rule was not expected to have a potential takings implication under Executive Order 12630 because it authorized incidental, but not intentional, take of polar bear and walrus by Industry and thereby exempts them from civil and criminal liability. The rule also did not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612. The above identified required determinations associated with the Service's original rulemaking process associated with the Beaufort Sea are still valid for this proposed rule.

The collections of information associated with this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C.

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3501 *et seq.*) and assigned clearance number 1018–0070.

List of Subjects in 50 CFR part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 18.122 of Subpart J is proposed to be revised to read as follows:

§ 18.122 Effective dates.

Regulations in this subpart, originally effective for an 18-month period from December 16, 1993, through June 16, 1995, will continue in effect for an additional 42 month period through December 15, 1998, for oil and gas exploration, development, and production activities.

Dated: March 10, 1995.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–6593 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12 Month Finding for a Petition to List the Anadromous Atlantic Salmon (Salmo Salar) Populations in the United States as Endangered or Threatened

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), collectively the Services, announce a 12-month finding on a petition to list the Atlantic salmon (*Salmo salar*) throughout its range in the United States as an endangered species pursuant to the Endangered Species Act of 1973 (Act). A Biological Review Team (Team), comprising staff from both NMFS and FWS, have compiled and analyzed available data, and prepared a "Status Review for Anadromous Atlantic Salmon in the United States." The Services have determined that available biological evidence indicates that the species described in the petition does not meet the definition of "species" under the Endangered Species Act. Consequently, the Services conclude that the petitioned action to list Atlantic salmon throughout its historic United States range is not warranted.

DATES: The finding made in this document was made on March 10, 1995.

ADDRESSES: Comments or questions concerning this petition finding should be sent to the Chief, Division of Endangered Species, FWS, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or the Chief, Habitat and Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, Massachusetts 01930. The petition finding and supporting data are available for public inspection by appointment during normal business hours at the above addresses and at FWS, 1033 South Main Street, Old Town, Maine 04468 (207–827–5938).

FOR FURTHER INFORMATION CONTACT: Paul Nickerson, Chief, Division of Endangered Species, at the Hadley, Massachusetts address (413–253–8615) or Mary Colligan, Marine Habitat Specialist, at the Gloucester, Massachusetts address (508–281–9116).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act requires that for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that the petitioned action may be warranted, the FWS or the NMFS, as appropriate, must undertake a review of the species in question and make a finding within 12 months of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be "warranted but precluded" should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

In October and November, 1993, the Services received a petition from RESTORE: the North Woods, Biodiversity Legal Foundation and Jeffrey Elliot to list naturally spawning anadromous Atlantic salmon (*Salmo salar*) throughout its known historic range in the conterminous United States, and to designate critical habitat. The petitioners presented current and historical information on Atlantic salmon populations, identified possible threats including commercial and sport fishing, pollution, barriers, land use practices, genetic disruption and others, and cited numerous scientific articles to support the petition.

The Services published a notice of finding on January 20, 1994 (59 FR 3067–3068), stating that the petition presented substantial information indicating that the requested action may be warranted. The Services also announced their intention to conduct a status review and solicited information from interested parties. To formalize the cooperative approach between NMFS and FWS in response to this petition, a Memorandum of Agreement was signed on March 14, 1994, by the regional directors of the respective agencies. A Biological Review Team (Team), comprising staff from the Services, has compiled and analyzed available data. The Team prepared a report entitled "Status Review for Anadromous Atlantic Salmon in the United States, January 1995" which provides detailed information, discussion and references. This report is summarized below and is available upon request (see **ADDRESSES**).

Life History

Anadromous Atlantic salmon have a relatively complex life history that extends from spawning and juvenile rearing in freshwater rivers to extensive feeding migration in the high seas. As a result, Atlantic salmon have several distinct phases in their life history that are identified by specific behavioral and physiological changes. Adult Atlantic salmon ascend the rivers of New England beginning in spring, a migration that peaks in June and continues into fall. Spawning occurs in late October through November. Good spawning habitat has a gravel substrate and adequate water circulation to keep eggs well oxygenated. Female anadromous Atlantic salmon produce between 1,500 and 1,800 eggs per kilogram (2.2 pounds) of body weight; on average each female Maine Atlantic salmon produces 7,200 eggs. Eggs hatch in late March or April and the resulting

alevin remain in the redd for about 6 weeks and are nourished by their yolk sac. When alevin emerge from the gravel about mid-May and begin feeding, they are referred to as fry. Fry become parr as vertical bars become visible on the sides of their bodies. In spring, when the parr are 2 or 3 years of age and 12.5 centimeters (cm) to 15 cm (5 to 6 inches (in.)) long, they undergo smoltification, a process where morphological and physiological changes prepare the smolt for the transition from fresh to salt water. Most smolts in New England migrate to sea in May and begin their ocean feeding migration.

The marine life history of Atlantic salmon of U.S. origin is not as well understood as the freshwater phase. Scientists have discovered correlations between natural mortality in the marine environment and abiotic factors, particularly sea surface temperature. Atlantic salmon of U.S. origin are highly migratory, undertaking long marine migrations from the mouth of U.S. rivers to the northwest Atlantic Ocean where they are distributed seasonally over much of the region. Upon entry into the nearshore waters of Canada, the U.S. post-smolts become part of a mixture of stocks of Atlantic salmon from various North American streams. Data from commercial harvest indicate that post-smolts overwinter in the southern Labrador Sea and in the Bay of Fundy. Direct sampling during the winter months is needed to better understand post-smolt Atlantic salmon distribution in the North Atlantic. Most Atlantic salmon of U.S. origin spend two winters in the ocean before returning to fresh water for spawning. Those that return after only 1 year at sea are called grilse.

Consideration as a "Species" Under the Act

The Act defines species as "any species of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature." This definition allows for the recognition of distinct population segments (DPSs) at levels below taxonomically recognized species or subspecies. Guidance on defining a DPS of a species under the Act has been provided by NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (56 FR 58612, November 20, 1991). This Policy states that a Pacific salmon population will be considered distinct, and therefore a species under the Act, if it represents an evolutionarily significant unit (ESU) of the biological species. Because the structure of Atlantic salmon populations is similar to that of Pacific salmonids, the ESU approach currently used for the Pacific salmonids provides a practical framework for delineating DPSs of Atlantic salmon under the Act. Accordingly, the Team used the ESU approach to define DPSs of Atlantic salmon. To qualify as a DPS, a population (or group of populations) of indigenous Atlantic salmon must be reproductively isolated from conspecific populations and must be evolutionarily significant (i.e. contribute substantially to the ecological/genetic diversity of the species).

Available scientific information indicates that naturally reproducing populations of Atlantic salmon in U.S. rivers are substantially reproductively isolated from those in Canada. Within the United States, Atlantic salmon populations have shown some evidence of straying but recolonization from adjacent watersheds is minimal. Gene flow between wild populations or stock transfers were determined not to have been sufficient to have eliminated all historic differences. As a group, these seven populations meet the criterion of reproductive isolation.

The second criterion used was evolutionary significance, or the substantial ecological and genetic importance of a population(s) to the species as a whole. In salmonids, adaptations to local ecosystems are important to the survival of populations and the survival of the species throughout its range. Examination of U.S. populations of Atlantic salmon provides evidence of their distinctness from stocks in Canada and northern Europe.

The Team categorized U.S. Atlantic salmon populations into three groupings: Extirpated, DPS and candidate species. A critical factor in determining the status of these populations was the historic persistence of a substantial component of natural reproduction. While it is unlikely that U.S. Atlantic salmon populations exist in a genetically pure native form, their continued presence in indigenous habitat suggests that important local adaptations still exist. The documented absence of wild Atlantic salmon from natal habitat for at least two generations (12 years) suggests the total loss of a native population under even the most conservative approach. Atlantic salmon populations in rivers south of the Kennebec River, Maine, were extirpated by the mid-1800's.

The Team determined that the Atlantic salmon populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys Rivers are reproductively isolated and, as a group, are of evolutionary significance. Therefore, the group meets the criteria for consideration as a "species" under the Act. The persistence of Atlantic salmon runs, and their link to native populations in the Kennebec River, Penobscot River, Tunk Stream, and St. Croix River are not well understood. Further study is warranted to determine whether Atlantic salmon in these rivers meet the criteria for consideration as "species" under the Act.

Distribution and Abundance

The original range of Atlantic salmon in the United States was from the Housatonic River in Connecticut north to U.S. tributaries of the St. Johns River in New Brunswick, Canada. The historic Atlantic salmon run in the United States has been estimated to have approached 500,000 fish.

The species began to disappear from U.S. rivers 150 years ago and currently only remnant populations occur in a limited number of rivers in Maine. Construction of hundreds of dams blocked salmon migration and reduced spawning habitat to a fraction of that available historically. Water pollution and overexploitation further reduced the abundance of Atlantic salmon. Indigenous Atlantic salmon in rivers south of the Kennebec River were extirpated by the mid-1800's. In addition, some populations north of the Kennebec River were also extirpated; most of these were in small rivers with less than 1 hectare (2.5 acres) of available nursery habitat. Beginning in the mid-1800's and continuing to the present time, numerous restoration efforts were undertaken. The Connecticut and Merrimack Rivers provided nearly 40 percent of historic U.S. Atlantic salmon habitat. These rivers are currently the focus of restoration efforts using nonindigenous stocks, and extensive efforts are being undertaken to gain access to historic habitat.

The North American Salmon Working Group's NASWG method for estimating the escapement goal for adequate egg deposition for each river was used. Thus, an escapement goal was determined for each river and the return calculated as a percentage of the escapement goal. Throughout the past 24 years, the Dennys and Narraguagus Rivers have had the best returns relative to available habitat, averaging 20 percent of escapement goal. The Pleasant, Sheepscot, and Machias Rivers have had returns that averaged between 10 and 12 percent of the escapement goal. However, recent downward trends in abundance have put most rivers at less than 10 percent of their respective

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escapement goals. Only the Narraguagus River has exceeded 10 percent in the past 7 years.

Determination

Section 4(b)(1)(a) of the Act requires that determinations of whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a status review of the species. The Services have evaluated the status of U.S. Atlantic salmon and determined that available biological evidence indicates that listing the Atlantic salmon as endangered throughout its historic range in the contiguous United States is not warranted. However, the Services have determined that sufficient information is available to support appropriate listing actions for the DPS that consists of populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys Rivers. This DPS is designated as a Category 1 candidate by FWS, and a candidate species by NMFS. In addition, the Services have found that the status of salmon in the Kennebec River, Tunk Stream, Penobscot River and the St. Croix River is uncertain and warrants further study. Therefore, the Atlantic salmon in these rivers are to be designated category 2 candidates by FWS and candidate species by NMFS. Work on a proposed rule to initiate the appropriate listing actions under the Act is underway and the proposed rule will be published promptly.

Author: The primary author of this document is Susan Lawrence of FWS (see **ADDRESSES**). Editorial comments were provided by Michael Amaral, FWS, 22 Bridge Street, Concord, New Hampshire 03301, and Joseph McKeon, FWS, Federal Building, Room 124, Laconia, New Hampshire 03246.

Authority: The authority citation for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: March 10, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, NMFS.

Dated: March 10, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–6611 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 52

Friday, March 17, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–016–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Tomato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Zeneca Plant Science and Petoseed Company, Inc., seeking a determination of nonregulated status for tomato lines designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase enzyme activity. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these tomato lines present a plant pest risk.

DATES: Written comments must be received on or before May 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–016–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 95–016–01. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On February 7, 1995, APHIS received a petition (APHIS Petition No. 94–290–01p) from Zeneca Plant Science of Wilmington, DE, and Petoseed Company, Inc., of Woodland, CA, (Zeneca/Petoseed) requesting a determination of nonregulated status under 7 CFR part 340 for modified T7 processing tomato inbred lines designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase (PG) enzyme activity. As described in the petition, tomato lines B, Da, and F have been developed from an unmodified proprietary inbred tomato line coded as T7, genetically engineered to contain a fragment of the tomato PG gene in the sense or antisense orientation. The PG enzyme is responsible for the breakdown of pectin molecules in the cell walls of tomato fruit during ripening. The inhibition of the PG enzyme resulting from the transcription of the PG gene fragment results in an increased thickness of the tomato, which is a desired characteristic in processing tomatoes.

The PG gene fragment in the subject tomato lines is regulated by the 35S promoter from the plant pathogen cauliflower mosaic virus. Tomato lines B, Da, and F were transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumefaciens*. The subject tomato lines also contain the bacterial neomycin phosphotransferase (*nptII*) gene that is used as a selectable marker.

The subject tomato lines are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences (vectors, promoters, and terminators) derived from plant pathogens. Tomato lines B, Da, and F were evaluated in field trials conducted under APHIS permits in 1991, 1992, and 1993, and under APHIS notifications in 1994. In the process of reviewing the applications for those field trials, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive confinement, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of the subject tomato lines may be subject to regulation by the Food and Drug Administration (FDA) under the

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authority of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*). The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Zeneca has notified the FDA that it has completed its food safety and nutritional assessment for the subject tomato lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioners, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Zeneca/Petoseed's tomato lines B, Da, and F and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa-150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6651 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–F

Forest Service

Elsmere Canyon Proposed Solid Waste Management Facility

AGENCY: Forest Service, USDA.

ACTION: Revised date for end of comment period.

SUMMARY: The Angeles National Forest made available an Environmental Impact Statement for the Elsmere Canyon Proposed Solid Waste Management Facility on January 20, 1995. This was announced in the **Federal Register** / Vol. 60, No. 13 / Friday, January 20, 1995 by the Environmental Protection Agency, under the Environmental Impact Statements, Notice of Availability. The EIS No. is 950009, Draft EIS. The comment period was to end on April 28, 1995.

The Angeles National Forest has extended the comment period. Comments are due by close of business, August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Johnson, Deputy Forest Supervisor at 818–574–5217 or Charles McDonald at 818–574–5257 or written questions may be directed to the U.S. Forest Service, Elsmere EIS, 701 N. Santa Anita Ave., Arcadia, CA 91006.

Dated: March 10, 1995.

Paul Johnson,

Deputy Forest Supervisor.

[FR Doc. 95–6633 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

Beaver/Cedar Land Exchange; Clearwater National Forest; Clearwater and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental Impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Clearwater National Forest, with assistance from Potlatch Corporation, will prepare an EIS (environmental impact statement) for a proposal to exchange National Forest land for Potlatch owned land. The project area is located on the North Fork Ranger District on the Clearwater National Forest and the Palouse Ranger District on the St. Joe National Forest and administered by the Clearwater National Forest, head-quartered in Orofino, Idaho. The Agreement to Initiate a land exchange was signed by Potlatch Corporation on September 17, 1993, and the Forest Service on October 8, 1993. This exchange is proposed pursuant to the General Exchange Acts of March 1, 1911 and March 20, 1922, as amended, and the Federal Land Policy Management Act of October 21, 1976.

The EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final EIS of September, 1987, which provides overall guidance of all land management activities on the Clearwater National Forest. Analyses will also be conducted in compliance with the Stipulation of Dismissal agreed to for the lawsuit between the Forest Service and the Sierra Club, et al (signed September 13, 1993).

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received within 45 days following publication of this notice to receive timely consideration in the preparation of the Draft EIS. The Draft EIS is anticipated to be filed with the Environmental Protection Agency in August 1995. The Final EIS and Record of Decision are expected to be issued in December of 1995.

ADDRESSES: Submit written comments and suggestions on the proposed action or requests to be placed on the project mailing list to James L. Caswell, Forest Supervisor, Clearwater National Forest, 12730 U.S. Highway 12, Orofino, ID, 83544. FAX: 208–476–8329.

FOR FURTHER INFORMATION CONTACT: Bill Jones, Interdisciplinary Team Leader, Clearwater National Forest, Supervisor's Office, telephone (208) 476–4541.

SUPPLEMENTARY INFORMATION: Potlatch Corporation owns approximately thirty-seven sections of land, each containing approximately 640 acres, within the Cedars-Trout area of the North Fork Ranger District. These sections alternate with National Forest sections, and together they comprise what is referred to as a "checkerboard" area on the Clearwater National Forest. The majority of this area is unroaded and is adjacent to the Upper North Fork and Great Burn roadless areas. Large portions of the area were impacted by the 1910 burn and have returned to stands of lodgepole pine, where as, the unburned areas support stands of western redcedar, grand fir, Douglas-fir, western larch, Engelmann spruce, and subalpine fir. A good elk population inhabits the area, as do mule deer, white tail deer, moose, mountain lion, river otter, black bear, and maybe some mountain goats in the higher elevations. Fishing is excellent with an abundance of cutthroat trout and bull trout, with some brook trout in the smaller cold streams. The area contains the popular Cedars Campground and is adjacent to a lot of historic gold mining activity in Moose City and the surrounding country.

The Beaver Block, owned by the Forest Service, is characterized as an island of timber surrounded by cut-over private lands. It has a good gravel road system and has been intensively managed since the 1940's. The area is very productive due to a good ash cap, that once supported large stands of western white pine. Western redcedar, grand fir, Douglas-fir, and minor amounts of Engelmann spruce, western white pine, ponderosa pine, and western larch now inhabit the area. The area provides excellent habitat for elk, and its rolling dissected topography is a favorite place for big-game hunters. Also present are moose, black bear, and white tail deer. Fishing is fair and is limited to brook trout in the South Fork of Beaver Creek. There is a lot of historic evidence of old logging cord wood roads and camp sites within the area.

The Clearwater Forest Plan provides guidance for land exchange within the potentially affected area through its goals, objectives, standards, guidelines and management area direction. The areas of proposed land exchange would occur mostly within Management Area E1. There are several inclusions of Management Area C4 within the Beaver Block area. Below is a brief description of the applicable management direction.

Management Area E1—Timber Management—Provide optimum, sustained production of timber products in a cost-effective manner while protecting soil and water quality. Lands Goal—Seek opportunities to consolidate land ownership through land exchange.

Management Area C4—Elk Winter Range/Timber—Provide sufficient winter forage and thermal cover for existing and projected big game populations while achieving timber production outputs. Lands Goal—Acquire private inholdings.

Initial negotiations began in 1985 with DAW Forest Products Company on a land exchange involving federal and non-federal parcels within the Cedars-Trout area. DAW later decided to get out of the area totally in favor of acquiring federal property on the Lolo National Forest to facilitate their mill in Superior, Montana. As this would take legislative action, DAW did not pursue this action and decided to not engage in a land exchange.

In January 1993, the Clearwater National Forest was approached by a local real estate representative wanting to know if the Forest would be interested in a land exchange involving DAW, the State of Idaho, and the Forest Service. Under this proposal, DAW would exchange their lands in the Cedars-Trout area to the State of Idaho for some State land near St. Maries, Idaho. The State would in turn exchange their newly acquired Cedars-Trout parcels for the federally owned Beaver Block. Before this proposal could be acted upon, all of the property owned by DAW went up for sale.

Later that year Potlatch Corporation informed the Forest that they were interested in purchasing the Cedars-Trout area from DAW, and asked if the Forest would be interested in a land exchange for the Beaver Block. On August 19, 1993, a letter was sent to Potlatch Corporation stating the Forest was interested in the exchange, but, with no guarantees that the exchange would be consummated. After some internal scoping, an Agreement to initiate was signed by both Potlatch Corporation and the Forest Service. Later in September, Potlatch Corporation and Bennett Lumber Company co-purchased the Cedars-Trout area as well as the other DAW owned lands on the Palouse Ranger District. Potlatch Corporation is currently giving Bennett Lumber Company some of their other land holdings in exchange for sole ownership of the newly acquired DAW lands.

As a result of internal scoping and negotiations with Potlatch, the following tracts are being proposed for exchange: Nonfederal Land (Property that Potlatch Corporation will consider exchanging)

Location	Acres	Total
T40N, R10E, Clearwater County, North Fork Ranger District:		
Sec 1 Lots 1–4, S½N½,S½ ...		650.08
T40N, R11E, Clearwater County, North Fork Ranger District:		
Sec 1 Lots 1–4, S½NW¼, S½NE¼,S½ .	649.28	
Sec 3 Lots 1–4, S½N½,S½ ...	652.24	
Sec 4 Lots 2,4, S½NW¼, SW¼	368.27	
Sec 5 Lots 1–4, S½NW¼, S½NE¼,S½ .	650.06	
Sec 7 Lots 1,2, E½NW¼, NE¼,E½SE¼	388.49	
Sec 8 N½,W½SW¼	400.00	
Sec 9 all	640.00	
Sec 10 all	640.00	
Sec 11 all	640.00	
Sec 13 all	640.00	
Sec 14 all	640.00	
Sec 15 N½,SE¼, E½SW¼	560.00	
Sec 23 E½NE¼	080.00	
		6,948.36

Location	Acres	Total
T40N, R12E, Clearwater County, North Fork Ranger District:		
Sec 5 Lots 1–4, S½NW¼, S½NE¼,S½ .	648.88	
Sec 7 Lots 1–4, E½NW¼, E½SW¼,E½	618.80	
Sec 9 all	640.00	
Sec 17 all	640.00	
Sec 19 Lots 1,2, E½NW¼, NE¼,E½SE¼	390.48	
		2,938.16
T41N, R10E, Clearwater County, North Fork Ranger District:		
Sec 13 all	640.00	
Sec 23 all	640.00	
Sec 25 all	640.00	
Sec 27 all	640.00	
Sec 33 all	640.00	
Sec 35 all	640.00	
		3,840.00
T41N, R11E, Clearwater County, North Fork Ranger District:		
Sec 3 Lots 1–4, S½NW¼, S½NE¼,S½ .	644.04	
Sec 9 all	640.00	
Sec 11 all	640.00	
Sec 15 all	640.00	
Sec 17 all	640.00	
Sec 19 Lots 1–4, E½NW¼, E½SW¼,E½	631.36	
Sec 21 all	640.00	
Sec 23 all	640.00	
Sec 25 all	640.00	
Sec 28 SE¼SW¼, S½SE¼, NE¼SE¼	160.000	
Sec 29 all	640.00	
Sec 31 Lots 1–4, E½NW¼, E½SW¼,E½	638.00	
Sec 32 all	640.00	
Sec 33 all	640.00	
Sec 35 all	640.00	
		9,113.40
Subtotal acres in Cedars-Trout area ..	23,490.00	
Nonfederal Land in the Neva Hill Area		
T40N, R1E, Clearwater County, Palouse Ranger District:		
Sec 22 NE¼SE¼	.....	40.00

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Location	Acres	Total
Nonfederal Land in the Elk Creek Drainage		
T39N, R2E, Clearwater County, Palouse Ranger District:		
Sec 11 SW¼SE¼	40.00	
Sec 14 E½, SE¼NW¼, E½SW¼, SW¼SW¼	480.00	
Sec 15 Lots 3,4, E½SW¼, NW¼SE¼, S½SE¼	279.08	
Sec 21 Lots 2,3,	86.10	
Sec 22 E½, NE¼SW¼, E½NW¼, NW¼NW¼ ...	480.00	
		1,365.18
Nonfederal Land in the Columbia Mine Area		
T42N, R1W, Latah County, Palouse Ranger District:		
Sec 7 Mineral Survey 3311 ..	34.09	
Sec 8 Mineral Survey 3311 ..	45.00	
		79.09
Nonfederal Land in the Mt. Gulch Area		
T43N, R1W, Latah County, Palouse Ranger District:		
Sec 31 Mineral Survey 2425	.....	56.62
Subtotal acres on Palouse Ranger District	1,540.89	
Total Nonfederal land for possible acquisition	25,030.89	
Outstanding Rights: Subject to the rights of the United States and third parties recited in the patent from the United States.		
Federal lands (Property the Forest Service Will Consider Exchanging)		
T40N, R6E, Clearwater County, North Fork Ranger District:		
Sec 31 Lots 1–4, E½W½, E½ .	533.96	
Sec 32 W½,SE¼, S½NE¼	560.00	
Sec 33 N½NE¼, NW¼SE¼, NW¼, N½SW¼, SE¼NE¼	400.00	
Sec 30 Lots 3,4, SE¼SW¼, SE¼SE¼	156.56	
		1,750.52
T39N, R6E, Clearwater County, North Fork Ranger District:		
Sec 4 Lots 3,4, S½NW¼, W½SW¼, SE¼SW¼	285.66	
Sec 5 Lots 1–4, S½NW¼, S½NE¼S½ ..	649.20	
Sec 6 Lots 1–7, SE¼NW¼, S½NE¼, E½SW¼, SE¼	638.49	
Sec 7 Lots 1–4, E½W½,E½ ..	637.20	
Sec 8 all	640.00	
Sec 9 W½NE¼, NW¼, N½SW¼, SW¼SW¼	360.00	
Sec 16 NW¼	160.00	
Sec 17 all	640.00	
Sec 18 Lots 1–4, E½W½, E½ .	637.64	
Sec 19 Lots 1–4, E½W½, E½ .	637.32	
Sec 20 N½, N½S½, SW¼SW¼, SE¼SE¼	560.00	
Sec 30 Lots 1–4, NE¼SW¼, E½NW¼, W½NE¼	358.72	
Sec 31 Lot 1	39.82	
		6,244.05
T39N, R5E, Clearwater County, North Fork Ranger District:		
Sec 1 Lots 1–4, S½NW¼, S½NE¼,S½ .	639.44	
Sec 2 Lots 1–4, S½NW¼, S½NE¼,S½ .	637.72	
Sec 11 NE¼, E½NW¼, SE¼, S½SW¼, NE¼SW¼	520.00	
Sec 12 all	640.00	
Sec 13 all	640.00	
Sec 14 all	640.00	
Sec 15 E½NE¼, SE¼, S½SW¼	320.00	
Sec 23 E½, NE¼NW¼	360.00	
Sec 24 all	640.00	
Sec 25 all	640.00	
Sec 26 all	640.00	
Sec 27 E½, S½SW¼, NE¼SW¼	440.00	
Sec 34 NW¼, N½NE¼, W½SW¼	320.00	
Sec 35 NE¼NE¼, S½SE¼, NW¼NE¼, N½NW¼, SE¼NW¼	280.00	
Sec 36 N½NE¼, W½,W½SE¼	480.00	
		7,837.16
Total Federal Acres Identified for Exchange	15,831.73	

Land reservations of the United States, exceptions to title and uses to be recognized.

A range of alternatives will be considered, including a no action alternative and the proposal identified above. Based on the issues identified through scoping, all action alternatives will vary in the number of acres to be exchanged, the location of the acres to be exchanged, and the kind of mitigation measures. Issues will drove the formulation of feasible alternatives, as will acceptance of each alternative by Potlatch Corporation and the Forest Service.

The EIS will analyze the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Comments from the public and other agencies will be used in preparation of the Draft EIS.

The scoping process will continue to be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Clearwater Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary issues identified as a result of internal and public scoping include: equal value of land being exchanged, plus, effects of the proposal on wildlife habitat, old growth habitat, water quality, riparian areas, fisheries, roadless areas, federal investigations already made, revenues to the counties, road access, deferred road maintenance, fire protection boundaries, timber program, visual quality of the area, recreation, and effects on threatened, endangered and sensitive species. This list will be verified, expanded and/or modified based on continued scoping for this proposal.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which starts with publication of this notice and continues for the next 45 days; and
2. Review of the Draft EIS in September and October, 1995.

The Forest Service expects to file the Draft EIS with the Environmental Protection Agency in August 1995. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Final EIS and Record of Decision are expected in December 1995.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS.

Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

I am the responsible official for this environmental impact statement. My address is Clearwater National Forest, Forest Supervisor's Office, 12730 Highway 12, Orofino, ID 83544.

Dated: March 8, 1995.

James L. Caswell,

Forest Supervisor.

[FR Doc. 95–6551 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

Noisy Divide Timber Sale and Other Integrated Resource Projects, Colville National Forest, Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation Notice.

SUMMARY: The Forest Service, USDA, is no longer involved in the preparation of an environmental impact statement for the Noisy Divide Timber Sale and Other Integrated Resource Projects on the Sullivan Lake Ranger District of the Colville National Forest (Pend Oreille County, Washington). The Notice of Intent, published in the **Federal Register** on January 2, 1991 is hereby rescinded (56 FR 58).

FOR FURTHER INFORMATION CONTACT: Tim Bertram, Project Leader, Sullivan Lake Ranger District, Colville National Forest; at Metaline Falls, Washington 99153, or phone 509–446–2681.

Dated: March 7, 1995.

George T. Buckingham,

Acting Forest Supervisor.

[FR Doc. 95–6626 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

North Sherman and Fritz Timber Sales, Colville National Forest, Ferry County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber and to construct and reconstruct roads. The proposed projects will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (The Plan) which provides the overall guidance for management of this area for the next ten years. The projects are proposed within portions of the Sherman Creek and South Fork Sherman Creek drainages on the Kettle Falls Ranger District in fiscal year 1996. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal so as to provide interested and affected people awareness as to how they may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by April 30, 1995.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Meredith Webster, District Ranger, 225 W. 11th, Kettle Falls, Washington 99141.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Ralph Egan, Planning Assistant, 225 W. 11th, Kettle Falls, Washington 99141 (phone: 509–738–6111).

SUPPLEMENTARY INFORMATION: The proposed action includes harvesting timber and constructing roads on North Sherman and Fritz timber sales.

The timber sales are proposed within the Sherman Creek and South Fork Sherman Creek drainages on the Kettle Falls Ranger District. This analysis will evaluate a range of alternatives for implementation of the timber sales. The area being analyzed is 69,557 acres.

The North Sherman timber sale would be located north of Washington State Highway 20 with the proposed harvest centered between McGahee and Elbow Creeks. The majority of the harvest would be landscape scale selection harvest. The proposed sale would harvest 10.0 MMBF from 2,000 acres.

The Fritz timber sale would be located south of Washington State Highway 20 with the proposed harvest centered around upper Fritz Creek, Scalawag Ridge and Paradise Peak. The majority of the harvest would be landscape scale selection harvest. The proposed sale would harvest 10.0 MMBF from 2,000 acres.

The Draft EIS will be tiered to The Plan. The Plan's Management Area direction for this analysis area is approximately 4.1 percent Old Growth Dependent Species Habitat, 8.3 percent Recreation, 30 percent Scenic/Timber, 1.3 percent Scenic/Winter Range, 22.1

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percent Wood/Forage, 5.3 percent Winter Range, 3.5 percent Semi-Primitive, Motorized Recreation, 19 percent Semi-Primitive, Non-Motorized Recreation and 6.4 percent other ownerships.

No harvest will be proposed within the Semi-Primitive, Motorized Recreation, Semi-Primitive, Non-Motorized Recreation Management Areas or other ownership areas. These areas are included only for analysis of effects. The proposed action includes portions of the Profanity, Bald Snow, South Huckleberry, and Bangs Roadless Areas which were considered but not selected for Wilderness designation.

Preliminary issues identified include: unroaded areas, recreation, sensitive plants and animals, visuals, water quality, timber production, and noxious weed control.

A range of alternatives will be considered, including a no-action alternative. Based on the issues gathered through scoping, alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatment prescribed, and (4) the number, type and location of other integrated resource projects.

Initial scoping began in March 1995. Scoping will include identifying issues, determining alternative driving issues, and identifying the objectives for the alternatives. An informal public meeting will be held at the Kettle Falls Ranger District office on April 18, 1995. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Tribes and individuals who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process. The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1995. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Tribes, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Colville National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by February 1996. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Edward L. Schultz, Forest Supervisor, is the Responsible Official. He will decide which, if any, of the alternative will be implemented. His decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR 215).

Dated: March 7, 1995.

George T. Buckingham,

Acting Forest Supervisor.

[FR Doc. 95–6627 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

First Creek Basin Restoration Project, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the First Creek Basin Restoration Project. The proposed action is partially located within the original Slide Ridge Roadless Area, approximately 15 miles northwest of the town of Chelan, in the First Creek, Baldy, and Granite Falls Creek drainages on the Chelan Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for ecosystem restoration activities within the First Creek Basin. Alternatives may include fuel reduction activities, seeding, reforestation, slope stabilization, wildlife habitat restoration, stream channel stabilization, timber harvest, road/trail construction, and road/trail obliteration.

The alternatives will include a no action alternative, and at least one alternative that maintains the unroaded character of the proposed project area. Other alternatives will be designed to respond to relevant issues. The proposed project will be consistent with direction given in the Wenatchee National Forest Land and Resource Management Plan, as amended by the April 13, 1994, Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. This Forest Service proposal is scheduled for implementation in 1995–1997. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by April 28, 1995.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Al Murphy, District Ranger, Chelan Ranger District, PO Box 189, Chelan, Washington 98816.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Lisa Gowe or John Lampereur, Interdisciplinary Team Leaders, Chelan Ranger District, PO Box 189, Chelan, Washington 98816; phone 509–682–2576.

SUPPLEMENTARY INFORMATION: In the summer of 1994, part of the 135,000 acre Tyee Complex wildfire burned through the analysis area, leaving thousands of acres of intensely-burned vegetation, altered soils, and increased fuel loads. The slopes in the area are steep and subject to severe erosion. This analysis was initiated to identify treatments that will lessen long-term losses in productivity and increase the rate of recovery of the ecosystems in the area. The analysis area is approximately 14,210 acres in size. About 280 acres of the area are unoccupied spotted owl habitat, with approximately 100 acres of this habitat being within a Late Successional Reserve. In addition, about 6,400 acres of the analysis area is unroaded.

The proposed action is to treat: (1) Approximately 4,700 acres in the ponderosa pine zone; (2) approximately 1,600 acres in the mesic Douglas-fir zone; and (3) approximately 340 acres in the high elevation zone. Treatments will be made through a combination of activities including: fuel disposal through the use of prescribed fire; harvest of dead and damaged trees; thinning; and slope stabilization. This proposal will include helicopter yarding as the preferred method of tree removal, but may require the construction of approximately 3 miles of temporary access roads. A transportation plan for the unroaded portion of the project area would also be developed.

To date, the following key issues have been identified:

Roadless Area management
Late Successional Reserves
Public safety and property
Economics
Cultural resources
Control of noxious weeds
Channel protection/restoration
Access management
Forest fuel management
Scenic quality
Recreation opportunities
Wildlife habitat
Revegetation
Water quality
Biodiversity/forest health
Fish/water/soil stability

The decision to be made through this analysis is where, how, and to what extent should the various vegetation management, fuels reduction and slope stabilization treatments be implemented within the First Creek analysis area, and what roading, if any, should occur within the currently unroaded area.

A range of alternatives will be considered, including a no action alternative, and an alternative that maintains the unroaded character of the area. Other alternatives will be developed in response to issues received during scoping. All alternatives will need to respond to specific conditions in the First Creek Basin.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, tribes, and local agencies, as well as individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating non significant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in June, 1995. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing those points).

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. (*City of Angoon v. Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986)) and (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed in August 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sonny O'Neal, Forest Supervisor, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 215).

Dated: March 9, 1995.

Mark Morris,

Administrative Officer.

[FR Doc. 95–6628 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene from 1:00 p.m. until 6:00 p.m. on Thursday, April 6, 1995, at the Westin Hotel, Renaissance Center, Detroit, Michigan 48243. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Janice G. Frazier at 313–259–8180, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD

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312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–6552 Filed 3–16–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–95]

Foreign-Trade Zone 24—Pittston, PA; Application for Subzone Status J. Schoeneman, Inc., Plant (Wearing Apparel), State Line, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting special-purpose subzone status for the apparel manufacturing plant of the J. Schoeneman, Inc. (JSI) (subsidiary of the Plaid Clothing Group, Inc.), located in State Line, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones (FTZ) Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 10, 1995.

This application involves the proposed transfer of subzone activity from JSI's plant (FTZ Subzone 99A) in Wilmington, Delaware, to JSI's new Pennsylvania plant. Subzone status for the company's Wilmington plant was authorized by the Board in 1984 (Subzone 99A; Board Order 257, 49 FR 24757, 6–15–84). The scope of FTZ authority for Subzone 99A is limited to non-manufacturing activity. JSI plans to close the Wilmington facility in 1995 and transfer the activity to its new plant in State Line, Pennsylvania. The activity at the proposed subzone would be the same as that now conducted at the Delaware plant, and no expansion of manufacturing authority is being requested.

The new JSI plant (10 acres, 126,000 sq. ft) is located at 15276 Molly Pitcher Highway (U.S. 11), State Line (Franklin County), Pennsylvania, some 6 miles north of Hagerstown, Maryland. The facility (120 employees) will be used to store, measure, and cut foreign and domestic fabric into tailored garment pieces that are shipped to other JSI plants for assembly into finished apparel (mens' and boys' suits, sport coats, raincoats, and trousers). Fabrics purchased from abroad (about 35% of total) include wool, silk, polyester, and polyester/wool (duty rates range up to 36.1%).

As is the case at the Delaware plant, FTZ procedures would exempt JSI from Customs duty payments on the foreign status fabric that is reexported from the proposed subzone. On domestic production, JSI would be able to defer duty payments on the foreign fabric until it is formally entered for consumption prior to cutting. No manufacturing would be conducted under FTZ procedures, and the same restrictions that are contained in Board Order 257 would apply at this plant. The application indicates that the savings from zone procedures will continue to help maintain the international competitiveness of JSI's domestic operations.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 16, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 31, 1995).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Harrisburg International Airport, Building 135, Second Floor, room 7, Middletown, PA 17057–5035

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230

Dated: March 13, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–6680 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–807]

Ceiling Fans From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On December 9, 1991, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on ceiling fans from the People's Republic of China (PRC). We are now revoking the order, based on the fact that this order is no longer of interest to domestic parties.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1991, the Department published in the **Federal Register** (56 FR 64249) an antidumping duty order on ceiling fans from the PRC (the order). On September 27, 1994, Lasko Metal Products, Inc. (Lasko), the petitioner in this proceeding, submitted a request for a changed circumstances administrative review and revocation of the order on the basis that the order no longer is of interest to the petitioner. On October 14, 1994, Lasko reaffirmed its September 27, 1994, request for the revocation of the order.

On January 17, 1995, the Department published in the **Federal Register** a notice of initiation and preliminary results of changed circumstances review to determine whether to revoke the order. (See Ceiling Fans from the People's Republic of China: Termination of Antidumping Duty Administrative Review, Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order, 60 FR 3390.) We found that Lasko's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. We gave

interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of the Review

Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation. Industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: A maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air delivery capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-mounted electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only—no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

This changed circumstances administrative review covers all manufacturers/exporters of ceiling fans from the PRC.

Final Results of Review; Revocation of Antidumping Duty Order

The affirmative statement of no interest by Lasko, the petitioner, constitutes changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the order on ceiling fans from the PRC in accordance with sections 751 (b) and (c) of the Tariff Act of 1930 (the Act) and 19 CFR 353.25(d)(1). This revocation applies to all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 5, 1991.

The Department will instruct the Customs Service to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 5, 1991. The Department will further instruct the Customs Service to refund with interest any estimated duties collected with respect to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 9, 1991, in accordance with section 778 of the Act.

This changed circumstances review, revocation of the antidumping duty order, and notice are in accordance with sections 751 (b) and (c) of the Act (19 U.S.C. 1675 (b) and (c)) and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: March 10, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–6681 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–811]

Steel Wire Rope From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 25 manufacturers/exporters of the subject merchandise to the United States. The review period is September 30, 1992, through February 28, 1994 (the POR).

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Davina Friedmann, Matthew Rosenbaum, or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1993, the Department published in the **Federal Register** (58 FR 16398) the antidumping duty order on steel wire rope from the Republic of Korea. On March 4, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 10368) of this antidumping duty order for the period September 30, 1992, through February 28, 1994. On March 14, 1994, the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, requested an administrative review for 25 manufacturers/exporters of steel wire rope from Korea.

We published a notice of initiation of the review on May 12, 1994 (59 FR 24683). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Unlocated Companies

We were unable to obtain addresses for Atlantic & Pacific, Dong-Il Metal, Dong Yong, Kwang Shin Industrial, and Seo Hae Industrial. In accordance with our practice with respect to companies to which we cannot send a questionnaire, we are assigning to these companies the "All Others" rate from the less-than-fair-value (LTFV) investigation, which is 1.51 percent. See Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong; Final Results of Antidumping Duty Administrative Review, 59 FR 13926 (March 24, 1994).

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and Customs purposes, our own written description of the scope of this review is dispositive.

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United States Price

In calculating USP, the Department used purchase price as defined in section 772 of the Act, because the subject merchandise was sold to unrelated U.S. purchasers prior to importation and the exporter's sales price (ESP) methodology was not indicated by other circumstances.

Purchase price was based on ex-factory, f.o.b. Korea, f.o.b. customer's specific delivery point, c.i.f., c&f, or delivered prices to unrelated purchasers in, or for exportation to, the United States. We adjusted these prices for billing adjustments. We made adjustments, where applicable, for domestic brokerage and handling, ocean freight, marine insurance, terminal handling charges, stevedoring charges, wharfage expenses, bill of lading issuing fees, export license fees, export insurance, domestic inland freight, containerization expenses and container taxes, container freight station charges, and shoring charges in accordance with section 772(d)(2) of the Act. For certain companies we also deducted bank charges, postage fees, letter of credit advice charges, and delay charges when they were not reported separately from movement expenses. We also added duty drawback, where applicable, for Manho Rope and Wire, Ltd. (Manho), and Chun Kee Steel & Wire Rope Co., Ltd. (Chun Kee), pursuant to section 772(d)(1)(B) of the Act. We did not make any duty drawback adjustments for Chung Woo Rope Co., Ltd., Hanboo Wire Rope, Inc., Kumho Rope, Sung Jin Company, Ssang Yong Steel Wire Co., Ltd., and Yeonsin Metal, because they were unable to demonstrate a connection between imports for which they paid duties and exports of steel wire rope.

We adjusted USP for taxes in accordance with our practice as outlined in Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204 (June 17, 1994).

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of steel wire rope in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of steel wire rope to the volume of third-country sales of steel wire rope, in accordance with section 773(a)(1) of the Act and 19 CFR 353.48(a). Based on this comparison we determined that the home market was viable.

Because the Department disregarded certain of Manho's home market sales that were determined to have been made below the cost of production (COP) during the original investigation, the Department initiated a COP investigation of Manho for purposes of this administrative review, in accordance with section 773(b) of the Act and Department practice. See, *e.g.*, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand; Preliminary Results of Antidumping Duty Administrative Review, 56 FR 11195, 11196 (March 15, 1991). Furthermore, based on allegations by petitioner, we also determined that reasonable grounds existed to believe or suspect that Chun Kee and Boo Kook made sales below cost. Thus, we initiated COP investigations with respect to Chun Kee and Boo Kook. However, we are using best information available (BIA) for Boo Kook and are not calculating a specific rate for that company (see "Best Information Available" section below).

We calculated the COP for the merchandise using Manho's and Chun Kee's cost of manufacturing (COM) and general expenses, in accordance with section 353.51(c) of the Department's regulations (19 CFR 353.51(c)(1994)). Respondents' COM consisted of materials, labor, and factory overhead costs incurred in steel wire rope production. General expenses consisted of general and administrative expenses as well as net interest expenses normally included in general expenses for COP.

We performed a model-specific COP test, in which we examined whether each home market sale was priced below the merchandise's COP. The Department defines the COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing. See Stainless Steel Hollow Products From Sweden; Preliminary Results of Antidumping Duty Administrative Review, 59 FR 40521 (August 9, 1994). For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses. In accordance with section 773(b) of the Act, we also examined whether the home market sales of each model were made at prices below their COP in substantial quantities over an extended period of time. None of these companies submitted evidence that such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each model where less than 10 percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where 10 percent or more, but not more than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where more than 90 percent of the home market sales during the POR were priced below the COP and over an extended period of time, we disregarded all sales of the model from our calculation of FMV and used the constructed value (CV) of those models as described below. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Part Thereof From France, *et al.*; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Orders (in Part) 59 FR 9463 (February 28, 1994).

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which each product was sold below cost to the number of months during the POR in which each model was sold. If a product was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POR. We found certain of Manho's and Chun Kee's home market sales to be below the COP and excluded these sales.

For those models that had sufficient above-cost sales, we calculated FMV based on delivered prices and ex-factory prices to unrelated customers. In calculating FMV, we made adjustments, where appropriate, for rebates. Manho reported domestic pre-sale freight for certain sales. We consider pre-sale freight to be an indirect expense where respondent does not demonstrate that it is a direct expense. Therefore, since all of Manho's U.S. sales are purchase price sales, and 19 CFR 353.56(b)(1) (the commission offset provision) does not apply, we have not adjusted FMV for pre-sale freight. We adjusted for Korean value-added tax in accordance with our decision in Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204 (June 17, 1994). We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV. We also made adjustments, where applicable, for differences in the physical characteristics of merchandise.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments to FMV. We deducted home market credit expenses, inspection fees, domestic post-sale inland freight, warranty and servicing expenses and where appropriate, added U.S postage fees, U.S. letter of credit fees, U.S. bank charges, U.S. credit expenses, U.S. inspection fees, U.S. warranty and servicing expenses, and U.S. product liability insurance except where they were not reported separately from movement expenses. We used CV as FMV for those U.S. sales for which there were no contemporaneous sales of the comparison home market model or insufficient sales at or above the COP. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the COM of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit and U.S. packing. The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or 10 percent of the COM, the statutory minimum for general expenses. For home market profit, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of COM and general expenses. We deducted home market direct selling expenses and added U.S direct selling expenses to CV.

No other adjustments were claimed or allowed.

Best Information Available

In accordance with section 776(c) of the Act, we have preliminarily determined that the use of BIA is appropriate for certain firms.

In determining what to use as BIA, the Department employs a two-tiered methodology. The Department uses one method to determine the BIA margin for those respondents who cooperate in a review, while it uses a different method to determine the BIA margin for those respondents who do not cooperate, or who significantly impede the review.

In the case of uncooperative respondents, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the LTFV investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*, 58 FR 39729 (July 26, 1993)). When a company substantially cooperates with our requests for information, but fails to provide all information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the current review for any firm for the class or kind of merchandise from the same country.

Boo Kook submitted timely responses to our original and supplemental sales questionnaires. However, Boo Kook failed to respond to the COP questionnaire. Furthermore, several days before the scheduled verification, Boo Kook requested that we postpone our verification for 60 to 90 days. In its request for this delay, Boo Kook claimed that it had learned that several employees who have been indicted for embezzlement had destroyed many of the company's financial records, and that the remaining records were in police custody. Boo Kook requested the delay in verification in order to enable it to reconstruct its records for verification. Because postponement of the verification posed a substantial burden to the Department, we could not grant the requested delay, and thus we could not verify Boo Kook's response. Therefore, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate for Boo Kook. Because Boo Kook submitted timely responses to the Department's original and supplemental sales questionnaires, we determine Boo Kook to be a cooperative respondent. Accordingly, a margin of 2.72 percent, which is the highest calculated rate for this review, has been applied to Boo Kook.

We sent Dae Kyung and Myung Jin a questionnaire and received a confirmation of receipt through the United States Postal Service and the U.S. Embassy in Seoul, respectively. We did not receive a response from these two companies. Therefore we have considered these companies to be uncooperative respondents. Accordingly, a margin of 2.72 percent has been applied to Dae Kyung and Myung Jin, which is the highest calculated rate for this review.

We sent Dong-Il Steel Mfg. Co., Ltd. (Dong-Il), a questionnaire. It requested that it be excused from the review process because it no longer manufactures steel wire rope. We sent the company a letter explaining that it is responsible for responding to the questionnaire for any sales or shipments that occurred during the POR. However, the company did not respond to the questionnaire. Therefore, we have considered Dong-Il to be an uncooperative respondent. Accordingly, a margin of 2.72 percent has been applied to Dong-Il, which is the highest calculated rate for this review.

We sent Kwangshin Rope a questionnaire and three weeks after the due date received a response indicating that it was bankrupt. We rejected the response because it was untimely and had not been properly submitted or served. However, we sent Kwangshin Rope a supplemental questionnaire requesting clarification of its bankruptcy status. We did not receive a response. Therefore, we have considered Kwangshin Rope to be an uncooperative respondent. Accordingly, a margin of 2.72 percent has been applied to Kwangshin Rope, which is the highest calculated rate for this review.

We sent Seo Jin a questionnaire and received confirmation of receipt from the U.S. Embassy. One month after the deadline for the questionnaire response, we received a letter requesting an extension from Seo Jin. We denied this request because the request was untimely, was not served as required by our regulations, and was not filed in our Central Records Unit as required by our regulations. Therefore, we have considered Seo Jin to be an uncooperative respondent. Accordingly, a margin of 2.72 percent has been applied to Seo Jin, which is the highest calculated rate for this review.

Preliminary Results of Reviews

As a result of this review, we preliminarily determine that the following margins exist for the period September 30, 1992, through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Atlantic & Pacific	1.51
Boo Kook Corporation	2.72
Chun Kee Steel & Wire Rope Co., Ltd	2.72
Chung Woo Rope Co., Ltd	0.16
Dae Heung Industrial Co	(1)
Dae Kyung Metal	2.72
Dong-Il Metal	1.51
Dong-Il Steel Manufacturing Co., Ltd	2.72
Dong Young	1.51

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Manufacturer/exporter	Margin (percent)
Hanboo Wire Rope, Inc	0.45
Jinyang Wire Rope, Inc	(1)
Korea Sangsa Co	(1)
Koropе Co	(1)
Kumho Rope	0.07
Kwang Shin Ind	1.51
Kwangshin Rope	2.72
Manho Rope & Wire, Ltd	0.03
Myung Jin Co	2.72
Seo Hae Ind	1.51
Seo Jin Rope	2.72
Ssang Yong Steel Wire Co., Ltd	0.09
Sung Jin	0.04
Sungsan Special Steel Processing Inc	(1)
TSK (Korea) Co., Ltd	(1)
Yeonsin Metal	0.17

[1] No shipments or sales subject to this review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of the review (except that if the rate for a firm is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 1.51 percent, the "All Others" rate established in the LTFV investigation (58 FR 11029).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: March 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6682 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 031095B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request to export nonreleasable beached and stranded marine mammals (P583).

SUMMARY: Notice is hereby given that Shimoda Floating Aquarium, Fujita Tourist Enterprises Co., 3–22–31 Shimoda, Shizuoka 415, Japan, has requested authorization to export for public display purposes two nonreleasable beached and stranded California sea lions from a U.S. rehabilitation facility.

ADDRESSES: The request for authorization and related documents are available for review upon written request to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301/713–2289).

Relevant written comments about this request should be submitted to the above address April 17, 1995.

SUPPLEMENTARY INFORMATION: Shimoda Floating Aquarium, Fujita Tourist Enterprises Co., is requesting authorization for the export of two nonreleasable rehabilitated female California sea lions (*Zalophus californianus*) for the purpose of public display under the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*).

The permanent retention or export for public display purposes of a beached or stranded marine mammal taken for the purpose of rehabilitation under section 109(h) of the MMPA must be authorized by NMFS. Under the 1994 amendments to the MMPA, in order to obtain any marine mammal for public display purposes, the recipient must: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*; i.e., from the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (or, for foreign facilities, meet comparable standards); and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee.

In this regard, the required certifications and statements provided by Shimoda Floating Aquarium and the Japanese Fisheries Agency have been submitted to NMFS and APHIS, and have been found appropriate and sufficient to allow consideration of the request.

Dated: March 13, 1995.

Art Jeffers,

Acting Chief, Division of Permits and Documentation, National Marine Fisheries Service.

[FR Doc. 95–6666 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031095C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request to export nonreleasable beached and stranded marine mammals (P582).

SUMMARY: Notice is hereby given that TOBA Aquarium, Toba 3–3–6 Toba City, Mie Prefecture, 517 Japan, has requested authorization to export nonreleasable beached/stranded marine mammals from the United States for the purpose of public display.

ADDRESSES: The request for authorization and related documents are available for review upon written request to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301/713–2289).

Relevant written comments about this request should be submitted to the above address by April 17, 1995.

SUPPLEMENTARY INFORMATION: TOBA Aquarium is requesting authorization for the export of five nonreleasable rehabilitated California sea lions (*Zalophus californianus*) for the purpose of public display under the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*).

The permanent retention or export for public display purposes of a beached or stranded marine mammal taken for the purpose of rehabilitation under section 109(h) of the MMPA must be authorized by NMFS. Under the 1994 amendments to the MMPA, in order to obtain any marine mammal for public display purposes, the recipient must: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*; i.e., from the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (or, for foreign facilities, meets comparable standards); and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee. In this regard, the required certifications and statements provided by TOBA Aquarium and the Japanese Fisheries Agency have been submitted to NMFS and APHIS, and have been found appropriate and sufficient to allow consideration of the request.

Dated: March 13, 1995.

Art Jeffers,

Acting Chief, Division of Permits & Documentation, National Marine Fisheries Service.

[FR Doc. 95–6664 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030995A]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will hold meetings during the week of April 17, 1995, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public, with the exception of an executive session to be held during the lunch hour 1 day during the meeting week to review personnel matters and pending litigation. Each meeting will continue until business is completed. All meetings will be held at the hotel and are scheduled as follows:

Council Advisory Panel and Scientific and Statistical Committee meetings will begin at 1:00 p.m., on April 17.

The Council meeting will begin at 1:00 p.m., on April 19, and is expected to continue through at least April 22, and possibly, April 23. There may be other workgroup and/or committee meetings held during the week. Notice of meetings will be posted and announced at the Council meeting. Time permitting, the Council will address, and may take appropriate action on, the following agenda items:

1. Reports from NMFS on the current status of fisheries and regulations, from the Alaska Department of Fish and Game on domestic fisheries, and from NMFS and the U.S. Coast Guard on enforcement and surveillance activities;
2. Final action on groundfish and crab license alternatives;
3. Initial review of analysis for continuation of inshore/offshore allocations and the pollock community development quota program;
4. Review proposed rule for the moratorium on groundfish and crab fisheries in the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI);
5. Receive a status report on the implementation of the Research Plan observer user fee program and review technical issues associated with the plan;
6. Receive legal opinion from NOAA General Counsel on the State of Alaska's authority over halibut management, and a staff report on progress for a regulatory amendment to control the amount of halibut taken by the charter industry;
7. Under the Sablefish and Halibut Individual Fishery Quota (IFQ) Program, the Council will receive a report from its Implementation Team, receive an issues paper on an early opening of the Aleutian Islands sablefish IFQ fishery, and receive a status report on several other pending amendments to the program;
8. Review information on oil and gas lease sale (MMS Sale 249) in Cook Inlet;
9. Bycatch, waste, and harvest priority: Receive discussion papers on improved retention and utilization; seasonal allocation of rock sole total allowable catch; and harvest priority, including a legal opinion on options being discussed for harvest priority;
10. Review Magnuson Act reauthorization proposals and approved amendments;
11. Review biological assessment and opinion for section 7 consultation for Snake River salmon, and receive a report on listing Steller sea lions as endangered, and a report on the status of seabirds;
12. Scallop management: Receive a status report on emergency closure; review draft fishery management plan, and information on crab bycatch and inclusion of scallop vessels in the observer plan;
13. Receive a report of the working panel for a grid sorting amendment to reduce halibut bycatch/mortality;
14. Initial review of an analysis of Bristol Bay red king crab closure and receive a report from the BSAI Crab and Groundfish Plan Teams on rebuilding crab fisheries;
15. Receive a report from the Salmon Research Foundation and take final action on chinook salmon bycatch amendment;
16. Review a proposed rule for the total weight measurement amendment;
17. Receive report on pollock trawl mesh studies;
18. Consider whether to adjust the GOA Pacific ocean perch (POP) rebuilding plan, and establish the total allowable catch for POP for 1995;
19. Consider apportioning pollock between midwater and bottom trawls.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for

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sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: March 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6663 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030695B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 770 (P66G).

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, Division of Wildlife Conservation, P.O. Box 25526, Juneau, Alaska 99802–5526, has requested a modification to permit no. 770.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 770, issued on March 20, 1992 (57 FR 10649), is requested under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 770 authorizes the permit holder to conduct scientific research on 200 harbor seals (*Phoca vitulina*) and 100 spotted seals (*Phoca largha*) over a 4-year period. The research includes capture, restraint, sampling, flipper tagging, and attaching satellite-linked platform transmitter terminals (PTTs) and/or VHF telemetry. The permit also authorizes the unintentional killing of up to 10 harbor seals and 5 spotted seals and the inadvertent harassment of up to 500 of each species.

The holder requests a further modification to this permit to take harbor seals in the following manner: (1) An additional 100 by capture, restraint, immobilization, sampling, and flipper tagging, and an additional 100 by unintentional harassment while conducting authorized activities; (2) obtain muscle biopsies from up to 50, inject deuterium oxide in up to 50, and inject Evans Blue solution in up to 50; (3) export samples from harbor seals and spotted seals specifically to Canada and The Netherlands and also on a worldwide basis as the need arises.

Dated: March 13, 1995.

Art Jeffers,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6665 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 17, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 28, December 9, 23, 1994, January 6, 13 and 20, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 54169, 63764, 66300, 60 FR 2083, 3196 and 4150) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Kit, Solar Power Installation
5340–01–176–4179

Microfiche of FAA Directives & Advisory Circulars
7690–00–NSH–0078
(Requirements for the Federal Aviation Administration)

Pad, Scouring
7920–00–841–7537
7920–01–162–6064

Holder, Scouring Pad
7920–01–222–7798

Services

Acquisition & Distribution of Batteries
(6135–00–643–1309)
(6135–00–643–1310)
(6135–00–826–4798)
(6135–00–900–2139)

Commissary Shelf Stocking and Custodial, Fort Polk, Louisiana

Janitorial/Custodial, Naval Postgraduate School, Annex, La Mesa Village, Golf Course Areas and Fort Ord Hospital, Monterey, California

Janitorial/Custodial, USARC Moore Hall, Salt Lake City, Utah

Medical Transcription, Department of Veterans Affairs, Dwight D. Eisenhower Medical Center, Leavenworth, Kansas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–6635 Filed 3–16–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 17, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Gaiter, Neck
8440–01–387–8509
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland at its facility in Cumberland, MD

Services

Administrative Services, Department of Veterans Affairs Medical Center, 2300 Ramsay Street, Fayetteville, North Carolina
NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia

Janitorial/Custodial, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi
NPA: Allied Enterprises of Jackson, Jackson, Mississippi

Laundry Service, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, Florida

Recycling Service, Robins Air Force Base, Georgia
NPA: Houston County Association for Exceptional Citizens, Inc., Warner Robins, Georgia

Recycling Service, Naval Surface Warfare Center, Crane, Indiana
NPA: Stone Belt Council for Retarded Citizens, Inc., Bloomington, Indiana

Switchboard Operation, Department of Veterans Affairs Medical Center, 3601 South 6th Avenue, Tucson, Arizona
NPA: Tucson Association for the Blind & Visually Impaired, Tucson, Arizona

Switchboard Operation, Department of Veterans Affairs Medical Center, 2300 Ramsay Street, Fayetteville, North Carolina
NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–6636 Filed 3–16–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on March 30, 1995, beginning at 1:30 p.m. and lasting until 5:00 p.m. FPAC members will be meeting to discuss the international competitiveness of the U.S. derivatives industry and the adequacy of the current regulatory structure to meet the needs of U.S. futures exchanges and derivatives market participants vis-a-vis their foreign competitors.

The FPAC will discuss how possible changes in the regulatory framework could help or hinder U.S. competitiveness, including such issues as whether greater regulatory consolidation would ease regulatory burdens; whether increased regulatory oversight of OTC derivatives markets in the U.S. will create a competitive disadvantage for U.S. firms; and the relative strengths and weaknesses of product-based versus institution-based regulation to meet the long term needs of the U.S. derivatives industry. Representatives of key congressional committees have been invited to make presentations and participate in this discussion.

FPAC members will also discuss the strengths and weaknesses of conducting business in the U.S. as compared to other jurisdictions from the perspective of end-users, futures commission merchants, OTC derivative dealers, and managed funds. FPAC will also hear from exchange representatives regarding the competitive challenges created by the growth of foreign futures exchanges. Finally, FPAC will discuss prospects for the development of global standards for derivatives oversight, in the wake of the collapse of Barings PLC.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by

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financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Kristyn H. Burnett, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Burnett in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on March 13, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6645 Filed 3–16–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission Investigative Hearings Schedule

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission *separate from and independent of DoD).*

ACTION: Notice of regional investigative hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces a series of regional investigative hearings to be held throughout the United States. The purpose of these hearings is for the Commission to receive testimony from communities that host military installations recommended for closure or realignment by the Secretary of Defense. The specific dates and locations follow:

March 29 (Location: Territory of Guam)

Regional hearing for testmony regarding the following installations:
- Fleet and Industrial Supply Center Guam
- Naval Air Station Agana Guam
- Naval Activities Guam
- Ship Repair Facility

March 30 (Location: Grand Forks ND)

Regional hearing for testimony regarding the following installations:
- Grand Forks Air Force Base ND
- Minot Air Force Base ND

March 31 (Location: Great Falls MT)

Regional hearing for testimony regarding the following installations:
- Fort Missoula MT
- Malmstrom Air Force Base MT

April 4 (Location: Birmingham AL)

Regional hearing for testimony regarding the following installations:
- Fort McClellan AL
- Reserve Center Huntsville AL
- Big Coppet Key FL
- Eglin Air Force Base FL
- Homestead Air Force Base FL
- MacDill Air Force Base FL
- Naval Air Station Cecil Field FL
- Naval Air Station Key West FL
- Naval Aviation Depot Pensacola FL
- Naval Research Lab & Naval Underwater Sound Reference Detachment FL
- Naval Training Center Orlando FL
- Nuclear Power Propulsion Training Center Orlando FL
- Defense Contract Management District South Marietta GA
- Robins Air Force Base GA
- Naval Biodynamics Lab New Orleans LA
- Reserve Center New Orleans (Region 10) LA
- Naval Technical Training Center Meridian MS
- Naval Air Station Meridian MS
- Fort Buchanan Puerto Rico
- Fleet and Industrial Supply Center Charleston SC
- Reserve Center Charlestown (Region 7) SC
- Defense Distribution Depot Memphis TN

April 12 (Location: Chicago IL)

Regional hearing for testimony regarding the following installations:
- Charles Melvin Price Support Center IL
- Savanna Army Depot Activity IL
- Naval Air Warfare Center Aircraft Division Indianapolis IN
- Reserve Center Olathe KS
- Naval Surface Warfare Center Crane Division Detachment Louisville KY
- Detroit Arsenal MI
- Naval Air Facility Detroit MI
- Reserve Center Cadillac MI
- Selfridge Army Garrison MI
- Aviation-Troop Command (ATCOM) MO
- Defense Contract Management Command International OH
- Defense Distribution Depot Columbus OH
- Springfield-Beckley Municipal Airport Air Guard Station OH
- Reserve Center Sheboygan WI

April 19 (Location: Dallas TX)

Regional hearing for testimony regarding the following installations:
- Fort Chaffee AR
- Tinker Air Force Base OK
- Bergstrom Air Reserve Base TX
- Brooks Air Force Base TX
- Defense Distribution Depot Red River TX
- Electronic Warfare Evaluation Simulator Activity Fort Worth TX
- Kelly Air Force Base TX
- Naval Air Station Corpus Christi TX
- Red River Army Depot TX
- Reese Air Force Base TX
- Reserve Center Laredo TX

April 20 (Location: Albuquerque NM)

Regional hearing for testimony regarding the following instailations:
- Williams Air Force Base AZ
- Fitzsimons Army Medical Center CO
- Lowry Air Force Base CO
- Kirtland Air Force Base NM
- Defense Distribution Depot Ogden UT
- Dugway Proving Ground UT
- Hill Air Force Base UT

April 24 (Location: Delta Junction AK)

Regional hearing for testimony regarding the following installations:
- Fort Greely AK
- Naval Air Facility Adak AK

April 28–29 (Location: San Francisco CA)

Regional hearing for testimony regarding the following installations:
- Branch U.S. Disciplinary Barracks CA
- Camp Bonneville CA
- Defense Contract Management District West El Segundo CA
- East Fort Baker CA
- Fort Hunter Liggett CA
- Marine Corps Air Station El Toro CA
- Marine Corps Air Station Tustin CA
- McClellan Air Force Base CA
- Moffett Federal Airfield Air Guard Station CA
- Naval Command Control and Ocean Surveillance Center San Diego CA
- Naval Health Research Center San Diego CA
- Naval Personnel Research & Development Center San Diego CA
- Naval Recruiting District San Diego CA
- Naval Ship Yard Long Beach CA
- Naval Training Center San Diego CA
- North Highlands Air Guard Station CA
- Onizuka Air Station CA
- Ontario International Airport Air Guard Station CA
- Reserve Center Pomona CA
- Reserve Center Santa Ana Irvine CA
- Reserve Center Stockton CA
- Rio Vista Army Reserve Center CA
- Sierra Army Depot CA
- Supervisor of Shipbuilding Conversion and Repair Long Beach CA
- Naval Air Station Barbers Point HI
- Naval Undersea Warfare Center Keyport WA

May 4 (Location: Baltimore MD)

Regional hearing for testimony regarding the following installations:
- Naval Recruiting Command DC
- Naval Security Group Command Detachment Potomac DC
- Army Bio-Medical Research Lab, Fort Detrick MD
- Concepts Analysis Agency MD
- Fort Meade MD
- Fort Ritchie MD
- Investigations Control and Automation Directorate Fort Holabird MD
- Naval Medical Research Institute Bethesda MD
- Naval Surface Warfare Center Carderock Division Detachment Annapolis MD
- Naval Surface Warfare Center Dahlgren Division Detachment White Oak MD
- Publications Distribution Center Baltimore MD
- Recreation Center #2 NC
- Charles E. Kelly Support Center PA
- Defense Distribution Depot Letterkenny PA
- Defense Industrial Supply Center Philadelphia PA
- Fort Indiantown Gap PA
- Greater Pittsburgh International Airport Air Reserve Station PA
- Naval Command Control and Ocean Surveillance Center Warminster PA
- Naval Air Technical Services Facility Philadelphia PA
- Letterkenny Army Depot PA
- Naval Air Warfare Center Aircraft Div Open Water Test Facility Oreland PA
- Naval Shipyard Norfolk Detachment Philadelphia PA
- Fort Lee VA
- Fort Pickett VA
- Information Systems Software Command (ISSC) VA
- Naval Command Control and Ocean Surveillance Center In-Service Engineering East Coast Detachment Norfolk VA
- Naval Information Systems Management Center Arlington, VA
- Naval Management Systems Support Office Chesapeake VA
- Naval Sea Systems Command Arlington VA
- Office of Naval Research Arlington VA
- Space and Naval Warfare Systems Command Arlington VA
- Valley Grove Area Maintenance Support Activity WV

May 5 (Location: New York City)

Regional hearing for testimony regarding the following installations:
- Naval Undersea Warfare Center Newport Division New London CT
- Hingham Cohasset MA
- Naval Air Station South Weymouth MA
- Bayonne Military Ocean Terminal NJ
- Bellmore Logistics Activity NJ
- Camp Kilmer NJ
- Camp Pedricktown NJ
- Caven Point Reserve Center NJ
- Fort Dix NJ
- Naval Air Warfare Center Aircraft Division Lakehurst NJ
- Fort Hamilton NY
- Fort Totten NY
- Griffiss Air Force Base NY
- Real-Time Digitally Controlled Analyzer Processor Activity Buffalo NY
- Reserve Center Staten Island NY
- Rome Laboratory NY
- Roslyn Air Guard Station NY
- Seneca Army Depot NY
- Stratford Army Engine Plant CT
- Sudbury Training Annex MA

Each hearing will begin at 9:00 a.m. and will be open to the public. The building and/or room number are noted in parentheses following the date of each hearing. However, hearing locations, dates, and times are subject to change based upon availability of facilities.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504.

SUPPLEMENTARY INFORMATION: The Commission will publish changes to the above schedule in the **Federal Register**. Please call the Commission point of contact to confirm dates, times, and locations prior to each event. Individuals needing special assistance should contact the Commission in advance of each event to facilitate their requirements.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6559 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces.

The Commission is charged with providing an independent review of the roles and missions of the armed services to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. The purpose of this meeting is to discuss some of the specific roles and missions issues that are being developed for consideration by the Commission. Material to be discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

DATES: March 20, 1995.

SUPPLEMENTARY INFORMATION: Extraordinary circumstances compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: March 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6622 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile

ACTION: Notice of meeting.

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SUMMARY: The first meeting of this committee will be held on March 30, 1995, at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA. The meeting is open to the public. This committee was established under Public Law 102–484. The agenda for the meeting is as follows:

8:30 a.m.: Briefings to the committee members on National Defense Stockpile issues
11:30 a.m.: Luncheon
1:00 p.m.: Member's discussion of scope of work and committee structure
4:00 p.m.: Adjourn.

For additional information contact Mr. Tom Meeker at 703–607–3203.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6560 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Defense Acquisition Reform, Phase III

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform, Phase III will meet in open session on March 29 and May 16, 1995 at the Pentagon, Room 3E869, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Jay Dutcher at (703) 697–5384.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6556 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on March 27, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issue dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Aapp. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly this meeting will be closed to the public.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6557 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on C–17 Review, Phase II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on C–17 Review, Phase II will meet in closed session on March 27, 1995 at Wright-Patterson Air Force Base, Ohio.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the current status of the C–17 program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6558 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2535–003—GA]

South Carolina Electric & Gas Co.; Notice of Availability of Draft Environmental Assessment

March 13, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Stevens Creek Hydroelectric Project, located on the Savannah River near Augusta, Georgia; in Columbia County, Georgia; and Edgefield and McCormick Counties, South Carolina; and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's office's at 941 North Capitol Street N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426. Please affix "Stevens Creek Hydroelectric Project No. 2535" to all comments. For further information, please contact John Blair at (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6586 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2306–016]

Citizens Utilities Co.; Notice of Amendment To Application

March 13, 1995.

On February 9, 1995, Citizens Utilities (Applicant) filed an application to amend its application for new license for the Clyde River Project, FERC No. 2306–016.

The Applicant is proposing to (1) remove the Newport No. 11 dam and buttress wall, (2) permanently stabilize the Newport No. 11 right abutment embankment, and (3) repower the No. 11 powerhouse through construction of an eight-foot-diameter pipe and draft tube extension from Project No. 2306's upstream Newport Nos. 1, 2, 3, powerhouse.

The project as originally proposed, and the project with dam No. 11 removed, have been addressed in the Draft Environmental Impact Statement for the Clyde River Project issued February 17, 1995. However, we were not aware when that document was issued that the Applicant was preparing to amend its application. Thus, we are providing an opportunity for additional interventions and for entities to reconsider their terms, conditions, prescriptions and comments submitted previously with respect to this application. Comments and/or petitions for intervention will be due 30 days from the date of issuance of this notice with response comments due 45 days from the date of issuance.

Copies of the application and amendment are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Citizens Utilities Company, Citizens Road, Newport, VT 05855, or by calling (802) 334–6539. The applicant contact for this project is Mr. Frank W. Thomas.

Contact Ms. Kathleen Sherman at (202) 219–2834 for questions relating to this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6585 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA94–1–23–005 and TA95–1–23–001]

Eastern Shore Natural Gas Co.; Notice of Request for Conference on Proposed Settlement

March 13, 1995.

Take notice that on March 1, 1995, Eastern Shore Natural Gas Company (Eastern Shore), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (1994), filed an offer of settlement in the captioned proceedings.

As part of the offer, Eastern Shore requests that the Commission convene a settlement conference to consider the offer of settlement and postpone the due dates for comments and reply comments until after the settlement conference.

Eastern Shore states that the offer of settlement has three interdependent parts. Article I provides that Eastern Shore will change its PGA methodology from unit-of-purchase to unit-of-sales and will allocate purchased gas demand costs on the basis of contract demand entitlements. If that change is approved, Article II provides that Eastern Shore will reduce its purchased gas demand base tariff rates immediately upon the effective date of the Commission's approval. Eastern Shore would not be required to make any refunds pursuant to the May 19, 1994 order in Docket No. TA94–1–23–000, *et al.*, and would withdraw its request for rehearing of that order. Article III provides that Eastern Shore will apply to the Commission for a blanket certificate authorizing open-access transportation on its system, pursuant to 18 CFR Part 284, Subpart G.

Eastern Shore states that copies of the proposed settlement and request for settlement conference have been served on all participants on the official service lists for the captioned proceedings and on interested state commissions who were served copies of the initial rate filings in these proceedings.

Any person desiring to be heard at the conference or to comment upon the procedures suggested in the request for settlement conference to consider the offer of settlement should file a motion to intervene or comment with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. All such motions or comments should be filed on or before March 21, 1995. Existing parties need not file a motion to intervene, but any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6587 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–250–000]

NorAm Gas Transmission Co.; Notice of Application

March 13, 1995.

Take notice that on March 8, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–250–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon the Collinson Gas Storage Facility (Collinson), located in Cowley County, Kansas, and the reclassification of the field lines and surface equipment from gas storage to gas supply facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT states that Collinson consists of 720 acres and appurtenant equipment used to store natural gas at a depth of approximately 1,450 feet. NGT further states that at Collinson there are two field lines consisting of 1,654 feet of six-inch pipe and 923 feet of four-inch pipe, that connect two injection/withdrawal wells that were drilled in 1945. NGT indicates that it acquired Collinson from Consolidated Gas Utilities Corporation (Consolidated) by merger effective August 31, 1960, and received certificate authorization in Docket No. CP60–79. NGT further indicates that in 1991, it upgraded its Line 6 which enabled NGT to provide service to existing customers without the need to operate Collinson. NGT avers that on September 30, 1994, it abandoned Line 6 as part of the Kansas facilities sold to Utilcorp United, Inc. (Utilcorp), as approved by the Commission on September 28, 1994, in Docket Nos. CP93–434–000 and CP93–434–001. NGT estimates the volume of gas presently in Collinson is 847 MMcf non-current "native" or "cushion" gas.

NGT states that upon receipt of the appropriate abandonment authorization, it proposes to install a temporary 65 horsepower skid-mounted compressor at the Collinson yard to withdraw the non-current gas at an estimated initial rate of 2,000 Mcf per day until the deliverability declines to an estimated economic limit of 50 Mcf per day. NGT indicates it will install this compressor as an eligible facility pursuant to § 157.208(a) of the Commission's regulations. NGT estimates that it can recover 300 MMcf to 750 MMcf of non-current gas over a period of one to three years, at an estimated annual operating cost of $36,000. NGT further indicates that gas wells can unpredictably produce for prolonged periods at rates less than 100 Mcf per day. NGT further states that although the economic limit is estimated to be reached within three years, NGT plans to produce the wells until the economic limit of the wells is reached.

NGT indicates it will use the gas it recovers from Collinson as part of its system management gas and accounted at fair market basis. NGT states that at

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the end of this withdrawal period, it proposes to abandon the two wells at an estimated cost of $37,000. NGT estimates the cost of removing all the field lines and appurtenant surface equipment at $95,685.

Any person desiring to be heard or to make protest with reference to said application should on or before April 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is file within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6584 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–4721–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 13, 1995 through February 17, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1995 (59 FR 16807).

Draft EISs

ERP No. D-COE-C39009–NY Rating EC2, Atlantic Coast of Long Island Jones Inlet to East Rockaway Inlet Storm Damage Reduction Project, Construction, Long Beach Island, Nassau County, NY.

Summary: EPA expressed environmental concerns about the potential cumulative impacts associated with this and other erosion/storm damage protection projects on Long Island and requested that additional information be presented in the final EIS.

ERP No. D-COE-K32047–CA Rating EC2, Humboldt Harbor and Bay (Deepening) Channels, Feasibility Study for Navigation Improvements, Humboldt County, CA.

SUMMARY: EPA expressed environmental concerns that the draft EIS did not analyze the no action alternative and that more information concerning both management of the unsuitable dredged material and monitoring of the disposal site was needed.

ERP No. D-FHW-B40080–MA Rating EC2, US 6 Transportation Improvements Project, between the Towns of Dennis and Orleans on Cape Cod, Funding, Coast Guard Bridge Permit and COE Section 10 and 404 Permits, Barnstable County, MA.

Summary: EPA expressed environmental concerns about the expansion of Cape Cod's Route 6 from two to four lanes between the Towns of Dennis and Orleans as proposed in the draft EIS. The project would cause direct adverse effects on the water supplies and wetlands of several towns as well as indirect environmental effects through induced growth and traffic on the Outer Cape. In keeping with the goal of the Cape Cod Commission's long range transportation plan for Cape Cod—to reduce reliance on the automobile and encourage alternative transportation modes—EPA recommended that the FHWA aggressively pursue multimodal solutions and make improvements to the existing roadway.

Final EISs

ERP No. F-FHW-C40125–NY, Northern State Parkway Widening Project, Construction from Meadowbrook State Parkway Interchange to Wantagh State Parkway Interchange, Funding, Town of North Hempstead, Nassau County, NY.

Summary: EPA believed that the proposed project will not result in significant adverse environmental impacts; therefore, EPA had no objections to its implementation.

ERP No. F-FHW-E40744–NC, US 421 Highway Improvements, East of Secondary Road 2433 to West of I–77, Funding and Possible COE Section 404 Permit, Wilkes and Yadkin Cos., NC.

Summary: EPA expressed environmental concerns that the selected alignment was not the most environmentally sound option to meet the project's objectives.

Dated: March 14, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–6677 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4721–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed March 06, 1995 Through March 10, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950074, FINAL EIS, BLM, MT, Big Dry Land and Resource Management Plan, Implementation, Miles City District, several counties, MT, Due: April 17, 1995, Contact: James Beavers (406) 255–2918.

EIS No. 950075, DRAFT SUPPLEMENT, AFS, AK, Bohemia Mountain Timber Sale, Updated Information concerning Resolution of Three Appeal Issues Regarding Harvesting Timber, Tongass National Forest, Stikine Area, AK, Due: May 01, 1995, Contact: David E. Helmick (907) 772–3841.

EIS No. 950076, FINAL EIS, FRC, MN, St. Louis River Basin Hydroelectric Projects, Issuing New Licenses for FERC Projects, Cloquet NO. 2363 and St. Louis River No. 2360, St. Louis and Carlton Counties, MN, Due: April 17, 1995, Contact: John S. Blair (202) 219–2845.

EIS No. 950077, DRAFT EIS, FHW, NC, Wilmington Bypass Transportation Improvement Program, Construction from I–40 to US 421, Funding, NPDES, US Coast Guard Permit, COE Section 10 and 404 Permit, New Hanover County, NC, Due: May 01, 1995, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950078, FINAL EIS, FHW, WA, Stillaguamish River Bridges WA–9/132 (Haller) and WA–530/120 (Lincoln) Bridge Replacement Project, Improvements, Funding, COE Section 404 Permit and Right-of-Way Acquisition, City of Arlington, Snohomish County, WA, Due: April 17, 1995, Contact: Dale Morimoto (206) 440–4548.

EIS No. 950079, DRAFT EIS, FHW, MT, US 93 Highway Transportation Project, Improvements between Evaro and Polson, Funding and COE Section 404 Permit, Missoula and Lake Counties, MT, Due: May 08, 1995, Contact: Joe Marshik (406) 444–6394.

EIS No. 950080, DRAFT SUPPLEMENT, DOE, WA, ID, NM, NV, MT, UT, OR, CA, AZ, WY, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and Wildlife Activities, Updated and New Information, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia, Due: May 01, 1995, Contact: Charles Alton (503) 230–3403.

EIS No. 950081, DRAFT EIS DOE, TX, ID, NV, TN, SC, Programmatic EIS—Tritium Supply and Recycling Facilities Siting, Construction and Operation, Implementation, Idaho National Engineering Laboratory, ID; Nevada Test Site, NV; Oak Ridge Reservation, TN; Pantex Plant, TX or Savannah River Site, SC, Due: May 15, 1995, Contact: Alfred W. Feldt (202) 586–5449.

EIS No. 950082, DRAFT EIS, AFS, PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR, Due: June 16, 1995, Contact: Pablo Cruz (809) 766–5335.

EIS No. 950083, FINAL EIS, AFS, ID, Boise River Wildfire Recovery Project, Implementation, North Fork Boise River and Mores Creek Drainages, Boise National Forest, Idaho City and Mountain Home Ranger Districts, Boise and Elmore Counties, ID, Due: May 01, 1995, Contact: Terry Padilla (208) 364–4330.

EIS No. 950084, FINAL EIS, NPS, NY, Hamilton Grange National Memorial, General Management Plan, Implementation, New York County, NY, Due: May 01, 1995, Contact: Georgette Nelms (212) 264–4456.

EIS No. 950085, DRAFT EIS, AFS, ID, Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID, Due: May 01, 1995, Contact: Steve Patterson (208) 364–7400.

EIS No. 950086, DRAFT EIS, FHW, WA, WA–3/WA–304 Bremerton Ferry Terminal to the vicinity of Gorst Highway Improvement Project, Implementation, Funding, Right-of-Way Grant, NPDES Permit and COE Section 404 Permit, City of Bremerton, Kitsap County, WA, Due: May 08, 1995, Contact: Jim Leonard (206) 753–2120.

EIS No. 950087, DRAFT SUPPLEMENT, NOA, Western 1995 Atlantic Bluefin Tuna Fishery, Regulation Amendment, Updated Information, Implementation, Due: May 01, 1995, Contact: Rolland Schmitten (301) 713–2239.

EIS No. 950088, DRAFT EIS, DOE, WA, Columbia Wind Farm #1 Project, Construction and Operation of a 25 Megawatt (MW) Wind Power Project in the Columbia Hills Area, Conditional-Use-Permit, NPDES Permit and COE Section 404 Permit, Klickitat County, WA, Due: May 01, 1995, Contact: Kathy Fisher (509) 773–5703.

EIS No. 950089, DRAFT EIS, DOE, SC, Savannah River Site Interim Management of Nuclear Materials, Implementation, Aiken and Barnwell County, SC, Due: May 01, 1995, Contact: Arthur B. Gould (800) 242–8269.

EIS No. 950090, FINAL EIS, EPA, ID, Adoption—Stone Cabin Open Pit Gold and Silver Mine Development and Operation, National Pollutant Discharge Elimination Permit, Issuance, Florida Mountain, Boise District, Owyhee County, ID, Contact: Sally Brough (206) 553–1295.

The US Environmental Protection Agency has adopted the US Department of the Interior, Bureau of Land Management's final EIS filed on 8–12–94. EPA was a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary Under Section 1506.3(c) of the Council on Environmental Quality Regulations.

Dated: March 14, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–6678 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

National City Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

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1. National City Corporation, Cleveland, Ohio; to merge with United Bancorp of Kentucky, Inc., Lexington, Kentucky, and thereby indirectly acquire The First State Bank and Trust Company, Manchester, Kentucky; The London Bank & Trust Company, London, Kentucky; Bank of Danville and Trust Company, Danville, Kentucky; The First National Bank and Trust Company, Nicholasville, Kentucky; Richmond Bank and Trust Company, Richmond, Kentucky, and First National Bank & Trust Company of Woodford County, Versailles, Kentucky.

In connection with this application, Applicant also has applied to acquire American Fidelity Bank, FSB, Harian, Kentucky, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Bancorp, Gainesville, Georgia; to acquire FF Bancorp, Inc., New Smyrna Beach, Florida, and Key Bancshares, Inc., Tampa, Florida, and thereby indirectly acquire The Key Bank of Florida, Tampa, Florida.

In connection with this application, Applicant also has applied to acquire First Federal Savings Bank of New Smyrna, New Smyrna Beach, Florida, and First Federal Savings Bank of Citrus County, Inverness, Florida, and thereby engage in operating savings associations, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Florida.

Board of Governors of the Federal Reserve System, March 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6619 Filed 3–16–95; 8:45 am]

BILLING CODE 6210–01–F

Ohio Heritage Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 10, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Ohio Heritage Bancorp, Inc., Coshocton, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Ohio Heritage Bank, Coshocton, Ohio, a *de novo* bank in formation.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. New Central Illinois Financial Co., Inc., Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of BankIllinois Financial Co., Champaign, Illinois, and thereby indirectly acquire BankIllinois, Champaign, Illinois; and Central Illinois Financial Corporation, Champaign, Illinois, and thereby indirectly acquire The Champaign National Bank, Champaign, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Pleasant Hope Bancshares, Inc., Pleasant Hope, Missouri; to acquire 8.57 percent of the voting shares of Premier Bancshares, Inc., Jefferson City, Missouri, and thereby indirectly acquire Premier Bank, Jefferson City, Missouri.

In connection with this application, Premier Bancshares, Inc., Jefferson City, Missouri; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Jefferson City, Missouri.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security Richland Bancorporation, Miles City, Montana; to acquire 100 percent of the voting shares of FirstWest Bank, Billings, Montana.

Board of Governors of the Federal Reserve System, March 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6620 Filed 3–16–95; 8:45 am]

BILLING CODE 6210–01–F

Pointe Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pointe Financial Corporation, Boca Raton, Florida; to engage *de novo* through its subsidiary Pointe Financial Services, Inc., Boca Raton, Florida, in making and servicing loans, and performing mortgage processing functions for third parties, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Union Bancorporation, Defiance, Iowa; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to engage *de novo* through its subsidiary St. Louis Business Development Fund, St. Louis, Missouri, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6621 Filed 3–16–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and date: Full Committee Meeting, May 2–3, 1995, 9:00 a.m.–5:00 p.m.

Place: Georgetown Child Development Center, 3307 "M" Street, NW.—Suite 401, Washington, DC 20007.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: The Committee plans to discuss critical issues concerning Federal policy, Federal research and demonstration, State policy collaboration, minority and cultural diversity and mission and public awareness.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for citizens with mental retardation, and reviewing legislative proposals that affect persons with mental retardation.

Contact person for more information: Gary H. Blumenthal, Wilbur J. Cohen Building, Room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001, (202) 619–0634.

Dated: March 10, 1995.

Gary H. Blumenthal,

Executive Director, PCMR.

[FR Doc. 95–6546 Filed 3–16–95; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of April 1995:

Name: Health Care Policy and Research Special Emphasis Panel

Date and time: April 13, 1995, 9:30 a.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, 6th Floor Conference Room, Rockville, MD 20852.

Open session April 13, 9:30 a.m. to 10 a.m.

Closed for remainder of meeting.

Purpose: This panel is charged with conducting the initial review of grant applications on research related to care for persons with acquired immune deficiency syndrome (AIDS) and other related human immunodeficiency virus (HIV) diseases.

Agenda: The open session of the meeting on April 13 from 9:30 a.m. to 10 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing grant applications dealing with (1) cost and financing of HIV/AIDS treatments and services; (2) organization and delivery of services; (3) characteristics and interactions of providers and patients; (4) comorbidity; and (5) special populations. In accordance with the Federal Advisory Committee Act, 5 U.S.C., Appendix 2 and 5 U.C.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 602, Rockville, Maryland 20852, Telephone (301) 594–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 13, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–6613 Filed 3–16–95; 8:45 am]

BILLING CODE 4160–90–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS. The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New Collection; *Title of Information Collection:* Medicaid Drug Rebate—Remittance Advice Report;
Form No.: HCFA–304;
Use: The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with HCFA for States to receive funding for drugs dispensed to Medicaid recipients. The regulations at 42 CFR 447.534 and 447.536 require manufacturers to report specific drug rebate information to States when payment is made;
Respondents: Business or other for profit;
Number of Respondents: 482;
Total Annual Responses: 1,928;
Total Annual Hours Requested: 116,896.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Termination of Enrollment Regulation—BPD–306;
Form No.: HCFA–141;
Use: The termination of enrollment requirement allows States, through contracts with Federally Qualified Health Maintenance Organizations (HMO) and certain other managed care contracts to restrict disenrollment from an HMO up to a 6-month period. However, Medicaid beneficiaries are allowed to disenroll during the period for good cause;
Respondents: Business or other for profit, State or local government;
Number of Respondents: 60,214;
Total Annual Responses: 1;
Total Annual Hours Requested: 15,054.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirement at

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42 CFR 447.53(d) Imposition of Cost Sharing Charges Under Medicaid (BERC–509);

Form No.: HCFA–R53;

Use: The information collection requirement at 42 CFR 447.53(d) requires the States to include in their Medicaid State plan their provisions for imposition of cost sharing on the medically and categorically needy;

Respondents: State or local government;

Number of Respondents: 54;

Total Annual Responses: 54;

Total Annual Hours Requested: 2,700.

4. *Type of Request:* Reinstatement;

Title of Information Collection: Medicare Current Beneficiary Survey—Community Component Supplement PR: "Sources Of Information About Medicare";

Form No.: HCFA–P–0015A;

Use: This supplement is intended to find out from a systematic sample of Medicare beneficiaries, how they obtain information about program rules and procedures when they need it. It also elicits their opinion of the adequacy of the information they found, and alternative means by which HCFA might provide this information;

Respondents: Individuals and households;

Number of Respondents: 12,000;

Total Annual Responses: 12,000;

Total Annual Hours Requested: 2,000.

5. *Type of Request:* Reinstatement;

Title of Information Collection: Application for Hospital Insurance;

Form No.: HCFA–18;

Use: This form is used to establish entitlement to Hospital Insurance and Supplementary Medical Insurance for beneficiaries covered under only title XVIII of the Social Security Act;

Respondents: Business or other for profit, Federal Government, State or local government, farms, individuals and households;

Number of Respondents: 50,000;

Total Annual Responses: 50,000;

Total Annual Hours Requested: 12,500.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 7, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–6553 Filed 3–16–95; 8:45 am]

BILLING CODE 4120–03–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 6 and 7, 1995, 9 a.m., Holiday Inn—Gaithersburg, Whetston and Walker Rooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, April 6, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; open public hearing, April 7, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m., Cornelia B. Rooks, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Hotline, 1–800–741–8138, (301–443–0572 in the Washington, DC area), Clinical Chemistry and Clinical Toxicology Devices Panel, code 12514.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 30, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 6, 1995, the committee will discuss a premarket approval application for a fetal fibronectin enzyme immunoassay which is to be used in symptomatic women as an aid in the prediction of impending preterm delivery. On April 7, 1995, the committee will discuss a group of 510(k) applications pertaining to sweat patch collection of drugs of abuse and their measurement. The collection devices are intended for use by professionals in drug treatment programs.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. April 10, 1995, 8 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Pulmonary-Allergy Drugs Advisory Committee, code 12545.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 24, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application (NDA) 20–471, Abbott Laboratories, Leutrol (zileuton) as an anti-asthmatic drug.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. April 10, 11, and 12, 1995, 9 a.m., Parklawn Bldg., conference room G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 10, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, April 11, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, April 12, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before April 5, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will continue with its discussion begun during the December 5 and 7, 1994, meeting on developing general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products. The subcommittee will also begin discussion on the safety and effectiveness of the ingredients stannous fluoride, zinc citrate, peppermint oil, and sage oil for antiplaque and antiplaque-related uses.

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 20, 1995, 8 a.m., Corporate Bldg., Main Conference Room, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations are available at the Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; Harry R. Sauberman, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ear, Nose, and Throat Devices Panel, code 12522. If anyone who is planning to attend the meeting will need any special assistance as defined under the Americans with Disabilities Act, please notify the contact person above.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 10, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a supplement to a premarket approval application that seeks to expand the indication for use for an approved cochlear implant device to include postlinguistically hearing-impaired adults who demonstrate severe-to-profound hearing loss and who obtain some minimal benefit from conventional amplification. The discussion will include the review of clinical data obtained with the use of various speech processors.

National Mammography Quality Assurance Advisory Committee

Date, time, and place. April 24, 1995, 10 a.m., and April 25 and 26, 1995, 9 a.m., Dupont Plaza Hotel, 1500 New Hampshire Ave. NW., Washington, DC. A limited number of overnight accommodations have been reserved at the Dupont Plaza Hotel. Attendees requiring overnight accommodations may contact the hotel at 202–483–6000 and reference the FDA Committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open committee discussion, April 24, 1995, 10 a.m. to 3 p.m.; open subcommittee discussions, 3 p.m. to 5 p.m.; open subcommittee discussions, April 25, 1995, 9 a.m. to 5 p.m.; open

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public hearing, April 26, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 18, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 24 and 26, 1995, the committee will discuss: (1) The development of three working groups (i.e., subcommittees) to consider access to mammography services, physicists availability, and cost benefit of compliance; (2) the Congressional reports and determinations mandated in the Mammography Quality Standards Act (the MQSA); (3) the work of the subcommittees; and (4) a briefing on inspections to date.

Open subcommittee discussions. On April 24 and 25, 1995, the three subcommittees will meet concurrently. The subcommittees will discuss preliminary information which is necessary to make the determinations and subsequently prepare the reports as mandated in the MQSA. Upon completion, the subcommittee reports will be reviewed by the committee prior to submission to the Secretary and Congress.

Subcommittees of the National Task Force on AIDS Drug Development

Date, time, and place. April 25, 1995, 8:30 a.m.; April 26, 1995, 10 a.m.; Salons 1, 2, and 3, Congressional Ballroom; Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open subcommittee discussion, April 25, 1995, 8:30 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open subcommittee discussions, April 26, 1995, 10 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; Jean H. McKay or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Task Force on AIDS Drug Development, code 12602.

General function of the task force. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The four subcommittees of the task force will meet to discuss barriers related to the identification of specific drug targets and solutions to these barriers in preparation for the next full meeting of the task force. Members of the subcommittees, Federal government, and the public will participate in these discussions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before April 19, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 13, 1995.

Lireka P. Joseph,

Acting Deputy Commissioner for Operations.

[FR Doc. 95–6692 Filed 3–16–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Institute for April and May 1995.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice and for the review of concepts being considered for funding. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide a summary of the meetings and the roster of committee members, upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the Executive Secretary/Scientific Review Administrator listed for that particular meeting.

Committee name: Cancer Centers and Research Programs Review Committee—Subcommittee D.

Contact person: Dr. John W. Abrell, Scientific Review Administrator, National Cancer Institute, Bldg. EPN, Room 635B, 6130 Executive Blvd MSC 7405, Bethesda, MD 20892–7405, Telephone: (301) 496–9767.

Date of meeting: April 11–12, 1995.

Place of meeting: The Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Closed: 8 am to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee name: Biometry and Epidemiology Contract Review Committee.

Contact person: Dr. Harvey P. Stein, Scientific Review Administrator, National Cancer Institute, Bldg. EPN, Room 601C, 6130 Executive Blvd MSC 7405, Bethesda, MD 20892–7405, Telephone: (301) 496–7030.

Date of meeting: April 12–13, 1995.

Place of meeting: Conference Room G, 6130 Executive Blvd., Rockville, MD 20852.

Closed: 9 am to adjournment.

Agenda: Review, discussion and evaluation of individual contract proposals.

Committee name: Acrylonitrile Study Advisory Panel.

Contact person: Dr. Aaron Blair, Executive Secretary, National Cancer Institute, 6130 Executive Blvd., Room 418, Rockville, MD 20852, Telephone: (301) 496–9093.

Date of meeting: May 3, 1995.

Place of meeting: Conference Rooms 1 & 2, 6100 Executive Blvd., Rockville, MD 20852.

Open: 10 am to adjournment.

Agenda: Review and discussion of study progress.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6570 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Council on April 6, 1995. The meeting will take place from 1 p.m. to 4 p.m. in Conference Room 9, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which is open to the public, will be held to discuss changes in the scientific field of hearing and hearing impairment since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the hearing and hearing impairment section of the Research Plan. Attendance by the public will be limited to the space available.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Mr. Baldwin Wong, Program Analyst, National Institute on Deafness and Other Communication Disorders, Building 31, Room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Wong in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6589 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Perio. Complications of Diabetes.

Dates: April 13, 1995.

Time: 9:00 a.m.

Place: Natcher Building, NIH, Conf. Center A.

Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Sensor for High Resolution (Teleconference).

Dates: April 17, 1995.

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Time: 11:00 a.m..
Place: Natcher Building, NIH, Conf. Rm. 4AS–10.
Contact Person: Dr. H. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.
Name of SEP: National Institute of Dental Research Special Emphasis Panel–R03, Special Small Grants.
Dates: April 18, 1995.
Time: 11:00 a.m.
Place: Natcher Building, NIH, Conf. Rm. 4AS–10.
Contact Person: Dr. H. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.
The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.
(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: March 13, 1995.

Margery G. Grubb,
Senior Committee Management Specialist, NIH.

[FR Doc. 95–6567 Filed 3–16–95; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 26–28, 1995, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.
The meeting will be open to the public on April 26 from 7 p.m. to 7:30 p.m. for discussions of policies of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.
In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 26 from 7:30 p.m. to 10 p.m.; April 27 from 8:30 a.m. to 6 p.m. and on April 28 from 9 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigations, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
A summary of the meeting and roster of members will be provided, upon request, by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A07, Bethesda, Maryland 20892.
For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, prior to the meeting.
(Catalog of Federal Domestic Assistance Program No 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: March 13, 1995.

Margery G. Grubb,
Senior Committee Management Specialist, NIH.

[FR Doc. 95–6565 Filed 3–16–95; 8:45 am]
BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on April 20–21, 1995.
The meeting of April 21 will be open to the public from 9 a.m. to 3 p.m. in the Board Room of the Library, 8600 Rockville Pike, Bethesda, Maryland, for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available.
Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.
In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 20 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on April 21, from 3 p.m. to approximately 5 p.m., in the Board Room of the National Library of Medicine, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.
The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: March 13, 1995.

Margery G. Grubb,
Senior Committee Management Specialist, NIH.

[FR Doc. 95–6568 Filed 3–16–95; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: April 3, 1995.
Time: 8:30 a.m.
Place: Hyatt Regency, Bethesda, MD.
Contact person: Dr. Scott Osborne, Scientific Review Administrator, 5333 Westbard Ave., Room 203C, Bethesda, MD 20892 (301) 594–7060.

Name of SEP: Clinical Sciences.
Date: April 3, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 203C, Telephone Conference.
Contact person: Dr. Scott Osborne, Scientific Review Administrator, 5333 Westbard Ave., Room 203C, Bethesda, MD 20892 (301) 594–7060.

Name of SEP: Clinical Sciences.
Date: April 3, 1995.
Time: 3 p.m.
Place: NIH, Westwood Building, Room 203C, Telephone Conference.
Contact person: Dr. Scott Osborne, Scientific Review Administrator, 5333 Westbard Ave., Room 203C, Bethesda, MD 20892 (301) 594–7060.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.
(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 1995.

Margery G. Grubb,
Senior Committee Management Specialist, NIH.

[FR Doc. 95–6566 Filed 3–16–95; 8:45 am]
BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–7100.
The following requests have been submitted for review since the list was last published on Friday, February 24.
1. Reporting Requirements for Federal Maternal and Child Health Set-Aside Programs—42 CFR PART 51(A)—0915–0169 (Reinstatement, with change)—Approval is requested for forms and regulations to implement amendments to 42 USC 706(A)(3) made by OBRA '89. The amendments require information from SPRANS and CISS projects to be reported annually to Congress on numbers of persons served or trained, evaluations performed, and Healthy Children 2000 objectives addressed. Respondents: Not-for-profit institutions; businesses or other for-profit; State, Local or Tribal Government; Number of Respondents: 580; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 1,160 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.
2. National Exposure Registry—0923–0006 (Reinstatement, no change)—Authorized under the Superfund mandate, this information collection is undertaken in order to develop the National Exposure Registry. Its purpose is to collect information on the health of persons exposed to a defined substance at a specific site. Respondents are individuals working or residing near sites identified by ATSDR as containing substances of specific health concern. Respondents: Individuals or households; Number of Respondents: 15,167; Number of Responses per Respondent: 1; Average Burden per Response: 0.42 hours; Estimated Annual Burden: 6320 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.
3. Cosmetic Product Experience Reports—CFR Part 730—0910–0047 (Extension, no change)—Experience data, when correlated with cosmetic product ingredient data, gives FDA scientists valuable insight into potentially unsafe cosmetic ingredients, thereby improving FDA's ability to accomplish its mission of protecting consumers from injuries resulting from harmful ingredients in cosmetics. Respondents: Businesses or other for-profit; Number of Respondents: 125; Number of Responses per Respondent: 1 form FDA–2706 @ 1 hour and 16 forms FDA–2704 @ .2 hours each); Average Burden per Response: 4.2 hours; Estimated Annual Burden: 525 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C 20503.
Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: March 14, 1995.

James Scanlon,
Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–6637 Filed 3–16–95; 8:45 am]
BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Single Source Grant to CODAC Behavioral Health Services of Pima County, Inc.

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of intent to award a single source demonstration grant to support a comprehensive outpatient treatment and prevention program for substance-abusing mothers and their infants in Pima County, Arizona.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public concerning a planned single source grant award to CODAC Behavioral Health Services of Pima County, Inc. This is not a formal request for applications. Assistance will be provided only to CODAC Behavioral Health Services of Pima County, Inc., based on the receipt of a satisfactory application that is approved by a peer review group and the CSAT National Advisory Council.

Authority/Justification

The grant will be made under the authority of Section 510(b)(1) of the Public Health Service Act, as amended.
An award is being made on a single source basis because the Conference Report to the Treasury/Postal Service and General Appropriations Act of 1995, Pub. L. 103–329, provides directive language that the appropriation includes $500,000 for CSAT to support CODAC Behavioral Health Services of Pima County, Inc., for "a comprehensive treatment and prevention program for substance-abusing mothers and their infants." Providing assistance through a grant is the appropriate mechanism to fund this activity because it is our intent to provide support for a public purpose and agency involvement in the actual conduct of the activity is not required. The grant is subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Background

Scientific evidence indicates that certain individuals are at greater risk of disease, dysfunction and death as a consequence of alcohol and other drug use and abuse. Women, and in particular, pregnant and postpartum women, their infants and children who live at or near the poverty line, are among the most vulnerable of these. For them, substance use/abuse, chemical dependency, and the biological, psychiatric, psychological and socio-economic co-factors of substance abuse (herein referred to as "alcohol and other drug problems") may be severe. Unfortunately, the treatment infrastructure has not kept pace with the demand or complexity of need in response to the serious problem of

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maternal alcohol and other drug use/abuse and the resulting complications experienced by this population. When women do seek treatment they often face strained substance abuse treatment agencies that lack the capacity, financial resources, or appropriate family-centered approaches to effectively meet the multiple treatment needs of women and their children. Few treatment agencies have the capability to provide all services required to meet the needs of this population, such as treatment for critical health and mental health problems and injuries resulting from histories of physical and sexual abuse; child care and development; parenting skills development; and child abuse and neglect prevention. Both residential and outpatient treatment services specifically designed for women are necessary to ensure that the full range of services is available. This is necessary because the needs and circumstances of clients can vary considerably. Some women are unwilling or unable to enter residential treatment; outpatient treatment is therefore the most appropriate option for them. Some residential programs have a combination of residential and outpatient care designed as part of their treatment approach, and for some programs, outpatient services are available as part of required or voluntary continuing care.

CODAC has offered substance abuse treatment, prevention and general mental health services in Pima County for 25 years, during which time it has become a nationally-known center for provision of residential and outpatient substance abuse treatment services for women and their children. CODAC targets women in the criminal justice system, ethnic minority women, and low-income women, all high-risk groups according to the Office of National Drug Control Policy. The majority of women served by CODAC are between 19 and 24 years of age, approximately 2% are African American, 30% Latino, 60% Caucasian, 1% Native American and 7% other (including multiracial).

CODAC has also initiated comprehensive residential treatment and prevention services to substance abusing mothers and their infants, under Section 508 of the Public Health Services Act, CSAT's Services Grant Program for Pregnant and Postpartum Women (PPW). The residential services are complemented by outpatient case management and treatment referral services funded by the Center for Substance Abuse Prevention (CSAP) since 1990. The CSAP project (Comprehensive Assistance to Mothers & Infants Outpatient Program Expansion—CAMI) comprises a wide range of services, including ensuring that the women receive prenatal care, education/job development, and housing.

Funding for CAMI is due to expire April 30, 1995. Among CAMI's innovations in outpatient prevention and treatment have been early detection and screening of infants and children (and referral for services as necessary), parenting training, outreach to difficult to reach target populations, and follow-up of clients post-treatment. From February 1991 to June 1994, CAMI has served 249 women, 153 infants and approximately 200 children. Of the 40 women who had been in treatment and are presently involved in 6 month post-treatment reevaluations, 79% have abstained from use of all drugs except tobacco (72% continue to smoke). Importantly, clients in CAMI have demonstrated a significant decrease in drug use during the second trimester of pregnancy. This reduces the probability of perinatal effects of drug use and therefore the costs of medical and associated care.

Providing continuing support for CAMI under the CSAT PPW program helps to ensure linkage between the residential and follow-up phases of treatment and thereby improve the likelihood of sustained recovery for the discharged mothers and their children as well as for women to enter the outpatient program only. This will, in turn, result in positive, wide-ranging impact on the Tucson community.

This grant will support comprehensive outpatient services to mothers and their infants, including:

(1) Outpatient substance abuse treatment;

(2) Expanded outreach to women not yet engaged in treatment;

(3) Coordination of services for women enrolled in the PPW program, including continuing care (aftercare) services;

(4) Expanding treatment, psychological counseling and educational groups tailored specifically to the needs of women in treatment;

(5) Expanding the wellness component and strengthening its linkage with the PPW residential program;

(6) Expanding the mentoring program;

(7) Provision of child care services for women enrolled only in the outpatient program; and

(8) Expanded prevention services directed toward at-risk populations.

This grant is consistent with the State of Arizona drug abuse treatment plan. Providing funding to CODAC under this grant will help ensure that the prevention and treatment approaches devised and implemented by CODAC can continue to serve as models for programs serving women and their children throughout the country.

The project will be funded for one year in the amount of approximately $500,000.

The Catalog of Federal Domestic Assistance number for this program is 93.101.

FOR FURTHER INFORMATION CONTACT: Maggie Wilmore, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–8160.

Dated: March 13, 1995.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–6612 Filed 3–16–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: March 10, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/17/95

Suitable/Available Properties

Buildings (by State)

California

VA Triangular Parcel
1401 Sepulveda Blvd.
Los Angeles Co: Los Angeles CA
Landholding Agency: GSA
Property Number: 549510003
Status: Surplus
Comment: 2904 sq. ft., 1-story bldg. on 2.13 acres, fair condition, possible asbestos
GSA Number: 9–G–CA–514K

Florida

Federal Building
435 Brevard Avenue
Cocoa Co: Brevard FL 32922–
Landholding Agency: GSA
Property Number: 549510001
Status: Excess
Comment: 4768 sq. ft., 2-story, average condition, repairs needed to roof and air conditioning system, to be vacated late summer of 1995.
GSA Number: 4–G–FL–971

Michigan

Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland;
1265 St.Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 549510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/95
GSA Number: 2–L–MI–757

New Mexico

Hornkohl Property
Petroglyph National Monument
Albuquerque Co: Bernalillo NM 87120–
Landholding Agency: Interior
Property Number: 619510001
Status: Excess
Comment: 1-story wood frame residence needs rehab, off-site use only

North Carolina

Federal Bldg.—Post Office
226 Carthage Street
Sanford Co: Lee NC 27330–
Landholding Agency: GSA
Property Number: 549440013
Status: Excess
Comment: 5195 sq. ft., 2 story brick frame, water damage in basement, existing lease for 88% of building, most recent use office/storage, restriction—admin. office activities only.
GSA Number: 4–G–NC–713

North Dakota

46 Bldgs.
Former Fortuna Air Force Station Co: Divide ND 58844–
Location: 4 miles west of Fortuna, 60 miles north of Williston, ND of Hwy. 50; Includes Bldg. 1–2, 4–5, 7–8, 10–24, 26–28, 30–32, 35–36, 38–46, 50, 52, 56–57, 98–100, Bldgs. 37 & 55 are unavailable
Landholding Agency: GSA
Property Number: 549440009
Status: Surplus
Comment: various square feet, incs. dining halls, ofcr. qtrs., rec facilities, dorms, clinic, supply bldgs., commissary, warehouses, fire hose houses, needs rehab
GSA Number: 7–D–ND–466A

66 Bldgs.
Former Fortuna Air Force Station Co: Divide ND 58844–
Location: 4 miles west of Fortuna, 60 miles north of Williston, ND on Hwy. 50; Include Bldgs. 47–49, 51, 61–62, 101–107, 110–116, 118, 122–129, 141–145, 201–218, 223–229, 912 (Bldgs. 117, 119–121, 221 & 222 are unavailable)
Landholding Agency: GSA
Property Number: 549440010
Status: Surplus
Comment: Various square feet, includes family housing, fire hose housing, some w/ attached or detached garages, relocatable family housing
GSA Number: 7–D–ND–466B

Bldg. 300 on 5.51 Acres
Former Fortuna Air Force Station Co: Divide ND 58844–
Location: 4 miles west of Fortuna, 60 miles north of Williston, ND on Hwy. 50

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Landholding Agency: GSA
Property Number: 549440011
Status: Surplus
Comment: 2730 sq. ft., include communications receiver bldg.
GSA Number: 7–D–ND–466C

Suitable/Unavailable Properties

Land (by State)

North Carolina

PHS, N.I.E.H.S.
Alexander Drive
RTP Co: Durham NC 27709–
Landholding Agency: GSA
Property Number: 549440012
Status: Excess
Comment: 4.995 acres, existing building construction restrictions
GSA Number: 4–F–NC–709

Washington

Colfax Substation
Boneville Power Administration Co: Whitman WA
Location: South of the Washington water power switch yard
Landholding Agency: Energy
Property Number: 419430001
Status: Unutilized
Comment: 2.99 acres of land

Unsuitable Properties

Buildings (by State)

Florida

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 879510009
Status: Unutilized
Reason: Secured Area, Floodway

Oregon

Pump Building
Marine Safety Office
Portland Co: Multnomoha OR 97217–
Landholding Agency: DOT
Property Number: 879510010
Status: Excess
Reason: Extensive deterioration.

[FR Doc. 95–6463 Filed 3–16–95; 8:45 am]
BILLING CODE 4210–29–M

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3800; FR–3649–N–04]

Announcement of Funding Awards for the Youth Apprenticeship Program—FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Public Housing agencies applicants under the Youth Apprenticeship Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Paula Blunt, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone number (202) 708–4214. (This is not a toll free number). Hearing or speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program.

SUPPLEMENTARY INFORMATION: The Youth Apprenticeship Program is funded under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (Pub. L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act).

The purpose of the Youth Apprenticeship Program is to further the Department's commitment to providing apprenticeship and employment opportunities to youth living in public and assisted housing, in partnership with Youth Corps and joint labor-management initiatives designed to focus on job training and employment opportunities leading to self-sufficiency. These Youth Apprenticeship grants will enable Public Housing agencies to assist Youth Corps and labor-management supported training, apprenticeship, and employment to youths living in public and assisted housing in HOPE VI communities. Recipients were chosen in a competition under selection criteria announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on August 18, 1994 (59 FR 42740).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101- 235, approved December 15, 1989) the Department is publishing the names and addresses of the Public Housing agencies which received funding under this NOFA, and the amount awarded to each. This information is provided in Appendix A to this document.

Dated: March 13, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—LIST OF AWARDEES FOR THE YOUTH APPRENTICESHIP PROGRAM FY 1994

Name and address	Grant amount
Housing Authority of the City of Atlanta, 739 West Peachtree Street, N.E., Atlanta, GA 30365, (404) 817–7203, Contact: Renee L. Glover	$1,178,571
Housing Authority of the City of Baltimore, 417 E. Fayette Street, Suite 1346, P.O. Box 1917, Baltimore, MD 21202, (410) 396–3232 Contact: Daniel P. Henson III	1,178,571
Cuyahoga Metropolitan Housing Authority, 1441 West 25th Street, Cleveland, Ohio 44113, (216) 348–5911, Contact: Claire E. Freeman	1,178,571
Housing Authority of the City of Los Angeles, 2600 Wilshire Boulevard, Los Angeles, CA 90057, (213) 484–5637, Contact: Donald J. Smith	1,178,571
Housing Authority of the City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202, (414) 223–5900, Contact: Richardo Diaz	1,178,571
Housing Authority of the City of Seattle, 120 Sixth Avenue North, Seattle, WA 98109–5003, (206) 615–3340, Contact: David Gilmore	1,178,571
San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102, (415) 554–1297, Contact: Ted Dienstfrey	1,178,571

[FR Doc 95–6669 Filed 3–16–95; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–799387

Applicant: Kootenai Tribe of Idaho, Fisheries Program, Bonners Ferry, Idaho

The applicant requests a permit to take (capture, collect, PIT tag, radio tag, mark, surgically sex, release, and sacrifice) the Kootenai River population of the white sturgeon (*Acipenser trasmontanus*) in the Kootenai River, Idaho for scientific research to enhance the propagation and survival of the species.

Permit No. PRT–798017

Applicant: Habitat Restoration Group, Felton, California

The applicant requests a permit to take (capture and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in Santa Cruz and Monterey Counties, California to determine the presence/absence of the species for the purpose of enhancing its survival.

Permit No. PRT–799491

Applicant: Dale T. Steele, Stockton, CA

The applicant requests a permit to take (survey, collect hair samples, and radio-tag) the Point Arena mountain beaver (*Aplodontia rufa nigra*) in Mendocino County, California for scientific research to enhance the survival of the species.

Permit No. PRT–799489

Applicant: Frances R. Taylor, Las Vegas, NV

The applicant requests a permit to take (collect) up to 200 Pahrump poolfish (*Empetrichthys latos*) from the Spring Mountain Ranch refuge pond for captive propagation to obtain life history information on spawning ecology, water temperature preference, critical thermal minimum and maximums, substrate preference, and age and growth data to enhance the propagation and survival of the species.

Permit No. PRT–799486

Applicant: Janet A. Randall, San Francisco, CA

The applicant requests a permit to take (capture, tag, release, and play taped foot drumming recordings) the giant kangaroo rat (*Dipodomys ingens*) in San Luis Obispo and Kern Counties, California for biological and behavorial studies to enhance the propagation and survival of the species.

Permit No. PRT–799495

Applicant: Roger D. Gambs, San Luis Obispo, CA

The applicant requests a permit to take (capture, mark, measure, weigh, and release) the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in San Luis Obispo County, California to conduct presence/absence surveys to enhance the survival of the species. These activities were previously authorized under the Regional Director's permit no. PRT–702631.

Permit No. PRT–793638

Applicant: Ramona Swenson, El Cerrito, California

The applicant requests a permit to take (capture, release, and sacrifice voucher specimens) the tidewater goby (*Eucyclogobius newberryi*) throughout the range of the species in California to conduct presence/absence surveys and population monitoring to enhance the survival of the species.

Permit No. PRT–799570

Applicant: Carol W. Witham, Davis, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–768251

Applicant: Biosearch Wildlife Surveys, Santa Cruz, California

The applicant requests amendment of their permit to include take (collect and release) of the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California while conducting ecological studies on co-occurring species for the purpose of enhancing species survival.

Permit No. PRT–799569

Applicant: Renee Y. Owens, San Marcos, California

The applicant requests a permit to take (harass by nest monitoring) the least Bell's vireo (*Vireo bellii pusillus*) in San Diego and Orange counties, California to monitor nest success and remove brown headed cowbird eggs/nestlings for the purpose of enhancing species survival.

Permit No. PRT–799566

Applicant: John G. Coy, Bellevue, Washington

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799564

Applicant: Sycamore Environmental Consultants, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus wootoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799561

Applicant: Entrix Incorporated, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (Streptocephalus wootoni), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799546

Applicant: Wymer and Associates, Citrus Heights, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus wootoni*) and vernal pool tadpole shrimp

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(*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–797230

Applicant: Sacramento-Yolo Mosquito and Vector Control District, Elk Grove, California

The applicant requests amendment of their permit to include take (harass by survey, collect and sacrifice voucher specimens) of the conservancy fairy shrimp (*Branchinecta conservatio*) in vernal pools in Sacramento County, California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799555

Applicant: Beak Consultants Incorporated, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799551

Applicant: Bryan M. Mori, Watsonville, California

The applicant requests amendment of their permit to include take (collect and release) of the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California while conducting ecological studies on co-occurring species for the purpose of enhancing species survival.

Permit No. PRT–799558

Applicant: Idaho Power Company, Boise, Idaho

The applicant requests a permit to take (collect, release, sacrifice voucher specimens) the Snake River (*physa snail (Physa natricina)*, the Idaho springsnail (*Fontelicella idahoensis*), the Utah valvata snail (*Valvata utahensis*), and the Banbury Springs Limpet (*Lanx n. sp.*) in the Snake River, Idaho, and its tributaries between (and including) river mile 589.3 and river mile 553.0 to determine presence or absence of the species and to various life history and ecological studies on the species for the purpose of enhancing species survival.

Permit No. PRT–781377

Applicant: San Marino Environmental Consultants, San Marino, California

The applicant requests amendment of their permit to include take (harass by survey, collect, handle, release, and sacrifice voucher specimens) of the tidewater goby (*Eucylogobius newberryi*) throughout its range in California to determine presence or absence, and take (harass by survey, collect, handle, and release) of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in San Bernardino County, California, to determine presence or absence and monitor populations for the purpose of enhancing species survival.

DATES: Written comments on the permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 9, 1995.

William F. Shake,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–6629 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–P

Notice of Meetings

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.A. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.A. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 3 p.m. to 5 p.m. on Sunday, April 2, 1995, and from 7 p.m. to 8 p.m. on Wednesday, April 5, 1995. Within this time period, other meetings may be announced. Meeting announcements will be posted at the administrative office for the Pacific Fishey Management Council (within the same hotel).

ADDRESSES: The meeting on April 2, 1995, will be held in the Rogue Room and the meeting on April 5, 1995, will be held in the Klamath Room. Both rooms are at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda item will be to refine fishery harvest options for the 1995 ocean salmon harvest management into recommendations to the Pacific Fishery Management Council. For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: March 13, 1995.

H. Dale Hall,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–6630 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–044–1040–00]

Call for Gila Box Advisory Committee Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions on the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to Title 2, Section 201, of the Arizona Desert Wilderness Act of 1990.

The purpose of the Advisory Committee is to provide informed advice to the Safford District Manager on management of public lands in the Gila Box Riparian National Conservation Area. Members are currently assisting BLM with the selection of a preferred alternative for the Final Gila Box Interdisciplinary Activity Plan. The Advisory Committee meets as needed, generally between two to four times per year. Members serve without salary, but are reimbursed for travel and per diem expenses at current rates for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. The categories of expertise for this nomination period include wildlife conservation, riparian ecology, hydrology, environmental education, or other related disciplines.

Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide names, addresses, professions, biographical data, and category of expertise for qualified nominees. Persons selected to serve on the Committee will serve a three-year term ending on July 31, 1998. Nominations should be submitted to the Safford District Manager at the address below.

DATES: Nominations must be received by April 28, 1995.

ADDRESSES: All nominations should be submitted to the District Manager, BLM Safford District, 711 14th Ave., Safford, AZ 85546.

FOR FURTHER INFORMATION CONTACT: Elmer Walls, Gila Box Coordinator, Gila Resource Area, Safford District, 711 14th Ave., Safford, AZ 85546, telephone (602) 428–4040.

Dated: February 22, 1995.

William Civish,

District Manager.

[FR Doc. 95–6634 Filed 3–16–95; 8:45 am]

BILLING CODE 4130–32–M

[NV–035–95–1220–00]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Douglas, Lyon, Mineral and Storey Counties on and adjacent to two Off Highway Vehicle race courses: April 30, 1995—High Sierra Motorcycle Club, Wassuks Hare 'N' Hound—Permit Number NV–035–95–11, May 13–14, 1995—Western States Racing Association, Virginia City Grand Prix—Permit Number NV–035–95–06.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of two motorcycle race events.

EFFECTIVE DATES: April 30, 1995 and May 12–14, 1995.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Spectators shall remain in safe locations as directed by event officials and BLM personnel.

Specific Information on each event follows:

1. High Sierra Motorcycle Club—Wassuks Hare 'N' Hound—Permit Number NV–035–95–11. This event is a one-lap race along 60 to 90 miles of dirt roads and dry wash trails located in the Wassuk foothills near Yerington, Nevada in Lyon and Mineral Counties within T10N R27E, R28E; T11N R26E, R27E; T12N R26E, R27E, R28E; T13N R26E, R27E; T14N R27E. The public lands to be closed to public use include existing roads and trails identified on the ground by colorful flagging and paper arrows attached to wooden stakes designating the race route. This closure will be in effect from 6:00 a.m. through 5:00 p.m. April 30, 1995.

2. Western States Racing Association—Virginia City Grand Prix Motorcycle Race—Permit Number NV–035–95–06. This event is a multiple-lap motorcycle race on dirt roads and trails near Virginia City, Nevada in Storey County within T17N R21E. The public lands to be closed to public use include those roads and trails identified with colorful flagging and paper arrows attached to wooden stakes designating the race route on the ground. Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited. This closure will be in effect from 6:00 p.m. on May 12 through 4:00 p.m. on May 14, 1995.

The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the events.

Authority: 43 CFR 8341; 43 CFR 8364 and 43 CFR 8372.

PENALTY: Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: March 10, 1995.

John Singlaub,

District Manager.

[FR Doc. 95–6631 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–HC–M

Notice

AGENCY: Bureau of Land Management [ID–030–993–07770–66].

ACTION: Notice of office relocation.

SUMMARY: The Bureau of Land Management, Idaho Falls Office including Fire Dispatch, warehouse operations, Big Butte Resource Area Office and Medicine Lodge Resource Area Office will be relocated. Effective April 6, 1995 the address of the Idaho Falls Office, including the Big Butte Resource Area, the Medicine Lodge Resource Area, will be changed from 940 Lincoln Road, Idaho Falls, Idaho 83401 to 1405 Hollipark, Idaho Falls, Idaho 83401. The address of Fire Dispatch and warehouse operations will change from 965 Lincoln Road, Idaho Falls, Idaho 83401 to 1405 Hollipark, Idaho Falls, Idaho 83401.

DATES: Effective April 6, 1995.

ADDRESSES: New address will be: Bureau of Land Management, Idaho Falls Office, 1405 Hollipark, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Sandy Courtney-Berain at 940 Lincoln Road, Idaho Falls, ID 83401 or by calling (208) 524–7510.

Dated: March 8, 1995.

Gary L. Bliss,

Associate District Manager.

[FR Doc. 95–6550 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., on Wednesday, April 12, 1995, in the Environmental Education Center, Barataria Preserve Unit, Jean Lafitte National Historical Park and Preserve, 7400 Highway 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection

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of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Old Business
—New Business
—Update on Park Resource Issues
—Presentation by the National Biological Service
—General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the pubic may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Person wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated March 8, 1995

Jerry Rogers,

Regional Director, Southwest Region.

[FR Doc. 95–6691 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–684 and 685 (Final)]

Fresh Cut Roses From Colombia and Ecuador

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Colombia and Ecuador of fresh cut roses, provided for in subheading 0603.10.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective September 16, 1994, following a preliminary determination by the Department of Commerce that imports of fresh cut roses from Colombia and Ecuador were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 20, 1994 (59 FR 52989). The hearing was held in Washington, DC, on January 26, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 13, 1995. The views of the Commission are contained in USITC Publication 2862 (March 1995), entitled "Fresh Cut Roses from Colombia and Ecuador: Investigations Nos. 731–TA–684 and 685 (Final)."

Issued: March 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6624 Filed 3–16–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–726–729 (Preliminary)]

Polyvinyl Alcohol From China, Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–726–729 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by Section 212b of the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Japan, Korea, and Taiwan of polyvinyl alcohols,[1] provided for in subheading 3905.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 24, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by May 1, 1995.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended.

EFFECTIVE DATE: March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on March 9, 1995, by Air Products and Chemicals, Inc., Allentown, PA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 30, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202–205–3188) not later than March 28, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 4, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other 4 parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 13, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6583 Filed 3–16–95; 8:45 am]

BILLING CODE 7020–02–P

[1] Polyvinyl alcohol is a dry, white to cream-colored, water-soluble synthetic polymer usually prepared by hydrolysis of polyvinyl acetate. The product covered by the petition includes all polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid.

[1] The record is defined in § 207 2(f) of the Commission's rules of practice and procedure (19 CFR 207 2(f))

[2] Vice Chairman Nuzum and Commissioner Rohr dissenting.

[Investigation No. 337–TA–370]

Certain Salinomycin Biomass and Preparations Containing Same; Notice of Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, Teresa M.B. Martinez, Esq. and Juan S. Cockburn, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Teresa M.B. Martinez, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: March 10, 1995.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 95–6625 Filed 3–16–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 23, 1994, and published in the Federal Register on December 6, 1994, (59 FR 62750), the Binding Site, Inc., 5889 Oberlin Drive, Suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Normorphine (9313)	I
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Methadone intermediate (9254)	II

A comment was filed by a registered manufacturer. The comment was considered, however, DEA determined that the application should be approved. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 13, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–6640 Filed 3–16–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 18, 1995, North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of marihuana seed which

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will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with the independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 13, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

[FR Doc. 95–6641 Filed 3–16–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

March 13, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ((202) 395–7316).

Type of Review: Extension
Agency: Employment Standards Administration
Title: Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement
OMB Number: 1215–0151
Agency Number: CA–1032
Frequency: Annually
Affected Public: Individuals or households
Number of Respondents: 50,000
Estimated time per respondent: 20 minutes
Total Burden Hours: 16,667
Description: The CA–1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the amount of compensation being paid is correct.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 95–6661 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–27–M

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as described in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of

submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. ME950038, dated Feb. 10, 1995.

Agencies with construction pending, to which this wage decision would have been applicable, should utilize Wage Decision ME950037. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume III

Tennessee
TN950057 (Mar. 17, 1995)
TN950058 (Mar. 17, 1995)
TN950059 (Mar. 17, 1995)
TN950060 (Mar. 17, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parenthesis following the decisions being modified.

Volume I

New York
NY950003 (Feb. 10, 1995)
NY950021 (Feb. 10, 1995)
NY950060 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950042 (Feb. 10, 1995)
PA950064 (Feb. 10, 1995)
PA950065 (Feb. 10, 1995)
West Virginia
WV950006 (Feb. 10, 1995)

Volume III

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CA950001 (Feb. 10, 1995)
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950027 (Feb. 10, 1995)
North Dakota
ND950002 (Feb. 10, 1995)
ND950026 (Feb. 10, 1995)
ND950049 (Feb. 10, 1995)
ND950050 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of March 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–6442 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–30,224, TA–W–30,370]

Apollo Dye, Paterson, NJ and Leader Dye & Finishing, Paterson, NJ; Notice of Revised Determination on Reopening

On March 7, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firms.

The initial investigation resulted in negative determinations on November 28, 1994 for workers at both firms because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not

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met. The denial notices were published in the Federal Register on December 16, 1994 (59 FR 65076).

The findings show that Apollo Dye is the parent company of Leader Dye & Finishing. Both firms are engaged in producing printed fabric and had integrated production.

A late response to the Department's customer survey shows that a major account reduced its business with Apollo Dye because of increased imports of printed dyed fabric.

Other findings show that U.S. imports increased absolutely and relative to domestic shipments in 1993 compared to 1992 and in the first six months of 1994 compared to the same period in 1993. The ratio of imports to U.S. production reached 143 percent in 1994.

Other findings show that the both plants closed in July 1994 when all production ceased and all workers were laid off.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with the printed dyed fabric produced by the subject firms contributed importantly to the decline in production and to the total or partial separation of workers at the subject firms. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All former workers of Apollo Dye, Paterson, New Jersey and its subsidiary, Leader Dye & Finishing, Paterson, New Jersey who became totally or partially separated from employment on or after August 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6652 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,565]

Cushman Industries, Inc., Hartford, CT; Notice of Affirmative Determination Regarding Application for Reconsideration

On February 8, 1995, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on January 20, 1995 and was published in the Federal Register on February 10, 1995 (60 FR 8061).

New findings show from the company show company imports of chucks from China.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 7th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6657 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,730]

Lightolier Model Shop of the Genlyte Group, Secaucus, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lightolier Model shop of the Genlyte Group, Secaucus, New Jersey. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,730; Lightolier Model Shop of the Genlyte Group Secaucus, New Jersey (March 7, 1995)

Signed at Washington, D.C. this 9th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6654 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,366]

H & R Blocks, Forks, WA; Notice of Revised Determination on Reopening

On March 8, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on November 22, 1994 for workers at the subject firm. The denial notice was published in the Federal Register on December 16, 1994 (59 FR 65076).

The findings show that H & R Blocks had reduced sales in 1993 compared to 1992 and all workers were laid off on December 31, 1993. New findings show a late response indicating that the subject firm's sole customer had increased its reliance on imports in 1994 from 1993 while decreasing its purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with cedar shakes and shingles produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All former workers of H & R Blocks in Forks, Washington who became totally or partially separated from employment on or after September 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6653 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Personal Products Co (Co)	Milltown, NJ	03/06/95	02/13/95	30,783	Ladies' Sanitary Products.
IBM (Wkrs)	Endicott, NY	03/06/95	02/15/95	30,784	Support Services.
American Tobacco Co. (The) (Co)	Chester, VA	03/06/95	02/10/95	30,785	Cigarettes.
Sandusky Plastics Inc. (Wkrs)	Sandusky, OH	03/06/95	02/21/95	30,786	Packaging Materials.
Bridgestone/Firestone, Inc. (URW)	Decatur, IL	03/06/95	02/17/95	30,787	Tires, Auto and Light Truck.
Meridian Oil, Inc (Wkrs)	Houston, TX	03/06/95	02/20/95	30,788	Oil and Gas.
Schweiger Industries, Inc. (USWA)	Jefferson, WI	03/06/95	02/17/95	30,789	Upholstered Furniture.
C.H. Todd, Inc. (Co)	Wichita, KS	03/06/95	02/06/95	30,790	Crude Oil and Natural Gas.
D.L.C.I. (Wrks)	Van Buren, ME	03/06/95	02/15/95	30,791	Bicycle Frames.
Pennzoil Products Co. (UE)	Bradford, PA	03/06/95	02/22/95	30,792	Crude Oil and Natural Gas.
Phillips Petroleum Co, E&P Permian (Co.).	Odessa, TX	03/06/95	02/17/95	30,793	Support Services.
Western Cabinet & Millwork, Inc. (CM)	Woodinville, WA	03/06/95	02/22/95	30,794	Wood Cabinets and Millwork Products.

[FR Doc. 95–6659 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,397; 29,397A; 29,398]

Shell Oil Co.; Shell Western E & P Inc. (SWEPI) A/K/A CalResources, LLC, Bakersfield, CA and all Other (SWEPI) Operations in California A/K/A CalResources, LLC; Shell Oil Company, Shell Development Company, Martinez, CA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 16, 1994, applicable to all SWEPI workers of Shell Oil Company in Bakersfield, California and in other locations in the State of California and the Shell Development Company in Martinez, California. The certification notice was published in the Federal Register on March 4, 1994, (59 FR 10429).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that Shell Oil Company's SWEPI operations have been reincorporated in the state of California as CalResources, LLC. Accordingly, the Department is amending the certification to show this matter.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,397 and TA–W–29,397A is hereby issued as follows:

All workers of Shell Oil Company, Shell Western E & P, Inc., (SWEPI) also known as (a/k/a) CalResources, LLC Bakersfield, California (TA–W–29,397); other SWEPI operations in California, a/k/a CalResources, LLC (TA–W–29,397A) and the Shell Development Company, Martinez, California (TA–W–29,398) engaged in employment related to the production of crude oil and natural gas who became totally or partially separated from employment on or after December 13, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6658 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,414]

Texaco Refining and Marketing, Incorporated Fuels Division, Tulsa, OK; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 27, 1995, one of the petitioners requested administrative reconsideration of the Department's notice of negative determination. The notice was issued on December 16, 1995 and published in the Federal Register on January 20, 1995 (60 FR 4194).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The workers produce refined petroleum products. Gasoline represents the predominant portion of sales at the Fuels Operation of Texaco Refining and Marketing.

Petitioner states that the refined petroleum workers at Texaco's Tulsa facility should be certified for TAA since the Department certified the workers producing crude oil and natural gas at Texaco's Exploration and Production Division in Tulsa.

Certification under the Trade Act is based on increased imports of articles that are like or directly competitive with those produced at the petitioning workers' firm and which contributed importantly to worker separations and sales or production declines at the plant. Refined products like gasoline, in all its many forms—leaded regular, unleaded regular, unleaded premium; diesel fuel; jet fuel; kerosene; propane; petroleum coke; asphalt and chemicals are not like or directly competitive with crude oil. Other findings show that refined petroleum products have a much lower import to domestic

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shipment ratio than crude oil which currently is over 100 percent of U.S. domestic shipments.

The Department's denial was based on the fact that sales and production of gasoline and total refined petroleum products increased in the first nine months of 1994 compared to the same period in 1993. No customer survey was conducted since the company sells everything that it produces and there were no declining customers. Further, the company does not import refined petroleum.

Worker separations occurred in late 1994 and were mainly salaried workers. These workers were laid off because of a corporate reorganization. Production workers increased in the first nine months of 1994 compared to the same period in 1993.

U.S. imports of refined petroleum products decreased absolutely and relative to domestic shipments in 1992 compared to 1991 and in 1993 compared to 1992. U.S. imports of refined petroleum products accounted for only seven percent of domestic shipments in 1993.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 28th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6656 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act (JTPA), Title IV–D, Demonstration Program: Diversity in Apprenticeship

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and Solicitation for Grant Application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a grant competition for a demonstration program using Title IV–D funds of the Job Training Partnership Act. ETA expects to award between three (3) and five (5) grants to Community Based Organizations (CBOs) to provide technical assistance to employers, labor unions, and/or labor organizations which will encourage the voluntary promotion, recruitment, selection, training, and retention of minorities, in apprenticeable occupations with low minority ratios.

This notice describes the background, the application process, Statement of Work, evaluation criteria and reporting requirements. ETA anticipates that up to $750,000 will be available for the demonstration funding. The Bureau of Apprenticeship and Training (BAT), will provide the policy leadership in this project. BAT assists industry and business by developing and improving apprenticeship and training programs to provide skilled American workers in a globally competitive market.

DATES: Applications for grant awards will be accepted commencing May 1, 1995 at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: U.S.Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Charlotte Adams, Reference: SGA/DAA 95–004, Room S4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Division of Acquisition and Assistance, Telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts: Part I describes the background and purpose of the demonstration program and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the Statement of Work for the demonstration projects. Part IV identifies and defines the evaluation criteria to be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

BAT carries out the objectives of the National Apprenticeship Act of 1937, by assisting industry and business develop and improve apprenticeship and training programs to provide skilled workers. BAT registers apprentices and apprenticeship programs in 23 States, Guam, and other Pacific Islands; it also provides technical assistance to State Apprenticeship Councils (SACs) in the remaining 27 States, District of Columbia, Puerto Rico, and the Virgin Islands.

Since 1964, the Bureau of Apprenticeship and Training has promoted equal opportunity in apprenticeship for minorities. As of 1972, apprenticeship program sponsors have been required to take affirmative action in the recruitment and selection of apprentices to achieve the same representation in apprenticeship as in local labor market areas. Program sponsors (employers, or employers with unions) are not required to attain specific goals and timetables, but they are expected to make good faith efforts toward the attainment of their goals and timetables. Despite the substantial increase in the percentage of minorities in apprenticeship over the past 20 years, the degree of occupational integration can be improved according to the General Accounting Office study (GAO/HRD 92–45). For some sponsors, successful recruitment, training, and retention of minorities may require technical assistance from CBOs that have experience preparing minorities for apprenticeship. The purpose of this project is to design and provide that technical assistance to program sponsors such as employers/labor unions and groups to improve the opportunities for minorities to enter apprenticeship in high wage occupations that have a significantly lower percentage of minority participation. Examples of such occupations includes tool and die maker, machinist, line repairer, and machine repairer. The project further aims to be a researched based, voluntary, partnership approach to examining and resolving the issues.

A. Authorities

Part IV–D of the Job Training Partnership Act authorizes the use of funds for pilot and demonstration projects. The Department relies on applicants for grants to comply with all Federal and State laws in setting up their programs.

B. Purpose of the Demonstration

This demonstration program intends that CBOs develop systematic approaches for providing technical assistance to employers, labor unions, and labor organizations to enhance minority representation in occupations with low minority representation, 20% or less. Minorities constitute about 20 percent of the civilian labor force. (See appendix A. for a listing of major occupations and minority participation.)

Further, CBOs designing this project will strive to integrate information, resources, and results with grantees of the "Women in Apprenticeship and Nontraditional Occupations" (WA–NTO) Act; the purpose of WA–NTO is to provide technical assistance to employers and labor unions to encourage the employment of women in apprenticeable occupations and other nontraditional occupations. (See appendix B for WA–NTO grantees and locations.)

Part II. Application Process

A. Eligible Applicants

Community Based organizations (CBOs) are eligible applicants to receive technical assistance grants.

Definitions: The term "community based organization" as defined in section 4(5) of the Job Training Partnership Act (29 U.S.C. 1501(5)), means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services. For this solicitation, the significant segment of communities are the private nonprofit organizations which are representative of organizations that have demonstrated experience administering programs that are capable of providing technical assistance (TA) for minorities for apprenticeship and nontraditional occupations.

Employers, and/or Labor Unions (E/LUs) employee organizations are eligible to be selected to receive TA provided by CBOs. If they wish to receive technical assistance, employers and labor unions must submit a technical assistance request sheet to the cognizant CBO. (see appendix C.) CBOs are requested to solicit TA requests from appropriate employers, labor unions/organizations.

Registered apprenticeship agency means the Bureau of Apprenticeship and Training in the United States Department of Labor or a State Apprenticeship Council recognized and approved by the Bureau of Apprenticeship and Training as the appropriate body for State registration or approval of local apprenticeship programs and agreements for Federal purposes.

Apprenticeship includes a formal paid training-work agreement where labor and management work together to promote learning on the job; to support the hands on learning there must be related theoretical instruction (often classroom). After completing the program standards successfully—usually three to five years—the apprentice is awarded a certificate of completion by either the BAT or SAC agency.

B. Contents

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the financial Proposal, and Part II, the Technical Proposal.

1. *Financial Proposal*—The Financial Proposal, Part I, shall contain the SF–424, "Application for Federal Assistance" (Appendix No. D), and SF 424–A, "Budget" (Appendix No. E). The Catalog of Federal Domestic Assistance number is 17.201. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each of the major cost categories for funds requested through this grant; and identification of the amount of each budget line item which will be covered by other funds, and the sources of those funds (including employer funds, in-kind resources, secured and unsecured loans, grants, and other forms of assistance, public and private); and a justification for the average cost of technical service per person.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. *Technical Proposal*—The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. No cost data or reference to price shall be included in the technical proposal.

C. Submission

A DOL/ETA panel will evaluate grant applications after the closing date of this solicitation. Incomplete or non-responsive proposals may be returned without evaluation. An application will be reviewed based upon the overall responsiveness of the application's content to the submission requirements and to the selection criteria found in Part IV, talking into consideration the extent to which funds are available.

D. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

E. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 5th of May must have been mailed by the 1st of May); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addresses, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addresses" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on

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both the receipt and the envelope or wrapper.

F. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before a grant award is executed.

G. Period of Performance

The period of performance will be 18 months, from the date of notice of grant approval.

H. Funding

DOL has set aside up to $750,000 to be disbursed, contingent upon resources being available for this purpose. ETA expects that grant awards will range from $150,000 to $250,000, with no award in excess of $250,000 each.

I. Grant Period and Option to Extend

Projects are to include 18 months of performance, with the option to extend for up to three months as a no cost extension to complete final reports. Applications must clearly describe project activities to be undertaken and goals to be achieved during the grant period.

J. Page Count Limit

Technical proposals are to be limited to approximately 15 single-side pages, single-spaced, size 10 font. (not including attachments).

Part III. State of Work

Each application must include in the appropriate section (s): (1) Information that responds to the requirements in this part; and (2) other information the offeror believes will address the selection criteria identified in Part IV. Each application should follow the format outlined here:

A. Target Group

The CBOs primary target groups are the employers, labor unions, and labor organizations, who would sponsor minorities in apprenticeship opportunities. Related to the primary group are those groups which may affect the recruitment, selection, training, and completion of apprenticeships. The secondary target includes minorities and/or minority organization who have an interest in a high skilled high wage apprenticeship opportunity. The potential opportunities may be defined by (a) employment growth as noted in appendix table F1. Employment, Projected Change in Employment 1992–2005, and Median Weekly Earnings for Occupations With at Least 250 Registered Apprentices on September 30, 1994. (Source: Bureau of Labor Statistics; (b) distribution of registered apprentices by occupations, sex, race/ethnicity, appendix A; and (c) Distribution of 1994 Cohort Apprentices by State, Sex, Race/Ethnicity, appendix F2. To enhance the geographical distribution and impact, the project encourages integrating with locations where the WA–NTO grantees are operating; it further encourages working relationships with relevant Administration initiatives such as "One Stop Career Center Pilots" operating in nine States, Job Corp, Job Service, School to Work, and Vocational Education projects.

B. Components of the Program

The design and components of the demonstration project must support the project purpose; CBOs would be expected to function as a professional consultant, working with employers to jointly assess the sponsor's recruitment, selection, and retention approaches and results to determine issues and problems. These joint assessments and findings will spotlight what areas involving pre-apprenticeship, apprenticeship, and post-apprenticeship that need addressing. CBOs should identify and provide a general description of: (1) Design, (b) processes, and (c) components of technical assistance, which may include as appropriate, but not limited to:

(1) Assessments instruments, measures, and approaches suitable for determining base line measures and user needs;

(2) Outreach and orientation strategies and services to recruit minorities into the employers' apprenticeable occupations;

(3) Outreach and recruitment strategies to ensure the participation of employers and/or labor unions labor organizations for apprenticeship and nontraditional occupations opportunities for minorities;

(4) Support groups to facilitate developing new networks for employers and labor unions/organization for minorities interested high skilled apprenticeable occupations;

(5) Local computerized data base referral system for employer/labor unions information; this can include current lists of minority tradepersons who are available mentoring young minorities, companies with high skilled occupations, and linkups with schools/groups preparing students for high tech high skilled occupations.

(6) Models and systems for programs which have been successful providing apprenticeship training and technical assistance for minorities in high skilled occupations; and

(7) Innovative technical assistance i.e., information brokering such as linkages to supporting projects i.e., Job Corp, WA–NTO, School to Work, One Stop Career Centers, which the CBOs deem necessary and helpful to meet the project's purpose.

(8) A modest evaluation, based on objectives and measures, after completion.

In addition, CBOs should identify relevant research or experience that supports effectiveness of their design and components.

C. Administration Management and Continuity

Identify the management structure, and demonstrate the means to ensure accountability for performance. Provide a description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. The grantees may employ focus groups and surveys, in addition to other methods, to collect information necessary to design the appropriate technical assistance.

D. Use of Existing Services and Resources

To leverage related resources, identify specific sources and amounts of other funds which will be used, in addition to funds provided through this grant.

E. Coordination and Linkages

A description of the consultation with relevant partners in developing project design and implementation. Working relationships with grantees from the WA–NTO project, One Stop Career Center, School to Work, and related complementary projects and pilots would strengthen the proposal.

F. Participant Services

A description of the services to be available and/or provided to workers who are project participants. From the joint assessment, a program design flow chart would be helpful to determine what kinds of TA/or related services would be provided to the employers,

labor union/organization, which affects minorities entry into high skilled occupation.

G. Outcomes

Provide a description of the project outcomes, measures of outcomes, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures should include, but are not limited to:

(1) A system or model that identifies employers, labor unions/organizations, minorities, and relevant partners (schools, organizations, etc.) working successfully with minorities/groups to recruit, select, train, and complete in skilled high paying apprenticeship opportunities;

(2) A model which describes what kinds of technical assistance are best related to successful recruitment, selection, and completion of minorities in high paying apprenticeship opportunities within a labor market area;

(3) Findings and/or evidence that employers, labor unions, labor organizations found the CBO provided technical assistance helpful and to an extent may be incorporated into the respective sponsors' policies, procedures, and information network.

(4) Other measurable performance based outcomes relevant to the purpose of the project, and agreed to by the project director and grantee.

H. Replicability

Include a description of how the demonstration project could be replicated in other geographic regions.

I Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended.

I Allowable Activities

Grant funds awarded under this demonstration may be used to fund staff salaries, benefits, and non-personal services normally identified with consulting services such as travel, communication, facilities costs, printing, etc., as defined on the budget submission.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel selected by DOL. Panelists will evaluate the proposals based on the various factors enumerated below.

Evaluations will be made on the basis of what the proposed offeror intends to do during the grant period, and on the usefulness of the demonstration after the end of the grant period. Special consideration will be given to applicants who demonstrate coordination efforts between employer(s) and workers to oversee the implementation.

The Department relies on CBO grant applicants to comply with all Federal and State laws in setting up their programs. No grant funds will be awarded for CBO capacity building that is not directly related to the delivery of services to complete a technical assistance request.

A. Technical Evaluation (80%)

CBOs should address the following requirements:

1. Describe your organization's staff experience, services provided (type and for whom), and funding for those services; (15%)

2. Describe your organization's experience in assessing minority employment and training issues with employers, labor unions/organizations: include assessment instruments, measures, and general approaches; (15%)

3. Describe your organization's experience in building upon research and previous experiences to determine feasible creative options in using technical assistance to address sensitive employment and training issues; (15%)

4. Describe your experiences in working with federal/state and public sector employment and training initiatives and programs in general and specifically with minorities; include leveraging related project resources. (15%).

5. Describe your management structure and accountability systems/processes to assure the project is well planned, executive, and reviewed/evaluated. (10%)

6. Describe briefly, if selected, describe how the funds would be allocated in designing the project and components. (10%).

B. Cost Evaluation (20%)

CBOs must include a discussion of the cost of the projects versus the expected benefits and outcomes of the project. Major benefits would include employers, labor unions/organizations reviewing present procedures and willing to developing new approaches based upon the experience of this TA demonstration project. Also include brief justification of the budget. Discussions may be necessary with the applicants to clarify any inconsistencies in their applications.

C. Selection

ETA will consider geographic diversity and occupational impact in making grant awards to CBO's. ETA will make only one grant per CBO with or without multiple service providers or sub-contractors. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

A. Short descriptive quarterly report, due 30 days following the reporting quarter; format will be agreed to by grantees/grant officer.

B. Standard Form 269, Financial Status Report Form;

C. Final Project Report, including project assessment, approximately 5 pages, within 45 days of project completion.

Signed at Washington, DC, the 13th day of March 1995.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance

Appendices

A. Distribution of Registered Apprentices by Occupation, Sex and Race/Ethnicity as of September 30, 1994

B Women in Apprenticeship and Non-Traditional Occupations (WA–NTO) Grantees

C. Technical Assistance Request Form

D. Application for Federal Assistance (S.F 424)

E. Budget Form (Standard Form 424–A)

F1. Total Apprentices, 1992 Employment, Protected Change in Employment 1992–2005, and Median Weekly Earnings for Occupations with at Least 250 Registered Apprentices on September 30, 1994

F2. Distribution of 1994 Cohort Sex and Race/Ethnicity Apprentice Groups Across States

BILLING CODE: 4510–30–M

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Number of Registered Apprentices by Occupation, Sex, and Race/Ethnicity as of September 30, 1994

Occupation Code	Occupation Title	Number of Registered Apprentices									
		Total	Asian	Black	Hispanic	A. Indian	Not Ident	White	Male	Female
23	AUTOMOBILE MECHANIC	10(	28	82	40	7	1	541	694	22
40	BOILERMAKER	1207	12	85	19	9	1	1091	1156	51
52	BRICKLAYER (CONST.)	2223	11	294	173	36	11	1698	2159	64
55	CABINETMAKER	343	2	71	18	3	0	269	331	12
67	CARPENTER	14322	99	1546	1031	373	25	11248	13563	758
75	CEMENT MASON	623	10	161	69	12	3	368	551	72
90	COOK (ANY IND)	560	6	188	25	2	2	337	363	197
116	DIE CAST/DIE MAKER	864	6	110	26	4	4	814	852	12
118	DIE MAKER	442	8	42	5	5	2	380	364	78
124	DIESEL MECHANIC	599	8	60	29	8	1	493	592	7
150	ELECTRICIAN	29467	305	2318	1632	380	65	24658	28309	1258
169	ELECTRONICS TECHNICIAN	313	6	23	9	3	1	271	265	48
195	FIRE FIGHTER	1811	7	161	98	16	1	1528	1717	94
199	FLOOR LAYER	441	2	40	48	5	1	345	433	8
221	GLAZIER	313	1	23	11	7	3	268	308	5
281	LINE ERECTOR	1078	17	57	51	21	1	931	1066	12
282	LINE INSTALLER-REPAIRER	313	4	9	15	7	0	278	311	2
283	LINE MAINTAINER	1474	5	59	53	21	1	1335	1460	14
284	LINE REPAIRER	439	2	6	12	17	0	402	436	3
292	MACHINE REPAIRER	573	3	4	4	0	1	522	539	34
296	MAINTENANCE MECH (ANY IND)	2612	30	104	74	7	3	2394	2524	88
310	MAINTENANCE REPAIRER, BUIL	1914	21	145	88	7	3	1630	1820	94
311	MAINT REPAIRER, INDUSTRIAL	970	14	248	49	14	3	592	785	135
335	MILLWRIGHT	575	4	53	11	7	0	500	564	11
366	OPERATING ENGINEER	2337	11	128	60	33	3	2102	2226	111
379	PAINTER (CONST)	2853	24	361	141	116	22	2169	2212	641
412	PIPE FITTER (SHIP & BOAT)	2613	32	322	202	58	6	1993	2373	239
414	PIPE FITTER (CONST)	345	3	58	0	0	0	284	315	30
423	PLASTERER	8780	89	648	466	117	9	7460	8491	298
432	PLUMBER	5191	4	116	59	11	2	327	493	26
437	POLICE OFFICER II	9749	66	757	392	110	16	8408	9503	246
480	ROOFER	878	7	64	21	7	0	779	774	104
510	SHEET METAL WORKER	4107	20	696	548	68	14	2761	4038	69
536	STATIONARY ENGINEER	7376	70	606	451	75	13	6161	7159	217
573	TILE SETTER	491	3	81	38	4	1	364	464	27
584	TOOL MAKER	289	1	24	21	0	0	243	271	18
586	TOOL & DIE MAKER	720	17	34	15	2	0	652	665	55
622	WELDER-COMBINATION	3588	24	104	76	9	7	3368	3491	97
637	HEATING&AIR-COND INST-SER	356	16	42	10	3	2	283	327	29
643	ELECTRICIAN (MAINTENANCE)	1274	22	114	74	2	1	1061	1249	25
663	COOK (HOTEL & REST)	1462	22	175	37	18	2	1208	1342	120
666	REFRIGERATION MECHANIC	2069	37	453	109	20	5	1445	1595	474
669	STRUCTURAL STEEL WORKER	749	31	26	28	5	3	656	730	19
754	FIRE MEDIC	3548	22	355	217	141	5	2808	3403	145
771	ELECTRICIAN(SHIP & BOAT)	759	6	101	41	2	1	608	722	37
791	CHEMICAL OPERATOR III	411	2	77	2	1	0	329	333	78
840	CHILD CARE DEV SPECIALIST	938	13	142	99	7	2	675	787	151
851	CORRECTION OFFICER	1520	7	323	65	4	1	1120	26	1494
909	INSULATION WORKER *	2822	14	941	77	8	7	1775	2503	319
	TOTAL	1548	15	91(	78	10	2	1345	1469	79
		126369	1180	12721	6018	1813	257	103471	118133	8234

APPENDIX A. BAT Data, 703

Women in Apprenticeship and Non-Traditional Occupations (WANTO) Grantees

Ms. Linda Wilcox
Assistant Director
Women Unlimited
Augusta, ME
207/623-7576

Ms. Sharon Caldwell-Newton
Women's Resource Center
Grand Rapids, MI
616/458-5443

Ms. Cyntina Marano
Executive Director
Wider Opportunities for Women
Washington, D.C.
202/638-3143

Ms. Lauren Sugerman
Executive Director
Chicago Women in Trades
Chicago, IL
312/942-1444

Ms. Rose Picardi
Executive Director
Tradeswomen of Purpose/Women in Nontraditional Work, Inc.
Philadelphia, PA
215/545-3700

Ms. Lila Burke
Executive Director
YWCA of Greater Memphis
Memphis, TN
901/323-2211

APPENDIX B

VOL 60 ISS 52 MR 17 1995 UMI

U. S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
BUREAU OF APPRENTICESHIP AND TRAINING

Request for Technical Assistance
Project "Diversity in Apprenticeship"

The U.S. Department of Labor is seeking employers and labor unions/organizations who wish to participate in a demonstration project; the project envisions Community Based Organizations (CBOs) and employers, or labor unions jointly assessing issues surrounding minorities in high skilled apprenticeship. These issues would include the outreach, recruitment, training, and retention of minorities in high skilled apprenticeship occupations. CBOs and the sponsors would then jointly develop technical assistance models that would seek to increase the opportunities for minorities in skilled apprenticeable occupations.

ETA plans to award between three (3) and five (5) demonstration grants to CBOs to develop systematic approaches for providing technical assistance to employers, labor unions, and labor organizations for the purposes described. In addition, ETA encourages the CBOs to integrate the information and resources to the extent possible with the grantees of the "Women in Apprenticeship and Nontraditional Occupations" project, and/or relevant related Federal/State initiatives.

CBOs are asked to have appropriate employers and labor organizations complete this request; CBOs would then submit this request with the grant proposal at the date listed in the Solicitation for Grant Application.

Name_____ Title_____

Organization_____

Address _____zip_____

Phone_____ FAX_____

Check Affiliation: Employer _____ Labor Union/related____

Industry and Product: _____

APPENDIX C

Please address the following questions:

1. Would your company be willing to participate in this demonstration program on a voluntary basis with the relevant Community Based Organization representative:

2. Describe your company's experience in recruiting, training, and retaining minorities in apprenticeship and nontraditional occupations:

3. Describe any issues with recruiting, training, and/or retaining minorities in high skilled apprenticeable occupations based upon your experiences.

4. Describe the apprenticeable occupations your company plans to have in the future; number, types, locations, etc.

5. Describe the target group of minorities in your geographical labor market.

6. What areas of technical assistance do you see as helpful to developing systems or models to improve opportunities for minorities in high skilled occupations?

7. Describe any input which you feel would be important in analyzing experiences and drawing conclusions in this area:

_____ _____
Signature Date

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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APPENDIX D

BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

APPENDIX E

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INSTRUCTIONS FOR BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Total Apprentices, 1992 Employment, Projected Change in Employment 1992-2005, and Median Weekly Earnings for Occupations with at Least 250 Registered Apprentices on September 30, 1994

AMS Occupation Code	Occupation Title	Total Apprentice	1992 Employment	Projected Change in Employment 1992-2005		Median Weekly Earnings
				Number	Percent	
23	AUTOMOBILE MECHANIC	706	739,000	168,000	23	$422
40	BOILERMAKER I	1207	26,000	-1,000	-4	553
52	BRICKLAYER (CONST.)	2223	139,000	36,000	26	479
55	CABINETMAKER	363	114,000	28,000	24	340
67	CARPENTER	14322	978,000	198,000	20	439
75	CEMENT MASON	623	100,000	13,000	13	419
90	COOK (ANY IND)	560	1,155,000	409,000	35	251
116	DIE CAST/DIE MAKER	864	138,000	-9,000	-7	632
118	DIE MAKER	442	138,000	-9,000	-7	632
124	DIESEL MECHANIC	599	263,000	64,000	24	479
158	ELECTRICIAN	29567	518,000	100,000	19	549
169	ELECTRONICS TECHNICIAN	313	323,000	74,000	23	591
195	FIRE FIGHTER	1811	229,000	38,000	17	619
199	FLOOR LAYER	441				
221	GLAZIER	313	39,000	12,000	30	
281	LINE ERECTOR	1078	108,000	9,000	9	697
282	LINE INSTALLER REPAIRER	313	108,000	9,000	9	697
283	LINE MAINTAINER	1474	108,000	9,000	9	697
284	LINE REPAIRER	439	108,000	9,000	9	697
292	MACHINE REPAIRER	573	73,000	6,000	9	627
296	MACHINIST	2619	352,000	-4,000	-1	512
308	MAINT MECH (ANY IND)	1914	1,145,000	319,000	28	510
310	MAINTENANCE REPAIRER, BUIL	920	1,145,000	319,000	28	375
311	MAINT REPAIRER, INDUSTRIAL	575	477,000	-15,000	-3	510
335	MILLWRIGHT	2337	73,000	6,000	9	627
365	OPERATING ENGINEER	2853	136,000	23,000	17	503
379	PAINTER (CONST)	2613	440,000	128,000	29	398
412	PIPE FITTER (SHIP & BOAT)	345	351,000	27,000	8	520
414	PIPE FITTER (CONST)	8789	351,000	27,000	8	520
423	PLASTERER	519	32,000	5,000	16	399
432	PLUMBER	9749	351,000	27,000	8	520
437	POLICE OFFICER I	878	411,000	57,000	14	632
480	ROOFER	4107	127,000	28,000	22	338
510	SHEET METAL WORKER	7376	208,000	36,000	17	519
536	STATIONARY ENGINEER	491	31,000	2,000	5	581
573	TILE SETTER	289	139,000	36,000	26	
584	TOOL MAKER	720	138,000	-9,000	-7	632
586	TOOL & DIE MAKER	3588	138,000	-9,000	-7	632
622	WELDER-COMBINATION	356	97,000	-17,000	-17	453
637	HEATING&AIR-COND INST-SER	1274	212,000	62,000	29	494
643	ELECTRICIAN (MAINTENANCE)	1462	518,000	100,000	19	603
663	COOK (HOTEL & REST)	2069	602,000	276,000	46	251
666	REFRIGERATION MECHANIC	749	212,000	62,000	29	494
669	STRUCTURAL-STEEL WORKER	3548	66,000	15,000	22	
754	FIRE MEDIC	759	229,000	38,000	17	614
771	ELECTRICIAN (SHIP & BOAT)	411	518,000	100,000	19	591
791	CHEMICAL OPERATOR III	938	39,000	1,000	1	
840	CHILD CARE DEV SPECIALIST	1520	684,000	450,000	66	240
851	CORRECTION OFFICER	2822	282,000	197,000	70	498
909	INSULATION WORKER	1548	57,000	22,000	40	477
		126369				

APPENDIX F1, BLS Data

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Distribution of 1994 Cohort Sex and Race/Ethnicity Apprentice Groups Across States

		Percentage of New Apprentices						
		Sex		Race/Ethnicity				
State	Total	Female	Male	Asian	Black	Hispanic	A. Indian	White
AK	358	0.7	0.7	1.3	0.3	0.2	9.1	0.6
AL	530	0.7	1.1	0.5	1.2	0.2	0.2	1.1
AR	1032	0.5	2.2	0.5	0.7	0.7	2.5	2.4
AZ	1108	1.7	2.2	0.5	0.6	6.4	21.2	1.7
CA	159	1.3	0.2	0.5	0.3	1.0	2.0	0.2
CO	1221	2.2	2.5	1.1	1.1	6.4	1.7	2.3
CT	135	0.6	0.2	0.2	0.6	0.4	0.3	0.2
DE	10	0.1	0.0	0.0	0.0	0.0	0.0	0.0
FL	3245	17.2	5.6	5.8	9.7	9.0	1.0	6.0
GA	1402	2.1	2.9	0.9	9.5	0.8	0.3	2.1
GU	286	0.4	0.6	39.4	0.0	0.1	0.1	0.1
IA	1022	0.9	2.1	2.0	0.2	0.5	0.2	2.5
ID	544	1.0	1.1	0.9	0.1	0.6	2.6	1.2
IL	3385	5.7	6.8	3.9	6.3	9.2	2.6	6.8
IN	3009	2.7	6.3	1.1	2.9	1.4	1.3	6.9
KS	331	0.4	0.7	0.3	0.5	0.5	1.3	0.7
KY	626	1.0	1.3	0.3	0.9	0.2	0.4	1.4
LA	1055	1.5	2.1	4.7	3.2	0.0	0.0	2.1
MA	193	0.4	0.4	0.6	0.5	0.5	0.2	0.4
MD	396	0.4	0.8	1.6	2.3	0.6	0.2	0.6
ME	249	1.5	0.4	0.0	0.0	0.0	0.0	0.6
MI	3106	4.9	6.3	2.7	4.3	1.9	4.5	6.9
MN	1264	2.5	2.5	3.6	0.9	0.8	3.7	2.8
MO	3235	4.0	6.6	1.9	5.2	1.5	2.4	7.2
MS	450	1.3	0.9	0.0	2.4	0.0	0.0	0.9
MT	345	0.5	0.7	0.2	0.0	0.1	5.6	0.7
NC	22	0.0	0.0	0.0	0.2	0.0	0.0	0.0
ND	118	0.1	0.2	0.0	0.0	0.1	0.9	0.3
NE	381	0.5	0.8	0.6	0.3	0.5	0.2	0.9
NH	104	0.2	0.2	0.2	0.0	0.0	0.0	0.3
NJ	1111	1.6	2.3	3.1	2.7	1.9	0.0	2.2
NM	1049	0.6	2.2	0.0	0.2	18.0	10.7	0.9
NV	1363	3.3	2.7	6.9	2.1	4.8	4.8	2.5
NY	900	1.9	1.8	1.1	3.0	2.5	1.2	1.6
OH	4006	7.0	8.1	3.6	8.6	1.7	1.5	8.6
OK	607	0.5	1.3	0.5	1.0	1.4	5.5	1.1
OR	82	0.3	0.2	0.5	0.0	0.1	0.1	0.2
PA	3377	4.7	6.9	1.7	6.9	2.3	1.5	7.3
RI	138	0.4	0.3	0.2	0.2	0.2	0.0	0.3
SC	200	0.6	0.4	0.2	0.8	0.0	0.1	0.4
SD	320	0.8	0.6	0.2	0.3	0.3	2.5	0.7
TN	1701	2.8	3.4	0.2	7.2	0.4	1.4	3.2
TX	3255	6.2	6.5	3.8	8.0	20.5	1.7	5.3
UT	768	1.3	1.5	1.4	0.1	1.9	3.3	1.7
VA	462	4.2	0.7	0.6	3.3	0.1	0.0	0.7
VT	119	0.1	0.2	0.0	0.0	0.0	0.0	0.3
WA	9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WI	14	0.0	0.0	0.0	0.1	0.1	0.0	0.0
WV	1054	6.4	1.8	0.5	1.2	0.2	0.5	2.5
WY	67	0.0	0.1	0.2	0.0	0.1	0.3	0.2
ZA	165	0.1	0.3	0.5	0.1	0.3	0.0	0.4
Total	50126	100.0	100.0	100.0	100.0	100.0	100.0	100.0

APPENDIX F2, BAT DATA, 70Z

[FR Doc. 95–6660 Filed 3–16–95; 8:45 am]
BILLING CODE 4510–30–C

[NAFTA–00319]

Woodward Governor Co., Stevens Point, WI.; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 3, 1995, applicable to all workers of the Aircraft Controls Group of the subject firm in Stevens Point, Wisconsin. The notice was published in the **Federal Register** on February 14, 1995 (60 FR 8416).

At the request of the State Agency and the company, the Department reviewed the certification for workers of the subject firm. New findings show that some production was in hydromatic controls. The workers were not entirely separately identifiable by product line and the plant will close in 1995. Accordingly, the Department is amending the certification to include all workers at Woodward Governor Company in Stevens Point, Wisconsin.

The intent of the Department's certification is to include all workers who were adversely affected at Woodward Governor Company in Stevens Point, Wisconsin by increased imports.

The amended notice applicable to NAFTA—00319 is hereby issued as follows:

All workers of the Woodward Governor Company, Stevens Point, Wisconsin who became totally or partially separated from employment on or after December 27, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974

Signed at Washington, D.C., this 3rd day of March 1995

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance

[FR Doc 95–6655 Filed 3–16–95; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: April 3, 1995; 8:45 a.m.–6 p.m.; April 4, 1995; 8:45 a.m.–12 Noon.

Place. National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistance Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting. The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: NSF and BIO strategic planning; integration of research and education.

Dated: March 14, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6679 Filed 3–16–95; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML–Ren, ASLBP No. 95–707–02–ML–Ren, (Source Material License No. 34–19089–01)]

Atomic Safety and Licensing Board Panel; Notice of Hearing

March 13, 1995.

In the Matter of Advanced Medical Systems, Inc. Cleveland, Ohio.

Notice is hereby given that, by Memorandum and Order dated March 10, 1995, the Presiding Officer in this proceeding has granted the hearing requests of the Northeast Ohio Regional Sewer District (dated December 29, 1994) and the City of Cleveland, Ohio (dated January 13, 1995), and has conditionally granted the participation of the Cuyahoga County Local Emergency Planning Committee in a hearing regarding the license renewal application of Advanced Medical Systems, Inc. for its facility located at 1020 London Road in Cleveland, Ohio. Advanced Medical Systems, Inc. seeks continued permission from the Nuclear Regulatory Commission to possess various quantities of radioactive materials for use in its manufacture of medically related devices. The hearing will involve the sufficiency of the renewal application.

This proceeding will be conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR part 2, subpart L. Further details appear in Statement of Considerations, Informal Hearing Procedures for Materials Licensing Adjudications, 54 Fed. Reg. 8269 (February 28, 1989) and the March 10, 1995 Memorandum and Order referenced above. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St. NW., Washington, DC.

Advanced Medical Systems, Inc., the Northeast Ohio Regional Sewer District, the City of Cleveland, and the NRC Staff are parties to this proceeding. The Cuyahoga County Local Emergency Planning Committee may participate in this proceeding under the provisions of 10 CFR 2.1211(b) upon submission to the Presiding Officer (and service on the parties) of an affidavit of a Cuyahoga County official attesting that the Local Emergency Planning Committee is representing the County's interest in this matter. If admitted as a representative of an interested county, the Local Emergency Planning Committee's participation shall be limited to the extent allowed by 10 CFR 2.1211(b).

In accordance with 10 CFR 2.1205(l)(4), any person whose interest may be affected by this proceeding may, within 30 days of publication of this Notice, file a petition for leave to intervene. Such petition must identify (1) the interest of the petitioner in the proceeding, (2) how that interest may be affected by the results of the proceeding, with particular reference to the factors set out in 10 CFR 2.1205(g), (3) the petitioner's areas of concern about the licensing activity which must be germane to the subject matter of the proceeding, and (4) the circumstances establishing that the petition is timely and that the petitioner has the requisite standing to intervene in the hearing.

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies should be served upon the Presiding Officer; the Special Assistant; the Assistant General Counsel for Hearings and Enforcement; the Senior Attorney, Atomic Safety and Licensing Board Panel; and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies should also be served on the Licensee, through its attorney, Henry E. Billingsley, II, Arter and Hadden, 1100 Huntington Building, 925 Euclid Avenue, Cleveland, Ohio 44115; and the other parties through Thomas E. Lenhart, Assistant General Counsel, Northeast Ohio Regional Sewer District, 3826 Euclid Avenue, Cleveland, Ohio

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44115; and Martha R. McCorkle, Assistant Director of Law, City of Cleveland Department of Law, Room 106, City Hall, 601 Lakeside Avenue, Cleveland, Ohio 44114. Pursuant to 10 CFR 2.1205(j)(2), any party may file an answer to a petition to intervene within 10 days of service of such petition (15 days in the case of the NRC Staff).

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to this proceeding may make a written statement in order to express his or her views of the issues involved in this license renewal proceeding. These statements are not evidence and do not become part of the decisional record under 10 CFR 2.1251(c). Written statements should be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated: March 13, 1995.

Marshall E. Miller,

Presiding Officer, Administrative Judge.

[FR Doc. 95-6617 Filed 3-16-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 50-374

Exemption

In the Matter of Commonwealth Edison Co., LaSalle County Station, Units 1 and 2.

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF-11 and NPF-18, which authorize operation of the LaSalle County Station, Units 1 and 2 (the facility), at a steady state power level not in excess of 3323 megawatts thermal. The facility consists of two boiling water reactors at the licensee's site located in LaSalle County, Illinois. The licenses provide, among other things, that they are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section III.A.6(b) of Appendix J to 10 CFR Part 50 states the following in regard to performing Overall Integrated Containment Leakage Rate (Type A) Tests (ILRT):

If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5(b), notwithstanding the periodic retest schedule of III.D., a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5(b), after which time the retest schedule specified in III.D. may be resumed.

The Type A tests performed during the first, third and fourth refueling outages for LaSalle County Station, Unit 2, were considered to be failures in the "as-found" condition due to penalties incurred as a result of leakage measured in Type B and C local leak rate tests (LLRT). Pursuant to Section III.A.6(b) of Appendix J, Type A testing was performed during the fifth refueling outage for LaSalle County Station, Unit 2, in December 1993. That Type A test satisfied the "as-found" acceptance criteria. Section III.A.6(b) of Appendix J requires an additional Type A test during the sixth refueling outage, currently scheduled for February 1995, in order to fulfill the condition of two consecutive successful tests prior to resuming the Type A test interval of Section III.D.

As an alternative to performing the required Type A test, the licensee has submitted a Corrective Action Plan to address excessive local leakage in accordance with the guidance provided in NRC Information Notice 85-71, "Containment Integrated Leak Rate Tests," dated August 22, 1985. The Corrective Action Plan is in lieu of the increased test frequency required by Section III.A.6(b) and, therefore, an exemption from this requirement is needed.

Section III.D.1(a) of Appendix J requires "* * * a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." The last refueling outage for Unit 2 during the first 10-year inservice inspection period is the sixth refueling outage scheduled for February 1995. Therefore, in addition to the requirements for additional testing specified in Section III.A.6(b), a Type A test is required during the upcoming Unit 2 refueling outage as a result of the periodic retest schedule contained in Section III.D.1(a). To address the short-term desire not to perform a Type A test during the sixth refueling outage for Unit 2 and avoid potential future problems, the licensee has requested an exemption from this requirement such that future Type A test would not need to coincide with the end of 10-year inservice inspection periods.

The NRC may grant exemptions from the requirements of the regulations, pursuant to 10 CFR 50.12, that (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2) of 10 CFR Part 50 describes special circumstances as including cases that would not serve the underlying purpose of the rule or are not necessary to achieve the underlying purpose of the rule.

III

The underlying purpose of the requirements in Appendix J is to ensure that containment leakage remains below criteria established to limit the release of radioactive materials in the event of a design basis accident. The Type A test is defined in 10 CFR Part 50, Appendix J, Section II.F, as a "test intended to measure the primary reactor containment overall integrated leakage rate (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter." Containment leakage is measured during the periodic testing required by Section III.D.1(a) and the additional testing requirements of Section III.A.6 if the measured leakage exceeds the established limits. The testing and other requirements contained in Appendix J ensure that leakage from the containment structure and penetrations remain below the acceptance criteria.

The licensee conducted four ILRTs during the first 10-year service period for Unit 1. For Unit 2, ILRTs were performed during the first, third, fourth, and fifth refueling outages. The Type A test history for Unit 2 is that the measured leakage rates for Type B and C penetrations, when added to the measured results from the Type A test, resulted in an "as-found" integrated leakage rate above the acceptance criteria. These test failures were the direct result of leakage penalties from Type B and C LLRTs.

Leakage from specific containment penetrations that have been major contributors to the failure of the integrated leakage rate acceptance criteria for Unit 2 have been identified. These leakage paths include isolation valves associated with the drywell equipment and floor drain sumps, reactor water cleanup suction, transversing incore probe air purge supply, residual heat removal shutdown cooling return, hydrogen recombiners, and primary containment chilled water supply. The leakage associated with the reactor water cleanup suction penetration provided the overwhelming contribution of local leakage penalty that resulted in the unsuccessful test during the fourth refueling outage. Leakage through the various isolation valves has been attributed to causes such as the introduction of foreign materials, misapplication of valve types, insufficient seating, defective valve internals, and failure of valve motor operators. Specific corrective actions have addressed the above contributors by improving foreign material exclusion controls, replacing and refurbishing valves, revising test procedures, and cleaning and lapping seating surfaces. Overall performance of the identified penetrations has improved significantly.

In addition to the specific corrective actions taken for the above isolation valves, the licensee's Corrective Action Plan includes programmatic changes to limit the leakage occurring from Type C penetrations. These changes include development and implementation of an improved trending program to track penetration and valve leakage rate performance. The improved trending will be designed to help determine any patterns or groups of valves that demonstrate either good or poor leakage behavior. Those penetrations determined to be susceptible to excessive leakage will also be subject to additional testing requirements beyond that routinely performed during refueling outages. Identified penetrations will be subject to Type B or C testing during any non-refueling outage for which a unit is in cold shutdown for fourteen days or longer. Poorly performing penetrations will also be reviewed for possible improvements in testing methods as well as possible repair, modification, or replacement of isolation devices.

As discussed in Information Notice 85-71, the staff has determined that:

> * * * if Type B and C leakage rates constitute an identified contributor to this failure of the "as-found" condition for the Type A test, the general purpose of maintaining a high degree of containment integrity might be better served through an improved maintenance and testing program for containment penetration boundaries and isolation valves. In this situation, the licensee may submit a Corrective Action Plan with an alternative leakage test program proposals as an exemption request for NRC staff review. If this submittal is approved by the NRC staff, the licensee may implement the corrective action and alternative leakage test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A test.

The licensee's Corrective Action Plan describes the modification, testing and preventive maintenance programs implemented or planned to decrease the leakage from poorly performing isolation devices. The specific corrective actions performed to date and the programmatic changes associated with ensuring future performance of penetrations provide an equivalent degree of assurance that containment integrity will be maintained as that provided by an additional Type A test performed on the accelerated frequency specified by Section III.A.6(b) of Appendix J. The NRC staff concludes that a return to the normal retest interval of Section III.D of Appendix J is justified and that the corrective actions taken and the creation of the Corrective Action Plan for local leak rate testing adequately address the underlying purpose of the requirements of Appendix J.

In the absence of the additional testing requirements of Section III.A.6(b), a periodic retest schedule is specified in section III.D.1(a). This retest schedule requires a minimum of three tests during a 10-year service period with the third test coinciding with the 10-year plant inservice inspections. LaSalle, Unit 1, completed four tests during the first ten year interval with the last test coinciding with the 10-year plant inservice inspections. Due to experiencing Type A test failures, Unit 2 has performed four tests during the first 10-year service period and without the requested exemptions would be required to perform a fifth Type A test during the sixth refueling outage. The sixth refueling outage for Unit 2 is the last refueling outage of the 10-year inservice inspection period and, therefore, the Type A test is required based on the requirements of Section III.D.1(a) as well as the previously discussed requirements of Section III.A.6(b).

Pursuant to Section II.F of Appendix J, the intent of Type A testing is "* * * to measure the primary reactor containment overall integrated leakage rate * * * at periodic intervals. * * *" The licensee has conducted a total of eight ILRTs for LaSalle, Units 1 and 2. The tests conclude that the largest variations in the measured overall leak rates result from the adjustments required to account for leakage from Type B and C penetrations. Leakage from sources other than those covered by Type B and C testing, such as the containment structure itself, have repeatedly been well below the acceptance criteria. The requested exemption from Section III.D.1(a) does not affect the performance of local leak rate testing which would be expected to detect the most probable sources of containment leakage. As discussed above, the licensee will not only continue routine Type B and C testing during each refueling outage, but will also attempt to minimize local leakage in accordance with their Corrective Action Plan.

The proposed exemption from Section III.D.1(a) does not revise the expected Type A test interval of between thirty and fifty months which is derived from the requirement to perform three tests in each ten year period at approximately equal intervals. For example, Unit 2 performed a Type A test during the fifth refueling outage in December 1993 and, with the proposed exemption, will perform another Type A test during the seventh refueling outage scheduled to begin in late 1996. The licensee has only proposed to exempt the requirement to perform a Type A test during the 10-year plant inservice inspections. Given the continued performance of Type A testing at approximately equal intervals of forty months and the performance of Type B and C testing at the required intervals to identify the most probable sources of containment leakage, the NRC staff finds that performance of Type A tests coincident with 10-year plant inservice inspections is not necessary to achieve the underlying purpose of the rule.

On the bases of the above discussions related to Sections III.A.6(b) and III.D.1(a) of Appendix J, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12. Further, the staff finds that providing a one-time exemption of the additional testing requirements of section III.A.6(b) and an exemption from the requirement to perform a Type A test coincident with the first 10-year plant inservice inspections pursuant to Section III.D.1(a) will not present undue risk to the public health and safety. Although requested as a permanent exemption, the exemption from the requirements of section III.D.1(a) of Appendix J related to the third test coinciding with the 10-year plant inservice inspections has been granted as a one-time exemption for the first 10-year inservice inspection interval. The exemption is, in effect, limited to the Type A test planned for the current Unit 2 outage since Unit 1 has completed the required Type A tests during its first inservice inspection interval. Future relationships between Appendix J and inservice inspection intervals can be addressed by anticipated changes to Appendix J or requests for exemptions from the current requirements.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12, these exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby

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grants an exemption from the additional testing requirements of Section III.A.6(b) of Appendix J to 10 CFR Part 50 to allow the licensee to resume the Type A test interval of Section III.D for LaSalle, Unit 2, and an exemption from the requirements of Section III.D.1(a) of Appendix J to allow the licensee to decouple the Type A testing and the first 10-year plant inservice inspections for LaSalle, Unit 2.

Pursuant to 10 CFR 31.32, the Commission determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 13187).

Dated at Rockville, Maryland this 10th day of March 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95-6616 Filed 3-16-95; 8:45 am]

BILLING CODE 7590-01-M

Licensing Support System Advisory Review Panel

ACTION: Change in meeting location.

SUMMARY: This is to announce a change in location of the next meeting of the Licensing Support System Advisory Review Panel (LSSARP). The meeting will be held in Las Vegas, Nevada, on March 22 and 23, 1995, as previously announced in the **Federal Register** on March 3, 1995 (60 FR 11998). The location of the meeting has been moved to a facility on the campus of the University of Nevada at Las Vegas (UNLV). The Panel will be using the Student Lounge, Room A-207, in the Thomas Beam Engineering Building. The building may be reached from the Claymont Road entrance to the campus.

FOR FURTHER INFORMATION CONTACT:

John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301-415-1969.

Dated at Washington, DC this 15th day of March, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95-6796 Filed 3-16-95; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 1047 and Docket No. A95-5]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Issued: March 13, 1995.

Docket Number: A95-6
Name of Affected Post Office: DeGraff, Minnesota 56233
Name(s) of Petitioner(s): Helen Byrne, *et al.*
Type of Determination: Consolidation
Date of Filing of Appeal Papers: March 7, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 22, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

March 7, 1995—Filing of Appeal letter
March 13, 1995—Commission Notice and Order of Filing of Appeal
April 3, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
April 11, 1995—Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115(a) and (b)]
May 1, 1995—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
May 16, 1995—Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
May 23, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
July 5, 1995—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95-6579 Filed 3-16-95; 8:45 am]

BILLING CODE 7710-FW-P

[Order No. 1046, and Docket No. A95-5]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Issued: March 13, 1995.

Docket Number: A95-5
Name of Affected Post Office: Oak, Nebraska 68964
Name(s) of Petitioner(s): Tom Jensen
Type of Determination: Consolidation
Date of Filing of Appeal Papers: March 3, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

March 3, 1995—Filing of Appeal letter
March 13, 1995—Commission Notice and Order of Filing of Appeal
March 28, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
April 7, 1995—Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
April 27, 1995—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
May 12, 1995—Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
May 19, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
July 1, 1995—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95-6580 Filed 3-16-95; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35474; File No. SR-BSE-95-03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Boston Stock Exchange, Inc. Relating to an Extension of a Pilot Program for Stopping Stock in Minimum Variation Markets

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 13, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 28, 1995, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify certain language in the original filing and to request accelerated approval of the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a four month extension of its pilot program regarding stopping stock in minimum variations markets.[4] The text of the proposed rule change is available at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the SEC-approved pilot provision regarding the execution of stopped orders in minimum variation markets for an additional four months. The pilot provision expires on March 21, 1995, and this proposal would extend the pilot until July 21, 1995.

The pilot rule requires the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stop price or higher in the case of a buy order (lower in the case of a sell order), (b) after the applicable Exchange share volume is exhausted or (c) at any time prior to (a) or (b) if filled at an improved price.[5] In no event will a stopped order be executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See* letter from Karen A. Aluise, Assistant Vice President, BSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated February 28, 1995 ("Amendment No. 1").

[4] The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a pilot program permitting specialists to stop stock in minimum variation markets in Securities Exchange Act Release No. 35068 (December 8, 1994), 59 FR 64717 (December 15, 1994) (File No. SR-BSE-94-09) ("1994 Pilot Approval Order"). *See also* Ch. II, Sec. 38 of the BSE Rules.

Independent of the BSE's request for an extension of its pilot program, the Commission has received a comment letter regarding permanent approval of the New York Stock Exchange's procedures for stopping stock in minimum variation markets. *See* letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995. The comment letter addresses the broader issue of whether stopping stock is consistent with the specialist's agency obligations and recommends that the Commission not grant permanent approval to the minimum variation market pilot programs. The current BSE filing, however, merely extends its pilot program for four months to permit additional information to be gathered and reviewed. The Commission believes that it would be more appropriate to address the issues raised by the comment letter in the context of proposals requesting permanent approval of the exchanges' stopping stock pilot programs.

[5] The Commission notes that, in certain narrow circumstances, a BSE specialist may execute a stopped order before limit order interest on the Exchange is exhausted. To do so, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, a double up or down tick or an out-of-range print.

Moreover, the specialist must follow certain procedures designed to ensure that the BSE's limit order book is adequately protected. First, the specialist must split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

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facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–03 and should be submitted by April 7, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder,[7] that specialist transactions must contribute to the maintenance of fair and orderly markets.

In its order approving the pilot procedures,[8] the Commission asked the BSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that received price improvement. In addition, the Commission encouraged the BSE to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock.

Although the BSE has begun to gather certain information requested by the Commission and to upgrade its technological capabilities in this regard, there has not been sufficient time since initial approval of the pilot program for the Exchange to produce conclusive results. The Commission believes that the BSE needs to submit comprehensive data on the operation of this rule and, in particular, on the impact on limit orders on the specialist's book before the Commission fairly can evaluate the BSE's use of its pilot procedures. To allow such information to be gathered and reviewed, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995. During this extension, the Commission expects the BSE to respond fully to the concerns set forth below.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[9] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in marketplace liquidity and the possibility of price improvement for the customer. Accordingly, those exchanges with stopping stock rules,[10] including the BSE, require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote. The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities markets.

Despite these potential benefits, the Commission continues to be particularly concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price. For that reason, the Commission has required that procedures for stopping stock in minimum variation markets be implemented on a pilot basis. These pilot programs have been extended until July 21, 1995, in order to allow the Commission and the relevant exchanges to determine whether the benefits of the practice substantially outweight the costs thereof.[11]

The Commission has concluded that it is appropriate to place the BSE on equal competitive footing with the other exchanges by extending its pilot program until July 21, 1995. Nevertheless, the Commission believes that the BSE rule, specifically the provisions regarding execution of stopped orders at an improved price before limit order interest at the price is exhausted,[12] raises certain unique issues. Accordingly, before the Commission would consider another extension or permanent approval of the Exchange's pilot program, the Commission would expect the BSE to submit comprehensive quantitative data on the impact of stopping stock in minimum variation markets on customer limit orders on the specialist's book and to demonstrate that the Exchange has the technological capabilities necessary to monitor specialist compliance with the pilot procedures.

At a minimum, the Commission requests that the BSE calculate (1) the average number of limit orders and the average number of shares on the book ahead of the stopped stock and (2) how much of that volume typically is executed by the close. Similarly, the Exchange should determine how often limit orders against which stock is stopped in a minimum variation market are executed by the close of the day's trading. This should include a one-day review of all book orders in the five stocks receiving the greatest numbers of stops.

Finally, in its order initially approving the BSE proposal, the Commission requested that the BSE determine how often stopped orders received price improvement and which investors were most affected by the pilot program. At this time, the Commission believes that further information is necessary to ensure that BSE specialists are handling stopped orders in a manner which is consistent with their obligation to maintain fair and orderly markets. Accordingly, the Exchange should continue to monitor (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that receive price improvement.

The Commission requests that the BSE submit a report describing its findings on the above matters by April 15, 1995. In addition, if the Exchange determines to request an extension of the pilot program beyond July 21, 1995, the BSE should submit to the Commission a proposed rule change by April 15, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[13]

It is therefore ordered, pursuant to Section 19(b)(2)[14] that the proposed rule change (SR–BSE–95–03) is hereby approved on a pilot basis until July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6571 Filed 3–16–95; 8:45 am]

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[6] 15 U.S.C. 78f(b) (1988).

[7] 17 CFR 240.11b–1 (1991).

[8] *See* 1994 Pilot Approval Order, *supra*, note 4.

[9] *See, e.g.*, SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[10] *See* NYSE Rule 116.30; American Stock Exchange ("Amex") Rule 109; and Article XX, Rule 12 of the Chicago Stock Exchange ("CHX") Rules. The relevant NYSE, Amex and CHX rules incorporate their pilot programs to permit specialists to stop stock in minimum variation markets. *See also* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange ("Phlx") proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

[11] For further discussion of the NYSE, Amex and CHX pilot programs and the Commission's rationale for extending them until July 21, 1995, *see* Securities Exchange Act Release Nos. 35309 (January 31, 1995), 60 FR 7247 (February 7, 1995) (File No. SR–NYSE–95–02); 35310 (January 31, 1995), 60 FR 7236 (February 7, 1995) (File No. SR–Amex–95–01); and 35431 (March 1, 1995) (File No. SR–CHX–95–04).

[12] *See supra*, note 5.

[13] No comments were received in connection with the proposed rule change that implemented these procedures. *See* Approval Order, *supra* note 4.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–35469; File No. SR–DTC–95–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking to Establish a Procedure to Buy-In Securities to Eliminate Participants' Short Positions Older than Ninety Days

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 13, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–01) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to establish a buy-in procedure to eliminate participants' short positions that are outstanding for more than ninety calendar days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC currently employs procedures to help eliminate short positions caused by book entry deliveries of callable securities made between the call publication date and the lottery processing date and procedures to help eliminate short positions caused by rejected deposits.[2] Under DTC rules when DTC participants have short positions in their accounts, DTC debits the participants' accounts by an amount equal to 130% of the market value of the short position as determined by DTC. DTC believes collecting 130% of the value of the short position protects DTC against risk and provides participants with an incentive to cover short positions promptly. the charge is marked to the market until the short position is covered or matures.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of DTC's procedures, refer to Securities Exchange Act Release No. 35034 (December 8, 1994), 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of procedures to recall certain deliveries which have created short positions as a

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DTC is proposing procedures that will permit DTC to use the short position charge as a funding source to attempt to buy-in securities to cover short positions which have not been covered by participants within ninety days.

Under the proposed procedures, once a short position has aged beyond ninety calendar days DTC will broadcast to participants that have long positions in the security an Invitation to Cover Short Request ("ICSR") using the Participant Terminal System ("PTS") operated by DTC.

The invitations will be offered at premiums above market value on a sliding scale set according to the following table:

SHORT POSITION VALUE

[Market value]

Minimum	Maximum	Premium percent	Maximum possible premium
$1	$50,000	12	$6,000
50,001	100,000	8	8,000
100,001	300,000	5	15,000
300,001	500,000	3	15,000
500,001	UP	2	(1)

[1] Unlimited.

If DTC is unsuccessful in finding a seller through the ICSR function, long participants will be contacted by telephone. DTC may elect to use the services of a broker to obtain the securities at a price not to exceed the current market value plus the premium based upon the value of the short position.

If DTC is able to buy-in some or all of the securities needed to cover a participant's short position, DTC will: (1) credit the securities to the participant's account, (2) reduce the short position charges by the amount of the purchase price of the securities together with the expenses of the cover transaction including any brokerage fee or other administrative expense, and (3) if the short position has been eliminated entirely, credit the account of the participant with the balance, if any, of the short position charge.

DTC believes the proposal is consistent with its obligation under Section 17A of the Act to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because the procedures are modelled on existing DTC procedures used to eliminate short positions of participants whose DTC accounts have been closed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants concerning an earlier version of the proposed buy-in procedures were solicited by a DTC Important Notice dated July 29, 1994. DTC received comment letters from eleven organizations. Seven respondents opposed the earlier proposed version of the buy-in procedures. The commentators raised concerns about the potential risk of monetary loss that their organizations and clients could incur because of the procedures as proposed. Five commentators viewed the offering price range of 110–130% of market value as excessive and/or felt that the tiered approach (*i.e.*, offerings starting from 110% after ninety days, 120% after 120 days, and 130% after 150 days) would be counterproductive as sellers would "hold out" for the higher rate.

DTC revised the earlier version of the buy-in procedure to address the concerns raised with respect to seller "hold-outs." The three-step invitation to tender successively at 110% of the current market value after 90 days, 120% after 120 days, and 130% after 150 days has been replaced by a single invitation after 90 days to tender at the current market value plus a premium ranging from 2–12% depending upon the current market value of the short position.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6572 Filed 3–16–95; 8:45 am]

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[3] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35468; File No. SR–MBSCC–95–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Billing Procedures

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 1, 1995, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to modify its Source Book billing procedures to implement a pricing policy that enables MBSCC to apply discounts and surcharges to participants' invoices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

On August 12, 1994, the Chicago Stock Exchange, Incorporated ("CHX") sold all of its ownership interest in MBSCC, a wholly-owned subsidiary of CHX, to MBSCC's participants and the National Securities Clearing Corporation.[2] The Board of Directors of the newly-owned MBSCC has now determined to establish a pricing policy for MBSCC's clearing services. The purpose of the proposed rule change is to modify MBSCC's Source Book, Procedure IX, Billing, to implement a pricing policy that enables MBSCC to apply discounts and surcharges to participants' invoices. The proposed rule change enables MBSCC's Board of Directors to apply the pricing policy on a monthly, yearly, or other basis as determined by MBSCC's Board of Directors from time to time. This pricing policy will more accurately reflect the approximate costs of MBSCC's actual operations. MBSCC will implement the pricing policy commencing with participants' invoices for January 1995. Additionally, the proposed rule makes a technical change to MBSCC's Source Book to delete all references to Midwest Securities Trust Company.

MBSCC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[3] of the Act and pursuant to Rule 19b–4(e)(3)[4] promulgated thereunder because the proposed rule change is concerned solely with the administration of MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6573 Filed 3–16–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of the transaction, refer to Securities Exchange Act Release No. 34512 (August 10, 1994), 59 FR 42320 [File No. SR–MBSCC–94–3] (order granting accelerated approval of corporate governance changes to facilitate the sale of MBSCC).

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] 17 CFR 240.19b–4(e)(3) (1994).

[Release No. 34–35472; File No. SR–OCC–95–01]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Clarifying Rules Regarding the Unavailability of Current Index Values

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 23, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–95–01) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify the respective rights

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

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and responsibilities of OCC and the options exchanges ("Exchanges") in the event that the primary market for securities representing a substantial part of the value of an underlying index is not trading at the time when the current index value would ordinarily be determined or in the event that the current index value is unreported or otherwise unavailable for purposes of calculating the exercise settlement amount. The proposed rule change also makes certain technical changes in OCC's By-Laws and Rules governing index options and its proposed By-Laws and Rules governing Flexible Structured Index Options Denominated in a Foreign Currency ("FX Index Options").[2]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 15, 1994, technical difficulties delayed the opening of the National Association of Securities Dealers Automated Quote System ("NASDAQ") until 11:55 a.m., Eastern Time, nearly two and a half hours after the time trading normally begins. Prior to the delayed opening, however, transactions in NASDAQ listed securities occurred via telephone and the Instinet on-line trading system. Prices reported in connection with those transactions ("preopening prices") had been transmitted to certain designated reporting authorities, and some or all of those reporting authorities used those prices in calculating values for certain stock indexes settling at the opening.

An issue arose that day as to whether the Exchanges would be able to provide OCC with settlement values for those indexes settling on the opening of the market whose component securities included NASDAQ listed issues. The Exchanges were concerned that they would be unable to provide OCC with settlement values prior to OCC's exercise processing cut-off time.

Fortunately, the designated reporting authorities were able to calculate and report the settlement values for the affected series to the Exchanges. The Exchanges, in turn, reported those settlement values to OCC in time for OCC to conduct its normal expiration processing. Although the Exchanges reported the settlement values somewhat later than usual, the late reporting did not have a significant impact on OCC's processing. In fact, OCC clearing member reports were not delayed at all.

While the NASDAQ incident was resolved without significant impact, the incident prompted OCC to take a closer look at its rules respecting the unavailability of current index values and to consider more fully what steps would be taken in such a situation. Following its review, OCC determined that certain technical changes should be made to its rules to clarify the respective rights and responsibilities of OCC and the Exchanges with respect to the reporting of current index values and the determination of settlement values.

During the NASDAQ event, OCC was prepared to exercise this authority had it become necessary. However, questions arose as to what prices OCC would use to fix exercise settlement amounts, and what the basis for that determination would be. OCC's proposed changes are intended to address those issues. OCC is proposing to amend its By-Laws, Article XVII, Section 4, which empowers OCC to fix an exercise settlement amount in the event that OCC determines that the current index value is unreported or otherwise unavailable.

First, the proposed rule change will make it clear that OCC has the authority to fix an exercise settlement amount whenever the primary market for securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. OCC believes that this authority is implicit in the language of the present By-Law because in such circumstances the current index value would generally be "unreported or otherwise unavailable." However, the proposed rule change would make it explicit.

In addition, the proposed change assigns the responsibility for fixing exercise settlement amounts to a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading, one of whom shall be such Exchange's representative on OCC's Securities Committee, and OCC's Chairman. This structure, which assigns the decision-making responsibility to an exchange-controlled panel, conforms to the way in which determinations with respect to adjustments to terms of FX index option contracts are made pursuant to Article XXIII, Section 4. The proposed change authorizes the panel to fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest including, without limitation, fixing the exercise settlement amount on the basis of the reported level of the underlying index at the close of trading on the last preceding trading day for which a closing index level was reported.

Identical changes also are being made to Article XXIII, Section 5, which governs the fixing of exercise settlement amounts for FX Index Options. Under these proposed changes, the situation contemplated by the last two sentences of the definition of "expiration date" in Article XXIII, Section 1.E.(3) (*i.e.*, where the primary market for underlying securities representing a substantial part of the value of an index is closed on an expiration date) will be explicitly covered by Article XXIII, Section 5. Therefore, the last two sentences of Article XXIII, Section 1.E.(3) have been deleted.

The remainder of the proposed changes to the By-Laws are technical changes, primarily for the purpose of conforming those By-Laws to changes approved in SR–OCC–94–08.[3]

OCC believes the proposed rule change is consistent with the requirements of the Act, specifically with Section 17A of the Act, and the rules and regulations thereunder because it will facilitate the prompt and accurate settlement of transactions in index options, flexibility structured index options, and FX Index Options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not sought or received comments on the proposed rule change.

[2] For a complete description of FX Index Options, refer to Securities Exchange Act Release No. 35149 (January 3, 1995), 60 FR 156, (File No. SR–OCC–94–08) (order approving proposed rule change).

[3] Supra Note 2.

OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6574 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35470; File No. SR–PHILADEP–94–6]

Self-Regulatory Organizations; the Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Extending the Pilot Program for the Fully Automated Securities Transfer Reconciliation Accounting Control System

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 14, 1994, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to extend its pilot program governing the Fully Automated Securities Transfer Reconciliation Accounting Control System ("FASTRACS") through December 29, 1995.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of and the Statutory Basis for the Proposed Rule Change

On July 19, 1994, the Commission approved a proposed rule change establishing a pilot program for FASTRACS for the transfer of certain securities between PHILADEP and certain transfer agents.[2] FASTRACS is an automated program by which PHILADEP and the participating transfer agents use a master balance certificate to evidence the number of securities of a particular issue that are registered in PHILADEP's nominee name. The transfer agents have custody of the securities in the form of balance certificates registered in PHILADEP's nominee name. The balance certificates are adjusted daily to reflect PHILADEP's withdrawal and deposit activity.

According to PHILADEP, the pilot program has operated successfully in accordance with the operational and technical specifications; however, testing of the program is not complete.[3] PHILADEP therefore requests an extension of the FASTRACS pilot program on a temporary basis through December 29, 1995.

PHILADEP believes extending the program is consistent with Section 17A of the Act.[4] By providing an efficient mechanism for the transfer of securities positions to and from participating transfer agents, the programs should help foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and should facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of PHILADEP's FASTRACS, refer to Securities Exchange Act Release No. 34404 (July 19, 1994), 59 FR 38010 [File No. SR–PHILADEP–90–03] (order approving FASTRACS program on a temporary basis).

[3] Currently, PHILADEP has completed testing with two transfer agents who are now fully operational with FASTRACS. PHILADEP continues to conduct testing with a third transfer agent. Upon successful completion of testing with the third transfer agent, PHILADEP will file a proposed rule change under Section 19(b) of the Act to seek permanent approval of the FASTRACS program. Telephone conversation between Keith Kessel, Compliance Officer, PHILADEP and Margaret I. Robb, Attorney, Division of Market Regulation, Commission (December 22, 1994).

[4] 15 U.S.C. 78q–1 (1988).

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as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule change that are filed with the Commission, and all written communications concerning the proposed rule change between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of PHILADEP. All submissions should refer to File Number SR–PHILADEP–94–6 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6575 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Providence Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting on Friday, April 21, 1995 at 8 a.m. at the Providence Marriott, Charles at Orms Streets, Providence, Rhode Island 02904 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: March 10, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–6643 Filed 3–16–95; 8:45 am]

BILLING CODE 8025–01–M

Providence Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting on Friday, March 24, 1995 at 8:00 a.m. at the Providence Marriott, Charles at Orms Streets, Providence, Rhode Island 02904 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: March 10, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–6644 Filed 3–16–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradford Regional Airport, Bradford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Sherwood Anderson, Chairman of the Bradford Regional Airport Authority at the following address: Bradford Regional Airport Authority, Star Route, Box 176, Lewis Run, PA 16738.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bradford Regional Airport Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011, (717) 975–3423. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bradford Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 4, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1995

Proposed charge expiration date: June 30, 2013

Total estimated PFC revenue: $808,875

Brief description of proposed projects:

—Apron Rehabilitation
—Deicing Pad
—Master Plan Update
—Purchase ARFF Vehicle
—Runway 14/32 Lighting
—Parking Lot Overlay
—Snow Removal Equipment
—Expand Removal Equipment Storage Building
—Sewage/Water System
—Parallel Taxiway to Runway 14–32
—Runway 5/23 Lighting (impose Only)
—Airport Sign
—Terminal Building
—Runway 14–32 Rehabilitation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bradford Regional Airport Authority.

Issued in Jamaica, New York on March 10, 1994.

Anthony P. Spera,

Acting Manager, Airports Division Eastern Region.

[FR Doc. 95–6690 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–M

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[5] 17 CFR 200.30–3(a)(12) (1994).

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–94–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before April 26, 1995 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The waiver petition is as follows:

Central Montana Rail, Incorporated (CM), FRA Waiver Petition Docket No. HS–94–5

The CM seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. CM states that it is not its intention to employ a train and engine service employee more than 12 hours under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. CM operates 83 miles of Class 2 track and 4 miles of Class 1 track between Moccasin Junction and Geraldine, Montana. Train movements are authorized by the yard limit rule and track warrant as stated in the General Code of Operating Rules. The maximum authorized operating speed is 25 mph.

The CM performs interchange service with the Burlington Northern Railroad Company at Moccasin Junction. The petitioner indicates that granting of the exemption will greatly facilitate their operation, is in the public interest, and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Issued in Washington, DC on March 10, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–6582 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–06–P

Waiver Petition Docket Number PB–94–3; Public Hearing

The National Railroad Passenger Corporation (Amtrak) has requested a waiver of compliance from certain provisions of the Railroad Power Brakes and Drawbars Regulations, Title 49 CFR Part 232. (see FR 37528, July 22, 1994). Amtrak is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 36 months to 48 months on all passenger cars equipped with 26–C Type Brake Equipment. Section 232.17(b)(2) states: "Brake equipment on passenger cars must be clean, repaired, lubricated and tested as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S–045 in the Manual of Standards and Recommended Practices of the Association of American Railroads (AAR)." Paragraph 2.1.2 of Standard S–045 (AAR Manual Section A, Part III) currently specifies 36 months for 26–C Type Brake Equipment.

The Federal Railroad Administration (FRA) has determined that a public hearing be held in this matter. Accordingly a public hearing is hereby set for 9:30 a.m. on April 6, 1995, at the Nassif Building, Conference Room 4236, 400 Seventh Street, SW., Washington, DC. The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA. The hearing will be a nonadversary proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition.

Issued in Washington, DC March 10, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–6581 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 94–98; Notice 2]

Decision That Nonconforming 1973 Ferrari Dino 246 GTS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1973 Ferrari Dino 246 GTS passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1973 Ferrari Dino 246 GTS), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective March 17, 1995.

FOR FURTHER INFORMATION CONTACT:

Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

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SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141 (a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc., of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 28, 1994 (59 FR 67002) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Fiat Auto U.S.A., Inc. (Fiat), the United States representative of Ferrari. In its comment, Fiat stated that Ferrari, and other companies within the Fiat Group, have invested considerable resources in the design and production of vehicles that comply with the Federal motor vehicle safety standards. Although it stated that it has not determined what modifications are necessary to bring a vehicle into compliance with the Federal safety standards, Fiat contended that it is not possible to achieve such compliance by simply retrofitting a vehicle built for the European market, without conducting extensive development and testing.

Because Fiat's comments did not specify how non-U.S. certified 1973 Ferrari Dino 246 GTS passenger cars are incapable of being readily altered to conform to the standards, there was no basis for NHTSA to solicit a response from the petitioner. As they have been performed with relative ease on thousands of vehicles imported over the years, none of the modifications described in the petition would preclude NHTSA from determining that non-U.S. certified 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation. NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 107 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1973 Ferrari Dino 246 GTS not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1973 Ferrari Dino 246 GTS originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conformed to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 3014(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 14, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–6703 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 145–01]

Lend-Lease Functions and Trust Fund Receipts; Authority Delegation

Dated: March 10, 1995.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b) and Executive Order (E.O.) 9726, it is ordered that the liquidation of the transferred functions cited in E.O. 9726 are delegated to the Commissioner, Financial Management Service. The Commissioner may redelegate the authority transferred to such subordinates in the bureau as necessary.

a. E.O. 9726 (May 17, 1946) transferred to the Department the Office of Foreign Liquidation and all functions with respect to the maintenance of accounts and other fiscal records relating to lend-lease and reverse lend-lease, effective at the close of business on May 31, 1946.

b. The Commissioner, upon approval by the Fiscal Assistant Secretary, may make arrangements with any bureau, division, or office within the Department for the performance of functions pertaining to lend-lease or reverse lend-lease transferred under this Order.

2. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), it is ordered that the authority to effect covering of general, special and trust receipts into the Treasury is delegated to the Commissioner, Financial Management Service. The Commissioner may redelegate the authority transferred herein to such subordinates in the bureau as deemed necessary. Such receipts will be considered as covered and officially acknowledged on the date they are entered in the records of the Financial Management Service. Paragraph 6. of the Joint Regulations No. 4, revised, issued by the Secretary of the Treasury and Comptroller General of the United States on April 29, 1955, provides:

The requirements of existing law that warrants be issued and countersigned to acknowledge the receipt of moneys to be covered in the Treasury are hereby waived, For the purposes of Section 305 of the Revised Statutes, as amended (31 U.S.C. 147), moneys received and covered into the public Treasury shall be deemed to be officially acknowledged when the receipt of such moneys, for credit to the receipt accounts or appropriation and fund accounts maintained pursuant to the Act of July 31, 1894, as amended (31 U.S.C. 1019), and Section 114(b) of the Budget and Accounting Procedures Act of 1950, is recorded by the Treasury offices designated for that purpose by the Secretary of the Treasury.

Frank N. Newman,

Deputy Secretary of the Treasury.

[FR Doc. 95–6638 Filed 3–16–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Order 107–05]

Communications With the White House Regarding Open Investigations, Adjudications or Civil and Criminal Enforcement Actions

Dated: March 2, 1995.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b) and 5 U.S.C. 301 and 302, I hereby issue the following procedures for communications between the Department of the Treasury and the White House regarding open Department investigations, adjudications or civil or criminal enforcement actions.

1. General Procedures

a. *General Policy.* In order to ensure the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," it is the policy of the Treasury Department to provide the White House with information on open investigations, adjudications, or civil (including administrative or regulatory) or criminal enforcement actions pending before or within any regulatory or law enforcement agency within the Department, where important for the performance of the President's duties, where appropriate from a law enforcement and regulatory perspective and where consistent with these procedures.

b. *Referral Procedures.* The below listed procedures are established to ensure the flow of appropriate information between the Department and the White House. Central to these procedures is the need for consultation with Department senior policy officials,[1] including the General Counsel. The General Counsel is authorized to issue more detailed guidance should he or she determine it to be necessary.

OPI: AGC (Enforcement)

(1) *Action to be Taken by Department Employees/Senior Policy Officials.* If a Department employee determines that a matter involving an open investigation, adjudication, or enforcement action under his or her jurisdiction should be communicated to the White House, he or she shall inform, through the appropriate Department senior policy official, the General Counsel about this matter.

(2) *Action to be Taken by Treasury Bureau Employees/Bureau Heads.* If an employee of a Treasury law enforcement or financial regulatory bureau or the Office of Foreign Assets Control ("Treasury Bureau") believes that a matter involving an open investigation, adjudication or enforcement action under his or her jurisdiction should be communicated to the White House, he or she shall contact, through the Treasury Bureau head, the Department senior policy official to whom that Treasury Bureau head directly reports. If the senior policy official concurs with that recommendation, he or she shall then inform the General Counsel about this matter.

(3) *General Counsel Review and Final Determination.* The General Counsel shall provide the Department senior policy official with his or her recommendation concerning the advisability of disclosing the information to the White House. The General Counsel is authorized to preclude transmittal of the information on legal or ethical grounds. If the General Counsel believes that disclosure should not be made based on other than legal or ethical grounds, the General Counsel shall inform the appropriate senior policy official of this recommendation.

(4) *Other Final Determinations.* Unless precluded on legal or ethical grounds by the General Counsel, the Department senior policy official referred to in paragraph 1.b.(1) or 1.b.(2) shall make the final determination on whether the information should be communicated to the White House. If the Department senior policy official determines that such information should be communicated to the White House, he or she shall request the General Counsel to make the initial communication.

c. *Communications.*

(1) *Initial Contact with White House.* Initial communications between the White House and the Treasury Department regarding any pending Department investigation, adjudication or criminal or civil enforcement action shall involve only the Counsel to the President or the Deputy Counsel and the General Counsel or the Deputy General Counsel. No Treasury or bureau employee shall initiate communications on these matters with the White House other than as provided in paragraph 1.c. Any Treasury or bureau employee in possession of information pertaining to any pending criminal referrals and criminal investigations shall keep the information in strict confidence and shall not disclose the information to any person except in accordance with applicable law, Treasury standards and this Order.

(2) *Continuing Contact.* After the initial contact, further contact on a matter deemed appropriate for communications pursuant to this Order shall be directed to the White House Counsel's Office by the General Counsel, the Deputy General Counsel or the appropriate senior policy official designated by the General Counsel or any other lawyer in the Office of the General Counsel, as designated by the General Counsel.

d. *Writing Requirements.* All proposals and decisions involving open Department investigations, adjudications or enforcement actions discussed herein that either propose or result in communications with the White House shall be detailed in contemporaneous, written memoranda.

(1) *Treasury Bureau Heads and Department Senior Policy Officials.* All requests from Treasury Bureau Heads to Department senior policy officials and from Department senior policy officials to the General Counsel requesting a communication to the White House concerning an open investigation, adjudication or enforcement action shall be in writing. Such memoranda shall explain why the communication of information is important for the performance of the President's duties and appropriate from a law enforcement perspective.

(2) *General Counsel.* The General Counsel shall also issue in writing his or her legal or ethical recommendation to the appropriate Department senior policy official in response to such request for communication with the White House.

(3) *Emergency Situations.* If an emergency situation is present, the memoranda requested by paragraph 1.d. may be prepared as soon as practicable thereafter.

e. *Information Requests by the White House.* Requests by the White House for information concerning open Department investigations, adjudications or civil or criminal enforcement actions shall be referred in all cases to the General Counsel. The General Counsel shall ensure that such requests are processed consistent with the provisions of this Order and any applicable White House guidance.

2. Open Investigations, Adjudications or Enforcement Actions Directly Involving the White House

a. *Contacts Directly Involving the White House.* If the President, the Vice-President, a member of their families, a senior advisor or an employee of an office which the Chief of Staff (or any similar successor position) directly supervises, is an actual or potential

[1] Department senior policy officials shall include those Treasury officials at the Assistant Secretary level and above as set forth in Treasury Order 101–05 and the organization chart attached thereto.

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subject, target or witness of an open investigation, adjudication or enforcement action under the jurisdiction of the Treasury Bureaus, the determination of whether it is appropriate to disclose this information to the White House shall be made in accordance with this Order taking into consideration, among other things, the following:

(1) whether disclosure would detrimentally affect the fundamental operation of an agency or other organization in the executive branch of the federal government;

(2) whether disclosure of the information would promote or reduce the public confidence and trust in the integrity of elected officials and public servants or the Department's regulatory and law enforcement activities;

(3) whether there exists an immediate threat of harm or injury to White House persons or property which disclosure will help to avoid;

(4) whether the matter involves any sensitive or urgent national security or foreign policy concern that should be brought to the White House's attention;

(5) whether disclosure of the information would interfere or assist with the Department's law enforcement and regulatory mission or an ongoing law enforcement or regulatory activity; and

(6) whether non-disclosure could cause the White House to convey inaccurate or misleading information to the public.

b. *Secretary/Deputy Secretary Consultation.* The Deputy Secretary shall be informed prior to any Department communications with the White House involving the matters subject to paragraph 2. The Deputy Secretary, in turn, may consult with the Secretary. The Secretary or Deputy Secretary may consult with the Attorney General or any other appropriate senior government official concerning the advisability of such disclosure or non-disclosure.

c. *Procedures.* Subject to the procedures specified in paragraph 2., the procedures described in paragraph 1. herein shall apply to the communications described in paragraph 2.

3. *SCOPE.* In the day-to-day functioning of the Department, there exist activities necessary to carry out the Department's law enforcement and regulatory mission. These may include routine law enforcement contacts, including administrative and regulatory contacts, designed to collect information through document requests, interviews, depositions or otherwise. Nothing in this Order shall be construed to amend the Department's current approach with respect to its handling of these routine activities.

In addition, the procedures set forth in this Order do not apply to the following circumstances.

a. Any communication subject to a specific statutory provision prohibiting or governing the disclosure of the information. (*See, e.g.*, 12 U.S.C. 1462a(b)(3) and 26 U.S.C. 6103.)

b. Communications between the Secret Service and the White House concerning the Service's protective responsibilities.

c. Communications between a Treasury Bureau and the National Security Council concerning open investigations or cases, if such disclosure is necessary for the conduct, determination or coordination of national security or foreign policy issues.

d. Communications between the Department and the White House appropriate to properly respond to inquiries or requests for information or documents in the form of (i) civil and criminal discovery requests; (ii) subpoenas, including but not limited to, grand jury and congressional; (iii) other congressional requests for documents and information; and (iv) any other requests for information and documents authorized by law; provided that the exception created by paragraph 3.d. shall not apply to requests for information pertaining to those officials and individuals identified in paragraph 2. who are the subject, target or witness in an open investigation, adjudication or enforcement action.

e. Communications between the Department and the White House appropriate to formulate an Administration position with respect to judicial review or settlement of pending litigation.

f. Tax, security and background checks on prospective Federal employees and appointees, including Executive and Judicial Branch appointments under consideration by the President or the Department.

g. Communications between the Inspector General or his or her authorized officials and the White House in furtherance of the duties and responsibilities of the Inspector General undertaken pursuant to the Inspector General Act of 1978, 5 U.S.C.A. App. 3.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 95–6639 Filed 3–16–95; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 52
Friday, March 17, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, March 24, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 3, 1995 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Appointments to the Indian State Advisory Committee
VI. Chicago Hearing Report
VII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,

Solicitor.

[FR Doc. 95–6709 Filed 3–14–95; 4:09 pm]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 21, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: 1994 Year-End Financial Management Report.

Memorandum and resolution re: (1) Final rule in the form of 5 C.F.R. Part 3201, entitled "Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation," which establishes uniform standards of ethical conduct for employees of the Corporation to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics; and (2) final amendments to Part 336 of the Corporation's rules and regulations, entitled "Employee Responsibilities and Conduct," which (a) remove and reserve subparts A, B, C, E, and F, sections 336.1–336.23, and sections 336.29–336.37, (b) remove the appendix, and (c) add a new section 336.1 to provide a cross-reference to the Corporation's supplemental ethical conduct regulation to be codified at 5 C.F.R. Part 3201, the Corporation's supplemental financial disclosure regulation at 5 C.F.R. Part 3202, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 C.F.R. Parts 2634 and 2635.

Memorandum and resolution re: Recommendation regarding the request that Part 344 of the Corporation's rules and regulations, entitled "Recordkeeping and Confirmation Requirements for Securities Transactions," be amended to delete the requirement that the amount of a bank's remuneration be disclosed with respect to mutual fund transactions effected for customers.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 359 to be entitled "Golden Parachute and Indemnification Payments," and proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which would (1) limit golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions and depository institution holding companies; and (2) delegate to the Executive Director for Supervision, Resolutions, and Compliance, the Director of the Division of Supervision, or their designees, the authority to approve or deny certain requests.

Memorandum and resolution re: Guidelines for the establishment of an independent intra-agency appellate process to review material supervisory determinations as required by the Riegle Community Development and Regulatory Improvement Act of 1994, which guidelines are intended to clarify the types of determinations that are eligible for review and establish the process by which appeals will be considered and decided.

Memorandum and resolution re: (1) Final amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," and "Rules of Practice and Procedure," respectively, and (2) amendments to the Corporation's rules and regulations in the form of a new Part 364, entitled "Standards for Safety and Soundness," which establish deadlines for submission and review of safety and soundness compliance plans, and set forth Interagency Guidelines Establishing Standards for Safety and Soundness.

Memorandum and resolution re: Notice of withdrawal of proposed amendments to the Corporation's rules and regulations in the form of a new Part 334, entitled "Contracts Adverse to Safety and Soundness of Insured Depository Institutions," which would have implemented the statutory prohibition on contracts that adversely affect the safety and soundness of insured depository institutions.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would, in implementing section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994, have the effect of lowering the capital requirement for small business loans and leases on personal property that have been transferred with recourse by qualified insured depository institutions.

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which will, in implementing section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, have the effect of correcting the anomaly that currently exists in the risk-based capital treatment of recourse transactions under which an institution would be required to hold capital in excess of the maximum amount of loss possible under the contractual terms of the recourse obligation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

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Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 14, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–6743 Filed 3–15–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, March 14, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's supervisory activities.

Application of Allied Bank of Georgia, Thomson, Georgia, for consent to purchase certain assets of and assume the liability to pay deposits made in the Washington Branch of First Union National Bank of Georgia, Atlanta, Georgia, and for consent to establish the Washington Branch of First Union National Bank of Georgia as a branch of Allied Bank of Georgia.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: March 14, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–6832 Filed 3–15–95; 3:04 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6725 Filed 3–15–95; 11:37 am]

BILLING CODE 6210–01–P

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: April 18—April 20, 1995, 9:00 a.m. to 5:00 p.m.

LOCATION: Radisson Barcelo Hotel Washington, 2121 P Street, NW., Washington, DC (202) 293–3100.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by April 7, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council shall be open to the public.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
ADA Town Meeting Tour Update
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 14, 1995.

Speed Davis,

Acting Executive Director.

[FR Doc. 95–6722 Filed 3–15–95; 8:45 am]

BILLING CODE 8820–BS–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 20, 1995.

An open meeting will be held on Tuesday, March 21, 1995, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, March 21, 1995, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9) (A) and (10) and 17 CFR 200.402(a)(4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, March 21, 1995, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Ahmed Mohamed Soliman, a registered investment adviser and formerly a registered representative, from the decision of an administrative law judge. For further information, please contact Kathleen A. O'Mara at (202) 942–0923.

The subject matter of the closed meeting scheduled for Tuesday, March 21, 1995, following the 10:00 a.m. open meeting will be:

Post oral argument discussion.
Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascretain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 16, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6840 Filed 3–15–95; 3:48 pm]

BILLING CODE 8010–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, March 23, 1995, 9:00 a.m.–5:30 p.m.

LOCATION: 1550 M Street NW., Washington, DC 20005, First Floor (Lobby) Conference Room.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-ninth Meeting of the Board of Directors; Chairman's Report; President's Report; General issues; Selection of Solicited Grants; Selection of 1995–1996 Fellows for Jennings Randolph Fellowship Program.

CONTACT: Mr. Wilson Grabill, Public Affairs Specialist, Public Affairs and Information Office, Telephone: (202) 457–1700.

Dated: March 13, 1995.

Charles E. Nelson,

Vice President, United States Institute of Peace.

[FR Doc. 95–6830 Filed 3–15–95; 3:02 pm]

BILLING CODE 3155–01–M

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Corrections

Federal Register
Vol. 60, No. 52
Friday, March 17, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

RIN 0584-AB97

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

Correction

In notice document 95-637 beginning on page 2730 in the issue of Wednesday, January 11, 1995, make the following correction:

On page 2731, in the table, in the sixth column (Guam), in the Household size for 5, the maximum allotment amount now reading "767" should read "676".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

Houston Lighting and Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

Correction

In notice document 95-3375 appearing on page 8100, in the issue of Friday, February 10, 1995, make the following correction:

In the first column, in the second paragraph, the last line was inadvertently omitted. The last line should read "should be changed to read "March 1, 1995" "

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 95-20]

RIN 1515-AB70

Prehispanic Artifacts From El Salvador

Correction

In rule document 95-6122 beginning on page 13351 in the issue of Friday, March 10, 1995, the cover page subject heading which reads "Prehistoric Artifacts From El Salvador" should read "Prehispanic Artifacts From El Salvador"

BILLING CODE 1505-01-D

federal register

Friday
March 17, 1995

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Patent Appeal and Interference Practice; Final Rule

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950207044–5044–01]

RIN 0651–AA71

Patent Appeal and Interference Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases relating to patent appeal and interference proceedings. The changes include amendments to conform the interference rules to new legislative requirements and a number of clarifying and housekeeping amendments.

EFFECTIVE DATE: This document is effective April 21, 1995, except § 1.11(e) which is effective March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 603–3361 or by mail marked to the attention of Fred E. McKelvey at P.O. Box 15667, Arlington, Virginia 22215.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** (59 FR 50181) on October 3, 1994, and in the Official Gazette of the Patent and Trademark Office (1167 Off. Gaz. Pat. Office 98) on October 25, 1994. In response to a request for written comments, twenty-six written comments were received. A public hearing was held on December 7, 1994, at which four witnesses testified. The written comments and the suggestions made at the public hearing represent the views of fifteen individuals and corporations and three patent law associations, namely, the Committee on Interferences of the American Bar Association, the Interference Committee of the American Intellectual Property Law Association and the Japan Intellectual Property Association. These comments and suggestions are addressed below in the discussion of the rule changes to which they pertain. A number of suggested rule changes, though meritorious, cannot be adopted at this time because they are believed to be outside the scope of the present rulemaking. Accordingly, those suggestions will be the subject of a future rulemaking.

The provisions of the rules, as amended, will be applied in pending interferences to the extent reasonably possible. However, it is the desire of PTO to avoid applying the rules, as adopted, to pending interferences where substantial prejudice would result. For example, generally speaking, in cases where the periods for filing preliminary motions and preliminary statements have been set, the current preliminary motion and preliminary statement rules will apply, although parties are free to voluntarily comply with the rules as amended. Generally speaking, in cases where the testimony periods have been set, the current testimony and record rules will apply. The question of whether substantial prejudice will result in a particular case is a matter within the discretion of the administrative patent judge or the Board.

I. Amendments Responsive to Adoption of Public Laws 103–182 and 103–465

As indicated in the Notice of Proposed Rulemaking, several of the amendments to the interference rules (i.e., 37 CFR 1.601 *et seq.*) are responsive to Public Law 103–182, 107 Stat. 2057 (1993) (North American Free Trade Agreement Implementation Act, hereinafter NAFTA Implementation Act), which amended 35 U.S.C. 104 to permit an applicant or patentee, with respect to an application filed on or after December 8, 1993, to rely on activities occurring in a "NAFTA country" to prove a date of invention no earlier than December 8, 1993, except as provided in 35 U.S.C. 119 and 365. On December 8, 1994, which was subsequent to publication of the Notice of Proposed Rulemaking, Public Law 103–465, 108 Stat. 4809 (1994) (Uruguay Round Agreements Act) was signed into law, which further amended 35 U.S.C. 104 to permit an applicant or a patentee, with respect to an application filed on or after January 1, 1996, to rely on activities occurring in a WTO member country to prove a date of invention no earlier than January 1, 1996, except as provided in 35 U.S.C. 119 and 365. Section 104, as amended by Public Law 103–465, reads as follows:

Section 104. Invention made abroad.

(a) IN GENERAL.—

(1) PROCEEDINGS.—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country or a WTO member country, except as provided in sections 119 and 365 of this title.

(2) RIGHTS.—If an invention was made by a person, civil or military—

(A) while domiciled in the United States, and serving in any other country in connection with operations by or on behalf of the United States,

(B) while domiciled in a NAFTA country and serving in another country in connection with operations by or on behalf of that NAFTA country, or

(C) while domiciled in a WTO member country and serving in another country in connection with operations by or on behalf of that WTO member country,

that person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States, that NAFTA country, or that WTO member country, as the case may be.

(3) USE OF INFORMATION.—To the extent that any information in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Patent and Trademark Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) DEFINITIONS.—As used in this section—

(1) the term 'NAFTA country' has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act; and

(2) the term 'WTO member country' has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.

Section 2(4) of the NAFTA Implementation Act is codified at 19 U.S.C. 3301; § 2(10) of the Uruguay Round Agreements Act is codified at 19 U.S.C. 3501.

The Notice of Proposed Rulemaking proposed adding a new paragraph (r) to § 1.601 defining "NAFTA country" to mean "NAFTA country" as defined in section 2(4) of the NAFTA Implementation Act and "non-NAFTA country" to mean a country other than a NAFTA country. One comment questioned whether "NAFTA country" should be defined in the rules to include the United States. The answer is no. "NAFTA country" as used in 35 U.S.C. 104 has the meaning given that term in section 2(4) of the NAFTA Implementation Act, which refers to only Canada and Mexico. Another comment observed that the proposed terms "NAFTA country" and "non-NAFTA country" do not appear to contemplate that inventive acts may occur in a foreign place that is not part of any "country" and suggested either using the phrase "outside the United States or a NAFTA country" instead of "non-NAFTA country" or else defining "non-NAFTA country" to mean "a *place* other than the United States or a NAFTA country." The comment is well taken. In view of the comment and the amendment of 35 U.S.C. 104 by the Uruguay Round Agreements Act to permit reliance on activities in WTO member countries, the proposed term "NAFTA country" is replaced in §§ 1.622, 1.623, 1.624 and 1.628, which set forth the requirements for preliminary statements and for correcting preliminary statements, by the phrase "NAFTA country or WTO member country" and the proposed term "non-NAFTA country" is replaced by the phrase "place other than the United States, a NAFTA country or a WTO member country." Furthermore, the references in §§ 1.622(b) and 1.623(a) to the "second sentence of 35 U.S.C. 104" have been changed to "35 U.S.C. 104(a)(2)" to reflect the fact that 35 U.S.C. 104 as amended by the Uruguay Round Agreements Act includes paragraphs (a) (1), (2) and (3). For example, § 1.622(b) is revised to read:

(b) The preliminary statement shall state whether the invention was made in the United States, a NAFTA country (and, if so, which NAFTA country), a WTO member country (and if so, which WTO member country), or in a place other than the United States, a NAFTA country, or a WTO member country. If made in a place other than the United States, a NAFTA country, or a WTO member country, the preliminary statement shall state whether the party is entitled to the benefit of 35 U.S.C. 104(a)(2).

For the above-stated reasons, § 1.601 is revised by adding new paragraph (r), which, as proposed, defines "NAFTA country" to have the meaning given that term in section 2(4) of the North American Free Trade Act Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (1993). However, since, as noted above, the term "non-NAFTA country" is not being adopted, the proposal to also define that term in § 1.601(r) is hereby withdrawn. Section 1.601 is also revised to include a new paragraph (s) that defines "WTO member country" to have the meaning given that term in section 2(10) of the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809 (1994).

Section 1.684, which relates to the taking of testimony in a foreign country, is removed and reserved in view of the amendments to §§ 1.671–72. Section 1.672 is amended by revising paragraph (a), revising current paragraph (b) and redesignating parts of it as new paragraphs (b), (c) and (d), removing and reserving paragraph (c) and redesignating it as new paragraph (e), revising paragraphs (d) and (e) and redesignating them as new paragraphs (f) and (g), and redesignating paragraph (f) as new paragraph (h).

Specifically, the Notice of Proposed Rulemaking proposed amending § 1.672(a) to require that "testimony not compelled under 35 U.S.C. 24 or compelled from a party or in another country" be taken only by affidavit. Several comments questioned whether the term "compelled" also applies to the phrase "in another country" and suggested inserting "compelled" before that phrase if that is the intent. Inasmuch as the comment correctly states the intent, the suggestion in the comment is being adopted.

One comment supported limiting non-compelled direct testimony to affidavits on the ground that it will reduce the cost of submitting testimony-in-chief and will eliminate economic harassment by a more affluent party of a less affluent opponent, since the less affluent opponent will no longer be required to pay the expense of counsel to attend depositions called by the more affluent party for taking direct testimony. Several comments were opposed, maintaining that affidavits are inherently less credible than live testimony. One comment states:

> Ours is the only country that supports interferences and we should be proud of it, because it demonstrates our commitment to the concept that it is more important to seek right and justice than to settle for a single arbitrary rule of convenience, no matter how convenient. Even if we don't always secure the right result, at least we try. As we invite the rest of the world to become full participants in this uncommon philosophy, we should endeavor to present it in its best light.
>
> How we conduct a trial is a centerpiece of our judicial system. Our interference trial by deposition is a reasonable compromise from a trial in a courtroom type setting. But a trial by affidavit is no trial at all! Affidavits are inevitably contrived, artificial, and often argumentative. They cannot substitute for the extemporaneous words of a witness (even if well coached), and cross-examination is not likely to reconstruct the real truth. Even if it is just in a nuance of expression, it is gone.
>
> The current approach of providing a choice between deposition and affidavit testimony is difficult to accept, but at least it is justifiable on the basis that so many patent attorneys simply don't know how to conduct a deposition, while they do have some experience with affidavits. But the proposal to make affidavits mandatory for direct testimony is contrary to my understanding of American jurisprudence.

Direct testimony on behalf of a party by oral deposition is said to be advantageous to the opponent in that the testimony is the witness' own, the demeanor of the witness can be observed by the opponent (but demeanor is not observed by any member of the Board), and cross-examination can be carried out without a period during which it is said that the witness can be coached in preparation for cross-examination. However, under current practice a party can elect to deprive its opponent of these advantages by electing to use affidavits. Deposition testimony is also said to be advantageous to the party offering the testimony, who may find it more convenient to present the witness at a single deposition for direct and cross-examination than to first prepare an affidavit for direct testimony and later produce the witness at a deposition for cross-examination by an opponent. These supposed advantages are believed to be outweighed by the advantages of requiring that direct non-compelled testimony be in affidavit form. As recognized by those who favor direct testimony by affidavit, there are at least two advantages to taking direct testimony by affidavit, i.e., (1) Reducing the cost of presenting a party's own direct testimony and (2) avoiding the expense of attending an opponent's depositions for direct testimony. There are a number of other advantages when direct testimony is taken by affidavit rather than deposition. First, because an opponent will have seen all of the party's direct testimony prior to beginning cross-examination, the opponent should be able to carry out a more pointed and efficient cross-examination, thereby avoiding the need to recall a witness for further examination during the opponent's rebuttal case, which can be costly in time and expense to both the party and the opponent. Second, a party presenting direct testimony by affidavit is less likely to inadvertently, and perhaps fatally, omit an essential part of its proofs than when presenting direct testimony by oral deposition. Third, affidavit testimony will be advantageous to the Board because affidavit testimony can be evaluated more expeditiously than can deposition transcripts, which frequently present the facts in an incoherent manner and too often include a considerable amount of disruptive attorney colloquy. Fourth, in the case of direct testimony by persons testifying in a foreign language, testimony by affidavit (in the English language) should be considerably less cumbersome than testimony by oral deposition through translators.

Two comments suggested that there may be cases in which both parties find it mutually convenient to present their direct testimony by oral deposition and that under these circumstances the administrative patent judge should be allowed to authorize such depositions. The suggestion is not being adopted,

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because it would eliminate the above-noted advantages of reducing the likelihood of omitting an essential part of the proofs and having the Board consider direct testimony presented in a more coherent form.

Another comment suggested that there appears to be no need why all testimony abroad must be by oral deposition, noting, for example, that a third-party witness may be willing to give an affidavit comprising the direct testimony, provided cross-examination will be conducted in the witness's home country. Still another comment asked how the parties should handle a situation where a party's witness residing in a foreign country, due to health or other serious impediment, is unable to travel to the United States for cross-examination, but is willing to testify in the foreign country, which allows testimony, for example, only by written interrogatories. The answer in both situations, as well as in other unusual situations not provided for by the rules, is to file a motion (§ 1.635) for permission to take the testimony in a manner other than by deposition. The motion may or may not be granted depending on the particular circumstances. In order to make it clear that the administrative patent judge and the Board have discretion in unusual circumstances to grant appropriate relief, § 1.672 is further revised by adding a new paragraph (i) reading as follows:

(i) In an unusual circumstahce and upon a showing that testimony cannot be taken in accordance with the provisions of this subpart, an administrative patent judge upon motion (§ 1.635) may authorize testimony to be taken in another manner.

Section 1.672(b), as it was proposed to be revised in the Notice of Proposed Rulemaking, includes a requirement that a party presenting testimony of a witness by affidavit, within the time set by the administrative patent judge for serving affidavits, file a copy of the affidavit. Since, for reasons discussed *infra*, § 1.671(e) is being retained in modified form rather than being removed and reserved, as was proposed, § 1.672(b) as adopted, like current § 1.672(b), permits a party to file a copy of the affidavit or, if appropriate, a notice under 1.671(e). If the affidavit relates to a party's case-in-chief, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-chief. If the affidavit relates to a party's case-in-rebuttal, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-rebuttal. A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on anything mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document.

As proposed in the Notice of Proposed Rulemaking, a new paragraph (c) is added to § 1.672 stating that where an opponent objects to the admissibility of any evidence contained in or submitted with an affidavit, the opponent must file and serve objections stating with particularly the nature of the objection. Any objection should identify the specific Federal Rule of Evidence that renders the evidence inadmissible and shall explain why the Rule applies to the evidence sought to be introduced. No oppositions to the objections are authorized. Rather, the party may respond by filing supplemental evidence in the form of affidavits, official records and printed publications. Alternatively, the party may determine that the objection is without merit and do nothing. One comment suggested that "supplemental affidavits and supplemental official records and printed publications" in the third sentence of § 1.672(c) as proposed be changed to "one or more supplemental affidavits, official records or printed publications." The suggestion is being adopted. The same or similar changes have been made in the third sentence of § 1.682(c) and in the third sentence of § 1.683(b); in the third sentence of § 1.688(b) "supplemental affidavits" has been changed to "one or more supplemental affidavits." Section 1.672(c) further provides that any objections to the admissibility of any evidence contained in or submitted with a supplemental affidavit shall be made only by a motion to suppress under § 1.656(h).

As proposed in the Notice of Proposed Rulemaking, § 1.672 is revised by adding a new paragraph (d) requiring any cross-examination of an affiant to be by deposition at a reasonable location within "the United States," which is defined in § 1.601(p) and 35 U.S.C. 100(c) to mean "the United States of America, its territories and possessions." For purposes of the interference rules, the term "territories and possessions" is broadly construed to refer to all territories and possessions of the United States, including, for example, the Commonwealth of Puerto Rico.

An opponent who believes that a party is producing an affiant for cross-examination in an "unreasonable" location may move (§ 1.635) for entry of an order by an administrative patent judge to set the location of the deposition for cross-examination. Paragraph (d) also requires that the party whose witness is to be cross-examined give notice of the deposition under § 1.673(e), obtain a court reporter and provide a translator if the witness will not testify in English. Although not expressly set forth in the rules as amended, it should be understood that any party attending the deposition can bring its own translator or the parties can agree to share the cost of a single mutually agreeable translator.

Comments were received against the proposal that § 1.672(d) require cross-examination of affiants to be conducted by oral deposition "at a reasonable location within the United States." One comment suggested that requiring a witness who resides in a foreign country to travel to the United States for cross-examination will be extremely inconvenient where the witness is a key person for a company. The comment also suggested that the term "United States" be amended to additionally include U.S. embassies and/or consulates in foreign countries, at least for purposes of conducting cross-examination. The suggestion is not being adopted. Given the time differences between the United States and Europe or the United States and Asia, it is highly likely that administrative patent judges would not be on duty to rule on telephonic requests for admissibility of evidence. Furthermore, a party whose witness is to testify on cross-examination at a "trial" (i.e., interference proceeding) in the United States should produce the witness for cross-examination at a reasonable location within the United States. Finally, in view of PTO's general lack of experience regarding procedures for, and difficulties which may arise in, taking deposition testimony in a foreign country, PTO has decided, at least for the time being, to take a conservative approach regarding taking testimony in a foreign country. The approach will be reevaluated after PTO gains some experience with foreign deposition testimony taken pursuant to § 1.671(h).

One comment suggested inserting a comma after "reporter" in the fifth sentence of proposed § 1.672(d), as well as in the fifth sentences of proposed §§ 1.682(d), 1.683(c) and 1.688(c). The suggestion is being adopted.

The Notice of Proposed Rulemaking proposed to redesignate current § 1.672(d) ("When a deposition is authorized under this subpart, if the parties agree in writing, the deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.") as § 1.672(f). One comment questioned whether § 1.672(f) (former § 1.672(d)) applies to cross-examination deposition testimony authorized by §§ 1.672(d), 1.673(a), 1.682(d), 1.683(c) and 1.688(c). Implicit in the comment is a question of whether proposed § 1.672(f) would authorize the parties, with respect to deposition testimony that has been authorized by the rules or by an administrative patent judge to be taken in the United States, to agree to take the deposition outside the United States. For the reasons discussed above, the parties may not agree, absent the permission of an administrative patent judge or the Board, to take a deposition outside the United States. Accordingly, § 1.672(f), as amended, provides that depositions authorized to be taken within the United States are to be taken within the United States: "When a deposition is authorized to be taken within the United States under this subpart and if the parties agree in writing, the deposition may be taken in any place within the United States, before any person authorized to administer oaths, upon any notice, and in any manner, and when so taken may be used like other depositions."

Current § 1.672(e), which is being redesignated as § 1.672(g), reads as follows: "If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit without opportunity for cross-examination. The affidavit shall be filed in the Patent and Trademark Office." Although not proposed in the Notice of Proposed Rulemaking, this section is revised to be consistent with the other amendments to §§ 1.671–73 so as to read as follows: "If the parties agree in writing, the affidavit testimony of any witness may be submitted without opportunity for cross-examination."

As proposed in the Notice of Proposed Rulemaking, current § 1.672(f), which concerns the filing of agreed statements setting forth how a particular witness would testify if called or the facts in the case of one or more of the parties, is redesignated as § 1.672(h).

In addition to the proposed amendments discussed above, current § 1.672(b) is revised, as proposed in the "Miscellaneous Amendments" part of the Notice of Proposed Rulemaking, by deleting the third sentence, which specifies the type of paper to be used for affidavits, as superfluous in view of § 1.677(a); and in paragraph (d), the fifth sentence ("A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a).") is removed as superfluous in view of the second sentence of new § 1.672(d).

In § 1.671, the Notice of Proposed Rulemaking proposed to amend paragraph (a) to read as follows: "Evidence consists of testimony and exhibits, official records and publications filed under § 1.682, testimony from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent: * * *." One comment suggested that "and discovery" be changed to "discovery" in order to remove an unnecessary "and." The suggestion is being adopted. Another comment suggested inserting "and exhibits" after "testimony" in the phrase "testimony from another interference, proceeding, or action under § 1.683." The suggestion is being adopted, but with the term "exhibits" prefaced by "referenced" to make it clear that it relates only to exhibits referred to by a witness in an affidavit or during an oral deposition. Clarification is necessary because, as noted in the discussion of § 1.653(c)(5), *infra*, the term "exhibit" also includes official records and printed publications relied on under § 1.682, which are not referred to by a witness in an affidavit or during an oral deposition. For the same reason, "referenced" is also inserted before the first occurrence of "exhibits" in § 1.671(a). A similar clarifying amendment is also made to § 1.683(a).

The Notice of Proposed Rulemaking proposed to revise § 1.671(f) to state that "[t]he significance of documentary and other exhibits identified by a witness in an affidavit or during oral deposition shall be discussed with particularity by *the* witness" (emphasis added) in order to clarify that the requirement for the significance of documentary and other exhibits to be discussed with particularity by a witness applies only to documentary and other exhibits identified by a witness in an affidavit or during oral deposition. One comment indicated that proposed § 1.671(f) fails to recognize that a witness may be called merely to authenticate a piece of evidence, e.g., a photograph, which is to be discussed with particularity by another witness. The comment is well taken. Accordingly, § 1.671(f) is revised to read as follows: "The significance of documentary and other exhibits identified by a witness in an affidavit or during oral deposition shall be discussed with particularity by a witness." Thus, § 1.671(f) does not apply to official records and printed publications submitted into evidence pursuant to § 1.682(a).

The Notice of Proposed Rulemaking proposed that § 1.671(g), which currently requires a party to file a motion (§ 1.635) to obtain permission prior to taking testimony or seeking documents or things "under 35 U.S.C. 24," be revised to require a motion "prior to compelling testimony or production of documents or things under 35 U.S.C. 24 or from a party." One comment suggested that the requirement to obtain permission from an administrative patent judge before noticing an employee of one's opponent as a hostile witness is important. Another comment took issue with the requirement and the statement in the Notice of Proposed Rulemaking that "all depositions for a case-in-chief would have to be approved by an administrative patent judge" (59 FR at 50191), stating:

I suppose that means by motion with an explanation of what the deposition will cover. Such a procedure will destroy the ability to obtain effective testimony from an adverse witness, because of the need to reveal the strategy. Particularly in a derivation contest, the ability to obtain unrehearsed testimony of the adverse party will be lost, and he [sic; his testimony] may be the only corroboration available. Heretofore, taking the deposition of one's adverse party to obtain evidence for one's case-in-chief has been a matter of right on serving proper notice. It is essential that this right be preserved. Obviously, this procedure should not be used to discover a senior party's case-in-chief, and that limitation is easily protected by objection to any such questions that are not also related to the junior party's case-in-chief, and then either (a) calling the judge for an immediate ruling, or (b) refusing to answer the question.

Assuming for the sake of argument that the current interference rules permit a party to notice the deposition of an opponent's witness in order to take direct testimony of the type described above without first obtaining permission from an administrative patent judge, the interference rules do not provide any sanction for the failure of the witness to appear at a noticed deposition. Consequently, even under the current rules the party seeking the testimony of an opponent's witness, as a practical matter, must obtain an order from an administrative patent judge or the Board requiring the witness to appear so that the opponent can be sanctioned under § 1.616 if the witness fails to appear.

One comment suggested that the proposed new last sentence for § 1.671(g) ("The testimony of the witness shall be taken on oral

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deposition.") be omitted as superfluous in view of § 1.672(a) as amended. The suggestion is being adopted.

A comment suggested that § 1.671(g) be modified to expressly apply to an entity or witness under the opponent's control. The modification is not believed to be necessary. The term "party" is defined in § 1.601(1) to include an inventor's legal representative or assignee. The term "opponent," while not defined per se in the rules, is a "party" who happens to be a "second" party opponent of a "first" party. Section 1.671(g) applies where a witness is under the control of a party opponent's assignee.

As proposed in the Notice of Proposed Rulemaking, a new paragraph (h) is added to § 1.671 providing that a party seeking to compel testimony or production of documents or things in a foreign country must file a motion (§ 1.635) to obtain permission from an administrative patent judge. The motion must show that the witness has been asked to testify in the United States and has refused to do so or that the individual or entity having possession, custody, or control of the document or thing has refused to produce the document or thing in the United States, even though the moving party has offered to pay the expenses involved in bringing the witness or the document or thing to the United States. When permission has been obtained from the administrative patent judge, the party, after also complying with the requirements for an oral conference (§ 1.673(g)), and service of documents and a proffer of access to things (§ 1.673(b)), must notice the deposition under § 1.673(a).

With respect to the requirements for a motion to compel testimony or production of documents or things in a foreign country, one comment suggested that the phrase "possession, custody and control" in proposed § 1.671(h)(2)(iii) appears to include a typographical error and should be changed to read "possession, custody *or* control." The suggestion is being adopted.

Another comment suggested that the administrative patent judge would benefit from being additionally advised of (1) the foreign country where the witness, document or thing is located, (2) a summary of the procedures proposed to be followed to compel the testimony or production of documents or things in the foreign country, and (3) the time likely to be required to complete the procedures. In support, the comment notes that compelling testimony or production of documents in a foreign country can be so time-consuming that it may outweigh the benefit of allowing the testimony or documents to be obtained, considering their likely probative value and other relevant considerations. The comment continues that in order to allow the administrative patent judge to supervise the progress of the interference and to allow establishment of an appropriate schedule for the interference, the rules should require the suggested procedural information. These suggestions are being adopted. Adoption of these suggestions, however, should not be construed as a policy determination by PTO that it intends to approve of, or tolerate, unwarranted delays in obtaining testimony in a foreign country. The spirit of 35 U.S.C. 104 requires that evidence be obtainable in a foreign country essentially on the same basis that it is obtainable in the United States. When the laws and procedures in a foreign country make it so time-consuming to obtain evidence that the evidence is essentially not available in a reasonable manner, then the "adverse inferences" provision of new § 1.616(c) may be appropriately applied.

Another comment notes that proposed § 1.671(h)(1)(iv) for witnesses and § 1.671(h)(2)(iii) for documents and things assume that it will be possible to request the holder of the evidence to voluntarily produce it and obtain a definitive response to the request, whereas it is said that discovery experience in foreign countries shows that those possessing evidence often evade contact or, when contacted, evade giving a definitive response. Accordingly, the comment suggested that these provisions be reworded as follows:

§ 1.671(h)(1)(iv). Demonstrate that the party has made reasonable efforts to secure the agreement of the witness to testify in the United States but has been unsuccessful in obtaining the agreement, even though the party has offered to pay the expenses of the witness to travel to and testify in the United States.

§ 1.671(h)(2)(iii). Demonstrate that the party has made reasonable efforts to obtain the agreement of the individual or entity having possession, custody, or control of the document to produce the document or thing in the United States but has been unsuccessful in obtaining that agreement, even though the party has offered to pay the expenses of producing the document or thing in the United States.

The suggestion is being adopted. The expenses of a witness traveling to the United States means the round-trip travel expenses.

The Notice of Proposed Rulemaking proposed the addition to § 1.671 of a new paragraph (j), which is patterned on paragraph (e) of § 1.684 (removed and reserved). Section 1.671(j), as it was proposed, reads as follows:

(j) The weight to be given testimony taken in a foreign country will be determined on a class-by-case basis. Little, if any, weight may be given to testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence (1) that giving false testimony in an interference proceeding is punishable as perjury under the laws of the foreign country where the testimony is taken and (2) that the punishment in a foreign country for giving such false testimony is similar to the punishment for perjury committed in the United States.

A number of comments were received in response to the proposal. Two comments questioned whether § 1.671(j) is intended to apply to affidavit testimony as well as deposition testimony. One comment suggested that the rule be expressly limited to deposition testimony, since testimony by affidavit (including declarations) can be taken in foreign countries under the perjury provisions of 28 U.S.C. 1746(1), and is additionally subject to the safeguard of cross-examination in the United States under proposed § 1.672(d). For these reasons, and also because current § 1.684(e), on which § 1.671(j) is patterned, applies only to deposition testimony in a foreign country in the form of interrogatories answered under oath, the suggestion to expressly limit § 1.671(j) to deposition testimony is being adopted.

Two comments stated that the party taking testimony in a foreign country should not have the burden of proving that the giving of false testimony is punishable as perjury under the law of the foreign country, as it may be difficult or impossible to prove or may not even be in dispute, and that the burden is especially unfair where a party is being forced to take testimony abroad by circumstances beyond its control. Both comments suggested putting the burden instead on the opponent to show that the requirements are not similar, such as by moving under § 1.635 to accord the testimony little weight or moving under § 1.656(h) to suppress the testimony altogether. Section 1.671(j), as proposed in the Notice of Proposed Rulemaking, does not alter who has the burden of proof with respect to testimony in a foreign country; the burden remains on the party offering the testimony, just as under current § 1.684(e).

Another comment questioned whether the first sentence of the rule as it was proposed, because it states that the weight of testimony "will be determined on a case-by-case basis," might be construed as allowing the effect to be given testimony in a particular foreign country in a given interference to be decided without regard to the effect given in prior interferences to testimony given in that country. The comment stated that the rule as proposed might be contrary to the goals of equal treatment of similarly situated parties and predictability of outcome, which would best be served by a system in which the Board publishes decisions making findings as to the adequacy of testimonial procedures in particular foreign countries and then follows those decisions in subsequent cases, and suggested changing "on a case-by-case basis" to read "in view of all the circumstances, including the laws of the foreign country governing the testimony." The suggestion is being adopted.

Another comment suggested that the "clear and convincing evidence" standard in the second sentence of proposed § 1.671(j) inappropriately implies that the determination of content of the law of a foreign country is a question of fact. PTO intends to treat the determination of the content of the law of a foreign country as a question of fact. Accordingly, the language "as a matter of fact" is inserted in § 1.671(j). The same comment further indicates that the proposed second sentence is troublesome because it (1) Requires a showing that giving false testimony is punishable as "perjury" under the laws of the foreign country rather than under some other name, (2) does not on its face allow the foreign offense to be applicable only when false testimony is given with the appropriate intent, and (3) requires that the foreign punishment be "similar to" United States punishment, when comparable or greater punishment would seem to serve the purpose of the proposed rule. The comment suggested that the foregoing problems can be avoided by replacing the proposed second sentence with the following sentence:

Little, if any, weight may be given to oral testimony given in a foreign country unless it is demonstrated (1) that the giving of false testimony in the interference proceeding would be punishable under the laws of the foreign country where the testimony was taken under circumstances similar to those defined as perjury under the laws of the United States and (2) that the punishment in the foreign country for giving such false testimony is comparable to or greater than the punishment for perjury committed under the laws of the United States.

The comment additionally suggested adding a third sentence patterned on the second and third sentences of Fed. R. Civ. P. 44.1 and reading as follows: "Such a demonstration may be made by any relevant material or source, including testimony, whether or not admissible under this subpart." To address the comments, which are believed to be well taken, the proposed second sentence is replaced with the following two sentences:

Little, if any, weight may be given to deposition testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence, as a matter of fact, that knowingly giving false testimony in that country in connection with an interference proceeding in the United States Patent and Trademark Office is punishable under the laws of that country and that the punishment in that country for such false testimony is comparable to or greater than the punishment for perjury committed in the United States. The administrative patent judge and the Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.

The finally adopted language is also responsive to another comment requesting clarification of the term "similar" in order to assist practitioners, and possibly foreign governments in promulgating laws in harmony with 35 U.S.C. 104 and § 1.671.

In addition to the above amendments, § 1.671(a), which identifies the various types of testimony, is revised as proposed in the "Miscellaneous Amendments" part of the Notice of Proposed Rulemaking, by changing "*evidence* from another interference, proceeding, or action filed under § 1.683" to "*testimony* from another interference, proceeding, or action filed under § 1.683" in order to be consistent with the terminology of § 1.683. Sections 1.671 (c)(6) and (c)(7) are revised by changing "by oral deposition or affidavit" to "by affidavit or oral deposition."

Section 1.673 is also amended as proposed in the "Miscellaneous Amendments" part of the Notice of Proposed Rulemaking. Specifically, § 1.673(b) is revised by (1) changing the time for service of evidence to be relied on at an oral disposition from "at least three days" prior to the conference required by § 1.673(g) when service is by hand or by Express Mail to "at least three working days" prior to the conference, (2) changing the time for service by any other means from 10 days to 14 days prior to the conference and (3) removing the quotation marks around "Express Mail."

The second sentence of § 1.673(d) is removed, as proposed in the Notice of Proposed Rulemaking, as unnecessary, because all depositions for a case-in-chief require approval by an administrative patent judge.

Section 1.673(e) is revised, as proposed, by changing "party electing to present testimony by affidavit" to "party who has presented testimony by affidavit."

One comment suggested amending § 1.673(g) to state that a party, prior to serving a notice of deposition and after complying with paragraph (b) of § 1.673, shall contact the administrative patent judge, who shall then have an oral conference with the party and all opponents. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. In any event, it is expected that in most cases the parties will be able to agree on a time and place for depositions without the need for participation by an administrative patent judge.

Concerning the first sentence of § 1.673(a), one comment suggested deleting the term "single" from "single notice of deposition" on the ground that the current language might be construed to mean that a party must file only a single notice of deposition listing all depositions. The same suggestion was offered with respect to paragraph (e) of § 1.673. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

The Notice of Proposed Rulemaking proposed to amend § 1.616 by adding a new paragraph (c), patterned after 35 U.S.C. 104(b), stating that to the extent that any information under the control of an individual or entity located in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has been ordered to be produced by an administrative patent judge or the Board (§ 1.671(h)), but is not produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference. Section 1.616(c) further provides that this "other action" may include the imposition of appropriate sanctions under § 1.616(a).

One comment questioned whether the failure of an individual or entity located in a NAFTA country or a WTO member country to provide the information requested by a party can result in the imposition of sanctions against an opponent from that country even though the opponent is not at fault. The answer

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is yes. One purpose of 35 U.S.C. 104 is to ensure that evidence for interferences is available in foreign countries in essentially the same manner that it is available in the United States. If the evidence is not available, then the appropriate inference provisions of 35 U.S.C. 104 shall be applied by PTO.

After the Notice of Proposed Rulemaking was published, it became apparent that the term "ordered" in the phrase "to the extent that any information under the control of an individual or entity located in a NAFTA country or a WTO member country * * * has been ordered to be produced by an administrative patent judge or the Board" may not be appropriate. Neither an administrative patent judge nor the Board can order testimony or production of documents and things in a foreign country from a witness who, or an entity that, is neither a party nor under the control of a party. Instead, an administrative patent judge or the Board can only authorize a party to seek to compel testimony or production in a foreign country from a witness or entity not under the control of a party. Accordingly, § 1.616(c) as adopted reads instead as follows:

(c) To the extent that an administrative patent judge or the Board has authorized a party to compel the taking of testimony or the production of documents or things from an individual or entity located in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to to proving or disproving a date of invention (§ 1.671(h)), but the testimony, documents or things have not been produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under paragraph (a) of this section.

As proposed in the Notice of Proposed Rulemaking, § 1.647, which currently requires a party who relies on a non-English language document to provide an English-language translation and an affidavit attesting to its accuracy, is revised to extend these requirements to any non-English language documents that a party is required to produce via discovery. One comment expressed the concern that the proposed amendment might impose an unnecessary financial burden on a non-U.S. party by requiring translations of compelled documents that are very long and have little or no relevance. The concern is believed to be misplaced. First, discovery in interferences, like discovery under the Federal Rules of Civil Procedure, is limited to evidence that is relevant. Second, as to relevant evidence, the scope of discovery under the interference rules is considerably narrower than the discovery available under the Federal Rules of Civil Procedure. Another comment stated that the general practice is that a party proffering a document is responsible for the cost of translation. The comment nevertheless suggested that in the case of documents offered to be produced during discovery, including cross-examination discovery pursuant to § 1.687(b), the documents be produced in the foreign language, with the recipient then indicating which documents it wishes to have translated and costs to be borne equally by the parties. The suggestion is not being adopted. In implementing practice under 35 U.S.C. 104, as amended, it is PTO's initial view that a correct policy is the one which the commentator says is the "general practice." Whether a different policy might be appropriate at some future time is something that will be tested with experience.

II. Compensatory Attorney Fees and Expenses

Section 1.616, in addition to the amendments discussed above, also is revised by redesignating current paragraphs (a) through (e) as paragraphs (a)(1) through (a)(4) and (a)(6) and adding new paragraphs (a)(5) and (b).

Section 1.616(a)(5), as amended, authorizes the award of compensatory (as opposed to punitive) expenses and/or compensatory attorney fees as a sanction for failing to comply with the rules or an order. This sanction shall apply only to conduct occurring in an interference on or after the effective date of § 1.616 as amended. It is believed that there may be occasions when an award of compensatory expenses and/or compensatory attorney fees would be more commensurate in scope with the infraction than the sanctions that are currently authorized.

There are administrative decisions which seemingly hold that the tribunals of PTO do not have authority to award expenses and attorney fees. *See, e.g., Driscoll* v. *Cebalo*, 5 USPQ2d 1477, 1481 (Bd. Pat. Int. 1982) (the rules do not provide us with the jurisdiction to award expenses and we know of no authority which does), *aff'd in part, rev'd in part*, 731 F.2d 878, 221 USPQ 745 (Fed. Cir. 1984); *Clevenger* v. *Martin*, 1 USPQ2d 1793, 1797 (Bd. Pat. App. & Int. 1986) (we do not have authority under the rules to award attorney's fees); *MacMillan Bloedel, Ltd.* v. *Arrow-M Corp.*, 203 USPQ 952, 953 (TTAB 1979) (the TTAB is without authority to award expenses and attorney's fees); *Fisons, Ltd.* v. *Capability Brown, Ltd.*, 209 USPQ 167, 171 (TTAB 1980) (request for attorney's fees denied because good cause not shown and the TTAB has no authority to grant such requests); *Jonergin Co.* v. *Jonergin Vermont, Inc.*, 222 USPQ 337, 340–41 (Comm'r Pat. 1983) (TTAB did not err in refusing to award reasonable expenses and attorney's fees under 37 CFR 2.116(a), 2.120 and Fed. R. Civ. P. 37(a)(4)); *Anheuser-Busch, Inc.* v. *Major Mud & Chemical Co.*, 221 USPQ 1191 1195 n.9 (TTAB 1984) (request for costs and attorneys fees was denied, inter alia, on the ground that the TTAB had no authority to award such fees and costs); *Luehrmann* v. *Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 n.4 (TTAB 1987) (the TTAB has no authority to grant monetary relief); *Fort Howard Paper Co.* v. *G.V. Gambina, Inc.*, 4 USPQ2d 1552, 1554 (TTAB 1987) (the TTAB has no authority to order costs or attorney's fees); *Paolo's Associates Ltd. Partnership* v. *Bodo*, 21 USPQ2d 1899, 1904 n.3 (Comm'r Pat. 1990) (the TTAB was correct in holding that 37 CFR 2.127(f) denies the TTAB authority to either award attorney's fees or costs to any party in a cancellation and opposition proceeding); *Nabisco Brands, Inc.* v. *Keebler Co.*, 28 USPQ2d 1237, 1238 (TTAB 1993) (the TTAB held, inter alia, that it did not have authority to award fees under 37 CFR 2.127(f)).

None of the decisions mentioned above provide any reasoned analysis or rationale to explain why the Commissioner lacks authority to promulgate a rule which would authorize imposition of monetary sanctions in appropriate cases. In view of the existence of the decisions, however, it is believed that a discussion of the Commissioner's authority to promulgate a rule authorizing the Board to award compensatory monetary sanctions is appropriate.

The Commissioner has been delegated the authority by the Congress to "establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office." 35 U.S.C. 6(a).

The U.S. Court of Appeals for the Federal Circuit upheld the authority of the Commissioner to issue regulations imposing sanctions in interference cases. In *Gerritsen* v. *Shirai*, 979 F.2d 1524, 24 USPQ2d 1912 (Fed. Cir. 1992) the Federal Circuit noted that 37 CFR 1.616 was a permissible exercise of the Commissioner's authority under 35 U.S.C. 6(a) and complied with the limitation on sanctions of the

Administrative Procedure Act. The court stated (979 F.2d at 1527 n.3, 24 USPQ2d at 1915 n.3):

35 U.S.C. § 6(a) (1988) permits the Commissioner of Patents and Trademarks to "establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office." Congress thus delegated plenary authority over PTO practice, including interference proceedings, to the Commissioner. On its face, 37 CFR § 1.616 represents a permissible exercise of that authority. Since the decision to impose a sanction * * * was authorized by law, it comports with the Administrative Procedure Act, 5 U.S.C. § 558(b) (1988).

In *Gerritsen*, the Federal Circuit held that the particular rule violation was sanctionable, but that the specific sanction chosen by the Board was too severe. Accordingly, the sanction was vacated and the case was remanded to the Board for imposition of a more appropriate sanction.

In *Abrutyn* v. *Giovanniello*, 15 F.3d 1048, 1050, 29 USPQ2d 1615, 1617 (Fed. Cir. 1994), the Federal Circuit again upheld the authority of the Board or an administrative patent judge to impose sanctions, including imposition of the most severe sanction, granting judgment against one of the parties:

The Board or EIC [Examiner-in-Chief, now administrative patent judge] may impose an appropriate sanction, including granting judgment in an interference, against a party who fails to comply with the rules governing interferences, including filing deadlines. 37 CFR § 1.616 (1993).

Gerritsen and *Abrutyn* judicially establish that the Commissioner has authority under 35 U.S.C. 6(a) to promulgate regulations which impose a spectrum of sanctions, including imposition of the ultimate sanction of judgment or dismissal.

As a general matter, agencies are given broad authority in the selection of an appropriate sanction. The choice of sanction within agency statutory limits will be upheld unless it constitutes an abuse of discretion. *Butz* v. *Glover Livestock Comm'n Co.*, 411 U.S. 182 (1973); *Lawrence* v. *Commodity Futures Trading Comm'n*, 759 F.2d 767, 774 (9th Cir. 1985). Current § 1.616 authorizes an administrative patent judge or the Board to impose a spectrum of sanctions. The sanctions range from holding certain facts established for purposes of the interference (37 CFR § 1.616 (a)) to granting judgment against the party who violated a regulation or an order (37 CFR § 1.616(e)). As indicated above, the Federal Circuit has upheld the Commissioner's authority to promulgate § 1.616 and impose the specified sanctions (*Gerritsen*, 979 F.2d at 1527 n.3, 24 USPQ2d at 1915 n.3), including granting judgment against a party (*Abrutyn*, 15 F.3d at 1050, 29 USPQ2d at 1617). Judgment and dismissal are the most severe forms of sanction. *See National Hockey League* v. *Metropolitan Hockey Club*, 427 U.S. 639, 643 (1976); *Poulis* v. *State Farm Fire and Casualty Co.*, 747 F.2d 863, 867 (3d Cir. 1984); *Cine Forty-Second St. Theatre Corp* v. *Allied Artists Pictures Corp.*, 602 F.2d 1062, 1066 (2d Cir. 1979). Consistent with these cases, the Federal Circuit has held that a holding by the Board that a party is not entitled to a patent directed to certain claims is an extreme sanction. *Gerritsen*, 979 F.2d at 1532 n.12, 24 USPQ2d at 1919 n.12.

The imposition of monetary sanctions is manifestly a lesser sanction than judgment or dismissal. Indeed, reimbursement of expenses incurred as a result of inappropriate action by the opposing party has been held to be a mild form of sanction. *Cine Forty-Second St.*, 602 F.2d at 1066. More stringent sanctions include orders striking out portions of a pleading, orders prohibiting the introduction of evidence on a particular point, and orders deeming a disputed issue determined adversely to the position of a disobedient party. *Id.*

Since the imposition of a monetary sanction is a lesser sanction than judgment against a party, the inclusion of an "appropriate" monetary sanction in § 1.616, as adopted, is not outside the Commissioner's rulemaking authority and would not be inconsistent with the sanctions already present in § 1.616.

Whether a monetary sanction is appropriate depends on the purpose of the sanction. Civil sanctions may be categorized as penal and remedial. One is not to be subjected by an agency to a penal sanction unless the words of the statute plainly authorize imposition of a penal sanction. *Commissioner* v. *Acker*, 361 U.S. 87, 91 (1959). Thus, a statute must plainly authorize an agency's power to impose penalties. *Pender Peanut Corp.* v. *United States*, 20 Civil Court 447, 453–55 (1990). Agencies have no inherent authority, based solely on their enabling statute, to impose penal sanctions. That authority must be expressly given in the statute. *Pender Peanut Corp.*, 20 Cl. Ct. at 453–55 (1990); *Gold Kist, Inc.* v. *Department of Agriculture*, 741 F. 2d 344, 348 (11th Cir. 1984); Koch, *Administrative Law and Practice* § 6.81 (1985). A penal sanction has been defined as one which inflicts a punishment. *United States* v. *Frame*, 885 F.2d 1119, 1142 (3d Cir. 1989).

On the other hand, an explicit grant of power from Congress need not underpin each exercise of agency authority. *See Zola* v. *Interstate Commerce Commission*, 889 F.2d 508, 516 (3d Cir. 1989), *citing Amoskeag Co.* v. *Interstate Commerce Commission*, 590 F.2d 388, 392 (1st Cir. 1979). Where the enabling statute authorizes the agency to make such rules and regulations as may be necessary to carry out the provisions of an act—the regulation will be sustained so long as it is reasonably related to the purpose of the act. *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973). Under its enabling legislation, an agency has inherent power to impose administrative sanctions that are not "penalties" as long as the sanctions are reasonably related to the purpose of the enabling statute. *Gold Kist*, 741 F.2d at 348. Accordingly, in evaluating whether the imposition of a sanction is within an agency's inherent powers, it is necessary to determine whether the sanction is remedial or punitive. *Frame*, 885 F.2d at 1142. Remedial sanctions may be within the agency's inherent powers if reasonably related to the purpose of enabling legislation. A remedial sanction is one whose purpose is not to stigmatize or punish wrongdoers. *Frame*, 885 F.2d at 1143.

Thus, in the absence of express statutory authority, the Commissioner's authority to impose monetary sanctions is limited to sanctions which are remedial in nature rather than punitive. In addition, the sanctions must be reasonably related to the purpose of enabling statute under which PTO operates. Under these guidelines, the Commissioner would appear to be without authority to issue a regulation which permits a penal sanction to be imposed against a party or an attorney for violation of a rule or order. Fines payable to Government, including PTO, are manifestly intended to punish wrongdoing and are thus punitive in nature. Assessment to redress an injury to the public is in the nature of a penalty. *Republic Steel Corp. v. National Labor Relations Board*, 311 U.S. 7, 12–13 (1940). On the other hand, the imposition of costs or expenses, including attorneys' fees, incurred by an opposing party due to the violation of a rule or order, may properly be considered remedial. Imposing costs or attorneys' fees serves to defray the expenses actually incurred by the opposing party for the violation of a rule or order by an opponent. *See Poulis*, 747 F.2d at 869 (non-dilatory party will not have to bear the brunt of the attorney's delay). Monetary sanctions would enhance the Board's ability to protect the integrity of its proceedings. *See Zola*, 889 F.2d at 516 (ICC justified in

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imposing monetary sanctions in acting to protect the integrity of its jurisdiction). Monetary sanctions would also allow the Board to maintain control of its docket to maximize the use of limited resources. *See Griffin & Dickson v. United States*, 16 Cl. Ct. 347, 351 (1989) (case management responsibilities require broad inherent authority to impose [non-penal] sanctions). Imposition of monetary sanctions is the only sanction both mild enough and flexible enough to use in day-to-day enforcement of orderly and expeditious litigation. *Eash v. Riggins Trucking, Inc.*, 757 F.2d 557, 567, (3d Cir. 1985) (in banc). Thus, monetary sanctions are reasonably related to the Commissioner's plenary authority to promulgate regulations for the conduct of proceedings, including interference proceedings in PTO.

Section 1.616(b), as proposed to be amended, would have authorized the imposition of a sanction, including a sanction in the form of compensatory expenses and/or attorney fees, against a party for taking or maintaining a frivolous position. A number of comments were received opposing the authorization of sanctions for taking or maintaining frivolous positions (§ 1.616(b)). Several comments suggested that the question of what is "frivolous" is inherently highly subjective and will therefore be frequently raised, substantially increasing costs and delaying decisions on more substantive issues. PTO believes, however, consistent with other comments received during the comment period, that inasmuch as a groundless motion for sanctions would itself be grounds for sanctioning the movant for taking or maintaining a frivolous positions, it is expected that motions for sanctions will only be filed in clear cases. One comment suggested that § 1.616(b) be reworded to parallel Rule 11 of the Federal Rules of Civil Procedure so that sanctions would only be imposed upon motion by an opponent, subject to a twenty-one day "safe harbor" withdrawal provision, and would explicitly apply only to frivolous positions taken in writing. Another comment, while supportive of the proposed amendment on the ground that it should reduce the number of frivolous papers, cautioned against treating as frivolous "that which is simply born of ignorance." The suggestion to have § 1.616(b) authorize sanctions imposed only on motion by a party is not being adopted. There may be situations in which the Board believes it would be appropriate to award compensatory fees or expenses even in the absence of a motion by a party. The suggestion that Fed. R. Civ. P. 11 permits sanctions only upon motion is believed to be incorrect; for example, Fed. R. Civ. P. 11(c)(1)(b) authorizes sanctions on the court's initiative. The suggestion to use the "safe harbor" approach of Fed. R. Civ. P. 11(c)(1)(A), which provides that a motion for sanctions shall be served but not filed unless, within 21 days after service of the motion, the challenged position is not withdrawn or appropriately corrected, is not being adopted. The administrative patent judge and the Board should know the reason why a party has withdrawn or corrected a position. Nevertheless, in order to make it clear that sanctions will not be imposed for mistakenly taking an erroneous position that is withdrawn or corrected as soon as the error becomes apparent, the proposed phrase "for taking *or* maintaining a frivolous position" in changed to "for taking *and* maintaining a frivolous position."

The suggestion that § 1.616(b) sanctions be limited to frivolous positions taken in writing is based on the Advisory Committee Note on the 1993 amendments to Fed. R. Civ. P. 11. The Note states in pertinent part: "The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been made if there had been more time for study and reflection." For the reason given in the Advisory Committee Note, the suggestion is being adopted. Accordingly, § 1.616(b) as adopted is limited to a frivolous position taken and maintained in papers filed in the interference and shall apply only to frivolous positions taken and maintained after the effective date of § 1.616 as amended.

Other comments questioned how the Board intends to handle proof of amounts of compensatory expenses and/or attorney fees and expressed the hope that attorney fee awards will not be *de facto* discriminatory as between highly paid outside counsel and in-house counsel without fees or billing records. The matter of how to prove amounts of compensatory expenses and/or attorney fees will be handled on a case-by-case basis.

Another comment suggested that an administrative patent judge or the Board be required to issue an order to show cause prior to imposing a sanction, since a party may be able to explain why a sanction should not be imposed. The suggestion is presumably based on Fed. R. Civ. P. 11(c)(1)(B) and directed to cases in which an administrative patent judge or the Board on its own initiative determines that a sanction is appropriate. The suggestion is being adopted and implemented in a new paragraph, § 1.616(d). In addition, paragraph (d) expressly provides that a party may file a motion (§ 1.635) requesting the imposition of sanctions, the drawing of adverse inferences or other action under paragraph (a), (b) or (c) of § 1.616.

III. Certificates of Prior Consultation

Section 1.637(b) currently requires that a miscellaneous motion under § 1.635 contain a certificate stating that the moving party has conferred with all opponents in a good faith effort to resolve by agreement the issues raised by the motion and indicating whether any other party plans to oppose the motion. In the Notice of Proposed Rulemaking, it was proposed to amend paragraph (b) to extend the requirement for such a certificate to preliminary motions filed under § 1.633 and other motions filed under § 1.634. It also was proposed to require the certificate to indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, to identify the issues and/or facts believed to be in dispute.

The rationale offered in the Notice of Proposed Rulemaking for the amendment was an expectation that consultation would result in a reduction in the number of issues raised by motions under §§ 1.633–34, as well as a reduction in the number of motions filed under those rules. All but one of many comments received in response to the proposal urged that the proposed rule not be adopted. In support, it was said that the proposed rule would unnecessarily increase the time and costs required to file motions under §§ 1.633–34, particularly preliminary motions. PTO, upon reflection, agrees with the comments. Accordingly, the proposal to extend the consultation requirement of § 1.637(b) to §§ 1.633–34 motions is withdrawn. The withdrawal of the proposed rule, however, should not be interpreted as precluding an administrative patent judge from holding a conference call prior to the date preliminary motions are due for the purpose of discussing which preliminary motions the parties plan to file or from entering an order requiring prior consultation as to a particular motion.

Several comments, citing experience with the consultation requirement for § 1.635 motions, suggested that

§ 1.637(b) be dropped altogether, or be limited at most to motions requesting extensions of time. The suggestion is not being adopted. However, there are circumstances where it may be appropriate to suspend the requirements of § 1.637(b). An example is a multi-party interference where one party may need to consult with a large number of opponents. Another example is a motion filed after a hearing before an administrative patent judge, where filing of the motion was authorized at the hearing. Accordingly, while the suggestion to delete the requirement for consultation altogether is not being adopted, the language "Unless otherwise ordered by an administrative patent judge or the Board" is added at the beginning of the first sentence of § 1.637(b).

Several comments were received which were also critical of the proposal to amend § 1.637(b), even if applied only to § 1.635 motions, to require that the certificate "indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, identify the issues and/or facts believed to be in dispute." One comment suggested that the proposal is unworkably vague with respect to: (1) the form of the information a party must provide to the opponent (e.g., a draft motion, an outline of the motion, a verbal statement of the motion, the evidence in support of the motion); (2) what form the opponent must use to provide its reasons for opposing (i.e., written or oral); and (3) whether the moving party can change the arguments in the motion in response to the reasons given by the opposing party without the need for another consultation. Other comments noted that an opponent may not have sufficient time before the due date for motions in which to take a reasoned position on the motion. Another comment observed that it is very difficult for the movant to identify the issues or facts believed to be in dispute, unless it is a very cursory exercise. According to the comment, the party cannot know what the opponent is really thinking, and suggested instead that there be an in-person conference involving the parties and the administrative patent judge in order to discuss all intended (or filed) motions. The comments are believed to be well taken and the proposal in the Notice of Proposed Rulemaking to amend § 1.637(b) to require that the motion, "if an opponent has indicated that it will oppose the motion, identify the issues and/or facts believed to be in dispute" is withdrawn.

IV. Service of a "Developing Record"

In addition to the amendments to § 1.672 discussed above under the heading "Amendments responsive to adoption of Public Laws 103–182 and 103–465," §§ 1.672, 1.682, 1.683 and 1.688 are amended, as proposed (with a few minor modifications discussed *infra*), to require each party to serve on each opponent a "developing record" that will evolve into the record required to be filed under § 1.653.

As noted above, the Notice of Proposed Rulemaking proposed to amend paragraph (b) of § 1.672 to provide that a party presenting testimony of a witness by affidavit shall, no later than the time set by the administrative patent judge for serving affidavits, file (and serve) the affidavit, whether it is a new affidavit or an affidavit previously filed by that party during ex parte prosecution of an application or under § 1.608 or 1.639(b). Furthermore, in view of the proposed amendment to § 1.672(b), it was also proposed to remove and reserve, as superfluous, § 1.671(e), which requires a party to give notice of intent to rely on an affidavit filed by that party during ex parte prosecution of an application or an affidavit under § 1.608 or 1.639(b). An oral comment suggested that § 1.671(e) notice practice be retained with respect to § 1.639(b) affidavits, so that a party does not have to refile (and re-serve) a previously submitted § 1.639(b) affidavit on which it intends to rely at final hearing. The comment further suggested that for the same reason § 1.671(e) notice practice should be extended to patents and printed publications filed and served pursuant to § 1.639(b). The suggestions are being adopted. Section 1.671(e) thus revised reads as follows:

> (e) A party may not rely on an affidavit (including any exhibits), patent or printed publication previously submitted by the party under § 1.639(b) unless a copy of the affidavit, patent or printed publication has been served and a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit, patent or printed publication. When proper notice is given under this paragraph, the affidavit, patent or printed publication shall be deemed as filed under § 1.640(b), 1.640(e)(3), 1.672(b) or 1.682(a), as appropriate.

Furthermore, in order to ensure that the evidence submitted under § 1.639(b) includes sequential numbering of the type required of other evidence filed under § 1.672(b), § 1.639(b) is revised to require the use of sequential numbering, which, for the reasons discussed *infra*, is required to be used only to the extent possible.

As explained *supra*, in view of the retention of § 1.671(e) in amended form, § 1.672(b), as adopted, permits a party to file an affidavit or, if appropriate, a notice under § 1.671(e).

Sections 1.682, 1.683 and 1.688 are revised, substantially as proposed, to parallel the amendments to § 1.672. Section 1.682(a) as proposed to be amended provides that a party may introduce into evidence, if otherwise admissible, an official record or printed publication not identified in an affidavit or on the record during on oral deposition of a witness, by filing (and serving) a copy of the official record or publication no later than the time set for filing affidavits under § 1.672(b), thereby eliminating the current requirement for filing a notice of intent to rely on the official record or printed publication. In view of the retention of § 1.671(e) in amended form to permit a party to file a notice of intent to rely on patents and publications previously filed by the party under § 1.639(b), § 1.682(a), as adopted, permits a party to file a copy of an official record or printed publication or, if appropriate, a notice under § 1.671(e). Section 1.683(a) is amended, as proposed, to provide that a party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition from another interference, proceeding, or action involving the same parties by filing (and serving) a copy of the deposition transcript no later than the time set for filing affidavits under § 1.672(b), thereby eliminating the current requirement for a party for filing a motion under § 1.635 for leave to rely on such testimony. Section 1.688(a) is amended, as proposed, to provide that, if otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer no later than the time set for filing affidavits under § 1.672(b). Thus, all evidence filed under §§ 1.672, 1.682, 1.683 and 1.688 that relates to a party's case-in-chief should be filed (and served) or noticed under § 1.671(e) no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief and all evidence under those sections that relates to the party's rebuttal should be filed (and served) or noticed under § 1.671(e) no later than the date set for the party to serve

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affidavits under § 1.672(b) for its case-in-rebuttal.

The Notice of Proposed Rulemaking proposed that the pages of all affidavits and deposition transcripts that a party enters into evidence pursuant to §§ 1.672, 1.682, 1.683 and 1.688 shall include sequential page numbers, which shall also serve as the record page numbers for the affidavits and deposition transcripts in the party's record when it is filed under § 1.653. Likewise, the Notice of Proposed Rulemaking proposed that exhibits identified in the affidavits and deposition transcripts and any official records and printed publications served under § 1.682(a) shall be given sequential numbers, which shall serve as the exhibit numbers when the exhibits are filed under § 1.653(i) with the party's record. The major benefit of sequential page numbering is that a particular page of an affidavit or exhibit will be referred to in a consistent manner throughout the record. Thus, when an affiant is subject to cross-examination about the affiant's affidavit or another person's affidavit, the record will be clear as to the material which is the subject of the cross-examination. Correlation of pages of affidavits and/or exhibits will no longer be necessary.

Regarding the sequential numbering of affidavits, one comment noted that:

> While this might be of some minor convenience to the PTO, it is inconvenient for the public, and may be difficult to be accomplished in practice. Due to severe PTO time constraints in preparing affidavits, it is usually essential to amend, add to, rewrite and execute declarations and affidavits in parallel. Often, the declarants are in different physical locations. Modern offices do not have the old fashioned manual impact typewriters that would be required to superpose new page numbers on executed documents. Declarations are already clearly identifiable, by the name of the declarant and the page of his or her declaration. * * *

The comment apparently assumes, incorrectly, that the required sequential numbers are to be used in lieu of the usual page numbers that appear in affidavits and deposition transcripts. The sequential numbers are in addition to the usual page numbers and are typically added to the pages by a sequential numbering device (e.g., a "Bates" stamp).

Since a party may decide not to rely at final hearing on a previously filed § 1.639(b) affidavit (including any exhibits), or on patents and printed publications that it previously filed under § 1.639(b) in connection with a motion, there may be gaps in the sequential numbers of the affidavit pages and exhibits that are relied on at final hearing. *Compare, e.g.*, Federal Circuit Rule 30(c)(2) with respect to pages omitted from an appendix. Furthermore, due to circumstances beyond the party's control it may not be possible to submit the § 1.639(b) affidavits and accompanying exhibits into evidence in the proper order. Finally, the exhibits referred to in testimony under § 1.683 from another proceeding will obviously already have the exhibit numbers assigned to them in that proceeding. When possible, those planning to use exhibits and testimony from a previous interference may wish to avoid using an exhibit number used in the previous interference, thereby minimizing the possibility of confusion which can exist when two exhibits in the same record have the same exhibit number. For these reasons, the proposal to amend § 1.672 to require that testimony pages and exhibits "shall be given sequential numbers" is changed to a requirement that testimony and exhibits "shall be given sequential numbers to the extent possible." This change also applies to evidence submitted under §§ 1.682, 1.683 and 1.688 as amended, which state that the pages of affidavits and deposition transcripts served under those paragraphs and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b). In order to take into account that there may be gaps in page numbers in the record and in the exhibit numbers, § 1.653(d) is revised to state that the pages of the record shall be consecutively numbered "to the extent possible." Sections 1.677 (a) and (b) are revised in a similar manner. That is, paragraph (a) is revised to limit its requirement for consecutive page numbering, which the rule currently applies to "the entire record of each party," to the pages of each transcript. Paragraph (b) is revised to require that exhibits be numbered consecutively "to the extent possible."

Section 1.672(a) affidavits and § 1.683(a) testimony shall be accompanied by an index giving the name of each witness and the number of the page where the testimony of each witness begins. The exhibits shall be accompanied by an index briefly describing the nature of each exhibit and giving the number of the page of affidavit or § 1.683(a) testimony where each exhibit identified in an affidavit or during an oral deposition is first identified and offered into evidence.

An opponent who objects to the admissibility of any evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) and 1.688(a) must file objections under §§ 1.672(c), 1.682(c), 1.683(b) and 1.688(b) no later than the date set by the administrative patent judge for filing objections to affidavits under § 1.672(c). An opponent who fails to challenge the admissibility of the evidence on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) will not be permitted to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection to evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) or 1.688(a), the party may respond by filing one or more supplemental affidavits and, in the case of objections to evidence filed under §§ 1.672(b), 1.682(b) and 1.683(a), may also file supplemental official records or printed publications. No objection to the admissibility of supplemental evidence shall be made except as provided by § 1.656(h). A party submitting evidence in response to an objection is aware of the objection and should take whatever steps are necessary in presenting supplemental evidence to overcome the objection. Whether the steps were sufficient is determined at final hearing on the basis of a motion to suppress the evidence under § 1.656(h).

The pages of the supplemental affidavits shall be sequentially numbered beginning with the number following the last page number of the testimony served under §§ 1.672(b), 1.683(a) and 1.688(a), if possible. Likewise, any additional exhibits identified in the supplemental affidavits and any supplemental official records and printed publications shall be given sequential numbers beginning with the number following the last number of the previously identified exhibits, if possible. After the time expires for filing objections and supplemental affidavits, or earlier when appropriate, the administrative patent judge shall set a time within which any opponent may file a request to cross-examine an affiant on oral deposition.

If any opponent requests cross-examination of an affiant, the party shall notice a deposition at a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination. Ordinarily, the parties should be able to agree on a "reasonable" place within the United States. Whether a place is a reasonable place depends on the circumstances. Generally a reasonable place within the United States would be the place where a witness resides or the office of one of the counsel of record in the interference. In assessing the reasonableness of a place, the convenience of both parties should be considered. For example, in a two-party interference if an affiant normally resides in Ohio and counsel are located respectively in Illinois and New York, noticing a deposition for Arizona may not be reasonable. In the event agreement cannot be reached, a place will be set by the administrative patent judge for taking the deposition.

Any redirect and recross shall take place at the deposition.

Within 45 days of the close of the period for taking cross-examination (§ 1.678 is revised to change the time for filing certified transcripts from 45 days to one month), the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by a witness during a deposition. The pages of the transcripts served under this paragraph and the accompanying exhibits shall be sequentially numbered in the manner discussed above. The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b). At this point in time, the opponent will have been served with all of the testimony that will appear in the party's record (with the same page numbers) as well as all of the documentary exhibits that will accompany the record (with the same exhibit numbers).

In the first sentence of § 1.688(a), the comma proposed to be inserted after "evidence" is inserted instead after "admissible."

V. Miscellaneous Amendments

Although not proposed in the Notice of Proposed Rulemaking, the authority citation for 37 CFR part 1 is revised by changing it from "35 U.S.C. 6" to "35 U.S.C. 6 and 23."

Throughout the rules, the term "examiner-in-chief" is replaced by "administrative patent judge" to reflect the change in the title of the members of the Board. *See* Commissioner's Notice of October 15, 1993, "New Title for Examiners-in-Chief," 1156 Off. Gaz. Pat. Office 332 (Nov. 9, 1993). One comment correctly noted that the Notice of Proposed Rulemaking failed to apply the change to § 1.610(b). The omission has been corrected. Another comment, citing possible confusion over the meaning of the term "administrative patent judge," suggested adding one of the following provisions to § 1.601 to define "administrative patent judge" in either of the following ways:

> An administrative patent judge is a member of the Board of Patent Appeals and Interferences, or
>
> An administrative patent judge is an examiner-in-chief (35 U.S.C. 7) or the Commissioner, the Deputy Commissioner or, an Assistant Commissioner when acting as a member of the Board of Patent Appeals and Interferences.

Neither suggestion is being adopted. The members of the Board of Patent Appeals and Interferences are the Commissioner [Assistant Secretary and Commissioner of Patents and Trademarks], the Deputy Commissioner [Deputy Assistant Secretary and Deputy Commissioner of Patents and Trademarks] and the Assistant Commissioners [the Assistant Commissioner for Patents and the Assistant Commissioner for Trademarks], and the examiners-in-chief, now administrative patent judges, including the Chief Administrative Patent Judge and the Vice-Chief Administrative Patent Judge, 35 U.S.C. 7(a). While the rules talk in terms of administrative patent judge, it must be recognized that any member of the Board, including a Commissioner-member, may take action in an interference which can be taken by an administrative patent judge.

Section 1.11(e) is revised to allow access to the file of an interference involving a reissue application once the interference has terminated or an award of priority or judgment has been entered as to all counts. Although it was intended that the public have access to any interference that involves a case which is open to the public, and § 1.11(b) provides that a reissue application is open to the public, interferences involving reissue applications were inadvertently not included in current § 1.11(e).

Section 1.192(a), which specifies the contents of the brief of an appellant for final hearing in an ex parte appeal, is revised to state that arguments or authorities not included in the brief will be refused consideration by the Board unless good cause is shown. The rule previously stated that such arguments and authorities may be refused consideration by the Board, without specifying how the Board decides whether or not it should be considered. One comment suggested that the amendment, if adopted, would make PTO less "user friendly" and would increase the burden of mere technicalities on applicants. It is believed that the comment misapprehends the nature of the proposed change, inasmuch as the change would merely codify the "good cause" standard that is currently applied by the Board in determining whether a new argument or authority will be considered.

Section 1.192(c) is revised in several respects. A first amendment simplifies the language used in the rule to refer to a brief filed by an applicant who is not represented by a registered practitioner. A second amendment removes from paragraph (c) the requirement that such a brief be in substantial compliance with the requirements of paragraphs (c)(1), (2), (6) and (7). Experience has shown that it is better to evaluate pro se briefs on a case-by-case basis. Section 1.192(c) is also revised to redesignate current paragraphs (c)(1) through (c)(7) as paragraphs (c)(3) through (c)(9), and to add new paragraphs (c)(1) and (c)(2). The added paragraphs (c)(1) and (c)(2) require an appellant who has filed an appeal to the Board to identify the real party in interest and any related appeals and interferences. It is necessary to know the identity of the real party in interest so that members of the Board can comply with applicable ethics regulations associated with working on matters in which the member has an interest. The requirements to identify related appeals and interferences is derived in part from Federal Circuit Rule 47.5 and will minimize the chance that the Board will enter inconsistent decisions in related cases.

One comment suggested that the term "real party in interest" be replaced by "owner" in order to avoid confusion with the term "party in interest of record," which appears in PTO's Notice of Allowance and Issue Fee Due (PTO–850). The suggestion is not being adopted, since it appears unlikely that any confusion will occur.

A comment on behalf of a large U.S. corporation having extensive overseas operations noted that the proposed requirement to identify the real party in interest will impose a substantial burden in appeals to the Board where the real party in interest is a corporation with international operations and many diverse and frequently changing affiliates. The comment was accompanied by a copy of a "Certificate of Interest" previously filed by the corporation in an appeal to the Federal Circuit, which named some three hundred subsidiaries and affiliates in which the corporation had an ownership interest of five percent or more. According to the comment, if ownership interests of less than five percent had been included, the list would have been about twice as long. The comment explained that because the corporation's business interests worldwide are frequently changing, the list would require updating for each and every appeal brief, and questioned whether this burden is justified. Upon consideration of the comment, it is

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believed, at this particular time, that the proposed rule would be burdensome on the public. Whether in the future more information might be required to the nature of a real party in interest is a matter which can await experience under a rule which requires identification only of the real party in interest. Accordingly, the suggestion is being adopted to the extent of requiring appellants to the Board to identify only the real party in interest. In this respect, § 1.192(c)(1) will parallel an equivalent requirement for briefs in inter partes cases. See § 1.656(b)(1)(ii), as amended.

One comment suggested revising proposed § 1.192(c)(9), which calls for an appendix including the claims on appeal, to include a statement that the rule sets forth the minimum requirements for a brief. According to the comment, the statement would make it clear that § 1.192 does not prohibit inclusion of other materials which an appellant may consider necessary or desirable, a point which the comment noted is explained in the Manual of Patent Examining Procedure § 1206, at 1200–6. The suggestion is not being adopted, since it is believed to be apparent from the rule that the requirements set forth therein are the minimum requirements.

Section 1.192 as proposed to be amended in the Notice of Proposed Rulemaking includes an amendment to current paragraph (a)(5) ("Grouping of claims"), proposed to be redesignated as paragraph (a)(7), that inadvertently was not discussed in the commentary in the Notice of Proposed Rulemaking. Specifically, it was proposed to amend that paragraph to state that for each ground of rejection which an appellant contests and which applies to more than one claim, the rejected claims shall stand or fall together with the broadest claim, and that only the broadest claim would be considered by the Board of Patent Appeals and Interferences unless a statement is included that the rejected claims do not stand or fall together and, in the argument under paragraph (c)(8), appellant presents reasons as to why appellant considers the rejected claims to be separately patentable from the broadest claim; merely pointing out what a claim covers is not an argument as to why the claim is separately patentable from the broadest claim. One comment suggested that it is not always clear which is the broadest claim, such as where there are two broad independent claims of differing scope (e.g., claims to ABCDE and ABCDF). The comment suggested that simply saying that the claims stand or fall together, as the current rule does, is probably the best one can do on a generic basis. The points raised by the comment are partly well taken. Paragraph (c)(7), as adopted, therefore reads as follows:

Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Where there is a "broadest" claim, that claim will normally be selected. Where there are two broad claims, such as ABCDE and ABCDF, as mentioned in the comment, the panel assigned to the case will select which claim to consider. The same would be true in a case where there are both broad method and apparatus claims. The rationale behind the rule, as amended, is to make the appeal process as efficient as possible. Thus, while the Board will consider each separately argued claim, the work of the Board can be done in a more efficient manner by selecting a single claim when the appellant does not meet the conditions of paragraph (c)(7) of § 1.192, as adopted. The choice of whether each claim will be considered separately or whether all claims will be considered on the basis of a single claim is a choice to be made by the appellant.

The term "subparagraph," which appeared in §§ 1.192 (c)(7) and (c)(8) in their originally proposed form, has been replaced by "paragraph" in those sections as amended.

Section 1.601 in general defines a number of terms used throughout the interference rules. One comment noted that a consistent format is not used throughout the definitions. For example, in § 1.601(q) all defined terms are italicized and in § 1.601(n) the defined terms are in quotation marks. The comment is well taken that there should be uniformity. Accordingly, paragraphs (l), (m) and (n) are revised by italicizing the first occurrence of each of the following defined terms: "junior party", "same patentable invention" and "separate patentable invention."

The Notice of Proposed Rulemaking proposed amending paragraph (f) of § 1.601 in a number of respects, including adding the following sentence: "A count should be broad enough to encompass the broadest corresponding patentable claim of each of the parties." One comment questioned whether the requirement is to be applied only at the time the interference is declared or throughout the interference. The comment notes that after an interference is declared, prior art may come to light which renders unpatentable all of the parties' claims that correspond to the count. The comment suggests that under these circumstances, requiring a count to be patentable over the prior art could mean that there might not be a proper count. According to the comment, a result might be that the Board, whose authority to enter judgments under the rules is limited to claims that correspond to a count (§§ 1.658 and 1.659), would be unable to enter judgment against the claims on the ground of unpatentability. Furthermore, since the Notice of Proposed Rulemaking was published, it has become apparent that § 1.601(f) could also be clarified in two other respects. First, the count should be broad enough to encompass *all* of the patentable claims that are designated as corresponding to the count, as opposed to solely each party's broadest corresponding patentable claim, i.e., where a party claims ABCDE in one claim and ABCDF in another claim and both claims are designated to correspond to the count. The current language of the rule can be argued to overlook the situation where a party has specific claims but no generic claim. Second, it should be made clear that the term "patentable" as used in § 1.601(f) in describing the scope of the count means patentable in view of the prior art, as opposed to unpatentability based on non-prior art grounds, e.g., the written description requirement of 35 U.S.C. 112, first paragraph. Accordingly, in lieu of the sentence proposed in the Notice of Proposed Rulemaking, § 1.601(f) is revised to include the following sentence: "At the time the interference is initially declared, a count should be broad enough to encompass all of the claims that are patentable over the prior art and designated to correspond to the count." A similar change is made in §§ 1.603 and 1.606. That is, instead of revising these rules to require that each application "must contain, or be amended to contain, at least one *patentable* claim that corresponds to the count," as proposed in the Notice of Proposed Rulemaking, these rules as amended require that each application "must contain, or be amended to contain, at least one claim that is *patentable over the prior art* and corresponds to the count."

The Notice of Proposed Rulemaking also proposed adding to § 1.601(f) a sentence stating: "A count may not be so broad as to be unpatentable over the prior art." Several comments questioned the meaning of the proposed sentence on the ground that a count, unlike a claim, does not have an effective filing date for purposes of establishing what is available against it as prior art. In view of the comments, the proposal to add the sentence is hereby withdrawn.

The Notice of Proposed Rulemaking proposed to amend the second sentence of § 1.601(f) by changing "which corresponds" to read "that is designated to correspond." This proposal should have referred instead to the third sentence, which is revised in the manner proposed. It was also proposed to revise the fourth and fifth sentences to read as follows, except that, for the reasons given above, the terms "correspond exactly" and "correspond substantially" are italicized rather than set off by quotation marks:

> A claim of a patent or application which is designated to correspond to a count that is identical to a count is said to *correspond exactly* to the count. A claim of a patent or application designated to correspond to a count that is not identical to a count is said to *correspond substantially* to the count.

On oral comment suggested that these sentences could be made clearer by revising them to read as follows:

> A claim of a patent or application that is designated to correspond to a count and is identical to the count is said to *correspond exactly* to the count. A claim of a patent or application that is designated to correspond to a count but is not identical to the count is said to *correspond substantially* to the count.

This suggestion is being adopted.

As proposed in the Notice of Proposed Rulemaking, the fifth sentence of § 1.601(f) is revised by removing the phrase "but which defines the same patentable invention as the count," which is used to describe a claim that corresponds to the count but is not identical to the count. The phrase is superfluous because a claim that corresponds to the count by definition is directed to the same patentable invention as the count.

The Notice of Proposed Rulemaking proposed to revise the last sentence of § 1.601(f) to state that: "A phantom count is unpatentable to all parties under the written description requirement of the first paragraph of 35 U.S.C. 112." One comment said that the sentence as proposed to be revised is inaccurate supposedly because a phantom count is not necessarily unpatentable to all parties for lacking written description support. According to the comment, a party may have written description support for a new claim identical to the count, yet choose not to present such a claim during the interference for tactical reasons, such as the desire to keep the count narrow enough to prevent an opponent from presenting priority evidence it might be able to produce with respect to a broader count. Another comment suggested that a phantom count be defined as a count that is "broader than the disclosure of any party to the interference." A third comment suggested that patentability under the enablement and best mode requirements be addressed along with patentability under the written description requirement. Apart from the comments, since patentability affects claims rather than counts, the proposal to amend the last sentence of § 1.601(f) is hereby withdrawn and the last sentence in its current form is removed.

One comment suggested counts serve little, if any, purpose under the new rules. The comment states that if PTO nevertheless feels compelled by tradition to have counts, each count should be the alternative union of *all* the parties' claims that are designated to correspond to the same invention. The suggestion that counts be abolished altogether, while superficially appearing to have considerable merit, is believed to be outside the scope of the present rulemaking and, for that reason, is not being adopted at this time. The suggestion that a count be the alternative union of all of the parties' claims that define the same patentable invention would not appear to require any change in the rules. The formulation of the count, whether by reference to particular claims in the parties' applications/patents or by describing the subject matter of the interference, is a matter within the discretion of PTO at this time.

The Notice of Proposed Rulemaking proposed amending § 1.601(g). Specifically, it was proposed to define the effective filing date of an application as the filing date of an earlier application accorded to the application or patent under 35 U.S.C. 119, 120, 121 or 365, or, if no benefit is accorded, the filing date of the application, and to define the effective filing date of a patent as the filing date of an earlier application accorded to the patent under 35 U.S.C. 120, 121, or 365(c) or, if no benefit is accorded, the filing date of the application which matured into the patent. The purpose of including the reference to 35 U.S.C. 121 is to eliminate any doubt that a divisional application may be entitled to an earlier filing date in accordance with 35 U.S.C. 121.

One comment suggested that the definition of effective filing date in § 1.601(g) should be expressly keyed to the claims rather than to the applications and patents, since different claims in the same application or patent may have different effective filing dates. The comment also suggested that the rules should be revised to make it clear that a motion under § 1.633(h) to add a reissue application need not be accompanied by a motion under § 1.633(f) for benefit of the patent sought to be reissued. Another comment suggested that the rule be revised to state that the effective filing date referred to in § 1.601(g) is the effective filing date of an application which constitutes a constructive reduction to practice of the subject matter of the count so as to make it clear that the rule is not referring to the effective filing date of an involved claim. These comments demonstrate that there is considerable uncertainty with respect to the inter-relationship between benefit issues and priority proof issues, including, among other issues, (a) benefit for a claim, (b) benefit for a count, (c) constructive reductions to practice based on a species disclosed in an earlier application (foreign or domestic) when claims of the U.S. application are not supported under § 119 in the priority document (*see In re Gosteli*, 872 F.2d 1008, 10 USPQ2d 1614 (Fed. Cir. 1989) and *In re Scheiber*, 587 F.2d 59, 199 USPQ 782 (CCPA 1978), and compare to the so-called one species is sufficient for priority "rule"), and (d) the fact that under interference practice since 1985, patentability is an issue which can be raised whereas prior to 1985, priority was "not ancillary" and could not be raised. A notice of proposed rulemaking will be issued in due course to address the issue, as well as other issues raised in comments responding to the current Notice of Proposed Rulemaking. A comment that the language of the proposed amendment to § 1.601(g) fails to take into account the fact that a patent may be accorded benefit of the filing date of an earlier foreign application during the interference is, however, well taken. Accordingly, § 1.601(g) is revised to make clear that a patent may be entitled to benefit under 35 U.S.C. 119.

As proposed in the Notice of Proposed Rulemaking, § 1.601(j) is revised by changing "which" to "that." One comment suggested changing "that corresponds to a count" to "that is designated to correspond to a count" for clarity and consistency with the language in § 1.601(f). The suggestion is being adopted.

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In § 1.601, paragraph (1) is revised, as proposed, by changing "assignee" to "assignee of record in the Patent and Trademark Office."

Paragraph (q) of § 1.601 is revised by deleting "a panel of" as superfluous.

Section 1.602 is revised by changing "within 20 days of" to "within 20 days after." One comment suggested clarification of the meaning of "any right, title and interest," noting involvement in several disputes over whether this includes a relationship such as a non-exclusive license, and also questioned whether the rule requires a party in a three-party interference to disclose that it is paying another party's expenses or attorney fees. The suggestion, which is outside the scope of the present rulemaking, is not being adopted at this time. The suggestion will be made the subject of a future notice of proposed rulemaking.

Sections 1.603 and 1.606 are revised, as proposed, by deleting the third sentence ("Each count shall define a separate patentable invention.") as redundant in view of the identical sentence in § 1.601(f) and by requiring that each application to be put into interference contain, or be amended to contain, at least one claim which is patentable over the prior art and which corresponds to each count. The introductory language in each of these sections ("Before an interference is declared * * *") makes it clear that the patentability requirement applies at the time that the interference is declared, as opposed to at all times during the interference.

One comment suggested that §§ 1.603 and 1.606 be further revised to require the examiner to examine all of the prior art in all of the potential parties' application and patent files in making a patentability determination. The suggestion is not being adopted. Ordinarily, the examiner determines that claims are patentable before an interference is declared. While there may be no express statement, consideration of whether claims are patentable in one application to be placed in an interference normally would involve consideration of prior art in a second application to be placed in the same interference.

In § 1.604, paragraph (a)(1) is revised by changing "his or her" to "its."

In § 1.605, paragraph (a) is revised for clarification essentially in the manner set forth in the Notice of Proposed Rulemaking. Part of the last sentence of the rules, however, is revised to require an applicant to "explain why the other claims would be more appropriate to be designated to correspond to a count in any interference which may be declared." In responding to a request by an examiner to copy a claim for purpose of a possible interference, an applicant should present the exact claim requested by the examiner. Often, however, an applicant may believe that the claim suggested by the examiner is not appropriate. For example, an applicant may believe it cannot support the exact claim requested by the examiner. Accordingly, while the applicant must present the exact claim requested by the examiner, the applicant is also free to suggest that the exact claim is inappropriate, but that other claims proposed by the applicant are more appropriate to be designated as corresponding to a count of any possible interference. Obviously, the applicant is also free to make a suggestion to the examiner as to what the count should be in any interference. The examiner can then determine whether an applicant's alternatively proposed claims are more appropriate than the exact claim suggested.

One comment suggested that § 1.605 further be revised "to include a reminder of the statutory prohibition against an *interference* copying claims from a patent issued more than one year, (as Rule 607 already does for applicants), since some examiners have been doing it" (original emphasis). The comment is understood to mean that examiners have suggested that applicants copy patent claims in violation of 35 U.S.C. 135(b). The suggested reminder is not incorporated into the rule, because it would not implement or interpret any requirement of law, and, while plausibly legitimate, is better made in administrative instructions, such as the Manual of Patent Examining Procedure.

Section 1.606 is also revised, as proposed, by adding a sentence stating that the claim in the application need not be, and most often will not be, identical to a claim in the patent.

One comment suggested that the last sentence of § 1.606, which the Notice of Proposed Rulemaking did not propose to revise, be revised to apply to application claims as well as patent claims and that the sentence be broken into two sentences for clarity, so as to read as follows:

> At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than (i) any application claim designated to correspond to the count and indicated in the form PTO–850 as allowable or (ii) any patent claim designated to correspond to the count. Any single patent claim designated to correspond to the count will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

The suggestion is being adopted; however, because it is inappropriate to refer to a PTO form in a rule, the following language is used:

> At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any application claim that is patentable over the prior art and designated to correspond to the count. Any single patent claim designated to correspond to the count or any patent claim designated to correspond to the count will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

One comment questioned why the declaration of interferences under § 1.606 is limited to unexpired patents, suggesting that there are rare cases where it would be very desirable to have an interference between an application and either a patent that has expired or a patent that has lapsed for failure to pay a maintenance fee. The enabling statute, however, authorizes interferences involving patents which are "unexpired." 35 U.S.C. 135(a).

In § 1.607, paragraph (a)(4) is revised to change "his or her" to "its" and to add a new paragraph (a)(6) requiring an applicant seeking an interference with a patent to demonstrate compliance with 35 U.S.C. 135(b), which provides:

> A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

Requiring an applicant to show compliance with 35 U.S.C. 135(b) before an interference is declared should prevent an interference from being declared where the applicant cannot satisfy § 135(b) with respect to any claim alleged to correspond to the proposed count. One comment suggested that requiring an applicant who has requested an interference with a patent to demonstrate compliance with § 135(b) is ultra vires. The comment argues that *In re Sasse*, 629 F.2d 675, 207 USPQ 107 (CCPA 1980), precludes an examiner from relying on § 135(b) to refuse to declare an interference and that *Sasse* can only be overruled by statute or decision of the Federal Circuit in banc, citing *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The argument in the comment is not persuasive. *Sasse* held that a claim added in violation of § 135(b) cannot be rejected by PTO under that statute; it did not hold that PTO cannot refuse to declare an interference where all of an applicant's claims that are proposed to correspond to the count fail to satisfy the statute. In fact, the court specifically held that the effect of § 135(b) is that "a *procedural* statutory bar arises proscribing the instigation of interferences after a specified time interval." 629 F.2d at 680, 207 USPQ at 110 (original emphasis).

In § 1.608, paragraphs (a) and (b) are revised in several respects, as proposed. First, both paragraphs are revised by removing the information about effective filing dates, which appears instead in § 1.601(g), as amended. Second, the current requirement of paragraph (a) for an affidavit filed by the applicant has been relaxed. Paragraph (a), as amended, permits a statement to be filed by the applicant or a practitioner of record. Third, "sufficient cause" in paragraph (b) of § 1.608 and in other interference rules is changed to "good cause" in order to make it clear that only one "cause" standard is intended. Fourth, "8½ x 11 inches (21.8 by 27.9 cm.)" is changed to "21.8 by 27.9 cm. (8½ x 11 inches)" to put the emphasis on the metric measurements. Fifth, the phrase "(§ 1.653(g) and (h))" is revised to read "(§ 1.653(g))" in view of the removal and reservation of § 1.653(h).

One comment stated a belief that there may be some confusion regarding the application of § 1.608(b) when the basis upon which an applicant is entitled to judgment is not priority of invention. According to the comment, while § 1.608(b) appears to include derivation as a basis, it is uncertain whether it applies in a situation where the applicant believes the patent claims are unpatentable over prior art that does not also render unpatentable the applicant's claims. The suggested change is not necessary. The comment's statement that derivation (35 U.S.C. 102(f)) provides a basis for a showing under § 1.608(b) is correct. Section 1.608(b) requires an applicant to explain why the applicant is entitled to judgment *vis-a-vis* the patentee. As explained in the Notice of Final Rule, 49 FR 48416, 48421 (Dec. 12, 1984), "[t]he evidence may relate to patentability and need not be restricted to priority." Such evidence could be, for example, evidence relating to derivation as noted by the comment.

The Notice of Proposed Rulemaking proposed that § 1.609(b)(2), be revised to require the examiner's statement (i.e., currently Form PTO–850, also known as the initial interference memorandum) to explain why each claim designated as corresponding to a count is directed to the same patentable invention as the count. It was also proposed that § 1.609(b)(3) be revised to require the examiner's statement to explain "why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count." The purpose of these amendments is to provide the Board and the parties with the benefit of the examiner's reasoning and to provide a better foundation for considering preliminary motions to designate claims as corresponding or as not corresponding to a count.

Paragraph (b)(2) is revised essentially as proposed in the Notice of Proposed Rulemaking. Upon further reflection, no need is seen for the examiner to indicate whether a claim corresponds exactly or substantially to a count.

One comment suggested that the proposed requirement of § 1.609(b)(3) may be unduly burdensome in multi-count interferences if it requires an examiner to explain not only why an involved claim corresponds to one count, but also why that claim does not correspond to each other count. Another comment, apparently construing the proposed language in the same way, suggested that the requirement could be made clearer by modifying the proposed language to read, "why each claim designated as not corresponding to *each* (or *the*) count is not directed to the same patentable invention as the count." To make it clear that such a requirement is not intended, the proposed amendment is withdrawn and paragraph (b)(3) is instead revised to read, "why each claim designated as not corresponding to *any* count is not directed to the same patentable invention as *any* count." Under § 1.609(b)(3), as adopted, the examiner's statement need not explain why a claim that is designated as corresponding to one count is not directed to the same patentable invention as another count in the interference.

One comment suggested that interferences involving patentees who are incontestably junior could be shortened by amending the rules to require a junior party patentee, prior to the preliminary motion period, to make a prima facie case of priority of the type currently required of junior party applicants by § 1.608. The suggestion is outside the scope of the present rulemaking and is not being adopted, but may be considered in a future notice of proposed rulemaking.

One comment suggested that §§ 1.609(b)(1) and 1.611(c)(6) also be revised to require that the examiner and the declaration notice explain, when there will be more than one count, why each count is patentably distinct from the other counts. The suggestion is being adopted.

Section 1.610(a) is revised by deleting the language "a panel consisting of at least three members of" as superfluous and by deleting the reference to § 1.640(c), which is revised to allow a request for reconsideration under § 1.640(c) to be decided by an individual administrative patent judge rather than by the Board. Section 1.610(b) is also revised by deleting "Unless otherwise provided in this section," as unnecessary in light of the amendment to paragraph (a).

One comment suggested that § 1.610(a) be revised to provide that an interference is handled throughout, including final hearing, by a single administrative patent judge, thereby avoiding the delays that occur when an issue is deferred to final hearing for decision by a three-member panel. The comment also suggested that § 1.610(b) be revised to provide that, at the discretion of the administrative patent judge, a panel consisting of two or more administrative patent judges may sit at final hearing (as well as deciding interlocutory orders). The suggestions have not been adopted. First, the suggestions are outside the scope of the present rulemaking. Second, the suggestions could not be implemented without amendment of 35 U.S.C. 7(b), which requires that an interference must be decided by at least three members of the Board.

One comment suggested that the second sentence of § 1.610(c) ("Times for taking action shall be set, and the administrative patent judge shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.") be removed as wishful thinking that only confuses district court judges confronted with a motion to stay a civil action pending the outcome of an interference. The suggestion is not being adopted. The two-year period, while not always attainable, is nevertheless believed to be realistic.

The Notice of Proposed Rulemaking proposed amending § 1.611 by redesignating paragraph (c)(8) as paragraph (c)(9) and adding a new paragraph (c)(8) requiring that a notice of declaration of interference state "[w]hy each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count." For the reasons given above in the discussion of § 1.609(b)(3), the proposed language is changed to read, "[t]he examiner's explanation as to why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each

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claim designated as not corresponding to any count is not directed to the same patentable invention as any count." The examiner's explanation should assist the parties in deciding whether to move to have claims designated as corresponding or not corresponding to the count. Normally, parties can expect that a copy of the examiner's explanation will accompany the notice declaring the interference. It should be understood that in declaring the interference, the administrative patent judge is neither agreeing nor disagreeing with the examiner's explanation and that the explanation is not binding on the administrative patent judge or the Board in further proceedings in the interference. As proposed in the Notice of Proposed Rulemaking, the first word in each of paragraphs (d)(2) and (d)(3) is also capitalized.

One comment suggested deleting ", oppositions to the motions, and replies to the motions" from § 1.611(d)(3) as surplusage. The suggestion is being adopted. In addition, paragraphs (d)(1), (d)(2) and (d)(3) are revised to be separately indented under paragraph (d).

Paragraph (a) of § 1.612 is revised to change "opposing party's" to "opponent's" and to add a sentence referring to § 1.11(e) concerning public access to interference files. One comment suggested amending § 1.612(a) to provide for automatic access to an application referred to in an opponent's involved case rather than requiring a motion for access under § 1.635, as under the current rule. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

Regarding § 1.613, one comment suggested that paragraph (c) be revised to give an administrative patent judge the authority to decide disqualification questions rather than requiring such questions to be referred to the Commissioner. Under current practice, the authority to decide motions for disqualification of counsel in cases before the Board of Patent Appeals and Interference has been delegated by the Commissioner to the Chief Administrative Patent Judge. Administratively, it is more appropriate that authority to decide disqualification matters be capable of being delegated to specific individuals rather than being assigned to administrative patent judges generally through a rule. The comment also suggested that paragraph (d) be revised to clarify whether "attorney or agent of record" includes an attorney or agent who is merely "of counsel." The term "attorney or agent of record" in the interference rules should be construed in the manner it is defined in 37 CFR 1.34(b). The rules do not recognize, or use, the term "of counsel." Accordingly, the suggestions are not being adopted. Furthermore, each suggestion is outside the scope of the present rulemaking.

Paragraph (a) of § 1.614 is clarified, as proposed in the Notice of Proposed Rulemaking, by changing "the Board shall assume jurisdiction" to "the Board acquires jurisdiction." One comment suggested amending § 1.614(c) ("An administrative patent judge, where appropriate, may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.") by deleting the current language ", when appropriate," as surplusage in view of "may." The suggestion is being adopted.

In addition to amending § 1.616 to authorize an award of compensatory attorney fees and expenses in appropriate circumstances, as discussed above, current paragraph (b), which is redesignated as paragraph (a)(2), is revised to permit a party to be sanctioned for failing to comply with the rules or an order by entering an order precluding the party from filing "a paper." Current paragraph (b) permits entry of an order precluding the filing only of a motion or a preliminary statement. The term "paper" will be given a broad construction, and includes a motion, a preliminary motion, a preliminary statement, evidence in the form of documents, a brief, or any other paper.

Section 1.617(b) is revised, as proposed, to authorize a party against whom a § 1.617(a) order to show cause has been issued to respond with an appropriate preliminary motion under § 1.633 (c), (f) or (g). The reason is that a preliminary motion under § 1.633(c) to redefine the interference, under § 1.633(f) for benefit of the filing date of an earlier application or under § 1.633(g) attacking the benefit accorded a patentee may be appropriate where the count set forth in the notice declaring the interference is not the same as the count proposed in the applicant's showing under § 1.608(b). A preliminary motion under § 1.633 (f) or (g) may also be appropriate where the count set forth in the notice declaring the interference is the same as the count proposed in the applicant's showing under § 1.608(b), but the notice either fails to accord the applicant the benefit of the filing date of an earlier application whose benefit was requested in the § 1.608(b) showing or accords the patentee the benefit of the filing date of an earlier application whose benefit the § 1.608(b) showing argued should not be accorded the patentee.

One comment suggested that § 1.617(b) be revised to state that a change of counsel is not "good cause" for presenting additional evidence in response to a § 1.617(a) show cause order, noting the similar amendment proposed in the Notice of Proposed Rulemaking for § 1.655(b). The suggestion is not being adopted. Moreover, the statement that a change of attorney is not generally good cause is not being added to § 1.655(b) as proposed. Upon reflection, it is better to leave the term "good cause" to be decided on a case-by-case basis. The proposed amendments to the rules to state that a change of attorney is generally not good cause for considering an issue belatedly raised by a new attorney is generally correct. In fact, recent experience shows that parties often retain new counsel after they find that "they are in trouble in the interference." Retaining new counsel midway through the case is almost never a reason to subject the opponent to starting over again. On the other hand, the rules use the term "good cause" in various places and PTO does not want to incorrectly give the impression that change of attorney is not good cause only when specifically stated in a rule which uses the phrase "good cause." Nor does PTO want to have a per se rule which says that a change of attorney cannot be good cause in any instance, although it would be rare for a change of attorney to be good cause.

One comment suggested that the second sentence of § 1.617(d) be revised to indicate that any statement filed by an opponent may set forth views as to why any (c), (f) or (g) motion filed by the applicant should be denied. The suggestion is not being adopted. The first sentence of § 1.617(d) as revised authorizes an opponent to file an opposition to any (c), (f) or (g) motion filed by the applicant, which opposition should include views as to why any (c), (f) or (g) motion filed by the applicant should be denied.

Another comment suggested that § 1.617(d), which currently prohibits an opponent from requesting a hearing, be revised to permit such a request on the ground that a hearing is the opponent's best chance to pretermit the whole interference process. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

The Notice of Proposed Rulemaking proposed amending the first sentence of § 1.618(a), which currently reads "The Patent and Trademark Office shall return to a party any paper presented by the party when the filing of the paper is

unauthorized by, or not in compliance with the requirements of, this subpart" to read: "An administrative patent judge or the Board shall enter an order directing the return to a party of any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart." The Notice of Proposed Rulemaking also proposed amending the second sentence of paragraph (a), which currently states that any paper returned "will not thereafter be considered by the Patent and Trademark Office in the interference," by deleting "by the Patent and Trademark Office." One comment questioned why the phrase "by the Patent and Trademark Office" is proposed to be removed. The reason is that the phrase is superfluous. Another comment questioned who is being ordered to return the paper and suggested that § 1.618(a) be revised to simply provide that the administrative patent judge shall return the unauthorized papers, with the understanding that it is the administrative patent judge's secretary who actually mails orders, opinions, etc. The suggestion is being adopted, but with the rule stating that the paper shall be returned by an administrative patent judge or the Board. Although not proposed in the Notice of Proposed Rulemaking, the last sentence of § 1.618(a), which states that a party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an administrative patent judge, is revised to also allow the Board to set such conditions.

One comment suggested an amendment to § 1.622(a) to clarify that the inventors named in the preliminary statement do not have to be all of the inventors named in the party's case in interference, citing *Larson v. Johenning*, 17 USPQ2d 1610 (Bd. Pat. App. & Int. 1990). The comment alternatively suggested dropping preliminary statements altogether on the grounds that they are (a) useless and (b) a snare and a delusion. These suggestions are outside the scope of the present rulemaking and are not being adopted.

Section 1.625(a) is revised, as proposed, by deleting "the invention was made in the United States or abroad and" as surplusage.

Section 1.626 is revised, as proposed, by revising "earlier application filed in the United States or abroad" to read "earlier filed application." The same change is made in §§ 1.630, 1.633(f), 1.633(g), 1.637(c)(1)(vi), 1.637(e)(1)(viii), 1.637(e)(2)(vii) and 1.637(h)(4).

Section 1.628(a) is revised, as proposed, to change "ends of justice" to "interest of justice" to be consistent with the language used in §§ 1.628(a) and 1.687(c), since a single standard is intended. The "interest of justice" requirement will be applied only to corrected preliminary statements that are filed on or after the due date for serving preliminary statements. Where the moving party has not yet seen the opponent's statement, an opponent normally will not be prejudiced by the filing of a corrected statement. One comment raised the following question:

> What is the standard if the motion is filed *before* the time set by the APJ for service of preliminary motions [sic, statements]? If, as implied by the comments, amendments prior to that date can be made freely, why not simply provide that the preliminary statements (if they are to be retained at all) are to be filed and served on the date set by the APJ pursuant to 37 CFR 1.628(a)? Particularly where it is obvious that the count(s) is or are going to be changed anyway, all of the parties' work preparing and the PTO's work in processing the original preliminary statement is wasted effort anyway.

(Original emphasis; footnote omitted.) The standard for a motion to amend that is filed before service of preliminary statements is that it be accompanied by an affidavit stating when the error occurred and be filed "as soon as practical after discovery of the error." The suggestion that preliminary statements be filed and served on the date set by the administrative patent judge pursuant to 37 CFR 1.628(a) is not understood, since that rule does not provide for setting such a date. Instead, the provisions relating to filing and serving preliminary statements appear in §§ 1.621(a) and 1.631, respectively. To the extent the comment is suggesting that these provisions be revised, the suggestion is outside the scope of the present rulemaking and is not being adopted.

As proposed in the Notice of Proposed Rulemaking, paragraphs (a), (c)(1) and (d) of § 1.629 are revised to make each consistent with the amendment of the definition of "effective filing date" in § 1.601(g). One comment suggested that in § 1.629(a), second sentence, the comma between "statement" and "as," which was proposed to be removed, be retained for clarity. As suggested, the comma is retained.

The first sentence of § 1.631(a) is revised by removing "by the examiner-in-chief" (first occurrence) as superfluous. The Notice of Proposed Rulemaking incorrectly proposed to remove the second occurrence of this phrase. Thus revised and with the remaining occurrences of "examiner-in-chief" changed to "administrative patent judge," the first sentence of § 1.631(a), as it was proposed to be revised, reads as follows: "Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633, any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement." (The proposed language set forth in the Notice of Proposed Rulemaking inadvertently omitted the phrase, "concurrently with entry of a decision on preliminary motions filed under § 1.633," which appears in the current rule and was not proposed to be removed.) In order to make it clear that the phrase "concurrently with entry of a decision on preliminary motions filed under § 1.633" modifies the succeeding phrase rather than the preceding phrase, the second comma is removed, so that the first sentence of § 1.631(a) as revised reads as follows: "Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633 any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement."

Section 1.632 is revised, as proposed, to more precisely state that a notice of intent to argue abandonment, suppression or concealment must be filed "within ten days after," rather than "within ten days of," the close of the testimony-in-chief of the opponent. One comment suggested that § 1.632 be further revised to (1) state what happens next and (2) provide a period for shifting the burden of proof. The suggestion is outside the scope of the present rulemaking, and is not being adopted.

Several comments were received with respect to § 1.633 in general. Two of the comments noted that § 1.642, which presumably was intended to allow an administrative patent judge to add a new party to an interference, has also been used to "request" addition of an application or patent of an already involved party, citing *Theeuwes v. Bogentoft*, 2 USPQ2d 1378 (Comm'r Pat. 1986). The two comments suggested that § 1.633 be revised to specifically provide for a motion to request addition of an application or patent of a party in order to make it clear that the standards for preliminary motions apply. Two other comments suggested amending §§ 1.633 and 1.637(h) to authorize a

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motion to *add* a claim to a party's application or an opponent's application (including a reissue application) to be designated as *not* corresponding to the count, thereby removing what is alleged to be one of the major drawbacks of the current rules. Still another comment suggested that in order to avoid the inefficiencies that result when prior art surfaces for the first time in a motion under § 1.633(a), which may render moot other preliminary motions, the parties should be required to file and serve all relevant prior art of which they are aware prior to the preliminary motion period. While some of the suggestions have merit, all are outside the scope of the present rulemaking and are not being adopted.

As proposed in the Notice of Proposed Rulemaking, paragraph (a) of § 1.633 is revised in several respects. The first is to specify that a claim shall be construed in light of the specification of the application or patent in which it appears. The amendment clarifies an ambiguity in PTO interference practice. Previously, the Federal Circuit had interpreted § 1.633 to require an ambiguous claim to be interpreted in light of the patent from which it was copied. *In re Spina*, 975 F.2d 854, 856, 24 USPQ2d 1142, 1144 (Fed. Cir. 1992). While this interpretation was a possible interpretation of previous § 1.633, PTO had intended that a copied claim be interpreted in light of the specification of the application or patent in which it appears. The rule, as adopted, will make ex parte and inter partes practice the same. A claim that has been added to a pending application for any purpose, including to provoke an interference, will be given the broadest reasonable interpretation consistent with the disclosure of the application to which it is added, as are claims which are added during ex parte prosecution. As explained *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989):

> [d]uring patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *See In re Prater*, 415 F.2d 1393, 1404–05, 162 USPQ 541, 550–51 (CCPA 1969) (before the application is granted, there is no reason to read into the claim the limitations of the specification). The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. *Burlington Industries, Inc. v. Quigg*, 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987); *In re Yamamoto*, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984).

If a party believes an opponent's claim corresponding to the count is ambiguous when construed in light of the opponent's disclosure, the party should move under § 1.633(a) for judgment against the claim on the ground of unpatentability under the second paragraph of 35 U.S.C. 112. In paragraph (a), "by reference to the prior art of record" is removed as unnecessary. Paragraphs (a)(1) and (a)(2) of § 1.633 are revised by deleting some unnecessary language from each paragraph and by changing "derivation" to "Derivation" in paragraph (a)(2). One comment suggested changing "corresponding to a count" in § 1.633(a) to "designated to correspond to a count" for consistency with § 1.601(f), as amended. The suggestion is being adopted.

Although not proposed in the Notice of Proposed Rulemaking, § 1.633(a) is also revised by adding a sentence requiring that the motion separately address each claim alleged to be unpatentable. For example, where a plurality of claims are alleged to be unpatentable over prior art, the motion must compare each of those claims to the prior art. As a result, a party would not be allowed to allege that all of the opponent's claims that correspond to the count are unpatentable simply because the opponent's claim that corresponds exactly to the count is anticipated by, or would have been obvious in view of, the prior art. At the time an interference is declared, it may appear (and the parties may then believe) that all claims designated as corresponding to a count are directed to the same patentable invention. Once additional prior art is discovered in the preliminary motion period, however, what was the case when the interference was declared may no longer be the case. Hence, a preliminary motion under § 1.633(a) alleging unpatentability over the prior art should address each claim believed to be unpatentable. In the case where a party has two claims, e.g., a genus and a species, if a preliminary motion under § 1.633(a) is filed by an opponent which argues that only the genus is unpatentable, the party will need only respond to the argument relative to the genus. Thus, to the extent there ever was a perception that all claims designated to correspond to a count stand or fall with the "patentability of the count," the rule as adopted attempts to overcome that perception. There is no presumption in an interference that because one claim designated to correspond to a count is unpatentable over the prior art (35 U.S.C. 102 (a), (b) and (e)), that all claims are unpatentable over the same prior art. On the other hand, in deciding priority of invention, all claims designated to correspond to a count at the time priority is decided will stand or fall together on the issue of priority.

Section 1.633(b), which concerns motions for judgment on the ground of no interference-in-fact, was proposed to be revised to state that it is possible for claims of opponents presented in "means plus function" format to define separate patentable inventions even though the claims of the opponents contain the same literal wording. The reason is that the sixth paragraph of 35 U.S.C. 112, which is applicable to "means plus function" limitations in application claims and patent claims, provides that such limitations are to be construed as covering the corresponding structure disclosed in the associated application or patent and equivalents thereof. *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). The proposed change has been adopted, but with the proposed term "opponents" being replaced by "different parties." One comment suggested that in addition to *Donaldson*, support for the amendment can be found in *Blackmore v. Hall*, 1905 Dec. Comm'r Pat. 561 (Comm'r Pat. 1905), and the withdrawn opinion in *Rion v. Ault*, 455 F.2d 570, 172 USPQ 588 (1972) (Rion I), *modified*, 482 F.2d 948 (CCPA 1973) (Rion II), which the comment says stand for a proposition even broader than the one set forth in the proposed amendment. Inasmuch as *Blackmore* predates the statutory language in question and *Rion I* was withdrawn by the CCPA, the suggestion is not being adopted.

Paragraph (i) of § 1.633, which in its current form authorizes a party who opposes a preliminary motion under § 1.633 (a), (b) or (g) to file a preliminary motion under § 1.633 (c) or (d), is revised to additionally authorize a party-patentee to file a preliminary motion under § 1.633(h) to add to the interference an application for reissue of the party's involved patent. Because a reissue application can include an amended or new claim to be designated as corresponding to a count, paragraph (i) as revised gives a patentee an option similar to that afforded in the same situation to a party-applicant, who can file a preliminary motion under § 1.633(c)(2) to amend a claim in, or add a claim to, its involved application to be designated as corresponding to a count. One comment suggested further amending § 1.633(i) to authorize a § 1.633(c)(1) motion in response to an opponent's § 1.633(c)(1) motion. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

One comment suggested that § 1.636, as proposed to be revised, which requires that a motion under § 1.634 to correct inventorship of a patent or application "be diligently filed after an error is discovered" is ultra vires with respect to patents. The suggestion is outside the scope of the present rulemaking and is not being adopted. The suggestion will be considered in a future rulemaking.

The Notice is Proposed Rulemaking proposed amending paragraph (a) of § 1.637 to incorporate the essence of a notice of August 10, 1990, *published as* "Interferences—Preliminary Motions for Judgment," 1118 Off. Gaz. Pat. Office 19 (Sept. 11, 1990). Specifically, the Notice of Proposed Rulemaking proposed adding the following language at the end of the paragraph:

> If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to be the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party. If the motion fails to include a sufficient explanation or evidence, the party will not be permitted to rely on any such explanation or evidence in response to or in any subsequent action in the interference.

Two comments suggested that the proposed last sentence is imprecise in that although it is presumably intended to preclude a party whose motion an administrative patent judge has held to include an insufficient explanation or evidence from later *supplementing* the explanation or evidence offered in the motion, the sentence is broad enough to be construed as also precluding the party from relying on the arguments and evidence that were offered *in* the motion. Accordingly, one of the comments suggested that the proposed last sentence be replaced by the following two sentences: "If the administrative patent judge holds that the motion fails to include a sufficient explanation or evidence as to why the cited prior art is not applicable to the party, the party will not be permitted to supplement any such explanation or evidence in any subsequent action in the interference. However, the party is not precluded from subsequently arguing that the administrative patent judge's decision was incorrect." The substance of the suggestions is believed to be correct, but the suggested language will not be adopted. Instead, § 1.637(a) is revised to read:

> A party filing a motion has the burden of proof to show that it is entitled to the relief sought in the motion. Each motion shall include a statement of the precise relief requested, a statement of the material facts in support of the motion, in numbered paragraphs, and a full statement of the reasons why the relief requested should be granted. If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party.

Rather than specify a particular sanction for failure of a party to comply with § 1.637(a), as adopted, it is more appropriate to rely on application of the provisions of § 1.618. A party who fails to timely include the explanation and/or evidence required by the rule runs a considerable risk that an explanation and/or evidence presented at a future time will be returned as untimely. See § 1.618(a). Papers which are returned are not considered part of the record.

Section 1.637(a) was proposed to be revised to state that the statement of material facts be "preferably in numbered paragraphs." One comment suggested that numbered paragraphs be a requirement, because it would make matters easier for opponents as well as administrative patent judges. The suggestion is being adopted. Ordinarily, it will be expected that each numbered paragraph will recite a single fact which can easily be "admitted" or "denied." The use of numbered paragraphs should make the decision-making process of the administrative patent judge easier.

Another comment suggested that § 1.637(a) be revised to require that motions, oppositions and replies be numbered sequentially, so that party X's opposition No. 1 will be its opposition to party Y's motion No. 1, etc. The suggestion, while having considerable merit, is outside the scope of the present rulemaking, and is not being adopted. The suggestion will be made the subject of a future rulemaking effort. In papers filed in PTO in interference cases, there is an increasing tendency for parties to use "long" titles, e.g., PARTY SMITH'S PRELIMINARY MOTION FOR DECLARATION OF PARTY OPPONENT RAYMOND'S CLAIMS TO BE UNPATENTABLE UNDER 37 CFR § 1.633(a). The opponent then responds with an opposition styled PARTY RAYMOND'S OPPOSITION TO PARTY SMITH'S PRELIMINARY MOTION FOR DECLARATION OF PARTY OPPONENT RAYMOND'S CLAIMS UNPATENTABLE UNDER 37 CFR § 1.633(a). The reply then tends to be PARTY SMITH'S REPLY TO PARTY RAYMOND'S OPPOSITION TO PARTY SMITH'S PRELIMINARY MOTION FOR DECLARATION OF PARTY OPPONENT RAYMOND'S CLAIMS UNPATENTABLE UNDER 37 CFR § 1.633(a). It should be apparent that the styling of the paper loses its significance. Accordingly, pending a further rulemaking effort parties in interference can simplify matters by voluntarily adopting the essence of the suggestion by replacing the styling of the three papers identified above with the following: (1) SMITH'S PRELIMINARY MOTION NO. 1; (2) RAYMOND'S OPPOSITION NO. 1; and (3) SMITH'S REPLY NO. 1. If numerous motions are filed, then sequential numbers can be used. In a two-party interference, if the parties can agree, one can use numbers and the other letters. In any event, it would be of considerable help to the Board if the style of a paper does not exceed a single line.

As proposed in the Notice of Proposed Rulemaking, § 1.637(a) is also revised by changing "Every" in the second sentence to "Each."

Section 1.637(c)(1) sets forth the requirements for a preliminary motion to add or substitute a proposed count. The Notice of Proposed Rulemaking proposed amending paragraph (c)(1)(v) in two respects: (1) To require a moving party to show that the proposed count is patentable over the prior art; and (2) to specify that a proposed substitute count need only be shown to be patentably distinct from the other counts proposed to remain in the interference, since a proposed substitute count need not be patentably distinct from the count it is to replace. Several comments opposed amending § 1.637(c)(1)(v) to require a party to show that a proposed new count is patentable over the prior art, stating, *inter alia*, that the date of a count for purposes of determining what is available as prior art is not clear. The statements in the comment are well taken for the reasons given above in the discussion of § 1.601(f). Accordingly, the proposal to amend paragraph (c)(1)(v) to require the moving party to show the patentability of a proposed new count over the prior art is withdrawn. Paragraph (c)(1)(v) is revised only to require that a proposed substitute count must be shown to be

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patentably distinct from the other counts proposed to remain in the interference.

As proposed in the Notice of Proposed Rulemaking, § 1.637(c)(1)(vi) is revised to clarify that a preliminary motion under § 1.633(c)(1) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count.

In order to eliminate the need for an opponent to respond to a § 1.633(c)(1) motion with a preliminary motion under § 1.633(f) claiming benefit, which has the effect of delaying a decision on the § 1.633(c)(1) motion, the Notice of Proposed Rulemaking also proposed amending § 1.637 by adding a new paragraph (c)(1)(vii) reading as follows:

> If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count

One comment suggested clarifying the first sentence by inserting "and if the movant desires a holding that its opponent is not entitled to the benefit of the filing date of the earlier filed application for the proposed count' after "interference." The same change was suggested for proposed new §§ 1.637(e)(1)(ix) and 1.637(e)(2)(viii), which are identical to § 1.637(c)(1)(vii). The suggestion is not being adopted. The rule, as amended, states that a moving party must take a positive action if it believes an opponent is not entitled to benefit for a new count. Failure to take the positive action creates a presumption. The rule, as amended, also states the consequences of not taking a positive action. Taking the positive action is the manner to procedurally attempt to overcome the presumption. Hence, the suggested "clarification" is not necessary.

As proposed, minor housekeeping amendments are made to §§ 1.637(c)(2)(ii) and (iii) for clarification, and §§ 1.637(c)(2)(iv) and 1.637(c)(3)(iii), which relate to § 1.633(f) motions for benefit, are removed and reserved as unnecessary, since motions under § 1.633(c) (2) and (3) do not affect the count. Section 1.637(c)(3)(ii), which applies to motions under § 1.633(c)(3) to designate a claim as corresponding to a count, is revised to have claims compared to claims, as is the case in § 1.633(c)(4)(ii), which applies to motions filed under § 1.633(c)(4) to designate a claim as not corresponding to a count. The amendment avoids the need to compare claims to counts.

Section 1.637(c)(4)(ii) was proposed to be revised to require that a party moving to designate a claim as not corresponding to a count must show that the claim could not serve as the basis for a preliminary motion under § 1.633(c)(1) to add a new count. As revised, the rule precludes a party from moving to designate one of its claims as not corresponding to the count where an opponent's disclosure would support a similar claim. The supporting rationale is that the party could file a § 1.633(c)(1) preliminary motion proposing a claim to be added to the opponent's application and suggesting that the proposed claim and the party's claim in question be designated as corresponding to a proposed new count. One comment argues that the proposed amendment would unduly burden a party by requiring it to propose claims to be added to an opponent's application, whereas under the current rule the opponent, who has the option to propose such a count and such a claim in a motion under § 1.633(c)(1), runs the risk of interference estoppel by not pursuing an interference on common patentable subject matter. Thus, the comment notes that the effect of the proposed requirement would be to require a party to prevent its opponent from possibly getting itself into an estoppel situation. The point of the comment is well taken. Accordingly, the proposal to amend § 1.637(c)(4) in the manner criticized by the comment hereby withdrawn.

As proposed in the Notice of Proposed Rulemaking, § 1.637(d)(4), which authorizes a party to file a motion for benefit together with a motion under § 1.633(d), is removed and reserved as unnecessary. Motions filed under § 1.633(d) do not affect the count. Sections 1.637(e)(1)(viii) and (e)(2)(vii) are revised to make it clear that a preliminary motion under §§ 1.633(e)(1) or (e)(2) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count. As proposed, §§ 1.637(e)(1)(ix) and (e)(2)(viii) are added specifying that where a party is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, that party is presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

Section 1.637(f)(2) is revised, as proposed, by changing "abroad" to "in a foreign country" and removing both occurrences of "filed abroad" as superfluous.

The Notice of Proposed Rulemaking proposed to amend § 1.637(h) by adding a sentence stating that "[a] patentee may not move under § 1.633(h) to add a reissue application that includes new or amended claims to be designated as not corresponding to a count." The purpose of the proposal was to make clear that a preliminary motion to add a reissue application that includes a new or amended claim to be designated as *not* corresponding to a count will be given the same treatment as a preliminary motion proposing to amend a claim in, or add a new claim to, an involved application to be designated as not corresponding to the count, i.e., the preliminary motion will be dismissed. *See L'Esperance V. Nishimoto*, 18 USPQ2d 1534, 1537 (Bd. Pat. App & Int. 1991) (interference rules do not authorize a motion by party-applicant to amend or add a claim to be designated as not corresponding to the count). Several comments were received in opposition to this proposal, one of which stated:

> As understood, this would prevent moving to add any reissue application to an interference if even a single claim of that reissue was independently patentable, i.e., properly not subject to the interference, even if some or most of the other claims were the same as, or patentably indistinct from, claims already subject to the interference.
>
> It is not seen why patent owners should be deprived of their statutory and normal *ex parte* right to have and maintain reissue applications with appropriate claims to inventions disclosed in their specifications, simply to meet a new interference rule requirement that appears to be solely for administrative convenience for the interference proceeding.

The statement in the comment is justified. The rule as proposed to be revised would unfairly preclude a patentee whose involved claims are all held to be unpatentable during the interference (e.g., under 35 U.S.C. 112, first paragraph, for lack of written description support) from adding a reissue application that contains new or amended claims to be designated as corresponding to a count simply because the reissue application also happens to include a new or amended claim to be designated as not corresponding to a count. Accordingly, the proposed amendment to paragraph (h) is hereby withdrawn.

As proposed in the Notice of Proposed Rulemaking, § 1.638(b) is revised by changing "a reply" to "any reply."

One comment suggested amending § 1.638(a) to take into account that an opposition may be based on material facts that are not set forth in the motion, by changing "(2) include an argument why the relief requested in the motion should be denied" to "(2) set forth in numbered paragraphs any material facts in support of the opposition not set forth in the motion and include an argument why the relief requested in the motion should be denied." A similar amendment was suggested for paragraph (b) as to replies. The suggestions, which are outside the scope of the present rulemaking, are not being adopted. The suggestions would appear to have considerable merit and will be made the subject of a future rulemaking effort.

Paragraph (a) of § 1.639, which currently requires that a motion, opposition or reply be accompanied by the evidence on which a party intends to rely in support of or in opposition to a motion, is revised as proposed in the Notice of Proposed Rulemaking to be consistent with paragraphs (c) through (g), which permit some types of evidence to be filed after filing of the motion, opposition or reply. In addition, paragraph (d)(1) is revised, as proposed, by changing "call" to "use."

One comment expressed concern about § 1.639(a) to the extent it is construed as requiring that all available evidence in support of a motion, opposition or reply must be filed and served with the motion, opposition or reply, which is presumed to be a reference to the construction given § 1.639 in *Irikura v. Petersen*, 18 USPQ2d 1362, 1368 (Bd. Pat. App. & Int. 1990):

> A good faith effort must be made to submit evidence to support a preliminary motion or opposition when the evidence is available. *Orikasa v. Oonishi*, [10 USPQ2d 1996, 2000 n.12 (Comm'r Pat. 1989). Note the commentary [*Patent Interference Proceedings; Final Rule*,] 49 F.R. [48416], at 48442 (Dec. 12, 1984), 1050 O.G. [385], at 411 (Jan. 29, 1985)], [*corrections*] 50 F.R. 23122 (May 31, 1985), 1059 O.G. 27 (Oct. 22, 1985).
>
> *See also Okada v. Hitotsumachi*, 16 USPQ2d 1789, 1790 (Comm'r Pat. 1990). Specifically, the comment notes that:
>
> [t]o permit testimony beyond the evidence filed with the motion, has been likened to "two bites of the apple". I think there is a misunderstanding here, it is not two bites.
>
> For example, a motion for summary judgment that is denied, [sic] does not preclude the party from proving his case at trial with additional evidence. Two bites comes if, after decision on motion, a party tries to bring a second *motion* with additional evidence or argument, or [if] after trial and judgment, the loser wants to introduce more evidence that was available all along. I see nothing wrong with an interference party submitting the prior art and arguing that "any fool can plainly see" the subject matter of the count is obvious. That's a sort of motion for summary judgment on the issue. If the APJ does not perceive the obviousness to be apparent, he or she should *invite* the parties to present additional testimony on obviousness during the testimony time, *not block it*. Obviously, the same reasoning would apply to enablement, operability, same patentable invention, etc.

(Original emphasis.) The suggestion that the rules be revised to permit a party to later submit evidence that it could have submitted in support of or in opposition to a preliminary motion is declined for the reasons given in *Hanagan v. Kimura*, 16 USPQ2d 1791, 1793 (Comm'r Pat. 1990) ("the new interference rules were not intended to permit routine requests to take testimony in lieu of presenting timely affidavits and other available proof of material [facts] with the motion"). *See also Staehelin v. Secher*, 24 USPQ2d 1513, 1515 n.3 (Bd. Pat. App. & Int. 1992).

Another comment suggested amending the rules to permit the filing of a motion for "summary judgment" shortly (e.g., within two months) after the interference is declared on a matter that may be dispositive of the interference, such as the absence of an interference-in-fact, unpatentability of all of the parties' claims that correspond to the count or unpatentability of all of the opponent's claims that correspond to the count, with testimony being restricted to affidavits and counter-affidavits. *Compare* Fed. R. Civ. P. 56. The comment continues that if the motion is denied by the administrative patent judge, there would be no right of appeal; if the motion is granted, the opponent could appeal to a three-member panel of the board and, if the panel concurs with the decision of the administrative patent judge, the opponent could seek judicial review. To the extent the suggestion is seeking a rule authorizing motions for summary judgment like those provided for in Fed. R. Civ. P. 56, the suggestion is outside the scope of the present rulemaking and is therefore not being adopted. In a future rulemaking effort, PTO will consider whether there is an advantage to be gained by some form of "summary judgment" motion.

The Notice of Proposed Rulemaking proposed to amend § 1.640(b) in several respects. First, it was proposed to add a first sentence providing that "[u]nless an administrative patent judge or the Board is of the opinion that a decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion should be deferred to final hearing." One comment indicated that requiring deferral of non-dispositive motions may adversely affect settlement of interferences:

> Under the current procedure, where most motions are initially decided, if a party is faced with a particular decision on a non-dispositive motion, that decision may affect the party's willingness to settle with the opposing party, even knowing that the decision may be changed at final hearing. For example, if a party has proposed a new count that better fits its proofs and the motion proposing the new count is denied, the party may be willing to request adverse judgment (e.g., in exchange for a license) rather than try to prove invention of the original count for which its proofs are not as good, even knowing that there is a chance that the proposed count may be adopted at final hearing. Similarly, a party that has succeeded in having important claims designated as not corresponding to the count may be willing to settle on that basis, even though it may lose certain other claims. To the extent that early decisions on preliminary motions motivate settlement in that way, the proposed amendments will decrease the settlement rate of interferences, adding to the workload of the Board and of practitioners.
>
> While the comment can be correct in some interferences, it may not be true in other interferences. In those interferences where decision on a preliminary motion is likely to lead to settlement, the parties should approach the administrative patent judge and discuss the matter. Then the administrative patent judge will then be in a position to make an informed decision on an "opinion that an earlier decision on a preliminary motion would materially advance the resolution of the interference." Amending the rule, as proposed, will advance resolution of interferences where settlement is not likely, while at the same time giving the parties a means by which to inform the administrative patent judge that a decision on a particular motion would assist the settlement process.

One comment suggested that the proposed language could be clarified by changing "a decision" (first occurrence) to "an earlier decision" so that the sentence reads: "Unless an administrative patent judge or the Board is of the opinion that an earlier decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion shall be deferred to final hearing." The suggestion is being adopted.

Another comment stated that the second sentence of § 1.640(b) as proposed to be revised ("Motions otherwise will be decided by an administrative patent judge.") is somewhat confusing and asks whether it is intended to mean that if the administrative patent judge decides not to defer a motion to final hearing, the administrative patent judge will then decide the motion. Any possible

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ambiguity is avoided by changing "otherwise" to "not deferred to final hearing."

Although not proposed in the Notice of Proposed Rulemaking, the sentence in § 1.640(b) which currently reads "[a]n administrative patent judge may consult with an examiner in deciding motions involving a question of patentability" is changed to "[a]n administrative patent judge may consult with an examiner in deciding motions" to avoid any uncertainty that the administrative patent judge is free to consult with an examiner on any preliminary motion.

Still another comment suggested that the fourth sentence of § 1.640(b) as proposed to be revised ("An administrative patent judge may take up motions for decision in any order and may grant or deny any motion or take such other action which will secure the just, speedy, and inexpensive determination of the interference.") be changed to read as follows to make it clear that the goal of ensuring a just, speedy, and inexpensive determination of the interference applies to the choice of order of deciding motions: "An administrative patent judge may take up motions for decision in any order, may grant or deny any motion, and may take such other action which will secure the just, speedy, and inexpensive determination of the interference." The suggestion is being adopted. The rule is also revised to make absolutely clear that, among other things, an administrative patent judge may dismiss a motion, e.g., when a motion does not comply with a rule. The addition of the possibility of "dismissing" a motion augments the sanction available under § 1.618(a), i.e., return of a paper.

One comment suggested adding a provision to § 1.640(b) specifically recognizing the authority of the administrative patent judge, for the purpose of promoting the just, speedy and inexpensive resolution of the interference, "to schedule a final hearing on deferred preliminary motions prior to the time of testimony on priority, etc. See also § 1.654(a)." The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The suggestion will be considered in a future rulemaking effort, although it should be noted that nothing in the rules should be construed as precluding an administrative patent judge or the Board from ordering a "final" hearing on a particular issue. Whether such a "final hearing" is ordered is within the sound discretion of the administrative patent judge or the Board.

As proposed in the Notice of Proposed Rulemaking, § 1.640(b) is also revised to state that "[a] matter raised by a party in support of, or in opposition to, a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing," one comment questioned whether it will be sufficient to simply incorporate the deferred motion and reply into the brief. The answer is no. With the exception of a motion to suppress, which may be filed as a separate paper together with a party's brief (§ 1.656(h)), and papers properly belatedly filed after the brief has been filed, the brief must satisfy the requirements of § 1.656(b) with respect to all issues to be decided at final hearing, including the requirement for a statement of the issue (§ 1.656(b)(4)), a statement of the relevant facts (§ 1.6565(b)(5)), and an argument (§ 1.656(b)(6)). It will be noted at this point, that the Board generally discourages the practice of incorporating an argument in one paper into a second paper. The reason is that the argument in the first paper can easily be overlooked in considering the second paper, i.e., when an administrative patent judge studies a motion, opposition, or reply at home only to find that the "incorporated paper" is not available.

As proposed in the Notice of Proposed Rulemaking, § 1.640(b) is revised to state that "[i]f the administrative patent judge determines that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions on motions or on matters raised sua sponte by the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred motions that the party wishes to have considered at final hearing." One comment questioned why the statement of matters to be reviewed at final hearing is limited to final hearings on "priority or derivation." The reason is that final hearings on priority and/or derivation are the only types of final hearing that will be scheduled pursuant to § 1.640(b). Final hearings that are requested in response to show cause orders under § 1.640(d) are set pursuant to § 1.640(e), which, as amended likewise requires statements identifying the matters to be reviewed at final hearing.

Section 1.640(b) was also proposed to be revised by adding as the last sentence: "Any evidence that a party wishes to have considered with respect to the decisions and motions identified by the party or by an opponent for consideration or review at final hearing, including any affidavit filed by the party under § 1.608 or 1.639(b), shall be served on the opponent during the testimony-in-chief period of the party." In order to consistent with the terminology in the preceding sentence of § 1.640(b), the phrase "decisions and motions" in the proposed last sentence is replaced by "decisions and deferred motions." Furthermore, the last sentence, as adopted, has been worded to take into account the retention and amendment of § 1.671(e) to permit a party to file a notice of intent to rely on affidavits, patents and printed publications previously submitted under § 1.639(b). Accordingly, the last sentence, as adopted, reads: "Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified by the party or by an opponent for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony-in-chief period of the party."

As proposed in the Notice of Proposed Rulemaking, the last sentence of § 1.640(b)(1) ("After the time expires for filing any amendment and supplemental preliminary statement, the examiner-in-chief will, if necessary, redeclare the interference.") is changed to read: "At an appropriate time in the interference, and when necessary, an order will be entered redeclaring the interference." One comment requested clarification of the meaning of "when necessary" and suggested that redeclaration should be required when the order of parties is changed but the count remains the same, in order to make it clear who is junior and who is senior. The suggestion, which included no specific language for its implementation and is outside the scope of the present rulemaking, is not being adopted. It will be considered in future rulemaking effort.

Section 1.640(b)(2), which currently states that a preliminary motion filed after a decision is entered on preliminary motions under § 1.633 will not be considered except as provided by § 1.655(b), is revised to state that a preliminary motion filed after the time expires for filing preliminary motions will not be considered except as provided by § 1.645(b) by changing "1.655(b)" to "1.645(b)." Section 1.645(b) relates to consideration of belatedly filed papers in general.

The Notice of Proposed Rulemaking proposed to amend § 1.640(c), which currently requires an administrative patent judge or the Board to specifically

authorize an opposition to a request for reconsideration of a decision by an administrative patent judge, to authorize an opponent to file an opposition, thereby saving the administrative patent judge or the Board the time it would otherwise take to determine whether to authorize an opposition. An opposition is normally required before the Board will modify the decision of an administrative patent judge. One comment suggested that because the Board frequently dismisses or denies requests for reconsideration without requesting an opposition, the proposed amendment will have the effect of unnecessarily increasing costs by encouraging the filing of oppositions that the Board may frequently find unnecessary to consider. The point is well taken and the proposal to amend § 1.640(c) to authorize oppositions to be filed without leave of the administrative patent judge is therefore withdrawn.

As proposed in the Notice of Proposed Rulemaking, the last sentence of § 1.640(c) is removed in order to authorize a single individual administrative patent judge to decide a request for reconsideration and is also revised to require that a request for reconsideration by filed by hand or Express Mail. The amendment of the rule should not be construed as limiting the authority of the Board, in the discretion of an administrative patent judge or the Board, to decide a request for reconsideration.

One comment suggested amending the second sentence of § 1.640(c) to permit service by next-business-day courier, arguing that hand delivery is often impractical and Express Mail unduly difficult. The comment also suggested that paragraph (c) be revised to allow reconsideration of a decision on motions, which is currently limited to identifying points that have been "misapprehended or overlooked," on the additional ground that the decision is simply wrong on the merits, noting that decisions on reconsideration in several interferences agreed that a decision is wrong on the merits, but refused to change it on the grounds that nothing was overlooked or misapprehended. Both of these suggestions are outside the scope of the present rulemaking and are not being adopted. However, pending a future rulemaking effort, the word "served by hand" in § 1.640(c) and elsewhere in the rules should be construed to include service by next-business-day courier. In using a next-business-day courier, a party is serving the paper by hand, the "hand" being the courier service. Hence, service by hand will be construed to include service by any commercial courier which performs a service essentially equivalent to the Express Mail service provided by the U.S. Postal Service. Pending further rulemaking, the date of service shall be the date of delivery to the courier.

Section 1.640(d)(1), which currently states that an order to show cause under that section may be based on a decision on a motion which is dispositive of the interference against a party as to any count, is revised, as proposed in the Notice of Proposed Rulemaking, to also include decisions on dispositive matters raised sua sponte by an administrative patent judge.

Section 1.640(e) is revised, as proposed, to incorporate the substance of the Notice of December 8, 1986, *published as* "Interference Practice: Response to Order to Show Cause Under 37 CFR 1.640," 1074 Off. Gaz. Pat. Office 4 (Jan. 6, 1987), 1086 Off. Gaz. Pat. Office 282 (Jan. 5, 1988). Specifically, § 1.640(e), as amended, provides that where the order to show cause was issued under § 1.640(d)(1), the party may file a paper (i) requesting that final hearing be set to review the decision which is the basis for the order and identifying every other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing, or (ii) fully explaining why judgment should not be entered. Any opponent is permitted to file a response to the paper within 20 days of the date of service of the paper. Where the order was issued under § 1.640(d)(1), and the paper includes a request for final hearing, the opponent's response must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. Where the order was issued under § 1.640(d)(1) and the paper does not include a request for final hearing, the opponent's response may include a request for final hearing which must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. Where an opponent's response includes a request for a final hearing, the party who filed the paper shall have 14 days from the date of service of the opponent's response in which to file a supplemental paper identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing. The paper or the response thereto shall be accompanied by a motion (§ 1.635) requesting a testimony period if a party wishes to introduce any evidence to be considered at final hearing (§ 1.671), such as affidavits previously filed under § 1.639(b). A request for a testimony period will be construed as including a request for final hearing. If the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing, the decision that in the basis for the order shall be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board shall enter judgment against the party against whom the order issued.

One comment suggested that in view of the proposed addition to § 1.640(b) to create a presumption of deferral of nondispositive preliminary motions, a provision should be added allowing the parties to request that the Board also consider deferred preliminary motions at a § 1.640(e) final hearing. The comment has merit and, while not being adopted specially at this time, will be made the subject of future rulemaking. In the interim, and consistent with the second sentence of § 1.601, the rules should be construed to give the administrative patent judge the maximum discretion to determine what issues might be considered at any final hearing set as a result of entry of an order to show cause.

One comment suggested that § 1.640(e)(1) be revised to automatically authorize the party who filed a paper in response to a § 1.640(d) show cause order to file a reply to an opponent's response in order to avoid the need for motions to file such replies. The suggestion is outside the scope of the present rulemaking and is not being adopted. Another comment suggested adding a provision to § 1.640(e) similar to the last sentence of proposed § 1.640(b) so that parties can include § 1.639 preliminary motion proofs in the record for consideration at a § 1.640(e) final hearing. The suggestion is being adopted. Accordingly, the penultimate sentence of § 1.640(e)(3), as adopted, reads: "Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified by the party or by an opponent for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony period of the party."

One comment suggested modifying the first sentence of proposed § 1.640(e)(4) ("If the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing * * *.") by changing "order and" to read "order, and if." The suggestion is being adopted.

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Two comments suggested that interferences can be expedited and the costs reduced by amending the rules to formalize the procedure of having an administrative patent judge conduct a hearing after the filing of motions, oppositions and replies on issues that are potentially dispositive of the interference, as has been done on an experimental basis in several interferences. The comment indicates that such a procedure should reduce time and costs, encourage settlements, reduce issues, and help parties reach stipulations. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The suggestion will be the subject of future rulemaking. In the interim, there is nothing in the rules to preclude a party from requesting a hearing on a dispositive motion. Whether a hearing is conducted is a matter within the discretion of the administrative patent judge.

Section 1.641 currently provides that an administrative patent judge who becomes aware of a reason why a claim designated to correspond to a count may not be patentable should notify the parties of the reason and set a time within which each party may present its views. After considering the views, the administrative patent judge determines how the interference shall proceed. The Notice of Proposed Rulemaking proposed to amend § 1.641 to state that a party's views "may include argument or appropriate preliminary motions under § 1.633 (c), (d) or (h), including any supporting evidence." After the Notice of Proposed Rulemaking was published it became apparent that the proposed language is ambiguous as to (1) whether evidence can be submitted in support of argument as well as in support of appropriate motions and (2) as to whether a party who agrees with the administrative patent judge's determination of unpatentability is entitled to file motions under §§ 1.633 (c), (d) and (h). These possible ambiguities are avoided by amending the rule to state that a party's views may include argument, including any supporting evidence, and in the case of the party whose claim may be unpatentable, may also include one or more appropriate preliminary motions under §§ 1.633 (c), (d) and (h), including any supporting evidence. The Notice of Proposed Rulemaking also proposed amending § 1.641 to state that "[a]fter considering any timely filed views, including any timely filed preliminary motions under § 1.633, the administrative patent judge shall decide how the interference shall proceed." Inasmuch as the proposed language fails to take into account any oppositions and replies for the motions, the rule is instead revised to read: "After considering any timely filed views, including any timely filed preliminary motions under § 1.633, oppositions and replies, the administrative patent judge shall decide how the interference shall proceed."

One comment responded to the proposed amendments of § 1.641 as follows:

> The action taken by an administrative patent judge under this rule should be described as, in effect, a section 1.633(a) motion by the administrative patent judge. The action should point out that any party disagreeing with the administrative patent judge should respond in the same fashion as it would in opposing a section 1.633(a) motion including the submission of all available evidence under rule 1.639. By taking action under this rule, an administrative patent judge* becomes the (or an) adversary to at least one party in the interference and therefore any decision on such a motion by an administrative patent judge should be deferred to final hearing and the administrative patent judge who took the action should not be a member of the panel at final hearing. Other possibilities would be to remand the matter to the primary examiner for his or her decision as to whether there is any merit to the purported ground of unpatentability. If the purported ground of unpatentability applies to the claims of a patent involved in the interference, the primary examiner could determine whether the purported ground of unpatentability is sufficient to institute a reexamination proceeding with respect to the patent. If the primary examiner's decision is adverse to one or more of the parties, that party or those parties would have the burden of showing that the primary examiner's decision was incorrect. Another possibility would be for the administrative patent judge to merely notice the issue and provide the parties with a period of time within which to submit a motion under section 1.633(a). If none of the parties submits a section 1.633(a) motion and the administrative patent judge considers the matter to be of sufficient importance, he or she could then remand to the attention of the primary examiner for his or her decision as previously indicated.

The suggestion that § 1.641 be revised to characterize an administrative patent judge's determination that a party's claim may be unpatentable as, in effect, a § 1.633(a) motion is not being adopted. Section 1.641, as proposed to be revised by the comment, could be construed as precluding an opponent who agrees with the determination from submitting argument and appropriate motions, including evidence, in support of the determination. The suggestion that the administrative patent judge who initially made the determination of unpatentability be precluded from serving as a member of the reviewing panel at final hearing is not adopted. Judges in various courts and judges in administrative proceedings routinely issue orders to show cause and consider views presented in response to those orders. In the case of a dispositive matter which results in the issuance of an order to show cause, the party receiving the order to show cause knows that in addition to the administrative patent judge issuing the order, at least two other administrative patent judges will consider the response. Moreover, it should be noted that resolving patentability in an interference and in ex parte proceedings is not the same. In ex parte examination of a patent application, the statute specifically contemplates an administrative appeal to the Board. 35 U.S.C. 134. In the case of interferences, the statute authorizes the Board, in the first instance, to make a patentability determination. 35 U.S.C. 135(a). Hence, the statute does not require that an administrative patent judge issuing an order to show cause not participate in ruling on the sufficiency of any response to the order. Efficient administration of interferences in PTO dictates that the administrative patent judge most likely to be familiar with the record participate in evaluating responses to orders to show cause.

Another comment suggested that a § 1.641 order authorizing views be identified in the rule as an order to show cause. The suggestion is not being adopted. If, after considering the parties' arguments, motions, oppositions and replies, the administrative patent judge concludes that all of the involved claims or one or both parties are unpatentable, the administrative patent judge may issue an order to show cause pursuant to § 1.640(d)(1) as amended, which expressly provides for a show cause order based on a decision on a matter raised sua sponte by an administrative patent judge.

Section 1.643(b) is revised, as proposed in the Notice of Proposed Rulemaking, for clarification and also to change "ends of justice" to "interest of justice" to be consistent with the language used in other interference rules, including §§ 1.628(a) and 1.687(c).

As proposed in the Notice of Proposed rulemaking, § 1.644(a) is revised by changing "a panel consisting of more than one examiner-in-chief" to "the Board" and paragraphs (a)(1), (b) and (c) are revised by changing both occurrences of "panel" to "Board."

Section 1.644(a)(2) is revised by removing the statement concerning when parties are authorized to file a petition seeking to invoke the supervisory authority of the Commissioner. The times for filing petitions are set out in § 1.644(b).

Section 1.644(b) is revised to provide that a petition seeking to invoke the supervisory authority of the Commissioner shall not be filed prior to the party's brief for final hearing. Sections 1.644(a)(2) and (b) currently provide that such a petition shall not be filed "prior to the decision of the Board awarding judgment." Since promulgation of the "new" rules, 49 FR 48416 (Dec. 12, 1984), *reprinted in* 1050 Off. Gaz. Pat. Office 385 (Jan. 29, 1985), there have been relatively few petitions filed in interference cases, particularly petitions seeking to invoke supervisory authority. Thus, a result sought to be achieved under the "new" rules has been, in fact, achieved, i.e., fewer petitions. Under the rules, there should be few, if any, petitions to invoke supervisory authority. Section 1.644(a)(1), which authorizes important questions to be certified to the Commissioner, should be sufficient in most cases to resolve questions of interpretation of the rules. Section 1.644(a)(2) provides a vehicle for rule interpretation in those cases where certification is declined by the administrative patent judge and there remains, at the time briefs are filed for final hearing, a need to resolve the interpretation. The time for filing a petition to invoke supervisory authority is believed to be more appropriate before the Board enters a final decision, as opposed to after entry of a final decision—as required by current practice. Parties should not file petitions seeking to invoke supervisory authority in cases involving routine interlocutory orders which do not involve an interpretation of a rule. As noted in the notice of final rule:

> [a] final decision of the Board is reviewable in the U.S. Court of Appeals for the Federal Circuit or an appropriate U.S. district court. Any reviewing court can review all aspects of the decision including patentability, priority, and all relevant interlocutory orders, such as denials of discovery.

49 FR 48416, 48418 (Dec. 12, 1984), *reprinted in* 1050 Off. Gaz. Pat. Office 385, 387 (Jan. 29, 1985).

Section 1.644(b) is also revised, as proposed, by revising it to state that a petition under § 1.644(a) shall be considered timely it is filed simultaneously with a proper motion under §§ 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. In other words, a petition under § 1.644(a)(3) should seek waiver of a rule prospectively rather than retroactively. Parties should recognize that waiver of a rule is reserved for unusual circumstances. *Myers v. Feigelman*, 455 F.2d 596, 601, 172 USPQ 580, 584 (CCPA 1972) (waiver of rules on routine basis would defeat the purpose of the rules and substantially confuse interference practice). Nevertheless, since PTO cannot possibly contemplate all circumstances which can arise in interferences at the time a rule is promulgated, waiver of a rule may be entirely appropriate in unusual circumstances. By encouraging parties to file a petition when they know a rule must be waived, the opponent is put ion the best position to address the matter and take whatever action might be in the opponent's interest in the event a petition is granted. One the other hand, parties should not expect many petitions to be granted which seek to waive the rules.

The time for responding to a petition under § 1.644(a)(1) or (a)(2) is changed from (a) 15 to days (b) to 20 days. The time for responding to a petition under § 1.544(a)(3) is changed from (a) 15 days to (b) 20 days or the date an opposition is due to the accompanying motion, whichever is earlier. The change will permit an opponent to file an opposition to the motion and the petition on the same day and should eliminate different, but related, time periods from running concurrently.

Section 1.644(b), as proposed, would have authorized the petition to be made part of the motion, as does § 1.644(b) in its current form. Upon reflection, since the petition is decided by one PTO official and the motion by another, it will be more efficient for PTO if the petition and motion are filed as separate papers. Additionally, the fact that a petition has been filed is less likely to be inadvertently overlooked if the petition and motion appear in separate papers.

In § 1.644(d), the second sentence, as proposed, is removed as unnecessary. The Notice of Proposed Rulemaking also proposed amending this paragraph to provide that the statement of facts in a petition preferably should be in numbered paragraphs. One comment suggested that numbered paragraphs be required, rather than just preferred. The suggestion is being adopted. Another comment suggested inserting a comma after "Board" in the second sentence of § 1.644(d), as proposed to be revised. The suggestion is being adopted.

As proposed in the Notice of Proposed Rulemaking, § 1.644(f) is revised to change the "15 days" in which to request reconsideration of a decision by the Commissioner to "14 days."

In § 1.644(g), the quotation marks around "Express Mail" are removed, as proposed.

Section 1.645(b), which in its current form permits consideration of a belatedly filed paper only if accompanied by a motion under § 1.635 showing sufficient cause (§ 1.645(b)) for the belatedness, is revised in several respects, as proposed in the Notice of Proposed Rulemaking. First, "sufficient cause" is changed to "good cause" in order to provide a single "clause" standard throughout the interference rules. Second, paragraph (b) is revised to permit consideration of a belatedly filed paper if an administrative patent judge or the Board sua sponte, is of the opinion that it would be in the interest of justice to consider the paper. An example would be where the delay is short (e.g., one day) and there is no prejudice to an opponent or where all parties and the Board act as though a paper is timely only to discover later that it was not. For purposes of sections other than § 1.645, a belatedly filed paper is considered "timely filed" if accompanied by a motion under § 1.635 to excuse the belatedness, which is granted.

Section 1.645(d) is revised, as proposed, by deleting "In an appropriate circumstance" as superfluous in view of the language "may stay proceedings," which indicates that the administrative patent judge has the discretion to stay an interference.

Section 1.646 is revised in the manner proposed in the Notice of Proposed Rulemaking. Specifically, § 1.646(a)(2) is revised by deleting the reference to § 1.684, which is removed. Section 1.646(c)(1) is revised by inserting "or causing a copy of the paper to be handed" after "By handing a copy of the paper" to make it clear that the paper need not be personally delivered by the party, i.e., that delivery by hand can be effected by a commercial courier is used, it should be understood that the party normally will deliver the paper to the courier on one day and the paper will be delivered to the office of counsel for the opponent on the next day. A certificate of service that states that the paper is being served "via the following commercial courier" [insert name]" is deemed to be a proper service within the meaning of § 1.646(c)(1), as amended. Pending further rulemaking, the date of service will be considered

*Cf. *In re Van Geuns*, 20 USPQ2d 1291, 1295 (Fed. Cir. 1991)[:] "[a]s in all *ex parte* cases, the entity adverse to Van Geuns is the PTO Commissioner."

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the date the paper is delivered to the courier.

In § 1.646(c)(4), "mail" "(second occurrence)" is changed to "first class mail" to make it clear that the service date specified in that paragraph applies only to first class mail.

Section 1.646(c)(5) is redesignated as § 1.646(c)(6) and a new § 1.646(c)(5) is added which explains that a party may serve by Express Mail and that when service is effected by Express Mail, the date of service is considered to be the date of deposit with the U.S. Postal Service.

Section 1.646(d) is revised by removing the quotation marks around "Express Mail."

Section 1.646(e) is revised to state that the due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office.

One comment suggested amending § 1.646 to authorize service by next-business-day courier, with the date of service being the day the paper is given to the courier. The suggestion is not being adopted at this time, but will be considered in future rulemaking. In the interim, for the reasons given above, service by a next-business-day courier may be regarded as service by hand.

Section 1.651(a)(2) is revised, as proposed, by removing "(testimony includes testimony to be taken abroad under § 1.684)" in order to be consistent with the proposal to remove and reserve § 1.684 and by amending §§ 1.651 (c)(2) and (c)(3) to be consistent with the amendment to the definition of "effective filing date" in § 1.601(g).

The Notice of Proposed Rulemaking proposed further amending § 1.651(d) by changing "abroad under § 1.684" to "in a foreign country." One comment noted that the term "foreign country" is unduly restrictive in that it does not include a foreign place that is not part of a "country" and suggested that the phrase "in a place outside the United States" be used instead. The suggestion is being adopted.

Section 1.653(a) is revised as proposed in the Notice of Proposed Rulemaking. First, the references to certain paragraphs of § 1.672 are revised to reflect the redesignation of those paragraphs. Second, "of fact" in the clause "agreed statements of fact under § 1.672(f)" is removed, because agreed statements under § 1.672(f), redesignated as § 1.672(h), can set forth either (1) how a particular witness would testify if called or (2) the facts in the case of one or more of the parties. Third, "under § 1.684(c)" is removed in view of the removal of § 1.684. Fourth, § 1.653(a) is revised to indicate that in addition to the types of testimony already set forth therein, testimony includes copies of written interrogatories and answers and written requests for admissions and answers, which might be obtained where a motion for additional discovery under § 1.687(c) is granted.

One comment suggested deleting "transcripts of interrogatories, cross interrogatories, and recorded answers" on the ground that this language is from § 1.684, which is removed. The suggestion is not being adopted, since there may be occasions when such testimony would be appropriate and authorized by an administrative patent judge or the Board.

Another comment suggested amending § 1.653 to provide that a party's record can include copies of videotapes of depositions and inter partes tests (in addition to the transcripts of the depositions), citing disparate treatment of this matter said to be occurring with different administrative patent judges. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The matter of videotapes and other forms of proof will be considered in a future rulemaking effort.

As proposed in the Notice of Proposed Rulemaking, § 1.653(b) is revised to be consistent with the redesignation of certain paragraphs of § 1.672 and to remove the reference to § 1.684(c), which is removed. Section 1.653(b) is also revised for clarity, while §§ 1.653(c) (1) and (4) are revised to make it clear that the only testimony to be included in a party's record is testimony submitted on behalf of the party. Having copies of the same testimony appear in both parties' records unnecessarily encumbers the records and is confusing in that a given page of testimony will have different page numbers in the different records, with the result that the briefs of the parties will refer to different record pages for the same testimony.

One comment suggested that either § 1.653(b) or § 1.672(h) be revised to specify when an "an original agreed statement under § 1.672(h)" is to be filed, since the due date for filing such a statement is not provided in the current rules. The suggestion is outside the scope of the current rulemaking and is not being adopted. In the interim, parties should plan on filing an agreed statement as soon as practical after it is agreed to, but an administrative patent judge shall have discretion to accept the agreed statement at any reasonable time.

Section 1.653(c)(5), which currently requires that the record filed by each party include each notice, official record and printed publication relied upon by the party and filed under § 1.682(a), is removed and reserved, as proposed. The requirement is unnecessary because notices, official records and printed publications are in the nature of exhibits under § 1.653(i), which are submitted with but not included in the record. The inclusion of exhibits in the record merely increases the size of the record without serving any useful purpose.

As proposed in the Notice of Proposed Rulemaking, § 1.653(g) is revised, and §§ 1.653 (f) and (h) removed and reserved, to eliminate the current distinction between typewritten and printed records. Specifically, § 1.653(g) is revised by changing "8½ x 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ x 11 inches)" in order to emphasize the metric dimension, by removing the requirement for justified margins, by requiring that the records be bound with covers at their left edges in such manner as to lie flat when open to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested) and by requiring that when there is more than one volume, the numbers of the pages contained in each volume must appear at the top of the cover for each volume. Section 1.653(i) is revised, as proposed, to state that exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions as well as official records and publications submitted pursuant to § 1.682(a).

Section 1.654(a) is revised, as proposed, by changing "shall" in the second sentence to "may" for clarity and also to reduce the time for oral argument by a party from 60 minutes to 30 minutes. Most hearings require no more than 30 minutes per side. A panel hearing oral argument retains discretion to grant more time at a hearing.

The Notice of Proposed Rulemaking proposed amending § 1.655(a) to state that the standard of review for interlocutory orders is "an abuse of discretion" rather than "erroneous or an abuse of discretion." As explained in the Notice of Proposed Rulemaking, the recitation of a separatee "error" standard is believed to be superfluous, because legal error is one of the alternative bases for finding an abuse of discretion. Specifically, an abuse of discretion may be found when (1) the decision of an administrative patent judge is clearly unreasonable, arbitrary or fanciful, (2) the decision is based on an erroneous conclusion of law, (3) the findings of the administrative patent judge are clearly erroneous, or (4) the record contains no evidence upon which the administrative patent judge rationally could have based the decision. *Compare, e.g., Heat and Control, Inc. v. Hester Industries, Inc.*, 785 F.2d 1017, 1022, 228 USPQ 926, 930 (Fed. Cir. 1986); *Western Electric Co. v. Piezo Technology, Inc. v. Quigg*, 860 F.2d 428, 430–31, 8 USPQ2d 1853, 1855 (Fed. Cir. 1988); *Abrutyn v. Giovanniello*, 15 F.3d 1048, 1050–51, 29 USPQ2d 1615, 1617 (Fed. Cir. 1994), all of which define the phrase "abuse of discretion." One comment stated that the rule, as proposed to be amended, in effect raises the standard of review because "abuse of discretion" includes "clear error" but not mere "error." In view of the above-cited Federal Circuit decisions, it is believed that the statement in the comment is not correct.

One comment suggested inserting a comma after "correct" in penultimate sentence of § 1.655(a)." The suggestion is being adopted.

Section 1.655(b) is revised to clarify the language concerning matters that a party is not entitled to raise for consideration at final hearing. Specifically, § 1.655(b), as amended, provides that a party shall not be entitled to raise for consideration at final hearing any matter which properly could have been raised by a motion under § 1.633 or 1.634 unless (1) The matter was properly raised in a motion that was timely filed by the party under § 1.633 or 1.634 and the motion was denied or deferred to final hearing, (2) the matter was properly raised by the party in a timely filed opposition to a motion under § 1.633 or 1.634 and the motion was granted over the opposition or deferred to final hearing, or (3) the party shows good cause why the issue was not properly raised by a timely filed motion or opposition. It was proposed in the Notice of Proposed Rulemaking to amend § 1.655(b) to state that "[a] change of attorneys during the interference generally does not constitute good cause." For the reasons already given, it has been decided not to adopt the proposed amendment to § 1.655(b).

The Notice of Proposed Rulemaking also proposed to amend § 1.655(b) to create a rebuttable presumption that all claims of a party that are designated as corresponding to a count are directed to the same patentable invention for the purpose of determining unpatentability in view of prior art. The Federal Circuit had interpreted the former rule to suggest that the presumption applied only where a party's claim corresponded exactly to a count and was anticipated by prior art. *In re Van Geuns*, 988 F.2d 1181, 1185, 26 USPQ2d 1057, 1060 (Fed. Cir. 1993). The proposed revised rule would have made it clear that the rebuttable presumption applies to all claims that are designated as corresponding to the count, regardless of whether the count is anticipated by (§ 102) or would have been obvious view of (§ 103) the prior art. Specifically, the Notice of Proposed Rulemaking proposed adding the following sentence: "A party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count may not subsequently argue to an administrative patent judge or the Board the separate patentability or lack of separate patentability of claims designated to correspond to the count." Comments were filed in opposition to the proposed amendment. One comment, for example, stated that the proposed amendment, as well as the accompanying commentary in the Notice of Proposed Rulemaking,

falsely assumes that claims cannot be separately patentable merely because they have been designated as corresponding to the count, *i.e.*, merely because the claims are patentably indistinct from each other. The falsity of this proposition is apparent from the practice of the Patent and Trademark Office of designating as corresponding to the count both the patentable and unpatentable claims of a party.

Two different comparisons are relevant: A party's claims with other claims of the party and the claims of a party with the prior art. The claims may be patentably indistinct *from each other* and, thus, provide no basis for a motion under § 1.633(c)(4), yet be separately patentable *over the prior art*.

Accordingly, for example, a party should be able to respond to a motion for judgment on grounds of unpatentability over the prior art by arguing that *some*, but not necessarily all, of the designated claims are patentable over the prior art, even though the party had not previously moved to designate the separately patentable claims as not corresponding to the count. Indeed, it is entirely possible that no basis existed for making such a previous motion. The proposed amended rule, however, forecloses a party from responding to an attack on patentability of its claims by arguing that some, but not all, of the claims are patentable over the prior art.

(Emphasis in original.) The comment included several illustrative examples, including the following example said to be from actual interference:

The count is directed to a broad generic class of compounds. While the compounds are useful herbicides, the count and corresponding claims are directed to compounds per se. The applications of both parties contain designated claims substantially corresponding to the count as well as claims directed to species falling within the count.

The application of party A contains a designated claim directed specifically to a species with [sic; within] the genus that possesses ordinary activity for compounds of the claimed class; *i.e.*, the species compound is not separately patentable over the genus. Thus, the claim to the species is not patentable over the count if the count were prior art and is properly designated as corresponding to the count.

Party B, during the motion period, moves for judgment under § 1.633(a) on the basis of a reference that is not prior art against party B, only against party A. That reference discloses a single compound falling squarely within the genus of the count * * *, but that is significantly different structurally from the species claimed in A's application. Furthermore, the reference does not indicate that the disclosed compound has herbicidal properties and it is shown in opposition to the motion for judgment that the compound, in fact, possesses virtually no herbicidal activity.

Under this set of facts, the compound of the reference anticipates party A's claim that corresponds * * * [exactly] to the count. Nevertheless, the reference has no significance with regard to the patentability of the species claim in party A's application.

In this particular case, the EIC [Examiner-in-Chief] had no difficulty in partially granting the motion for judgment against party A as to the generic claim, but denying the motion as to the species claim. The interference was continued with the count unchanged (because the reference was not prior art as to party B), with party A ultimately prevailing on the issue of priority. Thus, neither party received a generic claim, but party A ultimately obtained a species claim that was patentably indistinct from the genus of the count. Presumably under the new rules, party B would have retained all its claims while all of party A's claims would be found unpatentable.

This case clearly illustrates that a claim that is patentably indistinct from the count and from a claim corresponding * * * [exactly] to the count (*i.e.*, a claim that cannot be designated as not corresponding to the count), nevertheless can be patentable over prior art that renders unpatentable a claim corresponding precisely to the count. This case also illustrates that failure to file a motion to designate certain claims as not corresponding to the count cannot be taken as a concession that all of the designated claims are unpatentable merely because the count (or a claim corresponding precisely to the count) is unpatentable over the prior art. Moreover, this situation is not an unusual one. It happens often in chemical cases, particularly chemical cases dealing with biologically active compounds.

Another comment questioned when a party that has failed to contest the designation of a claim as corresponding to a count would ever have occasion to later argue a *lack* of separate patentability.

The above comments are well taken. Accordingly, the proposal to amend § 1.655(b) to preclude a party from arguing separate patentability or a lack of separate patentability of claims over prior art in the absence of a § 1.633(c) motion is hereby withdrawn. Instead,

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the rule is revised to read as follows: "A party that fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count, or *fails to timely argue the separate patentability of a particular claim when the ground for unpatentability is first raised*, will not be permitted to later argue the separate patentability of that claim with respect to that ground." Thus, a party that fails to timely argue the separate patentability of a particular claim when the ground for unpatentability is first raised will not be permitted to later argue the separate patentability of that claim with respect to that ground. As noted in the comment, often the first opportunity to address patentability is in an opposition to a preliminary motion for judgment under § 1.633(a). In addition, inasmuch as a party filing a motion under § 1.633(a) must separately address each claim alleged to be unpatentable, the opponent will be in a position to know how to prepare an opposition, whereas under the current rules preparation of an opposition separately addressing each claim is not clearly required by the rules. The basic idea is that an opponent should have a fair opportunity to address the patentability of any of the opponent's claims when a patentability issue is first raised. Patentability can be raised, for example, by a preliminary motion under § 1.633(a) or sua sponte by an administrative patent judge. However, a party is not entitled to wait until the 11th hour in an interference to belatedly raise for the first time an issue of separate patentability of claims corresponding to a count.

As proposed in the Notice of Proposed Rulemaking, § 1.655(c) is revised by changing "To prevent manifest injustice" to "In the interest of justice" to be consistent with the language used in other interference rules.

Section 1.656 is revised, as proposed, by redesignating paragraphs (b)(1) through (b)(6) as paragraphs (b)(3) through (b)(8), respectively, and adding new paragraphs (b)(1) and (b)(2) requiring the brief to include (1) a statement of interest identifying every party represented by the attorney in the interference and the real party in interest if the party named in the caption is not the real party in interest and (2) a statement of related cases indicating whether the interference was previously before the Board for final hearing and identifying any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference. Appeals are mentioned because there have been numerous situations where related issues have been present before the Board simultaneously or sequentially in an ex parte appeal and an interference and vice versa. It was also proposed to amend current paragraph (b)(3), redesignated as paragraph (b)(5), to specify that statements of fact preferably should be presented in numbered paragraphs. One comment suggested that numbered paragraphs be required. The suggestion is being adopted.

As explained in the Notice of Proposed Rulemaking, § 1.656(b)(4), which is redesignated as § 1.656(b)(6), requires that the opening brief of the junior party contain the contentions of the party with respect to the "issues to be decided," which has been construed to include the matter of whether some of the senior party's evidence of conception was inadmissible hearsay. *Suh* v. *Hoefle*, 23 USPQ2d 1321, 1323 (Bd. Pat. App. & Int. 1991). As support, the Board in *Suh* relied on *Fisher* v. *Bouzard*, 3 USPQ2d 1677 (Bd. Pat. App. & Int. 1987), and *Moller* v. *Harding*, 214 USPQ 730 (Bd. Pat. Int. 1982). Both of these cases concern interferences declared under the "old" interferences rules (i.e., § 1.201 *et seq.*), of which § 1.254 specified that the opening brief of the junior party shall "present a full, fair statement of the questions involved, including his position with respect to the priority evidence on behalf of other parties." Current § 1.656(b)(4) does not expressly require, and was not intended to imply, that the opening brief of the junior party must address the evidence of any other party with respect to the issue of priority or any other issue. In order to clarify that the opening brief of a junior party need not address the evidence of the other parties, § 1.656(b)(6), as adopted, is revised to require only that the junior party's opening brief contain the contentions of the party "with respect to the issues it is raising for consideration at final hearing." These issues would include the junior party's case-in-chief for priority with respect to an opponent or derivation by an opponent as well as matters raised in any denied or deferred motions of the junior party that are to be reviewed or considered at final hearing. Where the reply brief of the junior party is believed to include a new argument in response to the case-in-chief of the senior party as presented in the senior party's opening brief, the senior party may move under § 1.635 for leave to file a reply to the junior party's reply brief. The motion must be accompanied by a copy of the senior party's reply.

Section § 1.656(d) is revised, as proposed, to state that unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding. As a result, the current distinctions between printed and typewritten briefs are eliminated. Recent briefs filed in interference cases have been fairly long, e.g., 150 pages. The parties should make every effort to file briefs which, to borrow the words in one section of the patent statute, 35 U.S.C. 112, are "full, clear, concise, and exact." Consideration will be given in a future rulemaking effort as to whether it might be appropriate to require a party to submit both (1) Findings of fact and conclusions of law and (2) a brief, wherein it might be presumed that the reader of the brief is familiar with the proposed findings/conclusions. So that members of the bar practicing before the Board in interference cases can be apprised of how briefs are used at the Board, the following comments are made. Briefs serve two purposes. First, briefs enable all three panel members to prepare for oral argument. During the time a member prepares for oral argument, often there is not time to become fully familiar with the record, particularly where the brief is being read at a location outside PTO, e.g., home. Second, when an opinion is authored by one panel member and reviewed by the other two panel members, the brief serves as a road map during the necessarily more thorough and more complete review of the record. Whereas there may not be time to "check" the record during the preparation phase before oral argument, there is time to "check" the record during the opinion writing and review period. An effective brief, with or without proposed findings/conclusions, is one which permits the members of the Board to accomplish both purposes mentioned above.

In § 1.656, paragraphs (e), (g) and (h) are revised, as proposed, to require an original and four copies (currently an original and three copies are required) of each brief, any proposed findings of fact and conclusions of law, any motion under 37 CFR 1.635 to suppress evidence and any opposition to a motion to suppress evidence.

The Notice of Proposed Rulemaking proposed amending the third sentence of § 1.656(g) to read as follows: "Any proposed findings of fact shall be in numbered paragraphs and supported by specific references to the record." One comment suggested that "and supported" be changed to "and shall be supported." The suggestion is being adopted.

Section 1.656(h) is revised, as proposed, to state that a party's failure to challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) constitutes a waiver of the right to move under § 1.656(h) to suppress the evidence on that ground at final hearing.

Section 1.656(i) currently provides that if a junior party fails to file an opening brief for final hearing, an order may be issued by the administrative patent judge requiring the junior party to show cause why the failure to file a brief should not be treated as a concession of priority, and further provides that judgment may be rendered against the junior party if the junior party "fails to respond" within a time period set in the order. The expression "fails to respond" has been misinterpreted by some junior parties as meaning that the mere filing of a response of any kind to the order to show cause should be sufficient to avoid the entry of judgment. Such an interpretation was not intended and, if adopted, would effectively nullify § 1.656(i). As proposed in the Notice of Proposed Rulemaking, "respond" is changed to "show good cause" to make it clear that a junior party's failure to file a timely opening brief will not be excused unless good cause is shown to explain or justify the failure to file a brief. The language of the rule will then be consistent with the other interference rules concerning orders to show cause, e.g., §§ 1.640(c) and 1.652.

Section 1.657 is revised, as proposed, to be consistent with the changes to the definition of "effective filing date" in § 1.601(g). As revised, § 1.657 will also state that in an interference involving an application and a patent where the effective filing date of the application is after the date the patent issued, a junior party has the burden of establishing priority by clear and convincing evidence. In other interferences the junior party has the burden of establishing priority by a preponderance of the evidence. The amendment codifies the holding of *Price* v. *Symsek*, 988 F.2d 1187, 1190–91, 26 USPQ2d 1031, 1033 (Fed. Cir. 1993), as clarified by *Bosies* v. *Benedict*, 27 F.3d 539, 541–42, 30 USPQ2d 1862, 1864 (Fed. Cir. 1994).

Section 1.658(a) is revised, as proposed, to state that when the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141–44, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed.

Section 1.658(b) is revised, as proposed, by removing the phrases "[w]here reasonably possible" and "such that delivery is accomplished" as unnecessary, so that the sentence as revised reads as follows: "Service of the request for reconsideration shall be by hand or Express Mail." As proposed, a sentence is also added specifying that a decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–44, 146). Section 1.658(b) is further revised, as proposed, by changing "reply to a request for reconsideration" to "opposition to a request for reconsideration" in order to be consistent with the terminology employed in § 1.640(c), which concerns requests for reconsideration of decisions on preliminary motions.

One comment suggested amending § 1.658(b) to permit service of requests for reconsideration by next-business-day commercial courier. The suggestion is not being adopted at this time, but will be the subject of a future rulemaking effort. In the interim, see the discussion above concerning the interpretation to be given the phrase "service * * * by hand."

As proposed in the Notice of Proposed Rulemaking, § 1.660 has been revised by adding a new paragraph (e) explaining that the failure of a party to comply with the notice provisions of § 1.660 may result in sanctions under § 1.616 and that knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the reexamination, application for reissue, protest, or litigation shall not be sufficient. It was also proposed to provide that the notice contemplated by this section is notice addressed specifically to an administrative patent judge or the Board. One comment suggested that rather than requiring the notice to be "addressed specifically to an administrative patent judge or the Board," the rule requires that it be "addressed to the administrative patent judge in charge of the interference in which the application or patent is involved." The suggestion is being adopted.

Section 1.662(a) is revised, as proposed, by changing "filing by an applicant or patentee" in the second sentence to "filing by a party" to make it clear that a request for adverse judgment, including a written disclaimer of the invention defined by a count, a concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count and abandonment of the contest as to a count, can be signed by the party's attorney or agent of record. For the same reason, in the third sentence of paragraph (a), which concerns abandonment of an involved application "by an applicant" is removed and "applicant" is revised to read "application."

In § 1.662(b), the first sentence is revised, as proposed, by changing "omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference" to read "does not include a claim that corresponds to a count" in order to make it clear that judgment may not be entered where the reissue application includes any claim that corresponds to a count, including a new or amended claim that should be designated as corresponding to the count. Similarly, "reissue other than for the purpose of avoiding the interference" is changed to "reissue which includes a claim that corresponds to a count," which means corresponds to the count or should be designated to correspond to the count.

Section 1.674(a), which specifies before whom depositions may be taken, the reference to "United States or a territory or insular possession of the United States" is removed, as proposed, in order to make the paragraph applicable to depositions for testimony compelled in foreign countries.

Section 1.675(d), which concerns reading and signing of a transcript by the witness, is revised, as proposed, to take into account that the witness might refuse to read and/or sign the transcript of the deposition, in which case the circumstances under which the witness refused to sign must be noted on the certificate by the officer who prepared the certified transcript (§ 1.676(c)). One comment suggested that § 1.675 be revised to recognize the witness's right to make corrections to the transcript prior to signing, as in Fed. R. Civ. P. 30(e), second sentence. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The substance of the suggestion will be considered in a future rulemaking effort.

Section 1.676(a)(4) is revised, as proposed, by changing "opposing party" to "opponent."

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Section 1.677(a), which in its current form specifies the required form for transcripts of depositions, is revised, as proposed, to also apply to affidavits, by removing the reference to "typewritten" matter, changing "pica-type" to "11 point type," and changing "8½x11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½x11 inches)." For the reasons given above in the discussion of a "developing record," § 1.677(b), which concerns numbering of exhibits submitted with affidavits and deposition transcripts, is revised to change "consecutively" to "consecutively to the extent possible."

In § 1.678, the section heading is changed, as proposed, from "Transcript of deposition must be filed" to "Time for filing transcript of deposition" for clarity. The text is revised by changing the time for filing the certified transcript from 45 days to one month after the deposition.

Section 1.679 is revised as proposed by changing "transcript" to "transcript of a deposition" for clarity and "for printing (§ 1.653(g))" is removed as unnecessary.

In § 1.682, paragraph (a) is revised, as proposed, in the "Miscellaneous Amendments" part of the Notice of Proposed Rulemaking in the following respects. First, "identified during the taking of testimony of a witness" is changed to "identified in an affidavit or on the record during an oral deposition of a witness" for clarity. Second, § 1.682(a)(4) ("where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d))") is removed and reserved as superfluous in view of Rules 901 and 902 of the Federal Rules of Evidence, which apply to interference proceedings (§ 1.671(b), and require authentication of evidence that is not self-authenticating. Third, the first word in each of paragraphs (a)(2), (a)(3) and (a)(4) is capitalized.

Section 1.685(d) is revised, as proposed, for clarification.

Section 1.687(c) is revised, as proposed, to refer to § 1.647 concerning translations of documents in a foreign language.

One comment stated that the lack of discovery available under § 1.687(c) has prevented some interferences from reaching the "correct" result. According to the comment, a different result might have been reached if the discovery available under the Federal Rules of Civil Procedure had been allowed. The comment suggests that PTO consider authorizing discovery similar to the Fed. R. Civ. P. in interferences. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

In § 1.690(a), "37 CFR, Subpart E of Part 1" is revised to read "this subpart."

Other Considerations

These rules conform with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Order 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget has determined that these rule changes are not significant for the purposes of Executive Order 12866.

The Assistant Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the changes clarify existing rules setting forth the procedures used in patent appeals and interferences.

PTO has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out in the preamble, part 1 of title 37 of the Code of Federal Regulations is amended as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citations for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 6 and 23, unless otherwise noted.

2. Section 1.11(e) is revised to read as follows:

§ 1.11 Files open to the public.

* * * * *

(e) The file of any interference involving a patent, a statutory invention registration, a reissue application, or an application on which a patent has been issued or which has been published as a statutory invention registration, is open to inspection by the public, and copies may be obtained upon paying the fee therefor, if:

(1) The interference has terminated or

(2) An award of priority or judgment has been entered as to all parties and all counts.

3. In § 1.192, paragraphs (c)(1) through (c)(7) are redesignated as paragraphs (c)(3) through (c)(9); paragraphs (a), (c) introductory text, newly designated paragraphs (c)(7), (c)(8) introductory text, and (c)(8)(v), and (d) are revised; and paragraphs (c)(1) and (c)(2) are added to read follows:

§ 1.192 Appellant's brief.

(a) Appellant shall, within 2 months from the date of the notice of appeal under § 1.191 or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of patent Appeals and Interferences, unless good cause is shown.

* * * * *

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

(1) *Real party in interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) *Related appeals and interferences.* A Statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

* * * * *

(7) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

* * * * *

(v) For any rejection other than those referred to in paragraphs (c)(8) (i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

* * * * *

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

4. Section 1.601 is amended by revising paragraphs (f), (g), (j), (k), (l), (m), (n), and (q) and adding new paragraphs (r) and (s) to read as follows:

§ 1.601 Scope of rules, definitions.

* * * * *

(f) A *count* defines the interfering subject matter between two or more applications or between one or more applications and one or more patents. At the time the interference is initially declared, a count should be broad enough to encompass all of the claims that are patentable over the prior art and designated to correspond to the count. When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent that is designated to correspond to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application that is designated to correspond to a count and is identical to the count is said to correspond exactly to the count. A claim of a patent or application that is designated to correspond to a count but is not identical to the count is said to correspond substantially to the count. When a count is broader in scope than all claims which correspond to the count, the count is a phantom count.

(g) The *effective filing date* of an application is the filing date of an earlier application, benefit of which is accorded to the application under 35 U.S.C. 119, 120, 121, or 365 or, if no benefit is accorded, the filing date of the application. The effective filing date of a patent is the filing date of an earlier application, benefit of which is accorded to the patent under 35 U.S.C. 119, 120, 121, or 365 or, if no benefit is accorded, the filing date of the application which issued as the patent.

* * * * *

(j) An *interference-in-fact* exists when at least one claim of a party that is designated to correspond to a count and at least one claim of an opponent that is designated to correspond to the count define the same patentable invention.

(k) A *lead* attorney or agent is a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the attorney or agent whom an administrative patent judge may contact to set times and take other action in the interference.

(l) A *party* is an applicant or patentee involved in the interference or a legal representative or an assignee of record in the Patent and Trademark Office of an applicant or patentee involved in an interference. Where acts of party are normally performed by an attorney or agent, "party" may be construed to mean the attorney or agent. An inventor is the individual named as inventor in an application involved in an interference or the individual named as inventor in a patent involved in an interference.

(m) A *senior party* is the party with the earliest effective filing date as to all counts or, if there is no party with the earliest effective filing date as to all counts, the party with the earliest filing date. A *junior party* is any other party.

(n) Invention "A" is the *same patentable invention* as an invention "B" when invention "A" is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A". Invention "A" is a *separate patentable invention* with respect to invention "B" when invention "A" is new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A".

* * * * *

(q) A *final decision* is a decision awarding judgment as to all counts. An *interlocutory order* is any other action taken by an administrative patent judge or the Board in an interference, including the notice declaring an interference.

(r) *NAFTA country* means NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2060 (19 U.S.C. 3301).

(s) *WTO member country* means WTO member country as defined in section 2(10) of the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4813 (19 U.S.C. 3501):

5. Section 1.602 is amended by revising paragraph (c) to read as follows:

§ 1.602 Interest in applications and patents involved in an interference.

* * * * *

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 20 days after the change.

6. Section 1.603 is revised to read as follows:

§ 1.603 Interference between applications; subject matter of the interference.

Before an interference is declared between two or more applications, the examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each application must contain, or be amended to contain, at least one claim that is patentable over the prior art and corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count.

7. Section 1.604(a)(1) is revised to read as follows:

§ 1.604 Request for interference between applications by an applicant.

(a) * * *

(1) Suggesting a proposed count and presenting at least one claim corresponding to the proposed count or identifying at least one claim in its application that corresponds to the proposed count,

* * * * *

8. Section 1.605(a) is revised to read as follows:

§ 1.605 Suggestion of claim to applicant by examiner.

(a) If no claim in an application is drawn to the same patentable invention claimed in another application or patent, the examiner may suggest that an applicant present a claim drawn to an invention claimed in another

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application or patent for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the examiner, not less than one month. Failure or refusal of an applicant to timely present the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim. At the time the suggested claim is presented, the applicant may also call the examiner's attention to other claims already in the application or presented with the suggested claim and explain why the other claims would be more appropriate to be designated to correspond to a count in any interference which may be declared.

* * * * *

9. Section 1.606 is revised to read as follows:

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. The applications must contain, or be amended to contain, at least one claim that is patentable over the prior art and corresponds to each count. The claim in the application need not be, and most often will not be, identical to a claim in the patent. All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count. At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any application claim that is patentable over the prior art and designated to correspond to the count or any patent claim designated to correspond to the count. Any single patent claim designated to correspond to the count will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

10. Section 1.607 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(6) to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * *

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in its application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

* * * * *

(6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent.

11. Section 1.608 is revised to read as follows:

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the effective filing date of an application is three months or less after the effective filing date of a patent, before an interference will be declared, either the applicant or the applicant's attorney or agent of record shall file a statement alleging that there is a basis upon which the applicant is entitled to a judgment relative to the patentee.

(b) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant, before an interference will be declared, shall file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the effective filing date of the patent. To facilitate preparation of a record (§ 1.653(g)) for final hearing, an applicant should file affidavits on paper which is 21.8 by 27.9 cm. (8½ x 11 inches). The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of good cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

12. Section 1.609 is amended by revising paragraphs (b)(1), (b)(2) and (b)(3) to read as follows:

§ 1.609 Preparation of interference papers by examiner.

* * * * *

(b) * * *

(1) The proposed count or counts and, if there is more than one count proposed, explaining why the counts define different patentable inventions;

(2) The claims of any application or patent which correspond to each count, explaining why each claim designated as corresponding to a count is directed to the same patentable invention as the count;

(3) The claims in any application or patent which do not correspond to each count and explaining why each claim designated as not corresponding to any count is not directed to the same patentable invention as any count; and

* * * * *

13. Section 1.610 is revised to read as follows:

§ 1.610 Assignment of interference to administrative patent judge, time period for completing interference.

(a) Each interference will be declared by an administrative patent judge who may enter all interlocutory orders in the interference, except that only the Board shall hear oral argument at final hearing, enter a decision under §§ 1.617, 1.640(e), 1.652, 1.656(i) or 1.658, or enter any other order which terminates the interference.

(b) As necessary, another administrative patent judge may act in place of the one who declared the interference. At the discretion of the administrative patent judge assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the administrative patent judge assigned to the interference. Times for taking action shall be set and the administrative

patent judge shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d) An administrative patent judge may hold a conference with the parties to consider simplification of any issues, the necessity or desirability of amendments to counts, the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, any limitations on the number of expert witnesses, the time and place for conducting a deposition (§ 1.673(g)), and any other matter as may aid in the disposition of the interference. After a conference, the administrative patent judge may enter any order which may be appropriate.

(e) The administrative patent judge may determine a proper course of conduct in an interference for any situation not specifically covered by this part.

14. Section 1.611 is amended by redesignating paragraph (c)(8) as paragraph (c)(9); adding a new paragraph (c)(8); and revising paragraphs (b), (c)(6), (c)(7), and (d) to read as follows:

§ 1.611 Declaration of interference.

* * * * *

(b) When a notice of declaration is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an administrative patent judge may send a copy of the notice to a patentee named in a patent involved in an interference or the patentee's assignee of record in the Patent and Trademark Office or order publication of an appropriate notice in the *Official Gazette*.

(c) * * *

(6) The count or counts and, if there is more than one count, the examiner's explanation why the counts define different patentable inventions;

(7) The claim or claims of any application or any patent which correspond to each count;

(8) The examiner's explanation as to why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to any count is not directed to the same patentable invention as any count; and

* * * * *

(d) The notice of declaration may also specify the time for:

(1) Filing a preliminary statement as provided in § 1.621(a);

(2) Serving notice that a preliminary statement has been filed as provided in § 1.621(b); and

(3) Filing preliminary motions authorized by § 1.633.

* * * * *

15. Section 1.612 is amended by revising paragraph (a) to read as follows:

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608 filed separate from an amendment. A party seeking access to any abandoned or pending application referred to in the opponent's involved application or access to any pending application referred to in the opponent's patent must file a motion under § 1.635. See § 1.11(e) concerning public access to interference files.

* * * * *

16. Section 1.613 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.

* * * * *

(c) An administrative patent judge may make necessary inquiry to determine whether an attorney or agent should be disqualified from representing a party in an interference. If an administrative patent judge is of the opinion that an attorney or agent should be disqualified, the administrative patent judge shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

(d) No attorney or agent of record in an interference may withdraw as attorney or agent of record except with the approval of an administrative patent judge and after reasonable notice to the party on whose behalf the attorney or agent has appeared. A request to withdraw as attorney or agent of record in an interference shall be made by motion (§ 1.635).

17. Section 1.614 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.614 Jurisdiction over interference.

(a) The Board acquires jurisdiction over an interference when the interference is declared under § 1.611.

* * * * *

(c) The examiner shall have jurisdiction over any pending application until the interference is declared. An administrative patent judge may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.

18. Section 1.615 is revised to read as follows:

§ 1.615 Suspension of ex parte prosecution.

(a) When an interference is declared, ex parte prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application received during pendency of the interference will not be entered or considered in the interference without the consent of an administrative patent judge.

(b) Ex parte prosecution as to specified matters may be continued concurrently with the interference with the consent of the administrative patent judge.

19. Section 1.616 is revised to read as follows:

§ 1.616 Sanctions for failure to comply with rules or order or for taking and maintaining a frivolous position.

(a) An administrative patent judge or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an administrative patent judge or the Board. An appropriate sanction may include among others entry of an order:

(1) Holding certain facts to have been established in the interference;

(2) Precluding a party from filing a paper;

(3) Precluding a party from presenting or contesting a particular issue;

(4) Precluding a party from requesting, obtaining, or opposing discovery;

(5) Awarding compensatory expenses and/or compensatory attorney fees; or

(6) Granting judgment in the interference.

(b) An administrative patent judge or the Board may impose a sanction, including a sanction in the form of compensatory expenses and/or compensatory attorney fees, against a party for taking and maintaining a frivolous position in papers filed in the interference.

(c) To the extent that an administrative patent judge or the Board has authorized a party to compel the taking of testimony or the production of documents or things from an individual or entity located in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention (§ 1.671(h)), but the testimony, documents or things have

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not been produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under paragraph (a) of this section.

(d) A party may file a motion (§ 1.635) for entry of an order imposing sanctions, the drawing of adverse inferences or other action under paragraph (a), (b) or (c) of this section. Where an administrative patent judge or the Board on its own initiative determines that a sanction, adverse inference or other action against a party may be appropriate under paragraph (a), (b) or (c) of this section, the administrative patent judge or the Board shall enter an order for the party to show cause why the sanction, adverse inference or other action is not appropriate. The Board shall take action in accordance with the order unless, within 20 days after the date of the order, the party files a paper which shows good cause why the sanction, adverse inference or other action would not be appropriate.

20. Section 1.617 is amended by revising paragraphs (a), (b), (d), (e), (g) and (h) to read as follows:

§ 1.617 Summary judgment against applicant.

(a) An administrative patent judge shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is *prima facie* entitled to a judgment relative to the patentee. If the administrative patent judge determines that the evidence shows the applicant is *prima facie* entitled to a judgment relative to the patentee, the interference shall proceed in the normal manner under the regulations of this part. If in the opinion of the administrative patent judge the evidence fails to show that the applicant is *prima facie* entitled to a judgment relative to the patentee, the administrative patent judge shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant may file a response to the order, which may include an appropriate preliminary motion under § 1.633 (c), (f) or (g), and state any reasons why summary judgment should not be entered. Any request by the applicant for a hearing before the Board shall be made in the response. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a response, the applicant shall serve a copy of any evidence filed under § 1.608(b) and this paragraph.

* * * * *

(d) If a response is timely filed by the applicant, all opponents may file a statement and may oppose any preliminary motion filed under § 1.633 (c), (f) or (g) by the applicant within a time set by the administrative patent judge. The statement may set forth views as to why summary judgment should be granted against the applicant, but the statement shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the administrative patent judge for issuing the order to show cause. Except as required to oppose a motion under § 1.633 (c), (f) or (g) by the applicant, evidence shall not be filed by any opponent. An opponent may not request a hearing.

(e) Within a time authorized by the administrative patent judge, an applicant may file a reply to any statement or opposition filed by any opponent.

* * * * *

(g) If a response by the applicant is timely filed, the administrative patent judge or the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under paragraphs (b) and (e) of this section shows that the applicant is *prima facie* entitled to a judgment relative to the patentee. If the applicant is not *prima facie* entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. Otherwise, an interlocutory order shall be entered authorizing the interference to proceed in the normal manner under the regulations of this subpart.

(h) Only an applicant who filed evidence under § 1.608(b) may request a hearing. If that applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The administrative patent judge shall set a date and time for the hearing. Unless otherwise ordered by the administrative patent judge or the Board, the applicant and any opponent will each be entitled to no more than 30 minutes of oral argument at the hearing.

21. Section 1.618 is amended by revising paragraph (a) to read as follows:

§ 1.618 Return of unauthorized papers.

(a) An administrative patent judge or the Board shall return to a party any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart. Any paper returned will not thereafter be considered in the interference. A party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an administrative patent judge or the Board.

* * * * *

22. Section 1.621 is amended by revising paragraph (b) to read as follows:

§ 1.621 Preliminary statement, time for filing, notice of filing.

* * * * *

(b) When a party files a preliminary statement, the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by the administrative patent judge.

23. Section 1.622 is amended by revising paragraph (b) to read as follows:

§ 1.622 Preliminary statement; who made invention; where invention made.

* * * * *

(b) The preliminary statement shall state whether the invention was made in the United States, a NAFTA country (and, if so, which NAFTA country), a WTO member country (and, if so, which WTO member country), or in a place other than the United States, a NAFTA country, or a WTO member country. If made in a place other than the United States, a NAFTA country, or a WTO member country, the preliminary statement shall state whether the party is entitled to the benefit of 35 U.S.C. 104(a)(2).

24. Section 1.623 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 1.623 Preliminary statement; invention made in United States, a NAFTA country, or a WTO member country.

(a) When the invention was made in the United States, a NAFTA country, or a WTO member country, or a party is entitled to the benefit of 35 U.S.C. 104(a)(2), the preliminary statement

must state the following facts as to the invention defined by each count:

* * * * *

25. Section 1.624 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 1.624 Preliminary statement; invention made in a place other than the United States, a NAFTA country, or a WTO member country.

(a) When the invention was made in a place other than the United States, a NAFTA country, or a WTO member country and a party intends to rely on introduction of the invention into the United States, a NAFTA country, or a WTO member country, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first introduced into the United States, a NAFTA country, or a WTO member country.

(2) The date on which a written description of the invention was first introduced into the United States, a NAFTA country, or a WTO member country.

(3) The date on which the invention was first disclosed to another person in the United States, a NAFTA country, or a WTO member country.

(4) The date on which the inventor's conception of the invention was first introduced into the United States, a NAFTA country, or a WTO member country.

(5) The date on which an actual reduction to practice of the invention was first introduced into the United States, a NAFTA country, or a WTO member country. If an actual reduction to practice of the invention was not introduced into the United States, a NAFTA country, or a WTO member country, the preliminary amendment shall so state.

(6) The date after introduction of the inventor's conception into the United States, a NAFTA country, or a WTO member country when active exercise of reasonable diligence in the United States, a NAFTA country, or a WTO member country toward reducing the invention to practice began.

* * * * *

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was introduced into the United States, a NAFTA country, or a WTO member country, a copy of that drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was introduced into the United States, a NAFTA country, or a WTO member country, a copy of that written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a copy of the first drawing or first written description introduced in the United States, a NAFTA country, or a WTO member country cannot be filed with the preliminary statement.

26. Section 1.625 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.625 Preliminary statement; derivation by an opponent.

(a) When a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

* * * * *

27. Section 1.626 is revised to read as follows:

§ 1.626 Preliminary statement; earlier application.

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier filed application to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier filed application with particularity.

28. Section 1.627(b) is revised to read as follows:

§ 1.627 Preliminary statement; sealing before filing, opening of statement.

* * * * *

(b) A preliminary statement may be opened only at the direction of an administrative patent judge.

29. Section 1.628 is revised to read as follows:

§ 1.628 Preliminary statement; correction of error.

(a) A material error arising through inadvertence or mistake in connection with a preliminary statement or drawings or a written description submitted therewith or omitted therefrom may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit stating the date the error was first discovered, shall be accompanied by the corrected statement and shall be filed as soon as practical after discovery of the error. If filed on or after the date set by the administrative patent judge for service of preliminary statements, the motion shall also show that correction of the error is essential to the interest of justice.

(b) When a party cannot attach a copy of a drawing or written description to the party's preliminary statement as required by § 1.623(c), § 1.624(c) or § 1.625(c), the party shall show good cause and explain in the preliminary statement why a copy of the drawing or written description cannot be attached to the preliminary statement and shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States, a NAFTA country, or a WTO member country which is available. The party shall file a motion (§ 1.635) to amend its preliminary statement promptly after the first drawing, first written description, or drawing or written description first introduced into the United States, a NAFTA country, or a WTO member country becomes available. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under § 1.687 or during a testimony period.

30. Section 1.629 is amended by revising paragraphs (a), (c) (1) and (d) to read as follows:

§ 1.629 Effect of preliminary statement.

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to definiteness or sufficiency of any allegation in a preliminary statement or compliance with formal requirements will be resolved against the party filing the statement by restricting the party to its effective filing date or to the latest date of a period alleged in the preliminary statement, as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

* * * * *

(c) * * *

(1) Shall be restricted to the party's effective filing date and

* * * * *

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the party's effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

* * * * *

31. Section 1.630 is revised to read as follows:

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§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier filed application unless the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or the party files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

32. Section 1.631(a) is revised to read as follows:

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633 any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the administrative patent judge, a party shall serve a copy of its preliminary statement on each opponent who served a notice under § 1.621(b.

* * * * *

33. Section 1.632 is revised to read as follows:

§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed, or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an administrative patent judge, a notice is timely when filed within ten (10) days after the close of the testimony-in-chief of the opponent.

34. Section 1.633 is amended by revising paragraphs (a), (b), (f), (g) and (i) to read as follows:

§ 1.633 Preliminary motions.

* * * * *

(a) A motion for judgment against an opponent's claim designated to correspond to a count on the ground that the claim is not patentable to the opponent. The motion shall separately address each claim alleged to be unpatentable. In deciding an issue raised in a motion filed under this paragraph (a), a claim will be construed in light of the specification of the application or patent in which it appears. A motion under this paragraph shall not be based on:

(1) Priority of invention by the moving party as against any opponent or

(2) Derivation of the invention by an opponent from the moving party. See § 1.637(a).

(b) A motion for judgment on the ground that there is no interference-in-fact. A motion under this paragraph is proper only if the interference involves a design application or patent or a plant application or patent or no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. See § 1.637(a). When claims of different parties are presented in "means plus function" format, it may be possible for the claims of the different parties not to define the same patentable invention even though the claims contain the same literal wording.

* * * * *

(f) A motion to be accorded the benefit of the filing date of an earlier filed application. See § 1.637(a) and (f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier filed application. See § 1.637(a) and (g).

* * * * *

(i) When a motion is filed under paragraph (a), (b), or (g) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section, a motion to substitute a different application under paragraph (d) of this section, or a motion to add a reissue application to the interference under paragraph (h) of this section.

* * * * *

35. Section 1.636 is revised to read as follows:

§ 1.636 Motions, time for filing.

(a) A preliminary motion under § 1.633(a) through (h) shall be filed within a time period set by an administrative patent judge.

(b) A preliminary motion under § 1.633(i) or (j) shall be filed within 20 days of the service of the preliminary motion under § 1.633(a), (b), (c)(1), or (g) unless otherwise ordered by an administrative patent judge.

(c) A motion under § 1.634 shall be diligently filed after an error is discovered in the inventorship of an application or patent involved in an interference unless otherwise ordered by an administrative patent judge.

(d) A motion under § 1.635 shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an administrative patent judge.

36. Section 1.637 is amended by revising paragraphs (a), (b), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(3)(ii), (c)(4)(ii), (d), introductory text, (e)(1)(viii), (e)(2)(vii), (f)(2), and (h), (4); removing paragraphs (c)(2)(iv), (c)(3)(iii), and (d) (4); and adding paragraphs (c)(1)(vii), (e)(1)(ix), and (e)(2)(viii) to read as follows:

§ 1.637 Content of motions.

(a) A party filing a motion has the burden of proof to show that it is entitled to the relief sought in the motion. Each motion shall include a statement of the precise relief requested, a statement of the material facts in support of the motion, in numbered paragraphs, and a full statement of the reasons why the relief requested should be granted. If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party.

(b) Unless otherwise ordered by an administrative patent judge or the Board, a motion under § 1.635 shall contain a certificate by the moving party stating that the moving party has conferred with all opponents in an effort in good faith to resolve by agreement the issues raised by the motion. The certificate shall indicate whether any opponent plans to oppose the motion. The provisions of this paragraph do not apply to a motion to suppress evidence (§ 1.656(h)).

(c) * * *

(1) * * *

(v) Show that each proposed count defines a separate patentable invention from every other count proposed to remain in the interference.

(vi) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier filed application, if benefit of the earlier filed application is desired with respect to a proposed count.

(vii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(2) * * *

(ii) Show that the claim proposed to be amended or added defines the same patentable invention as the count.

(iii) Show the patentability to the applicant of each claim proposed to be amended or added and apply the terms of the claim proposed to be amended or added to the disclosure of the application; when necessary a moving party applicant shall file with the motion a proposed amendment to the application amending the claim corresponding to the count or adding the proposed additional claim to the application.

(3) * * *

(ii) Show the claim defines the same patentable invention as another claim whose designation as corresponding to the count the moving party does not dispute.

(4) * * *

(ii) Show that the claim does not defined the same patentable invention as any other claim whose designation in the notice declaring the interference as corresponding to the count the party does not dispute.

* * * * *

(d) A preliminary motion under § 1.633(d) to substitute a different application of the moving party shall:

* * * * *

(e) * * *

(1) * * *

(viii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier filed application, if benefit is desired with respect to a proposed count.

(ix) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(2) * * *

(vii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier filed application, if benefit is desired with respect to a proposed count.

(viii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(f) * * *

(2) When an earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608, has been served on all opponents. When the earlier application is an application filed in a foreign country, certify that a copy of the application has been served on all opponents. If the earlier filed application is not in English, the requirements of § 1.647 must also be met.

* * * * *

(h) * * *

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier filed application, if benefit is desired.

37. Section 1.638 is revised to read as follows:

§ 1.638 Opposition and reply; time for filing opposition and reply.

(a) Unless otherwise ordered by an administrative patent judge, any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall identify any material fact set forth in the motion which is in dispute and include an argument why the relief requested in the motion should be denied.

(b) Unless otherwise ordered by an administrative patent judge, any reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

38. Section 1.639 is amended by revising paragraphs (a), (b), (c) and (d)(1) to read as follows:

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) Except as provided in paragraphs (c) through (g) of this section, proof of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

(b) Proof may be in the form of patents, printed publications, and affidavits. The pages of any affidavits filed under this paragraph shall, to the extent possible, be given sequential numbers, which shall also serve as the record page numbers for the affidavits in the event they are included in the party's record (§ 1.653). Any patents and printed publications submitted under this paragraph and any exhibits identified in affidavits submitted under this paragraph shall, to the extent possible, be given sequential exhibit numbers, which shall also serve as the exhibit numbers in the event the patents, printed publications and exhibits are filed with the party's record (§ 1.653).

(c) If a party believes that additional evidence in the form of testimony that is unavailable to the party is necessary to support or oppose a preliminary motion under § 1.633 or a motion to correct inventorship under § 1,634, the party shall describe the nature of any proposed testimony as specified in paragraphs (d) through (g) of this section. If the administrative patent judge finds that testimony is needed to decide the motion, the administrative patent judge may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

(d) * * *

(1) Identify the person whom it expects to use as an expert;

* * * * *

39. Section 1.640 is amended by revising paragraphs (a), (b), (c), (d) introductory text, (d)(1), (d)(3) and (e) to read as follows:

§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.

(a) A hearing on a motion may be held in the discretion of the administrative patent judge. The administrative patent judge shall set the date and time for any hearing. The length of oral argument at a hearing on a motion is a matter within the discretion of the administrative patent judge. An administrative patent judge may direct that a hearing take place by telephone.

(b) Unless an administrative patent judge or the Board is of the opinion that an earlier decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion shall be deferred to final hearing. Motions not deferred to final hearing will be decided by an administrative patent judge. An administrative patent judge may consult with an examiner in deciding motions. An administrative patent judge may take up motions for decisions in any order, may grant, deny, or dismiss any motion, and may take such other action which will secure the just, speedy, and inexpensive determination of the interference. A matter raised by a party in support of or in opposition to a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing. If the administrative patent judge determines

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that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions on motions or on matters raised sua sponte by the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred motions that the party wishes to have considered at final hearing. Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified by the party or by an opponent for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony-in-chief period of the party.

(1) When appropriate after the time expires for filing replies to oppositions to preliminary motions, the administrative patent judge will set a time for filing any amendment to an application involved in the interference and for filing a supplemental preliminary statement as to any new counts which may become involved in the interference if a preliminary motion to amend or substitute a count has been filed. Failure or refusal of a party to timely present an amendment required by an administrative patent judge shall be taken without further action as a disclaimer by that party of the invention involved. A supplemental preliminary statement shall meet the requirements specified in §§ 1.623, 1.624, 1.625, or 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). At an appropriate time in the interference, and when necessary, an order will be entered redeclaring the interference.

(2) After the time expires for filing preliminary motions, a further preliminary motion under § 1.633 will not be considered except as provided by § 1.645(b).

(c) When a decision on any motion under §§ 1.633, 1.634, or 1.635 or on any matter raised sua sponte by an administrative patent judge is entered which does not result in the issuance of an order to show cause under paragraph (d) of this section, a party may file a request for reconsideration within 14 days after the date of the decision. The request for reconsideration shall be filed and served by hand or Express Mail. The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. No opposition to a request for reconsideration shall be filed unless requested by an administrative patent judge or the Board. A decision ordinarily will not be modified unless an opposition has been requested by an administrative patent judge or the Board. The request for reconsideration normally will be acted on by the administrative patent judge or the panel of the Board which issued the decision.

(d) An administrative patent judge may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion or on a matter raised sua sponte by an administrative patent judge is entered which is dispositive of the interference against the party as to any count;

* * * * *

(3) The party is a junior party whose preliminary statement fails to overcome the effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter judgment in accordance with the order unless, within 20 days after the date of the order, the party against whom the order issued files a paper which shows good cause why judgment should not be entered in accordance with the order.

(1) If the order was issued under paragraph (d)(1) of this section, the paper may:

(i) Request that final hearing be set to review any decision which is the basis for the order as well as any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at final hearing or

(ii) Fully explain why judgment should not be entered.

(2) Any opponent may file a response to the paper within 20 days of the date of service of the paper. If the order was issued under paragraph (d)(1) of this section and the party's paper includes a request for final hearing, the opponent's response must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. If the order was issued under paragraph (d)(1) of this section and the paper does not include a request for final hearing, the opponent's response may include a request for final hearing, which must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. Where only the opponent's response includes a request for a final hearing, the party filing the paper shall, within 14 days from the date of service of the opponent's response, file a reply identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing.

(3) The paper or the response should be accompanied by a motion (§ 1.635) requesting a testimony period if either party wishes to introduce any evidence to be considered at final hearing (§ 1.671). Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony period of the party. A request for a testimony period shall be construed as including a request for final hearing.

(4) If the paper contains an explanation of why judgment should not be entered in accordance with the order, and if no party has requested a final hearing, the decision that is the basis for the order shall be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board shall enter judgment against the party against whom the order issued.

40. Section 1.641 is revised to read as follows:

§ 1.641 Unpatentability discovered by administrative patent judge.

(a) During the pendency of an interference, if the administrative patent judge becomes aware of a reason why a claim designated to correspond to a count may not be patentable, the administrative patent judge may enter an order notifying the parties of the reason and set a time within which each party may present its views, including any argument and any supporting evidence, and, in the case of the party whose claim may be unpatentable, any appropriate preliminary motions under §§ 1.633(c), (d) and (h).

(b) If a party timely files a preliminary motion in response to the order of the administrative patent judge, any opponent may file an opposition (§ 1.638(a)). If an opponent files an opposition, the party may reply (§ 1.638(b)).

(c) After considering any timely filed views, including any timely filed preliminary motions under § 1.633, oppositions and replies, the administrative patent judge shall decide how the interference shall proceed.

41. Section 1.642 is revised to read as follows:

§ 1.642 Addition of application or patent to interference.

During the pendency of an interference, if the administrative patent judge becomes aware of an application or a patent not involved in the interference which claims the same patentable invention as a count in the interference, the administrative patent judge may add the application or patent to the interference on such terms as may be fair to all parties.

42. Section 1.643(b) is revised to read as follows:

§ 1.643 Prosecution of interference by assignee.

* * * * *

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show the inability or refusal of the inventor to prosecute the interference or other cause why it is in the interest of justice to permit the assignee of a part interest to prosecute the interference. The administrative patent judge may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

43. Section 1.644 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (b), (c), (d), (f) and (g) to read as follows:

§ 1.644 Petitions in interferences.

(a) There is no appeal to the Commissioner in an interference from a decision of an administrative patent judge or the Board. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an administrative patent judge or the Board and the administrative patent judge or the Board shall be of the opinion that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and that an immediate decision on petition by the Commissioner may materially advance the ultimate termination of the interference;

(2) The petition seeks to invoke the supervisory authority of the Commissioner and does not relate to the merits of priority of invention or patentability or the admissibility of evidence under the Federal Rules of Evidence; or

* * * * *

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the administrative patent judge or the Board may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to the party's brief for final hearing (see § 1.656). Any petition under paragraph (a)(3) of this section shall be timely if it is filed simultaneously with a proper motion under §§ 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. Any opposition to a petition under paragraphs (a)(1) or (a)(2) of this section shall be filed within 20 days of the date of service of the petition. Any opposition to a petition under paragraph (a)(3) of this section shall be filed within 20 days of the date of service of the petition or the date an opposition to the motion is due, whichever is earlier.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the administrative patent judge, the Board, or the Commissioner.

(d) Any petition must contain a statement of the facts involved, in numbered paragraphs, and the point or points to be reviewed and the action requested. The petition will be decided on the basis of the record made before the administrative patent judge or the Board, and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

* * * * *

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within 14 days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(h). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. The decision will not ordinarily be modified unless such an opposition has been requested by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand or Express Mail complies with this paragraph.

* * * * *

44. Section 1.645 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action, a party may file a motion (§ 1.635) seeking an extension of time to take action in an interference. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action. The motion shall be filed within sufficient time to actually reach the administrative patent judge before expiration of the time for taking action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an administrative patent judge sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed will not be considered except upon notion (§ 1.635) which shows good cause why the paper was not timely filed, or where an administrative patent judge or the Board, sua sponte, is of the opinion that it would be in the interest of justice to consider the paper. See § 1.304(a) for exclusive procedures relating to belated filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or belated commencement of a civil action.

* * * * *

(d) An administrative patent judge may stay proceedings in an interference.

45. Section 1.646 is amended by revising paragraphs (a)(1), (a)(2), (b), (c) introductory text, (c)(1), (c)(4), (d) and (e); redesignating paragraph (c)(5) as paragraph (c)(6) and revising it; and adding a new paragraph (c)(5) to read as follows:

§ 1.646 Service of papers, proof of service.

(a) * * *

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an administrative patent judge.

(2) Certified transcripts and exhibits which accompany the transcripts filed under § 1.676; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An administrative patent judge may order additional service or waive service where appropriate.

(c) Unless otherwise ordered by an administrative patent judge, or except as otherwise provided by this subpart, service of a paper shall be made as follows:

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(1) By handing a copy of the paper or causing a copy of the paper to be handed to the person served.

* * * * *

(4) By mailing a copy of the paper by first class mail; when service is by first class mail the date of mailing is regarded as the date of service.

(5) By mailing a copy of the paper by Express Mail; when service is by Express Mail the date of deposit with the U.S. Postal Service is regarded as the date of service.

(6) When it is shown to the satisfaction of an administrative patent judge that none of the above methods of obtaining or serving the copy of the paper was successful, the administrative patent judge may order service by publication of an appropriate notice in the *Official Gazette*.

(d) An administrative patent judge may order that a paper be served by hand or Express Mail.

(e) The due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office. Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraphs (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the date and manner of service will be accepted as *prima facie* proof of service.

46. Section 1.647 is revised to read as follows:

§ 1.647 Translation of document in foreign language.

When a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

47. Section 1.651 is amended by revising paragraphs (a), (c)(1), (c)(2), (c)(3) and (d) to read as follows:

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an administrative patent judge shall set a time for filing motions (§ 1.635) for additional discovery under § 1.687(c) and testimony periods for taking any necessary testimony.

* * * * *

(c) * * *

(1) The administrative patent judge orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the effective filing date of the party and the party has filed a preliminary statement alleging a date of invention prior to that date; or

* * * * *

(d) Testimony, including any testimony to be taken in a place outside the United States, shall be taken and completed during the testimony periods set under paragraph (a) of this section. A party seeking to extend the period for taking testimony must comply with §§ 1.635 and 1.645(a).

48. Section 1.652 is revised to read as follows:

§ 1.652 Judgment for failure to take testimony or file record.

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an administrative patent judge, with or without a motion (§ 1.635) by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

49. Section 1.653 is amended by removing and reserving paragraphs (c)(5), (f) and (h) and by revising paragraphs (a), (b), (c) introductory text, (c)(1), (c)(4), (d), (g) and (i) to read as follows:

§ 1.653 Record and exhibits.

(a) Testimony shall consist of affidavits under §§ 1.672 (b), (c) and (g), 1.682(c), 1.683(b) and 1.688(b), transcripts of depositions under §§ 1.671(g) and 1.672(a) when a deposition is authorized by an administrative patent judge, transcripts of depositions under §§ 1.672(d), 1.682(d), 1.683(c) and 1.688(c), agreed statements under § 1.672(h), transcripts of interrogatories, cross-interrogatories, and recorded answers and copies of written interrogatories and answers and written requests for admissions and answers under § 1.688(a).

(b) An affidavit shall be filed as set forth in § 1.677. A certified transcript of a deposition, including a deposition cross-examining an affiant, shall be filed as set forth in §§ 1.676, 1.677 and 1.678. An original agreed statement shall be filed as set forth in § 1.672(h).

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an administrative patent judge, each party shall file three copies and serve one copy of a record consisting of:

(1) An index of the names of the witnesses for the party, giving the pages of the record where the direct testimony and cross-examination of each witness begins.

* * * * *

(4) Each affidavit by a witness for the party, transcript, including transcripts of cross-examination of any affiant who testified for the party and transcripts of compelled deposition testimony by a witness for the party, agreed statement relied upon by the party, and transcript of interrogatories, cross-interrogatories and recorded answers.

* * * * *

(d) The pages of the record shall be consecutively numbered to the extent possible.

* * * * *

(g) The record may be produced by standard typographical printing or by any other process capable of producing a clear black permanent image. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. Footnotes may not be printed in type smaller than 9 point. The page size shall be 21.8 by 27.9 cm. (8½ by 11 inches) (letter size) with printed matter 16.5 by 24.1 cm. (6½ by 9½ inches). The record shall be bound with covers at their left edges in such manner as to lie flat when open to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested). When there is more than one volume, the numbers of the pages contained in each volume shall appear at the top of the cover for each volume.

(i) Each party shall file its exhibits with the record specified in paragraph (c) of this section. Exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions as well as official records and publications filed by the party under § 1.682(a). One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(d), shall be filed with the record. Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit. Upon termination of an interference, an administrative patent judge may return an exhibit to the party filing the exhibit. When any exhibit is returned, an order shall be entered indicating that the exhibit has been returned.

* * * * *

50. Section 1.654 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1.654 Final hearing.

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. An administrative patent judge may set a date and time for final hearing. Unless otherwise ordered by an administrative patent judge or the Board, each party will be entitled to no more than 30 minutes of oral argument at final hearing. A party who does not file a brief for final hearing (§ 1.656(a)) shall not be entitled to appear at final hearing.

* * * * *

(d) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an administrative patent judge or the Board. No additional oral argument shall be had unless ordered by the Board.

51. Section 1.655 is revised to read as follows:

§ 1.655 Matters considered in rendering a final decision.

(a) In rendering a final decision, the Board may consider any properly raised issue, including priority of invention, derivation by an opponent from a party who filed a preliminary statement under § 1.625, patentability of the invention, admissibility of evidence, any interlocutory matter deferred to final hearing, and any other matter necessary to resolve the interference. The Board may also consider whether entry of any interlocutory order was an abuse of discretion. All interlocutory orders shall be presumed to have been correct, and the burden of showing an abuse of discretion shall be on the party attacking the order. When two or more interlocutory orders involve the same issue, the last entered order shall be presumed to have been correct.

(b) A party shall not be entitled to raise for consideration at final hearing any matter which properly could have been raised by a motion under §§ 1.633 or 1.634 unless the matter was properly raised in a motion that was timely filed by the party under §§ 1.633 or 1.634 and the motion was denied or deferred to final hearing, the matter was properly raised by the party in a timely filed opposition to a motion under §§ 1.633 or 1.634 and the motion was granted over the opposition or deferred to final hearing, or the party shows good cause why the issue was not properly raised by a timely filed motion or opposition. A party that fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count, or fails to timely argue the separate patentability of a particular claim when the ground for unpatentability is first raised, may not subsequently argue to an administrative patent judge or the Board the separate patentability of claims designated to correspond to the count with respect to that ground.

(c) In the interest of justice, the Board may exercise its discretion to consider an issue even though it would not otherwise be entitled to consideration under this section.

52. In § 1.656, paragraphs (a), (d), (e), (g), (h), and (i) are revised; paragraphs (b)(1) through (b)(6) are redesignated as (b)(3) through (b)(8); newly designated paragraphs (b)(5) and (b)(6) are revised; and new paragraphs (b)(1) and (b)(2) are added to read as follows:

§ 1.656 Briefs for final hearing.

(a) Each party shall be entitled to file briefs for final hearing. The administrative patent judge shall determine the briefs needed and shall set the time and order for filing briefs.

(b)* * *

(1) A statement of interest indicating the full name of every party represented by the attorney in the interference and the name of the real party in interest if the party named in the caption is not the real party in interest.

(2) A statement of related cases indicating whether the interference was previously before the Board for final hearing and the name and number of any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the U.S. Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference.

* * * * *

(5) A statement of the facts, in numbered paragraphs, relevant to the issues presented for decision with appropriate references to the record.

(6) An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues it is raising for consideration at final hearing, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.

* * * * *

(d) Unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding.

(e) An original and four copies of each brief must be filed.

* * * * *

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and four copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be in numbered paragraphs and shall be supported by specific references to the record. Any proposed conclusions of law shall be in numbered paragraphs and shall be supported by citation of cases, statutes, or other authority. Any opponent, separate from its opening or reply brief, but filed concurrently therewith, may file a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party shall file with its opening brief an original and four copies of a motion (§ 1.635) to suppress the evidence. The provisions of § 1.637(b) do not apply to a motion to suppress under this paragraph. Any objection previously made to the admissibility of the evidence of an opponent is waived unless the motion required by this paragraph is filed. A party that failed to

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challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under § 1.672(c), 1.682(c), 1.683(b) or 1.688(b) may not move under this paragraph to suppress the evidence on that ground at final hearing. An original and four copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to show good cause within a time period set in the order, judgment may be entered against the junior party.

53. Section 1.657 is revised to read as follows:

§ 1.657 Burden of proof as to date of invention.

(a) A rebuttable presumption shall exist that, as to each count, the inventors made their invention in the chronological order of their effective filing dates. The burden of proof shall be upon a party who contends otherwise.

(b) In an interference involving copending applications or involving a patent and an application having an effective filing date on or before the date the patent issued, a junior party shall have the burden of establishing priority by a preponderance of the evidence.

(c) In an interference involving an application and a patent and where the effective filing date of the application is after the date the patent issued, a junior party shall have the burden of establishing priority by clear and convincing evidence.

54. Section 1.658 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.658 Final decision.

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may enter judgment, in whole or in part, remand the interference to an administrative patent judge for further proceedings, or take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the party's patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within one month after the date of the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any opposition to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Service of the request for reconsideration shall be by hand or Express Mail. The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision. A decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146).

* * * * *

55. Section 1.660 is amended by adding paragraph (e) to read as follows:

§ 1.660 Notice of reexamination, reissue, protest, or litigation.

* * * * *

(e) The notice required by this section is designed to assist the administrative patent judge and the Board in efficiently handling interference cases. Failure of a party to comply with the provisions of this section may result in sanctions under § 1.616. Knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the reexamination, application for reissue, protest, or litigation shall not be sufficient. The notice contemplated by this section is notice addressed to the administrative patent judge in charge of the interference in which the application or patent is involved.

56. Section 1.662 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by a party of a written disclaimer of the invention defined by a count, concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be treated as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application, other than an application for reissue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and the reissue application does not include a claim that corresponds to a count, judgment may be entered against the patentee. A patentee who files an application for reissue which includes a claim that corresponds to a count shall, in addition to complying with the provisions of § 1.660(b), timely file a preliminary motion under § 1.633(h) or show good cause why the motion could not have been timely filed or would not be appropriate.

* * * * *

57. Section 1.664 is revised to read as follows:

§ 1.664 Action after interference.

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an administrative patent judge, amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this subpart provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

58. Section 1.671 is amended by revising paragraphs (a) introductory text, (c)(1), (c)(2), (c)(6), (c)(7), (e), (f) and (g); redesignating paragraph (h) as paragraph (i) and revising it, and adding new paragraphs (h) and (j) to read as follows:

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of testimony and referenced exhibits, official records and publications filed under § 1.682, testimony and referenced exhibits from another interference, proceeding, or action filed under § 1.683, discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent.

* * * * *

(c) * * *

(1) *Courts of the United States, U.S. Magistrate, court, trial court,* or *trier of fact* means administrative patent judge or Board as may be appropriate.

(2) *Judge* means administrative patent judge.

* * * * *

(6) *Before the hearing* in Rule 703 of the Federal Rules of Evidence means before giving testimony by affidavit or oral deposition.

(7) *The trial or hearing* in Rules 803(24) and 804(5) of the Federal Rules of Evidence means the taking of testimony by affidavit or oral deposition.

* * * * *

(e) A party may not rely on an affidavit (including any exhibits), patent or printed publication previously submitted by the party under § 1.639(b) unless a copy of the affidavit, patent or printed publication has been served and a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit, patent or printed publication. When proper notice is given under this paragraph, the affidavit, patent or printed publication shall be deemed as filed under §§ 1.640(b), 1.640(e)(3), 1.672(b) or 1.682(a), as appropriate.

(f) The significance of documentary and other exhibits identified by a witness in an affidavit or during oral deposition shall be discussed with particularity by a witness.

(g) A party must file a motion (§ 1.635) seeking permission from an administrative patent judge prior to compelling testimony or production of documents or things under 35 U.S.C. 24 or from an opposing party. The motion shall describe the general nature and the relevance of the testimony, document, or thing. If permission is granted, the party shall notice a deposition under § 1.673 and may proceed to take testimony.

(h) A party must file a motion (§ 1.635) seeking permission from an administrative patent judge prior to compelling testimony or production of documents or things in a foreign country.

(1) In the case of testimony, the motion shall:

(i) Describe the general nature and relevance of the testimony;

(ii) Identify the witness by name or title;

(iii) Identify the foreign country and explain why the party believes the witness can be compelled to testify in the foreign country, including a description of the procedures that will be used to compel the testimony in the foreign country and an estimate of the time it is expected to take to obtain the testimony; and

(iv) Demonstrate that the party has made reasonable efforts to secure the agreement of the witness to testify in the United States but has been unsuccessful in obtaining the agreement, even though the party has offered to pay the expenses of the witness to travel to and testify in the United States.

(2) In the case of production of a document or thing, the motion shall:

(i) Describe the general nature and relevance of the document or thing;

(ii) Identify the foreign country and explain why the party believes production of the document or thing can be compelled in the foreign country, including a description of the procedures that will be used to compel production of the document or thing in the foreign country and an estimate of the time it is expected to take to obtain production of the document or thing; and

(iii) Demonstrate that the party has made reasonable efforts to obtain the agreement of the individual or entity having possession, custody, or control of the document to produce the document or thing in the United States but has been unsuccessful in obtaining that agreement, even though the party has offered to pay the expenses of producing the document or thing in the United States.

(i) Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

(j) The weight to be given deposition testimony taken in a foreign country will be determined in view of all the circumstances, including the laws of the foreign country governing the testimony. Little, if any, weight may be given to deposition testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence, as a matter of fact, that knowingly giving false testimony in that country in connection with an interference proceeding in the United States Patent and Trademark Office is punishable under the laws of that country and that the punishment in that country for such false testimony is comparable to or greater than the punishment for perjury committed in the United States. The administrative patent judge and the Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.

59. Section 1.672 is revised to read as follows:

§ 1.672 Manner of taking testimony.

(a) Unless testimony must be compelled under 35 U.S.C. 24, compelled from a party, or compelled in a foreign country, testimony of a witness shall be taken by affidavit in accordance with this subpart. Testimony which must be compelled under 35 U.S.C. 24, compelled from a party, or compelled in a foreign country shall be taken by oral deposition.

(b) A party presenting testimony of a witness by affidavit shall, within the time set by the administrative patent judge for serving affidavits, file a copy of the affidavit or, if appropriate, notice under § 1.671(e). If the affidavit relates to a party's case-in-chief, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-chief. If the affidavit relates to a party's case-in-rebuttal, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-rebuttal. A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on any thing mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document. The pages of affidavits filed under this paragraph and of any other testimony filed therewith under §§ 1.683(a) and 1.688(a) shall, to the extent possible, be given sequential numbers which shall also serve as the record page numbers for the affidavits and other testimony in the party's record to be filed under § 1.653. Exhibits identified in the affidavits or in any other testimony filed under §§ 1.683(a) and 1.688(a) and any official records and printed publications filed under § 1.682(a) shall, to the extent possible, be given sequential exhibit numbers, which shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The affidavits, testimony filed under §§ 1.683(a) and 1.688(a) and exhibits shall be accompanied by an index of the names of the witnesses, giving the number of the page where the testimony of each witness begins, and by an index of the exhibits briefly describing the nature of each exhibit and giving the number of the page where each exhibit is first identified and offered into evidence.

(c) If an opponent objects to the admissibility of any evidence contained

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in or submitted with an affidavit filed under paragraph (b) of this section, the opponent must, no later than the date set by the administrative patent judge for filing objections under this paragraph, file objections stating with particularity the nature of each objection. An opponent that fails to object to the admissibility of the evidence contained in or submitted with an affidavit on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files objections, the party may, within 20 days of the due date for filing objections, file one or more supplemental affidavits, official records or printed publications to overcome the objections. No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits filed under this paragraph shall, to the extent possible, be sequentially numbered beginning with the number following the last page number of the party's testimony submitted under paragraph (b) of this section. The page numbers assigned to the supplemental affidavits shall also serve as the record page numbers for the supplemental affidavits in the party's record filed under § 1.653. Additional exhibits identified in supplemental affidavits and any supplemental official records and printed publications shall, to the extent possible, be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraph (b) of this section. The exhibit numbers shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The supplemental affidavits shall be accompanied by an index of the names of the witnesses and an index of exhibits of the type specified in paragraph (b) of this section.

(d) After the time expires for filing objections and supplemental affidavits, or earlier when appropriate, the administrative patent judge shall set a time within which any opponent may file a request to cross-examine an affiant on oral deposition. If any opponents requests cross-examination of an affiant, the party shall notice a deposition at a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under paragraphs (b) and (c) of this section, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of the transcripts served under this paragraph shall, to the extent possible, be sequentially numbered beginning with the number following the last page number of the party's supplemental affidavits submitted under paragraph (c) of this section. The numbers assigned to the transcript pages shall also serve as the record page numbers for the transcripts in the party's record filed under § 1.653. Additional exhibits identified in the transcripts, shall, to the extent possible, be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraphs (b) and (c) of this section. The exhibit numbers assigned to the additional exhibits shall also serve as the exhibit numbers when those exhibits are filed with the party's record. The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in paragraph (b) of this section.

(e) [Reserved]

(f) When a deposition is authorized to be taken within the United States under this subpart and if the parties agree in writing, the deposition may be taken in any place within the United States, before any person authorized to administer oaths, upon any notice, and in any manner, and when so taken may be used like other depositions.

(g) If the parties agree in writing, the affidavit testimony of any witness may be submitted without opportunity for cross-examination.

(h) If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth how a particular witness would testify, if called, or the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

(i) In an unusual circumstance and upon a showing that testimony cannot be taken in accordance with the provisions of this subpart, an administrative patent judge upon motion (§ 1.635) may authorize testimony to be taken in another manner.

60. Section 1.673 is amended by revising paragraphs (a), (b) introductory text, (c) through (e) and (g) to read as follows:

§ 1.673 Notice of examination of witness.

(a) A party authorized to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions to be taken in the United States may be noticed for a reasonable time and place in the United States. A deposition may not be noticed for any other place without approval of an administrative patent judge. The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree or an administrative patent judge or the Board determine otherwise, a party shall serve, but not file, at least three working days prior to the conference required by paragraph (g) of this section, if service is made by hand or Express Mail, or at least 14 days prior to the conference if service is made by any other means, the following:

* * * * *

(c) A party shall not be permitted to rely on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section:

(1) Unless all opponents agree in writing or on the record to permit the party to rely on the witness, document or thing, or

(2) Except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows good cause why the notice, documents, or lists were not served in accordance with this section.

(d) Each opponent shall have a full opportunity to attend a deposition and cross-examine.

(e) A party who has presented testimony by affidavit and is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph (g) of this section, file and serve a single notice of deposition stating the time and place of each cross-examination deposition to be taken.

* * * * *

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an administrative patent judge who shall then designate the time and place for conducting the deposition.

* * * * *

61. Section 1.674 is amended by revising paragraph (a) to read as follows:

§ 1.674 Persons before whom depositions may be taken.

(a) A deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

* * * * *

62. Section 1.675 is amended by revising paragraph (d) to read as follows:

§ 1.675 Examination of witness, reading and signing transcript of deposition.

* * * * *

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the deposition, when the testimony has been transcribed a transcript of the deposition shall, unless the witness refuses to read and/or sign the transcript of the deposition, be read by the witness and then signed by the witness in the form of:

(1) An affidavit in the presence of any notary or

(2) A declaration.

63. Section 1.676 is amended by revising paragraph (a)(4) to read as follows:

§ 1.676 Certification and filing by officer, marking exhibits.

(a) * * *

(4) The presence or absence of any opponent.

* * * * *

64. Section 1.677 is revised to read as follows:

§ 1.677 Form of an affidavit or a transcript of deposition.

(a) An affidavit or a transcript of a deposition must be on opaque, unglazed, durable paper approximately 21.8 by 27.9 cm. (8½ by 11 inches) in size (letter size). The printed matter shall be double-spaced on one side of the paper in not smaller than 11 point type with a margin of 3.8 cm. (1½ inches) on the left-hand side of the page. The pages of each transcript must be consecutively numbered and the name of the witness shall appear at the top of each page (§ 1.653(e)). In transcripts of depositions, the questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

(b) Exhibits must be numbered consecutively to the extent possible and each must be marked as required by § 1.653(i).

65. Section 1.678 is revised to read as follows:

§ 1.678 Time for filing transcript of deposition.

Unless otherwise ordered by an administrative patent judge, a certified transcript of a deposition must be filed in the Patent and Trademark Office within one month after the date of deposition. If a party refuses to file a certified transcript, the administrative patent judge or the Board may take appropriate action under § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

66. Section 1.679 is revised to read as follows:

§ 1.679 Inspection of transcript.

A certified transcript of a deposition filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office unless authorized by an administrative patent judge upon such terms as may be appropriate.

67. Section 1.682 is revised to read as follows:

§ 1.682 Official records and printed publications.

(a) A party may introduce into evidence, if otherwise admissible, an official record or printed publication not identified in an affidavit or on the record during an oral deposition of a witness, by filing a copy of the official record or printed publication or, if appropriate, a notice under § 1.671(e). If the official record or printed publication relates to the party's case-in-chief, it shall be filed or noticed together with any affidavits filed by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-chief. If the official record or printed publication relates to rebuttal, it shall be filed or noticed together with any affidavits filed by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Official records and printed publications filed under this paragraph shall be assigned sequential exhibit numbers by the party in the manner set forth in § 1.672(b). The official record and printed publications shall be accompanied by a paper which shall:

(1) Identify the official record or printed publication;

(2) Identify the portion thereof to be introduced in evidence; and

(3) Indicate generally the relevance of the portion sought to be introduced in evidence.

(b) [Reserved]

(c) Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or to the admissibility of the official record or printed publication shall be filed no later than the date set by the administrative patent judge for the opponent to file objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to object to the admissibility of the official record or printed publication on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond by filing one or more supplemental affidavits, official records or printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of

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witnesses and an index of exhibits of the type required by § 1.672(b).

(d) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (c) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit served by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file notice of a deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

68. Section 1.683 is revised to read as follows:

§ 1.683 Testimony in another interference, proceeding, or action.

(a) A party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition and referenced exhibits from another interference, proceeding, or action involving the same parties by filing a copy of the affidavit or a copy of the transcript of the oral deposition and the referenced exhibits. If the testimony and referenced exhibits relate to the party's case-in-chief, they shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not file any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal, or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Pages of affidavits and deposition transcripts served under this paragraph and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b). The testimony shall be accompanied by a paper which specifies with particularity the exact testimony to be used and demonstrates its relevance.

(b) Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or the admissibility of the testimony and referenced exhibits filed under this section shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the testimony or referenced exhibits on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with one or more supplemental affidavits, official records or printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental evidence under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of an affidavit or supplemental affidavit submitted under paragraph (a) or (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

69. Section 1.684 is removed and reserved.

70. Section 1.685 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.685 Errors and irregularities in depositions.

* * * * *

(d) An objection to the deposition on any grounds, such as the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition, is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an administrative patent judge or the Board.

71. Section 1.687 is amended by revising paragraph (c) to read as follows:

§ 1.687 Additional discovery.

* * * * *

(c) Upon a motion (§ 1.635) brought by a party within the time set by an administrative patent judge under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an administrative patent judge may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. See § 1.647 concerning translations of documents in a foreign language.

* * * * *

72. Section 1.688 is revised to read as follows:

§ 1.688 Use of discovery.

(a) If otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer. If the answer relates to a party's case-in-chief, the answer shall be served together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief. If the answer relates to the party's rebuttal, the answer shall be served together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not serve any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-rebuttal.

(b) Unless otherwise ordered by an administrative patent judge, any written objection to the admissibility of an answer shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of an answer on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with one or more supplemental affidavits, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672(b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

(d) A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

73. Section 1.690 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.690 Arbitration of interferences.

(a) Parties to a patent interference may determine the interference or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of Title 9, United States Code. The parties must notify the Board in writing of their intention to arbitrate. An agreement to arbitrate must be in writing, specify the issues to be arbitrated, the name of the arbitrator or a date not more than thirty (30) days after the execution of the agreement for the selection of the arbitrator, and provide that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board. A copy of the agreement must be filed within twenty (20) days after its execution. The parties shall be solely responsible for the selection of the arbitrator and the rules for conducting proceedings before the arbitrator. Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in this subpart, as determined by the administrative patent judge.

(b) An arbitration proceeding under this section shall be conducted within such time as may be authorized on a case-by-case basis by an administrative patent judge.

(c) An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner the issue or issues arbitrated and the disposition of each issue. The award may include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an administrative patent judge, the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.

* * * * *

Dated: March 3, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–6377 Filed 3–16–95; 8:45 am]

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March 17, 1995

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing for Public and Indian Housing

Funding Availability for Comprehensive Improvement Assistance Program; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3867; FR–3774–N–02]

Notice of Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1995.

SUMMARY: This Notice informs HAs that own or operate fewer than 250 units and, therefore, are eligible to apply and compete for CIAP funds, of the availability of FY 1995 CIAP funding. HAs with 250 or more units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: Application is due on or before 3:00 p.m. local time on May 16, 1995, at the HUD Field Office with jurisdiction over the Public Housing Agency or Indian Housing Authority (herein referred to as HA), Attention: Director, Office of Public Housing, or Administrator, Office of Native American Programs.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, DC 20410. Telephone (202) 708–1640. (This is not a toll-free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., B–133, Washington, DC 20410. Telephone (202) 755–0032. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4595. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

On January 20, 1995, at 60 FR 4352, the Department published an Advance Notice of FY 1995 CIAP, setting forth all application requirements, except the allocation amounts and the application deadline date. Since the requirements set forth in the Advance Notice pertain to this NOFA, the entire Advance Notice is being republished as an attachment to this NOFA.

II. Allocation Amounts

(a) *Total Available.* The FY 1995 HUD Appropriations Act P.L. 103–327, enacted September 28, 1994, made available $3,700,000,000 of budget authority for the Modernization Program in the Annual Contributions Account. Funding may change if the carry-overs, recaptures and transfers estimated to occur in FY 1995 are not realized. The following chart shows the total amount of funds available in FY 1995, which is the appropriation, plus the carry-over from FY 1994, less the reduction and set-asides, as of the date of this NOFA:

FY 1995 Appropriation	$3,700,000,000
Plus Carry-over from FY 1994	194,092,503
Less Annual Contributions Account Reduction	(79,049,983)
FY 1995 Adjusted Appropriation	3,815,042,520
Less FY 1995 Set-Asides:	
Choice in Management (Being reevaluated) *	100,000,000
Emergency and Natural Disaster Reserve	75,000,000
Section 6J Activities *	40,042,520
Tenant Opportunity Program *	25,000,000
Inspection and Technical Assistance *	15,270,323
CGP Allocation from CGP Carry-Over	10,882,865
LBP Risk Assessment *	8,052,534
LBP Indemnification	971,983
Total Set-Asides	275,220,225
FY 1995 Adjusted Appropriation Less Set-Asides	3,539,822,295

* Set-asides to be implemented through separate NOFAs or Requests for Proposals.

(b) *Explanation of Carry-Overs.* The $194,092,503 in carry-overs from FY 1994 are:

(1) $100,000,000 from the set-aside for Choice-in-Management;

(2) $40,042,520 from the set-aside for implementing Section 6J activities;

(3) $32,259,237 from the national reserve for emergencies and natural and other disasters;

(4) $10,882,865 from the CGP allocation, including $1,438,509 from three HAs which did not apply for their FY 1994 grant, $99,963 unused due to the statutorily authorized conversion of a public housing project to a Section 8 project, and $9,344,393 from reduced formula funding of Mod Troubled PHAs;

(5) $8,052,534 of unused funds from the Lead-Based Paint (LBP) Risk Assessment set-aside, established in FY 1992;

(6) $1,612,976 from the set-aside for the Vacancy Reduction Program;

(7) $971,983 from the set-aside for the indemnification of three PHAs (Albany, New York; Cambridge, Massachusetts; and Omaha, Nebraska) that are participating in the LBP Abatement Demonstration. The FY 1991 Appropriations Act extended the availability of these funds appropriated in FY 1990 from October 1, 1991 to October 1, 1998;

(8) $270,323 from the set-aside for inspection of modernization work and technical assistance for HAs; and

(9) $65 from unassigned CIAP funds.

(c) *Allocation between CGP and CIAP.* The allocation between CGP and CIAP is explained below:

FY 1995 Adjusted Appropriation, Less Set-Asides		$3,539,822,295
Less CGP Credits Withheld for Mod Troubled Agencies		16,862,619
Amount Available for CGP and CIAP		3,522,959,676
CGP Allocation		3,153,244,533
CIAP Allocation		369,715,143

*Does not include $10,882,865 in CGP funds carried over from FY 1994 which will be added to the CGP allocation.

(1) The $3,522,959,676 balance is allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded ABT study of modernization needs. This allocation results in CIAP agencies receiving 10.49% or $369, 715, 143 and CGP agencies receiving 89.51% or $3,153,244,533 (plus the $10,822,865 carryover for a total of $3,164,067,398) of the funds available.

(i) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes, and items that are necessary for the long-term vaibility of a specific housing development.

(ii) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes.

(2) The $369,715,143 available to CIAP agencies is allocated between Public Housing at 91.8505% or $339,585,355, and Indian Housing at 8.1495% or $30,129,788. This allocation also is based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%).

(d) *Subassignment of Funds to Field Offices of Public Housing (OPH).* Headquarters has determined the distribution of Public Housing CIAP funds for each Field OPH, based on the relative shares of backlog and accrual needs for CIAP PHAs; adjusted as necessary.

(1) The Field OPH Director shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Public Housing CIAP become available, Headquarters will allocate the funds to one or more Field OPHs based on their relative shares of modernization need, approvable applications, and PHA capability to carry out the modernization.

(3) If a Field OPH does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field OPHs based on approvable applications and PHA capability to carry out the modernization.

Of the $339,585,355 available for Public Housing, 1% or $3,395,854 has been set aside to carry out goals related to pending civil rights litigation (e.g., Young v. Cisneros), which is subject to judicial oversight. The following table shows the distribution to CIAP funds for PHAs, excluding IHAs, assigned by Headquarters to each Field OPH as percentages of the $336,189,501 balance available for Public Housing:

Office of Public Housing (OPH)	Percent of Public Housing Funds
New England Region:	
Massachusetts State Office	2.6187
Connecticut State Office	.9266
New Hampshire State Office	1.5066
Rhode Island State Office	.7365
New York/New Jersey Region:	
Buffalo Area Office	2.1551
New Jersey State Office	2.7271
New York State Office	1.1576
Midatlantic Region:	
Maryland State Office	.4142
West Virginia State Office	1.4359
Pennsylvania State Office	1.1444
Pittsburgh Area Office	1.2048
Virginia State Office	.5756
District of Columbia Office	.1686
Southeast Region:	
Georgia State Office	5.3561
Alabama State Office	4.7698
South Carolina State Office	.9216
North Carolina State Office	3.0244
Mississippi State Office	1.7112
Jacksonville Area Office	2.9639
Knoxville Area Office	.9171
Kentucky State Office	4.7691
Tennessee State Office	1.8640
Midwest Region:	
Illinois State Office	3.5943
Cincinnati Area Office	.4374
Cleveland Area Office	.5058
Ohio State Office	1.1247
Michigan State Office	2.0393
Grand Rapids Area Office	3.0354
Indiana State Office	1.2262
Wisconsin State Office	2.8249
Minnesota State Office	2.9713
Southwest Region:	
New Mexico State Office	1.3454
Texas State Office	5.4523
Houston Area Office	1.1773
Arkansas State Office	3.0053
Louisiana State Office	3.9795
Oklahoma State Office	1.9327
San Antonio Area Office	2.6835
Great Plains Region:	
Iowa State Office	1.4211
Kansas/Missouri State Office	3.8535
Nebraska State Office	1.2155
St. Louis Area Office	2.2640
Rocky Mountain Region:	
Colorado State Office	3.5448
Pacific/Hawaii Region:	
Los Angeles Area Office	1.2057
Arizona State Office	1.2634
Sacramento Area Office	.2747
California State Office	1.5927
Northwest/Alaska Region:	
Oregon State Office	1.2688
Washington State Office	1.6876
Total	100.0000

(e) *Subassignment of Funds to Offices of Native American Programs (ONAPs).* Headquarters has determined the distribution of Indian Housing CIAP funds for each ONAP, based on the relative shares of backlog and accrual needs for CIAP IHAs, adjusted as necessary. The fund assignment will cover Indian Housing and any Public Housing owned and operated by IHAs.

(1) The ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Indian Housing CIAP become available, Headquarters will allocate the funds to one or more ONAPs based on their relative shares of modernization need, approvable applications, and IHA capability to carry out the modernization.

(3) If an ONAP does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more ONAPs based on approvable applications and IHA capability to carry out the modernization.

The following table shows the distribution of CIAP funds for IHAs, assigned by Headquarters to each ONAPs as percentages of the total $30,129,788 available for Indian Housing:

Office of Native American Programs (ONAP)	Percent of Indian Housing Funds
Eastern/Woodlands	14.8444
Southern Plains	12.3324
Northern Plains	13.3174
Southwest	29.9263
Northwest	24.4868
Alaska	5.0927
Total	100.0000

III. Application Deadline Date

The CIAP Application must be physically received by the local HUD Field Office by 3 p.m. local time on May 16, 1995. Faxed copies will *not* be considered official applications. The application deadline for this NOFA is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will not consider any application that is received after the application deadline. All applicants should take this into account and submit application materials as early as possible to avoid any risk brought about by unanticipated delays or delivery-related problems. This application deadline does not apply to applications for emergency funding, which may be submitted at any time when funds are available.

IV. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

Dated: March 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Attachment

Note: This is a republication of the advance notice published on January 20, 1995 at 60 FR 4352.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3867; FR 3774–N–01]

Advance Notice of Fiscal Year (FY) 1995 Funding for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Advance Notice of FY 1995 Funding for CIAP.

SUMMARY: This Notice provides advance information to Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 public housing units and, therefore, are eligible to apply and compete for CIAP funds, of the requirements for applying for FY 1995

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CIAP funding. Therefore, the CIAP eligible HA may start now to plan and develop its FY 1995 CIAP application. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: This Advance Notice does not establish an application deadline date. A Notice of Fund Availability (NOFA) will be published at a later date and will establish an application deadline date, as well as set forth the amount of funds available for the CIAP.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, DC 20410. Telephone (202) 708–1640. (This is not a toll free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development 451 Seventh Street, SW., B–133, Washington, DC 20410. Telephone (202) 755–0032. (This is not a toll free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4595. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Purpose and Substantive Description

(a) *Authority.* Sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). An interim rule revising the CIAP regulation, 24 CFR Part 968, Subparts A and B, for PHAs and 24 CFR Part 905, Subpart I, for IHAs, and streamlining the program was published on March 15, 1993. A final rule will be published shortly.

(b) *Program Highlights.*

(1) *Departmental Priority.* Improving Public and Indian Housing is one of the Department's major priorities. Accordingly, a review has been made of the entire Public and Indian Housing Program. Specifically, the Department is very concerned about several aspects of the Modernization Program, as follows:

(i) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant/substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy due to improved design promoting the blend of public housing into the surrounding neighborhood or to additional amenities improving the quality of life.

(ii) *Expediting the Program.* HAs are reminded that they are expected to obligate all funds within two years and to expend all funds within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer project implementation schedule is approved by the Field Office. If the HA does not obligate approved funds in a timely manner, the Department will recapture the funds unless there are clear, valid reasons for not meeting the obligation deadline; i.e., delays which are outside of the HA's control.

(iii) *Resident Involvement and Economic Uplift.* HAs are required to explore and implement through all feasible means the involvement of residents, including duly-elected resident councils, in every aspect of the CIAP, from planning through implementation. HAs shall use the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3) to the maximum feasible extent. HAs are encouraged to seek ways to employ Section 3 residents in all aspects of the CIAP's operation and to develop means to promote contracting opportunities for businesses in Section 3 areas. Refer to 24 CFR 85.36(e) regarding the provision of such opportunities.

(iv) *Elimination of Vacant Units.* Although the Department has a vacancy reduction effort specifically aimed at reducing vacancies, HAs are encouraged to apply for CIAP funds to address vacant units where the work does not involve routine maintenance, but will result in reoccupancy.

(2) *Relationship to Technical Review Factors.* The Departmental goal of improving Public and Indian Housing is reflected in the technical review factors, set forth in section IV(c)(5) of this Notice, on which the Field Office scores each HA's CIAP Application. Based on the HA's total score, the Field Office then ranks each HA to determine selection for Joint Review. The technical review factors include the following Departmental initiatives to improve Public and Indian Housing:

(i) Restoration of vacant units to occupancy;

(ii) Resident capacity-building, including opportunities for resident management;

(iii) Economic development, through job training and employment opportunities for residents and contracting opportunities for Section 3 businesses;

(iv) Drug elimination initiatives; and

(v) Partnership with local government.

II. Allocation Amounts

The Department will publish separately a NOFA in the **Federal Register**, explaining the FY 1995 appropriation, minus any FY 1995 set-asides and reductions, plus any carry-over from FY 1994. The NOFA also will explain the allocation between the CGP and the CIAP, and within the CIAP, the allocation between Public Housing and Indian Housing and the allocation to each Field Office/Office of Native Americans Program (ONAP). The Field Office Public Housing Director or the ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

III. Application Preparation and Submission by HA

(a) *Planning.* In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical improvement needs should be reviewed against the modernization standards, as set forth in HUD Handbook 7485.2, as revised, and any cost-effective energy conservation measures, identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. (See section I(b)(1)(i) of this Notice). In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information. The term "Field Office" includes the ONAP.

(b) *Resident Involvement/Local Official Consultation Requirements.*

(1) *Residents/Homebuyers.* The CIAP regulations at §§ 968.220 or 905.624 require the HA to establish a Partnership Process for rental developments which ensures full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(i) Before submission of the CIAP Application, consultation with residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization and request for resident recommendations;

(ii) Reasonable opportunity for residents, including duly-elected resident councils, to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(iii) Written response to residents, including duly-elected resident councils, indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review;

(iv) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP budget; and

(v) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local Officials.* Before submission of the CIAP Application, consultation with appropriate local officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(c) *Contents of CIAP Application.* Within the established time frame, the HA shall

submit the CIAP Application to the Field Office, with a copy to appropriate local/tribal officials. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(1) *Form HUD–52822, CIAP Application,* in an original and two copies, which includes:

(i) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in § 968.115 or § 905.603; description of work items required to correct identified deficiencies; and the estimated cost. *For example:*

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs; LBP testing; storm windows and doors; and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility of 2 units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of $90,000.

Development 1–3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility of 3 units; and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

Note: Refer to Section IV(d)(3) of this Notice regarding the consequences of not including all developments in the CIAP Application; even where there are no known current needs.

(ii) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. *Examples* of management improvements include, but are not limited to the following areas:

(A) the management, financial, and accounting control systems of the HA;

(B) the adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(C) the adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(iii) a certification that the HA has met the requirements for consultation with local officials and residents/homebuyers and that all developments included in the application have long-term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(2) *A narrative statement,* in an original and two copies, addressing each of the technical review factors in section IV(c)(5) and, where applicable, the bonus points in section IV(c)(6).

(3) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements,* in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(4) *SF–LLL, Disclosure of Lobbying Activities,* in an original only, required of HAs established under State law, only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers, Members of Congress and their staff regarding specific grants or contracts.

(5) *Form HUD–2880, Applicant/Recipient Update/Disclosure Report,* in an original only, required of HAs established under State law.

(6) *At the option of the HA,* photographs or video cassettes showing the physical condition of the developments.

IV. Application Processing by Field Office.

(a) *Completeness Review (Corrections to Deficient Applications).* To be eligible for processing, the CIAP Application must be physically received by the Field Office within the time period specified in the NOFA to be published at a future date, and must be complete, including the signed certification. Immediately after the application deadline, the Field Office shall perform a completeness review to determine whether an application is complete, responsive to the NOFA and acceptable for technical processing.

(1) If either Form HUD–52822, CIAP Application, *or* the narrative statement on the technical review factors is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing. The Field Office shall immediately notify the HA in writing.

(2) If Form HUD–50071, Certification for Contracts, Grants, Loans, and Cooperative Agreements, or SF–LLL, Disclosure of Lobbying Activities, are required, but missing, *or* Form HUD–2880, Applicant/Recipient Update/Disclosure Form, is missing, *or* there is a technical mistake, such as no signature on a submitted form or the HA failed to address all of the technical review factors, the Field Office shall immediately notify the HA in writing that the HA has 14 calendar days from the date of HUD's notification to submit or correct the deficiency. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If the HA fails to submit or correct the items within the required time period, the HA's application will be ineligible for further processing. The Field Office shall notify the HA in writing immediately after this occurs.

(b) *Eligibility Review.* After the HA's CIAP Application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for processing or processing on a reduced scope.

(1) *Eligibility for Processing.* To be eligible for processing:

(i) *HA Eligibility.* HA has fewer than 250 Public and Indian housing units.

(ii) *Development Eligibility.* The development is either a public housing development, including a conveyed Lanham Act or Public Works Administration development, or a Section 23 Leased Housing Bond-Financed project (BFP).

(iii) *Date of Full Availability (DOFA)/Major Reconstruction of Obsolete Projects (MROP) Funding.* Each eligible development for which work is proposed has reached DOFA at the time of CIAP Application submission. In addition, where funded under MROP after FY 1988, the development/building has reached DOFA or where funded during FYs 1986–1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for Processing on Reduced Scope.* Where the following conditions exist, the HA will be reviewed on a reduced scope:

(i) *Section 504 Compliance.* Where the Section 504 needs assessment identified a need for accessible units, the HA was required to make structural changes to meet that need by July 11, 1992. ("Section 504" refers to Section 504 of the Rehabilitation Act of 1973.) Where the HA has not completed all required structural changes or obtained a time extension from HUD to July 11, 1995, the HA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements. Refer to PIH Notice 94–56 (HA), dated August 15, 1994.

(ii) *Lead-Based Paint (LBP) Testing Compliance.* Where the HA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the HA is eligible for processing only for Emergency Modernization or work needed to complete LBP testing.

(iii) *FHEO Compliance.* Where the HA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as evidenced by an action, finding or determination as described below, unless the HA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the HA is eligible for processing only for Emergency Modernization or physical work needed to remedy civil rights deficiencies.

(A) A pending proceeding against the HA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of Discrimination is a charge under Section 810(g)(2) of the Fair Housing Act, issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the HA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of HA noncompliance with civil rights statutes and executive orders under § 968.110(a) or § 905.115, or implementing regulations, as a result of formal administrative proceedings, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) A deferral of the processing of applications from the HA imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24

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CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 968.110(a) or § 905.115 in a civil action filed against the HA by a private individual, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Selection Criteria and Ranking Factors.* After all CIAP Applications are reviewed for eligibility, the Field Office shall categorize the eligible HAs and their developments into two processing groups, as defined in subparagraph (1) of this paragraph: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. HA developments may be included in both groups and the same development may be in each group. However, the HA is only required to submit one CIAP Application.

(1) *Grouping Modernization Types.*

(i) *Group 1, Emergency Modernization.* Developments having physical conditions of an emergency nature, posing an immediate threat to the health or safety of residents or related to fire safety, and which must be corrected within one year of CIAP funding approval. Funding is limited to physical work items and may not be used for management improvements. Emergency Modernization includes all LBP testing and abatement of units housing children under six years old with elevated blood lead levels (EBLs) and all LBP testing and abatement of HA-owned day care facilities used by children under six years old with EBLs. Group 1 developments are not subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph or the long-term viability and reasonable cost determination in section V(e).

(ii) *Group 2, Other Modernization.* Developments not having physical conditions of an emergency nature and located in HAs which have demonstrated a capability of carrying out the proposed modernization activities. Other Modernization includes: one or more physical work items, where the Field Office determines that the physical improvements are necessary and sufficient to extend the useful life of the development; and/or one or more development specific or HA-wide management work items (including planning costs); and/or LBP testing, professional risk assessment, interim containment, and abatement. Therefore, eligibility of work under Other Modernization ranges from a single work item to the complete rehabilitation of a development. Refer to section I(b)(1)(i) of this Notice regarding modest amenities and improved design. Group 2 developments are subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph and the long-term viability and reasonable cost determination in section V(e).

(2) *Assessment of HA's Management Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, *and* on the performance review under the Public Housing Management Assessment Program (PHMAP) for PHAs or the Administrative Capability Assessment for IHAs, and other information sources, as follows:

(i) *Public Housing.* A PHA has management capability if it is (A) not designated as Troubled under 24 CFR Part 901, PHMAP, or (B) designated as Troubled, but has a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 or has obtained alternative oversight of its management functions.

(ii) *Indian Housing.* An IHA has management capability if it is (A) not designated as High Risk under § 905.135 or (B) designated as High Risk, but has a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A High Risk IHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the goals established in its management improvement plan under § 905.135.

(3) *Assessment of HA's Modernization Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits, as follows:

(i) *Public Housing.* A PHA has modernization capability if it is (A) not designated as Modernization Troubled under 24 CFR Part 901, PHMAP, or (B) designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability which may include through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(ii) *Indian Housing.* An IHA has modernization capability if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, the ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(4) *Technical Processing.* After the Field Office has categorized the eligible HAs and their developments into Group 1 and Group 2, the Field Office shall rate each Group 2 HA on each of the technical review factors in subparagraph (5) of this paragraph. With the exception of the technical review factor of "extent and urgency of need", a Group 2 HA is rated on its overall HA application and not on each development. For the technical review factor of "extent and urgency of need," each development for which funding is requested in the CIAP Application by a Group 2 HA is scored; the development with the highest priority needs is scored the highest number of points, which is then used for the overall HA score on that factor. *High priority needs* are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines.

(5) *Technical Review Factors.* The technical review factors for assistance are:

Technical review factors	Maximum points
Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines	40
HA's modernization capability	15
HA's management capability	15
Extent of vacancies, where the vacancies are not due to insufficient demand	10
Degree of resident involvement in HA operations	5
Degree of HA activity in resident initiatives, including tenant opportunity, economic development, and drug elimination efforts	5
Degree of resident employment through direct hiring or contracting or job training initiatives	5
Local government support for proposed modernization	5
Total Maximum Score	100

(6) *Bonus points.*

(i) For Public Housing only, the Field Office shall provide up to 5 bonus points for any PHA that can demonstrate that it has obtained funds from a non-HUD source to improve or support the modernization activities or the general operation of the PHA. Non-HUD sources of funding may include: local government, over and above what is required under the Cooperation Agreement for municipal services such as police and fire protection and refuse collection; private non-profit organizations; or other public and private entities. To qualify for the bonus points, the PHA shall identify the entity, the amount of funds being obtained, and the purpose of the funding.

(ii) For Public Housing only, the Field Office shall provide up to 2 bonus points for any PHA that can demonstrate that it has awarded contracts, including subcontracts, to minority business enterprises (MBEs) or women's business enterprises (WBEs) within the last three years. Such affirmative action is required by Executive Orders 11625 and 12432 for MBEs and by Executive Order 12138 for WBEs. To qualify for the bonus points, the PHA shall identify the contractor or the subcontractor, the dollar value of the contract or subcontract, and the date of award.

(7) *Rating and Ranking.* After rating all Group 2 HAs on each of the technical review factors and providing any bonus points as set forth in subparagraph (6) of this paragraph, the Field Office shall rank each Group 2 HA based on its total score, list Group 2 HAs in descending order and identify other Group 2 HAs with lower ranking applications, but with high priority needs. The Field Office shall consult with Headquarters regarding any identified FHEO noncompliance.

(d) *Joint Review.* The purpose of the Joint Review is for the Field Office to discuss with the HA the proposed modernization program, as set forth in the CIAP Application, and determine the size of the grant, if any, to be awarded.

(1) The Field Office shall select HAs, including all Group 1 HAs, for Joint Review so that the total dollar value of all proposed modernization recommended for funding exceeds the assignment amount by at least 15%. This will preserve the Field Office's ability to adjust cost estimates and work items as a result of Joint Review.

(2) The Field Office shall notify in writing each HA whose application has been selected for further processing as to whether the Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). An HA will not be selected for Joint Review if there is a duplication of funding (refer to section V(g)). The Field Office shall notify in writing each HA not selected for Joint Review and the reasons for non-selection.

(3) Where the HA has not included some of its developments in the CIAP Application, the Field Office may not, as a result of Joint Review, consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs.

(4) The HA shall prepare for the Joint Review by preparing a draft CIAP budget, and reviewing the other items to be covered during the Joint Review, such as the need for professional services, method of accomplishment of physical work (contract or force account labor), HA compliance with various Federal statutes and regulations, etc. If conducted on-site, the Joint Review may include an inspection of the proposed physical work.

(e) *HUD Awards.* After all Joint Reviews are completed, the Field Office shall adjust the HAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, FHEO review, and environmental reviews (refer to paragraph (h)). Such adjustments are necessary where Joint Review determines that actual Group 1 emergencies and Group 2 high priority needs, HA priorities, or cost estimates vary from the HA's application. Such adjustments may preclude the Field Office from funding all of the higher ranked HA applications in order to accommodate the funding of high priority needs. However, where the information obtained from Joint Reviews, FHEO review, and environmental reviews does not substantially alter the information used to establish the rankings before Joint Review, the Field Office shall make funding decisions in accordance with its rankings. After Congressional notifications, the Field Office shall announce the HAs selected for CIAP grants, subject to their submission of an approvable CIAP budget and other required documents.

(f) *HA Submission of Additional Documents.* After field Office funding decisions, the Field Office shall provide written notification to the HA of funding approval, subject to HA submission of the following documents within the time frame prescribed by the Field Office:

(1) *Form HUD–52825, CIAP Budget/Progress Report,* which includes the implementation schedule(s), in an original and two copies.

(2) *Form HUD–50070, Certification for a Drug-Free Workplace,* in an original only.

(3) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(g) *ACC Amendment.* After HUD approval of the CIAP budget, HUD and HA shall enter into an ACC amendment in order for the HA to obtain modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(h) *Environmental review.* The Field Office shall review the environmental impact of all modernization activities under Part 50, in accordance with the provisions of Parts 905 and 968. The Field Office may obtain the information required to conduct the environmental review during Joint Review. The HA shall provide any documentation to the Field Office that it needs to carry out its review under NEPA. After all Joint Reviews are conducted, the Field Office shall complete the environmental reviews before funding decisions are made and announced and before HAs are invited to submit CIAP budgets. Therefore, in requesting CIAP budgets, the Field Office shall specify any HA modification or elimination of activities or expenditures that the Field Office has determined, after review under the National Environmental Policy Act (NEPA) or related laws, to have an unacceptable environmental impact. Upon approval of the CIAP budget, the Field Office shall send an approval letter to the HA which includes notification that HUD has complied with its responsibilities under 24 CFR 905.120(a) or 24 CFR 968.110(c) and (d) before entering into an ACC amendment with the HA.

(i) *Declaration of Trust.* Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the HA is obliged to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD has determined that its interest in Mutual Help units is sufficiently protected without the further requirement of a Declaration of Trust; therefore, a Declaration of Trust is not required for Mutual Help Units.

(j) *"Fast Tracking" Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA applications may be submitted and processed at any time during the year when funds are available. The Field Office shall "fast track" the processing of these emergency applications so that fund reservation may occur as soon as possible.

V. Other Program Items

(a) *Turnkey III Developments.*

(1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization which are not the responsibility of the homebuyer families *and* which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. *In* addition, eligible costs include management improvements under the modernization type of Other Modernization. Turnkey III units which have been paid off, but not conveyed, are eligible for funding, but if funded, the modernization work must be completed before conveyance. The cost of the physical and management improvements shall not increase the purchase price and amortization period for the homebuyer families.

(2) *Ineligible Costs.* Nonroutine maintenance or replacements, dwelling additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception of vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of subparagraph (1) of this paragraph, an HA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a non-homebuyer family. An HA that intends to use funds under this paragraph must identify in its CIAP Application, the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an HA must certify that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III Program; and the HA has homebuyers who both are eligible for homeownership, in accordance with the regulatory requirements, and have demonstrated their intent to be placed into

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each of the Turnkey III units proposed for Other Modernization.

(ii) Before an HA may be approved for Other Modernization of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

(b) *Mutual Help Developments.* Mutual Help developments are eligible for the same physical and management improvement costs as are rental developments. Mutual Help units which have been paid off, but not conveyed, are eligible for funding, but if funded, the modernization work must be completed before conveyance.

(c) *Professional Risk Assessment for LBP.* A set-aside may be made available for LBP professional risk assessments under a separate NOFA and Processing Notice. HAs with pre-1980 family developments are strongly encouraged to apply for these funds to conduct LBP professional risk assessments.

(d) *In-Place Management (Interim Containment of LBP).* Where the results of the LBP professional risk assessment recommend that the HA undertake in-place management measures, the HA is strongly encouraged to apply for CIAP funds to carry out such measures. However, if the HA is not successful in obtaining CIAP funds for in-place management measures, the HA may request a budget revision of previously approved, but unobligated CIAP funds to accomplish such measures. Where the HA had a CIAP budget revision approved for this purpose in FY 1994, the HA may request FY 1995 CIAP funds to complete the items which were eliminated as a result of the budget revision.

(e) *Long-Term Viability and Reasonable Cost.*

(1) *Long-Term Viability.* On Form HUD–52822, CIAP Application, the HA certifies whether the developments proposed for modernization have long-term viability, including prospects for full occupancy. If, during Joint Review, the HA or Field Office believes that a particular development may not have long-term viability, the Field Office shall make a final viability determination. If the Field Office determines that a development does not have long-term viability, the Field Office shall only approve Emergency Modernization or nonemergency funding necessary to maintain habitability until the demolition or disposition application is approved and residents can be relocated. In making the final viability determination, the Field Office shall consider whether:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to blend the development in with the design and architecture of the neighborhood; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(iii) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(iv) There are no practical alternatives for replacement housing.

(2) *Reasonable Cost.* During the Joint Review, the Field Office shall determine reasonable cost for the proposed work, using one of the following methods: (i) unfunded hard cost of 90 percent or less of computed Total Development Cost (TDC), which is easier to apply when comprehensive-type modernization is proposed; or (ii) the reasonableness of the estimated cost of individual work items, using national indices, such as R.S. Means Index, the Dodge Report or Marshall and Swift, adjusted to reflect local conditions and actual experience, which is easier to apply when piecemeal-type modernization is proposed. No computation of the TDC is required where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development.

(f) *Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities.* On August 24, 1990, the Department issued HUD Notice PIH 90–39 (PHA), concerning the eligibility for funding under the Performance Funding System of dwelling units used to promote economic self-sufficiency services for residents and anti-drug programs. CIAP funds may be used to convert units for these purposes. Also refer to the Family Self-Sufficiency Program Guidelines (56 FR 49592, September 30, 1991).

(g) *Duplication of Funding.* The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program, shall not be funded by CIAP.

VI. Application Deadline Date and Summary of FY 1995 CIAP Processing Steps

The deadline date for submission of the FY 1995 CIAP Application will be established in the NOFA to be published at a future date. Dates for other processing steps will be established by each Field Office to reflect local workload issues.

Summary of Processing Steps

1. HA submits CIAP Application.
2. Field Office conducts completeness review and requests corrections to deficient applications.
3. HA submits corrections to deficient applications within 14 calendar days of notification from Field Office.
4. Field Office conducts eligibility review and technical review (rating and ranking) and makes Joint Review selections.
5. Field Office completes Joint Reviews, environmental reviews and FHEO review.
6. Field Office makes funding decisions and forwards Congressional notifications to Headquarters.
7. Congressional notification is completed and Field Office notifies HA of funding decisions.
8. HA submits additional documents as required in section IV(f).
9. Field Office completes fund reservations and forwards ACC amendment to HA for signature and return.
10. Field Office executes ACC amendment and HA begins implementation.

VII. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment will be made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with issuance of the FY 1995 NOFA for this program. The Finding of No Significant Impact will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, DC 20410.

(b) *Federalism Impact.* The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

(c) *Impact on the Family.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this Notice will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(d) *Accountability in the Provision of HUD Assistance.* The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR Part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. On January 16, 1992, the Department published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under the NOFA to be published as follows:

(1) *Documentation and Public Access.* The Department will ensure that documentation and other information regarding each application submitted pursuant to the NOFA to be published are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. In addition, HUD will include the recipients of assistance pursuant to the NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *HUD Responsibilities—Disclosures.* The Department will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with the NOFA to be published. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15 (See 24 CFR Part 12, Subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Prohibition Against Advance Information on Funding Decisions.* HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR Part 4, will apply to the funding competition to be announced under the separately published NOFA. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. Also refer to a final rule amending Part 4 published in the **Federal Register** on November 19, 1993 (58 FR 61016), regarding the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics at (202) 708–3815 (voice), (202) 708–1112 (TDD). These are not toll-free numbers. The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(f) *Prohibition Against Lobbying of HUD Personnel.*

Section 112 of the HUD Reform Act added a new Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD regulations implementing Section 13 are at 24 CFR Part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the regulation, particularly the examples contained in Appendix A of the rule.

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of "person" to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions regarding the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451, Seventh Street, S.W., Washington, DC 20410–3000. Telephone (202) 708–3815 (voice); (202) 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD Office.

(g) *Prohibition Against Lobbying Activities.*

The use of funds awarded under the NOFA to be published is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

If the amount applied for is greater than $100,000, the certification is required at the time application for funds is made that federally appropriated funds are not being or have not been used in violation of the Byrd Amendment. If the amount applied for is greater than $100,000 and the HA has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR Part 87 (Byrd Amendment), the submission also must include the SF–LLL, Disclosure of Lobbying Activities. The HA determines if the submission of the SF–LLL is applicable.

(h) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1989 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0044.

VIII. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

Dated: January 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6562 Filed 3–16–95; 8:45 am]

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Part IV

Department of Health and Human Services

Administration for Children and Families

Early Head Start Program Grant Availability; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS–93600.952]

Early Head Start Program Grant Availability

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of financial assistance to be competitively awarded to current Head Start programs—including Head Start Parent and Child Centers and Comprehensive Child Development programs—and other public and non-profit private entities to provide child and family development services for low-income families with children under age three and pregnant women.

SUMMARY: Section 645A of the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*, requires that, beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants competitively to agencies and organizations to implement programs which we call "Early Head Start." These programs will provide early, continuous, intensive, and comprehensive child development and family support services on a year-round basis to low-income families with children under age three and pregnant women. The purpose of the program is to enhance children's physical, social, emotional, and intellectual development; to assist parents in fulfilling their parental roles; and to help parents move toward self-sufficiency. Thus, the goals for Early Head Start are to:

- Promote the physical, cognitive, social and emotional growth of infants and toddlers and prepare them for future growth and development;
- Support parents—mothers, fathers, and guardians—in their role as primary caregivers and educators of their children, and in meeting family goals and achieving self-sufficiency across a wide variety of domains;
- Strengthen community supports for families with young children; and
- Develop highly-trained, caring and adequately compensated program staff, because the quality of staff and their relationships with children and parents are critical to achieving all the other goals.

DATES: The closing date for submission of applications is May 31, 1995.

ADDRESSES: Applications may be mailed to: Early Head Start Program, Ellsworth Associates, Inc., 3030 Clarendon Blvd., Suite 240, Arlington, Virginia 22201.

Hand delivered applications are accepted at the above address during the normal working hours of 8 a.m. and 4:30 p.m., Monday through Friday, on or before the closing date.

FOR FURTHER INFORMATION: For questions related to the Program Announcement, please contact the ACYF Operations Center, Technical Assistance Team at 1–800–351–2293. Staff at this center will answer questions regarding the application requirements or refer you to the appropriate contact person in ACYF for programmatic questions.

For a copy of the application kit, or for another copy of the program announcement please call or fax your request to the ACYF Operations Center at 1–800–351–2293 (phone) or 1–800–351–4490 (fax).

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Table of Contents

This program announcement is divided into five sections:

- Part I is an introductory section which contains the history and background for the Early Head Start program and the principles and program description that will guide the development, implementation and operation of the programs.
- Part II contains key program information such as a description of eligible applicants, project periods, applicable Head Start regulations, and Early Head Start as a learning community.
- Part III presents requirements for information that must be included in each application.
- Part IV presents the criteria upon which applications will be reviewed and evaluated.
- Part V contains instructions for preparing the Fiscal Year 1995 application. This section notes that the Commissioner of the Administration on Children, Youth, and Families, depending on the availability of funds and an adequate number of acceptable applications, may choose to fund the Fiscal Year 1996 cohort of programs out of the pool of applications submitted as a response to this program announcement.

Appendix A includes the relevant forms necessary for completing the application.

Appendix B lists the Single Points of Contact for each State and Territory.

Appendix C is The Statement of the Advisory Committee on Services for Families with Infants and Toddlers which guided the development of this program announcement and will be referred to throughout.

An application kit containing applicable Head Start Regulations, State Contact lists (e.g. Part H Lead Agency Coordinators) and other useful information must be obtained by applicants. (See address listed earlier in this announcement.)

B. Program Purpose

With the reauthorization of the Head Start Act in 1994, Congress established a new program for low income families with infants and toddlers and pregnant women which we are calling Early Head Start. Beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants to competing agencies and organizations to implement "Early Head Start" to provide early, continuous, intensive, and comprehensive child development and family support services.

In creating this program, the Congress acted upon evidence from research and practice which illustrates that high quality programs enhance children's physical, social, emotional, and cognitive development; enable parents to be better caregivers and teachers to their children; and help parents meet their own goals, including economic independence. Such programs answer an undeniable need. As pointed out in The Report of the Carnegie Task Force on Meeting The Needs of Young Children, many of the 12 million children under three and their families in the United States today face a "quiet crisis." The numerous indicators of this crisis include: One in four infants and toddlers live in families with incomes below the poverty line; nine out of every thousand infants die before the age of one; and, more than five million children under three receive child care from other adults while their parents work, much of that care is of poor quality.

The Early Head Start program will provide resources to community programs to address such needs and to achieve the purposes set forth by Congress. The local programs funded through Early Head Start will also operate as a national laboratory to demonstrate the impact that can be gained when early, continuous, intensive and comprehensive services are provided early on to pregnant women and very young children and their families.

Programs participating in this demonstration effort will:

- Provide early, individualized child development and parent education services to low-income infants and toddlers and their families according to a plan developed jointly by the parents and staff;
- Provide these services through an appropriate mix of home visits, experiences at the Early Head Start center, and experiences in other settings such as family- or center-based child care;
- Provide early opportunities for infants and toddlers with and without disabilities to grow and develop together in warm, nurturing and inclusive settings;
- Ensure that the Early Head Start center is a welcoming setting for families in the community;
- Respond to the needs of families, including the need for full-time child care for working families;
- Connect with other service providers at the local level to ensure that a comprehensive array of health, nutrition, and other services is provided to the program's pregnant women, very young children, and their families;
- Recruit, train, and supervise high quality staff to ensure the kind of warm and continuous relationships between caregivers and children that are crucial to learning and development for infants and toddlers;
- Ensure parent involvement in policy and decision making, similar to parent involvement in preschool Head Start programs;
- Coordinate with local Head Start programs in order to ensure continuity of services for these children and families;
- Ensure quality by focusing on all four cornerstones of successful early childhood programs: Child development, family development, community building, and staff development; and
- Participate actively in a research and evaluation effort to learn from the Early Head Start experience.

C. History and Background

1. Legislation

In May 1994 the President signed into law the bipartisan Head Start Reauthorization Act of 1994. This reauthorization established within the Head Start Bureau a new program for low-income pregnant women and families with infants and toddlers. The reauthorization sets aside funds from the overall Head Start budget for the next four years at a rate of three percent in FY 1995; four percent in FY 1996 and 1997; and five percent in FY 1998. Consolidated into the new initiative were the Parent and Child Centers Program and the Comprehensive Child Development Program.

This section of the legislation had a number of sources, including the recommendations of The Advisory Committee on Head Start Quality and Expansion, as well as recent lessons from research and practice.

2. The Advisory Committee on Head Start Quality and Expansion

In June 1993, the Secretary of the Department of Health and Human Services formed an Advisory Committee to look at Head Start quality and expansion. The recommendations of that committee centered around:

- Striving for excellence in staffing, management, oversight, facilities, and research;
- Expanding to better meet the needs of children and families; and
- Forging new partnerships with communities, schools, the private sector, and other national initiatives.

Included in the report was a recommendation that the Department develop a new initiative for expanded Head Start supports to families with infants and toddlers, as well as convene a high-level committee charged with developing guidelines for this new effort. This recommendation was fueled by relevant research findings and recognition in the field that a good deal more could be accomplished with earlier more sustained support for very young children and their families.

3. Relevant Research

Findings from more than three decades of research in child and family development illustrate that the time from conception to age three is critical for human development. The basic cognitive, social, and emotional foundation is established in these early years. The research also indicates that for infants and toddlers to develop optimally, they must have healthy beginnings and the continuity of responsive and caring relationships. Together, these supports help promote optimal cognitive, social, emotional, physical, and language development. When these supports are missing, the immediate and future development of the child may be compromised. Fortunately, recent research identifies characteristics of effective programs that enhance both child and family development. This growing body of knowledge provides a foundation upon which the Early Head Start program is based.

A more detailed discussion about the research in maternal and infant health, child-caregiver relationships, and characteristics of successful programs can be found in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers which is included as Appendix C.

4. Precursor Program Experiences

In enacting Early Head Start, Congress was building on lessons learned through Federal, State, local and community programs that serve some of our country's very young children and their families.

Most notable among the early Federal efforts include the following:

- Maternal and Child Health Services Block Grant has its roots in Title V of the Social Security Act which was enacted in 1935. It is administered by the Maternal and Child Health Bureau (MCHB) of the Public Health Service which provides leadership for building the infrastructure for health care services delivery to all mothers and children in the U.S., with particular responsibility for serving those low-income or isolated populations who would otherwise have limited access to care.
- The Parent and Child Centers Program (PCC) was established in 1967 to provide an array of services for pregnant women, infants/toddlers, parents, and families as a whole. There are currently 106 PCC's across all 50 States, the District of Columbia and Puerto Rico. Services include health, education, personal and interpersonal development, and family assistance.
- The Migrant Head Start program was established in 1969 in order to meet the needs of mobile farmworker children and their families. The program provides age appropriate infant, toddler and preschool programming, full-day services (8 to 12 hours per day), and full week services (five to six days per week). These services are offered in center-based and family child care settings during agricultural seasons. There are currently 76 Migrant Head Start programs operating in 35 states. Infant and toddlers comprise over 40 percent of the children served annually.
- Child and Family Resource Program (CFRP) operated as a demonstration from 1973 to 1983. Ten CFRP programs linked community resources in efforts to enhance families abilities to provide safe, stable, nurturing environments for their children.
- Part H of what is now known as the Individuals with Disabilities Education Act was initiated in 1986 as an early intervention program for children birth to three who have or are at risk for developmental disability. Part H supports comprehensive, statewide programs which identify and coordinate needed services within the context of a family-centered services delivery model.

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• The Comprehensive Child Development Program (CCDP) was enacted in 1988 to provide and coordinate a wide range of services to children and families involving child development, health care, education, economic self-sufficiency, mental health, substance abuse treatment and prevention and other services to strengthen the home and family.

• Even Start Literacy Program, administered by the Department of Education, integrates early childhood education and adult education for parents into a unified program.

• Healthy Start Initiative started in 1991 as a demonstration program to combat infant mortality through community coalitions.

In addition to these Federal efforts, several States and foundations are focusing on the special needs of very young children and their families. Among the States active in this area are Colorado, Kentucky, Maryland, Minnesota, Missouri and Vermont. Carnegie and Ford are among the foundations addressing the needs of pregnant women and families with infants and toddlers.

D. Consultation

In the statute establishing the new program which we call Early Head Start, Congress called on the Secretary to develop program guidelines in consultation with experts in early childhood development, experts in health, and experts in family services; and taking into consideration the knowledge and experience gained from other early childhood programs including the Comprehensive Child Development Programs, Head Start Parent Child Centers and Migrant Head Start programs that serve large numbers of infants and toddlers. As a result, the Secretary formed the Advisory Committee on Services for Families with Infants and Toddlers. The Committee was charged with advising the Department on the development of program approaches for the initiative. In September 1994, the Advisory Committee unanimously agreed to a statement that sets forth the vision, goals, principles, and program cornerstones for Early Head Start (the Statement, which includes the Advisory Committee membership list, is included as Appendix C).

In addition, Federal staff conducted approximately 30 focus groups during the summer of 1994 to hear from parents, practitioners, researchers, advocates, and representatives of professional organizations. Further, Federal staff met with or received materials and recommendations from a number of other parents, practitioners, and researchers. The suggestions, guidance, and information received through this consultation process helped shape the development of this program announcement.

E. Principles Recommended by the Field

The Advisory Committee on Services for Families with Infants and Toddlers identified nine principles that are characteristic of successful programs for families with very young children. These principles are consistent with the themes that emerged from the broader consultation conducted by the Department. Therefore, applicants are expected to design their programs around these principles:

1. *High Quality:* Programs will ensure high quality in both the services provided to children and families directly, and the services provided through referral. Programs will recognize that the conception-to-three age period is unique both in the rate of development and in the way young children's physical and mental growth reflects and absorbs experiences with caregivers and the surroundings. Because of this, the experiences and environments need to be of highest quality to promote child development.

2. *Prevention and Promotion:* Recognizing that windows of opportunity open and close quickly for very young children and their families, programs will seek out opportunities to promote the physical, social, emotional, cognitive and language development of young children and families before conception, prenatally, upon birth, and during the early years. Program staff will seek to prevent and detect problems at their earliest stages, rallying the services needed to help the child and family anticipate and overcome problems before they interfere with healthy development.

3. *Positive Relationships and Continuity:* Programs will support and enhance strong, caring, continuous relationships among the child, parents, family, and caregiving staff. Programs will support the mother-child, father-child bond by recognizing each parent as his or her child's first and primary source of love, nurturance and guidance. Programs will ensure that relationships between caregiving staff and young children support infant and toddler attachment to a limited number of skilled and caring individuals, thus maintaining relationships with caregivers over time and avoiding the trauma of loss experienced with frequent turnover of key people in the child's life.

4. *Parent Involvement:* Programs will ensure the highest level of partnership with parents, both mothers and fathers. Programs will support parents as primary nurturers, educators, and advocates for their children; assure that each parent has an opportunity for an experience that supports his or her own growth and goals, including that of parenting; encourage independence and self-sufficiency for parents; and provide a policy-making and decision-making role for parents.

5. *Inclusion:* Programs will develop services and create an environment which builds upon and responds to the unique strengths and needs of each child and family. Further, programs will support participation in community life by young children with disabilities and their families; families of very young children with significant disabilities will be fully included in all program services.

6. *Culture:* Programs will demonstrate an understanding of, respect for, and responsiveness to the home culture of children and families as culture is the context for healthy identity development in the first years of life.

7. *Comprehensiveness, Flexibility, Responsiveness, and Intensity:* Programs will respond in flexible ways to the unique strengths, abilities, and needs of the children, families and communities they serve. Developmental opportunities provided to each infant and toddler will address the whole child and be continually adapted to keep pace with his or her developmental growth. Programs also need to be responsive to the distinct needs and experiences of parents whose children are disabled and those parents who have disabilities.

8. *Transition:* Programs will be responsible for ensuring the smooth transition of children and their families into Head Start or other preschool programs which are of high quality and provide consistent and responsive caregiving.

9. *Collaboration:* Recognizing that no one program will be able to meet all of a child's and family's needs, programs will build strong connections to other service providers and to community sources of support for families. These efforts will foster a caring, comprehensive and integrated community-wide response to families with young children, maximize scarce financial resources, and avoid duplication of agency effort.

These principles (explained in more detail) are included in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers which is attached as Appendix C.

F. Program Description

In addition to the principles outlined above, a description of the Early Head Start program also emerged during consultation with the field. The Advisory Committee members set forth the formal framework for the program which includes four cornerstones: child development; family development; community building; and staff development.

1. Child Development

To develop fully, children need individualized support that honors the unique characteristics and pace of their physical, social, emotional, cognitive and language development. Critical to this development are the promotion of child health; positive relationships between the child and parents and other significant caregivers; opportunities for children's active engagement in appropriately stimulating environments; and enhancement of each parent's knowledge about the development of their child within healthy, safe, environments. The services that programs must provide to support the child development cornerstone include:

• High quality early education services provided both in and out of the home in a range of developmentally appropriate settings for infants and toddlers;

• Home visits (especially for families with newborns and other infants, as needed);

• Parent education, including parent-child activities;

• Comprehensive health and mental health services for children; and

• Part- and full-day child care services, as needed by children and families (the ACF does not expect Early Head Start grantees to pay for off-site child care but instead envisions the role of the grantee being a broker to help the family identify and access child care services from appropriate providers in the community as needed); the Early Head Start program must assume responsibility for ensuring that the child care settings meet standards for high quality, developmentally appropriate care.

In addition, Early Head Start programs would be responsible for helping the family identify and access the services of a consistent health professional who can provide ongoing care for the family, child and pregnant woman. Further, Early Head Start programs would be responsible for coordinating with programs providing services in accordance with Part H of the Individuals with Disabilities Education Act so that children and families served by these two programs can experience a seamless system of services.

2. Family Development

Healthy child development depends on the ability of parents and families to support and nurture children, while at the same time meeting other critical social and economic needs. Therefore, programs must work to help parents set and achieve goals for themselves and their children through individualized family development plans, which are collaboratively designed and updated by families and staff, and are responsive to the goals and ideals of the families. When families are served by additional programs which also require an individualized family development/service plan, such as Part H of the Individuals with Disabilities Education Act and family employability plans, then a single coordinated plan should be developed so families experience a seamless system of services.

The types of services that programs must provide directly or through referral include:

• Ongoing support to parents, through case management, peer support groups, or other approaches;

• Child development information;

• Health services, including services for women prior to, during, and after pregnancy;

• Mental health services;

• Services to improve health behavior such as smoking cessation and substance abuse treatment;

• Services to adults to support progress towards economic independence, such as adult education and basic literacy skills, job training, assistance in obtaining income support, food, and decent, safe housing, and emergency cash or in-kind assistance; and

• Transportation to program services.

Programs also must provide directly opportunities for parent involvement in the program so that parents can be involved as decision-makers, volunteers, and/or employees. Additional services not listed above, but identified by families through community assessments and mappings, may be provided either directly or through referral at local option.

3. Community Building

Children develop within the context of the family and the family develops within the context of the community. Therefore, to support children's development, Early Head Start must establish collaborative relationships with other community providers and strength-building organizations to create an environment that shares responsibility for the healthy development of its children and their families.

The goal of these community relationships will be three-fold: Increasing access to high quality services for program families; assuring that the program's approach to serving families with infants and toddlers fits into the existing constellation of services in the community so that there is a coherent, integrated approach to supporting families with very young children; and encouraging systemic improvements in service delivery for all the families in a community.

All programs will be required to conduct an in-depth assessment of existing community resources and needs and engage in an ongoing collaborative planning process with a range of stakeholders, including parents and residents of the community. If the community recently conducted such an assessment, the program would be able to use the results from that study and then proceed with the collaborative planning process.

4. Staff Development

Programs are only as good as the individuals who staff them. Thus staff development will be a key element of Early Head Start programs.

To ensure the recruitment and development of high quality staff, all programs will be required to:

• Select staff who, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide high quality, comprehensive, inclusive, culturally appropriate, and family-centered services to young children and their families;

• Select staff who are capable of entering into one-to-one caregiving relationships with infants and toddlers, and caring, respectful and empowering relationships with families and other coworkers;

• Select program directors who possess the above characteristics and are highly skilled administrators who exemplify leadership qualities such as integrity, warmth, intuition and holistic thinking;

• Provide ongoing staff training, supervision and mentoring for both line staff and supervisors that reflects an interdisciplinary approach and an emphasis on relationship building and employs techniques and opportunities for practice, feedback and reflection;

• Provide training so staff are "cross-trained" in the areas of child development, family development and community building, in addition to the areas of home visiting, caregiving

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relationships, effective communication with parents, family literacy, healthy/safe environments and caregiving practices, early identification of unhealthy behaviors or health problems, service coordination, and the provision of services and support to diverse populations, including families and children with disabilities and developmental delays; and

• Recognize that high quality performance and development occur when they are linked to rewards such as salary, compensation, and career advancement.

These cornerstones (explained in more detail) are included in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers which is attached as Appendix C. Applicants who become Early Head Start grantees will be expected to build their program around these four cornerstones.

Part II. Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 et seq.

B. Eligible Applicants

Those who may apply to become an Early Head Start program include: Entities operating Head Start programs and other public entities and nonprofit private entities capable of providing community-based child and family services that are consistent with recognized best practices and other requirements as established by the Secretary. Priority will be given to entities with a record of providing early, continuous, and comprehensive child and family development services. In awarding grants to eligible applicants, the Secretary shall ensure an equitable national geographic distribution of the grants and award grants to applicants proposing to serve communities in rural areas and to applicants proposing to serve communities in urban areas.

C. Eligible Participants

Persons who may participate in the Early Head Start program include pregnant women and families with children under age three who meet the income criteria specified for families in the Head Start regulations (See Part II, Section G). The report from Congress discussing the creation of this program encouraged that participants in programs funded through this initiative should be identified while pregnant or while their children are infants.

While Early Head Start programs will be targeted primarily toward families who have incomes at or below the poverty line or who are eligible for public assistance, regulations permit up to 10 percent of children in local programs to be from families which do not meet these low-income criteria. Head Start regulations also require that a minimum of 10 percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of services and activities in inclusive settings with their non-disabled peers and to receive individualized services.

As a comprehensive family development program, Early Head Start will be expected to assess the strengths and needs of the whole family and develop strategies for ensuring services are available. For example, grantees would be responsible for recognizing the child care needs of older siblings (i.e., children in the family age three or older) but would not be expected or authorized to pay for such services. Instead, the role of Early Head Start would be to work with the family and community providers to identify programs where the older sibling may be served.

D. Target Populations

There will be no required target populations other than that specified in Part II, Section C. However, applicants may choose to focus on special populations such as teen parents or design a program linked to welfare reform initiatives if they wish. In future years, the ACF may look at programs focusing on these populations for more in-depth study and evaluation.

E. Project Period, Funding and Project Sizes

A total of approximately $17 million in ACF funds will be available for funding approximately 15–25 new Early Head Start programs in FY 1995. Applicants will be required to enroll at least 75 families. In order to fund as many different projects as possible, the ACF does not intend to fund any applicant to serve more than 150 families, unless it is the judgment of the selecting official that a higher enrollment level will enable the ACF to better meet the stated purposes of Early Head Start. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five-years. Applications for continuation grants funded under these awards beyond the first one-year budget period but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. Continuation funds will be available to serve eligible families who were initially enrolled and eligible families which replaced starting families who left the program during any single year.

Parent and Child Center Programs and Cohort I of the Comprehensive Child Development Programs (Cohort I) are eligible to apply for this money according to the terms of this announcement but are not required to do so.

Note: The statute creating Early Head Start allows Cohort II of the Comprehensive Child Development Programs (Cohort II) to continue in their demonstration phase and receive funding for the duration of the project period.

If they do not choose to apply, they will generally continue to receive financial assistance in fiscal years 1995, 1996, and 1997 as permitted by section 645A(e) of the Act. When a Parent and Child Center Program or Cohort I competes successfully for an Early Head Start grant, the current grant will be replaced by the new Early Head Start grant. Thus, the grantee's current base funding will be folded into the new award and its current project period will be replaced by a new Early Head Start project period that extends a full five years. If a Parent and Child Center Program or a Cohort I chooses to compete for Early Head Start and does not succeed, the Parent and Child Center Program or Cohort I will generally continue to receive financial assistance through FY 1997 and may recompete to become an Early Head Start program as new funds become available in FY 1996, 1997, and 1998. Parent and Child Center Programs and Cohort I and Cohort II of the Comprehensive Child Development Program are receiving additional information about the terms affecting them as a result of this program announcement.

Allowable costs for developing and administering an Early Head Start program may not exceed 15 percent of the total approved costs of the program. Costs classified as development and administrative costs are those costs related to the overall management of the program. Additional information pertaining to limitations of costs on development and administration of Early Head Start programs can be found in Head Start Grants Administration regulation 45 CFR 1301.32, Limitations on Costs of Development and Administration of a Head Start Program, which is available in the application kit.

All programs will be thoroughly reviewed at the end of the first year to determine their suitability for receiving continued funding. Programs will be expected to submit an ongoing operation plan and revised budget. Federal staff also may ask for additional material as part of the review.

Given the importance of planning, selecting high quality staff and setting in place training mechanisms, and coordinating with other programs within the community, we expect that programs will spend some portion of the first year focusing on start-up activities. Programs are strongly encouraged to begin serving children and families within the first year. Programs should plan to be fully operational no later than October 1, 1996. Because the first year is unlikely to include 12 months of full operation, it is assumed that first year budgets will be lower than budgets for future years.

Subject to the availability of additional resources in FY 1996 and to the number of acceptable applications received as a result of this program announcement, the selecting official may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

F. Required Match

Grantees that operate Early Head Start programs must provide at least 20 percent of the total approved costs of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, fairly evaluated, including facilities, equipment or volunteer services. Therefore, a project requesting $100,000 in Federal funds (based on an award of $125,000 per budget period), must include a match of at least $25,000 (20 percent of total project costs). Applicants are encouraged to provide more than the minimum 20 percent non-Federal share.

In certain instances, the requirement for a 20 percent non-federal match may be waived in part or in whole, if the circumstances described in Section 640(b) of the Head Start Act exist. This section states that "For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection; (2) the impact of the cost the Head Start agency may incur in initial years it carries out such program; (3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program; (4) whether the Head Start agency is located in a community adversely affected by a major disaster; and (5) the impact on the community that would result if the Head Start agency ceased to carry out such program."

G. Applicable Head Start Standards

Agencies that receive funding through this announcement must adhere to those standards set forth in certain regulations that govern Head Start programs in addition to Department of Health and Human Services regulations that govern discretionary grants generally. The relevant Head Start regulations are: Head Start Grants Administration, 45 CFR part 1301; Head Start Program Performance Standards, 45 CFR part 1304; and Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start, 45 CFR part 1305.

There are a number of specific provisions in the foregoing Head Start regulations that relate only to children ages three to five. For example, the Head Start Performance Standards, Subpart B—Education Services in large part describes services that are to be provided to older preschool children and are not appropriate for children under age three. As is currently the case for Head Start Parent and Child Center programs and Migrant Head Start programs that serve children under three years of age, such provisions do not apply to Early Head Start programs.

New Performance Standards for Head Start programs are currently being developed. After a period of public comment, this regulation will be issued in final form in FY 1996 when agencies selected to become Early Head Start programs are beginning to provide services. At that time, programs will be expected to comply with the Performance Standards, as applicable under the time frames specified in the regulation.

Copies of the current applicable Head Start regulations are available in the application kit.

H. Early Head Start as a Learning Community

1. Overview

On both the local and national level, Early Head Start is envisioned as a learning community for how quality services should be delivered to pregnant women and families with infants and toddlers. Thus, continuous improvement, evaluation, research and dissemination activities play a critical role in this initiative. These activities include, but are not limited to:

• Continuous review and measurement of program processes to determine progress toward stated objectives and for the purpose of program improvement;

• Studies of program processes including services offered to and received by families and descriptions of how the services are delivered;

• Qualitative studies of individual families and programs;

• Studies of child, family, program and community variables that contribute to program outcomes;

• Studies of program quality and the relationship of quality to program outcomes;

• Studies of program variations and their relationship to impacts;

• National impact studies, conducted by a national contractor;

• Establishment of longitudinal research in a sample of Early Head Start national impact study sites; and

• Documentation of the program models and development of materials for dissemination purposes.

2. Requirement on the Use of an Automated Information System

In order to facilitate learning community activities, all Early Head Start programs will be required to use an automated information system to collect program information on families, services, collaborative arrangements, staff, training, services utilization and costs. The Head Start Family Information System (HSFIS), which is Head Start's new automated record keeping system, is currently being modified to accommodate the needs of Early Head Start. The HSFIS software and User's Manual will be made available to Early Head Start grantees at the time of award and grantees will be responsible for coordinating the collection of data for and management of HSFIS.

As Early Head Start sites will be in the first wave of HSFIS implementation in the field, technical assistance for implementation issues, including linkages to existing systems, will be provided through the ACYF-supervised contractor responsible for implementing HSFIS and through mentor sites from the pilot phase of the HSFIS project.

3. Continuous Improvement and Formative Evaluation Requirements

In order to enter fully into the learning community environment on both the national and local level, all

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Early Head Start programs will be required to:

- Conduct a local assessment of progress toward stated objectives and program improvement using the automated information system and other sources of data which will measure progress toward stated objectives and contribute to a process of continuous improvement within the program and sponsoring agency;
- Provide information from the Early Head Start automated information system as requested by a National Contractor;
- Collect qualitative information on the program and on individual families;
- Participate in the program variation and quality studies, if requested to do so by the ACYF; and
- Document the program model and develop dissemination materials.

All Early Head Start programs are required to have the capacity to carry out the activities listed above. Thus, applicants for Early Head Start funds will need access to expertise in developing and using performance measures, as well as in conducting qualitative evaluation. Applicants are strongly encouraged to form partnerships with representatives of local universities or other research organizations who can assist them in the conduct of formative evaluation and continuous improvement activities, and who can become potential candidates for the research and impact studies discussed below.

4. Impact Study and Research Site Requirements

Any Early Head Start program could be required to participate in the national impact study and therefore should be prepared to participate in random assignment over a specified time period. A limited number of funded Early Head Start programs will be selected by the ACF as special research sites in FY 1996. Selected sites shall fulfill all of the continuous improvement and other evaluation requirements listed above, and, in addition:

- Serve as a research site where a university or research organization will conduct research on the child, family, program and community variables that affect outcomes; and, as such, become eligible to participate in the Early Head Start/Head Start longitudinal study.
- Collaborate with the university or research organization in the development of relevant research questions and in the design of the local study; and/or,
- Serve as a national impact study site and accept assignment under either an experimental or quasi-experimental condition and/or cooperate with a national contractor and the ACF in establishing comparison groups appropriate for answering questions of impact, recruitment and/or generalizability.

The ACF will award approximately $2 million for local research activities in FY 1996. Early Head Start programs which are chosen by the ACF as impact evaluation and special research sites will be required to cooperate in carrying out intensive research and evaluation activities (e.g. random assignment of recruited families to comparison and program groups). The Request for Proposal for research site competition involving original or newly identified research partners, will be released in the Fall of 1995. Selection of research sites will be based on a combination of factors that may include proposed study design, research partner qualifications, location, program composition, and projected program readiness for evaluation.

Part III. Application Requirements

Applicants must address the following requirements in their applications for financial assistance. For the convenience of the applicants, these requirements have been organized according to the evaluation criteria presented in Part IV.

A. Objectives and Need for Assistance

1. State the objectives for the program and indicate how these objectives relate to the four Early Head Start Program Goals (see the Summary Section of this Announcement or Appendix C), and demonstrate that there is a need for the program that relates to these objectives and is based on an assessment of the community (conducted by the applicant or resulting from a recent study of the community) and consultation with consumers. Provide letters of support for your program from community leaders and residents.

2. Identify the population to be served by the project and explain why this population is most in need of the program. Identify the target enrollment size (number of families and estimated number of infants and toddlers) and provide assurances that the population the program intends to recruit and enroll will meet Early Head Start eligibility criteria.

3. Identify the geographic location to be served by the program. Describe the key characteristics of the targeted area and explain what makes the area an identifiable community or neighborhood. Describe what services and resources are/are not currently available in the area which serve pregnant women and families with infants and toddlers. Provide demographic and other information on the target area which demonstrates that there are a sufficient number of eligible, unserved families in the area to justify the target enrollment size. In addition, demonstrate that the program will be able to recruit at least twice as many eligible families to be enrolled from the target area should the program be selected as a national impact study site and be required to establish a randomly assigned comparison group (See Part II, Section H, Number 4). Attach relevant maps or other geographic aids.

B. Results or Benefits

1. Identify the specific results or benefits that could be expected for families and children participating in the program. Identify the specific community-wide results or benefits. Identify the specific results or benefits that could be expected for the staff working in the Early Head Start program as well as other child development caregivers and family development staff working in a variety of relevant community agencies.

2. Identify the kinds of qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits.

3. Provide assurances that the program will collect data on groups of individuals and geographic areas served, types of services to be furnished, service utilization information, types and nature of needs identified and met, and such other information as may be required periodically by the ACF for purposes of the national evaluation.

4. Describe how the lessons learned from the program will benefit national policy, practice, theory and research.

C. Approach

1. Describe the method used to undertake the community assessment and consumer consultation process that caused the applicant to conclude that there is a need for the proposed program as discussed in Part III, Section A. An applicant need not conduct an independent assessment of the community if such an assessment already exists. In this case, the applicant should describe the method of the recently conducted assessment and explain any additional consultation with consumers as it relates to the development of the proposed program. In addition, all applicants must describe the planning the program will do during the start-up period to prepare for implementation of the program and explain how consumers and other stakeholders in the community will be involved in the planning.

2. Explain the approach to recruiting and enrolling the number and type of children and families from the target recruitment area, as discussed in Part III, Section A. Discuss any special efforts you will make to recruit and enroll pregnant women and families with children under age one. Provide assurances that you will carry-out random assignment should your program be selected to participate in the national impact study.

3. Describe how the program will ensure that at least 10 percent of enrollment and participation opportunities will be made available to children with disabilities (as defined by the IDEA Part H Lead Agency for the State). Describe the policies and practices the program will have in place to assure that a child will not be denied enrollment or participation in the program on the basis of a disability or the severity of such a condition. Describe how the program will work with the Part H local lead agency or, if available, the local Interagency Coordinating Council to arrange or provide for special services needed by these children and their families. Describe how staff will coordinate their efforts with others to ensure children with disabilities and their families receive high quality services.

4. Describe the approach to providing child development services and explain the rationale for choosing the approach. Identify and describe the specific approaches that will be used for assuring the intellectual, social, emotional and physical development of the infants and toddlers served. Describe the philosophy, curricula, staffing patterns, staff qualifications, types and quality of settings and any other relevant information that will comprise the program's model for supporting the growth and development of very young children. Clearly explain how your model will meet the developmental needs of very young children (including children from non-English speaking families).

5. Explain how the program's child development approach will promote parent/guardian-child interaction and support the mother-child and/or father-child bond. Also explain how caregiving will be provided in ways that support infant and toddler attachment to a limited number of skilled and caring individuals.

6. Describe how high-quality infant and toddler full- and part-day child care will be provided to children of parents who are working or in training or to children who require out-of-home care due to special parental circumstances like substance abuse treatment. Discuss the relationship between these resources and the program's overall child development approach. Describe the process the program will use to determine that child care (provided either directly or through referral) will be of high quality. In addition, describe the program's approach to building capacity in communities where high quality infant/toddler child care is lacking.

7. Describe the program's approach to ensuring the continuation of developmentally-appropriate services for children, including those with disabilities, and their families once the children reach the age of three and the family exits the Early Head Start Program.

8. Describe the specific approaches for providing, either directly or through referral, ongoing well-baby and well-child health services such as early and periodic screening, diagnosis, treatment, immunizations, nutritional assessment, developmental surveillance and anticipatory guidance. In addition, describe the approach for ensuring that children are cared for in safe and hygienic environments.

9. Describe the approach for supporting family growth and development and explain the rationale for choosing the approach. Explain the framework of and procedures for developing each family's individualized plan. Explain how you intend to work with other service delivery systems which require a similar plan, such as the Part H Individualized Family Service Plan (IFSP), to ensure that the family only need to complete one plan and that one plan can be used by all relevant programs to ensure a seamless service delivery system for the child and family. Describe how your family development approach will assist families and individual family members in identifying, pursuing and achieving goals and overcoming obstacles on the way to achieving those goals.

10. Describe how the program will develop relationships with parents which promote their involvement with the program. Describe the strategy and the opportunities for parent involvement providing assurances that it meets or exceeds the parent involvement standards described in 45 CFR Part 1304 Instruction I–30, Section B–2, 70.2, the Parents. Explain what special efforts the program will make to reach out to and involve fathers.

11. Describe what services the program will provide, either directly or through referral, to promote adult and family health and wellness. Identify and explain the mental and physical health services which will be made available to and accessible by the parents, siblings and other significant family members of the infants and toddlers served by the program. Describe what the program will do to promote women's health and wellness prior to, during and after pregnancy. In addition, describe what the program will do to provide access to smoking cessation and substance abuse prevention and treatment services for affected families.

12. Describe what services the program will provide, either directly or through referral, to promote progress toward economic self-sufficiency for parents. Describe the program's approach for basic literacy training, adult basic education, employability skills training and job development and placement services.

13. Describe what assistance the program will provide, either directly or through referral, to families in obtaining needed income support, food, and decent, safe housing.

14. Identify the existing transportation resources available to families in reaching services provided at the program site and in off-site locations. Describe any transportation arrangements the program will make to ensure that families and children are able to access needed services.

15. Describe the program's approach to community building and explain the rationale for choosing the approach. Describe how the program will be coordinated with other programs and services in the community which serve pregnant women, infants, toddlers and their families and how the program will assist in the development of local community capability, expertise and commitment to carry out comprehensive service programs built around the needs of pregnant women and families with very young children. Describe any barriers to collaboration in your community and explain your strategy for addressing these. Identify by name specific providers, agencies and organizations with which the applicant will coordinate in order to carry out the requirements of this project. Applicants should furnish formal interagency agreements or contracts (if available) indicating which services will be provided to which program participants for what periods of time, by each of those provider agencies and/or organizations.

16. Describe linkages that the program will make with the following communities during the planning, implementation and operation of the program: Health and nutrition (e.g., public health departments and other

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health providers and programs including Title V, Supplemental Food Program for Women, Infants and Children (WIC) and Medicaid prenatal care services and the Medicaid Early and Periodic Screening, Diagnosis and Treatment program (EPSDT)); early intervention (e.g., Part H local lead agency or, if available, local interagency coordinating councils and University Affiliated Programs); mental health and substance abuse prevention and treatment; education (e.g., local preschool, child care, Head Start, and elementary schools); child care resource and referral agencies and their networks; business (e.g., the local Private Industry Council); parent groups; and other strength-building organizations.

17. Describe the approach to staff selection and explain the rationale for choosing the approach. Describe what staffing patterns and mix of staff qualifications and language/cultural competencies the program will require to ensure that staff, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide quality, comprehensive, inclusive and family-centered services to young children and families. Describe the process the applicant will use to identify and select individual staff—from directors to caregivers to data management staff—who demonstrate the personal characteristics, competencies and skills necessary to provide quality services and promote quality relationships with and among children, families, the community and other staff. Explain how the program will ensure that all infant/toddler caregivers are qualified, with sufficient grounding in infant/toddler development and care, and parent/caregiver relations prior to working with children and families enrolled in the program.

18. Describe the approach to staff development and the rationale for choosing the approach. Describe the training, technical assistance, and supervision that will be provided to ensure continued enhancement of staff skills and teamwork. Describe how training and technical assistance opportunities will be coordinated with other service providers in the community so that Early Head Start both provides and benefits from the knowledge, expertise, and training opportunities of other relevant community programs and service delivery systems. Describe how the program will ensure that staff are knowledgeable about the rights of children with disabilities and are capable of providing such infants and toddlers with high quality care in a supportive and developmentally appropriate environment.

19. Identify and explain the management and continuous improvement plan(s) for implementing the program. Include: An outline of the time frames and milestones for all key activities that the program will engage in during the first year of operation, as well as a preliminary outline of time frames and milestones for key activities in the remaining years of the project; a description of the procedures for assessment of progress toward stated objectives including how collection of data on the results and benefits identified in Part III, Section B will contribute to a process of continuous improvement within the program and the sponsoring agency; a description of how an automated information system will become an integral component in the management and continuous improvement of the program; a description of how confidentiality of user data will be maintained; a description of the applicant's capacity (e.g. facilities, administrative and support personnel, etc.) to support the program at the proposed target enrollment size; a description of the strategy for reducing staff turnover; and a description of how the program will go about establishing a Policy Council (as described by Head Start Regulation, 45 CFR part 1304) and a Health Services Advisory Committee (as described by Head Start Regulation, 45 CFR part 1304).

D. Staff Background and Organizational Experience

1. Describe the applicant's experience in providing comprehensive child development and family development services to families with infants and toddlers, as well as the applicant's experience in collaborating with local, State and Federal partners. Describe the applicant's history and relationship with the target community. Include a complete discussion of relevant program, administrative and fiscal management experience.

2. If the applicant represents a consortium of partner agencies, explain the relevant background of each partner and the partners' experience in planning and implementing programs to serve children and families. Each partner must provide a letter of commitment which authorizes the applicant to apply on behalf of the consortium.

3. Identify and provide a brief description of key staff who are proposed to work in the program and indicate their educational training and experience working with similar programs. Provide resumes. Build on the answer to Part III, Section C, Number 17 by explaining how these particular staff persons comprise a multi-disciplinary team of experts. In addition, explain how the ethnic and racial composition and language proficiencies of these particular staff persons is reflective of the community where the program is located.

4. Describe the expertise the organization will utilize in conducting the formative evaluation and continuous improvement activities described in Part II, Section H, Number 3. Describe the experience of and provide resumes from the individuals who will assist the program with continuous improvement and formative evaluation activities.

5. Provide assurances that the applicant will cooperate with a multi-site evaluation contractor and any other contractor the ACF may fund to provide management support or technical assistance services to Early Head Start programs.

E. Budget Appropriateness

1. Provide two detailed, line-item budgets: one that accounts for all relevant start-up and operating costs to be incurred in the first year of the project and one that reflects ongoing operating costs. In the proposed budgets, applicants must set aside sufficient funds so that 5 staff can travel to Washington, D.C. for two annual meetings to be convened by ACYF (i.e., 5 staff × 2 trips = 10 trips). Each budget should include the required non-Federal share of the cost of the project (See Part II, Section F).

2. Describe how these budgets reflect high quality, ongoing services provided at a reasonable cost. Include discussions on the appropriateness of staff compensation levels and funds set aside to promote staff development (programs are encouraged to set aside up to 10% of the annual budget for staff development purposes), costs associated with special equipment needs and the removal of architectural barriers for disabled families and children, renovation costs associated with providing environments conducive to the high quality provision of child and family development services, costs associated with family transportation and emergency resource needs, etc. Explain what efforts the applicant has made or will make to secure other community cash and in-kind resources, besides those shown in the budgets, and what additional resources will be used to support the provision of Early Head Start services to children and families.

Part IV. Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under Part III of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following five criteria. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

A. Criterion 1. Objectives and Need for Assistance (15 Points)

The extent to which, based on community assessment information, the applicant identifies any relevant physical, economic (e.g., poverty in the community), social, financial, institutional, or other issues which demonstrate a need for the Early Head Start program; in addition, the extent to which the applicant identifies the strengths of the community the project will serve. The extent to which the applicant lists relevant program objectives that adequately address the strengths and needs of the community. The extent to which the applicant describes the population to be served by the project and explains why this population is most in need of the program. The extent to which the applicant gives a precise location and rationale for the project site(s) and area(s) to be served by the proposed project.

Information provided in response to Part III, Section A of this announcement will be used to evaluate applicants on this criterion.

B. Criterion 2. Results or Benefits Expected (10 Points)

The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives. The extent to which the applicant describes the kinds of data to be collected and how it will be utilized to measure progress towards the stated results or benefits. The extent to which the applicant describes how the lessons learned from the program will benefit national policy, practice, theory and research.

Information provided in response to Part III, Section B of this announcement will be used to evaluate applicants on this criterion.

C. Criterion 3. Approach (50 Points)

The extent to which the applicant outlines a workable plan of action which relates to the four Early Head Start program cornerstones (see Part I, Section F or Appendix C), reflects the nine program principles (see Part I, Section E or Appendix C), and details how the proposed work will be accomplished. The extent to which the applicant explains why the approach chosen makes sense in light of the needs, objectives, results and benefits described above. The extent to which the approach is grounded in recognized standards and/or guidelines for high quality service provision or is defensible from a research or "best practices" standpoint.

The extent to which the applicant's management plan demonstrates sufficient management capacity to implement a high-quality Early Head Start program.

Information provided in Part III, Section C of this announcement will be used to evaluate applicants on this criterion.

D. Criterion 4. Staff Background and Organizational Experience (15 Points)

The extent to which the proposed program director, proposed key project staff, and the organization's experience and history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope. The extent to which the organization's (and/or university/research organization partner's) experience demonstrates an ability to carry out the continuous improvement and qualitative evaluation activities described in Part II, Section H, Number 3.

Information provided in response to Part III, Section D of this announcement will be used to evaluate applicants on this criterion.

E. Criterion 5. Budget Appropriateness (10 Points)

The extent to which the program's costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes. The extent to which the salaries and fringe benefits reflect the level of compensation appropriate for the responsibilities of staff. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost. The extent to which the program has attempted to and/or succeeded in garnering cash or in-kind resources from other sources in the community.

Information provided in response to Part III, Section E of this announcement will be used to evaluate applicants on this criterion.

Part V. The Application Process

A. Availability of Forms

Eligible applicants interested in applying for funds must submit all of the required forms included at the end of this program announcement in Appendix A.

In order to be considered for a grant under this Announcement, an application must be submitted on the Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0043. A copy has been provided (see Appendix A). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their application.

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103–227, The Pro-Children's Act of 1994. A copy of the **Federal Register** notice which implements the smoking prohibition is included in the application kit.

B. Application Submission

Applicants submitting proposals should use the following format guidelines: Proposals should be organized according to the evaluation criteria located in Part IV of this **Federal Register** announcement. For each of the five specified criteria, applicants should provide information in response to the application requirements described in Part III of this announcement. These application requirements are cross-referenced by number in the last paragraph of each criterion. All persons

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who prepared sections of the proposal should be identified along with those sections, as well as identified according to their responsibilities with regard to the proposed program.

One signed original and two copies of the grant application, including all attachments, are required. The program announcement number [ACYF–HS–93600.952] must be clearly identified on the application. Each application must be limited to no more than 125 double-spaced pages of program narrative (not including the forms which make up the SF–424 and resumes) including the one-page project summary. If the narrative portion of the application is more than 125 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers. The attachments/appendices to each application must be limited to no more than 100 pages. If the attachments/appendices to each application are more than 100 pages, the other pages will be removed from the application and not considered by the reviewers.

The application must be paginated beginning with the Form 424 and also contain a table of contents listing each section of the application with the respective pages identified. Only one application per applicant will be accepted.

C Application Consideration

Applicants will be scored against the evaluation criteria described above. The review will be conducted in Washington, DC by a panel consisting of experts in the areas of child and family development and other related fields.

To further inform the Associate Commissioner of the Head Start Bureau and the Commissioner of ACYF, representatives from the Federal government may conduct site visits to programs whose applications fall within a certain range of competitive rankings (i.e., all programs which have made the "first cut", but which the Commissioner of ACYF will not approve without additional data). This site visit will take place following the competitive review and before the award decision for the purpose of obtaining additional information, clarifying programmatic strategies and other issues which surfaced in the applications, and identifying any problem areas needing to be resolved.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, in recommending the project to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. An application may be funded in whole or in part, depending on the relative need for services, applicant ranking, geographic location and funds available.

The Commissioner may elect not to provide funding to applicants experiencing problems in providing quality services identified either through the panel review or the site visit.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—The narrative portion of the application does not exceed 125 double-spaced pages in a 12-pitch font with 1½ inch margins at the top and 1 inch at the bottom and both sides.
—Attachments/Appendices to the application do not exceed 100 pages. Attachments/appendices should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent/agreement. Please do not include books or video tapes as they are not easily reproduced and are therefore inaccessible to the reviewers. Each page should be numbered sequentially.
—A complete application consists of the following items in this order:

(1) Application for Federal Assistance (SF 424, REV.4–88);

(2) Table of Contents;

(3) Budget information—Non-Construction Programs (SF 424A&B REV.88);

(4) Budget justification for Section B—Budget Categories, including subcontract agency budgets;

(5) Project Summary (not to exceed one page);

(6) Application Narrative and Appendices;

(7) Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

(8) Assurances Non-Construction Programs;

(9) Certification Regarding Lobbying;

(10) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88).

E. Due Date for the Receipt of Applications

Deadlines: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline date at the address or receipt point specified in this program announcement. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline date. (Applicants are cautioned that postmarks *will not* be considered as a methodology for meeting the deadline.)

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions areas need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to the ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, OFM/DDG 6th Floor East, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of Single Points of Contact for each State and territory is included as Appendix B of this announcement.

H. Closing Date

The closing date for submission of applications is May 31, 1995.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: March 10, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

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APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

7. TYPE OF APPLICANT (enter appropriate letter in box) ☐

A State H Independent School Dist
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify)

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF
Start Date	Ending Date	a. Applicant / b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Line 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, your will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

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U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, a failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0340-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

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Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Appendix B

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW, Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

Appendix C—The Statement of the Advisory Committee on Services for Families With Infants and Toddlers

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Background, Vision, and Goals
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Overview

All children from birth to age three need early child development experiences that honor their unique characteristics and provide love, warmth, and positive learning experiences; and all families need encouragement and support from their community so they can achieve their own goals and provide a safe and nurturing environment for their very young children. This recognition is guiding the design of the new Early Head Start program.

Early Head Start marks a turning point in America's commitment to our youngest children and their families. By focusing on child development, family development, community building, and staff development a new era of support to very young children and their families is born, building on the experiences and lessons learned from existing Head Start programs.

Early Head Start puts resources into a constellation of high quality supports and services that will promote healthy child and family development, and backs them with a Federal commitment to training, standards and monitoring for high quality, research and evaluation, and services coordination at the national level. It enables families and communities to design flexible and responsive programs but requires that, at a minimum, programs provide child development, family support, health services for young children and pregnant women, and home visits to families with newborns. This would include child care services that respond to the needs of families. When services are provided through referral, it requires that the Early Head Start program assures the services to which families are referred are of highest quality, available and accessible, and that needed followup occurs. And although service delivery mechanisms may vary, a common characteristic will be that each Early Head Start program will establish a place which is recognized as a source of support for very young children, families, and caregiving staff. Programs will be encouraged to give this Early Head Start place visibility and identity.

With this design, the Early Head Start program will be suited to last well into the next century, always reshaping itself to provide high quality, responsive, and respectful services to America's youngest children and their families.

Background, Vision, and Goals

The reauthorization of the Head Start Act in 1994 made it possible to formally open a new chapter of Federal support for families with infants and toddlers by establishing a special initiative within the context of the Head Start program. Beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants to Early Head Start programs which will provide early, continuous, intensive, and comprehensive child development and family support services to low-income families with children under age three. This initiative will bring together under one umbrella Head Start's existing programs for families with infants and toddlers, the Comprehensive Child Development Program and the Parent and Child Centers; strengthen the Migrant Head Start Program; and add new resources to model high quality child development and family development services for very young children and their families.

To help with the design of the new initiative, the Secretary formed the Advisory Committee on Services for Families with Infants and Toddlers. The Committee was charged with advising the Secretary and Assistant Secretary for Children and Families on the development of program approaches for the initiative that would address the parenting and child development needs of low-income parents and their infants and toddlers. We were to pay particular attention to the key principles and array of models of effective culturally and developmentally appropriate service delivery. To fulfill this commitment, we met three times during the summer of 1994 to engage in discussions about our vision for a national approach to high quality, responsive services for very young children and their families. We outlined the Federal role for carrying forth this vision, ensuring such programs can flourish.

We are excited about the fruits of these deliberative efforts and confident that the resulting initiative will advance Head Start leadership in realizing a national vision of communities where:

► *children*, from birth, receive support through their family and their community to achieve optimal growth and development and build a foundation of security, self-confidence,

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and character strength which will in turn enable them to build successful social relationships for learning and continued development through later childhood and adulthood;

► *families* receive support to meet their personal goals, and resources and guidance to prepare for their child's birth and provide a warm, caring, responsive environment for their very young child;

► *communities* embrace and support all families, celebrating the birth of their children and creating an environment where support and resources are mobilized to ensure a comprehensive, integrated array of services are available and accessible for all very young children and their families; and

► *staff* receive the professional education and personal support they need to provide high quality environments and experiences and engage in responsive relationships that promote the healthy development of infants, toddlers, and their families.

In keeping with this vision, the goals set forth by the Advisory Committee for Early Head Start will be:

► To provide safe and developmentally enriching caregiving and environments which promote the physical, cognitive, social and emotional growth of *infants and toddlers* and prepare them for future growth and development;

► To support *parents*, both mothers and fathers, in their role as primary caregivers and educators of their children, and *families* in meeting personal goals and achieving self-sufficiency across a wide variety of domains;

► To mobilize *communities* to provide the resources and environment necessary to ensure a comprehensive, integrated array of services and support for families, and to foster the systems change necessary to summon forth the guiding vision of this initiative; and

► To ensure the provision of high quality responsive services to families with infants and toddlers through the development of highly-trained, caring and adequately compensated program *staff*.

The Advisory Committee recognizes that the vision and goals outlined above have also been shaped by the lessons learned from the Comprehensive Child Development Program, Parent and Child Centers, Migrant Head Start Programs, locally designed Head Start programs, and other early child development and family support efforts serving families with very young children. As part of the overall consultation for the development of this initiative, Federal staff conducted over 30 focus groups with parents, practitioners, researchers, advocates, and representatives of professional organizations. Focus groups were designed to address topical areas such as child care, family services, health care, support and services for children with disabilities and their families, community mobilization, parent involvement and parent advocacy. In addition, Federal staff met with or received materials and recommendations from a number of other experts and practitioners in the field. The suggestions, guidance, and information received through this process have been invaluable to both the Advisory Committee and the Administration on Children, Youth and Families.

Research Rationale

Findings from more than three decades of research in child and family development support the vision and goals set forth for support to families with infants and toddlers. We know that the time from conception to age three is a critical period of human development, as change occurs more rapidly than in any other period of the life span. Growth in these early years establishes the basic foundation for future development. For infants and toddlers to develop optimally, they must have healthy beginnings and the continuity of responsive and caring relationships. Together, these supports help promote optimal cognitive, social, emotional, physical, and language development. When these supports are missing, the immediate and future development of the child may be compromised. Fortunately, recent research identifies characteristics of effective programs that enhance both child and family development. This growing body of knowledge provides a solid base upon which the Early Head Start program can be founded.

Maternal and Infant Health

Maternal and infant health are essential for ensuring normal pre- and post-natal development of very young children. Late or inadequate prenatal care, malnutrition, stress and exposure to harmful substances are associated with shortened gestation, reduced birthweight, birth defects and underdeveloped brain growth (Osofsky, 1975; U.S. Department of Health and Human Services, 1989; Carnegie Corporation, 1994). These, in turn, have been associated with higher probabilities for infant mortality, illness, disabilities, child abuse, difficulty in relationships (Glasgow and Overall, 1979) and subsequent learning disorders (Drillien, Thomson and Bargoyne, 1980). During the early years of life, proper nutrition, routine well-child health care, timely immunizations, safe environments and health-promoting behaviors are necessary to support physical growth and development.

Given the paramount importance of health for very young children, a major focus of the Early Head Start program must be to ensure women receive the health services needed to promote a healthy pregnancy and birth, and very young children receive early and ongoing well-baby care, immunizations, and other essential health services to support their development.

Child-Caregiver Relationships

The child-caregiver relationships with the mother, father, grandparent and other caregivers are critical for providing infants and toddlers support, engagement, continuity and emotional nourishment necessary for healthy development, and the development of healthy attachments (Ainsworth, Blehar, Waters and Wall, 1978). Within the context of caregiving relationships, the infant builds a sense of what is expected, what feels right in the world, as well as skills and incentives for social turn-taking, reciprocity and cooperation (Emde, Biringen, Clyman and Oppenheim, 1991; Isabella and Belsky, 1991). The infant's activities are nourished and channeled in appropriate ways so as to encourage a sense of initiative and self-directedness. During the toddler period, the child, through repeated interactions with emotionally-available caregivers, also begins to learn basic skills of self-control, emotional regulation and negotiation (Kochanska, 1991; Kopp, 1989; Suess, Grossman and Sroufe, 1992). Empathy for others and prosocial tendencies for caring and helping also develop during toddlerhood as well as the emotions of pride and shame; experiencing and learning about these capacities require responsive caregiving relationships in the midst of life's inevitable stresses and challenges (Zahn-Waxler and Radke-Yarrow, 1990).

A sense of pleasure, interest in exploration, early imaginative capacities, and the sharing of positive emotions also begin in infancy—all of which require repeated and consistent caregiver relationship experiences and form a basis for social competence that carries through toddlerhood and the preschool period (Emde, 1989; Dix, 1991). The opportunities for play for both infant and caregiver, as well as the skills that develop from play, are often under-appreciated aspects of healthy development (Bruner, 1986; Elicker, Englund and Sroufe, 1992).

Finally, the importance of promoting a network of healthy caregiving relationships for the very young child cannot be overstated (Crockenberg, 1981; Egeland, Jacobvitz and Sroufe, 1988; Sameroff and Emde, 1989; Tronick, Winn and Morelli, 1985). The network of caring relationships provides an ever-expanding circle of support for both child and family. Factors that undermine optimal child-caregiver relationships include isolation, lack of support and maternal depression (Crnic, Greenberg, Robinson and Ragozin, 1984), the latter reported to be as high as 56% in some samples of low-income new mothers (Hall, Gurley, Sachs and Kryscio, 1991). In child care settings, high staff turnover, low staff wages, low quality programming and lack of adequate staff training for substitute caregivers negatively affects the quality of child-caregiver relationships (Zigler and Lang, 1991; Whitebook, Howes and Phillips, 1989). This in turn further compromises the nature and quality of the child's overall development.

Thus, it follows that a major focus for Early Head Start services should be the development of healthy and skillful relationship building between very young children and their parents and caregivers that encourages interactions and promotes attention and activity in infants. Hence, opportunities for sustained relationship-building over extended periods of times will be an explicit goal throughout the program.

Characteristics of Successful Programs Serving Families with Infants and Toddlers

The goal of many early child development programs is to enable the child, with the support of the parents as primary caregivers and other caregivers, to establish a developmental path that will prepare him or her for long-term success. Hundreds of programs with a variety of specific emphases have sought to achieve this goal. From these many interventions, a picture of the critical ingredients for successful programs has emerged. In short, we know effective programs often are characterized by: early prenatal services to the expectant woman (Olds, Henderson, Tatelbaum and Chamberlin, 1986); a two-generational focus (Zuckerman and Brazelton, 1994; Administration on Children, Youth and Families, 1994; Ramey and Campbell, 1984; Brooks-Gunn, Klebanov, Liaw, Spiker, 1993); family-centered services that address self-sufficiency through the provision of social services and parent education (Booth, Barnard, Mitchell and Spieker, 1987; Olds, Henderson, Tatebaum and Chamberlin, 1986; Olds, Henderson, Tatebaum and Chamberlin, 1988); quality child development services that are coupled with family services (Lally, Mangione and Honig, 1987; Brooks-Gunn, Klebanov, Liaw and Spiker, 1993); continuity of service delivery for the child and family that ensures the availability of support over a number of years with smooth transitions to other service delivery systems (Campbell and Ramey, 1994); continuity of caregivers (Howes and Hamilton, 1992); intensity of service delivery in terms of availability, accessibility, and usage of services (Booth, Barnard, Mitchell and Spieker, 1987; Ramey, Bryant, Wasik, Sparling, Fendt and LaVange, 1992); and consolidation or integration of service delivery systems. Further, research tells us that communities have been found to become more responsive to the needs of low-income families as a result of program activities (Kirschner, 1970).

Clearly, research over the past three decades has shown that when programs focus on both child development and family development through early, high quality, comprehensive, continuous, intensive services, opportunities for optimal child and family development can be realized, even for the most vulnerable families and very young children. The challenge for the Administration on Children, Youth and Families and the programs which will receive funds through this initiative is to translate these research findings into the design and operation of high quality programs so all families with young children served by Early Head Start will be able to grow and prosper. The following principles and cornerstones establish the framework for this to occur.

Program Principles

In recognition that each child is an individual who is supported by a family and that families are supported by neighborhoods and communities, the Advisory Committee recommends that programs funded under the new initiative be encouraged to develop a range of strategies for supporting the growth of the very young child within the family and the growth of the family within the community. Thus, each Early Head Start program should be family-centered and community-based. We recommend that the following principles serve as the conceptual foundation for Early Head Start:

► *High Quality:* Commitment to excellence will enable the new programs to be models for services to families with infants and toddlers from all socioeconomic strata of society. High quality will be assured in the direct services provided, and in the services provided through referral. To this end, each program will acknowledge and utilize the bodies of knowledge, skills and professional ethics surrounding the fields of child development, family development and community building. In particular, programs will recognize that the conception-to-three age period is unique in both the rate of development and in the way young children's physical and mental growth reflects and absorbs experiences with caregivers and the surroundings. Thus, high quality caregiving practices will spring from the healthy awareness that the unique nature of infant and toddler development not only carries with it major opportunities for intervention, but also leaves children especially vulnerable to negative inputs. The Federal government will share in the commitment to high quality by providing thorough and ongoing monitoring to assure program adherence to performance standards; technical assistance that addresses each program's individual needs and amplifies innovation and development across all programs; evaluation which measures program success against meaningful outcomes for young children and families; and research which contributes to the state of the art on child development, family development and community building.

► *Prevention and promotion:* Recognizing that windows of opportunity open and close quickly for families and young children, programs will seek and pursue opportunities to play a positive role in promoting the physical, social, emotional, cognitive and language development of young children and families before conception, prenatally, upon birth, and during the early years. By supporting the promotion of their health and well-being, program staff will be able to prevent and detect problems at their earliest stages, rallying the services needed to help the child and family anticipate and overcome problems before they interfere with healthy development. While early and proactive promotion of healthy development and healthy behaviors will be emphasized, programs will also need to be able to understand and respond to family crises that may occur while the family is enrolled in the program.

► *Positive Relationships and Continuity:* The success of each program will rest on its ability to support and enhance strong, caring, continuous relationships which nurture the child, parents, family, and caregiving staff. Programs will support the mother-child, father-child bond by recognizing each

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parent as his or her child's first and primary source of love, nurturance and guidance. Caregiving will be provided to families who need it in ways that support infant and toddler attachment to a limited number of skilled and caring individuals, thus maintaining relationships with caregivers over time and avoiding the trauma of loss experienced with frequent turnover of key people in the child's life. These relationships will aim to respectfully enhance child interest, curiosity, play and imagination, which, in turn, will develop a shared sense of trust, confidence and esteem for both caregiver and child. In addition, programs will model strong, mutually respectful relationships between staff and families, among staff, and with other community organizations and service providers. To do so, programs will be receptive to individual strengths, perspectives and contributions; affirm the value of the child and family's home culture; and support an environment where very young children, parents and staff can teach and learn from each other.

► *Parent Involvement:* As in all Head Start efforts, a hallmark of the new initiative will be the creation and sustenance of an environment that supports the highest level of partnership with parents, both mothers and fathers. As such, programs will support parents as primary nurturers, educators, and advocates for their children; assure that each parent has an opportunity for an experience that supports his or her own growth and goals, including that of parenting; and provide a policy- and decision-making role for parents. Furthermore, opportunities for parent involvement will encourage independence and self-sufficiency for parents. Special efforts will be made to welcome and support fathers as parenting partners.

► *Inclusion:* Program will seek to build communities that respect each child and adult as an individual while at the same time reinforcing a sense of belonging to the group. Programs will support participation in community life by young children with disabilities and their families; families of very young children with significant disabilities will be fully included in all program services.

► *Culture:* Children and their families will come to the new programs rooted in a culture which gives them meaning and direction. Programs will demonstrate an understanding of, respect for, and responsiveness to the home culture and home language of every child, thus affirming the values of each family's culture and providing the context for healthy identity development in the early years of life. Program staff will become aware of their own core beliefs and values and be attuned to the role culture and language play in child development, family development and the surrounding community values and attitudes. Programs will pursue opportunities to support home culture and language, while also recognizing the significance of a common culture shared by all. In building a more harmonious and peaceful community for children to grow in and for families to share, programs will encourage and provide opportunities for families and community members to engage in dialogue about culture, language, cultural diversity and multiculturalism.

► *Comprehensiveness, Flexibility, Responsiveness, and Intensity:* Programs will honor and build upon the unique strengths and abilities of the children, families and communities they serve and continually adapt to meet emerging needs. Developmental opportunities provided to each infant and toddler will address the whole child and be continually adapted to keep pace with his or her developmental growth. And just as programs need to be responsive and attentive to the special needs of very young children with disabilities, they also need to be responsive to parents with disabilities. Family development planning and service provision will be grounded in the belief that families, including those whose problems seem overwhelming, can identify their own goals, strengths and needs, and are capable of growth and change. Once these are identified, program resources of varied intensity will be marshaled to support the whole family in an individualized and responsive manner. Barriers which prevent families from accessing needed supports will be overcome through the location, coordination, and assurance by program staff that services are provided and received. Attention will also be given to ensure programs meet the needs and schedules of working parents. Ultimately, each parent's sense of empowerment and ability to identify and address his or her family's needs will be fostered by responsive and caring relationships with program staff.

► *Transition:* Programs will be responsible for ensuring the smooth transition of children and their families into Head Start or other preschool programs which are of high quality and provide consistent and responsive caregiving. The Federal government must support both Early Head Start and Head Start programs in carrying out this responsibility. Transition is important for ensuring continued accessibility to enriching early child development experiences and for providing ongoing family support services that promote healthy family development. To facilitate this transition, parents and caregivers should jointly develop a family and child transition plan, identifying services which will continue and new services and programs which will be accessed. Caregivers from both Early Head Start and the new service programs will share responsibility for coordinating and implementing the plan.

► *Collaboration:* Recognizing that no one program will be able to meet all of a child's and family's needs, programs will initiate or become embedded in an integrated community system of service providers and strength building organizations such as churches and other religious institutions, schools and civic groups. These efforts will foster a caring, comprehensive and integrated community-wide response to families with young children, thus maximizing scarce financial resources and avoiding duplication of agency effort. Likewise, the Federal Government will promote systems change and the efficient use of resources through the active pursuit of local, State and Federal partnerships which enhance the capacity of local programs to collaborate and combine financial resources.

Program Cornerstones

The principles outlined above establish the foundation for Early Head Start, a program that meets child development, family development, and health related goals while striving to provide high quality, comprehensive, and individualized support and services. In order to accomplish this, the Advisory Committee recommends that the Secretary of Health and Human Services adopt these key elements as the four cornerstones for Early Head Start: child development, family development, community building, and staff development.

Child Development

Programs will seek to enhance and advance each child's development by providing individualized support that honors the unique characteristics and pace of infant/toddler physical, social, emotional, cognitive and language development, including early education and health care. Critical to this development is the promotion of positive parent-child interactions and the enhancement of each parent's knowledge about the development of their child within healthy, safe environments. An early step for

providing this support to parents will be the provision of home visits to families with newborns to offer early encouragement and support and build bridges for families to other resources in the community. Also critical to the child's development is access to and delivery of comprehensive health and mental health services for children, including regular child health care; screening for health problems such as hearing, anemia, lead poisoning, metabolic problems; immunizations; nutritional assessment; developmental surveillance and anticipatory guidance. All children deserve a medical home that provides these and other prevention and treatment services. To help facilitate this, Early Head Start programs will collaborate with a variety of organizations and disciplines to ensure health supervision for children and their families.

It is particularly important that Early Head Start ensure coordination and continuity of services for infants and toddlers with or at risk of a disability, who are eligible for services through Early Head Start and Part H of the Individuals with Disabilities Education Act. These two service systems should be coordinated and integrated so that families and their children experience a seamless system of services, as identified in their family development plan or individualized service plan.

As programs provide child development services, they must ensure that infants and toddlers who need child care receive high quality part- and full-day services. Such child care can be provided directly or in collaboration with other community providers as long as the Early Head Start program assumes responsibility for ensuring that all settings meet the Early Head Start performance standards.

In general, the setting where these services are delivered is left to local option and the preferences of families as identified through their individual family development plan. Settings can represent a range of options including home visiting; family support centers; family child care homes; child care centers; centers where families are engaged in education, training, or employment; community health centers; and others.

Family Development

Programs must recognize that the key to optimal child development and family development is the empowerment of parents in goal setting for themselves and their children. Therefore, families and staff will collaboratively design and update individualized family development plans which ensure that service delivery strategies are rooted in the foundation principles and are responsive to the goals and ideals of the families. When families are served by additional programs which also require an individualized family service plan, such as Part H of the Individuals with Disabilities Education Act and family employability plans, then a single coordinated plan should be developed so families experience a seamless system of services. Based on the plan, programs will ensure the provision of a full range of family services which consider the different support and educational opportunities needed by new parents, pregnant women and expectant fathers, and potential parents, as well as by siblings and extended family members who influence the development of the family and very young child.

It is particularly important that parental health is linked to children's health and development. As such, health services for parents need to be included as part of a two-generational model of health care. Health services must be accessible for parents with a special emphasis on women's health that occurs prior to, during, and after pregnancy.

Services which programs must provide directly or through referral, and which local Early Head Start programs must actively ensure are of high quality and appropriately followed up include: child development information; health services, including services for women prior to, during, and after pregnancy; mental health services; services to improve health behavior such as smoking cessation and substance abuse treatment; services to adults to support self-sufficiency, including adult education and basic literacy skills, job training, assistance in obtaining income support, food, and decent, safe housing, and emergency cash or in-kind assistance; and transportation to program services. Programs must provide direct opportunities for parent involvement in the program so that parents can be involved as decisionmakers, volunteers, and/or employees. Additional services not listed above, but identified by families through community needs assessments and mappings, may be provided either directly or through referral at local option.

Community Building

The commitment of programs to high quality care for very young children and their families serves as a catalyst for creating a community environment that shares responsibility for the healthy development of its children. A program approach that exemplifies openness and caring is the start of community building. Programs should function in communities in a way that mirrors the principles that are the foundation of the program itself: parents become a vital resources for each other and the community at large; staff nurture networks of support; and programs develop relationships of trust with other community institutions, businesses, and with community leaders. By becoming a key actor in the life of the community, programs can serve to mobilize community resources and energies on behalf of children and families.

Essential to community building is ensuring a comprehensive network of services and supports for very young children and their families which are culturally responsive. Programs will be expected to establish collaborative relationships with other community providers and strength-building organizations such as churches and other religious institutions, schools and civic groups. The goal of these relationships will be threefold: increased access to high quality services for program families; assurance that the program's approach to serving families with infants and toddlers fits into the existing constellation of services in the community so that there is a coherent, integrated approach to supporting families with very young children; and systems change which will spark community caring and responsive service delivery for all the families with young children who live there. Thus, all programs will be required to conduct an in-depth assessment of existing community resources and needs and engage in an ongoing collaborative planning process with a range of stakeholders, including parents and residents of the community.

Staff Development

Programs are only as good as the individuals who staff them. This is particularly true of programs which serve young children, since the potential to do harm during the vulnerable years of infancy and toddlerhood is so great. Thus, staff development has been included as a key element in order to underscore its centrality to the success of the initiative.

Programs will be required to select staff who, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide high quality, comprehensive, culturally appropriate, and family-centered services to young children and families. Equally critical will be each program's ability to recognize individuals capable

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of entering into one-to-one caregiving relationships with infants and toddlers which support the positive formation of their identities. Likewise, programs will need to identify the capacity of potential staff members to develop caring, respectful and empowering relationships with families and other coworkers. Such individuals will demonstrate characteristics such as high self-esteem, personal strength, and the capacity for being emotionally available. The program directors who make these selections will, themselves, need to possess these characteristics in addition to being highly skilled administrators who exemplify leadership qualities such as integrity, warmth, intuition and holistic thinking.

Ongoing staff training, supervision and mentoring of both line staff and supervisors will be an integral part of staff development. Such training, supervision, and mentoring will reflect an interdisciplinary approach and emphasis on relationship building. Staff training programs will ensure that staff are "cross-trained" in the areas of child development, family development and community building. Particular emphasis will be placed on building skills in the areas of home visiting; caregiving relationships; effective communication with parents; family literacy; healthy/safe environments and caregiving practices; early identification of unhealthy behaviors or health problems; service coordination; and the provision of services and support to diverse populations, including families and children with disabilities and developmental delays. In addition, training efforts and supervision will be designed to develop each staff person's capacity to function as a member of a well-integrated, diverse and mutually supportive team comprised of families and other staff. To this end, training and supervision will support opportunities for practice, feedback and reflection. Another strategy for training is the development of multi-disciplinary teams of caregivers who can engage in team teaching, sharing concerns and problems, exploring different approaches, and learning practical skills for working with participants of the program and service providers from other relevant delivery systems. As such, training will model and reinforce the foundation principles of this initiative.

And finally, staff selection, training and supervision will be grounded in the knowledge that high quality performance and development occurs when they are linked to rewards such as salary, compensation, and career advancement; provided in environments that spark curiosity, excitement and openness to new ideas; and grounded in best practices revealed by ongoing research, evaluation and monitoring.

Federal Commitment

Both individual programs and the Federal government must work hand in hand to realize the vision, principles, and program concept outlined above the Early Head Start program. The Advisory Committee believes that a Federal commitment to training, monitoring, research and evaluation, and partnership building which respects and supports local program responsibility, initiative, and flexibility is paramount for the programs' success. In addition, Federal commitment is also needed to support and learn from existing Federal programs serving families with infants and toddlers so that they will have the opportunity to achieve excellence and meet the standards that will be set forth for this initiative. With this commitment, we feel the initiative for families with infants and toddlers will be able to serve as a national laboratory both testing and exemplifying quality child development and family development programs.

Training

Clearly the quality of programs is contingent upon the ongoing support and development of program staff who are trained in the various disciplines which support the principles of family-centered services. As described earlier, program staff need to be able to facilitate both the development of very young children and the development of families. But in too many communities, staff who can play this dual role are few or nonexistent.

The Advisory Committee urges the Secretary to engage in public-private partnerships aimed at establishing a cadre of highly trained practitioners and trainers who will be able to support the development of very young children and their families. Such an effort should extend beyond the scope of the new initiative for families with infants and toddlers, so that children cared for in a variety of settings will benefit from this commitment to enhancing the quality and quantity of caregivers. An example of such a partnership would be a commitment on the part of the Federal government to work with institutions of higher learning to ensure multi-disciplinary pre-service education and field work experience is available for students who wish to work in family-focused programs serving very young children and their families. Another example would be partnering with the foundation or philanthropic community to develop scholarship programs for low-income students desiring but unable to enter the field. A further example is coordinating with organizations of professional trainers to ensure they have the skills, resources and supports needed to work with programs providing early, continuous, intensive and comprehensive services and support to very young children and their families.

When designing the specific training and technical assistance plan for Early Head Start, the Federal government must focus on the whole spectrum of support and services that are needed for developing and advancing high quality staff, from pre-service and in-service training to supervision and monitoring. These supports and services must be provided in a continuous, holistic, responsive manner with the goal of building and nurturing the highest quality caregiving in all programs.

In addition to the focus on training, the Federal government also needs to take the lead in modeling a commitment to and respect for the importance of the caregiving profession. Given this, the Advisory Committee urges the Secretary to implement the Early Head Start program so that it models appropriate competencies, institutionalization of career ladders for staff working within the programs, and provision of staff salaries that are comparable to the importance of the job.

Monitoring

All programs need support and guidance to engage in continuous improvement. As directed by the legislation, the Secretary of the Department of Health and Human Services must provide this support and guidance through ongoing monitoring of the operation of these programs, evaluating their effectiveness, and providing training and technical assistance tailored to the particular needs of such programs.

The Advisory Committee reminds the Secretary that performance standards must be developed and issued in order to set forth the expectation of high quality services and environments for programs serving families with infants and toddlers. It is recommended that there be consistency in the principles and framework of the Early Head Start and Head Start performance standards, with the goal being a seamless approach to Federal performance standards for children from birth to age five. While the goal should be a seamless approach, clearly the content of the standards will vary to reflect the differences in development of children during this age span. Once these are issued, monitoring should become a tool for both measuring progress toward these high quality standards and for engaging in continuous improvement.

Research and Evaluation

Evaluation of Early Head Start is essential for determining the effectiveness of the initiative and for advancing our understanding about which services work best for different families under different circumstances. Evaluation data and information collected at the local level as part of management information systems and ethnographic research are helpful to provide ongoing feedback to programs and support staff in packaging and delivering a comprehensive array of services which are responsive to and reflective of the individual needs of very young children and their families.

The Advisory Committee believes that the Secretary must approach evaluation not just as a mechanism for producing summary statistics and reports about the changes in child and family development as a result of these new efforts, but as a tool for individual programs so that they can continuously refine their practices based on feedback from their own program evaluation. This feedback is essential to identify the particular conditions and activities that enable parents and other caregivers to most successfully support children's development. It is also essential to test and refine as appropriate the quality of planning, training, staff selection, supervision and program management that is crucial to program success. These lessons learned will benefit local Early Head Start programs, add new knowledge to the fields of child and family development, and will help shape future efforts at the Federal level for very young children and their families.

In keeping with the Head Start national laboratory role, we encourage research that examines variations in Early Head Start experiences on child development to learn more about the effectiveness of different interventions for very young children and their families. Accordingly, we encourage the testing of new models which might focus on linkages between this initiative and welfare reform, special coordination with Part H of the Individuals with Disabilities Education Act, or efforts to support teen parents who are either in school or training. Equally important will be research that identifies features of intervention which optimize relationship building, and research that examines variations in caregiving experiences as they influence child development.

We also recommend that research and evaluation for this initiative be part of an overall research agenda for Head Start which places Head Start in the broader context of research on young children, families, and communities; ensures a commitment to ongoing themes; and has the flexibility to respond to new and emerging developments in the broader early childhood and family development fields.

Partnership Building

Just as local programs will be required to coordinate services in the State and community to ensure a comprehensive array of services, the Federal government must also build partnerships across programs, agencies and departments to facilitate effective integration and coordination of resources and services.

The Advisory Committee points out that it is especially important that the Head Start Bureau work with the U.S. Maternal and Child Health Bureau and the Medicaid program to enhance the availability of and access to comprehensive health services for pregnant women, and very young children and their families. The Advisory Committee particularly recommends Federal leadership in the development of services that are scarce in communities, such as mental health services that meet the needs of families with infants and toddlers. It is equally important that linkages be made with the U.S. Department of Education, Office of Special Education and Rehabilitative Services and the Federal Interagency Coordination Council so that there is a clear message from the Federal government about the importance of partnership around early intervention at the Federal, State and community levels, especially between this initiative and Part H of the Individuals with Disabilities Education Act. The formation of a single Federal Interagency Coordination Council to address services for families with infants and toddlers who are served by Head Start and/or by Part H is recommended. Further, the Head Start Bureau is advised to develop partnerships with the National Institute of Child Health and Development and the National Institute of Mental Health so that programmatic and research activities can be coordinated and the results benefit and influence the work of all institutions.

Beyond coordination and partnership building among the many programs, agencies, and departments of the Federal government, the Advisory Committee advises the Head Start Bureau to continue consultation with professional organizations from relevant child and family development disciplines. Such consultation will help staff of the Head Start Bureau learn about emerging knowledge and apply this to the planning, implementation, and evaluation of this and other programs.

Finally, it is equally important that the Head Start Bureau re-evaluate its own regulations and procedures to support local creativity and responsiveness to the needs of very young children and their families. As a first step, the Advisory Committee recommends that the Secretary explore opportunities for Early Head Start programs to combine these resources with other public and private funding sources in order to serve more very young children and their families who might benefit from Early Head Start services and support. This is especially important as many Advisory Committee members feel that all children within a very low income community should be afforded access to these services. By allowing and encouraging Early Head Start communities to partner with other funding streams, it may be possible in some communities to provide access to most or all families with very young children

Funding

All of the above issues—from the principles to the program concept and Federal commitments—are moot when there are not adequate resources to develop and sustain high quality in each program. Advisory Committee members see the role of Early Head Start as a national laboratory and catalyst for change. The members point out that a Federal commitment is needed to ensure that resources are available in the short- and long-term to support the provision of high quality, well-integrated services.

Conclusion

Early Head Start represents a new era of support for America's youngest children and their families. It sets forth a vision that honors the unique strengths of very young children, their families and communities, and the staff who work with them. It calls for programs to provide family-centered and community-based services and supports that are individualized, of highest quality, and that promote positive health and development. And it commands significant attention at the Federal level for training, technical assistance, monitoring, and research and evaluation to ensure these programs can flourish.

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The members of the Advisory Committee on Services for Families with Infants and Toddlers are proud to set forth this vision and implementation design for Early Head Start. We call on the Secretary and the nation to move ahead rapidly with a series of steps to make this vision a reality. So much is at stake for our youngest children and their families.

References

Administration on Children, Youth and Families (1994). *Comprehensive Child Development Program—A national family support demonstration. Interim Report to Congress.* Washington DC: U.S. Department of Health and Human Services.

Ainsworth, M.S.B., Belhar, M.C., Waters, E., & Wall, S. (1978). *Patterns of attachment: A psychological study of the strange situation.* Hillsdale, NJ: Erlbaum.

Booth, C.L., Barnard, K.E., Mitchell, S.K. & Spieker, S.J. (1987). Successful intervention with multi-problem mothers: Effects on the mother-infant relationship. *Infant Mental Health Journal, 8–3* 288–206.

Brooks-Gunn, J., Klebanov, P.K., Liaw, F. & Spiker, D. (1993). Enhancing the development of low birth-weight, premature infants: Changes in cognition and behavior over the first three years. *Child Development, 64,* 736–753.

Bruner, J.S. (1986). *Actual minds, possible worlds.* Cambridge, MA: Harvard University Press.

Campbell, F.A. & Ramey, C.T. (1994). Effects of early intervention on intellectual and academic achievement: A follow-up study of children from low-income families. *Child Development, 65–2,* 684–698.

Carnegie Corporation of New York (1994). *Starting points: Meeting the needs of our youngest children.* New York: Carnegie Corporation.

Crnic, K.A., Greenberg, M.T., Robinson, N.M. & Ragozin, A.S. (1984). Maternal stress and social support: Effects on the mother-infant relationship from birth to eighteen months. *American Journal of Orthopsychiatry, 54,* 224–235.

Crockenburg, S. (1981). Infant irritability, mother responsiveness, and social support influences on the security of infant-mother attachment. *Child Development, 52,* 656–665.

Department of Health and Human Services (1989). *Caring for our future: The content of prenatal care.* Washington, DC.

Dix, T. (1991). The affective organization of parenting: Adaptive and maladaptive processes. *Psychological Bulletin, 110,* 3–25.

Drillien, C.M., Thomson, A.J.M., & Bargoyne, K. (1980): Low birth weight children at early school-age: A longitudinal study. *Developmental Medicine and Child Neurology, 22* 26–47.

Egeland, B., Jacobvitz, D., & Sroufe, L.A. (1988). Breaking the cycle of abuse: Relationship predictions. *Child Development, 59,* 1080–1088.

Elicker, J., Englund, M., and Sroufe, L.A. (1992). Predicting peer competence and peer relationships in childhood from early parent-child relationships. In R. Parke & B. Ladd (Eds.), *Family-peer relationships: Modes of linkage.* Hillsdale, NJ: Erlbaum.

Emde, R.N. (1989). The infant's relationship experience: developmental and affective aspects. In A.J. Sameroff & R.N. Emde (Eds.), *Relationship disturbances in early childhood: A developmental approach.* New York: Basic Books.

Emde, R.N., Biringen, Z., Clyman, R.B., & Oppenheim, D. (1991). The moral self of infancy: Affective core and procedural knowledge. *Developmental Review, 11,* 251–270.

Glasgow, L.A. & Overall, J.C., Jr. (1979). The fetus and neonatal infant: Infections. In V.C. Vaughan, R., J. McKay & R.E. Behrman (Eds.), *Nelson textbook of pediatrics* (11th ed.) (pp. 486–496). Philadelphia: W.B. Saunders.

Hall, L.A., Gurley, D.N., Sachs, B. & Kryscio, R.G. (1991). Psychosocial predictors of maternal depressive symptoms, parenting attitudes and child behavior in single parent mothers. *Nursing Research, 40,* 214–226.

Howes, C. & Hamilton, C.E. (1992). Children's relationships with child care teachers: Stability and concordance with parental attachments. *Child Development, 63,* 867–878.

Isabella, R.A. & Belsky, J. (1991). Interactional synchrony and the origins of infant-mother attachment: A replication study. *Child Development, 62,* 373–384.

Lally, J.R., Mangione, P.L. & Honig, A.S. (1987). Long-range impact of an early intervention with low-income children and their families. *Parent education as early childhood intervention: Emerging directions in theory, research, and practice.* Norwood, NJ: Ablex Publishers.

Kirschner Associates. (1970). *A national survey of the impacts of Head Start Centers on community institutions.* Washington, DC: Office of Health, Education and Welfare.

Kochanska, G. (1991). Socialization and temperament in the development of guilt and conscience. *Child Development, 62,* 1379–1392.

Kopp, C.B. (1989). Regulation of distress and negative emotions: A developmental view. *Developmental Psychology, 25,* 343–354.

Olds, D.L., Henderson, C.R., Tatelbaum, R., & Chamberlin, R. (1988). Improving the life-course development of socially disadvantaged mothers: A randomized trial of nurse home visitation. *American Journal of Public Health, 78–11,* 1436–1444.

Olds, D.L., Henderson, C.R., Tatelbaum, R., & Chamberlin, R. (1986). Improving the delivery of prenatal care and outcomes of pregnancy: A randomized trial of nurse home visitation. *Pediatrics, 77,* 16–28.

Osofsky, H.J. (1975). Relationships between nutrition during pregnancy and subsequent infant and child development. *Obstetrical and Gynecological Survey, 30,* 227–241.

Ramey, C.T., Bryant, D.M., Wasik, B.H., Sparling, J.J., Fendt, K.H., & LaVange, L.M. (1992). Infant Health and Development Program for low birth weight, premature infants: Program elements, family participation, and child intelligence. *Pediatrics, 89,* 454–465.

Ramey, C.T. & Campbell, F.A. (1984). Preventative Education for high risk children: Cognitive consequences of the Carolina Abecedarian Project. *American Journal of Mental Deficiency, 88–5,* 515–523.

Sameroff, A.J., & Emde, R.N. (Eds.) (1989). *Relationship disturbances in early childhood: A developmental approach.* New York: Basic Books.

Suess, G.J., Grossman, K.E., & Sroufe, L.A. (1992). Effects of infant attachment to mother and father on quality of adaptation in preschool: From dyadic to individual organization of self. *International Journal of Behavioral Development, 15,* 43–65.

Tronick, E.Z., Winn, S., & Morelli, G.A. (1985). Multiple caretaking in the context of human evolution: Why don't the Efe know the western prescription for child care? In M. Reite and T. Field (Eds.), *The psychology of attachment and separation.* Orlando, FL: Academic Press.

Whitebook, M., Howes, C. & Phillips, D (1989). *Who cares? Child care teachers and the quality of care in America.* Oakland, CA.

Zahn-Waxler, C. & Radke-Yarrow, M. (1990). The development of concern for others. *Developmental Psychology*

Zigler, E.F., & Lang, M.E. (1991). *Child care choices.* New York: Macmillan, Inc.

Zuckerman, B. & Brazelton, T.B., (1994). Strategies for a family-supportive child health care system. In Kagan, S.L. & B. Weissbourd (Eds.) *Putting families first: America's family support movement and the challenge of change.* San Francisco, CA: Jossey-Bass, Inc.

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Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Chapter I
Indian Self-Determination Negotiated Rulemaking Committee Meeting; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

Meeting of the Indian Self-Determination Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Interior (DOI) and the Secretary of Health and Human Services (DHHS) have established an Indian Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93–638, 25 U.S.C. 450 et seq., as amended. The Departments have determined that the establishment of this Committee is in the public interest and will assist the agencies in developing regulations authorized under Section 107 of the ISDEAA.

DATES: The Committee will have its first meeting as shown below:

Tuesday, April 11, 1995, 8:30 A.M. to 5:00 P.M.
Wednesday, April 12, 1995, 8:30 A.M. to 5:00 P.M.
Thursday, April 13, 1995, 8:30 A.M. to 5:00 P.M.

ADDRESSES: The April 11–13, 1995, meeting will be held at the: Holiday Inn, Arlington at Ballston, I–66 and Glebe Road, 4610 North Fairfax Drive, Arlington, Virginia 22203, Telephone: (703) 243–9800, Toll Free #: (800) 465–4329.

Written statements may be summitted to Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4627–MIB, Washington, DC 20240, Telephone (202) 208–3708.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4627–MIB, Washington, DC 20240 Telephone (202) 208–3708.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above. Summaries of Committee meetings will be available for public inspection and copying ten days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address

Dated: March 13, 1995

Ada E. Deer,

Assistant Secretary—Indian Affairs

[FR Doc. 95–6578 Filed 3–16–95, 8:45 am]

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Part VI

Department of Health and Human Services

Food and Drug Administration

Medical Devices: Mammography Quality Standards Act of 1992, Inspection Fees; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0335]

Medical Devices; Mammography Quality Standards Act of 1992; Inspection Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fees it will assess for inspections of mammography facilities during fiscal year 1995 (FY 95). The Mammography Quality Standards Act of 1992 (MQSA) requires FDA to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. This notice explains which facilities are subject to payment of inspection fees, provides information on the costs included in developing inspection fees, and provides information on the inspection, billing, and collection processes.

DATES: Effective October 1, 1994, for all inspections conducted under 42 U.S.C. 263b(g). Written comments by June 15, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm.1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John L. McCrohan, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, fax 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA amended Title III of the Public Health Services Act (the PHS Act) (42 U.S.C. 262 *et seq.*) by adding a new section 354 (42 U.S.C. 263b) to require uniform national quality standards for mammography facilities. The MQSA requires all mammography facilities, other than facilities of the Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services as meeting quality standards. Facilities must obtain a certificate by October 1, 1994, in order to continue to legally provide mammography services. See 58 FR 67558, December 21, 1993, "Mammography Facilities—Requirements for Accrediting Bodies and Quality Standards and Certification Requirements," interim rules and 59 FR 49808, September 30, 1994, "Quality Standards and Certification Requirements for Mammography Facilities," amending the interim rules. The MQSA requires FDA to establish a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation bodies; and standards for equipment, personnel, quality assurance, and recordkeeping and reporting by mammography facilities.

The MQSA requires annual facility inspections to determine compliance with the quality standards. Section 354(r) of the PHS Act requires FDA to assess and collect fees for inspections of all mammography facilities, other than Governmental entities as determined by FDA, to cover the costs of inspections. FDA is providing notice of the fees to be assessed during FY 95 and additional information relating to those fees. Although the MQSA does not require FDA to solicit comments on fee assessment and collection, FDA is inviting comments from interested persons in order to have the benefit of additional views and information.

II. Inspections under the Mammography Quality Standards Act of 1992

Section 354(g)(1) of the PHS Act requires FDA, or a State operating under a delegation of authority from FDA, to conduct an annual inspection of each mammography facility. The purpose of the annual inspection is to determine facility compliance with quality standards established under the MQSA. The quality standards to be enforced during FY 95 were established by an interim rule published at 58 FR 67565, December 21, 1993, "Quality Standards and Certification Requirements for Mammography Facilities," amended by an interim rule published at 59 FR 49808, September 30, 1994, "Quality Standards and Certification Requirements for Mammography Facilities." Inspections will be conducted by inspectors who have met Federal training requirements and who are certified by FDA.

Under ordinary circumstances, inspections will be conducted during the regular business hours of the facility or at a mutually agreed time. FDA normally will provide 5 working days advance notice of each annual inspection. If a significant deficiency is identified during an inspection, FDA will provide information on necessary corrective action and in appropriate cases, will schedule a followup inspection after the facility has had a reasonable time to correct the deficiency. FDA normally will provide 5 working days advance notice of each followup inspection. FDA may make unannounced inspections or may provide shorter notice if prompt action is necessary to protect the public health (see 42 U.S.C. 263b(g)(4)).

III. Costs Included in FY 1995 Inspection Fees

Section 354(r) of the PHS Act requires FDA to assess and collect fees from persons who own or lease mammography facilities, or their agents, to cover the cost of annual and followup inspections conducted by FDA or a State acting under a delegation from FDA. Section 354(r) limits FDA's discretion in setting inspection fees in three ways: (1) Fees must be set so that, for a given fiscal year, the aggregate amount of fees collected will equal the aggregate costs of inspections conducted; (2) a facility's liability for fees must be reasonably based on the proportion of the inspection costs which relate to the facility; and (3) Governmental entities, as determined by FDA, are exempt from payment of fees.

FDA has determined that the following categories of costs are recoverable under section 354(r) of the PHS Act and has included them in the fees to be assessed in FY 95:

- Personnel costs of annual and followup inspections of mammography facilities, including administration and support.
- Purchase of equipment, development of instrument calibration procedures, calibration of instruments used in the inspections, and modification of training facilities and laboratories to support MQSA operations.
- Design, programming, and maintenance of data systems necessary to schedule and track inspections and to collect data during inspections.
- Training and certification of inspectors (both FDA and State inspectors).
- Costs of billing facilities for fees due for annual and followup inspections and collecting facility payments.
- Tracking, coordination, and direction of inspections.
- Overhead and support attributable to facility inspections.

FDA has calculated the fixed and variable amounts of these costs. Because facilities and most scientific equipment are durable and can be used for a period of years, it is not appropriate to recover the full costs of such expenditures in the year of purchase. To do so would result in the MQSA inspection fee varying widely from one year to the next. Instead, these costs will be recovered over the useful life of the asset. FDA has used these data on fixed and variable costs to determine fees for two categories of inspection:

- Annual inspection of each mammography facility. The recoverable portions of all fixed costs of the inspection program and appropriate variable costs are recovered in the annual inspection fee. This fee will vary depending on how many mammography units are used by a facility. All mammography facilities, except Governmental entities, will be subject to this fee.
- Followup inspections. If the annual inspection of a facility identifies a deficiency that necessitates a followup inspection, that facility will be assessed an additional fee to recover the costs of that additional inspection. Only variable costs directly related to followup inspections are recovered. Governmental entities and all facilities that do not require a followup inspection are not subject to this fee.

IV. Inspection Fees to be Assessed During FY 95

After consulting with the National Mammography Quality Advisory Committee, FDA has determined that, for FY 95 (October 1, 1994 to September 30, 1995), a facility's inspection fees will be based on the number of mammography units used by the facility. Based on information submitted by States during contract negotiations and a 1993 survey by the National Cancer Institute, FDA estimates that there are 13,252 mammography units and 10,666 facilities subject to inspection in FY 1995. Most facilities (83 percent) have only a single mammography unit and fewer than 5 percent of facilities have more than two units.

FDA has determined that the following fees will be assessed for facility inspections conducted in fiscal year 1995:

Type of inspection	Fee
Annual	$1,178 for the first unit, plus $152 for each additional unit.
Followup	$670 for each followup inspection.

The fee schedule is subject to change each fiscal year to ensure that the aggregate amount of fees collected during any fiscal year equals the aggregate amount of costs for such fiscal year for inspection of facilities

FDA reviewed and considered several methodologies for setting annual inspection fees for FY 95, including fee structures that would do one or more of the following: (1) Account for differences in facility size (the adopted methodology); (2) establish a flat fee that would not vary by facility size; (3) account for regional variations in inspection costs; (4) eliminate separate followup inspection fees by increasing the annual inspection fee. FDA decided to charge separately for annual and followup inspections because FDA believes it is more appropriate and equitable for the costs of followup inspections to be borne entirely by the facilities that require such inspections. In addition, this approach eliminated the need for FDA to attempt to estimate the number of followup inspections that will be conducted. FDA chose to use a uniform, national fee structure because, at this time, the agency lacks sufficient information to adopt any other approach.

For followup inspections, FDA considered a flat fee (the adopted methodology) and an hourly rate that would vary the fee by the length of the inspection. FDA has chosen to adopt a flat fee for followup inspections because this approach eliminates concerns about variations among inspectors and differential treatment of facilities.

The methodology adopted by FDA to determine inspection fees does not pass on the costs of inspecting Governmental entities to other facilities. The entire cost of inspecting Governmental entities will be borne by FDA and paid out of appropriated funds.

The agency invites comments on alternative methods of determining inspection fees under the MQSA and may consider altering its methodology in the future, after actual inspection experience provides more accurate data about differences among facilities and variations in costs by State, region, or other factors.

V. Facilities Subject to Payment of Inspection Fees

Under the MQSA, all certified mammography facilities except Governmental entities, as determined by FDA, are subject to payment of inspection fees (see 42 U.S.C. 263b(r)).

FDA has developed a definition that will be used to determine whether a facility qualifies as a "Governmental entity" for the purpose of determining whether a facility is exempt from payment of inspection fees under 42 U.S.C. 263b(r). A Governmental entity is a mammography facility subject to inspection under section 354(g)(1) of the Public Health Service Act (42 U.S.C. 263b(g)(1)), that meets either of the following criteria: (1) Is operated by any Federal department, State, district, territory, possession, Federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, or (2) provides services under the Breast and Cervical Cancer Mortality Prevention Act of 1990, 42 U.S.C. 300k *et seq.*, and at least 50 percent of the mammography screening examinations provided during the preceding 12 months were funded under that statute.

In making these determinations, FDA reviewed the legislative history of the Mammography Quality Standards Act of 1992. There is nothing in the legislative history to indicate that Congress intended the exemption for Governmental entities to be read expansively. Nor is there anything in the legislative history to suggest that Congress intended FDA to distinguish among mammography facilities with respect to this exemption for any particular policy reason, such as the type of organization operating the facility (e.g., facilities that qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code), location (e.g., rural facilities), or size (e.g., facilities that handle relatively few patients). Accordingly, FDA has interpreted the exemption provision in a manner that will recoup the costs of inspections from as many facilities as possible. This approach will reduce the likelihood that fiscal constraints will undermine the agency's ability to perform adequate inspections required by the law.

FDA determined that the definition of Governmental entity under the MQSA should include facilities that are highly dependent on funding provided under the Breast and Cervical Cancer Mortality Prevention Act of 1990 (BCCMPA) (see 42 U.S.C. 300k *et seq.*). That statute authorizes grants to States for programs to screen women for breast and cervical cancer as a preventive health measure (see 42 U.S.C. 300k). Low income women are given priority for screening services, including free services to any woman with income below the official poverty line (see 42 U.S.C. 300n). Advisory committee discussions raised concern that assessing an inspection fee on certain facilities receiving these grants would be at variance with, and could undermine, the initiative that Congress legislated through BCCMPA, and that the Department of Health and Human Services implemented, to provide mammography screening to under-served populations. In response to this concern, FDA decided to include in its definition of Governmental entity, those facilities with BCCMPA grants that provide at least 50 percent of their mammography screening services to the

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population targeted by BCCMPA. FDA believes relatively few (less than 100) facilities will qualify as Governmental entities because of their dependence on BCCMPA grants. These facilities pursue the same public health objectives as the MQSA and are largely dependent on Federal payments. Assessing an inspection fee would do little more than shift the costs of one Federal program to another Federal program while subjecting the Federal government to the transaction costs involved with such transfers.

The agency invites comments on alternative ways to define Governmental entities under the MQSA and may consider altering its determination in the future, after actual inspection experience provides more accurate data about other types of facilities that might be included in the category which is exempt from inspection fees under 42 U.S.C. 263b(r).

Prior to the first annual inspection of a facility, FDA will contact the facility and provide an opportunity for the facility to attest that it qualifies as a Governmental entity. Facilities that FDA finds to be Governmental entities will not be billed for inspections.

VI. Billing and Collection Procedures

Within 30 days following inspection, FDA will mail a bill to the inspected facility (Governmental entities will not receive bills). The bill will set forth the type of inspection conducted (annual or followup), the fee to be paid, and the date payment is due (30 days after billing date). Inspection fees will be billed to and collected from the party that operates the facility. If the facility is owned or controlled by an entity other than the operator, it is up to the parties to establish, through contract or otherwise, how the costs of facility inspections will be allocated.

If full payment is not received by the due date, a second bill will be sent. At that time, interest will begin to accrue at the prevailing rate set by the Department of the Treasury (currently, the prevailing rate is 13 percent), a 6 percent late payment penalty will be assessed in accordance with 45 CFR 30.13, and a $20 administrative fee will be assessed for each 30-day period that a balance remains due. If payment is not received within 30 days of a third and final bill, FDA may initiate action to collect unpaid balances (with interest and penalties), including the use of collection agencies and reporting of delinquencies to commercial credit reporting agencies.

VII. Review and Appeals Procedures

FDA will review each declaration that a facility qualifies as a Governmental entity. If FDA disallows a facility's claim that it is a Governmental entity, a bill will be sent to the facility with payment due within 30 days.

If FDA determines that a facility is not a Governmental entity, but the facility believes it qualifies for exemption under the definition of Governmental entity set forth above, the facility may appeal FDA's determination by explaining and certifying the basis for its belief in a letter directed to the FDA Ombudsman, c/o Mammography Quality Assurance Program, Food and Drug Administration, P.O. Box 6057, Columbia, MD 21045–6057, postmarked within 30 days of FDA's notice to the facility that the facility does not qualify as a Governmental entity. The FDA Ombudsman will review a facility's claim that it is a Governmental entity and will normally reach a decision within 60 days. If the Ombudsman determines that a facility does not qualify as a Governmental entity, the Ombudsman shall provide a statement of the grounds for that determination. The Ombudsman's decision will constitute the agency's final decision on the matter. During the time required for the Ombudsman's review, FDA's efforts to collect the fee will be suspended.

VIII. Request for Comments

Although MQSA does not require FDA to solicit comments on fee exemption, assessment and collection, FDA is inviting comments from interested persons in order to have the benefit of additional views and information. FDA may consider altering its methodology of defining Governmental entities, and assessing and collecting fees under MQSA in future years, after actual inspection experience provides more accurate data about differences among facilities and variations in costs by State, region, or other factors.

Interested persons may on or before June 15, 1995 submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and a full explanation of the costs included and the methodology employed in determining these fees are on file with the Dockets Management Branch (address above) and may be seen in that office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Dated: March 13, 1995.

William B. Schultz,

Deputy Commissoner for Policy.

[FR Doc. 95–6614 Filed 3–16–95; 8:45 am]

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Part VII

Environmental Protection Agency

40 CFR Part 123

Amendment to Requirements for Authorized State Permit Programs Under Section 402 of the Clean Water Act; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–5148–6]

Amendment to Requirements for Authorized State Permit Programs Under Section 402 of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the regulations concerning the minimum requirements for federally authorized State permitting programs under section 402 of the Clean Water Act. The proposed rule would explicitly require that State law must provide any interested person an opportunity to challenge the approval or denial of 402 permits issued by the State in State court. The intent of the proposed rule is to ensure that any interested person has the opportunity to challenge judicially the final action on State-issued permits, to the same extent as if the permit were issued by EPA. Most States already have this authority which allows for local resolution of issues. As a result, EPA believes today's proposed rule will apply to a very small number of States with authorization to administer the National Pollutant Discharge Elimination System (NPDES) permit program. EPA is not proposing at this time to establish this requirement for Tribal permitting programs under section 402, but is soliciting comments on various issues related to extending this requirement to Tribes. No Tribes are currently authorized to operate the NPDES program.

DATES: Written comments on this proposed rule must be submitted on or before June 15, 1995.

ADDRESSES: Commenters are requested to submit three copies of their comments to the Comment Clerk for the section 402 Amendment; Water Docket; MC–4101, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Commenters who would like acknowledgement of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the supporting information for this proposal is available for review at EPA's Water Docket, room L–102, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Laura J. Phillips, Office of Wastewater Management (OWM), Permits Division (4203), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–9541.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

I. Summary and Explanation of Today's Action
1. Background
2. Rationale and Authority for Proposed Rule
3. Scope of Standing Requirement
4. Exhaustion of Administrative Remedies
5. Alternatives Under Consideration
6. Time Period for Compliance
II. Request for Comment
III. Supporting Documentation
1. Compliance With Executive Order 12866 (Regulatory Impact Analysis)
2. Compliance With Executive Order 12875
3. Paperwork Reduction Act
4. Regulatory Flexibility Act

I. Summary and Explanation of Today's Action

1. Background

Congress enacted the Clean Water Act, 33 U.S.C. 1251 *et seq.* ("CWA" or "the Act"), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this objective, the Act authorizes EPA, or a State approved by EPA, to issue permits controlling the discharge of pollutants to navigable waters. Section 402(a)(1), 33 U.S.C. 1342(a)(1). A State that wishes to administer its own permit program for discharges of pollutants, other than dredged or fill material, to navigable waters may submit a description of the program it proposes to administer to EPA for approval according to criteria set forth in the statute. Section 402(b), 33 U.S.C. 1342(b).

EPA is authorized to treat Indian Tribes in the same manner as States for purposes of certain provisions of the CWA, including section 402. Section 518(e), 33 U.S.C. 1377(e).

EPA's regulations at 40 CFR part 123 establish minimum requirements for federally authorized State permit programs under section 402 of the CWA. These regulations include federally recognized Indian Tribes within the definition of "State." 40 CFR 122.2. EPA is proposing to add language to part 123 that makes clear the intent that, to receive or retain Federal authorization, a State must have laws that afford any interested person the opportunity to challenge in State court the final approval or denial of 402 permits by the State. The intent of this proposal is to ensure that State programs provide the public with an opportunity to challenge final action on 402 permits in State courts, to the same extent as if the permit were federally-issued. EPA is inviting comment on various issues related to extending this requirement to Tribes.

2. Rationale and Authority for Proposed Rule

EPA has become aware of instances in which citizens are barred from challenging State-issued permits because of restrictive standing requirements in State law. EPA believes this is a gap in the regulations setting minimum requirements for State 402 permit programs that needs to be addressed.

A coalition of environmental groups has filed two petitions requesting that EPA withdraw the Virginia State 402 permit program, citing a limitation on citizen standing, among other alleged deficiencies. In particular, they allege that recent changes in the law in the State of Virginia have significantly narrowed the public's opportunity to challenge State-issued 402 permits. Virginia's State Water Control Law, the State law under which Virginia's authorized program is administered, authorizes only an "owner aggrieved" to challenge permits in court. VA Code 62.1–44.29. In 1990, the Virginia legislature amended and narrowed the statutory definition of "owner." The environmental groups allege that under three opinions of the Virginia Court of Appeals and the State Water Control Law, only a permittee has standing to challenge the issuance or denial of a 402 permit in State court. *Environmental Defense Fund* v. *State Water Control Board*, 12 Va. App. 456, 404 SE.2d 728 (1991), *reh'g en banc denied*, 1991 Va. App. LEXIS 129; *Town of Fries* v. *State Water Control Board*, 13 Va. App. 213, 409 SE.2d 634 (1991). See *Citizens for Clean Air* v. *State Air Pollution Control Board*, 13 Va. App. 430, 412 SE.2d 715 (1991)(interpreting similar language in Virginia Air Pollution Control Law). They allege that under these three decisions, riparian landowners, local governments that wish to draw drinking water from the waters in question, downstream permittees, local business and property owners associations, local civic associations and environmental organizations whose members use the waters in question may not challenge a State-issued permit in State court.

The Agency is committed to moving away from permit-by-permit oversight. At the same time, it is critical that EPA continue in its partnership role to support effective State implementation. It is also essential to provide for meaningful local participation and

resolution of permit specific issues. An important component of effective public participation is that the public have access to judicial forums to challenge State-issued permits to the same extent as would be the case were EPA the permitting authority. This approach ensures that as EPA reduces its oversight, both EPA and the States remain directly accountable on a permit-by-permit basis to the public. To this end, EPA believes the purposes of the CWA can best be accomplished by providing an opportunity for review in State court of the final approval or denial of 402 permits by all interested persons, as well as permittees and permit applicants, in order to ensure an adequate and meaningful opportunity for public review and comment on issues addressed by the permit. The same concerns arise when the program is federally administered; that is why Congress provided for judicial review of Federal permit actions in Federal court.

When citizens are denied the opportunity to challenge executive agency decisions in court, their ability to influence permitting decisions through other required elements of public participation, such as through public comments and public hearings on proposed permits, may be seriously compromised. If citizens perceive that a State is not addressing their concerns about 402 permits because the citizens have no recourse to an impartial judiciary, that perception also has a chilling effect on all the remaining forms of public participation in the permitting process. EPA believes that in order to effectuate the policies and purposes of the CWA, States must address the legitimate concerns of citizens about 402 permits. Accordingly, EPA is proposing to add language to part 123 explicitly requiring that all interested persons must have an opportunity to challenge the final approval or denial of 402 permits in State court. In the judgment of EPA, this effectively balances the CWA's strong policy favoring public participation in the development of water pollution controls with the policy to "recognize, preserve and protect the primary responsibilities and rights of the States to prevent, reduce and eliminate pollution..." Section 101(b), 33 U.S.C. 1251(b). It effectuates EPA's strong policy interest in deferring to State administration of authorized NPDES programs while ensuring that citizens will be able to influence permitting decisions through public participation and will have access to the courts to challenge State–issued permits to the same extent as if the program were federally administered.

EPA's direct authority to specify this requirement is found at sections 101(e), 304(i), 402(b) and (c), and 501(a) of the CWA.

Section 501(a), 33 U.S.C. 1361(a), confers general authority on the Administrator to prescribe such regulations as are necessary to carry out her functions under the CWA. Section 304(i), 33 U.S.C. 1314(i), provides that EPA shall promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402. Section 101(e) provides that "[p]ublic participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States . . . ." 33 U.S.C. 1251(e). To establish minimum public participation requirements consistent with these statutory goals, section 101(e) directs the Administrator, in cooperation with the States, to establish minimum guidelines for public participation. *Id.*

Congress included the provisions relating to public participation in section 101(e) because it recognized that "[a] high degree of informed public participation in the control process is essential to the accomplishment of the objectives we seek—a restored and protected natural environment." S. Rep. 414, 92d Cong., 2d Sess. 12 (1972), reprinted in *A Legislative History of the Water Pollution Control Act Amendments of 1972*, Cong. Research Service, Comm. Print No. 1, 93d Cong., 1st Sess. 108 (1973)(hereinafter cited as *1972 Legis. Hist.*) at 1430. The Senate Conference Report observed further that implementation of water pollution control measures would depend, "to a great extent, upon the pressures and persistence which an interested public can exert upon the governmental process. The Environmental Protection Agency and the State should actively seek, encourage and assist the involvement and participation of the public in the process of setting water quality requirements and in their subsequent implementation and enforcement." *Id.* See also Senate Conference Report at 72, *1972 Legis. Hist.* at 1490 ("The scrutiny of the public... is extremely important in insuring expeditious implementation of the authority [conferred by section 402] and a high level of performance by all levels of government and discharge sources.") Similarly, the House directed EPA and the States "to encourage and assist the public so that it may fully participate in the administrative process." H. Rep. 911, 92d Cong., 2d Sess. 79, *1972 Legis. Hist.* at 766. Congressman Dingell, a leading sponsor of the CWA, characterized section 101(e) as applying "across the board." *Id.* at 108. See also *id.* at 249.

Section 402(b) establishes the statutory standards applicable to the approval of State 402 permitting programs. These standards also reflect the importance that Congress attached to effective public participation in establishing controls on water pollution. States wishing to administer a 402 permit program must establish to the satisfaction of the Administrator that they have enacted laws that provide adequate authority to carry out the State program. Section 402(b), 33 U.S.C. 1342(b). Section 402(b)(3) contains an explicit requirement for public participation in the development of State permits. Subsection (3) allows disapproval upon a finding of inadequate authority "[t]o insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application." Id. Section 402(c), 33 U.S.C. 1342(c), authorizes EPA to withdraw a State program if it is not being administered in accordance with applicable requirements.

The courts have also recognized that meaningful and adequate public participation is an essential part of a State program under section 402. See *Natural Resources Defense Council* v. *EPA*, 859 F.2d 156, 175–78 (D.C. Cir. 1988)(approving part 123 regulations regarding citizen intervention in State enforcement actions); *Citizens for a Better Environment* v. *EPA*, 596 F.2d 720, *reh'g denied*, 596 F.2d 725 (7th Cir. 1979)(invalidating EPA approval of a State program in the absence of prior promulgation of guidelines regarding citizen participation in State enforcement actions).

Thus, the CWA vests considerable discretion in the Administrator to set minimum requirements applicable to authorized 402 programs, particularly with respect to public participation and the rights of citizens to influence the permitting process. See *Natural Resources Defense Council* v. *EPA*, 859 F.2d at 175–178.

EPA's proposal is further supported by the statutory provisions governing challenges to 402 permits issued by EPA. Section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), provides that "any interested person" may obtain judicial review in the United States Court of

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Appeals of the Administrator's action in issuing or denying any permit under section 402. There is no indication that Congress intended that the public's rights to challenge permit actions would be diminished, upon EPA's approval of a State 402 program, to the point that the goal of adequate and effective public participation in the permit issuance process would be compromised. (Similarly, Congress has provided citizens the ability, except in defined circumstances, to commence a civil action in the United States District Court against any person who is alleged to be in violation of any effluent standard or limitation under the CWA, regardless of whether the permitting authority is EPA or the State. Section 505(a), 33 U.S.C. 1365(a)).

The regulations setting minimum requirements for authorized State 402 permit programs, 40 CFR part 123, do not explicitly address requirements for citizen standing to challenge the approval or denial of permits in State court. The current part 123 regulations were originally issued on May 19, 1980. 45 FR 33290. When EPA issued those regulations, the Agency did not contemplate that State law might limit the opportunity for interested citizens to challenge final permit decisions in State court to such a degree that it is substantially narrower than the opportunity afforded under section 509 to challenge federally-issued permits. Accordingly, EPA believes it needs to specify standing requirements in part 123. EPA seeks to add language to part 123 that would explicitly require that in order to receive or retain authorization, a State must afford any interested person the opportunity to challenge the final approval or denial of 402 permits in State court. The proposal would codify the Agency's interpretation of the CWA, as set forth above. EPA believes the Clean Water Act authorizes the Agency to specify this requirement as a precondition to the assumption and continued operation of a 402 permitting program by a State.

The proposed rule would apply to final actions with respect to modification, revocation and reissuance and termination of permits as well as the approval or denial of permits in the first instance.

3. Scope of Standing Requirement

EPA's proposal makes it clear that "any interested person" must be afforded standing to challenge final action by a State in issuing or denying a 402 permit; this proposal would ensure consistency with the standing afforded the public to challenge federally-issued permits in Federal court. The legislative history of the CWA states explicitly that the term "interested person" in section 509(b) is intended to embody the injury in fact rule of the Administrative Procedure Act, as set forth by the Supreme Court in T3Sierra Club v. *Morton*, 405 U.S. 727 (1972). S. Conference Rep. No. 1236, 92d Cong, 2d Sess. 146 (1972), *1972 Legis. Hist.* at 281, 329. *Montgomery Environmental Coalition* v. *Costle*, 646 F.2d 568, 576–78 (D.C. Cir. 1980). See *Trustees for Alaska* v. *EPA*, 749 F.2d 549, 554–55 (9th Cir. 1984). EPA intends that the term "interested person" as used in the proposed rule have the same meaning that it has in section 509(b). Today's proposal would ensure that citizen standing to challenge the issuance or denial of State–issued 402 permits is similarly expansive where the State is authorized to administer 402 permit programs.

As interpreted by the United States Supreme Court, the standing requirement of Article III of the Constitution contains three key elements:

[A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,"... and that the injury "fairly can be traced to the challenged action" and "is likely to be redressed by a favorable decision."

Valley Forge Christian College v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982)(citations omitted. See also *Lujan* v. *Defenders of Wildlife*, 504 U.S. _____, 119 L.Ed.2d 351, 364 (1992).

With respect to the nature of the injury that an "interested person" must show to obtain standing, the Supreme Court held in *Sierra Club* v. *Morton*, 405 U.S. at 734–35, that harm to an economic interest is not necessary to confer standing. Harm to an aesthetic, environmental, or recreational interest is sufficient, provided that the party seeking judicial review is among the injured. This holding was most recently reaffirmed by the Supreme Court in *Lujan* v. *Defenders of Wildlife*, 504 U.S. _____, 119 L.Ed.2d at 365 ("[o]f course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purposes of standing."). See also *Japan Whaling Ass'n* v. *American Cetacean Society*, 478 U.S. 221, 231 n. 4 (1986); *Middlesex County Sewerage Auth.* v. *National Sea Clammers Ass'n*, 453 U.S. 1, 16–17. This low threshold for sufficiency of injury has been applied in many decisions. See, e.g., *Sierra Club* v. *Simkins Industries, Inc.*, 847 F.2d 1109 (4th Cir. 1988), cert. denied, 491 U.S. 904 (1989) (injury to aesthetic and environmental interests is sufficient where pollution would affect a river along which a single group member hiked); *Friends of the Earth* v. *Consolidated Rail Corp.*, 768 F.2d 57, 61 (2d Cir. 1985) (recreational use of a river and offense to aesthetic values are sufficient to demonstrate injury in fact).

4. Exhaustion of Administrative Remedies

A requirement that all interested persons have the opportunity to challenge final permitting actions judicially should be distinguished from a requirement that interested persons must exhaust administrative remedies in order to preserve their opportunity to challenge permitting actions judicially. For example, Federal regulations require that interested persons must raise reasonably ascertainable issues during the public comment period on a draft 402 permit (40 CFR 124.13) and must request an evidentiary hearing on a permit decision they wish to challenge (40 CFR 124.74). Today's proposal does not affect the authority of States to adopt similar, reasonable requirements that interested persons exhaust available administrative remedies in order to preserve their opportunity to challenge final permitting actions in State court.

5. Alternatives Under Consideration

EPA also considered amending part 123 to require that State law must provide an opportunity for judicial review of a final State permit action under section 402 by the permit applicant and any person who participated in the public comment process. See section 502(b)(6) of the Clean Air Act, 42 U.S.C. 7661a(b)(6). The Agency prefers the "any interested person" language because it tracks section 509(b)(1) of the CWA, which allows "any interested person" to challenge specified final actions of the Administrator, including the issuance or denial of any permit under section 402, in the United States Court of Appeals. It is also consistent with existing regulations under the CWA which allow "any interested person" to request an evidentiary hearing on a Regional Administrator's final permit decision. 40 CFR 124.74. As noted above, States would be free under today's proposal to impose reasonable requirements that interested persons must exhaust administrative remedies, such as participation in the public comment process, in order to preserve their opportunity to challenge a final permitting action in State court.

EPA solicits comment on whether it should adopt a requirement, in lieu of the proposed regulatory language, that State law must provide an opportunity for judicial review of a final permitting action under section 402 by the permit applicant and any person who participated in the public comment process.

6. Time Period for Compliance

Under EPA's existing regulations, any approved State 402 program that requires revision to conform to today's proposal, when it is finally promulgated, would need to be revised within one year of the date of final promulgation of today's proposed rule, unless the State must amend or enact a statute in order to make the required revision. In that case, under EPA's existing regulations, the revision must take place within two years. 40 CFR 123.62(e). EPA is considering amending the regulations to require that States revise their programs sooner than specified under 40 CFR 123.62(e) to bring the program into compliance with today's proposed rule. For example, EPA is considering requiring that if a State must amend or enact a statute to make the necessary revisions to its law, this must be done during the first legislative session that begins after the date of promulgation of today's proposal as a final rule. EPA requests comment on whether it should impose a requirement that States revise their programs sooner than specified under 40 CFR 123.62(e) to bring the program into compliance with today's proposed rule, and if so, what would be an appropriate shortened time period for compliance.

II. Request for Comment

EPA solicits comment on all aspects of today's proposal. In particular, EPA seeks comment on the appropriateness of the proposal from a legal and a policy perspective; on the "any interested person" language as proposed; on the alternative that would require that State law must provide an opportunity for judicial review of a final permitting action under section 402 by the permit applicant and any person who participated in the public comment process, as discussed above; and on any alternative language that would specify appropriate explicit standing requirements applicable to authorized State 402 programs.

EPA also requests comment on whether it should amend the regulations to require States to revise their programs sooner than would otherwise be required under 40 CFR 123.62(e) to bring the program into compliance with today's proposed rule, when it is finally promulgated.

EPA is not proposing at this time to establish this requirement for Tribal permitting programs under section 402. Tribes are just beginning the development of various Clean Water Act programs and the issues of sovereign immunity and access to Tribal courts must be carefully considered. No Tribes are currently authorized to operate the NPDES program. EPA is soliciting comments on various issues, including the issue of sovereign immunity, related to extending this requirement to Tribes. Based upon the comments received on this proposal, EPA may propose regulatory action in the future with respect to review of Tribally–issued NPDES permits. EPA also invites comment about how it could phase in such a requirement for Tribes, if the Agency moves forward with such a proposal in the future.

EPA is aware that access to Tribal courts may not be as broad as access to State courts. (EPA addressed some issues with regard to Tribal regulation of nonmembers, as well as differences in Tribal criminal enforcement programs, in the preamble to and/or the final regulation on NPDES authority for Tribes, 58 FR 67966, December 22, 1993.) EPA specifically invites comment on (1) these differences with regard to access to Tribal courts for appeal of NPDES permits (which may be issued to nonmembers of the Tribe), (2) the basis of the differences, (3) as well as any alternative procedures that may be used to provide for an appeal of final Tribal NPDES permit actions, if a Tribal court system is not available to a person.

III. Supporting Documentation

1. Compliance With Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations, of recipients thereof; and

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA believes that only a very few authorized States may be impacted by this proposed rule. The proposed action is consistent with and effectuates the public participation provisions of the CWA. As a result, EPA has determined that the final rule does not meet the definition of a significant regulation, and, therefore, the Agency is not conducting a Regulatory Impact Analysis.

It has also been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Compliance With Executive Order 12875

Under Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, the Agency is required to develop an effective process to permit elected officials and other representatives of State and Tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA fully supports this objective and has initiated a consultation process with both States and Tribes which will be continued through proposal and the public comment period. The Agency will be contacting each State individually for their views on this proposal. With regard to Indian Tribes, EPA is aware of the complex issues associated with applying this proposal to Tribes and is soliciting comments on those issues. EPA will work both with representatives of Tribes as well as through the Agency's American Indian Environmental Office to assure a full opportunity for review and comment on today's proposal and also to ensure an understanding of Tribal concerns or issues raised by today's proposal rule.

EPA anticipates a reaction from the relatively few NPDES-authorized States which restrict standing to challenge State-issued NPDES permits. Businesses and municipalities in States which restrict standing may argue that allowing standing will make it more difficult to obtain a permit due to court challenges by citizens. However, based on EPA's experience in States which already provide broad standing to challenge permits, EPA does not expect that any significant portion of permits will be challenged in State courts.

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EPA believes that it has developed an effective process for receiving comments on this proposed rulemaking and has met the consultation requirements for States, federally recognized Tribes and localities under the terms of Executive Order 12875.

3. Paperwork Reduction Act

This proposed rule does not contain information requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

4. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities.

This proposed rule applies only to States with authorization to administer the NPDES permit program. States are not considered small entities under the RFA. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 123

Environmental protection, Administrative practice and procedure, Water pollution control.

Dated: March 9, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, part 123, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.30 is added to read as follows:

§ 123.30 Judicial review of approval or denial of permits.

All States that administer or seek to administer a program under this part must provide any interested person an opportunity for judicial review in State Court of the final approval or denial of permits by the State. This requirement does not apply to Indian Tribes.

[FR Doc. 95–6676 Filed 3–16–95; 8:45 am]

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Friday
March 17, 1995

Part VIII

Office of Management and Budget

Audits of Institutions of Higher Education and Other Non-Profit Institutions; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Audits of Institutions of Higher Education and Other Non-Profit Institutions

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to OMB Circular No. A–133.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular No. A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

Also, this action provides notice of OMB's intent, after considering comments to this proposal, to seek modifications to the Single Audit Act of 1984 (Act) and OMB Circular No. A–128, "Audits of State and Local Governments," consistent with this proposed revision. OMB's intent is to obtain consistency between audits of State and local governments and non-profit organizations such that one law and one circular can cover both. This intent includes Indian tribal governments which are currently covered under the Act and OMB Circular No. A–128. Interested parties are encouraged to comment on this stated intent of OMB.

The National State Auditors Association issued a position paper on the single audit process in February 1993; the president's Council on Integrity and Efficiency Standards Subcommittee issued a study titled "Study on Improving the Single Audit Process" in September 1993; the General Accounting Office (GAO) issued a report titled "Single Audit: Refinements Can Improve Usefulness" in June 1994. The recommendations in these studies were considered in developing this proposed revision.

DATES: All comments on this proposal should be in writing, and must be received by May 16, 1995. Late comments will be considered to the extent practicable. Where possible, comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments into a computer format for analysis, respondents are asked to send a copy of comments on either a 3.5 or 5.25 inch diskette in either WordPerfect 5.1, WordPerfect for Windows, or ASCII format. When a diskette cannot be provided, it would be helpful if the comments were printed in pica or an equivalent 10 characters per inch type on white paper so the document can be easily scanned into a computer format. When comments are sent in by facsimile, they should be followed up with a diskette or printed copy, as indicated above.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6025, New Executive Office Building, Washington, DC 20503. For a copy of the current Circular, contact Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Sheila O. Conley, Office of Federal Financial Management, Financial Standards and Reporting Branch, telephone (202) 395–3993 and fax (202) 395–4915. A redline/strikeout version showing the detailed changes between the current Circular and the proposed revision is available by written request to the Office of Federal Financial Management.

SUPPLEMENTARY INFORMATION: The proposed revision requires non-profit organizations receiving $300,000 or more in a year in Federal awards to have an annual audit, sets forth requirements for both the performance and reporting of this audit, and provides for follow up on audit findings. Each non-profit organization is responsible for having its audit conducted and for reviewing audits of its subrecipients.

Significant Proposed Revisions

The substantive differences between the current Circular and the proposed revision are indicated in the following:

A. Increased Threshold for Audit

The threshold for when a non-profit organization is required to have an audit is proposed to be raised from $25,000 to $300,000 in paragraph 2, "Audit Requirements." This change is consistent with the findings and recommendations of the General Accounting Office's (GAO) single audit study that a threshold of $300,000 would cover 95 percent of all direct Federal financial assistance to local governments. When the total Federal awards received are small, the cost of audits required by this Circular have often been high in proportion to the awards received. This change will remove the requirement for non-profit organizations to obtain an audit when the total Federal awards received are small. However, non-profit organizations will continue to be required to properly account for their Federal awards, comply with applicable laws and regulations, and cooperate with any audits of Federal awards that the Federal Government may choose to perform. Respondents are encouraged to comment whether the proposed threshold for audit of $300,000 is appropriate or whether the threshold for audit should be different and, if so, what threshold you recommend (e.g., $500,000 or $1 million).

To mitigate risk to a Federal program which is structured such that substantial service delivery and expenditure of Federal funds are made by subrecipients receiving less than $300,000, paragraph 2 includes a provision to allow Federal agencies, with the approval of the Office of Management and Budget (OMB), to set appropriate audit requirements for these Federal programs awarded to subrecipients receiving less than $300,000.

The primary objective of revising the Circular is to reduce regulatory burden on recipients of Federal awards, while maintaining an appropriate level of accountability over Federal awards. The proposed revision seeks to achieve this objective by raising the threshold for audit to $300,000. However, OMB is also considering an additional approach to reduce audit burden whereby non-profit organizations meeting the criteria for low-risk auditees presented in Appendix 3 would be allowed, with the approval of the cognizant or oversight agency, to conduct a full-scope audit in accordance with this Circular on a triennial basis, which covers only the last year of the triennial period.

In the "off-years," or years in which a full-scope audit in accordance with this Circular is not required, a non-profit organization receiving $300,000 or more in Federal awards would be required to have a financial statement audit conducted in accordance with generally accepted government auditing standards (GAGAS). In addition, the off-year audit would include such additional procedures necessary to comply with the scope of work described in subparagraph 12.c, "Internal Controls," of the proposed revision. If the results of audit work conducted in an off-year identify conditions that prevent the non-profit organization from meeting the criteria for a low-risk auditee, then a full-scope audit in accordance with this Circular would be required for the year in which the deficiencies occurred and subsequent years until the non-profit organization met the criteria in Appendix 3.

Respondents are encouraged to comment whether the triennial audit approach would achieve its intended objective and could be feasibly implemented, particularly with respect to the application of a risk-based audit approach to determine major programs, described in the following section. Respondents are also encouraged to comment whether the triennial audit approach should be: (1) Implemented with the revised Circular, (2) phased in using pilot projects, or (3) applicable to non-profit organizations receiving more or less than a specified amount of Federal awards and, if so, what level of Federal awards you recommend (e.g., $10,000,000).

B. New Risk-Based Approach To Determine Major Programs

A revised process for determining major programs is proposed in Appendices 1 and 2. Currently the determination of major programs, the programs which receive primary audit coverage under the Circular, is based solely on the dollar amount of a Federal program's expenditures. Under this proposal, major programs are determined based on a risk assessment considering prior audit experience, oversight performed by Federal agencies and others, and the inherent risk of the Federal program. Also, a provision is made to require Federal programs that in aggregate have expenditures that total at least 50 percent of total Federal program expenditures to be covered as major programs. This 50 percent minimum is reduced to 25 percent for non-profit organizations meeting the criteria in Appendix 3 and classified as low-risk auditees. Respondents are encouraged to comment whether the Circular should be revised to permit organizations that qualify as low-risk auditees to reduce the scope of audit below the 50 percent minimum and, if so, whether the proposed 25 percent minimum is appropriate for low-risk auditees.

The proposed risk-based approach requires the use of judgment by auditors in determining major programs. However, several controls are included in the revised Circular to mitigate the risk of insufficient audit coverage of Federal programs including:

(1) The requirement that Federal programs with aggregate expenditures of at least 50 percent of total Federal program expenditures be covered as major programs (25 percent for low-risk auditees);

(2) The provision that allows Federal agencies and pass-thru entities to require an auditee to have a particular Federal program audited as a major program in lieu of conducting or contracting for additional audits, provided that the requesting agency agrees to pay the full incremental cost;

(3) The requirement that Federal programs with Federal expenditures exceeding three percent of total Federal expenditures or $300,000, whichever is greater, (Type A programs) shall be covered as major programs at least once every three years; and

(4) The inclusion of a model or process for auditors to use to determine major programs is provided in Appendices 1 and 2.

The objective of this change to a risk-based approach is to focus the audit effort on areas of greatest risk of noncompliance, provide audit coverage to high-risk programs previously below the dollar threshold of major programs, and permit reduction of audit effort when previous audits have not shown problems. An alternative to this risk-based approach would be to continue using the current approach of determining major programs based solely on dollar amount of a Federal program's expenditures and implement voluntary pilot projects to test the risk-based approach. Respondents are encouraged to comment whether the risk-based approach should be implemented with the revised Circular or phased in using pilot projects.

C. Required Level of Internal Control Testing

Clarification is provided in paragraph 12, "Scope of Audit," that the level of testing the auditor is required to perform on the internal control structure over major programs is based upon the auditor's planning for a low assessed level of control risk. Respondents who are auditors are encouraged to comment and provide examples of how many transactions they are currently testing for major programs and how many transactions they would expect to test based upon the proposed revision.

D. Guidance on the Schedule of Federal Awards

Guidance is added in paragraph 13, "Financial Statements and Auditor's Reporting," on the minimum requirements for the Schedule of Federal Awards. Since GAO's single audit study recommended that OMB prescribe the form and content of the schedule, respondents are encouraged to comment whether the revised Circular should prescribe additional requirements for the schedule and a description of such additional requirements.

E. Attestation on Internal Controls and Compliance

GAO's single audit study recommended that, for entities receiving in excess of $50 million a year in Federal awards, the entity should publicly report the extent to which the entity has in place internal controls over Federal awards and that the auditor should attest to the fairness of such a representation. Similarly, others have suggested to OMB that the work on compliance for Federal awards be an engagement under the American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements (SSAE) No. 3, "Compliance Attestation." Under a SSAE No. 3 engagement, management must perform an evaluation of the entity's compliance with the specified requirements and make an assertion about compliance. Respondents are encouraged to comment as to whether organization-wide and program-specific audits should require a management assertion and auditor attestation for internal controls and/or compliance. The proposed revision does not require a management assertion or auditor attestation on internal controls or compliance.

F. Modified Requirements Related to Audit Findings

The proposed revisions in paragraph 13, "Financial Statements and Auditor's Reporting," provide for reporting of audit findings related to Federal awards in a single schedule of findings and questioned costs, set thresholds for which audit findings will be included in the audit report, describe what information the auditor should include in an audit finding, and provide for audit follow-up on audit findings. Paragraph 14, "Audit Findings Follow-up," clarifies the non-profit organization's responsibility for follow-up on audit findings which includes preparing a corrective action plan for current audit findings and a summary schedule of prior audit findings. Paragraph 15, "Management Decision," provides guidance to improve the audit resolution process.

G. Other Modified Requirements and Guidance

The definition of non-profit organization in paragraph 1 is changed to include non-profit hospitals. However, under paragraph 3, "Basis for Determining Awards Received," Medicaid and Medicare are normally excluded from awards received. Paragraph 3 also provides guidance on

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determining awards received for other types of Federal programs.

New guidance is added in paragraph 4, "Subrecipient and Vendor Determination," paragraph 5, "Auditee Responsibilities," paragraph 6, "Federal Agency and Pass-Thru Entity Responsibilities," and paragraph 18, "Program-Specific Audit."

Paragraph 6 makes provision for assignment of cognizant agencies based on dollar thresholds of awards received. Under this proposal, entities receiving more than $25 million a year in Federal awards shall be assigned a cognizant agency based on which Federal agency provides the predominant amount of direct funding to the recipient. Currently OMB is responsible for assigning cognizant agencies and it has been unable to make the assignments in a timely manner.

The importance of the compliance supplement is enhanced in paragraph 6, "Federal Agency and Pass-Thru Entity Responsibilities," by requiring Federal agencies to designate a person responsible for annually informing OMB of updates needed, and in paragraph 12, "Scope of Audit," by clarifying the purpose and authority of the compliance supplement. Also, in paragraph 1, "Definitions," a provision is included for the compliance supplement to designate clusters of Federal programs which would be treated as one program.

In paragraph 11, "Auditor Selection," OMB is considering adding a restriction on auditor selection whereby an auditor who also prepares the indirect cost proposal, cost allocation plan, or the disclosure statement required by OMB Circular A–21, "Cost Principles for Educational Institutions," or the Cost Accounting Standards Board, as appropriate, may not be selected when the indirect costs charged are greater than five percent of expenditures of any one Type A program, as defined in Appendix 1, or greater than five percent of expenditures for all Federal programs. Respondents are encouraged to comment whether the auditor restriction should be included in the revised Circular. Also, current Circular paragraph 11, "Small and Minority Audit Firms," is deleted because these requirements are more fully covered in OMB Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."

In paragraph 16, "Report Submission," the due date is shortened for submitting reports required by this Circular from 13 months to 9 months. However, the provision for a cognizant or oversight agency to grant an extension is retained. Also, the report submission process was streamlined by providing for a certification form to be submitted in lieu of the full audit report when there are no audit findings, expanding the role of the central clearinghouse, and providing for the clearinghouse to pilot test electronic filing of reports. Under this expanded clearinghouse role, recipients will send all copies of reports to the clearinghouse which will subsequently distribute them to Federal agencies whose awards have audit findings.

Public Information Collection

The proposed revision includes a provision that will require the central clearinghouse designated by OMB to collect certain information about Federal awards and the audits of such awards. OMB is requesting comments on the proposed information collection described in paragraph 16, "Report Submission." The final collection requirement will be submitted to OMB for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

John B. Arthur,

Associate Director for Administration.

Circular No. A–133—Revised

To the Heads of Executive Departments and Establishments

Subject: Audits of Non-Profit Organizations Receiving Federal Awards

1. *Purpose.* This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-profit organizations receiving Federal awards.

2. *Authority.* Circular A–133 is issued under the authority of sections 503 and 1111 of title 31, United States Code, and Executive Orders 8248 and 11541.

3. *Supersession.* This Circular supersedes the prior Circular A–133, issued March 8, 1990. For effective dates, see paragraph 10.

4. *Policy.* Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-profit organizations, whether they are recipients receiving awards directly from Federal awarding agencies, or are subrecipients receiving awards from a pass-thru entity (a recipient or another subrecipient). Therefore, whereas this Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments (which are covered by OMB Circular A–128, "Audits of State and Local Governments"), this Circular does apply to awards that State and local governments make to non-profit organizations covered by this Circular.

This Circular does not apply to non-U.S. based entities receiving Federal awards either directly as a recipient or indirectly as a subrecipient.

5. *Definitions.* Definitions of key terms used in this Circular are contained in paragraph 1 in the Attachment.

6. *Required Action.* The specific requirements and responsibilities of Federal agencies and non-profit organizations are set forth in the Attachment and Appendices to this Circular. Federal agencies making awards to non-profit organizations, either directly or indirectly, shall adopt the language in the Circular in codified regulations, unless different provisions are required by Federal statute or are approved by OMB.

7. *OMB Responsibilities.* OMB will review agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation.

8. *Information Contact.* Further information concerning Circular A–133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993. Individual copies of this Circular may be obtained by contacting the Executive Office of the President, Publications Office, telephone (202) 395–7332.

9. *Termination Review Date.* This Circular will have a policy review three years from the date of issuance.

10. *Effective Dates.* (a) The standards set forth in this Circular that apply directly to Federal agencies will be effective 30 days after publication of the final revision in the **Federal Register**.

(b) The standards set forth in this Circular that Federal agencies are to apply to non-profit organizations will be adopted by Federal agencies in codified regulations within six months after publication of the final revision in the **Federal Register**, so that they will apply to audits of non-profit organizations for fiscal years that begin on or after January 1, 1996.

(c) In the interim period, until the standards in this Circular are adopted and become applicable, the audit provisions of Circular A–133 issued March 8, 1990, shall continue in effect. However, if a non-profit organization receives awards of more than one Federal agency, and not all such agencies have adopted the standards in this Circular in a timely fashion, then Federal agencies should permit the non-profit organization to comply with the standards in this Circular for all of its awards.

Alice M. Rivlin,

Director.

Attachment
Appendix 1
Appendix 2
Appendix 3

OMB Circular A–133—Audits of Non-Profit Organizations Receiving Federal Awards

Attachment

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1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. *Auditee* means any non-profit organization receiving awards which must be audited under this Circular. This term includes both organizations which receive awards directly as a recipient or indirectly as a subrecipient.

b. *Auditor* means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term "auditor" does not include internal auditors of non-profit organizations because they do not meet the GAGAS independence standards to report as external auditors.

c. *Audit finding* means deficiencies which the auditor is required by paragraph 13.d(1) to include in the schedule of findings and questioned costs.

d. *Award* means Federal financial assistance and Federal cost-type contracts. It includes awards received directly from Federal awarding agencies or indirectly from recipients of Federal awards or subrecipients. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Audits of such vendors shall be covered by the terms and conditions of the contract.

e. *CFDA number* means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

f. *Cluster of programs* means Federal programs with different CFDA numbers that are defined as a cluster of programs in the compliance supplements because they are closely related programs and share common compliance requirements. A cluster of programs shall be considered as one program for determining major programs as described in Appendix 1 and whether a program-specific audit may be elected under paragraph 2.c.

g. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget (OMB) to carry out the responsibilities described in paragraph 6.a.

h. *Compliance supplements* refers to the Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Organizations and the Compliance Supplement for Single Audits of State and Local Governments or such documents as OMB may issue to replace them. These documents are available from the Government Printing Office, telephone (202) 783–3238.

i. *Corrective action* means action taken by the auditee that: (1) Corrects identified deficiencies, (2) produces recommended improvements, or (3) demonstrates that audit findings are either invalid or do not warrant auditee action.

j. *Federal agency* has the same meaning as the term "agency" in Section 551(1) of title 5, United States Code.

k. *Federal awarding agency* means the Federal agency that provides an award directly to the recipient.

l. *Federal financial assistance* means assistance provided by a Federal agency to a recipient or by a pass-thru entity to a subrecipient to carry out a program. Such assistance may be in the form of: Grants, cooperative agreements, donated surplus property, food commodities, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, and other assistance. Such assistance does not include direct Federal cash assistance to individuals.

m. *Federal program* means:

(1) All Federal programs or awards under the same CFDA number. When no CFDA number is assigned, all awards from the same agency made for the same purpose may be combined. State governments may combine different awards to their subrecipients when the awards are closely related programs and share common compliance requirements. In this case, the State government may require the subrecipient to treat the combined awards as a single program.

A category of awards which is a group of awards in the categories of (a) research and development, (b) student financial aid, or (c) cluster of programs.

n. *GAGAS* means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

o. *Generally accepted accounting principles* has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants.

p. *Individual compliance requirements* refers to the types of compliance requirements as listed in the compliance supplements. Examples include cash management, Federal financial reporting, allowable costs/cost principles, types of services allowed or unallowed, eligibility, and matching.

q. *Internal control structure over Federal programs* means the policies and procedures established to provide reasonable assurance that the following objectives will be achieved:

(1) Transactions are executed in compliance with: (a) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program, and (b) any other laws and regulations that OMB has identified in the compliance supplements;

(2) Transactions are properly recorded and accounted for to: (a) Permit the preparation of reliable financial statements and Federal reports, (b) maintain accountability over assets, and (c) demonstrate compliance with laws, regulations, and other compliance requirements; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

r. *Loans* means Federal loans or loan guarantees received or administered by an auditee.

s. *Major program* means a Federal program determined by the auditor to be a major program in accordance with Appendix 1 or a program identified as

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a major program by a Federal agency or pass-thru entity in accordance with paragraph 7.c.

t. *Management decision* means the evaluation by the Federal awarding agency or pass-thru entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

u. *Non-profit organization* means any corporation, trust, association, cooperative, or other organization which: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and, (3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "non-profit organization" includes non-profit institutions of higher education and hospitals, except those that are audited as part of single audits in accordance with Circular A–128, "Audits of State and Local Governments."

v. *OMB* means the Executive Office of the President, Office of Management and Budget.

w. *Organization-wide audit* means an audit of a non-profit organization which includes both the organization-wide financial statements and the Federal awards as described in paragraph 12.

x. *Oversight agency* means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency are described in paragraph 6.b.

y. *Pass-thru entity* means a non-profit organization that provides a Federal award to a subrecipient.

z. *Program-specific audit* means an audit of one Federal program as provided for in paragraphs 2.c and 18.

aa. *Questioned cost* means a cost that is questioned by the auditor because of:

(1) An audit finding, which occurred or is likely to have occurred, from a violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) An audit finding where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) An audit finding where the costs incurred are unreasonable and do not reflect the actions a prudent person would take in the circumstances.

bb. *Recipient* means a non-profit organization receiving awards directly from a Federal awarding agency to carry out a Federal program.

cc. *Research and development* (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-profit organization. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

dd. *Student Financial Aid* (SFA) includes those programs of general student assistance in which a non-profit organization participates, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

ee. *Subrecipient* means the legal entity that receives an award from a pass-thru entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in paragraph 4.

ff. *Vendor* means a dealer, distributor, merchant, or other seller providing goods or services to an auditee that are required for the conduct of a Federal program. These goods or services may be for a non-profit organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in paragraph 4.

2. *Audit Requirements.*

a. *Audit Required.* Non-profit organizations that receive $300,000 or more in a year in awards shall have an organization-wide or program-specific audit conducted for that year in accordance with the provisions of this Circular.

b. *Organization-wide Audit.* Non-profit organizations that receive $300,000 or more in a year in awards shall have an organization-wide audit in accordance with paragraph 12 except when they elect to have a program-specific audit in accordance with paragraph c.

c. *Program-Specific Audit Election.* When a non-profit organization receives awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the non-profit organization, the non-profit organization may elect to have a program-specific audit conducted in accordance with paragraph 18. A program-specific audit may not be elected for R&D unless all awards are received from the same Federal agency, or the same Federal agency and the same pass-thru entity, and that Federal agency or pass-thru entity approves in advance a program-specific audit.

d. *Exemption When Awards Are Less Than $300,000.* Non-profit organizations that receive less than $300,000 a year in awards are exempt from Federal audit requirements for that year except as noted in paragraphs e and 7.a, but records must be available for review or audit by appropriate officials of the Federal awarding agency, pass-thru entity, and/or General Accounting Office (GAO).

e. *Special Provision for Certain Small Subrecipients.* When a Federal program is structured such that substantial service delivery and expenditure of Federal funds occur at subrecipients which receive awards of less than the $300,000 threshold for audit, the Federal agency, with the approval of OMB, may require pass-thru entities to arrange for audits of such subrecipients that would otherwise be exempt from audit under paragraph d. Such audits may be of lesser scope than audits required by this Circular.

3. *Basis for Determining Awards Received.*

a. *Determining Awards Received.* The determination of when an award is received should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-profit organization to comply with laws, regulations, and the provisions of contracts or grant agreements such as: Expenditure/expense transactions associated with grants, cost-type contracts, cooperative agreements, and direct appropriations; the use of loan proceeds under loan programs; the receipt of property; the receipt of surplus property; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-profit organization to an interest subsidy; and, the period when insurance is in force.

b. *Loans and Loan Guarantees (Loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of awards received under loan programs, except as noted in paragraphs c and d:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy or administrative costs allowance received.

c. *Loans and Loan Guarantees (Loans) at Institutions of Higher Education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered awards received in that year. The balance of loans for previous years is not included as awards received because the lender accounts for the prior balances.

d. *Prior Loans and Loan Guarantees (Loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered awards under this Circular when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

e. *Free Rent.* Free rent received by itself is not considered an award under this Circular. However, free rent received as part of an award to carry out a Federal program shall be considered an award and subject to audit under this Circular.

f. *Valuing Non-cash Assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

g. *Medicare.* Medicare payments to a non-profit organization for providing patient care services to Medicare eligible individuals are not considered awards under this Circular.

h. *Medicaid.* Medicaid payments to a non-profit organization for providing patient care services to Medicaid eligible individuals are not considered awards under this Circular unless a State requires the funds to be treated as awards because reimbursement is on a cost-type basis.

4. *Subrecipient and Vendor Determination.*

a. *General.* An auditee may be a recipient, a subrecipient, and a vendor. The awards received as a recipient or a subrecipient would be subject to audit under this Circular. The payments received for goods or services provided by a vendor would not be considered Federal awards. The guidance in paragraphs b and c should be considered in determining whether payments constitute an award to a subrecipient or a payment for goods and services to a vendor.

b. *Subrecipient.* Characteristics indicative of a subrecipient include:

(1) Determining who is eligible to receive what Federal financial assistance;

(2) Performance measured against meeting the objectives of the Federal program;

(3) Responsibility for programmatic decision making;

(4) Responsibility for applicable Federal program compliance requirements; and

(5) Use of funds to carry out a program of the subrecipient as compared to providing goods or services for a program of the pass-thru entity.

c. *Vendor.* Characteristics indicative of a vendor include:

(1) Providing goods and services within normal business operations;

(2) Providing similar goods or services to many different purchasers;

(3) Operating in a competitive environment;

(4) Having compliance requirements that do not pertain to the goods or services provided; and

(5) Providing goods or services that are ancillary to the operation of the Federal program.

d. *Use of Judgment in Making Determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

e. *For-profit Subrecipient.* Since this Circular does not apply to for-profit subrecipients, the pass-thru entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

f. *Compliance Responsibility for Vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for compliance or the vendor's records must be reviewed to determine compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

5. *Auditee Responsibilities.* The auditee shall:

a. Identify, in its accounts, all awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-thru entity.

b. Maintain an internal control structure over Federal programs that provides reasonable assurance that the auditee is managing awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material affect on each of its Federal programs.

c. Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

d. Prepare appropriate financial statements, including the schedule of Federal awards.

e. Ensure that the audits required by this Circular are properly performed and submitted when due.

f. Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with paragraphs 14.b and 14.c, respectively.

6. *Federal Agency and Pass-Thru Entity Responsibilities.*

a. *Cognizant Agency Responsibilities.* Recipients receiving more than $25 million a year in Federal awards shall have a cognizant agency. The assigned cognizant agency shall be the Federal awarding agency that provides the

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predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency assignment and provides notice in the **Federal Register**. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards received in the recipient's fiscal years ending in 1990, 1995, 2000, and every fifth year thereafter. A Federal awarding agency assigned cognizance may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency. Within 30 days after any reassignment, both the old and the new cognizant agency shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the nine month due date of the reporting package required by paragraph 16a. The cognizant agency may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations, when such reporting is not included in the reporting package described in paragraph 16.c.

(5) Advise the auditor and the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the auditor, the auditee, Federal awarding agencies, and the pass-thru entity of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with this Circular.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Help coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

b. *Oversight Agency Responsibilities.* An auditee not assigned a cognizant agency will be under the general oversight of the Federal agency providing it the predominant amount of direct funding as discussed in paragraph 1.x. The oversight agency:

(1) Shall provide technical advice and counsel to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency.

c. *Federal Awarding Agency Responsibilities.* The Federal awarding agency shall perform the following for the awards it makes:

(1) Identify awards made by informing each recipient of the CFDA title and number, award name and number, and award year. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(3) Provide technical advice and counsel to auditees and auditors as requested.

(4) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(5) Assign a person responsible to inform OMB annually of any updates needed to the compliance supplements.

d. *Pass-Thru Entity Responsibilities.* A pass-thru entity that receives a Federal award and passes all or part of it through to subrecipients shall perform the following for the awards it makes:

(1) Identify awards made by informing each subrecipient of CFDA title and number, award name and number, award year, and name of Federal agency. When some of this information is not available, the pass-thru entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-thru entity.

(3) Monitor the activities of subrecipients as necessary to ensure that awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that non-profit subrecipients receiving $300,000 or more in awards during the subrecipient's fiscal year have met the audit requirements of this Circular for that fiscal year, and that subrecipients subject to Circular A–128 have met the requirements of that Circular.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-thru entity's own records.

(7) Require each subrecipient to permit auditors to have access to the records and financial statements as necessary for the pass-thru entity to comply with this Circular.

7. *Relation to Other Audit Requirements.*

a. *Audit Under This Circular in Lieu of Other Audits.* An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this Circular neither limit the authority of Federal agencies, their inspectors general, or GAO to conduct or contract for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

b. *Federal Agency to Pay for Additional Audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits.

c. *Federal Agency Determination of Major Programs.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or contracting for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the applicable audit period. The auditee should promptly respond to such request by informing the Federal agency whether the program would otherwise

be audited as a major program and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. Since the Federal program audited as a result of this request would not otherwise have been audited as a major program, the expenditures of this Federal program shall not be included in the numerator of the calculation to determine whether the requirements of the 50 percent rule described in Appendix 1 were met. A pass-thru entity may use the provisions of this paragraph for a subrecipient.

8. *Frequency of Audit.* Audits required by this Circular shall be performed annually. However, a Federal agency or pass-thru entity may allow an auditee who elects a program-specific audit under paragraph 2.c to perform the audit every two years. Two-year audits must cover both years.

9. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have an audit conducted in accordance with this Circular, Federal agencies and pass-thru entities shall take appropriate sanctions such as:

a. Withholding a percentage of awards until the audit is completed satisfactorily;

b. Withholding or disallowing overhead costs;

c. Suspending awards until the audit is conducted; or

d. Terminating the award.

10. *Audit Costs.* Unless prohibited by law, the cost of audits made in accordance with the provisions of this Circular are allowable charges to awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, "Cost Principles for Educational Institutions," Circular A–122, "Cost Principles for Non-Profit Organizations," Federal Acquisition Regulations subpart 31, or other applicable cost principles or regulations.

11. *Auditor Selection.* In arranging for audit services, auditees shall follow the procurement standards prescribed by Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations." In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

12. *Scope of Audit.*

a. *General.* The audit shall be conducted in accordance with GAGAS.

b. *Financial Statements.* The auditor shall determine whether the financial statements of the auditee present fairly the auditee's financial position, results of operations, and, where appropriate, the cash flows in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of Federal awards is fairly presented in all material respects in relation to the auditee's financial statements taken as a whole.

c. *Internal Controls.*

(1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of the internal control structure over Federal programs sufficient to plan the audit to achieve a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (3), the auditor shall:

(a) Plan the testing of the internal control structure over major programs to achieve a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program.

(b) Perform testing of the internal control structure over major programs as planned in paragraph (a).

(3) When the internal control structure over major programs is likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraphs (2)(a) and (2)(b) are not required. However, the auditor shall report a reportable condition or a material weakness in accordance with paragraph 13.d, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of the ineffective internal control structure over major programs.

d. *Compliance.*

(1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance for each major program.

(3) The principal compliance requirements of the largest Federal programs are included in the compliance supplements.

(4) For Federal programs contained in the compliance supplements, an audit of the compliance requirements contained in the compliance supplements will meet the requirements of this Circular. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplements, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the elements of compliance (e.g., allowability of cost, types of services, eligibility) contained in the compliance supplements as guidance for identifying the individual compliance requirements to test, and determine the requirements governing the Federal program by reviewing the applicable laws, regulations, and the provisions of contracts or grant agreements. The auditor should consult with the applicable Federal agency to determine the availability of agency-prepared supplements or audit guides.

e. *Audit Follow-up.* The auditor shall follow-up on prior audit findings, review the summary schedule of prior audit findings prepared by the auditee in accordance with paragraph 14.b, and report, as an audit finding, when the results of the auditor's follow-up are different from those reported in the summary schedule of prior audit findings. The auditor shall perform audit follow-up regardless of whether a prior audit finding relates to a major program in the current year.

f. *Certification.* The auditor shall read the certification prepared by the auditee in accordance with paragraph 16.b and report as an audit finding when the information in the certification is materially inconsistent with the other parts of the reporting package.

13. *Financial Statements and Auditor's Reporting.*

a. *Financial Statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the organizational unit chosen to meet the requirements of this Circular.

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b. *Schedule of Federal Awards.* The auditee shall also prepare a schedule of Federal awards for the period covered by the auditee's financial statements. While not required, it is appropriate for the auditee to provide information requested to make the schedule easier to use by Federal awarding agencies and pass-thru entities. At a minimum, the schedule shall:

(1) List total expenditures for each individual award and the CFDA number or other identifying number when the CFDA information is not available.

(2) Include notes that describe the significant accounting policies used in preparing the schedule.

(3) Identify major programs.

(4) List individual awards by Federal agency and major subdivision within a Federal agency. For awards received as a subrecipient, the name of the pass-thru entity and identifying number assigned by the pass-thru entity shall be included.

(5) List individual awards within a category of awards. However, when it is not practical to list each individual award for R&D, total expenditures shall be shown by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(6) Include, in either the schedule or a note to the schedule, the value of non-cash assistance received, insurance programs in effect during the year, and loans or loan guarantees outstanding at year end.

c. *Auditor's Reporting.* The auditor's report(s) shall include the following:

(1) An opinion as to whether the financial statements are fairly presented in conformity with generally accepted accounting principles or a disclaimer of opinion and an opinion as to whether the schedule of Federal awards is fairly presented in all material respects in relation to the financial statements taken as a whole.

(2) A report on the auditee's internal control structure related to the financial statements and major programs. This report shall describe the scope of testing of this internal control structure and the results of those tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (4).

(3) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements and major programs. This report shall include an opinion as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (4).

(4) A schedule of findings and questioned costs which includes all audit findings as defined in paragraph d.(1). Any internal control findings, compliance findings, and questioned costs which relate to the same issue should be presented as a single finding. Where practical, audit findings should be organized by Federal agency or pass-thru entity.

(5) A copy of any management letters issued by the auditor.

d. *Audit Findings.*

(1) The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(a) Reportable conditions in the internal control structure over major programs. The auditor's determination of a reportable condition for major programs is in relation to an individual compliance requirement for a major program. Auditors shall identify reportable conditions which are individually or cumulatively material weaknesses.

(b) Known fraud affecting an award. Fraud is a type of illegal act involving the obtaining of something of value through willful misrepresentation. This paragraph does not require the auditor to make an additional reporting when the auditor confirms the fraud has been reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(c) Material irregularities, illegal acts, and noncompliance with the provisions of contracts or grant agreements which auditors conclude, based on evidence obtained, have occurred or are likely to have occurred. The auditor's determination of whether an irregularity, an illegal act, or noncompliance with the provisions of contracts or grant agreements is material is in relation to an individual compliance requirement for a major program. An irregularity, an illegal act, or noncompliance with the provisions of contracts or grant agreements which could have a material effect on an audit objective identified in the compliance supplements shall also be considered as material.

(d) Known questioned costs which are greater than $10,000 for an individual compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance for each major program, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for an individual compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(e) Instances where the audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with paragraph 14.b is other than as reported by the auditee.

(f) Instances where the certification prepared by the auditee in accordance with paragraph 16.b is materially inconsistent with the reporting package described in paragraph 16.c.

(2) Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-thru entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(a) Federal program and specific award identification including the CFDA title and number, award number and year, name of Federal agency, and name of the pass-thru entity. When information, such as the CFDA title and number or award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(b) The criteria or specific requirement upon which the audit findings are based, including statutory, regulatory, or other citation.

(c) The condition found, including facts that indicate that the audit findings occurred or are likely to have occurred.

(d) Identification of questioned costs and how they were computed.

(e) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value, if appropriate.

(f) The possible asserted effect to provide sufficient information to Federal, State, or local officials to permit them to determine the effect and

cause in order to take prompt and proper corrective action.

(g) Recommendations to prevent future occurrences of the audit finding.

(h) Explanations of responsible officials of the auditee when there is disagreement with the audit findings.

(3) Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

14. *Audit Findings Follow-up.*

a. *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under paragraph 13.d(3). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

b. *Summary Schedule of Prior Audit Findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule shall also include audit findings in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (1) or no longer valid in accordance with paragraph (4).

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-thru entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule.

c. *Corrective Action Plan.* At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the names of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

15. *Management Decision.*

a. *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-thru entity may request additional information or documentation from the auditee, including a request that the documentation be audited, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

b. *Federal Agency.* As provided in paragraph 6.a.(7), the cognizant agency shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in paragraph 6.c.(4), a Federal awarding agency is responsible for issuing a management decision for findings that relate to awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

c. *Pass-Thru Entity.* As provided in paragraph 6.d.(5), the pass-thru entity shall be responsible for making the management decision for audit findings that relate to awards it makes to subrecipients.

d. *Time Requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should proceed as rapidly as possible.

e. *Reference Numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with paragraph 13.d.(3).

16. *Report Submission.*

a. *General.* Within nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency, the reporting package described in paragraph c shall be submitted in accordance with this Circular. Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

b. *Certification.* The auditee shall complete a certification form which states whether the audit was completed in accordance with this Circular and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be available from the central clearinghouse designated by OMB. The auditee's chief executive officer or chief financial officer shall sign a statement that the information on the form is accurate and complete.

Certificate of Audit

This is to certify that, to the best of my knowledge and belief, the (specify name of non-profit organization) has: (1) Engaged an auditor to perform an audit in accordance with the provisions of OMB Circular A–133 for the (specify number) months ended (specify date); (2) the auditor has completed such audit and presented a signed audit report which states that the audit was conducted in accordance with the provisions of the Circular; and, (3) the information on the attached form accurately and completely reflects the results of this audit, as presented in the auditor's report. I declare that the foregoing is true and correct.

Attachment

Information Accompanying Certificate of Audit

The following data elements will be included in a machine-readable form to accompany the Certificate of Audit:

(1) Catalog of Federal Domestic Assistance (CFDA) number for each covered Federal program

(2) name of each covered Federal program

(3) amount of expenditures for the current fiscal year associated with each covered Federal program

(4) whether or not there are audit findings in the current audit report related to the following:

(a) Amount of questioned costs
(b) Types of services allowed or unallowed
(c) Matching or cost sharing
(d) Maintenance of level of effort
(e) Earmarking
(f) Special reporting requirements
(g) Special tests and provisions
(h) Administrative requirements
(i) Cash management
(j) Federal financial reporting
(k) Program income
(l) Real property management
(m) Equipment management
(n) Procurement
(o) Subrecipient monitoring
(p) Uniform Relocation Assistance and Real Property Acquisition Policies Act

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(q) Allowable costs/cost principles
(r) Davis-Bacon Act.

(5) Whether or not there is a summary schedule of prior audit findings

(6) If applicable, the CFDA number(s) for prior audit finding(s) reflected in the summary schedule of prior audit findings

(7) Non-Profit Organization Name:

Employer Identification Number:

Name and Title of Responsible Official:

Telephone:

Signature:

Date of Execution:

(8) Auditor Name:

Name and Title of Contact Person:

Auditor Address:

Auditor Telephone:

c. *Reporting Package.* The reporting package shall include the following:

(1) Certification discussed in paragraph b.

(2) Financial statements and schedule of Federal awards discussed in paragraphs 13.a and 13.b.

(3) Auditor's reporting discussed in paragraph 13.c.

(4) Summary schedule of prior audit findings discussed in paragraph 14.b.

(5) Corrective action plan discussed in paragraph 14.c.

d. *Submission to Clearinghouse.* All auditees shall submit to the central clearinghouse designated by OMB one copy of the:

(1) Certification discussed in paragraph b, and

(2) Reporting package described in paragraph c for each Federal awarding agency that provided direct awards when the schedule of findings and questioned costs disclosed audit findings for those direct awards or the summary schedule of prior audit findings reported the status of any audit findings for those direct awards.

e. *Additional Submission by Subrecipients.* Subrecipients shall submit to each pass-thru entity one copy of the:

(1) Certification discussed in paragraph b, and

(2) Reporting package described in paragraph c for each pass-thru entity when either the schedule of findings and questioned costs disclosed audit findings for awards that the pass-thru entity provided or the summary schedule of prior audit findings reported the status of any audit findings for awards that the pass-thru entity provided.

f. *Requests for Report Copies.* In response to requests by the Federal agency or pass-thru entity, auditees shall submit the appropriate copies of the reporting package described in paragraph c.

g. *Report Retention Requirements.* Auditees shall keep one copy of the reporting package described in paragraph c on file for three years from the date of submission to the central clearinghouse. Pass-thru entities shall keep subrecipients' submissions on file for three years from date of receipt.

h. *Clearinghouse Responsibilities.* The central clearinghouse designated by OMB shall distribute the reporting package received in accordance with paragraph d.(2) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required certifications and reporting packages.

i. *Clearinghouse address.* The address of the central clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132. If the designated central clearinghouse or its address should change, OMB will publish this information in the **Federal Register**.

j. *Electronic Filing.* Nothing in this Circular shall preclude electronic submissions to the central clearinghouse in such manner as may be approved by OMB. With OMB approval, the central clearinghouse may pilot test methods of electronic submissions.

17. *Audit Working Papers and Reports.* The auditor shall retain working papers and reports for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency, oversight agency, or pass-thru entity to extend the retention period. When auditors are aware that the Federal awarding agency, pass-thru entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding prior to destruction of the working papers and reports. Audit working papers shall be made available upon request to the cognizant or oversight agency or their designee, the Office of Inspector General of a Federal agency providing direct or indirect funding, or GAO at the completion of the audit.

18. *Program-Specific Audit.*

a. *Program Audit Guide Available.* In many cases a program-specific audit guide will be available to provide specific guidance to the auditor on internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

b. *Program Audit Guide Not Available.*

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program audited as they would have for a major program audited under the requirements of this Circular.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of the Federal program expenditures and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of paragraph 14.b, and a corrective action plan consistent with the requirements of paragraph 14.c.

(3) The auditor shall: (a) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS; (b) obtain an understanding of the internal control structure policies and procedures and perform tests of the internal control structure for the Federal program consistent with the guidance in paragraph 12.c for a major program; (c) perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the guidance in paragraph 12.d for a major program; (d) follow up on prior audit findings, review the auditee's summary schedule of prior audit findings, and report, as an audit finding, when the results of the auditor's follow-up are different from those reported by the auditee consistent with the requirements of paragraph 12.e; and, (e) read the certification prepared by the auditee consistent with the requirements of paragraph 12.f.

(4) The auditor shall: (a) Render an opinion as to whether the financial statement(s) of the Federal program is fairly presented in accordance with the stated accounting policies; (b) issue a report on the internal control structure related to the Federal program, which shall describe the scope of testing of that internal control structure and the results of those tests; (c) issue a report on compliance with laws and regulations which includes an opinion as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and, (d) issue a schedule of findings and questioned costs which includes audit findings for the Federal program as described in paragraph 13.d.

c. *Reporting for Program-Specific Audits.* Within nine months after the end of the audit period, unless a longer period is approved in advance by the Federal agency providing the funding, the auditee shall submit to the central clearinghouse designated by OMB a certification prepared in accordance with the requirements of paragraph 16.b. When a program-specific audit guide is available, the financial statement(s) and the audit report shall be submitted in accordance with that guide. When a program-specific audit guide is not available and the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit to the Federal awarding agency or pass-thru entity one copy of the financial statement(s), summary status of prior audit findings, corrective action plan, and the auditor's reporting described in paragraph b.(4). Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

d. *Other Paragraphs of This Circular May Apply.* The provisions of paragraphs 1 through 11, 15, 17 and other referenced provisions of this Attachment apply to program-specific audits unless contrary to a program-specific audit guide or program laws and regulations.

Appendix 1—Major Program Determination

The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: (a) Current and prior audit experience, (b) oversight by Federal agencies and pass-thru entities, and (c) the inherent risk of the Federal program. The following process shall be followed:

Step 1—The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal expenditures exceeding three percent of total Federal expenditures or $300,000, whichever is greater. The remaining Federal programs shall be labeled Type B programs.

The inclusion of large non-cash assistance, insurance programs, or loans and loan guarantees (loans), should not result in the exclusion of other programs as Type A programs. When a Federal program providing non-cash assistance, insurance, or loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

Step 2—The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods, and, in the most recent period audited, it shall have had no audit findings from reportable conditions, irregularities, illegal acts, or noncompliance with the provisions of contracts or grant agreements as described in paragraphs 13.d.(1)(a) and 13.d.(1)(c) of the Attachment. The auditor shall consider the criteria in D, E, F, G, and H of Appendix 2 and whether any changes in personnel or systems affecting a Type A program have significantly increased risk, and apply professional judgment in determining whether a Type A program is low-risk.

Step 3—The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in Appendix 2. Except for known reportable conditions in internal controls or compliance problems as discussed in criteria A, B, and D of Appendix 2, a single criteria in Appendix 2 would seldom cause a Type B program to be considered high-risk.

An audit under this Circular is not expected to test small Federal programs. Therefore, programs with expenditures of less than $100,000 would not be considered high-risk unless it is necessary to audit a program with expenditures of less than $100,000 as a major program to meet the 50 percent rule discussed below.

Step 4—All Type A programs shall be audited as major programs, except the auditor may exclude any Type A programs identified as low-risk under step 2. All Type B programs identified as high-risk under step 3 shall be audited as major programs.

50 Percent

Rule—The audit of Federal programs shall cover at least 50 percent of total Federal expenditures unless the auditee meets the criteria in Appendix 3 for a low-risk auditee, in which case the coverage shall be at least 25 percent of total Federal expenditures.

Documentation of Risk

The auditor shall document in the working papers the risk analysis process used in determining major programs.

Auditor's Judgment

When the major program determination has been performed and documented in accordance with this Circular, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-thru entities shall only be for clearly improper use of the guidance in this Circular. However, Federal agencies and pass-thru entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

Deviation from Use of Risk Criteria

For first year audits, the auditor may elect to determine major programs as all Type A programs plus any higher risk Type B programs as necessary to cover at least 50 percent of total Federal expenditures. Under this option, the auditor would not be required to perform the procedures discussed in steps 2, 3, and 4 of this Appendix.

A first-year audit is the first year the entity is audited under this Circular or the first year of a change of auditors or a bona fide procurement process which could result in a change of auditors.

To ensure that a frequent change of auditors would not preclude audit of high risk Type B programs, this election for first year audits may not be used by a non-profit organization more than once in every three years.

Appendix 2—Criteria for Risk

The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria such as the following to identify risk in Federal programs:

Current and Prior Audit Experience

A. Weaknesses in the internal control structure over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and

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the competence and experience of personnel who process transactions affecting Federal programs.

1. A Federal program administered under multiple internal control structures may have a higher risk. When identifying risk in a large organization-wide audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the organization.

2. When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

3. The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

B. Prior audit findings would indicate higher risk, particularly when the audit findings could have a significant impact on a Federal program or have not been corrected.

C. Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

Oversight Exercised by Federal Agencies and Pass-Thru Entities

D. Oversight exercised by Federal agencies or pass-thru entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

E. Risk would be higher for Federal programs identified by the Office of Management and Budget (OMB) as high-risk at the auditee level. OMB plans to provide this identification in its compliance supplements or by issuing an annual list of high-risk programs.

Inherent Risk of the Federal Program

F. The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

G. The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs laws, regulations, or the provisions of contracts or grant agreements may increase risk.

H. The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years, an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

I. Type B programs with larger expenditures would be of higher risk than programs with substantially smaller expenditures.

As part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-thru entity.

Appendix 3—Criteria for a Low-Risk Auditee

An auditee which meets all of the following conditions for the preceding two years shall qualify as a low-risk auditee under the 50 percent rule described in Appendix 1, unless the current year audit does not meet the conditions described in paragraph 3 below:

1. The audits were performed in accordance with the provisions of this Circular.

2. The auditor's opinions on the financial statements and the schedule of Federal awards were unqualified. However, the cognizant or oversight agency may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

3. There were no deficiencies in internal controls which were identified as material weaknesses under the requirements of generally accepted government auditing standards (GAGAS). However, the cognizant or oversight agency may judge that the material weaknesses do not affect the management of Federal awards and provide a waiver.

4. For any one Type A program, as defined in step 1 of Appendix 1, there were no audit findings as described in paragraph of the Attachment from:

a. Internal control deficiencies which were identified as material weaknesses.

b. Irregularities, illegal acts, or noncompliance with the provisions of contracts or grant agreements which either individually or cumulatively have a material effect on the Type A program.

c. Known or likely questioned costs that exceed five percent of the total expenditures for a Type A program during the year.

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Friday
March 17, 1995

Part IX

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Refrigerant Recycling; Final Rule and Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5174–5]

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Through this action EPA is amending the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h), which are currently scheduled to expire on May 15, 1995, only until March 18, 1996 or until EPA can complete rulemaking to adopt new refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is extending the requirements in response to requests from the air-conditioning and refrigeration industry in order to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants, which could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

In the proposed rules section of today's **Federal Register**, EPA is proposing to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h) and soliciting public comment on this extension. If adverse comments are received on this direct final rule, EPA will withdraw the direct final rule and address the comments received in a subsequent final rule on the related proposed rule. No additional opportunity for public comment on the extension will be provided.

DATES: This final action will become effective on May 16, 1995 unless EPA is notified by April 17, 1995 that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this direct final rule, then timely notice will be published in the **Federal Register**.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Deborah Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (Docket # A–92–01 VIII.F.) (202) 233–9149.

FOR FURTHER INFORMATION CONTACT: Section 608 Recycling Program Manager, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Overview
II. Background
III. Today's Action
IV. Effective Date
V. Summary of Supporting Analysis
VI. Judicial Review

I. Overview

Paragraphs 82.154 (g) and (h) of 40 CFR Part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on May 15, 1995. EPA is currently in the process of adopting new, less restrictive, refrigerant purity requirements based on industry guidelines, but will be unable to complete the rulemaking prior to the expiration of the existing standards. A lapse in the standards could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn causes increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants (including crops and aquatic organisms), and increased formation of ground-level ozone. To avoid these results, EPA is acting on requests from the air-conditioning and refrigeration industry to extend the effectiveness of the current refrigerant purity requirements, only until EPA can complete rulemaking to adopt the new requirements.

II. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would probably be required to address some issues that had been raised during the comment period on the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI 700 Standard of purity by a certified reclaimer (§ 82.154 (g) and (h) referencing standard in §§ 82.152(r) and 82.164). As discussed in the final rule, this requirement was intended to protect the purity of used refrigerant in order to prevent damage to air-conditioning and refrigeration equipment from use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could in turn lead to release of refrigerant that was presumed to be contaminated (and therefore harmful to equipment), depleting stratospheric ozone, decreasing the limited supply of refrigerants, and forcing the premature retirement or retrofit of CFC or HCFC equipment (58 FR 28678).

Although the reclamation requirements at § 82.154 (g) and (h) would clearly protect equipment, EPA believed that a less stringent but still effective requirement could be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced by the same contractor. However, the only existing refrigerant purity standard at the time EPA promulgated the rule was ARI 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers.

In order to encourage industry to explore the possibility of developing less stringent but still effective standards and technologies for purifying refrigerant, EPA adopted a commenter's suggestion that the Agency establish an expiration date, or "sunset," for the reclamation requirement. EPA accordingly made the reclamation requirements at § 82.154 (g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG–2): Handling and Reuse of Refrigerants in the United States*. This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. EPA believes that these requirements would protect air-conditioning and refrigeration equipment while permitting technicians, contractors, and equipment owners more flexibility than the current requirements, and EPA is pursuing rulemaking to adopt the IRG–2 requirements as soon as possible. However, EPA does not believe that it will have an opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule between now and May 15, 1995, when the current reclamation requirements will expire.

Representatives of the air-conditioning and refrigeration industry have expressed concern that such a lapse in refrigerant purity requirements would result in a number of problems, including sloppy handling of refrigerant and dumping of contaminated refrigerant on the market. These problems would in turn result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. However, if this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than properly disposed of.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and "recyclers" are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; in others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. (In fact, in the latter situation the refrigerant is worse than worthless, because the owner of the refrigerant must actually pay to have the refrigerant properly disposed of.) In either situation, such dumping would lead to widespread equipment damage. This concern is exacerbated by the date on which the current reclamation requirements are scheduled to expire: May 15 falls at the beginning of the summer, when there is heavy demand for refrigerant.

III. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard and anticipates publishing a proposal by mid to late summer of this year.

IV. Effective Date

This final action will become effective on May 16, 1995 unless EPA is notified by April 17, 1995 that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this direct final rule, then timely notice will be published in the **Federal Register**.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that this amendment will have negligible impact on the regulated community because it simply extends an existing requirement. This requirement itself is expected to result in significant private savings due to avoided damage to air-conditioning and refrigeration equipment and

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preservation of a stock of pure refrigerant to continue servicing equipment. An examination of the impacts of the section 608 rule as a whole on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

VI. Judicial Review

Because these regulations are nationally applicable under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Interstate commerce, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 14, 1995.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) Effective May 16, 1995 until March 18, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152(r);

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective May 16, 1995 until March 18, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * * *

[FR Doc. 95–6750 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5174–6]

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h), which are currently scheduled to expire on May 15, 1995, only until one year after publication of any final rule based on this proposal or until EPA can complete rulemaking to adopt new refrigerant purity requirements based on industry guidelines, whichever comes first. In the final rules section of this **Federal Register**, EPA is promulgating this amendment as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the amendment is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time. EPA has found that there is good cause for denying the opportunity for a public hearing pursuant to CAA section 307(d)(1) and 5 U.S.C. section 553(b)(3)(B).

DATES: Comments on this proposed rule must be received on or before April 17, 1995.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–92–01 VIII.F, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. All supporting materials are contained in Docket A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Section 608 Recycling Program Manager, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION:

I. Public Participation

EPA is providing an opportunity for interested parties to submit written comments on this proposal. However, EPA is not providing an opportunity for a public hearing in addition to the opportunity to submit written comments. This is necessary to ensure that EPA has sufficient time to take final action on the proposed extension of the reclamation requirements before those requirements expire on May 15, 1995. Even without an opportunity for a public hearing, the public comment period will close in mid-April at the earliest. Thus, a public hearing would be impracticable if EPA is to be able to act on the proposed extension of the reclamation requirements before their expiration.

Moreover, it would be contrary to the public interest to effectively eliminate EPA's option to extend the reclamation requirements before expiration by providing an opportunity for a public hearing. As discussed in the direct final rule published in the final rules section of this **Federal Register**, a lapse in the reclamation requirements could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages. Release of refrigerants has been found to deplete stratospheric ozone. Refrigerant shortages would result in economic harms from refrigerant price increases and from the premature retrofit of CFC and HCFC equipment.

Moreover, the lack of opportunity for a public hearing should place little burden on the public. First, commenters still have the opportunity to submit written comments on this proposal. EPA believes that such an opportunity to comment will be fully sufficient here to comply with the interest in ensuring public participation in agency actions, particularly as EPA expects very few, if any, adverse comments. Indeed, an important impetus for proposing this rule has been a request by significant portions of the affected industry that EPA extend the current standard. Second, if promulgated, the proposed rule would simply extend existing requirements, so EPA does not expect to receive significant new information regarding the costs and benefits of these requirements during the comment period. Third, the extension is for a limited time period, one year. Well before that time, EPA expects to propose a substitute standard, with full opportunity for written comment and a public hearing. Fourth, if the proposed rule is promulgated, continued compliance with the existing standard should impose no new burden on affected parties.

Providing for a public hearing here would be impracticable and contrary to the public interest, as EPA is providing sufficient opportunity for submission of written comment, the burden imposed on affected parties is minimal, and EPA expects it will need to extend the reclamation requirements before the May 15, 1995, expiration date. Thus, the Agency finds good cause for denying the opportunity for a public hearing pursuant to CAA § 307(d)(1) and 5 U.S.C. section 553(b)(3)(B).

If adverse comments are received on the direct final rule, EPA is proposing to make the final rule that responds to those comments effective upon publication. This expedited effective date is necessary to extend the reclamation requirements before those requirements expire on May 15, 1995. Providing for a 30 day delay in effectiveness after publication would be impracticable and contrary to the public interest. As discussed above, EPA would not have sufficient time to extend the reclamation requirements prior to their expiration if EPA must allow for an additional 30 days after publication. Also, for the reasons discussed above, EPA believes that a lapse of those requirements would be contrary to the public interest. Finally, because the proposed rule merely extends the existing requirements, making the rule effective immediately upon publication places little burden on the affected parties. Given the lack of burden upon affected parties and the need to extend the reclamation requirements prior to their expiration, the Agency proposes to find good cause for expediting the effective date of the rule, pursuant to 5 U.S.C. section 553(d)(3).

II. Additional Information

For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Chemicals, Reporting and recordkeeping requirements.

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Dated: March 14, 1995.
Carol M. Browner,
Administrator.
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Federal Register

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Part X

The President

Executive Orders 12957—Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources

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Presidential Documents

Title 3—

The President

Executive Order 12957 of March 15, 1995

Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order: (a) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract;

(b) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract for the financing of the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract; and

(c) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For the purposes of this order: (a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, or other organization;

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) The term "Iran" means the land territory claimed by Iran and any other area over which Iran claims sovereignty, sovereign rights or jurisdiction, including the territorial sea, exclusive economic zone, and continental shelf claimed by Iran.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States

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Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order is effective at 12:01 a.m., eastern standard time, on March 16, 1995.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
March 15, 1995.

[FR Doc. 95–6849
Filed 3-15-95; 4:50 pm]
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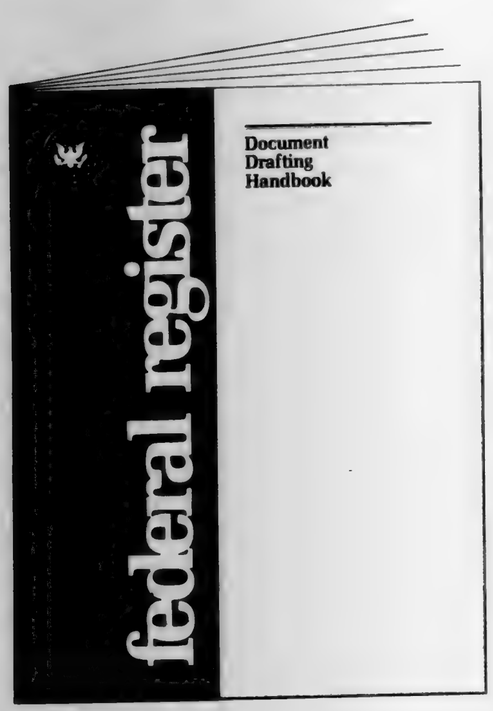

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Rules and Regulations

Federal Register
Vol. 60, No. 53
Monday, March 20, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 94–061–2]

Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the interstate movement of horses that test positive for equine infectious anemia to allow the horses to be moved interstate directly to slaughter under a permit and in a sealed conveyance, as an alternative to the horses being officially identified prior to the interstate movement with a hot iron or chemical brand, freezemarking, or a lip tattoo. This change in the regulations will provide owners of equine infectious anemia reactors with an alternative means of handling their animals while preventing the spread of this communicable disease.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Tim Cordes, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Sheep, Goat, Equine and Poultry Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1228, (301) 734–3279.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain provisions for the interstate movement of horses, asses, ponies, mules, and zebras that test positive for communicable diseases, including equine infectious anemia (EIA). The purpose of those provisions is to prevent the spread of communicable diseases, including EIA. EIA, also known as swamp fever, is a viral disease of equines that may be characterized by sudden fever, swelling of the legs and lower parts of the body, severe weight loss, and anemia.

Section 75.4(a) of the regulations defines an EIA reactor as any horse, ass, mule, pony, or zebra that is subjected to an official test and found positive. Under § 75.4(b) of the regulations, no EIA reactor may be moved interstate unless the reactor is officially identified and meets certain other requirements. Section 75.4(a) of the regulations defines "officially identified" as the permanent identification of a reactor with markings permanently applied by an Animal and Plant Health Inspection Service (APHIS) representative, a State representative, or an accredited veterinarian using a hot iron or chemical brand, freezemarking, or a lip tattoo.

On October 6, 1994, we published in the **Federal Register** (59 FR 50860–50861, Docket No. 94–061–1) a proposal to amend the requirements for interstate movement in § 75.4(b) by adding a provision stating that "Official identification is not necessary if the animal is moved directly to slaughter, traveling under a permit and in a sealed conveyance." We also proposed to add definitions of "official seal" and "permit" to § 75.4(a).

We solicited comments concerning our proposal for 60 days ending December 5, 1994. We received six comments by that date. They were from State agriculture agencies, animal rights organizations, and a horse industry association. Three of the commenters supported the proposed rule, although two of those commenters suggested additional provisions be included in the regulations. The remaining three commenters opposed the proposed rule. We carefully considered all of the comments we received. They are discussed below.

Comment: Horse owners may be unwilling to part with their animals for sentimental or economic reasons. If EIA reactors are not permanently identified, some horse owners may attempt to substitute a different horse for an EIA reactor prior to the reactor's movement to slaughter in a sealed conveyance.

Response: We do not believe that the substitution scenario envisioned by the commenter will present a problem. First, we believe that it is unlikely that a horse owner would attempt to substitute a healthy horse for a horse infected with a debilitating disease such as EIA. Second, when a horse is identified as an EIA reactor, that horse is tested for EIA at least two more times, once by State animal health authorities and once by APHIS. The APHIS and State representatives who deal with the retests will likely be the same APHIS and State representatives who are present at the time the reactor is sealed aboard the conveyance on which it will be transported to slaughter, and they would be able to recognize a horse that they had recently handled. Additionally, the horse would be identified, in writing, for the purposes of the tests and again when the required forms for its interstate movement were completed. Given those factors, it is unlikely that a horse owner could effect a substitution even if he or she desired to do so. Finally, a reactor does not necessarily have to be moved interstate to slaughter; a horse owner would have other options. The regulations in § 75.4(b) allow, under certain conditions, a reactor to be moved interstate to its farm of origin or to a diagnostic or research facility, where the reactor would remain quarantined under State authority until natural death, slaughter, or until disposed of by euthanasia.

Comment: APHIS should consider regulations to prohibit needlessly cruel identification procedures such as hot-iron and chemical branding for those EIA reactors that are not moved directly to slaughter in a sealed conveyance. In that vein, APHIS should research and encourage the use of microchip technology and its global standardization.

Response: Under the current regulations, the owner of a reactor is not required to use either of the identification methods that the commenter views as being needlessly cruel. Freezemarking and lip tattoos are approved for use in addition to hot-iron and chemical branding, and this final rule makes available a method by which the owner of a reactor could move the animal interstate without permanently identifying the animal.

With regard to microchips, we acknowledge that useful information can be readily stored on and retrieved from microchips but, as alluded to by

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the commenter, there is no universal chip reader that can access the information stored on chips produced by different manufacturers. That lack of standardization currently prevents our use of microchips in nationwide disease control programs. APHIS will, however, continue to research the potential uses of microchips in its disease control programs.

Comment: The proposed rule does not specify who is authorized to open a sealed conveyance. Because there are only nine equine processing plants in the United States, EIA reactors may have to travel several hundred miles to slaughter. How will the feeding, watering, and resting of EIA reactors being transported to slaughter over long distances be accomplished if the operator of the conveyance is not authorized to break the seal? Will an authorized person be available to open and reseal the conveyance and ensure that all EIA reactors are returned to the conveyance after a stop?

Response: As we stated in the proposed rule, moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance would ensure that the animals are not diverted for other uses. Because the seal is intended to provide evidence that the reactors have not been removed from the conveyance during the course of the interstate movement to the destination slaughtering establishment, it is necessary that the seal remain unbroken until the conveyance arrives at the destination slaughtering establishment, where an APHIS or State representative would remove the seal. The provisions of this final rule are presented as an alternative to officially identifying reactors prior to an interstate movement; we understand that this alternative may not be viable in all situations. If the interstate movement to the destination slaughtering establishment cannot be completed without a stop for resting, feeding, and watering a reactor, the owner of the reactor would still be able to move the reactor interstate to slaughter. Specifically, the owner of the reactor could choose to have the animal officially identified and, under the regulations in § 75.4(b)(4), would be able to move the reactor interstate through no more than one approved stockyard for sale for immediate slaughter if the reactor is accompanied by a certificate during the interstate movement and is moved within 5 days of its arrival at the approved stockyard directly to slaughter.

Comment: Without permanent identification, how will the identity of EIA reactors be maintained in the event that the conveyance in which they are being moved has a mechanical breakdown or is involved in an accident?

Response: The operator of the conveyance in which the reactors are being transported will have been furnished with the telephone numbers of APHIS representatives in the States of origin and destination prior to his or her departure from the State of origin. If, for any reason, the operator is unable to reach the slaughtering establishment in the State of destination as planned, the operator will be able to contact an APHIS representative, who will make the necessary arrangements for APHIS or State personnel to travel to the location of the conveyance and take whatever actions may be necessary to ensure that the reactors are maintained in isolation sufficient to prevent the transmission of EIA to other animals until such time as the movement to the slaughtering establishment can be completed.

Comment: When the nearest equine processing plant is several hundred miles away, it is not cost effective to transport a single EIA reactor to slaughter and it may take several weeks to gather enough animals to make the journey economically practical. If an EIA reactor is not officially identified as such, there is an increased chance that the animal could be diverted while waiting to be transported to slaughter.

Response: At the time an animal is confirmed as an EIA reactor, the APHIS representative handling the case will make arrangements for the animal to be officially identified or moved directly to slaughter under permit in a sealed conveyance, depending on the owner's preference. As envisioned by the commenter, the owner of a reactor may believe that it is not in his or her best economic interests to move the reactor interstate directly to slaughter under a permit and in a sealed conveyance. In such a case, the owner of the reactor would choose to have the animal officially identified and, under the regulations in § 75.4(b)(4), could then move the reactor interstate through no more than one approved stockyard for sale for immediate slaughter if the reactor is accompanied by a certificate during the interstate movement and is moved within 5 days of its arrival at the approved stockyard directly to slaughter.

Comment: Without official identification, some reactors may be diverted from slaughter. If APHIS' proposal to allow EIA reactors to be moved interstate to slaughter in a sealed conveyance without official identification is motivated by its concern that branding causes undue distress to horses, then freezemarking, which does not cause evident distress in horses, should be required for reactors being moved interstate to slaughter in a sealed conveyance. Although a freeze brand would not be immediately visible, the mark would become visible within 2 to 3 weeks, thus allowing for the identification of any EIA reactors that may have been diverted from slaughter while being moved in a sealed conveyance.

Response: The provisions of this final rule are intended as an alternative to official identification. In practical terms, if we were to require freezemarking in addition to the permit and seal requirements, there would be no real alternative at all. Indeed, the seal requirement would become an additional condition not found in the other provisions of § 75.4(b) regarding interstate movement to slaughter. As stated above and in the proposed rule, we believe that moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance will ensure that the animals are not diverted for other uses.

Comment: Because of the incidence and nature of EIA, it is better to expend the time and expense involved in permanently identifying an EIA reactor than to risk its being diverted during movement and exposing other horses to the disease.

Response: We took into account factors such as the incidence and nature of EIA, as well as other considerations, during the development of the proposed rule. After considering those issues, we concluded that EIA reactors could be moved interstate to slaughter without official identification if they were moved under a permit and in a sealed conveyance. We believed, and continue to believe, that the permit and seal requirements will ensure that the animals will not be diverted for other uses or pose a greater risk of spreading EIA than reactors moved under the other interstate movement provisions of § 75.4(b).

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Because this rule provides an alternative, the economic impact to horse owners will be minimal. The horse owners that will be affected by this rule change are those that have horses that test positive for EIA and voluntarily choose to transport their horses interstate to slaughter under an official seal. APHIS estimates that, annually, between 500 and 1,000 horse operations have horses that become infected with EIA. Although it is not known how many of these operations are "small" entities (less than $0.5 million in annual sales, according to Small Business Administration size criteria), it is likely that most are in that category.

Current estimates put the number of horses in the United States between 6 and 10 million. In 1993, about 1 million horses were tested for EIA. Of these, 1,859 (about 0.18 percent) tested positive for EIA.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0051.

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 is amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, and 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, paragraph (a) is amended by adding two new definitions, in alphabetical order, and in paragraph (b), the introductory text is amended by adding a statement immediately following the colon, to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

Official seal. A serially numbered metal or plastic strip, or a serially numbered button, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened. It is applied by an APHIS representative or State representative.

* * * * *

Permit. An official document (VS Form 1–27 or a State form which contains the same information, but not a "permit for entry") issued by an APHIS representative, State representative, or accredited veterinarian which lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, and one of the following: The individual animal registered breed association registration tattoo, individual animal registered breed association registration number, or similar individual identification, including name, age, sex, breed, color, and markings.

* * * * *

(b) * * * *Provided that* official identification is not necessary if the reactor is moved directly to slaughter under a permit and in a conveyance sealed with an official seal:

* * * * *

Done in Washington, DC, this 14th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6762 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–22–AD; Amendment 39–9177; AD 95–06–07]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R22 helicopters, that currently requires an initial dye penetrant inspection of the main rotor drive forward flexplate (flexplate), and repetitive visual inspections of certain installed flexplates. This amendment is prompted by three accidents reported by the airworthiness authority of Australia involving failure of the flexplate, located between the main rotor gearbox and clutch assembly. The actions specified by this AD are intended to prevent failure of the flexplate, failure of the main rotor drive system, and subsequent loss of control of the helicopter.

DATES: Effective April 4, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–22–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137–4298.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, Propulsion Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On May 18, 1994, the FAA issued Priority Letter AD 94–11–01, applicable to RHC Model R22 helicopters, to require an initial dye penetrant inspection of the flexplate on all RHC Model R22 helicopters, and repetitive visual inspections of flexplates that have been in service for 2 or more years or 500 or more hours time-in-service (TIS). That action was prompted by three accidents reported by the airworthiness authority of Australia involving failure of the flexplate. In one accident, the flexplate fractured during

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normal cruise flight releasing several fragments, some of which punctured the fuel tank. A metallurgical report issued by the airworthiness authority of Australia suggests that the failures resulted from fatigue cracking that initiated at areas of intergranular pitting corrosion on the edge of the flexplates. The FAA has determined that any crack, nick, or corrosion in the flexplate creates an unsafe condition and should be corrected. That condition, if not corrected, could result in failure of the flexplate, failure of the main rotor drive system, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has received information indicating that flexplates, part number (P/N) A193–1 without bonded washers, and P/N A947–1 with bonded washers, may have been subjected to paint overspray at Robinson Helicopter Company when they were painting hardware adjacent to the flexplate. Damage to flexplate edges with paint overspray could result in corrosion due to the retention of contaminants under the paint. Robinson Helicopter Company has revised their inspection procedures to ensure that subsequently-produced flexplates are not subject to the paint overspray. This corrective procedure was implemented with the production of flexplate, P/N A947–1E. In addition, flexplate, P/N A947–1E is stronger and more resistant to corrosion damage than the previously-designed flexplates. Therefore, the initial dye penetrant inspection for cracks and repetitive visual inspections for nicks, cracks, or corrosion may be terminated upon installation of this improved flexplate or a subsequent FAA-approved revision to P/N A947–1E.

The reference to the flexplate's TIS in paragraph (b) of the Priority Letter AD has been clarified to require that the repetitive visual inspections in paragraph (d) of the AD be conducted upon reaching 2 years or 500 hours TIS on the flexplate. If the flexplate TIS cannot be determined through a review of the log book, the helicopter TIS must be used to determine the TIS of the flexplate.

Paragraph (c) has been revised to delete the reference to the repetitive visual inspections for flexplates used to replace those that were determined to have cracks as a result of the inspection of paragraph (a) of the Priority Letter AD. This deletion changes the lettering of the subsequent paragraphs. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R–22 helicopters of the same type design, this AD supersedes Priority Letter AD 94–11–01, to require a one-time dye penetrant inspection of the flexplate, P/N A193–1 without bonded washers and P/N A947–1 with bonded washers, for cracks within the next 25 hours TIS, and replacement if a crack is found. Additionally, for flexplates that have been in service for 2 or more years or 450 or more hours TIS, repetitive visual inspections of the flexplate for nicks, cracks, or corrosion are required at intervals not to exceed 50 hours TIS. This AD also provides for repair of the flexplate if a nick or corrosion is found, or replacement if a crack is found. The flexplate connects the gearbox and the clutch shaft, and failure of the flexplate could lead to failure of the driveshaft and loss of power to the rotor system. Due to the critical need for the flexplate to ensure the continued safe flight of the affected helicopters, this rule must be issued immediately to correct an unsafe condition in aircraft.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–SW–22–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9177, to read as follows:

AD 95–06–07 Robinson Helicopter Company: Amendment 39–9177. Docket Number 94–SW–22–AD. Supersedes Priority Letter AD 94–11–01, issued May 18, 1994.

Applicability: Model R22 helicopters, with forward flexplate (flexplate), part number (P/N) A947–1 with bonded washers, or P/N A193–1 without bonded washers, installed, certificated in any category. Flexplate, P/N A947–1E and subsequent FAA-approved revisions to P/N A947–1, is exempt from the requirements of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flexplate, failure of the main rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this airworthiness directive (AD), accomplish the following:

(1) With the clutch disengaged, support the forward end of the clutch shaft, P/N A166–1, remove the flexplate, and record the shim locations for use during reinstallation.

(i) Replace any flexplate that does not have eight bonded washers (two per arm) with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1.

(ii) For those flexplates that have eight bonded washers (two per arm), comply with the following:

(2) Remove all coating down to bare metal from the outer edges of the flexplate to approximately 0.125 inches inward, but in no case within 0.50 inches of the bonded washers, using Scotch Brite or 600 grit sand paper. Do not use a chemical paint stripper since it may adversely affect the adhesive that bonds the washers to the flexplate.

(3) Inspect the outer edges of the flexplate for cracks, avoiding the bonded washers, using a dye penetrant inspection method in accordance with Appendix I of this AD. If the dye penetrant contacts the bonded washers, remove the solution from the bonded washers within 1 minute since longer exposure may adversely affect the adhesive.

(i) If a crack is found, replace the flexplate with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1.

(ii) If no crack is found, paint the bare edge area of the flexplate with an even coat of zinc-chromate or epoxy primer. Do not paint the bare metal surface of the bonded washers.

(4) Reinstall the flexplate and ensure sheave and clutch shaft angle are properly aligned in accordance with the applicable maintenance manual.

(b) For those helicopters with flexplates that have less than 2 years or 450 hours TIS, accomplish the following prior to or upon reaching 2 years or 500 hours TIS, and thereafter at intervals not to exceed 50 hours TIS from the last inspection; for those helicopters with flexplates that have 2 years or more or 450 hours or more TIS, accomplish the following at intervals not to exceed 50 hours TIS from the last inspection. (If the flexplate TIS cannot be determined through a review of the maintenance records, then use the helicopter TIS as the TIS of the flexplate).

(1) Remove the flexplate in accordance with the applicable maintenance manual.

(2) Clean the flexplate using a solvent (e.g., methyl-ethyl ketone or naphtha).

(3) Inspect the flexplate for nicks, cracks, or corrosion using a 10-power or higher magnifying glass, paying close attention to the edges of the flexplate.

(i) If a crack is found, replace the flexplate with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1, in accordance with the applicable maintenance manual.

(ii) If a nick or corrosion is found, repair the flexplate in accordance with the applicable maintenance manual.

(iii) Paint any bare edges of the flexplate with an even coat of zinc-chromate or epoxy primer. Do not paint the bare metal surface of the bonded washers.

(iv) If any nick or corrosion cannot be repaired within the rework limits specified in the applicable maintenance manual, replace the flexplate with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1, in accordance with the applicable maintenance manual.

(4) Reinstall the flexplate and ensure sheave and clutch shaft are properly aligned in accordance with the applicable maintenance manual.

Note 1: Robinson Helicopter Company R22 Maintenance Manual, Change 14, dated March 14, 1994, pertains to this AD.

(c) If a crack, nick, or corrosion is found on the flexplate as a result of the inspections required by this AD, report a description of the crack, nick, or corrosion, the total TIS, and the operating conditions to the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office, FAA. Reporting requirements have been approved by the Office of Management and Budget and assigned control number 2120–0056.

(d) Installation of a flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on April 4, 1995.

Appendix I—Dye Penetrants

Several dye penetrant type inspection kits are now available that will reveal the presence of surface cracks or defects and subsurface flaws that extend to the surface of the part being inspected. These penetrant type inspection methods are considered acceptable, provided the part being inspected has been thoroughly cleaned, all areas are readily accessible for viewing, and the manufacturer's recommendations as to the method of application are closely followed.

a. Cleaning. An inspection is initiated by first cleaning the surface to be inspected of dirt, loose scale, oil, and grease. Precleaning may usually be accomplished by vapor degreasing or with volatile cleaners. Use a volatile cleaner as it will evaporate from the defects before applying the penetrant dye. Sand blasting is not as desirable a cleaning method, since surface indications may be obscured. It is not necessary to remove anodic films from parts to be inspected, since the dye readily penetrates such films. Special procedures for removing the excess dye should be followed.

b. Application of Penetrant. The penetrant is applied by brushing, spraying, or by dipping and allowing to stand for a minimum of 2 minutes. Dwell time may be extended up to 15 minutes, depending upon the temperature of the part and fineness of the defect or surface condition. Parts being inspected should be dry and heated to at least 70° F, but not over 130° F. Very small indications require increased penetration periods.

c. Removal of Dye Penetrant. Surplus penetrant is usually removed by application of a special cleaner or remover, or by washing with plain water and allowing the part to dry. Water rinse may also be used in conjunction with the remover, subject to the manufacturer's recommendations.

d. Application of Developer. A light and even coat of developer is applied by spraying, brushing, or dipping. When dipping, avoid excess accumulation. Penetrant that has penetrated into cracks or other openings in the surface of the material will be drawn out by the developer resulting in a bright red indication. Some idea of the size of the defect may be obtained after experience by watching the size and rate of growth of the indication.

Issued in Fort Worth, Texas, on March 10, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–6684 Filed 3–17–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 270

[Release No. 34–35483]

Organization and Program Management

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its rules on organization and program management. This action is necessary to reflect changes that have occurred over the years. It is intended to update the rules.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Diane A. Campbell, Office of the Executive Director, (202) 942–4300; Elizabeth T. Tsai, Office of Freedom of Information and Privacy Act Operations, (202) 942–4326.

SUPPLEMENTARY INFORMATION: The Commission has undertaken a comprehensive review of the rules governing its organization and program management. The present amendments and additions to its rules result from that review.

Specifically, the Commission is amending § 200.2 (b) and (d) to clarify the description of the Securities Exchange Act of 1934 [1] and the Trust Indenture Act of 1939.[2] It is amending paragraphs (c) and (e) of § 200.2 to describe adequately the Commission's current functions under the Public Utility Holding Company Act of 1935 [3] and the Investment Company Act of 1940.[4] The Commission is revising § 200.13 to designate the Executive Director as the Chief Operating Officer of the Commission, to clarify the description of the responsibilities of the Executive Director, and to update the list of statutes, regulations, and Executive Orders to be implemented by the Executive Director. It is revising § 200.14(a) to describe the work of the Office of Administrative Law Judges specifically and accurately. The revised section refers to the Administrative Procedure Act,[5] under which hearings are conducted, and lists the tasks of administrative law judges in administrative proceedings. The Commission makes only minor editorial changes in §§ 200.14(b) and 200.30–9.

The Commission is revising § 200.16a to reflect the establishment of the Office of the Inspector General (OIG) in March 1989 and the transfer of the Office of Internal Audit to it in accordance with the 1988 amendments to the Inspector General Act of 1978.[6] The Commission established the OIG as an independent and objective unit to conduct audits and investigations, to keep Congress and the Chairman informed about problems and deficiencies in the Commission's programs and operations, and to further the other purposes of the Inspector General Act. Under this Act, the Inspector General shall report to the Commission Chairman, who "shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation." Under § 200.16a(e), any such subpoena shall be served by any method prescribed for service of subpoenas under § 201.232 of this chapter.

The Commission is revising § 200.17 to describe clearly the duties of the Chief Management Analyst. It is amending § 200.18(b) (3) and (5) to make technical clarifications.

The Commission is amending § 200.19a to reflect the current responsibilities of the Director of the Division of Market Regulation. As amended, the Director would have oversight of the entities and activities enumerated in the section, such as the national market system, government securities dealers, and the Securities Investor Protection Corporation. The Commission is also amending § 200.30–3, which delegates authority to the Director, to update citations to certain rules mentioned there.

The Commission is amending §§ 200.19b and 200.27 to reflect the reorganization of the Regional Offices under the general supervision of the Director of the Division of Enforcement. A further amendment to § 200.19b reflects the adoption of procedures for handling requests from regulatory and law enforcement agencies for access to nonpublic information in enforcement files.

The Commission is amending § 200.20b to clarify that the duties of the Director of the Division of Investment Management do not include enforcement activities under the jurisdiction of the Division of Enforcement and that the functions of the Director described in paragraphs (f) and (g) of the section relate to the Public Utility Holding Company Act. The Commission added paragraphs (f) and (g) in 1985 when it transferred the duties under this Act to the Division of Investment Management [7] from the Office of Public Utility Regulation, which then ceased to exist. At that time, however, introductory language to paragraphs (f) and (g) was inadvertently omitted.

The Commission is amending § 200.21a to clarify the responsibilities of the Ethics Counsel vis-a-vis those of the Inspector General. Specifically, the amendments reflect (1) Referral by the Ethics Counsel to the Inspector General of matters of alleged staff misconduct, and complaints appearing to involve violations of Federal criminal statutes, (2) the transfer of the Ethics Counsel's investigative responsibilities in those matters to the Inspector General, and (3) the transfer from the Ethics Counsel to the Inspector General of the responsibility to act as liaison with the Department of Justice with respect to such referred matters.

The Commission is revising § 200.24a to reflect reorganizations, which moved the management of the public reference facilities to the Office of Filings and Information Services and the administration of the Freedom of Information Act [8] and the Privacy Act of 1974 [9] to the Office of Freedom of Information and Privacy Act Operations. Both of these offices are now under the executive direction and administrative control of the Executive Director. The former Office of Consumer Affairs and Information Services has been renamed as the Office of Consumer Affairs and the Director of this office reports directly to the Chairman of the Commission.

The Commission is amending § 200.30–1 to reflect previous amendments and revisions in regulations overseen by the Division of Corporation Finance. These amendments are technical in nature, as the amendments primarily update and revise regulatory citations.

The Commission is amending paragraphs (a)(1), (a)(2), (e)(3), and (e)(4) of § 200.30–5 to simplify the review of applications in the Division of Investment Management. These provisions authorize the Director of the Division of Investment Management to approve applications under all sections of the Investment Company Act and the Investment Advisers Act of 1940,[10] except as specifically limited. The amendments give some discretion to the

[1] 15 U.S.C. 78a *et seq.*
[2] 15 U.S.C. 77aaa *et seq.*
[3] 15 U.S.C. 79a *et seq.*
[4] 15 U.S.C. 80a–1 *et seq.*
[5] 5 U.S.C. 551–559.
[6] 5 U.S.C. app.
[7] Investment Company Act Release No. 14341 (Jan. 30, 1985) [50 FR 5064] (Feb. 6, 1985)].
[8] 5 U.S.C. 552.
[9] 5 U.S.C. 552a.
[10] 15 U.S.C. 80b–1 *et seq.*

Director to present applications to the Commission. The Director generally may issue notices and orders if the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy warranting consideration by the Commission. The Commission proposed these § 200.30–5 amendments in March 1993, along with amendments to Rule 0–5 under the Investment Company Act,[11] but has not received any public comments on the former. These § 200.30–5 amendments do not authorize the Director to deny exemptive relief or to order a hearing under the Investment Company Act or the Investment Advisers Act.[12]

The Commission is revising paragraph (b) of § 200.30–5 to clarify that the Director of the Division of Investment Management has the authority referred to in that paragraph with respect to all of the types of entities listed. This amendment does not change the Director's authority, but is intended to clarify that the Director of the Division of Investment Management, rather than the Director of the Division of Corporation Finance, has the authority listed with respect to certain entities, such as business development companies, that are not registered investment companies.

The Commission is changing the cross-reference to the Internal Revenue Code in § 200.30–5(d) to the Internal Revenue Code of 1986.[13] It also is deleting paragraphs (g) and (h) of § 200.30–5 because the duties specified in those paragraphs fall within the jurisdiction of the Division of Enforcement. In new § 200.30–5(g)(1), it updates the cross-reference to § 200.30–6, which it amended in 1992.[14]

The Commission is also amending § 200.30–5(f)(1) to authorize the Director of the Division of Investment Management to issue notices of applications and declarations under Sections 32 and 33 of the Public Utility Holding Company Act. The Energy Policy Act of 1992 [15] has added these two sections. Also, the Commission is removing paragraph (f)(5) of § 200.30–5 because holding companies and their subsidiaries no longer submit the type of applications it describes and are not likely to submit any such applications in the future.

The Commission is amending § 200.30–6(a) to clarify that the delegated authority for the Regional Directors concerning Forms SB–1 and SB–2 is limited to filings made in their region. The Commission is amending § 200.20c and revising § 200.30–11 to reflect recent reorganizations and to clarify certain delegated authority to the Associate Executive Director of the Office of Filings and Information Services. The Commission is adopting new § 200.23, which describes the functions of the Office of Economic Analysis. It created this Office in 1988 when it merged the Office of the Chief Economist and the Directorate of Economic and Policy Analysis.

The Commission is removing § 200.30–12, which delegated authority to waive or reduce fees under the Freedom of Information Act and the Privacy Act of 1974 to the director of an office that no longer exists. The initial authority to waive or reduce such fees now lies with the Freedom of Information Act/Privacy Act Officer, whose decision is appealable to the General Counsel under § 200.30–14(c) and (d).

The Commission is revising § 200.30–15 to update the delegation of authority to the Executive Director in two ways. First, it removes the delegation of authority to publish quarterly compilations of reimbursements for Commission attendees of non-Federal conferences relating to the work of the Commission, since these reimbursements are now required to be reported semi-annually to the Office of Government Ethics. Second, it delegates the authority to the Executive Director, as the Chief Operating Officer of the Commission, to perform certain functions described in President Clinton's memorandum, dated October 1, 1993, on "Implementing Management Reform in the Executive Branch."

Other changes reflect the current titles of certain offices and office heads.

The Commission finds, in accordance with the Administrative Procedure Act ("APA"),[16] that these rule amendments relate solely to agency organization, procedures, or practice. Hence, the public notice and comment requirements of that Act are inapplicable. Similarly, the provisions of the Regulatory Flexibility Act,[17] which apply only when notice and comment are required by the APA or other law, are not applicable. The Commission further finds that, since these rule amendments relate solely to agency organization, procedures, or practice, the provisions of the APA, which require publication for not less than 30 days before the effective date of a substantive rule, are inapplicable. Accordingly, the amendments adopted today are effective March 20, 1995.

Effects on Competition

Section 23(a)(2) of the Securities Exchange Act [18] requires the Commission, in adopting rules under the Act, to consider their anti-competitive effects, if any. It also requires the Commission to balance any adverse impact against the regulatory benefits that will flow by advancing the purposes of the Act. The Commission has considered the amendments and additions to its rules announced in this release in light of the standards set forth in section 23(a)(2). It believes that their adoption would not impose any burden on competition unnecessary or inappropriate in furtherance of the Act.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Government employees, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

17 CFR Part 270

Investment companies.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. In § 200.1(a), the word "trade" is revised to read "traded".

3. Section 200.2 is amended by revising paragraphs (b), (c), (d), (e), and (g) to read as follows:

[11] Investment Company Act Release No. 19362 (Mar. 26, 1993) (58 FR 16799 (Mar. 31, 1993)).
[12] In reviewing applications, the Division occasionally determines that it will not recommend that the Commission order the relief requested by an applicant, and notifies the applicant accordingly. The applicant then may request that the Division submit the application to the Commission with the Division's recommendation that the application be set down for a hearing.
[13] 26 U.S.C. 1 *et seq.*
[14] Securities Act Release No. 6949 (July 30, 1992) (57 FR 36442 (Aug. 13, 1992)).
[15] Pub. L. No. 102–486, 106 Stat. 2776.
[16] 5 U.S.C. 553(b)(3)(A).
[17] 5 U.S.C. 601 *et seq.*
[18] 15 U.S.C. 78w(a)(2).

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§ 200.2 Statutory functions.

* * * * *

(b) *Securities Exchange Act of 1934.* This Act requires the filing of registration applications and annual and other reports with national securities exchanges and the Commission, by companies whose securities are listed on the exchanges. Annual and other reports must be filed also by certain companies whose securities are traded on the over-the-counter markets. These must contain financial and other data prescribed by the Commission for the information of investors. Material misstatements or omissions are grounds for suspension or withdrawal of the security from exchange trading. This Act makes unlawful any solicitation of proxies, authorizations, or consents in contravention of Commission rules. These rules require disclosure of information about the subject of the solicitation to security holders. The Act requires disclosure of the holdings and the transactions by an officer, director, or beneficial owner of over 10 percent of any class of equity security of certain companies. It also requires disclosure of the beneficial owners of more than five percent of any class of equity securities of a registered company. It provides substantive and procedural protection to security holders in third-party and issuer tender offers. The Act also provides for the registration with, and regulation by, the Commission of national securities exchanges, brokers or dealers engaged in an over-the-counter securities business, and national associations of such brokers or dealers. It gives the Commission rulemaking power with respect to short sales, stabilizing, floor trading activities of specialists and odd-lot dealers, and such matters as excessive trading by exchange members. The Act authorizes the Board of Governors of the Federal Reserve System to prescribe minimum margin requirements for listed securities.

(c) *Public Utility Holding Company Act of 1935.* This Act authorizes the Commission to regulate gas and electric public-utility holding companies under standards prescribed for the protection of the public interest and the interest of investors and consumers. The Act generally limits a public-utility holding company to a single integrated public-utility system, and requires simple corporate and capital structures. If not exempt, a public-utility holding company must register with the Commission. Generally, a registered holding company must obtain Commission approval before it can issue and sell securities, acquire utility securities or assets or any other interest in any business, or enter into transactions with its affiliates. It must also comply with extensive reporting and record-keeping requirements. Although largely free of these requirements, an exempt holding company remains subject to the geographic limitations of the Act. The Act permits the acquisition of interests in "exempt wholesale generators" and "foreign utility companies" unrelated to a system's utility operations.

(d) *Trust Indenture Act of 1939.* This Act safeguards the interests of purchasers of publicly-offered debt securities issued under trust indentures by requiring the inclusion of certain protective provisions in, and the exclusion of certain types of exculpatory clauses from, trust indentures. The Act also requires that an independent indenture trustee represent the debtors by proscribing certain relationships that could conflict with proper exercise of duties.

(e) *Investment Company Act of 1940.* This Act establishes a comprehensive regulatory framework for investment companies and subjects their activities to regulation under standards prescribed for the protection of investors. Among other things, the Act provides for the registration of investment companies with the Commission; requires them to disclose their financial condition and investment policies to their shareholders; prohibits them from substantially changing investment policies without shareholder approval; bars persons guilty of securities fraud from serving as officers or directors; prevents underwriters, investment bankers, or brokers from constituting more than a minority of the directors of an investment company; requires that management contracts be submitted to shareholders for their approval; prohibits transactions between investment companies and their directors, officers, or affiliated companies or persons, except when approved by the Commission; and prohibits investment companies from issuing senior securities except under specified terms and conditions. The Act also regulates advisory fees, sales and repurchases of securities, exchange offers, and other activities of investment companies. The Act authorizes the Commission to exempt any person or class of persons or securities from any provisions of, or rules under, the Act and to conduct any investigation it deems necessary to determine existing or potential violations of the Act. It also authorizes the Commission to prepare reports to security holders on the fairness of plans of reorganization, merger, or consolidation. The Commission may institute a court action to enjoin acts or practices of management involving, among other things, a breach of fiduciary duty and the consummation of plans of reorganization, merger, or consolidation that are grossly unfair to security holders.

(f) * * *

(g) *Chapter 11 of the Bankruptcy Code.* Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 *et seq.*) provides for Commission participation as a statutory party in reorganization cases. Under section 1109(a) of the Bankruptcy Code (11 U.S.C. 1109(a)), which also applies to Chapter 9 cases regarding municipalities, the Commission "may raise and may appear and be heard on any issue in the case."

4. In § 200.12, the word "judges" is revised to read "judges and the Inspector General".

5. Section 200.13 is revised to read as follows:

§ 200.13 Executive Director.

(a) The Executive Director is responsible for developing and executing the overall management policies of the Commission for all its operating divisions and staff offices. The Executive Director also provides executive direction to, and exercises administrative control over, the Office of Administrative and Personnel Management, the Office of the Comptroller, the Office of Filings and Information Services, the Office of Freedom of Information and Privacy Act Operations, and the Office of Information Technology. In addition, the Executive Director implements the following statutes, regulations, and Executive orders, as well as those that the Chairman may designate:

(1) Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(2) Small and Disadvantaged Business Utilization Program (15 U.S.C. 631 *et seq.*).

(3) Government Printing and Binding Regulations, U.S. Congress Joint Committee on Printing (1977).

(4) Occupational Safety and Health Programs for Federal Employees under Executive Order 12196 of February 26, 1980 (29 CFR 1960.1–1960.90).

(5) Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 3512).

(6) National Security Information under Executive Order 12356 of April 6, 1982.

(7) Government Performance and Results Act of 1993 (31 U.S.C. 1101 *et seq.*).

(8) Recommendations of the Report of the National Performance Review (September 1993).

(b) The Executive Director appoints personnel, reviews and approves policies and procedures, and assures appropriate resources to implement the programs set forth in paragraph (a) of this section, and authorizes and transmits reports required by them.

(c) The Executive Director also designates certifying officers for agency payments, prescribes procurement regulations, enters into contracts, designates contracting officers, and makes procurement determinations.

(d) As the Chief Operating Officer of the Commission, the Executive Director shall be responsible for:

(1) Implementing the goals of the President and the Chairman and the mission of the Commission;

(2) Providing overall organizational management to improve agency performance;

(3) Assisting the Chairman in promoting ongoing quality improvement, developing strategic plans, and measuring results;

(4) Directing ongoing reengineering of the Commission's administrative processes;

(e) Overseeing Commission-specific application of performance measures, procurement reforms, personnel reductions, financial management improvements, telecommunications and information technology policies, and other government-wide systems reforms adopted as a result of the recommendations of the National Performance Review; and

(f) Reforming the Commission's management practices by incorporating the principles of the National Performance Review into day-to-day management.

6. In § 200.13b, the words "Public Affairs" are revised to read "Public Affairs, Policy Evaluation, and Research" in the section heading and in the text, and the words "coordination and production of the Annual Report to Congress," are removed.

7. Section 200.14 is revised to read as follows:

§ 200.14 Office of Administrative Law Judges.

(a) Under the Administrative Procedure Act (5 U.S.C. 551–559) and the federal securities laws, the Office of Administrative Law Judges conducts hearings in proceedings instituted by the Commission. The Administrative Law Judges are responsible for the fair and orderly conduct of the proceedings and have the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Rule on offers of proof;

(4) Examine witnesses;

(5) Regulate the course of a hearing;

(6) Hold pre-hearing conferences;

(7) Rule upon motions; and

(8) Unless waived by the parties, prepare an initial decision containing the conclusions as to the factual and legal issues presented, and issue an appropriate order.

(b) The Chief Administrative Law Judge performs the duties of an Administrative Law Judge under the Administrative Procedure Act and the duties delegated to him or her by the Commission that are compatible with those duties. The Chief Administrative Law Judge is responsible for the orderly functioning of the Office of Administrative Law Judges apart from the conduct of administrative proceedings and acts as liaison between that Office and the Commission.

8. Section 200.16a is revised to read as follows:

§ 200.16a Inspector General.

(a) Under the Inspector General Act of 1978, as amended, (5 U.S.C. app.) the Inspector General performs independent and objective investigations and audits relating to the Commission's programs and operations. An investigation seeks to detect and prevent waste, fraud, and abuse in the Commission's programs and operations, such as violations of federal statutes or regulations by contractors and Commission employees or the Standards Of Ethical Conduct For Employees of the Executive Branch. An audit seeks to determine whether:

(1) Program goals and results identified in enabling legislation are achieved.

(2) Resources are efficiently and economically used and managed.

(3) Financial operations are properly conducted.

(4) Financial reports are fairly presented.

(5) Applicable laws and regulations are complied with.

(b) In cooperation with Commission management, the Inspector General generally promotes economy, efficiency, and the effectiveness of waste or fraud detection and prevention in the Commission's programs and operations. The Inspector General also keeps the Congress and the Chairman informed about problems and deficiencies in the Commission's programs and operations.

(c) The Inspector General reports to the Chairman, but is independent of all other Commission management. In addition, the Inspector General independently prepares semi-annual reports to the Congress.

(d) With respect to misconduct of Commission employees and contractors, the Inspector General, after consultation with the Ethics Counsel, where appropriate, serves as the Commission's liaison with other federal audit and investigative agencies, such as the Department of Justice and the Executive Council on Integrity and Efficiency.

(e) Subpoenas issued in the course of an audit or investigation conducted by the Office of the Inspector General shall be effected by any method prescribed by § 201.232(a) and (c) of this chapter.

9. Section 200.17 is revised to read as follows:

§ 200.17 Chief Management Analyst.

The Chief Management Analyst is responsible to the Executive Director for overseeing the performance of management analysis tasks which pertain, but are not limited, to:

(a) Agency work methods and procedures;

(b) Effective personnel and resource allocation and utilization;

(c) Organizational structures and delegations of authority;

(d) Management information systems and concepts; and

(e) The preparation of recurring special reports and analyses.

10. In § 200.18(b)(3), the words "information material" are revised to read "information statements".

11. In § 200.18(b)(5), the words "Section 16(a) thereof (15 U.S.C. 78p(a))" are revised to read "Section 16 thereof (15 U.S.C. 78p)".

12. The introductory text of § 200.19a is revised to read as follows:

§ 200.19a Director of the Division of Market Regulation.

The Director of the Division of Market Regulation is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the structure and operation of the securities markets and the prevention of manipulation in the securities markets. These responsibilities include oversight of the national market system, the national clearance and settlement system, and self-regulatory organizations, such as the national securities exchanges, registered securities associations, clearing agencies, the Municipal Securities Rulemaking Board, and the Securities Investor Protection Corporation. Duties also include the registration and regulation of brokers, dealers, municipal securities dealers, government securities brokers and dealers, transfer agents, and securities information processors. The functions involved in the regulation of such entities include reviewing proposed rule changes of self-regulatory organizations,

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recommending the adoption and amendment of Commission rules, responding to interpretive, exemptive, and no-action requests, and conducting inspections, examinations, and market surveillance. In addition, the Director shall have the duties specified below:

* * * * *

13. Section 200.19b is revised to read as follows:

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for supervising and conducting all enforcement activities under the acts administered by the Commission. The Director recommends the institution of administrative and injunctive actions arising out of such enforcement activities and determines the sufficiency of evidence to support the allegations in any proposed complaint. The Director supervises the Regional Directors and, in collaboration with the General Counsel, reviews cases to be recommended to the Department of Justice for criminal prosecution. The Director grants or denies access to nonpublic information in the Commission's enforcement files under § 240.24c–1 of this chapter; provided that access under that section shall be granted only with the concurrence of the head of the division or office responsible for the information or the files containing it.

14. Section 200.20b is amended by revising the last sentence of the introductory text, revising paragraph (f), and removing paragraph (g) to read as follows:

§ 200.20b Director of Division of Investment Management.

* * * These duties shall include inspections arising in connection with such administration but shall exclude enforcement and related activities under the jurisdiction of the Division of Enforcement.

* * * * *

(f) The administration and execution of the Public Utility Holding Company Act of 1935 in connection with:

(1) The administration and processing of proxy solicitation material subject to §§ 240.14a–1—240.14a–14 of this chapter,

(2) The examination and processing of ownership reports filed under section 17(a) of the Act (15 U.S.C. 79q(a)).

15. In § 200.20c, the words "Applications and Reports" are revised to read "Filings and Information" in the section heading and in the text, the last sentence is removed, and two new sentences are added in its place to read as follows:

§ 200.20c Office of Filings and Information Services.

* * * The Office provides filer-support services relating to the Commission's EDGAR system and the receipt of fees and filings for all types of filers, regardless of filing media. The Office also manages the Commission's public reference facilities to facilitate public access to electronic filings and ensure that all information contained in public filings with the Commission is timely made available to investors.

16. Paragraph (a) of § 200.21 is amended by:

(a) Adding in the second sentence after the words "District Courts," the words "except for law enforcement actions filed on behalf of the Commission,";

(b) Revising in the fourth sentence the words "officer" to read "office" and "professional persons" to read "lawyers";

(c) Removing at the end of the fifth sentence the words "and is responsible for investigating any claims of staff improprieties";

(d) Revising the sixth sentence to read "He or she is responsible (with the Associate Executive Director of the Office of Administrative and Personnel Management) for administering the Commission's Ethics Program, and (with the Ethics Counsel) for interpreting subpart M of this part and 5 CFR part 2635."; and

(e) Revising in the seventh sentence the words "Personnel Management" to read "Administrative and Personnel Management, the Office of the Inspector General".

17. Paragraph (b)(2) of § 200.21 is amended by adding after the words "administrative proceedings" the words "against lawyers".

18. Section 200.21a is revised to read as follows:

§ 200.21a The Ethics Counsel.

(a) The Ethics Counsel within the Office of the General Counsel of the Commission shall oversee compliance with subpart M of this part and 5 CFR part 2635. When appropriate and subject to the authority of, and in consultation with, the Inspector General, the Ethics Counsel shall inquire into alleged violations of subparts C, F, and M of this part, and 5 CFR part 2635.

(b) Subject to the oversight of the General Counsel or his or her delegate, the Ethics Counsel shall:

(1) Receive and review allegations of misconduct by a Commission employee.

(2) Refer matters involving management questions to Division Directors, Office Heads, District Administrators, or Regional Directors, and matters involving alleged or apparent employee misconduct to the Office of the Inspector General, except for matters involving alleged professional misconduct ultimately referable to state professional boards or societies.

(3) Refer complaints that appear to involve a violation of Federal criminal statutes, and do not appear to be frivolous, to the Inspector General for referral to the Department of Justice under 28 U.S.C. 535.

(4) Act as liaison with the Office of the Inspector General on matters that the Ethics Counsel has referred to that Office, and with state or local authorities on matters that, on occasion, the Ethics Counsel may refer to them.

(5) Arrange for the review of proposed publications and prepared speeches under § 200.735–4(e).

(6) Provide advice, counseling, interpretations, and opinions with respect to subparts C, F, and M of this part, and 5 CFR part 2635.

(7) Oversee investigations and refer findings of professional misconduct to state professional boards or societies.

(8) Draft rules and regulations as necessary to implement the Commission's Ethics Program.

19. Section 200.22 is revised to read as follows:

§ 200.22 The Chief Accountant.

The Chief Accountant of the Commission is the principal adviser to the Commission on, and is responsible to the Commission for, all accounting and auditing matters arising in the administration of the federal securities laws. The Chief Accountant oversees the accounting profession's standard-setting and self-regulatory organizations, develops or supervises the development of accounting and auditing rules, regulations, opinions and policy, and interprets Commission accounting policy and positions. The Chief Accountant is responsible for recommending the institution of administrative and disciplinary proceedings relating to the disqualification of accountants to practice before the Commission. The Chief Accountant supervises the procedures to be followed in the Commission's enforcement activities involving accounting and auditing issues and helps resolve differences on accounting issues between registrants and the Commission staff.

20. Section 200.23a is revised to read as follows:

§ 200.23 Office of Economic Analysis.

The Office of Economic Analysis is responsible for providing an objective economic perspective to understand and evaluate the economic dimension of the Commission's regulatory oversight. It performs economic analyses of proposed rule changes, current or proposed policies, and capital market developments and offers advice on the basis of these analyses. The Office also assists the Commission's enforcement effort by applying economic analysis and statistical tools to issues raised in enforcement cases. It reviews certifications and initial and final regulatory flexibility analyses prepared by the operating divisions under the Regulatory Flexibility Act.

21. Section 200.23b is removed and reserved.

22. In the text only of § 200.24, the word "Comptroller" is revised to read "Associate Executive Director of the Office of the Comptroller" each time it appears, the word "his" is revised to read "his or her" and the word "serves" is revised to read "serve".

23. Section 200.24a is revised to read as follows:

§ 200.24a Director of the Office of Consumer Affairs.

The Director of the Office of Consumer Affairs is responsible to the Chairman for the Commission's investor education and consumer protection program. The program includes, but is not limited to:

(a) Presenting seminars and instructional programs to educate investors about the securities markets and their rights as investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commission; and increasing public knowledge of the functions of the Commission.

(b) Implementing and administering a nationwide system for resolving investor complaints against individuals and entities regulated by the Commission by processing complaints received from individual investors and assuring that regulated individual and entities process and respond to such complaints.

(c) Providing information to investors who inquire about individuals and entities regulated by the Commission, the operation of the securities markets, or the functions of the Commission.

(d) Advising the Commission and its staff about problems frequently encountered by investors and possible solutions to them.

(e) Transmitting to other offices and divisions of the Commission information provided by investors which concerns the responsibilities of these offices and divisions.

(f) Providing for greater consumer input in Commission rulemaking proceedings.

24. Section 200.25 is revised to read as follows:

§ 200.25 Office of Administrative and Personnel Management.

(a) The Office of Administrative and Personnel Management (OAPM) is responsible for providing a wide variety of programs for human resources, office services, and other administrative and management services for the Commission. The Associate Executive Director of the Office of Administrative and Personnel Management is responsible to the Executive Director and the Chairman of the Commission for developing and executing these programs.

(b) OAPM develops, implements, and evaluates the Commission's programs for human resources and personnel management, such as position management and pay administration; recruitment, placement, and staffing; performance management and employee recognition; employee training and career development; employee and labor relations; personnel management evaluation; employee benefits and counseling; and the processing and maintenance of employee records. OAPM administers the Ethics Program, and helps the Office of the Executive Director manage the Senior Executive Service Program. It reviews requests, recommendations, and justifications for certain awards, recruitment and relocation bonuses, retention allowances, special salary rates, and other personnel compensation or benefit determinations for sufficiency and compliance with law, regulations, and Commission policy. OAPM develops and executes programs for office services, such as telecommunications; procurement and contracting; property management; contract and lease administration; space acquisition and management; management of official vehicles; safety programs; emergency preparedness plans; physical security; mail receipt and distribution; and publications, printing, and desktop publishing.

(c) With respect to human resources management, the Associate Executive Director of the Office of Administrative and Personnel Management is the Commission's liaison with the Office of Personnel Management, other agencies, professional organizations, educational institutions, and private industry. He or she is also the Printing Liaison with the Joint Committee on Printing, and the Contract Officer.

25. Section 200.26 is removed and reserved.

26. In § 200.26a, the words "Systems Management" are revised to read "Technology" in the section heading and in the text.

27. In § 200.27, the phrase "subject to policy direction and review by the Division Directors" is revised to read "subject to review by the Director of the Division of Enforcement and policy direction and review by the other Division Directors".

28. Section 200.30–1 is amended by revising paragraphs (e)(2), (e)(6), (f)(4), (f)(8), (f)(12), and (g)(2) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(2) To authorize the issuance of orders exempting certain securities from the Act under sections 304(c) and (d) thereof (15 U.S.C. 77ddd(c) and 77ddd(d)) and § 260.4c–1 and § 260.4d–7 of this chapter.

* * * * *

(6) To authorize the issuance of an order permitting a foreign person to act as sole trustee under qualified indentures under section 310(a) of the Act (15 U.S.C. 77jjj(a)) and § 260.10a–1 through § 260.10a–5 of this chapter.

* * * * *

(f) * * *

(4) To authorize the use of forms of proxies, proxy statements, or other soliciting material within periods of time less than that prescribed in §§ 240.14a–6, 240.14a–8(d), and 240.14a–11 of this chapter; to authorize the filing of information statements within periods of time less than that prescribed in § 240.14c–5a of this chapter; and to authorize the filing of information under § 240.14f–1 of this chapter within periods of time less than that prescribed therein.

* * * * *

(8) At the request of the issuer to accelerate the termination of registration of any class of equity securities as provided in section 12(g)(4) of the Act (15 U.S.C. 78l(g)(4)) or as provided in § 240.12g–4(a) of this chapter.

* * * * *

(12) To grant an exemption from § 240.14b–2(b) or § 240.14b–2(c), or both, of this chapter.

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(g) * * *

(2) The Director of the Division of Corporation Finance shall have the same authority as that delegated to each Regional Director in § 200.30–6(a) and (c).

29. Section 200.30–3 is amended by revising paragraphs (a)(21), (a)(22), and (a)(32), adding an introductory text to paragraph (a)(35), and revising paragraph (a)(35)(i), the introductory text to paragraph (a)(39), and paragraphs (a)(39)(ii) and (a)(42) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

(a) * * *

(21) Under section 17A(c)(4)(B) of the Act (15 U.S.C. 78q–1(c)(4)(B)), to set terms and conditions upon which transfer agents registered with the Commission may withdraw from registration as a transfer agent by filing a written notice of withdrawal.

(22) Under section 17A(c)(4)(B) of the Act (15 U.S.C. 78q–1(c)(4)(B)), to authorize the issuance of orders canceling registrations of transfer agents registered with the Commission or denying applications for registration as a transfer agent with the Commission, if such transfer agents are no longer in existence or are not engaged in business as transfer agents.

* * * * *

(32) Under § 240.10b–10(f) of this chapter, to grant exemptions from § 240.10b–10 of this chapter.

* * * * *

(35) Under § 240.13e–4(h)(8) of this chapter:

(i) To grant exemptions from § 240.13e–4 of this chapter; and

* * * * *

(39) Under § 240.9b–1 of this chapter:

(i) * * *

(ii) To require refiling of an amendment to an options disclosure document pursuant to the procedure set forth in § 240.9b–1(b)(2)(i) of this chapter.

* * * * *

(42) Under § 240.11Aa3–2(f) of this chapter, to grant or deny exemptions from § 240.11Aa3–2 of this chapter.

* * * * *

30. Section 200.30–4(a)(2) is revised to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(2) In nonpublic investigative proceedings, to grant requests of persons to procure copies of the transcript of their testimony under § 203.6 of this chapter.

* * * * *

31. Section 200.30–5 is amended by revising paragraphs (a)(1), (a)(2), (b), (d), (e)(3), and (e)(4), adding paragraphs (f)(1)(xxiv) and (f)(1)(xxv), removing paragraphs (g) and (h), redesignating present paragraphs (i), (j), (k), (l), (m), and (n) as paragraphs (g), (h), (i), (j), (k), and (l), respectively, and revising newly designated paragraph (g)(1) to read as follows:

§ 200.30–5 Delegation of Authority to Director of Division of Investment Management.

* * * * *

(a) * * *

(1) Except as otherwise provided in this section, to issue notices, under § 270.0–5 of this chapter, with respect to applications for orders under the Act and the rules and regulations thereunder and, with respect to section 8(f) of the Act (15 U.S.C. 80a–8(f)), in cases where no application has been filed, where, upon examination, the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.

(2) Except as otherwise provided in this section, to authorize the issuance of orders where a notice, under § 270.0–5 of this chapter, has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

(b) With respect to matters pertaining to investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), pooled investment funds or accounts, and the general assets or separate accounts of insurance companies, all arising under the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), and the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), the same functions as are delegated to the Director of the Division of Corporation Finance in regard to companies other than such investment companies in paragraphs (a), (c), and (f) of § 200.30–1.

* * * * *

(d) To issue certifications to investment companies that are principally engaged in the furnishing of capital to corporations that are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, under Section 851(e) of the Internal Revenue Code of 1986 (26 U.S.C. 851(e)), where applications from the investment companies do not present issues that have not been previously settled by the Commission and do not require a hearing.

(e) * * *

(3) To issue notices, under § 275.0–5 of this chapter, with respect to applications for orders under the Act and the rules and regulations thereunder where, upon examination, the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.

(4) To authorize the issuance of orders where a notice, pursuant to § 275.0–5 of this chapter, has been issued, no request for a hearing has been received from any interested person within the period specified in the notice, and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

* * * * *

(f) * * *

(1) * * *

(xxiv) Section 32, 15 U.S.C. 79ff.

(xxv) Section 33, 15 U.S.C. 79gg.

(g) * * *

(1) The Director of the Division of Investment Management shall have the same authority with respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), §§ 230.251–230.263, and §§ 230.651–230.703(T) of this chapter as that delegated to each Regional Director in § 200.30–6 (b) and (c).

32. Section 200.30–6 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 200.30–6 Delegation of authority to Regional Directors.

* * * * *

(a) With respect to the registration of securities on Forms SB–1 and SB–2 (§§ 239.9 and 239.10 of this chapter) filed in the regional office under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and §§ 230.400 *et seq.* of this chapter:

* * * * *

33. Section 200.30–7(a)(4) is revised to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(4) To grant or deny extensions of time within which to file papers with the Commission under § 201.13 of this chapter.

34. Section 200.30–9 is revised to read as follows:

§ 200.30–9 Delegation of authority to Administrative Law Judges.

Under Pub. L. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, to each Administrative Law Judge ("Judge") the authority to make the initial decision in any proceeding at which the Judge presides in which a hearing is required to be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 557) unless an initial decision is waived by all parties that appear at the hearing and the Commission does not subsequently order that an initial decision nevertheless be made by the Judge, and in any other proceeding in which the Commission directs the Judge to make an initial decision.

35. Section 200.30–11 is amended by revising the section heading, the introductory text, and paragraphs (a), (b), and (d) to read as follows:

§ 200.30–11 Delegation of authority to Associate Executive Director of the Office of Filings and Information Services.

Under Pub. L. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates the following functions to the Associate Executive Director of the Office of Filings and Information Services to be performed by him or her or under his or her direction by such person or persons as the Chairman of the Commission may designate from time to time:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

(1) Under section 15(b) of the Act (15 U.S.C. 78o(b)):

(i) To authorize the issuance of orders granting registration of brokers or dealers within 45 days of the acceptance of an application for registration as a broker or dealer (or within such longer period as to which the applicant consents);

(ii) To grant registration of brokers or dealers sooner than 45 days after acceptance of an application for registration;

(iii) To authorize the issuance of orders canceling registrations of brokers or dealers, or pending applications for registration, if such brokers or dealers or applicants for registration are no longer in existence or are not engaged in business as brokers or dealers; and

(iv) To determine whether notices of withdrawal from registration on Form BDW shall become effective sooner than the normal 60-day waiting period.

(2) Under section 15B(a) of the Act (15 U.S.C. 78o–4(a)):

(i) To authorize the issuance of orders granting registration of municipal securities dealers within 45 days of the filing of acceptable applications for registration as a municipal securities dealer (or within such longer period as to which the applicant consents); and

(ii) To grant registration of municipal securities dealers sooner than 45 days after receipt by the Commission of acceptable applications for registration.

(3) Under section 15B(c) of the Act (15 U.S.C. 78o–4(c)):

(i) To authorize the issuance of orders canceling registrations of municipal securities dealers, or pending applications for registration, if such municipal securities dealers or applicants for registration are no longer in existence or are not engaged in business as municipal securities dealers; and

(ii) To determine whether notices of withdrawal from registration on Form MSDW shall become effective sooner than the normal 60-day waiting period.

(4) Under section 15C(a) of the Act (15 U.S.C. 78o–5(a)):

(i) To authorize the issuance of orders granting registration of government securities brokers or government securities dealers for which the Commission is the appropriate regulatory agency within 45 days of the acceptance of an application for registration as a government securities broker or government securities dealer (or within such longer period as to which the applicant consents); and

(ii) To grant registration of government securities brokers or government securities dealers for which the Commission is the appropriate regulatory agency sooner than 45 days after acceptance of an application for registration.

(5) Under section 15C(c) of the Act (15 U.S.C. 78o–5(c)):

(i) To authorize the issuance of orders canceling registrations of government securities brokers or government securities dealers registered with the Commission, or pending applications for registration, if such government securities brokers or government securities dealers or applicants for registration are no longer in existence or are not engaged in business as government securities brokers or government securities dealers; and

(ii) To determine whether notices of withdrawal from registration on Form BDW shall become effective sooner than the normal 60-day waiting period.

(6) Under section 17A(c) of the Act (15 U.S.C. 78q–1(c)):

(i) To authorize the issuance of orders granting registration of transfer agents within 45 days of the filing of acceptable applications for registration as a transfer agent (or within such longer period as to which the applicant consents);

(ii) To grant registration of transfer agents sooner than 45 days after receipt by the Commission of acceptable applications for registration;

(iii) To authorize the issuance of orders canceling registrations of transfer agents, or pending applications for registration, if such transfer agents or applicants for registration are no longer in existence or are not engaged in business as transfer agents; and

(iv) To determine whether notices of withdrawal from registration on Form TA–W shall become effective sooner than the normal 60-day waiting period.

(b) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*):

(1) Under section 203(c) of the Act (15 U.S.C. 80b–3(c)):

(i) To authorize the issuance of orders granting registration of investment advisers within 45 days of the filing of acceptable applications for registration as an investment adviser (or within such longer period as to which the applicant consents); and

(ii) To grant registration of investment advisers sooner than 45 days after receipt by the Commission of acceptable applications for registration.

(2) Under section 203(h) of the Act (15 U.S.C. 80b–3(h)):

(i) To authorize the issuance of orders canceling registrations of investment advisers, or pending applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(ii) To determine whether notices of withdrawal from registration on Form ADV–W shall become effective sooner than the normal 60-day waiting period.

(c) * * *

(d) Notwithstanding anything in the foregoing, in any case in which the Associate Executive Director of the

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Office of Filings and Information Services believes it appropriate, he or she may submit the matter to the Commission.

* * * * *

36. Section 200.30–12 is removed and reserved.

37. In § 200.30–13, the word "Comptroller" in the heading and the words "Comptroller of the Commission" in the text are revised to read "Associate Executive Director of the Office of the Comptroller".

38. In § 200.30–14, remove the semicolon at the end of paragraph (a) and "; and" at the end of paragraph (b) and add in both their places a period.

39. Section 200.30–15 is revised to read as follows:

§ 200.30–15 Delegation of authority to Executive Director.

Under Pub. L. 100–181, 101 Stat. 1254 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Executive Director to be performed by him or her or under his or her direction by persons designated by the Chairman of the Commission: To identify and implement additional changes within the Commission that will promote the principles and standards of the National Performance Review and the strategic and quality management approaches described by the Federal Quality Institute's "Presidential Award for Quality" or its successor awards.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

40. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

* * * * *

41. In the last sentence of § 270.8b–25(b), the words "(j) and (k)" are revised to read "(h) and (i)".

By the Commission.

Dated: March 14, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6696 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 95–22]

RIN 1515–AB65

Temporary Importation Bonds; Anticipatory Breach, Assessment Amounts, Petitions for Relief

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to permit anticipatory breach and provide for early payment of liquidated damages in Temporary Importation Bond (TIB) cases. It also amends the regulations to permit assessment of liquidated damages in excess of double the duties in those cases where the district director requires extra bonding in order to protect the revenue and to state that the term "duties" for TIB assessment shall also include any applicable merchandise processing fees that otherwise would be charged on an entry for consumption. Finally, the document amends the regulations to eliminate forwarding of petitions for relief in TIB cases to Customs Headquarters when the bond principal or surety is dissatisfied with the decision on the petition afforded by the district director.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–482–6950.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), merchandise may be entered under the terms of a Temporary Importation Bond (TIB) without the payment of duties if the merchandise is entered for a specific purpose enumerated in Subchapter XIII, HTSUS. Per U.S. Note 1 to Subchapter XIII, the merchandise is permitted to remain in the United States for a one-year period subsequent to the date of importation (with a maximum of two one-year extensions allowed). Prior to the expiration of the bond period or any properly approved extension thereof, the merchandise must be exported or destroyed under Customs supervision. Failure to export or destroy in a timely manner results in the imposition of liquidated damages against the importer.

Instances arise where, after initiation of a TIB entry, the importer decides that the merchandise will remain in the United States in violation of the terms of the bond. Rather than wait for the one-year period to end and for liquidated damages to be assessed, importers inquired as to the possibility of early payment of liquidated damages. The Customs Regulations currently do not provide for an anticipatory breach of a TIB.

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of September 29, 1992 (57 FR 44714), it was proposed to amend the regulations to permit anticipatory breach of a TIB and allow the importer to pay the full measure of liquidated damages and thereby close the bond. Through payment of the liquidated damages, the importer would waive his right to receipt of notice of a claim for liquidated damages pursuant to § 172.1(a), Customs Regulations (19 CFR 172.1(a)).

For TIB entries, the provisions of § 10.31(f) of the Customs Regulations (19 CFR 10.31(f)) require that a bond shall be given containing the conditions set forth in § 113.62 of the Customs Regulations (19 CFR 113.62) in an amount equal to double the duties which it is estimated would have accrued (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. By contrast, under the provisions of § 10.39(d), if any article entered under Chapter 98, Subchapter XIII, HTSUS, has not been exported or destroyed in accordance with the regulations within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the district director shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a lower amount is prescribed by § 10.31(f).

On the one hand, § 10.31(f) empowers the district director to require a bond in excess of double the duties, but the provisions of § 10.39(d) only permit him to assess liquidated damages at double the estimated duties or such *lower* amount (emphasis added) as prescribed by § 10.31(f). These regulations can provide anomalous results and inefficient protection of the revenue. Accordingly, the NPRM proposed an amendment to the regulations to permit, in the case of breach of a TIB, assessment of liquidated damages in an amount equal to double the estimated duties or any different amount prescribed by § 10.31(f) rather than only a lower amount.

When a TIB entry is filed, no merchandise processing fees are charged to the importer of record. However, section 111 of the Customs and Trade Act of 1990 (Pub. L. 101–382) amended 19 U.S.C. 58c(g) (the statute which requires payment of the merchandise processing fee) to provide that all administrative and enforcement provisions of the Customs laws and regulations, except those relating to drawback, shall apply with respect to any fee prescribed under 19 U.S.C. 58c(a) (which requires payment of the merchandise processing fee), and with respect to persons liable therefor, as if such fee is a Customs duty. Any penalty which is expressed in terms of a relationship to the amount of the duty (e.g., liquidated damages expressed in terms of an amount equal to double the estimated duties due on an entry) shall be assessed as a multiple of the unpaid fee. Accordingly, when calculating the measure of liquidated damages for breach of a TIB, the amount of estimated duties due for breach should include duties plus the merchandise processing fees that would have been applicable to the entry had an entry for consumption been filed. The NPRM proposed an amendment to the regulations to provide that, for purposes of assessment of liquidated damages for breach of a TIB, the term duties includes any merchandise processing fees that would have been due on a consumption entry that would have been filed with regard to such TIB merchandise.

Under the provisions of § 10.39(e) of the Customs Regulations (19 CFR 10.39(e)), if there has been a default with respect to all the articles covered by the bond and a written petition for relief is filed timely, the regulations state that the petition "shall be transmitted to Headquarters, U.S. Customs Service, with a full report of the facts, unless it is allowed by the district director in whole or in part in accordance with this regulation, * * *." This language noting referral to Headquarters is unique to TIB cases in which all the articles covered by the bond are in default and the district director allows no mitigation. The NPRM posited that the jurisdictional amount found in § 172.21 of the Customs Regulations (19 CFR 172.21) should govern review of all petitions. Jurisdiction should not be predicated on a denial of relief in a limited fact situation. Accordingly, the NPRM proposed that § 10.39(e) be amended to remove the reference regarding referral of the petition to Customs Headquarters.

Analysis of Comments

Five comments were received with regard to the subject document. It should initially be noted that Customs, in error, indicated the harbor maintenance fees, as required by the provisions of the Harbor Maintenance Review Act of 1986 (Pub. L. 99–682), are not imposed on TIB entries. The NPRM then went on to state also in error that unpaid harbor maintenance fees, as well as merchandise processing fees, should be included in any calculation of double the duties or 110 percent of the duties for assessment of liquidated damages. Two commenters noted these errors. Customs concedes these mistakes, and the final rule avoids any mention of harbor maintenance fees in the calculation of duties, fees and charges in TIB liquidated damages assessment.

Two commenters suggested that the proposed regulatory amendment would only permit anticipatory breach as to the entire amount of merchandise entered under a TIB and would not permit anticipatory breach if a percentage of TIB merchandise covered by a single entry was intended to remain in the United States in violation of the bond provisions but the remaining percentage was to be exported or destroyed in compliance with bond conditions. The regulations require assessment of the full amount of liquidated damages applicable to the entry. The commenters suggest that there would be little incentive to comply with anticipatory breach provisions because the importer who wishes to file a partial anticipatory breach would be required to pay for the full amount of the entry.

Customs concedes that the comment has some validity but it should be emphasized that acceptance of payment in recognition of anticipatory breach of TIB conditions is being promulgated in response to requests made to Customs and as a courtesy to the importing community. It will permit importers to close out the records on a TIB rather than wait for the one-year bond period to expire. Partial anticipatory breaches would be difficult for Customs to administer, particularly if merchandise which the importer still intends to export or destroy in compliance with bond conditions has not yet been exported or destroyed so as to close the bond out in its entirety. Customs will not accept a partial anticipatory breach if the merchandise not covered by the breach has not been exported or destroyed in compliance with bond terms because of the difficulty of administration.

A comment received from a representative of surety companies did not oppose the concept of anticipatory breach, but did request that Customs notify a surety that anticipatory breach occurred, liquidated damages were paid and that the bond could be closed with regard to that particular TIB entry. Customs has no objection to this request and has added language which would require surety notification by the importer when an anticipatory breach occurs. Inasmuch as the importer seeks the benefit of anticipatory breach, Customs does not find it burdensome to require the importer to notify surety of its actions.

One commenter was of the view that the proposed amendment to § 10.31(f) gave Customs excessively broad discretion in deciding the bond amount. We disagree. The provisions of § 10.31(f) give the district director discretion to require a bond in sufficient size to protect the revenue. As a condition precedent to requiring a larger bond, the district director must notify the entrant, in writing or by equivalent electronic notification, of the increase. The language of the regulation does not permit an increase in the bond amount without cause.

Finally, one commenter indicates that under proposed amendments to § 10.39(e) of the regulations, Customs could be faced with an anomalous situation regarding review of petitions for relief. As proposed, the district director would review petitions for relief in all cases where the claim is for $100,000 or less and the entire amount of merchandise entered under a TIB is in default. Under the provisions of § 10.39(f), a petition for relief could be reviewed by the district director when a partial default occurs and the liability for liquidated damages on the articles in respect of which there has been a default does not exceed $50,000. Thus, jurisdictional amounts are not consistent, and Headquarters review would be required in certain TIB liquidated damages cases, depending upon what percentage of articles are in default. We agree with the comment and, therefore, are amending § 10.39(f) to be consistent with the change to § 10.39(e).

Accordingly, the regulations are amended as proposed except that references to the harbor maintenance fee have been removed, notice of anticipatory breach will now be required to be afforded to sureties by the breaching importer, and the jurisdictional amount in § 10.39(f) is amended to $100,000 to be consistent with § 10.39(e).

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Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 10

Articles conditionally free, Customs duties and inspection, Exports, temporary importations under bond.

Amendments

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Section 10.31 is amended by revising the first two sentences of paragraph (f) to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the district director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. * * *

* * * * *

3. Section 10.39(d)(1) is amended by removing the word "lower" in the first sentence and by adding in its place the word "different", and by adding a sentence at the end of the paragraph to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(d) (1) * * * For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

* * * * *

4. Section 10.39(e) is amended by revising its first sentence to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to all the articles covered by the bond and a written petition for relief has been timely filed as provided in part 172 of this chapter, it shall be reviewed by the district director if the full amount of the claim does not exceed $100,000 and by the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, if the full amount of the claim exceeds $100,000.

* * * * *

§ 10.39 [Amended]

* * * * *

5. Section 10.39(f) is amended by removing the figure "$50,000" in the first sentence and by adding in its place the figure "$100,000".

6. Section 10.39 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(g) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter.

* * * * *

Approved: February 23, 1995.

Peter J. Baish,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95-6759 Filed 3-17-95; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 760

[Docket No. R-95-1750; FR-3468-F-02]

RIN 2501-AB83

Participant's Consent To Release of Information

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992, and Section 3003 of the Omnibus Budget Reconciliation Act of 1993. Section 904 of the McKinney Act authorizes HUD to require applicants or participants in any HUD program involving review of an applicant's or participant's income to sign a consent form authorizing HUD, the Housing Agency/Authority, or the owner to verify income information by requesting wage and claim data from employers and the State agency responsible for the administration of the State unemployment laws.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Director, Occupancy Division, Office of Assisted Housing, Room 4206, concerning occupancy matters; Barbara D. Hunter, Acting Division Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180 concerning housing assistance programs administered by this office; and David L. Decker, Director, Computer Matching Activities, Room 5156, concerning computer matching/tenant income verification matters. They may be contacted at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-0744, (202) 708-3944 and (202) 708-0099, respectively. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. October 12, 1994 Proposed Rule

On October 12, 1994 (59 FR 51519) HUD published a rule which proposed to implement the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (the 1992 Act) and Section 3003 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, approved August 10, 1993).

Section 904 of the McKinney Act authorizes HUD to require applicants and participants and adult members of their families in any HUD program involving initial and periodic review of an applicant's or participant's income to sign a consent form authorizing: (1) HUD, the Housing Authority/Agency (HA),[1] or the owner to verify employee income information from current or previous employers; and (2) HUD or the HA to request wage and claim information from the State agency responsible for the administration of the State unemployment laws. In accordance with section 904(b) of the McKinney Act, HUD regulations make signing the consent form an explicit condition of initial or continuing eligibility for participation in the covered programs.

Among other revisions, the statutory amendments to Section 904 limited the scope of the consent form by requiring that it only cover information relevant and necessary to meet the requirements of Section 904. The amendments also authorized the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release information pursuant to Section 6103 (1)(7)(D)(ix) of the Internal Revenue Code of 1986 (26 U.S.C. 6103).

The preamble to the proposed rule listed the specific changes made to Section 904 of the McKinney Act by section 903 of the 1992 Act, section 3003 of the Omnibus Budget Reconciliation Act of 1993, and the regulatory amendments proposed to be made as a result of the statutory changes (see 59 FR 51519-51521). HUD solicited public comments on the proposed amendments to parts 200 and 760. By the expiration of the public comment period on December 12, 1994, four comments had been received.

The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

B. Comments on the October 12, 1994 Proposed Rule

Comment. One of the commenters expressed concern over proposed §§ 200.1203 and 200.1205, which permit HUD to require consent to the release of "other information as provided in 24 CFR 813.109 and 24 CFR 913.109." The commenter interpreted the McKinney Act as limiting the consent form to the three categories of information listed in Section 904: (1) Salary and wage information from employers; (2) wage and benefit information from State unemployment insurance agencies; and (3) income information from the Social Security Administration and the Department of the Treasury. The commenter contended that Section 904's requirement that HUD independently verify information provided by applicants and participants is an insufficient basis for requiring consent to release "other information." Furthermore, the commenter stated that it is indefensible for HUD to require consent to release "other information" before there is any adverse information to verify. Finally, the commenter believed that 24 CFR 813.109 and 24 CFR 913.109 conflict with 42 U.S.C 3544(b) and should be "amended or repealed accordingly."

HUD Response. HUD believes proposed §§ 200.1203 and 200.1205 are necessary to its compliance with statutory mandates. The Omnibus Budget Reconciliation Act of 1993 and the McKinney Act require that HUD verify information affecting eligibility for, and the level of, assisted housing benefits. Furthermore, the Privacy Act, as amended by Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, requires that agencies may not suspend, terminate, reduce or make a final denial of assistance or payment under a Federal benefit program until information is verified.

HUD notes that the language in proposed §§ 200.1203 and 200.1205 only permits consent to the release of "other information" necessary to determine eligibility or level of benefits. HUD believes that the consent form it has implemented, permitting HAs to obtain "financial information", is consistent with the "other information" language, since the information needed to determine eligibility or the level of benefits frequently is financial in nature.

Congress intended that the computer matching permitted by the consent form result in savings. If an HA or owner were prevented from obtaining an applicant's or participant's consent until after acquiring adverse information through computer matching, its ability to recoup funds or take other administrative or legal action would be seriously impaired. Many participants who receive excessive housing assistance will not sign the consent form after the HA or owner has obtained adverse information. By preventing the verification of the adverse information, these participants hinder the HA or owner from taking action against the participants and realizing program savings.

Finally, HUD disagrees with the commenter's statement that 24 CFR 813.109 and 24 CFR 913.109 need to be amended or repealed. Many recent and past laws require verification of information concerning applicants' and participants' eligibility for, and levels of, benefits.

Comment. One commenter questioned the basis for the proposed rule's placement of a 15-month limit on the effectiveness of the participant's consent for release of information. The commenter felt that the time limit would prove burdensome to local HAs, which would be required to have the consent form signed at each annual re-examination. The commenter suggested that HUD issue a blanket authorization which would permit the HA to verify information for the duration of the resident's tenancy.

HUD Response. HUD agrees that making the consent form effective for only 15 months increases the paperwork burden on HAs. However, Section 903(a) of the 1992 Act requires that the consent to release of information be limited with respect to time, and only cover information relevant and necessary to meet the requirements of Section 904 of the McKinney Act.

Given tenant concerns that the consent form might be used improperly to obtain private information, Congress required that HUD place a time limit on the consent form's effectiveness. A blanket authorization that would be valid for the duration of the resident's tenancy, like the one suggested by the

[1] The preamble to the October 12, 1994 proposed rule referred only to Public Housing Agencies (PHAs). Section 903 of the 1992 Act required that HUD develop a new consent form. This consent form, applicable to Indian Housing Authorities (IHAs) as well as PHAs, was released on June 13, 1994 (HUD Notice PIH-94-36 (HA)). IHAs were made aware of this new consent form and have utilized it since its issuance. Accordingly, the language in the preamble to this final rule and in the rule includes PHAs as well as IHAs (collectively referred to as HAs).

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commenter, would be inconsistent with the explicit instructions given by Congress.

Congress suggested that the consent for release of information be effective for 12 months, the normal period for tenant re-certification for continued occupancy. However, the law allows HUD discretion in choosing the effective period for the consent form. In order to provide leeway for unexpected delays in re-certification, HUD has chosen to make the consent form effective for 15 months from the date of execution.

Comment. Two commenters recommended that HUD develop a new regulation to accompany the issuance of this final rule. Specifically, the commenters urged the issuance of a regulation that would "clearly and unambiguously prohibit the release of [Housing Assistance Program] contracts or any other information which might lead to the identity of a recipient of Section 8 subsidy assistance, including the addresses of properties in which such recipients reside or the names of their landlords." Neither of the commenters expressed any objection to the proposed rule.

HUD Response. Although the rule recommended by the commenters and the proposed rule both have privacy implications, a clear nexus does not exist between them. Accordingly, HUD views the issuance of this final rule and the commenters' recommendation as independent issues.

C. Adoption of Proposed Rule

HUD adopts as its final rule the proposed rule published on October 12, 1994, without change.

II. Other Matters

A. Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review.* Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh St., SW., Washington, DC 20410.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this final rule relate to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this final rule are directed toward applicants and participants in federally assisted housing programs. It effects no significant changes in the current relationships between the Federal government, the States and their political subdivisions in connection with these programs.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Under this final rule, applicants and participants, and adult members of their families, are required to sign and submit consent forms authorizing the verification or collection of certain information necessary for determining eligibility for or level of assistance under the covered programs. Consent forms to permit verification of information provided by the family are already required. This rule change prohibits the collection of information which is not necessary to verify the income of an applicant or participant, and makes the consent form valid for 15 months. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule relates to applicants and participants in federally assisted housing projects but should not have a meaningful economic impact on these entities.

F. Regulatory Agenda

This final rule was not listed in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 760

Grant programs—housing and community development, Income verification procedures, Indians, Intergovernmental relations, Loan programs—housing and community development, Penalties, Public housing Rent subsidies, Reporting and recordkeeping requirements, Wages.

Accordingly, 24 CFR parts 200 and 760 are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18, 1701s, and 1715z-11; 42 U.S.C. 3535(d), 3543, and 3544.

2. Section 200.1203 is amended by revising paragraph (a), to read as follows:

§ 200.1203 Applicability.

(a) *Information to be covered by consent forms.* The information covered by consent forms described in this part involves: wage and claim information from SWICAs; and wages, net earnings from self-employment, payments of retirement income and unearned income as referenced at sections 6103(l)(7)(A) and 6103(l)(7)(B) of the Internal Revenue Code (26 U.S.C. 6103) In addition, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109.

* * * * *

3. Section 200.1205 is amended by revising the definition for "Consent form", to read as follows:

§ 200.1205 Definitions.

* * * * *

Consent form means a consent form or forms approved by HUD to be signed by applicants and participants for the purpose of obtaining employee income information from employers; wage and claim information from SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, payments of retirement income as referenced at section 6103(l)(7)(A) of the Internal Revenue Code (26 U.S.C. 6103); and return information for unearned income (i.e., interest and dividends) from the Internal Revenue Service as referenced at section 6103(l)(7)(B) (26 U.S.C. 6103). Also, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109. The consent form expires after a limited amount of time.

* * * * *

4. Section 200.1210 is amended by revising paragraph (c), to read as follows:

§ 200.1210 Consent by applicants and participants.

* * * * *

(c) *Consent form requirements.* The consent form required by this subpart V shall contain, at a minimum, the following:

(1) A provision authorizing HUD to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and/or to maintain continued assistance under a program referred to in § 200.1203;

(2) A provision authorizing HUD or the owner (or mortgagee as applicable) responsible for determining eligibility for or level of assistance, to verify with previous or current employers employee income information pertinent to the applicant's or participant's eligibility for or level of assistance under a program referred to in § 200.1203;

(3) A provision authorizing HUD to request tax return information from the Internal Revenue Service and the Social Security Administration for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the consent form was signed.

(5) These requirements may be contained in more then one consent form.

PART 760—PROCEDURES FOR OBTAINING WAGE AND CLAIM INFORMATION ABOUT APPLICANTS AND PARTICIPANTS IN HUD'S SECTION 8 AND PUBLIC HOUSING PROGRAMS FROM STATE WAGE INFORMATION COLLECTION AGENCIES (SWICAs)

5. The authority citation for part 760 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437a, 1437d, 1437ee, 1437f, 3535(d), and 3544.

6. Section 760.3 is amended by revising paragraph (a), to read as follows:

§ 760.3 Applicability.

(a) *Information to be covered by consent forms.* The information covered by consent forms described in this part involves wage and claim information from SWICAs; and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at sections 6103(l)(7)(A) and 6103(l)(7)(B) of the Internal Revenue Code (26 U.S.C. 6103). In addition, consent forms may authorize the collection of other information as identified in 24 CFR 813.109(b) and 24 CFR 913.109(b) for current verification procedures, including requirements regarding signing and submitting consent forms, for the covered programs.

* * * * *

7. Section 760.5 is amended by revising the definition for "Consent form", to read as follows:

§ 760.5 Definitions.

* * * * *

Consent form means a consent form or forms approved by HUD to be signed by applicants and participants for the purpose of obtaining employee income information from employers; wage and claim information from SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, payments of retirement income as referenced at section 6103(l)(7)(A) of the Internal Revenue Code (26 U.S.C. 6103); and return information for unearned income (i.e., interest and dividends) from the Internal Revenue Service as referenced at section 6103(l)(7)(B) (26 U.S.C. 6103). Also, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109. The consent form expires after a limited amount of time.

* * * * *

8. Section 760.10 is amended by revising paragraph (c), to read as follows:

§ 760.10 Consent by applicants and participants.

* * * * *

(c) *Consent form requirements.* The consent form required by this subpart B shall, at a minimum, contain the following:

(1) A provision authorizing HUD and HAs to obtain from SWICAs any information or materials necessary to complete or verify the application for participation or to maintain continued assistance under a program referred to in § 760.3;

(2) A provision authorizing HUD, HAs, or the owner responsible for determining eligibility for or level of assistance, to verify with previous or current employers income information pertinent to the applicant's or participant's eligibility for or level of assistance under a program referred to in §§ 200.1203, 813.109 and 913.109 of this title;

(3) A provision authorizing HUD to request income return information from the Internal Revenue Service and the Social Security Administration for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the consent form was signed.

Dated: March 3, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–6715 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–32–P

24 CFR Part 3500

[Docket No. R–95–1538; FR–2942–C–07]

RIN 2502–AG27

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X): Corrections

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

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SUMMARY: The final rule published on December 19, 1994, is being further amended to correct technical errors and to conform the rule text and an Appendix. Previously, on January 10, 1995, the Department published a substitute page correcting Appendix MS–1 to Part 3500 and correcting a cross-reference. The corrections published today are necessary to clarify certain other provisions.

EFFECTIVE DATE: June 19, 1995. This is the same effective date as applies to the final rule and earlier corrections. However, the Department continues to encourage persons covered by the new rule to implement all of its provision earlier than the rule's effective date.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, Room 5239, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 708–4560. The TDD number for hearing-impaired persons is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) (RESPA), the Secretary is to publish regulations implementing the requirements in Section 6 (12 U.S.C. 2605) concerning the servicing of mortgage loans. On December 19, 1994 (59 FR 65442), the Department published a final rule implementing Section 6 of RESPA. On January 10, 1995 (60 FR 2642), the Department published a substitute page correcting Appendix MS–1 to Part 3500, the Servicing Disclosure Statement, to include the Acknowledgment of Mortgage Loan Applicant that was referenced in the rule text. In addition, the January 10, 1995, publication corrected a cross-reference in § 3500.21(e) of the rule.

Additional corrections are necessary:

(a) To clarify terminology relating to the period of time applicable to certain calculations;

(b) To clarify how long signed acknowledgements must be retained;

(c) To clarify the contents of the Notices of Transfer, including removing one unnecessary requirement and ensuring that borrowers are advised of their rights in connection with complaint resolution; and

(d) To clarify the protections applicable to borrowers during a transfer of loan servicing and to conform the text of the rule with Appendix MS–2, Notice of Assignment, Sale, or Transfer of Servicing Rights.

In addition, the Department is correcting a cross-reference in one of the definitions applicable to part 3500.

Accordingly, 24 CFR 3500.2 is amended and FR Doc. 94–30413, the final rule on Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); and Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Technical Correction, published December 19, 1994 (59 FR 65442), is corrected, as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. In § 3500.2, the definition of "Lender" is amended by revising the fourth sentence to read as follows:

§ 3500.2 Definitions.

* * * * *

Lender * * * See also § 3500.5(b)(7), secondary market transactions.

* * * * *

§ 3500.21 [Corrected]

3. In the **Federal Register** of December 19, 1994, on page 65449, the second sentence in § 3500.21(b)(3)(iii) is amended at the first and fourth line of the third column by substituting the phrase "12-month period" for the phrase "calendar year" in the two places where it appears.

4. On page 65450, in the first column, in § 3500.21, a new paragraph (c)(3) is added, to read as follows:

§ 3500.21 Mortgage servicing transfers.

* * * * *

(c) * * *

(3) The signed Applicant Acknowledgment(s) shall be retained for a period of 5 years after the date of settlement as part of the loan file for every settled loan. There is no requirement for retention of Applicant Acknowledgment(s) if the loan is not settled.

* * * * *

5. On page 65450, beginning in the second column, in § 3500.21:

a. Paragraphs (d)(3) (ii) and (iii) are revised;

b. The word "and" is removed following the semicolon at the end of paragraph (d)(3)(v) in the third column;

c. The period at the end of paragraph (d)(3)(vi) in the third column is replaced with the word "; and";

d. A new paragraph (d)(3)(vii) is added; and

e. Paragraph (d)(5) is revised, to read as follows:

* * * * *

(d) * * *

(3) * * *

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

* * * * *

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS–2 of this part illustrates a statement satisfactory to the Secretary.

* * * * *

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

* * * * *

Dated: March 14, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–6794 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8590]

RIN 1545–AR10

Dividends Received Deduction Holding Period Reduced for Periods Where Risk of Loss Diminished

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reduction in the holding period of stock where a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or related property. In addition, this document contains final regulations relating to tax straddles involving stock and substantially similar or related property. The regulations, in response to specific congressional direction, provide guidance to taxpayers with respect to the availability of the dividends received deduction and the application of the rules relating to tax straddles.

DATES: These regulations are effective March 20, 1995.

For dates of applicability of these regulations, see § 1.246–5(e) and § 1.1092(d)–2(b).

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos or Thomas M. Preston of the Office of the Assistant Chief Counsel, Financial Institutions and Products, (202) 622–3920 or 622–3940, respectively (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1993, proposed regulations § 1.246–5 and § 1.1092(d)–2 under sections 246(c)(4)(C) and 1092(d)(3)(B) respectively were published in the **Federal Register** (58 FR 45080). A public hearing was held on September 28, 1993. After IRS and Treasury consideration of the public comments on the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The final regulations retain, with only minor modifications, the definitions of substantially similar or related property and diminished risk of loss that are contained in the proposed regulations. Property is substantially similar or related to stock if the property and the stock primarily reflect the performance of a single firm or enterprise, the same industry or industries, or the same economic factor or factors (such as interest rates, commodity prices, or foreign-currency exchange rates), and changes in the fair market value of the stock are reasonably expected to approximate, directly or inversely, changes in the fair market value of the property. A taxpayer has diminished its risk of loss if changes in the fair market values of the stock and a position with respect to substantially similar or related property are reasonably expected to vary inversely.

Several commentators argued that the definition of substantially similar or related property improperly focuses on the economic relationship between the stock and the other property held by the taxpayer. They argued that this approach fails to give independent substance to the two parts of the statutory test, namely, (a) risk reduction, and (b) holding positions in substantially similar or related property.

The IRS and Treasury believe that the rule, as finalized, gives appropriate weight both to risk reduction and to whether the taxpayer holds a position in substantially similar or related property. The only way to determine when properties are substantially similar or related for purposes of section 246(c)(4)(C) is by taking into account the economic characteristics of the properties. A definition that did not look to the economic relationships of properties would give undue deference to labels and would not serve the purposes of section 246(c)(4)(C).

Several commentators suggested that the regulations should provide a safe harbor under which taxpayers could establish that properties are not substantially similar or related by demonstrating a sufficiently low mathematical correlation between the changes in the price of stock and changes in the price of the other property. The final regulations do not include the suggested safe harbor because the IRS and Treasury have not identified a simple, workable safe harbor that would be appropriate in all cases and that the IRS could effectively administer. The IRS and Treasury continue to welcome suggestions for a safe harbor.

Although the final regulations retain the definition of substantially similar or related property, *Example 6* of the proposed regulations has been eliminated. This example, which was widely criticized by commentators, concludes that a nonparticipating, fixed-term, preferred stock is substantially similar to Treasury securities because both types of property primarily reflect the performance of the same economic factor—interest rates—and changes in the value of the stock will approximate changes in the value of the Treasury securities. The commentators argued that, although hedging preferred stock with Treasury securities may provide protection against the impact of substantial movements in overall interest rates, the value of preferred stock can also be significantly affected by other economic factors, such as the issuer's credit risk. Thus, they argued, the stock and the Treasury securities do not primarily reflect the performance of the same economic factor, and changes in their fair market values are not reasonably expected to approximate each other.

Whether offsetting positions constitute substantially similar or related property is determined based on the facts and circumstances of each case. Commentators demonstrated that, in many cases, changes in the price of Treasury securities would not approximate changes in the price of a preferred stock. Therefore, *Example 6* of the proposed regulations has been eliminated. Whether Treasury securities or other interest-sensitive property is substantially similar or related to a particular preferred stock must be decided on a case-by-case basis. The elimination of *Example 6* does not preclude a finding that such property or securities are substantially similar or related to preferred stock in appropriate cases.

Examples 3 and *8* of the proposed regulations were eliminated because, after further consideration, the IRS and Treasury decided the regulations were sufficiently clear without the examples.

The proposed regulations state that, notwithstanding the general rule, two portfolios of stocks are substantially similar or related if changes in their fair market values are reasonably expected to approximate each other. Commentators suggested that this rule did not give effect to the statement in the legislative history that the substantially similar or related standard is not satisfied merely because the taxpayer is an investor with diversified holdings and acquires a regulated futures contract or an option on a stock index to hedge general market risks. Commentators suggested that, even if changes in the values of two portfolios approximate each other, the substantially similar or related standard should be met only if the portfolios substantially overlap.

The final regulations adopt this suggestion subject to an anti-abuse rule. Under the final regulations, a position that reflects the value of a portfolio is not treated as substantially similar or related to the taxpayer's stock holdings unless the stock holdings and the portfolio substantially overlap. For this purpose, a taxpayer's stock holdings substantially overlap with a portfolio if the taxpayer holds 70 percent, by value, of the stocks in the portfolio (that is, the taxpayer holds 70 percent of the capitalization of the portfolio). A mechanical rule is provided for determining substantial overlap. The final regulations also define a portfolio as 20 or more stocks and provide that positions that reflect the value of more than one stock but less than 20 are treated as positions in each of the underlying stocks.

If the anti-abuse rule applies, a position that reflects the value of two or more stocks (including a portfolio) is treated as substantially similar or related property even if those stocks and

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the taxpayer's stock holdings do not substantially overlap. The anti-abuse rule applies when the following two conditions are met. First, changes in the value of the position or the stocks reflected in a position are reasonably expected to virtually track (directly or inversely) changes in the value of the taxpayer's stock holdings or any portion of the taxpayer's stock holdings and other positions of the taxpayer; and, second, the position is acquired or held as part of a plan a principal purpose of which is to obtain tax savings (including by deferring tax) that are significantly in excess of the expected pre-tax economic profits from the plan. Of course, common law doctrines and statutory authorities, such as substance over form, the sham transaction doctrine, and the clear reflection of income requirement, continue to apply notwithstanding any provision of these regulations. See, e.g., *Sheldon* v. *Commissioner*, 94 T.C. 738 (1990).

The final regulations generally retain the other provisions of the proposed regulations with the following modifications. The final regulations define a position, for purposes of section 246(c)(4)(C), as an interest (including a futures or forward contract or an option) in property or any contractual right to a payment, whether or not severable from stock or other property. Thus, for purposes of section 246(c)(4)(C), stock coupled with an option to sell the stock will not be treated as a single instrument (regardless of whether the option trades separately from the stock). A position does not, however, include traditional equity rights to demand payment from the issuer, such as rights traditionally provided by mandatorily redeemable preferred stock. The definition of position does not apply for purposes of section 1092, which includes its own definition of position in section 1092(d)(2).

The final regulations make clear that certain convertible instruments are substantially similar or related property. Thus, the holding period of stock may be tolled if the taxpayer holds an instrument that is convertible into property that is substantially similar or related to the taxpayer's stock. The situations identified in the final regulations are taken directly from the legislative history underlying the statutory provision. See H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 818 (1984).

For hedges of positions other than stock, the final regulations retain the rule in the proposed regulations that hedges of one position are not treated as hedges of another position (including stock). The final regulations clarify that relationships established in the taxpayer's books and records at the time the positions are entered into are given substantial deference. In addition, the final regulations provide that a taxpayer that diminishes its risk of loss in stock by holding a position in substantially similar or related property is treated as diminishing the risk of loss on the shares with the shortest holding period.

The final regulations retain the rule in the proposed regulations that a guarantee, surety agreement, or similar arrangement is treated as substantially similar or related property if it substantially offsets decreases in the fair market value of the stock. The IRS and Treasury caution that these arrangements or similar rights (even if they do not substantially offset decreases in the fair market value of the stock) may also be treated as options (whether settled in cash or property) to sell the stock for purposes of section 246(c)(4)(A). For example, if an instrument is debt for state law purposes but stock for federal income tax purposes, creditor's rights on the instrument are treated as options to sell. See Rev. Rul. 94–28, 1994–1 C.B. 86.

The final regulations clarify the treatment of notional principal contracts as substantially similar or related property. Under the final regulations, an analysis of whether a notional principal contract is a position in substantially similar or related property that diminishes risk must take into account the gross payments due under the contract even if payments under the contract are netted for other purposes. Thus, a taxpayer cannot look solely to the net payments that it expects to receive and argue that, because fluctuations in the value of the swap may not approximate changes in the value of the stock, the swap is not substantially similar or related to the stock, and does not diminish the taxpayer's risk of loss.

The final regulations defining substantially similar or related property under section 1092 of the Code are found in new § 1.1092(d)–2. The regulations provide that the definition of the term substantially similar or related property in § 1.246–5 is generally applicable for purposes of section 1092(d)(3)(B).

Effective Dates

The regulations contained in this Treasury decision generally are effective with respect to dividends received, and to positions established, on or after March 17, 1995 with respect to stock acquired after July 18, 1984. However, the regulations apply to dividends received by a taxpayer on stock acquired after July 18, 1984, and to positions established after March 1, 1984, with respect to certain specific transactions listed in the legislative history.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Nicholas G. Bogos and Thomas M. Preston, both of the Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.246–5 also issued under 26 U.S.C. 246(c) and 7701(f). * * *

Section 1.1092(d)–2 also issued under 26 U.S.C. 1092(d)(3)(B). * * *

Par. 2. Section 1.246–5 is added to read as follows:

§ 1.246–5 Reduction of holding periods in certain situations.

(a) *In general.* Under section 246(c)(4)(C), the holding period of stock for purposes of the dividends received deduction is appropriately reduced for any period in which a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or related property. This section provides rules for applying section 246(c)(4)(C).

(b) *Definitions*—(1) *Substantially similar or related property.* The term substantially similar or related property is applied according to the facts and circumstances in each case. In general, property is substantially similar or related to stock when—

(i) The fair market values of the stock and the property primarily reflect the performance of—

(A) A single firm or enterprise;

(B) The same industry or industries; or

(C) The same economic factor or factors such as (but not limited to) interest rates, commodity prices, or foreign-currency exchange rates; and

(ii) Changes in the fair market value of the stock are reasonably expected to approximate, directly or inversely, changes in the fair market value of the property, a fraction of the fair market value of the property, or a multiple of the fair market value of the property.

(2) *Diminished risk of loss.* A taxpayer has diminished its risk of loss on its stock by holding positions with respect to substantially similar or related property if changes in the fair market values of the stock and the positions are reasonably expected to vary inversely.

(3) *Position.* For purposes of this section, a position with respect to property is an interest (including a futures or forward contract or an option) in property or any contractual right to a payment, whether or not severable from stock or other property. A position does not include traditional equity rights to demand payment from the issuer, such as the rights traditionally provided by mandatorily redeemable preferred stock.

(4) *Reasonable expectations.* For purposes of paragraphs (b)(1)(i), (b)(2), or (c)(1)(vi) of this section, reasonable expectations are the expectations of a reasonable person, based on all the facts and circumstances at the later of the time the stock is acquired or the positions are entered into. Reasonable expectations include all explicit or implicit representations made with respect to the marketing or sale of the position.

(c) *Special rules*—(1) *Positions in more than one stock*—(i) *In general.* This paragraph (c)(1) provides rules for the treatment of positions that reflect the value of more than one stock. In general, positions that reflect the value of a portfolio of stocks are treated under the rules of paragraphs (c)(1) (ii) through (iv) of this section, and positions that reflect the value of more than one stock but less than a portfolio are treated under the rules of paragraph (c)(1)(v) of this section. A portfolio for this purpose is any group of stocks of 20 or more unrelated issuers. Paragraph (c)(1)(vi) of this section provides an anti-abuse rule.

(ii) *Portfolios.* Notwithstanding paragraph (b)(1) of this section, a position reflecting the value of a portfolio of stocks is substantially similar or related to the stocks held by the taxpayer only if the position and the taxpayer's holdings substantially overlap as of the most recent testing date. A position may be substantially similar or related to a taxpayer's entire stock holdings or a portion of a taxpayer's stock holdings.

(iii) *Determining substantial overlap.* This paragraph (c)(1)(iii) provides rules for determining whether a position and a taxpayer's stock holdings or a portion of a taxpayer's stock holdings substantially overlap. Paragraphs (c)(1)(iii) (A) through (C) of this section determine whether there is substantial overlap as of any testing date.

(A) *Step One.* Construct a subportfolio (the Subportfolio) that consists of stock in an amount equal to the lesser of the fair market value of each stock represented in the position and the fair market value of the stock in the taxpayer's stock holdings. (The Subportfolio may contain fewer than 20 stocks.)

(B) *Step Two.* If the fair market value of the Subportfolio is equal to or greater than 70 percent of the fair market value of the stocks represented in the position, the position and the Subportfolio substantially overlap.

(C) *Step Three.* If the position does not substantially overlap with the Subportfolio, repeat Steps One and Two (paragraphs (c)(1)(iii)(A) and (B) of this section) reducing the size of the position. The largest percentage of the position that results in a substantial overlap is substantially similar or related to the Subportfolio determined with respect to that percentage of the position.

(iv) *Testing date.* A testing date is any day on which the taxpayer purchases or sells any stock if the fair market value of the stock or the fair market value of substantially similar or related property is reflected in the position, any day on which the taxpayer changes the position, or any day on which the composition of the position changes.

(v) *Nonportfolio positions.* A position that reflects the fair market value of more than one stock but not of a portfolio of stocks is treated as a separate position with respect to each of the stocks the value of which the position reflects.

(vi) *Anti-abuse rule.* Notwithstanding paragraphs (c)(1)(i) through (v) of this section, a position that reflects the value of more than one stock is a position in substantially similar or related property to the appropriate portion of the taxpayer's stock holdings if—

(A) Changes in the value of the position or the stocks reflected in the position are reasonably expected to virtually track (directly or inversely) changes in the value of the taxpayer's stock holdings, or any portion of the taxpayer's stock holdings and other positions of the taxpayer; and

(B) The position is acquired or held as part of a plan a principal purpose of which is to obtain tax savings (including by deferring tax) the value of which is significantly in excess of the expected pre-tax economic profits from the plan.

(2) *Options*—(i) *Options that are significantly out of the money.* For purposes of paragraph (b)(2) of this section, an option to sell that is significantly out of the money does not diminish the taxpayer's risk of loss on its stock unless the option is held as part of a strategy to substantially offset changes in the fair market value of the stock.

(ii) *Conversion rights.* Notwithstanding paragraphs (b)(1) and (2) of this section, a taxpayer is treated as diminishing its risk of loss by holding substantially similar or related property if it engages in the following transactions or their substantial equivalents—

(A) A short sale of common stock while holding convertible preferred stock of the same issuer and the price changes of the convertible preferred stock and the common stock are related;

(B) A short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible or common stock; or

(C) A short sale of convertible preferred stock while holding common stock.

(3) *Stacking rule.* If a taxpayer diminishes its risk of loss by holding a position in substantially similar or related property with respect to only a portion of the shares that the taxpayer holds in a particular stock, the holding period of those shares having the shortest holding period is reduced.

(4) *Guarantees, surety agreements, or similar arrangements.* A taxpayer has diminished its risk of loss on stock by holding a position in substantially similar or related property if the taxpayer is the beneficiary of a guarantee, surety agreement, or similar arrangement and the guarantee, surety agreement, or similar arrangement provides for payments that will substantially offset decreases in the fair market value of the stock.

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(5) *Hedges counted only once.* A position established as a hedge of one outstanding position, transaction, or obligation of the taxpayer (other than stock) is not treated as diminishing the risk of loss with respect to any other position held by the taxpayer. In determining whether a position is established to hedge an outstanding position, transaction, or obligation of the taxpayer, substantial deference will be given to the relationships that are established in its books and records at the time the position is entered into.

(6) *Use of related persons or pass-through entities.* Positions held by a party related to the taxpayer within the meaning of sections 267(b) or 707(b)(1) are treated as positions held by the taxpayer if the positions are held with a view to avoiding the application of this section or § 1.1092(d)–2. In addition, a taxpayer is treated as diminishing its risk of loss by holding substantially similar or related property if the taxpayer holds an interest in, or is the beneficiary of, a pass-through entity, intermediary, or other arrangement with a view to avoiding the application of this section or § 1.1092(d)–2.

(7) *Notional principal contracts.* For purposes of this section, rights and obligations under notional principal contracts are considered separately even though payments with regard to those rights and obligations are generally netted for other purposes. Therefore, if a taxpayer is treated under the preceding sentence as receiving payments under a notional principal contract when the fair market value of the taxpayer's stock declines, the taxpayer has diminished its risk of loss by holding a position in substantially similar or related property regardless of the netting of the payments under the contract for any other purposes.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. General application to common stock. Corporation A and Corporation B are both automobile manufacturers. The fair market values of Corporation A and Corporation B common stock primarily reflect the value of the same industry. Because Corporation A and Corporation B common stock are affected not only by the general level of growth in the industry but also by individual corporate management decisions and corporate capital structures, changes in the fair market value of Corporation A common stock are not reasonably expected to approximate changes in the fair market value of the Corporation B common stock. Under paragraph (b)(1) of this section, Corporation A common stock is not substantially similar or related to Corporation B common stock.

Example 2. Common stock value primarily reflects commodity price. Corporation C and Corporation D both hold gold as their primary asset, and historically changes in the fair market value of Corporation C common stock approximated changes in the fair market value of Corporation D common stock. Corporation M purchased Corporation C common stock and sold short Corporation D common stock. Corporation C common stock is substantially similar or related to Corporation D common stock because their fair market values primarily reflect the performance of the same economic factor, the price of gold, and changes in the fair market value of Corporation C common stock are reasonably expected to approximate changes in the fair market value of Corporation D common stock. It was reasonably expected that changes in the fair market values of the Corporation C common stock and the short position in Corporation D common stock would vary inversely. Thus, Corporation M has diminished its risk of loss on its Corporation C common stock for purposes of section 246(c)(4)(C) and this section by holding a position in substantially similar or related property.

Example 3. Portfolios of stocks—(i) Corporation Z holds a portfolio of stocks and acquires a short position on a publicly traded index through a regulated futures contract (RFC) that reflects the value of a portfolio of stocks as defined in paragraph (c)(1)(i) of this section. The index reflects the fair market value of stocks A through T. The values of stocks reflected in the index and the values of the same stocks in Corporation Z's holdings are as follows:

Stock	Z's holdings	RFC	Subportfolio
A	$300	$300	$300
B	300	300	300
C	—	300	—
D	400	500	400
E	300	500	300
F	300	500	300
G	500	600	500
H	300	300	300
I	—	300	—
J	400	450	400
K	200	500	200
L	200	400	200
M	200	500	200
N	100	200	100
O	—	200	—
P	200	200	200
Q	100	300	100
R	200	100	100
S	100	100	100
T	100	100	100
Totals	$4,200	$6,750	$4,100

(ii) The position is substantially similar or related to Z's stock holdings only if they substantially overlap. To determine whether they substantially overlap, Corporation Z must construct a Subportfolio of stocks with the lesser of the value of the stock as reflected in the RFC and its holdings. The Subportfolio is given in the rightmost column above. The value of the Subportfolio is 60.74 percent of the value of the stocks represented in the position ($4100+$6750), so the position and the Subportfolio do not substantially overlap.

(iii) To determine whether any portion of the position substantially overlaps with any portion of the Z's stock holdings, the values of the stocks in the RFC are reduced for purposes of the above steps. Eighty percent of the position and the corresponding subportfolio (consisting of stocks with a value of the lesser of the stocks represented in Z's holdings and in 80 percent of the RFC) substantially overlap, computed as follows:

Stock	Z's holdings	80% of RFC	Subportfolio
A	$300	$240	$240
B	300	240	240
C	—	240	—
D	400	400	400
E	300	400	300
F	300	400	300
G	500	480	480
H	300	240	240
I	—	240	—
J	400	360	360
K	200	400	200
L	200	320	200
M	200	400	200
N	100	160	100
O	—	160	—
P	200	160	160
Q	100	240	100
R	200	80	80
S	100	80	80
T	100	160	100
Totals	$4,200	$5,400	$3,780

(iv) Because $3,780 is 70 percent of $5,400, the Subportfolio substantially overlaps with 80 percent of the position. Under paragraph (c)(3) of this section, Z's stocks having the shortest holding period are treated as included in the Subportfolio. A larger portion of Z's stocks may be treated as substantially similar or related property under the anti-abuse rule of paragraph (c)(1)(vi) of this section.

Example 4. Hedges counted only once. January 1, 1996, Corporation X owns a $100 million portfolio of stocks all of which would substantially overlap with a $100 million regulated futures contract (RFC) on a commonly used index (the Index). On January 15, Corporation X enters into a $100 million short position in an RFC on the Index with a March delivery date and enters into a $75 million long position in an RFC on the Index for June delivery. Also on January 15, 1996, Corporation X indicates in its books and records that the long and short RFC positions are intended to offset one another. Under paragraph (c)(5) of this section, $75 million of the short position in the RFC is not treated as diminishing the risk of loss on the stock portfolio and instead is treated as a straddle or a hedging transaction, as appropriate, with respect to the $75 million long position in the RFC, under section 1092. The remaining $25 million short position is treated as diminishing the risk of loss on the portfolio by holding a position in substantially similar or related property. The rules of paragraph (c)(1) determine how much of the portfolio is subject to this rule and the rules of paragraph (c)(3) determine which shares have their holding periods tolled.

(e) *Effective date*—(1) *In general.* The provisions of this section apply to dividends received on or after March 17, 1995, on stock acquired after July 18, 1984.

(2) *Special rule for dividends received on certain stock.* Notwithstanding paragraph (e)(1) of this section, this section applies to any dividends received by a taxpayer on stock acquired after July 18, 1984, if the taxpayer has diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) The short sale of common stock when holding convertible preferred stock of the same issuer and the price changes of the two stocks are related, or the short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible (or common stock), or a short sale of convertible preferred stock while holding common stock; or

(ii) The acquisition of a short position in a regulated futures contract on a stock index, or the acquisition of an option to sell the regulated futures contract or the stock index itself, or the grant of a deep-in-the-money option to buy the regulated futures contract or the stock index while holding the stock of an investment company whose principal holdings mimic the performance of the stocks included in the stock index; or alternatively, while holding a portfolio composed of stocks that mimic the performance of the stocks included in the stock index.

Par. 3. Section 1.1092(d)–2 is added to read as follows:

§ 1.1092(d)–2 Personal property.

(a) *Special rules for stock.* Under section 1092(d)(3)(B), personal property includes any stock that is part of a straddle, at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock). For purposes of this rule, the term *substantially similar or related property* is defined in § 1.246–5 (other than § 1.246–5(b)(3)). The rule in § 1.246–5(c)(6) does not narrow the related party rule in section 1092(d)(4).

(b) *Effective date*—(1) *In general.* This section applies to positions established on or after March 17, 1995.

(2) *Special rule for certain straddles.* This section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(ii) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Dated: March 3, 1995.

Approved: Leslie Samuels, Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 95–6693 Filed 3–17–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5173–4]

The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy statement.

SUMMARY: The Environmental Protection Agency ("EPA") is announcing a policy relating to the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2023, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list.

This document describes a policy for deleting sites from the NPL and deferring them to the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") corrective action program, if they meet the eligibility criteria for deletion set out in the NCP. EPA requested public comment on this policy on December 21, 1988 (53 FR 51421). The policy applies to sites on the NPL that are RCRA-regulated facilities engaged in treatment, storage or disposal of hazardous waste ("TSDs" under the RCRA program).

EFFECTIVE DATE: This policy is effective on April 19, 1995.

ADDRESSES: Comments received and the Agency's responses to them are contained in the Headquarters Superfund Docket. The Headquarters Superfund Docket is located at the U.S. Environmental Protection Agency, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA. It is available for viewing by appointment only from 9:00 a.m. to 4:00

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p.m., Monday through Friday, excluding Federal holidays, Telephone 703/603–8917.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, phone 800/424–9346 (or 703/412–9810 in the Washington, DC metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Purpose of CERCLA

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* ("CERCLA" or "the Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L., No. 99–499, 100 Stat. 1613. To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised most recently by EPA on March 8, 1990 (55 FR 8664), sets forth guidelines and procedures for responding under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list.

EPA requested public comment on this policy on December 21, 1988 (53 FR 51421).

B. Purpose of the NPL

Section 105(a)(8)(A) of CERCLA requires that the NCP include criteria for "determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action." Section 105(a)(8)(B) of CERCLA requires that those criteria be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). A site may undergo Fund-financed remedial action only after it is placed on the NPL. *See* 40 CFR 300.425(b)(1).

The Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982), and amended (55 FR 51532, December 14, 1990), is the principal tool upon which the Agency relies to determine the priority sites for possible remedial actions under CERCLA. 40 CFR 300.425(c)(1). In addition to the HRS scoring method, a site also may be listed if designated as a state's highest priority, or if the Agency for Toxic Substances and Disease Registry ("ATSDR") has issued a health advisory for the site, and EPA determines that the site poses a significant threat to public health and that it will be more cost effective to use the Agency's remedial authority than to use removal authority to respond to a release. *Id.* at 40 CFR 300.425(c) (2) and (3).

II. Policy for Deleting Sites from the NPL Based Upon RCRA Deferral

A. Purpose of Today's Notice

This notice announces the Agency's policy of deleting RCRA facilities from the NPL before a cleanup is complete, if the site is being, or will be, adequately addressed by the RCRA corrective action program under an existing permit or order. EPA must also be satisfied, based either on an evaluation of a petition from a person outside the Agency or via a unilateral Agency determination, that the site, as defined by the CERCLA program, falls within the criteria for deferral.

The terms "deferral" and "deletion" as used in the context of the NPL refer to the following: Deferral refers to the decision not to list a site on the NPL, or not retain a site on the NPL, to allow another authority (RCRA corrective action in this case) to handle the remediation of the site in lieu of CERCLA. Deletion is the act of taking a site off the NPL, which may occur because cleanup at a site is complete or because another authority (such as RCRA corrective action) can be used to bring about remediation at the site and further CERCLA action is not needed. Please see Appendix A for a summary of the development of deferral policies.

B. Rationale for Deleting Sites Based Upon RCRA Deferral Under NCP Deletion Criteria

EPA believes it is appropriate to delete sites from the NPL based upon deferral to RCRA under certain circumstances. Deletion of sites from the NPL to defer them to RCRA Subtitle C corrective action authorities would free CERCLA's oversight resources for use in situations where another authority is not available, as well as avoid possible duplication of effort and the need for an owner/operator to follow more than one set of regulatory procedures. Eliminating regulation under two separate authorities also will eliminate public and owner/operator confusion over which authority has primacy. Moreover, since the CERCLA and RCRA programs have comparable cleanup goals, RCRA Subtitle C facilities requiring remediation appropriately may be deferred to RCRA corrective action authorities unless deletion would interfere with the remediation of the site.

However, today's RCRA deletion policy does not pertain to Federal facility sites. Federal facility sites will not be deleted from the NPL based upon deferral to RCRA, even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA. One of the primary goals of deferral—maximizing the use of limited Fund monies—does not apply to Federal facility sites since Federal facilities typically are not eligible for Fund-financed remedial action. Furthermore, the goal of avoiding duplication of efforts can be resolved through the use of comprehensive Inter-Agency Agreements (54 FR 10522, March 13, 1989).

C. Proposed Criteria for Deleting Sites from the NPL Based on Deferral to RCRA

The following are the criteria proposed in the December 21, 1988 **Federal Register** notice for determining whether a site may be deleted from the NPL based upon deferral to another authority such as RCRA:

i. A site on the NPL is currently being addressed by another regulatory authority under an enforceable order or permit requiring corrective action or the PRPs have entered into a CERCLA consent order to perform the RD/RA;

ii. Response is progressing adequately;

iii. Deletion would not otherwise disrupt an ongoing CERCLA response action; and

iv. All criteria for deferral to that authority have been met (i.e., the requesting party must meet all conditions for deferral to that authority in addition to the three specific criteria set out above for deletion based upon deferral).

D. Final Criteria for Deleting Sites

EPA believes that it is appropriate to apply different and more stringent

criteria to actions to delete based on deferral to RCRA for sites that are on the NPL than to sites that are candidates for deferral prior to NPL listing. For NPL sites, EPA has completed its listing process, identified the site as a potential problem requiring further attention, and often has commenced CERCLA response actions. In addition, the listing itself has created public anticipation of a response under CERCLA. Thus, EPA and the public will generally have an interest in seeing that these sites are addressed by the Superfund program, particularly in cases where significant Superfund resources already have been expended at a site. Thus, it is in the best interest of the public to apply different and more stringent criteria.

In today's notice, EPA is finalizing the criteria enumerated below for use in identifying sites eligible for deletion based upon deferral to RCRA corrective action authorities. A site should satisfy all of these criteria to be eligible for deletion. Where there is uncertainty as to whether the criteria have been met, deletion generally will be inappropriate. The criteria are the following:

1. If evaluated under EPA's current RCRA/NPL deferral policy,[1] the site would be eligible for deferral from listing on the NPL.
2. The CERCLA site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions.
3. Response under RCRA is progressing adequately.
4. Deletion would not disrupt an ongoing CERCLA response action.

E. Discussion of Each Criterion

The first criterion states that sites generally will not be eligible for deletion from the NPL based upon deferral to RCRA corrective action if similarly situated sites would not be deferred from listing on the NPL.

Two types of sites may be eligible for deletion: 1) sites that would be eligible for deferral under current deferral criteria, but were not deferred because the deferral policy at the time of listing was different; and 2) sites that were not eligible for deferral when listed, but now may be eligible because of changed conditions at the site (e.g., they no longer are in bankruptcy, or they now are in compliance with a corrective action order). For RCRA facilities within the second category, the Agency will review the original listing rationale (e.g., unwillingness, bankruptcy) together with current information to ascertain whether conditions at the site have changed sufficiently to warrant deletion from the NPL. Where there is uncertainty about whether the criteria have been met, deletion generally will be inappropriate. Persons who submit petitions for deletion will have to bear the burden of demonstrating that they meet the current criteria for deletion based upon deferral, and that the conditions that justified the listing no longer exist and are not likely to recur.

The second criterion states that the site is being addressed by RCRA corrective action authorities under an existing order or permit. The criterion specifies that the requirement applies to sites as defined by CERCLA, and that the authority addressing the site is RCRA Subtitle C corrective action.

Under the second criterion, corrective action orders or permits issued by EPA or an authorized state program that address corrective action at the facility must generally be in place as a condition of deletion. This criterion serves as an objective indicator that contamination at a site is addressable under RCRA corrective action authorities. The term "addressable" in this context means that a CERCLA site is fully remediable by a permit or order with a schedule of compliance, whether or not actual cleanup has begun.

Corrective action permits or orders should require the cleanup of *all* releases at the CERCLA site (e.g., if contamination stemming from the CERCLA "release" extends beyond the boundaries of a particular RCRA facility, such releases must be addressed under RCRA sections 3004(v) and 3008(h) or other enforcement authority under RCRA);[2] otherwise, the CERCLA site would not be a candidate for deletion. There may be circumstances where modification of corrective action orders or permits may be necessary before a facility can be considered for deletion from the NPL. For example, a facility owner/operator who has been doing remedial work under CERCLA and intends to pursue deletion from the NPL, generally must obtain modification of RCRA permits or orders if existing permits and orders do not contain corrective action requirements for all operable units. Likewise, the implementing agency intending to unilaterally pursue deletion would need to modify orders or permits if necessary. This should enable the facility to meet the second criterion by ensuring that the entire CERCLA-defined facility is subject to RCRA corrective action.

Under the third criterion, EPA evaluates whether response under RCRA is progressing adequately. The RCRA/NPL deferral policy currently looks to compliance with corrective action orders or permits as the primary indicator of whether an owner/operator is willing to undertake corrective action. Under this criterion, noncompliance with corrective action orders and permits generally would be regarded as an indicator that response under RCRA is not progressing adequately. The Agency's evaluation may not end there, however. Even if an owner/operator is in compliance with a corrective action order or permit, EPA may determine that response is not progressing adequately based upon other factors. For example, the Agency may consider whether there has been a history of protracted negotiations due primarily to an uncooperative owner or operator.

Under the fourth criterion, EPA evaluates on a site-by-site basis whether deletion would disrupt an ongoing CERCLA response action. Consistent with the deletion criterion set forth in the NCP, the fourth criterion in today's notice is satisfied only where one of the following two circumstances exist: 1) no CERCLA response has been undertaken; or 2) CERCLA response has been discontinued (e.g., where CERCLA response action has reached a logical point of transfer to the RCRA program and has been discontinued). Response actions being undertaken under CERCLA generally will not be discontinued solely to allow for deletion.

In cases where EPA determines that a CERCLA response, or a CERCLA response combined with a RCRA response, is the most effective approach for addressing contamination at a site, the site will be retained on the NPL. In addition, a site generally will not be eligible for deletion based upon deferral to RCRA if such deletion would cause a significant delay in the response resulting in a threat to human health or the environment.

[1] The term "current RCRA/NPL deferral policy" refers to the policy in effect at the time the deletion decision is made. As past **Federal Register** notices demonstrate, the RCRA/NPL deferral policy has changed, and may continue to change based upon the Agency's continued evaluation of how best to implement the statutory authorities of RCRA and CERCLA.

[2] Under CERCLA, the term "facility" is meant to be synonymous with "site" or "release" and is not meant to suggest that the listing is geographically defined (56 FR 5600, February 11, 1991). The size or extent of a facility listed on the NPL may extend to those areas where the contamination has "come to be located." (See CERCLA section 101(9)). On the other hand, a "facility" as defined under RCRA is "all contiguous property under the control of the owner or operator seeking a Subtitle C permit" (58 FR 8664, February 16, 1993). Thus, a RCRA site relates more to property boundaries, and a CERCLA site/facility/release includes contamination irrespective of RCRA facility boundaries.

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F. Process for Deleting Sites From the NPL

In order for a site to be deleted from the NPL based upon deferral to RCRA, that site will be evaluated by EPA, as well as the relevant state authority. Deferral will be accomplished only after a coordinated review has occurred and concurrence has been achieved. As with any deletion, a decision to delete a site based upon deferral to RCRA would be made only after EPA publishes a Notice of Intent to Delete in the **Federal Register** and comment is taken. In addition, EPA's regulations allow a site to be deleted only if "the state in which the release was located has concurred on the proposed deletion" (40 CFR 300.425(e)(2)).

The process of deletion may begin either by a petition by a party outside the Agency, such as a facility owner/operator, or via a unilateral action from EPA. Petitions and inquiries about them should be directed to the appropriate Regional Administrator. The petitioner must demonstrate that the site has met the four criteria to the satisfaction of EPA, as well as the state in which the release has occurred. If necessary, the Agency may request additional information from the petitioner before making a decision.

Finally, if, after deletion, EPA later determines that a site is not being addressed adequately under RCRA, and that CERCLA remedial action is necessary at the site, the site would remain eligible for CERCLA Fund-financed remedial action. (40 CFR 300.425(e)(3)). Under such circumstances, and in accordance with the NCP, the site also may be eligible for relisting on the NPL.

III. Appendix A: Summary of NPL Deletion/Deferral Policies

1. NCP Criteria for Deleting Sites From the NPL

Section 300.425(e)(1) (i)–(iii) of the NCP addresses deletion of sites from the NPL. Pursuant to that section, releases may be deleted from the NPL where EPA determines that no further response is appropriate. In making that determination, EPA must consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate.

2. Current Deferral Policies

When the initial NPL was promulgated (48 FR 40658, September 8, 1983), the Agency announced certain listing policies relating to sites that might qualify for the NPL, but instead could be "deferred" to another authority for cleanup. These deferral policies included sites that can be addressed by the corrective action authorities of RCRA Subtitle C, or that are subject to regulation by the Nuclear Regulatory Commission.[3] (*Id.* at 40661–62).

3. RCRA Deferral Policy

In the preamble to the final rule promulgating the initial NPL (48 FR 40662, September 8, 1983), EPA announced the RCRA/NPL deferral policy, which provided that "where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA." Since that time, EPA has amended the RCRA/NPL deferral policy on a number of occasions. (For a more detailed discussion of the components of the RCRA/NPL deferral policy, see the **Federal Register** notice referenced below.[4])

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) only releases to ground water from regulated units, i.e. surface impoundments, waste piles, land treatment areas, and landfills were subject to corrective action requirements under RCRA. The enactment of HSWA greatly expanded RCRA Subtitle C corrective action authorities. For example, under RCRA section 3004(u), hazardous waste treatment, storage, and disposal facilities seeking RCRA permits must address all releases of hazardous constituents to any medium from solid waste management units, whether active or inactive. HSWA also provided new authority in RCRA section 3004(v) to address releases that have migrated beyond the facility boundary. In addition, section 3008(h) authorizes EPA to compel corrective action or any response necessary to protect human health or the environment when there is or has been a release of hazardous waste at a RCRA interim status facility.

In light of the new authorities, the Agency proposed in the preamble to the April 10, 1985 proposed rule (50 FR 14118), a revised policy for listing of RCRA-related sites on the NPL. Under the proposed policy, listing on the NPL of RCRA-related sites would be deferred until the Agency determined that RCRA corrective action measures were not likely to succeed due to factors outlined in the following paragraph.

On June 10, 1986 (51 FR 21057), EPA announced several new components of the RCRA/NPL deferral policy for placing RCRA-regulated facilities on the NPL. Certain RCRA facilities at which Subtitle C corrective action authorities are available would generally be listed if they had an HRS score of 28.50 or greater and fell within at least one of the following categories: (1) Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws; (2) facilities that have lost authorization to operate, or for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; or (3) facilities, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.

The Agency also recognized that facilities clearly not subject to RCRA Subtitle C corrective action authorities would be eligible for listing on the NPL, including those that ceased treating, storing or disposing of hazardous wastes prior to November 19, 1980 (the effective date of the RCRA hazardous waste regulations), and sites at which only material exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed. *Id.* In addition, RCRA hazardous waste handlers to which Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit, also are eligible for listing. *Id.*

On June 24, 1988 (53 FR 23980) and October 4, 1989 (54 FR 41004), EPA revised the NPL/RCRA deferral policy by identifying four new categories of RCRA sites eligible for listing on the NPL: (1) Non- or late filers; (2) pre-HSWA permittees; (3) protective filers; and (4) converters.[5] In the June 24, 1988, revision, EPA also recognized that sites where RCRA corrective action may not apply to all contamination are eligible for listing (53 FR 23982).

On August 9, 1988 (53 FR 30002), EPA proposed additional revisions to the policy concerning criteria to determine if an owner or operator is unable to pay for corrective action. No final Agency action has been taken on those proposed revisions.

On August 9, 1988 (53 FR 30005), in a separate **Federal Register** notice, EPA also further revised a portion of the NPL/RCRA deferral policy relating to the determination of unwillingness. The Agency specified that circumstances under which RCRA sites may be listed on the NPL if an owner/operator's unwillingness to undertake corrective action is established through noncompliance with one or more of the following: (1) A Federal or substantially equivalent state unilateral administrative order requiring corrective action, after the facility owner/operator has exhausted administrative due process rights; (2) a Federal or substantially equivalent State unilateral administrative order requiring corrective action, if the facility owner/operator did not pursue administrative due process rights within the specified time; (3) an initial Federal or State preliminary injunction or other judicial order requiring corrective action; (4) a Federal or State RCRA permit condition requiring corrective action after the facility owner/operator has exhausted administrative due process rights; or (5) a final Federal or State consent decree or administrative order on consent requiring corrective action after the exhaustion of dispute resolution procedures.

EPA also may depart from the above criteria on a case-by-case basis where CERCLA authorities are determined to be more appropriate than RCRA authorities for cleaning up a site. (*See, e.g.*, 56 FR 5602, February 11, 1991).

[3] In 1988, the Agency proposed to defer to a number of other authorities, namely Subtitles D and I of RCRA, the Surface Mine Control and Reclamation Act ("SMCRA"), the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), and States, and to allow responsible parties voluntarily to clean up sites under CERCLA without listing (53 FR 51415, December 21, 1988). Final decisions have not been made on those proposals, and they are not addressed in this notice.

[4] On March 13, 1989 (54 FR 10520), EPA announced the policy of including on the NPL Federal facility sites that may be eligible for listing (e.g., they have an HRS score of 28.5 or higher) even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA. The elements of the RCRA/NPL deferral policy are not revised in today's notice.

[5] Non- or late filers are facilities that were treating, storing or disposing of hazardous waste after November 19, 1980, but did not file a Part A permit by that date and have little or no history of compliance with RCRA. Pre-HSWA permittees are facilities that have permits in place that pre-date the 1984 corrective action requirements of HSWA. The protective filer category includes facilities which have filed Part A permit applications for treatment, storage and disposal of hazardous wastes as a precautionary measure only, and were never actually engaged in hazardous waste management activities subject to RCRA Subtitle C corrective action. Converters are facilities that at one time were treating or storing RCRA Subtitle C hazardous waste but have since converted to generator-only status, or are engaged in no other hazardous waste activity for which interim status is required (53 FR 22992, June 24, 1988).

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(C)(2); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: March 8, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–6673 Filed 3–17–95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL–5174–2]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the national priorities list.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Kent City Mobile Home Park Site in Kent City, Michigan from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), as amended.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Betty G. Lavis, Remedial Project Manager (HSE–5J); Waste Management Division; Emergency Response Branch; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604–3590. Phone (312) 886–7183.

SUPPLEMENTARY INFORMATION: The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

Section 300. 66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL.

The site EPA deletes from the NPL is the Kent City Mobile Home Park Site in Kent City, Michigan.

An explanation of the criteria for deleting sites from the NPL was presented in section II of the November 8, 1994, Notice of Intent to Delete FR Doc. No. 94–27647. A description of the site and how it meets the criteria for deletion was presented in Section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was December 7, 1994.

EPA received one comment on the deletion of the Kent City Mobile Home Park Site from the NPL.

Comment: Commenter states they are "concerned by the proposal to abandon a carbon tetrachloride contaminated well" at the site because "groundwater is a valuable resource for present and future generations and that groundwater contamination should therefore be remediated whenever possible."

Response: EPA appreciates the concern and strongly agrees that groundwater is a valuable resource; it is EPA's policy to promote protection of our groundwater resource and to restore usable goundwater to beneficial use whenever possible. However, at the Kent City site, the level of contamination is so low and the area of contamination so localized, that remediation is not practical.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

Appendix B—[AMENDED]

2. Table 1 of Appendix B to part 300 is amended by removing the entry for Kent City Mobile Home Park Site, Kent City, Michigan.

Dated: March 8, 1995.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 95–6770 Filed 3–17–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–101; Amdt. 192–73 and 195–54]

RIN 2137—AB 47

Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule extends the existing excavation damage prevention requirements for gas pipelines in urban areas to gas pipelines in rural areas; establishes excavation damage prevention program requirements for hazardous liquid and carbon dioxide pipelines; requires, with limited exceptions, line markers for gas transmission lines in urban areas; and permits smaller lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas.

This final rule is accompanied by a notice of proposed rulemaking (NPRM)(Docket No. PS–101A), which proposes mandatory participation in qualified one-call systems by pipeline operators. This final rule and the NPRM are intended to reduce excavation damage, the largest single cause of reportable pipeline accidents.

EFFECTIVE DATE: This final rule takes effect April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, or Christina M. Sames, (202) 366–4561, regarding the content of this final rule; or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION

Related Document

The Secretary of Transportation, pursuant to 49 U.S.C. 60114, is required to establish minimum standards for one-call systems. RSPA implemented those requirements in 49 CFR part 198 and has prepared a NPRM titled "Mandatory Participation in Qualified One-Call Systems by Pipeline Operators" (Docket No. PS–101A).

The NPRM proposes to amend this final rule by requiring that operators of interstate and intrastate pipelines participate in qualified one-call systems. However, the NPRM proposes less stringent standards for the participation of small entities (including operators of master meter systems) whose primary activity does not include the transportation of gas.

Although RSPA anticipates these regulations will be amended by a final rule addressing mandatory participation in qualified one-call systems, RSPA sees no reason to delay the regulations developed in this final rule. In the meantime, RSPA urges pipeline operators to voluntarily participate in qualified one-call systems that cover the areas where their pipeline facilities are located.

Excavation Damage

Excavation damage is the largest single cause of reportable gas and hazardous liquid pipeline accidents. During the period of January 1, 1988 through December 31, 1993, 33 percent or 481 of a total of 1,456 reported gas pipeline incidents were caused by excavation damage by persons other than the operator or its contractor. These incidents resulted in 35 deaths, 151 personal injuries, and about $42,570,000 in property damage. Of these 481 reported excavation damage incidents, 178 incidents or 37 percent occurred in Class 1 and 2 locations (class locations are described in 49 CFR 192.5) where damage prevention programs have not been required. These Class 1 and 2 incidents resulted in 7 deaths, 40 personal injuries, and about $10,912,000 in property damage.

Similarly, during the 1988–1993 period, 20 percent or 245 of a total of 1,221 reported hazardous liquid pipeline accidents were caused by excavation damage by persons other than the pipeline operator or its contractor. These accidents resulted in 3 deaths, 46 personal injuries, and about $48,821,000 in property damage. In addition, about 264,500 barrels of hazardous liquids were reported to have been spilled as a result of these accidents.

The above statistics do not account for all of the gas pipeline incidents and hazardous liquid pipeline accidents that have occurred from 1988 to 1993. Sections 191.3 and 195.50 exempt certain gas pipeline incidents and hazardous liquid pipeline accidents from the reporting requirements. Thus, the actual number of personal injuries and the amount of property damage resulting from excavation damage by persons other than the operator or its contractor can be assumed to be higher.

Existing Gas Damage Prevention Program

The most widely accepted approach to reducing excavation damage to underground pipelines and other underground facilities is a formalized damage prevention program that employs a one-call system. RSPA permits this approach for gas pipelines under the current § 192.614, "Damage Prevention Program." Section 192.614(a) allows a pipeline operator to perform any of the duties required by § 192.614(b) through participation in a one-call system. Such participation does not relieve the operator of responsibility for compliance with any requirements of § 192.614 that are not satisfied by the one-call system.

The current rule requires each gas pipeline operator, with limited exceptions, to establish and implement a written damage prevention program for buried gas pipelines in highly populated or urban areas, specifically Class 3 and 4 locations. Damage prevention programs have not been required for gas pipelines in Class 1 and 2 locations or for hazardous liquid and carbon dioxide pipelines subject to part 195. Also excluded from this current requirement for a damage prevention program are permanently marked pipelines in certain Class 3 locations (described in § 192.5(d)(2)), pipelines to which access is physically controlled by the operator, petroleum gas pipelines subject to § 192.11, and master meter systems as defined in § 191.3.

Gas pipeline operators in Class 3 and 4 locations, with certain exclusions previously discussed, are currently required by § 192.614 to: (1) Identify excavators normally operating in the area where the pipeline is located; (2) provide notification to the public and actual notification to excavators of the program's existence and purpose, as well as how to learn the location of underground pipelines before excavation activities begin; (3) provide a means for receiving and recording notification of planned excavations; (4) if an operator has buried pipelines in the area of planned excavation, provide actual notification to a person who has given notice of intent to excavate of the type of temporary markings to be provided and how to identify them; (5) provide temporary marking of buried pipelines in the area of the excavation in a timely manner; and (6) inspect, as frequently as necessary, pipelines that the operator has reason to believe could be damaged by the excavation activities and, in case of blasting, include leakage surveys. An operator may perform any of these six duties through participation in a one-call system, but participation does not relieve the operator of responsibility for compliance with § 192.614.

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the general public to call to notify participating members of their intent to engage in excavation activities. Notices of intent to excavate are received by the operational center and transmitted to the operators of underground pipeline facilities and other underground facilities that participate in the system. Upon receipt of notices of intended excavation activities, participating operators that have underground facilities in that area arrange for the timely identification and temporary marking of their underground facilities. Underground operators may inspect the site during the excavation activities to insure the safety of their underground facilities.

National One-Call Campaign

Presently, there are 74 one-call systems in the United States operating in 48 states and the District of Columbia. These one-call systems may not meet all of the qualifications of a "one-call notification system," as defined in § 198.39. Two states and Puerto Rico are currently without a one-call system.

Approximately 45 states and the District of Columbia have damage prevention laws that, to a varying extent, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, "State one-call damage prevention program."

To address the problem of incomplete national one-call coverage and the deficiencies in some of the existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign will target states for concentrated outreach to assist these states in their efforts to upgrade their current one-call systems. The national campaign will also work with selected states where there is a need to strengthen the one-call legislation or where a state is currently without one-call legislation.

Notice of Proposed Rulemaking

To reduce the incidence of excavation damage, RSPA issued a Notice of Proposed Rulemaking (NPRM) titled "Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program" (53 FR 24747, June 30, 1988). The NPRM proposed to (1) Delete the damage prevention program exemption for buried onshore gas pipelines in Class 1 and 2 locations, and for gas pipelines in Class 3 locations that are marked in accordance with § 192.707; (2) require that hazardous liquid pipeline operators carry out similar damage prevention programs for their buried onshore pipelines; and (3) require that gas pipeline operators permanently mark their mains and transmission lines in Class 3 and 4 locations, except where placement of a marker is impractical.

Presentation to Advisory Committees

RSPA presented the three proposals listed above to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

On September 13, 1988, the TPSSC discussed and unanimously supported extending § 192.614 to cover onshore gas pipelines in Class 1 and 2 locations. However, the TPSSC generally opposed the proposal requiring line markers over mains and transmission lines in Class 3 and 4 locations. Some members argued the proposed marking would be too burdensome and that markers in these class locations might cause an excavator to rely on the markers for location information instead of using the one-call system. However, two members stated their large gas companies occasionally install markers in Class 3 and 4 locations, as this final rule will now generally require for transmission lines.

On September 14, 1988, the THLPSSC voted 6 to 4 against the proposed rule to require hazardous liquid pipeline operators to establish and carry out damage prevention programs over the entire length of their pipelines. Opposition stemmed from the need to identify "on a current basis" the persons who normally engage in excavation activities in rural areas and the problem of identifying excavators who might come from some distant location or who recently entered the excavation business. A committee member also expressed concern over the exact meaning of "as often as needed," language in the proposed rule which refers to the frequency of notifying the public of the damage prevention program, and "leakage surveys applicable to the liquid transported," language which refers to the type of inspection done on pipelines that might have been damaged by blasting.

Additional Recommendations

The Transportation Research Board (TRB) proposed extending the excavation damage prevention program requirements to liquid pipelines. TRB is a unit of the National Research Council and provides public comment on scientific and technical questions of national importance. Their proposal was published in a report titled "Special Report 219–Pipelines and Public Safety." The report states that although most gas and liquid transmission pipelines were constructed in undeveloped areas and buried with 2½ to 3 feet of cover to prevent disturbance, development is intruding on these high pressure pipelines and is increasing the risk of failures from excavation damage. In the section of the Executive Summary titled "Damage Prevention and Public Awareness Programs," the report identifies significant gaps in existing damage prevention measures. TRB's first recommendation for closing these gaps was to extend the gas pipeline damage prevention program to liquid pipelines. That recommendation is one of the principal thrusts of this final rule.

Comments on the NPRM

RSPA received 81 comments on the three proposed rule changes. The commenters included gas and liquid pipeline operators, governmental agencies, and industry trade associations.

Comments—Damage Prevention Program, part 192

Of the 41 comments received addressing the proposal to extend the existing requirement for a damage prevention program in § 192.614 to Class 1 and 2 locations and to marked pipelines in Class 3 locations, 93 percent, including a gas industry trade association, expressed full or partial support, and 7 percent were opposed. Among those in support, a large gas transmission company commented that the proposal would have no significant impact on its operations because it participates in one-call systems regardless of class location, or it conducts similar programs in Class 1 and 2 locations where one-call systems are not yet operative. A large gas distribution company supported the proposal because the company voluntarily includes Class 1 and 2 locations in its current damage prevention program and believes customers and the general public expect the expenditure.

Among those opposed, a large gas distribution company argued that because conditions in urban (Class 3

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and 4 locations) and rural (Class 1 and 2) locations are completely different, different types of damage prevention programs are logical and reasonable and have evolved to meet these special conditions. The company commented that requiring the same damage prevention program in both areas defies logic and cannot be cost-effective. In particular, the company stated that the temporary marking of pipelines would be more expensive and less cost-effective in rural areas because of the greater distances to be traveled.

As indicated above, 37 percent of the gas pipeline excavation damage reported over the 1988 to 1993 period occurred in Class 1 and 2 locations and resulted in 7 deaths, 40 personal injuries, and millions of dollars in property damage. Therefore, RSPA rejects the argument that applying the same damage prevention program to both urban and rural areas defies logic and cannot be cost-effective. Furthermore, the overwhelming support expressed for extension of the gas damage prevention program rule supports RSPA's determination that this action is warranted to reduce the incidence of excavation damage.

Comments—Line Markers, Part 192

Of the 67 comments received regarding the proposal to require permanent line markers for gas mains and transmission lines in Class 3 and 4 locations except where placement is impractical, 22 percent indicated full or partial support and 78 percent were opposed. Those favoring the proposal included the National Transportation Safety Board (NTSB). NTSB is the Federal agency responsible for investigating and determining the cause of pipeline accidents involving a death, substantial property damage, or significant safety issues. NTSB stated that while it may not be practicable to mark pipelines in some Class 3 and 4 locations, line markers should generally be required for gas transmission lines. Similarly, a gas distribution company commented that additional line markers may make sense when elevated pressures are involved, as is often the case with transmission lines, or when pipelines are installed in unconventional places. A state regulatory agency commented that prior to adoption of the existing Class 3 and 4 location line marking exception, many operators were required to mark mains and transmission lines in Class 3 and 4 locations. The state agency pointed out that many operators have continued this practice even though it is no longer required. The agency said that marking pipelines in these areas is not impractical and provides, in conjunction with the damage prevention program, an extra line of defense against excavation damage.

Several of those opposed to requiring line markers argued the proposed exception for locations "where placement of a marker is impractical" is imprecise and would result in continual differences of opinion between operators and government inspectors. Many commenters felt that pipeline markers are useful for indicating the presence of a buried pipeline within a rural right-of-way but are of little benefit in urban areas where excavators are generally aware of the presence of buried utilities and of the need to call before they dig. Many commenters also felt that excavators in urban areas might get a false impression of the exact location of buried pipelines from the placement of line markers and assume they can dig without contacting a one-call system or the pipeline operator for temporary marking. Several commenters pointed out that property owners and planning commissions would resist installation of pipeline markers in Class 3 and 4 locations for aesthetic reasons. Also, a large gas distribution operator commented that while marker posts at every road crossing in a rural setting are reasonable, marker posts at every street intersection in cities and suburbs are unreasonable because of the very large number of pipeline street crossings.

This final rule has not adopted the proposal to require gas mains be marked in Class 3 and 4 locations. Because mains generally operate at lower pressures than transmission lines, they usually pose less of a threat to public safety in the event of excavation damage. Thus, RSPA believes there is lesser need for mains to be marked as a backup to damage prevention programs. Also, RSPA agrees with TPSSC's and the commenters' view that, because of the vast number of mains to be marked in Class 3 and 4 locations, compliance would be unduly burdensome and line markers would likely be more expensive to install and maintain.

This final rule has adopted the line marker requirement for gas transmission lines in Class 3 and 4 locations, except where placement of a marker is impractical. RSPA believes this is a reasonable means of advancing safety without imposing an undue burden on the operators. There are relatively few gas transmission lines in Class 3 and 4 locations and some of these gas transmission operators already voluntarily mark their pipelines. RSPA agrees with these commenters who indicated that these line markers provide an extra line of defense against excavation damage.

Further support for requiring gas transmission lines in Class 3 and 4 locations to be marked is found in § 195.410. Section 195.410 requires line markers for hazardous liquid pipelines in urban areas with specific exceptions for heavily developed urban areas, such as downtown business centers. Many of the objections to placing line markers in urban areas have been resolved by permitting adjustment of the marker's location. RSPA believes that some line markers installed to mark gas transmission lines in Class 3 and 4 locations could be suitably flush mounted on streets, sidewalks, and other appropriate surfaces to minimize the situations where placement of standing markers would be objectionable. When considering the design of flush mounted gas pipeline markers, it may be helpful to note § 192.707(d)(1) currently permits operators to use less than standard letter size on line markers in heavily developed urban areas. This final rule amends § 195.410(a)(2)(i) to provide the same flexibility for the lettering size on line markers in similar areas for hazardous liquid and carbon dioxide pipelines.

A few commenters objected to the phrase in § 192.707(b) of "where placement of a marker is impractical." Commenters stated the phrase is too indefinite and should be clarified. RSPA believes the phrase is appropriate as it has been applied successfully to allow operators limited discretion in determining where to install markers for buried gas main and transmission lines in Class 3 and 4 locations. The phrase will continue to allow operators limited discretion when a marker would be extremely difficult or expensive to install or maintain, would create a dangerous condition, or would be ineffective because it would be obscured or otherwise would not serve to reduce the likelihood of excavation type damage to the pipeline.

RSPA is not persuaded by the commenters' and TPSSC's view that the presence of markers in Class 3 and 4 areas might cause excavators to rely on the location of the marker and to dig without notifying the one-call system. No evidence was offered to support this view and it has not been true for markers in Class 1 and 2 locations. Pipeline markers are installed to warn excavators of the presence of buried pipelines, to provide a telephone number to obtain more accurate location information, and to allow persons in the area to report indications of other

problems relating to the safety of the pipeline.

Comments—Damage Prevention Program, part 195

Of the 16 commenters who responded to the proposal to require hazardous liquid pipelines carry out damage prevention programs, 15 commenters indicated full or partial support and only one commenter was opposed. Of those expressing support, a large products transmission company commented it has always advocated practical, cost effective, damage prevention programs and has made the locations of its facilities known to landowners, developers, and excavators. Additionally, its company policy has been to provide inspectors during and after excavation activities. An industry trade association replied that it concurs with RSPA that federal regulations for the development of damage prevention programs should be applied to hazardous liquid pipeline operators. The one commenter opposed, a hazardous liquid pipeline company, said it would be impossible to know of every backhoe operation in the area of its pipelines. This company further stated that any obligation to prepare an excavator list should be limited to checking county licenses every 4 to 6 months.

RSPA is not swayed by the THLPSSC's and the commenter's concern about the difficulty of identifying excavators in rural areas. Although some excavators may be difficult to identify, operators are only required to identify excavators by reasonably available means. Regarding one commenter's suggestion that excavator lists be assembled only from county licenses, RSPA believes that this procedure could be a supplementary approach to identifying and notifying excavators of the damage prevention program, since not all counties or other political subdivisions require licenses for all excavators in their jurisdiction. It would generally be more helpful for operators to contact the one-call centers operating in the area of their pipeline for excavator information or to look for excavator advertisements in publications such as the local yellow-pages and newspapers.

One THLPSSC member questioned the meaning of the phrase "as often as needed," currently in § 192.614(b)(2) and proposed in § 195.442(b)(2), to describe the frequency of notification to the public and excavators to make them aware of the damage prevention program. This phrase, which is retained, is intended to require that operators provide additional notice when damage appears to be caused by persons unaware of the damage prevention program. More frequent advertisement would be expected to have a positive effect on program results.

In proposed § 195.442(b)(6)(ii), the phrase "leakage surveys applicable to the liquid transported" was intended to indicate the required leakage surveys must be appropriate for the commodity being transported. However, in view of the concern expressed by a THLPSSC member over its meaning, RSPA has deleted the term from § 195.442(b)(6)(ii) and has replaced it with the comparable performance-based standard of the gas pipeline damage prevention program rule.

Amendments

Extending the Damage Prevention Program, Part 192

RSPA is amending § 192.614 to require that operators of gas pipelines in Class 1 and 2 locations, with limited exception, carry out damage prevention programs. The existing exception for Class 1 and 2 locations under § 192.614(c)(1) is removed and replaced with an exception for pipelines located offshore.

The operators affected by this action will be given 6 months to implement their damage prevention program.

The existing exception under § 192.614(c)(2) for pipelines in Class 3 locations and marked in accordance with § 192.707 is also removed. The operators affected by this action will be given 12 months to mark the location of their pipelines. Pipelines to which access is physically controlled by the operator and pipelines that are part of a petroleum gas system subject to § 192.11 or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association would still be exempt. RSPA is taking this action after considering the high incidence of excavation-related accidents in Class 1 and 2 locations, the generally recognized efficacy of damage prevention programs, and the favorable comments received in response to the NPRM.

Extending Line Markers, Part 192

Because of the continuing incidence of excavation damage in Class 3 and 4 locations and the extra risk posed by damage to transmission lines in these areas, RSPA is amending § 192.707 to require that gas operators place and maintain line markers, as close as practical, over buried transmission lines in Class 3 and 4 locations except where placement is impractical. Accordingly, the exception under § 192.707(b)(2) for line markers over buried pipelines in Class 3 and 4 locations where a § 192.614 damage prevention program is in effect is revised to limit the exception to mains and to transmission lines where placement of a marker is impractical.

Providing Flexibility in Lettering Requirements and Placement of Line Markers, Part 195

RSPA has provided flexibility in the lettering requirements listed under § 195.410(a)(2) by excepting the lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas from the minimum height and stroke requirements. RSPA has also provided flexibility in the placement of markers by changing the word "impracticable" to "impractical" under § 195.410(b)(2)(i). These exceptions were not proposed in the NPRM but will provide hazardous liquid and carbon dioxide operators the same flexibility as is currently afforded natural gas pipeline operators in § 192.707(b)(2)(i) and (d)(1). These revisions to the current regulations will provide uniform lettering requirements and uniform marker placement for operators of natural gas, hazardous liquid, and carbon dioxide pipelines.

Establishing Damage Prevention Programs, Part 195

RSPA is amending part 195 by adding § 195.442 to require that operators of buried hazardous liquid and carbon dioxide pipelines carry out a written damage prevention program similar to the current § 192.614 requirements for natural gas pipelines. The operators affected by this action will be given 6 months to implement their damage prevention program. This action is warranted due to the excavation damage accident rate for hazardous liquid pipelines and the demonstrated effectiveness of damage prevention programs. Commenters overwhelmingly supported this proposal. TRB's "Special Report 219–Pipelines and Public Safety," (referenced above), also supported amending the regulations to require damage prevention programs for liquid pipelines.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and

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Budget. The final rule is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA has prepared a regulatory evaluation to assess the costs and associated benefits that are expected to result from this final rule. The regulatory evaluation shows net benefits resulting from this final rule of between $1,375,000 and $1,991,000 per year. A copy of the regulatory evaluation is available in this docket.

Federalism Assessment

This rulemaking action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities; i.e. gas pipeline operators, small hazardous liquid pipeline operators, or small carbon dioxide pipeline operators. This determination is based on the following: (1) RSPA is not aware of any small gas, hazardous liquid, or carbon dioxide transmission companies; (2) small operators of pipelines that are part of a petroleum gas system subject to § 192.11 or are a part of a distribution system operated in connection with the leasing of real property, including master meter operators, are not affected by this regulatory action, (3) while there are many small gas distribution operators, they are currently required to have excavation damage prevention programs in the urban areas where the majority of their customers are located.

Paperwork Reduction Act

This final rule contains information collection requirements for written damage prevention programs for gas pipelines in rural areas under the revised § 192.614 and for hazardous liquid and carbon dioxide pipelines in urban and rural areas under the new § 195.442. None of these information collection requirements would be prepared for the purpose of submittal to RSPA.

The information collection requirements associated with this final rule are being submitted to OMB for approval in accordance with 44 U.S.C. Chapter 35 under the following:

OMB No: 2137–0049 for the added burden to gas pipelines and under New for hazardous liquid and carbon dioxide pipelines;

Administration: DOT, RSPA;

Title: Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines;

Need for Information: To reduce excavation damage, the largest single ceuse of pipeline accidents;

Proposed Use of Information: For preparation of written damage prevention programs for gas pipelines in rural areas under the revised § 192.614 and for hazardous liquid and carbon dioxide pipelines under the new § 195.442;

Frequency: On occasion;

Burden Estimate: For 2137–0049 (gas pipeline operators): 30,428 hrs annually will be added to the current burden to industry; under NEW (hazardous liquid pipeline operators): 19,580 hrs annually;

Respondents: Operators subject to 49 CFR parts 192 and 195;

Form(s): None;

Average Burden Hours per Respondent: 13 hrs (gas pipeline operators); 77 hrs (hazardous liquid pipeline operators).

For further information contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590, Tel. (202) 366–4735. Comments on the information collection requirements should be submitted to: OMB, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk officer for DOT, RSPA. It is requested that comments sent to OMB also be sent to the RSPA rulemaking docket for this final rule.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 192 and 195 are amended as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.614, paragraph (c)(1) and (c)(2) are revised to read as follows:

§ 192.614 Damage prevention program.

* * * * *

(c) * * *

(1) Pipelines located offshore.

(2) Pipelines, other than those located offshore, in Class 1 or 2 locations until September 20, 1995.

* * * * *

3. Section 192.707 is amended by revising paragraph (b) to read as follows:

§ 192.707 Line markers for mains and transmission lines.

* * * * *

(b) *Exceptions for buried pipelines.* Line markers are not required for the following pipelines:

(1) Mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water.

(2) Mains in Class 3 or Class 4 locations where a damage prevention program is in effect under § 192.614.

(3) Transmission lines in Class 3 or 4 locations until March 20, 1996.

(4) Transmission lines in Class 3 or 4 locations where placement of a line marker is impractical.

* * * * *

PART 195—[AMENDED]

4. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; 49 CFR 1.53.

5. Section 195.410 is amended by removing the term "impracticable" from paragraph (b)(2)(i) and adding "impractical" in its place, and by revising paragraph (a)(2) to read as follows:

§ 195.410 Line markers.

(a) * * *

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline", or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least one inch high with an approximate stroke of one-quarter inch.

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

* * * * *

6. Section 195.442 is added to subpart F to read as follows:

§ 195.442 Damage prevention program.

(a) After September 20, 1995, and except for pipelines listed in paragraph (c) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. An operator may comply with any of the requirements of paragraph (b) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section.

(b) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of this section of the following, as often as needed to make them aware of the damage prevention program:

(i) The program's existence and purpose; and

(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must include leakage surveys.

(c) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines located offshore.

(2) Pipelines to which access is physically controlled by the operator.

Issued in Washington, DC on February 17, 1995.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–6723 Filed 3–17–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 121994A]

RIN 0648–AH01

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and approval of catch sharing plan.

SUMMARY: NMFS, on behalf of the International Pacific Halibut Commission (IPHC), publishes regulations governing the Pacific halibut fishery implemented by the IPHC and approved by the Secretary of State. NMFS also approves catch limits for Areas 2A and 2C, approves regulations implementing a catch sharing plan for Area 2A, and repeals three regulations for Area 4. This final rule is intended to enhance the conservation of the Pacific halibut stock and to rebuild and sustain it in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 15, 1995.

ADDRESSES: NMFS Alaska Regional Office, 709 W 9th Street, P.O. Box 21668, Juneau, AK 99802–1668, telephone: 907–586–7228; NMFS Northwest Regional Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115–0070, telephone: 206–586–6140.

FOR FURTHER INFORMATION CONTACT: Aven Andersen, 907–586–7228, or Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has implemented new regulations governing the Pacific halibut fishery in 1995. The Secretary of State of the United States has accepted the IPHC regulations under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). However, the IPHC did not adopt 1995 catch limits for any portion of Area 2. Therefore, the United States is adopting catch limits for Areas 2A and 2C, which are implemented under domestic rule as described herein.

On behalf of the IPHC, the approved IPHC regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements. The IPHC held its annual meeting on January 23–26, 1995, in Victoria, British Columbia, and adopted regulations for 1995. The substantive changes to the previous IPHC regulations (59 FR 22522, May 2, 1994) include: (1) New catch limits for all areas except Areas 2A and 2C; (2) a commercial fishing season opening on March 15 and closing November 15 for all areas except 2A, which has specific 1-day openings; (3) repeal of a prohibition on automated hook strippers; (4) elimination of Area 4D–N; (5) a requirement that halibut be dressed before offloading; and (6) revisions to the Area 4 clearance requirements. In addition, because the non Indian directed commercial fishery in Area 2A is likely to exceed the subquota for this fishery during the first 10-hour opening, the IPHC announced that it would impose vessel trip limits. However, because it was unknown at the time of the meeting how many vessels might participate in the Area 2A fishery, the IPHC staff will determine and announce the vessel trip limits necessary to avoid exceeding the subquota prior to the July 5 opening, when better information will be available on the number of vessels that may participate in the fishery.

The U.S. and Canadian Commissioners were unable to agree upon new catch limits for Area 2, which includes all waters off Canada (Area 2B), waters off southeast Alaska (Area 2C), and waters off Washington, Oregon, and California (Area 2A). However, the U.S. and Canadian Commissioners expressed a joint commitment to adopt domestic catch limits for their respective portions of Area 2 to ensure conservation of the halibut stock. Without domestic action, the Area 2

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catch limits for the 1994 halibut fisheries would remain in effect for 1995. The 1994 catch limits for Areas 2C and 2A of 11,000,000 lb (4,990 mt) and 550,000 lb (249.5 mt), respectively, are higher than the catch limits recommended by the U.S. Commissioners for 1995. The lower catch limits were recommended by the U.S. Commissioners based on recent stock assessments, because of a continuing decline in the abundance of halibut, and the need to reduce catch limits to conserve the stock. Based on this recommendation and the findings in the February 1995 Environmental Assessment (EA) prepared on these catch limits, the NOAA Assistant Administrator for Fisheries (AA) approves the catch limits of 520,000 lb (235.9 mt) in Area 2A and 9,000,000 lb (4,082 mt) in Area 2C recommended by the U.S. Commissioners at the IPHC meeting. Canada is expected to adopt a 9,520,000 lb (4,318 mt) total allowable catch (TAC) level for Area 2B as recommended by the Canadian Commissioners. Copies of the EA are available from NMFS (see **ADDRESSES**).

Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Convention, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Regulations developed by the councils may be implemented only with the Secretary's approval. Under this authority, NOAA requested the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should allocation be necessary.

Repeal of Unnecessary Regulations

NMFS repeals three regulations that were necessary during the past open access fishery in waters off Alaska, but that have been made unnecessary by provisions of the individual fishing quota (IFQ) program (50 CFR part 676) that will govern the fishery for the first time this year. The North Pacific Fishery Management Council (NPFMC) recommended the repeal of these regulations at its December 1994 meeting. NMFS issues this final rule repealing them before the start of the 1995 Alaska commercial halibut fishery. Regulations implementing the IFQ program were published on November 9, 1993 (58 FR 59375). They since have been amended at 59 FR 28281, June 1, 1994; 59 FR 43502, August 24, 1994 (corrected at 59 FR 51874, October 13, 1994); and 59 FR 51135, October 7, 1994.

First, NMFS repeals § 301.7(f), a regulation that (1) closes Area 4B to commercial halibut fishing when the commercial harvest amounts to 315,000 lb (143 mt), and (2) withholds the remainder of that area's harvest limit until the fishery reopens on August 15. NMFS, at the recommendation of the NPFMC, implemented these provisions to provide summer fishing opportunities for operators of small vessels that catch and land all their halibut in Area 4B, which, in an open-access fishery, are at a competitive disadvantage with the operators of larger vessels that catch and land halibut in other areas as well as in Area 4B (59 FR 27241, May 26, 1994).

Second, NMFS removes § 301.10(g), which (1) divides Area 4E into a southeast part and a northwest part, (2) provides for a test fishery in the southeast part, (3) closes the southeast part when 30 percent of the total Area 4E quota has been harvested from the southeast part, and (4) transfers 50 percent of the amount of the quota remaining in the northwest part, as of August 1, to the quota of the southeast part. NMFS, on the recommendation of the NPFMC, implemented this provision in 1991 to ensure that, in the open access fishery, the small-boat fisheries of Nelson Island and Nunivak Island would have an opportunity for an equitable share of the harvest in Area 4E (56 FR 19617, April 29, 1991).

Third, NMFS removes three paragraphs of § 301.11 regarding trip harvest limits. Section 301.11(g) limits all vessels fishing in Area 4B to a maximum catch of 10,000 lb (4.5 mt) per fishing period from June 6 through August 14; § 301.11(h) limits all vessels fishing in Area 4C to a maximum catch of 10,000 lb (4.5 mt) of halibut per fishing period; and § 301.11(j) limits all vessels fishing in Area 4E to a maximum catch of 6,000 lb (2.7 mt) of halibut per fishing period. NMFS, on the recommendation of the NPFMC, implemented these provisions to (1) enhance fishing opportunities for operators of vessels that land their total annual catch within Area 4B (59 FR 22522, May 2, 1994); (2) enhance the economic development of the Pribilof Islands (55 FR 23085, June 6, 1990), and (3) increase the competitive advantage of the small vessels that catch and land their halibut exclusively in Area 4B (59 FR 27241, May 26, 1994).

The IFQ program provides each permitted fisher with an individual share of the harvest limit for a fishing area, which the fisher may harvest anytime during the fishing season that he or she deems to be the safest and most economical. Thus, the IFQ program eliminates the need for regulations, such as harvest limits per fishing period, intended to equalize the competitive abilities of fishers. In addition, community development quota (CDQ) allocations under the IFQ program will provide special economic benefits to resident fishers in Area 4. Hence, these regulations would impose an economic hardship on some fishers under the IFQ program. For example, a fisher with an IFQ or CDQ allocation amounting to 17,637 lb (8 mt) for Area 4B would be unable to harvest his or her entire allocation if the existing regulations are not removed. Thus, the regulation is unnecessary, because it has been superseded by provisions of the IFQ program, and it would be burdensome on fishers if it were not removed. The same reasoning applies to the other paragraphs removed by this final rule.

NMFS has prepared a regulatory impact review (RIR) for this action. It concludes that the action would have no significant economic or social impacts, is not a significant regulatory action as defined by E.O. 12866, requires no new reporting requirements, would not increase administrative or enforcement costs, and would not substantially alter the current management process. A copy of the RIR may be obtained from the NMFS Alaska Regional Office (see **ADDRESSES**).

Catch Sharing Plan

The PFMC has prepared catch sharing plans since 1988 to allocate the TAC of Pacific halibut among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California. For 1995 and beyond, the PFMC recommended revisions only to the allocations within the non-Indian fisheries, leaving the treaty Indian share of 35 percent of the Area 2A TAC the same as for 1994. The PFMC's recommended Catch Sharing Plan for 1995 and Beyond (Plan) divides the non-Indian harvest into three shares with the sport fishery north of the Columbia River receiving 36.6 percent, the sport fishery south of the Columbia River receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The recommended Plan also contains a number of management

measures including restricting the non-Indian commercial fishery to the area south of Subarea 2A–1 (south of the treaty Indian tribes' usual and accustomed fishing area). A complete description of the proposed Plan, background information on development and rationale for the Plan, and the proposed regulations necessary to implement the Plan were published in the **Federal Register** on January 12, 1995 (60 FR 2925) with a request for public comments. This action responds to public comments on the proposed Plan and proposed implementing regulations and announces approval of the final Plan, and final implementing regulations. Comments and Responses on the Proposed Plan and the Proposed Rule.

NMFS received six letters from the public with comments on the proposed Plan and one letter with comments on the proposed sport regulations. One letter from the Oregon Department of Fish and Wildlife (ODFW) expressed support for the Plan and five letters from commercial fishery interests were opposed. The one letter with comments on the proposed sport regulations was from Washington Department of Fish and Wildlife (WDFW) and was based on input the State received from sport fishing representatives at a public workshop on the Pacific halibut sport fishery on February 3, 1995. The comments are summarized below with responses.

Comment 1: ODFW supports approval of the Plan, because it provides a better balance between resource harvest and resource distribution. Available scientific information indicates that most (as high as 70 percent) of the halibut in Area 2A are found south of subarea 2A–1; however, for many years, the harvests south of subarea 2A–1 have averaged 30 to 35 percent of the TAC but those harvest do not reflect the abundance and distribution of halibut available to Oregon and California fishers.

Response: The Plan increases the allocation to sport fisheries off Oregon and California by about 8 percent over 1994 (from about 12.7 percent of the Area 2A TAC in 1994 to 20.6 percent in 1995). The Plan also closes the non-Indian directed commercial fishery north of subarea 2A–1. The PFMC recommended this shift in harvests to the south to provide a broader distribution of harvests in Area 2A that is more consistent with the distribution of halibut biomass in Area 2A.

Comment 2: The reallocation from commercial to sport fishery would unreasonably and unfairly terminate a 106-year-old commercial longline fishery north of Willapa Bay.

Response: The Plan does reduce the allocation to the commercial fishery from 50 percent of the non-Indian allocation to 31.7 percent and does shift the location of the directed (traditional) commercial halibut fishery south of Willapa Bay. Participation in the Area 2A halibut fishery by non-Indian commercial and sport users has increased and the potential harvests by both groups have had to be severely restricted in recent years to prevent quota overages. The continued need to reduce fishing effort and fishing opportunity prompted the PFMC to review the overall allocations to determine what changes could be made to preserve the viability of some of the Area 2A halibut fisheries over the long term. Because halibut quotas are expected to be low and not sufficient to fulfill the needs of all user groups for the near future, the PFMC has placed a high priority on maintaining viable sport fisheries and the coastal community businesses supported by sport fisheries in developing its allocation recommendations.

Comment 3: The basis for the PFMC's recommendation was an economic analysis that was fundamentally flawed with respect to treatment of economic contributions of the commercial and sport sectors of the fishery. That analysis, an EA/RIR, includes data on the numbers of commercial vessels in the fishery, but does not include comparable information on charterboats.

Response: Concerns about the economic analysis were raised by the Fishing Vessel Owners' Association at the PFMC's Halibut Advisory Subpanel meeting in July 1994 and at the PFMC's public meeting in October 1994, and the author of the analysis did address the concerns at these meetings. The EA/RIR contained the best available information on all sectors of the halibut fishery in Area 2A including catches by charterboats. Although the PFMC did review and consider economic aspects of the revised allocations, such information was not the primary basis for its recommendation. The PFMC placed a high priority on maintaining viable sport fisheries and the coastal community businesses supported by sport fisheries in developing the allocation recommendations.

Comment 4: Small longline commercial vessels will not be able to safely and reasonably transit from Neah Bay or Westport to the area open to commercial fishing south of Willapa Bay. Larger boats would have to absorb the additional time and expense of fishing in southern waters.

Response: NMFS acknowledges that this action may reduce the number of commercial vessels operating in this fishery; however, with the need to reduce fishing effort and shift harvests into areas of halibut biomass, it is not possible to accommodate the entire fleet that would like to fish off the northern Washington coast.

Comment 5: The PFMC failed to analyze other reasonable alternatives such as a system of individual fishing quotas based on historical landings.

Response: Various alternatives and options for allocation between and within commercial and sport sectors were considered, analyzed and discussed by the PFMC over the course of five public meetings from September 1993, when the PFMC decided to consider all aspects of the halibut allocation issue and to develop a multi-year plan for 1995 and beyond, through adoption of a final Plan at the PFMC's October 1994 public meeting. At its November 1993 public meeting, the PFMC did discuss transferable Individual Quotas (IQs) for the non-Indian commercial halibut fishery including transfer of IQs to sport users in 2A. As described in the EA/RIR, the PFMC, in developing the IQ program for fixed gear sablefish, initially included Pacific halibut. However, as the PFMC proceeded with the development of the fixed-gear IQ program, it decided that its limited resources would best be spent in development of the IQ program for the much larger sablefish fishery. The halibut fishery was sufficiently different not to be included with the sablefish fishery. An IQ program was identified for halibut allocations in 1995 and beyond, and the PFMC advised the commercial fishing industry to take the lead in establishing a committee to develop a proposal for PFMC consideration.

Comment 6: The Halibut Act requires that any limited entry scheme be consistent with section 303(b)(6) of the Magnuson Act.

Response: This action is not a limited-entry scheme. It does not place direct limits on who can participate, rather it reallocates among groups and shifts the area of participation.

Comment 7: The Halibut Act requires that any allocation be reasonably calculated to promote conservation.

Response: The potential Pacific halibut harvest in Area 2A by either the non-Indian commercial fishery or the sport fishery can easily exceed the non-Indian allocation, thereby exceeding the overall Area 2A quota, which could result in conservation problems for the halibut resource in Area 2A. All of the

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quotas are calculated to promote conservation.

Comment 8: The PFMC recommended prohibiting double-dipping by commercial vessels that also may fish in the sport fishery, but did not address multiple access by the charterboat fishery.

Response: The Plan prohibits commercial fishing for halibut from any vessel that participates in the sport fishery for halibut in Area 2A and vice versa. This includes charter boats. The PFMC is concerned that increased numbers of charterboat vessels operating in the sport fishery will also participate in the commercial fishery in Area 2A. The PFMC considers this double-dipping into both commercial and sport allocations as inconsistent with its intent to provide separate quotas and opportunity for each harvesting sector to utilize its allocation. Because the potential fishing effort and harvests far exceed what the resource can accommodate, the PFMC is trying to allocate fairly among various groups.

Comment 9: There is no net economic benefit, from either a national or local perspective, demonstrated by the reallocation.

Response: The analysis in the EA/RIR indicates varying losses/gains on the alternatives considered by the PFMC in terms of net economic value, local personal income, or state level income with the principal result of the allocations being distributional shifts. As noted above, although the PFMC did consider economic aspects of the revised allocations, such information was not the primary basis for its recommendation. The PFMC concluded that the best use for the limited halibut resource in Area 2A was to stabilize the recreational fishery while allowing some commercial harvest.

Comment 10: The PFMC did not follow a procedure that allowed for public input.

Response: As described above, the PFMC considered and discussed allocation options over the course of five public meetings, during which descriptions and analyses of the options were provided to the public and public input was received both orally and in writing.

Comment 11: The change in fishing boundary will disrupt the collection of data on the catch per unit-of-effort needed to manage the halibut stock.

Response: Although catch and effort data cannot be derived from non-Indian commercial harvests in the closed area in the future, the same data will continue to be collected from the commercial fisheries in the open area as well as from tribal commercial fisheries in the closed area.

Comment 12: The proposed geographic redistribution of harvest is not based on a conservation concern.

Response: NMFS agrees that the harvest shift was not necessitated by a conservation concern. See response to Comment 1.

Comment 13: The PFMC did not consider the findings of the Halibut Advisory Subpanel (HAS), which had nearly agreed on an option to allocate 40 percent of the TAC to commercial users and 60 percent to sport users.

Response: The PFMC did not adopt the recommendations of the HAS, but it considered them before it made its decision. The decision is fully supported by the record.

Comment 14: Why did salmon trollers receive 15 percent of the non-Indian commercial allocation?

Response: In the mid-1980's, quota reductions and increased fishing effort caused constraints on the commercial fishery, reducing it from multi-day seasons (35 days in 1985) that overlapped the May chinook salmon troll season to the current 1-day, 10-hour openings that occur only in the summer months. From about 1960 to the mid-1980's, salmon trollers caught about 15 percent of the commercial halibut fishery quota incidental to their salmon troll fishery. With the reduced seasons in recent years that occurred outside the timeframe of the chinook salmon fishery, the trollers lost their fishing opportunity. The PFMC decided that an allocation within the commercial fishery was necessary to provide trollers the opportunity to retain halibut caught incidentally during chinook salmon troll seasons.

Comment 15: WDFW recommends that the sport fishing season in Puget Sound open on May 25 and close on July 29. This recommendation is based on recent performance of the fishery that indicates an average of 440 lb (0.2 mt) of halibut were caught on weekdays and 1000 lb (0.5 mt) on weekend days. With the area allocation of 34,653 lb (15.7 mt) and closures on Tuesday and Wednesday, these average catches would allow 29 weekdays of fishing and 19 weekend days. The average catches used in these calculations were developed in consultation with IPHC.

Response: NMFS agrees with this recommendation, and the sport fishing season at § 301.21(d)(2)(i)(A) has been modified accordingly.

Comment 16: WDFW recommends that the sport fishing season in the north Washington coast area open on May 2 and continue until the subarea quota is taken. WDFW has estimated that the subarea quota is insufficient to allow for the May season and the second priority season from July 1 through at least July 4 in accordance with the Plan. Therefore, WDFW recommends that the May season be allowed to continue, possibly into early June, for 5 days per week until the subarea quota is estimated to have been taken.

Response: NMFS agrees with this recommendation and the sport fishing regulations for the north coast area at § 301.21(d)(2)(ii) have been modified accordingly.

Comment 17: WDFW recommends that the closed area in the north Washington coast area be enlarged by 1 mile on each side of the proposed closure area. In accordance with the Plan, the State is recommending this enlarged closure area to extend the length of the fishing season by reducing the numbers of larger fish caught. Data from the 1994 fishery indicate that larger fish were caught just outside the closure area and an enlarged closure would prevent this, thus allowing a longer fishing season since the quotas are based on pounds of halibut caught.

Response: NMFS agrees with this recommendation and the sport fishing closed area for the north coast area at § 301.21(d)(2)(ii) has been modified to be an area within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°04′00″ N. lat., 125°11′00″W. long.; and, 48°04′00″ N. lat., 124°59′00″ W. long.

The proposed Plan for 1995 and beyond was approved by NMFS on January 20, 1995, and the approval was announced at the IPHC annual meeting on January 23, 1995, so the IPHC could implement applicable portions of the Plan in its regulations. The only modifications to the proposed Plan, as recommended by the PFMC, are the opening and closing dates of the treaty Indian commercial fishery. The dates in the Plan adopted by PFMC were March 1 to October 31. These dates have been modified to allow the opening to be set between March 1 and April 1 and to set the closing for November 15 to be consistent with the IPHC action to have a March 15 to November 15 commercial season for all areas. The final approved Plan appears in the regulations at § 301.23.

Changes From the Proposed Plan and the Proposed Rule

The final regulations implementing the Plan are hereby approved, with the following changes from the proposed regulations. The subquotas in the proposed regulations implementing the Plan were based on an assumed 500,000-lb (226.8-mt) TAC for Area 2A and have been modified in accordance with the allocations set forth in the Plan based on the final TAC of 520,000 lb (235.9 mt) in Area 2A. The only other substantive modifications to the proposed sport fishing regulations at § 301.21(d)(2) were described in the responses to the comments above (i.e., the seasons and the closure area for the sport fishery subareas off Washington have been modified based on the final TAC, in accordance with the objectives in the Plan). The proposed sport fishing possession limits on land at § 301.21 (n) and (o) have been redesignated (i) and (j), respectively, to follow IPHC regulations on possession limits on the water. The proposed restriction on use of commercial vessels in the sport fishery and vice versa at § 301.21 (p) and (q) have been removed, because they are redundant with the restrictions in § 301.22. References to new §§ 301.22 and 301.23 have been added to § 301.5. The closure of the non-Indian commercial fishery north of Point Chehalis, WA (46°53′18″ N. lat.) set forth in the Plan at § 301.23(e)(2) and described in the preamble of the proposed rule (January 12, 1995, 60 FR 2925) has been added to the final rule at § 301.9(b) and noted in the IPHC regulations at §§ 301.3(c), 301.7(b), 301.10(b), and 301.11(g). Portions of the proposed rule have been implemented in IPHC regulations and separate U.S. rules are not necessary. Those portions of the proposed rule implemented by the IPHC are: (1) Area 2A license requirements in § 301.3, (2) fishing periods for the non-Indian directed commercial fishery in § 301.7, (3) fishing period limits for the non-Indian directed commercial fishery in § 301.11, and (4) treaty Indian commercial and ceremonial and subsistence fishing seasons in § 301.20. The proposed rules at §§ 301.7(j) and 301.10(j) were modified and renumbered §§ 301.7(c) and 301.10(b), respectively, to conform with IPHC regulations.

For the convenience and information of the public, all of the regulations in part 301 (including the 1995 IPHC regulations, U.S. regulations for Area 2A, the catch limits for Area 2, and U.S. regulations at § 301.21(d) (3), (4), and (5) originally published at 58 FR 17791 (April 6, 1993)) are set out in their entirety herein as revised.

Classification

IPHC Regulations

Because approval of the IPHC regulations by the Secretary of State is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 does not apply to this notice of the effectiveness and content of the IPHC regulations. Because a notice of proposed rulemaking is not required, the preparation of a regulatory flexibility analysis is not required.

Area 2A and 2C Catch Limits

The AA has determined that this rule is necessary to respond to an emergency situation and is consistent with the Halibut Act of 1982 and other applicable law. Without emergency adoption of the catch limits for Area 2A and 2C for 1995, the Pacific halibut stock would be harvested at an unacceptably high rate that could have long-term adverse effects on the halibut stock and U.S. halibut fisheries. Accordingly, the AA finds there is good cause to implement these regulations expediently and that it is impracticable and contrary to the public interest to require prior notice and public comment, or to delay the effective date of the regulations, under the provisions of section 553 (b) and (d) of the APA. This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is not required to be issued with prior notice and opportunity for public comment. This action has been determined to be not significant for purposes of E.O. 12866.

Repeal of Unnecessary Regulations for Area 4

The AA has determined, under 5 U.S.C. 553(b)(B), that good cause exists for waiving prior notice of this action and opportunity for public comment, because providing prior notice and opportunity for public comment would have been impracticable and contrary to the public interest. It was impracticable to do so, because the NPFMC determined only in December 1994, after hearing reports from its technical committees and entertaining public comment, that these regulations were an unnecessary burden on the IFQ fishery. Thus, there was inadequate time to prepare a proposed rule, collect comments, and prepare a final rule before the start of the Alaska commercial halibut fishery on March 15, 1995. A delay in repealing these unnecessary regulations would have been contrary to the public interest because, to realize the full benefit of the IFQ program and prevent economic inefficiencies and bycatch waste, the regulations must be removed by March 15, 1995. Moreover, this action is necessary to provide consistent management and conservation of other fixed gear fisheries also scheduled to begin on March 15.

Because this action relieves a restriction under 5 U.S.C. 553(d)(1), it is being made immediately effective. This action has been determined to be not significant for purposes of E.O. 12866.

Catch Sharing Plan and Implementing Regulations

The EA/RIR prepared for this Plan and implementing domestic regulations indicates that, although the actions taken under this Plan would reduce the allocation and area available to commercial fisheries, the commercial harvest of halibut in Area 2A is a small part of their average annual harvests. As such, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the Plan and regulations were proposed that, if they were adopted as proposed, they would not have a significant economic impact on a substantial number of small entities. Accordingly, preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act was not required.

The AA finds, under 5 U.S.C. 553(d)(3), that having the regulations for the Plan in place when the treaty Indian fishery opens on March 15 justifies waiving the 30-day delayed-effectiveness period. A copy of the EA/RIR may be obtained from the NMFS Northwest Region (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: March 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

301.1 Short title.
301.2 Interpretation.
301.3 Licensing vessels.
301.4 Inseason actions.
301.5 Application.
301.6 Regulatory areas.
301.7 Fishing periods.
301.8 Closed periods.
301.9 Closed area.
301.10 Catch limits.
301.11 Fishing period limits.
301.12 Size limits.
301.13 Careful release of halibut.
301.14 Vessel clearance in Area 4.
301.15 Logs.

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301.16 Receipt and possession of halibut.
301.17 Fishing gear.
301.18 Retention of tagged halibut.
301.19 Supervision of unloading and weighing.
301.20 Fishing by U.S. treaty Indian tribes.
301.21 Sport fishing for halibut.
301.22 Fishery election in Area 2A.
301.23 Catch Sharing Plan for Area 2A.
301.24 Previous regulations superseded.
Figure 1 to part 301—Map of Regulatory Areas
Figure 2 to part 301—Halibut Size Limits

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part:

Authorized officer means any state, Federal, or provincial officer authorized to enforce this part including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), and the U.S. Coast Guard (USCG).

Charter vessel means a vessel used for hire in sport fishing for halibut, but does not include a vessel without a hired operator.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered.

Commission means the International Pacific Halibut Commission.

Daily bag limit means the maximum number of halibut a person may take in any calendar day from Convention waters.

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period.

Land, with respect to halibut, means the offloading of halibut from the catching vessel.

License means a halibut fishing license issued by the Commission pursuant to § 301.3.

Maritime area, with respect to the fisheries jurisdiction of a Contracting Party, includes, without distinction, areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the owner and/or the master or other individual aboard and in charge of that vessel.

Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.6.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing.

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(c) In this part, all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

§ 301.3 Licensing vessels.

(a) No person shall fish for halibut from a U.S. vessel, nor possess halibut on board a U.S. vessel, used either for commercial fishing or as a charter vessel in Area 2A unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(b) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(c) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid only for either the directed commercial fishery south of 46°53′18″ N. lat. during the fishing periods specified in § 301.7(b) or the incidental catch fishery during the salmon troll fishery specified in § 301.7(c), but not both.

(d) No person shall fish for halibut from a Canadian vessel used as a charter vessel, nor possess halibut on board such vessel, unless the Commission has issued a license valid for fishing in Area 2B in respect of that vessel.

(e) No person shall fish for halibut from a U.S. vessel, nor possess halibut on board a U.S. vessel, used either for commercial fishing or as a charter vessel in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, unless the Commission has issued a license valid for fishing in those areas in respect of that vessel.

(f) A license issued in respect of a vessel referred to in paragraphs (a), (d), and (e) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(g) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, WA, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(h) A vessel operating in the commercial fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than midnight April 30.

(i) Application forms may be obtained from any authorized officer, or from the Commission.

(j) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(k) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(l) Licenses issued under this section shall be valid only during the year in which they are issued.

(m) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(n) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(o) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

§ 301.4 Inseason actions.

(a) The Commission is authorized to establish or modify the IPHC regulations in this part during the season after determining that such action:

(1) Will not result in exceeding the catch limit established preseason for each regulatory area;

(2) Is consistent with the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the U.S. or Canadian Governments.

(b) Inseason actions may include, but are not limited to, establishment or modification of the following:

(1) Closed areas;

(2) Fishing periods;

(3) Fishing period limits;

(4) Gear restrictions;

(5) Recreational bag limits;

(6) Size limits; or

(7) Vessel clearances.

(c) Inseason changes will be effective at the time and date specified by the Commission.

(d) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, state, U.S. treaty Indian, and provincial fishery officials; and the media.

§ 301.5 Application.

(a) This part applies to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Section 301.6 through 301.19 apply to commercial fishing for halibut.

(c) Section 301.20 applies to the U.S. treaty Indian tribal fishery in Area 2A–1.

(d) Section 301.21 applies to sport fishing for halibut.

(e) Section 301.22 applies to non-Indian commercial and sport fishing for halibut in Area 2A.

(f) Section 301.23 applies to all fishing for halibut in Area 2A.

(g) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.6 Regulatory areas.

The following areas (shown in Figure 1 of this part) shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the States of California, Oregon, and Washington;

(b) Area 2B includes all waters off British Columbia;

(c) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.), and south and east of a line running 205° true from said light;

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.9 that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. lat.;

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9 that are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

(j) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

§ 301.7 Fishing periods.

(a) The fishing periods for each regulatory area apply where the catch limits specified in § 301.10 have not been taken.

(b) Each fishing period in the Area 2A directed fishery south of 46°53′18″ N. lat. shall begin at 0800 hours and terminate at 1800 hours local time on July 5, July 18, August 1, and August 15, unless the Commission specifies otherwise.

(c) Notwithstanding paragraph (b) of this section and § 301.10(g), an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the **Federal Register**. The notice also will specify the ratio of halibut to salmon that may be retained during this fishery.

(d) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 15 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(e) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

§ 301.8 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.7 in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.17(g) and (h), fishing is not prohibited for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut on board a vessel in a regulatory area during a closed period, unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.9 Closed area.

(a) All waters in the Bering Sea that are north of 54°49′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters.

(b) In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.) are closed to the directed commercial halibut fishery.

§ 301.10 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 shall be limited to the weight expressed in pounds or metric tons shown in the following table.

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Regulatory area	Catch limits	
	Pounds	Metric tons
2A	107,120	49
2C	9,000,000	4,082
3A	20,000,000	9,072
3B	3,700,000	1,678
4A	1,950,000	885
4B	2,310,000	1,048
4C	770,000	349
4D	770,000	349
4E	120,000	54

(b) Notwithstanding paragraph (a) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate south of 46°53′18″ N. lat. during the fishing periods set out in § 301.7(b) and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in § 301.7(c). Inseason actions to transfer catch between these fisheries may occur in conformance with § 301.23.

(1) The catch limit in the directed halibut fishery is 91,052 lb (41.3 mt).

(2) The catch limit in the incidental catch fishery during the salmon troll fishery is 16,068 lb (7.3 mt).

(c) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken and the specific dates during which the directed fishery will be allowed in Area 2A.

(d) Notwithstanding paragraph (a) of this section, Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(e) Notwithstanding paragraph (a) of this section, Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will close only when all Individual Fishing Quotas and all Community Development Quotas issued by NMFS have been taken, or November 15, whichever is earlier.

(f) If the Commission determines that the catch limit specified for Area 2A in paragraph (a) of this section would be exceeded in an unrestricted 10-hour fishing period as specified in § 301.7(b), the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(g) When under paragraph (c) or (f) of this section the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.11 Fishing period limits.

(a) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut are weighed and reported on state fish tickets.

(c) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect, must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on state fish tickets.

(d) The provisions of paragraph (c) of this section are not intended to prevent retail over-the-side sales to individual purchasers, so long as all the halibut on board are ultimately offloaded and reported.

(e) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(f) Length classes are shown in the following table.

Overall length	Vessel class
1– 25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56– +	H

(g) Fishing period limits in Area 2A apply only to the directed halibut fishery south of 46°53′18″ N. lat. referred to in § 301.7(b).

§ 301.12 Size limits.

(a) No person shall take or possess any halibut that:

(1) With the head on, is less than 32 in (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part; or

(2) With the head removed, is less than 24 in (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

(c) No person aboard a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

§ 301.13 Careful release of halibut.

All halibut that are caught and are not retained shall be immediately released and returned to the sea with a minimum of injury by:

(a) Hook straightening outboard of the roller;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

§ 301.14 Vessel clearance in Area 4.

(a) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas and fishing periods that apply, and before the unloading of any halibut caught in any of these areas and fishing periods, unless specifically exempted in paragraph (k), (l), or (m) of this section.

(b) The vessel clearance required under paragraph (a) of this section prior to fishing in Areas 4A, 4C, or 4D may be obtained only at Dutch Harbor or Akutan, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(c) The vessel clearance required under paragraph (a) of this section prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(d) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(e) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (a) of this section only in Dutch Harbor or Akutan, AK, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(f) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (a) of this section only in Nazan Bay on Atka Island, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(g) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (a) of this section only in St. Paul or St. George, AK, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(h) Vessel clearances required under paragraph (a) of this section prior to fishing in Area 4 shall be obtained between 0600 and 1800 hours, local time.

(i) No halibut shall be on board the vessel at the time of the clearance required by paragraph (h) of this section.

(j) Vessel clearances required under paragraph (a) of this section after fishing in Area 4 shall be obtained between 0600 and 1800 hours, local time.

(k) Any vessel that is used to fish for halibut only in Area 4B and that lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (a) of this section.

(l) Any vessel that is used to fish for halibut only in Area 4C and that lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (a) of this section.

(m) Any vessel that is used to fish for halibut only in Areas 4D and 4E and that lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in § 301.9, is exempt from the clearance requirements of paragraph (a) of this section.

§ 301.15 Logs.

(a) The operator of any vessel that has an overall length of 26 ft (7.9 m) or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Separate from other records maintained on board the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of 2 years by the owner or operator of the vessel;

(4) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel during halibut fishing, during transits to port of landing, and for 5 days following offloading halibut.

(c) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24 hours of offloading.

(d) No person shall make a false entry in a log referred to in this section.

§ 301.16 Receipt and possession of halibut.

(a) No person shall receive halibut from a U.S. vessel that does not have on board the license required by § 301.3.

(b) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(c) A commercial fish processor who purchases or receives halibut directly from the owner or operator of a vessel that was engaged in halibut fishing must accept and weigh all halibut on board said vessel at the time offloading commences and record on state fish tickets or Federal catch reports the date, locality, name of vessel, Halibut Commission license number (United States), the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel, including: Pounds purchased; pounds in excess of IFQs, IVQs, or fishing period limits; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(d) No person shall make a false entry on a state fish ticket or a Federal catch or landing report referred to in paragraph (c) of this section.

(e) A copy of the fish tickets or catch reports referred to in paragraph (c) of this section shall be:

(1) Retained by the person making them for a period of 3 years from the date they are made; and

(2) Open to inspection by an authorized officer or any authorized representative of the Commission.

(f) No person shall possess any halibut that he/she knows to have been taken in contravention of this part.

(g) When halibut are delivered to other than a commercial fish processor the records required by paragraph (c) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (e).

(h) It shall be unlawful to enter a Halibut Commission license number on a state fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.17 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook-and-line gear.

(b) No person shall possess halibut taken with any gear other than hook-and-line gear.

(c) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(d) All setline or skate marker buoys carried on board or used by any U.S. vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name;

(2) The vessel's state license number; or

(3) The vessel's registration number.

(e) The markings specified in paragraph (d) of this section shall be in characters at least 4 in (10.2 cm) in height and 0.5 in (1.3 cm) in width in a contrasting color visible above the water, and shall be maintained in legible condition.

(f) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(1) Floating and visible on the surface of the water; and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(g) No person aboard a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) No person aboard a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel

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has removed all of its setline gear from the water and has either:

(1) Made a landing and completely offloaded its entire catch of other fish; or

(2) Submitted to a hold inspection by an authorized officer.

(j) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(1) Made a landing and completely offloaded its entire catch of other fish; or

(2) Submitted to a hold inspection by an authorized officer.

§ 301.18 Retention of tagged halibut.

(a) Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(b) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(1) May be retained for personal use; or

(2) May be sold if it complies with the provisions of § 301.12.

§ 301.19 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of this part.

§ 301.20 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) For purposes of this part, "treaty Indian tribes" means the Hoh, Jamestown S'Klallam, Lower Elwha S'Klallam, Lummi, Makah, Port Gamble S'Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all U.S. waters off the coast of Washington that are north of 46°53'18" N. lat. and east of 125°44'00" W. long., and all inland marine waters of Washington.

(d) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear from March 15 through November 15, or until 171,000 lb (77.6 mt) are taken by treaty Indians, whichever occurs first.

(e) Commercial fishing periods and management measures to implement paragraph (d) of this section will be established by treaty Indian tribal regulations.

(f) Commercial fishing for halibut by treaty Indians shall comply with the provisions of §§ 301.12, 301.13, 301.15, and 301.17, except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(g) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 to December 31, and is estimated to take 11,000 lb (5 mt).

(h) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(i) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(j) Any member of a U.S. treaty Indian tribe, as defined in paragraph (b) of this section, who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington* 384 F. Supp. 312 (W.D. Wash. 1974).

(k) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

Tribe	Boundaries
Hoh	Between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River), and east of 125°44'00" W. long.
Jamestown S'Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
Lower Elwha S'Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Makah	North of 48°02'15" N. lat. (Norwegian Memorial), west of 123°42'30" W. long., and east of 125°44'00" W. long.
Port Gamble S'Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
Quileute	Between 48°07'36" N. lat. (Sand Point) and 47°31'42" N. lat. (Queets River), and east of 125°44'00" W. long.
Quinault	Between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis), and east of 125°44'00" W. long.

Tribe	Boundaries
Skokomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
Suquamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
Swinomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

§ 301.21 Sport fishing for halibut.

(a) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(b) In all waters off Alaska:

(1) The sport fishing season is from February 1 to December 31; and

(2) The daily bag limit is two halibut of any size per day per person.

(c) In all waters off British Columbia:

(1) The sport fishing season is from February 1 to December 31; and

(2) The daily bag limit is two halibut of any size per day per person.

(d) In all waters off California, Oregon, and Washington:

(1) The total allowable catch of halibut shall be limited to:

(i) 123,760 lb (56.1 mt) in waters off Washington; and

(ii) 107,120 lb (48.6 mt) in waters off Oregon and California.

(2) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in paragraph (d)(3) of this section. All sport fishing in Area 2A (except for fish caught in the North Washington coast area and landed into Neah Bay) is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35'44" N. lat., 124°43'00" W. long.) to the buoy adjacent to Duntze Rock (48°24'55" N. lat., 124°44'50" W. long.) to Tatoosh Island lighthouse (48°23'30" N. lat., 124°4'00" W. long.) to Cape Flattery (48°22'55" N. lat., 124°43'42" W. long.), there is no subquota. This area is managed by setting a season that is projected to result in a catch of 34,653 lb (15.7 mt).

(A) The fishing season is May 25 through July 29, 5 days a week (closed Tuesdays and Wednesdays).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31'42" N. lat.), the subquota for landings into ports in this area is 71,410 lb (32.4 mt). Landings into Neah Bay of halibut caught in this area will count against this subquota and are governed by the regulations in this paragraph (d)(2)(ii).

(A) The fishing season commences on May 2, and continues 5 days a week (Tuesday through Saturday) until 71,410 lb (32.4 mt) are estimated to have been taken and the season is closed by the Commission.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18'00" N. lat., 125°11'00" W. long.; 48°18'00" N. lat., 124°59'00" W. long.; 48°04'00" N. lat., 125°11'00" W. long.; and, 48°04'00" N. lat., 124°59'00" W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10" N. lat.), the subquota for landings into ports in this area is 15,222 lb (6.9 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 15,222 lb (6.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area is closed to sport fishing for halibut. The closed area is west of 124°40'00" W. long. and north of 47°10'00" N. lat. If, on September 1, sufficient quota remains for at least 1 day of fishing, NMFS will, by inseason action as specified at § 301.21(d)(4), remove the geographical restriction on each Tuesday until the fishery is closed.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46'00" N. lat.), the subquota for landings into ports in this area is 4,617 lb (2.1 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 4,617 lb (2.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 in (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River (44°01'08" N. lat.), the subquota for landings into ports in this area is 94,694 lb (43 mt).

(A) The fishing seasons are:

(*1*) Commencing May 4, and continuing 3 days a week (Thursday through Saturday) until 67,706 lb (30.7 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(v)(A)(*1*) of this section, and continuing every day through August 2, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 3,314 lb (1.5 mt) or the area subquota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

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(3) Commencing August 3, and continuing 3 days a week (Thursday through Saturday) through September 30, or until the combined subquotas for the areas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 in (81.3 cm) and the second with a minimum overall size limit of 50 in (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River and the California border (42°00′00″ N. lat.), the subquota for landings into ports in this area is 7,499 lb (3.4 mt).

(A) The fishing seasons are:

(1) Commencing May 4 and continuing 3 days a week (Thursday through Saturday) until 5,999 lb (2.7 mt) are estimated to have been taken and the season is closed by the Commission;

(2) Commencing the day following the closure of the season in paragraph (d)(2)(vi)(A)(1) of this section, and continuing every day through August 2, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until a total of 1,500 lb (0.7 mt) or the area subquota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(3) Commencing August 3 and continuing 3 days a week (Thursday through Saturday) through September 30, or until the combined subquotas for the areas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 in (81.3 cm) and the second with a minimum overall size limit of 50 in (127.0 cm).

(vii) In the area off the California coast, there is no subquota. This area is managed on a season that is projected to result in a catch of less than 2,785 lb (1.3 mt).

(A) The fishing season will commence on May 1, and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 in (81.3 cm).

(3) *Flexible inseason management provisions in Area 2A.*

(i) The Regional Director, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after determining that such action:

(A) Is necessary to allow allocation objectives to be met; and

(B) Will not result in exceeding the catch limit established preseason for each area.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(iii) *Notice procedures.* (A) Actions taken under paragraph (d)(3) of this section will be published in the **Federal Register**.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishermen should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(iv) *Effective dates.* (A) Any action issued under paragraph (d)(3)(iii) of this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Director determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after of the action in the **Federal Register**.

(C) Any inseason action issued under paragraph (d)(3) of this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(v) *Availability of data.* The Regional Director will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Fisheries Management Division, 7600 Sand Point Way NE, Seattle, WA.

(4) The Commission shall determine and announce closing dates to the public for any area in which the subquotas under paragraph (d)(2) of this section are estimated to have been taken.

(5) When the Commission has determined that a subquota under paragraph (d)(2) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled under paragraph (d)(2) or (d)(3) of this section, or announced by the Commission.

(e) Any minimum overall size limit in this section shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(f) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(g) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(h) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(i) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(j) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(k) Any halibut brought on board a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(l) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(m) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(n) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish on board the said vessel are destined for commercial use, sale, trade, or barter.

(o) The operator of a charter vessel shall be liable for any violations of this part committed by a passenger aboard said vessel.

§ 301.22 Fishery election in Area 2A.

(a) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(1) The recreational fishery under § 301.21;

(2) The commercial directed fishery for halibut during the fishing period(s) established in § 301.7(b); or

(3) The incidental catch fishery during the salmon troll fishery as authorized in § 301.7(c).

(b) No person shall fish for halibut in the recreational fishery in Area 2A under § 301.21 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(c) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in § 301.7(b) from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in § 301.7(c).

(d) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A or that is licensed for the recreational halibut fishery in Area 2A.

(e) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under § 301.7(c) taken on a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A, or that is licensed for the recreational halibut fishery in Area 2A.

(f) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under § 301.7(c) taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in § 301.7(b) for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in § 301.7(b) in Area 2A.

§ 301.23 Catch sharing plan for Area 2A.

(a) This Plan constitutes a framework that shall be applied to the annual Area 2A total allowable catch (TAC) approved by the Commission each January. The framework shall be implemented in both Commission regulations and domestic regulations (implemented by NMFS) as published in the **Federal Register** as rulemaking in §§ 301.1 through 301.22.

(b) This Plan allocates 35 percent of the Area 2A TAC to U.S. treaty Indian tribes in the State of Washington in subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The sport fishery in the Columbia River area (Leadbetter Point to Cape Falcon) will receive 2 percent of the Washington sport allocation plus 2 percent of the Oregon/California sport allocation. The California sport fishery is allocated 2.6 percent of the Oregon/California sport allocation. These allocations may be changed if new information becomes available that indicates a change is necessary and/or the Pacific Fishery Management Council takes action to reconsider its allocation recommendations. Such changes will be made after appropriate rulemaking is completed and published in the **Federal Register**.

(c) The allocations in this Plan are distributed as subquotas to ensure that any overage or underage by any one group will not affect achievement of an allocation set aside for another group. The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described in paragraphs (d) through (f) of this section.

(d) Thirty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in subarea 2A–1, which includes that portion of Area 2A north of Point Chehalis, WA (46°53′18″ N. lat.) and east of 125°44′00″ W. long. The treaty Indian allocation is to provide for a tribal commercial fishery and a ceremonial and subsistence fishery. These two fisheries are managed separately; any overages in the commercial fishery do not affect the ceremonial and subsistence fishery. The commercial fishery is managed to achieve an established subquota, while the ceremonial and subsistence fishery is managed for a year-round season. The tribes will estimate the ceremonial and subsistence harvest expectations in January of each year, and the remainder of the allocation will be for the tribal commercial fishery.

(1) The tribal ceremonial and subsistence fishery begins on January 1 and continues through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person. Halibut taken for ceremonial and subsistence purposes may not be offered for sale or sold.

(2) The tribal commercial fishery begins between March 1 and April 1 and continues through November 15 or until the tribal commercial subquota is taken, whichever is earlier. Any halibut sold by treaty Indians during the commercial fishing season must comply with Commission regulations on size limits for the non Indian fishery.

(e) The non-Indian commercial fishery is allocated 20.6 percent of the Area 2A TAC. The commercial fishery is divided into two components: A directed fishery targeting on halibut, and an incidental catch fishery during the salmon troll fisheries off Washington, Oregon, and California.

(1) *Incidental halibut catch in the salmon troll fishery.* Fifteen percent of the non-Indian commercial fishery allocation is allocated to the salmon troll fishery in Area 2A as an incidental catch during the May through June salmon fisheries. The subquota for this incidental catch fishery is 3.1 percent of the Area 2A TAC. One halibut (in compliance with the Commission minimum size limit of 32 in (81.3 cm)) may be landed for each 25 chinook landed by a salmon troller. A salmon troller must have 25 chinook on board before retaining a halibut. NMFS may adjust this ratio preseason, after the halibut and chinook quotas are established. NMFS will publish adjustments to the ratio annually in the **Federal Register**, along with the salmon management measures. A salmon troller may participate in this fishery or in the directed commercial fishery targeting halibut, but not in both. Any poundage remaining in the subquota for this fishery after the May through June salmon troll season will be made available inseason to the directed halibut fishery. If the Commission determines that poundage remaining in the subquota for the directed fishery is insufficient to allow an additional day of directed halibut fishing, the remaining directed harvest subquota will be made available inseason for the fall salmon troll fisheries.

(2) *Directed fishery targeting halibut.* Eighty-five percent of the non-Indian commercial fishery allocation is allocated to the directed fishery targeting halibut (e.g., longline fishery) in southern Washington, Oregon, and California. The subquota for this directed catch fishery is 17.5 percent of

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the Area 2A TAC. This fishery is confined to the area south of Subarea 2A–1 (south of Point Chehalis, WA; 46°53′18″ N. lat.). The commercial fishery opening date(s), duration, and vessel trip limits for this fishery, as necessary to ensure that the subquota for this fishery is not exceeded, will be determined by the Commission and implemented in Commission regulations. If the Commission determines that poundage remaining in the subquota for this fishery is insufficient to allow an additional day of directed halibut fishing, the remaining subquota will be made available for incidental catch of halibut in the fall salmon troll fisheries.

(3) *Commercial license restrictions/declarations.* Commercial fishers must obtain a license to fish for halibut in Area 2A by May 1 of each year. Commercial fishers must choose either to operate in the directed commercial fishery in Area 2A, or to retain halibut caught incidentally during the salmon troll fishery. Fishing vessels that are issued Commission licenses to fish commercially in Area 2A are prohibited from obtaining a Commission charterboat license for Area 2A. Sport fishing for halibut in Area 2A is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(f) *Sport fisheries.* The non-Indian sport fisheries are allocated 68.3 percent of the non-Indian share, which is 44.4 percent of the Area 2A TAC. The Washington sport fishery (north of the Columbia River) is allocated 53.6 percent of the non-Indian sport allocation and Oregon/California is allocated 46.4 percent. The allocations are further subdivided as subquotas among seven geographic subareas as described in paragraph (f)(1) of this section.

(1) *Subarea management.* The sport fishery is divided into seven sport fishery subareas, each having separate allocations and management measures as follows.

(i) *Washington inside waters subarea.* This sport fishery subarea is allocated 28.0 percent of the Washington sport allocation, which equals 6.66 percent of the Area 2A TAC. This subarea is defined as all U.S. waters east of the Bonilla-Tatoosh line, defined as follows: From Bonilla Point (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°44′00″ W. long.) to Cape Flattery (48°22′55″ N. lat., 124°43′42″ W. long.), including Puget Sound. The structuring objective for this subarea is to provide a stable sport fishing opportunity and maximize the season length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason based on projected catch per day and number of days to achievement of the subquota. No inseason adjustments will be made, and estimates of actual catch will be made postseason. The fishery opens on either May 18 or May 25 and continues at least through July 4, until a date established preseason when the subquota is predicted to be taken, or until September 30, whichever is earlier. If May 18 or May 25 fall on a Tuesday or Wednesday, the fishery will open on the following Thursday. The season opens for 5 days per week (closed on Tuesdays and Wednesdays). The daily bag limit is one fish per person, with no size limit.

(ii) *Washington north coast subarea.* This sport fishery subarea is allocated 57.7 percent of the Washington sport allocation, which equals 13.73 percent of the Area 2A TAC. This subarea is defined as all U.S. waters west of the Bonilla-Tatoosh line, as defined in paragraph (f)(1)(i) of this section, and north of the Queets River (47°31′42″ N. lat.). The structuring objective for this subarea is to maximize the season length for viable fishing opportunity and, if possible, stagger the seasons to spread out this opportunity to anglers who utilize these remote grounds. The fishery opens on May 1, and continues 5 days per week (closed on Sundays and Mondays). If May 1 falls on a Sunday or Monday, the fishery will open on the following Tuesday. The highest priority is for the season to last through the month of May. If sufficient quota remains, the second priority is to establish a fishery that will be open July 1, through at least July 4. If the preseason prediction indicates that these two goals can be met without utilizing the quota for this subarea, the next priority is to open the May fishery 7 days per week and extend it into June as long as possible. No sport fishing for halibut is allowed after September 30. The daily bag limit in all fisheries is one halibut per person with no size limit. A closure to sport fishing for halibut will be established in an area that is approximately 19.5 nm (36.1 km) southwest of Cape Flattery. The size of this closed area may be modified preseason by NMFS to maximize the season length. The closed area is defined as the area within a rectangle defined by these four corners: 48°17′00″ N. lat., 125°10′00″ W. long.; 48°17′00″ N. lat., 125°00′00″ W. long.; 48°05′00″ N. lat., 125°10′00″ W. long.; and, 48°05′00″ N. lat., 125°00′00″ W. long.

(iii) *Washington south coast subarea.* This sport fishery subarea is allocated 12.3 percent of the Washington sport allocation, which equals 2.93 percent of the Area 2A TAC. This subarea is defined as waters south of the Queets River (47°31′42″ N. lat.) and north of Leadbetter Point (46°38′10″ N. lat.). The structuring objective for this subarea is to maximize the season length, while providing for a limited halibut fishery. The fishery opens on May 1, for 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area south of the Queets River (47°31′42″ N. lat.), west of 124°40′00″ W. long. and north of 47°10′00″ N. lat. This closure may be removed through inseason action by NMFS under § 301.21(d)(3) after September 1, for 1 day each week on Tuesday only, if NMFS determines that sufficient subarea quota remains to allow for 1 day of fishing without geographic restriction.

(iv) *Columbia River subarea.* This sport fishery subarea is allocated 2.0 percent of the Washington sport allocation plus 2.0 percent of the Oregon/California sport allocation, which combined equals 0.89 percent of the Area 2A TAC. This subarea is defined as waters south of Leadbetter Point, WA (46°38′10″ N. lat.) and north of Cape Falcon, OR (45°46′00″ N. lat.). The structuring objective for this subarea is to provide for a non-directed halibut sport fishery of not more than 5 months duration out of the Columbia River ports. The fishery will open on May 1, and continue 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. The daily bag limit is one halibut per person, with a 32-in (81.3 cm) minimum size.

(v) *Oregon central coast subarea (applicable through December 31, 1995).* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this sport fishery subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide one or two periods of fishing opportunity in productive deeper water areas along the coast, principally for charter and larger private boat anglers, and provide a period of fishing opportunity in nearshore waters in June and July, especially for small boat anglers. Any poundage remaining in this subarea quota from earlier seasons will be added to the last season in this subarea. This subarea has three seasons as set out in paragraphs (f)(2)(v) (A) through (C) of this section. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the second with a minimum 50-in (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins on May 4, and continues 3 days per week (Thursday through Saturday) until 71.5 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until 3.5 percent of the subarea quota is taken, or August 2, whichever is earlier.

(C) The last season begins on August 3, with no depth restrictions, and continues 3 days per week (Thursday through Saturday), until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vi) *Oregon south coast subarea (applicable through December 31, 1995).* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) to the California border (42°00′00″ N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation, which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central sport fishery subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar crossing conditions very often do not allow scheduled fishing trips. This subarea has three seasons as set out in paragraphs (f)(2)(vi) (A) through (C) of this section. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the second with a minimum 50-in (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins on May 4, and continues 3 days per week (Thursday through Saturday) until 80 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until the subarea quota is estimated to have been taken, or August 2, whichever is earlier.

(C) The last season begins on August 3, with no depth restrictions, and continues 3 days per week (Thursday through Saturday), until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vii) *California subarea.* This sport fishery subarea is allocated 2.6 percent of the Oregon/California subquota, which is 0.54 percent of the Area 2A TAC. This area is defined as the area south of the California border (42°00′00″ N. lat.). The structuring objective for this subarea is to provide anglers in California the opportunity to fish in a continuous, fixed season that is open from May 1 through September 30. The daily bag limit is one halibut per person, with a minimum 32-in (81.3 cm) size limit. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason by NMFS based on projected catch per day and number of days to achievement of the subquota; no inseason adjustments will be made, and estimates of actual catch will be made post season.

(2) *Port of landing management.* All sport fishing in Area 2A (except for fish caught in the Washington north coast subarea and landed in Neah Bay) will be managed on a "port of landing" basis, whereby any halibut landed into a port will count toward the quota for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch. The one exception is for halibut caught west of the Bonilla-Tatoosh line and landed in Neah Bay, which are counted against the Washington north coast subarea quota, and are governed by the regulations governing the Washington north coast subarea.

(3) *Possession limits.* The sport possession limit on land north of Cape Falcon, OR is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The possession limit on land south of Cape Falcon is the same as the bag limit.

(4) *Ban on sport vessels in the commercial fishery.* Vessels operating in the sport fishery for halibut in Area 2A are prohibited from operating in the commercial halibut fishery in Area 2A. Charterboat operators must choose, prior to May 1 of each year, whether they will obtain a charterboat license from the Commission or a commercial license, but cannot obtain both. Sport fishing for halibut in Area 2A is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(g) *Procedures for implementation.* Each year, NMFS will publish a proposed rule with any regulatory modifications necessary to implement the Plan for the following year, with a request for public comments. The comment period will extend until after the Commission's annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments. After the Area 2A TAC is known, and after NMFS reviews public comments, NMFS will implement final rules governing the sport fisheries. The final ratio of halibut to chinook to be allowed as incidental catch in the salmon troll fishery will be published with the annual salmon management measures. Inseason actions in the sport fisheries as stipulated in this Plan will be accomplished by NMFS in accordance with § 301.21(d)(3).

§ 301.24 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded by regulations, which will be published in the **Federal Register**.

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Figure 1 to Part 301—Map of Regulatory Areas

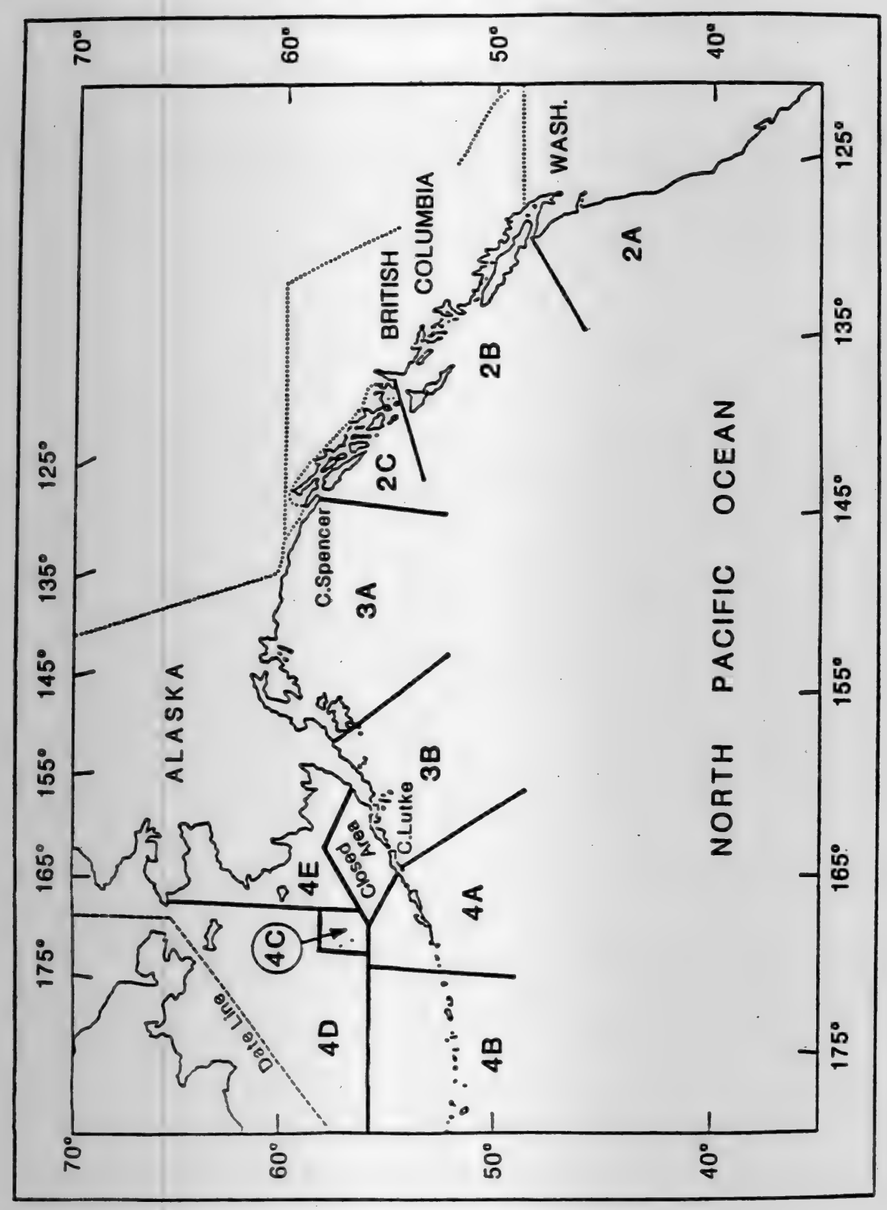

Figure 2 to Part 301—Halibut Size Limits

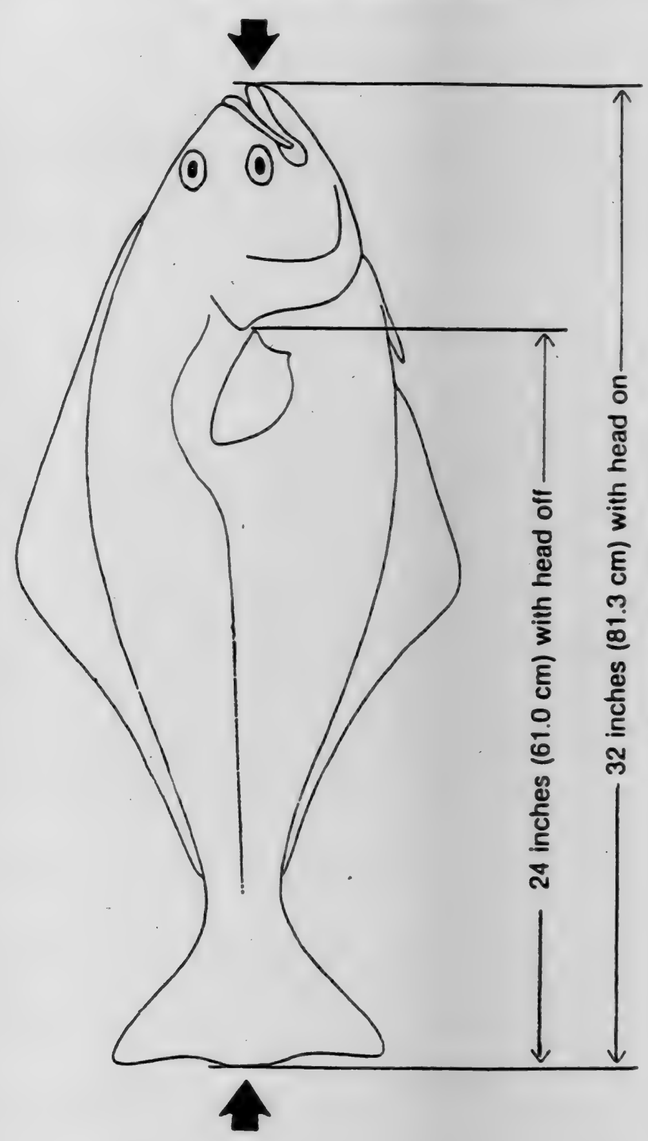

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Proposed Rules

Federal Register
Vol. 60, No. 53
Monday, March 20, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 94-022E]

RIN 0583-AB86

Use of the Term "Fresh" on the Labeling of Raw Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period; solicitation of comments.

SUMMARY: On January 17, 1995, the Food Safety and Inspection Service (FSIS) proposed to amend the Federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26° F. FSIS is extending the comment period on the proposal for 60 days in order to: Allow time for public review and comment on the findings of the Agriculture Research Service's (ARS) evaluation of the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F; allow the National Advisory Committee on Microbiological Criteria for Foods the opportunity to comment on the proposed rule; and solicit public comments on options for reconciling the FSIS proposal to require a "previously frozen" disclosure on product whose internal temperature has ever been below 26° F with existing FSIS regulations that require poultry labeled as "frozen" to have been chilled to an internal temperature of 0° F or below.

DATES: Comments must be received on or before May 19, 1995.

ADDRESSES: Submit written comments in triplicate to Diane Moore, Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. Charles R. Edwards, (202) 254-2565.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 254-2565.

SUPPLEMENTARY INFORMATION: On January 17, 1995, FSIS published a proposed rule (60 FR 3454) to amend the Federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26° F. The proposal would require such poultry products to be labeled with a descriptive term reflecting the fact that the product had been "previously frozen." The proposed action would help ensure that poultry products distributed to consumers are not labeled in a false or misleading manner and are not misbranded. Such action would also meet consumer expectations that the term "fresh" should not be applied to raw poultry products that have been subjected to processes that would cause such products to become chilled to temperatures below 26° F.

Interested persons were given until March 20, 1995, to submit comments on the proposed regulatory amendments. FSIS has received requests from two trade associations to extend the comment period for the proposed rule. The trade associations have requested that FSIS extend the comment period to allow the public time to obtain and review the findings of the Agricultural Research Service's (ARS) evaluation of the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F, with respect to their written comments on the proposed rule. The ARS report was not available for public review in the FSIS Docket Clerk's office at the time the "fresh" labeling proposal was published and, thus, its availability was not stated in the rulemaking docket. The report is now available for public review in the FSIS Docket Clerk's office, and FSIS concludes it is reasonable to allow additional time for interested parties to obtain, review, and comment on it.

Further, FSIS has previously stated its intention to seek comments from the National Advisory Committee on Microbiological Criteria for Foods on the Agency's conclusion stated in the preamble to the proposed rule that "there should be no increased microbiological safety risks associated with the growth of pathogenic microorganisms," by changing the labeling definition for "fresh" poultry. The next meeting of the Committee will be held in mid-April and, thus, an extension of the comment period is necessary to allow the Committee's views to be received within the comment period.

Finally, in this notice, FSIS is soliciting comments on options for reconciling the element of its "fresh" labeling proposal that would require product whose internal temperature has ever been below 26° F to bear a "previously frozen" disclosure with existing FSIS regulations (9 CFR 381.129(b)(3) and 381.66(f)(2)) that require poultry labeled as "frozen" to have been chilled to an internal temperature of 0° F or below. Under the proposal, product chilled to an internal temperature of 0° F or below could be labeled as "frozen" or "previously frozen," as the case may be.

FSIS has received a comment noting the conflict between the proposal and the existing regulatory definition of "frozen." FSIS is aware that the products directly affected by its "fresh" labeling proposal, which are frequently frozen to temperatures in the range of 20° F to 25° F and sold in a thawed state have different attributes than product frozen to an internal temperature of 0° F or below. The product chilled to temperatures in the range of 20° F to 25° F is hard-to-the-touch and thus "frozen" in common consumer parlance, even though only about 80 percent of the water in that product is frozen. Further, although the product exhibits a longer shelf life than product held at higher temperatures, e.g., 28° F to 32° F, the product will spoil in several weeks. In the product frozen to 0° F or below, over 99 percent of the water in the product is in a frozen state, microbial growth is stopped, and the product can last a year or more, depending on packaging and storage temperature, without discernable quality changes. The purpose of the existing definition of "frozen" is to ensure that poultry products labeled simply as "frozen" would be suitable for long-term storage and subsequent use. The terms

"frozen," as currently defined in FSIS regulations, and "previously frozen," as proposed by FSIS for use on poultry products held below 26° F and subsequently sold in a thawed state, both would provide truthful and useful information to consumers. FSIS is concerned that the existence of two definitions which make use of the word "frozen" could be confusing to industry and consumers. FSIS believes that the existing definition and the Agency's proposed use of the term "previously frozen" need to be reconciled. The Agency invites comments on how this can be accomplished. FSIS has identified three possible options as follows:

a. Use a term or phrase other than "previously frozen" to identify products in the temperature range from above 0° F to below 26° F. In its proposed rule, FSIS requested comments on other descriptive terms to describe the nature of the product. However, as of this time, no satisfactory substitute terms have been suggested. FSIS has identified other possible terms that do not use the unqualified word "frozen." Such terms include: "previously semi-frozen," "held semi-frozen," "previously partially frozen," "previously chilled to semi-solid state," "shipped/stored/handled semi-frozen (insert optional statement, e.g., to preserve quality)," or "previously frosted." FSIS continues to be interested in receiving comments on alternate terms including those that do not contain the unqualified word "frozen."

b. Eliminate the current requirement that poultry products labeled as "frozen" must be brought to an internal temperature of 0° F or below and require use of the term "frozen" to identify all poultry products whose internal temperature has ever been below 26° F. This option would eliminate any confusion that might be caused by having more than one temperature associated with products whose labels make use of the word "frozen," and satisfy the need to label appropriately all products that have been chilled to the point where they are hard-to-the-touch. Such action would in no way prevent manufacturers from continuing current practices regarding freezing to 0° F for long-term storage or from making supportable claims about the storage life or appropriate "use by" date for their products. However, such action might require adjustment in government and industry purchasing standards, codes of practice, or product specifications that evolved from the current freezing regulations. FSIS does not believe that elimination of the 0° F requirement for labeling a product "frozen" would pose a safety concern. However, purchasers who expect that a product was frozen for long-term preservation based on use of the term "frozen" on the labeling might be misled in the absence of explanatory labeling, if the shelf life and quality differs from products frozen to 0° F or below because the product was not actually brought to such low temperatures.

c. Use the proposed term "previously frozen" on labeling of products with internal temperatures above 0° F and below 26° F but require use of a term other than "frozen" or "previously frozen" on the labeling of products that are frozen to 0° F or below. The latter products could be labeled with a phrase such as "frozen for long-term preservation" in order to distinguish them clearly from chill pack products whose temperatures were at one time in the lower 20-degree Fahrenheit range. This labeling option differentiates the two types of frozen products so that the product labeled "previously frozen" would not be confused with the deep-frozen product. The descriptive term for the 0° F product reflects the purpose of the processing procedure and can be linked to the special qualities associated with these products.

FSIS is interested in receiving comments on these options and any others that would appropriately reconcile the existing definition of "frozen" and the proposed use of the term "previously frozen."

For all these reasons, FSIS is extending the comment period on its "fresh" labeling proposal for 60 days. The comment period will close May 19, 1995.

Done at Washington, DC, on: March 15, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95-6817 Filed 3-17-95; 8:45 am]

BILLING CODE 3410-DM-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AE97

Shutdown Operation of Nuclear Power Plants; Notice of Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Members of the staff of the Office of Nuclear Reactor Regulation will meet with commenters (or their representatives) who responded to **Federal Register**, 59 FR 52707; October 19, 1994, regarding the proposed rule "Shutdown and Low-Power Operations for Nuclear Power Reactors." The staff will discuss comments and receive feedback on the impact of potential staff responses regarding the proposed rule. The meeting will be open for interested members of the public, petitioners, intervenors, or other parties to attend as observers pursuant to "Open Meeting Statement of NCR Staff Policy," 43 FR 28058, June 28, 1978.

DATES: The meeting will be Friday, April 7, 1995 from 9 a.m.-3 p.m.

ADDRESSES: The meeting will be held at the United States Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Warren C. Lyon, Senior Reactor Systems Engineer, Reactor Systems Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-3892.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the proposed meeting is:

9:00—Introduction (Purpose of shutdown rule, Applicability/limitations)

9:15—Summary of Comments to Proposed Rule 59 FR 52707; October 19, 1994

9:30—Staff Decisions (Shutdown rule, Maintenance Rule, Codification of industry initiatives, Fire, Technical specifications, Outage plans and controls, Fuel storage pool, Safety related vs. non-safety related, Single failure, Regulatory analysis, Regulatory guide, Re notice in **Federal Register**)

10:15—Items Covered By Rule (General content of rule and philosophy; Structures, systems, and components; Reliability and redundancy; Planning; Procedures; Training; Controls; Reactivity; Reactor coolant system; Subcooled decay heat removal; Containment; Adequate core cooling; Contingency plan; Implementation)

13:15—Discussion—Issues (Maintenance rule—guidance for shutdown operation; The meaning of redundancy [Credit for passive heat removal, gravity feed, & operator response; Electrical power systems]; Containment; Analysis and test needs; Others)

Dated at Rockville, Maryland this 15 day of March 1995.

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For the Nuclear Regulatory Commission.

Warren C. Lyon,

Senior Reactor Systems Engineer, Reactor Systems Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6735 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Parts 170 and 171

RIN 3150–AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately $503.6 million.

DATES: The comment period expires April 19, 1995. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101–508 requires that NRC collect the FY 1995 fees by September 30, 1995, requests for extensions of the comment period will not be granted.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678).

The agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Environmental Impact: Categorical Exclusion.
V. Paperwork Reduction Act Statement.
VI. Regulatory Analysis.
VII. Regulatory Flexibility Analysis.
VIII. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published seven final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR part 170 hourly rate and fees and the 10 CFR part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on those challenges on March 16, 1993, in *Allied-Signal v. NRC*, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR part 171 lowered in some cases the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), July 20, 1993 (58 FR 38666), and July 20, 1994 (59 FR 36895), the NRC published final rules in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992, FY 1993, and FY 1994 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). In FY 1994, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but were assigned directly to the class of licensees that they support. Because this direct assignment resulted in a reduction of overhead costs allocated to each FTE, the cost per full time equivalent (FTE) was about 3 percent less than it would have been without the additional direct assignment.

The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the *AlliedSignal v. NRC* judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669–72). In brief, the NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform fee. On May 19, 1994 (59 FR 26097), the NRC amended its fee regulations in 10 CFR Part 171 to establish revised FY 1991 and FY 1992 surcharges for NRC licensees based on this revised method.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. This exemption was also included in the FY 1994 final rule. In response to the March 16, 1993, judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided in nonprofit institutions. The Commission denied that request on March 17, 1994 (59 FR 12555).

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is $525.6 million of which approximately $22.0 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $503.6 million in FY 1995 through 10 CFR Part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1995 is about $9.4 million less than the total amount to be recovered for FY 1994 and $15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately $137.7 million will be recovered in FY 1995 from the fees assessed under 10 CFR Part 170. The remaining $365.9 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1995.

Recognizing that OBRA–90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA–92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is proposing certain changes in 10 CFR part 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These proposed changes are summarized as follows and detailed in the following sections.

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately $56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. Currently, using three different methodologies, these costs have been allocated to classes of licensees. Approximately 50 percent of these costs were paid by power reactors. Under the proposed rule, these costs will instead be treated similar to overhead and distributed to each class of licensees based on the percent of the budget for that class. As a result, power reactors will pay a greater percentage of these costs.

2. Eliminate the materials selected inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as "flat" inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These proposed actions would streamline the license fee process and provide more predictable fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are proposed instead of a single rate.

4. Change the methodology for calculating annual fees for reactors, fuel facilities and uranium recovery licensees to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. Modify NRC small entity and lower-tier size standards for annual fee purposes.

As a result of the reduced budget amount to be recovered for FY 1995 and these proposed changes, the annual fees for a large majority of the licensees would be reduced. The following provides illustrative examples of the changes in the annual fees.

	FY 1994 annual fee	Proposed FY 1995 annual fee
Class of Licensees:		
Power Reactors	$3,078,000	$2,967,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF_6 Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
Typical Material Licenses:		
Radiographers	19,170	14,000
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,400

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The NRC also notes that it plans to increase the use of reimbursable agreements to avoid including certain costs that do not benefit NRC licensees within the NRC budget. By doing this, the budget will be reduced and the fees lowered. The NRC plans to exclude funds for training, travel, and technical support to the Agreement States and for review of Department of Energy (DOE)/Department of Defense (DOD) defense related projects from the NRC budget, beginning in FY 1997. This support would be provided to the Agreement States and DOE/DOD through reimbursable agreements, which would eliminate the need to recover the cost through fees assessed to NRC licensees. For FY 1995, these costs will continue to be recovered through fees. Because this change affects the budget and does not alter fee policies or methods, it falls outside the scope of this proposed rulemaking and the Commission is not soliciting comments on this policy change.

Although not a specific change in this rule, to help stabilize fees, beginning in FY 1996, the NRC proposes that the annual fees be adjusted only by the percent change in NRC's total budget. A base annual fee would be established in FY 1995 using current methodology modified by the changes in the final FY 1995 rule, and the percentage change (plus or minus) in the NRC total FY 1995 budget would be applied to all annual fees for the next four years (FY 1996–FY 1998 and FY 1999 if OBRA–90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The decision on whether to establish a new baseline would be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent. The NRC seeks comments on this approach in this rulemaking.

The Commission notes that, if, based on public comments, the Commission decides not to pursue some or all of these new proposed policies, then the respective current fee policies would be continued for FY 1995. Comments are also requested on whether the NRC should continue any or all of its current fee policies in lieu of the policies it proposes to change in this rule.

The NRC contemplates that any fees to be collected as a result of this proposed rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA–90. Therefore, as in FYs 1991–1994 the fees, if adopted, will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of Section 171.17. The annual fees for both reactor and material licensees are prorated based on (1) the date applications are filed during the FY to terminate a license or obtain a possession-only license (POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes four amendments to Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The proposed amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the NRC is proposing to amend § 170.11 of the Commission's fee regulations to conform them to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Second, the NRC is proposing to revise the current method of calculating the 10 CFR Part 170 professional hourly rate. Currently, there is one professional hourly rate established in § 170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was $133 per hour for FY 1994. The NRC proposes to establish two professional hourly rates for FY 1995, which will be used to determine the Part 170 fees. The NRC proposes to establish a rate of $123 per hour ($214,765 per direct FTE) for the reactor program. This rate is applicable to those licenses covered by 10 CFR part 170.21 of the fee regulations. A second rate of $116 per hour ($203,096 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate is applicable to those licenses covered by 10 CFR Part 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF.

The two rates would be based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) will be assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concepts will be discussed more fully in Section III—Section-by-Section Analysis.

Third, the NRC proposes that the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees be revised to reflect both the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are based on the average cost method (flat fees).

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The proposed licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the proposed nuclear materials professional hourly rate for FY 1995 of $116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the proposed licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the proposed fees for renewals would increase in over 70 percent of the cases.

Fourth, the NRC is proposing to streamline the fee program and improve the predictability of fees by eliminating the materials "flat" inspection fees in 170.31 and including the cost of the inspections in 10 CFR Part 171. Eliminating the 10 CFR Part 170 materials "flat" fees would recognize that the "regulatory service" to licensees, referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of beneficiaries. This proposed action would not result in any net fee increases for affected licensees and would provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The proposed materials annual fees, which include the 10 CFR Part 170 inspection fees, would become effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR Part 170 inspection fee for inspections conducted in FY 1995 would receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR Part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is proposing to (1) establish two 10 CFR Part 170 hourly rates; (2) revise the licensing fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost of the agency of providing the service; and (3) eliminate the materials "flat" inspection fees in § 170.31 and include the costs of inspections with the materials annual fees in § 171.16(d), or with the reciprocity application fee in fee category § 170.31, Category 16.

Assessing Fees for Final Design Approval (FDA) and Design Certification (DC) Reviews

During FY 1994, the question was raised by several standard design vendors concerning the NRC's policy on assessment of 10 CFR part 170 licensing fees beyond issuance of the FDA. The Commission has examined this issue and has decided to continue assessing fees to vendors for its review costs incurred following the issuance of the FDA. This would include fees to recover NRC costs for preparation of the Design Control Document, review of comments on a proposed certification rule, and preparation of a final certification rule. 10 CFR Part 170 fees will not be assessed to the vendor for costs incurred for any contested hearing before the Atomic Safety Licensing Board Panel (ASLBP) during the design certification review and rulemaking.

While the NRC understands the impact of fees on its applicants and licensees, it has concluded that 10 CFR part 170 review fees should continue to be assessed beyond the FDA issuance, because the vendor, who applies for a certification, is the principal beneficiary of the certification. The fundamental policy underlying 10 CFR part 170 fees, which are based on the requirements of the Independent Offices Appropriation Act of 1952, as amended, is that the principal beneficiary of a regulatory service should bear the cost of providing that service. Applicants for design certifications will not be charged 10 CFR part 170 fees for any hearings held before an ASLBP under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification. It has long been the policy of the NRC not to charge part 170 fees for hearings which are not mandated by law, and the NRC has maintained this policy despite its recent obligation to recover 100 percent of the budget through fees. Thus, for example, the NRC does not charge part 170 fees for power reactor operating license, amendment, or enforcement hearings. The costs of such hearings are recovered through the annual fees assessed to NRC licensees under 10 CFR part 171.

The NRC bills all design certification (DC) applicants for staff hours and contractual expenses incurred by the Office of Nuclear Reactor Regulation (NRR) in support of design certification and approval review activities as stipulated in 10 CFR part 170. The Office of Nuclear Regulatory Research (RES) staff and contractual expenses related to advanced reactor designs have been billed under 10 CFR part 171 to holders of operating reactor licenses. Although NRR is responsible for these advanced reactor reviews and licensing determinations, certain activities performed by RES can be essential elements of these reviews. If, for example, the review can be conducted more efficiently by RES due to experience of its staff, NRR would request that RES perform the review and provide the safety evaluation report input. In conducting recent DC reviews, NRR and RES have coordinated their activities to enhance the effectiveness and efficiency of the reviews. In specific technical areas (e.g., evaluation of DC applicant test programs), RES staff expertise and contractual resources provide direct support to NRR's licensing review. As such, some RES activities involve direct review of advanced reactor designs and provide input to the safety and licensing conclusions for design certification. The NRC believes that some adjustments to the fee policy are necessary to properly assess the applicant fees for design certification review activities performed by RES. Beginning with the effective date of the FY 1995 fee rule, the NRC plans to bill the applicants for RES's direct review and evaluation of the standard design in support of NRC's FDA and design certification. Direct review includes evaluation of the applicant's test programs, vendor codes and topical reports, standard safety analysis reports, and other supporting design and analysis information. Under this approach, fee assessment for RES costs would be treated identically to NRR charges for staff full-time equivalent (FTE) employees or contractors associated with the FDA/DC review. Billing vendors for RES activities that are in direct review of the applicant's design is consistent with the major principle of 10 CFR part 170 of assessing fees to the principal beneficiary of the NRC regulatory activity (i.e., vendor receipt of an FDA/DC). The applicant would not be assessed fees for confirmatory research related to the designs. The budget for confirmatory research would continue

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to be recovered from annual fees assessed to operating power reactor licensees under 10 CFR part 171.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes nine amendments to 10 CFR part 171. First, the NRC is proposing to modify its method for recovering certain budgeted costs. The report to Congress in response to EPA–92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is proposing to modify its current policies for allocating the budgeted costs for these and other activities that cause fairness and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. It is proposed that the budgeted costs of approximately $56 million for these activities be borne by all NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC proposes to allocate the approximately $56 million in fees for activities that raise fairness and equity concerns to all licensees, based on the budgeted dollars for each class of licensees. By allocating the costs in this way, the entire population of NRC licensees would pay the costs. The allocation would be based on the amount of the budget directly attributable to a class of licensees. This would result in operating power reactors paying approximately 89 percent of the costs of the activities in question with the other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 would be amended to provide that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in § 171.15(d) would be revised to reflect a single uniform annual fee. The NRC is proposing to streamline the fee program by assessing one uniform annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time-consuming process in determining power reactor annual fees. The annual fees have been determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric, and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor, that is, whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991), and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would reexamine this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The Office of the Inspector General (OIG) in its report on license fees dated October 26, 1993, indicated that the fee process is very detailed and labor intensive and that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG report stated that the determination of Part 171 fees could be simplified by eliminating/streamlining much of the detailed analyses performed as part of the process. The NRC, for FY 1995, calculated the reactor annual fees using both the current method and the proposed uniform method. For FY 1995, the lowest annual fee using the current method is about $20,000 less than the proposed uniform fee of about $3 million for an operating reactor. The NRC believes that this difference is small enough, relative to the size of the annual fee, to justify moving to a uniform annual fee particularly in light of administrative savings that will follow. Therefore, in an effort to streamline the fee program consistent with the OIG report on fees and for ease of administration, whereby a single annual fee can be used for fee billing purposes, the NRC is proposing to establish a uniform annual fee for each operating power reactor.

Fifth, as discussed earlier, the annual fees for materials licenses in § 171.16(d) would include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR Part 170.31.

Sixth, the NRC is proposing to refine the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised by B&W Fuel Company, General Atomics and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). Having conducted its own reexamination, the NRC is therefore proposing revised methodologies for determining annual fees for both fuel facility and uranium recovery licensees. These revised methodologies have been used to determine the proposed FY 1995 annual fees. The use of the revised methodologies results in the annual fee more accurately reflecting the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The proposed methodologies are explained in more detail in Section III—Section-by-Section Analysis.

Seventh, the NRC is proposing to modify the lower-tier size standard for those licensees that qualify as a small entity under the NRC's proposed size standards, published on November 30, 1994 (59 FR 61293). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to adjust its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also proposed to eliminate the separate $1 million size standard for private practice physicians and to apply the receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would apply to the types of manufacturing industries that hold an NRC license. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed has been developed and sent to the SBA for review and approval. The NRC expects to publish the final rule before the final fee rule becomes effective.

The NRC intends to use the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this proposed fee rule have been modified to reflect the proposed changes in the NRC's size standards. The existing maximum small entity annual fee of $1800 will be continued for all small entities except those defined as lower-tier small entities in this rule. The existing lower-tier small entity fee of $400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than $350,000, a higher threshold than the current lower-tier level of $250,000 in gross receipts.

Eighth, the NRC is proposing to modify Footnote 1 of 10 CFR 171.16(d) to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994. Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Ninth, the NRC is proposing to amend § 171.19 to credit the quarterly partial annual fee payments and "flat" inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the two proposed revised professional hourly rates discussed previously in the summary of the proposed changes to 10 CFR Part 170. The amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692–93). For those NRC costs not attributable to a class of licensees, the proposed amendments to 10 CFR Part 171 follow the conferees' guidance which states that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees . . ." (136 Cong. Rec. at H12692–3).

C. FY 1995 Budgeted Costs

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR Parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1995 BUDGET AUTHORITY

[Dollars in millions]

Recovery method	Estimated amount
Nuclear Waste Fund	$22.0
Part 170 (license and inspection fees)	137.7
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	265.3
Nonpower Reactors	.3
Fuel Facilities	10.1
Spent Fuel Storage	1.7
Uranium Recovery	1.8
Transportation	4.2
Material Users[1]	24.91
Rare Earth Facilities	.1
Subtotal Part 171	308.4
Costs remaining to be recovered not identified above	57.4
Total	525.6

[1] Includes $5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the $57.4 million remaining to be recovered in Table I, approximately $5.8 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower-tier small entity fee of $400 for certain licensees. The composition of the $63.2 million is as follows:

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE

Activities	Dollars in millions
Federal Agency Exemption	$1.6
Nonprofit Educational Exemption	6.1
International Activities	10.5
Small Entity Subsidy	5.8
Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	7.0
	63.2

The NRC is proposing to continue the existing policy for recovering the $7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing

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licensees). The remaining $56.2 million would be distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the $63.2 million are as follows:

$55.2 million to operating power reactors;
$2.2 million to fuel facilities;
$.6 million to spent fuel storage licensees;
$.6 million to transportation licensees;
$.6 million to uranium recovery facilities; and
$4.0 million to other materials licensees.

III. Section-by-Section Analysis

The following analysis of those sections that are affected under this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section would be amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge Part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average Cost Per Professional Staff Hour

This section would be amended to establish two professional staff-hour rates based on FY 1995 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all fee categories that are based on full cost under § 170.21 is $123 per hour, or $214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials fee categories that are based on full cost under § 170.31 is $116 per hour, or $203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. As noted earlier in this proposed rule, the NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because these support costs are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

TABLE III.—FY 1995 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

Salary and benefits	Reactor program	Materials program
Program	$148.5	$43.5
Allocated Agency Management & Support	$39.9	$11.7
Subtotal	$188.4	$55.2
General and Administrative Support (G&A):		
Program Travel and Other Support	$13.3	$2.7
Allocated Agency Management and Support	$73.6	$21.6
Subtotal	$86.9	$24.3
Less offsetting receipts	.1	
Total Budget Included in Hourly Rate	$275.2	$79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	$214,765	$203,096
Professional Hourly Rate	$123	$116

Dividing the $275.2 million budget for the reactor program by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of $214,765 per FTE for FY 1995. Dividing the $79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of $203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is $123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is $116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($203,096) by the number of productive hours in one year (1744 hours).

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed

for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in § 170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in § 170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, would be modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Those licensing fees, which are based on the average time to review an application ("flat" fees), would be adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from $133 per hour in FY 1994 to $116 per hour in FY 1995. The "flat" materials inspection fees in § 170.31 would be eliminated and combined with the materials annual fees in § 171.16(d). Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee would include the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments) and for inspections. The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing and inspection flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action or inspection for each license category. These average hours are multiplied by the proposed materials program professional hourly rate of $116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is proposing to eliminate materials "flat" inspection fees, the biennial review examined only the average number of hours per licensing action with regard to the 10 CFR part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine the proposed fees for FY 1995 reflect the changes in the licensing program that have occurred since that time; for example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the proposed licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the proposed fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The proposed licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees would be assessed for applications filed on or after the effective date of the final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the proposed materials program hourly rate of $116, as shown in § 170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to reflect when the NRC could more realistically expect to publish the proposed fee rule. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section will be revised to indicate that the NRC will publish the proposed rule (notice) in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) would be revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the budgeted costs that have been allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one proposed uniform

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annual fee to be assessed to all operating reactors.

The NRC is proposing to streamline the fee program by assessing one uniform annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for determining annual fees without causing an unfair burden. The NRC Office of the Inspector General (OIG) in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. The NRC for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The difference between the lowest fee under the current method and the uniform fee is about $20,000, which is less than 1 percent of the $3 million proposed annual fee for an operating power reactor. Because of this extremely small difference, the NRC believes that a single uniform annual fee should be established for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]

Program total	Allocated to power reactors			
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Program				
Cost Center: Reactor Regulation:				
Inspections	$4,350	471.4	$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	59.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	536	42.0
Cost Center Total	.....	.....	$84,499	1,145.9
Cost Center: Standard Reactor Designs:				
Design Certification	6,873	91.6	6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	.....	3.0	.....	3.0
Independent Review	86	10.0	86	10.0
Cost Center Total	.....	.....	$21,844	124.3
Nuclear Materials and Nuclear Waste Program				
Cost Center: Fuel Facilities:				
Licensing and Inspection	1,304	28.5	.....	.1
Cost Center: LLW and Decommissioning:				
Licensing and Inspection	50	2.6	.....	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	.....	331	.....
Cost Center Total	.....	.....	$431	7.6
Management and Support Programs				
Cost Center: Special Technical Programs:				
Educational Grants	1,050	.....	1,050	.....
Small Business Innovation Research	1,844	.....	1,844	.....
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	850	.7
Cost Center Total	.....	.....	$3,744	.7
Reactor Program Total	.....	.....	$110,518	1,278.6

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]—Continued

Program total	Allocated to power reactors			
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Total Base Fee Amount Allocated to Power Reactors	.....	.....	.....	[2] $385.0 million
Less Estimated Part 170 Power Reactor Fees	.....	.....	.....	$119.8 million
Part 171 Amount for Operating Power Reactors	.....	.....	.....	$265.2 million
Part 171 Base Fee For Each Operating Reactor	.....	.....	.....	265.2 million
	.....	.....	.....	108 reactors = $2,456,000 per reactor

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($214,765) and adding the program support funds.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) would be amended to show the amount of the budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

TABLE V

Category of costs	FY 1995 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities;	$10.5
b. Agreement State oversight	5.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan activities not recoverable under 10 CFR Part 170	5 6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based existing law or Commission policy:	
a. Fee Exemption of nonprofit educational institutions;	6.1
b. Licensing and inspection activities associated with other Federal agencies;	1.6
c. Costs not recovered from Part 171 for small entities	5.8
3. Activities supporting NRC operating licensees and Others:	
a. Regulatory support to Agreement States	$14.2
b. Decommissioning/Reclamation	5.2
Total Budgeted Costs	563.2

Excluding low-level waste costs totalling $7 million, the current policy allocates the remaining $56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA–90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees would be allocated to a smaller number of materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

For the above reasons, the NRC is proposing to change the current policy for allocating the costs for activities

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which have raised fairness and equity concerns among many NRC licensees. The proposed changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC proposes to allocate the costs in question to the entire population of NRC licensees that pay annual fees. The allocation would be based on the amount of the budget directly attributable to a class of licensees and would result in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This proposed change is consistent with the guidance in the Conference Committee Report that accompanied OBRA–90. First, by allocating these costs to all licensees, this proposed change is consistent with the Conference Report guidance that: "The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." Second, allocating a higher percentage of these costs to operating power reactors as opposed to other classes of licensees is also consistent with the Conference Report guidance that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitable and practicably contribute to their payment." Allocating these costs to the universe of NRC licenses would minimize the impact of the declining numbers of licenses in any specific class, because the costs would be allocated over the maximum number of licensees. It would also put in place both a policy that would help mitigate future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

$$\text{Generic LLW Cost Allocated} = .74 \times \$6{,}972\text{K} = \$5{,}159\text{K}$$

$$\text{Other Activities Allocated} = .89 \times \$56{,}229\text{K} = \$50{,}044\text{K}$$

$$\frac{\text{Total budgeted costs allocated}}{\text{Total number of operating reactors}} = \frac{\$55{,}203\text{K}}{108} = \$511{,}000 \text{ per operating power reactor}$$

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, would pay a base annual fee of $2,456,000 and an additional charge of $511,000 for a total FY 1995 annual fee of $2,967,000.

With respect to Big Rock Point, a smaller older reactor, the NRC proposes to grant a similar partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with § 171.11.

Paragraph (d) would be revised to show, in summary form, the amount of the total FY 1995 annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1995 annual fee for nonpower (test and research) reactors. In FY 1995, $339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $56,500 per operating license. The Energy Policy Act established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC amended § 171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC intends to continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in § 171.11.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The comment period expired December 30, 1994. The proposed size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts to include "all revenue in whatever form received or accrued from whatever source * * *" (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

The NRC has evaluated the comments received on the proposed rule, prepared a draft final rule that will adopt these size standards and submitted the final rule for the approval of the Administrator, Small Business Administration, as required by statute.

Pending SBA approval, the NRC intends to use these size standards in the final FY 1995 fee rule. Therefore, the small entity categories in § 171.16(c) of this proposed fee rule have been modified to reflect the proposed changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is also proposing that a new maximum small entity fee for manufacturing industries with 35 to 500 employees be established at $1,800 and a lower-tier small entity fee of $400 be instituted for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of $250,000 has been raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million.

Section 171.16(d) would be revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling $42.8 million that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

TABLE VI.—ALLOCATION OF NRC FY 1995 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Cost Center: Fuel Facilities:				
Fuel Fabricators Oversight and Inspections	$1,698	59.0	$1,486	56.1
Cost Center: LLW and Decommissioning:				
Decommissioning	4,447	50.0	325	1.7
Cost Center: Other Nuclear Materials and Waste:				
Independent Analysis of Operating Experience	345	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews		1.0		.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
Cost Center: Special Technical Program:				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	
Total			$2,066	61.9
Total Base Fee Amount Allocated to Fuel Facilities				[2] $14.6 million
Less Part 170 Fuel Facility Fees				4.5 million
Part 171 Base Fees For Fuel Facilities				$10.1 million

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES [1]

Total program element	Allocated to materials users			
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Materials & Nuclear Waste Program				
Cost Center: Materials Users:				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection/Health Effects	1,621	5.3	438	1.4
Cost Center Total			$1,751	87.7
Cost Center: LLW and Decommissioning:				
Licensing & Inspections	50	2.6		.2
Decommissioning	214	32.8	59	3.5

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TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES[1]—Continued

Total program element	Allocated to materials users			
	Program support $,K	FTE	Program support $,K	FTE
Radiological Surveys	1,653		372	
Cost Center Total			441	3.7
Cost Center: Other Nuclear Materials:				
Analysis of Operational Experience	$346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews		1.0		.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation		16.0		4.4
Cost Center Total			$691	32.4
Total Program			$2,883	123.8
Management and Support Program				
Cost Center: Special Technical Programs:				
Nuclear Material Management and Safeguard Systems	1,165	1.0	74	.1
Total All Programs			$2,957	123.9
Base Amount Allocated to Materials Users				[2] $28.1 million
Less Part 170 Material Users Fees				3.2 million
Part 171 Base Fees for Material Users				$24.9 million

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

The allocation of the NRC's $10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised by B&W Fuel Company, General Atomics and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore proposing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the proposed FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear type, enrichment, form, quantity, and use/associated activity) and according to the level scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid Part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear material and use/associated activity. Next, the category/license information is used to determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	Number of facilities	Relative weight per facility	
		Safety	Safeguards
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF_6 Conversion	1	.30	
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the $10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

Type of facility	Proposed annual fee
High Enriched Fuel:	
Babcock & Wilcox	$2,569,000
Nuclear Fuel Services	2,569,000
Low Enriched Fuel:	
Combustion Engineering (Hematite)	1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
Limited Operation Facilities:	
B&W Fuel Company	$501,700
UF_6 Conversion:	
AlliedSignal Corp.	$639,200
Other Fuel Facilities:	
Babcock & Wilcox	$340,700
General Atomics	$340,700
General Electric	$340,700

Of the $2.3 million ($1.8 million in base budget plus $0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately $1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing Part 171 annual fees for uranium recovery licenses. The methodology identifies three categories of licenses: (1) Conventional uranium mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) The operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) Decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3) cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	No. of facilities	Relative weight per facility
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal incidental to existing tailings sites	5	.13

Using this refined approach, the remaining $0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2) — Class I facilities: $60,900
2.A.(2) — Class II facilities: $34,400
2.A.(2) — Other facilities: $22,000
2.A.(3) — 11e(2) disposal: $44,700
2.A.(4) — 11e(2) disposal incidental to existing tailings site: $7,900

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this proposed rule. For rare earth facilities, the generic and other regulatory costs of $66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of $22,000 for each facility.

For spent fuel storage licenses, the costs of $2.3 million ($1.7 million in base budget plus $0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $291,500 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this class.

To equitably and fairly allocate the $24.9 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share ($2.8 million) of the surcharge, the NRC has continued to base the annual fee on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee = (Application Fee + Average Inspection Cost/Inspection Priority) x Constant + (Unique Category Costs).

The constant is the multiple necessary to recover $27.7 million and is 2.2 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1995, unique costs of approximately $1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is proposing to combine the "flat" material inspection fees in 10 CFR part 170 with the annual fees in 10 CFR Part 171. This is being done to recognize that the "regulatory service" to licensees referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA–90, the NRC believes that materials licensees' "flat" inspection fees could be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in effect, already been implemented for most materials licensees. First, materials

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licensees pay a "flat fee" per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials license fee category pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. The proposed materials annual fees would become effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR part 170 inspection fee for inspections conducted in FY 1995, would receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR part 171. Those Agreement States licensees that paid an inspection fee would not receive a credit because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted costs to all NRC licensees rather than to materials licensees as discussed earlier. The professional hourly rate for the materials program has decreased from $133 per hour to $116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of the average annual inspection costs with the annual fee. For example, if an inspection is performed every three years, one- third of the flat inspection fee would be included in the annual fee.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the $4.7 million attributable to the transportation class of licensees, $1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation costs under Category 18. The remaining transportation costs for generic activities ($3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $77,800 for users and fabricators and $1,000 for users only.

The amount or range of the proposed FY 1995 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$2,569,000
Part 70—Low enriched fuel	1,261,000
Part 40—UF_6 conversion ..	639,200
Part 40—Uranium recovery	22,000 to 60,900
Part 30—Byproduct Material.	490 to 23,400[1]
Part 71—Transportation of Radioactive Material.	1,000 to 77,800
Part 72—Independent Storage of Spent Nuclear Fuel.	291,500

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $417,700.

Section 171.16(e) would be amended to establish the additional charge which is included in the annual fees shown in Section 171.16(d) of this final rule. The Commission is continuing the approach used in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in Section 171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of costs for LLW disposed of by Agreement State licensees. The FY 1995 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1995 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$7.0

Of the $7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($5.7 million) are allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $48,000 per facility. Thus, the LLW charge will be $48,000 per HEU, LEU, UF_6 facility, and each of the other three fuel facilities. The remaining $1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: $1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the $1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is $21,000.

On the basis of this calculation, a fuel facility (a high-enriched fuel fabrication licensee, for example) pays an annual fee of $2,546,000 and an additional charge of $48,000 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $22,000 and an additional charge of $1,400, for a total FY 1995 annual fee of $23,400.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/ storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.19 Payment

This section would be revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC also expects that certain materials licensees would have paid inspection fees for inspections that were performed in FY 1995, whereas the rule proposes to include such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. The NRC would adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1995 budget of $525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

When developing the annual fees for operating power reactors, the NRC is proposing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in fees of about $20,000 is small enough relative to the size of the $3 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida*

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Power and Light Company v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The proposed rule results in an decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Exports, Imports, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties.

10 CFR Part 171

Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(5) is revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except where the Commission is authorized by statute to charge such fees.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average Cost Per Professional Staff-Hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program	$123 per hour.
Nuclear Materials and Nuclear Waste Program.	$116 per hour.

4. In Section 170.21, the introductory text, Category J, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Referenced Design Approvals, Special Projects, Inspections and Import and Export Licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
. . . . .	
J. Special Projects:[4]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application-new license	$7,500
Amendment	$7,500
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application-new license	$4,600
Amendment	$4,600

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
3. Application for export of components requiring foreign government assurances only:	
Application-new license	$2,900
Amendment	$2,900
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances:	
Application-new license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:	
Amendment	$120

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or followup of a licensed program. Inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the term and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

5. Section 170.31 is revised to read as follows:

Section 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application—New license	$530.
Renewal	$720.
Amendment	$290.

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SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application—New license	$580
Renewal	$650.
Amendment	$280.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in section 11e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$150.
Renewal	$170.
Amendment	$230.
C. All other source material licenses:	
Application—New license	$2,700.
Renewal	$1,500.
Amendment	$400.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,900.
Renewal	$1,900.
Amendment	$530.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,200.
Renewal	$2,400.
Amendment	$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,900.
Renewal	$3,100.
Amendment	$500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,500.
Renewal	$480.
Amendment	$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,200.
Renewal	$820.
Amendment	$350.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$360.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$5,800.
Renewal	$5,200.
Amendment	$750.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,300.
Renewal	$2,700.
Amendment	$990.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,300.
Renewal	$2,600.
Amendment	$840.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,500.
Renewal	$1,500.
Amendment	$280.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,300.
Renewal	$1,300.
Amendment	$300.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$3,300.
Amendment	$640.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,500.
Renewal	$1,700.
Amendment	$590.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,800.
Renewal	$1,900.
Amendment	$570.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,700.
Renewal	$3,000.
Amendment	$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$530.
Renewal	$720.
Amendment	$290.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$3,200.

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SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Renewal	$2,300.
Amendment	$390.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,700.
Renewal	$1,200.
Amendment	$280.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,100.
Renewal	$4,000.
Amendment	$610.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,900.
Renewal	$1,900.
Amendment	$770.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$1,400.
Amendment	$450.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,900.
Renewal	$5,700.
Amendment	$560.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,300.
Renewal	$1,400.
Amendment	$430.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$730.
Renewal	$630.
Amendment	$340.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,200.
Amendment—each device	$1,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$700.
Amendment—each source	$230.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$350.
Amendment—each source	$120.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$320.
Renewal	$340.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Amendment	$240.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:[5]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application—new license	$7,500.
Amendment	$7,500.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)-(8).	
Application—new license	$4,600.
Amendment	$4,600.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application—new license	$2,900.
Amendment	$2,900.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	$120.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$1,100.
Renewal	N/A.
Revisions	$200.[4]

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

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(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the Federal Register as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In § 171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is $2,456,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor. The amount of the surcharge is the sum of the budgeted costs for each FY for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and approximately 82 percent of the low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The FY 1995 surcharge to be added to each operating power reactor is $511,000. This amount is calculated by dividing the total cost for these activities ($55.2 million) by the number of operating power reactors (108).

(d) The FY 1995 Part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c)(2) of this section, is $2,967,000. Thereafter, annual fees will be assessed in accordance with § 171.13.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$56,500
Test reactor	$56,500

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

* * * * *

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses		Annual Fees[1 2 3]
1. Special nuclear material:		
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.		
(a) Strategic Special Nuclear Material.		
Babcock & Wilcox	SNM–42	$2,569,000
Nuclear Fuel Services	SNM–124	2,569,000
(b) Low Enriched Uranium in Dispersable Form Used for Fabrication of Power Reactor Fuel		
Combustion Engineering (Hematite)	SNM–33	1,261,000
General Electric Company	SNM–1097	1,261,000
Siemens Nuclear Power	SNM–1227	1,261,000
Westinghouse Electric Company	SNM–1107	1,261,000
(2) All other special nuclear materials licenses not included in category 1.A.(1) which are licensed for fuel cycle activities.		
(a) Facilities with limited operations:		
B&W Fuel Company	SNM–1168	501,700
(b) All Others:		
Babcock & Wilcox	SNM–414	340,700
General Atomics	SNM–696	340,700
General Electric	SNM–960	340,700
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)		291,500
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers		1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)		3,000
E. Licenses for the operation of a uranium enrichment facility		[11] N/A
2. Source Material		
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride		639,200
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode		
Class I facilities[4]		60,900
Class II facilities[4]		34,400
Other facilities		22,000
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)		44,700
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)		7,900

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B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,500
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,500
C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	11,200
D. Licenses and approvals issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,600
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,800
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,800
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,200
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,400
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	14,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	[8] 1,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 101,600
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,100
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,600
7. Human use of byproduct, source, or special nuclear material.	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,200

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	[9] 23,300
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	[9] 4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	1,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	77,800
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	291,500
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	417,700
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,200,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	[4] 1,937,000

[1] Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license and licensees paying annual fees under Category 2.A(2) are not subject to the annual fees for Category 4.D.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $21,000 has been added to fee Category 17.

(2) To recover these budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals a surcharge has been added for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

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(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

10. In Section 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 10th day of March, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Proposed Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The NRC proposed to adjust its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA rule. The NRC also proposed to eliminate the separate $1 million size standard for private practice physicians and to apply a receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that hold an NRC license. The final rule that would revise the NRC's size standards has been sent to the SBA for review and approval. The NRC intends to adopt the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this proposed rule have been modified to reflect the proposed changes in the size standards. It is proposed that a new maximum small entity fee for manufacturing industries with 35 to 500 employees be established at $1,800 and a lower-tier small entity fee of $400 be established for those manufacturing industries with less than 35 employees. The receipts-based lower-tier of $250,000 has been raised to $350,000 to maintain the lower-tier at the same relative amount of the new small entity size standard of $5 million. The NRC proposed size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts to include "all revenues in whatever form received or accrued from whatever source * * *" (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $499.6 million and the amount to be collected in FY 1995 is approximately $503.6 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991); in FY 1992 (57 FR 32691; July 23, 1992); in FY 1993 (58 FR 38666; July 20, 1993); and in FY 1994 (59 FR 36895; July 20, 1994) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993 and FY 1994 rulemakings to establish the proposed fees to be assessed for FY 1995 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is proposing the use of cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also proposing: (1) To change the method for allocating the budgeted costs (about $56 million) that cause fairness and equity concerns; (2) eliminate the materials "flat" inspection fees in 10 CFR 170.31 and include the inspections with the annual fees in 10 CFR 171.16(d); and (3) establish two professional hourly rates to better align the budgeted costs with the major classes of licensees. For FY 1995, the methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1995 final rule.

II. Impact on Small Entities

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 18 percent (approximately 1,300 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993) and in the FY 1994 rule (59 FR 36895; July 20, 1994). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be received from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license and inspection fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1995 costs ($27.1 million of the total $32.9 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the proposed maximum annual fee of $1,800 for small entities, when added to the part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, FY 1993, and FY 1994, the NRC proposes to continue the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 will also apply to manufacturing concerns and educational institutions not State or publicly supported with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and would now include manufacturing companies with a relatively small number of licensees.

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by: (1) The amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Based on this proposed rule, the amount of the small entity subsidy is lower than last year. Thus, no change is proposed.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a proposed maximum annual fee of $1,800 for small entities and a proposed lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that

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have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this proposed rule except those noted in Section II, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991, FY 1992, FY 1993, and FY 1994 rules remain valid for this proposed rule for FY 1995.

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BILLING CODE 7590–01–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 123CE, Notice No. SC–23–ACE–80]

Special Conditions; SIAI Marchetti Model S211A Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the SIAI Marchetti Aircraft Company Model S211A airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include performance characteristics for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before May 19, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 123CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 123CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 123CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On July 9, 1993, the SIAI Marchetti Aircraft Co., VIA Indipendenza, 2, 21018 Sesto Calende (VA) [ITALY] made application for acrobatic category type certification of the model S211A airplane. The S211A is a two-place (tendem), all metal, mid-wing cantilevered, retractable gear, pressurized, single turbofan engine airplane with a maximum weight of 6,394 pounds intended for specialized military operations as a 14 CFR Part 23 airplane in the Acrobatic Category.

Type Certification Basis

Type certification basis of the SIAI Marchetti Model S211A airplane is as follows: Federal Aviation Regulations (14 CFR Part 23), effective February 1, 1965, through amendment 23–44, effective August 18, 1993; Special Conditions in lieu of Part 23, amendment 23–44, as stated in this document; Equivalent Level of Safety for §§ 23.562, 23.677(a), 23.777(f)(1), 23.807(b)(5), 23.841 (a) and (b)(6), 23.971 (a) and (b), 23.1182, 23.1557(d); 14 CFR Part 34, effective September 10, 1990; 14 CFR Part 36, effective December 1, 1969, through amendment effective on the date of type certification; exemptions if any; and any special conditions that may result from this notice.

Discussion

SIAI Marchetti plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with 14 CFR Part 21, § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with 14 CFR Part 11, § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by 14 CFR Part 21, § 21.17(a)(2).

Flight

Current standards in 14 CFR Part 23 did not envisage this type of airplane and the associated performance capabilities. Based upon the knowledge and experience gained during certification and operation of previous 14 CFR Part 23 acrobatic jet airplanes and other acrobatic airplanes, special conditions that include selected Joint Airworthiness Regulations (JAR) 23, Issue 1, dated March 11, 1994, are proposed instead of selected performance requirements of subpart B of part 23.

Operating Limitations and Information

Current standards in part 23 did not envisage this type of airplane and the associated performance.

To maintain a level of safety consistent with other acrobatic category and jet powered airplanes, special conditions that include selected JAR 23, Issue 1, dated March 11, 1994, are proposed instead of the flight manual requirements of subpart G of Part 23.

Conclusion

In view of the design features and operational envelope discussed for the Model S211A airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423), 49 U.S.C. 106(g); 14 CFR 21.16 ad 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the SIAI Marchetti Model S211A airplane.

1. Flight

Instead of compliance with the sections listed below contained in subpart b of part 23, the following sections apply:

SC23.45 Performance—General.

(a) The performance requirements of this subpart must be met for: Still air; and Ambient atmospheric conditions.

(b) Unless otherwise prescribed, performance data must be provided over not less than the following ranges of conditions:

(1) Airport altitude from sea level to 10,000 feet; and

(2) Temperature from standard to 30°C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions 14 CFR Part 23, §§ 23.1041 to 23.1045 is shown, if lower.

(c) Performance data must be determined with the means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 to 23.1045.

(d) The available propulsive thrust must correspond to engine thrust not exceeding the approved thrust, less:

(1) Installation losses; and

(2) The equivalent thrust absorbed by the accessories and services appropriate to the particular flight condition.

(e) The performance as affected by engine thrust must be based on a relative humidity of—

(1) 80 percent at and below standard temperature; and

(2) 34 percent at and above standard temperature plus 50°F. Between the two temperatures the relative humidity must vary linearly.

(f) Unless otherwise prescribed in determining the takeoff and landing distances, changes in the airplane's configuration, speed and thrust must be made in accordance with procedures established by the applicant for operation in service. The procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The takeoff and landing distances must be determined on a smooth dry hard-surfaced runway. The effect on these distances of operation on other types of surface (for example, grass, gravel) when dry, may be derived and these surfaces listed under SC23.1583(o).

SC23.51 Takeoff speeds.

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with the intention of lifting the airplane out of contact with the runway. V_R must not be less than V_{S1}.

(b) The speed at 50 feet must not be less than the highest of—

(1) A speed that is shown to be safe under all reasonably expected conditions, including turbulence and complete engine failure; or

(2) 1.20 V_{S1}

SC23.53 Takeoff distance.

(a) The takeoff distance must be determined in accordance with subparagraph (b), using speeds determined in accordance with SC23.51 (a) and (b).

(b) The distance required to takeoff and climb to a height of 50 feet above the takeoff surface must be determined for each weight, altitude an temperature within the operational limits established for takeoff with—

(1) Takeoff thrust;

(2) Wing flaps in the takeoff position(s); and

(3) Landing gear extended.

SC23.63 Climb: General.

(a) Compliance with the requirements of SC23.65, SC23.69, and SC23.77 must be shown:

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1045 have been demonstrated.

(b) Compliance must be shown, at weights, as a function of airport altitude and ambient temperature, within the operational limits established for takeoff and landing respectively, with—

(1) SC23.65 for takeoff; and

(2) SC23.77 for landing.

SC23.65 Climb: All engines operating.

The airplane must have a steady gradient of climb after takeoff of at least 4 percent with—

(a) Takeoff thrust;

(b) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(c) Wing flaps in the takeoff position(s); and

(d) A climb speed not less than 1.2 V_{S1}.

SC23.69 Enroute climb/descent.

(a) All engines operating.

The steady gradient and rate of climb must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Not more than maximum continuous thrust;

(2) Landing gear retracted;

(3) Wing flaps retracted; and

(4) Climb speed not less than 1.3 V_{S1}.

SC23.71 Glide (Single Engine Airplanes).

The maximum horizontal distance traveled in still air, in nautical miles per 1,000 feet of altitude lost in a glide, and the speed necessary to achieve this, must be determined with the engine inoperative and with the landing gear and wing flaps in the most favorable position available.

SC23.73 Reference landing approach speed.

The reference landing approach speed, V_{REF}, must not be less than 1.3 V_{SO}.

SC23.75 Landing distance.

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined, for standard temperatures at each weight and altitude within the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} must be maintained down to the 50-foot height and

(1) The steady approach must be at a gradient or descent not greater than 5.2 percent (3 degrees) down to the 50-foot height; and

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient, steeper than 5.2 percent, down to the 50-foot height is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, or porpoise.

(d) It must be shown that a safe transition to the balked landing conditions of SC23.77 can be made from the conditions that exist at the 50-foot height, at maximum landing weight or the maximum landing weight for latitude and temperature of SC23.63(b)(2), as appropriate.

(e) The brakes must not be used so as to cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected in service

SC23.77 Balked landing.

The steady gradient of climb must not be less than 2.5 percent with—

(a) Not more than the thrust that is available 8 seconds after initiation of movement of the thrust controls from the minimum flight idle position;

(b) The landing gear extended;

(c) The wing flaps in the landing position; and

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(d) A climb speed equal to V_{REF}, as defined in SC23.73.

2. Operating Limitations and Information

Instead of compliance with the sections listed below contained in subpart G of part 23, the following sections apply:

Airplane Flight Manual

SC23.1581 General.

(a) An FAA-Approved Airplane Flight Manual must be furnished with each airplane and it must contain the following:

(1) Information required by SC23.1583 through SC23.1589.

(2) Other information that is necessary for safe operation because of design, operating or handling characteristics.

(3) Further information necessary to comply with the relevant operating rules.

(b) Each part of the Airplane Flight Manual containing information prescribed in SC23.1583 through SC23.1589 must be approved, segregated, identified, and clearly distinguished from each unapproved part of that Airplane Flight Manual.

(c) The units used in the Airplane Flight Manual must be the same as those marked on the appropriate instruments and placards.

(d) All Airplane Flight Manual operational airspeeds must, unless otherwise stated, be presented as indicated airspeeds.

(e) Provisions must be made for stowing the Airplane Flight Manual in a suitable fixed container that is readily accessible to the pilot.

(f) Each Airplane Flight Manual must contain a means for recording the incorporation of revisions and/or amendments.

SC23.1583 Operating limitations.

The Airplane Flight Manual must contain operating limitations determined under the applicable regulations, including the following:

(a) *Airspeed limitations.*

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_O, V_{LE}, and V_{LO} and their significance.

(b) *Powerplant limitations.*

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by §§ 23.1549 through 23.1553.

(c) *Weight.*

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(1).

(4) The maximum landing weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(2).

(5) The maximum zero fuel weight, where relevant.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section:

(1) A list of approved acrobatic flight maneuvers demonstrated in the type flight tests, together with recommended entry speeds and any other associated limitations.

(2) Spin recovery procedure established to show compliance with § 23.221.

(f) *Maneuver load factor.* The positive and negative limit load factors in g's.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under § 23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been granted.

(i) *Maximum operating altitude.* The maximum altitude established under § 23.1527.

(j) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(k) Baggage cargo loading. The following information for each baggage and cargo compartment or zone:

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(l) *Systems.* Any limitations on the use of airplane systems and equipment.

(m) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(n) *Smoking.* Any restrictions on smoking in the airplane.

(o) *Types of surface.* A statement of the types of surface on which operations may be conducted must be provided.

SC23.1585 Operating procedures.

Information concerning normal, abnormal (if applicable) and emergency procedures, and other pertinent information necessary for safe operation and the achievement of the scheduled performance, must be furnished, including:

(a) An explanation of significant or unusual flight or ground handling characteristics.

(b) The maximum demonstrated values of crosswind for takeoff and landing and procedures and information pertinent to operations in crosswinds.

(c) Procedures, speeds, and configuration(s) for making a normal takeoff in accordance with SC23.51 and SC23.53 and the subsequent climb in accordance with SC23.65 and SC26.59.

(d) Procedures for abandoning a takeoff due to engine failure or other cause.

(e) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling).

(f) Procedures, speeds, and configuration(s) for making a normal approach and landing in accordance with SC23.73 and SC23.75 and a transition to the balked landing condition.

(g) Procedures for restarting the engine in flight, including the effects of altitude.

(h) The procedures, speeds and configurations for a glide following engine failure in accordance with SC23.71 and the subsequent forced landing, must be furnished.

(i) For each airplane showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(j) Information on the total quantity of usable fuel for each fuel tank and the effect on the unusable fuel quantity as a result of a failure of any pump, must be furnished.

(k) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

SC23.1587 Performance information.

Unless otherwise prescribed, the following information must be furnished over the altitude and temperature ranges required by SC23.45(b):

(a) The stalling speeds V_{SO}, and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49 and the effect on these stalling speeds of angles of bank up to 60 degrees.

(b) The takeoff distance, determined under SC23.53 and the type of runway surface for which it is valid.

(c) The steady rate and gradient of climb with all engines operating, determined under SC23.69(a).

(d) The landing distance, determined under SC23.75, and the type of runway surface for which it is valid.

(e) The effect on takeoff and landing distances of operation on other than smooth hard surfaces, when dry, determined under SC23.45(g).

(f) The effect on takeoff and landing distances or runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(g) The steady gradient of climb/descent, determined under SC23.66.

(h) The glide performance determined under SC23.71.

SC23.1589 Loading information.

The following loading information must be furnished:

(a) The weight and location of each item of equipment that can easily be removed, relocated, or replaced and that is installed when the airplane was weighed under § 23.25.

(b) Appropriate loading instructions for each possible loading condition between the maximum and minimum weights established under § 23.25, to facilitate the center of gravity remaining within the limits established under § 23.23.

Issued in Kansas City, Missouri on March 7, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6688 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 150

[Docket No. 28149]

Policy on Approval and Funding of Part 150 Program Noise Mitigation Measures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed policy; request for comment.

SUMMARY: This notice requests comments on a proposed change in the Federal Aviation Administration's (FAA) policy concerning approval and eligibility for Federal funding of certain noise mitigation measures. The proposed policy would increase the incentives for airport operators to prevent the development of new noncompatible land uses around airports and assure the most cost effective use of Federal funds spent on land use measures. The revised policy would more clearly distinguish between measures that are appropriate for application to existing noncompatible development and measures that are appropriate for application to new noncompatible development. This differentiation between the use of remedial measures for existing noncompatible development and preventive measures for new noncompatible development is necessary for the FAA to determine the appropriate approval or disapproval of actions on proposed land use measures in an airport's noise compatibility program.

DATES: Comments must be received on or before April 19, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to the Federal Aviation Administration (FAA), Office of Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 28149, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m., weekdays, except Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28149." The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, FAA, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3553, facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Background

The Airport Noise Compatibility Planning Program (14 CFR part 150, hereinafter referred to as part 150 or the part 150 program) was established under the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 47501 through 47509, hereinafter referred to as ASNA). The part 150 program allows airport operators to submit noise exposure maps and a noise compatibility program to the FAA voluntarily. According to the ASNA, a noise compatibility program sets forth the measures that an airport operator has taken or has proposed for the reduction of existing noncompatible land uses and the prevention of additional noncompatible land uses within the area covered by noise exposure maps.

The ASNA embodies strong concepts of local initiative and flexibility. The submission of noise exposure maps and a noise compatibility program is left to the discretion of local airport operators. Airport operators may also choose to submit noise exposure maps without preparing and submitting a noise compatibility program. The types of measures that airport operators may include in a noise compatibility program are not limited by the ASNA, allowing airport operators substantial latitude to submit a broad array of measures—including innovative measures—that respond to local needs and circumstances.

The criteria for approval or disapproval of measures submitted in a part 150 program are set forth in the ASNA. The ASNA directs the Federal approval of a noise compatibility program, except for measures relating to flight procedures: (1) If the program measures do not create an undue burden on interstate or foreign commerce; (2) if the program measures are reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and (3) if the program provides for its revision if necessitated by the submission of a revised noise exposure map. Failure to approve or disapprove a noise compatibility program within 180 days, except for measures relating to flight procedures, is deemed to be an approval under the ASNA. Finally, the ASNA sets forth broad eligibility criteria, consistent with the ASNA's overall deference to local initiative and flexibility. The FAA is authorized, but not obligated, to fund projects via the Airport Improvement Program (AIP) to carry out measures in a noise compatibility program that are not disapproved by the FAA.

In establishing this new program, which became embodied in FAR part 150, the ASNA did not change the legal authority of state and local governments to control the uses of land within their jurisdictions. Public controls on the use of land are commonly exercised by zoning. Zoning is a power reserved to the states under the U.S. Constitution. It is an exercise of the police powers of the states that designates the uses permitted on each parcel of land. This power is usually delegated in state enabling legislation to local levels of government. Neither the FAA nor any other agency of the Federal government has zoning authority.

Many local land use control authorities (cities, counties, etc.) have not adopted zoning ordinances or other controls to prevent noncompatible development (primarily residential) within the noise impact areas of airports. An airport's noise impact area, identified within noise contours on a noise exposure map, may extend over a number of different local jurisdictions that individually control land uses. For example, at five airports recently studied, noise contours overlaid portions of from two to twenty-five different jurisdictions.

While airport operators have included measures in noise compatibility programs submitted under part 150 to prevent the development of new noncompatible land uses through zoning and other controls under the authorities of appropriate local jurisdictions, success in implementing these measures has been mixed. A study performed under contract to the FAA, completed in January 1994, evaluated sixteen airport case studies for the implementation of land use control measures. This study found that of the sixteen airports, six locations have implemented the recommended zoning measures, seven locations have not implemented the recommended zoning measures, and three are in the process of implementation.

Another recent independent study evaluated ten airports that have FAA approved part 150 programs in place and found that four locations have

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prevented new noncompatible land use development and six locations have not prevented such new development. At the latter six locations the study reported that twenty-six nonairport sponsor jurisdictions have approved new noncompatible development and twenty-eight nonairport sponsor jurisdictions and one airport sponsor jurisdiction have vacant land that is zoned to allow future noncompatible development.

The independent study identified the primary problem of allowing new noncompatible land uses near airports to be in jurisdictions that are different from the airport sponsor's jurisdiction. This is consistent with observations by the FAA and with a previous General Accounting Office (GAO) report that observed that the ability of airport operators to solve their noise problems is limited by their lack of control over the land surrounding the airports and the operator's dependence on local communities and states to cooperate in implementing land use control measures, such as zoning for compatible uses.

The FAA's January 1994 study explored factors that contribute to the failure to implement land use controls for noise purposes. A major factor is the multiplicity of jurisdictions with land use powers within airport noise impact areas. The greater the number of different jurisdictions, the greater the probability that at least some of them will not implement controls. Some jurisdictions have not developed cooperative relationships with the airport operator, which impedes appropriate land use compatibility planning. Some jurisdictions are not aware of the effects of aircraft noise and of the desirability of land use controls. This appears to be caused by a lack of ongoing education and communication between the airport and the jurisdictions, and to be worsened by lack of continuity in local government.

Some jurisdictions do not perceive land use controls as a priority because the amount of vacant land available for noncompatible development within the airport noise impact area is small, perhaps constituting only minor development on dispersed vacant lots, or because the current demand for residential construction near the airport is low to nonexistent. In such areas land use control change are not considered to have the ability to substantially change the number of residents affected by noise. Jurisdictions may also give noise a low priority compared to the economic advantages of developing more residential land or the need for additional housing stock within a community. A zoning change from residential to industrial or commercial may not make economic sense if little demand exists for this type of development opportunity. Therefore, a zoning change is viewed as limiting development opportunities and diminishing the opportunities for tax revenues.

In some cases, compatible land use zoning has met with organized public opposition by property owners arguing that the proposed zoning is a threat to private property rights, and that they deserve monetary compensation for any potential property devaluation. Further, basic zoning doctrine demands that the individual land parcels be left with viable economic value, i.e., be zoned for a use for which there is reasonable demand and economic return. Otherwise, the courts may determine a zoning change for compatibility to be a "taking" of private property for public use under the Fifth Amendment to the U.S. Constitution, requiring just compensation.

One or more of the factors hindering effective land use controls may be of sufficient importance to preclude some jurisdictions from following through on the land use recommendations of an airport's part 150 noise compatibility program. When either an airport sponsor's or a nonairport sponsor's jurisdiction allows additional noncompatible development within the airport's noise impact area, it can result in noise problems for the people who move into the area. This can, in turn, result in noise problems for the airport's operator in the form of inverse condemnation or noise nuisance lawsuits, public opposition to the expansion of the airport's capacity, and local political pressure for airport operational and capacity limitations to reduce noise. Some airport operators have taken the position that they will not provide any financial assistance to mitigate aviation noise for new noncompatible development. Other airport operators have determined that it is a practical necessity for them to include at least some new residential areas within their noise assistance program to mitigate noise impacts that they were unable to prevent in the first place—particularly if they have airport expansion plans. Over a relatively short period of time, the distinctions blur between what is "new" and what is "existing" residential development with respect to airport noise issues.

Airport operators currently have the local discretion to include new noncompatible land uses, as well as existing noncompatible land uses, within their part 150 noise compatibility programs and to recommend that remedial land use measures—usually either land acquisition or noise insulation—be applied to both situations. These recommendations have been considered to be approvable by the FAA under part 150. The part 150 approval enables noise mitigation measures to be eligible for Federal funding, although it does not guarantee that Federal funds will be provided.

Proposed Change in Policy

At issue is whether the FAA should revise its part 150 approval policy and its AIP noise set aside funding policy so as to approve and fund only preventative noise mitigation measures for new noncompatible land use development. The FAA's goal is to have a policy in place that provides airport operators with the maximum possible incentive available under the ASNA and the part 150 program, and the FAA with the maximum possible leverage to prevent the introduction of additional noncompatible development within an airport's noise contours. The FAA also seeks to make the most cost-effective use of limited Federal dollars that have been set aside for projects to implement part 150 programs. It is the FAA's intent to revise its policy within the parameters of the ASNA, but future legislative initiatives should not be ruled out.

Discussion

The continuing development of noncompatible land uses around airports is not a new problem. The FAA, airport operators, and the aviation community as a whole have for some years expended a great deal of effort to deal with the noise problems that are precipitated by such development.

With respect to the part 150 program and Airport Improvement Program (AIP) noise grants, the FAA considered in the 1989–1990 time frame whether to disallow federal assistance for new noncompatible development. The choice posed at that time was either (1) allow Federal funding for airport operator recommendations in part 150 programs that included new noncompatible land uses within the parameters of land use measures targeted for financial assistance from the airport (e.g., acquisition, noise insulation), or (2) disallow all Federal funding for new noncompatible development that local jurisdictions fail to control through zoning or other land use controls. No other alternatives were considered.

The FAA selected the first option—to continue to allow Federal funds to be used to mitigate new noncompatible development as well as existing noncompatible development if the airport operator so chose. Several factors supported this decision. One factor was lack of authority by airport operators to prevent new noncompatible development in nonairport sponsor jurisdictions, although airport sponsors bear the brunt of noise lawsuits. Intense local opposition to an airport can be detrimental to its capacity, especially if any expansion of airport facilities is needed. The FAA also considered the plight of local citizens living with a noise impact that they may not have fully understood at the time of home purchase. Land use noise mitigation measures, funded by the airport either with or without Federal assistance, may be the only practical tool an airport operator has to mitigate noise impacts in a community. The FAA was hesitant to deny airport operators and the affected public Federal help in this regard. In addition, the FAA gave deference to the local initiative, the flexibility, and the broad eligibility for project funding under the ASNA.

Since this review in 1989–1990, the FAA has given extensive additional consideration to the subject of noncompatible land uses around airports. In 1993, the FAA established a study group on Compatible Land Use to assist in the development of a national strategy to prevent and reduce noncompatible land uses. Pending review of recommendations from this study group on future initiatives that may require legislation, the FAA is considering whether immediate modest changes in part 150 policy and funding, within the parameters of existing legislation, would be an appropriate interim step. The proposal presented here involves a more measured and multi-faceted approach than the proposal considered in 1989–1990.

A primary criterion in the ASNA for the FAA's approval of measures in an airport's part 150 noise compatibility program is that the measures must be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Until now, the FAA has applied this criterion as a whole when issuing determinations under part 150; that is, if a measure either reduces or prevents noncompatible development, no matter when that development occurs, it may be approved as being reasonably consistent. No distinction has been made by the FAA between remedial land use measures that reduce noncompatible development and preventive land use measures that prevent noncompatible development. Airport operators may, therefore, recommend and receive FAA approval under part 150 for remedial acquisition or soundproofing of new residential development.

The FAA is now considering whether it would be more prudent to distinguish between (1) Land use measures that are reasonably consistent with the goal of reducing existing noncompatible land uses (i.e., remedial measures) and (2) land use measures that are reasonably consistent with the goal of preventing the introduction of additional noncompatible land uses (i.e., preventive measures). Using such a distinction, airport operators would need to clearly identify within the area covered by noise exposure maps the location of existing noncompatible land uses versus the location of potentially new noncompatible land uses. Many airport operators currently record this distinction in their noise exposure map submissions, when identifying noncompatible land uses. Potentially new noncompatible land uses could include (1) areas currently undergoing residential or other noncompatible construction; (2) areas zoned for residential or other noncompatible development where construction has not begun; and (3) areas currently compatible but in danger of being developed noncompatibly within the time frame covered by the airport's noise compatibility program.

The purpose of distinguishing between existing and potential new noncompatible development is for airport operators to restrict their consideration of remedial land use measures to existing noncompatible development and to focus preventive land use measures on potentially new noncompatible development. The most commonly used remedial land use measures are land acquisition and relocation, noise insulation, easement acquisition, purchase assurance, and transaction assistance. The most commonly used preventive land use measure are comprehensive planning, zoning, subdivision regulations, easement acquisition restricting noncompatible development, revised building codes for noise insulation, and real estate disclosure. Acquisition of vacant land may also be a preventive land use measure. Often, combinations of these measures are applied to assure the maximum compatibility.

In a revised FAA policy, airport operators would not be limited to applying the most commonly used land use measures in their noise compatibility programs. Local flexibility to recommend other measures, including innovative measures, under part 150 would be retained. However, all land use measures applied to existing noncompatible development must clearly be remedial and serve the goal of reducing existing noncompatible land uses. Similarly, all land use measures applied to potential new noncompatible development must clearly be preventive and serve the goal of preventing the introduction of additional noncompatible land uses.

Any FAA determinations issued under part 150 would be consistent under this policy. The FAA's approval of remedial land use measures would be limited to existing noncompatible development. The FAA's approval of preventive land use measures would be applied to potential new noncompatible development. The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. For example, minor development on vacant lots within an existing residential neighborhood, which clearly is not extensive new noncompatible development, may for practical purposes need to be treated with the same remedial measure applied to the rest of the neighborhood. Another example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators would be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.

Federal funding of noise projects through the noise set aside of the Airport Improvement Program (AIP) would follow the same policy as the FAA's part 150 determinations—remedial funding for existing noncompatible development and preventive funding for potential new noncompatible development. The FAA would apply the same policy to those few types of noise projects, such as soundproofing of schools and health care facilities, that are eligible for AIP funds under the noise set aside without an approved part 150 program.

The impact of revising the FAA's policy on part 150 land use determinations and AIP funding would be to preclude the use of the part 150 program and AIP funds to remediate new noncompatible development within the noise contours of an airport after the effective date of such a policy revision. By precluding this option while at the same time emphasizing the array of preventive land use measures

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that may be applied to potential new noncompatible development, the FAA seeks to focus airport operators and local governments more clearly on using these Federal programs to the maximum extent to prevent noncompatible development around airports, rather than attempting to mitigate noise in such development after the fact. The FAA has determined that such a policy will better serve the public interest. Unlike the FAA's previous consideration of this issue in 1989–1990, Federal funding would be available to assist airport operators in dealing with new noncompatible development that is not being successfully controlled by local jurisdictions, so long as the airport's methods prevent the noncompatible development rather than mitigating it after development has occurred. This should be a more cost effective use of limited Federal dollars since remedial land use measures generally cost more for a given unit than preventive measure.

In selecting a date to implement this policy revision, the FAA must balance a desire to implement a perceived beneficial program change as rapidly as possible with practical transition considerations of ongoing part 150 programs. One approach would be to implement it on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150.

This approach would have the advantage of directly tying this policy to a point in time for which an airport operator has defined, in a public process, the size of the airport's noise impact area and has consulted with local jurisdictions on measures to reduce and prevent noncompatible land uses. There are, however, disadvantages to this approach. Approximately 200 airports have participated in the part 150 program, beginning in the early 1980's. Thus, selecting either the noise exposure map's acceptance date or the noise compatibility program's approval date for these airports, which includes the great majority of commercial service airports with noise problems, means either applying this policy revision retroactively or applying it prospectively at some future date as such airports update their maps and programs.

Retroactive application has been suggested, which could present serious legal issues. There is also an equity issue in applying new policy retroactively, especially in view of the FAA's reaffirmation of the 1989–1990 policy. This alternative would require the FAA and airport operators to review previous part 150 maps and programs, historically reconstructing which land use development was "existing" at that time and which development is "new" since then, to potentially withdraw previous FAA part 150 determinations approving remedial measures for "new" development, and not issue new AIP grants for any "new" development (which by 1995 may have already been built and in place for a number of years and be regarded locally as an integral part of the airport's mitigation program for existing development). There is the further practical consideration of benefits to be achieved. It may now be too late to apply preventive land use measures to noncompatible land uses that have been developed since an airport's noise exposure maps have been accepted or noise compatibility program has been approved. If remedial land use measures are now determined not to be applicable to such areas, the areas would be left in limbo, having had no advance warning of a Federal policy revision.

There are also disadvantages to applying this policy revision prospectively on an airport-by-airport basis as an airport either updates a previous part 150 program or completes a first-time part 150 submission. The major disadvantages would be in the timeliness of implementing the policy revision and the universality of its coverage. Since part 150 is a voluntary program, airport operators may select their timing of entry into the program and the timing of updates to previous noise exposure maps and noise compatibility programs. The result would be a patchwork implementation, with some airports operating under the new policy regarding part 150 land use measures and funding and other airports operating under the old policy for an unspecified number of years. An unintended and counterproductive side effect could be the postponement by some airports of updated noise exposure maps and noise compatibility programs in order to maintain Federal funding eligibility under the previous policy.

A better option appears to be to select one prospective date nationwide as the effective date for this policy revision rather than to implement it based on an individual airport's part 150 activities, either maps or program. A specific date would insure nationwide application on a uniform basis and would provide a more timely implementation than prospective airport-by-airport implementation dates. A specific date would also eliminate any perceived advantages in postponing new or updated part 150 programs. The selection of a specific date could either be (1) the date of issuance of a final policy revision following evaluation of comments received on this proposal or (2) a date, 180 days to a year after publication of the revised policy, allowing some amount of transition time for airport operators to accommodate previously approved part 150 programs, recent part 150 submissions, or those programs or submissions under development.

While the date of issuance of a policy revision has the advantage of timeliness, this may be outweighed by the disadvantage of too abrupt a transition from one policy to another without giving airport operators and local communities a chance to react. The FAA currently anticipates implementing a transition period from the date of issuance of a policy revision of at least 180 days to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and undergoing statutory review. Provision for this period plus an additional margin of time beyond 180 days would allow airport operators adequate opportunity to amend previously completed noise compatibility programs or programs currently underway, in consultation with local jurisdictions, to make the appropriate adjustments in remedial and preventive land use measures in the programs. The revision of land use strategies submitted in a part 150 program cannot be accomplished overnight. Accordingly, the FAA is seeking comment on how long to extend a transition period beyond the 180 days noted—to a possible maximum of an additional 180 days, or 12 months from the date of issuance of the policy revision. Any time frame implemented will be established only after the careful consideration of public comments on this proposal.

The potential future expenditure of AIP funds for projects to remediate new noncompatible development during a transition period is believed to be minimal, based upon the FAA's review of the sample of airports included in the FAA's recent study and in an independent study, as well as general program knowledge. Not all airports have a problem of continuing uncontrolled noncompatible development. Among those that do have a problem, not all of them offer to provide remedial financial assistance for the new development, as shown in their part 150 submissions. Even in those cases where financial assistance for remediation is recommended for new noncompatible development, it is generally limited in scope and identified as a lower priority than funding remediation for existing noncompatible development. Further, funding for such new noncompatible development may only be anticipated in the latter years of an airport's part 150 program when it may not be needed because of shrinking noise contours resulting from the national transition to the use of Stage 3 aircraft.

Since part 150 is a voluntary program, each airport operator has the discretion to make its own determinations regarding the impact of a revised policy on its noise compatibility program. If an impact is found, each operator could determine whether to immediately amend its program during the allowed transition period or to wait until the program is otherwise updated. However, any remedial land use measures for noncompatible development that are allowed to occur within the area of an airport's noise exposure maps after the effective date of a revised policy would not be approved under part 150 and would have to be funded locally, since they would no longer be eligible for AIP assistance from the noise set aside.

Accordingly beginning (not more than 12 months from the date of issuance of a revised policy), the FAA will approve under part 150 only remedial land use measures for existing noncompatible development and only preventive land use measures in areas of potential new noncompatible development. As of the same date, criteria for determining AIP eligibility under the noise set aside that are consistent with this policy will be applied by the FAA. Specifically, no remedial land use measures for new noncompatible development that occur after the effective date of the revised policy be eligible for AIP funding under the noise set aside, regardless of previous FAA determinations under part 150, the status of an individual airport's part 150 program, or whether the project is eligible for AIP funding under the noise set aside without a part 150 program.

Alternatives to the Proposed Policy

Depending on the comments received in response to this proposal, the FAA will consider several alternatives to the proposed policy revision, as listed below. All comments received on these alternatives, as well as other suggestions, will be considered prior to the adoption of any policy revision. Comments should focus on the extent to which an alternative would assist in preventing the development of new noncompatible land uses around airports and in assuring cost effective use of Federal funds spent on land use measures for noise purposes.

1. Retain the present policy of approving and funding under part 150 remedial land use measures without regard to the date the noncompatible development occurs.

2. Retain the present policy of approving and funding under part 150 remedial land use measures for those areas not under the control of either the airport of the airport's sponsor and for which the airport operator has taken earnest but unsuccessful steps to persuade the controlling jurisdiction to prevent the addition of new noncompatible development. New noncompatible development in areas under the land use control jurisdiction of either the airport or the airport operator would not be approved under part 150 nor be eligible for funding under the AIP.

3. Retain the present policy only with respect to noncompatible land uses that will remain within the DNL 65 dB contour after the transition to an all Stage 3 fleet.

4. Retain the present policy with respect to part 150 approval, but eliminate Federal funding eligibility for remedial measures for new noncompatible development.

5. Implement the proposed policy on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150. Includes consideration of whether implementation should be retroactive or prospective.

Issued in Washington, DC on March 14, 1995.

Paul R. Dykeman,

Acting Director of Environment and Energy.

[FR Doc. 95–6754 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AB68

Country of Origin Marking Requirements for Watches

AGENCY: Customs Service, Department of Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of a proposal to amend the Customs Regulations to prescribe specific rules regarding the country of origin marking of watches to ensure that the marking is conspicuous and legible. The purpose of this document is to assist in determining whether a rulemaking is needed to ensure a uniform standard for conspicuous and legible country of origin marking for watches, and if needed, the contents of that rulemaking.

DATES: Comments must be received on or before May 4, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Ave., NW., Washington, DC. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Under § 134.41(b), Customs Regulations (19 CFR 134.41(b)), a country of origin marking is considered conspicuous if the ultimate purchaser in the United States is able to find the marking easily and read it without strain.

It has come to the attention of the Customs Service that over the years watches have been imported into the United States with very tiny country of origin markings. Usually these markings are in very small letters on the bottom of the dial (face) of the watch. Generally, these markings are exceptionally difficult to find and read. In fact, the country of origin markings on many watches are so tiny that a magnifying glass is needed in order to read them. Country of origin markings on watches which are so difficult to find and read

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are not conspicuous or legible and are not acceptable country of origin marking under 19 U.S.C. 1304. Customs is reviewing its policy to ensure that the country of origin marking on watches is legible and conspicuous.

On March 10, 1993, Customs published a general notice in the Customs Bulletin and Decisions (27 Cust. Bull. Vol. 10, p. 31) indicating that Customs did not intend to permit the continued importation of watches into the United States unless they were conspicuously and legibly marked with their country of origin. The document further indicated that Customs was proposing stricter enforcement of conspicuous country of origin marking requirements for watches. Customs requested comments on proposed stricter enforcement and when the stricter enforcement should go into effect. On May 5, 1993, Customs extended the comment period in a document published in the Customs Bulletin and Decisions (27 Cust. Bull. Vol. 18, p. 13). The comment period closed on June 9, 1993. While Customs has concluded that there should be stricter enforcement of what is legible and conspicuous regarding the country of origin marking requirements for watches on a case-by-case basis, Customs is now considering an amendment to the Customs Regulations incorporating such standards in order to ensure a uniform standard for conspicuous and legible country of origin marking for watches.

Factors Which May Be the Subject of a Notice of Proposed Rulemaking in Connection With Specific Country of Origin Marking of Watches

The Customs Service is considering issuing a notice of proposed rulemaking to amend the Customs Regulations to prescribe specific rules regarding the country of origin marking of watches. It is noted that the special marking requirements of U.S. Note 4, chapter 91, Harmonized Tariff Schedules of the United States (HTSUS), that are applicable to watches are not the subject of this advance notice of proposed rulemaking. Among the factors which may be the subject of the proposed rules are the size of the marking, the location of the marking, whether the marking stands out, and the legibility of the marking.

Size and Legibility of Marking

Generally, in determining whether a watch is marked properly, Customs considers, on a case-by-case basis, whether the marking is legible and conspicuous. Customs believes that a marking on a watch which has a type size of 3 points is acceptable. (A point is a unit of measurement approximately equal to 0.01384 inches or nearly 1/72 inch and all type sizes are multiples of this unit.) Whether the marking stands out is dependent on where it appears in relationship to the other print on the watch and whether it is in contrasting letters to the background. The legibility of the marking is determined by the clarity of the letters and whether the ultimate purchaser is able to read the letters of the marking without strain. Whether a particular marking meets the conspicuous requirement of 19 CFR 134.41 and 19 U.S.C 1304 will depend on a combination of these factors.

Location and Method of Marking

The marking should be in a location where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a casual inspection. Although traditionally the country of origin marking has appeared on the dial (face) of a watch, there is no requirement that the marking appear in that location.

The marking may also appear on the back of the watch case, unless the watch is or will be packaged for retail sale in a manner which would prevent the ultimate purchaser from seeing the marking before buying the watch.

In addition, the country of origin marking can be done through a variety of different methods such as die stamping, etching, engraving, or by using a sticker or hang tag. Any method of marking is sufficient as long as it is permanent enough to ensure that the marking will stay on the watch through normal handling until it reaches the ultimate purchaser. No matter where the marking appears or what method of marking is used, the marking must be large enough and sufficiently clear so that the ultimate purchaser of the watch can easily find it and read it with the unaided eye.

Whether a Notice of Proposed Rulemaking With Regard to Specific Country of Origin Marking of Watches Should Be Issued: Specific Issues for Consideration

Customs is requesting interested parties to submit comments regarding specific standards which would ensure that the country of origin marking on watches is legible, conspicuous, and permanent. Relevant comments were received in response to the general notice published in the Customs Bulletin and Decisions (27 Cust. Bull., Vol. 10, p. 31.) However, in addition to comments regarding the nature of specific standards, interested parties are also invited to comment on the following issues before Customs decides whether to propose rulemaking on this matter:

(1) Is there a need for Customs to initiate a proposed rulemaking regarding country of origin marking of watches or should questions of whether watches are marked properly continue to be determined on a case-by-case basis?

(2) Whether there are current abuses in the country of origin marking of imported watches.

(3) Whether Customs should prescribe, by regulation, certain type size and style specifications for the country of origin marking of watches. If so, whether the regulations should specify one type size for all watches, or different type sizes depending upon the size of the watch. If one type size is prescribed for all watches, what type size should be recommended and why?

(4) Whether consumer behaviors and attitudes toward country of origin marking of watches can be documented with studies or surveys. If so, how much time would be needed for a study or survey to be conducted and for the data to be analyzed?

(5) If Customs goes forward with a notice of proposed rulemaking, what should be a sufficient period of time for public comment?

(6) If Customs issues a notice of proposed rulemaking, should a public hearing be held in connection with such proposed rulemaking?

(7) If Customs proposes and adopts new country of origin marking regulations, what would be an appropriate time frame between the publication of the final rule and the effective date of such regulations?

(8) What other issues should be addressed in the proposed rulemaking in order to afford a full opportunity for public comment?

Comments

In order to assist Customs in determining whether to proceed with a notice of proposed rulemaking to prescribe rules regarding the country of origin marking for watches, and the appropriate type size and style specifications for such marking, this notice invites written comments on the issues raised in this document as well as any other issues in connection with this matter. Comments which were previously submitted in response to the general notice published in the Customs Bulletin and Decisions need not be resubmitted, as they will be fully considered in any final determination in this matter.

Comments submitted will be available for public inspection in accordance with

the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1099 14th Street, NW., Suite 4000, Washington, DC.

Approved: February 24, 1995

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–6760 Filed 3–17–95; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Chapter IX

[Docket No. N–95–3858; FR–3647–N–03]

RIN 2577–AB44

Vacancy Rule: Notice of Second and Third Meeting of Negotiated Rulemaking Advisory Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of meetings.

SUMMARY: The Department has established a Negotiated Rulemaking Advisory Committee to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units. The Committee met for the first time on March 7–9, 1995, in Washington, D.C. This notice announces the time and place of the second and third Committee meetings, which will be open to the public.

DATES: The second meeting of the Committee will take place April 4–5, 1995, and the third meeting will take place on May 2–3, 1995. On April 4, 1995, the meeting will start at 9:00 a.m. and run until completion; on April 5, 1995, the meeting will start at 9:00 a.m. and run until approximately 5:00 p.m. On May 2, 1995, the meeting will start at 9:00 a.m. and run until completion; on May 3, 1995, the meeting will start at 9:00 a.m. and run until approximately 5:00 p.m.

ADDRESSES: The second and third meetings of the Committee will be held at the Channel Inn Hotel; 650 Water Street, Southwest; Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Director, Financial Management Division, Public and Indian Housing, Room 4212, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872, or (202) 708–0850 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1995, HUD published a notice of establishment of a Negotiated Rulemaking Advisory Committee to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units (60 FR 10339) ("February 24 notice"). The February 24 notice also announced the first meeting of this committee, which was held on March 7–9, 1995, in Washington, D.C.

The members of the Committee are as follows:

Housing Agencies

- Housing Authority of the City of Houston, TX.
- Cuyahoga Metropolitan Housing Authority, Cleveland, OH.
- Birmingham, AL Housing Authority.
- New York City, NY Housing Authority.
- Newark, NJ Housing Authority.
- Reno, NV Housing Authority.
- Littleton, CO Housing Authority.
- Housing Authority of the City of South Bend, IN.

Tenant Organizations and Public Interest Groups

- Bromley Heath Tenant Management Corporation, Jamaica Plains, MA.
- New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ.
- Housing and Development Law Institute, Washington, DC.
- Illinois Association of Housing Authorities.

Federal Government

- U.S. Department of Housing and Urban Development.

The next two series of meetings of the Committee have been scheduled for April 4–5 and May 2–3, 1995 (see information under the headings **DATES** and **ADDRESSES** at the beginning of this notice). The meetings are open to the public, with limited seating available on a first-come, first-served basis.

Authority: 42 U.S.C. 1437g, 3535(d).

Dated: March 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6716 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will have meetings on the dates and at the times shown below:

Wednesday, April 12, 1995—9:30 a.m. to 5:00 p.m.
Thursday, April 13, 1995—8:00 a.m. to 5:00 p.m.
Tuesday, May 9, 1995—9:30 a.m. to 5:00 p.m.
Wednesday, May 10, 1995—8:00 a.m. to 5:00 p.m.
Wednesday, June 14, 1995—9:30 a.m. to 5:00 p.m.
Thursday, June 15, 1995—8:00 a.m. to 5:00 p.m.

ADDRESSES: These meetings will be held in the auditorium of Building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165,

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MS–3100, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: March 14, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–6786 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH73–1–6809, OH74–1–6810, OH75–1–6811; FRL–5174–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The USEPA is reopening the comment period for a proposed rule published on January 17, 1995 (60 FR 3361). On January 17, 1995, USEPA proposed to approve exemptions from the nitrogen oxides (NO_x) requirements as provided for in Section 182(f) of the Clean Air Act (Act) for the following ozone nonattainment areas in Ohio: Canton (Stark County); Cincinnati (Hamilton, Butler, Warren, and Clermont Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); Columbus (Delaware, Franklin, and Licking Counties); Youngstown (Mahoning and Trumbull Counties); Steubenville (Jefferson and Columbiana Counties); Preble County; and Clinton County.

The USEPA is reopening the comment period for this action to honor a request from the Ohio Sierra Club. The original request was for an extension of the public comment period by 90 days. The USEPA believes that additional time may be necessary to develop comments, but feels that an extension of 90 days, at this time, is not appropriate since a total of two adverse comments were received (and one supporting); and that no additional adverse comments are expected to be submitted by other entities. Therefore, USEPA is extending the original comment period by 45 days (until April 2, 1995).

DATES: Written comments on this action must be received by April 2, 1995.

ADDRESSES: Written comments must be submitted to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5089.

Authority: 42 U.S.C. 7401–7601q.

Dated: March 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–6768 Filed 3–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7131]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the Office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix	February 1, 1995, February 8, 1995, *Phoenix Gazette.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Eleventh Floor, Phoenix, Arizona 85003.	January 24, 1995.	040051
California: Solano	City of Fairfield	January 4, 1995, January 11, 1995, *Daily Republic.*	The Honorable Chuck Hammond, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, California 94533–4883.	December 5, 1994.	060370
California: Sacramento	City of Folsom	January 4, 1995, January 11, 1995, *Folsom Telegraph.*	The Honorable Bob Holderness, Mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	November 18, 1994.	060263
California: Ventura	City of Moorpark	January 20, 1995, January 27, 1995, *Star Free Press.*	The Honorable Paul W. Lawrason, Mayor, City of Moorpark, 799 Moorpark Avenue, Moorpark, California 93021.	December 28, 1994.	060712
California: Solano	Unincorporated areas	January 4, 1995, January 11, 1995, *Daily Republic.*	The Honorable William Carroll, Chairman, Solano County Board of Supervisors, 580 Texas Street, Fairfield, California 94533–6378.	December 5, 1994.	060631
California: Ventura	Unincorporated areas	January 20, 1995, January 27, 1995, *Star Free Press.*	The Honorable Susan K. Lacey, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	December 28, 1994.	060413
Colorado: La Plata	Unincorporated areas	January 6, 1995, January 13, 1995, *Durango Herald.*	The Honorable Frank Joswick, Chairperson, La Plata County Board of Commissioners, 1060 East Second Avenue, Durango, Colorado 81301.	November 29, 1994.	080097
Missouri: Pemiscot	City of Hayti Heights	January 26, 1995, February 2, 1995, *Democrat Argus.*	The Honorable David R. Humes, Mayor, City of Hayti Heights, P.O. Box 426, Hayti, Missouri 63851.	January 6, 1995.	290277
Nebraska: Lancaster	City of Lincoln	January 18, 1995, January 25, 1995, *Lincoln Journal-Star.*	The Honorable Mike Johanns, Mayor, City of Lincoln, 555 South Tenth Street, Lincoln, Nebraska 68508.	December 29, 1994.	315273
Nebraska: Lancaster	City of Lincoln	January 19, 1995, January 26, 1995, *Lincoln Journal-Star.*	The Honorable Mike Johanns, Mayor, City of Lincoln, 555 South Tenth Street, Lincoln, Nebraska 68508.	December 30, 1994.	315273
Nebraska: Cheyenne	City of Sidney	February 16, 1995, February 23, 1995, *Sidney Telegraph.*	The Honorable E.C. Petroff, Mayor, City of Sidney, P.O. Box 79, Sidney, Nebraska 69162.	January 24, 1995.	310039
Texas: Dallas	City of Carrollton	January 5, 1995, January 12, 1995, *Metrocrest News.*	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	December 13, 1994.	480167

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Tarrant	City of Colleyville	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram.*	The Honorable Cheryl Seigel, Mayor, City of Colleyville, P.O. Box 165, Colleyville, Texas 76034.	December 13, 1994.	480590
Texas: Dallas and Denton.	City of Coppell	February 17, 1995, February 24, 1995, *Citizen Advocate.*	The Honorable Tom Morton, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.	January 25, 1995.	480170
Texas: Dallas, Denton, Collin, Rockwall, and Kaufman.	City of Dallas	January 13, 1995, January 20, 1995, *Daily Commercial Record.*	The Honorable Steve Bartlett, Mayor, City of Dallas, City Hall, 1500 Madrilla Street, Room 5E North, Dallas, Texas 75201.	December 15, 1994.	480171
Texas: El Paso	City of El Paso	January 3, 1995, January 10, 1995, *El Paso Times.*	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	December 12, 1994.	480214
Texas: Tarrant	City of Grapevine	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram.*	The Honorable William D. Tate, Mayor, City of Grapevine, 413 South Main Street, Grapevine, Texas 76051.	December 13, 1994.	480598
Texas: Collin	City of Plano	January 4, 1995, January 11, 1995, *Dallas Morning News.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	November 29,1994.	480140
Utah: Salt Lake	City of Murray	February 23, 1995, March 2, 1995, *Murray Eagle.*	The Honorable Lynn Pett, Mayor, City of Murray, 5025 South State Street, Murray, Utah 84107.	January 26, 1995.	490103

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 13, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95-6765 Filed 3-17-95; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-7132]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 29(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 276.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Denver (City) Denver City.	Sand Creek	Just downstream of Interstate Highway 70.	*5,236	*5,236
			Approximately 0.5 mile upstream of Interstate Highway 70.	*5,246	*5,252
			Approximately 500 feet upstream of Smith Road.	*5,261	*5,264
			Approximately 500 feet downstream of Havana Street.	*5,282	*5,284
			Approximately 4,000 feet upstream of Havana Street.	*5,298	*5,298

Maps are available for inspection at the City of Denver, Department of Public Works, Wastewater Management Division, 2000 West Third Avenue, Denver, Colorado.

Send comments to The Honorable Wellington Webb, Mayor, City of Denver, 1437 Bannock Street, Room 350, Denver, Colorado 80202.

Louisiana	Colfax (Town) Grant Parish.	Sugarhouse Bayou	At downstream corporate limits, approximately 2,200 feet downstream of State Highway 8.	*95	*92
			At north corporate limits, approximately 2,200 feet upstream of Fraenzie Road.	*95	*93

Maps are available for inspection at Town Hall, Town of Colfax, 1208 Main Street, Colfax, Louisiana.

Send comments to The Honorable Constance Youngblood, Mayor, Town of Colfax, 1208 Main Street, Colfax, Louisiana 71417.

	Grant Parish (Unicorporated Areas).	Bayou Rigolette	At confluence with Walden Bayou	None	*87
			Approximately 3,800 feet upstream of Parish Road 118.	None	*88
			Approximately 900 feet upstream of State Highway 492.	None	*89
			Approximately 1,800 feet upstream of U.S. Highway 71.	None	*90
			Just upstream of State Highway 3169	None	*92
		Sugarhouse Bayou	Approximately 4,600 feet upstream of confluence with Bayou Rigolette.	None	*92
			At confluence of Valentine Bayou	None	*93
		Bayou Grappe	Approximately 3,500 feet downstream of Richardson Road.	None	*93
			Just upstream of Richardson Road	None	*94
			Just upstream of U.S. Highway 71	None	*96
			At confluence of Corfeine Bayou	None	*97
		Corfeine Bayou	Just downstream of U.S. Highway 71	None	*97
		Flagon Bayou	At Grant Parish-Rapides Parish line, approximately 9,300 feet downstream of Flagon Creek Road.	None	*151
			Just downstream of Flagon Creek Road	None	*159
			Just upstream of Airpark Road	None	*175
			Just upstream of Airpark Road at State Highway 8.	None	*201
		Clear Creek	Approximately 17,600 feet upstream of confluence with Little River.	None	*61
			Approximately 1,000 feet downstream of Walker Ferry Road.	None	*85
			Just downstream of Clear Creek Road	None	*108
			Just downstream of U.S. Highway 165	None	*160

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at Grant Parish Tax Office, Court House Building, 200 Main Street, Colfax, Louisiana. Send comments to The Honorable Donnie Brown, President, Grant Parish Policy Jury, Court House Building, 200 Main Street, Colfax, Louisiana 71417.					
	New Roads (Town)	Portage Canal	Approximately 2,100 feet downstream of Hospital Road.	None	*26
	Pointe Coupee Parish.		At Missouri Pacific Railroad Bridge	None	*27
			At State Highways 1 and 10	None	*27
Maps are available for inspection at City Hall, 211 West Main Street, New Roads, Louisiana. Send comments to The Honorable Sylvester Muckelroy, Mayor, Town of New Roads, 211 West Main Street, New Roads, Louisiana 70760.					
	Pointe Coupee Parish. (Unincorporated Areas).	Portage Canal	Approximately 6,500 feet downstream of Louisiana Highway 10.	None	*27
			Just downstream of Louisiana Highway 10.	None	*27
Maps are available for inspection at 160 East Maine Street, New Roads, Louisiana. Send comments to The Honorable Clement Guildroz, Pointe Coupee Parish President, 160 East Main Street, New Roads, Louisiana 70760.					
Missouri	Branson (City) Taney County.	Roark Creek	At confluence with White River (Lake Taneycomo).	*714	*714
			Approximately 700 feet upstream of U.S. Highway 65.	*717	*720
			Approximately 8,200 feet upstream of U.S. Highway 65.	*748	*749
			Approximately 3,800 feet downstream of Shepherd of the Hills Expressway.	None	*772
			Approximately 3,400 feet upstream of Shepherd of the Hills Expressway.	None	*801
		Cooper Creek	Approximately 2,000 feet downstream of Fall Creek Road.	None	*727
			Approximately 200 feet upstream of Fall Creek Road.	None	*764
			Approximately 2,700 feet upstream of Fall Creek Road.	None	*804
Maps are available for inspection at City Hall, City of Branson, 110 West Maddux, Branson, Missouri. Send comments to The Honorable Wade Meadows, Mayor, City of Branson, P.O. Box 1309, Branson, Missouri 65616.					
Nevada	Elko (City) Elko County.	Humboldt River	Approximately 1,350 feet upstream of truss bridge at corporate limits.	*5,049	*5,048
			At confluence with 22 East Drainage (levee failed).	*5,053	*5,054
			At confluence with 22 East Drainage (levee not failed).	*5,053	*5,055
			Approximately 4,300 feet upstream of confluence with Metzler Wash at corporate limits.	*5,067	*5,064
		Metzler Wash	Approximately 350 feet downstream of Clarkson Drive.	N/A	*5,067
			Just upstream of Lamoille Highway	N/A	*5,096
			Approximately 2,000 feet upstream of Lamoille Highway.	N/A	*5,136
		Panorama Wash	At Lamoille Highway	N/A	*5,078
			Approximately 1,300 feet upstream of Lamoille Highway.	N/A	*5,106
		Culley's Gulley	Approximately 550 feet downstream of Wildwood Way.	N/A	*5,106
			Just upstream of Pinion Road	N/A	*5,152
			Approximately 450 feet upstream of Lamoille Highway.	N/A	*5,190
		Eightmile Creek	Approximately 550 feet downstream of Fairgrounds Road.	N/A	*5,096
			Just upstream of Mittry Avenue	N/A	*5,158
			Approximately 5,000 feet upstream of Mittry Avenue.	N/A	*5,210
		22 Middle Drainage	Approximately 150 feet upstream of Bullion Road.	N/A	*5,071

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 2,300 feet upstream of Bullion Road.	N/A	*5,119
		22 East Drainage	Approximately 150 feet downstream of Bullion Road.	N/A	*5,058
			Approximately 2,800 feet upstream of Bullion Road.	N/A	*5,128
		Fifth Street Drainage	Just upstream of Chris Avenue	N/A	*5,206
			Just upstream of Cooper Street	N/A	*5,254
			Approximately 3,900 feet upstream of Rolling Hills Drive.	N/A	*5,305
		Golf Course Drainage	At confluence with Humboldt River	N/A	*5,064
			Just upstream of Idaho Street	N/A	*5,080
			Approximately 4,650 feet upstream of Interstate Highway 80.	N/A	*5,192
		East Adobe Creek	Approximately 200 feet upstream of Idaho Street.	N/A	*5,042
			Approximately 2,250 feet downstream of Interstate Highway 80.	N/A	*5,080
			Approximately 400 feet upstream of Connolly Drive.	N/A	*5,175
Maps are available for inspection at the City of Elko, Department of Engineering Services, 1751 College Avenue, Elko, Nevada. Send comments to The Honorable Jim Polkinghorne, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.					
	Elko County (Unincorporated Areas).	Humboldt River at Elko	Approximately 4,800 feet downstream of truss bridge—north side or railroad.	None	*5,035
			Approximately 4,800 feet downstream of truss bridge—south side of railroad.	#2	*5,040
			Approximately 1,350 feet upstream of truss bridge.	*5,049	**5,048
			At confluence with Culley's Gulley	*5,067	*5,064
			Approximately 4,550 feet upstream of confluence with Culley's Gulley.	*5,071	*5,070
		Culley's Gulley	Approximately 300 feet upstream of confluence with Humboldt River.	None	*5,068
			Approximately 100 feet upstream of Last Chance Road.	None	*5,106
		22 Middle Drainage	Approximately 1,600 feet upstream of Bullion Road.	None	*5,106
			Approximately 1,900 feet upstream of Bullion Road.	None	*5,110
		East Adobe Creek	Approximately 250 feet downstream of Interstate Highway 40.	None	*5,042
			Approximately 200 feet upstream of Interstate Highway 40.	None	*5,042
Maps are available for inspection at the County Manager's Office, Elko County, 569 Court Street, Elko, Nevada. Send comments to The Honorable Llee Chapman, Chairman, Elko County Board of Supervisors, 569 Court Street, Elko, Nevada 89801.					
North Dakota	Velva (Township) McHenry County.	Souris River	Approximately 2,700 feet downstream of Main Street.	None	*1,507
			Approximately 1,700 feet downstream of Main Street.	None	*1,508
			Approximately 200 feet downstream of Main Street.	None	*1,508
			Approximately 2,700 feet upstream of Main Street.	None	*1,509
			Approximately 4,500 feet upstream of Main Street.	None	*1,510
Maps are available for inspection at McHenry County Auditor's Office, 407 South Main Street, Towner, North Dakota. Send comments to The Honorable John Thomas, Chairman, Township of Velva, RR #2, Box 4, Velva, North Dakota 58790.					
Texas	Comanche (City) Comanche County.	Indian Creek	At eastern corporate limits of the City of Comanche.	None	*1,333
			At confluence with Tributary 1	None	*1,342
			At confluence with Horse Creek	None	*1,348
			50 feet downstream of State Highway 16	None	*1,360

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			200 feet downstream of confluence with Tributary 2.	None	*1,370
			200 feet downstream of confluence with South Fork of Indian Creek.	None	*1,375
			100 feet downstream of Indian Creek Drive.	None	*1,390
			At corporate limits	None	*1,393
		South Fork of Indian Creek.	At confluence with Indian Creek	None	*1,376
			50 feet upstream of Indian Creek Drive	None	*1,391
			At western corporate limits	None	*1,416
		Horse Creek	At confluence with Indian Creek	None	*1,348
			At upstream face of Summit Avenue	None	*1,360
			At southern corporate limits	None	*1,374
		Tributary 1	At confluence with Indian Creek	None	*1,342
			50 feet upstream of Central Avenue (U.S. Highway 67)—.	None	*1,361
			100 feet upstream of Walcott Avenue	None	*1,374
			At downstream face of Austin Street	None	*1,394
		Tributary 2	At confluence with Indian Creek	None	*1,371
			50 feet upstream of Central Avenue (U.S. Highway 67).	None	*1,381
			100 feet upstream of State Highway 36	None	*1,395
			1,000 feet upstream of FM 1689	None	*1,420
		Tributary 3	At confluence with Indian Creek	None	*1,372
			100 feet upstream of Indian Creek Drive	None	*1,390
			At southern corporate limits	None	*1,428
		Tributary 4	At confluence with Tributary 3	None	*1,420
			At limit of study	None	*1,435
		Tributary 5	At downstream face of State Highway 16	None	*1,351
			100 feet upstream of airport runway	None	*1,373
			At limit of study	None	*1,401

Maps are available for inspection at City Hall, City of Comanche, 114 West Central, Comanche, Texas.
Send comments to The Honorable Johnny Livingston, Mayor, City of Comanche, 114 West Central, Comanche, Texas 76442.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 13, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–6764 Filed 3–17–95; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–101A]

RIN 2137–AC 57

Mandatory Participation in Qualified One-Call Systems by Pipeline Operators

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require that operators of onshore gas, hazardous liquid, and carbon dioxide pipelines participate in qualified one-call systems as part of the required excavation damage prevention programs. The proposed rule would also limit the current exclusion of certain small gas systems from compliance with the damage prevention program requirements.

This notice is accompanied by a final rule (Docket No. PS–101), which addresses other requirements for excavation damage prevention programs and line markers. This notice and the final rule are intended to reduce excavation damage, the largest single cause of pipeline failures.

DATES: Interested persons are invited to submit written comments in duplicate by May 19, 1995. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all of the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Albert Garnett, (202) 366–2036, or Christina Sames, (202) 366–4561, regarding the content of this notice; or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Related Document

RSPA has issued a final rule titled "Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines" (Docket No. PS–101). The final rule addresses

aspects of damage prevention programs that were proposed in a notice of proposed rulemaking (NPRM) titled "Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program" (53 FR 24747; June 30, 1988). In particular, the final rule amends the pipeline safety regulations by (1) extending existing requirements governing excavation damage prevention programs for gas pipelines in urban areas to gas pipelines in rural areas; (2) establishing excavation damage prevention program requirements for hazardous liquid and carbon dioxide pipelines; (3) requiring, with limited exceptions, line markers for gas transmission lines in urban areas; and (4) permitting smaller lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas.

This NPRM proposes to amend §§ 192.614 and 195.442 of that final rule by requiring that operators of interstate and intrastate pipelines participate in qualified one-call systems. This NPRM further proposes less stringent standards for the participation of small entities, including operators of master meter systems (defined by 49 CFR 191.3), whose primary activity does not include the transportation of gas.

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the general public to call to notify participating members of their intent to engage in excavation activities. Notices of intent to excavate are received by the operational center and are transmitted to the operators of underground pipeline facilities and other underground facilities that participate in the system. Upon receipt of notices of intended excavation activities, participating operators that have underground facilities in that vicinity arrange for the timely identification and the temporary marking of their underground facilities. Underground operators may inspect the site during the excavation activities to insure the safety of their underground facilities.

National One-Call Campaign

Presently, there are 74 one-call systems in the United States operating in 48 states and the District of Columbia. Not all of the operating one-call systems meet the qualifications of a "one-call notification system," as defined in 49 CFR 198.39. Two states and Puerto Rico are currently without a one-call system.

Approximately 45 states and the District of Columbia have damage prevention laws that, to a varying extent, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, "State one-call damage prevention program."

To address the problem of incomplete national one-call coverage and the deficiencies in some of the existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign will target states for concentrated outreach to assist these states in their efforts to upgrade their current one-call systems. The national campaign will also work with selected states currently without one-call legislation or where there is a need to strengthen the one-call legislation.

Notice of Proposed Rulemaking (Docket No. PS–101)

The issue of mandatory participation in one-call systems by pipeline operators was touched upon, but not proposed, in the NPRM titled "Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program" (53 FR 24747; June 30, 1988). The NPRM requested comments on: (1) Whether RSPA should require pipeline operators to participate in a one-call system, even though other underground utilities are not required to participate; and (2) Whether RSPA should require mandatory participation where state or local law requires participation by other utilities.

Comments to the NPRM

Of the 43 comments received to question (1), 17 were in full or partial support and 26 were opposed. Among those in support, a state regulatory agency recommended that operators not be required to participate if the service available is insufficient for the operators' needs or unreasonably priced for the service rendered. A municipal utility, opposed to mandatory participation, stated that if an excavator must make more than one call, there is no true one-call system.

Thirty commenters to question (2) expressed full or partial support, and seven were opposed. Among those in support, a state regulatory agency said that requiring interstate operators to participate in one-call programs would enhance public safety. A gas transmission company, opposed to mandatory participation, stated that until one-call systems are required to meet minimum requirements, gas pipeline operators should not be singled out for mandatory participation.

Commenters opposed to mandatory participation of pipeline operators in one-call systems based their opposition on the lack of required participation by all other operators of underground utilities and other facilities, the lack of required participation by all excavators, and the lack of required standards for the operation of one-call systems. However, RSPA finds it significant that none of the commenters expressed doubt about the effectiveness of the one-call system concept.

Presentation to Advisory Committees

On September 10 and 11, 1991, RSPA presented an issue paper titled "Mandatory Participation in Certain One-call Systems" to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. The informal presentation was made to brief committee members on the topic of mandatory one-call participation. Although a formal vote was not taken, the advisory committees generally supported the idea of requiring pipeline operators to participate in a qualified one-call system.

After the briefing, members discussed various issues including the overlapping coverage of a few one-call systems. RSPA has researched this problem and has determined that overlapping coverage occurs in limited areas of about seven states. In these areas, pipeline operators with underground facilities would be required to participate in both one-call systems. RSPA, however, recognizes that excavators having to call two one-call systems or one-call systems having to transmit notifications of intent to excavate between themselves is confusing and burdensome and encourages the one-call systems or states where overlapping coverage occurs to resolve the issue.

Requests for Mandatory Participation and the Initiatives of Industry

Several sources have recommended that the Federal government require all operators of underground facilities mandatorily participate in one-call systems. The Transportation Research Board (TRB) of the National Research Council recommended that RSPA "require gas and liquids pipeline operators to join existing one-call

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systems * * *" (Special Report 219, "Pipelines and Public Safety"). TRB also recommended that one-call systems meet minimum standards set to provide the services pipeline operators need.

On August 3, 1994, various representatives from government and industry testified before the Senate Committee on Commerce, Science, and Transportation on the Comprehensive One-Call Notification Act of 1994. The National Transportation Safety Board recommended the passage of one-call legislation which would include requiring full participation by all organizations that operate buried facilities. Representatives for the Interstate Natural Gas Association of America and for the American Gas Association also encouraged the passage of one-call legislation which would include the requirement that all operators of underground facilities that are at risk of being struck by outside excavators participate in one-call systems. A representative for the Association of Oil Pipe Lines also supported one-call legislation that would include participation in one-call systems by excavators and by owners of underground facilities, including hazardous liquid pipelines regulated by RSPA.

The overwhelming support for mandatory one-call legislation from both government and industry representatives supports the need for the regulations proposed in this notice.

49 CFR Part 198

Pursuant to 49 U.S.C. 60114, DOT was mandated to require each state, as a condition to full grant-in-aid, to require intrastate pipeline operators to participate in one-call notification systems. RSPA implemented this mandate by publishing 49 CFR part 198, "Grants for Pipeline Safety Programs: State Adoption of One-Call Damage Prevention Program" (55 FR 38688; September 20, 1990).

Not all states have adopted one-call damage prevention programs that comply with part 198, nor are all states seeking to actively and effectively adopt them. Six states do not participate in the Federal pipeline safety grant program and thus do not come under part 198. In addition, because Federal law preempts state safety regulations of interstate pipelines, states with one-call damage prevention programs meeting part 198 requirements could have difficulty enforcing them against interstate pipelines. Thus, a need exists for a Federal rule mandating that all pipelines subject to parts 192 and 195 participate in qualified one-call systems.

Proposed Regulations

RSPA proposes to remove the option in §§ 192.614(a) and 195.442(a) that permits a pipeline operator to receive and record notification of planned excavation activities rather than to participate in a qualified one-call system covering the area where the operator's pipeline is located. Moreover, in response to the concerns expressed by commenters to the NPRM, RSPA proposes to require that pipeline operators only participate in qualified one-call systems. A one-call system would be considered qualified if the state has adopted a one-call damage prevention program under § 198.37. A one-call system would also be considered qualified if it is operated in accordance with § 198.39, provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities, and does not assess a participating pipeline operator a fee disproportionate to the costs of the one-call system's coverage of the operator's pipeline.

RSPA also proposes to extend the excavation damage prevention program requirements to petroleum gas systems subject to § 192.11 and to small gas systems whose primary activity includes the transportation of gas.

RSPA proposes to limit the current exemption for operators of gas systems, including operators of master meter systems, whose primary activity does not include the transportation of gas. However, the proposed regulations are sensitive to the minimum resources of these small operators. These operators would be exempted from the requirements to identify persons who normally engage in excavation activities in the area in which the pipeline is located, and to provide for actual notification of those identified persons on the damage prevention program's existence and purpose and on how to learn the location of underground pipelines before excavation activities begin. These small operators would also be exempted from the requirement that the damage prevention program be written. These operators would still be required to provide a means of receiving and recording notification of planned excavation activities; provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings; provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins; and provide for the inspection of the pipelines that the operator has reason to believe could be damaged by excavation activities.

Under the current damage prevention program requirements, a pipeline operator may voluntarily perform any of the duties required by the damage prevention program through participation in a public service program, such as a one-call system. This voluntary participation is still acceptable to meet the requirements of the damage prevention program but such participation does not relieve the operator of responsibility for compliance with the damage prevention program.

Under the proposed regulation, pipeline operators in areas where one-call systems are not yet established, or where a qualified one-call system is not yet in place, would continue to receive and record the notification of planned excavation activities with their own personnel. However, operators would be required to join a qualified one-call system once it has been established.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The notice is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in this docket.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

The cumulative effect of this NPRM will be no additional increase in the current information collection burden requirements for gas pipeline operators and hazardous liquid and carbon dioxide operators.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 192 and 195 to read as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5102, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. Section 192.614 would be amended by revising paragraph (a), by removing paragraph (c)(4), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and by adding paragraphs (b) and (e) as follows:

§ 192.614 Damage Prevention Program.

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system qualifies under either of the following:

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system—

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is not disproportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program: * * *

* * * * * *

(e) Pipelines operated by persons (including operators of master meters) whose primary activity does not include the transportation of gas need not comply with the following:

(1) The requirement of paragraph (a) of this section that the damage prevention program be written; and

(2) The requirements of paragraphs (c)(1) and (c)(2) of this section.

PART 195—[AMENDED]

3. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 60102 60104, 60108, 60109; 49 CFR 1.53.

4. Section 195.442 would be amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and adding paragraph (b) to read as follows:

§ 195.442 Damage Prevention Program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system qualifies under either of the following:

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system—

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is not disproportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program: * * *

* * * * * *

Issued in Washington, D.C. on March 14, 1995.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–6724 Filed 3–17–95; 8:45 am]

BILLING CODE 4810–60–P

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. 95–16, Notice 01]

Meeting on Regulatory Reform

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces a public meeting at which NHTSA will seek information from the public on regulatory reform actions the agency should take related to its motor vehicle regulations. This notice also invites written comments on the same subject.

DATES: Public meeting: The meeting will be held on March 29, 1995 at 1:00 p.m. Those wishing to make oral presentations at the meeting should contact Deborah Parker, at the address or telephone number listed below, by March 27, 1995.

Written comments: Written comments are due by April 7, 1995.

ADDRESSES: Public meeting: The public meeting will be held at the following location: Ramada Inn (near the Detroit Metro Airport), 8270 Wickham Road, Romulus, MI 48174.

Written comments: All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street SW., Washington, DC 20590. Please refer to the docket number when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Deborah Parker, Director, Special Projects Staff, NPS 01.1, NHTSA, 400 7th Street SW., Washington, DC 20590 (telephone 202–366–4931).

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SUPPLEMENTARY INFORMATION: Calling for a new approach to the way Government regulates the private sector President Clinton asked Executive Branch agencies to report to him by June 1, 1995, on ways to improve the regulatory process. Specifically, the President requested that agencies: (1) Cut obsolete regulations; (2) reward agency and regulator performance by rewarding results, not red tape; (3) create grassroots partnerships by meeting, outside of Washington, D.C., with those affected by regulations and other interested parties; and (4) use consensual rulemaking, such as regulatory negotiation, more frequently. This public meeting will help NHTSA to comply with the President's directives.

The Agency is focusing at this time on items (1) and (4) described above. For item (1), cut obsolete regulations, the President requested that we "conduct a page-by-page review of all. . .agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform." The President requested that our review include consideration of at least the following:

"• Is this regulation obsolete?

• Could its intended goal be achieved in more efficient, less intrusive ways?

• Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?

• Could private business, setting its own standards and being subject to public accountability, do the job as well?

• Could the States or local governments do the job, making Federal regulation unnecessary? "

To assist NHTSA in responding to this directive, the public's views on which Motor Vehicle-related regulations (standards, rules, etc., are all used interchangeably for this purpose) should be rescinded or revised are requested (the agency also is reviewing its non-motor vehicle related regulations but they are not the subject of this meeting). Both administratively issued and statutorily mandated regulations are the subject of this review. Suggestions should be accompanied by a rationale for the action and the expected consequences. Recommendations should be based on at least the following considerations:

• Cost-effectiveness.

• Administrative/compliance burdens.

• Whether the standard is performance-oriented, as opposed to design-oriented or is technology-restricting.

• Small business effects.

• Frequency of rulemaking to amend or clarify requirements (including inconsequentiality petitions).

• Availability of voluntary industry standards.

• Obsolete requirements.

• Enforceability of the standard.

• Whether the standard reflects a "common sense" approach to solving the problem.

In considering the consequences of any recommendation please provide the best available information on any effects on safety, consumer costs, regulated party testing/certification costs, small business impacts, competition, etc.

By motor vehicle-related regulations, NHTSA means all those standards/rules related to safety, fuel economy, theft, consumer information, damageability, and domestic content. The standards themselves and all related record-keeping and procedural requirements are included. Parts 520–594 of Title 49, Transportation, of the Code of Federal Regulations are encompassed.

The public meeting will be held in conjunction with and immediately after the agency's previously scheduled quarterly technical meeting.

With regard to item (4), consensual rulemaking, the agency wants recommendations on which active rulemakings—not those rules already in effect—would be appropriate candidates for the regulatory negotiation process. Bear in mind that these must be rulemakings in which the various interested parties would be willing to negotiate solutions. Currently, the agency is conducting a regulatory negotiation on the subject of optical headlamp aim.

Procedural Matters

As noted at the beginning of this notice, persons wishing to speak at the public meeting should contact Deborah Parker by the indicated date. To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the meeting. Thus, any person desiring assistance of auxiliary aids should contact Ms. Barbara Carnes, NHTSA Office of Safety Performance Standards, telephone (202) 366–1810, no later than March 23, 1995.

Those speaking at the public meeting should limit their presentation to 20 minutes. If the presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting so that NHTSA can readily include the material in the public record.

NHTSA staff at the meeting may ask questions of any speaker, and any participant may submit written questions for the NHTSA staff, at its discretion, to address to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits, persons who have not requested time, but wold like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentation will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Issued: March 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–6777 Filed 3–15–95; 1:03 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 60, No. 53

Monday, March 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Soutwestern Region, Arizona; Timber Resource Analysis—Kaibab National Forest

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Southwestern Region of the Forest Service filed a Notice of Intent to prepare an environmental impact statement in the **Federal Register** (Vol. 56, No. 37, pages 7659–7660) on February 25, 1991. Because of changing resource conditions and new planning issues, the original Notice of Intent is cancelled.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, is the responsible official for decisions that affect the Kaibab National Forest Land and Resource Management Plan.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Management Planning, Southwestern Regional Office, 517 Gold Avenue SW., Albuquerque, NM 87102, (505) 842–3210.

SUPPLEMENTARY INFORMATION: The original environmental impact statement process was initiated to reanalyze the timber resource and to amend the Kaibab Land and Resource Management Plan as needed. A draft environmental impact statement was circulated for comment in July, 1994.

Concurrent to the Kaibab process, the Regional Forester conducted another environmental impact statement process to amend Southwestern Region Forest Plans to include guidelines for management for the Mexican spotted owl and northern goshawk. This process did not include the Kaibab National Forest. The Notice of Intent for the region-wide amendment was filed in the **Federal Register** (Vol. 57, No. 122, pages 28171–28172) on June 24, 1992. A draft environmental impact statement for this process was circulated in December, 1994.

Public comments received from both environmental impact statement efforts requested that the two separate forest plan amendment procedures be combined. Other comments suggested that other alternatives need to be considered. Additionally, the Mexican spotted owl was listed as a threatened species under the Endangered Species Act with a recovery plan and critical habitat designation currently under consideration by the U.S. Fish and Wildlife Service.

The Regional Forester decided to combine both environmental impact statement processes and issue a revised draft environmental impact statement that covers amendment of all forest plans in the Southwestern Region. Comments received from review of both draft environmental impact statements will be considered.

Dated: March 14, 1995.

Arthur S. Briggs,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 95–6775 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma; Amendment of National Forest Plans in the Southwestern Region To Include Guidelines for Management of Habitat for the Mexican Spotted Owl and Northern Goshawk

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Southwestern Region of the Forest Service filed a Notice of Intent to prepare an environmental impact statement in the **Federal Register** (Vol. 57, No. 122, pages 28171–28172) on June 24, 1992. Because of changing resource conditions and new planning issues, the original Notice of Intent is revised.

DATES: This notice is effective March 20, 1995.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, is the responsible official for decisions that affect Southwestern Region Forest Land and Resource Management Plans.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Management Planning, Southwestern Regional Office, 517 Gold Avenue SW., Albuquerque, NM 87102, (505) 842–3210.

SUPPLEMENTARY INFORMATION: The original environmental impact statement process was initiated to amend Southwestern Region Forest Plans to include guidelines for management for the Mexican spotted owl and northern goshawk. This process did not include the Kaibab National Forest. A draft environmental impact statement for this process was circulated in December, 1994.

Concurrent to this process, a separate timber analysis and forest plan amendment process was being conducted for the Kaibab National Forest. A Notice of Intent to prepare an environmental impact statement for this process was filed in the **Federal Register** (Vol. 56, No. 37, pages 7659–7660) on February 25, 1991. A draft environmental impact statement was circulated for comment in July, 1994.

Public comments received from both environmental impact statement processes requested that the two separate procedures be combined. Other comments suggested that other alternatives need to be considered. Additionally, the Mexican spotted owl was listed as a threatened species under the Endangered Species Act with a recovery plan and critical habitat designation currently under consideration by the U.S. Fish and Wildlife Service.

The Regional Forester decided to combine both environmental impact statement processes and issue a revised draft environmental impact statement that covers amendment of all forest plans in the Southwestern Region. Comments received from review of both draft environmental impact statements will be considered.

A revised draft environmental impact statement will be available for public comment for 90 days in January, 1996. A final environmental impact statement should be released in fall of 1996.

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Dated: March 14, 1995.

Arthur S. Briggs,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 95–6773 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

Southwest Washington Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on April 20, 1995 in Kelso, Washington, at the Red Lion Inn, near Interstate 5 at Exit No. 39. The meeting will begin at 9 a.m. and continue until 4 p.m. Meeting purpose is to orient new Advisory Committee members to the President's Northwest Forest Plan and the Advisory Committee process. Agenda items to be covered include: (1) Introductions of Committee members; (2) context of the Advisory Committee, including background on the Forest Plan; (3) mission and purpose of the Province Advisory Committee; (4) overview of Federal agency missions; (5) Advisory Committee roles; (6) Public Involvement strategy; (7) Decision Process and Criteria; (8) Travel Requirements; (9) Public Open Forum.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled near the conclusion of the meeting. Interested speakers will need to register at the door. The Committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Mark Maggiora, Public Affairs Officer, at (360) 750-5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E Fourth Plain Blvd., PO Box 8944 Vancouver, WA 98668.

Dated: March 10, 1995.

Ted C. Stubblefield,

Forest Supervisor.

[FR Doc. 95–6710 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

RIN 0596–AA

Use of Bait in Hunting

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service gives notice of its final policy on the use of bait in hunting resident game on National Forest System lands. This policy has been issued to Agency employees as an amendment to the Forest Service Manual 2640. The intended effect of the final policy is to clarify the Agency's role with regard to baiting in relation to the role of the States and, thus, to provide a consistent approach to the regulation of baiting resident game on National Forest System lands.

EFFECTIVE DATE: This policy is effective March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Robert Nelson, Wildlife, Fish, and Rare Plants Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–1205.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1994, the Forest Service published a proposed policy on the Agency's role in regulating the placement of bait to attract resident game on National Forest System lands (59 FR 17758). Public comment was invited. The comment period closed June 13, 1994.

The focus of the proposed policy was that the Forest Service would continue to honor State regulations of fish and wildlife populations, including hunting and hunting practices. Where baiting is allowed by States, the practice would continue on National Forest System lands unless the authorized officer was to determine on a site-specific basis that the use of bait conflicts with Federal laws or regulations, forest plan direction, or other uses or users. In such case, the authorized officer could prohibit or restrict use of bait, in an area, by issuing a closure order. However, the authorized officer would first consult with the State fish and wildlife agency to see if the conflict could be resolved without a closure or restrictive order.

During the public comment period, the Forest Service received 1,249 comments on the proposed policy. Comments were received from 76 groups and private organizations, 29 State fish and wildlife agencies, 1 American Indian Tribal government, 1 Federal agency, and from private citizens located in 46 States and the District of Columbia. Of the total comments received, 86 percent were from individuals representing themselves. Forty-five percent of the comments agreed with the proposed policy either in its entirety or with suggested modifications, while fifty-one percent did not support the proposed policy. The analysis of the public comments was accomplished using standard Forest Service procedures designed to ensure an objective and systematic analysis. The Agency has considered these comments and, in response, where appropriate the Agency is adopting modifications in the final policy. A summary of the comments received and the Agency's response to them follows.

Summary of Comments Received

Form letters and modified form letters made up 61 percent of the 1,249 total comments. The majority of these letters were not directed at specific provisions of the policy; rather, most of these comments objected to the practice of baiting in hunting but did not address State and Federal roles in the administration of a hunting practice. These respondents simply stated that they were against the use of bait in hunting and that this practice should not be allowed on National Forest System lands. Among reasons cited were that bait is detrimental to the non-hunting recreation experience; and bait may cause pollution or may be a risk to human health and safety. Other topics addressed were the need for environmental documentation under the National Environmental Policy Act, State versus Federal jurisdiction over wildlife resources, population decimation and species viability, threatened and endangered species being killed, conditioning of wildlife to human food sources, and disruption of biological diversity and ecological processes.

A summary of specific comments by broad subject and the Agency's response to these comments follows.

1. *Comment:* Impact of Baiting on Recreation. A number of respondents feel that baiting causes a garbage problem, is detrimental to recreation experience, is a source of pollution, and poses health and safety risks. The reviewers feel that baiting has a negative impact on the majority of forest users and, therefore, grants a small group "special advantages on land meant to be enjoyed by all."

Response: The fact that an activity is enjoyed by a minority of forest users does not mean that the activity should be banned. The Forest Service has consistently cooperated with State agencies to help them develop regulations that minimize conflict between hunters using baits and other forest users. Under the proposed policy, the Forest Service would close specific areas to baiting if conflicts cannot be resolved with the State agencies regarding the protection of Federal resources and uses, including recreation. This has been retained in the final policy.

2. *Comment:* Retention of Baiting Practices. Many reviewers characterized bear baiting as "disgusting," "offensive," "revolting," "repulsive," "inhumane," "unsporting," and "unethical." These persons feel strongly that the practice of baiting should be outlawed on National Forest System lands.

Response. While the Agency respects the reviews of those who object to baiting, the final policy is not intended to determine whether or not the practice of using bait in hunting is to be allowed on National Forest System lands, but whether the use of bait needs regulation by the Forest Service beyond that required by the State. The practice of placing bait (food or scent to attract wildlife) is a hunting activity subject to State law and regulations. Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife; see the National Forest System Organic Administration Act at 16 U.S.C. 480, the Multiple Use-Sustained Yield Act at 16 U.S.C. 528, the Sikes Act at 16 U.S.C. 670h, and the Federal Land Policy and Management Act, at 43 U.S.C. 1732. Generally, the use of bait in hunting is not contrary to Federal interests. The final policy acknowledges the State fish and wildlife agencies' authority to adopt hunting regulations and provides for Federal action if State regulations do not protect Federal interests.

3. *Comment:* Clarity of Policy. Several reviewers felt that the reasons for closing an area to baiting were not clearly stated in the proposed policy. In addition, concerns were raised that the policy would not require review of State regulation and that Forest Service officers therefore would not identify problems that would be the basis for closure actions.

Response. In consideration of these comments, the Forest Service has modified the April 14, 1994 proposal to emphasize the Agency's intent to monitor State regulations. Such monitoring is a routine practice under Agency Memorandums of Understanding (MOUs) with State wildlife agencies. Direction to Forest Service employees on entering into and operating under such MOU's is set out in a different chapter of FSM 2600 than the use of bait policy. Nevertheless, Forest Service monitoring of State regulations has been emphasized in the FSM 2640 baiting use policy as a show of good faith to those who raised the concern about Forest Service review of State regulations. It should also be pointed out that, in the day-to-day monitoring of activities on National Forest System lands, Agency employees will be aware of practices under those regulations that appear to conflict with land and resource management plan standards and guidelines, which must be consistent with Federal law. The final policy makes explicit the circumstances under which the authorized officer must close an area to baiting as follows:

a. The State laws and regulations on placement of bait are not adequate to protect forest land or other resources or users in a particular location. The determination of the adequacy of State laws and regulations shall be based on consideration of the likely impact of baiting on such matters as water quality, public health and safety, the potential for litter, sanitation problems, or the potential to threaten the viability of wildlife;

b. The effects of baiting are inconsistent with direction in the applicable forest plan; or

c. The State laws and regulations conflict with Federal law, such as the Endangered Species Act.

2. Where the authorized officer determines that baiting should be restricted or prohibited, the following actions are necessary:

a. The officer shall immediately inform the State fish and wildlife agency of the determination; and

b. If, after consultation and coordination, the State is unable to resolve the matter with the Forest Service, the authorized officer shall close the area to baiting or otherwise restrict baiting by issuing an order pursuant to Part 261 of Title 36 of the Code of Federal Regulations (36 CFR Part 261)."

4. *Comment:* Impact on American Indians. Two reviewers specifically asked what impact the proposed policy would have on American Indian Tribes and their treaty rights regarding hunting and fishing.

Response. The final policy will not affect valid treaty rights reserved to American Indian Tribes on National Forest System lands. An explicit statement to this effect has been added to the final policy.

5. *Comment:* Impact on Protection of Inventoried Resources. Some reviewers expressed the view that the proposed policy would not allow the Forest Service to adequately "protect inventoried resources" required by the National Forest Management Act.

Response. The Multiple-Use Sustained-Yield Act (MUSYA) and the National Forest Management Act (NFMA) directs the Forest Service to manage and conserve the land and resources of the National Forest System for multiple uses. The Multiple-Use Sustained-Yield Act (MUSYA) specifically maintains the States' traditional wildlife management roles with regard to fish and wildlife on National Forest System lands. Accordingly, the final policy (2643.12) establishes the conditions under which Federal action will be taken when State regulations are not sufficiently protective and incorporates procedures for consulting with the responsible State agencies to ensure that Federal interests are protected.

6. *Comment:* National Environmental Protection Act (NEPA) Compliance. The Forest Service, has made a preliminary finding using a Categorical Exclusion, but a number of respondents believe that an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required because the proposed policy is highly controversial, and in the view of these respondents, a major Federal action of wide scope that will have a significant impact on wildlife.

Response. In publishing the proposed policy, the Agency indicated that its preliminary conclusion was that the proposal should be categorically excluded from documentation in an EA or EIS. However after reviewing the public comments received during the 60-day comment period, the Forest Service prepared an Environmental Assessment and based on a Finding of No Significant Impact (FONSI), has determined that an EIS is not needed. A copy of the environmental assessment, decision notice and FONSI may be obtained by calling the number listed earlier in this notice under **FOR FURTHER INFORMATION CONTACT.**

7. *Comment:* Use of Special Use Permits. Several reviewers indicated that the agency should issue special use permits for baiting and that this process would alleviate some of the problems associated with bear baiting, such as litter.

Response. As noted in the preamble to the proposed policy, some Forest Service units have used special use permits in the past to regulate baiting. However, the policy review that has been undertaken over the past few years has clearly shown that the issuance of special use permits is not appropriate. Specifically, the Forest Service special use authorization regulations at 36 CFR 251.50 exempt certain noncommercial use and occupancy, including

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"hunting," from the special use authorization requirement.

This was the basis for the provision in the April 14, 1994 proposed policy stating, "Special use authorizations shall not be issued for placing bait on National Forest System lands for hunting purposes (36 CFR 251.50(c))." However, since the final policy now clearly indicates the circumstances and process by which the authorized officer may restrict or prohibit baiting through the use of closure orders, the explicit prohibition on the issuance of special use permits to regulate baiting is unnecessary and, therefore, has not been retained in the final policy.

8. *Comment:* State Jurisdiction Over National Forest System Land. Many reviewers felt that State wildlife agencies should not be given control over hunting practices on NFS lands.

Response. As noted in the notice of proposed policy, Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife. The Forest Service, therefore, is generally reluctant to override State fish and wildlife regulation, except where Federal interest, such as protection of forest land, resources, and users, require Federal intervention. The practice of placing bait is a hunting activity subject to State laws and regulations and the final policy retains the explicit statement to this effect.

9. *Comment:* Impact on Grizzly Bear and Other At Risk Species. One group indicated that it was greatly concerned about the direct and indirect danger of mortality posed to grizzly bear and other at-risk, threatened, and endangered species in the Greater Yellowstone Ecosystem by the practice of baiting for bear.

Response. States as well as Federal agencies have extensive responsibilities under the Endangered Species Act to conserve resident species determined to be endangered or threatened. If State regulations are adequate to protect grizzly bears or any other threatened or endangered species, no action is needed by the Forest Service. The final policy will not allow any practices that would endanger any species. By interagency agreement, and the policy already stated in FSM, 2676.16b, for baiting for black bear hunting is as follows:

"Reduce the potential for preventable mortality on National Forest System lands by enforcing the Inter-agency [Grizzly Bear] Guidelines which specify no baiting for black bear hunting in areas designated as Management Situation 1(FSM 2676.11, ex. 1). Make this information available to hunters at Forest Service offices and at campsites in black bear hunting areas. Work with appropriate State wildlife law enforcement officials to ensure compliance.

Work with State wildlife agencies toward the elimination of baiting for black bear hunting in Management Situation 2 areas where grizzlies are know or are likely to occur. Inform black bear hunters in Management Situation 2 areas about the risk of shooting a grizzly bear (as a result of mistaking it for a black bear) that may be attracted to the bait."

10. *Comment:* Human Health and Safety. A number of reviewers felt that baiting will cause an increase in conflicts between bears and people, creating human health and safety issues.

Response. There is no evidence that baiting increases human-wildlife conflicts; moreover, the final policy specifically provides that the Forest Service, may close an area to baiting in cases where a threat to human health and safety from conflicts with bears, are likely to arise.

11. *Comment:* Impact on Other Wildlife. One frequently raised concern is that other species will be attracted to bait stations only to be shot or otherwise harmed. These respondents assert that baiting practices will lead to wildlife being conditioned to search for unnatural food sources, thereby increasing the prevalence of campsite raids and other conflicts.

Response. It is possible that wildlife species other than black bears could be attracted to baits. Such an occurrence does not necessarily mean that the species would be either shot or harmed. Baiting actually improves the chance that the hunted species is clearly identified before being shot, and therefore should improve the chances that other species are not shot accidentally.

Bears do not become conditioned to baits. Bear baits are temporary features. Once the bait is removed, bears revert to natural foods. However if the authorized officer determined that the State law and regulations on placement of bait are not adequate to protect other wildlife in a particular location, the area could be closed to baiting. The policy provides explicitly that the determination of the adequacy of State laws and regulations shall be based on consideration of the likely impact of baiting on such matters as water quality, public health and sanitation, the potential for litter, or the potential to threaten the viability of wildlife.

12. *Comment:* Ecosystem Management. A number of respondents commented that bear baiting has negative implications for ecosystem management and disrupts the social and ecological balance of the forest environment.

Response. Where properly regulated, baiting is not known to affect ecological processes. Forest Service management of the National Forest System is aimed at promoting the sustainability of ecosystems. The Agency's land ethic is to promote the sustainability of ecosystems by ensuring their health, diversity, and productivity. Ecosystem management is based on resource sustainability and recognizes that people are part of ecosystem management. The Agency believes this is fully consistent with its purpose and mission and therefore no change is made to the policy in response to this concern.

Conclusion

Having considered the comments received, the Forest Service is adopting a final policy on the use of bait on National Forest System lands. The policy retains the long-standing reliance on State regulation of baiting resident game. Where State law and regulation permit baiting the practice is permitted on National Forest System lands unless the authorized officer determines on a site specific basis that the practice conflicts with Federal laws or regulations, or forest plan direction, or would adversely affect other forest uses or users. The text of the final policy as it is being issued to Forest Service employees is set out at the end of this notice.

Environmental Analysis

An environmental assessment was prepared to identify the environmental effects of this policy and three alternative baiting policies. A finding of no significant impact (FONSI) was made, documenting that there are no direct, indirect or cumulative significant impacts to the human environment arising from the implementation of this policy. A copy of the environmental assessment, finding of no significant impact, and decision notice will be sent to interested publics upon request.

Controlling Paperwork Burden On The Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This policy has been reviewed under USDA procedures and Executive Order 12888 on Federal Regulations. It has been determined that this is not a significant policy.

Dated: March 15, 1995.

David G. Unger,

Associate Chief.

Forest Service Manual

Chapter 2640—Stocking and Harvesting Amendment No. 95–2600

(Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual that are relevant to this notice are set out here. The final policy also includes minor revisions to existing codes and subject headings. The audience for this direction is Forest Service employees responsible for coordinating wildlife management on National Forest System lands with State fish and wildlife agencies.)

2643—Applicability of State Fish and Wildlife Laws and Regulations. The Forest Service actively cooperates in the development of State fish and wildlife laws and regulations and may assist in the enforcement of State fish and wildlife laws on National Forest System lands. Pursuant to FSM 2610, Regional Foresters shall ensure that memorandums with State fish and wildlife agencies recognize the role of the Forest Service in cooperating in the development of State fish and wildlife laws and regulations; especially those addressing hunting, fishing, and trapping as they would apply to occupancy and use of National Forest System lands.

2643.1—Hunting, Fishing, and Trapping Regulations. Hunting, fishing, and trapping of fish and wildlife and associated practices on National Forest System lands are subject to State fish and wildlife laws and regulations, unless one or both of the following apply:

1. State fish and wildlife laws and regulations conflict with Federal laws; or

2. State laws and regulations would permit activities that conflict with land and resource management responsibilities of the Forest Service or that are inconsistent with direction in forest plans.

2643.12—Use of Bait for Resident Game Hunting. The use of bait for the purpose of taking resident game on National Forest System lands in a hunting practice.

The practice is prohibited on National Forest System lands where State hunting regulations prohibit its use. Where States permit the use of bait for attracting resident game, this activity is allowed on National Forest System lands, subject to State hunting laws and regulation, unless the authorized officer determines on a site-specific basis that there is a need to prohibit or restrict the practice.

1. The authorized officer shall continually monitor State hunting regulations with regard to the use of bait. A site-specific restriction or prohibition on baiting shall occur when the authorized officer determines that one or more of the following circumstances exists:

a. The State laws and regulations on placement of bait are not adequate to protect forest land, other resources, or users in a particular location. The determination of the adequacy of State laws and regulations shall be based on consideration of the likely impact of baiting on such matters as water quality, public health and safety, the potential for litter, sanitation problems, or the potential to threaten the viability of wildlife;

b. The effects of baiting are not consistent with direction in the applicable forest plan; and

c. The State laws and regulations conflict with Federal law, such as the Endangered Species Act.

2. Where the authorized officer determines that baiting must be restricted or prohibited, the following actions are necessary:

a. The officer shall immediately inform the State fish and wildlife agency of the determination; and

b. If, after consultation and coordination, the State is unable to resolve the matter with the Forest Service, the authorized officer shall close the area to baiting or otherwise restrict baiting by issuing an order pursuant to Part 261 of Title 36 of the Code of Federal Regulations (36 CFR Part 261).

3. Where the hunting season is underway and it would be impracticable to issue an order to close an area to baiting, the authorized officer shall take such measures as appropriate and practicable to ensure consistency with forest plan management direction; compliance with Federal laws, orders, and regulations; and protection of forest users and resources. For example, the officer might close a road or gate to restrict access.

Closure of an area to baiting is not the only way to address the practice of baiting. It is expected that land managers as part of their day-to-day management of National Forest System lands and resources will be cognizant of the effects of hunting activities and take such proactive measures as may be necessary to ensure resource protection. Also hunter education programs could be implemented in consultation with the State agencies.

The policy in this section, in and of itself, does not compel an authorized officer to undertake a specific decision to allow baiting on National Forest System lands in those States where the practice is permitted. Nothing in this section shall be construed to affect valid existing treaty rights of American Indian Tribes. For the purposes of this section and to assure consistency in coordination of national forest wildlife matters with State agencies, the authorized officer is the Regional Forester or Forest Supervisor responsible for executing memorandums of understanding with the State wildlife agency (FSM 2610).

[FR Doc. 95–6904 Filed 3–17–95; 8:45 am]
BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation of Keokuk (IA) and Springfield (IL) for the Former Quincy (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Keokuk Grain Inspection Service (Keokuk) and Springfield Grain Inspection, Inc. (Springfield), to provide official services under the United States Grain Standards Act, as amended (Act) in the former Quincy area.

EFFECTIVE DATES: April 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 3, 1994, **Federal Register** (59 FR 50221), GIPSA asked persons interested in providing official services in the geographic area assigned to Quincy to submit an application for designation. Applications were due by November 1, 1994. There were three applicants; all designated official agencies: Keokuk; Quincy Grain Inspection & Weighing Service, Inc. (Quincy); and Springfield. Keokuk applied for the entire Quincy area or any part which includes Adams and/or Pike Counties. Quincy applied for the entire area currently assigned to them. Springfield applied for the entire Quincy area or any part thereof.

GIPSA requested comments on the applicants in the December 2, 1994, **Federal Register** (59 FR 61869). Comments were due by December 30, 1994. GIPSA received four comments postmarked by the due date. Two of Keokuk's current customers supported designation of Keokuk for the Quincy area. Two of Quincy's current customers supported designation of Quincy for the area they currently serve. There were no comments regarding Springfield.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Keokuk is better able than Quincy and Springfield to provide official services in the northern portion of the Quincy geographic area, as follows: Adams, Brown, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois. GIPSA also evaluated all available information regarding the designation

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criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Springfield is better able than Keokuk and Quincy to provide official services in the southern portion of the Quincy geographic area, as follows: Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16), and Pike (southwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois.

Effective April 1, 1995, and ending April 30, 1995 (the end of their present designation), Keokuk is designated to provide official inspection services in the geographic area specified above in addition to the area they are already designated to serve. Effective April 1, 1995, and ending March 31, 1997 (the end of their present designation), Springfield is designated to provide official inspection services in the geographic area specified above in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Keokuk at 319–524–6482 and Springfield at 217–522–5233.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 13, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–6646 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1993 Panel Waves 9 and 10.

Form Number(s): SIPP–13900.

Agency Approval Number: 0607–0759.

Type of Request: Revision of a currently approved collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is a longitudinal, demographic, household survey in which the Census Bureau interviews sample households in waves occurring every 4 months over a 2 ½ year period. The survey is molded around a central "core" of labor force and income questions that remain fixed during each wave of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are referred to as "topical modules." The Census Bureau is requesting an extension of the 1993 Panel to conduct two additional waves of interviews extending the life of the 1993 Panel to three years. The topical modules for Wave 9 include the following: 1) Retirement Expectations and Pension Plan Coverage, 2) Work Schedule, 3) Child Care, 4) Children's Well–being, 5) Child Support Agreements, 6) Support for Nonhousehold Members, and 7) Basic Needs. Wave 9 interviews will be conducted from October 1995 through January 1996. Wave 10 interviews will have no topical modules and will be conducted from October 1995 through January 1996.

Affected Public: Individuals or households.

Frequency: Each Wave is done once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–6808 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–07–F

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409), we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Friday, March 31, 1995, at The Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC.

The Advisory Committee is composed of a Chair, Vice Chair, and twenty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 8:00 a.m. and adjourn at 11:30 a.m. on Friday, March 31, 1995.

ADDRESSES: The meeting will take place at The Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Susan M. Knight, Department of Commerce, Bureau of the Census, Room 2066, Federal Building 3, Washington, D.C. 20233. Telephone: (301) 457–2095.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes a presentation to Commerce Secretary Ronald H. Brown of the final report of the Committee on the design phase of the 2000 census, a status report on the 1995 Census Test, and any other business the Chair and Advisory Committee members deem appropriate for this meeting. The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Pat Ellis on (301) 457–2095.

Dated: March 15, 1995.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 95–6809 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–EA–M

Bureau of Export Administration

In the matter of Joseph P.M. D'Haens, Respondent

[Docket No. 7102–01]

Related Person Order

Whereas, on April 25, 1988, then-Under Secretary for Export Enforcement Paul Freedenberg entered an order affirming a March 25, 1988 Recommended Decision and Order entered against Respondent Joseph P.M. d'Haens (d'Haens) by the Administrative Law (ALJ), which, in pertinent part, provided that:

> For a period of 20 years * * * Respondent, Joseph P.M. d'Haens, Amerikalei 96, 2000 Antwerp, Belgium, and all successors, assignees, officers, partners, representatives, agents, and employees are hereby denied all privileges of participating, directly or indirectly, in any manner of [sic] capacity, in any transaction involving commodities or technical data exported from the United States * * *.
>
> * * * * * *
>
> After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

Whereas, on May 28, 1993, the ALJ issued an Order to, *inter alia*,[1] Discom NV, Endymion NV, and Kronatech NV directing them to show cause why the sanctions in the April 25, 1988 Order entered against d'Haens should not be made applicable to them because of their relationship to d'Haens in the conduct of export trade or related services;

Whereas, on December 25, 1993, d'Haens responded to the Order to Show Cause by admitting that he has a business relationship with Discom NV, Endymion NV, and Kronatech NV;

Whereas, the ALJ has recommended, based on the evidence of record, that I enter an Order finding that the above persons are related to d'Haens by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

Whereas, I find, based on the evidence of record, that each of the above persons is related to d'Haens by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

It is therefore ordered: That paragraph III of the ALJ's Recommended Decision and Order of March 25, 1988, as affirmed by the Under Secretary's April 25, 1988 Order, entered against Joseph P.M. d'Haens, be amended by adding the following as persons related to d'Haens:

Discom NV, Liersesteenweg 96, 2520 Ranst, Belgium

and

Endymion NV, Liersesteenweg 98, 2520 Ranst, Belgium

and

Kronatech NV, Amerikalei 96, 2000 Antwerpen, Belgium

Each of the above persons is therefore subject to the same sanctions as are imposed against d'Haens by the April 25, 1988 Order, which continues in full force and effect.

This Order is effective immediately. A copy of this Order shall be served on each named related person and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Dated: March 13, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–6720 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] Several other companies were identified in the Order to Show Cause as possible being related to d'Haens. Based on the response to the Order to Show Cause, it has been determined that those companies are no longer related to d'Haens.

International Trade Administration

[A–570–838]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6309 or (202) 482–4136, respectively.

Preliminary Determination

We preliminarily determine that honey from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on October 24, 1994, (59 FR 54434, October 31, 1994), the following events have occurred:

On November 1, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFREC) and the China Chamber of Commerce for Foodstuffs, Native Produce and Animal By-products Importers and Exporters (the Chamber) requesting the identification of producers and exporters, and information on production and sales of honey exported to the United States.

A response to the survey was received on November 29, 1994. Based on this information, the Department sent full questionnaires including Attachment I (dealing with claims for Market Oriented Industry (MOI) status) and Attachment II (dealing with claims for Separate Rates), to MOFTEC and the Chamber, requesting that the questionnaire be transmitted to all companies that process honey for export to the United States and to all companies that were engaged in exporting honey to the United States during the period of investigation (POI). On December 13 1994, MOFTEC responded that it had done so.

On November 17, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of honey from the PRC that are allege to be sold at less than fair value.

On January 3, 1995, the Department received section A responses from the Chamber and 28 Chinese exporters and their respective producers. Supplemental information was received on January 5 and 23, 1995. Each exporter is listed with its supplier(s):

Kunshan Xinlong Food, Ltd.
Kunshan Xinlong
Jiangsu Native Produce Import and Export
Jiangsu Sweet and Qinghai Provincial Bee Products
Jiangxi Native Produce Import and Export
Jianxi Ao Shan Duo Qi Beverage Factory

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Zhejiang Native Produce & Animal By-product Import and Export
Hangzhou Lewei Food Factory
Heilongjiang Native Produce and Animal By-product Import and Export
Baoji Kanda Honey Corportion
Inner Mongolia Native Produce and Animal By-product
Inner Mongolia Shengli Food Co.
Chang Cheng Industrial Co., Ltd.
Changcheng Industrial Co., ltd.
Shaanxi Native Produce Import and Export
Shaanxi Export Food Factory
Kunshan Foreign Trade Co.
Kunshan Xinlong Foods Ltd.
China (TUHSU) Super Food Import and Export
Xinle Hebei Honey Factory
Shanghai Bee Product Factory
Baoji Kanda Honey Corporation
Hubei Native Produce Import and Export
Tianjin Native Produce Import and Export
Hebei Province Bee Product Company
Shandong Native Produce Import and Export
Hu Shan Dried Fruits Processing Company
Qinghai Cereals and Oils Import and Export
Qinghai Provincial Bee Products Company
Shanghai Native Produce Import and Export
Jiangsu Sweet
Guangxi Cereals, Oils and Foodstuffs Import and Export Corporation
Kunshan Xinlong Foods Company, Ltd.
Sichuan Native Produce Import and Export
Anhui Tianxin Honey Product Co.
China (TUHSU) Flavors and Fragrances Import and Export
Kunshan Xinlong Food Ltd.
Shandong Cereals and Oils Import and Export
Weifang Hua Yuan Foodstuffs, Co., Ltd.
Ningbo Native Produce Import and Export
Ningbo Natural Bee Products Factory
Anhui Cereals & Oils Import and Export
Chaohu Baichun Pharmaceutical Ltd.
Jiangsu Sweet Foods Ltd.
Jiangsu Sweet
Hebei Native Produce Import and Export
Xinle Hebei Honey Factory
Anhui Medicines and Health Produce Import and Export
Zhuzhou General Trade Honey Product Factory
Xian Native Produce and Animal By-product Import and Export
Shaanxi Jingbian Honey Processing Factory
Liaoning Native Produce Import and Export
Liaoning Honey Factory
Anhui Native Produce Import and Export
Anhui Wuhu Milk Products Factory
Henan Native Produce Import and Export
Xinyang Honey Processing Factory

On January 19, 1995, we received responses to the remaining sections of the questionnaire from the above-mentioned exporters that had sales to the United States and their suppliers during the POI. We also received responses from the Additional information concerning Attachment II of the questionnaire was received on January 23, 1995.

In January and February 1995, we received comments from petitioners and respondents regarding separate rates and other issues.

In February 1995, the Department issued a supplemental questionnaire based on its analysis of the questionnaire response. We also sent a supplemental "Separate Rates" questionnaire to MOFTEC and to the Chamber.

On January 27, 1995, the Department requested parties to submit publicly available published information concerning surrogate values for valuating the factors of production for honey. On February 10 and February 24, 1995, petitioners and respondents, respectively, did so.

On February 27, 1995, responses to the Department's supplemental questionnaires were submitted. In addition, on March 3 and March 6, 1995, responses to the supplemental "Separate Rates" questionnaire were received.

Scope of Investigation

The products covered by this investigation are natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. The subject products include all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The subject merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.50, 2106.90.61, and 2106.90.69 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

On January 23, 1995, respondents challenged petitioners' standing to file this case with regard to "artificial honey containing more than 50 percent natural honey by weight" and "preparations of natural honey containing more than 50 percent natural honey by weight" because the ITC could not be certain that there was substantial production of "mixtures of honey" or "honey preparations" in the United States.

Pursuant to section 732(b)(1) of the Act, in order to have standing to file an antidumping petition, the petitioner must be an "interested party." The term "interested party" is defined, in relevant part, as "a manufacturer, producer, or wholesaler in the United States of the like product." (Section 771(9)(C) of the Act) Therefore, in determining whether the petitioners have standing as interested parties to file a petition on the class or kind of merchandise, the Department must determine whether the petitioners produce the like product.

For purposes of determining standing, as is our usual practice, the Department has determined that it is appropriate to adopt the ITC's definition of like product in this case. The ITC has determined that there is a single like product consisting of "natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight." Because it is undisputed that petitioners produce merchandise that falls within the like product category, as defined by the Department, they have standing with respect to all imports within the class or kind of merchandise, including mixtures of honey and honey preparations. *See Sandvik AB* v. *United States*, 721 F. Supp. 1322 (CIT, 1989), *aff'd without op., Sandvik AB* v. *United States*, 904 F. 2d 46 (1990).

Period of Investigation

The period of investigation (POI) is May 1, 1994, through October 31, 1994.

Selection of Respondents

On February 7, 1995, the Department solicited comments on its intention to focus the investigation on four exporters and their suppliers due to the administrative burden of analyzing and verifying such a large number of cooperating exporters located throughout the PRC (*see* Memorandum from Louis Apple, Program Manager, Office of Antidumping Investigations, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated February 6, 1995). Comments on this decision were received form respondents, petitioners, and U.S. importers of honey.

After a review of the comments received, the Department determined that a full analysis and verification of the four largest exporters that account for over 75 percent by volume of the subject merchandise imports from the PRC during the POI would provide an adequate basis for calculating a margin for purposes of collecting estimated duties. Thus, the analysis in this notice is based on the following exporters and their respective suppliers: (1) Kunshan Xinlong; (2) Jiangsu Native; (3) Jiangxi Native; and (4) Zhejiang Native. On March 2, 1995, the Department notified MOFTEC of this decision, pursuant to section 353.42(b)(2) of the Department's regulations.

Separate Rates

Each of the responding Chinese companies has requested a separate,

company-specific rate Kunshan Xinlong is a foreign joint venture which was established in 1992 and is owned by both PRC and foreign investors. Jiangsu Native is a limited liability corporation which is owned in part by its employees and in part by "all the people." According to their business licenses, Jiangxi Native and Zhejiang Native are state-owned enterprises ("owned by all the people").

As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, 22586, May 2, 1994) (*Silicon Carbide*), and the *Final Determination of Sales at Less than Fair Value: Sebacic Acid from the People's Republic of China* (59 FR 28053, May 31, 1994 ("*Sebacic Acid*"), ownership of a company by all the people does not require the application of a single rate. Accordingly, each of the four respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising our of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) ("*Sparklers*") and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents in this investigation have submitted a number of documents to demonstrate absence of *de jure* control, including two enactments indicating that the responsibility for managing enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988, (*1988 Law*) and the "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*1992 Regulations*).

The *1988 Law* and *1992 Regulations* shifted control of enterprises owned by all the people from the government to the enterprises themselves. The *1988 Law* provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The *1988 Law* also has other provisions which support a finding that such enterprises have management independence from the government in making management decisions. The *1992 Regulations* provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII).

Honey exports are also affected by another law, passed by the State Council in 1994, which the Department has not previously considered in the context of the Separate Rates issue. In April 1994, the "Emergent Notice of Changes in Issuing Authority for Export Licenses Regarding Public Quota Bidding for Certain Commodities" *(1994 Quota Measure)* entered into force, superseding earlier laws dealing with the export of the named commodities. Companies exporting honey during the POI, including the respondents, were subject to this law.

The *1994 Quota Measure* cancelled previous export licenses for honey and put into place a licensing system based on a public bidding process. Now, any company (including barter, joint venture, solely foreign owned enterprises, etc.) wishing to export honey to any country must submit bids for a portion of a global quota of honey to be exported.

The global quota is determined by the Chamber in consultation with the exporting companies, based on an analysis of the annual exports over the last three years, the current supply and demand in the international market, and the Chinese domestic supply. The Chamber recommends this quota amount to MOFTEC, which to date has accepted every such recommendation made by the Chamber.

The process of bidding for a portion of the quota is administered by representatives of MOFTEC and the Chamber. MOFTEC stated that each bidding company decides its own bid price, which reflects the amount it is willing to pay for a portion of the quota, and the quantity for which it intends to bid. Winning companies are selected by a computer program based on the tendered prices and a publicly available mathematical formula, as detailed in Article XIV and Article XVI of the "Guidelines of Public Quota Bidding for Export Commodities." Each winning company earns the right to an export license. Companies that have earned the right to export honey must deposit a portion of the bid price with the government in the form of a bond upon notification of their winning status and pay the balance of the bid price times the quantity allotted to the government upon claiming their honey export license.

After the bidding process is completed, the Chamber consults with winning bidders and analyzes past years' export prices to determine the appropriate minimum floor price in light of prices in the international market. The licensed exporters are free to negotiate prices above this floor. However, the program's regulations state that there are severe penalties for selling below the floor price, including revocation of the right to bid for or hold an export license for that commodity for up to two years. Despite this restriction in the regulations, respondent's counsel has stated that certain exporters have reported that they, in fact, sell honey below the floor price.

Respondents argue that: (1) the licensing process should not be seen as the Chinese government's reassertion of control over the companies, and (2) the *1994 Quota Measure* and the bidding process do not allow the Chinese government to manipulate the price of exported honey. Respondents view this procedure as an effort by the Chinese government to provide every company an equal opportunity to bid for part of the quota on a fair and impartial basis and to increase the price of PRC honey through macro-economic means.

Petitioners, on the other hand, view the *1994 Quota Measure* as evidence that the honey industry in the PRC is controlled by the Chinese central government. Petitioners state that the *1994 Quota Measure* extends the quota system on honey "to cover worldwide exports and to control worldwide prices of exported honey," and see this measure as evidence of *de jure* control of the honey industry by the Chinese government.

After a thorough examination of the nature of the government involvement associated with the *1994 Quota Measure* described above, the Department has preliminarily determined that, although there is some government involvement with respect to the export of products subject to investigation, there is an absence of government control over exporting pricing and marketing decisions of firms.

We find that the bidding process, as described in detail in the official

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documents provided for the record, permits independent export pricing decisions. The quota system operates on the basis of transparent and well-defined rules. All companies are free to bid for the right to export honey according to their own business plans. Further, companies are free to independently negotiate export prices with their customers above the floor price, which the exporting companies themselves are instrumental in setting. MOFTEC has claimed that it does not involve itself in the price-setting or market destination of companies that have won the right to export honey. Thus, allocation of the export quota is arrived at in a competitive form, and separate prices are set by each enterprise with industry input as to the floor price and in open competition with respect to the final price. Furthermore, under the *1994 Quota Measure*, honey exporters compete with each other for customers in the global marketplace. Thus, the 1994 measure does not involve the type of *de jure* government control over export pricing and marketing decisions contemplated in the separate rates test.

As stated in previous cases, there is some evidence, that the provisions of the above-cited *1988 Law* and *1992 Regulations* regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (*see* "PRC Government Findings on Enterprise Autonomy," in *Foreign Broadcast Information Service—China—93–133* (July 14, 1993)). Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Sebacic Acid*).

Kunshan Xinlong, Jiangsu Native, Jiangxi Native and Zhejiang Native have each asserted that (1) it establishes its own export prices above the floor in conformance with the *1994 Quota Measure* and the PRC government does not set or approve the actual prices negotiated between buyers and sellers for honey imports into the United States; (2) it negotiates contracts on a case-by-case basis based on market conditions, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions, and there is no information on the record that suggests central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters (*i.e.*, the prices for the same grades of honey differ among companies). This information supports a preliminary finding that there is a *de facto* absence of governmental control of the management of these firms. The *de facto* impact of the regulatory provisions embodied in the *1994 Quota Measure* does not constitute the degree of control of these firms which would preclude the calculation of antidumping rates based on their own, separate competitively-set prices.

Consequently, we preliminarily determine that Kunshan Xinlong, Jiangsu Native, Jiangxi Native and Zhejiang Native have met the criteria for the application of separate rates.

Market Oriented Industry

The respondents participating in this investigation have claimed that their material inputs are acquired at market prices and that, accordingly, we should find that the Chinese honey industry is a market oriented industry (MOI) and the Department should use the actual PRC prices for valuing these inputs.

The criteria for determining whether a MOI exists are: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material *e.g.*, labor and overhead), and for all but an insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. (*See, Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome Plated Lug Nuts from the People's Republic of China*, 57 FR 15052, 15054, April 24, 1992) (Lug Nuts Redetermination).

We recognize that certain sectors in the PRC may be becoming more market-oriented and that honey appears to be one of the more decentralized industries. However, we have determined that the MOI criteria outlined above have not been met in this investigation. For example, the third prong has clearly not been met in this case. Respondents have merely made unsubstantiated claims that the prices for significant inputs in processing honey are market-determined. Respondents have provided no information regarding the relevant real estate and capital markets. There is no description of the supply and demand factors supporting the claim that raw honey prices in China are market-driven, nor is there evidence on the record regarding supply and demand conditions in the labor market. Although the Ministry of Agriculture submitted a statement that coal and electricity prices are "set by the market," respondents do not elaborate on this statement nor do they provide any factual support for such a statement. It is known that electricity is rationed in the PRC, but respondents have not explained if and how electricity is rationed in the case of honey producers and on what basis.

Therefore, we preliminarily find that a MOI does not exist, and accordingly have calculated foreign market value in accordance with section 773(c) of the statute.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, *e.g.*, *Sebacic Acid* and *Silicon Carbide*). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(c) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of the merchandise. Section 773(c)(2) of the Act alternatively provides that when available information is inadequate for using the factors of production methodology, FMV may be based on the

export prices for comparable merchandise from market economy countries at a comparable level of economic development.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed under the FMV section, below.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Kenya, Nigeria, Pakistan, Sri Lanka, and Indonesia are the countries most comparable to the PRC in terms of overall economic development (*see* Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated January 25, 1995). According to the information we have developed, India appears to be the most significant producer of honey among these six potential surrogate countries. Accordingly, we have calculated foreign market value (FMV) using Indian prices for the PRC producers' factors of production. We have obtained and relied upon published, publicly available information wherever possible.

Fair Value Comparisons

To determine whether sales of honey from the PRC to the United States by Kunshan Xinlong, Jiangsu Native, Jiangxi Native and Zhejian Native were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For the four investigated exporters, we calculated purchase price based on packed, CIF and C&F foreign-port prices to unrelated purchasers in the United States. Where necessary, we made deductions for foreign inland freight and transportation insurance, valued in India.

The four respondents reported commissions incurred on certain sales. Our analysis of these expenses, based on respondents' submissions, indicates that these expenses are actually discounts from price. Accordingly, we have deducted them from gross price.

Two exporters, Jiangsu Native and Zhejian Native reported that their merchandise was shipped on market-economy carriers and that they paid for these services in U.S. dollars. These expenses included containerization and loading charges. Accordingly, for those companies, we deducted the reported ocean freight expense. The other two exporters, Kunshan Xinlong and Jiangxi Native, reported the use of both market economy and PRC based shipping companies. However, neither identified which sales were shipped by the relevant ocean freight companies. As best information available (BIA), we applied the higher of the reported expense or the amount provided by an international shipping company for transportation between Shanghai, the port of exportation, and various U.S. destinations. Where an international shipping rate was used, we also deducted containerization and loading fees valued in India, because these charges were included in the ocean freight value.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the four exporters. The factors used to produce the subject merchandise include raw honey, labor, factory overhead, selling, general and administrative expenses, and packing. The reported factor quantities were multiplied by Indian values. Where possible, we used public information. For a complete analysis of surrogate values, *see* the Valuation Memorandum, dated March 13, 1995, for this investigation.

We did not add separately a freight expense for transporting raw material from the supplier to the processor because this expense appears to be included in the surrogate values used (*see* the Valuation Memorandum).

To value raw honey, we used public information from the August-September, 1993, edition of *Khadigramodyog*, an English-language Indian agricultural journal. We adjusted the factor values from 1993 to the POI using wholesale price indices published in *International Financial Statistics (IFS)* by the International Monetary Fund.

To value labor, we used information regarding the Indian trade industry from the International Labor Office's *1993 Yearbook of Labor Statistics*. We adjusted the factor value to the POI using consumer price indices published in the *International Financial Statistics*, consistent with our treatment of this value in past NME cases (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* 59 FR 66895, December 28, 1994).

To value factory overhead, including energy, we calculated a percentage based on data from the August-September, 1993 edition of *Khadigramodyog*. For selling, general and administrative (SG&A) expenses, we used the ten percent statutory minimum because we were unable to obtain an Indian value. For profit, we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses because we were unable to obtain an Indian value. We added packing, using Indian values obtained from *Indian Import Statistics*.

Margins for Exporters Whose Responses Were Not Analyzed

For the responding companies that provided all the questionnaire responses requested of them and otherwise fully cooperated with the Department's investigation, but nonetheless, were not fully analyzed by the Department, due to limited resources, (*see Selection of Respondents* section above), we are assigning the weighted-average of the rates of the four fully analyzed companies. Companies receiving this rate are identified by name in the Suspension of Liquidation section of this notice.

We are not assigning a single country-wide rate to all exporters other than those which had been individually determined to have met the criteria for a separate rate. This change in methodology was necessitated by the particular circumstances of this case. The parties who responded but were not analyzed have applied for separate rates, and provided materials for the Department to consider in this request. Although the Department is unable, due to administrative constraints, to consider the request for separate rates status, and to calculate a separate rate for each of these named parties, there has been no failure on the part of these firms to provide requested information. Because it would not be appropriate for the Department to refuse to consider an affirmative documented request for an examination of whether these companies were independent of any

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non-respondent firms and then assign to the cooperative firms the rate for the noncooperative firms, which in this case is an adverse margin based on best information available, the Department has assigned a special single rate for these firms.

Best Information Available (BIA)

The following discussion regarding the application of BIA applies to all exporters other than those that have responded to our questionnaires. Because no information has been presented to the Department to prove otherwise, any exporter of subject merchandise that did not respond to the Department's questionnaires is presumed to be under government control, and, therefore, is not entitled to its own separate dumping margin. The evidence on record indicates the responding companies may not account for all exports of the subject merchandise. In the absence of responses from all exporters, therefore, we are basing the All PRC rate on BIA, pursuant to section 776(c) of the Act *(see Silicon Carbide).*

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium* (58 FR 37083, July 9, 1993). In this investigation, since the evidence indicates that not all PRC exporters of honey responded to our questionnaire, we are assigning to any PRC company, other than those specifically identified below, the highest calculated margin, which is higher than the margin alleged in the petition, as revised by the Department (*see Initiation of Antidumping Duty Investigation: Honey from the People's Republic of China,* (59 FR 54434, October 31, 1994).

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of honey from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer//producer/exporter	Weighted-average margin percentage
Kunshan Xinlong Food, Ltd.	146.37
Jiangsu Native Produce Import & Export	127.52
Jiangxi Native Produce Import & Export	157.16
Zhejiang Native Produce & Animal By-Product Import & Export	131.86
For the Following Other Responding Firms:	144.61
Heilongjiang Native Produce and Animal By-product Import and Export	
Inter Mongolia Native Produce and Animal By-product	
Chang Cheng Industrial Co. Ltd	
Shaanxi Native Produce Import and Export	
Kunshan Foreign Trade Co	
China (TUHSU) Super Food Import and Export	
Hubei Native Produce Import and Export	
Tianjin Native Produce Import and Export	
Chanting Native Produce Import and Export	
Qinghai Cereals and Oils Import and Export	
Shanghai Native Produce Import and Export	
Guangxi Cereals, Oils and Foodstuffs Import and Export Corporation	
Sichuan Native Produce Import and Export	
China (TUHSU) Flavors and Fragrances Import and Export	
Shandong Cereals and Oils Import and Export	
Ningbo Native Produce Import and Export	
Anhui Cereals & Oils Import and Export	
Jiangsu Sweet Foods, Ltd	
Hebei Native Produce Import and Export	
Anhui Medicines and Health Produce Import and Export	
Xian Native Produce and Animal By-product Import and Export	
Liaoning Native Produce Import and Export	
Anhui Native Produce Import and Export	
Henan Native Produce Import and Export	
All PRC	157.16

The All PRC rate applies to all entries of subject merchandise except for entries from exporters that are identified above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 4, 1995, and rebuttal briefs, no later than May 11, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 1:00 p.m. on May 16, 1995, at the U.S. Department of Commerce, Room 4803, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants: and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. In this investigation proceeds normally, we will make our final determination within 75 days after the preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: March 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6810 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–806]

Silicon Metal From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from petitioners and four respondents, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on silicon metal from Brazil. This review covers four manufacturers/exporters and the period July 1, 1992, through June 30, 1993.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On July 7, 1993, the Department published (58 FR 36391) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period July 1, 1992, through June 30, 1993. We received timely requests for review from Companhia Brasileira Carburetto de Calcio (CBCC), Companhia Ferroligas Minas Gerais Minasligas (Minasligas), Electroila, S.A. (currently known as Eletrosilex Belo Horizonte (Eletrosilex)), and Rima Eletrometalurgia S.A. (RIMA). We also received a request for review of the same four manufacturers/exporters of silicon metal from a group of five domestic producers of silicon metal (the petitioners). The five domestic producers are American Alloys, Inc., Elkem Metals Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals and Alloys, Inc.

On August 24, 1993, the Department published a notice of initiation (58 FR 44653) covering the four manufacturers/exporters named above. We verified the cost responses of Eletrosilex, RIMA, and CBCC in June and July 1994. The Department has now completed the preliminary results of this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

The review period is July 1, 1992, through June 30, 1993. This review involves four manufactueres/exporters of Brazilian silicon metal.

United States Price

In calculating USP, we used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, F.O.B., C.I.F., or C&F price to the first unrelated purchaser in the United States, or to unrelated trading companies who export to the United States.

We made deductions from USP, where appropriate, for foreign inland freight, ocean freight, and brokerage and handling. We made an addition to USP, where appropriate, for duty drawback. These adjustments were in accordance with section 772(d)(2) of the Tariff Act. We also adjusted USP for taxes in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 31204 (at 31205), June 17, 1994.

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as a viable basis for calculating FMV, we compared the volume of each respondent's home market sales to the volume of its third-country sales, in accordance with section 773(a)(1)(B) of the Tariff Act. In each case we found that the respondent's sales of silicon metal in

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the home market constituted at least five percent of its sales to all other markets. Thus, other than where we relied upon constructed value (CV) (as described below), we based FMV on sales in the home market. *See* 19 C.F.R. 353.46(a).

Based on findings in the previous review and the less-than fair-value (LTFV) investigation that the respondents sold subject merchandise in the home market below the cost of production (COP), we conducted a cost investigation in this review in accordance with section 732(a) of the Tariff Act. We calculated each respondent's COP as the sum of all reported material costs, labor expenses, factory overhead, selling, general, and administrative (SG&A) expenses, and packing expenses. Because the Brazilian economy was hyperinflationary during the period of review (POR), we instructed respondents to follow our long-standing methodology for hyperinflationary economies, including the use of replacement costs. (*See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review*, 59 FR 42806 (August 19, 1994.)

We compared individual home market prices, net of the *imposto de circulacao de mercadorias e servicos* (ICMS) tax (a home market, valued-added tax), to monthly COPs. For CBCC, Eletrosilex, and RIMA, we found that, for each model sold in the home market, more than 90 percent of sales were made at below-COP prices, and were made over an extended period of time. Since CBCC, Eletrosilex, and RIMA provided no indication that these sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded all of their home market sales, and based FMV on CV in accordance with 19 C.F.R. 353.50. For Minasligas, we found that between 10 and 90 percent of home market sales were made at below-COP prices. However, since we determined that such sales were not made over an extended period of time, we did not disregard them in our calculation of FMV.

In order to determine whether below-cost sales and been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each model to the number of months during the POR in which each model was sold. If a model was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a model was sold in three or more months, we did not exclude the below cost sales unless there were below-cost sales in at least three months during the POR.

In accordance with section 773(e) of the Tariff Act, where we based FMV on CV, it consisted of the sum of the cost of manufacture (COM) of silicon metal, home market SG&A expenses, home market profit, and the cost of export packing. The COM of silicon metal is the sum of direct material, direct labor, and variable and fixed overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or 10 percent of the COM, the statutory minimum for foreign SG&A expenses. For home market profit, we used the larger of the actual profit reported by the respondents, or the statutory minimum of eight percent of the sum of COM and SG&A expenses. *See* section 773(e)(1)(B) of the Tariff Act. We also made adjustments, where applicable, for differences between home market and U.S. market expenses for credit and warehousing.

We based FMV for Minasligas on prices to unrelated purchasers in the home market. We calculated a monthly, weighted-average price. Where applicable, we made adjustments for post-sale inland freight. We also made adjustments, where applicable, for differences between home market and U.S. market expenses for packing, credit, and warehousing.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1992, through June 30, 1993:

Manufacturer/exporter	Margin (percent)
CBCC	21.39
Minasligas	0.00
Eletrosilex	11.28
RIMA	20.83

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 91.06 percent, the "all others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22.

Dated: March 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6811 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–517–501]

Carbon Steel Wire Rod From Saudi Arabia; Termination of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is terminating the 1992 and 1993 administrative reviews on carbon steel wire rod from Saudi Arabia because the countervailing duty order has been revoked effective December 31, 1991 (59 FR 58814 (November 15, 1994)). The reviews were initiated on March 26, 1993, for the period January 1, 1992, through December 31, 1992, and March 14, 1994, for the period January 1, 1993, through December 31, 1993.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Lebowitz or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1992, after timely receipt of a request for an administrative review and a properly filed request for revocation from the Saudi Iron and Steel Company (HADEED), the Department initiated an administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia covering the period of January 1, 1991, through December 31, 1991 (57 FR 9104 (March 16, 1992)). On November 2, 1993, the Department issued preliminary results of the 1991 administrative review, including a preliminary determination that it intended to revoke the order (58 FR 58537 (March 26, 1993)).

On November 15, 1994, the Department issued the final results of the administrative review for the 1991 period of review, and revoked the entire countervailing duty order effective December 31, 1991 (59 FR 58814 (November 15, 1994)). The Department found that the respondent company had met the requirements for revocation of the countervailing duty order pursuant to 19 CFR 355.25(b)(2). Based upon certifications by HADEED and the Government of the Kingdom of Saudi Arabia, as well as from the Department's previous four consecutive administrative reviews, the Department determined that HADEED, the only Saudi producer of the subject merchandise, had not applied for or received any net subsidy under any programs deemed by the Department to be countervailable for the requisite five administrative reviews. The Department further determined that there was no likelihood that this company would apply for nor receive any net subsidy in the future.

Prior to the Department's final determination to revoke the order, there were two opportunities for interested parties to request administrative reviews of this order for the periods January 1, 1992, through December 31, 1992, and January 1, 1993, through December 31, 1993. HADEED submitted requests for administrative reviews of these periods and the Department initiated the reviews (58 FR 16397 (March 26, 1993) and 59 FR 11768 (March 14, 1994)).

Since the Department revoked the order effective December 31, 1991, there is no basis for completing the administrative reviews covering the 1992 and 1993 periods. Therefore, the Department is hereby terminating these reviews.

Dated: March 10, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–6812 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final affirmative injury determination made by the U.S. International Trade Commission, respecting Certain Softwood Lumber Products from Canada, Secretariat File No. USA–92–1904–02.

SUMMARY: In accordance with the memorandum Opinion and Order of the Binational Panel dated January 27, 1995, dismissing the panel review described above and the *Article 1904 Panel Rules*, the panel review was completed on March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On January 27, 1995, the Binational Panel issued an order dismissing the panel review of the final affirmative injury determination of the United States International Trade Commission ("ITC") concerning Certain Softwood Lumber Products from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. The Notice of Final Panel Action was issued on February 7, 1995. No Extraordinary Challenge request was filed in the time permitted by the FTA and the relevant rules of procedure. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective March 10, 1995.

Dated: March 13, 1995.

James R. Holbein,

United States Secretary NAFTA Secretariat.

[FR Doc. 95–6813 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–GT–M

Minority Business Development Agency

Business Development Center Applications: Jacksonville, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Jacksonville, Florida MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, March 8, 1995, Vol. 60, No. 45, 12739.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6818 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

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Minority Business Development Agency Business Development Center Applications: Miami, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Miami MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, February 15, 1995, Vol. 60. No. 31, 8639.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6819 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Minority Business Development Agency

Business Development Center Applications: Baton Rouge, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Baton Rouge MBDC. This solicitation was originally published in the **Federal Register**, Tuesday, February 21, 1995, Vol. 60, No. 34, 9662.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6820 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Cincinnati, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Cincinnati, Ohio MBDC. This solicitation was originally published in the **Federal Register**, Friday, March 3, 1995, Vol. 60, No. 42, 11955.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6821 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Portland, OR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Portland MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, February 15, 1995, Vol. 60, No. 31, 8633.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6822 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Pittsburgh, PA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Pittsburgh MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, March 8, 1995, Vol. 60, No. 45, 12741.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6823 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: San Juan, PR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its San Juan MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, March 8, 1995, Vol. 60, No. 45, 12742.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6824 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Charleston, SC

AGENCY: Minority Business Development Agency, Commerce

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Charleston, South Carolina MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, January 25, 1995, Vol. 60, No. 16, 4885.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6825 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Seattle, Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Seattle MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, February 15, 1995, Vol. 60, No. 31, 8641.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6826 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 031495E]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of two applications for scientific research permits (P497C and P45S) and receipt of an application for Modification 4 to scientific research Permit 817 (P45K).

Notice is hereby given that Dr. Theodore Bjornn of the Idaho Cooperative Fish and Wildlife Research Unit (ICFW) in Moscow, ID, in association with Lowell Stuehrenberg of NMFS, and Stanley Smith of the National Biological Service (NBS) in Cook, WA have applied in due form for scientific research permits (P497C and P45S respectively) and that Stanley Smith of NBS has applied for Modification 4 to scientific research Permit 817 (P45K) to take listed species as authorized by section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

ICFW requests an ESA section 10 permit to capture adult, endangered, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) to test the efficiency of Merwin traps at six sites downstream of Bonneville Dam on the Columbia River under variable flow conditions. The Merwin traps will be used for a study, which will begin in 1996, to evaluate the passage of migrating adult salmon and steelhead around the dams and through the reservoirs on the lower Columbia River and the lower Snake River. The adult anadromous fish will be migrating to upstream natal tributaries to spawn. A separate ESA section 10 permit will be requested for the study. The requested duration of this permit is mid-April to the end of May and mid-June to the end of July in 1995 only.

NBS requests an ESA section 10 scientific research permit to take juvenile, endangered, artificially propagated Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to provide managers with data on the distribution, abundance, movement, and habitat use by the anadromous fish that migrate through Lower Granite Reservoir. The study will provide detailed information on the response of migrating smolts to environmental changes that attend proposed reservoir drawdown and other river regulation scenarios. Project objectives and sampling plans will accommodate endangered species recovery needs and constraints. The juvenile fish to be used for the study will be collected at trap sites and by using purse seines, tagged with radio transmitters, and monitored electronically for their migratory patterns as far downriver as possible. The annual dates of collection will be from April 1 to May 26. The requested duration of the permit is 4 years.

Permit 817 authorizes NBS to take juvenile, endangered, Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to assess the migration timing of juvenile anadromous salmon using passive integrated transponder (PIT) tags and Panjet marks. For Modification 4, NBS requests an increase in the number of their annual authorized take and approval to use an additional sampling gear type. The increase in the annual take is requested to obtain a sufficient sample size to estimate the migration timing of fish produced in the upper Snake and Clearwater Rivers to Lower Monumental Dam on the lower Snake River. Similar increases in the authorized take for this permit were processed in 1993 and 1994. In addition, NBS requests approval to use modified fyke nets instead of beach seines to capture fish for tagging and to assess nearshore movements of the marked fish in the Snake and Clearwater Rivers. Modification 4 is requested for the duration of the permit. The permit expires on December 31, 1996.

Written data or views, or requests for a public hearing on these applications should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: March 14, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 95–6785 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030695C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification no. 3 to scientific research permit no. 717 (P77#44).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 717 submitted by Dr. Howard W. Braham, Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Building 4, Seattle, WA 98115, has been granted.

ADDRESSES: The modified permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200,

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Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: On January 20, 1995, notice was published in the **Federal Register** (60 FR 4148) that a modification of permit no. 717, issued October 22, 1990 (55 FR 35923), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The modification authorized the holder to take an additional 10 California sea lions (*Zalophus californianus*) for instrumentation and the permit was extended until December 31, 1996.

Dated: March 14, 1995.

Art Jeffers,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6784 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–23–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan; Correction

March 13, 1995.

In the table of the letter to Commissioner of Customs published on February 16, 1995 (60 FR 9014), delete the entry for Category 617 at the level of 15,286,929 square meters.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–6807 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on April 3, 1995 from 9:00 a.m. to 12:00 p.m. in the lower-level hearing room of the Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. The agenda will consist of:

Agenda

I. Introductory Remarks, Commissioner Joseph B. Dial;
II. Summary of the 1994 Summit on Risk Management in American Agriculture;
III. 1995—The beginning of the new age of combining yield and price risk management for agricultural commodities.
  1. The Chicago Board of Trade's Area Yield Insurance Futures/Options contract.
  2. Combining Multi-Peril Crop Insurance (MPCI) with replacement coverage, options, and forward contracts.
IV. The proposed merger of the CFTC and the SEC;
V. Updates on dual trading/audit trail;
VI. The change in delivery specifications for the CME live cattle contract effective June 1995;
VII. Other Committee Business; and
VIII. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the fifth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Kimberly N. Griles, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Griles in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on March 15, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6761 Filed 3–17–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

2nd Annual Product Shelf-Life Symposium

AGENCY: Defense Logistics Agency, Navy Ships Parts Control Center.

ACTION: Notice of symposium; call for papers.

SUMMARY: The Defense Logistics Agency and the Navy Ships Parts Control Center will conduct the 2nd Annual Product Shelf-Life Symposium, June 27–29, 1995 at the Hyatt Regency Hotel, San Diego, California. The purpose of this Symposium is to bring together government and industry representatives, in an open forum, to exchange ideas and discuss policies associated with product shelf-life. The 1995 symposium theme, "Partnering to Preserve Our Future" has been selected to reflect the need to continue a joint discussion of the many topics and issues affecting our nation's military readiness, as well as our national environment. Specifically, there are many questions within the government and industrial community that currently remain unanswered. We are confident that this symposium, by providing an open forum for the exchange of ideas and opportunities, will yield positive results for future methods of product shelf-life.

DATES: June 27–29, 1995.

ADDRESSES: Hyatt Regency Hotel—San Diego CA.

EFFECTIVE: Upon publication of this notice.

CONTACT: For information on submitting an abstract for the Product Shelf-Life Symposium contact Ms. Debbie Trautman, Navy Shelf-Life Program Administrator at (717) 790–1506, fax (717) 790–1615 or Ms. Heather Brinton at the American Defense Preparedness Association, at (703) 522–1820, fax (703) 522–1885.

Michael S. Pipan,

Director, DoD Shelf-Life Program.

[FR Doc. 95–6699 Filed 3–17–95; 8:45 am]

BILLING CODE 3620–01–M

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Airborne Laser Demonstration Phase

AGENCIES: Department of Defense, United States Air Force, Air Force Materiel Command, Space and Missile Systems Center, Phillips Laboratory, DOD.

SUMMARY: The United States Air Force (USAF) will prepare an Environmental Impact Statement (EIS) to assess the potential impacts of the Demonstrator Phase of the Airborne Laser (ABL) Program. This program is an Air Force Advanced Technology Demonstration program to develop and then demonstrate the necessary technologies required to acquire, track, and then destroy theater ballistic missiles during boost phase. The ABL Demonstrator Phase includes the design, development, integration, and testing of a weapons-class Chemical Oxygen Iodine Laser (COIL) on the aircraft. The ABL Demonstrator Phase is scheduled to begin in January 1997 and be completed by the end of 2001. The decision to be made by the Air Force, is to determine where the ABL Demonstrator Phase test activities will occur.

The ABL Program will require a Home Base, a Diagnostic Test Range and an Expanded-Area Test Range. The Home Base will be the location for the ABL Demonstrator Aircraft, its flightline maintenance, ground test facilities, fuel storage and transfer, laser pressure recovery systems, and technical and support personnel. The Diagnostic Test Range is the location for aircraft worthiness and flight certification testing, air refueling, modification testing, communication and navigation system testing, integrated weapon system checkouts without laser operations, short range integrated aircraft and weapons system checkouts and engagements with low- and high-power laser operations, short range launch and recovery operations, and target and debris recovery. The Expanded-Area Test Range is the location for long-range integrated aircraft and weapon system checkouts and low- and high-power laser operations, and target and debris recovery.

Alternative sites for the Home Base include Phillips Laboratory at Kirtland AFB, Albuquerque, NM, and Edwards AFB near Lancaster, CA. Potential Test Ranges include: the Western Test Range adjacent to Vandenberg AFB near Lompoc, CA; White Sands Missile Range near Las Cruces, NM; and Edwards AFB near Lancaster, CA.

The Air Force is planning to conduct a series of scoping meetings to assist in determining the issues to be analyzed in depth in the EIS, and to involve the public to help the USAF identify those areas of concern. Comments received as a result of the scoping process will be used to assist in identifying potential impacts to the quality of the human environment. To provide a forum for the community to make oral comments, scoping meetings are scheduled for:

April 4, 1995, 7 p.m. at the Ramada Classic Hotel, Albuquerque, NM.

April 18, 1995, 7 p.m. at the Holiday Inn, Las Cruces, NM.

May 3, 1995, 7 p.m. at the Desert Inn, Lancaster, CA.

May 10, 1995, 7 p.m. at the Best Western Porto Finale, Lompoc, CA.

The purpose of these meetings is to identify the environmental issues and concerns that should be analyzed to (1) support the ABL, (2) solicit comments on the proposed action and (3) solicit potential alternatives for consideration in developing the ABL EIS. Public hearings are proposed to be conducted in 1996 for the purpose of obtaining comments on the Draft EIS. Dates, times, and places will be determined and public notification will be made.

To ensure the USAF will have sufficient time to consider public scoping comments on environmental issues to be included in the Draft EIS, and alternatives to be included in the final plan, comments and proposals should be forwarded to the address below by May 26, 1995. However, comments will be accepted and considered through the process.

Please direct comments or requests for further information concerning the ABL EIS to: Michelle Hedrick, Phillips Laboratory/S,E, 3550 Aberdeen Ave. S.E., Bldg. 434,Albuquerque, NM 87117–5776, Toll free number: 1–800–343–1282.

List of Subjects

Environmental protection, Environmental impact statement, U.S. Air Force, Phillips Laboratory, Notice of intent, Airborne laser, Kirtland AFB, Edwards AFB, White Sands Missile Range, Vandenberg AFB.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–6721 Filed 3–17–95; 8:45 am]

BILLING CODE 3910–01–F

Department of the Navy

Government Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Request for copies of the patent applications cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Balston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 08/287,027: Fiber-Optic Rotary Joint with Bundle Collimator Assemblies; filed August 8, 1994;

Patent Application Serial No. 08/287,029: A Fiber-Optic Bundle and Collimator Assembly; filed August 8, 1994; and

Patent Application Serial No. 08/287,028: Method For Making Fiber-Optic Bundle Collimator Assembly; filed August 8, 1994.

Dated: March 14, 1995.

M.D. Schetsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6718 Filed 3–17–95; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Task Force on Naval Surface Warship Design will meet April 10-11, 1995, from 9 a.m. to 4 p.m., each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions about Future Surface Warships Designs. Matters to be examined constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified

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pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: March 14, 1995.

L. R. McNeese,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-6719 Filed 3-17-95; 8:45 am]

BILLING CODE 3810-FF-F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 31, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708-9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (RIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 14, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Fast Response Survey System—Nutrition Education in U.S. Public Schools, K-12
Frequency: One time
Affected Public: Individuals and households
Reporting Burden:
Responses: 900
Burden Hours: 450
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey of 1,000 public elementary, middle, and secondary schools was requested by the U.S. Department of Agriculture. The survey requests information on the way schools provide nutrition education to students, the topics covered in nutrition education to students, the topics covered in nutrition education, training or education of school nutrition coordinator, materials and resources used in the instruction of nutrition education, and the perceived importance of nutrition education. With the information from the survey, the U.S. Department of Agriculture can identify any gaps and determine what additional efforts might be needed.
Additional Information: Clearance for this information collection is requested for March 31, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95-6706 Filed 3-17-95; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Availability of the Tritium Supply and Recycling Draft Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability and Public Hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Tritium Supply and Recycling Draft Programmatic Environmental Impact Statement (PEIS), and the dates and locations for public hearings to receive comments on the Draft PEIS. The purpose of the Tritium Supply and Recycling PEIS is to evaluate alternatives for an assured, long-term supply of tritium, a radioactive gas which is a necessary component of every warhead in the Nation's nuclear weapons stockpile.

ADDRESSES AND FURTHER INFORMATION: A copy of the Draft PEIS and/or its Executive Summary may be obtained upon request by calling 1-800-776-2765, or by mail to: Office of Reconfiguration, DP-25, U.S. Department of Energy, P.O. Box 3417, Alexandria, Virginia 22302.

Specific information regarding the public hearings, including registration information, can also be obtained by calling the above toll free number, writing to the address above, or electronically via computer as follows: Federal Information Exchange Bulletin Board, InterNet Address: FEDIX.FIECOM, Modem Toll-Free: 1-800-783-3349, DC Metro Modem: 301-258-0953.

SUPPLEMENTARY INFORMATION: Section 3145 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, requires the Department of Energy to issue a Programmatic Environmental Impact Statement (PEIS) assessing the Department's capacity to produce tritium not later than March 1, 1995. In accordance with that law, the Tritium Supply and Recycling Draft PEIS was completed and distributed to Congress on March 1, 1995. That same Draft PEIS has also been distributed to individuals and organizations on the program's mailing list. Additional copies of the Draft PEIS are available to any other interested persons and can be requested as described above.

The Draft PEIS evaluates siting and technology alternatives related to tritium supply and recycling. Four technologies for tritium supply are assessed in the PEIS: Heavy Water Reactor, Modular High-Temperature Gas-Cooled Reactor, Advanced Light Water Reactor, and Accelerator Production of Tritium. Five sites for new tritium supply facilities and tritium recycling facilities are assessed: the Idaho National Engineering Laboratory (Idaho Falls, Idaho); the Nevada Test Site (Las Vegas, Nevada); the Pantex Plant (Amarillo, Texas); the Savannah River Site (Aiken, South Carolina); and the Oak Ridge Reservation (Oak Ridge, Tennessee). Two options for tritium recycling are evaluated: upgrade of existing tritium recycling facilities at the Savannah River Site, or collocation of a new tritium recycling facility with the tritium supply facility at one of the other sites.

Two of the three reactor technologies (Advanced Light Water Reactor and Modular High Temperature Gas-Cooled Reactor) are also evaluated in the Draft PEIS as "triple play" reactors which are capable of "burning" plutonium in addition to producing tritium and generating electricity. Additionally, the Draft PEIS includes an assessment of the generic environmental impacts of producing tritium in an existing commercial reactor, either as a contingency option in the event of a national emergency, or if the Department should choose to purchase such a reactor and convert it to defense purposes. The Department does not have a preferred alternative at this time for tritium supply and recycling sites, or for a tritium supply technology. The Final PEIS will include any preferred alternative. However, the Department may choose to identify a preferred alternative prior to issuing the Final PEIS.

Six public hearings to receive comments on the Draft PEIS will be held as follows:

Washington, DC—April 5, 1995, Forrestal Building, 1000 Independence Avenue, S.W., Morning Hearing 8:30am-1:00pm; Afternoon Hearing 1:30pm-6:00
Las Vegas, NV—April 5, 1995, Cashman Field Convention Center, 850 North Las Vegas Blvd., Morning Hearing 8:30am-1:00pm; Evening Hearing 6:00pm-10:30pm
Oak Ridge, TN—April 12, 1995, Pollard Auditorium, 210 Badger Avenue, Morning Hearing 8:30am-1:00pm; Evening Hearing 6:00pm-10:30pm
Pocatello, ID—April 12, 1995, Quality Inn Pocatello Park Hotel, 1555 Pocatello Creek Road, Morning Hearing 8:30am-1:00pm; Evening Hearing 6:00pm-10:30pm
North Augusta, SC—April 20, 1995, North Augusta Community Center, 101 Brookside Drive, Afternoon Hearing 1:00pm-5:30pm; Evening Hearing 6:00pm-10:30pm
Amarillo, TX—April 20, 1995, Sunset Convention Center, 3701 Plains Blvd., Suite 135, Afternoon Hearing 1:00pm-5:30pm; Evening Hearing 6:00pm-10:30pm

The public comment period will extend until May 15, 1995. A Final PEIS for Tritium Supply and Recycling is expected to be completed by October 1995. A Record of Decision would be completed no sooner than 30 days after the Final PEIS is issued.

Signed in Washington, D.C. this 13Th day of March, 1995.

Victor H. Reis,

Assistant Secretary for Defense Programs.

[FR Doc. 95-6793 Filed 3-17-95; 8:45 am]

BILLING CODE 6450-01-P

Office of Civilian Radioactive Waste Management; Waste Acceptance Issues

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of Availability of the Response Summary Report for the Department of Energy's Notice of Inquiry on Waste Acceptance Issues.

SUMMARY: The Department of Energy published a Notice of Inquiry on May 25, 1994, to elicit the views of affected parties on: (1) The Department's preliminary view that it does not have a statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or a suitable storage facility constructed under the Nuclear Waste Policy Act of 1982, as amended; (2) the need for an interim, away-from-reactor storage facility prior to repository operations; and (3) options for offsetting, through the use of the Nuclear Waste Fund, a portion of the financial burden that may be incurred by utilities in continuing to store spent nuclear fuel at reactor sites beyond 1998 (59 FR 27007). The Notice of Inquiry implemented the Secretary's initiative to invite the views of interested parties and to advance the consensus-building process on resolving these important issues.

The Notice of Inquiry requested written comments on or before September 22, 1994. In response to a request from six organizations, the Department published a Notice on October 18, 1994, announcing the reopening of this comment period until December 19, 1994 (59 FR 52524). The Department received more than 1,100 comment letters in response to the Notice of Inquiry.

The purpose of this Notice is to announce the availability of the *Notice of Inquiry on Waste Acceptance Issues — Response Summary Report* which the Department prepared to present a summary of the comments received in response to the Notice of Inquiry. The Department is currently reviewing the comments for the purpose of preparing its response to the issues set forth in the Notice of Inquiry.

ADDRESSES: Copies of the report may be obtained by writing: OCRWM Information Center, P.O. Box 44375, Washington, DC 20026, or by phone: (800) 225-NWPA (6972), (202) 488-5513 (in the Washington, DC area).

FOR FURTHER INFORMATION CONTACT: Mr. David Zabransky at the address above, or by telephone at (202) 586-7346 or Mr. Robert Waxman of the Office of General Counsel at (202) 586-6975.

Issued in Washington, DC, March 15, 1995.

Daniel A. Dreyfus,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 95-6791 Filed 3-17-95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER94-1593-001, et al.]

National Power Exchange, et al. Electric Rate and Corporate Regulation Filings

March 10, 1995

Take notice that the following filings have been made with the Commission:

1. National Power Exchange

[Docket No. ER94-1593-001]

Take notice that on February 21, 1995, National Power Exchange filed certain information as required by the Commission's order issued October 7, 1994.

2. Associated Power Services, Inc.

[Docket No. ER95-7-002]

Take notice that on February 10, 1995, Associated Power Services, Inc. tendered for filing additional information in the above-referenced docket.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

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3. Pacific Gas and Electric Company

[Docket No. ER95–262–000]

Take notice that on February 15, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment (Amendment) to the Control Area and Transmission Service Agreement (Agreement) between PG&E and Destec Power Services, Inc. (DPS) which was filed previously with the Commission on December 6, 1994 in the above docket.

The filing seeks to: (1) Modify the rate approach for Distribution Service provided for in the Agreement; (2) confirm that PG&E will file for approval of the construction agreement if DPS is requested to pay for any incremental transmission system upgrades; (3) provide more detailed description of Inter-Hour Load Balancing Service; (4) clarify the rate derivation for ancillary services, the Monthly Billing Charge and the charges for Power Deviations.

PG&E is requesting certain waivers.

Copies of this filing were served upon DPS, various intervenors and the California Public Utilities Commission.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER95–431–000]

Take notice that on March 2, 1995, Illinois Power Company (Illinois) tendered for filing an amendment between Illinois and Citizens Lehman Power Sales (CLP Sales). Illinois states that the purpose of this amendment is to revise the charges when Illinois is buying from a third party and selling to CLP Sales.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Connecticut Valley Electric Co. Central Vermont Public Service Corporation

[Docket Nos. ER95–679–000 and ER95–680–000]

Take notice that on March 1, 1995, Central Vermont Public Service Corporation tendered for filing a tariff providing for comprehensive transmission service. Central Vermont states that the tariff provides for transmission service on a basis comparable to the uses the Company makes of its transmission system to serve its own requirements customers. Central Vermont also tendered for filing a notice of cancellation of service by its subsidiary, Connecticut Valley Electric Company Inc., to New Hampshire Electric Cooperative.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Blackstone Valley Electric Company

[Docket No. ER95–682–000]

Take notice that on March 2, 1995, Blackstone Valley Electric Company filed a Notice of Cancellation of Rate Schedule No. 31. Rate Schedule No. 31 provided for subtransmission service by Blackstone to Roosevelt Hydro Electric Company. The provision for subtransmission service to Roosevelt expired by its own terms on October 31, 1994.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER95–683–000]

Take notice that on March 2, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed under the provisions of section 205 of the Federal Power Act a twelve-year power supply contract (the Service Agreement) under which Delmarva will provide all requirements service to the Town of Middletown, Delaware (Middletown). Delmarva states that the Service agreement supersedes Delmarva's Rate Schedule No. 65 under which Middletown currently receives service.

Delmarva, with Middletown's concurrence, requests an effective date of March 1, 1995 for the new Service Agreement. This effective date is specified by the terms of the Service Agreement.

The Service Agreement provides for the continuation of the requirements service previously furnished Middletown under Rate Schedule No. 65, but changes certain terms and conditions. The chief differences between the Service Agreement and Rate Schedule No. 65 are that the Service Agreement provides for all requirements service as a change from the partial requirements service Middletown was receiving, establishes a new rate for Middletown which is below the level of the rate currently charged Middletown and provides for future adjustments to the Middletown rate based on changes in the level of Delmarva's retail rates. The Service Agreement has a twelve year term.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER95–684–000]

Take notice that on March 2, 1995, Central Illinois Public Service company (CIPS), submitted for filing a Letter Agreement dated December 1, 1994, modifying the Interconnection Agreement dated November 1, 1969, between Tennessee Valley Authority, Central Illinois Public Service Company, Illinois Power Company and Union Electric Company.

The Letter Agreement provides for TVA's notification and consultation with CIPS, IP and UE regarding any changes TVA plans to make to the rental facilities at the Shawnee 345 kV Interconnection Point.

Copies of this filing have been mailed to Illinois Power Company, Union Electric Company, Tennessee Valley Authority, the Illinois Commerce Commission and the Missouri Public Service Commission.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–686–000]

Take notice that on March 2, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Electric Clearinghouse, Inc. (ECI).

Con Edison states that a copy of this filing has been served by mail upon ECI.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER95–687–000]

Take notice that on March 2, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Rochester Gas & Electric Corporation (RG&E) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to RG&E.

NUSCO requests that the Service Agreement become effective on March 15, 1995.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER95–688–000]

Take notice that on March 3, 1995, Southern California Edison Company tendered for filing a supplemental agreement, associated procedure and letter agreement to the 1990 Integrated Operations Agreement with the City of Azusa (Azusa), Commission Rate Schedule No. 247.

The supplemental agreement procedure and letter agreement establish the terms and conditions for the integration of Replacement Capacity Resources purchased by Azusa under the Conformed Western Systems Power Pool Agreement. Edison is requesting waiver of the Commission's 60 day notice requirements and is requesting an effective date of March 4, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER95–689–000]

Take notice that on March 3, 1995, Southern California Edison Company tendered for filing a supplemental agreement, associated procedure and letter agreement to the 1990 Integrated Operations Agreement with the City of Anaheim (Anaheim), Commission Rate Schedule No. 246.

The supplemental agreement, procedure and letter agreement establish the terms and conditions for the integration of Replacement Capacity Resources purchased by Anaheim under the Conformed Western Systems Power Pool Agreement. Edison is requesting waiver of the Commission's 60 day notice requirements and its requesting an effective date of March 4, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6746 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL95–30–000, et al.]

West Penn Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 13, 1995.

Take notice that the following filings have been made with the Commission:

1. West Penn Power Company

[Docket No. EL95–30–000]

Take notice that on March 10, 1995, West Penn Power (West Penn") filed a Petition for Issuance of a Declaratory Order ("Petition"). The Petition requests that this Commission: (1) Issue a declaratory order stating that West Penn has no current purchase obligation from Washington Power Company, L.P. ("Washington Power"); (2) find that the Public Utility Regulatory Policies Act of 1978 prohibits purchase rates for capacity that exceeds current avoided costs when (a) such rates are based on stale avoided cost data, (b) the utility no longer needs the capacity, and (c) the proposed generating plant is unbuilt; (3) find that a state utility commission may not modify a privately negotiated purchase agreement or, in the alternative, if a state utility commission may modify such an agreement, the utility must have the opportunity to demonstrate the purchase price is higher than the utility's avoided cost as of the date of the modification; and (4) find that a change in the type of qualifying facility from that originally granted rate approval voids that purchase agreement and requires that capacity charges must be recalculated at current avoided cost rates.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Orange and Rockland Utilities Inc.

[Docket Nos. ER94–1262–000, ER94–1264–000, ER94–1292–000, ER94–1293–000, ER94–1327–000, and ER94–1360–000]

Take notice that on February 24, 1995, Orange and Rockland Utilities, Inc. tendered for filing additional information requested by staff in the above-referenced dockets.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Western Regional Transmission Association

[Docket No. ER94–1288–002]

Take notice that on March 1, 1995, Western Regional Transmission Association tendered for filing revised copies of the amended Western Regional Transmission Association Governing Agreement filed on January 25, 1995.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Kimball Power Company

[Docket No. ER95–232–001]

Take notice that on March 3, 1995, Kimball Power Company tendered for filing revised copies of FERC Rate Schedule No. 1 pursuant to the Commission's order issued February 1, 1995 in the above-referenced docket.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER95–453–000]

Take notice that on March 2, 1995, Commonwealth Electric Company and Cambridge Electric Light Company each filed amendments to their respective FERC Electric Tariffs for Power Sales and Exchanges. The amendments reflect that the maximum duration of a transaction under the Tariff is one month and that the System Reservation Charge is calculated on a per-hour basis.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER95–543–000]

Take notice that on February 3, 1995, Potomac Electric Power Company tendered for filing supplemental information to its February 2, 1995 filing in the above-referenced docket.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Metropolitan Edison Company

[Docket No. ER95–685–000]

Take notice that on March 2, 1995, Metropolitan Edison Company tendered for filing Supplement Nos. 3 and 15 of Exhibit C–1 (Revised November 23, 1994).

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

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8. Northeast Utilities Service Company

[Docket No. ER95–690–000]

Take notice that Northeast Utilities Service Company (NUSCO), on March 2, 1995, tendered for filing a Service Agreement with Long Island Lighting Company (LILCO) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to LILCO.

NUSCO requests that the Service Agreement become effective on March 15, 1995.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–691–000]

Take notice that on March 3, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the "GPU Operating Companies"), filed an executed Service Agreement between GPU and LG&E Power Marketing Inc. (LG&E), dated February 16, 1995. The Service Agreement specifies that LG&E has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU and LG&E to energy into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 16, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Kamine/Besicorp Allegany L.P.

[Docket Nos. QF88–292–003 and EL95–29–000]

Take notice that on March 7, 1995, Kamine/Besicorp Allegany L.P. (Kamine/Besicorp) tendered for filing a supplement to its filing in these dockets.

This supplement pertains to operational aspects and legal proceedings relating to the facility. No determination has been made that this submittal constitutes a complete filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6747 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1639–000, et al.]

Wisconsin Public Service Corporation, et al. Electric Rate and Corporate Regulation Filings

March 14, 1995.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER94–1639–000]

Take notice that on February 24, 1995, Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin, tendered for filing revisions relating to the Commission's policy against "and" transmission pricing to its network transmission service tariff in compliance with the Commission's order issued January 25, 1995.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's regulations.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. TransCanada Northridge Power Ltd.

[Docket No. ER95–692–000]

Take notice that on March 3, 1995, TransCanada Northridge Power Ltd. (TNPL), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective May 2, 1995, unless an accelerated date (March 3, 1995), as requested by TNPL, is approved.

TNPL intends to engage in wholesale electric power and energy transactions as a marketer and a broker. In transactions where TNPL sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. TNPL is not engaged in the business of generating, transmitting or distributing electric power in the United States, although an affiliate has a minority ownership interest in a power generating facility located in Rhode Island.

Rate Schedule No. 1 provides for wholesale sales of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales of electric power may be made to affiliates.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER95–693–000]

Take notice that on March 3, 1995, Portland General Electric Company (PGE), tendered for filing a Surplus Firm Capacity Sale Agreement between PGE and the Bonneville Power Administration (BPA) under which PGE will return energy to BPA.

Pursuant to 18 CFR 35.11, PGE has requested that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Surplus Firm Capacity Sale Agreement to become effective on April 1, 1995.

Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems Inc.

[Docket No. ER95–695–000]

Take notice that on March 6, 1995, Midwest Power Systems Inc. (MPSI), tendered for filing a Transmission Service Agreement between MPSI and Rainbow Energy Marketing Corporation (Rainbow).

MPSI states that copies of this filing were served on the Iowa Utilities Board, the South Dakota Public Service Commission, and Rainbow.

MPSI requests the Agreement become effective upon the expiration of the Commission's 60-day notice period, or as soon thereafter as may be practical.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Madison Gas and Electric Company

[Docket No. ER95–696–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Electric Clearinghouse, Inc., under MEG's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Madison Gas and Electric Company

[Docket No. ER95–697–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with MidCon Power Services Corporation under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Company

[Docket No. ER95–698–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Louis Dreyfus Electric Power, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Madison Gas and Electric Company

[Docket No. ER95–699–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with AES Power, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER95–701–000]

Take notice that on March 6, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Maine Public Service Company. This Service Agreement specifies that MPSC has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and MPSC to enter into separately scheduled transactions under which NMPC will sell to MPSC capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of February 23, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and MPSC.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6744 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[FERC Docket No. CP95–35–000; PRPB Docket No. 94–62–1219–JPU]

EcoEléctrica, L.P.; Notice of Intent to Prepare a Joint Draft Environmental Impact Statement/Preliminary Environmental Impact Statement for the Proposed EcoEléctrica LNG Import Terminal and Cogeneration Project in Guayanilla Bay, Puerto Rico; Request for Comments on Environmental Issues and Notice of Scoping Meetings

March 14, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a joint environmental impact statement (EIS) with the Fuerto Rico Planning Board (PRPB or Board). The document will discuss the environmental impacts of the construction and operation of facilities proposed for EcoEléctrica L.P. (EcoEléctrica) Liquefied Natural Gas (LNG) Import Facility and Cogeneration Project in Guayanilla Bay, Puerto Rico. The FERC and the PRPB will use this joint EIS in their decision-making process (whether or not to authorize the proposed project).[1]

The PRPB will be the lead agency for the Commonwealth of Puerto Rico and the FERC will be the lead Federal agency in the preparation of this joint EIS. The joint document will avoid duplication of environmental analyses, and satisfy the requirements of Puerto Rico's law requiring an EIS under the Puerto Rico Environmental Quality Board (PREQB) Regulations (Article 4[c] of Law No. 9) and the National Environmental Policy Act (NEPA).

Summary of the Proposed Project

EcoEléctrica is seeking approval for a 36-acre site in Guayanilla Bay near Ponce, Puerto Rico, to import LNG for power generation. The facilities that require Commission approval ("jurisdictional" facilities) include the construction and operation of the LNG facilities. This would consist of a marine unloading facility, two LNG storage tanks with individual capacities of up to 1,000,000 barrels, a vaporization system, and a natural gas accumulator pipeline.

In addition, EcoEléctrica proposes to construct a "non-jurisdictional" cogeneration facility that will use the imported LNG as a fuel source for power

[1] EcoEléctrica filed an application with the Commission on October 25, 1994 pursuant to Section 3 of the Natural Gas Act and Parts 153 and 380 of the Commission's regulations. The action involves authorization of a place of import and the construction and operation of facilities at this place of import. On November 23, 1994, the Land Use Consultation was filed with the PRPB pursuant to Law 75 of June 24, 1975.

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generation. The power plant facility would consist of two gas turbines operating on natural gas and one steam turbine with a net station output of 461 megawatts (MW) at 230 kilovolts (kV). The gas turbines could also use propane (LPG) as a secondary fuel and high grade fuel oil as an emergency fuel.

The electricity generated by EcoEléctrica's cogeneration facility would be purchased by the Puerto Rico Electric Power Authority (PREPA), the government-created public utility that supplies nearly all of the electric power consumed in Puerto Rico. PREPA has identified a need for additional electric generating capacity of 1,200 MW by the year 2000 to meet future demand growth, enhance system reliability and to diversify the fuel sources that generate electricity.

EcoEléctrica also proposes to construct a desalination facility that would generate up to 4,000,000 gallons of freshwater per day. Freshwater uses at the power plant could require up to 1,000,000 gallons per day. The surplus capacity would be sold for public use.

Other facilities necessary for the operation of the cogeneration facility include a 2.3-mile long, 230-kV transmission line connecting the plant substation to an existing PREPA substation; a 3.5-mile long, 10-inch diameter pipeline to supply LPG to the facility; and a water pipeline for connecting into an existing offsite water supply or to outside delivery systems.

Summary of the Proposed Facilities

The general location of the proposed facilities for the EcoEléctrica LNG/Cogeneration Project is shown in figure 1. The proposed LNG import terminal, cogeneration power plant, and desalination plant will be located in Peñuelas, about 9 miles west of the City of Ponce on the south coast of Puerto Rico. The proposed 36-acre site is at the end of a peninsula presently owned by Union Carbide Caribe, Inc. (Union Carbide). The site is bordered on the north by Union Carbide's existing fuel storage tank farm operations and on the east, west, and south by Tallaboa and Guayanilla Bays (see figure 2). The site currently contains a decommissioned naptha storage tank and ring foundation for a demolished storage tank.

Major facilities of the proposed project can be divided between LNG import facilities and cogeneration/desalination facilities.

LNG Import Facilities

The LNG import facilities include a ship unloading system, two LNG storage tanks, and LNG vaporization and vapor handling systems. The proposed project facilities would be designed, constructed, and maintained to comply with the Department of Transportation (DOT) Federal Safety Standards for Liquefied Natural Gas Facilities (49 Code of Federal Regulation (CFR) Part 193). The facilities constructed at the site would also meet the National Fire Protection Association 59A LNG standards. The marine cargo transfer system and any appurtenances located between the vessel and the last valve located immediately before a storage tank will comply with the U.S. Coast Guard (USCG) regulations in 33 CFR Part 127 and Executive Order 10173.

Liquefied natural gas would be imported to Puerto Rico for use in the power plant portion of the project. No firm supply of LNG has been identified at this time. EcoEléctrica is considering potential LNG suppliers from Trinidad and Nigeria. It is anticipated that the project would import up to 130 million MMBtu per year, requiring between 10 and 60 LNG tanker unloadings annually.

The LNG tankers that would be used to transport the LNG would be the 125,000 cubic meter class and would use any of six Coast Guard approved containment systems. Any LNG carrier used for the project would be built in strict accordance with all current regulatory and classification society requirements.

The ship unloading system would consist of unloading facilities and a pier. The unloading facilities are designed to handle LNG ships with a capacity of up to 135,000 cubic meters with a draft of up to 40 feet. Four breasting and mooring dolphins are proposed for securing the LNG ships to the pier's berth. The tanker berth would be roughly parallel to the shore in 50 feet of water. The unloading platform would be a two-level structure with a 40-foot wide by 100-foot long lower level and a 20-foot wide by 76-foot long upper level. The pier is proposed to be 27 feet wide and 1,800 feet long. It would be constructed on 20- to 30-inch diameter steel pipe piles, or prestressed concrete tubes. The pile bents are expected to be constructed on 70-foot spacings. Pier framing, roadway, and spill impoundment system contained within the pier would be constructed of reinforced and prestressed concrete.

On-board pumps would deliver the LNG to the terminal. Four articulated marine unloading arms would be installed on the berth for this purpose. Three of the arms would be used to receive LNG from the ship, and one would return natural gas vapor to the ship. Fire fighting and fire and leak detection systems would be installed on the pier to comply with 33 CFR Part 127. Potential LNG spills from piping at the unloading platform, on the piping pier, and onshore would be impounded in concrete trenches located below the piping. The impoundment trenches would drain to a single impoundment basin located onshore near the end of the pier.

LNG would be stored in two double-containment insulated tanks. The tanks would be 166 feet in height and 254 feet in diameter with an individual capacity to store up to 1,000,000 barrels of LNG each at a temperature of minus 260°F and a pressure of 2.0 pounds per square inch gauge (psig). Each storage tank would consist of an inner tank constructed of 9 percent nickel steel, and an outer tank constructed of carbon steel. Outer walls would be designed to contain the product vapors and protect the insulation systems from moisture. Insulation would consist of perlite installed between the inner and outer tank walls. Each LNG tank would be surrounded by a concrete wall capable of containing 110 percent of the tank's LNG contents. This method of construction would ensure spill containment even if there were a complete rupture of the double walled metal tanks.

LNG from the storage tanks would be pressurized, vaporized, and heated so that natural gas can be delivered to the power plant turbines at the required pressure, temperature, and flow. Pumps in the LNG tanks would transfer and pressurize the LNG to between two and six 95 million cubic feet per day vaporizers. Two shell and tube vaporizers would use a water-ethylene glycol solution heated by the air intakes of the gas turbines. Four open rack vaporizers would use warm seawater to provide the heat required for vaporization. These are two independent systems.

Cogeneration Facilities

The cogeneration facilities can be subdivided into three distinct aspects: power plant facilities, cooling water systems, and desalination facilities. All facilities will meet all applicable Federal and Commonwealth laws. The cogeneration facilities are "non-jurisdictional" from the FERC perspective, and will not have any permitting authority for the "non-jurisdictional" facilities. The PRPB will have a primary role in assuring that all aspects of the cogeneration facilities meet the Commonwealth of Puerto Rico laws and regulations, including environmental regulations. Since both agencies require a NEPA document, this joint EIS will serve the needs of both agencies.

The power plant would be located on about 11 acres of the 36-acre site (see figure 2). The plant would have a net station output of about 461 MW at 230 kV when operating on natural gas under base load conditions. The plant would consist of two gas combustion turbines operating principally on natural gas and one steam turbine. The turbines could also be operated on LPG as a secondary fuel supply and high grade fuel oil as an emergency source. The LPG would be stored at a nearby location and transported to the facility by a proposed 10-inch diameter pipeline. Fuel oil would be stored on the site in a storage tank.

The power plant facility would consist of a building to house the steam turbine generator, condenser, control room, electrical room, battery room, maintenance area, offices, and other activities. Administrative and storage buildings would also be constructed on the site. These buildings would serve both the LNG import terminal and power plant facilities. A perimeter security system and fire protection/detection system would be monitored both from the administrative building and the power plant control room.

The power plant facility would also include a substation for the transfer of electricity generated by the plant to the PREPA system. The substation would be designed to inter-tie the EcoEléctrica power plant facility to the PREPA circuits. The substation system would also be used to supply power to the LNG facility's electrical equipment.

A cooling water system would be constructed at the facility to provide for power plant cooling and desalinated water production. EcoEléctrica has proposed to use a closed cycle seawater cooling tower (SWCT) system. Other methods of cooling would be analyzed as possible alternatives.

The SWCT system would consist of 10 cells. Each cell would be 50 feet in length and 50 feet in width. The overall site area would encompass 100 feet by 250 feet, with a tower 55 feet high from grade to the top of the fan stack. Water would be obtained from Guayanilla Bay from an intake pipeline placed under the LNG pier. About 13,000 gallons per minute of the SWCT blowdown would be mixed with other treated site water discharge for return to Guayanilla Bay through an offshore diffuser or discharged into Tallaboa Bay via a near-shore outfall structure. Water temperatures of the outfall would not exceed 91.4°F under any operating scenario.

EcoEléctrica has also proposed construction of a desalination plant to provide freshwater for power plant operation and to supply potable water for sale to other users. Freshwater uses at the power plant would include potable water for internal consumption, utility water, and after further treatment, high quality boiler feedwater totaling up to 1,000,000 gallons per day. The maximum freshwater production rate proposed for the desalination plant is expected to be up to 4,000,000 gallons per day. The surplus capacity would be sold for public use.

A Multi-Stage Flash (MSF) distillation technology is proposed to be used for desalination. MSF distillation plants use thermal energy, generally supplied in the form of low pressure steam to desalinate seawater. The combined cycle power plant facility would supply sufficient amounts of steam at suitable temperatures and pressures to drive the desalination process.

Offsite Facilities

Several offsite facilities are associated with the project. These include an electric transmission line, a natural gas accumulator pipeline, an LPG pipeline, a potable water supply line and new access roads (see figure 2 for locations of these facilities).

Electric output from the power plant would be supplied to the PREPA power grid. A 2.3-mile long, 230-kV transmission line would be constructed between the power plant substation and the existing PREPA substation. The line would be constructed on steel structures in a 100-foot wide right-of-way. Existing easements for the transmission corridor would be used whenever possible.

LPG would be used as the primary fuel during the construction of the LNG import facility, and as a backup fuel after the LNG facility is operational. LPG would be supplied to the power plant through a 10-inch diameter pipeline extending about 3.5 miles from the existing ProCaribe LPG terminal to the power plant (see figure 2). The LPG supply line would follow previously permitted pipeline routes and would use existing pipe racks wherever possible.

Normally, a natural gas accumulator vessel would be incorporated into the power plant facility infrastructure. It is used to ensure that natural gas volumes are available to prevent an instantaneous "emptying" or "voiding" of the supply line during startup of the plant and to prevent over-pressurization of the line after a shutdown. Instead, EcoEléctrica has proposed to use a pipeline "stub" rather than a vessel that would be built to the northern edge of the facility along the LPG pipeline right-of-way. This line would serve both as the accumulator line for the power plant and potentially as a feed for future natural gas refueling efforts should these markets develop. EcoEléctrica is not seeking approval for additional sales to sources outside this proposed action.

A water pipeline is also proposed for construction. Surplus freshwater would be marketed to the Puerto Rico Aqueduct and Sewer Authority (PRASA) or to other municipal, commercial, or retain customers. An exact alignment for connection to offsite water supplies or delivery systems outside the easements acquired from the present owner (Union Carbide) has not been obtained. Those easements and environmental documentation would be the responsibility of the PRASA or other users.

Access roads on the Union Carbide property and the proposed site would be developed or upgraded to bring workers and construction materials from route PR–127 and the existing Union Carbide dock (see figure 2). Roads constructed or upgraded would remain active during operation of the facility for materials' deliveries and worker access.

Construction

The LNG import facility and cogeneration facilities at Guayanilla Bay would be constructed by EcoEléctrica using conventional construction procedures and techniques. Two design and construction schedules have been developed: one for the cogeneration facilities and another for the LNG import facilities.

The power plant and desalination facilities would be designed and constructed over a 18 to 24-month period. Site preparation and levee construction would begin six months after the start of basic engineering design. Preparation of the site would require raising the base elevation of the existing site interior (about 5 feet above mean sea level [msl]) to about 10 feet above msl. Increasing the existing perimeter height of the levee from 10 feet to between 12 and 16 feet above msl would also be done. The interior of the site would be filled with imported soils and caliche. The combined levee construction and filling of the site interior would require about 175,000 cubic yards of materials that would be obtained locally from existing sources and transported to the site.

The southeast quadrant of the proposed site would be used for a construction material laydown area and the location of temporary offices. A permanent access road and temporary construction worker parking area would be located north of the laydown area. An existing construction off-loading

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dock would be used during construction (see figure 2).

Foundation construction would begin about six months after site preparation activities are begun. Construction of the power plant and desalination facilities would be complete in about one year from the start of foundation construction. Startup of the facility is anticipated two years after the start of basic engineering. Commercial operation would begin after a one-month startup and commissioning period.

The power plant structure would be about 75 feet high and constructed of a steel frame with insulated metal siding and roofing. The structures will be designed following all Federal, Commonwealth, and local building codes.

Construction of the proposed LNG facilities would follow a similar schedule. From basic engineering design to commercial operation would take about 24 to 30 months. Foundation installation on the LNG facility would begin about six months after the start of power plant foundations.

Marine terminal construction would begin four months after the start of foundation construction. The pier would connect the shore facilities with the unloading platform.

LNG tank construction would begin one month after the start of the marine terminal construction. The tanks would be constructed on insulated concrete pads. The tanks would be designed and constructed following all requirements of American Petroleum Institute (API) 620 and 49 CFR Part 193. Completion of all LNG facilities is anticipated about 18 months after initial foundation work. Commercial operation of the LNG facility is expected to start about one year after the start of commercial operation of the cogeneration facilities.

The EIS Process

The NEPA requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the approval of a place of import for natural gas. The PRPB, as a Commonwealth Agency with authority over location approval and land use control, is required to consider the same potential impacts within the Commonwealth of Puerto Rico under PREQB regulations under Article 4(c) of Law No. 9. The joint EIS we are preparing will give both the PRPB and the Commission the information we need to do that.

NEPA also requires us to discover and address public concerns about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the joint EIS on the important environmental issues, and to separate those issues that are insignificant and do not require detailed study. By the Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the joint EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The joint EIS will discuss impacts that could occur from the construction and operation of the proposed project. These impacts may include, but are not limited to:

- Geology and Soils

—Seismology and soil liquefaction
—Erosion control
—Right-of-way restoration
—Hazardous waste sites
—Seismic criteria

- Water Resources

—Site-specific impacts on surface and groundwater
—Potential introduction of non-indigenous species and diseases from tanker ballast water
—Effect on potable water supplies
—Effect in wetland hydrology
—Effect on construction in areas with shallow, contaminated groundwater
—Effects of water discharge on marine water quality and ambient temperature

- Biological Resources

—Effect of plant construction and operation on threatened and endangered species
—Effect of increased tanker traffic and marine construction traffic on manatees along the route
—Effects of construction of terminal on marine life in Guayanilla and Tallaboa Bays

- Cultural Resources

—Effect on historic and prehistoric sites
—Effect on underwater cultural resources
—Native American and tribal concerns

- Socioeconomics

—Impact of a peak work force of 400 on surrounding area
—Long-term effects of increased employment and taxes on local economy

- Air Quality and Noise

—Air quality and noise impacts associated with LNG and congeneration facilities during operations
—Air quality and noise impacts associated with construction

- Marine Transportation

—Effects of increased marine traffic on existing commercial and recreational marine traffic
—Probability of increased accident risk and potential for release of LNG or other hazardous materials

- Public Safety

—Compliance with 49 CFR 193 for exclusion zones (thermal and vapor gas dispersion) siting criteria, and seismic criteria
—Consequences of a major spill, both on land and marine
—Cryogenic design and technical review

- Land Use

—Impact on industrial areas
—Effect of rights-of-way and aboveground facilities on visual aesthetics in the region
—Consistency with local land use plans
—Impact on homes

- Cumulative Impacts

—Identification of related projects
—Analysis of cumulative impacts and mitigation measures

We will also evaluate possible site and technology alternatives to the project and recommend specific mitigation measures to lessen or avoid impacts on the various resource areas.

Federal and Commonwealth agencies are being asked to indicate whether they wish to cooperate with us in the preparation of the joint EIS. These agencies are listed in appendix A and may choose to participate once they have evaluated the proposed project and their agencies' responsibilities.[2]

Our independent analysis of the issues will result in the publication of a Draft/Preliminary EIS (the term Preliminary EIS is a specific milestone in the Puerto Rico environmental documentation procedures). This document will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allotted for the review of the Draft/Preliminary EIS. We will consider all comments on the Draft/Preliminary EIS and revise the document, as necessary, before issuing a Final EIS. The final EIS will include our response to each comment received.

[2] The appendices and figures referenced in this notice are not being printed in the **Federal Register**. Copies are available from FERC's Public Reference Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Public Participation and Scoping Meetings

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letters to:

Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426

Luis Frías, Secretary, Puerto Rico Planning Board, P.O. Box 41119, Santurce, PR 00940–1119

- Reference Docket No. CP95–35–000 (FERC)
- Reference Docket No. 94–62–1219–JPU (PRPB)
- Send a *copy* of your letter to the following individuals:

Mr. Chris Zerby, FERC EIS Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Room 7312, Washington, DC 20426

Mrs. María Gordillo, PRPB EIS Project Manager, Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940–1119

- Mail your comments so that they are received in Washington, D.C. or Santurce, PR on or before April 17, 1995.

Beside seeking your written comments, we invite you to attend any of the joint public scoping meetings the FERC and the PRPB will conduct. The locations and times for these meetings are listed below. Requests to hold additional public scoping meetings will be considered.

The public meetings will be designed to give you more detailed information and another opportunity to offer your comments on the proposed project. Those wanting to speak at the meetings can call the EIS Project Manager to pre-register their names on the speaker list. Those people on the speaker list before the date of the meeting will be allowed to speak first. A second speaker list will be developed at each meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded. This transcript will be available in both Spanish and English.

Schedule for Joint EIS Public Scoping Meetings

April 18, 1995 (5:00–7:00 pm)

Puerto Rico Planning Board, Minillas Governmental Center, De Diego Avenue, Stop 22, San Juan, Puerto Rico 00940

April 19, 1995 (5:00–7:00 pm)

City Hall, Peñuelas, Puerto Rico

Becoming an Intervenor

In addition to involvement in the EIS process, you may want to become an official party to the proceedings or an "intervenor." Among other things, intervenors have the right to receive copies of case-related FERC documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor, you must file a Motion To Intervene according to Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix B.

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to all potential interested parties to solicit focused comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of EcoElectrica will directly contact communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft/Preliminary and Final EIS, please return the Information Request (appendix C). If you do not return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Chris Zerby, FERC Project Manager, at (202) 208–0111. Information concerning the involvement of the Puerto Rico Planning Board can be obtained from Mrs. Maria Gordillo, PRPB Project Manager, at (809) 727–4444.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6702 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8835–019 California]

Dewey B. Smith; Notice of Availability of Environmental Assessment

March 14, 1995.

An environmental assessment (EA) is available for public review. The EA is for the termination of the license of the Dewey Smith Hydroelectric Project. The EA finds that termination of the license would not constitute a major federal action significantly affecting the quality of the human environment. The Dewey Smith Project is located on the Shasta River in Siskiyou County, California.

The EA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 45 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please denote "Comments: Project No. 8835–019" on all comments. For more information, please contact the project manager, John Mudre, at (202) 219–1208.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6700 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–217–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

March 10, 1995.

Take notice that the following filings have been made with the Commission:

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1. Columbia Gas Transmission Corporation

[Docket No. CP95–217–000]

Take notice that on February 22, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP95–217–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon a portion of a pipeline located in Gilmer, Lewis and Doddridge Counties, West Virginia, and to construct and operate replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to replace a deteriorating portion of Line 1740, totaling approximately 17.2 miles of 16-, and 20-inch pipeline, with five sections of 20-inch pipeline totaling approximately 17.5 miles. Columbia states that the involved portion of Line 1740 (6.45 miles of 16-inch and 10.75 miles of 20-inch pipeline) was constructed in 1947,[1] and should be replaced to enable Columbia to continue to maintain safe and reliable service to its existing customers at current levels. Columbia describes the pipe to be abandoned as beginning in Gilmer County at the Barbarow Valve Setting, just south of County Route 2/2, and proceeding northeast and terminating in Doddridge County near Long Run just south of County Route 38/4.

Columbia explains that, to the extent that 16-inch pipe is being replaced by 20-inch pipe, the 20-inch pipe is being utilized to provide a continuous pipe size for efficient maintenance. Columbia further explains that a singularly sized line would minimize the number of pig launchers and receivers necessary to pig the line. Columbia estimates that its proposal would permit it to avoid incurring an expense of approximately $250,000 to install pig launchers and receivers to accommodate the pigging of different diameter pipelines as opposed to a continuous 20-inch pipeline. The estimated cost of the proposed construction is $16,700,000.

Columbia states that the proposal would result in an increase in pipeline capacity of approximately 28,200 Dekatherms per day at the suction side of the Smithfield Compressor Station which would diminish to zero with distance from that point due to other system constraints. Columbia does not request authorization for any new or additional service and states that any additional capacity made available by the replacement pipe would be posted in accordance with applicable tariffs.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP95–235–000]

Take notice that on March 2, 1995, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon certain facilities (and related services) located on its pipeline system in Custer, Powder River, Stillwater and Carbon Counties, Montana; Burke and Divide Counties, North Dakota; Harding County, South Dakota; and Park, Hot Springs and Big Horn Counties, Wyoming, all as a result of the sale of property to Interenergy Corporation (Interenergy), all as more fully set forth in the application on file with the Commission and open to public inspection.

Williston seeks authorization to abandon by sale to Interenergy gathering facilities, certain facilities functionalized as transmission, and related land rights and services, associated with its existing operations. Williston states that Interenergy is currently conducting negotiations for replacement service agreements with Williston's existing gathering customers. Williston states that the total allocated net book value of the gathering facilities to be sold is $5,100,924; and, the total net book value of the transmission facilities to be sold is $626,550, as of January 1, 1995. Williston has indicated that Interenergy has filed concurrently a petition that the Commission declare the subject facilities exempt from jurisdiction pursuant to Section 1(b) of the Natural Gas Act.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP95–236–000]

Take notice that on March 2, 1995, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501 filed an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act. The application requests authority to transfer from the gathering function to the transmission function the Frannie-Deaver meter station; a portion of the Elk Basin to South Elk Basin gathering line; the Hiland Plant meter station; and, the Perry Gas meter station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston states that the above-referenced facilities were either purchased or constructed by Montana-Dakota Utilities Co., now MDU Resources Group, Inc., the parent of Centennial Energy Holdings, Inc., Williston's parent. Williston states that as a result of an extensive review and examination of its plant accounting records for gathering facilities and/or to rationalize the facilities which are to remain with Williston after receipt of the necessary abandonment authority sought for certain facilities and services in a companion application,[2] Williston has determined that certain facilities classified as gathering should be classified as transmission.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Interenergy Corporation

[Docket No. CP95–239–000]

Take notice that on March 2, 1995, Interenergy Corporation (Interenergy) 1700 Broadway, Suite 1150, Denver, Colorado 80202 filed a petition for declaratory order requesting that the Commission declare that facilities to be acquired from Williston Basin Interstate Pipeline Company (Williston) are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Interenergy states it is engaged in the gathering and marketing of natural gas. Interenergy states that it has agreed to purchase [3] from Williston certain facilities located on Williston's pipeline system in Custer, Powder River, Stillwater and Carbon Counties, Montana; Burke and Divide Counties, North Dakota; Harding County, South Dakota; and Park, Hot Springs and Big Horn Counties, Wyoming. Subject to the Commission's grant of Interenergy's Petition, Interenergy intends to operate the facilities to points of interconnection with Williston for transportation to markets. It is also indicated that Williston has sought authorization to abandon these facilities.[4]

Interenergy states that the facilities, which consist of pipeline totalling approximately 211 miles, separation and dehydration equipment, field compressors and associated facilities (including wellhead metering stations), display the characteristics the Commission has historically held to be indicative of gathering. Interenergy states that facilities will be used to perform services in the production area prior to transportation in interstate commerce. It states that through the facilities it will offer gathering, treating, dehydrating and compression services to producers and shippers seeking such services and will provide such services on an open-access, non-discriminatory basis.

Comment date: March 31, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

5. Parker & Parsley Gas Processing Company

[Docket No. CP95–244–000]

Take notice that on March 6, 1995, Parker & Parsley Gas Processing Co. (Parker & Parsley) 303 West Wall Avenue, Suite 101, Midland, Texas 79701, filed a petition for a declaratory order in Docket No. CP95–244–000 requesting that the Commission declare that certain facilities Parker & Parsley proposes to acquire from CNG Transmission Corporation (CNGT) are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act (NGA), and that Parker & Parsley's ownership and operation of those facilities will not subject Parker & Parsley to Commission jurisdiction under the NGA, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Parker & Parsley states that it has agreed to purchase approximately 352 miles of various sized pipelines, ranging in length from approximately 12 feet to approximately 17 miles, with approximately 95 percent of the lines no more than 5 miles in length. Parker & Parsley explains that while CNGT is seeking abandonment of 322 miles of pipeline, Parker & Parsley seeks an order from the Commission declaring to be non-jurisdictional gathering facilities: (1) The 322 miles of pipeline CNGT is seeking to abandon, plus (2) an additional 30 miles of pipeline to be conveyed to Parker & Parsley by CNGT. Parker & Parsley states that the Commission authorized the abandonment of the 30 miles of pipeline in Docket No. CP91–554–000.

CNGT has, concurrently herewith, filed a related abandonment application in Docket No. CP95–245–000.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. CNG Transmission Corporation

[Docket No. CP95–245–000]

Take notice that on March 6, 1995, CNG Transmission Corporation (CNGT), 445 Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–245–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 322 miles of various diameter pipeline by sale to Parker & Parsley Development, LP, (Parker & Parsley) or an affiliate, and to abandon an exchange service between CNGT and Equitrans Inc. (Equitrans), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, CNGT proposes to abandon by sale, 322 miles of pipeline ranging in diameter from 2 to 18 inches, and minor amounts of 20 and 30 inch line located in Harrison, Marion, Marshall, Monongalia, Doddridge, Wetzel, and Tyler Counties, West Virginia. All of CNGT's interest in the facilities were transferred to Consolidated Gas Transmission Corporation (now CNGT) from its predecessor, Consolidated Gas Supply Corporation (now Hope Gas, Inc.)) effective January 1, 1984. The transfer and classification of assets was approved by the Commission in Docket No. CP80–346–000 on December 20, 1983 (25 FERC ¶ 61,397). All of the lines make up a discrete gathering system feeding the Hastings extraction plant. The system is characterized by a web-like configuration of gathering lines and approximately 106 third party transport meters and 160 CNGT wells are located on this system. The CNGT wells are also being sold to Parker & Parsley.

Parker & Parsley Gas Processing Co. has, concurrently herewith, filed a Petition for Declaratory Order Disclaiming Jurisdiction in Docket No. CP95–244–000.

The exchange service CNGT seek to abandon with Equitrans is under a February 9, 1972 exchange agreement on file as CNGT's Rate Schedule X–9.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

7. Koch Gateway Pipeline Company

[Docket No. CP95–246–000]

Take notice that on March 7, 1995, Koch Gateway Pipeline Company (KGPC), 600 Travis Street, Houston, Texas 77002, filed in Docket No. CP95–246–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, KGPC proposes to abandon by sale to Western Gas Resources Storage, Inc. (Western) an offsystem gathering line, designated as Katy Field FPL No. 1 (Katy Line), located in Waller County, Texas. The Katy Line, consisting of 1.23 miles of 10-inch pipeline including all valves and appurtenances, connects an Exxon Corp. gasoline plant with a 30-inch Tennessee Gas Pipeline Company transmission line. KGPC states that it sold the Katy Line to Excel Resources, Inc. (Excel) for $110,000 on April 1, 1994 but that Excel assigned all of its contractual rights and obligations under the sales agreement with KGPC to Western.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

8. Williston Basin Interstate Pipeline Company

[Docket No. CP95–247–000]

Take notice that on March 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP95–247–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new metering station and associated appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate a new metering station and associated appurtenant facilities to provide deliveries of up to 6,500 Mcf per day of gas to Conoco, Inc. The facilities will be located in Burke County, North Dakota.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

[1] See 6 FPC 627 (1947).

[2] Filed March 2, 1995, in Docket No. CP95–235–000.

[3] Purchase and sales agreement dated January 3, 1995, as amended.

[4] Filed March 2, 1995, in Docket No. CP95–235–000.

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9. NorAm Gas Transmission Company

[Docket No. CP95–249–000]

Take notice that on March 8, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–249–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery tap on NGT's Line BT–14 in Yell County, Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a new 2-inch rural domestic tap for delivery of natural gas to ARKLA, a division of NorAm Energy Corp. for redelivery to its customer, Bessie Jo Meers. The tap will be located in Section 35, Township 7 North, Range 21 West, Yell County, Arkansas and approximately 85 MMBtu annually and 1 MMBtu per day are estimated to be delivered through the tap. NGT states that the estimated cost of construction is $2,700 and ARKLA will reimburse NGT for all construction costs. NGT further states that the volumes to be delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell

Secretary

[FR Doc. 95–6745 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–253–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

March 14, 1995

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP95–253–000]

Take notice that on March 9, 1995, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed a request with the Commission in Docket No. CP95–253–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to replace certain metering and regulating facilities in Union Parish, Louisiana, with upgraded facilities in order to increase natural gas deliveries to Arkla, a division of NorAm Energy Corp. (Arkla), under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.* pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

NGT proposes to abandon an above ground 2-inch meter station and a 1-inch regulator and replace them with a 4-inch meter station and a 2-inch regulator at Arkla's request. NGT states that it would increase its natural gas deliveries to Arkla's Rural Extension No. 292 in Farmerville, Union Parish, Louisiana. NGT would deliver to Arkla approximately 440,500 MMBtu equivalent annually and 2,400 MMBtu equivalent per peak day, all within Arkla's certificated entitlements. NGT states that it would cost approximately $58,700 to remove the old facilities and to construct the new facilities. NGT also states that Arkla has agreed to reimburse NGT for the cost of this project.

Comment date: April 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP95–254–000]

Take notice that on March 9, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–254–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an offshore metering facility which was authorized in Docket No. CP76–80, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon a dual 4-inch meter that is located on Mesa Petroleum Company's platform in East Cameron Block 322, offshore Louisiana. Natural states that the metering facilities are no longer needed and will be abandoned in place.

Comment date: April 4, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Stingray Pipeline Company

[Docket No. CP95–255–000]

Take notice that on March 9, 1995, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–255–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an offshore lateral which was authorized in Docket No. CP75–329, all as more fully set forth in the application on file with the Commission and open to public inspection.

Stingray proposes to abandon 7 miles of 6-inch lateral located in East Cameron Block 322, offshore Louisiana. Stingray states that there are leaks in a small segment of the lateral and Stingray has determined that it would be uneconomical to make the necessary repairs. The lateral will be abandoned in place with the exception of approximately 500 feet of lateral which Stingray intends to cut and remove in order for the producer to position a rig near its platform.

Comment date: April 4, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6748 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–265–000]

Southern Company Services, Inc.; Notice of Filing

March 14, 1995.

Take notice that on January 31, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Operating Companies"), tendered for filing supplemental information concerning the adoption of certain accounting methods for post-retirement benefits other than pensions, as set forth in the Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board, in agreements and tariffs of the Operating Companies (jointly and individually).

In addition, the Operating Companies provided notice to the Commission that they have established irrevocable external trusts as defined under the Internal Revenue Code Section 501(c)(8), that they will maximize use of income tax deductions for amounts deposited to such trusts, and that they have made appropriate deposits to such accounts. The Operating Companies state that this material was filed in compliance with the Commission's policy statement on ratemaking treatment for post-retirement benefits other than pensions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6701 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of February 20 Through February 24, 1995

During the Week of February 20 through February 24, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 20 through February 24, 1995]

Date	Name and location of Applicant	Case No.	Type of submission
2/21/95	Richard J. Levernier, Germantown, Maryland.	VFA–0025	Appeal of an Information Request Denial. If granted: The January 31, 1995 Freedom of Information Request Denial issued by the DOE Rocky Flats Field Office would be rescinded, and Richard J. Levernier would receive access to any records of telephone conversations between Wackenhut Services and Richard J. Levernier.
2/22/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSX–0002	Supplemental Order. If granted: Portions of a personnel security interview transcript submitted by the Oak Ridge Operations Office would be stricken from the record of Case Number VSO–0014.
2/22/95	Robert L. Hale, Madisonville, Tennessee	VFA–0026	Appeal of an Information Request Denial. If granted: The January 4, 1995 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Robert L. Hale would receive access to any Department of Energy medical records concerning his father, William C. Hale.
2/23/95	Casey O. Ruud, San Rafael, California	VFA–0027	Appeal of an Information Request Denial. If granted: The January 26, 1995 Freedom of Information Request Denial issued by the Office of Communications, Richland Operations Office would be rescinded, and Casey O. Ruud would receive access to the name and address of the author of certain information requested.
2/23/95	Mapco International, Inc., Tulsa, Oklahoma	VEF–0004	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the April 21, 1986 Remedial Order issued to Mapco International, Inc.
2/23/95	Venable, Baetjer and Howard, McLean, Virginia.	VFA–0028	Appeal of an Information Request Denial. If granted: The February 21, 1995 Freedom of Information Request Denial issued by the DOE FOIA Office would be rescinded, and Venable, Baetjer and Howard would receive access to documents and correspondence regarding the DOE Energy Sciences Network's contract award to Sprint Communications Company.

Date received	Name of refund proceeding/name of refund application	Case No.
2/21/95	Rio Farmers Union Coop	RG272–27
2/21/95	Farmers Coop Mill & Elevator	RG272–28
2/21/95	Afton Cooperative Assn	RG272–29
2/22/95	G & S Freight, Inc	RA272–66
2/22/95	Hudson River Inn	RA272–67
2/22/95	Baltimore Storage Co	RA272–68

[FR Doc. 95–6800 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearing and Appeals Week of February 6 Through February 10, 1995

Notice of Cases Filed

During the Week of February 6 through February 10, 1995, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 6 through February 10, 1995]

Date	Name and location of applicant	Case No.	Type of submission
2/10/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0020	Personnel Security/Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at the Albuquerque Operations Office would receive a hearing under 10 CFR Part 710.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
2/7/95	Air Comfort, Inc	RF321–21058
2/10/95	Nash Equity Exchange	RG272–25

[FR Doc. 95–6801 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Filed; Week of February 13 Through February 17, 1995

During the week of February 13 through February 17, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 13 through February 17, 1995]

Date	Name and location of applicant	Case No.	Type of Submission
1/5/95	Loiza Valley Shell Service, Hato Rey, Puerto Rico.	RR315–12	Request for Modification/Rescission in the Shell Refund Proceeding. If granted: The January 5, 1994 Dismissal Letter (Case Number RF315–9332) issued to Loiza Valley Shell Service would be modified regarding the firm's application for refund submitted in the Shell refund proceeding.
2/13/95	Shell/Briggs Transportation Company, Texaco/Briggs Transportation Company, Earlington, Kentucky.	RR315–13 thru RR321–175	Request for Modification/Recission in the Shell and Texaco Refund Proceedings. If granted: The January 11, 1995 Decision and Order Case Numbers RF315–10286 and RF321–21054 issued to Briggs Transportation Company would be modified regarding the firm's application for refund submitted in the Shell and Texaco Refund Proceedings.
2/15/95	Big/Little Stores, Inc., Enterprise, Alabama	VEE–0005	Exception to the Reporting Requirements. If granted: Big/Little Stores, Inc. would not be required to file form EIA–728B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
2/15/95	Robert S. Foote, Knoxville, TN	VFA–0024	Appeal of an Information Request Denial. If granted: The January 23, 1995 Freedom of Information Request Denial issued by the Health and Environmental Research in the Office of Energy Research would be rescinded, and Robert S. Foote would receive access to certain Department of Energy information.
2/16/95	Nevada Operations Office, Las Vegas, Nevada.	VSO–0022	Request for Hearing under 10 CFR Part 710. If granted: An individual employed at Nevada Operations Office would receive a hearing under 10 CFR Part 710.
2/16/95	Oak Ridge Operations Office, Oak Ridge, TN.	VSO–0021	Request for Hearing under 10 CFR Part 710. If granted: An individual employed at Oak Ridge Operations Office would receive a hearing under 10 CFR Part 710.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
2/13/95	Cairo Elevator	RF272–26.
2/16/95	Centex, Inc	RF345–35.

[FR Doc. 95–6802 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order; Week of January 16 Through January 20, 1995

During the week of January 16 through January 20, 1995, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who

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will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Sound Oil Company, Seattle, WA, Reportinfg Requirements—Lee–0153

Sound Oil Company (Sound) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Sound to be exempted from filing Form EIA–782B. On January 19, 1995, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 95–6803 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Proposed Decisions and Orders; Week of January 9 Through January 13, 1995

During the week of January 9 through January 13, 1995, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 13, 1995,

George B. Breznay,

Director, Office of Hearings and Appeals.

Central American Petroleum Company Cameron, MI, Reporting Requirements VEE—0001

Central American Petroleum Company (Central) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Central to be exempted from filing Form EIA–782B. On January 12, 1995, the Department of Energy issued a Proposed Decision and order which determined that the Exception request be denied.

Lane's Service, Inc., Lavina, MT, Reporting Requirements—LEE–0158

Lane's Service, Inc. (Lane) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Lane to be exempted from filing Form EIA–782B. On January 12, 1995, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 95–6804 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Central Valley Project, Proposed Non-Federal Funding to Perform Rewindings With Uprates on Three Generators at the Shasta Dam Powerplant

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to enter into a contract, along with the Department of the Interior, Bureau of Reclamation (Reclamation), to obtain non-Federal funding from Central Valley Project power contractors for maintenance and replacement work, to be performed by Reclamation, on the generators at Shasta Dam Powerplant.

SUMMARY: The Western Area Power Administration (Western) provides notice that non-Federal funding will be obtained for Reclamation to perform rewindings with uprates on three generators at the Shasta Dam Powerplant in order to ensure system reliability. Several Central Valley Project (CVP) power contractors have voluntarily agreed to jointly provide financing to complete the proposed work. All CVP power contractors will be considered if they meet the conditions specified under "Selection Criteria" herein. A list of the CVP power contractors providing funding (Funding Entities) may be requested from Western at the address or telephone provided under "For Further Information Contact" herein.

This notice presents background project information and outlines the terms of the proposed financing agreement and the projected work.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Zola M. Jackson, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 649–4421.

SUPPLEMENTARY INFORMATION:

Background

The Shasta Dam Powerplant is located on the Sacramento River near the city of Redding, California. The powerplant is a feature of the Shasta Division, CVP, and was authorized to be built by the Emergency Relief Appropriations Act of 1935 (49 Stat. 115). Reclamation operates the 578-megawatt (MW) powerplant at Shasta Dam, and Western markets that power pursuant to section 302 of the Department of Energy Organization Act (42 U.S.C. 7152).

Reclamation is responsible for planning, designing, constructing, operating, and maintaining electrical power generation facilities as authorized by Congress. Reclamation also is responsible for allocating all costs to water and power users for Reclamation project purposes and determining the reimbursable costs to be recovered by revenues. Western is responsible for marketing the power, constructing transmission facilities, making transmission arrangements, assuring recovery of all costs assigned to power for repayment, and for setting power and transmission rates. Reclamation and Western will work together in the negotiation and execution of contracts for the financing arrangements for the proposed project. Reclamation will be responsible for the negotiation and execution of the construction contracts.

The Shasta Dam Powerplant has a total of seven generator units. There are five main generators and two station service generators. Main generator units 1 and 2 were uprated to 125 MW in 1978–80. Main generator units 3, 4, and 5 were rewound between 1969 and 1974 and modified in 1981. Due to age and deterioration, the core temperatures of main generator units 3, 4, and 5 have been steadily increasing for the last decade, threatening the reliability of these units. Should one or more of the units fail, the loss of power generation could increase power costs and decrease power revenues.

Financing Proposal

Funds for constructing the rewinds with uprates at the Shasta Dam Powerplant will be made available to Reclamation under provision of the Act of March 4, 1921 (41 Stat. 1404). Western, the Funding Entities, and Reclamation will enter into a contract to assist in obtaining the funding necessary for Reclamation to perform the maintenance work at Shasta Dam Powerplant. The Funding Entities will advance approximately $20 million, the estimated total cost of the work to be performed, into an escrow account. Reclamation will withdraw the funds for the material and related expenses of the rewinds with uprates. The facilities will continue to be owned and operated by the United States as a feature of the CVP.

A repayment agreement is proposed between the United States and the Funding Entities. The Funding Entities will be reimbursed for funds provided, with interest, through credits on their CVP power bills. All costs will be recovered through sales of power and water.

Description of Proposed Work to be Performed by Reclamation

To ensure CVP system reliability, increase operational flexibility, and increase the nameplate rating of Shasta main generator units 3, 4, and 5, Reclamation will install new cores, windings, and excitation systems in addition to reinsulating or replacing the field windings. Reclamation will also install new thrust bearings to enable a faster unit start-up response time after emergency shutdowns.

Energy and Capacity Gains

As a result of uprating main generator units 3, 4, and 5, there will be an estimated total gain of approximately 47 MW of capacity available when Shasta Lake storage level is above 3.6 million acre-feet (MAF). Below 3.6 MAF, the total peaking capability decreases and is reduced to 0 MW when the level falls below 2.3 MAF. Under high water conditions and maximum operational capability, some additional energy may be produced. This could amount to an estimated average annual increase of 12 gigawatthours. All additional energy and capacity resulting from the uprates will be incorporated into the CVP system to support project use and CVP power sales. CVP capacity may be sold as excess, when available.

Treatment of Excess Capacity

If and when Western determines excess capacity is available for sale, the Funding Entities will be given first right of refusal for the purchase of excess capacity from the CVP system. Such right shall terminate on December 31, 2004. Such right of first refusal shall be limited to excess capacity purchases for a period of months in the year and to an amount of excess capacity equivalent to the amount resulting from the uprates of main generator units 3, 4, and 5, and only if Shasta Lake storage level is above 3.0 MAF at the time of the offer for sale. The determination of the amount of excess capacity available, period of availability, and terms of an offer will be at Western's discretion. Funding Entities must meet the marketing criteria for the excess capacity sale at the time of the offer.

Selection Criteria for Funding Entities

Western determined that the following criteria must be met by entities financing the rewinds with uprates at Shasta Dam Powerplant.

1. Funding must be advanced on behalf of an existing CVP firm power contractor who is a "preference entity" under Reclamation law and pertinent statutes, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)).

2. Entities must voluntarily agree to fund the proposal under the terms and conditions offered by Western and be able to receive reimbursement of funds advanced on their CVP power bills.

3. Entities must demonstrate their ability to provide funds for the proposed work.

4. Entities must be willing to advance the funding in a manner acceptable to Reclamation.

Environmental Compliance: The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 *et seq.*) and implementing regulations issued by the Council on Environmental Quality (40 CFR 1500–1506) require that the environmental effects of agency decisions be studied and considered by decision makers. For the construction work to be performed by Reclamation, Reclamation completed a Categorical Exclusion on August 5, 1994. This work will not change the operating parameters at Shasta Dam Powerplant.

In addition, the environmental effects associated with the marketing of power generated at various facilities, including the Shasta Dam Powerplant, were examined under Western's 1994 Power Marketing Plan Environmental Assessment, as revised in August 1992 and for which a FONSI was issued on September 21, 1992; therefore, no further environmental review under NEPA will be required.

Issued in Golden, Colorado, March 6, 1995.

J. M. Shafer,

Administrator.

[FR Doc. 95–6799 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–80016C; FRL–4937–6]

TSCA Section 8(e); Notice of Availability of Draft Policy and Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and reopening of comment period.

SUMMARY: This Notice solicits additional public comment on certain refinements to EPA's policy concerning the mandatory reporting of information under section 8(e), the "substantial risk" information reporting provision of the Toxic Substances Control Act (TSCA) proposed in the **Federal Register** of July 13, 1993. EPA received numerous comments on the proposed changes during the comment period, which was extended to October 28, 1993. In the interim, EPA has, based on the public comments, modified the proposed changes to reflect many of the comments. However, to enhance the effectiveness of the guidance and to identify additional burden-reducing measures, EPA is offering the public an opportunity to review the draft policy text and submit additional comments. The draft policy text will be in the public docket.

DATES: Written comments on the reporting guidance must be submitted in triplicate and received by EPA no later than May 4, 1995.

ADDRESSES: All comments must be transmitted in triplicate to: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attention: Docket No. OPPTS–80016.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551. A copy of the draft policy may be obtained by contacting the TSCA Hotline at the telephone number listed above.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending the applicability of Parts V(b)(1) and V(c) of EPA's 1978 Policy Statement which outlined the reportability of data on "widespread and previously unsuspected distribution in environmental media" and "emergency incidents of environmental contamination," respectively, and would propose changes in the **Federal Register** at a later time. Revisions to the guidance presented in Part V(b)(1) of the 1978 Policy Statement were proposed in the **Federal Register** of July 13, 1993 (58 FR 37735).

EPA has used the comments received in response to the proposal to draft revised policy text that EPA believes responds to the main comments. EPA believes that the process to develop revised guidance would be greatly enhanced by allowing the public an opportunity to review the draft guidance and provide additional comments.

Consequently, EPA is making available for public comment the draft guidance text in the public docket. EPA is not including the draft preamble language or response to comments because they are subject to change due to this action. Copies of the guidance text can be obtained from the Agency contact listed under FOR FURTHER INFORMATION CONTACT above.

List of Subjects

Environmental protection.

Dated: March 9, 1995.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–6767 Filed 3–17–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 13, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0362.

Title: Section 80.401 Station documents requirements.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; and State, Local or Tribal Governments.

Frequency of Response: On occasion.

Estimated Annual Burden: 10,208 annual responses; 4.33 hours burden per response; 44,200 hours total annual burden.

Needs and Uses: A portion of this documentation is used by the FCC Compliance and Information Bureau personnel during inspection and investigation to insure compliance with applicable rules and treaties. This information may be used for similar purposes by appropriate representatives of foreign governments when the vessel is operating in foreign waters. The remainder of the documents are used by the radio operator and are necessary to support communications capability at sea.

OMB Number: 3060–0502.

Title: Section 73.1942 Candidate Rates.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 285,875 annual responses; 2.1 hours burden per response; 600,338 hours total annual burden.

Needs and Uses: Section 73.1942 requires broadcast licensees to disclose station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time. It also requires licensees to calculate the lowest unit charge. The disclosures allow candidates to determine that they are receiving the same charge as the most favored advertisers.

OMB Number: 3060–0211.

Title: Section 73.1943 Political File.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 406,125 annual recordkeepers; .25 hours burden per response; 101,531 hours total annual recordkeeping burden.

Needs and Uses: Section 73.1943 requires licensees of broadcast stations to keep complete records of all requests for broadcast time made on behalf of political candidates, together with notations showing disposition of requests, and allow public inspection of these records. Data is used to by public to assess money expended and time allotted to political candidates and to ensure that equal access was afforded to other qualified candidates.

OMB Number: 3060–0501.

Title: Section 76.206 Candidate Rates.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: 10 disclosures annually, rates calculated semi-annually.

Estimated Annual Burden: 52480 annual responses; 2.5 hours burden per response; 131,200 hours total annual burden.

Needs and Uses: Section 76.205 requires cable television systems to disclose any station practice offered to commercial advertisers that enhance the value of advertising spots and different classes of time. It also requires cable systems to calculate the lowest unit charge. This allows candidates to determine that they are receiving the same rate as the most favored advertisers.

OMB Number: 3060–0313.

Title: Section 76.207 Political File.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 26,240 annual responses; .25 hours burden per response; 6,560 hours total annual burden.

Needs and Uses: Section 76.207 requires cable television systems to keep complete records of all request for cablecast time made on behalf of political candidates, together with notation showing disposition of requests, and allow public inspection of records. Data is used by the public to assess money expended, time allotted to political candidates and to ensure that equal access was afforded to other qualified candidates.

OMB Number: 3060–0419.

Title: Sections 76.94, 76.155, 76.157, and 76.159 Syndicated Exclusivity/ Network Non-duplication Rights.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 170,368 annual responses; 1 hour burden per response; 170,368 hours total annual burden.

Needs and Uses: Notifications by TV stations and program suppliers will provide cable systems with information on programs for which they have syndicated exclusivity/network non-duplication rights. The data provided to cable systems by TV stations will be used to determine when programs subject to deletion will be aired, so that the cable system can delete carriage of signals at appropriate time.

OMB Number: 3060–0500.

Title: Section 76.607 Resolution of Complaints.

Form No.: N/A

Action: Extension of currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 11,300 annual responses: 27 hours burden per response; 305,100 hours total annual burden.

Needs and Uses: Section 76.607 requires cable systems to advise subscribers once each calendar year of proceedings for resolution of complaints. It also requires that records be maintained on all subscriber complaints. The data is used by local franchising authorities to assess cable systems' performance and to ensure that the quality service is being provided to subscribers.

OMB Number: 3060–0316.

Title: Section 76.305 Records to be maintained locally by cable system operators for public inspection.

Form No.: N/A

Action: Extension of currently approved collection.

Respondents: Business or other for-profit; State, Local and Tribal Government.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 11,300 recordkeepers; 18.2 hours burden per recordkeeper; 205,386 hours total annual burden.

Needs and Uses: Section 76.305 requires cable television systems to maintain a public inspection file of certain records. This data is used by FCC investigation staff and the public to assess a cable systems performance and to ensure compliance with FCC rules and regulations.

OMB Number: N/A

Title: Section 76.934(f)(1) Alternative rate regulation agreements.

Form No.: N/A

Action: New collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 3,157 annual responses; .5 hours burden per response; 1,579 hours total annual burden.

Needs and Uses: This section permits local franchising authorities and qualified small systems to enter in alternative rate regulation agreements. Small systems must file with Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date. This information will be used by the Commission in conjunction with reviews of rate complaints filed by cable subscribers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–6730 Filed 3–17–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1044–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Nicholas B. Nikas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David A. Skarosi as Federal Coordinating Officer for this disaster.

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(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–6763 Filed 3–17–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375–016.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
Cho Yang Shipping Co. Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen BV
Hapag Lloyd AG
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
P&O Containers Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Synopsis: The proposed amendment adds a new Article 14.4—Independent Action, which provides for individual service contracts to commence no sooner than January 1, 1996, and terminate on or before December 31, 1996, except under specified circumstances. This provision complies with the Commission's Order Conditionally Approving Settlement (dated March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

Agreement No.: 232–011491.

Title: Lykes/Evergreen Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed Agreement authorizes the parties to charter space on each others vessels and rationalize sailings in the trade between U.S. Atlantic, Gulf and Pacific Coast ports and points on the one hand, and on the other hand, all ports in the United Kingdom and the Republic of Ireland, all ports in Denmark, Finland, Norway, Sweden and Poland, and all Baltic ports in the former Soviet Union and all ports in Continental Europe from Germany to and including Portugal, Atlantic Coast of Spain, and all inland and coastal points via such ports.

By Order of the Federal Maritime Commission.

Dated: March 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–6814 Filed 3–17–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 10573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200852–001.

Title: Port of New Orleans/International Shipholding Corporation.

Filing Agent: Mr. Joseph W. Fritz, Jr., Staff Attorney, Port of New Orleans, P.O. Box 60046, New Orleans, Louisiana 70160.

Parties: Port of New Orleans/International Shipholding Corporation.

Synopsis: The proposed amendment extends the terms of the Agreement for another year.

Agreement No.: 224–200924.

Title: Port of Houston Authority/James J. Flanagan Stevedores Terminal Agreement.

Parties: Port of Houston Authority ("Port")/James J. Flanagan Stevedores ("JJFS").

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes JJFS to perform stevedoring services at the Port's Transit Sheds Numbers 21–23. The term of the Agreement expires June 30, 1995.

Dated: March 15, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–6815 Filed 3–17–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Apollo Stevendoring Company, Inc., dba Jason Shipping Company, 13251 Eastern Ave., Palmetto, FL 34221, Officers: Edward E. Sheffield, President; Joan E. Sheffield, Secretary

Alfa Cargo Forwarders Corp., 500 Bayview Drive, #1027, North Miami, FL 33160, Officers: Carlos A. Cavanzo, President; Santiago Hermida, Vice President

Red Hot Transportation, 581 Maple Avenue, San Bruno, CA 94066, Officers: Greg Lowery, Partner; Gina Fregosi, Partner

Amerasa Rapid Transit USA Inc., 1440 Broadway, Suite 606, Oakland, CA 94612, Officers: Richard J. Eber, President; Li Bin, Stockholder.

Dated: March 14, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–6704 Filed 3–17–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to engage *de novo* through its subsidiary Barnett Dealer Financial Services, Inc., Jacksonville, Florida, in consumer finance activities and credit card activities, pursuant to § 225.25(b)(1)(i) and (ii) of the Board's Regulation Y, and in leasing personal or real property, pursuant to § 225.25(b)(5)(i) and (ii) of the Board's Regulation Y. The proposed activity will be conducted throughout the United States.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6787 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

Capital Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Capital Bancorporation, Inc., Cape Girardeau, Missouri; to acquire Home Federal Savings and Loan Association, Jonesboro, Arkansas, and thereby engage in operating a savings association, whose activities include taking deposits and lending funds for residential, commercial, and consumer purposes, pursuant to § 225.23(b)(9) of the Board's Regulation Y, and in the sale of credit-related insurance products, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6788 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

Louis G. Titus Revocable Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Louis G. Titus Revocable Trust and Paula E. Titus and Liscomb J. Titus voting trust, all of Lincoln, Nebraska; all to retain a total of 51.17 percent of the voting shares of LJT, Inc., Holdredge, Nebraska, and thereby indirectly acquire The First National Bank of Holdredge, Holdredge, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Glenn Fred Bergau, Usk, Washington; to acquire an additional

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.996 percent, for a total of 10.49 percent, of the voting shares of Pend Oreille Bancorp, Newport, Washington, and thereby indirectly acquire Pend Oreille Bank, Newport, Washington.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6790 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

North Fork Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 13, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. North Fork Bancorporation, Mattituck, New York; to acquire 100 percent of the voting shares of Great Neck Bancorp, Great Neck, New York, and thereby indirectly acquire Bank of Great Neck, Great Neck, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. 1st Jackson Bancshares, Inc., Stevenson, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The North Jackson Bank, Inc., Stevenson, Alabama.

2. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Florida, Jacksonville, Florida; to merge with FBC Holding Company, Inc., Crestview, Florida, and thereby indirectly acquire First Bank of Crestview, Crestview, Florida.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Watford City Bancshares, Inc., Watford City, North Dakota; to acquire 100 percent of the voting shares of First International Bank & Trust, Scottsdale, Arizona, a *de novo* bank.

2. Windsor Bancshares, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Bank Windsor II, Chisholm, Minnesota, a *de novo* bank.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ameribank, Corporation, Inc.; Shawnee, Oklahoma; to acquire 100 percent of the voting shares of United Oklahoma Bankshares, Inc., Del City, Oklahoma, and thereby indirectly acquire United Bank, Del City, Oklahoma.

2. First Mountain Company, Montrose, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Mountain State Bank, Montrose, Colorado.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Bancorp, Inc., Denton, Texas; to acquire 100 percent of the voting shares of First Colony Bank, The Colony, Texas.

2. First Delaware Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First Colony Bank, The Colony, Texas.

3. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Bank, Houston, Texas

4. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Colony Bank, The Colony, Texas.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6789 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 02/27/95 AND 03/10/95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Glenayre Technologies, Inc., Western Multiplex Corporation, Western Multiplex Corporation	95–0972	02/27/95
Jerry Zucker, Johnson & Johnson, Johnson & Johnson	95–0992	02/27/95
Telephone and Data Systems, Inc. Voting Trust, Barbara Magin, P.C. Cellular of Kentucky, L.P.	95–0999	02/27/95
David and Sonia Salzman, Keith Rupert Murdoch, FTS Atlanta, Inc	95–1030	02/27/95
Quincy D. Jones, Keith Rupert Murdoch, FTS Atlanta, Inc	95–1031	02/27/95
General American Life Insurance Company, Xerox Corporation, Xerox Financial Services Life Insurance Company	95–1034	02/27/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 02/27/95 AND 03/10/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
York International Corporation, Donald H. Gales, Evcon Holdings, Inc	95–1043	02/27/95
Roadmaster Industries, Inc., Morris Z. Hocherman, MZH, Incorporated & MZH Contracting Corp	95–1058	02/27/95
General Electric Company, ITT Corporation, ITT Commercial Finance Corporation	95–1062	02/27/95
Exor Group S.A., Xerox Corporation, Constitution Re Corporation	95–1065	02/27/95
K–III Communications Corporation, Bacon's Information Inc., Bacon's Information Inc	95–1068	02/27/95
Tyco International Ltd., Tectron Holding Corporation, Tectron Holding Corporation	95–1074	02/27/95
Winn-Dixie Stores, Inc., Richard E. Linder, Thriftway, Inc	95–1081	02/27/95
Von Roll AG, Gary C. Bivona, Insulating Materials, Inc. & IMI Real Estate Corp	95–1084	02/27/95
Sonoco Products Company, Hargro Enterprises, Inc., Hargro Flexible Packaging Corp	95–0877	02/28/95
Robert H. Chapman, Figgie International Inc., Figgie International Inc.	95–0959	02/28/95
Laidlaw Inc., William I. Goodhew Family Trust, Goodhew Ambulance Service, Inc	95–0971	02/28/95
Superior Gen. & Councilors/Franciscan Sisters of Mary, Daughters of Charity National Health System, Inc., DePaul Health Center	95–0981	02/28/95
Columbia/HCA Healthcare Corporation, University Healthcare System, L.C., University Healthcare System, L.C	95–1002	02/28/95
The Administrators of the Tulane Educational Fund, University Healthcare System, L.C., University Healthcare System, L.C.	95–1006	02/28/95
TheraTx, Incorporated, Southern Management of Pompano Beach, Inc., Southern Management of Pompano Beach, Inc	95–1041	02/28/95
TheraTx, Incorporated, David M. Veltman, Highland Pines Nursing Manor, Inc., and Abbey Land	95–1042	02/28/95
Interamericas Investments, Ltd., Medallion Mortgage Company, Medallion Mortgage Company	95–1047	02/28/95
Adwest Group PLC, E. Christopher Benzing, Triple A Tube, Inc	95–1079	02/28/95
Health Management Associates, Inc., The Cape Coral Medical Center, The Cape Coral Medical Center, Inc	95–1111	02/28/95
Dr. Michael Otto, Sears, Roebuck and Co., Sears Logistics Services, Inc	95–1088	03/01/95
Warrick Industries, Inc., Harsco Corporation, BMY-Wayne Wheeled Vehicles Division	95–0998	03/02/95
PacifiCare Health Systems, Inc., Central Valley Health Plan, Inc., Central Valley Health Plan, Inc., dba ValueCare	95–1051	03/02/95
J.G. Boswell Company, Fred Salyer, Salyer Land Company	95–1069	03/02/95
Honeywell, Inc., DMC Services, Inc., DMC Service, Inc	95–1070	03/02/95
Alfonso Romo Garza, Geo. J. Ball, Inc., Geo. J. Ball, Inc.	95–1087	03/02/95
Schein Holdings, Inc., Ethical Holdings plc, Ethical Holdings plc	95–1013	03/03/95
Beverly Enterprises, Inc., Health Care Property Investors, Inc., Health Care Property Investors, Inc	95–1036	03/03/95
Deloitte & Touche LLP, International Consulting Solutions, Inc., International Consulting Solutions, Inc	95–1039	03/03/95
Maysayoshi Son, Sheldon G. Adelson, Interface Group-Nevada, Inc. and Interface Group	95–1046	03/03/95
Pennzoil Company, California Lubricants Limited Partnership, California Lubricants Limited Partnership	95–1061	03/03/95
Optical Coating Laboratory, Inc., Imperial Chemical Industries PLC, Flex Products, Inc.	95–1090	03/03/95
James R. Shaw, Sr., International Cablecasting Technologies Inc., International Cablecasting Technologies Inc.	95–1096	03/03/95
Loews Corporation, AmeriChoice Corporation, AmeriChoice Corporation	95–1099	03/03/95
The SK Equity Fund, L.P., Raymond Barshick, Souper Salad, Inc	95–1103	03/03/95
U.S. Foodservice, Inc., Harvey Frank, City Provisioners, Inc.	95–1105	03/03/95
Siebe plc, Thomas J. Manning, Fabex, Inc	95–1108	03/03/95
Lincoln National Corporation, Riverplace Investments (Curacao), C.V., Riverplace Investments, Ltd	95–1109	03/03/95
Berwind Group Partners, Elastochem, Inc., Elastochem, Inc	95–1110	03/03/95
Howard M. Meyers, Morgan Stanley Leveraged Equity Fund II, L.P., Tennessee Valley Steel Corporation, Debtor-in-Possession	95–1112	03/03/95
NEXTEL Communications, Inc., Tele-Communications, Inc., American Mobil Systems Incorporated	95–1118	03/03/95
James C. Henry, Atlantic Richfield Company, Atlantic Richfield Company	95–1123	03/03/95
NEXTEL Communications, Inc., Dial Page, Inc., Dial Page, Inc	95–1134	03/03/95
Maxus Energy Corporation, Pennzoil Company, Pennzoil Exploration and Production Company	95–1054	03/07/95
Group Financial Partners, Inc., Smartflex Systems, Inc., Smartflex Systems, Inc	95–1072	03/07/95
KeyCorp, Spears, Benzak, Salomon & Farrell, Inc., Spears, Benzak, Salomon & Farrell, Inc	95–1093	03/07/95
Jairo A. Estrada, StairMaster Sports/Medical Products, Inc., StairMaster Sports/Medical Products, Inc	95–1098	03/07/95
SCI Systems, Inc., Digital Equipment Corporation, Digital Equipment Corporation	95–1106	03/07/95
Internationale Nederlanden Groep N.V. (a Dutch company), Barings PLC (a British company), Baring Securities (International) Holdings Limited	95–1200	03/07/95
Internationale Nederlanden Groep N.V. (a Dutch company), Dillon, Read Holding Inc., Dillon, Read Holding Inc.	95–1203	03/07/95
New Valley Corporation, Empresa Brasileira de Aeronautica S.A., Scorpio Acquisition Company, Ltd	95–1059	03/08/95
Bedford Capital Financial Corp., Elf Acquitaine (a French company), Sanofi Beaute, Inc	95–1073	03/08/95
BanPonce Corporation, CGC Holding Company, Home Mortgage Company	95–1050	03/09/95
GSS Acquisition Limited Partnership, Brenlin Corporation, Gulf States Steel, Inc. of Alabama	95–1077	03/09/95
GSS Acquisition Limited Partnership, DSC Equipment Associates, Ltd., DSC Equipment Associates, Inc	95–1078	03/09/95
Berkshire Hathaway Inc., American Express Company, American Express Company	95–1101	03/09/95
Kenetech Corporation, Midwest Resources, Inc., Century Contractors West Inc	95–1102	03/09/95
NationsBank Corporation, KeyCorp, KeyCorp Mortgage Inc.	95–1115	03/09/95
Citicasters Inc., Jeffrey E. Trumper, Trumper Communications of Portland L.P	95–1129	03/09/95
Steven C. Stomel, H. Ross Arnold, III, NCC, L.P.	95–1157	03/10/95

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FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–6752 Filed 3–17–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0069]

Drug Export; Pepcid AC (Famotidine 10 Milligram (mg)) Compressed Chewable Tablets (CCT)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck & Co. has filed an application requesting conditional approval for the export of the human drug Pepcid AC (Famotidine 10 mg) Compressed Chewable Tablets (CCT) to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck & Co., BLA–30, West Point, PA 19486, has filed an application requesting conditional approval for the export of the human drug Pepcid AC (Famotidine 10 mg) Compressed Chewable Tablets (CCT) to Canada. This product is indicated for the treatment and prevention of heartburn. The firm does have new drug application approval for various other dosage forms and strengths of Pepcid. The application was received and filed in the Center for Drug Evaluation and Research on February 17, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 30, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 8, 1995.

Betty L. Jones,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–6727 Filed 3-17–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for Fiscal Year (FY) 1995: Cancellation of Cycle for Certain Grants and Cooperative Agreements; Extension of Certain Application Deadline Dates

Notice of Availability of Funds for Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for fiscal year (FY) 1995, section 502(a), title V of the Social Security Act, was published on February 13, 1995, at 60 FR 8244. Section 4.1.2.1. of this notice announced the availability of funds for 2 grants in the Maternal, Infant, Child and Adolescent Health category priority identified as "Content and Organization of Care for Women of Childbearing Age, Infants, Children, Adolescents, and their Families." Section 4.2.3. of the notice announced the availability of funds for up to four cooperative agreements in the Childhood Injury Prevention category.

Since publication of this notice, it has been determined that amounts allocated for grants under Section 4.1.2.1. are insufficient to permit a competitive grant cycle in the "Content and Organization of Care" priority for FY 1995. As a result, this competition is herewith canceled. Additionally, the Department has decided that it prefers to implement contracts rather than award cooperative agreements in order to acquire the work it wishes to have accomplished by the centers described in the Section 4.2.3. Childhood Injury Prevention category. This competition is also herewith canceled. It is anticipated that contracts for this purpose will be awarded during the second quarter of FY 1996; a request for proposals will be advertised at the appropriate time. To ensure continuity in this activity until then, the cooperative agreements with existing Childhood Injury Prevention centers will be extended for six months, through February 1996.

Two of the deadline dates announced in the February 13, Notice of Availability of Funds for Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for fiscal year (FY) 1995, are being extended. The deadline date for the remaining grants announced under Section 1.2.1. is hereby extended to May 10, 1995. In addition, the deadline date for cooperative agreements for Out-of-Home Child Care Health and Safety announced under Section 2.2.4. is hereby extended to June 9, 1995.

The rest of the notice remains as published.

Dated: March 14, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–6729 Filed 3–17–95; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: February 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of February 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, state	Effective date
Program-Related Convictions:	
Ahmad, Malak I, Old Brookville, NY	02/22/95
Battle, Arnita Shawn, Dillard, GA	02/22/95
Bowers, Kenneth, Oxnard, CA	03/16/95
Bronfman, Jerard, Pleasantville, NY	03/16/95
Bronstein, Robert, Williamsville, NY	03/16/95
Cabuntala, Amado, West Covina, CA	02/23/95
Castillo, Daniel Love, Palm Springs, CA	03/16/95
Deane, Gardner, Valdosta, GA	02/22/95
Deuink, Brent L, Clymer, NY	03/16/95
Diamond, David L, Johnstown, PA	03/16/95
Hartley, Wanda, Ripley, WV	03/16/95
Levan, Mike, Spring Valley, IL	02/22/95
Liberman, Alberto J, Portland, TX	03/16/95
Lowe, Thomas F, Long Beach, CA	03/16/95
Mathis, Ina A, Freeport, NY	03/16/95
Mestre, Carolina M, Hercules, CA	02/23/95
Mumia, Fred, Long Beach, CA	03/16/95
Neff, Reana Lynn, Platteville, CO	03/16/95
Nelson, Ronald Gene, Phoenix, AZ	03/16/95
Nurture Home Care Services, Roosevelt, NY	03/16/95
Olive, Jesus, Miami, FL	02/22/95
Oliver, Beverly, Moreno Valley, CA	02/23/95
Sobotka, Joseph J, Phoenix, AZ	03/16/95
Tan, Consuelo G, Vallejo, CA	02/23/95
Zhitlovsky, Gherman, Kansas City, MO	03/16/95
Patient abuse/neglect convictions:	
Corpening, Sandra F, Buffalo, NY	03/16/95
Maurice, Marie C, Brockton, MA	03/16/95
McDonald, Sharon A, Clarksdale, MS	02/22/95
Palmer, Linda Lea, Goodyear, AZ	03/16/95
Perry, Tequinnie Z, Memphis, TN	02/22/95
Trombley, Stephen P, Hancock, VT	02/22/95
Conviction for health care fraud:	
Bowlan, Timothy Mark, Oklahoma City, OK	02/22/95
Franks, Darrell D, Louisville, KY	02/22/95
Controlled substance convictions:	
Larson, Mark A, Yankton, SD	02/22/95
Mathews, Louis D, Rialto, CA	02/23/95
Molotkiewicz, Andrzej J, Charleroi, PA	03/16/95
Wright, William Jr, Chesapeake, VA	02/22/95
License revocation/suspension/surrender:	
Blazys, Lorie A, Brockton, MA	02/22/95
Bogart, Janet A, Norman, OK	03/16/95
Demetrios, Abbas Halim, Cumming, GA	02/22/95
Duncan, Peter David, Fayetteville, AR	03/16/95
Dunkin, Donald E, Brighton, CO	02/22/95
Harkness, Donna B, Hingham, MA	02/22/95
Harvey, Richard L, Aurora, CO	03/16/95
Hunter, Mary C, Sasakwa, OK	03/16/95
Jayme, Linda, Wethersfield, CT	02/22/95
Lauchu, Carlos, Saginaw, MI	03/16/95
Majors, Irving R, Troup, TX	03/16/95
Molstad, Brian, Minneapolis, MN	03/16/95
Needl, Elise, Nevis, MN	03/16/95
Ochsner, Edward William, Metairie, LA	03/16/95
Polk, Kathey A, Nacogdoches, TX	03/16/95

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Subject, city, state	Effective date
Quinton, Betty Jo, Sand Springs, OK	03/16/95
Settli, Peter, Milbank, SD	03/16/95
Sullivan, Joelle L, Canton, MI	03/16/95
Thrash, Susan L, Wyoming, IN	02/22/95
Turner, Craig S, New Orleans, LA	03/16/95
Webster-Fee, Pamela, San Francisco, CA	03/16/95
Wood, Theodore H, Fort Stanton, NM	02/22/95
Federal/state exclusion/suspension:	
Feinstein, David S, White Plains, NY	03/16/95
Paul, Fitzpatrick, Brooklyn, NY	03/16/95
Scotti, Louis, Nesconset, NY	03/16/95
St Louis, Parnell, Bronx, NY	03/16/95
Owned/controlled by convicted/excluded:	
Southern Psychotheraphy Assoc, Valdosta, GA	02/22/95
Default on heal loan:	
Arnett, Shannon L, Kendallsville, IN	02/22/95
Benjamin, James Jr, Presque Isle, ME	02/22/95
Cappa, Claude Lorenzo, Modesto, CA	03/16/95
Cunningham, Marvin Dan, Colorado Springs, CO	03/16/95
Cyrus, Pamela A, Arlington, MA	02/22/95
Dejesus, Iris M, Miami, FL	03/16/95
Erickson, Brock Tyrone, Delray Beach, FL	03/16/95
Espinosa, Sylvia Leos, Colorado Springs, CO	03/16/95
Faison, Willi R, Louisville, KY	03/16/95
Frier, James W, Jackson, CA	03/16/95
Getwan, Eliot M, Brookline, MA	03/16/95
Gilroy, Anne F, Ardmore, PA	03/16/95
Hansen, Timothy J, Pewaukee, WI	02/22/95
Hill, David L, San Jose, CA	03/16/95
Hinds, Thomas E, Springfield, IL	03/16/95
Hopstock, Richard M, La Puente, CA	02/23/95
Kowalski, Brian A, Newport Beach, CA	03/16/95
Kulirich, Regan T, Oakhurst, CA	03/16/95
Lawson, Mary Elene, Grand Marais, MN	02/22/95
Lindley, Frank A, Philadelphia, PA	03/16/95
Lloyd, Antoinette L, Orange Park, FL	03/16/95
Mayernik, Curtis V, Belle Vernon, PA	03/16/95
McClure, Brian C, Jupiter, FL	03/16/95
McLaughlin, Harry L, San Diego, CA	02/23/95
Memmott, Dana B, Signal Hill, CA	02/23/95
Miller, Jay P, Arlington, VA	03/16/95
Petersen, Kirk J, Long Beach, CA	03/16/95
Pierce, Douglas E, Grand Rapids, MI	03/16/95
Pittman, Kenneth M, Fort Lauderdale, FL	03/16/95
Refkin, Joseph P, Indianapolis, IN	02/22/95
Reynolds, Howard P, New York, NY	03/16/95
Richland, Warren A, Brooklyn, NY	03/16/95
Rieck, Paul G, Olathe, KS	03/16/95
Rogers, James J, Poplar Bluff, MO	03/16/95
Schamel, Lisa E, San Jose, CA	03/16/95
Slack, Craig A, Columbus, OH	02/22/95
Smith, Daniel J, Washington, DC	03/16/95
Stalker, James W, Dublin, CA	03/16/95
Stanford, Jeanne A, Santa Monica, CA	02/23/95
Thompson, Jerrold Allen, Lakewood, CO	03/16/95
Towers, Timothy J, St Louis, MO	03/16/95
Wagner, John P, Newton, KS	03/16/95
Wedemeyer, Ronald A, Bakersfield, CA	03/16/95
Wheeler, Randy R, Haysville, KS	03/16/95
Wright, Victor J, Sun City, FL	03/16/95
Zawada, Stanley John, Whitestone, NY	02/22/95
Section 1128Aa:	
Mohr, Carolyn S, Inglewood, CA	02/23/95
Payne, Brownell H, Culver City, CA	02/23/95
Peer review organization cases:	
Hanham, William J, Troy, NC	02/23/95
Holt, Dean, Logan, UT	03/16/95

Dated: March 7, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–6741 Filed 3–17–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. N–95–3347; FR–3064–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within five (5) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department is requesting that OMB complete its review within five working days from the date of this Notice.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 13, 1995.

Nelson A. Diaz,

General Counsel.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Applicant/Recipient Disclosure/Update Form (HUD–2880) Reinstatement

Office: Office of the General Counsel

Description of the Need for the Information and Its Proposed Use: Section 102 of the HUD Reform Act of 1989 requires that persons or entities applying for or updating an application for certain HUD assistance disclose information regarding interested parties and other financial assistance received and the sources and uses of that assistance. The information is made available for public scrutiny, and it is used by the Department to determine if subsidy layering is occurring.

Form Number: HUD–2880

Respondents: Applicants or recipients of certain competitive HUD assistance.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden Hours
HUD–2880	13,520		1.25		2.2		37,100

Total Estimated Burden Hours: 37,100

Status: Expired December 31, 1995.

Contact: Aaron Santa Anna, HUD (202) 708–3815; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 13, 1995.

Supporting Statement—1989 HUD Reform Act, Section 102—Accountability

A. Justification

1. Explain the Circumstances That Make the Collection of Information Necessary

Section 102 of the HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD, and from States and units of local government, of other assistance to be used with respect to the activities to be carried out with the assistance. The disclosure includes the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the use to which the funds are to be put.

Each applicant who submits an application for assistance within the jurisdiction of the Department to HUD, or to a State or to a unit of general local government, for a specific project or activity must disclose this information whenever the dollar threshold is met. This information must be kept updated during the application review process and while the assistance is being provided.

2. Indicate How, by Whom, and for What Purpose the Information Is To Be Used and the Consequence to Federal Program or Policy Activities If the Collection of Information Was not Conducted

This legislation was developed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. The Department is required to publish in the **Federal Register** the availability of assistance, application requirements and procedures, the selection criteria to be used, and the resulting funding decisions. HUD must also provide for public inspection of all documentation and other information which indicate the basis for either providing or denying the assistance being requested.

Applicants for assistance are required to disclose information concerning other

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governmental assistance they have obtained or is pending for the same project, as well as information about the key individuals involved with the proposed project/activity. This information will assist the Department in having an accurate assessment of the extent of government funding for a project as well as information regarding the key personnel involved. The disclosure requirement would be the only way in which this information could be obtained.

3. Describe Any Consideration of the Use of Improved Information Technology to Reduce Burden and Any Technical or Legal Obstacles to Reducing Burden

It would be difficult to determine the extent to which applicants for HUD assistance have advanced information technology equipment on hand. Therefore, it would not be appropriate for the Department to mandate the use of a particular software. The form which has been designed to capture the required data however could easily be computer generated.

4. Describe Efforts to Identify Duplication

This reporting requirement is new to the Department. It is explicitly mandated by Section 102 of the Housing Reform Act of 1989, approved December 15, 1989. There is no duplication.

5. Show Specifically Why Any Similar Information Already Available Cannot Be Used or Modified for the Purpose Described in 2.

The information that is being required for disclosure has not been previously requested.

6. If the Collection of Information Involves Small Businesses or Other Small Entities, Describe the Methods Used to Minimize Burden

An applicant for assistance within the jurisdiction of the Department will not be required to make the disclosures if they will not receive an aggregate amount of all forms of such assistance in excess of $200,000 during the fiscal year in which the application is submitted. Setting the threshold at this level should exclude most small entities from the reporting requirement.

7. Describe the Consequences to Federal Program or Policy Activities If the Collection Were Conducted Less Frequently

This requirement is part of the assistance application process. As such, it is not a periodic report, but instead should be viewed as a one-time requirement. It is intended to provide information necessary to the review process.

8. Explain Any Special Circumstances That Require the Collection To Be Conducted in a Manner Inconsistent With the Guidelines in 5 CFR 1320.6

None.

9. Describe Efforts to Consult With Persons Outside the Agency to Obtain Their Views on the Availability of Data

The Department published a proposed rule to implement Section 102 on June 19, 1995 (55 FR 25036). Comments on the proposed rule were received and considered.

10. Describe Any Assurance of Confidentiality Provided to Respondents and the Basis for the Assurance in Statute, Regulation, or Agency Policy

None. There is no purpose for confidentiality since the legislation includes specific requirements for the government to make all information regarding applications for HUD assistance available for public inspection.

11. Provide Additional Justification for Any Questions of a Sensitive Nature

Questions involving financial interest are statutorily mandated.

12. Provide Estimates of Annualized Cost to the Federal Government and to the Respondents

Federal Government

The cost to the government can be broken down as follows:

No. of reviews of disclosed information	16,900
No. hours to complete a review	45
Cost for total no. reviews: (@$30.hr.)	$228,000

Respondent

The cost to respondents to disclose the data HUD is requiring is estimated at $557,700. This number is for the total number of applicants meeting the $200,00 threshold and is based on the following assumptions:

Current hourly wage is estimated at $15 per hour. Each applicant must disclose three ypes of information: a listing of other government assistance that is expected to be made available for the project, a listing of all interested parties including any developers, contractors, and consultants, and a report of all sources and uses of funds. The time required to prepare this information is estimated at 2.2 hours per initial submission.

No. of disclosures (including updates)	Hours	Rate	Total
16,900	2.2	$15	$557,700

13. Provide estimates of the Burden of Collection of Information

This is a new requirement. The following matrix provides an estimate of the burden on respondents meeting the threshold necessitated by the disclosure report.

	Number of responses	Frequency	Hours	Burden
Initial Applications	13,500	1	2.5	33,700
Updates	3,400	1	1	3,400
Total Estimated Burden Hours: 37,100				

14. Explain reasons for changes in burden, including the need for any increases.

Not Applicable.

15. Collection of information to be used for statistical use.

Not applicable.

BILLING CODE: 4210-01-M

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Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

OMB Approval No. 2535-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information **Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

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Part V. Report on Expected Sources and Uses of Funds

Source	

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true (Signature) _____ Date _____

Use	

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true (Signature) _____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature _____ Date _____

BILLING CODE: 4210-01-C

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535–0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. § 552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR § 12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients to HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,
The financial interests of persons in the project,
The sources of funds to be made available for the project, and
The uses to which the funds are to be put.

B. Update reports: General. All recipients covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if either of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets neither of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets either of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; of

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

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For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions

A. Part I. Applicant/Recipient Information

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations—Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. Recipients filing Update Reports should not complete this Part.

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions 1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is ought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; or

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1., 2., or 4., above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with the last names first.

2. Entry of the Social Security Number (SSN) or Employee identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed; i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filling applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds—both from HUD and from any other source—that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions—sources of funds.

Each reportable source of funds must indicate:

A. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard: Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

C. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions—sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount approved and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing—Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

Specific instructions—uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee—design
Architect's fee—supervision
Bond premium
Buildre's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA/GNMA fee
General requirements
Insurance
Legal—construction
Legal—organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recording Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.

2. A list of the covered assistance programs can be found at 24 CFR § 12.30, or in the rules or administrative instructions governing the program involved.

Note: The list of covered programs will be updated periodically.

3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR)(48 CFR Chapter 1).

4. See 24 CFR §§ 12.32(a) (2) and (3) for detailed guidance on how the threshold is calculated.

5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.

6. For further guidance on the criterion, and for a list of covered programs, see 24 CFR § 12.50.

7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

[FR Doc. 6717 Filed 3–17–95; 8:45 am]
BILLING CODE 4210–01–M

Office of Administration

[Docket No. N–95–3905]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

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FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 7, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Lead-Based Paint Hazard Elimination Program and Annual Reporting
Office: Public and Indian Housing
Description of the Need For the Information and its Proposed Use: Public and Indian Housing Agencies are required to maintain records on tenant notification, testing by location and abatement, and testing by location and method. These agencies are also required to provide tenants and purchasers a copy of all positive lead-based paint test results.
Form Number: HUD–52850
Respondents: State, Local, and Tribal Government and Federal Government
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52850	3,100		1		2		6,200
Notice	3,100		3		1		9,300

Total Estimated Burden Hours: 15,500
Status: Reinstatement with changes
Contact: Carolyn Newton, HUD, (202) 708–1640; Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated: March 7, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Victimization Survey of Public Housing Residents
Office: Policy Development and Research
Description of the Need For the Information and its Proposed Use: Reliable and valid information on crime rates in public housing does not exist. This survey involves: (1) The development of data collection methods for measuring criminal victimization among public housing residents, and (2) the collection of baseline data so that crime prevention measured in public housing can be assessed.
Form Number: None
Respondents: Individuals or Households
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	875		1		.36		319

Total Estimated Burden Hours: 319
Status: New
Contact: Harold R. Holzman, HUD, (202) 708–2031; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 7, 1995.

[FR Doc. 95–6726 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing; Federal Housing Commissioner

[Docket No. N–95–3904; FR–3891–N–01]

Sale of HUD-Held Multifamily Mortgages; Notice of Loan Sale Policy

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Loan Sale Policy for HUD-Held Multifamily Mortgages.

SUMMARY: This notice sets forth the sale procedures and other information relevant to the sale of HUD-held non-performing, unsubsidized mortgage loans.

DATES: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: William Richbourg, Office of the Housing-FHA Comptroller, Room 5144, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; Telephone (202) 401–0577. Hearing- or speech-impaired individuals may call (202) 708–4594 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On September 22, 1994, the Department of Housing and Urban Development ("Department") published a final rule in the **Federal Register** (59 FR 48726) containing provisions set forth in 24 CFR 290.202 for selling nonperforming, unsubsidized mortgage loans. The first auction of these mortgage loans is scheduled for March 28, 1995 and involves the sale of mortgage loans secured by properties located in the Southeastern United States ("Southeast Auction"). The sale was announced by a notice published in the **Federal Register** on January 13, 1995 (60 FR 3255).

This notice sets forth the sale procedures and other information relevant to the sale scheduled for March 28, 1995. The following are changes, modifications and/or amplifications to those sale procedures previously published. Except as expressly set forth below, the procedures set forth in the **Federal Register** on January 13, 1995 remain effective.

Ineligible Bidders. The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the mortgage loans included in the Southeast Auction:

(1) Any employee of the Department;

(2) Any individual or entity that is debarred from doing business with the Department pursuant to 24 CFR part 24;

(3) Any contractor, subcontractor and/or consultant (including any agent of the foregoing) who performed services for, or on behalf of, the Department in connection with the Southeast Auction;

(4) Any individual that was a principal and/or employee of any entity or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of, the Department in connection with the Southeast Auction;

(5) Any entity or individual that served as a loan servicer or performed other services for, or on behalf of the Department, with respect to any of the mortgage loans included in the Southeast Auction at any time during the two-year period prior to March 28, 1995; and

(6) Any individual that was a principal and/or employee of any entity or individual described in paragraph (5) above at any time during the two year period prior to March 28, 1995, except, however, any entity or individual described in paragraphs (5) and (6) shall be permitted (subject to the terms and conditions of any agreement the entity or individual has previously entered into in connection with the Southeast Auction and/or other agreements entered into with, or on behalf of, the Department), to:

(i) Perform services as a consultant and/or advisor to any bidder who is eligible to bid at the Southeast Auction, provided that such services do not involve the use of any materials or information not otherwise available to the general public that were produced or developed for, or on behalf of, the Department; and

(ii) Bid on any of the mortgage loans included in the Southeast Auction that were not serviced by such entity or individual described in paragraphs (5) or (6) at any time during the two year period prior to March 28, 1995.

Number of Bids. A bidder may bid on as many individual mortgage loans as the bidder chooses. However, no bidder may bid on more than ten (10) pools of mortgage loans (i.e., combinations of two or more mortgage loans).

Timely Bids and Deposits. Each bidder assumes all risks of loss relating to its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, each bid form, earnest money deposit and loan sale agreement required to be submitted by the bidder.

Ties for High Bidder. In the event there is a tie for a high bid, the Department, through its financial advisor, will contact the parties with the tie bid and afford each of them an opportunity to offer a best and final bid. The successful bidder will be the one with the highest bid. If a tie continues after the best and final offers are submitted or the bidders do not respond, or do not respond within the time period established by the Department, the successful bidder will be determined by lottery. Notwithstanding the above, the Department reserves the right to withdraw any mortgage loan(s) subject to a tie bid.

Nonperforming Status of Mortgage Loans. Almost all of the mortgage loans included in the Southeast Auction are nonperforming. However, some of the mortgage loans may become performing on or before the date that title to the mortgage loan(s) is transferred to the successful bidder.

Dated: March 13, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–6714 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1220–00; GP5–082]

Notice of Public Lands Closure/Restrictions, Grant County, Washington

AGENCY: Bureau of Land Management, Wenatchee Resource Area, Spokane District.

ACTION: Emergency closure of public lands; Washington.

SUMMARY: Closure and restriction order. Under the authority identified in 43 CFR 8364.1 (a.) Fifty acres of public lands located on Saddle Mountains, (S½NE¼NW¼, N½NW¼NE¼, SW¼NW¼NE¼, Section 12, T. 15 N., R. 23 E. Willamette Meridian), are closed to surface disturbing activities including OHV riding and digging of petrified wood. The existing road and jeep trail are not affected by this closure. This closure/restriction is effective immediately upon publication of this notice and will remain in effect year round or until rescinded. This order is necessary to provide protection for sensitive plant species habitat. Authorized BLM personnel conducting habitat restoration activities, and personnel operating fire fighting and/or emergency vehicles or operations including search and rescue activities, are exempt from this order.

Any person who fails to comply with a closure or restriction order issued under this subpart may be subject to the penalties provided in 43 CFR 8360.0–7. These penalties are as follows. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: James Fisher, Area Manager, BLM, Wenatchee Resource Area Office, 915 N Walla Walla Street, Wenatchee, Washington, 98801–15Z1; 509–665–2100.

Dated February 28, 1995.

James F. Fisher,

Wenatchee Resource Area Manager.

[FR Doc. 95–6740 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–33–M

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Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Project Called Windsor Estates Subdivision, a Single Family Residence Subdivision, in Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Forte Macaulay Development Co., Incorporated, (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The permit would authorize the take of two families of the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens* in Brevard County, Florida, for a period of 3 years. The proposed taking is incidental to construction of 205 single family homes, including the necessary infrastructure, on approximately 98 acres (Project). Within the Project, 25 acres are occupied by Florida scrub jays and will be permanently altered. The Project is called Windsor Estates, and it is located on the mainland of Brevard County, north of the city of Melbourne due west of the intersection of Pineda Causeway and Wickham Road, Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before April 19, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–799977 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. A third alternative is the proposed Project that is designed with a different mitigation strategy focusing on management of existing lands surrounding the project area. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite habitat for the Florida scrub jay, the establishment of an endowment fund for the offsite acquired habitat, and donation of additional offsite habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: March 13, 1995.

Noreen K. Clough,

Acting Regional Director.

[FR Doc. 95–6771 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–55–P

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Re-opening of Comment Period for Availability of a Draft Environmental Assessment and Notice of an Application for an Incidental Take Permit for La Costa Villages, Carlsbad, California, by the City of Carlsbad and Fieldstone/La Costa Associates; Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has re-opened the comment period for a draft environmental assessment (EA) and application for an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a Habitat Conservation Plan (HCP), two HCP addendums, and an Implementing Agreement (IA). The EA package includes an EA, EA addendum, and a draft Finding of No Significant Impact for La Costa Villages, a housing and road project proposed by the applicants: Fieldstone/La Costa Associates and the City of Carlsbad, California (Applicants).

The Applicants have applied to the Service for an incidental take permit and have included a proposed pre-listing Implementation Agreement and HCP for a proposed 1,940 acre project (HCP area) in the southeastern corner of Carlsbad, California. Completion of the grading and construction activities associated with the proposed project would result in direct impacts to the federally threatened coastal California gnatcatcher (*Polioptilla californica californica*).

This notice supplements an earlier notice published on October 28, 1994 (59 FR 54207). That initial comment period closed November 28, 1994. The Service re-opened the comment period from January 31, 1995 to March 2, 1995 (60 FR 5945) to allow for public comment on the National Environmental Policy Act (NEPA) documents and the complete application package, as revised. The applicants request that 66 species be covered by the HCP and that 1 or more

section 10(a) permits be issued for those species pursuant to the HCP and IA. In response to previous comments, additional conservation, comprised of the acquisition of approximately 240 acres under the City of Carlsbad's Habitat Management Plan, has been suggested and is being considered. The 240 acres would be purchased within the habitat corridor between the City of Carlsbad and the San Dieguito River Valley to the southeast and will be of value to the gnatcatcher as habitat or as connectivity between areas of occupied habitat. In order to provide for further consideration of the above, the Service has re-opened the comment period for the Fieldstone HCP and associated documents.

DATES: Written comments on the permit application and draft EA should be received on or before April 3, 1995.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Please refer to permit No. PRT–795759 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich or Ken Corey at the above address, or telephone (619) 431–9440. Individuals wishing copies of the application or EA should immediately contact Ken Corey. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: A concern has been raised regarding the consistency of the HCP with specific subarea and subregional plans under the statewide Natural Community Conservation Program (NCCP) (see page 54208 in 59 FR No. 208). All agencies and individuals are urged to provide comments on the proposal, draft EA, and the NCCP consistency issue. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

Dated: March 14, 1995.

Don Weathers,

Regional Director.

[FR Doc. 95–6772 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Notice on Outer Continental Shelf Gas and Oil Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1995, through October 31, 1995. The List of Restricted Joint Bidders published October 5, 1994, in the **Federal Register** at 59 FR 50767 covered the period of November 1, 1994, through April 30, 1995.

Group I. Exxon Corporation; Exxon San Joaquin Production Co.

Group II. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Onshore Ventures Inc.

Group III. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group IV. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: March 13, 1995.

Cynthia Quarterman,

Acting Director, Minerals Management Service.

[FR Doc. 95–6755 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32611]

Dallas Area Rapid Transit—Acquisition and Operation Exemption—Certain Lines of The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343–11345 the acquisition and operation by Dallas Area Rapid Transit of 11.5 miles of railroad line of The Atchison, Topeka and Santa Fe Railway Company, subject to the standard labor protective conditions. The line extends from approximately milepost 45.5 in Hale, to the Southern Pacific Transportation Company's overhead crossing at approximately milepost 57.0 in Dallas, Dallas County, TX.

DATES: This exemption will be effective on April 9, 1995. Petitions to stay must be filed by March 30, 1995. Petitions to reopen must be filed by April 4, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32611 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioners' representative: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6742 Filed 3–17–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 183X)]

Southern Pacific Transportation Company—Abandonment Exemption—in Marion County, OR

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon the 4.71-mile portion of its Geer Branch (the Line), extending from milepost 721.10, at or near the Geer rail station, to milepost 725.81, at or near the Salem rail station, in Marion County, OR.[1] SPT has certified that: (1) no local traffic has moved over the Line for at least 2 years; (2) any overhead traffic on the Line can

[1] Contemporaneous with this filing, the Williamette Valley Railway Company (WVR) filed a notice of exemption in Williamette Valley Railway Company—Discontinuance of Service Exemption—In Marion County, OR, Docket No. AB–435 (Sub-No. 1X), to discontinue operating on the 4.71-mile portion of the Geer Branch between milepost 721.10 at or near the Geer rail station to milepost 725.81 at or near the Salem rail station.

WVR leased and operated the entire Geer Branch pursuant to the notice of exemption in *Williamette Valley Railway Company—Acquisition, Lease and Operation Exemption—Southern Pacific Transportation Company, Finance* Docket No. 32249 (ICC served Mar. 5, 1993).

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be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 19, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by March 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, Room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

SPT has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6886 Filed 3–17–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–435 (Sub-No. 1X)]

Willamette Valley Railway Company—Discontinuance of Service Exemption—In Marion County, OR

Willamette Valley Railway Company (WVR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue service over approximately 4.71 miles of rail line owned by Southern Pacific Transportation Company (SP) extending between milepost 721.10 at or near Geer rail station and milepost 725.81 at or near Salem rail station, in Marion County, OR.[1]

WVR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 19, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[3] must be filed by March 30, 1995. Petitions to reopen must be filed by April 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

SP has filed an environmental report in Docket No. AB–12 (Sub-No. 183X) which addresses the abandonment's effects, if any, on the environment or historic resources. WVR has adopted SP's environmental report here. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 24, 1995.

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[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] WVR was authorized to lease from SP and operate approximate 72.37 miles of rail line, including this line segment, in *Willamette Valley Railway Company—Acquisition, Lease and Operation Exemption—Southern Pacific Transportation Company*, Finance Docket No. 32249 (ICC served Mar. 5, 1993). The lease transaction was consummated on February 22, 1993, as noted in SP's simultaneously filed notice of exemption to abandon this same line segment. *See Southern Pacific Transportation Company—Abandonment Exemption—In Marion County, OR*, Docket No. AB–12 (Sub-No. 183X).

[2] A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] Requests for trail use/rail banking or public use conditions will be considered in SP's related abandonment notice of exemption in Docket No. AB–12 (Sub-No. 183X).

Interested persons may obtain a copy of the EA from SEA by writing to it at (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental and historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision in Docket No. AB–12 (Sub-No. 183X).

Decided: March 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6887 Filed 3–17–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on September 26, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CableLabs, Louisville, CO and: Adelphia Communications Corporation, Coudersport, PA; ALLTEL Service Corporation, Little Rock, AR; Apollo Cablevision, Inc., Cerritos, CA; Armstrong Utilities, Inc., Butler, PA; Avenue TV Cable Service, Inc., Ventura, CA; Barden Communications, Inc., Detroit, MI; Benchmark Communications, Sterling, VA; Bend Cable Communications, Inc., Eugene, OR; Bresnan Communications Company, White Plains, NY; Buckeye Cablevision, Inc., Toledo, OH; Buford Television, Inc., Dallas, TX; Bluffton Cablevision, Ltd., Bluffton, SC; Cable America Corp., Phoenix, AZ; Cable de Tula, S.A. de C.V., Col Juarez, DF, Mexico; Cable TV, Inc., Hazleton, PA; Cablevision Industries Corp., Liberty, NY; Cablevision Systems Corporation, Woodbury, NY; CF Cable TV Inc., Montreal, PQ, Canada; Chambers Communications Corp., Eugene, OR; Classic Communications Ltd., Richmond Hill, ON, Canada; Coaxial Communications, Columbus, Ohio; Cogeco Inc., Montreal, PQ Canada; Colony Communications, Inc., Providence, RI; Comcast Corporation, Philadelphia, PA; Continental Cablevision, Inc., Boston, MA; Cox Cable Communications, Inc., Atlanta, GA; Cross Country Cable, Inc., Warren, NJ; Crown Media, Inc., Dallas, TX; C–TEC Cable Systems, Dallas, PA; CUC Broadcasting Limited, Scarborough, ON, Canada; Douglas Communications Corporation II, Ridgewood, NJ; Duhanel Cable, Rapid City, SD; Fairmont Cable TV, Rochester, MN; Fundy Cable Ltd./Ltee, St. John, NB, Canada; Greater Media, Inc., East Brunswick, NJ; Guam Cable TV, Agana, Guam; Helicon Corp., Englewood Cliffs, NJ; Higgins Lake Cable, Inc., Iron Mountain, MI; Hornell Television Service, Inc., Hornell, NY; Insight Communications Company, New York, NY; InterMedia Partners, San Francisco, CA; ITC, Bala Cynwyd, PA; Jones Intercable, Inc., Englewood, CO; Lenfest Group (The), Pottstown, PA; Maclean Hunter Cable TV, Etobicoke, ON, Canada; Monmouth Cablevision Associate, Falls Church, VA; Multimedia Cablevision, Inc., Wichita, KS; New Heritage Associates, Des Moines, IA; Newhouse Broadcasting Corporation, Syracuse, NY; News, Press & Gazette Co. (The), St. Joseph, MO; North Star Cable, Inc., Kingston, WA; Northern Cablevision Ltd., Edmonton, AB, Canada; Paradigm Communications, Inc., Greenwich, CT; Post-Newsweek Cable, Inc., Phoenix, AZ; Prestige Cable TV of Maryland, Inc., Cartersville, GA; Prime Cable, Alutin, TX; Princetown Cable Company, Schenectady, NY; Regina Cablevision Cooperative, Regina, SK, Canada; Rock Associates, Kirkland, WA; Rogers Cable TV Limited, Toronto, ON, Canada; Sammons Communications, Inc., Dallas, TX; Scripps Howard Cable Company, Cincinnati, OH; Shaw Communications Inc., Edmonton, AB, Canada; Susquehanna Cable Co., York, PA; Tele-Communications, Inc., Englewood, CO; Tele-Media Corporation, Pleasant Gap, PA; TeleCable Corporation, Norfolk, VA; Time Warner Cable, Stamford, CT; Times Mirror Cable Television, Irvine, CA; TKR Cable Company, Warren, NJ; Valley Cable TV Inc., Fort Valley, GA; Viacom International, Inc. (Cable Division), Pleasanton, CA; Videotron Ltee, Montreal, PQ, Canada; Western Co-Axial Ltd., Hamilton, ON, Canada; WinDBreak Cable, Gering, NE; World Company (The), Fort Collins, CO.

The area of planned activity is researching and developing specifications for equipment that will enable cable television systems to deliver telecommunications services to customers via a hybrid fiber/coax network architecture.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6737 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Financial Services Technology Consortium, Inc.

Notice is hereby given that, on November 22, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new Principal Member of the Consortium is: Banc One Services Corporation, Columbus, OH. The following parties were admitted as Associate Members of the Consortium: Motorola, Schaumburg, IL; American Express TRS Co., Inc., Salt Lake City, UT; Visa International, San Francisco, CA; Proprietary and Financial Products, Inc., Charleston, SC; Bank of Montreal, Toronto, Ontario, CANADA; OKI Advanced Products Division, Marlborough, MA; and IBM Corporation, New York, NY.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 Fed. Reg. 65399).

The last notification was filed with the Department on August 15, 1994. A

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notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 12, 1994 (60 F.R. 2986).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6736 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on November 17, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 14 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Abelstik Laboratories; Amoco Production Company; EDEN International Corporation; Itasca Systems, Inc.; and Occidental Chemical Corporation have not renewed their Associate memberships with MCC.

No other changes have been made in either membership or planned activity of the group research project. Membership remains open and MCC intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on July 15, 1994. A **Federal Register** notice pursuant to Section 6(b) of the Act has not yet been, published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6739 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Smart Valley Commercenet Consortium, Inc.

Notice is hereby given that, on January 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Smart Valley CommerceNet Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: Ameritech, Chicago, IL; Delphi Internet Services Corporation, Cambridge, MA; InterNex Information Services, Menlo Park, CA; Lawrence Livermore Laboratory, Livermore, CA; MasterCard International, New York, NY; Social Security Administration, Baltimore, MD; Solectron, Milpitas, CA; The General Electric Company, Rockville, MD; and Trusted Information Systems, Mountain View, CA. The following organizations have joined the Consortium as associate members: Arroyo Seco/Fore Play Golf, South Pasadena, CA; Boomerang Information Services, Palo Alto, CA; CONNECT, Inc., Cupertino, CA; CyberCash, Inc., Vienna, VA; CyberMark, Inc., Washington, D.C.; Equifax, Inc., Atlanta, GA; National Association of Purchasing Management Silicon Valley, Inc., San Jose, CA; National Housewares Manufacturers Association, Rosemont, IL; O'Reilly & Associates, Sebastopol, CA; Process Software Corporation, Framingham, MA; Sybase, Emeryville, CA; Telequip, Hollis, NH; UC Berkeley Center for Information Technology and Management (CITM), Berkeley, CA; and Wave Systems Corporation, New York, NY. In error, in the October 18, 1994, notice, Financial Services Technology Consortium, New York, NY was listed as a sponsor. It is actually a member at the associate level.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994 the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 Fed. Reg. 45012).

The last notification was filed with the Department on October 19, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 12, 1995 (60 F. R. 2986).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6738 Filed 3–17–95; 8:45]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09358, et al.]

Proposed Exemptions; NCNB Real Estate Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NCNB Real Estate Fund (the Fund), NationsBank Pension Plan, NationsBank Retirement Savings Plan

Located in Charlotte, North Carolina [Exemption App. Nos. D–09358, D–09359 and D–09360, respectively]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department and the Service are considering granting the following requested exemptions under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) and Revenue Procedure 75–26, 1975–1 C.B. 722.

Section I: Covered Transactions

1. If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of units in the Fund (Units) by plans participating in the Fund (the Plans) pursuant to an Option election made available by NationsBank of North Carolina, N.A. (the Bank), to a standby trust (the Standby Trust) established and maintained by NationsBank, Corporation (the Holding Company), a party in interest with respect to the Plans. This proposed exemption is subject to the conditions set forth in Section II.

2. If the exemption is granted, the restrictions of sections 406(a)(1)(D), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) and (E) of the Code shall not apply to any decision by the Bank to sell a property held by the Fund to a third party, and jointly owned by the Plans and the Holding Company, provided that: each Plan receives no less than fair market value for its interest in the property; and the Independent Fiduciary approves the reasonableness and propriety of the sale of the property.

Section II: Conditions

(a) The properties held by the Fund (the Properties) shall be appraised by an independent and qualified appraiser within twelve months and updated within fifteen days before the Settlement Valuation Date.

(b) The Plans selling Units pursuant to the Options will receive a price equal to the value of each Unit sold based on the value of the Fund as of the Settlement Valuation Date (the Unit Purchase Price) plus the Interest Amount which will be calculated by the Bank and reviewed and approved by the Independent Fiduciary who has been retained to represent the interests of the Plans with respect to the Sale and the subsequent activities of the Fund related to the Fund's liquidation.

(c) Plans selling Units pursuant to Options 1 or 2 will receive the Unit Purchase Price plus the Interest Amount for each Unit sold on the settlement date (Settlement Date) which will be no more than 120 days after the Settlement Valuation Date.

(d) If Options 2 or 4 are elected, the Plans involved will receive the final payment, if any, within sixty days after, the two year anniversary of the Settlement Valuation date for Option 2, or the date of complete liquidation of the Fund for Option 4.

(e) Prior to the Settlement Valuation Date, the Bank will provide each Plan with written information regarding the terms of the Sale. Such information includes, but is not limited to:

(i) notice that each Plan will be entitled to elect one or more Options which will permit the Plan to sell all or part of its Units to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund until the Fund's liquidation is complete, provided that if multiple Options are elected they must be uniform with respect to the grant, or failure to grant, a Release to the Bank,

(ii) a description of each Option,

(iii) the date by which a Plan must elect an Option (Option Election Date), and

(iv) forms for electing the Options.

(f) Except for Plans with respect to which the Bank or any of its Affiliates is an employer, the decision whether to authorize the Independent Fiduciary to make an Option election on behalf of the Plan will be made by a fiduciary independent of the Bank and its Affiliates and the Independent Fiduciary.

(g) The Bank and any Affiliate which is an employer with respect to a Plan will authorize the Independent Fiduciary to choose among all of the Options.

(h) A Plan's Option election will be made by a Plan fiduciary who is independent of the Bank and its Affiliates or by the Independent Fiduciary.

(i) The Independent Fiduciary's duties and responsibilities include, but are not limited to:

(1) Reviewing and determining whether to approve the appraisals of the Properties;

(2) Ordering a new appraisal in cases in which it has determined not to approve an existing appraisal;

(3) Reviewing and approving all of the disclosures, written explanations, and forms furnished to the Plans by the Bank;

(4) Furnishing information to an independent Plan fiduciary, in advance of any date by which the independent Plan fiduciary is required to respond in order to authorize the Independent Fiduciary to make a decision on behalf of the Plan. Such information includes, but is not limited to:

(i) the Unit Purchase Price;

(ii) a description and explanation of the Options;

(iii) dates by which the Plans must act in order to make Option elections and authorize the Independent Fiduciary to make Option elections on behalf of the Plan;

(iv) information summarizing: the effect of failing to authorize the Independent Fiduciary to make Option elections on behalf of the Plan, the effect

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of failing to make an Option election after informing the Independent Fiduciary that the independent Plan fiduciary would make the decision to select an Option election, and the availability and effect of the different Option election authorizations which the Plan may provide to the Independent Fiduciary, in language calculated to be reasonably understood by the average independent Plan fiduciary responsible for making decisions on behalf of a Plan with regard to Units of the Fund held by the Plan;

(4) making Option elections on behalf of any Plan if: (a) The Bank or any of its Affiliates is an employer with respect to the Plan; (b) the independent Plan fiduciary authorizes the Independent Fiduciary to make an Option elections on behalf of that Plan; or (c) the independent Plan fiduciary does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date;

(5) providing guidance regarding the four Options, to those independent Plan fiduciaries who wish to make their own Option elections;

(6) reviewing and determining whether to approve the Unit Purchase Price as of the Settlement Valuation Date, and the value of a Unit in the Fund as of two years from the Sale of the Units by the Plans to the Standby Trust (for purposes of determining the amount which is due to those Plans electing Option 2);

(7) reviewing and determining whether to approve the Interest Amount payable to any Plan which elected either Option 1 or 2;

(8) exercising its veto authority with regard to the proposed Unit Purchase Price, Interest Amount, or value of Fund Units pursuant to Option 2, which it has determined not to approve;

(9) monitoring the Bank's efforts to dispose of the Properties during the liquidation of the Fund;

(10) approving the reasonableness and propriety of sales of the Properties during the period in which the Standby Trust owns units in the Fund.

(j) The Independent Fiduciary may be removed by a majority vote of the Plans "for cause."

(i) The term "for cause" shall mean that there must be sufficient and reasonable grounds for removal and the grounds must be related to the ability and fitness of the Independent Fiduciary to perform his required duties.

(ii) Each Plan's vote for or against removal will be proportionate to it's ownership interest in the Fund exclusive of Units owned by the Standby Trust.

(k) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary.

(l) The Bank will continue its efforts, with due diligence to liquidate the Fund.

(m) Any distributions made by the Fund will be made pro rata, in cash.

(n) Any payment made pursuant to any of the Options will be made in cash.

(o) The Independent Fiduciary is responsible for monitoring compliance with the terms and conditions of the exemption at all times.

Section II. Definitions

For purposes of this exemption:

(a) Affiliate of the Bank includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Bank;

(2) Any officer, director or employee of the Bank, or of a person described in paragraph (a)(1) of Section II; and

(3) Any partnership in which the Bank is a partner;

(b) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) Affiliate of the Independent Fiduciary includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Independent Fiduciary;

(2) Any officer or director of the Independent Fiduciary;

(3) Any partner in the Independent Fiduciary, or any other related individual, with the authority to make, or who actually makes, fiduciary decisions which are within the scope of the Independent Fiduciary's duties and responsibilities under this exemption, or who holds a five percent (5%) or greater interest in the Independent Fiduciary;

(d) Independent Fiduciary means a person who:

(1) Is not an Affiliate of the Bank as defined in section II(a);

(2) does not have an ownership interest in the Bank or its Affiliates;

(3) is not a corporation or partnership in which the Bank or any of its Affiliates has an ownership interest;

(4) is not a fiduciary with respect to any of the Plans other than in connection with the transactions described in this exemption;

(5) has acknowledged in writing acceptance of fiduciary responsibility;

(6) is either:

(i) A business organization which has at least (5) years of experience with respect to commercial real estate investments or other relevant experience;

(ii) a committee comprised of three to five individuals who each have at least five (5) years of experience with respect to commercial real estate investments or other relevant experience; or

(iii) a committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (d)(1) through (6)(ii) above.

(7) An individual acting in a fiduciary capacity with respect to the Fund on behalf of, and at the direction of, an Independent Fiduciary meeting the conditions of paragraphs (d)(1) through (6)(iii) above shall be considered an Independent Fiduciary.

For purposes of this definition, no organization or individual may serve as an Independent Fiduciary for the Fund for any fiscal year, if the gross income received by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) from the Bank, or any Affiliate, for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual has no income for the prior fiscal year, the 5% limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income received for services rendered to the Plans and the Fund as Independent Fiduciary, as described in this exemption.

In addition, no organization or individual who is an Independent Fiduciary or an Affiliate of such Independent Fiduciary, and no partnership or corporation of which such Independent Fiduciary is an officer, director, or ten percent (10%) or more partner or shareholder with the authority to cause such corporation or partnership to engage in the following transactions, or who exercises such authority in conjunction with others, may:

(1) Acquire any property from, sell any property to, or borrow any funds from, the Bank, its Affiliates, or any collective investment vehicle or separate trust maintained or advised by the Bank or its Affiliates, during the period that such organization or individual serves as an Independent fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary; or

(2) Negotiate any such transaction, described above in paragraph (1) above during the period that such organization or individual serves as Independent Fiduciary.

No Plan fiduciary or sponsor of a Plan or a designee of such Plan fiduciary, sponsor or Plan may serve as the Independent Fiduciary with respect to the Fund.

(e) Option(s) means the following:

Option 1: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. A Plan electing this Option will reserve all rights it may have with respect to the Fund, the Bank and other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 2: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. In addition, the Bank will pay promptly following the second anniversary of the Settlement Valuation Date, an amount equal to the excess, if any, of (A) the sum of (1) the value that the Unit would have had at the Valuation Date two years after the Settlement Valuation Date if such Unit had not been sold, plus (2) the amount of any distributions made with respect to such Unit during such two year period, over (B) the Unit Purchase Price plus the Interest Amount. The Bank will pay Litigation Expenses to the Plan, if any. Under this Option, a Plan will release the Fund, the Bank and other appropriate persons with respect to all matters relating to the investment in the Fund occurring prior to the Sale.

Option 3: A Plan will continue its investment in the Fund through the end of the liquidation process. Under this Option, a Plan reserves all rights with respect to the Fund, the Bank and all other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 4: A Plan will continue its investment in the Fund through the end of the liquidation process. For a Plan electing this Option, the Bank will agree to pay promptly following the completion of the liquidation of the Fund, with respect to each Unit subject to this Option, an amount equal to the excess, if any, of the (i) the value of a Unit on September 28, 1990 over (ii) the value of all distributions made to the Plan with respect to such Unit since September 29, 1990 and during the liquidation of the Fund. The Bank will also pay Litigation Expenses to the Plan, if any. Plans electing this Option will release the Fund, the Bank and other appropriate persons with respect to all matters related to the investment in the Fund occurring prior to the Sale.

(f) Unit Purchase Price means the amount which is calculated by dividing the value of all of the assets of the Fund, as reviewed and approved by the Independent Fiduciary, by the total number of units in the Fund.

(g) Interest Amount means the amount approved by the Independent Fiduciary, equal to the net income earned on a Fund unit during the period commencing on the Settlement Valuation Date and ending on the day immediately preceding the Settlement Date, exclusive of realized or unrealized appreciation or depreciation.

(h) Settlement Valuation Date means the date on which the value of the Fund will be determined by the Bank in order to establish the Unit Purchase Price in connection with the Sale. The Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which final prospective approval will be granted by the Office of the Comptroller of the Currency subsequent to a final grant of this proposed exemption and approval of the transaction which is the subject of this proposed exemption by the Federal Reserve Board.

(i) Litigation Expenses means the out-of-pocket expenses of litigation instituted before November 24, 1992 by or on behalf of a Plan against the Bank or the Fund with respect to the Plan's investment in the Fund exclusive of any expense of litigation with respect to a case which has proceeded to trial, or with respect to which there is a judgment against the Bank or the Fund, prior to the Option Election Date, plus interest. The total amount of Litigation Expenses, the rate of interest and the period for which interest is paid must be agreed to in writing between the Bank and the Plan prior to the Plan's election of Options 2 or 4. However, in the event there has never been a written settlement agreement specifying the amount of Litigation Expenses, prior to the date on which the Plan elects Option 2 or 4, Litigation Expenses will be the amounts requested by the Plan, unless such expenses are unreasonable.

(j) Option Election Date means the date as communicated to the Plans, at least Ninety (90) days subsequent to the Settlement Valuation Date and at least sixty (60) days subsequent to the completion of the mailing of the general post Settlement Valuation Date disclosure to all of the Plans by the Independent Fiduciary, on or prior to which a Plan must submit its Option election forms to the Bank.

(k) Settlement Date means the date, no more than 120 days after the Settlement Valuation Date, on which the transfer of the Units to the Standby Trust and delivery of Releases to the Bank will be effected pursuant to the Options.

(l) Release means a release covering activities and transactions in connection with the Fund prior to, and during, the Fund's liquidation, but in no case shall be effective on or after the Settlement Date. In this regard, the Release does not cover activities and transactions necessary to comply with the exemption, the conditions of the exemption, and the material representations made in connection therewith, which form the basis for the Department's decision to propose an exemption for the Sale and subsequent dispositions of properties owned by the Fund.

Summary of Facts and Representatives

1. The applicants are the Bank and The Holding Company. The Holding Company is a North Carolina corporation registered under the Bank Holding Company Act of 1956, as amended. The Holding Company maintains its principal office in Charlotte, North Carolina. The Holding Company represents that it is the largest banking company in the south and southwest and the fourth largest in the United States with banking subsidiaries providing full-service banking centers in nine states: Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia and the District of Columbia. As of December 31, 1992, total assets of the Holding Company and its subsidiaries were approximately $118 billion.

2. The Bank is a wholly-owned subsidiary of the Holding Company with its principal offices in Charlotte, North Carolina. As of September 30, 1993 the Bank had total assets of approximately $20 billion. On February 28, 1974, the Bank established the Fund

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as a common trust fund exempt from federal income taxation under section 584 of the Internal Revenue Code, and serves as trustee of the Fund. The Fund is a vehicle for the collective investment of tax-qualified retirement plans with respect to which the Bank or its affiliates are trustees. The Fund is divided into units of equal value (Units). The proportionate interest of each Plan is represented by the number of Units owned by that Plan.

3. As of March 1992, approximately 589 defined benefit plans and defined contribution plans held Units in the Fund. Some of these Plans include participant directed accounts and may elect to meet the requirements of section 404(c) of the Act (Section 404(c) Plans). In relevant part, section 404(c) of the Act and the regulations promulgated thereunder at 57 FR 46906 (October 13, 1992) provide that where a participant or beneficiary of a Section 404(c) Plan in fact exercises control over the assets in his or her account, then (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his or her exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of the Act for any loss, or by reason of any breach which results from such participant's or beneficiary's exercise of control.

Because section 404(c) of the Act applies only to the provisions of Part 4 of Title I, there is no provision in the Code corresponding to section 404(c). Thus, there is no statutory exemption from the excise taxes imposed under section 4975 of the Code with respect to prohibited transactions involving a Section 404(c) Plan. In this regard, the Department notes that the authority to grant administrative exemptions for section 404(c) transactions remains with the Treasury Department pursuant to Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). Accordingly, the Department has no authority to provide exemptive relief with respect to a transaction that results from a participant's or beneficiary's exercise of control within the meaning of section 404(c) and applicable regulations. In this regard, the Department has solicited the views of the Service with respect to the transactions described herein as they relate to Section 404(c) Plans. The Service has reviewed this notice of proposed exemption and concurs with the exemptive relief provided. Accordingly, the Service has determined that it will join the Department in publishing this pendency notice in the **Federal Register**.[1]

4. The assets of the Fund have been primarily invested in real estate and real estate related securities. According to the Bank, the Fund experienced excellent returns through the second quarter of 1990. However, due to market conditions and investor uncertainty, the Fund experienced increased withdrawal requests and decreased new investment commitments during the third quarter of 1990. As a result, the Bank suspended admissions to and withdrawals from the Fund, and no Unit transactions have been effected since June 30, 1990.

After considering several alternative courses of action, the Bank determined in July of 1991 that it was in the best interests of the Plans to terminate the Fund. Accordingly, the Fund is in the process of liquidating pursuant to a Plan of liquidation which provides for the orderly disposition of the assets of the Fund and periodic partial liquidating distributions to Plans on a pro rata basis until the Fund has been completely liquidated. As of December 31, 1993, the value of the Fund was $172,907,000. As part of its plan of liquidation, during the year ending on December 31, 1992, the Fund distributed assets worth $222,000,000. The Bank anticipates that the liquidation will take several more years.

6. Due to the inability to liquidate their investments in the Fund, many Plans have experienced administrative difficulties. Certain Plans have made claims and filed lawsuits against the Bank alleging breach of fiduciary duty by the Bank in its management of the Fund.[2] Consequently, some Plans have expressed a desire to accelerate the liquidation of their investment in the Fund by selling all or part of their Units for cash equal to the current value of the Plan's Units, and in lieu of receiving proceeds during the liquidation process.

7. In order to accommodate the Plans and to respond to those claims against the Bank and the Holding Company, the Bank proposes the Sale whereby the Holding Company would establish the Stand-by Trust and contribute funds in a sufficient amount to enable the Stand-by Trust to acquire the Units held by the Plans desiring to accelerate liquidation of their Fund investment.[3] The trustee of the Stand-by Trust will be NationsBank of Tennessee, N.A., a national banking association organized under the laws of the United States with its principal office located in Nashville, Tennessee. NationsBank of Tennessee, N.A., as trustee of the Standby Trust, is to execute Sale transactions pursuant to the Option election forms timely filed. The Grantor of the trust is the Holding Company which has agreed to provide assets sufficient for the Stand-by Trust to meet its obligations.

8. Following the establishment of the Stand-by Trust, each Plan will be offered the opportunity to select from four Options which will permit each Plan to elect to sell all or part of its Units in the Fund to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund. Options 1 and 2 involve selling the Fund units to the Standby Trust. Options 3 and 4 involve continuation of a Plan's investment in the Fund.

Options 2 and 4 always involve the provision of a Release[4] whereby the Plan sponsor, an authorized independent Plan fiduciary and the participants and beneficiaries release the Fund, the Bank and other appropriate persons with respect to matters relating to the Fund which occurred prior to the Settlement Date in exchange for certain consideration provided by the Bank.[5]

No release is involved in Options 1 or 3 except with respect to participant directed account Plans. In this regard, in connection with Options 1 and 3, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons, without any affect on the rights of participants or beneficiaries with respect to the matters covered by the Release.

A Plan may elect one Option with respect to its entire investment in the Fund. Alternatively, a Plan may elect one Option with respect to a portion of that Plan's investment in the Fund and another Option with respect to the remainder. However, if a Plan elects multiple Options, it must be a combination of either Options 1 and 3 or Options 2 and 4.

The Independent Fiduciary will provide each Plan with the information necessary to evaluate the four Options. Plans which desire to liquidate all or part of their investment in the Fund by selling their Units to the Stand-by Trust may elect a combination of the four Options by submitting an Option election form prior to the Option Election Date. For those Plan sponsors of participant directed Plans who wish to allow the participants and beneficiaries of their Plans to make their own Option elections, the Plan sponsor will establish four sub trusts each of which will accommodate the participants' and beneficiaries' election of the different Options.[6] Each participant's election of an Option will then be represented by an interest in the sub trust designated for that Option. If a Plan sponsor does not elect to have participants and beneficiaries make Option elections, then the Plan will be treated as any other Plan, and Option elections will be made by the independent Plan fiduciary or the Independent Fiduciary.

The Bank will be directed with respect to each Plan's election of one or more Options by an independent Plan fiduciary or by the Independent Fiduciary who will represent the Plans interest for purposes of the Sale.

9. In order to determine the value of the Units which will be sold pursuant to the Option elections, the Unit Purchase Price, the assets of the Fund will be appraised by independent and qualified appraisers selected by the Bank. Such appraisals will be completed within twelve months of and updated within fifteen days of the Sale. The Independent Fiduciary will review and approve the professional qualifications of the appraisers and their technical analyses and methodologies employed. As part of this approval process, the Independent Fiduciary will determine whether such appraisals are reasonable and adequate to establish the fair market value of the Properties. Additionally, the Independent Fiduciary will review and consider any capital improvement programs, environmental issues, preemptive liens, debt obligations and accrued expenses which may impact the value of the Properties. In the event that the Independent Fiduciary finds that any appraisal is deficient or unsuitable, the Independent Fiduciary has the authority to request the revision of such appraisal or the commission of a new appraisal. These appraisals will then be used by the Bank to calculate the overall value of the Fund.

The Bank will calculate the Unit Purchase Price based on the value of the Fund on the Settlement Valuation Date. The Unit Purchase Price will be approved by the Independent Fiduciary. Such approval will be accomplished by reviewing the appraisals of the assets of the Fund and the procedures and methodologies to be employed by the Bank in determining the Unit Purchase Price. Further, if the Independent Fiduciary believes that the Unit Purchase Price proposed by the Bank is not accurate, the Independent Fiduciary has the authority to order the Bank to recalculate the Unit Purchase Price. In addition, the Independent Fiduciary will review and approve the Bank's calculation of the Interest Amount payable to those Plans which elected Options 1 or 2. The Independent Fiduciary will also participate in the quarterly meetings held by the Bank in order to remain current on issues and developments relating to the Fund.

10. Arthur Andersen, LLP (Arthur Andersen) has been retained to serve as the Independent Fiduciary on behalf of the Plans with respect to the Sale. Arthur Andersen represents that it has extensive experience in the business of commercial real estate consulting, appraisal and related activities. Arthur Andersen is an experienced counselor to institutional owners of real estate and has negotiated terms and conditions of various real estate transactions. Specifically, Arthur Andersen has served as independent fiduciary on behalf of numerous clients. In addition, Arthur Andersen acknowledges that in acting as the Independent Fiduciary, it is a fiduciary within the meaning of section 3(21) of the Act.

11. In its capacity as the Independent Fiduciary, Arthur Andersen will review all disclosures made by the Bank to the Plans in connection with the Sale. In addition, Arthur Andersen will distribute to all Plans written disclosures providing general information regarding the proposed transaction, the circumstances under which the Independent Fiduciary will make an Option election for the Plan, and among which Options the Independent Fiduciary may elect for the Plan under various circumstances. Arthur Andersen will also provide general information to all Plans regarding the various factors that each Plan may wish to consider in deciding whether to authorize Arthur Andersen to select from the four Options. This information will include the cost/benefit considerations relating to pursuing an action against the Bank if the independent Plan fiduciary does not release the Bank, and the relative attractiveness of the additional features of Options 2 and 4. In addition, Arthur Andersen will send a survey/profile to all Plans to determine the type of Plan, degree of participant involvement in investment elections, Plan liquidity needs and the preferences of the independent Plan fiduciary. However, an independent Plan fiduciary that decides to make its own decision and

[1] Neither the Department nor the Service is expressing an opinion as to whether the investment decision made by a participant of a Plan which holds an interest in the Fund would be subject to relief provided by section 404(c) of the Act or applicable regulations.

[2] On December 14, 1992, the Bank entered into an agreement settling claims relating to the Fund with Teamsters Joint Council No. 83 of Virginia Pension Fund. In addition, NationsBank of Florida, N.A., an affiliate of the Bank and wholly owned subsidiary of the Holding Company, entered into a settlement agreement with Kenny Nachwalter Seymour & Crichlow, P.A. Employees' Trust and its trustees. The terms of the settlement agreements contain the same terms and conditions provided in this notice of proposed exemption, and are contingent upon the granting of the exemption.

[3] The Department notes that the exemptive relief being granted herein extends only to those transactions described above. Also, the Applicants represent that the Bank is a national bank which is subject to the authority of the Office of the Comptroller of the Currency (the OCC). The OCC has informed the Department that a transaction that may be prohibited under the Act may also be a violation of the National Bank Act or constitute an unsafe or unsound banking practice. The proposed exemption does not address the safety and soundness or the legality of the transaction under the National Bank Act. Accordingly, the Bank should satisfy itself that the transaction does not violate the National Bank Act or constitute an unsafe or unsound banking practice.

In this regard, the applicants represent that they are currently obtaining any and all regulatory approvals from applicable governmental agencies, in order to effect the Sale, including approval from the Office of the Comptroller of the Currency, the Internal Revenue Service and the Federal Reserve Board.

[4] The Bank represents that there are only four litigants which potentially will be eligible to receive Litigation Expenses. In this regard, only four lawsuits were filed (on a consolidated basis) before November 24, 1992. Three of the four lawsuits have been settled conditioned on the opportunity to sell units to the Standby Trust. Each settlement agreement provides that payment of Litigation Expenses will be made with respect to the election of Option 2 or Option 4 by, or on behalf of, the Plan within ten days after the Bank and the Independent Fiduciary determine that all payments under the relevant Option have been paid. In this regard, the Department expects that a settlement of the fourth law suit would provide terms at least as favorable to the Plan as the arrangement described in this proposed exemption.

[5] The Department notes that the selection of the Options made by the independent Plan fiduciaries or the Independent Fiduciary is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. Section 404 of the Act requires, in part, that a fiduciary of a plan act prudently, solely in the interest of and for the exclusive purpose of providing benefits to participants and beneficiaries. In this regard, the Department notes that in order to act prudently, a fiduciary must consider, among other factors, the risk and potential return of the alternative Options for its Plan.

Further, the Department is expressing no opinion, herein, on the decision by a fiduciary in electing an Option involving the Release. In this regard, the Department notes that the election by a plan fiduciary of an Option involving the Release does not preclude the Department from taking any action with respect to past transactions involving the Fund.

Finally, the Department notes that a determination by a Plan fiduciary to settle litigation and enter into an agreement which provides for the release of the Bank and the Fund is subject to the fiduciary responsiblity requirements of section 404 of the Act.

[6] The Department expects that each participant or beneficiary of a participant directed account Plan will be treated similarly with respect to the availability of the opportunity to elect Options, and those participants and beneficiaries who are responsible for making Option elections will receive information that is adequate to make an informed decision with regard to the Options.

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declines to receive the survey/profile will not receive it.

12. Arthur Andersen will make Option elections for (1) Any Plan with respect to which the Bank or its Affiliates is an employer; (2) Plans that have authorized Arthur Andersen to make an Option election on their behalf; or (3) Any Plan which does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date.

If the Plan reserves the right to make its own Option election and subsequently fails to make an Option election by the Option Election Date, the Plan will be deemed to have elected Option 3. If the Plan does not reserve the right to make its own Option election and the Plan fails to make: a sufficiently broad authorization; any authorization at all; or fails to complete the profile survey, Arthur Andersen will elect only between Options 1 and 3 for the Plan. However, Arthur Andersen will choose among all four Options if the independent Plan fiduciary completes and returns timely all required parts of the profile/survey and the related authorization form expressly authorizing Arthur Andersen to choose among all four Options. The Bank represents that it will authorize Arthur Andersen to choose among all four Options for Plans with respect to which the Bank or any of its Affiliates is an employer.

Arthur Andersen will review all surveys returned by the Plans for completeness and contact Plan fiduciaries regarding any unclear or incomplete information. In the event that the Plan fiduciaries do not respond to the surveys, Arthur Andersen will make the Option election based on the information available, and will notify each Plan of the Option election which it has selected for the Plan and the basis for such election in writing.

With respect to those independent Plan fiduciaries who notify Arthur Andersen that they will be making their own Option elections, Arthur Andersen is prepared to counsel any Plan fiduciary regarding the election process.

Finally, as the Independent Fiduciary, Arthur Andersen's duties will also include monitoring property sales and disposition activities during the liquidation of the Fund.

13. The Bank represents that it will provide securities disclosure forms and option elections forms, reviewed and approved by Arthur Andersen, to the Plan within ten days after the date on which final approval for the Sale will be granted by the Office of the Comptroller of the Currency which will be subsequent to a final grant of this proposed exemption and approval of the transactions covered by this proposed exemption by the Federal Reserve Board (the Initiation Date).

The Bank represents that the Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which the Initiation Date occurs.

The Bank states that the Independent Fiduciary will mail a notice of right to make election, forms, supplemental disclosures and profile/surveys within thirty (30) days subsequent to the Settlement Valuation Date. The Plans will have at least thirty (30) days subsequent to the mailing of the Option Election Information to return the profile/survey to the Independent Fiduciary. The Plans will have at least sixty (60) days after the date on which the Option Election Information is mailed by the Independent Fiduciary in order to make their own Option elections.

The Bank states that the date on which the Plans will receive in cash the Unit Purchase Price plus the Interest Amount for their units in the Fund will be no more than 120 days after the Settlement Valuation Date.

14. The Standby Trustee will be obligated to acquire the Units in accordance with the Option Election Forms, and sales will be effected only pursuant to the Option Election Forms filed with the Bank on or prior to the Option Election Date. A Plan may rescind an Option election at any time prior to the Option Election Date.

15. The Bank agrees to be bound by the decisions and determinations made by Arthur Andersen, as the Independent Fiduciary. In the event that any action or inaction by the Bank or by the Holding Company with respect to the liquidation of the Fund or the Stand-by Trust is determined by the Independent Fiduciary to impede or conflict with any action or inaction required of the Independent Fiduciary in order to carry out and comply with the terms and provisions of this proposed transaction, the Independent Fiduciary shall so notify the Bank and demand that the Bank cease and desist from such action or take such action as is requested by the Independent Fiduciary.

16. In summary, it is represented that the proposed transaction will meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Properties will be appraised by an independent and qualified appraiser; (b) The Plans selling Units pursuant to the Options will receive a price at least equal to the Unit Purchase Price plus the Interest Amount; (c) Prior to the Sale, the Plans will receive written information regarding the terms of the Sale; (d) An Independent Fiduciary has been retained to represent the Plans' interests with respect to the Sale and ongoing disposition of the Properties in the Fund; (e) The duties of the Independent Fiduciary shall include: reviewing and approving the appraisals of the Properties; monitoring the sales of, and disposition activities with respect to, the Properties during the Fund's liquidation; making Option elections on behalf of any Plan if the Bank or its affiliates have sole investment discretion with respect to that Plan, the independent plan Fiduciary authorizes the Independent Fiduciary to make an Option election on behalf of that Plan, the independent Plan fiduciary does not indicate whether the Independent Fiduciary is authorized to make an Option election on behalf of the Plan, or the Bank or any Affiliate is an employer with respect to the Plan; (f) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary; and (g) The Bank will continue its efforts to liquidate the Fund.

FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The First National Bank of Boston and Its Affiliates (Collectively, the Bank)

Located in Boston, Massachusetts
[App. No. D–09682]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of April 1, 1994 to: (1) the receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian and accountant to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. "secondary services" as defined in Section III(h) below) in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the General Conditions of Section II below are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, through a cash rebate, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, no later than one business day after the receipt of such fees by the Bank. The crediting of all investment advisory fees to the Client Plans by the Bank is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.[7]

[7] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) A second fiduciary acting for the Client Plan which is independent of and unrelated to the Bank (the Second Fiduciary) receives, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) On the basis of the information described above in paragraph (h) of Section I, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Fund to the Bank, and the cash rebate to the Client Plan of fees received by the Bank from the Funds for investment advisory services.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) of Section I shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) of Section I on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be rebated as required by paragraph (d) of Section I above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below. However, if the Termination Form has been provided to the Second Fiduciary pursuant to this paragraph or paragraph (k) above, then the Termination Form need not be provided again for an annual reauthorization pursuant to paragraph (j) above unless at least six months has elapsed since the form was provided in connection with the fee increase.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

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(2) A copy of the annual financial disclosure report prepared by the Bank which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section II—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section II are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term "Bank" means the First National Bank of Boston and any affiliate thereof as defined below in paragraph (b) of Section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" shall include the 1784 Funds, Inc., or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, Fund accountant, transfer agent or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III shall not apply.

(h) The term "secondary service" means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. However, for purposes of this exemption, the term "secondary service" will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective April 1, 1994.

Summary of Facts and Representations

1. The Bank is a national banking association with its principal offices located at 100 Federal Street, Boston, Massachusetts, and is a subsidiary of Bank of Boston Corporation, a registered bank holding company. The Bank and various affiliates (referred to herein as "the Bank"),[8] serve as trustee, directed trustee, investment manager, or custodian for approximately 800 employee benefit plans. As of April 1, 1994, the Bank had total assets under management of approximately $1.3 billion.

[8] The Bank's current affiliates include: Rhode Island Hospital Trust National Bank; Bank of Boston, Connecticut; Casco Northern Bank, N.A. Bank of Boston, Florida, N.A.; South Shore Bank Multibank West; and Mechanics Bank.

The Bank represents that its status as a fiduciary with investment discretion for a Client Plan arises out of its relationship as a trustee or investment manager for such Plan, but does not result from the rendering of any investment advice to a Plan fiduciary that has investment discretion for the Client Plan. As a custodian or directed trustee of a Client Plan, the Bank has custody of Plan assets, collects all income, performs bookkeeping and accounting services, generates periodic statements of account activity and other reports, and makes payments or distributions from the account as directed. However, the Bank has no duty as custodian or directed trustee to review investments or make recommendations, acting only as directed by an authorized Second Fiduciary.

The Client Plans include various pension, profit sharing, and stock bonus plans as well as retirement plans for self-employed individuals (i.e., Keogh plans), and individual retirement accounts (IRAs). The Bank, in its capacity as a fiduciary of the Client Plans, may exercise investment discretion for all or a portion of the assets of such Client Plans.

2. The Bank invests assets of Client Plans for which it acts as a fiduciary in shares of the Funds in instances where the Bank provides investment advisory and other services to the Funds. The Client Plans' pro rata share of fees paid by the Funds to the Bank for investment advisory services are rebated to all Client Plans, subject to the conditions of the proposed exemption, with respect to the assets of the Client Plans involved in such Fund investments. All investments in the Funds on behalf of the Client Plans are made by the Bank pursuant to an initial written authorization, and an annual reauthorization (as discussed below), of the investment by an independent Plan fiduciary (i.e., the Second Fiduciary). The Bank invests assets of a Client Plan in any of the Funds for which it has received prior written authorization for such investment from the Second Fiduciary during the period that such authorization is effective.

3. The Funds are a Massachusetts business trust organized on February 5, 1993, as an open-end, diversified management investment company registered under the 1940 Act. The Funds consist of twelve separate series of funds or investment portfolios with combined assets of approximately $897 million. Each share of each Fund represents an undivided, proportionate interest in the assets of that Fund. The current Funds are: (i) The 1784 Growth and Income Fund; (ii) The 1784 Asset Allocation Fund; (iii) The 1784 U.S. Government Medium-Term Income Fund; (iv) The 1784 Tax-Exempt Medium-Term Income Fund; (v) The 1784 Massachusetts Tax-Exempt Income Fund; (vi) The 1784 U.S. Treasury Money Market Fund; (vii) The 1784 Institutional U.S. Treasury Money Market Fund; (viii) The 1784 Tax-Free Money Market Fund; (ix) The 1784 Short-Term Income Fund; (x) The 1784 Income Fund; (xi) The Connecticut Tax-Exempt Income Fund; and (xii) The 1784 Rhode Island Tax-Exempt Income Fund.[9] The Bank states that shares of the Funds are offered to the Bank's trust customers, including the Client Plans, under terms and conditions which are at least as favorable to such customers as the terms and conditions offered to other customers of the Bank.

Additional Funds are in the process of registration and other series of Funds may be established in the future. The Bank intends to offer such Funds to the Client Plans, if deemed appropriate by the Second Fiduciary, as a means of obtaining an interest in a diversified portfolio of debt or equity investments consistent with the investment policies and objectives of the Client Plans.

The Bank believes that there are material advantages to the Client Plans from the use of the Funds. The Funds are valued on a daily basis, in contrast to certain collective investment funds maintained by the Bank which are valued monthly. The daily valuation permits (i) immediate investment of Client Plan contributions in various types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions under the Client Plan. In addition, information concerning the investment performance of the Funds is available in newspapers of general circulation which allows Client Plan fiduciaries to monitor the investment performance of such assets on a daily basis rather than monthly.

All investments of Client Plan assets in the Funds will occur either through the direct purchase of shares of the Funds for a Client Plan by the Bank, the transfer by the Bank of Client Plan assets from one Fund to another Fund, or a daily automated sweep of uninvested cash of a Client Plan by the Bank into one or more Funds previously designated by the Client Plan for sweeping such cash. Any such investments for the Client Plans will be made pursuant to the Second Fiduciary's prior written authorization and annual reauthorization to the Bank.

[9] Since the Client Plans generally are not subject to federal or state income taxes and do not need to seek tax-free income, the Bank does not anticipate that the Client Plans will invest in The 1784 Tax-Exempt Medium-Term Income Fund, The 1784 Massachusetts Tax-Exempt Income Fund, The 1784 Tax-Free Money Market Fund, The Connecticut Tax-Exempt Income Fund, The 1784 Rhode Island Tax- Exempt Income Fund or any other tax-exempt Fund

4. No sales commissions or redemption fees are charged in connection with the purchase or sale of shares of the Funds. However, the Bank states that the Funds may pay a distribution fee to the Funds' distributor, provided that such distributor is unrelated to the Bank and the Client Plans. Thus, the Bank does not and will not receive fees payable pursuant to Rule 12b–1 in connection with transactions involving any shares of the Funds. The current distributor for the Funds is SEI Financial Services Company (the Distributor), a wholly-owned subsidiary of SEI Corporation (SEI). According to the distribution plan adopted by the Funds pursuant to Rule 12b–1 under the 1940 Act, the Distributor receives a distribution fee equal to an annual rate of 0.25% of each of the Funds' average daily net assets. The distribution fee is calculated daily and paid monthly. For all of the current Funds, the distribution fees have been waived by the Distributor since the formation of the Funds.

SEI Financial Management Corporation, a wholly-owned subsidiary of SEI, also serves as the administrator, dividend disbursing agent, shareholder servicing agent, and transfer agent for the current Funds. The Bank states that SEI and its subsidiaries are unrelated to the Bank and its affiliates.[10]

5. The Bank serves as the investment advisor for the Funds and charges the Funds for this service in accordance with investment advisory agreements (the Agreements) between the Bank and each Fund. The Bank is currently the sole investment adviser to the Funds' existing portfolios and presently contemplates no change for such portfolios. However, the Bank states that it may utilize third party sub-advisers in the future to enhance the investment

[10] With respect to any fees paid by the Funds to parties unrelated to the Bank and its affiliates, the Department notes that the Bank, as a trustee or investment manager for a Client Plan's assets that are invested in the Funds, has a fiduciary duty to ensure that the fees indirectly paid by a plan to third parties are reasonable. The Department notes further that the Bank should ensure that services performed by the Bank or an affiliate for a Fund are not duplicative of any similar services performed by third parties.

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alternatives and the investment advisory services available to the Funds for certain new portfolios. The Agreements allow the Bank to receive monthly investment advisory fees based on a percentage of the average daily net assets of each of the Funds. The Agreements and the fees received by the Bank are approved by the Board of Directors of the Funds (the Funds' Directors), in accordance with the applicable provisions of the 1940 Act. The Bank also serves as the custodian and accountant for the Funds for which it is entitled to receive additional fees. Any changes in the fees received by the Bank from the Funds are approved by the Funds' Directors. All of the Funds' Directors are independent of the Bank.

The Bank states that while it may be engaged by the Funds in the future to perform additional secondary services, it will not provide brokerage services to the Funds. Therefore, all securities transactions for a Fund's portfolio will be executed by broker-dealers unrelated to the Bank and will not generate commissions or other fees to the Bank.

6. The Bank represents that it has designed a fee structure (the Fee Structure) which is at least as advantageous to the Client Plans as an offset or credit arrangement, similar to that described in Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977), whereby investment advisory fees paid by the Funds to the Bank would be offset against fees paid directly to the Bank by the Client Plans.[11]

Under the Fee Structure, the Bank charges its standard fees to the Client Plans for serving as either a trustee, directed trustee, investment manager, or custodian.[12] All fees are billed on a quarterly basis. The annual charges for a Client Plan account are individually negotiated with the Bank based on the Bank's standard fee schedules. The Bank provides services to the Client Plans for which it acts as a trustee with investment discretion, including sweep services for uninvested cash balances in such Plans, under a bundled or single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. Thus, in such instances, there are no separate charges for the provision of particular services to the Client Plans. However, for Client Plans where investment decisions are directed by a Second Fiduciary, a separate charge is assessed for particular services where the Second Fiduciary specifically agrees to have the Bank provide such services to the Client Plan. With respect to sweep services, the Bank represents that such services are generally provided at no additional charge and, in any event, are provided only if approved by a Second Fiduciary for the Client Plan after disclosure of the services to be provided.[13] The Bank states that in some cases fees charged by the Bank to a Client Plan are paid by the Client Plan sponsor rather than by the Client Plan.

The Bank charges the Funds for its services to the Funds as investment adviser, in accordance with the Agreements between the Bank and the Funds. Under the Agreements, the Bank charges fees at a different rate for each Fund, computed based on the average daily net assets for the respective Fund. The fee differentials among the Funds result from the particular level of services rendered by the Bank to the Funds.

The investment advisory and other fees paid by each of the existing Funds are accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees accrued. The applicant states that any additional Funds will follow the same monthly billing arrangement.

At the beginning of each month (pursuant to the terms of the applicable Agreements) and in no event more than one business day following the receipt of such fees by the Bank, the Bank rebates to each Client Plan directly with cash such Plan's pro rata share of all investment advisory fees charged by the Bank to the Funds (the Rebate Program). The Bank represents that each Client Plan's rebate of such investment advisory fees will include any investment advisory fees paid by the Bank to third party sub-advisers.

The Bank retains fees received from the Funds for custody and shareholder services and will retain additional fees received in the future for other secondary services. The Bank states that such secondary services are distinct from the services provided by the Bank as trustee to a Client Plan. Trustee services rendered at the Plan-level include maintaining custody of the assets of the Client Plan (including the Fund shares, but not the assets underlying the Fund shares), processing benefit payments, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. These trustee services are necessary regardless of whether the Client Plan's assets are invested in the Funds. Thus, the Bank represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level would not involve the receipt of "double fees" for duplicative services to the Client Plans because a Fund is charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan is charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[14]

[11] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[12] The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

[13] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.

[14] In this regard, the Department notes that the combined total of all fees received by the Bank directly and indirectly from the Client Plans for the provision of services to the Plans and/or to the Funds should not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

In addition, the fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve a Client Plan fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

Finally, the Department notes that the Bank, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client Plan assets in the Funds, has a fiduciary duty to monitor all fees paid by a Fund to the Bank, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees is reasonable and would not involve the payment of any "double" fees for duplicative services to the Fund by such parties.

The Bank states that the Rebate Program ensures that the Bank does not receive any investment advisory fees from the Funds as a result of the investment in the Funds by the Client Plans. Thus, the Fee Structure with the Rebate Program essentially has the same effect in offsetting the Bank's investment advisory fees received from the Funds as an arrangement allowing for a credit of such fees against investment management fees charged directly to the Client Plans. The Bank prefers the Fee Structure with the Rebate Program because it allows fees for fiduciary services charged at the Plan-level to remain fixed without any adjustments to such fees based on the investment advisory fees paid by the Funds to the Bank. The Bank notes that the Fee Structure also allows a Client Plan sponsor to pay the Client Plan's fees to the Bank for fiduciary services and still allows the Client Plan to receive a rebate of such Plan's pro rata share of the investment advisory fees paid by the Funds to the Bank.[15]

7. The Bank has established a system of internal accounting controls for the Rebate Program. In addition, the Bank has retained the services of Coopers & Lybrand of Boston, Massachusetts (the Auditor), an independent accounting firm, to audit annually the rebating of fees to the Client Plans under the Rebate Program. The Bank states that such audits provide independent verification of the proper rebating to the Client Plans of the investment advisory fees charged by the Bank to the Funds. The Bank states further that information obtained from the audits is used in the preparation of required financial disclosure reports to the Client Plans' fiduciaries.

By letter dated March 29, 1994, the Auditor describes the procedures that will be used in any annual audit of the Rebate Program. The Auditor obtains: (i) A calculation of the daily actual balances for all the Funds and for the total Client Plan shareholders of such Funds; (ii) a detailed list of the expenses charged to the Funds' shareholders by type of expense; and (iii) calculations of the total expenses charged by the Bank to each Fund which are reimbursable to the Client Plans. The Auditor states that every audit will include, but not necessarily be limited to, an examination of: (i) The daily rebate factors; (ii) the proper identification of Client Plan customers; (iii) the calculation of the ratio used to determine the amount of expenses to be rebated to each Client Plan; (iv) the total rebates paid and a comparison of this amount to the sum of all rebates paid to each Client Plan; [16] and (v) the amount of rebated fees determined for selected Client Plan customers of the Funds to ensure that the rebated amounts were made to the proper Client Plan account.

In the event either the internal audit by the Bank or the independent audit by the Auditor identifies that an error has been made in the rebating of fees to the Client Plans, the Bank will correct the error. With respect to any shortfall in rebated fees to a Client Plan, the Bank will make a cash payment to the Plan equal to the amount of the error with interest computed on the same yield as that paid by The 1784 Institutional U.S. Treasury Money Market Fund for the period involved. Any excess rebates made to a Client Plan will be corrected, to the extent possible, by an appropriate reduction of cash to the Client Plan during the next payment period to accurately reflect the proper amount of total rebates due to the Client Plan for the period involved.

8. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that a Second Fiduciary receives full and detailed written disclosure of information concerning the Fund in advance of any investment by the Client Plan in the Fund. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in the Fund and the fees to be paid by the Fund to the Bank. In addition, the Bank represents that the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services, which are above the rate reflected in the prospectus for the Fund, at least 30 days prior to the effective date of such increase. In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services, resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[17] Such notice will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary will also receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited, as required by Section I(d) above.

Any authorizations by a Second Fiduciary regarding the investment of a Client Plan's assets in a Fund and the fees to be paid to the Bank, including any future increases in rates of fees for secondary services, are or will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. The Bank states that a Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form include the following information:

(a) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(b) Failure to return the form will result in continued authorization of the

[15] To the extent that the Department of the Treasury determines that this arrangement should be deemed a contribution by an employer to a Client Plan of the rebated fees, the transaction must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

[16] In this regard, the Auditor recomputes cash received in connection with the rebate of each Client Plan's fees to ensure the proper amount of cash was issued to the Client Plan under the Rebate Program.

[17] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established secondary service shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

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Bank to engage in the subject transactions on behalf of the Client Plan.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. The Bank states that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

Any disclosure of information regarding a proposed increase in the rate of any fees for secondary services will be accompanied by an additional Termination Form with instructions on the use of the form as described above. Therefore, the Second Fiduciary will have prior notice of the proposed increase and an opportunity to withdraw from the Funds in advance of the date the increase becomes effective. Although the Second Fiduciary will also have notice of any increase in the rates of fees charged by the Bank to the Funds for investment advisory services, through an updated prospectus or otherwise, such notice will not be accompanied by a Termination Form since all increases in investment advisory fees will be rebated by the Bank to the Client Plans and will be subject to an annual reauthorization as described above. However, if the Termination Form has been provided to the Second Fiduciary for the authorization of a fee increase, then a Termination Form for an annual reauthorization will not be provided by the Bank for that year unless at least six months has elapsed since the Termination Form was provided for the fee increase.

The Bank states that the Second Fiduciary always receives a current prospectus for each Fund and a written statement giving full disclosure of the Fee Structure prior to any investment in the Funds. The disclosure statement explains why the Bank believes that the investment of assets of the Client Plan in the Funds is appropriate. The disclosure statement also describes whether there are any limitations on the Bank with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[18]

[18] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

The Bank states further that the Second Fiduciary receives an updated prospectus for each Fund at least annually and either annual or semi-annual financial reports for each Fund, which include information on the Auditor's findings as to the proper rebating of the investment advisory fees by the Bank to the Client Plan. The Bank also provides monthly reports to the Second Fiduciary of all transactions engaged in by the Client Plan, including purchases and sales of Fund shares.

9. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds. As noted above in Paragraph 4, the Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions. The applicant states further that all other dealings between the Client Plans and the Funds, the Bank or any affiliate, are on a basis no less favorable to the Client Plans than such dealings are with the other shareholders of the Funds.

10. In summary, the applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Funds provide the Client Plans with a more effective investment vehicle than collective investment funds maintained by the Bank without any increase in investment management, advisory or similar fees paid to the Bank; (b) the Bank requires annual audits by an independent accounting firm to verify the proper rebating to the Client Plans of investment advisory fees charged by the Bank to the Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to the Bank, a Second Fiduciary receives full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the Fee Structure, and authorizes in writing the investment of the Client Plan's assets in the Fund and the fees paid by the Fund to the Bank; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees paid to the Bank, or any increases in the rates of fees for secondary services which are retained by the Bank, are or will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees are paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) the Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions; and (g) all dealings between the Client Plans, the Funds and the Bank, are on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans that are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the **Federal Register**, where the Bank provides services to the Funds and receives fees which would be covered by the exemption, if granted. Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Amended Profit Sharing Plan and Trust of Walker Products Co., Inc. (the P/S Plan)

Located in Lincoln, Kansas
[App. No. D–09798]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain farm land (the Land) by the

P/S Plan to Mr. Lloyd Walker, a 33⅓% shareholder of the P/S Plan sponsor and a party in interest with respect to the P/S Plan, provided that the following conditions are satisfied:

(1) The proposed sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser; and

(3) The P/S Plan will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plan, established in May, 1974, is a profit sharing plan, which currently has two participants. As of September 1, 1994, the P/S Plan had $101,468 in total assets. The P/S Plan's trustees are Albert Walker, Craig Walker and Joyce Walker (the P/S Plan Trustees). Craig Walker is the president of Walker Products Company Inc. (the Employer). Lloyd Walker is a 33⅓% shareholder of the Employer. However, Lloyd Walker has retired from the Employer on December 31, 1982, and received distributions from the P/S Plan on February 28, 1983. The Employer is a Subchapter "C" Kansas corporation which is in the farming business. The applicant represents that until approximately August, 1985, the Employer maintained two plans (collectively; the Plans), the P/S Plan and the Money Purchase Plan (M/P Plan). The M/P Plan was terminated in August, 1985, and its assets were rolled over into the P/S Plan approximately May, 1986.

2. On May 5, 1975, the M/P Plan purchased the 79.6 acre tract of Land for $57,000 in cash from Edward Hamilton, the executor of the Estate of Marie Jensen, neither of which had any relationship to the Plans, Lloyd Walker, or the Employer. At the time that the Land was purchased it represented 78.95% of the M/P Plan's assets. It is represented that the original decision to purchase the Land was made by the M/P Plan Trustees who deemed it a safe investment which could produce income from farming operations and a reasonable rate of return. The Land was held by the M/P Plan from the date of original acquisition until approximately May, 1986, when the M/P Plan's assets, including the Land, were transferred into the P/S Plan.

3. The Land is currently encumbered with a first mortgage which was entered into on August 31, 1994, in the principal amount of $30,000. The applicant represents that the P/S Plan Trustees borrowed the money (the Loan) in order to pay out distributions. The Loan was made by Farmers National Bank, which is unrelated to the P/S Plan and the Employer. The P/S Plan Trustees intend to pay off the Loan with the proceeds from the proposed sale.

4. It is represented that since its original acquisition, the Land has been rented or operated.[19] Since April, 1985 and currently, the Land has been rented on a crop share basis to Lowell Vonada (Mr. Vonada), an unrelated third party. Under this arrangement, Mr. Vonada as the tenant receives 60% of the crops and the P/S Plan receives 40% of the crops. It is also represented that currently there are no crops growing on the Land.

5. Lloyd Walker now desires to purchase the Land from the P/S Plan in a one-time cash purchase. The Land was appraised (the Appraisal) on October 18, 1994, by Frank L. Princ (Mr. Princ), an independent Kansas State Certified General R.E. appraiser. Mr. Princ stated that the purpose of the Appraisal is to estimate the market value of the Land on an "as is" basis. The Land, located in Lincoln County, Kansas, contains approximately 82 acres,[20] of which 76.2 acres are in cultivation, and the remaining acres are primarily woodland and waste. In determining the fair market value of the Land, Mr. Princ utilized the sales comparison approach and the income approach, but relied mainly on the sales approach as the primary basis for the value estimate of the Land. Accordingly, as of October 18, 1994, Mr. Princ determined the fair market value of the Land to be $64,000.

6. The applicant maintains that the Land has yielded revenue for the Plans. The applicant submitted a "return on investment" analysis (the Analysis) on the Land, covering the period 1976 through 1994. Return on investment value ratios were derived by the applicant by dividing the estimated net income by the original acquisition price of the Land for each year of ownership.[21] An average of the "return on investment" figures was determined to be 6.98%. Therefore, according to the Analysis, the Plans received an average yield of 6.98% for their investment in the Land.

7. The applicant represents that the transaction is administratively feasible, in the interest and protective of the P/S Plan. Lloyd Walker will purchase the Land at its fair market value in a one-time cash transaction. The transaction is protective and in the best interest of the P/S Plan because as a result of this transaction the P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser. The transaction would also be in the interest of the P/S Plan because it will enable the P/S Plan to sell an illiquid asset which currently represents in excess of 50% of the P/S Plan's total assets and which had little appreciation in value over time.[22] The sale will enable the P/S Plan Trustees to pay off the Loan and to acquire investments with a higher yield. The applicant also represents that the P/S Plan will incur no expenses as a result of the transaction described herein.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The proposed sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser; and

(3) The P/S Plan will pay no expenses associated with the sale.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Delaware Trust Capital Management, Inc. (DTCM)

Located in Wilmington, Delaware
[App. No. D–09853]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by certain rollover individual retirement accounts (the

[19] With regard to the Land being operated, the applicant represents that for a short period of time the employees of the Employer (the Employees) were paid to provide farming services. However, the applicant represents that the Employees were not compensated for these farming services by either of the Plans. It is further represented that no renter, at any time, has been a party in interest with respect to the Plans.

[20] The applicant represents that 82 acres shown by Mr. Princ probably come from the Lincoln County Appraiser's office. The applicant also maintains that their reference to the Land as containing 79.6 acres is based on the number of tillable acres on the Land.

[21] With respect to the Analysis, the applicant represents that with respect to the period 1986 through 1994, the data was estimated to reflect pro rata income and expenses for the Land, excluding any unrealized gain due to the change in fair market value of the Land.

[22] The Department expresses no opinion as to whether the Plan's acquisition and holding of the Land, as well as the operation of the Land by the Employees, violated any provision of part 4 of Title I of the Act, and no relief is provided herein

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IRAs) of their interests in certain securities (the Securities) to DTCM, a disqualified person with respect to the IRAs, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRAs in connection with the sale; (3) the IRAs receive the greater of: (a) the fair market value of the Securities as of June 30, 1994, plus accrued interest, less principal repayments received, or (b) the fair market value of the Securities as of the time of the sale as determined by a qualified, independent expert.[23]

Summary of Facts and Representations

1. DTCM is a Delaware corporation which is engaged in the business of providing trust and other fiduciary services to individuals, businesses and non-profit entities, including employee pension plans and individual retirement accounts.

2. DTCM was the trustee of the USA Training Academy, Inc. Profit Sharing Plan (the Plan), and is the trustee of the IRAs, which are rollover individual retirement accounts for five former participants (the Affected Participants) in the Plan. DTCM (and its parent company, Delaware Trust Company) have served as trustee of the Plan and the IRAs from November 1, 1984 until the present. The applicant is a wholly owned subsidiary of Delaware Trust Company, which in turn is a wholly owned subsidiary of Meridian Bancorp, Inc.

3. In 1994, the Plan's Administrator advised the applicant, DTCM, that the Plan's sponsor intended to terminate the Plan and, in that connection, would be instructing DTCM to liquidate the Plan assets and make distributions to the remaining Plan participants. In response, DTCM informed the Plan Administrator that there was no readily discernible market for the Securities. The Securities included the following two obligations:

(a) SEARS ROEBUCK & CO MTG SEC PAR CTF (the Sears Securities), which are mortgage-backed obligations issued by the Sears Mortgage Securities Corp. These Securities pay 10.36% in interest and mature July 25, 2018. The Plan acquired a participating certificate for 198,992 units of these obligations in July, 1988 for $196,200 (unit cost=$0.99). The Plan has received all scheduled payments of principal and interest.

(b) AMERICAN SVNGS & LOAN ASSN BRAZOR CNTY PART CTF (the American Securities), which are mortgage-backed obligations issued by American Savings and Loan Association of Brazoria County, Texas. Each loan is a guaranteed FHA Title I loan. These Securities pay 9.5% in interest and mature January 9, 2002. The Plan acquired 198,161.88 units in April, 1987 at a unit cost of $1 per unit. The Plan has received all scheduled payments of principal and interest.

4. DTCM determined that as of June 30, 1994, the Sears Securities had a fair market value of $24,163.78. This fair market value was established by Sears' mortgage subsidiary, a brokerage house providing master servicing for Sears' mortgage pass-through certificates which is a sister subsidiary to Sears Mortgage Securities Corp., the issuer of the Sears Securities. DTCM also determined that as of June 30, 1994, the American Securities had a fair market value of $49,416.80. The applicant represents that this fair market value was established by A.W. Dougherty, an unrelated brokerage house specializing in fixed- income securities.

5. DTCM, the Plan sponsor, the Plan and the Affected Participants entered into an agreement (the Agreement) in 1994 that provided for the orderly liquidation of the Plan without the delay that would have been caused by attempting to convert the Securities to cash. Following the execution of the Agreement on August 30, 1994, the applicant liquidated the Plan assets (excluding the Securities). The Plan Administrator then determined the value of each participant's account based upon the cash proceeds of liquidation and the fair market value of the Securities as of June 30, 1994 (see rep. 4, above).[24] The Affected Participants received pro rata shares of (i) the cash proceeds of the liquidation of the Plan's assets and (ii) the Securities. The value of each Affected Participant's account was distributed to the IRAs, individual retirement rollover accounts established by DTCM on behalf of the Affected Participants and for which DTCM serves as trustee. The IRAs currently hold a total of 14,628.32 units of the Sears Securities and 41,501.40 units of the American Securities.

6. The applicant has requested an exemption to permit DTCM to purchase the Securities from the IRAs. DTCM will pay the greater of (i) the fair market value as of June 30, 1994, increased by any interest payments in arrears as of the date of purchase by the applicant, and reduced proportionately for any principal repayments received, or (ii) the fair market value of the Securities as of the date of the sale as determined by a qualified, independent expert. The IRAs will pay no fees, commissions or other expenses in connection with the transaction. The applicant represents that the Securities have been determined by Ms. Janet Milanese, Vice President of Starboard Capital Markets, Inc., an independent expert in Philadelphia, Pa., as having a fair market value as of January 31, 1995 which is less per unit than the June 30, 1994 figure determined as described in rep. 4, above. Accordingly, DTCM proposes to pay to the IRAs the June 30, 1994 fair market value of the Securities, plus any interest payments in arrears as of the date of the transaction, less any principal repayments received.

7. The applicant represents that the Plan entered into the Agreement because it allowed for the orderly liquidation of its assets and distribution of benefits while at the same time protecting the Affected Participants because they would receive at least as much as they would have if the Plan had been able to sell the Securities in an arm's-length transaction on the date of the Plan's liquidation. The proposed transaction also benefits the IRAs since it allows the Securities to be converted to cash prior to maturity at a price at least as great as could be obtained in an arm's-length transaction.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975 (c)(2) of the Code because: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses will be paid by the IRAs in connection with the sale; (c) the IRAs will be receiving not less than the fair market value of the Securities as determined by a qualified, independent expert; and (d) each of the Affected Participants is the only participant in his/her own IRA, and each has determined that the proposed transaction is appropriate for and in the best interest of his/her IRA and desires that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Because each of the Affected Participants is the only participant in his/her own IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Ferderal Register**.

[23] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[24] The applicant represents that, based on the valuation methods described in rep. 4, the fair market value of the Securities on June 30, 1994, was at least as great as the fair market value of the Securities on August 31, 1994, the date liquidation of the Plan commenced.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare BenefitsAdministration. U.S. Department of Labor.

[FR Doc. 95–6728 Filed 3–17–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 95–1—Supervisory Review Committee (IRPS 95–1).

SUMMARY: The Riegle Community Development and Regulatory Improvement of Act (Act) of 1994 was signed into law on September 23, 1994. Section 309 of the Act requires that NCUA establish an independent appellate process to review material supervisory determinations. This process must be established within 180 days of the Act's passage or by March 22, 1995. The Act also requires that the public be entitled to comment on the proposed process. The NCUA Board issued proposed IRPS 94–2 on November 10, 1994. The proposed IRPS would have established a Supervisory Review Committee (Committee) consisting of five senior staff members to hear appeals of material supervisory determinations. Material supervisory determinations were defined in the proposal to include composite CAMEL ratings of 4 and 5, significant loan classifications and adequacy of loan loss reserves. The Board has expanded the determinations subject to review in the final IRPS to include composite CAMEL ratings of 3, 4 and 5 and all component ratings of those composite ratings. The final IRPS reduces Committee membership from five to three and shortens the time-frames for Committee action. Additional procedural and technical changes are made in the final IRPS as described in the Supplementary Information.

EFFECTIVE DATE: March 22, 1995.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at the above address or telephone 703–518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (the Act) was signed into law on September 23, 1994. Section 309 of the Act requires, among other things, that NCUA and the federal banking agencies each establish an independent appellate process to review material supervisory determinations. The Act requires that the agencies provide the public with notice and opportunity to comment on the proposed guidelines for the appellate process within 90 days of the Act's passage. The NCUA Board issued proposed guidelines establishing a Supervisory Review Committee (Committee) (Interpretive Ruling and Policy Statement (IRPS) 94–2) on November 10, 1994 (59 FR 59437, 11/17/94.) The guidelines were issued with a 30-day comment period ending on December 19, 1994. The NCUA Board then extended the comment period until January 18, 1995. (See 59 FR 61003, 11/29/94.) The Act requires that each agency's appellate process be established not later than 180 days after the Act's passage (by March 22, 1995).

Forty-nine commenters responded to the proposed guidelines. The public commenters consisted of 26 federally chartered credit unions, 7 state chartered, federally-insured credit unions and 1 unidentified credit union, 8 state credit union leagues, 1 state credit union regulator, 3 national trade associations, 2 individual auditors and one credit union manager. The commenters generally approved of the proposed Supervisory Review Committee, however, there were several areas where many of the commenters suggested changes. The Board has considered the public comments and suggestions of NCUA staff as well as the proposed guidelines of the federal banking agencies (Federal Deposit Insurance Corporation, Office of Thrift Supervision, Office of Comptroller of the Currency, and Federal Reserve Board) in devising its final guidelines. An explanation of the comments received and the resolution of the issues in the final IRPS follows.

Format—IRPS or Regulation

The Board specifically requested comment on whether an IRPS was the appropriate method to establish the appeals process or whether the process should be established through a regulation. Sixteen commenters addressed this issue and the response was split 50/50. Several of the commenters supporting use of a regulation believe it would have greater force of law. The Board believes that the IRPS format is more appropriate since it provides the Board with some flexibility. The Board does not believe enforceability of the IRPS will be a problem since notice and comment requirements of the Administrative Procedure Act have been followed in its promulgation.

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Committee Composition

According to the proposed IRPS, the Committee was to be composed of five senior staff members: the Executive Director, the Director of the Office of Examination and Insurance, the General Counsel, one Regional Director, and one additional senior staff or Board staff member. The Executive Director was to serve as Committee chairperson. The proposed composition generated response from 32 commenters. Twenty-two of these commenters suggested adding (or completely substituting) non-NCUA staff to the Committee to ensure that the Committee would exercise independent judgment. The Board does not have the authority to place non-NCUA staff on the Committee. The Act requires that NCUA establish an "independent *intra-agency* appellate process." (Emphasis added.) Non-NCUA staff presence on the Committee would not fulfill the statutory requirement of "intra-agency." Several commenters (including ten who agreed that no non-NCUA staff should be on the Committee) suggested eliminating the Regional Director and alternate Regional Director from the Committee. Commenters believed that the Regional Director members would find it difficult not to support one another, even though they would not hear appeals occurring in their own Regions. The Board does not wish to place the Regional Directors in this position and has eliminated the Regional Director and alternate Regional Director from the Committee. In addition, the Board believes that neither the Executive Director nor the Executive Assistants to the Board Members should serve on the Committee. The persons serving in these positions report to and represent the interests of Board members. In order to ensure a separate and meaningful final right of appeal to the Board, as discussed below, these individuals should not serve on the Committee.

A few commenters noted that a Committee composed of fewer individuals may be better able to handle the appellate process. These commenters noted that it may be difficult to accommodate all members' schedules given their senior status and multiple job demands. The Board agrees and has reduced the Committee from five to three. The Committee will be composed of three senior staff members, none of whom are currently serving as a Regional Director or Associate Regional Director, the Executive Director or Executive Assistant to a Board Member. One Committee member will be designated as chairperson. All three members will serve for one year terms and can be reappointed for additional terms. The NCUA Chairman will appoint the Committee members and designate one member as Committee chairperson.

The proposed IRPS required that three of the five Committee members be present at each Committee meeting and that a majority vote be required for action on an appeal. The number of Committee members has been reduced from five to three and a quorum of two must be present for each meeting. A majority vote of the entire Committee (at least two) is required for action on an appeal.

The proposed IRPS stated that regular Committee meetings would be held quarterly with flexibility given to the Committee chairperson to cancel meetings and call additional meetings, as needed. Many commenters believed that more regular meetings should be scheduled. The final IRPS retains the requirement for regular quarterly meetings, again with flexibility given to the Committee chairperson to change this schedule. It is the Board's intention that adequate meetings be scheduled and held to complete action on all appeals within the time frames set forth below. Time frames for Committee action have been shortened as requested by many commenters. See discussion below.

Appealable Issues

The Act requires that material supervisory determinations, including determinations relating to examination ratings, adequacy of loan loss reserve provisions and loan classifications on loans that are significant to the credit union, be subject to the appellate process. The Board noted in the proposed IRPS that it understood the reference to "examination" rating to mean a credit union's CAMEL rating. The Board proposed that only a credit union's composite CAMEL rating of 4 or 5 be appealable; component ratings were not appealable to the Committee. In addition, the Board noted adequacy of loan loss reserve provisions and loan classifications on loans that are significant to the credit union as appealable issues. The Board requested comment on how it should define "significant" for purposes of identifying classified loans subject to the appeals process.

A total of 30 commenters addressed the appealability of certain CAMEL ratings. Most commenters thought the ratings subject to the appeals process should be expanded. Thirteen commenters believed all CAMEL ratings (or CAMELs 2–5) should be appealable. They stated that credit unions with CAMEL ratings other than 4 and 5 have significant objections to ratings and that their appealability would give credit unions the ability to discuss ratings with their examiners. Ten commenters thought that CAMEL 3s should be appealable. They noted that a rating of 3 affects field of membership expansions and some CAMEL 3 credit unions get increased examinations and supervisory contacts and are placed under letters of understanding and agreement. One commenter stated that a CAMEL rating of 3 is perceived as unsatisfactory in the credit union community. Fifteen commenters requested that at least some component ratings should be appealable. It was stated that composite ratings are made up of components, and if a component rating could not be appealed, a composite rating could never be changed. The Board has decided to expand the appealability of CAMEL ratings. Credit unions may appeal composite ratings of 3, 4, and 5 as well of as all component ratings of those composite ratings.

Eleven commenters addressed the issue of how to define "significant" for purposes of appealing the classification of a significant loan. Seven of these commenters believe that each credit union should determine which loans are significant. Two commenters suggested significant be defined as a percentage of reserves, one suggested a percentage of reserve plus dollar amount of the loan and one suggested that significant loans be linked to reserve adequacy. The Board has determined that each credit union may determine whether a classified loan is "significant" for purposes of its appealability to the Committee.

Several commenters believed additional disputes should also be subject to the Supervisory Review Committee. Included are disputes relating to fixed assets, credit union service organizations, field of membership, mergers and letters of understanding and agreement. It was also suggested that the Act requires that material supervisory decisions "relating to examinations" are appealable and the Board's interpretation of the Act as set forth in the proposed IRPS was too narrow. The Board has determined not to further expand the types of disputes covered by the review process initially. The Board may expand the disputes covered after some experience is gained with the process. In addition, disputes over field of membership, mergers, and other material issues are already appealable to the NCUA Board by credit unions not satisfied with the decisions of the Regional Director.

Resolution by Region and Timing Issues

The proposed IRPS stated that a dispute is ripe for review by the Committee only when the credit union establishes that it has been unsuccessful in attempting to resolve the matter with the Regional Office. No time frames were set for resolving issues at the regional level. Fourteen commenters believed that some time limit should be imposed on the Region to make a decision. Suggestions ranged from 30 - 120 days, with most commenters favoring 30 days. The Board agrees and believes that the Regions should respond to these disputes within 30 days. The proposed IRPS stated that appeals should be submitted within 30 days of the Regional Office's decision. Seven commenters suggested that 30 days would not always provide adequate time for a credit union to prepare an appeal. Some of these commenters suggested the 30 days be expanded to 45 - 60 days. The Board believes that 30 days is adequate time for a credit union to make a decision on whether to submit an appeal and in an effort to complete the appeal process expeditiously, will not increase the 30 days. In the event the Region does not respond, the dispute becomes appealable to the Committee after the first 30 days and within another 30 days (30 days for Region to respond, 30 days for credit union to submit appeal to Committee). The Board also believes that credit unions should be timely in their attempt to resolve the dispute with the Region. Therefore the final IRPS states that the credit union must contact the Regional Office within 30 days of the examiner's final determination. Sixteen commenters addressed the proposed time frames for the Committee to act on an appeal. Most agreed that the time frames set forth would not result in an expeditious appeal as required by the Act. It was proposed that an appeal be submitted by a credit union within 30 days of regional action and that the Committee would make a decision on the appeal within 90 days. If additional information was needed, the Committee would request it within 30 days of receipt of the appeal and the information would be submitted by the credit union and/or Regional Office within 15 days. Seven commenters specifically suggested shorter time frames for the Committee to decide an appeal, several others just noted that the time frame was too long. One commenter suggested reducing the 90 days to 30 days, three others suggested reducing it to 60 days. Three additional commenters stated the whole process should be limited to 90 days. The Board agrees that the time for Committee deliberation should be reduced. The final IRPS reduces the time the Committee has to request additional information from 30 to 15 days and the time for Committee action on the appeal from 90 to 30 days.

Appeals by Federally-Insured, State Chartered Credit Unions

The Act requires that the appellate process be available at insured institutions that NCUA supervises. It was noted in the preamble of the proposed IRPS that in cases of material supervisory determinations made by NCUA, the Committee would consider appeals from all federally insured institutions and that NCUA would consult with the state supervisory authority in appropriate cases. Six commenters addressed the issue of appeals made by federally-insured, state chartered credit unions (FISCUs). One commenter agreed with the proposal, one stated that NCUA does not supervise FISCUs and believed the review process should not be available to them and several commenters asked how the FISCU review process would be implemented.

NCUA has clear responsibilities with respect to the safety and soundness of all federally insured credit unions. NCUA works closely with the various state supervisory authorities in both joint and independent examination of FISCUs. There are two basic types of FISCU examinations in which NCUA examiners are involved: a joint examination with the state examiner; and an NCUA insurance review. Normally in a joint examination, the state examiner is the examiner-in-charge and there will be concurrence between the state and NCUA examiner on all substantive exceptions noted in the examination report. Results of joint examinations will normally be within the purview of the state since the state examiner is the examiner-in-charge. Disputes arising from these examinations would not normally be subject to NCUA's review process. An insurance review, on the other hand, is done by NCUA examiners; it does not involve state examiners. Disputes concerning material supervisory determinations arising from insurance reviews would normally be subject to the review process. The final IRPS states that FISCU appeals of material supervisory determinations made by NCUA examiners should first be pursued with the appropriate NCUA Regional Office and then, if not satisfactorily resolved, submitted to the Committee. The Committee chairperson will reverify that an NCUA examiner rather than a state examiner made the disputed determination, and the appeal will then be subject to review by the Committee. Regional staff and the Committee will consult with the state supervisor's office in appropriate cases.

Corporate Credit Union Appeals

The proposed IRPS did not specifically address appeals of corporate credit unions. The corporate credit union program is managed by the Office of Corporate Credit Unions located in NCUA's central office. NCUA examiners (rather than state credit union examiners) normally serve as the examiner-in-charge for examinations of corporate FISCUs. All federally insured corporate credit unions (both FCUs and FISCUs) should contact the Office of Corporate Credit Unions rather than the regional office concerning material supervisory determinations made by NCUA examiners. The same time frames and procedures apply. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisor's office in appropriate cases.

Written Appeal and Authorization by Board of Directors

Most commenters did not address whether the appeal should be submitted in writing. Of the few that did address the issue, only one commenter was opposed. The final IRPS reflects the requirement that the appeal be submitted in writing. A related issue that the Board did not specifically request comment on is whether the board of directors of the appealing credit union be required to authorize the appeal. The NCUA believes this to be a fair requirement. The board of directors should be made aware of and authorize any appeal made to the Committee. This requirement will eliminate the decision to appeal being made by one credit union official.

Personal Appearance

The preamble to the proposed IRPS noted that personal appearances would not be a regular part of the appellate process; that personal appearances may be requested, but the final decision would be made by the Committee. Twenty-nine commenters addressed personal appearance of the appealing party and all agreed that the credit union should be given the opportunity to make a personal appearance before the Committee. The NCUA Board has reconsidered this issue and determined that the decision on whether to make a personal appearance should be up to the appealing credit union. Appealing credit unions will be responsible for all

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of their costs associated with a personal appearance. In an attempt to save resources of both appealing credit unions and the NCUA, the Committee chairperson reserves the right to first attempt to work out the dispute via teleconference.

Stay of Decision Pending Review

Three commenters requested that any material supervisory determination appealed be stayed pending the outcome of the appellate process. This issue was not specifically addressed in the proposed IRPS. The NCUA Board does not believe it appropriate to stay examination findings pending appeal. Safety and soundness concerns require that examination findings remain in place and that any action that the NCUA deems appropriate based on these findings be taken.

Role of NCUA Board

The proposed IRPS required that all Committee decisions be submitted to the NCUA Board. The Board would then have 7 days to review the decision. If a majority of the Board members agreed, the decision would become final. If a majority did not agree, the decision would be considered by the Board on final appeal. Six commenters addressed this issue. One agreed with the proposal and four stated that the decision should not go to the Board, but that the appealing credit union should have a right to appeal the Committee decision to the Board. One commenter suggested that only Committee decisions opposed to the appealing credit union should go to the Board. The Board has reconsidered this issue and determined that all appealing credit unions as well as the NCUA offices involved should have a right to appeal to the Board. The Committee decision is appealable to the NCUA Board within 30 days of receipt by the parties.

Other Appeals

One commenter requested that the Board include in the IRPS other types of appealable issues that are available to credit unions and credit union members. A section has been added to the final IRPS setting forth provisions of the NCUA Rules and Regulations which address various formal and informal appeals processes. Also noted in this section are other types of disputes (chartering, insurance applications, field of membership expansions, merger, etc.) which are appealable to the NCUA Board.

Retaliation

The Act requires that NCUA ensure that safeguards exist for protecting the appellant from retaliation by agency examiners. The proposed IRPS stated that credit unions could seek redress from alleged retaliation through NCUA's Office of Inspector General. Seven commenters addressed this issue, with five suggesting rotation of examiners if retaliation is found to exist. The final IRPS sets forth the types of actions that may be taken against an NCUA employee, including rotation of examiners, when retaliation is found to exist.

Exhaustion of Administrative Remedies

Two commenters asked whether a credit union would have to use the appellate process before proceeding to court on a dispute subject to the Committee's jurisdiction. Since the appellate procedure is part of NCUA's administrative process, it appears that if a credit union did not pursue the process and filed directly in court, it would not have exhausted its administrative remedies. Unless otherwise noted, this would be true for any of NCUA's appeal procedures. The Board has determined not to address this issue in the IRPS, as it is a principle of general administrative law.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant economic impact on small credit unions (those under $1 million in assets). The appeal procedures set forth apply equally to all credit unions. The procedures are not mandatory. Only those credit unions wishing to appeal are subject to its provisions. It is not anticipated that small credit unions will use the appeal procedures any more or less than large credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The IRPS applies to all federally insured credit unions (both federally chartered credit unions and federally-insured, state chartered credit unions (FISCUs)), as required by the Act. It may have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, the Act requires that the process apply to FISCUs.

Paperwork Reduction Act

Although it was noted in the proposal that the IRPS would impose paperwork requirements subject to the Paperwork Reduction Act, upon further consideration, including consultation with the Office of Management and Budget, the Board has concluded that the IRPS is exempt from the Paperwork Reduction Act pursuant to 44 U.S.C. 3518(c)(1)(B)(ii). According to this section, the Paperwork Reduction Act does not apply to an administrative action or investigation involving an agency against specific individuals or entities.

By the National Credit Union Administration Board on March 13, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, IRPS 95–1 is established as follows:

[Note: The following ruling will not appear in the Code of Federal Regulations.]

1. **Authority:** Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325.

2. IRPS 95–1 is established as follows:

Interpretive Ruling and Policy Statement 95–1—Supervisory Review Committee

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that NCUA establish an independent intra-agency appellate process to review material supervisory determinations. The NCUA Board hereby establishes a Supervisory Review Committee (Committee) to implement Section 309.

It is NCUA policy to maintain good communication with all credit unions it supervises. Credit unions, examiners and regional and central office staff are encouraged to resolve disagreements informally and expeditiously. The NCUA Board expects that most disputes will be handled in that manner. The Supervisory Review Committee and other appeals processes are available for certain disputes that cannot be resolved informally.

A—Committee Structure, Scope and Procedures

The Supervisory Review Committee shall consist of three regular members of the NCUA's senior staff as appointed by the NCUA Chairman. None of the members shall be currently serving as a Regional Director, Associate Regional Director, Executive Director or Executive Assistant to a Board Member. One member shall be designated by the NCUA Chairman as chairperson. All three Committee members shall serve for one year terms and may be reappointed for additional terms. Each member of the Committee shall have one vote and a quorum (two members) shall be present at each Committee meeting. Meetings may be held in person or via teleconference. A majority vote of the full Committee (two votes) is required for action on an appeal. Regular Committee meetings shall generally be held quarterly. Additional meetings will be scheduled or regular meetings canceled, as appropriate, by the chairperson on an as needed basis.

Appeals of material supervisory determinations made by NCUA may be made by all federally insured credit unions (federal credit unions (FCUs) and federally-insured, state chartered credit unions (FISCUs)).

Material supervisory determinations are limited to: (1) Composite CAMEL ratings of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant as determined by the appealing credit union.

An FCU, other than a corporate FCU, must contact the regional office regarding the examiner's decision within 30 days of the examiner's final determination. The decision must be appealed to (postmarked or received by) the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination.

A FISCU, other than a corporate FISCU, must contact the Regional Office within 30 days of the NCUA examiner's final decision. The Region will verify that the determination being appealed was made by an NCUA examiner. If the decision was made by the state, the appeal will be turned over to the state for appropriate action. If the decision was made by the NCUA examiner, the dispute will be handed by the Region and become appealable to the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination. The Committee chairperson will reverify that the determination was made by NCUA. Regional staff and the Committee will notify and consult with the state supervisory authority in appropriate cases.

All federally insured corporate credit unions (FCUs and FISCUs) must contact the Office of Corporate Credit Unions concerning its examiner's final determination and then the Committee within the same time frames. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisory authority in appropriate cases involving corporate FISCUs.

The board of directors of the appealing credit union must authorize that the appeal be filed. Appeals shall be submitted in writing and shall be mailed or delivered to Chairman, Supervisory Review Committee, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

Appeals may be made by letter, and shall include the name of the appellant credit union, the material supervisory determination being appealed and the reasons for the appeal. Appellants are encouraged to submit all information and supporting documentation relevant to the matter in dispute.

Appellants are entitled to a personal appearance before the Committee. The Committee chairperson reserves the right, however, to attempt to work out the dispute through teleconference.

The material supervisory determination remains in affect pending appeal. The appeal does not prevent the NCUA from taking any action, either formal or informal, that it deems appropriate during the pendency of the appeal.

The Committee may request additional information from the appellant and/or the Regional Office within 15 days of its receipt of the appeal. The information must be submitted to the Committee within 15 days of receipt of the Committee request. The Committee shall make a determination on the appeal within 30 days from the date of the receipt of an appeal by the Committee or of its receipt of any requested additional information. These time requirements are subject to adjustment by the Committee, whether on its own or upon request of the appellant or the Region involved.

The Committee decision is appealable to the NCUA Board within 30 days of receipt by the parties.

B—Other Appeals

Procedures for various formal and informal adjudicative and non-adjudicative actions and proceedings not covered by the Supervisory Review Committee are found in Parts 709 (creditor claim appeals), 745 (share insurance appeals), 792 (Freedom of Information Act appeals) and 747 (appeals of various administrative and enforcement actions) of the NCUA Rules and Regulations (12 CFR 709, 745, 792, and 747). These parts should be reviewed to determine the procedures which apply for a particular appeal. In addition, the NCUA Board serves as the final administrative decision maker for major disputes that are not otherwise covered by this IRPS or Parts 709, 745, 792 or 747. These include disputes over chartering, insurance applications, field of membership expansion, merger, certain corporate credit union matters, charter changes and letters of understanding and agreement. These issues should first be pursued through the appropriate Regional Office or the Office of Corporate Credit Unions. Appeals concerning these matters should be addressed to the NCUA Board and submitted through the appropriate Regional Office or the Office of Corporate Credit Unions.

C—Retaliation

Alleged acts of retaliation should be reported to NCUA's Inspector General, who is authorized by Congress, under the Inspector General Act, to receive and investigate complaints and other information regarding abuse in agency programs and operations.

Any retaliation by NCUA staff against a credit union making any type of appeal will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension or separation from employment, change in assigned duties, or disqualification from a particular assignment, including prohibition from participating in any examination of the credit union that was the subject of the retaliation.

[FR Doc. 95–6705 Filed 3–17–95; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collections: FOIA Customer Satisfaction Survey.

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3. The form number if applicable: Not Applicable.

4. How often the collection is required: One-time.

5. Who will be required or asked to report: Voluntary submittal by requesters who receive a final response from the NRC to a Freedom of Information Act (FOIA) request during a three-month survey period.

6. An estimate of the number of responses: Approximately 200 surveys will be dispatched and an estimated 150 responses will be received.

7. An estimate of the total number of hours needed annually to complete the requirement or request: Total hours for the one-time survey is 37.5 (15 minutes per response).

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: The NRC is surveying all requesters who receive a final response from the NRC to a Freedom of Information Act (FOIA) request during a three-month survey period. The survey will assess customer perceptions of the NRC FOIA process, and will identify areas for improvement.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Troy Hillier, Office of Information & Regulatory Affairs (3150–0000), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–6732 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01786; License No. 19–00296–10]

The National Institutes of Health Issuance of Director's Decision Under 10 C.F.R. 2.206 (DD–95–05)

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission (NRC or Commission) has issued a decision concerning a Petition dated December 2, 1993, submitted by the North Bethesda Congress of Citizen's Associations regarding the National Institutes of Health (NIH), Bethesda, Maryland.

The Petition requested that the Commission suspend License Condition 24, which authorizes NIH to incinerate radioactive waste on the Bethesda campus, pending resolution of several regulatory issues. The Petition also requested copies of the environmental assessments and/or safety evaluations that form the base for the NRC's authorization of License Condition 21, which raised the sewer disposal limit for radioactive materials to 8 Ci per year, and License Condition 28, which authorizes storage of radioactive waste at the NIH Poolesville facility. Finally, the Petition requested a copy of future correspondence between NRC and NIH regarding these matters.

After review of the Petition, the Director has determined that Petitioner's request to suspend License Condition 24 (License Condition 27 in the current License) was mooted by the removal of that Condition from the License. Petitioner's request for a copy of environmental assessments and/or safety evaluations that form the bases for authorization of license Conditions 21 and 28 cannot be granted. However, certain documents submitted by the Licensee in support of license amendment applications in connection with License Conditions 21, 24, and 28 have been supplied to Petitioner. Petitioner's request for a copy of future correspondence between NRC and NIH regarding these matters was granted. The reasons for this Decision are explained in a "Director's Decision Under 10 C.F.R. 2.206" (DD–95–05), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C. 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 C.F.R. 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision, unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 5th day of March, 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

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DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

I. Introduction

By letter addressed to the Executive Director for Operations, dated December 2, 1993, Arlene S. Allen, on behalf of the North Bethesda Congress of Citizen's Associations, Inc. (North Bethesda Congress, or Petitioner), requested that NRC take action with respect to the National Institutes of Health (NIH, or the Licensee) in Bethesda, Maryland.

Petitioner requests that the NRC: (1) suspend License Condition 24 of the NIH Materials License No. 19–00296–10 (License), which authorizes NIH to dispose of licensed materials by incineration, pending resolution of two regulatory issues: (a) no environmental report or environmental assessment has been completed regarding the incineration of radioactive waste on NIH's Bethesda campus; and (b) there may be less than adequate monitoring to ensure that radioactive effluents are within regulatory limits; (2) provide copies of the NRC environmental assessments and/or safety evaluations that provide the bases for (a) an exception from 10 CFR § 20.303(d) limits regarding radioactive materials discharges into sanitary sewer systems (License Condition 21); and (b) approval of the construction and operation of a low level waste storage facility at NIH's Poolesville campus (License Condition 28); and (3) forward a copy of future correspondence between NRC and NIH regarding these matters to the North Bethesda Congress.

The Petitioner asserts the following as bases for these requests: (1) NIH has not completed or submitted to the NRC an environmental report regarding radiological releases from incinerators at the Bethesda campus, and the NRC has not issued an environmental assessment or impact statement regarding NIH radiological emissions, as required by the National Environmental Policy Act and 10 CFR 51.21, 51.45 and 51.60(b); (2) licensing the disposal of radioactive waste by incineration is a federal action subject to the NEPA process; (3) because releases from the NIH incinerators are capable of exceeding regulatory limits and will increase over the next few years, and because total radiological emissions from NIH are sufficient to warrant environmental analysis, the continued burning of radioactive waste by NIH without an environmental report and environmental assessment are in noncompliance with NRC environmental regulations; (4) although NRC cited NIH for its failure to adequately monitor radioactive effluents and NIH committed to install instrumentation for continuous monitoring as a corrective action for having exceeded its yearly radioactive effluent release limit to unrestricted areas for 1987, no continuous monitoring for radioactive airborne effluents exists for the NIH incinerator stacks; (5) it is not clear that the box monitoring system installed by NIH adequately detects radioactive waste, and small amounts of iodine continue to be identified in the incinerator ash, indicating that medical waste still gets into the incinerators; and (6) it is unclear that NIH methods to assess radioactive effluent releases at the incinerators satisfy regulatory requirements and provide assurance that Part 20 limits are being met.

The NRC staff provided a partial response to North Bethesda Congress by letter dated February 24, 1994. The staff acknowledged receipt of the Petition, and denied Petitioner's request to suspend License Condition 24 pending resolution of the Petition. The denial of the request to suspend License Condition 24 was based on findings of the then most recent NRC Inspection Report, Inspection Report No. 030–01786/92–001, which concluded that emissions from the incinerators at the NIH Bethesda campus were within regulatory limits and that, despite some deficiencies, the incineration operation was under adequate control. The NRC staff, therefore, determined that there was no immediate risk to public health and safety from continued operation of the incinerators. The February 24, 1994, letter granted Petitioner's request for copies of environmental assessments and/or safety evaluations insofar as such documents exist and could be retrieved. A later search of the active and archived NRC files disclosed no such documents. The February 24, 1994, letter also granted Petitioner's request for copies of all correspondence with the Licensee concerning the matters raised by Petitioner.

As of May 1994, all three incinerators were taken out of service by NIH. In a letter dated August 10, 1994, NIH committed to permanently stop all incineration of low level radioactive waste at its Bethesda campus, and requested a license amendment to delete License Condition 27 (formerly License Condition 24) from License No. 19–00296–10. This application was granted by NRC on November 3, 1994.

I have completed my evaluation of the matters raised by Petitioner, and have determined that, for the reasons stated below, Petitioner's request to suspend authority to incinerate pursuant to License Condition 24, pending performance of an environmental assessment and an environmental report with regard to incineration operations, and pending review of incinerator operating procedures, is moot. Petitioner's request for environmental assessments and/or safety evaluations in connection with License Conditions 21 and 28 cannot be granted because the NRC was not required to perform environmental assessments or formal safety evaluations in connection with the low level radioactivity associated with NIH discharges to the sanitary sewer system and with the low level waste storage facility at NIH's Poolesville campus, as explained below. Documents constituting the informal equivalent of an environmental review or safety evaluation in connection with License Conditions 21, 24, and 28, will be supplied to Petitioner. Petitioner's request for a copy of all correspondence between NRC and NIH regarding these matters was granted by the NRC staff letter dated February 24, 1994.

II. Background

The NIH specific license of broad scope, No. 19–00296–10, was issued in December 1956 by the Atomic Energy Commission (AEC). The license is due to expire in May 1995. The License replaced a set of nine licenses that had been issued to different institutes or laboratories of NIH. At the time of issuance of this broad scope license, short-lived radioactive waste (half-life under 100 days) was allowed to decay in storage and was then disposed of as ordinary waste. Long-lived solid and liquid wastes were incorporated into concrete and shipped for disposal. There was no license condition permitting incineration of licensed material, and sewer disposal of licensed material was limited to 1 Ci/yr, provided other conditions, such as average concentration limits, were met.

Soon after the License was issued, NIH requested authorization to incinerate dead animals used in experiments, and other combustible waste containing tritium (H–3), carbon-14 (C–14), and sulphur-35 (S–35) in the two general purpose incinerators then in use on campus. This request was granted as License Condition 12 in February 1959. In April 1968, License Condition 21 was approved to extend the incineration authorization to include incineration of any byproduct material, provided the effluent concentration limits specified in the regulations were met for the air effluents from the incinerators, as well as for disposal of the ash resulting from incineration. Byproduct material is defined in NRC regulations as "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to radiation incident to the process of producing or utilizing special nuclear material". 10 CFR 20.1003. This, in effect, means any radioactive material produced in a nuclear reactor, other than plutonium, which is considered special nuclear material. H–3, C–14, and S–35 are all byproduct materials. Special nuclear material is any material that has the potential for use as fuel in a nuclear reactor, including plutonium, uranium-233, and uranium enriched in the isotope 233 or in the isotope 235.

In 1961, NIH requested raising the sewer disposal limit from 1 to 20 Ci/yr. In response to this request, NRC authorized an increase in the sewer disposal limit from 1 Ci/yr to 3 Ci/yr in October 1961, as reflected in License Condition 21. In April 1968, following another request, the sewer disposal limit was raised to 5 Ci/yr, and in April 1969, the License Condition was amended to raise the sewer disposal limit from 5 Ci/yr to its current level of 8 Ci/yr.

License Condition 24, authorizing incineration of byproduct material, and the License Condition 21, authorizing disposal of up to 8 Ci/yr of radioactive material to the sewer, have not changed materially since they were first issued.

The NRC regulations pertaining to incineration and sewage disposal appear in 10 CFR Part 20, "Standards for Protection Against Radiation", first implemented in 1957. The initial 1957 version of 10 CFR Part 20 limited the quantity of licensed and other radioactive material released into the sewerage system to 1 Ci/yr. Limits were also imposed on the average concentrations of radioactive materials in the sewer releases. The regulations in 10 CFR Part 20 were revised in 1982 to raise the disposal limit for discharges to sanitary sewerage systems from 1 Ci/yr to a total of 7 Ci/yr, of which up to 5 Ci/yr may be H–3, up to 1 Ci/yr C–14, and up to 1 Ci/yr all other isotopes combined. Permission to incinerate radioactive waste in the form disposed of at NIH was sought through the mechanism then applicable to permit licensees to apply for approval of a waste disposal method provided in 10 CFR 20.302, "Method of obtaining approval of proposed disposal procedures."

An application for a license amendment to permit interim storage of low-level radioactive waste at the NIH Animal Center in Poolesville, Maryland, was submitted to the NRC in October 1992. In the same submittal, NIH also requested an increase in its possession limits for carbon-14 from 2 to 3 curies, and for phosphorus-32 from 2 to 4 curies. The increases in possession limits were requested to provide

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flexibility in waste storage. The stated reason for the request to store waste was partly to allow decay of short-lived activity before disposal, and partly in anticipation of a reduction or elimination of options for permanent disposal of low-level radioactive waste, such as the anticipated closure of the Barnwell, South Carolina waste disposal facility. In January 1993, the NRC authorized use of the Poolesville facility for interim storage of low-level radioactive waste, as reflected in License Condition 28.

III. Discussion

A. Petitioner's Request for Suspension of Incineration Operations Was Mooted by Amendment of the NIH License

As explained above, NIH's authority to incinerate radioactive waste was terminated by the NRC Staff's November 3, 1994, grant of NIH's application for a license amendment to remove License Condition 27. Consequently, Petitioner's request for suspension of NIH incineration operations is moot. Similarly, any past deficienices in NIH's incineration monitoring program [1] need not be addressed, other than to emphasize that if, in the future, NIH were to request authorization to resume incineration operations, the NRC staff, as part of its evaluation of such a request, would review the incineration program and operating procedures and require correction of any deficiencies in the monitoring program [2] before granting such a request.

B. Request for Environmental Assessments and Environmental Reports

1. Incineration of Radioactive Waste

Petitioner contends that incineration of radioactive wastes and potentially contaminated medical wastes by NIH, without complete environmental reports and environmental assessments, is in violation of NRC regulations and the National Environmental Policy Act (NEPA). Petitioner further states that, in the Statement of Consideration accompanying the newly revised 10 CFR Part 20, NRC retained the requirement for prior approval of incineration on a site specific basis and that NRC rejected the notion that disposal of radioactive waste by incineration is simply just another form of general effluent release, and thus approval of incineration is subject to the NEPA process. Petitioner also claims that because radiological releases from the NIH incinerators are capable of exceeding regulatory limits, as discussed in the 1988 NRC Inspection Report No. 030–01786/88–001, NIH total radiological emissions warrant environmental analyses.

The initial authorization to incinerate H–3, C–14, and S–35, as well as the 1968 license amendment extending this authorization to all byproduct materials, predated both the National Environmental Policy Act (NEPA) of 1969, and NRC regulations implementing NEPA (10 CFR Part 51), which became effective in 1974. There was, therefore, no requirement at the time of these amendments to conduct an environmental assessment. A review of NRC records pertaining to the NIH licenses failed to identify any formal environmental assessments or safety evaluations in connection with these license amendments. However, related correspondence between NRC and NIH indicate that authorization to incinerate radioactive wastes was granted on the condition operations be conducted within the effluent limits imposed by 10 CFR Part 20. The total activity incinerated in any given period was limited indirectly by limiting the maximum allowable concentrations of radioactive materials in the effluents from the incinerator stacks to the levels specified by 10 CFR Part 20, Appendix B, Table II.

The original authorization to incinerate licensed material was reevaluated in connection with NIH's 1988 license amendment application to add a third incinerator of larger capacity to the two existing smaller incinerators previously authorized for operation. The license amendment application was accompanied by detailed descriptions of the incineration facility and proposed modes of operation and control. The record also shows correspondence from NRC requesting clarifications and additional information, as well as responses from NIH providing the requested information. These documents were incorporated into the License as tie-down conditions, which means that the Licensee must conduct operations as described in its application documents. However, a formal environmental assessment was not prepared. The amendment request was granted on the same condition as the original 1959 amendment authorizing incineration of wastes, which was that effluents from the incinerators must remain within the concentration limits specified by 10 CFR Part 20, Appendix B, Tables II. Incineration at NIH was authorized only after performance of NRC staff reviews of the incinerator design and proposed methods of operation and control of effluents, including disposal of the ash resulting from incineration, and consideration of the public doses expected from the operation.

The NRC practice in 1988 was, and still is, to determine on a case-by-case basis whether to perform an environmental assessment in connection with applications for incineration of waste containing radioactive material, provided that the concentration of radioactive materials in the incinerator effluents at the point of release, and in the ash residues, do not exceed the limits specified by 10 CFR Part 20, Appendix B, Table II, and also provided that the dose to the highest exposed member of the public that results from the authorized activity is no more than a small fraction of the dose limit for individual members of the public (100 millirem per year) specified by 10 CFR § 20.1301(a)(1). The radiation dose to a member of the public resulting from air effluents depends on the concentration of radioactive materials in the air at the location of that person. Limiting the concentrations of radioactive materials emitted from the stack at the release point to those specified in 10 CFR Part 20, Appendix B, Table II, ensures that any dose to members of the public will be a small fraction of the applicable public dose limit. This is due to the fact that dispersion of the effluent air from the stack will reduce the average concentration of radioactive materials in the air at the location of an exposed individual to a small fraction of the limits for emissions at the release point, causing the delivered dose to that individual in turn to be a small fraction of the public dose limit. Review of an application to incinerate licensed materials involves, in part, verification that dispersion of the released material during transit, from the stack to the closest exposed individual, will reduce the concentrations sufficiently to ensure a very small dose to members of the public, even under the most conservative assumptions. Since the NIH application proposed limiting airborne incinerator effluents at the release point to 10 CFR Part 20, Appendix B, Table II, limits, the dose to the highest exposed member of the public would be limited to a small fraction of the dose limit for individual members of the public specified by 10 CFR § 20.1301(a)(1).

The NEPA and the Commission's implementing regulations in 10 CFR Part 51 do not require the performance of an environmental assessment in connection with authorization of incineration of radiological wastes at NIH. Under NEPA § 102(2)(c), 42 U.S.C. 4332(2)(c), and 10 CFR 51.21, an environmental assessment must be undertaken by the NRC for all licensing and regulatory actions except where the Commission's regulations, See 10 CFR 51.20(b), require the preparation of an environmental impact statement, or the licensing actions are eligible for categorical exclusion from these requirements because the actions do not individually or cumulatively have a significant effect on the human environment. 10 CFR 51.21 and 51.22(a). Any use of source, byproduct, or special nuclear material which involves quantities and forms of these materials similar to those involved in activities eligible for categorical exclusion in 10 CFR 51.22(c)(14)(i)–(xv), is also eligible for categorical exclusion. 10 CFR 51.22(c)(14)(xvi). The Commission anticipated that the quantities of radioactive material associated with the fifteen types of activities eligible for categorical exclusion under 10 CFR 51.22(c)(14)(i)–(xv) would involve effluent releases of between zero and 12% of the limits of 10 CFR Part 20. Statement of Consideration, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments", 49 FR 9352, 9378–9379 (March 12, 1984). Applicants who propose to limit the concentration of radioactive material in the incinerator stack effluents to less than 12 per cent of the applicable 10 CFR Part 20 limits, therefore, would be eligible for the categorical exclusion pursuant to 10 CFR 51.22(c)(14)(xvi). Since NIH committed, in its application for authority to incinerate radioactive waste, to have a program with the objective of limiting average annual concentrations of radioactive material in the incinerator stack effluents to 10 percent of the 10 CFR Part 20, Appendix B, Table II, limits, the NIH application for authority to incinerate was eligible for categorical exclusion pursuant to 10 CFR 51.22(c)(14)(xvi).

NIH's authority to dispose of contaminated ash residue from incinerator operations was also granted without performance of an environmental assessment, pursuant to the categorical exclusion of 10 CFR 51.22(c)(14)(xvi), for the same reasons as discussed above. The concentrations of radioactive materials in the ash residue were required by License Condition 24, in the case of NIH, to be below those specified by 10 CFR Part 20, Appendix B, Table II. Since 10 CFR Part 20 does not specify concentrations limits for ash, the limits specified for water were applied to the incinerator ash.

When the categorical exclusion provisions of 10 CFR Part 51 exempt a license application to incinerate licensed materials from the requirements to prepare an environmental assessment or an environmental impact statement, such as the NIH incineration operations, the licensee is not required to submit an environmental report for such proposed activity. Although NIH was not required to submit a formal environmental report in connection with its application for authorization of its incineration facility, NIH was required to submit, and did submit, detailed descriptions of the facility and the proposed mode of operation and control to ensure safe operation and compliance with NRC requirements.

In view of the above, the NRC was not required to and did not perform environmental assessments, and the Licensee was not required to and did not submit environmental reports, in connection with authorization of NIH incineration operations or disposal of incinerator ash residue. Petitioner has been provided, however, with copies of documents submitted by the Licensee in support of License Condition 27 and documents associated with the grant of License Condition 27.

2. Radioactive Material Discharges Into the Sanitary Sewer Systems (License Condition 21)

Petitioner requests copies of the NRC environmental assessments and/or safety evaluations that provide the basis for the NRC's grant of an exception from 10 CFR § 20.303(d) limits regarding radioactive material discharges into sanitary sewer systems. License Condition 21 exempts NIH from 10 CFR § 20.303(d), now superseded by 10 CFR § 20.2003(a)(4), which limits the quantity of licensed and other radioactive material released into the sewerage system to 5 Ci/yr H–3, 1 Ci/yr C–14, and 1 Ci/yr all other isotopes combined. License Condition 21, however, authorizes disposal of up to 8 Ci/yr of all licensed and other radioactive material, with no separate limits on the activities of individual isotopes, provided the provisions in 10 CFR §§ 20.303 (a), (b), and (c), superseded by 10 CFR §§ 20.2003 (a)(1), (a)(2) and (a)(3), are met. These regulations place limits on the monthly average concentrations of radioactive materials in sewer releases.

The license amendment which initially authorized a sewer release limit of 8 Ci/yr was granted in 1969, and predates NRC's 10 CFR Part 51, which implements the National Environmental Policy Act (NEPA) of 1969. There was, therefore, no requirement at the time the license amendment was granted to conduct an environmental assessment in connection with this License Condition 21. No environmental assessments or safety evaluations to support the grant of this amendment were found in a search of NRC records, nor were any references to such documents found.

A review of NRC records pertaining to the NIH license indicates that the grant to NIH of the exemption from 10 CFR 20.303(d), by raising the annual release limit from the 10 CFR Part 20 limit of 1 Ci/yr to 8 Ci/yr in 1969, and from the 10 CFR Part 20 total activity limit of 7 Ci/yr to 8 Ci/yr after 1982, without separate limits on H–3 and C–14, was based on concentrations of radioactive material in the sewer releases from the facility. The dose to a member of the public, obtaining drinking water from the sewer discharge point for the facility, depends on the concentration of activity in the sewer water, and not on the total amount released during the year.

[1] NIH incinerator effluents were within the 10 CFR Part 20 regulatory limits specified by the license, and the incineration operation was under adequate control. See NIH Inspection Report No. 030–01786/92–001 (September 14, 1992) and NRC Inpsection Report No. 030–01786/94–001 (July 8, 1994). Nonetheless, there were some weak areas in the program, as indicated by the the possibility that the amount of iodine that was released in effluents may have exceeded ALARA goals. See NRC Inspection Report No. 030–01786/94–01. The Licensee's As Low As Reasonably Achievable (ALARA) commitment, incorporated into License Condition 27 by the July 1986 application for authority to incinerate radioactive materials, obligates the Licensee to have a program with the objective of limiting the average annual concentration of radioactive material in the incinerator stack effluents to ten per cent of the 10 CFR Part 20, Appendix B, Table II, values. The indications that the incineration effluents may have exceeded this ten percent limit in 1993 were inferential, and could not be verified on the basis of available data. The NRC staff determined that the ash residue data collected by the Licensee was not specific enough to permit a determination whether Iodine-125 releases did in fact violate the License Condition 27 requirement to have an ALARA program with the objective of limiting the average annual concentration of radioactive material in the incinerator stack effluent to 10 per cent of the 10 CFR Part 20, Appendix B, Table II, values. The available data, however, indicates that the annual average concentrations of radioactive materials in the incinerator effluents were probably substantially below the 10 CFR Part 20, Appendix B, Table II, limits for the 1990 through 1993 time period reviewed in the May 1994 NRC inspection.

[2] Petitioner also contends that releases from sources other than the incinerators, such as Building 21, did not appear to be routinely considered in conjunction with incinerator radionuclide releases when computing overall facility release totals to unrestricted areas. License Condition 27 imposed limits only upon incinerator radionuclide releases. Effluents from Building 21, and from other buildings on the NIH campus, are limited separately by other license conditions and by the limits imposed by 10 CFR Part 20 on effluents to unrestricted areas.

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10 CFR 51.22(c)(14)(xvi) provides that any use of source, byproduct, or special nuclear material which involves quantities and forms of these materials similar to those involved in actions eligible for categorical exclusion from environmental assessments is also eligible for exclusion, pursuant to 10 CFR 51.22(c)(14)(i)–(xv). NIH releases daily to the sewers a very large amount of water from its various buildings and the Clinical Center. This volume of water, which substantially exceeds one million gallons per day, provides very large dilution factors for radioactive wastes released to the sewers. At the level of 8 Ci/year, the resulting average concentrations of radioactivity in water leaving the NIH campus are a small fraction of the allowable concentrations specified in the 10 CFR Part 20, Appendix B, Table 3, and thus NIH sewer disposal activity is eligible for categorical exclusion pursuant to 10 CFR 51.22(c)(xvi). *See* Section III.B.1, *supra*. The corresponding doses are, therefore, also small fractions of the public dose limits, and are of the same order of magnitude, or smaller, than those involved in activities that are eligible for categorical exclusion. It was, therefore, concluded that grant of the NIH application for an 8 Ci/yr sewer disposal limit was eligible for the categorical exclusion. NRC's review of the NIH amendment application for License Condition 21 also considered the fact that radioactive material in the sewer water released from NIH is further diluted at the Blue Plains Sewage Treatment Plant, to which NIH discharges its sewer water. Further dilution is provided by the Potomac River, to which the effluent from Blue Plains is discharged.

The 10 CFR Part 20 limit on total activity released to the sewers per year from a licensee's facility was imposed to guard against the possibility that more than one licensee may discharge radioactive material to the same sewer lines, thus raising the overall concentrations of radioactive materials in the sewer lines. This was not an important consideration in the case of NIH in view of the high water discharge volume from the facility, which ensures very low concentrations of radioactive materials, even in the presence of possible sewer discharges from other licensees discharging to the same sewer system. A review of the NIH records for sewer discharges in recent years showed that the annual quantities discharged have been less than the 7 Ci/yr limit in 10 CFR Part 20. License condition 21 did not impose separate limits on H–3 and C–14 discharges.

In view of the above, Petitioner's request for environmental assessments and/or safety evaluations providing the basis for authorization of License Condition 21 cannot be granted. Petitioner, however, has been provided with documents submitted by NIH to the NRC in support of the amendment requests to raise the sewer discharge limits.

3. Construction and Operation of the Low Level Waste Storage Facility at NIH's Poolesville Campus (License Condition 28)

Petitioner requests copies of the NRC environmental assessments and/or safety evaluations that provide the bases for the NRC grant of the Licensee's license amendment application for construction and operation of a low level waste storage facility at NIH's Poolesville campus. License Condition 28 of the License currently states that "Radioactive waste generated under this License shall be stored in accordance with the statements, representations, and procedures included with the Licensee's waste storage plan described in the Licensee's application dated October 13, 1992". The conditions under which radioactive waste is stored at the Poolesville facility are described in the Licensee's 1992 application for an amendment to permit such storage, and were incorporated into License Condition 28 as tie-down conditions. They were evaluated by the NRC staff and found to be adequate to ensure public health and safety and to minimize adverse environmental effects. The Poolesville facility is inspected routinely by NRC's Region I to ensure that the conditions described in the bases for the license amendment are being observed, in addition to observance of good radiological safety practices.

The application documents for the License Condition 28 provide detailed descriptions of the Licensee's Poolesville facility and surrounding environment and demography, storage building construction details, methods of waste storage, waste form and inventory control, and other relevant details. This information was provided in accordance with the instructions in NRC Information Notice IN 90–09, "Extended Interim Storage of Low-Level Waste by Fuel Cycle and Materials Licensees", which describes the information required by the NRC for its review of license amendment requests to authorize extended interim storage of low-level radioactive waste. This review is functionally equivalent to an environmental assessment for such facilities.

In view of the above, Petitioner's request for environmental assessments and/or safety evaluations in connection with authorization of License Condition 28 cannot be granted. Petitioner, however, has been provided with a copy of IN 90–09 and the information submitted by the Licensee in support of its application for authority to construct and operate the Poolesville low level waste storage facility, which is the functional equivalent of a an environmental report and safety evaluation.

C. Request to Forward a Copy of Future Correspondence Between NRC and NIH to Petitioner

As requested by Petitioner, North Bethesda Congress of Citizen's Associations will be placed on the distribution list for all correspondence regarding operation of the NIH incinerators, sewer disposal limits, and interim radioactive waste storage license amendments at the Poolesville facility.

IV. Conclusion

For the reasons discussed above, Petitioner's request to suspend authority for incineration operations by NIH pursuant to Condition 24 of the NIH License, pending a review and improvement of operating procedures for the incinerators, and pending preparation of an environmental assessment and an environmental report, was mooted by removal of that authority from NIH License No. 19–00296–10 in November 1994. Petitioner's request for copies of any NRC environmental assessments and/or safety evaluations that provide the bases for authorization of License Conditions 21 and 28 cannot be granted, as explained in Section III, supra. Certain information submitted by the Licensee in connection with its request for authorization of License Conditions 21, 24, and 28, and NRC correspondence in response, however, was provided to Petitioner. Petitioner's request for a copy of all future correspondence between NRC and NIH regarding these matters is granted.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 C.F.R. 2.206(c). As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 5th day of March, 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 95–6733 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by the Baltimore Gas and Electric Company (BG&E) to withdraw a portion of its December 8, 1993, application for proposed amendments to Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would revise Technical Specifications (TSs) Section 5.0, Design Features. The requested changes, for the most part, adopt the improved Standard Technical Specifications format and content for Combustion Engineering plants provided in NUREG–1432. Included in the initial December 8, 1993, application was a request to delete two subsections of the existing TSs. These subsections were Subsection 5.3.3, "Control Element Assemblies," and 5.6.3, "Drainage." Subsection 5.6.3 relates to inadvertent drainage of the spent fuel pool. By letter dated March 2, 1995, BG&E withdrew the request to delete these two subsections. The existing information in Subsection 5.3.3 will be retained in a new Subsection 5.2.2 and the information in Subsection 5.6.3 will be retained in a new Subsection 5.3.2. The new subsection designations are necessary to be consistent with the reformatting of the Design Features Section of the TSs.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments to Facility Operating License Nos. DPR–53 and DPR–69, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing, which was published in the **Federal Register** on January 19, 1994 (59 FR 2861).

For further details with respect to this action, see the application for amendments dated December 8, 1993, as supplemented on March 2, 1995. The March 2, 1995, letter provided clarification of the initial application and withdrew the request to delete the two subsections as detailed above. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 14th day of March 1995.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6731 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 185 to Facility Operating License No. DPR–61 issued to the Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance to be implemented within 30 days of issuance.

The amendment revises the Haddam Neck Plant Technical Specifications (TS) to allow an increased limit for fuel enrichment. The change allows the storage of fuel with an enrichment not to exceed a nominal 5.0 weight percent (w/o) U–235 in the Haddam Neck Plant new and spent fuel storage racks. The current new and spent fuel storage rack maximum nominal enrichment is 3.9 w/o U–235 for Zircaloy clad fuel and 4.0 w/o U–235 for stainless steel clad fuel.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 14, 1994 (59 FR 30620). No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 7798).

For further details with respect to the action see (1) the application for amendment dated May 17, 1994, as supplemented September 9, 1994, and January 31, 1995, (2) Amendment No. 185 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 10th day of March 1995.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Management, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6734 Filed 3–17–95; 8:45 am]

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POSTAL RATE COMMISSION

[Docket No. RM95–2]

Procedural Streamlining Inquiry; Notice of Request for Comments on Information Contained in Postal Service Requests

March 15, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley

On December 14, 1994, the Commission issued an Advance Notice of Proposed Rulemaking (Advance Notice) seeking suggestions concerning how the Commission's rules of practice and procedure could be amended or supplemented to improve the efficiency and expedition of consideration of requests for changes in postal rates and classifications conducted pursuant to 39 U.S.C. 3624(a). Comments were due on or before February 21, 1995, and the Commission has received several thought provoking statements from frequent participants in these cases. Several comments emphasized the importance of timely access to Postal

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Service data, see for example, Comments of McGraw-Hill, Inc.

The Postal Service filed comments in response to the Advance Notice. It suggests that rate and classification reques'ts could be improved if consideration were given to reducing the amount of information which the Postal Service is required to provide in support of its requests. It suggests that the Commission "canvass the postal community as to which of the Postal Service's filings are actually used in the course of Commission litigation." Response of the United States Postal Service to Request for Comments at 5.

The rules applicable to requests for changes in rates and fees describe the scope of supporting information which the Postal Service must provide, *see* rules of practice 54(b)–(r). The rules applicable to requests for changes in the Domestic Mail Classification Schedule describe the scope of supporting information which the Postal Service must provide, *see* rules of practice 64(b)–(h). The vast preponderance of these rules relate to the rationale supporting the Postal Service request, or estimates of the effect on costs, volumes, and revenues should the proposed changes be accepted.

This request for information is being sent to participants in the last two omnibus rate cases, Docket Nos. R94–1 and R90–1. Recipients are requested to comment on whether current rules of practice 54(b)–(r) or 64(b)–(h) require the Postal Service to provide information which is either not helpful to participants or likely to be largely irrelevant to issues in rate and classification cases. Respondents are asked to indicate either specific rules or subjects which might be eliminated without reducing the Commission's ability to issue recommended decisions which comport with applicable statutory criteria.

Respondents are assured that this remains a preliminary stage in the effort to streamline Commission proceedings. No changes will be made in this proceeding without providing interested persons an opportunity to comment on specific proposals. Nonetheless, responses on the general topic of whether current filing requirements are unnecessarily burdensome to the Postal Service will assist the Commission to direct the focus of subsequent phases of this rulemaking, and submissions on this proposition by interested participants will be extremely helpful.

By direction of the Commission.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–6757 Filed 3–17–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35482; File No. 600–25]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Request and Order Approving Application for Extension of Temporary Registration as a Clearing Agency

March 13, 1995.

On February 28, 1995, the Participants Trust Company ("PTC") files with the Securities and Exchange Commission ("Commission") a request pursuant to section 19(a)[1] of the Securities Exchange Act of 1934 ("Act") for extension of its registration as a clearing agency under Section 17A[2] of the Act for a period of one year.[3] The Commission is publishing this notice of filing of request and order to solicit comments from interested persons and to grant PTC's request for an extension of its temporary registration as a clearing agency through March 31, 1996.

On March 28, 1989, the Commission granted PTC's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a)[4] of the Act on a temporary basis for a period of one year.[5] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency, the last of which extended PTC's registration until March 31, 1995.[6]

As discussed in detail in the initial order granting PTC's temporary registration,[7] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities, and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. For example, the par value of GNMA securities on deposit at PTC has grown from $850 billion on December 31, 1993, to $967 billion on December 31, 1994, with average monthly GNMA I principal and interest distributions processed by PTC increasing from $13.5 billion in 1993 to $103.9 billion in 1994. The par value of VA REMICs on deposit at PTC has grown from $4.634 billion on December 31, 1993, to $7.256 billion on December 31, 1994. The average monthly transaction volume processed by PTC has grown from 309,000 in 1993 to 353,225 in 1994.[8] PTC also has expanded its product base with the designation of GNMA REMICs,[9] GNMA Platinum securities,[10] and certain Freddie Mac REMICs backed by GNMA securities[11] as depository eligible securities. In addition, PTC declared a dividend of $1.00 per share to stockholders of record on December 31, 1994.[12]

PTC also continued its efforts over the past year to implement operational and procedural changes in connection with PTC's temporary registration.[13] For example, PTC eliminated the Deliverer's Security Interest from its rules in response to its commitment made to the Commission and the Federal Reserve Bank of New York.[14]

PTC has functioned effectively as a registered clearing agency for the past six years. In light of PTC's past performance, the Commission believes that PTC has the capacity to comply with the statutory obligations set forth under Section 17A(b)(3) of the Act[15] as the prerequisites for registration as a clearing agency. Comments received during PTC's temporary registration will be considered in determining whether PTC should receive permanent registration as a clearing agency under Section 17A(b) of the Act.[16]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the request for extension of temporary registration as a clearing agency that are filed with the Commission, and all written communications relating to the requested extension between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. 600–25.

Conclusion

On the basis of the foregoing, the Commission finds that PTC's request for extension of temporary registration as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, That PTC's temporary registration as a clearing agency (File No. 600–25) be, and hereby is, extended through March 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6698 Filed 3–17–95; 8:45 am]

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[1] 15 U.S.C. 78s(a)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (February 28, 1995).

[4] 15 U.S.C. 78q–1(b)(2) and 78s(a) (1988).

[5] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[6] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13846; 30537 (April 9, 1992), 57 FR 12351; 32040 (March 23, 1993), 58 FR 16902; and 33734 (March 8, 1994), 59 FR 11815.

[7] *Supra* note 5.

[8] *Supra* note 3.

[9] Securities Exchange Act Release No. 34154 (June 3, 1994), 59 FR 30073.

[10] Securities Exchange Act Release No. 35044 (December 2, 1994), 59 FR 63847.

[11] Securities Exchange Act Release No. 34472 (August 1, 1994), 59 FR 40397.

[12] Securities Exchange Act Release No. 35205 (January 9, 1995), 60 FR 3444.

[13] In connection with PTC's original temporary registration, PTC committed to the Commission and to the Federal Reserve Bank of New York to make a number of operational and procedural changes which include:

(1) Eliminating trade reversals from PTC's procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse transfers because customers may not be able to fulfill financial obligations to the participants;

(5) Eliminating the deliverer's security interest and replacing it with a substitute;

(6) Reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) Expanding and diversifying PTC's lines of credit;

(8) Assuring operational integrity by developing and constructing a back-up facility; and

(9) Reviewing PTC rules and procedures for consistency with current operations.

[14] Securities Exchange Act Release No. 34701 (September 22, 1994), 59 FR 49730.

[15] 15 U.S.C. 78q–1(b)(3) (1988).

[16] 15 U.S.C. 78q–1(b) (1988).

[17] 17 CFR 200.30–3(a)(50)(i) (1994).

[Release No. 34–35478; File No. SR–MSTC–95–05]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Distribution of Reorganization Processing Reports and Notices

March 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] ("Act"), notice is hereby given that on March 3, 1995, the Midwest Securities Trust Company ("MSTC") filed with Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend MSTC's procedures regarding distribution reorganization notices and reports. Effective March 3, 1995, hard copy reports will only be distributed upon request to those participants who have access to MSTC's On-Line Report Availability ("ORA") function.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce participant cost by distributing certain reorganization processing reports and notices electronically through MSTC's ORA function to those participants who have terminal access. In an earlier proposed rule change,[2] MSTC amended its procedures regarding the distribution of reports and notices. In that filing, MSTC stated that it would distribute certain of those reports in hard copy form. Effective March 3, 1995, hard copy reports will only be distributed upon request to those participants who have access to MSTC's ORA function.

MSTC believes the proposed rule change is consistent with the requirements of the Act, specifically with Section 17A of the Act, and the rules and regulations thereunder because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MSTC will notify the Commission of any written comments received MSTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[3] of the Act and pursuant to Rule 19b–4(e)(4)[4] promulgated thereunder because the proposal effects a change in an existing service that does not adversely affect the safeguarding of securities of funds in MSTC's custody or control or for which it is responsible and does not significantly affect the respective rights or obligations of MSTC or persons using MSTC's services. At any time within sixty days of the filing of such rule change, the Commission

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of MSTC's changes to its reorganization processing system, refer to Securities Exchange Act Release No. 35293 (January 30, 1995), 60 FR 6741 [File No. SR–MSTC–94–19] (notice of filing and order granting accelerated approval of proposed rule change).

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] 17 CFR 240.19b–4(e)(4) (1994).

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may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–05 and should be submitted by April 10, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6697 Filed 3–17–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–20954; No. 812–9364]

New York Life Insurance and Annuity Corporation, et al.

March 14, 1995.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the investment Company Act of 1940 ("1940 Act").

APPLICANTS: New York Life Insurance and Annuity Corporation ("NYLIAC"), NYLIAC LifeStages Annuity Separate Account ("Separate Account") and NYLIFE Distributors, Inc. ("Distributors").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance and sale of certain flexible premium variable annuity contracts ("Contracts"), and in connection with certain other NYLIAC variable annuity contracts which are substantially similar in all material respects to the Contracts ("Other Contracts") which are offered in the future through the Separate Account. Applicants also seek to deduct mortality and expense risk changes from the assets of any other similar separate account(s) established by NYLIAC ("Other Accounts"), whether currently existing or hereafter created, in connection with the issuance and sale of the Other Contracts. Applicants also request that the exemptive relief include any other broker-dealer ("Other Broker-Dealers") which may serve in the future as principal underwriter of the contracts or of the Other Contracts.

FILING DATE: The application was filed on December 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on April 4, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested Persons may requests notification of hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, The Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o New York Life Insurance and Annuity Corporation, 51 Madison Avenue, New York 10010.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel or Wendy Friedlander, Deputy Chief at (202) 942–0670, Office of Insurance Products (Division of Investment Management)..

SUPPLEMENTARY INFORMATION: Following is a summary of the application; complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. NYLIAC, a stock life insurance company, is wholly-owned by New York Life Insurance Company ("New York Life"), a mutual life insurance company. NYLIAC is principally engaged in offering life insurance and annuities and is admitted to do business in all 50 states, the District of Columbia, Puerto Rico and Canada.

2. The Separate Account was established by NYLIAC to fund the Contracts. The Separate Account and the Other Accounts may be used to fund Other Contracts. The Separate Account has filed a notice of registration under the 1940 Act to register as a unit investment trust, and a registration statement under the 1940 Act and the Securities Act of 1933 ("1933 Act") to register the Contracts as securities. Other Accounts each will file a notice of registration under the 1940 Act to register as unit investment trusts, and a registration statement under the 1940 Act and the 1933 Act to register any Other Contract as securities.[1]

The Separate Account currently has seven investment divisions, each investing exclusively in one of seven corresponding portfolios of New York Life MFA Series Fund, Inc. ("Fund"), a diversified, open-end management investment company registered under the 1940 Act. Additional investment divisions may be established in the future to invest in other Fund portfolios or in other investments. Portfolio shares also may be offered to Other Accounts.

3. Distributors, currently the principal underwriter of the Contracts is an indirect wholly-owned subsidiary of New York Life. Broker-Dealer and is a member of the National Association of Securities Dealers ("NASD"). Distributors may enter into agreements for the sale of the Contracts or the Other Contracts with Other Broker-Dealers which will be registered under the 1934 Act,[2] and which are or will be members of the NASD.

The Contracts are to be used either in connection with retirement plans qualities under Sections 401(a), 403(a) 403(b), 403(b), 408 OR 457 of the Internal Revenue Code or by any other purchaser for whom the Contracts may provide a suitable investment.

5. The Contracts provide for the payment of initial premium payments and allow for additional premium payments at any time prior to Annuity Commencement Date for the life of the Annuitant. Contract owners may direct the allocation of premium payments, as well as Accumulation Value, among the investment divisions and to the Fixed Account, which is part of NYLIAC's General Account. Accumulation value is determined on a variable basis by the investment experience of the investment divisions selected for the allocation of premium payments, other than the amount allocated to the Fixed Account.

6. The Contracts also provide for the payment of a minimum death benefit equal to the greatest of: (a) Accumulation Value, less any outstanding loan balance under the Contract, (b) the sum of all premium payments made less any outstanding loan balance, partial withdrawals, CDSL deductions and any rider premiums, or (c) the "reset value" plus any additional premium payments, other than rider premiums, made since the most recent "reset date," less any outstanding loan balance, withdrawals made since the most recent "reset date," and any CDSL deductions applicable to such withdrawals.[3]

7. Various fees and charges are deducted under the Contracts, An annual Contract fee of the lesser of $30 or 2% of the Accumulation Value at the end of the Contract Year will be deducted on each Contract Anniversary during the Accumulation Period, or upon surrender of the Contract if on that date the Accumulation Value is less than $20,000. A daily charge equal, on an annual basis, of up to .15% of the net asset value of the appropriate separate account will be deducted to cover administration expenses of the Contract and of the Other Contracts. These fees are guaranteed for the life of such Contracts or Other Contracts and will not exceed the cost of services to be provided over the life of such Contracts, in accordance with the provisions of Rule 26a–1 under the 1940 Act.

8. A charge for premium taxes imposed by state law may be deducted under the Contracts, either when a surrender or cancellation occurs, or at the Annuity Commencement Date or the Retirement Date, as applicable. Currently, these taxes range up to 3.5%. The Separate Account and the investment divisions may bear charges for federal income taxes, should such taxes be incurred by NYLIAC in connection with the operation of the Separate Account.

9. No charge currently is deducted for the first twelve transfers during any Contract Year or for transfers prior to 30 days before the Annuity Commencement Date. NYLIAC reserves the right to charge a $30 fee for each transfer in excess of twelve per Contract Year.

10. No sales charge currently is deducted from premium payments under the Contracts, nor will be deducted under Other Contracts. Surrenders and partial withdrawals, however, are subject to a maximum contingent deferred sales load ("CDSL") of 7% during the first three years, declining by 1% per year thereafter until reaching 0% in the sixth year. Other Contracts will be subject to a maximum 7% CDSL. The total CDSL will not exceed 8.5% of the premium payments under the Contract or Other Contracts. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the CDSL.

11. A daily charge equal to an effective annual rate of 1.25% of the net asset value of each investment division will be imposed to compensate NYLIAC for bearing certain mortality and expense risks in connection with the Contracts and Other Contracts. Of this amount, 0.75% is allocable to mortality risks and 0.50% is allocable to expense risks. This charge may be a source of profit for NYLIAC which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

12. The mortality risk borne by NYLIAC arises from its obligation to make annuity payments (determined in accordance with the Annuity Tables and other provisions contained in the Contract), where a life annuity is selected, regardless of how long an Annuitant may live. The mortality risk under the Contract is the risk that, upon selection of an annuity payment option which has a life contingency, Annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected income payments. NYLIAC also is assuming mortality risk as a result of its promise to pay a minimum death benefit under the Contracts.

13. The expense risk borne by NYLIAC under the Contract is the risk that the charges for administrative expenses, which are guaranteed for the life of the Contract, may be insufficient to cover the actual costs of issuing and administering the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an order under Section 6(c) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction from the assets of the Separate Account or Other Accounts of a charge for mortality and expense risks under the Contracts or Other Contracts. Applicants also request that the exemptive relief extend to Other Broker-Dealers which may serve in the future as principal underwriters of the Contracts or Other Contracts.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

4. Applicants submit that their request for an order is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for NYLIAC to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring NYLIAC repeatedly to seek exemptive relief with respect to the same issues addressed in this Application.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current

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[1] Applicants undertake to amend the application during the notice period to make this representation.

[2] Applicants undertake to amend the application during the notice period to make this representation.

[3] The "reset value," is equal to the Accumulation Value, as recalculated on each "reset date" (every 3 years from the date of initial premium payments until age 85). If the new reset value calculated on the most recent reset date is higher than the previous reset value, the new reset value will be retained for purposes of determining the available death benefit. If it is lower, the old reset value will be retained. The formula guarantees that the amount paid will at least equal the sum of all premium payments (less any outstanding loan balance, partial withdrawals, CDSL deductions and rider premiums), independent of the investment experience of the Separate Account.

[5] 17 CFR 200.30–3(a)(12) (1994).

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charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants state that NYLIAC will maintain at its corporate headquarters [4] and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

Similarly, prior to making available any Other Contracts, Applicants will determine that the mortality and expense risk charges under any such Other Contracts will be within the range of industry practice for comparable contracts. Applicants state that NYLIAC will maintain at corporate headquarters [5] and make available to the Commission, upon request, a memorandum outlining the methodology underlying such conclusion.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. NYLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract Owners. NYLIAC will keep at its corporate headquarters [6] and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

7. Similarly, Applicants recognize that, if a profit is realized from the mortality and expense risk charge under the Other Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSL. Prior to issuing Other Contracts, NYLIAC will determine that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the relevant separate account and the Other Contract Owners. The basis for that conclusion will be set forth in a memorandum which will be maintained by NYLIAC at its corporate headquarters [7] and will be made available to the Commission, upon request.

8. Applicants represent that the Separate Account, and any Other Accounts, will invest only in underlying funds that have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above. In addition, Applicants undertake to rely on the exemptive relief requested herein with respect to Other Contracts only if such Other Contracts are substantially similar in all material respects to the Contracts.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under Other Contracts, offered by the Separate Account or by Other Accounts, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6749 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–M

[4] Applicants undertake to amend the application during the notice period to make this representation.

[5] Applicants undertake to amend the application during the notice period to make this representation.

[6] Applicants undertake to amend the application during the notice period to make this representation.

[7] Applicants undertake to amend the application during the notice period to make this representation.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 19, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Financing Eligibility Statement

Form No.: SBA Form 1941A, B, and C

Frequency: On Occasion

Description of Respondents: SBA businesses seeking financing from Specialized Small Business Investment Companies (SSBIC)

Annual Responses: 1,000

Annual Burden: 2,000

Dated: March 10, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–6712 Filed 3–17–95; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the pubic that the agency has made such a submission.

DATES: Comments should be submitted on or before April 19, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Application for Section 502/504 Loan

Form No.: SBA Form 1244

Frequency: On Occasion

Description of Respondents: SBA business applying for financial assistance

Annual Responses: 4,000

Annual Burden: 9,000

Dated: March 9, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–6713 Filed 3–17–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2760; Amdt. #4]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective immediately, to establish the incident period for this disaster as beginning on January 3, 1995 and continuing through February 10, 1995.

All other information remains the same, i.e., the termination date for filing applications for economic injury is October 10, 1995. The deadline for filing applications for physical damage expired on March 13, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 14, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–6778 Filed 3–17–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 10, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50185.
Date filed: March 7, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Reso 024f, Local Currency Fare Changes—Hungary.
Proposed Effective Date: May 1, 1995.
Docket Number: 50186.
Date filed: March 7, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso/C 0621 dated February 24, 1995, Expedited Cargo Resos (except to/from US/UST).
Proposed Effective Date: April 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–6805 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 10, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50182.
Date filed: March 6, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 3, 1995.
Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. Section 41102 of the Act and Subpart Q of the Regulations applies for issuance of a new or amended certificate of public convenience and necessity, so as to authorize UPS to provide foreign air transportation of property and mail between any point or points in the United States, on the one hand, and any point or points in Canada, on the other hand.

Docket Number: 50195.
Date filed: March 10, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 7, 1995.
Description: First Amendment to the Application of Aeroservicios Ecuatorianos, C.A., amends its pending Foreign Air Carrier Permit to encompass authority to perform scheduled foreign air transportation of property and mail between Guayaquil and Quito, Ecuador, via the intermediate points Bogota, Colombia and/or Panama City, Panama, and the U.S. co-terminal points Miami, New York, Houston and Los Angeles. AECA proposes to operate five (5) weekly frequencies to Miami; one (1) weekly frequency to New York; and one (1) weekly frequency to Los Angeles, as currently authorized by its homeland license, or such additional frequencies as may be authorized by the Ecuadorian aviation authorities from time to time.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–6806 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Research, Engineering and Development Advisory Committee, Aviation Weather Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Aviation Weather Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Monday, April 3, 1995, 1 PM to 5 PM and continue on Tuesday, April 4, 1995, 8 AM to 5 PM. The meeting will take place at Forecast Systems Laboratory (FSL), 3100 Marine Street, Boulder, Colorado in room 274.

The agenda for this meeting will include presentations and demonstration by FSL and the National Center for Atmospheric Research of their work in developing aviation weather products for the Federal Aviation Administration (FAA) and National Weather Service.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact Mr. Carl McCullough, ASD–110, 800 Independence Avenue, SW., Washington, DC, at (202) 287–8595, the FAA Designated Federal Official to the subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

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Issued in Washington, DC, on March 15, 1995.

Andres Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95–6782 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Arshile Gorky: The Breakthrough Years" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at The National Gallery, Washington, DC, from on or about May 7, 1995, to on or about September 17, 1995, the Albright-Knox Art Gallery, Buffalo, NY, from on or about October 13, 1995, to on or about December 31, 1995, and at the Modern Art Museum of Fort Worth, Forth Worth, Texas, from on or about January 13, 1996, to on or about March 17, 1996, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: March 14, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–6779 Filed 3–17–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547

Sunshine Act Meetings

Federal Register
Vol. 60, No. 53
Monday, March 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 7, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6943 Filed 3–16–95; 2:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 14, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6944 Filed 3–16–95; 2:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 21, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314/

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6945 Filed 3–16–95; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 28, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6946 Filed 3–16–95; 2:49 p.m.]

BILLING CODE 6351–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 10, 1995, 60 FR 13209.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 15, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added on the Agenda scheduled for March 15, 1995:

Item No., Docket No. and Company

CAG–32—RP95–202–000, Sea Robin Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 95–6970 Filed 3–16–95; 9:45 am]

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Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200 et al.
Restrictions on Assistance to Noncitizens; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960

[Docket No. R–95–1409; FR–2383–F–05]

RIN 2501–AA53

Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits the Secretary of HUD from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in HUD's Public Housing and Indian Housing programs (including homeownership), the Section 8 housing assistance payments programs, the Housing Development Grants program, the Section 236 interest reduction and rental assistance programs, the Rent Supplement program, and the Section 235 homeownership program. This final rule follows a proposed rule published on August 25, 1994, and takes into consideration the public comment received on the August 25, 1994 proposed rule.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Certificate, Rental Voucher, and Moderate Rehabilitation (except Single Room Occupancy—"SRO") programs—Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–0744;

(2) For Indian Housing programs—Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–1015;

(3) For the Section 8 Moderate Rehabilitation SRO program—Maggie H. Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–4300;

(4) For the other Section 8 programs, the Section 236 programs, Housing Development Grants and Rent Supplement—Barbara Hunter, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3944; and

(5) For the Section 235 homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–1824.

For persons with hearing impairment, the TDD number is (202) 472–6725. None of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and when approved and assigned OMB control number(s), the control numbers will be published by separate notice in the **Federal Register**.

II. Procedural Matters

A. Implementation of Section 214

HUD reiterates the statement made in the August 25, 1994 proposed rule that the restrictions on the use of assisted housing by noncitizens with ineligible immigration status (see 59 FR 43900–43901) takes effect when this final rule takes effect, which is 90 days from the date of publication in the **Federal Register**. Accordingly, until that time, covered entities (i.e., housing authorities, managers of HUD-assisted housing, and mortgagees in the Section 235 FHA insurance program) are not authorized to take any action based on the eligible immigration status of applicants and tenants.

B. Using the "Effective Date of the Final Rule" as the Pivotal Date, Rather Than "Date of Enactment"

HUD also reiterates its statement in the August 25, 1994 proposed rule concerning the use of the effective date of the final rule as the pivotal date rather than the date of enactment of the statute (see 59 FR 43901). Paragraph (c)(1) of Section 214 was added by the Housing and Community Development Act of 1987 (the 1987 Act) and confers discretion on the Secretary of HUD to continue assistance or defer termination of assistance on behalf of an individual for whom assistance would otherwise be terminated if that person was "receiving such assistance on the date of enactment of the Housing and Community Development Act of 1987."

The term "date of enactment" is also found in Section 214(d) in the description of the elderly persons who need not provide documentation of their immigration status. The statute exempts from such documentation any individual who is "62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987."

HUD has determined that the provisions of Section 214 are to complex to be determined self-implementing as of the date of enactment of the 1987 Act (February 5, 1988). Thus, the restrictions of Section 214 will not be felt until this final rule is published and effective.

C. Nondiscrimination in Implementation of Section 214

Several commenters stated that implementation of Section 214 could promote discrimination against certain minority and ethnic groups. Section 214 is constructed in a way that allows little discretionary action in its implementation. This was discussed to some extent in the preamble to the proposed rule (59 FR 43900). As noted in the preamble to the August 25, 1994 proposed rule, Section 214 is specific concerning those noncitizens who are eligible for HUD housing assistance. Section 214 also specifies the type of documentation that must be submitted, the type of verification to be undertaken, and the type of due process procedures available to individuals and families. Therefore, a housing authority or project owner does not have the discretion to accept or deny admission to certain categories of noncitizens, but not others, because the statute specifies the eligible categories. Further, the housing authority or project owner does not have the discretion to request certain immigration documentation from certain noncitizens, but not others, because the statute specifies the acceptable documentation as does this rule. The housing authority or project owner does not have the discretion to request documentation of citizenship status because the statute, as does this rule, provides that citizens only need execute a declaration of citizenship status, signed under penalty of perjury HUD is aware of the sensitive nature of verifying eligible immigration status for HUD public housing and assisted housing, and has included a separate section in the implementing regulations setting forth applicable nondiscrimination requirements. In setting forth the applicable nondiscrimination requirements, however, the final rule does not (nor did the proposed rule) summarize the content of each nondiscrimination statute or regulation (e.g., such as title VI of the Civil Rights Act of 1964 or the Fair Housing Act). These nondiscrimination statutes and regulations which are longstanding and applicable to almost all HUD programs are familiar to housing authorities and project owners.

III. Statutory and Regulatory Background

The restrictions on providing housing assistance to noncitizens with ineligible immigration status have been embodied in statute since 1980. Section 214 of the Housing and Community Development Act of 1980 (94 Stat. 1637) (Section 214) was the original basis for restrictions on providing assistance to noncitizens with ineligible immigration status in the assisted housing programs. Section 214 was amended by section 329(a) of the Housing and Community Development Amendments of 1981 (94 Stat. 408), by section 121(a)(2) of the Immigration Reform and Control Act of 1986 ("IRCA", 100 Stat. 3384), and by section 164 of the Housing and Community Development Act of 1987 (101 Stat. 1860). (Section 214, as amended by these statutory sections, is codified at 42 U.S.C. 1436a.)

There have been several previous attempts by HUD to implement Section 214 by regulation. Rules, both proposed and final, were published in 1982 (47 FR 18914, and 47 FR 43674), 1986 (51 FR 15611), and 1988 (53 FR 842, and 53 FR 41038). Despite the publication of final rules during the period between 1982 and 1988, the statutory restrictions of Section 214 have not been made effective.[1]

This final rule, which takes effect on June 19, 1995, follows publication of a proposed rule published on August 25, 1994 (59 FR 43900) and takes into consideration public comment received on this proposed rule. The discussion of public comments on the August 25, 1994 proposed rule is set forth in Section V of this preamble.

IV. Differences Between the Proposed Rule and the Final Rule

As will be discussed in more detail in Section V of this preamble, very few changes were made to the Section 214 proposed regulations at the final rule stage because of the prescriptive nature of Section 214. Section 214 specifies the HUD programs that are covered by the statute, the categories of noncitizens that are eligible to receive HUD financial assistance, the procedures to be used to verify immigration status, the type of documentation that must be submitted, and who must submit this documentation, the appeal procedures to be provided to persons initially determined to have ineligible status, and the special assistance to be provided to certain families with members who have eligible status and those who have ineligible status. Accordingly, with the exception of clarifying changes, and editorial corrections, the principal changes made at the final rule stage are as follows:

1. *Removing housing authorities (HAs) and project owners as the "conduits" in the INS appeals process.* In response to public comment (from both representatives of housing authorities and project owners and representatives of resident groups), the final rule has been revised to allow applicants and tenants to directly appeal to INS, and INS to directly reply to applicants and tenants (i.e., without having to go through housing authorities and project owners as intermediaries in the INS appeal process).

2. *Clarifying that proration of assistance is not discretionary on the part of project owners and housing authorities.* The proposed rule was not clear on whether proration of assistance must be provided to eligible mixed families, or whether the project owner or housing authority had the discretion to offer proration of assistance. While the majority of commenters appeared to understand that proration of assistance must be offered to eligible mixed families, the final rule clarifies that this is the case.

3. *Strengthening the confidentiality and privacy of information concerning immigration status.* The final rule clarifies that HAs, landlords and HUD officials cannot use the information in their possession for any purpose other than determining an individual's eligibility for housing assistance.

V. Discussion of Public Comments

This section presents the significant issues raised by the public commenters on the August 25, 1994 proposed rule. Several commenters offered editorial suggestions to certain of the regulatory suggestions, or revised regulatory text. Each of these suggestions is not discussed in this section. To the extent that the suggestion or revision helped clarify the meaning of the regulatory text, the suggestion was adopted. In several cases the editorial comment did not convey the appropriate meaning of the regulatory text.

Application of Rule

Comment. Several commenters requested that the final rule grandfather in all current residents and apply the rule only to applicants.

HUD Response. The language of Section 214, which provides for preservation of assistance for those mixed families (those families who contain eligible and ineligible members) currently residing in HUD public housing and assisted housing, indicates that the Congress contemplated that the restrictions on housing assistance imposed by Section 214 would apply not only to applicants, but to tenants as well. (See Section 214(c)).

Comment. Another commenter requested that the rule not require the head of household or adult members to have legal immigration status, and thus permit children who have such status to enter into lease agreements and contracts on behalf of the adult members.

HUD Response. Section 214 restricts HUD from adopting the suggestion of the commenter. Section 214(d) provides for adult member to execute documents on behalf of children. Section 214(c) which addresses continued assistance is the statutory provision which requires the head of household or spouse to be a U.S. citizen or national, or to have the eligible immigration status listed in Section 214. In the case of a mixed family with eligible children and two ineligible adults (the adults are neither U.S. citizens or meet one of the six specified categories of eligible immigration status) may be eligible for prorated assistance, as provided in the August 25, 1994 proposed rule, and this final rule.

Comment. Another commenter requested that the rule clarify the application of Section 214 *vis a vis* local/Federal preferences.

HUD Response. Preferences and eligibility for public housing and HUD-assisted housing are two different matters. Families must first meet the eligibility requirements for public housing and HUD-assisted housing, and then local/Federal preferences are applied to eligible families.

Delay Effective Date of Final Rule

Comment. Several commenters requested that HUD delay the effective date of the final rule for six months because of the preparation and staff training that will be needed by housing authorities in connection with implementation of Section 214.

[1] A detailed history of the regulatory efforts to implement Section 214 (including why the final rules were not made effective) can be found in the rule published on January 11, 1988 (53 FR 842).

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HUD Response. HUD believes that the delay of 90 days is sufficient time for housing authorities and HUD to prepare for implementation of Section 214.

Guidance to Supplement Final Rule

Comment. Another commenter urged HUD to publish comprehensive guidance in connection with the publication of the final rule.

HUD Response. HUD has every intention of issuing guidance to assist HAs and project owners with implementation of Section 214.

Liability of Ineligible Tenants for Reimbursement of Benefits

Commenter. One commenter stated that an owner cannot be held responsible for pursuit of recapture of payment of subsidies to ineligible tenants.

HUD Response. The rule does not hold owners responsible for pursuit of repayments of subsidies to ineligible tenants, but rather when it is determined that HUD assistance was paid to an ineligible tenant, "the project owner *is encouraged* to refer to the case to the HUD Inspector General's office for further investigation." (Emphasis added; see, e.g., 24 CFR 200.192).

Recordkeeping

Comment. One commenter, referring to § 200.186(h) (Retention of documents), stated that the rule was not clear on which documents must be retained for a period of five years—documents for all families or just those families requesting an INS appeal.

HUD Response. Section 200.186(h) and the parallel provisions in §§ 812.9(h), 905.310(q), and 912.9(h) provide that the project owner or housing authority "shall retain for a minimum of five years the following documents that may have been submitted to the project owner by the family or provided to the project owner *as part of the INS appeal or the informal hearing process.*" (Emphasis added.)

Terminology

Comment. Five commenters stated that in lieu of the terms "citizen" and "noncitizens," HUD should refer to the persons eligible to apply for HUD housing as "authorized persons."

HUD Response. In using the term "noncitizen," HUD's intention is to convey the design of Section 214. Section 214 imposes no restrictions on HUD housing assistance for citizens, including U.S. nationals, but rather, imposes restrictions on the provision of housing assistance to those who are not citizens, by limiting housing assistance to certain categories of legally admitted noncitizens. All categories of noncitizens who are authorized to reside in the United States are not necessarily authorized to receive HUD housing assistance (for example, student noncitizens).

Eligibility for HUD Financial Assistance

Comment. One commuter stated that the rule does not address the status of "Section 203" preference class applicants, which, according to the commenter, are categorized by the Department of State as "spouses and children of legalization beneficiaries."

HUD Response. Section 214 lists those categories of noncitizens that are eligible for HUD housing assistance, and these categories are repeated in the rule with elaboration, based on information provided by INS. (See Section 214(a)). Section 200.182 and comparable sections (§§ 812.5, 905.310(a) and 912.5) provide that an eligible noncitizen includes one who is lawfully present in the United States "as a result of being granted conditional entry under section 203(a)(7) of the INA."

Comment. Another commenter stated that the rule does not take into account the transborder treaty agreements concerning Native Americans. The commenter noted that under these treaty agreements, many Native Americans have the right to cross freely into the United States and have the legal right to reside and work in the United States.

HUD Response. Neither Section 214 nor these regulations interfere with transborder treaty agreements concerning Native Americans.

Evidence of Eligible Status

Comment. Eight commenters stated that HUD exceeds its authority in implementing regulations that require documentation and verification from applicants. These commenters stated that the statute only imposes documentation requirements on noncitizens who were residing in assisted housing when the statute was enacted to document their ineligible status.

HUD Response. HUD disagrees with the interpretation proposed by the commenters. The statute refers to documentation requirements "at the time of application" (see Section 214(d)(4)), and speaks in terms of "denying" assistance, not just "terminating" assistance (see Section 214(d)(4)), which therefore indicate that the statute intended to encompass applicants, and not just those families residing in HUD public housing and assisted housing at the time of enactment of the statute.

Comment. Eight commenters requested that the final rule require U.S. citizens to provide documentation of eligibility, and that citizenship status should be verified. Other commenters stated that a declaration signed under penalty of perjury, as required by the August 25, 1994 proposed rule of U.S. citizens, is inadequate and is not a realistic deterrent against fraud. Another commenter stated that the declaration, to be signed by U.S. citizens, should require the individual signing the declaration to identify his or her place of birth, city, county and State. Another commenter requested that the final rule require U.S. citizens to submit the same type of documentation that is currently required of U.S. citizens under employer verification requirements. Another commenter requested that persons 62 years of age or older should be subject to same documentation requirements as everyone else.

HUD Response. The Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99–603, approved November 6, 1986) amended Section 214 by providing a procedure for the submission and verification of evidence of citizenship or eligible immigration status. The amendment specifically provides that U.S. citizens and nationals only need submit a declaration in writing, signed under penalty of perjury (Section 214(d)). For individuals 62 years of age or older Section 214 requires documentation if "such an individual is not a citizen or national of the United States, is not 62 years of age or older" (Section 214(d)(2)). Accordingly, HUD interprets this language to provide that individuals 62 years of age or older and receiving assistance on the effective date of the final rule, like citizens or nationals, need only submit a declaration in writing, and proof of age.

Comment. Two commenters stated HUD should disseminate standard and model documents, such as a standard declaration form, and acceptable INS forms.

HUD Response. In its guidance to be issued in connection with implementation of the final rule, HUD intends to provide as much information as possible to housing authorities and project owners, including, where appropriate, model documents, and samples of standard INS forms.

Documents in Languages Other Than English

Comment. Fifteen commenters stated that there is a substantial cost involved with the requirement imposed on housing authorities and project owners to provide documents in languages other than English to the extent "feasible." Twelve commenters stated that there will be disputes over "what is feasible." Six commenters stated that HUD should provide model notices in languages other than English. Another commenter stated the issue providing notification in languages other than English is not simply making documents available in other languages, but in having interpreters to interview applicants, and ask follow-up questions. Seven commenters stated that the translation of documents into other languages should be a firm requirement and not left to the owner's discretion.

HUD Response. The "feasibility" language in the rule is to assist housing authorities to maintain the flexibility that they currently have with respect to translating documents into languages other than English, and to exercise judgment with respect to translating documents into languages of a population group which they serve, of a substantial number, and which speaks a language other than English. Many housing authorities and project owners currently, without any requirement imposed, translate documents into languages other than English. Additionally, housing authorities and project owners may have staff in their employ which speak languages other than English, and can assist residents in understanding documents. Apart from the notices, certifications, and documentation required by this rule, applying for HUD public housing or HUD assisted housing involves reviewing and completing documents which make reference to certain rights and responsibilities; for example, the application form, the lease (which will specify the rights of the tenant, as well as sanctions that may be imposed against the tenant for violation of the lease) and other documents which support the individual or family's eligibility for assisted housing (i.e., documentation of income). It is HUD's understanding that housing authorities and project owners currently make efforts to assist residents with completion of these documents, if not by providing translated documents, by allowing individuals the opportunity and time to find a family member or friend who can assist them with understanding and completing these documents, or in some cases (as mentioned above), the housing authority may have in its employ an individual who can provide such assistance.

As noted in discussion of other aspects of applying for and residing in HUD public housing or assisted housing, HUD would like housing authorities and project owners to utilize procedures already in place with respect to implementation of this rule, to the extent possible. For example, the rule provides for housing authorities and project owners to verify immigration status at the same time other aspects of eligibility are verified. Similarly, HUD would like housing authorities and project owners to handle the documents required by this rule, which are important, in the same manner that they handle other important documents (again, the application, the lease, eviction notices, etc.) that specify the rights and responsibilities of the applicant or tenant. The "feasibility" language is to encourage housing authorities and project owners to continue procedures already in place to assist families whose first language is not English. Accordingly, HUD declines to make the translation of documents into a requirement, as suggested by some commenters.

When To Submit Evidence of Eligible Immigration Status

Comment. One commenter stated that submission of evidence of citizenship or eligible immigration status should occur at each annual recertification, and not simply one time during continuously assisted occupancy, as the proposed rule provided. The commenter stated that INS forms are by their very nature "temporary" in every case, and noted that the proposed rule calls for only an initial proffer of documents versus a yearly demonstration of eligibility.

HUD Response. The statute does not speak in terms of annual verification, but only in terms of an initial documentation and verification of tenants and applicants. Accordingly, HUD declines to revise the proposed rule to impose an annual demonstration of eligibility.

Comment. Two commenters stated that the final rule must clarify when evidence is to be submitted by applicants. The commenters noted that the August 25, 1994 proposed rule stated that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification or other aspects of eligibility for assistance will occur.

HUD Response. The responsibility of housing authorities and project owners is simply to ensure that this evidence is submitted by or within a reasonable time within which verification of eligibility will take place.

Extension of Time To Submit Evidence

Comment. Five commenters stated that the mandatory extensions of time imposed by the rule will create an administrative burden for authorities, owners, and managers.

HUD Response. The mandatory extensions of time are imposed by statute. Section 214(d)(A) *requires* the Secretary of HUD to provide a reasonable opportunity to submit evidence of eligible status if such evidence is not submitted at the time of application or recertification for financial assistance. Section 214(d) provides that "for purposes of this subsection, the term 'Secretary' means the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance."

Comment. Two commenters stated that the final rule should define what is meant by a "reasonable period of time." The commenters stated that "while we accept that the statute requires extensions of a 'reasonable period of time,' we are very concerned that without further definition in the rule, there will be countless disputes over whether the extension was sufficient." Two commenters stated that the rule should require more than a self-certification that documentation is temporarily unavailable. Three commenters stated that extensions of time to submit evidence must be the exception, and not the norm.

HUD Response. HUD believes that extensions of time will be the exception and not the norm, and that for those extensions requested, the extensions, generally, will not exceed 30 days in duration. However, HUD declines to establish by regulation what constitutes a reasonable period of time, and prefers to allow housing authorities and project owners the flexibility to determine what is reasonable given the circumstances of the particular case for extension before them.

Limiting Acceptable Immigration Evidence to INS Documents

Comment. Four commenters stated that HUD's list of acceptable documents is unnecessarily narrow and will cause hardship and inconvenience to eligible persons. The commenters stated that the seven categories listed in the statute can be documented through many more INS-issued and non-INS-issued documents than are listed in the rule. Four commenters stated that requiring two documents from those individuals with certain I–94s is both unfair and unjustified. Four commenters also stated that requiring that eligibility for the replacement of the document be verified before the receipt can even be submitted defeats the whole purpose of the rule's protections against delay or

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denial pending INS verification. Other commenters provided suggestions of other types of evidence that HUD and INS should determine as acceptable evidence of immigration status.

HUD Response. With respect to acceptable evidence of immigration status, HUD follows the guidance and requirements issued by INS. However, the final rule provides, as did the proposed rule, that other acceptable documents as announced by INS will be announced by notice published in the **Federal Register**.

Comment. One commenter stated that the list of documents of eligible immigration status did not reflect a proper understanding of INS procedures and of the Immigration Court's authority.

HUD Response. This list was prepared in consultation with the INS. Again, as noted in the response to the preceding comment, any additional acceptable evidence or any changes to the evidence listed in this rule will be announced by notice in the **Federal Register**, and HUD will make any conforming amendments, as may be necessary, at the earliest possible opportunity.

Verification of Eligible Immigration Status

Comment. Several commenters objected to HUD's proposed use of the SAVE system. The commenters stated that the SAVE system is ineffective, inaccurate, and costly. The commenters suggested that HUD should not use SAVE until it has been further tested. Other commenters encouraged the Secretary of HUD to waive the verification requirements of IRCA. Other commenters encouraged HUD to use, in lieu of SAVE, a verification system modeled on the current employer verification system.

HUD Response. HUD declines to adopt the suggestions of the commenters, and will proceed to use the SAVE system, as provided by Section 214. HUD believes that since its implementation SAVE has significantly improved, and is more effective and accurate than at the time of its start-up.

When Verification Is To Occur

Comment. Two commenters requested that the final rule provide that verification of immigration status occur at the time of application.

HUD Response. HUD declines to adopt the suggestion of the commenters, and the final rule provides, as did the proposed rule, that verification of immigration status should occur at the time that verification of other aspects of eligibility for assistance occur.

No Delay, Denial or Termination of Assistance Pending Verification or Appeals Process

Comment. Several commenters stated that applicants should not be admitted to housing until final eligibility is determined.

HUD Response. The statute is very clear that "pending verification or appeal, the Secretary may not delay, deny, reduce or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status." (See Section 214(d)(4)).

Comment. Thirteen commenters stated that the final rule should make clear that applicants who reach the top of the waiting list before INS completes its verification must be offered housing even though eligible status has not been established.

HUD Response. HUD believes that the final rule is clear on this issue, and no additional language need be added to the rule.

Appeal to INS of Adverse Determination Concerning Immigration Status

Comment. Twenty commenters, representing individuals, housing authorities and project owners, stated that the housing authority and the project owner should be removed from the INS appeal process; that this should be exclusively between the applicant/tenant and INS.

HUD Response. As noted earlier in this preamble, the final rule provides for direct applicant/tenant participation in the INS appeal process, and removes the housing authority or project owner as the intermediary. The final rule, however, provides for the housing authority and project owner to be copied on correspondence between INS and the applicant/tenant.

Comment. One commenter stated that the proposed rule misinterpreted the nature of immigration hearings and the authority of immigration judges to bind the INS. The commenter stated that any decision by the immigration court is final unless reversed on appeal by the Board of Immigration Appeals. Another commenter stated that the rule needs to clearly establish what an INS appeal is because the INS has no regulations or procedures in place regarding appeal from secondary verification.

HUD Response. In developing the proposed rule, and in developing this final rule, HUD solicited and received the assistance of the INS, and the rule reflects the input of INS. Although the INS regulations found in title 8 of the Code of Federal Regulations do not specifically reference appeal procedures applicable to the SAVE system, the INS regulations have procedures in place to provide for further determination of the accuracy of their records on noncitizens. (See 8 CFR part 103; see generally §§ 103.20–103.36.

Informal Fair Hearing Process

Comment. Several commenters requested that the final rule eliminate the hearing process to be provided by the housing authority or project owner. The commenters questioned the purpose of the hearing. The commenters stated that the project owner is not qualified to second guess the entire INS process and determine that an otherwise ineligible person or family is ineligible. Other commenters stated that HUD should not adopt a procedure which carves out special rights for a particular category of ineligible applicant.

HUD Response. The informal hearing process is mandated by statute. Section 214 provides that "if the Secretary determines, after complying with the requirements of paragraph (4) (which addresses the INS appeal process), that such an individual is not in a satisfactory immigration status * * * the applicable fair hearing process shall be made available with respect to the individual." (See Section 214(d)(4).)

Comment. Three commenters stated that with respect to the fair hearing provided by the housing authority or the owner, the right to discovery should be limited to those documents in the HA's possession.

HUD Response. In the matter of discovery, the HA or project owner only would be required to produce documents in its possession.

Comment. Three commenters stated that the rule should require the housing authority or project owner to incur the costs of any interpretive services.

HUD Response. HUD declines to adopt the suggestion of the commenter. HUD prefers to maintain the flexibility provided in the proposed rule, which allows for the parties to agree on the arrangement of interpretive services. HUD believes that in many cases, the applicant or tenant will rely upon a family member, relative, or friend to serve as the interpreter.

Preservation of Family (Mixed Family) Provisions

Mixed Families

Comment. A few commenters urged HUD to drop the "preservation of family" provisions in the rule. The commenters stated that ineligible persons should not be allowed to reside in an assisted unit.

HUD Response. The "preservation of family" provisions flow directly from

the statute. Section 214(c) provides for continued assistance and temporary deferral of termination of assistance for mixed families.

Comment. Four commenters asked whether a mixed family may choose temporary deferral of termination of assistance, and then select prorated assistance at the end of the deferral period.

HUD Response. A family that receives temporary deferral of termination of assistance bears a responsibility to make a good faith effort to obtain other affordable housing, and the family's efforts are monitored by the housing authority or project owner. If the family makes such good faith efforts but is unsuccessful in obtaining other affordable housing, the family shall be provided prorated assistance.

Continued Assistance

Comment. Several commenters objected to the restrictive definition of "family" which determines eligibility for continued assistance. The commenters stated that this definition unfairly penalizes a wide range of families, and further stated that the requirement that the head of household or spouse be a U.S. citizen is discriminatory.

HUD Response. The definition of "family" which determines eligibility for continued assistance is taken directly from the statute. Section 214(c)(1)(A), which addresses continued assistance, provides that HUD may permit the continued provision of financial assistance, if necessary to avoid the division of family in which: "the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any paragraphs (1) through (6) of subsection (a). For purposes of this paragraph, the term 'family' means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse."

Comment. Four commenters stated that the rule should make clear that housing authorities are not permitted to establish conditions for continued assistance that are more burdensome than permitted by statute. The commenters stated that this rule must set out in mandatory language the circumstances under which continued assistance must be granted.

HUD Response. The statute permits housing authorities the discretion to grant continued assistance. This issue was discussed in detail in the preamble to the proposed rule (see 59 FR 43913–43914). The final rule provides (as did the proposed rule) the conditions under which continued assistance may be granted by housing authorities (see §§ 812.11(c) and 912.11(c)).

Comment. One commenter requested that § 200.187 be revised to make clear that the requirements of this section, which address continued assistance, are not tied to the date on which the regulations become effective but rather continued assistance shall be determined as of the date following completion of the applicable hearing process.

HUD Response. HUD believes that the commenter misunderstands the reference to the "effective date of the rule" in this provision. This section provides that a family that is eligible for continued assistance must have been receiving assistance under a covered HUD program as of the effective date of the rule. In other words, continued assistance is not available to applicant families.

Deferral of Termination of Assistance

Comment. Five commenters requested that HUD remove the provision concerning temporary deferral of termination of assistance on the basis that this provision subjects owners and managers to legal liability. The commenters stated that this provision requires owners and managers to make a number of judgments (e.g., whether there is other affordable housing in the market) that would subject them to legal liability. Another commenter stated that this provision was discriminatory to other categories of residents; that no other category of resident who becomes ineligible for housing is protected from dislocation solely because the resident has not located other affordable housing. Seven commenters stated that the three year deferral period provided in the rule is too long, and that the period should be limited to six months or one year, at a maximum. The commenters stated that the three year period would adversely impact eligible families on the waiting list. Another commenter stated that the notification requirement imposed in connection with deferral of termination of assistance is burdensome.

HUD Response. In allowing for a period of up to three years to defer termination of assistance, HUD is adopting the language of Section 214, which provides for an aggregate period of three years (see Section 214(c)(1)(B)). Additionally, Section 214 requires that: "At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing." (See Section 214(c)(1)(B)). HUD believes that these "preservation of family" provisions reflect the concern of the Congress about displacement, or immediate displacement of families, who but for their immigration status, were eligible to reside in public housing or assisted housing, and had not otherwise presented cause for eviction or termination of assistance.

Comment. Fifteen commenters stated that the August 25, 1994 proposed rule imposes three conditions which must be met in order for a family to be eligible for temporary deferral of termination of assistance, and that families only should be required to meet one standard.

HUD Response. For project owners, § 200.187(c) of the final rule requires, as did the proposed rule, that temporary deferral of termination of assistance shall be granted to a mixed family if "*one* of the following conditions is met." This language is not adopted in §§ 812.10(c)(1), 905.310(r)(3) or 912.10(c)(1). Again, as discussed in detail in the preamble to the proposed rule, the statute gives directly to housing authorities the discretion to determine the appropriateness of providing continued assistance or temporary deferral of termination of assistance. Since this discretion is given directly to housing authorities, HUD cannot preempt this discretion and impose requirements on housing authorities. Accordingly, the "temporary deferral of termination" provisions for housing authorities more closely mirrors the language of the statute.

Comment. Two commenters stated that the final rule should impose specific conditions on housing authorities for the granting temporary deferral of termination of assistance, as it did for project owners.

HUD Response. As discussed in the preamble to the proposed rule (59 FR 43914), Section 214 permits HUD (in the case of project owners) or the HA to defer termination of assistance in certain circumstances. For project owners, the rule requires project owners to grant this type of relief if a family meets certain qualifying conditions for HAs, the rule permits HAs to determine whether this type of relief will be provided, but requires the HA, in establishing its standards, to be guided by the standards set forth in this rule implementing Section 214.

Proration of Assistance

Comment. A number of commenters voiced their objection to proration of assistance on the basis that this process

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would be an administrative nightmare. Several of these commenters advocated that in order to eliminate this burden, full assistance should be provided to a family when one or more members of the family have citizenship or eligible immigration status One commenter stated that proration of assistance was not supported by the language of Section 214. Another commenter stated that despite limiting assistance to only eligible family members, ineligible family members benefit from proration of assistance. Three other commenters suggested that only ineligible extended members of the family (and not core family members who have ineligible extended members of the family (and not core family members who have ineligible status) be counted as ineligible in determining prorated assistance. Other commenters made suggestions concerning alternative proration formulas, and one of these commenters suggested that HUD accept each housing authority's calculation of the rent level that would permit the housing authority to "break even without the benefit of Federal subsidies."

HUD Response. HUD carefully considered all of the suggestions and recommendations made by the commenters on the proration of assistance provisions, and declines to make changes to the August 25, 1994 proposed rule at the final rule stage. Proration of assistance is consistent with the preservation of Families provisions of Section 214, which provide for continued assistance and temporary deferral of termination of assistance. HUD believes that the proration formulas set forth in the rule are workable, and HUD will make every effort to assist housing authorities and project owners in making these formulas more easily workable.

Comment. Another commenter requested clarification whether providing proration of assistance is discretionary on the part of the housing authorities.

HUD Response. The final rule clarifies that for both housing authorities and project owners, proration of assistance must be offered to eligible mixed families.

Comment. Four commenters asked for guidance for action to be taken if the family is unable to pay prorated subsidy.

HUD Response. Housing authorities and project owners should utilize the procedures currently in place when a family is unable to pay its share of rent.

Comment. One commenter state that the prohibition against extension of assistance to noncitizen students should not be extended to the citizen children of the noncitizen student and noncitizen spouse.

HUD Response. The final rule provides, as did the proposed rule, that the prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student. Section 214 provides that nonimmigrant student are not eligible for financial assistance under the programs covered by Section 214. If the nonimmigrant student and the noncitizen spouse of the student have children born in the U.S., the citizenship status of the children would not be sufficient in and of itself to make the family eligible for prorated assistance because the fact remains that the family is in the United States for the purpose of the education of the nonimmigrant student, and not for the purpose of immigrating to the U.S. In other words, Section 213 covered financial assistance is not available to noncitizens who have not expressed an intention of immigrating to the United States.

Protection of Individual's Privacy

Comment. Ten commenters stated that the proposed rule failed to provide effective guards against the misuse of immigration status information submitted by applicants and tenants, and that the final rule should clarify that HAs, landlords and HUD officials cannot use the information in their possession for any purpose other than determining an individual's eligibility for housing assistance.

HUD Response. HUD agrees with the commenters and the final rule clarifies that immigration status information provided to HAs, landlords and HUD officials only may be used for purposes of determining an individual's eligibility for housing assistance.

Nondiscrimination Provisions

Comment. One commenter requested that the final rule contain a blanket hold-harmless provision to owners in the implementation of Section 214.

HUD Response. HUD declines to adopt this recommendation.

Comment. Ten commenters stated that HUD must establish explicit policies which prohibit and punish foreseeable discriminatory applications of the noncitizens restrictions. The commenters stated that the proposed rule merely recites general anti-discrimination laws from related statutes. The commenters stated that housing authorities should not be able to require different evidence of citizenship or eligible immigration status based on foreign accents or non-English sounding surnames.

HUD Response. HUD believes that the anti-discrimination statutes and regulations currently in place are sufficient to address discriminatory actions that may result in connection with implementation of Section 214, and establishment of additional policies and sanctions is not necessary. There is no need for HUD to impose sanctions and penalties in addition to, or similar to those imposed by the Fair Housing Act and Title VI of the Civil Rights Act. As discussed at the beginning of this preamble, Section 214 is constructed in a way that allows little discretionary action in its implementation. For example, Section 214 is very specific with respect to documentation requirements. Accordingly, if an individual signs a declaration under penalty of perjury that he or she is a citizen, that is all the documentation that is required under the statute and these regulations.

Administrative Burden/Unfunded Mandate

Comment. Although commenters acknowledged HUD's statement in the August 25, 1994 proposed rule that the costs of automated verification of immigration status through the SAVE system would be billed directly to HUD, the majority of the commenters stated that implementation of Section 214 imposes a substantial administrative burden, and HUD fails to address reimbursement of all of the costs associated with implementation of this statute, such as the various notification requirements, document collection, hearings, record retention, and the time and expense of training new staff in the new procedure for verifying noncitizen status.

HUD Response. HUD acknowledges that there are additional administrative responsibilities imposed by Section 214, and HUD has made every effort to minimize the administrative burden through this regulation. HUD will continue to make efforts to assist housing authorities and project owners to carry out their responsibilities through the guidance to be issued in connection with this final rule.

VI. Other Matters

Executive Order 12866. This final rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this rule as a result of that review are clearly identified in the docket file for this proposed rule, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC. 20410–0500.

Environmental Review. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the August 25, 1994 proposed rule. That Finding remains applicable to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. HUD believes that the rule, when implemented, will have only a minimal impact on small housing project owners, small mortgagees and small housing agencies, since the procedures specified to implement the restrictions are to require owners and HAs to use an easily accessible (by telephone) automated system for verifying immigration status. HUD has arranged for the cost of the automated verification system, established by the Immigration and Naturalization Service, to be billed directly to HUD. The only other significant element of cost or delay in administration of HUD programs that may be encountered by small entities as a result of this rule is the requirement for a fair hearing, on request, for any applicant or tenant found to be ineligible. This procedure is specifically required by 42 U.S.C. 1436a. However, HUD does not believe that the cost or delay related to this statutory requirement will be significant because HUD anticipates that small housing agencies, project owners and mortgagees will find that the majority of applicants or tenants are eligible to receive HUD assistance, and therefore fair hearing to determine eligibility on the basis of immigration status will be minimal. Accordingly, HUD concludes that this rule will not have a significant economic impact on a substantial number of small entities, an that to the extent possible, HUD has minimized the economic impact on all entities, consistent with the Secretary's responsibilities under section 143a.

Executive Order on Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the status that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of discretion in promulgating a rule to implement the statute.

Executive Order on the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the provisions of this final rule, while affecting the composition and well-being of families, are strictly the result of the statute that imposes the restriction. The only families upon whom the stature and the rule have an impact are those containing individuals with ineligible immigration status who are not receiving the benefit of assisted housing, or whose continued receipt of assisted housing is not necessary in order to avoid the division of the family. However, even for families that contain members with ineligible status, the rule strives to maintain the unity of the family under the regulatory provisions concerning special assistance to mixed families.

Regulatory Agenda. This final rule was listed as sequence number 1741 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57644), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 215

Grant Programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead

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poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 900

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 912

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, title 24 of the Code of Federal Regulations, parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960 are amended as follows.

PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

Authority: 12 W.S.C. 1701–1715z-18; 42 U.S.C. 1436a and 3535(d).

2. A new subpart G, consisting of §§ 200.180 through 200.192, is added to read as follows:.

Subpart G—Restrictions on Assistance to Noncitizens

Sec.

200.180 Applicability.
200.180a Requirements concerning documents.
200.181 Definitions.
200.182 General provisions.
200.183 Submission of evidence of citizenship or eligible immigration status.
200.184 Documents of eligible immigration status.
200.185 Verification of eligible immigration status.
200.186 Delay, denial, reduction or termination of assistance.
200.187 Preservation of mixed families and other families.
200.188 Proration of assistance.
200.189 Prohibition of assistance to noncitizen students.
200.190 Compliance with nondiscrimination requirements.
200.191 Protection from liability for project owners, State and local government agencies and officials.
200.192 Liability of ineligible tenants for reimbursement of benefits.

Subpart G—Restrictions on Assistance to Noncitizens

§ 200.180 Applicability.

(a) *Covered programs/assistance.* This subpart implements the statutory restrictions on providing financial assistance to benefit individuals who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart is applicable to financial assistance provided under:

(1) *Section 235 Program assistance.* Section 235 of the National Housing Act (12 U.S.C. 1715z).(the Section 235 Program), and for which the implementing regulations are codified in 24 CFR part 235;

(2) *Section 236 Program assistance (below market rent only).* Section 236 of the National Housing Act (12 W.S.C. 1715z-1) (tenants paying below market rent only) (the Second 236 Program), and for which the implementing regulations are codified in 24 CFR part 236, subpart D; or

(3) *Rent Supplement Program assistance.* Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program), and for which the implementing regulations are codified in 24 CFR part 215.

(b) *When financial assistance is considered paid.* Covered financial assistance is considered to be provide (or paid), and the restrictions on providing covered financial assistance to noncitizens with ineligible immigration status are applicable as follows:

(1) *Payment under Section 235 Program.* Financial assistance is considered to be paid under the Section 235 program on behalf of a mortgagor when:

(i) The dwelling unit is subject to a mortgage insured under section 235 of the National Housing Act (and part 235 of this chapter); *and*

(ii) Assistance payments are made to the mortgagee on behalf of the mortgagor under a contract between the mortgagee and the Secretary in accordance with section 235(b) of the National Housing Act, unless those assistance payments are pro-rated in accordance with § 200.188.

(2) *Payment under Section 236 Program.* Financial assistance is considered to be paid under the Section 236 program on behalf of a tenant or cooperative unit purchaser when:

(i) The project is subject to a mortgage insured or the project is assisted under section 236 of the National Housing Act (and part 236 of this chapter) for which interest reduction payments are paid under a contract between the mortgagee and the Secretary; *and*

(ii) The monthly rental charge paid to the owner for the dwelling unit is less than the HUD-approved market rent, whether or not rental assistance payments are also paid under a contract in accordance with section 236(f)(2) and part 236, subpart D, of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(3) *Payment under Rent Supplement Program.* Financial assistance is considered to be paid under the Rent Supplement program administered under section 101 of the Housing and Urban Development Act of 1965 when rent supplement payments are paid under a contract between the project owner and the Secretary in accordance with that section and part 215 of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(c) *Covered individuals and entities.*—(1) *Covered individuals/persons and families.* The provisions of this subpart apply to both applicants for assistance and persons already receiving assistance covered under this subpart (i.e., tenants, homebuyers, cooperative members; see definition of "tenant" in § 200.181). Unless the context clearly indicates otherwise, the terms "individual," "person" or "family," or the plural of these terms, as used in this subpart apply to both an applicant and a tenant, or an applicant family or a tenant family.

(2) *Covered entities.* The provisions of this subpart apply to both project owners (as defined in § 200.181) and mortgagees under the Section 235 homeownership program. Unless the context clearly indicates otherwise, the term "project owner" as used in this subpart includes mortgagee.

(d) *Administration of restrictions on providing assistance.* Project owners shall administer the restrictions on providing assistance to noncitizens with ineligible immigration status in accordance with the requirements of this subpart.

§ 200.180a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart requires the project owner to provide to an individual, or requires the project owner to obtain the signature of an individual, the project owner, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 200.181 Definitions.

Assisted dwelling unit means a dwelling unit for which financial assistance is considered to be paid, as determined in accordance with § 200.180.

Child means a member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible immigration status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 200.186(b).)

Family. Except as may be otherwise specified in this subpart, the term "family" for purposes of this subpart shall have the same meaning as provided in the definition section of the regulations for each of the following programs: the Section 235 Program, Section 236 Program, and the Rent Supplement Program). (See, respectively, 24 CFR 235.5, 24 CFR 236.2, 24 CFR 215.1).

Financial assistance or *covered financial assistance.* See § 200.180.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD means the Department of Housing and Urban Development.

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor nation of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit. For purposes of this subpart, this term includes the mortgagee, in the case of a Section 235 mortgage.

Section 214 means Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Tenant means for the Rent Supplement program and the Section 236 program, an individual or a family renting an assisted dwelling unit or occupying such a dwelling unit as a cooperative member. For purposes of simplifying the language in this subpart to include the Section 235 homeownership program, the term tenant will also be used to include a homebuyer, where appropriate.

§ 200.182 General provisions.

(a) *Restrictions on assistance.* Financial assistance under the programs covered by this subpart is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the grant of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of three types of assistance provided in § 200.187. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 200.187.

§ 200.183 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a program covered by this subpart is contingent upon a family's submission to the project owner of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to content to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 200.187 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the project owner.

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a covered program on June 19, 1995 the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

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(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 200.184; and

(iii) A signed verification form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the project owner a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by project owner.* The verification consent form shall provide that evidence of eligible immigration status may be released by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the future use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 200.187 or 200.188, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify to the project owner, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the project owner as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995 shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Tenant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the project owner's notice of regular reexamination of tenant income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section in accordance with § 235.13(b)(2) of this chapter.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 200.186 concerning INS appeal, and informal hearing process by the project owner) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of § 200.187.

(g) *When evidence of eligible status is required to be submitted.* The project owner shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, project owners must ensure that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 200.185(a)).

(2) *Tenants.* For tenants (i.e., persons already receiving the benefit of assistance in a covered program on June 19, 1995, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments, the tenant shall, in accordance with the provisions of §§ 215.55(a) and 236.80(a) of this chapter, submit the required evidence at the first regular reexamination after June 19, 1995.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with § 235.13(c) of this chapter.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a program covered by this subpart, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the project owner for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*

(1) *When extension must be granted.* The project owner shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 200.183(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence; and prompt and diligent effort will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The project owner's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The project owner's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the project owner shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 200.186 and 200.187.

§ 200.184 Documents of eligible immigration status.

(a) *General.* A project owner shall request and review original documents of eligible immigration status. The project owner shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 200.185.

(1) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I–94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to Section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I–688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I–688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 200.185 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the project owner simultaneously with verification of other aspects of eligibility for assistance or continued eligibility for assistance under a covered program. The project owner shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the project owner through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The project owner must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance covered by this subpart.

(2) *Secondary verification initiated by project owner.* Secondary verification is initiated by the project owner forwarding photocopies of the original INS documents listed in § 200.184 (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the project owner shall issue to the family the notice described in § 200.186(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 200.186(d)(4)).

(d) *Exemption from liability for INS verification.* The project owner shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 200.188 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.*—(1) *Restrictions on reduction, denial or termination of assistance.* Assistance to an applicant shall not be reduced or denied, and assistance to a tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration

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documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 200.186(e) has not been concluded; or

(v) For a tenant, the informal hearing process under § 200.186(f) has not been concluded.

(2) *Restrictions on denial or termination.* Assistance to an applicant shall not be denied, and assistance to a tenant shall not be terminated, on the basis of ineligible immigration status of a family member if:

(i) Assistance is prorated in accordance with § 200.188;

(ii) Assistance for a mixed family is continued in accordance with § 200.187; or

(iii) Deferral of termination of assistance is granted in accordance with § 200.187.

(3) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.*—(1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 200.183(g) or by the expiration of any extension granted in accordance with § 200.183(h); or

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(2) *Termination of assisted occupancy.* For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 200.188;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 200.187;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the project owner either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal by applicant to the INS.*—(1) *Submission of request for appeal.* Upon receipt of notification by the project owner that INS secondary verification failed to confirm eligible immigration status, the project owner shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the project owner's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the project owner with a copy of the written request for appeal and proof of mailing. For good cause shown, the project owner shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is request an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS Office.)

(3) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the project owner, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and project owner of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the project owner receives a copy of the INS decision, the project owner shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the project owner provide a hearing. This request must be made either within 14 days of the date the project owner mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The project owner shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* A family who submits a timely request for a hearing with the project owner shall have an opportunity for:

(i) *Hearing before an impartial individual.* The family shall be provided a hearing before any person(s) designated by the project owner (including an officer or employee of the project owner), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(ii) *Examination of evidence.* The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any

documents in the possession of the project owner pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(iii) *Presentation of evidence and arguments in support of eligible status.* The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(iv) *Controverting evidence of the project owner.* The family shall be provided the opportunity to controvert evidence relied upon by the project owner and to confront and cross-examine all witnesses on whose testimony or information the project owner relies;

(v) *Representation.* The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(vi) *Interpretive services.* The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family or project owner, as may be agreed upon by both parties; and

(vii) *Hearing to be recorded.* The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the project owner).

(4) *Hearing decision.* The project owner shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraph (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The project owner shall retain for a minimum of 5 years the following documents that may have been submitted to the project owner by the family, or provided to the project owner as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final hearing decision.

(i) *Termination of assisted occupancy.* Assisted occupancy is terminated by:

(1) If permitted under the lease, the project owner notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(2) The project owner and tenant entering into a new lease without financial assistance.

(3) The project owner evicting the tenant. An owner may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the tenant must be in accordance with 24 CFR part 247 and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

§ 200.187 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.*—(1) *Assistance available for tenant mixed families.* For a mixed family assisted under a program by this subpart on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 200.186 if utilized by the family, one of the following three types of assistance is available to the family depending upon the family's eligibility for such assistance:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (c) of this section); or

(iii) Prorated assistance (see § 200.188; a mixed family must be provided prorated assistance if the family so requests).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 200.188.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a program covered by this subpart on June 19, 1995 and who have no members with eligible immigration status, temporary deferral of termination of assistance is available to families without any eligible members in accordance with paragraph (c) of this section..

(b) *Continued assistance.* A mixed family shall receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a program covered by this subpart on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 200.182; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family shall be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Conditions for granting temporary deferral of termination of assistance.* The project owners shall grant a temporary deferral of termination of assistance to a mixed family if one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing

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agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the project owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the project owner must:

(i) Make a determination that one of the three conditions specified in paragraph (c)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater, or if the consolidated plan (If applicable), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available). *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the project owner shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(e) *Notification of decision on family preservation assistance.* A project owner shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 200.188 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 200.187(b), or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance under § 200.187(c).

(b) *Method for prorating assistance.* For each of the three types of assistance covered by this subpart, the project owner shall prorate the family's assistance as follows:

(1) *Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

§ 200.189 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 200.187 and 200.188, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 200.190 Compliance with nondiscrimination requirements.

The project owner shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 200.191 Protection from liability for project owners, State and local government agencies and officials.

(a) *Protection from liability for project owners.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a project owner with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the project owner established eligibility based upon verification of eligible immigration status through the verification system described in § 200.185.

(2) Because the project owner was required to provide an opportunity for the family to submit evidence in accordance with § 200.183;

(3) Because the project owner was required to wait for completion of INS verification of immigration status in accordance with § 200.185;

(4) Because the project owner was required to wait for completion of the INS appeal process provided in accordance with § 200.186(e); or

(5) Because the project owner was required to provide an informal hearing in accordance with § 200.186(f).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 200.185 and the informal hearings provided under § 200.186, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rule and requirements.

§ 200.192 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented "eligible status" (as defined in § 200.182), the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the project owner is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

4. In § 215.20, paragraph (b)(2) is amended by adding a new sentence at the end to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) * * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see part 200, subpart G, of this chapter.

* * * * *

5. In § 215.25, paragraph (a)(1) is revised to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of part 200, subpart G, of this chapter govern the submission and verification of citizenship information and eligible immigration status for applicants, and the procedures for denial or proration of assistance based upon a failure to establish eligible immigration status.

* * * * *

6. A new § 215.26 is added to read as follows:

§ 215.26 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of part 200, subpart G, this chapter

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination that an individual is eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189 of this chapter.

7. Section 215.55 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding two sentences at the end of paragraph (c), to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 200, subpart G, of this chapter concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. The procedures of part 200, subpart G, of this chapter, apply when termination is based upon a determination that the tenant does not have eligible immigration status.

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PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

8. The authority citation for part 235 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z; 42 U.S.C. 3535(d).

9. Section 235.2 is amended by adding a new paragraph (f) to read as follows:

§ 235.2 Basic program outline.

* * * * *

(f) Evidence of citizenship or eligible immigration status shall be submitted by the applicant or mortgagor and verified in accordance with part 200, subpart G of this chapter and § 235.13.

10. Section 235.10 is amended by adding a new paragraph (c)(2)(iii) and by adding a sentence at the end of paragraph (e), to read as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(c) * * *

(2) * * *

(iii) A new member is added to the family in which case evidence of citizenship or eligible immigration status also shall be submitted, in accordance with part 200, subpart G, of this chapter.

* * * * *

(e) * * * Eligibility for assistance under this subpart also requires citizenship or eligible immigration status, as determined in accordance with part 200, subpart G, of this chapter, except that citizenship or eligible immigration status shall not be required of a mortgagor whose assistance contract was executed before June 19, 1995 and remains unchanged after that date. (See § 235.13(c).)

* * * * *

11. A new § 235.13 is added to read as follows:

§ 235.13 Special requirements concerning citizenship or eligible immigration status.

(a) *General.* Except as may be supplemented by the provisions of this section, the requirements of 24 CFR part 200, subpart G, concerning restrictions on the use of assisted housing by noncitizens with ineligible immigration status are applicable to mortgagees and mortgagors covered by the Section 235 Program with the exception of mortgagors:

(1) Whose assistance contracts were executed before June 19, 1995 and remain unchanged after that date; or

(2) Who refinance their Section 235 mortgages, which were executed before June 19, 1995 and whose assistance contracts were unchanged after that date, with mortgages insured under section 235(r) of the National Housing Act (12 U.S.C. 1715z).

(b) *Notification of requirements to submit evidence of eligible status*—(1) *Notice to applicants.* A mortgagee shall notify applicants, including applicants whose names are on a waiting list on June 19, 1995, that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of eligible citizenship and immigration status as required under 24 CFR part 200, subpart G.

(2) *Notice to mortgagors.* A mortgagee also shall notify mortgagors (except Section 235(r) mortgagors) whose contracts are executed after June 19, 1995 that continued financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of eligible status required in 24 CFR part 200, subpart G. This notice requirement also shall apply to mortgagors whose contracts are revised, at the request of the mortgagor, after June 19, 1995.

(c) *Submission of evidence of eligible status*—(1) *When evidence of eligible immigration status is to be submitted.* A mortgagee shall obtain evidence concerning an applicant or mortgagor's citizenship or eligible immigration status, as required by 24 CFR part 200, subpart G, at the following times:

(i) Application for assistance; and

(ii) The first recertification of family income and composition conducted after June 19, 1995, in accordance with § 235.10 or § 235.350. The requirements of this section are not applicable to mortgagors whose assistance contracts were executed before June 19, 1995 and remain unchanged after that date, or to mortgagors who refinance their section 235 mortgages, which were executed before June 19, 1995 and whose assistance contracts remain unchanged after such date, with mortgages insured under section 235(r) of the National Housing Act.

(2) *Extensions of time to submit evidence of eligible status.* The provisions of § 200.183(e) of this chapter, concerning extension of time within which to submit evidence of eligible status are applicable.

(d) *Certification by mortgagee*—(1) *General.* The mortgagee shall verify the evidence submitted in the case of an applicant or mortgagor declaring eligible immigration status, in accordance with the requirements of part 200, subpart G, of this chapter, and certify to the Secretary that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable) for all persons for whom the evidence is required. If the applicant or mortgagor's citizenship or eligible immigration status is not established as a result of the process required under 24 CFR part 200, subpart G, the mortgagee shall notify the applicant or mortgagor in accordance with the requirements of 24 CFR part 200, subpart G concerning notification of the possibility of denial or termination of assistance, and, if applicable, of additional assistance that may be available to the applicant or mortgagor.

(2) *Invalid certification.* (i) If the mortgagee has certified to the Secretary in accordance with paragraph (d)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the procedures required by this section and 24 CFR part 200, subpart G, were not followed, the following actions will be taken:

(A) The mortgagee will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(ii) The Secretary may permit the resumption of assistance payments if all persons residing in the dwelling whose status was not determined to be eligible have moved from the dwelling unit, or their status has been determined to be eligible, in accordance with 24 CFR part 200, subpart G.

(iii) If the mortgagee has certified to the Secretary in accordance with paragraph (c)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the mortgagor's eligible status determination was based on fraudulent documents, or was otherwise defective, although the determination was made in accordance with required procedures, the following actions will be taken:

(A) The mortgagor will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(iv) The Secretary's right to repayment from the mortgagor under paragraph (d)(2)(i) of this section shall not affect or limit the Secretary's right to refund of overpaid assistance payments from the mortgagee as provided in § 235.361(b).

(e) *Mortgage insurance commitments.* Commitments to insure mortgages under this part will not be issued or extended unless the mortgagee has made the certification required under paragraph (d) of this section.

(f) *Other related provisions.* See § 235.10 for eligibility requirements, specifically citizenship and eligible immigration status; § 235.350 for the mortgagor's required recertification, including provision of information concerning eligible immigration status; and generally part 200, subpart G, of this chapter, for the provisions on restrictions to providing assistance to noncitizens with ineligible immigration status.

12. In § 235,325, a new paragraph (c) is added to read as follows:

§ 235.325 Qualified cooperative members.

* * * * *

(c) Eligibility as a cooperative member under this subpart also requires eligible status with respect to citizenship or eligible immigration status determined in accordance with 24 CFR part 200, subpart G. (See § 235,13.)

13. Section 235.350 is amended by adding a new paragraph (a)(2)(iii) to read as follows:

§ 235.350 Mortgagor's required recertification.

(a) * * *

(2) * * *

(iii) A new member is added to the family who is not born in the United States (except for a mortgagor described in 235.13(a) (1) or (2)).

* * * * *

14. In § 235.375, a new paragraph (b)(6) is added to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.

* * * * *

(b) * * *

(6) Failure to provide evidence of citizenship or eligible immigration status in accordance with 24 CFR part 200, subpart G:

(i) For a new member of the family, other than a child born in the United States, except with respect to a mortgagor described under § 235.13(a) (1) and (2);

(ii) At the first recertification of an assistance contract, except with respect to a mortgagor described in § 235.13(a)(1) and (2); or

(iii) Upon modification of an existing assistance contract

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

15. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

16. Section 236.2 is amended by:

1. Amending the definition of "Adjusted income" by redesignating paragraphs (a), (b), (c), (d) introductory text, (d)(1), (d)(2), (d)(3), and (e), as paragraphs (1), (2), (3), (4) introductory text, (4)(i), (4)(ii), (4)(iii), and (5), respectively, and by removing the cross-reference in newly designated paragraph (4)(ii) that reads "paragraph (c) of this section" and adding in its place "paragraph (3) of this definition";

2. Amending the definition of "Handicapped Person" by redesignating paragraphs (a), (b), and (c) to read paragraphs (1), (2), and (3), respectively;

3. Amending the definition of "Live-in aide" by redesignating paragraphs (a), (b), and (c), to read paragraphs (1), (2), and (3), respectively; and

4. Amending the definition of "Qualified Tenant" by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) respectively, and by adding a new paragraph (3), to read as follows:

§ 236.2 Definitions.

* * * * *

Qualified Tenant

* * * * *

(3) For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

* * * * *

17. In § 236.70, paragraph (a)(1) is revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

18. Section 236.80 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding three sentences at the end of paragraph (c), to read as follows:

§ 236.80 Reexamination of income.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease with HUD requirements. When termination is based upon a determination that the tenant does not have eligible immigration status, the procedures of 24 CFR part 200, subpart G, apply. The procedures include the provision of assistance to certain mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination.

19. Section 236.710 is amended by adding a new sentence at the end of this section to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

20. In § 236.715, paragraph (a) is revised to read as follows:

§ 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

21. A new § 236.765 is added to subpart D to read as follows:

§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 200, subpart G.

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(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 200, subpart G.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

22. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

23. In § 247.3, paragraph (c)(3) is revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) * * *

(3) Failure of the tenant to supply on time all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to submit required evidence of citizenship or eligible immigration status, in accordance with 24 CFR part 200, subpart G, failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 200, subpart T, or 24 CFR part 750 (as appropriate), or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 200, subpart V, or 24 CFR part 760 (as appropriate), or to knowingly provide incomplete or inaccurate information; and

* * * * *

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

24. The authority citation for part 812 is revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

25. In § 812.1, paragraph (a) is amended by removing the word "and" following the semicolon in paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and replacing with "and"; and by adding a new paragraph (a)(3), to read as follows:

§ 812.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") (42 U.S.C. 1437) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

26. Section 812.2 is amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "HA," "Head of household," "HUD," "INS," "Mixed family," "National," "Noncitizen," and "Responsible entity," "Section 214" and "Section 214 covered programs" to read as follows:

§ 812.2 Definitions.

* * * * *

Child. A member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See § 812.6(b).)

* * * * *

HA. A housing authority—either a public housing agency or an Indian housing authority, or both.

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Responsible entity. The person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status:

(1) For the Section 8 Certificate, the Section 8 Housing Voucher, and the Section 8 Moderate Rehabilitation programs, the housing authority (HA) administering the program under an ACC with HUD.

(2) For all other Section 8 programs, the owner.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

27. Part 812 is amended by redesignating §§ 812.1 through 812.4 as subpart A, and by adding the subpart heading to read, "Subpart A—General," and by adding a new subpart B, consisting of §§ 812.5 through 812.15, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.
812.5 General.
812.5a Requirements concerning documents.
812.6 Submission of evidence of citizenship or eligible immigration status.
812.7 Documents of eligible immigration status.
812.8 Verification of eligible immigration status.
812.9 Delay, denial or termination of assistance.
812.10 Preservation of mixed families and other families.
812.11 Proration of assistance.
812.12 Prohibition of assistance to noncitizen students.
812.13 Compliance with nondiscrimination requirements.
812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.
812.15 Liability of ineligible families for reimbursement of benefits.

Subpart B—Restrictions on Assistance to Noncitizens

§ 812.5 General.

(a) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C.

1101(a)(20) and 1101(a)(15), respectively (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 812.10. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 812.10.

§ 812.5a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 812.5 through 812.15 require a responsible entity to provide to an individual, or require that the responsible entity obtain the signature of the individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 812.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 812.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 812.7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.*—If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under §§ 812.10 or 812.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (e) of this section, shall be

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given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995, shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (f)(1) of this section shall be given to each at the time of, and together with, the responsible entity's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 812.9 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of § 812.10.

(g) *When evidence of eligible status is required to be submitted.*—The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the responsible entity must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 812.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements. (See §§ 850.151, 880.603, 881.603, 882.212, 882.515, 883.704, 884.124, 886.124, 886.324, or 887.357 of this chapter.)

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the responsible entity for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status*—(1) *When extension must be granted.* The responsible entity shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 812.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen when eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 812.9 and 812.10 respectively. For all Section 8 programs, denial or termination of assistance shall be in accordance with the procedures of § 812.9.

§ 812.7 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptance evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 812.8.

(1) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I–94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to Section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I–688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I–688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 812.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the responsible entity simultaneously with verification of other aspects of eligibility for assistance under a 214 covered program. (See § 812.6(g).) The responsible entity shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by responsible entity.* Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents listed in § 812.7 (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 812.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 812.9(d)(4)).

(d) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 812.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restriction on delay, denial, or termination of assistance*—(1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 812.9(e) has not been concluded;

(v) For a tenant, the informal hearing process under § 812.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 812.11;

(vii) Assistance for a mixed family is continued in accordance with § 812.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 812.10.

(2) *When delay in assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the responsible entity informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance*—Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 812.6(g) or by the expiration of any extension granted in accordance with § 812.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(i) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(ii) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance*—The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 812.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 812.10;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the responsible entity informal hearing process.

(e) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family

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of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing. For good cause shown, the responsible entity shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of the appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS office.)

(3) *Decision by INS* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the responsible entity of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 14 days of the date the responsible entity mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The responsible entity shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the responsible entity are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or responsible entity, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required, to be provided by the responsible entity); and

(H) *Hearing decision.* The responsible entity shall provide the family with a written final decision, based solely on the facts, presented at the hearing within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraph (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final informal hearing decision.

(i) *Termination of assisted occupancy.* (1) In the Section 8 programs other than Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the project owner notifying the family that because of the termination of assisted occupancy, the family is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The project owner and family entering into a new lease with Section 8 assistance.

(iii) The project owner evicting the family. While the family continues in occupancy of the unit, the project owner may continue assistance payments in accordance with the Housing Assistance Payments contract if judicial action to terminate the tenancy and evict the family is promptly initiated and diligently pursued by the project owner in accordance with the terms of the lease. Action by the project owner to terminate the tenancy and to evict the family shall be in accordance with HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The HA shall not make any additional assistance payments to the project owner after the required procedures specified in this section have been completed. In addition, the HA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

§ 812.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families*—(1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 812.9 if utilized by the family, one of the following three types of assistance may be available to the family:

(i) Continued assistance (see paragraph (c) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (d) of this section); or

(iii) Prorated assistance (see § 812.11; a mixed family must be provided prorated assistance if the family so requests).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 812.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on June 19, 1995 and who have no members with eligible immigration status, the responsible entity may grant the family temporary deferral of termination of assistance.

(b) *Discretion afforded to provide certain family preservation assistance*—(1) *Project owners.* With respect to assistance administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of termination of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance described in paragraph (a) of this section to a family. However, project owners and housing authorities must offer prorated assistance to eligible mixed families.

(2) *HAs.* With respect to an HA acting as a contract administrator of a certificate (including project-based certificate), housing voucher, or Moderate Rehabilitation program (as opposed to an HA owner), the HA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The HA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the HA must incorporate the statutory criteria, which are set forth in paragraphs (c) and (d) of this section. However, the housing authority must offer prorated assistance to eligible mixed families.

(c) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 812.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(d) *Temporary deferral of termination of assistance*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the responsible entity must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(e) *Option to select proration of assistance at end of deferral period.* A family who is eligible for and who receives temporary deferral of termination of assistance, may request, and the project owner or housing

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authority shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(f) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights. (For HAs administering Certificate or Housing Voucher Programs, see §§ 882.216 or 887.405 of this chapter).

§ 812.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 812.10(c), or other than a family for which termination of assistance is temporarily deferred under § 812.10(d).

(b) *Method or prorating assistance—*(1) *Section 8 assistance other than Section 8 voucher assistance.* For Section 8 assistance other than assistance provided under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with 24 CFR 813.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status).

(iii) *Step 3.* Subtract amount determined in Step 2 from amount determined in Step 1.

(iv) *Step 4.* Multiply the amount determined in Step 3 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in Step 4 is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Section 8 Voucher assistance.* For assistance under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration voucher housing assistance payment in accordance with 24 CFR 887.353. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in step 1 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in Step 2 is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the voucher housing assistance payment does not affect rent to the owner. The family must pay as rent the portion of rent not covered by the prorated housing assistance payment.

§ 812.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 812.10 and 812.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extent to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 812.13 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.

(a) *Protection from liability for responsible entities.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a responsible entity with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the responsible entity established eligibility based upon verification of eligible immigration status through the verification system described in § 612.8;

(2) Because the responsible entity was required to provide an opportunity for the family to submit evidence in accordance with § 812.6;

(3) Because the responsible entity was required to wait for completion of INS verification of immigration status in accordance with § 812.8;

(4) Because the responsible entity was required to wait for completion of the INS appeal process provided in accordance with § 812.9(e); or

(5) Because the responsible entity was required to provide an informal hearing in accordance with § 812.9(f).

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 812.8, and the informal hearings provided under § 812.9(f), as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

§ 812.15 Liability of ineligible families for reimbursement of benefits.

Where a family has received the benefit of HUD financial assistance to which it was not entitled because the family intentionally misrepresented eligible status, the ineligible family is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 850—HOUSING DEVELOPMENT GRANTS

28. The authority citation for part 850 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

29. Section 850.151 is amended by adding one sentence at the beginning of paragraph (c), by adding two sentences at the end of paragraph (f)(1), and by adding a new paragraph (f)(3), to read as follows:

§ 850.151 Project restrictions.

* * * * *

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status.). * * *

* * * * *

(f) * * *

(1) * * * At the first regular reexamination after June 19, 1995 the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

30. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

31. In § 880.504, a new paragraph (e) is added, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall simply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

32. In § 880.601, paragraph (b) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

33. Section 880.603 is amended by revising the introductory text in paragraph (b), by adding a sentence at the end of paragraph (b)(2), by adding a sentence at the end of paragraph (c)(1), and by adding one sentence at the end of paragraph (c)(2) and paragraph (c)(3), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813, and to select families for admission to the program, which includes giving selection preferences in accordance with §§ 880.613 through 880.617.

* * * * *

(2) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part

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812 and verify the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

34. Section 880.607 is amended by redesignating the first sentence following the paragraph heading in the introductory text of paragraph (b)(3) as paragraph (b)(3)(i); by redesignating the existing paragraphs (b)(3)(i) and (b)(3)(ii) as (b)(3)(i)(A) and (b)(3)(i)(B), respectively; by redesignating and revising the undesignated paragraph in (b)(3) as (b)(3)(ii) and by adding a new paragraph (c)(4) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

35. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

36. In § 881.504, a new paragraph (e) is added to read as follows:

§ 881.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning certain assistance to mixed families, and deferral of termination of assistance.

37. In § 881.601, paragraph (b) is revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with 24 CFR 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

38. Section 881.603 is amended by revising the introductory text of paragraph (b), by adding one sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812 to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813 and parts 750 and 760 of chapter VII, and to select families for admission to the program, which includes giving selection preferences in accordance with §§ 881.613 through 881.617.

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

39. In § 881.607, the second sentence of paragraph (b)(3)(ii) is revised, and a new paragraph (c)(4) is added, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provided incomplete or inaccurate information, shall constitute a substantial violation of the lease.

* * *

(c) * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

40. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d) and 11401.

41. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for participation; selection of applicants; verification of family income and other factors relating to eligibility (including citizenship or eligible immigration status as provided by 24 CFR part 812) and amount of assistance; and maintenance of a waiting list.

* * * * *

42. In § 882.118, paragraph (a)(1) is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) * * *

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 750), submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and submissions required for an annual or interim reexamination of family income and composition.

* * * * *

43. In § 882.209, paragraph (a)(2) is revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2)(i) The PHA shall determine whether an applicant for participation:

(A) Qualifies as a family;

(B) Is income eligible; and

(C) Is a citizen or is in eligible immigration status as determined in accordance with 24 CFR part 812.

(ii) The family shall submit any certification, release, information, or documentation as the PHA or HUD determines to be necessary (see the requirements in 24 CFR parts 750, 760, 812, and 813).

* * * * *

44. In § 882.210, a new paragraph (f) is added to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(f) The family's obligations as stated in § 882.118 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate housing assistance payments because a family member is not a U.S. citizen or does not establish eligible immigration status, and the applicable informal hearing procedures, see § 882.216(b) and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

45. Section 882.212 is amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of Family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship of eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member (except a child born in the United States).

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that a member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

46. Section 882.216 is amended by adding a new paragraph (a)(5) and new paragraphs (b)(1)(v) and (b)(8), to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(5) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(v) A determination that the participant does not qualify under the PHA's policy for granting special relief under 24 CFR 812.10.

* * * * *

(8) The informal hearing provisions for the termination of assistance on the

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basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

47. In § 882.514, paragraph (f) is amended by adding one sentence at the end of the paragraph, to read as follows:

§ 882.514 Family participation.

* * * * *

(f) * * * The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

48. Section 882.515 is amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

48a. Section 882.808 is amended by adding two sentences at the end of paragraph (i)(1), one sentence at the end of paragraphs (i)(2), and a sentence at the end of paragraph (l), to read as follows:

§ 882.808 Management.

* * * * *

(i) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

* * * * *

(l) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

49. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

50. In § 883.101, the last sentence of paragraph (c) is revised to read as follows:

§ 883.101 General.

* * * * *

(c) * * * Eligible families are families, as defined in 24 CFR part 812, whose incomes qualify them for assistance in accordance with 24 CFR part 813, and who are otherwise eligible under these parts.

* * * * *

51. In § 883.605, a new paragraph (e) is added, to read as follows:

§ 883.605 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

52. In § 883.702, the section heading and paragraph (b) are revised to read as follows:

§ 883.702 Responsibilities of the owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determination of the eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

53. Section 883.704 is amended by adding one sentence at the end of paragraph (b)(3), two sentences at the end of paragraph (c)(1), and one sentence at the end of paragraphs (c)(2), and (c)(3), to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also see 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning the verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

54. In § 883.708, the second sentence of paragraph (b)(3)(ii) beginning with "Failure of * * *" is revised, and a new paragraph (c)(4) is added, to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provide incomplete or inaccurate information, shall constitute a substantial violation of the lease.

* * *

* * * * *

(c) * * *

(4) For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

55. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

56. In § 884.118, paragraph (a)(3) is revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preference in accordance with § 884.226, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

57. In § 884.214, paragraph (b)(1) is revised and a new paragraph (b)(8) is added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the procedure of 24 CFR part 812, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

* * * * *

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

58. In § 884.216, a new sentence is added at the end of the paragraph to read as follows:

§ 884.216 Termination of tenancy.

* * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

59. Section 884.218 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

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60. In § 884.223, a new paragraph (e) is added to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 of this chapter because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

61. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

62. In § 886.119, the section heading and paragraph (a)(3) are revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

63. In § 886.121, paragraph (b) is revised and a new paragraph (c) is added, to read as follows:

§ 886.121 Marketing.

* * * * *

(b) The Owner shall comply with the applicable provisions of the Contract, this subpart A, and the procedures of 24 CFR part 812 in taking applications, selecting families, and all related determinations.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

64. Section 886.124 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995, when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance

65. Section 886.128 is revised to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

66. In § 886.129, a new paragraph (e) is added, to read as follows:

§ 886.129 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance

67. In § 886.318, paragraph (a)(3) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.337, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

68. In § 886.321, the first two sentences of paragraph (b)(1) are revised and a new paragraph (b)(7) is added, to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of applicants for tenancy (including compliance with the procedures of 24 CFR part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the among of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR part 813. * * *

* * * * *

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance:

* * * * *

69. Section 886.324 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraph (b) and (c), to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

70. Section 886.328 is revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

71. In § 886.329, a new paragraph (e) is added to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 887—HOUSING VOUCHERS

72. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

73. In § 887.105, paragraph (b)(5) is revised to read as follows:

§ 887.105 PHA responsibilities.

* * * * *

(b) * * *

(5) Determine the amount of, and make, the housing assistance payment (see § 887.353); obtain and verify evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812; reexamine the family income and family size and composition, at least annually, and redetermine the amount of the housing assistance payment (see §§ 887.355 through 887.359); adjust the amount of the housing assistance payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.353 and 887.361); and

* * * * *

74. In § 887.355, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added, to read as follows:

§ 887.355 Regular reexamination of family income and composition.

* * * * *

(b) At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *

75. Section 887.357 is amended by adding a new sentence at the end, to read as follows:

§ 887.357 Interim reexamination of family income and composition.

* * * At any interim reexamination after June 19, 1995 that involves the addition of a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

76. In § 887.401, paragraph (a), introductory text, and paragraph (a)(1) are revised, to read as follows:

§ 887.401 Family responsibilities.

(a) A family shall:

(1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750), signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and other information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

* * * * *

77. In § 887.403, paragraphs (d) and (e) are redesignated as paragraphs (e)

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and (f), and a new paragraph (d) is added, to read as follows:

§ 887.403 Grounds for PHA denial or termination of assistance.

* * * * *

(d) The family's obligations as stated in § 887.401 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate assistance because of a family member's inability to establish citizenship or eligible immigration status, and the applicable informal hearing procedures, see 24 CFR 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

78. Section 887.405 is amended by adding a new paragraph (a)(4) and new paragraphs (b)(1)(iv) and (b)(8), to read as follows:

§ 887.405 Informal review or hearing.

(a) * * *

(4) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(iv) A determination that the participant does not qualify under the PHA's policy for granting special assistance under 24 CFR 812.10.

* * * * *

(8) The informal hearing provisions for the termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

79. The authority citation for part 900 continues to read as follows:

Authority: 42 U.S.C. 1410(b) and 3535(d).

80. In § 900.102, the first sentence of paragraph (g) is revised to read as follows:

§ 900.102 Definitions.

* * * * *

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted under this part in accordance with 24 CFR parts 912 and 913 and other pertinent requirements. * * *

* * * * *

81. Section 900.202 is amended by adding a new sentence to the end of paragraph (d)(3), and by redesignating existing paragraphs (g) and (h) as paragraphs (h) and (i) respectively, and by adding a new paragraph (g), to read as follows:

§ 900.202 Project operation.

* * * * *

(d) * * *

(3) * * * For provisions related to denial of assistance because of a failure to establish citizenship or eligible immigration status, the requirements of 24 CFR 960.207 and 24 CFR part 912 shall apply.

* * * * *

(g) *Termination of assistance.* For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, the requirements of 24 CFR parts 912 and 966 shall apply.

* * * * *

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

82. The authority citation for part 904 is revised to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

83. In § 904.104, the first sentence of paragraph (b)(1) and paragraph (g)(2) are revised, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 912 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. * * *

* * * * *

(g) * * *

(2) Applicants who are not selected for a specific Turnkey III development shall be notified in accordance with HUD-approved procedure. The notice shall state:

(i) The reason for the applicant's rejection (including a nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee);

(ii) That the applicant will be given an information hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice; and

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR 912.9.

* * * * *

84. In § 904.107, paragraphs (j)(2) and (m)(1) are revised to read as follows:

§ 904.107 Responsibilities of homebuyer.

* * * * *

(j) * * *

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 912 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 912. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with 24 CFR parts 912 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

* * * * *

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by

misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 912; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 912, the requirements of 24 CFR parts 912 and 966 shall apply.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

85. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

86. Section 905.102 is amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "Head of household," "INS," "Mixed family," "National," "Noncitizen," "Section 214," and "Section 214 covered program" to read as follows:

§ 905.102 Definitions.

* * * * *

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 905.310(e)).

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

* * * * *

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

* * * * *

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

87. Section 905.310 is added to read as follows:

§ 905.310 Restrictions on assistance to noncitizens.

(a) *Requirements concerning documents.* For any notice or document (decision, declaration, consent form, etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(c) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family

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may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995 is *not* subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(A) A signed declaration of eligible immigration status; and

(B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and

(C) A signed verification consent form.

(3) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the IHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form.*—(i) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult;

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD; and

(B) The INS for purposes of verification of the immigration status of the individual.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under paragraphs (r) or (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214.*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (g)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (g)(1) of this section shall be given to each at the time of, and together with, the IHA's notice of the regular reexamination after that date, but no later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the

required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status.*—(1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance, respectively with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status.*—(1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section:

(i) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I–94, Arrival-Departure Record, with one of the following annotations:

(A) "Admitted as Refugee Pursuant to Section 207";

(B) "Section 208" or "Asylum";

(C) "Section 243(h)" or "Deportation stayed by Attorney General";

(D) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(iii) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I–688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(v) Form I–688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(vi) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

(l) *Verification of eligible immigration status.*—(1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.*—(i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification.*—(i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(iii) *Failure of secondary verification to conform eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice

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described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.*—(1) *Restrictions on delay, denial, or termination of assistance.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph(s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) The financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph(s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) of this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS.*—(1) *Submission of request for appeal.* Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the IHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the IHA's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the IHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the IHA shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS Office.)

(3) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the IHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the IHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the IHA receives a copy of the INS decision, the IHA shall notify the family of its right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing.*—(1) *When request for hearing is to be made.* After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the IHA are set forth in § 905.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows.

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision.* The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief.* A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents.* The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an IHA informal hearing; and

(9) The final hearing decision.

(r) *Preservation of mixed families and other families.*—(1) *Assistance available for mixed families.*—(i) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following the appeals and informal hearing procedures provided in paragraphs (n) and (o) of this section if utilized by the family, one of the following three types of assistance may be available to the family:

(A) Continued assistance (see paragraph (r)(2) of this section);

(B) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section); or

(C) Prorated assistance (see paragraph (s) of this section; a mixed family must be provided prorated assistance if the family so requests).

(ii) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on June 19, 1995 and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance.*—(i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

(A) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period,

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that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the IHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(vi) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance*—(1) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family who is eligible for and requests temporary deferral of termination of assistance under paragraph (r)(3) of this section. The IHA must provide an eligible mixed family prorated assistance if the family request prorated assistance.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 905.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "Indian housing maximum rent" applicable to the unit or the housing authority. ("Indian housing maximum rent" shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(v) *Step 5.* The product of steps 1–4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students*—(1) *General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(i) Has a residence in a foreign country that the person has no intention of abandoning;

(ii) Is a bona fide student qualified to pursue a full course of study; and

(iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials*—(1) *Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) If the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

88. Section 905.315 is amended by redesignating paragraphs (a)(i) and (a)(ii) as (a)(1) and (a)(2), respectively; by redesignating existing paragraphs (a)(2) and (a)(3) as paragraphs (b) and (c) respectively; and by adding a new paragraph (d), to read as follows:

§ 905.315 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 905.310 for determining citizenship or eligible immigration status before initial occupancy, and, for tenants admitted before June 19, 1995, at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall follow the requirements of § 905.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

89. The authority citation for part 912 is revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

90. Section 912.1 is amended by changing the period at the end of paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") (42 U.S.C. 1437 *et seq.*) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

91. Section 912.2 is amended by adding definitions in alphabetical order for the terms "Child," "Citizen," "Evidence of citizenship or eligible immigration status," "Head of household," "HUD," "Mixed family," "National," "Noncitizen," "Section 214," and "Section 214 covered program," to read as follows:

§ 912.2 Definitions.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 912.6(b)).

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

92. Part 912 is amended by redesignating §§ 912.1 through 912.4 as subpart A, and by adding the subpart heading to read, "Subpart A—General", and by adding a new subpart B consisting of §§ 912.5 through 912.14, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.

912.5 General.
912.5a Requirements concerning documents.
912.6 Submission of evidence of citizenship or eligible immigration status.
912.7 Documents of eligible immigration status.
912.8 Verification of eligible immigration status.
912.9 Delay, denial, or termination of assistance.
912.10 Preservation of mixed families and other families.
912.11 Proration of assistance.
912.12 Prohibition of assistance to noncitizen students.
912.13 Compliance with nondiscrimination requirements.
912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

Subpart B—Restrictions on Assistance to Noncitizens

§ 912.5 General.

(a) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the

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INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 912.10. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 912.10.

§ 912.5a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 912.5 through 912.14 require a PHA to provide to an individual, or require that the PHA obtain the signature of the individual, the PHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 912.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the PHA of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 912.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the PHA:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 912.7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member who contend that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the PHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status:

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by PHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the PHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD is required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under §§ 912.10 or 912.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to PHA the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *Timing of notice.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (e) of this section, shall be given by the PHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (f)(1) of this section shall be given to each at the time of, and together with, the PHA's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 912.9 concerning INS appeal, and PHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of § 912.10.

(g) *When evidence of eligible status is required to be submitted.* The PHA shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the PHA must ensure that evidence of eligible status is submitted not later than the date the PHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 912.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the PHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*—(1) *When extension must be granted.* The PHA shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 912.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The PHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The PHA's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the PHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 912.9 and 912.10 respectively.

§ 912.7 Documents of eligible immigration status.

(a) *General.* A PHA shall request and review original documents of eligible immigration status. The PHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 912.8:

(1) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I–94, Arrival-Departure Record, with one of the following annotations:

(i) "Admitted as Refugee Pursuant to section 207";

(ii) "Section 208" or "Asylum";

(iii) "Section 243(h)" or "Deportation stayed by Attorney General";

(iv) "Paroled Pursuant to Sec. 212(d)(5) of the INA";

(3) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application is filed before October 1, 1990);

(iii) A court decision granting withholding of deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application is filed on or after October 1, 1990).

(4) Form I–688, Temporary Resident Card, which must be annotated "Section 245A" or "Section 210";

(5) Form I–688B, Employment Authorization Card, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12";

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register.

§ 912.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the PHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See § 912.6(g).) The PHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the PHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The PHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by PHA.* Secondary verification is initiated by the PHA forwarding photocopies of the original INS documents listed in

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§ 912.7 (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice described in § 912.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 912.9(d)(4)).

(d) *Exemption from liability for INS verification.* The PHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 912.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, or termination of assistance.*—(1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member of whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 912.9(e) has not been concluded;

(v) For a tenant, the PHA hearing process under § 912.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 912.11;

(vii) Assistance for a mixed family is continued in accordance with § 912.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 912.10.

(2) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the PHA informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 912.6(g) or by the expiration of any extension granted in accordance with § 912.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(i) The family does not pursue INS appeal or PHA informal hearing rights as provided in this section; or

(ii) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That they may be eligible for proration of assistance as provided under § 912.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 912.10;

(4) The family has a right to request an appeal to the INS of the results of the secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) The family has a right to request an informal hearing with the PHA either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the PHA informal hearing process.

(e) *Appeal to the INS.*—(1) *Submission of request for appeal.* Upon receipt of notification by the PHA that INS secondary verification failed to confirm eligible immigration status, the PHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the project owner's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the PHA shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the PHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the PHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the PHA receives a copy of the INS decision, the PHA shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing—(1) When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the PHA provide a hearing. This request must be made either within 14 days of the date the PHA mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The PHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the PHA are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the PHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the PHA (including an officer or employee of the PHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The PHA shall be provided the opportunity to examine and copy at the applicant's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the PHA and to confront and cross-examine all witnesses on whose testimony or information the PHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or PHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to be provided by the PHA); and

(H) *Hearing decision.* The PHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The PHA shall retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the INS appeal or the PHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for a PHA informal hearing; and

(9) The final PHA hearing decision.

§ 912.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.* (1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 912.9 if utilized by the family, one of the following three types of assistance may be available to the family:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (c) of this section); or

(iii) Prorated assistance (see § 912.11; a mixed family must be provided prorated assistance if the family so requests); or

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 912.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the June 19, 1995 and who have no members with eligible immigration status, the PHA may grant the family temporary deferral of termination of assistance.

(b) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 912.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the PHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the PHA must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply for affordable housing for the area in which the project is located, the consolidated plan (if applicable, as

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described in 24 CFR part 91), the PHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years) and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the PHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(e) *Notification of decision on family preservation assistance.* A PHA shall notify the family of it's decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 912.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 912.10(b), or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance under § 912.10(c). An eligible mixed family who requests prorated assistance, must be provided prorated assistance.

(b) *Method of prorating assistance.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a) (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public housing maximum rent" applicable to the unit or the housing authority. (Public housing maximum rent shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

(4) *Step 4.* Multiplying the member maximum subsidy by the number of "eligible" family members.

(5) *Step 5.* The product of steps 1–4, as set forth in paragraph (b)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

§ 912.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 912.10 and 912.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 912.13 Compliance with nondiscrimination requirements.

The PHA shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations of 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations of 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations of 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

(a) *Protection from liability for PHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the PHA established eligibility based upon verification of eligible immigration status through the verification system described in § 912.8;

(2) Because the PHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with § 912.6;

(3) Because the PHA was required to wait for completion of INS verification of immigration status in accordance with § 912.8;

(4) Because the PHA was required to wait for completion of the INS appeal process provided in accordance with § 912.9(e); or

(5) Because the PHA was required to provide an informal hearing in accordance with § 912.9(f) or 24 CFR part 966.

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 912.8, and the informal hearings provided under § 912.9(f) and 24 CFR part 966, as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

93. The authority citation for part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

94. In § 960.204, paragraphs (a) and (d)(4) are revised to read as follows:

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individual families for public housing and the statutory purpose in developing and operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(d) * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 912.

* * * * *

95. In § 960.206, paragraph (a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See parts 912 and 913 of this chapter, and 24 CFR parts 750 and 760.) Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211 must be documented and placed in the applicant's file.

* * * * *

96. Section 960.209 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 912 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see 24 CFR 912.9, and also 24 CFR 912.10 for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of assistance.

Dated: March 8, 1995.

Henry G. Cisneros,

Secretary.

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Part III

Department of Education

34 CFR Part 280
Magnet Schools Assistance Program; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN 1810–AA76

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary revises the regulations governing the Magnet Schools Assistance Program (MSAP) to conform them to statutory provisions that authorize Magnet Schools Assistance. These regulations make technical changes in the existing regulations to incorporate the statutory amendments.

EFFECTIVE DATE: These regulations take effect April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, D.C. 20202–6140. Telephone: (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Improving America's Schools Act (IASA) reauthorized the MSAP, which is now authorized under Part A of Title V of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. The MSAP provides Federal financial assistance to local educational agencies (LEAs) for magnet schools that are part of approved desegregation plans that LEAs are implementing.

B. Explanation of Changes

The Secretary amends regulations in 34 CFR part 280 to conform to the amended statute. The statutory amendments incorporated in the regulations include—

- Add two new elements to the statement of purpose for the MSAP (§ 280.1(b) and (c))—one element addresses the development and implementation of magnet schools that will assist LEAs in achieving systemic reform; the other element addresses the development and design of innovative educational methods and practices;
- In § 280.2(a), add "consortia of LEAs" to those eligible to receive assistance under the MSAP;
- Clarify the definition of the term "Magnet school" in § 280.4(b) by inserting the words "public elementary or secondary" before the words "school" and "education center;"
- Add a new assurance at § 280.20(b)(7) that applicants will give students residing in the local attendance area of the proposed magnet school projects equitable consideration for placement in those projects;
- Modify the assurance in § 280.20(b)(2) regarding the employment of teachers in courses of instruction assisted under the MSAP to include both teachers and those who supervise others who are teaching. Under the assurance both teachers and those who supervise other instructional personnel must be appropriately certified or licensed by the State;
- Modify the information required in grant applications by adding language in § 280.20(i)(1) that indicates that, as a part of an applicant's description of how MSAP assistance will promote desegregation, information must be included that describes how the proposed project will increase interaction among students of different social, economic, ethnic, and racial backgrounds;
- Further modify the information required in grant applications by specifying in § 280.20(i)(3) that applications must describe how an applicant will continue the magnet school project after MSAP assistance is no longer available including, if applicable, an explanation of why magnet schools that have been previously supported with MSAP funds cannot be continued without further assistance;
- Add requirements for information describing how and the extent to which MSAP assistance will increase student achievement in the instructional area or areas of the magnet school (§ 280.20(i)(2)); how MSAP assistance will be used to implement services and activities that are consistent with other programs under the ESEA, the Goals 2000: Educate America Act, and other Acts, as appropriate (§ 280.20(i)(4)); and what criteria will be used to select students to attend each magnet school proposed for the project (§ 280.20(i)(5));
- Add "reading skills" and "geography" to the subject areas identified in § 280.31(c)(2)(iii) and § 280.40(b)(2) in which instruction may be provided in magnet schools projects;
- Eliminate special considerations for "Recentness of the implementation of the approved desegregation plan;" "Involvement of minority group children;" and "Degree of achievement." In their place, priorities are established for projects that propose to: carry out new, or significantly revised, magnet schools (§ 280.32(c)); select students to attend magnet schools by methods such as lottery, rather than through academic examination (§ 280.32(d)); and implement innovative educational approaches that are consistent with State and local systemic reform plans, if any, under title III of the Goals 2000: Educate America Act (§ 280.32(e)). The priority for "Collaborative efforts" (§ 280.32(f)) is revised to give priority to applicants whose projects seek to draw on comprehensive community involvement plans. This provides flexibility for applicants to promote various kinds of broad community collaboration (such as collaboration with business) in designing and implementing their magnet programs;
- Delete § 280.34, which indicates that a condition for receipt of a continuation award is satisfactory progress towards achieving the purposes of the program. However, the standard set forth in 34 CFR 75.253(a) of Education Department General Administrative Regulations requiring substantial progress continues to apply;
- Amend the rules governing allowable costs in § 280.40(a) by including planning and promotional costs directly related to the development of academic programs and services offered at magnet schools, in addition to the expansion, continuation, or enhancement of those programs and services;
- Further amend the allowable costs regulations in § 280.40(d) by including "instructional staff, where applicable," to the personnel whose salaries may be paid or subsidized with MSAP funds. This permits funds to be used to employ instructional personnel other than licensed or certified teachers—such as instructional aides, artists in residence, instructors from institutions of higher education, and others—who would provide instruction to students;
- Further amend the allowable costs regulations in § 280.40(e) by permitting instructional activities designed to make the special curriculum of a magnet program available to students who are enrolled in the magnet school, but who are not enrolled in the magnet program, provided that the implementation of those instructional activities furthers the purposes of the MSAP;
- Eliminate the prohibition on the use of grant funds for consultants from § 280.41;
- Add a prohibition (§ 280.41(d)) on the use of funds for planning after the third year;
- Change the limitation in § 280.41(a) on the amount of funds that can be used for planning activities (*e.g.*, curriculum development, staff training) to permit

up to 50 percent of the amount received for the first year of the project to be used for planning; up to 15 percent of the amount received for the second year; and up to 10 percent of the amount received for the third year of the project;
- Remove § 280.42, which limited the amount that could be carried over from one budget period to the subsequent budget period; and
- Remove § 280.50, which prohibited a State from reducing State aid to an LEA because of assistance made available under the MSAP;

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these grants effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Intergovernmental Review

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

Dated: March 8, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.165A—Magnet Schools Assistance Program)

The Secretary amends Part 280 of Title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for part 280 is revised to read as follows:

Authority: 20 U.S.C. 7201–7213, unless otherwise noted.

2. Section 280.1 is amended by adding the words "or consortia of LEAs" following "(LEAs)" and after "LEAs" in the undesignated introductory text; removing the word "and" at the end of paragraph (a); redesignating paragraph (b) as paragraph (d); adding new paragraphs (b) and (c); and revising the authority citation to read as follows:

§ 280.1 What is the Magnet Schools Assistance Program?

* * * * *

(b) The development and implementation of magnet school projects that will assist LEAs in achieving systemic reforms and providing all students the opportunity to meet challenging State content standards and challenging State performance standards;

(c) The development and design of innovative educational methods and practices; and

* * * * *

(Authority: 20 U.S.C. 7202)

3. Section 280.2 is amended by adding "or consortium of LEAs" after "LEA" in paragraphs (a), (a)(1), and (a)(2); by adding the words "or those agencies" after "that agency" at the end of paragraph (a)(1); and by revising the authority citation to read as follows.

(Authority: 20 U.S.C. 7205)

4. The authority citation for § 280.3 is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

5. Section 280.4 paragraph (b) is amended by removing the definitions of "Community-based organization," "Implementation date," and "Institution of higher education," by adding the words "public elementary or secondary" before the words "school" and "education center" in the definition of "Magnet school," and by adding "or consortium of LEAs" after "LEA" in the definition of "Special curriculum", and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 7201–7213)

6. Section 280.10 paragraph (c) is amended by adding "(1)" after "§ 280.2(a)" and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 7203)

7. Section 280.20 is amended by adding "or consortium of LEAs" after "LEA" in paragraphs (a), (b) introductory text, (c), (d), (e), (f), (f)(1), (f)(4), and (f)(5) introductory text; adding "or consortium of LEAs'" after "LEA's" in paragraph (f)(4)(ii), (f)(5)(ii), and (h); removing the word "two" in paragraphs (f)(4)(i)(C), (f)(4)(ii)(C), (f)(5)(i)(B), and (f)(5)(ii)(B); revising paragraphs (b) and (i); and revising the authority citation to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(b) In its application, the LEA or consortium of LEAs shall provide assurances that it—

(1) Will use funds made available under this part for the purposes specified in section 5102 of the Act;

(2) Will employ teachers in the courses of instruction assisted under this part who are certified or licensed by the State to teach, or supervise others who are teaching, the subject matter of the courses of instruction;

(3) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in the assignment of students to schools or to courses of instruction within schools of the agency, except to carry out the approved desegregation plan;

(5) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in designing or operating extracurricular activities for students;

(6) Will carry out a high-quality education program that will encourage greater parental decisionmaking and involvement; and

(7) Will give students residing in the local attendance area of the proposed magnet school projects equitable consideration for placement in those projects.

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(i) In addition to including the assurances required by this section, an LEA or consortium of LEAs shall describe in its application—

(1) How the applicant will use assistance made available under this part to promote desegregation, including how the proposed magnet school project will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

(2) How and to what extent the assistance will increase student achievement in instructional areas offered;

(3) How the LEA or consortium of LEAs will continue the magnet schools project after assistance under this program is no longer available, including, if applicable, why magnet schools cannot be continued without the use of funds under this program.

(4) How assistance will be used to implement services and activities that are consistent with other programs under the Elementary and Secondary Education Act of 1965, the Goals 2000: Educate America Act, and other Acts, as appropriate, in accordance with section 14306 of the Act; and

(5) What criteria will be used in selecting students to attend the proposed magnet schools projects.

(Authority: 20 U.S.C. 7206)

8. Section 280.30(a) and (c) are amended by removing the words "special consideration" and inserting the word "priority" before the word "factors". The authority citation for § 280.30 is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

9. In § 280.31 paragraph (c)(2)(iii) is amended by adding "reading skills or" after "students'" and "geography," before "English", and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

10. Section 280.32 is amended by revising the heading, removing paragraph (b), redesignating paragraph (d) as paragraph (b), removing the parenthetical reference to "15 points" from the redesignated paragraph (b), adding a new paragraph (d), and revising paragraphs (a), (c), (e), (f) and the authority citation to read as follows:

§ 280.32 How is priority given to applicants?

(a) *How priority is given.* In addition to the points awarded under § 280.31, the Secretary gives priority to the factors listed in paragraphs (b) through (f) of this section by awarding additional points for these factors. The Secretary indicates in the application notice published in the **Federal Register** how these additional points will be distributed.

* * * * *

(c) *New or revised magnet schools projects.* The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

(d) *Selection of students.* The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

(e) *Innovative approaches and systemic reform.* The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plan, if any, under the Goals 2000: Educate America Act.

(f) *Collaborative efforts.* The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

(Authority: 20 U.S.C. 7207)

11. The authority citation for § 280.33 is revised to read as follows:

(Authority: 20 U.S.C. 7213(b))

12. Section 280.34 is removed.

13. Section 280.40 is amended by adding "or consortium of LEAs" after "LEA" in the undesignated introductory text; by adding "development," before "expansion" and removing "restriction in § 280.41(a)" and adding, in its place, "restrictions in § 280.41(a) and (d)" in paragraph (a); by adding "reading skills or" before "the knowledge" and "geography," before "English" in paragraph (b)(2); by adding "reading skills or" before "the knowledge" and "geography," before "English" in paragraph (c)(3); by adding new paragraphs (d) and (e); and by revising the authority citation to read as follows:

§ 280.40 What costs are allowable?

* * * * *

(d) The payment or subsidization of the compensation of instructional staff, where applicable, who satisfy the requirements of paragraphs (c)(2) and (3) of this section.

(e) With respect to a magnet school program offered to less than the entire school population, for instructional activities that—

(1) Are designed to make available the special curriculum of the magnet school program to students enrolled in the school, but not in the magnet school program; and

(2) Further the purposes of the program.

(Authority: 20 U.S.C. 7208)

14. Section 280.41 is revised to read as follows:

§ 280.41 What are the limitations on allowable costs?

An LEA or consortium of LEAs that receives assistance under this part may not—

(a) Expend for planning more than 50 percent of the funds received for the first fiscal year, 15 percent of the funds received for the second fiscal year, and 10 percent of the funds received for the third fiscal year;

(b) Use funds for transportation;

(c) Use funds for any activity that does not augment academic improvement; or

(d) Use funds for planning after the third year.

(Authority: 20 U.S.C. 7209, 7210(b))

§ 280.42 [Removed]

15. Section 280.42 is removed.

Subpart F Removed

§ 280.50 [Removed]

16. Subpart F consisting of § 280.50 is removed.

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Part IV

Department of Education

Magnet Schools Assistance Program, Applications for New Awards for Fiscal Year 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program Provides grants to eligible local educational agencies and consortia of such agencies to support magnet schools that are part of approved desegregation plans.
Eligible Applicants: Local educational agencies (LEAs) and consortia of such agencies.
Deadline for Transmittal of Applications: May 12, 1995.
Deadline for Intergovernmental Review: July 11, 1995.
Applications Available: March 20, 1995.
Available Funds: $111,359,000.
Estimated Range of Awards: $200,000–$4,000,000.
Estimated Average Size of Awards: $1,855,983.
Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.
Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 as published in the **Federal Register** on June 10, 1994 (59 FR 30258), 77, 79, 80, 81, 82, 85 and 86; and (b) the regulations in 34 CFR Part 280 as amended in this issue of the **Federal Register**.

Priorities

Background

The Magnet Schools Assistance Program (MSAP) makes grants to eligible LEAs and consortia of LEAs for programs that are designed to support——

- The elimination, reduction, or prevention of minority group isolation in public elementary and secondary schools with substantial proportions of minority group children;
- The development and implementation of magnet school projects that will assist in achieving systemic reform and providing all children the opportunity to meet challenging State content standards and challenging student performance standards;
- the development and design of innovative educational methods and practices; and
- courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending those magnet schools.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 280.32(b)-(f), the Secretary gives preference to applications that meet competitive priorities. Depending upon how well an application meets each priority, the Secretary awards additional points to the application for each priority up to the maximum number of points available for that priority. These points are in addition to any points the applicant earns under the selection criteria in 34 CFR 280.31.

The Secretary will award up to a total of 45 points for the following competitive priorities:

- *Need for assistance.* (15 points) The Secretary evaluates the applicant's need for assistance under this part, by considering—
- (a) The costs of fully implementing the magnet schools project as proposed;
- (b) The resources available to the applicant to carry out the project if funds under the program were not provided;
- (c) The extent to which the costs of the project exceed the applicant's resources; and
- (d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.
- *New or revised magnet schools projects.* (10 points) The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.
- *Selection of students.* (10 points) The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.
- *Innovative approaches and systemic reform.* (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plans, if any, under Title III of Goals 2000: Educate America Act.
- *Collaborative efforts.* (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

SUPPLEMENTARY INFORMATION:

Applicants must submit with their applications one of the following types of desegregation plans: (1) A plan required by a court order; (2) a plan required by a State agency or official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

Under the regulations, applicants are required to provide all of the information required under the regulations at § 280.20 (a)–(g) in order to satisfy the civil rights eligibility requirements found in § 280.2 (a)(2) and (b) of the regulations. In the past, if necessary, ED requested enrollment data or other information from applicants after their applications were submitted utilizing the procedures set forth in § 280.20(h). However, that follow-up process delayed awards under the program. In order to respond to requests from applicants and grantees that the Department announce MSAP awards earlier in the year, ED has modified the application review process for this competition.

Specifically, when conducting eligibility reviews of desegregation plans, under § 280.2 the Department will not follow up with applicants to obtain additional information or clarification. Accordingly, in order to satisfy the civil rights eligibility requirements found in § 280.2 (a)(2) and (b) of the regulations, it is very important that an applicant provide all of the information required under the regulations at § 280.20 (a)–(g). This notice describes that information.

In addition to the particular data and other items for required and voluntary plans, described separately in the information that follows, an application must include:

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's desegregation plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. Plans Required by a Court Order

An applicant that submits a plan required by a court, State agency or official of competent jurisdiction, must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—

- A Federal or State court order that establishes or amends a previous order or orders by establishing additional or different specific magnet schools;
- A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Plans Required by a State Agency or Official of Competent Jurisdiction

An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Title VI Required Plans

An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. Modifications to Required Plans

A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency or official, that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR Regional Office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED of approval of all modifications to their plans by April 17, 1995.

Voluntary Plans

A voluntary desegregation plan must be approved each time an application is submitted for funding. Even if ED has approved a voluntary desegregation plan in an LEA in the past, the plan must be resubmitted to ED for approval as part of the application.

An applicant submitting a voluntary desegregation plan must include in its application:

- A copy of a school board resolution or other evidence of final official action adopting and implementing the desegregation plan, or agreeing to adopt and implement the desegregation plan upon the award of assistance.
- Enrollment and other information as required by the regulations at § 280.20(f) and (g) for applicants with voluntary desegregation plans. Enrollment data and information are critical to ED's determination of an applicant's eligibility under a voluntary desegregation plan.

A voluntary desegregation plan is a plan to reduce, eliminate, or prevent minority group isolation (MGI), either at a magnet school or at a feeder school—a school from which students are drawn to attend the magnet school. Under § 280.2, the establishment of the magnet school cannot result in an increase in MGI at a magnet school or any feeder school above the districtwide percentage of minority group students at the grade levels served by the magnet school.

The following example and those in subsequent sections of this notice are designed to assist applicants in the preparation of their application. The examples illustrate the types of data and information that have proven successful in the past for satisfying the voluntary desegregation plan regulation requirements.

District A has a districtwide percentage of 65.5 percent for its minority student population in elementary schools. District A has six elementary schools with the following minority student populations:

1. School A—67 percent.
2. School B—58 percent.
3. School C—64 percent.
4. School D—76 percent.
5. School E—47 percent.
6. School F—81 percent.

District A has five minority group isolated schools, i.e., five schools with minority student enrollment of over 50 percent. District A seeks funding to establish a magnet program at School F to reduce MGI at that school. For District A to be eligible for a grant, the establishment of the magnet program at School F should not increase the minority student enrollment at feeder school C to more than 65.5 percent (the districtwide percentage). Also, the establishment of the magnet program should not increase the minority student enrollment at feeder schools A or D at all because those schools are already above the districtwide percentage for minority students. If projected enrollments at a magnet or feeder school indicate that there will be an increase in MGI, District A should provide an explanation in its application for the increase that shows it is not caused by the establishment of the magnet program. See the discussion below.

An applicant that proposes to establish new magnet schools must submit projected data for each magnet and feeder school that show that the magnet schools and all feeders will maintain eligibility for the entire three-year period of the grant. Projected data are included in the examples below.

Objective: Reduction of Minority Group Isolation in Existing Magnet Schools

In situations where the applicant intends to reduce minority isolation in an existing magnet program, whether in the magnet school or in one or more of the feeder schools, and minority isolation has increased, the applicant must provide data and information to demonstrate that the increase was not due to the applicant's magnet program, in accordance with § 280.20(g). See the following examples.

Options for Demonstrating Reduction

1. Magnet School Analysis

District Z has two existing magnet high schools that began their magnet programs in different years. All of the other schools in the district are feeder schools to one or both of the magnet schools. District Z has six feeder schools and a districtwide minority enrollment of 59.95 percent. Since becoming a magnet school, Enterprise Magnet has increased its MGI from 74.40 percent to 76.55 percent. Because of this increase, this school would be found ineligible unless the increase in MGI was not caused by the magnet school. This may be shown through data indicating an increase either in minority enrollment districtwide or in the area served by the magnet school.

If District Z's districtwide minority enrollment has become more minority isolated due to districtwide demographic changes in the student population and if a magnet or a feeder school's increase in MGI is *less* than the districtwide increase in MGI, ED will conclude that the school's increase in MGI was not the result of the magnet programs, but due to the overall effect of demographic changes in the district as a whole.

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District Z magnet school & base year	Base year					Current year					Increase in MGI
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		
		Number	Percent	Number	Percent		Number	Percent	Number	Percent	
Jefferson (1993)	459	349	76.03	110	23.97	514	356	69.26	158	30.74	.....
Enterprise (1991)	375	279	74.40	96	25.60	388	297	76.55	91	23.45	2.15%

Note: "Base Year" is the year prior to the year each school became a magnet.

Feeder school (ranked in order of descending minority enrollments)	Base year					Current year					Increase in MGI
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		
		Number	Percent	Number	Percent		Number	Percent	Number	Percent	
Rose	398	301	75.63	97	24.37	401	278	69.33	123	30.67	.....
Rocky Mount	289	199	68.86	90	31.14	291	211	72.51	80	27.49	3.65%
Wheeler	239	144	60.25	95	39.75	250	153	61.20	97	38.80	0.95%
King	289	144	49.83	145	50.17	277	149	53.79	128	46.21	.....
Tinker	451	211	46.78	240	53.22	423	221	52.25	202	47.75	.....
Holly	481	122	25.36	359	74.64	450	130	28.89	320	71.11	.....
Districtwide	2,981	1,749	58.67	1,232	41.33	2,994	1,795	59.95	1,199	40.05	1.28%

Projected magnet school & base year	1995–1996 Projected					1996–1997 Projected					1997–1998				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Non-minority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Jefferson (1993)	500	335	67	165	33	510	337	66	173	34	515	340	66	175	34
Enterprise (1991)	390	289	74	101	26	400	288	72	112	28	410	295	72	115	28

Feeder School	1995–1996 Projected					1996–1997 Projected					1997–1998 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Rose	400	272	68	128	32	400	272	68	128	32	400	264	66	136	34
Rocky Mount	300	210	70	90	30	300	210	70	90	30	300	204	68	96	32
Wheeler	250	148	59	102	41	250	148	59	102	41	250	148	59	103	41
King	280	151	54	129	46	280	151	54	129	46	280	151	54	129	46
Tinker	430	232	54	198	46	430	232	54	198	46	430	232	54	198	46
Holly	460	161	35	299	65	460	184	40	276	60	460	207	45	253	55
Districtwide	3,010	1,798	60	1,212	40	3,030	1,822	60	1,208	40	3,045	1,841	60	1,204	40

However, as with the magnet Enterprise, if the MGI in a magnet increases above the districtwide increase, an applicant must demonstrate that the magnet is not causing the problem. In order to show that the increase in MGI at a particular school is not the result of the operation of a magnet, a district should provide student transfer data on the number of minority and nonminority students that attend the magnet program from the other feeder schools in the district for the current year. If, by subtracting from the magnet enrollment those students that came from other schools, the MGI is higher than the districtwide average, it can be concluded that the increase in MGI was not caused by the magnet school.

Current year student transfer data for magnet schools that increase in minority group isolation over the districtwide minority enrollment.	Current year				
	Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent
Enterprise	388	297	76.55	91	23.45
Students transferred to Jefferson to attend magnet program	25	4	.....	21	.....
Magnet school minority enrollment with transfer students "returned" to feeders	363	293	80.72	70	19.28

Current year student transfer data for feeder schools that increase in minority group isolation over the districtwide minority enrollment.	Current year				
	Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent
Rocky Mount	291	211	72.51	80	27.49
Students attending Jefferson	21	16	.....	5	.....
Students attending Enterprise	19	15	.....	4	.....
Feeder school minority enrollment with transfer students "returned" from magnet	331	242	73.11	89	26.89

2. Feeder School Analysis

In District Z, two feeder schools, Rocky Mount and Wheeler, increased in MGI by 3.65 percent and 0.95 percent respectively. Since Wheeler's MGI increase of 0.95 percent is less than the districtwide MGI increase of 1.28 percent, Wheeler's MGI increase was due to the demographic changes in the district and further scrutiny of Wheeler is not required.

Because Rocky Mount, a feeder school to magnet programs at Jefferson and Enterprise, increased in MGI over the districtwide average from 68.86 percent to 72.51 percent, this would make both Jefferson and Enterprise ineligible unless the district demonstrates that the increase was not because of the magnet programs. The clearest way for an applicant to show this is to provide student transfer data on the number of minority and nonminority students that left Rocky Mount to attend magnet programs at Jefferson and Enterprise. By adding the number of students that transferred to the magnet programs to Rocky Mount's total enrollment, ED can determine whether the increase was due to the magnet program. If it can be demonstrated that without the magnet program, the MGI at the feeder school would be even higher, these magnet schools would be found eligible.

Some applicants may find it impossible to provide the type of student transfer data referred to above. In some cases, these applicants may be able to present demographic or other statistical data and information that would satisfy the requirements of the statute and regulations. This demographic data must persuasively demonstrate that the operation of a proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's magnet schools and would not result in an increase of MGI at one of the applicant's feeder schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school. (34 CFR § 280.20(g)). For example, an applicant might include data provided to it by a local social service agency about the numbers and concentration of families in a recent influx of immigrants into the neighborhood or attendance zone of the feeder school.

3. Additional Base-Year Data

If an applicant believes that comparing a magnet program's current-year enrollment data with its base year—*i.e.*, the year prior to the year each school became a magnet or a feeder—enrollment data is misleading due to significant changes that have occurred in attendance zones or other factors affecting the magnet school or in the closing and combining of other schools with the magnet school, additional and more recent enrollment data for an alternative to the base year may be submitted along with a justification for its submission.

Objective: Conversion of an Existing School to a New Magnet Program

District X will convert Williams, an existing elementary school, to a new elementary magnet program. Currently, Williams has a minority enrollment of 94.67 percent. The district projects that the magnet program will reduce minority group isolation at Williams to 89 percent in the first year of the project. The projection of enrollment should be based upon reasonable assumptions and should clearly state the basis for these assumptions, *e.g.*, parent or student interest surveys, or other objective indicators, such as waiting lists for other magnet schools in the district.

District X Magnet School	Current year					1995–1996 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority—	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Williams	450	426	94.67	24	5.33	450	400	89	50	11

Feeder School (Ranked in order of descending minority enrollments)	Current year					1995–1996 Projected				
	Total enrollment	Minority		Nonminority—		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Shaw	398	179	44.97	219	55.03	400	190	48	210	53
Lincoln	477	186	38.99	291	61.01	480	210	44	270	56
Districtwide	1,325	791	59.70	534	40.30	1,330	800	60	530	40

Magnet School	1996–1997 Projected					1997–1998 Projected				
	Total enrollment	Minority		Nonminority—		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Williams	450	392	87	59	13	450	383	85	67	15

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Feeder School (Ranked in order of descending minority enrollments)	1996–1997 Projected					1997–1998 Projected				
	Total enrollment	Minority		Nonminority—		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Shaw	410	200	49	210	51	420	215	51	205	49
Lincoln	490	220	45	270	55	500	235	47	265	53
Districtwide	1,350	812	60	538	40	1,370	833	61	537	39

Objective: Construction of New Magnet School/Reopening a Closed School

District Y will construct a new school, Barton, and open its magnet program in 1996. There is no preoxisting school, and consequently, it appears that no enrollment data are readily available to use as a comparison. However, the district estimates that if the proposed magnet school had opened as a "neighborhood school," without a magnet program designed to attract students from outside the "neighborhood" or attendance zone, it would have a minority enrollment of 67 percent. This estimate was based on national census data, supplemented by more current data on the neighborhood provided by the local county government. The district further reasonably anticipates, based on surveys and other indicators, that when the new school opens as a magnet school in 1996, it will have a minority enrollment of 58 percent.

District Y Magnet School	Current year					1995–96 Projected					
	Total enrollment	Minority enrollment	Nonminority			Total percent	Minority	Nonminority			
			Number	Percent	Number		Enrollment	Number	Percent	Number	Percent
Barton	500	400	66.67	200	33.33	—	—	—	—	—	

Note: Since this magnet will not open until 1996, the current year is the base year. Provide hypothetical base year data for what the school would look like if it had opened as a neighborhood school. For example, census data could be used to estimate the hypothetical enrollment.

Feeder School (ranked in order of descending minority enrollments)	Total Enrollment	Current year				1995–96 projected				
		Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Clark	298	101	33.89	197	66.11	—	—	—	—	—
Topper	324	111	34.26	213	65.74	—	—	—	—	—
Districtwide	1,222	612	50.08	610	49.92	—	—	—	—	—

Magnet School	1996–1997 Projected					1997–1998 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Barton	600	336	58	250	42	580	331	57	249	43

Feeder School (ranked in order of descending minority enrollments)	1996–97 Projected					1997–98 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Clark	300	125	42	175	58	310	136	44	174	56
Topper	330	135	41	195	59	340	146	43	194	57
Districtwide	1,230	610	50	620	50	1,230	613	50	617	50

Objective: Reduction, Elimination, or Prevention of MGI at Targeted Feeder Schools

Many applicants apply for MSAP funding to reduce, eliminate, or prevent minority group isolation at a magnet school. However, some applicants have established magnet programs at schools that are not minority-isolated for the purpose of reducing, eliminating, or preventing minority isolation at one or more targeted feeder schools. The data requirements and analysis for this type of magnet program are the same as described for "Existing Magnet Schools." In this example, MGI is being reduced in each of the targeted feeder schools.

Magnet School	Base Year					Current Year				Nonminority
	Total enrollment	Minority		Nonminority		Total number	Percent	Minority		
		Percent	Number	Percent	Enrollment			Number	Percent	
Douglas	505	129	25.54	376	74.46	520	221	42.50	299	57.50

Feeder School (ranked in order of descending minority enrollments.)	Base year					Current year				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
North	398	309	77.64	89	22.36	401	275	68.58	126	31.42
Central	312	239	76.60	73	23.40	300	229	76.33	71	23.67
South	289	205	70.93	84	29.07	302	189	62.58	113	37.42
Districtwide	1,504	882	58.64	622	41.36	1,523	914	60.01	609	39.99

Magnet School	Total enrollment	1995–96 Projected				1996–97 Projected				1997–98 Projected				
		Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Douglas	520	234	45	286	55	525	247	47	278	53	530	276	52	254	48

Feeder School	1995–96 Projected					1996–97 Projected				1997–98 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
North	410	275	67	135	33	410	267	65	143	35	410	256	63	152	37
Central	300	225	75	75	25	300	222	74	78	26	300	204	68	96	32
South	310	186	60	124	40	310	186	60	124	40	310	186	60	124	40
Districtwide	1,540	920	60	620	40	1,545	922	60	623	40	1,550	924	60	626	40

Objective: Prevention of Minority Group Isolation

An applicant that applies for MSAP funding for the purposes of preventing minority isolation must demonstrate that without the intervention of the magnet program, the magnet school or targeted feeder school will become minority-isolated within the project period. Generally this may be documented by showing a trend in the enrollment data for the proposed school. For example, if a neighborhood school currently has a 45 percent minority enrollment and, for the last three years, minority enrollment has increased an average of three percent each year (36 percent, 39 percent, and 42 percent), it is reasonable to expect that, in three years, the school would exceed 50 percent thereby becoming minority-isolated during the project period without the intervention of a magnet. The applicant in this example should submit this enrollment data in its application.

The preceding examples are not intended to be an exhaustive set of examples.

Applicants with questions about their desegregation plans and the information required in support of those desegregation plans (including applicants that find that these examples do not fit their circumstances and applicants who find that the enrollment data requested is unavailable or do not reflect accurately the effectiveness of their proposed magnet program) are encouraged to contact ED for technical assistance, prior to submitting their application by calling the contact person listed under the "FOR APPLICATIONS OR INFORMATION" heading.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue, SW., Portals Room 4509, Washington, DC 20202–6140. Telephone (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a dsicretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 3021–3032.

Dated: March 8, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 95–6708 Filed 3–17–95; 8:45 am]

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Part V

Department of the Interior

Bureau of Indian Affairs

Availability of Final Environmental Impact Statement for Livestock Grazing and Prairie Dog Management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of Final Environmental Impact Statement for Livestock Grazing and Prairie Dog Management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Final Environmental Impact Statement (FEIS) for proposed livestock grazing and prairie dog management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota is available for final public review. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1503 and 1506.9) to obtain comments from government agencies and the public on the FEIS.

DATE: Send comments on or before April 19, 1995.

ADDRESSES: *Send comments to:* Mr. Donald Whitener, Acting Area Director, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue SE., Aberdeen, South Dakota 57401. Fax (605) 226–7446.

FOR FURTHER INFORMATION CONTACT: Mr. Wayland Lilly, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue SE., Aberdeen, South Dakota 57401. Telephone (605) 226–7621. Fax (605) 226–7358. Copies of the FEIS are available at this address. All agencies and individuals who participated in the scoping process and public hearings have been sent copies.

SUPPLEMENTARY INFORMATION: In 1991, the Bureau of Indian Affairs (BIA) reviewed tribal council proposals to poison black-tailed prairie dogs on the Cheyenne River and Rosebud Sioux Reservations. An Environmental Assessment (EA) and a Biological Assessment were prepared, pursuant to NEPA and to the Endangered Species Act (ESA), respectively. Because of insufficient personnel, time, and funds, the BIA was unable to meet U.S. Fish and Wildlife Service (USFWS) and NEPA requirements for analyzing impacts on prairie dog/black-footed ferret habitat and threatened and endangered species, such as the bald eagle, peregrine falcon, and American burying beetle. The BIA, therefore, only investigated the effects of prairie dog poisoning programs proposed by the tribal councils.

The BIA initiated the EIS with a Notice of Intent in the **Federal Register** on November 18, 1992, after the USFWS issued an opinion that the proposed poisoning programs would jeopardize the endangered, black-footed ferret. The draft EIS was published in June 1994 (**Federal Register**, June 16, 1994).

Public involvement in scoping included three (3) open meetings on each reservation, radio and newspaper announcements, and direct mailings of scoping notices. The 60-day comment period on the draft EIS ended on August 20, 1994. Eleven (11) Federal, state, and local agencies, ten (10) organizations, and twelve (12) individuals provided comments. Some of these were submitted by letter, in response to extensive mailings of the draft EIS, summary, and availability notices. Others were delivered orally, at the public hearing on the draft held on each reservation. Most comment addressed the proposed action for the Rosebud Reservation.

The BIA received the draft Biological Opinion for comment from the USFWS on November 10, 1994. The Aberdeen Area Office responded with concerns regarding BIA trust responsibilities towards tribes and the implementation of reasonable and prudent alternatives and conservation measures. The final Biological Opinion was issued on December 29, 1994.

The alternatives for the Cheyenne River Reservation include No Action (current management); a Proposed Action (Prairie Management Plan); four alternatives that would preserve approximately 10,000 acres of prairie dogs on Indian trust lands along the Moreau River while treating various proportions of prairie dog acreage on trust lands away from the river; and a fifth alternative that would treat half of the prairie dog acres on the reservation, including those along the Moreau River.

Alternatives for the Rosebud Reservation include No Action; a Proposed Action that would treat 100 percent of prairie dog acres on Indian trust lands; an alternative that would not treat prairie dogs within the 7,416-acre Corn Creek Management Area (CCMA), but would treat 100 percent of prairie dog acres outside the CCMA; and an alternative that also would treat all prairie dog towns outside the CCMA, but would limit those on trust lands within the CCMA to a single treatment.

All action alternatives for both reservations include grazing management systems.

The preferred alternative for Cheyenne River is the Proposed Action, which consists of the tribal Prairie Management Plan. This would restore the prairie ecosystem to a more natural state, in which prairie dog populations and other wildlife species coexist with livestock production. The plan includes. (1) A grazing management system that would increase water development and fencing to improve cattle distribution; (2) funding for habitat set-asides, to compensate landowners for retaining prairie dog colonies in order to maintain biodiversity and enhance black-footed ferret populations, should the ferret be reintroduced; (3) conservation measures for threatened and endangered species; (4) education of permittees, landowners, tribal and BIA land managers, and the public on the use and benefits of proposed management techniques; and (5) limitations on the control of prairie dogs in certain areas, such as cemeteries, pow wow grounds, and near residences.

The preferred alternative for Rosebud is the Proposed Action. This consists of a plan that would restore the prairie ecosystem to where prairie dog populations are maintained at levels that improve range conditions for livestock production, and thus increase income to the tribe and to Indian landowners. It includes: (1) A grazing management system that would increase water development, fencing, mechanical treatments, and planting to improve cattle distribution; (2) use of zinc phosphide to eradicate black-tailed prairie dogs on 100% (45,000 acres) of trust lands, with additional treatments in the third and fifth year following to ensure complete control; and (3) safety and environmental mitigation measures, as listed on pages 3–14 through 3–15 of the DEIS, for the use of zinc phosphide. The black-footed ferret is not considered in this alternative, in deference to a Rosebud Sioux Tribal Council resolution requesting that the ferret not be reintroduced on or near the reservation.

Dated: March 13, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6756 Filed 3–17–95; 8:45 am]

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federal register

Monday
March 20, 1995

Part VI

Postal Service

39 CFR Part 20
International Postal Rates and Fees; Proposed Changes; Proposed Rule

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POSTAL SERVICE

39 CFR Part 20

International Postal Rates and Fees; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates and fees.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates and fees.

As required under the Postal Reorganization Act, the proposed changes will result in international postal rates that do not apportion the costs of the service so as to impair the overall value of the service to the users, are fair and reasonable, and are not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before April 19, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 6670, Washington, DC 20260–2406. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 6670, at the above address.

FOR FURTHER INFORMATION CONTACT: John F. Alepa, (202) 268–2650.

SUPPLEMENTARY INFORMATION: The proposed international rates and fees, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service.

The Postal Service proposes to eliminate the surface rates for letters, letter packages, and postal and post cards (surface LC rates). The costs associated with processing and dispatching LC items make it desirable to merge the air and surface mailstreams into a single air service that will provide the lowest combined cost and improve overall service quality. Surface LC volume has been declining for a number of years and has now reached the point where it is uneconomical to continue to separate the surface and air letter mailstreams. Surface LC is less than 1.5 percent of total air and surface LC volume.

The Postal Service also proposes to lower the minimum weight for M-bags (direct sacks of printed matter to a single addressee) from 15 to 11 pounds to increase the availability of M-bags for customers.

The rate structure for International Surface Air Lift (ISAL) is being simplified and modified. Currently, there is a piece rate of 32 cents to all countries only for items weighing 2 ounces or less. Items weighing more than 2 ounces are charged only a per-pound rate based on the rate group assigned to the country of destination. There are four country destination rate groups. The proposed rate structure has a per-piece charge for each rate group for all items regardless of weight and a per-pound charge based on the total weight of the mail to a particular rate group. The per-piece rates are 23 cents per piece to rate group 1 and 10 cents per piece to rate groups 2, 3, and 4. M-bags are not subject to the piece rate, only the per-pound charge. Countries continue in the same rate groups. The proposed gateway discount is 25 cents.

Rates for Express Mail International Service (EMS) have been revised. It is also proposed that the deaveraging of rates within certain rate groups would be beneficial to meet the market characteristics of mail flows to particular country-specific destinations. Accordingly, countries previously defined by rate group 1 are identified separately by their own country-specific rates. These countries are Canada, Mexico, and Great Britain. Rates for these countries are shown in section I.A.

Country-specific rates are also proposed for China and Japan, instead of including them in the rate groups to which they were previously assigned. The rates for these countries are shown in section I.A. All remaining countries have been configured into a revised set of rate groups. These rate groups are shown in section I.A.

A separate rate has been established for publishers' periodicals to Mexico, and, as a result, separate rates for books and sheet music to Mexico are established.

The bulk letter service to Canada is expanded from a maximum of 1 ounce to a maximum of 3 ounces. This increased maximum will enable more mailers to benefit from this program.

For air parcel post, Germany has been moved from rate group C to B. For air AO, Malta has been moved from rate group AA to EU.

In the tables below, some international fees are marked with an asterisk. The asterisk indicates that the Postal Service adopted these fees effective January 1, 1995, concurrent with the changes to domestic rates and fees that took effect on that date. These rates and fees are the same as the corresponding rates and fee for the equivalent domestic service. They are presented for convenience and information only.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance-notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following rates and fees and to amend the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

Stanley F. Mires,

Chief Counsel, Legislative.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate the following postal rates and fees:

International Postal Rates and Fees

I. Express Mail International Service

(See section VII for country rate groups.)

A. On Demand Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	$15.50	$15.00	$16.50	$15.00	$15.00
1	18.00	17.50	18.75	17.50	17.00
2	22.00	21.00	22.50	20.00	19.50
3	25.50	24.50	26.50	26.00	25.00
4	28.50	28.00	30.00	33.00	31.00
5	32.00	30.75	34.00	36.00	34.00
Each add'l pound or fraction	3.50	2.75	3.75	6.00	5.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	See Country-Specific Rates	$21.00	$15.00	$19.00	$18.00	$20.00
1		23.00	18.00	23.50	19.75	22.50
2		26.00	21.00	26.00	26.00	26.50
3		28.50	27.00	32.00	29.50	32.50
4		34.00	35.00	36.75	33.50	39.50
5		39.00	39.50	42.25	37.50	47.50
Each add'l pound or fraction		4.50	6.00	5.75	3.90	6.50

B. Custom Designed Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	Custom Designed Service Not Available	$23.00	$24.50	$23.00	$23.00
1		25.50	26.75	25.50	25.00
2		29.00	30.50	28.00	27.50
3		32.50	34.50	34.00	33.00
4		36.00	38.00	41.00	39.00
5		38.75	42.00	44.00	42.00
Each add'l pound or fraction		2.75	3.75	6.00	5.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	See Country-Specific Rates	$29.00	$23.00	$27.00	$26.00	$28.00
1		31.00	26.00	31.50	27.75	30.50
2		34.00	29.00	34.00	34.00	34.50
3		36.50	35.00	40.00	37.50	40.50
4		42.00	43.00	44.75	41.50	47.50
5		47.00	47.50	50.25	45.50	55.50
Each add'l pound or fraction		4.50	6.00	5.75	3.90	6.50

II. Letters and Letter Packages

All LC mail (letters, letter packages, post and postal cards, and aerogrammes) receives First-Class service in the United States, dispatch by the most expeditious transportation available, and airmail or priority service in the destination country. Mailer should endorse all LC items "Airmail" or "Par Avion."

A. Canada and Mexico

Weight not over		Canada [1]	Mexico
(lb.)	(oz.)		
0	0.5	$0.46	$0.4
0	1.	.52	0.46
0	1.5	0.64	0.66
0	2	0.72	0.86
0	3	0.95	1.26
0	4	1.14	1.66
0	5	1.33	2.

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Weight not over (lb.)	Weight not over (oz.)	Canada [1]	Mexico
0	6	1.52	2.46
0	7	1.71	2.86
0	8	1.90	3.26
0	9	2.09	3.66
0	10	2.28	4.06
0	11	2.47	4.46
0	12	2.66	4.86
1	0	3.42	6.46
1	8	4.30	9.66
2	0	5.18	12.86
2	8	6.06	16.06
3	0	6.94	19.26
3	8	7.82	22.46
4	0	8.70	25.66

[1] A 4-pound maximum applies except for registered items sent to Canada. Canada-bound registered items may weigh up to 66 pounds. For registered items weighing over 4 pounds, the rate is $1.76 for each additional pound up to a 66-pound limit.

BULK LETTER SERVICE TO CANADA

[See IMM 225]

Weight not over (oz.)	Bulk letter service to Canada
0.5	$0.42
1	0.48
1.5	0.60
2	0.68
3	0.91

B. Countries Other Than Canada and Mexico

(Maximum weight: 64 ounces)

Weight not over (oz.)	All countries (other than Canada and Mexico)
0.5	$0.60
1.0	100
Each additional 0.5 ounce, up to and including 32 ounces	0.40
Each additional ounce over 32	0.40

C. International Priority Airmail (IPA)

(See section VII for country rate groups.)

Rate group	Piece rate	pound rate
Worldwide Nonpresort	$0.25	$8.55
Presort:		
Group 1	0.25	5.15
Group 2	0.10	71.5
Group 3	0.10	8.50

III. Post/Postal Cards and Aerogrammes

A. Post/postal Cards

Country	Rate
Canda	$0.40
Mexico	0.35
All others	0.50

B. Aerogrammes

All countries: $0.50 each.

IV. Other Articles (AO) (Includes Printed Matter and Small Packets)

A. Regular Printed Matter and Small Packets—Surface

Weight not over (lb.)	Weight not over (oz.)	Country: Canada	Mexico	All others
0	1	$0.46	$0.40	$0.50
0	2	0.60	0.60	0.80
0	3	0.88	0.80	1.00
0	4	1.02	0.94	1.21
0	5	1.16	1.22	1.63
0	6	1.30	1.22	1.63
0	7	1.44	1.50	2.05
0	8	1.58	1.50	2.05
0	9	1.72	1.78	2.47
0	10	1.86	1.78	2.47
0	11	2.00	2.06	2.89
0	12	2.14	2.06	2.89
0	13	2.28	2.34	3.31
0	14	2.42	2.34	3.31
0	15	2.56	2.62	3.73
1	0	2.70	2.62	3.73
1	2	2.90	2.86	4.03
1	4	3.10	3.10	4.33
1	6	3.30	3.34	4.63
1	8	3.50	3.58	4.93
1	10	3.70	3.82	5.23
1	12	3.90	4.06	5.53
1	14	4.10	4.30	5.83
2	0	4.30	4.54	6.13
3	0	5.58	6.14	8.05
4	0	6.86	7.74	9.97
Each add'l pound or fraction		1.28	1.60	1.92
M-bag rate per pound or fraction		1.06	1.32	1.45

B. Valuepost/Canada

Weight	Rate
Letter-size:	
1 ounce or less	$0.32
Over 1 ounce	0.30 plus $0.39 per pound or fraction of a pound.
Flat-size:	
5 ounces or less	$0.57
Over 5 ounces	0.34 plus $0.93 per pound or fraction of a pound.

C. Publishers' Periodicals—Surface

Weight not over (oz.)	Country: Canada	Mexico	All others
1	$0.40	$0.32	$0.32
2	0.46	0.40	0.40
3	0.52	0.52	0.52
4	0.59	0.60	0.60
5	0.65	0.75	0.76
6	0.72	0.75	0.76
7	0.78	0.90	0.92
8	0.85	0.90	0.92
9	0.91	1.05	1.08
10	0.98	1.05	1.08
11	1.04	1.20	1.24
12	1.11	1.20	1.24
13	1.17	1.35	1.40
14	1.24	1.35	1.40
15	1.30	1.50	1.56
16	1.37	1.50	1.56
18	1.43	1.64	1.71
20	1.49	1.78	1.86
22	1.55	1.92	2.01
24	1.61	2.06	2.16
26	1.67	2.20	2.31
28	1.73	2.34	2.46
30	1.79	2.48	2.61
32	1.85	2.62	2.76
3 lb.	4.00	3.58	3.72
4 lb.	4.64	4.54	4.68
5 lb.	5.28	5.50	5.64
6 lb.	5.92	6.46	6.60
7 lb.	6.56	7.42	7.56
8 lb.	7.20	8.38	8.52
9 lb.	7.84	9.34	9.48
10 lb.	8.48	10.30	10.44
11 lb.	9.12	11.26	11.40
Each add'l pound or fraction	0.64	0.96	0.96
M-bag rate per pound or fraction	0.64	0.72	0.79

D. Books and Sheet Music—Surface

Weight not over (lb.)	Country: Canada	Mexico	All others
1	$1.37	$1.50	$1.56
2	1.85	2.62	2.76
3	4.00	3.58	3.72
4	4.64	4.54	4.68
5	5.28	5.50	5.64
6	5.92	6.46	6.60
7	6.56	7.42	7.56
8	7.20	8.38	8.52
9	7.84	9.34	9.48
10	8.48	10.30	10.44
11	9.12	11.26	11.40
Each add'l pound or fraction	0.64	0.96	0.96
M-bag rate per pound or fraction	0.64	0.72	0.79

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E. International Surface Air Lift (ISAL)

(See section VII for country rate groups.) Rates are per piece plus the per-pound rate for the each pound or fraction of a pound for the total weight in each rate group. M-bags are pound rates only.

Rate group	Piece rate	Regular per-pound rate		M-bag per-pound rate	
		Full service	Gateway/ direct shipment	Full service	Gateway/ direct shipment
1	$0.23	$2.10	$1.85	$2.12	$1.87
2	0.10	2.60	2.35	2.61	2.36
3	0.10	2.80	2.55	2.81	2.56
4	0.10	3.65	3.40	3.66	3.41

F. Air—Other Articles (Printed Matter, Matter for the Blind, and Small Packets)

1. Canada and Mexico—Air

Weight not over (oz.)	Canada	Mexico
0.5	$0.45	$0.46
1	0.51	0.60
1.5	0.62	0.70
2	0.70	0.80
3	0.93	1.00
4	1.11	1.20
5	1.29	1.40
6	1.47	1.60
7	1.65	1.80
8	1.83	2.00
9	2.01	2.20
10	2.19	2.40
11	2.37	2.60
12	2.55	2.80
16	3.27	3.60
24	4.07	5.20
32	4.87	6.80
2.5 lb.	5.67	8.40
3.0 lb.	6.47	10.00
3.5 lb.	7.27	11.60
4.0 lb.	8.07	13.20
Each add'l 0.5 pound or fraction	0.80	1.60
M-bag rate per pound or fraction	1.41	1.50

2. All Other Countries—Air (See section VII for country rate groups.)

Weight not over (oz.)	Western Hemisphere (except Canada and Mexico) (WH)	Europe (EU)	Asia/Africa (AA)	Pacific Rim (PR)
1	$0.75	$0.90	$0.98	$1.00
2	1.07	1.32	1.48	1.55
3	1.39	1.74	1.98	2.10
4	1.71	2.16	2.48	2.65
6	2.35	3.00	3.48	3.75
8	2.99	3.84	4.48	4.85
10	3.63	4.68	5.48	5.95
12	4.27	5.52	6.48	7.05
14	4.91	6.36	7.48	8.15
16	5.55	7.20	8.48	9.25
18	5.85	7.80	9.28	10.15
20	6.15	8.40	10.08	11.05
22	6.45	9.00	10.88	11.95
24	6.75	9.60	11.68	12.85
26	7.05	10.20	12.48	13.75
28	7.35	10.80	13.28	14.65
30	7.65	11.40	14.08	15.55
32	7.95	12.00	14.88	16.45
2.5 lb	9.15	14.40	18.08	20.05
3.0 lb	10.35	16.80	21.28	23.65
3.5 lb	11.55	19.20	24.48	27.25
4.0 lb	12.75	21.60	27.68	30.85
Each additional 0.5 pound or fraction of 0.5 pound	1.20	2.40	3.20	3.60
M-bag rate per pound or fraction of a pound	2.47	4.41	6.27	6.35

V. Parcel Post

The weight limits for parcels vary by country and are usually 22, 33, or 44 pounds. Algeria, Canada, Denmark, Faroe Islands, Greenland, Ireland, Great Britain and Northern Ireland, Liechtenstein, and Switzerland have 66-pound weight limits. The rates over 44 pounds are given in anticipation of other countries increasing parcel weight limits.

A. Surface

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre & Miquelon	All other countries
2	$6.95	$7.50	$9.00
3	8.23	8.94	10.92
4	9.51	10.38	12.84
5	10.79	11.82	14.76
6	12.07	13.26	16.68
7	13.35	14.70	18.60
8	14.63	16.14	20.52
9	15.91	17.58	22.44
10	17.19	19.02	24.36
11	18.39	20.46	26.28
12	19.59	21.90	28.20
13	20.79	23.34	30.12
14	21.99	24.78	32.04
15	23.19	26.22	33.96
16	24.39	27.66	35.88
17	25.59	29.10	37.80
18	26.79	30.54	39.72
19	27.99	31.98	41.64
20	29.19	33.42	43.56
21	30.31	34.86	45.48
22	31.43	36.30	47.40
23	32.55	37.74	49.32
24	33.67	39.18	51.24
25	34.79	40.62	53.16
26	35.91	42.06	55.08
27	37.03	43.50	57.00
28	38.15	44.94	58.92
29	39.27	46.38	60.84
30	40.39	47.82	62.76
31	41.51	49.26	64.68
32	42.63	50.70	66.60
33	43.75	52.14	68.52
34	44.87	53.58	70.44
35	45.99	55.02	72.36
36	47.11	56.46	74.28
37	48.23	57.90	76.20
38	49.35	59.34	78.12
39	50.47	60.78	80.04
40	51.59	62.22	81.96
41	52.71	63.66	83.88
42	53.83	65.10	85.80
43	54.95	66.54	87.72
44	56.07	67.98	89.64
Each add'l pound or fraction	1.12	1.44	1.92

B. Air

Weight not over (lb.)	Rate groups						
	Canada	Mexico	A	B	C	D	E
1		$6.50	$6.50	$8.25	$9.75	$11.20	$12.80
2	$7.00	9.70	9.86	12.25	15.03	16.96	19.20
3	8.28	12.90	13.22	16.25	20.31	22.72	25.60
4	9.56	15.46	16.58	20.25	25.59	28.48	32.00
5	10.84	18.02	19.46	23.45	29.91	33.76	37.44
6	12.12	20.58	22.34	26.65	34.23	39.04	42.88
7	13.40	23.14	25.22	29.85	38.55	44.32	48.32
8	14.68	25.70	28.10	33.05	42.87	49.60	53.76
9	15.96	28.26	30.98	36.25	47.19	54.88	59.20
10	17.24	30.82	33.86	39.45	51.51	60.16	64.64
11	17.72	33.06	36.58	42.33	55.51	64.48	69.12
12	18.20	35.30	39.30	45.21	59.51	68.80	73.60

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Weight not over (lb.)	Rate groups						
	Canada	Mexico	A	B	C	D	E
13	18.68	37.54	42.02	48.09	63.51	73.12	78.08
14	19.16	39.78	44.74	50.97	67.51	77.44	82.56
15	19.64	42.02	47.46	53.85	71.51	81.76	87.04
16	20.12	44.26	50.18	56.73	75.51	86.08	91.52
17	20.60	46.50	52.90	59.61	79.51	90.40	96.00
18	21.08	48.74	55.62	62.49	83.51	94.72	100.48
19	21.56	50.98	58.34	65.37	87.51	99.04	104.96
20	22.04	53.22	61.06	68.25	91.51	103.36	109.44
21	22.20	55.14	63.30	70.81	95.35	107.52	113.76
22	22.36	57.06	65.54	73.37	99.19	111.68	118.08
23	22.52	58.98	67.78	75.93	103.03	115.84	122.40
24	22.68	60.90	70.02	78.49	106.87	120.00	126.72
25	22.84	62.82	72.26	81.05	110.71	124.16	131.04
26	23.00	64.74	74.50	83.61	114.55	128.32	135.36
27	23.16	66.66	76.74	86.17	118.39	132.48	139.68
28	23.32	68.58	78.98	88.73	122.23	136.64	144.00
29	23.48	70.50	81.22	91.29	126.07	140.80	148.32
30	23.64	72.42	83.46	93.85	129.91	144.96	152.64
31	23.80	74.02	85.38	96.09	133.59	148.96	156.80
32	23.96	75.62	87.30	98.33	137.27	152.96	160.96
33	24.12	77.22	89.22	100.57	140.95	156.96	165.12
34	24.28	78.82	91.14	102.81	144.63	160.96	169.28
35	24.44	80.42	93.06	105.05	148.31	164.96	173.44
36	25.08	82.02	94.98	107.29	151.99	168.96	177.60
37	25.72	83.62	96.90	109.53	155.67	172.96	181.76
38	26.36	85.22	98.82	111.77	159.35	176.96	185.92
39	27.00	86.82	100.74	114.01	163.03	180.96	190.08
40	27.64	88.42	102.66	116.25	166.71	184.96	194.24
41	28.28	90.02	104.58	118.49	170.39	188.96	198.40
42	28.92	91.62	106.50	120.73	174.07	192.96	202.56
43	29.56	93.22	108.42	122.97	177.75	196.96	206.72
44	30.20	94.82	110.34	125.21	181.43	200.96	210.88
Each add'l pound or fraction	0.64	1.60	1.92	2.24	3.68	4.00	4.16

VI. Fees for Special Mail Services and Miscellaneous Charges

* = Fees changed effective January 1, 1995, based on changes in domestic rates and fees that took effect on that date.

A. Nonstandard Surcharge—Letters and regular printed matter weighing 1 ounce or less: $0.11*

B. Customs Clearance and Delivery Fee: $3.75*

C. Inquiry Fee: $6.60*

D. Return Receipt: $1.10*

E. Registered Mail

1. Canada

Limit of indemnity	Fee
$100.00	*$4.95
500.00	*5.40
1,000.00	*5.85

2. All Other Countries

Limit of indemnity	Fee
$32.25	*$4.85

F. Insured Mail

Limit of indemnity	Fee	
	Canada	All other countries
$50	*$0.75	$1.60
100	*1.60	2.45
200	*2.50	3.35
300	*3.40	4.25
400	*4.30	5.15
500	*5.20	6.05
600	*6.10	6.95
700		7.40
800		7.85
900		8.30
1,000		8.75
1,100		9.20
1,200		9.65

G. Money Orders

The fees for international money orders issued on form MP 1 ($3.00) and money orders issued pursuant to an Authorization to Issue an International Money Order ($7.50) are not changed. The use of domestic money orders was abolished on March 1, 1995.

H. Special Handling

Weight (lb.)	Fee
Not over 10	*$5.40
Over 10	*7.50

I. Special Delivery

Class of mail	2 pounds or less	More than 2 pounds
Letters, Letter Packages, and Post/Postal Cards	*$9.95	*$10.35
Printed Matter, Matter for the Blind, and Small Packets	*$10.45	*$11.25

J. Restricted Delivery: $2.75*

K. Recorded Delivery: $1.10*

L. Certificates of Mailing

Type of mailing	Fee
Piece Mailing:	
Basic service (Form 3817)	*$0.55
Firm mailing book (Form 3877)	*0.20
Bulk Mailing:	
Up to 1,000 identical pieces	*$2.75
Each additional 1,000 pieces	*0.35
Duplicate copy	*$0.55

M. Return Charges

(For returned publishers' periodicals originally mailed to Canada by publishers or registered news agents, see IMM 781.5a.)

Weight not over (oz.)	Charge*
1	$0.32
2	0.55
3	0.78
4	1.01
5	1.24
6	1.47
7	1.70
8	1.93
9	2.16
10	2.39
11	2.60
12	2.90
13	2.90
14	2.95
15	2.95
16	2.95
Over 1 pound	Use domestic zone 8 fourth-class rates.

N. International Reply Coupons

Selling price for U.S.-issued coupons: $1.05. Redemption price for foreign-issued coupons: $0.60.

O. International Business Reply

Item	Fee
Envelope (not over 2 oz.)	$1.00
Card	0.60

P. Pickup Fee—$4.95*

VII. Country Table

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Afghanistan[1]	AA		D		2
Albania	EU		C	1	2
Algeria	AA	6	D	4	2
Andorra	EU		B		2
Angola	AA	6	E	4	2
Anguilla	WH		A		2
Antigua & Barbuda	WH		A		2
Argentina	WH	5	D	2	2
Armenia	EU	4	E		3
Aruba	WH	5	A	2	2
Ascension	AA				2
Australia	PR	3	D	3	1
Austria	EU	4	B	1	3
Azerbaijan	EU	4	E		3
Azores	EU	4	C		3
Bahamas	WH	5	A		2
Bahrain	AA	6	D	4	2
Bangladesh	AA	6	E	4	2
Barbados	WH	5	B		2
Belarus	EU	4	E		3
Belgium	EU	2	D	1	3
Belize	WH	5	A	2	2
Benin	AA	6	C	4	2
Bermuda	WH	5	A		2
Bhutan	AA	[2]6	E		2
Bolivia	WH	5	B	2	2
Bosnia-Herzegovina	EU	4	C		3
Botswana	AA	6	E		2
Brazil	WH	5	E	2	2
British Virgin Islands	WH		A		2
Brunei Darussalam	AA	6	D		2
Bulgaria	EU	4	D	1	2
Burkina Faso	AA	6	D	4	2
Burma	AA		D		2
Burundi	AA	6	E	4	2
Cambodia (Kampuchea)	AA	6		2	2
Cameroon	AA	6	D	4	2
Canada	(3)	(4)	(3)		
Cape Verde	AA	5	D		2
Cayman Islands	WH	5	A		2
Central African Republic	AA	6	E	4	2
Chad	AA	6	D		2
Chile	WH	5	D	2	2
China	PR	(5)	D	3	3
Colombia	WH	5	B	2	3
Comoros	AA		E		2
Congo	AA	6	D	4	2
Corsica	EU	2	E		1
Costa Rica	WH	5	A	2	2
Cote d'Ivoire (Ivory Coast)	AA	6	D	4	2

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Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Croatia	EU	4	C	.....	3
Cuba	WH	.....	.....	2	2
Cyprus	AA	6	C	.....	2
Czech Republic	EU	4	C	1	3
Denmark	EU	4	C	1	1
Djibouti	AA	5	D	.....	2
Dominica	WH	.....	A	.....	2
Dominican Republic	WH	5	A	2	2
Ecuador	WH	5	C	2	2
Egypt	AA	6	D	4	2
El Salvador	WH	5	B	2	2
Equatorial Guinea	AA	6	D	.....	2
Eritrea	AA	6	D	.....	2
Estonia	EU	[6]4	E	.....	3
Ethiopia	AA	5	D	4	2
Falkland Islands	WH	.....	[7]	.....	2
Faroe Islands	EU	4	C	.....	1
Fiji	PR	6	B	3	2
Finland	EU	4	D	1	1
France (incl. Monaco)	EU	[6]2	E	1	1
French Guiana	WH	.....	C	2	2
French Polynesia	AA	.....	D	.....	2
Gabon	AA	5	D	4	2
Gambia	AA	.....	B	.....	2
Georgia, Republic of	EU	4	E	.....	3
Germany	EU	[6]2	B	1	1
Ghana	AA	5	D	4	2
Gibraltar	EU	.....	C	.....	2
Great Britain & Northern Ireland	EU	([5])	C	1	1
Greece	EU	4	C	1	3
Greenland	EU	.....	D	.....	1
Grenada	WH	.....	A	.....	2
Guadeloupe	WH	.....	A	.....	2
Guatemala	WH	5	A	2	2
Guinea	AA	6	B	.....	2
Guinea-Bissau	AA	6	B	.....	2
Guyana	WH	5	B	2	2
Haiti	WH	.....	A	2	2
Honduras	WH	5	B	2	2
Hong Kong	PR	3	C	3	3
Hungary	EU	4	C	1	3
Iceland	EU	4	C	1	1
India	AA	6	D	4	3
Indonesia	PR	5	E	3	2
Iran	AA	.....	D	4	3
Iraq[8]	AA	[9]6	D	[10]4	2
Ireland	EU	2	C	1	1
Israel	AA	6	C	4	3
Italy	EU	4	C	1	1
Jamaica	WH	5	A	2	2
Japan	PR	([5])	E	3	1
Jordan	AA	6	C	4	2
Kazakhstan	EU	4	E	.....	3
Kenya	AA	6	D	4	2
Kiribati	AA	.....	B	.....	2
Korea, Dem. People's Rep. (North)	PR	.....	.....	.....	2
Korea, Republic of (South)	PR	3	C	3	3
Kuwait	AA	6	C	4	2
Kyrgyzstan	EU	4	E	.....	3
Laos	PR	6	E	.....	2
Latvia	EU	4	E	.....	3
Lebanon	AA	.....	C	4	2
Lesotho	AA	6	E	.....	2
Liberia	AA	6	C	[10]4	2
Libya	AA	.....	D	[10]4	2
Liechtenstein	EU	2	B	1	2
Lithuania	EU	4	E	.....	3
Luxembourg	EU	4	B	1	1
Macao	PR	6	C	.....	2
Macedonia, Republic of	EU	4	C	.....	3
Madagascar	AA	6	E	4	2
Madeira Islands	EU	4	B	.....	3

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Malawi	AA	6	D	.....	2
Malaysia	PR	6	D	3	3
Maldives	AA	6	D	.....	2
Mali	AA	6	C	4	2
Malta	EU	4	C	.....	2
Martinique	WH	.....	A	.....	2
Mauritania	AA	6	D	4	2
Mauritius	AA	6	E	4	2
Mexico	([11])	([5])	A	2	3
Moldova	EU	4	E	.....	3
Mongolia	AA	.....	.....	.....	2
Montserrat	WH	.....	A	.....	2
Morocco	AA	6	C	4	2
Mozambique	AA	6	E	4	2
Namibia	AA	6	D	.....	3
Nauru	AA	6	C	.....	2
Nepal	AA	.....	D	.....	2
Netherlands	EU	[6]2	C	1	1
Netherlands Antilles	WH	5	A	2	2
New Caledonia	AA	6	D	.....	1
New Zealand	PR	6	D	3	3
Nicaragua	WH	5	B	2	2
Niger	AA	6	D	4	2
Nigeria	AA	6	C	4	2
Norway	EU	4	D	1	1
Oman	AA	6	D	4	2
Pakistan	AA	6	D	4	2
Panama	WH	5	A	2	2
Papua New Guinea[8]	PR	6	D	3	2
Paraguay	WH	5	D	2	2
Peru	WH	5	B	2	2
Philippines	PR	6	D	3	3
Pitcairn Island	AA	....	B	....	2
Poland	EU	4	B	1	3
Portugal	EU	4	C	1	3
Qatar	AA	6	C	4	2
Reunion	AA	.....	E	4	2
Romania	EU	4	C	1	2
Russia	EU	4	E	1	3
Rwanda	AA	6	D	[10]4	2
Saint Christopher (St. Kitts) & Nevis	WH	.....	A	.....	2
Saint Helena	AA	.....	C	.....	2
Saint Lucia	WH	5	A	.....	2
Saint Pierre & Miquelon	WH	.....	A	.....	2
Saint Vincent & the Grenadines	WH	5	A	.....	2
San Marino	EU	.....	C	1	2
Sao Tome & Principe	AA	.....	D	.....	2
Saudi Arabia	AA	6	D	4	3
Senegal	AA	6	D	4	2
Serbia-Montenegro (Yugoslavia)[8]	EU	4	C[9]	.....	3
Seychelles	AA	6	D	.....	2
Sierra Leone	AA	6	D	4	2
Singapore	PR	3	D	3	3
Slovak Republic	EU	4	C	.....	2
Slovenia	EU	4	C	.....	3
Solomon Islands	AA	6	C	.....	2
Somalia[1]	AA	6	D	4	2
South Africa	AA	6	D	4	3
Spain	EU	4	C	1	3
Sri Lanka	AA	6	D	4	2
Sudan	AA	6	D	4	2
Suriname	WH	.....	B	2	2
Swaziland	AA	6	D	.....	2
Sweden	EU	[6]4	D	1	1
Switzerland	EU	2	B	1	3
Syria	AA	6	C	4	2
Taiwan	PR	3	C	3	3
Tajikistan	EU	4	E	.....	3
Tanzania	AA	6	E	4	2
Thailand	PR	3	D	3	3
Togo	AA	5	D	4	2
Tonga	AA	.....	B	.....	2

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Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Trinidad & Tobago	WH	5	B	2	2
Tristan da Cunha	AA	.....	E	.....	2
Tunisia	AA	6	C	4	2
Turkey	EU	4	C	1	2
Turkmenistan	EU	4	E	.....	3
Turks & Caicos Islands	WH	.....	A	.....	2
Tuvalu	AA	.....	B	.....	2
Uganda	AA	6	D	4	2
Ukraine	EU	4	E	.....	3
United Arab Emirates	AA	6	D	4	2
Uruguay	WH	5	B	2	2
Uzbekistan	EU	.....	E	.....	3
Vanuatu	AA	[6]6	B	.....	2
Vatican City	EU	.....	C	.....	2
Venezuela	WH	5	B	2	2
Vietnam	PR	6	E	.....	2
Wallis & Futuna Islands	AA	.....	D	.....	1
Western Samoa	AA	5	B	.....	2
Yemen	AA	5	E	4	2
Zaire	AA	6	E	4	2
Zambia	AA	6	E	4	2
Zimbabwe	AA	5	E	4	2

[1] All mail service suspended.
[2] On Demand Service not available.
[3] Sea separate rates for Canada.
[4] See country-specific rate. Custom Designed Service not available.
[5] See country-specific rate.
[6] Custom Designed Service not available.
[7] Surface parcel post service available.
[8] Restrictions apply. See IMM.
[9] Parcel post service suspended.
[10] ISAL service suspended.
[11] See separate rates for Mexico.

[FR Doc. 95-6781 Filed 3-17-95; 8:45 am]
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federal register

Monday
March 20, 1995

Part VII

Department of Housing and Urban Development

24 CFR Part 100
Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments; Correction; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. R–95–1706; FR–3502–C–07]

Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments; Correction

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule; Correction.

SUMMARY: On March 14, 1995 (60 FR 13840), HUD published a rule which proposed to implement section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." The purpose of this document is to make a correction to the section of the proposed rule which sets forth the standards by which to ascertain whether a facility or service is "significant" or "especially designed to meet the physical or social needs of older persons."

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–0836. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0113, or 1–800–877–8399 (Federal Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601–19) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Specifically, section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfies certain criteria. HUD has implemented the housing for older persons exemption at 24 CFR part 100, subpart E.

Section 919 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) requires the Secretary of HUD to issue a rule further defining what are "significant facilities and services especially designed to meet the physical or social needs of older persons" required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term "housing for older persons."

On March 14, 1995 (60 FR 13840) HUD published a rule which proposed to implement the requirements of section 919 of the Housing and Community Development Act of 1992. This document makes a correction to proposed § 100.306, which sets forth the standards by which to ascertain whether a facility or service is "significant" or "especially designed to meet the physical or social needs of older persons."

Proposed § 100.306 sets forth a diverse "menu" of facilities and services which a community may choose to provide. The facilities and services are listed under twelve broad categories (e.g. Social Needs, Leisure Needs, Educational Needs). The preamble to the March 14, 1995 proposed rule discusses § 100.306 on page 13841, column one, paragraph four. The preamble states that "[i]n order to qualify as 55-or-over housing, the community must provide at least two facilities or services from five of the categories, for a total of at least ten facilities or services."

However, paragraph (c) of proposed § 100.306 reads: "A housing provider provides significant facilities and services if it makes available, directly or indirectly, at least 2 facilities or services of the facilities described in paragraph (d)(10) of this section (category 10) or in paragraph (d)(11) of this section (category 11)." The phrase "in at least 5 categories described in paragraph (d) of this section, including at least two" should have followed the phrase "at least 2 facilities or services." This document inserts the missing phrase.

Accordingly, FR Doc. 95–1706, Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments, published in the **Federal Register** on March 14, 1995 (60 FR 13840) is corrected as follows:

1. On page 13843, in column 2, paragraph (c) of § 100.306 is corrected to read as follows:

§ 100.306 Significant facilities and services specifically designed for older persons.

* * * * *

(c) A housing provider provides significant facilities and services if it makes available, directly or indirectly, at least 2 facilities or services in at least five categories described in paragraph (d) of this section, including at least 2 of the facilities described in paragraph (d)(10) of this section (category 10) or in paragraph (d)(11) of this section (category 11).

* * * * *

Dated: March 15, 1995.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 95–6912 Filed 3–16–95; 2:20 pm]

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Rules and Regulations

Federal Register
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Tuesday, March 21, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–1–IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the size, maturity, container, and pack requirements for fresh shipments of these fruits, beginning with 1995 season shipments. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

DATES: Effective April 1, 1995. Comments which are received by April 20, 1995 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural producers are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met December 7, 1994, and recommended that the handling requirements for California nectarines and peaches be revised, respectively. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. This rule revises paragraph

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(a)(4)(iv) of § 916.350 by modifying two size designations for the weight-count standards in Column B of TABLE I for early-season and mid-season nectarine varieties. This table was added prior to the 1994 season. Research conducted by the NAC indicated that early-season and mid-season fruit weigh less than late-season fruit and therefore different weight-count standards were established for late-season fruit. Results from further research during the 1994 season suggest that some minor modifications of TABLE I are necessary to provide for more accurate weight-count standards for early-season and mid-season nectarines.

The NAC recommended these revised weight-count standards for nectarines after a comprehensive review of the relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season nectarine varieties. Specifically, the NAC's recommendation provides that the maximum number of nectarines of size 80 in a 16-pound sample of early-season and mid-season fruit is more appropriately 75 rather than 76. Also, the maximum number of nectarines of size 64 in a 16-pound sample of early-season and mid-season fruit is more appropriately 55 rather than 56.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for comparability between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack containers.

According to the NAC, packers occasionally moved fruit from tray-pack containers to loose-filled or tight-filled containers. This activity has led to an awareness, in regard to early-season and mid-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled containers. In some instances, these samples would need additional pieces of fruit to meet the 16-pound weight requirement, thus causing the pack to be marked smaller than its equivalent tray-pack size. When packs are marked with a smaller size, the container is generally sold for a lower price. Revised and refined weight-count standards for early-season and mid-season varieties should provide for more accurate marking of size when packed in loose-filled or tight-filled containers compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of nectarines.

Currently, under the marketing order the minimum maturity requirement for nectarines grown in California is U.S. Mature, which means that the nectarine has reached the stage of growth which will insure a proper completion of the ripening process. A higher maturity standard is defined as California "Well Matured," which is a condition distinctly more advanced than mature.

This rule adds a definition of "tree ripe" to paragraph (b) of section 916.350. According to the NAC, "tree ripe" is an optional marking without regard to maturity that is stamped on containers of nectarines. Currently there is no definition of "tree ripe". As a result of inquiries from the industry and the trade, the NAC recommended defining "tree ripe" so that it has a standard meaning. In the past, there has been no definition of "tree ripe" although fruit boxes marked "tree ripe" had to meet the minimum marketing order maturity standard of U.S. Mature. Handlers have been able to stamp any maturity level, including U.S. Mature, as "tree ripe" due to a lack of any definition for this nomenclature. The NAC stated that in some instances, handlers have stamped "tree ripe" on every box of fruit they packed all season. There is growing concern within the industry that fruit packed at the lower level of acceptable maturity do not represent what is most commonly perceived as tree ripe. By requiring that fruit must be at a minimum California Well Matured maturity standard in order to be marked "tree ripe" will help ensure that buyer expectations are met.

Maturity Requirements (Nectarines)

Section 916.356 specifies maturity requirements for fresh nectarines in paragraph (a)(1)(i), including TABLE I, for fruit being inspected and certified as meeting the maturity requirements for "well matured" fruit. Such maturity requirements are based on maturity measurements which are generally recognized in terms of maturity guides (e.g., color chips) specified in paragraph (a)(1)(i) and TABLE I of § 916.356 for nectarines. This rule revises TABLE I of paragraph (a)(1)(i) of § 916.356 for nectarines to change the maturity guide for one nectarine variety.

Specifically, a change in color standard was recommended for Alshir Red from L to J. In a corresponding action, the tolerance for the Alshir Red variety that states "except not less than an aggregate area of 95% of fruit surface shall meet the color standard established for the variety" is deleted.

These changes for this nectarine variety are based on a continuing review of its individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such variety.

Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for fourteen nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1994 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time which not only improves maturity and therefore the quality of the product but also size and increases the number of packed boxes of nectarines per acre. This provides greater consumer satisfaction, more repeat purchases and therefore increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

Paragraph (a)(4) is revised to include the Arctic Glo, May Jim, and Red Glo varieties; and paragraph (a)(6) of § 916.356 is revised to include the Arctic Queen, How Red, La Pinta, Red Fred, Royal Glo, Royal Red, Ruby Diamond, Spring Bright, Summer Blush, 424–195, and Nectarine 23 varieties.

This rule also revises § 916.356 to remove six nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1994 season. Paragraph (a)(2) of that section is revised to remove the Aurelio Grand and Maybelle nectarine varieties; paragraph (a)(4) is revised to remove the Grand Stan variety; and paragraph (a)(6) is revised to remove the Autumn Grand, Le Grand, and Super Red nectarine varieties. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. This rule revises paragraph (a)(4)(iv) of § 917.442 by modifying three size designations for the weight-count standards in Column B of TABLE I for early-season and mid-season peach varieties. Research conducted by the PCC indicated that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified based on that consideration. Results from the 1994 season suggest that some minor modifications of TABLE I are necessary to further correct the weight-count differences between early-season and mid-season peaches, and late-season peaches.

The PCC recommended the revised container marking requirement changes for peaches after a comprehensive review of the appropriate size pack-count relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season peach varieties prior to the 1995 season. Specifically, the PCC's recommendation provides that the maximum number of peaches of size 84 in a 16-pound sample of early-season and mid-season fruit is more appropriately 83 rather than 85. Also, the maximum number of peaches of size 70 in a 16-pound sample of early-season and mid-season fruit is more appropriately 64 rather than 66. The maximum number of peaches of size 60 in a 16-pound sample of early-season to mid-season fruit is more appropriately 50 rather than 47.

In making this revision, a conforming change is required in § 917.459(a)(4)(iii) which is referenced in TABLE I. Section 917.459(a)(4)(iii) currently provides a maximum number of 85 peaches in a 16-pound sample of early-season and mid-season fruit. This revision will modify the maximum number of peaches in a 16-pound sample of early-season and mid-season fruit to 83 pieces of fruit from the current 85 pieces of fruit.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between packs of loose-filled or tight-filled sizes to fruit sizes packed in tray-pack styles. Varieties harvested early in the season and packed in loose-filled or tight-filled pack styles have had more difficulty being equal in size to tray-pack style of packing.

According to the PCC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness, especially in regard to early-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose- or tight-filled pack size. In some instances, these samples would need as many as 10 additional pieces of fruit to meet the 16-pound weight requirement, thus causing the pack to be "marked" smaller than its equivalent tray-pack size. When packs are "marked" smaller this causes the container to be sold for a lower price. During the 1994 season new weight-count assignments for early varieties were in place. Research continued with the purpose of possible refinement of those weight-count assignments.

Revised and refined weight-count standards for early varieties should provide for more accurate marking size when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of peaches.

Currently, under the marketing order the minimum maturity requirement for peaches grown in California is U.S. Mature, which means that the peach has reached the stage of growth which will insure a proper completion of the ripening process. A higher maturity standard is defined as California "Well Matured," which is a condition distinctly more advanced than mature.

This rule adds a definition of tree ripe to section 917.442 paragraph (b). According to the PCC, tree ripe is an optional marking without regard to maturity that is stamped on containers of peaches. Currently there is no definition of tree ripe. As a result of inquiries from the industry and the trade, the PCC wants to define tree ripe so that its interpretation is consistent with other descriptive markings. In the past there has been no definition of tree ripe although fruit boxes marked "tree ripe" had to meet minimum marketing order standards. Handlers have been able to stamp any maturity level, including U.S. Mature, as tree ripe due to a lack of any definition for this nomenclature. The PCC states that in some instances in the past, it is known that some handlers have stamped tree ripe on every box of fruit they packed all season. There is growing concern among the industry that fruit packed at the lowest levels of maturity do not represent what is most commonly perceived as tree ripe. By requiring fruit be at a minimum California "Well Matured" maturity standard in order to be marked tree ripe will help ensure that buyer expectations are met.

Maturity Requirements (Peaches)

Section 917.459 specifies maturity requirements for fresh peaches in paragraph (a)(1)(i), including TABLE I, for fruit being inspected and certified as meeting the maturity requirements for "well matured" fruit. Such maturity requirements are based on maturity measurements which are generally recognized in terms of maturity guides (e.g., color chips) specified in paragraph (a)(1)(i) and TABLE I of § 917.459 for peaches. This rule revises TABLE I of paragraph (a)(1)(i) of § 917.459 for peaches to change the maturity guide for the David Sun, King's Red, Crimson Lady and Johnny's White peach varieties.

The SPI recommended these changes for these peach varieties based on a continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such varieties.

Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific size requirements for eight peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1994 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time which not only improves maturity and therefore the quality of the product but also size and increases the number of packed boxes of peaches per acre. This provides greater consumer satisfaction, more repeat purchases and therefore increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

In § 917.459 paragraph (a)(5) is revised to include the Snow Brite and Sugar May peach varieties; and paragraph (a)(6) is revised to include the August Delight, Autumn Rose, Red Boy, Royal Lady, September Snow, and Summer Sweet peach varieties.

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This rule also revises § 917.459 to remove two peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1994 season. In § 917.459 paragraph (a)(4) of § 917.459 is revised to remove the Morning Sun peach variety; and paragraph (a)(6) is revised to remove the Golden Lady peach variety. Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The removal of the Morning Sun variety from paragraph (a)(4) results in there being no varieties regulated within size 84 for the 1995 season. Since the variety-specific list is subject to change from one season to another, the Department wishes to reserve paragraph number § 916.459(a)(4) for future regulation of peaches at size 84.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach growers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to begin about April 1; (2) this rule relaxes grade requirements for peaches and size requirements for several nectarine and peach varieties; (3) California nectarine and peach handlers are aware of these revised requirements recommended by the committees at public meetings, and they will need no additional time to comply with such requirements; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.350 is amended by revising TABLE I of paragraph (a)(4)(iv) and paragraph (b) to read as follows:

§ 916.350 California Nectarine Container and Pack Regulation.

(a) * * *
(4) * * *
(iv) * * *

TABLE I—WEIGHT-COUNT STANDARDS FOR NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A [1]	Column B [2]
108	100
96	90
88	83
84	78
80	75
72	67
70	60
64	55
60	49
56	46
54	40
50	38
48	35
42	31
40	30
36	25
34	23
32	22
30	19

[1] Tray Pack Size Designation.
[2] Maximum Number of Nectarines in a 16-pound Sample Applicable to Varieties Specified in Paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356.

* * * * *

(b) As used in this section, *standard pack and fairly uniform in size* shall have the same meanings as set forth in U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. No. 12B standard fruit box measures 2⅜ to 7⅛ × 11½ × 16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛ × 13½ × 16⅛ inches, No.22E standard lug box measures 8¾ × 13½ × 16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½ × 13¼ × 15⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension). Individual consumer packages means packages holding 15 pounds or less net weight of nectarines. "Tree ripe" means fruit shipped and marked as tree ripe must meet minimum California Well Matured standards.

3. Section 916.356 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(1)(i), Table I, (a)(2) introductory text, (a)(4) introductory text, and (a)(6) introductory text to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) During the period beginning April 1 and ending October 31, no handler shall ship:

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided,* That nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further,* That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency.

(i) The Federal or Federal-State Inspection Service will use the maturity guides listed in TABLE I in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Fairlane, Tom Grand, and 61–61 varieties of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in TABLE I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well matured."

TABLE I

Column A variety	Column B maturity guide
Alshir Red	J
Ama Lyn	G
Apache	G
April Glo	H
Armking	B
August Glo	L
August Red	J
Aurelio Grand	F
Autumn Delight	M
Autumn Grand	L
Bob Grand	L
Clinton-Strawberry	H
Del Rio Rey	G
Desert Dawn	G
Early Diamond	J
Early May	F
Early May Grand	H
Early Star	G
Early Sungrand	H
Fairlane	M
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Gee Red	H
Gold King	H
Granderli	J
Grand Stan	F
Hi-Red	J
Independence	H
July Red	L
June Glo	H
June Grand	G
Kent Grand	L
Kism Grand	J
Larry's Grand	M
Late Le Grand	L
Late Tina Red	I
Le Grand	H
Maybelle	F
May Diamond	I
Mayfair	C
May Fire	H
May Glo	H
May Grand	H
May Kist	H
Mayred	B
Mid Glo	L
Mike Grand	H
Moon Grand	M
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	M
Red Delight	I
Red Free	L
Red Glen	J
Red Grand	H
Red Jim	L
Red June	G
Red Lion	J
Red May	J
Regal Grand	L
Rio Red	L
Royal Delight	F
Royal Giant	I
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sierra Star/181–119	G
Son Red	L
Sparkling June	M
Sparkling May	J
Sparkling Red	L
Spring Diamond	M
Spring Grand	G
Spring Red	H
Springtop	B
Stan's Grand	C
Star Bright	G
Star Brite	J
Star Grand	H
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	M
Summer Fire	L
Summer Grand	L
Summer Lion	M
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Free	J
Tasty Gold	H
Tom Grand	L
Zee Glo	J
61–61	J

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(2) Any package or container of May Glo variety nectarines through May 5 of each year; or April Glo, Mayfire, or Royal Delight variety nectarines, unless:

* * * * *

(4) Any package or container of Early May, Mike Grand, June Brite, June Glo, May Grand, May Diamond, May Lion, Pacific Star, Red Delight, Rose Diamond, Sparkling May, Star Brite, Sunfire, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Queen, Arctic Rose, August Glo, August Red, Autumn Delight, Big Jim, Bob Grand, Del Rio Rey, Early Red Jim, Early Sungrand, Fairlane, Fantasia, Firebrite, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, How Red, Independence, July Red, King Jim, Kay Diamond, Kism Grand, La Pinta, Late Le Grand, Late Red Jim, Mid Glo, Moon Grand, Niagara Grand, Prima Diamond, P-R Red, Red Diamond, Red Fred, Red Free, Red Glen, Red Jim, Red Lion, Rio Red, Royal Giant, Royal Glo, Royal Red, Ruby Diamond, Ruby Grand, Scarlet Red, September Grand, September Red, Son Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Summer Star, Sunburst, Sun Diamond, Sun Grand, Super Star, Tasty Gold, Tom Grand, Zee Glo, 181–119, 80P–1135, 424–195, or Nectarine 23 variety nectarines unless:

* * * * *

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PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

4. Section 917.442 is amended by revising TABLE I of paragraph (a)(4)(iv) and paragraph (b) to read as follows:

§ 917.442 California Peach Container and Pack Regulation.

(a) * * *
(4) * * *
(iv) * * *

Table I—Weight-Count Standards for Peaches Packed in Loose or Tight-Filled Containers

Column A [1]	Column B [2]
96	96
88	92
84	83
80	76
72	68
70	64
64	56
60	50
56	46
54	43
50	39
48	35
42	31
40	30
36	27
34	25
32	23
30	21

[1] Tray Pack Size Designation.
[2] Maximum Number of Peaches in a 16-pound Sample Applicable to Varieties Specified in Paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(iii), (a)(5)(ii), and (b)(3) of § 917.459.

* * * * *

(b) As used in this section, *standard pack* shall have the same meaning as set forth in U.S. Standards for Grades of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. No. 12B standard fruit box measures 2⅜ to 7⅛x11½x16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛x13½x16⅛ inches, No.22E standard lug box measures 8¾x13½x16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½x13¼x15⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension). Individual consumer packages means packages holding 15 pounds or less net weight of nectarines. "Tree ripe" means fruit shipped and marked as tree ripe must meet minimum California Well Matured standards.

5. Section 917.459 is amended by revising paragraph (a)(2)(ii), adding Table I, and revising paragraphs (a)(4), (a)(5) introductory text, and (a)(6) introductory text to read as follows:

§ 917.459 California Peach Grade and Size Regulation.

(a) * * *
(2) * * *

(ii) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

TABLE I

Column A variety	Column B maturity guide
Angelus	I
Ambercrest	G
Armgold	D
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Bella Rosa	G
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Bonjour	F
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Desertgold	B
Diamond Princess	J
Early Coronet	D
Early Fairtime	I
Early May Crest	H
Early O'Henry	I
Early Royal May	G
Early Top	G
Elberta	B
Elegant Lady	M
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Fortyniner	F
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
Jody Gaye	F
John Henry	J
Judy Elberta	C
July Lady	G
June Crest	G
June Lady	G
June Pride	J
June Sun	H
Kearney	I
Kern Sun	H
Kings Lady	I
Kings Red	I
Lacey	I
Mardigras	G
Mary Ann	G
May Crest	G
May Lady	G
Merrill Gem	G
Merrill Gemfree	D
Morning Sun	I
O'Henry	G
Pacifica	I
Parade	D
Pat's Pride	F
Preuss Suncrest	H
Prima Fire	J
Prima Lady	H
Prime Crest	G
Queen Crest	G
Ray Crest	I
Red Cal	C
Redglobe	G
Redhaven	G
Red Lady	G
Redtop	G
Regina	J
Rich Lady	H
Rich May	I
Rio Oso Gem	D
Royal April	J
Royal Lady	G
Royal May	H
Ruby May	I
Ryan Sun	F
Scarlet Lady	I
September Sun	H
Sierra Crest	I
Sierra Lady	I
Sparkle	G
Springcrest	H
Spring Lady	D
Springgold	J
Sugar Lady	M
Summer Lady	I
Summerset	G
Suncrest	I
Sun Lady	H
Topcrest	I
Toreador	J
Tra Zee	F
Treasure	G
Willie Red	I
Windsor	L
Zee Lady	G
50–178	

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(4) (i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of a standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 83 peaches.

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, First Lady, Flavorcrest, Golden Crest, Honey Red, June Lady, June Sun, Kern Sun, Kingscrest, Kings Red, May Crest, Merrill Gem, Merrill Gemfree, Queencrest, Ray Crest, Redtop, Regina, Rich May, Royal May, Sierra Crest, Snow Brite, Snow Flame, Springcrest, Spring Lady, Sugar May, Summer Crest, or 50–178 variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, Angelus, August Delight, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Autumn Rose, Belmont, Berenda Sun, Blum's Beauty, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairmont, Fairtime, Fay Elberta, Fire Red, Flamecrest, John Henry, July Lady, June Pride, Kings Lady, Lacey, Late Ito Red, Mary Ann, O'Henry, Parade, Prima Gattie, Prima Lady, Red Boy, Red Cal, Redglobe, Rich Lady, Royal Lady, Ryan's Sun, Scarlet Lady, September Snow, September Sun, Sierra Lady, Sparkle, Sprague Last Chance, Summer Lady, Summer Sweet, Suncrest, Tra Zee, White Lady, or Zee Lady variety of peaches unless:

* * * * *

Dated: March 15, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–6908 Filed 3–20–95; 8:45 am]

BILLING CODE 3410–02–W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–23–AD; Amendment 39–9175; AD 95–06–05]

Airworthiness Directives; Boeing Model 737–200 and -300 Series Airplanes Equipped With Cargo Doors Installed in Accordance With Supplemental Type Certification (STC) SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 and -300 series airplanes. This action requires inspections to detect cracking of the fuselage frames at certain locations below the lower jamb of the upper deck main cargo door, and repair, if necessary. This amendment is prompted by reports of fatigue cracking in the fuselage frames at these locations. The actions specified in this AD are intended to prevent rapid decompression of the airplane due to fatigue cracking in the fuselage frames of the main deck cargo door.

DATES: Effective April 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 5, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Pemco Aeroplex, Incorporated, P.O. Box 2287, Birmingham, Alabama 35201–2287. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7348; fax (404) 305–7348; or Della Swartz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2785; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Recently, two operators reported finding fatigue cracks in the fuselage frames below the lower jamb of the main deck cargo door between stringers 20L and 21L at water line 180 on Boeing Model 737–300 series airplanes. The cracking was randomly located in various areas of the fuselage frames and may have initiated at frame stations 380, 400, 420, 440, 460, and/or 480 at the radius of the frame webs that were modified in accordance with supplemental type certificate (STC) SA2969SO.

Such cracking, if not detected and corrected in a timely manner, could result in rapid decompression of the airplane.

Pemco Aeroplex installed main deck cargo doors on Boeing Model 737–200 and -300 series airplanes in accordance with STC SA2969SO. Therefore, the FAA has determined that Boeing Model 737–200 series airplanes are also subject to the same unsafe condition.

The FAA has reviewed and approved Pemco Alert Service Letter 737–53–0004, dated January 10, 1995, which describes procedures for detailed close visual inspections to detect cracking of the fuselage frames below the lower jamb of the upper deck main cargo door between stringers 20L and 21L at water line 180 at frame stations 380, 400, 420, 440, 460, and 480, and repair of any cracking found.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent rapid decompression of the airplane due to cracking of the fuselage frames below the lower jamb of the upper deck main cargo door. This AD requires detailed close visual inspections to detect cracking of the fuselage frames below the lower jamb of the upper deck main cargo door, and repair, if necessary. The actions are required to be accomplished in accordance with the alert service letter described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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Note: The FAA previously issued AD 95–01–06, amendment 39–9117 (60 FR 2323, January 9, 1995), which is applicable to the same airplanes affected by this new AD action. AD 95–01–06 requires inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main cargo door, and replacement of cracked parts. The requirements of AD 95–01–06 are different and separate from the requirements of this new AD.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–23–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–05 Boeing: Amendment 39–9175. Docket 95–NM–23–AD.

Applicability: Model 737–200 and –300 series airplanes equipped with main deck cargo doors installed in accordance with supplemental type certificate (STC) SA2969SO, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression due to cracking of the fuselage frames below the lower jamb of the upper deck main cargo door, accomplish the following:

(a) Within 50 flight cycles after the effective date of this AD or within 50 flight cycles after the installation of STC SA2969SO, whichever occurs later, perform a detailed close visual inspection to detect cracking of the fuselage frames below the lower jamb of the upper deck main cargo door between stringers 20L and 21L at water line 180 at frame stations 380, 400, 420, 440, 460, and 480, in accordance with Pemco Alert Service Letter 737–53–0004, dated January 10, 1995.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 450 flight cycles until the repair described in Pemco Alert Service Letter 737–53–0004, dated January 10, 1995, has been accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with Pemco Alert Service Letter 737–53–0004, dated January 10, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and repair shall be done in accordance with Pemco Alert Service Letter 737–53–0004, including Appendices I and II dated January 10, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pemco Aeroplex, Incorporated, P.O. Box 2287, Birmingham, Alabama 35201–2287. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 5, 1995.

Issued in Renton, Washington, on March 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6319 Filed 3–20–95; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL79–1–6616A; FRL—5167–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves requested revisions to Chicago ozone Federal Implementation Plan (FIP) as it pertains to the following sources: General Motors Corporation, Electro-Motive Division Plant (GMC Electro-Motive), LaGrange, Illinois; Minnesota Mining and Manufacturing Corporation (3M), Bedford Park, Illinois; Replogle Globes, Inc. (Replogle); Broadview, Illinois; Candle Corporation of America (CCA), Chicago, Illinois; Nalco Chemical Company (Nalco) Bedford Park, Illinois Clearing Plant; Parisian Novelty Company (Parisian), Chicago, Illinois; Meyercord Corporation (Meyercord), Carol Stream, Illinois; Wallace Computer Services, Inc. (Wallace) Printing and Binding Plant, Hillside, Illinois; and the General Packaging Products, Inc. (GPP) Chicago, Illinois. This action lists the FIP revisions USEPA is approving and incorporates the relevant material into the Code of Federal Regulations. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated below. Elsewhere in this **Federal Register**, USEPA is proposing approval, soliciting public comment, and offering an opportunity for a public hearing on these requested FIP revisions. If adverse comments are received or a public hearing is requested on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in the final rule on the proposed rule published in the proposed rules section of this **Federal Register**. Unless this final rule is withdrawn, no further rulemaking will occur on this requested FIP revision.

EFFECTIVE DATE: This action will be effective May 22, 1995 unless notice is received by April 20, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Docket: Pursuant to sections 307(d)(1)(B) and (N) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A–94–39, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Fayette Bright before visiting the Chicago location and Rachel Romine before visiting the Washington, D.C. location. A reasonable fee may be charged for copying.

The United States Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6069.

United States Environmental Protection Agency, Docket No. A–94–39, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer (312) 886–6052.

SUPPLEMENTARY INFORMATION: On June 29, 1990, USEPA promulgated a FIP requiring Reasonably Available Control Technology (RACT) to control the emission of Volatile Organic Compounds (VOCs) in six counties in the Chicago metropolitan area. 55 FR 26818, codified at 40 CFR 52.741. In determining the applicability of some of these regulations to particular sources, USEPA used the concept of "maximum theoretical emissions" (MTE), which is defined as "the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year * * * at "55 FR 26860, 40 CFR 52.741(a). Relief for otherwise subject sources is available through a site-specific State Implementation Plan (SIP) or FIP revision that limits emissions to below the applicable cutoff by operational or production limitations.

The sources identified in Table 1 have requested that USEPA approve production or operational limitations that will keep their emissions below the applicability cutoff of the rule to which they would otherwise be subject. Production limits are restrictions on the amount of final product which can be manufactured or otherwise produced at a source. Operational limits are all other restrictions on the manner in which a source is run, including hours of operation and amount and type of raw material consumed. Production and operational limits must be stated as conditions that can be enforced independently of one another.

FIP revisions which limit VOC emissions to less than 100 tons VOC per year have been requested by the following nine companies.

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TABLE 1.—REQUESTS FOR FEDERALLY ENFORCEABLE OPERATING RESTRICTIONS

State	Pollutant	Subject matter	Source	Date of submission
Illinois	VOM	Chicago Ozone FIP	GMC Electro-Motive	[1]NA
Illinois	VOM	Chicago Ozone FIP	3M	08/29/91
Illinois	VOM	Chicago Ozone FIP	Replogle	10/17/91
Illinois	VOM	Chicago Ozone FIP	CCA	09/05/91
Illinois	VOC	Chicago Ozone FIP	Nalco	02/23/93
Illinois	VOM	Chicago Ozone FIP	Parisian	04/09/92
Illinois	VOM	Chicago Ozone FIP	Meyercord	08/12/94
Illinois	VOM	Chicago Ozone FIP	Wallace	09/24/92
Illinois	VOM	Chicago Ozone FIP	General Packaging	10/02/92

[1] The General Motors revision is based on materials submitted to USEPA on February 28, 1991 and May 10, 1991, in connection with resolution of *General Motors Corp.* v. *USEPA*, No. 90–2889 (7th Cir.).

USEPA has determined that these FIP revision requests comply with all applicable requirements of the Act and USEPA policy and regulations concerning such revisions. The USEPA, therefore, grants these requests.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on May 22, 1995. However, if we receive adverse comments or a request for a public hearing by April 20, 1995, then USEPA will publish a notice that withdraws this action. If no request for a public hearing has been received, USEPA will address the public comments received in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. If a public hearing is requested, USEPA will publish a proposed rule announcing a public hearing and reopening the public comment period until 30 days after the public hearing. At the conclusion of this additional public comment period, USEPA will publish a final rule responding to the public comments received and announcing final action.

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Volatile organic compound, Volatile organic material.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by adding paragraphs (e)(8), (h)(6), (u)(6), (u)(7), (v)(6), (x)(6), (x)(8), (x)(9), (x)(10), (x)(11), (x)(12) and (x)(13) read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, Du Page, Kane, Lake, McHenry and Will Counties.

* * * * *

(e) * * *

(8) The control requirements in this paragraph apply to the wood coating line, which coats wooden globe stand components, at Replogle Globes, Inc. (Replogle) Broadview facility in Cook County, Illinois, instead of the control requirements in paragraphs (e)(1) and (e)(2) of this section. Compliance with this paragraph must be demonstrated through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) of this section.

(i) After October 6, 1991, no coatings shall at any time be applied which exceed the following emission limitations for the specified coating.

(A) 6.59 pounds (lbs) Volatile Organic Material (VOM) per gallon of stain (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat wooden globe stand components. Such stain consists of #9250 Walnut NGR Stain (RGI #W06000100), #9974 Cherry NGR Stain (RGI #W06003500) and #9943 Ash NGR Stain (RGI #W06003600). The Administrator must be notified at least ten (10) days prior to the use of any replacement stains.

(B) 5.53 lbs VOM per gallon of Sanding Sealer (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat wooden globe stand components. Such sealer consists of #15304 High Build Sanding Sealer (RGI #W06003700). The Administrator must be notified at least ten (10) days prior to the use of any replacement sanding sealer.

(C) 5.20 lbs VOM per gallon of lacquer (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat wooden globe stand components. Such lacquer consists of #15352 High Build Lacquer (RGI #W06003300). The Administrator shall be notified at least ten (10) days prior to the use of any replacement lacquer.

(ii) After October 6, 1991, the volume of coatings used shall not exceed the following:

(A) 5,000 gallons per year total for all coatings specified in paragraph (e)(8)(i)(A) of this section. The yearly volume of coatings used are to be calculated as follows:

(*1*) Compute the volume of specified coating used each month by the 15th of the following month.

(*2*) By the 15th of each month, add the monthly coating use for the 12 previous months (to obtain the yearly volume of coatings used).

(B) 4,000 gallons per year total for all coatings specified in paragraph (e)(8)(i)(B) of this section. The yearly volume of the coatings used are to be calculated as specified in paragraphs (e)(8)(ii)(A)(1) and (e)(8)(ii)(A)(2) of this section.

(C) 5,000 gallons per year total for all coatings specified in paragraph (e)(8)(i)(C) of this section. The yearly volume of coatings used are to be calculated as specified in paragraphs (e)(8)(ii)(A)(1) and (e)(8)(ii)(A)(2) of this section.

(iii) Beginning on October 6, 1991, the owner and operator of the Replogle Globes, Inc. plant in Broadview, Illinois shall keep the following records for each month. All records shall be retained at Replogle Globes, Inc. for three (3) years and shall be made available to the Administrator on request.

(A) the name and identification number of each coating as applied on any wood coating line.

(B) The weight of VOM per volume (determined in accordance with the procedures in paragraph (a)(4)(i) of this section) and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month on any wood coating line.

* * * * *

(h) * * *

(6) The control and recordkeeping and reporting requirements, as well as the test methods in this paragraph, apply to the rotogravure and flexographic presses at General Packaging Products, Inc.'s (GPP) plant in Chicago, Illinois, instead of the requirements in 40 CFR 52.741(h)(1) through 40 CFR 52.741(h)(5).

(i) After July 1, 1992, no inks or other volatile organic material (VOM) containing materials shall at any time be applied or used which have a higher percent VOM by weight than the following:

(A) 8 percent VOM by weight for waterbased inks as applied on GPP's presses.

(B) 82 percent VOM by weight for solvent based inks as applied on GPP's presses.

(C) 100 percent VOM by weight for all other VOM containing materials (besides inks) as used on GPP's presses.

(ii) After July 1, 1992, the weight of ink and other VOM containing materials used shall not exceed the following:

(A) 200,000 pounds per year total for all waterbased inks, as applied (including dilution material). The yearly weight of waterbased inks used is to be calculated according to the procedure in paragraph (h)(6)(iii) of this section.

(B) 100,008 pounds per year total for all solvent based inks, as applied (including dilution material). The yearly weight of solvent based inks used is to be calculated according to the procedure in paragraph (h)(6)(iii) of this section.

(C) 100,000 pounds per year total (based upon the formulation of the material as it is used on the presses) for all other VOM containing materials (besides inks). The yearly weight of other VOM containing materials is to be calculated according to the procedure in paragraph (h)(6)(iii) of this section.

(iii) The yearly weight of ink/material used is to be calculated as follows:

(A) Compute the weight of ink/material used each month by the 15th of the following month.

(B) By the 15th of each month, add the monthly ink/material usage for the 12 previous months (to obtain the yearly weight of ink/material used).

(iv) Beginning on July 1, 1992, the owner and operator of GPP's plant in Chicago, Illinois, shall keep the following records for each month. All records shall be retained at GPP for 3 years and shall be made available to the Administrator on request:

(A) The name and identification number of each waterbased ink, each solvent based ink, and each other VOM containing material as applied or used on any press.

(B) The pounds of waterbased ink as applied on all presses for each month and the percent VOM by weight for each waterbased ink as applied on any press for each month.

(C) The pounds of solvent based ink as applied on all presses for each month and the percent VOM by weight for each solvent based ink as applied on any press for each month.

(D) The pounds of other (non-ink) VOM containing material used on all presses for each month and the percent VOM by weight for each (non-ink) VOM containing material as used on any press for each month.

(v) Any record showing a violation of paragraph (h)(6)(i) or (h)(6)(ii) of this section shall be reported by sending a copy of such record to the Administrator within 30 days of the violation.

(vi) To determine compliance with paragraphs (h)(6)(i) and (h)(6)(ii) of this section and to establish the records required under paragraph (h)(6)(iv) of this section the percent VOM by weight of each ink and other VOM containing material shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) of this section.

* * * * *

(u) * * *

(6) The control requirements in this paragraph apply to the adhesive globe coating operations at Replogle's Broadview facility in Cook County, Illinois, instead of the control requirements in paragraph (u)(3) of this section.

(i) After October 6, 1991, no coatings shall at any time be applied which exceed the following emission limitations for the specified coating.

(A) 7.0 lbs VOM per gallon of adhesive coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat globes. Such coating consists of #7879446 Methylene Chloride (RGI #01004100). The Administrator shall be notified at least ten (10) days prior to the use of any replacement adhesive for coating globes.

(B) [Reserved]

(ii) After October 6, 1991, the volume of coatings used shall not exceed the following:

(A) 572 gallons per year total for all coatings specified in paragraph (u)(6)(i)(A) of this section. The yearly volume of coatings used are to be calculated as follows:

(*1*) Compute the volume of specified coating used each month by the 15th of the following month.

(*2*) By the 15th of each month, add the monthly coating use for the 12 previous months (to obtain the yearly volume of coatings used).

(B) [Reserved]

(iii) Beginning on October 6, 1991, the owner and operator of the Replogle Globes, Inc. plant in Broadview, Illinois shall keep the following records for each month. All records shall be retained at Replogle Globes, Inc. for three (3) years and shall be made available to the Administrator on request:

(A) The name and identification number of each coating as applied on any adhesive globe coating line.

(B) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month on any adhesive globe coating line.

(7) The control requirements in this paragraph apply to the glass candle container coating line(s) and silk screening machines at the Candle Corporation of America (CCA), Chicago, Illinois facility, instead of the control requirements in paragraph (u)(3) of this section.

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(i) After June 1, 1992, no coatings or inks shall at any time be applied, at any coating or ink applicator, which exceed the following emission limitations for the specified coating or ink.

(A) 6.04 pounds (lbs) volatile organic material (VOM) per gallon of clear lacquer/varnish (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat glass candle containers. Such clear lacquer/varnish (multi-color) is identified as LP3500. The Administrator must be notified at least 10 days prior to the use of any replacement clear lacquers/varnishes.

(B) 5.23 lbs VOM per gallon of translucent coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat glass candle containers. Such translucent coating (multi-color) is identified as LP3603. The Administrator must be notified at least 10 days prior to the use of any replacement translucent coatings.

(C) 5.84 lbs VOM per gallon of white lacquer (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to coat glass candle containers. Such white lacquer is identified as LP3507. The Administrator must be notified at least 10 days prior to the use of any replacement white lacquers.

(D) 3.40 lbs VOM per gallon of fast dry enamel silk screen printing ink (minus water and any compounds which are specifically exempted from the definition of VOM) as applied to print onto glass candle containers.

(ii) After June 1, 1992, the volume of coating and ink used shall not exceed the following:

(A) 2,164 gallons per month total for all coatings specified in paragraph (u)(7)(i)(A) of this section.

(B) 369 gallons per month total for all coatings specified in paragraph (u)(7)(i)(B) of this section.

(C) 49 gallons per month total for all coatings specified in paragraph (u)(7)(i)(C) of this section.

(D) 50 gallons per month total for all inks specified in paragraph (u)(7)(i)(D) of this Section.

(iii) Beginning on June 1, 1992, the owner and operator of CCA's plant in Chicago, Illinois, shall keep the following records for each month. All records shall be retained at CCA for 3 years and shall be made available to the Administrator on request.

(A) The name and identification number of each coating and ink as applied on any glass candle container coating line or silk screening machine.

(B) The weight of VOM per volume and the volume of each coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month on any glass candle container coating line or silk screening machine.

(iv) After June 1, 1992, no more than 100 gallons per month of cleaning solvent is allowed to be used on the glass candle container coating line(s) at CCA. The only cleaning solvents allowed for use are acetone (identified as LP3525) and methyl ethyl ketone (identified as LP3520). Beginning on June 1, 1992, CCA shall keep monthly records of the type and volume of all cleaning solvents used. All such records shall be retained at CCA for 3 years and shall be made available to the Administrator on request.

(v) After June 1, 1992, no more than 50 gallons per month of cleaning solvent is allowed to be used on the glass candle container silk screening machines at CCA. The only cleaning solvent allowed for use is petroleum naphtha (identified as light aromatic naphtha with 7.28 lbs VOM per gallon, minus water and any compounds which are specifically exempted from the definition of VOM). Beginning on June 1, 1992, CCA shall keep monthly records of the type and volume and the weight of VOM per volume (minus water and any compounds which are specifically exempted from the definition of VOM) of all cleaning solvents used on the glass candle container silk screening machines. All such records shall be retained at CCA for 3 years and shall be made available to the Administrator on request.

* * * * *

(v) * * *

(6) The control requirements in this paragraph apply to the 7 blenders and 3 moguls of the adhesive coating solution formulation (compounding) operations at the Minnesota Mining and Manufacturing Corporation's (3M) Bedford Park facility in Cook County, Illinois, instead of the control requirements in paragraph (v)(3) of this section.

(i) After September 1, 1991, the following operating restrictions shall apply to 3M's Bedford Park, Illinois, compounding operations.

(A) The combined operating hours for all blenders shall not exceed 8,400 hours per quarter (rolled on a monthly basis). The combined quarterly operating hours of all blenders are to be calculated as follows:

(*1*) By the 15th of each month, compute the combined monthly operating hours of all blenders during the previous month.

(*2*) By the 15th of each month, add the monthly operating hours of all blenders for the 3 previous months (to obtain the combined quarterly operating hours of all blenders).

(B) The combined operating hours for all moguls shall not exceed 4,200 hours per quarter (rolled on a monthly basis). The quarterly operating hours of all moguls are to be calculated as follows:

(*1*) By the 15th of each month, compute the combined monthly operating hours of all moguls during the previous month.

(*2*) By the 15th of each month, add the monthly operating hours of all moguls for the 3 previous months (to obtain the combined quarterly operating hours of all moguls).

(ii) Beginning on September 1, 1991, the owner and operator of the 3M Bedford Park Plant in Bedford Park, Illinois, shall keep the following records. These records shall be compiled on a monthly basis, be retained at the 3M facility for a period of 3 years, and be made available to the Administrator upon request.

(A) Separate monthly records for each of the 7 blenders identifying each batch and the length of each batch as well as the total monthly hours of operation for all blenders.

(B) Separate monthly records for each of the 3 moguls identifying each batch and the length of each batch as well as the total monthly hours of operation for all moguls.

* * * * *

(x) * * *

(6) The control requirements in this paragraph apply to the varnish operations at the General Motors Corporation, Electro-Motive Division Plant (GMC Electro-Motive), LaGrange, Illinois, instead of the control requirements in paragraph (x)(3) of this section.

(i) After July 1, 1991, no coatings shall at any time be applied which exceed the following emission limitations for the specified coating.

(A) 8.0 lbs VOM per gallon of coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied at each coating applicator to coat Nomex rings. Such coating consists of Monsanto Skybond 705 Polyamide Resin (EMD P/N 9088817) and diluents. The Administrator must be notified at least 10 days prior to the use of any replacement coating(s) and/or diluents for coating Nomex rings.

(B) 6.8 lbs VOM per gallon of coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied at each coating applicator for any coatings not specified in paragraph (x)(6)(i)(A) of this section.

(ii) After July 1, 1991, the volume of coatings used shall not exceed the following:

(A) 600 gallons per year total for all coatings specified in paragraph (x)(6)(i)(A) of this section. The yearly volume of coatings used are to be calculated as follows:

(1) Compute the volume of specified coating used each month by the 15th of the following month.

(2) By the 15th of each month, add the monthly coating use for the 12 previous months (to obtain the yearly volume of coatings used).

(B) 28,500 gallons per year total for all coatings other than those specified in paragraph (x)(6)(i)(A) of this section. The yearly volume of coatings used are to be calculated as specified in paragraphs (x)(6)(ii)(A)(1) and (x)(6)(ii)(A)(2) of this section.

(iii) Beginning on July 1, 1991, the owner and operator of the General Motors Corporation Electro-Motive Division Plant in LaGrange, Illinois shall keep the following records for each month. All records shall be retained at General Motors for 3 years and shall be made available to the Administrator on request.

(A) The name and identification number of each coating as applied on any coating line within the varnish operation.

(B) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month on any coating line within the varnish operation.

* * * * *

(8) The control and recordkeeping requirements in this paragraph apply to the silk screen presses and associated ovens, cleaning operations and laminators at Parisian's Novelty Company (Parisian), Chicago, Illinois, facility, instead of the control requirements in paragraphs (x)(8) (u)(3) and (x)(3) of this section and the recordkeeping requirements in paragraph (x)(8)(y) of this section.

(i) After March 1, 1993, no coatings or inks shall at any time be applied, at any coating or ink applicator, which exceed the following emission limitations for the specified coating or ink.

(A) 6.65 pounds (lbs) volatile organic material (VOM) per gallon of ink (minus water and any compounds which are specifically exempted from the definition of VOM) as applied on Parisian's silk screen presses.

(B) 6.4 lbs VOM per gallon of adhesive coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied on Parisian's laminators. Such adhesive is identified as MIX #963.

(ii) After March 1, 1993, the volume of coating and ink used shall not exceed the following:

(A) 2,556 gallons per year total for all inks. The yearly volume of inks used is to be calculated as follows:

(*1*) Compute the volume of ink used each month by the 15th of the following month.

(*2*) By the 15th of each month, add the monthly ink usage for the 12 previous months (to obtain the yearly volume of ink used).

(B) 780 gallons per year total for all coatings specified in paragraph (x)(8)(i)(B) of this section. The yearly volume of coatings used are to be calculated as specified in paragraphs (x)(8)(ii)(A)(*1*) and (x)(8)(ii)(A)(*2*) of this section.

(iii) Beginning on March 1, 1993, the owner and operator of Parisian's plant in Chicago, Illinois, shall keep the following records for each month. All records shall be retained at Parisian for 3 years and shall be made available to the Administrator on request.

(A) The name and identification number of each coating as applied on any laminator.

(B) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month on any laminator.

(C) The weight of VOM per volume and the volume of each type of ink (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month on any screen press.

(iv) After March 1, 1993, no more than 84 gallons per year of denatured alcohol may be used for cleaning labels at Parisian. The yearly volume of denatured alcohol used is to be calculated as specified in paragraphs (x)(8)(ii)(A)(*1*) and (x)(8)(ii)(A)(*2*) of this section. Beginning on March 1, 1993, Parisian shall keep monthly records of the type, volume, and VOM content of all solvents used for label cleaning. These records shall be retained at Parisian for 3 years and shall be made available to the Administrator on request.

(v) After March 1, 1993, no more than 7,932 gallons per year of screen wash #956 may be used on Parisian's screen cleaner. The yearly volume of screen wash #956 used is to be calculated as specified in paragraphs (x)(8)(ii)(A)(*1*) and (x)(8)(ii)(A)(*2*) of this section. Beginning on March 1, 1993, Parisian shall keep monthly records of the type, volume, and VOM content of all cleaning compounds used on Parisian's screen cleaner. These records shall be retained at Parisian for 3 years and shall be made available to the Administrator on request.

(vi) After March 1, 1993, only those cleaners specifically identified in paragraphs (x)(8)(iv) and (x)(8)(v) of this section may be used at Parisian.

(9) The control requirements in this paragraph apply to the process sources listed in paragraph (x)(9)(i)(A) of this section at the Nalco Chemical Company facility in Bedford Park, Illinois, instead of the control requirements in paragraph (x)(3) of this section.

(i) *Production and Operation Restrictions.*

(A) On and after October 1, 1992, the maximum volatile organic compound (VOC) emissions per batch, the 12-month rolling average number of batches per year, and the peak limit of batches per month shall not exceed the following limits:

Source	Maximum VOC emissions, lb/batch	12-mo. rolling average limit batch/yr	Peak batch limit, batch/month
(*1*) System 1 charge	0.16	280	33.
System 1 purge	1.35		
(*2*) 24–T–156, 157	2.60	300	33.
(*3*) 28–T–217, 234	0.23	402	45.
(*4*) 28–T–214–216	5.70	603	65.
(*5*) 20–R–182, 185	0.02	72	8.
(*6*) 20–R–130	0.07	340	38.
(*7*) 20–R–155	0.21	254	29.

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Source	Maximum VOC emissions, lb/batch	12-mo. rolling average limit batch/yr	Peak batch limit, batch/month
(*8*) 20–WT–174	0.21	254	29.
(*9*) 12–T–97–99	4.6E–4 lb/hr	8,760 hr/yr	744 hr/mo.
(*10*) 12–T–95	4.0E–6 lb/hr	8,760 hr/yr	744 hr/mo.
(*11*) 12–T–96	7.7E–5 lb/hr	8,760 hr/yr	744 hr/mo.
(*12*) 12–T–67, 73	0.003 lb/hr	8,760 hr/yr	744 hr/mo.
(*13*) 20–T–121–122	0.85	312	34.
(*14*) 20–T–123–125	5.4	616	68.
(*15*) 20–T–140, 142	8.0	600	65.
(*16*) 20–T–159	0.31	416	46.
(*17*) 20–R–193, 200	9.8	540	59.
(*18*) 32–R–300	0.18	365	41.
(*19*) 32–T–302	0.21	365	41.
(*20*) 32–T–304	0.21	730	81.
(*21*) 32–T–314	0.23	365	41.
(*22*) 32–T–322	0.21	365	41.
(*23*) 32–T–328	0.23	365	41.
(*24*) 10–T–61	0.001	365—containing organic	31—containing organic.
(*25*) 24–T–441, 166	0.12	730	81.
(*26*) 25–T–284, 440, 443–444.	0.28	730	81.
(*27*) 25–T–170	4E–6	104	12.
(*28*) Tank truck loading	0.12 lb/truck	1,600 trucks/yr	134 trucks/mo.
(*29*) System 2	0.36	280	33.
(*30*) System 4	2.88	280	33.
(*31*) 25–R–164	0.10	365	41.
(*32*) 25–R–205	0.14	365	41.
(*33*) Drum station	3.51	1,005	110.
(*34*) V–4SAC	1.56	254	29.
(*35*) 20–CT–155	13.90	254	29.
(*36*) 12–SE–100	1.10 lb/hr	8,760 hr/yr	744 hr/mo.
(*37*) Drum exhaust hood A	1.00	365—involving use of organic material	31—involving use of organic material.
(*38*) 24–T–230	0.98	730	81.
(*39*) 8–CT–1	0.002 lb/hr	8,760 hr/yr	744 hr/mo.
(*40*) 9–CT–1	0.002 lb/hr	8,760 hr/yr	744 hr/mo.
(*41*) 10–CT–1	0.005 lb/hr	8,760 hr/yr	744 hr/mo.
(*42*) 22–CT–1	0.003 lb/hr	8,760 hr/yr	744 hr/mo.
(*43*) 25–CT–1	0.005 lb/hr	8,760 hr/yr	744 hr/mo.
(*44*) 25–CT–2	0.002 lb/hr	8,760 hr/yr	744 hr/mo.
(*45*) 29–CT–1	0.002 lb/hr	8,760 hr/yr	744 hr/mo.
(*46*) 32–CT–1	0.005 lb/hr	8,760 hr/yr	744 hr/mo.
(*47*) 36–CT–1	0.002 lb/hr	8,760 hr/yr	744 hr/mo.
(*48*) 32–T–325	0[a]	365	41.
(*49*) 26–R–195	0.1[a]	365	41.
(*50*) Continuous polymer-blending.	0.1 lb/hr[a]	2,000 hr/yr	
(*51*) Portafeed washer booth 1.	0.84 lb/hr[b]	4,160 hr/yr	744 hr/mo.
(*52*) Portafeed washer booth 2.	0.84 lb/hr[b]	8,736 hr/yr	744 hr/mo.
(*53*) 32–T–392	4.4E–7	104	12.

[a] Assumed value.
[b] Based on monitoring data.

(B) The following equation shall be used to calculate maximum VOC emissions per batch for the process sources listed in paragraphs (x)(9)(i)(A)(*1*) (charge only and (*2*) through (*28*) and (*53*) of this section:
Where:

$$ER(lb/batch) = \frac{Q_O(gal/batch) \times M_V(lb/mole) \times P(mmHg)}{constant_1([gal][mmHg]/mole)}$$

ER = VOC emission rate;
Q_o = Quantity of organic per batch or charge rate;
M_v = Molecular weight of the volatile component;
P = Partial pressure of the volatile component for mixtures of liquid made up with more than one chemical; or vapor pressure for pure liquids made up of only one organic chemical; and
Constant $_1$ = (7.45 gal/ft^3)x(385 ft^3/mole)x(760 mmHg).

(C) The following equation shall be used to calculate the VOC emissions per batch from the process sources listed in paragraph (x)(9)(i)(A)(*1*) of this section

(purge only) and (*29*) through (*32*) of this section:

$$ER(lb/batch) = \frac{PR(ft^3/batch) \times M_V(lb/mole) \times P(mmHg)}{constant_2([ft^3][mmHg]/mole)}$$

Where:
PR=Nitrogen purge rate; and
Constant $_2$ = (385 ft^3/mole)x(760 mmHg).

(D) The following equation shall be used to calculate the VOC emissions per batch from the drum station listed at paragraph (x)(9)(i)(A)(*33*) of this section:
ER(1b/batch) = (0.40 x [ER$_{28\text{-}T\text{-}217\text{-}218}$])+(0.60 x [ER$_{28\text{-}T\text{-}214\text{-}216}$])

(E) The following equation shall be used to calculate the VOC emissions per batch from the V–4SAC listed at paragraph (x)(9)(i)(A)(*34*) of this section:

$$ER(lb/batch) = \frac{FR_{1mmHg}(lb/batch) \times M_V(lb/mole) \times P_{V2}(mmHg)}{M_a(lb/mole) \times (760 - P_{V2})(mmHg)}$$

Where:
FR_{1mmHg} = Maximum air flow rate to maintain 1 mmHg;
M_a = Molecular weight of air; and
P_{v2} = Vapor pressure of organic at 65 °F and 760 mmHg.

(F) The following equation shall be used to calculate the VOC emissions per batch from 20–CT–155 listed at paragraph (x)(9)(i)(A)(*35*) of this section:

$$ER(lb/batch) = [ER_{tot}(lb/hr) - ER_{V-4SAC}(lb/hr)] \times hr/batch$$

Where:
ER_{tot} = Total system emission rate calculated using the following equation:

$$ER_{tot}(lb/hr) = \frac{FR_{1mmHg}(lb/hr) \times M_V(lb/mole) \times P_{V1}(mmHg)}{M_a(lb/mole) \times (350 - P_{V1})(mmHg)}$$

Where:
P_{v1} = Vapor pressure of organic at 200 °F and 350 mmHg.

(G) The following equation shall be used to calculate the VOC emissions per hour from 12–SE–100 listed at paragraph (x)(9)(i)(A)(*36*) of this section:
ER(lb/hr) = Evap (gm/cm^{2}sec) × area (cm^2) × 3600 sec/hr
Where:
Evap = Evaporation rate from a surface 8.93 cm × 8.9 cm (lb/[cm^2] [sec]) calculated using the following equation:

$$Evap = 10^{-7} M_v^{0.71} \times [0.034 (P_e - P_d)^{1.25} + 156 (P_e - P_d)]$$

Where:
P_e = Partial pressure of the component from the spilled liquid;
P_d = Partial pressure of the component in the incident air stream, assumed to be 0 mmhg; and
Area = Surface area of the liquid.

(H) The following equation shall be used to calculate the VOC emissions per batch from the drum exhaust hood A listed at paragraph (x)(9)(i)(A)(*37*) of this section:

$$ER(lb/batch) = \frac{FR(ft^3/batch) \times M_V(lb/mole) \times P(mmHg)}{constant_2([ft^3][mmHg]/mole)}$$

Where:
FR = Air flow rate.

(I) The following equation shall be used to calculate the VOC emissions per batch from 24–T–230 listed at paragraph (x)(9)(i)(A)(*38*) of this section:

$$ER(lb/batch) = \frac{(V_H - V_A) \times M_V \times PP_{135°F} \times 0.5}{constant_3}$$

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Where:

V_H = Head space volume at heated temperature 135°F;

V_A = Head space volume at ambient temperature 68°F;

$PP_{135°F}$ = Partial pressure of volatile component at 135°F.

$Constant_3$ = (434 ft³/mole)(7.45 gal/ft³)x(760 mmHg)

(J) The following equations shall be used to calculate the VOC emissions per batch from the process sources listed in paragraph (x)(9)(i) (*39*) through (*47*) of this section:

$$ER_A(lb/yr) = \frac{V_R(gal) \times M_V(lb/mole) \times P(mmHg) \times org}{t(yr) \times constant_1\ ([gal]\ [mmHg]/mole)}$$

$$ER_B(lb/yr) = C_B \times V_T(gal) \times d_B(lb/gal) \times (charges/yr) \times org$$

$$ER_C(lb/yr) = C_C \times Evap(gal/min) \times d_C(lb/gal) \times (min/yr) \times org$$

Where:

V_R = Refill volume;

t = Time between refills;

org = Fraction of organic component in product;

C_B = Concentration of chemical B fed 3 times/week;

v_T = Tower volume;

d_B = Density of chemical B;

C_C = Concentration of chemical C fed continuously;

Evap = Evaporation rate; and

d_c = Density of chemical C.

(K) The number of batches for each process source shall be calculated as follows:

(*1*) Compute the monthly number of batches for each process source by the 15th day of the following month.

(*2*) By the 15th day of each month, add the monthly number of batches for each process source for the 12 previous months to obtain the total number of batches per year.

(ii) *Recordingkeeping.*

(A) On and after October 1, 1992, the owner and operator of the Nalco Chemical Company facility in Bedford Park, Illinois, shall keep the following records for all process sources listed in paragraphs (x)(9)(i)(A) (*1*) through (*53*) of this section. These records shall be maintained for the units specified in paragraphs (x)(9)(i) (A) through (K) of this section, be compiled on a monthly basis, be retained at the facility for a period of 3 years, and be made available to the Administrator upon request.

(B) [Reserved]

(*1*) Calculations of the pounds per batch or pounds per hour (as appropriate) for each batch for each process source. This includes the information necessary for each calculation.

(*2*) The monthly number of batches for each process source.

(*3*) The total number of batches per year for the 12 previous months for each process source.

(10) The control requirements in this paragraph apply to the storage tanks listed in paragraph (x)(10)(i)(A) of this section at the Nalco Chemical Company facility in Bedford Park, Illinois, instead of the control requirements in paragraph (x)(3) of this section.

(i) *Production and Operation Restrictions.*

(A) On and after October 1, 1992, the product of the molecular weight of vapor in each storage tank (M_v), the true vapor pressure at bulk liquid conditions for each tank (P), and the paint factor (F_p); the storage tank maximum yearly throughput for each tank; and the maximum monthly throughput for each tank shall not exceed the following limits:

Tank No.	$M_V \times P \times F_P$, (lb) (mmhg)/ lb-mole	Yearly throughput, gal/yr	Monthly throughput, gal/month
(*1*) 24–T–147	45.4	56,250	4,688
(*2*) 24–T–150	227	266,450	22,204
(*3*) 24–T–151	227	266,450	22,204
(*4*) 24–T–158N	18.9	173,830	14,486
(*5*) 24–T–158C	18.0	110,190	9,183
(*6*) 24–T–158S	1.17	52,010	4,334
(*7*) 24–T–160	226.8	266,450	22,204
(*8*) 24–T–161	227	182,450	15,204
(*9*) 24–T–162	473	93,900	7,825
(*10*) 20–T–101	3.72	90,290	7,525
(*11*) 20–T–102	1.80	122,900	10,242
(*12*) 20–T–103	420	23,960	1,997
(*13*) 20–T–104	180	475,900	39,659
(*14*) 20–T–105	370	52,360	4,363
(*15*) 20–T–106	1,210	623,100	51,926
(*16*) 20–T–107	294	90,040	7,503
(*17*) 20–T–108	1,360	81,470	6,789
(*18*) 20–T–109	1,390	167,060	13,922
(*19*) 20–T–153	180	35,000	2,917
(*20*) 20–T–131[a]			
(*21*) 20–T–132[a]			
(*22*) 20–T–133[a]			
(*23*) 20–T–134[a]			
(*24*) 20–T–135[a]			
(*25*) 20–T–136	29.5	307,710	26,580
(*26*) 20–T–137[a]			

Tank No.	$M_V \times P \times F_P$, (lb) (mmhg)/ lb-mole	Yearly throughput, gal/yr	Monthly throughput, gal/month
(*27*) 20–T–138	29.5	307,710	26,580
(*28*) 32–T–305	288	785,550	65,462
(*29*) 32–T–306	66.5	165,350	13,779
(*30*) 32–T–307	66.5	294,750	24,563
(*31*) 32–T–308	66.5	128,470	10,706
(*32*) 32–T–310	66.5	77,290	6,441
(*33*) 32–T–311	66.5	182,130	15,177
(*34*) 32–T–319	50.0	688,950	57,413
(*35*) 32–T–320	50.0	688,950	57,413
(*36*) 32–T–326	70.0	248,440	20,703
(*37*) 32–T–331	70.0	489,540	40,795
(*38*) 32–T–332	70.0	70,380	5,865
(*39*) 32–T–333	70.0	270,850	22,571
(*40*) 32–T–334	70.0	210,610	18,267
(*41*) 32–T–335	70.0	418,200	34,850
(*42*) 32–T–336	70.0	632,460	52,706
(*43*) 32–T–337	798	53,850	4,488
(*44*) 17–T–206	27,000	300,760	25,063
(*45*) 17–T–208	27,000	300,760	25,063
(*46*) 17–T–207	2.48	180,180	15,016
(*47*) 17–T–209	2.48	180,180	15,016
(*48*) 24–T–515	331	216,860	18,072
(*49*) 25–T–282	1.42	1,920,410	160,034
(*50*) 25–T–283	1.42	1,920,410	160,034
(*51*) 24–T–442	18.0	90,990	7,583
(*52*) 17–T–210	47.9	582,990	48,583
(*53*) 17–T–211	47.9	582,990	48,583
(*54*) 17–T–212	508	728,420	60,702
(*55*) 17–T–213	508	728,420	60,702
(*56*) 17–T–401	50.0	131,970	10,998
(*57*) 17–T–402	15.0	120,160	10,014
(*58*) 17–T–403	6.20	127,770	10,648
(*59*) 17–T–404	26.5	1,601,510	133,460
(*60*) 17–T–405	50.0	113,830	9,486
(*61*) 17–T–406	40.0	231,030	19,253
(*62*) 17–T–407	206	135,180	11,265
(*63*) 17–T–409	395	327,410	27,285
(*64*) 17–T–410	395	129,290	10,774
(*65*) 17–T–411	50.0	213,870	17,843
(*66*) 17–T–412	50.0	277,840	23,153
(*67*) 17–T–414	50.0	72,920	6,077
(*68*) 17–T–415	50.0	56,140	4,678
(*69*) 17–T–416	395	393,550	32,796
(*70*) 17–T–417	23.4	233,780	19,482
(*71*) 17–T–418	115	873,270	72,773
(*72*) 17–T–419	119	278,460	23,205
(*73*) 17–T–420	112	730,780	60,898
(*74*) 17–T–421	25.2	300,010	25,001
(*75*) 17–T–422	115	873,270	72,773
(*76*) 17–T–423	23.4	215,060	17,922
(*77*) 17–T–424	23.4	209,610	17,468
(*78*) 26–T–218	50.0	64,890	5,408
(*79*) 26–T–219	1.50	197,900	16,492
(*80*) 26–T–220	2,460	160,020	13,336
(*81*) 26–T–221	50.0	74,820	6,235
(*82*) 26–T–222	80.0	66,590	5,550
(*83*) 26–T–224	4.80	225,290	18,774
(*84*) 26–T–225	50.0	36,610	3,051
(*85*) 26–T–226	294	47,390	3,949
(*86*) 26–T–227	50.0	63,040	5,253
(*87*) 26–T–228	500	136,150	11,346
(*88*) 26–T–229	50.0	112,970	9,414
(*89*) 26–T–231	23.4	319,610	26,634
(*90*) 26–T–232	117	564,280	47,024
(*91*) 26–T–233	23.4	539,700	44,975
(*92*) 27–T–245	21.6	361,970	30,165
(*93*) 27–T–246	348	141,820	11,818
(*94*) 27–T–247	23.4	71,670	5,972
(*95*) 27–T–248	198	96,010	8,001
(*96*) 27–T–249	927	51,240	4,270
(*97*) 27–T–250	110	433,030	36,086
(*98*) 27–T–251	396	45,440	3,787

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Tank No.	$M_v \times P \times F_p$, (lb) (mmhg)/lb-mole	Yearly throughput, gal/yr	Monthly throughput, gal/month
(99) 27–T–252	21.6	171,370	14,281
(100) 27–T–253	348	237,900	19,825
(101) 26–T–192	10.0	117,950	9,829
(102) 27–T–278	0.62	74,910	6,243
(103) 27–T–279	0.18	583,760	48,647
(104) 27–T–285	21.6	459,530	38,294
(105) 27–T–286	21.6	459,530	38,294
(106) 25–T–201	19.8	143,550	11,963
(107) 32–T–388	0.07	499,340	41,612
(108) 32–T–389	0.07	499,340	41,612
(109) 32–T–390	288	808,310	583,340
(110) 32–T–391	1.42	800,00	583,340

[a] Tank not in use.

(B) The throughput shall be calculated as follows:

(*1*) Compute the monthly throughput for each tank by the 15th day of the following month.

(*2*) By the 15th day of each month, add the monthly throughputs for the 12 previous months to obtain the yearly throughput.

(ii) *Recordkeeping.* (A) On and after October 1, 1992, the owner and operator of the Nalco Chemical Company facility in Bedford Park, Illinois, shall keep the following records for all storage tanks. These records shall be compiled on a monthly basis, be retained at the facility for a period of 3 years, and be made available to the Administrator upon request.

(*1*) The molecular weight of vapor in each storage tank (M_v), the true vapor pressure at bulk liquid conditions for each tank (P), the paint factor (F_p), and their product. F_p shall be determined from Table 4.3–1 of "Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources," AP–42, September 1985.

(*2*) The monthly throughput.

(*3*) The total throughput per year for the 12 previous months.

(B) [Reserved].

(iii) *Test Methods.* (A) The true vapor pressure at bulk liquid temperature shall be determined by using the procedures specified in paragraph (a)(8) of this section.

(B) The molecular weight of vapor in the storage tank shall be determined by using Table 4.3–2 "Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources," AP–42, September 1985, or by analysis of vapor samples. Where mixtures of organic liquids are stored in a tank, M_v shall be estimated from the liquid composition using the following equation:

$$M_v = M_a \frac{P_a X_a}{P_t} + M_b \frac{P_b X_b}{P_t}$$

Where:

M_a=Molecular weight of pure component a;
P_a=Vapor pressure of pure component a;
X_a=Mole fraction of pure component a in the liquid;
M_b=Molecular weight of pure component b;
P_b=Vapor pressure of pure component b;
X_b=Mole fraction of pure component b in the liquid; and
$P_t = P_a X_2 + P_b X_b$.

(11) The control requirements in this paragraph apply to the fugitive emission sources listed in paragraph (x)(11)(i)(A) of this section at the Nalco Chemical Company facility in Bedfore Park, Illinois, instead of the control requirements in paragraph (x)(3) of this section.

(i) *Production and Operation Restrictions.*

(A) On and after October 1, 1992, all components (e.g., pumps, valves, flanges, pressure relief valves (PRV's), and open end lines) at the specified locations (e.g., Building 32—Tube Reactor System, etc.), and in the specified type of service (e.g., heavy liquid stratified, light liquid stratified, etc.) shall be limited by the maximum monthly hours in the following table:

(ii) *Recordkeeping.*

(A) On and after October 1, 1992, the owner and operator of the Nalco Chemical Company facility in Bedford Park, Illinois, shall keep the following records for all fugitive emission sources. These records shall be compiled on a monthly basis, be retained at the facility for a period of 3 years, and be made available to the Administrator upon request.

(*1*) The total number of hours of organic service for each component at each location specified in paragraphs (x)(11)(i)(A) (*1*) through (*10*) of this section.

(*2*) The vapor pressure of each organic compound in each component at each location specified in paragraphs (x)(11)(i)(A) (*1*) through (*10*) of this section.

(B) [Reserved]

(12) The control and recordkeeping and reporting requirements, as well as the test methods in this paragraph, apply to the gravure and screen press operations at the Meyercord Corporation (Meyercord) in Carol Stream, Illinois, instead of the requirements in paragraphs (x)(1) through (x)(5) of this section.

(i) After July 1, 1991, no materials which contain volatile organic material (VOM), including coatings, inks, and cleaning material, may be used at any gravure or screen press unless the total VOM emissions remain below 100 tons of VOM for every consecutive 365-day period, or fraction thereof, starting on July 1, 1991. A new 365-day period starts on each day. The VOM emissions, which are to be calculated on a daily basis, are to be added to the VOM emissions for the prior 364 days (but not including any day prior to July 1, 1991). VOM emissions are based upon the VOM content of the material and the volume of material used. The effect of add-on control equipment is not considered in calculating VOM emissions; that is, the VOM emissions are to be determined as if the press(es) do(es) not have add-on control equipment. The applicable test methods and procedures specified in paragraph (a)(4) of this section are to be used in determining daily VOM emissions.

(ii) The VOM content of each coating, ink, and cleaning solution shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) of this section to establish the records required under paragraph (x)(12)(ii) of this section. Beginning on July 1, 1991, the owner or operator of the subject presses shall collect and record all of the following information each day and maintain the information at the facility for 3 years:

(A) The name and identification number of each coating, ink, and cleaning solution as applied on any press.

(B) The pounds (lbs) of VOM per gallon of each coating, ink, and cleaning solution (minus water and any compounds which are specifically exempted from the definition of VOM) as applied on any press.

(C) The total gallons of each coating, ink, and cleaning solution (minus water and any compounds which are specifically exempted from the definition of VOM) used per day.

(D) The total lbs of VOM contained in the volume of each coating, ink, and cleaning solution used per day on any press. The lbs of VOM per day is to be calculated by multiplying the lbs of VOM per gallon (minus water and any compounds which are specifically exempted from the definition of VOM) times the gallons (minus water and any compounds which are specifically exempted from the definition of VOM) used per day.

(E) The total lbs of VOM per day from all coatings, inks, and cleaning solutions used on all presses. The total lbs of VOM per day is to be obtained by adding the lbs of VOM per day contained in all coatings, inks, and cleaning solutions.

(F) Within 7 days after each 365-day period, the VOM emissions (as calculated in paragraph (x)(12)(ii)(E)) of this section before add-on control, from the 365-day period, are to be determined.

Starting on July 7, 1992, VOM emissions are to be determined for the 365 days ending 7 days earlier. Each day concludes a new 365-day period. However, no VOM emissions are to be included for any days prior to July 1, 1991. For example, on July 17, 1991, the emissions from July 1, through July 10, 1991, are to be included, whereas on January 7, 1994, the emissions from January 1, 1993, through December 31, 1993, are to be included.

(13) The control and recordkeeping and reporting requirements, as well as the test methods in this paragraph, apply to the sheet fed cold set presses and web heatset presses at the Wallace Computer Services, Inc. (Wallace) printing and binding plant in Hillside, Illinois, instead of the requirements in 40 CFR 52.741(h) and 40 CFR 52.741(x)(1) through 40 CFR 52.741(x)(5).

(i) After July 1, 1991, no inks shall at any time be applied, at the presses indicated below, which exceed the pounds (lbs) volatile organic material (VOM) per gallon of ink (minus water and any compounds which are specifically exempted from the definition of VOM) limit established for each press. After July 1, 1991, the yearly volume of ink used at each press, in gallons of ink (minus water and any compounds which are specifically exempted from the definition of VOM) per year, shall not exceed the gallons per year limit established below for each press. The yearly volume of ink used per press is to be calculated according to the procedure in paragraph (x)(13)(iii) of this section.

Press	Lbs VOM/gallon ink	Gallons/year ink
14	1.68	276
16	1.68	1896
22	3.01	2712
23	3.01	13140
25	3.01	12720
26	3.01	4764

(ii) After July 1, 1991, no materials (other than those inks subject to the limits in paragraph (x)(13)(i)) of this section, shall at any time be applied or used, at the presses indicated below, which exceed the lbs VOM per gallon of material (minus water and any compounds which are specifically exempted from the definition of VOM) limit established for each press. After July 1, 1991, the yearly volume of material (excluding ink and water) used at each press, in gallons of material (minus water and any compounds which are specifically exempted from the definition of VOM) per year, shall not exceed the gallons per year limit established for each press. The yearly volume of material (excluding ink and water) used per press is to be calculated according to the procedure in paragraph (x)(13)(iii) of this section.

Press	Lbs VOM/gallon material	Gallons/year material
14	5.9	612
16	5.9	8,340
22	7.1	360
23	7.1	480
25	7.1	516
26	7.1	1,848

(iii) The yearly volume of ink/material used is to be calculated as follows:

(A) Compute the volume of ink/material used each month per press by the 15th of the following month.

(B) By the 15th of each month, add the monthly ink/material usage per press for the 12 previous months (to obtain the yearly volume of ink used).

(iv) Beginning on July 1, 1991, the owner and operator of Wallace's plant in Hillside, Illinois, shall keep the following records for each press for each month. All records shall be retained by Wallace for 3 years and shall be made available to the Administrator on request:

(A) The name and identification number of each ink, fountain solution, fountain solution additive, cleaning solvent, and other VOM containing material as applied or used.

(B) The weight of VOM per volume of each ink, fountain solution, fountain solution additive, cleaning solvent, and each other VOM containing material (minus water and any compounds which are specifically exempted from the definition of VOM) as applied or used each month.

(C) The volume of ink (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each month.

(D) The total volume of miscellaneous VOM containing materials (minus water and any compounds which are specifically exempted from the definition of VOM), other than inks, that are used each month.

(v) Any record showing a violation of paragraph (x)(13)(i) or (x)(13)(ii) of this section shall be reported by sending a copy of such record to the Administrator within 30 days of the violation.

(vi) To determine compliance with paragraphs (x)(13)(i) and (x)(13)(ii) of this section and to establish the records required under paragraph (x)(13)(iv) of this section the VOM content of each ink and miscellaneous VOM containing material shall be determined by the applicable test methods and procedures

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specified in paragraph (a)(4) of this section.

[FR Doc. 95–6003 Filed 3–20–95; 8:45 am]
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40 CFR Part 799

[OPPTS–42180; FRL 4935–4]

RIN 2070–AB07

Testing Consent Order for Tertiary Amyl Methyl Ether

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Consent Agreement and Order.

SUMMARY: EPA has issued a Testing Consent Order that incorporates an Enforceable Consent Agreement (ECA) pursuant to the Toxic Substances Control Act (TSCA) with members of the TAME Producers Group comprised of the following companies: Amerada Hess Corporation, Chevron U.S.A. Products Company, Citgo Petroleum, Exxon Company U.S.A., and Texaco Refining and Marketing (the Consortium) who have agreed to perform certain health effects tests with tertiary-amyl methyl ether (CAS No. 994–05–8) (TAME). This document summarizes the ECA and adds TAME to the list of chemical substances and mixtures subject to ECAs. Accordingly, export notification requirements apply to TAME.

EFFECTIVE DATE: March 21, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551. Technical contact: Gary Timm (202) 260–7335.

SUPPLEMENTARY INFORMATION: This document amends 40 CFR 799.5000 by adding TAME to the list of chemical substances and mixtures subject to ECAs and export notification requirements.

I. Background

The Clean Air Act (42 U.S.C. 7401–7671q) provides that beginning on November 1, 1992, gasoline containing at least 2.7 percent oxygen by weight is required to be used in the wintertime in 39 areas of the county which failed to comply with the carbon monoxide (CO) National Ambient Air Quality Standard. Carbon monoxide pollution is caused by incomplete burning of fuels used in internal combustion engines and is generally more severe during cold winter temperatures. Tests have shown that the use of oxygenates in gasoline can reduce CO emissions by 15 to 20 percent (Emission Reduction and Cost Effectiveness of Oxygenated Gasolines. Environmental Protection Agency. June, 3 1991). Methyl tertiary-butyl ether (MTBE) and ethanol are the primary oxygenates used in the oxygenated gasoline program.

MTBE was recommended for health effects testing by the Interagency Testing Committee in its 19th report because of its rapidly growing use as a fuel additive. EPA negotiated an ECA with the Oxygenated Fuel Producers for comprehensive health effects testing in 1988 (53 FR 10391, March 31, 1988). Despite this extensive testing program and experience using MTBE as a gasoline additive, acute health concerns were raised in Alaska and Missoula, MT after MTBE's introduction to these areas in November, 1992. Additional research was conducted by EPA, the American Petroleum Institute (API), and the Oxygenated Fuels Association to address the concerns raised by the citizens of Alaska and assist policy decision making for the next oxyfuel season. These studies, including human exposures, failed to confirm MTBE as the source of the human health complaints.

A meeting between the Federal Government, State of Alaska, and industry to plan additional research on the oxyfuels was held in December, 1993. This group also recommended that baseline toxicity testing information be developed for both ethyl tertiary-butyl ether (ETBE) and TAME, widely seen as possible substitutes for MTBE, to compare their toxic potential with that of MTBE. The research planning workshop recommended the following tests for ETBE and TAME:1st tier genotoxicity, 90–day inhalation subchronic, neurotoxicity developmental toxicity, reproductive effects pharmacokinetics.

On March 1, 1994, EPA's Office of Mobile Sources requested that the Office of Pollution Prevention and Toxics develop these data under section 4 of the Toxic Substances Control Act (TSCA).

II. Enforceable Consent Agreement Negotiations

EPA sent letters to approximately 50 individuals in the petroleum and oxyfuel-related industries announcing the addition of ETBE and TAME to EPA's Master Testing List and EPA's interest in pursuing a testing program under an ECA. On March 9, 1994, API indicated that the industry had agreed to form a testing panel under API auspices to develop and present a testing proposal to EPA on ETBE and TAME. On April 18, 1994, EPA published a notice in the **Federal Register** inviting manufacturers and processors of ETBE and TAME and other interested persons to participate in ECA negotiations on these substances and announced that a public meeting would be held on May 9, 1994.

On behalf of the Consortium, API submitted proposals for testing ETBE and TAME in April. At the May 9 meeting, API stated that there was support among Consortium members to conduct testing of TAME, but not ETBE. The chief difference between the EPA and Consortium positions on testing TAME was the design of the reproductive effects and fertility study. The Consortium proposed only a one-generation study as opposed to the two-generation study recommended by EPA. This issue was resolved in a conference call on July 28, 1994, with the Consortium agreeing to conduct the two-generation study. Members of the Consortium signed an ECA for the testing of TAME in January, 1995; EPA signed the ECA in February, 1995.

Regarding ETBE, after appropriate notification of interested persons, EPA held a public meeting on July 14, 1994, to discuss the development of an ECA for this substance. At that meeting, ARCO, the only current or potential producer in attendance, stated that it had conducted screening tests for mutagenicity but that the company had decided not to enter into an ECA with EPA to conduct additional testing. ETBE thus remains on EPA's Master Testing List in a queue for rulemaking under TSCA section 4.

III. TAME Testing Program

Table I describes the tests, the test standards and reporting requirements For TAME under the ECA. This testing program will allow EPA to better characterize the potential health hazards resulting from exposure to TAME.

TABLE I.— REQUIRED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR TAME

Description of Tests	Test Standard[1]	Deadline for Final Report[2]	Interim Reports Required[3]
Pharmacokinetics (Inhalation, rats and mice)	795.230 (Appendix I)	20	3
90–Day Subchronic (Inhalation, rats and mice)	798.2450 Amended to include mitogenesis,special staining and immunochemistry (Appendix II)	18	2
Neurotoxicity Screen	795.247 (Appendix III)	20	3
Mutagenicity: CHO HGPRT	798.5300 (Appendix)	15	2
Mutagenicity: Chromosomal aberrations	798.5375 (Appendix)	15	2
Reproduction and Fertility (Inhalation, rats)	OPPTS 870.3800	30	5
Developmental toxicity (Inhalation, rats and mice)	OPPTS 870.3700	15	2

[1] Citation is to 40 CFR unless otherwise noted. The OPPTS 870 series guidelines are available from EPA but have not been published.
[2] Number of months after the effective date of the consent order.
[3] Interim reports are required every 6 months from the effective date until the final report is submitted. This column shows the number of interim reports required for each test.

IV. Export Notification

The issuance of the ECA and Order subjects any persons who export or intend to export the chemical substance TAME (CAS No. 994–05–8), of any purity, to the export notification requirements of section 12(b) of TSCA and the regulations promulgated pursuant to it at 40 CFR part 707. The listing of the chemical substance or mixture at 40 CFR 799.5000 serves as a notification to persons who intend to export such a chemical substance or mixture that the substance or mixture is the subject of an ECA and Order and 40 CFR part 707 applies.

V. Rulemaking Record

EPA has established a record for this ECA and Order under docket number OPPTS–52098, which is available for inspection Monday through Friday, excluding legal holidays, in Rm. NE B607, 401 M St.,SW., Washington, DC., 20460 from 1 p.m. to 4 p.m. Confidential Business Information (CBI), while part of the record, is not available for public review. This record contains the basic information considered in developing this ECA and Order, and includes the following information:

(1) Testing Consent Order for TAME with incorporated Enforceable Consent Agreement and associated testing protocols attached as appendices.

(2) **Federal Register** notice announcing the opportunity to initiate Negotiations for a TSCA Section 4 Testing ECA (April 18, 1994; 59 FR 18399).

(3) Communications consisting of:

(a) Written Letters.

(b) Contact reports of telephone summaries.

(c) Meeting summaries.

(4) Reports -published and unpublished factual materials.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Health effects, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: March 7, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding tertiary-amyl methyl ether (TAME) to the table in CAS Number order, to read as follows:

§799.5000 Testing consent agreements for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS Number	Substance or mixture name	Testing	FR Publication Date
.	.	.	.
994–05–8	Tertiary-amyl methyl ether	Health effects	March 21, 1995.
.	.	.	.

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[FR Doc. 95-6766 Filed 3-20-95; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950223057-5057-01; I.D. 120594A]

RIN 0648-AG95

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Pacific Halibut Bycatch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final 1995 specification of Pacific halibut bycatch allowances; change of effective date.

SUMMARY: On March 6, 1995, NMFS published a final rule that authorizes NMFS to determine annually whether to apportion a Pacific halibut bycatch allowance to the Bering Sea and Aleutian Islands management area (BSAI) or Gulf of Alaska (GOA) hook-and-line gear fisheries for sablefish, or to exempt these fisheries from halibut bycatch restrictions. Final 1995 halibut bycatch allowances also were specified for the BSAI nontrawl fisheries and GOA hook-and-line gear fisheries that exempted the sablefish hook-and-line gear fisheries from halibut bycatch restrictions. NMFS is changing the effective date of a portion of the final rule from April 3, 1995, to March 15, 1995, to avoid a closure of the GOA sablefish Individual Fishing Quota (IFQ) fishery when it opens on March 15.

EFFECTIVE DATE: Section 672.20(f)(1)(ii) and (f)(3)(ii) of the final rule published March 6, 1995, at 60 FR 12149, are effective March 15, 1995; the remaining portion of the final rule which amends § 675.21 will be effective, April 15, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** (60 FR 12149, March 6, 1995) that revises the management of the halibut bycatch limits established for the GOA hook-and-line gear groundfish fisheries and the BSAI nontrawl fisheries. The final rule is scheduled to become effective April 3, 1995, and authorizes the exemption of the GOA and BSAI hook-and-line gear sablefish fisheries from halibut bycatch restrictions to support the new sablefish/halibut IFQ program. The final rule also addresses concern about the potential closure of the BSAI jig gear fishery due to halibut bycatch in other nontrawl fisheries and allows for the management of the seasonal apportionment of the halibut bycatch allowances annually specified for the BSAI Pacific cod hook-and-line gear fishery consistent with the management of the amount of Pacific cod total allowable catch allocated to this fishery. Final 1995 specifications of halibut bycatch allowances were published with the final rule that exempted the GOA and BSAI hook-and-line sablefish fisheries and the BSAI jig gear fishery from halibut bycatch restrictions. The effective date of the final rule was established as the date 30 days after publication in the **Federal Register**, or April 3, 1995.

The 1995 sablefish/halibut IFQ fishery is scheduled to open on March 15, 1995 (60 FR 12152, March 6, 1995). Halibut bycatch mortality in the GOA Pacific cod hook-and-line gear fishery has accrued at a rate higher than anticipated and will reach the first seasonal bycatch mortality allowance currently specified for all GOA hook-and-line gear fisheries (60 FR 8476, February 14, 1995) before the final rule becomes effective on April 3, 1995. As a result, the sablefish IFQ fishery would be closed until this date when the exemption of this fishery from halibut bycatch restrictions becomes effective. NMFS has determined that the closure of the sablefish IFQ fishery due to halibut bycatch in the Pacific cod fishery imposes an unnecessary restriction on the IFQ fishery and directly counters the intent of the final rule and associated 1995 final specifications of halibut bycatch allowances. Therefore, NMFS is waiving a portion of the 30-day delayed effective period so that the final rule authorizing the exemption of the GOA sablefish IFQ fishery from halibut bycatch restrictions becomes effective on March 15, 1995, when the sablefish IFQ fishery opens.

Classification

Implementation of § 672.20(f)(1)(ii) and (f)(3)(ii) of the final rule published in the **Federal Register** March 6, 1995 (60 FR 12149) in a timely manner will avoid an unnecessary closure of the GOA sablefish IFQ fishery. Since implementation of these provisions will relieve a restriction, a 30-day delay in the effective date is not required under 5 U.S.C. 553(d)(1). Therefore, the effective date of the portion of the final rule and associated final 1995 specifications that authorize the exemption of the GOA sablefish IFQ fishery from 1995 halibut bycatch restrictions is changed to March 15, 1995.

This action modifies the effective dates of a final rule that is exempt from review under E.O. 12866.

Dated: March 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95-6845 Filed 3-15-95; 4:29 pm]
BILLING CODE 3510-22-F

50 CFR Part 675

[Docket No. 950206040-5040-01; 031495A]

Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Rockfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rockfish fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rockfish fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 15, 1995, until 12 noon, A.l.t., April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The first seasonal bycatch allowance of Pacific halibut for the BSAI trawl rockfish fishery category, which is defined at § 675.21(b)(1)(iii)(D), was established as 30 metric tons by the final initial 1995 specifications for groundfish (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal bycatch allowance of Pacific halibut

apportioned to the trawl rockfish fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rockfish fishery category by vessels using trawl gear in the BSAI from 12 noon, A.l.t., March 15, 1995, until 12 noon, A.l.t., April 1, 1995.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 15, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-6783 Filed 3-15-95; 4:29 pm]
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Proposed Rules

Federal Register
Vol. 60, No. 54
Tuesday, March 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket Nos. AO–99–A–6; FV–92–065]

Winter Pears Grown in Oregon, Washington, and California; Recommended Decision and Opportunity to File Written Exceptions to Proposed Further Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for winter pears grown in the States of Oregon, Washington, and California. The proposed amendments would redefine "ship or handle" to include shipments of winter pears within the production area, update the definition of "export market" to recognize that there are now 50 states in the United States, authorize the Winter Pear Control Committee (WPCC) to accept voluntary contributions and how such funds may be used, and revise the authority for exempting certain shipments from regulation. These proposed amendments are designed to improve the administration, operation and functioning of the winter pear marketing order program.

DATES: Written exceptions must be filed by April 20, 1995.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1079–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson or Britthany Beadle, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, Washington, D.C. 20250–0200; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, Room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 16, 1992, and published in the November 20, 1992, issue of the **Federal Register** (57 FR 54728).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Kenneth G. Johnson, Britthany Beadle or Teresa Hutchinson whose addresses are listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendment of Marketing Agreement and Order No. 927 is based on the record of a public hearing held in Portland, Oregon, on December 2, 1992. Notice of this hearing was published in the **Federal Register** on November 20, 1992. The notice of hearing contained several proposals submitted by the WPCC, which locally administers the order.

The proposed amendments would: (1) Redefine "ship or handle" to include shipments of winter pears within the production area; (2) update the definition of "export market" to recognize that there are now 50 states in the United States; (3) authorize the WPCC to accept voluntary contributions and how such funds may be used; and (4) revise the authority for exempting certain shipments from regulation.

The notice of hearing also included proposals by the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), to make such changes as are necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. The Department also proposed revising the language in several sections of the order.

Interested persons had until January 15, 1993, to file proposed findings and conclusions, and written arguments or briefs based on the evidence received at the hearing. No such documents were received.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1991–92 crop year, 88 handlers were regulated under Marketing Order No. 927. In addition, there were about 1,650 producers of winter pears in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

All of the changes in the amendments are designed to enhance the administration and functioning of the marketing agreement and order which would benefit the industry. If implemented, these amendments might impose some costs on affected handlers and producers. However, the added burden on small entities, if present at all, would not be significant because the benefits of the proposed amendments are expected to outweigh the costs.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any change in the reporting and recordkeeping provisions that may result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until receiving OMB approval.

Material Issues

The material issues of record addressed in this decision are as follows: (1) Whether to redefine "ship or handle" to include shipments of winter pears within the production area; (2) whether the definition of "export market" should be updated to recognize that there are now 50 states in the United States; (3) whether the WPCC should be authorized to accept voluntary contributions and how such funds may be used; and (4) whether to revise authority for exempting certain shipments from regulation.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof, are:

(1) Section 927.8, Ship or Handle, of the winter pear marketing order should be amended to cover shipments of winter pears within the production area, as well as interstate shipments.

Record evidence indicates that the intent of the proposal is to provide that shipments of winter pears within the production area be regulated the same as shipments marketed outside the production area. Currently, the order authorizes grade, size, and quality regulations and inspection and reporting requirements for fresh winter pears. While, no grade, quality or size requirements have been issued under the order since the 1979 marketing season, handlers who ship winter pears outside the production area are required to comply with reporting and recordkeeping requirements and pay assessments on those shipments. Handlers who ship winter pears within the production area are not required to comply with such requirements. The WPCC has considered reestablishing grade and size requirements for winter pear shipments in order to ensure the acceptability of such shipments. The WPCC recommended that winter pear shipments within the production area be regulated in the same manner as interstate shipments in order to improve the effectiveness of the marketing order. Regulation of winter pears within the marketing area will help to enhance the orderly marketing of winter pears. The record evidence supports this change in the definition of the term "ship or handle" to make shipments of winter pears within the production area subject to all order requirements.

In 1985, marketing order No. 927 was amended to provide for research and promotion activities, including paid advertising. Until then, the Oregon, Washington, California Pear Bureau (Bureau) represented the northwest winter pear industry in its market development and promotion and advertising programs throughout world markets. The Bureau's purpose was to conduct those activities necessary to assure the continued success of the industry.

According to record evidence, the assessments to conduct these activities and membership in the Bureau were voluntary. These voluntary assessments were paid by handlers on winter pears marketed both within and outside of the production area.

The WPCC has the responsibility for collecting mandatory assessments on interstate winter pear shipments. The WPCC provides funds for its research and promotion activities and is responsible for oversight of such projects. Currently, the Bureau manages the WPCC's research and promotion activities. There is a contractual agreement between the WPCC and the Bureau for these purposes. The record indicates that this arrangement has proven beneficial, and the WPCC continues to utilize the Bureau which has over 60 years of experience in trade relations to conduct its marketing, promotion and advertising activities.

Other WPCC activities include collection of various statistical information, and post- and pre-harvest research programs to improve cultural practices. The statistical information collected is used by the WPCC to target potential markets to increase sales of winter pears. Research results to improve cultural and handling practices are distributed throughout the winter pear industry. Handlers pay assessments only on shipments of winter pears to destinations outside the production area, since the order currently provides no authority for assessments on shipments of winter pears within the production area. Currently, handlers of winter pears shipped within the production area may benefit from the WPCC's activities without absorbing any of the costs to conduct these programs. Handlers making shipments of winter pears within the production area are currently exempted from paying assessments.

According to record testimony, it is appropriate that assessments be paid on winter pear shipments within the production area to support production and marketing research and promotion projects. Approximately 15 percent (347,647 cartons out of 2,267,582 cartons for 1991) of the winter pears marketed within the production area are sold in the State in which they are grown.

Record evidence indicates that many of the pears initially shipped to intrastate destinations ultimately enter interstate commerce. According to record testimony, an estimated 70 to 80

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percent of the pears sold at retail in Las Vegas, Nevada, and Arizona are moved there from distributors in southern California either by wholesalers or the retailer's own distribution system. Similar estimates are made for pears sold at retail in the Reno/Lake Tahoe area of central Nevada, with service from the Bay Area and/or Sacramento. Hawaii is also serviced by wholesalers in the California seaports. The WPCC believes and the evidence supports that many of these shipments originate from sources in the production area. Promotions paid for with mandatory assessments on interstate shipments are conducted in all of these production areas.

At the hearing, witnesses for the WPCC offered a modification of the proposal as it appeared in the hearing notice. These witnesses testified that the term "handle" should not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market. The intent of this proposal is that winter pears transported within the production area for purposes of preparation for market would not be subject to assessment or any other order requirements since they would not yet have been handled. All other winter pears placed in interstate commerce or marketed within the production area would be subject to regulation, unless otherwise exempt under other provisions of the order.

Record testimony also supported adding the definition of "consign" to the definition of "ship or handle". The record indicates that "consign" is defined as an agreement between a buyer and seller for the transport of product to be marketed with no previous determination of the return of the product. It is the responsibility of the buyer to market the product and return to the seller the proceeds. This should be included as "handling" because the "agent" or "handler" who receives the commodity is engaged in the buying, selling and distributing of the commodity for market. The record also indicates that the words "handle for shipment" should be deleted from the definition of the term "ship or handle" because they are redundant and not necessary.

Section 927.10, Production area, should be changed from "area" to "production area". This is a conforming amendment to clarify those areas that comprise the production area under the marketing order.

Section 927.41, Assessments, should be amended to remove any reference to a specific State. Record testimony indicates that this is a conforming amendment to provide the necessary language to comply with the intent of the proposal to regulate winter pear shipments within and outside the production area. This section should also be amended to remove the words "upon billing". Record testimony indicates that current procedures to collect assessments do not entail billing. The WPCC does not bill handlers for assessments due. Rather, handlers pay their assessments every two weeks when they submit handler statements of winter pear shipments to the WPCC.

Section 927.52, Prerequisites to Control Committee recommendations, should be amended to provide conforming language updating the marketing order. Presently, the marketing order specifies a basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods to destinations outside the State in which produced. As such, only interstate shipments of winter pears are used as a criteria to determine voting procedures. Record evidence supports the inclusion of shipments within the production area in the tonnage vote during WPCC meetings. This action is necessary to provide representation based on all winter pears handled, consistent with order provisions. The proposed amendment to the order has been modified for clarity.

(2) Section 927.12, Export Market, should be amended to update that provision of the marketing order. The marketing order currently provides that "export market" means any destination which is not within the 48 states, or the District of Columbia, of the United States. Record testimony indicates that this section of the marketing order should be updated to reflect that the United States is made up of 50 states.

(3) Section 927.45, Contributions, should be added to the marketing order to authorize the WPCC to receive voluntary contributions. Record evidence indicates that marketing promotion and research projects for winter pears should directly benefit growers of that commodity and secondarily benefit other groups and businesses whose interests are allied with the production and marketing of winter pears. These groups frequently desire to make contributions or donations to help defray the costs of such projects. Record testimony indicates that voluntary contributions could include money, information or anything of value. Such contributions should be received by the WPCC free from any encumbrances by the donor and under the complete control of the WPCC. The WPCC should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest. Handlers under the order would be allowed to make voluntary contributions to the WPCC.

Record testimony indicated that the provision to accept voluntary contributions as currently provided in the notice of hearing is too restrictive. According to the proposal included in the hearing notice, the WPCC would be prohibited from accepting funds for any purposes other than research and development. However, record testimony indicates that contributions might be provided for activities other than research and promotion projects including paid advertising. Record testimony indicates that the WPCC should be authorized to receive voluntary contributions for any purpose authorized under the order.

Witnesses testified at the hearing that a person making a voluntary contribution to the WPCC should be able to specify its use for a particular authorized activity. However, the WPCC should be free to receive and use such contributions, subject to the provisions of the order, without any encumbrances upon the donor. The acceptance of voluntary contributions with encumbrances by the donor could, at a minimum, give rise to the appearance of improprieties. Accordingly, this recommendation is not included in the proposed amendment.

Section 927.47, Research and Development, should be changed to include conforming language that provides for the acceptance and use of voluntary contributions. The marketing order currently provides that research and development projects shall be paid from funds collected pursuant to § 927.41. This proposed amendment would allow funds collected from voluntary contributions pursuant to § 927.45 to also pay for such projects.

(4) Section 927.65, Exemption from regulation, should be amended to include additional types of winter pear shipments that may be exempt from regulation under the marketing order. Record testimony suggested additional language should be added to the proposed order amendments to provide exemptions to allow the WPCC, with the approval of the Secretary, to establish regulations that exempt from any or all requirements pursuant to this part quantities of pears or of types of pear shipments that do not interfere with the objectives of the order. These proposed

provisions would be in addition to the proposed amendments in the notice of hearing. Record testimony indicates that the overall intent of this amendatory action is to enable the exemption of shipments that do not impact fresh commercial shipments. Record testimony indicated further that § 927.65, "Exemptions from regulation", would be reviewed by the WPCC annually, and that the WPCC would have the flexibility of including and or adjusting requirements, subject to the approval of the Secretary, depending on the circumstances of any given year.

Rulings on Briefs of Interested Persons

The presiding officer at the hearing set January 15, 1993, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. No briefs were received.

General Findings

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of winter pears grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of winter pears grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 927, are proposed to be amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.8 is revised to read as follows:

§ 927.8 Ship or handle.

Ship or *handle* means to sell, deliver, consign or transport pears, within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market.

3. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon, Washington, and California.

4. Section 927.12 is revised to read as follows:

§ 927.12 Export market.

Export market means any destination which is not within the 50 states, or the District of Columbia, of the United States.

5. In § 927.41, paragraph (a) is revised to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

6. Section 927.45 is added to read as follows:

§ 927.45 Contributions.

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

7. Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety of pears.

8. In § 927.52, paragraph (b)(1) is revised to read as follows:

§ 927.52 Prerequisites to Control Committee recommendations.

* * * * *

(b) * * *

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

* * * * *

9. In § 927.65, paragraph (b) is revised to read as follows:

§ 927.65 Exemption from regulation.

* * * * *

(b) The Control Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be

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exempted from any or all provisions of this subpart.

* * * * *

Dated: March 15, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–6909 Filed 3–20–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 111, 170, and 310

[Docket Nos. 91P–0186 and 93P–0306]

Acute Toxicity of Elemental (Reduced, Metallic Powder) Forms of Iron Relative to That of Iron Salts; Notice of a Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on the acute toxicity of elemental (reduced, metallic powder) forms of iron. The purpose of this workshop is to solicit scientific data and information from interested persons about the acute toxicity of elemental forms of iron with regard to whether such forms are sufficiently safe in dietary supplement and drug products to warrant exemption from the special packaging and labeling requirements that FDA has proposed for products containing iron salts.

DATES: The public workshop will be held on April 20, 1995, 8:30 a.m. to 5 p.m. Submit written comments by April 20, 1995.

ADDRESSES: The public workshop will be held at the Parklawn Bldg., conference room G, 5600 Fishers Lane, Rockville, MD 20857. Written comments regarding the workshop may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John N. Hathcock, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 8301 Muirkirk Rd., Laurel, MD 20708, 301–594–6006.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 1994 (59 FR 51030), FDA issued a proposal (the initial proposal) on actions that it tentatively concluded were necessary to stem the recent epidemic of pediatric poisonings from over-consuming iron-containing products. In the **Federal Register** of February 16, 1995 (60 FR 8989), the agency issued a supplementary proposal to clarify changes in its legal authority with the passage of the Dietary Supplement Health and Education Act (Pub. L. 103–417).

In the initial proposal, FDA briefly described the three basic types of elemental iron powders that are marketed for use in foods. The three types are reduced iron, electrolytic iron, and carbonyl iron. The term "carbonyl" refers to the production process, not the composition of the product. The bioavailability of these various elemental iron sources is dependent primarily on their physical characteristics, which in turn depend on the manufacturing method. For example, higher relative bioavailabilities of elemental iron are obtained with smaller particle sizes.

Some evidence suggests that carbonyl iron may be a useful substitute for the more commonly used chemical compounds of iron in reducing the risk of accidental iron poisonings. Data from studies in animals suggest that carbonyl iron may be only 1/100th as toxic as ferrous sulfate in single doses, i.e., the LD_{50} (lethal dose for 50 percent of the test group) of ferrous sulfate is approximately 0.30 gram ferrous per kilogram (g Fe/kg) (*The Merck Index*, 11th ed., p. 635 (1989)), and the LD_{50} for carbonyl iron is approximately 30.0 g Fe/kg body weight. At the same time, data from human subjects indicate that the overall bioavailability of carbonyl iron in supporting the nutritional functions of iron is about 70 percent that of ferrous sulfate. Thus, carbonyl iron, in comparison with ferrous sulfate, appears to have a much larger margin of safety between the level that would provide adequate iron nutrition and the level that causes acute toxicity. Consequently, carbonyl iron may be inherently safer to use, and its use may help to reduce the risk of iron poisoning in children, than ferrous sulfate.

In the initial proposal, FDA expressed interest in receiving data on the potential of elemental iron to have acute toxicity in humans, and particularly in children, and stated that the agency would carefully consider any information that it received on this subject. FDA stated that, if the information it received was persuasive in establishing that the use of elemental iron would substantially decrease the risk of pediatric poisoning while allowing for effective dietary iron supplementation, FDA would consider exempting iron-containing products that incorporate elemental iron from any regulations that result from this rulemaking.

In response to this request for information, FDA received several comments that supplied information on this topic. Some of the comments included citations to scientific literature or copies of scientific articles. The comments argued that the information supports an exemption of products formulated with elemental iron from the labeling and packaging requirements applied to products containing iron salts. These comments have convinced FDA that the issues and data that they have presented should be discussed in a public workshop.

The purpose of the workshop on the acute toxicity of elemental iron is to:

1. Identify data that objectively describe the acute toxicity of elemental iron.
2. Identify the market uses of elemental iron and any adverse reaction reporting systems or processes used by manufacturers and vendors.
3. Identify any data on acute, accidental exposure of children or adults to products containing elemental iron.
4. Discuss a possible conceptual framework for evaluation of the effects of elemental forms of iron upon acute exposure.
5. Discuss the validity, and limitations, of acute toxicity data in experimental animals in predicting the risk in young children.

Specific topics that may be relevant and on which discussion is invited include:

1. Physiological factors that influence acute toxicity of elemental forms of iron, in comparison with those for iron salts.
2. The quality, results, and relevance of animal studies on acute toxicity of elemental iron and iron salts.
3. The quality and results of human studies for evaluating the effects of elemental iron.
4. Factors influencing the validity of extrapolation of experimental animal data on acute toxicity of various forms of iron for predicting the risk in young children.
5. Current uses of elemental iron in dietary supplements and drugs and the data available on potential adverse effects.

Discussion of these topics will be considered by FDA in the development of any final rule on the packaging and labeling of products containing iron salts. In conjunction with the workshop, FDA specifically requests comments on the appropriateness of elemental iron as a source of iron in drugs and dietary supplements. The comments should focus on whether the use of elemental iron in iron-containing products will decrease the risk of pediatric poisonings, while providing desirable iron nutrition to those who need iron supplementation, and on whether an exemption for products that contain elemental iron from any packaging and labeling requirements that result from the underlying rulemaking is appropriate.

Interested persons may on or before April 20, 1995, submit to the Dockets Management Branch (address above) comments on the workshop. Additional written comments may be submitted for 30 days after the date of this workshop. Two copies of any comments are to be submitted, except that individuals may submit one copy. Written comments and submitted documents are to be identified with the docket numbers found in brackets in the heading of this document. Received comments and the transcript of the discussion identified with the same docket numbers may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 16, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–6919 Filed 3–20–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA26

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Six Separate Changes

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses six separate changes to comply with new statutory provisions affecting CHAMPUS. These changes will update this part to include as a benefit, a screen to check for the level of lead in the blood of an infant; eliminate the implied statement that ambulance services are covered only to and from hospitals; include other forms of prescribed contraceptives by eliminating the reference that limits prescribed contraceptives only to those taken orally; recognize chemical aversion therapy as a treatment modality for alcoholism by eliminating the exclusionary language in the current regulation; identify three additional Gulf Conflict groups eligible for the delay in the increased deductible; and to establish lower limits on the fiscal year catastrophic cap from $10,000 to $7,500 for all eligibles except dependents of active duty personnel, whose limit remains at $1,000.

DATES: Written comments, whether from the general public or from other governmental agencies, must be received on or before May 22, 1995.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, Co 80045–6900.

FOR FURTHER INFORMATION CONTACT: Mr. A. Chris Armijo, Program Development Branch, OCHAMPUS, telephone (303) 361–1120.

SUPPLEMENTARY INFORMATION: 32 CFR 199.4 lists Basic Program benefits including exclusions and limitations. Paragraph (c) defines, in general terms, the scope of reimbursable services provided by physicians and other authorized individual professional providers; paragraph (e) extends benefits under certain circumstances, to conditions and limitations that are subject to applicable definitions, conditions, or exclusions that are set forth in this or other sections of this regulation; paragraph (f) identifies the liabilities, in the form of cost-shares and deductibles, to be paid by beneficiaries or sponsors.

Well-Baby Care: Paragraph (c)(3)(xi), provides for certain well-baby care services for infants up to the age of two years. A paragraph (6) will be added under paragraph (xi)(A) to list blood lead level screening for infants as a benefit.

Ambulance Service: Ambulance services are covered between points deemed to be medically necessary for the covered medical condition, therefore, the restrictive language, "to, from, and between hospitals" will be removed from paragraph (d)(3)(v).

Family Planning: Paragraph (e)(3) provides for a family planning benefit. Paragraph (e)(3)(i)(A)(3) of this Section allows benefits for prescribed oral contraceptives. With the development of new methods of contraception, prescribed contraceptives are no longer limited to those taken orally. We are, therefore, amending that paragraph by removing the word "oral" to expand the coverage accordingly.

Treatment for Alcoholism: Paragraph (e)(4)(iii)(A) of § 199.4, has historically excluded benefits for aversion therapy as a treatment modality for alcoholism. At the request of OCHAMPUS, the Office of Health Technology Assessment (OHTA) of the Public Health Service (PHS) conducted an assessment of the safety and efficacy of chemical aversion conditioning for the treatment of alcoholism. On the basis of the OHTA assessment, it was determined that chemical aversion conditioning is no less effective than other therapies for alcoholism when it is provided following the failure of less intrusive therapies. This rule proposes to remove paragraph (e)(4)(iii)(A) in its entirety to remove exclusionary language, to reserve that paragraph for future use, and to revise paragraph (4)(ii), to include coverage of chemical aversion therapy as a treatment modality.

Financial Liability-Deductibles: Under paragraph (f) of section 199.4, CHAMPUS beneficiaries and sponsors have some financial responsibility when medical care is received from civilian sources. Financial liability is imposed in order to encourage use of the Uniformed Services direct medical care system whenever facilities and services are available. Beneficiaries are responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. The cost-share and deductible amounts are controlled by statute and subject to change by Congressional action. Previous legislation had deferred a statutory increase in the deductible amount from April 1, 1991, to October 1, 1991, for dependents of active duty members who served in the Gulf Conflict. The National Defense Authorization Act for Fiscal Year 1993 contains language which prompts a revision of paragraph (f)(2)(i)(G) of this section to identify three new groups of Gulf Conflict beneficiaries, besides the dependents of active duty members, eligible for the delay in the increased deductibles, and to allow credit or reimbursement of excess amounts inadvertently paid by those groups subject to availability of appropriated funds.

Catastrophic Loss: The National Defense Authorization Act for Fiscal Years 1988 and 1989 (P.L. 100–180) amended Title 10, United States Code and established catastrophic loss protection for CHAMPUS beneficiaries on a government fiscal year basis. The law placed fiscal year limits or, catastrophic caps, on beneficiary liability for cost-shares and deductibles under the CHAMPUS Basic Program. After the fiscal year cap is met by the beneficiary, the CHAMPUS determined allowable amounts for all covered services or supplies received under the Basic Program are to be paid in full by CHAMPUS.

For dependents of active duty members, the maximum family liability

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is $1,000 for deductibles and cost-shares based on allowed charges for the Basic Program services and supplies received in a fiscal year. For all other categories of beneficiary families, the previous fiscal year cap of $10,000 under P.L. 100–180 has been reduced under the 1993 Defense Authorization Act (P.L. 102–484) to $7,500. This proposed rule implements the law which reduces the fiscal year catastrophic other than active duty dependents, effective for Basic Program services and supplies received on or after October 1, 1992.

Regulatory Procedures: OMB has determined that this is not a significant rule as defined by E.O. 12866.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule would not have a significant impact on a substantial number of small entities. The changes set forth in this proposed rule are minor revisions to the existing regulation. This proposed rule does not impose information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). Public comments on this proposed rule are invited and will be considered. A discussion of any major issues revised as a result of public comments will be included in issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is proposed to be revised as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is proposed to be amended in paragraph (e)(3)(i)(A)(*3*) by removing the word "oral"; by removing and reserving paragraph (e)(4)(iii)(A); by adding new paragraphs (c)(3)(xi)(A)(*7*) and (f)(10); and by revising the first sentence in paragraph (d)(3)(v), paragraph (e)(4)(ii), and paragraph (f)(2)(i)(G) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(xi) * * *

(A) * * *

(*7*) One screening of an infant to determine the level of lead in the blood of that infant.

* * * * *

(d) * * *

(3) * * *

(v) *Ambulance.* Civilian ambulance service is covered when medically necessary in connection with otherwise covered services and supplies and a covered medical condition. * * *

* * * * *

(e) * * *

(4) * * *

(ii) *Authorized substance use disorder treatment.* Only those services provided by CHAMPUS-authorized institutional providers are covered. Such a provider must be either an authorized hospital, or an organized substance use disorder treatment program in an authorized free-standing or hospital-based substance use disorder rehabilitation facility. Covered services consist of any or all of the services listed below, including chemical aversion therapy for alcoholism. A qualified mental health provider (physician, clinical psychologist, clinical social worker, psychiatric nurse specialist, (see paragraph (c)(3)(i) of this section) shall prescribe the particular level of treatment. Each CHAMPUS beneficiary is entitled to three substance use disorder treatment benefit periods in his or her lifetime, unless this limit is waived pursuant to paragraph (e)(4)(v) of this section. Unless clinically contraindicated, the programmed use of chemical aversion therapy is limited to the third lifetime alcoholism benefit period. (A benefit period begins with the first date of covered treatment and ends 365 days later, regardless of the total services actually used within the benefit period. Unused benefits cannot be carried over to subsequent benefit periods. Emergency and inpatient hospital services (as described in paragraph (e)(4)(i) of this section do not constitute substance abuse treatment for purposes of establishing the beginning of a benefit period.)

* * * * *

(f) * * *

(2) * * *

(i) * * *

(G) Notwithstanding the dates specified in paragraphs (f)(2)(i) (A) and (B) of this section, in the case of dependents of active duty members of rank E–5 or above with Persian Gulf Conflict service, dependents of service members who were killed in the Gulf, who died subsequent to Gulf service, and of members who retired prior to October 1, 1991, after having served in the Gulf War, the deductible shall be the amount specified in paragraph (f)(2)(i)(A) of this section for care rendered prior to October 1, 1991, and the amount specified in paragraph (f)(2)(i)(B) of this section for care rendered after October 1, 1991.

* * * * *

(10) *Catastrophic loss protection for basic program benefits.* Fiscal year limits, or catastrophic caps, on the amounts beneficiaries are required to pay are established as follows:

(i) *Dependents of active duty members.* The maximum family liability is $1,000 for deductibles and cost-shares based on allowable charges for Basic Program services and supplies received in a fiscal year.

(ii) *All other beneficiaries.* For all other categories of beneficiary families (including those eligible under CHAMPVA), the fiscal year cap is $10,000.

(iii) *Payment after cap is met.* After a family has paid the maximum cost-share and deductible amounts (dependents of active duty members $1,000 and all others $10,000), for a fiscal year, CHAMPUS will pay allowable amounts for remaining covered services through the end of that fiscal year.

Note to paragraph (f)(2)(i)(G)(10): Under the Defense Authorization Act for fiscal year 1993, the cap for beneficiaries other than dependents of active duty members was reduced from $10,000 to $7,500 on October 1, 1992. The cap remains at $1,000 for dependents of active duty members.

* * * * *

Dated: March 14, 1995.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6670 Filed 3–20–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL79–2–6616B; FRL–5167–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve requested revisions to the Chicago ozone Federal Implementation Plan as it pertains to the following sources: General Motors Corporation, Minnesota Mining and Manufacturing Corporation; Replogle Globes, Inc., Candle Corporation of America, Nalco Chemical Company, Parisian Novelty Company, Meyercord Corporation, Wallace Computer Services, Inc. and General Packaging Products, Inc. This action lists the FIP revisions USEPA is proposing to approve and provides an opportunity to request a public hearing. A detailed rationale for approving these requests is presented in the final rules section of this **Federal Register**, where USEPA is approving the revision requests as a direct final rule without prior proposal because USEPA views these as noncontroversial revisions and anticipates no adverse comments. If no adverse comments or requests for a public hearing are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments or a public hearing request, the direct final rule will be withdrawn. The USEPA will institute a second comment period on this notice only if a public hearing is requested. Any parties interested in commenting on this notice should do so at this time. If a request for a public hearing is received, USEPA will publish a notice in the **Federal Register** announcing a public hearing. The final rule on this proposed action will address all comments received.

DATES: Comments on this proposal must be received by April 20, 1995. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a public hearing should be submitted to J. Elmer Bortzer by April 20, 1995.

ADDRESSES: Written comments and requests for a public hearing on this proposed action should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments should be strictly limited to the subject matter of this proposal.

DOCKET: Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A–94–39, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Fayette Bright before visiting the Chicago location and Rachel Romine before visiting the Washington, D.C. location. A reasonable fee may be charged for copying.

The United States Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6069.

United States Environmental Protection Agency, Docket No. A–94–39, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–6004 Filed 3–20–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 70

[AD–FRL–5174–4]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by the District of Columbia. This program was submitted by the District for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources. The rationale for proposing interim approval is set forth in this notice; additional information is available at the address indicated below. This action is being taken in accordance with the provisions of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by April 20, 1995.

ADDRESSES: Comments should be submitted to Jennifer Abramson at the Region III address indicated. Copies of the District's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if the District fails to submit a complete corrective program for full approval by 6 months before the interim approval period expires, EPA would start an 18-month clock for mandatory sanctions. If the District then failed to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such a sanction would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the

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expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA disapproved the District's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, the District had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a District program by the expiration of an interim approval period, EPA must promulgate, administer and enforce a federal operating permits program for the District upon the date the interim approval period expires.

On January 13, 1994, the District of Columbia submitted an operating permits program for review by EPA. The submittal was supplemented by additional materials on March 11, 1994, and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal includes an Administrator's letter, a description of the District's title V program, permitting regulations, a Corporation Counsel's legal opinion, permitting program documentation, a permit fee demonstration, a description of compliance tracking and enforcement program, and provisions implementing the requirements of other titles of the CAA.

II. Summary and Analysis of the District's Submittal

The analysis contained in this notice focuses on the major portions of the District's operating permits program submittal: regulations and program implementation, variances, fees, support materials, and provisions implementing the requirements of titles III and IV of the CAA. Specifically, this notice addresses the deficiencies in the District's submittal which will need to be corrected prior to full approval by EPA. These deficiencies as well as other issues related to the District's operating permit program are discussed in detail in the Technical Support Document (TSD). The full program submittal and the TSD are available for review as part of the public docket. The docket may be viewed during regular business hours at the EPA Region III office listed in the **ADDRESSES** section of this document.

A. Regulations and Program Implementation

The District of Columbia's operating permit program is primarily defined by regulations adopted as chapter 3 of subtitle I of title 20 of the District of Columbia Municipal Regulations (20 DCMR). Provisions for enforcement authority are located in other Chapters of subtitle I of 20 DCMR. The following analysis of the District's operating permit regulations corresponds directly with the format and structure of part 70.

Section 70.2 Definitions

The District's regulations substantially meet the requirements of 40 CFR 70.2 for definitions. The following changes must be made to chapter 3 in order to fully meet the requirements of 40 CFR 70.2.

1. The § 399.1 definition of "Fugitive emissions" is entitled "Emissions emissions". This typographical error must be corrected to clarify the meaning of the term fugitive emissions as the term is used in the chapter 3 operating permits regulations.

2. The § 399.1 definition of "Title I modification or modification under any provision of Title I of the Act" does not expressly include changes reviewed under a minor source preconstruction review program ("minor NSR changes"). EPA is currently in the process of determining the proper definition of this term. As further explained below, EPA has solicited public comment on whether the phrase "modification under any provision of Title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include state preconstruction review programs approved by EPA as part of a State Implementation Plan (SIP) under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow state programs with a more narrow definition of "Title I modifications" to receive interim approval (59 FR 44572). EPA explained its view that the preferred reading of "Title I modifications" includes minor NSR, and solicited public comment on the proper interpretation of that term (59 FR 44573). EPA stated that if, after considering the public comments, it continued to believe that the term "Title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval.

EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously. If EPA establishes in its rulemaking that the definition of "Title I modifications" can be interpreted to exclude changes reviewed under minor NSR programs, the District's definition of "Title I modification or modification under any provision of Title I of the Act" would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, the District's definition of "Title I modification or modification under any provision of Title I of the Act" will not fully meet the 40 CFR 70.2 requirements for definitions. If the impact of this deficiency becomes a basis for interim approval as a result of EPA's rulemaking, the District would be required to revise the section 399.1 definition to conform to the requirements of part 70.

Accordingly, this proposed approval does not identify the District's definition of "Title I modification or modification under any provision of Title I of the Act" as necessary grounds for either interim approval or disapproval. Again, although EPA has reasons for believing that the better interpretation of "Title I modifications" is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

Section 70.5 Permit Applications

The District's regulations substantially meet the requirements of

40 CFR 70.5 for permit applications. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.5:

1. Section 301.1(b)(6)(B) must be modified to clarify that applications for permit renewal must contain both a compliance plan, as required by § 301.3(h), and a compliance certification, as required by § 301.3(i).

2. The District must revise § 301.3(c)(1) to ensure that all regulated air pollutant emissions which are subject to applicable requirements, including emissions from nonmajor sources subject to section 111 or 112 of the CAA, and sources solely subject to Part 60, Subpart AAA—Standards of Performance for new Residential Wood Heaters and Part 61, Subpart M—National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Asbestos, section 61.145, Standard for Demolition and Renovation, will be described in permit applications.

During the interim period, the District will be expected to require sources to prepare permit applications which include all information needed to determine the applicability of any applicable requirement, in accordance with § 301.3.

Accordingly, the District will also be expected to issue permits to major sources that include all applicable requirements, in accordance with § 302.1.

3. Section 301.3(g) must be revised to correct the misreferenced sections of the District's regulations which address alternate operating scenarios and emissions trading.

4. Section 301.3(h)(3)(C) must be revised to clarify that any schedule of compliance shall be supplemental to and shall not sanction noncompliance with the applicable requirements on which it is based.

Sections 70.4 and 70.6 Permit Content

The District's regulations substantially meet the requirements of 40 CFR 70.4 and 40 CFR 70.6 for permit content. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.4 and 40 CFR 70.6:

1. Section 302.1(k) must be revised to clarify that terms and conditions for the trading or averaging of emissions must meet all applicable requirements and the requirements of the operating permits program.

2. Section 302.3(e)(6) must be renumbered to § 302.3(f) to be consistent with the structure of 40 CFR 70.6(c)(6). Such a change is needed to clarify that the permit will include provisions required by the Mayor to ensure compliance.

3. Section 302.4(e) must be revised to clarify that requests for coverage under a general permit must meet the permit application requirements of Title V of the Clean Air Act, and include all information necessary to assure compliance with the general permit.

4. The section 302.8 provisions regarding operational flexibility must be restructured to clarify that the three types of operational flexibility (Section 502(b)(10) changes, emissions trading under SIP, and emissions trading for the purposes of complying with federally enforceable emissions cap) are available only when the conditions specified in 40 CFR 70.4(b)(12) are met.

5. Section 302.8(b) must be revised to clarify that compliance with emissions trading provisions in a permit will be determined according to requirements of the applicable SIP/ Federal Implementation Plan (FIP) or applicable requirement authorizing the emissions trade.

Section 70.7 Permit Issuance, Renewal, Reopenings, and Revisions

The District's regulations substantially meet the requirements of 40 CFR 70.7 for permit issuance, renewal, reopenings, and revisions. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.7:

1. The provisions of § 303.1(f) and § 303.1(e)(2) authorize an extension of 5 days from the permit issuance deadlines required in part 70. Sections 303.1(f) and 303.1(d)(1) must be revised to ensure that the Part 70 permit issuance deadlines will be met.

2. Section 303.3(a) language must be modified to clarify that public participation and EPA and affected state review will apply to the entire draft renewal permit, including those portions which are incorporated by reference.

3. Section 303.5(d)(1) prescribes the use of significant permit modification procedures for changes meeting certain criteria. So that all types of changes will be assigned a specified permit revision track, § 303.5(d)(1) must be revised to also require the use of the significant permit modification procedure for any type of change which does not qualify for either a minor permit modification or an administrative amendment.

4. The District must revise § 303.10 to provide for sending notice to persons on a mailing list developed by the permitting authority, including those people who request, in writing, to be on the list.

5. Section 303.10(a)(1)(B) must be revised to require the notice to include procedures to request a hearing in the event that a hearing has not been scheduled. Although not specified in the Chapter 3 regulations, the District must provide an opportunity to request a hearing if one has not been scheduled during the interim period.

6. Section 303.10 must be revised to include a provision that requires notice of a public hearing at least 30 days in advance of the hearing. Although not specified in the Chapter 3 regulations, the District must provide notice of a public hearing at least 30 days in advance of the hearing during the interim period.

Section 70.9 Fee Determination and Certification

The District's regulations substantially meet the requirements of 40 CFR 70.9 for fee determination and certification. The following changes must be made to Chapter 3 in order to fully meet the requirements of 40 CFR 70.9:

1. Section 305.2(b) must be revised to clarify that the August 1989 CPI value of 124.6 will not be used for the purposes of calculating the CPI fee adjustment and that the appropriate value of 122.15, the average 1989 CPI value, will be used instead.

2. Section 305.1 requires sources to pay an annual presumptive minimum fee "or the equivalent over some other period". Although appearing in section 502(b)(3)(A) of the CAA, the language "or the equivalent over some other period" as written into this section may allow for wide variations in the amount and timing of fee payments and could frustrate enforcement of the fee payment requirement. If the District intends to provide sources with the flexibility to pay fees pursuant to a pay schedule other than the annual presumptive minimum, section 305.1 must be revised to ensure that such equivalent fee schedule is enforceable as a practical matter. If the District does not intend to allow sources to pay fees other than the annual presumptive minimum, the section 305.1 language "or the equivalent over some other period" should be removed.

Section 70.11 Enforcement Authority

The District's regulations substantially meet the requirements of 40 CFR 70.11 for requirements for enforcement authority. The following changes must be made to subtitle I of 20 DCMR in order to fully meet the requirements of 40 CFR 70.11:

1. The enforcement provisions cited in the Corporation Counsel's opinion as

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meeting the enforcement requirements of part 70 do not satisfy the requirements of § 70.11(a)(1) and (2). The District must either revise the Corporation Counsel's opinion to reference existing provisions in District of Columbia law which satisfy the requirements of 70.11(a) (1) and (2), or specifically establish authorities to restrain or enjoin immediately permit violators presenting substantial endangerment, and to seek injunctive relief for program and permit violations without the need for prior revocation of the permit. Whichever approach the District takes, the District's regulations must clearly establish that such enforcement authority extends to chapter 3.

2. The District must clarify that civil fines are recoverable for the violation of any applicable requirement, any permit condition, any fee or filing requirement, any duty to allow or carry out inspection, entry of monitoring activities or, any regulation or orders issued by the Mayor. The District must either amend the Subtitle I of 20 DCMR to specifically address the types of violations for which civil fines are recoverable, or otherwise have the Corporation Counsel demonstrate that section 100.6 applies to each of the specific types of violations mentioned in § 70.11(a)(3)(i).

3. As required by 40 CFR 70.11(a)(3), the District must establish civil enforcement authority for the collection of penalties in a maximum amount of not less than $10,000 per day per violation. Such civil penalties must be recoverable for the types of violations discussed in § 70.11(a)(3)(i).

4. With respect to the § 100.6 civil enforcement authority, the District must clarify that mental state is not allowed as an element of proof for civil violations. The District must either establish regulatory provisions for strict liability or provide a demonstration from the Corporation Counsel that mental state is not allowed as an element of proof for civil violations.

5. The District must clarify that criminal fines are recoverable for any knowing violations of applicable requirements, permit conditions, or fee or filing requirements. Criminal fines must also be recoverable against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. The District must either amend the subtitle I of 20 DCMR to specifically address the types of knowing violations for which criminal fines are recoverable or have the Corporation Counsel demonstrate that section 105.1 applies to each of the specific types of knowing violations mentioned in § 70.11(a)(3)(ii) and (iii).

6. Section 105.1 provides criminal enforcement authority for the recovery of fines in an amount not to exceed $10,000. Pursuant to the requirements of § 70.11(a)(3)(i), the District must revise the provisions pertaining to criminal enforcement so to authorize the collection of penalties in a maximum amount of not less than § 10,000 per day per violation. Such criminal penalties must be recoverable for the types of knowing violations discussed in § 70.11(a)(3)(ii) and (iii).

B. Variances

The District of Columbia has the authority to issue a variance from requirements imposed by the District under the "District of Columbia Air Pollution Control Act of 1984" (APCA). Under specific circumstances and following a specified procedure, section 103 of the APCA authorizes the Mayor to grant or deny requests for relief from APCA requirements. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of the District's law. EPA has no authority to approve provisions of District law, such as the variance provisions referred to, which are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures.

C. Permit Fee Demonstration

Section 305 of the District's regulations requires owners or operators of part 70 sources to pay annual fees of twenty-five dollars ($25), adjusted by the CPI index, times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources, or an equivalent amount. All fees, penalties, and interest collected shall be deposited by the Mayor in a special District of Columbia Treasury fund, subject to appropriation, to carry out part 70 activities solely. The District's fee calculation, based on 1990 inventory data, shows that revenues will be able to cover the estimated costs of the program.

In chapter V. of the submittal entitled "Permitting Program Documentation", the District estimates revenues and costs associated with the implementation of its operating permits program. However, the District's projection of revenues is based on the August 1989 CPI value of 124.6 rather than the average 1989 CPI value of 122.15 required under the concept of presumptive minimum. Although Chapter V. demonstrates that revenues would have been adequate using the August 1989 value, section 305 requires the District to use the average 1989 value in calculating the CPI adjustment which will result in the collection of greater revenues. Until the District submits a revised fee rule accompanied by a detailed fee demonstration, the average 1989 value of 122.15 must be employed in the implementation of the chapter 3 operating permits program.

In addition to revenues obtained from the payment of emissions-based fees, the District's chapter V. projection of revenues includes revenues received from annual $200 operating fees assessed to each of the District's 38 sources. Because the imposition of the annual $200 operating fee is not authorized under any provision of the chapter 3 regulations, EPA cannot be certain that such fees will be paid. Accordingly, EPA has subtracted the revenue estimates from operating fees from total projected revenues for purposes of evaluating the adequacy of the District's fee program. The estimates of revenues from the authorized collection of emissions-based fees reveal that the District's program will have adequate funding to cover the direct and indirect costs of implementing the permit program during each of the first four years.

D. Support Materials

The District's part 70 operating permits program submittal substantially meets the requirements of 40 CFR 70.4 for an attorney general's legal opinion. Among the several issues required to be addressed in the attorney general's opinion, part 70 requires each opinion to demonstrate adequate authority for judicial review of final permit actions. Specifically, § 70.4(b)(3)(xi) requires the legal opinion to demonstrate authority to ensure that if the final permit action being challenged is the permitting authority's failure to issue or deny a permit within the required timeframes, a petition for judicial review may be filed any time before the permitting authority issues or denies the permit. Section XX. of the Corporation Counsel's opinion cites DCMR 303.11 as the authority which fulfills this requirement. In doing so, it appears that the Corporation Counsel interprets District law such that each day which the Mayor fails to issue or deny a permit (after the permit issuance deadline) constitutes a new final action date for purposes of the 90-day judicial review petition deadline. However, the District's 303.11 regulations are vague in this regard and do not prohibit petitions for the Mayor's failure to act from being filed after the Mayor issues or denies the permit. The District must amend DCMR 303.11 to clarify that when the Mayor fails to issue or deny a permit within the required deadline, this failure can be challenged up until the time before the permitting authority denies the permit or issues the final permit.

The District's part 70 operating permits program substantially meets the requirements of 40 CFR 70.4 for a statement of adequate resources. Chapter VIII. of the District's submittal indicates that the Compliance and Enforcement Branch (CEB) of the District's Air Resources Management Division (ARMD) manages compliance and enforcement activities in the District. In chapters II., and V., the submittal indicates that title V fee revenues will support the hiring of 4 engineers in the Engineering and Planning Branch (EPB) of the ARMD who will perform engineering functions inclusive of permitting, inspections, compliance monitoring and reporting. Chapter II. of the submittal indicates that the EPB will collaborate with the CEB to carry out compliance and enforcement functions.

In order to fully meet the 40 CFR 70.4 requirement for a statement of adequate resources, the District must clarify the specific responsibilities and procedures for coordination regarding EPB and CEB involvement in compliance and enforcement activities for part 70 sources. The District must also demonstrate that compliance and enforcement activities (not including court costs or other costs associated with an enforcement action) will be fully supported by title V fees, including resources allocated to support CEB involvement in compliance and enforcement activities, if applicable.

The District's part 70 operating permits program submittal substantially meets the requirements of 40 CFR 70.4 for compliance tracking and enforcement. In order to fully meet the 40 CFR 70.4 requirement for compliance tracking and enforcement, the District must submit additional information regarding how the District will monitor and track source compliance (e.g., inspection/enforcement strategies, description of system to be used prior to/in conjunction with Aerometric Information Retrieval System (AIRS)/ AIRS Facility Subsystem (AFS) enhancements, etc.) or reference any agreement the District has with EPA that provides this information. The District must also clarify that information related to the District's enforcement actions will be submitted to EPA at least annually.

E. Provisions Implementing the Requirements of Title III

Implementing Title III Standards Through Title V Permits

Under the "District of Columbia Air Pollution Control Act of 1984", D.C. Law 5–165 as amended by D.C. Law 9–162, D.C. Code § 6–906 and Title 20, District of Columbia Municipal Regulations (20 DCMR), Chapter 3, the District of Columbia has demonstrated in its Title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements; however, the District has also indicated that additional regulatory authority may be necessary to carry out specific CAA section 112 activities. The District has therefore supplemented its broad legal authority with a commitment "to adopt and implement expeditiously any additional regulations that might be needed to incorporate such requirements into operating permits." This is stated in the Operating Permit Program submittal, Chapter IX, entitled "Provisions Implementing the Requirements of Other Titles of the Act", paragraph B. EPA has determined that this commitment, in conjunction with the District of Columbia's broad statutory authority, adequately assures compliance with all the CAA's section 112 requirements. EPA regards this commitment as an acknowledgement by the District of Columbia of its obligation to obtain further legal authority as needed to issue permits that assure compliance with the CAA's section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that the District of Columbia is able to carry out all of the CAA's section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking which is located in the public docket and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, USEPA.

Implementation of 112(g) Upon Program Approval

EPA is proposing to approve the District's Chapter 3 operating permits program for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and District adoption of 112(g) implementing regulations. EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the Title V program regardless of whether EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 **Federal Register** notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

EPA believes that, although the District currently lacks a program designed specifically to implement section 112(g), the District's Chapter 3 permit program will serve as an adequate implementation vehicle during a transition period because it will allow the District to select control measures that would meet MACT on a case-by-case basis, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits. Section 112(g) requirements for case-by-case MACT determinations are governed by the provisions of 20 DCMR, sections 301.1(a)(3), 303.9, and the section 399.1 definition of "Applicable requirement". However, in accordance with the provisions of section 112(g), the section 301.1(a)(3) requirement to obtain an operating permit or permit revision within twelve (12) months after

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commencing operation must instead be satisfied prior to construction during the transition period.

This proposed approval clarifies that the operating permits program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the District of Columbia of rules established to implement section 112(g). EPA is proposing to limit the duration of this approval to an outer limit of 18 months following promulgation by EPA of the section 112(g) rule. Comment is solicited on whether 18 months is an appropriate period taking into consideration the District's procedures for adoption of regulations.

However, since this proposed approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. If the District of Columbia does not wish to implement section 112(g) through its Chapter 3 permit program and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving the District of Columbia's Part 70 program, approve the alternative instead.

Program for Straight Delegation of Section 112 Standards

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the District of Columbia's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. For EPA-promulgated rules which are applicable to sources in the District, the District intends to request delegation after adopting the rules by incorporation by reference. The details of this delegation mechanism will be established prior to delegating any section 112 standards under the District's approved section 112(l) program for straight delegation. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program.

F. Title IV Provisions/Commitments

As part of the program submittal, the District of Columbia committed to submit all missing portions of the title IV acid rain program by January 1, 1995. On February 3, 1995, the District submitted a letter notifying EPA that the January 1, 1995 date would not be met. In this letter, the District committed to having acid rain regulations in place by November 15, 1995 and provided a brief schedule for adoption of the necessary regulatory authorities.

III. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in this federal rulemaking action by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the District of Columbia on January 13, 1994. The scope of the District's Part 70 program applies to all Part 70 sources (as defined in the program) within the District, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term "Indian Tribe" is defined under the CAA as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). Prior to full approval by EPA, the District must make the following changes:

1. Rename section 399.1 definition of "Emissions emissions" to "Fugitive emissions".

2. If EPA establishes through rulemaking that the definition of "Title I modifications" must include changes reviewed under minor NSR, the District's definition of "Title I modification or modification under any provision of title I of the Act" will not fully meet the 40 CFR 70.2 requirements for definitions. If the impact of this deficiency becomes a basis for interim approval as a result of EPA's rulemaking, the District must revise its section 399.1 definition of the term "Title I modification or modification under any provision of title I of the Act" to conform to the requirements of part 70. At that time, EPA will determine the required timeframe, up to two years, to correct the deficiency.

3. Modify section 301.1(b)(6)(B) to clarify that applications for permit renewal must contain both a compliance plan, as required by section 301.3(h), and a compliance certification, as required by section 301.3(i).

4. Revise section 301.3(c)(1) to ensure that all applicable requirements will be described in permit applications.

5. Revise section 301.3(g) to correct misreferenced sections of the District's regulations which address alternate operating scenarios and emissions trading.

6. Revise section 301.3(h)(3)(C) to clarify that any schedule of compliance shall be supplemental to and shall not sanction noncompliance with the applicable requirements on which it is based.

7. Revise section 302.1(k) to clarify that terms and conditions for the trading or averaging of emissions must meet all applicable requirements and the requirements of the operating permits program.

8. Renumber section 302.3(e)(6) to 302.3(f).

9. Revise section 302.4(e) to clarify that requests for coverage under a general permit must meet the permit application requirements of title V of the Clean Air Act, and include all information necessary to assure compliance with the general permit.

10. Restructure section 302.8 for operational flexibility in accordance the structure of part 70 operational flexibility provisions.

11. Revise section 302.8(b) to clarify that compliance with emissions trading provisions in a permit will be determined according to requirements of the applicable SIP/FIP or applicable requirement authorizing the emissions trade.

12. Revise sections 303.1(f) and 303.1(d)(1) to ensure that the part 70 permit issuance deadlines will be met.

13. Modify section 303.3(a) to clarify that public participation and EPA and affected state review will apply to the entire draft renewal permit, including those portions which are incorporated by reference.

14. Revise section 303.5(d)(1) to require the use of the significant permit modification procedure for any type of change which does not qualify as either a minor permit modification or an administrative amendment.

15. Revise section 303.10 to provide for sending notice to persons on a mailing list developed by the permitting authority, including those people who request in writing to be on the list.

16. Revise section 303.10(a)(1)(B) to require the notice to include procedures to request a hearing in the event that a hearing has not been scheduled.

17. Revise section 303.10 to include a provision that requires notice of a public hearing at least 30 days in advance of the hearing.

18. Revise section 305.2(b) to clarify that the August 1989 CPI value of 124.6 will not be used for the purposes of calculating the CPI fee adjustment and that the appropriate value of 122.15, the average 1989 CPI value, will be used instead.

19. Revise section 305.1 to ensure that provisions for equivalent fee schedules are enforceable as a practical matter or remove section 305.1 language "or the equivalent over some other period".

20. Revise the Corporation Counsel's opinion to reference existing provisions in District of Columbia law which satisfy the requirements of § 70.11(a)(1) and (2), or establish authorities to restrain or enjoin immediately permit violators presenting substantial endangerment, and to seek injunctive relief for program and permit violations without the need for prior revocation of the permit.

21. Amend subtitle I of 20 DCMR to specifically address the types of violations for which civil fines are recoverable, or otherwise have the Corporation Counsel demonstrate that section 100.6 applies to each of the specific types of violations mentioned in § 70.11(a)(3)(i).

22. Establish civil enforcement authority for the collection of penalties in a maximum amount of not less than $10,000 per day per violation.

23. Establish regulatory provisions for strict civil liability, or provide a demonstration from the Corporation Counsel that mental state is not allowed as an element of proof for civil violations.

24. Amend Subtitle I of 20 DCMR to specifically address the types of knowing violations for which criminal fines are recoverable, or have the Corporation Counsel demonstrate that section 105.1 applies to each of the specific types of knowing violations mentioned in § 70.11(a)(3)(ii) and (iii).

25. Revise criminal enforcement provisions to authorize the collection of penalties in a maximum amount of not less than $10,000 per day per violation.

26. Amend DCMR 303.11 to clarify that when the Mayor fails to issue or deny a permit within the required deadline, this failure can be challenged any time before the permitting authority denies the permit or issues the final permit.

27. Clarify the specific responsibilities and procedures for coordination regarding EPB and CEB involvement in compliance and enforcement activities for part 70 sources. Such a clarification must demonstrate that compliance and enforcement activities (not including court costs or other costs associated with an enforcement action) will be fully supported by title V fees.

28. Submit additional information regarding how the District will monitor and track source compliance or reference any agreement the District has with EPA that provides this information.

29. Clarify that information on the District's enforcement activities will be submitted to EPA at least annually.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the District is protected from sanctions for failure to have a fully approved title V, part 70 program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards applicable to Part 70 sources as promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing under section 112(l)(5) and 40 CFR 63.91 to grant approval of the District's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action to propose interim approval of the District of Columbia's operating permits program pursuant to title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 9, 1995.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 95–6929 Filed 3–20–95; 8:45 am]

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Notices

Federal Register
Vol. 60, No. 54
Tuesday, March 21, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid (ACVFA); Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: April 12, 1995 (8:30 a.m. to 5 p.m.).
Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purposes of the meeting are: To examine case studies of recent programs implemented by private voluntary organizations (PVOs) with USAID support; to extract "lessons learned" from these case studies; and to develop recommendations for improving future USAID/PVO collaboration.

The meeting is free and open to the public. However, notification by April 7, 1995, through the advisory committee headquarters is required. Persons wishing to attend the meeting must register with Lisa Douglas-Watson (703) 351-0243 or Susan Saregi (703) 351-0244 or FAX (703) 351-0228/0212, providing their name, organization, birthdate and social security number for security purposes.

Dated: March 14, 1995.

Louis C. Stamberg,

Office Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 95-6848 Filed 3-20-95; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-026-2]

RIN 0579-AA61

Introduction of Nonindigenous Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: We are advising the public that an additional public hearing will be held to give interested persons in the State of Hawaii an opportunity for the oral presentation of data, views, and arguments regarding a proposed rule that would establish regulations governing the introduction (importation, interstate movement, and release into the environment) of certain nonindigenous organisms. We are also extending by 60 days the period for the public to comment on the proposed regulations.

DATES: Consideration will be given only to comments received on or before May 26, 1995. We will also consider comments made at a public hearing to be held in Honolulu, HI, on April 6, 1995, from 10 a.m. until 5 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93-026-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 93-026-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. The public hearing will be held at the following location: Holiday Inn at the Airport, 3401 N. Nimitz Highway, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A01, 4700 River Road Unit 133, Riverdale, MD 20737-1228; (301) 734-8896.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1995, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (60 FR 5288-5307, Docket No. 93-026-1) to establish regulations governing the introduction (importation, interstate movement, and release into the environment) of certain nonindigenous organisms. In that document, APHIS stated that the proposed rule appears to be necessary because the plant pest regulations under which the movement of certain nonindigenous organisms are currently regulated do not adequately address the introduction of nonindigenous organisms that may potentially be plant pests. The proposed regulations would provide a means of screening certain nonindigenous organisms prior to their introduction to determine the potential plant pest risk associated with a particular introduction.

In the proposed rule, we announced that three public hearings would be held: In Kansas City, MO, on March 6, 1995; in Sacramento, CA, on March 7, 1995; and in Washington, DC, on March 10, 1995. Since the publication of the proposed rule, we have received requests that a public hearing also be held in the State of Hawaii. In response to those requests, we have scheduled a fourth public hearing, to be held at the Holiday Inn at the Airport, 3401 N. Nimitz Highway, Honolulu, HI, on April 6, 1995.

As is the case with the tree previously scheduled hearings, the purpose of the hearing is to give interested persons an opportunity for the oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to the comments at the hearing, except to clarify or explain provisions of the proposed rule.

A representative of APHIS will preside at the public hearing. Any interested person may appear and may be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. Persons who wish to speak at a public hearing will be asked to provide their name and organization. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

The public hearing will begin at 10 a.m. and is scheduled to end at 5:00 p.m., local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

In the January 26, 1995, proposed rule, we stated that comments on the proposed rule were required to be received on or before March 27, 1995. However, to receive and consider the comments to be presented at the public hearing in Hawaii on April 6, 1995, and to accommodate persons who may wish to comment on issues that may be raised at that public hearing, we are extending by 60 days the comment period for the proposed rule. Therefore, we will consider all comments that are received on or before May 26, 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-6907 Filed 3-20-95; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Carlota Copper Project, Tonto National Forest, Gila and Pinal Counties, AZ

AGENCY: Forest Service, USDA.

COOPERATING AGENCIES:
Department of Defense, U.S. Army Corps of Engineers, Los Angeles District, Arizona Field Office.
Arizona Department of Environmental Quality.

ACTION: Notice of the extension of the comment period on the draft EIS.

SUMMARY: On June 9, 1992, the USDA, Forest Service, as lead agency, issued a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposal to develop a mine for copper extraction in the Pinto Creek/Powers Gulch area in the **Federal Register** (57 FR 24461). The NOI indicated a 45 day period for comments on the Draft EIS. A Notice of Availability of the Draft EIS was published by EPA in the **Federal Register** (60 FR 6710) as EIS No. 950034, Draft EIS, AFS, AZ, Carlota Open-Pit Copper Mine Project on February 3, 1995. The Forest Service, USDA, has decided to extend the review period an additional 45 days.

DATES: Comments on the Draft EIS should now be received in writing by May 11, 1995.

ADDRESSES: Send written comments to USDA Forest Service, Tonto National Forest, 2324 E. McDowell Road, Phoenix, AZ 85006, Attn: Paul Stewart.

RESPONSIBLE OFFICIAL: The Forest Supervisor, Tonto National Forest, will be the responsible official and will decide on the conditions under which the mining operations may proceed.

FOR FURTHER INFORMATION CONTACT: Paul Stewart, Project Coordinator (602) 225-5200.

SUPPLEMENTARY INFORMATION: The Forest Service received a number of requests from both other agencies and the public to extend the review period due to the complexity of the issues and the length of the Draft EIS. After review of the extension requests, and consideration of potential impacts to the mining proponent, an additional 45 days is reasonable to provide for review of the Draft EIS. The entire comment period will total 97-100 days from the release of the Draft.

Dated: March 13, 1995.

Charles R. Bazan,

Forest Supervisor, Tonto National Forest.

[FR Doc. 95-6891 Filed 3-20-95; 8:45 am]

BILLING CODE 3410-11-M

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on April 10, 1995 at the Olympic National Forest Headquarters Office, 1835 Black Lake Blvd., S.W. Olympia, Washington. The meeting will begin at 10 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) Context of the Advisory Committee, including background on the President's Forest Plan; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on who they represent and their interests; and (7) Open public forum. All Olympic Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765-2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956-2301.

Dated: March 14, 1995.

David Yates,

Land Management Planning Staff Officer.

[FR Doc. 95-6860 Filed 3-20-95; 8:45 am]

BILLING CODE 3410-11-M

Rural Housing and Community Development Service

Notice of Recipients of Fiscal Year 1994 Section 515 Loan Funds

AGENCY: Rural Housing and Community Development Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing and Community Development Service (RHCDS) has compiled a list of all recipients of fiscal year (FY) 1994, Section 515 loan funds. This action is taken to inform the public of recipients of FY 94 Section 515 funds. The intended effect is public awareness.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Reese-Foxworth, Loan Specialist, Multi-Family Housing Processing Division, Rural Housing and Community Development Service (RHCDS), USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1608 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Discussion of Notice

The information available is a 74 page compilation that lists borrower names, names of the general partners, project name and location, number of units developed, and RHCDS loan amount. This information is available to all interested parties and can be obtained by writing the following address: USDA, RHCDS, Multi-Family Housing Processing Division, Room 5337-S, Washington, DC 20250. The request must be accompanied by a self-addressed, self-stamped envelope. Envelopes must be a minimum of 11"x9" in size, and bear first class postage of $1.47. Requests without the required return envelope and postage will not be acknowledged or responded to.

Dated: March 9, 1995.

Maureen Kennedy,

Acting Administrator, Rural Housing and Community Development Service.

[FR Doc. 95-6917 Filed 3-20-95; 8:45 am]

BILLING CODE 3410-07-U

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DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92–463 as amended by P.L. 94–409), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations. The meeting will convene on April 27–28, 1995 at the Bureau of the Census, Conference Center, Federal Building 3, Suitland, Maryland.

The committee is composed of 36 members appointed by the presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the chairman of the board of the American Marketing Association. It advises the Director, Bureau of the Census, on the full range of Census Bureau programs and activities in relation to the areas of expertise.

The agenda for the meeting on April 27 that will begin at 9 a.m. and end at 5:15 p.m. is:

- Introductory remarks by the Director, Bureau of the Census.
- 2000 census update.
- Economic and agriculture censuses update.
- Census Bureau responses to committee recommendations.
- Standard Occupation Classification Revision Policy Committee.
- Bureauwide methodology research.
- Strategic planning.
- Communicating the benefits and usefulness of economic data.
- Initiatives to reduce reporting burden for businesses.
- Measuring output (service industries).
- Continuous measurement.
- Acquiring data through administrative records.

The agenda for the April 28 meeting that will begin at 9 a.m. and adjourn at 12:15 p.m. is:

- Mid-decade "clean slate" review of national accounts.
- Marketing at the Census Bureau: What does it mean and how should we do it?
- National Academy of Sciences recommendations to modernize the U.S. census.
- Develop recommendations and special interest activities.
- Closing session.

The meeting is open to the public, and a brief period is set aside on April 28 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2419, Federal Building 3, Suitland, Maryland (mailing address: Washington, D.C. 20233), telephone: (301) 457–2494—TDD (301) 457–2540.

Dated: March 14, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–6903 Filed 3–20–95; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

Open Meeting of Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: April 4, 1995, from 9 a.m. until adjournment. The meeting location will be at the Hawk's Cay Resort, Mile Marker 61, Duck Key, Florida.

AGENDA:

1. Discussion of nomination of new officers and distribute charter for review.
2. Distribute the Draft Florida Keys National Marine Sanctuary Management Plan.
3. Receive briefing on contents of draft plan.
4. Discussion of public review process.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Public comment will be received from 4:30 to 5:30. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Ben Haskell at (305) 743–2437 or June Cradick at (301) 713–3137.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: March 16, 1995.

Frank Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–6883 Filed 3–20–95; 8:45 am]

BILLING CODE 3510–08–M

Open Meeting of Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council open meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary.

TIME AND PLACE: Friday, March 24, 1995, from 8:30 until 5:00. The meeting will be held at the Santa Cruz Holiday Inn, Sierra Room, 611 Ocean Street, Santa Cruz, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including strategic planning for the Council, update on plans to reduce elephant seal harassment at Piedras Blancas, update from the Sanctuary Manager, and reports from the working groups.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4201 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: March 16, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–6881 Filed 3–20–95; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Nebraska Advisory Committee to the Commission will convene on Thursday, April 20, 1995, from 7:00 p.m. to 9:30 p.m. at the Western Nebraska Community College, 1601 East 27th Street, Scottsbluff, Nebraska 69301. The purpose of the meeting is to provide information on filing complaints of discrimination with civil rights organizations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 13, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–6889 Filed 3–20–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will be held on Saturday, April 8, 1995, from 9:30 a.m. to 12:30 p.m. at the Sheraton University City, 36th and Chestnut Streets, Philadelphia, Pennsylvania 19102. The purpose of the meeting is to conduct project planning for the current term, elect officers, and provide orientation for newly appointed members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 13, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–6890 Filed 3–20–95; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels and Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

March 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels and amending visa requirements.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated March 3, 1995 between the Governments of the United States and Guatemala, among other things, establishes specific limits and guaranteed access levels (GALs) for certain cotton, wool and man-made fiber textile products for the period beginning on January 1, 1995 and extending through December 31, 1995.

The specific limits may be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Guatemala becomes a member of the World Trade Organization.

Beginning on March 23, 1995, the U.S. Customs Service will start signing the first section of form ITA–370P for shipments of U.S. formed and cut parts in Category 443 that are destined for Guatemala and subject to the GAL established for Category 443 for the period beginning on January 1, 1995 and extending through December 31, 1995. These products are governed by Harmonized Tariff item number 9802.00.8015 and Chapter 61 Statistical Note 5 and Chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Category 443 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Guatemala in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and GALs for certain categories for 1995 and to begin signing the first section of form ITA–370P for Category 443. Textile products in Category 443, produced or manufactured in Guatemala and exported from Guatemala on and after March 23, 1995 shall require a visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 66522, published on December 27, 1994.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on March 23, 1995, you are directed to cancel the counting letter issued to you on December 14, 1994 by the Chairman, Committee for the Implementation of Textile Agreements which directed you to count imports of wool textile

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products in Category 443 for the period beginning on November 21, 1994 and extending through November 20, 1995.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and a Memorandum of Understanding (MOU) dated March 3, 1995 between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following restraint limits:

Category	Twelve-month limit [1]
340/640	1,080,379 dozen.
347/348	1,293,629 dozen.
351/651	227,900 dozen.
443	68,344 numbers.
448	42,821 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits, except Category 443, for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Guatemala become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

For visa purposes, you are directed, effective on March 23, 1995, to amend further the directive dated January 24, 1990 to require a visa for textile products in Category 443, produced or manufactured in Guatemala and exported from Guatemala on and after March 23, 1995. Goods in Category 443 which are exported during the period March 23, 1995 through April 22, 1995 shall not be denied entry for the lack of a visa. Goods in Category 443 which are exported after April 22, 1995 must be accompanied by an appropriate export visa.

Beginning on March 23, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Category 443 that are destined for Guatemala and re-exported to the United States on and after March 23, 1995.

Additionally, pursuant to the Memorandum of Understanding dated March 3, 1995 between the Governments of the United States and Guatemala; and the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on March 23, 1995, guaranteed access levels are being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in the following categories which are re-exported to the United States from Guatemala during the period January 1, 1995 through December 31, 1995:

Category	Guaranteed access level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990, as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–6857 Filed 3–20–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Combat Identification

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Combat Identification will meet in closed session on April 18–19, May 9–10, and June 13–14, 1995 at the MITRE Corporation, Bedford, Massachusetts.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the DoD long term strategy and plan for development and fielding of a comprehensive situational awareness (SA) and combat identification (CID) architecture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: March 16, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6956 Filed 3–20–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Granting of Exclusive License

AGENCY: U.S. Army Research Laboratory, DOD.

ACTION: Notice of intent.

In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of U.S. Patent Nos. 4,754,237, entitled, "Switchable Millimeter Wave Microstrip Circulator;" 4,749,966, entitled, "Millimeter Wave Microstrip Circulator;" and 4,862,117, entitled, "Compact Millimeter Wave Microstrip Circulator."

DATES: Written objections or comments must be filed on or before May 22, 1995.

ADDRESSES: Commander, U.S. Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, NJ 07703–5010.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, (908) 532–4112.

SUPPLEMENTARY INFORMATION: The inventions described in the above mentioned patents relate to Y-junction or cone-shaped circulators that are based on ferrite materials. U.S. Patent No. 4,754,237 was filed on September 21, 1987, given serial number 99,371, and issued to Stern and Babbit on June 28, 1988; U.S. Patent No. 4,749,966 was filed July 1, 1987, given Serial number 68,394 and issued to Stern and Babbit on June 7, 1988, U.S. Patent No. 4,862,117 was filed on January 27, 1989, given Serial Number 302,509, and issued to Stern and Babbit on August 28, 1989.

Rights to these United States Patents are owned by the United States of America, as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army, as represented by the U.S. Army Research Laboratory, intends to grant a limited term exclusive license for the above mentioned patents to Princeton Microwave Technology, Inc., a New Jersey manufacturer with principal offices at 3 Nami Lane, Unit 10, Mercerville, New Jersey 98619.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file written objections to this prospective exclusive license arrangements. Written objections should be directed to the above address.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–6834 Filed 3–20–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Joint Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR)

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DOD.

ACTION: Notice of intent.

SUMMARY: To prepare a joint draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the proposed aggregate mining of approximately 1250 acres of land within the Morrison Creek Drainage Basin north of Highway 16, Sacramento County, California. The area evaluated by the EIR/EIS is bounded roughly by Kiefer Boulevard to the north, Excelsior Road to the east, Jackson Road (Highway 16) to the south and Bradshaw Road to the west.

ADDRESSES: U.S. Army Engineer District, Sacramento, 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Shaffer, (916) 557–5269.

SUPPLEMENTARY INFORMATION: There are three mining areas within the 1250 acre study area. They are known as Aspen V North, Aspen VI and Granite I. Teichert Aggregates and Granite Construction Company have each applied to the Corps of Engineers for Department of the Army permits pursuant to Section 404 of the Clean Water Act. These applications are being evaluated jointly because they are adjacent to one another and propose to share planning and cost of reclamation and mitigation. Teichert proposes to impact 42.88 acres of wetlands and other waters subject to DOA jurisdiction on their Aspen VI site, while Granite's impacts amount to 16.16 acres of wetlands and other waters subject to DOA jurisdiction on their Granite I site. Aspen VI and Granite I, combine for a total of 1061 acres in size with a total of 59.04 acres of waters of the United States being impacted. The Teichert site known as Aspen V North is approximately 184 acres in size with no jurisdictional waters of the United States. Presently, Aspen VI and Granite I consist of relatively flat terrain with Morrison Creek running through roughly from north east to south west and Mather Drain running through roughly from north to south. Granite I and Aspen VI are used for grazing and Aspen V North is relatively flat and is used for farming except in some areas that have already been mined. Because Aspen V North has no waters of the United States and can continue to be mined without a Department of the Army permit, the applicants have proposed to use the reclaimed pit as the mitigation area for vernal pool creation. In this way, the pools can be built on the Aspen V North site as they are impacted on the Aspen VI and Granite I sites with less temporal loss. The applicants proposed to reroute Mather Drain and Morrison Creek into a bypass channel that will be construed at the present grade. Low flows and flood flows will be directed to the pit floor where the applicants propose to mitigate for project impacts to seasonal wetlands and creek channel. The pit floor will also serve as a detention basin for storm water during peak flows.

Alternatives

The alternatives being considered at this time are:

a. Aggregate mining on site as proposed by the applicants.

b. Downsizing mining operation on site so as to avoid some waters of the United States.

c. Alternative site location.

d. No action (no project alternative).

Significant Issues

The significant issues which have been identified to date and which will be analyzed in the report are:

a. The need for additional aggregate material in Sacramento.

b. Impacts to wetlands and ability to create vernal pools on a reclaimed pit floor.

c. Impacts to threatened and endangered species.

d. Impacts to wildlife.

e. Impacts to the hydrology of the Morrison Creek drainage basin.

f. Need for flood storage on the Morrison Creek drainage basin.

g. Impacts to water quality.

h. Impacts to traffic (alternative site location).

i. Impacts to aesthetics.

j. Impacts to noise levels.

Other Environmental Review and Consultation

Environmental review and consultation as required by Sections 401 and 404 of the Clean Water Act, as amended (33 U.S. Code 1341 and 1344); the Fish and Wildlife Coordination Act (16 U.S. Code 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S. Code 470 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S. Code 1531 *et seq.*); Executive Order 11990, "Protection of Wetlands," 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIR/EIS review process.

Another joint draft EIR/EIS is being prepared concurrently for the Morrison Creek drainage basin south of Highway 16. This report will focus on the following mining projects: Granite Vineyard, Aspen III South, Aspen IV South and Aspen V South. Both EIR/EIS documents will evaluate impacts to the entire Morrison Creek drainage basin within cumulative impacts.

The Sacramento District of the U.S. Army Corps of Engineers will issue a 30-day public notice, concurrently with this notice, to initiate the scoping process. The public notice will be sent to all known, interested parties; and will request that the reviewers provide comments on the topical scope, alternatives, and major issues to be covered in the Draft EIR/EIS. We intend to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for a public scoping meeting will be considered.

Schedule

We estimate the draft EIR/EIS will be made available to the public in May 1995.

Questions concerning the proposed action and Draft EIR/EIS should be addressed directly to Ms. Karen Shaffer, Regulatory Branch, U.S. Army Corps of Engineers, 1325 J Street, Room 1444, Sacramento, California 95814–2922, telephone (916) 557–5269.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–6833 Filed 3–20–95; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

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SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 21, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Resources Group, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office this notice contains the following information: (1) Type of review requested, e.g., new, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: March 15, 1995.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Emergency.
Title: Compliance with Statutory Requirements.
Abstract: Grantees under previous law (P.L. (100–297) must comply with the new requirements under Public Law 103–382—October 20, 1994. Grantees required to comply include State educational agencies, local educational agencies, institutions of higher education and non-profit organizations.
Additional Information: OMB approve is requested for March 21, 1995. An Emergency review will allow the Department of Education to make continuation grants awards before the end of the fiscal year.
Frequency: One time.
Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, Local or Tribal government.
Reporting Burden:
Responses: 74.
Burden Hours: 1,319.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

[FR Doc. 95–6836 Filed 3–20–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) was requested by March 10, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 15, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: Application for Grants Under Magnet Schools Assistance Programs
Frequency: Annually
Affected Public: State, Local or Tribal Government
Reporting Burden:
Responses: 150
Burden Hours: 3,750
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by Local Educational agencies to apply for funding under the Magnet Schools Assistance Program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection was requested for March 10, 1995. An expedited review is requested in order to implement this high priority program as soon as possible.

[FR Doc. 95–6835 Filed 3–20–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–203–000, et al. (Phase II)]

Tennessee Gas Pipeline Co.; Notice of Informal Settlement Conference

March 16, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 22, 1995, at 2:00 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Dennis H. Melvin (202) 208–0042 or Donald Williams (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6839 Filed 3–20–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Parker-Davis Project—Proposed Firm Power Rate and Firm and Nonfirm Transmission Service Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Parker-Davis Project power rate and firm and nonfirm transmission rate adjustments.

SUMMARY: The Western Area Power Administration (Western) is initiating rate adjustments for firm power and firm and nonfirm transmission service for the Parker-Davis Project (P–DP). The power repayment study and other analyses indicate that the revenues required to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period has decreased by approximately $4.7 million since the last rate adjustment. The proposed P–DP rates for firm power and firm and nonfirm transmission service are expected to become effective October 1, 1995, and will supersede the existing step two rates.

On January 6, 1994, the Deputy Secretary of the Department of Energy (DOE) approved the existing rates for firm power and firm and nonfirm transmission service on an interim basis. The existing rates for firm power and firm and nonfirm transmission service were placed in effect on February 1, 1994, and consisted of a two-step rate adjustment. Step one of the existing rates was effective February 1, 1994, through September 30, 1995, and step two of the existing rates was to be effective on October 1, 1995, through January 31, 1999. The Federal Energy Regulatory Commission (FERC) confirmed and approved the rates on October 14, 1994.

During this last P–DP rate adjustment process (WAPA–55), the Arizona Power Pooling Association, Inc.; Arizona Power Authority; and the Arizona Customer Group filed Motions To Intervene and Protest FERC's confirmation and approval of the P–DP rates described in Rate Order No. WAPA–55. On August 19, 1994, Western filed a Stipulation Agreement signed by Western and these customers in which the intervenors withdrew any protest and Western agreed to re-examine the issues raised as well as commence a new rate adjustment proceeding during fiscal year 1995.

Western has re-examined the issues raised during the last rate adjustment process and has developed proposed P–DP rates to supersede step two of the existing rates which were to become effective October 1, 1995, for firm power and firm and nonfirm transmission service. The major differences between step two of the existing rates and the proposed P–DP rates resulted from several activities which involved Western working in partnership with the P–DP customers. First, future revenue requirements were reduced by controlling Western's operation and maintenance costs, and by decreasing the construction and replacement program through the Engineering Ten Year Planning Process. The Engineering Ten Year Planning Process includes a decision making partnership among P–DP customers and Western.

Second, Western revised the allocation of costs between the power and transmission customers which is described in a Costs Apportionment Study. A working group including customer representatives, Western, and the Bureau of Reclamation was formed to analyze the issues and concerns expressed by the customers during the last rate adjustment process on how costs were allocated between power and transmission. The working group derived a new methodology for allocating these costs in a manner deemed equitable. The new methodology also meets the concerns of both P–DP customers and Western.

Third, the working group developed a revised rate design methodology using the results from the Costs Apportionment Study. The results from the Costs Apportionment Study were applied to total revenue requirements instead of incremental revenue requirements as was done to derive step two of the existing rates.

When compared to step two of the existing rates, the activities stated resulted in a rate decrease for firm power customers and a rate increase for firm and nonfirm transmission customers.

The proposed P–DP rates provide for an energy rate of 1.91 mills per kilowatthour (mills/kWh) and a capacity rate of $2.06 per kilowatt/month (kW/month) for a composite rate of 6.62 mills/kWh. The proposed P–DP rates for transmission service provide for a firm transmission service rate of $13.28 per kilowatt/year (kW/year) and a nonfirm transmission service rate of 2.53 mills/kWh for P–DP and a firm transmission service rate for the Salt Lake City Area/Integrated Projects (SLCA/IP) of $6.64/kW/season. The SLCA/IP transmission service is for the SLCA/IP customers' seasonal use of the P–DP transmission system.

Table One compares step two of the existing rates with the proposed P–DP rates.

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TABLE ONE

Type of service	Step two of the existing rates October 1, 1995, through January 31, 1999	Proposed rates October 1, 1995, through September 30, 2000	Percent change (%)
Composite Rate	12.01 mills/kWh	6.62 mills/kWh	−45
Energy Rate	6.01 mills/kWh	1.91 mills/kWh	−68
Capacity Rate	$2.63 per kW/month	$2.06 per kW/month	−22
Firm Transmission Service	$12.55 per kW/year	$13.28 per kW/year	6
Nonfirm Transmission Service	2.39 mills/kWh	2.53 mills/kWh	6
Transmission Service for SLCA/IP	$6.27 per kW/season	$6.64 per kW/season	6

Overall, annual revenue requirements for the proposed rates has slightly increased as compared to step one of the existing rates and has decreased as compared to step two of the existing rates. Table Two shows a comparison of the annual revenue requirements for step one of the existing rates, step two of the existing rates, and the proposed rates.

TABLE TWO

Step one of the existing rates (February 1, 1994, through September 30, 1995)	Step two of the existing rates (October 1, 1995, through January 31, 1999)	Proposed rates (October 1, 1995, through September 30, 2000)
$37,209,290	$42,099,987	$37,385,908

Since the proposed P–DP rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend proposed P–DP rates for approval on an interim basis by the Deputy Secretary of DOE (Deputy Secretary).

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end not less than 90 days later, or June 21, 1995, whichever occurs last. A public information forum will be held at 9:30 a.m. on April 5, 1995, at Western's Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 9:30 a.m. on May 15, 1995, also at Western's Phoenix Area Office.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Area Manager, Western Area Power Administration, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2453.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 392 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and the Act of May 28, 1954 (ch. 241, 68 Stat. 143).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37837).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed P-DP rates for firm power and firm and nonfirm transmission service are and will be made available for inspection and copying at the Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona 85005.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, March 10, 1995.

J. M. Shafer,

Administrator.

[FR Doc. 95–6913 Filed 3–20–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5175–7]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA announces extension of the April 1, 1994 and April 1, 1995 deadlines for small diesel refineries to request allowances under the Acid Rain Program. These deadlines are extended to May 15, 1995. This extension is warranted by confusion regarding small diesel refinery eligibility for allowance allocations.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, EPA Acid Rain Division (6204J), 401 M Street., SW., Washington DC 20460; telephone (202) 233–9074.

SUPPLEMENTARY INFORMATION:

1. Background

Title IV of the Clean Air Act Amendments of 1990 (CAAA) established the Acid Rain Program to reduce acid rain in the United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO_2) emissions from utility units. The SO_2 reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO_2. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO_2 emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties.

Section 410(h) of the Clean Air Act provides allowances for small diesel refineries that produce diesel fuel that meets the requirements of section 211(i) (that "desulfurize" diesel fuel) during the period from October 1, 1993 through December 31, 1999. Section 410(h) limits the annual allocations to small diesel refineries to 35,000, as compared to the 8.95 million allowances for Phase II utilities. Also, each eligible small diesel refinery is limited to 1500 allowances per year. Small diesel refineries are not otherwise affected by the Acid Rain Program and do not need the allowances to comply with any provision of the Clean Air Act. Thus, the allowances serve as a financial benefit to small diesel refineries desulfurizing diesel fuel.

2. Clarification of Eligibility

The preamble to both the proposed (56 FR 29940, July 7, 1992) and final rules (57 FR 15645, March 23, 1993) concerning the allocation of acid rain allowances to small refineries stated that only small diesel refineries that desulfurized both on-road and off-road diesel fuels would be eligible for allowances. However, the text of the rule allowed all small refineries desulfurizing diesel fuel eligible to receive allowances. 40 CFR 73.90.

The purpose of today's notice is to remedy any confusion caused by the language in both preambles and to provide all eligible small refiners with an opportunity to participate in the allowance program. This notice clarifies that small refineries do not have to desulfurize all diesel fuel to be eligible for allowances and supersedes the preamble language.

Contrary to assertions EPA made in the preamble to the final rule, nothing in section 410(h) clearly requires a small refiner to desulfurize all of its on-road diesel fuel as well as all of its off-road diesel fuel to obtain allowances. In particular, the declaration in the preamble that the section 410(h)(6) certification provision is "insistent" on both on-road and off-road diesel fuel being desulfurized ignores alternative interpretations of the certification language that would simply read it to require that allowances could be claimed only for the fuel that meets the section 211(i) standard. Rather than reading the certification to impose a substantive requirement not expressed elsewhere in section 410(h), the better reading of the subsection as a whole is that allowances may be claimed for all motor diesel fuel meeting section 211(i) that is produced at the small refinery. This interpretation is consistent with the statute and the text of the regulation and has been EPA policy in applying the regulation to the requests for allowances for 1993 fuel desulfurization.

EPA will consider a small diesel refinery eligible for allocation of allowances based solely on the requirements in the definition of "small diesel refinery" at 40 CFR 72.2. A small diesel refinery does not have to certify that it desulfurizes both on-road and off-road diesel fuel.

3. Extension of 1994 and 1995 Filing Deadlines

EPA acknowledges that the preamble to the final rule, when compared to the rule itself, created confusion as to the criteria for eligibility. In implementing this program, EPA has followed the statutory criteria, as implemented at 40 CFR 73.90 and 72.2.

After EPA provided notice of the allowances allocated to small diesel refineries in 1994 (59 FR 34811, July 7, 1994), several small refineries notified EPA that some refineries that had not desulfurized 100 percent of their diesel throughput were allocated allowances. The commenting refineries argued that these refineries, based on the criteria stated in the preamble to the rule, should not be eligible for allowances. The small refineries that notified EPA sought to be deemed eligible for allowances, in addition to the group listed in the **Federal Register** notice.

In order to be fair to all small diesel refineries, EPA is extending the April 1, 1994 deadline until May 15, 1995. Refineries that did not apply for certification of eligibility or request allowances for 1993 desulfurization because they thought they were not eligible should apply for certification of eligibility and request allocations no later than May 15, 1995. All refineries that wish to be allocated allowances for 1994 desulfurization must request allocations no later than May 15, 1995. For each year in the future, the date for requests remains April 1.

Dated: March 15, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–6924 Filed 3–20–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5175–6]

Flow Control and Municipal Solid Waste; Availability of Report to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of a Report to Congress on Flow Control and Municipal Solid Waste. Flow controls are legal provisions that allow state and local governments to designate where Municipal Solid Waste (MSW) must be taken for processing, treatment, or disposal. These designated facilities may hold local monopolies on MSW and/or recoverable materials because of flow controls. Consequently, flow control has become a heavily debated issue among state and local governments, the waste management industry, the recycling industry, and environmental groups.

The 102nd Congress directed the Environmental Protection Agency (EPA) to review flow control as a form of MSW management. Congress asked EPA to: (1) Review and compare states with and without flow control authority; (2) identify the impact of flow controls on human health and the environment; and (3) describe the impacts of flow control on the development of state and local waste management, and on the achievement of state and local goals set for source reduction, materials reuse, and recycling.

The Report indicates that flow controls are an administratively efficient tool for local governments to plan and fund solid waste management systems. However, protection of human health and the environment is directly related to the implementation and enforcement of federal, state, and local environmental regulations, and not to

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the existence of flow control measures. Data also indicate that flow control is not essential for developing MSW capacity or for achieving recycling goals.

The Agency examined flow control nation-wide, finding that 35 states, the District of Columbia, and the Virgin Islands authorize flow control directly. Four additional states authorize flow control indirectly through mechanisms such as solid waste management plans and home rule authority. Eleven states do not have flow control authority. It is important to recognize that the Report presents a national perspective on flow control, and that the needs and objectives of state and local jurisdictions may differ significantly from a national viewpoint. Factors such as local waste generation rates, financial and market conditions, demographics, and the local economy affect the planning and implementation of solid waste management systems.

ADDRESSES: Paper copies of the full Report are available from the National Technical Information Service (NTIS) at 1–703–487–4650. The document number is PB95–179 263 (EPA530–R–95–008). Copies of the Report's Executive Summary (EPA530–S–95–008) are free, and may be obtained by calling the RCRA/Superfund Hotline at 1–800–424–9346; 1–800–553–7672 (TDD).

EPA is making these documents available electronically. The Agency is interested in learning whether people have obtained them electronically and what their experiences were in doing so. You are encouraged to provide feedback on the electronic availability of these documents by sending E-mail to OSW-Pilot @epamail.epa.gov. The Report and the Executive Summary can be accessed in electronic format on the Internet System through:

EPA Public Access Gopher Server: Go to gopher.epa.gov; from the main menu, choose "EPA Offices and Regions"; next, choose "Office of Solid Waste and Emergency Response (OSWER)"; finally, choose "Office of Solid Waste/Nonhazardous/Municipal Solid Waste/General."

Through FTP: Go to ftp.epa.gov; Login: anonymous; Password: Your Internet Address. Files are located in directories/pub/gopher. All OSW files are in directories beginning with "OSW."

Through MOSAIC: Go to http://www.epa.gov; choose the EPA Public Access Gopher; from the main (Gopher) menu, choose "EPA Office and Regions." Next, choose "Office of Solid Waste and Emergency Response (OSWER)." Finally, choose "Office of Solid Waste/Nonhazardous/Municipal Solid Waste/General."

Through Dial-up Access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions"; then "Office of Solid Waste and Emergency Response (OSWER)"; finally, "Office of Solid Waste/Nonhazardous/Municipal Solid Waste/General."

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at 1–800–424–9346 or 1–800–553–7673 (TDD); in the Washington, DC metropolitan area, 703–412–9810 or 703–412–3323 (TDD). For technical information on specific aspects of the Report, contact Angie Leith (5306), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–7253.

Dated: March 15, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–6925 Filed 3–20–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5175–5]

Common Sense Initiative Council, Computers and Electronics Sector Subcommittee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Computer and Electronics Sector Subcommittee, notice of meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC) on October 17, 1994, to provide independent advice and counsel to EPA on environmental issues associated with the electronics and computer industry and other industrial sectors. The charter was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA). The Computer and Electronics Subcommittee (CSIC–CES) operates as a subcommittee of the CSIC.

OPEN MEETING NOTICE: Notice is hereby given that the CSIC–CES Subcommittee will hold an open meeting on Wednesday, April 12, from 8:30 a.m. to 5:00 p.m., and Thursday, April 13, from 8:30 a.m. to 3:00 p.m., at the Hyatt Regency Crystal City, Regency Ballroom, 2799 Jefferson Davis Highway, Arlington, VA 22202. Seating will be available on a first-come, first-serve basis.

The meeting will include review and discussion of subcommittee operating principles, discussion of subcommittee information needs, review and approval of proposed workplan items, formation of workgroups for accepted workplan items, and presentations on ongoing related Agency activities. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CSIC–CES meeting minutes, will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, DC, phone (202) 260–7417.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CSIC–CES, please contact Gina Bushong, US EPA (202) 260–3797, FAX (202) 260–1096, or by mail at US EPA (7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, Region 1, US EPA, (617) 565–1155; or Dave Jones, Region 9, U.S. EPA, (415) 744–2266.

Dated: March 15, 1995.

Gina Bushong,

Designated Federal Officer.

[FR Doc. 95–6927 Filed 3–20–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5175–1]

Maryland Department of the Environment: Partial Program Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency Region 3.

ACTION: Notice of tentative determination on the Maryland Department of the Environment's application for a partial program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The EPA intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The EPA believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Maryland Department of the Environment (MDE) applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed MDE's application and made a tentative determination of adequacy for those portions of the MDE's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The MDE plans to revise the remainder of its permit program to assure complete compliance with the revised MSWLF Criteria and gain full program approval. MDE's application for partial program adequacy determination is available for public review and comment.

All municipal solid waste landfilled in Maryland must be disposed in a landfill which meets these criteria. This includes all ash from municipal solid waste incinerators which is determined to be non-hazardous.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the EPA Region 3 has scheduled a public hearing on this determination on the date given below in the **DATES** section.

DATES: All comments on MDE's application for a partial determination of adequacy must be received by EPA Region 3 by the close of business on May 19, 1995. A public hearing will be held on Wednesday, May 17, 1995, from 10:00 am until 1:00 pm for the purposes of soliciting public comment on this tentative determination.

ADDRESSES: Written comments should be sent to U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Christopher B. Pilla, mailcode (3HW50). Copies of MDE's application for partial adequacy determination are available from 9 a.m. to 4 p.m. at the following addresses for inspection and copying: Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224, Attn: Mr. Edward Dexter, telephone 410–631–3364; and U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW50), telephone 215–597–7936. The hearing will be held at the Maryland State Office Complex at 300 West Preston Street, Baltimore, Maryland. MDE will attend the public hearing.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW50) and telephone 215–597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of Part 258. These requirements when promulgated, will address the potential problems posed by the dual State/Tribal and Federal regulatory controls following the October 1993 effective dates of the Federal rule. On that date, Federal rules covering any portion of a State/Tribe's program that had not received EPA approval became enforceable through the citizen suit provisions of RCRA 7002. Owners and operators of MSWLFs subject to such dual programs must understand the applicable requirements and comply with them. In addition, those portions of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the EPA to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal landfill rule, EPA's national Subtitle D standards took effect in October 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator. On July 28, 1993, EPA proposed to modify the effective date of the landfill criteria for certain classifications of landfills (50 *FR* 40568).

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/

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Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in STIR.

B. State of Maryland

On August 26, 1993, MDE submitted a complete application (dated July 15, 1993) for a partial program adequacy determination. In response to EPA comments on their initial application, MDE submitted additional information, including letters dated October 4, 1994, and December 15, 1994. EPA reviewed MDE's application and this additional information and has tentatively determined that the following portions of the State/Tribe's municipal solid waste landfill permitting program will ensure compliance with the revised Federal Criteria.

Subpart A—General

The existing Maryland requirements fully comply with 40 CFR Section 258.1, Purpose, Scope, and Applicability. MDE permit application checklists and internal guidance have been revised to fully incorporate the requirements of § 258.2, Definitions and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The existing Maryland requirements fully comply with § 258.11, Floodplains.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of § 258.10, Airport Safety; § 258.12, Wetlands; § 258.13, Fault areas; § 258.14, Seismic Impact Zones; § 258.15, Unstable Areas; and § 258.16, Closure of Existing Landfill Units.

Subpart C—Operating Criteria

1. The existing Maryland requirements fully comply with:

§ 258.20, Hazardous Waste Exclusion;
§ 258.21, Daily Cover;
§ 258.22, Disease Vectors Control;
§ 258.24, Air Criteria;
§ 258.25, Access requirements; and
§ 258.27, Surface Water Requirements.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of:
§ 258.23, Explosive Gas Control;
§ 258.26, Run-On/Run-Off Control Systems; § 258.28, Liquids Restrictions; and § 258.29, Record Keeping.

Subpart D—Landfill Design

1. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of the § 258.40 design criteria. MDE now requires, as a minimum, at all new MSW landfills and expansions to existing landfill, the bottom liner system described in § 258.40 (b). This consists of a composite liner composed of an upper synthetic (plastic) component in direct contact with a lower component at least two feet thick made of compacted soil (clay). MDE also allows an alternate design that meets the performance standards established in § 258.40 (a) and (c). MDE requires that conformance be demonstrated through the use of mathematical modeling, such as the Hydrologic Evaluation of Landfill Performance Model (HELP) and Multimedia Exposure Assessment Model (MULTIMED). MDE has to date submitted several alternate liner systems to EPA under the 40 CFR 258.40(e) Liner Petition Process, which were subsequently approved, thereby demonstrating to EPA that this process is successfully in place. Submittal to EPA for such alternate liner approvals will no longer be required upon EPA final approval of this portion of the State's program.

Subpart E—Groundwater Monitoring and Corrective Action

1. The previously existing Maryland requirements for groundwater sampling and corrective action were in need of substantial upgrading to meet the 40 CFR 258 requirements. Using existing authorities, MDE is requiring all current landfill operators to amend their existing groundwater monitoring plans to meet the requirements of Subpart E in terms of monitoring frequency and coverage, including the pollution parameters listed in Appendices I and II of 40 CFR 258. For proposed facilities and changes to existing facilities, MDE has amended their application forms and checklists to require the preparation and implementation of a monitoring program which incorporates the complete EPA requirements (§§ 258.50 thru 258.55).

2. In the assessment of corrective measures, selection of remedies, and implementation of corrective actions, MDE has committed to use the EPA regulations (§§ 258.56; 258.57; 258.58) to guide their enforcement actions.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Maryland will require flexible membrane caps, where appropriate, in accordance with the EPA regulations, and is implementing the closure periods required.

Not all existing States/Tribes permit programs ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR Part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant period of time. This delay in determining the adequacy of the State/Tribal permit program, while the State/Tribe revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with approved permit programs.

As State/Tribal regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review, and an adequacy determination will be made using the same criteria used for the initial application. This adequacy determination will be published in the **Federal Register** which will summarize the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected. It will also provide for a minimum 30 day public comment period. This future adequacy determination will become effective 60 days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the revised Federal Criteria and to obtain full EPA approval, MDE must revise the following aspects of its permit program:

(1) Post-Closure Care Requirements (§ 258.61)—MDE must amend its existing regulations extending the post-closure care period of closed landfills from a minimum of five years to 30 years, with the flexibility to increase or decrease that period as necessary or demonstrated. The extension of the period required for financial assurance will require legislative action. The State also needs to specifically require leachate collection and treatment, and gas and groundwater monitoring, as post-closure care requirements. MDE has committed to make these changes.

(2) Subpart G—Financial Assurance Criteria (§§ 258.70–258.74)—Maryland's only existing financial assurance requirements are limited to the posting of a $5000 per acre closure bond, and even this requirement exempts, by statute, local governments, who currently operate most MSW landfills in Maryland. To comply with Federal requirements, MDE has committed to prepare a major revision to its regulations, adopting the financial assurance requirements in 40 CFR Part 258 for closure, post-closure care, and corrective action. These revisions will require an act by the Maryland legislature to revise the statute exempting local governments from financial assurance requirements. MDE has committed to submit the required legislation for consideration at the next General Assembly session.

MDE submitted a schedule indicating that it will be able to complete these revisions by September 1995. To allow Maryland to begin exercising some of the flexibility allowed in States with adequate permit programs, EPA is proposing to approve those portions of Maryland's program that can be implemented today.

EPA reviewed MDE's schedule and believes it is reasonable, considering the complexity of the rule changes, number of steps in the State rulemaking process, and the need for legislative action.

Comments are solicited on EPA's tentative determination until May 19, 1995. Copies of MDE's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA Region 3 will hold a public hearing on its tentative decision on Wednesday, May 17, 1995 from 10 a.m. to 1 p.m. at 300 West Preston Street in Baltimore, Maryland. Comments can be submitted as transcribed from oral comments presented at the hearing, or in writing at the time of the hearing.

Public comment is specifically requested on the issue of MDE's authority to implement and enforce immediately the portions of 40 CFR 258 proposed for approval in this Notice, using authorities in existing statutes and regulations, to revise internal guidances and permit checklists. MDE has committed to, and EPA concurs, in MDE also making revisions to its existing regulations to explicitly include the 40 CFR 258 requirements.

EPA will consider all public comments on its tentative determination received during the public comment period and at the public hearing. Issues raised by those comments may be the basis for EPA's reconsideration of this tentative determination of adequacy for MDE's program. EPA will make a final decision on whether or not to approve MDE's program and will provide notice in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments. Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that according to EPA Headquarters this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: March 9, 1995.

Peter H. Kostmayer,

Regional Administrator.

[FR Doc. 95–6928 Filed 3–20–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2063]

Petition for Reconsideration of Actions in Rulemaking Proceedings

March 16, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed April 5, 1995. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services. (GEN Docket No. 90–357)
Number of Petition Filed: 1

Subject: Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems. (PR Docket No. 93–61)
Number of Petition Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–6827 Filed 3–20–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Allied Irish Banks, plc, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

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application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, plc, Dublin, Ireland, to engage *de novo* through its subsidiary AIB Investment Managers Limited, Dublin, Ireland, in providing portfolio investment advice to any other person, serving as investment adviser to an investment company, including sponsoring, organizing, and managing a closed-end investment company, and furnishing general economic information and advice, general economic statistical forecasting services and industry studies, pursuant to §§ 225.25(b)(4)(ii), (iii), and (iv) of the Board's Regulation Y; providing foreign exchange advisory and transactional services, pursuant to § 225.25(b)(17) of the Board's Regulation Y; and providing investment advice as a commodity trading advisor for institutional and other financially sophisticated customers with respect to the purchase and sale of futures contracts and options on futures contracts for (1) bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, (2) other financial instruments listed on the Board's list entitled "Approved Exchanges and Contracts" (as from time to time revised), and (3) other financial instruments which the Federal Reserve Board (or a Federal Reserve Bank under delegated authority) may from time to time approve for Applicant or for any other bank holding company, pursuant to § 225.25(b)(19) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. McCook National Company, McCook, Nebraska; to engage *de novo* in credit related life insurance activities, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6868 Filed 3-20-95; 8:45 am]

BILLING CODE 6210-01-F

BB&T Bancshares Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BB&T Bancshares Corp., Bloomingdale, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bloomingdale Bank and Trust, Bloomingdale, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Tennessee National Corporation, Memphis, Tennessee; to merge with Financial Investment Corporation, Springdale, Arkansas, and thereby indirectly acquire The First National Bank of Springdale, Springdale, Arkansas.

2. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First State Bancorporation, Inc., Tiptonville, Tennessee, and thereby indirectly acquire First Exchange Bank, Tiptonville, Tennessee.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gibbon Exchange Company, Gibbon, Nebraska; to acquire 100 percent of the voting shares of Nebraska National Bank (in organization), Kearney, Nebraska.

Board of Governors of the Federal Reserve System, March 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6869 Filed 3-20-95; 8:45 am]

BILLING CODE 6210-01-F

The Denis J. O'Brien Irrevocable Family Trust; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. The Denis J. O'Brien Irrevocable Family Trust, Swansea, Illinois; to retain 48.81 percent of the voting shares of Union Illinois Company, Swansea, Illinois, and thereby indirectly acquire Union Bank of Illinois, Swansea, Illinois, and The State Bank of Jerseyville, Jerseyville, Illinois.

Board of Governors of the Federal Reserve System, March 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-6870 Filed 3-20-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Correction of Notice of Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Correction.

SUMMARY: A Notice beginning on page 9032 in the issue of February 16, 1995, entitled "Findings of Scientific Misconduct" is hereby reprinted in its entirety to correct the name of the university's organizational unit referenced in the original printing:

Aaron Apte, Stanford University: The Division of Research Investigations of the Office of Research Integrity (ORI) reviewed an investigation conducted by Stanford University into possible scientific misconduct on the part of Mr. Aaron Apte, a former technician in the Division of Cardiovascular Medicine. Mr. Apte and his research were supported by U.S. Public Health Service grants. ORI concluded that Mr. Apte fabricated data for research by cutting from a former coworker's notebook a scintillation counter printout, pasting it into his own notebook, and representing it as his own results from a different experiment on the binding of angiotensin to transfected cells. Mr. Apte has been debarred from eligibility for and involvement in grants as well as other assistance awards and contracts from the Federal Government for a period of three years. The fabricated research did not appear in any publications.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95-6829 Filed 3-20-95; 8:45 am]

BILLING CODE 4160-17-P

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 1996

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of Fiscal Year 1996 Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth Fiscal Year 1996 individual allotments and percentages to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to section 125 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The amounts published herein are based upon Fiscal Year 1995 funding levels, and are contingent upon Congressional appropriations for Fiscal Year 1996. If Congress enacts and the President approves an amount different from the Fiscal Year 1995 appropriation, the allotments will be adjusted accordingly.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401–6955.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year. It should be noted that, as required, Palau's allotment has been adjusted to seventy-five percent of its Fiscal Year 1995 allotment.

The Administration on Developmental Disabilities has updated the data elements for issuance of Fiscal Year 1996 allotments for the Developmental Disabilities formula grant programs. The data elements used in the update are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1993, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1994" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1989–93, are from Table 2 of the "Survey of Current Business," September 1994, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1993, are from "Current Population Reports: Population Estimates and Projections, Series P–25, Number 1010, issued by the Bureau of the Census, U.S. Department of Commerce. Estimates for the Territories are no longer available, therefore, the Territories population data are from the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which includes the most recent data available from the Bureau.

FY 1996 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	State developmental disabilities councils	Percentage
Total	$70,438,000	100.000000
Alabama	1,316,693	1.869294
Alaska	420,475	.596943
Arizona	1,000,166	1.419924
Arkansas	768,612	1.091189
California	6,681,609	9.485802
Colorado	783,758	1.112692

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FY 1996 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	State developmental disabilities councils	Percentage
Connecticut	664,043	.942734
Delaware	420,475	.596943
District of Columbia	420,475	.596943
Florida	3,101,405	4.403026
Georgia	1,719,577	2.441236
Hawaii	420,475	.596943
Idaho	420,475	.596943
Illinois	2,656,684	3.771663
Indiana	1,465,625	2.080731
Iowa	795,933	1.129977
Kansas	612,767	.869936
Kentucky	1,218,230	1.729507
Louisiana	1,414,382	2.007981
Maine	420,475	.596943
Maryland	974,662	1.383716
Massachusetts	1,285,660	1.825236
Michigan	2,357,909	3.347496
Minnesota	1,029,605	1.461718
Mississippi	938,115	1.331831
Missouri	1,326,269	1.882688
Montana	420,475	.596943
Nebraska	425,955	.604723
Nevada	420,475	.596943
New Hampshire	420,475	.596943
New Jersey	1,493,616	2.120469
New Mexico	477,025	.677227
New York	4,149,651	5.891211
North Carolina	2,635,469	3.741544
North Dakota	420,475	.596943
Ohio	2,870,116	4.074670
Oklahoma	917,217	1.302162
Oregon	743,074	1.054933
Pennsylvania	3,111,570	4.417459
Rhode Island	420,475	.596943
South Carolina	1,059,457	1.504099
South Dakota	420,475	.596943
Tennessee	1,443,820	2.049774
Texas	4,496,463	6.383576
Utah	546,890	.776413
Vermont	420,475	.596943
Virginia	1,419,709	2.015544
Washington	1,139,374	1.617556
West Virginia	760,118	1.079131
Wisconsin	1,284,773	1.823977
Wyoming	420,475	.596943
American Samoa	220,750	.313396
Guam	220,750	.313396
Northern Mariana Islands	220,750	.313396
Puerto Rico	2,416,786	3.431083
Palau	165,563	.235048
Virgin Islands	220,750	.313396

FY 1996 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection and advocacy	Percentage
Total	[1] $25,911,318	100.000000
Alabama	413,724	1.596692
Alaska	254,508	.982227
Arizona	337,130	1.301092
Arkansas	254,508	.982227
California	2,304,146	8.892431
Colorado	272,686	1.052382
Connecticut	254,508	.982227
Delaware	254,508	.982227
District of Columbia	254,508	.982227
Florida	1,048,692	4.047235
Georgia	579,558	2.236698

FY 1996 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Protection and advocacy	Percentage
Hawaii	254,508	.982227
Idaho	254,508	.982227
Illinois	858,307	3.312479
Iowa	491,113	1.895361
Kansas	254,508	.982227
Kentucky	254,508	.982227
Louisiana	378,380	1.460289
Maine	443,374	1.711121
Maryland	254,508	.982227
Massachusetts	329,489	1.271603
Michigan	403,574	1.557520
Minnesota	769,485	2.969687
Mississippi	347,673	1.341780
Missouri	301,040	1.161809
Montana	438,395	1.691905
Nebraska	254,508	.982227
Nevada	254,508	.982227
New Hampshire	254,508	.982227
New Jersey	254,508	.982227
New Mexico	473,899	1.828927
New York	254,508	.982227
North Carolina	1,255,206	4.844238
North Dakota	1,332,640	5.143081
Ohio	254,508	.982227
Oklahoma	938,556	3.622185
Oregon	304,757	1.176154
Pennsylvania	261,963	1.010998
Rhode Island	975,776	3.765829
South Carolina	254,508	.982227
South Dakota	354,085	1.366526
Tennessee	254,508	.982227
Texas	465,273	1.795636
Utah	1,492,807	5.761216
Vermont	254,508	.982227
Virginia	254,508	.982227
Washington	479,643	1.851095
West Virginia	382,580	1.476498
Wisconsin	254,508	.982227
Wyoming	422,284	1.629728
American Samoa	254,508	.982227
Guam	136,161	.525489
Northern Mariana Islands	136,161	.525489
Puerto Rico	136,161	.525489
Palau	809,142	3.122736
Virgin Islands	102,121	.394117
	136,161	.525489

[1] This amount is $806,682 less than the 1995 appropriation level. These funds are set aside for funding technical assistance and American Indian Consortiums. Public Law 103–230 authorizes spending up to two percent (2%) of the amount appropriated under Section 143 to fund technical assistance. American Indian Consortiums are eligible to receive the minimum amount under Section 142(c)(1)(A)(i). Unused funds will be reallotted in accordance with Section 142(c)(1) of the Act.

Dated: March 15, 1995.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 95–6916 Filed 3–20–95; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

[Announcement 123]

Grants for Education Programs in Occupational Safety and Health; Availability of Funds for Fiscal Year 1996

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for fiscal year (FY) 1996 training grants in occupational safety and health. This announcement reflects an initial response of CDC/NIOSH to an external review of the NIOSH training and education programs which concluded that there should be more flexibility in the definition of academic programs and of what constitutes an Educational Resource Center. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of "Healthy

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People 2000," see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)). Regulations applicable to this program are in 42 CFR Part 86, "Grants for Education Programs in Occupational Safety and Health."

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Availability of Funds and Recipient Activities

CDC expects approximately $11,500,000 to be available in FY 1996.

A. Approximately $10,400,000 of the total funds available will be utilized as follows:

1. To award approximately fourteen non-competing continuation Educational Resource Center (ERC) training grants totaling approximately $8,200,000 and ranging from approximately $400,000 to $800,000 with the average award being approximately $600,000. An Occupational Safety and Health Educational Resource Center shall be an identifiable organizational unit within the sponsoring organization and shall consist of the following characteristics:

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine); with a school of nursing or its equivalent; with a school of public health or its equivalent; or with a school of engineering or its equivalent. Other schools or departments with relevant disciplines and resources shall be expected to be represented and contribute as appropriate to the conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended multidisciplinary training and education will be engendered.

b. A Center Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the Center Program and shall, to the extent possible, directly participate in training activities. Provisions shall be made to employ a Deputy Director who shall be responsible for managing the daily administrative duties of the Center and to increase the Center Director's availability to ERC staff and to the public. At least one full-time equivalent effort shall be demonstrated between the two positions.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the Center. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training in four core disciplines: Occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of programs together). Although it is desirable for a Center to have the full range of core programs, a Center with a minimum of three components of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of new and innovative component programs that are relevant to the occupational safety and health field, e.g., ergonomics, industrial toxicology, and occupational epidemiology. Centers must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches.

f. A specific plan describing how trainees will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium Centers generally have geographic, policy and other barriers to achieving this Center characteristic and, therefore, must give special, if not innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialties (e.g. neurology) and the curriculum of other schools such as engineering, business and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and Training Project Grants. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (e.g., Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (e.g., high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the Center is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Where appropriate, it shall be professionally acceptable in that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the Center shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The Center should establish and maintain cooperative efforts with labor unions, government agencies, and industry and trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the Center. The Board shall meet regularly to advise a Center Executive Committee and to provide periodic evaluation of Center activities. The Executive Committee shall be composed of the Center Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the Center Director may appoint to assist in governing the internal affairs of the Center.

k. In research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the Center intends to strengthen existing research training efforts, and how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas of surveillance, work organization (including underserved populations, occupational stress and ergonomics), control technology or intervention research, and health services research. In addition to the research and research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for renovating or acquiring facilities and equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other funds, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. Approximately $250,000 of the available funds as specified in A.1. will be awarded to ERCs to support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety. Program support is available for faculty and staff salaries, trainee costs, and other costs to educate professionals in agricultural safety and health.

3. To award approximately twenty-five non-competing continuation and fourteen competing continuation long-term training project grants (TPG) totaling $2,200,000 and ranging from approximately $10,000 to $500,000, with the average award being $56,000, to support academic programs in the core disciplines (i.e. industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (e.g. toxicology, ergonomics). The awards are normally for training programs of 1 academic year. They are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations. They must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas (i.e., disciplines such as occupational health nursing) of greatest occupational safety and health need.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for training of occupational safety and health technicians or specialists.

d. Special programs for development of occupational safety and health training curricula and educational materials, including mechanisms for effectiveness testing and implementation.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Non-competing continuation awards within the approved project periods will be made on the basis of satisfactory progress and the availability of funds.

B. Approximately $1,100,000 of the total funds available will be awarded to ERCs to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. These funds are provided to NIOSH/CDC through an Interagency Agreement with the National Institute of Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9660(a)(4)). The hazardous substance training (HST) funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERCs in FY 1984 and 1985 under the authority of Title III of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by SARA for the ERC continuing education program. The hazardous substance academic training (HSAT) funds are being used to supplement continuing industrial hygiene core program support to develop and offer academic curricula in the hazardous substance field

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primarily for industrial hygiene trainees. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Purpose

The objective of this grant program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional and para-professional occupational safety and health personnel to carry out the purposes of the Occupational Safety and Health Act.

Review and Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination, and special industrial or community training needs that may be peculiar to the region.

2. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve *Characteristics of an Educational Resource Center.* (See A.1.a.–l.)

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the DHHS Region. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

In reviewing long-term TPG applications, consideration will be given to:

1. Need for training in the program area outlined by the application. This should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any within the geographic area.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

11. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

Funding Allocation Criteria

For Educational Resource Center grants, the following criteria will be considered in determining funding allocations.

1. Academic Core Programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral) and specialty (master's) programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional workforce needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

d. Budget to support research training programs to establish a research base within core disciplines and for the training of researchers in occupational safety and health.

2. Center Administration

Budget to support Center administration to assure coordination and promotion of academic programs.

3. Continuing Education/Outreach Program

Budget to support outreach and continuing education activities to prepare, distribute, and conduct short courses, seminars, and workshops.

4. Hazardous Substance Training Programs

Budget to support the development and presentation of continuing education courses for professionals engaged in the management of hazardous substances.

5. Hazardous Substance Academic Training Programs

Budget to support the development and presentation of specialized academic programs in hazardous substance management.

6. Agricultural Safety and Health Academic Programs

Budget to support the development and presentation of specialized academic programs and continuing education courses in agricultural safety and health.

For Long-Term Training Project grants, the following factors will be considered in determining funding allocations.

Academic Core Programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral), specialty (master's), and baccalaureate/associate programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional workforce needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.263.

Application Submission and Deadline

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: July 1, 1995

An original and two copies of new, competing continuation and supplemental applications (Form CDC 2.145A ERC or TPG, OMB Number 0920–0261) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15, 1995

An original and two copies of non-competing continuation applications (Form CDC 2.145B ERC or TPG, OMB Number 0920–0261) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305.

Where To Obtain Additional Information

To receive additional information call (404) 332–4561. You will be asked to leave your name, address and phone number and will need to refer to Announcement Number 123. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne S. Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8241.

Please refer to Announcement Number 123 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1)

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through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: March 15, 1995.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–6861 Filed 3–20–95; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 95G–0039]

Degussa Corp.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Degussa Corp. has filed a petition (GRAS 2419) proposing that hydrophobic silica, prepared by the hydrophobization of silicon dioxide with dichlorodimethyl-silane, be affirmed as generally recognized as safe (GRAS) as an anticaking/free-flow agent in vitamin preparations for animal feed.

DATES: Written comments by June 5, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: J. D. McCurdy, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 201(s), 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 570.35 (21 CFR 570.35), notice is given that Degussa Corp., c/o Counsel for Petitioner, Jerome H. Heckman, Keller, and Heckman, 1001 G St. NW., Suite 500 West, Washington, DC 20001, has filed a petition (GRASP 2419) proposing that hydrophobic silica, prepared by the hydrophobization of silicon dioxide with dichlorodimethyl-silane, be affirmed as GRAS as an anticaking/free-flow agent in vitamin preparations for animal feed.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 570.30 (21 CFR 570.30) and 570.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before June 5, 1995, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–6918 Filed 3–20–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Arthritis Advisory Committee. This meeting was announced in the **Federal Register** of February 17, 1995 (60 FR 9338). This amendment is being made to announce the cancellation of the open committee discussion portion of the meeting and adjustment of the starting time. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Arthritis Advisory Committee, code 12532.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 17, 1995 (60 FR 9338), FDA announced that the Arthritis Advisory Committee would hold a meeting on March 27, 1995.

On page 9338, column 2, the "*Date, time, and place*" portion is amended to read as follows:

Date, time, and place. March 27, 1995, 9 a.m., Holiday Inn—Silver Spring, Silver Room, 8777 Georgia Ave., Silver Spring, MD.

On page 9338, column 2, the "*Type of meeting and contact person*" portion is amended to read as follows:

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; closed committee deliberations, 10 a.m. to 4 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Arthritis Advisory Committee, code 12532.

Dated: March 16, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–7068 Filed 3–17–95; 3:46 pm]

BILLING CODE 4160–01–F

Advisory Committee Meetings; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Nonprescription Drugs Advisory Committee. This meeting was announced in the **Federal Register** of February 17, 1995 (60 FR 9335 at 9336). The amendment is being made to announce the cancellation of the joint session with the Dermatologic and Ophthalmic Drugs Advisory Committee; the cancellation of the session with Pulmonary-Allergy Drugs Advisory Committee representation; the addition of joint sessions with the Gastrointestinal Drugs Advisory Committee and the Arthritis Advisory Committee; the addition of closed sessions to the agenda and consequent adjustment in times; and the correction of the new drug application (NDA) number announced under open committee discussion scheduled for March 28, 1995. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 17, 1995, FDA announced that the Nonprescription Drugs Advisory Committee would hold a joint meeting with the Dermatologic and Ophthalmic Drugs Advisory Committee, followed by a session with the Pulmonary-Allergy Drugs Advisory Committee representation, and a joint meeting with the Arthritis Advisory Committee on March 27 and 28, 1995.

On page 9336, in column 2, the "*Date, time, and place*" portion of this meeting is amended as follows:

Date, time, and place. March 27, 1995, 1 p.m., and March 28, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

On page 9336, in column 2, the "*Type of meeting and contact person*" portion of this meeting is amended as follows:

Type of meeting and contact person. Open committee discussion, March 27, 1995, 1 p.m. to 3 p.m.; open public hearing, 3 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; closed committee deliberations for the Nonprescription Drugs Advisory Committee only, 5 p.m. to 6 p.m.; open committee discussion, March 28, 1995, 8 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; joint closed committee deliberations, 12 m. to 12:30 p.m.; open committee discussion, 12:30 p.m. to 4 p.m.; Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541.

On page 9336, in column 2, the "*General function of the committees*" portion is amended as follows:

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

On page 9336, in column 3, the "*Open committee discussion*" portion is amended as follows:

Open committee discussion. On March 27, 1995, the Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee will discuss SmithKline Beecham's NDA 20–238 for over-the-counter (OTC) Tagamet® (cimetidine) tablets for the treatment of heartburn. On the morning of March 28, 1995, the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee will discuss data relevant to NDA 20–516 for ibuprofen suspension (Motrin®, McNeil Consumer Products) for the treatment of fever and of pain in children between 2 and 12 years of age. On the afternoon of March 28, 1995, the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee will discuss recommendations regarding appropriate OTC indication(s) for muscle relaxants, OTC dose(s) and duration of use, safety profiles, abuse potential, and pharmacokinetic information.

After the "*Open committee discussion*" portion, a "*Closed committee deliberations*" portion is added as follows:

Closed committee deliberations. On March 27 and 28, 1995, the committees will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600

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Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 16, 1995

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–7069 Filed 3–17–95; 3:46 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

Office of Research and Demonstrations; Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14642–43, dated Tuesday, March 29, 1994) is amended to reflect various changes resulting from the streamlining and reorganization of the Office of Research and Demonstrations (ORD).

These changes abolish the current ORD substructure which consists of three subordinate offices and one staff, and establish a new substructure which consists of four subordinate offices and two subordinate staffs. These changes will realign all current ORD functions into the following activity areas: information dissemination; financial, administrative, and procurement support; state health reform demonstrations; payment, delivery, and financing research and demonstrations; beneficiary related research and demonstrations; and ORD program support activities.

The specific changes to Part F are:

• Section F.10.C.3.a, through Section F.10.C.3.c.(2) is deleted in its entirety and replaced by the following revised functional statements. The new sections F.10.C.3.a through F.10.C.3.f.(2) read as follows:

A. Dissemination Staff (FKB–2)

• Produces and distributes ORD publications, such as the Health Care Financing Review, Status Report, Publications Catalog, and Reports to Congress.

• Coordinates ORD's input for the annual HCFA Report to Congress.

• Markets materials, including electronically produced data and publications to consumers, customers and other individuals or organizations.

• Develops new dissemination strategies that encourage the adoption and diffusion of innovations in health care financing and delivery.

• Manages internal and external inquiries.

• Provides conference support.

• Provides technical and editorial support services.

• Coordinates with the Government Printing Office and the National Technical Information Service.

• Maintains resource material for internal use.

• Develops and disseminates internal communications and operational procedures.

• Reviews, coordinates and serves as liaison for administrative correspondence.

B. Financial, Administrative and Procurement Staff (FKB–3)

• Plans, directs and implements a comprehensive office-wide human resources and employee development program.

• Coordinates ORD's section of the HCFA strategic plan.

• Coordinates the Federal Managers Financial Integrity Act.

• Plans, directs and implements office-wide facilities and property management programs.

• Plans, directs and implements comprehensive office-wide budget and financial management programs.

• Coordinates grants, contracts, cooperative agreements and waiver activities.

• Plans and develops ORD's Acquisition Planning Document.

• Develops and implements the ORD Waiver Compendium.

• Manages Freedom of Information and Privacy Act issues.

C. Office of State Health Reform Demonstrations (FKB4)

• Conducts research, demonstrations and evaluations to support the development and implementation of State health and welfare reform demonstrations.

• In partnership with other HCFA bureaus and DHHS offices, directs the Department's response to all aspects of the State's proposal and any proposed changes to ongoing demonstration activities.

• Monitors ongoing operations of the State's demonstration in partnership with other HCFA bureaus and regional offices.

• Funds technical assistance to States in the implementation and evaluation of these programs.

D. Office of Payment and Delivery Research and Demonstrations (FKB5)

• Directs intramural and extramural research, demonstrations and evaluations of managed care and other delivery systems including studies supporting the development of associated payment systems and the development of infrastructure in underserved areas.

• Directs intramural and extramural research, demonstrations and evaluations of broad reforms of the Medicare and Medicaid programs, studies to evaluate the impact of proposals for reform of the health care system and studies of health care financing systems.

• Directs intramural and extramural research, demonstrations and evaluations to support the development, implementation and refinement of payment policies including the extension of existing payment systems to excluded providers and other payers.

• Directs and performs analyses to assist in delivery and systems reform and payment policy development.

D.(1) Division of Delivery Systems and Financing (FKB51)

• Conducts intramural and extramural research, demonstrations and evaluations of managed care and other delivery systems including the development of infrastructure in underserved areas (rural/inner-city areas).

• Conducts intramural and extramural research, demonstrations and evaluations to support the development and implementation of payment systems associated with delivery and systems reform.

• Conducts intramural and extramural research, demonstrations and evaluations to develop and implement patient and other classification systems, including risk adjustment methodologies, for new delivery and payment systems.

• Conducts intramural and extramural research, demonstrations and evaluations of broad reforms of the Medicare and Medicaid programs.

• Conducts intramural and extramural research studies to evaluate the impact of proposals for reform of the health care system.

• Conducts intramural and extramural research, demonstrations and evaluations of health care financing issues.

• Performs analyses to assist in delivery and systems reform policy development.

D.(2) Division of Payment Systems (FKB52)

• Conducts intramural and extramural research, demonstrations and evaluations to support the development, implementation and refinement of payment policy for hospitals, physicians, drugs, outpatient facilities, skilled nursing facilities, home health agencies and other providers.

• Conducts intramural and extramural research, demonstrations and evaluations to support the extension of payment systems to excluded providers and to other payers.

• Conducts intramural and extramural research, demonstrations and evaluations to develop and implement patient and other classifications for payment systems.

• Conducts intramural and extramural research studies of the impact of payment systems on providers and other payers.

• Conducts intramural and extramural research studies on developments/changes in the health care sector and evaluate the implications for payment policy.

• Assists in the development and implementation of payment policies to expand access and develop infrastructure in underserved areas (rural/inner-city areas).

• Performs analyses to assist in payment policy development.

E. Office of Beneficiary and Program Research and Demonstrations (FKB6)

• Directs intramural and extramural research, demonstrations and evaluations on the Medicare and Medicaid programs and beneficiary populations that include, but are not limited to, maternal and child health, End Stage Renal Disease (ESRD), persons with Acquired Immune Deficiency Syndrome (AIDS), prescribed drugs, persons with cancer, persons with mental and physical chronic disease and disabilities, where the issues to be studied include, but are not limited to, health status and outcomes, information, eligibility, service use, access to care, coverage, expenditures and quality of care.

• Directs intramural and extramural studies on the impact of existing and new HCFA programs and payment systems on the beneficiaries.

• Directs intramural and extramural research, demonstrations and evaluations on ways to improve the decision-making process by which consumers select health insurance coverage, providers and treatments, and beneficiary satisfaction.

• Directs intramural and extramural research, demonstrations and evaluations related to new measures of quality of care.

• Directs intramural and extramural research, demonstrations and evaluations to support coverage policy for new and existing technology and procedures.

• Directs and performs the policy analyses of findings on issues that affect beneficiary populations and programs.

E.(1) Division of Health, Information and Outcomes (FKB61)

• Conducts intramural and extramural research, demonstrations and evaluations related to issues that affect the health status, outcomes, eligibility, access to, and use and costs of services for Medicare and Medicaid beneficiaries and special populations, such as, maternal and child health, persons with AIDS and cancer patients.

• Conducts intramural and extramural research, demonstrations and evaluations related to issues that affect the ESRD program.

• Conducts intramural and extramural research, demonstrations and evaluations related to beneficiary satisfaction.

• Conducts intramural and extramural studies on the impact of existing and new HCFA programs and payment systems on the beneficiaries.

• Conducts intramural and extramural research, demonstrations and evaluations on ways to improve the decision-making process by which consumers select health insurance coverage, providers and treatments.

• Carries out and analyzes the results of the Medicare Health Status Registry.

• Conducts intramural and extramural research, demonstrations and evaluations on health information for providers.

• Conducts intramural and extramural research, demonstrations and evaluations related to new measures of quality of care (not related to the aged and disabled).

• Conducts intramural and extramural research, demonstrations and evaluations to support coverage policy for new and existing technologies, procedures and pharmaceuticals.

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• Analyzes the policy implications of findings on health, information, outcomes, access, coverage and quality.

E.(2) Division of Aging and Disability (FKB62)

• Conducts intramural and extramural research, demonstrations and evaluations on issues that affect program eligibility for populations that include persons with mental and physical chronic disease and disabilities.

• Conducts intramural and extramural research, demonstrations and evaluations on issues that affect coverage for populations that include persons with mental and physical chronic disease and disabilities.

• Conducts intramural and extramural research, demonstrations and evaluations on issues that affect cost of care for populations that include persons with mental and physical chronic disease and disabilities.

• Conducts intramural and extramural research, demonstrations and evaluations on issues that affect access to care for populations that include persons with mental and physical chronic disease and disabilities.

• Conducts intramural and extramural research, demonstrations and evaluations on issues that affect quality of health and long-term care services for populations that include persons with mental and physical chronic disease and disabilities.

• Conducts intramural and extramural research, demonstrations and evaluations related to new measures of quality of care for populations that include persons with mental and physical chronic disease and disabilities.

• Analyzes trends in long-term care programs and market characteristics.

• Analyzes the policy implications of findings on issues that affect aging and disability.

F. Office of Research and Demonstrations Support (FKB7)

• Directs the Fiscal Intermediary and Carrier activities for demonstrations.

• Directs the development, implementation and ongoing operations of demonstrations.

• Directs the design and development of payment methodologies for demonstrations, special cost reports and operational manuals.

• Directs the design, development and implementation of mainframe and personal computer (PC) based claims processing systems and collation of evaluation data.

• Directs the development of data programs to monitor and evaluate trends in Medicare/Medicaid and the health care system.

• Oversees programming and dataset technical assistance.

• Directs the control and support for PC's, local area networks (LAN's), computer communications and mainframe computer hardware/software packages.

• Participates with the Bureau of Data Management and Strategy (BDMS) in providing support and access to HCFA's data bases as required by research and demonstration activities.

F.(1) Division of Demonstrations Support (FKB71)

• Serves as Fiscal Intermediary and Carrier for demonstrations.

• Participates in the development, implementation and ongoing operations of demonstrations.

• Designs and develops payment methodologies when needed for demonstrations and studies, such as special cost reports, special operational manuals and participates in facilitating demonstrations.

• Designs, develops and implements mainframe and PC claims processing systems and collates data for evaluations.

• Conducts on-site audits of submitted costs reports and validates services rendered.

F.(2) Division of Data Systems Resources (FKB72)

• Develops, manages and maintains a variety of data programs to monitor and evaluate trends in Medicare/Medicaid and the health care system.

• Provides and participates in a variety of data support activities related to quality control and data verification.

• Provides programming and dataset technical assistance.

• Provides control and support for PCs, LAN, computer communications and mainframe computer hardware/software packages.

• Participates with BDMS in providing necessary support and access to HCFA's data bases as required by research and demonstration activities.

• Coordinates ORD's participation in computer-based systems.

• Designs and develops a variety of analytic data bases.

Dated: March 8, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95-6885 Filed 3-20-95; 8:45 am]

BILLING CODE 4120-01-P

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research Agreement (CRADA) for the Scientific and Commercial Development of Diagnostic and/or Therapeutic Agents for Hyperpigmentary Lesions

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), seeks a pharmaceutical or cosmetic company that can effectively pursue the scientific and commercial generation and development of agents inhibiting pigmentation. The project is of scientific importance since it will characterize mechanisms whereby melanocyte function is compromised to produce hyperpigmented lesions. As such, this research will seek to provide insights into mechanisms responsible for clinically abnormal hyperpigmentation such as occurs in postinflammatory hyperpigmentation and other pigmentary diseases. NCI has successfully characterized the melanogenetic functions of several pigmentary genes that are important to the regulation of mammalian pigmentation. The NCI has produced a number of specific antibodies which recognize those gene products as well as a number of oligonucleotides and cDNAs whereby expression of their encoding genes can be quantitated. The selected sponsor will collaborate in a project aimed at using those probes to characterize melanocyte function in hyperpigmentary conditions and to develop agents useful commercially to down regulate melanogenic function.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Mark Noel or Bert Zbar (Telephone (301) 496-0477, Facsimile (301) 402-2117), Office of Technology Development, National Cancer Institute, Bldg 31, Room 4A49, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892

DATES: Proposals must be received at the above address by no later than May 22, 1995.

SUPPLEMENTARY INFORMATION:

"Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The NCI is seeking a pharmaceutical or cosmetic company which can lend resources and scientific expertise to a project aimed at identifying mechanisms responsible for abnormal melanocyte function in clinical hyperpigmentary conditions. Little is known about the level of abnormal function of melanocytes in a number of clinical conditions of hyperpigmentation, such as occurs in postinflammation, wound healing and/or photodamaged/age pigmented lesions. This proposed study will employ a number of antibodies specific for melanogenic proteins to examine melanocyte function, and thus levels of melanogenic protein expression, in such lesions. DNA probes specific for the encoding genes will be used to characterize the level of abnormal regulation of any gene products so identified. Approaches will be designed to attempt to correct abnormal expression of such genes, or the function of their encoded proteins and thus down-regulate pigmentation *in vitro*, with the ultimate goal of developing commercially useful therapeutic agents to treat conditions of epidermal hyperpigmentation. Since pigment production is inherently associated with photoprotection against UV-induced carcinogenesis, further benefit of these studies towards photoprotection may evolve. The CRADA will allow the selected partner to provide expertise and resources, in collaboration with NCI, for the preclinical development of agents useful in the treatment of epidermal hyperpigmentary conditions. Further clinical development of such agents may also be made subject to this agreement, or a separate agreement at a later date, and upon mutual agreement of the parties.

The expected duration of the CRADA will be three (3) to five (5) years.

The role of the National Cancer Institute, the Division of Cancer Biology, Diagnosis and Centers includes:

1. NCI will provide specific antibodies and probes useful to examine expression of pigmentary genes in hyperpigmented tissues.
2. NCI will perform enzymatic assays that measure melanogenic protein function in hyperpigmented tissues.
3. NCI will examine melanocyte function via expression of pigmentary genes in hyperpigmentary lesions.
4. NCI will screen potential inhibitors or down-regulators of melanogenic activity using in vitro techniques with melanocytes in culture.
5. NCI will collaborate with the corporate partner on the design of experiments and evalutation of results.

The role of the successful corporate partner will include:

1. Supply expertise in melanocyte function in hyperpigmentary disorders.
2. Supply potential melanogenic inhibitors or down-regulators of melanogenic activity for testing.
3. Provide funds to support a postdoctoral fellow and associated expenses of the study.
4. The corporate partner will collaborate with the NCI on the design of experiments and the evaluation of results.

Criteria for choosing the collaborating company will include:

1. Experience in the study of hyperpigmentary disorders.
2. Ability to provide adequate amounts of potential melanogenic inhibitors or down regulators of melanogenic activity for the preclinical studies which are subject to the research plan.
3. Experience and ability to produce, package, market and distribute pharmaceutical and/or cosmetic products, including experience with the regulatory approval process and with the FDA.
4. Willingness to cooperate with the NCI in the collection, evaluation, maintenance and publication of data from the investigation.
5. Willingness to share costs of the laboratory studies.
6. An agreement to be bound by DHHS rules involving the use of human and animal subjects, and human tissue.
7. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor or where a joint invention arises)

Thomas Mays,

Director, Office of Technology Development, National Cancer Institute.

[FR Doc. 95-6855 Filed 3-20-95; 8:45 am]

BILLING CODE 4140-01-P

National Institute of Environmental Health Sciences: Opportunity for a Cooperative Research and Development Agreement (CRADA) and/or Licensing Opportunity for Preparative Two Dimensional Gel Electrophoresis System

AGENCY: National Institute of Environmental Health Sciences, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is seeking CRADA partners and/or licensees for the further development, evaluation, and commercialization of a Preparative Two Dimensional Gel Electrophoresis System (U.S. Patent Application Serial No. 08/243,643, filed May 16, 1994) for protein analysis and characterization. The National Institute of Environmental Health Sciences has also determined that the developed technology can be utilized in other scientific areas. The invention claimed in the above-referenced patent application is available for either further development under a CRADA and/or exclusive or non-exclusive licensing (in accordance with 35 U.S.C 207 and 37 CFR part 404) for the applications described below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: CRADA proposals and questions about this opportunity may be addressed to Dr. B. Alex Merrick, NIEHS, Mail Drop D4-03, P.O. Box 12233, Research Triangle Park, NC 27709 (Telephone: 919/541-1531; Fax: 919/541-4704; Email: MERRICK@NIEHS.NIH.GOV). CRADA proposals must be received by the date specified below.

Licensing proposals and questions about this opportunity should be addressed to: David Sadowski, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, MD 20852 (Telephone: 301/496-7735 ext. 288; Fax: 301/402-0220).

Information on the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

DATES: Capability statements/CRADA proposals must be received by NIH on or before May 22, 1995. There is no

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deadline by which license applications must be received.

SUPPLEMENTARY INFORMATION:

The National Institute of Environmental Health Sciences has developed procedures and a prototype device for isolation of proteins from complex mixtures for protein sequencing. The system serves as a one-step purification method for isolation of biologically relevant proteins affected by disease or experimental treatment and has been described in Electrophoresis 15,535–545,1994. The system includes a preparative isoelectric focusing device for separation of proteins by charge, a glass mold for preparative polyacrylamide gel separation by mass and a protocol for use.

The commercial advantage of the Preparative Two Dimensional Gel Electrophoresis system is to separate and isolate sufficient amounts of individual protein for sequencing in a powerful one-step purification method. The Preparative Two Dimensional Gel Electrophoresis system can resolve individual proteins by charge and mass from up to 1 to 2 mg of unpurified starting material from protein mixtures. Current devices for two dimensional gel electrophoresis are generally for analytical scale work and are not physically or procedurally adapted to accommodate preparative sample loads. Although other preparative electrophoresis devices do exist, they separate by either mass or charge alone and function as stand-alone units without ready integration into additional systems for resolution of individual proteins.

The developed technology has applications for protein sequencing, protein immunization for antibody production, immunostaining and other modes of protein characterization. Although the system has been tested and is operational, some refinements in protein resolution are still possible which may involve procedural, reagent or equipment modifications.

The CRADA awardees will have an option to negotiate for an exclusive license to market and commercialize any new technology developed within the scope of the CRADA research plan for the Preparative Two Dimensional Gel Electrophoresis System. This CRADA may be directed toward the co-development of improved preparative electrophoresis equipment and pertinent procedures.

Roles of NIEHS

1. Provide design and specifications of an operating prototype device, provide a protocol for prototype operation, provide user expertise, and assist in beta testing.

2. Work cooperatively with the company(s) to determine the market potential for the Preparative Two Dimensional Gel Electrophoresis system and to refine the prototype system.

Roles of the CRADA Partner

1. Provide expertise in application and commercial-oriented separation systems.

2. Develop plan for production, testing and commercialization of Preparative Two Dimensional Gel Electrophoresis system.

Selection criteria for choosing the CRADA partner(s) will include, but will not be limited to the following:

1. Experience in manufacturing electrophoresis devices or related separation technologies.

2. Capability to develop, implement and manage the product commercialization so as to ensure the dissemination of the technology(s) to research or health care services.

3. Ability to cost share for production and testing of a preparative two-dimensional gel electrophoresis device.

Dated: March 13, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–6854 Filed 3–20–95; 8:45 am]

BILLING CODE 4140–01–P

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Blood Diseases.

Dates of Meeting: April 27–28, 1995.

Time of Meeting: 9 a.m.

Place of Meeting: National Institutes of Health, Natcher Building, Building 45, Lower Level Room D, Bethesda, Maryland.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Dr. Fann Harding, 7550 Wisconsin Avenue, Room 5A08, Bethesda, Maryland 20892, (301) 496–1817.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 14, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–6851 Filed 3–20–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Response and Adaptation to Exercise-Unit II (Telephone Conference Call).

Date: April 6, 1995.

Time: 1 p.m.

Place: 5333 Westbard Avenue, Room 552, Bethesda, Maryland.

Contact Person: S. Charles Selden, Ph.D., 5333 Westbard Avenue, Room 552, Bethesda, Maryland 20892, (301) 594–7476.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: The Insulin in Resistance Atherosclerosis Study (IRAS).

Date: April 18, 1995.

Time: 12:30 p.m.

Place: Crystal Gateway Marriott, Arlington, Virginia.

Contact Person: David Monsees, Jr., Ph.D., 5333 Westbard Avenue, Room 550, Bethesda, Maryland 20892, (301) 594–7450.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 14, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–6850 Filed 3–20–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: April 7, 1995.

Time: 9:30 a.m.

Place: Hyatt Regency, Bethesda, MD.

Contact Person: Dr. Catharine Wingate, Scientific Review Admin. 5333 Westbard Avenue, Room 357, Bethesda, MD 20892, (301) 594–7295.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 14, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–6852 Filed 3–20–95; 8:45 am]

BILLING CODE 4140–01–M

Opportunity For a License: Live, Attenuated Bovine Parainfluenza Virus Type 3 (BPIV–3) for Use as a Vaccine to Protect Infants and Children Against Disease(s) Caused by Human Parainfluenza Virus Type 3 (HPIV–3)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks licensee(s) who can effectively pursue the clinical and commercial development of a live, attenuated BPIV–3 vaccine. Several common childhood acute respiratory illnesses, including croup, pneumonia and bronchiolitis, are caused by HPIV–3 viral infection. Briefly, the National Institute of Allergy and Infectious Diseases (NIAID) has supported the clinical research development of this experimental vaccine in a series of phase I trials and has evidence that this candidate live virus could be used as a safe and immunogenic pediatric vaccine against HPIV–3. The NIAID is interested in having these efforts utilized for the public good, as mandated by the Federal Technology Transfer Act (FTTA) of 1986, by transferring certain unpatented biological materials to a company. For consideration, prospective licensee(s) should be capable of further developing and eventually commercializing a live attenuated BPIV–3 vaccine. Furthermore, the prospective industrial partner should have: An aggressive clinical development plan for BPIV–3; access to suitably equipped manufacturing facilities for large-scale production of the candidate vaccine; relevant experience in obtaining regulatory approval for other vaccines. NIAID scientists would provide the relevant BPIV–3 viral strains as well as supply information and data from the completed phase I clinical studies. This information is available for confidential evaluation to interested parties following the acceptance of standard confidentiality terms. The deadline for submitting a license application will be 90 days from March 21, 1995.

ADDRESSES: Requests for a summary of the clinical trial results and additional scientific information about the BPIV–3 vaccine as well as other questions and comments concerning clinical aspects this technology should be directed to: Claire T. Driscoll, Technology Transfer Specialist, Technology Transfer Branch, NIAID, NIH, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892. Telephone (301) 496–2644; E-mail: Claire Driscoll@d31.niaid.pc.niaid.nih.gov; Fax (301) 402–7123.

Requests for a copy of the license application form, or other questions and comments concerning the licensing of this technology should be directed to: Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone (301) 496–7735 extension 266; E-mail: fergusos@od5100m1.od.nih.gov; Fax (301) 402–0220.

Dated: March 13, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–6853 Filed 3–20–95; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

National Center for Health Statistics

AGENCY: National Center for Health Statistics, DHHS.

ACTION: Notice of meeting.

SUMMARY: The ICD–9–CM Coordination and Maintenance Committee (C&M) will be holding its first meeting of the year on Friday May 5, 1995. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, ninth-revision, clinical modification.

DATES: The meeting will be held on May 5, 1995 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The Hubert H. Humphrey Building, rm. 703A, 200 Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Amy Blum, 301–436–4216.

SUPPLEMENTARY INFORMATION: Tentative agenda:

Tobacco related illness Coordination disorders
Concussion versus Head Injury NOS
Chlamydial Pneumonia Atherosclerosis
Late Amputation Stump Complications
Laparoscopic Appendectomy
Development of ICD–10 Procedure Classification
Addenda

Sue Meads,

Co-chair, ICD–9–CM Coordination and Maintenance Committee.

[FR Doc. 95–6884 Filed 3–20–95; 8:45 am]

BILLING CODE 4160–18–M

Substance Abuse and Mental Health Services Administration

Supplemental Awards for Addiction Training Centers Grantees

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of supplemental funds for currently funded grantees in the Center for Substance Abuse Treatment (CSAT) addiction training centers cooperative agreement program.

SUMMARY: This notice is to inform the public that CSAT is making available approximately $1.7 million for supplemental awards in fiscal year 1995 to existing grantees in its Addiction Training Centers (ATCs) program. Competition is being limited to the eleven currently funded ATCs because their unique training infrastructure is well established and will permit the additional activities described below to

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be implemented quickly and within the available funding. Supplemental awards will be made based on the receipt of satisfactory applications that are approved by a peer review group and the CSAT National Advisory Council.

Approximately $550,000 is available for up to four supplemental awards to ATCs for geographic expansion to broaden the geographic areas covered by existing ATCs. Applications are invited for the expansion of an ATC into a minimum of one additional contiguous State to provide addictions training and financial support for addiction counselors and a minimum of one other health or allied health care discipline.

Approximately $1.2 million is available for up to four supplemental awards to ATCs for criminal justice training. Applications are invited for the delivery of cross-training for probation, parole, corrections and public health/mental health/addictions treatment personnel. Applicants must agree to provide training for a region of two or more contiguous States.

Authority: Supplemental awards will be made under authority of Section 512(a) of the Public Health Service Act, as amended (42 USC 290bb–5).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.131.

FOR FURTHER INFORMATION CONTACT: Edward T. Morgan, Office of Scientific Analysis and Evaluation, CSAT, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: (301) 443–8831.

Dated: March 14, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–6828 Filed 3–20–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–11042]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h), will be issued to Chugach Alaska Corporation for approximately 6.4 acres. The land involved are in the vicinity of Esther Passage, Alaska.

Seward Meridian, Alaska

T. 10 N., R. 8 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 20, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–6859 Filed 3–20–95; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Concession Contract Negotiations: Cape Cod National Seashore, MA

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued operation of the Nauset Knoll Motor Lodge facilities and services for the public at Cape Cod National Seashore for a period of five (5) years from January 1, 1995, through December 31, 1999.

EFFECTIVE: May 22, 1995.

ADDRESSES: Interested parties should contact the Regional Director, North Atlantic Region, Attention: Division of Concession Management, 15 State Street, Boston, Massachusetts 02109–3572, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1993, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: February 9, 1995.

Marie Rust,

Regional Director, North Atlantic Region.

[FR Doc. 95–6962 Filed 3–20–95; 8:45 am]

BILLING CODE 4310–70–M

Draft Environmental Impact Statement for Mountain Goat Management Within Olympic National Park, Washington

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: This Notice announces the availability of a Draft Environmental Impact Statement (DEIS) for mountain goat management within Olympic National Park, Washington. This Notice also announces two public meetings for the purpose of receiving public comments on the DEIS.

DATES: Written comments on the DEIS should be received no later than May 22, 1995. The dates of the public meetings regarding the DEIS are 3 May (Wednesday) 1995 and 4 May (Thursday) 1995.

ADDRESSES: Written comments should be submitted to: Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, WA 93362.

The first public meeting will be at the Jackson Federal Building, 915 Second Avenue, Seattle, Washington, from 7:00 p.m. to 10:00 p.m. on Wednesday, 3 May 1995, in the 4th Floor North Auditorium (enter the building from First Avenue). The second meeting will be at the Vern Burton Community Center, 308 East Fourth Street, Port Angeles, Washington, from 7:00 p.m. to 10:00 p.m. on Thursday, 4 May 1995.

Public reading copies of the DEIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, 1849 C. St., NW., Washington, D.C.
Pacific Northwest Regional Office, National Park Service, 909 First Avenue, Seattle, Washington
Alaska Regional Office, National Park Service, 2525 Gambell St., Anchorage, Alaska
Mid-Atlantic Regional Office, National Park Service, 143 South Third St., Philadelphia, Pennsylvania
Midwest Regional Office, National Park Service, 1709 Jackson St., Omaha, Nebraska
North Atlantic Regional Office, National Park Service, 15 State St., Boston, Massachusetts
Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, Denver, Colorado
Southeast Regional Office, National Park Service, 75 Spring St., SW., Atlanta, Georgia
Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico
Western Regional Office, National Park Service, 600 Hrrison St., Suite 600, San Francisco, California
Olympbic National Forest Headquarters, U.S. Forest Service, 1835 Black Lake Blvd., SW., Olympia, Washington
Pacific Northwest Regional Office, U.S. Forest Service, 333 SW 1st Ave., Portland, Oregon

A limited number of copies of the DEIS are available on request from the Superintendent, Olympic National Park, at the above address.

SUPPLEMENTARY INFORMATION: Mountain goats are not native to Washington's Olympic Peninsula, but were introduced there in the 1920's apparently to develop a population for hunting. Olympic National Park was established in 1938 and hunting was subsequently prohibited on park lands. The introduced goat population grew in size and dispersed throughout suitable areas of the peninsula, with most concentrating within the National Park. By 1983, the goat population on the peninsula was estimated to be approximately 1,175± 171 (Standard Error). During the 1980's, Olympic National Park staff conducted experimental and operational management programs to reduce goat populations using translocation and reproductive control methods. A census conducted in 1990 documented a population of 389± 106 (Standard Error). Results from an additional census in 1994 showed no statistical difference from the 1990 results. The non-native goats are causing significant impacts to native ecosystem processes and components within Olympic National Park. Documented goat impacts on vegetation include changes in dominance and competitive relationships between plant species which alter the relative abundance of species in native communities. Goats directly and indirectly alter plant communities through changes in plant structure, reproductive patterns, growth rates, and seedling establishment. Threats to 33 known rare and/or endemic plant taxa from goat trampling, wallowing, and grazing include risks to individual plants, subpopulations, and populations. The Olympic Mt. milkvetch (*Astragalus australis var. olympicus*) is proposed for listing by the U.S. Fish and Wildlife Service as threatened or endangered and is listed as threatened by the Washington Natural Heritage Program. The world's entire known population of this species contains only 3,800–4,000 plants, all of which are within goat habitat of the Olympic Mountains. Soil impacts from goats include wallows and trailing.

The Draft Environmental Impact Statement describes and analyzes three alternatives for future management of mountain goats within Olympic National Park. Alternative 1 (the proposed action) is the National Park Service's preferred alternative. This alternative proposes elimination of mountain goats from the park by shooting from helicopters. Ecosystem impacts from goats would cease in approximately three years. Alternative 2 (the no-action alternative) identifies no active management of the park's mountain goats, other than monitoring. The goat population would likely increase to approximately 1,400 animals and impacts to native ecosystems would increase dramatically. Alternative 3 is similar to Alternative 1 except that it allows for a short-term, live-capture program before elimination by shooting. Ecosystem impacts from goats would cease in approximately four years.

Dated: March 10, 1995.

William C. Walters,

Acting Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 95–6963 Filed 3–20–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 11, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 5, 1995.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Mississippi County

Herman Davis Memorial, Jct. of Baltimore Ave. and AR 18, NE corner, Manila, 95000379

Pulaski County

Barlow Apartments (Little Rock Apartment Buildings MPS), 2115 Scott St., Little Rock, 95000376
Holcomb Court Apartments (Little Rock Apartment Buildings MPS), 2201 Main St., Little Rock, 95000377
Luxor Apartments (Little Rock Apartment Buildings MPS), 1923 Main St., Little Rock, 95000375
South Main Street Apartments Historic District (Little Rock Apartment Buildings MPS), 2209–2213 Main St., Little Rock, 95000378

CALIFORNIA

Los Angeles County

Palos Verdes Public Library and Art Gallery, 2400 Via Campesina, Palos Verdes Estates, 95000388

San Diego County

Rosicrucian Fellowship Temple, 2222 Mission Ave., Oceanside, 95000390

San Mateo County

Sequoia Union High School, 1201 Brewster Ave., Redwood City, 95000389

FLORIDA

Suwannee County

Allison, George House, 418 W. Duval St., Live Oak, 95000369

IOWA

Cedar County

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West Branch Commercial Historic District (Boundary Increase), 124 W. Main St., West Branch, 95000386

Floyd County

Lane, Lucius and Maria Clinton, House, 2379 Timber Ave., Charles City vicinity, 95000384

Jackson County

Squiers, J.E., House (Maquoketa MPS), 418 W. Pleasant St., Maquoketa, 95000385

LOUISIANA

Rapides Parish

Carnahan House, 212 Ulster Ave., Boyce, 95000373

St. Landry Parish

Wier House, 310 E. Bellevue St. Opelousas, 95000368

West Baton Rouge Parish

Smithfield Plantation House, 12445 N River Rd., Port Allen vicinity, 95000387

MICHIGAN

Charlevoix County

Horton Bay House—Red Fox Inn, 05156 Boyne City Rd., Bay Township, Horton Bay, 95000372

Sanilac County

Matthews, Thomas and Margaret Spencer, Farm, 5916 E. Gardner Line Rd., Worth Township, Amador vicinity, 95000371

MISSOURI

Hickory County

Quincy Public Hall, MO 83, Quincy, 95000370

MONTANA

Carbon County

Kent Dairy Round Barn, US 212, 2 mi. N of Red Lodge, Red Lodge vicinity, 95000381

Lewis and Clark County

Power, C.B., Bungalow, 1.2 mi. N of I–15 and 1 mi. W of US 287, Wolf Creek vicinity, 95000380

Stearns Hall, 2 mi. N of jct. of MT 200 and Hwy. 434, Wolf Creek vicinity, 95000382

Petroleum County

Winnett School, Address unavailable, Winnett, 95000383

TEXAS

Presidio County

El Fortin del Cibolo Historic District (Historic Resources Associated with Milton Fever, Agriculturist, MPS), Approximately 4 mi. NW of Shafter, W of US 67, Shafter vicinity, 95000366

La Morita Historic District (Historic Resources Associated with Milton Fever, Agriculturist, MPS), Approximately 5 mi. SW of Shafter, E of US 67, Shafter vicinity, 95000367

VERMONT

Windham County

Green River Crib Dam, Green River Rd. (Town Hwy. # 5), Guilford, 95000374

VIRGINIA

Clarke County

Josephine City School, 301–A Josephine St., Berryville, 95000397

Prince Edward County

Buffalo Presbyterian Church, VA 659, 0.3 mi. S of jct. with VA 658, Pamplin vicinity, 95000395

Rockbridge County

Rockbridge Inn, Valley Rd., N side, at jct. with VA 743, Natural Bridge vicinity, 95000398

Sussex County

Hunting Quarter, VA 632, S of jct. with VA 608, Waverly vicinity, 95000396

Suffolk Independent City

Chuckatuck Historic District, Jct. of VA 10/32 and VA 125, Suffolk (Independent City), 95000393

Driver Historic District, Jct. of VA 125 and VA 629, Suffolk (Independent City), 95000394

Wholeyville Historic District, Jct. of US 13 and VA 616, Suffolk (Independent City), 95000392

[FR Doc. 95–6856 Filed 3–20–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–365]

Decision Not To Review an Initial Determination Finding a Violation of Section 337 and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding

In the Matter of: Certain Audible Alarm Devices for Divers.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) issued on February 2, 1995, by the presiding administrative law judge (ALJ) in the above-captioned investigation finding a violation of section 337 in the importation and sale of certain audible alarm devices for divers.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3083. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–3000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 8, 1994, the Commission instituted an investigation of a complaint filed by David A. Hanock and Ideations Design Inc. under section 337 of the Tariff Act of 1930. The complaint alleged that Duton Industry Co., Ltd. (Duton) of Taipei, Taiwan and IHK International Corp. (IHK) of Torrance, California had imported, sold for importation, and sold within the United States after importation certain audible alarm devices for divers by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 (the '107 patent) and claim 1 of U.S. Letters Patent 5,106,236 (the '236 patent). The Commission's notice of investigation named as respondents Duton and IHK, each of which was alleged to have committed one or more unfair acts in the importation or sale of audible alarm devices for divers that infringe the asserted patent claims.

The ALJ conducted an evidentiary hearing commencing on October 11, 1994, and issued her final ID on February 2, 1995. She found that: (1) claim 6 of the '107 patent and claim 1 of the '236 patent are valid and enforceable; (2) there is a domestic industry manufacturing and selling products protected by these two claims; (3) respondent IHK has imported products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent, and respondent Duton has exported to the United States products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent. Based upon her findings of validity, infringement, and domestic industry, the ALJ concluded that there was a violation of section 337.

No petitions for review of the ID were filed and, consequently, no responses thereto were filed. No government comments on the ID were received by the Commission.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on April 3, 1995. Reply submissions must be filed no later than the close of business on April 10, 1995. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and §§ 210.53 and 210.58 of the Commission's interim rules of practice and procedure (19 CFR 210.53 and 210.58).

Issued: March 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6865 Filed 3–20–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–700–701 (Final)]

Commission Determination To Conduct a Portion of the Hearing in Camera

In the Matter of: Disposable Lighters From the People's Republic of China and Thailand.

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondent Thai Merry Co., Ltd. (Thai Merry) in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for March 21, 1995, *in camera*. See Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3), as amended, 59 FR 66719 (Dec. 28, 1994)). The remainder of the hearing will be open to the public. The Commission has unanimously determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1), as amended, 59 FR 66719 (Dec. 28, 1994)).

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3083. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Thai Merry has justified the need for a closed session. Because petitioner BIC Corporation is the sole domestic producer, a full discussion of petitioner's financial condition and of many of the indicators that the Commission examines in assessing material reason by reason of subject imports can only occur if at least part of the hearing is held *in camera*. In addition, because Thai Merry is the sole participating Thai respondent in these investigations and because the Commission's preliminary determination that there was a reasonable indication that imports from Thailand pose a threat of material injury to the domestic industry, any discussion of Thai producer and importer data as required by the Commission's analysis of the statutory factors pertaining to a finding of threat of material injury by reason of those imports will necessitate disclosure of business proprietary information (BPI). Thus, such a discussion can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation including BPI by respondents and for questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except: those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in these investigations. See 19 CFR 201.35(b)(1), (2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner may also be granted access to the closed session. Similarly, if respondents' BPI will be discussed in the *in camera* session, personnel of respondents may also be granted access to the closed session. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the

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hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Disposable Lighters from the People's Republic of China and Thailand*, Invs. Nos. 731–TA–700–701 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: March 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6863 Filed 3–20–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–718 (Final)]

Glycine From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China (China) of glycine,[2] provided for in subheading 2922.49.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective November 15, 1994, following a preliminary determination by Commerce that imports of glycine from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 8, 1994 (59 FR 63378). The hearing was held in Washington, DC, on February 9, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 14, 1995. The views of the Commission are contained in USITC Publication 2863 (March 1995), entitled "Glycine from the People's Republic of China: Investigation No. 731–TA–718 (Final)."

Issued: March 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6864 Filed 3–20–95; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] The product covered by this investigation is glycine which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. The scope of this investigation includes glycine of all purity levels.

[3] Commissioner Crawford and Commissioner Bragg determine that an industry in the United States is materially injured by reason of imports of glycine from China that Commerce has found to be sold in the United States at LTFV.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 504X)]

CSX Transportation, Inc.—Abandonment Exemption—In Indiana County, PA

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 11.25 miles of line between milepost 5.83 near Shelocta and milepost 17.08 near Clarksburg, in Indiana County, PA. CSXT's proposed consummation date of this abandonment is April 24, 1995.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 20, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 31, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St. J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 14, 1995.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6897 Filed 3–20–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–416 (Sub-No. 2X)]

San Bernardino Associated Governments—Abandonment Exemption—San Bernardino County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by the San Bernardino Associated Governments of 1.94 miles of rail line on the Redlands Subdivision, between milepost 11.40 and milepost 13.34, in San Bernardino County, CA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 10, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] and petitions to stay must be filed by March 31, 1995. Requests for a public use condition and petitions to reopen must be filed by April 10, 1995.

ADDRESSES: Any comments must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on petitioner's representative: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, N.W., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: March 9, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6899 Filed 3–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on March 9, 1995, a proposed Consent Decree in *United States* v. *Arrowhead Refining Co. et al.*, Civil Action 5–89–202, was lodged with the United States District Court for the District of Minnesota. This consent decree represents a settlement of claims against 209 parties under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.* (CERCLA).

The consent decree requires 44 parties (the Settling Defendants) to perform one component of the remedial action (the "sludge pit" clean-up) at the Arrowhead Refining Co. Site (the Site) at an approximate cost of $12.52 million. These parties have already spent $6.4 million in Site related investigative and response activities. In addition, the Settling Defendants are required to pay an additional $134,800 to federal and state natural resources trustees for use in habitat restoration projects.

One hundred and sixty-five other parties, including De Minimis and De Micromis parties, "Hardship" parties, a defunct owner/operator, eight federal entities, and several oil company defendants, will contribute financially to the Settling Defendants' performance of the remedial action.

This settlement was part of EPA's Mixed Funding Pilot Project. In addition to the work to be performed by the Settling Defendants, EPA and the Minnesota Pollution Control Agency (MPCA) intend to undertake the remaining soils and groundwater components of the remedial action as "mixed work." These portions of the remedy are expected to cost approximately $6.35 million and $1.0 million, respectively.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer *United States* v. *Arrowhead Refining Co. et al.* D.J. Ref. 90–11–3–164.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Minnesota, 234 U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minnesota, at the Region V Office of the Environmental Protection Agency, 200 West Adams Street, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount $26.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6895 Filed 3–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Modification of Consent Decree Under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that on February 27, 1995 a proposed Modification of Consent Decree in *United States* v. *Champion International Corporation*, Civil Action No. CV–89–127–M–CCL, was lodged with the United States District Court for the District of Montana. The consent decree in this case was entered on October 18, 1989 pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, between the United States and Champion International Corporation ("Champion") to resolve the CERCLA liability of Champion for the Libby Groundwater National Priorities List Superfund Site located in Libby, Montana. The decree required Champion, *inter alia*, to implement the December 1988 Record of Decision ("ROD") issued by the United States Environmental Protection Agency ("EPA") for the Site. The decree provided a covenant not to sue Champion by the United States under

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Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the Site except that claims of the United States against Champion regarding deep aquifer contamination were reserved.

The proposed Modification of Consent Decree requires Champion to implement the September 1993 Explanation of Significant Differences ("ESD") issued by EPA. The ESD waives the soils remediation levels for pyrene, napthalene and phenanthrene while maintaining overall protectiveness of public health and the environment. The ESD also selects monitoring and institutional controls on usage as a final remedy for the deep aquifer. Under the proposed Modification of Consent Decree, Champion is required to implement the ESD and the covenants not to sue in the consent decree are extended to cover the deep aquifer contamination at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Champion International Corporation*, DOJ Ref. No. 90–11–2–379.

The proposed Modification of Consent Decree may be examined at the Montana Operations Office of the United States Environmental Protection Agency, Region VIII, Federal Building, Room 285, 301 S. Park, Helena, Montana 59626. Copies of the proposed Modification of Consent Decree may also be examined at or obtained by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 2005 (202–624–0892). When requesting a copy of the proposed Modification of Consent Decree by mail, please enclose a check in the amount of $3.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 95–6894 Filed 3–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Action Brought Under the Clean Air Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Lafarge, et al.*, Civil Action No. 4–94CV–356Y, was lodged with the United States District Court for the Northern District of Texas on February 15, 1995. This Consent Decree resolves a Complaint filed by the United States against Art O'Shea pursuant to Section 112 of the Clean Air Act, 42 U.S.C. 7412.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to impose civil penalties and injunctive relief on Lafarge, Inc., Victor Yorstoun and Art O'Shea for their alleged violations of the National Emission Standards for Hazardous Air Pollutants ("the NESHAP") for asbestos during demolition activities at a mill building at the Lafarge cement manufacturing and distribution facility in Fort Worth, Texas. The NESHAP for asbestos consists of regulations promulgated by EPA pursuant to the Clean Air Act.

The settlement in this case requires defendant O'Shea to pay a civil penalty of $500 and comply with the asbestos NESHAP in all future demolition and activities which he owns or operates.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Lafarge*, DOJ number 90–5–2–1–1865.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Texas, 801 Cherry Street, Suite 1700, Forth Worth, Texas 76102, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VI, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6893 Filed 3–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 2, 1995, a proposed consent decree in *United States* v. *Scovill, Inc.*, Civ. A. No. 3:95CV159, was lodged with the United States District Court for the Eastern District of Virginia. The complaint in this action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9606, 9607(a). This action involves the Arrowhead Plating Superfund Site located in Montross, Westmoreland County, Virginia.

Under the proposed Consent Decree, Scovill, Inc. will pay $339,811.48 to reimburse the Superfund for costs incurred by the United States in performing certain response actions at the Arrowhead Plating Superfund Site. The Decree also requires Scovill, Inc. to perform the remedial action for the Site selected in the September 30, 1991 Record of Decision issued by the United States Environmental Protection Agency ("EPA"). The Decree reserves the right of the United States to recover future response costs and seek further injunctive relief against the settling defendants for conditions at the Site that are not known by the United States at the time of entry of this decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Scovill, Inc.*, DOJ Reference No. 90–11–3–859.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Virginia, Norfolk Division, 101 W. Main Street, Suite 8000, Norfolk, Va. 23510; Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the Consent Decree Library, 1120 "G" Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case number, and enclose a check in the amount of $23.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6892 Filed 3–20–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Advisory Council on Unemployment Compensation; Notice of Hearings; Correction

AGENCY: Employment and Training Administration, USDOL.

ACTION: Correction.

SUMMARY: In notice document 95–5950 beginning on page 13181 in the issue of Friday, March 10, 1995, make the following correction:

On page 13181 in the second column, the time of hearings was previously listed as from 3:30 p.m. to 5:30 p.m. on April 5. This should be changed to read from 2:00 p.m. to 3:00 p.m. on April 5.

Dated: March 15, 1995.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 95–6934 Filed 3–20–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Parts 655, Subpart D, and 29 CFR Part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, D.C., this 14th day of March 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment and Training Administration.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS

[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA REGION 1 **02/06/95 to 02/12/95**		
Neal M. Elliott, New Fairview Health Care Facility, 181 Clifton Street, New Haven, CT 06513, 203–467–1666 ..... ETA CONTROL NUMBER—1/217199 ACTION—ACCEPTED	CT	02/07/95
Kenneth O'Grady, Bringham Hill Nursing Center Inc., 23 North Bringham Hill, North Grafton, MA 01536, 508–839–4980.	MA	02/07/95

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DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—1/217196 ACTION—ACCEPTED		
Kenneth O'Grady, Upton Nursing inc., P.O. Box 1100, 145 Main St., Upton, MA 01568, 508–529–6983	MA	02/07/95
ETA CONTROL NUMBER—1/217197 ACTION—ACCEPTED		
George Cannata, Dover Christian Nursing Center, 65 N. Sussex St., Dover, NJ 07801, 201–361–5200	NJ	02/07/95
ETA CONTROL NUMBER—1/217354 ACTION—ACCEPTED		
Paul Baine, H–S Management Services Corp., 1072 Grand Concourse, Bronx, NY 10456, 718–681–4000	NY	02/07/95
ETA CONTROL NUMBER—1/217288 ACTION—ACCEPTED		
Sister Linda Ann Palmisano, Mercy Health & Rehabilitation Ctr., 3 St. Anthony Street, Auburn, NY 13021, 315–253–0351.	NY	02/07/95
ETA CONTROL NUMBER—1/217289 ACTION—ACCEPTED		
Elaine Berg, New York Eye & Ear Infirmary, Second Avenue at 14th Street, New York, NY 10003, 212–979–4000	NY	02/07/95
ETA CONTROL NUMBER—1/217267 ACTION—ACCEPTED		
Lillian Seabrook, Rockaway Care Center, 353 Beach 48th Street, Far Rockaway, NY 11691, 718–471–5000	NY	02/07/95
ETA CONTROL NUMBER—1/217195 ACTION—ACCEPTED		
Ruth Rama Witt, Sharp Nurses, Inc., 215 Park Avenue South, Suite 1304, New York, NY 10003, 212–780–0044	NY	02/07/95
ETA CONTROL NUMBER—1/217200 ACTION—ACCEPTED		
ETA REGION 1 02/13/95 to 02/19/95		
Dan Meyers, Convalescent Center of Norwich Inc., 60 Crouch Avenue, Norwich, CT 06360, 203–889–2639	CT	02/13/95
ETA CONTROL NUMBER—1/217401 ACTION—ACCEPTED		
Sharon H. Turley, Aspen Technology, Incorporated, Ten Canal Park, Cambridge, MA 02141, 617–577–0100	MA	02/13/95
ETA CONTROL NUMBER—1/217494 ACTION—ACCEPTED		
Frederic Delacuesa, Health Personnel Services, 83 School House Lane, East Brunswick, NJ 08816, 908–246–4493	NJ	02/13/95
ETA CONTROL NUMBER—1/217490 ACTION—ACCEPTED		
Dr. Linda Valencia, Valencia, 2113 Klockner Road, Trenton, NJ 08690, 609–586–7887	NJ	02/13/95
ETA CONTROL NUMBER—1/217492 ACTION—ACCEPTED		
Robert Schlundt, South Shore Health Care, Inc., 275 W. Merrick Rd., Freeport, NY 11520, 516–623–4000	NY	02/13/95
ETA CONTROL NUMBER—1/217371 ACTION—ACCEPTED		
Arthur W. Wheeler, Universal Service Center, Ltd., 150 Broadway, Suite 1310, New York, NY 10038, 212–571–3900	NY	02/13/95
ETA CONTROL NUMBER—1/217374 ACTION—ACCEPTED		
ETA REGION 1 02/20/95 to 02/26/95		
Dorothy Miller, Franklin Convalescent Center, 3371 Route 27, Franklin Park, NJ 08823, 908–821–9000	NJ	02/23/95
ETA CONTROL NUMBER—1/217617 ACTION—ACCEPTED		
Irv J. Diamond, Memorial Medical Center at S. Amboy, 540 Bordentown Avenue, S. Amboy, NJ 08879, 908–721–1000.	NJ	02/23/95
ETA CONTROL NUMBER—1/217619 ACTION—ACCEPTED		
Nicholas Siiso, Int'l Recruiters of America, Inc., 234 5th Avenue, New York, NY 10001, 212–213–0473	NY	02/23/95
ETA CONTROL NUMBER—1/217549 ACTION—ACCEPTED		
Marie Ferrara, SS Joachim and Anne Residence, 2720 Surf Avenue, Brooklyn, NY 11224, 718–714–4800	NY	02/23/95
ETA CONTROL NUMBER—1/217621 ACTION—ACCEPTED		
ETA REGION 1 02/27/95 to 03/05/95		
Gaudalupe L. Dagaydey, Alfa Health Care Group, Inc., 70 Fairview Avenue, Verona, NJ 07044, 201–239–4133	NJ	02/27/95
ETA CONTROL NUMBER—1/217867 ACTION—ACCEPTED		
Mark Pitta, Community Medical Center, 99 Highway, 37 West, Toms River, NJ 08755, 908–240–8007	NJ	02/28/95
ETA CONTROL NUMBER—1/217722 ACTION—ACCEPTED		
Michael Tenenbaum, Resort Nursing Home, 430 Beach 68th Street, Rockaway Beach, NY 11692, 718–474–5200	NY	02/28/95
ETA CONTROL NUMBER—1/217724 ACTION—ACCEPTED		
ETA REGION 10 02/06/95 to 02/12/95		
Regina Martiner, Parker Community Hospital, 1200 Mahave Road, P.O. Box 1149, Parker, AZ 85344, 602–669–7306.	AZ	02/09/95
ETA CONTROL NUMBER—10/206364 ACTION—ACCEPTED		
Barbara Garner, Burlingame, 1100 Trousdale Drive, Burlingame, CA 94010, 714–544–4443	CA	02/09/95
ETA CONTROL NUMBER—10/206370 ACTION—ACCEPTED		
Patricia Smith, Chapman-Harbor Skilled Nursing Ctr., 12232 Chapman Avenue, Garden Grove, CA 92640, 714–971–5517.	CA	02/10/95
ETA CONTROL NUMBER—10/206361 ACTION—ACCEPTED		
Barbara Garner, Garfield, 7781 Garfield Avenue, Huntington Beach, CA 92648, 714–544–4443	CA	02/09/95
ETA CONTROL NUMBER—10/206368 ACTION—ACCEPTED		
Barbara Garner, Huntington Valley, 8361 Newman Avenue, Huntington Beach, CA 92647, 714–544–4443	CA	02/09/95
ETA CONTROL NUMBER—10/206367 ACTION—ACCEPTED		
Wilfredo L. Gabriel, Intercontinental Nursing Services, 1971 Cantamar Road, San Diego, CA 92154, 619–278–4197	CA	02/09/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—10/206359 ACTION—ACCEPTED		
Barbara Garner, Park Central, 2100 Parkside Drive, Fremont, CA 94536, 714–544–4443	CA	02/09/95
ETA CONTROL NUMBER—10/206366 ACTION—ACCEPTED		
June Hernandez, Park Imperial Convalescent Hospital, 15100 South Prairie Avenue, Lawndale, CA 90260, 310–328–0812.	CA	02/09/95
ETA CONTROL NUMBER—10/206440 ACTION—ACCEPTED		
Pacita M. Cabacab, PMC Health Care Recruiting Agency, 2714 East Washington Street, Fresno, CA 93701, 209–498–6364.	CA	02/10/95
ETA CONTROL NUMBER—10/206442 ACTION—ACCEPTED		
Pacita Pinero, Ramona Home Health Inc., 5505 East Carson Suite 205, Lakewood, CA 90713, 310–496–1229	CA	02/09/95
ETA CONTROL NUMBER—10/206365 ACTION—ACCEPTED		
Bernice Schrabeck, South Gate Care Center, Inc., 8455 State Street, South Gate, CA 90280, 213–564–7761	CA	02/09/95
ETA CONTROL NUMBER—10/206271 ACTION—ACCEPTED		
Pamela Gentzsch, St. Mary Desert Valley Hospital, 18300 Highway 18, Apple Valley, CA 92307, 619–242–2311	CA	02/10/95
ETA CONTROL NUMBER—10/206363 ACTION—ACCEPTED		
Andy Embuido, US Lifeline Nursing Facility, 8033 Los Sabalos Street, San Diego, CA 92126–1154, 619–549–3505	CA	02/09/95
ETA CONTROL NUMBER—10/206262 ACTION—ACCEPTED		
Barbara Garner, Washington Manor, 14766 Washington Avenue, San Leandro, CA 94578, 714–544–4443	CA	02/09/95
ETA CONTROL NUMBER—10/206369 ACTION—ACCEPTED		
ETA REGION 10 02/13/95 to 02/19/95		
Lulu Cabagay, Banning Health Care, 3476 West Wilson, Banning, CA 92220, 909–849–0972	CA	02/13/95
ETA CONTROL NUMBER—10/206501 ACTION—ACCEPTED		
Lynn Nolan, InCare Health Services, 6540 Lusk Boulevard Suite C–200, San Diego, CA 92121, 619–450–4747	CA	02/13/95
ETA CONTROL NUMBER—10/206441 ACTION—ACCEPTED		
Kayce H.R. Hudson, Irvine Medical Center, 16200 Sand Canyon Avenue, Irvine, CA 92718, 714–753–2114	CA	02/13/95
ETA CONTROL NUMBER—10/206444 ACTION—ACCEPTED		
Stephen W. Hooker, Live Oak Living Center, 2150 Pyramid Drive, Richmond, CA 94803, 510–222–1242	CA	02/13/95
ETA CONTROL NUMBER—10/206564 ACTION—ACCEPTED		
Gerald L. Price, Royal Care Convalescent Hospital, 2725 Pacific Avenue, Long Beach, CA 90806, 310–427–7494	CA	02/13/95
ETA CONTROL NUMBER—10/206523 ACTION—ACCEPTED		
Jaime M. Recabo, Staffing Specialists, Inc., 347–D Gellert Boulevard, Daly City, CA 94015, 914–337–0703	CA	02/13/95
ETA CONTROL NUMBER—10/206562 ACTION—ACCEPTED		
Wen P. Javier, WPJ Health Care Consultant, 849 Lehigh Avenue, Chula Vista, CA 91913–2714, 619–421–1526	CA	02/13/95
ETA CONTROL NUMBER—10/206502 ACTION—ACCEPTED		
ETA REGION 10 02/20/95 to 02/26/95		
Remy Tibayan, Fruitvale Health Care Center, 3020 East 15th Street, Oakland, CA 94601, 510–261–5613	CA	02/23/95
ETA CONTROL NUMBER—10/206316 ACTION—ACCEPTED		
Linda Morgan, Patton State Hospital, 3102 East Highland Avenue, Patton, CA 92369, 909–425–7541	CA	02/24/95
ETA CONTROL NUMBER—10/206443 ACTION—ACCEPTED		
Randy Bloom, Villa Rancho Bernardo, 15720 Bernardo Center Drive, San Diego, CA 92127, 619–672–3900	CA	02/22/95
ETA CONTROL NUMBER—10/206315 ACTION—ACCEPTED		
ETA REGION 10 02/27/95 to 03/05/95		
Lydia L. Ramirez, Golden Haven, 2324 Lever Boulevard, Stockton, CA 95206, 209–464–4743	CA	02/27/95
ETA CONTROL NUMBER—10/206500 ACTION—ACCEPTED		
B. Sanchez, Marian Health Careers Center, 3325 Wilshire Boulevard Suite 1213, Los Angeles, CA 90010, 213–388–3566.	CA	02/27/95
ETA CONTROL NUMBER—10/206503 ACTION—ACCEPTED		
Mildred M. Bondoc, Professional Staffing Services, 3812 Pierce Plaza Suite H, Riverside, CA 92503, 909–343–1987	CA	02/27/95
ETA CONTROL NUMBER—10/206389 ACTION—ACCEPTED		
ETA REGION 5 02/13/95 to 02/19/95		
Eva A. Washington, District of Columbia General Hosp., 1900 Massachusetts Avenue, S.E., Anne Archbold Hall—Room 141, Washington, DC 20003, 202–675–5039.	DC	02/13/95
ETA CONTROL NUMBER—5/237036 ACTION—ACCEPTED		
Howard D. Geller, Garden View Home, 6450 N. Ridge Avenue, Chicago, IL 60626, 312–743–8700	IL	02/14/95
ETA CONTROL NUMBER—5/237074 ACTION—ACCEPTED		
Michelle Keen, Lake Cook Terrace Nursing Home, 222 Dennis Drive, Northbrook, IL 60062, 708–564–0505	IL	02/13/95
ETA CONTROL NUMBER—5/237040 ACTION—ACCEPTED		
Ann Tucker, Nurse Providers Health Care Svcs., 18350 Kedzie, Suite 101, Homewood, IL 60430, 708–798–7880	IL	02/13/95
ETA CONTROL NUMBER—5/237038 ACTION—ACCEPTED		
John Schlofrock, Sharon Health Care Elms, 3611 N. Rochelle Lane, Peori, IL 61604, 309–685–8800	IL	02/14/95

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[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—5/237051 ACTION—ACCEPTED		
John Schlofrock, Sharon Health Care Plaza, 3614 N. Rochelle Lane, Peoria, IL 61604, 309–685–8800	IL	02/14/95
ETA CONTROL NUMBER—5/237053 ACTION—ACCEPTED		
Mary Dockerty, Jordan's Nursing Home, P.O. Box 607, Bridgman, MI 49106, 616–465–3017	MI	02/14/95
ETA CONTROL NUMBER—5/237092 ACTION—ACCEPTED		
Terry Kiplinger, Correctional Medical Services, 12647 Olive Street, St. Louis, MO 63141, 800–325–4809	MO	02/14/95
ETA CONTROL NUMBER—5/237099 ACTION—ACCEPTED		
Evelyn Quintos, Rehab Network Incorporated, 3022 S. National Suites 308 and 312, Springfield, Mo 65804, 417–886–1123.	MO	02/13/95
ETA CONTROL NUMBER—5/237035 ACTION—ACCEPTED		
Dorothy B. Caldwell, Sentara Life Care Corp., 249 S. Newton Road, Norfolk, VA 23502, 804–461–3333	VA	02/14/95
ETA CONTROL NUMBER—5/237060 ACTION—ACCEPTED		
ETA REGION 5 02/20/95 to 02/26/95		
JoAnn Birdzell, St. Elizabeth's Hospital, 1431 N. Claremont Ave., Chicago, IL 60622, 312–633–5917	IL	02/24/95
ETA CONTROL NUMBER—5/237551 ACTION—ACCEPTED		
Linda Funds, Beverly Hills Nursing Center, Inc., 3030 Greenfield Rd., Royal Oak, MI 48073, 810–288–6610	MI	02/23/95
ETA CONTROL NUMBER—5/237487 ACTION—ACCEPTED		
ETA REGION 5 02/27/95 to 03/05/95		
John P. Yerce, Nurse Source Health Care Services, 360 S. Garfield St., Suite #660, Denver, CO 80209, 303–394–2900.	CO	03/02/95
ETA CONTROL NUMBER—5/237840 ACTION—ACCEPTED		
Anthony R. Miser, Golfview Developmental Center, 9555 West Golf Road, Des Plaines, IL 60016, 708–827–6626	IL	03/03/95
ETA CONTROL NUMBER—5/237912 ACTION—ACCEPTED		
William A. Labra, Governors Park Nursing & Rehab Ctr., 1420 South Barrington Road, Barrington, IL 60010, 708–382–6664.	IL	03/03/95
ETA CONTROL NUMBER—5/237914 ACTION—ACCEPTED		
Arthur Bunag, Sterling Hope Placement Agency, 7542 N. Oakley, Chicago, IL 60645, 312–478–8862	IL	03/02/95
ETA CONTROL NUMBER—5/237842 ACTION—ACCEPTED		
Richard Shiltcutt, Crystal Park Care Center, 16600 West 126th Street, Olathe, KS 66062, 913–764–0331	KS	02/27/95
ETA CONTROL NUMBER—5/237557 ACTION—ACCEPTED		
Marianne Athee, El Shekidai Health Care, Inc., 7600 Clays Lane, Baltimore, MD 21224, 410–298–9800	MD	03/02/95
ETA CONTROL NUMBER—5/237841 ACTION—ACCEPTED		
Richard Young, Detroit Riverview Hospital, ATTN: Karen Krolicki, 7733 East Jefferson Avenue, Detroit, MI 48214–2598, 313–499–4930.	MI	03/03/95
ETA CONTROL NUMBER—5/237910 ACTION—ACCEPTED		
Joyce Stone, Deerbrook Healthcare, Inc., 724 N. East 79th Terrace, Kansas City, MO 64118, 816–436–8940	MO	02/27/95
ETA CONTROL NUMBER—5/237556 ACTION—ACCEPTED		
ETA REGION 6 02/06/95 to 02/12/95		
Ms. Margie B. Mills, First American Home Care, 206 Medical Center Drive, Clanton, AL 35045–2330, 205–755–9600	AL	02/07/95
ETA CONTROL NUMBER—6/224877 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 122 7th Ave., NE Suite E, Alabaster, AL 35007–8788, 205–663–1575.	AL	02/07/95
ETA CONTROL NUMBER—6/224878 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 101 Camille Place, Heflin, AL 36264, 205–463–2019	AL	02/07/95
ETA CONTROL NUMBER—6/224876 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 770 East Shaw Suite 300, Fresno, CA 93a710–7708, 209–244–8333.	CA	02/07/95
ETA CONTROL NUMBER—6/224875 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 15425–B Los Gatos Blvd. Suite 104, Los Gatos, CA 95350–1058, 408–358–8069.	CA	02/07/95
ETA CONTROL NUMBER—6/224872 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 355 Campus Dr. Suite D, Hanford, CA 93230–4374, 209–584–5555	CA	02/07/95
ETA CONTROL NUMBER—6/224873 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 9401 SW Highway 200 Building 100, Suite 102, Ocala, FL 34481–9610, 904–622–2100.	FL	02/09/95
ETA CONTROL NUMBER—6/224862 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 1004 North 14th Street Suite 106, Leesburg, FL 34748–3850, 904–787–3808.	FL	02/07/95
ETA CONTROL NUMBER—6/224863 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, First Florida Home Health 1680, Dunn Ave., Unit 24, Jacksonville, FL 32218,904–696–7880.	FL	02/07/95

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[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—6/224868 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, First Florida Home Health 903 N. Stone Street, Deland, FL 32720–2521, 904–822–9796.	FL	02/07/95
ETA CONTROL NUMBER—6/224869 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 2509 Rio De Janeiro Ave. Deep Creek, Punta Gorda, FL 33983–8699, 813–625–8088.	FL	02/07/95
ETA CONTROL NUMBER—6/224870 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 587 SE Hwy. 19, Crystal River, FL 34429–4805, 904–795–8970	FL	02/07/95
ETA CONTROL NUMBER—6/224871 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 121–B La Grande Blvd., Lady Lake, FL 32159–1302, 813–646–7202.	FL	02/07/95
ETA CONTROL NUMBER—6/224864 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, First Florida Home Health 830 A1A, North, Suite 10B, Ponte Vedra Beach, FL 32082, 904–285–1884.	FL	02/07/95
ETA CONTROL NUMBER—6/224865 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, First Florida Home Health 3729, Phillips Hwy., Ste. 212, Jacksonville, FL 32207–8549, 904–399–3660.	FL	02/07/95
ETA CONTROL NUMBER—6/224866 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, First Florida Home Health 7764, Normandy Blvd., Ste. 19, Jacksonville, FL 32221–6692, 904–786–9733.	FL	02/07/95
ETA CONTROL NUMBER—6/224867 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 6436 U.S. Hwy. 27 South, Sebring, FL 33870–5735, 813–385–2600	FL	02/07/95
ETA CONTROL NUMBER—6/224861 ACTION—ACCEPTED		
Mr. Martin E. Casper, Greynolds Park Manor, Inc., 17400 West Dixie Highway, N. Miami Beach, FL 33160, 305–944–2361.	FL	02/08/95
ETA CONTROL NUMBER—6/225569 ACTION—ACCEPTED		
Ms. Margie B. Mills, ABC Home Health Services, Inc., 3528 Darien Highway, Brunswick, GA 31525, 912–264–1940	GA	02/09/95
ETA CONTROL NUMBER—6/224844 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 161 N. Macon Street P.O. Box 1331, Jessup, GA 30143–1906, 912–427–8580.	GA	02/07/95
ETA CONTROL NUMBER—6/224859 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 2054 Watson Blvd., Warner Robins, GA 31088, 912–923–9766	GA	02/07/95
ETA CONTROL NUMBER—6/224856 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 616 Ferncrest Drive, Sandersville, GA 21082–1348, 912–552–5085	GA	02/07/95
ETA CONTROL NUMBER—6/224857 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 3200 Riverside Drive Bldg. A, Suite 100, Macon, GA 31210–2250, 912–757–2240.	GA	02/07/95
ETA CONTROL NUMBER—6/224858 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, Hwy. 441 North P.O. Box 250, Helena, GA 31037–9617, 912–868–5616.	GA	02/07/95
ETA CONTROL NUMBER—6/224860 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 239–2000 N. Jebavy Drive Building B, Ludington, MI 48431–1921, 616–843–4288.	MI	02/07/95
ETA CONTROL NUMBER—6/224855 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 850 N. Center Street, Gaylord, MI 49735, 517–732–2680	MI	02/07/95
ETA CONTROL NUMBER—6/224853 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 3118 Logan Valley Rd., Traverse City, MI 49684, 616–935–3045	MI	02/07/95
ETA CONTROL NUMBER—6/224854 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 6605 Uptown Blvd., NE Suite 280, Albuquerque, NM 87110–4200, 505–880–1221.	NM	02/07/95
ETA CONTROL NUMBER—6/224852 ACTION—ACCEPTED		
Ms. Margie B. Mills, ABC Home Health Services Inc., 201 Broadway, Hartsville, TN 37074–1303, 615–374–4755	TN	02/09/95
ETA CONTROL NUMBER—6/224851 ACTION—ACCEPTED		
Ms. Margie B. Mills, ABC Home Health Services Inc., 20 Rhea St., Sparta, TN 38583–2040, 615–836–6200	TN	02/09/95
ETA CONTROL NUMBER—6/224849 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 205 Oak Park, Suite 3, McMinnville, TN 37110–1336, 615–473–9561.	TN	02/07/95
ETA CONTROL NUMBER—6/224850 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 6011 Trotwood Ave., Columbia, TN 38401–5087, 615–381–6296	TN	02/07/95
ETA CONTROL NUMBER—6/224847 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 4589 Rhea Co. Hwy. Suite 100, Dayton, TN 37321–6013, 615–775–1334.	TN	02/07/95
ETA CONTROL NUMBER—6/224848 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 110 Medical Drive, Victoria, TX 77904, 512–572–4061	TX	02/07/95
ETA CONTROL NUMBER—6/224845 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 5152 N. 10th Street, McAllen, TX 78504–2834, 210–664–0055	TX	02/07/95

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DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—6/224846 ACTION—ACCEPTED		
ETA REGION 6 02/13/95 to 02/19/95		
Mr. Ralph Aleman, Cedars Medical Center, 1400 NW 12th Avenue, Miami, FL 33136, 305–325–4991	FL	02/15/95
ETA CONTROL NUMBER—6/225154 ACTION—ACCEPTED		
Ms. Roberta Agner, Madison County Memorial Hospital, 201 East Marion Street, Madison, FL 32350, 904–973–2271	FL	02/16/95
ETA CONTROL NUMBER—6/225301 ACTION—ACCEPTED		
Mr. Edward J. Renford, Grady Health System, 80 Butler Street, SE P.O. Box 26208, Atlanta, GA 30335–3801, 404–616–1900.	GA	02/16/95
ETA CONTROL NUMBER—6/225094 ACTION—ACCEPTED		
Mr. Scott Bell, Archusa Convalescent Center, 191 Highway 511 East Post Office, Drawer 10, Quitman, MS 39355, 601–776–2141.	MS	02/16/95
ETA CONTROL NUMBER—6/225300 ACTION—ACCEPTED		
Mr. Lewis T. Peeples, ParkView Regional Medical Center, 100 McAuley Drive, Vicksburg, MS 39180, 601–631–2131	MS	02/16/95
ETA CONTROL NUMBER—6/225152 ACTION—ACCEPTED		
Sr. Paola Canziani, Casa Angelica, 5629 Isleta Blvd. SW., Albuquerque, NM 87105, 505–877–5763	NM	02/17/95
ETA CONTROL NUMBER—6/225303 ACTION—ACCEPTED		
Mr. Eduardo Duarte, Lavida Serena, 711 Kings Way Blvd., Del Rio, TX 78840, 210–774–0698	TX	02/16/95
ETA CONTROL NUMBER—6/225095 ACTION—ACCEPTED		
Mr. Harvey L. Fishero, Navarro Memorial Hospital, Inc., 3201 W. Highway 22, Corsicana, TX 75110, 903–872–4861	TX	02/17/95
ETA CONTROL NUMBER—6/225302 ACTION—ACCEPTED		
Ms. Thalia H. Munoz, Starr County Memorial Hospital, P.O. Box 75, Rio Grande City, TX 78582, 210–487–5561	TX	02/17/95
ETA CONTROL NUMBER—6/225093 ACTION—ACCEPTED		
ETA REGION 6 02/20/95 to 02/26/95		
Ms. Cheryl Woods, Winter Garden Health Care, 15204 West Colonial Drive, Winter Garden, FL 34787, 407–877–2384.	FL	02/22/95
ETA CONTROL NUMBER—6/225406 ACTION—ACCEPTED		
Mr. Gary Morse, Tyler Holmes Memorial Hospital, 409 Tyler Holmes Drive, Winona, MI 38967, 601–283–4114	MI	02/22/95
ETA CONTROL NUMBER—6/225328 ACTION—ACCEPTED		
Mr. Robert Hill, Britthaven of Davidson, 706 Pineywood Road, Thomasville, NC 27360, 919–475–9116	NC	02/22/95
ETA CONTROL NUMBER—6/225380 ACTION—ACCEPTED		
Mr. Don Davidson, Advanced Care Center at Stephenville, 2309 W. Washington Street, Stephenville, TX 76401, 817–968–4191.	TX	02/22/95
ETA CONTROL NUMBER—6/225377 ACTION—ACCEPTED		
Mr. Don Davidson, Advanced Care Center at Tyler, 2902 FM 2767 East, Tyler, TX 75702, 803–592–5684	TX	02/23/95
ETA CONTROL NUMBER—6/225379 ACTION—ACCEPTED		
Mr. Don Davidson, Advanced Care Ctr. of Amer/Pro-Care, 3508 Milan Street, Houston, TX 77002, 713–628–3071	TX	02/22/95
ETA CONTROL NUMBER—6/225378 ACTION—ACCEPTED		
Mr. Samuel A. Ramirez, Sr., Dolly Vinsant Memorial Hospital, 400 East Hwy 77, San Benito, TX 78586, 210–399–1313.	TX	02/22/95
ETA CONTROL NUMBER—6/225403 ACTION—ACCEPTED		
Ms. Lois Jean Moore, Harris County Hospital District, 2525 Holly Hall, Houston, TX 77054, 713–746–6495	TX	02/22/95
ETA CONTROL NUMBER—6/225381 ACTION—ACCEPTED		
Ms. Jolyn West Scheirman, JWS Health Consultants, Inc., 3730 Kirby Drive Suite 900, Houston, TX 77098, 713–522–5355.	TX	02/22/95
ETA CONTROL NUMBER—6/225404 ACTION—ACCEPTED		
Ms. Toni Parks, Memorial Medical Nursing Center, 315 Lewis, SW., San Antonio, TX 78212, 210–223–5521	TX	02/22/95
ETA CONTROL NUMBER—6/225402 ACTION—ACCEPTED		
Mr. William D. Poteet, III, Methodist Hospital, 3615 19th Street, Lubbock, TX 79410, 806–792–1011	TX	02/22/95
ETA CONTROL NUMBER—6/225375 ACTION—ACCEPTED		
Ms. Maria A. Malacon, Omni Health Services, 2600 N. Gessner Suite 280, Houston, TX 77080, 713–690–1971	TX	02/22/95
ETA CONTROL NUMBER—6/225405 ACTION—ACCEPTED		
Mr. Rod Seidel, San Jacinto Methodist Hospital, 4401 Garth Road, Baytown, TX 77521, 713–420–8690	TX	02/23/95
ETA CONTROL NUMBER—6/225374 ACTION—ACCEPTED		
ETA REGION 6 02/27/95 to 03/05/95		
Mr. John Botsko, CPC Fort Lauderdale Hospital, 1601 E. Las Olas Blvd., Fort Lauderdale, FL 33301, 305–463–4321	FL	03/03/95
ETA CONTROL NUMBER—6/225605 ACTION—ACCEPTED		
Leon Metz, IHS-Venice North, 1970 Landings Blvd., Ste. 201, Sarasota, FL 34231, 800–743–2575	FL	03/03/95
ETA CONTROL NUMBER—6/225598 ACTION—ACCEPTED		
Mr. William A. McDonald, Miami Children's Hospital, 3100 S. W. 62nd Avenue, Miami, FL 33155, 305–666–6511	FL	03/03/95
ETA CONTROL NUMBER—6/225570 ACTION—ACCEPTED		
Mr. Rafael Fonseca, West Gables Health Care Center, HSI, Inc. 163 Stratford Ct., Suite 205, Winston-Salem, NC 27103, 305–265–9391.	NC	03/03/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[Form ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—6/225572 ACTION—ACCEPTED		
Ms. Alecia Bristow, IHS of Nashville, 2733 McCampbell Road, Nashville, TN 37214, 615–885–0483	TN	03/02/95
ETA CONTROL NUMBER—6/225532 ACTION—ACCEPTED		
Ms. Julie Martinez, Canterbury Villa of Eagle Pass, 2550 Zacatecas, Eagle Pass, TX 78852, 210–773–4488	TX	03/02/95
ETA CONTROL NUMBER—6/225530 ACTION—ACCEPTED		
Donald R. Cain, Cartwheel Lodge of Gonzales, 1800 Cartwheel Drive, Gonzales, TX 78629, 210–672–2887	TX	03/03/95
ETA CONTROL NUMBER—6/225600 ACTION—ACCEPTED		
Ms. Peggy Brisgill, Colonial Manor Care Center, 821 Hwy 81 West, New Braunfels, TX 78130, 210–625–7526	TX	03/03/95
ETA CONTROL NUMBER—6/225602 ACTION—ACCEPTED		
Mr. Ernest Flores, Jr., Dimmit County Memorial Hospital, P.O. Box 1016, Carrizo Springs, TX 78834, 210–876–2424	TX	03/02/95
ETA CONTROL NUMBER—6/225535 ACTION—ACCEPTED		
Chris Callahan, Monument Hill Nursing Center, 120 Star Loop 92, LaGrange, TX 78945, 410–968–3144	TX	03/03/95
ETA CONTROL NUMBER—6/225601 ACTION—ACCEPTED		
Mr. David Nesbit, Nesbit Nursing Home, 1215 Ashby, Sequin, TX 78155, 210–379–1606	TX	03/03/95
ETA CONTROL NUMBER—6/225603 ACTION—ACCEPTED		
Harvin E Saggs, Southern Manor, Highway 90A West, Hallettsville, TX 77964, 512–798–3268	TX	03/03/95
ETA CONTROL NUMBER—6/225599 ACTION—ACCEPTED		
Ms. Donna Grayson, Town and Country Manor, 625 N. Main, Boerne, TX 78006, 210–249–3085	TX	03/03/95
ETA CONTROL NUMBER—6/225604 ACTION—ACCEPTED		

[FR Doc. 95–6911 Filed 3–20–95; 8:45 am]
BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP–CD90–92]

Distribution of 1990, 1991 and 1992 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of consolidation of proceedings, request for notices of intent to participate, and precontroversy discovery schedule.

SUMMARY: The Copyright Office of the Library of Congress is consolidating the distribution of the 1990, 1991 and 1992 cable royalty funds into a single proceeding. Accordingly, the Office is requesting that claimants to the 1991 and 1992 royalty funds file a Notice of Intent to Participate in the distribution proceeding for those funds, if they have not already done so. The Office is also setting the prehearing schedule for the 1990–1992 distribution proceeding, including the date on which controversies will be declared and arbitration initiated.

DATES: Notices of Intent to Participate are due April 5, 1995.

ADDRESSES: If sent by mail, an original and five copies of the Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of the Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E. Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Each year, cable systems submit royalties to the U.S. Copyright Office for a statutory license to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed to the appropriate copyright owners by means of a cable royalty distribution proceeding. These proceedings were formerly conducted by the Copyright Royalty Tribunal. However, on December 17, 1993, the Tribunal was abolished. Royalty distribution proceedings are now conducted by *ad hoc* copyright arbitration royalty panels (CARPs) convened and supported by the Library of Congress and the Copyright Office. Copyright Royalty Tribunal Reform Act of 1993, P.L. 103–198, 107 Stat. 2304 (1993).

At the time Congress was considering the abolition of the Tribunal, the Tribunal had already begun a proceeding to distribute the cable royalties that were collected in 1990. The 1990 cable royalty distribution proceedings began on April 2, 1993. 58 FR 17387 (April 2, 1993). The proceeding did not, however, reach a conclusion. In light of the imminent passage of the Copyright Royalty Tribunal Reform Act, the Tribunal suspended the 1990 cable royalty distribution proceeding. Order, CRT Docket No. 92–1–90CD (October 14, 1993).

The Copyright Royalty Tribunal Reform Act, which was effective immediately upon enactment, directed the Librarian and the Copyright Office to adopt the rules and regulations of the Tribunal found in 37 CFR chapter 3, 17 U.S.C. 802(d), and provided that the Tribunal's regulations were to remain in effect until the Librarian adopts "supplemental or superseding regulations." The Office adopted the Tribunal's rules and regulations on an interim basis on December 22, 1993, and notified the public that it intended to begin a rulemaking proceeding to revise and update those rules. 58 FR 67690 (December 22, 1993). In one of the first decisions in that rulemaking, we considered the question of how to handle proceedings that were suspended because of the abolition of the Tribunal. The Office determined that matters left pending at the Tribunal would not be taken up where they had been left off, but would have to be begun anew. 59 FR 2550 (January 18, 1994). The 1990 cable distribution would, therefore, start over from the beginning.

We met with the cable copyright claimants on August 11, 1994 and were informed that they preferred to restart the 1990 cable distribution proceeding only after final regulations for the

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CARPs were adopted and in place. The Office honored this request and, on December 7, 1994, published final regulations governing the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993. 59 FR 63025 (December 7, 1994).

Cable royalties for the 1990, 1991, 1992 and 1993 account years are now eligible for distribution proceedings. A partial distribution of ninety percent of the 1990 and 1991 royalties was made by the Tribunal prior to its termination, and the Copyright Office has made a partial distribution of eighty percent of the 1992 and 1993 royalty funds. *See*, Distribution Order, CRT Docket No. 92–1–90CD, 57 FR 41478 (September 10, 1992) (1990 royalties); Distribution Order, CRT Docket No. 93–4–91CD (October 6, 1993) (1991 royalties); *Order*, Docket Nos. 94 CARP (92–CD) and 94 CARP (93–CD) (September 26, 1994) (1992 and 1993 royalties).

II. Request for Comments on Controversy

On December 15, 1994, the Copyright Office of the Library of Congress published a notice seeking comment as to the existence of controversies among claimants to the 1990 cable royalty fund. 59 FR 64714 (December 15, 1994). We also requested interested claimants to file a Notice of Intent to Participate in the 1990 cable distribution proceeding.

In addition to seeking comments regarding 1990 royalty fund controversies, we solicited comments as to whether the distribution of 1990 cable royalties should be consolidated with other cable royalty funds collected in subsequent years. 59 FR 64715 (1994). The 1991, 1992 and 1993 royalty funds are ready for distribution and could be made a part of the 1990 proceeding, if that would serve the public interest. If the claimants favored a consolidation, we sought comment as to the existence of controversies in those subsequent years. We also stated that if we did consolidate the 1990 cable distribution with one or more subsequent years, we would issue a request at that time for Notices of Intent to Participate for those subsequent years. 59 FR 64715.

The Comments

The Office received comments from the following claimant groups: Program Suppliers, Joint Sports Claimants (consisting of the Office of the Commissioner of Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association), National Association of Broadcasters (NAB), Canadian Claimants, Devotional Claimants, Music Claimants (consisting of the American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; and SESAC, Inc.), The Public Broadcasting Service (PBS), National Public Radio (NPR) and Multimedia Entertainment, Inc. (Multimedia). In addition to individual comments from these groups, the Office received a comment, styled "Joint Comments of Copyright Owners" (Copyright Owners), that expresses the collective opinion of all of the above listed claimant groups.

Discussion of the Comments

The Copyright Owners identify existence of both Phase I and Phase II controversies for the 1990 cable distribution, and identify the existence of a Phase I controversy for the 1991 and 1992 royalty funds. They request a consolidation of the 1991 and 1992 distribution with the 1990 proceeding, and propose a detailed schedule for the 45-day precontroversy discovery period. The Copyright Owners are not, however, in agreement as to when the precontroversy discovery period, and the initiation of arbitration, should begin.

A. *Existence of Controversies.* Copyright Owners state that a controversy exists as to the Phase I allocation of the 1990 cable royalty fund. Copyright Owners, comments at 1–2. The Phase I parties agreed to settle the 1990 royalty claims of NPR, the Canadian Claimants and the Music Claimants. These settlements were approved by the Copyright Royalty Tribunal during the aborted 1990 cable distribution proceeding; therefore, no controversy exists with respect to the shares of the 1990 cable royalty fund for NPR, Canadian Claimants, and Music Claimants. *See* in CRT Docket No. 92–1–90CD: "Distribution Order" (dated March 29, 1993) (NPR); "Distribution Order" (dated July 27, 1993) (Canadian Claimants); and "Order" (dated August 16, 1993) (Music Claimants).

Copyright Owners also identify the existence of a controversy for the Phase I allocation of the 1991 and the 1992 cable royalties. *Id.* at 2. Although there is a possibility that some of the claimants will reach a Phase I settlement, hearings before a CARP will nevertheless be required. *Id.*

With respect to Phase II controversies, Copyright Owners ask that the Copyright Office schedule them after resolution of all Phase I controversies, and then conduct all Phase II proceedings concurrently. *Id.* at 3. Music Claimants urge that a separate CARP panel be convened to conduct each Phase II hearing. Music Claimants comments at 7.

Multimedia and NAB report the existence of Phase II controversies for the 1990 cable fund. Multimedia, comments at 1; NAB, comments at 1–2. Several other commentators, including Program Supplier and Joint Sports Claimants, report that they are currently unaware of any Phase II controversies for the 1990 fund, but reserve the right to participate in such controversies should they arise. *See* Program Suppliers, comments at 1–2; Joint Sports Claimants, comments at 2. *See also* Canadian Claimants, comments at 2; Music Claimants, comments at 3–4; Devotional Claimants, comments at 1. None of the commentators are aware of any Phase II controversies at this time for the 1991 and 1992 cable royalty funds; however, they express an intention to participate in any Phase II controversies should they arise. *See e.g.* Program Suppliers, comments at 2; Music Claimants, comments at 5–6; Devotional Claimants, comments at 1.

B. *Consolidation of Proceedings.* Copyright Owners request that the 1990, 1991, and 1992 distribution proceedings be consolidated into a single proceeding. Copyright Owners, comments at 2. They state that consolidation is necessary to reduce the existing backlog in distribution proceedings, created by the elimination of the Copyright Royalty Tribunal, and that a proceeding which covers no more than three years would be manageable and cost effective for the parties and the CARP. *Id.* Copyright Owners do not, however, express any opinion as to the advisability of consolidating subsequent royalty funds (1993, 1994, etc.) into a single proceeding. *Id.* at 2–3.

NAB supports consolidation of the 1990, 1991, and 1992 cable funds into a single proceeding, but only if the procedural dates and schedule proposed by Joint Sports Claimants is followed. *See* discussion, *infra*.

C. *Prehearing Schedule.* Copyright Owners urge the Copyright Office to adopt a detailed prehearing scheduling order which addresses the following matters.

1. Scheduling of proceeding. Section 251.45(b)(1) prescribes a 45-day precontroversy discovery period for the handling of discovery and pre-arbitration matters. Copyright Owners propose that the Copyright Office adopt specific deadlines for the following procedural steps to take place within those 45 days:

Exchange of Written Direct Cases
Requests for Underlying Documents Related to Written Direct Cases
Responses to Requests for Underlying Documents
Completion of Document Production
Follow-up Requests for Underlying Documents
Responses to Follow-up Requests
Motions Related to Document Production to Date
Production of Documents In Response to Follow-Up Requests
All Other Motions, Petitions and Objections

Copyright Owners, comments at 4. In addition, Program Suppliers urge that parties should be free to file motions, particularly on discovery disputes, at any time up to the established deadline. The Librarian could then address each motion on an ad hoc basis, thereby expediting the decisionmaking process. Program Suppliers, comments at 4.

2. Nature and scope of precontroversy discovery. Copyright Owners note that the rules describe the nature and scope of discovery permitted by a CARP, § 251.45(c), but do not articulate any standard for precontroversy discovery. They therefore recommend that the same standard in § 251.45(c) apply to the precontroversy discovery period, which would allow the parties to "request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony." Copyright Owners, comments at 5.

3. Discovery and motions before the CARP. Copyright Owners voice concern that § 251.45(c) requires the CARP to establish a discovery period following the submission of rebuttal and direct cases. They believe that allowing additional discovery on direct cases would be counterproductive to the purpose of the precontroversy discovery period, and that a CARP should only allow additional direct case discovery upon a showing of good cause. Copyright Owners, comments at 5–6. Thus, all discovery requests that can be made during the precontroversy discovery period, and all motions and objections contemplated by § 251.45(b), must be made at that time. *Id.*

4. Manner of service. Because of what they view as a limited precontroversy discovery period, Copyright Owners recommend that service of all discovery requests and responses to such requests be by hand or fax on the party to whom the request or response is directed. Likewise, they propose that all motions and responses filed during the precontroversy discovery period be served by means no slower that overnight express mail. Copyright Owners, comments at 6.

5. Start of evidentiary hearings. Copyright Owners request that a "sufficient" time period be allowed from issuance of all precontroversy discovery rulings by the Copyright Office and the start of the 180-day arbitration period. Copyright Owners, comments at 6–7.

D. *Commencement of Proceedings.* The commentators disagree as to when the precontroversy discovery period should begin and, consequently, when arbitration should be initiated. A majority of the commentators support the proposal of joint Sports Claimants, who propose commencement of precontroversy discovery on August 18, 1995, and initiation of arbitration on October 30, 1995. Program Suppliers urge that precontroversy discovery begin on March 31, 1995, with the 180-day arbitration period starting on June 7, 1995. Music Claimants do not endorse either position, but do not believe that precontroversy discovery should begin any time before "mid-May." NPR takes a similar approach, favoring a June start.

1. Program Suppliers proposal. Program Suppliers argue that an immediate start to the 1990 cable distribution proceeding is necessary to reduce the backlog of cable and satellite distributions and rate adjustments created by the elimination of the Copyright Royalty Tribunal. Program Suppliers, comments at 2. There have been no compulsory license hearings since the fall of 1993, and a number of proceedings are or will be ripe for decision:

—All cable compulsory license distribution cases from 1990 forward;
—All satellite carrier compulsory license distribution cases from 1992 forward;
—The five-year cable royalty rate adjustment case under 17 U.S.C. 801(b)(2) (A) and (D) and 803(a)(2) must be filed during 1995; and
—The satellite carrier fee negotiation and arbitration under 17 U.S.C. 119(c) must begin on July 1, 1996 with initiation of arbitration no later than January 1, 1997.

Id. Program Suppliers concede that consolidation of the 1990, 1991, and 1992 cable distribution proceedings will help to reduce this backlog, but only a combination of consolidation and prompt scheduling of hearings will bring all matters up-to-date. *Id.* at 3.

Program Suppliers recommend that the 45-day precontroversy discovery period begin on March 31, 1995, and conclude on May 10, 1995. Arbitration would begin on June 7, 1995. *Id.* at 4–5. Program Suppliers argue that under this proposal, arbitration will be completed by December, thereby clearing the 1996 calendar for 1993 cable distribution, 1992 satellite distribution, and cable rate adjustment CARP proceedings, if necessary. Creating the scheduling possibility for two CARP hearings in 1996 by completing the 1990 cable distribution in 1995 "would help considerably to relieve the backlog that will exist at that time." *Id.* at 3.

While Program Suppliers acknowledge that their proposed schedule is ambitious and will require hard work by the parties, they argue that it does not grant them any unfair advantage. They note that the Bortz study introduced by Joint Sports Claimants in the 1990 distribution proceeding before the Copyright Royalty Tribunal, the "principal evidentiary presentation supported by all the parties in the 1990 hearing other than Program Suppliers," contained data for 1990, 1991 and 1992. Program Suppliers, however, have yet to receive their principal data, the Neilsen study, for those same years. *Id.* at 6.

In addition to proposing precontroversy discovery and arbitration starting dates, Program Suppliers recommend specific dates for all precontroversy procedural deadlines proposed in the comments of Copyright Owners:

Filing	Deadline
Written Direct Cases	Mar. 31, 1995.
Request for Underlying Document Related to Written Direct Cases.	Apr. 10, 1995.
Responses to Requests for Underlying Documents.	Apr. 14, 1995.
Completion of Document Production.	Apr. 20, 1995.
Follow-Up Document Requests, If Any.	Apr. 25, 1995.
Responses to Follow-Up Requests.	Apr. 28, 1995.
Motions Related to Document Production to Date.	May 2, 1995.
Completion of Document Production For Follow-Up Requests, If Any.	May 8, 1995.
All Other Motions, Petitions, and Objections.	May 10, 1995.
Commencement of the 180-day Period.	June 7, 1995.
Start of Evidentiary Hearing.	June 13, 1995.

Id. at 4–5. Program Suppliers envision that direct case hearings would be completed by August 4, and recommend that further hearings be suspended until at least September 6, 1995, during which time the parties would exchange rebuttal cases and conduct discovery of the rebuttal cases. *Id.* at 5. They further suggest that rebuttal hearings be completed by the end of September, and that proposed and reply findings of fact

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and conclusions of law be briefed in October and early November so that "the CARP decision could be issued by December 4, the last day of the 180-day period." *Id.*

2. Joint Sports Claimants proposal. Joint Sports Claimants argue that Program Suppliers proposed schedule does not permit sufficient preparation time for a consolidated 1990–92 proceeding, and strongly opposes any schedule that would begin precontroversy discovery prior to August 18, 1995. They submit that a consolidated 1990–92 proceeding will be the most complicated in which the parties have ever participated, and will be before arbitrators "who, presumably, will be selected for their expertise in dispute resolution rather than familiarity with cable copyright issues." Joint Sports Claimants, comments at 3. Adequate preparation time is, therefore, needed "to locate witnesses, to commission and to complete research and to prepare testimony and exhibits." *Id.* at 4. Joint Sports Claimants further note that Program Suppliers' concern with the current backlog of proceedings is adequately addressed by consolidating the 1991 and 1992 cable distribution with the 1990 proceeding. *Id.* at 5.

Joint Sports Claimants propose an August 18, 1995 start date for precontroversy discovery and an October 30, 1995 initiation of arbitration. They are supported in their commencement proposal by NAB, Devotional Claimants, Canadian Claimants and PBS. *See* NAB, comments at 3–4; Devotional Claimants, comments at 2; Canadian Claimants, comments at 1; PBS, comments at 1. Joint Sports Claimants recommend the following dates for the precontroversy discovery procedural deadline schedule proposed in the comments of the Copyright Owners:

Filing	Deadline
Written Direct Cases	Aug. 18, 1995.
Requests for Underlying Documents Related to Written Direct Cases.	Aug. 28, 1995.
Responses to Requests for Underlying Documents.	Sept. 1, 1995.
Completion of Document Production.	Sept. 8, 1995.
Follow-Up Requests for Underlying Documents.	Sept. 13, 1995.
Responses to Follow-Up Requests.	Sept. 18, 1995.
Motions Related to Document Production.	Sept. 20, 1995.
Production of Documents in Response to Follow-Up Requests.	Sept. 27, 1995.
All Other Motions, Petitions and Objections.	Oct. 2, 1995.
Commencement of 180-Day Period.	Oct. 30, 1995.

Id. at 2. Joint Sports Claimants do not make any scheduling proposals for the conduct of hearings before the CARP.

3. Music Claimants and NPR. Music Claimants and NPR do not endorse the scheduling proposals of either Program Suppliers or Joint Sports Claimants. Music Claimants request that precontroversy discovery begin no sooner than mid-May 1995 to allow adequate preparation time for the written direct cases. Music Claimants, comments at 7. NPR requests a starting date no earlier than June, with hearings commencing no sooner than September. NPR, comments at 4.

III. Consolidation of Proceedings, Notices of Intent to Participate, and Scheduling

Having fully considered the comments of the interested parties, the Copyright Office is consolidating the 1991 and 1992 cable royalty distribution with the 1990 distribution proceeding, and is requesting that interested parties, who have not already done so, file a Notice of Intent to Participate for the 1991 and 1992 distribution no later than April 5, 1995. The precontroversy discovery period will begin on August 18, 1995, and proceed according to the schedule described below.

Consolidation of Proceedings

The commentators report the existence of controversies for the 1990, 1991 and 1992 cable royalty funds and request that the Copyright Office consolidate distribution of these funds into a single proceeding. Although the 1993 royalty funds are available for distribution, the commentators do not favor consolidation of the 1993 funds. The Office believes that consolidation of the 1990, 1991 and 1992 royalties into a single distribution proceeding is manageable and cost effective, and that addition of the 1993 funds to the proceeding may be unduly burdensome. Consolidation of three funds itself represents an unprecedented distribution, and is a major step towards eliminating the existing backlog of copyright compulsory license proceedings. We are, therefore, consolidating the 1990–92 cable royalty funds for distribution, and will conduct a single proceeding necessary to the resolution of all controversies related to these funds.

By consolidating the 1990–92 distributions, the Office will handle Phase I and Phase II controversies in those funds sequentially. That is, we will first conduct a proceeding and convene a CARP to resolve all Phase I controversies for the 1990–92 funds, and, after that proceeding has been completed, we will ascertain the existence of any Phase II controversies and conduct separate proceedings. The issue of whether to convene separate CARPs for each Phase II controversy, or to allow a single CARP to resolve more than one controversy, will be decided at the time the Office determines the existence of Phase II controversies, if any.

Notices of Intent To Participate

The Copyright Office has received Notices of Intent to Participate from the parties wishing to participate in the CARP proceedings for the 1990 cable royalty distribution. The Office noted in the Notice requesting comments on the existence of cable distribution controversies that if it consolidated the 1990 cable distribution with one or more subsequent years it would then issue a request for Notices of Intent to Participate for those subsequent years. 59 FR 64714, 64715 (1994).

We are consolidating the 1991 and 1992 cable distribution with the 1990 proceeding. Therefore, those claimants who wish to present evidence to the CARPs for distribution of the 1991 and 1992 royalties must, if they have not already done so, file a Notice of Intent to Participate for those years. Notices must be filed no later than April 5, 1995. Failure to file a timely Notice of Intent to Participate may subject the claim to dismissal. The filing of a Notice of Intent to Participate is thus critical to a claimant being able to present an effective claim.

Scheduling of the 1990–92 Cable Distribution Proceeding

The Copyright Office is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the 1990–92 cable distribution proceeding. In addition, the Office is announcing the date on which the existence of controversies to the 1990–92 cable funds will be declared and arbitration initiated, thereby commencing the 180-day arbitration period. Once a CARP has been convened, the scheduling of the arbitration period is within the discretion of the CARP and will be announced at that time.

A. *Commencement of the Proceeding.* A royalty distribution proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceedings before a CARP itself, including the presentation of evidence through live hearings and the submission of proposed findings by all of the parties. Both of these phases to a distribution proceeding require significant amounts of work, not just for the parties, but for the Librarian, the Copyright Office and the arbitrators as well. Selection of a date to commence a distribution proceeding is, therefore, not dependent on the schedules of one or more of the participating parties, but must be weighed against the interests of all involved.

Because there are two phases to a distribution proceeding—precontroversy discovery and arbitration—there are two time periods to be scheduled. The regulations do not provide how much time must separate precontroversy discovery from initiation of arbitration. Program Suppliers and Joint Sports Claimants, in their proposed schedules, both recommended a period of 28 days from the end of precontroversy discovery to the beginning of the 180-day arbitration period. *See* Program Suppliers, comments at 5; Joint Sports Claimants, comments at 2. The Copyright Office agrees that there is no reason to schedule an inordinate amount of time between the two; however, there must be adequate time for the Librarian to rule upon all motions filed within the 45-day precontroversy period. Since motions could, and undoubtedly will be filed on the last day of the period, a sufficient amount of time must be allowed to receive oppositions (7 days from filing of motion) and replies (5 business days from date of service of opposition), and to consider those motions and issue decisions and orders. Given these considerations, the uniqueness of cable distribution for the Office, and the complexities of the proceedings involving three years worth of royalties, we believe that a period of 45 days between the end of the precontroversy discovery period and the declaration of controversies/initiation of arbitration is necessary for the Office to adequately complete its task.

The issue remains as to what date precontroversy discovery should begin and, subsequently, initiation of arbitration. The commentators are divided. Program Suppliers believe that precontroversy discovery should begin at the end of March of this year to speed the reduction of royalty funds currently ripe for distribution, and to allow the scheduling of more than one CARP next year to handle distributions and/or rate adjustments. The remainder of the commentators argue that a March starting time is premature because it does not allow sufficient preparation time for what will be the first CARP proceeding. Music Claimants and NPR favor commencement in mid-May and early June, respectively. Joint Sports Claimants state that they are opposed to any schedule which begins the 1990–92 cable distribution proceeding prior to August 18, 1995. They are supported by Devotional Claimants, Canadian Claimants, PBS, and NAB, whose support for consolidation of the 1991 and 1992 funds with the 1990 distribution is contingent upon acceptance of Joint Sports Claimants' proposed schedule.

Because the commentators are so widely divided, the obvious compromise solution would be to split the difference in proposed starting dates. This would result in starting precontroversy discovery sometime in early June, which is NPR's proposal. However, in an open meeting of all parties filing Notices of Intent to Participate in the 1990 distribution held at the Copyright Office, the parties expressed strong opposition to any compromise position, and urged the Office to select one of the proposed schedules. Meeting, held February 6, 1995. We are complying with the parties wishes and are selecting a starting date of August 18, 1995 for the 45-day precontroversy period. The period will conclude on October 2, followed by a 45-day period in which the Librarian and the Copyright Office will complete all precontroversy discovery matters and issue all rulings. Controversies will be declared, and the 180-day arbitration period initiated, on November 17, 1995.

There are several reasons for selecting these dates. First, this is the first cable distribution proceeding under the new CARP regime and the parties should be afforded adequate time for preparation of their cases and evidence. A majority of the parties stated that they need until August 18 to allow them sufficient time to prepare. Second, a single distribution proceeding for three royalty years is unprecedented and represents a highly complex and involved proceeding. The difficulty of the proceeding will be further heightened by the fact that it is the first test of the new CARP regulations governing cable distribution. We, therefore believe that the parties should have optimal preparation time to increase the likelihood of a smooth and efficient proceeding. Third, the Office wishes to avoid any scheduling conflicts with distribution proceedings of the 1992–94 DART royalty funds. We are currently seeking comment as to the existence of controversies for these funds, which are eligible for distribution after March 30, 1995. While it is anticipated that distribution settlements will be reached for these funds, convocation of a CARP or CARPs may nevertheless be necessary. It would be extremely difficult for the Office to conduct precontroversy discovery for cable as well as DART at the same time. An August 18 commencement date for cable distribution allows the Office to schedule a prior, nonoverlapping precontroversy discovery period for 1992–94 DART distribution.

B. *Precontroversy Discovery Schedule and Procedures.* Any party filing a Notice of Intent to Participate in the 1990–92 cable distribution for one or more of the royalty funds is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party nonprivileged underlying documents related to the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

Copyright Owners requested that the Copyright Office adopt a precontroversy discovery schedule that prescribes filing deadlines for discovery requests, responses and related motions. Because Copyright Owners believe their proposal is critical to an efficient and successful precontroversy discovery period, we will adopt it for purposes of this distribution proceeding.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

Action	Deadline
Filing of Written Direct Cases.	Aug. 18, 1995.
Requests for Underlying Documents Related to Written Direct Cases.	Aug. 28, 1995.
Responses to Requests for Underlying Documents.	Sept. 1, 1995.
Completion of Document Production.	Sept. 8, 1995.
Follow-Up Requests for Underlying Documents.	Sept. 13, 1995.
Responses to Follow-Up Requests.	Sept. 18, 1995.
Motions Related to Document Production.	Sept. 22, 1995.

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Action	Deadline
Production of Documents in Response to Follow-Up Requests.	Sept. 27, 1995.
All Other Motions, Petitions and Objections.	Oct. 2, 1995.

The § 251.45(b) precontroversy discovery period begins on August 18, 1995 with the filing of written direct cases. Each party to the proceeding must serve by hand on that day a complete copy of its written direct case on each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Thus, the parties have until August 28 to request from one another Underlying Documents Related to Written Direct Cases, until September 1 to respond to Requests for Underlying Documents, and so forth. The dates listed in the schedule mark the deadlines by which the corresponding requests, responses and motions must be served and filed. In the case of document requests and all precontroversy discovery motions, failure to make a request or file a motion by the prescribed deadline precludes a party from making the request or filing the motion at a later date. For example, if a party fails to file a motion to compel production of Underlying Documents Related to Written Direct Cases by September 22, 1995, that party is precluded from filing that motion at a later date with either the Copyright Office or the CARP. In the case of document production responses, it is expected that parties receiving requests will respond by the appropriate deadline. Motions to comply with the request may be filed beginning on the first day after the response deadline and up to the September 22 deadline for motions related to document production.[1]

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such request or response is directed. A complete copy of the response or request shall also be served on the Copyright Office. Service via the mail, addressed to the official address in § 251.1, is permissible.

Filing and service of all precontroversy motions, petitions, objections, oppositions and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all motions, petitions, objections, oppositions and replies must be brought to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington D.C. 20540, between the hours of 9 a.m. and 5 p.m. Form and content of such motions, petitions, objections, oppositions and replies must be in compliance with §§ 251.44(b)–(e). As provided in § 251.45(b), oppositions to motions, objections and petitions must be filed with the Copyright Office no later than seven business days from date of filing of such motions, objections and petitions. Replies are due five business days from the date of filing of oppositions. Service of all motions, petitions, objections, oppositions and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

Dated: March 13, 1995.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 95–6831 Filed 3–20–95; 8:45 am]

BILLING CODE 1410–33–P

[1] Motions related to the September 27 Production of Documents in Response to Follow-Up Requests may be filed up to the October 2 deadline for All Other Motions, Petitions and Objections.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before May 5, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT:

Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Army (N1–AU–95–2). Polygraph technical files.

2. Department of Housing and Urban Development (N1–207–95–3). Records relating to purchases and contracts.

3. Department of Housing and Urban Development (N1–207–95–4). Preforeclosure Sale Case Files.

4. Department of Housing and Urban Development (N1–207–94–5). Claims Without Conveyance of Title Case Files.

5. Department of the Interior (N1–48–95–1). Reduction in retention period for radio frequency assignment files.

6. Department of Transportation, Federal Highway Administration (N1–406–94–2). Unidentified black and white photographic prints depicting highway construction activities.

7. Department of the Treasury, Bureau of Engraving and Printing (N1–318–95–1). Final receipts for perfect deliveries of material other than National Bank Currency.

8. Department of the Treasury, Office of Thrift Supervision (N1–483–93–24). Financial data in electronic form and related textual records utilized in the supervision of thrift institutions.

9. Department of Veterans Affairs, Veterans Health Administration (N1–15–95–1). National Chaplain Management Information System.

10. Bonneville Power Administration (N1–305–94–2). Routine and facilitative records concerning environmental quality and power generation.

11. Office of Technology Assessment (N1–444–95–2). Listing of proposed assessment projects for 1978.

12. Tennessee Valley Authority (N1–142–92–18). Housekeeping and facilitative records relating to the operation of the Phosphate Development Works.

13. Tennessee Valley Authority (N1–142–93–8). Public relations video and audio recordings determined during archival processing to lack sufficient archival value to warrant permanent retention by the National Archives.

14. Tennessee Valley Authority (N1–142–93–10). Nuclear power plant operating records.

Dated: March 10, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–6947 Filed 3–20–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Jaleh Behroozi Soroui at (202) 632–1506.

SUPPLEMENTARY INFORMATION:

Title

Application for Technology Awards to Governors' State Literacy Resource Centers to build a national electronic information and communication network for literacy by establishing regional hubs on the Internet in each of the four regions designated by the Department of Education's Office of Vocational and Adult Education.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by State Governors' State Literacy Resource Centers to apply for funding to create regional electronic information and communication hubs for literacy that will build technological capacity for electronic exchange across the literacy community. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a maximum of four cooperative agreement awards for a period of up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States and Trust Territories and the Mayor of the District of Columbia.

Estimated Number of Respondents: 15.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 975 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200, Washington, DC 20006, and Dan Chenok, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Sharyn M. Abbott,

Acting Director.

[FR Doc. 95–6902 Filed 3–20–95; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act of OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by April 21, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

Agency Clearance Officer: Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to: *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Earned Doctorates in the United States.

Affected Public: Individuals.

Respondents/Reporting Burden: 41,000 respondents: average 20 minutes per response.

Abstract: Data collected from research doctorates when they earn their degree is used by five Federal agencies for program planning, program evaluation, policy, and data dissemination. These data are especially used to describe the participation of women, racial/ethnic minorities, and foreign citizens.

Dated: March 16, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–6964 Filed 3–20–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

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Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date and time: April 3, 1995, 12:30 p.m.–5:00 p.m., April 4, 1995, 8:30 a.m.–5:00 p.m.

Place: Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, VA 22203.

Type of meeting: Open.

Contact person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, Room 805, Arlington, VA 22230, (703) 306–1604.

Summary minutes: May be obtained from contact person listed above.

Purpose of committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1995 Programs and Initiatives Strategic Planning for FY 1996 and Beyond.

Dated: March 16, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6866 Filed 3–20–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collections: Qualifications Investigation, and Qualifications Investigation, Clerical/Secretarial.

3. The form number if applicable: NRC Form 212, and NRC Form 212A.

4. How often the collection is required: Whenever NRC Office of Personnel specialists determine qualification investigations are required in conjunction with applications for employment related to vacancies.

5. Who will be required or asked to report: Supervisors, former supervisors, and/or other references of external applicants.

6. An estimate of the number of responses: 1400 annually for the NRC Form 212, and 300 annually for the NRC Form 212A.

7. An estimate of the total number of hours needed annually to complete the requirement or request: NRC Form 212, 350 hours (15 minutes per response), and NRC Form 212A, 75 hours (15 minutes per response).

8. Section 3504(h), Pub. L 96–511 does not apply.

9. Abstract: Information requested on NRC Forms 212 and 212A is used to determine the qualifications and suitability of external applicants for employment in professional and clerical/secretarial positions with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Personnel, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 3120 L Street, NW., (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Troy Hillier, Office of Information & Regulatory Affairs (3150–0034), NEOB 10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–6875 Filed 3–20–95; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, (new, revision, or extension): Extension.

2. The title of the information collection: Request for Records.

3. The form number if applicable: NRC Form 57.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Individuals requesting Public Document Room (PDR) documents.

6. An estimate of the number of annual responses: 45,000 per year.

7. An estimate of the total number of hours to complete the requirement or request: 750 hours annually (45,000 forms × .01666 hr/form) or about 1 minute per individual.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: This form is utilized by individual members of the public to request publicly available documents in NRC's Headquarters Public Document Room (PDR). The form serves as a suspense slip on the shelf when the document is charged out.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0063), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Granford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–6874 Filed 3–20–95; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 314—Certificate of Disposition of Materials.

3. The form number if applicable: NRC Form 314.

4. How often the collection is required: The form is submitted once, when a licensee terminates its license.

5. Who will be required or asked to report: Persons holding an NRC license for the possession and use of radioactive byproduct, source, or special nuclear material who are ceasing licensed activities and terminating the license.

6. An estimate of the number of responses: 400.

7. An estimate of the total number of hours needed to complete the requirement or request: An average of 0.5 hours per response, for a total of 200 hours.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC Form 314 furnishes information to NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer, Troy Hiller, Office of Information and Regulatory Affairs (3150–0028), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–6873 Filed 3–20–95; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 39—Licenses and Radiation Safety Requirements for Well Logging.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 5 years. Reports are submitted as events occur.

5. Who will be required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

6. An estimate of the number of responses: 643.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 3.2 hours annually per respondent for applications and reports, plus approximately 214 hours annually per recordkeeper. The industry total burden is 13,676 hours annually.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR Part 39 establish radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0130), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–6876 Filed 3–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 316]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant Unit No. 2, Environmental Assessment and Funding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from Facility Operating License No. DPR–69, issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 (CC2) located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of February 24, 1995. The proposed action would exempt the licensee from: (1) The requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to permit a one-time interval extension between the first and second Type A test (containment integrated leak rate test) for approximately 24 months from the spring 1995 refueling outage to the spring 1997 refueling outage and, (2) would extend the second 10-year service period to 12 years allowing the third Type A test to be performed during the spring 1999 refueling outage.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the spring 1995 refueling outage to the spring 1997 refueling outage, which will also result in extending the second 10-year service period to 12 years to allow the third Type A test to be performed, thereby deferring the cost of performing the tests and elimination the time required to perform the test from the critical path schedule during the upcoming spring

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1995 refueling outage. In addition, not performing the test during this outage will reduce the occupational radiation exposure which is consistent with as low as reasonable achievable goal of the licensee's Radiation Protection Program.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the one-time interval extension between the first and second Type A tests and the extension of the 10-year service period to 12 years would not increase the probability or consequences of accidents previously analyzed and the proposed exemptions would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at CC2. Although the first test was not successful,the licensee promptly identified and corrected the problems. As a result, the last three tests have been successful and have demonstrated good containment performance. The licensee will continue to be required to conduct the Type B and C local leak rate tests which, subsequent to the prompt corrective actions following the initial Type A test, have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemptions, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Maryland State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 24, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 15th day of March, 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6877 Filed 3–20–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 5, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 5, 1995—2:00 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. It will also discuss the status of the appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefore can be obtained by contracting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 15, 1995.

Sam Duraiswamy

Chief, Nuclear Reactors Branch.

[FR Doc. 95–6879 Filed 3–20–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

National Information Infrastructure; Public Meeting

AGENCY: Office of Management and Budget.

ACTION: National Information Infrastructure Security issues forum; notice of public meeting and request for public comments.

SUMMARY: The National Information Infrastructure Security Issues Forum will conduct a public meeting to continue a dialogue between government and the private and public interest sectors on issues related to the security of information on the National Information Infrastructure (NII). Interested parties—especially users and providers of services based on the public switched network as well as cable, wireless, satellite, and Internet communications—are invited to submit a 1–2 page position statement and request to testify on the subject of the availability and the reliability of the NII.

The meetings are sponsored by the NII Security Issues Forum of the Information Infrastructure Task Force and Mega-Project III of the U.S. Advisory Council on the NII.

DATES: The public meeting, "The NII: Will It Be There When You Need It? Will It Be Safe To Use?" will be held on Tuesday, March 28, 1995, from 9:00 a.m. to 12:30 p.m. in Room 4830 at the Department of Commerce in Washington, DC.

Those wishing to testify should submit a 1–2 page position statement and request to participate by March 20, 1995. Individuals wishing to offer general comments or present questions may request to do so during the meeting. Written comments may be submitted on paper or electronically, in ASCII format, and will be accepted until April 21, 1995.

ADDRESSES: The public meeting will be held in Room 4830 at the Department of Commerce at 14th Street and Constitution Avenue NW., in Washington, DC.

Postion statements and requests to appear for the meeting, "The NII: Will It Be There When You Need It? Will It Be Safe To Use?" should be sent to the National Communications Systems, 701 South Court House Road, Arlington, VA 22204, marked to the attention of Mr. Mark Centra. Position statements may also be submitted via fax to (703) 746–4960 or through electronic mail to centram@cc.ims.disa.mil. Electronic mail should be submitted as unencoded, unformatted, ASCII text.

Parties offering testimony are asked to provide them on paper, and where possible, in machine-readable format. Machine-readable submissions may be provided through electronic mail messages sent over the Internet, or on a 3.5" floppy disk formatted for use in an MS–DOD based computer. Machine-readable submissions should be provided as unencoded, unformatted ASCII text.

Written comments should include the following information:

- Name and organizational affiliation, if any, of the individual responding;
- An indication of whether comments offered represents views of the respondent's organization or are the respondent's personal views; and
- If applicable, information on the respondent's organization, including the type of organization (e.g., trade association, private corporation, non-profit organization) and general areas of interest.

FOR FURTHER INFORMATION CONTACT: For further information relating to the availability and reliability of the NII, contact Mr. Mark Centra of the National Communications System at (703) 607–6183.

SUPPLEMENTARY INFORMATION:

I. Issues for Public Comment

A. Background

The NII is a system of high-speed telecommunications networks, databases, and advanced computer systems that will make electronic information more widely available and accessible than ever before. The NII includes not only the Internet, but also the public switched network, and cable, wireless, and satellite communications. As the network becomes more interconnected, citizens and organizations will engage in multimedia communications, as well as sell goods and services electronically, share data resources, and receive Federal benefits. This increased availability and accessibility of services and products provided through information technology will dramatically affect the way in which individuals conduct their everyday affairs.

Consequently, broad public and commercial use of the NII hinges upon implementing technologies, policies, and practices that not only ensure that users of information systems have access to information when and where they need it, but that subjects of information records are able to protect themselves from unauthorized or inappropriate access to or use of information.

"Americans will not use the NII to its full potential unless they trust that information will go where and when they want it and nowhere else," declared Sally Katzen, Administrator of the Office of Information Regulatory Affairs at OMB and chair of the Forum. "The Federal government is a primary user of the NII and thus a catalyst for change. Yet the NII will be designed, built, owned, operated, and used primarily by the private sector, making it essential that security on the NII be considered in partnership with the public."

To address these critical issues, the Vice president formed the Information Infrastructure Task Force (IITF). The IITF is chaired by Secretary of Commerce Ron Brown and is comprised of senior Administration officials having expertise in technical, legal, and policy areas pertinent to the NII. The Mission of the IITF is to articulate and implement the Administration's vision for the NII. The NII Security Issues Forum was established within the IITF to address the cross-cutting issue of security in the NII.

In addition to the IITF, the President has established the U.S. Advisory Council on the National Information Infrastructure. The Advisory Council represents industry, labor, and public interest groups, and advises the Secretary of Commerce on issues relating to the NII. Mega-Project III, one of three work groups of the Advisory Council, is responsible for addressing security, intellectual property, and privacy issues as they relate to the NII.

The public meetings are part of an ongoing dialogue with the Administration to assess the security needs and concerns of users of the National Information Infrastructure (NII). The testimony of the meeting participants will form the basis of a report being developed by the NII Security Issues Forum, "The NII Security Plant." The Security Plan will: Outline findings of security needs; present an analysis of technical, legal and architectural issues relating to security; discuss the Federal and private sector roles in meeting these need; and propose milestones towards the achievement of Federal roles.

B. Structure and Content of Public Meeting

Security—or the confidentiality, integrity, availability, and reliability of information and services provided on the NII—is linked inextricably to its broad public use. The Forum and Mega-Project III seek input from parties representing individual and corporate users of communications networks as well as providers of communications services.

Security will determine whether, how, and to what extent the NII will be used in such critical applications as enabling electronic commerce, providing public information, training and educating students, supporting the efficient delivery of government services, and utilizing intelligent transportation systems.

NII security will be supported by technology, as well as by a sound legal and policy framework. The Forum and Mega-Project III seek input in this area

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as well. Specifically, what technologies, legal remedies, and policy frameworks, or combinations thereof, can be used to effectively protect the security of the Internet, the public switched network, and other communications systems?

A panel of witnesses drawn from the public will be assembled to discuss the following topics with a panel of senior Administration officials, members of the Security Issues forum, and members of the U.S. Advisory Council on the NII, and to field questions and comments from other members of the public.

The public meeting will consist of two panels. The first panel, entitled "Experiences and Expectations," representing users of the NII, should address questions in three principal areas:

1. As systems evolve from a closed to a more open status, what are your expectations and needs regarding the availability and reliability of services and information on the NII? Examples of risks include loss of proprietary or personal information or network disruptions or outages.

2. How does your organization plan to ensure that information and underlying systems are available to legitimate users? Consider technical, managerial, and legal strategies.

3. How should government support the reliability and availability of the NII? What government policies or guidance would bolster your confidence in the NII?

The second panel, entitled, "current State of Affairs and Future Challenges," represented industry providers of communications services, whether cable, wireless, satellite, Internet, or public switched network communications, should address questions in three principal areas:

1. What are the security risks faced by industry providers of communications services today? As networks evolve from a closed status to a more open one, how will the interoperability of systems and the expansion of universal access affect availability and reliability? How do you plan to address potential threats such as network disruptions and outages or degradation of service as new services are implemented? Consider technical, managerial, and legal strategies.

2. Do you feel that end-users are aware of the level of availability and reliability associated with various components of the NII? What steps have you taken to educate or meet the expectations of the user in the areas of availability and reliability of the NII, particularly within the Internet?

3. How should government support availability and reliability in the NII? Some examples might include legislation, public education, or regulation.

II. Guidelines for Participation in the Public Hearing

Individuals who would like to participate on a panel must request an opportunity to do so no later than March 20, 1995, by submitting a brief, 1–2 page summary position statement. If approved, each participant will be allowed to present brief opening remarks. Primary participation, however, shall be during the general discussion to follow, according to the format described above.

Participants in the public meeting will testify before and participate in discussions with a panel consisting of members of the Advisory Council, members of the Security Issues Forum, and other Administration officials.

Individuals not selected as panel participants may offer comments or ask questions of the witnesses by requesting an opportunity to do so and being recognized during the meeting by the chairs of the meetings. Oral remarks offered in this fashion should not exceed three minutes. No advance approval is required to attend the public meetings, offer comments, or present questions.

The public meeting will be chaired by Ms. Sally Katzen, Chair of the NII Security Issues Forum. The meeting will be co-chaired by Mr. Bob Marquette, Deputy Manager, National Communications Systems; Mr. Tom Sugrue, Deputy Assistant Secretary for Communications and Information, National Telecommunications and Information Administration; and Mr. Robert Pepper, Chief, Office of Plans & Policy, Federal Communications Commission.

More information about the Clinton Administration's National Information Infrastructure initiative can be obtained from the IITF Secretariat. Inquiries may be directed to Yvette Barrett at (202) 482–1835, by e-mail to ybarrett@ntia.doc.gov, or by mail to U.S. Department of Commerce, IITF Secretariat, NTIA, Room 4892, Washington, DC 20230.

For inquiries over the Internet to the IITF Gopher Server, gopher, telnet (login = gopher), or anonymous ftp to iitf.doc.gov. Access is also available over the World-Wide-Web. Questions may be addressed to nii@ntia.doc.gov.

For access by modem, dial (202) 501–1920 and set modem communications parameters at no parity, 8 data bits, and one stop (N,8,1). Modem speeds of up to 14,400 baud are supported.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 95–6882 Filed 3–20–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of an Information Collection for Comprehensive Medical Plans

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Comprehensive Medical Plans: Applications to Participate in Federal Employees Health Benefits (FEHB) Program and Contractor Records Retention is used by OPM to determine if Comprehensive Medical Plans applying for participation in the Federal Employees Health Benefits Program meet the requirements for participation. The second part of this clearance covers recordkeeping requirements imposed on the plans that participate in the FEHB program for the purpose of contract auditing and monitoring.

The total annual reporting burden is estimated to be 13,230 hours based on 49 applications at an average time burden of 270 hours per plan. The recordkeeping burden is estimated to be 300 hours. Therefore, the total annual reporting burden including both recordkeeping and reporting requirements equals 13,530 (13,230 plus 300) hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8564.

DATES: Comments on this proposal should be received on or before April 20, 1995.

ADDRESSES: Send or deliver comments to—

Kenneth H. Glass, Chief, Insurance Operations Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and, Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Forms Analysis & Design Section, (202) 606–4025.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–6867 Filed 3–20–95; 8:45 am]

BILLING CODE 6325–01–M

Notice of Request for Expedited Review of Employment Information Customer Service Survey

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a new information collection. The Employment Information Customer Service Survey authorized by Executive Order 12862, will be used to determine the job seeking public's level of satisfaction with OPM's service. The information obtained from the survey will be used to identify areas where service improvements are necessary. Participation is voluntary.

Approximately 60,000 surveys will be completed annually. We estimate it will take 10 minutes to complete this form. The total annual burden is 10,000 hours.

A copy of the proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before March 27, 1995. The Office of Management and Budget has been requested to take action within 10 days.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

U.S. Office of Personnel Management.

James B. King,

Director.

Federal Employment Information Customer Service Survey

Our goal is to provide service that meets your needs. Please take a few minutes to let us know how well we have served you, and how we may better serve you in the future. Please respond to each question by circling the number that corresponds to your answer. We have provided a postage paid envelope. Thank you for your time!

	I Called	I Wrote	I Visited
1) How did you contact OPM?	1	2	3

2) Why did you contact us?
1: To obtain general information about Federal employment
2: To find out what specific jobs are open and how to apply
3: To obtain job information materials
4: To submit an application or take a test
5: Other_____

	Not at all		Moderately		Completely	Does not apply
3) Was our staff:						
• courteous?	1	2	3	4	5	6
• responsive?	1	2	3	4	5	6
• knowledgeable?	1	2	3	4	5	6
• available to answer your questions (in person or by phone)?	1	2	3	4	5	6
4) Was our service:						
• timely?	1	2	3	4	5	6
• successful in meeting your information needs?	1	2	3	4	5	6
5) Was our employment information:						
• current?	1	2	3	4	5	6
• accurate?	1	2	3	4	5	6
• helpful?	1	2	3	4	5	6
• easy to access?	1	2	3	4	5	6
6) How helpful were the following services:						
• talking to an Information Specialist in person	1	2	3	4	5	6
• talking to an Information Specialist by telephone	1	2	3	4	5	6
• writing to an Information Specialist	1	2	3	4	5	6
• using our automated systems (e.g., touchscreen)	1	2	3	4	5	6
7) Did we:						
• tell you how to contact us with complaints or suggestions regarding our services (if applicable)?	1	2	3	4	5	6
• encourage your comments to better meet your needs in the future?	1	2	3	4	5	6

8) If you requested material from us, how long did it take to receive it?

1 week or less	1–2 weeks	More than 2 weeks	Did not request material
1	2	3	4

9) Please tell us how we may better serve you. If possible, when making your comments, please tell us which question number(s) above (#1 through 8) they refer to:

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10) If you wish, please give us your name, address, and telephone number:

Public Burden Statement: Executive Order 12862 authorizes the solicitation of this information. The purpose of this collection is to find out how well the Office of Personnel Management is serving the public. Participation is voluntary. We think providing this information takes an average of 10 minutes, including the time for reviewing instructions and reviewing the requested information. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing time needed to Paperwork Reduction Project, OMB Clearance Number 3206–xxxx, Office of Management and Budget, Washington, D.C. 20503.

[FR Doc. 95–6871 Filed 3–20–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade Meetings

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade Meetings.

SUMMARY: The Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) will hold meetings during the period of March 24, 1995—May 31, 1995. The meetings will include a review and discussion of current issues which influence U.S. agricultural trade policy.

Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy priorities, negotiating objectives, or bargaining positions. Accordingly, these meetings will be closed to the public.

Briefings regarding non-sensitive issues may be held in conjunction with these meetings. Such briefings will be open to the public. Information regarding the dates and times of such briefings can be obtained by contacting John B. Winski, Joint Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720–6829.

ADDRESSES: All meetings will be held at the U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250 unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT:

Debbie Leilani Shon, Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative at (202) 395–6120 or John B. Winski, Joint Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agriculture Service, U.S. Department of Agriculture, at (202) 720–6829.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–6901 Filed 3–20–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35487; International Series Release No. 792; File No. S7–8–90]

Order Approving Proposed Amendment to the Options Price Reporting Authority's National Market System Plan for the Purpose of Unbundling Services for Foreign Currency and Index Options

March 14, 1995.

On September 19, 1994, the Options Price Reporting Authority ("OPRA")[1] filed with the Commission pursuant to Rule 11Aa3–2[2] under the Securities Exchange Act of 1934 ("Act")[3] a proposed amendment to its National Market System Plan for the purpose of providing separate unbundled last sale and quotation services for foreign currency and index options, and to charge separately for access to each such service. Notice of the proposed amendment was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] One comment letter was received. For the reasons discussed below, the Commission is approving the proposed amendment.

I. Description

The proposed amendment permits OPRA to unbundle its market information services for foreign currency options ("FCOs") and index options, and to impose separate charges for access to each service. The amendment provides for the establishment of separate accounting centers for equity, index and FCOs, on January 1, 1996. Each accounting center will be allocated revenues, costs and expenses associated with the receipt, processing and distribution of last sale and quotation information, as well as the costs of developing, operating and administering services and facilities associated with each accounting center. Such revenues, costs and expenses then will be further allocated among the parties providing a market in the securities included in each accounting center. The amendment also provides for special allocation of incremental costs associated with the operation of one or more services outside the regular trading hours. Finally, the amendment includes a few nonsubstantive, editorial changes to clarify the language of the Plan.

The implementation of separate services for FCO and index option information requires certain systems modifications by OPRA's processor, Securities Industry Automation Corporation ("SIAC"). The implementation of separate services also will require advance notice to OPRA's vendors and subscribers of the changes to OPRA's fees and specifications, as well as changes in contractual provisions, in accordance with OPRA's agreements with those persons. Vendors will then be able to determine whether and how they wish to offer separate FCO and index option services to their customers, and to make any necessary modifications to their own systems and procedures associated with the unbundling of these services.

II. Summary of Comments

As noted above, the Commission receive one comment letter. The Securities Industry Association's ("SIA")[6] Telecommunications and Information Management Committee ("TIMC")[7] is opposed to the amendment to the OPRA Plan.[8] TIMC anticipates the separate access charges that result from the unbundling of FCO and index options will constitute a substantial price increase for the data currently provided by OPRA. In addition, TIMC concluded that the establishment of separate accounting centers as well as the necessity for systems modifications by SIAC, vendors and some securities firms will result in additional costs to both the distribution and accounting systems used by securities firms to monitor OPRA's information services. TIMC concluded that the amendment, while generating additional costs, does not provide additional benefits to those entities that use OPRA's services.

III. Discussion

The Commission has determined to approve the amendment to the OPRA Plan. The Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to OPRA, including the requirements of Sections 11A(a)(1)(C)(iii) and (D) of the Act.[9] Section 11A(a)(1)(C)(iii) states that the availability of information to brokers, dealers and investors, with respect to quotations for and transactions in securities, is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Section 11A(a)(1)(D) provides for the linking of all markets for qualified securities through communications and data processing facilities to foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. Further, the Commission believes that the amendment is consistent with Rule 11Aa3–2(c)(2)[10] in that it is appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; and to remove impediments to, and perfect the mechanisms of, a national market system.

Although the Commission understands the concerns raised by TIMC, the Commission believes that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to OPRA. As noted above in the summary of comments, TIMC is opposed to the Plan amendment. Generally, the basis for TIMC's opposition is its expectation that additional costs will accrue as a result of the proposal. The amendment, however, does not include a fee increase for the market data currently provided by OPRA. Instead, the amendment permits OPRA to unbundle its services pertaining to FCOs and index options and to change separately for such services on or after January 1, 1996. Under the amendment, the decision to unbundle fees is subject to the conditions of the OPRA Plan and the requirements of Rule 11Aa3–2.[11] Any subsequent decision to change fees by OPRA, therefore, will be filed with the Commission. Further, while some entities may have to incur initial costs to accommodate the changes contemplated by the amendment, such changes will provide flexibility to both vendors and subscribers. Unbundling will allow OPRA market information services to be tailored to the individual needs of vendors and subscribers.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[12] that the amendment (S7–8–90) to the OPRA Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6844 Filed 3–20–95; 8:45 am]

BILLING CODE 8010–01–M

[1] OPRA is a National Market System Plan approved by the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A of the Act and Rule 11Aa3–2, thereunder. Securities Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"), the Chicago Board Options Exchange ("CBOE"), the New York Stock Exchange ("NYSE"), the Pacific Stock Exchange ("PSE"), and the Philadelphia Stock Exchange ("PHLX").

[2] 17 CFR 240.11Aa3–2.

[3] 15 U.S.C. 78k–1.

[4] Securities Exchange Act Release No. 35049 (December 2, 1994).

[5] 59 FR 63843 (December 9, 1994).

[6] The SIA is a trade association that represents the business interests of securities firms throughout North America. Its members include investments banks, brokers, dealers and mutual fund companies.

[7] The TIMC focuses on issues pertaining to data processing, market data, telecommunications and related technology activities.

[8] Letter from Heidi H. Heiden, Chairman, SIA TIMC, to Margaret H. McFarland, Deputy Secretary, SEC (September 9, 1994).

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii) and (D).

[10] *Supra,* note 2 at (c)(2).

[11] *Supra,* note 2.

[12] 15 U.S.C. 78k–1(a)(3)(B).

[13] 17 CFR 300.30–3(a)(29).

[Release No. 34–35492; File No. SR–Amex–95–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Entry of Market-at-the-Close Orders

March 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Commentary .02 to Exchange Rule 109 to provide that members entering market-at-the-close ("MOC") orders through the PER of AMOS systems must do so no later than 3:50 p.m. The text of the proposed rule change is as follows [new text is italicized]:

Rule 109

Commentary

.01 Each "stopped" transaction shall be reported for printing on the tape in the form and manner prescribed by the Exchange.

.02 Members entering market-at-the-close orders through the PER or AMOS systems must do so no later than 3:50 p.m. The foregoing shall not limit or restrict the entry of market-at-the-close orders (or their cancellation) other than via such systems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 109 sets forth the procedures to be followed in executing MOC orders. Paragraph (d) of the Rule provides that where there is an imbalance between MOC buy and sell orders, the imbalance of buy orders would be executed against the offer and an imbalance of sell orders would be executed against the bid. The remaining buy and sell orders are then paired off and executed at the price of

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the immediately preceding last sale. The "pair off" transaction is reported to the consolidated last-sale reporting system as "stopped stock."[1]

Currently, members may enter MOC orders until 4:00 p.m. when trading closes. MOC orders that are entered through the Exchange's order routing systems, PER and AMOS, can have a disruptive effect on the market when they are entered very shortly before the close. Under these circumstances it can take several minutes for the specialist to ascertain whether an imbalance exists and to pair off buyers and sellers, with the result that the executed MOC transactions do not print until after the close. When this happens, it becomes difficult for market participants to ascertain the closing price of a security in a timely fashion.[2]

To address this concern, the Exchange is proposing an amendment to Commentary .02 to Exchange Rule 109 to provide for a 3:50 p.m. cut-off time for MOC orders entered through PER or AMOS on both expiration and non-expiration days. After this time, no MOC order could be entered or reduced in size via AMEX systems. MOC orders may still be entered, modified, or canceled until 4:00 p.m. other than through the automated systems. The Exchange expects that this proposed change will enable specialists to more efficiently execute and report MOC orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] A "stopped stock" transaction is one in which a floor broker or specialist pairs-off buy and sell market-at-the-close orders when holding those orders simultaneously in the same stock.

[2] The closing price is the price at which the MOC orders were executed. Telephone conversation with Stuart Diamond and Linda Tarr, Amex, and Glen Barentine and Jennifer Choi, SEC, on March 7, 1995.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW,. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–95–09 and should be submitted by April 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6938 Filed 3–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35488; File No. SR–Amex–94–46]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Qualification Examinations Administered by the Exchange and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1

March 14, 1995.

On October 25, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update and revise its examinations to conform them to new rules and procedures.[3] On March 10, 1995, the Amex submitted Amendment No. 1 to the above referenced rule filing.[4] The proposed rule change includes the contents of the qualification examinations and related materials.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35016 (November 29, 1994), 59 FR 62428 (December 5, 1994). No comments were received on the proposal.

The Amex administers six qualification examinations: the Qualification Examination for Regular Members, the Qualification Examination for Options Principal Members ("OPMs"), the Put and Call Stock Option Examination, the Put and Call Option Questionnaire for Listed Personnel, the Specialist Examination and the Registered Equity Trader and Registered Equity Market Maker Examination. All six examinations are specifically designed for Amex membership applicants in order to test the applicant's knowledge in a variety of areas, including general trading principles and procedures as well as specific Amex rules and policies.

Pursuant to Amex Rule 50(a) every applicant for regular and options

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The proposed rule change was filed pursuant to the SEC's position that all qualification examinations administered by the Exchange be filed with the Commission. *See* Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906. *See also* letter from Brandon Becker, SEC, to Gordon L. Nash, Amex, dated March 5, 1991.

[4] *See* letter from Janice Stroughter, Director of Hearings and Special Counsel Legal & Regulatory Policy, Amex, to Amy Bilbija, Attorney, Commission, dated March 9, 1995. In Amendment No. 1 the Amex made several clarifications and corrections to three of the six exams filed with the Commission.

principal membership must pass a qualifying examination prior to undertaking any active duties on the Floor. As a result, regular members, who may trade stocks and options, take both the Qualifying Examination for Regular Floor Members and the Put and Call Stock Option Examination. OPMs, who are prohibited from trading equities, take the Qualifying Examination for OPMs and the Put and Call Stock Option Examination. Limited Trading Permit Holders[5] take the Qualifying Examination for OPMs and the Put and Call Stock Option Examination.

Commentary .01 to Exchange Rule 50(a) requires that a regular member who applies to register as a specialist and a regular or OPM member who applies to register as a registered floor trader must also pass an examination. Specialists take the Specialist Examination. Registered floor traders take the Registered Equity Trader and Registered Equity Market Maker Examination.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B).[6] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and may require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule change is consistent with Section 15(b)(7) of the Act[7] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–46 and should be submitted by April 11, 1995.

Finally, the Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Amex to begin utilizing the exams, as corrected. Further, the use of the six qualification exams has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR-Amex–94–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6843 Filed 3–20–95; 8:45 am]

BILLING CODE 8010–01–M

[5] This type of member may execute on the Floor transactions in options and other derivative products initiated by him for his own account and may give orders for such securities for his own account to regular members for execution provided, however, that this type of member may not trade in individual stock options listed on the Exchange. *See* Amex Constitution, Article IV § 1(j)(3).

[6] 15 U.S.C. 78f(b)(5) & (c)(3)(B) (1988).

[7] 15 U.S.C. 78o(b)(7) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35491; File No. SR–DGOC–94–06]

Self-Regulatory Organizations; Delta Government Options Corp.; Notice of Proposed Rule Change Relating to Implementing New Procedures Allowing for the Clearance and Settlement of Repurchase Transactions and Reverse Repurchase Transactions

March 15, 1995.

Pursuant to Section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 31, 1994, Delta Government Options Corp. ("DGOC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DGOC. On December 9, 1994, January 10, 1995, January 24, 1995, February 13, 1995, and March 3, 1995, DGOC filed amendments to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DGOC is proposing amendments to its Procedures that will insert new procedures allowing for the establishment of a clearance and settlement system for repurchase agreements ("repos") and reverse repurchase agreements ("reverse repos"). Standards for participation, financial requirements, financial reports, audits, admission procedures, withdrawal of a participant(s), and such other standards as described in these new procedures are similar to DGOC's existing procedures and have been modified only insofar as they reflect repos and reverse repos.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Barry E. Silverman, President, DGOC, to Jerry Carpenter, Assistant Director, Securities Processing Regulation, Division of Market Regulation ("Division"), Commission, (December 16, 1994); Barry E. Silverman, President, DGOC, to Jerry W. Carpenter, Assistant Director, Office of Securities Regulation ("OSPR"), Division, Commission (January 9, 1995); Kathryn V. Natale, Morgan, Lewis & Bockius, to Jerry W. Carpenter, Assistant Director, Division, Commission, (January 20, 1995); Kathryn V. Natale, Morgan, Lewis & Bockius, to Jerry W. Carpenter, Assistant Director, Division, Commission (February 10, 1995); and Barry Silverman, President, DGOC, to Christine Sibille, Senior Counsel, OSPR, Division, Commission (March 2, 1995).

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II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, DGOC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DGOC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable DGOC to clear and settle repos and reverse repos. Existing participants and nonparticipants have expressed an interest in such services. DGOC believes that by providing a centralized clearing and settlement facility for repos and reverse repos, it will enable users of such a facility for repos and reverse repos, it will enable users of such a facility to reduce credit exposure, decrease capital utilization, reduce transaction flow, and improve efficiency.

In the recent past, the U.S. fixed income securities dealer community has expressed significant interest in exploring mechanisms designed to reduce the risks associated with holding inventories of securities, trading derivative securities, and the attendant costs of maintaining such inventories. In particular, this exploratory effort has focused on the U.S. Treasury securities market as a consequence of the dramatic growth in the outstanding notional amounts and the resulting increased dealer trading inventories of Treasury Bills, Notes, and Bonds during the last several years.

In addition to the benefits that DGOC believes will accrue to the dealer community, DGOC believes the following systemic benefits of creating a clearing and settling mechanism for repos and reverse repos also are likely. First, through the imposition of daily margin requirements, there is an enhanced probability of performance on the part of participants even during times of market stress. Second, through netting, the exposures giving rise to margin requirements will result in optimal use of collateral. Third, as the common contraparty subject to Commission oversight, DGOC will provide transparency and access to an activity which is fundamental to efficiently functioning capital markets.

Prior to using the system, a DGOC participant must apply for membership in DGOC's repo clearance system. All applications for membership will be reviewed by DGOC's executive committee. The standards for participation are similar to the standards for participation in DGOC's other systems. For example, broker-dealer members must have minimum net capital of $25 million, and bank or insurance company members must have total equity capitalization of $500 million. At the time of admission to the system, each participant will be assigned a trading limit and may be assigned a position limit for a particular CUSIP.

DGOC's system will clear repo trades that result from a direct agreement between two participants or repo trades that have been agreed to through the facilities of brokers that have been specially authorized by DGOC ("Authorized Brokers") to offer their services to DGOC participants. The Authorized Broker will make use of their own communications networks for the purpose of accepting bids and offers and effecting repo trades that will be cleared through DGOC. Specifically, bids and offers will be called in to the Authorized Broker by a participant, and the Authorized Broker will in turn display those bids and offers to all of its customers who are DGOC participants. Once the bidder and offerer agree on the repo rate, the underlying collateral description, the start date, the end date, and the partisan amount to be delivered, the trade will be effected.[3] Representatives of the buyer and seller at the Authorized Broker will intermediate between the buyer and seller to obtain a price to use for the collateral. The participants will not learn the identity of their contraparty.

After the price has been agreed upon, the Authorized Broker then will prepare either one trade report, representing both sides of the trade, or two trade reports, one for each side of the trade. The Authorized Broker then will forward the trade report or reports to DGOC. If the participants have agreed to the trade directly between themselves, each participant will forward a trade report to DGOC indicating its side of the trade. If DOGC does not receive a trade report from the contraparty, DGOC will contact the contraparty within one half hour to confirm the trade entered against them.

The trade report must show for each transaction (a) the identity of the reporting party and the contraparty, (b) the type of transaction, (c) the CUSIP number for the underlying collateral, (d) the repo rate for the transaction, (e) the par amount of securities for the total transaction, (f) the par amount of securities for each delivery and the associated money,(g) the trade date and time, and (h) the on-date and the off-date of the transaction. DGOC will review all trade reports to determine if their contents are valid and that all required information has been submitted.

If two separate trade reports are received for a transaction, DGOC will match the two trade reports. In order to be accepted for clearance, the trade reports must agree as to identity of the contraparty, type of transaction, the repo rate, the price, any rights of substitution, settlement date, maturity date of the Treasury securities, coupon rate if the underlying securities are Treasury notes or bonds, the CUSIP number, the on-date, and off-date. If the details do not match, the trade report(s) will go back to the sending party or parties until the match is reconciled. Matching of positions will be done continuously throughout the day and at the close of each trading day.[4] All trade reports received through an Authorized Broker also will be confirmed either orally or via facsimile with the buying and selling participants.

It the trade reports have been matched and confirmed, DGOC will be deemed to have accepted the transaction for clearance. However, DGOC will reject the transaction if it exceeds the participant's trading or position limits, the participant has been suspended from the system, or the transaction is not designated as delivery versus payment. If the transaction is accepted, DGOC interposes itself as the contraparty to both sides of the transaction. Trade data then will be keyed into DGOC's computer system for the purposes of generating clearance instructions to the clearing bank and for purposes of margining. The participants will receive a written daily activity report indicating DGOC's acceptance of the trade. The daily activity report will report trades DGOC accepted the previous business day.[5]

The details of the trade will be sent to the clearing bank along with the delivery instructions. Participants must maintain a bank account in one or more correspondent banks for purposes of the payment or return of margin, delivery or acceptance of the Treasury securities, or making or receiving payment for such securities. The selected correspondent bank must be a member of the Fed Wire System. The selling participant must deliver securities to the clearing bank against payment no later than one minute prior to the close of the Federal Bank Wire System. The clearing bank will redeliver such securities to the purchasing participant against payment for such securities.

DGOC will net trades under two circumstances. If a participant has a repo and a reverse repo with the same underlying collateral and off-date, the off-date settlement positions will be netted as to par amount, price, and accrued interest. If a participant renews a maturing repo for the same underlying collateral prior to the off-date for such repo. DGOC will report to the participant the net money difference between the two repo transactions.

DGOC's existing margining methodology will be adapted to incorporate repo transaction and reverse repo transaction exposures. Margin may be deposited in the form of "Central Bank Funds,"[6] Treasury bills, Treasury Notes, or Treasury bonds. Treasury securities will be valued at 95% of their market value. All participants will be required to maintain a minimum margin deposit of $1 million par amount Treasury bills with a maturity of less than 180 days. The amount of margin will be derived from two calculations: Mark to market and performance margin. Mark to market will represent the net amount of the estimated cost to liquidate a participant's under-margined position offset by the estimated proceeds from liquidation of its over-margined positions. Performance margin will represent an estimate of the net shortfall from the liquidation of a participant's repo positions at the close of the next business day taking into account the most adverse market movement in the price of the underlying Treasury securities which could reasonably be anticipated.

Price files, which will be updated several times intraday, as well as daily mark to market prices on repos will reference data on the underlying collateral as well as the participant's existing positions which are then used to calculate margin requirements. The margining system will be run and margin reports will be prepared and distributed to participants for margin collection. This process also will be the beginning point for the accounting system which will track all system activity. Margin will be set for each participant and will reflect the netting of payments and any potential exposures to the participant. Margin requirements will go into effect at the time the trade is accepted for clearance. Prior to 8:00 a.m. of each business day, each participant will be issued a daily margin report which will indicate the margin surplus or deficit. At or before settlement time on each business day, each participant will be obligated to deposit sufficient margin to satisfy the margin deficit shown on the daily report.

In the event of a failure to deliver securities on either the on-leg or off-leg, DGOC will still margin the transaction. DGOC also may elect to collect intraday margin if DGOC deems such collection necessary or advisable to reflect a market price change, the size of the participant's positions, the financial or operational condition of the participant, or otherwise to protect DGOC.

DGOC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to DGOC and in particular with Section 17A(b) (3) (F) of the Act.[7] That section requires that a clearing agency's rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DGOC believes the proposed rule change will permit wider utilization of its system by providing participants with the ability to clear and settle repos and reverse repos.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DGOC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of DGOC. All submissions should refer to the File Number SR–DGOC–94–06 and should be submitted by April 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6939 Filed 3–20–95; 8:45 am]

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[3] Generally, participants can cancel transactions at any time until the price of the underlying collateral has been agreed upon by the parties. Depending on participant system capabilities, cancellation will typically take place either on-line or by voice communication. If the cancellation is effected through voice communication, a follow-up notice will be prepared and transmitted to the participants.

[4] The close of each trading day will be at 2:30 p.m.

[5] If the on-leg is scheduled to settle that day, participants will not receive confirmation that DGOC has accepted the trade until the day after the trade has settled.

[6] Central Bank funds is defined as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve System or any other wire system operated in a similar characteristics or attributes.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

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[Release No. 34–35484; File No. SR–MSTC–94–21]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Establishing an Automated Program for the Transfer of Certain Securities Between the Midwest Securities Trust Company and Transfer Agents

March 14, 1995.

On December 28, 1994, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSTC–94–21) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to establish an automated program for the transfer of certain securities between MSTC and transfer agents. Notice of the proposal was published in the **Federal Register** on March 6, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

MSTC is establishing an automated program, to be known as ATS, for the transfer of certain securities between MSTC and transfer agents. Under MSTC's program, MSTC and the transfer agents participating in the program will use a master balance certificate[3] to evidence the number of securities of a particular issue transferred into or out of MSTC and through the transfer agents. The transfer agents will have custody of the securities in the form of balance certificates registered in MSTC's nominee name. The balance certificates will be adjusted daily to reflect MSTC's withdrawal and deposit activity.

Previously, if a participant requested the withdrawal of one hundred shares of a security from MSTC, MSTC would send an electronic or written instruction to the transfer agent followed by a physical transfer of the shares from MSTC to the transfer agent. The transfer agent would reissue the shares in the requested name and would send the shares back to MSTC. Using the ATS program, an electronic instruction will immediately effectuate the withdrawal transfer, eliminating the extra step of physically transferring the security from MSTC to the transfer agent.

For issues eligible for ATS, MSTC will deliver to participating transfer agents nominee and/or non-nominee certificates[4] for each issue. The transfer agent will cancel the certificates delivered and issue one or more balance certificates per issue in the name of Kray & Co. The transfer agent will retain possession of the balance certificates, holding them in a secured area at all times, and MSTC will be provided a sample balance certificate for each issue.

MSTC will deliver to participating transfer agents nominee certificates and/or non-nominee certificates with the instructions to register the non-nominee certificates into the name of Kray & Co. and to include the securities evidenced by the non-nominee and/or nominee certificates in the balance certificate for the issue represented by such balance certificate. MSTC also may issue instructions to the transfer agent to register the transfer of securities evidenced by a balance certificate to a name other than Kray & Co. or to issue a certificate to a name other than Kray & Co.

After issuing a balance certificate, the transfer agent will increase or decrease the number of securities evidenced by the balance certificate so that at the end of each day it will evidence the number of securities equal to the previous balance plus any securities received from MSTC to be registered in the name Kray & Co. less any transfers and issuance of certificates in a name other than Kray & Co. The transfer agent will confirm in writing, on a daily or other periodic basis as MSTC may reasonably request, the number of securities evidenced by each balance certificate.

The obligations of the ATS transfer agents and MSTC will be set forth in a Balance Certificate Agreement ("Agreement") executed by each ATS transfer agent and MSTC.[5] The Agreement provides that all shares or units or the amount of any obligations evidenced by the balance certificate which come into possession of the transfer agent pursuant to ATS will be the sole property of MSTC. The transfer agent will not obtain any legal or equitable right, title, or interest in or to such securities evidenced by the balance certificates.

The Agreement also provides that upon request from MSTC, the transfer agent will be obligated to deliver, within twenty-four hours, all securities evidenced by a balance certificate. If the transfer agent determines that any security held by it is lost, destroyed, stolen, or otherwise unaccounted for, the transfer agent must notify MSTC immediately and issue a replacement certificate.

The Agreement provides that the transfer agent must maintain an insurance policy in the form of a customary bankers blanket bond to cover any securities received from MSTC or held by the transfer agent pursuant to ATS. The bond must be in the maximum amount of one hundred million dollars. The Agreement further states that the transfer agent must provide annually to MSTC's satisfaction evidence that such blanket bond or comparable plan of insurance is in full effect.[6] When the transfer agent is responsible for the shipment of securities, the Agreement requires that the transfer agent provide adequate insurance coverage or require coverage from the carrier to cover losses that occur while in transit to and until received by MSTC. The amount of coverage must be equal to or exceed 110% of the fair market value of the securities shipped. The transfer agent is not obligated to deliver shares evidenced by balance certificates within twenty four hours of such a request from MSTC if the aggregate value of the shares to be delivered exceeds the amount of the bankers blanket bond. The transfer agent will instead deliver or make available the certificates as promptly as possible.[7]

Instructions from MSTC to register the transfer of securities evidenced by a balance certificate in a name other than MSTC will constitute a presentation of the balance certificate to the transfer agent under applicable law. The same warranties that would apply if MSTC physically presented the balance certificate to the transfer agent will be applicable in this instance.

II. Discussion

The Commission believes that MSTC's proposal is consistent with Section 17A of the Act[8] and specifically with Sections 17A(b)(3)(A) and (F).[9] Sections 17A(b)(3)(A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.

Under MSTC's proposed rule change, an electronic instructions will replace the physical transfer of securities between MSTC and transfer agents. The proposal should help alleviate the inefficiencies associated with the physical transfer of securities and should help reduce the possibility of loss while securities are in transit between MSTC and the transfer agent. The transfer of securities will be factor and more efficient with the likely effect of reducing costs related to the preparation of written instructions and physical delivery of the securities. MSTC's proposed rule change also should help MSTC fulfill its safekeeping obligations by allowing MSTC to maintain securities in a form which should reduce the chances of loss and theft.

MSTC's proposed rule change requires that the transfer agent be insured by a customary bankers blanket bond which will cover any securities received from MSTC and/or held by the transfer agent or processor on behalf of MSTC under the Agreement. Where balance certificates have an aggregate current market value in excess of the maximum value of the bankers blanket bond, the transfer agent will not create or maintain certificates in excess of that value, other than any balance certificate, prior to delivery to MSTC. These insurance requirement should better enable MSTC to safeguard securities which are at the transfer agent or are in transit from the transfer agent to MSTC and should aid in the safekeeping of securities with a market value in excess of the bankers blanket bond.

MSTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the ATS program allows for an electronic communication between brokers and transfer agents through MSTC. Such communication will be necessary for transfer agents to participate in the direct registration system ("DRS") recently proposed by the Commission.[10] The Commission believes it is prudent to allow MSTC to begin use of the ATS as soon as possible in order that MSTC and its participants will have time to become proficient in using such a system before a DRS is implemented. The Commission also believes that accelerated approval will allow MSTC participants to utilize and to take full advantage in a more timely fashion of the benefits of the ATS service.

III. Conclusion

The Commission finds that MSTC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MSTC–94–21) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6841 Filed 3–20–95; 8:45 am]

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 35424 (February 28, 1995), 60 FR 12258.

[3] For the purpose of the ATS program, "balance certificates" shall mean a certificate registered in the name Kray & Co., which is MSTC's nominee name, which evidences (1) record ownership by Kray & Co. of the number of shares or units of the issue shown from time to time on the records of the issuer thereof or (2) the duties of the issuer thereof to perform the obligations shown from time to time on the records of the issuer thereof, which records are maintained by a transfer agent, as being evidenced by such certificate, which certificate shall be retained by a transfer agent.

[4] For the purpose of the ATS program, the term "nominee certificates" shall mean a certificate of an issue registered in the name of Kray & Co. The term "non-nominee certificate" shall mean a certificate of an issue registered in a name other than Kray & Co.

[5] If a transfer agent employs a processor to perform the transfer agent's duties in ATS, the transfer agent and processor must enter into a separate agreement obligating the processor to perform the duties described in the Agreement. The transfer agent must notify MSTC if there is any material change to the terms of the agreement between the transfer agent and processor, if there is a termination or anticipated termination of the agreement, or if there is breach of the agreement or an event that will affect or might reasonably be expected to affect the processor's ability to perform any of its obligations under the agreement. MSTC only will permit a transfer agent to employ a processor as its agent if the transfer agent represents and warrants that it will bear any and all liability and responsibility for all securities held by, all actions taken by, and all obligations assigned to the processor with the same force and effect as if the securities were held by, the actions were taken by, or the obligations were those of the transfer agent.

[6] The transfer agent may limit, decrease, or cancel the blanket bond protection upon thirty days prior notice of such action to MSTC.

[7] Before delivering to MSTC certificates with an aggregate current market value in excess of the maximum amount of the blanket bond, the transfer agent may not create or maintain certificates, other than any balance certificate, having a value in excess of the blanket bond.

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[10] For a complete description of DRS, refer to Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 [File No. S7–34–94] (concept release soliciting comment on a transfer agent operated book-entry registration system).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35497; File No. SR–PSE–95–2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Obligations for Regulatory Cooperation

March 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1995, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 3, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which is also described below.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to require regulatory cooperation by members, member organizations, and others over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) in connection with certain investigations and proceedings that are initiated by other exchanges or self-regulatory organizations. The text of the proposed rule change is as follow [new text is italicized]:

Rule 10.2

Regulatory Cooperation

(d) No member, member organization, person associated with a number or member organization, or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b), shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered

[1] *See* letter from Michael D. Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, Division of Market Regulation, SEC, dated March 2, 1995. Amendment No. 1 adds .02 of the Commentary to the proposed rule change.

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into by the Exchange pursuant to Rule 14.1. The requirements of this Rule 10.2(d) shall apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.3.

Commentary

.01 The terms "exchange" and "self-regulatory organization," as used in Rule 10.2(d), shall include, but are not limited to, any member of affiliate member of the Intermarket Surveillance Group.

.02 Any person or entity required to furnish information or testimony pursuant to Rule 10.2(d) shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Rule 10.2, relating to Exchange investigations. The proposed amendment would provide the Exchange with the authority to compel its members, member organizations, and others over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) to testify or furnish documentary materials in connection with regulatory investigations or examinations by other exchanges or self-regulatory organizations under certain circumstances.

Specifically, the Exchange is proposing to adopt new Rule 10.2(d) to provide that no member, member organization, person associated with a member or member organization, or other person or entity over whom the Exchange has jurisdiction, shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation or examination. Under the proposed rule change, this requirement would apply whenever the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to Rule 14.1[2] The proposal further provides that the requirements of Rule 10.2(d) shall apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.3.[3]

Under the proposed rule change, the Exchange defines in the Commentary the terms "exchange" and "self-regulatory organization," for purposes of Rule 10.2(d), to include, but not be limited to, any member or affiliate member of the Intermarket Surveillance Group.[4] Moreover, the Exchange in .02 of the Commentary makes explicit that persons or entities, required to furnish information or testimony pursuant to a regulatory agreement, will be afforded the same rights and procedural protections that such persons or entities would have if the Exchange had initiated the request for information or testimony.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–95–2 and should be submitted by April 11, 1995.

[2] Rule 14.1 provides that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement, and other regulatory purposes.

[3] Under the proposed rule, the Exchange would always act as an intermediary between another SRO and the Exchange member, member organization, or other designated person from whom information or testimony is being sought, for any inquiry made pursuant to an agreement under Rule 14.1. *See* letter from Michael D. Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, Division of Market Regulation, SEC, dated March 2, 1995.

[4] On July 14, 1983, the Intermarket Surveillance Group ("ISG") was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Sharing Group Agreement, July 14, 1983. The members of ISG are the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Incorporated, the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6937 Filed 3–20–95; 8:45 am]

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[Release No. 34–35479; File No. SR–Phlx–95–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing Criteria for Equity Linked Notes ("ELNs")

March 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 803 to adopt listing standards for equity linked notes ("ELNs"). The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add subsection (h) to Exchange Rule 803 to permit the Exchange to list and trade ELNs. ELNs are intermediate-term, hybrid securities, whose value is based in whole or in part, to the performance of a highly capitalized, actively traded U.S. common stock, non-convertible preferred stock, or foreign security that is traded in the U.S. in the form of sponsored American Depositary Receipts ("ADRs"), ordinary shares, or otherwise.[1] ELNs may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. ELNs may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity, and they may feature a "floor" on the minimum principal amount paid to holders upon maturity. A specific issue of ELNs, for example, may provide holders with a fixed semi-annual interest payment, while capping the maximum amount to be repaid upon maturity at 135% of the issuance price, with no minimum floor guarantee on the principal to be repaid at maturity. Another issue of ELNs might offer lower semi-annual payments based upon a floating interest rate[2] with a minimum floor for the repayment of principal of 75% of the issuance price. ELNs will be treated as equity instruments for, among other purposes, margin requirements. According to the Phlx, the flexibility available to an issuer of ELNs permits the creation of securities which offer issuers and investors the opportunity to more precisely focus on a specific investment strategy.

There are four components to the proposed listing standards for ELNs: (1) ELN issuer standards; (2) ELN offering standards; (3) underlying linked security standards; and (4) limitations on the size of ELN offerings.

1. Issuer Listing Standards

The issuer must be listed on or be an affiliate of a company listed on a national securities exchange or the Nasdaq National Market. Each issuer must also have a minimum tangible net worth of $150 million. Finally, the market value of an ELN offering, when combined with the market value of all other ELN offerings previously completed by the issuer and traded on a national securities exchange or through Nasdaq may not be grater than 25% of the issuer's tangible net worth at the time of issuance.

2. Offering Standards

In order to ensure adequate liquidity in the markets for ELNs, each issuance of an ELN must have: (1) A minimum public distribution of one million ELNs; (2) a minimum of 400 holders of the ELNs, unless the ELNs are traded in $1,000 denominations, in which case thee is no minimum number of holders required; (3) a minimum market value of $4 million; and (4) a term to maturity of two to seven years (although ELNs linked to a non-U.S. security (including a sponsored ADR) can not have a term longer than three years).

3. Underlying Linked Security Standards

In order to help ensure that ELNs will not have a disruptive effect on the market for the underlying securities, the linked securities must have sufficiently large market capitalizations and high trading volumes. Specifically, an underlying security must have: (1) A minimum market capitalization of $3 billion and trading volume in the United States of at least 2.5 million shares in the 12-month period preceding the listing of the ELN; (2) a minimum market capitalization of $1.5 billion and trading volume in the United States of at least 20 million shares in the 12-month period preceding the listing of the ELN; or (3) a minimum market capitalization of $500 million and trading volume in the United States of at least 80 million shares in the 12-month period preceding the listing of the ELN. In addition, if an issuer proposes to issue ELNs on a security that does not meet the market capitalization and trading volume standards set forth above, the Phlx, with the concurrence of the staff of the Commission, may evaluate the trading volume, public float, and market capitalization of that security, as well as other relevant factors, and determine on a case-by-case basis that it is appropriate to list ELNs overlying that security. The Phlx will submit a rule filing pursuant to Section 19(b) of the Act if so required by the Commission if significant regulatory concerns are raised by a proposed ELN offering that does not meet the above market capitalization and trading volume standards.[3]

The issuer of the linked security must be a reporting company under the Act and the underlying linked security must be traded on a national securities exchange or through Nasdaq and be

[1] The Phlx will notify the Commission if an issue of ELNs is structured so that it is convertible prior to maturity and will submit a rule filing pursuant to Section 19(b) of the Act prior to listing ELNs with such terms if the Commission so requires.

[2] The Phlx will notify the Commission if an issue of ELNs provides for periodic interest payments to holders based on a floating rate and will submit a rule filing pursuant to Section 19(b) of the Act prior to listing ELNs with such terms if the Commission so requires.

[3] In this connection, the Commission notes that any proposal to list an ELN linked to a security with a market capitalization of less than $500 million would raise significant regulatory concerns for which a Section 19(b) rule filing would be required.

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subject to last sale reporting pursuant to Rule 11Aa3–1 under the Act. Additionally, ELNs can be linked to certain non-U.S. companies[4] subject to reporting requirements under the Act whose securities are traded in the U.S. either as ordinary shares or sponsored ADRs, provided there are at least 2,000 holders of the underlying linked security. For ELNs linked to non-U.S. securities (including sponsored ADRs) either: (1) The Exchange must also have in place a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ELN is primarily traded (or in the case of sponsored ADRs, on the primary exchange where the security underlying the ADR is traded); or (2) the combined trading volume of the underlying security and other related securities occurring in the U.S. market represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the underlying security, other related securities, and other classes of common stock related to the underlying security over the six month period preceding the date of listing of the ELN. The U.S. market includes trading only on the U.S. self-regulatory organizations included in the Intermarket Surveillance Group[5] and linked through the Intermarket Trading System.[6]

[4] A non-U.S. company is any company formed or incorporated outside of the United States.

[5] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG, (and accordingly, of the U.S. market) are: the American Stock Exchange, Inc. ("Amex"); the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc. ("CBOE"); the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"); the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[6] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) the display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.

4. Limitations of Size of Particular ELN Offerings

Without the concurrence of the staff of the Commission, the issuance of ELNs relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. Further, without the concurrence of the staff of the Commission, the issuance of ELNs relating to any non-U.S. security (including sponsored ADRs) that is traded in the U.S. and is issued by a non-U.S. company subject to U.S. reporting requirements may not exceed: (1) 2% of the total shares outstanding worldwide provided at least 30% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of listing of the ELN; (2) 3% of the total shares outstanding worldwide provided at least 50% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of listing of the ELN; or (3) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of listing of the ELN. An ELN may not be linked to a non-U.S. security (including a sponsored ADR) where such security and all related securities had less than 30% of the worldwide trading volume occur in the U.S. during the six month period preceding the date of listing of the ELN. The Exchange may determine, on a case-by-case basis and with the concurrence of the staff of the Commission, to approve for listing ELNs that relate to more than these allowable percentages.[7]

Finally, because ELNs are linked to price movements in another security, the Exchange proposes three additional safeguards that are designed to satisfy the investor protection concerns raised by the trading of ELNs. First, for each ELN issue, the Exchange will distribute a circular to its membership[8] providing guidance concerning member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs. Second, members will have a duty of due diligence pursuant to Exchange Rule 746 to learn the essential facts relating to every customer trading ELNs prior to their first ELN transaction. Third, pursuant to Exchange Rule 747, a member must approve a customer's account for trading ELNs prior to the completion of the customer's first ELN transaction.

The Phlx represents that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Specifically, the Phlx believes the proposal strikes an appropriate balance between the Phlx's need to adapt and respond to innovations in the securities markets and the Phlx's concomitant need to ensure the protection of investors and the maintenance of fair and orderly markets. The Phlx believes the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by ELNs are able to list such products on the Exchange. Similarly, by providing for the distribution of circulars to the membership concerning member firm compliance responsibilities and requirements, the Phlx believes the proposal addresses any potential sales practice concerns that may arise in connection with ELNs. The Phlx also believes that the trading of ELNs will provide investors with important investment and hedging benefits that will serve to satisfy better their investment and portfolio management needs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[7] As with the market capitalization and trading volume requirements, the Commission notes that based on the proposed facts, the Phlx may be required to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address regulatory issues raised by any Phlx proposal to list ELNs related to more than the allowable percentages of outstanding shares of the underlying security.

[8] The Commission notes that the circular must be in a form approved by the Commission.

[9] 15 U.S.C. 78f(b)(5) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from February 22, 1995, it has become effective pursuant to Section 19(b) (3) (A) of the Act and Rule 19b–4 (e) (6) thereunder. The proposed ELN listing standards are virtually identical to the listing standards for equity linked notes previously approved by the Commission for NYSE,[10] the Amex,[11] the CBOE,[12] and the NASD.[13] Accordingly, because the Commission has already approved similar rules for other exchanges, the Phlx believes that summary effectiveness of the proposed rule change will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–09 and should be submitted by April 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Johathan G. Katz,

Secretary.

[FR Doc. 95–6842 Filed 3–20–95; 8:45 am]

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[10] *See* Securities Exchange Act Release Nos. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) (order originally approving the listing of ELNs on the NYSE); 33841 (March 31, 1994), 59 FR 16671 (April 7, 1994) (order approving revised market capitalization and trading volume requirements for the listing of ELNs on the NYSE); 34545 (August 18, 1994), 59 FR 43877 (August 25, 1994) (order approving the listing of ELNs on the NYSE linked to securities issued by non-U.S. companies).

[11] *See* Securities Exchange Act Release Nos. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (order originally approving the listing of ELNs on the Amex); 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993) (order approving revised market capitalization and trading volume requirements for the listing of ELNs on the Amex); 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (order approving the listing of ELNs on the Amex linked to securities issued by non-U.S. companies).

[12] *See* Securities Exchange Act Release No. 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994).

[13] *See* Securities Exchange Act Release No. 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994).

[14] The Commission notes that prior to listing any ELNs, the Exchange will be required to obtain approval from the staff of the Commission concerning the Exchange's surveillance procedures applicable to the trading ELNs.

[15] 17 CFR 200.30–3 (a)(12) (1994).

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Conversion Industries, Inc., Common Stock, No Par Value) File No. 1–10249

March 15, 1995

Conversion Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Company received a letter dated October 11, 1994, from the Exchange stating that it was considering delisting the Security because it believed that the Company had violated the Exchange's listing agreement and disclosure policies. The Company responded to the letter in writing to the Exchange dated November 3, 1994. In addition, the Company attended on November 3, 1994, a conference at the Exchange in which it made an extensive oral submission for the Exchange's consideration. Thereafter, the Company submitted voluminous documents in response to requests by the Exchange.

According to the Company, on November 23, 1994, the Company received a letter from the Exchange stating that the Exchange had made a determination to delist the Security.

Although the Company initially elected to appeal the Exchange's decision to delist the Security to the Exchange's Board of Governors, the Company has decided to settle matters by removing the Security from the Exchange. The Company believes that due to the impasses between the Exchange and the Company and the anticipated large expenditures of money and management time which would be required before a final resolution of the matters at issue could be obtained, it is in the best interest of the Company and its shareholders that matters be settled by delisting the Security from the Exchange.

The Exchange has also agreed that it would be in the best interest of the Exchange and the investing public to resolve this issue between the Company and the Exchange in this manner.

Any interested person may, on or before April 6, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6941 Filed 3–20–95; 8:45 am]

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[Rel. No. IC–20958; File No. 812–9308]

The Paul Revere Variable Annuity Insurance Company, et al.

March 15, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Paul Revere Variable Annuity Insurance Company ("Paul Revere"), Paul Revere Separate Account One (the "Account"), certain separate accounts that may be established by Paul Revere in the future to support certain variable deferred annuity contracts issued by Paul Revere (the "Other Accounts", collectively, with the Account, the "Accounts") and Marsh & McLennan Securities Corporation ("Marsh McLennan").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting Paul Revere to deduct from the assets of the Accounts the mortality and expense risk charge imposed under certain variable annuity contracts issued by Paul Revere (the "Existing Contracts") and under any other variable annuity contracts issued by Paul Revere which are materially similar to the Existing Contracts (the "Other Contracts", together, with the Existing Contracts, the "Contracts".

FILING DATE: The application was filed on October 26, 1994 and amended and restated on January 23, 1995. Applicants represent that an amendment to the application will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 10, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Judith A. Hasenauer, Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, P.O. Box 5108, Westport, Connecticut 06881.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendy F. Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Paul Revere, a stock life insurance company organized under Massachusetts law, is a wholly owned subsidiary of The Paul Revere Life Insurance Company, a Massachusetts corporation. The Paul Revere Life Insurance Company is wholly owned by the Paul Revere Corporation (the "Corporation"), also a Massachusetts corporation. The application states that, prior to October 26, 1993, the Corporation was wholly owned by Textron, Inc., a Delaware corporation. On that date, Textron, Inc. sold 17% of the Corporation to the public and retained 83% of the outstanding shares of the Corporation. The Account, established August 18, 1994 under Massachusetts law, is registered with the Commission as a unit investment trust. The Account will fund the Existing Contracts issued by Paul Revere. Applicants incorporate the registration statement on Form N–4 for the Account and the Existing Contracts (File No. 33–83320) into the application by reference. The Account is divided into a number of subaccounts, each of which invests in an underlying investment option. All of the investment options are registered with the Commission under the 1940 Act as open end management investment companies.

2. Marsh McLennan, a wholly owned subsidiary of Seabury & Smith, Inc., which his, in turn, a wholly owned subsidiary of Marsh & McLennan Companies, Inc., is a broker dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc. Marsh McLennan will serve as the distributor of the Contracts.

3. The Existing Contracts are individual flexible premium variable annuity deferred contracts which provide for a guaranteed death benefit during the accumulation phase. Paul Revere proposes to market the Existing Contracts to members of various associations that sponsors benefit programs. The minimum initial premium is $2,500 and the minimum for subsequent premiums is $500. If the owner of an Existing Contract has elected the automatic premium option, a minimum payment of $200 will be accepted. The maximum total premium payments which Paul Revere will accept is $1,000,000. The application states that there are no charges for sales load. Therefore, neither premiums nor amounts withdrawn are subject to a charge for sales load.[1]

4. Applicants state that the current practice of Paul Revere is to deduct for premium taxes when those taxes become due and payable to the states. Thus, premium taxes relating to a Contract may be deducted from either the premium payments made or the value of the Contract. The application states that premium taxes generally range from 0% to 4%.

5. Paul Revere presently permits unlimited transfers. The owner of an Existing Contract may transfer all or part of the interest in a subaccount to another subaccount; or, during annuitization, from a subaccount to the general account of Paul Revere. These transfers are permitted without charge so long as the designated number of transfers has not been exceeded. If transfers are made in excess of the free number of transfers, presently unlimited, Paul Revere will deduct a transfer fee from the amount transferred equal to the lesser of $25 or 2% of the amount transferred. The minimum amount which may be transferred is $500 (from one or multiple subaccounts); however, the entire interest in the subaccount must be transferred, if, prior to or as a result of the transfer, the interest in the subaccount is less than $500.[2]

6. On each Contract anniversary, Paul Revere deducts a Contract maintenance charge of $25 from Contracts with a Contract value of less than $25,000. During annuitization, the Contract maintenance charge is $2.00 per month for all Contracts and is deducted from annuity payments. The application states that the fee is to reimburse Paul Revere for its administrative expenses. Applicants further state that the charge has been set at a level so that, when taken together with the annual administrative charge, Paul Revere will not make a profit from the two charges assessed for administration.

[1] Applicants represent that an amendment to the application will be filed during the notice period and that the amendment will include the representation that the Contracts are not subject to a charge for sales load.

[2] Applicants represent that an amendment to the application will be filed during the notice period and that the amendment will indicate the requirements for transfers from one or more subaccounts.

7. Paul Revere deducts an annual administrative charge equal to .15% of the average daily net asset value of the Account. Applicants represent that this charge, together with the Contract maintenance charge, is to reimburse Paul Revere for expenses incurred in establishing and maintaining both the Account and the Contracts. Applicants also state that Paul Revere does not intend to profit from this charge and that Paul Revere will monitor the charge to ensure that it does not exceed expenses. Applicants state that they will rely upon Rule 265a–1 under the 1940 Act in deducting both the Contract maintenance charge and the annual administrative charge.

Paul Revere will impose a daily charge equal to an annual effective rate of .80% of the value of the net assets of the Account to compensate Paul Revere for assuming certain mortality and expense risks in connection with the Contracts. Applicants state that approximately .50% of the .80% charge is attributable to mortality risk while approximately .30% is attributable to expense risk. The application states that Paul Revere reserves the right to increase the charge to a maximum of 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs of the risks undertaken, Paul Revere will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Paul Revere and will be available for any corporate purpose, including payment of expenses relating to the distribution of the Contracts. The application states that Paul Revere expects a profit from the mortality and expense risk charge.

9. Applicants state that the mortality risk borne by Paul Revere consists of: (a) The risk of guaranteeing to make monthly annuity payments in accordance with the annuity option selected by the Contract owner regardless of how long the annuitant may live; (b) the risk of guaranteeing the annuity purchase rates, for either a fixed or a variable annuity, for the annuity options under the Contracts; and (c) the risk of guaranteeing a death benefit.

10. Applicants state that Paul Revere assumes an expense risk under the Contracts. According to Applicants, this is the risk that the charges for administrative services under the Contracts will be insufficient to cover actual administrative expenses.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks under the Contracts. Applicants state that the requested extension of relief to the Other Accounts and the Other Contracts is appropriate in the public interest. Applicants opine that the relief will promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications and will, therefore, reduce administrative expenses and maximize efficient use of resources. Applicants assert that the delay and expense involved in having to repeatedly seek exemptive relief would impair the ability of Paul Revere to take advantage effectively of business opportunities as those opportunities arise. Applicants posit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Finally, Applicants state that were Paul Revere required to seek repeated exemptive relief with respect to the issues addressed in the application, no additional benefit or protection would be provided to investors through the redundant filings.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants assert that the charge for morality and expense risks is reasonable compensation for the risks assumed.

4. Applicants represent that the proposed charge of .80% and the maximum charge of 1.25% for the mortality and expense risks assumed by Paul Revere is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information regarding mortality risks, taking into consideration such factors as: the guaranteed annuity purchase rates; the expense risks, the estimated costs for product features; and the industry practice with respect to comparable contracts. Applicants represent that Paul Revere will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of the analysis by Paul Revere.

5. Applicants assess no charge for sales load. To the extent that distribution costs are not covered, Paul Revere will recover its distribution costs from the assets of the general account. These assets may include that portion of the mortality and expense risk charge which is profit to Paul Revere. Applicants represent that Paul Revere has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by Paul Revere at its principal office and will be made available to the Commission.[3]

6. Paul Revere also represents that the Accounts will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by either the company's board of directors of the board of trustees, as applicable, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6935 Filed 3–20–95; 8:45 am]

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[3] Applicants represent that an amendment to the application will be filed during the notice period and that such amendment will include the representations contained in paragraph 5 of this notice.

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Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Polaris Industries, Inc., Common Stock, $.01 Par Value) File No. 1–11411

March 15, 1995.

Polaris Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex and the Pacific Stock Exchange, Inc. ("PSE") the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on February 24, 1995, and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the listing of its securities on the NYSE, the Amex and the PSE. The Company does not see any particular advantage in the trading of the Security in both the Amex and the NYSE.

Any interested person may, on or before April 6, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6940 Filed 3–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20960/812–9352]

The Roulston Family of Funds, et al.; Notice of Application

March 16, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Roulston Family of Funds ("Roulston Funds"), the Advisors' Inner Circle Fund ("Advisors' Fund), and Roulston & Company, Inc. ("Roulston").

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the series of the Roulston Funds to acquire all of the assets of corresponding series of the Advisors' Fund, in exchange for shares of the Roulston Funds series. Because of certain affiliations, the funds may not rely on rule 17a–8 under the Act.

FILING DATES: The application was filed on December 9, 1994 and amended on February 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 10, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Roulston Funds and Roulston, 4000 Chester Avenue, Cleveland, Ohio 44103; Advisors' Fund, 2 Oliver Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Roulston Funds, an Ohio business trust, is registered as an open-end management investment company. Roulston Midwest Growth Fund ("Roulston 1"), Roulston Growth and Income Fund ("Roulston 2"), and Roulston Government Securities Fund ("Roulston 3") (collectively, the "Acquiring Funds") are series of the Roulston Funds. Roulston Research Corporation, a wholly-owned subsidiary of Roulston, is the principal underwriter to the Roulston Funds and receives no compensation for serving in such capacity. Roulston Funds, however, has adopted a rule 12b–1 plan pursuant to which Roulston Research will provide certain shareholder services and will be paid a fee at an annual rate of .25% of the average aggregate net asset value of shares held in customer accounts during the period for which Roulston Research provides such services. The Fund/Plan Services Inc. is the administrator and transfer agent to the Roulston Funds.

2. Advisors' Fund, a Massachusetts business trust, is registered as an open-end management investment company. Advisors' Fund has fifteen series. Three of these series are Roulston Midwest Growth Fund ("Advisors 1"), Roulston Growth and Income Fund ("Advisors 2"), and Roulston Government Securities Fund ("Advisors 3") (collectively, the "Acquired Funds"). SEI Financial Services Company, a wholly-owned subsidiary of SEI Corporation ("SEI"), is the principal underwriter to the Advisors' Fund and receives no compensation for serving in such capacity. SEI Financial Management Corporation, a wholly-owned subsidiary of SEI, provides administrative and shareholder services for the Acquired Funds. Supervised Service Company, Inc. serves as transfer agent and dividend disbursing agent for the Acquired Funds.

3. Roulston serves as investment adviser to both the Acquiring Funds and Acquired Funds. Thomas H. Roulston, chairman and a director of Roulston, together with members of his immediate family, own a controlling interest in Roulston and beneficially owns more than 5% of the outstanding shares of Advisors 2 and Advisors 3.

4. Roulston 1, Roulston 2, and Roulston 3 were created to acquire the assets and liabilities respectively of Advisors 1, Advisors 2, and Advisors 3. In exchange for these assets, each Acquired Fund will receive shares of the respective Acquiring Fund having an aggregate net asset value equal to the value of net assets the Acquired Fund exchanged. After the exchange, each Acquiring Fund will liquidate and distribute *pro rata* to its respective unitholders the shares of the Acquiring Fund it received pursuant to the reorganization. Unitholders of the Acquired Funds will not incur any sales load in connection with their acquisition of Acquiring Fund shares.

5. In connection with the proposed reorganization, the board of trustees of Roulston Funds, including a majority of its disinterested trustees, approved an agreement and plan of reorganization (the "Plan") on October 20, 1994. The board of trustees of the Advisors' fund, including a majority of its disinterested trustees, approved the Plan on November 14, 1994. In assessing the Plan, each board considered the following factors: (a) The compatibility of the objectives, policies and restrictions of the respective Acquiring Funds and Acquired Funds, (b) the terms and conditions of the Plan, (c) the tax-free nature of the reorganization, and (d) the expense ratios of the Acquiring Funds and Acquired Funds, including certain fee waivers.[1] In addition, applicants represent that a principal business consideration influencing Roulston's recommendation of the reorganization, and the Roulston board's approval of the reorganization, was their belief, based in part on input from unitholders, that services to unitholders of the Acquired Funds, particularly transfer agency services, could be more effectively structured, delivered, and monitored in a different organizational setting.

6. The Acquired Funds will submit the Plan to their unitholders for approval at a meeting scheduled for March 24, 1995. Applicants will deliver to unitholders of the Acquired Funds a prospectus/proxy statement describing the Plan prior to their vote. In addition to unitholder approval, the consummation of the reorganization is conditioned upon, among other things, receipt from the SEC of the order requested herein.

7. The expenses of the reorganization are to be paid by the party directly incurring such expenses, subject to certain exceptions set forth in the Plan. Applicants estimate the expenses of the reorganization to be $70,000, of which Roulston Funds will pay $50,000 and Advisors' Fund will pay $20,000.

[1] Roulston and Roulston Research have agreed to waive their respective investment advisory and 12b–1 fees and absorb certain expenses for one year following the reorganization to the extent necessary to ensure that the expense ratios of the Acquiring Funds do not exceed certain limits.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees and/or common officers provided that certain conditions are satisfied. Applicants may not rely on rule 17a–8. Thomas H. Roulston may be an affiliated person of the Acquiring Funds because he may indirectly control the Acquiring Funds by owning, together with his immediate family, a controlling interest in Roulston. Mr. Roulston is also an affiliated person of two of the Acquired Funds because he beneficially owns more than 5% of the outstanding shares of these funds. Therefore, the Acquiring Funds may be deemed affiliated with the Acquired Funds for reasons other than those set forth in the rule.

3. Applicants, however, believe that the terms of the reorganization satisfy the standards of section 17(b). Each Fund's board, including the disinterested trustees, has reviewed the terms of the reorganization and have found that participation in the reorganization as contemplated by the Plan is in the best interests of the Acquiring Funds and Acquired Funds, and that the interests of the unitholders of each Fund will not be diluted as a result of the reorganization. Each board also considered the fact that the Acquiring Funds were established for the express purpose of acquiring the assets of the Acquiring Funds, and, therefore, the objectives of each Acquiring Fund are identical or substantially similar to that of its corresponding Acquired Fund. Applicants further submit that the terms of the reorganization, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6936 Filed 3–20–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: March 13, 1995.

Joseph Guttentag,

International Tax Counsel.

[FR Doc. 95–6973 Filed 3–20–95; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1995

AGENCY: Internal Revenue Service (IRS), Treasury.

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60
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54
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ACTION: Publication of inflation adjustment factor and reference prices for calendar year 1995 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 1995 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 1995 inflation adjustment factor and reference prices apply to calender year 1995 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

INFLATION ADJUSTMENT FACTOR: The inflation adjustment factor for calendar year 1995 is 1.0430.

REFERENCE PRICES: The reference prices for calendar year 1995 are 5.4¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass. The reference price for electricity produced from closed-loop biomass, as defined in section 45(c)(2), is based on a determination under section 45(d)(2)(C) that in calendar year 1994 there were no sales of electricity generated from closed-loop biomass energy resources under contracts entered into after December 31, 1989.

Because the 1995 reference prices for electricity produced from wind and closed-loop biomass energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 1995.

CREDIT AMOUNT: As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1%. Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 1995 under section 45(a) is 1.6¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass and wind energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:DOM:P&SI:5, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3040 (not a toll-free call).

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 95–6923 Filed 3–20–95; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–19; OTS No. 12609]

American Savings Association, Portsmouth, Ohio; Approval of Conversion Application

Notice is hereby given that on March 15, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of American Savings Association, Portsmouth, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: March 16, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–6920 Filed 3–20–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–18; OTS No. 03952]

First Federal Savings and Loan Association of Ashland, Kentucky, Ashland, Kentucky; Approval of Conversion Application

Notice is hereby given that on February 13, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Ashland, Kentucky, Ashland, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: March 16, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–6921 Filed 3–20–95; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 54

Tuesday, March 21, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Tuesday, March 21, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Iron Powered Supplement Petition PP 94–1

The staff will brief the Commission on options for Commission action on petition PP 94–1 from Douglas Ingoldby of Nutritech, Inc. requesting an exemption from the child-resistant packaging requirements for certain iron-containing dietary supplement powders.

For a recorded message containing the latest agenda information, call (303) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 15, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–7081 Filed 3–17–95; 3:41 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

DATE: March 29–31, 1995.

PLACE: United States Court of Appeals for the Federal Circuit ("Federal Circuit"), Courtroom No. 1, 717 Madison Place, N.W., Washington, D.C.; and Room 6005, 1730 K Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following matter in open session at Federal Circuit in accordance with the schedule and division of issues set forth below:

In Re: Contents of Respirable Dust Sample Alteration Citations, and Keystone Coal Mining Corp., Master Docket No. 91–1 and Docket Nos. PENN 91–451–R, etc. (issues include whether the judge erred in his framing of the Secretary's burden of proof and in finding that the Secretary failed to carry his burden of proving that the weight of 75 cited filters from the Urling No. 1 Mine was intentionally altered by Keystone Coal Mining Corp.)

Wednesday, March 29, 1995

Oral argument will begin at 9:30 a.m. at the Federal Circuit addressing the issues of Burden of Proof and Scientific Evidence.

An afternoon session of oral argument will begin at 2:00 p.m. at the Federal Circuit addressing the issues of Statistical Evidence, Credibility Resolutions and Exclusion of Evidence of Criminal Tampering in Other Cases.

Following oral argument, the Commission will consider this matter in Room 6005, 1730 K Street, N.W., Washington, D.C. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

Thursday, March 30, 1995

Oral argument will begin at 10:00 a.m. at the Federal Circuit and will cover issues not previously addressed.

At the completion of the morning session, the Commission will determine whether an afternoon session will be necessary. If further argument is deemed necessary, the session shall commence at 2:00 p.m. at the Federal Circuit.

Following oral argument, the Commission will consider and act upon this matter in Room 6005, 1730 K Street, N.W., Washington, D.C. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

Friday, March 31, 1995

At 10:00 a.m., the Commission will consider and act upon this matter at Room 6005, 1730 K Street, N.W., Washington, D.C. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: March 15, 1995.

Jean H. Ellen,

Chief of Docket Clerk.

[FR Doc. 95–7086 Filed 3–17–95; 3:43 pm]

BILLING CODE 6735–01–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 17, 1995.

PLACE: On board *Mississippi V* at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

TIME AND DATE: 9:00 a.m., April 18, 1995.

PLACE: On board *Mississippi V* at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

TIME AND DATE: 3:00 p.m., April 19, 1995.

PLACE: On board *Mississippi V* at City Front, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

TIME AND DATE: 9:00 a.m., April 21, 1995.

PLACE: On board *Mississippi V* at Corps of Engineers District Depot Facility, Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by President of the Commission on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

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CONTACT PERSON FOR MORE INFORMATION: Mr. Noel D. Caldwell, telephone 601–634–5766.

Noel D. Caldwell,

Executive Assistant, Mississippi River Commission.

[FR Doc. 95–7087 Filed 3–17–95; 3:44 pm]

BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 20, 27, April 3, and 10, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 20

Wednesday, March 22

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: John Hickey, 301–415–7192)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
Briefing on Status of Reactor Regulatory Reform Initiatives (Public Meeting)
(Contact: Gene Imbro, 301–415–2969)

Wednesday, March 29

10:00 a.m.
Briefing by National Academy of Sciences on Status of Independent Review of Medical Use Program (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)
2:00 p.m.
Briefing on Lessons Learned from Enhanced Participatory Rulemakings (Public Meeting)
(Contact: Chip Cameron, 301–415–1642)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule to Eliminate Requirement for Prior Commission Approval for a Specific ISFSI License at a Reactor Site (10 CFR Part 72) (Tentative)
b. Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of April 3—Tentative

Wednesday, April 5

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting)
(Contact: Edward Butcher, 301–415–3183)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Note: Affirmation sessions are initially scheduled and announced to the public of a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc. gov or gkt@nrc. gov.

Dated: March 17, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–7070 Filed 3–17–95; 2:10 pm]

BILLING CODE 7590–01–M

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federal register

Tuesday
March 21, 1995

Part II

Department of Energy

10 CFR Part 1003 et al.
Office of Hearings and Appeals Procedural Regulations; Payments Equal to Taxes Provisions of the Nuclear Waste Policy Act of 1982, As Amended, Interpretation and Procedures; Final Rules

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DEPARTMENT OF ENERGY

10 CFR Part 1003

RIN 1901–AA55

Office of Hearings and Appeals Procedural Regulations

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its regulations by adding a new part to contain procedural regulations governing proceedings before the Office of Hearings and Appeals (OHA), a quasi-judicial branch of the DOE, pertaining to matters within the jurisdiction of that Office. These rules streamline and distill the procedures governing the conduct of proceedings before the OHA and update pertinent filing information. They will be used by OHA in most cases that do not involve the former federal petroleum price and allocation control regulations.

EFFECTIVE DATE: These rules become effective April 20, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–2383, Internet: roger.klurfeld@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion
II. Procedural Requirements

I. Discussion

The Office of Hearings and Appeals (OHA) is a quasi-judicial body reporting to the Secretary of Energy. It is responsible for conducting most informal adjudicative proceedings of DOE where there is provision for separation of functions, other than those which are subject to the jurisdiction of the Federal Energy Regulatory Commission. In connection with these duties, OHA holds hearings, receives evidence, develops the record, and issues final agency determinations, which are subject to review in the federal courts. Except for regulations governing proceedings before the Board of Contract Appeals and other procurement and financial assistance appeals boards in DOE (which are independent components of the Office of Hearings and Appeals and governed by their own rules), procedural regulations governing OHA practice generally have appeared before today in part 205 of title 10 of the Code of Federal Regulations. Part 205 is a part of chapter II, subchapter A of the DOE regulations, and was designed to apply to matters involving the former oil price and allocation control regulations which were in effect during the period 1973 through January 1981. Part 205 will be retained until the remaining oil-related proceedings are completed. Because those oil-related proceedings are winding down, and the OHA is conducting a variety of other informal adjudications for the Department, it is now appropriate that the OHA procedural regulations should appear in chapter X of title 10, which contains the general provisions of DOE regulations. The rules issued today will be organized as a new part 1003 within chapter X, and will be used by OHA in most cases that do not involve the former federal petroleum regulations. At the same time, these new procedures governing the conduct of proceedings before the OHA have been streamlined, and pertinent filing information has been updated.

A Notice of Proposed Rulemaking was published in the **Federal Register** on July 7, 1994 (59 FR 34767). No comments were received.

Apart from general filing procedures, the regulations issued today set forth OHA procedures for adjudicating various applications, petitions, motions and related requests filed by the public. These regulations include procedures for the filing of: (1) Applications for Exception from a DOE rule, regulation or action having the effect of a rule as defined by 5 U.S.C. 551(4); (2) Appeals of DOE orders; (3) Applications for Stay of DOE orders; (4) Motions for Modification or Rescission of OHA orders; (5) Requests for Conferences and Hearings before OHA; and (6) Petitions for Special Redress or Other Relief.

These rules are not intended to grant by themselves any new authority to the Office of Hearings and Appeals to conduct informal adjudications. They are designed to provide standard procedural rules that may be used to cover a variety of situations that may be encountered by the many different programs that the Department implements.

There are two ways these regulations become applicable. First, the procedures outlined in these rules become applicable where program rules specifically reference them and state that a member of the public can make a request for relief under these rules. For example, the program regulations that the Department promulgated in the Energy Conservation Program for Consumer Products state that any person receiving an order may file an appeal with the Office of Hearings and Appeals using that Office's appellate rules. See 10 CFR 430.27(n).[1]

Second, these rules may be applicable where a statute requires or authorizes the Department to provide procedures that permit the public to seek redress, and the appropriate departmental official has delegated the responsibility to implement that requirement to the Office of Hearings and Appeals. For example, section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7101 *et seq.*) requires the Secretary of Energy to provide for the making of adjustments to a rule or regulation issued under four statutes—the Emergency Petroleum Allocation Act of 1973 (since expired), the Federal Energy Administration Act of 1974 (FEAA), the Energy Supply and Environmental Coordination Act of 1974, and the Energy Policy and Conservation Act—as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens. The Secretary has delegated that responsibility to the Office of Hearings and Appeals, which is promulgating procedures in subpart B today by which members of the public may seek an exception from rules or regulations issued under the three named statutes which remain in effect.[2] (See also part 205, subpart D, for exception provisions applicable to the oil program.)

Despite the establishment of standard procedures in these rules, there may be situations where the Office of Hearings and Appeals needs to use procedures specific to the particular needs of a program. In those situations, DOE program regulations themselves contain procedures governing OHA proceedings conducted under authority of those particular regulations, rather than a reference to OHA procedural rules. For example, the DOE Contractor Employee Protection Program contains procedural rules governing OHA proceedings under 10 CFR part 708. Similarly, procedural rules governing OHA proceedings involving eligibility for access to classified matter or special nuclear material are contained in 10 CFR part 710. Under these circumstances, the rules in the program rules would govern OHA proceedings in those matters, and the rules in part 1003 would not apply.

With the exception of the regulations governing the filing and adjudication of an Application for Exception, the rules promulgated today correspond to nearly identical procedural rules contained in 10 CFR part 205, which were promulgated in the 1970's to adjudicate matters relating to the federal oil regulations. Regulations concerning the filing and adjudication of an Application for Exception have been revised and are contained in 10 CFR part 1003, subpart B. Generally, an Application for Exception may be filed by a person seeking an exception from a DOE regulatory requirement, where such relief is authorized by the pertinent regulations or underlying statute. Similar to the regulations appearing in 10 CFR part 205, subpart D, the rules promulgated today provide that an aggrieved person may file an Application for Exception from a DOE regulation on the basis that the specific regulatory requirement results in a serious hardship, gross inequity or unfair distribution of burdens. The rules set forth in part 1003, subpart B, present a simpler procedure than the rules in part 205, subpart D, by (1) eliminating the issuance of a Proposed Decision and Order and related procedures prior to issuance of a final Decision and Order, and (2) providing for an administrative appeal of the final Decision and Order by an aggrieved party directly to OHA, except in exception proceedings brought under section 504 of the DOE Act which will continue to be appealable to the Federal Energy Regulatory Commission. The rules make the adjudication of Applications for Exception more effective since they are more practicable than the more complex procedures of part 205, subpart D, which were formulated in contemplation of the federal oil regulations.

It is the intent of DOE to require parties to pursue an administrative appeal prior to seeking judicial review. The Supreme Court has interpreted section 10(c) of the Administrative Procedure Act (APA) (5 U.S.C. 704) to provide that, with respect to actions brought under the APA, an administrative appeal is a prerequisite to judicial review only when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review. *Darby v. Cisneros*, 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993). Accordingly, new 10 CFR 1003.30 provides that a person aggrieved by a DOE order appealable under subpart C of these regulations has not exhausted administrative remedies until an appeal has been filed and an order granting or denying the appeal has been issued. In addition, section 1003.30 provides that a person filing an appeal must also file an "Application for Stay" under subpart D of part 1003 if the grant of such a stay is necessary to render the administrative action inoperable and thus preclude judicial review pending final OHA action on the appeal.

[1] Elsewhere in today's **Federal Register**, DOE is changing existing references in program rules from part 205 to part 1003. For instance, the DOE is modifying section 430.27(n) of 10 CFR part 430 (DOE Energy Conservation Program for Consumer Products) to provide that an aggrieved person filing an appeal under that part shall proceed under subpart C of the new part 1003, in place of subpart H of part 205. Future rulemakings which invoke OHA's adjudicatory authority will refer to the rules contained in part 1003 as the operative administrative process.

[2] Similarly under delegation to OHA, persons may petition for relief under subpart G (Private Grievances and Redress) with respect to those program functions assigned to DOE under the FEAA which are not oil related. (See FEAA section 21, 15 U.S.C. 780.)

II. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulations do not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under Executive Order 12612.

C. Regulatory Flexibility Analysis

These regulations were reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires preparation of a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small entities. This action essentially recodifies existing procedural regulations. DOE, accordingly, certifies that there will not be a significant and adverse economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

D. National Environmental Policy Act

The rules issued today are strictly procedural in nature. Preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required for such rules under Appendix A to subpart D of 10 CFR part 1021. More specifically, DOE has determined that this rule is covered under the Categorical Exclusion found in paragraph A.6 of Appendix A to subpart D of part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Paperwork Reduction Act

There will be no additional paperwork burden imposed by the rules issued today. Therefore, the goals of the Paperwork Reduction Act are not diminished by the rules.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's rule meets the requirements of sections 2(a) and (b)(2) of Executive Order 12778.

List of Subjects in 10 CFR Part 1003

Administrative practice and procedure, Appeal procedures, Hearing and appeal procedures, Practice and procedure.

Issued in Washington, DC, on March 14, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, title 10, chapter X of the CFR is amended by adding a new part 1003 to read as set forth below:

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PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

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Authority: 15 U.S.C. 761 *et seq.*; 42 U.S.C. 7101 *et seq.*

Subpart A—General Provisions

§ 1003.1 Purpose and scope.

This part establishes the procedures to be utilized and identifies the sanctions that are available in most proceedings before the Office of Hearings and Appeals of the Department of Energy. These procedures provide standard rules of practice in a variety of informal adjudications when jurisdiction is vested in the Office of Hearings and Appeals. Any or all of the procedures contained in this part may be incorporated by reference in another DOE rule or regulation which invokes the adjudicatory authority of the Office of Hearings and Appeals. The procedures may also be made applicable at the direction of an appropriate DOE official if incorporated by reference in the delegation. These rules do not apply in instances in which DOE regulations themselves contain procedures governing OHA proceedings conducted under authority of those particular regulations. (E.g., 10 CFR part 708–DOE Contractor Employee Protection Program; 10 CFR part 710–Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.) These rules also do not apply to matters which relate specifically to the federal oil regulations (10 CFR parts 210, 211, and 212) and which are governed by the procedures contained in 10 CFR part 205, or to matters before the DOE Board of Contract Appeals or other procurement and financial assistance appeals boards, which are governed by their own rules.

§ 1003.2 Definitions.

(a) As used in this part:

Action means an order issued, or a rulemaking undertaken, by the DOE.

Aggrieved, with respect to a person, means adversely affected by an action of the DOE.

Conference means an informal meeting between the Office of Hearings and Appeals and any person aggrieved by an action of the DOE.

Director means the Director of the Office of Hearings and Appeals or duly authorized delegate.

DOE means the Department of Energy, created by the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Duly authorized representative means a person who has been designated to appear before the Office of Hearings and Appeals in connection with a proceeding on behalf of a person interested in or aggrieved by an action of the DOE. Such appearance may consist of the submission of a written document, a personal appearance, verbal communication, or any other participation in the proceeding.

Exception means the waiver or modification of the requirements of a rule, regulation or other DOE action having the effect of a rule as defined by 5 U.S.C. 551(4) under a specific set of facts, pursuant to subpart B of this part.

Federal legal holiday means the first day of January, the third Monday of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the eleventh day of November, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by federal statute or Executive order.

OHA means the Office of Hearings and Appeals of the Department of Energy.

Order means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of DOE in a matter other than rulemaking but including licensing. This definition does not include internal DOE orders and directives issued by the Secretary of Energy or delegate in the management and administration of departmental elements and functions.

Person means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

Proceeding means the process and activity, and any part thereof, instituted by the OHA, either on its own initiative or in response to an application, complaint, petition or request submitted by a person, that may lead to an action by the OHA.

SRO means a special report order issued pursuant to § 1003.8(b) of this part.

(b) Throughout this part the use of a word or term in the singular shall include the plural, and the use of the male gender shall include the female gender.

§ 1003.3 Appearance before the OHA.

(a) A person may make an appearance, including personal appearances in the discretion of the OHA, and participate in any proceeding described in this part on his own behalf or by a duly authorized representative.

Any application, appeal, petition, or request filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative. Falsification of such certification will subject such person to the sanctions stated in 18 U.S.C. 1001.

(b) *Suspension and disqualification.* The OHA may deny, temporarily or permanently, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the OHA—

(1) To have made false or misleading statements, either verbally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the person seeking an OHA action; or

(4) To have engaged in or to be engaged in contumacious conduct that substantially disrupts a proceeding.

§ 1003.4 Filing of documents.

(a) Any document filed with the OHA must be addressed as required by § 1003.11, and should conform to the requirements contained in § 1003.9. All documents and exhibits submitted become part of an OHA file and will not be returned.

(b) A document submitted in connection with any proceeding transmitted by first class United States mail and properly addressed is considered to be filed upon mailing.

(c) Hand-delivered documents to be filed with the OHA shall be submitted to Room 1E–234 at 1000 Independence Avenue, S.W., Washington, D.C., on business days between the hours of 2:00 p.m. and 4:30 p.m.

(d) Documents hand delivered or received electronically after regular business hours are deemed filed on the next regular business day.

§ 1003.5 Computation of time.

(a) *Days.* (1) Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the OHA, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a federal legal holiday.

(2) Saturdays, Sundays and federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(b) *Hours.* If the period of time prescribed in an order issued by the OHA is stated in hours rather than days, the period of time shall begin to run upon actual notice of such order, whether by verbal or written communication, to the person directly affected, and shall run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended or rescinded. When a written order is transmitted by verbal communication, the written order shall be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice or other document and the order, notice or other document is served solely by mail, 3 days shall be added to the prescribed period.

§ 1003.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the OHA upon good cause shown.

§ 1003.7 Service.

(a) All documents required to be served under this part shall be served personally or by first class United States mail, except as otherwise provided.

(b) Service upon a person's duly authorized representative shall constitute service upon that person.

(c) Official United States Postal Service receipts from certified mailing shall constitute evidence of service.

§ 1003.8 Subpoenas, special report orders, oaths, witnesses.

(a) In accordance with the provisions of this section and as otherwise authorized by law, the Director may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(b) The Director may issue a Special Report Order requiring any person subject to the jurisdiction of the OHA to file a special report providing information relating to the OHA proceeding, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required.

(c) The Director, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(d) Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may file a request for review of the subpoena or SRO with the Director. The Director then shall provide notice of receipt to the person requesting review, may extend the time prescribed for compliance with the subpoena or SRO, and may negotiate and approve the terms of satisfactory compliance.

(e) If the subpoena or SRO is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or SRO shall be effective as issued; and

(2) The person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.

(f) There is no administrative appeal of a subpoena or SRO.

(g) A subpoena or SRO shall be served upon a person named in the document by delivering a copy of the document to the person named.

(h) Delivery of a copy of a subpoena or SRO to a natural person may be made by:

(1) Handing it to the person;

(2) Leaving it at the person's office with the person in charge of the office;

(3) Leaving it at the person's dwelling or usual place of abode with a person of suitable age and discretion who resides there;

(4) Mailing it to the person by certified mail, at his last known address; or

(5) Any method that provides the person with actual notice prior to the return date of the document.

(i) Delivery of a copy of a subpoena or SRO to a person who is not a natural person may be made by:

(1) Handing it to a registered agent of the person;

(2) Handing it to any officer, director, or agent in charge of any office of such person;

(3) Mailing it to the last known address of any registered agent, officer, director, or agent in charge of any office of the person by certified mail; or

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(4) Any method that provides any registered agent, officer, director, or agent in charge of any office of the person with actual notice of the document prior to the return date of the document.

(j) A witness subpoenaed by the OHA may be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(k) If in the course of a proceeding a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage may be paid by the OHA if the person shows:

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person who requested that the subpoena be issued would suffer a serious hardship if required to pay the witness fees and mileage.

(l) If any person upon whom a subpoena or SRO is served pursuant to this section refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the appropriate United States District Court to enforce the subpoena or SRO.

(m) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that:

(1) A diligent search has been made for each document responsive to the subpoena; and

(2) To the best of his knowledge, information, and belief each document responsive to the subpoena is being produced.

(n) Any information furnished in response to an SRO shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom it was directed or his authorized agent who actually provides the information that:

(1) A diligent effort has been made to provide all information required by the SRO; and

(2) All information furnished is true, complete, and correct.

(o) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason for failing to comply with the subpoena or SRO. If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (m) or (n) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

(p) If testimony is taken pursuant to a subpoena, the Director shall determine whether the testimony shall be recorded and the means by which the testimony is recorded.

(q) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees. However, the Director may deny the request for good cause. Upon proper identification, any witness or his attorney has the right to inspect the official transcript of the witness' own testimony.

(r) The Director may sequester any person subpoenaed to furnish documents or give testimony. Unless permitted by the Director, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(s) A witness whose testimony is taken may be accompanied, represented and advised by his attorney as follows:

(1) Upon the initiative of the attorney or witness, the attorney may advise his client, in confidence, with respect to the question asked his client, and if the witness refuses to answer any question, the witness or his attorney is required to briefly state the legal grounds for such refusal; and

(2) If the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(t) The Director shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. OHA may take actions as the circumstances may warrant in regard to any instances where any attorney refuses to comply with directions or provisions of this section.

§ 1003.9 General filing requirements.

(a) *Purpose and scope.* The provisions of this section shall apply to all documents required or permitted to be filed with the OHA. One copy of each document must be filed with the original, except as provided in paragraph (f) of this section. A telefax filing of a document will be accepted only if immediately followed by the filing by mail or hand-delivery of the original document.

(b) *Signing.* Any document that is required to be signed, shall be signed by the person filing the document. Any document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative. (A false certification is unlawful under the provisions of 18 U.S.C. 1001.) The signature by the person or duly authorized representative constitutes a certificate by the signer that the signer has read the document and that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact, warranted under existing law, and submitted in good faith and not for any improper purpose such as to harass or to cause unnecessary delay. If a document is signed in violation of this section, OHA may impose the sanctions specified in section 1003.3 and other sanctions determined to be appropriate.

(c) *Labeling.* An application, petition, or other request for action by the OHA should be clearly labeled according to the nature of the action involved both on the document and on the outside of the envelope in which the document is transmitted.

(d) *Obligation to supply information.* A person who files an application, petition, appeal or other request for action is under a continuing obligation during the proceeding to provide the OHA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, appeal or request for action that is subsequently filed by that person with any DOE office.

(e) *The same or related matters.* A person who files an application, petition, appeal or other request for action by the OHA shall state whether, to the best knowledge of that person, the same or related issue, act or transaction has been or presently is being considered or investigated by any other DOE office, other federal agency, department or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with any proceeding described in this part. In addition, the person shall state whether contact has been made by the person or one acting on his behalf with any person who is employed by the DOE with regard to the same issue, act or transaction or a related issue, act or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the OHA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if such person requests the OHA not to disclose such information, such person shall file together with the document two copies of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and must file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception codified at 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit two copies of the document with the confidential information deleted, the OHA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The OHA retains the right to make its own determination with regard to any claim of confidentiality, under criteria specified in 10 CFR 1004.11. Notice of the decision by the OHA to deny such claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

(g) Each application, petition or request for OHA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding.

§ 1003.10 Effective date of orders.

Any order issued by the OHA under this part is effective as against all persons having actual or constructive notice thereof upon issuance, in accordance with its terms, unless and until it is stayed, modified, suspended, or rescinded. An order is deemed to be issued on the date, as specified in the order, on which it is signed by the Director of the OHA or his designee, unless the order provides otherwise.

§ 1003.11 Address for filing documents.

All applications, requests, petitions, appeals, written communications and other documents to be submitted to or filed with the OHA, as provided in this part or otherwise, shall be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The OHA has facilities for the receipt of transmissions via FAX, at FAX Number (202) 586–4972.

§ 1003.12 Ratification of prior directives, orders and actions.

All orders and other directives issued, all proceedings initiated, and all other actions taken in accordance with 10 CFR part 205 prior to the effective date of this part, are hereby confirmed and ratified, and shall remain in full force and effect as if issued under this part, unless or until they are altered, amended, modified or rescinded in accordance with the provisions of this part.

§ 1003.13 Public reference room.

There shall be maintained at the OHA, 1000 Independence Avenue, S.W., Washington, D.C., a public reference room in which shall be made available for public inspection and copying, during business hours from 1:00 p.m. to 5:00 p.m.:

(a) A list of all persons who have applied for an exception, or filed an appeal or petition, and a digest of each application;

(b) Each Decision and Order, with confidential information deleted, issued in response to an application for an exception, petition or other request, or at the conclusion of an appeal; and

(c) Any other information in the possession of OHA which is required by statute to be made available for public inspection and copying, and any other information that the OHA determines should be made available to the public.

§ 1003.14 Notice of proceedings.

At regular intervals, the OHA shall publish in the **Federal Register** a digest of the applications, appeals, petitions and other requests filed, and a summary of the Decisions and Orders issued by the OHA, pursuant to proceedings conducted under this part.

Subpart B—Exceptions

§ 1003.20 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception, as provided for in section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), from a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4), based on an assertion of serious hardship, gross inequity or unfair distribution of burdens, and for the consideration of such application by the OHA. The procedures contained in this subpart may be incorporated by reference in another DOE rule or regulation which invokes the adjudicatory authority of the Office of Hearings and Appeals. The procedures may also be made applicable to proceedings undertaken at the direction of an appropriate DOE official if incorporated by reference in the delegation.

(b) The filing of an application for an exception shall not constitute grounds for noncompliance with the requirements from which an exception is sought, unless a stay has been issued in accordance with subpart D of this part.

§ 1003.21 What to file.

A person seeking relief under this subpart shall file an "Application for Exception," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.22 Where to file.

All applications for exception shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.23 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the applicant as a person who would be aggrieved by the OHA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application within 10 days. The application filed with the OHA shall include certification to the OHA that the applicant has complied with the requirements of this

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paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provision of paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was sent. The OHA may require the applicant to provide additional or alternative notice, may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identified by the OHA as one who would be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of such notice.

(d) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the applicant. The person shall certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.24 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested OHA action; and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference or hearing regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible. The request and the OHA determination on the request shall be made in accordance with subpart F of this part.

(c) The application shall include a discussion of all relevant authorities, including, but not limited to, DOE rules, regulations, and decisions on appeals and exceptions relied upon to support the particular action sought therein.

(d) The application shall specify the exact nature and extent of the relief requested.

§ 1003.25 OHA evaluation.

(a) (1) OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the OHA may consider any other source of information. The OHA on its own initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application. The OHA may issue appropriate orders as warranted in the proceeding.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 1003.23, the OHA may dismiss the application without prejudice.

(b)(1) The OHA shall consider an application for an exception only when it determines that a more appropriate proceeding is not provided by DOE regulations.

(2) An application for an exception may be granted to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.

(3) An application for an exception shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous applications for exception.

§ 1003.26 Decision and Order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue an order granting or denying the application, in whole or in part.

(b) The Decision and Order shall include a written statement setting forth the relevant facts and the legal basis of the order. The Decision and Order shall provide that any person aggrieved thereby may file an appeal in accordance with § 1003.27.

(c) The OHA shall serve a copy of the Decision and Order upon the applicant, any other person who participated in the proceeding, and upon any other person readily identifiable by the OHA as one who is aggrieved by such Decision and Order.

§ 1003.27 Appeal of exception order.

(a) Except as provided in paragraph (b) of this section, any person aggrieved by an order issued by the OHA under this subpart may file an appeal with the OHA in accordance with subpart C of this part. Any appeal filed under this paragraph must be filed within 30 days of service, or constructive service under § 1003.14, of the order from which the appeal is taken.

(b) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act (42 U.S.C. 7194) may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

Subpart C—Appeals

§ 1003.30 Purpose and scope.

This subpart establishes the procedures for the filing of an administrative appeal of a DOE order and for the consideration of the appeal by the Office of Hearings and Appeals. Unless a program rule or regulation or a DOE delegation of authority provides otherwise, a person aggrieved by a DOE order appealable under this subpart has not exhausted his or her administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued. A person filing an appeal must also file an "Application for Stay" under subpart D of this part if the grant of a stay is necessary under Section 10(c) of the Administrative Procedure Act (5 U.S.C. 704) to preclude judicial review pending final action on the appeal.

§ 1003.31 Who may file.

Any person may file an appeal under this subpart who is so authorized by § 1003.27, a program rule or regulation, or a DOE delegation of authority.

§ 1003.32 What to file.

A person filing under this subpart shall file an "Appeal of Order" which should be clearly labeled as such both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.33 Where to file.

The appeal shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.34 Notice.

(a) The appellant shall send by United States mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the appellant as a person who would be aggrieved by the OHA action sought, including those who participated in the process that led to the issuance of the order from which the appeal has been taken. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the OHA within 10 days. The appeal filed with the OHA shall include certification to the OHA that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if any appellant determines that compliance with paragraph (a) of this section would be impracticable, the appellant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent. The OHA may require the appellant to provide additional or alternative notice, may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identifiable by the OHA as one who would be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within 10 days of the service of that notice.

(d) Any person submitting written comments to the OHA with respect to an appeal filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the appellant. The person shall certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.35 Contents.

(a) The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant authorities, including, but not limited to, DOE rules, regulations, and decisions on appeals and exceptions relied upon to support the appeal. If the appeal includes a request for relief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the process that led to the issuance of the order from which the appeal has been taken. For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(1) The discovery of material facts that were not known or could not have been known at the time of the process that led to the issuance of the order from which the appeal has been taken;

(2) The discovery of a law, rule, regulation, order or decision on an appeal or any exception that was in effect at the time of the process that led to the issuance of the order from which the appeal has been taken, and which, if such had been made known to DOE, would have been relevant and would have substantially altered the outcome; or

(3) A substantial change in the facts or circumstances upon which an outstanding and continuing order affecting the appellant was issued, which change has occurred during the interval between issuance of the order and the date of the appeal and was caused by forces or circumstances beyond the control of the appellant.

(b) A copy of the order that is the subject of the appeal shall be submitted with the appeal.

(c) The appellant shall state whether he requests or intends to request that there be a conference or hearing regarding the appeal. Any request not made at the time the appeal is filed shall be made as soon thereafter as possible. The request and the OHA determination on the request shall be made in accordance with subpart F of this part.

§ 1003.36 OHA evaluation.

(a) (1) The OHA may initiate an investigation of any statement in an appeal and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any appeal provided that the appellant is afforded an opportunity to respond to all third person submissions. In evaluating an appeal, the OHA may consider any other source of information. The OHA on its own initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the appeal with leave to refile within a specified time. If the failure to supply additional information is repeated or willful, the OHA may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by § 1003.34, the OHA may dismiss the appeal without prejudice.

(b) The OHA may issue an order summarily denying the appeal if—

(1) It is not filed in a timely manner, unless good cause is shown; or

(2) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the DOE action was erroneous in fact or in law, or that it was arbitrary or capricious.

(c) The OHA may deny any appeal if the appellant does not establish that—

(1) The appeal was filed by a person aggrieved by a DOE action;

(2) The DOE's action was erroneous in fact or in law; or

(3) The DOE's action was arbitrary or capricious.

§ 1003.37 Decision and Order.

(a) Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the OHA shall enter an appropriate order, which may include the modification of the order that is the subject of the appeal.

(b) The Decision and Order shall include a written statement setting forth the relevant facts and the legal basis of the Decision and Order. The Decision and Order shall state that it is a final

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order of the DOE of which the appellant may seek judicial review.

(c) The OHA shall serve a copy of the Decision and Order upon the appellant, any other person who participated in the proceeding, and upon any other person readily identifiable by the OHA as one who is aggrieved by such Decision and Order.

Subpart D—Stays

§ 1003.40 Purpose and scope.

(a) This subpart establishes the procedures for applying for a stay. It also specifies the nature of the relief which may be effectuated through the approval of a stay.

(b) An application for a stay will be considered if it is incident to a submission over which OHA has jurisdiction. An application for stay may also be considered if the stay is requested pending judicial review of an order issued by the OHA.

(c) All applicable DOE rules, regulations, orders, and generally applicable requirements shall be complied with unless and until an application for a stay is granted.

§ 1003.41 What to file.

A person filing under this subpart shall file an "Application for Stay" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted. The application shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.42 Where to file.

An Application for Stay shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.43 Notice.

(a) An applicant for stay shall notify each person readily identifiable as one who will be directly aggrieved by the OHA action sought that it has filed an Application for Stay. The applicant shall serve the application on each identified person and shall notify each such person that the OHA will receive and endeavor to consider, subject to time constraints imposed by the urgency of the proceeding, written comments on the application that are submitted immediately.

(b) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the applicant. The person shall certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

(c) The OHA shall require the applicant to take reasonable measures depending on the circumstances and urgency of the case to notify each person readily identified as one that would be directly aggrieved by the OHA action sought of the date, time and place of any hearing or other proceedings in the matter. However, if the Director of the OHA concludes that the circumstances presented by the applicant justify immediate action, the OHA may issue a Decision on the Application for Stay prior to receipt of written comments or the oral presentation of views by adversely affected parties.

§ 1003.44 Contents.

(a) An Application for Stay shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include, but not be limited to, all information that relates to satisfaction of the criteria in § 1003.45(b).

(b) The application shall include a description of the proceeding incident to which the stay is being sought. This description shall contain a discussion of all DOE actions relevant to the proceeding.

(c) The applicant shall state whether he requests that a conference or hearing be convened regarding the application, as provided in subpart F of this part.

§ 1003.45 OHA evaluation.

(a) (1) The OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may order the submission of additional information, and may solicit and accept submissions from third persons relevant to an application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the OHA may also consider any other source of information, and may conduct hearings or conferences either in response to requests by parties in the proceeding or on its own initiative.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice.

(3) The OHA shall process applications for stay as expeditiously as possible. When administratively feasible, the OHA shall grant or deny an Application for Stay within 10 business days after receipt of the application.

(4) Notwithstanding any other provision of the DOE regulations, the OHA may make a decision on any Application for Stay prior to the receipt of written comments.

(b) The criteria to be considered and weighed by the OHA in determining whether a stay should be granted are:

(1) Whether a showing has been made that an irreparable injury will result in the event that the stay is denied;

(2) Whether a showing has been made that a denial of the stay will result in a more immediate hardship or inequity to the applicant than a grant of the stay would cause to other persons affected by the proceeding;

(3) Whether a showing has been made that it would be desirable for public policy reasons to grant immediate relief pending a decision by OHA on the merits;

(4) Whether a showing has been made that it is impossible for the applicant to fulfill the requirements of an outstanding order or regulatory provision; and

(5) Whether a showing has been made that there is a strong likelihood of success on the merits.

§ 1003.46 Decision and Order.

(a) In reaching a decision with respect to an Application for Stay, the OHA shall consider all relevant information in the record. An Application for Stay may be decided by the issuance of an order either during the course of a hearing or conference in which an official transcript is maintained or in a separate written Decision and Order. Any such order shall include a statement of the relevant facts and the legal basis of the decision. The approval or denial of a stay is not an order of the OHA that is subject to administrative or judicial review.

(b) In its discretion and upon a determination that it would be desirable to do so in order to further the objectives stated in the regulations or in the statutes the DOE is responsible for administering, the OHA may order a stay on its own initiative.

Subpart E—Modification or Rescission

§ 1003.50 Purpose and scope.

This subpart establishes the procedures for the filing of an application for modification or rescission of a DOE order. An application for modification or rescission is a summary proceeding that will be initiated only if the criteria described in § 1003.55(b) are satisfied.

§ 1003.51 What to file.

A person filing under this subpart shall file an "Application for Modification (or Rescission)," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.52 Where to file.

The application shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.53 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the applicant as a person who would be aggrieved by the OHA action sought, including persons who participated in the process that led to the issuance of the order for which the modification or rescission is sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the OHA within 10 days. The application filed with the OHA shall include certification to the OHA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of all persons to whom a copy of the application was sent.

(b) If an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent. The OHA may require the applicant to provide additional or alternative notice, may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identifiable by the OHA as one who would be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the applicant. The person shall certify to the OHA that he has complied with the requirement of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.54 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable), a complete statement of the business or other reasons that justify the act or transaction, a description of the acts or transactions that would be affected by the requested action, and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the OHA upon its request. A copy of the order of which modification or rescission is sought shall be included with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible. The request and the OHA determination on the request shall be made in accordance with subpart F of this part.

(c) The applicant shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in § 1003.55(b)(2), upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the process that led to the issuance of the order for which modification or rescission is sought.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, DOE rules, regulations, and decisions on appeal and exceptions relied upon to support the action sought therein.

§ 1003.55 OHA evaluation.

(a)(1) The OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any application for modification or rescission provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application for modification or rescission, the OHA may convene a conference, on its own initiative, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 1003.53, the OHA may dismiss the application without prejudice.

(b)(1) An application for modification or rescission of an order shall be processed only if—

(i) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based;

(ii) The discovery of a law, rule, regulation, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the OHA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order of the OHA affecting

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the applicant was issued, which change has occurred during the interval between issuance of such order and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 1003.56 Decision and Order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue a Decision and Order granting or denying the application.

(b) The Decision and Order shall include a written statement setting forth the relevant facts and the legal basis of the Decision and Order. When appropriate, the Decision and Order shall state that it is a final order of which the applicant may seek judicial review.

(c) The OHA shall serve a copy of the Decision and Order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the OHA as one who is aggrieved by such Decision and Order.

Subpart F—Conferences and Hearings

§ 1003.60 Purpose and scope.

This subpart establishes the procedures for requesting and conducting an OHA conference or hearing. Such proceedings shall be convened in the discretion of the OHA, consistent with OHA requirements.

§ 1003.61 Conferences.

(a) The OHA in its discretion may direct that a conference be convened, on its own initiative or upon request by a person, when it appears that such conference will materially advance the proceeding. The determination as to who may attend a conference convened under this subpart shall be in the discretion of the OHA, but a conference will usually not be open to the public.

(b) A conference may be requested in connection with any proceeding of the OHA by any person who would be aggrieved by that proceeding. The request may be made in writing or verbally, but must include a specific showing as to why such conference will materially advance the proceeding. The request shall be addressed to the OHA, as provided in § 1003.11.

(c) A conference may only be convened after actual notice of the time, place and nature of the conference is provided to the person who requested the conference.

(d) When a conference is convened in accordance with this section, each person may present views as to the issues involved. Documentary evidence may be presented at the conference, but will be treated as if submitted in the regular course of the proceeding. A transcript of the conference will not usually be prepared. However, the OHA in its discretion may have a verbatim transcript prepared.

(e) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the OHA in its discretion determines that such would be advisable.

§ 1003.62 Hearings.

(a) The OHA in its discretion may direct that a hearing be convened on its own initiative or upon request by a person, when it appears that such hearing will materially advance the proceeding. All hearings convened pursuant to this subpart shall be conducted by the Director of the OHA or his designee. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of OHA. Hearings will be open to the public, but may be closed at the discretion of OHA if the reason is put in the record.

(b) A hearing may be requested by an applicant, appellant, or any other person who would be aggrieved by the OHA action sought. The request shall be in writing and shall include a specific showing as to why such hearing will materially advance the proceeding. The request shall be addressed to the OHA at the address provided in § 1003.11.

(c) A hearing may be convened only after actual notice of the time, place, and nature of the hearing is provided both to the applicant or appellant and to any other person readily identifiable by the OHA as one who would be aggrieved by the OHA action involved. The notice shall include, as appropriate:

(1) A statement that such person may participate in the hearing; or

(2) A statement that such person may request a separate conference or hearing regarding the application or appeal.

(d) When a hearing is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the hearing, but will be treated as if submitted in the regular course of the proceeding. A transcript of the hearing will be prepared.

(e) If material factual issues remain in dispute after an application or appeal has been filed, the Director of the OHA or his designee may issue an order convening an evidentiary hearing in which witnesses shall testify under oath, subject to cross-examination, for the record and in the presence of a Presiding Officer. A Motion for Evidentiary Hearing should specify the type of witness or witnesses whose testimony is sought, the scope of questioning that is anticipated, and the relevance of the questioning to the proceeding. A motion may be summarily denied for lack of sufficient specificity, because an evidentiary hearing would place an undue burden on another person or the DOE, or because an evidentiary hearing would cause undue delay.

(f) A Motion for Evidentiary Hearing must be served on any person from whom information is sought and on parties to the underlying administrative action. Any person who wishes to respond to a Motion for Evidentiary Hearing must do so within ten days of service.

(g) In reaching a decision with respect to a request for a hearing or motion filed under this subpart, the OHA shall consider all relevant information in the record. If an order is issued granting a hearing or evidentiary hearing, in whole or in part, the order shall specify the parties, any limitations on the participation of a party, and the issues to be considered. An order of the OHA issued under this section is an interlocutory order which is subject to further administrative review or appeal only upon issuance of a final Decision and Order in the proceeding concerned.

(h) At any evidentiary hearing, the parties shall have the opportunity to present material evidence that directly relates to a particular issue set forth for hearing. The Presiding Officer may administer oaths or affirmations, rule on objections to the presentation of evidence, receive relevant material, require the advance submission of documents offered as evidence, dispose of procedural requests, determine the format of the hearing, modify any order granting a Motion for Evidentiary Hearing, direct that written motions, documents or briefs be filed with respect to issues raised during the course of the hearing, ask questions of witnesses, issue subpoenas, direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential) and otherwise regulate the conduct of the hearing.

Subpart G—Private Grievances and Redress

§ 1003.70 Purpose and scope.

The OHA shall receive and consider petitions that seek special redress relief or other extraordinary assistance as provided for in the Federal Energy

Administration Act of 1974, Section 21 (15 U.S.C. 780), apart from or in addition to the other proceedings described in this part. This subpart may also apply if cross referenced in another DOE rule or regulation, or in a DOE delegation of authority. Petitions under this subpart shall include those seeking special assistance based on an assertion that DOE is not complying with its rules, regulations, or orders.

§ 1003.71 Who may file.

Any person may file a petition under this subpart who is adversely affected by any DOE rule, regulation or order subject to 15 U.S.C. 780 or who is so authorized by a program rule or regulation or a DOE delegation of authority.

§ 1003.72 What to file.

The person seeking relief under this subpart shall file a "Petition for Special Redress or Other Relief," which shall be clearly labeled as such both on the petition and on the outside of the envelope in which it is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.73 Where to file.

A petition shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.74 Notice.

(a) The person filing the petition, except a petition that asserts that the DOE is not complying with agency rules, regulations, or orders, shall send by United States mail a copy of the petition and any subsequent amendments or other documents relating to the petition, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the petitioner as a person who would be aggrieved by the OHA action sought. The copy of the petition shall be accompanied by a statement that the person may submit comments regarding the petition to the OHA within 10 days. The copy filed with the OHA shall include certification that the requirements of this paragraph have been complied with and shall include the names and addresses of each person to whom a copy of the petition was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the petitioner determines that compliance with paragraph (a) of this section would be impracticable, the petitioner shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the petition a description of the persons or class or classes of persons to whom notice was not sent.

(3) The OHA may require the petitioner to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identifiable by the OHA as one who would be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the petition will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the OHA regarding a petition filed under his subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the petitioner. The person shall certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.75 Contents.

The petition shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the petition and to the OHA action sought. Such facts shall include, but not be limited to, the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction, if applicable; a description of the act or transaction, if applicable; a description of the acts or transactions that would be affected by the requested action; a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the petition, and an explanation of how the petitioner is aggrieved by DOE's position. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the petition shall be submitted to the OHA upon its request.

§ 1003.76 OHA evaluation of request.

(a) (1) The OHA may initiate an investigation of any statement in a petition and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any petition provided that the petitioner is afforded an opportunity to respond to all third person submissions. In evaluating a petition, the OHA may consider any other source of information. The OHA on its own initiative may convene a conference, if, in its discretion, it considers that such will advance its evaluation of the petition.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the petition without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the petition with prejudice. If the petitioner fails to provide the notice required by § 1003.74, the OHA may dismiss the petition without prejudice.

(b) (1) The OHA will dismiss without prejudice a "Petition for Special Redress or Other Relief" if it determines that another more appropriate proceeding is provided by this part.

(2) The OHA will dismiss with prejudice a "Petition for Special Redress or Other Relief" filed by a person who has exhausted his administrative remedies with respect to any proceeding provided by this part, and received a final order therefrom that addresses the same issue or transaction.

§ 1003.77 Decision and Order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue a Decision and Order granting or denying the petition.

(b) The Decision and Order denying or granting the petition shall include a written statement setting forth the relevant facts and legal basis for the Decision and Order. Such Decision and Order shall state that it is a final order of the DOE of which the petitioner may seek judicial review.

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DEPARTMENT OF ENERGY

10 CFR Parts 430, 765, and 766

Payments Equal to Taxes Provisions of the Nuclear Waste Policy Act of 1982, As Amended, Interpretation and Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Final rule; technical amendments.

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SUMMARY: The Department is amending four rules which provide for adjudications by the Office of Hearings and Appeals (OHA), in order to conform them to OHA procedural regulations contained in a new part 1003 of chapter X, being published elsewhere in this issue of the **Federal Register**. This change of procedural references will not substantively affect the remedies provided under those rules. The Department is also amending certain rules to make clear its original intent that an appeal must be taken with OHA in order to exhaust administrative remedies.

EFFECTIVE DATE: These rules become effective April 20, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–2383, Internet: roger.klurfeld@hq.doe.gov.

SUPPLEMENTARY INFORMATION: OHA is a quasi-judicial body reporting to the Secretary of Energy. It is responsible for conducting most informal adjudicative proceedings of DOE where there is provision for separation of functions, other than those which are subject to the jurisdiction of the Federal Energy Regulatory Commission. Until today, procedural regulations governing OHA practice appeared mainly in part 205 of title 10 of the Code of Federal Regulations. Part 205, however, was designed to apply to matters involving the former oil price and allocation control regulations which were in effect during the period 1973 through January 1981. Because those oil-related proceedings are winding down, and the OHA is conducting a variety of other informal adjudications for the Department, the OHA procedural regulations have been organized as a new part 1003 within chapter X of title 10, which contains the general provisions of DOE regulations. Part 205 will continue to be used only to adjudicate matters which relate specifically to the federal oil regulations, while new part 1003 will be used for adjudicating most other matters within OHA's jurisdiction.

The procedures codified in part 1003 become applicable where program rules specifically reference them and state that a member of the public can make a request for relief under these rules. Four program rules or regulations currently reference part 205 procedures where the new part 1003 procedures would be more appropriate. Accordingly, DOE hereby is updating those references as follows. Until today, the program regulations that the Department promulgated in the Energy Conservation Program for Consumer Products, 10 CFR part 430, have stated that any person receiving an order may file an appeal with OHA using that office's appellate rules provided in 10 CFR part 205, subpart H. See 10 CFR 430.27(n). This provision is updated to reference the new appeals procedure in 10 CFR part 1003, subpart C. The same change is made in program regulations contained in 10 CFR part 765 (Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites) and 10 CFR part 766 (Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities). See 10 CFR 765.22(b) and 10 CFR 766.104(d). Finally, the Department stated in implementing the Payments-Equal-to-Taxes (PETT) provisions of the Nuclear Waste Policy Act of 1982, as amended, that an entity may file an appeal with OHA of a DOE PETT determination using the OHA's 10 CFR part 205, subpart H appellate rules. See Payments-Equal-To-Taxes Provisions of the Nuclear Waste Policy Act of 1982, as Amended, Interpretation and Procedures, as published in the **Federal Register** on August 27, 1991 (56 FR 42314). The reference on page 42319, column 2, of that notice to "10 CFR part 205 subpart H" is hereby changed to "10 CFR part 1003, subpart C." Therefore, persons following procedures for the PETT provisions should now refer to 10 CFR part 1003, subpart C.

The procedural rules contained in the new 10 CFR part 1003, subpart C, correspond to nearly identical procedural rules contained in previously applicable 10 CFR part 205, subpart H. Thus, the foregoing conforming amendments adopted today merely change the procedural references and do not substantively affect the remedies available to aggrieved parties under the affected program rules.

It has always been the intent of DOE to require parties to pursue an administrative appeal prior to seeking judicial review. The Supreme Court has interpreted section 10(c) of the Administrative Procedure Act (APA) (5 U.S.C. 704) to provide that, with respect to actions brought under the APA, an administrative appeal is a prerequisite to judicial review only when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review. *Darby* v. *Cisneros*, 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993). Accordingly, the Department is also amending two program rules to make clear its original intent that a person who receives an order from program officials must file an appeal with OHA and await the issuance of an order granting or denying the appeal in order to exhaust administrative remedies. The two programs are 10 CFR part 430 regarding consumer products and PETT determinations under the Nuclear Waste Policy Act of 1982. With respect to the rule on PETT determinations, as published in the **Federal Register** on August 27, 1991 (56 FR 42314), the phrase on page 42319, column 2, that "Appeals may be filed with the Office of Hearings and Appeals (OHA)" is modified to read "In order to exhaust administrative remedies, appeals must be filed with the Office of Hearings and Appeals (OHA)".[1] The specific changes to part 430 are set forth later in this notice.

Finally, a slight, nonsubstantive stylistic change is made in part 765.

List of Subjects

10 CFR Part 430

Administrative Practice and Procedure, Energy Conservation, Household Appliances.

10 CFR Part 765

Radioactive materials, Reclamation, Reporting and recordkeeping requirements, Uranium.

10 CFR Part 766

Confidential Business Information, Electric Power Rates, Electric Utilities, Nuclear Materials, Radioactive Materials, Reclamation, Reporting and Recordkeeping Requirements, Uranium, Waste Treatment and Disposal.

Issued in Washington, DC on March 14, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, 10 CFR parts 430, 765 and 766 are amended as set forth below:

[1] The affected provision in the PETT rule, with all changes made today, now reads:

D. Appeals Process

An appeals process is available for those jurisdictions which are challenging the original DOE determination related to PETT. In order to exhaust administrative remedies, appeals must be filed with the Office of Hearings and Appeals (OHA), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The appeal must be filed within 45 days from the date of issuance of an original DOE determination related to PETT. Appeals will be governed by procedures set forth in 10 CFR part 1003, subpart C. [56 FR at 42319.]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

§ 430.27 [Amended]

2. Section 430.27(n) is amended by adding at the beginning of the paragraph the phrase "In order to exhaust administrative remedies,", by revising the word "may" to read "must", and by revising the reference to "10 CFR part 205, subpart H" to read "10 CFR part 1003, subpart C".

PART 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

3. The authority citation for part 765 continues to read as follows:

Authority: Sections 1001–1004 of Pub. L. No. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*)

4. Section 765.22(b) (third sentence) is revised to read as follows:

§ 765.22 Appeals procedures.

(a) * * *

(b) * * * Appeals must comply with the procedures set forth in 10 CFR part 1003, subpart C. * * *

PART 766—URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND; PROCEDURES FOR SPECIAL ASSESSMENT OF DOMESTIC UTILITIES

5. The authority citation for part 766 continues to read as follows:

Authority: 42 U.S.C. 2201, 2297g, 2297g–1, 2297g–2, 7254.

§ 766.104 [Amended]

6. Section 766.104(d) (second sentence) is amended by revising "10 CFR part 205, subpart H" to read "10 CFR part 1003, subpart C".

[FR Doc. 95–6798 Filed 3–20–95; 8:45 am]

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

Alternative Fuel Transportation Program; Proposed Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110]

Alternative Fuel Transportation Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy is proposing rules for implementation of the State and Local Incentives Program. Under this Program DOE may grant financial assistance to States for projects in DOE approved State plans to promote use of alternative fuels and alternative fueled vehicles.

DATES: Written comments (six copies and, if possible, a computer disk) on the proposed rule must be received by DOE on or before May 22, 1995. Oral views, data, and arguments may be presented at a public hearing which is scheduled as follows:

1. May 1, 1995, 9 a.m., U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, D.C.

Requests to speak at the hearing should be received by DOE no later than 4 p.m. on April 27, 1995. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: All written comments (six copies), and requests to speak at a public hearing, are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket Number EE–RM–95–110, 1000 Independence Ave., SW, Washington, DC 20585, telephone number (202) 586–3012.

Copies of the hearing transcript and written comments may be inspected and photocopied in the DOE Freedom of Information Reading Room, Room 1E–190, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. For more information concerning public comment on this proposed rulemaking, see section III of this Notice.

FOR FURTHER INFORMATION CONTACT:

Frank Mallgrave, Office of Alternative Fuels, Office of Transportation Technologies, Energy Efficiency and Renewable Energy, Department of Energy, Mail Stop EE–33, 5G–086, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8077.

Vivian Lewis, Office of General Counsel, Energy Efficiency (GC–72), Department of Energy, Room 6B–256, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9507.

For information concerning the public hearings and procedures concerning written comments: Ms. Andi Kasarsky, (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Section-By-Section Analysis
III. Opportunity for Public Comment
IV. Review Under Executive Order 12612
V. Review under Executive Order 12778
VI. Review under Executive Order 12866
VII. Review Under the Regulatory Flexibility Act
VIII. Review Under the Paperwork Reduction Act
IX. Review Under the National Environmental Policy Act
X. Review By Other Federal Agencies
XI. List of Subjects
XII. The Catalog of Federal Domestic Assistance

I. Introduction

Pursuant to Title IV, section 409 of the Energy Policy Act of 1992 (the Act) (Pub. L. 102–486), 42 U.S.C. 13235, this proposed rule will establish the State and Local Incentives Program, a financial assistance program, under which DOE will consider applications to support projects included in State plans. The proposed rule sets forth guidelines for participating States to follow in developing State plans. These plans will show how States intend to meet the Program's primary goals of accelerating the introduction and use of alternative fuels and substantial numbers of alternative fueled vehicles (AFV) by the year 2000. The proposed rule establishes grant application procedures and evaluation criteria. Participating States may also subaward to local government entities or the private sector to assist in the implementation of projects within an approved plan.

At the beginning of each fiscal year, DOE will publish a notice in the **Federal Register** and send a letter and a copy of the notice to the Governor of each State announcing the availability of funds. These notices will invite each Governor to submit to DOE a State plan, or an amendment to a previously approved plan, and apply for financial assistance to carry out the plan.

Pursuant to the Act, participating States must provide at least 20 percent of the estimated cost of the activities under their program, although the selection criteria will reward proposals with higher levels of cost sharing. This minimum cost sharing requirement may be met with in-kind services and cost contributions by other public and private entities that commit to a State plan. Upon review and approval of the plan by DOE, Federal assistance may be provided to the State. This assistance may be in the form of grants of up to 80% of the costs of implementing a plan's project(s), information, and technical assistance.

DOE will competitively evaluate proposed projects included in approved State plans against criteria described in this notice, including projected energy-related benefits, as measured by the amount of conventional motor fuel that may be displaced by the use of alternative fuels, and the projected number of registered alternative fueled vehicles as a percentage of all registered vehicles as of December 31, 2000. No State will receive more than one grant per year. A grant may, however, cover more than one project. No award shall exceed 10 percent of the total fiscal year funding for this program. All project periods must be consistent with the goals stated in a State plan and may not extend beyond the end of the year 2000.

The Department has, in another notice of proposed rulemaking, published on February 28, 1995 (60 FR 10970), proposed to establish rules concerning alternative fueled vehicles in part 490 of title 10 of the Code of Federal Regulations. This proposed rule would add subpart B to the proposed part 490.

II. Section-By-Section Analysis

This part of the Supplementary Information discusses those provisions of the proposed regulations that are not self-explanatory.

Proposed Section 490.101 Definitions

Some of the terms used in this proposed rule will be defined in a general definition section for part 490 to be codified in 10 CFR 490.2. Those definitions are proposed in a **Federal Register** notice dated February 28, 1995.

The proposed definition for "life cycle" is based on DOE's interpretation of the statutory provision which contains this phrase. Section 409(b)(2)(A) of the Act provides that in approving a State plan and determining the amount of financial assistance, if any, to be awarded, DOE must take into account, among other factors, an estimate of energy-related and environment-related impacts, on a life cycle basis, of the introduction and use of alternative fueled vehicles included in the State plan, compared to conventional motor vehicles. DOE is proposing to define the "life cycle" of an alternative fueled vehicle as the time from the date the vehicle is registered by the State's motor vehicle agency as an alternative fueled vehicle, and ending when the vehicle is no longer registered as an alternative fueled vehicle. Because of the critical nature of a "life cycle basis" and how it will impact on the evaluation of State plans and the projects within the State plans, DOE invites comments on this definition.

Proposed Section 490.102 Who May Apply

The proposed rule would require any application for financial assistance and State plan submission to be submitted by the chief executive of a State. Such submissions are optional to the States, but any submission must comply with the requirements of this subpart.

Proposed Section 490.103 When and Where To Apply

The deadline date for submission of State plans to DOE may vary from year to year, depending upon the availability of funding. Normally funding is made available at the beginning of a fiscal year which commences October 1 of each year. Each year, after funding has been appropriated by Congress, DOE is proposing to announce the submission deadline in a **Federal Register** notice, and a letter to the Governor of each State, identifying the amount of funding available, as well as providing the address to which submissions may be sent.

Proposed Section 490.104 Content of State Plans

In paragraph (a) of this section, DOE is proposing to require that the State plan include the name and description of the lead organization designated to be responsible for implementing the plan and administering any grant awarded. DOE needs this information to ensure that it will be dealing with the proper State authority.

Paragraph (c) sets forth the primary goals of the Program which are to substantially increase, by the year 2000, the number of alternative fueled vehicles registered in the State and the number of alternative fuel refueling facilities licensed for operation. Each State plan must provide detailed descriptions as to how these goals are to be achieved.

With the exception of proposed paragraph (d)(11), all of the mandatory analyses set forth in paragraph (d) are statutorily required.

Paragraph (d)(5), which corresponds to section 409(a)(3)(E) of the Act, requires a State plan to describe how the State treats the sales of alternative fuels for use in alternative fueled vehicles. This information will be helpful to DOE in determining whether the State's methods of treating the sales of alternative fuels will actually increase the use of alternative fuels. If these methods are effective, DOE will share this information with all the States in an annual report which will be sent both to Congress and the Governor of each State.

Proposed paragraph (d)(8) requires, consistent with section 409(a)(3)(I) of the Act, that the plan identify any existing State laws or regulations, including traffic safety prohibitions, that would, unless amended, impede the implementation of the goals of this Program. The plan must describe how the State intends to resolve such impediments.

Paragraph (d)(9), which corresponds to section 409(a)(3)(J) of the Act, asks States to describe the services provided by municipal, county, and regional transit authorities. This requirement is important because DOE is interested in knowing how States will coordinate with other governmental entities in carrying out a State plan. To accelerate the use of alternative fueled vehicles, there must be adequate refueling facilities. Coordination and cooperation among the various governmental entities within the States will be of great importance in facilitating the availability of alternative fuels in areas where alternative fueled vehicles operate.

Proposed paragraph (d)(11) also provides that each State plan shall consider participation in DOE's Clean Cities Program. The Clean Cities Program provides an opportunity for States to get more involved in coordinating with other States as well as with alternative fuel providers, local governments, vehicle manufacturers, and others. The Clean Cities' goals are to put into operation 250,000 new alternative fueled vehicles and 500 to 1000 refueling stations in 50 cities by 1996. As of January, 1995, 34 cities in 21 States are participating in the Clean Cities Program. For information on the Clean Cities Program, please write to Department of Energy, Clean Cities Program, EE–33, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–1885.

Proposed Section 490.105 State Plan Amendments

Subsequent to an initial award under this subpart, a State may, with DOE approval, amend a plan with updated information. A State must submit an amendment to a proposed plan if any of the previously submitted information corresponding to paragraphs (e), (f), and (g) of proposed § 490.104 has changed.

Proposed Section 490.106 Review of Assistance Applications

DOE is proposing in paragraph (e) of section 490.106 to competitively evaluate proposed projects in approved plans against specified criteria listed in descending order of importance. The most important proposed criterion as set forth in paragraph (e)(1) is the projected energy-related benefits, per dollar expended, that may be achieved through the use of alternative fuels from the start of the program through December 31, 2000. DOE is proposing that energy-related benefits, be measured on a life cycle basis through the use of alternative fueled vehicles, by the amount of conventional motor fuel that is displaced by alternative fuels. The calculation of displacement may be denominated in gallons, British thermal units (Btus) or any other appropriate method. For DOE to evaluate the energy benefits of a proposed project, it is important that the State indicate the degree to which alternative fuels will actually be used by alternative fueled vehicles. For projects that provide for dedicated alternative fueled vehicles to be placed into use, alternative fuel use is assumed and no further demonstration is needed. For projects that include vehicles capable of operating on gasoline or diesel, as well as alternative fuel, estimates of the actual alternative fuel use must be specified, accompanied by information about measures to realize such levels of use. The energy related benefits are proposed to be included in the annual report that participating States must submit to DOE as provided in proposed section 490.110.

The energy related benefit is the highest ranked criterion used to evaluate proposed projects in State plans. DOE welcomes and encourages comments on the proposed measure, or any others that are recommended.

The second most important criterion as proposed in paragraph (e)(2) is the projected number of alternative fueled vehicles as a percentage of vehicles registered in the State as of December 31, 2000.

Proposed § 490.104(g) reflects the statutory requirement that DOE shall not approve a State plan unless the State agrees to contribute at least 20 percent of the cost of plan projects. In addition, DOE is proposing in paragraph (e)(3) that the third most important criterion in evaluating proposed projects is the extent of cost sharing in excess of the minimum 20 percent cost share and the

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level of actual non-Federal outlays rather than in-kind contributions. Cost sharing may come from any non-Federal source, private or public. The additional cost sharing will enable DOE to stretch scarce appropriations to cover more projects.

The fourth most important criterion, as proposed in paragraph (e)(4), would be the projected environmental benefits derived as of December 31, 2000 through the use of alternative fueled vehicles. Environmental benefits in this context are most appropriately based on reductions of exhaust, evaporative and greenhouse gas emissions. DOE believes that this criterion is important because use of alternative fueled vehicles has the significant potential for reducing vehicle emissions such as hydrocarbons from combustion and fuel evaporation, and carbon monoxide, nitrogen oxides, and other pollutants from combustion. In addition, there is the potential of reducing vehicle emissions of greenhouse gases.

State plans which request consideration under the environmental benefit criterion must provide an estimate of how many alternative fueled vehicles under the plan will be certified to each of the Environmental Protection Agency (EPA) clean fuel vehicle emission standards pursuant to 40 CFR part 88. Benefits claimed will be evaluated by the number of alternative faeled vehicles certified to the various tiers of EPA clean vehicle standards, such as low emission, inherently low emission, ultra-low emission and zero emission vehicles. In calculating environmental benefits to be derived from alternative fueled vehicles, States may want to refer to EPA's Technical Report entitled Lifetime Emissions for Clean Fuel Fleet Vehicles, dated October 1993.

DOE is proposing that a report, entitled Emissions of Greenhouse Gases from the Use of Transportation Fuels and Electricity by M. A. DeLuchi, dated November 1991 and amended by letter April 22, 1992, serve as the basis for the calculation of greenhouse gas emissions. This report was prepared for the Center for Transportation Research, Energy Systems Division, Argonne National Laboratory. It is available to the public from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, Virginia 22161. This report sets forth the total carbon dioxide equivalent grams per mile emissions, by fuel and vehicle type. The method of calculation is simply a matter of applying the estimated number of miles traveled per year, by vehicle and fuel type, against the carbon dioxide equivalent grams per mile. During the hearings and sixty day comment period DOE urges suggestions as to the appropriateness of this method and recommendations for alternative methods.

DOE is proposing in paragraph (e)(5) that the fifth most important criterion be the number of alternative fuel refueling facilities projected to be in operation by December 31, 2000.

Proposed paragraph (e)(6) addresses interstate coordination. DOE is suggesting, as an option, that States consider coordinating the development of alternative fuel refueling facilities along interstate highways with adjacent States, where applicable. The benefit from such coordination would be to increase the potential driving range of alternative fueled vehicles and, thereby, make their use more widely feasible and attractive.

Proposed paragraph (e)(7) provides the seventh criterion which is participation in DOE's Clean Cities Program. Neither paragraph (e)(6) nor (e)(7) of these criteria are set forth in the Act, but both are considered very important for the long term effectiveness of the program.

The eighth criterion, as proposed in paragraph (e)(8), deals with how well a State has implemented its plan during the previous budget period. If a State requests funding for new projects in a subsequent budget period, but has failed to implement its previously approved projects in a timely fashion, the new plan may not receive favorable consideration.

The ninth and last criterion, as proposed in paragraph (e)(9), relates to the innovation and creativity of the proposed projects. DOE encourages States to be resourceful in reaching the goals and objectives of this proposed regulation beyond the minimum requirements. For example, the number of alternative fueled vehicles that are registered in a State is a key element within the State and Local Incentives Program. Based on information available to DOE, very few States, if any, are able to distinguish the fuel system type of vehicles registered in the State. As an additional project that may receive favorable consideration, States may want to modify their registration system so that alternative fueled vehicles can be identified. This kind of information would assist DOE in gathering information on the distribution of each type of alternative fueled vehicle. Other innovative and creative projects might include far-reaching public relations programs or information exchange activities which encourage local governments and the private sector to acquire alternative fueled vehicles.

Although Section 409 of the Act provides for the use of financial assistance to acquire alternative fueled vehicles, and States are required to acquire a certain percentage of alternative fueled vehicles under Section 507(o) of the Act, States are encouraged to develop plans that would use grants for broader purposes. State plans will receive favorable consideration if they consider resourceful and innovative methods of increasing alternative fuel, encouraging acquisition of alternative fueled vehicles by local governments and private parties, and expanding the alternative fuel infrastructure.

In paragraph (f), DOE is proposing to limit the amount of funding that any State may receive. Based on prior experience, DOE does not expect to be able to provide funding for each and every project within an approved plan. DOE, however, wants to ensure that as many States as possible participate in this Program. Therefore, it is proposed that, regardless of the number of proposed projects in an approved plan, each State may not receive more than one grant per calendar year. The grant may, however, cover more than one project. Additionally, each award may not exceed 10 percent of the total fiscal year funding for the State and Local Incentives Program.

Proposed Section 490.107 Expenditure Limitations

DOE is proposing that overhead costs for State programs be limited to 10 percent of a financial award. This would include costs related to salaries, office equipment, and library materials. This provision is directly related to achieving the overall goal of this Program—to substantially increase the use of alternative fueled vehicles by the year 2000. It will ensure that 90 percent of the funds are expended on activities and project costs that produce goal-related results.

Proposed Section 490.108 De-Obligation of Funds

DOE is proposing to deobligate any funds that a State has failed to obligate or expend within a budget period. A budget period is generally 12 months and may not exceed 24 months. If the funds are not obligated or expended by the State within the budget period, DOE is proposing to de-obligate the funds which shall become available for award, in the same manner as newly appropriated funds, to another financial assistance recipient.

Proposed Section 490.109 Technical Assistance and Information

DOE is proposing, pursuant to section 409(b)(1)(A) of the Act, to provide States with information and technical assistance if requested, subject to the availability of resources. One form of such assistance could be coordinating the acquisition of alternative fueled vehicles with Federal procurement of these vehicles. Such coordinated acquisition may decrease the costs of the alternative fueled vehicles to the State.

Proposed Section 490.110 Reports

Each State awarded a grant under this proposed subpart must submit an annual report to DOE for the period of time covered by the State plan. This report must be submitted not later than 30 days after the close of the calendar year. The information required in the State report will be used to monitor the implementation of the State plan, the projects within an approved plan, and the expenditure of funds. Pursuant to section 409(c)(2) of the Act, DOE must report annually to the President and Congress. Information in the State reports will also be used to compile the DOE report to Congress and the President.

III. Opportunity for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or comments with respect to the matters set forth in this notice.

Written comments (6 copies) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State and Local Incentives Program, Notice of Proposed Rulemaking, Docket Number EE–RM–95–110", and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling Ms. Andi Kasarsky at (202) 586–3012. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. The Department is currently using Wordperfect 5.1 for DOS.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. In addition, a transcript of the proceedings of the public hearing will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department of Energy shall make its own determination of any such claim and treat it according to its determination.

B. Public Hearing Procedures

The time and place of the public hearing is indicated at the **ADDRESSES** section of this notice. Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation at the hearing. A request to speak at the hearing should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person should also provide a phone number where he/she may be reached during the day. Each person selected to speak at the public hearing will be notified as to the approximate time their presentation will be given. Six copies of the speaker's statement should be brought to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance by so indicating in a letter or phone call to Ms. Andi Kasarsky ((202)–586–3012) requesting an opportunity to make an oral presentation.

The Department of Energy reserves the right to select persons to be heard at the hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A Department of Energy official will preside at the hearing. This will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

Although today's proposed rule is mandated by the Act, State participation in the State and Local Incentives Program is voluntary. This proposed rule simply establishes ground rules for implementation of the Program. Many States are currently conducting alternative fueled vehicle programs and are anticipating that the influx of Federal funding through the State and Local Incentives Program will assist them in achieving their goals of accelerating the use of alternative fueled vehicles.

Today's proposed rule will have direct effects on those States that choose to participate in the Program in that a State must share at least 20 percent of the cost of implementing the State plan's projects, and must comply with the other requirements of the Program. Most of the proposed rule's provisions, including the cost sharing requirement, correspond to provisions of the Act. Wherever possible, however, DOE has attempted to simplify the implementation of this Program by providing as much flexibility as possible to the States.

DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States in relationship to the Federal Government. Therefore, preparation of a federalism assessment is unnecessary.

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V. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. The requirements in section (2)(a) and (b)(2) of this Executive Order include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation by providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make all reasonable efforts to ensure that regulations specify clearly any preemptive effect on existing Federal law or regulation and any retroactive effects. Rulemaking notices must describe any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

VI. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–354, 5 U.S.C. 601 *et seq.*, requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. This proposed rule will impact only those States that decide to initiate or in some instances, continue an alternative fuel and alternative fueled vehicle program. The Department of Energy, therefore, certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

VIII. Review Under the Paperwork Reduction Act

New information collection or record keeping requirements are subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements.

The Energy Policy Act requires DOE to report annually to Congress and the President and to furnish copies of the report to each State participating in the Program. Most of the information required to be included in the report can be collected only from the participating States. This information is necessary to determine if the Program is being implemented adequately and to determine the effectiveness of the Program in accelerating the use of alternative fueled vehicles. DOE cannot estimate how many States may participate in the Program.

The public reporting burden is estimated to average eight hours per response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and retrieving the collection of information. DOE has attempted to require States to collect and maintain only those records that are essential in assisting DOE to administer the Program in an effective manner and to comply with a reporting requirement to the President and Congress.

Comments on the information collection requirements contained in this rule should be submitted both to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Docket Number EE–RM–95–110, at the address given earlier in this notice, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

IX. Review Under the National Environmental Policy Act

The Department of Energy has concluded that, before the final promulgation of this rule and related rules implementing the alternative fueled vehicle provisions of the Energy Policy Act of 1992, an Environmental Assessment will be completed.

X. Review By Other Federal Agencies

The Department of Energy has provided a draft copy of this notice to the staff of the Administrator of the Environmental Protection Agency and the Secretary of the Department of Transportation pursuant to Section 409(a)(2) of the Energy Policy Act of 1992. The Administrator responded regarding emission criteria and certification of vehicles. These responses were incorporated into the Notice of Proposed Rule. The Secretary of Transportation had no comment. The Department of Energy has also provided a draft copy of this notice to the Automotive Commodity Center, Federal Supply Service, General Services Administration, pursuant to Section 409(b)(3).

XI. List of Subjects in 10 CFR Part 490

Appeal procedures, Energy, Energy conservation, Fuel, Gasoline, Motor vehicles, Oil imports, Petroleum, Recordkeeping and reporting requirements and Utilities.

XII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State and Local Incentive Program is 81.111.

Issued in Washington, D.C., March 10, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reason set forth in the preamble, DOE proposes to amend part 490 of title 10 of the Code of Federal Regulations as proposed on February 28, 1995 and as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

1. The authority citation to part 490 is revised to read as follows:

Authority: 42 U.S.C. 7191; 42 U.S.C. 13235; 42 U.S.C. 13251; 42 U.S.C. 13257; 42 U.S.C. 13258; 42 U.S.C. 13260–3.

2. A new subpart B is proposed to be added to part 490 as set forth below:

Subpart B—State and Local Incentives Program

490.100 Purpose and scope.
490.101 Definitions.
490.102 Who may apply.
490.103 When and where to apply.
490.104 Content of State plans.
490.105 State plan amendments.
490.106 Review of assistance applications..
490.107 Expenditure limitations.
490.108 De-obligation of funds.
490.109 Technical assistance and information.
490.110 Reports.

§ 490.100 Purpose and scope.

(a) This subpart sets forth the guidelines for implementation of the State and Local Incentives Program. Under this program, DOE may grant financial assistance to States for projects in DOE-approved State plans. This subpart provides guidelines for development of State plans to accelerate the introduction and use of alternative fuels and alternative fueled vehicles by the year 2000, and for applications for financial assistance to carry out projects included in approved State plans.

(b) Except as otherwise provided in this subpart, the provisions of 10 CFR part 600 apply to financial assistance awards under this part.

§ 490.101 Definitions.

In addition to the definitions found in § 490.2, the following definitions apply to this subpart—

Awardee means the State named in the notice of financial assistance award.

British thermal unit (Btu) is defined as the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Clean Cities Program is a voluntary Federal program designed to accelerate and expand the use of alternative fueled vehicles in communities throughout the country and to provide refueling and maintenance facilities for their operation.

Conventional motor fuel means gasoline or diesel fuel used in a motor vehicle.

Evaporative Emissions are hydrocarbons released into the atmosphere as a result of fuel evaporation from a vehicle's fuel system.

Exhaust Emissions are substances released into the atmosphere through motor vehicle tailpipes resulting either from uncombusted fuel or from chemical reactions during combustion. They can include carbon monoxide, oxides of nitrogen, hydrocarbons, and particulate matter.

Governor means the chief executive of a State or a person designated by the chief executive officer to act upon his or her behalf.

Greenhouse Gas Emissions means emissions of carbon dioxide and other gases such as chlorofluorocarbon, methane, ozone, and nitrous oxide that contribute to global climate change.

Life cycle means the period of time beginning with the date on which the vehicle is registered as an alternative fueled vehicle by the motor vehicle agency of the State and ending on the date the vehicle is no longer registered as an alternative fueled vehicle.

Project means any activity specified in a State plan which is undertaken to achieve the goals set forth in the State plan.

State plan means a State and Local Incentives plan submitted to DOE that contains proposed projects and provisions designed to introduce a substantial number of alternative fueled vehicles and increase the use of alternative fuels by the year 2000.

§ 490.102 Who may apply.

The Governor of any State may submit to DOE a State plan and apply for Federal assistance to carry out that plan under this subpart.

§ 490.103 When and where to apply.

For each fiscal year, DOE will publish a notice in the **Federal Register** announcing the availability of funds, specifying the deadline for submissions, and providing the address to which a submission may be sent. A copy of this notice will be sent to the Governor of each State. In order to be eligible for Federal assistance, a State must submit an application on standard forms, pursuant to 10 CFR Part 600, and either a proposed State plan, or a proposed State plan amendment to a previously approved plan. This submission must be made before the specified deadline.

§ 490.104 Content of State plans.

(a) *Organization.* Each State plan must name and describe the functions of the State organization designated by the Governor to carry out the provisions of the plan.

(b) *Intergovernmental coordination.* Each State plan shall describe the manner in which the State intends to coordinate with the Federal Government, local governments, and the private sector in implementing the plan.

(c) *Goals.* Each State plan must identify its goals for the number of alternative fueled vehicles to be registered within the State, the amount of alternative fuel to be used within the State, and the number of alternative fuel refueling facilities to be licensed for operation. The plan must also provide a detailed description as to how these goals can be achieved by the year 2000.

(d) *Mandatory analyses.* Each State plan shall include an examination of—

(1) Exemption from State sales tax or other State or local taxes or surcharges (other than such taxes or surcharges which are dedicated for transportation purposes) with respect to alternative fueled vehicles, alternative fuels, or alternative fuel refueling facilities;

(2) The introduction of alternative fueled vehicles into State-owned or operated motor vehicle fleets;

(3) Special parking for alternative fueled vehicles at public buildings, as defined by § 490.201 of subpart A, and airport and transportation facilities;

(4) Programs of public education to promote the use of alternative fueled vehicles;

(5) The treatment of sales of alternative fuels for use in alternative fueled vehicles;

(6) Methods by which State and local governments might enhance—

(i) The availability of alternative fuels; and

(ii) The ability to recharge electric motor vehicles at public locations.

(7) Allowing public utilities to include in rates the incremental cost of—

(i) New alternative fueled vehicles;

(ii) Converting conventional vehicles to operate on alternative fuels; and

(iii) Installing alternative fuel refueling facilities; but only to the extent that the inclusion of such costs in rates would not create competitive disadvantages for other market participants, and taking into consideration the effect that inclusion of such costs would have on rates, service, and reliability to other utility customers;

(8) Whether accomplishing any of the goals of the State plan would require amendment to State law or regulations, including traffic safety prohibitions;

(9) Services provided by municipal, county, and regional transportation authorities;

(10) Effects of the State plan on programs authorized by the Intermodal Surface Transportation Efficiency Act of 1991 and amendments made by that Act;

(11) Participation in the DOE's Clean Cities Program; and

(12) Such other programs and incentives as a State may describe.

(e) *Projects.* Each State plan—

(1) Shall contain a detailed description of projects designed to result in scheduled progress toward, and achievement of, the goals of using alternative fuel and introducing substantial numbers of alternative fueled vehicles in the State by the year 2000. For each project, the plan must specify the project periods and milestones which must be consistent with the State plan goals; and

(2) Shall include estimates of the volumes of alternative fuels to be used within each calendar year as a result of each project.

(f) *Requirements.* Each State plan shall contain a detailed description of the requirements for implementing the plan, including the estimated cost and budget for implementation.

(g) *Cost Share.* Each State plan shall specify the non-federally funded share of each project, which must be at least 20 percent of the cost of the project. The plan must identify the amounts to be provided in cash and in-kind.

§ 490.105 State plan amendments.

Subsequent to an initial State plan approval and any award under this subpart, a State—

(a) May amend a State plan with the approval of DOE; and

(b) Must, in the event of any change to the provisions identified in paragraphs (e), (f) and (g) of § 490.104, submit a proposed State plan amendment with updated information for the approval of DOE.

§ 490.106 Review of assistance applications.

(a) On or before 60 days from an applicable deadline for submission of

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applications for financial assistance, DOE shall review State plans or State plan amendments to determine whether they meet the requirements of this subpart and represent policies and activities reasonably designed to achieve the goals of a substantial number of alternative fueled vehicles in operation by the year 2000 and increased use of alternative fuel.

(b) DOE may request further information from States prior to completing its review under paragraph (a) of this section.

(c) DOE may allow a reasonable period of time to revise a proposed State plan or State plan amendment, or may condition approval on acceptance of revisions deemed necessary by DOE. A grant will not be awarded until all conditions are satisfied.

(d) If DOE finally disapproves a State plan or State plan amendment, DOE shall notify the Governor in writing with a statement of reasons.

(e) On the basis of approved State plans or approved State plan amendments, DOE shall evaluate proposed projects competitively against the following criteria which are listed in descending order of importance:

(1) Projected energy-related benefits, per dollar expended, on a life-cycle basis, through the use of alternative fueled vehicles, as measured by the amount of conventional motor fuel that is displaced by alternative fuels from the start of the project through December 31, 2000. This displacement may be calculated on the basis of gallons, British thermal units (Btus), or any other appropriate method.

(2) Projected number of alternative fueled vehicles introduced as of December 31, 2000, as a result of the project;

(3) Extent of cost sharing in excess of the minimum required 20 percent cost share and extent of contribution made in cash rather than in-kind;

(4) Projected environmental benefits, on a life-cycle basis, measured in terms of the reduction of exhaust, evaporative, and greenhouse gas emissions through December 31, 2000. Projections should be based on the number of alternative fueled vehicles that will be certified as meeting various EPA clean vehicle emission standards pursuant to 40 CFR part 88;

(5) Projected number of alternative fuel refueling facilities as of December 31, 2000;

(6) Extent of interstate collaboration on refueling infrastructure, including collaboration on development of alternative fuel refueling facilities along interstate highways with adjacent States;

(7) Extent of participation in DOE's Clean Cities Program;

(8) Effectiveness in carrying out State plan in previous budget periods; and

(9) Inclusion of creative and innovative projects.

(f) A State may not receive more than one grant per calendar year. This grant may cover multiple projects or projects expanding for more than one year. No award is to exceed 10 percent of the total fiscal year funding for the State and Local Incentives Program. In those instances where projects in an approved plan are not funded, the State may reapply for financial assistance for such projects in subsequent years.

§ 490.107 Expenditure Limitations.

A State may not expend more than 10 percent of a financial award for indirect costs including, but not limited to, salaries, equipment, and library materials.

§ 490.108 De-obligation of funds.

A budget period should typically be 12 months, but may not exceed 24 months unless an extension is approved by DOE. Any funds, under a notice of financial assistance award, which remain unexpended at the end of the budget period shall be de-obligated. DOE shall make these funds available for award, in the same manner as newly appropriated funds.

§ 490.109 Technical assistance and information.

At the request of the Governor of any participating State and subject to the availability of personnel and funds, DOE will provide technical assistance and information to the State in connection with effectuating the purposes of this subpart. Non-financial assistance, including coordinating the acquisition of alternative fueled vehicles with Federal procurement of alternative fueled vehicles, will be provided.

§ 490.110 Reports.

(a) For the period of time covered by a State plan, an awardee shall submit to DOE an annual report each calendar year and not later than 30 days after the close of the calendar year, which shall include at a minimum—

(1) The estimated number of alternative fueled vehicles in use in the State;

(2) A description of Federal, State and local programs undertaken within the State to provide incentives for the introduction of alternative fueled vehicles, whether or not these programs are within the State plan; and

(3) The estimated energy and environmental benefits of the State plan.

(b) An awardee shall submit to DOE a financial status report (FSR) (OMB No. 0348–0039) within 90 days after completion of each budget period. For budget periods exceeding 12 months, an FSR is also required within 90 days after the first 12 months, unless waived by the contracting officer.

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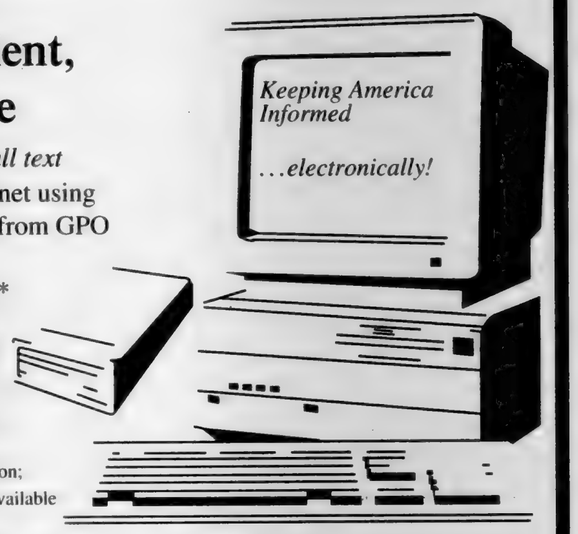

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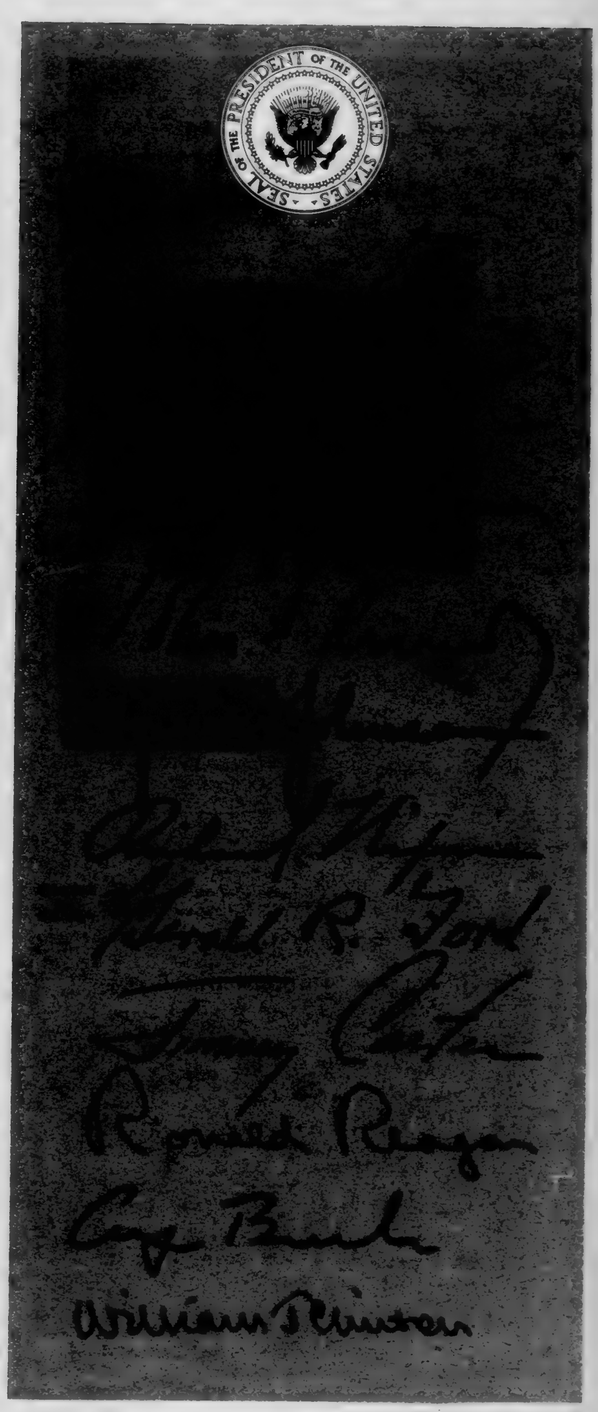

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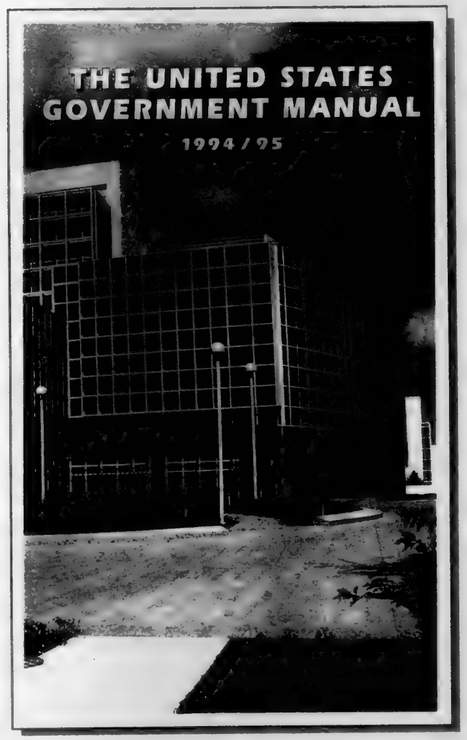

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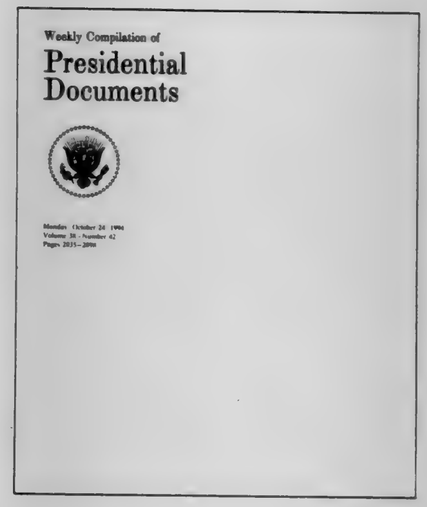
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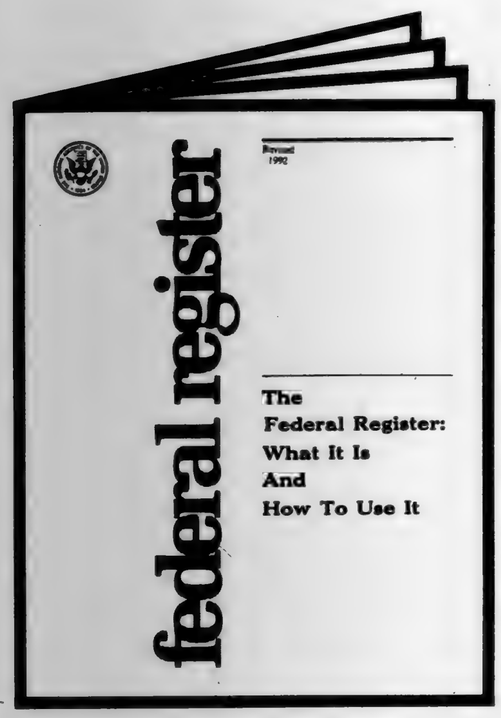

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Federal Register
Vol. 60, No. 55
Wednesday, March 22, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–94–006]

RIN 0581–AB30

Soybean Promotion and Research Program: Procedures for the Conduct of a Producer Poll

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act), a poll will be conducted among eligible soybean producers to determine whether they support the conduct of a refund referendum on the continuance of the payment of refunds under the Soybean Promotion and Research Order (Order). This final rule establishes the procedures for conducting the required producer poll.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2624–S; PO Box 96456; Washington, DC 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION:

Prior document in this proceeding: Proposed Rule—Soybean Promotion and Research Program: Procedures for the Conduct of a Producer Poll published October 18, 1994 (59 FR 52475).

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law, and requesting a modification of the Order or an exemption from the Order. The Act provides that a petitioner is to be given the opportunity for a hearing on the petition, and that the Secretary is to rule on the petition after such hearing. The District Court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's ruling if the petitioner files a complaint seeking review not later than 20 days after the date of the entry of the ruling.

Section 1974 of the Act also provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception concerns assessments collected by Qualified State Soybean Boards. To ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted by a State during specified periods relating to the continuation or termination of a Qualified State Soybean Board or State soybean assessment.

This final rule establishes procedures for the conduct of a producer poll. It provides to all eligible soybean producers the opportunity to request that the Secretary conduct a refund referendum on the continuance of the payment of refunds under the Order. Participation in the poll is voluntary. The Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB). They have been assigned OMB control number 0581–0093. The information collection requirements in this final rule include the following:

(a) In-person requests to conduct a refund referendum: Each person who wants to request that the Secretary conduct a refund referendum must ask the appropriate county Consolidated Farm Service Agency (CFSA) office to enter his or her name and address on Form LS–51, "Producer Poll on Refund Referendum Request List." Each person must read the Certification Statement at the top of the form and sign it certifying that he or she meets the eligibility requirements. The estimated average time burden for completing the procedure is 5 minutes per person.

(b) Absentee requests to conduct a refund referendum: Each person who wants to request that the Secretary conduct a refund referendum must write or go to the appropriate county CFSA office and ask for Form LS–53. The CFSA office will provide the form by mail. The requester must then complete Form LS–53, "Producer Poll Refund Referendum—Absentee Request." Form LS–53 is a self-mailer. The person making a request must read and sign the form, fold the form so that the CFSA address is visible, and tape the form closed. The form may be returned by mail by affixing a stamp or may be returned in person. The estimated average time burden for completing the procedure is 5 minutes per person.

(c) The final rule contains a requirement that the county CFSA office list the names and addresses of each person requesting Form LS–53 (Absentee Request), the date of the request, and the date the completed form was received by the CFSA office. The Department needs this information in order to prepare a list of persons making a request in the producer poll and to make the list available to interested parties. This information can also be used to validate requests and to challenge potentially ineligible persons. Each county CFSA office will fill out one or more Form LS–52 "Absentee Request List." The estimated average reporting burden will depend on the

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number of requests. We estimate that 75,000 to 100,000 producers, including in-person and absentee, will request that the Secretary conduct a refund referendum, with each producer making one request.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act requires that a referendum be conducted no earlier than 18 months and no later than 36 months after the issuance of the Order to determine whether the Order should be continued.

The required initial referendum was conducted on February 9, 1994. Of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order, and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act requires approval by a simple majority for the Order to continue.

The Act also requires that within 18 months after the Secretary announces the results of the referendum, the Secretary conduct a poll of producers to determine if producers support the conducting of a referendum on the continuance of the payment of refunds under the Order. The Secretary announced the results of the referendum on April 1, 1994. Therefore, the producer poll must be held before October 1, 1995.

For purposes of the poll, the Secretary will use data from the 1992 Census of Agriculture to determine the total number of producers. The census shows that 381,000 farms produce soybeans. Therefore, for purposes of the poll, the total number of soybean producers will be 381,000.

If, based on the poll, the Secretary determines that at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the approximately 381,000 producers nationwide support the conducting of a refund referendum, the Secretary must conduct a refund referendum within 1 year of that determination.

If, based on the poll, the Secretary determines that less than 20 percent (not in excess of one-fifth of which may be producers in any one State) of the approximately 381,000 producers nationwide support the conducting of a refund referendum, it will not be conducted and refunds will be discontinued.

The Act specifies that the producer poll shall be conducted for a period established by the Secretary. Eligible persons must both certify that they were engaged in the production of soybeans during a representative period specified by the Secretary and indicate that they support the conducting of a refund referendum.

The Secretary has determined that the producer poll shall be conducted on 1 day. That date will be announced in a Notice published in the **Federal Register** and as specified in § 1220.711. The Act also provides that producers may participate in the poll in person at county Extension (now Cooperative State Research, Education, and Extension Service) offices or county Agricultural Stabilization and Conservation Service (now Consolidated Farm Service Agency) offices or by mail-in requests. Conducting the poll at county CFSA offices and providing for mail-in requests will provide the greatest opportunity for those producers who wish to indicate that they support the conducting of a refund referendum.

On October 18, 1994, AMS published in the **Federal Register** (59 FR 52475) a proposed rule setting forth the procedures to be followed in conducting the producer poll under the Act. The proposed rule included provisions concerning definitions, supervision of the producer poll, certification and request procedures, reporting poll results, and disposition of records. It also proposed that CFSA of the Department coordinate State and county CFSA roles in conducting the poll.

The proposed rule was published with a request for comments to be submitted by November 17, 1994.

The Department received nine written comments. One from the United Soybean Board, five from State soybean organizations and three from individual soybean producers. The commenters generally supported the procedures for the conduct of the poll with certain qualifications.

The changes suggested by commenters are discussed below, together with a description of changes made by the Department upon review of the proposed procedures for the conduct of a producer poll. The Department has made other minor changes of a nonsubstantive nature for clarity and accuracy. Due to the recent reorganization of USDA, all references in the proposed rule to "Agricultural Stabilization and Conservation Service (ASCS)" have been changed in this final rule and in the discussion below to "Consolidated Farm Service Agency (CFSA)," and references to "Cooperative Extension Service (CES)" have been changed to "Cooperative State Research, Education, and Extension Service (CSREES)." For the reader's convenience, the discussion is organized by the same topic headings in the proposed rule.

§ 1220.717 General.

Regarding § 1220.717(b), two commenters suggested that the poll be conducted at county Cooperative Extension Service (CES) Offices (now Cooperative State Research, Education, and Extension Service (CSREES)) because the Act requires that referenda be conducted at CSREES offices and to do otherwise would tend to cause confusion among producers. The poll is not a referendum. It is an opportunity for producers to request a referendum, and only those producers who want to request a refund referendum will participate in the poll. Therefore, we believe that the use of CFSA offices is the most economical and efficient place for conducting the poll. If the poll shows that producers favor a refund referendum, it (as well as any future referenda) will be conducted at county CSREES offices as provided in the Act. Accordingly, we have not adopted this suggestion in this final rule.

Regarding § 1220.717 (c) and (d), the commenters suggested that, because the outcome of the poll is determined by 20 percent (not in excess of one-fifth of which may be producers in any one State) of all producers, the rule should include the total number of soybean producers that would be used to determine the outcome of the poll. This is a valid suggestion. Accordingly, we have added subsection (e) as follows: "For purposes of subsections (c) and (d), the total number of producers is 381,000."

§ 1220.720 Time and place for requesting a refund referendum.

Two commenters suggested extending the in-person portion of the poll to three consecutive days and one commenter suggested extending it to two days. The commenters believe that giving more time for the in-person poll would provide a greater opportunity for producers to participate in the poll. We share the commenters' concern that producers have ample opportunity to participate in the poll; however, we believe that the provision for a 4-week absentee period will give all those who wish to participate in the poll a chance to do so. Therefore, this suggestion is not adopted.

§ 1220.723 Certification and request procedure.

Regarding § 1220.723(b), two commenters suggested that eligible producers be allowed to request Form LS–53 (absentee request) by telephone. We have determined that restricting requests to in-person and mail-in—where the producer is required to write his or her name and address—lessens the likelihood that a request would go unfilled because the required information was not accurately recorded by the person answering the telephone. Accordingly, this suggestion is not adopted.

Regarding § 1220.723(b)(4), two commenters wrote that the Act provides that to be considered, absentee requests (Forms LS–53) must be postmarked no later than the end of the period established under clause (i) for in-person requests. They assert that the postmark is the relevant date and should be the end of the period for in-person requests. We agree that the postmark is the relevant date and that the Act specifies that the date be no later than the end of the period for in-person requests. The date can, however, be earlier, and we have required that absentee requests be postmarked no later than the end of the period for absentee requests. This earlier cut-off date is necessary to ensure that county CFSA offices receive absentee requests in time to allow those requesters' names to be posted for public viewing. Challenges to a person's eligibility to make a request must be made no later than the 2nd day after the in-person polling date. Accordingly, we have adopted a part of the suggestion and amended this section to require that absentee requests be postmarked on or before the last day of the absentee polling period.

§ 1220.725 Challenge of eligibility.

Regarding § 1220.725(e), two commenters were concerned that there is no provision for an appeal, by a person challenging a producer's eligibility, of the county CFSA committee's determination that the producer is eligible. When a person challenges another's eligibility, the CFSA county committee, acting on behalf of the Administrator of AMS for purposes of conducting the poll, determines whether the official records indicate that the challenged person is eligible. If the records so indicate, the CFSA county committee resolves the challenge in favor of eligibility. If the records do not so indicate, the challenged person is notified of his or her right of appeal and to provide proof of eligibility to the CFSA county committee. Since the CFSA county committee's determination is based on official records, this suggestion is not adopted.

§ 1220.726 Canvassing request lists.

Regarding § 1220.726, two commenters were concerned that the canvassing procedures in this subsection do not conform with the canvassing procedures set out for the initial referendum. The canvassing referred to in the initial referendum rule pertained to the county CSREES offices transferring ballots to the county CFSA offices and verifying that each ballot transferred was recorded on the list of voters. The canvassing referred to in this rule pertains to the review and tabulation of the poll results, which would take place on the 10th business day following the in-person polling date. The commenters' concern that eligibility be determined in a timely manner is addressed in § 1220.725 and will be addressed in the detailed instructions provided to the county CFSA offices. All properly completed requests are deemed valid until challenged. The commenters also suggested that the rule contain a definition of "invalid requests." This is a valid suggestion and we have described that term in § 1220.726(b). Section 1220.726(b) in the proposed rule is renumbered § 1220.726(c) in this final rule.

Miscellaneous

Two commenters recommended that a new section be included to address the requirement in the Act that the Secretary publish a notice in the **Federal Register** and that the Board notify producers in writing, within 60 days of the end of the polling period, of their opportunity to request a refund referendum. This is a valid suggestion; however, rather than add a new section, we have expanded the definition of Public Notice in § 1220.711 to include the commenters' suggestions.

Effective Date

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the **Federal Register**. This rule establishes the procedures for conducting a producer poll required by the Act and should become effective as soon as possible in order to begin preparations for the poll.

List of Subjects in 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. In part 1220, a new subpart F is added to read as follows:

Subpart F—Procedures for the Conduct of a Producer Poll

Sec.

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1220.703 Consolidated Farm Service Agency County Committee.
1220.704 Consolidated Farm Service Agency.
1220.705 Consolidated Farm Service Agency County Executive Director.
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1220.729 Results of the poll.
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Subpart F—Procedures for the Conduct of a Producer Poll

Definitions

§ 1220.701 Act.

The term *Act* means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

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§ 1220.702 Administrator.

The term *Administrator* means the Administrator of AMS, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.703 Consolidated Farm Service Agency County Committee.

The term *Consolidated Farm Service Agency County Committee*, also referred to as *CFSA County Committee*, means the group of persons within a county who are elected to act as the Consolidated Farm Service Agency County Committee.

§ 1220.704 Consolidated Farm Service Agency.

The term *Consolidated Farm Service Agency*, also referred to as *CFSA*, means the Consolidated Farm Service Agency of the Department.

§ 1220.705 Consolidated Farm Service Agency County Executive Director.

The term *Consolidated Farm Service Agency County Executive Director*, also referred to as *CED*, means the person employed by the CFSA County Committee to execute the policies of the CFSA County Committee and to be responsible for the day-to-day operation of the CFSA county office, or the person acting in such capacity.

§ 1220.706 Department.

The term *Department* means the United States Department of Agriculture.

§ 1220.707 Deputy Administrator.

The term *Deputy Administrator* means the Deputy or Acting Deputy Administrator, Program Delivery and Field Operations, Consolidated Farm Service Agency, U.S. Department of Agriculture.

§ 1220.708 Order.

The term *Order* means the Soybean Promotion and Research Order.

§ 1220.709 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.710 Producer.

The term *Producer* means any person engaged in the growing of soybeans in the United States who owns, or shares the ownership and risk of loss of such soybeans.

§ 1220.711 Public notice.

The term *Public notice* means a notice published in the **Federal Register**, not later than 60 days prior to the last day of the polling period which provides information regarding the producer poll. Such notification shall include, but not be limited to explanation of producers—rights; the opportunity to request a refund referendum by participating in the producer poll; the purpose of the poll, dates during which the producer poll will be conducted; where it will be conducted, and eligibility requirements. Additionally, the Board is required to provide producers, in writing, the same information during the same time period. Other pertinent information will also be provided, without advertising expense, through press releases by State and county CFSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletter, and the like.

§ 1220.712 Refund referendum.

The term *Refund referendum* means a referendum conducted pursuant to § 1969(1)(2)(F)(iv) of the Act relating to continuance of authority for producers to receive refunds of assessments.

§ 1220.713 Representative period.

The term *Representative period* means the period designated by the Secretary pursuant to § 1970 of the Act.

§ 1220.714 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.715 Soybeans.

The term *Soybeans* means all varieties of Glycine max or Glycine soja.

§ 1220.716 State and United States.

The terms *State and United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Producer Poll

§ 1220.717 General.

(a) A poll to determine whether eligible producers favor the conduct of a refund referendum on the continuance of the payment of refunds under the Order shall be conducted in accordance with this subpart.

(b) The poll shall be conducted at the county offices of CFSA.

(c) If the Secretary determines, based on the poll results, that at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of all producers support the conducting of a refund referendum to determine whether such producers favor the continuation of the payment of refunds under the Order, a refund referendum will be held within 1 year from that determination.

(d) If the Secretary determines, based on the poll results, that less than 20 percent (not in excess of one-fifth of which may be producers in any one State) of all producers favor the conduct of a refund referendum, a refund referendum will not be held and refunds will be discontinued.

(e) For purposes of paragraphs (c) and (d) of this section, the total number of producers is 381,000 as reported in the 1992 Census of Agriculture.

§ 1220.718 Supervision of poll.

The Administrator shall be responsible for conducting the poll in accordance with this subpart.

§ 1220.719 Eligibility.

(a) Eligible producers. Each person who was a producer during the representative period is entitled to request a refund referendum. Each producer entity is entitled to only one request.

(b) Participation in the poll by proxy is not authorized.

(c) An officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may register and request a refund referendum on behalf of that entity. Such individual must certify that he/she is authorized by such entity to take such action.

(d) Joint and group interest. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity will be entitled to make only one request; provided, however, that any individual member of a group who is an eligible producer separate from the group may register and make a request as a producer.

§ 1220.720 Time and place for requesting a refund referendum.

A poll will be conducted for one day on a date to be determined by the Secretary. Eligible persons shall make their requests following the procedures in § 1220.723. Except for absentee requests, the polling will take place during the business hours of each county CFSA office.

§ 1220.721 Facilities for conducting poll.

Each county CFSA office shall provide adequate facilities and space to permit producers to register and to sign Form LS–51 indicating that they are requesting that a refund referendum be conducted.

§ 1220.722 Certification and request forms.

A single sheet (Form LS–51) shall be used for certifying eligibility and for requesting a refund referendum. The county CFSA office, at the request of the producer, will fill out the form, including the producer's name and address. The county CFSA office will require the producer to read the certification statement and to sign his or her name. The form does not require a "yes" or "no." Completing and signing the Form LS–51 will be considered a request to the Secretary to conduct a refund referendum. A combined registration, certification, and request form (Form LS–53) shall be used for absentee requests. The producer must read and sign the form simultaneously registering, certifying eligibility, and requesting that a refund referendum be conducted.

§ 1220.723 Certification and request procedure.

(a) *In-person.* Each producer who wants to request that a refund referendum be conducted shall, during the period to be specified by the Secretary, request that the county CFSA office in, or serving, the county in which the producer resides, enter his or her name and address on Form LS–51. Each producer entity shall make its request at the county CFSA office in the county in which its headquarters office or business is located or at the county office serving the county in which the entity's headquarters office or business is located. Producers will be required to provide their names and addresses to the county CFSA office and to read the certification statement before signing the form. By signing the form, producers certify that they or the entity they represent were producers during the specified representative period. A producer who is requesting a refund referendum on behalf of an entity referred to in § 1220.719 certifies by signing the form that he or she is authorized to do so.

(b) *Absentee requests.* Individual eligible producers may request and obtain a combined registration, certification, and request form (Form LS–53) from the county CFSA office in, or serving, the county in which they reside. Eligible producer entities may request Form LS–53 from the county CFSA office in, or serving, the county in which their main office is located. Only one Form LS–53 shall be provided to each eligible producer. Form LS–53 may be requested in person or in writing during a specified period which will be announced by the Secretary. The county ASCS office shall enter on Form LS–52, "Absentee Request List," the name and address of each person or entity requesting Form LS–53 and the date the form was mailed.

(1) To register, eligible producers must complete and sign Form LS–53, and certify that: (i) They or the entity they represent were producers during the specified representative period; and

(ii) If requesting a refund referendum on behalf of an entity referred to in § 1220.719 they are authorized to do so.

(2) After completing Form LS–53, a producer must fold the self-mailer so that the CFSA county office address is properly displayed, and mail or deliver the form to the address shown.

(3) Completed absentee requests must be postmarked no later than the last day of the absentee polling period.

§ 1220.724 Lists of registered producers.

Maintaining security of Forms LS–51 and LS–52. County CFSA offices shall at all times maintain control of the master (original) Forms LS–51 and LS–52. A copy of Form LS–52 will be posted and available for public inspection each day beginning on the first day of the absentee polling period through the second business day following the in-person poll. Copies of Form LS–51 will be posted and available for public inspection on the date of the in-person poll and for 2 business days thereafter. The forms will be posted during regular office hours in a conspicuous public location.

§ 1220.725 Challenge of eligibility.

(a) *Who may challenge.* A person's eligibility to request a refund referendum may be challenged by any person.

(b) *Challenge period.* A challenge of a person's eligibility to request a refund referendum may be made at any time during the polling period, but no later than the close of business on the 2nd day after the date of the in-person poll.

(c) *Determination of challenges.* The CFSA County Committee or its designee, acting on behalf of the Administrator, shall make a determination concerning the eligibility of a producer who has been challenged and notify challenged producers as soon as practicable, but not later than 5 business days after the date of the in-person poll.

(d) *Challenged names.* The names of producers whose eligibility is challenged shall be so noted. The notation "challenged" shall be made next to the name on the Form LS–51 or Form LS–52. After the challenge has been resolved, the county CFSA office shall write either "eligible" or "ineligible" next to the name on the Form LS–51 or Form LS–52. A challenge shall be determined to have been resolved if the determination of the CFSA County Committee or its designee is not appealed within the time allowed for appeal or there has been a determination by the CFSA County Committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to request a refund referendum by the CFSA County Committee or its designee may file an appeal at the county CFSA office within 3 business days after notification of such decision. Such person may be required to provide documentation such as sales documents or similar documents in order to demonstrate his or her eligibility. An appeal shall be determined by the CFSA County Committee, or its designee, acting on behalf of the Administrator, as soon as practicable, but in all cases not later than the 9th business day after the last day of the polling period. The CFSA County Committee or its designee's determination on an appeal is final.

§ 1220.726 Canvassing request lists.

(a) Canvassing procedure. Canvassing of Forms LS–51, LS–52, and LS–53 shall take place as soon as possible after the opening of county CFSA offices on the 10th business day following the in-person polling date. Such canvassing shall be in the presence of at least two CFSA employees. CED or designee shall supervise the canvassing process and make a determination as to:

(1) The number of producers signing Forms LS–51 and LS–53 and found to be eligible to request a refund referendum, and

(2) The number of producers signing Forms LS–51 and LS–53 found to be ineligible to request a refund referendum.

(b) Requests shall be declared invalid if a producer has failed to provide all information required and/or has failed to properly sign Forms LS–51, LS–52, or LS–53.

(c) The public may witness the review and tabulation of Forms LS–51, LS–52, and LS–53, but may not interfere with the process.

§ 1220.727 CFSA county office report.

The CFSA county report shall be certified as complete by the CED or designee. CFSA county office shall notify CFSA State office of the results of

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the poll. Each CFSA county office shall transmit the results of the poll in its county to the CFSA State office. Such report shall include, but not be limited to, the number of producers registering to request a refund referendum; the number of requests declared invalid; the number of requests declared ineligible; and the total number of requests declared eligible to conduct a referendum. The results of the poll in each county may be made available to the public after the county has reported to the State office. A copy of the report of results shall be posted for 30 days in CFSA county office in a conspicuous place accessible to the public, and a copy shall be kept on file in CFSA county office for a period of at least 12 months.

§ 1220.728 CFSA State office report.

Each CFSA State office shall transmit to the Deputy Administrator, CFSA, a written summary of the results of the poll received from all CFSA county offices within the State. The summary shall include the information on the poll results contained in the reports from all county offices within each State and be certified by the CFSA State Executive Director. The State CFSA office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less that 12 months.

§ 1220.729 Results of the poll.

(a) The Deputy Administrator, CFSA, shall submit to the Administrator, AMS, the results of the poll. The Administrator, AMS, shall prepare and submit to the Secretary a report of the results of the poll. The results of the poll shall be issued by the Department in an official press release and published in the **Federal Register**. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, room 2624 South Agriculture Building, 14th and Independence Avenue SW, Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county will be reexamined and checked by such persons who may be designated by the Deputy Administrator, CFSA, or the Secretary.

§ 1220.730 Disposition of records.

Each CFSA CED shall place in sealed containers marked with the identification of the soybean producer poll, the request lists and county summaries. Such records shall be secured in the custody of the CFSA CED for a period of not less than 12 months after the poll. If no notice to the contrary is received from the Deputy Administrator, CFSA, by the end of such time, the records shall be destroyed.

§ 1220.731 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the producer poll.

Dated: March 15, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–6910 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0859]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation E (Electronic Fund Transfers). The amendment eliminates the requirement that an electronic terminal receipt disclose a number or code that uniquely identifies the consumer, the consumer's account, or the access device. This requirement posed a significant security risk to consumers and financial institutions by making information accessible to criminals that could be used to make fraudulent fund withdrawals. To address this problem, the Board adopted an interim rule effective December 1, 1994. The Board also sought comments on the interim rule and is amending the rule to address the comments received.

EFFECTIVE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation E implements the Electronic Fund Transfer Act (EFTA). The EFTA provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment system, or home banking program. Regulation E establishes restrictions on the unsolicited issuance of ATM cards and other access devices; requires disclosure of terms and conditions of an EFT service; calls for documentation of EFTs through terminal receipts and periodic account statements; provides limitations on consumer liability for unauthorized transfers; and establishes procedures for error resolution.

II. Summary of Amendment

In December 1994, the Board adopted an interim rule amending Regulation E (59 FR 61787, December 2, 1994). Comment was solicited on making the rule final; approximately 65 comments were received. All commenters strongly supported the Board's proposal.[1] Commenters believed that the change would not significantly reduce the level of information provided to consumers regarding their ATM transactions and would continue to provide enough information for the consumer (and the financial institution) to identify the transaction.

Based on the comments received and further analysis, the Board is adopting final amendments to Regulation E. Under the final rule, the card or account number identification on the receipt no longer has to be "unique" among the institution's customers and need not exceed four digits or letters. The number or code still has to distinguish the consumer's account(s) from other accounts of the same consumer at the institution, and to distinguish the access device from other access devices of the same consumer at the institution.

Section 205.9—Documentation of Transfers

Paragraph (a)—Receipts at Electronic Terminals

Under the EFTA, when a consumer initiates a transfer at an electronic terminal, the financial institution must make a written receipt available to the consumer, identifying the consumer's account with the financial institution from which or to which funds are transferred. Under the regulation, institutions can comply with this

[1] Commenters included 39 financial institutions, six trade associations, five Federal Reserve Banks, and two law firms. No consumer groups commented on the interim rule.

identification requirement by including a number or code on the receipt that identifies the access device used to initiate the transfer, the consumer initiating the transaction, or the consumer's account(s). The Board specified that the number or code should be "unique" to ensure that the method used on the receipt adequately identifies the consumer.

Over the years, many financial institutions met this requirement for unique identification by disclosing consumers' card or account numbers on the receipt, and doing so did not appear to represent a security risk. Recently, the requirement for a unique identification has resulted in serious and widespread ATM fraud carried out by individuals who observe—and often videotape—a consumer entering a personal identification number (PIN) on the ATM keypad. These persons retrieve terminal receipts that have been discarded at ATM locations to obtain the account or ATM card number. Using the combination of PIN and number, they then manufacture a counterfeit ATM card and use the card to withdraw funds from the consumer's account.

To help protect consumers and financial institutions against this fraud, the Board adopted an interim rule effective December 1, 1994. The interim rule eliminated the requirement that an electronic terminal receipt uniquely identify the consumer's account or card. This change has allowed institutions to truncate the number printed on the receipt so that it will not contain enough information for a criminal to duplicate the card.

The Board believes that the change does not substantially diminish consumer protections. The purpose of the receipt requirement is to allow consumers to verify transactions. Under the final rule, the receipt still provides sufficient information to allow the consumer to identify transfers: the date of the transfer; the amount of the transfer; the type of transfer and type of account; the location of the terminal; and the identification of any third party to or from which funds are transferred. Using this information, a consumer can match each transaction on the periodic statement with the receipt received at the time the transaction took place. In addition, a consumer has the necessary information to identify and resolve errors in documentation. Commenters agreed, noting that the amendment would not adversely effect their ability to comply with the error resolution procedures of Regulation E.

Standards for Truncation

Numerous commenters asked the Board to provide specific guidance to establish truncation standards for card number suppression. Several commenters requested that either the regulation or the Official Staff Commentary should provide a "safe harbor" for institutions, allowing them to truncate the identifying information on terminal receipts to as few as four digits or letters. An industry trade association, along with the major ATM networks, has developed and proposed a 4-digit standard for the industry. Although the account number printed on the receipt would be truncated under this standard, the necessary information to support research and reconciliation would be retained in the system. Commenters believed that a 4-digit standard would deter fraud and still provide sufficient identification.

Commenters strongly supported establishing a standard at the network level. They believed that this standard would assure that cardholders are provided the same level of account protection at any network ATM they use. In addition, commenters noted that a financial institution could provide the same level of account protection to cardholders from other institutions who use their ATMs. Other commenters, while not opposing the proposed standard, asked the Board to provide flexibility for financial institutions to develop their own receipt identification methoddlogy. The Board is amending the regulation to provide that institutions are in compliance with the terminal receipt account identification requirement when account numbers are truncated to four digits. This would create a safe harbor for compliance, allow for the establishment of an industry standard, and also allow an institution to develop its own requirements.

The Board believes that the ATM fraud addressed by the rule is a serious problem that, absent Board action, would have continued to the detriment of consumers and financial institutions. The final rule reduces fraud without compromising consumers' ability to document their electronic fund transfers and provides specific guidance concerning compliance.

This amendment to Regulation E supersedes a proposed change under the regulatory review project that was published for comment earlier this year (59 FR 10684, March 7, 1994).

III. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared an economic impact statement on the amendment to Regulation E. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

IV. Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR 1320.13), the information collection has been reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period. The third party disclosure in this revision of Regulation E is in 12 CFR 205.9. Information is required as confirmation of transactions consumers perform at electronic terminals. The revision allows institutions to truncate the identifying number or code on receipts, thus deterring fraud. The revision is not estimated to change the amount of annual burden associated with Regulation E for state member banks, which is 543,363 hours.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 12 CFR part 205 which was published at 59 FR 61787 (December 2, 1994) is adopted as a final rule with the following changes:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 12 U.S.C. 1693.

2. Section 205.9 is amended by revising paragraph (a)(4), to read as follows:

§ 205.9 Documentation of transfers.

(a) * * *

(4) A number or code that identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: March 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6971 Filed 3–21–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–149–AD; Amendment 39–9174; AD 95–06–04]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–80 series airplanes, that requires inspection and replacement of certain suspect horizontal stabilizer primary trim motors. This amendment is prompted by an analysis which revealed that certain incorrectly manufactured motor shafts could fail prematurely and, in turn, cause the primary trim motor to fail. The actions specified by this AD are intended to prevent such failures of the primary trim motor, which could ultimately result in reduced controllability of the airplane.

DATES: Effective April 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC–9–80 series airplanes was published in the **Federal Register** on October 18, 1994 (59 FR 52482). That action proposed to require inspecting the horizontal stabilizer primary trim motor to determine if the motor is one having a suspect serial number, and replacing the suspect motors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 26 Model DC–9–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry will be affected by this AD, that it will take approximately .5 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $390, or $30 per airplane.

Replacement of suspect motors will require 4.5 work hours to accomplish, at an average labor charge of $60 per work hour. Required replacement parts will be provided by Sundstrand Electric Power Systems (the manufacturer of the horizontal stabilizer primary trim motors) at no charge to operators. Based on these figures, the total cost impact is estimated to be $3,510, or $270 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–04 McDonnell Douglas: Amendment 39–9174. Docket 94–NM–149–AD.

Applicability: Model DC–9–80 series airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the horizontal stabilizer primary trim motor, accomplish the following:

(a) Within 6 months after the effective date of this AD, conduct a visual inspection of the horizontal stabilizer primary trim motor to determine if the motor is identified with one of the suspect serial numbers listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994. Conduct this inspection in accordance with the procedures specified in that service bulletin.

(1) If the horizontal stabilizer primary trim motor is not identified with a suspect serial number, no further action is required by this AD.

(2) If the horizontal stabilizer primary trim motor is identified with a suspect serial number, prior to further flight, replace the motor in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement shall be done in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A27–342, dated August 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 21, 1995.

Issued in Renton, Washington, on March 8, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6238 Filed 3–21–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–172–AD; Amendment 39–9176; AD 95–06–06]

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes and Model MD–88 airplanes, that requires a visual inspection to verify proper installation of the wire termination lugs on the ignition selector switch, and removal and correct installation of any improperly installed wire termination lugs. This amendment also requires application of sealant to the wire termination lugs and the attachment screws. This amendment is prompted by a report that, during the manufacturer's production flight testing, an abnormal engine start valve open annunciation for engine No. 2 occurred and resulted in an uncontained failure of the engine starter. The actions specified by this AD are intended to prevent damage to the engine cowling, damage to adjacent engine components, and possible fire in the cowling, due to an uncontained failure of the engine starter.

DATES: Effective April 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L , FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and—C–9 (military) series airplanes and Model MD–88 airplanes, was published in the **Federal Register** on November 22, 1994 (59 FR 60097). That action proposed to require a visual inspection to verify proper installation of the wire termination lugs on the ignition selector switch, and removal and correct installation of any improperly installed wire termination lugs. That action also proposed to require application of sealant to the wire termination lugs and the attachment screws.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that it plans to incorporate the service bulletin referenced in the proposed rule into its "heavy check" maintenance visits, which occur approximately every 18 months. The FAA infers from this comment that the commenter would

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like the compliance time for the visual inspection of the wire termination lugs on the ignition selector switch to be extended from the proposed 8 months to 18 months. The FAA concurs. The FAA's intent was that the inspection be accomplished during a regularly scheduled maintenance for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA now recognizes that 18 months corresponds more closely to the interval representative of the commenter's normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 18 months. The FAA does not consider that this extension will adversely affect safety.

Another commenter questions the applicability of the proposed rule. The commenter states that the service bulletin referenced in the proposed AD is effective for Model DC–9 series airplanes that are equipped with a 20/4 Joule Ignition System. The commenter's Model DC–9 series airplanes are equipped with Dual 20 Joule Ignition System and, therefore, the commenter states that this should exclude its airplanes from the applicability of the AD. The FAA concurs that clarification is necessary. The applicability statement of this AD indicates that only those airplanes listed in McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992, are applicable to its requirements. As the commenter points out, the service bulletin applies only to airplanes equipped with a 20/4 Joule Ignition System. The FAA's intent is to limit the applicability of this AD only to those airplanes that have been identified as subject to the addressed unsafe condition. In light of this, the applicability of the final rule has been revised to clarify that only those Model DC–9 series airplanes listed in the referenced service bulletin and equipped with 20/4 Joule Ignition Systems (and) are subject to the requirements of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,954 Model DC–9, DC–9–80, and C–9 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,097 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The costs of required parts would be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $131,640, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–06 McDonnell Douglas: Amendment 39–9176. Docket 94–NM–172–AD.

Applicability: Model DC–9, DC–9–80, and C–9 (Military) series airplanes, and Model MD–88 airplanes, equipped with a 20/4 Joule ignition system; as listed in McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the engine starter, which could cause damage to the engine cowling, damage to adjacent engine components, and possible fire in the cowling, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a visual inspection of the wire termination lugs on the ignition selector switch located in the forward overhead switch panel in the flight compartment to determine if the lugs are installed in accordance with McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992.

(1) If any wire termination lug is improperly installed, prior to further flight, remove and reinstall wire terminations with the barrel up, and encapsulate wire termination lugs and attachment screws with sealant, in accordance with the service bulletin.

(2) If all wire termination lugs are properly installed, prior to further flight, encapsulate the termination lugs and attachment screws with sealant, in accordance with the service bulletin.

(b) Within 10 days after removing and reinstalling wire terminations with the barrel up, as required by paragraph (a)(1) of this AD, submit an accomplishment report of the modification, to the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712, Attention: Robert Baitoo, ANM–140L, fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, removal, reinstallation, and encapsulation shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 21, 1995.

Issued in Renton, Washington, on March 9, 1995.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6320 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–24–AD; Amendment 39–9179; AD 95–04–51]

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–04–51 that was sent previously to all known U.S. owners and operators of all Dornier Model 328–100 series airplanes by individual telegrams. This AD requires certain revisions to the Airplane Flight Manual (AFM), replacement of certain de-icing boots in the air intake duct assemblies of the engine with re-designed units, and inspections of the boots to detect discrepancies. This amendment is prompted by reports of failures of the engine air inlet de-icing system, including debonding of the boots from the engine air intake ducts, failure of the air-tight chambers in the boots, and malfunction and subsequent shutdown of an engine during flight. The actions specified by this AD are intended to prevent engine malfunction due to failure of the engine air inlet de-icing system.

DATES: Effective April 6, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–04–51, issued February 21, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On February 21, 1995, the FAA issued telegraphic AD T95–04–51, which is applicable to all Model Dornier 328–100 series airplanes. That action was prompted by reports of failure of the engine inlet de-icing system, including debonding of the boots from the engine air intake ducts, failure of the airtight chambers in the boots, and malfunction and subsequent shutdown of an engine during flight. These conditions, if not corrected, could result in significant loss of engine power.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that it has received numerous reports of failures of the engine inlet de-icing system, including reports of debonding of the de-icing boots from the engine air intake ducts, and other reports of failure of the air-tight chambers in these pneumatic de-icing boots. In one case, debonding and associated disruption of airflow into the engine resulted in malfunction and subsequent shutdown of the engine during flight. The causes of failure of the engine inlet de-icing system have not yet been identified fully.

Dornier has issued Service Bulletin SB–328–30–020, dated March 17, 1994, which describes procedures for repetitive detailed visual and tactile inspections of the de-icing boots of the air intake on the engines to detect flat spots, softness, or other discrepancies in the de-icing boots, and to ensure that the edges of the de-icing boots are sealed properly.

Dornier also has issued Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995, which describes procedures for replacement of certain de-icing boots on the air intakes of the engines with de-icing boots that have been re-designed.

The LBA classified these service bulletins as mandatory and issued German airworthiness directive 95–098/2, dated February 17, 1995, in order to assure the continued airworthiness of these airplanes in the Federal Republic of Germany.

In light of the failure history of certain engine intake de-icing systems on which re-designed de-icing boots are not installed, the FAA finds that the existing de-icing boots must be replaced with re-designed units. In the interim, daily inspections, as described in the Dornier service bulletin, are required to determine the condition of the de-icing system. In addition, because the causes of the failures have not been identified fully, the FAA has determined that functional tests also are necessary prior to each flight to ensure proper operation of the system. Finally, for the same reason, this AD also requires that these inspections and tests be continued at greater intervals following installation of the re-designed boot to ensure that installation of the re-designed unit has corrected the unsafe condition.

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This airplane model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T95–04–51 to:

1. Require replacement of certain de-icing boots with re-designed units;

2. Provide operating limitations and require revisions to abnormal procedures to specify that icing conditions must be exited or the airplane must be landed at the nearest suitable airport under certain conditions;

3. Require certain inspections to detect discrepancies in de-icing boots;

4. Require functional tests to ensure proper operation of the de-icing system; and

5. Require that operators report to the FAA findings of any discrepancy discovered on re-designed boots.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on February 21, 1995, to all known U.S. owners and operators of Dornier Model 328–100 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–24–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–51 Dornier: Amendment 39–9179. Docket 95–NM–24–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine malfunction due to failure of the engine air inlet de-icing system, accomplish the following:

(a) For all airplanes: Within 24 hours after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting the following limitation in the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"During flight, if the 'ENG DEICE FAIL' electronic indication and caution advisory system (EICAS) annunciation activates for either engine, flight into known or forecast icing conditions is prohibited."

(2) Revise the Abnormal Procedures Section of the FAA-approved AFM by removing page 4, dated September 1, 1994, of section 04–12–00, and replacing it with the following. This may be accomplished by inserting a copy of this AD in the AFM.

"1. Icing Conditions.	Exit immediately. If unable, land at nearest suitable airport."

(3) Revise the Limitations Section of the FAA-approved AFM to include the following functional test. This may be accomplished by inserting a copy of this AD in the AFM.

"Accomplish the following test at the applicable time specified as follows:

"For airplanes equipped with air intake duct assemblies having de-icing boots with part numbers (P/N's) 29S–5D5240–21, –23, and –25: As of 24 hours after the effective date of AD 95–04–51, accomplish the functional test prior to each flight.

"For airplanes equipped with air intake duct assemblies having de-icing boots with P/N's 29S–5D5240–211 (inlet lip), –231 (bypass duct), and –251 (aft ramp duct): Accomplish the functional test within 24 hours after the effective date of AD 95–04–51, and thereafter at daily intervals.

"Perform a functional test of the de-icing system of the air intake ducts of the left and right engines to determine the condition of the system, in accordance with the procedures specified below. Flight crew or maintenance personnel shall perform this test.

FUNCTIONAL TEST OF THE DE-ICING SYSTEM

"With engines running at idle power, display and monitor the 'ICE PROTECT' system page of the electronic indication and caution advisory system (EICAS), select left and right 'ENGINE INTAKE' pushbuttons in ('ON'), for a minimum of 60 seconds. Monitor system page for normal indications of one complete boot inflation and deflation cycle. Monitor EICAS for normal messages, and absence of 'ENG DEICE FAIL' caution.

After 60 seconds and observation of one complete inflation/deflation cycle, release 'ENGINE INTAKE' pushbuttons to out ('OFF') position, confirm absence of system page and EICAS cautions, and deselect 'ICE PROTECT' system page. At completion of check, 'ENGINE INTAKE' pushbuttons may be turned back on if required for departure.

"If any EICAS 'ENG DEICE FAIL' annunciation is observed, or if system normal inflate and deflate cycling is not observed: The system shall be considered inoperative. Prior to further flight, the detailed visual and tactile inspections required by paragraph (b) of AD 95–04–51 must be accomplished.

"If no discrepancy with the de-icing boots is found during these inspections, the de-icing system may be inoperative for a period of time not to exceed that specified in the DO–328 Master Minimum Equipment List (MMEL). Flight into known or forecast icing conditions is prohibited."

(b) For airplanes equipped with air intake duct assemblies having de-icing boots with P/N's 29S–5D5240–21, –23, and –25: Accomplish paragraphs (b)(1) and (b)(2) of this AD at the times specified in those paragraphs.

(1) Within 24 hours after the effective date of this AD: Perform a detailed visual inspection and a tactile inspection of the de-icing boots in the air intake ducts on the engines to detect flat spots, softness, or other discrepancies, and to ensure that the edges of the de-icing boots are sealed properly, in accordance with Dornier Service Bulletin SB–328–30–020, dated March 17, 1994.

(i) If no discrepancies are found and the edges of the de-icing boots are sealed properly (no debonding between the boot and the intake duct), repeat the detailed visual and tactile inspections required by paragraph (b)(1) of this AD thereafter at daily intervals.

(ii) If any discrepancy is found, or if any edge of a de-icing boot is sealed improperly (debonding between the boots and the intake duct), prior to further flight, replace all three de-icing boots having P/N's 29S–5D5240–21, –23, and –25, with three new units having P/N's 29S–5D5240–211, –231, and –251, in accordance with the procedures specified in Dornier Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995.

(2) Within 5 days after the effective date of this AD, replace all three de-icing boots having P/N's 29S–5D5240–21, –23, and –25, with three new units having P/N's 29S–5D5240–211, –231, and –251, in accordance with Dornier Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995. Following such replacement, perform the detailed visual and tactile inspections and the functional tests required by paragraphs (c) and (a)(3) of this AD, respectively, in accordance with the times and procedures specified in those paragraphs.

(c) For airplanes equipped with air intake duct assemblies having de-icing boots with P/N's 29S–5D5240–211,–231, and –251: Within 7 days after the effective date of this AD, perform a detailed visual inspection and a tactile inspection of the de-icing boots in the air intake ducts on the engines to detect flat spots, softness, or other discrepancies, and to ensure that the edges of the de-icing boots are sealed properly, in accordance with the procedures specified in Dornier Service Bulletin SB–328–30–020, dated March 17, 1994.

(1) If no discrepancies are found and the edges of the de-icing boots are sealed properly (no debonding between the boot and the intake duct): Repeat the detailed visual and tactile inspections required by paragraph (c) of this AD thereafter at intervals not to exceed 7 days.

(2) If any discrepancy is found, or if any edge of a de-icing boot is sealed improperly (debonding between the boots and the intake duct): Prior to further flight, replace all three de-icing boots with three new units having P/N's 29S–5D5240–211, –231, and –251, in accordance with Dornier Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995; and accomplish the reporting requirement specified in paragraph (d) of this AD.

(d) For airplanes equipped with air intake duct assemblies having de-icing boots with P/N's 29S–5D5240–211, –231, and –251: Within 10 days after accomplishing any inspection or functional test required by this AD, report findings of any discrepancy to the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; fax (206) 227–1320. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) After the effective date of this AD, no de-icing boot having P/N 29S–5D5240–21, –23, or –25 shall be installed on any airplane.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and replacement shall be done in accordance with Dornier Service Bulletin SB–328–30–020, dated March 17, 1994; and Dornier Alert Service Bulletin ASB–328–71–006, Revison 1, dated February 16, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 6, 1995, to all persons except those persons to whom it was made immediately

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effective by telegraphic AD T95–04–51, issued on February 21, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 14, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6774 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 11 and 381

[Docket No. RM93–7–000; Order No. 576]

Charges and Fees for Hydroelectric Projects

Issued: March 15, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act, 16 U.S.C. 792–823b. The final rule adopts a maximum charge and makes the assessments commence at the same time as the commencement of project construction. The final rule eliminates annual charges for minor licensees, and does not (as originally proposed) adopt annual charges for existing exemptees. The final rule eliminates filing fees for future exemption applications, and adopts annual charges with respect to exemptions that are issued in the future for projects that are equivalent in size to those of major licensed projects. The final rule retains at this time the separate allocation of annual charges for administrative costs for municipal and non-municipal licensees, and retains as well the existing formulae for allocating those costs between the two classes of major licensees. The final rule defers consideration of those issues to a future proceeding.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act (FPA).[1] The final rule adopts a maximum charge and makes the assessments commence at the same time as the commencement of project construction. The final rule eliminates annual charges for minor licensees, and does not (as originally proposed) adopt annual charges for existing exemptees.[2] The final rule retains at this time the separate allocation of annual charges for administrative costs for municipal and non-municipal licensees, and retains as well the existing formulae for allocating those costs between the two classes of major licensees. The final rule defers consideration of those issues to a future proceeding.

II. Public Reporting Burden

Under the current regulations, major non-municipal licensees file annual reports containing data on their electric generation during the prior fiscal year. The final rule does not alter that reporting burden.

[1] 16 U.S.C. 792–823b.

[2] As discussed below, the final rule eliminates filing fees for future exemption applications, and adopts annual charges with respect to exemptions that are issued in the future for projects that are equivalent in size to those of major licensed projects.

III. Background

On January 26, 1994, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to revise its regulations governing the assessment of annual charges under FPA Part I.[3] As explained in the NOPR, the Commission is required by section 10(e)(1) of the FPA[4] to collect annual charges from licensees for the cost of administering Part I of the FPA. Part 11 of the Commission's regulations[5] provides the manner in which licensees are charged for such costs. Prior to the adoption of the current regulations in 1958 and 1963, administrative charges were not based on the actual costs of the government, but were in the nature of set fees that were billed for a calendar year.[6] Under the current regulations, the reimbursable costs are determined on a fiscal year basis.

Section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA)[7] requires the Commission to recover all of its costs for the fiscal year through annual charges and fees.[8] The annual charges assessed pursuant to OBRA are based on an estimate of the Commission's current-fiscal-year costs, with subsequent adjustments based on actual costs.[9] Pursuant to OBRA, the Commission collects annual charges to recover the costs of administering Parts II and III of the FPA, as well as the costs the Commission incurs in administering the Natural Gas Act, the Natural Gas Policy Act, and the Interstate Commerce Act. In this regard, we note that section 3401(a)(2) of OBRA provides that "[t]he provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act."

In response to the NOPR, the Commission received 73 comments. The

[3] IV FERC Stats. & Regs. ¶ 32,505. The NOPR was published in the **Federal Register** on February 3, 1994, 59 FR 5142.

[4] 16 U.S.C. 803(e)(1).

[5] 18 CFR part 11.

[6] The system of basing the annual charges on actual costs was adopted in Order No. 205, 19 F.P.C. 907 (1958) (with respect to municipal licensees only), and in Order No. 272, 30 F.P.C. 1333 (1963) (all other licensees); *see also* Order No. 272–A, 31 F.P.C. 1555 (1964).

[7] Pub. L. No. 99–509, Title III, Subtitle E, sec. 3401 (1986) (codified at 42 U.S.C. 7178). OBRA is implemented in Part 382 of the Commission's Regulations, 18 CFR Part 382.

[8] See Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, reprinted in 1986 U.S.C.C.A.N. 3607, 3883.

[9] The former procedures for estimating the costs and later adjusting the assessments were described in Order No. 472, 52 FR 18201 (May 14, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,746 at pp. 30,612 and 30,616–17.

commenters are listed in Appendix A of this final rule. The proposals in the NOPR, the comments thereon, and the Commission's determinations thereon are discussed below on a subject by subject basis.

IV. Discussion

As explained in the NOPR, former § 11.1 of the Commission's regulations provided three different allocation formulae for three different classes of licensees. For non-municipal licensees of projects of more than 2,000 horsepower of installed capacity, former § 11.1(a) set forth an allocation formula based on a combination of the project's authorized installed capacity and the energy actually generated. For municipal licensees of projects of more than 2,000 horsepower, former § 11.1(b) set forth an allocation formula based solely on capacity. For all licensees (both municipal and non-municipal) of projects of 2,000 horsepower or less of installed capacity, former § 11.1(c) specified an annual charge of five cents per horsepower, with a minimum charge of $5 per year.

The NOPR proposed two alternatives. In Alternative A, the Commission proposed to base the allocation of all of the annual charges among a single class of licensees and exemptees, including all major and minor municipal and non-municipal licensees and all exemptees. The allocation would be based solely on the respective capacity of each hydropower project as measured in kilowatts. Under Alternative B, the Commission proposed to retain separate categories and formulae for major municipal and non-municipal licensees. Minor licensees and exemptees would be classified with the comparable groups of major licensees, and their charges would be assessed pursuant to the formulae currently used for those groups.

A. Charges for Minor Licensees

As noted above, both Alternative A and Alternative B treated the minor licensees in the same manner as the major licensees. In Alternative A, all licensees were combined together in a single allocation formula. In Alternative B, the minor licensees were included in the respective allocation formulae for the major licensees. In other words, the minor municipal licensees were included in the same allocation formula with the major municipal licensees, and the minor non-municipal licensees were included in the same allocation formula with the major non-municipal licensees. The NOPR recognized that, under either scheme, the charges for minor licensees may increase substantially, but expressed the Commission's belief that the existing charge of five cents per horsepower had been so heavily eroded by inflation since it was adopted in 1963 as to have been rendered comparatively meaningless.

The major licensees favor including the minor licensees in the same assessment pool,[10] while the minor licensees object. The major licensees emphasize fairness in broadly spreading the Commission's costs, while the minor licensees emphasize the burden on them.

Water Assn. contends that "dramatic increases in fees" would cause some economically marginal minor licensees to abandon operation of their projects.[11]

Some minor licensees contend that they cannot afford a minimum annual charge of $100: Mackowiak, for instance, has a 37 kilowatt (kW) project in his back yard, whose purpose is to provide electricity to his home. He proposes that projects smaller than 100 kW in capacity be excluded from the assessments.

We have decided not to assess annual charges on minor projects. As a practical matter, excluding minor projects (*i.e.*, projects of 1.5 MW or smaller) will have no meaningful impact on the other licensees' assessments, but will relieve minor licensees of a potentially onerous burden.

In fiscal year 1993, a total of 1052 licensees were assessed a total of $51,399,160 in annual charges for administration of Part I of the FPA. Of that total, the 661 major licensees were assessed a total of $51,350,699,[12] while the 391 minor licensees were assessed a total of $48,461.[13] Thus, the major licensees accounted for 99.9 percent of the total assessments, while the minor licensees accounted for only 0.1 percent of the total assessments.

In other words, no major licensee derives any meaningful financial benefit from including the minor licensees in the existing assessment and allocation scheme. We believe that substantially increasing the minor licensees' annual charges, as proposed in the NOPR, could impose unreasonable burdens on many of those licensees, while exclusion of the minor licensees from the new assessment and allocation scheme may provide meaningful relief to many of those minor licensees. Accordingly, we have defined the scope of the assessment process in new § 11.1(b)(1) so as to include only licensees whose projects exceed 1.5 MW in authorized installed capacity. The 1.5 MW is the equivalent of the 2,000 horsepower definition of minor projects in former § 11.1.

B. Minimum and Maximum Charges

The NOPR proposed to establish a minimum and maximum annual charge. The minimum annual charge would be $100. The maximum charge would set a limit on annual charges so that, with respect to costs incurred by the Commission, no licensee's project would be required to pay more than 2.0 percent of the total costs.[14]

The NOPR also invited comment on other potential alternatives. With respect to a minimum charge, other alternatives would be to waive charges below a fixed dollar amount or below a fixed capacity. With respect to a maximum charge, different percentages could be used for the ceiling. If the formula were to be based solely on capacity, another alternative would be to have a 50 percent discount for all authorized capacity above a prescribed ceiling (*e.g.*, 500 megawatts).

Many of the commenters express approval for a maximum charge, and many of these comments come from licensees who would not themselves benefit from such a cap. In general, the commenters believe that the charges assessed to the largest projects are disproportionate.

Washington Company proposes a minimum base annual charge of $500.[15] Some smaller exemptees and minor licensees, on the other hand, contend that the $100 minimum would be unduly burdensome on them.

Ogden opposes the two percent maximum charge on grounds that it would solely benefit larger, non-municipal projects. Alaskan opposes the maximum charge on grounds that, "[i]f the charges are equitably allocated at the outset, the effect of the proposed cap could be to unfairly reallocate costs from larger to smaller projects."[16] Synergics also believes the cap is unfair.

Consolidated would lower the cap from 2 percent to 1.6 percent. Or, using the alternative formula discussed in the

[10] See, *e.g.*, EEI at 16–17.

[11] Water Assn. at 3. See also North America.

[12] Of that total, 133 municipal major licensees were assessed a total of $11,105,138, while 528 non-municipal major licensees were assessed a total of $40,245,561.

[13] Of that total, 58 municipal minor licensees were assessed a total of $3,404, while 333 non-municipal minor licensees were assessed a total of $45,057.

[14] The proposed limit was modelled after the formula in § 382.203(b) with respect to annual charges for oil pipelines. The maximum annual charge stated therein is 6.339 percent of the total charges, but that figure is based on a much smaller number of significant entities (interstate oil pipelines) sharing a much smaller total cost.

[15] Washington Company at 5.

[16] Alaskan at 5.

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NOPR, Consolidated would use a 75 percent discount factor for all capacity in excess of 500 MW.[17]

Chelan argues that the proposed two percent cap is inequitable. Chelan has two large projects each of which would fall beneath the cap, while its downstream neighbor, Grant, has two comparable developments that are grouped together into a single licensed project large enough to benefit from the cap. Therefore, Chelan urges us to apply the cap to licensees, not to projects. Chelan offers a further alternative: "The maximum charge per licensee could be 2 percent of the total administrative costs, or .5 percent of the number of projects licensed to it, whichever is greater."[18]

Grant suggests that the Commission conduct "a reasonable project-by-project sample study" that would "determine the average relationship of administrative costs to project size," and thereafter adjust the cap "to reflect the outcome of the study."[19] Virginia Electric proposes that the minimum charge be indexed to the rates of inflation of the Commission's total costs.[20]

In light of our determination to assess annual charges only to licensees whose projects have a capacity in excess of 1.5 MW, the proposed minimum charge has been rendered moot. Accordingly, we have not adopted it in the final rule.

Having considered the comments received, and for the reasons stated in the NOPR, we will adopt the two percent maximum charge that was proposed in the NOPR. We believe it is a reasonable compromise that takes into account the financial capacity of the larger projects as well as considerations of fairness in spreading the burden equitably among licensees by putting finite limits on the extent of any one project's burden.[21]

C. Commencement of Assessments

The NOPR recognized that, in the case of major construction projects, the license may be in effect for several years before project construction is commenced and before the project commences operation and goes into service. With respect to non-municipal licensees, annual charges are payable each year from the date of issuance of the license, but there is no incoming stream of revenue during those years, because no power is being generated. Municipal licensees, on the other hand, do obtain an exemption from annual charges prior to and during the construction period. This is because § 11.6(g) of the regulations provides a complete exemption from certain annual charges when a municipal project is under construction and not generating power, on the theory that the project is operating without profit within the meaning of the municipal exemption in FPA section 10(e).

Under the various regulatory regimes discussed in the NOPR, the Commission would maintain the above-described exemption from annual charges with respect to municipal projects that have not yet commenced commercial operation. In addition, the NOPR proposed to include in the assessment formula (whatever it may be) only licensed and exempted projects that have already been constructed or whose construction has commenced. Although framed in terms of all projects, as a practical matter, because of the exemption for municipal projects, the change would primarily affect non-municipal projects.[22]

Some commenters advocate commencement of annual charge assessments upon issuance of the license or even earlier. Some prefer to delay commencement of charges until the project commences operating. And some prefer the middle ground proposed in the NOPR—commencement of charges after commencement of construction.

EEI opposes deferring commencement of billing until commencement of construction, contending that it would give a "free ride" to licensees whose pre-construction planning activities consume Commission staff time. EEI would, instead, assess the charges during the pre-construction period but defer their payment until after construction, has commenced. Otherwise, according to EEI, the existing licensees would be "subsidizing" the new licensees; it would be unfair to the existing licensees, who all paid annual charges from the inception of their licenses.[23]

Consolidated states that large pumped storage projects require substantial lead time for design and financing prior to commencement of construction, and that during this period pumped storage developers typically have limited funds available.[24] Consolidated also points out that the existing regulations based annual charges for non-municipal pumped storage projects entirely on capacity, so that such projects did not receive the partial or complete relief accorded to non-municipal conventional projects and municipal projects, both of whose charges were based in part or in whole on generation; charges based on generation do not commence until after construction, because nothing is generated until the project has been built. Thus, Consolidated favors the NOPR's commencement proposal as a more equitable solution.[25] Consolidated also asserts that pumped storage projects, because of their large scale, bear a disproportionate share of the annual charges. According to Consolidated, in 1993 pumped storage projects comprised three percent of the total number of licensed projects but paid 32 percent of the total annual charges for administrative costs.[26]

Storage Council points out that pumped storage projects typically require two to four years of lead time after licensing before construction commences; that the annual charges for those projects are quite large; and that private developers of these projects need to concentrate their available finances on project design and power marketing.[27]

Noah Corp. states that "(t)he elimination of annual charges until construction start * * * is the most important part of this rulemaking. It will make more projects happen, because it will encourage development by reducing risk cost."[28]

Adirondack argues that it is unfair for non-municipal licensees to have to pay annual charges during the construction period when municipal licensees do not. Adirondack favors commencing all annual charges at the commencement of project operation, *i.e.*, the day on which the project first generates electricity.[29]

Storage Partners also advocates the date of commencement of commercial operations as the appropriate date of commencement of annual charges. Storage Partners would define the commencement of commercial operations in terms of the contractually defined date of that type specified in construction contracts, financing commitments, and power sales contracts.[30]

PG&E contends that the intent of Congress in FPA section 10(e) was to require annual licensees to pay annual charges throughout the term of the license, including the years immediately after its issuance, even if construction hasn't commenced.[31] PG&E points out that this is a period of significant Commission staff involvement in the licensee's activities, as the staff monitors and approves various aspects of design and construction.[32]

Consumers Power contends that the Commission can provide adequate relief to project-financed projects by authorizing deferred payment of annual charges on a case-by-case basis.[33] Duke advocates a system of direct billing for actual services rendered, starting with the Commission's initial involvement with the applicant/licensee.[34]

In light of all of the comments, and for the reasons stated in the NOPR, we believe that the annual charges commencement date proposed in the NOPR strikes a reasonable balance and compromise among the financial concerns of the different licensees. Licenses are issued for terms of as long as 50 years, and the projects themselves are often designed and constructed to last much longer than the license. Thus, over time, providing a modest level of relief to licensees of projects that haven't yet commenced construction imposes a very small burden on the existing licensees, because the licensees of newly constructed projects will be sharing the total annual charges burden long after the expiration of the short pre-construction period. Moreover, if a few years of pre-construction relief from annual charges enables one or more licensees of new projects to bring their projects to fruition, these new projects will help share the existing licensees' burden.

As we explained in the NOPR, we prefer to use the date of commencement of construction as the benchmark for commencement of annual charge assessments, as opposed to the date of commencement of operation, because the former has come to be defined (for other purposes) with considerably greater precision in the case law. It also marks the point in time at which funding is available from construction loans.

D. From Horsepower to Kilowatts

As discussed above and in the NOPR, former § 11.1 provided different allocation formulae for municipal and non-municipal projects of more than 2,000 horsepower of installed capacity. Both formulae, however, took into account a project's authorized installed capacity defined in terms of horsepower.

In the NOPR, the Commission proposed to revise former § 11.1 to substitute kilowatts for horsepower in stating a project's authorized installed capacity. This change was designed to reflect modern usage in the rating of equipment used in hydropower projects. For the few licensed hydromechanical projects, all of which are quite small, the Commission would impute a kilowatt figure by multiplying these projects' existing horsepower capacity by three-fourths.

All of the comments received on this proposal were in favor of it. Accordingly, for the reasons discussed in the NOPR, this proposal has been adopted in the final rule.

E. The Determination of Authorized Installed Capacity

The NOPR explained that questions have occasionally arisen as to how to define "authorized installed capacity." The Commission proposed to clarify the concept of "authorized installed capacity" by defining it in the proposed new § 11.1(i). The authorized installed capacity would be expressed in kilowatts, and would be the lesser of the capacity of the generator or the turbine. Thus, if the capacity of the generator exceeded the capacity of the turbine, then the capacity of the turbine would apply, and vice-versa. The availability of stream flow, however, would not be considered.[35]

The capacity would be based on the actual power of the equipment in question without regard to whatever "nameplate" rating might be physically affixed to the unit (although, with respect to a new or unmodified unit, the "nameplate rating" may well coincide with the definition proposed herein). If the generator or turbine are subsequently modified, such as by rewinding the generator, the capacity would be recalculated accordingly.

This proposal drew a variety of comments. EEI, for instance, proposes convening a technical conference to discuss the matter.[36]

Central Maine suggests that the Commission "take into account actual performance limitations such as age, wear, and cavitation limits when determining authorized capacity."[37]

Independent contends that turbine and generator nameplate ratings may be less than accurate as a determinant of actual capacity. Independent states that turbine ratings vary according to gate or head, and that the total capacity of a multi-unit powerhouse may well be less than the sum of the individual generator nameplate ratings because of the hydraulics of a multi-unit site.[38] Washington Company and Westinghouse make the same points.[39]

Portland Co. would base the determination of capacity solely on the manufacturer's nameplate rating, contending that this method "is simple, fair and predictable." Portland Co. claims that the formula proposed in the NOPR is unreasonable because hydro turbines have "a unique gate position (water flow) vs. megawatt output efficiency curve" that has "established upper and lower cavitation limits." Use of the maximum head gate opening is unrealistic, because the turbine runner might be damaged at that point on the curve. Portland Co. would use, instead, "the design upper cavitation limit as defined by the turbine manufacturer at the rated head."[40]

PG&E advocates measuring capacity in kilovolt-amperes (kVA), because manufacturers rate their generators' capacity in kVA.[41]

Continued

[17] Consolidated at 11–12; see also Storage Council at 9–10; Kvaerner at 10–11.

[18] Chelan at 11–13.

[19] Grant at 6.

[20] Virginia Power at 2.

[21] We understand Chelan's point, but we believe that basing the cap on licensees rather than on projects might result in as many distortions as the one Chelan notes. No annual charge allocation formula will ever be "perfect" or totally free of any distortion. We believe that the one we have adopted is reasonable. In any event, as noted below, our annual charge program is not predicated on collecting from individual projects in proportion to their responsibility for administrative costs incurred. For these and other reasons, we also believe that no useful purpose would be served by conducting the study suggested by Grant.

[22] The NOPR expressed the Commission's belief that commencement of construction is a more appropriate determinant than completion of construction, for two reasons. First, of all, the date on which construction commenced is a legally precise, documented date, whereas the date on which construction is completed is not defined with the same precision. This is because section 13 of the FPA requires that the licensee commence construction of the project within fixed time periods after issuance of the license, as specified in section 13 and the license. Thus, the Commission has evolved standards for determining the precise date of commencement of construction, and the hydropower industry is familiar with those standards. Secondly, the NOPR expressed the Commission's understanding that licensees of projects under construction can draw on construction loan funds to pay the annual charges, whereas such funds may not be available prior to the commencement of construction.

[23] EEI at 12–14. EEI goes on to advocate filing fees for applications for a preliminary permit or an original license. Those proposals go beyond the scope of the NOPR and will not be considered here.

[24] Consolidated at 3–4.

[25] *Id.* at 4–5.

[26] *Id.* at 6.

[27] Storage Council at 4–5.

[28] Noah Corp. at 1.

[29] Adirondack at 2.

[30] Storage Partners at 4.

[31] PG&E's comments, however, do not provide convincing documentation of such Congressional intent.

[32] PG&E at 6–8.

[33] Consumers Power at 6.

[34] Duke at 2.

[35] The NOPR stated that the proposed rule would codify the policy articulated in Public Utility District No. 2 of Grant County, Washington, 62 FERC ¶ 61,229 (1993).

[36] EEI at 16.

[37] Central Maine at 4.

[38] Independent at 2–3. See also National Hydro at 2.

[39] Washington Company at 7; Westinghouse at 2.

[40] Portland Co. at 3.

[41] PG&E at 5–6. We note that the portion of the definition in § 11.1(i) that deals with the capacity

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Westinghouse points out that profitability hinges in significant measure on the price and other terms of a company's power sales contracts, rather than on the raw capacity of the company's equipment. Therefore, Westinghouse suggests utilizing financial data on operating income and profitability in allocating annual charges. Westinghouse would also adjust the annual charges to reflect the extent to which poor management on the part of the regulated entity increases the level of the Commission staff's regulatory activities with respect to that entity.[42]

The most efficient use of the water resource is at "best gate" rather than at "maximum gate." Therefore, in response to the comments, we have substituted "best gate (maximum efficiency point)" for "maximum head gate" in the turbine portion of the definition in § 11.1(i). We will not, however, adjust the total capacity of the turbines at a multi-unit powerhouse to reflect the peculiar hydraulics of the site. That is precisely the sort of potentially contentious complexity we seek to avoid.

We will also clarify the NOPR's reference to the generator's "nameplate" rating. The rating on the generator's nameplate at licensing will be deemed to be the capacity of the generator unless the generator has been modified or rewound subsequent to licensing such that the nameplate no longer accurately describes the generator's actual capacity.

We are unwilling, however, to inject into the calculation such subjective and extraneous factors as the efficiency of the licensee's management or the profitability of the licensee's operation. Moreover, our annual charge program is not predicated on collecting from individual projects in proportion to their responsibility for administrative costs incurred.

F. The Five Megawatt and Conduit Exemption Costs

As explained in the NOPR, section 30 of the FP[43] provides that the Commission may exempt from the FPA's licensing provisions any facility (other than a dam, and within certain megawatt limits) which is constructed or operated to generate electric power, if the facility is located on non-federal land and "utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity."

Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended by section 408 of the Energy Security Act of 1980,[44] provide that the Commission may exempt from the FPA's licensing requirements small hydroelectric power projects that are located at the site of an existing dam (or utilize natural water features without the need for a dam) and that have a proposed installed capacity of five megawatts (MW) or less.

In the NOPR, the Commission expressed its belief that it has the legal authority under OBRA to assess annual charges to exemptees,[45] and proposed to do so with respect to both the 5 MW and the conduit exemptions.[46]

Finally, pursuant to former § 381.601, the Commission imposed a filing fee for applications for a 5 MW exemption. As a part of its proposal to assess annual charges on 5 MW exemptees, the NOPR proposed to delete § 381.601 from the regulations.[47]

EEI supports the proposal in the NOPR for the same reasons that it supports inclusion of minor licensees in the same pool with major licensees.[48]

Humboldt contends that OBRA does not confer any legal authority to assess annual charges independent of the authority conferred by section 10(e) of the FPA, which (as the NOPR noted) applies to licensees. Thus, Humboldt contends that the Commission lacks legal authority to assess annual charges to exemptees.

Humboldt further contends that the assessment of annual charges against exemptees violates the Congressional purpose and spirit of PURPA, which was to encourage certain small power projects by freeing them from regulatory requirements and costs.[49]

Howard contends that "(l)umping exempted and licensed projects into a single administrative framework defeats the spirit" of PURPA, "which put small projects with minimal environmental impacts in a separate category to facilitate their development and operation."[50]

Water Assn. states that many of its exemptee members "are facing dramatic reductions" in their revenues and "are reevaluating the continued operation" of their projects. Water Assn. believes that the imposition of annual charges "could easily tip the balance against continued operation."[51]

Ann Arbor states that it relied in part on the absence of charges when it redeveloped its two small (900 kW and 540 kW) exempted projects, and that the assessment of annual charges might contribute to a decision to sell or decommission one or both projects.[52] Desert also states that it relied, in part, on freedom from annual charges when it decided to invest in its two small exempted conduit projects; the two projects are operated on a not-for-profit basis to reduce water rates.[53]

Columbus states that its exempted project "was conceived to demonstrate the feasibility of a municipality operating a low head generator in Central Ohio at a water supply reservoir."[54]

Falls Creek contends that, by virtue of its exemption, the level of regulatory services it receives is lower than those received by licensees.[55]

Haemmig states that his 1.4 kW project "only produces approximately $20 per year revenue for us." Adkins' project is located in a national forest and is used solely to supply electricity

of generators is framed in part in kVA. It is then converted to kilowatts for purposes of comparison with the capacity of the turbine.

[42] Westinghouse at 3.

[43] 18 U.S.C. 823a.

[44] 16 U.S.C. 2705 and 2708.

[45] Section 3401(a) of OBRA provides as follows:

[46] Holders of 5 MW and conduit exemptions would, however, be able to apply for exemption from annual charges based on their municipal status.

(a) In General.—(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act.

Whereas this provision makes clear that OBRA does not authorize the collection of annual charges from, e.g., municipal licensees who qualify for an exemption under the terms of section 10(e) of the Federal Power Act, projects under exemptions from licensing are not subject to section 10(e), and therefore charging them under OBRA does not affect any provision of section 10(e).

Section 30(e) of the Federal Power Act requires the Commission to collect from exemption applicants and certain license applicants, on behalf of the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and state fish and wildlife agencies, these agencies' project-specific costs under section 30(c) (establishment of mandatory conditions with respect to fish and wildlife resources). These agencies are required to subtract from their section 10(e) claims the money they recover under section 30(e). 5 MW and the conduit exemptions.

[47] As noted in the NOPR, the Commission does not impose a filing fee for applications for conduit exemptions.

[48] EEI at 17.

[49] Humbo)dt at 3–4. See also Westinghouse at 3–4.

[50] Howard at 2.

[51] Water Assn. at 2.

[52] Ann Arbor at 1.

[53] Desert at 1–2. See also Michiana.

[54] Columbus at 1.

[55] Falls Creek at 2.

project is located in a national forest and is used solely to supply electricity to his ranch, whose alternate source of power is a diesel generator. Lassen states that his 30 kW conduit exemption project has a small positive cash flow but a negative rate of return, and that the $100 minimum charge proposed in the NOPR would constitute three percent of his gross revenue.

The Commission is persuaded by the comments that it should not extend the annual charges scheme to the existing exemptees. We believe that the statutory scheme by which the exemptions were authorized was designed to induce the development of small projects, and that many of the existing exemptees reasonably relied on freedom from annual charges when they invested in their projects. We also note that many of the existing exemptees paid a substantial filing fee at the time they filed their applications for exemption. For all of these reasons, we will not extend the scope of the annual charges scheme to encompass existing exemptees.

As discussed in the NOPR, the filing fee for exemption applications generates very little revenue but is so substantial as to likely deter applicants from filing new applications. No comments were received on the proposal to eliminate that filing fee. For the reasons stated in the NOPR, we will delete it from the regulations.

We will, however, include in the annual charges allocation scheme all exemptees whose projects exceed 1.5 MW in authorized installed capacity and whose exemptions are issued subsequent to the effective date of this final rule. Most of those exemptees will not have paid the application filing fee, and they will be on notice of the annual charges obligation at the time they choose to accept the exemption and invest in the exempted project. The exemption will be conditioned on knowing, voluntary acceptance of the obligation to participate in the annual charges scheme. We will exclude from the annual charges all projects of 1.5 MW capacity or less for the same reasons, explained above, that we excluded all such projects that are licensed instead of exempted. As a transition matter, we will allow any future exemptees who paid the application filing fee prior to the effective date of this final rule to credit that fee against their annual charge assessments to the full extent of the fee that was paid.

G. Other Revisions to Annual Charges

Former § 11.1(d) stated that the minimum annual charge for projects involving transmission lines was $5. The NOPR noted that the Commission's current practice is to state that charge in the articles of the individual licenses, as appropriate. Therefore, the NOPR proposed to conform the text of former § 11.1(d) (renumbered as proposed new § 11.1(e)) to that practice. No comments were received on this proposal, and the change has been made.

Former § 11.20 provided two separate deadlines for payment of bills for annual charges: 30 days for headwater benefits bills and 45 days for other annual charges bills. The NOPR proposed to make all such bills payable upon 30 days of their rendition.

Many commenters express strenuous objection to this proposed change,[56] and no commenter supports it. Some commenters discuss their experience with the time elapsed during mail transmissions between themselves and the Commission. They also discuss the time elapsed during mail transmissions within corporate or governmental entities; the added delays and complexities of licensees who are structured as corporate affiliates; and the layers of authority whose prior approval is needed before issuing checks for large sums of money. They discuss these matters in the context of the five percent per month penalty for late payment of the annual charges bill.[57]

Without endorsing any particular reason advanced by the commenters, the Commission is persuaded by their collective response that the present 45-day period should be retained. Therefore, the Commission will conform the divergent deadlines in § 11.20 by making both of them 45 days.

The NOPR proposed a new § 11.20, which would provide for licensees to file an appeal of the bill to the Commission's Chief Financial Officer. All decisions of the Chief Financial Officer on appeals would be subject to rehearing by the Commission pursuant to § 385.713. This would essentially codify the current informal practice. The NOPR noted that most billing disputes involve mathematical calculations that can be readily resolved by discussion with the Commission's staff without the need for a formal request to the Commission for rehearing. The bill would still have to be paid within 45 days of its rendition in order to avoid the assessment of penalty payments under § 11.21, but if a timely appeal or request for rehearing were filed the bill could be paid under protest and subject to refund. This provision would codify the Commission's current practice. No comments were received on these proposals. They will be adopted, for the reasons stated in the NOPR.

Former § 11.6(i) required that applications for exemptions from payment of annual charges "shall be prepared on forms prescribed by the Commission * * *" Inasmuch as the Commission does not currently prescribe such forms, the NOPR announced the Commission's intention to delete the reference to such forms. No comments were received on this, and the reference has been deleted.

The NOPR also proposed to add a sentence at the end of § 11.6(i) to clarify that bills for annual charges can be paid under protest and subject to refund in the event that an application for an exemption from payment is pending when the bill becomes payable. The NOPR explained that this provision would codify the Commission's current practice. No comments were received on this proposal, and we have adopted it, for the reasons stated in the NOPR.[58]

The Washington State Energy Office and the U.S. Forest Service note that the NOPR did not propose new regulations to implement section 1701(a) of the Energy Policy Act of 1992.[59] That legislation involves recovery through annual charges of certain costs incurred by federal and state fish and wildlife agencies and other natural and cultural resource agencies in connection with studies they perform pursuant to Part I of the FPA. They urge us to propose new regulations to implement section 1701(a). Citing section 504(g) of the Federal Land Policy Management Act, the Forest Service also argues that "any land use fees charged by the Commission for hydropower projects should be based on the fair market value of these lands for hydropower purposes."[60]

None of these matters was addressed in the NOPR, and they fall beyond the scope of this rulemaking proceeding. Accordingly, they will not be discussed or resolved in this final rule.

[56] See, e.g., EEI at 17–18; Central Maine at 4; Consumers at 7–8; PG&E at 9. PG&E favors extending the period to 60 days.

[57] See section 17(b) of the FPA, 18 U.S.C. 810(b).

[58] Snohomish suggests that the Commission pay interest on annual charges paid in protest that are later refunded when the protest is upheld. Snohomish argues that this would be fair and equitable in light of the penalties for late payment of the charges. Snohomish also suggests an escrow arrangement. The short answer is that the penalties are mandated by the FPA, but the Commission has no statutory authority to pay interest.

[59] Pub. L. 102–486, 106 Stat. 2776–3133 (Oct. 24, 1992).

[60] Forest Service comments at 1.

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H. Separate Classes of Licensees; Capacity or Generation

Many commenters expressed their views on the choice between Alternatives A and B in the NOPR, *i.e.*, whether to maintain separate pools of costs attributable to municipal and non-municipal licensees or to combine them into a single common pool of costs for allocation among all licensees regardless of class. The non-municipal licensees prefer to establish a combined pool, while the municipal licensees prefer to maintain separate pools. The NOPR also considered what formula to use to allocate costs among the licensees. Within Alternative A, the NOPR discussed several potential variations: (1) Base the allocation formula entirely on authorized installed capacity; (2) base the formula entirely on generation; or (3) base it on a combination of capacity and generation. Within Alternative B, the NOPR retained the existing formulae (as described above) whereby the allocation of costs for municipal licensees is based entirely on capacity while the allocation for non-municipal licensees is based on a combination of both capacity and generation.

Many commenters addressed this issue. The comments diverged widely, cutting across municipal and non-municipal lines. Some commenters preferred capacity, some preferred generation, and some preferred a combination.

The Commission has decided to defer consideration of these issues to a future proceeding. Because the Commission has not reached any decision on whether to revise these aspects of the current regulations, and if so, how, the final rule retains the separate pools of costs for municipal and non-municipal licensees, and retains the distinctions in the present formulae with respect to use of capacity and generation in the respective allocations.

I. Transition Arrangements

In the NOPR, the Commission proposed a three-year transition period for phasing in the changes described in the "Alternative A" regulatory text.

Many commenters supported use of a transition period in the event that the Commission adopted significant changes in the annual charges formulae. One commenter opposed having a transition period.[61] Several commenters suggested extending the transition period to five years, or even to ten years.[62]

As discussed above, the transition period in the NOPR was proposed to alleviate the dislocations attributable to adoption of the Alternative A formula. The proposed regulatory text for Alternative B did not include a transition period. Our decision to defer consideration of the allocation formulae renders the proposed transition period moot, and it will not be adopted. Thus, the maximum charge, the exclusion of minor licensees, and the commencement of assessments only after commencement of construction will all become effective immediately.[63]

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[64] generally requires a description and analysis of proposed regulations that will have a significant economic impact on a substantial number of small entities.[65] In the NOPR, we certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration, in its comments, asserts that there are approximately 900 licensees and exemptees whose projects have a rated capacity of less than 80 megawatts, and that section 3(17)(A) of the FPA uses that standard to define a "small power production facility."[66] The Association of California Water Agencies (Water Assn.) contends that "[a]dditional FERC fees for hydroelectric licenses will be a major impact on already strained local water agency budgets, and will additionally compromise the ability of the water agencies to meet their mandate of providing essential services of adequate water at reasonable costs."[67] Therefore, the Small Business Administration and the Water Assn. urge the Commission to perform a regulatory flexibility analysis. Several other exemptees also raised this issue.[68]

As discussed above, the Commission received numerous comments from exemptees and minor licensees urging us to provide a measure of relief from the proposed new regulations. In response to these comments, the Commission has decided not to impose annual charges on either licensees or exemptees whose projects have a capacity of 1.5 MW or less. This encompasses all of the minor licensees and all of the exemptees of comparable size. We have also excluded all of the existing exemptees regardless of size. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the final rule adopted herein will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Issuance of this final rule does not constitute a major federal action having a significant adverse impact on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act.[69] The final rule adopted herein is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[70]

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations at 5 CFR part 1320 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements pertinent to the existing regulations that are retained by this final rule are contained in FERC–583 "Annual Kilowatt Generating Report (Annual Charges)" (1902–0136). The Commission's Financial Services Division uses the data for determination of the amount of annual charges to be assessed licensees for reimbursable government administrative costs. The Commission will submit to the OMB a notification that these collections of information have been modified.

Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division, (202) 208–1415). Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

VIII. Effective Date

This final rule is effective April 21, 1995.

List of Subjects

18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends parts 11 and 381 of chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. Section 11.1 is revised to read as follows:

§ 11.1 Costs of administration.

(a) *Authority.* Pursuant to section 10(e) of the Federal Power Act and section 3401 of the Omnibus Budget Reconciliation Act of 1986, the Commission will assess reasonable annual charges against licensees and exemptees to reimburse the United States for the costs of administration of the Commission's hydropower regulatory program.

(b) *Scope.* The annual charges under this section will be charged to and allocated among:

(1) All licensees of projects of more than 1.5 megawatts of installed capacity; and

(2) All holders of exemptions under either section 30 of the Federal Power Act or sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, as amended by section 408 of the Energy Security Act of 1980, but only if the exemption was issued subsequent to April 21, 1995 and is for a project of more than 1.5 megawatts of installed capacity.

(3) If the exemption for a project of more than 1.5 megawatts of installed capacity was issued subsequent to April 21, 1995 but pursuant to an application filed prior to that date, the exemptee may credit against its annual charge any filing fee paid pursuant to § 381.601 of this chapter, which was removed effective April 21, 1995, 18 CFR 381.601 (1994), until the total of all such credits equals the filing fee that was paid.

(c) *Licenses and exemptions other than State or municipal.* For licensees and exemptees, other than State or municipal:

(1) A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees or exemptees, from which shall be deducted any administrative costs that are stated in the license or exemption or fixed by the Commission in determining headwater benefit payments.

(2) For each fiscal year the costs of administration determined under paragraph (c)(1) of this section will be assessed against such licenses or exemptee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses and exemptions.

(3) The annual charge factor for each such project shall be found as follows:

(i) For a conventional project the factor is its authorized installed capacity plus 150 times its annual energy output in millions of kilowatt-hours.

(ii) For a pure pumped storage project the factor is its authorized installed capacity.

(iii) For a mixed conventional-pumped storage project the factor is its authorized installed capacity plus 150 times its gross annual energy output in millions of kilowatt-hours less 100 times the annual energy used for pumped storage pumping in million of kilowatt-hours.

(iv) For purposes of determining their annual charges factor, projects that are operated pursuant to an exemption will be deemed to have an annual energy output of zero.

(4) To enable the Commission to determine such charges annually, each licensee whose authorized installed capacity exceeds 1.5 megawatts must file with the Commission, on or before November 1 of each year, a statement under oath showing the gross amount of power generated (or produced by nonelectrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding fiscal year, expressed in kilowatt hours. If any licensee does not report the gross energy output of its project within the time specified above, the Commission's staff will estimate the energy output and this estimate may be used in lieu of the filings required by this section made by such licensee after November 1.

(5) For unconstructed projects, the assessments start on the date of commencement of project construction. For constructed projects, the assessments start on the effective date of the license or exemption, except for any new capacity authorized therein. The assessments for new authorized capacity start on the date of commencement of construction of such new capacity. In the event that construction commences during a fiscal year, the charges will be prorated based on the date on which construction commenced.

(d) *State and municipal licensees and exemptees.* For State or municipal licensees and exemptees:

(1) A determination shall be made for each fiscal year of the cost of administration under Part I of the Federal Power Act chargeable to such licensees and exemptees, from which shall be deducted any administrative costs that are stated in the license or exemption or that are fixed by the Commission in determining headwater benefit payments.

(2) An exemption will be granted to a licensee or exemptee to the extent, if any, to which it may be entitled under section 10(e) of the Act provided the data is submitted as requested in paragraphs (d) (4) and (5) of this section.

(3) For each fiscal year the total actual cost of administration as determined under paragraph (d)(1) of this section will be assessed against each such licensee or exemptee (except to the extent of the exemptions granted pursuant to paragraph (d)(2) of this section) in the proportion that the authorized installed capacity of each such project bears to the total such capacity under all such outstanding licenses or exemptions.

(4) To enable the Commission to compute on the bill for annual charges the exemption to which State and municipal licensees and exemptees are entitled because of the use of power by the licensee or exemptee for State or municipal purposes, each such licensee or exemptee must file with the

[61] Noah Corp. (at 2) contends that the phased-in transition provisions are unnecessary and would further complicate the changes.

[62] APPA at 17; No. Cal. Power at 4; Okla. Authority; Public Pool at 8–9; Westinghouse at 4–5.

[63] We are, however, adopting a minor transition provision with respect to the change from horsepower to kilowatts, discussed above.

[64] 5 U.S.C. 601–612.

[65] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[66] We note that the regulations previously in effect, as discussed above, treated as "minor" for annual charge purposes only those projects whose capacity did not exceed 2,000 horsepower, which equates to 1.5 megawatts, not 80 megawatts.

[67] Water Assn. at 3–4.

[68] Conn. Producers; Desert.

[69] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[70] See 18 CFR 380.4(a)(1). Water Assn. (at 4) contends that we should prepare an environmental impact statement because, in its view, the proposed revision of the annual charges allocation will result in some projects ceasing to operate, thereby increasing the burning of fossil fuels, thereby increasing air pollution. Putting aside the procedural nature of the regulatory revisions, Water Assn.'s assertions are purely speculative, relying on a tenuous series of causal connections and a minute percentage of total hydroelectric generation. Moreover, as discussed above, in response to the comments received we have significantly modified the proposal to relieve the potential burden on all existing exemptees and all minor licensees.

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Commission, on or before November 1 of each year, a statement under oath showing the following information with respect to the power generated by the project and the disposition thereof during the preceding fiscal year, expressed in kilowatt-hours:

(i) Gross amount of power generated by the project.

(ii) Amount of power used for station purposes and lost in transmission, etc.

(iii) Net amount of power available for sale or use by licensee or exemptee, classified as follows:

(A) Used by licensee or exemptee.

(B) Sold by licensee or exemptee.

(5) When the power from a licensed or exempted project owned by a State or municipality enters into its electric system, making it impracticable to meet the requirements of this section with respect to the disposition of project power, such licensee or exemptee may, in lieu thereof, furnish similar information with respect to the disposition of the available power of the entire electric system of the licensee or exemptee.

(6) The assessments commence on the date of commencement of project operation. In the event that project operation commences during a fiscal year, the charges will be prorated based on the date on which operation commenced.

(e) *Transmission lines.* For projects involving transmission lines only, the administrative charge will be stated in the license.

(f) *Maximum charge.* No licensed or exempted project's annual charge may exceed a maximum charge established each year by the Commission to equal 2.0 percent of the adjusted Commission costs of administration of the hydropower regulatory program. For every project with an annual charge determined to be above the maximum charge, that project's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining projects. The reapportionment will be computed using the method outlined in paragraphs (c) and (d) of this section (but excluding any project whose annual charge is already set at the maximum amount). This procedure will be repeated until no project's annual charge exceeds the maximum charge.

(g) *Commission's costs.* (1) With respect to costs incurred by the Commission, the assessment of annual charges will be based on an estimate of the costs of administration of Part I of the Federal Power Act that will be incurred during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs of administration that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs; and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year.

(2) The issuance of bills based on the administrative costs incurred by the Commission during the year in which the bill is issued will commence in 1993. The annual charge for the administrative costs that were incurred in fiscal year 1992 will be billed in 1994. At the licensee's option, the charge may be paid in three equal annual installments in fiscal years 1994, 1995, and 1996, plus any accrued interest. If the licensee elects the three-year installment plan, the Commission will accrue interest (at the most recent yield of two-year Treasury securities) on the unpaid charges and add the accrued interest to the installments billed in fiscal years 1995 and 1996.

(h) In making their annual reports to the Commission on their costs in administering Part I of the Federal Power Act, the United States Fish and Wildlife Service and the National Marine Fisheries Service are to deduct any amounts that were deposited into their Treasury accounts during that year as reimbursements for conducting studies and reviews pursuant to section 30(e) of the Federal Power Act.

(i) *Definition.* As used in paragraph (c) of this section, *authorized installed capacity* means the lesser of the ratings of the generator or turbine units. The rating of a generator is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kW/kVA. If the licensee or exemptee does not know its power factor, a factor of 1.0 kW/kVA will be used. The rating of a turbine is the product of the turbine's capacity in horsepower (hp) at best gate (maximum efficiency point) opening under the manufacturer's rated head times a conversion factor of 0.75 kW/hp. If the generator or turbine installed has a rating different from that authorized in the license or exemption, or the installed generator is rewound or otherwise modified to change its rating, or the turbine is modified to change its rating, the licensee or exemptee must apply to the Commission to amend its authorized installed capacity to reflect the change.

(j) *Transition.* For a license having the capacity of the project for annual charge purposes stated in horsepower, that capacity shall be deemed to be the capacity stated in kilowatts elsewhere in the license, including any amendments thereto.

3. In § 11.6, the heading, the introductory text of paragraph (a), and paragraph (i), are revised, and the cross-reference at the end of the section is removed, to read as follows:

§ 11.6 Exemption of State and municipal licensees and exemptees.

(a) *Bases for exemption.* A State or municipal licensee or exemptee may claim total or partial exemption from the assessment of annual charges upon one or more of the following grounds:

* * * * *

(i) *Application for exemption.* Applications for exemption from payment of annual charges shall be signed by an authorized executive officer or chief accounting officer of the licensee or exemptee and verified under oath. An original and three copies of such application shall be filed with the Commission within the time allowed (by § 11.28) for the payment of the annual charges. If the licensee or exemptee, within the time allowed for the payment of the annual charges, files notice that it intends to file an application for exemption, an additional period of 30 days is allowed within which to complete and file the application for exemption. The filing of an application for exemption does not by itself alleviate the requirement to pay the annual charges, nor does it exonerate the licensee or exemptee from the assessment of penalties under § 11.21. If a bill for annual charges becomes payable after an application for an exemption has been filed and while the application is still pending for decision, the bill may be paid under protest and subject to refund.

4. Section 11.20 is revised to read as follows:

§ 11.20 Time for payment.

Annual charges must be paid no later than 45 days after rendition of a bill by the Commission. If the licensee or exemptee believes that the bill is incorrect, no later than 45 days after its rendition the licensee or exemptee may file an appeal of the bill with the Chief Financial Officer. No later than 30 days after the date of issuance of the Chief Financial Officer's decision on the appeal, the licensee or exemptee may file a request for rehearing of that decision pursuant to § 385.713 of this chapter. In the event that a timely appeal to the Chief Financial Officer or a timely request to the Commission for rehearing is filed, the payment of the bill may be made under protest, and subject to refund pending the outcome of the appeal or rehearing.

PART 381—FEES

5. The authority citation for Part 381 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

6. Section 381.601 is removed and subpart F is reserved.

Appendix A

(**Note:** This Appendix will not be published in the Code of Federal Regulations.)

Commenters

Adirondack Hydro Development Corp. (Adirondack)
Adrian Haemmig (Haemmig)
Alabama Power Company (Alabama Power)
Alaskan Utilities (Alaskan)
Allegheny Power System (Allegheny)
American Public Power Association (APPA)
Association of California Water Agencies (Water Assn.)
Calaveras County Water District (Calaveras)
California Department of Water Resources (Cal. Water)
Calleguas Municipal Water District (Calleguas)
Central Maine Power (Central Maine)
City of Ann Arbor, Michigan (Ann Arbor)
City of Spokane, Washington (Spokane)
City of Tallahassee, Florida (Tallahassee)
Columbus Department of Public Utilities (Columbus)
Connecticut Small Power Producers Association (Conn. Producers)
Consolidated Pumped Storage, Inc. (Consolidated)
Consumers Power Company (Consumers Power)
Desert Water Agency (Desert)
Duke Power Company (Duke)
Eagle Mountain Energy (Eagle)
Edison Electric Institute (EEI)
Energy Storage Partners (Storage Partners)
Fairfax County Water Authority (Fairfax)
Falls Creek H.P.
Friant Power Authority (Friant)
Georgia Power Company (Georgia)
Great Bear Hydropower, Inc. (Bear)
Humboldt Bay Municipal Water District, Kaweah River Power Authority, and Nevada Irrigation District (Humboldt)
Hydro Energy Storage Council (Storage Council)
Idaho Power Company (Idaho Power)
Independent Hydro Developers, Inc. (Independent)
James B. Adkins (Adkins)
James C. Katsekas (Katsekas)
John E. Howard (Howard)
Kvaerner Energy Development and Halecrest Company (Kvaerner)
Lassen Research (Lassen)
McCallum Enterprises Limited Partnership (McCallum)
Michiana Hydroelectric Company (Michiana)
Montecito Water District (Montecito)
National Hydro
Noah Corp.
North American Hydro, Inc. (North American)
Northern California Power Agency and the City of Santa Clara, California (No. Cal. Power)
Ogden Environmental and Energy Services (Ogden)
Oklahoma Municipal Power Authority (Okl. Authority)
Otter Tail Power Company (Otter Tail)
Pacific Gas and Electric Company (PG&E)
Pennsylvania Power & Light Company (Pennsylvania Power)
Portland General Electric Company (Portland Co.)
Potlatch Corporation (Potlatch)
Power Authority of the State of New York (PASNY)
Public Generating Pool (Public Pool)
Public Utility District No. 1 of Chelan County, Washington (Chelan)
Public Utility District No. 1 of Douglas County, Washington (Douglas)
Public Utility District No. 2 of Grant County, Washington (Grant)
Richard G. Mackowiak (Mackowiak)
Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (Sabine)
Sacramento Municipal Utility District (SMUD)
Seattle City Light (Seattle Light)
Snohomish County, Washington, Public Utility District No. 1 (Snohomish)
South Carolina Electric & Gas Company (Carolina Electric)
Summit Hydropower (Summit)
Susquehanna Power Company and Peco Energy Power Company (Susquehanna)
Synergics Energy Development, Inc. (Synergics)
Tacoma Public Utilities (Tacoma)
U.S. Forest Service
U.S. Small Business Administration
Virginia Electric and Power Company (Virginia Electric)
Washington State Energy Office (Washington Office)
Washington Water Power Company (Washington Company)
Westinghouse Electric Company (Westinghouse)
Zoes J. Dimos (Dimos)

[FR Doc. 95–6979 Filed 3–21–95; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–016]

Special Local Regulations: The Great Kennebec River Whatever Race, Augusta, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.108, for the Great Kennebec River Whatever Race. The regulation will be effective Sunday, July 2, 1995 from 6 a.m. until 6 p.m. This regulation is necessary to control vessel traffic due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.108 are effective from 6 a.m. to 6 p.m. on Sunday, July 2, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

Drafting Information: The principal persons involved in drafting this document are LTJG B.M. Algeo, Project Manager, First Coast Guard District Boating Safety Division, and LCDR S.R. Watkins, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1995 running of the Great Kennebec River Whatever Race, Maine. A portion of the Kennebec River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that portion of the Kennebec River, extending bank to bank, between the Maine Route 126 bridge to the U.S. Route 201–202 bridge. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.108.

Dated: March 8, 1995.

J.L. Linnon,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–6954 Filed 3–21–95; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Parts 100 and 165

[CGD 95–025]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between October 1, 1994 and December 31, 1994, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

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DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between October 1, 1994 and December 31, 1994, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Thomas R. Cahill, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1994 and December 31, 1994, unless otherwise indicated.

Thomas R. Cahill,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Baltimore 94–032	Annapolis, MD	Safety Zone	12/31/94
Baltimore 94–033	Rte 450 Severn River Bridge, Annapolis, MD	Safety Zone	12/8/94
Charleston 94–116	Cooper River, Charleston, SC	Safety Zone	11/7/94
Charleston 94–117	Cooper River, Charleston, SC	Safety Zone	11/4/94
Charleston 94–118	Cooper River, Charleston, SC	Safety Zone	10/29/94
Charleston 94–119	Cooper River, Charleston, SC	Safety Zone	11/15/94
Charleston 94–128	Ashley River, Charleston, SC	Safety Zone	12/3/94
Corpus Christi 94–012	Redfish Bay, TX	Safety Zone	5/8/94
Corpus Christi 94–013	Corpus Christi Ship Channel, TX	Safety Zone	5/10/94
Corpus Christi 94–014	Corpus Christi Ship Channel, TX	Safety Zone	5/15/94
Corpus Christi 94–015	Corpus Christi Ship Channel, TX	Safety Zone	4/22/94
Corpus Christi 94–016	Corpus Christi Ship Channel, TX	Safety Zone	4/25/94
Corpus Christi 94–017	Matagorda Bay, TX	Safety Zone	4/27/94
Corpus Christi 94–018	Matagorda Ship Channel, TX	Safety Zone	5/27/94
Corpus Christi 94–019	Corpus Christi Ship Channel, TX	Safety Zone	6/11/94
Corpus Christi 94–020	Port Aransas Harbor, TX	Safety Zone	6/7/94
Corpus Christi 94–021	Corpus Christi Ship Channel, TX	Safety Zone	6/13/94
Corpus Christi 94–022	Corpus Christi Ship Channel, TX	Safety Zone	6/16/94
Corpus Christi 94–023	Corpus Christi Ship Channel, TX	Safety Zone	8/1/94
Corpus Christi 94–024	Corpus Christi Ship Channel, TX	Safety Zone	10/5/94
Corpus Christi 94–025	Corpus Christi Ship Channel, TX	Safety Zone	10/13/94
Corpus Christi 94–026	Corpus Christi Ship Channel, TX	Safety Zone	10/14/94
Corpus Christi 94–027	Corpus Christi Ship Channel, TX	Safety Zone	10/19/94
Galveston 94–008	Galveston Channel, TX	Safety Zone	10/6/94
Galveston 94–009	Galveston Channel, TX	Safety Zone	10/15/94
Hampton Roads 94–080	Hampton Roads, VA	Safety Zone	9/10/94
Hampton Roads 94–086	Hampton Roads, VA	Safety Zone	9/27/94
Houston 94–005	Houston Ship Channel, TX	Safety Zone	7/4/94
Houston 94–007	Houston Ship Channel, TX	Safety Zone	10/18/94
Houston 94–008	Houston Ship Channel, TX	Safety Zone	10/19/94
Houston 94–009	San Jacinto River, TX	Safety Zone	10/21/94
Houston 94–010	San Jacinto River, TX	Safety Zone	10/23/94
Houston 94–011	San Jacinto River, TX	Safety Zone	12/13/94
Houston 94–012	Old River, TX	Safety Zone	12/21/94
Jacksonville 94–113	St. Johns River, Jacksonville, FL	Safety Zone	10/28/94
Jacksonville 94–129	Cumberland Sound, GA	Safety Zone	12/1/94
LA/Long Beach 94–005	San Pedro Bay, CA	Safety Zone	9/28/94
LA/Long Beach 94–007	Long Beach Harbor, CA	Safety Zone	12/12/94
Memphis 94–002	Mississippi River, M. 576 to M. 581	Safety Zone	11/9/94

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
Miami 94–125	Miami, FL	Safety Zone	12/10/94
Miami 94–126	Miami, FL	Safety Zone	12/8/94
Miami 94–127	Miami, FL	Safety Zone	12/9/94
Miami 94–130	Miami, FL	Security Zone	12/10/94
Miami 94–131	Miami, FL	Security Zone	12/10/94
Miami 94–132	Miami, FL	Security Zone	12/10/94
Miami 94–133	Miami, FL	Security Zone	12/10/94
Mobile 94–004	M. 215 to M. 220, Mary Esther, FL	Safety Zone	7/1/94
Mobile 94–005	Pensacola Bay, Pensacola, FL	Safety Zone	7/4/94
Mobile 94–006	Panama City, FL	Safety Zone	7/4/94
Mobile 94–007	Gulf Shores, AL	Safety Zone	7/4/94
Mobile 94–008	City of Fort Walton Beach, FL	Safety Zone	7/4/94
Mobile 94–009	Pensacola Beach, FL	Safety Zone	7/13/94
Mobile 94–010	Mississippi Sound, AL	Safety Zone	7/25/94
Mobile 94–011	Panama City, FL	Safety Zone	7/4/94
Mobile 94–012	Mobile Ship Channel, AL	Safety Zone	8/6/94
Mobile 94–013	Fort Walton Beach, FL	Safety Zone	10/8/94
Mobile 94–014	Back Bay Biloxi, MS	Safety Zone	11/12/94
Morgan City 94–003	M. 137, Atchafalaya River, LA	Safety Zone	11/14/94
New Orleans 94–013	Mississippi River, M. 94 to M. 97	Safety Zone	4/9/94
New Orleans 94–014	Mississippi River, M. 228.5 to M. 230.5	Safety Zone	4/30/94
New Orleans 94–015	Mississippi River, M. 228.5 to M. 230.5	Safety Zone	5/21/94
New Orleans 94–018	Mississippi River, M. 94 to M. 97	Safety Zone	5/8/94
New Orleans 94–020	Mississippi River, M. 94 to M. 97	Safety Zone	6/24/94
New Orleans 94–021	Mississippi River, M. 113.2 to M. 115.2	Safety Zone	6/27/94
New Orleans 94–027	Mississippi River, M. 436 to M. 438	Safety Zone	8/7/94
New Orleans 94–028	Turning Basin, Industrial Canal, LA	Safety Zone	9/22/94
New Orleans 94–029	Mississippi River, M. 93.5 to M. 96.6	Safety Zone	10/1/94
New Orleans 94–031	Algiers Canal, LA, M. 6.6 to M. 7.6	Safety Zone	10/11/94
New Orleans 94–032	Mississippi River, M. 332.5 to M. 334.5	Safety Zone	10/15/94
New Orleans 94–034	Algiers Canal, LA, M. 6.6 to M. 7.6	Safety Zone	11/1/94
Port Arthur 94–004	Beaumont, TX	Safety Zone	4/16/94
Port Arthur 94–005	Beaumont, TX	Safety Zone	4/16/94
Port Arthur 94–006	Beaumont, TX	Safety Zone	4/24/94
Port Arthur 94–009	Mermentau, LA	Safety Zone	5/6/94
Port Arthur 94–010	Neches River to the Gulf of Mexico	Security Zone	8/31/94
Port Arthur 94–011	Cameron Parish, LA	Safety Zone	9/6/94
Port Arthur 94–015	Sabine Neches Canal, Port Arthur, TX	Safety Zone	10/18/94
San Diego Bay 94–008	San Diego Bay, CA	Safety Zone	12/13/94
San Francisco Bay 94–014	San Francisco Bay, CA	Safety Zone	10/1/94
San Francisco Bay 94–015	San Francisco Bay, CA	Safety Zone	10/8/94
San Francisco Bay 94–017	San Francisco Bay, CA	Safety Zone	12/21/94
San Juan 94–108	San Juan Harbor, PR	Safety Zone	10/16/94
Savannah 94–114	Savannah River, Savannah, GA	Safety Zone	11/13/94
St. Louis 94–016	Illinois River, M. 162 to M. 162.5	Safety Zone	12/1/94
Tampa 94–110	Tampa Bay, FL	Safety Zone	10/3/94
01–94–122	Keyport Harbor, NJ	Safety Zone	10/22/94
01–94–140	East River, NY	Safety Zone	10/16/94
01–94–145	Victory Fireworks, East River, NY	Safety Zone	10/2/94
01–94–152	East River, NY	Security Zone	10/19/94
01–94–154	Boston and Quincy Harbors, MA	Safety Zone	10/30/94
01–94–161	Mystic, CT	Safety Zone	12/31/94
01–94–162	South Norwalk, CT	Safety Zone	12/31/94
05–94–084	Wilmington, NC	Special Local	10/1/94
05–94–099	Wrightsville Beach, NC	Special Local	11/26/94
07–94–104	City of Sunny Isle, FL	Special Local	10/8/94
07–94–105	Holiday Isle, FL	Special Local	10/15/94
07–94–109	City of Miami Beach, FL	Special Local	10/8/94
07–94–115	Key West, FL	Special Local	11/9/94
07–94–120	Charleston, SC	Special Local	11/19/94
07–94–121	City of Charleston, SC	Special Local	12/3/94
07–94–134	City of Pompano Beach, FL	Special Local	12/11/94
07–94–135	Fort Lauderdale, FL	Special Local	12/10/94
08–94–034	Lake Charles, LA	Special Local	12/3/94
09–94–032	Waters Off Camp Perry, OH	Safety Zone	9/17/94
13–94–029	Puget Sound, WA	Safety Zone	9/14/94
13–94–034	Bremerton to Queets, WA	Safety Zone	9/21/94
13–94–035	Queets to Port of Benton, WA	Safety Zone	9/22/94
13–94–036	Puget Sound, WA	Safety Zone	9/29/94
13–94–037	Bremerton to Queets, WA	Safety Zone	10/19/94
13–94–038	Bremerton to Queets, WA	Safety Zone	10/26/94

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QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
13-94-040	Queets to Port of Benton, WA	Safety Zone	10/20/94
13-94-041	Queets to Port of Benton, WA	Safety Zone	10/29/94
13-94-042	Bremerton to Queets, WA	Safety Zone	10/28/94
13-94-043	Astoria, OR	Safety Zone	10/26/94
13-94-044	Puget Sound, WA	Security Zone	11/6/94
13-94-045	Puget Sound, WA	Safety Zone	11/9/94
14-94-002	Kawaihae, Kona, HI	Safety Zone	12/21/94
14-94-003	Waikiki, Oahu, HI	Safety Zone	12/31/94

[FR Doc. 95-6948 Filed 3-21-95; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-95-007]

Special Local Regulations for Marine Events; 16th Annual Safety-at-Sea Seminar, Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.511 for the 16th Annual Safety-at-Sea Seminar, an annual event to be held April 1, 1995, on the Severn River, at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic within the immediate vicinity of the U.S. Naval Academy during the Pyrotechnic Display, Helicopter Rescue Demonstration, and Sail Training Craft Maneuver Demonstration. The effect will be to restrict general navigation in this area for the safety of the spectators and the participants in these events.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 11 a.m. to 3:30 p.m. on April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204, or Commander, Coast Guard Group Baltimore, (410) 576-2516.

Drafting Information: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation: The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the 16th Annual Safety-at-Sea Seminar on the Severn River just off the Robert Crown Sailing Center, U.S. Naval Academy, Annapolis, Maryland. The event includes demonstrations of life rafts, pyrotechnics, use of anti-exposure suits, man overboard procedures, and a helicopter rescue. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: February 27, 1995.

W.J. Ecker,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95-6953 Filed 3-21-95; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 110

[CGD09 93-033]

Special Anchorage Area, Lake Superior, La Pointe Harbor, Madeline Island, WI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Special Anchorage Area on Lake Superior, La Pointe Harbor, Madeline Island, Wisconsin. Several boats already use this area for permanent anchorage. Use of the area for anchorage has been growing steadily over the years and it has become apparent there is a significant public need for this Special Anchorage Area. The intended effect of this Special Anchorage Area is reduce risk of vessel collisions within the designated area.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3990.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are Lieutenant Junior Grade, Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Regulatory History

On December 13, 1993, the Coast Guard published a notice of proposed rulemaking entitled Special Anchorage Area, Lake Superior, La Pointe Harbor, Madeline Island, WI in the **Federal Register** (58 FR 65140). The deadline for the submission of comments was January 27, 1994. The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held. The Commander, Ninth Coast Guard District has decided to publish the final rule as proposed.

Background and Purpose

On March 3, 1993, the Madeline Island Youth Sailing Club, requested that a Special Anchorage Area be established in the port of La Pointe in the vicinity of Madeline Island Marina, La Pointe, Wisconsin. The club operates Seascout Ship Number 336 of the Boy Scouts of America. They are a non-profit organization providing sailboat training and boating safety education to the community. The Town of La Pointe, Town Board of Supervisors, support this request. The intended effect of this Special Anchorage Area is to reduce the risk of vessel collisions within the designated area. Use of the area for anchorage has been growing steadily over the years and it has become apparent there is a significant public need for this Special Anchorage Area.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 110

Anchorage grounds, Navigation (water).

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and all subsections thereunder are also issued under 33 U.S.C. 1223 and 1231.

2. In part 110, a new § 110.77b is added to read as follows:

§ 110.77b Madeline Island, WI.

The water are in La Pointe Harbor, Madeline Island, Wisconsin, enclosed by:

Latitude	*Longitude*
46°46.3′ N	090°47.1′ W, to
46°46.6′ N	090°47.2′ W, to
46°46.7′ N	090°47.2′ W, thence
along the natural shoreline and structures to:	
46°46.3′ N	090°47.1′ W

Dated: March 8, 1995.

Rudy K. Peschel,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95-6955 Filed 3-21-95; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[CGD13-95-002]

Safety Zone Regulation: Bremerton, Washington, to Queets, Washington

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: This document contains corrections to the temporary final regulations (CGD13-95-002) which were published Monday, March 6, 1995 (60 FR 12112). The regulations established a temporary safety zone around vessels transiting from Bremerton, Washington to Queets, Washington.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: LTJG K. Paquette, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington, 98134, (206) 217-6232.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of these corrections established a temporary moving safety zone around two towing vessels and a barge transiting from Bremerton, Washington to Queet, Washington. The final rule erroneously states the name of the barge to be "NESTUCCA". The correct name of the barge is "EDGECUMBE".

Need for Correction

As published, the final rule contained errors which would make the safety zone ineffective and therefore must be corrected.

Correction of Publication

Accordingly, the publication on March 6, 1995, of the temporary final rule (CGD13-95-002) which was the subject of FR Doc. 95-5385, is corrected as follows:

1. Beginning on page 12112 in the first column, change "NESTUCCA" to "EDGECUMBE" wherever it appears in the preamble.

2. In § 165.T13-002, on page 12113 in the first column, in paragraph (a), "NESTUCCA" should read "EDGECUMBE".

3. In § 165.T13-002, on page 12113 in the second column, in paragraph (d), "NESTUCCA" should read "EDGECUMBE".

Dated: March 13, 1995.

R.K. Softye,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 95-6951 Filed 3-21-95; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH61-1-6381a; FRL-5175-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving, as revisions to the ozone portion of the Ohio State Implementation Plan (SIP), through direct final procedure, Ohio's 1990 base-year ozone precursor emissions inventory for the Toledo and Dayton ozone nonattainment areas. These emissions inventories were submitted to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions for the year 1990. The Ohio ozone nonattainment areas covered by this rulemaking are Toledo (Lucas and Wood Counties) and Dayton (Clark, Greene, Miami, and Montgomery Counties).

DATES: This final rule will be effective May 22, 1995 unless an adverse comment is received by April 21, 1995 If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at the following address (It is recommended that you contact Richard Schleyer at (312) 353-5089 before visiting the Region 5 Office.) Regulation Development Section, Air Enforcement Branch (AE-17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE-17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(a)(1) of the Clean Air Act Amendments of 1990 (Act) requires States with ozone and carbon monoxide (CO) nonattainment areas to submit a

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comprehensive, accurate and current inventory of actual ozone precursor emissions (which includes volatile organic compounds (VOC), nitrogen oxides (NO_X), and CO) for each ozone nonattainment area by November 15, 1992. This inventory must include anthropogenic base-year (1990) emissions from stationary point, area, non-road mobile, and on-road mobile sources, as well as biogenic (naturally occurring) emissions in all ozone nonattainment areas. The emissions inventory must be based on conditions that exist during the peak ozone season (generally the period when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard—NAAQS). Ohio's annual peak ozone season is from April 31 to October 31.

II. Criteria for Evaluating Ozone Emissions Inventories

Available guidance for preparing and reviewing the emission inventories is provided in the following USEPA guidance documents or memorandum: "State Implementation Plans; General Preamble for the Implementation of Title I of the Act," (Preamble) as published in the April 16, 1992 **Federal Register** (57 FR 13498); "Emission Inventory Requirements for Ozone State Implementation Plans," (EPA–450/4–91–010) dated March 1991; a memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, entitled "Public Hearing Requirements for the 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas," dated September 29, 1992; "Procedures for the Preparation of Emissions Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II," (EPA–450/4–91–016 and EPA–450/4–91–014) dated May 1991; "Procedures for Emissions Inventories Preparation, Volume IV: Mobile Sources," (EPA–450/4–81–026d) dated 1992; and "Supplement C to Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources," (AP–42) dated September 1990.

As a primary tool for the review of the quality of emission inventories, the USEPA has also developed three levels (I, II, and III) of emission inventories checklists. The Level I and II checklists are used to determine that all required components of the base-year emission inventory and its associated documentation are present. These reviews also evaluate the level of quality of the associated documentation and the data provided by the State and assess whether the emission estimates were developed according to the USEPA guidance. The Level III review evaluates crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet any of the ten crucial aspects would lead to disapproval of the emissions inventory submittal.

Detailed Level I and II review procedures can be found in the USEPA guidance document entitled "Quality Review Guidelines for 1990 Base Year Emissions Inventories," (Quality Review) (EPA–454/R–92–007) dated August 1992. Level III criteria were attached to a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Emission Inventory Issue," dated June 24, 1993. The Level I, II, and III checklists used in reviewing this emissions inventory submittal are attached to a USEPA technical support document (TSD) dated January 24, 1995.

III. State Submittal

On March 15, 1994, the Ohio Environmental Protection Agency (OEPA) submitted a request for revision to the ozone portion of Ohio's SIP, consisting of the 1990 base-year ozone emissions inventory for the following ozone nonattainment areas in Ohio: Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown. These emissions inventories were deemed complete on May 16, 1994. The USEPA has completed its review of the emissions inventories submitted for the Toledo and Dayton ozone nonattainment areas. The 1990 base-year emissions inventories submitted for the other areas shall be addressed in a separate rulemaking.

Inventory Preparation Plan/Quality Assurance Plan

All States were required to submit an Inventory Preparation Plan (IPP) to USEPA for review and approval by October 1, 1991. The IPP documents the procedures utilized in the development of an emissions inventory and contains the quality assurance and quality control plan (QA/QC). On March 19, 1992, the State of Ohio submitted a final ozone emissions IPP to USEPA. On April 15, 1992, USEPA informed the State that the IPP was not then approvable. The USEPA has worked with the State since that time in order to correct the deficiencies in the IPP. In the March 1994 SIP revision, the State submitted documentation of how the emissions inventory was prepared, as well as a quality assurance report for the point, area, and mobile source portions of the emissions inventory. The USEPA has determined that this documentation and the quality assurance reports meet the requirements for an IPP and are acceptable.

Point Source Emissions Inventory

The State submitted a point source emissions inventory of all facilities that emit at least 10 tons per year (tpy) of VOC, or 100 tpy NO_X or CO in the nonattainment area. The inventory also included sources that emit 100 tpy of VOC, CO, or NO_X located in a 25-mile boundary surrounding the nonattainment area. The point source emissions inventory contains general facility information, number of sources, production schedules and related emissions for each source, emissions limitation, control efficiency and rule effectiveness (RE), as applicable, and total emissions on an annual and daily ozone season basis.

The following methods were employed by the State to identify sources to be included in the 1990 base-year emissions inventory: the 1989 records for plants in the Emissions Inventory System (EIS) were checked and plants meeting the VOC, CO or NO_X criteria were updated with 1990 emissions data; the air permit records were reviewed for plants that may be candidates for inclusion in the point source inventory; and current industrial directories and the Toxic Release Information System (TRIS) database were checked for additional sources. For facilities in the point source inventory, the State acquired the emissions data by means of the following: Mail surveys; plant inspections; telephone calls; and air permit files.

The USEPA reviewed the point source emissions data by cross referencing the point source inventory to the following sources: (1) USEPA's guidance document entitled "Major CO, NO_2, and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume I: Classified Ozone Nonattainment Areas," (EPA–450/4–92–005a) February 1992; a 1990 TRIS Retrieval; and a 1990 AFS—Emission to Compliance Comparison Report. The State was notified of potentially missing sources or discrepancies in their reported emissions, and provided necessary corrections.

Where a source was governed by a regulation or a control device, the emissions limit was stated. RE was then applied in the determination of emissions. A standard RE of 80 percent was utilized unless otherwise justified in accordance with USEPA guidance.

Area Source Emissions Inventory

Area source emissions were calculated using State-specific data as well as USEPA guidance documents and technical memorandum developed for various categories. The State utilized emission factors from Volume I and IV, and AP–42 and provided necessary documentation. The following area source categories were included in the emissions inventory: Gasoline loading and distribution, dry cleaning, degreasing, architectural surface coatings, traffic markings, automobile refinishing, graphic arts, cutback asphalt, pesticide application, commercial/consumer solvents, bakeries, waste management practices (landfills), leaking underground storage tanks, incineration of solid waste, stationary fossil fuel combustion, and fires (structural, open burn, etc.). Vehicle refueling emissions were included as part of the mobile source emissions inventory.

The area source inventory was reviewed utilizing USEPA's guidance documents, and the Level I and II checklists, to ensure that all source categories and their related emissions (and emission factors) were included in the area source emissions inventory. Seasonal adjustments, rule effectiveness, and rule penetration were applied as indicated in the State submittal.

On-Road Mobile Source Emissions Inventory

In the development of the mobile source emissions inventory, the State utilized USEPA's mobile source emissions model, Mobile 5a, for the determination of emissions factors for eight vehicle types and twelve roadway types. Hard-copy documentation of the input and output files are provided in the submittal. Where available, the State-specific inputs were utilized in the development of the input file for Mobile 5a.

The 1990 vehicle miles travelled (VMT) for each roadway type was developed by the Ohio Department of Transportation (ODOT). ODOT maintains data on each section of highway in the State of Ohio. VMT were developed by the State Road Inventory System and reported through the Highway Performance Monitoring System (HPMS) to the Federal Highway Administration (FHWA).

Each roadway section daily VMT (dVMT) is computed as the annual average daily traffic (AADT) for that section times the length of the section. The county dVMT is the sum of the dVMT for each highway functional classification in the county. The total dVMTs are then summed for a statewide total. The statewide total is then compared by functional class to the 1990 HPMS submittal. For those classifications where traffic counts were available for all or nearly all their sections, the totals were essentially the same. For those with more off-systems roads, the resulting totals were larger than the HPMS's submittal value (as expected). Correction factors were computed from the two sets of totals and applied to the individual cells.

ODOT used permanent and portable vehicle classification equipment to develop the vehicle mix by functional classification of highway. Traficomp III vehicle classification equipment are used to support the HPMS data collection effort. A software program called OHIO CONVERT formats vehicle classification data into the FHWA Vehicle Classification categories.

The USEPA has reviewed the mobile source emissions inventory utilizing the checklist contained in the Quality Review guidance document. This was used to ensure that recommended procedures were followed in the development of the mobile source portion of the emissions inventory. This checklist is attached to a USEPA TSD dated January 24, 1995.

Off-Road Mobile Source Emissions Inventory

The State developed emissions estimates for the following off-road categories according to USEPA guidance: aircraft, railroad locomotives, recreational boating, off-road motorcycles, agricultural equipment, construction equipment, industrial equipment, and lawn and garden equipment. The State provided documentation of the sources of emissions factors utilized, and submitted it in the area source emissions inventory portion of the submittal.

The USEPA reviewed the off-road mobile source inventory utilizing the Level I and II checklists and USEPA's guidance documents to ensure that all source categories and their related emissions factors were included in the off-road mobile source emissions inventory.

Biogenic Emissions Inventory

The State of Ohio determined the biogenic emissions for the Toledo and Dayton area according to a USEPA's guidance document entitled "User's Guide to the Personal Computer Version of the Biogenic Emissions Inventory System (PC–BEIS)," (EPA–450/4–91–017), dated July 1991. Meteorological data utilized in PC–BEIS was collected in accordance with USEPA guidance. The ten warmest days from the period between 1988 to 1990 with the highest hourly peak ozone concentrations in each ozone nonattainment area was collected and reviewed. As required by USEPA guidance, the fourth highest daily maximum ozone concentration for each nonattainment area was selected and utilized in the model. The State provided hard copy documentation of the meteorological inputs utilized, and PC–BEIS output files for the biogenic emissions inventory for the Toledo and Dayton nonattainment areas.

IV. Summary of Ozone Emissions Inventory

The USEPA has prepared the following summary of the emissions inventories for an average ozone summer weekday for the Toledo and Dayton ozone nonattainment areas. The emissions are stated in tons per day for a typical ozone season weekday:

TOLEDO OZONE NONATTAINMENT AREA (TPD)

Source type	VOC	CO	NO_X
Point Sources	58.82	5.21	85.33
Area Sources	28.18	6.71	1.51
On-Road Mobile Sources	68.46	377.89	37.73
Off-Road Mobile Sources	9.96	66.26	16.55
Biogenic Sources	72.33	.....	.....
Totals	237.75	456.07	141.12

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DAYTON OZONE NONATTAINMENT AREA (TPD)

Source type	VOC	CO	NO_x
Point Sources	37.52	5.65	32.15
Area Sources	46.94	0.72	1.40
On-Road Mobile Sources	106.43	611.44	60.78
Off-Road Mobile Sources	11.45	122.70	31.84
Biogenic Sources	114.68	.....	.....
Totals	317.02	740.51	126.17

V. Final Action

The USEPA is approving the 1990 base-year ozone precursor emissions inventories for the Toledo and Dayton nonattainment areas based upon the evidence presented by the State and the State's compliance with the requirements outlines in the applicable USEPA guidance.

VI. Comment and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. This action will be effective on May 22, 1995, unless USEPA receives adverse or critical comments by April 21, 1995. USEPA has published, simultaneously, a proposed rule for this action in this issue of the **Federal Register.** If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to this action.

VII. Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approval under Section 110 and subchapter I, Part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Nitrogen oxides, Ozone, Volatile organic compounds, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping.

Authority: 42 U.S.C. 4201–7601q.

Dated: March 3, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (s) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(s) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for the following ozone nonattainment areas: Toledo (Lucas and Wood Counties) and Dayton (Clark, Greene, Miami, and Montgomery Counties).

[FR Doc. 95–7007 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MT26–1–6692a; FRL–5163–8]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Butte; PM_{10} Contingency Measures and Revisions to the Attainment and Maintenance Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated August 26, 1994. This submittal addresses, for the Butte moderate PM_{10} nonattainment area, the Federal Clean Air Act requirement to submit contingency measures for particulate matter with an aerodynamic diameter less than or equal to a nominal

10 micrometers (PM_{10}) for areas designated as nonattainment for the PM_{10} National Ambient Air Quality Standards (NAAQS). This submittal also includes revisions to the attainment and maintenance demonstrations for the moderate PM_{10} nonattainment area SIP for Butte due to the inclusion of new emission limits in a revised air quality permit for Montana Resources, Inc. Since the SIP adequately addresses the requirement for contingency measures and, with the new emission limits for Montana Resources, Inc., still adequately demonstrates attainment and maintenance of the PM_{10} NAAQS in Butte, EPA approves these revisions.

DATES: This final rule will become effective on May 22, 1995 unless notice is received by April 21, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405

Montana Department of Health and Environmental Sciences, Air Quality Division, Cogswell Building, Helena, Montana 59620–0901

The Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Butte, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Silver Bow County—Butte). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas such as Butte were required to submit, among other things, several provisions by November 15, 1991. These provisions, including an attainment demonstration (or demonstration that timely attainment is impracticable), are described in EPA's final rulemaking on the Butte moderate PM_{10} nonattainment area SIP (59 FR 11550–11554, March 11, 1994). Such States were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). These measures must become effective, without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13510–13512 and 13543–13544.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted revisions to the SIP for Butte with a letter dated August 26, 1994. The revisions address PM_{10} emissions in Butte, including modified emission limitations for Montana Resources, Inc. and the associated attainment and maintenance demonstrations, as well as contingency measures.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see Section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Montana, after providing adequate notice, held a public hearing on May 20, 1994 to address the Butte PM_{10} contingency measures and revisions to the attainment and maintenance demonstrations for this SIP. Following the Montana Board of Health and Environmental Sciences public hearing, the Board adopted the Butte PM_{10} SIP revisions and contingency measures.

The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and a letter dated November 1, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Control Strategy

On March 11, 1994 (59 FR 11550), EPA approved the control measures in the Butte moderate PM_{10} nonattainment area SIP as satisfying the requirement to provide for the implementation of reasonably available control measures (including reasonable available control technology). See CAA sections 172(c)(1) and 189(a)(1)(C). The measures targeted re-entrained road dust, residential wood burning, prescribed burning, industry, and motor vehicle exhaust. Please see that notice of final rulemaking and associated Technical Support Document (TSD) for further details on the specific control measures in the approved SIP.

The subsequent August 26, 1994 submittal included a modification to the

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Section 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

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Air Quality Permit for Montana Resources, Inc. (one of the industries targeted for emissions reductions in the previous SIP submittal). Permit modification #1749–05, effective January 5, 1994, allows for production increases in diesel consumption, vehicle miles travelled by haul trucks, and ore hauled to the primary crusher dump. These increases were compensated for by the installation of Detroit Diesel Electronic Controls (DDEC) packages on 11 of 15 haul trucks at the mine. These controls decrease diesel exhaust emissions from the haul trucks. In the following table, the PM_{10} emissions reductions from base year due to the new permitted limitations are outlined.

Source	Control measure	PM_{10} emissions reduction from base year	Effective date
Industry	Air Quality Permit Modification #1749–05 for- Montana Resources, Inc.:		1/5/94
	(a) limit winter PM_{10} emissions from haul trucks and support vehicles.	88% or 2672.6 tons fewer winter allowable PM_{10} emissions.	
	(b) limit winter PM_{10} diesel exhaust emissions	85% or 25.6 tons fewer winter allowable PM_{10} emissions.	
	(c) limit winter PM_{10} emissions at ore dump, molybdenum dryer and lime handling.	75% or 55.3 tons fewer winter allowable PM_{10} emissions.	
	Combined controls	2753.5 tons fewer winter allowable PM_{10} emissions.	

The previous version of the permit (*i.e.*, #1749–04) had the following winter allowable PM_{10} emissions limits: (1) haul trucks and support vehicles—250.0 tons; (2) diesel exhaust—6.4 tons; and (3) ore dump, molybdenum dryer and lime handling—14.2 tons. The current permit (*i.e.*, #1749–05) modified these numbers to 373.0 tons, 4.6 tons, and 18.5 tons, respectively. Winter allowable PM_{10} emissions from categories (1) and (3) have been increased from the previous version of the permit. The diesel exhaust (category (2)) winter allowable PM_{10} emissions have been decreased. While there is an overall net increase in emissions from the three categories, the chemical mass balance (CMB) analyses for the area apportioned a larger percentage contribution to diesel exhaust. Therefore, there is a net air quality benefit associated with this permit modification due to the reduction in diesel exhaust emissions. Further, in all three categories, the permit modification still represents a significant decrease from base year winter allowable PM_{10} emissions (as indicated in the table on the previous page).

A more detailed discussion of the control measures implemented at Montana Resources, Inc. can be found in the TSD (available at the EPA address listed at the beginning of this document). EPA has reviewed the State's documentation and concluded that it adequately justifies the modifications to the Montana Resources permit. The implementation of these measures, along with the control measures that were approved in the moderate PM_{10} nonattainment area SIP for Butte on March 11,1994 (59 FR 11550), will result in the attainment of the PM_{10} NAAQS by December 31, 1994. EPA approves this permit modification as part of the control strategy for the Butte PM_{10} SIP as it will not interfere with timely attainment of the PM_{10} NAAQS.

3. Revisions to Attainment and Maintenance Demonstrations

The initial moderate PM_{10} nonattainment areas were required to submit either a demonstration (including air quality modelling) showing that the plan will provide for attainment as expeditiously as practicable or a demonstration that timely attainment is not practicable (see section 189(a)(1)(B) of the Act). The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM_{10} NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (id.).

CMB receptor modelling in combination with emissions rollback modelling analysis was chosen as the best tool for the attainment and maintenance demonstrations of the 24-hour standard. EPA approved Montana's attainment and maintenance demonstrations for the Butte moderate PM_{10} nonattainment area on March 11, 1994 (59 FR 11550–11554). The 24-hour attainment value (*i.e.*, the ambient PM_{10} air quality levels achieved by 1995)[4] was 144.4 $\mu g/m^3$, and the annual attainment value was 42.1 $\mu g/m^3$. The 24-hour maintenance value (*i.e.*, ambient PM_{10} air quality levels maintained through January 1, 1998) was 145.5 $\mu g/m^3$, and the annual maintenance value was 41.7 $\mu g/m^3$.

Due to changes made in Montana Resources, Inc.'s Air Quality Permit #1749, with a final modification date of January 5, 1994 (#1749–05), the attainment and maintenance demonstrations for the Butte moderate PM_{10} nonattainment area SIP were revised in the August 26, 1994 submittal. The new permitted allowable emission limits were used in the revised attainment and maintenance demonstrations.

The modifications to the allowable emissions did not result in an inability to demonstrate timely attainment and maintenance of the PM_{10} NAAQS in Butte, but, in fact, showed an improvement. With the adjustments, the 24-hour attainment value is 142.3 $\mu g/m^3$ (2.1 $\mu g/m^3$ lower than without the adjustments) and the annual attainment value is 41.8 $\mu g/m^3$ (0.3 $\mu g/m^3$ lower than without the adjustments). With the adjustments, the 24-hour maintenance value is 142.2 $\mu g/m^3$ (3.3 $\mu g/m^3$ lower than without the adjustments) and the annual maintenance value is 40.0 $\mu g/m^3$ (1.7 $\mu g/m^3$ lower than without the adjustments).

There is no need to adopt additional control measures based on these adjusted calculations. The SIP still adequately demonstrates timely attainment and maintenance of the PM_{10} NAAQS in Butte and satisfies the requirement to provide for the implementation of RACM (including RACT). For a more detailed description of the attainment and maintenance demonstration revisions, please see the TSD for this document.

[4] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment of the PM_{10} NAAQS by January 1, 1995. EPA approved the State's demonstration on the basis of the de minimis differential between the two dates.

4. Contingency Measures

The Clean Air Act requires States containing PM_{10} nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing initial moderate PM_{10} nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543, n. 3.)

The General Preamble further explains that contingency measures for PM_{10} should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (see Clean Air Act, sections 172(c)(1) and 189(a)(1)(C)). Based on the statutory structure, EPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during the interim period between the determination that the SIP has failed to achieve RFP or provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination (57 FR 13511).

Section 172(c)(9) of the Act specifies that contingency measures shall "take effect * * * without further action by the State or the [EPA] Administrator." EPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure to attain the standard or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The PM_{10} contingency measures for Butte were developed by the Butte/Silver Bow Health Department (BSBHD) and the Montana Department of Health and Environmental Sciences (MDHES). At its May 20, 1994 public hearing, the Montana Board of Health and Environmental Sciences (MBHES) adopted the contingency measures.

The Governor submitted the contingency measures to EPA with a letter dated August 26, 1994. After reviewing the submittal for conformance with the completeness criteria in 40 CFR Part 51, Appendix V, EPA determined the submittal to be complete and notified the Governor of such determination in a letter dated November 1, 1994.

a. Re-entrained Road Dust Contingency Measure. The Butte/Silver Bow Health Department adopted a contingency plan that implements the mandatory use of liquid de-icer on all roads with the exception of priority routes with extraordinary circumstances existing within the Butte/Silver Bow Air Pollution Control District. Butte/Silver Bow Ordinance No. 468 stipulates that within 60 days of notification by EPA that the SIP for the Butte moderate PM_{10} nonattainment area has failed to timely attain the PM_{10} NAAQS or make reasonable further progress the following will occur:

Within the Butte/Silver Bow Air Pollution Control District, only liquid de-icer shall be placed on any road with the exception of priority routes with extraordinary circumstances existing. During extraordinary events, priority routes must use sanding material which has a durability, as defined by the Montana Modified L.A. Abrasion test, of less than or equal to 7, and has a content of material greater than 200 mesh, as determined by standard wet sieving methods, which is less than 3.0% oven dry weight.

b. Contingency Measure for Montana-Resources, Inc. Since it was determined through source apportionment studies that the Montana Resources facility is one of the largest contributing sources of uncontrolled ambient PM $_{10}$ emissions in the Butte/Silver Bow PM_{10} moderate nonattainment area, the State believed that a contingency measure for Montana Resources was necessary to ensure a sufficient amount of emissions reduction. In addition to allowing the production increases as offsets for the installation of DDEC on haul trucks (as discussed above), a contingency measure was added to Permit #1749–05. Montana Resources agreed to reduce emission and production limitations within 60 days of notification by MDHES that the PM_{10} NAAQS has been exceeded within the Butte/Silver Bow moderate PM_{10} nonattainment. The contingency measure to be implemented would be to decrease emission and production levels, as described in section II.A.5.b. below.

As a result of these permit negotiations, Permit #1749 was modified to outline the production and emission decreases required for the contingency measure. The final emission limitations for the implementation of the contingency measure are outlined in Permit #1749–05.

5. Effectiveness of the Contingency Measures

a. Re-entrained Road Dust Contingency Measure. If the re-entrained road dust contingency measure is implemented, the control efficiency of the re-entrained road dust measures will be 66% in the 24-hour attainment demonstration (an increase of 14% over the control efficiency of the re-entrained road dust measures in the original SIP attainment demonstration). This calculation takes into account the use of the liquid de-icer, the current requirements for use of washed sand, and the existing street sweeping measures (see the TSD for the Butte PM_{10} SIP for further details on the existing re-entrained road dust strategies). Total reduction from the contingency measure is calculated to be 1.5 more tons of PM_{10} per day than without the contingency measure.

b. Montana Resources Contingency Measure. If the Montana Resources contingency measure is implemented, the permit modification requires the following reductions in winter allowable PM_{10} emissions. Haul trucks and support vehicles will be reduced to 250 tons (123 tons less than without the contingency measure), diesel exhaust will be reduced to 4.0 tons (0.6 tons less than without the contingency measure), and the ore dump, lime handling and molybdenum dryer will be reduced to 14.2 tons (4.3 tons less than without the contingency measure). The combined control of this contingency measure results in 127.9 tons fewer winter allowable PM_{10} emissions. See the TSD for further details on the existing permit limitations and contingency measure limitations.

EPA believes that these contingency measures are approvable. The control measures implemented in the PM_{10} SIP achieve more emissions reductions than needed to demonstrate attainment of the PM_{10} NAAQS, as indicated by the State's predicted 24-hour attainment concentration of 142.3 $\mu g/m^3$ (see Section II.A.2. above and the TSD). Since the 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$, this established safety margin further supports the reasonableness of these contingency measures.

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6. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific measures contained in the Butte contingency plan are addressed above in sections II.A.4. and II.A.5. The Butte/Silver Bow air pollution control ordinance, as included in the SIP, is legally enforceable by BSHD. There are penalties for noncompliance with Ordinance No. 468 (regarding liquid de-icer application).

If a State relies on a local government for the implementation of any plan provision, then, according to Section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation if, for example, the State has the authority and resources to implement the provision when the local entity has failed to do so.

The Butte/Silver Bow Air Pollution Control Program and the associated local ordinances, resolutions and stipulations are also enforceable by the MDHES, if the BSHD fails to administer the program. Since the program has been approved by the MBHES in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, sections 75–2–401–429, Montana Code Annotated.

The emission limits for Montana Resources, Inc. are enforceable by the MDHES through Air Quality Permit #1749–05 with a final modification date of January 5, 1994. Section 75–2–401 of the Montana Clean Air Act allows the MDHES to seek civil penalties for a violation of a permit limitation. Administrative Rules of Montana (ARM) 16.8.1112 allows the MDHES to revoke a permit for a violation of a permit limitation. These regulations are contained in ARM 16.8.101 through 16.8.1602 and violations of these rules are punishable by civil penalties in an amount up to $10,000 per day and criminal penalties in an amount up to $1,000 per day.

The Butte/Silver Bow Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A stipulation between the MDHES and the Butte/Silver Bow Council of Commissioners was signed on October 8, 1991 to delineate responsibilities and authorities between the MDHES and the local authorities. On November 15, 1991, the MBHES issued a board order effectuating the program. On March 20, 1992, the MBHES approved the Butte PM_{10} plan and local program. The stipulation, Board order, and ordinances were incorporated into the SIP on March 11, 1994 (59 FR 11550).

On May 20, 1994, the MBHES issued a Board order approving the Butte PM_{10} contingency measures. The related regulation, air quality permit, and the May 20, 1994 Board order were submitted to EPA in the August 26, 1994 submittal as a revision to the Montana SIP.

The Butte/Silver Bow regulation is in effect now, as is the State's permit modification for Montana Resources, Inc. (Air Quality Permit #1749–05). The State of Montana has a program that will ensure that the contingency measures and Montana Resources, Inc. emission limitations contained in the Butte PM_{10} SIP are adequately enforced. EPA believes that the State's and Butte's existing air enforcement program will be adequate. The TSD for this action contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

III. Final Action

EPA is approving Montana's SIP revision, submitted by the Governor with a letter dated August 26, 1994, for the Butte moderate PM_{10} nonattainment area. This submittal adequately addressed, for the Butte moderate PM_{10} nonattainment area, PM_{10} contingency measures, which were due on November 15, 1993, and revisions to the attainment and maintenance demonstrations to incorporate new permit emission limitations for Montana Resources, Inc.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective May 22, 1995 unless, by April 21, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 22, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: February 17, 1995.

Jack McGraw,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(36) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(36) The Governor of Montana submitted PM_{10} contingency measures for Butte, Montana in a letter dated August 26, 1994. This submittal also contained revisions to the attainment and maintenance demonstrations for the moderate PM_{10} nonattainment area SIP, due to modifications made to the Air Quality Permit for Montana Resources, Inc.

(i) Incorporation by reference.

(A) Board order issued on May 20, 1994 by the Montana Board of Health and Environmental Sciences approving the amendments to the Butte/Silver Bow Air Pollution Control Program regarding the PM_{10} contingency measure.

(B) Butte/Silver Bow Ordinance No. 468, effective May 20, 1994, which addresses PM_{10} contingency measure requirements for liquid de-icer application.

(ii) Additional material.

(A) Montana Department of Health and Environmental Sciences Air Quality Permit #1749–05, as revised with a final modification date of January 5, 1994, for Montana Resources, Inc.'s open pit copper and molybdenum mine, crushing and milling operation, and concentrator.

* * * * *

[FR Doc. 95–7004 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–65–1–6859; FRL–5168–7]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 31, 1994 EPA published the Notice of Proposed Rulemaking to approve the State Implementation Plan (SIP) revision submitted by the State of California for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The SIP revision plan was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval was set forth in the proposal. EPA received one comment from the Southern California Gas Company which does not impact the proposed action. Therefore, EPA is proceeding with its approval of the revision to the California SIP for establishing a PROGRAM.

EFFECTIVE DATE: This rule will become effective on April 21, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

U.S. Environmental Protection Agency, Air Docket 6102, 401 "M" Street, S.W., Washington, D.C., 20460.

State of California, Air Resources Board, 2020 L Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenburg, A–1, U.S Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1102.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

On November 13, 1992 the State of California submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. A detailed discussion of the background for each of the above PROGRAM elements is provided in the May 31, 1994 **Federal Register** Notice of Proposed Rulemaking (NPR) (59 FR 28036).

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EPA has evaluated all of the above PROGRAM elements for consistency with the requirements of the CAA and the EPA policy guidance document. EPA has found that the PROGRAM elements meet the applicable EPA requirements. A detailed discussion of the PROGRAM elements and evaluations has been provided in the May 31, 1994 **Federal Register** NPR (59 FR 28036).

II. Response to Public Comments

A 30-day public comment period was provided in the May 31, 1994 **Federal Register** NPR. EPA received one comment from the Southern California Gas Company (Gas Company). The Gas Company commented that governmental assistance and education programs should present factual and objective information on fuels and fuel use characteristics without encouraging the selection of a particular fuel or technology. Since the PROGRAM does not advocate the use of any particular fuel but rather serves to provide small businesses with technical assistance and regulatory information necessary to comply with the CAA, EPA did not find this comment to be in conflict with the SIP revision. Thus this comment does not effect the EPA's proposal to approve the PROGRAM.

III. Final Action

EPA is approving the SIP revisions submitted by the State of California. The revisions were made to satisfy the requirements of Section 507 of the CAA.

The OMB has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

By this action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 24, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(200) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(200) Program elements were submitted on November 13, 1992 by the Governor's designee.

(i) Incorporation by reference.

(A) Small Business Stationary Source Technical and Environmental Compliance Assistance Program, adopted on October 15, 1992.

* * * * *

[FR Doc. 95–7006 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–46–P

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40 CFR Part 52

[CA 38–2–6232a; FRL–5171–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District (BAAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern seventeen rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from a number of different source categories. These categories are described in the supplementary information section. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on May 22, 1995 unless adverse or critical comments are received by April 21, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Erik Beck, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190. Internet E-mail address: Beck.Erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Coating Categories

This document takes direct final action on seventeen BAAQMD rules. These rules cover the following VOC emission categories: general cleaning operations; miscellaneous solvent usage; general surface coating; gasoline dispensing; graphic arts facilities and paper, fabric, and film coating; asphalt use; pharmaceutical and cosmetic manufacturing; semiconductor manufacturing; plastic parts coating; wood products coating; municipal landfills; manufacturing of inks, coatings, and adhesives; aeration of VOC contaminated soil; vegetable oil manufacturing; mobile equipment coating; and aerosol paint products.

Applicability

The rules being approved into the California SIP are listed below with the date they were adopted by the BAAQMD and the date they were submitted to EPA by the California Air Resources Board (CARB).

Number	Title	Adoption	Submittal
8–1	General Provisions	6/15/94	9/28/94
8–2	Miscellaneous Operations	6/15/94	9/28/94
8–4	General Surface Coating and Solvent Operations	6/01/94	9/28/94
8–7	Gasoline Dispensing Facilities	6/01/64	9/28/94
8–12	Paper, Fabric, and Film Coating	6/15/94	9/28/94
8–15	Emulsified and Liquid Asphalts	6/01/94	9/28/94
8–20	Graphic Arts Printing and Coating Operations	6/15/94	9/28/94
8–24	Pharmaceutical and Cosmetic Manufacturing Operations	6/15/94	9/28/94
8–30	Semiconductor Manufacturing Operations	6/15/94	9/28/94
8–31	Surface Coating of Plastic Parts and Products	6/01/94	9/28/94
8–32	Wood Products Coating	7/06/94	9/28/94
8–34	Solid Waste Disposal Sites	6/15/94	9/28/94
8–35	Ink, Coating, and Adhesive Manufacturing	6/15/94	9/28/94
8–40	Aeration of Contaminated Soil and Removal of Underground Storage Tanks	6/15/94	9/28/94
8–41	Vegetable Oil Manufacturing Operations	6/01/94	9/28/94
8–45	Mobile Vehicle and Mobile Equipment Coating Operations	11/02/94	12/22/94
8–49	Aerosol Paint Products	8/21/92	9/14/92

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Francisco Bay Area. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the BAAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco Bay Area is classified as moderate;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 14, 1992, September 28, 1994, and December 22, 1994, including the rules being acted on in this document. This document addresses EPA's direct-final action for the BAAQMD rules cited above in the applicability section.

BAAQMD adopted Rule 8–49 on August 21, 1992, and Rules 8–7, 8–15, 8–31, and 8–41 on June 1, 1994. BAAQMD adopted Rules 8–1, 8–2, 8–12, 8–20, 8–24, 8–30, 8–34, 8–35, and 8–40 on June 15, 1994. Rule 8–32 was adopted on July 6, 1994. Rule 8–45 was adopted on November 2, 1994. Each of these rules were found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.[3] With the exception of Rule 8–49, which was found complete on November 20, 1994, and Rule 8–45, which was found complete on January 3, 1995, the rules were found complete on November 22, 1994, and all are being finalized for approval into the SIP.

These rules control VOC emissions from coating operations, waste disposal, gasoline dispensing, general coating and solvent use, use of aerosol spray products, asphalt usage, and the manufacture of pharmaceuticals, cosmetics, semiconductors, inks, coatings, and vegetable oil. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987), "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988), and the existing control technique guidelines (CTGs).

[2] The San Francisco Bay Area was retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are:

- Control of Volatile Organic Emissions from Existing Stationary Sources. Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. EPA document number EPA–450/2–77–008.
- Control of Volatile Organic Emissions from Existing Stationary Sources— Volume VII: Graphic Arts—Rotogravure and Flexography. EPA document number EPA–450/2–78–033.
- Control of Volatile Organic Compounds from Use of Cutback Asphalt (EPA–450/2–77–037).
- Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products (EPA–450/2–78–029).

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Rule Features and Changes

The following BAAQMD rules are revisions to rule versions that are in the current SIP: 8–1, 8–2, 8–4, 8–7, 8–12, 8–15, 8–20, 8–24, 8–30, 8–31, 8–32, 8–34, and 8–35. The other BAAQMD rules being approved by this document, 8–40, 8–41, 8–45, and 8–49, are new rules for inclusion in the SIP.

BAAQMD submitted Rule 8–1, "General Provisions," includes the following significant changes from the current SIP:

- Revised the description of the rule;
- Removed exemption based on vapor pressure of solvents;
- Made extensive changes to the definition section, including changes to the definitions of "volatile organic compound," and "organic compound, non-precursor";
- Added a standards section containing a prohibition on storing cleanup solvents and materials in open containers;
- Added a standards section containing a requirement to limit VOC emissions from cleaning spray equipment;
- Added test procedures to measure VOC emissions.

BAAQMD submitted Rule 8–2, "Miscellaneous Operations," includes the following significant changes from the current SIP:

- Revised section 8–2–601 to allow multiple test methods to determine VOC emissions, and to specify that a source shall be in violation of the rule if VOC emissions measured by any of the referenced test methods exceed the standards of this rule.

BAAQMD submitted Rule 8–4, "General Surface Coating and Solvent Operations," includes the following significant changes from the current SIP:

- Revised the description of the rule;
- Revised the definitions section, including revisions to the definition of "precursor organic compounds";
- Added a standards section containing a prohibition on storing cleanup solvents and materials in open containers;
- Revised the standards section concerning emission limitations;
- Revised test procedures to measure VOC emissions;
- Added recordkeeping requirements;
- Revised exemption for organic diluents;
- Removed test method to determine the weight loss of polyester resins.

BAAQMD submitted Rule 8–7, "Gasoline Dispensing Facilities," includes the following significant changes from the current SIP:

- Definitions for "vapor tight" and "gasoline dispensing facility" have been added;
- Several phase I requirements were added, including: submerged fill pipe for all phase I vapor recovery systems, pressure-vacuum relief valves on open vent pipes, leak-free and vapor tight equipment, and a poppetted drybreak on the vapor return;
- Phase II requirements were added: proper operation according to manufacturer specifications and free of defects, repair or replacement of defective components, and maintenance of leak-free and vapor tight equipment;
- Section 309 was added which requires all facilities equipped with phase II systems to be equipped with phase I systems;
- Section 310 was added which requires all storage tanks with a capacity of 260 gallons or more, and installed after March 4, 1987, to be equipped with phase I and phase II;
- Requirements for submerged fill pipes and pressure vacuum relief valves were added;
- Section 312 was added which prohibits transfer from storage tanks to delivery vessels unless a 95% efficient vapor recovery systems is used;
- Outdated increments of progress and a permit fee waiver provision were deleted;
- Test method references were added for dynamic backpressure requirements, vapor tightness, and phase I vapor recovery efficiency.

BAAQMD submitted Rule 8–12, "Paper, Fabric, and Film Coating," includes the following significant changes from the current SIP:

- Revised the description of the rule;
- Revised the definitions section, including revisions to the definitions of "volatile organic compounds," "approved emission control system," and "key operating system parameter";
- Revised sections regarding control device equivalency analysis of samples, and determination of emissions;
- Added test procedures to measure VOC emissions from control equipment;
- Added analytical methods to determine the VOC content of coatings;
- Revised recordkeeping requirements;
- Revised the limitations section to make a distinction between compliance with control equipment and compliance with low VOC coating;
- Revised the exemptions section. These revisions include:
- Removing the exemption for equipment cleaning;
- Removing the exemption for air-dried coating products;
- Removing the exemption for coatings with a VOC content of under 265 grams per liter.

BAAQMD submitted Rule 8–15, "Emulsified and Liquid Asphalts," includes the following significant changes from the current SIP:

- Added monitoring, recordkeeping, and testing requirements;
- Added prohibitions on the manufacture and sale and the specification of any emulsified or liquid asphalt prohibited by any provision of the rule;
- Elimination of the exemptions for penetrating prime coat and slow-cure liquid asphalt;
- Replacement of the term Cutback Asphalt with the term Liquid Asphalt and the elimination of the term Penetrating Prime Coat.

BAAQMD submitted Rule 8–20, "Graphic Arts Printing and Coating Operations," includes the following significant changes from the current SIP:

- Revised the small user exemption to reduce the emissions permitted under the exemption;
- Revised the laboratory operations exemption to reduce the emissions permitted under the exemption;
- Modified the description of the rule;
- Added definitions of lithographic printing, non-heatset ink, solvent, key operating parameters, letterpress, fountain solution, metallic ink, screen printing, and volatile organic compound;
- Modified requirements for the alternative emission control plan;
- Revised emission reduction requirements for publication and packaging gravure and flexographic printing;
- Added emission requirements for letterpress, lithography, and screen printing;
- Revised the test method section to include EPA test methods and protocols;
- Added requirement to keep records of coating, ink, and solvent usage;
- Added requirement to monitor and record key parameters of the abatement equipment.

BAAQMD submitted Rule 8–24, "Pharmaceutical and Cosmetic Manufacturing Operations," includes the following significant changes from the current SIP:

- Defines Approved Emission Control System;
- Defines Key System Operating Parameter;
- Eliminates APCO discretion for control devices;
- Adds recordkeeping requirements for air pollution abatement equipment;
- Includes language referencing EPA Test Methods 25 and 25A.

BAAQMD submitted Rule 8–30, "Semiconductor Manufacturing Operations," includes the following significant changes from the current SIP:

- Deleted the Alternative Emissions Control Plan;
- Deleted equivalent emission control systems section;
- Deleted reference to storage tank requirements of Rule 8–5;
- Revised test method section to include EPA Methods.

BAAQMD submitted Rule 8–31, "Surface Coating of Plastic Parts and Products," includes the following significant changes from the current SIP:

- Includes polyester resin (fiberglass) products;
- Redefines low usage coatings;
- Exempts coating operations employing hand-held aerosol cans, and makes reference that such coating is now subject to the provisions of new Rule 8–49;
- Deletes reference to effective dates that have passed;
- Clarifies definition of metallic topcoat;
- Clarifies definition of extreme performance coating;
- Adds definition of key operating parameters of an emission control system;
- Adds new section 8–31–309 proposing VOC limits for specialty coatings, including camouflage, conductive, metallic topcoat, extreme performance and high gloss coatings.
- Adds requirements for handling surface preparation and cleanup solvents;
- Adds requirements for recordkeeping of key system operating parameters of emission control systems;
- Allows multiple test methods to determine VOC emissions, and specifies that the source shall be in violation of the rule if VOC emissions measured by any of the referenced test methods exceeds the standards of this rule.

BAAQMD submitted Rule 8–32, "Wood Products Coatings," includes the following significant changes from the current SIP:

- Expands the applicability of the rule to the coating of all wood products;
- Sets technology forcing volatile organic compound (VOC) content standards effective in 1992, 1995 and 1997;
- Regulates the emissions of all volatile organic compounds, and will not exempt 1,1,1 trichloroethane and the other organic compounds deemed non-photochemically reactive by EPA;
- Requires a progress report from any facility with emissions greater than 5 tons per year showing the results of product trials of coating products compliant with the VOC standards effective on July 1, 1995;
- Provides recordkeeping requirements and improves clarity;
- Changed section 602 to allow multiple test methods to determine VOC emissions, and to specify that a source shall be in violation of the rule if VOC emissions measured by any of the referenced test methods exceeds the standards of this rule.

BAAQMD submitted Rule 8–34, "Solid Waste Disposal Sites," includes the following significant changes from the current SIP:

- Revised exemption criteria;
- Revised definitions of landfill and solid waste disposal site;
- Added definitions of emission control system;
- Added definition of organic compound;
- Revised gas collection requirements;
- Added surface testing requirement;
- Added recordkeeping requirements;
- Revised test methods and established inspection procedures.

BAAQMD submitted Rule 8–35, "Ink, Coating, and Adhesive Manufacturing," includes the following significant changes from the current SIP:

- Revised exemption criteria;
- Added definition of key operating parameter;
- Revised definition of ink manufacturer;
- Added equipment cleaning requirements;
- Added definition of volatile organic compound;
- Revised recordkeeping requirements;
- Added definition of collection efficiency;
- Revised test methods to include EPA test methods.

BAAQMD submitted Rule 8–40, "Aeration of Contaminated Soil and Removal of Underground Storage Tanks," is a new rule that contains the following significant features to control VOC emissions:

- Establishes what volume of soil can be aerated per day before emission controls are required;
- Establishes work practices to be used when removing or replacing an underground storage tank;
- Requires that sources notify the BAAQMD Air Pollution Control Officer before soil is excavated or aerated, or before underground storage tanks are removed;
- Requires periodic soil sampling;
- Specifies test methods to analyze the organic content of soil and to determine VOC emissions.

BAAQMD submitted Rule 8–41, "Vegetable Oil Manufacturing Operations," is a new rule that contains the following significant features to control VOC emissions:

- Requires use of emission control equipment;
- Requires leak inspection and repair;
- Requires recordkeeping of leaks and operating parameters of the emission control equipment;
- Specifies test methods to be used in order to detect leaks and measure emissions from abatement equipment.

BAAQMD submitted Rule 8–45, "Motor Vehicle and Mobile Equipment Coating Operations," is a new rule that contains the following significant features to control VOC emissions:

- VOC content limits for coatings;
- Use of Abatement devices;
- Transfer efficiency requirements;
- Surface preparation work standards and VOC content limits for solvents;
- Records of coating use and control device operating parameters;

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- Test methods to determine VOC content of coatings and VOC emissions from control devices.

BAAQMD submitted Rule 8–49, "Aerosol Paint Products," is a new rule that contains the following significant features to control VOC emissions:

- Limits VOC content of aerosol coating products;
- Requires that labels stating VOC content be affixed to the aerosol paint container;
- Requires records of coating sales to be kept;
- Specifies test methods to be used in order to determine VOC content of aerosol coatings.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the following BAAQMD rules are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D:

Rules 8–1, General Provisions; 8–2, Miscellaneous Operations; 8–4, General Surface Coating and Solvent Operations; 8–7, Gasoline Dispensing Facilities; 8–12, Paper, Fabric, and Film Coating; 8–15 Emulsified and Liquid Asphalts; 8–20, Graphic Arts Printing and Coating Operations; 8–24, Pharmaceutical and Cosmetic Manufacturing Operations; 8–30, Semiconductor Manufacturing Operations; 8–31, Surface Coating of Plastic Parts and Products; 8–32, Wood Products Coating; 8–34, Solid Waste Disposal Sites; 8–35, Ink, Coating, and Adhesive Manufacturing; 8–40, Aeration of Contaminated Soil and Removal of Underground Storage Tanks; 8–41, Vegetable Oil Manufacturing Operations; 8–45, Mobile Vehicle and Mobile Equipment Coating Operations; and 8–49, Aerosol Paint Products.

EPA Action

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 22, 1995, unless, by April 21, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 22, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 3, 1995.

David P. Howekamp,

Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(189)(i)(C), (199)(i)(A)(*6*), and (210) and by adding and reserving paragraph (c)(209) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(189) * * *

(i) * * *

(C) Bay Area Air Quality Management District.

(*1*) Rule 8–49, adopted on August 21, 1992.

* * * * *

(199) * * *

(i) * * *

(A) * * *

(*6*) Rules 8–4, 8–7, 8–15, 8–31, and 8–41 adopted on June 1, 1994. Rules 8–1, 8–2, 8–12, 8–20, 8–24, 8–30, 8–34, 8–35, and 8–40 adopted on June 15, 1994. Rule 8–32 adopted on July 6, 1994.

* * * * *

(209) [Reserved]

(210) New and amended regulations for the following APCDs were submitted on December 22, 1994 by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 8–45, adopted on November 2, 1994.

[FR Doc. 95–7010 Filed 3–21–95; 8:45 am]

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40 CFR Part 70

[SD–001; FRL–5176–7]

Clean Air Act Final Interim Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of South Dakota for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: April 21, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On January 12, 1995 EPA published a **Federal Register** notice proposing interim approval of the Operating Permits Program for the State of South Dakota (PROGRAM). See 60 FR 2917. The EPA received adverse comments on this proposed interim approval, which are summarized and addressed below. In this rulemaking EPA is taking final action to promulgate interim approval of the South Dakota PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

Robert E. Roberts, Secretary of the Department of Environment and Natural Resources, as designee of the Governor of South Dakota, submitted the State of South Dakota Title V Operating Permit Program (PROGRAM) to EPA on November 12, 1993. Amendments to the PROGRAM requested by EPA were received on January 11, 1994 and December 15, 1994. The South Dakota PROGRAM, including the operating permit regulations (Administrative Rules of South Dakota (ARSD), Article 74:36, Air Pollution Control Program), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

Comments noting deficiencies in the South Dakota PROGRAM were sent to the State in a letter dated July 8, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. In a letter dated August 18, 1994, the State committed to complete the regulatory process to correct both interim and full PROGRAM approval deficiencies related to its PROGRAM regulations, and submit these changes to EPA by approximately December 15, 1994. EPA responded in a letter dated October 3, 1994 that they would review all of the State's corrective actions. However, these corrective actions would be considered a material change to the PROGRAM and the date for final interim approval would be extended. The State adopted the regulatory changes on November 17, 1994, which EPA has reviewed and has determined to be adequate to allow for interim approval. One remaining issue noted in EPA's July 8, 1994 letter that requires corrective action prior to full PROGRAM approval is discussed below in section C *Final Action*.

B. Response to Comments

The comments received on the January 12, 1995 **Federal Register** notice proposing interim approval of the South Dakota PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: Two commenters objected to EPA's proposed approval of South Dakota's preconstruction permitting program for purpose of implementing section 112(g) of the Act during the transition period between PROGRAM approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenters argued that there is no legal basis for delegating to South Dakota the section 112(g) program until EPA has promulgated a section 112(g) regulation and the State has a section 112(g) program in place. In addition, the commenters argued that the South Dakota PROGRAM fails to address critical threshold questions of when an emission increase is greater than de minimis and when, if it is, it has been offset satisfactorily.

EPA Response: In its proposed approval of South Dakota's PROGRAM, EPA also proposed to approve South Dakota's preconstruction permitting program for the purpose of implementing section 112(g) of the Act during the transition period before a Federal rule had been promulgated implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act. See 60 FR 8333 (dated February 14, 1995). This revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. Questions regarding the threshold for determining when an emission increase is greater than de minimis and when it has been offset satisfactorily will be addressed in the final section 112(g) rule. The 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), South Dakota must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that South Dakota can utilize its preconstruction review program to serve as a procedural vehicle for implementing section 112(g) and making these requirements Federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. The EPA approval of South Dakota's preconstruction review program clarifies that it may be used for this purpose during any transition period to meet the requirements of

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section 112(g). South Dakota's preconstruction permitting program allows permit requirements to be established for all regulated air pollutants (which is defined at ASRD 70:36:01:15 and includes all of the hazardous air pollutants (HAPs) listed in section 112(b) of the Act).

Comment #2: Two commenters stated that they did not have a problem with the way "prompt" is defined for deviation reporting in the South Dakota PROGRAM but added that they did have a problem with the way the definition has been handled in other interim approval notices.

EPA Response: The South Dakota PROGRAM allows the State to define "prompt" for deviation reporting in each individual permit. Since the commenters did not have a problem with the way "prompt" reporting of deviations is handled in South Dakota, EPA will not respond to that comment. In addition, it would be inappropriate in this notice to comment on how the definition of "prompt" was handled in notices for other states' part 70 approvals.

C. Final Action

The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of South Dakota on November 12, 1993. The State must complete the following corrective action to receive full PROGRAM approval: 1) The State must adopt legislation consistent with 40 CFR 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than $10,000 per day per violation for knowing violations of operating permit requirements, including making a false statement and tampering with a monitoring device.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of this PROGRAM deficiency and the required corrective action.

The scope of South Dakota's final interim PROGRAM approval does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a part 70 program within some or all of these "existing or former" Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA would approve the State's PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and EPA does not wish to delay interim approval of the State's PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on PROGRAM approval for sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

This interim PROGRAM approval, which may not be renewed, extends until April 22, 1997. During this interim approval period, the State of South Dakota is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of South Dakota. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time period for processing the initial permit applications.

If the State of South Dakota fails to submit a complete corrective PROGRAM for full approval by October 22, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of South Dakota then fails to submit a corrective PROGRAM that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of South Dakota has corrected the deficiency by submitting a complete corrective PROGRAM. Moreover, if the Administrator finds a lack of good faith on the part of the State of South Dakota, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State of South Dakota has come into compliance. In any case, if, six months after application of the first sanction, the State of South Dakota still has not submitted a corrective PROGRAM that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of South Dakota's complete corrective PROGRAM, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of South Dakota has submitted a revised PROGRAM and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of South Dakota, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of South Dakota has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of South Dakota has not submitted a revised PROGRAM that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of South Dakota has not timely submitted a complete corrective PROGRAM or EPA has disapproved its submitted corrective PROGRAM. Moreover, if EPA has not granted full approval to the South Dakota PROGRAM by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of South Dakota upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's PROGRAM for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

EPA is also finalizing its approval of South Dakota's combined preconstruction/operating permit program found in section 74:36:05 of the State's regulations under the authority of title V and part 70 solely for the purpose of providing a mechanism to implement section 112(g) during any transition period between EPA's promulgation of a section 112(g) rule and adoption by the State of rules to implement section 112(g). However, since this approval is for the single purpose of providing a mechanism to implement section 112(g) during any transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The EPA is limiting the duration of this approval to 12 months following promulgation by EPA of the final section 112(g) rule.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 14, 1995.

William P. Yellowtail,

Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for South Dakota in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

South Dakota

(a) South Dakota Department of Environment and Natural Resources Division of Environmental Regulation: submitted on November 12, 1993; effective on April 21, 1995; interim approval expires April 22, 1997.

(b) Reserved.

[FR Doc. 95–7064 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300376A; FRL–4941–4]

RIN 2070–AB78

Isopropyl Myristate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes exemptions from the requirement of a tolerance for residues of isopropyl myristate when used as a solvent in pesticide formulations. Technology Sciences Group, Inc., on behalf of Sumitomo Chemical Co., Ltd., requested this regulation.

EFFECTIVE DATE: This regulation becomes effective March 22, 1995.

ADDRESSES: Written objections, identified by the document control number, [OPP-300376A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8375.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 1995 (60 FR 6053), EPA issued a proposed rule that gave notice that Technological Sciences Group, Inc., Pesticide Division, Steuart Street Tower 2700, One Market Plaza, San Francisco, CA 94105-1475, had submitted pesticide petition (PP) 3E04245 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing exemptions from the requirement of a tolerance for isopropyl myristate when used as a solvent in pesticide formulations applied to growing crops, raw agricultural commodities, and animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemptions will protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after

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publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 9, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraphs (c) and (e) in the tables therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
. . . . .		
Isopropyl myristate, CAS Reg. No. 110-27-0		Solvent
. . . . .		

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
. . . . .		
Isopropyl myristate, CAS Reg. No. 110-27-0		Solvent
. . . . .		

[FR Doc. 95-6930 Filed 3-21-95; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7613]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows: Current Community Effective date of effective

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia: Crisp County, unincorporated areas	130504	February 3, 1995	
Iowa: Alden, city of, Hardin County	190138	February 6, 1995	December 26, 1975.
Kansas:			
Morganville, city of, Clay County	200055	.....do	December 20, 1974.
Neosho County, unincorporated areas	200598	.....do	November 1, 1977.
Georgia: Ideal, city of Macon County	130520	February 10, 1995	
Kentucky: Barren County, unincorporated areas	210334	February 15, 1995	August 19, 1977.
Missouri:			
Lexington, city of, Lafayette County	290707	February 17, 1995	July 25, 1975.
Richmond, city of, Ray County	290657	.....do	October 22, 1976.
Washington: Skokomish Indian Tribe, Mason County	530326	.....do	
Georgia: Guyton, city of, Effingham County	130456	February 27, 1995	July 1, 1977.
Regular Program Conversions			
Region VIII			
Colorado: Colorado Springs, city of, El Paso County	080060	February 2, 1995 suspension withdrawn	February 2, 1995.

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State/location	Community No.	Effective date of eligibility	Current effective map date
Region VIII			
North Dakota:			
Fargo, city of, Cass County	385364	.....do	Do.
Stanley, township of, Cass County	380258	.....do	Do.
West Fargo, city of, Cass County	380024	.....do	Do.
Region III			
Pennsylvania:			
Briar Creek, borough of, Columbia County	420340	February 16, 1995 suspension withdrawn	February 16, 1995.
Upper Dublin, township of, Montgomery County	420706	.....do	Do.
Region V			
Indiana: Allen County, unincorporated areas	180302	.....do	Do.
Region VI			
Texas:			
Harris County, unincorporated areas	480287	.....do	Do.
Montgomery County, unincorporated areas	480483	.....do	Do.
Plano, city of, Collin County	480856	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 16, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95-7037 Filed 3-21-95; 8:45 am]

BILLING CODE 6718-21-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041-5041-01; I.D. 031595B]

Groundfish of the Gulf of Alaska; Vessels Using Hook-and-Line Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for demersal shelf rockfish (DSR) in the Southeast Outside district and sablefish. This action is necessary because the first seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear in the GOA for the 1995 fishing year has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 16, 1995, until 12 noon, A.l.t., May 18, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(f)(1)(ii)(A), the 1995 Pacific halibut bycatch allowance for hook-and-line gear for groundfish fisheries in the GOA, other than DSR in the Southeast Outside district, was established by the final groundfish specifications (60 FR 8470, February 14, 1995), as 740 metric tons (mt). The first seasonal allocation of that allowance is 200 mt. GOA hook-and-line gear sablefish fisheries are exempted from halibut bycatch restrictions (60 FR 12149, March 6, 1995), as amended by a document published on March 21, 1995 in the *Federal Register*.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(ii)(A), that the catch of Pacific halibut by operators of vessels using hook-and-line gear in groundfish fisheries other than the directed fishery for DSR in the Southeast Outside District has reached the first seasonal bycatch allowance of Pacific halibut. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the GOA, except this prohibition does not apply to vessels engaged in directed fishing for DSR in the Southeast Outside district or to vessels engaged in directed fishing for sablefish.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-6942 Filed 3-16-95; 4:18 pm]

BILLING CODE 3510-22-F

50 CFR Part 672

[Docket No. 950206041-5041-01; I.D. 031695B]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 17, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Western Regulatory Area was established by the final groundfish specifications (60 FR 8470, February 14, 1995) as 18,090 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the inshore component in the Western Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 13,090 mt, with consideration that 5,000 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-7013 Filed 3-17-95; 3:58 pm]

BILLING CODE 3510-22-F

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Proposed Rules

Federal Register
Vol. 60, No. 55
Wednesday, March 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG40

Federal Employees Health Benefits Program; HMO Plan Applications

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations that would clarify the policy under which it invites applications from comprehensive medical plans (HMO's) to participate in the Federal Employees Health Benefits (FEHB) Program. This clarification is necessary in order to ensure that OPM and the HMO's are providing the best possible service to FEHB enrollees.

DATES: Comments must be received on or before May 22, 1995.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.; or FAXed to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On December 5, 1994, OPM published an interim regulation in the **Federal Register** (59 FR 62283) to clarify the policy under which it invites applications from comprehensive medical plans (HMO's) to participate in the FEHB Program. This year, OPM made a determination not to invite new plan applications, with a limited exception, for contract year 1996.

OPM received numerous written comments and phone calls concerning the regulation. All of the commenters object that OPM did not give HMO's sufficient notice of its determination not to accept applications for the 1996 contract year. They contend that many HMO's had already expended a substantial amount of time in preparation for the application process and that OPM's decision, therefore, has caused them undue hardship.

After careful consideration of the comments received, OPM has concluded that its timeframes had, in fact, been too compressed to allow for a thorough review of all the consequences of the decision not to invite applications. As a result, OPM has decided to accept both applications and benefit change proposals for contract year 1996. In addition, OPM is issuing this regulation as proposed rulemaking in order to provide the public with a longer comment period. Because the deadline for submission of applications is already past, OPM is extending the application due date for the 1996 contract year from January 31 to March 31, 1995.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect OPM's administrative procedures.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.203, paragraph (a)(1) is revised, paragraphs (a)(2) through (a)(4) are redesignated as paragraphs (a)(3) through (a)(5) respectively; newly designated paragraph (a)(5) is amended by revising the last sentence; a new paragraph (a)(2) is added; and a heading is added for paragraph (b) to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) *New plan applications.* (1) The Director of OPM shall consider applications to participate in the FEHB Program from comprehensive medical plans (CMP's) at his or her discretion. If the Director of OPM determines that it is beneficial to enrollees and the Federal Employees Health Benefits Program to invite new plans to join the Program, OPM will publish a notice in the **Federal Register.**

(2) When invited to participate, CMP's should apply for approval by writing to the Office of Personnel Management, Washington, DC 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31, or another date specified by OPM, of the year preceding the contract year for which applications are being accepted. Plans must submit evidence demonstrating they meet all requirements for approval by March 31 of the year preceding the contract year for which applications are being accepted. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year for which applications are being accepted in order to be considered for participation in that contract year. OPM may make counter-proposals at any time.

* * * * *

(5) * * * The extent o. the data and documentation to be submitted by a plan so certified by HHS, as well as by a non-certified plan, for a particular review cycle may be obtained by writing directly to the Office of Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

(b) *Participating plans.* * * *

[FR Doc. 95–7031 Filed 3–21–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

RIN 0580–AA14

United States Standards for Barley

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: In its periodic review of existing regulations, the Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to amend the United States Standards for Barley by: Modifying the classification system of barley to better reflect current marketing practices by establishing two classes, "Malting barley and Barley"; revising procedures to permit applicants the option of requesting either the malting standards or barley standards for malting types; revising the standards for Two-rowed Malting barley by removing the "U.S. Choice" grade designation and also combining the grading factors and limits for two- and six-rowed malting types onto a single grade chart; Amending the definition for suitable malting type to include other proprietary malting varieties used by private malting and brewing companies; revising the dockage certification procedure by reporting results in half and whole percent with a fraction less than one-half percent being disregarded; amending the definition of thins to require the use of a single sieve (5/64 x 3/4 slotted-hole) only in the proposed class Barley and removing the grading limits from the standards; however, the level of thins will continue to be reported on the inspection certificate; revising the standards by removing the grading limits for damaged kernels, heat damaged kernels, and foreign material in the proposed class Barley; and eliminating the numerical grade restriction for badly stained and materially weathered from the standards. GIPSA further proposes to amend the inspection plan tolerances based on these proposed changes.

The objective of this review is to ensure that the barley standards are serving their intended purpose, are clear, and are consistent with GIPSA policy and authority.

DATES: Comments must be submitted on or before May 22, 1995.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA, USDA, Room 0623, South Building, PO Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection at Room 0624 South Building, 1400 Independence Avenue, SW, Washington, D.C., during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292; FAX (202) 720–4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the rule to be amended have been previously approved by OMB under control number 0580–0013.

Background

During December 1991, the Federal Grain Inspection Service (FGIS), which is now part of GIPSA, distributed a discussion paper concerning the U.S. Standards for Barley. This paper addressed several issues relating to the standards and served as a starting point for discussions with producers, trade associations, processors, maltsters, brewers, handlers, and merchandisers to better understand their views on changes needed to improve existing standards. FGIS received positive feedback from the grain industry regarding the barley discussion paper; in fact, several industry officials suggested that FGIS develop and distribute similar documents before amending other marketing standards.

FGIS received a total of 13 written comments concerning the discussion paper: 1 from a malting company; 1 from a barley trade association that represents the major U.S. malting and brewing companies; 1 from a barley feed processor; 1 from a major feed grain association; 7 from producer organizations and associations; 1 from a grain handler; and 1 from a grain inspection/weighing association.

FGIS also reviewed the barley discussion paper with the FGIS Advisory Committee and the Grain Quality Workshop in January 1992. In addition, FGIS personnel participated in an industry sponsored forum in Pasco, Washington in May 1993 to gather further information on the need for changes to the barley standards. FGIS also considered ideas received during the normalcourse of business, recommendations from internal management and program reviews, and various other sources.

Based on the comments received and other available information, GIPSA is proposing eight changes to the barley standards that reflect current market needs and also serve to improve the effectiveness of the standards. The proposed amendments include: (1) Modifying the classification system of barley to better reflect current marketing practices by establishing two classes, "Malting barley and Barley"; (2) revising procedures to permit applicants the option of requesting either the malting standards or barley standards for malting types; (3) revising the standards for Two-rowed Malting barley by removing the "U.S. Choice" grade designation and also combining the grading factors and limits for two- and six-rowed malting types onto a single grade chart; (4) amending the definition for suitable malting type to include other proprietary malting varieties used by private malting and brewing companies; (5) revising the dockage certification procedure by reporting results in half and whole percent with

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a fraction less than one-half percent being disregarded; (6) amending the definition of thins to require the use of a single sieve (5/64 x 3/4 slotted-hole) only in the proposed class "Barley" and removing the grading limits from the standards; however, the level of thins will continue to be reported on the inspection certificate; (7) revising the standards by removing the grading limits for damaged kernels, heat-damaged kernels, and foreign material in the proposed class "Barley"; and (8) eliminating the numerical grade restriction for badly stained and materially weathered from the standards. Furthermore, this proposal amends inspection plan tolerances based on the proposed revisions to the standards.

Barley Classification

GIPSA proposes to amend the barley classification system in 7 CFR 810.202, paragraph (c), by establishing two classes of barley. Specifically, a new class "Malting barley" will be divided into three subclasses, Six-rowed Malting barley, Six-rowed Blue Malting barley, and Two-rowed Malting barley. Additionally, the new class "Barley" will be divided into three subclasses, Six-rowed barley, Two-rowed barley, and Barley. GIPSA believes these changes will assist in simplifying the barley standards.

The present barley classification system was introduced into the standards during the 1974 revisions. Prior to 1974, barley was classed based on production areas (i.e., east of the Rocky Mountains and Alaska was classed "Barley" and barley grown west of the Rocky Mountains was classed "Western barley"). The 1974 review of the standards determined that the production area was not the best method for identifying barley classes. Accordingly, the classing procedure was revised and kernel characteristics were established as the basis for this determination. Present-day standards divide barley into the three classes; Six-rowed barley, Two-rowed barley, and Barley. The class Six-rowed barley is divided into three subclasses; Six-rowed Malting barley, Six-rowed Blue Malting barley, and Six-rowed barley. The class Two-rowed barley is divided into two subclasses; Two-rowed Malting barley and Two-rowed barley. The class Barley has no subclasses.

GIPSA believes that the existing barley classing system may not reflect current marketing practices. That is, barley produced in the United States is used primarily as livestock feed or for malting. Consequently, GIPSA believes that the barley classing system should be structured in a manner consistent with current trading practices. Therefore, GIPSA proposes to revise the classification system for barley by establishing two classes; Malting barley and Barley. The Malting class will be divided into three subclasses, Six-rowed Malting barley, Six-rowed Blue Malting barley, and Two-rowed Malting barley. The Barley class will be divided into three subclasses, Six-rowed barley, Two-rowed barley, and Barley.

Applying the Malting Standards

GIPSA proposes to amend the subclass definitions for Six-rowed barley and Two-rowed barley in 7 CFR part 810.202, paragraphs (c)(1)(iii) and (c)(2)(ii) by deleting the reference to Malting barley. This change is needed to permit applicants the option of requesting either the malting standards or the barley standards for malting types.

The present standards require official personnel to initially apply the Malting barley requirements and assign grades covered in 7 CFR 810.206 only if the sample fails to meet the malting criteria. This policy is based on the subclass definitions for Six- and Two-rowed barley. The subclass definitions for Six- and Two-rowed barley state, in part, that barley not meeting the applicable subclass requirement for malting shall be graded using the 7 CFR 810.206 grade chart.

GIPSA believes the present practice of initially applying the malting standards hampers inspection efficiency and may create market disruptions for malting varieties that are used for other purposes. Labeling barley as malting when it is being marketed for another use causes confusion and could lead to unnecessary marketing complications.

Therefore, GIPSA proposes to amend the subclass definitions for Six- and Two-rowed barley to provide the inspection system greater flexibility in meeting the market needs. This proposed amendment will also bring existing standards more in line with today's marketing practices for Malting barley.

U.S. "Choice Grade Designations"

GIPSA proposes to revise 7 CFR 810.205 by removing the U.S. No. 1 "Choice" grade designation from the chart. The factors and limits pertaining to the "Choice" grade will be retained. This revision is being sought to bring more consistency between the standards for two- and six-rowed malting types.

The current Two-rowed Malting barley standard includes a U.S. No. 1 "Choice" grade designation. The Six-rowed Malting barley standard does not include a similar grade. The differences between No. 1 "Choice" Two-rowed Malting barley and No. 1 Two-rowed Malting barley are reflected in the test weight, skinned and broken kernels, and the thin barley grade units.

GIPSA believes that the factors and limits for the "Choice" grade designation are important to producers, maltsters, and brewers. Furthermore, GIPSA believes that the quality requirements in the standards for Six- and Two-rowed Malting barley should be more consistent in order to eliminate confusion in the marketplace and to provide more meaningful information to our customers. Therefore, GIPSA proposes to delete the U.S. No. 1 "Choice" grade designation from 7 CFR 810.205 for Two-rowed Malting barley, but retain the factors and limits as the U.S. No. 1 grade.

Malting Barley Grading Charts

GIPSA proposes to revise the grade requirements in 7 CFR 810.204 and 810.205 by: (a) Combining the factors and limits for Two- and Six-rowed Malting barley onto a single grade chart; (b) establishing four numerical grades for all Malting barley; (c) establishing separate grade limits for test weight, suitable malting types, sound barley, skinned and broken kernels, and thin barley for two- and six-rowed malting types; (d) applying the current damaged kernels grade limits in Six-rowed Malting barley to Two-rowed Malting barley and also establishing a new 5.0 percent damaged kernels limit to correspond with the proposed four grade categories; (e) applying the present limits for mold damage and injured-by-mold in Two-rowed Malting barley to Six-rowed Malting barley; and (f) applying the current grade limits for other grains and wild oats to both Six- and Two-rowed Malting barley.

In the present malting standards, separate grade charts exist for two- and six-rowed malting types. Additionally, the factor requirements differ based on the subclass. For example, the current malting standards impose limits for other grains, wild oats, mold-damage, and injured-by-mold, but not consistently for all malting types. These differences reflect the traditional variances between the production areas and markets dealing with Six- and Two-rowed Malting barley. GIPSA believes that the malting standards should be revised to more consistently apply factor requirements between two- and six-rowed types. GIPSA believes also that the proposed revisions to combine 7 CFR 810.204 and 810.205 simplify the malting standards and make them more user friendly.

Suitable Malting Type

GIPSA proposes to amend the definition of suitable malting type in 7 CFR Part 810.202, paragraph (t), to expand the list of approved malting varieties. The proposed definition will include other proprietary malting types used by various maltsters and brewers. This change will bring existing standards more in line with today's processing practices of the malting and brewing industries. Current standards require a specified level of suitable malting type before the Malting barley designation is assigned. GIPSA presently relies on The American Malting Barley Association (AMBA) to determine which malting varieties are considered suitable. Varieties other than the AMBA-designated varieties are bought and sold as Malting barley in the marketplace. For instance, several breweries are involved in the development of Malting barley types to meet various end-product specifications (Ref. 1). In many instances, these varietal types are not tested and approved by AMBA; although such varieties meet all quality requirements of the brewery.

Furthermore, AMBA revises its list of approved malting types annually by adding new varieties and deleting outdated ones. Many malting varieties that are removed from AMBA's list continue to be produced, marketed, and processed. If a previously approved malting type was offered for official inspection, the current grading system would not permit the assignment of a malting grade designation because the variety would not meet the suitable malting type criteria.

Consequently, GIPSA proposes to amend the suitable malting type definition to include varieties recommended by AMBA and other proprietary malting types.

Dockage Certification

GIPSA proposes to amend the dockage certification procedure in 7 CFR 810.104, paragraph (b). It is proposed that dockage in barley be reported in half and whole percent with a fraction less than one-half percent being disregarded. For example, at a level of 0.0 to 0.49 percent, no dockage would be reported; and 0.50 to 0.99 percent would be reported as 0.5 percent dockage. Persons interested in actual dockage percentage may request that this information be reported in the remarks section of the certificate. GIPSA believes that the change in reporting dockage will provide a more accurate description of non-barley material.

Dockage in barley consists of dust, chaff, small weed seed, very small pieces of broken barley, and coarse grains larger than barley. Present standards certify dockage in whole percents with fractions of a percent being disregarded. For example, at a level of 0.0 to 0.99 percent, no dockage is reported; and 1.0 to 1.99 percent is reported as 1.0 percent dockage. GIPSA believes that this method of reporting dockage often understates dockage levels. GIPSA believes that reporting dockage in half and whole percent increments provides a more accurate description of non-barley material, thereby, enabling handlers and end-users to make more informed decisions regarding quality, storability, and end-product yield. In addition, providing information concerning the actual dockage percentage in the remarks section of the certificate is currently available upon request. Consequently, GIPSA proposes to revise 7 CFR 810.104 (b) to certify barley dockage in half and whole percent with a fraction less than one-half percent being disregarded.

Thin Barley

GIPSA proposes to revise the sieve requirement for determining thin barley in 7 CFR 810.202, paragraph (u). It is proposed that thin barley be determined using the 5/64 x 3/4 slotted-hole sieve in the proposed class Barley and the factor thin as a grade determining factor be removed. The amount of thin kernels will continue to be reported on the official certificate as a non-grade determining factor. GIPSA also proposes to amend 7 CFR 800.162 of the regulations under the United States Grain Standards Act by adding a paragraph to require that thin be reported on each inspection certificate when the grade is reported for the proposed class Barley. GIPSA is not proposing changes to the thin determinations in the standards for Malting barley.

Present standards define thin barley as Six-rowed barley which passes through a 5/64 x 3/4 slotted-hole sieve or Two-rowed barley which passes through a 55/64 x 3/4 slotted-hole sieve. In addition, for the class Barley, which consists of a mixture of six-rowed and two-rowed barley types, thin is defined as barley passing through the 5/64 x 3/4 slotted-hole sieve. Thin is a grade determining factor in all classes and subclasses of Barley.

The issue of sieve size for determining thin kernels has been a topic of discussion for many years, and GIPSA recognizes the need for uniformity in applying procedures. Concerns over the level of thins is directly related to the processing technique employed by the end-user. There are generally two processing strategies employed by processors which take into account the levels of thins. One involves the removal of thins before processing, and the other involves processing the grain with thins. Many buyers and sellers of barley often establish contractually the amount of thins considered appropriate.

The factor thin in the standards is a measurement of kernel size more than an indicator of overall quality in barley. A measurement of kernel size distribution may be more important to the barley industry than simply the percent of thins. GIPSA recognizes that the percent of thins is a factor used by the industry to determine market value. GIPSA has not found research that correlates barley quality to the level of thin kernels. That is, at what level do thins in barley impact on the overall nutritional quality or value. GIPSA believes that the end-user is in the best position to determine the appropriate level of thins and the market value of the grain.

GIPSA reviewed discount schedules for thins in barley from various grain companies. GIPSA's survey revealed that discounts for thins are assessed at levels ranging from 15 to 20 percent with higher discounts for thins over 20 percent. The marketplace, through discounting practices, makes adjustments for thin levels; in many instances, without regard to the official system. In brief, the industry establishes the value of barley including thins based on the end-users' needs rather than the levels as defined in the official standards.

Therefore, GIPSA proposes to amend 7 CFR 810.206 by deleting the factor thins and its corresponding grade limits for the proposed class Barley. It is further proposed to amend 7 CFR 800.162 by requiring that the level of thins be reported on each certificate representing an inspection for grade. This proposed reporting requirement, which is similar to the certification procedure for moisture, provides the marketplace with the flexibility to establish more meaningful quality limits for thins based on the specific needs of end-users. In addition, GIPSA proposes to revise 7 CFR 810.202(u) of the standards to require the use of the 5/64 x 3/4 slotted-hole sieve for thin determinations in the proposed class Barley. This proposed change would streamline the inspection process and promote uniformity in determining thins. Moreover, GIPSA believes that using a single sieve to determine thins is the best approach in order to standardize the inspection process.

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Sound Barley

GIPSA proposes to revise 7 CFR 810.206 by removing the factors and limits for damaged kernels, heat-damaged kernels, and foreign material in the proposed class Barley. The standards will rely on the factor "sound barley" to relate the overall amount of damaged kernels, heat-damaged kernels, foreign material, other grains, and wild oats. In addition, applicants interested in the percentage and composition of damaged kernels, heat-damaged kernels, foreign material, other grains, and wild oats may request this information be reported on the inspection certificate.

Sound barley is the sum of the percentages of damaged kernels, foreign material, other grains, and wild oats subtracted from 100 percent. Sound barley is a grading factor in all classes and subclasses of barley. Revising the manner in which the factors sound barley, heat-damaged kernels, damaged kernels, foreign material, other grains, and wild oats influence the grade designation could simplify the standards and improve their usefulness. GIPSA believes that the factor sound barley provides adequate information without the need to establish grading limits for its component factors.

GIPSA believes that the malting barley standards should continue to provide a breakdown of non-barley material (i.e., damaged kernels, foreign material, other grains, and wild oats) due to the impact these factors have on the malting process. GIPSA believes further that the malting and brewing industries need precise information on the overall amount of sound barley as well as information as to the level of damaged barley, non-barley material, and other grains.

GIPSA believes that the standards for the proposed class Barley should be revised to rely on the factor "sound" to determine quality, provided other information concerning non-barley material and damaged kernels is available to interested parties upon request. GIPSA reviewed inspection information from its Grain Inspection Monitoring System database to determine how the factors and limits for sound barley, damaged kernels, heat-damaged kernels, and foreign material influence the final grade. GIPSA's analysis revealed that sound barley was the grade determining factor approximately 83 percent of the time when compared to component factors that define sound (i.e., damaged kernels, heat-damaged kernels, and foreign material). Consequently, GIPSA believes that it is unnecessary to have limits for the component factors. GIPSA believes that the proposed revisions to 7 CFR 810.206 will streamline and simplify the standards while providing customers useful information needed to facilitate marketing.

Badly Stained or Materially Weathered Barley

GIPSA proposes that the grade limitation for barley that is badly stained or materially weathered in 7 CFR 810.206 be eliminated. Currently, barley that is badly stained or materially weathered is graded not higher than U.S. No. 4. In addition, it is further proposed to remove the definition for stained barley from 7 CFR 810.202(s). The determination of badly stained or materially weathered is seldom necessary because this condition also affects the level of sound kernels. In brief, factor limits for the other damages adequately conveys quality; therefore, this criterion is rarely used.

Miscellaneous Changes

GIPSA proposes to revise the format of the grade charts in the standards for Malting barley and Barley. These revisions serve to improve the readability of the grade tables.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected by a statistically based inspection plan (55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. The proposed changes to the barley standards require revisions to some breakpoints. Therefore, GIPSA proposes to amend the breakpoint for dockage from 0.47 to 0.23. GIPSA also proposes to establish new range limits as specified by contracts and new breakpoints for heat-damaged kernels, damaged kernels, foreign material, thin barley, other grains, and wild oats in the standards.

Proposed Action

GIPSA proposes to revise § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2), Table 1, by combining the factors and limits from Table 2 onto a single table and amending the title. GIPSA also proposes to: (1) Delete the U.S. No. 1 "Choice" grade designation from the malting standards and create four numerical grade categories; (2) establish a minimum 43.0 pound test weight limit with a breakpoint of −0.5 for No. 4 Six-rowed Malting barley; (3) establish a minimum 95.0 percent suitable malting type limit with a breakpoint of −1.3 for No. 4 Six-rowed Malting barley; (4) establish a minimum 87.0 percent sound barley limit with a breakpoint of 1.9 for No. 4 Six-rowed Malting barley; (5) apply current limits for damaged kernels to Two-rowed Malting barley and establish a maximum 5.0 percent damaged kernels grade limit with a breakpoint of 1.3 for barley meeting the No. 4 malting grade requirements; (6) establish foreign material limits at 0.5 percent with a breakpoint of 0.1, 1.0 percent with a breakpoint of 0.4, 2.0 percent with a breakpoint 0.5, and 3.0 percent with a breakpoint of 0.6, in grade Nos. 1, 2, 3, and 4, respectively; (7) apply current limits for wild oats to Six-rowed Malting barley; (8) apply present limits for other grains to two-rowed malting types and establish a maximum 4.0 percent grade limit with a breakpoint of 1.0 for barley meeting the No. 3 malting grade requirements; (9) establish a maximum 10.0 percent skinned and broken kernel limit with a breakpoint of 1.6 for No. 4 Six-rowed Malting barley; and (10) establish a maximum 15.0 percent thin barley grade limit with a breakpoint of 0.9 for No. 4 Six-rowed Malting barley. GIPSA also proposes to incorporate other malting factor grade limits and breakpoints (i.e., injured-by-frost, injured-by-heat, frost-damaged, heat-damaged, and kernel texture) from Table 4 onto Table 1 without any change in requirements.

GIPSA further proposes to reserve Table 2 for future use. In addition, the grade limits and breakpoints for damaged kernels, heat-damaged kernels, foreign material, and thin barley are deleted from Table 3; however, these factors are being moved to Table 4. Also, the footnote that limits barley which is badly stained or materially weathered to grade not higher than U.S. No. 4 is deleted.

Additionally, GIPSA proposes to amend Table 4 by establishing a breakpoint of 0.23 for dockage at any level. GIPSA also proposes to allow buyers and sellers of barley, excluding malting types, to specify contractually the appropriate level of heat-damaged kernels, damaged kernels, foreign material, thin barley, other grains, and wild oats. FGIS proposes to include range limits with breakpoints for these factors in Table 4 as follows:

TABLE 4.—FACTORS, RANGE LIMITS, AND BREAKPOINTS FOR BARLEY

Factor	Range limit	Breakpoint
Heat damage	0.0–0.5	0.1
Do	0.6–1.0	0.2
Do	1.1–2.5	0.3
Do	2.6–3.0	0.4
Do	3.1–3.5	0.5
Do	Above 3.5	0.6

TABLE 4.—FACTORS, RANGE LIMITS, AND BREAKPOINTS FOR BARLEY—Continued

Factor	Range limit	Breakpoint
Damage kernels	0.0–1.0	0.3
Do	1.1–2.0	0.4
Do	2.1–3.0	0.5
Do	3.1–4.0	0.6
Do	4.1–5.0	0.7
Do	Above 5.0	0.9
Foreign material	0.0–0.5	0.1
Do	0.6–1.5	0.2
Do	1.6–2.5	0.3
Do	2.6–3.5	0.4
Do	3.6–4.5	0.5
Do	Above 4.5	0.6
Thin barley	0.0–2.5	0.5
Do	2.6–4.5	0.6
Do	4.6–6.5	0.7
Do	6.6–8.5	0.8
Do	8.6–11.0	0.9
Do	Above 11.0	1.0
Other grains	0.0–0.5	0.4
Do	0.6–1.5	0.5
Do	1.6–2.5	0.6
Do	2.6–3.5	0.7

TABLE 4.—FACTORS, RANGE LIMITS, AND BREAKPOINTS FOR BARLEY—Continued

Factor	Range limit	Breakpoint
Do	3.6–4.5	0.8
Do	4.6–5.5	0.9
Wild Oats	0.0–0.5	0.4
Do	0.6–1.5	0.5
Do	1.6–2.5	0.6
Do	2.6–3.5	0.7
Do	3.6–4.5	0.8
Do	Above 4.5	1.0

GIPSA also proposes to amend section § 800.162 by redesignating paragraph (b) Cargo shipments as (c) and adding a new paragraph (b) Barley.

Reference

(1) U.S. Department of Agriculture in cooperation with the Colorado Agricultural Statistics Service; "1992 Colorado Barley Varieties." Published by the Colorado Agricultural Statistics Service; Lakewood, Colorado.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR part 800 and 7 CFR part 810 are proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.86 (c)(2) Table 2 is removed and reserved and Tables 1, 3, and 4 are revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 1.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR MALTING BARLEY

Grade	Minimum limits of—											
	Test weight (pounds)				Suitable malting types (percent)				Sound barley [1] (percent)				Kernel texture (percent)	
	Six-rowed		Two-rowed		Six-rowed		Two-rowed		Six-rowed		Two-rowed		Six-rowed only	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	50.0	−0.5	95.0	−1.3	97.0	−1.0	97.0	−1.0	98.0	−0.8	90.0	−1.3
U.S. No. 2	45.0	−0.5	48.0	−0.5	95.0	−1.3	97.0	−1.0	94.0	−1.4	98.0	−0.8	90.0	−1.3
U.S. No. 3	43.0	−0.5	48.0	−0.5	95.0	−1.3	95.0	−1.3	90.0	−1.6	96.0	−1.1	90.0	−1.3
U.S. No. 4	43.0	−0.5	48.0	−0.5	95.0	−1.3	95.0	−1.3	87.0	−1.9	93.0	−1.1	90.0	−1.3

Grade	Maximum limits of—											
	Damaged [1] kernels (percent)		Foreign material (percent)		Wild oats (percent)		Other grains (percent)		Skinned and broken kernels (percent)				Thin barley (percent)	
									Six-rowed		Two-rowed		Six-rowed	Two-rowed
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL BP	GL BP
U.S. No. 1	2.0	0.8	0.5	0.1	1.0	0.6	2.0	0.8	4.0	1.1	5.0	1.3	7.0 0.6	5.0 0.4
U.S. No. 2	3.0	0.9	1.0	0.4	1.0	0.6	3.0	0.9	6.0	1.4	7.0	1.3	10.0 0.9	7.0 0.5
U.S. No. 3	4.0	1.1	2.0	0.5	2.0	0.8	4.0	1.0	8.0	1.5	10.0	1.8	15.0 0.9	10.0 0.9
U.S. No. 4	5.0	1.3	3.0	0.6	3.0	0.9	5.0	1.3	10.0	1.6	10.0	1.8	15.0 0.9	10.0 0.9

Grade	Frost-damaged (percent)		Injured-by-frost (percent)		Heat-damaged (percent)		Injured-by-heat (percent)		Mold-damaged (percent)		Injured-by-mold (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. Nos. 1, 2, 3, & 4	0.4	0.05	1.9	0.1	0.1	0.1	0.2	0.04	0.4	0.05	1.9	0.1

[1] Injured-by-frost and injured-by-mold kernels are not considered damaged kernels or count as a deduction against sound barley.

Note: Malting barley shall not be infested in accordance with § 810.107 (b) and shall not contain any special grades as defined in § 810.206. Six- and Two-rowed barley varieties not meeting the above requirements shall be graded in accordance with standards established for the class Barley.

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Table 2 [Reserved]

TABLE 3.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR BARLEY

Grade	Minimum limits of— Test weight (pounds)		Sound barley (percent)		Maximum limits of broken kernels (percent)	
	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	97.0	−1.1	4.0	1.0
U.S. No. 2	45.0	−0.5	94.0	−1.4	8.0	1.0
U.S. No. 3	43.0	−0.5	90.0	−1.6	12.0	1.8
U.S. No. 4	40.0	−0.5	85.0	−2.2	18.0	1.8
U.S. No. 5	36.0	−0.5	75.0	−2.2	28.0	2.4

TABLE 4.—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

Special grade or factor	Grade or range limit	Breakpoint
Dockage	As specified by contract or load order grade	0.23
Two-rowed Barley	Not more than 10.0% of Six-rowed in Two-rowed	1.8
Six-rowed Barley	Not more than 10.0% of Two-rowed in Six-rowed	1.8
Smutty	More than 0.20%	0.06
Garlicky	3 or more in 500 grams	2⅓
Ergoty	More than 0.10%	0.13
Infested	Same as in § 810.107	0
Blighted	More than 4.0%	1.1
Heat-damaged kernels	0.0 – 0.5	0.1
	0.6 – 1.0	0.2
	1.1 – 2.5	0.3
	2.6 – 3.0	0.4
	3.1 – 3.5	0.5
	Above 3.5	0.6
Damaged kernels	0.0 – 1.0	0.3
	1.1 – 2.0	0.4
	2.1 – 3.0	0.5
	3.1 – 4.0	0.6
	4.1 – 5.0	0.7
	Above 5.0	0.9
Foreign material	0.0 – 0.5	0.1
	0.6 – 1.5	0.2
	1.6 – 2.5	0.3
	2.6 – 3.5	0.4
	3.6 – 4.5	0.5
	Above 4.5	0.6
Thin barley	0.0 – 2.5	0.5
	2.6 – 4.5	0.6
	4.6 – 6.5	0.7
	6.6 – 8.5	0.8
	8.6 – 11.0	0.9
	Above 11.0	1.0
Other grains	0.0 – 0.5	0.4
	0.6 – 1.5	0.5
	1.6 – 2.5	0.6
	2.6 – 3.5	0.7
	3.6 – 4.5	0.8
	4.6 – 6.0	0.9
Wild oats	0.0 – 0.5	0.4
	0.6 – 1.5	0.5
	1.6 – 2.5	0.6
	2.6 – 3.5	0.7
	3.6 – 4.5	0.8
	Above 4.5	1.0
Moisture	As specified by contract or load order grade	0.5

* * * * *

3. Section 800.162, paragraph (b) is revised and (c) is added to read as follows:

§ 800.162 Certification of grade; special requirements.

* * * * *

(b) *Barley.* Each official certificate for grade shall show, in addition to the requirements of paragraphs (a) and (c) of this section, the percent of thin barley.

(c) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraphs (a) and (b) of this section, the results of all official grade factors defined in the Official United States Standards for Grain for the type of grain being inspected

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

4. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

5. and 6. Section 810.104, paragraph (b), is amended by revising the first and second sentences to read as follows:

Subpart A—General Provisions

* * * * *

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed, rye, and sorghum are reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. * * *

7. Section 810.202, paragraph (c) is revised: paragraph (s) is removed; paragraph (t) is revised and redesignated as (s); paragraph (u) is revised and redesignated as (t); paragraph (v) is redesignated as (u) to read as follows:

§ 810.202 Definition of other terms.

* * * * *

(c) *Classes.* There are two classes of barley: Malting barley and Barley.

(1) *Malting barley.* Barley of a six-rowed or two-rowed malting type. The class Malting barley is divided into the following three subclasses:

(i) *Six-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with white aleurone layers that contains not more than: 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Six-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Six-Rowed Blue Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers that contains not more than: 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Six-rowed Blue Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(iii) *Two-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than: 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(2) *Barley.* Any barley of a six-rowed or two-rowed type. The class Barley is divided into the following three subclasses:

(i) *Six-rowed barley.* Any Six-rowed barley with white hulls that contains not more than 10.0 percent of two-rowed varieties.

(ii) *Two-rowed barley.* Any Two-rowed barley with white hulls that contains not more than 10.0 percent of six-rowed varieties.

(iii) *Barley.* Any barley that does not meet the requirements for the subclasses Six-rowed barley or Two-rowed barley.

* * * * *

(s) *Suitable malting type.* Varieties of malting barley that are recommended by the American Malting Barley Association and any other proprietary malting type(s) used by the malting and brewing industry. The recommended varieties are listed in FGIS instructions.

(t) *Thin barley.* Thin barley shall be defined for the appropriate class as follows:

(1) *Malting barley.* Six-rowed Malting barley that passes through a 5/64 x ¾ slotted-hole sieve and Two-rowed Malting barley which passes through a 5.5/64 x ¾ slotted-hole sieve in accordance with procedures prescribed in FGIS instructions.

(2) *Barley.* Six-rowed barley, Two-rowed barley, or barley that passes through a 5/64 x ¾ slotted-hole sieve in accordance with procedures prescribed in FGIS instructions.

* * * * *

8. Section 810.204 is revised to read as follows:

§ 810.204 Grades and grade requirements for malting barley.

Grading factors	Grades U.S. Nos. 1	2	3	4
Minimum limits of:				
Test weight:				
Six-rowed	47.0	45.0	43.0	43.0
Two-rowed	50.0	48.0	48.0	48.0
Minimum percent limits of:				
Suitable malting types:				
Six-rowed	95.0	95.0	95.0	95.0
Two-rowed	97.0	97.0	95.0	95.0
Sound Barley:[1]				
Six-rowed	97.0	94.0	90.0	87.0
Two-rowed	98.0	98.0	96.0	93.0
Kernel Texture:				
Six-rowed (only)	90.0	90.0	90.0	90.0
Maximum percent limits of:				
Damaged kernels total[1]	2.0	3.0	4.0	5.0
Malting factors:				
Frost damage	0.4	0.4	0.4	0.4
Injured-by-frost	1.9	1.9	1.9	1.9
Heat damage	0.1	0.1	0.1	0.1
Injured-by-heat	0.2	0.2	0.2	0.2
Mold damage	0.4	0.4	0.4	0.4
Injured-by-mold	1.9	1.9	1.9	1.9

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Grading factors	Grades U.S. Nos.			
	1	2	3	4
Foreign material	0.5	1.0	2.0	3.0
Wild oats	1.0	1.0	2.0	3.0
Other grains	2.0	3.0	4.0	5.0
Skinned and broken kernels:				
Six-rowed	4.0	6.0	8.0	10.0
Two-rowed	5.0	7.0	10.0	10.0
Thin barley:				
Six-rowed	7.0	10.0	15.0	15.0
Two-rowed	5.0	7.0	10.0	10.0
Stones	0.2	0.2	0.2	0.2
Maximum count limits of:[2]				
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Cocklebur	7	7	7	7
Crotalaria seeds	2	2	2	2
Glass	1	1	1	1
Stones	7	7	7	7
Unknown foreign substance	3	3	3	3

[1] Injured-by-frost and injured-by-mold kernels are not considered damaged kernels or count as a deduction against sound barley.
[2] Determined on a representative sample before the removal of dockage, except for stones. Determine stones on a dockage-free sample.

Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six- and Two-rowed barley varieties not meeting the above requirements shall be graded in accordance with standards established for the class Barley.

9. Section 810.205 is removed and § 810.206 is redesignated as 810.205 and revised to read as follows:

§ 810.205 Grades and Grade Requirements for Barley.

Grading factor	Grades U.S. Nos.				
	1	2	3	4	5
Minimum limits of:					
Test weight	47.0	45.0	43.0	40.0	36.0
Minimum percent limits of:					
Sound barley[1]	97.0	94.0	90.0	85.0	75.0
Maximum percent limits of:					
Broken kernels	4.0	8.0	12.0	18.0	28.0
Stones	0.2	0.2	0.2	0.2	0.2
Maximum count limits of:[2]					
Other material:					
Animal filth	9	9	9	9	9
Castor beans	1	1	1	1	1
Cocklebur	7	7	7	7	7
Crotalaria seeds	2	2	2	2	2
Glass	1	1	1	1	1
Stones	7	7	7	7	7
Unknown foreign substance	3	3	3	3	3

[1] Injured-by-frost and injured-by-mold kernels are not considered damaged kernels or count as a deduction against sound barley.
[2] Determined on a representative sample before the removal of dockage, except for stones. Determine stones on a dockage-free sample.

U.S. Sample grade shall be barley that: (a) does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; (b) has a musty, sour, or commercially objectionable foreign odor; or (c) is heating or of distinctly low quality.

§ 810.20 [Redesignated as § 810.206]

10. Section 810.207 is redesignated as 810.206.

Dated: March 15, 1995.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 95–6905 Filed 3–21–95; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 1220

[No. LS–94–003]

RIN 0581–AB18

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board and Adjust Number of Board Meetings Required

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was appointed in 1991 and decrease the number of required Board meetings from four a year to three a year.

DATES: Written comments must be received by April 21, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2624–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2624, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778, and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order No. 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner has the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the person resides or carries on a business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program organized and operated under the laws of the United States or any State relating to soybean promotion, research, consumer information, or industry information. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). This exception provides that, in order to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would adjust representation on the Board to reflect changes in production levels that have occurred since the Board was appointed in 1991. The Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991.

Section 1220.201(c) of the Order provides that at the end of each three (3) year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its September 1994 meeting, the Board voted to recommend to the Secretary that no modification be made.

Section 1220.201(d) of the Order provides that at the end of each three (3) year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

Current representation on the Board is based on average production levels for the years 1985–89 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture.

Proposed representation on the Board is based on average production levels for the years 1989–93 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by NASS.

This proposed rule would adjust representation on the Board as follows:

State	Current representation	Proposed representation
Florida	1	0
Georgia	2	1
South Carolina	2	1
Wisconsin	1	2
Maryland	1	2

Florida would join the Eastern Region unit, and be represented by its Board representative.

The 1994 nomination and appointment process was in progress while this proposed rule was being developed. Therefore, Board adjustment as proposed by this rulemaking would be effective, if adopted, with the 1995 nominations and appointments.

Section 1220.212(a) of the Order provides that the Board shall meet at least four times a year, and more often if necessary for the Board to carry out its responsibilities. The Board, which operates under a 5 percent administrative cap, has recommended to the Secretary that in order to reduce its administrative costs and comply with the 5 percent cap, § 1220.212(a) be amended to reduce the number of required yearly Board meetings to three. This proposed amendment would reduce the required minimum number of Board meetings from four to three a year.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

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For the reasons set forth in the preamble, it is proposed that title 7 of the CFR part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. Section 1220.201 is amended by revising the section heading and paragraph (a), removing paragraph (f), and redesignating paragraph (g) as paragraph (f) as follows:

§ 1220.201 Membership of board.

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into 30 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Unit	No. of members
Illinois	4
Iowa	4
Minnesota	3
Indiana	3
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
Mississippi	2
Kansas	2
Louisiana	2
South Dakota	2
Tennessee	2
North Carolina	2
Kentucky	2
Michigan	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
North Dakota	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
New Jersey	1
Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

2. In § 1220.212, paragraph (a) is revised to read as follows:

§ 1220.212 Duties.

* * * * *

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

* * * * *

Dated: March 15, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–6915 Filed 3–21–95; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–36–AD]

Airworthiness Directives; Aerospatiale Model ATR72–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Model ATR72–100 and –200 series airplanes, that would have required a one-time dye penetrant inspection to detect cracking in certain hinge pins of the nose landing gear (NLG), and replacement of cracked pins with crack-free pins. That proposal was prompted by reports of cracking of certain hinge pins in the NLG. This action revises the proposed rule by shortening the compliance time to perform the inspection of the hinge pins of the NLG. The actions specified by this proposed AD are intended to prevent collapse of the NLG due to cracking of the hinge pins.

DATES: Comments must be received by May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72–100 and –200 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 18, 1994 (59 FR 25846). That NPRM would have required a one-time dye penetrant inspection to detect cracking in certain hinge pins in the nose landing gear (NLG), and replacement of cracked pins with crack-free pins. That NPRM was prompted by a report that cracking has been found on the hinge pins during routine overhaul of the NLG. That condition, if not corrected, could result in collapse of the NLG due to cracking of the hinge pins.

Since the issuance of that NPRM, the FAA has received a comment from the manufacturer that has caused the FAA to reconsider the proposed compliance time to perform the inspection of the hinge pins of the NLG. Aerospatiale requests that the proposed compliance time of 10,000 landings be shortened to 1,000 landings for airplanes that have accumulated 10,000 or more total landings, and 1,500 landings for airplanes that have accumulated less than 10,000 total landings. Aerospatiale suggests that the proposed compliance time may be too long for these airplanes to fly with a potential for the NLG to collapse due to cracking of the hinge pins. The commenter's suggested compliance time would allow older airplanes that are at greater risk to be inspected earlier, while newer airplanes that pose a lower risk would be inspected later. Further, this staggered compliance time would allow the manufacturer additional time to produce an adequate number of replacement pins.

The FAA concurs. The FAA has reconsidered the compliance time for performing the inspection of the hinge pins of the NLG and finds that the compliance time must be shortened based upon the degree of urgency associated with addressing the subject unsafe condition and the availability of replacement pins. Therefore, the FAA finds that to ensure safety of the fleet, the compliance time for paragraph (a) must be shortened. For airplanes that have accumulated 10,000 or more total landings, the compliance time has been shortened to 1,000 landings; and for airplanes that have accumulated less than 10,000 total landings, the compliance time has been shortened to 1,500 landings. (This change has necessitated the reitemization of the paragraphs. Paragraphs (b) and (c) were formerly identified in the proposal as paragraphs (a)(1) and (a)(2).)

Since this change in the proposed compliance times expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,080, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive: AEROSPATIALE: Docket 94–NM–36–AD.

Applicability: Model ATR72–100 and –200 series airplanes equipped with hinge pins installed at the nose landing gear (NLG) that are manufactured by Nardi, have part number D56867, and have serial numbers beginning with the letter "N"; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

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To prevent collapse of the NLG due to cracking of the hinge pins, accomplish the following:

(a) Perform a dye penetrant inspection to detect cracking in the hinge pins of the NLG in accordance with Avions de Transport Regional Service Bulletin ATR72–32–1021, dated January 17, 1994, at the time specified in either paragraph (a)(1) or (a)(2) or this AD, as applicable.

(1) For airplanes that have accumulated 10,000 total landings or more as of the effective date of this AD: Within 1,000 landings after the effective date of this AD.

(2) For airplanes that have accumulated less than 10,000 total landings as of the effective date of this AD: Within 1,500 landings after the effective date of this AD.

(b) If no cracking is found, prior to further flight, reinstall that hinge pin in accordance with Avions de Transport Regional Service Bulletin ATR72–32–1021, dated January 17, 1994.

(c) If cracking is found, prior to further flight, install a new hinge pin or a pin that has been previously inspected and found to be crack-free, in accordance with the Avions de Transport Regional Service Bulletin ATR72–32–1021, dated January 17, 1994.

(d) As of the effective date of this AD, no hinge pin manufactured by Nardi having part number D56867 and any serial number beginning with the letter "N," shall be installed on the NLG of any airplane, unless that pin has been previously inspected and has been found to be crack-free, in accordance Avions de Transport Regional Service Bulletin ATR72–32–1021, dated January 17, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6999 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 855

RIN 0701–AA42

Civil Aircraft Use of United States Air Force Airfields

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to revise its regulations on civil aircraft use of United States Air Force airfields to reflect current policies and statutes. This revision establishes responsibilities and prescribes procedures for requesting and granting civil aircraft access to Air Force airfields. The public is invited to participate in this rulemaking by submitting comments to the point of contact listed under ADDRESSES. On September 24, 1993, the Air Force published, at 58 FR 49951, what is now subpart A of this proposed rule for comment. That proposed rule is hereby canceled and comments will be accepted on the version contained in this proposed rule in place of that previous version.

DATES: Comments must be received no later than May 22, 1995.

ADDRESSES: Comments should be submitted to HQ USAF/XOOBC, Attn: Mrs. R.A. Young, 1480 Air Force Pentagon, Room 5C966, Washington DC 20330–1480.

FOR FURTHER INFORMATION CONTACT: Mrs. R.A. Young, 703 697–5967.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this proposed rule is not a major rule because it will not have an annual adverse effect on the economy of $100 million or more. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations & Environment) has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612 because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use. This proposed rule revises and replaces Air Force Regulation (AFR) 55–20, Use of United States Air Force Installations By Other Than United States Department of Defense Aircraft, 10 April 1987.

List of Subjects in 32 CFR Part 855

Aircraft, Federal buildings and facilities.

Therefore, 32 CFR part 855 is proposed to be revised to read as follows:

PART 855—CIVIL AIRCRAFT USE OF UNITED STATES AIR FORCE AIRFIELDS

Subpart A—General Provisions

Sec.
855.1 Policy.
855.2 Responsibilities.
855.3 Applicability.

Subpart B—Civil Aircraft Landing Permits

855.4 Scope.
855.5 Responsibilities and authorities.
855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.
855.7 Conditions for use of Air Force airfields.
855.8 Application procedures.
855.9 Permit renewal.
855.10 Purpose of use.
855.11 Insurance requirements.
855.12 Processing a permit application.
855.13 Civil fly-ins.
855.14 Unauthorized landings.
855.15 Detaining an aircraft.
855.16 Landing, parking, and storage fees.
855.17 Aviation fuel and oil purchases.
855.18 Supply and service charges.

Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

855.19 Joint-use Agreements.
855.20 Procedures for sponsor.
855.21 Air Force procedures.
855.22 Other agreements.
Table 1—Purpose of Use/Verification/Approval Authority/Fees
Table 2—Aircraft Liability Coverage Requirements
Table 3—Landing Fees
Table 4—Parking and Storage Fees
Attachment 1 to Part 855—Definitions
Attachment 2 to Part 855—Weather Alternate List
Attachment 3 to Part 855—Landing Permit Application Instructions
Attachment 4 to Part 855—Sample Joint-Use Agreement
Attachment 5 to Part 855—Sample Temporary Agreement.

Authority: 49 U.S.C. 44502 and 47103.

Subpart A—General Provisions

§ 855.1 Policy.

The Air Force establishes and uses its airfields to support the scope and level of operations necessary to carry out missions worldwide. The Congress funds airfields in response to Air Force requirements, but also specifies that civil aviation access is a national priority to be accommodated when it does not jeopardize an installation's military utility. The Air Force engages in dialogue with the civil aviation community and the Federal Aviation Administration to ensure mutual understanding of long-term needs for the national air transportation system and programmed military force structure requirements. To implement the national policy and to respond to requests for access, the Air Force must have policies that balance such requests with military needs. Civil aircraft access to Air Force airfields on foreign territory requires host nation approval.

(a) The Air Force will manage two programs that are generally used to grant civil aircraft access to its airfields: civil aircraft landing permits and joint-use agreements. Other arrangements for access will be negotiated as required for specific purposes.

(1) Normally, landing permits will be issued only for civil aircraft operating in support of official Government business. Other types of use may be authorized if justified by exceptional circumstances.

(2) The Air Force will consider only proposals for joint use that do not compromise operations, security, readiness, safety, environment, and quality of life. Further, only proposals submitted by authorized local Government representatives eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint-use agreement.

(3) Any aircraft operator with an inflight emergency may land at any Air Force airfield without prior authorization. An inflight emergency is defined as a situation that makes continued flight hazardous.

(b) Air Force requirements will take precedence on Air Force airfields over all civil aircraft operations, whether they were previously authorized or not.

(c) Civil aircraft use of Air Force airfields in the United States will be subject to Federal laws and regulations. Civil aircraft use of Air Force airfields in foreign countries will be subject to U.S. Federal laws and regulations that have extraterritorial effect and to applicable international agreements with the country in which the Air Force installation is located.

§ 855.2 Responsibilities.

(a) As the program manager for joint use, the Civil Aviation Branch, Bases and Units Division, Directorate of Operations (HQ USAF/XOOBC), ensures that all impacts have been considered and addressed before forwarding a joint-use proposal or agreement to the Deputy Assistant Secretary for Installations (SAF/MII), who holds decision authority. All decisions are subject to the environmental impact analysis process as directed by the Environmental Planning Division of the Directorate of Environmental Quality (HQ USAF/CEVP) and the Deputy Assistant Secretary for Environment, Safety, and Occupational Health (SAF/MIQ). The Air Force Real Estate Agency (AFREA/MI) handles the leases for Air Force-owned land or facilities that may be included in an agreement for joint use.

(b) HQ USAF/XOOBC determines the level of decision authority for landing permits. It delegates decision authority for certain types of use to major commands and installation commanders.

(c) HQ USAF/XOOBC makes the decisions on all requests for exceptions or waivers to this part and related Air Force instructions. The decision process includes consultation with other affected functional area managers when required. Potential impacts on current and future Air Force policies and operations strongly influence such decisions.

(d) Major commands, direct reporting units, and field operating agencies may issue supplements to establish command-unique procedures permitted by and consistent with this part.

§ 855.3 Applicability.

This part applies to all regular United States Air Force (USAF), Air National Guard (ANG), and United States Air Force Reserve (USAFR) installations with airfields. This part also applies to civil aircraft use of Air Force ramps at civil airports hosting USAF, ANG, and USAFR units.

Subpart B—Civil Aircraft Landing Permits

§ 855.4 Scope.

Air Force airfields are available for use by civil aircraft so far as such use does not interfere with military operations or jeopardize the military utility of the installation. Air Force requirements take precedence over authorized civil aircraft use. This part carries the force of U.S. law, and exceptions are not authorized without prior approval from the Civil Aviation Branch, Bases and Units Division, Directorate of Operations, (HQ USAF/XOOBC), 1480 Air Force Pentagon, Washington DC 20330–1480. Proposed exceptions or waivers are evaluated as to current and future impact on Air Force policy and operations.

§ 855.5 Responsibilities and authorities.

(a) The Air Force:

(1) Determines whether civil aircraft use of Air Force airfields is compatible with current and planned military activities.

(2) Normally authorizes civil aircraft use of Air Force airfields only in support of official government business. If exceptional circumstances warrant, use for other purposes may be authorized.

(3) Acts as clearing authority for civil aircraft use of Air Force airfields, subject to the laws and regulations of the U.S., or to applicable international agreements with the country in which the Air Force installation is located.

(4) Reserves the right to suspend any operation that is inconsistent with national defense interests or deemed not in the best interests of the Air Force.

(5) Will terminate authority to use an Air Force airfield if the:

(i) User's liability insurance is canceled.

(ii) User lands for other than the approved purpose of use or is otherwise in violation of this part or clearances and directives hereunder.

(6) Will not authorize use of Air Force airfields:

(i) In competition with civil airports by providing services or facilities that are already available in the private sector.

Note: Use to conduct business with or for the US Government is not considered as competition with civil airports.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) By civil aircraft that do not meet US Department of Transportation operating and airworthiness standards.

(v) That selectively promotes, benefits, or favors a specific commercial venture unless equitable consideration is available to all potential users in like circumstances.

(vi) For unsolicited proposals in procuring government business or contracts.

(vii) Solely for customs-handling purposes.

(viii) When the air traffic control tower and base operations are closed or when a runway is restricted from use by all aircraft.

Note: Requests for waiver of this provision must address liability responsibility, emergency response, and security.

(7) Will not authorize civil aircraft use of Air Force ramps located on civil airfields.

Note: This section does not apply to use of aero club facilities located on Air Force land at civil airports, or civil aircraft chartered by US military departments and authorized use of terminal facilities and ground handling services on the Air Force ramp. Only the DD Form 2400, Civil Aircraft Certificate of Insurance, and DD Form 2402, Civil Aircraft

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Hold Harmless Agreement, are required for use of Air Force ramps.

(b) Civil aircraft operators must:

(1) Have an approved DD Form 2401, Civil Aircraft Landing Permit, before operating at Air Force airfields, except for emergency use and as indicated in paragraphs (d)(2) and (d)(2) (iii)(E) of this section, and § 855.6, and § 855.13(b)(1)(ii).

(2) Ensure that pavement load-bearing capacity will support the aircraft to be operated at the Air Force airfield.

(3) Have aircraft equipped with operating two-way radio equipment to obtain landing clearance from the air traffic control tower.

(4) Obtain final approval for landing from the installation commander or a designated representative (normally base operations) at least 24 hours prior to arrival.

(5) Not assume that the landing clearance granted by an air traffic control tower facility is a substitute for either the approved civil aircraft landing permit or approval from the installation commander or a designated representative (normally base operations).

(6) Obtain required diplomatic or overflight clearance before operating in foreign airspace.

(7) Pay applicable costs and fees.

(8) File a flight plan before departing the Air Force airfield.

(c) The installation commander or a designated representative:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute aircraft arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with civil aircraft arrival and departure.

(d) Decision Authority: The authority to grant civil aircraft use of Air Force airfields is vested in:

(1) Directorate of Operations, Bases and Units Division, Civil Aviation Branch (HQ USAF/XOOBC). HQ USAF/XOOBC may act on any request for civil aircraft use of an Air Force airfield. Decision authority for the following will not be delegated below HQ USAF:

(i) Use of multiple Air Force airfields except as designated in paragraph (d)(2) of this section.

(ii) Those designated as 2 under Approval Authority in Table 1.

(iii) Any unusual or unique purpose of use not specifically addressed in this part.

(2) Major Command, Field Operating Agency, Direct Reporting Unit, or Installation Commander. With the exception of those uses specifically delegated to another decision authority, major commands (MAJCOMs), field operating agencies (FOAs), direct reporting units (DRUs) and installation commanders or designated representatives have the authority to approve or disapprove civil aircraft landing permit applications (DD Forms 2400, Civil Aircraft Certificate of Insurance; 2401; Civil Aircraft Landing Permit, and 2402, Civil Aircraft Hold Harmless Agreement) at airfields for which they hold oversight responsibilities. Additionally, for expeditious handling of short notice requests, they may grant requests for one-time, official government business flights that are in the best interest of the US Government and do not violate other provisions of this part. As a minimum, for one-time flights authorized under this section, the aircraft owner or operator must provide the decision authority with insurance verification and a completed DD Form 2402 before the aircraft operates into the Air Force airfield. Air Force authority to approve civil aircraft use of Air Force airfields on foreign soil may be limited. Commanders outside the US must be familiar with base rights agreements or other international agreements that may render inapplicable, in part or in whole, provisions of this part. Decision authority is delegated for specific purposes of use and/or locations as follows:

(i) Commander, 611th Air Operations Group (AOG). The Commander, 611th AOG or a designated representative may approve commercial charters, on a case-by-case basis, at all Air Force airfields in Alaska, except Eielson and Elmendorf AFBs, if the purpose of the charter is to transport goods and/or materials, such as an electric generator or construction materials for a community center, for the benefit of remote communities that do not have adequate civil airports.

(ii) Commander, Air Mobility Command (AMC). The Commander, AMC or a designated representative may approve permits that grant landing rights at Air Force airfields worldwide in support of AMC contracts.

(iii) US Defense Attache Office (USDAO). The USDAO, acting on behalf of HQ USAF/XOOBC, may grant a request for one-time landing rights at an Air Force airfield provided:

(A) The request is for official government business of either the US or the country to which the USDAO is accredited.

(B) The Air Force airfield is located within the country to which the USDAO is accredited.

(C) Approval will not violate any agreement with the host country.

(D) The installation commander concurs.

(E) The USDAO has a properly completed DD Form 2402 on file and has verified that the insurance coverage meets the requirements of Table 2, before the aircraft operates into the Air Force airfield.

§ 855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.

(a) Any aircraft owned by:

(1) Any other US Government agency.

(2) US Air Force aero clubs established as prescribed in AFI 34–117, Air Force Aero Club Program, and AFMAN 3–132, Air Force Aero Club Operations [1].

Note: This includes aircraft owned by individuals but leased by an Air Force aero club.

(3) Aero clubs of other US military services.

Note: This includes aircraft owned by individuals but leased by Army or Navy aero clubs.

(4) A US state, county, municipality, or other political subdivision, when operating to support official business at any level of government.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive US Government use on a long-term basis and operated on official business by or for a US Government agency; for example, the Federal Aviation Administration (FAA), Department of the Interior, or Department of Energy.

Note: The government must hold liability responsibility for all damages or injury associated with operation of the aircraft.

(2) Lease or contractual agreement to the Air Force for Air Force Civil Air Patrol (CAP) liaison purposes and operated by an Air Force CAP liaison officer on official Air Force business.

(3) CAP control for a specific mission directed by the Air Force.

(4) Coast Guard control for a specific mission directed by the Coast Guard.

Note: For identification purposes, the aircraft will be marked with a sticker near the port side door identifying it as a Coast Guard Auxiliary aircraft. The pilot will always be in uniform and normally have a copy of a Coast Guard Auxiliary Patrol Order. If the aircraft is operating under "verbal orders of the commander," the pilot can provide the telephone number of the cognizant Coast Guard commander.

(5) Contractual agreement to any US, state, or local government agency in support of operations involving safety of life or property as a result of a disaster.

(6) Government furnished property or bailment contract for use by a contractor, provided the federal, state, or local government has retained liability responsibilities.

(7) Civil aircraft transporting critically ill or injured individuals or transplant organs to or from an Air Force installation.

(8) Historic aircraft being delivered for Air Force museum exhibits under the provisions of AFI 84–103, Museum System.[2]

§ 855.7 Conditions for use of Air Force airfields.

The Air Force authorizes use of its airfields for a specific purpose by a named individual or company. The authorization cannot be transferred to a second or third party and does not extend to use for other purposes. An approved landing permit does not obligate the Air Force to provide supplies, equipment, or facilities other than the landing, taxiing, and parking areas. The aircraft crew and passengers are only authorized activities at the installation directly related to the purpose for which use is granted. All users are expected to submit their application (DD Forms 2400, 2401, and 2402) at least 30 days before intended use and, except for use as a weather alternate, CRAF alternate, or emergency landing site, must contact the appropriate installation commander or a designated representative for final landing approval at least 24 hours before arrival. Failure to comply with either time limit may result in denied landing rights.

§ 855.8 Application procedures.

To allow time for processing, the application (DD Forms 2400, 2401, and 2402) and a self-addressed, stamped envelope should be submitted at least 30 days before the date of the first intended landing. The verification required for each purpose of use must be included with the application. The name of the user must be the same on all forms. Original, hand scribed signatures, not facsimile elements, are required on all forms. Landing Permit Application Instructions are at Attachment 3. The user is responsible for reviewing this part and accurately completing the forms before submitting them to the approving authority.

§ 855.9 Permit renewal.

When a landing permit expires, DD Forms 2400 and 2401 must be resubmitted for continued use of Air Force airfields.

Note: Corporations must resubmit the DD Form 2402 every five years.

§ 855.10 Purpose of use.

The purposes of use normally associated with civil aircraft operations at Air Force airfields are listed in Table 1. Requests for use for purposes other than those listed will be considered and may be approved if warranted by unique circumstances. A separate DD Form 2401 is required for each purpose of use. (Users can have multiple DD Forms 2401 that are covered by a single DD Form 2400 and DD Form 2402.)

§ 855.11 Insurance requirements.

Applicants must provide proof of third-party liability insurance on a DD Form 2400, with the amounts stated in U.S. dollars. The policy number, effective date, and expiration date are required. The statement "until canceled" may be used in lieu of a specific expiration date. The geographic coverage must include the area where the Air Force airfield of proposed use is located. If several aircraft or aircraft types are included under the same policy, a statement such as "all aircraft owned," "all aircraft owned and/or operated," "all non-owned aircraft," or "all aircraft operated," may be used in lieu of aircraft registration numbers. To meet the insurance requirements, either split limit coverage for bodily injury (individuals outside the aircraft), property damage, and passengers, or a single limit coverage is required. The coverage will be at the expense of the user with an insurance company acceptable to the Air Force. Coverage must be current during the period the Air Force airfield will be used. The liability required is computed on the basis of aircraft maximum gross takeoff weight (MGTOW) and passenger or cargo configuration. Minimum coverage will not be less than the amount indicated in Table 2.

(a) Any insurance presented as a single limit of liability or a combination of primary and excess coverage will be an amount equal to or greater than the each accident minimums indicated in Table 2 for bodily injury (individuals outside the aircraft), property damage, and passengers.

(b) The policy will specifically provide that:

(1) The insurer waives any right of subrogation it may have against the U.S. by reason of any payment made under the policy for injury, death, or property damage that might arise, out of or in connection with the insured's use of any Air Force airfield.

(2) The insurance afforded by the policy applies to the liability assumed by the insured under DD Form 2402.

(3) If the insurer or the insured cancels or reduces the amount of insurance afforded under the listed policy before the expiration date indicated on DD Form 2400, the insurer will send written notice of policy cancellation or coverage reduction to the Air Force approving authority at least 30 days before the effective date of the cancellation or reduction. The policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent.

§ 855.12 Processing a permit application.

Upon receipt of an application (DD Forms 2400, 2401, and 2402) for use of an Air Force airfield, the decision authority:

(a) Determines the availability of the airfield and its capability to accommodate the purpose of use requested.

(b) Determines the validity of the request and ensures all entries on DD Forms 2400, 2401, and 2402 are in conformance with this part.

(c) Approves DD Form 2401 (with conditions or limitations noted) by completing all items in Section II—For Use by Approving Authority as follows:

(1) Period of Use (Block 7): The "From" date will be either the first day of approved use or the first day of insurance coverage. The "From" date cannot precede the first day of insurance coverage shown on the DD Form 2400. The "Thru" date is determined by the insurance expiration date and/or the purpose of use. For example, the period of use for participants in an Air Force open house will be determined by both insurance coverage and open house dates. The permit would be issued only for the duration of the open house but must not precede or exceed the dates of insurance coverage. Many insurance policies terminate at noon on the expiration date. Therefore, if the insurance expiration is used to determine the permit expiration date, the landing permit will expire one day before the insurance expiration date shown on the DD Form 2400. If the insurance expiration date either exceeds 2 years or is indefinite (for example, "until canceled"), the landing permit will

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 855.6.

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expire 2 years from the issue date or first day of coverage.

(2) Frequency of Use (Block 8) is normally "as required" but may be more specific, such as "one time."

(3) Identification Number (Block 9): Installation commanders or a designated representative assign a permit number comprised of the last three letters of the installation's International Civil Aviation Organization identifier code, the last two digits of the calendar year, a number sequentially assigned, and the letter suffix that indicates the purpose of use (Table 1); for example, ADW 95–01C. MAJCOMs, FOAs, DRUs, and USDAOs use a three-position organization abbreviation, such as AMC 95–02K.

(4) DD Form 2400 (Dated and Filed) (Block 11a): This block should contain the date from Block 1 (Date Issued) on the DD Form 2400 and the identification of the unit or base where the form was approved; i.e., 30 March 1995, HQ USAF/XOOBC.

(5) DD Form 2402 (Dated and Filed) (Block 11b): This block should contain the date from Block 4 (Date Signed) on the DD Form 2402 and the identification of the unit or base where the form was approved; i.e., 30 March 1995, HQ USAF/XOOBC.

(6) SA–ALC/SFR, 1014 Andrews Road, Building 1621, Kelly AFB TX 78241–5603 publishes the list of companies authorized to purchase Air Force fuel on credit. Block 12 should be marked "yes" only if the permit holder's name appears on the SA–ALC list.

(7) Landing Fees, Block 13, should be marked as indicated in Table 1.

(8) Permit Amendments: New entries or revisions to an approved DD Form 2401 may be made only by or with the consent of the approving authority.

(d) Provides the applicant with written disapproval if:

(1) Use will interfere with operations, security, or safety.

(2) Adequate civil facilities are collocated.

(3) Purpose of use is not official government business and adequate civil facilities are available in the proximity of the requested Air Force airfield.

(4) Use will constitute competition with civil airports or air carriers.

(5) Applicant has not fully complied with this part.

(e) Distributes the approved DD Form 2401 before the first intended landing, when possible, as follows:

(1) Retains original.

(2) Returns two copies to the user.

(3) Provides a copy to HQ USAF/XOOBC. NOTE: HQ USAF/XOOBC will provide a computer report of current landing permits to the MAJCOMs, FOAs, DRUs, and installations.

§ 855.13 Civil fly-ins.

(a) Civil aircraft operators may be invited to a specified Air Force airfield for:

(1) A base open house to perform or provide a static display.

(2) A flying safety seminar.

(b) Civil fly-in procedures:

(1) The installation commander or a designated representative:

(i) Requests approval from the MAJCOM, FOA, or DRU with an information copy to HQ USAF/XOOBC/XOOO and SAF/PAC.

(ii) Ensures that DD Form 2402 is completed by each user.

Note: DD Forms 2400 and 2401 are not required for fly-in participants if flying activity consists of a single landing and takeoff with no spectators other than flightline or other personnel required to support the aircraft operations.

(2) The MAJCOM, FOA, or DRU ensures HQ USAF/XOOBC/XOOO and SAF/PAC are advised of the approval or disapproval for the fly-in.

(3) Aerial performance by civil aircraft requires MAJCOM or FOA approval and an approved landing permit as specified in AFI 35–201, Community Relations.[3] Regardless of the aircraft's historic military significance, DD Forms 2400, 2401, and 2402 must be submitted and approved before the performance. The permit can be approved at MAJCOM, FOA, DRU, or installation level. Use will be authorized only for the period of the event. Fly-in procedures do not apply to aircraft transporting passengers (revenue or non-revenue) or demonstration flights associated with marketing a product.

§ 855.14 Unauthorized landings.

(a) *Unauthorized landing procedures.* The installation commander or a designated representative will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this part, and whether or not the operator filed a flight plan identifying the installation as a destination. Aircraft must depart the installation as soon as practical. On all unauthorized landings, the installation commander or a designated representative:

(1) Informs the operator of Subpart B procedures and the requirement for notifying the Federal Aviation Administration (FAA) as specified in Section 6 of the FAA Airman's Information Manual.

(2) Notifies the Federal Aviation Flight Standards District Office (FSDO) by telephone or telefax, followed by written notification using FAA Form 8020–9, 8020–11, or 8020–17, as appropriate. A copy of the written notification must be provided to HQ USAF/XOOBC.

(3) Ensures the operator completes a DD Form 2402, and collects applicable charges. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.) DD Form 2402 need not be completed for commercial carriers if it is known that the form is already on file at HQ USAF/XOOBC.

(4) In a foreign country, notifies the local US Defense Attache Office (USDAO) by telephone or telefax and, where applicable, the appropriate USDAO in the country of aircraft registry, followed by written notification with an information copy to HQ USAF/XOOBC and the civil aviation authority of the country or countries concerned.

(b) *Emergency landings.* Any aircraft operator who experiences an inflight emergency may land at any Air Force airfield without prior authorization (approved DD Form 2401 and 24 hours prior notice). An inflight emergency is defined as a situation that makes continued flight hazardous.

(1) The Air Force will use any method or means to clear an aircraft or wreckage from the runway to preclude interference with essential military operations after coordinating with the FSDO and National Transportation Safety Board. Removal efforts will minimize damage to the aircraft or wreckage; however, military or other operational factors may be overriding.

(2) An operator making an emergency landing:

(i) Is not charged a landing fee.

(ii) Pays all costs for labor, material, parts, use of equipment and tools, and so forth, to include, but not limited to:

(A) Spreading foam on the runway.

(B) Damage to runway, lighting, and navigation aids.

(C) Rescue, crash, and fire control services.

(D) Movement and storage of aircraft.

(E) Performance of minor maintenance.

(F) Fuel or oil (AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures).[4]

(c) *Inadvertent unauthorized landings.* (1) The installation commander or a designated representative may determine a landing to be inadvertent if the aircraft operator:

(i) Landed due to flight disorientation.

(ii) Mistook the Air Force airfield for a civil airport.

[3] See footnote 1 to § 855.6.

[4] See footnote 1 to § 855.6.

(2) Normal landing fees must be charged and an unauthorized landing fee may be assessed to compensate the government for the added time, effort, and risk involved in the inadvertent landing. Only the unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, FOA, or DRU whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

(d) *Intentional unauthorized landings.* (1) The installation commander may categorize an unauthorized landing as intentional when there is unequivocal evidence that the pilot deliberately:

(i) Landed without an approved DD Form 2401 on board the aircraft.

(ii) Landed for a purpose not approved on the DD Form 2401.

(iii) Operated an aircraft not of a model or registration number on the approved DD Form 2401.

(iv) Did not request or obtain the required final approval from the installation commander or a designated representative at least 24 hours before aircraft arrival.

(v) Did not obtain landing clearance from the air traffic control tower.

(vi) Landed with an expired DD Form 2401.

(vii) Obtained landing authorization through fraudulent methods, or

(viii) Landed after having been denied a request to land from any Air Force authority, including the control tower.

(2) Normal landing fees and an unauthorized landing fee must be charged. Intentional unauthorized landings increase reporting, processing, and staffing costs; therefore, the unauthorized landing fee for paragraph (d)(1)(i) through (d)(1)(vi) of this section will be increased by 100 percent. The unauthorized landing fee will be increased 200 percent for paragraph (d)(1)(vii) and (d)(1)(viii) of this section.

(3) Intentional unauthorized landings may be prosecuted as a criminal trespass, especially if a debarment letter has been issued. Repeated intentional unauthorized landings prejudice the user's FAA operating authority and jeopardize future use of Air Force airfields.

§ 855.15 Detaining an aircraft.

(a) An installation commander in the United States, its territories, or its possessions may choose to detain an aircraft for an intentional unauthorized landing until:

(1) The unauthorized landing has been reported to the FAA, HQ USAF/XOOBC, and the appropriate US Attorney.

(2) All applicable charges have been paid.

(b) If the installation commander wishes to release the aircraft before the investigation is completed, he or she must obtain bond, promissory note, or other security for payment of the highest charge that may be assessed.

(c) The pilot and passengers will not be detained longer than is necessary for identification, although they may be permitted to remain in a lounge or other waiting area on the base at their request for such period as the installation commander may determine (normally not to exceed close of business hours at the home office of the entity owning the aircraft, if the operator does not own the aircraft). No person, solely due to an intentional unauthorized landing, will be detained involuntarily after identification is complete without coordination from the appropriate US Attorney, the MAJCOM, FOA, or DRU, and HQ USAF/XOOBC.

§ 855.16 Landing, parking, and storage fees.

(a) All fees are normally due and collectible at the time of use of the Air Force airfield. The DD Form 1131, Cash Collection Voucher, is used to deposit the fees with the base accounting and finance officer. In some instances, it may be necessary to bill the user for charges incurred. Landing, parking, and storage fees (Tables 3 and 4) are determined by aircraft maximum gross takeoff weight (MGTOW). The installation commander or a designated representative may permit parking and storage on a nonexclusive, temporary, or intermittent basis, when compatible with military requirements. The time that an aircraft spends on an installation is at the discretion of the installation commander or a designated representative but should be linked to the purpose of use authorized. At those locations where there are Air Force aero clubs, parking and storage privileges may be permitted in the area designated for aero club use without regard for the purpose of use authorized, if consistent with aero club policies. Any such permission may be revoked upon notice, based on military needs and the installation commander's discretion.

(b) Landing fees are not charged when the aircraft is operating in support of official government business or for any purpose, the cost of which is subject to reimbursement by the US Government. Parking and Storage Fees (Table 4) are charged if an aircraft must remain beyond the period necessary to conduct official government business and for all non-official government business operations.

§ 855.17 Aviation fuel and oil purchases.

When a user qualifies under the provisions of AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures,[5] purchase of Air Force fuel and oil may be made on a cash or credit basis. An application for credit authority can be filed by submitting an Authorized Credit Letter to SA–ALC/SFRL, 1014 Andrews Road, Building 1621, Kelly AFB TX 78241–5603.

§ 855.18 Supply and service charges.

Supplies and services furnished to a user will be charged for as prescribed in AFM 67–1, volume 1, part one, chapter 10, section N, Basic Air Force Supply Procedures, and AFR 177–102, paragraph 28.24, Commercial Transactions at Base Level.[6] A personal check with appropriate identification, cashier's check, money order, or cash are acceptable means of payment. Charges for handling foreign military sales cargo are prescribed in AFR 170–3, Financial Management and Accounting for Security Assistance and International Programs.[7]

Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

§ 855.19 Joint-use agreements.

An agreement between the Air Force and a local government agency is required before a community can establish a public airport on an Air Force airfield.

(a) Joint use of an Air Force airfield will be considered only if there will be no cost to the Air Force and no compromise of mission capability, security, readiness, safety, or quality of life. Further, only proposals submitted by authorized representatives of local government agencies eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint use agreement. All reviewing levels will consider and evaluate such requests on an individual basis.

(b) Generally, the Air Force is willing to consider joint use at an airfield if it does not have pilot training, nuclear storage, or a primary mission that requires a high level of security. Civil

[5] See footnote 1 to § 855.6.

[6] See footnote 1 to § 855.6.

[7] See footnote 1 to § 855.6.

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operations must begin within 5 years of the effective date of an agreement. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. The Air Force normally will not consider personnel increases solely to support civil operations but, if accommodated, all costs must be fully reimbursed by the joint-use sponsor. The Air Force will not provide personnel to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. Changes in equipment or systems to support the civil operations must be funded by the joint-use sponsor. The Air Force must approve siting, design, and construction of the civil facilities.

§ 855.20 Procedures for sponsor.

To initiate consideration for joint use of an Air Force airfield, a formal proposal must be submitted to the installation commander by a local government agency eligible to sponsor a public airport. The proposal must include:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the airfield.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.21 Air Force procedures.

(a) Upon receipt of a joint-use proposal, the installation commander, without precommitment or comment, will send the documents to the Air Force Representative (AFREP) at the Federal Aviation Administration (FAA) Regional Office within the geographical area where the installation is located. AFI 13–201, Air Force Airspace Management,[8] lists the AFREPs and their addresses. The installation commander must provide an information copy of the proposal to HQ USAF/XOOBC, 1480 Air Force Pentagon, Washington DC 20330–1480.

(b) The AFREP provides comments to the installation commander on airspace, air traffic control, and other related areas, and informs local FAA personnel of the proposal for joint use.

(c) The installation, the numbered Air Force, and the major command (MAJCOM) will then evaluate the proposal. The MAJCOM will send the comments and recommendations from all reviewing officials to HQ USAF/XOOBC.

(d) Factors considered in evaluating joint use include, but are not limited to:

(1) Impact on current and programmed military activities at the installation.

(2) Compatibility of proposed civil aviation operations with present and planned military operations.

(3) Compatibility of communications systems.

(4) Instrument capability of crew and aircraft.

(5) Runway and taxiway configuration. (Installations with single runways normally will not be considered for joint use.)

(6) Security. The possibility for sabotage, terrorism, and vandalism increases with joint use; therefore, joint use will not be considered:

(i) If military and civil aircraft would be collocated in hangars or on ramps.

(ii) If access to the civil aviation facilities would require routine transit through the base.

(7) Fire, crash, and rescue requirements.

(8) Availability of public airports to accommodate the current and future air transportation needs of the community through construction or expansion.

(9) Availability of land for civil airport complex. NOTE: The majority of land required for a terminal and other support facilities must be located outside the installation perimeter or at a site that will allow maximum separation of military and civil activities. If the community does not already own the needed land, it must be acquired at no expense to the Air Force. The Air Force may make real property that is not presently needed, but not excess, available by lease under 10 U.S.C 2667. An application for lease of Air Force real property must be processed through the chain of command to the Air Force Real Estate Agency, 172 Luke Avenue, Suite 104, Building 5683, Bolling AFB DC 20332–5113, as prescribed in AFI 32–9003, Granting Temporary Use of Air Force Real Property.[9] All real property outleases require payment of fair market consideration and normally are processed through the Corps of Engineers. The General Services Administration must be contacted regarding availability of excess or surplus Federal real property and an application submitted through FAA for an airport use public benefit transfer under 49 U.S.C. 47151–47153.

(10) Sponsor's resources to pay a proportionate share of costs for runway operation and maintenance and other jointly used facilities or otherwise provide compensation that is of direct benefit to the Government.

(e) When the Air Force determines that joint use may be compatible with its defense mission, the environmental impact analysis process must be completed before a final decision can be made. The Air Force will act as lead agency for the preparation of the environmental analysis (32 CFR part 989, Environmental Impact Analysis Process). The local government agency representatives, working in coordination with Air Force personnel at the installation and other concerned local or Federal officials, must identify the proposed action, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by the appropriate MAJCOM and HQ USAF/CEVP. The information must be complete and accurate in order to serve as a basis for the preparation of the Air Force environmental documents. All costs associated with the environmental studies required to complete the environmental impact analysis process must be paid by the joint use sponsor. Information on environmental analysis requirements is available from HQ USAF/CEVP, 1260 Air Force Pentagon, Washington DC 20330–1260.

(f) HQ USAF/XOOBC can begin negotiating a joint-use agreement after the environmental impact analysis process is completed. The agreement must be concluded on behalf of the Air Force by SAF/MII as the approval authority for use of Air Force real property for periods exceeding 5 years. The joint-use agreement will state the extent to which the provisions of Subpart B of this part, Civil Aircraft Landing Permits, apply to civil aircraft operations.

(1) Joint-use agreements are tailored to accommodate the needs of the community and minimize the impact on the defense mission. Although each agreement is unique, attachment 4 of this part provides basic terms that are frequently included in such agreements.

(2) Agreements for joint use at Air Force airfields on foreign soil are subject to the requirements of AFI 51–701, Negotiating, Concluding, Reporting, and Maintaining International Agreements.[10]

(g) HQ USAF/XOOBC and SAF/MII approval is required to amend existing joint use agreements. The evaluation and decision processes followed in concluding an initial joint-use proposal must be used to amend existing joint-use agreements.

§ 855.22 Other agreements.

(a) Temporary use of Air Force runways occasionally is needed for extended periods when a local civil airport is unavailable or to accommodate special events or projects. Such use requires agreement between the Air Force and the local airport authority or other equivalent responsible entity.

(b) The local proponent and Air Force personnel should draft and submit an agreement to the MAJCOM Director for Operations, or equivalent level, for review and comment. The agreement must address all responsibilities for handling aircraft, cargo, and passengers, and hold the Air Force harmless of all liabilities. The agreement will not exceed 3 years. Although each agreement will be unique, attachment 5 of this part provides one example. The draft agreement, with all comments and recommendations, must be sent to HQ USAF/XOOBC for final approval

[8] See footnote 1 to § 855.6.

[9] See footnote 1 to § 855.6.

[10] See footnote 1 to § 855.6.

TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES

Purpose of use	Verification	Approval* authority	Fees
Contractor or subcontractor (A). A US or foreign contractor or subcontractor, operating corporate, personal, or leased aircraft in conjunction with fulfilling the terms of a government contract. NOTE: Potential contractors may not land at Air Force airfields to pursue or present an unsolicited proposal for procurement of government business. One time authorization can be provided when an authorized US Government representative verifies that the potential contractor has been specifically invited for a sales presentation or to discuss their product.	Current government contract numbers; the Air Force airfields required for each contract; a brief description of the work to be performed; and the name, telephone number, and address of the government contracting officer must be provided on the DD Form 2401 or a continuation sheet.	1	No
Demonstration (B). Aircraft, aircraft with components installed, or aircraft transporting components or equipment operating to demonstrate or display a product to US Government representatives with procurement or certification responsibilities. (Authority granted under this section does not include aerobatic demonstrations.).	Demonstration or display must be a contractual requirement or presented at the request of an authorized US Government representative. The name, address, and telephone number of the requesting government representative or contracting officer and contract number must be included on the DD Form 2401.	1	No
Aerial performance (BB). Aircraft performing aerobatics and or fly-bys at Air Force airfields.	Approval of MAJCOM, FOA, or DRU and FAA as specified in AFI 35–201, Community Relations.	1	No
Active duty US military and other US uniformed service members entitled to military identification cards (includes members of the US Public Health Service, Coast Guard, and National Oceanic and Atmospheric Administration) (C). Service members, operating their own aircraft, leased aircraft, or other available aircraft for official duty travel (temporary duty, permanent change of station, etc.) or for private, non revenue flights.	Social security number in block 1 on DD Form 2401	1	No
Reserve Forces (D). Members of the US Reserve Forces (including Reserve Officer Training Corps and National Guard) operating their own aircraft, leased aircraft, or other available aircraft to fulfill their official duty commitment at the installation where their unit is assigned and other installations for temporary duty assignments.	Endorsement from member's commander that validates military status and requirement for use of Air Force airfields listed on the DD Form 2401. The endorsement may be included on the DD Form 2401 or provided separately by letter. When appropriate, travel orders must be on board the aircraft.	1	No
Dependents of active duty US military personnel, other US uniformed service personnel, (CC), or US Reserve Forces personnel (DD). Dependents operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to entitlements as a dependent of a uniformed service member.	Military identification card number and expiration date and a letter of endorsement from sponsor.	1	No
US Government civil service employees (E). Civilian employees of the US Government operating their own aircraft, leased aircraft, or other available aircraft for official government business travel.	Supervisor's endorsement in block 4 of the DD Form 2401. Individual must have a copy of current travel orders or other official travel certification available for verification if requested by an airfield manager or a designated representative.	1	No
Retired US military members and other retired US uniformed service members with a military identification card authorizing use of the commissary, base exchange, and or military medical facilities (G). Retired Service members, operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to retirement entitlements authorized by law or regulation.	Copy of retirement orders on file with the approving authority.	1	No
Dependents of retired US military personnel and other retired US uniformed service personnel (GG). Dependents of retired Service members operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to entitlements authorized by law or regulation as a dependent of a retired Service member.	Military identification card number and expiration date, sponsor's retirement orders, and letter of endorsement from sponsor.	1	No

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TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval* authority	Fees
Civil Air Patrol (CAP) (H). CAP members operating personal or CAP aircraft for official CAP activities.	Endorsement of the application by HQ CAP–USAF/XOO, 105 South Hansell Street, Maxwell AFB AL 36112–5332.	1	No.
Aero club members (I). Individuals operating their own aircraft at the Air Force airfield where they hold active aero club membership.	Membership validation by the aero club manager on the DD Form 2401.	6	No.
Weather alternate (J). An Air Force airfield identified on a scheduled air carrier's flight plan as an alternate airport as prescribed by Federal Aviation Regulations (FARs) or equivalent foreign government regulations. The airfield can only be used if weather conditions develop while the aircraft is in flight that preclude landing at the original destination. Aircraft may not be dispatched from the point of departure to an Air Force airfield designated as an approved weather alternate. NOTE: Only those airfields identified on the list at Attachment 2 are available for use as weather alternates.	Certification of scheduled air carrier status, such as the US Department of Transportation Fitness Certificate.	1	Yes.
Air Mobility Command (AMC) contract or charter (K). An air carrier transporting passengers or cargo under the terms of an AMC contract. (Landing permits for this purpose are processed by HQ AMC/XOKA, 402 Scott Drive, Unit 3A1, Scott AFB IL 62225–5302.).	International flights must have an AMC Form 8, Civil Aircraft Certificate, on board the aircraft. Domestic flights must have either a Certificate of QUICK–TRANS (Navy), a Certificate of Courier Service Operations (AMC), or a Certificate of Intra-Alaska Operations (AMC) on board the aircraft.	3	No.
CRAF alternate (KK). An Air Force airfield used as an alternate airport by air carriers that have contracted to provide aircraft for the Civil Reserve Air Fleet (CRAF).	Participant in the CRAF program and authorized by contract.	2	Yes.
US Government contract or charter operator (L). An air carrier transporting passengers or cargo for a US Government department or agency other than US military departments.	The chartering agency and name, address, and telephone number of the government official procuring the transportation must be listed in block 4 of the DD Form 2401. An official government document, such as an SF 1169, US Government Transportation Request, must be on board the aircraft to substantiate that the flight is operating for a US Government department or agency.	1	No.
Contractor or subcontractor charter (M). Aircraft chartered by a US or foreign contractor or subcontractor to transport personnel or cargo in support of a current government contract.	The contractor or subcontractor must provide written validation to the decision authority that the charter operator will be operating on their behalf in fulfilling the terms of a government contract, to include current government contract numbers and contract titles or brief description of the work to be performed; the Air Force airfields required for use, and the name, telephone number, and address of the government contracting officer.	1	No.
DOD charter (N). Aircraft transporting passengers or cargo within the United States for the military departments to accommodate transportation requirements that do not exceed 90 days.	Military Air Transportation Agreement (MATA) approved by the Military Transportation Management Command (MTMC) (this includes survey and approval by HQ AMC/XOB, 402 Scott Drive, Suite 132, Scott AFB IL 62225–5363). An SF 1169 or SF 1103, US Government Bill of Lading, must be on board the aircraft to validate the operation is for the military departments as specified in AFJI 24–211, Defense Traffic Management Regulation. (Passenger charters arranged by the MTMC are assigned a commercial air movement (CAM) or civil air freight movement number each time a trip is awarded. Installations will normally be notified by message at least 24 hours before a pending CAM.)	1	No.
Media (F). Aircraft transporting representatives of the media for the purpose of gathering information about a US Government operation or event. (Except for the White House Press Corps, use will be considered on a case-by-case basis. For example, authorization is warranted if other forms of transportation preclude meeting a production deadline or such use is in the best interest of the US Government. DD Forms 2400 and 2402 should be on file with HQ USAF/XOOBC to ensure prompt telephone approval for validated requests.)	Except for White House Press Corps charters, concurrence of the installation commander, base operations officer, and public affairs officer.	2	Note 1.
Commercial aircraft certification testing required by the FARs that does not involve use of Air Force testing hardware (P).	Application must cite the applicable FAR, describe the test, and include the name and telephone number of the FAA certification officer.	2	Yes.

TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval* authority	Fees
Commercial development testing at Air Force flight test facilities (Q).	Copy of letter from HQ AFMC/DOR, 4225 Logistics Avenue, Suite 2, Wright Patterson AFB OH 45433–5714, validating approval and compliance with AFI 99–101, Development, Test, and Evaluation.	2	Yes.
Commercial charter operations (R). Aircraft transporting passengers or cargo for hire for other than US military departments. NOTE: Federal Aviation Administration (FAA) certification is required for airfields used by carriers certified under FAR, Part 121 (passenger aircraft that exceed 30 passenger seats). HQ USAF/XOOBC will request that FAA issue an airport operating certificate under FAR, Part 139, as necessary. Exceptions to the requirement for certification are Air Force airfields used for: a. Emergencies, b. Weather alternates. c. Air taxi operations under FAR, Part 135. NOTE: This is currently under review. Anticipate a change that will eliminate the air taxi exemption. d. Air carrier operations in support of contract flights exclusively for the US military departments.	Unavailability of: a. a suitable civil airport, b. aircraft that could operate into the local civil airport, or c. other modes of transportation that would reasonably satisfy the transportation requirement.	5	Yes.
Commercial air crew training flights (S). Aircraft operated by commercial air carrier crews for the purpose of maintaining required proficiency.	Memorandum of Understanding approved by HQ USAF/XOOBC that establishes conditions and responsibilities in conducting the training flights.	2	Yes.
Private, non-revenue-producing flights (T). Aircraft operating for a variety of reasons, such as transporting individuals to meet with government representatives or participate in government sponsored ceremonies and similar events. At specified locations, the purpose of use may be to gain access to collocated private sector facilities as authorized by lease, agreement, or contract.	The verification will vary with the purpose for use. For example, when use is requested in conjunction with events such as meetings or ceremonies, the applicant must provide the name and telephone number of the government project officer.	4	Note 2.
Provisional airfield (U). An Air Force airfield used by civil aircraft when the local civil airport is temporarily unavailable, or by a commercial air carrier operating at a specific remote location to provide commercial air transportation for local military members under the provisions of a lease or other legal instrument.	Memorandum of Understanding, Letter of Agreement, or lease that establishes responsibilities and conditions for use.	2	Yes.
Foreign government charter (V). Aircraft chartered by a foreign government to transport passengers or cargo.	Application must include name and telephone number of the foreign government representative responsible for handling the charter arrangements.	2	Note 3.
Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.)	FMS case number, requisition numbers, delivery term code and information as specified below: a. Description of cargo (nomenclature and or proper shipping name). The description of hazardous cargo must include the Department of Transportation exemption number, hazard class, number of pieces, and net explosive weight. b. Name, address, and telephone number of individual at Air Force base that is coordinating cargo handling and or other required terminal services. c. Cargo to be loaded or off loaded must be equipped with sufficient cargo pallets and or tiedown materials to facilitate handling. Compatible 463L pallets and nets will be exchanged on a one-for-one basis for serviceable units. Nonstandard pallets and nets cannot be exchanged; however, they will be used to buildup cargo loads after arrival of the aircraft. Aircraft arriving without sufficient cargo loading and tiedown devices must be floor loaded and the aircraft crew will be responsible for purchasing the necessary ropes, chains, and so forth. d. US Government FMS case management agency to which costs for services rendered are chargeable. e. Name, address, and telephone number of freight forwarder. f. Name, address, and telephone number of shipper.	2	Note 3.
Certified flight record attempts (X). Aircraft operating to establish a new aviation record.	Documentation that will validate National Aeronautic Association or Federation Aeronautique Internationale sanction of the record attempt.	2	Yes.

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TABLE 1.—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval* authority	Fees
Political candidates (Y). (For security reasons only) Aircraft either owned or chartered explicitly for a Presidential or Vice Presidential candidate, including not more than one accompanying overflow aircraft for the candidate's staff and press corps. Candidate must be a Presidential or Vice Presidential candidate who is being furnished protection by the US Secret Service. Aircraft clearance is predicated on the Presidential or Vice Presidential candidate being aboard one of the aircraft (either on arrival or departure). Normal landing fees will be charged. To avoid conflict with US statutes and Air Force operational requirements, and to accommodate expeditious handling of aircraft and passengers, the installation commander will: a. Provide minimum official welcoming party. b. Not provide special facilities. c. Not permit political rallies or speeches on the installation. d. Not provide official transportation to unauthorized personnel, such as the press or local populace.	The Secret Service must confirm that use has been requested in support of its security responsibilities.	2	Yes.
Aircraft either owned or personally chartered for transportation of the President, Vice President, a past President of the United States, the head of any US federal department or agency, or a member of the Congress (Z).	Use by other than the President or Vice President must be for official government business. All requests will be coordinated with the Office of Legislative Liaison (SAF/LL) as prescribed in AFI 90–401, Air Force Relations with Congress.	2	No.

*APPROVING AUTHORITY:
1 = Can be approved at all levels.
2 = HQ USAF/XOOBC.
3 = HQ AMC/XOKA.
4 = Except as specifically delegated in §§ 855.5(d)(2) and 855.5(d)(2)(iii), must be approved by HQ USAF/XOOBC.
5 = Except as specifically delegated in § 855.5(d)(2)(i), must be approved by HQ USAF/XOOBC.
6 = Policy concerning private aircraft use of aero club facilities varies from base to base, primarily due to space limitations and military mission requirements. Therefore, applications for use of aero club facilities must be processed at base level.

NOTE 1: Landing fees are charged for White House Press Corps flights. Landing fees are not charged if the Air Force has invited media coverage of specific events.

NOTE 2: Landing fees are charged if flight is not operating in support of official government business.

NOTE 3: Landing fees are charged unless US Government charters have reciprocal privileges in the foreign country.

TABLE 2.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS

Aircraft maximum gross takeoff weight (MGTOW)	Coverage for	Bodily injury	Property damage	Passenger
12,500 pounds and under	Each Person	$100,000		$100,000.
	Each Accident	$300,000	$100,000	$100,000 multiplied by the number of passenger seats.
More than 12,500 pounds	Each Person	$100,000		$100,000.
	Each Accident	$1,000,000	$1,000,000	$100,000 multiplied by 75% multiplied by the number of passenger seats.

TABLE 3.—LANDING FEES

Aircraft maximum gross takeoff weight (MGTOW)	Normal fee	Unauthorized fee	Intentional fee	Minimum fee	United States, territories, and possessions	Overseas
	$1.50 per 1,000 lbs MGTOW or fraction thereof.			$20.00	X	
	$1.70 per 1,000 lbs MGTOW or fraction thereof.			$25.00		X
Up to and including 12,500 lbs.		$100.00			X	X
12,501 to 40,000 lbs		$300.00			X	X

TABLE 3.—LANDING FEES—Continued

Aircraft maximum gross takeoff weight (MGTOW)	Normal fee	Unauthorized fee	Intentional fee	Minimum fee	United States, territories, and possessions	Overseas
Over 40,000 lbs		$600.00			X	X
			Increase unauthorized fee by 100% or 200%.		X	X

TABLE 4.—PARKING AND STORAGE FEES

Fee per aircraft for each 24-hour period or less	Minimum fee	Charge begins	Ramp	Hangar
$1.00 per 100,000 lbs MGTOW or fraction thereof	$20.00	6 hours after landing	X	
$2.00 per 100,000 lbs MGTOW or fraction thereof	$20.00	Immediately		X

Attachment 1 to Part 855—Definitions

Aircraft. Any contrivance now known or hereafter invented, used, or designated for navigation of or flight in navigable airspace as defined in the Federal Aviation Act.

Airfield. An area prepared for the accommodation (including any buildings, installations, and equipment), landing, and take-off of aircraft.

Authorized Credit letter. A letter of agreement that qualified operators must file with the Air Force to purchase Air Force aviation fuel and oil on a credit basis under the provisions of AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures.

Civil Aircraft. Any United States or foreign-registered aircraft owned by non-governmental entities, and foreign government-owned aircraft that are operated for commercial purposes.

Civil Aviation. All civil aircraft of any national registry, including:

—Commercial Aviation. Civil aircraft that transport passengers or cargo for hire.

—General Aviation. Civil aircraft that do not transport passengers or cargo for hire.

Civil Reserve Air Fleet (CRAF). US registered aircraft, certificated under FAR Part 121, obligated by contract to provide aircraft and crews to the Department of Defense (DOD) during contingencies or war.

DD Form 2400, Civil Aircraft Certificate of Insurance. A certificate that shows the amount of third-party liability insurance carried by the user and assures the United States Government of advance notice if changes in coverage occur.

DD Form 2401, Civil Aircraft Landing Permit. A license which, when validated by an Air Force approving authority, authorizes the civil aircraft owner or operator to use Air Force airfields.

DD Form 2402, Civil Aircraft Hold Harmless Agreement. An agreement, completed by the user, which releases the United States Government from all liabilities incurred in connection with civil aircraft use of Air Force airfields.

Government Aircraft. Aircraft owned, operated, or controlled for exclusive, long-term use by any department or agency of either the United States or a foreign government; and aircraft owned by any United States state, county, municipality or other political subdivision; or any aircraft for which a government has the liability responsibility. In the context of this Part, it includes foreign registered aircraft, which are normally commercially operated, that have been wholly chartered for use by foreign government heads of state for official state visits.

Government Furnished or Bailed Aircraft. US Government-owned aircraft provided to a government contractor for use in conjunction with a specific contractual requirement.

Installation Commander. The individual responsible for all operations performed by an installation.

Loaned Aircraft. US Government-owned aircraft made available for use by another US Government agency. This does not include aircraft leased or loaned to non-governmental entities. Such aircraft will be considered as civil aircraft for purposes of this part.

Military Aircraft. Aircraft used exclusively in the military services of the US or a foreign government and bearing appropriate military and national markings or carrying appropriate identification.

Official Government Business. Activities that support or serve the needs of US federal agencies located at or in the immediate vicinity of an Air Force installation, including nonappropriated fund entities. For elected or appointed federal, state, and local officeholders, official business is activity performed in fulfilling duties as a public official.

Scheduled Air Carrier. An air carrier that holds a scheduled air carrier certificate and provides scheduled service year round between two or more points.

Unauthorized Landing. A landing at an Air Force airfield by a civil aircraft without prior authority (approved DD Form 2401 and 24 hours prior notice).

User. The person, corporation, or other responsible entity operating civil aircraft at Air Force airfields.

Attachment 2 to Part 855—Weather Alternate List Air Force Airfields Designated for Weather Alternate use by Scheduled Air Carriers

Altus AFB OK
Andersen AFB Guam
Cannon AFB NM
Dobbins ARB GA
Dyess AFB TX
Eareckson AFS AK*
Eglin AFB FL
Eielson AFB AK
Ellsworth AFB SD
Elmendorf AFB AK
Fairchild AFB WA
Grand Forks AFB ND
Hill AFB UT
Howard AFB PN
Kadena AFB OKINAWA
Kelly AFB TX
Kunsan AFB KOREA
Langley AFB VA
Laughlin AFB TX
Malmstrom AFB MT
McChord AFB WA
McConnell AFB KS
Minot AFB ND
Mt Home AFB ID
Nellis AFB NV
Offutt AFB NE
Osan AFB KOREA
Plant 42, Palmdale CA
Travis AFB CA
Tyndall AFB FL

Yokota AFB Japan

*Formerly Shemya AFB

Attachment 3 to Part 855—Landing Permit Application Instructions

A3.1. DD Form 2400, Civil Aircraft Certificate of Insurance: The insurance company or its authorized agent must complete and sign the DD Form 2400. Corrections to the form made using a different typewriter, pen, or whiteout must be initialed by the signatory. THE FORM CANNOT BE COMPLETED BY THE AIRCRAFT OWNER OR OPERATOR. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force airfields. The DD Form 2400 may be submitted to the decision authority by either the user or insurer.

(Approved by the Office of Management and Budget under control number 0701–0050)

A3.1.1. Block 1, Date Issued. The date the DD Form 2400 is completed by the signatory.

A3.1.2. Block 2a and 2b, Insurer Name, Address. The name and address of the insurance company.

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A3.1.3. Block 3a and 3b. Insured Name, Address. The name and address of the aircraft owner and or operator. (The name of the user must be the same on all the forms.)

A3.1.4. Block 4a, Policy Number(s). The policy number must be provided. Binder numbers or other assigned numbers will not be accepted in lieu of the policy number.

A3.1.5. Block 4b, Effective Date. The first day of current insurance coverage.

A3.1.6. Block 4c, Expiration Date. The last day of current insurance coverage. The DD Form 2400 is valid until one day before the insurance expiration date. A DD Form 2400 with the statement "until canceled," in lieu of a specific expiration date, is valid for two years from the issue date.

A3.1.7. Block 5, Aircraft Liability Coverage. The amount of split limit coverage. All boxes in block 5 must be completed to specify the coverage for: each person (top line, left to right) outside the aircraft (bodily injury) and each passenger; and the total coverage per accident (second line, left to right) for: persons outside the aircraft (bodily injury), property damage, and passengers. IF BLOCK 5 IS USED, BLOCK 6 SHOULD NOT BE USED. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED. See Table 2 for required minimum coverage.

A3.1.8. Block 6, Single Limit. The maximum amount of coverage per accident. IF BLOCK 6 IS USED, BLOCK 5 SHOULD NOT BE USED. The minimum coverage required for a combined single limit is determined by adding the minimums specified in the "each accident" line of Table 2. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED.

A3.1.9. Block 7, Excess Liability. The amount of coverage which exceeds primary coverage. All coverages must be stated in US dollars.

A3.1.10. Block 8, Provisions of Amendments or Endorsements of Listed Policy(ies). Any modification of this block by the insurer or insured invalidates the DD Form 2400.

A3.1.11. Block 9a, Typed Name of Insurer's Authorized Representative. Individual must be an employee of the insurance company, an agent of the insurance company, or an employee of an insurance broker.

A3.1.12. Block 9b, Signature. The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.1.13. Block 9c, Title. Self-explanatory.

A3.1.14. Block 9d, Telephone Number. Self-explanatory.

A3.1.15. THE REVERSE OF THE FORM MAY BE USED IF ADDITIONAL SPACE IS REQUIRED.

A3.2. DD Form 2401, Civil Aircraft Landing Permit. A separate DD Form 2401 must be submitted for each purpose of use (Table 1). (Approved by the Office of Management and Budget under control number 0701–0050).

A3.2.1. Block 1a. The name of the owner or operator. (The name of the user must be the same on all the forms.)

A3.2.2. Block 1b. This block should only be completed if the applicant is a subsidiary, division, etc, of another company.

A3.2.3. Block 1c. Business or home address, whichever is applicable, of applicant.

A3.2.4. Block 2. List the airfields where the aircraft will be operating. The statement "Any US Air Force Installation Worldwide" is acceptable for users performing AMC and White House Press Corps charters. "All Air Force airfields in the CONUS" is acceptable, if warranted by official government business, for all users.

A3.2.5. Block 3. Self-explanatory. (Users will not necessarily be denied landing rights if pilots are not instrument rated and current.)

A3.2.6. Block 4. Provide a brief explanation of purpose for use. The purposes normally associated with use of Air Force airfields are listed in Table 1. If use for other purposes is requested, it may be approved if warranted by unique circumstances. (The verification specified for each purpose of use must be included with the application.)

A3.2.7. Block 5. EXCEPT AS NOTED FOR BLOCK 5C, ALL ITEMS MUST BE COMPLETED.

A3.2.8. Block 5a and Block 5b. Self-explanatory.

A3.2.9. Block 5c. If the DD Form 2400, Certificate of Insurance, indicates coverage for "any aircraft of the listed model owned and or operated," the same statement can be used in block 5c in lieu of specific registration numbers.

A3.2.10. Block 5d. The capacity provided must reflect only the number of crew required to operate the aircraft. The remaining seats are considered passenger seats.

A3.2.11. Block 5e. Self-explanatory.

A3.2.12. Block 5d. A two-way radio is required. Landing rights will not necessarily be denied for lack of strobe lights, a transponder, or IFR capabilities.

A3.2.13. Block 6a. Self-explanatory.

A3.2.14. Block 6b. If the applicant is an individual, this block should not be completed.

A3.2.15. Block 6c. This block should contain a daytime telephone number.

A3.2.16. Block 6d. The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.2.17. Block 6e. Self-explanatory.

A3.2.18. THE REVERSE OF THE FORM MAY BE USED IF ADDITIONAL SPACE IS REQUIRED.

BLOCKS 7A THROUGH 14C ARE NOT COMPLETED BY THE APPLICANT.

A3.2.19. Blocks 7a and 7b. The expiration date of a permit is determined by the insurance expiration date or the purpose of use. For example, the dates of an air show will determine the expiration date of a permit approved for participation in the air show. If the insurance expiration is used to determine the permit expiration date, the landing permit will expire one day before the insurance expiration date shown on the DD Form 2400, or 2 years from the date the permit is issued when the insurance expiration date either exceeds 2 years or is indefinite (for example, "until canceled").

A3.2.20. APPROVED PERMITS CANNOT BE CHANGED WITHOUT THE CONSENT OF THE APPROVING AUTHORITY.

A3.2.21. DD FORMS 2400 AND 2401 MUST BE RESUBMITTED TO RENEW A LANDING PERMIT. (Corporations must resubmit the DD Form 2402 every five years.)

A3.3. DD Form 2402, Civil Aircraft Hold Harmless Agreement. A form submitted and accepted by an approving authority for an individual remains valid and need not be resubmitted to the same approving authority, unless canceled for cause. Forms submitted by companies, organizations, associations, etc, must be resubmitted at least every five years.

(Approved by the Office of Management and Budget under control number 0701–0050).

A3.3.1. Block 2a(1). This block should contain the user's name if the applicant is a company. If the hold harmless agreement is intended to cover other entities of a parent company, their names must also be included in this block.

A3.3.2. Block 2a(2). This block should contain the user's address if the applicant is a company.

A3.3.3. Block 2b(1). This block should contain the name of the individual applying for a landing permit or the name of a corporate officer that is authorized to legally bind the corporation from litigation against the Air Force.

A3.3.4. Block 2b(2). This block should contain the address of the individual applying for a landing permit. A company address is only required if it is different from the address in block 2a(2).

A3.3.5. Block 2b(3). The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.3.6. Block 2b(4). This block should only be completed when the applicant is a company, organization, association, etc.

A3.3.7. Block 3a(1). If the applicant is a company, organization, association, etc., the form must be completed and signed by the corporate secretary or a second corporate officer (other than the officer executing DD Form 2402) to certify the signature of the first officer. As necessary, the US Air Force also may require that the form be authenticated by an appropriately designated third official.

A3.3.8. Block 3a(2). The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.3.9. Block 3a(3). Self-explanatory.

A3.3.10. Block 4. Self-explanatory.

Attachment 4 to Part 855—Sample Joint-Use Agreement

Joint-Use Agreement Between an Airport Sponsor and the United States Air Force

This Joint Use Agreement is made and entered into this _____ day of _____ 19____, by and between the Secretary of the Air Force, for and on behalf of the United States of America ("Air Force") and an airport sponsor ("Sponsor")

a public body eligible to sponsor a public airport.

Whereas, the Air Force owns and operates the runways and associated flight facilities (collectively "flying facilities") located at Warbucks Air Force Base, USA ("WAFB"); and

Whereas, Sponsor desires to use the flying facilities at WAFB to permit operations by general aviation aircraft and commercial air carriers (scheduled and nonscheduled) jointly with military aircraft; and

Whereas, the Air Force considers that this Agreement will be in the public interest, and is agreeable to joint use of the flying facilities at WAFB; and

Whereas, this Agreement neither addresses nor commits any Air Force real property or other facilities that may be required for exclusive use by Sponsor to support either present or future civil aviation operations and activities in connection with joint use; and

Whereas, the real property and other facilities needed to support civil aviation operations are either already available to or will be diligently pursued by Sponsor;

Now, Therefore, it is agreed:

1. Joint Use

a. The Air Force hereby authorizes Sponsor to permit aircraft equipped with two-way radios capable of communicating with the WAFB Control Tower to use the flying facilities at WAFB, subject to the terms and conditions set forth in this Agreement and those Federal Aviation Regulations (FAR) applicable to civil aircraft operations. Civil aircraft operations are limited to 20,000 per calendar year. An operation is a landing or a takeoff. Civil aircraft using the flying facilities of WAFB on official Government business as provided in Air Force Instruction (AFI) 10–1001, Civil Aircraft Landing Permits, are not subject to this Agreement.

b. Aircraft using the flying facilities of WAFB under the authority granted to Sponsor by this Agreement shall be entitled to use those for landings, takeoffs, and movement of aircraft and will normally park only in the area made available to Sponsor and designated by them for that purpose.

c. Government aircraft taking off and landing at WAFB will have priority over all civil aircraft at all times.

d. All ground and air movements of civil aircraft using the flying facilities of WAFB under this Agreement, and movements of all other vehicles across Air Force taxiways, will be controlled by the WAFB Control Tower. Civil aircraft activity will coincide with the WAFB Control Tower hours of operation. Any additional hours of the WAFB Control Tower or other essential airfield management, or operational requirements beyond those needed by the Air Force, shall be arranged and funded (or reimbursed) by Sponsor. These charges, if any, shall be in addition to the annual charge in paragraph 2 and payable not less frequently than quarterly.

e. No civil aircraft may use the flying facilities for training.

f. Air Force-owned airfield pavements made available for use under this Agreement shall be for use on an "as is, where is" basis. The Air Force will be responsible for snow removal only as required for Government mission accomplishment.

g. Dust or any other erosion or nuisance that is created by, or arises out of, activities or operations by civil aircraft authorized use of the flying facilities under this Agreement will be corrected by Sponsor at no expense to the Air Force, using standard engineering methods and procedures.

h. All phases of planning and construction of new runways and primary taxiways on Sponsor property must be coordinated with the WAFB Base Civil Engineer. Those intended to be jointly used by Air Force aircraft will be designed to support the type of military aircraft assigned to or commonly transient through WAFB.

i. Coordination with the WAFB Base Civil Engineer is required for planning and construction of new structures or exterior alteration of existing structures that are owned or leased by Sponsor.

j. Sponsor shall comply with the procedural and substantive requirements established by the Air Force, and Federal, State, interstate, and local laws, for the flying facilities of WAFB and any runway and flight facilities on Sponsor property with respect to the control of air and water pollution; noise; hazardous and solid waste management and disposal; and hazardous materials management.

k. Sponsor shall implement civil aircraft noise mitigation plans and controls at no expense to and as directed by the Air Force, pursuant to the requirements of the WAFB Air Installation Compatible Use Zone (AICUZ) study; the FAA Part 150 study; and environmental impact statements and environmental assessments, including supplements, applicable to aircraft operations at WAFB.

l. Sponsor shall comply, at no expense to the Air Force, with all applicable FAA security measures and procedures as described in the Airport Security Program for WAFB.

m. Sponsor shall not post any notices or erect any billboards or signs, nor authorize the posting of any notices or the erection of any billboards or signs at the airfield of any nature whatsoever, other than identification signs attached to buildings, without prior written approval from the WAFB Base Civil Engineer.

n. Sponsor shall neither transfer nor assign this Agreement without the prior written consent of the Air Force.

2. Payment

a. For the purpose of reimbursing the Air Force for Sponsor's share of the cost of maintaining and operating the flying facilities of WAFB as provided in this Agreement, Sponsor shall pay, with respect to civil aircraft authorized to use those facilities under this Agreement, the sum of (specify sum) annually. Payment shall be made quarterly, in equal installments.

b. All payments due pursuant to this Agreement shall be payable to the order of the Treasurer of the United States of America, and shall be made to the Accounting and Finance Officer, WAFB, within thirty (30) days after each quarter. Quarters are deemed to end on December 31, March 31, June 30, and September 30. Payment shall be made promptly when due, without any deduction or setoff. Interest at the rate prescribed by the Secretary of the Treasury of the United States shall be due and payable on any payment required to be made under this Agreement that is not paid within ten (10) days after the date on which such payment is due and end on the day payment is received by the Air Force.

3. Services

Sponsor shall be responsible for providing services, maintenance, and emergency repairs for civil aircraft authorized to use the flying facilities of WAFB under this Agreement at no cost to the Air Force. If Air Force assistance is required to repair an aircraft, Sponsor shall reimburse the Air Force for all expenses of such services. Any required reimbursement shall be paid not less frequently than quarterly. These charges are in addition to the annual charge specified in paragraph 2.

4. Fire Protection and Crash Rescue

a. The Air Force maintains the level of fire fighting, crash, and rescue capability required to support the military mission at WAFB. The Air Force agrees to respond to fire, crash, and rescue emergencies involving civil aircraft outside the hangars or other structures within the limits of its existing capabilities, equipment, and available personnel, only at the request of Sponsor, and subject to subparagraphs b, c, and d below. Air Force fire fighting, crash, and rescue equipment and personnel shall not be routinely located in the airfield movement area during nonemergency landings by civil aircraft.

b. Sponsor shall be responsible for installing, operating, and maintaining, at no cost to the Air Force, the equipment and safety devices required for all aspects of handling and support for aircraft on the ground as specified in the FARs and National Fire Protection Association procedures and standards.

c. Sponsor agrees to release, acquit, and forever discharge the Air Force, its officers, agents, and employees from all liability arising out of or connected with the use of or failure to supply in individual cases, Air Force fire fighting and or crash and rescue equipment or personnel for fire control and crash and rescue activities pursuant to this Agreement. Sponsor further agrees to indemnify, defend, and hold harmless the Air Force, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of, or failure to supply Air Force fire fighting and or crash and rescue equipment or personnel.

d. Sponsor will reimburse the Air Force for expenses incurred by the Air Force for fire fighting and or crash and rescue materials expended in connection with providing such service to civil aircraft. The Air Force may, at its option, with concurrence of the National Transportation Safety Board, remove crashed civil aircraft from Air Force-owned pavements or property and shall follow existing Air Force directives and or

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instructions in recovering the cost of such removal.

e. Failure to comply with the above conditions upon reasonable notice to cure or termination of this Agreement under the provisions of paragraph 7 may result in termination of fire protection and crash and rescue response by the Air Force.

f. The Air Force commitment to assist Sponsor with fire protection shall continue only so long as a fire fighting and crash and rescue organization is authorized for military operations at WAFB. The Air Force shall have no obligation to maintain or provide a fire fighting, and crash and rescue organization or fire fighting and crash and rescue equipment; or to provide any increase in fire fighting and crash and rescue equipment or personnel; or to conduct training or inspections for purposes of assisting Sponsor with fire protection.

5. Liability and Insurance

a. Sponsor will assume all risk of loss and or damage to property or injury to or death of persons by reason of civil aviation use of the flying facilities of WAFB under this Agreement, including, but not limited to, risks connected with the provision of services or goods by the Air Force to Sponsor or to any user under this Agreement. Sponsor further agrees to indemnify and hold harmless the Air Force against, and to defend at Sponsor expense, all claims for loss, damage, injury, or death sustained by any individual or corporation or other entity and arising out of the use of the flying facilities of WAFB and or the provision of services or goods by the Air Force to Sponsor or to any user, whether the claims be based in whole, or in part, on the negligence or fault of the Air Force or its contractors or any of their officers, agents, and employees, or based on any concept of strict or absolute liability, or otherwise.

b. Sponsor will carry a policy of liability and indemnity insurance satisfactory to the Air Force, naming the United States of America as an additional insured party, to protect the Government against any of the aforesaid losses and or liability, in the sum of not less than (specify sum) bodily injury and property damage combined for any one accident. Sponsor shall provide the Air Force with a certificate of insurance evidencing such coverage. A new certificate must be provided on the occasion of policy renewal or change in coverage. All policies shall provide that: (1) no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice of such cancellation, reduction, or change by the installation commander at WAFB, (2) any losses shall be payable notwithstanding any act or failure to act or negligence of Sponsor or the Air Force or any other person, and (3) the insurer shall have no right of subrogation against the United States.

6. Term of Agreement

This Agreement shall become effective immediately and shall remain in force and effect for a term of 25 years, unless otherwise renegotiated or terminated under the provisions of paragraph 7, but in no event shall the Agreement survive the termination or expiration of Sponsor's right to use, by license, lease, or transfer of ownership, of the land areas used in connection with joint use of the flying facilities of WAFB.

7. Renegotiation and Termination

a. If significant change in circumstances or conditions relevant to this Agreement should occur, the Air Force and Sponsor may enter into negotiations to revise the provisions of this Agreement, including financial and insurance provisions, upon sixty (60) days written notice to the other party. Any such revision or modification of this Agreement shall require the written mutual agreement and signatures of both parties. Unless such agreement is reached, the existing agreement shall continue in full force and effect, subject to termination or suspension under this section.

b. Notwithstanding any other provision of this Agreement, the Air Force may terminate this Agreement: (1) at any time by the Secretary of the Air Force, giving ninety (90) days written notice to Sponsor, provided that the Secretary of the Air Force determines, in writing, that paramount military necessity requires that joint use be terminated, or (2) at any time during any national emergency, present or future, declared by the President or the Congress of the United States, or (3) in the event that Sponsor ceases operation of the civil activities at WAFB for a period of one (1) year, or (4) in the event Sponsor violates any of the terms and conditions of this Agreement and continues and persists therein for thirty (30) days after written notification to cure such violation. In addition to the above rights, the Air Force may at any time suspend this agreement if violations of its terms and conditions by Sponsor create a significant danger to safety, public health, or the environment at WAFB.

c. The failure of either the Air Force or Sponsor to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

8. Notices

a. No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communication to Sponsor shall be delivered or mailed to Sponsor addressed: The Sponsor, 9000 Airport Blvd, USA.

c. Written communication to the Air Force shall be delivered or mailed to the Air Force addressed: Commander, WAFB, USA.

9. Other Agreements Not Affected

This Agreement does not affect the WAFB-Sponsor Fire Mutual Aid Agreement.

In Witness Whereof, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

United States Air Force.

Date: _____

By: _____

Deputy Assistant Secretary of the Air Force (Installations)

Date: _____

By: _____

Sponsor Representative

Attachment 5 to Part 855—Sample Temporary Agreement Letter of Agreement, for Temporary Civil Aircraft Operations at Warbucks AFB, USA

This letter of agreement establishes policies, responsibilities, and procedures for commercial air carrier operations at Warbucks AFB, USA, (WAFB) for the period (date) through (date) Military requirements will take precedence over civil aircraft operations. Should a conflict arise between air carrier and Air Force operational procedures, Air Force procedures will apply.

Authorized Users

The following air carriers are authorized use, provided they have a civil aircraft landing permit approved at HQ USAF/XOOBC for such use: Flyaway Airlines, Recreation Airlines, Economy Airlines, PacAir Transport

Schedules

The Bunker International Airport (BIA) manager or air carrier station managers will ensure that the WAFB Airfield Manager is provided current airline schedules during the approved period of use. Every effort will be made to avoid disruption of the air carriers' schedules; however, it is understood that the installation commander will suspend or change flight plans when required to preclude interference with military activities or operations.

Passenger and Luggage Handling

The BIA terminal will be used for passenger loading and unloading. Security checks will be performed at the terminal before loading passengers on buses. Luggage on arriving aircraft will be directly offloaded onto vehicles and delivered to the BIA terminal. Each arriving and departing bus or vehicle caravan will be accompanied by a credentialed representative of the airline or BIA to ensure its integrity enroute. Buses or vehicles transporting passengers to board an aircraft will not depart WAFB until the passengers are airborne. Unless an emergency exists, arriving passengers will not deplane until the buses are available for transportation to the BIA terminal. All checked luggage will be picked up at BIA and delivered directly to the departing aircraft. Buses will proceed directly to the aircraft at WAFB alert ramp. Luggage on arriving aircraft will be directly offloaded onto a vehicle parked on the WAFB alert ramp. WAFB will be notified, in advance, if a local funeral home requires access for pickup or delivery of deceased persons.

Aircraft Handling and Ground Support Equipment

Air Force-owned fuel will not be provided. The air carriers will provide their own ground support equipment. Refueling equipment from BIA will be prepositioned at WAFB on the alert ramp. The Air Force shall not be responsible for any damage or loss to such equipment, and BIA expressly assumes all risks of any such loss or damage and agrees to indemnify and hold the United States harmless against any such damage or loss. No routine aircraft maintenance will be accomplished at WAFB. Emergency repairs and or maintenance are only authorized to avoid extended parking and storage of civil aircraft at WAFB.

Customs and Security

The installation commander will exercise administrative and security control over both the aircraft and passengers on WAFB. Customs officials will be transported to and from the base by air carrier representatives. The installation commander will cooperate with customer, health, and other public officials to expedite arrival and departure of the aircraft. Air carrier representatives will notify the WAFB Airfield Manager, in advance, of armed security or law enforcement officers arriving or departing on a flight. BIA officials and air carrier representatives must provide the WAFB Airfield Manager a list of employees, contractors, and vehicles requiring flightline access. Temporary passes will be issued to authorized individuals and vehicles.

Fire, Crash, and Rescue Services

BIA will provide technical information and training for WAFB Fire Department personnel prior to (date). Fire, Crash, and Rescue Services will be provided in an emergency, but fire trucks will not routinely park on the flightline for aircraft arrivals and departures. BIA will reimburse WAFB for all such services.

Liability and Indemnification

The Air Force shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use of WAFB by BIA under this Agreement, or for damages to the property of BIA or injuries to the person of BIA's officers, agents, servants, employees, or invitees. BIA agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to the use of WAFB under this Agreement and expressly waives any and all claims against the United States for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such use. BIA further agrees to indemnify, save, and hold the United States, its officers, agents, and employees harmless from and against all claims, demands, or actions, liabilities, judgments, costs, and attorneys fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by, or arising out of the use of WAFB under this Agreement.

Fees

Landing and parking fees will be charged in accordance with to AFI 10–1001, Civil Aircraft Landing Permits. Charges will be made in accordance with the appropriate Air Force Instructions for any services or supplies required from WAFB. The WAFB Airfield Manager will be responsible for consolidating all charges which will be billed to BIA not later than (date) by the Accounting and Finance Office.

In Witness Whereof, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

_____

BIA Representative
(Name and Title)

Date _____

_____

WAFB Representative
(Name and Title)

Date _____

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–6888 Filed 3–21–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–003]

RIN 2115–AA97

Safety Zone: Heritage of Pride Fireworks Display, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual Heritage of Pride fireworks display located in the Hudson River, New York. This safety zone would in effect annually on the last Sunday in June from 9:30 p.m. until 11:30 p.m, unless extended or terminated sooner by the Captain of the Port, New York. The safety zone would close all waters of the Hudson River within a 300 yard radius from the center of the fireworks platform located 330 yards off the Manhattan pierhead line between Pier 45 and Pier 49.

DATES: Comments must be received on or before May 22, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Planning and Readiness Division, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff, Coast Guard Group, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–003) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under "ADDRESSES". If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years; Heritage of Pride Inc., has submitted an Application for Approval of Marine Event for a fireworks program in the waters of the Hudson River. This regulation would establish a safety zone in the waters of the Hudson River on the last Sunday in June from 9:30 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting within a 300 yard radius of the fireworks platform anchored 330 yards off the Manhattan pierhead line between Pier 45 and Pier 49. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety marine

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Information Broadcasters and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the Hudson River to all vessel traffic annually on the last Sunday in June between 9:30 p.m. and 11:30 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that traffic can safely transit to the west of this safety zone; and that this event has been held annually for the past several years without incident or complaint, the Coast guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Cost Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small business Act (15 U.S.C. 632). For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.170 is added to read as follows:

§ 165.170 Safety Zone; Heritage of Pride Fireworks Display, Hudson River, New York.

(a) *Location.* All waters south of the Hudson River within a 300 yard radius from the center of a fireworks platform anchored 330 yards off the Manhattan pierhead line between Pier 45 and Pier 49.

(b) *Effective period.* This section is in effect annually on the last Sunday in June from 9:30 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 8, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–6949 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–012]

RIN 2115–AA97

Safety Zone: Annual Burlington Independence Day Celebration Fireworks Display, Burlington Bay, Vermont

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual Burlington Independence Day Celebration fireworks display located in Burlington Bay, Burlington, Vermont. The safety zone would be in effect annually on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The proposed safety zone would close all waters of Burlington Bay within a 250 yard radius from the center of the fireworks platform located approximately 250 yards off of Burlington, Vermont, at or near 44°29′33″ N latitude and 073°13′33″ W longitude.

DATES: Comments must be received on or before May 22, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–012) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

For the last several years, the Burlington Department of Parks and Recreation has submitted an Application for Approval of Marine Event for a fireworks program in the waters of Burlington Bay. This regulation would establish a safety zone in the waters of Burlington Bay on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would preclude all vessels from transiting within a 250 yard radius of the fireworks platform anchored approximately 250 yards off of Burlington, Vermont, at or near 44°28′33″N latitude and 073°13′33″W longitude. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation would provide notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. This regulation will be announced annually via Safety Marine Information Broadcasts and by locally issued notices.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of Burlington Bay to all vessel traffic annually on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made; that traffic can safely transit to the west of this safety zone; and that this event has been held annually for the past several years without incident or complaint, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.166, is added to read as follows:

§ 165.166 Safety Zone; Annual Burlington Independence Day Celebration Fireworks Display, Burlington Bay, Vermont.

(a) *Location.* All waters of Burlington Bay within a 250 yard radius from the center of a fireworks platform anchored approximately 250 yards off of Burlington, Vermont, at or near 44°28′33″N latitude and 073°13′33″W longitude.

(b) *Effective period.* This section is in effect annually on the third of July from 7:45 p.m. until 10:15 p.m., unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 6, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–6952 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–14–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH61-1-6381b; FRL-5175-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is taking action to approve, through direct final procedure, Ohio's 1990 base-year ozone precursor emissions inventory for the Toledo and Dayton ozone nonattainment areas as revisions to the ozone portion of the Ohio State Implementation Plan (SIP). The emissions inventories were submitted to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions for the year 1990. The Ohio ozone nonattainment areas covered by this rulemaking are Toledo (Lucas and Wood Counties) and Dayton (Clark, Greene, Miami, and Montgomery Counties).

In the final rules section of this **Federal Register**, USEPA is approving the State's SIP revision request as a direct final rule without prior proposal because USEPA views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by April 21, 1995.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE-17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE-17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5089.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 4201-7601q.

Dated: March 3, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95-6994 Filed 3-21-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 52

[MT26-1-6692b; FRL-5163-9]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Butte; PM_{10} Contingency Measures and Revisions to the Attainment and Maintenance Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated August 26, 1994. This submittal addresses, for the Butte moderate PM_{10} nonattainment area, the Federal Clean Air Act requirement to submit contingency measures for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) for areas designated as nonattainment for the PM_{10} National Ambient Air Quality Standards (NAAQS). This submittal also includes revisions to the attainment and maintenance demonstrations for the moderate PM_{10} nonattainment area SIP for Butte due to the inclusion of new emission limits in a revised air quality permit for Montana Resources, Inc. Since the SIP adequately addresses the requirement for contingency measures and, with the new emission limits for Montana Resources, Inc., still adequately demonstrates attainment and maintenance of the PM_{10} NAAQS in Butte, EPA proposes to approve these revisions.

In the final rules section of this **Federal Register**, EPA is acting on the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for EPA's actions is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 21, 1995.

ADDRESSES: Written comments on this action should be addressed to Amy Platt, 8ART-AP, at the EPA Regional Office listed below. Copies of the State's submittal and documents relevant to this proposed rule are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII; 999 18th Street, suite 500, Denver, Colorado 80202-2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620-0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt at (303) 293-1769.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: February 17, 1995.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 95-7005 Filed 3-21-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CA38-2-6232b; FRL-5171-4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District (BAAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from coating, cleaning, and manufacturing operations. These revisions also concern gasoline dispensing and the control of VOCs from municipal landfills.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 21, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 744-1190. Internet E-mail: beck.erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document concerns Bay Area Air Quality Management District (BAAQMD) rules submitted to EPA by the California Air Resources Board (CARB). The titles and numbers of these rules are listed below along with their adoption and submission dates.

Number	Title	Adoption	Submittal
8-1	General Provisions	6/15/94	9/28/94
8-2	Miscellaneous Operations	6/15/94	9/28/94
8-4	General Surface Coating and Solvent Operations	6/01/94	9/28/94
8-7	Gasoline Dispensing Facilities	6/01/94	9/28/94
8-12	Paper, Fabric, and Film Coating	6/15/94	9/28/94
8-15	Emulsified and Liquid Asphalts	6/01/94	9/28/94
8-20	Graphic Arts Printing and Coating Operations	6/15/94	9/28/94
8-24	Pharmaceutical and Cosmetic Manufacturing Operations	6/15/94	9/28/94
8-30	Semiconductor Manufacturing Operations	6/15/94	9/28/94
8-31	Surface Coating of Plastic Parts and Products	6/01/94	9/28/94
8-32	Wood Products Coating	7/06/94	9/28/94
8-34	Solid Waste Disposal Sites	6/15/94	9/28/94
8-35	Ink, Coating, and Adhesive Manufacturing	6/15/94	9/28/94
8-40	Aeration of Contaminated Soil and Removal of Underground Storage Tanks	6/15/94	9/28/94
8-41	Vegetable Oil Manufacturing Operations	6/01/94	9/28/94
8-45	Mobile Vehicle and Mobile Equipment Coating Operations	11/02/94	12/22/94
8-49	Aerosol Paint Products	8/21/92	9/14/92

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7671q.

Dated: March 3, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95-7009 Filed 3-21-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[UT-001; FRL-5176-6]

Clean Air Act Proposed Full Approval of Operating Permits Program; Approval of Construction Permit Program Under Section 112(l); State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes full approval of the Operating Permits Program submitted by the State of Utah for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA also proposes approval of the Utah Construction Permit Program under section 112(l) of the Clean Air Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by April 21, 1995.

ADDRESSES: Comments should be addressed to the contact indicated below. Copies of the State's submittal and other supporting information used in developing these proposed approvals are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294-7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating

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permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Utah submitted the State of Utah Title V Operating Permit Program (PROGRAM) to EPA on April 14, 1994. EPA deemed the PROGRAM administratively and technically complete in a letter to the Governor dated May 12, 1994. Additional documentation for the PROGRAM submittal was received on August 25, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of Utah stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations and a permit fee demonstration.

2. Regulations and Program Implementation

The Utah PROGRAM, including the operating permit regulation (Utah Administrative Code Rule R307–15, Operating Permit Requirements), meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

R307–15–3 contains the PROGRAM definitions. EPA is aware that other Utah regulations may contain similar, but not identical, definitions as those contained in R307–15–3. For purposes of this PROGRAM approval, EPA wishes to clarify that the binding definitions are those contained in R307–15–3.

R307–15–5(5) of the State's permitting regulation lists the insignificant activities that sources do not have to include in their operating permit application. This list includes specific activities and sources which are considered to be insignificant. This provision states that the source's application may not omit information needed to determine applicable requirements or to evaluate the fee amount required.

Utah has the authority to issue a variance from requirements imposed by State law. Section 16–2–113, Utah Code Ann., provides that any person may apply to the board for a variance from its rules. The board may grant the requested variance, "if it determines that the hardship imposed by compliance would outweigh the benefit to the public." This authority is limited by regulation: Utah Administrative Code section R307–1–2.3 provides that the board may grant variances to the extent provided under law, unless prohibited by the Act. Other statutory provisions of State law require that the operating permit program must meet the requirements of title V of the Act. See, section 19–2–104(1)(f) and 19–1–109.1 (c)–(d), Utah Code Ann.

In addition to these limitations, EPA regards Utah's variance provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with part 70. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. If the State uses its variance provision strictly to establish a compliance schedule for a source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Part 70 of the Federal operating permit regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) of that regulation requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A) of the Federal operating permit regulation. Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The Utah PROGRAM will define prompt reporting of deviations in each permit consistent with the degree and type of deviation likely and the applicable requirements (see subsection R307–15–6(1)(c)(iii)(B) of the Utah permitting rule). Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of the Utah Administrative Code section R307–1–4.7.

R307–15–7(4)(a)(ii) allows for emissions trading within a permitted facility where the State Implementation Plan (SIP) allows for such emissions trades without requiring a permit revision, consistent with 40 CFR 70.4(b)(12)(ii). However, the approved Utah SIP does not provide for such trading at this time.

R307–15–7(5)(a)(v) correctly allows the State to incorporate the terms of a construction permit (i.e., an "approval order") into an operating permit using the administrative permit amendment process. This process will be available when a source requests enhanced procedures in the issuance of its construction permit that are "substantially equivalent" to the operating permit issuance or modification procedures. "Substantial equivalence" between the construction permit and operating permit issuance procedures necessarily includes, among other things, public and affected state review as well as EPA's 45-day review period and veto authority.

Comments noting deficiencies in the Utah PROGRAM were sent to the State in a letter dated October 28, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. In a letter dated November 30, 1994, the State committed to complete the corrective actions required for interim PROGRAM approval. The Utah Air Quality Board adopted amendments to R307–15 on February 23, 1995 which adequately addressed all deficiencies identified in the PROGRAM regulations. A letter from the Attorney General's office dated February 27, 1995 transmitted these regulation changes, which become effective April 15, 1995. The changes that addressed the deficiencies in the PROGRAM summary were transmitted to EPA by the State in a letter dated February 28, 1995.

Refer to the Technical Support Document accompanying this rulemaking for a detailed explanation of each PROGRAM deficiency and the corrective actions completed by the State.

3. Permit Fee Demonstration

The State of Utah established an initial fee for regulated air pollutants below the presumptive minimum set in title V, section 502 and part 70, and was required to submit a detailed permit fee demonstration as part of its PROGRAM submittal. The basis of this fee demonstration included a workload analysis, which estimated the annual cost of running the PROGRAM in fiscal year (FY) 1995 to be $2,386,895 based on the estimated direct and indirect costs of the PROGRAM, and a projected emission inventory for fiscal year 1995. The permit fee established for FY 1995 is $21.70 per ton of actual emissions of a regulated pollutant, with an emissions cap of 4,000 tons per year per pollutant. This fee structure will be reevaluated each year. After careful review, the State of Utah has determined that these fees would support the Utah PROGRAM costs as required by section 70.9(a) of the Federal operating permit regulation. Upon review of this demonstration, the EPA noted the following concern: State law generally provides authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the program. However, section A.1 of the PROGRAM description found in volume 1, part II.A., of the State's title V submittal indicates that the Utah Legislature must authorize permit fees on a yearly basis. If permit fees sufficient to fund all the costs of the PROGRAM are not authorized, and the State is not able to fully implement the PROGRAM, then EPA would be required to disapprove or withdraw the part 70 program, impose sanctions, and implement a Federal permitting program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Utah has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Utah's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Utah to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of Section 112(g). On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Utah must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that Utah can utilize its construction review program to serve as a procedural vehicle for implementing section 112(g) and making these requirements Federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. For this reason, EPA is proposing to approve Utah's construction permitting program found in section R307–1–3 of the State's regulations under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period to meet the requirements of section 112(g). Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA proposes to limit the duration of the approval to 12 months following promulgation by EPA of its section 112(g) rule. Utah's construction permitting program allows permit requirements to be established for all air contaminants (which is defined in R307–1–1 of the Utah Administrative Code and includes all of the hazardous air pollutants (HAPs) listed in section 112(b) of the Act).

c. Program for Straight Delegation of Section 112 Standards. Requirements for approval, specified in 40 CFR § 70.4(b), encompass section 112(l)(5). requirements for approval of a program for delegation of the provisions of 40 CFR part 63, Subpart A, and section 112 standards promulgated by EPA as they apply to part 70 sources, as well as non-part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Utah has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. This program applies to both existing and future standards.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and an applicable requirement under the State PROGRAM. Currently the State of Utah has no part 70 sources which emit radionuclides. However, sources which are not currently part 70 sources may be

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defined as major and become part 70 sources under forthcoming Federal radionuclide regulations. In that event, the State will be responsible for issuing part 70 permits to those sources.

d. Approval of Construction Permit Program Under Section 112(l). Also in this action, EPA is proposing to approve Utah's construction permit program in R307–1–3.1 of the State's regulations under the authority provided in section 112(l) of the amended Act for the purpose of creating Federally enforceable permit conditions for sources of HAPs listed pursuant to section 112(b) of the Act. The State's construction permitting rules referenced above were approved by EPA as part of the SIP on February 19, 1980 (45 FR 10761–10765). Approval of the State's construction permit program under section 112(l) is necessary to allow the State to create Federally enforceable limits on the potential to emit of HAPs, because SIP approval of the State's construction permit rules only extends to the control of HAPs which are photochemically reactive organic compounds or particulate matter. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs. As a legal matter, no additional program approval by the EPA is required in order for those "criteria" pollutant limits to be recognized as Federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

The State's construction permit program applies to new and modified sources which would emit "air contaminants," which is defined in the State's rules as "any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors." The State has defined "air contaminant" in such a broad manner that it includes HAPs. Consequently, the State's construction permit program provides authority for the State to issue construction permits to sources of HAPs.

The criteria used in approving Utah's construction permit program in the SIP are located in 40 CFR 51.160–164. As detailed in the Technical Support Document accompanying this notice, EPA believes the State's construction permit program meets the requirements of 40 CFR 51.160–164. EPA believes the most significant criteria in 40 CFR Part 51 for creating Federally enforceable limits through construction permits are those in 40 CFR 51.160–162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act," in order for EPA to consider any construction permit terms Federally enforceable, such permit conditions must be enforceable as a practical matter. Utah's program will allow the State to issue permits that are enforceable as a practical matter. Thus, any permits issued in accordance with the Utah program and which are practically enforceable would be considered Federally enforceable.

In addition to meeting the criteria discussed above, a construction permit program for HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources to implement the program; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue. The EPA is therefore proposing approval of Utah's construction permit program to limit the potential to emit of HAPs now, so that the State may begin to issue Federally enforceable synthetic minor permits as soon as possible. The EPA also plans to codify programs approved under section 112(l) without further rulemaking once the revisions to Subpart E are promulgated.

As discussed above, Utah's construction permit program in R307–1–3.1 has already been approved in the SIP, and it satisfies the criteria for such programs, including the relevant criteria related to creating Federally enforceable limits in 40 CFR 51.160–162. In addition, Utah's construction permit program meets the statutory criteria for approval under section 112(l)(5), as follows:

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Utah's construction permit program contains adequate authority to assure compliance with section 112 requirements because the State's program does not provide for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to the State's construction permit program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, the State has committed in its SIP to provide adequate resources for all program activities required by the annual State/EPA agreement, which includes construction permitting. Thus, EPA believes the State has adequate resources to support the construction permit program for HAPs, and EPA will monitor the State's implementation of the program to assure that adequate resources continue to be available.

The EPA also believes that the State's rules provide for an expeditious schedule for assuring compliance with section 112 requirements. A source seeking a voluntary limit on its potential to emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in the State's program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate Federally enforceable limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

Accordingly, EPA believes that Utah's construction permit program in R307–1–3.1 of its air quality regulations satisfies the applicable criteria for establishing Federally enforceable limitations for sources of HAPs. Therefore, EPA is proposing approval of Utah's construction permit program in R307–1–3 of the State's rules under section 112(l) of the Act.

Refer to the Technical Support Document accompanying this rulemaking for a detailed explanation of this approval under section 112(l) of the Act.

e. Program for Implementing Title IV of the Act. Utah's PROGRAM contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and Utah commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Proposed Action

EPA is proposing full approval of the operating permits program submitted to EPA by the State of Utah on April 14, 1994. Among other things, Utah has demonstrated that the PROGRAM will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. EPA also proposes approval of the Utah Construction Permit Program found in section R307–1–3 of the State's regulations under section 112(l) of the Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Act, and, under the authority of title V and 40 CFR part 70, for the purpose of providing a mechanism to implement section 112(g) of the Act during any transition period between EPA's promulgation of a section 112(g) rule and adoption by the State of rules to implement section 112(g).

In Utah's part 70 program submission, the State indicated that it is not seeking approval from EPA to administer the State's part 70 PROGRAM within the exterior boundaries of Indian Reservations in Utah. In this notice, EPA proposes to approve Utah's part 70 PROGRAM for all areas within the State except the following: lands within the exterior boundaries of Indian Reservations (including the Uintah and Ouray, Skull Valley, Paiute, Navajo, Goshute, White Mesa, and Northwestern Shoshoni Indian Reservations) and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151 (excepted areas).

In proposing not to extend the scope of Utah's part 70 PROGRAM to sources located in the excepted areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Utah choose to seek program approval within these areas, it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of the excepted areas, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program, as well as non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed title V and section 112(l) approvals are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of these proposed approvals. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by April 21, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 and section 112(l) of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70 and the creation of Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Act. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: March 14, 1995.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95–7063 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3E4241/P607; FRL–4941–1]

RIN 2070–AC18

Imazethapyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances with regional registration for the sum of the residues of the herbicide imazethapyr, as its ammonium salt, and its metabolite in or on the raw agricultural commodities lettuce and endive. The Interregional Research Project No. 4 (IR–4) requested this proposed regulation.

DATES: Comments, identified by the document control number, [PP 3E4241/P607], must be received on or before April 21, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection

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Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 3E4241 to EPA on behalf of the vegetable growers of Florida. The petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.447 by establishing tolerances with regional registration for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl-3-pyridine carboxylic acid), free and conjugated, in or on the raw agricultural commodities lettuce (head and leaf) and endive (escarole) at 0.1 part per million (ppm). The petitioner proposed that use of imazethapyr on lettuce and endive be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. Several acute toxicology studies placing technical-grade imazethapyr in Toxicity Category III and Toxicity Category IV.

2. A 1-year feeding study with dogs fed diets containing 0, 1,000, 5,000, or 10,000 part per million (ppm) with a systemic no-observed-effect level (NOEL) of 1,000 ppm (25 milligrams (mg)/kilogram (kg)/day) based on decreased packed cell volume, hemoglobin, and erythrocytes in the blood of female dogs at the 5,000-ppm (125 mg/kg/day) dose level.

3. A 78-week carcinogenicity study in mice fed diets containing 0, 1,000, 5,000 or 10,000 ppm (equivalent to 0, 150, 750, or 1,500 mg/kg/day) with a systemic NOEL of 5,000 ppm based on decreased body weight gain in both sexes at the 10,000-ppm dose level. No carcinogenic effects were observed under the conditions of the study.

4. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 50, 250, or 500 mg/kg/day) with no treatment-related systemic or carcinogenic effects observed under the conditions of the study.

5. A multi-generation reproduction study in rats fed diets containing 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 50, 250, or 500 mg/kg/day) with no treatment-related systemic or reproductive effects observed under the conditions of the study.

6. Developmental toxicity studies in rats and rabbits with no developmental toxicity observed under the conditions of the studies at dose levels up to and including the highest dose tested (1,125 mg/kg/day in rats and 1,000 mg/kg/day in rabbits).

7. Mutagenicity studies include gene mutation assays in bacteria cells (negative) and Chinese hamster ovary cells (no dose-response); structural chromosomal aberration assays *in vivo* in rat bone marrow cells (negative) and *in vitro* in Chinese hamster ovary cells (positive without activation at levels toxic to cells and negative with activation); and other genotoxic effects (did not induce unscheduled DNA synthesis in rat hepatocytes cultured *in vitro*).

The reference dose (RfD) for imazethapyr is established at 0.25 mg/kg body weight/day. The RfD is based on a NOEL of 25 mg/kg/day established in the 1-year feeding study in dogs and an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) from existing uses and the proposed uses on lettuce and endive utilizes less than 1 percent of the RfD for the general population and all 22 subgroup populations for which EPA routinely conducts dietary risk assessments. This is a worst-case estimate of dietary exposure which assumes tolerance level residues and treatment of the total production acreage of the commodities. The dietary risk assessment indicates that there is minimal risk from the establishment of the proposed tolerances for lettuce and endive.

The nature of residues in lettuce and endive is adequately understood for the purposes of establishing the proposed tolerances. An adequate analytical method is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

No secondary residues are expected to occur in meat, milk, poultry, or eggs from this action since lettuce and endive are not considered livestock feed commodities.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR 180.447 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E4241/P607]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 8, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.447, by adding new paragraph (d), to read as follows:

§ 180.447 Imazethapyr, ammonium salt; tolerance for residues.

* * * * *

(d) Tolerances with regional registration, as defined in § 180.1(n) of this chapter, are established for the sum of residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid, both free and conjugated, in or on the following raw agricultural commodities:

Commodity	Parts per million
Endive (escarole)	0.1
Lettuce (head and leaf)	0.1

[FR Doc. 95-6932 Filed 3-21-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300380; FRL-4936-4]

RIN 2070-AC18

Acetic Acid Ethenyl Ester, Polymer with Ethenol and (α)-2-Propenyl-(ω)-Hydroxypoly(Oxy-1,2-Ethanediyl); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091-12-4), when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d). Japan Technical Information Center, Inc., requested this proposed regulation on behalf of Nippon Gohsei (U.S.A.) Co., Ltd.

DATES: Written comments, identified by the document control number, [OPP-300380], must be received on or before April 21, 1995.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703) 308-8323.

SUPPLEMENTARY INFORMATION: Japan Information Center, Inc., 775 South 23rd St., Arlington, VA 22202, on behalf of Nippon Gohsei (U.S.A.) Co., Ltd., submitted pesticide petition (PP) 4EO4403 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091-12-4), when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an

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inert ingredient. The Agency has decided that no data, in addition to that described below, for acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers.

1. The minimum number-average molecular weight of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) is 15,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) does not contain a reactive functional group that is intended or reasonably expected to undergo further reaction.

9. Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) is neither designed nor reasonably expected to substantiaully degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP–300380]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 8, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
• • •	•	• • •
Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091–12–4); minimum number average molecular weight 15,000.	.....	Component of water-soluble film.
• • •	•	• • •

* * * * *

[FR Doc. 95–6933 Filed 3–21–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[FAP 4H5683/P600; FRL–4935–1]

RIN 2070–AC18

Hexazinone; Pesticide Tolerances and Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the current tolerance for residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione and its metabolites (calculated as hexazinone) in or on sugarcane at 0.2 part per million (ppm) by revoking the current tolerance and reestablishing the same tolerance with regional registration and tolerance as described by 40 CFR 180.1(n). EPA also proposes to establish food and feed additive regulations for residues of hexazinone and its metabolites (calculated as hexazinone) in sugarcane molasses at 0.5 ppm. E. I. du Pont de Nemours & Co., Inc., requested these proposed regulations.

DATES: Written comments, identified by the document control number [FAP 4H5683/P600], must be received on or before April 21, 1995.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–7830).

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours & Co., Inc., has requested a regional registration for the use of hexazinone end-use pesticide products for the use site, sugarcane. The company proposed that the use-site exclude the State of Florida, because the product is not efficacious in muck soils at dosages that would be economically viable to growers. The company has stated that the rate needed for weed control in the typically high organic soil of Florida used for the culture of sugarcane would exceed the maximum labelled dosage. In addition, the company also stated that the high rates would not be economically viable considering other less expensive, lower application rate products. Based on the information submitted, the company has proposed a geographically limited registration for use of hexazinone in sugarcane. In this case, the company contends that there is little likelihood for the use of hexazinone in the State of Florida and that its residue data are representative of all sugarcane-growing areas of the United States.

Published information on acres of sugarcane grown in the State of Florida on other than organic soils (Spodosols, Entisols, Mollisols) was 11.1% of a total of 464,191 acres in 1993 (Sugar Y Azucar 89:(1): 39–44). EPA has no data on potential residues of hexazinone when used in the culture of sugarcane commodities from studies with sugarcane cultured in the State of Florida. Residue chemistry data from a Florida study are required to allow the unrestricted use of hexazinone in the culture of sugarcane.

EPA issued a notice, published in the **Federal Register** of July 13, 1994 (59 FR 35179), which announced that E.I. Du Pont de Nemours & Co., Inc., had submitted food additive petition (FAP) 4H5683 to EPA requesting that the Administrator, pursuant to section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR parts 185 and 186 by establishing tolerances for residues of the herbicide hexazinone (3-cyclohexyl-6-dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) in or on sugarcane molasses at 5.0 ppm and sugarcane bagasse at 0.5 ppm. Sugarcane bagasse is not currently considered a food or a feed commodity by EPA; therefore, the requested tolerance is not proposed to be established in this document.

There were no comments received in response to the notice of filing. The scientific data submitted with the petition and other relevant material have been evaluated. The toxicological and residue chemistry data considered in support of the proposed actions include the following:

1. Plant and animal metabolism studies.

2. Enforcement methodology for determining residues.

3. A 90-day feeding study with rats, with a NOEL of 50 mg/kg/day and an LEL of 150 mg/kg/day with the effect being decreased body weights in both sexes.

4. A 90-day feeding study with dogs, with a NOEL of 25 mg/kg/day, increase alkaline phosphatase, decreased albumin/globulin, and increased absolute and relative liver weights in both sexes.

5. A 21-day dermal study in rabbits, with a NOEL of 1,000 mg/kg/day, the highest dose tested (HDT).

6. A 12-month chronic feeding study with dogs, with a NOEL of 5.0 mg/kg/day and a lowest effect level (LEL) of 37.5 mg/kg/day with thinness in one male dog, increased alkaline phosphatase in males, decrease albumin and increased golbulin in males, pale kidneys in one female, and increased incidence of hepatocellular vacuolation in males, and cytoplasmic inclusions and pigmented Kupffer cells in the livers of females.

7. A 24-month carcinogenicity study in mice that was equivocal for adenomas/carcinomas, with no statistical significance in pair-wise comparison between control and dosed animals; systemic NOEL of 30 mg/kg/day and systemic LEL of 375 mg/kg/day.

8. A developmental toxicity study with rats, with a maternal NOEL of 100 mg/kg/day and maternal LEL of 400 mg/kg/day; a developmental NOEL of 100 mg/kg/day and developmental LEL of 400 mg/kg/day (decreased fetal body weight, increased incidence of fetuses with no kidney papilla, and increased incidence of fetus with unossified sternebrae).

9. A developmental toxicity study in rabbits, with a maternal NOEL of 50 mg/kg/day and a maternal LEL of 125 mg/kg/day (decreased body weight gains, increased resorptions and increased clinical signs); and with a developmental NOEL of 50 mg/kg/day and a developmental LEL of 125 mg/kg/day (decreased body weight and delayed ossifications of extremities).

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10. A two-generation reproductive study with rats with a reproductive NOEL of 10 mg/kg/day and an LEL of 100 mg/kg/day and an LEL of 100 mg/kg/day (decreased pup weight in F_1, F_{2a}, and F_{2b} litters) and decreased pup survival at 250 mg/kg/day in F_{2b} litters; systemic NOEL of 10 mg/kg/day and LEL of 100 mg/kg/day (decreased body weight and body weight gains).

11. A chronic feeding/carcinogenicity study in rats with a negative carcinogenic potential and a systemic NOEL of 10 mg/kg/day and an LEL of 50 mg/kg/day (decreased food efficiency and weight gains in females).

12. A gene mutation assay with *Salmonella* strains TA1535, TA1537, TA1538, TA100, and TA98 with and without S–9 activation, negative.

13. A gene mutation (*in vitro*) CHO/HGPRT assay at cytotoxic doses (13.9 mM, without S–9 and 9.9 mM with S–9 activation), negative.

14. A structural chromosome aberration (mammalian cells in culture) cytogenetic assay in Chinese hamster ovary cells with CHO chromosomal aberrations with and without S–9 metabolic activation, positive.

15. A structural chromosome aberration (mammalian cells in culture) cytogenetic assay in rat bone marrow, negative.

16. An unscheduled DNA synthesis study with rats at doses of 1×10^5 to 30 mM, negative.

17. A rat metabolism study with a single dose, resulted in 97% of radioactivity excreted within 7 days (20 percent in feces and 77 percent in urine); the major metabolites were demethylated hydroxylated compounds.

As part of EPA's evaluation of potential human health risks, hexazinone has been the subject of two Peer Reviews by the Office of Pesticides' Carcinogenicity Peer Review Committee. The first Peer Review, dated October 10, 1991, indicated that based on the weight of evidence, hexazinone was classified as a Group C carcinogen, possible human carcinogen. The committee recommended that for the purposes of risk characterization, the EPA reference dose (RfD) approach should be used for quantification of human risk.

E. I. du Pont de Nemours & Co. questioned the finding of the first Peer Review and presented a reevaluation of the mouse carcinogenic study based on contemporary diagnostic nomenclature of the pathology of the neoplasium found. The pathologist classified the hepatocellular carcinomas and hyperplastic nodules as either hepatocellular carcinoma, hepatocellular adenoma, or a focus of cellular alteration (nonneoplastic). The Peer Review findings were based on a pathological diagnosis that classified all hyperplastic nodules as tumors/adenomas.

A second Peer Review dated May 11, 1994, was conducted based on the reclassification of the pathology. Based on another weight-of-evidence evaluation the Carcinogenicity Peer Review Committee determined that hexazinone should be recategorized as a Group D not classifiable as to human carcinogenicity. That is, the evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect. Based on this conclusion, EPA determines that hexazinone does not induce cancer within the meaning of the Delaney Clause.

The Peer Review Committee considered the following facts regarding the toxicology data on hexazinone in a weight-of-evidence determination of carcinogenic potential:

1. Based on the registrant's submission of reevaluated liver sections, hexazinone feed in the diet of CD-1 male and female mice was not associated with any pairwise statistically significant increases in adenomas, carcinomas, or combined adenomas/carcinomas, when the controls were compared to the treated groups. Female mice had a statistically significant dose-related trend ($P = 0.014$) for combined hepatocellular adenoma/carcinoma, but the pairwise comparison of the high-dose group to control was not statistically significant. The incidence of combined hepatocellular adenomas/carcinomas (9%) in females at the highest dose exceeded the range of these tumors in historical controls (0-5%).

Male mice had a statistically significant increasing dose-related trend in foci of cellular alteration in the liver and also a significant increase ($p = 0.004$) in these nonneoplastic lesions in the pairwise comparison of the highest dose and the controls. The HDT, although very high, was not considered by the Committee to have been excessive for assessing the carcinogenic potential of hexazinone in mice.

2. Hexazinone fed in the diet to male and female Spragus-Dawley rats at doses up to 125 mg/kg/day was not associated with statistically significant increases of any neoplasms in either sex.

The dosing in this study was considered to be marginally adequate based on the lack of significant toxicity and enhanced survival.

3. Hexazinone was mutagenic both with and without S-9 activation in an *in vivo* assay for chromosomal aberrations in Chinese hamster ovary cells (almost at the level of a positive control without activation). The response in a Chinese hamster ovary (CHO) gene mutation assay with activation was equivocal. Hexazinone was negative in the *Salmonella* assay, in an *in vivo* cytogenetic assay, and in a UDS assay.

4. Hexazinone is structurally, but not chemically (lacks aromaticity), related to the 2-triazines, which are usually associated with mammary gland tumors in Sprague-Dawley rats (the same strain used in the hexazinone study). Phenobarbital was considered to be a closer analog, both structurally and chemically, but unlike hexazinone, phenobarbital has no known genotoxicity. Hexazinone may also be viewed as a pyrimidine analog, a property which is thought to be predictive of carcinogenicity.

The Reference Dose (RfD) is established at 0.05 mg/kg/day, based on a NOEL of 5.0 mg/kg/day in the 12-month dog-feeding study and an uncertainty factor of 100. The Anticipated Residue Contribution (ARC) from the current actions is estimated at 7.4×10^{-5} mg/kg of body weight/day for the general population and utilizes less than 15% of the RfD for the U.S. population. The ARC for the most exposed subgroups is 2.0×10^{-2} mg/kg/body weight/day for nonnursing infants (less than 1 year old) and 1.0×10^{-2} mg/kg/body weight/day for children (1 to 6 years old), or 40.0 and 20.0 percent of the RfD, respectively. No appreciable risk is expected from chronic dietary intake because the RfD is not exceeded for either the general population or any subgroup.

The nature of the residue is adequately understood for establishing these tolerances.

An adequate analytical method, gas chromatography with a nitrogen-phosphorus detector, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which these tolerances are sought, and these tolerances will limit dietary exposure to this pesticidal chemical. There are currently no actions pending against the registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances and food/feed additive regulations established by amending 40 CFR parts 180, 185, and 186 would protect the public health. Therefore, it is proposed that the tolerances and food/feed additive regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 4H5683/P600]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 [46 FR 24950].

List of Subjects in 40 CFR Parts 180, 185, 186

Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: March 9, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180, 185, and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.396, the existing text is designated as paragraph (a), and the table therein is amended by removing the entry for sugarcane, and new paragraph (b) is added, to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

(a) * * *

(b) A tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following raw agricultural commodity:

Commodity	Parts per million
Sugarcane	0.2

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.3575, to read as follows:

§ 185.3575 Hexazinone; tolerances for residues.

A food additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following commodity:

Commodity	Parts per million
Sugarcane, molasses	0.5

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3575, to read as follows:

§ 186.3575 Hexazinone; tolerances for residues.

A feed additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione and its metabolites (calculated hexazinone) in or on the following feed commodity:

Commodity	Parts per million
Sugarcane, molasses	0.5

[FR Doc. 95–6931 Filed 3–21–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4 and 5

[CGD 95–023]

Marine Safety Investigation Process Review

AGENCY: Coast Guard, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard conducts marine casualty investigations to determine the causes of casualties. The findings of an investigation may lead to proceedings for the suspension or revocation of a merchant mariner's license, certificate of registry, or document, the assessment of a civil penalty, or to criminal prosecution. The Coast Guard is reviewing its marine safety investigation process to identify possible improvements, and is seeking input from the public.

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DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments may be mailed to Mr. W.D. Rabe, Commandant (G–MMI), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be made by telephone at (202) 267–1430, or by fax at (202) 267–1416.

FOR FURTHER INFORMATION CONTACT: Mr. W.D. Rabe, Marine Investigation Division, Office of Marine Safety, Security and Environmental Protection, telephone, (202) 267–1430.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this process by submitting written data, views, or arguments, or verbal comments. Persons submitting comments should include their names and addresses, identify this notice (CGD 95–023) and the specific question to which each comment applies, and give the reason for each comment. Please submit two copies of all written comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Drafting Information

The principal persons involved in drafting the document are Mr. W.D. Rabe, Project Manager, and Commander P.A. Popko, Assistant Division Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection.

Background and Purpose

The marine casualty investigation process is the main feedback loop for Coast Guard prevention programs. This measurement function has never been more important as limited resources must be focused on those activities which will be most effective in minimizing the risks to personnel and the environment.

Under the authority of 46 U.S.C. Chapter 63, the Coast Guard conducts marine casualty investigations. Section 6301 of Title 46, U.S. Code, requires the Secretary to issue regulations for the investigation of marine casualties. This authority has been delegated to the Coast Guard which has promulgated regulations and procedures for the reporting and investigation of marine casualties. These regulations appear in 46 CFR parts 4 and 5. Under current law and regulations, the marine industry has a duty to report marine casualties, as defined in law and regulations, to the Coast Guard. There is more confusion regarding which casualties must be reported and a general concern that there is little benefit in reporting and investigation many of the "minor" casualties.

The Chief, Office of Marine Safety, Security, and Environmental Protection has established a Quality Action Team (QAT) to review the investigation process. The QAT will examine the process and recommend improvements. It will consider public comment during its review. The review will address collection and analysis of casualty data, casualty reporting requirements, casualty investigation procedures, investigator training and qualification requirements, and the use of investigations for Suspension and Revocation proceedings, civil penalty assessments, and potential criminal prosecutions.

The QAT specifically solicits responses to the following questions:

1. What changes would you recommend to the reporting requirements for marine casualties in 46 CFR part 4?

2. How could the reporting criteria be improved to help eliminate confusion concerning which incidents are reportable to the Coast Guard?

3. How could the Coast Guard satisfy its need for data collection on marine casualties while reducing some of the burden on industry to report casualties?

4. Would electronic or batch reporting of minor casualties be beneficial?

5. What would be the pros and cons of limiting Coast Guard activity on certain casualties to data collection while reserving in depth investigation to those casualties from which important lessons can be learned?

6. What would be the pros and cons of the Coast Guard not investigating those cases which the National Transportation Safety Board is investigating to reduce duplication of effort?

The QAT will consult with the marine industry to obtain insight on where investigation processes can be improved to benefit both the Coast Guard and industry. Small study groups may be formed, if appropriate, and public meetings may be held to get input from a broad interest base. If the Coast Guard decides to hold public meetings, the dates, times, and locations will be announced by a later notice in the **Federal Register**.

Dated: March 15, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 95–6950 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 95–19; FCC 95–46]

Streamlining the Equipment Authorization Procedures for Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal would streamline the equipment authorization requirements for personal computers and personal computer peripherals by relaxing the equipment authorization from certification to a new type of authorization based on a manufacturer's or supplier's declaration of compliance. It would also permit authorization of individual components of personal computers and would require testing laboratories to be accredited by the National Institute of Standards and technology under its National Voluntary Laboratory Accreditation Program. These changes would allow manufacturers and suppliers to market new equipment without having to submit an application for equipment authorization and await FCC approval. This would save industry approximately $250 million annually and would stimulate the creation of jobs and competition in the computer industry by relaxing regulations that are particularly burdensome for small businesses.

DATES: Comments must be submitted on or before June 5, 1995, and reply comments on or before July 5, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 776–1627.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 95–19, adopted February 7, 1995, and released February 7, 1995. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

PAPERWORK REDUCTION: The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain, (202) 395–3561, Office of Management and Budget, Room 10102 (NEOB), Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 418–0210.

OMB Number: None.

Title: Equipment Authorization—Declaration of Compliance, Amendment of Parts 2 and 15.

Form: None.

Action: Proposed new collection.

Respondents: Businesses or other for profit.

Frequency of Response: On occasion.

Estimated Annual Response: 4000 respondents, 19 hours per response.

Needs and Uses: Data collection will be used to investigate complaints of harmful interference to radio communications and to verify manufacturer's or supplier's compliance with the rules. The information collected is essential to controlling potential interference to radio communications.

Summary of the Notice of Proposed Rule Making:

1. In the Notice of Proposed Rule Making, the Commission proposes to amend parts 2 and 15 of its rules regarding the equipment authorization and testing requirements for personal computers, personal computer peripherals and individual components of personal computers.

2. Personal computers and personal computer peripheral devices are currently subject to authorization under our certification procedure to ensure that they do not cause interference to radio services such as TV broadcasting, aeronautical and maritime communications, amateur services, etc. We propose to relax the equipment authorization procedure for personal computers and peripherals from certification to a process based on a manufacturer's or supplier's Declaration of Conformity (DoC). The DoC is similar to the current verification procedure where testing is required to ensure compliance with the standards. The DoC would be packaged with the equipment and would include the following information: (1) Identification of the specific product covered by the declaration; (2) a statement that the product complies with part 15 of the FCC rules; (3) identification of the compliance test report by date and number; and, (4) identification by name, address and telephone number of the manufacturer, importer or other party located within the U.S. that is responsible for ensuring compliance with the rules. Marketing and importation could begin immediately following satisfactory testing and completion of the DoC.

3. In order to provide an additional safeguard that personal computers and peripherals continue to comply with the technical standards, we propose to require laboratories that perform measurements on these products to obtain accreditation by the National Institute of Standards and Technology (NIST) under its National Voluntary Laboratory Accreditation Program (NVLAP). NIST would review the qualifications of the testing personnel, quality control procedures, record keeping and reporting, etc. and send recognized experts to observe the testing. Laboratory accreditation is generally required, either implicitly or explicitly, under most foreign government approval systems.

4. We also propose to permit modular personal computers to be authorized based on tests and DoCs of the individual components, *i.e.*, enclosures, power supplies and mother boards, without further testing of the completed assembly. Currently, personal computers must be tested and authorized based on the specific combination of CPU board, power supply and enclosure used in their fabrication. Every time this configuration is changed, separate testing and authorization is required. Many computers are now assembled form modular components. Thus, this proposal will enable a small manufacturer or retailer to legally assemble computers and will also ensure that components used in the assembly result in a computer that complies with the standards. Comments are invited on specific test procedures and standards that should be applied to mother boards, power supplies and enclosures.

Initial Regulatory Flexibility Analysis

5. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Reason for action: This rule making proceeding is initiated to obtain comments regarding whether and how the Commission should regulate computers, peripheral devices to computers and subassemblies to computers.

Objectives: The Commission seeks to determine the standards, test procedures, and equipment authorization requirements that should be applied to computers as well as to CPU boards, power supplies, and enclosures used in personal computers in order: (1) To reduce regulatory burdens on computer manufacturers; (2) to remove impediments to flexible system design and construction techniques for computer; and (3) to reduce the potential for interference to radio services by improving our ability to ensure that personal computers comply with our standards.

Legal Basis: The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(f), 303(r), 304 and 307.

Reporting, Recordkeeping and Other Compliance Requirements: CPU boards, power supplies, and enclosures designed for use in computers are proposed to be included under our standards and equipment authorization requirements. These components, which were not previously subject to our rules, will be included under an equipment authorization procedure similar to our

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verification procedure with the addition of a Declaration of Conformity that would be included with each product marketed. In addition, we propose to permit any party to assemble computers from authorized CPU boards, power supplies, and enclosures without further testing provided the instructions accompanying the components are followed during assembly. Computers assembled in this fashion would also be accompanied by a Declaration of Conformity. Alternatively, the computer may be assembled using unauthorized components provided the resulting system is tested and accompanied by a Declaration of Conformity. While the measurement data, where required, must be retained by the responsible party, there is no requirement to file an application with, and obtain authorization from, the Commission prior to marketing or importation. Accordingly, we expect a significant decrease in the overall recordkeeping requirements.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact and Number of Small Entities Involved: The actions proposed in this proceeding will result in a significant decrease in the amount of testing and Commission authorization of computer systems. Currently, every combination of components used to make a basic computer system must be tested and authorized prior to marketing or importation. This is extremely burdensome, especially on small manufacturers. Under the proposal, as long as authorized components are used to assemble the computers no additional testing or Commission authorization would be required. However, there will be some impact to the entities that manufacture computer CPU boards, power supplies and enclosures. We estimate there are 50–75 manufacturers of CPU boards and a similar number of manufacturers of power supplies. No estimate is available on the potential number of manufacturers of enclosures. Even with this additional impact to the manufacturers of computer CPU boards, power supplies and enclosures, the overall workload will decrease.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives: None.

List of Subjects

47 CFR Part 2

Imports, Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Computer technology, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton

Acting Secretary

[FR Doc. 95–6965 Filed 3–21–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 63

[IB Docket No. 95–22; DA 95–502; RM–8355; and RM–8392]

Foreign-Affiliated Entities: In the Matter of Market Entry and Regulation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Communications Commission has granted an extension of time in which to file comments and reply comments to its Notice of Proposed Rulemaking on Market Entry and Regulation of Foreign-Affiliated Entities. The Commission acted in response to Telefonica Larga Distancia de Puerto Rico, Inc.'s (TLD) motion for an extension of time. Because of the broad range of complex legal, economic and policy issues raised in the Notice of Proposed Rulemaking, the Commission recognized the importance of receiving a complete and balanced presentation on the numerous issues, and found that an extension of time would help achieve this objective. The Commission, however, limited the extension of time to two weeks beyond the original due date for both the comments and reply comments. In addition to being concerned about a complete and balanced presentation on the issues, the Commission is equally interested in completing this proceeding in a timely manner, therefore it limited the requested extension to two weeks beyond the original due date.

As a result of the Commission order, the due date for comments in this proceeding has been extended to April 11, 1995, and the due date for the reply comments has been extended May 12, 1995.

DATES: Comments due April 11, 1995; Reply Comments due May 12, 1995.

ADDRESSES: All comments and reply comments concerning this Notice of Proposed Rulemaking should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Troy Tanner or Ken Schagrin, International Bureau (202) 418–1470.

SUPPLEMENTARY INFORMATION:

Order

Adopted: March 15, 1995.

Released: March 15, 1995.

By the Chief, International Bureau: 1. Telefonica Larga Distancia de Puerto Rico, Inc. (TLD) requests that the time for filing Comments and Reply Comments to the *Notice of Proposed Rulemaking*[1] be extended four weeks. TRW Inc., IDB Mobile Communications, Inc., and AmericaTel Corporation join TLD in this request.

2. This proceeding seeks comments on a broad range of complex legal, economic and policy issues involving the entry and regulation of foreign-affiliated entities in the U.S. telecommunications market. The issues raised have been the subject of much debate in recent years, and the Commission is interested in receiving a complete and balanced presentation on the numerous issues. While the Commission recognizes the wide range of issues to be addressed, it is also interested in completing this proceeding in a timely manner. Therefore, the Commission will limit the requested extension of time for Comments and Reply Comments to two weeks from the original due dates of March 28, 1995, and April 28, 1995, respectively.

3. Although the Bureau does not routinely grant extension requests, we find that an extension of the deadline for Comments to April 11, 1995, would be beneficial in this proceeding as it would enable the parties to fully develop their positions on the many issues raised in this proceeding. In addition, the Bureau will extend the deadline for filing Reply Comments to May 12, 1995. The parties should note, however, that the Bureau remains committed to completing this proceeding in a timely manner and that no further extensions are contemplated.

4. Accordingly, pursuant to § 0.261 of the Commission's rules, 47 CFR 0.261, it is ordered that the deadline for filing Comments to the Notice of Proposed Rulemaking is extended to April 11, 1995, and the deadline for filing Reply Comments is extended to May 12, 1995.

Federal Communications Commission.

Scott Blake Harris,

Chief, International Bureau.

[FR Doc. 95–7017 Filed 3–21–95; 8:45 am]

BILLING CODE 6712–01–M

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[1] *Notice of Proposed Rulemaking*, IB Docket No. 95–22, RM–8355, RM–8392 (Released February 17, 1995), 60 FR 11644, March 2, 1995.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. 95–16, Notice 2]

Meeting on Regulatory Reform

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces a public meeting at which NHTSA will seek information from the public on regulatory reform actions the agency should take related to its motor vehicle regulations. This notice also invites written comments on the same subject.

DATES: Public meeting: The meeting will be held on April 7, 1995 at 9:30 a.m. Those wishing to make oral presentations at the meeting should contact Deborah Parker, at the address or telephone number listed below, April 4, 1995.

Written comments: Written comments are due by April 7, 1995.

ADDRESSES: Public meeting: The public meeting will be held at the following location: Room 2230, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Written comments: All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street SW., Washington, DC 20590. Please refer to the docket number when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Deborah Parker, Director, Special Projects Staff, NPS 01.1, NHTSA, 400 7th Street, SW., Washington, DC 20590 (telephone 202–366–4931).

SUPPLEMENTARY INFORMATION: Calling for a new approach to the way Government regulates the private sector President Clinton asked Executive Branch agencies to report to him by June 1, 1995, on ways to improve the regulatory process. Specifically, the President requested that agencies: (1) Cut obsolete regulations; (2) reward agency and regulator performance by rewarding results, not red tape; (3) create grassroots partnerships by meeting, outside of Washington, DC, with those affected by regulations and other interested parties; and (4) use consensual rulemaking, such as regulatory negotiation, more frequently. This public meeting will help NHTSA to comply with the President's directives.

The agency is focussing at this time on items (1) and (4) described above. For item (1), cut obsolete regulations, the President requested that we "conduct a page-by-page review of all * * * agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform." The President requested that our review include consideration of at least the following:

"• Is this regulation obsolete?

• Could its intended goal be achieved in more efficient, less intrusive ways?

• Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?

• Could private business, setting its own standards and being subject to public accountability, do the job as well?

• Could the States or local governments do the job, making Federal regulation unnecessary?"

To assist NHTSA in responding to this directive, the public's views on which *Motor Vehicle*—related regulations (standards, rules, etc., are all used interchangeably for this purpose) should be rescinded or revised are requested (the agency also is reviewing its non-motor vehicle related regulations but they are not the subject of this meeting). Both administratively issued and statutorily mandated regulations are the subject of this review. Suggestions should be accompanied by a rationale for the action and the expected consequences. Recommendations should be based on at least the following considerations:

• Cost-effectiveness.

• Administrative/compliance burdens.

• Whether the standard is performance-oriented, as opposed to design-oriented or is technology-restricting.

• Small business effects.

• Frequency of rulemaking to amend or clarify requirements (including inconsequentiality petitions).

• Availability of voluntary industry standards.

• Obsolete requirements.

• Enforceability of the standard.

• Whether the standard reflects a "common sense" approach to solving the problem.

In considering the consequences of any recommendation please provide the best available information on any effects on safety, consumer costs, regulated party testing/certification costs, small business impacts, competition, etc.

By motor vehicle-related regulations, NHTSA means all those standards/rules related to safety, fuel economy, theft, consumer information, damageability, and domestic content. The standards themselves and all related record-keeping and procedural requirements are included. Parts 520–594 of Title 49, Transportation, of the Code of Federal Regulations are encompassed.

This will be the second public meeting held on this subject. The first public meeting will be held in conjunction with and immediately after the agency's previously scheduled quarterly technical meeting, in Romulus, Michigan, on March 29, 1995.

With regard to item (4), consensual rulemaking, the agency wants recommendations on which active rulemakings—not those rules already in effect—would be appropriate candidates for the regulatory negotiation process. Bear in mind that these must be rulemakings in which the various interested parties would be willing to negotiate solutions. Currently, the agency is conducting a regulatory negotiation on the subject of optical headlamp aim.

Procedural Matters

As noted at the beginning of this notice, persons wishing to speak at the public meeting should contact Deborah Parker by the indicated date. To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the meeting. Thus, any person desiring assistance of auxiliary aids should contact Ms. Barbara Carnes, NHTSA Office of Safety Performance Standards, telephone (202) 366–1810, no later than April 3, 1995.

Those speaking at the public meeting should limit their presentation to 20 minutes. If the presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting so that NHTSA can readily include the material in the public record.

NHTSA staff at the meeting may ask questions of any speaker, and any participant may submit written questions for the NHTSA staff, at its discretion, to address to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentation will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim

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transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–7020 Filed 3–17–95; 3:15 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 60, No. 55

Wednesday, March 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

SUMMARY: Notice is hereby give that the Advisory Council on Historic Preservation will meet on Wednesday, March 29, 1995, in Room 5160 at the Department of the Interior Main Building, 1849 C Street NW., Washington DC beginning at 1:30 p.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Discussion of the Draft Policy Statement on Affordable Housing
III. Discussion of the Proposed Regulations Revisions
IV. Section 106 Cases
V. Executive Director's Report
VI. New Business
VII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, Room 809, Washington, DC 202–606–8503, at least seven (7) days prior the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerting the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, #809, Washington, DC 20004.

Dated: March 17, 1995.

Robert D. Bush,

Executive Director.

[FR Doc. 95–7019 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Cotton Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by cotton warehouse operators requesting to enter into a storage agreement or renew an existing storage agreement in accordance with the regulations governing the Standards for Approval of Warehouses for Cotton or Cotton Linters (7 CFR 1427.1081 *et seq.*).

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Closson, Warehouse and Inventory Division, Consolidated Farm Service Agency, United States Department of Agriculture, Room 5968–South Building. P.O. Box 2415, Washington, DC 20013, (202) 720–4018.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of CCC's Charter Act (15 U.S.C. 714 *et seq*), CCC enters into storage agreements with private cotton warehouse operators to provide for the storage of commodities owned by CCC or pledged as security to CCC for price support loans.

The regulation, 7 CFR 1427.1088, requires that all non-Federally licensed cotton warehouse operators in States that do not have a Cooperative Agreement with CCC for warehouse examinations and who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and inspection fee prior to CCC conducting the original warehouse examination. After the initial examination and upon execution of the CSA, such cotton warehouse operator must pay the annual contract fee prorated for the first year and the full contract fee annually thereafter in advance of the renewal date of the agreement.

Section 1427.1088 also provides that the amount of the contract fee will be determined and announced in the **Federal Register**. The fee schedule remains effective until changed by CCC. No fee schedule currently is in effect and CCC has not collected fees although the Standards for Approval and the Cotton Storage Agreement (CSA) provides for the collection of such fees. The Department of Agriculture has determined that the user fees will now be collected under the United States Warehouse Act from cotton warehouse operators licensed there under. A cotton user fee schedule was announced in the **Federal Register** effective October 1, 1994. CCC has now determined that a CSA contract fee will be collected from cotton warehouse operators having a CSA and not licensed under the United States Warehouse Act. This notice will establish the schedule of Contract Fees.

Determination

The fees set forth herein will be collected by CCC from non-Federally licensed warehouse operators in States which do not have a Cooperative Agreement with CCC for the examination of warehouses and who have entered into a CSA with CCC or who are seeking to enter into a CSA with CCC.

Application and Inspection Fees

The Application and Inspection fee will be computed at the rate of $65 for each 1,000 bales of storage capacity or fraction thereof, but the fee will be not less than $130 nor more than $1,300.

Contract Fees

The contract fees are as follows:

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TWELVE-MONTH CONTRACT FEE SCHEDULE

Location capacity (bales)	Contract fees (dollars)
1 to 20,000	$500
20,001 to 40,000	850
40,001 to 60,000	900
60,001 to 80,000	1,000
80,001 to 100,000	1,250
100,001 to 120,000	1,500
120,001 to 140,000	1,750
140,001 to 160,000	2,000
160,001 +	[1] 2,250

[1] Plus $50.00 per 5,000 bale capacity or fraction thereof above 160,000 bales.

Signed at Washington, DC on March 16, 1995.

Bruce R Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc 95–7049 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Zaca Mine Project Toiyabe National Forest, Alpine County, California

AGENCY: Forest Service.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service and Alpine County Planning Department have cancelled preparation of an Environmental Impact Statement/Report (EIS/EIR) for the Zaca Mine Project following withdrawal of the proposal by Western States Minerals Corporation. Public comments regarding this project are no longer needed. The Notice of Intent to Prepare an EIS was originally published on February 8, 1995 in the **Federal Register**, Volume 60, NO. 26, pages 7518–7519.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be directed to Maureen Joplin, Project Team Leader, Toiyabe National Forest, 1200 Franklin Way, Sparks, NV, 89431; telephone: 702–355–5394.

SUPPLEMENTARY INFORMATION: Western States Minerals Corporation (WSM) has withdrawn its proposed Plan of Operations (POO) for an open pit/cyanide heap leach gold/silver mine in Alpine County, California. The project would have been located approximately four miles southeast of Markleeville in sections 29, 30, 31 and 32, T10N R21E, M.D.M. Total area of proposed disturbances was 228 acres. Forest Service and Alpine County were in the process of collecting comments from other agencies and the public when WSM withdrew its proposed plan. WSM offered the following statement: "Western States Minerals Corporation has decided to discontinue permitting of its wholly owned Zaca Project at this time. This decision is based entirely upon economic reasons. The Company has other Projects that it will develop at this time, because they appear to be more economically viable in the present business climate. Western States Minerals Corporation fully intends to develop the Zaca Project at some future date."

Dated: March 10, 1995.

Gary Sayer,

Deputy Forest Supervisor, Toiyabe National Forest.

[FR Doc. 95–6961 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–11–M

Rangeland Health; Wasatch-Cache National Forest, Box Elder, Cache, Rich, Tooele, Weber, Morgan, Summit Counties, Utah and Uinta County, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to amend the Wasatch-Cache National Forest Land and Resource Management Plan to add management direction and standards and guidelines for desired future condition of rangelands.

DATES: Comments concerning the scope of the analysis should be received in writing by April 20, 1995.

ADDRESSES: Send written comments to William P. LeVere, Deputy Forest Supervisor, 8236 Federal Building, 125 South State St., Salt Lake City, Utah 84138.

FOR FURTHER INFORMATION CONTACT: Reese Pope, Planning Staff Officer, (801) 524–5188.

SUPPLEMENTARY INFORMATION: The Wasatch-Cache National Forest is proposing to amend the Wasatch-Cache National Forest Land and Resource Management Plan to add management direction and standards and guidelines for desired future condition of rangelands. The desired future condition of four range types will be defined: Riparian, uplands, alpine, and aspen. Riparian areas will be managed for mid-to-late seral ecological conditions to maintain or restore biological, physical, and aesthetic values of riparian ecosystems. Uplands will be managed for mid-to-late seral status to maintain watershed conditions. Alpine areas will be managed for protective ground cover with a diversified vegetative cover. Management of aspen will be to maintain and improve aspen sites and associated vegetation. Specific utilization standards and stubble heights will be set to move toward desired rangeland conditions.

A scoping document has been sent to 700 individuals and organizations and local and state government agencies. Preliminary issues identified by the interdisciplinary team include effects on threatened, endangered, and sensitive species, effects on riparian areas and upland watershed conditions, effects to local economies, effects on rangeland from livestock and wildlife, effects on recreational values and visual resources and effects on range condition on important wildlife habitat. Two preliminary alternatives have been identified. The proposed action which would amend the Forest Plan with new management direction for rangelands and the No Action which would continue setting direction in individual allotment management plans.

The public is invited to submit comments or suggestions to the address above. The responsible official is William LeVere, Deputy Forest Supervisor. A draft EIS is expected to be filed in May of 1995 and the final EIS filed in August of 1995.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v.

Hodel, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: March 14, 1995.

William P. LeVere,

Deputy Forest Supervisor.

[FR Doc. 95–6974 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–11–M

Timber Bridge Research Joint Venture Agreements; Solicitation of Applications and Application Guidelines

Program Description

Purpose

The Federal Highway Administration and the USDA, Forest Service, Forest Products Laboratory (FPL), are working cooperatively under Public Law 102–240, The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, on research for the development of wood in transportation structures.

The FPL is now inviting proposals for specific areas of the research under the authority of the Food Security Act of 1985 (7 U.S.C. 3318(b) and will award competitive Research Joint Venture Agreements for cooperative research related to wood in transportation structures. The specific research areas are stated within this announcement.

Eligibility

Proposals may be submitted by any Federal Agency, university, private business, non profit organization, or any research or engineering entity.

An applicant must qualify as a responsible applicant in order to be eligible for an award. To qualify as responsible, an applicant must meet the following standards:

(a) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through subagreement (s)) or contracts;

(b) Ability to comply with the proposed or required completion schedule for the project;

(c) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(d) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants, agreements, and contracts from the Federal government; and

(e) Otherwise be qualified and eligible to receive an award under the applicable laws and regulations.

Available Funding

Available funding is shown under the specific research areas, below. The FPL will reimburse the cooperator not-to-exceed eighty percent (80%) of the total cost of the research. The proposing entity may contribute the indirect costs as its portion of the total cost of the research.

Indirect costs will be reimbursed to State Cooperative Institutions. State Cooperative Institutions are designated by the following:

(a) The Act of July 2, 1862 (7 U.S.C. 301 and the following), commonly known as the First Morrill Act;

(b) The Act of August 30, 1890 (7 U.S.C. 321 and the following), commonly known as the Second Morrill Act, including the Tuskegee Institute;

(c) The Act of March 2, 1887 (7 U.S.C. 361a and the following), commonly known as the Hatch Act of 1887;

(d) The Act of May 8, 1914 (7 U.S.C. 341 and the following), commonly known as the Smith-Lever Act;

(e) The Act of October 10, 1962 (16 U.S.C. 582a and the following), commonly known as the McIntire-Stennis Act of 1962; and

(f) Sections 1429 through 1439 (Animal Health and Disease Research), sections 1474 through 1483 (Rangeland Research) of Public Law 95–113, as amended by Public Law 97–98.

Definitions

(a) Grants, Agreements, and Licensing Officer means the Grants, Agreements, and Licensing Officer of the FPL and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) Awarding Official means the Grants, Agreements, and Licensing Officer and any other officer or employee of the Department of Agriculture to whom the authority to issue or modify awards has been delegated.

(c) Budget Period means the interval of time (usually twelve months) into which the project period is divided for budgetary and reporting purposes.

(d) Department or USDA means the U.S. Department of Agriculture.

(e) Research Joint Venture Agreement means the award by the Grants, Agreements, and Licensing Officer or his/her designee to a cooperator to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research problem area identified herein.

(f) Cooperator means the entity designated in the Research Joint Venture Agreement award document as the responsible legal entity to whom a Research Joint Venture Agreement is awarded.

(g) Methodology means the project approach to be followed to carry out the project.

(h) Peer Review Group means an assembled group of experts or consultants qualified by training and/or experience in particular scientific or technical field to give expert advice on the technical merit of grant applications in those fields.

(i) Principal Investigator means an individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the application and approved by the Grants, Agreements, and Licensing Officer.

(j) Project means the particular activity within the scope of one or more of the research areas identified herein.

(k) Project Period means the total time approved by the Grants, Agreements, and Licensing Officer for conducting the proposed project as outlined in an approved application or the approved portions thereof.

(l) Research means any systematic study directed toward new or fuller knowledge of the subject field.

Areas: Proposals are currently being solicited in the following areas:

(a) Problem Area I: Copper Naphthenate Preservative for Bridge Applications. To develop a method for the separation and analysis of naphthenic acid components of copper naphthenate preservatives and to determine the relative efficacy of these components to decay fungi. Total estimated cost of the research: $60,000; estimated Federal funding: $48,000.

(b) Problem Area II: Development of Crash-Tested Bridge Railings. To develop and evaluate by full-scale crash testing two bridge railing systems, each including the bridge railing and the approach railing transition, for glued laminated timber bridges constructed of longitudinal girders and transverse deck panels. Total estimated cost of the research: $242,500; estimated Federal funding: $194,000.

(c) Problem Area III: Manual for Timber Bridge Inspection. To develop a comprehensive, stand-alone reference on the inspection of timber highway

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bridges, including superstructures and substructures, which will present the knowledge, skills, and tools needed by bridge personnel to complete an effective inspection of timber bridges. Total estimated cost of the research: $72,500; estimated Federal funding: $58,000.

(d) Problem Area IV: Moisture Protection for Timber Members: To develop, refine, and/or evaluate a variety of coatings and coverings for protecting bridge members from moisture. Total estimated cost of the research: $43,750; estimated Federal funding: $35,000.

For additional information, contact John G. Bachhuber, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398.

Proposal Preparation

Application Materials

An Application Kit and a copy of this solicitation will be made available upon request. The kit contains detailed information on each Problem Area, required forms, certifications, and instructions for preparing and submitting agreement applications. Copies of the Application Kit and this solicitation may be requested from: Joanne M. Bosch, Grants and Agreements, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398, Telephone Number (608) 231–9205.

Proposal Submission

What to Submit

An original and five copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (Do not bind). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals must be received by the Grants, Agreements, and Licensing Officer by 2 p.m. June 2, 1995, and should be sent or delivered to the following address: Grants, Agreements, and Licensing Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398, Telephone (608) 231–9282.

Proposal Review, Evaluation, and Disposition

Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within solicitation guidelines will be eliminated from competition; one copy will be returned to the applicant and the remainder will be destroyed. All accepted proposals will be reviewed by the Grants, Agreements, and Licensing Officer, qualified officers or employees of the Department, and by peer panel(s) of scientists or others who are recognized specialists in the areas covered by the proposals. Peer panels will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals.

Evaluation Criteria

The peer review panel(s) will take into account the following criteria in carrying out its review of responsive proposals submitted:

(a) Scientific merit of proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness, and originality.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal and performance record and/or potential for future accomplishments;

(2) Time allocated for specific attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

Proposal Disposition

When the peer review panel(s) has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel(s), will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review.

USDA reserves the right to negotiate with the Principal Investigator and/or the submitting entity regarding project revisions (e.g., reduction in scope of work), funding level, or period of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed

Supplementary Information

Grant Awards

Within the limit of funds available for such purpose, the awarding official shall make awards to those responsible eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines.

The date specified by the awarding officials as the beginning of the project period shall not be later than September 1, 1995.

All funds awarded shall be expended only for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, and the applicable Federal cost principles.

Obligation of the Federal Government

Neither the approval of any application nor the award of any Research Joint Venture Agreement commits or obligates the United States in any way to provide further support of a project or an portion thereof.

Other Conditions

The FPL may, with respect to any class of awards, impose additional conditions prior to or at the time of any award, when in the FPL's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of Research Joint Venture Agreement funds.

Done at Madison, WI, on March 13, 1995.

Susan L. LeVan,

Acting Director.

[FR Doc. 95–6959 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

East Wenatchee Watershed, Washington; Notice

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of deauthorization of federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the East Wenatchee Watershed project, Douglas County, Washington, effective on February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Natural Resources Conservation Service, W. 316 Boone Avenue, Suite #450, Spokane, Washington 99201–2348, telephone: (509) 353–2337.

Dated: March 13, 1995.

Lynn A. Brown,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 95–6960 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–16–M

Rural Utilities Service

Municipal Interest Rates for Second Quarter of 1995

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the second quarter of 1995.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the second calendar quarter of 1995.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning April 1, 1995, and ending June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Shea, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230–s, 14th Street & Independence Avenue SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the second calendar quarter of 1995 for municipal rate electric loans. Pursuant regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the second calendar quarter of 1995.

Interest rate term ends in (year)	Interest rate (0.000 percent)
2016 or later	6.000
2015	6.000
2014	6.000
2013	6.000
2012	6.000
2011	5.875
2010	5.875
2009	5.750
2008	5.750
2007	5.625
2006	5.500
2005	5.500
2004	5.375
2003	5.375
2002	5.375
2001	5.250
2000	5.125
1999	5.125
1998	5.000
1997	4.875
1996	4.625

Dated: March 13, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–7048 Filed 3–21–95; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held April 18, 1995, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: March 17, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–7018 Filed 3–21–95; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications: San Francisco/Oakland

AGENCY: Minority Business Development Agency.

ACTION: Correction.

SUMMARY: On page 12738, in the issue dated Wednesday, March 8, 1995, solicitation for the operation of the Minority Business Development Center (MBDC) is corrected to read, "San Francisco/Oakland".

The MBDC will provide service in the San Francisco/Oakland, California Metropolitan Area. The award number of the MBDC will be 09–10–95015–01.

FOR FURTHER INFORMATION CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

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Dated: March 16, 1995.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95-6995 Filed 3-21-95; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B-256, Gaithersburg, MD 20899; Fax 301-869-2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 93-051

Title: Process For The Chemical Preparation of Bismuth Telluride and Bismuth Telluride Composite Thermoelectric Materials

Description: An aqueous chemical route to a bismuth telluride precursor is described. Bismuth telluride is readily generated from the precursor by hydrogen reduction at 275 deg C, and exhibits a particle size of about 100nm. This process provides fine-particle, polycrystalline bismuth telluride from commonly available chemicals in yields exceeding 90%.

NIST Docket No. 93-059

Title: Strut Structure and Rigid Joint Therefor

Description: This NIST invention is a system of mechanical joints and clamps for assembling lightweight struts into a rigid structure. The system is designed to hold several large objects, such as telescope mirrors, in precise and stable positions relative to each other.

NIST Docket No. 94-005

Title: Particle Calorimeter With Normal Metal Base Layer

Description: NIST researchers have designed a microcalorimeter based x-ray detector using a normal-metal absorber and a normal-insulator-superconductor tunnel junction thermometer. The detector has very fast response time, on the order of 10 to 100 microseconds, and is capable of detecting a minimum energy of 1 eV.

NIST Docket No. 94-008

Title: Josephson D/A Converter With Fundamental Accuracy

Description: The invention is a superconducting integrated circuit that uses a digital input to rapidly select any one of several thousand quantized output voltages. The voltages are generated directly by microwave synchronized Josephson junctions and are as accurate as the externally generated microwave frequency. The circuit makes fast voltage comparisons and the digital synthesis of ultra-accurate AC waveforms possible. These AC waveform's amplitude derives directly from the internationally accepted definition of the volt.

NIST Docket No. 94-019

Title: Transparent Carbon Nitride Films, Process For Making Carbon Nitride Films And Compositions Of Matter Comprising Transparent Carbon Nitride Films

Description: This invention is a novel process to produce transparent, hard carbon nitride films. The films are useful on lenses, windows, and mirrors where durability is often limited by scratches or other means of surface damage.

Dated: March 15, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95-7057 Filed 3-21-95; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 030695A]

Atlantic Sea Scallop Fishery; Scoping Meetings; SEIS

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); scoping meetings; request for comments.

SUMMARY: NMFS announces the intention of the New England Fishery Management Council (Council) to prepare an SEIS for proposed Amendment 5 to the Atlantic Sea Scallop Fishery Management Plan (FMP). NMFS informs the public herewith of the opportunity to participate in the further development of Amendment 5 to the FMP. All persons affected by, or otherwise interested in, the proposed amendment are invited to participate in determining the scope of significant issues to be considered in the SEIS by submitting written comments. The scoping process also will identify issues that are not significant and eliminate them from detailed study.

DATES: See **SUPPLEMENTARY INFORMATION** for dates and times of scoping meetings. Written comments must be received by April 19, 1995.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for meeting locations. Send written comments on the scoping process and scope of the SEIS to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, 617-231-0422; FAX: 617-565-8937.

SUPPLEMENTARY INFORMATION: The Council will discuss Amendment 5 at regularly scheduled meetings. The public will be notified (by a **Federal Register** notice) of the specific agendas at least 2 weeks prior to Council meetings. There is a preliminary document available from the Council that briefly describes the alternatives currently under consideration.

One of these alternatives is consolidation. Consolidation means allowing days at sea (DAS) or other units of fishing activity to be redistributed among fewer boats, so the remaining vessels have more opportunity to fish. It has already been discussed at the following Council meetings:

October 26, 1994, Danvers, MA;
December 8, 1994, Danvers, MA;
January 12, 1994, Danvers, MA; and
February 16, 1995, Danvers, MA.

The currently scheduled scoping meetings are as follows:

1. March 31, 1995, 4 p.m., Holiday Inn, Maine Route 3, Ellsworth, ME;
2. April 3, 1995, 4 p.m., Seaport Inn, 110 Middle St., Fairhaven, MA;

3. April 4, 1995, 7 p.m., Little Washington, Department of Environmental, Health and Natural Resources, 1424 Carolina Avenue, Washington, NC; and
4. April 5, 1995, 5 p.m., Grand Hotel, Oceanfront and Philadelphia Avenue, Cape May, NJ.

Atlantic sea scallop stocks are over-exploited and at low levels of abundance. Amendment 4 to the FMP was implemented on March 1, 1994 (59 FR 12, January 19, 1994), and was intended to eliminate overfishing through an incremental effort reduction program, gear modifications such as ring and mesh size increases, and other measures. It was also expected that the number of limited access vessels would remain stable for the duration of the 7-year schedule.

Amendment 4 to the FMP states that vessels with a DAS allocation of 150 days per year will yield revenues that are insufficient, on average, to cover the fixed costs for vessels larger than 50 gross registered tons. A DAS allocation of 150 days is projected for year 4 or 5 of the 7-year schedule, depending on the initial fishing mortality rate. The amendment further states that if recruitment falls to what is considered to be average or below average levels, many vessel operations will become uneconomic, regardless of the management in place at that time. During 1994, the first year of effort reduction under Amendment 4, recruitment has been below average. The result has been a request by scallop advisors to redistribute DAS among the remaining vessels. The amendment will not do this until the pause in DAS reductions, which is scheduled for the third year. The consolidation of DAS is expected to allow the remaining vessels to remain economically viable.

The Council's Scallop Industry Advisory Committee believes that consolidation is needed as soon as possible to minimize financial failures caused by present and future reductions in DAS and poor scallop stock conditions.

The Council is in the process of identifying management alternatives to achieve these goals. The current range of options includes, but is not limited to, a private program to buy back vessels, a government buy-back program, limits on total allowable catch with individual transferrable quotas, transferrable DAS, a use-it-or-lose-it provision under which vessels that do not use their DAS or quota allocation will lose their scallop permits, and a prohibition on shellstocking.

The Council expects that proposed regulations implementing the recommendations of the industry advisors may have significant economic and social effects. The Council recognizes that these effects will extend beyond the individuals, families and communities that principally depend on scallops to other fisheries in the region, due to the displacement of fishing effort caused by the scallop regulations. This displacement could also potentially affect the status of these other fishery stocks. For this reason the Council has determined that it will hold scoping meetings to determine whether or not an SEIS is appropriate.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 15, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-6847 Filed 3-21-95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 031595B]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: The industry implementation team for the Sablefish and Halibut Individual Fishing Quota (IFQ) Program will hold a meeting, on April 5-6, 1995, at the NMFS Regional office, 709 W. 9th Street, Juneau, AK.

The agenda for the meeting will include the following subjects:

1. Amount of IFQ fish that can be retained onboard in a particular area,
2. Clarification of "prelanding written clearance" and "preclearance reports" requirements,
3. Coordination of the IFQ Program and Research Plan,
4. Vessel and use caps,
5. Certified mail requirement,
6. Sub-leasing of quota shares or IFQs,
7. Shipping report problems,
8. Clarification that vessel caps do not include Community Development Quota allocations,
9. Transshipment reports, and
10. Overage provision.

The Implementation Team will provide a written report of the meeting to the North Pacific Fishery Management Council at its meeting the week of April 17, 1995, in Anchorage.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271-2809, at least 5 working days prior to the meeting date.

Dated: March 16, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management,

National Marine Fisheries Service.

[FR Doc. 95-7003 Filed 3-21-95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 031595A]

Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold meetings, April 3-7, 1995, at the Red Lion Hotel Columbia River, Portland, OR; telephone: (503) 283-2111.

Council Meetings

On April 4, the Council will meet in a closed session (not open to the public) to discuss personnel matters and litigation from 8:00-8:30 a.m. The open session will begin at 8:30 a.m. on April 4, and each day thereafter at 8:00 a.m., and may continue into the evening hours, if necessary, to complete business.

The following items are included on the Council's agenda:

A. Call To Order

1. Opening remarks, introductions, roll call; and
2. Approval of proposed agenda.

B. Salmon Management

1. Tentative adoption of 1995 ocean salmon management measures for Salmon Technical Team analysis;
2. Methodology reviews;
3. Clarification of tentative 1995 measures, if necessary;
4. Update of Council salmon management cycle; and
5. Final action on 1995 measures, including specification of a halibut to chinook ratio in the 1995 troll fishery

C. Habitat Issues

Consider recommendation of the habitat steering group.

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D. Groundfish Management

1. Status of Federal regulations implementing Council actions;
2. 1995 harvest guideline for sablefish;
3. Status of fisheries and inseason trip limit adjustments;
4. Rockfish sport bag limit off Washington;
5. Oregon data collection activities;
6. Review of surveys and assessments for Dover sole, thornyheads and sablefish;
7. Plans for NMFS groundfish research in Newport, OR;
8. Review of overfishing definition;
9. Review of groundfish management cycle; and
10. Groundfish management team reports on new issues.

E. Administrative Matters and Other Matters

1. Budget Committee report;
2. Status of legislation;
3. June meeting agenda;
4. Operating procedures;
5. Shark baiting in the Monterey Bay National Marine Sanctuary;
6. Management of the Dungeness crab fishery; and
7. Summary of research indicating reduced zooplankton productivity off California.

Other Meetings

The Scientific and Statistical Committee will meet on April 3, at 9:00 a.m., and April 4, at 8:00 a.m., to address scientific issues on the Council agenda.

The Salmon Technical Team will meet, as necessary (irregular hours), throughout the week, April 3–7, to prepare impact analyses of the proposed salmon management measures for 1995.

The Groundfish Management Team will meet on April 3, at 8:00 a.m., to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will meet on April 3, at 1:00 p.m., on April 4, at 8:00 a.m., and on April 5 (if necessary) at 7:00 a.m., to address groundfish management items on the Council agenda.

The Salmon Advisory Subpanel will meet on April 3, at 9:00 a.m., and at 8:00 a.m. each day thereafter through April 7, to address salmon management items on the Council agenda.

The Habitat Steering Group will meet on April 3, at 10:00 a.m., to consider activities affecting the habitat of fish stocks managed by the Council.

The Committee on Council Procedures will meet on April 3, at 1:00 p.m., to recommend revisions to the Council's operating procedures.

The Budget Committee will meet on April 3, at 3:00 p.m., to review the status of the fiscal year 1995 Council budget and discuss funding priorities for fiscal year 1996.

The Observer/Data Collection Program Steering Committee will meet on April 3, at 7:00 p.m., to review proposed Oregon State data collection program and related issues.

The Enforcement Consultants will meet on April 4, at 7:00 p.m., to address enforcement issues related to Council agenda items.

The Groundfish Permit Review Board will meet on April 7, at 8:00 a.m., for orientation of new members and to hear appeals. The hearing on appeals will begin at 10:00 a.m.

Detailed agendas for the above advisory meetings will be available from the Council after March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: March 16, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–7002 Filed 3–21–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031095D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a public display permit (P585).

SUMMARY: Notice is hereby given that Mr. Emil Popescu, 1829 La Vante Avenue, Las Vegas, NV 89109, has applied in due form for a public display permit.

DATES: Written comments must be received on or before April 21, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, copies of this application are being forwarded to the Marine Mammal Commission and the Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested to import three captive Patagonian sea lions (*Otaria byronia*), under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The animals are to be held by Mr. Popescu (Animal and Plant Health Inspection Service License No. 88–C–112) at the Bonnie Springs Ranch Zoo, Old Nevada, NV 89004 (Animal and Plant Health Inspection Service License No. 88–C–013). The Bonnie Springs Ranch Zoo is open to the public on a regularly scheduled basis without admission charge. Mr. Popescu will offer an educational program that is based on the standards of both the American Zoo and Aquarium Association and the Alliance of Marine Mammal Parks and Aquariums. The display program for the animals will be conducted primarily at the Bonnie Springs Ranch Zoo, but a display will also take place in the Riviera Hotel.

Dated: March 16, 1995.

Art Jeffers,

Acting Chief, Division of Permits & Documentation, National Marine Fisheries Service.

[FR Doc. 95–7001 Filed 3–21–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

March 17, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: March 17, 1995

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka is being amended to no longer require an export visa for cotton and man-made fiber textile products in part-Categories 340–O/640–O, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after March 14, 1995. Goods exported during the period March 14, 1995 through April 13, 1995 shall not be denied entry if visaed as 340–O/640–O.

Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 17, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 1, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Sri Lanka for which the Government of the Democratic Socialist Republic of Sri Lanka has not issued an appropriate visa.

Effective on March 17, 1995 you are directed to no longer require a part-category visa for 340–O/640–O [1] for goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after March 14, 1995. Goods exported during the period March 14, 1995 through April 13, 1995 shall not be denied entry if visaed as 340–O/640–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–7032 Filed 3–21–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 340–O/640–O: all HTS numbers except 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050, 6205.20.2060 (340–Y); 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 (640–Y).

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Mapping for Future Operations

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Mapping for Future Operations will meet in closed session on April 6–7, 1995 at the Pentagon in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will develop recommendations for implementing a cost-effective approach for providing geospatial information and products to Department of Defense users.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 16, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 95–6958 Filed 3–21–95; 8:45 am]

BILLING CODE 5000–04–M

Telecommunications Service Priority (TSP) System Oversight Committee

AGENCY: Department of Defense, National Communications System.

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Thursday, April 20, 1995, from 9 a.m. to 4:45 p.m. and Friday, April 21, 1995, from 9 a.m. to 11 a.m. The meeting will be held at the Citadel in Charleston South Carolina. The agenda is as follows:

—Opening/Administrative Remarks
—Review of November 6, 1994 Meeting Summary
—TSP Program Office Update
—CPAS Working Group Reports
—Vendor to Vendor Reconciliation Report
—Review of Action Items
—Old Business/New Business.

Anyone interested in attending or presenting additional information to the Committee, please contact the NCS TSP Program Office, Bernard Farrell (703) 607–4901 or Betty Hoskin (703) 607–4932, by April 13, 1995.

Dated: March 16, 1995

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Department of the Navy

Notice of Extension of the Public Review Period for the Department of the Navy Draft Environmental Impact Statement for the Disposal and Reuse of Naval Hospital Long Beach, Long Beach, California and Notice of Availability of Specific Materials Referenced Therein

The public review and comment period for the Draft Environmental Impact Statement for the Disposal and Reuse of Naval Hospital Long Beach, Long Beach, California (DEIS) is extended until 5 April 1995. The reason for this extension is to make available for review and comment preliminary working papers that were erroneously referenced in the DEIS. The preliminary working papers, that were to be part of a joint City of Long Beach/United States Navy Draft Environmental Impact Report/Draft Environmental Impact Statement for the Closure and Demolition of the Long Beach Naval Hospital and Construction of the Long Beach Power Center Los Angeles County, California, were never completed or published and only exist as working papers. The responsibility for this error rests entirely with the

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Navy. Although there is no requirement to distribute reference materials, those working papers are now being made available for review at the following locations:

Long Beach

Long Beach Public Library, Main Branch, 101 Pacific Avenue, Long Beach, CA 90822–1097
Bach Library Branch, 4055 Bellflower Boulevard, Long Beach, CA 90808
El Dorado Library Branch, 2900 Studebaker Road, Long Beach, CA 90815
Community and Environmental Planning, 333 West Ocean Boulevard, 5th Floor, Long Beach, CA 90802

Lakewood

Angelo Iacaboni Library Branch, 4990 Clark Avenue, Lakewood, CA 90712
George Nye, Jr. Library Branch, 6600 Del Amo Boulevard, Lakewood, CA 90713
Community Development Department, 5050 Clark Avenue, Lakewood, CA 90714

Hawaiian Gardens

Hawaiian Gardens Public Library, 12100 East Carson Street, #E, Hawaiian Gardens, CA 90716
Community Development Department, 21815 Pioneer Boulevard, Hawaiian Gardens, CA 90716.

All other materials referenced in the DEIS remain available by contacting the person listed below. Please provide review comments no later than 5 April 1995 to Jo Ellen Anderson (Code 232.JA), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 93132–5190; Phone number (619) 532–3912, Fax number (619) 532–3824.

Dated: March 17, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–7056 Filed 3–21–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 17, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Star Schools Program
Frequency: Annually
Affected Public: Businesses or other for-profit; Non-profit institutions; State, Local or Tribal Governments
Reporting Burden:
Responses: 50
Burden Hours: 4,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used to apply for grants under the Star Schools Program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to comply with the statute and award funds in FY 95 for the program.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Application for Grants Under the Dwight D. Eisenhower Professional Development Program—Federal Activities Program
Frequency: Annually
Affected Public: Non-profit institutions; State, Local or Tribal Governments
Reporting Burden:
Responses: 200
Burden Hours: 14,400
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational agencies to apply for grants under the Dwight D. Eisenhower Professional Development Federal Activities Program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7075 Filed 3–21–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

NAME: Formerly Utilized Site Remediation Program (FUSRAP) Subcommittee to the Environmental Management Advisory Board.

DATES AND TIMES: Monday, April 3, 1995 from 10:30 a.m. to 5:30 p.m.; Tuesday, April 4, 1995 from 8:30 a.m. to 4:30 p.m.

PLACE: Comsat Building, 950 L'Enfant Plaza, Lobby level conference room, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400 or internet James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Committee. The purpose of the FUSRAP Committee is to establish guiding principles for the implementation of the Department of Energy's FUSRAP efforts. The principles will promote consistent and cost effective remedies for the FUSRAP projects.

Tentative Agenda

Monday, April 3, 1995

The first meeting of the FUSRAP committee will begin at 10:30 a.m. with an introduction of participants and opening remarks. The group will discuss DOE program needs and the purpose of the FUSRAP Committee, and begin to draft guiding principles. The guiding principles will establish a clear focus for DOE and the public for the stakeholder forum in May. There will be time for public comment before adjourning at 5:00 p.m.

Tuesday, April 4, 1995

The meeting will begin at 8:30 a.m. with a discussion of a process for developing action principles. There will be briefings on selected issues and discussions on the draft guiding principles and the stakeholder review process. Assignments will be handed out and there will be time for public comment before adjourning at 4:30 p.m.

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address, internet address, or telephone number listed above. Individuals may also register on April 3, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. The Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Meeting minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 17, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–7071 Filed 3–21–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, the Fernald Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), the Fernald Citizens Task Force.

DATES: The next meeting of the Task Force will be on Tuesday, March 28, 1995, from 5:00 p.m. to 6:45 p.m.

ADDRESSES: The March 28 meeting will be held at: Venice Fire House, 2565 Cincinnati-Brookville Road, Ross, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

5:00 Call to Order
5:05 Discuss Site Priorities
6:00 Opportunity for Public Comment
6:15 Discussion of Potential Recommendation
6:45 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. The documents and other materials relevant to the meeting's subjects are being developed by the Task Force staff. They will be distributed at the meeting. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on March 17, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–7073 Filed 3–21–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Hanford Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, April 6: 8:30 a.m.–5:00 p.m. Friday, April 7: 8:30 a.m.–4:00 p.m.

ADDRESSES: The session will be held at: Tower Inn Best Western, 1515 George Washington Way, Richland, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator,

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Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

April Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: Pump and Treat Issues, Privatization, 100 Area Operable Unit Plans, and the '97 Budget Overview. The Committee will also receive updates from various Subcommittees, including reports on: the Facility Transition TPA Negotiations, Tank Safety and Emergency Response (C–106), Public Involvement, USDOE Environmental Justice Strategy, Double Shell Tanks, and the CERE Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on March 17, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–7072 Filed 3–21–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project Nos. 2113, 2239, 2476, and 1999, 2212, 2590, and 2256, 2255, 2291, and 2292—WI]

Wisconsin Valley Improvement Company, Tomahawk Power and Pulp Company, Wisconsin Public Service Corporation, Weyerhaeuser Paper Company, Consolidated Water Power Company, Nekoosa Papers, Inc.; Notice of Intent To Hold Public Meetings in Rhinelander and Rib Mountain, Wisconsin, To Discuss the Draft Environmental Impact Statement (DEIS) for the Proposed Relicensing of the Existing Wisconsin River Headquarters, Kings Dam, Jersey, Wausau, Rothschild, Wisconsin River Division, Wisconsin Rapids, Centralia, Port Edwards and Nekoosa Projects

March 16, 1995.

On February 23, 1995, the Commission staff mailed the Wisconsin River Basin DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of the proposed relicensing of the Wisconsin River Headquarters project (no power; regulates flows to the Wisconsin River); 2.7 megawatt (MW) Kings Dam; 0.512 MW Jersey; 5.4 MW Wausau; 4.66 MW Rothschild; 6.4 MW Wisconsin River Division; 9.02 MW Wisconsin Rapids; 3.2 MW Centralia; 3.592 MW Port Edwards; and 3.78 MW Nekoosa projects. The projects are located in Vilas, Forest, Oneida, Lincoln, Marathon, Portage, and Wood counties, Wisconsin, and in Gogebic County, Michigan.

The public meetings will be recorded by a court reporter and are scheduled as follows: (1) A meeting on the Wisconsin Headwaters Project No. 2113, will be held at 7 p.m. on Tuesday, April 4, 1995, at the Claridge Motor Inn (Best Western), 70 N. Stevens Street, Rhinelander, Wisconsin; and (2) a meeting on the 9 hydropower projects will be held at 7 p.m. on Wednesday, April 5, 1995, at Wausau Inn and Conference Center, 2001 N. Mountain Road, Rib Mountain, Wisconsin.

At the meetings, Commission staff will summarize major DEIS findings and recommendations. Resource agency personnel and other interested persons will be provided an opportunity to submit oral and written comments regarding the DEIS for the Commission's public record. Written comments on the DEIS may also be sent to: The Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20426.

Comments must be received by April 17, 1995. All correspondence should include the appropriate project name(s) and number(s) on the first page of the correspondence.

The DEIS considers over 400 resource recommendations received from license applicants, citizens, resource agencies, and organizations. Resource enhancements relating to hydrologic flow regulation, recreation, land use, fish, wildlife, water quality, reservoir shoreline erosion, vegetation resources and other resource issues are proposed.

All of the projects are proposed to continue operation in a run-of-river mode with no expansion of hydroelectric generating capacity. In major findings, staff recommends adoption of the licensee's hydrological flow regime for the 21 headwater reservoirs together with staff recommended enhancements which would protect water quality in the Wisconsin River, enhance recreation in certain headwater man-made lakes, and generally maintain existing fishing and flood control benefits throughout the Wisconsin River. For entrainment issues at the nine hydroelectric reservoirs, the DEIS finds that avoidance and protection measures are not feasible, that entrainment is biologically insignificant, and that limited payments for enhancement of fishery resources may be appropriate.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6981 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–32–000, et al.]

Coastal Technology Salvador, S.A. de C.V., et al.; Electric Rate and Corporate Regulation Filings

March 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Coastal Technology Salvador, S.A. de C.V.)

[Docket No. EG95–32–000]

On February 27, 1995, Coastal Technology Salvador, S.A. de C.V. ("Applicant"), Calle Arturo Ambrogi #124, Colonia Escalon, San Salvador, El Salvador, C.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Applicant states that it is an El Salvador corporation which intends to

operate and maintain all or part of certain generating and transmission facilities in El Salvador. Applicant states that these facilities will consist of a 91 MW electric generating facility located in the vicinity of San Salvador, El Salvador, including 17 medium speed diesel electric generators and related interconnection facilities.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Coastal Nejapa Ltd.

[Docket No. EG95–33–000]

On February 27, 1995, Coastal Nejapa Ltd. ("Applicant"), c/o Paget-Brown & Company Ltd., West Wind Building, P.O. Box 1111, Grand Cayman, Cayman Islands, B.W.I., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Cayman Islands Company which intends to own part of certain generating and transmission facilities in El Salvador. Applicant states that these facilities will consist of a 91 MW electric generating facility located in the vicinity of San Salvador, El Salvador, including 17 medium speed diesel electric generators and related interconnection facilities.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. North American Energy Services Co.

[Docket No. EG95–34–000]

On March 1, 1995, North American Energy Services Company, a Washington corporation ("Applicant"), with its principal executive office at Issaquah, Washington, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations (the "Application").

Applicant has entered into an operation and maintenance agreement with Turbine Power Co. S.A., a company organized under the laws of the Republic of Argentina, to operate and maintain a 123-megawatt natural gas-fired, electric power generating facility located at General Roca, Argentina (the "Project"). Project facilities also include a gas pipeline that interconnects with a regional gas carrier's pipeline, a natural gas processing unit, and a 132-kV switching station which is interconnected with a 132 kV transmission line owned by Energia Rio Negro Sociedad del Estado ("ERSE"), the state-owned electric company of the Province of Rio Negro, Republic of Argentina. The Project is expected to commence generating electric power during March 1995. All of the power generated at the Project will be sold at wholesale by the Project's owner, Turbine Power Co. S.A., to ERSE pursuant to a purchase and sale agreement.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Nejapa Power Co.

[Docket No. EG95–35–000]

On February 27, 1995, Nejapa Power Company ("Applicant"), Calle Arturo Ambrogi #124, Colonia Escalon, San Salvador, El Salvador, C.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware Limited Liability Company which intends to own certain generating and transmission facilities in El Salvador. Applicant states that these facilities will consist of a 91 MW electric generating facility located in the vicinity of San Salvador, El Salvador, including 17 medium speed diesel electric generators and related interconnection facilities.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. 1994 El Salvador Power Trust, Acting Through its Trustee, State Street Bank and Trust Company)

[Docket No. EG95–36–000]

On March 2, 1995, 1994 El Salvador Power Trust, acting through its Trustee, State Street Bank and Trust Company, 225 Franklin Street, Boston, Massachusetts 02110, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a business trust organized and in good standing under the laws of the Commonwealth of Massachusetts. Applicant states that it owns a ninety-nine percent ownership interest in Nejapa Power Company, a Delaware limited liability company. Applicant states that Nejapa Power Company intends to construct and own part or all of an eligible facility. Applicant states that the eligible facility will consist of a ninety-one Megawatt electric generating facility located in the vicinity of San Salvador, El Salvador. Applicant states that the eligible facility will include seventeen medium speed diesel electric generators and related facilities necessary to interconnect with the facilities of Commission Ejecutiva Hidroelectria Del Rio Lempa, the Salvadoran national utility, so as to effect sales of electric energy at wholesale to such utility.

Comment date: April 7, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Virginia Electric and Power Co.

[Docket No. ER94–1043–001]

Take notice that on January 26, 1995, Virginia Electric and Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United, Inc.

[Docket No. ER95–67–001]

Take Notice that on February 24, 1995 UtiliCorp United, Inc. tendered for filing an amendment to its filing in this docket. The amendment consists of a revised Opportunity Sales Tariff and revised charges under its tariff and cost support for those charges. UtiliCorp states that the filing has been made in compliance with the Commission's order of February 9, 1995.

Comment date: March 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Co.

[Docket No. ER95–206–000]

Take notice that on February 28, 1995, Central Illinois Public Service Company (CIPS) submitted a corrected Index of Purchases to its Coordination Sales Tariff. The revised Index simply corrects a minor typographical error.

CIPS has asked for waiver of the Commission's notice requirements to the extent necessary to permit an effective date of January 1, 1995 for the corrected Index.

Copies of this filing were served on the Illinois Commerce Commission and

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all parties which have executed service agreements under the Tariff. A copy of the filing is also available for public inspection at CIPS' offices in Springfield, Illinois.

Comment date: March 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket Nos. ES95–24–000,) and ES95–24–001]

Take notice that on February 28, 1995, UtiliCorp United Inc. (UtiliCorp) filed an application under Section 204 of the Federal Power Act and an amended application on March 7, 1995, seeking authorization to:

- Issue up to and including 5,000,000 shares of common stock, par value $1.00 per share,
- Issue up to and including $200 million of debt securities,
- Issue $8,190,000 of secured notes, and
- Guarantee payment by a UtiliCorp subsidiary of obligations under securities to be issued by the subsidiary and to borrow up to $100 million from such subsidiary.

Also, UtiliCorp requests exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: April 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Ocean State Power; Ocean State Power II

[Docket Nos. FA93–63–001 and FA93–70–001]

Take notice that on March 3, 1995, Ocean State Power and Ocean State Power II tendered for filing its compliance filing in the above-referenced dockets.

Comment date: March 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

11 White Oak Energy Company L.L.C. (Lockport Project)

[Docket No. QF95–122–000]

On March 13, 1995, White Oak Energy Company L.L.C. (White Oak) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure of White Oak's small power production facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. White Oak Energy Company L.L.C. (Joliet Project)

[Docket No. QF95–123–000]

On March 13, 1995, White Oak Energy Company L.L.C. (White Oak) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure of White Oak's small power production facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7034 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–702–000, et al.]

Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Docket No. ER95–702–000]

Take notice that on March 6, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and CNG Power Services Corporation (CNG). This Service Agreement specifies that CNG has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and CNG to enter into separately scheduled transactions under which NMPC will sell to CNG capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of February 15, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and CNG.

Comment date: March 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER95–703–000]

Take notice that on March 6, 1995, Commonwealth Edison Company (ComEd) submitted a Service Agreement, dated February 3, 1995, establishing NorAm Energy Services (NorAm) as a customer under the terms of ComEd's Transmission Service Tariff TS–1 (TS–1 Tariff). The Commission has previously accepted the TS–1 Tariff for filing and suspended rates (as modified) in Docket No. ER93–777–000.

ComEd requests an effective date of February 3, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon NorAm and the Illinois Commerce Commission.

Comment date: March 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Co.; Metropolitan Edison Co.; Pennsylvania Electric Co.

[Docket No. ER95–704–000]

Take notice that on March 6, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Public Service Electric and Gas Company (PSE&G), dated February 16, 1995. This Service Agreement specifies that PSE&G has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and PSE&G to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 16, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas and Electric Corp.

[Docket No. ER95–705–000]

Take notice that on March 6, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing a Service Agreement for (Commission) between CHG&E and North American Energy Conservation, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR § 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Co.

[Docket No. ER95–709–000]

Take notice that on March 7, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between American Municipal Power-Ohio and Virginia Power, dated February 28, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to American Municipal Power—Ohio under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of Service Schedule B included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER95–711–000]

Take notice that on March 7, 1995, Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power & Light Company (AP&L), filed revisions to the rates and the Transmission Loss Factor under (1) the Power Coordination Interchange and Transmission Service Agreement between AP&L and Conway, West Memphis, and Osceola, Arkansas; Campbell and Thayer, Missouri; City Water & Light Plant of Jonesboro, Arkansas; Arkansas Electric Cooperative Corporation; (2) the Transmission Service Agreement between AP&L and the City of Hope, Arkansas; (3) the Transmission Service Agreement between AP&L and the City of Hope, Arkansas; (4) the Hydroelectric Power Transmission and Distribution Service Agreement between AP&L and the City of North Little Rock, Arkansas; and (5) the Interchange Agreement between AP&L and Oglethorpe Power Corporation (collectively, Agreements). Entergy Services requests that the revised rates and Transmission Loss Factor become effective March 1, 1995, subject to refund, in accordance with the provisions of the Agreements.

Comment date: March 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. MDU Resources Group, Inc.

[Docket Nos. ES95–21–000 and ES95–21–001]

Take notice that on February 6, 1995, MDU Resources Group, Inc. (MDU) filed an application and on March 15, 1995, filed an amendment to its application under Section 204 of the Federal Power Act seeking authorization to issue up to 50,000 shares of common stock of MDU, including treasury stock which has been issued and reacquired by MDU and stock purchased on the open market, for the purpose of implementing a Non-Employee Director Stock Compensation Plan. Also, MDU requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: April 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Scott Paper Co.

[Docket No. QF86–557–001]

On March 8, 1995, Scott Paper Company tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the technical characteristics of the facility.

Comment date: April 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–7033 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–52–000]

Granite State Gas Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Granite State LNG Project and Request for Comments on Environmental Issues

March 16, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the Granite State LNG Project. This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement (EIS) is necessary and whether to approve the project.[1]

[1] Granite State Gas Transmission, Inc.'s application was filed under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

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Summary of the Proposed Project

Granite State Gas Transmission, Inc. (Granite State) is seeking approval to construct and operate an LNG facility at the western boundary of the town of Wells, Maine and adjacent to the eastern border of the town of North Berwick, Maine. The purpose of the project is to maintain service to Northern Utilities, Inc. for its distribution operations in Maine and New Hampshire upon the abandonment of the operation of a leased natural gas pipeline extending from Canada to Portland, Maine.

The LNG facilities would include:

- A storage tank with a gas-equivalent capacity of 2 Bcf;
- A truck unloading system with two unloading stations;
- Two 67 MMcfd LNG vaporizers;
- A vapor handling system; and
- Fire protection systems.

The storage tank would be 154 feet in height and 211 feet in diameter. The tank would be surrounded by a concrete impoundment 99 feet high and 18 inches thick. The proposed project facilities would be designed, constructed, and maintained to comply with the Department of Transportation Federal Safety Standards for Liquefied Natural Gas Facilities (49 CFR Part 193). The facilities constructed at the site would also meet the National Fire Protection Association 59A LNG standards.

The source of LNG for the proposed facility would be Distrigas of Massachusetts Corporation of Everett, Massachusetts. LNG would be transported to the site by LNG tanker trucks and would access the site by a proposed 1.4-mile access road from Route 9. It would take approximately 32 truckloads of LNG per day over a 3-month period to initially fill the tank. Thereafter, trucking would predominantly occur during the summer and fall of each year. Vaporized LNG would be transported from the site via a 12-inch lateral connecting to Granite State's existing and adjacent 8-inch pipeline.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

The proposed facilities would affect 38.3 acres of a 300-acre site in Wells, Maine. Granite State would clear 30 acres of land for the plant facilities, all of which would be permanently committed to the project. Construction of the proposed access road would require clearing 8.3 acres, of which 1.7 acres would be allowed to revert back of its original condition.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA and whether an EIS is necessary. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils

—Seismology and soil liquefaction.
—Erosion control.
—Right-of-way restoration.

- Water Resources

—Site specific impacts on surface and groundwater.
—Effect on potable water supplies.
—Effect on wetland hydrology.

- Biological Resources

—Effect of plant construction and operation on threatened, endangered, or sensitive plant and animal species and their habitats.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

- Socioeconomics

—Impact of a peak work force of 50 employees on the surrounding area.
—Long-term effects of increased employment and taxes on the local economy.

- Land Use

—Impact on state areas of critical environmental concern.
—Effect of aboveground facilities on visual aesthetics in the region.
—Consistency with local land use plans.
—Impact on residences.

- Air Quality and Noise

—Impact on regional air quality and noise-sensitive areas associated with the operation of the proposed LNG facilities.
—Air quality and noise impacts associated with construction.

- Public Safety

—Compliance with 49 CFR 193 for exclusion zones (thermal and vapor gas dispersion), siting criteria, seismic criteria, and cryogenic criteria.
—Consequences of a major spill.

We will also evaluate possible site and technology alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Washington, D.C. 20426;
- Reference Docket No. CP95–52–000;
- Send a copy of your letter to: Mr. Chris Zerby, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they are received in Washington, D.C. on or before April 24, 1995.

Beyond asking for written comments, we invite you to attend our public scoping meeting on May 15, 1995. We will give the location and time for this meeting in a future notice. Requests to hold additional public scoping meetings will be considered.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

Filing of timely motions to intervene in this proceeding should be made on or before March 27, 1995. Once this date has passed, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to all potential interested parties to solicit focused comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of Granite State will directly contact communities and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the EA, please return the Information Request (see appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Chris Zerby, EA Project Manager, at (202) 208–0111.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6980 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail

[Docket No. RP94–43–011]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 16, 1995.

Take notice that on March 10, 1995, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective January 9, 1995:

Substitute Second Revised Sheet No. 176
Second Substitute Second Revised Sheet No. 187
Substitute Original Sheet No. 187.1
Substitute Third Revised Sheet No. 191
Substitute First Revised Sheet No. 194

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's February 8, 1995, "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions" in this proceeding. Such order directed ANR, inter alia, to make changes to its tracking provision for the recovery of Account No. 858 costs, and to its tariff provisions implementing the Commission's new Natural policy.

ANR states that all of its FERC Gas Tariff, Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to protect said filing should file a protest with the Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6982 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–8–000]

Arkansas Western Gas Co.; Notice of Petition for Rate Approval

March 16, 1995.

Take notice that on March 3, 1995, Arkansas Western Gas Company (AWG) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1300 per MMBtu, plus 3.1 percent for compressor fuel and lost and unaccounted for gas, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AWG states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Arkansas. AWG proposes an effective date of March 3, 1995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before March 31, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6983 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–194–001]

Columbia Gas Transmission Corp.; Notice of Filing of Corrected Tariff Sheet

March 16, 1995.

Take notice that on March 13, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1995:

Substitute First Revised Sheet No. 44

Columbia states that on March 1, 1995, Columbia submitted its annual filing pursuant to the provisions of Section 35, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. In that annual filing, Columbia filed First Revised Sheet No. 44 which set forth a revised transportation retainage factor proposed to be effective April 1, 1995. The Commission noticed that annual filing on March 3, 1995, and interventions and/or protests were to be filed by March 10, 1995.

Columbia states that when it began planning to implement the annual

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filing, it discovered that the revised retainage factor should have been rounded to the nearest thousandth, because Columbia's computer software programs for allocating capacity (which take into account quantities attributable to retainage) were designed to accept only a retainage factor rounded to the nearest thousandth.

Consequently, Columbia states that it is submitting the above referenced substitute tariff sheet as a correction to the tariff sheet filed March 1, 1995, in Columbia's annual filing. It reflects a retainage factor rounded at three decimal places (thousandths), instead of the factor filed in the annual filing and rounded at four decimal places. Columbia states that the filing of this substitute tariff sheet corrects the numeric presentation of the retainage factor, which is supported in the March 1, 1995, annual filing. Columbia respectfully requests that the Commission grant any waivers necessary to permit this substitute tariff sheet to be effective April 1, 1995, the proposed effective date of Columbia's annual TRA filing.

Columbia states that copies of its filing have been mailed to all parties known to have intervened in Docket No. RP95–194 to date, and all firm customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Those who are already parties to this proceeding need not file to intervene in response to this notice. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6984 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–95–195–001]

Columbia Gulf Transmission Co.; Notice of Filing of Corrected Tariff Sheets

March 16, 1995.

Take notice that on March 13, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1995:

Substitute Fifth Revised Sheet No. 018
Substitute Fifth Revised Sheet No. 019

Columbia Gulf states that on March 1, 1995, Columbia Gulf submitted its annual filing pursuant to the provisions of Section 33, Transportation Retainage Adjustment (TRA), of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volumn No. 1. In that annual filing, Columbia Gulf filed First Revised Sheet Nos. 018 and 019, which set forth revised transportation retainage factors proposed to be effective April 1, 1995 for the three Columbia Gulf zones. The Commission noticed that annual filing on March 3, 1995, and interventions and/or protests were to be filed by March 10, 1995.

Columbia Gulf states when it began planning to implement the annual filing, it discovered that the revised retainage factors should have been rounded to the nearest thousandth, because Columbia Gulf's computer software programs for allocating capacity (which take into account quantities attributable to retainage) were designed to accept only a retainage factor rounded to the nearest thousandth.

Consequently, Columbia Gulf states that it is submitting the above referenced substitute tariff sheets as a correction to the tariff sheets filed March 1, 1995, in Columbia Gulf's annual filing. The reflect retainage factors rounded at three decimal places (thousandths), instead of the factors filed in the annual filing and rounded at four decimal places.

Columbia Gulf states that the filing of these substitute tariff sheets corrects the numeric presentation of the retainage factors, which are supported in the March 1, 1995 annual filing. Columbia Gulf respectively requests that the Commission grant any waivers necessary to permit these substitute tariff sheets to be effective April 1, 1995, the proposed effective date of Columbia Gulf's annual TRA filing.

Columbia Gulf states that copies of its filing have been mailed to all parties known to have intervened in Docket No. RP95–195 to date and all firm customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed before March 23 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Those who are already parties to this proceeding need not file to intervene in response to this notice. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6985 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–7–23–000]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 16, 1995.

Take notice that on March 14, 1995 Eastern Shore Natural Gas Company (ESNG) tendered certain revised tariff sheets included in Appendix A to the filing. Such sheets are proposed to be effective April 1, 1995.

ESNG states that the above referenced tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations and Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect: (1) Changes in storage fuel retention percentages; and (2) changes in ESNG's pipeline suppliers' storage service rates.

ESNG states that copies of the filing have been served upon its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before March 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6986 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–35–000]

EcoEléctrica, L.P.; Notice of Meeting

March 14, 1995.

On March 28, 1995, at 8:45 a.m., the Office of Pipeline Regulation environmental staff will meet with representatives of EcoEléctrica, L.P. to conduct a cryogenic design and engineering review of the liquefied natural gas import facilities proposed for Guayanilla, Puerto Rico. The meeting will be at the Greenspoint Marriott Hotel, 225 North Sam Houston Parkway East, Houston, Texas 77060.

For further information, call Chris Zerby, (202) 208–0111.

Kevin P. Madden,

Director, Office of Pipeline Regulation.

[FR Doc. 95–7035 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–138–005]

Florida Gas Transmission Co., Notice of Revised Pro Forma Tariff Sheets

March 16, 1995.

Take notice that on March 8, 1995 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Pro Forma Sheet No. 120
Pro Forma Sheet No. 120A

On February 10, 1995, FGT filed tariff sheets in compliance with a Commission order issued January 12, 1995 in Docket Nos. RS92–16–008 & 009 and RP91–138–002 (January 12 Order). The February 10, 1995 filing included, among other things, modifications to FGT's scheduling provisions to provide a limited exemption from pro rata scheduling for uses determined to be "Exempt Uses" under a new capacity curtailment to be implemented on FGT's system by November 1, 1995. Such modifications provide that if nominations for firm service exceed the capacity available for firm service, FGT will first schedule requests for firm transportation service to serve Exempt Uses on a pro rata basis by end use priority for Priority 1 and 2 Uses.

FGT inadvertently including these modifications on Pro Forma Sheet No. 121 in its Receipt Point Scheduling Priorities provisions contained in Section 10.C.2. of the General Terms and Conditions (GT&C) of FGT's FERC Gas Tariff. These provisions should have been added in the Scheduling Priorities—Mainline Capacity and Delivery Points provisions of Section 10.C.1 of the GT&C. In the instant filing, FGT is moving the identical provisions as proposed in Pro Forma Sheet No. 121 to Pro Forma Sheet No. 120.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 23, 1995. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6987 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–93–008]

K N Interstate Gas Transmission Co.; Notice of Filing of Refund Report

March 16, 1995.

Take notice that on March 13, 1995, K N Interstate Gas Transmission Co. (KNI) filed a refund report in the above captioned docket. KNI states that the filing and refunds were made to comply with the Federal Energy Regulatory Commission's (Commission) Order dated January 20, 1995. KNI states that these amounts were paid by KNI on March 8, 1995.

KNI states that the refund report summarizes refund amounts for the period July 1, 1994 through December 31, 1994.

KNI further states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest with reference to this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 23, 1995. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6988 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–325–000]

Panhandle Eastern Pipe Line Co.; Notice of Informal Settlement Conference

March 16, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, March 24, 1995, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Kathleen Dias at (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6989 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–7–000]

The Tekas Corp.; Notice of Petition for Rate Approval

March 16, 1995.

Take notice that on March 1, 1995, the Tekas Corporation (Tekas) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.3334 per Mcf, plus a pro rata share of fuel and lost and unaccounted for volumes, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Tekas states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Kansas. Tekas proposes an effective date of March 1, 1995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which

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interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 31, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6990 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–260–000]

Texas Eastern Transmission Corp.; Notice of Request Under Blanket Authorization

March 16, 1995.

Take notice that on March 13, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–260–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point in Colbert County, Alabama, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct a new delivery point in Colbert County, Alabama, so that Texas Eastern may provide up to 10,000 Dekatherms per day of interruptible transportation service to Decatur Utilities, City of Decatur, Alabama (Decatur). Texas Eastern states that the interruptible transportation service for Decatur will be provided pursuant to Rate Schedule IT–1 of Texas Eastern's FERC Gas Tariff, Volume No. 1. Texas Eastern states that the existing tariff does not prohibit the additional volumes.

Texas Eastern states that Decatur has requested Texas Eastern to install a 4-inch hot tap, and 50 feet of 4-inch appurtenant piping (Hot Tap) to be located on Texas Eastern's 30-inch Line No. 10 at approximate Mile Post 158.45 in Colbert County, Alabama. Texas Eastern states that approximate cost of the facilities is $34,300 and will be 100% reimbursable by Decatur.

Texas Eastern also states that Decatur will cause to be installed a 4-inch meter station, consisting of a single 4-inch meter run, 100 feet of 4-inch interconnecting piping which will extend between the Hot Tap and Decatur's proposed meter station, and electronic gas measurement equipment. Texas Eastern states it will own, operate and maintain the Hot Tap and electronic gas measurement equipment, and operate and maintain Decatur's proposed meter station.

In addition, Texas Eastern states that Decatur will construct, own, operate, and maintain approximately 37 miles of new mainline trunk high pressure facilities (Trunk Facilities), extending from a point near Courtland, Alabama, to an interconnection with Tennessee Gas Pipeline Company near Barton, Alabama. Texas Eastern states that its proposed Hot Tap facilities will be connected to Decatur's Trunk Facilities by Decatur's 100 feet of 4-inch interconnecting piping.

Texas Eastern states that the installation of the delivery point will have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6991 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–200–002]

Transcontinental Gas Pipe Line Corp.; Notice of Refund Report

March 16, 1995.

Take notice that on February 23, 1995, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made pursuant to the Commission's Order On Rehearing dated February 1, 1995, in Docket No. RP94–200–001. The report shows that on February 15, 1995, TGPL refunded certain Producer Settlement Payment (PSP) and Litigant Producer Settlement Payment (LPSP) amounts, plus interest in accordance with the February 1 Order. The refunds total $620,334.11, including $41,903.47 in interest.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6992 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–6–000]

Utah Gas Service Co.; Notice of Petition for Rate Approval

March 16, 1995.

Take notice that on February 28, 1995, Utah Gas Service Company (Utah Gas) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.18 per MMBtu for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Utah Gas states that it is a local distribution company performing section 311 service in the State of Utah under a section 284.224 blanket certificate granted in Docket No. CP86–188. Utah Gas proposes an effective date of March 1, 995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will

be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 31, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6993 Filed 3–21–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5176–4]

Public Water System Supervision Program Revision for the State of Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provision of Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Ohio is revising its approved Public Water System Supervision (PWSS) primacy program. The Ohio Environmental Protection Agency (OEPA), has adopted drinking water regulations for Lead and Copper that correspond to the NPDWR for Lead and Copper promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 7, 1991, (56 FR 26460–26564). The U.S. EPA has completed its review of Ohio's PWSS primacy program revision.

The U.S. EPA has determined that the Ohio rule meets the requirements of the Federal rule. Therefore, the U.S. EPA has determined that this state program revision is no less stringent than the corresponding Federal regulations, and is proposing to approve the OEPA's rule revisions.

This proposed approval includes the entire adopted Ohio Lead and Copper Rule, except for the use of Standard Method-CU E (Bathocuproine) for measuring copper levels in finished drinking water. This method is not a Federally approved analytical method. Any systems which monitor for copper using this method will be considered to be in violation of copper monitoring and reporting requirements.

All interested parties are invited to submit written comments on this proposed determination, and may request a public hearing on or before April 21, 1995. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Requests for public hearing should be addressed to: William Spaulding (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Ohio. A notice will be sent to the person(s) requesting the hearing as well as to the State of Ohio. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on April 22, 1995. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, P.O. Box 163669, 1800 WaterMark Drive, Columbus, Ohio 43216–3669, State Docket Officer: Mr. Kirk Leifheit, (614) 644–2752

Safe Drinking Water Branch, Drinking Water Section (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: William Spaulding, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–7242.

(Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 8th day of March, 1995.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 95–7065 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180962; FRL 4942–3]

Mancozeb; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as the "Applicant") for use of the pesticide mancozeb (CAS 8018–01–7) to control leaf, stem blight on ginseng. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 6, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180962," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the mancozeb, available as Dithane DF (EPA Reg. No. 707–180) from Rohm and Haas Co., to control leaf, stem blight, caused by the fungus *Alternaria panax* and *Phytophthora cactorum*, on a maximum of 4,167 acres in Wisconsin. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Alternaria blight rarely kills the ginseng root, which is the marketed portion; however, loss of the foliage results in significant root yield loss in a harvested crop, and retards root growth and overwintering ability in younger crops. Infestations of Alternaria blight in one season greatly increase the potential for epidemics in subsequent seasons, since the fungus remains in the infected plant debris. *Alternaria panax* has become resistant to Rovral 50W, the only fungicide carrying a section 3 label for use against Alternaria blight on ginseng. Rovral by itself is no longer be effective to control Alternaris. Other fungicides are also substantially less effective than Dithane. If not controlled, the disease can be expected to infest all of Wisconsin's 5,000 acres of ginseng.

Under the proposed exemption 2.0 lbs of product [1.5 lbs of active ingredient (a.i.)] per acre will be used on 4,167 acres. A maximum of 12 applications at a minimum of 7–day intervals will be made by ground equipment using a minimum of 80 gallons of water per acre. A 28–day pre-harvest interval will be observed. Applications will be made by certified private or commercial applicators or persons under their direct supervision. In addition, applicators, mixer/loaders, and persons entering treated ginseng gardens to work must wear chemical-resistant gloves, long-legged pants and long-sleeved shirts.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been subject to a Special Review, and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been subject of the Special Review. [40 CFR 166.24 (a)(5)].

The Agency initiated a Special Review of the ethylene bisdithiocarbamate (EBDC) fungicides on July 17, 1987, which includes mancozeb. A notice of final determination was issued March 2, 1992. The Agency took this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from, pesticide products containing the active ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency concluded that the estimated cumulative risk of 10^{-5} from all current 55 food uses was unacceptable and, therefore, canceled the following 11 food uses: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans and turnips. These cancellations reduce estimated lifetime dietary risk to 1.6×10^{-6} which the Agency has determined does not outweigh the benefits of the 44 retained uses.

The regulations governing section 18 also require the Agency to publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a) (6)]. Exemptions for the use of mancozeb on ginseng have been requested for the past 8 years (1987 thru 1994). Mancozeb was granted for use on ginseng in 1991, 1993, 1994. Wisconsin issued a crisis in 1992. An application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade and Consumer Protection.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7061 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180964; FRL 4942–5]

Propazine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Kansas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide propazine (CAS 139–40–2) to treat up to 300,000 acres of sorghum to control various weeds. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 6, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180964," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8417; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicant claims that this has left many sorghum growers with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. The Applicant claims that significant economic losses will occur without the availability of propazine.

Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant proposes to apply propazine at a maximum rate of 1.2 lbs. active ingredient (a.i.), (2.4 pt. of product) per acre, by ground or air, to a maximum of 300,000 acres of sorghum, with one application allowed per crop growing season. Therefore, use under this exemption could potentially amount to a maximum total of 360,000 lbs. of active ingredient (90,000 gal. of product).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Kansas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7062 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–42182; FRL–4943–6]

Certain Paint Stripping Chemicals; Solicitation of Testing Proposals for Negotiation of TSCA Section 4 Enforceable Consent Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites manufacturers and processors of certain chemical substances used in commercial paint strippers and other interested parties to develop and submit to EPA specific toxicity testing proposals for these chemicals. Testing is needed for three dibasic esters (DBEs), specifically, dimethyl adipate, dimethyl glutarate and dimethyl succinate. The EPA, the Consumer Product Safety Commission and the National Toxicology Program have consulted on the need for and nature of toxicity testing of DBEs, and the means for implementing such testing.

DATES: Written testing proposals must be received by May 22, 1995. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline.

ADDRESSES: Submit three copies of written testing proposals to TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. G–99, East Tower, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS–42182; FRL–4943–6). The public docket supporting this action, including comments, is available for public inspection in the Nonconfidential Information Center, Rm NE-B607, at the above address from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: James Willis, Acting Director, Environmental Assistance Division (7408), Rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551. For specific information regarding this action or related activities, contact George Semeniuk, Project Manager, Chemical Testing and Information Branch (7405), Rm E221B, 401 M St., SW., Washington, DC 20460, (202) 260–2134.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rationale for Action

Known as dibasic esters (DBEs), dimethyl adipate (DMA, CAS No. 627–93–0), dimethyl glutarate (DMG, CAS No. 1119–40–0) and dimethyl succinate (DMS, CAS No. 106–65–0) are component chemicals of solvent mixtures used in paint stripping formulations that are sold to the general public. Consumers can be significantly exposed to DBEs during use of these formulations. This potential for significant exposure, a reported adverse human effect—blurred vision—resulting from the use of DBE-based paint strippers, and the results of limited toxicity testing (rats), form the

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foundation for the Agency's concern for the potential health risk that may be posed to consumers by DBE-based paint strippers. Upon further review of the other chemicals being used in commercial paint strippers, the Agency may determine that other commercial paint stripper chemicals in addition to the DBEs may pose significant exposures and possible risks to consumers or to other users. It may then seek additional testing, if necessary, to evaluate more fully that risk, in conjunction with, or apart from, the testing of the DBEs.

EPA's Office of Pollution Prevention and Toxics (OPPT) administers the Toxic Substances Control Act (TSCA) and the TSCA section 4 testing program. Under TSCA section 4, 15 U.S.C. 2603, EPA may require that chemical manufacturers and processors provide to EPA test data that can be used to assess the impact on human health and the environment from exposure to such chemicals. In addition to imposing section 4 testing requirements by rulemaking, OPPT has developed an Enforceable Consent Agreement (ECA) process for obtaining needed testing often with less time and resources and more flexibility than under a test rule. See 40 CFR part 790. On numerous occasions, chemical companies have approached EPA to negotiate ECAs for chemicals which are likely to become the subject of proposed test rules.

Testing proposals for the DBEs should cover all identified data needs of the substances in order to be considered for ECA negotiation. If, after receiving testing proposals, EPA pursues negotiations for one or more ECAs applicable to these chemicals, EPA will, through a notice in the Federal Register, solicit requests by individuals to be designated an interested party to the negotiation(s). EPA has authority to require testing for these chemical substances under section 4 of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2601–2692) and, if an ECA-based approach does not prove viable, EPA would proceed with proposed rulemaking to require the needed testing.

B. Chemical Data Needs

In 1986, the Consumer Product Safety Commission (CPSC) established a labeling and enforcement policy for methylene chloride, a chemical solvent used in many paint strippers and household products and considered hazardous due to its potential carcinogenicity. Use of such products often resulted in widespread and significant consumer exposure. Since then, paint strippers that do not contain methylene chloride have been developed and marketed to consumers as "safe alternatives" to the methylene chloride-based formulations. Mixtures, or blends, of dibasic esters (DBEs) are becoming an important substitute solvent in alternative paint stripper formulations.

There is limited toxicity information available on the individual DBEs and the alternative paint stripper formulations that use DBEs. An adverse human health effect—blurred vision—has been reported for a user who used DBE-based paint strippers in a poorly ventilated setting. This response was associated with DBE-based paint strippers that contained high percentages of the more volatile DMG and DMS and less than 20 percent DMA.

A well-designed and executed battery of tests was carried out by the E.I. Du Pont de Nemours Company to evaluate the effects of a mixture of DBEs on experimental animals. These tests included a single-dose acute study, a 2–week subacute study, two separate subchronic studies, a reproductive toxicity study (one-generation), and a developmental toxicity study. The studies utilized male and female rats that were exposed via inhalation of vapor or vapor aerosols of a DBE blend that contained 66 percent DMG, 17 percent DMA and 17 percent DMS. Among other findings, these studies established the lethal concentration from a 4–hour exposure to be approximately 4,000 mg/m^{-3}. Subchronic inhalation studies demonstrated that DBE could produce, depending upon the exposure concentration, progressive degeneration of the nasal olfactory epithelium, a dose-dependent decrease in liver weight, a depression in serum sodium levels and, at high exposure concentrations, a reduction in body weight. In addition, studies of the effects of DBE exposure on reproduction showed decreases in parental and pup weight gain and an increased incidence of delayed renal papilla development. One test animal developed a tumor (meningeal sarcoma) on the olfactory bulb of the brain. Results from the developmental toxicity study revealed significant reductions in body weight gain and food consumption for female rats exposed at higher concentrations and significant increases in percent of litters having one or more malformed fetuses. The deposition and metabolism of DBE vapors in the upper respiratory tract of rats has also been studied by DuPont researchers and yielded insight into understanding DBE-induced degeneration of the olfactory epithelium in test animals and the potential for similar effects in humans.

An EPA-led interagency workgroup composed of representatives from EPA and CPSC was formed in 1993 to: (1) assess the human health risks posed by the myriad chemical substances (or "cluster of chemicals") used in paint stripper formulations sold to consumers and (2) identify potential options for reducing risk. CPSC identified a need to develop test data on DMA that would provide a more complete toxicity profile that would be used in comparing DMA's hazards to that of methylene chloride and other paint stripping chemicals. In 1994, CPSC formally nominated DMA as its 1994 priority chemical for federally-funded testing under the National Toxicology Program (NTP) and described an array of tests that would meet its needs. The testing that CPSC requested for DMA concerned the following effects: oncogenicity and genotoxicity, sensory irritation, toxicity following subchronic dermal administration, reproductive and developmental toxicity in a mammalian species other than the rat, neurotoxicity (screening), and *in vitro* metabolism/toxicity using human upper respiratory tissue.

In December, 1994, the Executive Committee of the NTP convened and decided to refer the bulk of the testing requested by CPSC to EPA for implementation using TSCA testing authorities. This decision was taken because of the commercial significance of DMA, TSCA's stated policy that testing is the responsibility of industry (15 U.S.C. 2601), and EPA's interest in collecting needed data on the broader class of DBEs currently used in paint strippers. However, testing will be conducted by NTP for each of the three DBEs with regard to genotoxicity (the *Salmonella typhimurium* reverse mutation assay and the *in vivo* mammalian bone marrow cytogenetic test: micronucleus assay).

The testing regime identified by CPSC for DMA is comparable to that recently undertaken for *N*-methylpyrrolidone under an ECA published in the Federal Register of November 23, 1993 (58 FR 61814). EPA believes, however, that testing that is similar, or complementary, to that specified for DMA is also needed for DMG and DMS in order to compare and contrast the toxicities of all three chemical substances. When used in paint stripper formulations, all three DBEs are usually present, although their relative proportions may vary among commercial formulations.

After consultation, EPA and CPSC have agreed that the 2–tier testing regime identified in Table 1 below is both appropriate and needed for the individual DBEs. As a matter of policy, EPA believes testing of the individual components is preferable to testing mixtures of the DBEs, although EPA would consider favorably a testing regime for the DBEs that included mixture testing, provided the individual components were also tested. EPA also invites the submission of additional testing proposals (beyond the testing described in the following Table 1) that address inter-species differences in metabolism, dosimetry or mode of toxic action for use in improving the extrapolation of DBE-induced toxicity in animal experiments to adverse effects that may occur in humans at relevant exposure levels.

TABLE 1.—PROPOSED TESTING AND TEST STANDARDS FOR INDIVIDUAL DBEs

	Species	Exposure route	Test duration	Guidelines/notes
Tier 1 Testing				
1.1 *In vitro* Gene mutation in mammalian cells (DMA, DMG & DMS).	NA	NA	NA	40 CFR 798.5300.
1.2 SIDS Reproductive toxicity Screening (DMA, DMG & DMS).	Mouse	Inhalation for most volatile DBE; dermal for other two..	45 days	OECD[1] Guideline for SIDS Testing No. 422 "Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test 1994."
1.3 Sensory irritation (DMA, DMG & DMS).	Mouse	Inhalation	NA	ASTM E981-84 standard test method.
Tier 2 Testing[2]				
2.1 Two generation reproductive study (DMA, DMG *or* DMS).	Mouse or rat	To be selected based on Tier 1 results..	2 generation	40 CFR 798.4700, as proposed for revision (59 FR 42272, August 17, 1994).
2.2 Subchronic neurotoxicity (DMA, DMG *or* DMS).	Rat	To be selected based on Tier 1 results..	90 days	1991 Neurotoxicity Testing Guidelines. Unless 2-generation reproductive study is run using the rat, this testing will require a second 90–day study.
2.3 Developmental toxicity study (DMA, DMG *or* DMS).	2 species: mouse or rat, and rabbit.	To be selected based on Tier 1 results..	NA	40 CFR 798.4900, as proposed for revision (59 FR 42272, August 17, 1994).
2.4 Oncogenicity studies (DMA, DMG *or* DMS).	Mouse and rat	To be selected based on Tier 1 results..	2 years +	40 CFR 798.3300

[1] Organization of Economic Cooperation and Development, Paris, France.
[2] Tier 2 testing will be done on one of the three DBEs selected on the basis of available toxicity data and exposure potential, as appropriate.

II. Public Docket

EPA has established a docket for this action (docket control number OPPTS–42182; FRL–4943–6). The docket contains basic information considered by EPA in developing this action and includes:

1. Letter from Marilyn L. Wind, Ph.D., Director of Poison Prevention and Scientific Coordination, Consumer Product Safety Commission to Dr. Errol Zeiger, National Toxicology Program, National Institute for Environmental Health Sciences, January 31, 1994. (Copies of unpublished material cited in the letter are included in the docket. Within 15 days of publication of this notice, the Agency expects to add the published material cited in the letter to the docket.)

2. 1991 Neurotoxicology Testing Guidelines.

3. OPPTS Health Effects Test Guidelines for reproductive and fertility effects (OPPTS 870.3800).

4. OPPTS Health Effects Test Guidelines for developmental toxicity (OPPTS 870.3700).

EPA will supplement the docket with additional information as it is received.

A public version of this docket is available in the TSCA Non-confidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The NCIC is located in Rm NE-B607, Mail Code 7407, 401 M St., SW., Washington, DC 20460. Written requests for copies of documents contained in this docket may be sent to the above address or faxed to (202) 260–9555.

Authority: 15 U.S.C. 2603.

Dated: March 16, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–7060 Filed 3–21–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Petitions For Reconsideration Of Action In Rulemaking Proceeding; Correction

A Public Notice dated March 7, 1995, DA 95–439, in the proceeding below inadvertently failed to list both petitioners and is, therefore, superseded by this Public Notice. These petitions for reconsideration have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in the Reference Room, 1250 23rd Street, N.W., Plaza Level, Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to both of the petitions listed below must be filed on or before April 6, 1995, of the date of public notice of these petitions in the **Federal Register**. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed

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within 10 days after the time for filing oppositions has expired.

For further information contact Michelle M. Carey, Common Carrier Bureau, at (202) 418–0960.

Subject:

In the Matter of Authority to Issue Subpoenas (FCC 94–319)

Filed By:

Mark J. Golden, Vice President of the Personal Communications Industry Association on 01–26–95

Gregory Widney, Senior Vice President of ICORE on 01–26–95

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–7016 Filed 3–21–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1046–DR]

Amendment to Notice of a Major Disaster Declaration; California

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1046–DR), dated March 12, 1995, and related determinations.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated March 12, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 12, 1995:

El Dorado, Mariposa, Modoc, Mono, Nevada, Shasta, Siskiyou, Trinity and Tuolumne Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–7036 Filed 3–21–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

James Richard Judd; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 5, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James Richard Judd, Stevens Point, Wisconsin; to acquire 45.6 percent of the voting shares of Rudolph Bancshares, Inc., Rudolph, Wisconsin, and thereby indirectly acquire Farmers & Merchants Bank, Rudolph, Wisconsin.

Board of Governors of the Federal Reserve System, March 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7011 Filed 3–21–95; 8:45 am]

BILLING CODE 6210–01–F

PSB Mutual Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. PSB Mutual Holding Company, Philadelphia, Pennsylvania; to become a bank holding company by acquiring 53.5 percent of the voting shares of Pennsylvania Savings Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. BancFirst Ohio Corp., Zanesville, Ohio; to merge with Bellbrook Bancorp, Inc., Bellbrook, Ohio, and thereby indirectly acquire Bellbrook Community Bank, Bellbrook, Ohio.

2. First Financial Bancorp, Hamilton, Ohio; to acquire 100 percent of the voting shares of Peoples Bank and Trust Company, Sunman, Indiana.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. FirstBancorp, Inc., Marathon, Florida; to acquire 100 percent of the voting shares of Gulf Coast National Bank, Naples, Florida, a *de novo* bank.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Sword Limited Partnership 1994, Horicon, Wisconsin; to become a bank holding company by acquiring an additional 46.80 percent, for a total of 51.90 percent of the nonvoting shares, representing more than 25 percent of the equity, of Sword Financial Corporation, Horicon, Wisconsin, and thereby indirectly acquire Horicon State Bank, Horicon, Wisconsin.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Blumberg Family Partnership, L.P. Seguin, Texas; to become a bank holding company by acquiring 16 percent of the voting shares of Seguin State Bank & Trust Company, Seguin, Texas.

2. Blumberg Bank, L.P. Seguin, Texas; to become a bank holding company by acquiring 48 percent of the voting shares of Seguin State Bank & Trust Company, Seguin, Texas.

Board of Governors of the Federal Reserve System, March 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7012 Filed 3–21–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families (ACF) has submitted to the Office of Management and Budget (OMB) a request for the continued use of an information collection titled: ACF–231–Aid To Families With Dependent Children Financial Report; Expenditures and Estimates.

Addresses: Copies of the request for approval may be obtained from Robert A. Sargis of the Office of Information Systems Management, ACF, by calling (202) 690–7275.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the following: Wendy Taylor, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503, (202) 395–7316.

Information on Document

Title: ACF—231 AID TO FAMILIES WITH DEPENDENT CHILDREN FINANCIAL REPORT

OMB No.: 0970–0032

Description: The information collected is required by the Social Security Act to collect program and financial data under the AFDC program The State agency provides a quarterly estimate of the total amount and the Federal share of expenditures to be made in administering the AFDC programs.

Respondents: State governments

Annual Number of Respondents: 54 sites

Number of responses per respondent: 6

Total annual responses: 324 sites

Hours per response: 3.5

Total Burden Hours: 1,134

Dated: March 16, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–7055 Filed 3–21–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention (CDC)

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Will Convene the Following Meeting Sponsored by the Division of Environmental Health Laboratory Sciences

Name: Development of Innovative Technology for Measurement of Lead in Blood: Meeting of Grant Recipients and Cooperative Research and Development Agreement (CRADA) Partners.

Time and date: 8:30 a.m.–11 a.m., May 20, 1995.

Place: Terrace Garden Inn-Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by space available.

Purpose: The primary purpose of this meeting is to brief the grantees and CDC's CRADA partners about CDC expectations for the grant and CRADA program, to encourage collaboration among grantees and CRADA partners and to review progress toward the objectives of the program.

Matters to be discussed: Topics to be discussed include objectives of the CDC grant and CRADA program for the development of innovative technology for the measurement of lead in blood, impact of the Clinical Laboratory Improvement Act on the technology, and an overview of each grantee and CRADA organization.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Robert L. Jones, Ph.D., Supervisory Research Chemist, Nutritional Biochemistry Branch, Division of Environmental Health Laboratory Sciences, (P18), NCEH, CDC, 4770 Buford Highway, NE, Chamblee, Georgia 30341–3724, telephone 404/488–7991.

Written comments are welcome and should be received by the contact person no later than May 10, 1995. Persons wishing to make oral comments at the meeting should notify the contact person in writing or by telephone no later than May 10, 1995. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–6997 Filed 3–21–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Drug Abuse Advisory Committee

Date, time, and place. April 6 and 7, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, April 6, 1995, 8 a.m. to 5 p.m.; open public hearing, April 7, 1995, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Stephen P. Pollitt, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Drug Abuse Advisory Committee, code 12535.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety,

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efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 23, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. On April 6, 1995, the committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. On April 7, 1995, the committee will discuss the 1995 Institute of Medicine Report on the Development of Medications for the Treatment of Opiate and Cocaine Addiction.

Biological Response Modifiers Advisory Committee

Date, time, and place. April 10 and 11, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 10, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5:30 p.m.; open public hearing, April 11, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 5 p.m.; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Biological Response Modifiers Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 3, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 10, 1995, the committee will discuss: (1) Product license application supplement, reference number 94–0381, for Roferon A (Interferon-alpha-2a) Hoffman La Roche Inc., for treatment of chronic phase, Philadelphia chromosome positive chronic myelogenous leukemia; and (2) product license application supplements 94–0291 and 93–0287, for Sargramostim (GM–CSF), Immunex Corp., for acceleration of neutrophil recovery following chemotherapy in acute nonlymphoblastic leukemia and for chemotherapy-induced neutropenia (this discussion will continue on the following morning). On the morning of April 11, 1995, the committee will also discuss perspectives on xenotransplantation. In the afternoon, the committee will discuss the intramural scientific program of the Laboratory of Bone Marrow Growth Factors and research programs of individuals in the Division of Hematologic Products and Division of Cytokine Biology.

Closed committee deliberations. On April 11, 1995, the committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 21, 1995, 8 a.m., Corporate Bldg., Main Conference Room, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Gastroenterology and Urology Devices Panel, code 12523.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 14, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues related to two premarket approval applications for devices intended for the extracorporeal removal of low-density lipoprotein (LDL) to lower LDL cholesterol in patients with familial hypercholesterolemia.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding medical devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 24, 1995, 8:30 a.m., Corporate Bldg., Main Conference Room, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Obstetrics and Gynecology Devices Panel, code 12524.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 10, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues regarding home uterine activity monitors (HUAM's), in light of new published information on HUAM's.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding various medical devices used in obstetrics and gynecology that are currently being evaluated by FDA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and

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FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 16, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–7078 Filed 3–21–95; 8:45 am]

BILLING CODE 4160–01–F

Social Security Administration

National Commission on Childhood Disability

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the fourth meeting of the National Commission on Childhood Disability (the Commission).

DATES: Monday, March 27, 1995, 9 a.m. to 12 p.m. and 1 p.m. to 5 p.m.

ADDRESSES: Penn Tower Hotel, Salons A, B, and C, University of Pennsylvania Campus, Civic Center Boulevard at 34th Street, Philadelphia, Pennsylvania 19104–4385. Telephone: 215–387–8333.

FOR FURTHER INFORMATION CONTACT: Elaine Fultz, Commission Staff Director, (202) 272–2228.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Commission on Childhood Disability was established by Congress to assess the Social Security Administration's eligibility criteria for Supplemental Security Income (SSI) childhood disability benefits and to consider alternative criteria. The Commission is chaired by the Honorable Jim Slattery and consists of 14 members.

II. Agenda

At this meeting, the Commission will:

- Hear testimony from experts in emotional and learning disorders;
- Conduct general policy discussion; and
- Receive public testimony from SSI recipients and others concerned about the SSI program.

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and Social Security and SSI recipients may sign-up at the meeting site to address the Commission for not longer than five minutes each. Such public testimony will be received from 3 p.m. to 4:30 p.m.

Interpreter services will be available for persons with hearing impairments. A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the information contact shown above. The transcript will become part of the record of these meetings.

Dated: March 16, 1995.

Ron Sribnik,

Social Security Administration Regulations Officer.

[FR Doc. 95–7090 Filed 3–21–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3900; FR–3856–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received by not later than April 21, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority

Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 24, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Inclusion of Holocaust Reparation Payments in Family Income for Assisted Housing Programs: Notification of Affected Individuals (FR–3856).

Office: Housing.

Description of the Need for the Information and its Proposed Use: Public Law 103–286 dated August 1, 1994, provides for possible refunds of housing assistance to individuals who have received payments because of their status as victims of Nazi persecution. Section 1(e) of the Public Law also purports to provide retroactive relief for those persons whose rents were increased by reason of counting reparation payments from February 1, 1993 through April 30, 1993.

Form Number: None.

Respondents: Individuals or Households and Businesses or Other For-Profit.

REPORTING BURDEN

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Notification	400		1		1.5		600

Total Estimated Burden Hours: 600.

Status: New.

Contact: Barbara D. Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 24, 1995.

[FR Doc. 95–7038 Filed 3–21–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Silvio Conte National Fish and Wildlife Refuge Advisory Committee Meeting

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act, this notice announces a meeting of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee established under the authority of The Silvio O. Conte National Fish and Wildlife Refuge Act.

The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration. Summary minutes of meeting will be maintained in the office of the Coordinator for the Silvio Conte National Fish and Wildlife Refuge Advisory Committee at 38 Avenue A, Turners Falls, MA 01376, and will be available for public inspection during regular business hours (8:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATES: The Silvio Conte National Fish and Wildlife Refuge Advisory Committee will meet from 10:00 a.m. to 2:00 p.m. on Wednesday, April 19, 1995.

PLACE: The meeting will be held at the Fish and Wildlife Service's Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts.

TOPICS FOR DISCUSSION: Committee members will discuss outreach for the public comment period which follows publication of the draft Environmental Impact Statement. They will also discuss strategies for outreach and environmental education.

FOR FURTHER INFORMATION CONTACT:

For further information individuals may contact Committee Coordinator Lawrence Bandolin at 413–863–0209.

Dated: March 16, 1995.

Ronald E. Lambertson,

Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 95–7166 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Lincoln Park Zoological Gardens, Chicago, IL, PRT–793611

The applicant requests a permit to export one pair of captive-born South American tapirs (*Tapirus terrestris*) to the Emperor Valley Zoo, Trinidad, to enhance the survival of the species through conservation education.

Applicant: Fort Worth Zoological Park, Fort Worth, TX, PRT–799689

The applicant requests a permit to import two pair captive-born black lion tamarins (*Leontopithecus chrysopygus*) from Centro de Primatologia do Rio de Janerio, Brazil, to enhance the propagation and survival of the species through captive breeding.

Applicant: International Wildlife Veterinary Services, Fair Oaks, CA, PRT–798407

The applicant requests a permit to export serum samples taken from captive-held and captive born black rhinoceros (*Diceros bicornis*) to enhance the survival of the species through scientific research.

Applicant: Tiger's Eye Productions, Inc., Oviedo, FL, PRT–759943

The applicant requests a permit to export and reimport two male and one female tiger (*Panthera tigris*), three male and two female leopard (Panthera pardus), and one male ring-tailed lemur (*Lemur catta*) to enhance the survival of the species through conservation education.

Applicant: Fort Worth Zoological Park, Fort Worth, TX, PRT–798968

The applicant requests an amendment to an application for a permit to import one male and one female Asian elephant (*Elephas maximus*) from African Lion Safari, Cambridge, Ontario, Canada, for the purpose of enhancement and survival of the species through captive-breeding and conservation education. The original request was published in the **Federal Register**, Vol. 60, No. 36, page 10106 on February 23, 1995.

Applicant: International Animal Exchange, Ferndale, MI, PRT–800037

The applicant requests a permit to export one captive-born male parma wallaby (*Macropus parma*) to the Seoul Grand Park Zoo, Seoul, Korea, to enhance the propagation and survival of the species through captive breeding and conservation education.

Applicant: National Zoological Park, Washington DC, PRT–700322

The applicant request a permit to import blood, hair, tissue samples, and whole carcasses of captive born and wild-caught specimens of Golden lion tamarin (*Leontopithecus rosalia*) to enhance the survival of the species through scientific research.

Applicant: National Zoological Park, Washington DC, PRT–732974

The applicant request a permit to import blood, semen, skin hair, tissue samples, temporal gland secretions, and molar teeth of Asian elephants (*Elephas maximus*) born in captivity or in the wild to enhance the survival of the species through scientific research.

Applicant: Southwest Foundation For Biomedical Research, San Antonio, TX, PRT–799528

The applicant request a permit to import serum samples from 41 captive born Lion-tailed macaques (*Macaca silenus*), to enhance the survival of the species through scientific research.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and

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the regulations governing marine mammals (50 CFR 18).

Applicant: The Seattle Aquarium, Seattle, WA, PRT–799991

Type of Permit: Import for public display

Name and Number of Animals: Northern sea otter *(Enhydra lutris lutris)*, 1

Summary of Activity to be Authorized: Applicant requests a permit to import one female sea otter for public display. The animal was taken as a beached and stranded pup as a result of the 1989 Exxon Valdez oil spill, deemed non-releasable, and subsequently transferred to the Vancouver Aquarium for public display.

Source of Marine Mammals for Research/Public Display: Vancouver Aquarium, British Columbia, Canada.

Period of Activity: Period in which to import is 1 year Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 17, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–7076 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Dan L. Pike, Edmonds, WA. The applicant wishes to amend his approved cooperative breeding program to include two additional subspecies of peregrine falcon: *Falco peregrinus babylonicus*, and *Falco peregrinus peregrinator*. Two private individuals will be an actively participating in this program. The Washington Falconers Association maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a writtenf request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 15, 1995.

Carol Lee Carson,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 95–7077 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[UT–080–1430–01; UTU–71261]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Serial Number UTU–71261; Modified Competitive Sale of Public Lands located in Uintah County, Utah.

SUMMARY: The public lands described below on the table entitled Land Sale Matrix have been examined and found suitable for disposal pursuant to Sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713 and 90 Stat. 2757–58; 43 U.S.C. 1719, respectively) at not less than appraised market value.

The purpose of the proposed sale is to dispose of parcels of public land that have been committed to either single purpose use or are too scattered and isolated for effective federal management by the BLM or any other federal agency. The proposed sale is consistent with the BLM's Book Cliffs and Diamond Mountain Resource Management Plans and amendments thereto and the public interest will be served by offering these parcels of public land for sale.

LAND SALE MATRIX

Parcel No.	Serial No. UTU	Legal description	*3rd party rights and Federal reservations	Acres	Minimum acceptable bid	Legal access
1	73550	T. 1 N., R. 23 E., Sec. 1: SE¼NW¼.	C–1	40.00	$5,000.00	No.
2	73551	T. 1 N., R. 23 E., Sec. 1: SW¼SW¼.	C–1	40.00	5,000.00	No.
3	73552	T. 1 N., R. 23 E., Sec. 12: Lot 4.	C–1	39.75	3,975.00	No.
4	73553	T. 1 N., R. 24 E., Sec. 6: Lot 1.	C–1	40.00	5,600.00	No.
5	73554	T. 1 N., R. 24 E., Sec. 7: SE¼NE¼.	C–1	40.00	5,600.00	No.
6	73555	T. 1 S., R. 24 E., Sec. 35: SE¼SE¼.	A–1; C–1	40.00	10,000.00	No.
7	73556	T. 2 S., R. 24 E., Sec. 4: SE¼NW¼, NE¼SW¼.	C–1	80.00	12,000.00	No.
8	73557	T. 3 S., R. 19 E.,	B–1; C–1	12.50	2,190.00	No.

LAND SALE MATRIX—Continued

Parcel No.	Serial No. UTU	Legal description	*3rd party rights and Federal reservations	Acres	Minimum acceptable bid	Legal access
9	73558	Sec. 7: SW¼NW¼NE¼SE¼, SW¼NE¼SE¼. T. 3 S., R. 19 E., Sec. 9: SW¼SW¼.	C–1	40.00	5,000.00	No.
10	73559	T. 3 S., R. 19 E., Sec. 12: S½NW¼, N½SW¼, E½SE¼SW¼, NW¼SE¼SW¼, E½SW¼SE¼SW¼, NW¼SW¼SE¼SW¼, S½SE¼. Sec. 13: NE¼NE¼, N½NW¼NE¼, NE¼SW¼NW¼NE¼, N½SE¼NW¼NE¼, SE¼SE¼NW¼NE¼.	A–21; C–1	347.50	43,440.00	Yes.
11	73560	T. 3 S., R. 19 E., Sec. 19: S½SW¼SW¼NE¼, SW¼SE¼SW¼NE¼	C–1	7.50	5,625.00	No.
12	73561	T. 3 S., R. 19 E., Sec. 19: SE¼SE¼SW¼NE¼.	B–2; C–1	2.50	2,500.00	No.
13	73562	T. 3 S., R. 20 E., Sec. 18: Lot 2.	C–1	37.75	5,665.00	No.
14	73563	T. 3 S., R. 30 E., Sec. 18: Lot 4, SE¼SW¼; Sec. 19: Lots 3 and 4.	C–1	149.51	18,690.00	No.
15	73564	T. 3 S., R. 20 E., Sec. 18: SW¼SE¼.	C–1	40.00	6,000.00	No.
16	73565	T. 3 S., R. 20 E., Sec. 19: SW¼NE¼.	C–1	40.00	6,000.00	No.
17	73566	T. 3 S., R. 22 E., Sec. 11: NW¼SW¼NE¼, S½SW¼NE¼.	A–2; B–3; C–1	30.00	7,500.00	No.
18	73567	T. 4 S., R. 20 E., Sec. 12: NE¼NW¼, W½W½, W½SE¼NW¼, W½NE¼SW¼.	A–3; C–1	240.00	60,000.00	No.
19	73568	T. 4 S., R. 21 E., Sec. 1: Lots 1 and 2, S½NE¼, NE¼SE¼.	C–1	200.10	50,000.00	No
20	73569	T. 4 S., R. 21 E., Sec. 30: SW¼NE¼.	C–1	40.00	10,000.00	No.
21	73570	T. 4 S., R. 21 E., Sec. 30: NE¼NE¼NW¼.	A–4; C–1	10.00	2,500.00	No.
22	73571	T. 4 S., R. 22 E., Sec. 31: NE¼NE¼NW¼ (within)	Privately-owned Minerals.	4.13	6,195.00	Yes.
23	73572	T. 4 S., R. 23 E., Sec. 33: NW¼SE¼.	A–5 & A–6; C–1 & C–2	40.00	8,000.00	Yes.
24	73573	T. 5 S., R. 19 E., Sec. 12: E½NE¼, S½N½SW¼NE¼, S½SW¼NE¼.	A–7 & A–20; C–1	110.00	22,000.00	No.
25	73574	T. 5 S., R. 22 E., Sec. 11: W½NE¼, NW¼, SE¼.	A–8 & A–9; C–1 & C–2	400.00	40,000.00	No.
26	73575	T. 5 S., R. 22 E., Sec. 22: W½SE¼.	C–1	80.00	16,000.00	No.
27	73576	T. 5 S., R. 22 E., Sec. 22: N½SE¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼SE¼.	A–10; C–1	35.00	8,750.00	No.
28	73577	T. 5 S., R. 22 E., Sec. 23: SW¼SW¼.	C–1	40.00	10,000.00	No.
29	73578	T. 5 S., R. 22 E., Sec. 26: NW¼NW¼; Sec. 27: NE¼NE¼.	A–7; C–1	80.00	16,000.00	No.
30	73579	T. 5 S., R. 22 E., Sec. 26: NE¼, E½NW¼.	A–7 & A–11; C–1	240.00	36,000.00	Yes.
31	73580	T. 5 S., R. 22 E., Sec. 25: SW¼NW¼.	C–1	40.00	10,000.00	No.
32	73581	T. 5 S., R. 23 E., Sec. 5: S½SW¼, SW¼SE¼.	A–9; C–1	120.00	18,000.00	No.
33	73582	T. 6 S., R. 20 E., Sec. 3: Lot 1, SE¼NE¼.	C–1	46.94	7,000.00	No.
34	73583	T. 6 S., R. 22 E., Sec. 12: Lot 11.	C–1 & C–2	3.38	250.00	No.
35	73584	T. 6 S., R. 22 E., Sec. 12: SE¼SW¼	A–12 & A–13; C–1 & C–2.	40.00	18,000.00	Yes.
36	73585	T. 7 S., R. 19 E., Sec. 1: Lots 2 through 4, SW¼NE¼, SW¼NW¼.	C–1 & C–2	203.66	30,550.00	No.

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LAND SALE MATRIX—Continued

Parcel No.	Serial No. UTU	Legal description	*3rd party rights and Federal reservations	Acres	Minimum acceptable bid	Legal access
37	73586	T. 7 S., R. 19 E., Sec. 1: SE¼SW¼, SW¼SE¼.	C–1 & C–2	80.00	12,000.00	No.
38	73587	T. 7 S., R. 20 E., Sec. 5: Lots 3 and 4, SW¼NW¼, SW¼; Sec. 6: Lots 1 and 2.	A–14, A–15, A–16 & A–17; C–1 & C–2.	364.47	63,785.00	No.
39	73588	T. 7 S., R. 20 E., Sec. 15: SW¼NE¼.	A–18; C–1 & C–2	40.00	12,000.00	No.
40	73589	T. 11 S., R. 20 E., Sec. 3: W½NW¼SE¼NE¼, S½SE¼NE¼.	A–19; C–1	25.00	1,000.00	Yes.
41	73590	T. 12 S., R. 20 E., Sec. 12: Lot 2, SE¼NE¼.	A–19; B–4; C–1	62.42	3,100.00	Yes.

*Those rights and reservations listed by letter and number are described in the narrative portion of this document.

SALE TIME, DATE AND LOCATION: The BLM will offer for sale the parcels of public land described on the Land Sale Matrix from 1 p.m. until 4 p.m. Mountain Daylight Time (MDT) on Friday, May 26, 1995, in Room #2 of the Western Park Convention Center located at 300 East 200 South, Vernal, Utah.

SALE PROCEDURES: The sale will be conducted using modified competitive bidding procedures described in this notice. Those who wish to participate in the land sale must submit a sealed bid for not less than the minimum bid amount specified in this notice with a separate bid submitted for each sale parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the United States Department of the Interior, BLM for not less than 10% of the amount bid. All sealed bids must be submitted to the BLM's Vernal District Office at 170 South 500 East, Vernal, Utah 84078, no later than 4:00 p.m. MDT, May 25, 1995. The sealed bid envelope containing the bid and required down payment must be clearly marked on the lower, left-hand corner as described below:

"Bid for Public Land Sale"
Parcel No. ___; Serial No. UTU–
Sale Date: May 26, 1995

On the day of the sale, the authorized officer shall publicly declare the highest qualifying sealed bid for each of the sale parcels. Designated bidders (i.e., adjoining land owners, grazing permittees, and holders of land use permits) who submitted a sealed bid for a specific sale parcel will be afforded an opportunity to present oral bids on that sale parcel. Oral bidding shall begin at not less than the announced highest sealed bid. Those designated bidders who choose to present oral bids shall do so in increments of $100.00 or more per sale parcel. The highest oral bid will determine who will be the successful bidder. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than 20% of the amount bid immediately following the close of the sale.

In the absence of oral bids, the party submitting the highest sealed bid will be declared the successful bidder. If two or more envelopes containing valid, sealed bids of the same amount are received, the determination of who is to be considered the successful bidder shall be by drawing on the day of the sale.

The successful bidder, whether such bid is oral or sealed, shall pay the remainder of the full price bid within 180 days of the sale date. Failure to pay the full price within the allotted time shall disqualify the successful bidder and cause the bid deposit to be forfeited to the BLM. The next highest bid, whether sealed or oral bid, will then be honored.

The successful bidder will be required to submit an application for those mineral interests offered for conveyance in the sale. The mineral interests being conveyed have no known mineral value. Some of the sale parcels do have prospectively valuable leasable minerals and/or saleable minerals which will be reserved to the United States. Only those mineral interests specified in this notice will be reserved to the United States. All other mineral interests will be conveyed with the surface estate. The successful bidder will be required to deposit, within 30 days of the sale date, a $50.00 non-refundable application fee for conveyance of the mineral estate, in accordance with Section 209(b) of the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1719). Failure to deposit the required application fee will result in disqualification as the high bidder.

All sealed bids will be either returned, accepted, or rejected within 30 days of the sale date. In the event the Authorized Officer rejects the highest qualified bid for any of the above sale parcels, or releases the successful bidder from it, the Authorized Officer shall determine whether the public land shall be withdrawn from disposal by sale or offered to the next highest bidder.

All bidders must be United States citizens, 18 years of age or older, and corporations must be subject to the laws of any State or of the United States. Successful bidders must submit proof of meeting these requirements within 15 days after the sale date. Proof forms may be obtained from the Vernal District Office.

Water Rights: Those water rights acquired by the United States from the State of Utah affecting Sale Parcels #6, #18, #30, #40 and #41 will transfer to the patentee upon conveyance of title. These water rights are based on incidental use of water available in streams or impounded in reservoirs for livestock watering.

Terms and Conditions: Disposal of the sale parcels would be subject to valid existing rights including the federal reservations and third party rights shown on the *Land Sale Matrix*. A description of these reservations and third party rights is provided below:

Federal Reservations: Patents, when and if issued, will contain mineral reservations to the United States for the minerals indicated in the Land Sale Matrix. This may include leasable minerals (C–1) and/or sand and gravel (C–2), together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document is available for review at the Vernal District office.

The United States will reserve title to all cultural resources, including archeological, historical, and paleontological resources, within or from the NW¼NW¼NE¼ of Section 13, T. 3 S., R. 19 E., Salt Lake Meridian (Sale Parcel No. 10), together with such right of ingress, egress, and temporary occupancy as is necessary to identify, inventory, monitor, preserve, protect, mitigate, and remove any cultural resources from the above described property. A more detailed description of this reservation which will be incorporated in the patent document is available for review at the Vernal District Office.

All patents, when and if issued, will reserve a right-of-way (R/W) for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

A–5. Those rights for State Highway 149 granted to the Utah Department of Transportation (UDOT) under the Act of November 9, 1921 (42 Stat. 212); R/W Grant No. U–029221.

A–8. Those rights for a 138 kV powerline granted to Western Area Power Administration under the Act of December 6, 1924 (43 U.S.C. 417); R/W Grant No. U–0144547.

A–12. Those rights for State Highway 264 granted to UDOT under the Act of August 27, 1958 (72 Stat. 885); R/W Grant No. U–0124784.

A–20. Those rights for a public road granted to the Bureau of Land Management under the Act of October 21, 1976 (43 U.S.C. 1767); R/W Grant No. U–71296.

Third Party Rights: Patents, when and if issued, will be subject to the following third party rights:

Rights-of-Way:

A–1. Those rights for a buried water pipeline granted to Randy Searle under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–61947.

A–2. Those rights for a 7.2 kV powerline granted to Moon Lake Electric Association (MLEA) under the Act of March 4, 1911 (43 U.S.C. 961); R/W Grant No. U–870.

A–3. Those rights for a water well and access road granted to Maeser Water Company under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–59120.

A–4. Those rights for a power/communication line granted to Insight Communications Company under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–018475.

A–6. Those rights for an access road granted to Wayne Wilkins under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–61943.

A–7. Those rights for a 69 kV powerline granted to MLEA under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–05579.

A–9. Those rights for a buried gas pipeline granted to Utah Gas Service Company under the Act of February 25, 1920 (30 U.S.C. 185); R/W Grant No. U–23779.

A–10. Those rights for an irrigation ditch granted to K.C. Ivers Estate under the Act of March 3, 1891 (43 U.S.C. 946–949); R/W Grant No. U–036553.

A–11. Those rights for a road granted to Uintah County under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–71236.

A–12. Those rights for a buried water pipeline granted to Jensen Water District under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–53937.

A–14. Those rights for a buried water pipeline and reservoir site granted to Ouray Park Water Improvement District under the Act of February 15, 1901 (43 U.S.C. 959); R/W Grant No. U–29706.

A–15. Those rights for a 7.2 kV powerline granted to MLEA under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–49246.

A–16. Those rights for a buried water pipeline granted to Ronald Dudley under the Act of March 3, 1891 (43 U.S.C. 946–949); R/W Grant No. U–31557.

A–17. Those rights for a buried water pipeline granted to Willard Wall under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–47495.

A–18. Those rights for a road granted to Dale Barratt under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–52134.

A–19. Those rights for a road granted to Uintah County under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–69125–14.

A–21. Those rights for a road granted to Uintah County under the Act of October 21, 1976 (43 U.S.C. 1761); R/W Grant No. U–73594.

Land Use Permits:

B–1. A land use permit issued to Chad Wilkerson for agricultural production under the Act of October 21, 1976 (43 U.S.C. 1732); Permit No. U–65100.

B–2. A land use permit issued to Tom Murphy and Art Reichle for a portion of a house, swimming pool and associated outbuildings under the Act of October 21, 1976 (43 U.S.C. 1732); Permit No. U–65188.

B–3. A land use permit issued to Maughan Colton for agricultural production under the Act of October 21, 1976 (43 U.S.C. 1732); Permit No. U–63998.

B–4. A land use permit issued to Shon and Tamra Massey for agricultural production under the Act of October 21, 1976 (43 U.S.C. 1732); Permit No. U–71239.

Water Rights: Those water rights acquired by Rondle Rogers from the State of Utah affecting Sale Parcel #39. The water right granted to Mr. Rogers is for irrigation and stockwatering use.

Oil & Gas Leases: Those rights granted to the holders of oil and gas leases issued pursuant to the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181, as amended).

Grazing Permits: The authorization of existing grazing permittees to graze their livestock on public lands encumbered by such permits would expire two years from the date of publication of the Notice of Realty Action in the Federal Register, unless the permittees choose to waive their grazing privileges earlier.

Flood Plain Covenant: Conveyance of these lands by the Secretary of the Interior shall not exempt the patent holder or subsequent owners of title from compliance with applicable Federal or State law and compliance with State or local land use plans, including floodplain management restrictions.

DATES: For a period of 45 days from the publication date of this notice in the Federal Register, interested parties may submit comments concerning the proposed public land sale to the Vernal District Manager.

ADDRESSES: Written comments concerning the proposed public land sale should be sent to the Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land sale, including relevant planning and environmental documentation, may be obtained from the Vernal District Office at the above address. Telephone calls may be directed to Peter A. Kempenich at (801) 781–4432.

SUPPLEMENTARY INFORMATION: Comments must refer to specific sale parcel numbers. Adverse comments received on specific sale parcels will not affect the sale of any other parcels. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the Federal Register will segregate the public lands from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever

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occurs first, and terminates in its entirety the notice published in the **Federal Register** on January 14, 1994, in Vol. 59, No. 10, Pages 2433 through 2435 under serial number UTU–65199.

The BLM may accept or reject any offer to purchase or withdraw any of the sale parcels at any time, if, in the opinion of the authorized officer, consummation of the sale would not be in the interest of the United States.

Dated: March 13, 1995.

Paul Andrews,

Acting District Manager.

[FR Doc. 95–6694 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–DQ–P

Bureau of Mines

Public Meeting of Bureau of Mines Advisory Board

AGENCY: Bureau of Mines, Interior.

ACTION: Notice of the first public meeting of the Bureau of Mines Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a public meeting of the Bureau of Mines Advisory Board will be held. The Bureau of Mines Advisory Board was established by the Secretary of the Interior on July 8, 1994. The purpose of the Board shall be to provide the Director of the U.S. Bureau of Mines with expert advice on policy and program direction. The purpose of the public meeting is to review the mission of the Board; to gain a better understanding of the new organization and program priorities of the Bureau of Mines and its relationship with customers in government and the private sector; and to begin to scope the work of the Board and its products.

DATES: The public meeting will be held on April 17 and 18, 1995 beginning at 8:30 a.m. EST.

ADDRESSES: The public meeting will be held in Room 324 at the U.S. Bureau of Mines, 810 Seventh Street, NW., Washington, DC 20241. Due to limited space, seating at the meeting will be on a first-come basis.

FOR FURTHER INFORMATION CONTACT: George White, U.S. Bureau of Mines, 810 Seventh Street, NW., Mailstop 1000, Washington, DC 20241; telephone (202) 501–9305, or Fax (202) 501–9960.

SUPPLEMENTARY INFORMATION: Members of the public who wish to submit written comments should do so by mailing at least 20 copies to Mr. White at the address above by April 7, 1995.

Comments received on or before that date will be mailed to Board members prior to the public meeting. Comments received after that date will be made available to Board members at the public meeting. Members of the public who wish to make a brief oral statement should contact Mr. White at the telephone number above no later than April 7, 1995. Oral statements should be limited to 5 minutes and should not be restatements of previously submitted written comments.

Dated: March 17, 1995.

George White,

Special Assistant to the Director.

[FR Doc. 95–7039 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–53–M

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the USDA Forest Service

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under provisions of the Native American Graves Protection and Repatriation Act of the intent to repatriate cultural items in the possession of the Cibola National Forest, USDA Forest Service, that meet the definition of "sacred object" under Section 2 of the Act.

The items consist of 138 bundles of feathers, several loose fragments of feathers and two corn husk bundle ties. Each feather bundle contains either two or three feathers tied with cotton twine on the lower shaft. With approximately one half of the bundles, the twine and some feathers are stained with red ochre. A few of the bundles are made up entirely of small feathers but most consist of one large feather and either one or two small feathers. The large feathers are turkey or hawk. With few exceptions, each bundle contains one small blue feather from a Stellar's or other jay.

The feather bundles were collected by a hiker from a shrine on the Sandia Mountains (New Mexico) in the late summer/early fall of 1984 and were brought to the Sandia Ranger District, Cibola National Forest several weeks later. A review of published and unpublished ethnographic information identified 27 Indian tribes and pueblos that traditionally used the Sandia Mountains. All 27 Indian tribes and pueblos were notified of the feather bundles.

Representatives of the Pueblo of Jemez have inspected the items and have identified them as prayer feather bundles. The representatives of the Pueblo of Jemez indicated that the prayer feather bundles are left as offerings at a shrine on the Sandia Mountains as part of their traditional religious practice. Once left as a offering, Jemez Pueblo religion requires that such prayer feather bundles not be disturbed.

The Pueblo of Jemez has identified the prayer feather bundles and associated materials as sacred objects of the Pueblo of Jemez and requested their repatriation. The Pueblo of Sandia, the Pueblo of Acoma, the Pueblo of Isleta and the Pueblo of Zuni have been consulted following their expressions of interest in the feather bundles. The Pueblos of Sandia, Acoma, Isleta and Zuni support the claim of the Pueblo of Jemez to this particular collection of feather bundles from the Sandia Mountains.

Based on the above mentioned information officials of the USDA Forest Service have determined, pursuant to 25 U.S.C. 3001(3)(C), that these feather bundles are specific ceremonial objects needed by the traditional religious leaders of the Pueblo of Jemez for the practice of their traditional religion by its present day adherents. Officials of the USDA Forest Service have further determined, pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity which can be reasonably traced between these prayer feather bundles and the Pueblo of Jemez.

This notice has been sent to officials of the Pueblos of Jemez, Acoma, Isleta, Sandia, and Zuni. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these cultural items should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, NM 87102, telephone: (505) 842–3238, before April 21, 1995. Repatriation of these sacred objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: March 15, 1995.

Ruthann Knudson,

Acting, Departmental Consulting Archeologist, Acting Chief, Archeological Assistance Division.

[FR Doc. 95–6976 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–70–F

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0039), Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans—30 CFR 784.

OMB Number: 1029–0039.

Abstract: Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards in Public Law 95–87.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Underground Coal Mining Operators.

Estimated Completion Time: 513 hours.

Annual Responses: 100.

Annual Burden Hours: 51,261.

Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: January 10, 1995.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–6975 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–364]

Certain Curable Fluoroelastomer Compositions and Precursors Thereof; Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

The Commission instituted this investigation on March 16, 1994, based upon a complaint filed by Minnesota Mining and Manufacturing Company ("3M") alleging that Ausimont, S.p.A., of Milan, Italy, and Ausimont U.S.A., Inc., of Morristown, NJ (collectively referred to as "respondents" or "Ausimont") had violated section 337 in the sale for importation, the importation, and the sale within the United States after importation of certain curable fluoroelastomer compositions and precursors thereof, by reason of infringement of one or more claims of U.S. Letters Patent 4,287,320 ("the '320 patent") assigned to 3M. 59 FR 12344 (March 16, 1994).

On December 15, 1994, the presiding administrative law judge (ALJ) issued his final initial determination (ID) finding that respondents had violated section 337, based on his findings that (1) the claims in issue of the '320 patent are not invalid; (2) the accused products imported by respondents infringe the claims in issue of the '320 patent under the doctrine of equivalents; and (3) a domestic industry exists. On February 2, 1995, the Commission determined not to review the ALJ's final ID and requested written submissions on the issues of remedy, the public interest, and bonding. 60 FR 7581 (February 8, 1995).

Submissions on remedy, the public interest, and bonding were received from complainant 3M, respondents, and the Commission investigative attorney (IA). Complainant, respondents, and the IA also filed reply submissions on these issues.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing fluoroelastomer compositions or precursors thereof manufactured and/or imported by or on behalf of Ausimont, S.p.A. of Milan, Italy or Ausimont U.S.A, Inc., of Morristown, New Jersey. In addition, the Commission issued a cease and desist order directed to the domestic respondent, Ausimont U.S.A, ordering it to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported curable fluoroelastomer compositions or precursors thereof. The orders apply to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, of the above-named companies.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337 (d) and (f) do not preclude the issuance of the limited exclusion and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 48 percent of the entered value of the articles in question.

Copies of the Commission orders, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: March 16, 1995.

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By order of the Commission.
Donna R. Koehnke,
Secretary.
[FR Doc. 95–7047 Filed 3–21–95; 8:45 am]
BILLING CODE 7029–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–203.

Comments on the following assessment are due 15 days after the date of availability:

AB–43 (Sub-No. 166X), Illinois Central Railroad Company—Notice of Exemption Under 49 C.F.R. 1152.50—Abandonment of Line In Taylorsville, Mississippi. EA available 3/3/95

AB–436X, Bath & Hammondsport Railroad Co.—Abandonment Exemption—In Steuben County, NY. EA available 3/10/95.

AB–55 (Sub-No. 501X), CSX Transportation, Inc.—Abandonment—In Lucas and Wood Counties, Ohio. EA available 3/10/95.

Comments on the following assessment are due 20 days after the date of availability:

Finance Docket No. 32640, Canadian National Railway Company—Integration of Rail Operations with U.S. Rail Affiliates. EA available 3/17/95.

Comments on the following assessment are due 30 days after the date of availability:

AB–43 (Sub-No. 168X), Illinois Central Railroad Company Abandonment Exemption—In Hinds County, Mississippi. EA available 3/10/95.

AB–402 (Sub-No. 3X), Fox Valley & Western Ltd.—Abandonment Exemption—In Portage and Waupaca Counties, Wisconsin. EA available 3/17/95.

Vernon A. Williams,
Secretary.
[FR Doc. 95–7053 Filed 3–21–95; 8:45 am]
BILLING CODE 7035–01–P

[Docket No. AB–6 (Sub-No. 365X)]

Exemption and of Interim Trail Use or Abandonment; Burlington Northern Railroad Company—Abandonment Exemption—In Thurston County, WA

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 12.45-mile rail line between BN MP 16.00 near Belmore and BN MP 28.45 near Gate, including the station of Little Rock at BN MP 21.4, in Thurston County, WA.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is either pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 21, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 3, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Thurston County (County) supports the abandonment and seeks issuance of a notice of interim trail use/rail banking (NITU) under 16 U.S.C. 1247(d) covering the involved lines. County has submitted a statement of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29. BN consents to this request and is willing to negotiate with County.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) (Trails Act) are applicable, and all of the criteria for imposing trail use/rail banking have been met. Accordingly, based on BN's willingness to enter into negotiations with County, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, BN may fully abandon the line. See 49 CFR 1152.29(d)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude BN from negotiating with other parties in addition to County during the NITU negotiating period. If additional trail use requests are filed, BN is directed to respond to them. Use of the rights-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

conditions.[4] Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. *See* 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, BN may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

2. If an interim trail use/rail banking agreement is reached, then with respect to the right-of-way, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify BN from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

4. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, BN may fully abandon the line.

6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective on April 21, 1995.

Decided: March 15, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 95–6896 Filed 3–21–95; 8:45 am]
BILLING CODE 7035–01–P

[4] The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by our adoption of rules allowing OFAs in these exemption proceedings. *See* 49 CFR 1152.27.

[Docket No. AB–6 (Sub-No. 364X)]

Burlington Northern Railroad Company; Abandonment Exemption—in Snohomish County, WA; Exemption and Notice of Interim Trail Use or Abandonment

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon its 2.69-mile line of railroad between BN milepost 6.92 and BN milepost 8.19, and the 1.42-mile Cascade Pole Spur in and near Arlington, in Snohomish County, WA.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 21, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

The Snohomish County Parks and Recreation Department (SCPRD) requests issuance of a notice of interim trail use/rail banking (NITU) for the involved line under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). SCPRD has submitted a statement of willingness to assume financial responsibility for the interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. BN consents to this request and is willing to negotiate with SCPRD.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) (Trails Act) are applicable, and all of the

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request prior to the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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criteria for imposing trail use/rail banking have been met. Accordingly, based on BN's willingness to enter into negotiations with SCPRD, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, BN may fully abandon the line. See 49 CFR 1152.29(d)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude BN from negotiating with other parties in addition to SCPRD during the NITU negotiating period. If additional trail use requests are filed, BN is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the OFA process under 49 U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions.[4] Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SCPRD also requested a 180-day public use condition under 49 U.S.C. 10906 as an alternative to interim trail use. When the need for both conditions is established, it is Commission policy to impose them concurrently, subject to the execution of a trail use agreement. See *Trails*, *supra* at 609. SCPRD's submission meets the requirements for a public use condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (a) The condition sought; (b) the public importance of the condition; (c) the time period for which the condition would be effective; and (d) justification for imposition of the time period.

[4] The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by the adoption of rules allowing OFAs in these exemption proceedings. See 49 CFR 1152.27.

Accordingly, the requested 180-day public use condition will also be imposed. If a trail use agreement is reached for a portion of the right-of-way, BN must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire either the whole or a portion of a right-of-way that has been found suitable for public purposes, including trail use.

BN has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. The abandonment of the above described line is subject to the conditions: (1) That BN is prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, unless for public use on reasonable terms; and (2) that BN keep intact the right-of-way underlying the track, including all of the trail related structures including bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of this exemption, to enable any State or local government agency or other interested persons to negotiate the acquisition of the line for public use.

2. Subject to the conditions set forth above, BN may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify BN from any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this notice of exemption and NITU, interim trail use may be implemented. If no agreement is reached by that time, BN may fully abandon the line.

Decided: March 16, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7052 Filed 3–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–6 (Sub-No. 362X)]

Burlington Northern Railroad Company—Abandonment Exemption—In King County, WA

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon its line of railroad between BN milepost 12.37 and BN milepost 13.06, a distance of approximately 0.69 miles, in Renton, King County, WA.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 21, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main St., Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 16, 1995.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–7054 Filed 3–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32433]

Chicago & North Western Railway Co.—Construction Exemption—Douglas County, Wisconsin

The Chicago & North Western Railway Co. (CNW) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 2,900-foot rail line extension which would provide CNW with access to the Midwest Energy Resources Company coal dock facility in Superior, Wisconsin. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring CNW to implement the mitigation contained in the EA.

The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Dana White (202) 927–6214. Requests for copies of the EA should also be directed to Ms. White.

Date made available to the public: March 22, 1995.

Comment due date: April 21, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6898 Filed 3–21–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1626ROD–94]

Record of Decision for the Program of Protecting the Southwest Border Through the Interdiction of Illegal Drugs With the Support of Joint Task Force Six

AGENCY: The Immigration and Naturalization Service, Department of Justice (lead); Joint Task Force Six, Department of Defense (cooperating); and Environmental Protection Agency (cooperating).

ACTION: Notice of availability of the record of decision.

SUMMARY: This Notice is to announce that the Record of Decision (ROD) for the continuation of the Joint Task Force Six (JTF–6) activities along the United States (U.S.)/Mexico border, jointly signed by JTF–6 and the Immigration and Naturalization Service (INS), is available.

The JTF–6 program involves providing operational, engineering, and general support to law enforcement agencies (LEAs) that have drug interdiction responsibilities within the southwestern border states. The JTF–6's primary area of concern is within a 50-mile-wide corridor along the U.S./Mexico border from Port Arthur, Texas, to San Diego, California.

ADDRESSES: Copies of the ROD are available upon written request to either of the following addresses:

1. U.S. Army Corps of Engineers, Fort Worth District, CESWF–PL–RE, P.O. Box 17300, 819 Taylor Street, Fort Worth, Texas 76102–0300.
2. Immigration and Naturalization Service, 425 I Street NW, Facilities Branch (Room 2003), Washington, DC 20536.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This Notice of Availability (NOA) is being issued in accordance with the National Environmental Policy Act (NEPA), Public Law 91–190, and Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508.

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Background

JTF–6 was activated on November 13, 1989, at Fort Bliss, Texas, by the Secretary of Defense in accordance with the President's National Drug Control Strategy.

The mission of JTF–6 is to plan and coordinate military training along the U.S. Southwest Land Border in support of counter-drug activities by Federal, State, and Local LEAs, as requested through Operation Alliance and approved by the Secretary of Defense or a designated representative.

The INS is responsible for the prevention of smuggling and unlawful entry of aliens into the United States. This task of the Border Patrol often results in the interdiction of drugs between the U.S. land Ports-of-Entry. The INS Border Patrol has been the primary beneficiary of most JTF–6 engineering actions to date, which have included reconnaissance operations, and fence and road construction. For this reason, the INS elected to act as lead agency for the preparation of a Programmatic Environmental Impact Statement (PEIS). The PEIS analyzed cumulative environmental impacts of previous actions performed by JTF–6, and generically examined the impacts of future individual actions, which may be developed within the reasonably foreseeable future, based on experience with similar past actions. The PEIS also described the different types of actions performed by JTF–6. The Environmental Protection Agency (EPA) and JTF–6 elected to act as cooperating agencies.

A Notice of Intent (NOI) to prepare the PEIS was published in the **Federal Register** on July 15, 1993, at 58 FR 38140. The Draft PEIS was filed with the EPA and published in the **Federal Register** on April 15, 1994, at 59 FR 18115; the Notice of Availability (NOA) of the Draft PEIS was published in the **Federal Register** on May 19, 1994, at 59 FR 26322. The Final PEIS was filed with the EPA on August 11, 1994, and published in the **Federal Register** on August 19, 1994, at 59 FR 42831; the NOA of the Final PEIS was published in the **Federal Register** on October 5, 1994, at 59 FR 50773. In accordance with NEPA, this ROD is the concluding step in the PEIS process.

Dated: March 9, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–7021 Filed 3–21–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,693; Hudson Valley Polymers, A Division of Alfa Laval Agri, Inc., Poughkeepsie, NY

TA–W–30,628 & TA–W–30,629; Artex Manufacturing Co., Abilene, KS and Overland, KS

TA–W–30,630, A & B; Artex Manufacturing Co., Boonville, MO, Manhattan, KS, Yates Center, KS

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,542; Scott Paper Co., Oconto Falls, WI

U.S. imports of sanitary paper products were negligible in 1992 through 1994.

TA–W–30,638; MPI Warehouse Speciality Co., Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,621, TRW Technar, Inc., TRW Transportation Electronics Div., San Dimas & Irwindale, CA

The investigation revealed that worker separations at the San Dimas and Irwindale, CA, plants of TRW Transportation Electronics Div. of TRW Technar, Inc., were a result of a corporate restructuring effort to more efficiently utilize the capacity of all company plants.

TA–W–30,641; Camp Service Line, Standard Motor Products, Inc., Edwardsville, KS

Layoffs were a result of corporate restructuring effort to utilize more efficiently the capacity of all company plants.

TA–W–30,702; Bearings, Inc., Rahway, NJ

The worker's firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,720; SNE Enterprises, Inc., Spokane, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,630; Exxon Pipeline Co., La Porte, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,760; Kennemetal, Inc., El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,770; AT&T Communications of Southwest, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,658; Swift Adhesives, St. Joseph, MO

A certification was issued covering all workers separated on or after January 3, 1994.

TA–W–30,725, A & B; Gerrity Oil & Gas Corp., Denver, CO & Operating at Various Locations in the Following States: A; CO., B; WY

A certification was issued covering all workers separated on or after January 31, 1994.

TA–W–30,732; Contract Apparel, El Paso, TX

A certification was issued covering all workers separated on or after January 24, 1994.

TA–W–30,753; Techmedica, Inc., Camarillo, CA

A certification was issued covering all workers separated on or after December 22, 1993.

TA–W–30, 627; New Dimensions, Ltd. Providence, RI

A certification was issued covering all workers separated on or after December 21, 1993.

TA–W–30, 613; T.A.B.C. Prince Gardner (Formerly Prince Gardner, Inc), Searcy, AR

A certification was issued covering all workers separated on or after December 14, 1993.

TA–W–30, 697; Empire Manufacturing Co., Winder, GA

A certification was issued covering all workers separated on or after January 5, 1994.

TA–W–30, 654; Guardian Electric Manufacturing Co., Inc., Woodstock, IL

A certification was issued covering all workers separated on or after January 3, 1994.

TA–W–30, 704; Lynwood Fashions, Inc., Wilkes Barre, PA

A certification was issued covering all workers separated on or after January 24, 1994.

TA–W–30, 710; Crown Cork & Seal Co., Inc., Swedesboro, NJ

A certification was issued covering all workers separated on or after January 23, 1994.

TA–W–30, 647, A, B, C; Amerada Hess Corp., Houston, TX and Operating At Various Locations in the Following States: A; OK. B; LA, C; ND

A certification was issued covering all workers separated on or after January 17, 1994.

TA–W–30, 675; Mallinckrodt Medical, Inc., Anesthesiology Div., Argyle, NY

A certification was issued covering all workers separated on or after January 16, 1994.

TA–W–30, 660 & TA–W–30, 661; Utica Corp., Mohawk St, Whitesboro, NY and Halsey Road, Whitesboro, NY

A certification was issued covering all workers separated on or after March 9, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of March, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00354; Genlyte Group, Inc., Lightolier Div—Model Shop. Secaucus, NJ

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from Genlyte to Mexico or Canada during the period under investigation, nor did Genlyte import tissue from Mexico or Canada any articles like or directly competitive with model lamp fixtures, track system devices, fluorescent fixtures and other lighting model products.

NAFTA–TAA–00348; Martin Marietta, Ocean, Radar & Sensor Systems Div., Utica, NY

The investigation revealed that criteria (3) and (4) were not met and that criterion (1) has not been met in conjunction with the requirements of Section 506(b)(2) of the Act.

NAFTA–TAA–00351; Eagle Coach Corp., Brownsville, TX

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor does the company import buses from Mexico or Canada.

NAFTA–TAA–00345; Johnson Controls Battery Group, Inc., Owosso, MI

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production from Johnson Controls to Mexico or Canada during the period under investigation, nor did Johnson Controls import from Mexico or Canada any articles that are like or directly competitive with automotive batteries.

NAFTA–TAA–00353; Anderson & Middleton, Grays Harbor Veneer Div., Hoquiam, WA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor does the company import veneer from Mexico or Canada. Customer imports of veneer from Canada or Mexico did not contribute importantly to worker separations at the subject firm.

NAFTA–TAA–00349; Unisys Government Systems Group, Great Neck, NY

The investigation revealed that criteria (3) and (4) were not met. The investigation finding show that of the bids submitted unsuccessfully by the subject firm, the contracts were awarded to domestic firms to manufacture domestically; therefore, customer imports from Canada or Mexico did not contribute importantly to worker separations at the subject firm.

NAFTA–TAA–00347; Pacific Trail, Inc., London Fog Industries, Spokane, WA

The investigation disclosed that workers at the Spokane facility provided warehousing, distribution and other support services related to the overseas production of recreational clothing. The provision of services supporting production that occurs outside the U.S. cannot be used as the basis for certification under the terms of the Trade Act of 1974, as amended.

NAFTA–TAA–00356; Digital Employees' Federal Credit Union, Albuquerque, NM

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended. Performance of services does not constitute production of an article, as required by the Trade Act of 1974. this determination has been upheld in the US Court of Appeals.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00360; Axia, Inc., Nestaway Div., Beaver Dam, KY

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A certification was issued covering all workers of the Nestaway Div. of Axia, Inc., Beaver Dam, KY separated on or after February 3, 1994.

NAFTA-TAA-00358; Sun Apparel, Inc., Concepcion Plant, El Paso, TX

A certification was issued covering all workers of the Concepcion Plant of Sun Apparel, Inc., El Paso, TX separated on or after February 2, 1994.

NAFTA-TAA-00346; D & G Shake Co., Inc, Amanda Park, WA

A certification was issued covering all workers of D & G Shake Co., Inc., Amanda Park, WA separated on or after January 24, 1994.

NAFTA-TAA-00342; Johnson & Johnson, Personal Products Co., Div., North Little Rock, AR

A certification was issued covering all workers of Carefree, Serenity Thin Pads and Serenity Guards Departments of the Personal Products Co Div. of Johnson & Johnson, North Little Rock, AR separated on or after January 23, 1994.

NAFTA-TAA-00350; Memotec Communications, Inc., North Andover, MA

A certification was issued covering all workers of Memotec Communication, Inc., North Andover, MA separated on or after January 9, 1994.

I hereby certify that the aforementioned determinations were issued during the months of March, 1995. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 14, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7040 Filed 3-21-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,633]

Karlshamns USA, Incorporated, Harrison, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 9, 1995 in response to a worker petition which was filed on behalf of workers and former workers at Karlshamns USA, Incorporated, Harrison, New Jersey (TA-W-30,633).

The company has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7045 Filed 3-21-95; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 3, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 3, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 13th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Hyperion Power Technologies (Workers).	Watertown, MA	03/13/95	02/20/95	30,795	Power supplies & magnetics.
TTC Inc. (Workers)	Kankakee, IL	03/13/95	02/08/95	30,796	Outerwear jackets.
Ace Comb Co (IBT)	Booneville, AR	03/13/95	02/15/95	30,797	Hair accessories.
Etowah Mfg. Co., Inc. (Workers)	Etowah, TN	03/13/95	02/24/95	30,798	Work shirts.
Huls America Inc. (Workers)	Elizabeth, NJ	03/13/95	01/31/95	30,799	Paint thinners chemicals.
Penn Union Corp (Workers)	Edinboro, PA	03/13/95	02/22/95	30,800	Casting bronze & Copper alloy.
Gregory Rig Service & Sales, Inc. (Co.)	Odessa, TX	03/13/95	01/03/95	30,801	Oil rigs.
Fisher Controls International, Inc. (UAW).	Marshalltown, IA	03/13/95	02/27/95	30,802	Control valves for pipelines.
Mitel Telecommunications Systems (Co).	Mt. Laurel, NJ	03/13/95	11/06/95	30,803	Telephone & voice mail systems.
Mitel Telecommunications Systems (Co).	Moorestown, NJ	03/13/95	11/06/95	30,804	Telephone & voice mail systems.
Formfit Rogers (Co.)	McMinnville, TN	03/13/95	02/22/95	30,805	Ladies nightwear.
Transwestern Pipeline (Workers)	Hobbs, NM	03/13/95	03/02/95	30,806	Natural gas.
Saba Petroleum, Inc/Saba Energy (Workers).	Edmond, OK	03/13/95	02/11/95	30,807	Crude oil & natural gas.
Pennzoil Sulphur Co. (Co.)	Pecos, TX	03/13/95	02/03/95	30,808	Sulphur.
Pennzoil Sulphur Co. (Co.)	Galveston, TX	03/13/95	02/03/95	30,809	Sulphur.
Pennzoil Sulphur Co. (Co.)	Houston, TX	03/13/95	02/03/95	30,810	Sulphur.
Pennzoil Sulphur Co. (Co.)	Tampa, FL	03/13/95	02/03/95	30,811	Sulphur.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Anderson & Middleton (Co.)	Hoquiam, WA	03/13/95	03/07/95	30,812	Softwood lumber.
Unisys (IUE)	Great Neck, NY	03/13/95	03/06/95	30,813	Shipboard radar systems.
Eagle Coach Corporation (Co.)	Brownsville, TX	03/13/95	03/07/95	30,814	Buses.

[FR Doc. 95-7042 Filed 3-21-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,733]

McDonnell Douglas Corporation, Long Beach, Monrovia and Huntington Beach, California and Columbus, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1995, in response to a worker petition which was filed on February 13, 1995, on behalf of workers at McDonnell Douglas Corporation, Long Beach, Monrovia and Huntington Beach, California, and Columbus, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-7044 Filed 3-21-95; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on April 10 and 11, 1995, in Room N3437 A-D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. each day lasting until approximately 4 p.m. on April 10 and 3 p.m. on April 11.

Agenda items will include overviews of activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH), a legislative update, and discussions on occupational safety and health programs.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by April 3 at the address indicated below.

An official record of the meeting will be available for public inspection through Tom Hall, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue NW, Washington, DC 20210, telephone 202-219-8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N-3641, 200 Constitution Avenue NW, Washington, DC 20210, telephone 202-219-8021.

Signed at Washington, D.C. this 17th day of March 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95-7046 Filed 3-21-95; 8:45 am]

BILLING CODE 4510-26-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration, (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than April 3, 1995.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than April 3, 1995.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room

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C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 13th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Cleveland Twist Drill Company; Div. of Greenfield Ind. (Workers).	Cynthiana, KY	02/17/95	NAFTA–00373	Twist drills, tool bits, T-blades, cut-off blades.
Boeing of Portland (Workers)	Portland, OR	02/20/95	NAFTA–00374	Aircraft parts ie. beams.
Schweiger Industries, Inc.; Jefferson Furniture Mgf. Fac. (USWA).	Jefferson, WA	02/23/95	NAFTA–00375	Livingroom furniture.
W.E. Kautenberg Company; National Brush Sister Co. (Workers).	Freeport, IL	02/17/95	NAFTA–00376	Brooms; corn and straw.
DLCI USA (Workers)	Van Buren, ME	02/24/95	NAFTA–00377	Bicycle parts.
AMSCO Basil Mfg.; AMSCO International (Co.).	Wilson, NY	02/24/95	NAFTA–00378	Industrial washing equipment.
I. Appel Corporation; Formfit Rogers (Workers).	McMinnville, TN	02/27/95	NAFTA–00379	Underwear and outerwear.
Hillside Logging Inc. (Workers)	Appleton, WA	02/28/95	NAFTA–00380	Logs.
Pennzoil Products Co.; Exploration and Production (UERMA).	Vienna, WV	02/28/95	NAFTA–00381	Natural gas and crude oil.
Timet; Tremont (Workers)	Henderson, NV	02/28/95	NAFTA–00382	Titanium sponge.
Goody Products; Ace Comb. Co. (Workers) .	Booneville, AR	03/01/95	NAFTA–00383	Combs, brushes, and hair accessories.
Pillowtex Corporation (Workers)	Dallas, TX	03/06/95	NAFTA–00384	Bedroom textile furnishings.
Marshalltown Instruments—DESCO Corp.; Oshkosh (Workers).	Oshkosh, NE	03/08/95	NAFTA–00385	Medical instruments ie. stephescope diaphrams.
Editorial America, SA (Workers)	Virginia Gardens, FL.	03/08/95	NAFTA–00386	Magazines.
Western Cabinet & Millwork, Inc. (MILLMAN).	Woodinville, WA	03/09/95	NAFTA–00387	Wood cabinets, decorative wood furnishings, furniture items.
West Pac Cedar Products Inc. (Co.)	Humptulips, WA	03/09/95	NAFTA–00388	Cedar shakes.

[FR Doc. 95–7041 Filed 3–21–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00365]

Nashua Cartridge Products, Inc. Exeter, New Hampshire; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 13, 1995 in response to a petition filed on behalf of workers at Nashua Cartridge Products, Inc. in Exeter, New Hampshire. Workers produce laser toner cartridges.

In a letter dated February 27, 1995, the petitioners requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 14th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–7043 Filed 3–21–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–024)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Materials and Structures; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Materials and Structures meeting.

DATES: April 11, 1995, 8 a.m. to 7 p.m.; and April 12, 1995, 8 a.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Room 124, Building 1229, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Dr. Darrel R. Tenney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864–3492).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of NASA's Aeronautics Program
—Multidisciplinary Design Optimization Airframe/Engine
—Base Materials & Structures/Airframes
—Base Materials & Structures/Propulsion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 16, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–7000 Filed 3–21–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For A Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–18 issued to Rochester Gas and Electric Corporation (RG&E) for operation of the Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would revise Ginna Station Technical Specification (TS) 4.4.2.4.a to replace specific leakage testing frequencies for containment isolation valves. This TS change will support a proposed Exemption to Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix J, Section III.D.3, requested under separate cover to exempt Type C testing of certain valves during a 1995 refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings require by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated. The change is consistent with NUREG–1431 [Standard Technical Specifications - Westinghouse Plants, dated September 1993] and has therefore, been previously evaluated and accepted by the NRC. The change involves no technical change to the existing Technical Specification since 10 CFR Appendix J provides equivalent testing frequencies as those currently specified in TS 4.4.2.4.a. There is no impact to initiators of analyzed events or assumed mitigation of accident on transient events. Implementation of this change is expected to result in more efficient use of RG&E and the NRC resources without any reduction in safety.

2. Operation of Ginna Station in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change is consistent with NUREG–1431 and has therefore, been previously evaluated and accepted by the NRC. The change does not involve physical alterations of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change does not impose or eliminate any new or different requirements since 10 CFR [Part] 50, Appendix J provides equivalent testing frequencies as those currently specified in TS 4.4.2.4.a.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. All requirement in the technical specifications related to containment isolation valves remain the same with exception that a reference to 10 CFR [Part] 50, Appendix J is being provided in place of specific leakage testing requirements. The change has no impact on any safety analysis assumptions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 21, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

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the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 13, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 16th day of March 1995.

For The Nuclear Regulatory Commission.

Clarence E. Carpenter,

Acting Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–7015 Filed 3–21–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 1995, of 25 rescission proposals and seven deferrals contained in four special messages for FY 1995. These messages were transmitted to Congress on October 18, and December 13, 1994, and on February 6, and February 22, 1995.

Rescissions (Attachments A and C)

As of March 1, 1995, 25 rescission proposals totaling $1,067.8 million had been transmitted to the Congress. Attachment C shows the status of the FY 1995 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1995, $2,621.0 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1995.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

59 FR 54066, Thursday, October 27, 1994
59 FR 67108, Wednesday, December 28, 1994

60 FR 8842, Wednesday, February 15, 1995

Alice M. Rivlin,

Director.

Attachment A.—Status of FY 1995 Rescissions

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	1,067.8
Rejected by the Congress	
Currently before the Congress	1,067.8

Attachment B.—Status of FY 1995 Deferrals

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	4,669.1
Routine Executive releases through March 1, 1995 (OMB/Agency releases of $2,079.7 million, partially offset by cumulative positive adjustment of $1.6 million)	−2,078.0

Attachment B.—Status of FY 1995 Deferrals—Continued

[In millions of dollars]

	Budgetary resources
Overturned by the Congress	
Currently before the Congress	2,621.0

ATTACHMENT C.—STATUS OF FY 1995 RESCISSION PROPOSALS AS OF MARCH 1, 1995

[Amounts in thousands of dollars]

Agency/bureau/account	Amounts pending before Congress			Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
	Rescission No.	Less than 45 days	More than 45 days					
Department of Agriculture								
Foreign Agricultural Service:								
Public Law 480 program account.	R95–1	43,865		2–6–95				
Public Law 480 grants, title I (OFD), II, and III.		98,635		2–6–95				
Food and Nutrition Service:								
Food stamp program	R95–2	2,900		2–6–95				
Department of Commerce								
National Telecommunications and Information Administration:								
Public broadcasting facilities, planning and construction.	R95–3	18,000		2–6–95				
Department of Education								
Office of Elementary and Secondary Education:								
School improvement programs.	R95–4	138,084		2–6–95				
	R95–4A	−35,000		2–22–95				
Office of Vocational and Adult Education:								
Vocational and adult education.	R95–5	43,888		2–6–95				
Office of Postsecondary Education:								
Higher education	R95–6	26,903		2–6–95				
College housing and academic facilities program	R95–7	168		2–6–95				
Office of Educational Research and improvement:								
Education research, statistics, and improvement.	R95–8	750		2–6–95				
Libraries	R95–9	12,942		2–6–95				
Department of Health and Human Services								
Health Resources and Services Administration:								
Health resources and services.	R95–10	29,147		2–6–95				

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ATTACHMENT C.—STATUS OF FY 1995 RESCISSION PROPOSALS AS OF MARCH 1, 1995—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Amounts pending before Congress: Rescission No.	Amounts pending before Congress: Less than 45 days	Amounts pending before Congress: More than 45 days	Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
Centers for Disease Control and Prevention:								
Disease control, research, and training.	R95–11	1,300		2–6–95				
National Institutes of Health:								
National Center for Research Resources.	R95–12	1,000		2–6–95				
Department of Housing and Urban Development								
Housing Programs:								
Annual contributions for assisted housing.	R95–13	439,200		2–6–95				
Congregate services	R95–14	37,000		2–6–95				
Department of Labor								
Bureau of Labor Statistics:								
Salaries and expenses.	R95–15	1,100		2–6–95				
Department of Transportation								
Federal Railroad Administration:								
Local rail freight assistance.	R95–16	13,216		2–6–95				
Office of the Secretary:								
Payments to air carriers (Airport and airway trust fund).	R95–17	7,680		2–6–95				
Environmental Protection Agency								
Abatement, control, and compliance.	R95–18	11,642		2–6–95	6,835	2–6–95		
	R95–18A	–6,835		2–6–95				
Water infrastructure financing.	R95–18B	3,200		2–6–95				
Research and development.	R95–18C	3,635						
	R95–18C–1	Language		2–6–95				
				2–22–95				
National Aeronautics and Space Administration								
Mission support	R95–19	1,000		2–6–95				
Construction of facilities.	R95–20	27,000		2–6–95				
Small Business Administration								
Salaries and expenses.	R95–21	15,000		2–6–95				
Other Independent Agencies								
Chemical Safety and Hazard Investigation Board:								
Salaries and expenses.	R95–22	500		2–6–95				

ATTACHMENT C.—STATUS OF FY 1995 RESCISSION PROPOSALS AS OF MARCH 1, 1995—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Amounts pending before Congress: Rescission No.	Amounts pending before Congress: Less than 45 days	Amounts pending before Congress: More than 45 days	Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
National Science Foundation:								
Academic research infrastructure.	R95–23	131,867		2–6–95				
Total Rescissions.		1,067,787	0		6,835		0	

ATTACHMENT D.—STATUS OF FY 1995 DEFERRALS AS OF MARCH 1, 1995

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted: Original request	Amounts transmitted: Subsequent change (+)	Date of message	Releases (–): Cumulative OMB/agency	Releases (–): Congressionally required	Congressional action	Cumulative adjustments (+)	Amount deferred as of 3–1–95
Funds Appropriated to the President									
International Security Assistance:									
Economic support fund	D95–1	53,300		10–18–94					
	D95–1A		1,173,948	12–13–94	121,848			1,647	1,107,047
Foreign military financing grants.	D95–2	3,139,279		10–18–94	1,800,000				1,339,279
Foreign military financing program account.	D95–3	47,917		10–18–94					47,917
Military-to-military contact program.	D95–4	2,000		10–18–94					2,000
Agency of International Development:									
International disaster assistance, executive.	D95–5	169,998		10–18–94	127,830				42,168
Department of Health and Human Services									
Social Security Administration:									
Limitation on administrative expenses.	D95–6	7,319		10–18–94					
	D95–6A		2	2–22–95					7,321
Department of State									
Bureau for Refugee Programs:									
United States emergency refugee and migration assistance fund.	D95–7	105,300		10–18–94	30,000				75,300
Total, Deferrals		3,525,113	1,173,950		2,079,678			1,647	2,621,032

[FR Doc. 95–7029 Filed 3–21–95; 8:45 am]

BILLING CODE 3110–01–M

Rescission of OMB Circulars

AGENCY: Office of Management and Budget.

ACTION: Notice of proposed rescission of OMB Circular A–105 "Standard Federal Regions".

SUMMARY: Notice is hereby given that OMB intends to rescind Circular No. A–105, "Standard Federal Regions." The current circular establishes ten standard Federal regions, uniform regional boundaries and common regional office headquarter locations for all Federal domestic agencies. The circular also provides guidelines for establishing or realigning field structures, regional offices, and subregional offices. Circular A–105 is being proposed for rescission because changes in the way the Federal Government manages resources; agency efforts to reduce duplicative levels of management and oversight; and expanded use of technology to interact with the public makes a strict regional structure inefficient and unnecessary.

DATES: Persons who wish to comment on the proposed rescission of Circular No. A–105 should submit their comments no later than April 24, 1995. The rescission will take place June 8, 1995, unless the comments raise significant concerns regarding the proposed rescission.

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ADDRESSES: Comments should be addressed to: Steve Mertens, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 9002, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rescission of Circular No. A–105, contact Steve Mertens on (202) 395–4935. For further information on OMB's overall review of its circulars, contact Frank J. Seidl, III, Staff Assistant, on (202) 395–5146; or Rosalyn J. Rettman, Associate General Counsel for Budget on (202) 395–5000.

SUPPLEMENTARY INFORMATION: The Director of the Office of Management and Budget (OMB) has initiated a systematic review of all OMB circulars, in an effort to reduce unnecessary Government directives. As part of this initiative, each OMB circular is being reviewed to see whether it should be rescinded or whether its requirements can be simplified.

Dated: March 10, 1995.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 95–6758 Filed 3–21–95; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Airspace Reclassification in the Vicinity of Bellingham, WA, in Support of Transport Canada Terminal Airspace Design; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces informal airspace meetings to solicit information from airspace users and others concerning a proposal by Transport Canada to reclassify the United States airspace as Class C airspace in the vicinity of the San Juan Islands and Bellingham, WA, to provide the same level of safety as adjacent Canadian airspace. Prior to initiating rulemaking actions to modify United States airspace, the FAA is seeking public input to assist in the development of a viable airspace design. The FAA will conduct two informal airspace meetings in the State of Washington on May 9–10, 1995. The purpose of these meetings is to gather information concerning the impact of the Transport Canada proposal on aircraft operations in the United States. Interested persons will be given an opportunity to present their views, recommendations, and comments concerning these issues in this public forum. All comments received will be considered in any future FAA actions, rules, or policy developments on reclassification of airspace in the vicinity of the San Juan Islands and Bellingham, WA.

TIMES AND DATES: These meetings will be held from 7:00 p.m. to 10:00 p.m., on Tuesday, May 9, and Wednesday, May 10, 1995. Comments must be received on or before July 10, 1995.

PLACE:

Tuesday, May 9, 1995: Friday Harbor High School (Hall Gymnasium), 45 Blair Street, Friday Harbor, WA

Wednesday, May 10, 1995: Bellingham International Airport, Terminal Building, 2nd Floor Meeting Room, Bellingham, WA

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr, System Management Branch (ANM–530), Northwest Regional Office, telephone: (206) 227–1534.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

Agenda for Each Meeting

—Opening Remarks and Discussion of Meeting Procedures
—Briefing on Background for Proposal
—Public Presentations
—Closing Comments

Issued in Washington, DC, on March 15, 1995.

Harold W. Becker

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–7030 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–13–P

National Highway Traffic Safety Administration

[Docket No. 94–106; Notice 2]

Decision That Nonconforming 1991 Mercedes-Benz 200E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1991 Mercedes-Benz 200E passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1991 Mercedes-Benz 200E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 Mercedes-Benz 300E), and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1991 Mercedes-Benz 200E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on January 4, 1995 (60 FR 527) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 109 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Mercedes-Benz 200E (Model ID 124.021) is substantially similar to a 1991 Mercedes-Benz 300E originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30015, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March16, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–6996 Filed 3–21–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0007.
Form Number: ATF F 3310.6.
Type of Review: Extension.
Title: Interstate Firearms Shipment Report of Theft/Loss.
Description: This form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center, to initiate investigations, and to perfect criminal cases.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,014.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 338 hours.

OMB Number: 1512–0035.
Form Number: ATF F 5000.21.
Type of Review: Extension.
Title: Referral of Information.
Description: ATF asks the Federal agency or State or local regulatory compliance agency to respond as to whether any action will be taken; and, if so, the action planned on referrals of potential violations of Federal, or State or local law discovered by ATF personnel during investigations. It is also used to evaluate effectiveness of these referrals.
Respondents: Federal, State, Local or Tribal Government.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–7022 Filed 3–21–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

March 13, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0095.
Form Number: None.
Type of Review: Extension.
Title: Regulations Governing United States Savings Bonds Series E/EE and H/HH.
Description: The regulations mandate the payment of H/HH interest by Direct Deposit (Automated Clearing House (ACH)).
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 741,405.
Estimated Burden Hours Per Response: 5 minutes.

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Frequency of Response: On occasion.
Estimated Total Reporting Burden: 61,537 hours.
Clearance Officer: Vicki S. Ott, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–7023 Filed 3–21–95; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

March 16, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to make the revised version of ATF F 5640.1 described below available for use by the affected public as quickly as possible, the Department of the Treasury on behalf of the Bureau of Alcohol, Tobacco and Firearms is requesting Office of Management and Budget (OMB) review and approval by April 28, 1995. All comments must be received by COB April 21, 1995. Copies may be obtained by contacting the Clearance Officer listed at the end of this notice.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0221.
Form Number: ATF F 5640.1.
Type of Review: Revision.
Title: Offer In Compromise Liability Incurred Under the Provisions of Title 26 U.S.C. Enforced and Administered by the Bureau of Alcohol, Tobacco and Firearms.
Description: ATF F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted, the offer in compromise is a settlement between the government and the party in violation in lieu of legal proceedings or prosecution. The form identifies the party making the offer, violations, amount of offer and circumstances concerning the violations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 40.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 338 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–7024 Filed 3–21–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

March 16, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0970.
Form Number: IRS Form 8453–P.
Type of Review: Extension.
Title: U.S. Partnership Declaration and Signature for Electronic/Magnetic Media Filing.
Description: This form is used to secure the general partners' signature and declaration in conjunction with the electronic/magnetic media filing program. This form, together with the electronic/magnetic transmission, will comprise the partnership's return.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—5 min.
Preparing the form—20 min.
Copying, assembling, and sending the form to the IRS—17 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 405 hours.
OMB Number: 1545–1430.
Form Number: IRS Forms 945 and 945–A.
Type of Review: Extension.
Title: 1. Annual Return of Withheld Federal Income Tax (945); and 2. Annual Record of Federal Tax Liability (945–A).
Description: Form 945 is used to report income tax withholding on nonpayroll payments including backup withholding and withholding on pensions, annuities, IRA's, military retirement and gambling winnings. Form 945–A is used to record nonpayroll tax liabilities.
Respondents: Business or other for-profit, Individuals or households, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondent/ Recordkeepers: 300,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 945	Form 945–A
Recordkeeping	4 hr., 47 min.	8 hr., 37 min.
Preparing and sending the form to the IRS.	5 min	8 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,972,470 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–7025 Filed 3–21–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Executive Committee, Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet April 6–7, 1995, at the Disabled American Veterans (DAV) National Service and Legislative Headquarters, 807 Maine Avenue SW., Washington, DC. The meeting is scheduled from 8:30 a.m.–4:30 p.m. on April 6 and from 8:30 a.m.–3 p.m. on April 7.

The NAC consists of fifty-four national organizations and advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC Annual Meetings. Business topics for the Executive Committee meeting include: VAVS program progress since the 1994 NAC Annual Meeting; 1995 and 1996 NAC Annual Meeting planning and subcommittee reports.

The meeting is open to the public. Individuals interested in attending are encouraged to contact: Mr. Jim Mayer, Administrative Officer, Voluntary Service Office (167), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, (202) 535–7405.

Dated: February 28, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–7027 Filed 3–21–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Prosthetics and Special-Disabilities Programs for Fiscal Year 1994 has been issued. The Report summarizes activities of the Committee on matters relative to special disability programs, prosthetic rehabilitation technology, accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540

and

Department of Veterans Affairs, Prosthetic and Sensory Aids Service, Techworld Plaza—Room 542, 801 I Street NW., Washington, D.C. 20001.

Dated: March 3, 1995.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–7028 Filed 3–21–95; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 55
Wednesday, March 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, March 27, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Proposed acquisition of a materials handling system within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–7115 Filed 3–20–95; 10:40 am]

BILLING CODE 6210–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, April 4, 1995, in Washington, D.C. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, April 3, 1995, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

April 4–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 6–7, 1995.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon.)
3. Report on Credit/Debit Card Program. (Michael J. Riley, Chief Financial Officer and Senior Vice President, Finance.)
4. Capital Investments. (Final decision.)
   a. Washington-National Airport Mail Center. (Henry A. Pankey, Vice President, Mid-Atlantic Area Operations)
   b. Additional Funding and Modification Request for 978 Delivery Bar Code Sorters included in the 120 Remote Bar Coding System DAR. (William J. Dowling, Vice President, Engineering)
5. Tentative Agenda for the May 1–2, 1994, meeting in New York, New York.

David F. Harris,

Secretary.

[FR Doc. 95–7218 Filed 3–20–95; 3:30 pm]

BILLING CODE 7710–12–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 29, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Revised Actuarial Advisory Committee Charter.
(2) Statement of Work—Physicians Services.
(3) Request for Extension of Temporary Quarters and Storage of Household Goods (Virginia Earl).
(4) Request for Transfer of Funds for Procuring New Non-Impact Printing Equipment in the Bureau of Data Processing.
(5) Fiscal Year 1995 Budget Allocations.
(6) Draft Bill—Exemption from Standard Level User Charge.
(7) Response to OMB Legislative Referral Memorandum—SSA FY 1996 Legislative Proposals.
(8) Legislative Proposals for the 104th Congress.
(9) OIG Reinvention Proposals—Establishment of Task Force.
(10) Frequent Flyer Policy.
(11) Medicare Carrier Incentive Contract.
(12) Field Service/Reorganization and Vacancies.
(13) Posting and Filling of Vacant Positions.
(14) Unfair Labor Practice Advisory Letter—Function Survey.
(15) Administrative Circulars.
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(18) Executive Resources Board Vacancy.
(19) Request for Reconsideration of Assessment of Interest and Penalty—Montana Rail Link.
(20) Coverage Determinations:
   A. Bankhead Enterprises, Inc.
   B. Hohorst-Drunsic Transportation Company, Inc.
   C. Industrial Temps, Inc.
   D. New Jersey Transit Corp.; New Jersey Transit Rail Operations Corp.; and New Jersey Transit Management Information System Department
   E. Lone Star Railroad, Inc.
   F. The Oxford Group. Inc.
   G. Rail-West, Inc.
   H. Sault Ste. Marie Bridge Company
   I. MidSouth Corp.
   J. Border Pacific Railroad Company
   K. Employee Status—John J. Emerick, Jr.
(21) Regulations:
   A. Part 230, Reduction and Nonpayment of Annuities By Reason of Work
   B. Part 255, Recovery of Overpayments
   C. Part 366 and 367, Collection of Debts
(22) Claim of Stuart M. Reed.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: March 17, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–7112 Filed 3–20–95; 10:39 am]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 60, No. 55
Wednesday, March 22, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95-189-000]

K N Interstate Gas Transmission Co.; Notice of Filing

Correction

In notice document 95–6172 appearing on page 13719 in the issue of Tuesday, March 14, 1995, the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Grants for Centers of Excellence (COE) Bilingual and Bicultural Minority Pre-Faculty Fellowship Program

Correction

In notice document 95–6082 beginning on page 13584, in the issue of Monday, March 13, 1995, make the following correction:

On page 13586, in the second column, in the first full paragraph, in the second line, "(enter 30 days from date of publication)." should read "April 12, 1995.".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35447; File No. SR-MSTC-95-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to the Legal Expert System Fees

March 6, 1995.

Correction

In notice document 95–6087 beginning on page 13495 in the issue of Monday, March 13, 1995, the date should have appeared as set forth above.

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Part II

Nuclear Regulatory Commission

10 CFR Part 60
Disposal of High-Level Radioactive Wastes in Geologic Repositories; Proposed Rules

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

RIN 3150–AD51

Disposal of High-Level Radioactive Wastes in Geologic Repositories; Design Basis Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its policy on the protection of public health and safety from activities conducted at a geologic repository operations area (GROA) before permanent closure. In particular, the proposed rule would address the measures that are required to provide defense in depth against the consequences of "design basis events." These measures include prescribed design requirements, quality assurance requirements, and the establishment of a preclosure controlled area from which members of the public can be excluded.

DATES: Comments must be submitted on or before June 20, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

Examine comments received at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Richard A. Weller, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7287.

SUPPLEMENTARY INFORMATION:

Background

Under the Nuclear Waste Policy Act of 1982, as amended, the U.S. Nuclear Regulatory Commission exercises licensing and related regulatory authority with respect to geologic repositories that are to be constructed and operated by the U.S. Department of Energy (DOE) for the disposal of high-level radioactive waste. The Commission's regulations pertaining to these geologic repositories appear at 10 CFR part 60. In recent years, NRC, in conjunction with its Federally-Funded Research and Development Center (the Center for Nuclear Waste Regulatory Analyses), completed a comprehensive review of the requirements of part 60, regarding their clarity and sufficiency to protect public health and safety. NRC focused particular attention on any matters that may be ambiguous, insufficient for their intended purpose, or inconsistent with other expressions of its regulatory policy. The amendments presented in this proposed rule deal with a matter that was brought to light by this review and by a petition for rulemaking (PRM) filed by DOE (PRM–60–3).

The issue concerns the protection of public health and safety for a broad range of normal and accident conditions during the operational period of a geologic repository (i.e., before permanent closure). The Commission is concerned that the current requirements of part 60 may be unclear and may be insufficient to protect public health and safety for the full range of credible conditions or events that may occur at an operating repository, including those low-probability events that have potentially serious consequences. The Commission also notes that certain elements of existing part 60 differ from counterpart requirements in other NRC rules, and it believes that greater consistency in language would be beneficial. NRC is proposing rulemaking to address these identified concerns. To develop and explain the changes to the regulatory requirements that appear to be desirable, it would be useful to review the pertinent provisions of existing part 60. In this review and in subsequent discussions in this notice, unless the specific context suggests otherwise, the terms "provisions," "requirements," "standards," and "criteria" are generally used interchangeably; the term "limit" (as in "dose limit") is generally used to refer to a specific type of requirement or criterion; and the term "rule" is generally used to refer to the entire set of requirements or criteria (e.g., part 60).

The Existing Rule

The provisions of part 60 generally reflect the defense-in-depth philosophy of the Commission that is commonly embodied in the requirements and practices for other types of Commission-regulated facilities, such as commercial nuclear power reactors and independent spent fuel storage installations (ISFSIs), with the overall intent to prevent or mitigate the occurrence of serious accidents and, thereby, to protect the public health and safety. Defense-in-depth is provided for, during the preclosure period, by conservatism, redundancy, and diversity in design; the application of a comprehensive quality assurance program, to facility design, construction, operation, and maintenance; the imposition of radiation protection standards, for both workers and members of the public, to limit the potential adverse consequences of licensed activities to levels that are well within the bounds of risks accepted in other productive activities in society; and requirements for radiation safety programs and procedures and emergency plans. The Commission's radiation protection standards are codified in 10 CFR part 20.

Specifically, defense-in-depth is implemented in Part 60 by repository performance objectives and by detailed siting and design criteria. Further, the rule provides that those structures, systems, and components determined to be "important to safety" would be subject to additional design requirements and to quality assurance requirements, to add confidence that the repository and its subsystems will perform satisfactorily in service. However, examination of the specific provisions of the rule indicates that some elements may be deficient in terms of their clarity, sufficiency, or consistency with other NRC rules, resulting in concerns about the adequacy of defense-in-depth in Part 60. The most significant concerns relate to: (1) The definition of structures, systems, and components "important to safety" and the ability to identify such features; (2) uncertainties in the performance objective for radiation protection; and (3) the lack of consistency with 10 CFR part 72 ("Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste") which applies to "monitored retrievable storage (MRS) installations," the facilities most similar to a repository, during the repository's operational period. These concerns are discussed in turn.

"Important-to-Safety" Definition

The regulation states (10 CFR 60.2):

> "Important to safety," with reference to structures, systems, and components means those engineered structures, systems, and components essential to the prevention or mitigation of an accident that could result in a radiation dose to the whole body, or any organ, of 0.5 rem or greater at or beyond the nearest boundary of the unrestricted area at any time until the completion of permanent closure.

Note, first, that the definition refers to repository features "essential to the prevention or mitigation of an *accident*" (emphasis added) in the context of a dose limit (0.5 rem) "* * * equal to the annual dose to the whole body of an individual in an unrestricted area that would be permitted under 10 CFR Part 20 for normal operations * * *" (48 FR 28202; June 21, 1983, Final rule, "Disposal of High-Level Radioactive Wastes in Geologic Repositories"). However, the definition is unclear with respect to the range of "accidents" to be considered when it is applied to identify those structures, systems, and components important to safety. As such, the uncertainty in the definition raises questions about the adequacy of the requirements, in the rule, to protect the public health and safety for the full range of conditions or events that may occur before closure, including those credible, but unlikely events with potentially significant radiological consequences. Second, the focus of the definition is the protection of members of the public in unrestricted areas and, although supplemental design and quality assurance requirements for this purpose may also indirectly benefit onsite workers for some conditions or events, the definition does not explicitly address protection for the occupational workforce. Lastly, the value of 5 mSv (0.5 rem) as a dose limit in unrestricted areas for "accident" conditions is peculiar to part 60, and lacks consistency with a corresponding limit in 10 CFR part 72.

Performance Objective for Radiation Protection

As stated previously, the Commission's numerical radiation protection standards are codified in Part 20. These standards apply to operations at a geologic repository by virtue of 10 CFR 20.1002 as well as by 10 CFR 60.111(a), which provides, in part:

> *Protection against radiation exposures and releases of radioactive material.* The geologic repository operations area shall be designed so that until permanent closure has been completed, radiation exposures and radiation levels, and releases of radioactive materials to unrestricted areas, will at all times be maintained within the limits specified in Part 20 of this chapter * * *.

There are two conceptual difficulties with this language and both issues derive from the language in the rule that requires the limits of part 20 to be met "at all times." The first issue relates to the uncertainty about the scope of *activities* intended in the requirement, specifically, whether part 20 limits must be observed not only during planned operations, but also if the emplaced waste has to be retrieved in accordance with 10 CFR 60.111(b). The Commission previously addressed this issue in a prior proposed rulemaking, explaining that the phrase ("at all times") was included in the regulation so as "* * * to emphasize the need to design the geologic repository operations area so that any waste retrieval found to be necessary in the future could be carried out in conformance with the radiation protection requirements of 10 CFR Part 20" (51 FR 22288; June 19, 1986, proposed amendments to conform to U.S. Environmental Protection Agency (EPA) general environmental standards). The Commission adheres to this interpretation and believes that the application of part 20 limits to possible retrieval activities is consistent with the policy followed in the application of part 20 to corresponding activities (e.g., spent fuel handling) at other facilities regulated by the Commission under 10 CFR parts 50 and 72 (i.e., at commercial power reactors and ISFSIs, respectively).

The second issue relates to uncertainty about the scope of conditions intended in § 60.111(a), specifically, whether part 20 limits must be observed for the extreme conditions that may result from credible, but unlikely, scenarios or events. Here, the Commission recognizes the desirability of articulating its intentions more clearly. For this purpose, it is helpful to use a simple classification scheme for describing the broad range of conditions or events that effectively provide the design basis for the facility. These so-called "design basis events" are defined as being of two categories:

(1) those natural and human-induced events that are reasonably likely to occur regularly, moderately frequently, or one or more times before permanent closure of the geologic repository operations area; and

(2) other natural and human-induced events that are considered unlikely, but sufficiently credible to warrant consideration, taking into account the potential for significant radiological impacts on public health and safety.

Category 1 events have typically been referred to in the rules and guidance documents (e.g., regulatory guides) for Commission-regulated facilities (nuclear power plants, MRS installations, geologic repositories) as those conditions resulting from "normal operation, including anticipated operational occurrences." Anticipated operational occurrences, including those of natural origin, are those conditions expected to occur one or more times during the lifetime of the facility.

In the administration of its regulatory program for facilities licensed under parts 50 and 72, it has been the Commission's general practice, as well as its intent in part 60, to apply the dose limits of part 20 to Category 1 events. The Commission's intent, in this regard, is further clarified in the statement of considerations related to revision of its part 20 standards (56 FR 23360; May 21, 1991, Final rule, "Standards for Protection Against Radiation"). Here, the Commission notes that the revision conforms its regulations to the "Presidential Radiation Protection Guidance to Federal Agencies for Occupational Exposure." The Commission further notes (56 FR 23365) that the dose standards in the Presidential guidance only apply to normal operating conditions. Although it is the Commission's intent that the regulations in part 20 also be observed to the extent practicable during emergencies, the Commission also recognizes that, in an actual emergency, operations that do not conform to the regulations may be necessary to protect public health and safety. Notwithstanding the general applicability of these regulations to all operational situations, it is not the Commission's intent that these requirements apply to Category 2 events as a design basis for the facility. Appropriate requirements other than the dose limits of part 20 would be provided as the design basis for Category 2 events. Some of the confusion about this matter is no doubt linked to the terminology used in various Commission rules or guidance documents, where the terms "accidents" and "anticipated operational occurrences" may have been used interchangeably. It should be recognized that some accidents" may, indeed, be "anticipated operational occurrences," if they are expected to occur one or more times during the lifetime of the facility. What is important, in this regard, is not the term applied to the event, but its expected frequency of occurrence, to determine both its category and whether part 20 limits should apply as a design basis.

Although the foregoing discussion may help to clarify the Commission's intent regarding the applicability of part 20 limits to Categories 1 and 2 design basis events, it leaves open the question about the adequacy, to protect public health and safety, of the requirements of part 60 for Category 2 events. The Commission now proposes to address this matter by harmonizing the requirements of part 60, as appropriate, with other parts of its regulations—

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particularly art 72, which applies to facilities (MRS installations) with much in common with repositories, during their operational period. In this regard, the character and design of the features of an MRS installation would be expected to be very similar to the surface facilities of an operating repository. Further, the same kind of functional activities would be performed at both types of facilities, namely, receiving, handling, packaging, storing, and retrieving high-level radioactive waste. As such, the Commission believes that greater consistency between part 60 and part 72 is both logical and desirable.

10 CFR Part 72

Part 72 also refers to structures, systems, and components important to safety. However, instead of defining this concept in specific quantitative terms, it provides the following (10 CFR 72.3):

"Structures, systems, and components important to safety" mean those features of the ISFSI (independent spent fuel storage installation) or MRS (monitored retrievable storage installation) whose function is:

(1) to maintain the conditions required to store spent fuel or high-level radioactive waste safely;

(2) to prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage; or

(3) to provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

The Commission's concern in singling out this class of structures, systems, and components is to identify those features that are so important that it is prudent to warrant the application of special design and quality assurance criteria. The design elements that are then to be required are determined in the light of the design bases, a term that is defined as follows:

"Design bases" means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include: (1) estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved and (2) estimates of severe external man-induced events to be used for deriving design bases that will be based on analysis of human activity in the region taking into account the site characteristics and the risks associated with the event. (10 CFR 72.3.)

Part 72 provides for a quality assurance program that encompasses a range of structures, systems, and components of somewhat indefinite scope. According to 10 CFR 72.140(b), the program "* * * must cover the activities identified in 10 CFR 72.24(n)," which in turn deals with "structures, systems, and components important to safety." The application of these provisions relates to the qualitative language of the definition of "* * * structures, systems, and components important to safety." In essence, an element is to be placed in this category if its function is to provide reasonable assurance that there is no undue risk to the health and safety of the public. Although the definition lacks specific numerical guidance as to what constitutes "undue risk," the Commission, nevertheless, regards this as a stringent test—one that contemplates that the numerical limits set out in part 20 will generally be met for Category 1 design basis events, consistent with the general practice (as previously discussed) of the Commission in the application of these standards.

With respect to Category 2 design basis events, numerical guidance may be inferred from both the "Siting Evaluation Factors" (Subpart E) and "General Design Criteria" (Subpart F) of part 72. As specified in 10 CFR 72.106, for each ISFSI or MRS facility, there must be a "controlled area" of such size that no individual located on or beyond its boundary will receive a dose greater than 0.05 Sv (5 rem) to the whole body, or to any organ, from any "design basis accident." Both external natural events and external man-induced events must be considered in defining the design bases that would result in the design basis accident. 10 CFR 72.126(d) specifies that analyses must be made to show that releases to the general environment from design basis accidents will be within the exposure limits of 10 CFR 72.106. These requirements suggest that the 0.05-Sv (5-rem) dose limit cited above could be used to aid in the identification of structures, systems, and components "important to safety." However, although the existing functional definition, in part 72, for "important-to-safety" features, has sufficed for identifying those corresponding components or structures of an ISFSI, the Commission believes that the greater specificity (i.e., numerical guidance) provided by a quantitative definition similar in character to the existing part 60 definition would be more suitable for the licensing of a more complex repository.

In the foregoing discussion, the Commission cited the requirements of 10 CFR 72.106, which include provisions for the establishment of a "controlled area" boundary and dose criteria for limiting exposures to individuals at or beyond that boundary, during design basis accidents. The Commission notes that corresponding requirements are not provided in part 60 which, in turn, raises questions about the adequacy of the criteria in part 60 to ensure protection of public health and safety.

There is another matter the Commission wishes to address, in this action, that relates to another area of inconsistency between part 72 and part 60. Subpart F of part 72 provides the "general design criteria" for an ISFSI or an MRS. These general design criteria establish the minimum requirements for the design, fabrication, construction, testing, maintenance, and performance, for the structures, systems, and components of the facility that are important to safety. In this regard, subpart F of part 72 is structured similarly to, and performs the same function as, appendix A of 10 CFR part 50 ("General Design Criteria for Nuclear Power Plants") in that both sets of criteria establish minimum requirements for structures, systems, and components "important to safety." The corresponding structure for the design criteria for the GROA in part 60 is somewhat different from the corresponding structures in parts 72 and 50.

The design criteria for the GROA are provided in §§ 60.130 through 60.134 and include criteria for both preclosure considerations (i.e., criteria for features "important to safety"), as well as postclosure interests (i.e., criteria for features "important to waste isolation"). However, only the criteria of § 60.131(b) are identified as "structures, systems, and components important to safety," and it is unclear if other criteria specified in §§ 60.131(a), 60.132, and 60.133, for operational considerations, are also "important to safety." In this regard, the Commission notes that there are some "important-to-safety" criteria in part 72 that are not designated as such, in a corresponding manner, in part 60. Although the Commission recognizes that this lack of consistency may be due, in part, to the dual interests, in part 60, of preclosure safety and postclosure isolation, the Commission also believes that this structure may contribute to the difficulty in determining which features of the GROA are "important to safety" and subject to the quality assurance provisions of subpart G.

The Petition for Rulemaking

On April 19, 1990, DOE filed a PRM with the Commission. It was assigned Docket No. PRM–60–3. A notice of receipt was published in the **Federal Register** on July 13, 1990 (55 FR 28771).

In its petition, DOE observed that 10 CFR 60.21(c)(3)(ii) requires that the safety analysis report for a repository include a description and analysis that considers "* * * the adequacy of structures, systems, and components provided for the prevention of accidents and mitigation of the consequences of accidents, including those caused by natural phenomena." Yet, part 60 does not provide numerical dose criteria (i.e., dose limits) to use in identifying the need for engineered safety features and for determining their adequacy.

DOE noted how similar operations at a geologic repository were to those carried out at other licensed facilities, including, in particular, facility operations for independent storage of spent nuclear fuel. In common with these other facilities, the operations at a repository would involve receipt, handling, transfer, and storage of highly radioactive materials.

Under DOE's proposal, part 60 would be amended to include accident dose limits of 0.05-Sv (5-rem) effective dose equivalent or 0.5-Sv (50-rem) committed dose equivalent to any organ. These limits would apply to any individual at the boundary of a newly defined "preclosure control area." The definition of the term "important to safety" would be revised, but would retain the 5-mSv (0.5-rem) dose limit; however, unlike the present part 60, which relates this value to the boundary of the unrestricted area, DOE's proposal would apply the dose limit at the boundary of the preclosure control area. The phrase, "at all times," would be deleted from 10 CFR 60.111(a), to clarify that part 20 does not apply to accident conditions. Lastly, DOE proposed adding definitions of the terms "preclosure control area," "committed dose equivalent," "committed effective dose equivalent," and "effective dose equivalent," to support the application of the accident-dose limits described above.

For a fuller discussion of the PRM, see the July 13, 1990, **Federal Register** notice.

Discussion

The Commission agrees with the petitioner that rulemaking is needed to address the uncertainties related to appropriate accident-dose limits for those unlikely, but credible, conditions or events (i.e., Category 2 design basis events) that might occur. In this regard, the Commission agrees with the concept proposed by DOE, including the application of appropriate accident-dose limits at the boundary of a "preclosure control area."

Regarding the current definition of "important to safety," the Commission agrees with DOE that the term should be revised so as to clarify both its meaning and its intended scope. Although the revision proposed by DOE captures the Commission's intent, with respect to identifying those structures, systems, and components necessary to prevent or mitigate the consequences of credible, but unlikely accidents (i.e., Category 2 design basis events), it does not address the Commission's parallel interest in those repository features necessary to protect workers and members of the public from those events that occur regularly, moderately frequently, or one or more times during the lifetime of the GROA (i.e., Category 1 design basis events). The Commission proposes to address this matter by both expanding and modifying the current definition in part 60.

With regard to DOE's remaining major item of concern in its petition, specifically the uncertainty in the language of 10 CFR 60.111(a), the Commission agrees with DOE's proposal to delete the ambiguous phrase "at all times" from the rule, to clarify that the objective does not apply to radiation exposures, levels, or releases from those credible, but unlikely conditions or events that are referred to above as Category 2 design basis events. Notwithstanding this change, it remains the Commission's intent that this performance objective applies to all functional activities (e.g., radioactive waste receiving, handling, packaging, storage, and emplacement) expected to occur at a repository site, including retrieval, if that becomes necessary.

Finally, with respect to the new definitions that DOE proposed for 10 CFR 60.2, the Commission agrees that there is a need to define a boundary for a "preclosure control area." However, the terms "committed dose equivalent," "committed effective dose equivalent," and "effective dose equivalent" are all defined terms, in part 20, and incorporated into part 60 by virtue of 10 CFR 60.111(a). As such, these terms do not need to be defined in part 60.

Based on the foregoing discussion of DOE's petition and the interest of greater consistency between part 60 and part 72, as previously discussed, the Commission proposes to amend part 60 to ensure the adequacy of its requirements to protect the public health and safety. In this regard, dose limits are proposed, in the rule, for protection of members of the public, during Category 1 and Category 2 design basis events, and for protection of workers, during Category 1 design basis events. The Commission notes that dose limits are not proposed for protection of workers during Category 2 design basis events, consistent with the policy in practice for facilities regulated by the Commission under parts 50 and 72.

The Commission has determined that specific standards for the protection of workers during Category 2 events are not needed for part 60. First, for some design basis events, the repository design and quality assurance enhancements employed to satisfy the proposed requirements, for protection of members of the public, during Category 2 events, will also provide a measure of protection for onsite workers. Second, onsite workers would have access to protective equipment (e.g., respirators) and clothing, should the need ever arise. Third, onsite workers would be trained in emergency response and procedures to deal with operational problems related to these kinds of events. Fourth, part 20 should provide adequate worker protection standards.

There is one other matter the Commission would like to note in relation to this action. During the course of consideration of the DOE PRM and development of the amendments as proposed herein, the Commission identified an additional regulatory uncertainty with respect to part 60 requirements. Specifically, while part 60 includes a definition for structures, systems, and components "important to safety," there is no corresponding definition in the rule for structures, systems, and components "important to waste isolation." These definitions are important as they are the predicates for required design and quality assurance requirements in the rule. However, the focus of the amendments proposed in this action is strictly in relation to the adequacy of part 60 requirements to protect public health and safety during the operational period of the repository. Recognizing that the lack of a definition for "important to waste isolation" relates solely to the period of isolation following permanent repository closure, the Commission plans to address this matter separately in a subsequent rulemaking action.

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The proposed amendments are discussed below.

Section-by-Section Analysis

Section 60.2. Definitions

The proposed amendments involve eight definitions needed in part 60.

The term "preclosure controlled area" is new. It is essentially the same as the term "preclosure control area" proposed by DOE in its petition (PRM–60–3) and corresponds closely to the term "controlled area," as defined in 10 CFR 72.3. The term "preclosure controlled area" is proposed because part 60 already refers to a "controlled area" (within which waste isolation is to be ensured after permanent closure). The function of the new term is to delimit an area over which the licensee exercises control of activities to meet regulatory requirements. Control includes the power to exclude members of the public, if necessary. Because part 60 (unlike part 72) involves ongoing underground operations and timeframes of concern over centuries and millennia, language in the proposed definition is included that, consistent with its function, limits the area to the surface and limits the duration to the period up to, and including, permanent closure.

The existing term "controlled area" would be renamed "postclosure controlled area," to avoid any confusion or misunderstanding about this term, in relation to its use in parts 20 and 72. No substantive change, however, is intended for the "postclosure controlled area," as this is a change in nomenclature, only. Consistent with this change in nomenclature, the term "controlled area" would be changed to "postclosure controlled area," where it appears in the definitions for "accessible environment," "disturbed zone," and "site."

The term "important to safety" would be amended to address the issues previously discussed. The existing provision is unclear and fails to ensure proper levels of protection of public and worker health and safety for the broad range of conditions or events that might occur at a repository site. This is an important term, because it is the predicate for required design features, as well as required quality assurance measures that provide defense-in-depth. The Commission proposes to retain the quantitative features of the existing definition, but specify different numerical limits for each of the two categories (1 and 2) of design basis events. The structures, systems, and components "important to safety" would be those necessary: (1) to provide reasonable assurance that the requirements of § 60.111(a) would be observed for Category 1 design basis events; or (2) to prevent or mitigate Category 2 design basis events that could result in doses equal to, or greater than, the values specified in [new] § 60.136, to any individual located on or beyond the nearest boundary of the preclosure controlled area.

Although the term "design bases" appears in existing part 60, in 10 CFR 60.21(c)(2), it was not defined. As the discussion above makes clear, "design bases" should be understood in relation to that range of events, including external natural or man-induced events, that is taken into account in the design, and, in particular, in relation to conditions that could result in radiological consequences beyond specified limits. The definition in part 72 would be inserted, without change, into the list of defined terms in 10 CFR 60.2.

The inclusion of a definition of "design basis events" serves two purposes. First, it identifies a set of events (referred to elsewhere as Category 1 design basis events) that must be taken into account in demonstrating compliance with the requirement to show, with reasonable assurance, that the provisions of part 20 will be met. (This set of events is described as "* * * those natural and human-induced events that are reasonably likely to occur regularly, moderately frequently, or one or more times before permanent closure of the geologic repository operations area.") Second, it identifies an additional set of events (previously referred to as Category 2 design basis events) that must be taken into account in applying the Commission's defense-in-depth philosophy. (This set of events is described as those "* * * other natural and human-induced events that are considered unlikely, but sufficiently credible to warrant consideration, taking into account the potential for significant radiological impacts on public health and safety.") The Commission recognizes that the criterion of "sufficiently credible to warrant consideration" is inexact, leaving its application to a consideration of the particular site and design that are the subjects of a license application. Generally, the Commission would expect that such design basis events would include as broad a range of external phenomena as would be taken into account in defining the design basis for other regulated facilities, including nuclear reactors.

Section 60.8 Information Collection Requirements: OMB Approval

NRC is proposing to update 10 CFR 60.8, "Information Collection Requirements: OMB Approval," to reflect the fact that subsequent to the original issuance of part 60, NRC requested, and obtained Office of Management and Budget (OMB) approval for the part 60 "Information Collection Requirements." Section 60.8 was to be corrected the first time other revisions were made.

Section 60.21 Content of Application

The petition for rulemaking suggested that provision for accident analysis might be accomplished by amendment of 10 CFR 60.111. The Commission proposes, instead, to provide for an accident analysis as part of the content of the application section (i.e., 10 CFR 60.21). The proposed language would require the application to address the potential dose, to an individual on or beyond the preclosure controlled area boundary, that is attributable to Category 2 design basis events. The procedure that is envisaged is that the applicant would address the critical design basis events, singly, and demonstrate, by its analysis, that the doses on or beyond the preclosure controlled area boundary would be in accordance with the applicable requirements. The proposed language serves the same purpose as the counterpart section of part 72 (namely 10 CFR 72.24(m)).

The proposed rule also reflects the position, as discussed previously, that the applicant must demonstrate that the requirements of part 20 will be met, assuming the occurrence of Category 1 design basis events. For this analysis, the applicant would consider Category 1 design basis events singly, or in appropriate combinations. The doses, exposures, or releases must be kept within part 20 limits should less likely events (e.g., moderately frequent events) occur in combination with events that occur regularly.

The Commission also proposes to eliminate certain terms in part 60 that are undefined and may be subject to differing interpretations—specifically, the terms "normal conditions," "anticipated operational occurrences," and "accidents." These terms would be supplanted by the new term "design basis events." Besides enhancing clarity of expression, the new language better reflects the regulatory framework articulated above. Lastly, where the term "controlled area" appears in the language of this section, it would be changed to "postclosure controlled area."

Section 60.43 License Specification

The term "controlled area" would be changed to "postclosure controlled area."

Section 60.46 Particular Activities Requiring License Amendment

The term "controlled area" would be changed to "postclosure controlled area."

Section 60.51 License Amendment for Permanent Closure

The term "controlled area" would be changed to "postclosure controlled area."

Section 60.102 Concepts

The term "controlled area" would be changed to "postclosure controlled area."

Section 60.111 Performance of the Geologic Repository Operations Area Through Permanent Closure

Consistent with the petitioner's proposal, the Commission would delete the phrase "at all times" from the performance objective of § 60.111(a). This change would clarify that this requirement does not apply to radiation exposures, levels, and releases from Category 2 design basis events.

Section 60.121 Requirements for Ownership and Control of Interests in Land

The term "controlled area" would be changed to "postclosure controlled area."

Section 60.122 Siting Criteria

The term "controlled area" would be changed to "postclosure controlled area."

Section 60.130 Scope of Design Criteria for the Geologic Repository Operations Area

The Commission proposes to modify the title of this section to the term "General Considerations" and add clarifying language, to the existing discussion, to indicate that §§ 60.131 through 60.134 specify the minimum criteria for the design of those structures, systems, and components important to safety, or important to waste isolation. These changes are necessary to provide consistency with the modified definition of "important to safety" (10 CFR 60.2) as well as to clarify the purpose of these criteria. These changes will also provide consistency with the corresponding "minimum" design criteria, for an MRS, in 10 CFR part 72.

Section 60.131 General Design Criteria for the Geologic Repository Operations Area

Consistent with the modifications to § 60.130, as described above, the Commission would delete the reference to "Structures, systems, and components important to safety," in the title of § 60.131(b), and re-letter or re-number the current criteria in §§ 60.131(b)(1) through 60.131(b)(10), as appropriate. This change would eliminate the confusion in the existing rule related to the identification of only the criteria in § 60.131(b) as "important to safety." It would also resolve the present incongruity with § 60.131(b)(7), "Criticality control," regarding the reference to waste "isolation" (a postclosure term) in the requirement.

The current rule employs the term "normal and accident conditions," or similar expression, in several places. However, the conditions that must be addressed under this language are not well-defined. The Commission proposes to remedy this situation by replacing current terminology with references to "design basis events," thereby ensuring that the design appropriately takes into account the consequences of all design basis events (i.e., as discussed in this document, Category 1 and 2 design basis events). Accordingly, modification of paragraphs (b)(5)(i), (b)(7), and (b)(8) is being proposed for this section. The Commission would also revise the language in 10 CFR 60.131(b)(1), which refers to "anticipated" natural phenomena and environmental conditions, so as to encompass all design basis events. The "necessary safety functions" that must be accommodated in the design, pursuant to that paragraph, include whatever is necessary to meet the quantitative limits set out in the Commission's rules (i.e., in 10 CFR 60.111(a) and 10 CFR 60.136).

Section 60.132 Additional Design Criteria for Surface Facilities in the Geologic Repository Operations Area

Section 60.132(c)(1) requires that the surface facilities must be "* * * designed to control the release of radioactive materials in effluents during normal operations so as to meet the performance objectives of § 60.111(a)." As indicated previously, the design should ordinarily be sufficiently conservative so as to provide reasonable assurance of meeting part 20 not only during normal operations, but even for events that are likely to occur moderately frequently or one or more times before permanent closure of the geologic repository (i.e., all Category 1 design basis events). Deleting the phrase "during normal operations," as proposed, will broaden the scope of this provision to reflect the Commission's intent more accurately.

Section 60.133 Additional Design Criteria for the Underground Facility

As in the case of the changes proposed to 10 CFR 60.131, a reference to design basis events would be substituted for the less precise "normal operations and * * * accident conditions."

Section 60.136 Preclosure Controlled Area.

The proposed rule would adopt the petitioner's concept of a preclosure control area under the name "preclosure controlled area." The term would delimit an area over which the licensee exercises control of activities to meet regulatory requirements. Control would include the power to exclude members of the public, if necessary. The zone, and related dose limits, would also be used to analyze and identify structures, systems, and components that are important to safety under unusual conditions that have heretofore been characterized as Category 2 design basis events—credible, yet not likely to occur during the period of operations. The issue that is presented concerns the dose limits on or beyond the preclosure controlled area boundary that are appropriate to ensure that the occurrence of any such events presents no unreasonable risk to the health and safety of the public. (Releases resulting from Category 1 design basis events would not be permitted to cause doses exceeding the limits of part 20.) The Commission proposes to adopt the basic provisions of part 72—namely, a 0.05-Sv (5-rem) dose limit, on or beyond the preclosure controlled area boundary—as modified to reflect the part 20 system of dose limits (see § 20.1201(a)). In addition to providing for separate dose limits for individual organs and tissue, the lens of the eye, and the skin, the use of "total effective dose equivalent" (TEDE) in part 20 explicitly accounts for exposures via the ingestion and inhalation dose pathways.

Modification of the 0.05-Sv (5-rem) dose limit, to reflect the part 20 system of dose limits, results in a family of dose limits: a TEDE of 0.05 Sv (5 rem); or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem); an eye dose equivalent of 0.15 Sv (15 rem); and a shallow dose equivalent, to

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skin, of 0.5 Sv (50 rem).[1] The eye and skin dose limits are adequate to ensure that no observable effects (e.g., induction of cataracts in the lens of the eye) will occur as a result of any accidental radiation exposure. In implementing this provision, dose calculations should be made solely with reference to the consequence of the specific Category 2 design basis event, and not cumulatively with other design basis events. To clarify this matter further, the analysis of a specific Category 2 design basis event would require an analysis of an event sequence or scenario which includes an initiating event (e.g., an earthquake) and the associated combinations of repository system or component failures that can potentially lead to exposure of the public to radiation. An example sequence is a postulated earthquake (the initiating event) which results in the failure of a crane lifting a spent fuel waste package inside a waste handling building, the drop and breach of the waste package, damage to the spent fuel and partitioning of a fraction of the radionuclide inventory to the building atmosphere, failure of the building filtration system, and public exposure to the released radioactive material.

The only other noteworthy deviation from part 72 (specifically 10 CFR 72.106) would be to refer to doses attributable to any "design basis event" instead of any "design basis accident." The term "design basis event" is used because it is a defined term in part 60. The change in terminology is not intended to be one of substance as a design basis accident is the consequence of some design basis event.

As discussed above, the 0.05 Sv (5 rem) dose limit is being proposed by the Commission as the appropriate design basis for protection of public health and safety from Category 2 design basis events at a GROA and will harmonize part 60 with part 72. In this regard, the Commission notes that part 72 applies to those facilities (MRS installations) most similar to the surface facilities of a repository and for which the kinds of design basis events are also expected to be similar. Further, the proposed dose limit is consistent with dose values (0.06 Sv [6 rem] to the whole body) established as guidance for both fuel-handling accidents and spent-fuel cask-drop accidents at nuclear power plants.[2] Moreover, the proposed dose limit is consistent with the accident-dose value (0.05 Sv [5 rem] effective dose equivalent) proposed by DOE in its PRM.

However, while consistency between the proposed 0.05 Sv (5 rem) dose limit for part 60 and other Commission rules or guidance documents is important, consistency alone does not necessarily ensure that there would be no unreasonable risk to the health and safety of the public associated with the proposed limit. As such, a perspective is provided on the risks associated with an operational repository and the appropriateness of the proposed 0.05 Sv (5 rem) dose limit as the design basis for protection of public health and safety from Category 2 design basis events.

Based on estimates provided by the National Council on Radiation Protection and Measurements (NCRP)[3] the lifetime risk to individuals in the general population is 0.05 fatal cancers per Seivert (Sv) of exposure. Therefore, the lifetime risk of fatal cancer from an assumed 0.05 Sv (5 rem) exposure resulting from a postulated Category 2 design basis event is 0.0025 (i.e., 2.5×10^{-3}) per individual exposed. While this assessment provides perspective on the risk associated with a hypothetical exposure of a 0.05 Sv (5 rem) dose, it does not provide perspective on the estimated actual risk associated with the spectrum of possible Category 2 design basis events at a repository during its operational lifetime (estimated to be about 100 years).

Perspective on actual risk must include consideration of the frequencies (i.e., probabilities) of occurrence of these events, as well as their consequences, as "risk" is defined as the probability of an event times its consequences. With respect to the range of probabilities of Category 2 design basis events, the upper bound is roughly 1×10^{-2} per year (i.e., event scenarios with probabilities of occurrence greater than 1×10^{-2} per year would generally be considered to be Category 1 events) and the lower bound is considered to be on the order of 1×10^{-9} per year (i.e., event scenarios with probabilities of occurrence less than 1×10^{-9} per year would generally be screened from further consideration due to their negligible contribution to overall risk). Accordingly, assuming event consequences equivalent to the proposed 0.05 Sv (5 rem) dose limit for part 60, the hypothetical upper bound on individual risk is 2.5×10^{-5} fatal cancers per year. To put this risk in perspective, the International Commission on Radiological Protection[4] notes that, based on a review of information related to risks regularly accepted in everyday life for stochastic phenomena, a fatal cancer risk in the range of 1×10^{-6} to 1×10^{-5} per year from exposure to radiation would likely be acceptable to individual members of the public. Thus, while the risk associated with repository event consequences at the proposed dose limit and bounding probability of occurrence exceeds this range by a small factor, and is at a level that the Commission considers safe for occupational exposures, the Commission believes this result significantly overestimates the actual risk of an operating repository.

Perspective on actual repository risk can be obtained by developing an understanding of the spectrum of potential Category 2 design basis events and estimating the consequences of these events as well as their probabilities of occurrence. In this regard, the Commission recognizes that there is no high-level waste repository operating experience and that only conceptual designs have been developed for these facilities. Nonetheless, some perspective can be gained from the preliminary risk assessment by DOE[5] of a conceptual design for a repository at Yucca Mountain, Nevada, as well as from consideration of risk assessments of selected U.S. nuclear power plants.[6]

Consistent with risk assessments for nuclear power plants, the spectrum of possible repository design basis events includes both internally and externally initiated events. Internally initiated events would include waste transporter collisions, crane failures or other types of fuel assembly, waste package or cask drop events, building or facility exhaust filter fires, and exhaust filter bypass or failure. Externally initiated events would include those resulting from earthquakes, tornados, and flooding. Regardless of the type or nature of the initiating event, the Commission believes that, for several reasons, both the variety of credible event sequences and the resulting potential consequences to members of the public will be somewhat limited at repository facilities. First, in comparison with a nuclear power plant, an operating repository is a relatively simple facility in which the primary activities are in relation to waste receipt, handling, storage, and emplacement. A repository does not require the variety and complexity of systems necessary to support an operating nuclear power plant. Further, the conditions are not present at a repository to generate a radioactive source term of a magnitude that, however unlikely, is potentially capable at a nuclear power plant (e.g., from a postulated loss of coolant event). As such, the estimated consequences resulting from limited source term generation at a repository would be correspondingly limited. This conclusion is consistent with the results of the aforementioned preliminary risk assessment by DOE of a conceptual repository design at Yucca Mountain, Nevada. In that assessment, the DOE considered 149 scenarios for a variety of internally and externally initiated events. Of the 149 scenarios, only 7 resulted in offsite doses in excess of 0.005 Sv (0.5 rem) to the critical organs of a maximally exposed individual and also had associated probabilities of occurrence greater than 1×10^{-9} per year. The highest estimated offsite dose from the DOE risk assessment was 0.021 Sv (2.1 rem) with an associated probability of occurrence of 5×10^{-7} per year.

The dose estimates of the DOE risk assessment are only reflective of a conceptual design for a repository at Yucca Mountain, Nevada. Nonetheless, the Commission believes they provide perspective on the magnitude of the estimated consequences to members of the public from postulated Category 2 design basis events and that variations in repository design or site selection would not likely vary these estimates by more than order of magnitude. The results of the DOE risk assessment also provide some perspective on the estimated probabilities of occurrence of the postulated repository design basis events and, as such, perspective on actual risk from an operating repository.

In general, the Commission would expect the potential higher consequence events to have correspondingly lower probabilities of occurrence. This expectation is consistent with the results of the DOE risk assessment as the estimated probabilities of occurrence for the 7 scenarios which resulted in offsite doses in excess of 0.005 Sv (0.5 rem) vary from 1×10^{-9} to 5×10^{-6} per year. The corollary to the above is the expectation that higher frequency events would have correspondingly lower offsite consequences and perspective on actual risk from an operating repository necessitates consideration of these events as well as lower frequency events. Review of the DOE risk assessment indicates that some higher frequency, but lower consequence, events are just as important to actual risk as the lower frequency, but higher consequence, events. With respect to actual risk from the broad spectrum of all events considered in the DOE risk assessment, the estimated actual risk of an operating repository is roughly two to three orders of magnitude lower than the range of fatal cancer risks that would likely be acceptable to members of the public (i.e., a fatal cancer risk of 1×10^{-6} to 1×10^{-5} per year as noted in ICRP Publication 26).

With respect to the appropriateness of the proposed 0.05 Sv (5 rem) dose limit for part 60 as the design basis for protection of public health and safety from Category 2 design basis events, the DOE risk assessment indicates the potential for events with offsite consequences on the order of several hundredths to several tenths of Sv (several rem to several tens of rem), depending on design and siting factors. The event consequences in this range, coupled with the estimated event probabilities of occurrence, result in estimated risks that would likely be acceptable to members of the public. However, given the lack of repository design, siting and operating experience and the supporting data base for probabilistic risk assessment, the Commission believes there is considerable uncertainty in the estimates of both the consequences and the probabilities of occurrence of postulated Category 2 design basis events. As such, the Commission believes that establishing a dose limit in part 60 to the proposed 0.05 Sv (5 rem) value would provide an adequate margin of safety and an appropriate design basis for protection of members of the public from unlikely, but credible events. Further, the Commission believes that a singular dose limit is appropriate for the broad range of possible event frequencies, given the limited potential for offsite consequences at repository facilities and the significant uncertainties in repository risk assessment. Stated differently, the level of sophistication in repository risk assessment does not presently exist to warrant a more complex set of requirements in part 60 for protection of public health and safety from postulated Category 2 design basis events. Notwithstanding these views and the Commission's parallel interest in harmonizing part 60 and part 72, the Commission specifically seeks public comment on (1) the appropriateness of the proposed 0.05 Sv (5 rem) dose limit in Section 60.136 as the design basis for protection of public health and safety, and (2) the rationale, as discussed herein, supporting the proposed 0.05 Sv (5 rem) dose limit.

Section 60.183 Criminal Penalties

A conforming change has been made to this section, to include § 60.136 (pertaining to the preclosure controlled area) among the regulations that are not issued under Sections 161b, 161i, or 161o of the Atomic Energy Act, for purposes of section 223 of the Act.

Environmental Impact: Categorical Exclusion

NRC has determined that this proposed regulation is the type of action described in 10 CFR 51.22 (c)(2), pertaining to the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under part 60. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0127.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Dr. Richard A. Weller, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Division of Waste Management, Washington, DC 20555, Telephone (301) 415–7287.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this rule is DOE.

[1] Radiation exposure terminology is as used in part 20 (56 FR 23360; May 21, 1991).

[2] NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," June 1987.

[3] National Council on Radiation Protection and Measurements, "Risk Estimates for Radiation Protection," NCRP Report No. 115, December 31, 1993.

[4] Recommendations of the International Commission on Radiological Protection. ICRP Publication 26, January 1977.

[5] U.S. Department of Energy, "Site Characterization Plan, Yucca Mountain Site, Nevada Research and Development Area, Nevada," DOE/RW-0199, December 1988.

[6] NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," December 1990.

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Backfit Analysis

NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, and Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to 10 CFR part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); Sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141).

2. Section 60.2 is amended by adding definitions of "Design bases," "Design basis events," and "Preclosure controlled area," revising the definitions of "Accessible environment," "Disturbed zone," "Important to safety," and "Site," renaming the defined term "Controlled area" to "Postclosure controlled area," and alphabetizing the definitions to read as follows:

§ 60.2 Definitions.

* * * * *

Accessible environment means: (1) The atmosphere, (2) the land surface, (3) surface water, (4) oceans, and (5) the portion of the lithosphere that is outside the postclosure controlled area.

* * * * *

Design bases means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include:

(1) estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved; and

(2) estimates of severe external man-induced events, to be used for deriving design bases, that will be based on analysis of human activity in the region, taking into account the site characteristics and the risks associated with the event.

Design basis events means:

(1) those natural and human-induced events that are reasonably likely to occur regularly, moderately frequently, or one or more times before permanent closure of the geologic repository operations area; and

(2) other natural and man-induced events that are considered unlikely, but sufficiently credible to warrant consideration, taking into account the potential for significant radiological impacts on public health and safety.

The events described in paragraph (1) of this definition are referred to as "Category 1" design basis events. The events described in paragraph (2) of this definition are referred to as "Category 2" design basis events.

* * * * *

Disturbed zone means that portion of the postclosure controlled area the physical or chemical properties of which have changed as a result of underground facility construction or as a result of heat generated by the emplaced radioactive wastes such that the resultant change of properties may have a significant effect on the performance of the geologic repository.

* * * * *

Important to safety, with reference to structures, systems, and components, means those features of the repository whose function is:

(1) to provide reasonable assurance that high-level waste can be received, handled, packaged, stored, emplaced, and retrieved without exceeding the requirements of § 60.111(a) for Category 1 design basis events; or

(2) to prevent or mitigate Category 2 design basis events that could result in doses equal to or greater than the values specified in § 60.136 to any individual located on or beyond the nearest boundary of the preclosure controlled area.

* * * * *

Postclosure controlled area means a surface location, to be marked by suitable monuments, extending horizontally no more than 10 kilometers in any direction from the outer boundary of the underground facility, and the underlying subsurface, which area has been committed to use as a geologic repository and from which incompatible activities would be restricted following permanent closure.

* * * * *

Preclosure controlled area means that surface area immediately surrounding the geologic repository operations area for which the licensee exercises authority over its use, in accordance with the provisions of this part, until permanent closure has been completed.

* * * * *

Site means the location of the postclosure controlled area.

3. Section 60.8 is revised to read as follows:

§ 60.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements of general applicability contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150-0127.

(b) The approved information collection requirements contained in this part appear in §§ 60.62, 60.63, and 60.65.

4. In § 60.21, paragraphs (c)(1)(i), (c)(1)(ii)(B), (c)(3), and (c)(8) are revised to read as follows:

§ 60.21. Content of application.

* * * * *

(c) * * *

(1) * * *

(i) The description of the site shall also include the following information regarding subsurface conditions. This description shall, in all cases, include such information with respect to the postclosure controlled area. In addition, where subsurface conditions outside the postclosure controlled area may affect isolation within the postclosure controlled area, the description shall include such information with respect to subsurface conditions outside the postclosure controlled area to the extent such information is relevant and material. The detailed information referred to in this paragraph shall include:

(A) the orientation, distribution, aperture in-filling and origin of fractures, discontinuities, and heterogeneities;

(B) the presence and characteristics of other potential pathways such as solution features, breccia pipes, or other potentially permeable features;

(C) the geomechanical properties and conditions, including pore pressure and ambient stress conditions;

(D) the hydrogeologic properties and conditions;

(E) the geochemical properties; and

(F) the anticipated response of the geomechanical, hydrogeologic, and geochemical systems to the maximum design thermal loading, given the pattern of fractures and other discontinuities and the heat transfer properties of the rock mass and groundwater.

(ii) * * *

(B) Analyses to determine the degree to which each of the favorable and potentially adverse conditions, if present, has been characterized, and the extent to which it contributes to or detracts from isolation. For the purpose of determining the presence of the potentially adverse conditions, investigations shall extend from the surface to a depth sufficient to determine critical pathways for radionuclide migration from the underground facility to the accessible environment. Potentially adverse conditions shall be investigated outside of the postclosure controlled area if they affect isolation within the postclosure controlled area.

* * * * *

(3) A description and analysis of the design and performance requirements for structures, systems, and components of the geologic repository that are important to safety. The analysis must include a demonstration that—(i) the requirements of § 60.111(a) will be met, assuming occurrence of Category 1 design basis events; and (ii) the requirements of § 60.136 will be met, assuming occurrence of Category 2 design basis events.

* * * * *

(8) A description of the controls that the applicant will apply to restrict access and to regulate land use at the site and adjacent areas, including a conceptual design of monuments which would be used to identify the postclosure controlled area after permanent closure.

* * * * *

§ 60.43 [Amended]

5. In § 60.43(b)(5), the term "controlled area" is revised to read "postclosure controlled area."

§ 60.46 [Amended]

6. In § 60.46(a)(3), the term "controlled area" is revised to read "postclosure controlled area wherever it appears."

§ 60.51 [Amended]

7. In § 60.51(a)(2)(i) and (a)(2)(ii), the term "controlled area" is revised to read "postclosure controlled area."

§ 60.102 [Amended]

8. In § 60.102(c), the term "controlled area" is revised to read "postclosure controlled area."

9. In § 60.111, paragraph (a) is revised to read as follows:

§ 60.111. Performance of the geologic repository operations area through permanent closure.

(a) *Protection against radiation exposures and releases of radioactive material.* The geologic repository operations area shall be designed so that until permanent closure has been completed, radiation exposures and radiation levels, and releases of radioactive materials to unrestricted areas, will be maintained within the limits specified in part 20 of this chapter and such generally applicable environmental standards for radioactivity as may have been established by the Environmental Protection Agency.

* * * * *

§ 60.121 [Amended]

10. In § 60.121(a) and (b), the term "controlled area" is revised to read "postclosure controlled area."

§ 60.122 [Amended]

11. In § 60.122(b)(6) and (c) introductory text, the term "controlled area" is revised to read "postclosure controlled area."

12. Section 60.130 is revised to read as follows:

§ 60.130 General considerations.

Pursuant to the provisions of § 60.21(c)(2)(i), an application to receive, possess, store, and dispose of high-level radioactive waste in the geologic repository operations area must include the principal design criteria for a proposed facility. The principal design criteria establish the necessary design, fabrication, construction, testing, maintenance, and performance requirements for structures, systems, and components important to safety and/or important to waste isolation. Sections 60.131 through 60.134 specify minimum requirements for the principal design criteria for the geologic repository operations area. These design criteria are not intended to be exhaustive, however. Omissions in §§ 60.131 through 60.134 do not relieve DOE from any obligation to provide such features in a specific facility needed to achieve the performance objectives.

13. In § 60.131, paragraph (b) is revised, and paragraphs (c) through (k) are added to read as follows:

§ 60.131 General design criteria for the geologic repository operations area.

* * * * *

(b) *Protection against design basis events.* The structures, systems, and components important to safety shall be designed so that they will perform their necessary safety functions, assuming occurrence of design basis events.

(c) *Protection against dynamic effects of equipment failure and similar events.* The structures, systems, and components important to safety shall be designed to withstand dynamic effects such as missile impacts, that could result from equipment failure, and similar events and conditions that could lead to loss of their safety functions.

(d) *Protection against fires and explosions.* (1) The structures, systems, and components important to safety shall be designed to perform their safety functions during and after credible fires or explosions in the geologic repository operations area.

(2) To the extent practicable, the geologic repository operations area shall be designed to incorporate the use of noncombustible and heat resistant materials.

(3) The geologic repository operations area shall be designed to include explosion and fire detection alarm systems and appropriate suppression systems with sufficient capacity and capability to reduce the adverse effects of fires and explosions on structures, systems, and components important to safety.

(4) The geologic repository operations area shall be designed to include means to protect systems, structures, and components important to safety against the adverse effects of either the operation or failure of the fire suppression systems.

(e) *Emergency capability.* (1) The structures, systems, and components important to safety shall be designed to maintain control of radioactive waste and radioactive effluents, and permit prompt termination of operations and evacuation of personnel during an emergency.

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(2) The geologic repository operations area shall be designed to include onsite facilities and services that ensure a safe and timely response to emergency conditions and that facilitate the use of available offsite services (such as fire, police, medical, and ambulance service) that may aid in recovery from emergencies.

(f) *Utility services.* (1) Each utility service system that is important to safety shall be designed so that essential safety functions can be performed, assuming occurrence of the design basis events.

(2) The utility services important to safety shall include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform their safety functions.

(3) Provisions shall be made so that, if there is a loss of the primary electric power source or circuit, reliable and timely emergency power can be provided to instruments, utility service systems, and operating systems, including alarm systems, important to safety.

(g) *Inspection, testing, and maintenance.* The structures, systems, and components important to safety shall be designed to permit periodic inspection, testing, and maintenance, as necessary, to ensure their continued functioning and readiness.

(h) *Criticality control.* All systems for processing, transporting, handling, storage, retrieval, emplacement, and isolation of radioactive waste shall be designed to ensure that nuclear criticality is not possible unless at least two unlikely, independent, and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety. Each system must be designed for criticality safety assuming occurrence of design basis events. The calculated effective multiplication factor (keff) must be sufficiently below unity to show at least a 5 percent margin, after allowance for the bias in the method of calculation and the uncertainty in the experiments used to validate the method of calculation.

(i) *Instrumentation and control systems.* The design shall include provisions for instrumentation and control systems to monitor and control the behavior of systems important to safety, assuming occurrence of design basis events.

(j) *Compliance with mining regulations.* To the extent that DOE is not subject to the Federal Mine Safety and Health Act of 1977, as to the construction and operation of the geologic repository operations area, the design of the geologic repository operations area shall nevertheless include such provisions for worker protection as may be necessary to provide reasonable assurance that all structures, systems, and components important to safety can perform their intended functions. Any deviation from relevant design requirements in 30 CFR, Chapter I, Subchapters D, E, and N will give rise to a rebuttable presumption that this requirement has not been met.

(k) *Shaft conveyances used in radioactive waste handling. (1) Hoists important to safety shall be designed to preclude cage free fall.*

(2) Hoists important to safety shall be designed with a reliable cage location system.

(3) Loading and unloading systems for hoists important to safety shall be designed with a reliable system of interlocks that will fail safely upon malfunction.

(4) Hoists important to safety shall be designed to include two independent indicators to indicate when waste packages are in place and ready for transfer.

14. In § 60.132, paragraph (c)(1) is revised to read as follows:

§ 60.132. Additional design criteria for surface facilities in the geologic repository operations area.

* * * * *

(c) *Radiation control and monitoring*—(1) *Effluent control.* The surface facilities shall be designed to control the release of radioactive materials in effluents so as to meet the performance objectives of § 60.111(a).

* * * * *

15. In § 60.133, the introductory text of paragraph (g) and paragraph (g)(2) are revised to read as follows:

§ 60.133 Additional design criteria for the underground facility.

* * * * *

(g) *Underground facility ventilation.* The ventilation system shall be designed to:

* * * * *

(2) Assure the ability to perform essential safety functions assuming occurrence of design basis events; and

* * * * *

16. A new undesignated center heading and § 60.136 are added to read as follows:

Preclosure Controlled Area

§ 60.136 Preclosure controlled area.

(a) A preclosure controlled area must be established for the geologic repository operations area.

(b) The geologic repository operations area shall be designed so that, for Category 2 design basis events, no individual located on or beyond the nearest boundary of the preclosure controlled area will receive the more limiting of a total effective dose equivalent of 0.05 Sv (5 rem), or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem). The eye dose equivalent may not exceed 0.15 Sv (15 rem), and the shallow dose equivalent to skin may not exceed 0.5 Sv (50 rem). The minimum distance from the surface facilities in the geologic repository operations area to the boundary of the preclosure controlled area must be at least 100 meters.

(c) The preclosure controlled area may be traversed by a highway, railroad, or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect public health and safety.

17. In § 60.183, paragraph (b) is revised to read as follows:

§ 60.183 Criminal penalties.

* * * * *

(b) The regulations in part 60 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 60.1, 60.2, 60.3, 60.5, 60.6, 60.7, 60.8, 60.15, 60.16, 60.17, 60.18, 60.21, 60.22, 60.23, 60.24, 60.31, 60.32, 60.33, 60.41, 60.42, 60.43, 60.44, 60.45, 60.46, 60.51, 60.52, 60.61, 60.62, 60.63, 60.64, 60.65, 60.101, 60.102, 60.111, 60.112, 60.113, 60.121, 60.122, 60.130, 60.131, 60.132, 60.133, 60.134, 60.135, 60.136, 60.137, 60.140, 60.141, 60.142, 60.143, 60.150, 60.151, 60.152, 60.162, 60.181, and 60.183.

Dated in Rockville, Maryland, this 15th day of March, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–6872 Filed 3–21–95; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

[Docket No. PRM–60–3]

Disposal of High-Level Radioactive Wastes in Geologic Repositories

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Partial grant/partial denial of petition for rulemaking.

SUMMARY: In a petition for rulemaking (PRM–60–3) submitted by the U.S. Department of Energy (DOE), the U.S. Nuclear Regulatory Commission was requested to establish specific dose criteria for design basis accidents at a high-level radioactive waste repository. NRC hereby grants in part, and denies in part, the specific proposals of the petitioner.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner are available for public inspection or copying, for a fee, in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Weller, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7287.

SUPPLEMENTARY INFORMATION:

DOE submitted a petition for rulemaking on April 19, 1990. On July 13, 1990 (55 FR 28771) NRC published a notice of receipt of the petition for rulemaking. The comment period expired on October 11, 1990. The petition requested that the Commission amend 10 CFR part 60 to prescribe certain numerical accident-dose criteria to be applied at the boundary of a "preclosure control area."

Under DOE's proposal, the definition of "important to safety," in 10 CFR 60.2, would be changed to apply a reference dose limit at the preclosure-control-area boundary, instead of the present unrestricted-area boundary; further, the definition would be amended to add a statement "All engineered safety features shall be included within the meaning of the term 'important to safety.'" The petition also proposed that performance objectives of 10 CFR 60.111 would be revised to incorporate an explicit accident dose limit, at the preclosure control area boundary, of 0.05-Sv (5-rem) effective dose equivalent, or 0.5-Sv (50-rem) committed dose equivalent. DOE indicated its intention that this limit would apply to direct irradiation and inhalation pathways, alone, and not to ingestion of contaminated foodstuffs. The phrase "at all times" would be deleted from 10 CFR 60.111(a), to clarify that the performance objective for the period of operations does not apply to exposure from accidents. Finally, the petition proposed adding new definitions, to 10 CFR 60.2, for the terms "preclosure control area," "committed dose equivalent," "committed effective dose equivalent," and "effective dose equivalent," to support the application of the accident dose criteria described above.

For a fuller statement of the petition for rulemaking, see the **Federal Register** notice cited above.

In response to NRC's publication of notice of receipt of the petition, comments were received from: DOE; Edison Electric Institute and the Utility Nuclear Waste and Transportation Program (EEI/UWASTE); Intertech Consultants, on behalf of Lincoln County, Nevada, and the City of Caliente, Nevada; and an anonymous "Concerned U.S. Citizen." The Commission, having now considered the petition and comments, grants the petition in part and denies the petition in part, and to that end, the Commission is publishing, concurrently with this notice, a notice of proposed rulemaking.

Under the proposed rule, accident-dose criteria would be applied at the boundary of a newly defined "preclosure controlled area," as recommended by DOE. Further, in response to the petition, the term "important to safety" would be redefined, though not in the form suggested by DOE. The Commission is also proposing to adopt the petitioner's request that the phrase "at all times" be deleted from the performance objective that applies to preclosure operations. In all other respects, the petition is denied.

The reasons for the action, insofar as it both grants and denies parts of the petition, are set out at length in the statement of considerations accompanying the proposed rule.

Dated in Rockville, Maryland, this 15th day of March, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–6878 Filed 3–21–95; 8:45 am]

BILLING CODE 7590–01–P

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Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approval for Tribal-State compacts.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, approved Tribal-State Compacts between the following tribes and the State of New Mexico on February 13, 1995: The Mescalero Apache Tribe, Pueblo of Santa Ana, Pueblo of San Juan, Pueblo of Taos, Pojoaque Pueblo, Pueblo of Sandia, Pueblo of Tesuque, Pueblo of Santa Clara, Jicarilla Apache Tribe, Pueblo of Isleta, and the Pueblo of San Felipe.

DATES: This action is effective March 22, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 15, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6966 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approval for Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact For Regulation of Class III Gaming Between the Siletz Indian Tribe and the State of Oregon, which was executed on November 14, 1994.

DATES: This action is effective March 22, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 14, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6967 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Jamestown S'Klallam Tribe and the State of Washington Class III Gaming Compact Amendment, which was executed on January 26, 1995.

DATES: This action is effective March 22, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: March 10, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6968 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–02–P

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Part IV

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation Meetings on Indian Education Programs; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are as follows:

1. Tribal Priority Allocation Category for Education Programs
2. Actions Being Proposed by Bureau of Indian Affairs to Implement Pub. L. 103–227 and Pub. L. 103–382:
A. Draft Goals 2000 Consolidated State Plan to meet requirements of Pub. L. 103–227.
B. Discussion Paper on Proposed MOA Between Secretaries of Interior and Education Per § 14205 of Pub. L. 103–382.
3. Open Discussion
4. On-Going ISEP Formula Study: ISEP study mandated by Pub. L. 103–332, FY 95 Appropriations for the Department of Interior.
5. Implementing Pub. L. 100–297 Construction Grants exceeding $100,000
6. Regulatory Revisions
A. Adult Education and Higher Education Grant Programs
B. Kindergarten Student Enrollment Age
C. Residential Opportunity to Learn Standards

DATES: March 31, and April 3, 5, 7, and 11, 1995 for locations listed. Several dates and locations were scheduled to coincide with meetings of various Indian education organizations. Meetings will begin at 9:00 A.M. and continue until 3:00 P.M. (local time). Written comments concerning the consultation items must be received no later than May 1, 1995.

ADDRESSES:

Location	Local contact	Telephone
March 31, 1995:		
1. Colorado, Denver	Verna Houle	(503) 230–5682
April 3, 1995:		
1. Montana, Billings	Larry Parker	(406) 657–6375
2. Arizona, Phoenix	John Wahnee	(602) 738–2262
3. Oklahoma, Tulsa	Jim Baker	(405) 945–6051
April 5, 1995:		
1. South Dakota, Aberdeen	Bobby Thompson	(701) 854–3497
2. New Mexico, Gallup	Lester Hudson	(505) 368–4427
3. California, Sacramento	Fayetta Babby	(916) 979–2560
4. Louisiana, New Orleans	LaVonna Weller	(703) 235–3233
April 7, 1995:		
1. Minnesota, St. Paul	Mary Hilfiker	(612) 373–1090
2. Alaska, Anchorage	Robert Pringle	(907) 271–4115
3. New Mexico, Albuquerque	Juanita Cata	(505) 753–1465
April 11, 1995:		
1. Oregon, Portland	Verna Houle	(503) 230–5682

Written comments should be mailed, to be received, on or before May 1, 1995, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512–MIB, OIE–32, 1849 C. Street, NW, Washington, D.C. 20240, Attn: Dr. John Tippeconnic; OR, may be hand delivered to Room 3512 at the same address. Telefax responses may be transmitted to (202) 219–0221.

FOR FURTHER INFORMATION CONTACT: Goodwin K. Cobb or Jim Martin at the above address or call (202) 219–1131 or 208–3550.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: March 7, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6969 Filed 3–21–95; 8:45 am]

BILLING CODE 4320–02–P

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Part V

Federal Trade Commission

16 CFR Part 305

Energy Consumption and Water Use of Certain Home Appliances and Other Products; Final Rule and Proposed Rule

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule, policy statement delaying enforcement.

SUMMARY: The Federal Trade Commission, in response to a petition, issues an Enforcement Policy Statement under which the Commission will avoid taking law enforcement actions against manufacturers of general service incandescent lamps (including reflector lamps) not in compliance with the labeling disclosure requirements of the Appliance Labeling Rule until December 1, 1995.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Division of Enforcement, Bureau of Consumer Protection, Room S–4631, Federal Trade Commission, Washington, DC 20580, telephone 202/326–3013.

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 1994, the Commission published amendments to the Appliance Labeling Rule to bring certain lamp products under the Rule's coverage.[1] The amendments will become effective on May 15, 1995. The Commission promulgated the amendments in response to a directive in the Energy Policy Act of 1992 ("EPA 92").[2] In a petition dated January 31, 1995 ("Petition"), the Lamp Section of The National Electrical Manufacturers Association ("NEMA")[3] requested that the Commission allow manufacturers of specific types of incandescent lamp products an option as to where on the package specific disclosures must be made, and stay compliance with the Rule through November 30, 1995. In a document published elsewhere in this issue of the **Federal Register**, the Commission proposes amendments to the lamp labeling requirements of the Appliance Labeling Rule and requests comments on the amendments. The Commission responds to NEMA's request for a stay below.

II. NEMA's Request for a Stay

NEMA's Petition requests that the Commission stay, through November 30, 1995, "compliance against manufacturers who, in good faith and despite the exercise of due diligence, are unable to change all of their lamp packages prior to the May 15, 1995 effective date of the Lamp Labeling Rule." In support of its request for a stay, NEMA asserts that manufacturers must change by May 15, 1995, a large number of packaging designs and equipment for many stock-keeping units ("SKUs").[4] The extent of the changes to the lamp packages, the number of product-types affected, and the need to coordinate energy efficiency disclosures with other marketing information, such as logos, names, and comparative representations, has resulted in a more time-consuming and costly conversion process than NEMA and its members initially projected. The lamp labeling amendments have had the effect of requiring manufacturers to undertake substantial redesign of the lamp package. According to NEMA, some manufacturers have undertaken extensive market research to determine the most effective placement of required disclosures in conjunction with other marketing information. Because the marketing significance of a lamp package is much greater than that of a yellow EnergyGuide attached to a larger and more expensive home appliance, the redesign of lamp packages entails much more than merely adding a disclosure box and some explanatory statements.[5]

In addition, NEMA asserts that, because of ambiguities in the lamp labeling requirements of the Appliance Labeling Rule and the different requirements of the preexisting Light Bulb Rule, 16 CFR Part 409, it has been necessary for manufacturers to seek various clarifications and other advice from the Commission's staff before manufacturers could finalize package designs for their entire inventory.[6] NEMA states that, while the Commission's staff offered informal advice on many occasions, NEMA believes it needs formal, written guidance concerning specific issues.[7] Because of the number of issues involved, NEMA asserts that manufacturers have been unable in many respects to complete their packaging designs, or to order new printing plates and paper stock pending resolution of specific issues. NEMA contends, therefore, that even acting in good faith and exercising due diligence, manufacturers are unlikely to be able to complete the changeover of their entire packaging inventory prior to the May 15, 1995, effective date.[8] Accordingly, NEMA requests that the Commission stay compliance of the lamp labeling provisions of the Appliance Labeling Rule for all lamps other than general service fluorescent lamps for six months, through November 30, 1995.[9]

III. Enforcement Policy Statement

The Commission has determined that it would not be appropriate for the Commission to stay the effective date of the lamp labeling amendments to the Appliance Labeling Rule because the effective date is set by the EPA 92 amendments to EPCA and the statute does not authorize the Commission to extend the effective date. 42 U.S.C. 6294(a)(2)(C)(i). The Commission, however, has determined to grant manufacturers of incandescent lamps the additional time petitioner requests.

In light of the amendments to the Rule the Commission proposes today elsewhere in this issue of the **Federal Register** in response to the Petition from NEMA and the apparent uncertainties among incandescent lamp manufacturers regarding their compliance responsibilities under the combined requirements of the Appliance Labeling Rule and the Light Bulb Rule, 16 CFR Part 409, and in order to minimize relabeling costs, the Commission has determined to not take law enforcement actions until December 1, 1995, against manufacturers of incandescent lamp products not in compliance with the lamp labeling requirements of the Appliance Labeling Rule. Petitioner, however, has not demonstrated why a similar delay should apply to the labeling disclosure requirements for medium base compact fluorescent lamps, as requested in the Petition. The Commission, therefore, has determined that the delay in taking law enforcement actions will not apply to the labeling requirements for medium base compact fluorescent lamps.[10]

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–7059 Filed 3–21–95; 8:45 am]

BILLING CODE 6750–01–P

[1] Final rule and Statement of Basis and Purpose ("SBP"), 59 FR 25176. On December 29, 1994, the Commission published minor, technical amendments to resolve certain inconsistencies in paragraph numbering and language that had arisen during the course of four recent proceedings amending the Rule. 59 FR 67524.

[2] Pub. L. No. 102–486, 106 Stat. 2776, 2817–2832 (Oct. 24, 1992) (codified at 42 U.S.C. 6201, 6291–6309).

[3] NEMA is a trade association representing the nation's largest manufacturers of lamp products. Its members produce more than 90 percent of the lamp products subject to the lamp labeling requirements of the Appliance Labeling Rule. Petition at 2.

[4] NEMA's counsel informed the Commission's staff that its members produce over two thousand SKUs that will be covered by the lamp labeling requirements of the Appliance Labeling Rule.

[5] Petition at 7.

[6] Petition at 8.

[7] *Id.* at 2 note 1, 8. NEMA has consolidated and limited the issues on which it requests written advice in a letter to the Commission's staff dated January 30, 1995. The Commission's staff responded to the issues raised in that letter in a separate, written staff opinion letter.

[8] *Id.*

[9] *Id.* at 9–10.

[10] No evidence was presented in the original rulemaking record concerning the effect, if any, of different voltages on compact fluorescent lamps, which operate through the use of a ballast that regulates the lamp current during operation, or that medium base compact fluorescent lamps are produced or marketed with design voltages other than 120 volts. Similarly, the delay will not apply to the labeling disclosure requirements for general service fluorescent lamps, for which petitioner did not request a stay.

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Proposed rule and request for comments.

SUMMARY: The Federal Trade Commission ("Commission") proposes amendments to the Appliance Labeling Rule ("Rule"), in response to a petition and a separate written request, to allow manufacturers of general service incandescent lamps (including incandescent reflector lamps) with a design voltage other than 120 volts an option as to where on the package specific disclosures must be made; to clarify the light output measure that manufacturers of incandescent reflector lamps must disclose on lamp labels; to delete the requirement that the lumen disclosure for incandescent reflector lamps be followed by the term "at beam spread;" and, to allow manufacturers of incandescent reflector lamps the option of adding a reference to "beam spread" to the Advisory Statement about saving energy costs. The Commission is soliciting written data, views and arguments concerning these amendments.

DATES: Written comments must be submitted on or before April 21, 1995.

ADDRESSES: Written comments should be submitted to Office of the Secretary, Federal Trade Commission, Room 159, Sixth and Pennsylvania Avenue NW., Washington, DC 20580, telephone number 202/326–2506. Comments should be identified as "16 CFR Part 305—Comment—Lamp Products." Written comments should be provided, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Division of Enforcement, Bureau of Consumer Protection, Room S–4631, Federal Trade Commission, Washington, D.C. 20580, telephone 202/326–3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 13, 1994, the Commission published amendments to bring certain lamp products under the Rule's coverage,[1] which will become effective on May 15, 1995. The Commission initiated the proceeding to bring certain lamp products under the Rule's coverage in response to a directive in the Energy Policy Act of 1992 ("EPA 92").[2]

In a petition dated January 31, 1995 ("Petition"), the Lamp Section of The National Electrical Manufacturers Association ("NEMA")[3] requested that the Commission:

(1) allow manufacturers of specific types of lamp products an option as to where on the package specific disclosures must be made; and

(2) stay, through November 30, 1995, "compliance against manufacturers who, in good faith and despite the exercise of due diligence, are unable to change all of their lamp packages prior to the May 15, 1995 effective date of the Lamp Labeling Rule."

NEMA requested expedited treatment of its request to enable manufacturers to complete the design of affected lamp packages and to order necessary printing plates and packaging inventory, costing millions of dollars, as soon as possible.

In a separate letter to the Commission's staff dated January 30, 1995, NEMA also requested a written staff opinion concerning several issues on which staff already has informally advised NEMA and various lamp manufacturers. One item raised in this letter, concerning disclosure requirements for incandescent reflector lamps (spotlights and floodlights), raises issues that the Commission determined could not be resolved, as NEMA requested, simply by a staff opinion letter. The Commission, therefore, has included consideration of these issues in this Notice.

For the reasons discussed below, the Commission proposes adopting amendments to the lamp labeling requirements of the Appliance Labeling Rule that would give manufacturers of general service incandescent lamps (including incandescent reflector lamps) greater flexibility in making disclosures for lamps that have a design voltage of other than 120 volts. The amended Rule would continue to require that specific information about each covered lamp's operation at 120 volts be disclosed on product labels, as required by EPA 92, but the disclosures would not have to be included on the principal panel of the packaging. In addition, the Commission proposes adopting amendments to the Rule to clarify the light output measure in lumens that manufacturers of incandescent reflector lamps must disclose on lamp labels, to delete the requirement that the lumen disclosure for incandescent reflector lamps be followed by the term "at beam spread," and to allow manufacturers of incandescent reflector lamps the option of adding a reference to "beam spread" to the Advisory Statement about how to save energy costs that must appear on the principal display panel of each lamp package. The latter amendments primarily would correct an inadvertent technical error and effectuate the original intent of the Rule's requirements. The Commission is seeking written public comments on these proposed amendments, and it will announce its final decision regarding the proposed amendments after reviewing the comments it receives.

In light of these proposed amendments, the difficulties manufacturers of incandescent lamps have encountered in complying with both the requirements of the Appliance Labeling Rule and the Commission's preexisting Light Bulb Rule, 16 CFR Part 409, and the need to minimize relabeling costs, the Commission has determined to issue an Enforcement Policy Statement. In a document published elsewhere in this issue of the **Federal Register**, the Enforcement Policy Statement explains that the Commission has determined to not take law enforcement action until December 1, 1995 against manufacturers of general service incandescent lamp products (including incandescent reflector lamps) for labeling not in compliance with the disclosure requirements of the Appliance Labeling Rule. This determination does not affect any other compliance obligations imposed by the lamp labeling requirements of the Rule that will become effective on May 15, 1995.

II. Background

On May 13, 1994, the Commission published final labeling rules for various types of lamp products ("light bulbs"), including general service fluorescent lamps, general service incandescent lamps (including reflector incandescent lamps), and medium base compact fluorescent lamps,[4] as mandated by EPA 92.[5] The Commission issued the lamp labeling rules as amendments to the Appliance Labeling Rule, 16 CFR Part 305. These lamp labeling amendments will become effective on May 15, 1995.[6]

In the Statement of Basis and Purpose for the lamp labeling amendments, the Commission determined to require disclosures on labels of specific information relating to the performance of these lamp products. In brief, the amendments require disclosures on the primary display panel of package labels of light output (in lumens), energy use (in watts), and life (in hours), plus an Advisory Statement that explains how purchasers can save on energy costs. For incandescent reflector lamps (used to focus or spread light on a particular object or objects), the amendments additionally require that the disclosure of light output (in lumens) be for the lamp's "beam spread," and that the disclosure of lumens be followed clearly and conspicuously by the phrase "at beam spread."

Based on the statutory directive that the Commission promulgate these labeling rules and that labeling information be based on performance at 120 volts, the lamp labeling amendments to the Rule require that the disclosures for general service incandescent lamps (including incandescent reflector lamps) appear on the primary display panel based on operation at 120 volts, regardless of the lamp's design voltage. The amendments, however, allow manufacturers the option of adding disclosures based on operation at a different design voltage, either on the primary display panel or on a separate panel on the package.

The lamp labeling amendments to the Appliance Labeling Rule overlap certain disclosures already required on packages of non-reflector general service incandescent bulbs by the Commission's Light Bulb Rule.[7] This Rule, unlike the lamp labeling amendments to the Appliance Labeling Rule, requires that package labels clearly and conspicuously disclose average initial wattage, light output expressed in average initial lumens, and average laboratory life expressed in hours, based on operation at the bulb's *stated design voltage*.[8] Under the Light Bulb Rule, the disclosures must appear on at least two panels of the outer sleeve or container in which bulbs are displayed and additionally on all panels of the inner and the outer sleeve that contain any reference to wattage, lumens, life or voltage. The disclosures, however, need not be made on the primary display panel.[9]

When it promulgated the lamp labeling amendments to the Appliance Labeling Rule, the Commission noted two provisions of the Light Bulb Rule that are different from the lamp labeling requirements under the Appliance Labeling Rule. The first provision concerns the format requirements for disclosing the wattage, light output and laboratory life ratings of general service incandescent nonreflector lamps. The second provision concerns the Light Bulb Rule's requirement that the testing for, and required disclosures of, wattage, light output and laboratory life ratings of general service nonreflector lamps be at the lamp's design voltage. Because these different rule provisions are not contradictory, the Commission stated that manufacturers will be able to comply with both without incurring significant additional costs.[10]

Nevertheless, the Commission stated that, following that rulemaking proceeding, it would consider whether any additional action is necessary concerning the Light Bulb Rule.[11] To amend or repeal the Light Bulb Rule, the Commission's Rules of Practice require the Commission to use different, and more lengthy, rulemaking procedures than those specified in EPA 92 for the lamp labeling amendments to the Appliance Labeling Rule. Thus, because of the statutory deadline for issuing the lamp labeling rules under EPA 92, the Commission determined to review the Light Bulb Rule in a separate proceeding. The Commission has scheduled the Light Bulb Rule for review during 1995 as part of the Commission's ongoing program to review all Commission rules and guides.[12]

III. Petition

A. NEMA's Request (Disclosures at 120 Volts)

NEMA's Petition requests that the Commission approve an optional, but not required, labeling format scheme for packages of incandescent lamp products with a design voltage other than 120 volts. NEMA states that manufacturers design some lamp products for operation at either 125 or 130 volts,[13] and that line voltages of other than 120 volts are prevalent in certain regions of the country.[14] The Petition also notes that the Light Bulb Rule requires disclosures of a general service incandescent lamp's light output, wattage and life, measured at design voltage. Based on these assertions, the Petition contends that the lamp labeling requirements in the Appliance Labeling Rule, "by requiring that a lamp package's principal display panel contain performance ratings measured at 120 volts, and designated 'at 120 volts,' will cause considerable confusion for consumers who use lamps designed for the local line voltage which is other than 120 volts." NEMA contends that, because light output of a given lamp is lower at 120 volts than at higher voltages, consumers in non-120 volt regions may seek a higher wattage lamp than needed to obtain the light output they desire. NEMA asserts that this would undermine the energy efficiency objectives of the Appliance Labeling Rule.[15]

NEMA's Petition states that consumers in regions with line voltages other than 120 volts should be able to find lamp packages labeled on the principal display panel with performance ratings measured at the lamp's design voltage. NEMA claims that, under the Appliance Labeling Rule, this would require manufacturers to provide dual-voltage information for each performance rating on the primary display panel. In support of its Petition,

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[1] Final rule and Statement of Basis and Purpose ("SBP"), 59 FR 25176. On December 29, 1994, the Commission published minor, technical amendments to resolve certain inconsistencies in paragraph numbering and language that had arisen during the course of four recent proceedings amending the Rule. 59 FR 67524.

[2] Pub. L. 102–486, 106 Stat. 2776, 2817–2832 (Oct. 24, 1992) (codified at 42 U.S.C. 6201, 6291–6309).

[3] NEMA is a trade association representing the nation's largest manufacturers of lamp products. Its members produce more than 90 percent of the lamp products subject to the lamp labeling requirements of the Appliance Labeling Rule. Petition at 2.

[4] 59 FR 25176. In the current Notice, citations to evidence are based on the citation system used in the SBP for these lamp labeling requirements. Documents are numbered sequentially, such as Document No. G–1, Document No. G–2. Comments are cited by an identification of the commentor, the comment number and the relevant page number(s), *e.g.*, "Angelo, G–1, 1–3." Supplemental comments are designated in addition as: "(Supp.)." Discussion by more than one party in the transcript of the Public Workshop Conference is cited by a reference to the transcript and the relevant page number(s), *e.g.*, "Tr., 15–20." Discussion by one party in the transcript is cited by an identification of the party, a reference to the transcript and the relevant page number(s), *e.g.*, "Osram (Tr.), 80–81."

[5] EPA 92 amended the Energy Policy and Conservation Act of 1975 ("EPCA"). 42 U.S.C. 6291 *et seq.*

[6] The statute required the Commission's rules to become effective 12 months after their publication in the **Federal Register**. Because May 13, 1995, falls on a Saturday, the effective date is Monday, May 15. 42 U.S.C. 6294(a)(2)(C)(i).

[7] 16 CFR Part 409. The Light Bulb Rule, issued in 1970, was intended to prevent deceptive or unfair practices in the sale of incandescent light bulbs. Other types of lamps covered by the Appliance Labeling Rule amendments (including incandescent reflector lamps) are not covered by the Light Bulb Rule.

[8] *Id.* at 409.1 n. 1.

[9] *Id.* at 409.1 n. 4.

[10] 59 FR at 25177.

[11] 59 FR at 25176.

[12] 60 FR 6463 (Feb. 2, 1995).

[13] Petition at 2. The voltage provided by electric utilities in the United States for lighting purposes is primarily 120 volts, but may range from approximately 115 to 125 volts. Voltage is not a characteristic of a lamp product, but the operation of a lamp is affected by the voltage at which it operates. For a given lamp, the higher the voltage, the higher the light output in lumens, the higher the wattage, and the shorter the life.

[14] *Id.* NEMA states that the prevailing voltage for these areas is 125 volts, though actual line voltage within these areas varies. *Id.* at 2 note 3.

[15] *Id.*

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NEMA submitted examples of labels that contain performance disclosures on the primary display panel based on operation at both 120 volts and the lamp's different design voltage. NEMA believes the resulting complexity of the package is certain to confuse even the most energy-conscious consumer.[16]

NEMA proposes an alternative, optional disclosure format to comply with the labeling requirements under Section 305.11(e)(1)(iii) of the Appliance Labeling Rule. Specifically:

> As an optional disclosure under Section 305.11(e)(1)(iii), for lamps with a design voltage other than 120 volts, light output, energy used, and life ratings displayed on the principal display panel could be measured at design voltage, provided that such ratings measured at 120 volts are disclosed on another panel of the package, and that the principal display panel clearly and conspicuously identifies the lamp's design voltage and clearly and conspicuously contains the following explanatory statement:
>
> [125/130] volt design. At 120 v., light output and efficiency are noticeably reduced. See [side/back] panel for data at 120 v.[17]

NEMA also states it would accept a more detailed explanatory statement, which could read:

> This product is designed for [125/130] volts. When used on the normal line voltage of 120 volts, the light output and efficiency are noticeably reduced. See [side/back] panel for 120 volt ratings.[18]

NEMA believes that its proposal fully satisfies the Commission's objectives and the requirements of Section 324(a)(2)(C)(i) of EPCA, which states: "Labeling information for incandescent lamps shall be based on performance when operated at 120 volt input, regardless of the rated lamp voltage." NEMA also believes that its proposal provides accurate and meaningful information.[19]

B. Background

The issue of the voltage at which the proposed disclosures of watts, light output, life and energy efficiency should be based was not specifically raised in the Notice of Proposed Rulemaking ("NPR").[20] However, this issue was the subject of considerable discussion during the Public Workshop the Commission conducted on January 19, 1994, as part of the rulemaking proceeding, as well as in two post-Workshop comments.[21] In addition, the statutory language mandating the information disclosures is explicit in requiring disclosures to be based on operation at 120 volts, regardless of the lamp's design voltage.

Several industry representatives supported requiring disclosure of wattage, light output in lumens, and average laboratory life based on operation of the lamp at its design voltage, if the design voltage is other than 120 volts.[22] They suggested that only the energy index proposed in the NPR (i.e., lumens per watt) should be disclosed at 120 volts, regardless of the lamp's design voltage.[23] They argued that only the efficiency measure (energy index) is covered by the requirement in EPCA that labeling disclosures for incandescent lamps be measured at 120 volts.[24] Other participants contended, however, that for general service incandescent lamps the labeling rules should require that the wattage, light output, life and energy index disclosures be made at 120 volts because most purchasers operate lamps at 120 volts and performance claims should be based on a uniform standard.[25]

Both the statute and its legislative history are silent about the specific purpose and meaning of the mandate that labeling information shall be based on operation at 120 volts. The Commission, therefore, analyzed the record evidence concerning the methods of sales distribution and the uses of these lamp products, as well as the manner in which purchasers could best be provided with accurate and important information to enable them "to select the most energy efficient lamps which meet their requirements."[26]

According to the rulemaking record, the majority of the service voltage of electricity supplied by local utilities for lighting is 120 volts. The rest is supplied at 125 volts, primarily in the Pacific Northwest and the Tennessee Valley. No evidence was presented that any local utility supplies electricity at 130 volts, or at service voltage other than 120 or 125 volts. The lamp manufacturers who participated in the proceeding stated that they distribute incandescent lamps with a design voltage of 120 volts for sale in 120 voltage service regions. They also stated, however, that while they distribute incandescent lamps with a design voltage of 125 volts primarily to regions with 125 voltage service, they cannot guarantee that lamps with a design voltage of 125 volts are only offered for sale in 125 voltage service regions. Manufacturers that distribute incandescent lamps with a design voltage of 130 volts stated that they distribute these lamps, which are marketed as long-life lamps, in both 120 and 125 voltage service regions.

In light of the statutory standard and the rulemaking record, the Commission determined to require disclosure on the primary display panel of the specific lamp performance information based on operation of the lamp at 120 volts.

[16] *Id.*

[17] *Id.* at 6.

[18] *Id.* at 6 note 6.

[19] *Id.* at 5–6.

[20] In the NPR, 58 FR 60147 (1993), the Commission proposed requiring disclosure of an energy efficiency number. Based on the definition of "lamp efficacy" in the EPA 92 amendments to EPCA, the NPR proposed requiring disclosure on lamp packages of an "Energy Index," based on each lamp product's lumens per watt rating. When it issued the final labeling rules, the Commission determined not to require this disclosure.

[21] See (Tr.), 35–65, 201–205. See also Osram (G–11) (Supp.), 2; NEMA (G–10) (Supp.), 19–21.

[22] NEMA (Tr.), 39–40, 54, (Supp.), G–10, 19–21 (the Commission views these statements as NEMA's final position on the issue); Osram (Tr.), 41, (Supp.), G–11, 2. *See also* Angelo, G–1, 2 (but note that Angelo later recommends disclosures at 120 volts in the Workshop at Tr. 57); GE, G–2, 7, (Ans.), 1; Osram (Tr.), 41, 58–59, (Supp.), G–11, 2; ACEEE, GG–1, 1 (ACEEE, too, later recommends in the Workshop that all disclosures be at 120 volts, (Tr.), 59); OR DOE, GG–13, 7; WA SEO, GG–18, 1.

[23] See note 20, *supra.*

[24] In its supplemental comment, NEMA stated:

> A question was raised at the Workshop as to whether the last sentence of section [324(a)(2)(C)(i) of EPCA] should be interpreted to apply only to energy efficiency labeling or to all items required to be disclosed under the Commission's regulations. There is no published legislative history interpreting this provision. However, NEMA representatives were involved in extensive discussions with energy efficiency organizations and congressional staff over the language of the Energy Policy Act. Throughout those discussions, everyone's attention was focused on how best to educate consumers to select the most energy efficient lamp. NEMA representatives sought inclusion of the requirement that all lamps' efficiency ratings be based on a comparable operation at 120 volts. NEMA's objective was to prevent some manufacturers or importers from disguising low efficiency lamps by claiming efficiency ratings at voltages greater than 120 volts. NEMA was concerned that if a consumer faced 120 and 130 volt lamps in the same store, it be clear that the 130 volt lamp would be substantially less efficient when operated at 120 volts (Tr. 40–41). NEMA did not intend to force manufacturers to cease production or alter existing ratings of higher voltage lamps for use in niche markets. Thus, in construing section [324(a)(2)(C)(i)] of EPCA, NEMA urges that the provision be fairly read in the context of the legislative discussions and that congressional intent is best served by requiring that only lumens per watt measurements be based on 120 volts operation.

NEMA (Supp.), G–10, 20–21. *See also* GE (Supp.), G–9, Ex. 4; Osram (Tr.), 51–52 (most purchasers do not see mix of products based on different voltages on store shelves, but purpose of the statute's requirement was to require that efficiency be based on constant voltage for situations when mix of products were on shelves at same time). *But see* NEMA, G–3, 45 ("The Commission's regulations should expressly require manufacturers of incandescent lamps to disclose all performance characteristics when operated at 120 volts, regardless of the rated voltage.").

[25] See MN DPS, GG–9, 2; NEPS (Tr.), 44; LRC (Tr.), 44, 54–55; Angelo (Tr.), 57; ACEEE (Tr.), 59; IES (Tr.), 62.

[26] 42 U.S.C. 6294(a)(2)(C)(i).

Otherwise, purchasers in most parts of the country who purchase lamps with a design voltage of 125 or 130 volts could be misled by exaggerated light output claims.[27] In order to ensure that purchasers in 125 volt service regions are provided accurate performance information, and to allow manufacturers flexibility in marketing longer-life, 130-volt design voltage lamps, however, the Commission determined to allow manufacturers, at their option, to disclose performance information at an additional design voltage. This information could be included on the primary display panel, or on a different package panel.[28]

C. Proposed Amendments

NEMA's Petition raises no legal analysis that was not presented in the original rulemaking record, nor does it present any empirical information indicating that consumers would be misled by the dual sets of disclosures on the primary panel. NEMA, however, asserts that marketing considerations will lead manufacturers to want to put design voltage information on the primary display panel.[29] A review of the sample labels with dual disclosures on the primary display panel indicates that they may be confusing to consumers. The Commission believes that the approach NEMA suggests will be adequate to meet the statutory standard and ensure that purchasers receive accurate information they need in making purchase decisions.

Although the statute states that labeling information for these lamps shall be based on operation at 120 volts, regardless of the rated (or design) lamp voltage, it does not prohibit the Commission from allowing additional disclosures based on operation of the lamp at a different design voltage. The statute also leaves to the Commission's discretion both the specific disclosures that should be required and the manner and format in which the disclosures should be made. The Commission, therefore, proposes amending the Rule to allow an optional disclosure format, as NEMA requests, for incandescent lamps with design voltages of 125 or 130 volts.[30] The Commission proposes amending the Rule to require use of the more detailed explanation regarding operation at 120 volts and to allow the placement of information on packages that NEMA proposed. In addition, to ensure that purchasers are aware that they are selecting a bulb with a design voltage of 125 volts or 130 volts, the Commission proposes amending the Rule to require that all panels of the package that contain a claim about lumen light, wattage or life clearly and conspicuously identify the lamp as "[125 volt/130 volt]."[31]

The Commission proposes promulgating the optional compliance method requested by NEMA as amendments to the Appliance Labeling Rule. The proposed amendments would comply with the statutory mandate because they would require clear and conspicuous disclosure on labels of the specific performance information for the lamps when they are operated at 120 volts. The proposed amendments would impose no additional requirements on manufacturers, but merely would allow an alternative format for manufacturers to make the required disclosures. At the same time, the proposed amendments would ensure that purchasers are provided with accurate information they need about the most efficient lamps that meet their requirements when they make purchase decisions.

IV. Other Issues

A. NEMA's Request (Disclosures for Reflector Lamps)

NEMA believes that the existing lamp labeling requirements in the Appliance Labeling Rule may be based on a technical misunderstanding of incandescent reflector lamp characteristics, and would lead consumers to purchase more energy intensive lamps than are needed.[32] Accordingly, NEMA requests that the Appliance Labeling Rule be either interpreted or amended as follows:[33]

(1) to require that disclosure of light output for an incandescent reflector lamp shall be given for the lamp's "total forward lumens;" and

(2) to delete the requirement that the disclosure of light output be followed by the phrase "at beam spread."

NEMA further requests that Section 305.11(e)(1)(vi) of the Appliance Labeling Rule be either interpreted or amended to permit, but not require, a manufacturer the option to insert into the required Advisory Statement the following italicized words:

"To save energy costs, find the bulb with the *beam spread and* light output you need, then choose the one with the lowest watts."

In support of these requests, NEMA explains that it may not clearly have communicated to the Commission during the rulemaking proceeding the difference between total lumens (or total forward lumens), which are measured independently of beam spread, and beam intensity, which is a measure of a reflector lamp's performance independent of lumens. NEMA asserts that the requirement that the lumen disclosure be labeled "at beam spread," consequently, confuses two distinct performance characteristics of reflector lamps. NEMA states that reflector lamp purchasers choose a beam spread for a particular lighting task, whether requiring sharply concentrated light or more dispersed light. Then, purchasers determine how much light output or total forward lumens they need, rather than beam lumens. Finally, NEMA asserts that purchasers should be directed to the most efficient lamp at a given beam spread, which will be the lamp with the lowest wattage for the desired total lumen output.[34]

NEMA believes that the existing requirements would merely confuse purchasers and distract them from purchasing the most efficient lamp that meets their needs. Such confusion would arise because, for lamps with the same total forward lumens, the spotlight or narrow beam lamp will always have fewer beam lumens than a floodlight. Labeling incandescent reflector lamps only in terms of beam lumens thus would often bias purchasers into selecting higher wattage lamps than are needed to meet their lighting needs, or to save energy. Further, NEMA states that the lamp efficiency standards specified by EPA 92 are based on total

[27] See Angelo (Tr.), 63: [P]eople may choose life or lumen output but if it's tested at 120 then there's no reason to go through the deception of saying it's a 130-volt lamp. It's simply enough to say that this lamp is going to produce less lumens[,] meaning it's going to have a different filament and it has really nothing to do with design wattage, it has to do with life and lumens. So in the circumstance of the people who were buying it for that reason, why go through a deception? Why not just tell them [it's] at 120 and let it be billed as a 120-volt lamp with less lumens and more life?

[28] See 16 CFR 305.11(e)(1)(C).

[29] NEMA also has indicated that, although less than 10% of the lamps sold have a design voltage of other than 120 volts, of the three largest manufacturers of the broad range of general service incandescent lamps, the percentage of stock-keeping units ("SKUs") designed for other than 120 volts ranges from between 40% and 50% for one manufacturer, to approximately 30% for another, and 10% to 20% for the third.

[30] If interested parties demonstrate that covered incandescent lamps at additional design voltages are produced and sold, the Commission can consider adding the additional design voltages to the option.

[31] NEMA's counsel agreed that this condition would be appropriate.

[32] Letter dated November 11, 1994, to Kent C. Howerton and James G. Mills, FTC, from Mark L. Perlis, Counsel to NEMA, at 2. *See also* Letter dated December 5, 1994, to Kent C. Howerton, FTC, from Mark L. Perlis, Counsel to NEMA.

[33] Petition at 1–3.

[34] Letter dated November 11, 1994, to Kent C. Howerton and James G. Mills, FTC, from Mark L. Perlis, Counsel to NEMA, at 2.

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forward lumens rather than beam lumens.[35]

B. Background

Not all light produced by an incandescent reflector lamp is reflected forward as useable light.[36] Some light may escape around the base of the cone and be lost into the lamp fixture. Some light may be reflected back and forth inside the cone and not be emitted as useful light output. In an attempt to ensure that only useable forward light output would be disclosed as the lamp's lumen light output, Section 305.11(e)(1)(iv) of the Appliance Labeling Rule requires that the light output disclosed shall be for the lamp's "beam spread," and be followed clearly and conspicuously by the phrase "at beam spread."

C. Proposed Amendments

The Commission agrees with NEMA's explanation and analysis. During the rulemaking proceeding, and in discussions between the Commission's staff and NEMA and various lamp manufacturers since the Commission issued the final lamp labeling amendments to the Appliance Labeling Rule, there has been confusion about the use of such terms as "beam spread," "beam angle," "total lumens," and "total forward lumens" for incandescent reflector lamps. NEMA's proposal would clarify that the required light output disclosure is for the useable light output reflected forward (as was intended by the Commission), and not merely of light focused within the more narrow "beam spread." The proposal also would clarify that the lumen disclosure for incandescent reflector lamps is consistent with the lumen measurement used by the Department of Energy (DOE) in determining the efficiency of these products under the minimum efficiency standards set by EPA 92.[37]

[35] *Id.*

[36] Incandescent reflector lamps (also known as reflectorized incandescent lamps) are cone-shaped with a reflectorized coating applied to the cone-shaped part of the bulb. Incandescent reflector lamps thus allow light output to be directed and focused forward through the face of the lamp. They may be used, for example, to provide lighting from recessed ceiling fixtures or as spotlights or floodlights.

[37] See Interim final rule, 59 FR 49468 (1994). The EPA 92 amendments to EPCA specify minimum efficiency standards for incandescent reflector lamps and require DOE to issue rules specifying the test procedures to be used in enforcing the minimum efficiency standards. DOE published its interim final rule for testing to comply with EPA 92's minimum efficiency standards on September 28, 1994, after the Commission published the lamp labeling rule amendments to the Appliance Labeling Rule.

Accordingly, the Commission proposes amending Section 305.11(e)(1)(iv) of the Appliance Labeling Rule to clarify that the required lumen disclosure for incandescent reflector lamps is of "total forward lumens" instead of lumens "at beam spread." The Commission also proposes amending Section 305.11(e)(1)(iv) to delete the requirement that the lumen disclosure be followed by the phrase "at beam spread." Because the lumen disclosure for all incandescent reflector lamps must be based on the same lumen measurement, it is unnecessary to specify that the disclosure is "at beam spread." Lastly, the Commission proposes amending § 305.11(e)(1)(vi) to allow manufacturers, at their option, to insert in the Advisory Statement the reference to selecting a lamp with the "beam spread," as well as the light output purchasers need. The Commission believes that the optional Advisory Statement for incandescent reflector lamps would more appropriately advise purchasers that, to save on energy costs, they should select the lamp with the light output they need at the lowest watts after first selecting the type of incandescent reflector lamp (spotlight or floodlight) they need.

The Commission believes that the proposed amendments would impose no additional requirements on manufacturers. Instead, they merely would clarify the existing lamp labeling rules and allow manufacturers an option in making the Advisory Statement disclosure. At the same time, the Commission believes that the proposed amendments would ensure that purchasers are provided with accurate information they need about the most efficient lamps that meet their requirements when they make purchase decisions.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

V. Text of Proposed Amendments

Accordingly, the Commission proposes that 16 CFR Part 305 be amended as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.11, to become effective May 15, 1995, is amended by revising paragraph (e)(1)(iii), (iv), and (vi) as follows:

§ 305.11 Labeling for covered products.

* * * * *

(e) *Lamps*—

(1) * * *

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output and life ratings shall in each instance be:

(A) At 120 volts and followed by the phrase "at 120 volts." In such case, the labels for such lamps also may disclose the lamp's wattage, light output and life at the designed voltage (*e.g.*, "Light Output 1710 Lumens at 125 volts"); or

(B) At the design voltage and followed by the phrase "at [125 volts/130 volts]" if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as "[125 volt/130 volt]," and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for [125/130] volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See [side/back] panel for 120 volt ratings.

(1)(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's total forward lumens.

* * * * *

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the [beam spread and] light output you need, then choose the one with the lowest watts.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–7058 Filed 3–21–95; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Part 22
Hazardous Waste: Technical Revision for the Federal Facility Compliance Act of 1992 Amendments; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL–5175–8]

Hazardous Waste: Technical Revision for the Federal Facility Compliance Act of 1992 Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing a rule in response to a requirement established by section 6001 of the Resource Conservation and Recovery Act (RCRA), as amended by the Federal Facility Compliance Act of 1992 (FFCA). The FFCA includes explicit authority to the Administrator of the EPA to commence administrative enforcement actions against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government that is in violation of requirements under RCRA. The FFCA further provides that no administrative enforcement order issued to a department, agency, or instrumentality of the Federal Government becomes final until the department, agency, or instrumentality has an opportunity to confer with the EPA Administrator. Today's proposal is a technical revision of the Agency's administrative rules of practice to provide a federal department, agency, or instrumentality which is the subject of an administrative enforcement order, with the opportunity to confer with the Administrator, as provided under the FFCA.

DATES: Comments on this proposed rule must be received on or before April 21, 1995.

ADDRESSES: Commenters must each send an original and two copies of their comments to EPA RCRA Docket (5305); Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F–95–TRFA–FFFFF on the comments. The docket is located in the EPA RCRA Docket Room M2616. The docket is open from 9 a.m. to 4 p.m., Monday through Friday except for public holidays. To review docket materials, make an appointment by calling 202–260–9327. The public may obtain copies of docket materials as provided for in 40 CFR part 2. There may be charges for copying services.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/CERCLA Hotline at 1–800–424–9346 or in the Washington Metropolitan Area at 703–412–9810. For information on specific aspects of this proposed rule, contact Sally Dalzell, Federal Facilities Enforcement Office (2261), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202–260–9808.

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

This regulation is issued under the authority of sections 2002 and 6001(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Federal Facility Compliance Act (FFCA), 42 U.S.C. 6912 and 6961(b).

II. Background

The FFCA clarified that EPA has explicit authority to issue administrative enforcement orders to other federal agencies that are in violation of RCRA. In the past, where EPA found RCRA violations at a federal facility, it primarily relied on a negotiated Federal Facility Compliance Agreement to bring the federal facility into compliance. The FFCA amended RCRA to expressly authorize the EPA Administrator to commence an administrative enforcement action against federal facilities pursuant to the Agency's RCRA enforcement authorities. RCRA section 6001(b)(1), 42 U.S.C. 6961(b)(1). Moreover, the FFCA requires the Administrator to initiate administrative enforcement actions against federal facilities "* * * in the same manner and under the same circumstances as an action would be initiated against another person." Id. The legislative history makes it clear that Congress intends that the Agency issue administrative complaints pursuant to RCRA section 3008(a) to federal facilities to address violations that are of the same types that are found at private companies or municipalities. H.R. No. 102–886, 102nd Cong. 2nd Sess. at 19 (1992). Finally, the FFCA provides that before any such administrative enforcement order issued to a federal facility becomes final, the recipient department, agency, or instrumentality must have the opportunity to confer with the Administrator. RCRA section 6001(b)(2), 42 U.S.C. 6961(b)(2).

The adjudication process for all administrative enforcement complaints issued pursuant to RCRA section 3008(a) is governed by the Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22, and the Supplemental Rules of Practice governing the administrative assessment of civil penalties under the Solid Waste Disposal Act, 40 CFR 22.37. Under current regulations, the initial decision of a Presiding Officer shall become the final order of the Environmental Appeals Board within 45 days after its service upon the parties and without further proceedings unless an appeal is taken to the Environmental Appeals Board or the Environmental Appeals Board elects, sua sponte, to review the initial decision. 40 CFR 22.27(c). If the Presiding Officer's initial decision is appealed to the Environmental Appeals Board or if the Environmental Appeals Board elects, sua sponte, to review the initial decision, then the Environmental Appeals Board issues a final order as soon as practicable after receiving the appellate briefs or oral argument, which ever is later. 40 CFR 22.31.

These rules currently have no provisions which accommodate the statutory requirement that no such administrative enforcement order issued to a federal facility shall become final until the recipient agency has had an opportunity to confer with the Administrator. The purpose of today's proposed rule is to revise 40 CFR part 22 to reflect a federal agency's right to an opportunity to confer with the Administrator before an administrative enforcement order issued to that agency becomes a final order.

III. Content of the Rule

The proposed rule would revise the supplemental practice rules for RCRA administrative orders, 40 CFR 22.37, by adding a new paragraph (g) in the nature of a technical amendment. Specifically, under new paragraph (g), an order issued by the Environmental Appeals Board to a federal agency for RCRA violations would not be a final order, if the recipient federal agency made a timely request for a conference with the Administrator. In that event, the decision by the Administrator would be the final order. New paragraph (g) would also establish the timing and procedure that a federal agency must follow to preserve its right to confer with the Administrator prior to an administrative enforcement order becoming final. The head of the recipient federal agency would have 30 days from the Environmental Appeal Board's service of an order or decision to request a conference with the Administrator in writing. The request must also be served upon all parties of record. Finally, new paragraph (g) states that a motion for reconsideration filed under 40 CFR 22.32 does not toll the 30-day period for filing a request for a conference with the Administrator.

The Agency believes that placing the conference at the end of the administrative enforcement process will enable the Agency to proceed with an enforcement case against a Federal agency in the same manner as it would against a private party. This procedure also best assures that the Administrator will have a complete factual and legal record on which to base a decision. The Agency further believes that the 30-day request period, and the requirement that the request for a conference be in writing and served upon the parties of record, are fair and reasonable requirements necessary for the orderly administration of administrative enforcement actions against federal agencies.

The Agency also believes that not tolling the period for requesting a conference for the filing of motions for reconsideration with the Environmental Appeals Board is consistent with 40 CFR 22.32. That section provides that the filing of a motion for reconsideration does not stay the effective date of an Environmental Appeals Board final order. Moreover, the Agency sees no reason to build additional delay into the administrative enforcement process by automatically tolling the request period during the pendency of a motion for reconsideration before the Environmental Appeals Board. Under the proposed rule, the Environmental Appeals Board can grant a request to toll the time period for filing a request for a conference; in addition, the Administrator can always take into account a motion for reconsideration filed with the Environmental Appeals Board, when scheduling a requested conference.

Finally, the proposed rule is consistent with previously published Agency guidance issued by the Office of Federal Facilities Enforcement entitled: Federal Facility Compliance Act: Enforcement Authorities Implementation, dated July 6, 1993 (58 FR 49044, September 12, 1993). This guidance remains in effect for matters not covered by the proposed rule.

IV. Regulatory Analysis

A. Executive Order No. 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), requires Federal regulatory agencies to consider the impact of rulemaking on "small entities." If a rulemaking will have a significant impact on small entities, agencies must consider regulatory alternatives that minimize economic impact.

Today's decision does not affect any small entity. Rather, it is merely a technical amendment to the part 22 procedures ensuring consistency between the regulatory procedures and the Federal Facility Compliance Act. Accordingly, this action will not add any economic burdens to any affected entities, small or large. Therefore, a regulatory flexibility analysis is not required. Pursuant to Section 605(b) of the RFA, 5 U.S.C. section 605(b), the Administrator certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to review of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et. seq.*

List of Subjects in 40 CFR Part 22

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control, Federal facilities.

Dated: March 15, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 22 is proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 42 U.S.C. 6961.

2. Section 22.37 is amended by adding a new paragraph (g) to read as follows:

§ 22.37 Supplemental rules of practice governing the administrative assessment of civil penalties under the Solid Waste Disposal Act

* * * * *

(g) *Final Orders to Federal Agencies on Appeal.* (1) In the case of an administrative order or decision issued to a department, agency, or instrumentality of the United States, such order or decision shall become the final order for purposes of the Federal Facility Compliance Act, 42 U.S.C. 6961(b), in accordance with §§ 22.27(c) and 22.31 except as provided in paragraph (g)(2) of this section.

(2) In the case of an administrative order or decision issued by the Environmental Appeals Board, if the head of the affected department, agency, or instrumentality requests conference with the Administrator in writing and serves a copy of the request on the parties of record within thirty days of the Environmental Appeals Board's service of the order or decision, a decision by the Administrator (rather than the Environmental Appeals Board) shall be the final order for the purposes of the Federal Facility Compliance Act.

(3) In the event the department, agency, or instrumentality of the United States files a motion for reconsideration with the Environmental Appeals Board in accordance with § 22.32, filing such motion for reconsideration shall not toll the thirty-day period for filing the request with the Administrator for a conference unless specifically so ordered by the Environmental Appeals Board.

[FR Doc. 95–7067 Filed 3–21–95; 8:45 am]

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Part VII

Department of Transportation

Federal Highway Administration

23 CFR Part 658

Truck Size and Weight; Restrictions on Longer Combination Vehicles; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 92–15]

RIN 2125–AD53

Truck Size and Weight; Restrictions on Longer Combination Vehicles and Vehicles With Two or More Cargo-Carrying Units

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document corrects appendix C and appendix A to part 658, as well as a few other provisions of part 658. The final rule imposing a freeze on the operation of longer combination vehicles (LCVs) on the Interstate System and vehicles with two or more cargo-carrying units on the National Network (NN) was published on June 13, 1994, and created appendix C. The rule provided that the Federal Highway Administrator may determine if the information in appendix C is correct and if not, may make appropriate corrections. Accordingly, appendix C is being amended to correct the maximum vehicle weight in Michigan and Montana, access and route information in Oklahoma, add a new vehicle and correct a route in Oregon, and correct the offtracking formula in South Dakota. In appendix A, the route listing for the State of Virginia is being corrected, a note is being added to the entry for the State of Iowa, and the route listings for the State of Kentucky are being clarified. Minor corrections are also being made to other provisions in the final rule.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, (202) 366–2212 or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: A final rule implementing sections 1023 and 4006 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 1951, codified at 23 U.S.C. 127(d) and 49 U.S.C. 31112, respectively) was published on June 13, 1994 (59 FR 30392). It provided that the Federal Highway Administrator, on his own motion or on the request of any other person, may determine if the information in appendix C to the final rule is correct and, if not, make the appropriate corrections. This document makes corrections in appendix A as well as in appendix C and other corrections to the final rule.

In the preamble, under the heading, "Vehicles Submitted by States but Excepted From or Not Subject to Section 4006 of the ISTEA," a sentence in the middle of the first column on page 30394 reads as follows: "However, dromedary equipped truck tractors in actual operation on December 1, 1982, are grandfathered under § 658.13(*f*) * * *." This should be corrected to § 658.13(*g*)" to conform to the numbering used in the final rule.

Paragraph (k) of § 658.17 is being amended to show that any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus has been excluded from the axle weight limits in § 658.17(c), (d), and (e) until October 6, 1995, by a notice published November 22, 1994 (59 FR 60242). Axle weight limits authorized by each State will apply until then.

Paragraph (b)(3) of § 658.23 is being amended to indicate that "truck-trailer" and "truck-semitrailer" combinations with two or more cargo-carrying units 65 feet or less in length may operate on the NN. The current reference to a "truck tractor-semitrailer" and "truck tractor-trailer" is erroneous since these vehicles have only one cargo-carrying unit, and thus would not be subject to the freeze under any reading of the statute.

The NN for Iowa as shown in appendix A to part 658 is being amended. Effective July 1, 1994, the State amended its laws to allow vehicles with dimensions mandated in the Surface Transportation Assistance Act of 1982 (STAA) to operate on all State highways. Some States, before the NN was designated, already allowed STAA-dimensioned vehicles to operate on all primary Federal-aid highways. In those States, only Interstate highways were listed as NN routes. Iowa, on the other hand, allowed STAA vehicles on many, but not all, primary system highways, and the NN routes listed in appendix A reflect that choice. Although Iowa has now opened all of its highways to STAA-dimensioned vehicles, the federally-designated routes will continue to be shown along with a note at the beginning of the Iowa listing in appendix A explaining the State's current law.

The NN for Kentucky as shown in appendix A of part 658, "National Network—Federally Designated Routes," is being changed. The State requested a clarification of its routes, such as showing exit numbers instead of referring to the end of a route. In addition, the note for I–75/71 in the Cincinnati area is being deleted since it was only valid through 1992 and has not been officially extended. A new note is being added at the end of the Kentucky routes to explain that although the Kentucky state line is near the Ohio shoreline on the U. S. Grant Bridge, the terminal point for US 23 is listed as the south end of the bridge. This is because the bridge is maintained by the State of Ohio.

The NN for Virginia as shown in appendix A of part 658, "National Network—Federally Designated Routes," is being corrected for Route US 360. "Richmond" should have been shown in the "From" column following "I–64 Exit 192" instead of the "To" column following "VA 627 Village" since Exit 192 on I–64 is in Richmond.

In the table published in appendix C in the final rule on pages 30422 and 30423, "Vehicle Combinations Subject to Pub. L. 102–240," the maximum cargo-carrying length and maximum gross weight are shown on the same line in columns 1 and 2, with the length on the left and the weight on the right. The text of the paragraph immediately preceding the table is being amended to correspond to the present table citation format which places the length and weight figures on the same line, rather than one above the other, as originally planned.

The maximum allowable gross weight in Michigan for a truck tractor and two trailing units with a maximum cargo-carrying length of 58 feet was established in appendix C of part 658 as 154,000 pounds because the FHWA believed that was the maximum practical gross weight. However, the State has verified that a truck tractor and two trailing units with 11 total axles may carry 164,000 pounds. The weight limit is determined from axle and axle group weights. The axles, for purposes of this discussion, are numbered from 1, for the steering axle, to 11 for the last axle in the combination, and are arranged as follows: 1 23 4567 8 9 1011. The longer distances between axles are all 9 feet and the shorter are 3 feet 6 inches. The first three are on the tractor, the next four on the semitrailer, and the last four on the full trailer. Axles 1, 8, and 9 may carry 18,000 pounds each; axles 2 and 3 may carry 16,000 pounds each; and axles 4, 5, 6, 7, 10, and 11 may carry 13,000 pounds each for a total of 164,000 pounds.

The maximum allowable gross weight for LCV's in Montana is shown as 137,800 pounds. However, this is the maximum only for LCV's operating on I–15 between Sweetgrass and Shelby under the Montana/Alberta Memorandum of Understanding. Based on material previously submitted by the State, the maximum gross weight for other LCV's is 131,060 pounds. This has been corrected.

Under Oklahoma in appendix C, the maximum length of cargo-carrying units for a truck tractor and two trailing units is 110 feet. Under the heading of "VEHICLE" for the same combination, the maximum semitrailer or trailer length is shown as 59.5 feet. The State had previously claimed a cargo-unit length of 118 feet, based on the operation of two 57-foot trailers spaced 4 feet apart. Trailers 59.5 feet long are grandfathered for single-trailer operations, as indicated in appendix B to part 658, but the State did not demonstrate that they ran in a twin-trailer configuration before June 1, 1991. The Oklahoma Transportation Commission amended the State's administrative rules in April 1994 to limit the length of the trailers allowed to operate in a double configuration to 53 feet and the overall cargo-carrying length of such a configuration to 110 feet. The reference to a 59.5-foot semitrailer or trailer will therefore be changed to 53 feet, which is consistent with a 110-foot overall maximum cargo-carrying length.

The listing of "ROUTES" for truck tractors and 2 trailing units in Oklahoma was incomplete as some of the routes were shown under the "ACCESS" listing. This was corrected by putting all of the routes under "ROUTES", which left the "ACCESS" provisions (to service facilities and terminals within a 5-mile radius) applicable to all of the routes. The State also indicated that access is allowed from one multilane highway to another via two-lane roads when the distance is not over 15 miles. This correction was also made.

The "PERMIT" section for a truck tractor and three trailing units is also being corrected to reflect that a single special permit authorizes both three units and the maximum gross weight of 90,000 pounds. The permit fee statement at the end of the "PERMIT" section is also being corrected to show that there is only one fee for the permit.

Finally, the "PERMIT" section is being corrected by removing the time-of-travel restriction since it applies only on vehicles or loads which are not easily divided. This type of permitted movement is not subject to the provisions of § 658.23.

A truck-trailer combination is being added under Oregon in appendix C. This was inadvertently overlooked in the material previously furnished by the State.

The list in appendix C showing routes available to triple trailer combinations in Oregon is also being corrected. One segment of US 20 is shown as extending from "Jct. OR 22/OR 126" to "US 26 Vale Santiam Junction." However, Santiam Junction should be under the "From" column since it is located near the junction of OR 22/OR 126.

The offtracking formula for South Dakota in the first column on page 30443 was corrected by the State to read as follows:

$$\text{Offtracking Formula} = 161 - [161^2 - (L_1^2 + L_2^2 + L_3^2 + L_4^2 + L_5^2 + L_6^2 + L_7^2 + L8_8^2)]^{1/2}$$

Utah found that the information under the heading "Routes" in appendix C was not clearly presented. It has been revised to provide greater clarity.

Regulatory Analyses and Notices

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice to the public when the agency for good cause finds that such procedure is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). The FHWA has determined that providing prior notice to the public on this action is unnecessary. This action merely makes corrections to two of the appendices to 23 CFR 658. It does not add new requirements to the regulations. For these same reasons, the FHWA has determined that it has good cause to make the rule effective upon publication in the **Federal Register**. 5 U.S.C. 553(d)(3).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation Regulatory Policies and Procedures. The rule simply makes minor changes to Part 658 to correct errors. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FHWA has evaluated the effects of this rule on small entities. Based on this evaluation, and for the reasons set forth in the preceding two paragraphs, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proceeding.

Paperwork Reduction

This action does not contain an additional or expanded collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, and Motor carrier size and weight.

Issued on: March 16, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 23 CFR, subchapter G, part 658 as set forth below.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH, AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 is revised to read as follows:

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Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31115; 49 CFR 1.48(b)(19) and (c)(19).

2. In § 658.17, paragraph (k) is revised to read as follows:

§ 658.17 Weight.

* * * * *

(k) Any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus is excluded from the axle weight limits in paragraphs (c) through (e) of this section until October 6, 1995.

3. In § 658.23, paragraph (b)(3) is revised to read as follows:

§ 658.23 LCV freeze; cargo-carrying unit freeze.

* * * * *

(b) * * *

(3) Truck-trailer and truck-semitrailer combinations with an overall length of 65 feet or less.

* * * * *

4. Appendix A to part 658 is amended for the State of Iowa by adding a note at the beginning of the listing. The entry for the State of Kentucky is revised and the entry for the State of Virginia is amended by revising the entry for US 360. These changes are as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

* * * * *

Route	From	To
Iowa		

Note: Iowa State law allows STAA-dimensioned vehicles to operate on all highways in the State. The routes shown below were incorporated into the NN by the FHWA in 1984.

* * * * *

Route	From	To
Kentucky		
I–471 Connector	US 27 Highland Heights	I–275/471 Interchange.
US 23	Virginia State Line	US 119 near Jenkins, S. end U.S. Grant Bridge South Portsmouth.
US 23	US 119 N. of Pikeville	
US 23 Spur	US 60 Ashland (via 13th St. Bridge)	Ohio State Line.
US 25/421	Int. US 25/US 421 S. of Richmond	KY 876 Richmond.
US 25/421	KY 418 (via KY 4)	Nandino Blvd., Lexington.
US 25E	Virginia State Line	I–75 Exit 29 N. of Corbin.
US 27	Tennessee State Line (via KY 4 Lexington)	Ohio State Line.
US 31W	Tennessee State Line	KY 255 Park City.
US 31W	Byp US 31W N. of Elizabethtown	I–264 Exit 8 Louisville.
US 31W Byp	Western Kentucky Parkway Exit 136	US 31W N. of Elizabethtown.
US 41	Pennyrile Parkway Henderson	Indiana State Line.
US 41	Tennessee State Line	Pennyrile Parkway near SCL Hopkinsville.
US 45	Jackson Purchase Parkway N. of Mayfield	US 60 Paducah.
US 60	US 45 Paducah	Int. US 60/62 Paducah.
US 60	US 60 Byp W. of Owensboro	KY 69 Hawesville.
US 60	KY 144 Garrett	US 31W S. of Muldraugh.
US 60	Int. US 421/KY 676 Frankfort (via KY 4 Lexington)	I–75 Exit 110 Lexington.
US 60	KY 180 Cannonsburg	US 23 Ashland.
US 60 Byp	US 60 W. of Owensboro	US 60 E. of Owensboro.
US 62	I–24 Exit 7 Paducah (via US 60 Paducah)	US 68.
US 62/68	Washington	Ohio State Line.
US 68	US 62	I–24 Exit 16 Green River Parkway Exit 5 Bowling Green.
US 68	I–24 Exit 65 E. of Cadiz (via US 41 Hopkinsville)	Int. US 62/68 Washington.
US 68	US 27 Paris (via Paris Byp)	US 23 near Jenkins.
US 119	KY 15 E. of Whitesburg	US 421 Harlan.
US 119	US 25E S. of Pineville	KY 1441.
US 119	US 23 N. of Pikeville	KY 35 Bromley.
US 127	KY 22 Owenton	US 60 Frankfort (via Lawrenceburg Byp.).
US 127	US 127 Byp N. of Danville (via US 68 Harrosdburg)	US 127 N. of Danville.
US 127 Byp	US 127 S. of Danville	US 127 N. of Lawrenceburg.
US 127 Byp	US 127 S. of Lawrenceburg	US 27 N. of Stanford.
US 150	US 62 Bardstown (via US 68 Perryville, the Danville Byp, and the Stanford Byp).	US 150 E. of Danville.
US 150 Byp	US 127 S. of Danville	US 27 N. of Stanford.
US 150 Byp	US 150 N. of Stanford	Indiana State Line.
US 231	US 60 Byp Owensboro	US 119.
US 421	0.1 mile S. of Harlan Appalachian Regional Hospital	US 127 Wilkinson Blvd./Owenton Rd. Interchange Frankfort.
US 421	Int. US 60/460 Frankfort	US 60 (4th St.) Owensboro.
US 431	US 60 Byp Owensboro	KY 686 Mt. Sterling.
US 460	I–64 Exit 110 N. of Mt. Sterling	US 23 W. of Paintsville.
US 460	E. end Mountain Pkwy. Extension	KY 348 Benton.
US 641	Tennessee State Line	Entire Circle of Lexington.
KY 4	US 27 S. Lexington	

Route	From	To
KY 11	KY 3170 Lewisburg	US 62/68 Maysville.
KY 15	US 119 Whitesburg (via KY 7 Isom)	KY 15 Spur/KY 191 Campton.
KY 15	KY 15/191 Campton	Mountain Parkway Exit 43.
KY 21	I–75 Exit 76 W. of Berea	US 25 Berea.
KY 35	US 127 Bromley	I–71 Exit 57.
KY 55	Cumberland Parkway Exit 49 Columbia	US 150 Springfield.
KY 61	Peytonsburg	KY 90 Burkesville
KY 69	US 60 Hawesville	Indiana State Line.
KY 70/90	I–65 Exit 53	US 31E Glasgow.
KY 79	KY 1051 Brandenburg	Indiana State Line.
KY 80	KY 80 Byp. E. of Somerset	US 25 N. of London.
KY 80	KY 15 N. of Hazard	US 23 Watergap.
KY 80/US 421	S. ramps Daniel Boone Parkway Exit 20	2nd Street Manchester.
KY 80 Byp	US 27 Somerset	KY 80 E. of Somerset.
KY 90	KY 61 Burkesville	US 27 Burnside.
KY 114	US 460 E. of Salyersville	US 23/460 S. of Prestonburg.
KY 118	Int. US 421/KY 80 Hyden	Daniel Boone Parkway Exit 44.
KY 144	KY 448	US 60 Garrett.
KY 151	US 127 N. of Lawrenceburg	I–64 Exit 48.
KY 180	I–64 Exit 185	Int. US 60/KY 180 Cannonsburg.
KY 192	I–75 Exit 38	Daniel Boone Parkway E. of London.
KY 259	Western Kentucky Parkway Exit 107	US 62 Leitchfield.
KY 418	US 25/421 Lexington	I–75 Exit 104.
KY 446	US 31W Bowling Green	I–65 Exit 28.
KY 448	KY 144	KY 1051 Brandenburg.
KY 555	US 150 Springfield	Bluegrass Parkway Exit 42.
KY 676	US 127 Frankfort	US 60/421 Frankfort.
KY 686	US 460 Mt. Sterling	KY 11 S. of Mt. Sterling.
KY 876	I–75 Exit 87 Richmond	KY 52.
KY 922	KY 4 Lexington	I–64/75 Exit 115.
KY 1051	KY 448 S. of Brandenburg	KY 79.
KY 1682	US 68 W. of Hopkinsville	Pennyrile Parkway Exit 12 NCL Hopkinsville.
KY 1958	KY 627 S. of Winchester	I–64 Exit 94 Winchester.
Audubon Parkway	Pennyrile Parkway Exit 77 Henderson	US 60 Byp Owensboro.
Blue Grass Parkway	I–65 Exit 93 E. of Elizabethtown	US 60 E. of Versailles.
Cumberland Parkway	I–65 Exit 43 N. of Hays	US 27 Somerset.
Daniel Boone Parkway	US 25 N. of London	KY 15 N. of Hazard.
Green River Parkway	I–65 Exit 20 S.E. of Bowling Green	US 60 Byp Owensboro.
Jackson Purchase Parkway	Tennessee State Line	I–24 Exit 25 E. of Calvert City.
Mountain Parkway and Mountain Parkway Extension.	I–64 Exit 98 E. of Winchester	US 460 Salyersville.
Pennyrile	US 41 Alt. Hopkinsville	US 41 Henderson.
Western Kentucky Parkway	I–24 Exit 42 S. of Eddyville	I–65 Exit 91 S. of Elizabethtown.

Note: US 23 crosses the Ohio River between South Portsmouth, KY and Portsmouth, OH via the U.S. Grant Bridge. Although the state line is near the Ohio shoreline, putting most of the bridge in Kentucky, the terminal point for US 23 is listed as the south end of the bridge because the bridge is maintained by the Ohio DOT.

* * * * * * *

Route	From	To
Virginia		
US 360	I–64 Exit 192 Richmond	VA 617 Village.

* * * * *

5. Appendix C to part 658 is amended as follows:

A. By revising the paragraph immediately preceding the table entitled "Vehicle Combinations Subject to Pub. L. 102–240"; and revising the entry for the State of Michigan in that table;

B. In the listing for the State of Montana for the combination "Truck tractor and 2 trailing units—LCV" revising the weight under the heading "Maximum Allowable Gross Weight"and by revising the maximum gross weight limit under the heading "Operational Conditions: Weight:"; and for the combination "Truck tractor and 3 trailing units—LCV", revising the maximum gross weight limit under the heading "Operational Conditions: Weight:";

C. In the listing for the State of Oklahoma for the combination "Truck tractor and 2 trailing units—LCV", under "Operational Conditions" and under the heading "Vehicles", "Access", and "Routes", revising the vehicle access and route information. Also in the listing for the State of Oklahoma for the combination "Truck tractor and 3 trailing units—LCV", under "Operational Conditions",

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revising the text under the heading "Permit";

D. In the listing for the State of Oregon, adding at the end a new vehicle "Truck-trailer—LCV", and revising the reference to US 20 route for a "Truck tractor and 3 trailing units—LCV";

E. In the listing for the State of South Dakota for the combination "Truck tractor and 2 trailing units—LCV", under "Operational Conditions" and under "Vehicle", the offtracking formula is revised; and

F. In the listing for the State of Utah for the combinations "Truck tractor and 2 trailing units—LCV", "Truck-trailer", and "Automobile transporter", under "Operational Conditions", revising the information under the heading "Routes" in three places.

Appendix C to Part 658—Trucks Over 80,000 Pounds on the Interstate System and Trucks Over STAA Lengths on the National Network

* * * * *

In the following table the left number is the maximum cargo-carrying length measured in feet from the front of the first cargo unit to the rear of the last cargo unit. This distance is not to include length exclusive devices which have been approved by the Secretary or by any State. Devices excluded from length determination shall only include items whose function is related to the safe and efficient operation of the semitrailer or trailer. No device excluded from length determination shall be designed or used for carrying cargo. The right number is the maximum gross weight in thousands of pounds that the type of vehicle can carry when operating as an LCV on the Interstate System. For every State where there is a length or weight number in the table that follows, additional information is provided.

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240

State	Truck tractor and 2 trailing units	Truck tractor and 3 trailing units	Other
	1	2	3
* * * * *			
Michigan ..	58' 164K	No	No.
* * * * *			

STATE: MONTANA

COMBINATION: Truck tractor and 2 trailing units—LCV

* * * * *

MAXIMUM ALLOWABLE GROSS WEIGHT: 137,800 pounds for vehicles operating under the Montana/Alberta Memorandum of Understanding (MOU). For other MT-TT2 combinations, the maximum allowable gross weight is 131,060 pounds.

OPERATIONAL CONDITIONS:

WEIGHT: Except for vehicles operating under the MOU, any vehicle carrying a divisible load over 80,000 pounds must comply with the Federal Bridge Formula found in 23 U.S.C. 127.

Maximum single-axle limit: 20,000 pounds

Maximum tandem-axle limit: 34,000 pounds

Maximum gross weight limit: 131,060 pounds

Maximum weight allowed per inch of tire width is 600 pounds.

* * * * *

COMBINATION: Truck tractor and 3 trailing units—LCV

* * * * *

OPERATIONAL CONDITIONS:

WEIGHT: Any vehicle carrying a divisible load over 80,000 pounds must comply with the Federal Bridge Formula found in 23 U.S.C. 127.

Maximum single-axle limit: 20,000 pounds

Maximum tandem-axle limit: 34,000 pounds

Maximum gross weight limit: 131,060 pounds

Maximum weight allowed per inch of tire width is 600 pounds.

* * * * *

STATE: OKLAHOMA

COMBINATION: Truck tractor and 2 trailing units—LCV

* * * * *

OPERATIONAL CONDITIONS:

* * * * *

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicles and load shall not exceed 102 inches in width on the Interstate System and four-lane divided highways. Maximum semitrailer length is 53 feet.

Multiple trailer combinations must be stable at all times during braking and normal operation. A multiple trailer combination when traveling on a level, smooth, paved surface must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Heavier trailers are to be placed to the front in multiple trailer combinations.

* * * * *

ACCESS: Access is allowed from legally available routes (listed below) to service facilities and terminals within a 5-mile radius. Access is also authorized on two-lane roadways which connect multi-lane divided highways when such connection does not exceed 15 miles.

ROUTES: Doubles with 29-foot trailers may use any route on the NN. Doubles with at least one trailer or semitrailer over 29 feet in length are limited to the Interstate and other multi-lane divided highways listed below.

	From	To
I–35	Texas	Kansas.
I–40	Texas	Arkansas.
I–44	Texas	Missouri.
I–235	Entire length in Oklahoma City	
I–240	Entire length in Oklahoma City	
I–244	Entire length in Tulsa	
I–444	Entire length in Tulsa	
I–40 Bus	I–40 Exit 119	US 81 El Reno.
US 60	I–35 Exit 214	US 177 Ponca City.
US 62	US 69 Muskogee	OK 80 Ft. Gibson.
US 62	I–44 Exit 39A Lawton	OK 115 Cache.
US 64	Cimarron Turnpike	I–244 Tulsa.
US 64	I–35 Exit 186 Perry	US 77 Perry.
US 64	I–40 Exit 325 Roland	Arkansas.
US 69	Texas	I–44 (Will Rogers Tpk.) Exit 282.
US 70	OK 76 Wilson	I–35 Exits 31A-B Ardmore.
US 75	I–40 Exits 240A-B Henryetta	I–244 Exit 2 Tulsa.

	From	To
US 75	I–44 Exits 6A-B Tulsa	Dewey.
US 77	I–35 Exit 141 Edmond	3.5 mi. W of I–35.
US 81	I–44 (Bailey Tpk.) Exit 80	South Intersection OK 7 Duncan.
US 81	OK 51 Hennessey	11.5 mi. N of US 412.
US 169	OK 51 Tulsa	OK 20 Collinsville.
US 270	Indian Nation Tpk. Exit 4	US 69 McAlester.
US 270	OK 9 Tecumseh	I–40 Exit 181.
US 271	Texas	Indian Nation Tpk. Hugo.
US 412	I–44 Exit 241 Catoosa	US 69.
US 412	OK 58 Ringwood	I–35 Exits 194A-B.
US 412	US 69 Chouteau	OK 412 B.
OK 3	I–44 Exit 123	Oklahoma/Canadian County Line.
OK 3A	OK 3 Oklahoma City	I–44 Exit 125B Oklahoma City.
OK 7	I–44 Exits 36A-B	OK 65 Pumpkin Center.
OK 7	I–35 Exit 55	US 177 Sulphur.
OK 7	South intersection US 81 Duncan	7.5 mi. E of US 81.
OK 9	I–35 Exit 108A	US 77 Norman.
OK 11	I–35 Exit 222	US 177 Blackwell.
OK 11	US 75 Tulsa	I–244 Exit 12B.
OK 33	US 77 Guthrie	I–35 Exit 157 Guthrie.
OK 51	I–35 Exit 174	US 177 Stillwater.
OK 51	I–44 Exit 231 Tulsa	Muskogee Tpk. Broken Arrow.
OK 165	Connecting two sections of the Muskogee Turnpike at Muskogee.	
OK 165	US 64/Bus. US 64 Muskogee	Muskogee Tpk.
Cimarron Tpk .	I–35 Exit 194	US 64.
Cimarron Tpk Conn.	US 177 Stillwater	Cimarron Tpk.
Indian Nation Turnpike.	US 70/271 Hugo	I–40 Exits 240A-B Henryetta.
Muskogee Tpk	OK 51 Broken Arrow	US 62/OK 165 Muskogee.
Muskogee Tpk	OK 165 Muskogee	I–40 Exit 286 Webber's Falls.

* * * * *

COMBINATION: Truck tractor and 3 trailing units—LCV

* * * * *

PERMIT: An annual special combination permit is required for the operation of triple-trailer combinations on the Interstate System and other four-lane divided primary highways. This permit also authorizes such combinations to exceed 80,000 pounds on the Interstate System.

The permit holder must certify that the driver of a triple-trailer combination is qualified. Operators of triple-trailer combinations must maintain a 500-foot following distance and must drive in the right lane, except when passing or in an emergency.

Speed shall be reduced and extreme caution exercised when operating triple-trailer combinations under hazardous conditions, such as those caused by snow, wind, ice, sleet, fog, mist, rain, dust, or smoke. When conditions become sufficiently dangerous, as determined by the company or driver, operations shall be discontinued and shall not resume until the vehicle can be safely operated. The State may restrict or prohibit operations during periods when, in the State's judgment, traffic, weather, or other safety conditions make such operations unsafe or inadvisable.

Class A and B explosives; Class A poisons; Class 1, 2, and 3 radioactive material; and any other material deemed to be unduly hazardous by the U.S. Department of Transportation cannot be transported in triple-trailer combinations.

A fee is charged for the annual special authorization permit.

* * * * *

STATE: OREGON

COMBINATION: Truck tractor and 3 trailing units—LCV

* * * * *

ROUTES: The following NN routes are also open to truck tractor and three trailing unit combinations.

* * * * *

	From	To
US 20 ...	Jct OR 22/OR126 Santiam Junction.	US 26 Vale.

* * * * *

STATE: OREGON

COMBINATION: Truck-trailer—LCV

WEIGHT, DRIVER, ACCESS, ROUTES, AND LEGAL CITATIONS: Same as OR–TT2 combination.

VEHICLE: The truck may have a built-in hoist to load cargo. Including the hoist it may be up to 41.5 feet long. Any towed vehicle in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

PERMIT: A permit is required for operation if the gross combination weight exceeds 80,000 pounds. A fee is charged. The combination must use splash and spray devices when operating in rainy weather. Movement is not allowed when road surfaces are hazardous due to ice or snow, or when other atmospheric conditions make travel unsafe.

* * * * *

STATE: SOUTH DAKOTA

COMBINATION: Truck tractor and 2 trailing units—LCV

* * * * *

OPERATIONAL CONDITIONS:

* * * * *

VEHICLE:

* * * * *

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Offtracking Formula = 161 - [161^2 - (L_1^2 + L_2^2 + L_3^2 + L_4^2 + L_5^2 + L_6^2 + L_7^2 + L_8^2)]$^{1/2}$

* * * * *

STATE: UTAH

COMBINATION: Truck tractor and 2 trailing units—LCV

* * * * *

OPERATIONAL CONDITIONS:

* * * * *

ROUTES: For combinations with a cargo-carrying length of 85 feet or less, all NN routes. Combinations with a cargo-carrying length over 85 feet are restricted to the following NN routes:

	From	To
I–15	Arizona	Idaho.
I–70	Jct. I–15	Colorado.
I–80	Nevada	Wyoming.
I–84	Idaho	Jct. I–80.
I–215	Entire length in the Salt Lake City area.	
UT–201	I–80 Exit 102 Lake Point Jct.	300 West Street, Salt Lake City.

* * * * *

COMBINATION: Truck-trailer

* * * * *

OPERATIONAL CONDITIONS:

* * * * *

ROUTES:

1. Truck-trailer combinations hauling bulk gasoline or LP gas: cargo-carrying length less than or equal to 78 feet, all NN routes; cargo-carrying lengths over 78 feet up to and including 88 feet, same as UT-TT2 with cargo-carrying length over 85 feet.
2. All other truck-trailer combinations: cargo-carrying length less than or equal to 70 feet, all NN routes; cargo-carrying lengths over 70 feet up to and including 78 feet, same as UT-TT2 with cargo-carrying length over 85 feet.

* * * * *

COMBINATION: Automobile transporter

* * * * *

OPERATIONAL CONDITIONS:

* * * * *

ROUTES: For automobile transporters with a cargo-carrying length of 92 feet or less, all NN routes. Automobile transporters with a cargo-carrying length over 92 feet up to and including 105 feet, same as UT-TT2 with cargo-carrying length over 85 feet.

[FR Doc. 95–7074 Filed 3–21–95; 8:45 am]
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federal register

Wednesday
March 22, 1995

Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12 and 52
Federal Acquisition Regulation (FAR); Subcontracts for Commercial Items; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAR Case 94–791]

RIN 9000–AG47

Federal Acquisition Regulations; Subcontracts for Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: At 60 FR 11198, March 1, 1995, a proposed rule was published in the **Federal Register** to amend the Federal Acquisition Regulation (FAR) to implement portions of Title VIII of the Federal Acquisition Streamlining Act of 1994 (the Act) dealing with the acquisition of commercial items. The background and the regulatory text of that proposed rule stated that the list of laws and the list of clauses would be published at a later date. This case provides the complete list of laws determined to be inapplicable to Executive agency contracts and subcontracts for commercial items and the clauses determined to be applicable to subcontracts for the acquisition of commercial items. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before May 22, 1995, to be considered in the formulation of a final rule.

Public Meeting: April 3, 1995, 1 p.m. at: General Services Administration Auditorium, 18th & F Streets, NW, First Floor, Washington, DC 20405.

Written and Oral Statements: Statements prepared for oral presentation must be sent to the FAR Secretariat at the address given below, not later than March 29, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–791 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Colonel Laurence M. Trowel, Commercial Items Team Leader, at (703) 695–3858 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–791.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of implementation of the Act include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Computer Network (FACNET).

This notice announces proposed revisions developed under FAR Case 94–791, Subcontracts for Commercial Items. FAR Case 94–790, published as a proposed rule at 60 FR 11198, March 1, 1995, proposed revisions to the FAR to implement portions of Title VIII of the Federal Acquisition Streamlining Act of 1994. In the supplementary information, paragraph A, Background, and at the following three citations in that proposed rule, the **Federal Register** notice indicated that the list of laws determined to be inapplicable to subcontracts for the acquisition of commercial items in accordance with section 8003(a) of the Act and the list of clauses applicable to subcontracts for the acquisition of commercial items would be published in the **Federal Register** in a future proposed rule under FAR case 94–791:

—Proposed FAR 12.403, Applicability of certain laws to subcontracts for the acquisition of commercial items, at paragraphs (a), (b), and (c);

—Proposed FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, at paragraph (d); and

—Proposed FAR 52.244–XX, Subcontracts for Commercial Items and Commercial Components, at paragraph (d).

This proposed rule revises the earlier rule by providing the full list of laws determined to be inapplicable to prime contracts at 12.402, and provides the list of laws determined to be inapplicable to subcontracts at 12.403. In addition, this proposed rule includes the clauses determined to be applicable to subcontracts for the acquisition of commercial items at 52.212–5 paragraph (d) and 522.244–XX, paragraph (d).

An area of concern discussed extensively by the Team was the applicability of the Buy American Act (41 U.S.C. 10 (a)–(d)) and Trade Agreements Act (19 U.S.C. 2512(a)) to subcontracts. The Buy American Act requires that "only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use." The effect of this language is that prime contractors must consider the cost and origin of components in determining whether an end item manufactured in the United States meets the definition of a domestic end product. While the Act does not specifically use the terms "subcontract" or "subcontractors," concern was raised that including these two laws on the list of laws inapplicable to subcontractors would result in confusion regarding whether the cost and origin of subcontractor components needed to be considered for commercial items. Consequently, the decision was made to leave these two laws off the list at 12.403 and solicit further public comment on the issue.

The proposed rule at 12.402 and 12.403 includes the full list of laws (Civilian and DOD-unique) determined to be inapplicable at both the prime and subcontractor level. Including the full list of laws in this case provides the public with a complete view of the Government's implementation of Section 8003. The final disposition of the DOD-unique laws, with respect to inclusion in the FAR, will be determined during the resolution of public comments.

Public Meeting. The FAR Council is interested in an exchange of ideas and opinions on this rule. For that reason, the FAR Council is conducting a series of public meetings. A public meeting will be held on April 3, 1995, with respect to FAR Case 94–790, Acquisition of Commercial Items. This rule, FAR Case 94–791, will also be discussed at the April 3rd meeting. The public is encouraged to furnish its views; the Council anticipates that public comments will be very helpful in formulating final rules.

Persons or organizations wishing to make presentations will be allowed 10 minutes each, provided they notify the FAR Secretariat at (202) 501–4755 and submit written statements of the presentation by March 29, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

B. Regulatory Flexibility Act

This proposed rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule will have a beneficial impact by significantly limiting the flow down of Government-unique terms and conditions to subcontractors at all levels thereby minimizing the burden on a significant number of small businesses.

An Initial Regulatory Flexibility Analysis (IRFA) was provided to the Chief Counsel for Advocacy for the Small Business Administration in conjunction with FAR Case 94–790, Acquisition of Commercial Items. That IRFA applies to this rule as well. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR Case 94–791), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: March 20, 1995.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 12 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. In the table of contents, the title of Part 12 is revised as set forth above.

3. Section 12.402 is revised to read as follows:

12.402 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 43, Walsh-Healey Act (see 48 CFR (FAR) part 22, subpart 22.6);

(2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 48 CFR (FAR) 3.404);

(3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 48 CFR (FAR) 5.203);

(4) 41 U.S.C. 701 et seq., Drug-Free Workplace Act of 1988 (see 48 CFR (FAR) 23.501);

(5) 10 U.S.C. 2384(b), Requirement to Identify Suppliers and Sources of Supply (see 48 CFR (DFARS) part 217, subpart 217.73);

(6) 10 U.S.C. 2397, Reports by Employees or Former Employees of Defense Contractors;

(7) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials;

(8) 10 U.S.C. 2408, Prohibition on Persons Convicted of Defense-Related Felonies (see 48 CFR (DFARS) 203.57); and

(9) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 48 CFR (DFARS) part 242, subpart 242.72).

(b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Walter Pollution Control Act (see 48 CFR (FAR) 23.105);

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 48 CFR (FAR) 22.305);

(3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 48 CFR (FAR) 3.502);

(4) 41 U.S.C. 423e(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see 48 CFR (FAR) 3.104–9);

(5) 42 U.S.C. 7606, Requirement for a certificate and clause under the Clean Air Act (see 48 CFR (FAR) 23.105); and

(6) 49 U.S.C. 40118, Requirement for a certificate and clause under Fly American provisions (see 48 CFR (FAR) 47.405).

(c) The applicability of the following laws have been modified in regards to executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 48 CFR (FAR) 3.503);

(2) 41 U.S.C. 254(d)-and 10 U.S.C. 2306a, Truth in Negotiations Act (see 48 CFR (FAR) 15.804);

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR (FAR) Part 99); and

(4) 10 U.S.C. 2397b, Limits on Employment for Certain Former DoD Officials (see 48 CFR (FAR) 203.170).

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

4. Section 12.403 is revised to read as follows:

12.403 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see 49 CFR (FAR) part 19, subpart 19.2);

(2) 41 U.S.C. 43, Walsh-Healey Act (see 48 CFR (FAR) part 22, subpart 22.6);

(3) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see 48 CFR (FAR) part 27, subpart 27.4);

(4) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 48 CFR (FAR) part 3, subpart 3.4);

(5) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 48 CFR (FAR) part 5, subpart 5.2);

(6) 41 U.S.C. 418a, Rights in Technical Data (see 48 CFR (FAR) part 27, subpart 27.4);

(7) 41 U.S.C. 701 *et seq.*, Drug-Free Workplace Act of 1988 (see 48 CFR (FAR) 23.5);

(8) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see 48 CFR (FAR) part 47, subpart 47.5);

(9) 49 U.S.C. 40118, Fly American provisions (see 48 CFR (FAR) part 47, subpart 47.4);

(10) Pub. L. 90–469, William Langer Jewel Bearing Plant Special Act (see 48 CFR (FAR) part 8, subpart 8.2);

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(11) 10 U.S.C. 2301, note, as amended by Section 2091, Pub. L. 103–355, Payment Protections for Subcontractors and Suppliers (see 48 CFR (FAR) part 28, subpart 28.1 and part 32, subpart 32.1);

(12) 10 U.S.C. 2241, note (Pub. L. 102–396, Section 9005, as amended by Pub. L. 103–139, Section 8005), Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States (see 48 CFR (DFARS) part 225, subpart 225.70);

(13) 10 U.S.C. 2320, Rights in Technical Data (see 48 CFR (DFARS) part 227, subpart 227.4);

(14) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions (see 48 CFR (DFARS) part 227, subpart 227.4);

(15) 10 U.S.C. 2327, note (Pub. L. 103–160, Section 843), Reporting Requirement Regarding Dealings with Terrorist Countries (see 48 CFR (DFARS) part 209, subpart 209.1);

(16) 10 U.S.C. 2391, note (Pub. L. 101–510, Section 4201(a)(1)(B)), Notification of Substantial Impact on Employment (see 48 CFR (DFARS) part 249, subpart 249.70);

(17) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors (see 48 CFR (DFARS) part 209, subpart 209.4);

(18) 10 U.S.C. 2501, note (Pub. L. 103–160, Section 1372), Notification of Proposed Program Termination (see 48 CFR (DFARS) part 249, subpart 249.70);

(19) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods other than United States Goods (see 48 CFR (DFARS) part 225, subparts 225.7004, 225.7007, 225.7010, and 225.7016);

(20) 10 U.S.C. 2631, Cargo Preference Act (see 48 CFR (DFARS) 247.5); and

(21) National Defense Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Purchases as follows: Pub. L. 100–202, Section 8088, Polyacrylonitrile Based Carbon Fiber; Pub. L. 101–511, Section 8041, Anchor and Mooring Chain; Pub. L. 102–172, Section 8111, Carbon, Alloy and Armor Steel Plates; Pub. L. 102–396, Section 9108, Four Ton Dolly Jacks; Pub. L. 102–484, Section 832, Anti friction Bearings; Pub. L. 103–139, Section 8090, Aircraft Fuel Cells; Pub. L. 103–139, Section 8124, Totally Enclosed Lifeboat Survival Systems; Pub. L. 103–335, Section 8023, Supercomputers; Pub. L. 103–335, Section 8050, Multibeam Sonar Mapping Systems; Pub. L. 103–335, Section 8115, Ship Propellers; and Pub. L. 103–335, Section 8120, 120 mm Mortars and Ammunition.

(b) Certain requirements of the following laws have been eliminated for subcontracts under either a contract for the acquisition of commercial items or subcontract for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a cerificate and clause under the Federal Water Pollution Control Act (see 48 CFR (FAR) part 23, subpart 23.1);

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 48 CFR (FAR) part 22, subpart 22.3);

(3) 41 U.S.C. 423e(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see 48 CFR (FAR) part 3, subpart 3.1); and

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 48 CFR (FAR) part 23, subpart 23.1).

(c) The applicability of the following laws have been modified in regards to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 48 CFR (FAR) part 3, subpart 3.5);

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 48 CFR (FAR) part 15, subpart 15.8); and

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR (FAR) part 99).

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.212–5 is revised to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.302(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (XXX 1995)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3));

(2) 52.222–3, Convict Labor (E.O. 11755); and

(3) 52.233–3, Protest After Award (31 U.S.C. 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the following FAR and FIRMR clauses in this paragraph (b) that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

___ (1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

___ (2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

___ (3) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

___ (4) 52.222–26, Equal Opportunity (E.O. 11246).

___ (5) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012).

___ (6) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

___ (7) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 2012).

___ (8) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).

___ (9) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

___ (10) 52.225–17, Buy American Act—Supplies Under European Community Sanctions for End Products (E.O. 12849).

___ (11) 52.225–18, European Community Sanctions for End Products (E.O. 12849).

___ (12) 52.225–19, European Community Sanctions for Services (E.O. 12849).

___ (13) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C. 10, Pub. L. 103–187).

___ (14) 52.247–64, Preference for Privately Owned US Flagged Commercial Vessels (46 U.S.C. 1241).

___ (15) 201–39.5202–3, Procurement Authority (FIRMR).

(This acquisition is being conducted under _____ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is _____.)

(c) The Contractor agrees to comply with the following FAR clauses in this paragraph (c), applicable to commercial services, that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

___ (1) 52.222–41, Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

___ (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

___ (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

___ (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 *et seq.*).

(d) Notwithstanding the requirements of the clauses in paragraphs (a), (b) or (c) of this clause, the Contractor is not required to include any FAR clause, other than those listed below, in a subcontract for commercial items or commercial components—

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(End of clause)

6. Section 52.244–XX is added to read as follows:

52.244–XX Subcontracts for Commercial Items and Commercial Components.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Items and Commercial Components (XXX 1995)

(a) *Definition. Commercial item*, as used in this clause, has the meaning contained in the clause at 52.202–1, Definitions.

Subcontract, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all levels to incorporate, commercial items or nondevelopmental items other than commercial items, as components of items to be supplied under this contract.

(c) If in awarding a subcontract for commercial items an exception under 15.804–1(a) does not apply, the subcontractor may be required to submit cost or pricing data and comply with the appropriate clauses prescribed in FAR Part 15.

(d) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below and as may be required by paragraph (c) of this clause, in a subcontract for commercial items or commercial components:

(1) 52.203–12, Limitation on Payments to Influence Certain Federal Transactions (31 U.S.C. 1352);

(2) 52.222–26, Equal Opportunity (E.O. 11246);

(3) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(4) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(e) The Contractor shall include the terms of this clause, including this paragraph (e), in subcontracts awarded under this contract.

(End of clause)

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Part IX

The President

Presidential Determination No. 95–16—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–16 of March 13, 1995

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $11,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of victims of the conflict in Chechnya. These funds may be used as necessary to provide U.S. contributions in response to the appeals of international and intergovernmental organizations for funds to meet the urgent and unforeseen humanitarian needs of victims of the conflict in Chechnya.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 13, 1995.

[FR Doc. 95–7259
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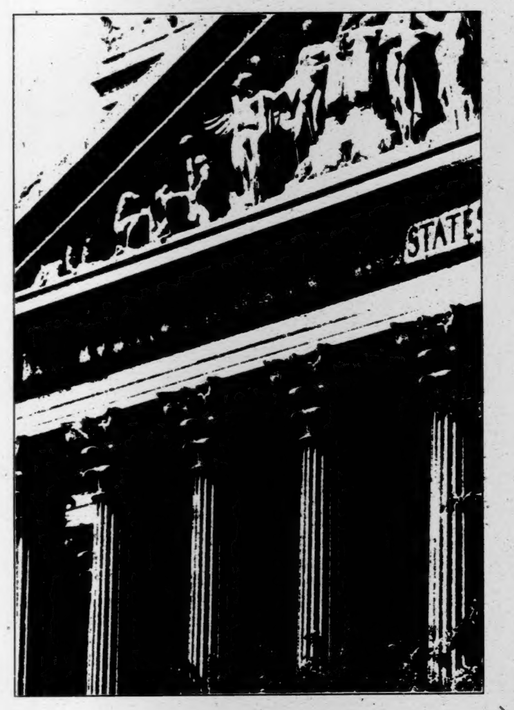

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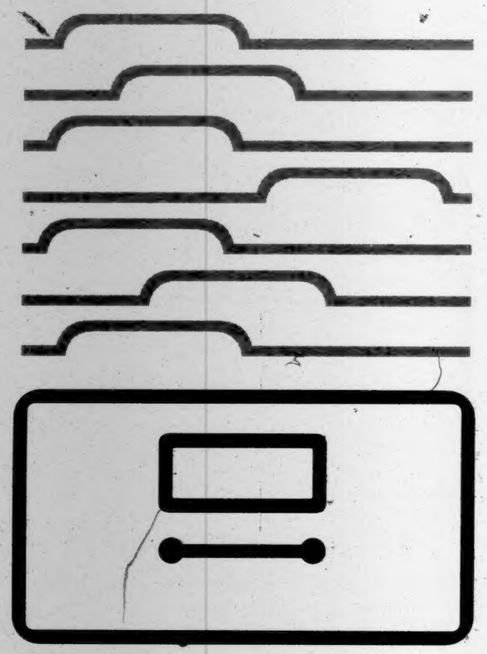

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in the Code of Federal Regulations (CFR)

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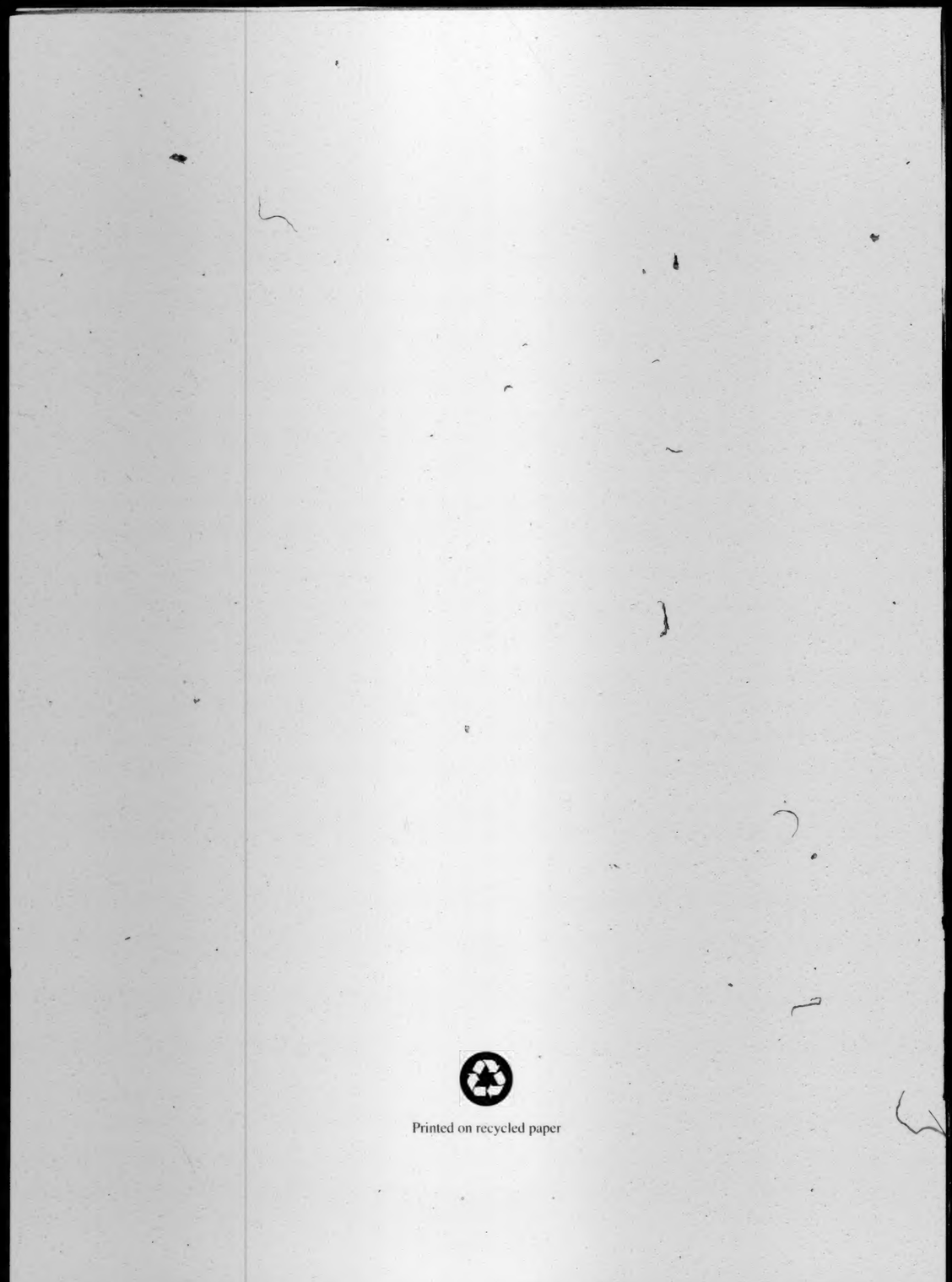

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